



June 15, 2018

***Via Email and FedEx***

Charles Ozaki  
City & County Manager  
City & County of Broomfield  
One DesCombes Drive  
Broomfield, CO 80020

**Re: Notice of Breach of October 24, 2017 Amended and Restated Oil and Gas Operator Agreement between Extraction Oil & Gas, Inc. (“Extraction”) and The City and County of Broomfield (the “City”)**

Dear Mr. Ozaki:

The City and County of Broomfield (the “City”) has breached (i) the Amended and Restated Operator Agreement, dated October 24, 2017, between the City and Extraction Oil & Gas Inc. (the “Operator Agreement”), (ii) the Settlement Agreement, dated October 24, 2017, between the City and Extraction (the “Settlement Agreement”) and (iii) the Surface Use Agreement, dated October 24, 2017, between the City and Extraction (the “Surface Use Agreement” and, together with the Operator Agreement and the Settlement Agreement, the “Agreements”). The City, through its City Council and staff members, has ignored the clear requirements of our extensively negotiated contracts and engaged in bad faith by unreasonably withholding approvals and attempts to impose new conditions of approval that do not exist either in the agreements or law. Because of the City’s deliberate actions, Extraction’s reasonable contract rights and expectations have been violated.

This is our notice of breach under Section 21 of the Operator Agreement.

**I. The City Committed to Terms of the Agreements.**

The agreements entered into by Extraction and the City were all approved through Broomfield City Council Resolution 2017-186. Section 9 of the Operator Agreement requires Extraction to submit a Comprehensive Drilling Plan (“CDP”) to the City for review and administrative approval. Section 9 provides that Extraction’s submission of the CDP constitutes full compliance with the City’s administrative process for the oil and gas development operations that are the subject of the Operator Agreement. Section 9 also provides that the City’s administrative approval of the CDP “shall not be unreasonably withheld or delayed.” The bargained for consideration for this administrative approval includes, as provided in Section 9,

that: “[t]he Parties agree that Operator has had substantial engagement with the City with respect to its development plans.” This “substantial engagement” occurred for more than two years and has included Extraction’s attendance at numerous City Council meetings, meetings with City Staff, an Oil and Gas Town Hall Meeting, more than six months of meetings, discussions and presentations with the Broomfield Oil and Gas Comprehensive Plan Update Committee (“Task Force”) and extended negotiation with City Staff and lawyers that yielded a comprehensive and beneficial amended Operator Agreement. The benefits to the City included, among things, relocation of well sites in a cooperative process at the City’s request, as well as a design that involves pipelines and eliminates oil trucks and permanent tanks and the implementation of best management practices (“BMPs”) that are second to none in the industry. These benefits resulted, in part, from the Task Force’s exclusive scrutiny and laser-focus on Extraction’s development plan.

Section 12 of the Operator Agreement requires that the City Manager “shall issue” the administrative approvals for the CDP without further protest, objection or opposition from the City, per the terms of the Operator Agreement, the Settlement Agreement, and the Surface Use Agreement.

Extraction has satisfied all requirements for approval of the CDP. On December 15, 2017, Extraction submitted the portion of the CDP for the Interchange B Pad and the related proposed Forms 2A and 2s for the Interchange A&B Pad as per the development schedule in Section 10 of the Operator Agreement. Extraction also included the Livingston Pad in the December 2017 submittal. On January 26, 2018, Extraction submitted to City staff the remainder of the CDP for the Northwest A&B, and United Pads and all related draft Colorado Oil and Gas Conservation Commission (“COGCC”) Forms 2A and 2. By January 26, 2018, Extraction had submitted the complete CDP including every plan listed in Section 9 of the Operator Agreement to City for each of the planned Well Sites, including Interchange A&B, Northwest A&B, Livingston and the United Pads in full compliance with the Operator Agreement and the City’s administrative process for the oil and gas development operations.

Following its complete submittal dated January 26, 2018, Extraction revised and refined the CDP on February 15, 2018 and again on April 16, 2018 to accommodate the City’s comments received on January 22, 2018, March 7, 2018 and March 23, 2018. To be clear, the revisions made by Extraction to the CDP since the January 26, 2018 submission have been made in good faith cooperation to address concerns of the City, but Extraction maintains that the January 26, 2018 submission was complete in all respects and should have been promptly approved after its submittal.

In any event, the April 16, 2018 CDP submission (“the “Final CDP”) fully complies with Section 9 of the Operator Agreement and addresses Extraction’s oil and gas development in the City in extraordinary detail. The CDP consists of 1,500 pages of all plans required by the Operator Agreement and over 3,000 pages consisting of the COGCC Form 2 and 2A permits that the City requested that Extraction provide for review. The City has never articulated a credible shortcoming in the CDP but instead has delayed unreasonably, raised barriers and asserted that

Extraction is required to include additional items into the CDP that are not required by the Agreement.

Extraction has also complied with all of its affirmative obligations and terms set forth in the Operator Agreement, Settlement Agreement and Surface Use Agreement, including but not limited to, conveyances and payments. It has also taken many actions at the request of the City that go above and beyond what is required by the Agreements.

Just since the approval of the Operator Agreement on October 24, 2017, Extraction has, among other things, (i) paid the City \$650,000 pursuant to Section 14 of the Surface Use Agreement, (ii) conveyed to the City approximately 40 acres of land to be used as open space, (iii) purchased or entered firm commitments to purchase approximately \$10 million of pipe to be utilized to implement the pipeline requirements under the Operating Agreement, (iv) agreed to deepen certain parts of the pipeline at an approximate cost of \$250,000, (v) spent thousands of man-hours on developing plans to implement the best management practice requirements of the Operating Agreement, (vi) attended approximately 50 in-person meetings with City staff to discuss Extraction's plans under the Operator Agreement, (vii) commissioned numerous studies, plans, drawings and schematics in order to implement the requirements of the Operator Agreement, (viii) incurred significant costs associated with the securing of financing necessary to construct the midstream infrastructure required by the City under the Operator Agreement, (ix) agreed to bear the cost of emergency equipment and training requested by the North Metro Fire Department and (x) conducted site work on the aforementioned land conveyance at the request of the City that was not otherwise required.

To date, Extraction has spent an additional approximately \$15 million on the acquisition of surface land for drilling sites, engineering work, new plans associated with well site changes, surveying, documentation and other expenses, all in reliance on our agreements with the City.

## **II. The City has breached the Agreements.**

The City has breached the Agreements in at least the following ways:

1. *Failure to approve the CDP is a bad faith breach of contract.* Under Sections 9 and 12 of the Operator Agreement, Broomfield is required to approve Extraction's CDP without unreasonable delay. Broomfield Municipal Code § 17-54-200(B)(6) provides that the City Manager shall render a decision on a complete application within 30 working days after a three day completeness review. As mentioned, Extraction submitted the CDP for the Livingston and Interchange B Pads to Broomfield on December 15, 2017 and it submitted the CDP for the remainder of the pads (Northwest A&B, Interchange A and United Pads) on January 26, 2018. The January 26, 2018 CDP was complete. At Broomfield's request, Extraction submitted a Final CDP on April 17, 2018, with certain sections revised as requested by the City and in response to the City comments but such revisions were not required to be made by the Operator Agreement.

One example of the City's bad faith delay is that although not required, the City demanded that Extraction respond to hundreds of City staff and citizen comments over a five-month time frame. Without waiver of any of its rights, Extraction's proceeded to provide countless responses to the citizen comments.

According to Section 9 of the Operator Agreement, once Extraction submitted all required plans under that section, Extraction has complied with the City's administrative process. The City's administrative approval should have then been granted without unreasonable delay. The City has now unreasonably withheld its administrative approval. The City and Extraction have specifically agreed in their contract that "Operator has had substantial engagement with the City with respect to its development plans." We remind you the prior substantial engagement included but was not limited to a Town Hall Meeting attended by approximately 1,000 citizens, weekly participation with the Broomfield Oil and Gas Task Force and its subcommittees, and Extraction's attendance at numerous City Council meetings and weekly meetings with City staff where Extraction's development plans underwent substantial scrutiny. In response to all of the feedback from the City and its residents, Extraction went over, above and beyond by moving planned locations for which the company already had vested rights and amended its plan which it was not required to do in consideration for amended agreements as requested by the City. Even following the Broomfield City Council's approval of the Operator Agreement, Extraction's weekly meetings with City Staff of various departments has continued over the past eight months—yet the City has yet to issue its approval of the CDP.

Since January 26, 2018, Extraction had submitted the complete CDP and therefore under the terms of Section 9 of the Operator Agreement, approval should have been rendered on or about February 28, 2018. Instead, 140 days have elapsed, which is an unreasonable and deliberate delay. Even if the time requirements of Broomfield Municipal Code §17-54-200 (B)(6) did not start until the April 16, 2018 submission, the City is now well beyond 30 working days.

As further evidence of the City's unreasonable delay, Extraction filed its COGCC Form 2A 30 days after its CDP submittal and it has already obtained approval for its COGCC Form 2A permit for the Livingston Well Site as well as for several COGCC Form 2 applications for permit-to-drill, yet the City still has not rendered its approval of the CDP. Therefore, Broomfield's failure to timely approve the CDP constitutes a breach of Sections 9 and 12 of the Operator Agreement and Section 3 of the Settlement Agreement.

2. *Failure to grant pipeline rights-of-way.* Under Section 13 of the Operator Agreement, the City was required to provide or procure by March 1, 2018 all right-of-way necessary for the transportation, oil, gas and water for Extraction to construct the pipeline infrastructure agreed to in paragraph 3 of Exhibit B to the Operator Agreement. The City has breached the Operator Agreement by failing to grant or procure these required rights-of-way from Point A to Point B, as depicted on Exhibit E of the Operator Agreement. It was the City's request for Extraction to

use pipelines which is why the City agreed to provide the right-of-way. Extraction has made the City aware of all right-of-way segments that it has still not secured.

3. Failure to execute oil and gas lease. The City has breached Section 6 of the Settlement Agreement requiring that the City execute one or more oil and gas leases to lease its unleased minerals interests in the Form Lease, Annex A. Extraction provided a lease utilizing the Form Lease to the City for execution on April 5, 2018. The City has neither returned the executed lease nor informed Extraction why it has not done so.

4. Requiring the approval of City Council before proceeding to approve administratively. Section 12 of the Operator Agreement provides, in part, as follows:

“12. City Administrative Approvals. The Operator shall not be required to obtain from the City Council any use by special review approvals or any other approvals for any New Wells subject to the terms and conditions of this Agreement, as long as the Operator complies with the terms and conditions contained herein. The City shall issue administrative approvals, by the City Manager or his designee, for the operations allowed for by this Agreement, in accordance with the procedures set forth in this Agreement and Chapter 17-54 of the Broomfield Municipal Code, if such operations comply with the requirements of this Agreement, including the BMPs set forth on Exhibit B.”

Section 9 of the Operator Agreement provides, in part, that:

“The Parties agree that, by submitting a Comprehensive Drilling Plan or Plans addressing all Well Sites, the Operator has complied with the City’s administrative process and such Plans are subject to the City’s administrative approval, which shall not be unreasonably withheld or delayed.”

Contrary to these provisions, the City has submitted Extraction’s CDP to the City Council for their review and input.

Despite the fact that no further City Council action is permitted by the City approved Agreements, there have been sub rosa attempts to require at least City Council “head-nods” prior to administrative approval. Mayor Randy Ahrens, Deputy City and County Manager Kevin Standbridge and the City and County Attorney’s office have all acknowledged that the CDP is being submitted to City Council to obtain their consensus and/or enough “head-nods” on the CDP before the City Manager administratively approves Extraction’s application.

The latest example of these impermissible actions occurred at the recent June 12, 2018 City Council meeting. A so-called hearing was conducted even though the City is stating that there is nothing for the City Council to decide and that “[t]here is no pending application coming to Broomfield City Council regarding Extraction.” See Exhibit A, the City’s Response to Extraction’s Letter Seeking Recusal of Erickson and Kreeger. During this session,

Councilmember Kreeger stated: “[g]et us a document that isn’t chock-full of errors and then **we can potentially approve it**,” clearly showing his view that the CDP is subject to City Council’s de-facto approval before it is administratively approved. As you have admitted in Exhibit A, there is nothing for City Council to approve.

5. Multiple violations of the City’s negotiated agreements not to object. Because Extraction and the City specifically agreed in writing that the City and Extraction already underwent significant engagement and collaboration in Extraction’s development plan prior to execution of the Operator Agreement, again in bargained for consideration the City agreed it would not, among other things, object, require hearings or oppose Extraction’s permits, applications or other related documents submitted to any governmental entity. The City has breached this obligation—one that is set out in all three of the Agreements between the City and Extraction. This breach has occurred through the City’s inappropriate involvement in the COGCC Form 2A process. The City’s actions, involvement and comments through the COGCC Form 2A approval process are impermissible objections to the permit applications in violation of all three of the Agreements.

The Operator Agreement does not require that there be an approved CDP prior to either submission or approval of Form 2 or Form 2A applications with the COGCC. Extraction has not breached the Operator Agreement or any of the other Agreements in any way and the City has made no assertion otherwise. Yet, the City submitted comments to the COGCC that resulted in the following language being inserted into the COGCC’s approved Form 2A:

“In both citizens’ and staff comments we have identified areas where Broomfield is requesting additional information and where we believe the Plan is not complete. Broomfield believes that Extraction has an obligation to correct or update any deficient statements in the Plan. The issues that remain outstanding in the Plan include the following:”

The City also submitted a comment to the COGCC that was incorporated in the COGCC Form 2A that once again demonstrates the City’s a breach of the “no objection” provisions in all of the Agreements that stated:

“Broomfield asks that COGCC leave the comment period on the Permits open until all issues are resolved regarding the Plan. Broomfield will continue to work diligently with Extraction on the Plan.”

Again, there is no requirement in the Operator Agreement that the CDP be approved prior to approval of state permits. There has been no allegation from the City that Extraction is in non-compliance with the Operator Agreement. Statements by the City to the COGCC like the one quoted above are strictly prohibited by the terms of the Agreements so long as Extraction is complying with the terms of the Operator Agreement.

The only alleged outstanding issue with the CDP claimed by the City that Extraction is aware of is that the risk management plan required by paragraph 55 of Exhibit B to the Operator Agreement is not sufficient. While Extraction strongly maintains that the risk management plan submitted satisfies all of the requirements of such Section 55, there is no dispute from the City that it has in fact been submitted. The submission of the plans demonstrates our compliance with the Agreements and requires the City's administrative approval. Because of the executed Agreements, the City has no right to object to the COGCC with respect to the sufficiency of the risk management plan or for the City to withhold our administrative approval. Even Councilmember Kreeger agrees and stated on June 12, 2018 that "[y]ou were required by the contract to provide us with your risk assessment---and you did that."

Further, as you know, the Mayor Pro Tem Erickson submitted correspondence to the COGCC Director Julie Murphy objecting to the approval of the Livingston Pad COGCC Form 2A contrary to the Agreements in bad faith and as strictly prohibited by the Agreements. Again, the "no objection" term to the Agreements was included in the Agreements, in consideration for, among other things, Extraction's concession to move well sites from locations it had vested property rights to develop. The new Well Sites and the associated BMPs that would be implemented at each Well Site were approved by City Council Resolution 2017-186. Allegedly, the offending objection was withdrawn. While Extraction appreciates the City's acknowledgement that the communication by Mayor Pro Tem Erickson was improper under the terms of the Agreement, the damage of such communication has been done and has put an unfavorable color on the COGCC process. It remains a concrete example of the City's bad faith in administering this contract and its obligations.

Additionally, Councilmember Kreeger has displayed his ongoing bias and objections to the project for months despite it being approved and resolved in a validly enacted City resolution. An example of his ongoing bias and objection to Extraction's operations to be conducted under the Agreements includes a public anti-oil and gas forum held on May 18, 2018, Councilmember Kreeger stated:

"Extraction goes right into neighborhoods and they are not invited. It causes an uproar. And this uproar is helpful. And in fact this Extraction could be the best advocate we have for getting this out of residential areas. Because while they are one of the companies most adamant about getting into residential areas, they are making so many thousands...tens of thousands...hundreds of thousands of people so angry that there is a rising tide of people that don't want this in residential areas and it's because of companies like Extraction that honestly the momentum has grown so great."

Councilmember Kreeger also stated in public session that "[t]here are hundreds or even thousands of errors" in Extraction's CDP submissions. While these hundreds or even thousands of alleged errors have not been brought to our attention, the unsupported allegation is being used to publicly attempt to discredit and disparage Extraction and its plans that it has submitted in full

compliance with the Operator Agreement. During that same session, Councilmember Kreeger also stated that “I will address your lies and slander later on in my comments” but failed to assert any purported lies or slander made by Extraction. This again is an example of a City councilmember impermissibly objecting to our project and further demonstrating a lack of impartiality and blatant bias **when directly reviewing our application made to the City**. These statements made by a representative of the City are in breach of the Agreements.

The entire session on June 12, 2018 only served as a process of further delay on the part of the City and to provide a forum where Extraction was to appear for the sole purpose of allowing Councilmember Kreeger and others to complain, berate and make defacto impermissible objections to Extraction’s CDP submitted in full compliance with the Operator Agreement without any fair and impartial basis.

The City’s repeated violations of its promises and obligations made in its Agreements has already caused substantial damages to Extraction. Those damages will only continue and increase if the City does not comply with its Agreements.

### **III. Extraction Demands Cure of Breach.**

Extraction has complied, above and beyond, with all of Broomfield’s reasonable requests. It is time for the City to perform its promises and obligations under all Agreements.

Under Sections 21 and 22 of the Operator Agreement, Extraction hereby notifies Broomfield that it is in breach of the all Agreements approved and resolved by the City Resolution 2017-186 and demands approval of its CDP immediately and all other pending local permits. Per such Section 22, Broomfield now has 30 days from the date of this notice to remedy its breaches. The only acceptable cure here is to approve the CDP, grant the local permits (including, but not limited to, pending PPIPs), pipeline easements, and execute any and all oil and gas leases submitted to the City pursuant to the Operating Agreement. We demand that you cease and desist in your incessant campaign to object to Extraction’s plan of development and the related Agreements.

If Broomfield fails to cure, Extraction intends to continue to pursue its remedies including legal action per the terms of the Operator Agreement for monetary damages, lost profits, costs of delay, fraudulent inducement to enter into the Agreements, injunctive relief and costs. This demand is without prejudice of any of Extraction’s rights, powers, privileges, remedies and defenses, now existing or hereafter arising, all of which are hereby expressly reserved.

Mr. Charles Ozaki  
City and County of Broomfield  
June 15, 2018  
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Sincerely,



Eric J. Christ  
Vice President, General Counsel, Corporate  
Counsel

cc:

T. Shaun Sullivan, Esq.  
Patricia W. Gilbert, Esq.



# CITY AND COUNTY ATTORNEY

One DesCombes Drive • Broomfield, CO 80020 • 303.438.6353 • www.broomfield.org

June 12, 2018

Mr. Eric J. Christ  
Vice President and General Counsel  
Extraction Oil & Gas, Inc.  
370 17th Street, Suite 5300  
Denver, CO 80202

Re: Request for Recusal of Mayor-Pro Tem Erickson and Councilmember Kreeger

Dear Mr. Christ:

Your request for recusal of two councilmembers from Tuesday's meeting at which staff will present an update regarding Extraction's Comprehensive Drilling Plan (CDP) is misplaced. There is no action item being presented for Council to decide with regard to Extaction's CDP. Staff will be presenting an update of the CDP so the policy makers can understand what is being proposed and ask questions and provide feedback to staff about the CDP. As you pointed out, the CDP will be administratively approved by the City Manager. There is no decision for councilmembers to be recused from and certainly not a quasi-judicial decision. It would not be appropriate to recuse councilmembers from a public information session.

The provisions you cite from Broomfield's Ethics Code were designed to prevent conflicts of interest that arise from two different situations. First, there is a flat prohibition on elected or appointed officials appearing before a city council or a city board acting in a quasi-judicial capacity. Section 2-70-030(A). B.M.C. As pointed out above, there is no quasi-judicial matter pending before Broomfield City Council regarding Extraction.

Second, elected and appointed officials must recuse themselves from transactions with the city in which they, a close family member or a firm in which they have substantial interest have a "substantial interest" in the transaction before the city. Section 2-70-030(B). "Substantial interest" is defined as a pecuniary stake in the outcome of a decision or other interest of such weight that would lead a reasonably prudent person observing the situation to expect such interest to make the rendering of an objective decision unlikely. Section 2- 70-020(D). The purpose of the section is to prevent City officials from putting their personal financial interests

**EXHIBIT A**

ahead of the City's interests by their own vote or by influencing other officials. This provision does not prohibit officials from having and expressing a point of view about a transaction. In any case, the Operator Agreement with Extraction has already been approved by Broomfield City Council.

The cases you cite apply to matters pending before a city council in its quasi-judicial role. There is no pending application coming to Broomfield City Council regarding Extraction that implicates those cases or Council's quasi-judicial role.

As you know, as soon as we advised Mayor Pro Tem Erickson of your concerns with her email, she withdrew her comments from the record. In any case, most of Extraction's Livingston permits have been issued by the Colorado Oil & Gas Conservation Commission.

We are pleased to hear that representatives of Extraction will attend the June 12, 2018 City Council meeting. This will give Extraction an opportunity to answer questions and explain how the CDP and its component plans satisfy the requirements of the Operator Agreement, the Settlement Agreement and the Surface Use Agreement and protect public health, safety and welfare and the environment.

Sincerely,



T. Shaun Sullivan  
City and County Attorney

cc: Broomfield City Council  
Charles Ozaki  
Kevin Stanbridge  
Pat Gilbert, Esq.