



Office of the County Attorney

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January 27, 2017

VIA E-MAIL

Cynthia H. Coffman,
Attorney General
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Dear Attorney General Coffman:

The Board of County Commissioners of Boulder County is familiar with the two Colorado Supreme Court cases you cite in your January 26, 2017, letter. In fact, the County submitted amicus briefs in those cases supporting the City of Fort Collins and the City of Longmont. On May 12, 2016, the County rescinded the moratorium it had in place that extended through July of 2018 based on the outcome of those cases. However, the only oil and gas regulations in place at that time were originally enacted in 2012. Since then, industry practice evolved in ways of great concern to local residents, schools, and others proximate to oil and gas operations. For example, when the County last updated its regulations, the current practice was to construct one to four wells per pad. Recently, industry has moved toward much larger well pads with 12, 16, 20, or more wells per pad. In neighboring Broomfield, an operator is planning multiple well pads holding 40 wells.

In addition to this trend toward mega-facilities, at least two state agencies, the Colorado Oil and Gas Commission (“COGCC”) and the Colorado Air Quality Control Commission (“AQCC”), have changed their regulations since the County adopted its current land use regulations.

As a result of these changes, the County’s 2012 oil and gas regulations were not adequate and needed an update to ensure our local regulations do not conflict with new state laws, to better reflect more recent industry practices, and to best protect public health, safety, welfare, and the environment in Boulder County. It would have been irresponsible for the County to have processed applications for new oil and gas development under outdated regulations. Last May, Land Use Department staff determined it would need approximately six months to develop and implement County oil and gas regulations. This timeframe included hiring technical expertise; internal staff meetings; meetings with the COGCC and industry; drafting;

referral to interested third parties; public review of those drafts; Planning Commission hearings; and a Board of County Commissioners hearing. Accordingly, the County adopted a six month temporary moratorium through November 18, 2016. In the field of land use regulation, the moratorium is an “essential tool of successful development . . . it counters the incentive . . . to develop . . . quickly to avoid the consequences of an impending land use plan for the jurisdiction.” *Droste v. Board of County Com’rs of County of Pitkin*, 159 P.3d 601, 606 (Colo. 2007). Unlike the five year moratorium in *City of Fort Collins* that the Court invalidated last May, the County’s November 18 moratorium was of a “materially shorter duration,” on which the Colorado Supreme Court expressed no view. *City of Fort Collins v. Colo. Oil and Gas Ass’n*, 369 P.3d 586, 594 (Colo. 2016).

Since enacting its new temporary moratorium, County staff worked hard to prepare oil and gas regulations that meet the County’s current needs. Staff conducted multiple meetings with the COGCC and industry representatives, received input from the public, and wrote complex and detailed draft regulations. As required by law, the County presented its draft regulations to the Boulder County Planning Commission on October 12, 2016. After a public hearing, the Planning Commission recommended numerous modifications to the draft regulations. Staff presented updated regulations on October 27, 2016, at which time the Planning Commission approved the draft with edits and direction. Staff presented a new version of the regulations that incorporated the Planning Commission’s recommendations to the Board of County Commissions at a public hearing on November 15, 2016, three days before the original expiration of the temporary moratorium. Based on the extensive public testimony at that hearing, the Board determined that further work was needed on the regulations. To complete work on the regulations and allow time for implementation of those regulations after adoption, the Board extended the temporary moratorium through May 1, 2017. The Board scheduled a continued public hearing to consider a final draft on March 14, 2017, at 2 p.m. Given the length and complexity of the proposed regulations, the legally required opportunities for public input, and the multiple other projects and tasks that County staff is required to undertake, the County and its staff acted on these regulations within a very tight timeframe. During this entire timeframe and multiple opportunities for public input, neither the COGCC nor any representative from your office indicated that it believed the County was legally required to complete its work by February 10, 2017. It certainly would have been helpful to know this position earlier in the process rather than springing this issue on the County two weeks before this purported deadline.

For the reasons explained above, it would be irresponsible for the County to permit oil and gas development in Boulder County without having up-to-date regulations in place and a period in which to prepare for the implementation of those regulations. Should the Attorney General’s Office decide to pursue litigation based on its arbitrary deadline of February 10, 2017, the County will be prepared to defend it. However, we hope you recognize that litigation over whether the County accepts applications in February rather than May would be an unjustified intrusion into local government affairs, not to mention a waste of taxpayer resources. No irreparable injury to mineral owners or oil and gas operators will occur in this

three month timeframe; however, forcing the County to move forward with out-of-date regulations could cause significant harm to the public and the environment.

We hope that you will reconsider your position given the detailed information provided in this letter so that our residents are not deprived of reasonable and necessary local regulatory protections enacted by their elected officials.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Ben Pearlman', with a stylized flourish at the end.

Ben Pearlman
Boulder County Attorney