

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

IN THE MATTER OF THE APPLICATION OF GREAT WESTERN OPERATING COMPANY, LLC FOR AN ORDER TO POOL ALL INTERESTS IN AN APPROXIMATE 640-ACRE DRILLING AND SPACING UNIT ESTABLISHED FOR THE E½ OF SECTIONS 2 AND 11, TOWNSHIP 1 SOUTH, RANGE 67 WEST, 6 <sup>TH</sup> P.M., FOR THE CODELL AND NIOBARA FORMATIONS, WATTENBERG FIELD, ADAMS COUNTY, COLORADO	CAUSE NO. 407  DOCKET NOS.: 190900569  TYPE: POOLING
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**PROTESTANTS' MOTION FOR AN EMERGENCY HEARING**

Protestants Stacy S. Lambright and Eric C. Lambright (the “Lambrights”), by and through counsel, Joseph A. Salazar of Colorado Rising for Communities, submits this Motion for an Emergency Hearing. In response thereof, the Lambrights state the following:

**NOTICE OF CONFERRAL**

On December 7, 2020, undersigned counsel sent an email attempting to confer with opposing counsel related to the subject matter of this motion and the relief requested. Opposing counsel opposes this motion.

**FACTUAL BACKGROUND**

1. On or about July 26, 2019, the Lambrights received a package of information from the Colorado Oil and Gas Conservation Commission (the “Commission”) related to an application for pooling (“Application”) filed by Great Western Operating Company, LLC (“Great Western”) on June 25, 2019.
2. The Lambrights filed their protest on August 26, 2019, as required by the Commission.
3. On December 17, 2019, Great Western filed a motion to dismiss the Lambrights’ protest pursuant to C.R.C.P. 12(b)(1) and 12(b)(5).
4. The Lambrights filed their Response Brief on January 7, 2020.
5. The matter was fully briefed with the filing of Great Western’s Reply Brief filed on January 14, 2020.
6. The parties presented oral arguments on the Motion to Dismiss on March 12, 2020.
7. Presently, no decision has been made with respect to the Motion to Dismiss.

8. On September 28, 2020, the Commission conducted a “preliminary final vote,” which was characterized as a “substantive approval of the rules,” with respect to the Mission Change rulemaking for 200-600 Series rules.<sup>1</sup>

9. As Chair of the Commission, Jeff Robbins found under § 24-4-104.5(2)(a), C.R.S., that the new rules shall govern pending permits.<sup>2</sup> This finding was supported by other Commissioners, including Commissioner Messner who indicated the following: “The intent was clear to apply rules to permits in the pipeline.”<sup>3</sup> The Commission approved the “preliminary final vote” that same day.<sup>4</sup>

10. The final vote on the Mission Change rulemaking occurred on November 23, 2020.

11. To date, it is unknown if Great Western’s Motion to Dismiss will be weighed under the new COGCC rules, particularly since Great Western now has the burden of proof under the new rules, the issue of standing has now substantively changed through rulemaking, and COGCC Rule 530 no longer exists in the manner suggested by Great Western.

12. Without any Order denying or granting Great Western’s Motion to Dismiss, it was learned on December 2, 2020, that Great Western had started the process to begin construction on the subject site. Photos and videos were received from community members, and Great Western updated its website indicating that it intends to start drilling in January 2021, complete drilling in March 2021, and producing in June 2021.

13. On December 2, 2020, the Lambrights sought clarification from the hearing officer and Great Western regarding the Commission’s process now that rulemaking is complete, and whether Great Western intends to pool the Lambrights without an Order from the COGCC granting their application.

14. On December 8, 2020, Great Western’s attorney provided an answer indicating that: “COGCC Rule 530 provides that an Applicant may pool prior to or after the drilling of a well.” As stated above, the problem with this argument is that COGCC Rule 530 has been amended and now involves ex parte communications, not pooling. Nonetheless, it is apparent that Great Western has begun construction on the subject site and intends to drill and pool the Lambrights’ mineral interests without a Commission Order.

15. It should be noted that state statute does not remotely allow oil and gas operators to pool nonconsenting Owners without an Order from the Commission nor does state statute allow oil and gas operators to drill and take nonconsenting Owners’ mineral rights before an Order is issued by the Commission. *See* § 34-60-116(6)(a)-(c), (7)(a)(I)-(IV), C.R.S. (2020).

16. As it appears Great Western intends on taking the Lambrights’ mineral interests without an Order from the Commission, and there remain substantial questions regarding the application

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<sup>1</sup> <https://www.youtube.com/watch?v=TXt77rsg0SU>, at 1:38:15.

<sup>2</sup> *Id.* at 50:40-52:50.

<sup>3</sup> *Id.* at 1:16:35.

<sup>4</sup> *Id.* at 1:38:20-1:40:40.

of the new rules to this matter and to Great Western's Motion to Dismiss, the Lambrights request the hearing officer to grant an emergency hearing to decide these matters that greatly intrude upon the Lambrights' due process rights. *Hendricks v. Indus. Claim Appeals Office*, 809 P.2d 1076, 1077 (Colo. App. 1990); *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974).

17. This Motion is not a request to reopen briefing on Great Western's Motion to Dismiss. It is, however, intended to understand the Lambrights' rights with respect to due process and property interests now that rulemaking is complete, and in light of Great Western's intent to pool the Lambrights' mineral interests without an Order from the Commission.

WHEREFORE, the Lambrights request that the Commission GRANT this Motion for an Emergency Hearing in its entirety.

Dated this 8<sup>th</sup> day of December, 2020,

Respectfully Submitted,

/s/ Joseph A. Salazar  
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### **CERTIFICATE OF SERVICE**

I hereby certify that on this 8<sup>th</sup> day of December, 2020, a true and correct copy of the foregoing **PROTESTANTS' MOTION FOR AN EMERGENCY HEARING** was served on the following parties.

Via electronic mail:

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/s/Joseph A. Salazar  
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