



May 14, 2019

Jeffrey Robbins, Director
Steven Mah, Enforcement Officer
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80202

Re: Purported claim on Fifth Creek Bond; Docket No's. 181200382, 190600478 and 190600479

Dear Messrs. Robbins and Mah:

I am writing with regard to the upcoming renewal of the blanket plugging (No. B010003) and surface damage (No. B010002) bonds registered with the Commission by Fifth Creek Energy Operating Company ("Fifth Creek").

HighPoint Resources Corporation was formed in a transaction that closed in March of 2018, pursuant to which Bill Barrett Corporation ("BBC") and Fifth Creek became wholly-owned subsidiaries. BBC was subsequently renamed HighPoint Operating Corporation ("HighPoint"), into which Fifth Creek and its assets were subsumed, resulting in the termination of Fifth Creek's corporate existence. Form 10s transferring operatorship of Fifth Creek's wells to HighPoint – with the exception of the Fox Creek 501-3403H Well (API #05-123-42583; "the Fox Creek Well") – have been approved by the Commission. Under these circumstances, it makes no sense to renew these legacy Fifth Creek blanket bonds to cover a single well pending resolution of these matters.

Accordingly, I am asking that the Commission approve the Form 10 transferring operatorship of the Fox Creek Well to HighPoint (resubmitted today by separate transmission). This would recognize the reality on the ground and would not prejudice the commission in any way. HighPoint will assume the obligations related to the Fox Creek Well under its operator bond. It is simply unnecessary for the Commission to assert potential foreclosure of the Fifth Creek plugging bond in connection with its desire to have a monitor well drilled to the Laramie-Fox Hills Aquifer in close proximity to the Peters 16-34 Well (API #05-123-07723; "Peters Well"). Should Commission enforcement staff prevail in obtaining that relief – over HighPoint's protest – HighPoint will install the monitor well and no bond foreclosure will be necessary.

However, proceeding through the hearing process, not to mention potential litigation, to obtain that relief would be unproductive. HighPoint has already re-entered and re-plugged the Peters Well in preparation for drilling additional Fox Creek wells. During that re-plugging operation, HighPoint did not observe methane, which Mr. Deranleau indicated to me was staff's concern. Further, in conjunction with its pending drilling operations on the Fox Creek pads, HighPoint conducted baseline sampling and analysis on two nearby domestic water wells with no methane observed. The enclosed map shows the locations of the recently sampled wells, as well as one sampled by EOG in 2010.

With the Peters Well re-plugged, and no indication of gas migration in the Laramie-Fox Hills Aquifer due to Fifth Creek's failure to perform offset well mitigation on the Peters Well prior to completing the Fox

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Creek Well in late 2016, there is nothing further to be gained by the Commission's pursuit of an enforcement order to drill a monitor well, or to foreclose on Fifth Creek's plugging bond.

I request an in-person a meeting to see if we can resolve these matters expeditiously. For the Director's benefit, I have enclosed certain relevant correspondence in this matter.

Yours truly,



Ken Wonstolen

General Counsel & Senior Vice President

cc. Greg Deranleau, Environmental Manager
Mimi Larsen, Hearings Manager
Kyle Davenport, Asst. Attorney General
Jost Energy Law

Enc.

12N/63W

27

26

Receipt #0007048
Permit #122358-A
Permit Issued
Depth - 0'
Static WL - 0'
Date Tested: 12/11/2018

Receipt #0103510
Permit #106305-
Well Constructed
Depth - 320'
Static WL - 0'
Date Tested: 1/23/2019

34

35

PETERS 16-34
05-123-07723
D&A Date: 8/7/1873
Re-P&A Date: 3/11/2019

ELSIE 7-34H
05-123-30831
Spud Date: 8/9/2010
Completion Date: 12/8/2010

Receipt #9065182
Permit #69352
Well Constructed
Depth - 180'
Static WL - 0'
Date Tested: 2010

3

2

11N/63W

CRITTER CREEK 2-03H
05-123-31047-01
Spud Date: 3/18/2010
Completion Date: 7/3/2010

Legend

HPR Well Surface Holes

- OH
- Approved Location
- P&A
- Spud In

HPR Well Bottom Holes

- OH
- APD
- P&A
- Water Wells (CDMPR)

Other Op Surface Hole

- Dry

HPR Well Paths

- Drilling/Drilled
- Approved
- For Creek (01-3402H)

WETLAND TYPE

- Freshwater Emergent Wetland
- Freshwater Pond
- Riparian

Blue arrow: Aquifer water flows to the southeast following the river drainage.

Kirkham, RW, Reid, JW, 1988. Water Resources of Upper Crow Creek, Colorado. Special Publication 29. Colorado Geological Survey, Denver, Colorado.





January 18, 2019

VIA EMAIL

Mike Leonard, Acting Director
Greg Deranleau, Environmental Manager
COGCC
1120 Lincoln Street, Suite 801
Denver, CO 80202

Re: Site Investigation and Remediation Workplan Request

I am responding to your letter of January 3, 2019, related to the failure of Fifth Creek Energy to perform offset mitigation on the Peters 16-34 well (API #05-123-07723) when it drilled and completed the Fox Creek 501-340H well (API #05-123-42583) in late 2016. Your letter purports to require "HighPoint to initiate an investigation to determine whether actual impacts to the Laramie Fox Hills aquifer have occurred." Notably, the request requires the installation of a monitoring well in close proximity to the Peters well, among other measures.

You cite to Rule 906.c as the authority for this request. Rule 906.c is not applicable to the situation, and in no event is applicable to HighPoint.

As an initial matter, HighPoint was not, and still is not, the COGCC-recognized *operator* of the Fox Creek well. As you know, COGCC staff has refused to approve the Form 10 transferring operatorship to HighPoint due to an outstanding NOAV related to Fifth Creek's failure to perform offset mitigation on the Peters well. That NOAV was issued to Fifth Creek – not HighPoint – in March of 2018. While COGCC enforcement staff is currently seeking to join HighPoint to the NOAV proceeding – over HighPoint's objection – such joinder has not been approved by the Hearing Officer, and the matter was recently continued to the March hearing.

Second, Rule 906 requires operators "immediately upon discovery, to control and contain all spills/releases." Reporting obligations are also imposed following the discovery of a spill/release, and remediation may be required under Rule 906.c. Here, there has been no discovery of a spill/release, and HighPoint asserts that Rule 906 is not applicable to the situation.

Instead, the Commission must proceed pursuant to its statutory authority to "investigate alleged violations of any provision of this article, any rule or order of the commission, or any permit where the alleged violation threatens to cause or actually causes a significant adverse environmental impact," including by requiring "responsible parties to conduct investigation or monitoring activities and to provide the commission with the results" C.R.S. 34-60-124(4)(a)(3); (6)(b).



“Responsible party” means “any person who conducts an oil and gas operation in a manner which is in contravention of any then applicable provision of this article, or of any rule, regulation, or order of the commission, or of any permit that threatens to cause, or actually causes, a significant adverse environmental impact to any air, water, soil, or biological resource.” C.R.S. 34-60-124(8)(a).

In this matter, HighPoint cannot be deemed the “responsible party.” The failure to conduct offset mitigation on the Peters well occurred in November or December of 2016, and such action was the sole responsibility of Fifth Creek. HighPoint is not vicariously liable for the activities of an independent company some fifteen months before HighPoint acquired the Fifth Creek assets.

That “responsible party” liability is individualized and specific is made clear even in situations where there *are* multiple operators involved in the violation: “Each responsible party shall be liable only for a proportionate share of any costs imposed under this section and *shall not be held jointly and severally liable for such costs.*” C.R.S. 34-60-124(9), emphasis supplied.

The Commission’s enforcement authority is similarly limited: “Whenever the commission or the director has reasonable cause to believe a violation of any provision of this article, any rule, regulation, or order of the commission, or any permit has occurred, written *notice shall be given to the operator whose act or omission allegedly resulted in such violation.*” C.R.S. 34-60-121(4), emphasis supplied. Once again, HighPoint was not the operator that failed to conduct offset mitigation on the Peters well in 2016

As a final matter, the Commission has a specific rule applicable to HighPoint in this situation: An “operator will enjoy a rebuttable presumption against mitigation liability under §34-60-124(7) C.R.S., for ongoing significant adverse environmental impacts where the violation which led to such impacts was committed by a predecessor operator and where the operator has conducted an environmental investigation, with reasonable due diligence, of the environmental condition of the particular asset or activity and such investigation did not reveal such significant adverse environmental impacts.” Rule 524.e.

In this situation, HighPoint (then Bill Barrett Corporation) indeed conducted appropriate due diligence in conjunction with the acquisition of the Fifth Creek assets, which investigation did not reveal the issue now of concern to the Commission. The Commission, itself, bears responsibility in this regard because it failed to issue an NOAV to Fifth Creek until March 14, 2018, a mere four days before the closing of the transaction, and some fifteen months after the conduct in question.

Under these circumstances, HighPoint rejects your January 3rd “request”. If the Commission believes that an investigation is warranted, it is free to expend its Environmental Response



Fund to perform it. For your information, we estimate the cost of a monitoring well to be in the range of \$65,000.

HighPoint does, however, offer to supply any information in its possession that is responsive to your Rule 205 request, including providing access to its environmental investigation, and to consider other appropriate assistance to the Commission in resolving this matter.

Yours truly,

A handwritten signature in blue ink, appearing to read "KWonstolen", is written over a light blue horizontal line.

Ken Wonstolen

Senior Vice President & General Counsel

Ken Wonstolen

From: Ken Wonstolen
Sent: Friday, March 1, 2019 2:07 PM
To: 'kira.gillette@state.co.us'; 'dnr_cogccenforcement@state.co.us'
Cc: 'Deranleau - DNR, Greg'; kyle.davenport@coag.gov; Jamie L. Jost - Jost Energy Law, P.C. (jjost@jostenergylaw.com); Jill Dorancy
Subject: Response to NOAV
Attachments: COGCC Response Letter 011819.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Ms. Gillette –

I am responding to the NOAV, dated February 11, 2019 (“2/11 NOAV”) issued to Fifth Creek Energy Operating Company LLC (“Fifth Creek”). The 2/11 NOAV was received by HighPoint Resources (“HPR”) on February 19, 2019. The 2/11 NOAV asserts that Fifth Creek failed to file an eForm 27 as required by a letter from the (then-acting) Director, dated January 3, 2018, pertaining to unknown potential impacts to the Laramie Fox Hills aquifer that may have occurred due to Fifth Creek’s failure to conduct offset well mitigation on the Peters #16-34 well prior to completing the Fox Creek 501-3403H well in December, 2016.

For the following reasons, HPR asserts that this NOAV is invalid and must be withdrawn.

- This matter was commenced by an NOAV issued to Fifth Creek on March 13, 2018.
- On October 4, 2018, staff filed its Notice of Hearing for an Order Finding Violation (Cause 1V, Docket No. 181200382).
- HPR filed its Motion to Dismiss on October 24, 2018.
- A prehearing conference was conducted on December 5, 2018.
- On December 25, 2018, staff filed a Motion to Join HPR to the matter.
- HPR filed its Response in opposition on January 4, 2019.
- Neither the Motion to Dismiss nor the Motion to Join have been adjudicated.
- The staff’s proposed Order Finding Violation states: “Staff will seek the following corrective actions in the OFV: 1) Submission and implementation of a Form 27, Site Investigation and Remediation Workplan, to investigate potential impacts from the failure to perform mitigation of the Offset Well prior to hydraulic stimulation.”

Whether or not Fifth Creek – or HPR – must conduct a site investigation (and potential remediation) is an open matter, at issue in a regular enforcement proceeding. Accordingly, the Director’s letter of January 3, 2019, requiring the same action sought in Docket No. 181200382 is out-of-order and of no legal effect. Failure to comply with the Director’s *ultra vires* demand cannot form the basis for another NOAV relating to the same facts and circumstances. ***Therefore, HPR insists that you withdraw the 2/11 NOAV.***

For your convenience, HPR’s substantive response to the Director’s letter is attached. All of the points made in that response are equally applicable to the 2/11 NOAV. In its response, HPR offered to allow Mr. Deranleau to examine the environmental investigation report that HPR commissioned pursuant to its acquisition of the Fifth Creek assets, so that he could determine whether HPR qualifies for the presumption against mitigation liability afforded to successor operators under COGCC Rule 524.e. Mr. Deranleau conducted that examination on Tuesday of this week. In addition, I discussed with Mr. Deranleau a potential alternative to the demand in the Director’s letter to install a monitoring well in close proximity to the Peters well: obtaining fluid and gas (if present) samples from the Peters well pursuant to HPR’s

plugging operation. HPR has an approved Form 6 for that plugging operation, and yesterday, it filed a Sundry Notice for the sampling activity.

Please confirm your receipt of this electronic response to the 2/11 NOAV and advise me whether you will withdraw it. Please include Ms. Jost and Ms. Dorancy (cc'd above), HPR's counsel in Docket No. 181200382, as well.

Finally, please do not send any physical correspondence to the Fifth Creek at the address shown in the 2/11 NOAV, as that office is unoccupied. Please send all correspondence in this matter to my attention. Thank you.

Ken Wonstolen
Senior Vice President & General Counsel



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