

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

**IN THE MATTER OF THE APPLICATION FOR)
A VARIANCE FROM COMMISSION ORDER 1-) CAUSE NO. 1
149 IN CAUSE NO. 1)
) DOCKET NO. _____
)**

**APPLICATION FOR VARIANCE OF
MAGPIE OPERATING, INC.**

Magpie Operating, Inc. ("Magpie"), respectfully submits this application to the Oil and Gas Conservation Commission of the State of Colorado ("Commission") for an order granting a variance from the Commission's prior Order No. 1-149 in Cause No. 1 setting the expiration date of Magpie's permit No. 20084004, pursuant to Rule 502.b(1).

Commission Rule 502.b(1) provides:

The operator or the applicant requesting the variance shall make a showing that it has made a good faith effort to comply, or is unable to comply with the specific requirements contained in the rules, regulations, or orders, from which it seeks a variance, including, without limitation, securing a waiver or an exception, if any, and that the requested variance will not violate the basic intent of the Oil and Gas Conservation Act.

As set forth below, Magpie satisfies these requirements for a variance.

In support of its application, Magpie states and alleges as follows:

1. Magpie is a company duly authorized to conduct business in the State of Colorado and is a registered operator with the Commission.
2. Magpie has an approved application for permit to drill ("Permit"), Permit No. 20084004, from the Commission dated April 9, 2010, with an expiration date of April 8, 2012. *See Exhibit A, attached to this application.*¹

¹ The Permit was issued under the Commission Rules as they existed prior to the rulemaking in 2008 to implement House Bills 1298 and 1341. Commission Rule 303.h., the applicable Commission Rule prior to the rulemaking, stated that all permits to drill expired one year after Director approval. The Commission, pursuant to Commission Staff's recommendation, approved the Permit with a two-year expiration given the numerous operational restrictions – including timing and access limitations – contained in the Permit.

3. Magpie has spent over four years trying to develop its valid leasehold rights on the property covered by the Permit (the "Property"). In that four-year period, the Property owners ("Property Owners") have gone to great lengths to delay and prevent oil and gas development to the detriment of Magpie and to Magpie's lessors, the Colorado State Board of Land Commissioners ("State Land Board"). During that period, Magpie has had to:

(a) File suit against the Property Owners in the District Court of Larimer County, Colorado, to seek access to and recover damages for the excessive efforts Magpie had to undertake to exercise its valid leasehold rights (*See Magpie Operating, Inc. v. Laura Chase and Mike Sutak*, No. 2009 CV 1134, Dist. Ct. Larimer County);

(b) Defend the right to access the Property at the Commission's Designated Outside Activity Hearing ("DOAA") in February 2010;

(c) Defend and seek approval for the Permit, which was one of Magpie's two originally-filed applications for permits to drill at the Commission's Application for Permit to Drill Hearing in March 2010 (Magpie withdrew its application for a second permit to drill for a location on the Property as part of its numerous concessions made to address the Property Owners' and Commission's concerns);

(d) Defend and support the decisions of the Commission during the Property Owners' unsuccessful appeal to the district court of (i) the Commission's denial of the Property Owners' DOAA application, and (ii) the Commission's approval of Magpie's Permit; and

(e) Defend and support the decisions of the Commission before the Colorado Court of Appeals (the "Appeal"). *See* Exhibit B, attached to this application, for Magpie's Answer Brief before the Colorado Court of Appeals in Case No. 2011 CA 1249.

4. Although the Appeal does not absolutely prevent Magpie from accessing the Property, it is entirely foreseeable that should Magpie seek access to the Property to drill a well prior to the current expiration date of the Permit, the Property Owners could and likely would immediately seek judicial restraint against such access. Magpie has limited financial resources and the prospect of yet another layer of legal disputes is not only unappealing, but it makes the financing of well drilling impractical, if not impossible, for Magpie.

5. Extending the expiration of the Permit by an additional two years – until April 8, 2014 – will give the Colorado Court of Appeals, and, if necessary, the Colorado Supreme Court, ample opportunity to rule on the Commission's findings concerning the DOAA and the Permit while not depriving Magpie and the State Land Board of the benefits of the Commission's prior rulings.

6. Magpie has sought, in good faith, compliance with the current expiration date of the Permit and was hopeful the Property Owners would not seek a second appeal. Magpie has pursued an expeditious appeal and has maintained pressure on counsel for all parties involved to move the Appeal along as quickly as reasonably possible. As of the date of this application, the Property Owners have filed their opening brief and the Commission, the State Land Board, and Magpie have all filed their answer briefs. The Property Owners have until January 25, 2012, to file their reply brief. The Commission, the State Land Board, and Magpie have all requested that

the Colorado Court of Appeals reject oral argument, and the Property Owners have opposed that request; the Colorado Court of Appeals has yet to rule on the matter. Given the procedural status of the Appeal, it is highly unlikely the Appeal (and any further appeals) will conclude prior to the expiration date of the Permit on April 8, 2012.

7. Magpie seeks *no other* variance from the 14 conditions of approval contained in the Permit. Magpie seeks *only* a variance from the expiration date of the Permit.

8. The failure to develop the lands covered by the Permit not only harms Magpie, but it harms the State of Colorado since the State Land Board is the lessor of the lease that gives Magpie the right to access the Property, and revenue from production of the lease funds K-12 public education.

9. The Commission's approval of this application will not violate the basic intent of the Oil and Gas Conservation Act because the granting of this application will: (a) foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources; (b) prevent waste; (c) safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas; and (d) balance production with the protection of wildlife resources. COLO. REV. STAT. § 34-60-102(1)(a) (2011).

10. Counsel for Magpie will submit Magpie's verification of this application under separate cover at a later date.

11. Although not required by Commission Rules, Magpie is providing a courtesy notice of this application to counsel of record for the Property Owners, simultaneous with this filing.

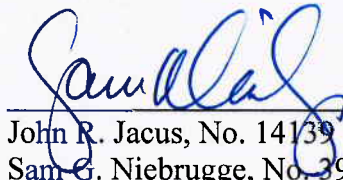
WHEREFORE, Magpie respectfully requests that this matter be set for hearing at the March 2012 hearing, that notice be given as required by law, and that upon such hearing, the Commission enter its order:

(A) Granting a variance to the Commission's prior Order No. 1-149 in Cause No. 1 setting the expiration date of Magpie's Permit No. 20084004 to April 8, 2012, and ordering that Magpie's Permit No. 20084004 shall expire on April 8, 2014; and,

(B) For such other findings and orders as the Commission may deem proper or advisable in this matter.

[Remainder of page left intentionally blank. Signature page follows.]

Respectfully submitted this 11th day of January, 2012.



John R. Jacus, No. 14139

Sam G. Niebrugge, No. 39006

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ATTORNEYS FOR MAGPIE OPERATING, INC.

CERTIFICATE OF SERVICE

I hereby certify on this 11th day of January, 2012, I caused a true and correct copy of this **APPLICATION FOR VARIANCE OF MAGPIE OPERATING, INC.** to be served by United States mail, first-class, postage pre-paid to the following parties:

Phillip D. Barber
Attorney for Laura "Wendy" Chase and Mike Satak
1675 Larimer Street, Suite 620
Denver, CO 80202
Telephone: 303-894-0880
Facsimile: 720-904-5755

Heather A. Warren
Assistant Attorney General
Natural Resources and Environment Section
Attorney for State Land Board
1525 Sherman Street, 7th Floor
Denver, Colorado 80203
Telephone: (303) 866-5513
E-Mail: Heather.Warren@state.co.us


Christine M. Thompson

VERIFICATION

STATE OF COLORADO)
) ss.
COUNTY OF Larimer)

Ryan Warner, of lawful age, being first duly sworn upon oath, deposes and says that he is the Vice President of Magpie Operating, Inc., and that he has read the foregoing Application and that the matters therein contained are true to the best of his knowledge, information and belief.


Ryan Warner

Subscribed and sworn to before me this 18 day of January, 2012.

Witness my hand and official seal.

My commission expires: 11 / 30 / 2014

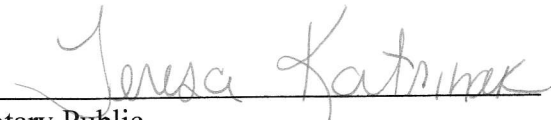

Notary Public



EXHIBIT A

State

Oil and Gas Const.

02553357

1120 Lincoln Street, Suite 601, Denver, Colorado 80203 Phone: (303)894-2100 Fax: (303)894-2109

APPLICATION FOR PERMIT TO:

- 1.
- ☒
- Drill,
- ☐
- Deepen,
- ☐
- Re-enter,
- ☐
- Recomplete and Operate

2. TYPE OF WELL

OIL ☐ GAS ☒ COALBED ☐ OTHER: ☐
SINGLE ZONE ☐ MULTIPLE ZONES ☒ COMMINGLE ZONES ☐Refilling ☐
Sidetrack ☐

RECEIVED

JUN 13 2008

COGCC

Complete the

Attachment Checklist

3. Name of Operator: Magpie Operating, Inc.	4. COGCC Operator Number: 52530	OP	COGCC
5. Address: 2707 South County Road 11		APD Orig & 1 Copy	X
City: Loveland State: CO Zip: 80537		Form 2A	X
6. Contact Name: Ryan Warner Phone: 970-669-6308 Fax: 970-669-6396		Well location plat	X
7. Well Name: State-Chase Well Number: 33-36		Topo map	X
8. Unit Name (if appl): Unit Number:		Mineral lease map	X
9. Proposed Total Measured Depth: 7650		Surface agmt/Surety	X
10. Qtr/Sec: NW SE Sec: 36 Twp: 6N Rng: 68W Meridian: 6		30 Day notice letter	X
Latitude: 40.35426 40.351349 Longitude: 104.95281 -104.950528		Deviated Drilling Plan	
Footage At Surface: 1874 817' FSL 4981 1387' FEL		Exception Location Request	
11. Field Name: Johnson's Corner Field Number: 42570		Exception Loc Waivers	
12. Ground Elevation: 4919 13. County: Larimer		H2S Contingency Plan	
14. GPS Data: 4/8/2010 Date of Measurement: 4/2/2008 PDOP Reading: 0 Instrument Operator's Name: B. David Rux L. Coler		Federal Drilling Permit	

15. If well is: <input type="checkbox"/> Directional <input type="checkbox"/> Horizontal (highly deviated), submit deviated drilling plan. Bottomhole Sec Twp Rng:	
Footage At Top of Prod Zone: <input type="checkbox"/> At Bottom Hole: <input type="checkbox"/>	
16. Is location in a high density area (Rule 603b)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
17. Distance to the nearest building, public road, above ground utility or railroad: 1874 634	
18. Distance to Nearest Property Line: 687 80	19. Distance to nearest well permitted/completed in the same formation: 966' 2410'

20. LEASE, SPACING AND POOLING INFORMATION				
Objective Formation(s)	Formation Code	Spacing Order Number (s)	Unit Acreage Assigned to Well	Unit Configuration (N/2, SE1/4, etc.)
Niobrara Codell	NB-CO	407-87	640	Sec 36 All
J Sand	JSND	N/A	640	Sec 36 All
21. Mineral Ownership: <input type="checkbox"/> Fee <input checked="" type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Indian Lease #				
22. Surface Ownership: <input checked="" type="checkbox"/> Fee <input type="checkbox"/> State <input type="checkbox"/> Federal <input type="checkbox"/> Indian				
23. Is the Surface Owner also the Mineral Owner? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Surface Surety ID# 2009 0079				
23a. If 23 is Yes: Is the Surface Owner(s) signature on the lease? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
23b. If 23 is No: <input type="checkbox"/> Surface Owners Agreement Attached or <input checked="" type="checkbox"/> \$25,000 Blanket Surface Bond <input type="checkbox"/> \$2,000 Surface Bond <input type="checkbox"/> \$5,000 Surface Bond				
24. Using standard Qtr/Sec, Twp, Rng format enter entire mineral lease description upon which this proposed well site is located (attach separate sheet/map if you prefer):				
25. Distance to Nearest Mineral Lease Line: 1874 817' 26. Total Acres in Lease: 640				

27. DRILLING PLANS AND PROCEDURES							
27. Is H2S anticipated? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, attach contingency plan.							
28. Will salt sections be encountered during drilling? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							
29. Will salt (>15,000 ppm TDS Cl) or oil based muds be used during drilling? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No							
30. If questions 27 or 28 are yes, is this location in a sensitive area (Rule 903)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If 28, 29 or 30 are "Yes" a pit permit may be required.							
31. Mud disposal: <input type="checkbox"/> Offsite <input checked="" type="checkbox"/> Onsite							
Method: <input checked="" type="checkbox"/> Land Farming <input type="checkbox"/> Land Spreading <input type="checkbox"/> Disposal Facility <input type="checkbox"/> Other:							
NOTE: The use of an earthen pit for Recompletion fluids requires a pit permit (Rule 905b.) If air/gas drilling, notify local fire officials.							
String	Size of Hole	Size of Casing	Weight Per Foot	Setting Depth	Sacks Cement	Cement Bottom	Cement Top
Surface	12 1/4	8 5/8	24#	630'	450	630'	Surface
Production	7 7/8	4 1/2	10.5#	7660	200	7650	200' above Niobrara
32. BOP Equipment Type: <input type="checkbox"/> Annular Preventor <input checked="" type="checkbox"/> Double Ram <input type="checkbox"/> Rotating Head <input type="checkbox"/> None							
33. Comments: No conductor pipe will be used.							
34. Initial Rule 306 Consultation took place on (date) 4/4/2008, was waived, or is not required. Provide supporting documentation if consultation has been waived or if good faith effort did not result in consultation.							
PERMIT SUBMITTED TO COGCC PRIOR TO COMPLIANCE WITH RULE 306 CONSULTATION SHALL BE RETURNED UNAPPROVED.							
I hereby certify that a complete permit package has been sent to the applicable Local Government Designee(s), and all statements made in this form are, to the best of my knowledge, true, correct, and complete.							
Signed: Ryan Warner				Print Name: Ryan Warner			
Title: Vice President				Date: 5/30/2008 Email: magpieoil@yahoo.com			

Based on the information provided herein this Application for Permit-to-Drill complies with COGCC Rules and applicable orders and is hereby approved.

COGCC Approved: David Meslin Director of COGCC Date: 9 April 10

Permit Number: 20084004

Expiration Date: 8 April 12

API NUMBER
05-069-06397-00

CONDITIONS OF APPROVAL, IF ANY:

- 1) Provide 24 hour notice of MIRU to Ed Binkley at 970-506-9834 or e-mail at ed.binkley@state.co.us 2) Comply with Rule 317.i and provide cement coverage from TD to a minimum of 200' above Niobrara. Verify coverage with cement bond log.

Well location must be surveyed prior to move in and rig up and must be submitted to the COGCC for review.

Conditions of Approval

Attached to and part of the Permit to Drill

State Chase 33-36

- Drilling and completion activities shall occur between November 15 and March 1.
- The State Chase 33-36 well shall be located along the eastern property boundary at the location preferred by the landowner, approximately 110 feet south of the location proposed by the operator.
- Interim reclamation shall commence immediately following well drilling and completion. An appropriate seed mix and seeding method shall be selected by the surface owner.
- The operator shall implement all practicable measures to ensure that disruption to the surface owners' irrigation practices are minimized.
- Drill cuttings and other exploration and production waste shall be disposed of offsite.
- Access to the well location shall be from WCR 14 via an access road along the eastern property boundary, as proposed in Magpie's sketch. The road shall be no wider than is reasonably wide necessary for safe maneuvering of equipment and trucks.
- A horse safe 6 bar 2-inch Powder River access gate shall be installed across the access road to prevent unauthorized entrance. The gate shall be equipped with a lock that can be opened and locked by both the surface owners and Magpie.
- In addition to the required notice for site preparation, drilling and completion, the operator shall provide 30 days notice to the surface owner for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled event 14 days in advance of the scheduled work then the operation may proceed. Otherwise if there is a conflict then the operator shall work with the surface owner to avoid the work during the surface owners scheduled equestrian events.

In the event the tank battery will not be located off site:

- The tank battery shall be located at the site designated by the operator along the south property boundary approximately 400 feet west of the southeast corner of the property adjacent to Weld County Road 14.
- The operator shall, to the extent practicable, minimize the size of the tank battery by using, among other methods, corrugated steel containment structures rather than soil berms around surface equipment.
- The operator shall install no more than two low profile tanks.
- The tank battery shall not include any compression or dehydration equipment.
- The operator shall install a minimum eight foot privacy fence around the tank battery to mitigate visual impacts and to prevent unauthorized access to the facility. The construction and finish of the fence shall be reasonably acceptable to the surface owner.
- The operator shall use best efforts to ensure that operations and maintenance activities at the tank battery do not occur during scheduled equestrian events, provided that the operator receives at least fourteen (14) days notice in advance of the event. This requirement shall not apply to emergency operations necessary to protect human health, safety, welfare, or the environment.

EXHIBIT B

<p>COLORADO COURT OF APPEALS 101 West Colfax Avenue, Suite 800 Denver, Colorado 80202</p>	
<p>On Appeal from the District Court of Denver County The Honorable Brian Whitney Case No.: 2010 CV 3230, Consolidated with 2010 CV 4100</p>	
<p>Plaintiffs / Appellants: Laura W. "Wendy" Chase and Michael Sutak</p> <p>v.</p> <p>Defendants / Appellees: Colorado Oil and Gas Conservation Commission, Colorado State Land Board, and Magpie Operating, Inc.</p>	<p>▲ COURT USE ONLY ▲</p>
<p>John R. Jacus, No. 014139 Sam Niebrugge, No. 039006 DAVIS GRAHAM & STUBBS LLP 1550 Seventeenth St., Suite 500 Denver, CO 80202 Tel: (303) 892-9400 Fax: (303) 893-1379 E-mail: john.jacus@dgsllaw.com sam.niebrugge@dgsllaw.com</p> <p>Attorneys for Defendant / Appellee Magpie Operating, Inc.</p>	<p>No. 2011 CA 1249</p>
<p>MAGPIE OPERATING, INC.'S ANSWER BRIEF</p>	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules.

Specifically, the undersigned certifies that:

- This brief complies with C.A.R. 28(g) because it contains 838 words.
- This brief complies with C.A.R. 28(k) because it contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.



/s/ Sam Niebrugge
Sam Niebrugge, 39006

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TABLE OF AUTHORITIES

None.

I. STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Magpie Operating, Inc. (“Magpie”) adopts the statement of the issues presented for review included in the Answer Briefs of the Commission and the State Land Board.

II. STATEMENT OF THE CASE

A. Procedural Summary

Magpie adopts the procedural summary included in the Answer Briefs of the Commission and the State Land Board.

B. Statement of Facts

Magpie adopts the statement of facts included in the Answer Briefs of the Commission and the State Land Board, and submits the following additional facts:

Magpie is a small, independent oil and gas operator that has limited financial resources. (R. 519-520¹). Magpie has less than 20 employees and operates just over 100 wells in Colorado. (R. 79). Magpie is entitled to access to the 77-acre parcel of property south of Loveland, Colorado, in Larimer County (the “Property”) by virtue of its oil and gas lease with the State Land Board. (R. 174-

¹ Citations to the Bates-stamped record regarding the Commission’s decision to deny the Property Owners’ DOAA application, Denver District Court Case Number 2010 CV 3230, are referred to as R. __.

183). Appellants bought the Property in 1997 with full knowledge they were not acquiring the minerals. (R. 28:18-21; 50:5-9).

Magpie's representatives first initiated contact with the Appellants more than four years ago on November 21, 2007. (R. 426). Magpie has invested a substantial amount of time, effort, and money attempting to exercise its leasehold rights and to obtain rights of access at the DOAA Hearing (defined below) and the Commission's approval of its permit to drill at the APD Hearing (defined below). (Magpie 311²).

III. SUMMARY OF THE ARGUMENT

Magpie adopts the summary of the argument included in the Answer Briefs of the Commission and the State Land Board.

IV. ARGUMENT

A. Standard of Review

Magpie agrees with the Commission that the standard of review set forth in Appellants' Opening Brief is not correct, and Magpie adopts the standard of review included in the Answer Briefs of the Commission and the State Land Board.

² Citations to the Bates-stamped record regarding the Commission's approval of the Magpie APD, Denver District Court Case Number 2010 CV 4100, are referred to as Magpie _.

B. Argument

Magpie adopts the remaining arguments included in the Answer Briefs of the Commission and the State Land Board, and submits the following additional arguments:

Magpie supports the Commission's and the State Land Board's request in their Answer Briefs that Appellants' request for oral argument be denied. Magpie has had to incur costs for landmen, surveyors, expert witnesses, and attorneys to exercise and defend its valid leasehold rights. In the last four years Magpie has gone to great lengths to simply obtain and preserve a permit to drill under its lease with the State Land Board, including:

- (1) Filing suit against the Appellants in the District Court of Larimer County, Colorado, to recover damages for the excessive efforts Magpie had to undertake to exercise its valid leasehold rights. *See Magpie Operating, Inc. v. Laura Chase and Mike Sutak*, No. 2009 CV 1134, Dist. Ct. Larimer County;
- (2) Defending the right to access the Property at the Designated Outside Activity Hearing ("DOAA") in February 2010 (the "DOAA Hearing");

- (3) Defending and seeking approval for one of Magpie's two originally-filed applications for permits to drill ("APD") at the Application for Permit to Drill Hearing in March 2010 ("APD Hearing"); and
- (4) Defending and supporting the decisions of the Commission during the district court appeal of (i) the Commission's denial of the Appellant's DOAA application, and (ii) the Commission's approval of Magpie's APD.

Appellants have had four opportunities to argue their case: at the DOAA Hearing, at the APD Hearing, in the district court (both in briefs and oral argument), and now in the briefs to this Court on second appeal. The Appellants have been told that the Property does not qualify as a DOAA (R. 487-490 attached hereto as Exhibit A), that Magpie has the valid and enforceable right to drill a well as set forth in the APD (Magpie 297-301, attached hereto as Exhibit B), and that the Commission's actions were reasonable, entitled to deference, and not arbitrary or capricious (Lexis R. 608-611/673³, attached hereto as Exhibit C). This Court should limit its review to the briefs submitted by the Appellants, Commission, State Land Board, and Magpie, and should deny Appellants' request for oral

³ The entire registry of actions, consisting of 673 pages was scanned and uploaded for purposes of appeal. Citations to this portion of the record are referred to as Lexis R. ___/673.

argument as it will not affect the outcome and will only serve to further prejudice Magpie as a result of additional delay and expense.

V. **CONCLUSION**

Based on the foregoing reasons and on the information contained in the State Land Board's and Commission's Answer Briefs, Magpie requests that oral argument be denied, and that the Court affirm the rulings of the Commission and the district court and deny all relief requested by the Appellants.

Dated: December 16, 2011

Respectfully submitted,

DAVIS GRAHAM & STUBBS LLP


/s/ Sam Niebrugge
Sam Niebrugge

Attorneys for Defendant / Appellee
Magpie Operating, Inc.

This document was filed and served via the ECF e-file system. The original signed copy is on file at the offices of Davis Graham & Stubbs LLP.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing **Magpie Operating, Inc.'s Answer Brief** has been served this 16th day of December, 2011, via LEXIS/NEXIS File and Service, on the following:

Phillip D. Barber, Esq.
Suite 620
1675 Larimer Street
Denver, Colorado 80202
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Assistant Attorney General
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1525 Sherman Street
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*Counsel for Appellee / State Land
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*Counsel for Appellee / Colorado Oil
and Gas Conservation Commission*

Clerk of the District Court
City and County of Denver
1437 Bannock Street
Denver, Colorado 80202

s/Paige Finnell
Paige Finnell

Exhibit A

Exhibit A

BEFORE THE OIL AND GAS CONSERVATION COMMISSION OF THE STATE OF COLORADO

IN THE MATTER OF THE PROMULGATION AND) CAUSE NO. 1
ESTABLISHMENT OF FIELD RULES TO)
ESTABLISH MOQUI MEADOWS AS A) ORDER NO. 1-147
DESIGNATED OUTSIDE ACTIVITY AREA,)
LARIMER COUNTY, COLORADO)

REPORT OF THE COMMISSION

This cause came on for hearing before the Commission on February 22, 2010, at 9:00 a.m., in Suite 801, The Chancery Building, 1120 Lincoln Street, Denver, Colorado; after giving Notice of Hearing as required by law, on the application of Mike Satak and Laura W. Chase for an order determining that certain lands in Township 5 North, Range 68 West, 6th P.M. constitute a designated outside activity area in accordance with Commission Rule 603.b and its 100-Series Rules (definitions).

FINDINGS

The Commission finds as follows:

1. Mike Satak and Laura W. Chase ("Satak and Chase"), as applicants herein, are interested parties in the subject matter of the above-referenced hearing.
2. Due notice of the time, place and purpose of the hearing has been given in all respects as required by law.
3. The Commission has jurisdiction over the subject matter embraced in said Notice, and of the parties interested therein, and jurisdiction to promulgate the hereinafter prescribed order.
4. On November 17, 2009, Satak and Chase, by their attorney, filed with the Commission a verified application for an order to designate Moqui Meadows as a designated outside activity area ("DOAA"). Moqui Meadows is comprised of 77.599 approximate acres located on a portion of the following land:

Township 5 North, Range 68 West, 6th P.M.
Section 36: W½ SE¼

as more specifically described below:

Parcel 1:

That portion of the W½ of the SE¼ of Section 36, Township 5 North, Range 68 West, 6th P.M., described as follows:

Considering the West line of said SE¼ of Section 36, as monumented with a #6 rebar 30 inches long with a 2-½ inch aluminum cap L.S. #17662 at the center of Section and at the South quarter corner of said Section 36; as bearing North 00 degrees, 7 minutes, 33 seconds East and with all bearings contained herein relative thereto. Beginning at said South quarter corner of Section 36; thence along said West line of the southeast quarter North 00 degrees, 7 minutes, 33 seconds West 1256.52 feet to the true point of beginning; thence continuing along said North line North 00 degrees, 7 minutes, 33 seconds West 1384.69 feet to the center quarter corner of said Section 36; thence along the North line of said West half of the southeast quarter North 89 degrees, 57 minutes, 52 seconds East 1328.94 feet to the East line of said West half of the southeast quarter North 89 degrees, 57 minutes, 52 seconds East 1328.94 feet of the East line of said West half of the southeast quarter of Section 36;

Exhibit A

thence along said East line South 00 degrees, 03 minutes, 29 seconds West 1396.43 feet; thence North 89 degrees, 31 minutes, 40 seconds West 1324.53 feet to the true point of beginning. Containing 42.352 acres more or less.

Parcel II:

That portion of the W $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 36, Township 5 North, Range 68 West, 6th P.M., described as follows:

Considering the West line of said southeast quarter of Section 36, as monumented with a #6 rebar 30 inches long with a 2- $\frac{1}{2}$ inch aluminum cap L.S. #17662 at the center of Section and at the South quarter corner of said Section 36, as bearing North 00 degrees, 7 minutes, 33 seconds East and with all bearings contained herein relative thereto.

Beginning at said South quarter corner of Section 36; thence along said West line of the southeast quarter corner North 00 degrees, 44 minutes, 33 seconds East 1256.52 feet; thence South 89 degrees, 31 minutes, 40 seconds East 1324.53 feet to the East line of said West half of the southeast quarter of Section 36; thence along said East line South 00 degrees, 3 minutes, 29 seconds West 573.99 feet to the North line of that certain parcel of land as described at Reception No. 98035630, records of said county; thence along said North line and the West line of said parcel of land South 89 degrees, 49 minutes, 18 seconds West 175.00 feet and again South 00 degrees, 3 minutes, 30 seconds West 668.00 feet to the South line of said southeast quarter of Section 36; thence along said South line South 89 degrees, 49 minutes, 18 seconds West 457.25 feet to the North quarter corner of Section 1, Township 4 North, Range 68 West of the 6th P.M.; thence continuing along said South line South 89 degrees, 51 minutes, 49 seconds West 688.22 feet to the true point of beginning. Containing 35.247 acres more or less.

5. Magpie Operating, Inc. ("Magpie"), mineral lessee, and the Colorado State Land Board ("SLB"), mineral owner and lessor, timely filed protests to the DOAA application.

6. Magpie and the SLB filed a joint motion to continue the matter, which the Commission voted to deny. The Commission chair approved Magpie's motion to hear testimony telephonically.

7. The Commission heard testimony from Laura (a.k.a. Wendy) Chase who has owned the property since 1997 and invested over \$1,000,000 to improve the property as a place to school horses and riders for three-day eventing (dressage, cross-country jumping, and show jumping). She testified that normally, a three-day event takes place over properties that are much larger than Moqui Meadows; however, all three phases take place at Moqui Meadows in a relatively compressed area. Ms. Chase testified that she has spent significant time and money on improvements to the property so that horses and riders can train without outside distractions and on soft ground with safe footing for jumping. She testified that no vehicular traffic is allowed on the cross country course, that rocks are removed by hand, that when she drives a pick up on the course, she drags a harrow in order to improve and maintain the footing on the course. She testified that when there is an event on the property, every part of the property is used for various activities from parking vehicles and trailers to grooming, tacking, bandaging, warming up, and cooling down horses to galloping and jumping horses on and around the cross country course. She testified that clinics and training for three-day eventing cannot be conducted without being able to use the entire property. Ms. Chase testified that more than 20 people used the property on 45 to 50 days in 2009 and that the property is open to the public with close supervision by approved trainers. She testified that oil and gas operations would make the property so unsafe that it could not be used for training for three-day eventing.

Exhibit A

8. The Commission heard testimony from Sarah Barnes, a horse trainer and competitive rider, who uses Moqui Meadows for training her students and for organizing shows and clinics for riders ranging in age from 13 to 60 years. She testified that Eric Smiley has been flown in from Ireland and that his clinics attract 15 to 30 auditors (observers) throughout the day. She testified that when she gives clinics, there are more than 20 people on the property and that she expects that the entire property is available and safe for the riders' use including the areas used for parking, cross country jumping, warming up, and cooling down. She testified that she runs clinics at Moqui Meadows because the entire property is safe.

9. The Commission heard testimony from Dr. Nancy Carr, DVM, an equine veterinarian and competitor, who schools horses and organizes clinics at Moqui Meadows usually involving 12 to 15 riders and an equal number of observers. She testified that she expects to use the entire property during her clinics including the areas used for parking, cross country jumping, warming up, and cooling down. She testified that the safety of the horses and riders depends on level footing that is not too soft or hard. She testified that truck traffic on the property would be a safety hazard by disrupting the footing and creating noises to which the horses could overreact.

10. The Commission heard testimony from applicant Mike Satak that all of the land comprising Moqui Meadows is used as an equestrian center for three-day eventing. He also testified that in 2009, he attempted to keep track of the number of people who came to the property beginning in April. He counted at least 20 people who used the property 43 days that year.

11. The Commission heard testimony from Ryan Warner, Vice President of Magpie. He testified that Magpie has been in existence about 20 years; it has 16 employees, and two independent contractors, making it smaller than the majority of oil and gas companies in Colorado. He testified that Magpie has 104 active wells and approximately 40 oil and gas leases. He testified that Magpie operates three wells on the lease that is common with the Moqui Meadows property in Section 36. Mr. Warner testified that in late 2008, Magpie drilled the State Anderson 41-36 Well, located on the lease in the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, that the well satisfied Magpie's expectations; that it is still producing and profitable, and that he expects wells on Moqui Meadows will be just as productive. He testified that in May 2008, Magpie filed all its applications for permits to drill in Section 36 as a group. Mr. Warner further testified that the surface use agreement with the Andersons required a fraction of the time that Magpie spent on unsuccessful negotiations with Satak and Chase. He testified that Magpie had been prepared to accommodate some of the surface owners' concerns, but that ultimately the parties were unable to agree on terms of a surface use agreement. Mr. Warner further testified that Magpie has the funding and equipment and is prepared to drill the wells on Moqui Meadows. He also testified that he received estimates to drill wells directionally from off the property and that they ranged from a one-line estimate of \$16,000 to \$17,000 to a comprehensive estimate of \$68,000. He also testified that Magpie prefers to locate the tank battery along County Road 14 on Moqui Meadows property, similar to the approach it took on the Anderson property, to minimize conflict with surface use.

12. The Commission heard rebuttal testimony from Mr. Warner about his and his family's experience with horses. He testified that his family's farm has 30 horses that they train, ride, and breed on a property that has seven oil and gas wells, that they ride near the wells and the tank battery and have not had any accidents attributable to oil and gas operations.

13. The Commission heard testimony (telephonically) from Michael Power, President of Petroleum Power LLC, consulting petroleum engineer and employee of Delta Petroleum (senior staff drilling engineer) who has drilling experience in 11 countries and throughout the U.S. Mr. Powers provided an estimate of incremental additional drilling costs of approximately \$68,000 for a directional well with a 1,200-foot deviation from the surface to the bottomhole location.

14. The Commission heard testimony from Mark Davis, Minerals Director for the SLB; regarding the mineral interest that the State of Colorado received from the federal government in Section 36. Upon statehood, the federal government granted the State of Colorado Section 36 including the entire mineral estate without reservation. When the State sold the surface estate to Section 36, it reserved the entire mineral estate with ingress and egress to access the minerals. Mr. Davis testified that Magpie is the lessee of Section 36, that it is in good standing, and that there are three wells on the lease, which is held by production.

15. The Commission heard testimony and staff analysis from Steve Lindblom,

Exhibit A

Eastern Colorado Environmental Supervisor, regarding an onsite inspection on August 27, 2008. Based on that meeting, COGCC staff requested that Magpie survey a site south of the irrigation ditch to minimize impact to the cross country course and determine whether it would be within the drilling window. The location was outside the drilling window, and Magpie obtained a waiver from the SLB, concurring with the alternate location. Mr. Lindblom testified that Magpie has posted a bond and is within its rights to drill in the drilling windows. He also testified that his recommendations for well locations were subject to any Commission decision on the application for a DOAA. He further testified that his notes from the onsite inspection in August 2008 indicated the parties talked about the tank battery possibly being on City of Johnstown property on the County Road 14 just west of Moqui Meadows property.

16. After deliberations, the Commission voted 6 to 3 to deny the Satak-Chase application for a DOAA based on questions regarding the definition of "designated outside activity area," whether the property fell within the definition, whether it was the type of property or activity that was contemplated when the definition was promulgated by the Commission, and whether waste will be committed because wells cannot be located on the property if the application is granted.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the application filed by Mike Satak and Laura W. Chase for an order to designate Moqui Meadows as an outside activity area is hereby denied.

IT IS FURTHER ORDERED, that the provisions contained in the above order, shall become effective forthwith.

IT IS FURTHER ORDERED, that the Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.

IT IS FURTHER ORDERED, that under the State Administrative Procedure Act the Commission considers this order to be final agency action for purposes of judicial review within thirty (30) days after the date this order is mailed by the Commission.

IT IS FURTHER ORDERED, that an application for reconsideration by the Commission of this order is not required prior to the filing for judicial review.

ENTERED this 24th day of March, 2010, as of February 22, 2010.

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By Carol Harmon
Carol Harmon, Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
March 24, 2010

Exhibit B

Exhibit B



BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE PROMULGATION AND) CAUSE NO. 1
ESTABLISHMENT OF FIELD RULES TO)
GOVERN OPERATIONS IN THE JOHNSON'S) ORDER NO. 1-149
CORNER FIELD, LARIMER COUNTY, COLORADO)

REPORT OF THE COMMISSION

This cause came on for hearing before the Commission at 9:00 a.m. on March 25, 2010, in Suite 801, The Chancery Building, 1120 Lincoln Street, Denver, Colorado, on the Commission's own motion, for an order related to two Applications for Permits-to-Drill ("APDs") filed by Magpie Operating, Inc. ("Magpie") on June 13, 2008 that had not been approved as of the date of the hearing.

FINDINGS

The Commission finds as follows:

1. Rule 502.a. of the Commission authorizes the Commission, on its own motion, to initiate proceedings upon any questions relating to the conduct of oil and gas operations in the State of Colorado or the administration of the Colorado Oil and Gas Conservation Act by notice of hearing.
2. Due notice of the time, place and purpose of the hearing has been given in all respects as required by law.
3. The Commission has jurisdiction over the subject matter embraced in said Notice, and of the parties interested therein, and jurisdiction to promulgate the hereinafter prescribed order pursuant to the Oil and Gas Conservation Act.
4. At its hearing on February 22, 2010, the Commission moved to initiate proceedings related to two APDs filed by Magpie on June 13, 2008 for the following locations:

State Chase #33-36 Well:

Township 5 North, Range 68 West, 6th P.M.
Section 36: NW¼ SE¼

1,874 feet from the south line ("FSL") and 1,981 feet from the east line ("FEL"), just south of the center of the drilling window measuring 400 feet by 400 feet for the quarter-quarter section

State Chase #34-36 Well:

Township 5 North, Range 68 West, 6th P.M.
Section 36: SW¼ SE¼

597 FSL 1,798 FEL, within the drilling window measuring 400 feet by 400 feet for the quarter-quarter section

5. The proposed wells are located on a property ("Moqui Meadows") owned by Wendy (a.k.a., Laura) Chase and Mike Satak ("Chase and Satak"), which is comprised of 77.599 approximate acres located in portions of the W½ of the SE¼ of Section 36; Township 5 North, Range 68 West, 6th P.M. Current surface use at Moqui Meadows includes irrigated crop land and an equestrian riding, training, and competition facility. Chase and Satak had filed a hearing application requesting the Commission make a determination that Moqui Meadows is a Designated Outside Activity Area ("DOAA") under the Commission Rules. The Commission denied the Chase Satak DOAA application at its February 22, 2010 hearing; however, the Commission instructed COGCC Staff to confer with the parties regarding locations for the wells that would mitigate potential impacts to public health, safety and welfare considering the current use of the surface estate.

Exhibit B

6. On March 3, 2010, COGCC Staff, including Director Neslin, East Environmental Supervisor Steve Lindbloom, and Northeast Region Field Inspection Supervisor Ed Binkley met with Chase and Sutak and representatives from Magpie and the mineral owner (the Colorado State Land Board) at Moqui Meadows to observe the site and consider locations for the proposed wells and associated production facilities. Afterward, Director Neslin requested that Magpie provide a written proposal for the location of the wells and production facilities taking into account potential public health, safety and welfare impacts those facilities might pose in light of the current surface use of Moqui Meadows.

By letter dated March 12, 2010 (subsequently clarified by email dated March 12, 2010), Magpie proposed to move the location of its State-Chase 33-36 Well from the 400-foot by 400-foot drilling window established by Rule 318A in the NW¼ SE¼ to the 800-foot by 800-foot drilling window in the center of the SE¼ of Section 36, Township 5 North, Range 68 West, 6th P.M.

Magpie proposed to access the well by a road following the eastern boundary of Moqui Meadows extending from County Road 14 north to the alternative proposed well location.

Magpie proposed to locate a tank battery consisting of not more than two, low-profile, 300-barrel tanks approximately 400 feet to the west from the southeast corner of Moqui Meadows immediately adjacent to Weld County Road 14. Magpie asserted this location would provide convenient access to the tank battery for pumpers and would be conducive to unobstructed flow of three-phase production from the well to the tank battery.

Magpie further proposed not to locate any compression or dehydration equipment at the tank battery, provided the Commission approved Magpie's APD for the State-Chase 33-36 Well at the alternative location for a period of two years.

Magpie further agreed to withdraw or revoke its pending APD for the State-Chase 34-36 Well while leaving open the possibility of two additional wells to be drilled on Moqui Meadows with bottomhole locations in original 400-foot by 400-foot drilling windows for the State-Chase 33-36 (directional) and the State-Chase 34-36 (vertical) Wells.

Magpie further agreed to the following proposed conditions of approval recommended by COGCC Staff in its January 4, 2010 memo:

- a. Drilling and completion activities shall occur between October 31 and March 31, outside irrigation season.
- b. Interim reclamation shall commence immediately following well drilling and completion.
- c. Implementation by operator of all practicable measures to ensure minimizing the disruption to the surface owners' irrigation practices.
- d. In addition to the required notice for site preparation, drilling, and completion, operator shall provide 30 days' notice to the surface owners for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled equestrian event 14 days in advance of the scheduled work, the operation may proceed. Otherwise, if there is a conflict, the operator shall work with the surface owners to avoid the work during the surface owners' scheduled equestrian events.

7. Chase and Sutak responded to Magpie's March 12 proposal on March 17, 2010. Chase and Sutak opposed Magpie's proposed well location in the center 800' x 800' window, and proposed locating two wells on the eastern edge of Moqui Meadows approximately 820 feet north of the centerline of Weld County Road 14. The location Chase and Sutak proposed for the State-Chase 33-36 Well is approximately 110 feet south of the location proposed by Magpie and is not within any Rule 318A drilling window. They requested that any wells to be located on Moqui Meadows be drilled in immediate sequence. They strongly objected to locating a tank battery on Moqui Meadows due to concerns that noise and visual distractions from operations of those facilities would increase the risk of public health, safety and welfare impacts to users of the surface estate.

Exhibit B

Chase and Sutak agreed to a twelve-foot wide road on the east property edge running from their proposed well site location to Weld County Road 14 and a horse safe 6 bar 2-inch Powder River access gate that is kept locked at all times with separate locks for Chase/Sutak and Magpie.

Chase and Sutak proposed that all flowlines run under the access road easement, as Magpie had proposed in one of their discussions.

Chase and Sutak further proposed the following conditions of approval for drilling permits:

- a. Drilling should occur between November 15 and March 1.
- b. Reclamation and reseeding with compatible grasses should commence immediately following well drilling and completion with seed and seeding method picked by Chase.
- c. The operator shall implement all practicable measures to ensure the disruption to the surface owners' irrigation practices are minimized.
- d. There should not be any open pits, land farming of drilling tailings, or discharged water on the property.
- e. Routine access to the well sites should occur only before 8:00 a.m. to minimize conflicts and potential injuries and surface owners' risk of lawsuits.
- f. In addition to the required notice for site preparation, drilling, and completion, the operator shall provide 30 days' notice to surface owners for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled use on their property 14 days in advance after notification of scheduled work, then the operation may proceed. Otherwise, if there is a conflict the operator shall work with the surface owners to avoid work during the surface owners' scheduled events.

8. On March 18, 2010, the Colorado State Board of Land Commissioners, as the mineral owner of the property, submitted a letter to the Commission in support of Magpie's March 12, 2010 proposal.

9. On March 23, 2010, the COGCC Staff submitted its analysis and recommendation, a copy of which is attached hereto as Exhibit A and is incorporated by reference into this Order as if set forth in full. The COGCC Staff recommendation is based on the site visit on March 3, 2010; review and consideration of Magpie's APDs and subsequent well and associated equipment location proposals; review and consideration of Chase and Sutak's opposition to the APDs and subsequent proposals; meetings between COGCC Staff and the parties; knowledge of the current surface use of Moqui Meadows based on Chase and Sutak's Application for DOAA status for Moqui Meadows and the February 22, 2010 Commission hearing on their DOAA Application, as well as site visits; knowledge of the geology of the mineral formations underlying Moqui Meadows, as well as the applicable drilling and spacing units and setback requirements in the area; and consideration of the legislature's direction to foster the responsible and balance development of oil and gas, consistent with the protection of public safety and welfare.

10. The Staff's recommendation is intended to minimize public health, safety and welfare impacts to users of the surface estate, including the surface owners, given the current use of the surface estate as an equestrian riding, training and competition event center while allowing the mineral resources to be developed efficiently.

11. With minor suggested changes, the COGCC Staff's recommended location for State-Chase Well 33-36 and associated conditions of approval should be adopted by the Commission. The oil and gas resources should be developed, and the conditions of approval will balance the development of the resources with public health, safety and welfare.

ORDER

WHEREFORE, IT IS ORDERED, that the following alternate location for the State-Chase 33-36 Well proposed by the COGCC Staff along the eastern edge of Moqui Meadows, approximately 820 feet north of the centerline of Weld County Road 14, in the SE¼ of Section 36, Township 5 North, Range 68 West, 6th P.M.) is hereby approved with the following conditions of

Exhibit B

approval to be applied to the Application for Permit-to-Drill submitted by Magpie Operating, Inc. for such well:

1. Drilling and completion activities shall occur between November 15 and March 1.
2. The State Chas 33-36 Well shall be located along the eastern property boundary at the location preferred by the landowner, approximately 110 feet south of the location proposed by the operator.
3. Interim reclamation shall commence immediately following well drilling and completion. An appropriate seed mix and seeding method shall be selected by the surface owner.
4. The operator shall implement all practicable measures to ensure that disruption to the surface owners' irrigation practices are minimized.
5. Drill cuttings and other exploration and production waste shall be disposed of offsite.
6. Access to the well location shall be from Weld County Road 14 via an access road along the eastern property boundary, as proposed in Magpie's sketch. The road shall be no wider than is reasonably necessary for safe maneuvering of equipment and trucks.
7. A horse safe 6 bar 2-inch Power River access gate shall be installed across the access road to prevent unauthorized entrance. The gate shall be equipped with a lock that can be opened and locked by both the surface owners and Magpie.
8. In addition to the required notice for site preparation, drilling and completion, the operator shall provide 30 days' notice to the surface owners for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled event 14 days in advance of the scheduled work then the operation may proceed. Otherwise, if there is a conflict, the operator shall work with the surface owners to avoid the work during the surface owners' scheduled equestrian events.
9. If the tank battery cannot be located off the surface of Moqui Meadows, the following conditions shall apply:
 - a. The tank battery shall be located at the site designated by the operator along the south property boundary, approximately 400 feet west of the southeast corner of the property adjacent to Weld County Road 14.
 - b. The operator shall, to the extent practicable, minimize the size of the tank battery by using among other methods, corrugated steel containment structures rather than soil berms around surface equipment.
 - c. The operator shall install no more than two low profile tanks.
 - d. The tank battery shall not include any compression or dehydration equipment.
 - e. The operator shall install a minimum eight foot privacy fence around the tank battery to mitigate visual impacts and to prevent unauthorized access to the facility. The construction and finish of the fence shall be reasonably acceptable to the surface owner.
 - f. The operator shall use best efforts to ensure that operations and maintenance activities at the tank battery do not occur during scheduled equestrian events, provided that the operator receives at least 14 days' notice in advance of the event. This requirement shall not apply to emergency operations necessary to protect human health, safety, welfare, or the environment.

(1003-GA-05/1-149)

MAGAPD00300

Exhibit B

IT IS FURTHER ORDERED, that Magpie Operating, Inc. shall withdraw its pending Application for Permit-to-Drill the State-Chase 34-36 Well.

IT IS FURTHER ORDERED, that the provisions contained in the above order shall become effective forthwith.

IT IS FURTHER ORDERED, that the Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.

IT IS FURTHER ORDERED, that under the State Administrative Procedure Act the Commission considers this order to be final agency action for purposes of judicial review within thirty (30) days after the date this order is mailed by the Commission.

IT IS FURTHER ORDERED, that an application for reconsideration by the Commission of this order is not required prior to the filing for judicial review.

ENTERED this 24th day of April, 2010, as of March 25, 2010.

OIL AND GAS CONSERVATION COMMISSION OF THE
STATE OF COLORADO

By Carol Hammon
Carol Hammon, Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
April 24, 2010

Exhibit C

Exhibit C

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: City & County Building 1437 Bannock Street Denver, Colorado 80202	EFILED Document CO Denver County District Court 2nd JD Filing Date: May 5 2011 4:16PM MDT Filing ID: 37432974 Review Clerk: Tara L Nelson
LAURA W. "WENDY" CHASE and MICHAEL SUTAK Plaintiffs v. COLORADO OIL AND GAS CONSERVATION COMMISSION, and MAGPIE OPERATING INC. Defendants	▲ COURT USE ONLY ▲ Case Number: 2010cv3230 Courtroom: 203
ORDER RE: PLAINTIFFS' APPEAL OF DECISIONS OF THE COMMISSION	

THIS MATTER is before the Court on an appeal from two separate but related decisions of the Colorado Oil and Gas Conservation Commission (Commission). After consideration, the Court enters the following order:

BACKGROUND

Plaintiffs filed an application with the Commission to have their property classified as a Designated Outside Activity Area (DOAA) which would have prevented Defendant Magpie Operating Inc. (Magpie) from conducting any oil and gas operations on the property. After conducting a hearing, the Commission voted to deny Plaintiffs' application for DOAA classification. Subsequent to that decision, the Commission conducted another hearing on whether to grant Magpie's Application for a Permit to Drill (APD) on the property. The Commission voted to grant Magpie's APD. Plaintiffs seek judicial review of both decisions.¹

¹ Plaintiffs initially filed two separate appeals, case 2010cv3230 and 2010cv4100. The two cases were consolidated into case 2010cv3230. Since the parties filed separate briefs for each case, the Court will address the cases separately for purposes of its analysis in this ruling.

Exhibit C

STANDARD OF REVIEW

When conducting judicial review of an administrative agency action, a court may reverse an agency's determination if it finds that the agency acted in an arbitrary and capricious manner, made a determination that is unsupported by evidence in the record, erroneously interpreted the law, or exceeded its constitutional or statutory authority. *Ohlson v. Weil*, 953 P.2d 939, 941 (Colo. App. 1997); C.R.S. § 24-4-206(7). An agency's interpretation of its own regulations is entitled to deference and must be accepted if there is a reasonable basis in law. *Citizens for Clean Air & Water in Pueblo and S. Colo. v. Colorado Dept. of Public Health and Environment*, 181 P.3d 393, 396-397 (Colo. App. 2008). Such deference is not required only when the language of the regulation is so clear as to compel a contrary result. *Bd. of County Com'rs v. Colorado Oil and Gas Conservation Com'n*, 81 P.3d 1119, 1125 (Colo. App. 2003).

CONCLUSIONS

CASE 10CV3230:

The Commission's Denial of Plaintiffs' Application for DOAA Classification

Plaintiffs argue that the Commission abused its discretion by denying Plaintiffs' application for DOAA classification. The Commission found that Plaintiffs' land did not meet the definition of a DOAA based on its interpretation of the language contained within the definitional provision for a DOAA² contained in the Commission Rules. Plaintiffs argue that the language of the definition is so clear that the Commission abused its discretion by denying the application. The Court does not find the language of the definition to be so clear as to compel a decision that is contrary to that of the Commission. The Commissioners struggled when interpreting the language of the definition, particularly with the terms "well defined area" and "occupied." See *Record* at 154, 156. Both terms are vague and could be open to various interpretations. The Commission heard the evidence presented and found that Plaintiffs' land did not qualify as a DOAA. The Court finds this decision to be reasonable in light of the evidence presented and will afford the Commission deference in its interpretation of the language contained within its own rules.

The Commission's Failure to Address Plaintiffs' Arguments Related to the Lease

Plaintiffs argue that the Commission abused its discretion by failing to address their arguments concerning whether the proposed operations are prohibited under the lease between the State Land Board and Magpie. The Court finds that the Commission lacks jurisdiction to interpret the provisions of the lease and issue a decision regarding the rights and obligations

²The provision provides:

DESIGNATED OUTSIDE ACTIVITY AREAS shall mean a well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty (20) or more persons on at least forty (40) days in any twelve (12) month period or by at least five hundred (500) or more people on at least three (3) days in any twelve (12) month period.

Exhibit C

under that lease. *See Grynberg v. Oil and Gas Conservation Commission*, 7 P.3d 1060 (Colo. App. 1999). Therefore, the Commission's failure to address this issue was not an abuse of discretion. Further, Plaintiff failed to plead a claim for declaratory judgment regarding the lease in the complaint and thus the Court will not issue a decision on the arguments presented by Plaintiffs related to the lease.

The Commission's Failure to Address Plaintiffs' Request under C.R.S. § 34-60-106(2)(d)³

Plaintiffs argue that the Commission abused its discretion by failing to address their request for relief under C.R.S. § 34-60-106(2)(d). The Court finds that Plaintiffs failed to present evidence related to any potential adverse environmental impacts on air, water, soil, or biological resource the proposed oil and gas operations would have in this case. The portions of testimony cited by Plaintiffs in their reply do not specifically relate to the environmental impacts of the proposed operations but mostly reference the noise and other impacts the operations will have on the riders themselves. Plaintiffs failed to present evidence or argument to the Commission regarding the potential environmental impacts under C.R.S. § 34-60-106(2)(d) and therefore the Commission did not abuse its discretion by failing to rule on Plaintiffs' request.

CASE 10CV4100:

The Commission's Decision to Grant Magpie's Application for Permit to Drill

Plaintiffs argue that the Commission further erred by granting Magpie's Application for Permit to Drill. Plaintiffs argue that the application should not have been granted because the property should have been classified as a DOAA, the lease between Magpie and the State Land Board prohibited the proposed drilling, and the application did not comply with the informational and procedural requirements of the Commission's Rules. Plaintiffs' first two arguments have been addressed by the Court above and therefore the Court will only consider Plaintiffs' third procedural argument.

The Court finds that Plaintiffs failed to raise their argument concerning the procedural errors of Defendant's application process to the Commission. An argument which is not raised

³ C.R.S. § 34-60-106(2)(d) provides:

(2) The commission has the authority to regulate:

(d) Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility.

Exhibit C

in an administrative proceeding is not preserved for review and need not be addressed by a reviewing court. *Debalco Enterprises, Inc. v. Industrial Claim Appeals Office of State*, 32 P.3d 621, 624 (Colo. App. 2001). The portions of the record cited in Plaintiffs' reply do not support Plaintiffs' assertion that the substance of their argument was raised below. Each cited portion relates to Plaintiffs' dissatisfaction with the ultimate decision to place the tank battery on their property, not any procedural inadequacies with Defendant's application process.

Accordingly, the decisions of the Commission are **AFFIRMED**.

SO ORDERED this 5th day of May, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "B. Whitney", written over a horizontal line.

Brian R. Whitney
District Court Judge

LexisNexis File & Serve Transaction Receipt

Transaction ID: 41450994
Submitted by: Paige Finnell, Davis Graham & Stubbs LLP-Denver
Authorized by: Sam Niebrugge, Davis Graham & Stubbs LLP-Denver
Authorize and file on: Dec 16 2011 3:36PM MST

Court: CO Court of Appeals
Division/Courtroom: N/A
Case Class: Appeal
Case Type: Civil - General
Case Number: 11CA1249
Case Name: Laura W. "Wendy" Chase v. Colorado Oil and Gas Conservation Commission

Transaction Option: File and Serve
Billing Reference: 131830-0003
Read Status for e-service: Not Purchased

Documents List

4 Document(s)

Attached Document, 10 Pages Document ID: 44803641

Document Type:	Access:	Statutory Fee:	Linked:
Brief - Answer (COA)	Public	\$0.00	

Document title:
Magpie Operating, Inc.'s Answer Brief

Attached Document, 5 Pages Document ID: 44803650

Document Type:	Access:	Statutory Fee:	Linked:
Exhibit (COA)	Public	\$0.00	

Document title:
Exhibit A

Attached Document, 6 Pages Document ID: 44803657

Document Type:	Access:	Statutory Fee:	Linked:
Exhibit (COA)	Public	\$0.00	

Document title:
Exhibit B

Attached Document, 5 Pages Document ID: 44803669

Document Type:	Access:	Statutory Fee:	Linked:
Exhibit (COA)	Public	\$0.00	

Document title:
Exhibit C

[Expand All](#)

☒ **Sending Parties (3)**

Party	Party Type	Attorney	Firm	Attorney Type
MAGPIE OPERATING INC	Appellee	Mueller, Kirk	Davis Graham & Stubbs LLP-Denver	Privately Retained Attorney
MAGPIE OPERATING INC	Appellee	Niebrugge, Sam	Davis Graham & Stubbs LLP-Denver	Privately Retained Attorney
MAGPIE OPERATING INC	Appellee	Jacus, John	Davis Graham & Stubbs LLP-Denver	Privately Retained Attorney

☒ **Recipients (5)**☒ **Service List (5)**

Delivery Option	Party	Party Type	Attorney	Firm	Attorney Type	Method
			Barber, Phillip	Barber, Phillip	Privately Retained	E-

Service	CHASE, LAURA W	Appellant	Dean	D PC	Attorney	Service
Service	Colorado Oil & Gas Conservation Co	Appellee	Matter, Jake	CO Attorney General	Attorney General - Assistant	E- Service
Service	Colorado State BD of Land Co	Appellee	Warren, Heather	CO Attorney General	Attorney General	E- Service
Service	Colorado State BD of Land Co	Appellee	Stroupe, Kerri	CO Attorney General	Attorney General	E- Service
Service	SUTAK, MICHAEL	Appellant	Barber, Phillip Dean	Barber, Phillip D PC	Privately Retained Attorney	E- Service

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