

## CITY ATTORNEY

408 THIRD AVENUE, CIVIC CENTER COMPLEX, LONGMONT COLORADO 80501  
PHONE: 572-0719(METRO); (303)651-8619 FACSIMILE: 572-0719(METRO); (303)651-8590



NOV 24 1995

November 21, 1995



Colorado Oil & Gas Conservation Commission  
Attention: Thomas Kerr, Permit Supervisor  
1120 Lincoln Street, Suite 801  
Denver, CO 80203

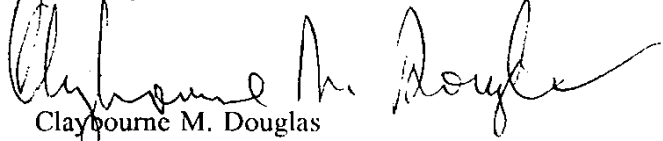
Dear Mr. Kerr:

Re: Township 3 N, Range 69 W. 6th p.m., Section 26, SE1/4

The City of Longmont, in a condemnation action captioned *Longmont v. Carried Gas Venture*, Case No. 95-CV-849, Division 3, was recently granted possession of the George Mayeda No. 1 lease and well covering the referenced property. I enclose copies of the eminent domain Petition and of the Order of Possession, dated October 18, 1995, for your information. In accordance with the Order, the City deposited the sum of \$35,000 in the registry of the court on November 1, 1995, and has taken full and complete possession of the well and the lease.

Consequently, neither Top Operating Company, as the former operator of this well, nor any other working or royalty interest owners have any possessory interests in the well or in the lease. Therefore, we believe it is appropriate for the Commission at this time to revoke drilling permits previously issued to Top Operating Company for the drilling of two Codell/Niobrara wells on the property. Please call if you have any questions about this request.

Sincerely,

  
Claybourne M. Douglas  
City Attorney

enclosures

cc: Robert R. Duncan, Esq.  
Phil DelVecchio, Longmont Community Development Director  
Our File: 2066  
C:\WP51\DATA\golf\emdom\KERR.LTR



COPY

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

Case No. 95CV849, Division 3

20TH JUNE 2001  
10:05 AM

PETITION IN CONDEMNATION

THE CITY OF LONGMONT, a Colorado Home Rule Municipal Corporation,

Petitioner,

vs.

CARRIED GAS VENTURE; JOHN R. & ELIZABETH CALVIN; MEEKER PEAK FARM INC./SPRING VALLEY PROPERTIES, L.L.C.; TOP OPERATING COMPANY; CHRIS G. & NANCY C. BOYETTE; BARBARA D. HANSEN; ECLIPSE ENERGY, INC.; JAMES M. & BLANCHE D. MARTIN; LONGVIEW GAS VENTURE; TELCO INVESTMENTS; THOMPSON & THOMPSON PARTNERSHIP; MURRAY J. HERRING; and SANDY HUME, as Treasurer of Boulder County,

Respondents.

The City of Longmont, a Colorado Home Rule municipal corporation, by and through its attorneys alleges as follows:

ALLEGATIONS

1. The City of Longmont, a Colorado Home Rule municipal corporation (hereinafter the "City" or "Petitioner"), exists and operates pursuant to Article XX of the Constitution of the State of Colorado and the City of Longmont Home Rule Charter. The City is vested with the power to condemn land for public purposes by the right of eminent domain and derives its authority from Article XX of the Constitution of the State of Colorado and from Section 13.5 of its Home Rule Charter.
2. There is a need and necessity and it is in the public interest for the City to acquire the property described in Exhibit A in order to serve the public purpose of developing a public golf course.
3. The City has a public purpose and a public use for the property described in Exhibit A.
4. The property described in Exhibit A is located in Boulder County, Colorado.

5. It is believed that the royalty interests in Exhibit A are as follows:
  - a. The City is informed and believes that Respondent Carried Gas Venture owns a 5.16% royalty interest in the property described in Exhibit A.
  - b. The City is informed and believes that Respondents John and Elizabeth Calvin own a 15.49% royalty interest in the property described in Exhibit A.
  - c. The City is informed and believes that Respondent Meeker Peak Farm Inc/Spring Valley Properties, L.L.C. owns a 70.31% royalty interest in the property described in Exhibit A.
6. It is believed that the working interests in Exhibit A are as follows:
  - a. The City is informed and believes that Respondent Top Operating Company owns a .000001% working interest in the property described in Exhibit A.
  - b. The City is informed and believes that Respondents Chris and Nancy C. Boyette own a 1.25% working interest in the property described in Exhibit A.
  - c. The City is informed and believes that Respondent Barbara D. Hansen owns a 1.5625% working interest in the property described in Exhibit A.
  - d. The City is informed and believes that Respondent Eclipse Energy, Inc. owns a 3.125% working interest in the property described in Exhibit A.
  - e. The City is informed and believes that Respondents James M. and Blanche D. Martin own a 10.417% working interest in the property described in Exhibit A.
  - f. The City is informed and believes that Respondent Longview Gas Venture owns a 12.5% working interest in the property described in Exhibit A.
  - g. The City is informed and believes that Respondent Telco Investments owns a 12.5% working interest in the property described in Exhibit A.
  - h. The City is informed and believes that Respondent Thompson & Thompson Partnership owns a 12.5% working interest in the property described in Exhibit A.
  - i. The City is informed and believes that Respondent Murray J. Herring owns a 20.832999% working interest in the property described in Exhibit A.
  - j. The City is informed and believes that Respondent Meeker Peak Farm Inc./Spring Valley Properties, L.L.C. has a 25.228762% working interest in the property described in Exhibit A.



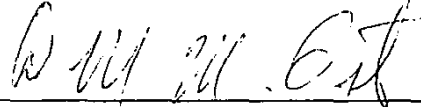
4. That the Court determine the proper deposit to be made by the Petitioner with the Court for taking of immediate possession of the property described in Exhibit A and enter an order authorizing the Petitioner and its contractors, agents and employees to enter into, take and retain possession of said property without interference from the Respondents, their successors, assigns, heirs, guests or invitees or any other person or persons claiming by, through or under said Respondents or any of them.

5. That this Court grant such additional relief as may be deemed just and proper.

Respectfully submitted this 1st day of August, 1995.

CITY OF LONGMONT  
Clay Douglas  
City Attorney  
408 Third Avenue  
Civic Center Complex  
Longmont, Colorado 80501

DUNCAN, OSTRANDER & DINGESS, P.C.

By: 

Robert R. Duncan, No. 5733  
Donald M. Ostrander, No. 12458  
7800 E. Union Avenue, Suite 200  
Denver, Colorado 80237  
Telephone: (303) 779-0200  
Facsimile: (303) 779-3662

ATTORNEYS FOR PETITIONER

Address of Petitioner:  
408 Third Avenue  
Civic Center Complex  
Longmont, Colorado 80501

All interests in the Oil and Gas Lease burdening the property described as the Southeast  $\frac{1}{4}$ , Section 26, Township 3 North, Range 69 West of the 6th P.M., which Lease is dated December 12, 1980, from George I. Mayeda and Sumiye Mayeda to Calvin Petroleum Corporation, and is recorded in the records of the Clerk and Recorder of Boulder County at Film No. 1154 and Reception No. 433674, together with the George I. Mayeda Number One Well located on the property, together with all licenses, permits, easements, appurtenances, fixtures, equipment, pipe, casing and all personal property used or obtained in connection with said Lease and said Well.

EXHIBIT

A

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ORDINANCE O-95-47

A BILL FOR AN ORDINANCE AUTHORIZING ROBERT R. DUNCAN, ESQ., OF THE LAW FIRM OF DUNCAN, OSTRANDER & DINGESS, P.C., TO ACT IN BEHALF OF THE CITY OF LONGMONT FOR THE ACQUISITION OF CERTAIN REAL PROPERTY

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WHEREAS, the City of Longmont is a Home Rule municipal corporation existing and operating pursuant to Article XX of the Constitution of the State of Colorado and the City of Longmont Home Rule Charter; and

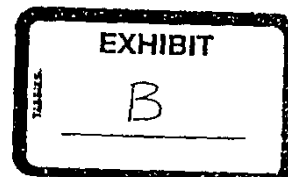
WHEREAS, the City has determined that it is necessary and in the public interest to purchase land for a public golf course.

WHEREAS, Article XX of the Colorado Constitution, Section 13.5 of the City's Home Rule Charter, and Article I of Title 38, C.R.S., as amended, provide the constitutional and statutory powers and procedures for the use of the power of eminent domain by a home rule city to acquire property or interests therein; and

WHEREAS, certain property described in the attached Exhibit "A", hereby incorporated by reference, is needed for a public golf course.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF LONGMONT HEREBY ORDAINS:

1. It is in the best interest of the public's health, safety and welfare for the City to acquire, as soon as possible, the property described in Exhibit "A" (Property) for a public golf course.
2. The City Council finds, determines and declares there is a need and necessity to acquire the Property, for a public purpose, to wit:



1 Meeker Peak Farm, Inc. and Spring Valley Properties, LLC (called SVP in this  
2 Ordinance) and City of Longmont (City) are parties in a cooperative venture to develop a Public  
3 Golf course on land SVP now owns:

4 1.1 As part of the entire development, SVP will dedicate land for the Public Golf  
5 Course:

6 1.2 Time is of the essence in planning, securing governmental approvals for and  
7 completing golf course construction:

8 1.3 It is in the public interest to acquire an outstanding oil and gas lease and well, and  
9 associated real and personal property on the land planned for the Public Golf  
10 Course because:

11 1.3.1 The outstanding oil and gas lease may prevent SVP from conveying the  
12 Public Golf Course free of encumbrances; and

13 1.3.2 The current gas well on the land is inconsistent with the aesthetic qualities  
14 of the championship golf course and adjacent pleasant residential  
15 community the City seeks to develop on the land; and

16 1.3.3 The potential fire hazard of wells on and next to a residential community  
17 and the danger to residents and golfers from additional truck and service  
18 vehicle traffic and other perils associated with oil and gas development are  
19 contrary to the health, safety and welfare of present and future citizens,  
20 residents and golfers.

21 3. The City Council hereby authorizes City representatives to enter into good faith  
22 negotiations for the acquisition of the Property by voluntary transfer.



1           4.     In the event good faith negotiations to acquire the Property free and clear of all  
2 encumbrances are futile, the City Council authorizes Robert R. Duncan of the Law Firm of  
3 Duncan, Ostrander & Dingess, P.C., as special counsel, under the direction of the City Attorney,  
4 to initiate and to pursue to conclusion proceedings in eminent domain for the acquisition of the  
5 Property and to request and to obtain immediate possession of the Property.

6           5.     All ordinances or parts of ordinances in conflict herewith are hereby repealed, but  
7 only to the extent of such conflict.

8  
9 Introduced this 23rd day of MAY, 1995.

10 Adopted this 13th day of JUNE, 1995.

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*Leona Stecker*  
MAYOR

ATTEST:

*Valerie H. Skitt*  
CITY CLERK

NOTICE: PUBLIC HEARING ON THE ABOVE ORDINANCE WILL BE HELD ON THE  
13th DAY OF JUNE, 1995, IN COUNCIL CHAMBERS AT 7:00  
P.M.

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APPROVED AS TO FORM:

*Laurence M. Deane*  
CITY ATTORNEY

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June 7, 1995

2066

RECEIVED IN THE CITY  
ATTORNEY'S OFFICE

'95 OCT 20 AM 11 46

DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO

Case No. 95-CV-849, Division 3

**ORDER OF IMMEDIATE POSSESSION PURSUANT TO HEARING**

THE CITY OF LONGMONT, a Colorado Home Rule Municipal Corporation,

Petitioner,

vs.

CARRIED GAS VENTURE; JOHN R. & ELIZABETH CALVIN; MEEKER PEAK FARM INC./SPRING VALLEY PROPERTIES, L.L.C.; TOP OPERATING COMPANY; CHRIS G. & NANCY C. BOYETTE; BARBARA D. HANSEN; ECLIPSE ENERGY, INC.; JAMES M. & BLANCHE D. MARTIN; LONGVIEW GAS VENTURE; TELCO INVESTMENTS; THOMPSON & THOMPSON PARTNERSHIP; MURRAY J. HERRING; and SANDY HUME, as Treasurer of Boulder County,

Respondents.

THIS MATTER came on for hearing pursuant to notice on October 11, 1995, at Boulder, Colorado, upon the request of the Petitioner for an Order authorizing it to take immediate possession of and use the property described in the Petition in Condemnation.

The Court having heard the evidence and having reviewed its file hereby

FINDS that possession of the property described in the Petition in Condemnation ("the Property") is necessary for the project described at the hearing; there has been a failure of negotiations between the parties with regard to the compensation sought to be paid for the Property; any disturbance of the possessory rights of the Respondents is necessary; the taking by the Petitioner is for a public use and in the public interest; and the sum of \$35,000 is sufficient for the Petitioner to pay into the registry of this Court as a deposit for the benefit of the Respondents until compensation is finally ascertained for the taking of the Property.

It is therefore, ORDERED, ADJUDGED, and DECREED that upon the deposit of the sum set forth above into the registry fund of this Court, and subject to any conditions set forth herein, the Petitioner and its contractors, agents, servants and employees shall have the right to take possession of and use the Property during the pendency of and until the final conclusion of this proceeding. These rights shall be valid against each of the Respondents and its, his, her,

or their successors, assigns, heirs, devisees, and personal representatives, and all persons claiming any right, title or interest in and to said property, by, through, or under said Respondents.

DATED this 18<sup>TH</sup> day of October, 1995.

BY THE COURT:

Edward E. Caulli  
DISTRICT COURT JUDGE

3037279915

TOP Operating Co.  
1120 Lincoln Street  
Suite 801  
Denver CO 80203  
Phone: 303-728-4541

TOP Operating Co. Mayeda #1 well in T3N, R69W, 8th P.M.; Sec 26: SE¼; Boulder County, CO.

Certified #: Z 105 872 849

Colorado Oil And Gas Conservation Commission  
1120 Lincoln Street Suite 801  
Denver CO 80203

Dear Mr. Griebling,

We have been informed that the Colorado Oil And Gas Conservation Commission has granted the City of Longmont Colorado or its agent verbal approval to plug and abandoned the captioned well. Longmont inappropriately petitioned for and was granted "Immediate Possession" of this well by court order dated 10/18/95. To our knowledge Longmont has not posted the necessary bond nor have the required forms been filed by Longmont or approved by the Colorado Oil And Gas Conservation Commission. TOP Operating Co.'s bond covering its obligations as operator of this well has not been released (Rule 304; Rules And Regulations, Rules Of Practice And Procedure And Oil And Gas Conservation Act as amended).

We have grave concerns that the Colorado Oil And Gas Conservation Commission will, by inaction, abrogate its authority to govern oil and gas operations in this state. The circumstances surrounding the condemnation of the subject oil and gas lease set a precedent that threatens your ability to govern and imperils all mineral properties in the Wattenburg gas field.

TOP Operating Co. protests and disputes the recognition of any other operator for the above well unless and until our bond is released as to this well. TOP Operating Co. believes that Longmont should be held to the same exacting standards that all other operators are held, failing which, Longmont should not be allowed to proceed with its operations including the subject plugging and abandonment. Further, if the Colorado Oil And Gas Conservation Commission persists in allowing someone other than TOP Operating Co. to operate this well, we hereby demand that our operating bond be immediately released in writing with a fax copy sent to us. Notwithstanding anything to the contrary, TOP Operating Co. and the remaining owners of this well will not be responsible for any claims against them as a result of the failures and omissions of the City of Longmont or the Colorado Oil And Gas Conservation Commission.

Sincerely,  
TOP Operating Co.

  
Rodney K. Herring  
President

cc: Eugene E. Burk, Esq.



DEPARTMENT OF NATURAL RESOURCES  
Roy Romer, Governor  
1120 Lincoln St., Suite 801  
Denver, CO 80203  
Phone: (303) 894-2100  
FAX: (303) 894-2109

December 5, 1995

Mr. Claybourne M. Douglas  
City Attorney  
City of Longmont  
408 Third Ave.  
Longmont, CO 80501

Re: SE/4, Section 26, Township 3 North, Range 69 West 6th P.M.

Dear Mr. Douglas:

The COGCC has reviewed your letter dated November 21, 1995. In order for the City of Longmont to be recognized as an oil and gas well operator in the State of Colorado certain requirements must be met. A "Designation of Agent" (Form 1) for the new operator and a "Certificate of Clearance and/or Change of Operator" (Form 10) for each producing well must be filed with the COGCC. There is also a requirement to provide financial surety (\$5,000/well or \$30,000 blanket) for each well operated. Production Reports (Form 7) are required on a monthly basis and are to be filed within forty-five days after the last day of the month.

The COGCC does not view that the two drilling permits outstanding on these lands are or have been issued in error. Therefore, if you desire you may file a Sundry Notice (Form 4) for each well requesting the change of operator for the undrilled location and the abandonment of plans to drill the well.

The COGCC inspects all abandoned locations and plugged wells to ensure regulatory compliance. If you have any further questions, please contact Thom Kerr at (303)894-2100.

Sincerely,

Thomas J. Kerr  
Permit Supervisor

Enc. Blank forms.  
cc: Well files  
Top Operating Company