

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

IN THE MATTER OF AN APPLICATION OF	)	CAUSE NO. 407
EXTRACTION OIL & GAS, INC., FOR AN	)	
ORDER POOLING ALL INTERESTS IN	)	DOCKET NO. 191100729
TWO APPROXIMATE 556-ACRE	)	
DESIGNATED HORIZONTAL WELLBORE	)	TYPE: POOLING
SPACING UNITS FOR CERTAIN LANDS	)	
IN TOWNSHIPS 6 AND 7 NORTH, RANGE	)	
67 WEST, 6TH P.M., FOR THE NIOBARA	)	
AND CODELL FORMATIONS,	)	
WATTENBERG FIELD, WELD COUNTY,	)	
COLORADO	)	

**HEARING OFFICER ORDER REGARDING MOTIONS**

The Hearing Officer enters the following Order regarding the filing of motions in this case.

**Duty to Confer:**

The Parties are bound by the rule of Civil Procedure requiring conferral prior to the filing of a motion. See C.R.C.P. Rule 121 § 1-15(8): “Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel shall confer with opposing counsel before filing a motion. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why shall be stated.”

Failure to comply with C.R.C.P. Rule 121 § 1-15(8) may result in the rejection of the filing by the Hearing Officer.

**Responses and Replies:**

Unless different deadlines are set by the Hearing Officer, the Parties are bound by the same time frames set forth by C.R.C.P. Rule 121 § 1-15(1)(b)-(c). Specifically, once the moving party has filed a motion, the responding party shall have 21 days in which to file a responsive brief, and the moving party shall have 7 days to file a reply brief. No sur-replies are authorized without leave of the Hearing Officer.

**Dispositive Motions:**

**I. C.R.C.P. 12(b) Motions**

- a. Motions brought pursuant to C.R.C.P. 12(b) are discouraged if the defect is correctable by the filing of an amended pleading.
- b. All requests for relief under any part of C.R.C.P. 12 must be brought in a single motion. All motions to dismiss shall state in the caption or in the opening paragraph under which rule or subsection thereof such motion is filed.
- c. With respect to motions brought pursuant to C.R.C.P. 12(b)(5):
  - i. For each claim for relief that the movant seeks to have dismissed, the movant shall clearly enumerate each element that movant contends must be alleged, but was not.
  - ii. The respondent should utilize the same format for each challenged claim. If the respondent disputes that a particular element must be alleged, the element should be identified as disputed and addressed in an accompanying brief. If the respondent contends that a proper and sufficient factual allegation has been made in the complaint, the respondent should specifically identify the page and paragraph containing the required factual allegation.
- d. Rule 12(b) motions should not be stated in the alternative as a Rule 56 motion for summary judgment. If matters outside the pleadings are submitted in support of or opposition to a Rule 12(b) motion, the party should discuss whether the 12(b) motion should be converted to a summary judgment motion. In such a case, the Hearing Officer may issue an order to show cause why the motion should not be treated as a Rule 56 motion, or the parol submissions may be disregarded.

## **II. C.R.C.P. 56 Motions**

- a. These procedures contemplate the filing of a single motion for summary judgment by a party. A party may NOT file multiple motions for summary judgment without obtaining permission from the Hearing Officer. Such permission will only be given in exceptional circumstances.
- b. Statement of Undisputed Material Facts:
  - i. The purpose of these procedures is to establish facts and determine which of them are in dispute. Legal argument is not permitted here and should be reserved for separate portions of the briefs. If, for example, a party believes that an established fact is immaterial that belief should be expressed in the part of the brief devoted to legal argument, and the fact should be admitted. If, on the other hand, a party believes that the reference to material in the record does not support the claimed fact, that fact may be denied and factual argument may appropriately be made pursuant to these procedures.

- ii. Because of the voluminous factual materials which are frequently submitted with motions for summary judgment, all Rule 56 motions must comply with the following requirements:
  1. In a section of the brief styled "Statement of Undisputed Material Facts," the movant shall set forth in simple, declarative sentences, separately numbered and paragraphed, each material fact which the movant believes is not in dispute and which supports movant's claim that movant is entitled to judgment as a matter of law.
  2. Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes that fact. General references to pleadings, depositions, or documents are insufficient if the document is over one page in length. Only if the nature of the material fact does not permit a specific reference (e.g., "The contract contains no provision for termination.") is a general reference sufficient. A "specific reference" means:
    - a) In the case of materials filed with the Commission, the title of the document, the date on which it was filed or served, and a specific paragraph or page and line number; or, if the document is attached to the motion, the paragraph or page and line number;
    - b) In the case of interrogatories or requests for admission (the pertinent parts of which must be filed with the motion), the number of the interrogatory or request;
    - c) In the case of depositions or other documents bearing line numbers, the specific page and line(s) establishing the fact;
    - d) In the case of affidavits submitted in support of the motion, the specific paragraph number establishing the fact;
    - e) In the case of other materials not numbered by paragraph, line, or page, a reference which will enable the Commission to ascertain the fact without reviewing the entire document; the effort at specificity may be made by highlighting, manual underscoring, or pagination supplied by the movant.
  3. Any party opposing the motion for summary judgment shall, in a section of the brief styled "Response to Statement of Undisputed Material Facts," admit or deny the asserted material facts set forth by the movant. The admission or denial shall be made in separate paragraphs numbered to correspond to movant's paragraph numbering. Any denial shall be accompanied by a brief factual explanation of the reason(s) for

the denial and a specific reference to material in the record supporting the denial.

4. If the party opposing the motion believes that there exist additional disputed questions of fact which it has not adequately addressed in the Response to Statement of Undisputed Material Facts, the party shall, in a separate section of the party's brief styled "Statement of Additional Disputed Facts," set forth in simple, declarative sentences, separately numbered and paragraphed, each additional, material disputed fact which undercuts movant's claim that it is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by a specific reference to material in the record which establishes the fact or at least demonstrates that it is disputed.
5. Any reply brief must comply with the following requirements:
  - a) In a separate section styled "Reply Concerning Undisputed Facts," include any factual reply which movant cares to make regarding undisputed facts, supported by specific references to material in the record. The reply will be made in separate paragraphs numbered according to the motion and the opposing party's response.
  - b) In a separate section styled "Response Concerning Disputed Facts" (with respect to each fact which the opposing party, claims to be in dispute), either admit that the fact is disputed or supply a brief factual explanation for its position that the fact is undisputed, accompanied by a specific reference to material in the record which establishes that the fact is undisputed. This will be done in paragraphs numbered to correspond with the opposing party's paragraph numbering.
  - c) All summary judgment exhibits shall be labeled both by exhibit number or letter and by name, e.g., Exhibit 1 - Smith Affidavit. Applicant and any Joint Exhibits will be labeled numerically. The Protestant will label its exhibits alphabetically.
  - d) Failure to follow these procedures may result in an order striking or denying the motion or brief, and it will have to be resubmitted. Repeated failure to follow them may result in an order granting other proper relief.

Dated: September 23, 2020.

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

/s/ Elias J. Thomas  
Elias J. Thomas, Hearing Officer

Colorado Oil and Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203  
Website: <http://cogcc.state.co.us>  
Phone: (303) 894-2100  
Fax: (303) 894-2109

**CERTIFICATE OF SERVICE**

On September 23, 2020, a true and correct copy of foregoing *Hearing Officer Order Regarding Motions* was served by electronic mail to the following:

Jillian Fulcher  
Jobediah Rittenhouse  
Attorneys for Extraction Oil & Gas, Inc.  
[jfulcher@bwenergylaw.com](mailto:jfulcher@bwenergylaw.com)  
[jrittenhouse@bwenergylaw.com](mailto:jrittenhouse@bwenergylaw.com)

Ryan Guinn  
Protestant  
[fronrangeohd@gmail.com](mailto:fronrangeohd@gmail.com)

/s/ Elias J. Thomas  
Elias Thomas, Hearing Officer