



SAGUACHE COUNTY GOVERNMENT

501 Fourth Street
P. O. Box 655
Saguache, Colorado 81149

Phone: (719) 655-2231 • Fax: (719) 655-2635

www.saguachecounty.net

Hand Delivered
March 14, 2007

David Neslin, Director
Colorado Oil and Gas Conservation Commission
Suite 801
Denver, CO 80203

Re: Lexam Explorations (USA) Inc - Extension of time for permits-to-drill, Saguache County, Colorado;
Docket No. 0803-GA-03

Mr. Neslin:

The Saguache County Board of County Commissioners hereby formally protests the variance application submitted by Lexam for extension of time for permits-to-drill Wells number 5 and 6. This request is made pursuant to the Board's understanding that the Commission must be notified of protests by March 17, 2008.

Saguache County recognizes that the applicant may have certain property interests in the mineral rights and lease agreement, but after careful consideration of all aspects of the application, input from County advisory committees, discussions with members of the Commission's staff, and an overwhelming volume of concerns expressed by the citizens of Saguache County, the Board has determined that a denial of the extension is in the best interest of all involved in this process. The County has reached this decision based on a number of considerations, including several previously submitted in response to the Well number 7 permit application, and more recent developments in these matters, as below.

1. The County has been informed by the Commission that there are over 4,000 wells operating in the State of Colorado. Despite that fact, the application for each new well must be reviewed considering the potential impact and unique characteristics of each proposed site. The site of the proposed drilling operation in this case is a pristine National Wildlife Refuge set in the San Luis Valley. The Refuge has limited baseline data and is not slated to have developed their management plan based on findings, until 2012. The Valley does not have any existing drilling operations, nor in fact any major manufacturing operations. The County is in the process of developing its first Oil & Gas regulations, standards, and agreements, but they are not yet in place. The Planning Commission's recommended regulations will be received by the County Commissioner's in April and scheduled for public hearings. Meanwhile, a moratorium is in place, the resolution for which is attached to this letter, as APPENDIX A.

The proposed drilling operation will be the first in such an environmentally sensitive wetland area. This operation, if approved, may set the standard for any further drilling in the Valley and therefore must be scrutinized to the utmost extent to ensure that if granted, all efforts have been made to protect the health, safety and welfare of the citizens, and the integrity of the environment and wildlife at Refuge standards.

2. The proposed drilling operation will occur in a large confined aquifer, which has been the subject of past litigation and is currently the subject of litigation at the Colorado Supreme Court concerning regulations to protect and stabilize the aquifer. The water located in the aquifer is the main source of both agricultural and domestic water for the residents of the San Luis Valley.
3. The U.S. Fish and Wildlife Service was ordered, by action of a remand, by a Federal Court to comply with the N.E.P.A. review procedures and the regulations to implement the NEPA process. The Court further prohibited Lexam from “all ground disturbing activities” during the NEPA process. See: San Luis Valley Ecosystem Council v. U.S. Fish and Wildlife Service, United States District Court, Case No. 07CV00945 WDM.

Attached as APPENDIX B, please find a copy of The County’s letter to USFWS in response to the Draft Environmental Assessment. In brief, the County has concluded and requested that a full Environmental Impact Statement, or Comprehensive Conservation Plan should be done, in order to appropriately protect the Refuge and the Public Health, Safety and Welfare.

Other Agencies have also submitted comments substantiating this concern from their areas of expertise and jurisdiction, and which have cross-jurisdictional bearing on the State’s permit conditions. Given their numerous comments submitted on the EA, it would appear to be logical to wait on permitting any wells until after F&WS has responded to those comments, so that information can be considered.

As examples, we submit for your consideration, excerpts from letters by:

- A. Superintendent, Great Sand Dunes National Park and Preserve, Art Hutchinson
email: Art_Hutchinson@nps.gov

“Air Quality. The EA lacks a credible air quality impact analysis to evaluate the impacts to the park. The park contains both a Class I wilderness area and a Class II non-wilderness area. Results from a preliminary visible plume analysis performed by the NPS indicate potential impacts from the operation of a single 1500 horsepower diesel fueled drilling rig to both the Class I and Class II areas of the park.”

“The drilling rig should use ultra low sulfur diesel fuel. Due to the proximity of the project to the park, Lexam should obtain the lowest air pollutant emitting drilling rig that is commercially available.”

“The “maximum permissible noise levels,” as presented in table 3-8 have little bearing on the lands being analyzed in this EA ... The “maximum permissible noise levels,” as presented in table 3-8 have little bearing on the lands being analyzed in this EA. Human health standards are not applicable except at the actual job site and would only apply to rig workers. The appropriate sound metrics for this EA would be the L90 standard (level of ambient sound exceeded 90% of the time) or the use of “audibility standard.” These metrics should be applied to determine the potential sound impacts in the park. Additional information on appropriate noise metrics and sampling techniques for natural areas can be obtained from the Natural Sounds Program in the Air Resources Division. Finally, we note the analysis is premised on use of a quieter diesel-electric rig, but its use is qualified by availability. This qualification diminishes the quality of the analysis.”

“Drilling Two Wells from Same Surface Location in the Refuge. Using only one drill site to drill two wells is an obvious strategy to reduce the footprint of operations, and should be fully evaluated as a reasonable alternative ... Though directional wells do present additional physical and economic risk, these risks are effectively managed by the oil and gas industry on a daily basis. Directional wells would still provide useful information for interpreting the existing seismic data, though perhaps not to the extent of the current proposal. To be useful, analysis of

directional drilling alternatives needs to be rigorous and include discussion of geologic feasibility and whether directional drilling options could meet Lexam's project objectives."

"Flow Testing. The project scope does not include flow testing potential gas bearing zones. If such zones are encountered, there will likely be a strong desire on Lexam's part to conduct limited flow tests to further evaluate the zone(s) potential. Conducting such tests would likely include gas flaring and handling/disposal of produced liquids. Because this is a common occurrence, the NPS standard approach is to include such short-term testing of exploration wells in the project scope for exploration wells and in the NEPA analysis."

- B. NEPA Expert U.S. Environmental Protection Agency in Denver, Larry Svoboda
<http://www.epa.gov/region8/compliance/nepa/nepadocs/comments.html>

"The Great Sand Dunes National Park is a federal Class I area under the Clean Air Act, requiring special protection of air quality and air quality related values, such as visibility."

"The critical need for ... additional information is amplified due to the location of the proposed drilling pads and operations near sensitive air sheds. The proposed drilling operations are to be conducted approximately 12 miles from the Great Sand Dunes Class I area and 1.5 miles from a sensitive Class II area."

"...we found no information regarding the cumulative effects to air quality. WITHOUT THIS INFORMATION, IT IS NOT POSSIBLE FOR THE USFWS, EPA, THE STATE AND THE PUBLIC TO DETERMINE WHETHER THE CUMULATIVE EFFECTS INDICATE THAT THIS PROJECT WILL HAVE A SIGNIFICANT IMPACT. In addition, given that this project involves an exploratory drilling operation, AN ANTICIPATED REASONABLE FORESEEABLE DEVELOPMENT (RFD) PLAN IS NEEDED IN THE EVENT NATURAL GAS OR OIL IS FOUND TO BE VIABLE FOR PRODUCTION PURPOSES." (Caps added.)

"... we could find no information on the acreage of wetlands, wetland type or value of the wetlands impacted by the proposed alternatives. This information is essential in order to properly evaluate the project impacts to existing aquatic resources, meet NEPA requirements and federal wetland regulations and policy, and develop mitigation options."

"... numerous reports on the hydrogeology of the San Luis Valley, indicate that the "deeper" aquifer extends to 4500 feet below the land surface – yet the plan only requires casing to be set to 3000 feet. EPA requests information regarding how the lower part of the aquifer will be protected."

- C. Area Wildlife Manager – San Luis Valley, Colorado Division of Wildlife, Rick Basagoitia
email: rick.basagoitia@state.co.us Phone: 719/587-6904

"There remains, however, several issues that CDOW would like to see addressed in more detail prior to completion of the NEPA process ..."

"CDOW would be opposed to placing a production pipeline across Crestone Creek and North Crestone Ditch due to existing Rio Grande sucker and Rio Grande chub populations that inhabit these aquatic habitats."

"CDOW DOES NOT AGREE THAT IT WOULD BE EITHER TECHNICALLY OR ECONOMICALLY PROHIBITIVE TO DIRECTIONALLY DRILL THE TWO WELLS FROM A SINGLE CENTRALIZED WELL PAD (Section 2.5.2, p. 2-9). Given the close proximity of the proposed well pad locations and the proposed 14,000 foot well depth, directionally drilling the two wells from a single centralized pad location would not seem impractical, even for exploratory wells. CDOW STAFF HAVE SEEN THIS TECHNOLOGY USED SUCCESSFULLY IN SIMILAR SITUATIONS. CDOW ADVOCATES MORE WIDESPREAD USE OF DIRECTIONAL DRILLING TO REDUCE IMPACTS TO

WILDLIFE RESOURCES, and encourages USFWS to consider this method for the two proposed wells. While there would be some increased drilling cost and complexity, this cost and additional technical complexity would be justified by the sensitivity of the surface resources on the refuge and the decrease in surface disturbance associated with building a single road and one well pad for both wells. Additionally, this would provide an opportunity to test the efficacy of directionally drilling oil and gas resources on the refuge; an issue that will certainly arise if additional wells are proposed.”

“CDOW recommends that USFWS consider an alternate route to access the proposed well pad locations, in order to avoid hauling construction equipment and drilling materials across Crestone Creek and North Crestone Ditch that could result in a spill having catastrophic consequences to the Rio Grande sucker and Rio Grande chub populations in this area. It appears that a potential alternative access exists from the east, across existing Saguache County and private roads. If an alternative route is not found, CDOW recommends that Lexam’s emergency response plan contain a site-specific contingency plan for Crestone Creek and North Crestone Ditch that includes having sufficient spill control materials, equipment, and trained spill response personnel on-site to contain a worst-case spill event in that area without adverse impacts to either watercourse.”

“Based on the potential for impacts to seasonal big game habitats in the project area, CDOW suggests that construction and drilling activities take place between 15 June and 1 December. Due to the additional concerns that USFWS describes in the EA related to migratory bird nesting and production (Section 2.2, p. 2-3), CDOW recommends that the window for construction and drilling activities be 1 August to 1 December in order to avoid impacts to these species.”

“... if this action leads to gas production or the drilling of additional exploratory wells, there will be a much greater potential for impacts to these species (Rio Grande Sucker and Rio Grande chub, Gunnison’s prairie dog, Southwestern willow flycatcher, Townsend’s big-eared bat, Northern leopard frog). More extensive evaluations and additional data will be required at that point, to fully assess the potential impacts to these species.”

D. State Historic Preservation Officer, Office of Archeology and Historic Preservation, Georgianna Contiguglia Phone: 303/866-3395

“ ... we wish to consult with the (*USF&WS*) Service regarding the potential effects of proposed oil and gas exploration in the Baca National Wildlife Refuge on historic properties ... ”

“ ... it is our opinion that the Service is required to comply with the NHPA [*National Historic Preservation Act*]. Compliance with the NHPA by the Service does not deny Lexam the reasonable opportunity to explore for minerals.”

To reiterate other concerns previously submitted to the COGCC with regard to Well 7, which apply as well to Wells 5/6:

- 1. The County has requested Cooperating Agency status with USFWS, and Mike Blenden, USFWS, met with the County on March 4, 2008, to work together on agreements and conditions for a mutually agreeable Cooperating Agency Memorandum of Understanding. We are awaiting receipt of a revised draft MOU, once USFWS has completed it.**
- 2. The County has requested, but not yet received, the Emergency Response Plan for Lexam. It is important that the County and regional emergency personnel have the opportunity to provide input to this plan, as well as any considerations raised through the N.E.P.A. process be included in both the conditions for the application and the N.O.P.**

- 3. The County perceives that there is an ongoing evolution of the approach to and the regulation of drilling operations in the State that has not been completed. The fact that the State passed a law last year requiring a change in the composition of COGCC membership and has required that changes in the current rules and policies of the Commission be implemented, was a result of the explicit recognition of the legislative bodies that the current application process and Commission rules are not adequate to protect the health and safety of the citizens of Colorado, as well as the irreplaceable wildlife asset. It appears reasonable that the Lexam applications for Wells number 5, 6 and 7 be considered in view of these concerns.**

It is difficult to understand how COGCC can determine appropriate conditions for these permits without having the information generated by completion of the N.E.P.A. process. The County cannot adequately comment on any such conditions without the relevant information, and U.S.F.W.S. cannot possibly determine all the requirements of the required N.O.P. without the results of the N.E.P.A. process. The existing draft N.O.P. of March 2007 was developed without the Court required information. Additionally, Saguache County was not actively consulted in the development of the proposed N.O.P.

It seems appropriate that all issues regarding the access to the proposed drilling site be resolved prior to the issuance by the State of a permits to drill.

In summary, the Saguache County Board of Commissioners respectfully requests that the Commission deny Lexam Explorations (USA) Inc; Operator No. 50770; Extension of time for permit-to-drill, dated March 7, 2008. In view of the fact that the Federal Court has required that a status report in this case be filed on February 29, 2008, and has not yet decided if the Environmental Assessment process was acceptable, the County Commissioners request that any COGCC public hearing on the Lexam permits be scheduled after the court has ruled on this matter, the full N.E.P.A. process is complete, and the new County regulations and State rules are in place. If necessary due to COGCC rules we can attend a hearing at an earlier date.

The County Commissioners have a responsibility to the residents of Saguache County to do everything feasible to ensure that if the drilling operations are permitted, that it is done under conditions and in a manner to ensure the health and safety of the citizens and to protect a valuable and pristine area. At this time, the Board does not believe that proper consideration has been given to such factors and that substantial more information is required before COGCC can in good faith take action on Lexam's permits. In the event that the Colorado Oil and Gas Conservation Commission denies this protest and related requests, the County Commissioners request to be informed in writing of the specific reasons for that denial.

The Saguache County Commissioners look forward to working with the Commission in addressing realistic outstanding concerns. Should you have any questions concerning this request, please contact any of the County Commissioners or the County Land Use Administrator, Wendi Maez, at (719) 655-2231.

Respectfully submitted,
Saguache County Board of Commissioners

By: Sam Pace, Chairman

CC –	Trési Houpt, COGCC County Commissioner Representative
Governor Bill Ritter	Mike Blenden, Dean Rundle, USFWS
Senator Gail Schwartz	Art Hutchinson, Great Sand Dunes National Park and Preserve
US Senator Ken Salazar	Rick Basagoitia, Colorado Division of Wildlife
Rep. John Salazar	Larry Svoboda, U.S. Environmental Protection Agency in Denver
Rep. Kathleen Curry	Georgianna Contiguglia, Office of Archeology/Historic Preservation, Denver