

STATE OF  
COLORADO

02193294

Ferrin - DNR, Jeremy &lt;jeremy.ferrin@state.co.us&gt;

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## Letter regarding Order 1V-564

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**Ferrin - DNR, Jeremy** <jeremy.ferrin@state.co.us>

Thu, Mar 10, 2016 at 12:44 PM

To: jerry@benchmarkenergy.us

Cc: Matt Lepore - DNR &lt;matt.lepore@state.co.us&gt;, Dave Kulmann &lt;dave.kulmann@state.co.us&gt;, "Britta K. Beckstead" &lt;britta.beckstead@coag.gov&gt;, Margaret Ash - DNR &lt;margaret.ash@state.co.us&gt;, Craig Quint - DNR &lt;craig.quint@state.co.us&gt;, Greg Deranleau - DNR &lt;greg.deranleau@state.co.us&gt;, John Axelson - DNR &lt;john.axelson@state.co.us&gt;, Martha Ramos - DNR &lt;Martha.Ramos@state.co.us&gt;, Teri Ikenouye - DNR &lt;teri.ikenouye@state.co.us&gt;, Julie Murphy &lt;Julie.Murphy@state.co.us&gt;

Mr. Nash,

Attached please find a letter from Director Lepore regarding Order 1V-564. An original will be mailed today.

Thanks,

Jeremy I Ferrin

Enforcement Officer



COLORADO

Oil & Gas Conservation  
Commission

Department of Natural Resources

P 303.894.2100 x5186 | F 303.894.2109

1120 Lincoln Street, Suite 801, Denver, CO 80203

[jeremy.ferrin@state.co.us](mailto:jeremy.ferrin@state.co.us) | [www.colorado.gov/cogcc](http://www.colorado.gov/cogcc)**Benchmark - March 10, 2016 Letter.pdf**

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**COLORADO**

**Oil & Gas Conservation  
Commission**

Department of Natural Resources

1120 Lincoln Street, Suite 801  
Denver, CO 80203

March 10, 2016

**Benchmark Energy LLC**  
Attn: Jerry Nash  
PO Box 8747  
Pratt, KS 67124

*Certified Mail, Return Receipt Requested*  
Also by email: [jerry@benchmarkenergy.us](mailto:jerry@benchmarkenergy.us)

**RE: Colorado Oil and Gas Conservation Commission Order 1V-564  
Termination of Operator No. 10380  
Rescission of Form 1, Registration for Oil and Gas Operations  
Foreclosure of Bond Nos. 1060570 & 1060554**

Dear Mr. Nash:

Following up on our conversation from yesterday, this letter is an informational notice regarding Order 1V-564 of the Colorado Oil and Gas Conservation Commission ("Commission"), the right of Benchmark Energy LLC ("Benchmark") to conduct oil and gas operations in the State of Colorado, and the equipment and appurtenances formerly owned by Benchmark.

Order 1V-564 was entered by the Commission on January 26, 2016. The order was signed by the Secretary of the Commission on February 2, 2016, and emailed to you on February 3, 2016 (along with a letter revoking Benchmark's Form 10). The order was mailed by the Commission on February 4, 2016 and departed the USPS Facility on February 5, 2016. Benchmark received Order 1V-564 on February 8, 2016 (see enclosed return receipt). As a courtesy, Order 1V-564 is enclosed again for your benefit. Order 1V-564 required payment of a penalty within 30 days after the order was mailed. The Commission has not received a penalty payment under Order 1V-564 as of March 10, 2016.

Effective immediately, the Commission has terminated Benchmark's Operator Number (No. 10380), rescinded Benchmark's Form 1 (Doc. No. 1663925), and revoked Benchmark's right to conduct oil and gas operations in Colorado. **If**

P 303.894.2100 F 303.894.2109 [www.colorado.gov/cogcc](http://www.colorado.gov/cogcc)

Commissioners: Thomas L. Compton - Chairman, Richard Alward, John H. Benton, DeAnn Craig,

James W. Hawkins, Tommy Holton, Andrew L. Spielman, Mike King, Dr. Larry Wolk

John W. Hickenlooper, Governor | Mike King, Executive Director, DNR | Matthew J. Lepore, Director



**Benchmark conducts oil and gas operations, the Commission will seek additional remedies as provided in the Oil and Gas Conservation Act, §34-60-101 *et seq.*, C.R.S. (“Act”), the Rules and Regulations of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1, and other state law.**

The Commission is foreclosing Benchmark’s existing financial assurance and claiming both the principal and any accrued, but undisbursed, interest that may exist.

The Commission is also authorized to use funds from the Oil and Gas Conservation and Environmental Response Fund as necessary on oil and gas locations previously operated by Benchmark, as well as to claim all equipment, saleable product, and appurtenances from those locations to fund these activities.

Effective immediately, the Commission claims all of Benchmark’s equipment, saleable product, and appurtenances related to Benchmark’s operations. Unless the Commission is notified of any valid liens, security interests, or other legal interests asserted by a taxing authority or Benchmark’s creditors, the equipment and appurtenances are the property of the Commission pursuant to Section 34-60-124(6)(c), C.R.S., of the Act. **Any removal of equipment or appurtenances by Benchmark or other parties without authorization may have legal implications.** We ask that you notify us should a third-party claim an interest in any of the equipment or appurtenances on the Benchmark’s locations, prior to removal, so that the Commission can determine the validity of the claim.

Previously, we discussed the possibility that Benchmark may sell its interest in these properties. I ask that you involve the Commission in any discussions with potential purchasers moving forward.

Benchmark and its successors or assigns remain responsible for complying with Order 1V-564 and repaying any funds expended by the Commission from the Oil and Gas Conservation and Environmental Response Fund.



Mr. Jerry Nash  
Page 3  
March 10, 2016

Sincerely,



for  
Matthew J. Lepore  
Director

Enclosures

By Email CC:

Julie Murphy, COGCC Hearings Manager  
Jeremy Ferrin, COGCC Enforcement Officer  
Margaret Ash, COGCC Field Inspection Manager  
Craig Quint, COGCC Field Inspection Supervisor  
Greg Deranleau, COGCC Environmental Manager  
John Axelson, COGCC East Environmental Supervisor  
Martha Ramos, COGCC Financial Assurance Supervisor  
Teri Ikenouye, COGCC Information Processing Supervisor



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PO Box 8747  
Pratt, Kansas



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*Jennifer Prosser*

C. Date of Delivery

*2/8/16*

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Benchmark did not file the Initial or Supplemental Form 19 for the Unreported Spill. Benchmark also has not filed Supplemental Form 19s for five other releases.

1. Three Spills at the Facility: Tank Battery 1, Tank Battery 2, Unreported Spill

On June 4, 2014, an injection pump failed at the Sec 1 8N54W Tank Battery Facility (Facility No. 437485) ("Facility") and released a reported five to 100 barrels of oil ("Tank Battery 1"). Ex. 10. Benchmark was given an extension to fulfill the corrective actions requirements of the conditionally approved Form 27 regarding this release, but failed to meet the extended deadline and respond to Staff's attempts to communicate regarding these corrective actions. Ex. 3, "Findings," ¶¶9-10.

On June 10, 2014, lightning struck a tank at the Facility and released between a reported one and five barrels of oil and more than 100 barrels of produced water ("Tank Battery 2"). Exs. 11 & 12. Benchmark has not filed a Supplemental Form 19, due on June 20, 2014, for this release. Affidavit of John Axelson ("Axelson Affidavit") ¶6.

On April 13, 2015, the Commission found Benchmark in violation of Rule 906.a., 906.b., and 907.a.(1) regarding Spill 438043. Ex. 3, "Order," ¶1. Pursuant to this Order, Benchmark was required to complete additional soil sampling and provide status reports regarding the remediation of the spill area to COGCC by May 13, 2015. *Id.* at "Order," ¶5. On June 4, 2015, Staff sent Benchmark a letter regarding Benchmark's failure to fulfill the corrective action requirements of Order 1V-496. Ex. 13.

In an August 19, 2015 inspection, Staff requested confirmation soil samples demonstrating that the E&P waste from Spills 438043 and 438744 was adequately removed. Ex. 14. These reports were never submitted and, to COGCC's knowledge, sampling demonstrating compliance with Table 910-1 was never performed. Axelson Affidavit, ¶5-6.

On October 27, 2015, Staff discovered an unreported spill at the Facility from a tank overflow of at least five barrels of oil and produced water ("Unreported Spill"). Ex. 15. The unreported spill at the Facility is estimated to have impacted a total area of 1,761 square feet and resulted in 110 barrels of released oil and produced water. Ex. 16. During a November 6, 2015 inspection, Staff observed oil and water within secondary containment and that the spill had not been cleaned up in accordance with Commission rules. Ex. 17. Benchmark has not removed any soils or taken samples to demonstrate compliance with Table 910-1 at the site of this release. Axelson Affidavit, ¶7. Benchmark has not filed an Initial Form 19, due on October 30, 2015, or Supplemental Form 19, due on November 6, 2015, for this release. *Id.*

The Commission finds Benchmark in violation of: (1) Section 34-60-121(1), C.R.S., of the Oil and Gas Conservation Act ("Act") for the failure to comply with the requirements of Order 1V-496 for the clean-up and remediation of Tank Battery 1; (2) Rule 906.a. (Spills and Releases, General) for the failure to investigate, clean-up, and document Tank Battery 2 and the Unreported Spill as soon as practicable; and (3) Rule

906.b. (Spills and Releases, Reporting) for the failure to file both an Initial and Supplemental Form 19 for the Unreported Spill and a Supplemental Form 19 for Tank Battery 2.

## 2. Two Spills at the 5-W Well: #5-W Spill 1 and #5-W Spill 2

On August 18, 2014, a release of oil and produced water occurred at the NW Graylin D-Sand Unit 5-W Well (API No. 05-075-05971) (“5-W Well”) during an excavation of a flowline due to a previous spill (“#5-W Spill 1”). Ex. 19. Benchmark reported that between five and 100 barrels of oil and produced water were spilled. *Id.* The spill was not contained, because rain had already washed it down the pathway. *Id.* On August 19, 2014, Staff observed that the release had impacted an area of approximately 175 feet by 100 feet. Ex. 20. In the inspection report, Staff required Benchmark to remove and remediate the impacted soils. *Id.* Benchmark has not removed any soils or taken samples to demonstrate compliance with Table 910-1 at the site of this release. Axelson Affidavit, ¶8. As of today’s date, Benchmark has not filed a Supplemental Form 19 with COGCC for this release, which was required by August 28, 2014. *Id.*

On October 15, 2014, a second release of a reported five to 100 barrels of produced water occurred at the wellhead of the 5-W Well due to a flowline system failure (“#5-W Spill 2”). Ex. 22-26. Benchmark had not taken any action regarding this release at a November 6, 2014 inspection. Ex. 28. During the August 19, 2015 and November 6, 2015 inspections, Staff observed large areas with stressed or no vegetation. Exs. 29 & 30. In the inspection reports, Staff requested soil sampling and analysis, which has not been received. *Id.* Benchmark has not removed any soils or taken samples to demonstrate compliance with Table 910-1 at the site of this release. Axelson Affidavit, ¶9. As of today’s date, Benchmark has not filed a Supplemental Form 19 with COGCC for this release, which was required by October 25, 2014. *Id.*

The Commission finds Benchmark in violation of: (1) Rule 906.a. (Spills and Releases, General) for the failure to investigate, clean-up, and document the #5-W Spill 1 and #5-W Spill 2 as soon as practicable; and (2) Rule 906.b. (Spills and Releases, Reporting) for the failure to file Supplemental Form 19 for the #5-W Spill 1 and #5-W Spill 2.

## 3. One Spill at the 33-Well: #33 Flowline

On July 10, 2015, a release of a reported five to 100 barrels of oil and produced water occurred at the NW Graylin D-Sand Unit 33 Well (API No. 05-075-05908) (“33 Well”) as a result of a flowline failure (“#33 Flowline”). Ex. 28. Benchmark removed thirty cubic yards of soil. *Id.* This release impacted 100 feet by 60 feet of surface area. Ex. 29. In an August 19, 2015 inspection, Staff requested soil sampling and soil disposal documentation. Ex. 30. To Staff’s knowledge, the soils remain out of compliance with Table 910-1 and the disposition of the oily waste has not been reported. Axelson Affidavit, ¶10.

The Commission finds Benchmark in violation of Rule 906.a. (Spills and Releases, General) for the failure to investigate, clean-up, and document the #33 Flowline as soon as practicable.

#### 4. Two Spills at the 20-W Well: #20-W Flowline and #20-W Wellhead

On July 24, 2015, a release from a flowline of a reported five and 100 barrels of produced water (“#20-W Flowline”) occurred at the 20-W Well NW Graylin D-Sand Unit 20-W Well (API No. 05-075-05972) (“20-W Well”). Ex. 31 & 32. Russell Adels, the landowner, discovered the release while crossing an adjacent field with farming equipment. Ex. 33. During a July 24, 2015 inspection, Staff observed an impacted area of standing water, which was not the result of precipitation, in all directions from the release point. Ex. 34. Benchmark has not removed any soils or taken samples to demonstrate compliance with Table 910-1 at the site of this release. Axelson Affidavit, ¶11. As of today’s date, Benchmark has not filed a Supplemental Form 19 with COGCC for this release, which was required by August 3, 2015. *Id.*

On August 10, 2015, a release at the wellhead of a reported five and 100 barrels of E&P waste occurred at the 20-Well (“#20-W Wellhead”). Exs. 35 & 36. During an August 10, 2015 inspection, Staff observed the active release originating from the wellhead. Ex. 36. Staff required Benchmark to keep the 20-W Well shut-in, perform flowline integrity tests, and remove and remediate contaminated soils. *Id.* Benchmark has not removed any soils or taken samples to demonstrate compliance with Table 910-1 at the site of this release. Axelson Affidavit, ¶12. As of today’s date, Benchmark has not filed a Supplemental Form 19 with COGCC for this release, which was required by August 20, 2015. *Id.*

The Commission finds Benchmark in violation of: (1) Rule 906.a. (Spills and Releases, General) for the failure to investigate, clean-up, and document the #20-W Flowline and #20-W Wellhead as soon as practicable; and (2) Rule 906.b. (Spills and Releases, Reporting) for the failure to file Supplemental Form 19 for the #20-W Flowline and #20-W Wellhead.

#### ***B. Failure to Maintain Mechanical Integrity, Submit Production Reports, and Remove Workover Debris at the 20-W Well***

Benchmark returned the 20-W Well, an underground injection control (“UIC”) well, to injection before passing a successful Mechanical Integrity Test (“MIT”). Since returning the Well to injection, Benchmark has failed to submit production reports and clean up cement debris from workover operations undertaken more than a year ago.

##### 1. Mechanical Integrity and Production Reporting for the 20-W Well

Rule 309 requires operators to report all existing oil and gas wells that are not plugged and abandoned on the Operator’s Monthly Report of Operations, within 45 days after the end of each month. Benchmark has not submitted a Form 7, Monthly Report of Operations, to the COGCC for the 20-W Well since December 2014. Ex. 37.

Rule 326.e. requires operators to maintain a well's mechanical integrity and immediately shut-in all injection wells which are determined to lack mechanical integrity.<sup>1</sup> Pursuant to Rule 326.a.(1), a satisfactory MIT on an injection well must be performed with a packer set at 100 feet or less above the highest open injection zone perforation, unless otherwise approved by Staff.

On September 16, 2014, the 20-W Well failed an MIT. Ex. 38. COGCC Field Inspector Kym Schure required Benchmark to shut-in the Well until it could successfully pass an MIT and to contact COGCC Engineering for compliance directives. *Id.* On October 13, 2014, Benchmark tried pressure testing the 20-W Well's casing with a packer set at approximately 4870 feet (153 jts) and approximately 4450 feet (140 jts) and both tests failed. Amended Affidavit of Dirk Sutphin ("Sutphin Affidavit"), ¶7. Inspector Schure reiterated that a COGCC witnessed MIT must be performed satisfactorily and COGCC Engineering approval must be obtained prior to returning the Well to service. Ex. 39.

On October 14, 2014, COGCC Engineer Dirk Sutphin approved a casing repair at the 20-W Well consisting of: squeeze holes at 3230-3524 feet, a cement retainer at 3432 feet, and a wireline set plug at 3610 feet. Sutphin Affidavit, ¶8. That day, Benchmark performed an MIT on the well with the packer set at 3630 feet, which is 1,314 feet above the D-Sands perforations. *Id.* at ¶9; Ex. 40. This MIT was inadequate to demonstrate mechanical integrity pursuant to Rule 326, which requires MITs to be performed on injection wells with the packer set within 100 feet of the highest open injection zone perforations. Sutphin Affidavit, ¶6.

On October 14, 2014, Benchmark notified Inspector Schure that Engineer Sutphin had granted verbal approval to return the well to service. Ex. 40. In November 2014, Benchmark returned the Well to injection without passing the MIT required by Rule 326. Exs. 37 & 42. Engineer Sutphin never gave approval to return the 20-W Well to injection. Sutphin Affidavit, ¶10. The 20-W Well has still not passed an MIT demonstrating mechanical integrity for the purposes of Rule 326. *Id.* at ¶12.

The Commission finds Benchmark in violation of: (1) Rule 326 (Mechanical Integrity) for the failure to maintain mechanical integrity at the 20-W Well; and (2) Rule 309 (Form 7, Operator's Monthly Report of Operations) for the failure to file production reports for the 20-W Well from January 2015 to January 2016.

## 2. Workover Debris at the 20-W Well

Rule 1003.a. requires operators to remove debris and waste materials, including concrete, plastic pipes, and cables. On October 17, 2014, Staff received a complaint from the landowner, Russell Adels, regarding surface damage from workover operations, which was confirmed by Staff. Exs. 44 & 45. In May, August, and September of 2015, Staff received complaints from the surface owner and observed

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<sup>1</sup> This subsection became Rule 326.f. as of January 30, 2015.

that the corrective actions regarding the workover damage had still not been performed. Exs. 46-49. To the best of Staff's knowledge, the cement debris from the October 2014 workover operations remain on the site. Axelson Affidavit, ¶13.

The Commission finds Benchmark in violation of Rule 1003.a. (Interim Reclamation) for the failure to remove cement debris from workover operations at the 20-W Well.

### ***C. Penalty Calculation***

The Commission finds that Benchmark's violations described above had moderate impacts, except for the Rule 309 violation. The violation for failure to maintain mechanical integrity at the 20-W Well is classified as moderate as a result of the threat of significant adverse impacts, especially with the return of the well to injection. Sutphin Affidavit, ¶13. The violations regarding the order, spills and releases, and the workover debris impacted areas beyond the footprint of the oil and gas location, contaminating soil, exposing livestock and wildlife to E&P waste, and creating an ongoing loss of the surface owners' productive land. Axelson Affidavit, ¶14. However, in order to make the penalty appropriate to the nature of the violations pursuant to §34-60-121(1)(c)(I), C.R.S., and in light of the number of violations, the daily penalty was reduced to that of a minor penalty. The Commission imposes a \$1,267,555 penalty for these violations.

## **II. Benchmark's Pattern of Violations**

Pursuant to the Act, if the Commission determines there is "evidence that an operator is responsible for a pattern of violation" of the Act, or Commission rules, orders, or permits, "it may issue an order that prohibits the issuance of any new permits to the operator, suspends any or all of the operator's certificates of clearance, or both." §34-60-121(7), C.R.S. Pursuant to Rule 523.d.(3), the Commission will "consider an operator's history of violations of the Act, or Commission rules, orders, or permits and any other factors relevant to objectively determining whether an operator has engaged in a pattern of violations."

The Commission has entered four prior enforcement orders finding Benchmark in violation of Commission requirements over the past two years. On May 6, 2013, the Commission found Benchmark in violation of Commission rules regarding production reporting, temporary abandonment, and mechanical integrity at five wells – for a total of 13 violations. Ex. 1. On September 16, 2013, the Commission found Benchmark in violation of Rule 1004 for the failure to properly reclaim a produced water pit, which was not corrected until more than a year after the unsatisfactory inspection report. Ex. 2. On April 13, 2015, the Commission found Benchmark in violation of Commission rules regarding the reporting, cleaning up, and transport of E&P waste from a release of hydrocarbons. Ex. 3. On May 18, 2015, the Commission found Benchmark in violation of various field-inspection rules, including those related to unused equipment and debris, signs, berms, and interim reclamation, at six wells – for a total of 14 violations. Ex. 4.

There are three patterns of violation that mark Benchmark's compliance history. First, Benchmark has previously violated Commission rules regarding mechanical integrity. In the current case, Benchmark began injection into a UIC Well that did not have mechanical integrity. Second, Benchmark has previously violated Commission rules regarding site conditions, such as unused equipment and debris. In the current case, Benchmark has allowed cement debris from a workover operation to remain onsite for over a year. Lastly, the Commission previously found Benchmark in violation of rules regarding spills and releases. Not only did Benchmark fail to comply with the order regarding that release, eight releases have occurred within the last year and a half at Benchmark's facilities. None of those releases have been fully documented, cleaned up, or remediated.

There are also patterns present in the recent violations of Rule 906.a. and 906.b. First, four of the eight spills were the result of a loss of flowline integrity. Second, six of the eight spills were discovered by either a COGCC inspector or the landowner, not the operator. Lastly, eight spills were not properly cleaned up and six spills were not properly reported in the last year and a half.

Taking into account the violations currently at issue, as well as those confirmed in prior orders, the Commission finds that Benchmark has engaged in a pattern of violations pursuant to Section 34-60-121(7), C.R.S., and Rule 523.d.(3).

### ORDER

NOW, THEREFORE, the COMMISSION ORDERS:

1. Benchmark is found in violation of Section 34-60-121(1), C.R.S., of the Act and Rules 309, 326, 906.a., 906.b., and 1003.a., for the reasons described above.

2. Benchmark is assessed a total penalty of \$1,267,555 for these violations. Benchmark will pay \$1,267,555 within 30 days after this Order is mailed by the Commission.

3. Benchmark is found to have engaged in a pattern of violations pursuant to Section 34-60-121(7), C.R.S., and Rule 523.d.(3). The Director is authorized to immediately suspend Benchmark's Form 10, Certification of Clearance, as to all of Benchmark's wells, and withhold the issuance of any new drilling or oil and gas location permits, until Benchmark demonstrates to the satisfaction of the Director that the operator has brought all violations into compliance and that any penalty assessed has been paid.

4. If Benchmark fails to pay the penalty and/or return to compliance within 30 days, Staff is authorized to take the following actions:

- a. Terminate Benchmark's Operator Number (No. 10380), rescind Benchmark's Form 1 (Doc. No. 1663925), and revoke Benchmark's right to conduct oil and

gas operations in Colorado, until Benchmark demonstrates at a Commission hearing that Benchmark has brought all violations into compliance, any penalty assessed has been paid, and that re-instating Benchmark's Form 1 will not threaten, or actually impact, public health, safety, and welfare, including the environment and wildlife resources;

- b. Foreclose Benchmark's existing financial assurance and claim both the principal and any accrued, but undisbursed, interest that may exist;
- c. Use funds from the Oil and Gas Conservation and Environmental Response Fund to investigate, prevent, monitor, or mitigate conditions that threaten to cause, or that actually cause, significant adverse environmental impacts at oil and gas locations operated by Benchmark; and
- d. Claim all equipment, saleable product, and appurtenances related to Benchmark's operations, if any, as property of the Commission should Staff initiate any of the activities described in subpart (c) above, provided that any proceeds from the disposition of the assets will be applied to any work undertaken by the Commission.

5. Benchmark, or its successors or assigns, to comply with the order entered by the Commission and repay any funds expended by the Commission from the Oil and Gas Conservation and Environmental Response Fund for any work undertaken by Staff.

6. Entry of this Order constitutes final agency action for purposes of judicial review 30 days after the date this Order is mailed by the Commission. For all other purposes, this Order is effective as of the date it is approved by the Commission.

7. The Commission expressly reserves its right after notice and hearing, to alter, amend, or repeal any and/or all of the above Order.

=====

ENTERED this 2<sup>nd</sup> day of February, 2016 as of the 26<sup>th</sup> day of January, 2016.

OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

By  \_\_\_\_\_  
Julie Murphy, Secretary

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Bench mark - 3/10/16 Letter

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Benchmark Energy LLC  
Attn: Jerry Nash  
PO Box 8747  
Pratt, KS 67124



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