



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

IN THE MATTER OF THE PROMULGATION AND)	CAUSE NO. 1
ESTABLISHMENT OF FIELD RULES TO)	
GOVERNOPERATIONS IN THE JOHNSON'S)	ORDER NO. 1-149
CORNER FIELD, LARIMER COUNTY, COLORADO)	

REPORT OF THE COMMISSION

This cause came on for hearing before the Commission at 9:00 a.m. on March 25, 2010, in Suite 801, The Chancery Building, 1120 Lincoln Street, Denver, Colorado, on the Commission's own motion, for an order related to two Applications for Permits-to-Drill ("APDs") filed by Magpie Operating, Inc. ("Magpie") on June 13, 2008 that had not been approved as of the date of the hearing.

FINDINGS

The Commission finds as follows:

1. Rule 502.a. of the Commission authorizes the Commission, on its own motion, to initiate proceedings upon any questions relating to the conduct of oil and gas operations in the State of Colorado or the administration of the Colorado Oil and Gas Conservation Act by notice of hearing.
2. Due notice of the time, place and purpose of the hearing has been given in all respects as required by law.
3. The Commission has jurisdiction over the subject matter embraced in said Notice, and of the parties interested therein, and jurisdiction to promulgate the hereinafter prescribed order pursuant to the Oil and Gas Conservation Act.
4. At its hearing on February 22, 2010, the Commission moved to initiate proceedings related to two APDs filed by Magpie on June 13, 2008 for the following locations:

State Chase #33-36 Well:

Township 5 North, Range 68 West, 6th P.M.
Section 36: NW¼ SE¼

1,874 feet from the south line ("FSL") and 1,981 feet from the east line ("FEL"), just south of the center of the drilling window measuring 400 feet by 400 feet for the quarter-quarter section

State Chase #34-36 Well:

Township 5 North, Range 68 West, 6th P.M.
Section 36: SW¼ SE¼

597 FSL 1,798 FEL, within the drilling window measuring 400 feet by 400 feet for the quarter-quarter section

5. The proposed wells are located on a property ("Moqui Meadows") owned by Wendy (a.k.a., Laura) Chase and Mike Sutak ("Chase and Sutak"), which is comprised of 77.599 approximate acres located in portions of the W½ of the SE¼ of Section 36, Township 5 North, Range 68 West, 6th P.M. Current surface use at Moqui Meadows includes irrigated crop land and an equestrian riding, training, and competition facility. Chase and Sutak had filed a hearing application requesting the Commission make a determination that Moqui Meadows is a Designated Outside Activity Area ("DOAA") under the Commission Rules. The Commission denied the Chase Sutak DOAA application at its February 22, 2010 hearing; however, the Commission instructed COGCC Staff to confer with the parties regarding locations for the wells that would mitigate potential impacts to public health, safety and welfare considering the current use of the surface estate.

6. On March 3, 2010, COGCC Staff, including Director Neslin, East Environmental Supervisor Steve Lindbloom, and Northeast Region Field Inspection Supervisor Ed Binkley met with Chase and Sutak and representatives from Magpie and the mineral owner (the Colorado State Land Board) at Moqui Meadows to observe the site and consider locations for the proposed wells and associated production facilities. Afterward, Director Neslin requested that Magpie provide a written proposal for the location of the wells and production facilities taking into account potential public health, safety and welfare impacts those facilities might pose in light of the current surface use of Moqui Meadows.

By letter dated March 12, 2010 (subsequently clarified by email dated March 12, 2010), Magpie proposed to move the location of its State-Chase 33-36 Well from the 400-feet by 400-feet drilling window established by Rule 318A in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ to the 800-feet by 800-feet drilling window in the center of the SE $\frac{1}{4}$ of Section 36, Township 5 North, Range 68 West, 6th P.M.

Magpie proposed to access the well by a road following the eastern boundary of Moqui Meadows extending from County Road 14 north to the alternative proposed well location.

Magpie proposed to locate a tank battery consisting of not more than two, low-profile, 300-barrel tanks approximately 400 feet to the west from the southeast corner of Moqui Meadows immediately adjacent to Weld County Road 14. Magpie asserted this location would provide convenient access to the tank battery for pumpers and would be conducive to unobstructed flow of three-phase production from the well to the tank battery.

Magpie further proposed not to locate any compression or dehydration equipment at the tank battery, provided the Commission approved Magpie's APD for the State-Chase 33-36 Well at the alternative location for a period of two years.

Magpie further agreed to withdraw or revoke its pending APD for the State-Chase 34-36 Well while leaving open the possibility of two additional wells to be drilled on Moqui Meadows with bottomhole locations in original 400-feet by 400-feet drilling windows for the State-Chase 33-36 (directional) and the State-Chase 34-36 (vertical) Wells.

Magpie further agreed to the following proposed conditions of approval recommended by COGCC Staff in its January 4, 2010 memo:

- a. Drilling and completion activities shall occur between October 31 and March 31, outside irrigation season.
- b. Interim reclamation shall commence immediately following well drilling and completion.
- c. Implementation by operator of all practicable measures to ensure minimizing the disruption to the surface owners' irrigation practices.
- d. In addition to the required notice for site preparation, drilling, and completion, operator shall provide 30 days' notice to the surface owners for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled equestrian event 14 days in advance of the scheduled work, the operation may proceed. Otherwise, if there is a conflict, the operator shall work with the surface owners to avoid the work during the surface owners' scheduled equestrian events.

7. Chase and Sutak responded to Magpie's March 12 proposal on March 17, 2010. Chase and Sutak opposed Magpie's proposed well location in the center 800' x 800' window, and proposed locating two wells on the eastern edge of Moqui Meadows approximately 820 feet north of the centerline of Weld County Road 14. The location Chase and Sutak proposed for the State-Chase 33-36 Well is approximately 110 feet south of the location proposed by Magpie and is not within any Rule 318A drilling window. They requested that any wells to be located on Moqui Meadows be drilled in immediate sequence. They strongly objected to locating a tank battery on Moqui Meadows due to concerns that noise and visual distractions from operations of those facilities would increase the risk of public health, safety and welfare impacts to users of the surface estate.

Chase and Sutak agreed to a twelve-foot wide road on the east property edge running from their proposed well site location to Weld County Road 14 and a horse safe 6 bar 2-inch Powder River access gate that is kept locked at all times with separate locks for Chase/Sutak and Magpie.

Chase and Sutak proposed that all flowlines run under the access road easement, as Magpie had proposed in one of their discussions.

Chase and Sutak further proposed the following conditions of approval for drilling permits:

- a. Drilling should occur between November 15 and March 1.
- b. Reclamation and reseeding with compatible grasses should commence immediately following well drilling and completion with seed and seeding method picked by Chase.
- c. The operator shall implement all practicable measures to ensure the disruption to the surface owners' irrigation practices are minimized.
- d. There should not be any open pits, land farming of drilling tailings, or discharged water on the property.
- e. Routine access to the well sites should occur only before 8:00 a.m. to minimize conflicts and potential injuries and surface owners' risk of lawsuits.
- f. In addition to the required notice for site preparation, drilling, and completion, the operator shall provide 30 days' notice to surface owners for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled use on their property 14 days in advance after notification of scheduled work, then the operation may proceed. Otherwise, if there is a conflict the operator shall work with the surface owners to avoid work during the surface owners' scheduled events.

8. On March 18, 2010, the Colorado State Board of Land Commissioners, as the mineral owner of the property, submitted a letter to the Commission in support of Magpie's March 12, 2010 proposal.

9. On March 23, 2010, the COGCC Staff submitted its analysis and recommendation, a copy of which is attached hereto as Exhibit A and is incorporated by reference into this Order as if set forth in full. The COGCC Staff recommendation is based on the site visit on March 3, 2010; review and consideration of Magpie's APDs and subsequent well and associated equipment location proposals; review and consideration of Chase and Sutak's opposition to the APDs and subsequent proposals; meetings between COGCC Staff and the parties; knowledge of the current surface use of Moqui Meadows based on Chase and Sutak's Application for DOAA status for Moqui Meadows and the February 22, 2010 Commission hearing on their DOAA Application, as well as site visits; knowledge of the geology of the mineral formations underlying Moqui Meadows, as well as the applicable drilling and spacing units and setback requirements in the area; and consideration of the legislature's direction to foster the responsible and balance development of oil and gas, consistent with the protection of public safety and welfare.

10. The Staff's recommendation is intended to minimize public health, safety and welfare impacts to users of the surface estate, including the surface owners, given the current use of the surface estate as an equestrian riding, training and competition event center while allowing the mineral resources to be developed efficiently.

11. With minor suggested changes, the COGCC Staff's recommended location for State-Chase Well 33-36 and associated conditions of approval should be adopted by the Commission. The oil and gas resources should be developed, and the conditions of approval will balance the development of the resources with public health, safety and welfare.

ORDER

WHEREFORE, IT IS ORDERED, that the following alternate location for the State-Chase 33-36 Well proposed by the COGCC Staff along the eastern edge of Moqui Meadows, approximately 820 feet north of the centerline of Weld County Road 14, in the SE¼ of Section 36, Township 5 North, Range 68 West, 6th P.M.) is hereby approved with the following conditions of

approval to be applied to the Application for Permit-to-Drill submitted by Magpie Operating, Inc. for such well:

1. Drilling and completion activities shall occur between November 15 and March 1.
2. The State Chase 33-36 Well shall be located along the eastern property boundary at the location preferred by the landowner, approximately 110 feet south of the location proposed by the operator.
3. Interim reclamation shall commence immediately following well drilling and completion. An appropriate seed mix and seeding method shall be selected by the surface owner.
4. The operator shall implement all practicable measures to ensure that disruption to the surface owners' irrigation practices are minimized.
5. Drill cuttings and other exploration and production waste shall be disposed of offsite.
6. Access to the well location shall be from Weld County Road 14 via an access road along the eastern property boundary, as proposed in Magpie's sketch. The road shall be no wider than is reasonably necessary for safe maneuvering of equipment and trucks.
7. A horse safe 6 bar 2-inch Power River access gate shall be installed across the access road to prevent unauthorized entrance. The gate shall be equipped with a lock that can be opened and locked by both the surface owners and Magpie.
8. In addition to the required notice for site preparation, drilling and completion, the operator shall provide 30 days' notice to the surface owners for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled event 14 days in advance of the scheduled work then the operation may proceed. Otherwise, if there is a conflict, the operator shall work with the surface owners to avoid the work during the surface owners' scheduled equestrian events.
9. If the tank battery cannot be located off the surface of Moqui Meadows, the following conditions shall apply:
 - a. The tank battery shall be located at the site designated by the operator along the south property boundary, approximately 400 feet west of the southeast corner of the property adjacent to Weld County Road 14.
 - b. The operator shall, to the extent practicable, minimize the size of the tank battery by using among other methods, corrugated steel containment structures rather than soil berms around surface equipment.
 - c. The operator shall install no more than two low profile tanks.
 - d. The tank battery shall not include any compression or dehydration equipment.
 - e. The operator shall install a minimum eight foot privacy fence around the tank battery to mitigate visual impacts and to prevent unauthorized access to the facility. The construction and finish of the fence shall be reasonably acceptable to the surface owner.
 - f. The operator shall use best efforts to ensure that operations and maintenance activities at the tank battery do not occur during scheduled equestrian events, provided that the operator receives at least 14 days' notice in advance of the event. This requirement shall not apply to emergency operations necessary to protect human health, safety, welfare, or the environment.

IT IS FURTHER ORDERED, that Magpie Operating, Inc. shall withdraw its pending Application for Permit-to-Drill the State-Chase 34-36 Well.

IT IS FURTHER ORDERED, that the provisions contained in the above order shall become effective forthwith.

IT IS FURTHER ORDERED, that the Commission expressly reserves its right, after notice and hearing, to alter, amend or repeal any and/or all of the above orders.

IT IS FURTHER ORDERED, that under the State Administrative Procedure Act the Commission considers this order to be final agency action for purposes of judicial review within thirty (30) days after the date this order is mailed by the Commission.

IT IS FURTHER ORDERED, that an application for reconsideration by the Commission of this order is not required prior to the filing for judicial review.

ENTERED this 24th day of April, 2010, as of March 25, 2010.

OIL AND GAS CONSERVATION COMMISSION OF THE
STATE OF COLORADO

By Carol Harmon
Carol Harmon, Secretary

Dated at Suite 801
1120 Lincoln Street
Denver, Colorado 80203
April 24, 2010

Exhibit A



DEPARTMENT OF NATURAL
RESOURCES
Bill Ritter, Jr., Governor
1120 Lincoln St. Suite 801
Denver, CO 80203
Phone: (303) 894-2100
FAX: (303) 894-2109
www.oil-gas.state.co.us

Memorandum

To: Dave Neslin, Director

From: Steven Lindblom

CC: Laura Chase and Mike Satak – Surface owners
Ryan Wamer – Magpie Operating, Inc.
Phil Barber, Esq. – Chase/Satak Counsel
John Jacus, Esq., - Magpie Operating Counsel
Heather Warren, Esq., - State Land Board
Carol Harmon - COGCC

Date: March 23, 2010

Re: Background and position summary – Magpie Operating Inc. wells State Chase 33-36 and State Chase 34-36

BACKGROUND

On June 13, 2008, Magpie Operating, Inc. (Magpie or operator) submitted Applications for Permits to Drill – Form 2 (APDs) for the State-Chase 33-36 and State Chase 34-36 wells in the Southeast Quarter of Section 5, Township 5 North, Range 68 West, in Larimer County, Colorado. Two meetings between COGCC staff and parties in this matter were held on site to discuss locations of wells and associated facilities and to determine if Conditions of Approval (COAs) might be attached to the APDs to address the surface owners' concerns. The first meeting, an Onsite Inspection under the COGCC Onsite Inspection Policy, was conducted on August 27, 2008. A second meeting between parties in this matter was held on March 3, 2010 with the intent to discuss possible locations of wells and associated facilities that would be acceptable to all parties. This meeting was attended not only by surface owners, operator, and mineral interest representatives, but also by the COGCC Director and senior staff. The surface owners stated that they would prefer the wells be located along the eastern property boundary and that tank batteries be located offsite. Magpie agreed to contact adjacent landowners to determine if locating the tank battery on adjacent property would be possible.

In 2009, the surface owners filed with the COGCC an application to designate their property an Outside Activity Area, as defined in the COGCC 100 Series Rules. This matter was heard by the Commission during the February 22, 2010 Hearing, and the majority of the Commission declined to designate the property as an Outside Activity Area. The Commission subsequently requested that final approval of the APDs for the wells in question be brought before the Commission at the March 25, 2010 Hearing.

MAGPIE POSITION

Magpie proposed in a letter, dated March 12, 2010 and clarified in an email on March 15, 2010, a potential resolution to issues related to the APDs for the State Chase 33-36 and State Chase 34-36 wells. Both the letter and clarifying email are included with this memorandum as Attachment 1. This proposed resolution included:



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Bill Ritter, Jr., Governor
1120 Lincoln St. Suite 801
Denver, CO 80203
Phone: (303) 894-2100
FAX: (303) 894-2109
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- Locating the State Chase 33-36 well along the eastern property boundary at a location within the 800-foot drilling window and close to (approximately 110 feet) north of a location preferred by the landowner.
- Withdrawal of the APD for the State Chase 34-36
- Accessing the State Chase 33-36 location along the eastern property boundary
- Constructing a tank battery along the southern property boundary adjacent to Weld County Road (WCR)14
- Utilizing low profile tanks to minimize aesthetic impacts.
- Not locating compression or dehydration equipment at the tank battery.

SURFACE OWNER POSITION

In a March 17, 2010 letter to Director Neslin (Attachment 2), the surface owners reiterated their opposition to the proposed activities but also suggested an alternate well location and requested that specific Conditions of Approval (COAs) be attached to APDs for wells in question.

As with the Magpie proposed location, the surface owners suggest a location on the eastern edge of the property with an access road to the location along the east property line from WCR 14. Based upon the diagram provided by Magpie in Exhibit A of Attachment 1, the Magpie proposed location is approximately 930 feet north of the centerline of WCR 14 while the surface owner proposed location is 820 feet north of the centerline of WCR 14.

The COAs suggested by the surface owner were considered and incorporated into the COGCC staff recommended COAs with some modifications.

STAFF ANALYSIS

After review of correspondence between parties, discussions at the two meetings on site, and information provided on the APDs, the COGCC staff recommend a combination of Magpie's and surface owners' proposed resolutions, subject to several COAs that will be attached to the APD. The approved APDs will be valid for a 2 year period, as suggested at the March 3, 2010 meeting on site and as proposed by Magpie in their March 12, 2010 letter. Most of these COAs were provided to all parties in the January 4, 2010 Background and Staff Analysis Memorandum to Director Neslin. The COAs for the State Chase 33-36 well include:

- Drilling and completion activities shall occur between November 15 and March 1.
- The State Chase 33-36 well shall be located along the eastern property boundary at the location preferred by the landowner, approximately 110 feet south of the location proposed by the operator.
- Interim reclamation shall commence immediately following well drilling and completion. An appropriate seed mix and seeding method shall be selected by the surface owner.
- The operator shall implement all practicable measures to ensure that disruption to the surface owners' irrigation practices are minimized.
- Drill cuttings and other exploration and production waste shall be disposed of offsite.
- Other than during drilling and workover operations, access to the well location shall be from WCR 14 via a 12 foot wide access road along the eastern property boundary, as proposed in Magpie's sketch. During drilling and workover operations, access to the well shall be along the same road but may be reasonably wide enough for safe maneuvering of equipment and trucks.



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- A horse safe 6 bar 2-inch Powder River access gate shall be installed across the access road to prevent unauthorized entrance. The gate shall be equipped with a lock that can be opened and locked by both the surface owners and Magpie.
- In addition to the required notice for site preparation, drilling and completion, the operator shall provide 30 days notice to the surface owner for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled event 14 days in advance of the scheduled work then the operation may proceed. Otherwise if there is a conflict then the operator shall work with the surface owner to avoid the work during the surface owners scheduled equestrian events.

Additionally, COGCC staff recommend that the following COAs regarding the tank battery be included with the APD for the State Chase 33-36 well:

- If the tank battery cannot be located off site, the tank battery shall be located at the site preferred by the operator along the south property boundary approximately 400 feet west of the southeast corner of the property adjacent to Weld County Road 14.
- The operator shall, to the extent practicable, minimize the size of the tank battery by using, among other methods, corrugated steel containment structures rather than soil berms around surface equipment.
- The operator shall install no more than two low profile tanks.
- The tank battery shall not include any compression or dehydration equipment.
- The operator shall install a minimum eight foot privacy fence around the tank battery to mitigate visual impacts and to prevent unauthorized access to the facility. The construction and finish of the fence shall be reasonably acceptable to the surface owner.
- The operator shall ensure that operations and maintenance activities at the tank battery do not occur during scheduled equestrian events, provided that the operator receives at least fourteen (14) days notice in advance of the event. This requirement shall not apply to emergency operations necessary to protect human health, safety, welfare, or the environment.

In addition to the actions proposed by Magpie in their March 12, 2010 letter, the Director will waive the requirement to submit and obtain approval for an Oil and Gas Location Assessment, Form 2A for the tank battery. The intent of a Form 2A is to assist in selecting appropriate locations for oil and gas facilities and to incorporate relevant COAs into the approval process. Waiving the requirement for a Form 2A was deemed appropriate given that discussions regarding locations for wells and associated surface facilities and appropriate COAs have been ongoing for a period of nearly two years.

ATTACHMENT 1



Davis Graham & Stubbs LLP

March 12, 2010

Via Electronic Mail

Mr. David Neslin
Executive Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, Colorado 80203

Re: State-Chase 33-36 and State-Chase 34-36 Applications for Permits to Drill
of Magpie Operating, Inc.

Dear Mr. Neslin:

I am responding on behalf of our client Magpie Operating, Inc. ("Magpie") as per your request for a written position statement concerning Magpie's referenced, long-pending Applications for Permits to Drill ("APDs") to complete two vertical wells on surface property owned by Ms. Laura W. Chase (the "Property") pursuant to Magpie's lease with the Colorado State Land Board. Magpie appreciates the opportunity to submit this position statement and believes it has developed an alternative which will allow the Colorado Oil and Gas Conservation Commission ("Commission") to approve one of its APDs and, if approved, allow Magpie to withdraw the other pending APD, as described more specifically below. Magpie is particularly mindful of the Commissioners' concerns expressed at the conclusion of the recent hearing on Ms. Chase's and Mr. Sutak's application for designation as an outside activity area, and believes that the position described below, if approved, would satisfactorily resolve Magpie's long-standing dispute with Ms. Chase over access to the property for the lawful exercise of Magpie's lease rights to develop oil and gas for the benefit of the State of Colorado.

Summary of Magpie Position and Pending APDs

Magpie proposes the following resolution by action of the Commission and Magpie, of two long-pending APDs, State-Chase 33-36 and State-Chase 34-36:

1. In order to mitigate the impacts of Magpie's operations on the surface property owned by Ms. Chase, Magpie seeks an exception location for its State-Chase 33-36 APD that is located outside the GWA window for this location under Rule 318A, but inside the drilling window that is centered within the southeast quarter section of Section 36. See Magpie Exhibit A, attached. The granting of

an exception location outside the 33-36 window, but inside the center-spot drilling window that extends onto the Property, would achieve the desired mitigation of impacts from drilling, completion, and operation of the well in that location for the surface owners, and would also enable Magpie to complete a vertical well, and thereby avoid the significant incremental additional expense of directional drilling to which it has objected in its negotiations with the surface owners.

2. Magpie would access this well by a road along the eastern boundary of the Property extending from County Road 14 north to a point on the eastern boundary of the Property, but inside the center-spot drilling window under Rule 318A. See Magpie Exhibit A, attached.
3. Magpie further proposes to locate a tank battery consisting on no more than two, low-profile, 300 BBL tanks to serve the well to be completed at the noted exception location on the southern boundary of the Property at a point approximately 400 feet to the west from the southeast corner of the Property, immediately adjacent to County Road 14. See Magpie Exhibit A. This location would provide convenient access to the tank battery for pumpers, and the location is conducive to unobstructed flow of three-phase production to the tank battery.
4. Magpie further agrees not to locate any compression or dehydration equipment at this proposed tank battery location as a condition of approval, provided the Commission approves Magpie's APD for State-Chase 33-36 at the noted exception location for a period of two years.
5. With these additional provisions as conditions of approval, Magpie agrees to withdraw/revoke its pending State-Chase 34-36 APD and leave open for future application and ruling the possibility of two additional wells to be drilled on the Property which will bottom hole in the GWA 33-36 window and the 34-36 window under Rule 318A.

Reasonable Accommodation

Ms. Chase, Mr. Sutak, their attorney and the Commissioners have all made reference to the doctrine of reasonable accommodation as recently codified by statute, but that standard does not apply in this instance, and even if it did, Magpie has met and exceeded the requirements of the doctrine as codified. As a lessee of the State Land Board, Magpie is entitled to "convenient" access to develop and produce the oil and gas minerals located beneath the Property. That standard should allow Magpie to place vertical wells into each of the three GWA windows located upon the Property, but Magpie has not insisted upon its right to do that; rather, Magpie

Mr. David Neslin
Colorado Oil and Gas Conservation Commission
March 12, 2010
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has attempted to accommodate the surface owners' use of the Property and is no longer seeking to place a vertical well in the 33-36 window. A vertical well in that window would interfere with the surface owners' use of the improved riding area that they have created over a period of years and that their guests use and enjoy for equestrian events, and that is not something with which Magpie wishes to interfere. This Commission should approve the proposed exception location on the eastern edge of the Property, but in the center drilling window of the southeast quarter of Section 36, south of the irrigation ditch running across the Property, as proposed on Magpie Exhibit A.

Fairness to Magpie

Magpie has been diligent in its efforts to obtain Commission approval of the long-pending APDs. It has attempted on numerous occasions to access the Property for surveying and has now participated in two site inspections involving COGCC's staff, the latter of which was occasioned by a visit from Channel 7 News, something which the surface owners knew about and failed to disclose to the staff or Magpie and its counsel. It seems the surface owner will do almost anything to prevent Magpie from exercising its valid and enforceable lease rights under Commission rules to explore for and produce oil and gas owned by the State of Colorado beneath the Property, and it seeks to have this Commission do its bidding in preventing this from happening. Magpie has been both patient and diligent in seeking approval of its long-pending APDs, and this should not be rewarded with a denial of both applications by this Commission. Magpie is entitled to and deserving of the approval of at least one well location where it can complete a vertical well so as not to incur the significant additional expense of directional drilling, an expense which this Commission cannot lawfully impose upon Magpie, and certainly not under these circumstances.

Future Wells

This position statement leaves open the issue of two future wells that might be drilled on the Property, and whether those would be drilled from the pad at the proposed exception location directionally, or vertically in the case of the State-Chase 34-36 window. As the Commission's staff directly observed themselves during the recent site inspection, there is nothing remarkable or significantly improved about the southern portion of the Property in and around the State-Chase 34-36 GWA window. It is a common irrigated hay meadow like any other across this portion of Larimer or nearby Weld Counties on which wells and associated equipment are located every single day in compliance with COGCC rules and in a manner that reasonably accommodates the surface owners' uses and activities. Magpie would be well within its rights to insist upon a ruling in its favor to immediately locate a vertical well in the 34-36 window, but seeks to resolve this dispute through Commission action expeditiously and as amicably as

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possible by proposing the noted exception location along the eastern boundary of the Property within the center drilling window of the southeast quarter of Section 36. Commission approval of that exception location would be authorized under Rule 318A.h. which permits exception locations in the GWA comparable to those granted pursuant to Rule 318.c., *i.e.*, for environmental or topographic reasons or other "good cause shown." Magpie has requested the waiver of the State Land Board for this proposed exception location and expects that it will be granted, and also plans to survey the proposed exception location as soon as practicable, but had not completed such a survey at the time this position statement was expected by Executive Director Neslin.

Remaining Conditions of Approval

Magpie also agrees to the proposed conditions of approval recommended by staff in its January 4, 2010 "background and staff analysis" memorandum to Director Neslin. Those conditions of approval provide:

1. Drilling and completion activities shall occur between October 31 and March 31, outside of the irrigation season.
2. Interim reclamation shall commence immediately following well drilling and completion.
3. The operator shall implement all practicable measures to ensure the disruption to the surface owners' irrigation practices are minimized.
4. In addition to the required notice for site preparation, drilling, and completion, the operator shall provide 30 days' notice to the surface owner for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled event 14 days in advance of the scheduled work then the operation may proceed. Otherwise if there is a conflict then the operator shall work with the surface owner to avoid the work during the surface owners' scheduled equestrian events.

Contingent Revocation of State-Chase 34-36 APD

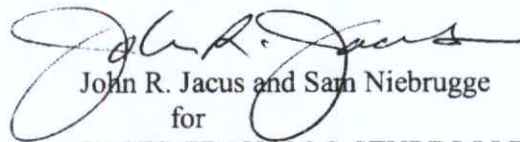
Contingent on Commission approval of the proposed exception location for the State-Chase 33-36 APD, as proposed above, Magpie would withdraw and revoke its pending State-Chase 34-36 APD, and leave open the possibility of a future application for wells with bottom hole locations in the two drilling windows located under the Chase Property.

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Conclusion

Magpie Operating is a small business. It has invested a substantial amount of time, effort, and money in obtaining this Commission's approval of its long-pending APDs. It has diligently attempted to settle this matter so as to avoid a contested hearing on its APDs, without success. Accordingly, this Commission must act to either approve or deny Magpie's pending APDs, and the proposal contained in this position statement affords the Commission an opportunity to approve one vertical well location on the Property that greatly mitigates and accommodates, while still allowing Magpie to conduct its lawful business activities under its lease with the State of Colorado. Such a result avoids waste, promotes production, mitigates impacts, and resolves a long-standing disputed issue, thereby meeting this Commission's statutory obligations. Magpie strongly urges the Commission to approve the proposed exception location described above at its hearing on this matter, and appreciates the opportunity to submit this position statement.

Respectfully submitted,



John R. Jacus and Sam Niebrugge
for

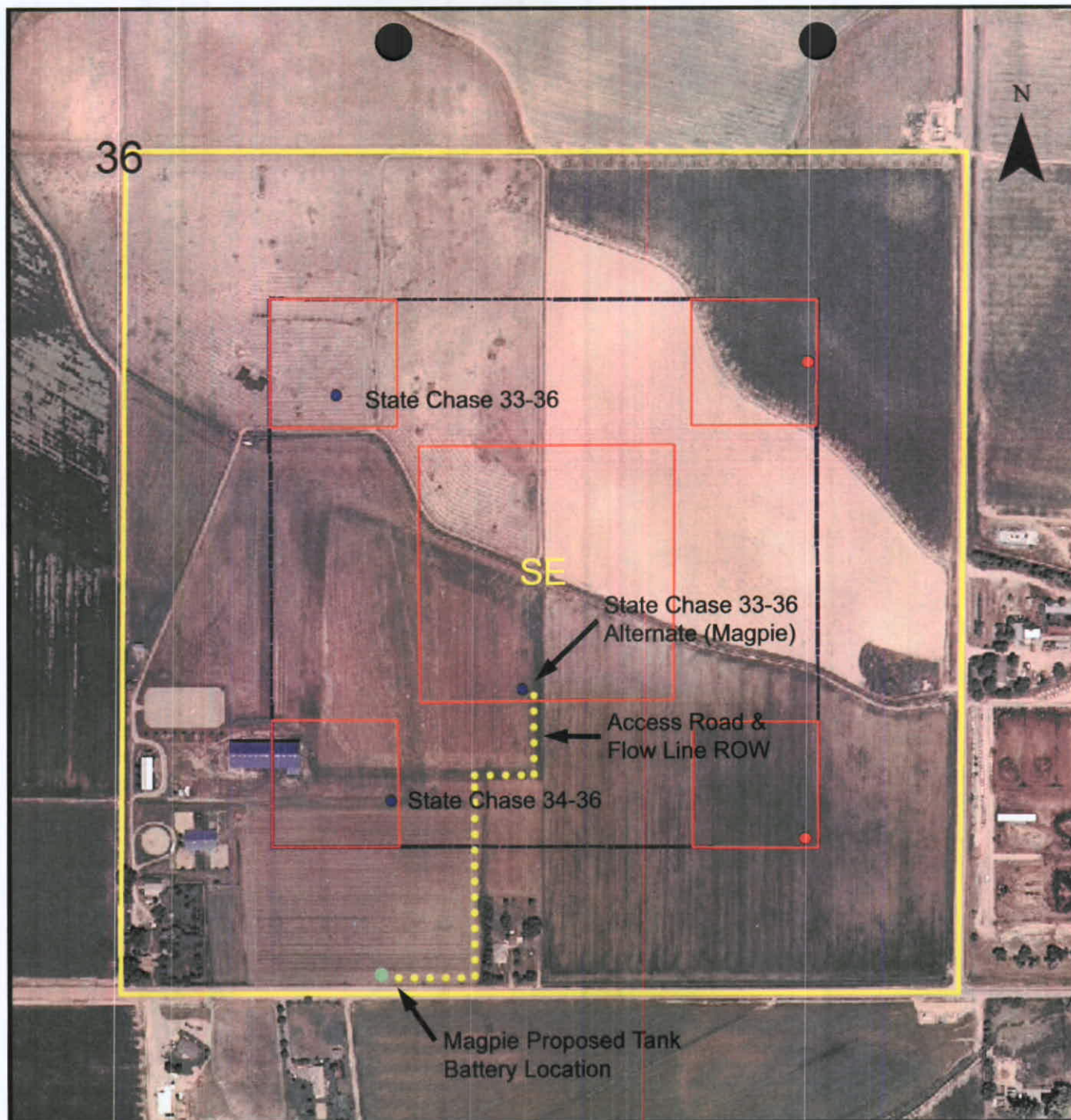
DAVIS GRAHAM & STUBBS LLP

ATTORNEYS FOR MAGPIE OPERATING, INC.

JRJ/cmt

Enclosures

cc: Carol Harmon, Hearing Officer
Matt Lepore, Esq., COGCC Counsel
Phillip Barber, Esq., Chase/Sutak Counsel
Heather Warren, Esq., State Land Board Counsel
Ryan Warner, Magpie Operating



Aerial Photo: NAIP, Summer 2009

0 330 660 990 1,320 Feet

Legend

- Proposed Location
- Permit Locations
- Proposed Battery Location
- Access Road & Flow Line ROW
- 318A Drilling Windows
- Setback Line
- Quarter Section Boundary

Proposed Magpie Operating State-Chase Surface Locations Section 36 T5N R68W, Larimer County, Colorado

COGCC, December 23, 2009

Lindblom, Steven

From: Harmon, Carol
Sent: Tuesday, March 16, 2010 3:06 PM
To: Niebrugge, Sam; Willis, Rob; Humecki, Margaret
Cc: Phillipbarber@aol.com; shelleypeister@phillipdbarberpc.com; Heather Warren; Jacus, John; Neslin, David; Lindblom, Steven
Subject: RE: Supplement to Magpie letter

Sam,
Thank you for Magpie's supplement.

Regards,
Carol

Carol Harmon, Hearings Manager
Colorado Oil and Gas Conservation Commission
Telephone: 303-894-2100 ext. 5105
Email: carol.harmon@state.co.us

From: Niebrugge, Sam [mailto:Sam.Niebrugge@dgsllaw.com]
Sent: Tuesday, March 16, 2010 2:08 PM
To: Harmon, Carol; Willis, Rob; Humecki, Margaret
Cc: Phillipbarber@aol.com; shelleypeister@phillipdbarberpc.com; Heather Warren; Jacus, John
Subject: RE: Supplement to Magpie letter

Hearing Officer Harmon – Please see Magpie's responses below.

Sam

Sam Niebrugge
Davis Graham & Stubbs LLP
1550 17th Street, Suite 500
Denver, Colorado 80202-1500
Direct: 303-892-7433
Fax: 303-893-1379

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From: Harmon, Carol [mailto:Carol.Harmon@state.co.us]
Sent: Tuesday, March 16, 2010 10:00 AM
To: Jacus, John; Niebrugge, Sam
Cc: Humecki, Margaret
Subject: Supplement to Magpie letter

John or Sam,

COGCC Staff would like Magpie to supplement its proposal for oil and gas activities by Magpie on Moqui Meadows property to address the following issues:

1. Why could not Magpie locate the tank battery either to the east or west along the county road so that it would be off Moqui Meadows?

Magpie is unable to place their tank batteries to the east along the county road because Magpie has a valid and enforceable surface use agreement with the owners of the property to the east. That surface use agreement does not allow for use of tank batteries on the property to the east for production from other properties.

Magpie is unable to place their tank batteries to the west along the county road because there is regulatory and financial concern about that location. Magpie understands that the property to the west is subject to a planned use development. Magpie has tried to contact the owners of that property to get a clearer picture of their surface development plans, but has not heard a response. This creates both a cost and regulatory uncertainty which prevents Magpie from agreeing to locate its tank battery for production from the Property elsewhere. The proposed location disturbs less ground and accommodates the surface owner and neighboring residents, while being convenient for Magpie and the State Land Board, owner of the minerals. And the record of our prior hearing plus the recent site inspection confirms the lack of improvements in the hay meadow on the southern portion of the Property, adjacent to the proposed tank battery location.

2. Why did Magpie allow its other APDs in Section 36 expire without drilling? Is there a geologic or other technical reason for pursuing the location(s) on Moqui Meadows first?

Magpie is a small operator that does not have an unlimited drilling budget. The State Chase APDs have been pending for nearly two years. At the time Magpie applied for these two APDs, it applied for a number of other leases in Section 36. The COGCC approved the other APDs without controversy, but Magpie submitted those APDs at a time when oil and gas were priced such that Magpie thought it could economically develop those other wells. Magpie, like so many oil and gas operators, suffered a dramatic change in its business prospects due to the Great Recession of late 2008 and 2009, and Magpie has testified that it was unable to gain access to credit markets or financing to develop those locations; thus, those other APDs lapsed without being able to drill the locations. Now, after the nearly two year delay by the Commission, the economic climate has improved, Magpie has been able to acquire pipe, casing, and other well materials, and Magpie has greater access to the credit markets and potential partnering terms with well field service companies to enable drilling of the State Chase 33-36 well at the proposed alternate location. As such, the pending APDs are of great importance to Magpie's immediate business plans.

3. Does Magpie have waivers for the proposed location on Moqui Meadows from the State Land Board? If so, please provide.

Magpie does not yet have a waiver from the State Land Board, but has requested one, as indicated in our position statement of last Friday. Magpie does not believe, however, that a waiver is required in this instance. Although Magpie has styled its well proposal as an exception location, the State Chase 33-36 well will be a vertical well within the 800' center-spot drilling window in the SE/4 of Section 36. So, the well is an exception from the originally proposed location, but is still within the confines of Rule 318A.

4. Is the proposed location on Moqui Meadows closer than 150 feet from the property line? If so, please provide the neighboring property owner's waiver.

Attached to this response is the surface waiver of the Evelyn Betz Trust. Magpie also notes that the Director, at the onsite inspection, stated the Commission could waive Rule 603.(a)(2).

Feel free to contact me with any questions.

Thanks,
Carol

Carol Harmon
Hearings Manager
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, Colorado 80203
Telephone: 303-894-2100 ext. 5105

Facsimile: 303-894-2109

Email: carol.harmon@state.co.us

www.cogcc.state.co.us

ATTACHMENT 2

Phillip D. Barber, P.C.

1675 Larimer Street, Ste. 620
Denver, Colorado 80202
Telephone: 303-894-0880
Facsimile: 720-904-5755
E-mail: Phillipbarber@aol.com

March 17, 2010

Via Hand Delivery

Mr. David Neslin
Executive Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Ste. 801
Denver, CO 80203

Re: March 12, 2010 letter from Magpie Operating, Inc. regarding State - Chase 33-36
and State - Chase 34-36 Wells.

Dear Mr. Neslin:

As you know, I represent Wendy Chase and Mike Sutak, whose Application for a Designated Outside Activity Area was denied by the Commission at its February 22, 2010 meeting. The Commission also scheduled a hearing on Magpie's pending APD's, and encouraged the parties to continue to explore alternative well sites. This effort included the onsite visit that was conducted by you and COGCC staff last week.

We have reviewed Magpie's March 12, 2010 letter. Magpie asks that the location of the State - Chase 33-36 Well be moved to the "center window" in the section and also discusses the possibility of "future wells", although it does not appear that permits for those wells are being requested at the present time. We believe that the primary issue before the Commission will be the application of the reasonable accommodation doctrine to Magpie's latest well proposal. Magpie's proposal does not offer any accommodation of the surface owner's rights, since it simply asks that Magpie be allowed to drill a well at a Rule 318A location and place a tank battery on the property.

My clients' response to Magpie's new proposal is found in the attached letter from them to you. They live on the Property and have the best understanding of where wells might reasonably be located, taking into consideration the historic and current use of the Property and Magpie's request to drill. You will see that they have identified a reasonable location for the wellsite that will allow Magpie to exploit the minerals. This is the same location that was

Mr. David Neslin
March 17, 2010
Page 2

presented to and approved by the neighbor to the east, Evelyn Betz, when she signed the January 14, 2010 "Request for Exception to Rule 603.A.[2]", a copy of which I am also attaching to this letter. Thus, the site seems to be acceptable to both the adjacent landowner and my clients.

We disagree with Magpie's statement that "the doctrine of reasonable accommodation . . . does not apply in this instance." That doctrine was announced as the law in Colorado by the Colorado Supreme Court in *Gerrity Oil & Gas Corp. v. Magness*, 946 P.2d 913 (Colo. 1997). Referring to the mineral lessee's right to access the mineral estate, the Court stated:

The right to use the surface as is reasonably necessary, known as the rule of reasonable surface use, **does not include the right to destroy, interfere with or damage the surface owner's correlative rights to the surface.** . . . [U]nless the conduct of an operator in accessing, exploring, drilling, and using the surface is reasonable and necessary to the development of the mineral interests, the conduct is a trespass.

946 P.2d at 926-927 (emphasis added).

The *Gerrity* decision acknowledged the tensions that naturally exist between the rights of a surface owner and the owner of a severed mineral estate:

The fact that neither the surface owner nor the severed mineral rights holder has any absolute right to exclude the other from the surface may create tension between the competing surface uses. The broad principle by which tensions are to be resolved is that each owner must have due regard for the rights of the other in making use of the estate in question. *Grynberg v. City of Northglenn*, 739 P.2d 230, 234 (Colo. 1987).

The Court went on to describe the accommodation that mineral owners must make to the surface uses:

This 'due regard' concept requires mineral rights holders to accommodate surface owners **to the fullest extent possible** consistent with their right to develop the mineral estate. [cite omitted] How much accommodation is necessary will, of course, vary depending on surface uses and on the alternative available to

Mr. David Neslin
March 17, 2010
Page 3

the mineral rights holder for exploitation of the underlying mineral estate. **However, when the operations of a lessee or other holder of mineral rights would preclude or impair uses by the surface owner, and when reasonable alternatives are available to the lessee, the doctrine of reasonable surface use requires the lessee to adopt an alternative means.**

Id. (emphasis added). Mr. Jacus correctly points out that the *Gerrity* decision has been recently codified by statute at C.R.S. §34-60-127, and is now part of the *Oil and Gas Conservation Act*.

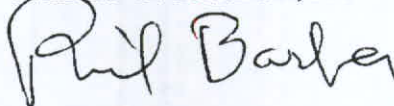
There can be no doubt that Magpie's proposed operations will impair the current surface uses at Moqui Meadows. The accommodations requested by my clients in the attached letter are reasonable and necessary in that they are technologically feasible and economically practicable. Based on the testimony by Magpie's witness, the additional cost, if any, to Magpie would be negligible in comparison to their profits, and the value to the surface owners would be significant in terms of reduced interference and risks to riders and horses. See Sutak/Chase letter. We believe *Gerrity* requires Magpie to adopt these alternative means of exploration. Stated conversely, the multiple wellsite locations and tank battery which Magpie describes would be an unreasonable interference with the surface owner's rights.

It was my understanding that as recently as the last Commission hearing, Magpie did not propose to place a tank battery on the property. This turn of events has also been addressed in the attached letter from my clients. Because the property immediately to the west has apparently been platted, an oil and gas operations area would have been designated on that property which would be available to Magpie for a tank battery per C.R.S. §24-65.5-103.5. The property to the west is covered by the same Lease with the State Land Board.

Finally, I want to echo my clients' statement of appreciation for the effort that you and your staff have put forth in this matter. We look forward to answering any questions which you or the Commission may have. Along with this original letter, we have enclosed 13 copies for the Commission.

Sincerely,

PHILLIP D. BARBER, P.C.



Phillip D. Barber

PDB/sfp

Mr. David Neslin

March 17, 2010

Page 4

cc: (via e-mail)

John Jacus, Esq. (w/enc.)

Sam Niebrugge, Esq. (w/enc.)

Heather Warren, Esq. (w/enc.)

Matt LePore, Esq. (w/enc.)

Carol Harmon (w/enc.)

Wendy Chase and Mike Sutak (w/enc.)

March 16, 2010

David Neslin
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Mr. Neslin:

Wendy and I are grateful for the staff's and your efforts to help us try to resolve our disagreements with Magpie. We know that all of you are very busy.

We have spent 15 years developing our property for its current use. Any oil and gas development will compromise our ability to continue to use the property. It will certainly prevent us from making it safe and available to the public including the different Pony Club chapters and other eventers that come from all over the state of Colorado and surrounding states to take advantage of the unique training opportunity we have been providing. We were disappointed that the Commission denied our DOAA application which was an attempt to protect this use.

Magpie's position statement does not provide a resolution for the COGCC or Ms. Chase in the disagreement about location of well sites on our property. Their offer leaves open the possibility of attempting to impact our facility again in the future if and when they see fit, and asks for the first time that a tank battery be allowed to be placed on the property. Magpie has never considered a tank battery on our property until this past month. It seems this is to punish us for disagreeing with them about well site locations. As we said at the last hearing, the noise, distraction and truck traffic associated with the tank battery pose the greatest risks and dangers to the health and safety of riders, spectators and the horses by oil and gas operations on an equestrian facility. Horses and riders can be easily distracted or frightened by unexpected and unfamiliar sights, noises and movements which come with that facility and the associated traffic. Catastrophic injury is a real possibility. Magpie had always said the tank battery would not be on our property, and we simply cannot agree to this last minute change. We prefer their original proposal of tank batteries elsewhere. The only surface facilities should be the wellheads surrounded by horse safe 6 bar 2-inch Powder River fence.

Although we prefer that there be no operations on the property, we have always offered a single well site for two wells drilled simultaneously on the east edge of our property as far south as possible, approximately 820' north of the centerline of County Road 14. This would still impact our facility but would attempt to minimize the dangers and would require the least amount of restructuring of the property and the course. Magpie has continually refused to consider this. We disagree. Although Magpie says this is too expensive, the greatest single cost of drilling is the cost of breaking down a drilling rig, moving it to a new location, and reassembling it before drilling again. This cost is always born by the new well owner. By drilling multiple wells where drilling starts again on a new well in minutes instead of days, progressive businesses gain a huge advantage at a cost comparable to vertical drilling. Likewise, for the life of a well, multiple wells in close proximity are easier and cheaper to service.

Mr. Warner said at the last hearing that Magpie had the money to drill its wells, and I believe he estimated the total costs at approximately \$1 million. He also said that Magpie would receive a 5:1

return on its investment, or about \$5 million over the life of the well. According to the email from Ensign Drilling to Magpie, the additional cost of directional drilling is less than \$20,000 per well, or \$40,000 for two wells before accounting for simultaneous drilling. This is about 4% of the cost of the project, and it is a reasonable cost for Magpie to incur to accommodate our established use of the property and to help alleviate hazards to our users.

Their current single well site proposal is hundreds of feet closer to the middle of the riding and jumping area than our proposal and would increase risks to horses and riders. Any location is going to impact the way we have been using our land. The further north they go the greater the impact and chance of injury.

We would agree to a twelve foot wide access road on our east property edge running from our proposed well site location to the county road and a horse safe 6 bar 2-inch Powder River access gate that is kept locked at all times. This should be separately openable and lockable by both Chase and Magpie. All flow lines would, as Magpie had originally proposed, run under this access road. We do not want any other flow line easements.

Drilling and major work should occur between November 15th and March 1st.

Reclamation and reseeding with compatible grasses should commence immediately following well drilling and completion with seed and seeding method picked by Ms. Chase.

The operator shall implement all practicable measures to ensure the disruption to the surface owners' irrigation practices are minimized.

No open pits, land farming of drilling tailings, or discharged water should be allowed on the property.

Routine access to well sites only before 8 a.m. to minimize conflicts and potential injuries and lawsuits.

In addition to the required notice for site preparation, drilling, and completion, the operator shall provide 30 days notice to surface owner for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled use on their property 14 days in advance after notification of scheduled work, then the operation may proceed. Otherwise, if there is a conflict, then the operator shall work with the surface owner to avoid work during the surface owner's scheduled events.

Ms. Chase and I plan to attend the hearing with Mr. Barber and will explain the merits of this proposal to the Commission, and answer any questions they may have.

Thank you,

Wendy Chase

Mike Satak

Wendy Chase and Mike Satak

CC: Carol Harmon

January 14, 2010

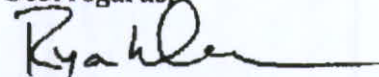
Re: Request for Exception to Rule 603.A.(2)

Township 5 North, Range 68 West of 6th P.M.
Section 36: Southeast Quarter (SE4)
Located in Larimer County, Colorado.

Director:

Magpie Operating, Inc. has a lease in the aforementioned lands. The surface property in the east half is owned by the Evelyn H. Betz Trust, in which Steven Betz is Trustee. The surface property in the west half is owned by Laura W. Chase. Magpie and Ms. Chase have entered into a surface use agreement for the purpose of developing oil and gas. Magpie wishes to place well(s) closer than 150' from the property line dividing the two properties. It is understood that no operations on the Chase property will directly impact the ground on the Betz property. This letter is meant only to waive the 150' setback requirement described in Colorado Oil and Gas Conservation Commission Rule 603.a.(2). This letter will be filed with the Director of the Colorado Oil and Gas Conservation Commission and in the records of Larimer County. The well(s) location is in order to accommodate current surface use. Thank you for your consideration.

Best regards,

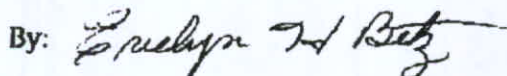


Ryan Warner
Vice President

*Temporary fence to be put on property
line before operations.*

I/we agree to the above described

By:



Title:

Conditions of Approval

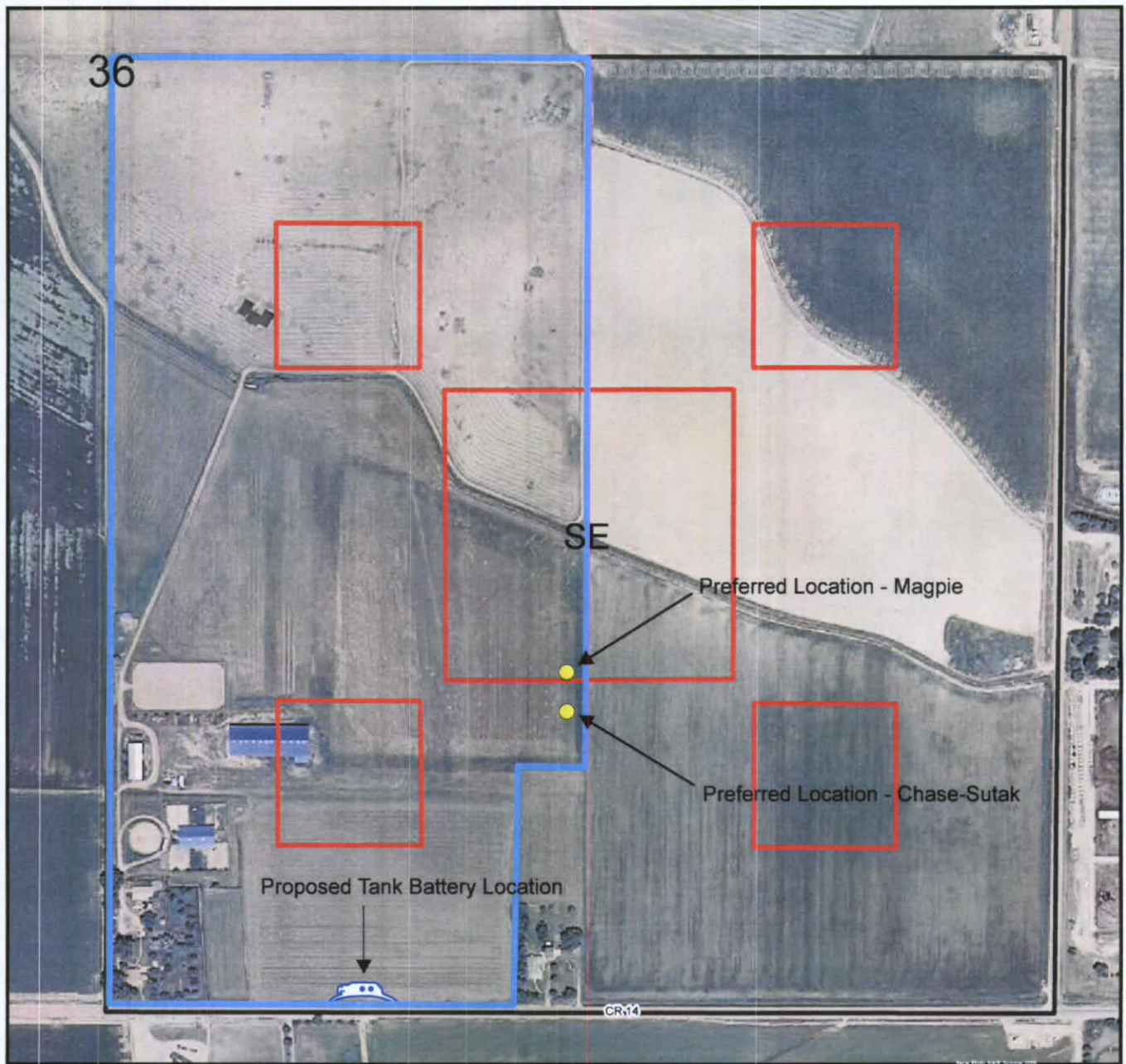
Attached to and part of the Permit to Drill

State Chase 33-36

- Drilling and completion activities shall occur between November 15 and March 1.
- The State Chase 33-36 well shall be located along the eastern property boundary at the location preferred by the landowner, approximately 110 feet south of the location proposed by the operator.
- Interim reclamation shall commence immediately following well drilling and completion. An appropriate seed mix and seeding method shall be selected by the surface owner.
- The operator shall implement all practicable measures to ensure that disruption to the surface owners' irrigation practices are minimized.
- Drill cuttings and other exploration and production waste shall be disposed of offsite.
- Access to the well location shall be from WCR 14 via an access road along the eastern property boundary, as proposed in Magpie's sketch. The road shall be no wider than is reasonably wide necessary for safe maneuvering of equipment and trucks.
- A horse safe 6 bar 2-inch Powder River access gate shall be installed across the access road to prevent unauthorized entrance. The gate shall be equipped with a lock that can be opened and locked by both the surface owners and Magpie.
- In addition to the required notice for site preparation, drilling and completion, the operator shall provide 30 days notice to the surface owner for any non-emergency workover or well treatment. If the surface owners fail to notify the operator of a scheduled event 14 days in advance of the scheduled work then the operation may proceed. Otherwise if there is a conflict then the operator shall work with the surface owner to avoid the work during the surface owners scheduled equestrian events.

In the event the tank battery will not be located off site:

- The tank battery shall be located at the site designated by the operator along the south property boundary approximately 400 feet west of the southeast corner of the property adjacent to Weld County Road 14.
- The operator shall, to the extent practicable, minimize the size of the tank battery by using, among other methods, corrugated steel containment structures rather than soil berms around surface equipment.
- The operator shall install no more than two low profile tanks.
- The tank battery shall not include any compression or dehydration equipment.
- The operator shall install a minimum eight foot privacy fence around the tank battery to mitigate visual impacts and to prevent unauthorized access to the facility. The construction and finish of the fence shall be reasonably acceptable to the surface owner.
- The operator shall use best efforts to ensure that operations and maintenance activities at the tank battery do not occur during scheduled equestrian events, provided that the operator receives at least fourteen (14) days notice in advance of the event. This requirement shall not apply to emergency operations necessary to protect human health, safety, welfare, or the environment.



COGCC, March 22, 2010

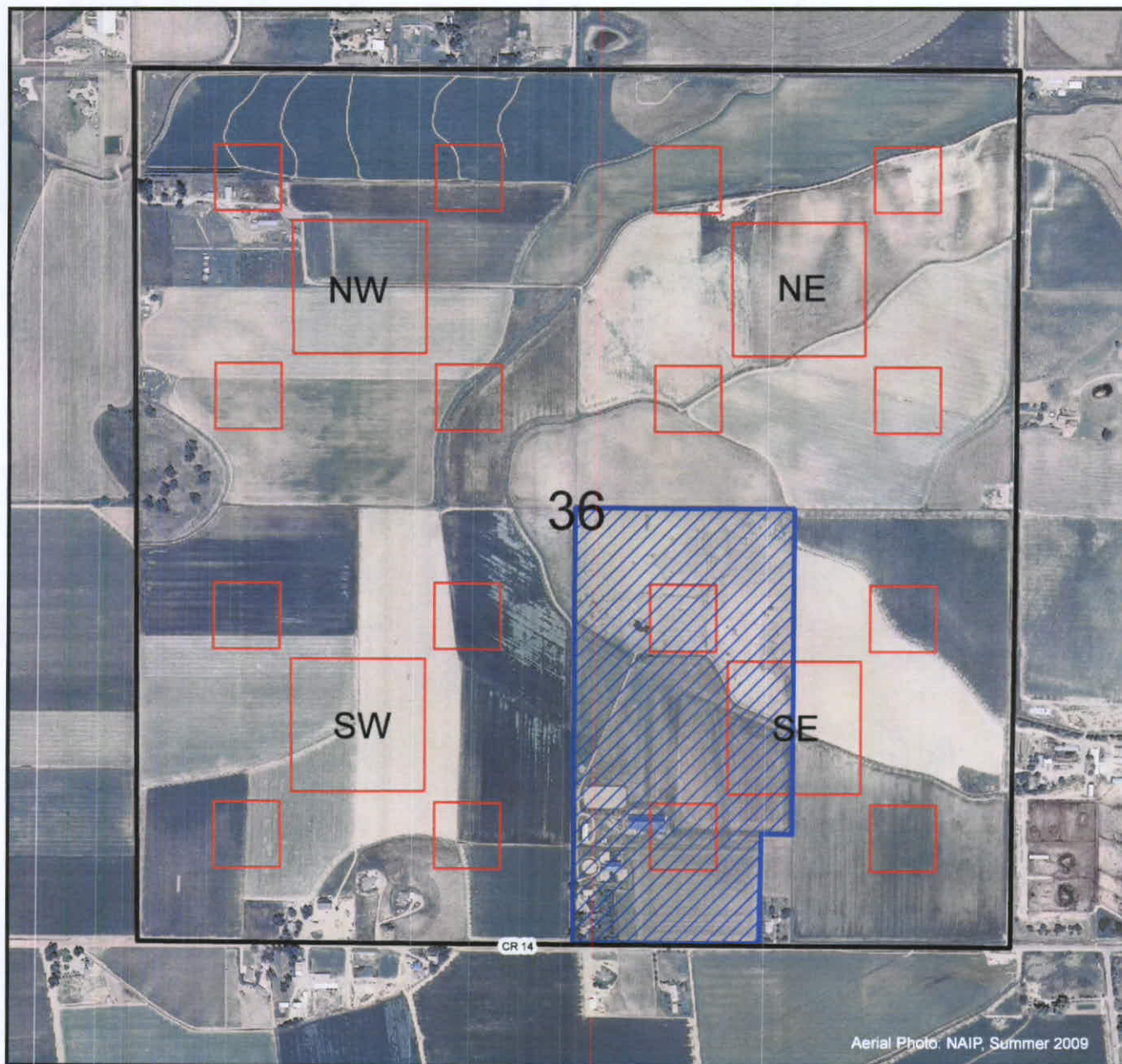
0 250 500 750 1,000 Feet

Legend

- 318A Drilling Windows
- Quarter Section Boundary
- Chase-Sutak Property Outline

ORIGINAL

COGCC Staff Exhibit 2 - Docket No. 1003-GA-06
Proposed Magpie Operating and Chase-Sutak Surface Locations
Section 36 T5N R68W, Larimer County, Colorado



COGCC, March 22, 2010

0 500 1,000 1,500 2,000 Feet

Legend

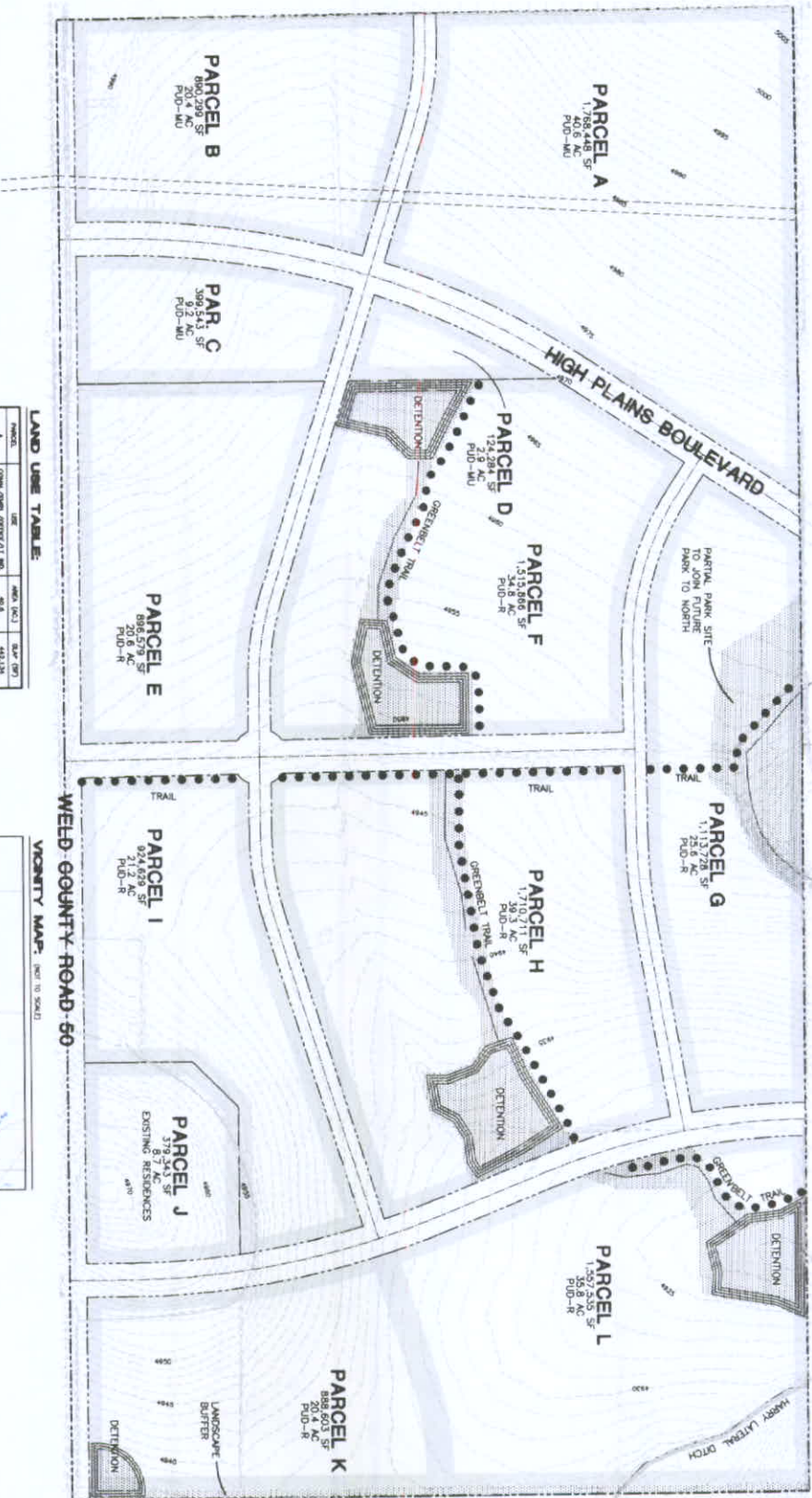
- 318A Drilling Windows
- Section Boundary
- Chase-Sutak Property

ORIGINAL

COGCC Staff Exhibit 1 - Docket No. 1003-GA-06
Location of the Chase-Sutak Property
Section 36 T5N R68W, Larimer County, Colorado

OUTLINE DEVELOPMENT PLAN FOR GBH ANNEXATION

BECING A PART OF THE SOUTHEAST QUARTER SECTION 35 AND THE SOUTHWEST QUARTER SECTION 36, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH P.M., CITY OF LOVELAND, COUNTY OF LARIMER, STATE OF COLORADO



LAND USE TABLE

PARCEL	USE	AREA (AC)	AREA (SQ)
A	COMM/RESIDENTIAL	20.4	880,029
B	COMM/RESIDENTIAL	20.4	880,029
C	COMM/RESIDENTIAL	9.2	399,543
D	COMM/RESIDENTIAL	0.3	13,118
E	COMM/RESIDENTIAL	20.6	898,579
F	COMM/RESIDENTIAL	25.6	1,113,728
G	COMM/RESIDENTIAL	25.6	1,113,728
H	COMM/RESIDENTIAL	39.3	1,710,711
I	COMM/RESIDENTIAL	21.2	924,629
J	EXISTING RESIDENCES	8.7	372,543
K	COMM/RESIDENTIAL	20.4	880,029
L	COMM/RESIDENTIAL	31.1	1,357,302
TOTAL		211.9	8,924,629

VICINITY MAP

