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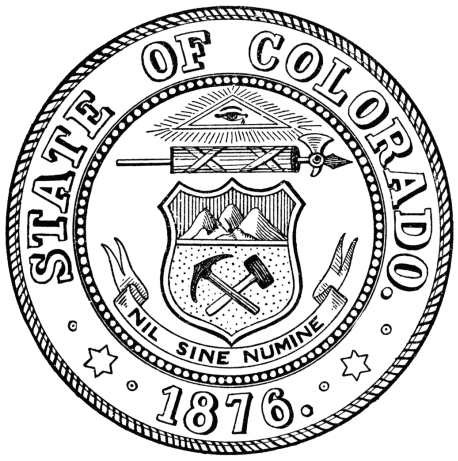

PERSPECTIVE ON *WILDGRASS OIL & GAS COMMITTEE V. COLORADO OIL & GAS CONSERVATION COMMISSION* AND THE EMBRACING OF ASSOCIATED STANDING

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I. INTRODUCTION

The ongoing litigations between the Wildgrass Oil & Gas Committee ("Wildgrass") and, among others, the Colorado Oil & Gas Conservation Commission ("COGCC") serve as a microcosm of the political and legal horizons that define the microscope used to examine Colorado oil and gas development. This set of litigations began administratively with the application for permits before the COGCC and, over the passage of time, weaved its way through the District Court of the City and County of Denver (the "State District Court"), the United States District Court for the District of Colorado (the "Federal District Court"), the Colorado Court of Appeals (the "Court of Appeals"), and finally the United States Court of Appeals for the 10th Circuit (the "10th Circuit").[1] As of the time of this writing, the State District Court action remains currently unresolved since the Court of Appeals remanded the case.[2] This Article will provide an overview of these litigations and the Authors' thoughts and insights as to the political and regulatory environment of these judicial decisions, including an emphasis on associated standing by the Court of Appeals.

This set of litigations bookends with both the regulatory law of Colorado, as it existed prior to Jared S. Polis becoming Governor of Colorado, and the presently reconstituted regulatory scheme enacted thereafter. As such, these ongoing litigations provide a bridge between an era in which the COGCC possessed, as a mandate, the development of the oil and gas industry in Colorado to a new regulatory scheme. The new regulatory scheme recognizes not merely the development of the oil and gas industry, but also the inevitable competition between

1. Wildgrass Oil & Gas Comm. v. Colo. Oil & Gas Conservation Comm'n, No. 19CA1212, 2020 WL6040180 (Colo. App. Oct. 8, 2020); Wildgrass Oil & Gas Comm. v. Colorado, 447 F. Supp. 3d 1051 (D. Colo. 2020); Wildgrass Oil & Gas Comm. v. Colorado, 843 F. App'x 120 (10th Cir. 2021).

2. *Wildgrass Oil & Gas Comm.*, 2020 WL 6040180, at *1.

population growth and energy development, climate change, and the political repositioning of Colorado from a historically Republican state to one where the Democratic Party claims, as its elected representatives, not merely the governor but also a majority in both the state senate and house. While these political realities do not independently impact the judicial determinations, it is unwise to believe that judicial decisions are made in a vacuum without impact from these political variables.

II. THE PARTIES

The plaintiff in these matters is Wildgrass Oil.[3] As noted by all of the Courts rendering decisions in these cases:

> [T]he Plaintiff is a committee formed to assist property owners in the Wildgrass subdivision in Bromfield in matters regarding oil & gas operations and development. It is their goal to ensure that oil & gas development in or near community is responsibly accomplished within the laws of Colorado and to protect the homeowners' interest in such development.[4]

The defendants are disparate from case to case, but the most significant defendant in each case discussed here is the COGCC.[5] The COGCC is an administrative and regulatory entity defined by C.R.S. Section 34-60-101, *et seq.*, also known as the Colorado Oil & Gas Conservation Act.[6]

The final significant party in these litigations is Extraction Oil & Gas, Inc. ("Extraction"). Extraction is an oil and gas developer that was applying for development related permits with and through the COGCC.[7]

III. FACTUAL BACKGROUND

While these cases include a vast array of facts, for the purposes of this Article, the facts can be shortcut by beginning with Extraction and the City of Broomfield entering into an operating agreement

3. *Wildgrass Oil & Gas Comm.*, 2020 WL 6040180; *Wildgrass Oil & Gas Comm.*, 447 F. Supp. 3d 1051 (D. Colo. 2020); *Wildgrass Oil & Gas Comm.*, 843 F. App'x at 121.

4. Order of Denver District Court, No. 2018CV32513, at 1 (May 13, 2019).

5. *Wildgrass Oil & Gas Comm.*, 2020 WL 6040180; *Wildgrass Oil & Gas Comm.,*447 F. Supp. 3d 1051 (D. Colo. 2020); *Wildgrass Oil & Gas Comm.,*843 F. App'x at 121.

6. COLO. REV. STAT. §§ 34-60-101 to 102 (2021).

7. Order of Denver District Court, No. 2018CV32513, at 1 (May 13, 2019).

requiring Extraction to develop as a precondition a comprehensive drilling plan defining which proposed oil and gas wells located within the City's jurisdiction would be drilled, spaced, and located.[8] Wildgrass maintained that based upon its belief that the COGCC would summarily adopt this operating agreement, Wildgrass withdrew its opposition to the applications of Extraction then pending before the COGCC.[9]

In January 2018, Extraction sought approval for what amounted to two final permits to have their spacing application approved by COGCC.[10] These permits included the Form 2 Application for Permit to Drill ("APD") and Form 2A Oil & Gas Location Assessment.[11] This course of action resulted in the COGCC adopting drilling and spacing unit applications ("DSUs") unacceptable to Wildgrass.[12]

IV. STATE DISTRICT COURT ACTION

Despite Wildgrass having submitted comments to COGCC objecting to these applications, the COGCC approved the pending applications of Extraction without conducting a hearing.[13] Thereafter, Wildgrass initiated its complaint in the District Court of the City and County of Denver.[14] COGCC moved for the dismissal of the claims asserted by Wildgrass based upon a lack of standing to sue, a failure to state a claim, a failure to exhaust its administrative remedies under the APA, and estoppel-based principals.[15] After briefing on the motion to dismiss filed by the COGCC, Wildgrass filed a motion to amend their complaint.[16] COGCC next moved to deny the amendments based upon notions of futility.[17] Thereafter, Extraction filed a motion to intervene, which was granted by the Court.[18] This aligned the interests of Extraction with the interests of the COGCC.

Following the joinder of Extraction, the State District Court scheduled a status hearing to address the filing of the subsequent

8. *Id.* at 2.
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.* at 2–3.
13. *Id.* at 2.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.*

lawsuit by Wildgrass in Federal District Court.[19] While the newly filed Federal District Court action was pending simultaneously with the pre-existing case filing in the State District Court, it became necessary for the State District Court to consider a host of procedural complications that could now arise.[20] The specifics of the Federal District action are discussed later in this Article.

While the Federal District Court action was pending, the State District Court concurrently was taking into account the fact that the Colorado legislature had recently enacted new statutes concerning the COGCC, including new permit considerations which, in part, addressed challenges brought by Wildgrass in its action pending in State District Court.[21] The State District Court delayed ruling on the outstanding motion to dismiss to allow an opportunity for Wildgrass and COGCC to discuss settlement and allow a "fluidity of the proceedings."[22] When this approach proved to be unfruitful, the State District Court ultimately dismissed the case as explained below.

Wildgrass claimed that the COGCC, during its administrative process, violated the Administrative Procedure Act.[23] Wildgrass also requested declaratory relief asserting denial of due process.[24] Lastly, Wildgrass made a claim of promissory estoppel based upon its perceived reliance of the operating agreement entered into between Extraction and Broomfield. Wildgrass claimed that the COGCC violated the operating agreement when it approved the ADP and Form 2A permits.[25] The COGCC sought dismissal pursuant to C.R.C.P. 12(b)(1), claiming a lack of subject matter jurisdiction by the Court as Wildgrass did not maintain standing. The COGCC further sought dismissal based upon C.R.C.P. 12(b)(5) for the failure of the plaintiff to state a claim upon which relief could be granted.[26]

The State District Court agreed with the COGGC's assertion of the lack of jurisdiction. The State District Court noted that based upon legal authority set forth in *Colorado Oil & Gas Conservation Commission v. Grand Valley Citizens Alliance*, the Colorado Supreme

19. *Id.*
20. *Id.* at 2–3; Complaint for Temporary Restraining Order and Injunction, Wildgrass Oil & Gas Comm. v. Colorado, 447 F.Supp.3d 1051 (D. Colo. 2020) (No. 19-CV-00190-RBJ).
21. Order of Denver District Court, No. 2018CV32513, at 2–3 (May 13, 2019).
22. *Id.* at 3.
23. *Id.*
24. *Id.*
25. *Id.*
26. *Id.* at 5.

Court had established that the COGCC's Rules did not entitle a citizens' group such as Wildgrass to seek a rehearing on specific permitting issues because such a citizens' group was not one of the individuals or entities enumerated by statutes or regulations entitled to request a hearing.[27] The Colorado Supreme Court in *Grand Valley Citizens' Alliance* noted that in issues involving APDs or Form 2A permits, the permit approval of the COGCC was not the equivalent of a rule, regulation, or order, any of which would have allowed a requested hearing.[28] The Court emphasized that the COGCC possessed the discretion, but not any obligation, to consider a citizens' group challenge.[29] Such legal authority is clear that the COGCC is not required to consider such a citizens' group challenge, and because no citizens' group has any legal right to participate in proceedings where the COGCC issues a permit, any reliance upon (or lack of reliance upon) the operating agreement is not the concern of such citizens' group.[30] Dismissal thus became appropriate.[31]

The State District Court first seized upon the distinction between the discretionary latitude afforded to the COGCC to allow participation in and requesting of a hearing as sought by the citizens' group at issue here (Wildgrass). It next held that the mere fact that the COGCC declined to allow Wildgrass to request or participate in such a hearing was entirely allowed by the law.[32] As a result, based upon the discretionary authority of the COGCC, Wildgrass had lost no legal right when its request for a hearing was not allowed by the COGCC.

The State District Court further found that Wildgrass could not, as a matter of law, sustain its burden of proof that the issuance of any permits by the COGCC resulted in an injury to a legally protected legal right of Wildgrass.[33] In essence, the State District Court found that Wildgrass did not possess any legally protected interest as contemplated by either the Colorado Oil & Gas Act or the Constitution of Colorado.[34] The State District Court concluded by noting that where a plaintiff lacks standing to assert error, the Court thereafter lacks

27. *Id.* at 4; Colo. Oil & Gas Conservation Comm'n v. Grand Valley Citizens' All., 279 P.3d 646, 649 (Colo. 2012).
28. *Colo. Oil & Gas Conservation Comm'n*, 279 P.3d at 648.
29. Order of Denver District Court, No. 2018CV32513, at 3–4 (May 13, 2019).
30. *Id.*
31. *Id.* at 4.
32. *Id.*
33. *Id.*
34. *Id.*

jurisdiction to entertain those claims.[35] The State District Court thereafter articulated numerous grounds supporting the dismissal of both the claim for declaratory relief and the claim for promissory estoppel of Wildgrass, the latter of which this Article does not discuss.[36]

Although the State District Court ruled that it should dismiss all three claims for lack of standing, the Court nonetheless addressed the arguments of COGCC based upon C.R.C.P. 12(b)(5).[37] The State District Court noted that pursuant to case law set forth in *Bell Atlantic Corp. v. Twombly* and *Ashcroft v. Iqbal*, a complaint must contain sufficient factual allegations to state a claim for relief that is plausible on its face.[38] The State District Court further concluded that any reliance of Wildgrass on agreements between Extraction and the City of Broomfield did not satisfy the elements of promissory estoppel, as the State District Court believed that there existed no promise made to Wildgrass by either Extraction or the City of Bromfield in its operating agreement.[39] The Court believed that had Wildgrass communicated to COGCC that Wildgrass would withdraw their objection in the then-pending application before the COGCC because of the operating agreement, a possible cause of action might have existed.[40] However, as there was no evidence that either Extraction or the City of Broomfield had made any promises to Wildgrass, no promiser could reasonably expect such promise would induce action or forbearance by Wildgrass.[41]

To this order of dismissal, Wildgrass appealed.[42] The State Court Appeal is discussed later in this Article.

V. THE FEDERAL DISTRICT COURT ACTION

Wildgrass's complaint filed in Federal District Court before Hon. Judge R. Brooke Jackson raised Forced Pooling issues would prove no more fruitful than the proceedings before the State District Court.

35. *Id.*
36. *Id.* at 5.
37. *Id.*
38. *Id.* (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 U.S. 662 (2009)); Warne v. Hall, 373 P.3d 588, 589 (Colo. 2016).
39. Order of Denver District Court, No. 2018CV32513, at 6 (May 13, 2019).
40. *Id.*
41. *Id.*
42. Wildgrass Oil & Gas Comm. v. Colo. Oil & Gas Conservation Comm'n, No. 19CA1212, 2020 WL6040180 (Colo. App. Oct. 8, 2020).

"Pooling is the comingling of small tracts or fractional mineral interests into a 'drilling unit' in order to drill a well."[43] Assuming "all mineral owners in a drilling unit sign a lease that includes a pooling provision, then each mineral owner will receive a royalty payment equal to their lease royalty percentage multiplied by their proportionate share of the drilling unit acreage."[44] Some "oil and gas leases grant the company the right to pool the owner's interests into a production unit . . . known as voluntary pooling."[45] Conversely, "'Forced Pooling' occurs when the operator cannot voluntarily pool the necessary [acreage of] tracts or mineral interests to drill [a] well."[46] Instead, the operator relies upon C.R.S. Section 34-60-116 to obtain pooling consent from the COGCC.[47] This process seeks an administrative order "forcing" mineral owners to "allow" the use of their legal interests in oil and gas developments.[48] The operator thus applies to COGCC for a Forced Pooling order.[49]

In the complaint filed in the Federal District Court, Wildgrass then challenged the Forced Pooling regiment allowed by C.R.S. Section 34-60-116.[50] Wildgrass sought a restraining order against the COGCC challenging the constitutionality of Forced Pooling; the COGCC's approval of Forced Pooling application advanced by Extraction; and the COGCC's alleged refusal to consider health, safety, welfare, and other environmental concerns in its decisions to allow Forced Pooling.[51]

Judge Jackson noted that C.R.S. Section 34-60-116 created a process that allows oil and gas developers to apply to pool the interest of a group of mineral owners to pursue more efficient oil and gas drilling so as to decrease waste and avoid drilling of unnecessary wells.[52] C.R.S. Section 34-60-116 was an attempt by the Colorado legislature

43. Zachary Grey, *Mineral Rights–What is Forced Pooling?*, FRASCONA JOINER GOODMAN & GREENSTEIN PC (July 11, 2018), https://frascona.com/mineral-rights-forced-pooling/ [https://perma.cc /HL9Z-XWWS].

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. COLO. REV. STAT. § 34-60-118(5) (2006) ("[W]ho . . . will be required to pay at least eighty percent of the costs of the unit operation, and also by the owners of at least eighty percent of the production or proceeds thereof . . . .").

50. Wildgrass Oil & Gas Comm. v. Colorado, 447 F. Supp. 3d 1051, 1057 (D. Colo. 2020).

51. *Id.* at 1058–59.

52. *Id.* at 1057.

to address the flaws in the "rule of capture."[53] Judge Jackson further noted that pooling, as a general proposition, reduces the number of wells drilled while simultaneously compensating mineral owners for their share of minerals extracted.[54] This is true even where a mineral owner does not consent to the development of its mineral interests.

So as to avail themselves to a Forced Pooling order by the COGCC, an operator must first make a "just and reasonable" offer to the interested mineral owners, and the COGCC must thereafter provide notice of a hearing before issuing a Forced Pooling order.[55] If a court grants an order seeking Forced Pooling, the operator may, out of any revenue produced by the wells in question, recover 100% of the non-consenting owners' share of equipment and operation costs and 200% of some preparation and recovery cost.[56] Only after these costs are fully recovered by the operator do the non-consenting owners become working interest owners.[57]

The Defendants sought to dismiss each of these claims by Wildgrass, most notably arguing as to the Federal District Court's discretionary authority pursuant to the Burford Abstention doctrine.[58] The Burford Abstention doctrine states:

> When timely and adequate state-court review is available, a Federal Court sitting in equity must decline to interfere with the proceedings or orders of state administrate agencies: 1. When there are difficult questions of state law bearing on policy problems of substantial public import whose importance transience the result in the case at bar; or Where the exercise of Federal review of the question in a case and in similar cases would be disruptive state efforts to establish a coherent policy with respect to a matter of substantial public concern.[59]

The COGCC argued that the Court should dismiss the Wildgrass complaint pursuant to Burford Abstention as such "arises when a Federal District Court faces issues that involved complicated state

53. *Id*.
54. *Id.*
55. *Id.* at 1058.
56. *Id.*
57. *Id.*
58. *Id.* at 1057.
59. *Id.* at 1062.

regulator schemes."[60] Judge Jackson thus began his legal analysis focusing on the doctrine of Burford Abstention.[61]

Among other things, Judge Jackson noted that the state court system already provided timely and adequate state review of any COGCC decision.[62] Judge Jackson noted that it was the willful failure of Wildgrass to raise constitutional issues in the State District Court so as to contrive jurisdiction by the Federal Court.[63] Judge Jackson noted that "Wildgrass's failure to pursue state court review cannot render review unavailable."[64] The Judge further noted "the availability and adequacy of state court review cannot be determined by Wildgrass's failure to pursue remedies available to them."[65] Judge Jackson based the gravamen of his position upon his concern that invoking Federal Jurisdiction would "disrupt the state of Colorado's attempt to ensure uniformity in the application of the Forced Pooling statute."[66]

As stated eloquently by Judge Jackson:

> In *Burford* itself Plaintiff brought a constitutionality claim to challenge the reasonableness of a state agency's grant of an oil drilling permit. The claim challenged the administrative proceeding in which the permit was granted. Resolution of the case depended on review of the state agency's application of state-law factors and was therefore likely to create conflicts between federal and state law. I see a similar risk.[67]

Judge Jackson then noted:

> Though Wildgrass asks me to determine whether § 30-60-116 is constitutional, in substance what it actually is asking is that I determine whether the COGCC correctly applied § 34-60-116. Not only would I have to consider whether the COGCC correctly applied the statute in this particular instance, but whether the COGCC has previously approved and can continue to approve forced pooling for non-migratory mineral extraction, a question of state statutory interpretation that is difficult and controversial. To me, this looks like a state law question in federal law clothing, one that would bring this court into an area of state political

60. *Id.* (citing Lehman v. City of Louisville, 967 F.2d 1474, 1478 (10th Cir. 1992)).
61. *Id.*
62. *Id.* at 1063.
63. *Id.*
64. *Id.*
65. *Id.*
66. *Id.* at 1064.
67. *Id.* (citations omitted).

> controversy and could easily create conflicts between state and federal interpretations.[68]

As with the State District Court, Judge Jackson also addressed the COGGC's motion to dismiss for failure to state a claim here under Federal Rule of Civil Procedure 12(b)(6).[69]

Initially, Judge Jackson reviewed the claims asserted by Wildgrass that Forced Pooling violated its First Amendment rights in that it required Wildgrass as a non-consenting mineral interest to associate with oil and gas companies as well as forcing Wildgrass to "subsidize private speech" of oil and gas companies.[70] Judge Jackson found that "there is no evidence that the operators recoveries are for expressive purposes as opposed to what it is expressly meant to compensate, namely operators costs."[71]

The Federal District Court next found there was no evidence that there was any association amongst Wildgrass property owners with oil and gas operators that were in any way expressing speech.[72] Judge Jackson relied upon *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, *et al*., 138 S. Ct. 2448 (2018), in which the United States Supreme Court determined that forced contribution to a labor union violated the First Amendment rights of employees as union dues thereafter funded the union's representation of employees in the collective bargaining process.[73] Judge Jackson did not find persuasive the argument that Forced Pooling in Colorado subsidized private speech of an operator noting: "In *Janus*, non-union member employees were required to pay dues that would directly fund union speech in collective bargaining."[74]

Lastly, Judge Jackson entertained the argument of Wildgrass that Forced Pooling arrangements in Colorado were a form of a taking involving the "Takings Clause" as set forth in the United States Constitution.[75] The Judge initially noted that Wildgrass never pursued its remedies in the State District Court under circumstances where the State District Court was fully available to consider such arguments.[76]

68. *Id.*
69. *Id.* at 1066.
70. *Id.*
71. *Id.*
72. *Id.* at 1066–68.
73. *Id.* at 1067 (citing Janus v. Am. Fed'n of State, Cnty., and Mun. Emp. Council 31, 138 S. Ct. 2448, 2464 (2018)).
74. *Id.* (citing *Janus*, 138 S. Ct. at 2464).
75. *Id.* at 1069.
76. *Id.*

Judge Jackson also noted that Colorado recognized mineral property owners' "correlative rights" in obtaining "a just and equal profit share" from a "common source or pool" of resources while preventing waste.[77]

Judge Jackson found that it was well within the COGCC's state police powers to regulate oil and gas so as to "serve the public interest[] in curbing waste, protecting correlative rights, and protecting the economy of the state" of Colorado.[78] He concluded that Forced Pooling served a public service, conceding that while Wildgrass had demonstrated the existence of a protected property interest, it had not shown that the taking of any property interest did not serve a public purpose.[79] The Judge further found that the statutory regiment in Colorado did not violate the Contracts Clause of the United States Constitution as there was no existing contractual relationship relied upon by Wildgrass.[80] Colorado law as set forth in *Grant Bros. Ranch, LLC v. Antero Res. Piceance Corp.*, 409 P.3d 637 (Colo. App. 2016), where the Colorado Court of Appeals found that no contract existed between operators and the non-consenting owners forced to pool pursuant to C.R.S. Section 34-60-116, supports this analysis.[81]

Ultimately, Jackson dismissed the entirety of the Federal District Court action brought by Wildgrass.[82] Again, Wildgrass appealed.[83]

VI. THE STATE COURT APPEAL

Despite these litigation setbacks, Wildgrass found success with the Colorado Court of Appeals.[84] The Court of Appeals raised the issue of an associated standing as set forth in *Colorado Union of Tax Payers Foundation v. City of Aspen*.[85]

The Court of Appeals noted that the State District Court did not address whether Wildgrass had associated standing to pursue its claim

77. *Id.* at 1070 (citing City of Longmont v. Colo. Oil and Gas Ass'n, 369 P.3d 573, 580, 582 (Colo. 2016)).
78. *Id.*
79. *Id.*
80. *Id.* at 1070–71.
81. *Id.* at 1071; Grant Bros. Ranch, LLC v. Antero Res. Piceance Corp., 409 P.3d 637, 643 (Colo. App. 2016).
82. *Wildgrass Oil & Gas Comm.*, 447 F. Supp. 3d at 1071.
83. Wildgrass Oil & Gas Comm. v. Colorado, 843 Fed. Appx. 120 (10th Cir. 2021).
84. Wildgrass Oil & Gas Comm. v. Colo. Oil & Gas Conservation Comm'n, No. 19CA1212, (Colo. App. Oct. 8, 2020).
85. *Id.* at 8 (citing Colo. Union of Taxpayers Found. v. City of Aspen, 418 P.3d 506 (Colo. 2018)).

seeking judicial review of the COGCC approval of the drilling permits.[86] The issue arose as to whether the COGCC violated the Colorado Administrative Procedure Act by not considering possible associated standing of Wildgrass.[87]

The Court of Appeals next observed that invoking a court's subject-matter jurisdiction requires standing.[88] Further, a party may raise issues as to subject-matter jurisdiction at any time during the course of a proceeding.[89] The Court of Appeals thus elected to address for the first time on appeal the claim that Wildgrass had associated standing.[90] This was not an issue raised or decided in the State District Court.

Additionally, the Court of Appeals commented that Form 2 and Form 2A applications were "integrally related" and in tandem constituted a final step in securing approval from the COGCC to commence oil and gas operations upon a Forced Pooling arrangement.[91] The Court of Appeals noted that Wildgrass had submitted to the State District Court "a number of affidavits alleging that its members suffer direct and imminent harm from the Commission's permit approvals."[92] These injuries were a result of the issuance of the permits by the COGCC, and, hence, the Wildgrass members had adequate proximity to the operation in question.[93]

The Court of Appeals, therefore, found that Wildgrass had demonstrated that at least one of its members would suffer an injury-in-fact as a result of the permit approvals by COGCC and that the injury in question would be a legally protected interest.[94] Because at least a single Wildgrass member possessed standing to sue in their own right, the legal interests that Wildgrass sought to protect were germane. Wildgrass, therefore, had adequately exhibited associated standing to pursue its claim.[95] The Court of Appeals concluded contrary to the State District Court that Wildgrass possessed standing, and therefore, the State District Court had jurisdiction. The matter was remanded to the State District Court.[96]

86. *Id.* at 8 n.5.
87. *Id.* at 5, 8 n.5.
88. *Id.* at 8 n.5 (citing Weld Air & Water v. Colo. Oil and Gas Conservation Comm'n, 457 P.3d 727 (Colo. App. 2019); *id.* at 9.
89. *Id.* at 8 n.5 (citing Hansen v. Long 166 P. 3d 248, 250 (Colo. App. 2007)).
90. *Id.*
91. *Id.* at 11.
92. *Id.* at 12.
93. *Id.* at 12–13.
94. *Id.* at 13.
95. *Id.* at 18.
96. *Id.* at 25.

VII. FEDERAL COURT APPEAL

On February 1, 2021, the United States Court of Appeals for the Tenth Circuit affirmed the ruling of Judge Jackson concluding that the Federal District Court's decision to abstain based upon *Burford* discretion was not an abuse of discretion. The Tenth Circuit relied upon authority set forth in *Marshall v. El Paso Natural Gas Company*.[97]

VIII. CURRENT STATUS

The State District Court case has been remanded to the District Court of the City and County of Denver. The case is pending and unresolved as of March 9, 2022.

IX. CONCLUSION

While the issues raised in the Federal District Court have now drawn to a conclusion, the Wildgrass case continues to remain unresolved in the State District Court as of the date of this Article. The ultimate result of this case is not yet known.

The Wildgrass litigations discussed in this Article are significant. They represent the appreciation of the Colorado Courts that, in the first instance, the federal courts will not be intervening in Forced Pooling disputes for the reasons stated by both the Court of Appeals and Judge Jackson in his reliance on Burford Abstention. That resulting reluctance of the federal courts to intervene comes as no surprise.

Only the state courts, not the federal courts, can grant relief as to the COGCC. The federal courts, as such, pertain to the regulatory practices of the COGCC and will abstain from the application of the Administrative Practices Act.

More importantly, the Colorado Court of Appeals, by invoking the doctrine of associated standing, significantly broadened the scope of participants in the regulatory practices to non-traditional stakeholders; here, a citizens' group has a place in the regulatory process and, more specifically, in matters pending before the COGCC. Whether Wildgrass is ultimately successful or not in this dispute is perhaps immaterial. This is because the real significance is that the doctrine of associated standing has been judicially applied to COGCC proceedings. While the decision of the Court of Appeals was not published,

97. Wildgrass Oil & Gas Comm. v. Colorado, 843 Fed. Appx. 120, 122 (10th Cir. 2021) (citing Marshall v. El Paso Nat. Gas Co., 874 F.2d 1373, 1377 (10th Cir. 1989)).

this opinion is still significant law in Colorado. The Wildgrass opinion, hence, provides a roadmap hereafter for citizens' groups to participate in the COGCC regulatory process in a manner in which they heretofore have not been able. The position is consistent with the changing demographic and political landscape of Colorado. As oil and gas production is more frequently pursued in areas of greater population density, it is no surprise that standing is afforded to not only operators and the COGCC but also impacted stakeholders.