



## Office of the County Attorney

Ben Pearlman, County Attorney • Tel: 303.441.3190 • Fax: 303.441.4794 • [ca@bouldercounty.org](mailto:ca@bouldercounty.org)  
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306-0471 • [www.bouldercounty.org](http://www.bouldercounty.org)

October 29, 2020

Jeff Robbins, Chair  
Dan Gibbs, Bill Gonzalez, Karin McGowan, John Messner, Priya Nanjappa, and John Putnam, Commissioners  
Julie Murphy, Director  
Colorado Oil and Gas Conservation Commission  
1120 Lincoln Street, Suite 801  
Denver, CO 80203

VIA EMAIL AND U.S. MAIL

RE: Emergency Request to Suspend Approval of Permits for “Blue Paintbrush” Pad: SWSW Section 18, Township 2 North, Range 68 West

Dear Mr. Chair, Commissioners and Ms. Director:

On behalf of the Board of County Commissioners of Boulder County, Colorado (the “County”), I urgently request that you immediately suspend existing approvals for the 2 Form 2As and 17 Form 2s issued for the above-referenced pad until pending litigation between the County, Extraction Oil & Gas, Inc. (“Extraction”), and the COGCC is resolved. On October 14, 2020, a Boulder County resident forwarded to our LGD a letter he received from Extraction stating its plans to begin well construction at the Blue Paintbrush Pad on November 11, 2020. Extraction did not notify Boulder County of this planned activity despite our obvious and ongoing interest in this project. The County has significant interests in the pad site and the overall project due to its ongoing litigation related to the site, the conservation easement it owns over the parcel where the Blue Paintbrush Pad is proposed, and its minerals contained in the DSU, which include both leased and unleased mineral rights. Moreover, the facilities on the Blue Paintbrush Pad are within a few hundred feet of the Boulder County line. Thus, even though the well pad itself is proposed in Weld County, Boulder County has a significant stake and many of its residents would be impacted by development on this site.

Extraction’s planned construction is based on Form 2s and 2As that the COGCC issued under the assumption that the well location and wells were in an approved DSU. However, the DSU relied upon by the COGCC and Extraction for those permits, established through COGCC Docket No. 171000695, is subject to ongoing litigation in the Colorado Court of Appeals, Case No. 19CA1880. In the litigation, the County requested that, among other things, the Court of

Appeals instruct the District Court to issue an order reversing the COGCC's approval of the DSU. Accordingly, should the County prevail on the appeal, the DSU, and the associated Form 2s and Form 2As based on that DSU, will be invalid. That appeal has been fully briefed but oral argument has yet to be scheduled.

It is senseless for the COGCC to countenance Extraction beginning construction on wells that may soon have to be removed. Given Extraction's June, 2020, bankruptcy filing, Extraction's financial ability to remove invalid wells is questionable, and the COGCC could end up having to fund the clean-up of unauthorized wells. Moreover, the damage done by even preparatory construction activities on the high-value agricultural property protected by the County's conservation easement would be impossible to fully repair. Accordingly, we strongly urge the Director or the Commission to suspend the approvals of the Form 2s and Form 2A permits until the litigation is concluded. *See, e.g.* COGCC Rule 305(e) (Commission's authority to suspend approvals in certain circumstances). Extraction has stated that its Form 2 permits expire in January of 2021 and it cannot delay, but the COGCC is free to extend the duration of those permits through the variance process. Moreover, if the approvals of the permits are suspended, the expiration dates could similarly be suspended, solving both problems.

Extraction's plans to proceed with construction are particularly concerning given the COGCC's repeated refusal to hear the County's health, safety and environmental concerns regarding this well pad location, along with its repeated assurances that the County could raise those issues at the Form 2 or Form 2A stage. At the July 31, 2018, DSU hearing, COGCC Commissioners refused to consider evidence about public health and safety, informing the County that those concerns should be addressed at the Form 2 and 2A stage. Extraction submitted Form 2s and 2As in September 2018 without providing the County with notice (which the County believes was required due to the proximity of the facilities to the county line). Therefore, the County did not learn about those applications until the public comment period was over. On November 1, 2019, the County asked that the COGCC not approve the Form 2s and 2As given the ongoing lawsuit. The County also tried several ways to seek participation in the Form 2 and 2A procedures to bring these issues to COGCC attention, as it had been invited to do and even promised it could, including a motion to intervene under Rule 509. The Director refused to hear the County's concerns based on technical readings of

COGCC rules. Instead, the Form 2As and Form 2s were approved on a Saturday in January 2019, just before S.B. 19-181 was passed.

We also note that in March 2019, when he was acting Director, Mr. Robbins placed 10 additional Form 2s for the Blue Paintbrush Pad on hold, pursuant to the County's request based on the issues stated above and its public comments on the permit applications. In July of that year, Extraction submitted 4 additional Form 2s, which are also listed as pending. For convenience, enclosed is a list of the Blue Paintbrush related Form 2s and 2As and their current status. The notice Extraction sent stated its plans to drill 21 wells, although it has only 17 approved Form 2s at this point, and 14 remaining in process, indicating another area of confusion. For all the reasons stated here, we request that the pending permits not be approved until the DSU litigation is complete.

Now that the Legislature has made it clear that the COGCC is responsible for protecting public health, safety, and welfare, and the environment, and wildlife resources, Boulder County requests that the Director or the Commission take action on this matter. If Extraction proceeds with the construction of wells that Colorado courts ultimately determine are illegal, destroying a protected parcel of high-value agricultural land in the process, it will represent a massive failure of the system, including the COGCC's procedures.

Due to the very short time before Extraction intends to disturb the protected property (starting November 11, 2020), I request a response of some kind at your earliest convenience.

Sincerely,

A handwritten signature in blue ink that reads "Kate Burke". The signature is written in a cursive style.

Kate Burke  
Senior Assistant County Attorney for Boulder County

Encl.

Cc: Kyle Davenport, Assistant Colorado Attorney General  
Julia Rhine, Counsel for Extraction  
Mark Matthews, Counsel for Extraction

## BLUE PAINTBRUSH ASSOCIATED PERMIT STATUS

### FORM 2s APPROVED

Well Name & No.	API Number	COGCC Doc Number	Date Submitted	Date Approved
BB 24W-20-5C	05-123-49514	401753026	9/4/18	1/12/19
BB 244W-20-1N	05-123-49512	401742922	9/4/18	1/12/19
BB 24W-20-4N	05-123-49506	401743017	9/4/18	1/12/19
BB 24W-20-7N	05-123-49522	401743064	9/4/18	9/12/19
BB 24W-20-8C	05-123-49517	401743067	9/4/18	1/12/19
BB 24W-20-9N	05-123-49512	401743070	9/4/18	1/12/19
BB 24W-20-12N	05-123-49508	401743084	9/4/18	1/12/18
Pb 13W-20-3C	05-123-49519	401743157	9/5/18	1/12/19
Pb 13W-20-4N	05-123-49516	401743159	9/5/18	1/12/19
Pb 13W-20-5N	05-123-49507	401743160	9/5/18	1/12/19
Pb 13W-20-7N	05-123-49509	401743162	9/5/18	1/12/19
Pb 13W-20-8N	05-123-49521	401743163	9/5/18	1/12/19
Pb 13W-20-9C	05-123-49520	401743164	9/5/18	1/12/19
Pb 13W-20-10N	05-123-49510	401743166	9/5/18	1/12/19
Pb 13W-25-12C	05-123-49518	401743168	9/5/18	1/12/19
Pb 13W-25-16N	05-123-49515	401743173	9/5/18	1/12/19
Pb 13W-20-6C	05-123-49511	401903188	9/5/18	1/12/19

**FORM 2As APPROVED**

Location Name	Facility No.	COGCC Doc No.	Submitted	Approved
BP Pad	460670	401704822	9/5/18	1/12/19
BP Facility	460669	401704857	9/5/18	1/12/19

**FORM 2s ON HOLD**

Well Name & No.	Status	COGCC Doc Number	Date Submitted	Date Posted	Status date
BB 24W-20-2C	In process	401742932	9/4/18	9/12/18	1/7/20
BB 24W-20-3N	In process	401743010	9/4/18	9/12/18	1/7/20
BB 24W-20-6N	In process	401743056	9/4/18	9/12/18	1/7/20
BB 24W-20-10N	In process	401743074	9/4/18	9/12/18	1/7/20
BB 24W-20-11C	In process	401743080	9/4/18	9/12/18	1/7/20
BB 24W-20-13C	In process	401743090	9/4/18	9/12/18	1/7/20
Pb 13W-25-11N	In process	401743167	9/5/18	9/13/18	1/7/20
Pb 13W-25-13N	In process	401743170	9/5/18	9/13/18	1/7/20
Pb 13W-25-14N	In process	401743171	9/5/18	9/13/18	1/7/20
Pb 13W-25-15C	In process	401743172	9/5/18	9/13/18	1/7/20
Pb 13W-20-2N	In process	401743154	7/1/19	7/8/19	1/7/20
Pb 13W-20-1C	In process	401743152	7/1/19	7/8/20	1/7/20
BB 24W-20-15N *WSU well	In process	401743102	7/1/19 *by letter to COGCC 2/19/20	7/11/19	1/7/20
BB 24W-20-14N *WSU well	In process	401743096	7/9/20 *by letter to COGCC 2/19/20	7/12/20	1/7/20