

DISTRICT COURT, DENVER COUNTY, COLORADO Address: 1437 Bannock Street Denver, CO 80202	
Plaintiffs: BATTLEMENT CONCERNED CITIZENS; and GRAND VALLEY CITIZENS ALLIANCE v. Defendant: COLORADO OIL AND GAS CONSERVATION COMMISSION	▲COURT USE ONLY▲
<i>Attorneys for Plaintiffs:</i> Name: Wyatt Sassman (CO Bar No. 51890) Kevin Lynch (CO Bar No. 39873) Sarah Matsumoto (CO Bar No. 52169) Gianni Puglielli (Student Attorney) Chelsea Kelleher (Student Attorney) Caroline Crow (Student Attorney) Jake Jacobsen (Student Attorney) Address: Environmental Law Clinic University of Denver Sturm College of Law 2255 E. Evans Avenue Denver, CO 80208 Phone: (303) 871-6140 FAX: (303) 871-6847 E-mail: wsassman@law.du.edu klynch@law.du.edu smatsumoto@law.du.edu	Case Number: Div.: Ctrm.:
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF	

INTRODUCTION

1. This action seeks judicial review of the Colorado Oil and Gas Conservation Commission's approval of a Form 2A permit that allows Ursa Operating Company, LLC, to construct an oil and gas project known as "BMC A Pad" in Battlement Mesa, Colorado. BMC A Pad is a massive project, involving fracking and drilling 24 oil and gas wells, producing oil and gas onsite, and disposing of hazardous fracking waste from BMC A Pad and other nearby Ursa projects underground through an injection well.

2. Battlement Mesa is a planned residential community outside of Parachute, Colorado marketed as a quiet retirement community. Many residents moved to Battlement

Mesa to enjoy breathtaking mountain views, a nationally renowned golf course, and clean mountain air. However, Ursas has started conducting large scale oil and gas operations within the Battlement Mesa community. Odors, noise, and pollution from these mega-projects has adversely impacted residents' health and disrupted residents' enjoyment of what was promised to be an idyllic community. As Ursas's large scale oil and gas operations within Battlement Mesa have increased, so have the adverse impacts on residents.

3. But unlike other sites in Battlement Mesa, BMC A Pad is especially troublesome because it poses special and substantial risks to irreplaceable features in the community. It is precariously cut into the side of a hill, wedged between homes and the Battlement Mesa water infrastructure, and plans to include a dangerous injection well that risks leaking potential toxic waste in to the Colorado River and systems that treat and supply water to the community. The site's facilities are just over 500 feet of several homes (and within 1,000 feet of dozens more), about 1,000 feet from the Colorado River, and less than 200 feet from the water treatment and water-supply infrastructure for the entire Battlement Mesa community.

4. Because of the project's size and proximity to homes, it is designated as a "Large Urban Mitigation Area Facility" under the Commission's rules. This designation means that the project cannot be approved under the Commission's rules unless it complies with some of the Commission's most stringent regulations, including requirements that the project be "as far as possible" from homes and that it use the "best available technology" to protect the surrounding community from adverse impacts associated with the planned oil and gas activity. In adopting these rules, the Commission explained that an Urban Mitigation Area should be the last place to locate a large oil and gas project. Similarly, the Colorado Department of Public Health & Environment (CDPHE) has said that injection wells "should not be located in an Urban Mitigation Area," and advised that injection wells should not be located so close to water resources.

5. The community responded to the proposed project by urging the Commission to find a better location for BMC A Pad. During several public comment periods on BMC A Pad's pending approval, hundreds of comments asked the Commission to deny the project and approve a safer location. The community presented to the Commission numerous health, safety, welfare, and environmental concerns with the proposed plans for BMC A Pad, backed by scientific studies. Comments noted that the project, as proposed, violated several of the Commission's rules, including requirements that the project be located "as far as possible" from homes. Finally, the community expressed that it had been subjected to enough harmful oil and gas development around their homes.

6. Tellingly, the Commission rejected Ursas's initial application because the operator could not obtain waivers from all the nearby homeowners as required by a Commission rule for projects this close to homes. Rather than move the project, Ursas moved some tanks and other hardware from one side of the pad to the other side of the pad

so that the Commission rule no longer applied. Without addressing many issues raised in the community's comments, the agency then approved Ursa's reconfigured project.

7. Community groups then requested that the Commission put the permit on hold and conduct a hearing to address problems with the permit. The Commissioners discussed the community groups' request during a regularly scheduled hearing, but they expressed substantial uncertainty about their own authority to protect local communities from projects that are not sufficiently protective of public health. For example, neither the Commissioners, nor counsel for the Commission, knew whether the Commission can overturn its staff's decision to approve a Form 2A permit. In light of this and other uncertainties, the Commission decided not to hold a hearing and let the permit remain in effect.

8. Battlement Concerned Citizens and Grand Valley Citizens Alliance now seek judicial review of the BMC A Pad Form 2A permit approval under the Colorado Administrative Procedure Act and the Colorado Oil and Gas Conservation Act. As discussed below, the community groups argue that the Commission's approval of the Form 2A violated the Colorado Administrative Procedure Act and the Commission's rules in several ways, including but not limited to: (a) the agency misconstrued its statutory authority; (b) the agency failed to consider legitimate concerns presented by public comments; (c) the agency failed to ensure the operator conducted an alternative site analysis for the production facilities; and (d) the agency failed to ensure that the project is located as far as possible away from homes and utilized the best available technology.

PARTIES

9. Battlement Concerned Citizens (BCC) is an unincorporated community association formed in 2009 in order to voice residents' concerns about oil and gas development in Battlement Mesa and to ensure that the Commission permits well-pad locations in the Battlement Mesa Planned Unit Development (PUD) in accordance with the Commission's rules. The organization's members are residents living in Battlement Mesa.

10. Grand Valley Citizens Alliance (GVCA) is a non-profit community organization established in 1997 in Garfield County, Colorado. Similar to BCC, GVCA strives to ensure oil and gas development in the region is done consistently with the Commission's regulations. The organization additionally promotes community-centered state legislative proposals and coordinates grassroots events.

11. BCC and GVCA (collectively the community groups) members live in Battlement Mesa. Battlement Mesa's drinking water is taken from the Colorado River at an intake near the approved BMC A Pad location. Members will be harmed by the Commission's approval of BMC A Pad's location due to: the project's high risk of contaminating the Colorado River and the community's water treatment facilities; exposure to air pollution generated at the project; decreased quality of life caused by noise,

odors, fumes, and other impacts from the project; and the cumulative adverse health and welfare impacts caused by locating another large scale oil and gas project inside this community.

12. Defendant Colorado Oil and Gas Conservation Commission is a Colorado administrative agency charged with fostering the responsible development of Colorado's oil and gas resources in a manner consistent with the protection of public health, safety, and welfare through the Oil and Gas Conservation Act. C.R.S. § 34-60-102(1)(a)(I).

JURISDICTION AND VENUE

13. Pursuant to the Colorado APA, any person adversely affected or aggrieved by a final agency action may seek judicial review of such action within 35 days after that action is effective. C.R.S. § 24-4-106(4).

14. The Commission issued the Form 2A permit for BMC A Pad on January 11, 2019, and the community groups timely filed this complaint.

15. Form 2A permits are final agency actions issued by the Commission and are subject to judicial review under the APA. C.R.S. § 24-4-106(2); *see also* 2 C.C.R. §§ 404-1:305.e.(3); 501.c.

16. The community groups are adversely affected by the Commission's approval of the Form 2A permit for Ursas BMC A Pad. The project will adversely impact the community groups members' health, safety, and welfare, by exposing them to air pollution, decreasing their quality of life, and diminishing their ability to enjoy their homes and property. The site's proximity to the Colorado River and the community's water treatment and wastewater treatment facilities threatens the community groups members' access to clean water.

17. This Court has subject matter jurisdiction over this proceeding. C.R.S. § 24-4-106(4); C.R.S. § 34-60-111.

18. This Court has personal jurisdiction over the Colorado Oil and Gas Conservation Commission.

19. Venue is appropriate in this Court because the Commission is an administrative agency of the State of Colorado with its headquarters in the City and County of Denver. C.R.S. § 24-4-106(4); C.R.C.P. 98(c).

LEGAL BACKGROUND

Colorado Administrative Procedure Act

20. A permit issued by the Commission shall be set aside under the APA when a court finds that the Commission's decision to approve the permit was arbitrary and capricious. C.R.S. § 24-4-106(7)(b)(I).

21. A decision is arbitrary and capricious when an agency fails to "examine relevant data and articulate a satisfactory explanation for its action." *Chase v. Colo. Oil and Gas Conservation Comm'n*, 284 P.3d 161, 171 (Colo. App. 2012) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983)); see C.R.S. § 24-4-106(7).

22. An agency's failure to follow its own regulations also constitutes arbitrary and capricious conduct. *Rags Over the Ark. River, Inc. v. Colo. Parks & Wildlife Bd.*, 360 P.3d 186, 191 (Colo. App. 2015).

Regulation of Oil and Gas Operations in Colorado

23. The Commission has the authority to regulate all oil and gas operations in the state and to make and enforce rules affecting oil and gas activity in Colorado. C.R.S. §§ 34-60-105(1); 106.

24. The Commission has the authority to regulate "[o]il and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility." C.R.S. § 34-60-106(2)(d).

25. "The Commission may, on its own motion, initiate proceedings upon any questions relating to conservation of oil and gas or the conduct of oil and gas operations in the State of Colorado, or to the administration of the [Oil and Gas Conservation] Act . . ." 2 C.C.R. § 404-1:502.a.

26. One way the Commission regulates oil and gas operations is by requiring operators to apply for and obtain a permit called a "Form 2A, Oil and Gas Location Assessment" from the Commission that approves the location of an oil and gas project prior to conducting oil and gas operations. 2 C.C.R. § 404-1:303.b.

27. An Oil and Gas Location is "a definable area where an operator has disturbed or intends to disturb the land surface in order to locate an oil and gas" project. 2 C.C.R. § 404-1:100 Series Definitions; see also 2 C.C.R. § 404-1:303.b.(1).A.

28. Upon the operator's submission of a Form 2A application, the Commission evaluates an operator's proposed location for the oil and gas project for, among other things, the location's safety and impact on public health and the environment. 2 C.C.R. § 404-1:303.b.

The Oil & Gas Location Assessment Process

29. Before the Form 2A application is approved by the Commission, it must go through a series of procedures known as the Oil and Gas Location Assessment process (OGLA process). *See* 2 C.C.R. §§ 404-1:303.b; 305.

30. Generally, the OGLA process requires the Commission to post the Form 2A on the Commission's website, and solicit public comments for the Commission's consideration prior to the permit's approval. The Commission may attach best management practices and conditions of approval responsive to legitimate health, safety, and environmental concerns expressed in comments. *See* 2 C.C.R. §§ 404-1:303.b; 305.b.; 305.e.

31. In 2008, the Commission engaged in an extensive rulemaking in which it adopted and revised several rules pertaining to the OGLA process. The Commission expected that public comments received through the OGLA process would help the agency "learn of issues or problems that would not otherwise be considered" and "identify potential issues, impacts, or conflicts early." STATEMENT OF BASIS, SPECIFIC STATUTORY AUTH., AND PURPOSE: NEW RULES AND AMENDMENTS TO CURRENT RULES OF THE COGCC, 2 C.C.R. § 404-1 (2008) at 29.

32. The Commission's rules are intended to enhance the public's role in the permitting process, recognizing that "communicating with persons who live or work near drilling operations before those operations begin is an effective means of addressing concerns about what will occur, how long it will take, and what measures will be taken to eliminate, minimize, or mitigate potential nuisances and adverse impacts." SPECIFIC STATUTORY AUTH., AND PURPOSE: NEW RULES AND AMENDMENTS TO CURRENT RULES OF THE COGCC, 2 C.C.R. § 404-1 (2013) at 2.

33. After the Commission receives a Form 2A application, it opens a public comment period so that the Commission can solicit feedback from the public on the permit application. 2 C.C.R. § 404-1:305.b.

34. The Commission must open the public comment period for proposed project locations for at least 20 days (or 40 days for large projects, such as the case here) in order to solicit and consider public comments. 2 C.C.R. § 404-1:305.d.(1)-(2).

35. After the public comment period, the Commission must consider issues raised in the public comments and can require the operator to adopt certain practices as

conditions of approval for the permit in order “to respond to legitimate public health, safety, or welfare concerns expressed during the comment period.” 2 C.C.R. § 404-1:305.e.

36. The Commission’s rules also require the agency to apply certain mandatory mitigation measures prior to the Form 2A permit approval. 2 C.C.R. § 404-1:604.c.

37. Relevant here, Rule 604.c.(2).E.i requires the Commission to ensure that production facilities are located “as far as possible” from homes when an operator proposes to locate production facilities within 1,000 feet of homes as part of a project with more than one oil and gas well. 2 C.C.R. § 404-1:604.c.(2).E.i.

38. Production facilities are defined to include, but are not limited to, equipment used to separate, measure, store, transport, and dispose of waste associated with extracting oil and natural gas. *See* 2 C.C.R. § 404-1:100.

39. Production facilities can be located on the same pad as the wells associated with the facilities or on a separate pad, further away from the wells.

40. One kind of production facility is an injection well, which is used to inject fluids or gas into the ground as a way to dispose of fracking wastes. *See* 2 C.C.R. § 404-1:100.

The Urban Mitigation Area Rules

41. Due to oil and gas projects encroaching upon residential communities, the Governor created a Task Force in 2014 to “harmonize state and local regulatory structures” around this issue. Colo. Governor’s Task Force, STATEMENT OF BASIS, SPECIFIC STATUTORY AUTH., AND PURPOSE: NEW RULES AND AMENDMENTS TO CURRENT RULES OF THE COGCC; 2 C.C.R. § 404-1 (2015) at 1.

42. The Task Force recommended that the Commission regulate the location of oil and gas projects and reduce negative impacts on communities by using siting tools to determine when it is possible to locate projects away from residential areas. *Id.* at 20.

43. To implement this recommendation, the Commission adopted a new setback standard called an Urban Mitigation Area (UMA). An UMA is an area where (1) 22 or more homes are located within a 1,000-foot radius of the proposed oil and gas project location, or (2) when 11 or more homes are located within any semi-circle of the 1,000-foot radius. 2 C.C.R. § 404-1:100.

44. The Commission named a new kind of Oil and Gas Location called a “Large Urban Mitigation Area Facility” (LUMA Facility). A LUMA Facility is an Oil and Gas Location that is proposed to be located in an UMA and in which the operator proposes to drill 8 or

more wells. STATEMENT OF BASIS AND PURPOSE (2015), *supra* ¶41, at 7–10, 20; 2 C.C.R. § 404-1:100.

45. The Commission explained that “an Urban Mitigation Area should be the last choice in which to locate a large multi-well oil and gas facility.” *Id.* at 12.

46. In particular, the Commission “closely scrutinizes” proposed locations that place production facilities in Urban Mitigation Areas. *Id.* at 21.

47. The Commission, therefore, adopted a rule stating that, when a proposed oil and gas project qualifies as a LUMA Facility, then it “should be built as far as possible from existing building units and operated using the best available technology to avoid or minimize adverse impacts to adjoining land uses.” 2 C.C.R. § 404-1:604.c.(4).

48. The Commission also adopted a separate rule requiring operators to notify and consult local governments regarding the location of proposed LUMA Facilities before the Commission’s OGLA process begins. 2 C.C.R. § 404-1:305A.

49. In the event that the project must be located in an UMA, the Commission requires site-specific conditions for approval of permit applications in addition to mandatory mitigation measures applied to projects within 1,000 feet of homes. STATEMENT OF BASIS AND PURPOSE (2015), *supra* ¶41, at 20–23.

50. The Commission also stated that “the Director will not approve a Large UMA Facility Form 2A” unless all identified problems with the application have “been addressed completely and thoroughly in a manner that ensures public health, safety and welfare, including the environment and wildlife resources, are protected.” *Id.* at 22.

FACTUAL BACKGROUND

51. Battlement Mesa is a covenant-protected residential development located outside of Parachute, Colorado. It has its own municipal district and operates its own utilities services through a Metropolitan District, including potable water treatment and wastewater treatment facilities.

52. Starting in the late 1990s, Battlement Mesa was marketed as an idyllic place to retire.

53. Many people, including members of the community groups, moved there to enjoy the aesthetic mountain views and community-based recreational activities with the expectation that oil and gas projects would not be located within the neighborhood.

54. Some members expressly moved to Battlement Mesa to avoid fracking activity near their previous homes.

Antero and Ursas Plans to Drill

55. At a meeting in May 2009, Antero announced to residents its plans to drill 10 oil and gas projects inside Battlement Mesa pursuant to a surface use agreement with Battlement Mesa Partners, LLC.

56. A group of residents formed Battlement Concerned Citizens to better protect their community from adverse impacts associated with oil and gas projects and partnered with Grand Valley Citizens Alliance shortly thereafter.

57. Later in 2009, Antero Resources sold its mineral rights in the Battlement Mesa area and its surface use agreement to Ursas Resources, LLC.

58. In 2010, the community groups petitioned Garfield County to fund a health impact assessment to determine potential health risks of the projects before drilling began. The County agreed and partnered with Colorado School of Public Health.

59. The Health Impact Assessment concluded in its second draft that Battlement Mesa residents' health will be affected by chemical exposures, accidents or emergencies from industry operations, and stress-related community changes. See Colorado School of Public Health, Battlement Mesa Health Impact Assessment Second Draft, February 2011, at 3, available at https://www.garfield-county.com/public-health/documents/6_HIA_2nd_draft_introduction.pdf

60. In 2011, Garfield County pulled its funding of the Health Impact Assessment before it was finalized.

61. Also in 2011, Ursas began drilling outside of Battlement Mesa.

Ursas Drills Inside the Community

62. Ursas announced a two-phase drilling plan inside Battlement Mesa at a community meeting.

63. Phase I would include the construction of two LUMA projects, "BMC D Pad" and "BMC B Pad," and a two-and-a-half mile pipeline project.

64. Phase II would include the construction of a water storage facility called "BMC F Pad," and two drilling locations called "BMC L Pad" and "BMC A Pad."

65. BMC D Pad was approved in 2016 and constructed near some of the community members' homes.

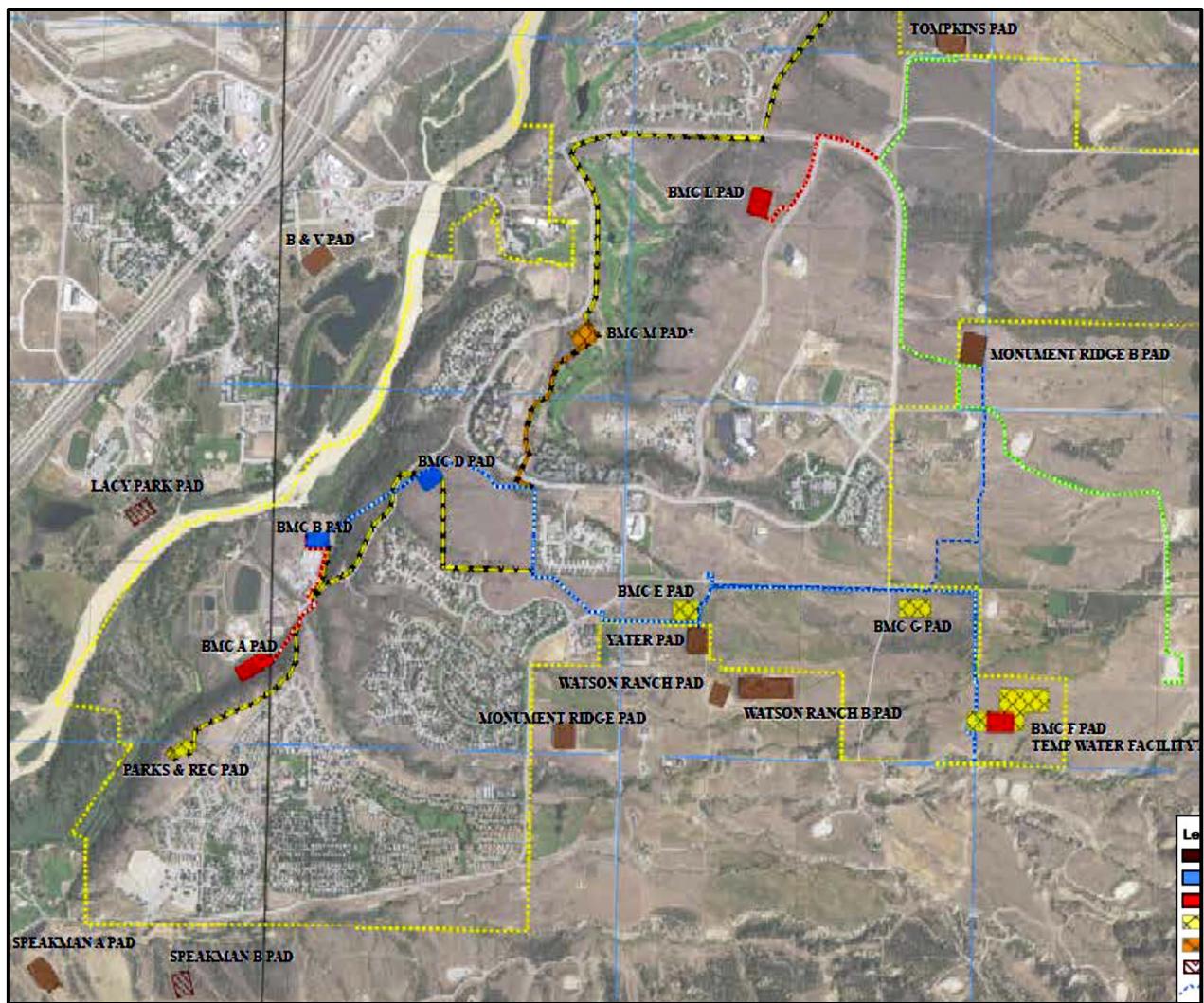
66. BMC B Pad was approved in 2016 and is located about 351 feet away from the Colorado River, upstream from the intake where Battlement Mesa draws its drinking water from the river.

67. During construction of BMC B Pad, Ursa unexpectedly hit an underground water source twice.

68. Since commencing construction, drilling, and production on BMC B and BMC D Pads, Ursa's activities have been the cause for 37 complaints submitted to the Commission and continue to greatly disrupt residents' lives in numerous ways, including noise, odors, and fumes.

69. BMC F Pad and BMC L Pad were both permitted by the Commission in 2017.

70. Below is a map illustrating the locations of these projects within and around the Battlement Mesa community.



BMC A Pad Location

71. BMC A Pad is the last project in Ursa's Phase II. BMC A Pad's proposed wells are about 500 feet away from 8 homes, 1,000 feet away from 51 homes, 550 feet from the Colorado River, and immediately adjacent to the community's water treatment and wastewater treatment facilities.

72. BMC A Pad includes 24 wells and numerous associated production facilities, including a wastewater injection well.

73. Because of the number of proposed drilling wells and its proximity to homes, BMC A Pad qualifies as a LUMA Facility.

74. The injection well on BMC A Pad is planned to dispose of wastewater from BMC D Pad, BMC B Pad, and BMC A Pad.

Garfield County Rezoning Ordinance for Injection Well

75. Ursa originally proposed to locate BMC A Pad's injection well on BMC B Pad.

76. In order to locate the injection well on BMC B Pad, Ursa and Battlement Mesa Partners applied to Garfield County in 2016 to change the PUD zoning for BMC B Pad's location from "Public, Semi-Public, and Recreational" to "Public, Semi-Public, Recreational, and Injection Well."

77. The Colorado Department of Public Health & Environment sent advisory letters to Garfield County and to the Commission. In the CDPHE letter to Garfield County, it stated "injection wells should not be located in Urban Mitigation Areas." In the CDPHE's letter to the Commission, it stated that it could not support an injection well at BMC B Pad and recommended that the Commission not approve the injection well for the BMC B Pad location. Attached as Exhibit 1 is CDPHE's Consultation Letter for BMC B Pad and BMC D Pad to the Commission dated February 29, 2016 and CDPHE's Letter to Garfield County for PUD Zoning Amendment dated January 12, 2017.

78. Ursa subsequently removed the injection well proposal from the BMC B Pad Form 2A permit application, proposing the injection well in its Form 2A application for nearby BMC A Pad instead.

Ursa Notifies Garfield County Regarding BMC A Pad

79. Ursa notified and consulted with Garfield County 90 days prior to submitting its Form 2A application with the Commission in accordance with Rule 305A and applied for a Special Use Permit with the County according to the County's zoning requirements.

80. In its permit application to Garfield County, Ursa stated that it would not develop other particularly disruptive locations—specifically, the “Parks and Rec Pad” proposed next to a community park and the “BMC M Pad” proposed next to Battlement Mesa’s nationally renowned golf course—if the County approved the BMC A Pad location. *See Map illustrating locations of projects, supra at ¶70.*

81. With the county permit application still pending after 90 days, the Commission’s rules allowed Ursa to submit its Form 2A application to the Commission in June 2017 without completing the local government consultation process. 2 C.C.R. § 305A.f.(1).E.

82. Garfield County eventually approved Ursa’s Special Use Permit application on November 16, 2017.

A. The Commission receives Ursa’s initial Form 2A application for BMC A Pad.

83. The Commission received Ursa’s initial Form 2A application for BMC A Pad on June 8, 2017.

84. Under the initial layout, the nearest home to BMC A Pad is within 500 feet from the edge of the pad, 340 feet away from a production facility and exactly 500 feet from a proposed well.

85. Below is Ursas 3D rendered image of the development's initial layout from the northeast. A Battlement Mesa neighborhood is on the hillside and the BMC A Pad site is at the bottom of the hill, cut into the hillside. The image shows the initial placement of storage tanks and other production facilities on the side of the pad closest to the neighborhood and the drilling rig in the center of the pad.



86. Ursas initially obtained waivers from eight nearby homeowners as required by Rule 604.a for a project proposed this close to homes, but then one homeowner rescinded her waiver.

87. BCC and GVCA then submitted a public comment to the Commission, notifying the Commission that Ursu had not complied with the notice and waiver requirements in the Commission's rules.

88. Additionally, the CDPHE submitted a consultation letter to the Commission regarding BMC A Pad, stating that the Department could not support the approval of BMC A Pad because of Ursu's failure to obtain the necessary waivers.

89. On October 21, 2017, BCC and GVCA filed a formal complaint with the Commission explaining that Ursu failed to give affected homeowners proper notice of their proposed oil and gas activities as required by the Commission's rules. Attached as Exhibit 2 is the Letter from Dave Devaney, Battlement Concerned Citizens, Leslie Robinson, Grand Valley Citizens Alliance, Matt Sura to COGCC RE "Lack of Notice" dated October 21, 2017.

90. On October 27, 2017, the Commission rejected Ursu's initial application for BMC A Pad because Ursu failed to obtain waivers from the residents of all homes within 500 feet of the nearest production facility.

B. The Commission receives a second Form 2A application for BMC A pad.

91. On December 15, 2017, the Commission received Ursu's second Form 2A application for BMC A Pad with the same layout.

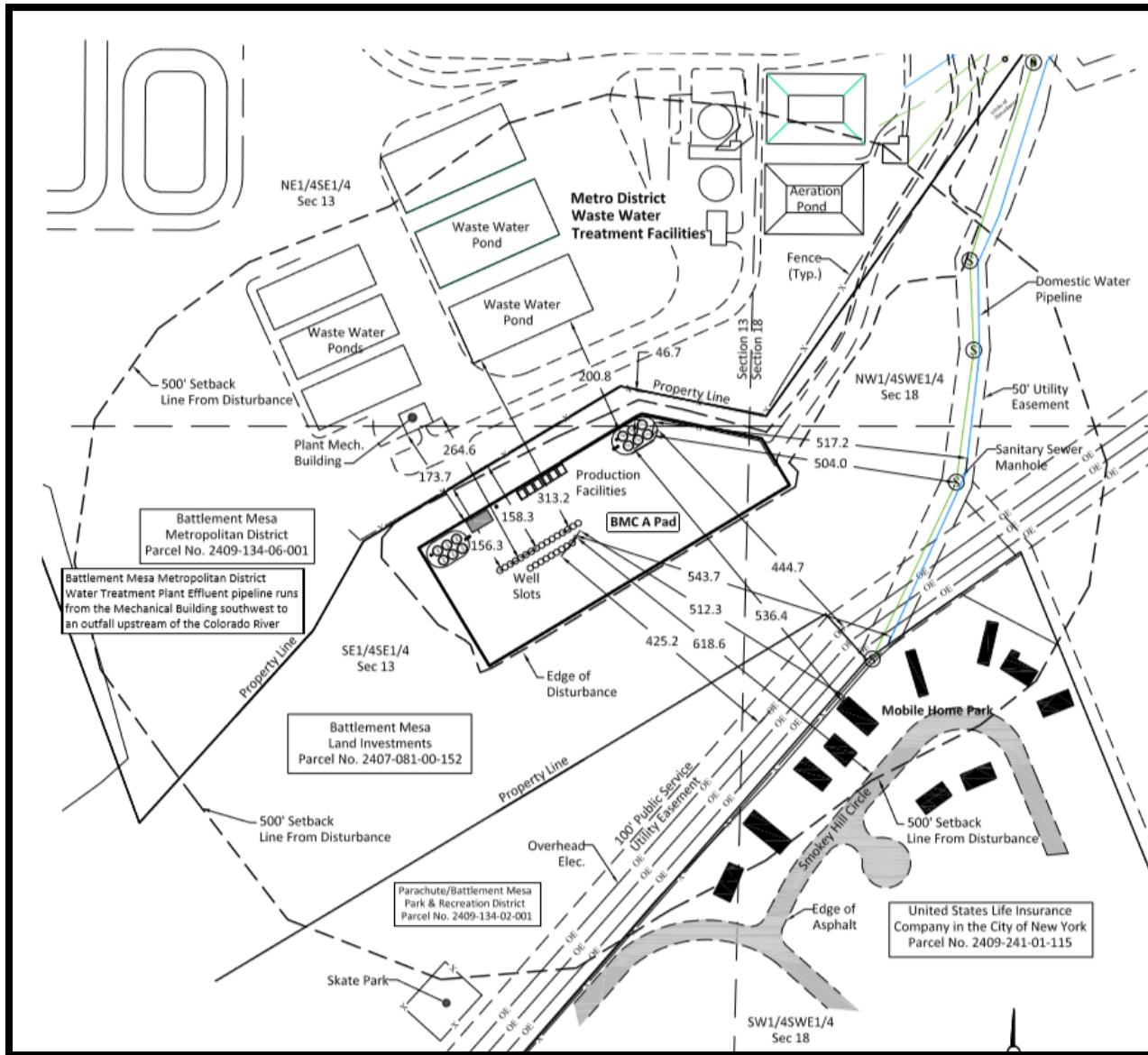
92. As part of the second application, Ursu requested a variance from the Commission's rules that required the company to get waivers from nearby homeowners.

93. The Commission re-opened the public comment period for 40 days, and during that time, the Commission received over 300 comments requesting that the Commission not grant the variance.

94. Ursu then amended its application to adjust the layout of BMC A Pad. Ursu did not move the location of BMC A Pad. Instead, Ursu moved the production facilities from the side of the pad nearest homes to the side of the pad nearest the water treatment and wastewater treatment facility.

95. Under the new layout, the production facility that was 340 feet away from the nearest home was moved to 536 feet away, and the well that was 500 feet away from the nearest home was moved to 512 feet away. Because the structures were now 500 feet from homes, Ursu no longer had to obtain waivers from nearby homeowners under the Commission's rules. *See 2 § C.C.R. 604.a.1.(A).i.*

96. Below is a map of Ursas second proposed layout of BMC A Pad.



97. In its second application, Ursas submitted the same justification for BMC A Pad's location, called a siting rationale, from its initial Form 2A application.

98. The siting rationale document indicates that the Ursas prepared the document pursuant to Rule 305A, the rule that required Ursas to notify and consult with the local government prior to submitting its Form 2A application with the Commission.

99. The document offers reasons why Ursas prefers the BMC A Pad location, and says that Ursas cannot move the project because it is located so close to the water treatment and wastewater treatment facilities, homes, and difficult hillside terrain.

100. Ursa's siting rationale identified that drilling 2,463 feet from BMC A Pad to the underground formation was a reasonable distance.

101. In its Form 2A application for BMC L Pad, Ursa stated that it was able to drill from about 3,500 feet away. Attached as Exhibit 3 is Ursa's BMC L Pad Siting Rationale.

102. Ursa's siting rationale for BMC A Pad does not identify alternative locations for the BMC A Pad location that were not already included in Ursa's surface use agreement.

103. Ursa's siting rationale for BMC A Pad also does not identify alternative locations for the production facilities proposed on BMC A Pad.

104. However, Ursa provided alternative location analyses specific to production facilities at other projects located both inside and outside of the Battlement Mesa boundaries, such as in its Form 2A applications for BMC D Pad, BMC B Pad, and Watson Ranch B Pad. Attached as Exhibit 4 is Ursa's Rule 604.c.(2).E.i. Production Facilities Siting Analysis for BMC B Pad, BMC D Pad, and Watson Ranch B Pad.

105. Ursa's siting rationale for BMC A Pad stated that locations outside of Battlement Mesa were considered for the injection well, but the siting rationale does not specify or explain any of these locations.

C. Public comments identify legitimate health, safety, and welfare concerns regarding the approval of BMC A Pad.

106. Both the rejected Form 2A and second Form 2A applications were open for public comment. The community groups and other members of the public submitted public comments addressing public health affects resulting from oil and gas activities on BMC A Pad, and specifically public health and environmental harms from the proposed injection well.

Public Health Effects of BMC A Pad's Air Pollutants

107. The community groups and other members of the public submitted hundreds of public comments stating how residents of Battlement Mesa will be harmed by air pollution resulting from the oil and gas activities on BMC A Pad due to the site's proximity to homes.

108. The community groups noted that, according to the EPA, oil and gas production facilities release air pollutants that are carcinogenic, harm the respiratory system, nervous system, reproductive system, cardiovascular system, and the immune system, as well as the liver and kidneys.

109. The community groups included a report by the Colorado Air Pollution and Control Division concluding that oil and gas operations release these pollutants in greater quantities than all other stationary sources in the state combined.

110. The report also stated that oil and gas operations release hydrogen sulfide, which is associated with eye, nose, and throat irritation and respiratory complications. In some cases, hydrogen sulfide exposure causes death.

111. The community groups also submitted a study by the University of Colorado School of Public Health that examined the health impacts that were created by living approximately 500 feet from the oil and gas operations along Colorado's Northern Front Range. The University of Colorado study concluded that the Commission's current 500-foot setback regulations are insufficient to prevent harmful health effects caused by oil and gas operations. The community groups' comment explained to the Commission that this is the first study conducted in Colorado to address the inadequacy of the regulatory setbacks alone in protecting communities against adverse health effects from oil and gas development.

112. Public comments also stated that Battlement Mesa residents have been subjected to harmful air pollutants emitting from other oil and gas developments operated by Ursa in and around Battlement Mesa, and urged the Commission to consider the cumulative effects of drilling in the area when processing the BMC A Pad application.

113. Because of BMC A Pad and other projects' harmful air emissions, public comments asked for the Commission to deny Ursa's Form 2A application and for BMC A Pad to be located outside of the Battlement Mesa community's boundaries.

Oil and Gas Activity at BMC A Pad will Harm Residents' Quality of Life

114. The community groups' comments illustrated how residents living near Ursa's existing sites have suffered from lack of sleep, stress and anxiety, and inability to enjoy their homes or outside activities.

115. The community groups submitted scientific studies linking these and other adverse impacts to oil and gas development near residential areas. These studies show that living near oil and gas developments causes adverse health impacts from increased traffic, light pollution, odor, and noise resulting from the months of continuous industrial activities taking place at these locations.

116. Comments asked the Commission to deny the Form 2A application and require that BMC A Pad be located outside of Battlement Mesa because further oil and gas activity inside the community will cause adverse health impacts on community group members and other Battlement Mesa residents.

Oil and Gas Operations on BMC A Pad Threaten the Safety of Battlement Mesa

117. In light of Ursas plans to cut BMC A Pad into the hillside next to several homes, the community groups' comments also expressed concern about safety risks presented by BMC A Pad.

118. Comments summarized the 2013 Colorado Geological Survey, which explained that the land in Garfield County has highly unstable soil that is prone to collapse.

119. Supporting the community groups' concerns expressed in public comments, Bob Arrington, a Battlement Mesa resident who is a member of both community groups and a Professional Engineer, expressed concerns about the hillside's structural instability. Bob feared that, not only would homes be destroyed if the hillside collapsed, but also that such a collapse would cause debris to damage the adjacent water treatment and wastewater treatment facilities.

120. Because of these concerns about the structural instability of the hillside, public comments asked the Commission to deny the BMC A Pad Form 2A application.

The Injection Well on BMC A Pad Threatens to Contaminate Water Resources

121. The community groups' public comments also expressed specific concerns about the risks of the injection well located on BMC A Pad.

122. BMC A Pad is located 550 feet from a side channel of the Colorado River.

123. An intermittent stream runs through BMC A Pad, and the water treatment facility is 250 feet away.

124. The public comments explained that the kind of toxic waste that BMC A Pad's injection well will inject into the ground near these water resources has proved to be dangerous for human health by causing harm to the reproductive system and being associated with an increased risk of cancer.

125. Public comments specifically noted that chemicals Ursas uses to frack on other pads in Battlement Mesa are known to be hazardous and should be prevented from coming into contact with waterways.

126. Bob Arrington's comment explained that injection well casings often fail and therefore injection wells have high risks of leaking.

127. Bob's comment stated that one out of every six injections wells across the country has been cited for an integrity violation and over 7,000 wells have shown signs of leaking.

128. Bob's comment also showed that there is no demonstrated need for an additional injection well in the area because Ursa already has injection wells at their nearby Tompkins, Speakman, and Watson Ranch pads. *See Map illustrating locations of projects, supra* at ¶70. By calculating injection well capacity at the other pads, Bob found that these existing wells can incorporate the fracking water generated by the wells on BMC A Pad.

129. Comments also noted that Ursa's injection well facilities caused a spill in 2014. Produced water stored in tanks at Ursa's Watson Ridge pad overflowed when the high-water alarms malfunctioned, releasing an estimated 10,800 gallons of toxic water that contaminated nearby ground water.

130. Even if Ursa required another injection well for its operations, public comments emphasized that "there are hundreds of locations in the area" outside of Battlement Mesa "that are available for injection wells that would pose far less risk to residents, public water supplies, and the Colorado River."

131. These comments urged the Commission to deny the permit or otherwise locate the injection well outside the PUD.

D. The Commission approved the permit without addressing concerns expressed in public comments.

132. On January 11, 2019, the Commission approved Ursa's Form 2A application for BMC A Pad.

133. The Commission's permit approval included two documents dated January 2, 2019, titled "Response to LGD Comments and Public Comments" and "Public Comment Response Document for the URSA Operating Company BMC A Pad."

134. The Commission reserved a section in the Public Comment Response Document to respond to "Health and Safety Concerns from Hydraulic Fracturing Chemicals and Sand."

135. The Commission did not itself respond to "Health and Safety Concerns from Hydraulic Fracturing Chemicals and Sand" and instead copied a response from Ursa.

136. Neither document responded to the health studies submitted with public comments.

137. Neither document explained why the injection well could not be located outside of Battlement Mesa.

138. The Commission attached a condition of approval to the permit that requires Ursia to submit an engineering analysis of the site, including the retainer wall, to the Commission thirty days before Ursia starts construction.

139. The Commission did not require an analysis of the site's stability and safety before the Commission approved the permit.

140. Commission staff later confirmed at a public hearing that staff did not consider the cumulative effects from placing another oil and gas project inside the community on Battlement Mesa residents' health and welfare.

E. The Commission declined to hold a hearing to consider overturning the staff's approval of the BMC A Pad Form 2A.

141. In light of the deficiencies in the permit, the community groups sent a letter to the Garfield County Local Government Liaison, Kirby Wynn, on January 17, 2019, asking the county to exercise its right as the relevant local government to request a hearing before the Commission on the BMC A Pad Form 2A permit. Attached as Exhibit 5 is BCC and GVCA's Letter to Kirby Wynn dated January 17, 2019.

142. On January 21, 2019, after consulting with the Garfield County Board of County Commissioners, Kirby Wynn sent the community groups a response stating that the County would not request a hearing.

143. On January 21, 2019, the community groups sent a letter to the Commission requesting that the Commission hold a hearing on its own motion to reconsider the BMC A Pad Form 2A permit approval. Attached as Exhibit 6 is BCC and GVCA's Letter to the Colorado Oil & Gas Conservation Commission dated January 21, 2019.

144. On January 28, 2019, the Commission held a General Session in Denver where it allowed two hours for public comments.

145. During this public comment period, GVCA President Leslie Robinson asked the Commission to consider the community groups' request for the Commission to hold a hearing on its own motion to reconsider the BMC A Pad Form 2A permit approval.

146. The Commission stated that it would discuss BMC A Pad on the following day.

147. On the morning of the January 29, 2019 Commission hearing, the community groups sent a second letter to the Commission suggesting questions for the Commissioners to ask staff about deficiencies in the BMC A Pad Form 2A application approval process. Attached as Exhibit 7 is BCC and GVCA's Second Letter to the Colorado Oil & Gas Conservation Commission dated January 28, 2019.

148. At the January 29, 2019 Commission hearing, staff gave a presentation on BMC A Pad, and then the Commission deliberated on whether or not to hold a separate hearing to reconsider the permit.

149. During the staff presentation, staff members made several comments about the BMC A Pad Form 2A approval process.

150. For example, staff stated its understanding that no Commission rule explicitly requires an alternative site analysis, and expressed uncertainty as to whether an alternative site analysis was done for BMC A Pad.

151. Also, the Commissioners and staff stated that they did not consider cumulative impacts of A Pad; instead, the Commission considers the impacts of each project individually.

152. During the Commissioners' deliberation, the Commissioners expressed confusion about their own authority to review BMC A Pad's Form 2A and the meaning of the Commission's rules.

153. For example, the Commissioners expressed confusion about whether or not the Commission's rules require an alternative site analysis and what this analysis would include.

154. During the Commissioners' deliberation, Commissioner Ager asked counsel for the Commission if the Commissioners are able to, in the interest of public health and environment, overturn a permit approved by staff. Counsel for the Commission stated that this was a "big question" that he was unable to answer.

155. The Commissioners declined to hold a separate hearing on the permit because they could not determine what authority the Commission does or does not have to overturn staff's decision to approve a permit or otherwise remedy the concerns expressed by the community groups' letters.

156. The Commissioner's deliberation on the community groups' letters concluded with Commissioner Jolley stating "this wasn't going to go anywhere."

CLAIMS

First Claim for Relief

The Commission misconstrued its authority under the Oil and Gas Conservation Act.

157. The above paragraphs are incorporated herein by reference.

158. Under Section 106(2)(d) of the Act, “[t]he Commission has the authority to regulate . . . [o]il and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources . . .” C.R.S. § 34-60-106(2)(d).

159. Commission Rule 502.a. gives the Commission the authority to, on its own motion, initiate a hearing “upon any questions relating to conservation of oil and gas or the conduct of any oil and gas operations in the State of Colorado, or to the administration of the Act.” 2 C.C.R. § 404-1:502.a.

160. During the Commission hearing on January 29, 2019 in Denver, Colorado, regarding the Form 2A permit for BMC A Pad, the Commissioners expressed confusion and doubt about the Commission’s ability to overturn its staff’s decision to issue a permit that does not sufficiently protect public health and the environment.

161. As a result of this confusion, the Commission allowed the permit for BMC A Pad to remain in effect.

162. In doing so, the Commission misconstrued its authority under the Act to protect public health and the environment and hold hearings necessary to implement the Act.

163. The BMC A Pad Form 2A is therefore contrary to law. C.R.S. § 24-4-106(7)(b)(IX).

Second Claim for Relief

The Commission acted arbitrarily and capriciously when it approved Ursa’s Form 2A permit application for BMC A Pad because the Commission failed to show on the record that it considered legitimate concerns raised in public comments.

164. The above paragraphs are incorporated herein by reference.

165. Commission Rule 305 requires the Commission to post Form 2As for public comment and consider those comments.

166. A permit is arbitrary and capricious when an agency fails to “examine relevant data and articulate a satisfactory explanation for its action.” *Chase v. Colo. Oil and Gas Conservation Comm'n*, 284 P.3d 161, 171 (Colo. App. 2012) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43 (1983)).

167. Here, public comments on BMC A Pad’s Form 2A identified several legitimate concerns including negative health effects from air pollutants; impacts to residents’ quality of life; safety risks from BMC A Pad’s location; cumulative impacts from locating another pad inside Battlement Mesa’s boundaries; and threats posed by the injection well to water resources.

168. Comments included health studies supporting these concerns and documenting significant adverse health impacts that will result from the oil and gas activities on BMC A Pad.

169. The Commission did not adequately address these public health concerns, and made no response in the record to the submitted health studies.

170. Therefore, the Commission acted arbitrarily and capriciously by failing to show on the record how it considered the public comments prior to approving the Form 2A permit for BMC A Pad.

Third Claim for Relief

The Commission acted arbitrarily and capriciously when it approved Ursu's Form 2A permit application for BMC A Pad because Ursu failed to submit an alternative location analysis for the production facilities as required by Rule 604.c.(2).E.i.

171. The above paragraphs are incorporated herein by reference.

172. Commission Rule 604.c.(2).E.i requires production facilities to be located as far as possible from homes when those facilities (1) are within 1,000 feet of a home and (2) serve multiple wells. 2 C.C.R. § 404-1:604.c.(2).E.i.

173. BMC A Pad will include production facilities located within 1,000 feet of a home and will serve multiple wells, so the Commission must ensure that the project complies with Rule 604.c.(2).E.i.

174. To comply with Rule 604.c.(2).E.i., the Form 2A application requires the operator to conduct an analysis that identifies and assesses alternative locations for the production facilities that are farther from the nearest home.

175. Ursa never submitted this analysis required by the Form 2A and Rule 604.c.(2).E.i.

176. Ursa never adequately considered alternative locations for the injection well, as required by the rule.

177. Therefore, the Commission acted arbitrarily and capriciously when it approved the Form 2A permit for BMC A Pad without requiring Ursa to submit the alternative location analysis for the production facilities as required by Rule 604.c.(2).E.i.

Fourth Claim for Relief

The Commission acted arbitrarily and capriciously when it approved Ursa's Form 2A permit application for BMC A Pad because the Commission failed to ensure that BMC A Pad was located as far as possible from homes and used best available technology as required by Rule 604.c.(4).

178. The above paragraphs are incorporated herein by reference.

179. BMC A Pad qualifies as a LUMA Facility due to its number of wells and proximity to numerous homes. See 2 C.C.R. § 404-1:100.

180. Commission Rule 604.c.(4) therefore required that the Commission ensure BMC A Pad is located "as far as possible" from homes and used "best available technology to avoid or minimize adverse impacts to adjoining land uses." 2 C.C.R. § 404-1:604.c.(4).

181. The Commission failed to independently ensure that BMC A Pad was located as far as possible from homes.

182. Although Ursa provided a siting rationale pursuant to another rule, that analysis did not adequately show that the Commission ensured BMC A Pad complies with Rule 604.c.(4) and that BMC A Pad is as far as possible away from homes.

183. The Commission failed to ensure that Ursa used the best available technology at BMC A Pad pursuant to Rule 604.c.(4), including, for example, technology that would allow the injection well to be located away from BMC A Pad.

184. Therefore, the Commission acted arbitrarily and capriciously when it approved the Form 2A permit for BMC A Pad because Ursa failed to ensure that BMC A Pad was built as far as possible from homes and used the best available technology as required by Rule 604.c.(4).

PRAYER FOR RELIEF

Battlement Concerned Citizens and Grand Valley Citizens Alliance respectfully request that this Court:

185. Declare that the Commission's approval of Ursa's Form 2A application for BMC A Pad was arbitrary and capricious and contrary to law.

186. Declare that:

- a. The Oil and Gas Conservation Act empowers the Commission to overturn staff decisions that are not sufficiently protective of public health.
- b. Commission Rule 604.c.(2).E.i requires the Commission to ensure that the operator identified and meaningfully evaluated alternative locations for production facilities that are farther from homes; and
- c. Commission Rule 604.c.(4) requires the Commission to ensure that the operator located the LUMA site as far away as possible from homes and utilized the best available technology to minimize impacts.

187. Set aside the Commission's approval of Ursa's Form 2A permit for the BMC A Pad location.

188. Remand back to the Commission for a decision consistent with the ruling of this Court.

189. Award Battlement Concerned Citizens and Grand Valley Citizens Alliance their costs pursuant to Colorado Rule of Civil Procedure 54 to the extent permitted by law.

190. Grant further relief that the Court finds just and proper.

DESIGNATION OF RECORD

Battlement Concerned Citizens and Grand Valley Citizens Alliance designate the following documents as relevant parts of the administrative record pursuant to the Colorado Administrative Procedure Act, C.R.S. § 24-4-106(6):

1. The original or certified copies of all applications and attachments thereto, evidence, memoranda, exhibits, public comments, studies, and other papers presented to or considered by the Commission regarding the approval of Ursa's Form 2A application for BMC A Pad on January 11, 2019.
2. Specifically, the record should include, but should not be limited to, the following documents: Initial Form 2A application for BMC A Pad (No. 401902959); Resubmitted Form 2A application for BMC A Pad (No. 401902959); Rejected Form 2A application for BMC A Pad (No. 401443512); Final Approved Form 2A application for BMC A Pad (No. 401234964); Ursa's Rule 305A Certification of Compliance (No. 401488239); Ursa's Siting Rationale submitted pursuant to Rule 305A (No. 401488245); Reference Area Map (No. 401488269); Facility Layout Drawing (No. 2108442); Garfield County Special Use Permit Gas Wells Conditions of Approval (No. 2108504); Garfield County Special Use Permit Injection Well Conditions of Approval (No. 8505); Battlement Mesa Planned Unit Development Map (No. 2108540); Comment Response Letter to LGDs (No. 2108677); Final Public Comment Response Document (No. 2108679); Document of Public Comments (No. 401902960); Letter from Dave Devanney, Battlement Concerned Citizens, Leslie Robinson, Grand Valley Citizens Alliance, Matt Sura to COGCC RE "Lack of Notice" dated October 21, 2017; BCC and GVCA's Letter to the Colorado Oil & Gas Conservation Commission dated January 21, 2019; Transcript from January 28, 2019 Colorado Oil & Gas Conservation Commission Hearing in Denver, Colorado (available at: <https://www.youtube.com/watch?v=YWNn0BHvKvg>); Transcript from January 29, 2019 Colorado Oil & Gas Conservation Commission Hearing in Denver, Colorado (available at: <https://www.youtube.com/watch?v=OLy0LiGh7aM>).

EXHIBITS

Exhibit 1 CDPHE's Consultation Letter for BMC B Pad and BMC D Pad to the Commission dated February 29, 2016 and CDPHE's Letter to Garfield County for PUD Zoning Amendment dated January 12, 2017.

Exhibit 2 Letter from Dave Devanney, Battlement Concerned Citizens, Leslie Robinson, Grand Valley Citizens Alliance, Matt Sura to COGCC RE "Lack of Notice" dated October 21, 2017.

Exhibit 3 Ursa's BMC L Pad Siting Rationale.

Exhibit 4 Ursa's Rule 604.c.(2).E.i. Production Facilities Siting Analysis for BMC B Pad, BMC D Pad, and Watson Ranch B Pad.

Exhibit 5 BCC and GVCA's Letter to Kirby Wynn dated January 17, 2019.

Exhibit 6 BCC and GVCA's Letter to the Colorado Oil & Gas Conservation Commission dated January 21, 2019.

Exhibit 7 BCC and GVCA's Second Letter to the Colorado Oil & Gas Conservation Commission dated January 28, 2019.

Respectfully submitted on February 14, 2019.

s/ Wyatt Sassman

Wyatt Sassman (CO Bar No. 51890)

Attorney for Battlement Concerned Citizens
and Grand Valley Citizens Alliance



Dedicated to protecting and improving the health and environment of the people of Colorado

February 29, 2016

Mr. Matthew Lepore, Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, Colorado 80203

Re: Colorado Department of Public Health and Environment (Department)
Consultation Recommendations for the URSA Operating Company, LLC (URSA)
well pads BMC B and BMC D in Garfield County

Dear Mr. Lepore:

This letter describes the Department's recommendations to the Colorado Oil and Gas Conservation Commission (COGCC) on a list of conditions of approval to minimize adverse impacts to public health, safety, welfare and the environment for the URSA well pads BMC B and BMC D located in Section 18 Township 7S Range 95W Garfield County. These recommendations are based on an analysis of the potential impacts from this well site as depicted in the Form 2A submittal, comments from local residents, County permitting documents and an onsite visit to the well sites. The Department recognizes that COGCC staff will be addressing the best management practices and site specific mitigation measures found in the Governor's Task Force Recommendation 17 that will serve to enhance the following recommendations.

The Department commends both Garfield County and URSA Operating Company for the extensive County permitting process and the numerous public outreach meetings for these two well pads within Battlement Mesa. Consultation on these well pads was triggered by Garfield County requesting consultation and also with the adoption of the rule implementing the Governor's Oil and Gas Task Force Recommendation No. 17. The Department has identified potential issues with these well sites and recommended actions and practices to address these issues. These potential issues include

- Determining the Location of the BMC B Well Pad
- Locating a Class II Injection on URSA's BMC B Well Pad;
- Odor and Air Quality Concerns;
- Spill Response; and
- Stormwater Protections.



Determining the Location of the BMC B Well Pad

URSA's well pad BMC B is proposed to be located within intermediate buffer zone of a public water supply area as defined by COGCC Rule 317B. COGCC established Rule 317B to enhance protection of public water supply areas based on the distance from the ordinary high water line of the public water supply bank to the nearest edge of the disturbed area at the oil and gas location; however, the Department remains uncertain about which buffer zone the BMC B well pad is located in. The Form 2A submittal, maps provided by URSA and the site visit indicates the well pad is very close to internal buffer zone as defined in COGCC Rule 317B. In order to determine which buffer zone conditions apply to URSA's BMC B well pad, the Department is recommending that the COGCC require the Operator obtain a third party expert (geomorphologist or hydrologist) to determine the ordinary high water line of the closest bank of the Colorado River and measure to the near edge of the disturbed area at the proposed BMC B well pad. Once the analysis is completed the Department recommends the third party submit a map to the COGCC showing the BMC B well pad location in relationship to the nearest ordinary high water line of the Colorado River.

If the BMC B well pad is found to be within the internal buffer zone of COGCC Rule 317B, the Operator will need to request a variance and the Department would consult on that variance request. In addition to determining the appropriate buffer zone, the Department is concerned about the proposed Class II Injection Well and associated storage tanks on this well pad.

Locating a Class II Injection Well on URSA's BMC B Well Pad

URSA's BMC B well pad includes a Class II injection well with six produced water storage tanks that the Department believes creates a significant contamination risk to the public water supply for Battlement Mesa. The Battlement Mesa Water Treatment Plant has a raw water intake structure in close proximity to this proposed well pad creating an unnecessary long-term risk for a spill or release to potentially impact the public water supply. This risk will persist for many years, and will continue as additional well sites are developed in Battlement Mesa area. There are options available when determining a location for a Class II injection well and the Department believes Class II injection wells should not be located in Urban Mitigation Areas.

After considering the long-term risk to the public water supply and the flexibility available to the Operator when locating Class II injection wells the Department recommends that the COGCC deny the permit for the injection well and the associated storage tanks on the URSA BMC B well pad.

Odor and Air Quality Concerns

Odor and air quality concerns are found in large numbers in the comments received on the URSA's permits for both BMC B and D well pads. During the onsite visit URSA representatives shared with the Department various practices intended to reduce emissions and odors and the Department has added to these practices to further



mitigate odors and air quality concerns that are being recommended to COGCC as conditions of approval. These recommendations include

- Eliminating open tanks for any fluids other than fresh water;
- Eliminating the use of diesel in the drilling muds;
- Requiring green completion practices that utilize two P traps to minimize emissions during flowback;
- Requiring production facilities and pipelines to be in place prior to well completions to ensure green completion practices are fully used;
- Requiring natural gas sales line installation prior to completion activities to eliminate flaring;
- Requiring carbon blankets over thief hatches on temporary tanks to reduce emissions;
- Requiring dust suppression practices using a vacuum system or comparable process to control dust from completion activities;
- Requiring an automated system to determine tank levels eliminating the need to open thief hatches;
- Developing documented methods to minimize emissions from tank unloading activities i.e., unloading tanks without opening thief hatches;
- Requiring electric motors for the transfer of fluids to and from the well pads via pipelines;
- Requiring emission control devices on all produced water tanks regardless of the potential to emit; and
- Requiring monthly Infra-red camera or Method 21 inspections on the well sites.

Spill Response

A spill or release on either well pad BMC B and D will require immediate action to minimize the impacts to the riparian area and surface water. URSA has a Spill Prevention and Management Plan and the Department is requesting additional measures to reduce the likelihood of an impact. These recommendations include

- Requiring a spill response trailer onsite along with heavy equipment and an operator to quickly build additional earthen berms in the event of a spill outside of containment;
- Requiring 150% fluid containment for all storage tanks and pipelines on both well pad BMC B and D;
- Require weekly spill response training with onsite staff and contractors during oil and gas operations;
- Requiring the use of pipelines to minimize spills and truck trips within Battlement Mesa; and
- Requiring telemetry system to notify the operator of upset conditions with remote well shut-in capability.



Stormwater Protections

In addition to a spill or release impacting the riparian area and surface water, stormwater released from these well sites could also impact these resources. The Department is recommending stormwater management inspections be conducted weekly and immediately after a storm event to ensure stormwater is contained and does not leave the well sites. The Department is also requesting URSA provide notice of the start of construction activities on these well sites. This notice will allow staff to manage workloads and prepare for citizen inquiries.

Conclusion

This is the first oil and gas facility to be permitted under the Governor's Task Force Recommendation 17. The COGCC Commissioners adopted Recommendation 17 which requires collaboration with local government, use of best available technology, use of best management practices and site specific mitigation measures to minimize the impacts to residential areas. URSA was not required to collaborate with local government; however, URSA held numerous meetings to share with residents of Battlement Mesa their plans to develop the minerals and address local concerns. URSA also worked with Garfield County to develop twenty-seven conditions of approval as part of the local permit prior to the Department's consultation. The Department has considered the public comments, reviewed the conditions of approval submitted with the COGCC permit application and conducted an onsite visit to assess site conditions. The recommended conditions of approval listed above are crafted to add to the work already done by the Garfield County and URSA to minimize the impacts from these well sites to the residents of Battlement Mesa.

Sincerely,

Kent Kuster

Digitally signed by Kent Kuster
DN: cn=Kent Kuster, o=CDPHE, ou=EDO,
email=kent.kuster@state.co.us, c=US
Date: 2016.03.02 08:16:24 -07'00'

Kent Kuster
Oil and Gas Liaison
Colorado Department of Public Health and Environment





January 12, 2017

Glenn Hartmann, Planner
Garfield County Community Development Department
108 8th Street, Suite 401
Glenwood Springs, CO 81601

Re: File No. PUAA-11-16-8497

Dear Mr. Hartmann,

The Colorado Department of Public Health and Environment has the following comment on the Battlement Mesa PUD Text Amendment and PUD Zone District Amendment File No. PUAA-11-16-8497.

The Colorado Department of Public Health and Environment (Department) previously provided the following recommendation to the Colorado Oil and Gas Conservation Commission as a result of the consultation requested by Garfield County on URSA's BMC B well pad and the Class II injection well. "URSA's BMC B well pad includes a Class II injection well with six produced water storage tanks that the Department believes creates a significant contamination risk to the public water supply for Battlement Mesa. The Battlement Mesa Water Treatment Plant has a raw water intake structure in close proximity to this proposed well pad creating an unnecessary long-term risk for a spill or release to potentially impact the public water supply. This risk will persist for many years, and will continue as additional well sites are developed in Battlement Mesa area. There are options available when determining a location for a Class II injection well and the Department believes Class II injection wells should not be located in Urban Mitigation Areas.

After considering the long-term risk to the public water supply and the flexibility available to the Operator when locating Class II injection wells the Department recommends that the COGCC deny the permit for the injection well and the associated storage tanks on the URSA BMC B well pad."

This recommendation has not changed and the Department believes URSA has not adequately demonstrated why this location, in close proximity to a drinking water intake, must be used for an injection well. Therefore, the Department would



recommend that Garfield County require URSA to provide an alternative analysis investigation specifically for potential locations of any proposed injection well.

URSA has already provided an alternative analysis for the well pad as part of the original COGCC permitting process that included an existing surface use agreement covering the location of wells and production facilities and including discussion on the technical capabilities to reach the minerals. However, reaching the mineral resources is not a deciding factor when locating an injection well. There are options that should be considered when selecting a location for an injection well and the Department believes that alternative injection well locations should be evaluated to reduce the potential for accidental contamination to the Battlement Mesa public water supply.

Please contact Kent Kuster at 303-692-3662 with any questions.

Sincerely,

Kent Kuster

Kent Kuster

Environmental Specialist

Colorado Department of Public Health and Environment



LAW OFFICE OF MATTHEW SURA

Matthew Sura LLC • 7354 Cardinal Lane, Longmont, CO 80503 • Phone: 720-563-1866 • mattsura.law@gmail.com

TO: COGCC complaints dnr_cogcc.complaints@state.co.us

Date: October 21, 2017

Name: Dave Devanney, Battlement Concerned Citizens, Leslie Robinson, Grand Valley Citizens Alliance, Matt Sura, *Attorney for Grand Valley Citizens Alliance.*

Address: Grand Valley Citizens Alliance
c/o Western Colorado Congress
134 N 6th St,
Grand Junction, CO 81501

Phone: 720-563-1866 – Matt Sura; 303-594-1066 – Dave Devanney.

Email Address: Matt Sura mattsura.law@gmail.com; Dave Devanney dgdevanney@comcast.net

Type of Complaint: LACK OF NOTICE - Ursula failed to send any notice to Building Unit owners within the Exception Zone or Buffer Zone and is therefore in violation of Rules 305.a(2), 305.c.(1), 305.c(2), 306.e.; and 604.a(1)A.ii.

Dear COGCC,

This complaint is being submitted on behalf of Grand Valley Citizens Alliance, Battlement Concerned Citizen, and our individual members in Battlement Mesa. On June 8, 2017, Ursula Resources filed a Form 2A with the COGCC for its proposed A Pad (Doc. # 401234964). As part of the application, Ursula was required to supply a pre-application notice to those Building Unit owners within 1,000 feet, OGLA notices to all Building Unit owners within 500 feet, and Buffer Zone notices to all Building Unit owners within 1,000 feet of the proposed location.

A “Residential Building Unit” is defined as “a building or structure designed for use as a place of residency by a person, a family, or families. ***The term includes manufactured, mobile, and modular homes***, except to the extent that any such manufactured, mobile, or modular home is intended for temporary occupancy or for business purposes.” *COGCC 100 series definitions.*

The owners of the individual mobile homes in the Tamarisk Village mobile home park are “Building Unit owners” and they should have received notice of Ursula’s application. NOTE: All the Mobile Home Unit Owners are available on the Garfield County Assessor website Once there, Choice #2; Enter Eagle Web; Click on Advanced Search; Under “Subdivision”, enter Saddleback/Tamarisk Park; Enter “Search” (<http://act.garfield-county.com/assessor/taxweb/results.jsp>) . Last visited August 21, 2017.)

EXHIBIT 2

The notice requirements of Rules 305.a, 305.c., 306.e.; and 604.a(1)A.ii. are fundamental to due process and general fairness. These rules ensure residents receive notice as to what is being proposed in their neighborhood, how to engage in discussions with the operator, and how to comment on the issue with the decision-maker. If these rules are not followed, the people who are potentially most impacted will have been denied their due process.

As is clearly stated in its application, Ursia has FAILED to meet these requirements. In its Rule 305.a. (2) Certification – (Doc # 401302664), Ursia states that the pre-application was only sent to six addresses – those of the *landowners*. Ursia's actions are in clear violation of the requirement to send the notice to all **Building Unit owners** within the exception (500 ft) and buffer (1,000 ft) zones.

Ursia has also failed to meet the requirements for an Exception Zone setback location that requires waivers to be submitted from all Building Unit Owners within 500 feet. In its application, Ursia admitted that it did not receive waivers from all Building Unit owners. The mobile home they did not receive a waiver from, and claimed was “uninhabitable,” has been remodeled and is now being rented. Another Building Unit owner has rescinded her waiver. She had not been given any of the pre-application notice information required in Rule 305.a(2) and did not understand the well pad was being proposed near her home.

Ursia's alleged rule violations are listed below.

LIST OF VIOLATIONS

Rule 305.a(2) – “Notice of Intent to Conduct Oil and Gas Operations”

- When required: not less than 30 days prior to submitting the Form 2A
- Must be sent to: All Building Unit owners within 1,000 feet (Buffer zone)
- Contents of notice: A. The Operator's contact information; B. The location and a general description of the proposed Well or Oil and Gas Facilities; C. The anticipated date operations will commence (by calendar quarter and year); D. The Local Governmental Designee's (LGD) contact information; E. Notice that the Building Unit owner may request a meeting to discuss the proposed operations by contacting the LGD or the Operator; and F. A “Notice of Comment Period” will be sent pursuant to Rule 305.c. when the public comment period commences.
- **VIOLATION:** No notice was sent to Building Unit owners within 1,000 feet. Rule 305.a.(2) certification (Doc. # 401302664) admitted that they only sent pre-application notices to surface owners and listed no Building Unit owners.

Rule 305.c.(1) – “Oil and Gas Location Assessment Notice – OGLA Notice”

- When required: Upon completeness determination
- Must be sent to: All Building Unit owners within 500 feet (Exception zone)
- Contents of notice: i. The Form 2A itself (without attachments); ii. A copy of the information required under Rule 303.b.(3).C, 303.b.(3).D, 303.b.(3).F, and 303.b(3).J.i.; iii. The COGCC's information sheet on hydraulic fracturing treatments except where hydraulic fracturing treatments are not going to be applied to the well in question; iv.

Instructions on how Building Unit owners can contact their Local Governmental Designee; v. An invitation to meet with the Operator before Oil and Gas Operations commence on the proposed Oil and Gas Location; vi. An invitation to provide written comments to the LGD, the Operator and to the Director regarding the proposed Oil and Gas Operations, including comments regarding the mitigation measures or Best Management Practices to be used at the Oil and Gas Location.

- **VIOLATION:** No OGLA notice was sent to Building Unit owners within 500 feet. OGLA notice was not waived by any parties nor is OGLA notice even waivable by Building Unit owners.

Rule 305.c.(2) – “Notice of Comment Period – Buffer Zone Notice”

- When required: Upon completeness determination
- Must be sent to: All Building Unit owners within 500 feet (Exception zone)
- Contents of notice: A. The Operator’s contact information; B. The Local Governmental Designee’s contact information; C. The COGCC’s website address and telephone number; D. The location of the proposed Oil and Gas Facilities and the anticipated date operations will commence (by month and year); E. An invitation to meet with the Operator before Oil and Gas Operations commence on the proposed Oil and Gas Location; F. An invitation to provide written comments to the LGD, the Operator and to the Director regarding the proposed Oil and Gas Operations, including comments regarding the mitigation measures or Best Management Practices to be used at the Oil and Gas Location.
- **VIOLATION:** No notice of comment period was sent to Building Unit owners within 1,000 feet

Rule 306.e. - Meetings with Building Unit Owners Within a Buffer Zone Setback.

- When required: After OGLA or Buffer Zone notices are sent.
- Must be sent to: Invitation to meet must be part of the OGLA and Buffer Zone notices (above)
- Operator shall provide the following information: the date construction is anticipated to begin; the anticipated duration of pad construction, drilling and completion activities; the types of equipment anticipated to be present on the Location; and the operator’s interim and final reclamation obligation. In addition, the Operator shall present a description and diagram of the proposed Oil and Gas Location that includes the dimensions of the Location and the anticipated layout of production or injection facilities, pipelines, roads and any other areas to be used for oil and gas operations. The Operator and Building Unit owners shall be encouraged to discuss potential concerns associated with Oil and Gas Operations, such as security, noise, light, odors, dust, and traffic, and shall provide information on proposed or recommended Best Management Practices or mitigation measures to eliminate, minimize or mitigate those issues.
- **VIOLATION:** In an attempt to obtain waivers, meetings were held with some Building Unit owners within 500 feet but none of the information required above was supplied at those meetings. No meetings were offered to, nor held with, Building Unit owners within 500-1,000 feet.

Rule 604.a(1)A.i. – Operator must obtain waivers from all Building Unit owners within 500 feet or go through variance process.

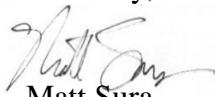
- When required: Submission of Form 2A
- Must be sent to: COGCC as part of exception location request
- **VIOLATION 1:** Ursa has only submitted waivers from six out of seven Building unit owners. One of the Building unit owners has since rescinded the waiver. The Operator also failed to provide those Building Unit owners the information required in Rule 305.c. prior to having them sign the waiver (see below).

Rule 604.a(1)A.ii. – Operator Certification of Compliance with Rules 305.a, 305.c., & 306.e.

- When required: Submission of Form 2A
- Must be sent to: COGCC as part of exception location request
- **VIOLATION 1:** Rule 303.b.(3)J.iii – Rule 305.a.(2) certification (Doc. # 401302664) admitted that they only sent pre-application notices to *surface owners* and listed no *Building Unit owners*.
- **VIOLATION 2:** The Operator has failed to provide certification that it has complied with 305.c. and 306.e as required by Rule 604.a(1)A.ii.

As the COGCC is well aware, Ursa's A Pad proposal represents the closest multi-well facility to an urban mitigation area since the setbacks regulations were adopted in early 2013. Ursa's flagrant disregard of COGCC notice requirements are harming those closest to their proposed pad: Tamarisk Village residents. Aside from any penalties COGCC might impose on Ursa, we also urge the COGCC to require Ursa to withdraw its current Form 2A application for the A Pad. Submitting a new Form 2A, and going through the variance process for a location closer than 500 feet from a Building Unit, is the only way Ursa will be able to comply with COGCC regulations. Alternatively, the COGCC Director is required to deny Ursa's Form 2A for failure to comply with the COGCC rules. *Rule 306.e(5); Rule 604.a.(1)A.*

Sincerely,



Matt Sura

Attorney for BCC and GVCA

Dave Devaney
Battlement Concerned Citizens
Leslie Robinson
Grand Valley Citizens Alliance



BMC L PAD
LUMA Siting Rationale and Alternative Analysis
(COGCC Rules 305A.a and 305A.b.(2))

COGCC Rule 305A.a. requires a 90-day Notification of Intent (NOI) for a proposed location within a Large UMA (LUMA) oil and gas facility (herein after “location”) prior to submitting an oil and gas location (i.e. Form 2A) application to the COGCC. Per COGCC Rule 305A.b.(2), this siting rationale is required as part of the NOI. The notification must be forwarded to (A) the local government with land use authority over the proposed location and (B) the landowner on whose lands the LUMA facility will be located, prior to finalizing the location with the landowner, unless exception criteria under 305A.e.(1) are met.

BACKGROUND

Battlement Mesa (Garfield County, CO), since the late 1970s, was planned as an energy community and initially built to support oil shale and oil and gas development. Following the slow-down of oil shale development in the 1980s, Battlement Mesa continued to be an oil and gas community for the development of the Piceance Basin. Since the 1980s, Battlement Mesa has also been promoted as a retirement community; however as of the 2010 census, the average age of a Battlement Mesa resident is 37.5 and a good portion of its residents support the oil and gas industry. The area surrounding the BM PUD has had historic (since 1949) and considerable oil and gas development, particularly within the past 10 years.

At the time of the county resolution, 14 well pads were proposed within the BM PUD. Under Ursa’s predecessor in interest, prior to December 2012, the number of pads and associated infrastructure was reduced to 10. Since that time, Ursa has reduced the number of proposed well pads within the BM PUD to five (5) and potentially four (4) as part of a comprehensive development plan to occur in two phases. Phase I included two locations (the BMC B and the BMC D), which were approved by the COGCC and Garfield County in 2016. Phase II will include the remaining three well pads (the BMC A and BMC L) and a temporary water storage facility (BMC F).

Of the 197 wells Ursa proposes in the vicinity of the BM PUD, 107 are proposed to be drilled from the four (4) pads within the BM PUD, including the 31 gas wells to be drilled from the BMC L Pad.

All pad locations within the BM PUD are subject to an amended Surface Use Agreement (SUA, 2009) executed between Battlement Mesa Partners, LLC (BM Partners) and Ursa Operating Company LLC (formerly Antero Resources). Said SUA establishes not only the BMC L pad location, but all four (4) of the pad locations for the overall development of the BM PUD. This also meets the intent of the Governor’s Task Force and implementing LUMA regulations, as the oil and gas facility is proposed within a site specific development plan (via the SUA) that establishes vested property rights and which expressly governs the location of the wells and production facilities on the surface estate. It should be noted that in working closely with Battlement Mesa Partners over the past several years, the comprehensive development plan considered many complex factors, including long-term community development plans and complex operational considerations.



SITING CRITERIA

Several considerations and criteria weigh significantly in selecting locations to minimize potential impacts to human health, safety, and the environment (including wildlife). Proposed Best Management Practices (BMPs), developed on a site-specific basis provide an additional level of mitigation, in addition to Federal, state, county and local regulations, land use codes and permit conditions of approval. Potential criteria may vary on a site-specific basis and include (but aren't limited to) those listed below: Only those criteria applicable to the proposed location are addressed:

Geology and Bottomhole Considerations

- Number of Bottom holes and approximate depths
- Rationale for selecting this location from a mineral development perspective

Technical and Operational Capabilities Issues

- Topography and accessibility of locations
- The ability to reach and develop bottom holes in an economic and technically feasible manner using proven technologies
- Water availability, transportation and management options
- Seasonal and weather constraints, and timeframe to develop (construct, drill, complete, produce)

Existing Mineral Leasing, Surface Owner Contractual Considerations

- Mineral leasing agreement(s)
- Surface owner Surface Use Agreement (SUA) provisions and preferences (w/landowner conflicts)
- Potential local/regional conflicts with future development by a landowner
- Prior existing rights and encumbrances (both public and private)
- State and county land and easement cultural setback requirements (i.e. COGCC exception/buffer zones)

Community Health and Safety Concerns

- Traffic safety including transportation and haul routes
- Proximity to distance of the location from building units, schools, public buildings, etc.
- Community events that may affect scheduling (if known)

Regulatory Considerations Affecting Siting

- Existing Federal, state, county and local regulations and land use codes (and conflicts)
- Minimizing the level of disturbance associated with pads, roads, pipelines, etc.

Environmental

- Potential natural resource impacts to sensitive areas, public water supplies, wetlands, floodplains
- Potential for nuisances including traffic, odors, noise, air emissions, etc.
- Sensitive area, natural resource, environmental and wildlife concerns
- Potential environmental and wildlife concerns



PROPOSED LOCATION

Geological, Technical and Operational Considerations

Consideration was given to the location most likely available to reach all bottomholes from a single well pad vs. multiple pads to reach all bottomholes. The proposed oil and gas location has 31 bottomholes that would be accessed from this location. The farthest bottomhole from the locations is approximately 3,588'. Please note that an injection well is not proposed at this location at this time.

The construction of the well pad location will have moderate cuts and fills. Access to the location would be via existing improved and unimproved existing roads. A shorter well pad access road will be constructed, approximately 350ft +/-.

Based on the bottomhole locations in relationship to the location of the well pad, Ursa has determined that it is economically and technically feasible using proven technologies to reach all bottomholes and that the maximum drilling reach of 3,588' is reasonable and practical.

Existing Mineral Leasing, Surface Owner Contractual Considerations

Ursa has valid existing lease(s) to reach bottomholes from the proposed location. Communication with the surface owner has been in progress for the past several years and an agreement has been reached. The surface owner agreed to amend the surface use agreement to move the proposed location to the east farther from the subdivision to the north and away from the highly visible location near the golf course as proposed in the original SUA. The well pad is not anticipated to affect any prior existing rights, easements or encumbrances. There are no building units within exception zone (0 – 500') and nine building units and one commercial building located within the buffer zone (500 – 1000').

Community Health, Safety and Nuisance Concerns

Ursa's traffic and transportation (aka haul route) plans consider potential community and residential safety concerns. The proposed location doesn't appear to present any traffic or safety concerns that would adversely affect this location, nor present any greater concerns than other locations in similar settings. In addition, Ursa works with Community Counts, the Garfield Energy Advisory Board, and periodic community meetings to address upcoming rig moves, operations actions, etc. that would potentially affect the community. Haul routes were established by Garfield County to serve as primary routes for oil and gas development in the vicinity of this location.

There is a potential for short-term noise and lighting nuisances associated with construction, drilling and completions for the 9 building units to the north of the well pad location. However, Ursa will work with the permitting agencies and the community to mitigate or eliminate potential nuisances through compliance with regulations, BMPs, and state and county permit conditions of approval (COAs).



Regulatory & Environmental Considerations

Ursa has conducted site reviews, onsites, and land assessments to ensure that the location would comply with existing Federal, state, county and local regulations and land use codes; including both cultural and environmental setbacks. No conflicts with laws and regulations have been initially identified in the assessments and onsites conducted by Ursa.

Ursa and its third party consultants have conducted site environmental assessments including ecological surveys (e.g. noxious weeds, wildlife, waters of the state, etc.) for the BMC L Pad. The proposed location was evaluated for potential natural resource impacts to include (but not limited to) sensitive areas, public water supplies, wetlands, watersheds and floodplains. The proposed location is not located within the 100-year floodplain, nor does it appear to be within the Parachute Watershed District or a designated 317B Public Water Supply Area. This location is located within key wildlife habitats, for which a Wildlife Mitigation Plan exists, so there are no issues affecting wildlife, which is primarily big game. Otherwise no potential environmental conflicts were identified during the site reviews and onsite. As a result of moving the proposed location to the east, there are no downwind residents within 1,000ft.

ALTERNATIVE LOCATIONS CONSIDERED

Geological, Technical and Operational Considerations

Alternative locations were considered and evaluated over the past several years to reach bottomholes to meet lease commitments, without requiring two locations or more to reach bottomholes. Related limitations to alternative locations are addressed in sections below.

Other adjacent locations were considered for construction, drilling bottomhole reaches and operations of the pad, access road and pipelines. However these options were eliminated due to landowner development plans and/or state, county, land use codes, and environmental compliance considerations.

Existing Mineral Leasing, Surface Owner Contractual Considerations

From both a mineral and the SUA with the surface owner, no other feasible alternatives exist. The well pad isn't anticipated to affect any prior existing rights, easements or encumbrances.

Community Health and Safety Concerns

Ursa's initial review of traffic and transportation haul routes found that no other options exist based on current infrastructure. No alternative location was identified that would create less traffic and safety concerns. Alternative locations to the north, south and west would place the location in closer proximity to homes, building units and the golf course and would likely result in a higher potential for short-term noise and lighting nuisances associated with construction and drilling in close proximity to the well pad location.

The original pad location near the golf course pursuant to the 2009 SUA was not a preferred location due to difficult topography and drainages in the area as well as visual impact to the surrounding community. In 2016, Ursa was able to work with the surface owner and amend the SUA to relocate the pad out of the drainage area to a much preferred location further from homes and the golf course. Upon further technical review and discussion with COGCC staff, it was discovered that the newly relocated pad fell within 1000' of a High Occupancy Building Unit (HOBU), being the Grace Bible Church child care center. Ursa elected to postpone



permit submittal in order to relocate the pad approximately 115' north of the renegotiated location in order to maintain a 1000' buffer to the HOBU. The proposed pad location now falls outside of the 1000' buffer from the HOBU as well as the residential building units located to the north.

Regulatory & Environmental Considerations

Alternate locations were considered as part of site environmental assessment, onsites, and land assessments to ensure that the location would comply with existing Federal, state, county and local regulations and land use codes. While other locations could potentially comply, those options were eliminated due to both cultural and environmental setbacks, and other reasons included in this siting analysis.

Alternate locations were considered in evaluating potential natural resource impacts to include (but not limited to) sensitive areas, public water supplies, wetlands, floodplains and wildlife.

SUMMARY

Ursa has evaluated the proposed location and potential alternative locations to assess compliance with Federal, state and local regulations and land use codes, and the landowner's preference as documented in the SUA. In conducting the siting analysis, potential conflicting land uses and concerns were identified. The analysis included mineral lease obligations, SUA contractual obligations, existing and reasonably foreseeable land development uses, regulatory setbacks, community concerns, and potential impacts to natural resources, the environment, and wildlife. Based on the information provided in this siting rationale, alternative sites to the north, south and west aren't considered feasible for the location for reasons provided herein, and still have the ability to reach bottom holes. Ursa already has a location to the northeast approved by COGCC and Garfield County. Therefore, Ursa believes that the proposed location is the best option to locate the proposed well pad with appropriate BMPs and permit COAs.

Rule 604.c.(2).E.i. Alternatives Evaluation for Locating Production Facilities

URSA Operating Company LLC, BMC D Pad, NENW Sec 18 T7S R95W, Garfield County, Form 2A#400928415

604. SETBACK AND MITIGATION MEASURES FOR OIL AND GAS FACILITIES, DRILLING, AND WELL SERVICING OPERATIONS

c. Mitigation Measures.

(2) Location Specific Requirements – Designated Setback Locations.

E. Multi-well Pads.

- i. Where technologically feasible and economically practicable, operators shall consolidate wells to create multi-well pads, including shared locations with other operators. **Multi-well production facilities shall be located as far as possible from Building Units.**

Per COGCC Rule 604.c.(2).E.i., Ursas evaluated alternatives to determine consolidation of multi-well pads and to determine if the production facilities (and location) are as far from building units as possible. Several considerations weighed heavily on the location proposed in this permit application. This application is one of two locations proposed under Phase 1 of natural gas development within the Battlement Mesa Planned Unit Development (BMPUD). A total of five (5) locations are currently proposed within the BMPUD, including the two aforementioned locations under Phase 1.

In addition to the well pad location siting rationale and considerations, the location of the production facilities has been determined based on several criteria. First, the existing SUA expressly governs the location of the production facilities on the surface owner's land. Second, placement of the production facilities along the southwestern edge of the pad surface is the preferred location as the equipment will be tucked into the cut slope of the pad (see the Construction Layout Drawings attachment). This is preferred as the placement of equipment near the cut slope will provide both visual (line of sight) and sound mitigation based on the topology of the area and the location of the residences in the vicinity. Additionally, and included as an exhibit to the SUA, Ursas has a detailed landscape plan for the BMC D pad location. The mounding and vegetative cover is planned to screen the production equipment in order to provide yet another level of visual impact and sound mitigation to proximate residences.

Ursa has invested significant capital in having a third-party sound and visual impact study conducted and an in-depth report generated for site-specific BMC D pad conditions. The study is being included with this analysis as supplemental information to further support the proposed location of the BMC D pad production facilities (see the Location Siting Rationale attachment, Landscape Plan). It should be noted that this information is part of the approved Garfield County application materials.

Shifting of the production facilities to the east along the south-western edge or to eastern edge of the pad would place the equipment closer to the apartment complex northeast of the pad location. In fact, moving the facilities to this area would place equipment closer to the apartment complex than it currently sits in relation to the housing subdivision to the southwest of the pad. Relocation of the production facilities to the northern- northwestern side of the pad would place the equipment closer to the housing subdivision to the northeast of the pad location and closer to the Colorado River. Furthermore, equipment placement on the northern edge would fall on the fill side of the pad, would not take advantage of the cut slope barrier and would be much more visible to surrounding residences. Based on this information, there are no feasible, alternative production facility locations within the abutting lands that would move the equipment further than 1000' from building units and allow for maximum mitigation of nuisance conditions.

EXHIBIT 4

BMC B Pad; Form 2A #400927767

Rule 604.c.(2).E.i. Production Facilities Siting Analysis Considerations

The location of the production facilities has been determined based on several criteria. First, the existing SUA expressly governs the location of the production facilities on the surface owner's land. Second, placement of the production facilities along the western edge of the pad surface is the preferred location as the proposed production and injection tanks will be greater than 1000' from all proximate residences (except the Burke residence, which Ursa has obtained a waiver from) and all equipment is located as far as possible from the Colorado River 317B public water supply internal buffer area. Location of facilities in this area also provides both visual (line of sight) and sound mitigation based on the topology of the area and the location of the residences in the vicinity.

Shifting of the production facilities to the north edge of the pad would place the equipment closer to the Colorado River and internal buffer area of the 317B public water supply. Relocation of the production facilities to the eastern side of the pad would also place the equipment closer to the Colorado River and associated 317B internal buffer area. Additionally, placement on the east side of the pad would move equipment closer than 1000' to homes and toward the wetland area north of the pad location. Based on this information, the production and injection tanks already meet the requirement to be 1000' or more from the nearest residence. The location of the remaining production equipment (separators and combustor) are situated on the pad location as far as possible from residences in the vicinity while still maintaining proper safety setback as required per the 600-series rules. There are no feasible production facility locations within the abutting lands that would move the equipment further than the current distances from building units and allow maximum mitigation of nuisance conditions.

Ursa had a third-party sound study conducted and report generated for site-specific BMC B pad conditions. The sound study report is being included with this analysis as supplemental information to further support the proposed location of the BMC B pad production facilities. (Please note, Attachment A to the report is available as part of the approved Garfield County application materials and is not included here-in due to the size of the file at 100+ pages.)



Watson Ranch B Pad Alternatives Analysis (Rule 604.c.(2)E.i)

Per COGCC rule 604.c.(2)E.i, Ursa evaluated alternatives to determine if the production facilities are as far from building units as possible. The evaluation is captured in Ursa's Site Assessment Checklist (provided to D. Kubeczko, OGLA) at the field onsite on October 23, 2014. Production equipment for this location will be placed on the well pad. As such, Ursa evaluated the well pad location/production facilities based on several criteria including topography, pad stability, access, access to bottomhole locations, mineral lease and surface use agreements, established transportation and haul routes per local and community preferences, setbacks identified in the Section 300 and 600 regulations, community concerns, and environmental concerns based on proximity to sensitive areas. Sensitive areas considered include state waters, wetlands, floodplains and key wildlife habitat. It was determined that no other alternatives are feasible based on the criteria described herein.



BCC
BATTLEMENT
CONCERNED CITIZENS

Kirby Wynn
Local Government Designee
Garfield County
Oil and Gas Division
195 West 14th Street, Building D
Rifle, CO 81650
Via Email: Kirby Wynn kwynn@garfield-county.com

January 17, 2019

COGCC Hearing for A Pad Form 2A, Location ID: 460637

Mr. Wynn,

Battlement Concerned Citizens and Grand Valley Citizens Alliance are writing to you concerning the recent approval of the Form 2A for Ursas A Pad in Battlement Mesa, Location ID No. 460637. The Colorado Oil & Gas Conservation Commission regulations allow you, our Local Government Designee, to request a hearing from the Commission contesting the approval of this Form 2A. We believe that the Commission violated its regulations during the permitting process and issued an illegal permit. As a result, we urge you to request a hearing from the Commission. Your request must be made to the Commission within 10 days of the permit approval—making your request to the Commission contesting A Pad's Form 2A approval due on: January 21, 2019.

Among other concerns, the approved Form 2A permit does not comply with the Commission's regulations and is not protective of public health. For example, Ursas siting rationale was deficient and did not adequately consider alternative locations. There is nothing to support that A Pad is as far as possible away from the affected residential community. The Commission's regulations also require that Ursas employ the best available technology, however, we are concerned that the Commission did not require Ursas to do so here. Further, the Commission did not explain its refusal to honor either Battlement Mesa residents' request to site the injection well outside of Battlement Mesa and away water resources. As expressed in public comments, A Pad's proposed injection well poses serious risks because injection wells are frequent sources of groundwater and surface water contamination.

Neither the permitting process nor the Commission's Public Comment Response Document dated January 2, 2019 fully address the community's concerns. Battlement Concerned Citizens, Grand Valley Citizens Alliance, and other affected members of the public submitted hundreds of public comments detailing how this site will negatively impact them, without adequate response. Because the permitting process included regulatory violations and the resulting permit is deficient, we believe that a hearing before the Commission is now the best avenue to address the community's concerns.

EXHIBIT 5

We want to again reiterate the importance of your hearing request to the community. By making this hearing request as the Local Government Designee, the permit approval will be suspended and the matter will be set for a hearing.

In a spirit of cooperation and to ensure a safe and healthy community, we want to offer you any support that you may need in completing this request or in adequately representing our affected community. Due to the time-sensitive nature of this matter, please let us know by noon on Friday whether or not you intend to submit a hearing request to the Commission so that we may pursue other avenues if necessary.

Very truly yours,

Dave Devanney

Leslie Robinson

Dave Devanney
Chair of Battlement
Concerned Citizens

Leslie Robinson
Chair of Grand Valley
Citizens Alliance



BCC
BATTLEMENT
CONCERNED CITIZENS

Via Email

dnr_HearingApplications@state.co.us
jeff.robbins@state.co.us
mimi.larsen@state.co.us
james.rouse@state.co.us

Colorado Oil & Gas Conservation Commissioners
Jeff Robbins, Acting Director
Colorado Oil & Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

January 21, 2019

COGCC Hearing on BMC A Pad Form 2A, Location ID: 460637

Dear Commissioners and Acting Director Robbins,

Battlement Concerned Citizens and Grand Valley Citizens Alliance are writing to you concerning the recent approval of the Form 2A for Ursas's BMC A Pad in Battlement Mesa, Location ID No. 460637. We believe that the approval of the BMC A Pad's location may cause irreparable harm to the community, and that the Form 2A should be denied because it violates the Commission's regulations and the Oil and Gas Conservation Act. Commission regulations 502.a and 508.j allow the Commission to initiate a hearing related to the administration of the Oil & Gas Conservation Act or potential significant adverse impacts to public health, safety, and welfare. We now urge the Commission to use this authority to hold a much-needed hearing on BMC A Pad's approval and suspend the Form 2A permit pending the hearing. We also ask the Director to withhold approval of the injection well under regulation 325.b, due to the significant risks the injection well presents.

For many years, Battlement Concerned Citizens and Grand Valley Citizens Alliance have been advocating for the protection of residential communities from the hazards of oil and gas drilling operations, not only in Battlement Mesa, but across the state. We have participated in rule-makings, hearings, Governor's Task Force operations, school setback issues, and many other initiatives for the increased safety of all Colorado residents. While this advocacy has been very rewarding, we've witnessed mixed-success with regulatory results. Over the past two years, Battlement Concerned Citizens and Grand Valley Citizens

Alliance have been involved in the process to permit BMC A Pad, showing concern over the increased number of wells in Battlement Mesa's neighborhoods.

BMC A Pad poses serious risks to the public health, safety, and welfare of the citizens of Garfield County and the surrounding areas. To date, the Commission has received well over 200 public comments expressing a wide-range of shared concerns among the members of this community, many requesting that the Commission deny A Pad's Form 2A. These public comments expressed numerous concerns including compromised air quality, danger to the Colorado River and to community members' quality of life, among many other issues. For example, A Pad will be located at the bottom of a hillside, and citizens have expressed concerns about structural instability that could occur when Ursas begins to cut into the hillside at the site. It is easy to conclude that not only would homes be destroyed if the hillside collapsed, but the collapse would also cause debris to damage the adjacent wastewater and water treatment facilities. One public comment summarized a 2013 Colorado Geological Survey which explained that the land in Garfield County has highly unstable soil prone to collapse and our members believe that the planned retaining wall will have to employ a special anchoring design to be effective. Other concerns voiced in comments stem from regulatory violations including the recently promulgated LUMA rules created to protect communities from large industrial fracking projects. Because the permitting process included regulatory violations and the resulting permit is deficient, we believe that the permit should be denied.

Neither the permitting process nor the permit itself, including the Commission staff's Public Comment Response Document dated January 2, 2019, has fully addressed the community's concerns. For example, the approved permit only requires the operator to submit an engineering analysis showing that the project's cut into the hillside will be safe and stable thirty days before construction of the retaining wall. An engineering analysis of this wall should have been required as a prerequisite to both the approval of the Form 2A and the staff's conclusion that this location was safe. Additionally, the Commission has not taken into consideration the totality of the harms or their cumulative effects on the community by approving multiple well pads inside Battlement Mesa. This is evidenced by the residents' numerous public comments submitted on BMC A Pad's Form 2A about impacts from light, noise, and odors they have experienced due to the other industrial projects inside the community.

Another concern is that the A Pad Form 2A approves a proposed injection well location, which will be very close to homes, the water treatment facility for Battlement Mesa, and the Colorado River. These wells are *frequent* sources of groundwater and surface water contamination. The Form 2A approved the injection well's location without groundwater sampling and analysis necessary to determine the risk that the well poses to nearby water resources, or sufficient explanation why the injection well cannot be located outside of the Battlement Mesa neighborhood. The approved location is also dangerously close to the Colorado River, one of the State's most valuable water resources and a source of drinking water for many communities along the western slope. Not only does Ursas already operate several injection wells in the area outside of Battlement Mesa that are able to dispose of the wastewater generated from oil and gas projects inside the community, but the operator

could also place a new injection well at a different site it operates that is outside Battlement Mesa's borders and away from water resources. Because the magnitude of risks associated with the proposed injection well are indeterminable without further investigation, that analysis should have been a precondition to approving the Form 2A as well.

The potential risks of the injection well alone are sufficient for the Commission to step in and protect our community. Commission regulation 325.b grants the Director authority to withhold approval of a permit "when the Director has reasonable cause to believe that the proposed disposal well could result in a significant adverse impact on the environment or public health, safety and welfare." Here, we believe the Director should withhold approval of this Form 2A, now, in light of the risks presented by the injection well location.

Moreover, this project requires several more approvals, such as Forms 31 and 33 for the injection well and Form 2's for 24 oil and gas wells, that are still pending. Without a complete picture of BMC A Pad, neither the public nor the Commission can truly assess or competently mitigate the risks of this project. The approved Form 2A permit for BMC A Pad should be suspended until all issues can be considered together, so that the Commission can conduct a comprehensive analysis and the public can better understand the impacts to their health and homes.

Just last year, the Commission thought it was appropriate to grant the citizens of Adams County a hearing on the Interchange and Northwest Pads located in Broomfield. The Commission recognized that these citizens would be adversely affected by the location of these pads. We would like to be afforded the same opportunity to bring our concerns before the Commission. On Thursday, January 17, 2019, we asked Garfield County to submit a hearing request. However, on Monday, January 21, 2019, they refused to request a hearing on our behalf. Now we appeal directly to you, Commission.

Suspending the permit and holding a hearing would allow our affected community to voice concerns that were not adequately addressed during the permitting process and give the Commission a chance to address these concerns. We are hopeful that new state leadership will be more responsive to the desires of citizens looking for better protection of our beautiful state and the public health of all citizens. In light of the foregoing, the permit should be suspended while the Commission considers setting the matter for a hearing and further suspended until hearing proceedings are concluded.

Very truly yours,

Dave Devaney /s/
Chair of Battlement
Concerned Citizens

Leslie Robinson /s/
Chair of Grand Valley
Citizens Alliance

cc: Department of Natural Resources
 Polis Administration



BCC
BATTLEMENT
CONCERNED CITIZENS

Via Email

dnr_HearingApplications@state.co.us
jeff.robbins@state.co.us; mimi.larsen@state.co.us
james.rouse@state.co.us; marc.morton@state.co.us

Colorado Oil & Gas Conservation Commissioners
Jeff Robbins, Acting Director
Colorado Oil & Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

January 28, 2019

Follow-up to January 21, 2019 Request on BMC A Pad Form 2A, Location ID: 460637

Dear Commissioners and Acting Director Robbins,

We are encouraged that you are considering our request from January 21, 2019 regarding the BMC A Pad Form 2A permit. There are many good reasons to hold a hearing on this permit, but specifically, we'd like to highlight 5 major concerns here.

1. Why was the permit approved without an adequate alternative location analysis?

This location is undeniably close to homes. It is 512 feet from the closest home, less than 550 feet from seven homes and less than 1,000 feet from 52 homes. It is one of the first Large Urban Mitigation Areas (LUMA) in the state. The COGCC's LUMA regulations require Ursula to use "best available technologies" to "minimize impacts on nearby residents to the greatest extent achievable." The LUMA rules Statement of Basis and Purpose states that locating an oil and gas facility within a LUMA should be the ***last choice*** for a large oil and gas facility.¹ Ursula must drill from locations farther away from homes *if at all possible*.

Ursula's "Siting Rationale" does not adequately consider alternative locations. In fact, Ursula makes conclusory statements that alternative locations "cannot reach bottom hole locations" or are "drilled out" that are not supported in the record. Ursula has stated its intent

¹ COGCC, Draft Statement of Basis & Purpose, January 20, 2016, Page 13.

to use a small drilling rig and has admitted that a larger rig would have greater reach. Is Ursa really using “best available technologies” if they refuse to use a drilling rig capable of drilling farther away from homes?

Aside from being within 1,000 feet of 52 homes, the proposed location is also 550 feet away from the Colorado River and 174 feet from the Battlement Mesa Water Treatment Facility. This is a bad location that should be denied.

2. Why did staff approve the permit without addressing any of the health studies submitted to the agency?

BCC submitted several studies to the agency that are directly relevant to the issues here. Last March, CU School of Public Health released an important study, “Ambient Nonmethane Hydrocarbon Levels Along Colorado’s Northern Front Range: Acute and Chronic Health Risks.” This peer-reviewed study analyzed air samples collected across Colorado’s Northern Front Range that showed an elevated health risk for residents within 500 feet of oil and gas development. The study found that the lifetime cancer risk for people living within 500 feet of an oil and gas facility is eight times higher than the Environmental Protection Agency’s upper risk threshold (8.3 per 10,000 vs 1 per 10,000 population respectively). It also found that people living within 500 feet of oil and gas locations “are more likely to experience neurological, hematological, and developmental health effects from acute inhalation exposures to benzene and alkanes.”²

When the COGCC adopted the current 500-foot setback standard in 2013, the COGCC stated that it did not have sufficient evidence to determine if a 500-foot setback was protective of public health. In the setback rules “Statement of Basis and Purpose” the COGCC wrote, “These Setback Rules are not intended to address potential human health impacts associated with air emissions related to oil and gas development. The Commission, after consulting with the Colorado Department of Health and Environment (“CDPHE”), believes that there are numerous data gaps related to oil and gas development’s potential effect on human health and that such data gaps warrant further study.”³

Now, five years later, there has been further study on this issue. The CU School of Public Health study is the only peer-reviewed study to examine the adequacy of the COGCC’s 500-foot setback. The study concludes, “Our results indicate that State regulatory setback distances (the minimum distance an O&G wellhead may be located from a home)... may not protect nearby residents from health effects resulting from air pollutants emitted from these facilities.”

² Lisa M. McKenzie, et al, *Ambient Nonmethane Hydrocarbon Levels Along Colorado’s Northern Front Range: Acute and Chronic Health Risk*, *Environmental Science & Technology* **2018** 52 (8), 4514-4525 DOI: 10.1021/acs.est.7b05983

³ Colorado Oil and Gas Conservation Commission, Statement of Basis, Specific Statutory Authority, and Purpose, New Rules and Amendments to Current Rules of the Colorado Oil and Gas Conservation Commission, 2 CCR 404-1. Cause no. 1R Docket No. 1211-RM-04, 2013; p 2. Available at: <http://cogcc.state.co.us/reg.html#rules>

This information should require the COGCC to reconsider allowing *even one* oil and gas well 500 feet from homes... let alone allowing 24 wells and an injection well as close as 512 feet from two homes and less than 1,000 feet from 52 homes.

The CU School of Public Health study is just one of many studies that have been supplied to the COGCC. Yet, the COGCC has stated that "Reference documents such as general health studies are not posted as public comments.⁴ Are they part of the public record? Were they considered at all?

3. Why didn't staff require an engineering report that the site is safe and stable prior to approval?

As we noted in our prior letter, this site is cut into a hill and presents stability risks. But this permit only requires an engineering analysis 30 days after the permit is approved. This analysis does no good when it comes after the location has been approved. An engineering analysis should have been required as a prerequisite to both the approval of the Form 2A and the staff's conclusion that this location was safe. Is it standard to approve a high retaining wall immediately below a neighborhood and immediately above a water treatment plant without studying and understanding the stability risks?

Last year, an Ursula pipeline contractor breached an aquifer in Battlement Mesa, causing a deluge of water lasting several weeks that closed a Battlement Mesa road. Given that history, wouldn't it be prudent to require an engineering study prior to approving the location? Shouldn't the affected public also have the ability to review the study?

4. Why did staff approve an injection well so close to homes, the Battlement Mesa Water treatment plant, and the Colorado River when it could easily be located elsewhere?

The CDPHE has stated that "There are options available when determining a location for a Class II injection well and the Department believes Class II injection wells should not be located in Urban Mitigation Areas."⁵ This injection well could easily be located outside the Battlement Mesa community. As we mentioned in our prior letter, injection wells are a known pollution risk, yet this one is located next to many important resources: homes, the water treatment plant for all of Battlement Mesa, and the Colorado River. The current project will pipe in produced water from other locations—but why didn't the Commission consider using pipelines to pump the waste water to a safer location outside Battlement Mesa?

5. This Proposal should be denied based on Environmental Justice Concerns.

⁴ Final Public Comment Response, URSA A Pad – Form 2A #401234964 and associated APDs, COGCC, January 2, 2019, Page 2.

⁵ CDPHE Oil and Gas Liaison Kent Kuster letter to COGCC Director Matt Lepore, February 29, 2016. P. 2. Attached as Exhibit 1 in BCC's January 31, 2018 comment letter.

Targeting a low income mobile home park raises serious environmental justice concerns. The residents of the Tamarisk Village Mobile Home Park are working people who are struggling to make ends meet. They do not have the time or finances to fight oil and gas industry – even if they are proposing wells literally in their backyard. Ursa initially failed to notify any residents in Tamarisk Village – in violation of the notice requirements of Rules 305.a, 305.c., 306.e.; and 604.a(1)A.ii. A current EPA official in Region 8 stated that, in any other administration, the EPA would have cited the industry and the COGCC for targeting a low-income population with a polluting industry. Would A Pad be approved in Broomfield? In Stapleton?

Given the significance and complexity of the risks posed by A Pad, we reiterate our request to suspend the permit while the Commission contemplates these concerns and sets this matter for hearing.

Very truly yours,

s/Dave Devaney

Dave Devaney
Chair of Battlement
Concerned Citizens

s/Leslie Robinson

Leslie Robinson
Chair of Grand Valley
Citizens Alliance