ECMC SENATE BILL 24-185 POOLING PROCESS CHANGES

Document Control

- **Created Date:** 8/01/2024
- **Last Updated:** 3/14/2025
- **Document Owner:** Hearings
- Change log may be viewed at the bottom of the document.

SB 24-185; C.R.S. § 34-60-116

Purpose of SB 24-185

Senate Bill 24-185 ("SB 185") mandates that all applications for statutory pooling contain additional requirements for approval. Below is a brief description of each provision, when the provision will go into effect, and how applicants and ECMC Units will adjust their current processes to comply.

Guidance/Requirements

1. All pooling applications must include an affidavit that declares an applicant has the requisite ownership or obtained the requisite consent AND must include certain well and leasing information. *See* C.R.S. § 34-60-116(6)(b)(I).

***Effective Date**: In effect for all applications filed on or after August 7, 2024.*

ECMC Units Impacted: Hearings; Planning and Permitting ("P&P").

Implementation: Both Hearings and P&P will flag any application that does not contain the affidavit of requisite ownership.

The affidavit will identify or include:

1) Lease, memorandum of lease, or other recorded agreement that conveys rights to minerals or provides consent of owners within the applicable drilling and spacing unit (DSU). This may be identified by recording or reception number, or a copy of the document may be attached to the affidavit; **AND**

2) The API No. for any well that is holding open a recorded lease (if the well is holding the lease by production), memorandum of lease, or other agreement.

If the applicant is relying on an unrecorded lease, memorandum or lease, or conveyance, the applicant will disclose this reliance in the affidavit.

It is no longer sufficient that the statement of ownership is merely included in the application. Lack of the affidavit is grounds to return the Application to "Applicant Issue Resolution" or decline to issue a notice for the application until an adequate affidavit is submitted.

If a petition is filed in a matter where an applicant is relying on an unrecorded lease, memorandum, or conveyance, the Commission or Hearing Officer must require the applicant to provide additional information about the unrecorded lease, memorandum, or conveyance. Staff will likely require disclosure of this information, which applicants can submit confidentially pursuant to Rule 223. A petitioner that challenges the affidavit may be permitted by the Hearing Officer or Commission to review the information submitted confidentially by the applicant in support of the affidavit.

2. At least 60 days before the first hearing date for which the Commission has provided notice, an unleased mineral owner of mineral interests proposed to be pooled by an application may file a protest of the application disputing the

declaration in the affidavit of requisite ownership. *See* C.R.S. § 34-60-116(6)(b.5)(I).

***Effective Date**: In effect for all applications filed on or after August 7, 2024.*

ECMC Units Impacted: Hearings.

Implementation: Beginning August 7, 2024, all pooling applications are noticed for hearing on a date no less than 90 days from the date the notice is issued, with the petition deadline falling no fewer than 60 days before the hearing date. This will comply with the statute while still giving interested parties approximately 30 days to review the notice and application before the petition deadline.

The statute contains additional information on how the Hearing Officer will resolve a petition challenging the affidavit of ownership. In short, the Hearing Officer must:

1. Resolve the petition prior to hearing on the pooling application;

2. Do so using a process that protects the interests of the unleased mineral owner that has articulated a factual dispute of the affidavit/declaration, which may include granting a stay pending a determination by a court;

3. Allow said unleased mineral owner to review, in a manner that protects confidential information, any unrecorded materials used to support the affidavit.

3. The Commission may not enter a pooling order that pools the mineral interests of an unleased owner if the unleased owner is: a) a local government that has rejected an offer to lease; and b) the minerals subject to the unleased owner's mineral interests are within the local government's geographic boundaries ("local government unleased interest"). If an application proposes to pool a local government unleased interest, the commission must deny the application unless the applicant amends the application to no longer pool the local government unleased interest. *See* C.R.S. § 34-60-116(7)(f).

***Effective Date**: In effect for all applications filed on or after August 7, 2024.*

ECMC Units Impacted: P&P and Hearings.

Implementation: Permitting review forms now include a space to note if any local government owns minerals within the unit to be pooled and to identify such local government. "Local government" is defined as "a home rule or statutory county, city and county, or municipality." C.R.S. § 34-60-116(9). If the application indicates that a local government unleased interest exists within the unit to be pooled and that mineral interest is within the local government's geographic boundaries, P&P will state as much in the Permitting Review. Although the existence of a local government unleased interest within the application lands is not grounds to return an application or delay the noticing of an application, P&P will require the Applicant to clearly identify and describe any local government unleased interests within their application.

The Hearings Unit anticipates the following three most common scenarios, and describes below how applicants should address these scenarios in their application in order for the application to be deemed ready for notice:

- There are no local government unleased interests within the Application Lands.
    - The Applicant may simply state that "There are no local government unleased interests within the Application Lands."

- The Application Lands include local government-owned minerals, but the applicant does not intend to pool those interests under the application.
    - The Applicant should identify by name each of the local governments to be excluded from the application and pooling order in a brief description in the application. Explicit acknowledgement of both the existence of local government-owned minerals and their exclusion from the application and subsequent pooling order will clarify applicants' compliance with section 34-60-116(7)(f) and give local governments a clear statement of

applicants' intent within the application to be mailed to interested parties.

- The Application Lands contain local government unleased interests and applicant intends to pool those minerals with the pooling order requested.
    - The Applicant should clearly identify by name each of the local governments it intends to subject to the Application and subsequent pooling order. In this scenario, before the application may proceed to hearing Applicants must file supplemental testimony confirming that the local government unleased interests have since accepted a lease or other agreement, or that applicant now intends to exclude the local government unleased interests from the application and subsequent pooling order.

Any variations on these scenarios will be addressed on a case-by-case basis. Before issuing a recommended order to approve the application, the Hearing Officer must ensure that the testimony demonstrates that the local government interests has accepted an offer to lease or the local government unleased interest is no longer being pooled by the application.

4. If a unit contains the mineral interests of an unleased owner that has rejected an offer to lease, an oil and gas operator may not drill/extract minerals from a drilling unit owned by the unleased owner and not voluntarily pooled before a pooling order is entered by the commission. C.R.S. § 34-60-116(7)(e).

***Effective Date**: January 1, 2025*

ECMC Units Impacted: P&P and Hearings.

Implementation: A new submit tab comment will be added to the Form 2 process to allow operators to denote the existence of an unleased owner that has rejected an offer to lease. For purposes of this process, "reject" will mean an active refusal by a mineral owner to lease or participate in the wells. A mineral owner's failure to respond to the

applicants' offers to lease or participate does not constitute rejection under the Act. Any unique scenarios will be addressed on a case-by-case basis.

If an unleased owner has rejected an offer to lease, Staff will withhold approval of the corresponding Form 2s, Applications for Permit to Drill (Form 2s) until the applicant: 1) certifies that that there are no unleased mineral owners in the unit to be pooled, 2) provides an approved pooling order, or 3) provides a voluntary pooling agreement.

To assist with timing, Applicants may now file pooling applications simultaneously with the corresponding OGDP and DSU applications. Hearings and P&P ask that Applicants file pooling orders in a separate docket than OGDP and DSU Applications, and not as exhibits to that application, for the following reasons. First, as noted above, pooling applications will be noticed for 90 days, while most OGDPs are now noticed for 60 days. Establishing two distinct petition periods within a single docketed application has the potential to sow confusion among interested parties and cause undue delays for one application if the other application is petitioned. If filed simultaneously, Hearings will ensure that both dockets are assigned to the same Hearing Officer for efficiency purposes.

Second, pooling applications require document numbers for the Form 2s to be pooled, and so will likely need to be filed shortly after the OGDP application to allow the applicant to obtain the document numbers. Although Staff considered waiving that requirement, Staff recognizes a need to tie pooling applications and orders to distinct tracking numbers other than the well names alone, which are often changed after the fact. If document numbers change, the applicant may file supplemental testimony and/or provide the new document numbers in the Rule 505.e proposed order. Furthermore, if the document numbers change after approval of the Pooling Order, P&P Staff will work with applicants on a case-by-case basis to allow continued Form 2 review without the need for an additional application to amend the approved Pooling Order.

In certain scenarios, an operator may not need a pooling order to comply with C.R.S. § 34-60-116(7)(e). Those scenarios, and what is still needed in order to process Form 2, Applications for Permit to Drill (APDs) expediently, is listed below. In addition, although not required by rule or statute, the Hearings Unit notes that best practice may be, to include a clarifying statement that one of the following scenarios apply within the Drilling and Spacing Unit application to avoid confusion or unanticipated delays in processing.

- **Scenario 1: A pooling order is not needed at all because all minerals are leased or a declaration of pooling has been filed in county records.**
    - The Operator should provide reference to the lease(s) and/or declaration of pooling, in the Operator's Comment Box on the Submit Tab of the Form 2.
    - Recommended Language: "[Applicant] states that all minerals in the drilling and spacing unit are leased and/or voluntarily pooled, and therefore a pooling order is not required to comply with C.R.S. § 34-60-116(7)(e). The lease/declaration of pooling is recorded at: [county records information]."
    - Receipt of the above is sufficient to process the Form 2s.

- **Scenario 2: No pooling order is needed because there are no Unleased Mineral Interest Owners in the subject drilling and spacing unit.**
    - The Operator should certify that there are no unleased mineral interest owners in the unit, in the Operator's Comment Box on the Submit Tab of the Form 2.
    - Recommended Language: "[Applicant] certifies that there are no unleashed mineral owners within the drilling and spacing unit, and therefore a pooling order is not required to comply with C.R.S. § 34-60-116(7)(e)."
    - Receipt of the above is sufficient to begin processing the Form 2s.

- **Scenario 3: There are no Unleased Mineral Interests owned by a Local Government, within their own jurisdiction, in the subject drilling and spacing unit.**
    - The Operator may reference a pending pooling application, by docket number, that states as much, in the Operator's Comment Box on the Submit Tab of the Form 2.
    - Recommended Language: "[Applicant] states, as alleged in pooling application Docket No. _____, that there are no unleased mineral interest owner local governments that own minerals in the drilling and spacing unit, and therefore the application complies with C.R.S. §§ 34-60-116(7)(e) and (f)(I)."
    - **NOTE: Applicants will still need to address the presence of non-government unleased mineral interest owners in the DSU, if any, through another scenario.**
    - Assuming there are no other unleased mineral interest owners in the unit that have rejected an offer to lease, receipt of the above is sufficient to release/process the Form 2s.

- **Scenario 4: No Unleased Mineral Interest Owner has actively rejected a lease offer in the statutory 60-day period.**
    - The Operator should identify the unleased mineral interest owners that did not respond to the lease offer and the docket number of any pending associated pooling applications, in the Operator's Comment Box on the Submit Tab of the Form 2.
    - Recommended Language: "[Applicant] states that the following unleased mineral interest owners that own minerals within the drilling and spacing unit have neither responded to nor actively rejected an offer to lease within 60 days of receipt pursuant to C.R.S. § 34-60-116(7)(d)(I): [List]. Per ECMC guidance, non-response to an offer to lease does not constitute rejection of said offer to lease. As such, no unleased mineral interest owners within the drilling and spacing unit have rejected an offer to lease

and a pooling Order is not required to comply with C.R.S. § 34-60-116(7)(e). [Applicant] has filed a pooling application in Docket No. _____."

- Non-response does not constitute rejection. Receipt of the above information is sufficient to release/process the Form 2s.

- **Scenario 5: A pooling Order has already been issued for the DSU, and a pending pooling application requests to only subject additional Working Interest Owner(s) to the original pooling Order. No Unleased Mineral Interest Owners are present in the DSU.**
  - Reference to the pooling order number for the application lands, in the Operator's Comment Box on the Submit Tab of the Form 2 is sufficient to release/process the Form.
  - Recommended Language: [Applicant] states that the Commission has already entered a pooling Order, Order No. ___ for the drilling and spacing unit. [Applicant] states that the pooling application filed in Docket No. ___ intends to subject additional working interest owners to Order No. __, and that there are no unleased mineral owners within the drilling and spacing unit. Therefore, the requirements of C.R.S. § 34-60-116(7)(e) are met."

- **Scenario 6: Additional permit applications are being sought when the unit has already been pooled.**
  - The application itself need not be held. Reference to the pooling Order for the application lands, in the Operator's Comment Box on the Submit Tab of the Form 2 may be sufficient to release/process the Form.
  - Recommended Language: [Applicant] states that the Commission has already entered a pooling Order, Order No. _____ for the drilling and spacing unit, and therefore the requirements of C.R.S. § 34-60-116(7)(e) are met."

Document Change Log

Change Date	Description of Changes
11/12/2024	Updated to include clarification on original guidance and include description of processes changes for provisions in effect January 1, 2025.
3/14/2025	Updated for formatting and to include descriptions of specific scenarios where a pooling order will not be required to process Form 2, Applications for Permit to Drill (Form 2).
Date	Description