

**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 NIOBRARA FORMATIONS, WATTENBERG  
FIELD, ADAMS COUNTY, COLORADO

CAUSE NO. 407

DOCKET NO. 190900569

TYPE: POOLING

**GREAT WESTERN OPERATING COMPANY, LLC’S RESPONSE TO  
PROTESTANTS’ MOTION FOR EMERGENCY HEARING**

COMES NOW Great Western Operating Company, LLC (Operator No. 10110) (“Great Western” or “Applicant”) by and through its attorneys, Jost Energy Law, P.C., and respectfully and timely files this Response to the Motion for Emergency Hearing (“Motion”) filed by Stacy and Eric Lambright (the “Lambrights” or “Protestants”) on Tuesday, December 8, 2020. The Motion should be immediately denied as it intentionally misrepresents and misapplies the applicable law and it contains no legal or factual support for the request. In support of this Response, Great Western states as follows:

**PROTESTANT MISPRESENTS AND MISAPPLIES THE LAW**

Great Western asserts and maintains that Protestants and their counsel’s application of the newly adopted rules is not only patently wrong, but intentionally misrepresentative in order to obtain the requested “emergency hearing.” On November 23, 2020, this Commission adopted new rules for the 200, 300, 400, 500, 600, 800, 900 and 1200 Series Rules of the Commission. Protestants’ counsel, Mr. Salazar, represented Colorado Rising in the four-months of rulemakings and is well aware of the difference between the “adoption date” and “effective date” of the rules, even though his pleadings do not support as much. *See Motion*, ¶¶ 8, 10. Protestants attempt to claim that the newly adopted rules are *effective* as of either September 28, 2020 or November 23, 2020. This is flat wrong.

It is clear that each of the series rules, specifically the 500 Series Rules as applied to this docket, are to be effective on January 15, 2021. *See 200-600 Statement of Basis and Purpose and Commission’s final vote on November 23, 2020*. The Protestants’ attempt to apply the new rules well before their effective date illustrates the falsity of the need for an “emergency hearing” on this matter, particularly with respect to the current *pooling* application.<sup>1</sup> Rule 530 – Involuntary Pooling Proceedings – remains in place, valid and effective until January 15, 2021. Protestants’

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<sup>1</sup> Great Western has always acknowledged that it has the burden of proof to support its Application. This burden of proof did not change as a result any modification to the 500 Series Rule effective on and after January 15, 2021.

claim that Rule 530 – Ex Parte Communications – somehow applies as of the date of this filing just illustrates the absurdity of their Motion.

Great Western also asserts and maintains that Protestants’ claims are entirely based on their concerns with the existing, approved Form 2A and Form 2’s for the Ivey Pad, and not the *pooling* of their interests in the established drilling and spacing unit. Protestants claim that the “new rules shall govern pending permits.” *See Motion*, ¶11. This claim is irrelevant to the subject pooling application. Great Western’s Form 2A for the Ivey Pad was approved in August 2018 and the Form 2s were approved in November 2020. These forms are not at issue nor relevant to this pooling proceeding and Protestants cannot improperly attempt to attack those approved permits via the pooling application.

Great Western further asserts and maintains that Protestants’ statement of “[i]t 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)” is also patently wrong. No provision or section of C.R.S. §34-60-116(6) or (7) requires that an Operator must obtain a pooling order prior to drilling any well. *See C.R.S. § 34-60-116(6)(b)(I)*(... “the commission...*may* enter an order...”) (emphasis added). If a pooling order is entered by the Commission, it is only then that it must comply with the provisions cited by Protestants; however, it is not a mandate that such order occur prior to any drilling, or at all. *Id.* As addressed below, current Commission Rule 530.a. allows for pooling under C.R.S. § 34-60-116 to occur at any time, and specifically “before or after the drilling of a well”. *See Commission Rule 530.a. effective until January 15, 2021 and Commission Rule 506.a. effective on and after January 15*, It should be noted that Rule 506.a, effective on and after January 15, 2021, is materially unchanged from current Rule 530.a.

Finally, Great Western asserts and maintains that Protestants’ statement that a pooling equivalates to a “taking” of the nonconsenting Owners’ mineral rights is also wrong. This argument is beyond the scope of Protestant’s Motion, however, it must be stated in this Response that any allegation of a “takings” claim is outside of the scope of the Commission’s jurisdiction and cannot be addressed in any order on the subject pooling application.

### **PROTESTANS’ REQUEST IS UNSUPPORTED IN FACT AND LAW**

There is no Commission rule that allows for the emergency hearing requested by Protestants. Under the current 500 series rules, Rule 502 allows for “emergency orders” on conservation of oil and gas or conduct of oil and gas operations, or the administration of the Act, but only if resulting from the Commission’s own Motion. This is not the circumstance in this case. Further, current Rule 519 applies the Colorado Rules of Civil Procedure to Commission proceedings and Protestants have not, and cannot now, incorporate any applicable Colorado Rule of Civil Procedure into its request for an emergency hearing. Furthermore, no rule of civil

procedure applies in this instance as there is no “emergency” situation despite Protestants’ false claims to the contrary.

In fact, current Rule 530 – Involuntary Pooling Proceedings<sup>2</sup>, supports denial of Protestants’ requested relief. Rule 530.a., which remains effective until January 15, 2021, provides:

“[a]n application for involuntary pooling pursuant to §34-60-116, C.R.S., may be filed *at any time* by an owner who owns, or has secured the consent of the owners of, more than forty-five (45) percent of the mineral interests to be pooled within a drilling and spacing unit established by Commission order, *prior to or after drilling of a well*, but no later than ninety (90) days in advance of the hearing date for which the applicant proposes the matter be heard by the Commission, as per Rule 506.a.”

*See Commission Rule 530.a. effective until January 15, 2021 and Commission Rule 506.a. effective on and after January 15, 2021.* This language in and of itself confirms that there is no reason for an emergency hearing on the above-captioned pooling application because pooling orders were expressly contemplated to occur before *or* after any well has been drilled.

Protestants intentionally attempt to mislead this Commission by claiming that “...it is apparent that Great Western has begun construction on the subject site and intends to drill and pool the mineral interests without a Commission Order” and “it appears Great Western intends on taking the Lambright’ mineral interests without an Order from the Commission, and there remains substantial questions regarding the application 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.” *See Motion*, ¶¶ 15, 16. Each of these allegations is flat wrong. In reality, Great Western can begin construction on the Ivey Pad because it has held an approved Form 2A for the site since August 2018. Great Western can drill all of the associated wells on the Ivey Pad because it has held approved Form 2s for the site since November 2020. What Protestants and their counsel continually fail to understand is that the pooling Order does not have to be in place prior to the drilling of any well on the Ivey Pad, and this position is clearly supported by C.R.S. § 34-60-116(6) and (7), as well as Rule 530.

This is not the time or place to yet again detail Protestants and their counsel’s complete misunderstanding of the Colorado pooling laws as these have been clearly addressed in the pending Motion to Dismiss and oral arguments on such motion. However, is critically important for the Hearing Officer and the Commission to acknowledge that Protestants’ Motion is just another attempt to make an argument in opposition to Great Western’s pending Motion to Dismiss, and is

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<sup>2</sup> Rule 530 will become Rule 506 on and after January 15, 2021. The language of Rule 530.a. remains unchanged by the outcome of the COGCC Mission Change Rulemaking, with the exception of the cross-reference to Rule 510 instead of 506.a..

an example of their complete ignorance and disregard of the applicable pooling laws and regulations. As such, the Motion for Emergency Hearing must be denied.

**PROTESTANTS HAVE FAILED TO PRESENT ANY GOOD CAUSE FOR THE  
REQUEST**

Even if an emergency hearing was allowed by rule, Protestants have failed to provide any evidence of a good cause to support its request for an emergency hearing. The Motion has clearly been filed on a complete misunderstanding of C.R.S. § 34-60-116, the current 500 series rules, and the 500 series rules that are not effective until January 15, 2020. Each unsupported allegation relates to the construction of the approved Ivey Pad (which is governed by the 300 series rules), the approved Ivey well permits (which is governed by the 300 series rules) and false claims of “takings” (which are not within the subject matter jurisdiction of the Commission), none of which are subject or relevant to the pooling application at issue. Protestants know that the Hearing Officer in this matter will be issuing an order on Great Western’s pending Motion to Dismiss within the upcoming weeks, yet they refuse to remain patient in these proceedings and attempt to get around the pending Motion with this frivolous filing. Frankly, this is an abuse of process under Commission Rule 501.b. and Protestants’ Motion should be denied due to such abuse.

If the Hearing Officer finds in Great Western’s favor and dismisses Protestants’ objections, then this ends the current issue. If the Hearing Officer does not find in Great Western’s favor of dismissing Protestants’ claims, then Great Western would welcome a hearing in early 2021 on this matter in order to obtain closure on this application. However, there is no reason to have an emergency hearing with Protestants’ whose standing is yet to be determined by the Hearing Officer. That would not only be putting the cart before the horse and a waste of administrative resources, but it would also be in violation of Great Western’s right to receive an order on its Motion to Dismiss that has been pending almost one year from the date of this filing.

WHEREFORE, for the foregoing reasons, Great Western respectfully requests that the Commission dismiss the Protestant’s Motion for Emergency Hearing with prejudice and grant such further relief as necessary and required in this matter. Great Western also renews its request for the Hearing Officer to enter an order on Great Western’s Motion to Dismiss dated December 17, 2019 at its earliest convenience.

DATED this 14<sup>th</sup> day of December 2020.

Respectfully submitted,

**Great Western Operating Company, LLC**

By:   
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CERTIFICATE OF SERVICE

I hereby certify that on December 14, 2020, Jost Energy Law, P.C. caused Great Western Operating Company, LLC's Response to Protestants' Motion for Emergency Hearing in Colorado Oil and Gas Conservation Commission Docket No. 190900569 to be served via electronic mail to the Commission and to counsel for Eric and Stacy Lambright at the addresses listed below:

Colorado Oil and Gas Conservation Commission

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Denver, CO 80203

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