



STATE OF COLORADO OIL AND GAS CONSERVATION COMMISSION

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COGCC

IN THE MATTER OF THE APPLICATION OF )  
ANTERO RESOURCES PICEANCE CORPORATION )  
FOR AN ORDER ESTABLISHING A DRILLING )  
AND SPACING UNIT FOR THE PRODUCTION OF )  
GAS AND ASSOCIATED HYDROCARBONS FROM )  
THE WILLIAMS FORK FORMATION AND ILES )  
FORMATION OF THE MESAVERDE GROUP FOR )  
CERTAIN DESCRIBED LANDS IN THE )  
PARACHUTE FIELD AREA, GARFIELD COUNTY, )  
COLORADO )

CAUSE NO. 440  
DOCKET NO. 1002-SP-04

ORIGINAL

MEMORANDUM SUPPLEMENTING AND SUPPORTING THE MOTION TO INTERVENE

COMES NOW the Intervenor, the Board of County Commissioners of Garfield County, State of Colorado (BOCC), by and through its attorney, Don K. DeFord, Garfield County Attorney, and herein submits its Memorandum Supplementing and Supporting the Motion to Intervene pursuant to the directions of the Pre-Hearing Officer and the Pre-Hearing Order:

CASE STATUS

On the 5<sup>th</sup> of January, 2010, the BOCC received a copy of the Application for Well Density Increase submitted in the above-captioned matter. By its terms, that Application seeks authorization to increase both downhole and surface use density from existing approvals by tenfold and fourfold respectively. The existing orders of this Commission allow a density of one downhole well and one surface location for 320 acres, with some allowance to increase that density to one of each for every 160 acres. (Exhibit A attached is an aerial photo of the affected area with an overlay of the boundaries of the Battlement Mesa PUD, the subject one-half sections and the possible well and surface densities authorized by Order 440-12.) Through its Application, Antero is seeking authorization for a maximum density of one downhole well every 10 acres and one surface location every 40 acres. (Exhibit B attached is an aerial photo of a portion of the Battlement Mesa PUD with an overlay of one of the affected one-half sections and possible well

and surface densities resulting from the density increase sought in the Application.) In response, the BOCC filed a Motion to Intervene under COGCC Rule 509 as the only available rule under which it could ask the Colorado Oil and Gas Conservation Commission ("COGCC") to review the cumulative public health, welfare and safety impacts resulting from this request to increase well and surface density. Additionally, in order to prepare for hearing that could impact thousands of residents at the Application location and the surrounding area, the BOCC filed a Motion to Continue the February 22<sup>nd</sup> hearing date. Finally, consistent with representations of the BOCC, Antero and the COGCC, the BOCC filed a Motion to have this matter heard at a location in the Battlement Mesa area in order to allow participation by the residents of the community that may be affected by this Application.

On the 10<sup>th</sup> of February, 2010, a pre-hearing conference was conducted in this matter. During the course of that conference the Hearing Officer indicated that she would recommend denial of the BOCC Motion to Intervene. While other matters were discussed and resolved during the conference, this Memorandum is directed to that recommendation of denial. It is the BOCC's understanding of her position that denial of its Motion to Intervene would be premised on the position that an Application for increased well density does not provide the appropriate forum for consideration of public health, safety and welfare concerns related to surface residents. Rather, it seemed to be her position that such cumulative public and environmental issues should be addressed under COGCC Rules 303 and 305 at the time a Form 2A is submitted. The Hearing Officer granted leave to submit this Memorandum to the Commission to address that position.

#### **ARGUMENT**

The BOCC believes that the recommendation of denial of its Motion to Intervene is contrary to the intent and language of both the COGCC RULES and the statutes authorizing their enactment. The Commission, along with all other entities, is required to follow



the plain meaning of the words it has adopted as its regulations. (Gerrity Oil and Gas Corp. v. Magness, 923 P.2d 261, 265 (Colo.App. 1995)) COGCC Rule 509 applies to all adjudicatory proceedings before the COGCC. That rule authorizes the BOCC to intervene as a matter of right, not discretion, to raise "environmental or public health, safety, and welfare concerns,..." COGCC Rule 509(a). The motion filed by the BOCC, by its terms, relates solely to concerns for which a right to intervene is granted by the plain and unambiguous language of the rule. The interpretation of that rule by the Hearing Officer converts that "right" to a discretionary finding by the COGCC. There is no reasonable basis in the language of Rule 509 for such a construction and the position of the Hearing officer should therefore be rejected. (Bd. of County Commissioners of La Plata County v. COGCC, 81 P.3d 1119, 1125 (Colo.App. 2003))

As part of the Hearing Officer's determination, both the Officer and later Antero argued that there was another forum for discussing public welfare issues, as those may be related to the gas well development activity of Antero. That alternative was proposed to lie in a hearing on a Form 2A application under COGCC Rules 303 and 305. The BOCC first notes that the right to intervene under Rule 509 is not dependent upon the failure of other rules to address its public welfare concerns, COGCC 509(a). While the Rule requires information and a description of the manner in which the Rules do not address impacts, it does not condition the right to intervene on the existence of such a void, COGCC Rule 509(a)(2)(B)(iii). Additionally, an Application for Well Density Increase is a separate and distinct process from a Location Assessment, Form 2A. Well density involves a broad geographic area and an assessment of the cumulative impacts on public welfare from drilling an increased number of wells in that area. The Location Assessment is site specific and deals only with the public impacts related to that site and well or wells to be drilled on that site. The COGCC recognized this difference in its Rules by requiring consultation with the CDPHE and DOW on any request for an increase

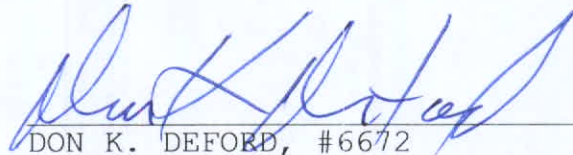
in well density, COGCC Rules 306(d)(1)(B) and 306(c)(1)(B). The Rules require a separate consultation with those agencies on a Form 2A Location Assessment, COGCC Rules 306(c)(1)(A) and 306(d)(1)(A). While there is a provision requiring consultation with the County for a Location Assessment, there is no rule requiring or allowing involvement of the local government in a well density application similar to that provided to the two State agencies, COGCC Rule 306(b). Therefore, while the COGCC recognized the need for protection of public welfare concerns in the increased well density application process, it left intervention by right in Rule 509 as the appropriate means for a local government to express its position on the cumulative public welfare and environment impacts raised by such an application.

#### CONCLUSION

The BOCC has noted in its Motion the policy of the State to balance environmental and public welfare concerns with the need to efficiently develop natural gas resources, C.R.S. §§ 34-60-102(1)(a)(I&IV) and 34-60106(2)(d), as amended; Gerrity Oil & Gas Corp. v. Magness, 946 P.2d 913, 925 (Colo. 1997). The COGCC has implemented that policy by granting local governments the right to intervene to protect public welfare concerns in any adjudicatory proceeding, a right that is not discretionary with the staff of the Commission or the Commission itself. A hearing to consider an Increased Well Density Application is such a proceeding. It is also a proceeding for which the COGCC provided mandatory consultation on public welfare issues for other agencies, but left intervention as the mechanism for a local government to express its concern for cumulative public impacts that should be addressed as part of this application.

DATED: February 16, 2010.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Don K. Deford", is written over a horizontal line.

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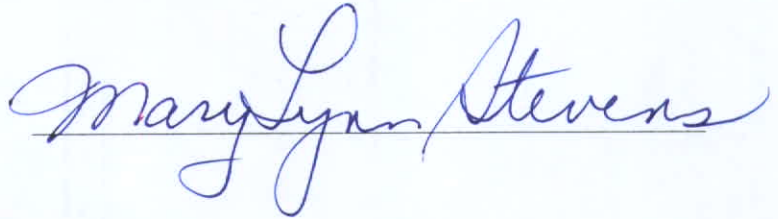


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that true and accurate copies of the foregoing MEMORANDUM SUPPLEMENTING AND SUPPORTING THE MOTION TO INTERVENE were emailed and deposited UPS overnight mail, prepaid, this 16<sup>th</sup> day of February, 2010, to the following:

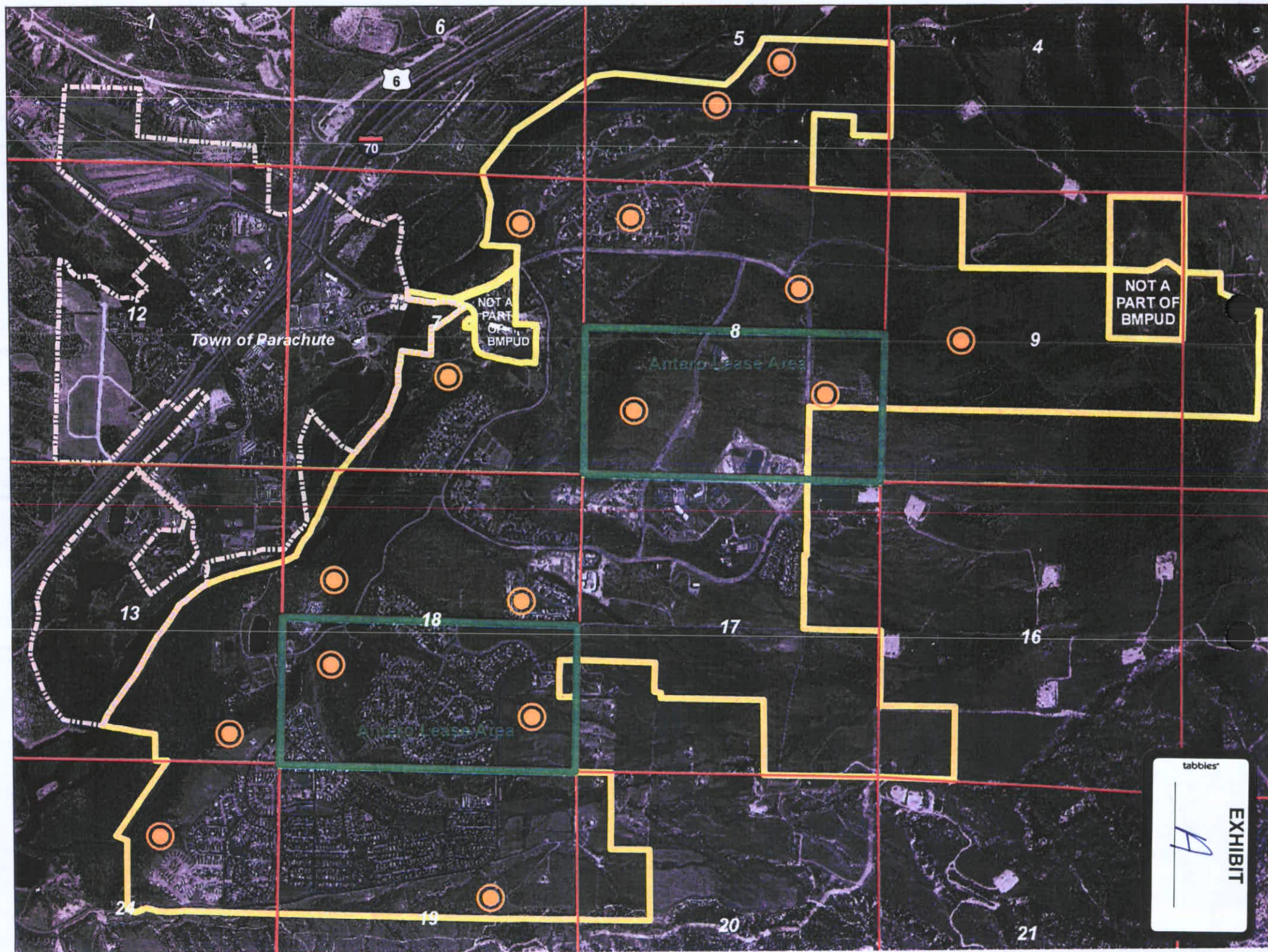
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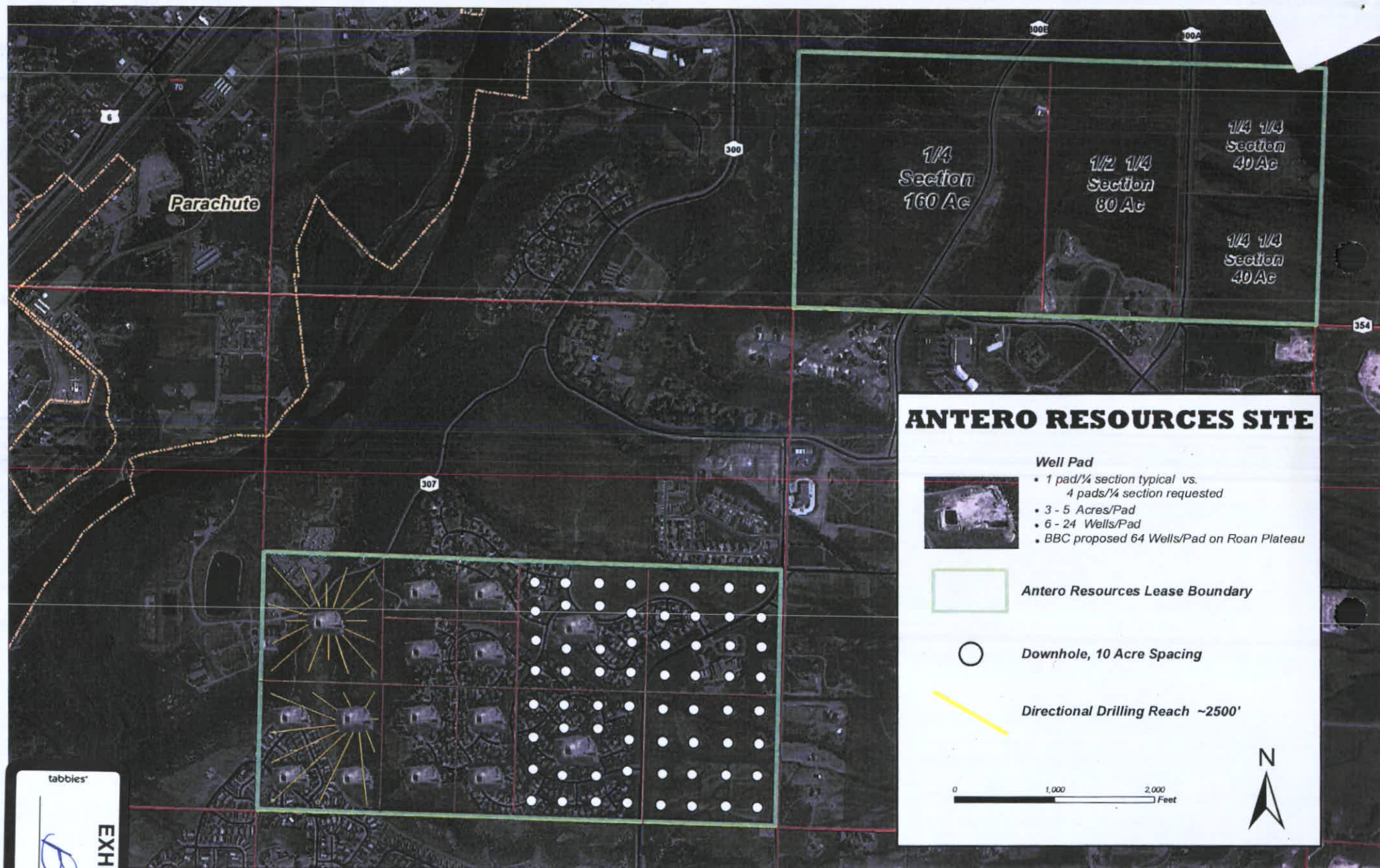


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EXHIBIT