

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

IN THE MATTER OF THE PROMULGATION AND ) CAUSE NO. 407  
ESTABLISHMENT OF FIELD RULES TO GOVERN )  
OPERATIONS FOR THE NIOBRARA AND CODELL ) DOCKET NO. 190900569  
FORMATIONS, WATTENBERG FIELD, ADAMS )  
COUNTY, COLORADO ) TYPE: POOLING  
)  
) ORDER NO. 407-3250

ORDER OF THE COMMISSION

The Commission heard this matter on November 17, 2021, at the Colorado Oil and Gas Conservation Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado, upon application for an order to pool all interests within an approximate 640-acre drilling and spacing unit established for the below-described lands (“Application Lands”), and to subject any nonconsenting interests to the cost recovery provisions of C.R.S. § 34-60-116(7), for the drilling of the Ivey LC 02-033HC Well (API No. 05-001-09900) and Ivey LC 02-036HC Well (API No. 05-001-09908) (“Wells”), for the development and operation of the Niobrara and Codell Formations:

Township 1 South, Range 68 West, 6<sup>th</sup> P.M.

Section 2: E½

Section 11: E½

FINDINGS

The Commission finds as follows:

1. Great Western Operating Company LLC, (Operator No. 10110) (“Great Western” or “Applicant”), as applicant herein, is an interested party 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 pursuant to the Oil and Gas Conservation Act.
4. On February 19, 1992 (amended August 20, 1993), the Commission entered Order No. 407-87 which, among other things, established 80-acre drilling and spacing units for the production of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations, with permitted well locations in accordance with the provisions of Order No. 407-1.
5. On April 27, 1998, the Commission adopted Rule 318A, the Greater Wattenberg Area Special Well Location, Spacing and Unit Designation Rule. The Application Lands are subject to this Rule for the Niobrara and Codell Formations. Effective January 15, 2021, Commission Rule 318A was moved to Rule 402 and modified to have no effect on future operations and development in the Greater Wattenberg Area. However, Rule 402.c states that

any wellbore spacing units established prior to January 15, 2021 will remain in effect unless the applicable Form 2s, if any, expire without spud.

6. On March 20, 2017, the Commission entered Order No. 407-1902, which, among other things, established an approximate 640-acre drilling and spacing unit for the Application Lands, and approved a total of up to 12 horizontal wells within the unit, for production from the Niobrara and Codell Formations, with the productive interval of the wellbore to be located no closer than 460 feet from the unit boundaries, and no closer than 150 feet from the productive interval of any other wellbore located in the unit, unless the Director grants an exception.

7. On June 25, 2019, which was at least 90 days before the Commission heard this matter, Great Western filed a verified application ("Application") pursuant to C.R.S. § 34-60-116, for an order to pool all interests in the Application Lands, for the development and operation of the Niobrara and Codell Formations, and to subject any nonconsenting interests to the cost recovery provisions of C.R.S. § 34-60-116(7), for the drilling of the Wells.

8. On August 26, 2019, Eric and Stacy Lambright filed a protest to the Application. Pursuant to an order dated October 29, 2021, the Hearing Officer dismissed the Protest.

9. The Applicant filed with the Commission a written request to approve the Application based on the merits of the Application and the supporting exhibits. Sworn written testimony and exhibits were submitted in support of the Application.

10. Land testimony and exhibits submitted in support of the Application by Jason Lowrey, Senior Landman and David Keahey, Landman for Great Western, along with the verified Application, show that the Applicant owns, or has secured the consent of the owners of, more than 45% of the mineral interest to be pooled. The land testimony further showed that granting the Application is consistent with the protection of public health, safety, welfare, the environment, and wildlife resources.

11. The land testimony and exhibits also show that the unleased owners within the drilling and spacing unit received a reasonable offer to lease or participate at least 90 days before the hearing date, that the owners to be pooled did not elect in writing to consent to the Well within 60 days after receiving the offer to participate, and that any unleased owner(s) had at least 60 days to review a reasonable offer to lease but either refused it or have not yet accepted it.

12. The land testimony and exhibits also demonstrate that the offers to lease were made in good faith, contained the contact information for a representative of an Applicant, and contained the Commission's pooling brochure or a link to access it.

13. In addition, the land testimony and exhibits show that the offers to participate contained the Commission's pooling brochure or a link to access it, the particular owner's share of the total estimated drilling and completion costs for the Well, and also the following information for each Well: the location, measured depth, true vertical depth, and lateral length, the total estimated drilling and completion cost, and the estimated spud date.

14. Land testimony showed the Applicant complied with the requirements of Rule 505 and the Act, and is entitled to the cost recovery provisions pursuant to C.R.S. § 34-60-116(7), for the Wells, but did not provide testimony for any subsequent wells.

15. Great Western agreed to be bound by oral order of the Commission.

16. Based on the facts stated in the verified Application, all protests having been dismissed, and based on the Hearing Officer review of the Application under Rule 506, the Commission should enter an order to pool all interests in the Application Lands, and to subject any nonconsenting interests to the cost recovery provisions of C.R.S. § 34-60-116(7), for the drilling of the Wells, for the development and operation of the Niobrara and Codell Formations.

### ORDER

#### IT IS HEREBY ORDERED:

1. Pursuant to the provisions of C.R.S. § 34-60-116, all interests in the drilling and spacing unit established for the Application Lands are hereby pooled, for the development and operation of the Niobrara and Codell Formations, effective as of the date the Application was filed.

2. The production obtained from the drilling and spacing unit shall be allocated to each owner in the unit on the basis of the proportion that the number of acres in such tract bears to the total number of mineral acres within the drilling and spacing unit; each owner of an interest in the drilling and spacing unit shall be entitled to receive its share of the production of the Wells located on the drilling and spacing unit applicable to its interest in the drilling and spacing unit.

3. The following working interest owner(s) did not elect to participate in the Well(s) or failed to make a timely election and are hereby deemed to be nonconsenting and subject to the penalties as provided for in C.R.S. § 34-60-116(7): Brent Miyazaki; Byron Oil Industries; F.M. Mineral Holdings, Inc.; James B. Wilcox, Jr.; James H. Turner, Trustee; Morgan J. Connor; Paul E. Vransec, II; Robert S. Pirtle; Robinson Brick Company; Scott J. Reasoner; SRC Energy Inc.; Ward Petroleum; WEP Operating Co., LLC; and Zenith Energy, LLC.

4. Each nonconsenting working interest owner must reimburse the consenting owners for the owner's proportionate share of the costs and risks of drilling and operating the Well(s) from the owner's proportionate share of production, subject to non-cost bearing interests, if and to the extent that the royalty is consistent with the lease terms prevailing in the area and is not designed to avoid the recovery of costs provided for in C.R.S. § 34-60-116(7)(b), until costs and penalties are recovered as set forth in C.R.S. § 34-60-116(7).

5. The following unleased owner(s) did not elect to participate in the Well(s) or failed to make a timely election and are hereby deemed to be nonconsenting and subject to the penalties as provided for in C.R.S. § 34-60-116(7): Carla S. Larson; Dorothy B. Anderson and Fred Anderson; and Roberta J. Sandin.

6. Any nonconsenting unleased owner shall be deemed to have a landowner's royalty, proportionate to each owner's record title interest, of:

a. for a gas well as defined in the Commission Regulations, 13% until the consenting owners recover, only out of each nonconsenting owner's proportionate 87% share of production, the costs specified in C.R.S. § 34-60-116(7)(b);

b. for an oil well as defined in the Commission Regulations, 16% until the consenting owners recover, only out of each nonconsenting owner's proportionate 84% share of production, the costs specified in C.R.S. § 34-60-116(7)(b).

After recovery of the costs specified in C.R.S. § 34-60-116(7)(b), each unleased nonconsenting mineral owner owns its proportionate 8/8ths share of the Wells, surface facilities, and production, and is liable for its proportionate share of further costs as if the nonconsenting owner had originally agreed to the drilling.

7. The operator of the Wells shall furnish the nonconsenting owners with a monthly statement of all costs incurred, together with the quantity of oil and gas produced, and the amount of proceeds realized from the sale of production during the preceding month.

8. A nonconsenting owner is immune from liability for costs arising from spills, releases, damage, or injury resulting from oil and gas operations on the drilling and spacing unit.

9. The operator shall not use the surface owned by a nonconsenting owner without the nonconsenting owner's permission.

10. Nothing in this order is intended to conflict with C.R.S. § 34-60-116. Any conflict that may arise shall be resolved in favor of the statute.

IT IS FURTHER ORDERED:

1. The provisions contained in the above order shall become effective immediately.

2. The Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.

3. Under the State Administrative Procedure Act, the Commission considers this Order to be final agency action for purposes of judicial review within 35 days after the date this Order is mailed by the Commission.

4. An application for reconsideration by the Commission of this Order is not required prior to the filing for judicial review.

**APPEAL RIGHTS**

Those seeking to file an exception to any Interim Decision or Recommended Order related to this docket may do so pursuant to Rule 520.c. If no exceptions are filed within 20 days from the date on the Certificate of Service, and the Commission does not stay on its own motion the Recommended Order or any related Interim Decisions at its next regularly scheduled hearing, the Recommended Order will become a final agency action pursuant to Rule 520.b.

A party seeking to file an exception must do so by submitting it electronically to: [dnr\\_hearingapplications@state.co.us](mailto:dnr_hearingapplications@state.co.us). An exception is a written objection that states a party's disagreement with the legal findings of the hearing officer's Recommended Order and Interim Decision. Written statements expressing general dissatisfaction with the Recommended Order or Interim Decision do not constitute a valid exception.

DATED this 8th day of November 2021.

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

By /s/ Elias J. Thomas  
Elias J. Thomas, Hearing Officer

**CERTIFICATE OF SERVICE**

The above signed certifies that on November 8, 2021, a true and correct copy of this Recommended Order of the Commission was served by email addressed to the following:

Jamie L. Jost  
Kelsey H. Wasylenky  
*Attorneys for Great Western*  
[jjost@jostenergylaw.com](mailto:jjost@jostenergylaw.com)  
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Joseph A. Salazar  
*Attorney for Eric & Stacy Lambright*  
[jas@salazarlaw.com](mailto:jas@salazarlaw.com)

Also on this date, the record, exhibits, and related interim orders of this proceeding were transmitted to the Commission and the parties via electronic mail:

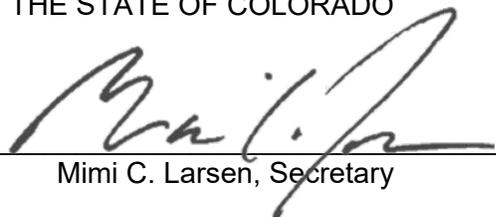
/s/ Elias J. Thomas  
Elias J. Thomas, Hearing Officer

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Pursuant to Rule 520.b, this Recommended Order is the Commission's Final Order effective as of 30th day of November, 2021.

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

By   
Mimi C. Larsen, Secretary