

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

IN THE MATTER OF THE ESTABLISHMENT)	CAUSE NO.
OF SURFACE LOCATIONS FOR OIL AND)	
GAS OPERATIONS UPON CERTAIN LANDS)	
IN AND AROUND THE BROOMFIELD)	
DRINKING WATER RESERVOIR SITE)	
LOCATED IN THE CITY AND COUNTY OF)	
BROOMFIELD, COLORADO)	DOCKET NO.

APPLICATION FOR DESIGNATED SURFACE LOCATIONS

The City and County of Broomfield, a home rule city ("Broomfield") through its Deputy City & County Attorney, Tami Yellico and undersigned counsel, hereby applies to the Colorado Oil and Gas Conservation Commission ("Commission") for an order establishing two designated Oil and Gas Operations Areas ("OGOAs") on lands owned by the City and County of Broomfield in order to enable Broomfield to construct a drinking water reservoir while also allowing compatible surface and oil and gas development. In support of this Application, Broomfield states as follows:

A. PROPERTY SUBJECT TO THIS APPLICATION AND OWNERS

1. The property that is the subject of this Application is as follows:

A parcel of land described as Parcel 1 in Special Warranty Deed between Hoopes Farm, LLC and the City and County of Broomfield, dated May 20, 2005 as recorded at Reception No. 2005006594, on May 20, 2005, City and County of Broomfield, State of Colorado. Less and except any land lying within the NE 1/4 of Section 18, Township 1 South, Range 68 West of the 6th Principal Meridian.

("Subject Lands")

2. Broomfield is a home rule city and county which provides, among other things, water and sanitation services to its citizens. Broomfield acquired the Subject Lands as a site for the Broomfield Drinking Water Reservoir ("Reservoir"). A diagram showing the potential location of the Reservoir area and the applicable Greater Wattenberg Area (GWA) drilling windows is attached hereto as Exhibit "1". The Reservoir will be surrounded by an approximate 500 to 1000 foot Public, Multi-Use Recreation Area, which may include trails, beach areas, an interpretive visitor center, and an access road. The Reservoir dam will be located on the north side of the Reservoir as depicted on Exhibit "1."

3. The Reservoir is a "terminal reservoir" which Broomfield needs to meet the peak water demands of its citizens. It will have a capacity of approximately 1,000 acre feet, which size may vary when final construction is completed. The estimated total project expenditures for the 1,000 acre-foot Reservoir will be \$57,391,553, which includes expenditures Broomfield has already made for land acquisition and water rights of approximately \$30,200,000. Broomfield has already spent approximately \$4,891,553 for design, engineering, construction, title, feasibility studies, and consulting in anticipation of building the Reservoir. A list of the estimated costs for the Reservoir and the expected budget are set forth in Exhibit "2" hereto.

4. Broomfield owns the surface of the Subject Lands on which the Reservoir will be located. The mineral estate underlying the Subject Lands is owned by Anadarko E & P and Anadarko Land (collectively "Anadarko Entities"). The Anadarko Entities have leased the oil and gas rights to Noble Energy, Inc. ("Noble").

B. JURISDICTION OF THE COMMISSION

5. The Oil and Gas Conservation Act, C.R.S. §34-60-101, *et seq.* ("Act") states that it is in the public interest to, among other things, foster the responsible production and utilization of oil and gas natural resources consistent with the protection of the public welfare and the environment.

The Colorado Legislature has granted the Commission broad powers, authority, and discretion to enter orders and to enforce and adopt rules and regulations which implement the Act. For instance, the Act gives this Commission "jurisdiction over all persons and property, public and private, necessary to enforce the provisions of [the Act], and the power to make and enforce rules, regulations, and orders pursuant to [the Act], and to do whatever may reasonably be necessary to carry out the provisions of this [Act]." The Act also states that any person "may apply for any hearing before the commission . . . upon any question relating to the administration of [the Act]." C.R.S. §34-60-105(1). The Act also gives the Commission the authority to regulate drilling and all other operations for the production of oil or gas, and to prevent and mitigate significant adverse environmental impacts on air, water, and the public health, safety and welfare. *Id.*, §34-60-106. Furthermore, the Commission also has authority to determine the spacing of oil and gas wells. *Id.*

C. NEGOTIATIONS WITH NOBLE AND THE ANADARKO ENTITIES

6. Broomfield, the Anadarko Entities, and Noble have conferred off and on since Broomfield acquired the Subject Lands in 2005 regarding the coordination of oil and gas operations at or near the Reservoir site on the Subject Lands. Initially, the discussions focused on a single well that had been drilled, but was never completed, the Livingston No. 43-7 Well. That well was owned by Noble's predecessor and is located on the eastern edge of the Subject Lands at the "Livingston Location," as depicted on Exhibit "1." As a result of the discussions and negotiations over the past several years, Broomfield granted a Use by Special Review Permit to Noble to complete the Livingston No. 43-7 Well on the Livingston Location, which has now been placed on line and is producing oil and gas on the Subject Lands. Through this Use by Special Review Permit, Broomfield also granted Noble the right to place certain equipment and ancillary facilities at a second location referred to as the "Northern Location" on Exhibit "1". The Livingston Well drill site location and the second Northern Location are both shown on Exhibit 1. The Northern Location includes a portion of the Subject Lands and another Broomfield owned property, known as Anthem Filing No. 22, Tract EE, which Broomfield has made available to Noble and Anadarko Entities. Both OGOAs may be used by Noble and the Anadarko Entities to access all minerals, no matter the depth.

7. Since approximately 2010, the Broomfield, the Anadarko Entities, and Noble have also been in negotiations over the second OGOA at the Northern Location which could be used by Noble and the Anadarko Entities to access oil, gas and other minerals underlying the Reservoir site. Although Broomfield, the Anadarko Entities, and Noble have not signed a formal surface use agreement ("SUA"), Broomfield believes that Noble and the Anadarko Entities have indicated that they accept the locations and will be able to access all minerals underlying the Reservoir site and Subject Lands through the Livingston Location and the Northern Location. For its part, Broomfield has agreed to allow multiple wells and tank batteries at the Northern Location, with appropriate safeguards and using best management practices. Noble will need to receive approval of a Use by Special Review Permit for the wells and related facilities at the Northern Location.

8. There have been multiple versions of a proposed SUA exchanged by the parties. Broomfield submitted the most recent draft of the SUA and other associated agreements to the Anadarko Entities and Noble on February 2, 2012. Broomfield asked for a response by February 17, 2012 so that the matter could be discussed with City Council in early March 2012.

9. In late February, 2012, Broomfield was told that it would not receive a response to its February 2nd letter until approximately the end of March. In early May 2012, Broomfield was told that representatives of Noble and the Anadarko Entities would be meeting during the week of May 15th to discuss the SUA and other draft documents, and they would respond to the most current drafts at that time. Broomfield has still not received any response to its February 2nd letter.

D. DISCUSSIONS WITH THE COMMISSION

10. Broomfield has communicated with the Commission staff on a number of occasions to discuss the Reservoir and matters related to oil and gas operations near a drinking water supply. The Commission's staff has been extremely helpful and forthcoming in identifying issues that Broomfield should consider. The Staff made a technical presentation concerning oil and gas operations to Broomfield staff in late 2011, and followed up on that meeting with a presentation concerning the safety precautions which the Commission requires on all wells and, in particular, at drilling locations that are located near drinking water supplies.

E. PRECEDENT FOR DESIGNATING SURFACE LOCATIONS

11. There is precedent for the Commission to consider this type of Application and to issue an order establishing OGOAs. The Commission issued an order which established drill site and other surface equipment locations in at least one prior proceeding. See Report of the Commission entered on August 1, 2002 and Amended Order of September 2005 in Cause No. 523, Order No. 523-1.

12. The Commission has jurisdiction to enter the order requested by Broomfield and to establish OGOAs to enable development of the oil and gas and other mineral resources under the Reservoir, while at the same time allowing Broomfield to construct a drinking water reservoir and related infrastructure that will meet the current and future needs of its citizens. The requested order will help Broomfield safeguard its drinking water from oil and gas operations, will allow the surface and oil and gas development that will be compatible with the City's drinking water needs, and will accomplish the Act's purposes and promote its public policy goals.

13. Additional support for Broomfield's request is found in Colorado's "reasonable accommodation doctrine" (adopted in *Gerrity Oil & Gas v. Magness*, 946 P.2d 913 (Colo. 1997) and codified at C.R.S. §34-60-127), which states that the "mineral estate" and the "surface estate" must exercise their rights in a manner consistent with the other and "each owner must have due regard for the rights of the other." While mineral owners cannot be denied access and have a right to "reasonable surface use", that right "does not include the right to destroy, interfere with or damage the surface owner's correlative rights to the surface." Further, the mineral owner is entitled to access only that portion of the surface that "is reasonably necessary to develop the severed mineral estate." The accommodation doctrine requires the mineral owners "to accommodate surface owners to the fullest extent possible consistent with their right to develop the mineral estate." (emphasis added) When the mineral owner's operations "would preclude or impair uses by the surface owner, and when reasonable alternatives are available to [the mineral owner], the doctrine of reasonable surface use requires [the mineral owner] to adopt an alternative means." *Gerrity*, at 926-27; see also C.R.S. §34-60-127.

14. The order requested by Broomfield would give the Anadarko Entities and Noble reasonable access to the oil and gas mineral estate underlying the Reservoir and the Subject Lands. At the same time, the order would provide Broomfield with the assurance as to where the oil and gas operations in the vicinity of the Reservoir would be located, would allow Broomfield to move forward with the financing and construction of the Reservoir, and would mitigate and protect against any potential pollution or environmental damage to the Reservoir from oil and gas operations.

WHEREFORE, Broomfield respectfully requests that this Commission enter its order to allow for the compatible development of the oil and gas mineral estate underlying the Reservoir on the Subject Lands and for the creation of Broomfield's Reservoir. At a minimum, Broomfield requests that the Commission enter an Order that provides for the following:

- A. For the exploration, development, and production of oil and gas that enables compatible surface use for the Anadarko Entities and Noble by establishing the two OGOAs for the Subject Lands that are shown on Exhibit '1' as the Livingston Location and Northern Location. Those areas would be the only areas on the Subject Lands where wells could be drilled, including wells to all depths, and where related surface equipment, tank batteries and other facilities, roads, utility pipelines, flowlines, and any other easements would be located; and
- B. That any surface access for oil and gas operations and related activities on the Subject Lands be limited to the lands within the OGOA's and on access roads and pipeline easements associated therewith; and
- C. That any applications for permits to drill or for other permits which affect the Subject Lands as described in Paragraph 1 and depicted on Exhibit '1' hereto conform and be restricted to the OGOA's described in Exhibit '1'; and
- D. That any subsequent order entered by the Commission pursuant to C.R.S. §34-60-116 or its Rules and Regulations that establish spacing and/or well density for the Subject Lands be deemed to include and incorporate by reference the provisions in these paragraphs A through E; and

E. For further relief deemed appropriate by the Commission.

Broomfield respectfully requests that a hearing be held and, at its conclusion, an order as set forth above be entered by the Commission.

DATED this 20th day of July, 2012.

Respectfully submitted,

PHILLIP D. BARBER, P.C.

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Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **APPLICATION FOR DESIGNATED SURFACE LOCATIONS**, has been mailed this 20th day of July, 2012 to the following entities that require notice of such filing and an original and 13 copies has been sent or filed with the COGCC:

Robert Leo, Esq.
Noble Energy, Inc.
1625 Broadway, Ste. 200
Denver, CO 80202

Molly Sommerville Buchanan, Esq.
1580 Lincoln Street, Ste. 700
Denver, CO 80203

Melley Reister

Proposed Broomfield Reservoir Operations Areas

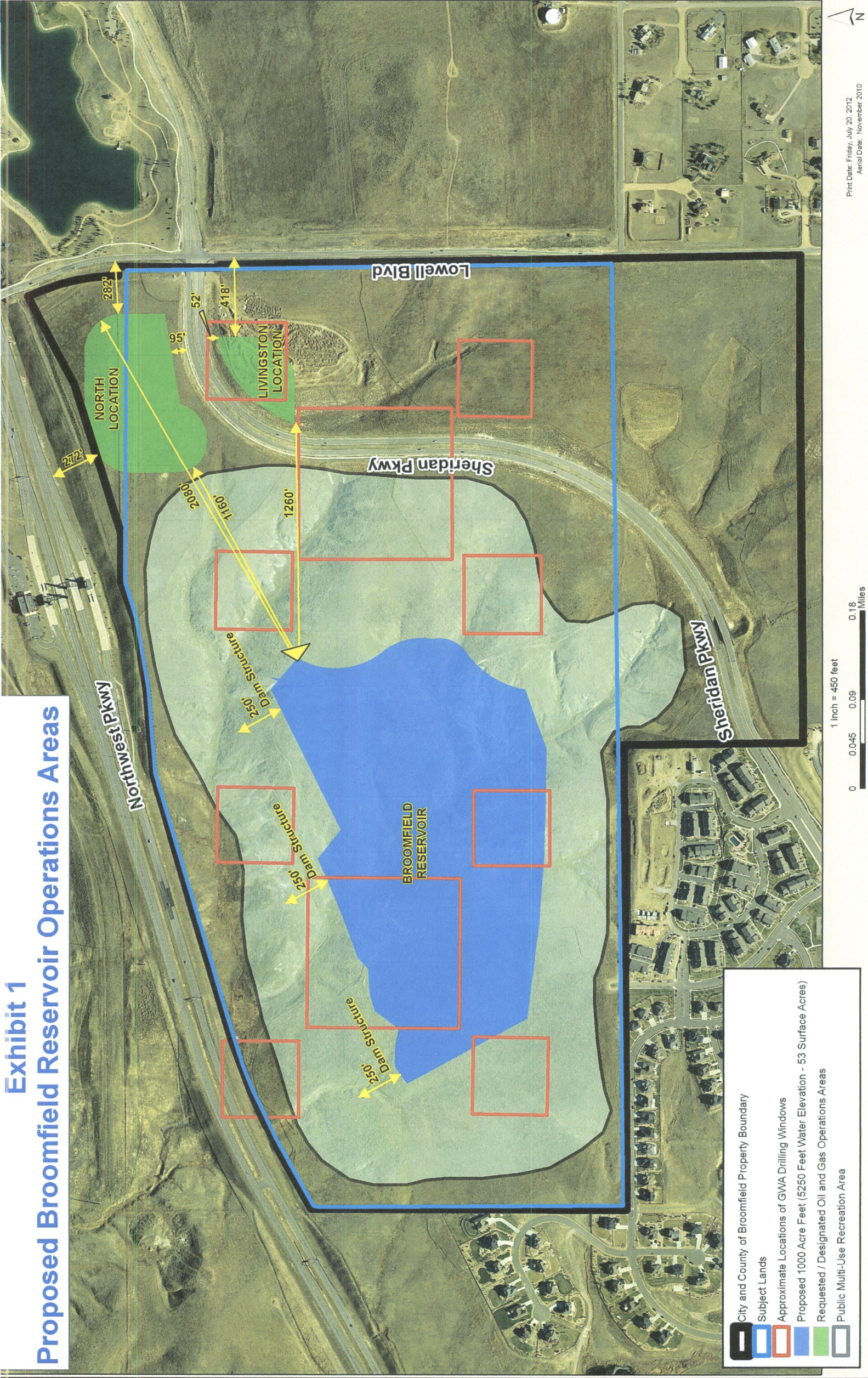


Exhibit 2
Current and Projected Reservoir Expenditures

Total Projected Funds Available (Reserves, License Fees, Bond Proceeds)	\$ 58,500,000
Expenditures to date	
Preliminary Engineering, Legal and Support Services	\$ 288,757
Construction (utilities and Sheridan Crossing)	2,482,650
Design (MWH contract)	2,120,146
Water rights and Land Acquisition	30,200,000
Total Expended to date	\$ 35,091,553
Projected Expenditures	
Reservoir Construction	\$ 21,000,000
Other	\$ 1,300,000
Total projected costs	\$ 22,300,000
Total Project Expenditures	\$ 57,391,553