

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

IN THE MATTER OF THE APPLICATION OF )	CAUSE NO. 535
BISON EXPLORATION, LLC FOR AN ORDER )	
ESTABLISHING AN APPROXIMATE 1,600- )	DOCKET NO. 180300216
ACRE DRILLING AND SPACING UNIT, AND )	
ESTABLISHING WELL LOCATION RULES )	TYPE: SPACING
APPLICABLE TO THE DRILLING AND )	
PRODUCING OF WELLS FROM THE )	
NIOBRARA FORMATION COVERING )	
CERTAIN LANDS IN SECTIONS 2, 3, AND 4, )	
TOWNSHIP 3 SOUTH, RANGE 66 WEST, )	
6 <sup>TH</sup> P.M., UNNAMED FIELD, DENVER AND )	
ADAMS COUNTIES, COLORADO )	

and

IN THE MATTER OF THE PROMULGATION )	CAUSE NO. 535
AND ESTABLISHMENT OF FIELD RULES )	
TO GOVERN OPERATIONS FOR THE )	DOCKET NO. 180300216
NIOBRARA FORMATION, UNNAMED )	
FIELD, DENVER AND ADAMS )	TYPE: SPACING
COUNTIES, COLORADO )	

**PROTEST AND INTERVENTION BY AURORA CONVENTION CENTER HOTEL  
LLC AND RIDA DEVELOPMENT CORP**

Pursuant to Commission Rule 509, AURORA CONVENTION CENTER HOTEL, LLC, AURORA10 LAND, LLC, AND RIDA HIGH POINT LAND, LLC ("Protestants"), by its undersigned counsel, file this protest and intervention by right ("Protest") to the Application submitted by Bison Exploration, LLC ("Applicant"), and received by the Colorado Oil and Gas Conservation Commission ("COGCC") on January 26, 2018.

**A. GENERAL STATEMENT OF FACTUAL AND/OR LEGAL BASIS FOR THE  
PROTEST AND INTERVENTION**

1. Applicants filed an Application for an Order establishing an approximate 1,600-acre drilling and spacing unit, and establishing well location rules applicable to the drilling and producing of wells from the Niobrara formation covering certain lands in Sections 2, 3 and 4, Township 3 South, Range 66 West, 6<sup>th</sup> P.M., unnamed field, Denver and Adams Counties, Colorado ("Application"), which was received by the COGCC on January 26, 2018.

2. Applicants requested a hearing date, as part of its Application.

3. Per the notices received in the office of Fairfield and Woods, P.C., the hearing date is scheduled for June 11-12, 2018.

4. Protestants are authorized to transact business in the State of Colorado.

5. Protestants are owners of property interests on, within and under a portion of the Application Lands, as defined in the Application.

6. The property owned by Protestants, collectively, covers roughly 215 acres of the Application Lands area, as illustrated in Exhibit A ("Property").

7. Approximately 85 acres of the Property within the boundaries of the Application Lands lie within a Regional Tourism Zone, a land area expected to generate a substantial increase in out-of-state tourism and a significant portion of sales tax revenue for the state through the development of the Gaylord Rockies Resort and Convention Center.

8. The Gaylord Rockies Resort and Convention Center, costing over \$800 Million is over 90% complete and will open December 18, 2018.

9. Rockies Village is an entitled development within the Property designed to support the Gaylord Rockies Resort and Convention Center.

10. To the best of Protestants knowledge, Applicant neither owned nor leased any mineral rights within the Application Lands at the time of the Protestants substantial investment in the minerals, the Property and the development thereon.

11. To protect residential and non-residential development, Protestants purchased, own, or control 100% of the minerals underlying the Property within Section 2 and over 50% of the minerals underlying the Property within Section 3. Protestants have not leased the minerals to Applicant.

12. Applicants owns no subsurface easements to access Protestants minerals.

13. Protestants ownership interests are insubstantial in relation to area within the Application Lands, therefore substantial waste or substantial injury to the state's interest is unlikely if the spacing plan avoids the Property.

14. Six wells were drilled, dry, abandoned and plugged within the Property, supporting the belief that additional drilling will not be economic or efficient and that substantial waste is unlikely if the spacing plan avoids the Property.

15. The public interest will be served by, and the public issues warrant, a review of the public health, safety and welfare issues surrounding the potentially significant adverse impacts to Protestants property rights and interests.



16. Mitigation of potential impacts to the Property have not been adequately addressed by the Application and Protestants request a hearing to minimize the extent and severity of impacts.

17. The Application, without maximizing the mitigation measures, may adversely affect public health, safety and welfare, take or damage private mineral and surface rights, negatively impact economic investments and projections, and harm the public interest.

18. The Commission has a duty to foster the responsible, balanced development of oil and gas natural resources and to protect public health, safety and welfare. It also has the authority to prevent waste and the drilling of unnecessary or uneconomic wells, and to protect correlative rights. C.R.S. §§34-60-102, 116.

19. Applicant is asking the Commission to use its statutory authority under the Oil and Gas Act to decrease the unit size to remove the Property, or minimally increase the spacing unit within the boundaries of the Property to avoid the subsurface area below the Gaylord Rockies Resort and Convention Center.

20. Upon information and belief, current market conditions are not favorable to the owner of mineral interests. Protestants are the owner of mineral interests within the Application Lands and hold them for its future benefit. Protestants do not find it economically beneficial to move forward with development of its mineral interests at this time. Granting the Application may lead to Protestants' mineral rights being taken without due process of law and just compensation in violation of the United States and Colorado Constitutions.

21. Applicant's actions in draining the resources under the Property impair ACCH's correlative rights by preventing ACCH from developing their minerals at a later time and a better price.

22. Any access to the surface or subsurface property constitutes a trespass to the ownership rights and interests of the Protestants.

23. Approval of the Application may violate current or future local land use regulations, policies or procedures.

24. Protestants request that the Commission deny the Application for the reasons set forth above.

25. Protestants reserve all other objections which they have the right to present, as well as the right to amend this Protest.

## **B. RELIEF REQUESTED**

WHEREFORE, Protestants respectfully requests the following relief:

1. That the Commission deny the Application and enter such other findings and orders as the Commission may deem proper or advisable in this matter to avoid use of Protestants Property and its interests thereon, therein and thereunder;
2. That Protestants be allowed to participate as an Owner in this matter; and
3. Request order directing parties to engage in Prehearing conference in accordance with Rule 527.
4. Request the Commission to limit the production of oil and gas in order to protect ACCH's correlative rights, under C.R.S. §34-60-117.

## **C. RESERVATION OF RIGHTS**

Protestants reserve all rights to supplement this Protest with additional factual information and/or legal arguments and to request additional relief. Protestants further reserve the right to require Applicant to prove its case, and to file any motions or other responsive pleadings to the Application based upon this Commission's Scheduling Order.

## **D. REQUEST FOR IMMEDIATE SCHEDULING ORDER**

Protestants respectfully requests that the Commission Hearing Officer issue a Scheduling Order including, but not limited to, the following dates:

1. Motions Deadline, including dates to file motions, responses to motions and replies to motions and any necessary briefs in support;
2. Disclosure and Discovery Schedule;
3. Pre-Hearing Statement Deadline;
4. Witness List Deadline;
5. Exhibit List and Submission of Exhibit Deadline;
6. Deadline for Submission of Draft Order; and
7. Rule 508 hearing procedures.

Protestants respectfully request that they be provided with a complete list of all interested parties in this Docket.

#### **E. DESCRIPTION OF INTENDED PRESENTATION**

1. Protestants will present testimony and evidence in support of the facts and arguments stated within this Protest.

2. Protestants may present representatives to identify their interests, witnesses, the individual completing the mineral search, representatives from the City of Aurora regarding the use and density of approved and vested development applications within the Applications Land, and an oil and gas operations expert. Protestants reserve the right to present additional witnesses as necessary to supplement the above facts and/or rebut any evidence, argument or witness testimony presented by Applicant at its hearing.

#### **F. TIME ESTIMATE FOR PROTEST**

Protestants estimate that it will require less than one hour to present their evidence and testimony, in support of this Protest and in response to Applicant's case.

DATED this 25<sup>th</sup> day of May, 2018.

Respectfully submitted,

FAIRFIELD AND WOODS, P.C.

By:



Rita M. Connerly (#19795)

1801 California Street, Suite 2600

Denver, CO 80202

Telephone: 303-894-4411

Email: [rconnerly@fwlaw.com](mailto:rconnerly@fwlaw.com)




## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PROTEST AND INTERVENTION BY AURORA CONVENTION CENTER HOTEL, LLC AND RIDA DEVELOPMENT CORP**, has been hand delivered or served electronically this 25<sup>th</sup> day of May, 2018 to the following entities that require notice of such filing and an original and two copies and one electronic copy have been delivered or filed with the COGCC:

Joseph C. Pierzchala  
Geoffrey W. Storm  
Welborn Sullivan Meck & Tooley, P.C.  
1125 17<sup>th</sup> Street, Suite 2200  
Denver, Colorado 80202  
[jpierzchala@wsmtlaw.com](mailto:jpierzchala@wsmtlaw.com)  
[gstorm@wsmtlaw.com](mailto:gstorm@wsmtlaw.com)

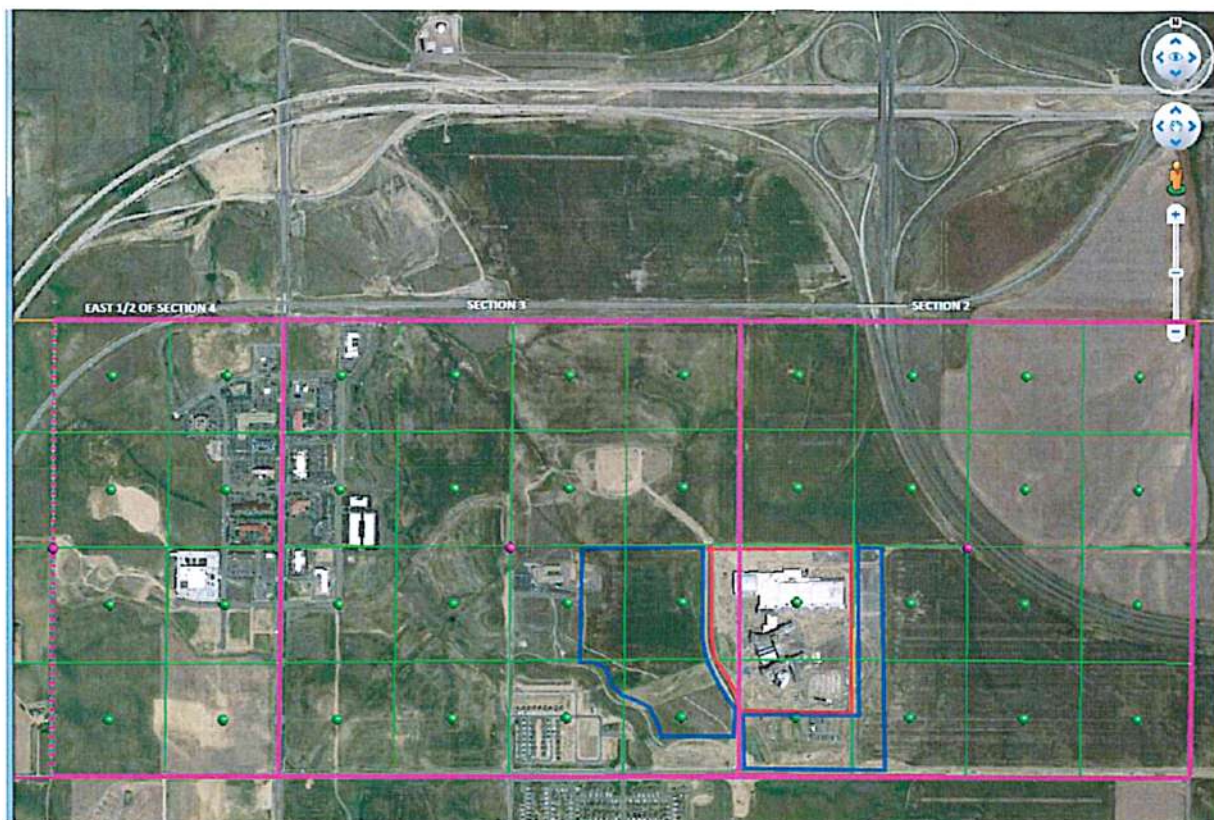
Colorado Oil and Gas Conservation Commission  
The Chancery Building  
1120 Lincoln Street, Suite 801  
Denver, Colorado 80203  
[Cogcc.hearings\\_unit@state.co.us](mailto:Cogcc.hearings_unit@state.co.us)

Bison Exploration, LLC  
Attn: Pam Kingery  
370 17<sup>th</sup> St., Suite 5300  
Denver, CO 80202

  
\_\_\_\_\_  
Debra P. Simon

1909146.3

EXHIBIT A







STATE OF  
COLORADO

Peskin - DNR, Jon <jon.peskin@state.co.us>

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**Re: Docket No. 180300216**

2 messages

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**Nicholas N. Dyer** <NDyer@fwlaw.com>

Wed, Jul 8, 2020 at 9:40 AM

To: "jon.peskin@state.co.us" <jon.peskin@state.co.us>

Cc: "Rita M. Connerly" <rconnerly@fwlaw.com>, "JPierzchala@wsmtlaw.com" <JPierzchala@wsmtlaw.com>, "gstorm@wsmtlaw.com" <gstorm@wsmtlaw.com>, "mmorman@wsmtlaw.com" <mmorman@wsmtlaw.com>

Dear Mr. Peskin –

I am a colleague of Ms. Rita Connerly's, and we represent Aurora Convention Center Hotel, LLC, Aurora10 Land, LLC, and Rida High Point Land, LLC (collectively, "ACCH") in this matter. ACCH respectfully withdraws its Protest to the Application in DN 180300216.

We have conferred with counsel for Applicant, and we are authorized to represent that they do not oppose the withdrawal. Please do not hesitate to reach out to Ms. Connerly or myself with any further concerns.

Regards,

Nicholas Dyer

Nicholas N. Dyer

Of Counsel

Fairfield and Woods P.C.

1801 California Street, Suite 2600

Denver, Colorado, 80202

Email: [ndyer@fwlaw.com](mailto:ndyer@fwlaw.com)

Direct Dial: (303) 894-4477

Cell: (435) 740-4691

Fax: (303) 830-1033

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**Peskin - DNR, Jon** <jon.peskin@state.co.us>

Wed, Jul 8, 2020 at 5:12 PM

To: "Nicholas N. Dyer" <NDyer@fwlaw.com>

Cc: "Rita M. Connerly" <rconnerly@fwlaw.com>, "JPierzchala@wsmtlaw.com" <JPierzchala@wsmtlaw.com>, "gstorm@wsmtlaw.com" <gstorm@wsmtlaw.com>, "mmorman@wsmtlaw.com" <mmorman@wsmtlaw.com>

Mr. Dyer -

Thank you for notifying me regarding the withdrawal, which is granted.

Mr. Storm -

Given the age of this docket, I want the 511 testimony filed ASAP. Your client has until July 29th to submit same. Thank you -

Jonathan Peskin, Esq.  
Hearing Officer



**COLORADO**  
Oil & Gas Conservation  
Commission  
Department of Natural Resources

P 303.894.2100 x 5160 | F 303.894.2109  
[1120 Lincoln Street, Suite 801, Denver, CO 80203](https://www.colorado.gov/cogcc)  
[jon.peskin@state.co.us](mailto:jon.peskin@state.co.us) | [www.colorado.gov/cogcc](https://www.colorado.gov/cogcc)

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

IN THE MATTER OF THE <b>AMENDED</b>	)	Cause No. 535
APPLICATION OF <b>AXIS EXPLORATION, LLC</b>	)	
<del>VISION OIL &amp; GAS, LLC</del> FOR AN ORDER	)	
ESTABLISHING AN APPROXIMATE <b>1906.96-</b>	)	<b>Docket No. 180300216</b>
<b>ACRE</b> 4,600-ACRE DRILLING AND SPACING	)	
UNIT AND ESTABLISHING WELL LOCATION	)	Type: SPACING
RULES APPLICABLE TO THE DRILLING AND	)	
PRODUCING OF WELLS FROM THE	)	
NIOBRARA FORMATION COVERING CERTAIN	)	
<del>LANDS IN</del> SECTIONS 2, 3, and 4, TOWNSHIP	)	
3 SOUTH, RANGE 66 WEST, 6 <sup>TH</sup> P.M.,	)	
UNNAMED FIELD, DENVER AND ADAMS	)	
COUNTIES, COLORADO	)	

**PROTEST**

The City and County of Denver, on behalf of its Department of Aviation which owns and operates Denver International Airport ("**DEN**"), pursuant to Rule 509 and the Amended Notice of Hearing issued by the Commission on September 24, 2018, submits this protest to the Amended Application of Axis Exploration, LLC ("**Axis**" or "**Applicant**") in the above captioned matter. As grounds for this Protest, DEN states as follows:

**A. Protesting party.**

1. DEN is an agency of the City and County of Denver, a home-rule municipal corporation of the State of Colorado ("**Denver**").

**B. Background.**

1. On January 18, 2018, as amended September 24, 2018, Axis submitted an **Application** to establish an approximate 1907-acre drilling and spacing unit covering the **Amended Application Lands** described below for production of oil, gas, and associated hydrocarbons from the Niobrara Formation, and approval of up to 16 horizontal wells within that unit:

Township 3 South, Range 66 West, 6<sup>th</sup> P.M.

Section 2: All  
Section 3: All  
Section 4: All

2. DEN owns surface and mineral rights in the western ½ of Section 4 and the northern ½ of Section 2, and is an adjoining land and mineral owner on the northern boundary of Section 3. The boundaries of Denver International Airport abut the northern boundary of the Application Lands in Section 2.



### C. Intervention as of Right.

1. Under COGCC Rule 509, "Intervention shall be granted by right and without fee to the relevant local government, ....."
2. The City and County of Denver is a relevant local government, since a portion of the proposed Amended Application Lands lies within the corporate boundaries of the City and County of Denver. DEN also owns significant mineral rights within the Amended Application Lands.
3. The Application raises potential significant adverse impacts to public health, safety and welfare, including environment and wildlife resources, that are within the Commission's jurisdiction to remedy.
4. DEN asserts that the proposed mineral development described in the Amended Application Lands and on the surface location described by Applicant will adversely affect and threaten the viability of existing and future environmental, public use, and wildlife resources, including:
  - a. The existing First Creek Open Space on land owned by DEN in Section 4; and
  - b. A planned future scenic overlook and bison enclosure on the west side of Section 4 on land owned by DEN; and
  - c. An existing Bald Eagle observation stand overlooking eagle winter range on the neighboring Rocky Mountain Arsenal National Wildlife Refuge.
5. DEN asserts that the proposed development described in the Amended Application will adversely affect public safety and welfare by interfering with operations at Denver International Airport.
6. DEN asserts that the proposed development described in the Amended Application will adversely affect public safety and welfare by potentially damaging current or future airport infrastructure.
7. Certain regulations promulgated by the Federal Aviation Administration ("**FAA**") will apply to Applicant's activities in the Amended Application Land, and these are not addressed in the Application.
  - a. Specifically, the Amended Application Lands are near approaches to existing Runways, and lie within the Title 14 CFR Part 77 Navigable Airspace Surfaces associated with DEN. A temporary drill rig may exceed an instrument approach area and aeronautical study is needed to determine if it will exceed a standard of subpart C of 14 CFR Part 77. The FAA, in accordance with Part 77.9 requires the proponent to file an FAA Form 7460-1 (Notice of Proposed Construction or Alteration) in order to complete an FAA aeronautical study. See FAA Advisory Circular 70/7460-2K. The FAA website from which the proponent may file FAA Form 7460-1 online is: <https://oeaaa.faa.gov/oeaaa/external/portal.jsp>.
  - b. The Amended Application Lands also are within the Airport Height Overlay District of the Adams County Development Standards and Regulations. Per 3-32-04-01 of the Regulations, "Applicants requesting conditional uses must complete

an FAA aeronautical study on obstructions to determine of the proposed development could be a hazard to air navigation.”

8. A number of potential impacts were not adequately addressed by the Application and are potential impacts are not adequately addressed by the rules and regulations of the Commission.
9. DEN requests that public uses and wildlife assets, airport operations, and airport infrastructure be protected by the Commission.
10. DEN requests the Commission make compliance with FAA requirements a condition of any approval of Applicant's request.

**D. Additional Protests based on Mineral Interests.**

1. This proposed unit will cause waste and injure the correlative rights of the off-set mineral owners, including DEN.
2. **The Applicant does not state adequate reasons to support this proposed spacing unit in its Application, including the addition of the northern half of Section 2 and the western half of Section 4 in which Applicant has no interests.**
3. DEN objects that Applicant does not comply with location of a well under Rule 318a, which mandates a six hundred (600) foot setback from any lease line.
4. **DEN is a governmental entity and therefore not subject to involuntary inclusion in a spacing unit or to forced development of its minerals.**
5. **DEN is a governmental entity and therefore has a right to object to a horizontal lateral penetrating DEN minerals without its consent.**
6. **DEN owns a significant percentage of the mineral interests in the proposed spacing unit, and it does not want to develop its minerals at this time.**

**E. Conclusion.**

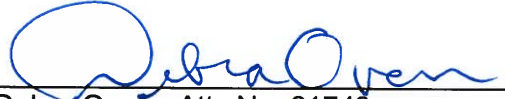
1. **DEN reserves all rights to amend or supplement this Protest, and the right to file any additional motions or other responsive pleadings.**
2. At this time, DEN estimates that three witnesses will present evidence in this matter, including DEN's oil & gas operations contractor, and representatives of DEN's Real Estate and Environmental Services divisions. DEN estimates 2 hours will be required to present its testimony and rebut Axis's testimony.

**WHEREFORE**, the City and County of Denver, on behalf of its Department of Aviation which owns and operates Denver International Airport, requests that the Commission deny Axis's Amended Application, and for such other relief as the Commission deems necessary or advisable.

**DATED this 15<sup>th</sup> day of October, 2018.**

Respectfully submitted,

KRISTIN M. BRONSON,  
City Attorney for the City and County of Denver



By: Debra Overn, Atty No. 21749  
Assistant City Attorney  
8500 Peña Blvd., Room 9810  
Denver, Colorado 80249  
[Debra.Overn@FlyDenver.com](mailto:Debra.Overn@FlyDenver.com)  
Telephone: 303-342-2561  
*Attorney for Protestant*  
*City and County of Denver*

**ADDRESS OF PROTESTANT:**

Denver International Airport  
Commercial Properties  
8500 Peña Blvd., Room 9810  
Denver, Colorado 80249

Attn: Stacey Nichols  
Director, Airport Properties  
[Stacey.Nichols@flydenver.com](mailto:Stacey.Nichols@flydenver.com)



## CERTIFICATE OF SERVICE

I hereby certify on this 15<sup>th</sup> day of October, 2018, I caused a true and correct copy of this Protest to be served by electronic mail to the following:

**APPLICANT:**

Axis Exploration, LLC  
370 17<sup>th</sup> Street, Suite 5300  
Denver, CO 80202

Contact: Pam Kingery, Land Advisor

**COUNSEL FOR APPLICANT:**

Joseph C. Pierzchala  
Geoffrey W. Storm  
Welborn Sullivan Meck & Tooley, P.C.  
1125 Seventeenth Street, Suite 2200  
Denver, Colorado 80202

[jpierzchala@wsmtlaw.com](mailto:jpierzchala@wsmtlaw.com)  
[gstorm@wsmtlaw.com](mailto:gstorm@wsmtlaw.com)

**COUNSEL FOR OTHER PROTESTERS:**

Rita Connerly, Esq.  
1801 California Street, Suite 2600  
Denver, CO 80202

[rconnerly@fwaw.com](mailto:rconnerly@fwaw.com)

  
\_\_\_\_\_  
Denver City Attorney's Office



STATE OF  
COLORADO

Eden - DNR, Michael <michael.eden@state.co.us>

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## Dkt. No. 180300216 - CMO Deadline

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**Eden - DNR, Michael** <michael.eden@state.co.us>

Mon, Feb 25, 2019 at 10:26 AM

To: "Overn, Debra - DEN" <Debra.Overn@flydenver.com>

Cc: Geoffrey Storm <GStorm@wsmtlaw.com>, "rconnerly@fwlaw.com" <rconnerly@fwlaw.com>, Joe Pierzchala <JPierzchala@wsmtlaw.com>, Melissa Morman <mmorman@wsmtlaw.com>, James Rouse - DNR <james.rouse@state.co.us>

The City and County of Denver's protest is hereby withdrawn.

What is the status of this case as between Bison and Aurora Convention Center Hotel and RIDA Development?

Michael Eden, JD  
Hearing Officer



**COLORADO**  
Oil & Gas Conservation  
Commission  
Department of Natural Resources

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