

**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 TH 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' REPLY IN SUPPORT OF 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 Reply in Support of Motion for an Emergency Hearing. In reply thereof, the Lambrights state the following:

CURRENT STATE OF THE LAW AND RULEMAKING

I. STATUTORY LAW

This application for pooling was filed on June 25, 2019, which was after the effective date of SB 19-181. Thus, Great Western’s pooling application is required to follow the statutory guidelines. As an example, Great Western is required to prove that it has forty-five percent of the mineral interests to be pooled. § 34-60-116(6)(b)(I), C.R.S. (2019).

Additionally, the Commission is obligated, **before entering an order**, to provide Protestants notice and a hearing, and Great Western is obligated to prove that the terms and conditions are “just and reasonable, and that afford to the owner of each tract or interest in the drilling unit the opportunity to recover or receive, without necessary expense, a just and equitable share.” § 34-60-116(6)(b)(II).

To date, none of these statutorily required steps have occurred in this case. Instead, Great Western attempts to short circuit these steps through its Motion to Dismiss.

II. DIRECTOR’S OBJECTIVE CRITERIA AND RULEMAKING

In addition to the changes in statutory law, the Commission also approved the Director’s Objective Criteria.¹ Both the statute and the Director’s Objective Criteria are clear that permit applications shall be weighed under the new statutory mandate to regulate oil and gas operations

¹ https://cogcc.state.co.us/documents/sb19181/DOC/Objective_Criteria_Guidance_20190716.pdf.

in a manner that protects and minimizes adverse impacts to public health, safety, and welfare, the environment, and wildlife resources. *Id.*; § 34-60-102(1)(a)(I). Great Western’s pooling application does not escape this scrutiny. Great Western’s pooling application also cannot escape statutory scrutiny with respect to the Commission’s obligation to: “Safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each such owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom.” § 34-60-102(1)(a)(III).

With this backdrop, and as statutorily required by SB 19-181, the Commission was mandated to engage in rulemaking to ensure that its rules were in compliance with the Colorado Oil and Gas Conservation Act (the “Act”), as amended by SB 19-181.

Mission Change Rulemaking 200-600 started in January-February 2020, starting with the Strawdog rules. 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.² Referencing § 24-4-104.5(2)(a), the Commission held that the new rules shall govern pending permits.³ The statutory section states the following:

*If the rules or any written statements of agency interpretation of the statutes governing the agency’s permit process or the requirements to qualify for a permit have been amended, the agency shall process the application under the rules and any written statements of agency interpretation of the statutes in effect on the date of the application, **unless the agency determines in writing that:***

- (I)(A) The new rules materially affect the health and safety of the public; and
- (B) Use of the rules in effect on the date of the application is likely to result in an unsafe situation if the applicant does not comply with the new rules; or
- (II) New rules or new requirements are necessary to ensure that the agency and the permit will be in compliance with the requirements of federal law and federal regulations; or
- (III) New rules or new requirements are necessary to ensure that the agency and the permit will not be in conflict with state statutes; or
- (IV) New rules or new requirements are necessary to ensure that the agency and the permit will be in compliance with the requirements of a court order.

§§ 24-4-104.5(2)(a)(I)(A) and (B)(I)-(IV). As indicated above, Chair Robbins made findings under the statute that pending applications would be processed under the new rules. Based on both the plain language of the statute and Chair Robbins’ public statements, the new 200-600 Series rules apply to this pending pooling application.

² <https://www.youtube.com/watch?v=TXt77rsg0SU>, at 1:38:15.

³ *Id.* at 50:40-52:50.

Thus, it begs the question why Great Western has telegraphed that it intends on drilling the Ivey Site starting in January 2021 when it has not received a pooling permit in this case. The matter is further compounded when it cites a rule, as authority, that no longer exists.

An emergency hearing must be held in this case if only to sort out the various legal rights and obligations of the parties and the Commission. As previously stated, Protestants have a constitutional right to their property and to due process – in fact their rights are fundamental. *Hendricks v. Indus. Claim Appeals Ofc.*, 809 P.2d 1076, 1077 (Colo. App. 1990); *Wolff v. McDonnell*, 418 U.S. 539, 557-58 (1974) (“The Court has consistently held that some kind of hearing is required at some time before a person is finally deprived of his property interests.”). The cornerstone of due process is fundamental fairness. *Meyerstein v. City of Aspen*, 282 P.3d 456, 467 (Colo. App. 2011). It would be fundamentally unfair to Protestants if an emergency hearing is not granted in order to define the various legal rights and obligations. On the other hand, there is no harm to either of the parties to understand how the Commission intends to proceed in this case.

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

Dated this 17th day of December, 2020,

Respectfully Submitted,

/s/ Joseph A. Salazar
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 2020, a true and correct copy of the foregoing **PROTESTANTS' REPLY IN SUPPORT OF MOTION FOR AN EMERGENCY HEARING** was served on the following parties.

Via electronic mail:

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