

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

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

**ORDER REGARDING ERIC AND STACY LAMBRIGHT'S MOTION FOR
EMERGENCY HEARING**

THIS MATTER is before the Hearing Officer upon Eric and Stacy Lambright's (the "Lambrights" or "Protesters") Motion for Emergency Hearing ("Motion"). Great Western Operating Company, LLC ("Great Western") filed a Response ("Response"), and the Lambrights filed a Reply in support of the Motion ("Reply"). Upon review of the Motion, Response, and Reply, the Hearing Officer recommends that the Motion be denied.

FINDINGS OF FACT

On June 25, 2019, Great Western filed an 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 non-consenting interests to the cost recovery provisions of § 34-60-116(7), C.R.S., for the drilling of the Ivey LC 02-033HC Well and Ivey LC 02-036HC Well ("Wells"), for the production of oil, gas, and associated hydrocarbons from the Niobrara and Codell Formations:

Township 1 South, Range 68 West, 6th P.M.

Section 2: E½

Section 11: E½

On August 26, 2019, Eric and Stacy Lambright filed a protest to the Application. In their protest, the Lambrights contend that Great Western failed to provide them with a reasonable offer to lease or participate in the wells. Protest, pp. 1-2. The Lambrights also alleged that the application will cause waste and result in the drilling of unnecessary wells, will not protect their correlative rights, will cause irreparable environmental damage, and will endanger the health, safety, and welfare of residents in the area. *Id.* at 2.

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) ("Motion to Dismiss"). The Lambrights filed their Response to the Motion to Dismiss on January 7, 2020, and Great Western filed its Reply on January 14, 2020.

On March 12, 2020, the Hearing Officer held oral arguments on the merits of the Protest and fully briefed Motion to Dismiss. The briefed Motion to Dismiss is pending before the Hearing Officer.

On November 25, 2020, upon the request of Great Western, the Hearing Officer provided an update to the parties regarding the status of the Motion to Dismiss, indicating that he intended to dispose of the Motion to Dismiss in a matter of weeks. In response, counsel for the Lambrights emailed the Hearing Officer seeking clarification on whether the newly adopted Mission Change Rules would apply to the Application, Protest, and Motion to Dismiss. In addition, counsel for the Lambrights noted that they had learned that Great Western intended to begin drilling on the well sites without the pooling application being approved by the Commission.¹ Although the parties exchanged a number of emails on these matters, the Hearing Officer did not respond to any of the emails in light of the pending Motion to Dismiss.

On December 8, 2020, counsel for the Lambrights filed a Motion for Emergency Hearing seeking clarification on the issues raised in the email chain. The Lambrights reiterated their concerns in the response email and requested an emergency hearing to seek clarity regarding the Commission's process upon completion of the Mission Change Rulemaking and regarding the recent activities of Great Western on the Application Lands. Motion for Emergency Hearing ("Motion"), p. 2. In addition, the Lambrights noted that the Motion is not intended to be a request to reopen briefing on the Motion to Dismiss. *Id.* at 3.

On December 14, 2020, Great Western filed its Response to the Motion. Great Western argued that the Lambrights' premise for requesting an emergency hearing is incorrect, as both the Commission and the Statement of Basis and Purpose specifically noted that the Mission Change Rules do not become effective until January 15, 2021, and therefore do not affect the pending application. Response to Motion for Emergency Hearing ("Response"), p. 1. Great Western also argued that the Lambrights' concerns regarding drilling pertain to Great Western's approved Form 2s and 2As for the site at issue, and not to the pooling application that the Lambrights protested. *Id.* at 2. Finally, Great Western noted that there is no basis in Commission Rules or in the Colorado Rules of Civil Procedure to request an "emergency hearing", and even if there was, the Lambrights failed to demonstrate good cause for such a hearing. *Id.* at 3-4. As such, Great Western contended that an emergency hearing is not necessary for any of the reasons raised by Protesters, and the Motion should therefore be dismissed.

On December 17, 2020, the Lambrights filed a Reply in support of the Motion. The Lambrights reiterated that Great Western must comply with the statutory requirements implemented by Senate Bill 19-181. Reply in Support of Motion for Emergency Hearing ("Reply"), p. 1. The Lambrights further argued that the pooling application at issue is subject to the Director's Objective Criteria and to the Rules as of September 28, 2020, during which the Commission took a "preliminary final vote" on the 200-600 Series Mission Change Rules and effected a "substantive approval of the rules." *Id.* at 2. Finally, the Lambrights reemphasized the need for an emergency hearing to address their rights

¹ Arguments related to this issue were raised in the Lambrights' Response to the Motion to Dismiss and discussed at length during oral arguments.

regarding recent activity of Great Western upon the Application Lands, absent Commission approval of a pooling order. *Id.* at 3.

STANDARD OF REVIEW

Commission Rule 519.a provides that:

The Colorado Rules of Civil Procedure apply to Commission proceedings, unless they are inconsistent with Commission Rules or the Colorado Oil and Gas Conservation Act, or as the Hearing Officer may direct on the record during prehearing proceedings.

Commission Rule 527.b. provides that the Hearing Officer will rule on preliminary matters in any pending proceeding.

Finally, pursuant to Rule 532.a, this Order is an Interim Decision that is not subject to the exception process until the Hearing Officer serves a recommended order disposing of the underlying Application. See Rule 532.a.(1)-(3).

ANALYSIS

Upon review, the Lambrights' Motion must be denied. As an initial matter, the Motion's request for clarification on the application of the Mission Change Rules is unripe for adjudication by the Hearing Officer. Ripeness is a component of subject matter jurisdiction that requires an actual case or controversy between the parties that is sufficiently immediate and real so as to warrant adjudication. *Beauprez v. Avalos*, 42 P.3d 642, 648 (Colo. 2002) (citations omitted). Under the ripeness doctrine, courts usually do not consider disputes involving uncertain or contingent future matters. *Id.* In deciding ripeness, the court, or in this case the Hearing Officer, looks to the hardship of the parties of withholding court consideration and the fitness of the issues for judicial decision. *Stell v. Boulder Cty. Dept. of Social Services*, 92 P.3d 910, 914-15 (Colo. 2004).

The Hearing Officer construes the Motion to be a request for a hearing on the effect of the Mission Change Rules on the Lambrights' Protest. It bears emphasis that the Mission Change Rules are not presently in effect and will not go into effect until January 15, 2021. See Statement of Basis, Statutory Authority, and Purpose, 200-600 Mission Change, Cumulative Impacts, and Alternative Location Analysis Rulemaking, pp. 1, 13, 14 ("Unless otherwise specified, the new rules and amendments become effective on January 15, 2021"); see also § 24-4-103(5), C.R.S. Nor is there any indication that any of the 500 Series Rules, applicable here, go into effect prior to January 15, 2020. *Id.* at 179-212. Since the Mission Change Rules are not yet in effect, there is no case or controversy regarding their impact on the Lambrights' Protest or Great Western's Motion to Dismiss. An emergency hearing on that the Mission Change Rules is thus unripe for adjudication.

It further follows that for the Hearing Officer to address or apply the Mission Change Rules to the protest and the issues presented in the Motion to dismiss would

constitute the impermissible issuance of an advisory opinion. Courts may not issue advisory opinions over cases that are not yet ripe. See *Bickel v. City of Boulder*, 885 P.2d 215, 234 (Colo.1994) (“[T]his court is not empowered to give advisory opinions based on hypothetical fact situations”); *Bd. of Cnty. Comm’rs of City of Archuleta v. Cnty. Road Users Ass’n*, 11 P.3d 432, 439 (Colo. 2000); see also *McKee v. City of Louisville*, 200 Colo. 525, 530, 616 P.2d 969, 973 (1980) (recognizing that only after a measure is adopted, “when actual litigants whose rights are affected are before it, may the court determine the validity of the legislation”).

The Lambrights also request an emergency hearing before the Hearing Officer on other issues related to the Great Western’s application, including constitutional arguments and arguments regarding forced pooling under the Colorado Oil and Gas Conservation Act and Commission Rules. That request must also be denied. The relief requested has already been afforded to the Protestants under the current rules through briefing of the Motion to Dismiss and oral argument. See Commission Rule 509.e; Rule 529.a. Those matters were briefed in the Motion to Dismiss and argued at an oral argument hearing, presided over by the Hearing Officer and still pending before the Hearing Officer. Protestants cite no applicable Commission Rule or Rule of Civil Procedure to support granting an emergency hearing before the Hearing Officer, nor do their arguments substantially deviate from those raised in the Protest or Response to the Motion to Dismiss. As such, no further relief is available. As the Hearing Officer cannot provide any relief requested in the Motion, it is denied.

ORDER

THEREFORE it is hereby

ORDERED that Eric and Stacy Lambright’s “Motion for Emergency Hearing” is DENIED.

IT IS FURTHER ORDERED that pursuant to Rule 532.a.(1)-(3), this Order is an Interim Decision, which is not subject to the Commission’s exception process. The aggrieved party may only file an exception to this Order once the Hearing Officer serves a recommended order disposing of the underlying application.

Dated: December 21, 2020

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO,

/s/ Elias J. Thomas

Elias J. Thomas, Hearing Officer

CERTIFICATE OF SERVICE

On December 21, 2020 a true and correct copy of the foregoing Hearing Officer Recommendation was sent by electronic mail to the following:

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/s/ Elias J. Thomas

Elias J. Thomas, Hearing Officer