

<input type="checkbox"/> County Court <input checked="" type="checkbox"/> District Court ADAMS County, Colorado Court Address: Adams County Justice Center 1100 Judicial Center Drive Brighton, CO 80601	DATE FILED: January 27, 2021 2:21 PM FILING ID: 2C38909599722 CASE NUMBER: 2021CV30101
<b>PLAINTIFFS:</b> ADAMS COUNTY COMMUNITIES FOR DRILLING ACCOUNTABILITY NOW  v.  <b>DEFENDANTS:</b> COLORADO OIL AND GAS CONSERVATION COMMISSION; JULIE MURPHY, DIRECTOR OF THE COGCC; BOARD OF COUNTY COMMISSIONERS, ADAMS COUNTY; AND GREAT WESTERN OPERATING COMPANY, LLC	<p style="text-align: center;">↑    <b>COURT USE ONLY</b>    ↑</p>
<i>Attorneys for Plaintiff</i>  COLORADO RISING FOR COMMUNITIES Joseph A. Salazar, #35196 PO Box 370 Eastlake, CO 80614-0370 Phone: (303) 895-7044 Email: <a href="mailto:joe@corising.org">joe@corising.org</a>  FOOTE LAW FIRM, LLC Michael Foote, #34358 357 S. McCaslin Blvd., Suite 200 Louisville, CO 80027 Phone: (303) 519-2183 Email: <a href="mailto:mjbfoote@gmail.com">mjbfoote@gmail.com</a>	Case No.:  Division:
<b>COMPLAINT FOR DECLARATORY JUDGMENT</b>	

Adams County Communities for Drilling Accountability Now (“ACCDAN” or “Plaintiff”), by and through their attorney Joseph A. Salazar of Colorado Rising for Communities hereby files this Declaratory Judgment Complaint seeking:

1) a declaratory judgment invalidating Colorado's pooling statute and corresponding state rules as they violate Article II, § 14 of the Colorado Constitution; and

2) a declaratory judgment finding that a June 30, 2015 Memorandum of Understanding ("MOU") signed between Adams County and Great Western Operating Company ("Great Western"), which affects Plaintiff members' statutory rights, requires Adams County to enforce the stricter standards of state law and regulation against Great Western and its operation known as the Ivey Site.

ACCDAN further seeks an injunction: 1) enjoining the COGCC from enforcing Colorado's pooling statute and regulations regarding involuntary pooling; and 2) enjoining Great Western from drilling into and producing from Plaintiff members' mineral property until Great Western comes into compliance with the stricter standards of state law and regulation.

## **PARTIES**

1. The Colorado Oil and Gas Conservation Commission (the "COGCC") is the state agency responsible for administering the Colorado Oil and Gas Conservation Act (the "Act"), as amended by SB 19-181, and for, among other things, protecting public health, safety and welfare, environment, and wildlife resources. COGCC enforces Colorado's pooling statute and regulations, which allow private oil and gas companies to forcibly take the private mineral property of individuals despite the mineral owners' objection.

2. Great Western Operating Company, LLC ("Great Western") is a private oil and gas company registered under the laws of the state of Colorado. Great Western filed an application for pooling with the Commission involving the Ivey Site, which is located in Adams County. Great Western intends on taking Plaintiff members' private mineral property despite Plaintiff members' objections. Great Western also is obligated under the MOU to adhere to the stricter standards of state law and regulations on the Ivey Site. Great Western's drilling operation does not meet the stricter standards of state law and regulations.

3. Adams County Board of County Commissioners is a Colorado statutory county and political subdivision of the state of Colorado organized under the laws of the state of Colorado. Adams County entered into an MOU that applies to Great Western and its drilling operation at the Ivey Site. Adams County, pursuant to the MOU, is obligated to hold Great Western to the stricter standards of state law and regulations. Adams County has failed to hold Great Western's drilling operation at the Ivey Site to the stricter standard of state law.

4. Julie Murphy is the director of the COGCC. In her official capacity, Ms. Murphy is in charge of enforcing the Act, including the forced pooling statute. Ms. Murphy also is mandated by the Act to prioritize public health, safety, welfare, environment, and wildlife resources above oil and gas operations.

5. Adams County Communities for Drilling Accountability (“ACCDAN”) is a Colorado nonprofit corporation registered under the laws of the State of Colorado. ACCDAN was formed to fight against oil and gas drilling within Adams County communities near the Ivey Site. ACCDAN’s members include individuals who hold mineral interests affected by the COGCC and Great Western within the Ivey Site, and whose health, safety, and welfare are directly impacted by Great Western’s operations at the Ivey Site. ACCDAN members have been advised by the COGCC and Great Western that its members’ mineral property is under threat of being forcibly taken for the private use of Great Western and consenting mineral owners despite ACCDAN members’ numerous objections. ACCDAN members’ statutory rights also are imminently threatened through Adams County’s failure to enforce the stricter standards provision of the MOU against Great Western at the Ivey Site, and by Great Western’s operations at the Ivey Site that do not comply with the stricter standards of state law and regulation.

### JURISDICTION AND VENUE

6. The Court has personal and subject matter jurisdiction over this proceeding pursuant to §§ 13-51-105 and 13-51-106, C.R.S. (2020), and Rule 57 of the Colorado Rules of Civil Procedure.

7. Venue in this district is proper pursuant to Rule 98(a) of the Colorado Rules of Civil Procedure as Great Western’s pooling application affects Plaintiff’s members’ mineral property in Adams County, and the MOU was signed by Charles “Chaz” Tedesco, then-Chair of the Adams County Board of County Commissioners, and affects Plaintiff’s members’ statutory rights in Adams County.

### FACTUAL ALLEGATIONS

#### Article II, § 14

8. Sec. 14 of Article II of the Colorado Constitution states:

*Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, and except for reservoirs, drains, flumes, or ditches on or across the land of others, for agricultural, mining, milling, domestic or sanitary purposes.*

(Emphasis added).

9. The provisions of Article II, § 14 constitute “a general inhibition against taking private property for private use without the consent of the owner, but with certain [specified] exceptions.” *Coquina Oil Corp. v. Harry Kourlis Ranch*, 643 P.2d 519, 522 (Colo. 1982), citing *Crystal Park Co. v. Morton*, 146 P. 566, 569 (Colo. App. 1915).

10. Courts must interpret the exceptions in Article II, § 14 “narrowly, and resolve any uncertainty” against the private corporation or private individuals attempting to take the private property rights of a person. *Akin v. Four Corners Encampment*, 179 P.3d 139, 144 (Colo. App. 2007).

11. The drilling for oil and gas is not an exception to Art. II, § 14.

12. The forced pooling of mineral owners’ mineral rights is not an exception to Art. II, § 14.

**§ 34-60-116**

13. The Colorado Oil and Gas Conservation Act has a forced pooling provision that allows oil and gas operators to take the mineral property of private mineral owners who object to entering into any oil and gas lease. The forced pooling statute states:

*In the absence of voluntary pooling, the commission, upon the application of a person who owns, or has secured the consent of the owners of, more than forty-five percent of the mineral interests to be pooled, may enter an order pooling all interest in the drilling unit for the development and operation of the drilling unit.*

§ 34-60-116(6)(b)(1).

14. The forced pooling provision allows oil and gas operators and private mineral owners to penalize nonconsenting mineral owners by giving the nonconsenting owners’ proportionate share of production to consenting private mineral owners “until costs are recovered and that each nonconsenting owner is entitled to own and to receive the share of the production applicable to the owner’s interest in the unit after the consenting owners have recovered the nonconsenting owner’s share of the costs out of production.” § 34-60-116(7)(a)(II).

15. Nonconsenting owners are further penalized for not agreeing to have their mineral rights taken by private oil and gas companies and consenting private mineral owners by:

*Upon the determination of the commission, proper costs recovered by the consenting owners of the drilling unit from the nonconsenting owner’s share of production from such a unit shall be as follows:*

*One hundred percent of the nonconsenting owner’s share of the cost of surface equipment beyond the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner’s share of the cost of operation of the well or wells commencing with first production and continuing until the consenting owners have recovered such cost.*

*Two hundred percent of that portion of the cost and expenses of staking, well site, preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received by the consenting owners, and two hundred percent of that portion of the cost of equipment in the well, including the wellhead connections.*

§ 34-60-116(7)(b)(I) and (2).

16. The nonconsenting mineral owner is then further penalized by receiving a lesser percentage of proportionate royalty than consenting private mineral owners in the following amounts: 1) thirteen (13) percent for a gas well; and 2) sixteen (16) percent for oil wells. § 34-60-116(7)(c)(1)(A) and (B).

17. The state of Colorado recognizes that “[T]he right to own and use private property is a fundamental right, essential to the continued vitality of a democratic society.” § 29-20-201(1)(a);

18. ACCDAN members’ mineral property rights are fundamental rights in the state of Colorado.

19. ACCDAN members have not consented to the taking of their mineral rights.

20. In fact, ACCDAN members have filed protests with the COGCC expressly objecting to the taking of their mineral rights for the benefit of Great Western.

21. Thus, ACCDAN members are considered “nonconsenting” owners pursuant to the Act. § 34-60-116(7)(a)(II).

22. Taking nonconsenting ACCDAN members’ private property for the private uses of consenting mineral owners or oil and gas operators expressly violates Article II, § 14 of the Colorado Constitution.

23. There is a clear and unmistakable conflict between Article II, § 14 and Colorado’s forced pooling statute. *Gieck v. Ofc. of Information Tech.*, 467 P.3d 1277, 1284 (Colo. App. 2020).

24. The Court must not presume that Colorado’s forced pooling statute is constitutional as the statute impacts ACCDAN members’ fundamental rights to property. *Id.*

### **Adams County/Great Western MOU**

25. On February 17, 2015, and June 30, 2015, Ward Petroleum and Adams County, respectively, signed a Memorandum of Understanding (“MOU”) related to the Ivey Site.

26. Both Adams County and Ward Petroleum recognized that state law, rules, and regulations could change after the signing of the MOU.<sup>1</sup>

27. Great Western later acquired the rights to the Ivey Site, which also included being subjected to the provisions of the MOU.

28. Great Western was aware that the language contained in the MOU mandated the following:

*The Parties recognize that pursuant to the Colorado Oil and Gas Conservation Act, C.R.S. 34-60-101, et seq. ("Act"), the COGCC regulates the development and production of oil and gas resources in Colorado, and the Act authorizes the COGCC to adopt statewide rules and regulations. The provisions of this MOU are intended to supplement and add to the COGCC's rules and regulations and not to replace such rules and regulations. **To the extent that any of the provisions of this MOU are in conflict with the Act or COGCC rules and regulations, the stricter standards shall govern, if neither is stricter, the COGCC rule or regulation shall apply.***

29. The MOU also indicates that the parties must negotiate to update the MOU if “there is a new development in state law, rules or judicial decisions that substantially affect any provisions of this MOU...”

30. Great Western used this MOU to secure Forms 2 and 2A from the COGCC and permits to operate from Adams County, respectively.

31. The MOU was terminated by Adams County on August 19, 2019.

32. However, even with Adams County’s decision to terminate the MOU, a provision of the MOU still requires Adams County and Great Western to apply the stricter standards of the law:

*In the event this MOU expires or is otherwise terminated, the substantive requirements stated in this MOU shall survive and remain enforceable against the owner or operator of any oil and gas facility that were permitted or otherwise approved during the term of this MOU...”*

33. The “stricter standards” provision of the MOU was never waived or modified by Adams County or Great Western, and is a substantive requirement that survived the MOU termination.

### **Change in State Law and Regulations**

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<sup>1</sup> Great Western Oil and Gas Company (“Great Western”) later acquired the rights to the Ivey Site. Plaintiff was advised by the Adams County Attorney that this MOU applies to the Ivey Site. MOU, Provision 37.

34. After the signing of the MOU and after Great Western acquired rights to the Ivey Site, Colorado oil and gas laws substantially changed on April 16, 2019 with the signing of SB 19-181 by Gov. Jared Polis.

35. The change in law resulted in a seismic shift on how local and state government regulate oil and gas operations, which included a new legislative declaration and substantial regulatory powers given to local government over oil and gas surface impacts. Here are some examples of the sweeping changes:

Pre-SB 19-181	Post-SB 19-181
<p>§ 34-60-102 - Legislative Declaration:</p> <p>(1)(a) It is declared to be in the public interest to:</p> <p style="padding-left: 40px;">(I) Foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.</p> <p>(b) It is not the intent nor the purpose of this article to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of health, safety, welfare, including protection of the environment and wildlife resources, and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of the common source of oil and gas, so that each common owner and producer may obtain a just and equitable</p>	<p>§ 34-60-102 – Legislative Declaration</p> <p>(1)(a) It is declared to be in the public interest and the commission is directed to:</p> <p style="padding-left: 40px;">(I) Regulate the development and production of the natural resources of oil and gas in the state of Colorado <b>in a manner that protects</b> public health, safety, and welfare, including protection of the environment and wildlife resources.</p> <p>(b) It is neither the intent nor the purpose of this article 60 to require or permit the proration or distribution of the production of oil and gas among the fields and pools of Colorado on the basis of market demand. It is the intent and purpose of this article 60 to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the protection of health, safety, welfare, including protection of the environment and wildlife resources and the prevention of waste as set forth in section 34-60-106 (2.5) and (3)(a), and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of a common source of oil and gas, so that each common owner and producer may obtain a just and equitable share</p>

share of production therefrom.	of production from the common source.
<p>§ 29-20-104 – Power of local governments</p> <p>(1)(h) Otherwise planning for and regulating the use of land so as to provide planned and orderly use of land and protection of the environment in a manner consistent with constitutional rights.</p> <p>Subsections (1)(h)(I)-(VI) and (2)(a)-(c) did not exist.</p>	<p>§ 29-20-104 – Power of local governments</p> <p>(1)(h) Regulating the surface impacts of oil and gas operations in a reasonable manner to address matters specified in this subsection (1)(h) and to protect and minimize adverse impacts to public health, safety, and welfare and the environment. Nothing in this subsection (1)(h) is intended to alter, expand, or diminish the authority of local governments to regulate air quality under section 25-7-128. For purposes of this subsection (1)(h), “Minimize adverse impacts” means, to the extent necessary and reasonable, to protect public health, safety, and welfare and the environment by avoiding adverse impacts from oil and gas operations and minimize and mitigating the extent and severity of those impacts that cannot be avoided. The following matters are covered by this subsection (1)(h):</p> <ul style="list-style-type: none"> <li>(I) Land use;</li> <li>(II) The location and siting of oil and gas facilities and oil and gas locations, as those terms are defined in section 34-60-103(6.2) and (6.4);</li> <li>(III) Impacts to public facilities and services;</li> <li>(IV) Water quality and source, noise, vibration, odor, light, dust, air emissions and air quality, land disturbance, reclamation procedures, cultural resources, emergency preparedness and coordination with first responders, security, and traffic and transportation impacts;</li> <li>(V) Financial securities, indemnification, and insurance as appropriate to ensure compliance</li> </ul>

	<p>with the regulations of local government; and</p> <p>(VI) All other nuisance-type effects of oil and gas development; and</p> <p>(i) Otherwise planning and orderly use of land and protection of the environment in a manner consistent with constitutional rights.</p> <p>(2) To implement the powers and authority granted in subsection (1)(h) of this section, a local government within its respective jurisdiction has the authority to:</p> <p>(a) Inspect all facilities subject to local government regulation;</p> <p>(b) Impose fines for leaks spills, and emissions; and</p> <p>(c) Impose fees on operators or owners to cover the reasonably foreseeable direct and indirect costs of permitting and regulation and the costs of any monitoring and inspection program necessary to address the impacts of development and enforce local governmental requirements.</p>
<p>34-60-103 – Definitions</p> <p>Within the definition of “Waste”, (11)(b), (12)(b), or (13)(b) did not exist.</p>	<p>34-60-103 – Definitions</p> <p>(11) “Waste”, as applied to gas:</p> <p>(b) Does not include the nonproduction of gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission.</p> <p>(12) “Waste”, as applied to oil:</p> <p>(b) Does not include the nonproduction of oil from a formation if necessary to protect public health, safety, and welfare, the</p>

	<p>environment, or wildlife resources as determined by the Commission.</p> <p>(13) “Waste”, in addition to the meanings as set forth in subsections (11) and (12) of this section:</p> <p>(b) Does not include the nonproduction of oil or gas from a formation if necessary to protect public health, safety, and welfare, the environment, or wildlife resources as determined by the Commission.</p>
<p>§ 34-60-131 did not exist.</p>	<p>§ 34-60-131 – No land use preemption</p> <p>Local governments and state agencies, including the Commission and agencies listed in section 34-60-105(1)(b), have regulatory authority over oil and gas development, including as specified in section 34-60-105(1)(6). <i>A local government’s regulations may be more protective or stricter than state requirements.</i></p>

36. New sections of the Act also include, among other provisions, emissions regulations, cumulative impacts analysis, and financial assurances. §§ 25-7-109; 34-60-106(11)(c)(II); and 34-60-106(13).

37. As part of its statutory obligations under SB 19-181, the COGCC engaged in rulemakings to ensure that COGCC’s rules are protective of public health, safety, and welfare, including protection of the environment and wildlife.

38. The COGCC’s “Mission Change Rulemaking” 200-600 Series started in January-February 2020 with the Strawdog rules. After months of work, on September 28, 2020, the COGCC conducted a “preliminary final vote” of the 200-600 Series Rules, which was characterized as a “substantive approval of the rules.”<sup>2</sup>

39. Of particular note, the COGCC passed rules involving disproportionately impacted communities (Series Rule 100 - Definitions); local government siting regulations (Series Rule 302); cumulative impacts data evaluation (Series Rule 303); alternative location analysis (Series Rule 304); and establishing setbacks and siting requirements (Series Rule 604).<sup>3</sup>

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

<sup>3</sup> The COGCC established a minimum 2,000 foot setback as measured from the edge of a well pad.

40. In addition to the 200-600 Series Rules, the COGCC established rules for Series 800, 900, and 1200. Of note, stricter rules related to venting and flaring also were passed. (Series Rule 903).<sup>4</sup>

41. SB 19-181 and the new rules established through rulemaking are stricter than the laws and rules that existed at the time the MOU was signed.

42. The new COGCC rules went into effect on January 15, 2021.

43. The MOU specifically states that the “strictest standard *shall* govern.”<sup>5</sup>

44. According to the July 3, 2018 Form 2A submitted by Great Western, the nearest buildings were within 1,500 feet of the nearest buildings, which is closer than the 2,000 foot minimum distance adopted by the COGCC.

45. Since the filing of the Form 2A, Great Western’s Ivey project is now within 1,300 feet of the nearest home, which is even closer than the 2,000 foot minimum distance adopted by the COGCC.

46. Also, the Form 2A fails to take into account cumulative impacts or venting and flaring.

47. The strictest standards of state law or regulations would not allow this project to exist at its current location.

### **January 5, 2021 Hearing**

48. In December 2020, ACCDAN and other community organizations discovered the existence of the MOU, and immediately requested that Adams County hold a hearing to determine whether the stricter standards were being applied to the Ivey Site.

49. On January 5, 2021, Adams County held a hearing to discuss the Ivey Site.

50. As part of its hearing materials provided to the Adams County commissioners and the public, Adams County staff admitted that Great Western’s Ivey project was out of compliance with the new changes in law:

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<sup>4</sup> As indicated by the Commission, these rules set a regulatory floor. Local governments are not allowed to go below this floor, but are allowed to establish surface impact rules that are stricter or more protective than state regulations. § 34-60-131.

<sup>5</sup> The word “shall” in a contract mandates that an action be done. See *Brock v. Weidner*, 93 P.3d 576, 580 (Colo. App. 2004) (holding that the word “shall” in a contract mandated that attorney’s fees be awarded to the prevailing party); *RCS Lumber Co. v. Sanchez*, 316 P.2d 1045, 1047 (Colo. 1957) (the word “shall” in a contract denotes mandatory compliance). As such, the Commission does not have discretion to decide if stricter standards will be applied; it is obligated to ensure that the stricter standards apply.

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## Ivey LC Pad Update Rule Comparison

Impact	AdCo Regulations at Permitting	COGCC Rules at Permitting	Current AdCo Regulations	COGCC Rules effective January 15, 2021	Permit Conditions and BMPs at Ivey Site	Meets January 15, 2021 rules?
Setbacks	500-feet (same as COGCC at time of permitting)	500-feet from residences and school facilities	1,000-feet from residences, schools & environmentally sensitive areas	2,000-feet from residences and schools 1,000-ft from water wells & some water bodies	1,300-feet from nearest residence and 2,850-feet from nearest school/childcare center	<b>No</b> , but an Operator could still be granted an exception or waiver to these rules
Air Quality Monitoring	Not required	Not required	Required on site-specific basis	Not required	Air quality monitoring from drilling through the first 6 months of production	<b>N/A</b>
Noise	Same as COGCC	Various db(A) requirements based on land use, no db(C) restrictions	Same as COGCC, Baseline Noise Study required, and Continuous Noise Monitoring on site-specific basis	Requires continuous noise monitoring, lower maximum permissible noise in some areas, and AdCo determines land use designation for maximum noise at COGCC	Operator improved noise mitigation: 32-ft. sound walls around entire site vs. 24-ft walls, sound dampening equipment, and use of lower decibel electric engines	<b>Partially</b> , based on noise modeling - with mitigation, Ivey will meet new noise standards at residences to the SE/NE
Alternative Location Analysis	Not required	Not required	Required for all new applications	Required for locations within 2,000-ft of homes	Operators conducted ALA to move location from Wadley Farms site	<b>Partially</b> , did not meet all submission requirements of a formal ALA
Cumulative Impacts Evaluation	Not required	Not required	Not required	Required for all new applications	Analysis not formally conducted	<b>No</b>

51. Without requiring Great Western to comply with the strictest standards of the law, ACCDAN members suffer an injury-in-fact to their health, safety, and welfare as secured by the Act and state regulations.

52. For example, during rulemaking, the COGCC took testimony and received documents showing the adverse health effects to which people are exposed within 2,000 feet of oil and gas operations.

53. Also, economic studies show that property values decrease when homes are within 2,000 feet of oil and gas operations.

54. During the Mission Change rulemaking, the COGCC also took testimony and received documents related to the adverse environmental impacts suffered by communities as a result of oil and gas operations, including air quality issues, water pollution, and harm to wildlife.

55. ACCDAN's members' interests to protect their health, safety, welfare, environment, and wildlife resources are legally protected by SB 19-181 and the new state regulations that are in effect.

56. In an email exchange between Great Western and Adams County, Great Western objected to the community referencing the MOU during the January 5, 2021 hearing.

57. Great Western argued that the MOU was terminated by Adams County.

58. Adams County's county attorney responded that the MOU's "substantive requirements" remain enforceable.

59. Despite admitting that Great Western's Ivey project is not in compliance with the stricter standard of the law, Adams County has failed to stop operations at the Ivey Site and failed to require Great Western to come into compliance with the stricter standards of state law and regulation.

### **Forced Pooling Cases**

60. In addition to their statutory rights being adversely affected by Adams County's failure to hold Great Western to the stricter standards of state law and regulation, Great Western filed an application to pool the mineral rights of ACCDAN members without those members' consent.

61. On June 25, 2019, Great Western filed an Application for Pooling (the "Application") with the Commission.

62. The Application encompasses mineral rights owned by Stacy S. Lambright and Eric C. Lambright (the "Lambrights").

63. Stacy Lambright is a member of ACCDAN.

64. On July 17, 2019, the Commission issued a Notice of Hearing for the Application.

65. Great Western sent the Notice of Hearing and the Application to the Lambrights.

66. On August 26, 2019, the Lambrights filed a Protest against the Application.

67. The Lambrights protested the Application on several grounds, including:

- The operator failed to offer a "reasonable offer to lease," as required by state statute;
- Current market conditions are not favorable to the owner of mineral interests; and
- The Application will cause waste, will not protect correlative rights, and will endanger the health, safety, and welfare of the residents who live in the drilling and spacing unity and the surrounding area, and cause irreparable environmental damage.

68. The Lambrights further objected to the forced pooling application based on their firm belief that the taking of their property by an oil and gas operator would be injurious to the community and the environment. *Keystone Bituminous Coal Assoc. v. DeBenedictis*, 480 U.S. 470, 491-92 (1987) ("Long ago it was recognized that 'all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community.'").

69. The Lambrights also protested the forced pooling application arguing that it would be a clear violation of their constitutional rights to have their mineral property taken by a private corporation without their consent. Colo. Const. art. II, § 14.
70. The Lambrights have never consented to their property being taken by Great Western or by other private mineral owners.
71. Notwithstanding their numerous objections, the COGCC forces the Lambrights to go through an administrative process that is specifically designed to take their mineral property without their consent and in violation of their constitutional rights.
72. While its forced pooling application awaits action from the COGCC, in November 2020, Great Western publicly announced plans to drill the Ivey Site starting in January 2021, completing drilling by March 2021, and producing from the site by June 2021. <https://greatwesternpetroleum.com/ivey/>.
73. Concerned that Great Western intended on drilling into and taking Plaintiff members' private mineral property without Plaintiff members receiving a hearing on the pooling Application, Plaintiff members sought clarification from Great Western.
74. In a December 7, 2020, Great Western provided a cryptic response to Plaintiff stating that a COGCC regulation allowed it to pool Plaintiff members' private mineral property "prior to or after the drilling of a well."
75. This cryptic response indicates that Great Western does not believe it needs a COGCC order approving its pooling Application and that Great Western believes that the rule signifies that the COGCC pooling process is merely a rubber stamp process for its Application.
76. Great Western began its oil and gas operations on the Ivey Site sometime in November or December 2020. On January 22, 2021, Great Western moved cranes and an oil rig to the Ivey Site.
77. Drilling entails drilling into the Lambrights' mineral property without consent from the Lambrights. Producing means the taking of the Lambrights mineral property without consent from the Lambrights.
78. Similar to the Lambrights' protest, on March 28, 2019, ACCDAN president Stewart Nyholm, and ACCDAN members Maria Luz Stirman, Jack Stirman, Jeffrey Chigro, and Georgia Chigro also filed a protest against Great Western's pooling notice.
79. ACCDAN members also objected to having their private mineral interests taken by Great Western.

### **PROPRIETY OF DECLARATORY RELIEF**

80. The Colorado Uniform Declaratory Judgements Act provides, in pertinent part, that: “Any person... whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise may have determined any question or construction or validity arising under the... statute, ordinance, contract, or franchise and obtain a declaration of rights, statute or other legal relations thereunder.” § 13-51-106; *see* C.R.C.P. 57.
81. The MOU between Adams County and Great Western affects the statutory rights of ACCDAN members.
82. ACCDAN members have a statutory right to have oil and gas operators regulated in a manner that protects public health, safety, welfare, environment, and wildlife resources. § 34-60-102(1)(a)(I).
83. An entire regulatory structure was created by the COGCC to meet the new requirements of the Act, and this regulatory structure provides stricter standards than those that existed when the MOU was signed.
84. Even with the termination of the MOU, Adams County admitted that the substantive provisions of the MOU survived the termination.
85. One of the substantive provisions of the MOU is that the stricter standards of state law and regulation shall govern.
86. Adams County admits in its January 5, 2021 presentation documentation that Great Western’s Ivey project does not meet the stricter standard of state law or regulation.
87. Although mandated to enforce the stricter standard provision, Adams County has failed to stop the Ivey Site project and failed to require Great Western to comply with the stricter standard of state law and regulation, despite the fact that Great Western has publicly announced that drilling is imminent.
88. Despite the requirement that Great Western comply with the stricter standards of state law and regulation, Great Western has moved forward with operations on the Ivey Site out of compliance with the stricter standards mandate.
89. ACCDAN members also are mineral owners whose private mineral property is under imminent threat of being taken by Great Western, which is a private corporation.
90. ACCDAN members have raised constitutional arguments against the taking of their private property by Great Western.

91. Despite their nonconsent, the COGCC forces ACCDAN members to engage in an administrative process that is specifically designed to allow private oil and gas operators and consenting mineral owners to take nonconsenting owners' mineral property for private use.

92. ACCDAN members' constitutional rights to their mineral interest are under direct threat as state statute not only allows Great Western and consenting mineral owners to take their mineral rights, despite their objections, but also ACCDAN members will be penalized for refusing to enter into a lease to which they object.

93. The penalty provisions of the forced pooling statute further ensures that ACCDAN members will have their royalties taken from them for the private use of an oil and gas operator and consenting mineral owners.

94. Although ACCDAN members are protesting the pooling Application in front of the COGCC, the COGCC has no power to determine the constitutionality of the statute it is in charge of enforcing. *Welch v. Colo. State Plumbing Bd.*, 474 P.3d 236, 240 (Colo. App. 2020).

95. The controversy is one upon which the judgment of this Court will effectively operate, and upon which a judicial determination will have the force and effect of a final judgment regarding the rights of the parties under applicable law.

96. No reasonable interpretation of the MOU would result in a finding that Great Western is excused from complying with the stricter standards of state law and regulation.

97. No reasonable interpretation of the MOU would result in a finding that Great Western is allowed to continue its operations on the Ivey Site despite being out of compliance with the stricter standard of state law and regulation.

98. No reasonable interpretation of Colorado's pooling statute would result in finding that the pooling statute is not repugnant to Article II, § 14 of the Colorado Constitution.

99. Accordingly, a real and substantial controversy exists between the parties for which declaratory relief is appropriate. *Bd. of County Comm'ners, La Plata County v. Bowen/Edwards*, 830 P.2d 1045, 1053 (Colo. 1992)(en banc).

### **FIRST CLAIM OF RELIEF**

(Declaratory Judgment – Colorado's Forced Pooling Statute Is Unconstitutional)

100. ACCDAN incorporates each allegation of the preceding paragraphs as though fully set forth herein.

101. Colorado's pooling statute allows private oil and gas operators to take ACCDAN members' mineral rights without consent for the private benefit of the oil and gas operators in violation of Article II, § 14 of the Colorado Constitution.

102. There is no exception in Article II, § 14 that allows Great Western to take the ACCDAN members' mineral rights for their private benefit.

103. The pooling penalties also is a taking of ACCDAN members' right to royalties and payments for the benefit of a private oil and gas operator.

104. ACCDAN seeks a declaratory judgment that Colorado's pooling statute and regulations violate Article II, § 14 of the Colorado Constitution.

105. ACCDAN further seeks a preliminary injunction enjoining the state of Colorado or its agencies from enforcing the pooling statute.

### **SECOND CLAIM OF RELIEF**

(Declaratory Judgment – The MOU Requires Enforcement)

106. ACCDAN incorporates each allegation of the preceding paragraphs as though fully set forth herein.

107. Adams County and Great Western are parties to an MOU that requires Great Western to comply with the stricter standards of state law and regulation.

108. This stricter standard requirement exists despite Adams County's termination of the MOU.

109. Adams County admits that Great Western's Ivey project does not meet some of the stricter standards of state law and regulation.

110. Adams County has failed to hold Great Western in compliance with the stricter standard provision of the MOU.

111. Great Western is moving forward with oil and gas operations despite the fact that it is not in compliance with the stricter standards of state law and regulations.

112. ACCDAN members' have suffered an injury-in-fact as they have been deprived the enforcement of protections to their health, safety, welfare as secured through the Act, as amended by SB 19-181, and through the enforcement of new state regulations that protect them from Great Western's oil and gas operation at the Ivey Site.

113. ACCDAN seeks a declaratory judgment that the MOU requires Adams County to enforce the stricter standards provision of the MOU against Great Western, and that the MOU prohibits Great Western from engaging in oil and gas operations until it comes into compliance with the stricter standards of state law and regulations.

## PRAYER FOR RELIEF

WHEREFORE, ACCDAN respectfully request:

- 1) That the Court declare that Colorado's pooling statute violates Article II, § 14 of the Colorado Constitution.
- 2) That the Court permanently enjoin the COGCC from hearing any pooling applications where nonconsenting mineral owners have protested said pooling applications.
- 3) That the Court declare that the "stricter standards" provision of the MOU must be enforced by Adams County against Great Western on the Ivey Site.
- 4) That the Court permanently enjoin Great Western from operating on the Ivey Site until it comes into compliance with the stricter standards of state law and regulation.
- 5) Attorney's fees and costs.
- 6) That the Court grant such further relief as may be just and proper.

Respectfully submitted this 27<sup>th</sup> day of January, 2021.

/s/ Joseph A. Salazar

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