

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

IN THE MATTER OF THE AMENDED) CAUSE NO.
APPLICATION OF CRESTONE PEAK)
RESOURCES OPERATING LLC FOR AN ORDER) DOCKET NO. 170500189
TO: (1) ESTABLISH AND APPROVE A RULE 216)
COMPREHENSIVE DRILLING PLAN FOR) TYPE:
SECTIONS 1, 2, 3, 10, 11, AND 12, TOWNSHIP 1)
NORTH, RANGE 69 WEST, 6TH P.M. AND)
SECTIONS 25, 26, 27, 34, 35, AND 36, TOWNSHIP)
2 NORTH, RANGE 69 WEST, 6TH P.M. FOR THE)
COMPREHENSIVE DEVELOPMENT AND)
OPERATION OF THE CODELL AND NIOBRARA)
FORMATIONS, WATTENBERG FIELD, BOULDER)
COUNTY, COLORADO, AND (2) TO APPROVE A)
RULE 502.b. VARIANCE TO COMMISSION RULE)
303

PROTEST

Kerr-McGee Oil & Gas Onshore LP ("Kerr-McGee"), Operator No. 47120, by and through its attorneys, Welborn Sullivan Meck & Tooley, P.C., pursuant to Rule 509.a., submits this protest to the Amended Application ("Application") of Crestone Peak Resources Operating LLC ("Crestone") in the above-captioned matter. As grounds for this protest, Kerr-McGee states the following:

INTRODUCTION

There is no legal basis for the injunctive relief Crestone's Application¹ seeks. Crestone seeks an order from the Colorado Oil and Gas Conservation Commission ("Commission") to prohibit all other owners of minerals or leasehold interest, those with the right to drill, as defined by Commission Rules, within the Application Lands,² from filing any Forms 2 Application to Drill and/or Forms 2A Oil and Gas Location Assessments ("APDs") to develop their mineral or leasehold interest in those lands while Crestone develops its proposed Comprehensive Drilling Plan ("CDP").

¹ Crestone's Amended Application seeks an order to (1) establish a Comprehensive Drilling Plan for the Application Lands (involving three 2,560-acre drilling and spacing units subject to Docket Nos. 170500190, 170500191, and 170500192, which have been continued to a future undetermined hearing for establishment of the respective drilling and spacing units) and (2) grant a Rule 502.b. variance to Rule 303. The Amended Application states, however, that for the May 2017 hearing, Crestone is only seeking the Rule 502.b. variance at this time and has voluntarily continued the request to establish a Comprehensive Drilling Plan for the Application Lands to a future undetermined hearing. Accordingly, this Protest only addresses Crestone's request for a Rule 502.b. variance to Rule 303, and Kerr-McGee expressly reserves its rights to file a protest to the establishment of the Rule 216 Comprehensive Drilling Plan and the drilling and spacing units in Docket Nos. 170500190, 170500191, and 170500192.

² The Application Lands are comprised of twelve governmental sections in Boulder County, Sections 1, 2, 3, 10, 11, and 12, Township 1 North, Range 69 West, 6th P.M., and Sections 25, 26, 27, 34, 35, and 36, Township 2 North, Range 69 West, 6th P.M.

Application, ¶ B. Kerr-McGee owns significant leasehold interests in the Application Lands.³ Crestone effectively seeks to enjoin all other owners within 7,680 acres from developing their minerals or leasehold interests in a timely manner. Not only is there no legal basis for Crestone's request, the request is contrary to the fundamental purpose of the Colorado Oil and Gas Conservation Act ("the Act") and ignores the express procedures established by Commission Rule 216 for applying to establish a CDP. For the reasons herein, Crestone's Application should be denied.

PROTEST

A. Rule 502.b.(1) does not allow an applicant to enjoin other operators from applying for APDs pursuant to Rule 303.

Commission Rule 502.b.(1) does not provide an operator the right to enjoin another operator from applying for an APD under Rule 303 by way of a variance. A variance to the rules pursuant to Rule 502.b.(1) may be granted only if the applicant shows "that [the applicant] has made a good faith effort to comply, or is unable to comply with the specific requirements contained in the rules, regulations, or orders, from which it seeks a variance." Rule 502.b.(1). Per the express language of Rule 502.b.(1), an applicant may seek a variance to the rules *only as the rules apply to the applicant*. *Id.* An applicant cannot, however, seek a variance to the rules to prevent another operator from participating in oil and gas operations governed by Commission Rules and procedures. *Id.*

Here, Crestone's variance request fails to meet the express requirements of Rule 502.b.(1) because it has not alleged that Crestone has made a good faith effort to comply or is unable to comply with Rule 303. Of course, that is because Crestone is not seeking any variance to Rule 303 as it applies to Crestone – only to all other owners in the Application Lands. Application, ¶ 32. Crestone's requested "variance" asks the Commission to indefinitely stop doing its job, which it is statutorily mandated to do,⁴ to accept and process APDs from any owner other than Crestone within the Application Lands while Crestone develops its CDP. Assuming, *arguendo*, that 502.b.(1) allowed an operator to seek a variance to stop another operator from proceeding under Rule 303, even then, Crestone has not shown that it cannot comply with Rule 303 due to the actions of any other operator. *See generally* Application. There is no procedural mechanism in the Commission Rules to support Crestone's request for an injunction pursuant to Rule 502.b.(1). Indeed, the requested relief would be contrary to the express intent of the Act, to "[f]oster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado . . . [and] [s]afeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas" C.R.S. § 34-60-102(1)(a)(I), (III) (emphasis added). The Commission may not elevate the rights of Crestone over the coequal rights of all other owners to develop their minerals by enjoining all others from filing APDs. *Id.* Crestone's requested relief would violate the Act by granting Crestone exclusive power to determine if, when, how the minerals within twelve governmental sections should be developed

³ Kerr-McGee owns leasehold interests in the Application Lands, more specifically within Sections 1, 10, and 12, Township 1 North, Range 69 West, 6th P.M., and Sections 26, 34, 35, and 36, Township 2 North, Range 69 West, 6th P.M.

⁴ "[T]he Commission shall . . . [p]romulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit." C.R.S. § 34-60-106(11)(a)(I)(A).

even before Crestone has finalized, much less created, its CDP. For these reasons, the Application should be denied.

B. The Application should be denied because Crestone has not complied with Rule 216.

Crestone's Application should be summarily denied because it does not comply with Rule 216. First, Rule 216 does not provide a mechanism to stop all other owners from developing their minerals while another owner attempts to develop and seek approval of a CDP. Rather, Rule 216 expressly states that a CDP covering lands with multiple owners will have to take into account the planned operations of those other owners. See Rule 216.b. Even more, Rule 216 contemplates the submission of multiple proposed CDPs from more than one operator for operations covering the same lands. See Rule 216.d.(1). A CDP for the twelve sections at issue could take years to develop, negotiate, and approve given the numerous mineral and surface owners involved and the regulatory hurdles of development in Boulder. See Order No. 1-143 (taking over two years to approve CDP). Rule 216 does not empower the Commission to suspend the rights of all other owners in the Application Lands indefinitely while the CDP process plays out.

Second, before an application related to approval of a CDP may even be filed, Rule 216 requires that a CDP has first been "agreed to in writing by the operator(s) and that the Director considers suitable" Rule 216.d.(4). That has not happened. Kerr-McGee is an owner and operator in the Application Lands and it has not agreed in writing to any CDP. Upon information and belief, nor has the Director made any determination as to whether Crestone's CDP is suitable. Crestone's assertion in the application that it will later provide such a plan with terms consistent with those that Crestone has broadly described therein, Application, ¶¶ 16-19, is not a substitute for actually taking the first step of obtaining an agreed upon and Director-approved plan. Rule 216.d.(1), (4). The actual plan is necessary to ensure meaningful participation from other stakeholders. It is inconsistent with the Rule 216 procedures to enjoin all other owners from proceeding with development plans, while Crestone develops its own plan that has not yet been submitted. Thus, the Application must be denied for failing to comply with Rule 216.d.'s threshold procedural requirements.

Even more, Crestone argues that because it intends to submit a CDP in the future, the Commission should enjoin all other owners from developing their minerals to avoid "the potential for confusion or prejudice if **any** Form 2's and/or Form 2A's are allowed to be filed and processed prior to the determination of Applicant's Comprehensive Drilling Plan." Application, ¶ 33 (emphasis in original). Crestone's concern of prejudice is self-serving. Indeed, the only parties to be prejudiced by the application are the other owners in the Application Lands. Allowing an operator to use Rule 216 to enjoin its competitors so that it may obtain control over large areas of land would set a dangerous precedent across the state. If Crestone held 100% or nearly 100% of the working interest in the Application Lands, there may be more practical reasons to justify the relief Crestone seeks. But, under these facts, approval of the injunction is not sound policy.

CONCLUSION

For the reasons herein, Crestone's Amended Application for a variance, pursuant to Rule 502.b., to enjoin all other owners within the Application Lands from submitted Forms 2 and 2A pursuant to Rule 303, should be denied.

Upon information and belief, no other party has filed a protest or requested to intervene in this matter and, therefore, no service of this protest to any party other than Crestone is required.

Kerr-McGee estimates that one land witness and one operations witness will present evidence in this matter. Kerr-McGee estimates that it will require approximately forty-five (45) minutes to present its testimony and rebut Crestone's testimony.

WHEREFORE, Kerr-McGee Oil & Gas Onshore LP respectfully requests that the Commission deny Crestone's Amended Application for a Rule 502.b. variance to enjoin all other owners within the Application Lands from submitting Forms 2 and 2A pursuant to Rule 303 and award Kerr-McGee such further relief as the Commission deems just and proper.

DATED this 17th day of April, 2017

Respectfully submitted,

WELBORN SULLIVAN MECK & TOOLEY, P.C.

By: _____


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CERTIFICATE OF SERVICE

I hereby certify on this 17th day of April, 2017, I caused a true and correct copy of this Protest to be served by electronic mail to Jamie L. Jost of Jost Energy Law, P.C., attorney for Crestone Peak Resources Operating, LLC, at 1401 17th Street, Suite 370, Denver, CO 80202, (720) 446-5620, jjost@jostenergylaw.com.


Melissa Morman