

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

IN THE MATTER OF THE SECOND AMENDED)	Cause No. 535
APPLICATION OF AXIS EXPLORATION, LLC)	
FOR AN ORDER ESTABLISHING AN)	Docket No. 180300216
APPROXIMATE 1,588.82-ACRE DRILLING AND)	
SPACING UNIT, AND ESTABLISHING WELL)	Type: SPACING
LOCATION RULES APPLICABLE TO THE)	
DRILLING AND PRODUCING OF WELLS FROM)	
THE NIOBRARA FORMATION COVERING)	
CERTAIN LANDS IN SECTIONS 2, 3, AND 4,)	
TOWNSHIP 3 SOUTH, RANGE 66 WEST, 6TH)	
P.M., UNNAMED FIELD, DENVER AND ADAMS)	
COUNTIES, COLORADO.)	
)	

SUPPLEMENTAL BRIEF

Axis Exploration, LLC ("Axis" or "Applicant"), Operator No. 10646, by its attorneys, Welborn Sullivan Meck & Tooley, P.C., files this supplemental brief.

PROCEDURAL HISTORY

1. Axis filed an application (the "Application"), twice since amended, pursuant to Section 34-60-116, C.R.S. for an order establishing an approximate 1,588.82-acre drilling and spacing unit, and establishing well location rules applicable to the drilling of wells and producing of oil, gas and associated hydrocarbons from the Niobrara Formation covering the following lands in Denver and Adams Counties, Colorado:

Township 3 South, Range 66 West, 6th P.M.
Section 2: All
Section 3: All
Section 4: E½

2. On May 25, 2018, the Aurora Convention Center Hotel, LLC, Aurora10 Land, LLC, and RIDA High Point Land, LLC (collectively "ACCH") filed a protest ("Protest") to the Application.

3. Upon receipt of the Protest, Axis's Application was subsequently continued multiple hearing cycles. The matter has yet to be set for hearing.

4. On April 16, 2019, Governor Jared Polis signed Senate Bill 19-181 ("SB 19-181") into law. The bill contained comprehensive changes to Colorado's oil and gas regulations.

5. On April 19, 2019, the Commission published a document titled “COGCC Operator Guidance SB 19-181: Hearings and Permit Applications” (the “Guidance Document”).

6. On July 24th, 2019, Axis entered into that Oil and Gas Operator Agreement between Extraction Oil & Gas, Inc., and the City of Aurora, Colorado, a municipal corporation.

7. On October 7, 2019, the Hearing Officer ordered the parties to file “supplemental briefing setting forth how, if at all, the changes enacted by SB 19-181 affect the disputed issues in this case.”

ARGUMENT

SB 19-181 implemented two significant changes to the Commission’s drilling and spacing unit review under Section 34-60-116, C.R.S. First, SB 19-181 requires that the unit applicant first apply for and obtain local siting authority with the relevant local jurisdiction. Second, SB 19-181 makes drilling and spacing unit applications expressly subject to the Commission’s requirement to regulate oil and gas operations “in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations.”

A. The Local Siting Requirement

First, SB 19-181 amended Section 34-60-116, C.R.S., such to require that the applicant for a drilling and spacing unit provide the Commission with proof that the operator has (i) already filed an application with the affected local government to approve the siting of the proposed oil and gas location and of the local government’s disposition of the application, or (ii) proof that the affected local government does not regulate the siting of oil and gas locations (the “Local Siting Requirement”). C.R.S. § 34-60-116(1) (b) (I) – (II).

On July 24th, 2019, Axis entered into that Oil and Gas Operator Agreement between Extraction Oil & Gas, Inc.¹, and the City of Aurora, Colorado, a municipal corporation. The Oil and Gas Operator Agreement provides for certain locations within the city of Aurora, including Axis’s propose location for development of the Application Lands, the ACM High Point Pad. The ACM High Point Pad is a surface location located within the W½ of Section 1, Township 3 South, Range 66West, 6th P.M., all within the City of Aurora. The City of Aurora is the local government with local siting jurisdiction over the Location. The Oil and Gas Operator Agreement satisfies the Local Siting Requirement as provided for in Section 34-60-116(1)(a)(I), C.R.S.

¹ Axis Exploration, LLC is a wholly owned subsidiary of Extraction Oil & Gas, Inc.

B. The Public Health, Safety, Welfare, and the Environment Requirement

Second, SB 19-181 expressly subjects Commission orders establishing drilling and spacing units to Section 34-60-106(2.5) (the “Public Health, Safety, Welfare, and the Environment Requirement”), which provides that “[i]n exercising the authority granted by this article 60, the commission shall regulate oil and gas operations in a reasonable manner to protect and minimize adverse impacts to public health, safety, and welfare, the environment, and wildlife resources and shall protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations.” C.R.S. § 34-60-116(3)(a). The bill further provides that, “until the commission has promulgated any rules required to be adopted by subsections (2.5)(a), (11)(c), and (19) of this section and each rule specified in this subsection (1)(f)(III)(A) has become effective, the director may delay the final determination regarding a permit application if the director determines, pursuant to objective criteria to be published by the director within thirty days after April 16, 2019, and following a public comment period, that the permit requires additional analysis to ensure the protection of public health, safety, and welfare or the environment or requires additional local government or other state agency consultation.” C.R.S. § 34-60-106(1)(f)(III)(A)².

As part of Axis’s Oil and Gas Operator Agreement, Axis has agreed to certain locations within the City of Aurora, including the ACM High Point Pad. Axis has reviewed the existing ACM High Point Pad in light of the Director’s Objective Criteria, published by the Commission. The Oil and Gas Operator Agreement provides for certain Best Management Practices (“BMPs”) that will be implemented by Axis at the ACM High Point Pad. The BMPs listed in Exhibit B to the Oil and Gas Operator Agreement comprehensively address all phases of development at the ACM High Point Pad, including:

- Quiet Completions Technology;
- Mitigation Barriers using Berms, Bales, and Sound Walls;
- Use of pipelines for transportation of water and hydrocarbons from wellsite.
- Notification to City of Aurora regarding Commencement of Operations;
- Plugged and Decommissioned Well Testing;
- Flowline procedures;
- Closed-Loop Pitless Systems for Containment and/or Recycling of Drilling Fluids;
- No open burning at wellsite;
- Chemical Disclosure and Storage Procedures;
- Visual mitigation including facilities color, low profile equipment, minimal tree removal, lighting, landscaping, maintenance weed control, and removal of equipment;

² Section 34-60-106(1)(f)(III)(B) provides that Section 34-60-106(1)(f)(III)(A) shall be repealed if rulemaking specified in subsection (1)(f)(III)(A) have become effective. As of the date of this filing, rulemaking remains ongoing and has not been completed.

- Use of Open-ended discharge valves on all storage tanks, pipelines, and other containers;
- Fugitive Dust Suppression;
- Electric Equipment;
- Emergency Action Plans;
- Air Quality and Air Quality Monitoring Plan;
- Reduced Emission Completions;
- Fencing;
- Use of Combustion Devices;
- Noise Mitigation;
- Road Repair;
- Stormwater and Wastewater management;
- Odor Mitigation;
- Water Quality Monitoring;
- Spills Plan;
- Wildlife Mitigation;
- Other BMPs

Axis's ACM High Point Pad will be operated in accordance with the best management practices identified above. Axis maintains that the above-described best management practices, in coordination to those required by the Colorado Oil and Gas Conservation Commission, will ensure the highest standards of operations at its location, and allow the Commission to determine that Axis's operations are sufficient to reasonably protect against adverse impacts to public health, safety, and welfare, the environment, and wildlife resources, and to best protect against adverse environmental impacts on any air, water, soil, or biological resources in accordance with Section 34-60-106(2.5)(a), C.R.S

RESERVATION OF RIGHTS

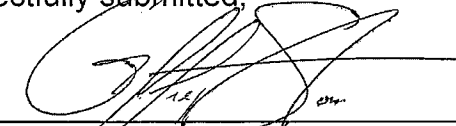
Axis reserves its right to supplement its position.

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DATED this 4th day of November, 2019

Respectfully submitted,

By:

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Joseph C. Pierzchala
Geoffrey W. Storm
Welborn Sullivan Meck & Tooley, P.C.
Attorneys for Applicant
1125 17th Street, Suite 2200
Denver, CO 80202
(303) 830-2500
jpierzchala@wsmtlaw.com
gstorm@wsmtlaw.com

CERTIFICATE OF SERVICE

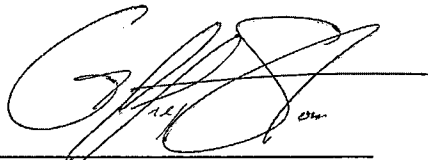
I hereby certify on this 4th day of November, 2019, I caused a true and correct copy of this Supplemental Brief to be served to:

Via electronic mail:

Colorado Oil and Gas Conservation Commission
ATTN: Michael Eden
1120 Lincoln Street, Suite 810
Denver, CO 80203
michael.eden@state.co.us

Rita Connerly
Nicholas N. Dyer
Fairfield and Woods P.C.
1801 California Street, Suite 2600
Denver, Colorado, 80202
rconnerly@fwlaw.com
ndyer@fwlaw.com

Attorneys for ACCH

A handwritten signature in black ink, appearing to read 'Geoffrey W. Storm', is written over a horizontal line.

Geoffrey W. Storm