

<p>DISTRICT COURT, BOULDER COUNTY, COLORADO</p> <p>BOULDER JUSTICE CENTER 1777 SIXTH STREET BOULDER, CO 80302 TELEPHONE: 303.441.3750</p>	
<p>Plaintiff: PEOPLE OF THE STATE OF COLORADO <i>ex rel.</i> CYNTHIA H. COFFMAN, in her official capacity as Colorado Attorney General;</p> <p>Plaintiff: THE STATE OF COLORADO;</p> <p>and</p> <p>Proposed Plaintiff-Intervenors: COLORADO OIL AND GAS ASSOCIATION; AMERICAN PETROLEUM INSTITUTE</p> <p>v.</p> <p>Defendant: COUNTY OF BOULDER, COLORADO;</p> <p>Defendant: THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, COLORADO.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Proposed Plaintiff-Intervenors</i></p> <p>Mark J. Mathews, Colo. Atty. Reg. No. 23749 Julia E. Rhine, Colo. Atty. Reg. No. 45360 BROWNSTEIN HYATT FARBER SCHRECK, LLP 410 Seventeenth Street, Suite 2200 Denver, Colorado 80202-4432 Telephone: 303.332.1100 E-mail: mmathews@bhfs.com, jrhine@bhfs.com</p>	<p>Case Number: 2017CV030151</p> <p>Division: 3</p>
<p style="text-align: center;">COLORADO OIL AND GAS ASSOCIATION’S AND AMERICAN PETROLEUM INSTITUTE’S JOINT UNOPPOSED MOTION TO INTERVENE</p>	

The Colorado Oil & Gas Association (“COGA”) and the American Petroleum Institute (“API”) (collectively, the “Proposed Plaintiff-Intervenors”) respectfully move for an order allowing intervention pursuant to Rule 24 of the Colorado Rules of Civil Procedure.

C.R.C.P. 121 § 1-15(8) CERTIFICATION

Counsel for Proposed Plaintiff-Intervenors contacted counsel for Defendant Board of County Commissioners of Boulder County, Colorado, Defendant County of Boulder, Colorado, Plaintiff People of the State of Colorado *ex rel.* Cynthia H. Coffman, in her official capacity as the Colorado Attorney General, and Plaintiff the State of Colorado regarding this motion.

Counsel is advised that Plaintiffs do not oppose this motion and that Defendants do not oppose this motion.

STANDARD OF REVIEW

1. An applicant is entitled to intervene as a matter of right if its application is “timely” and (1) it claims an interest relating to the property or transaction that is the subject of the action, (2) it is so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest, and (3) existing parties may not adequately represent its interest. C.R.C.P. 24(a)(2).

2. Additionally, the Court may allow permissive intervention if (1) an applicant’s contentions and the proceedings present common questions of law or fact, and (2) intervention will not unduly delay or prejudice the rights of the original parties. C.R.C.P. 24(b)(2).

3. Rule 24 is construed liberally “to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level.” *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001).

GROUNDS FOR INTERVENTION

4. COGA is a Colorado nonprofit corporation and nationally recognized trade association whose purpose is to foster and promote the beneficial, efficient, responsible, and environmentally sound development, production, and use of Colorado oil and natural gas. COGA promotes the expansion of Colorado oil and natural gas supply, markets, and transportation infrastructure.

5. API is the primary national trade association of the oil and gas industry in the United States and is involved in all aspects of the industry, including exploration and production, refining, and marketing and transportation of petroleum and petroleum products. API's mission is to promote safety across the industry globally and to ensure a strong, viable oil and natural gas industry capable of meeting the energy needs of our Nation and Colorado in a safe and environmentally responsible manner. API has a strong presence in the State of Colorado through its Colorado Petroleum Council division, and API members have invested billions of dollars in Colorado's oil and natural gas industry.

6. The Proposed Plaintiff-Intervenors' Joint Complaint in this action—filed concurrently with this motion in accordance with C.R.C.P. 24(c)—seeks a declaratory judgment invalidating Defendants' enactment of multiple rolling, "temporary" moratoria that together are the functional equivalent of an uninterrupted five-year three-month long moratorium on the acceptance, processing, and approval of applications for oil and gas development within Boulder County. Defendants first imposed a six-month moratorium on the Boulder County Land Use Department's acceptance, processing, and approval of any applications for oil and gas development in unincorporated Boulder County on February 2, 2012, and no less than eight

subsequently enacted moratoria have continued the ban on oil and gas development in the County through the present. Collectively, this unremitting ban on the acceptance, processing, and approval of applications is referred to herein and in the Joint Complaint as the “Continuous Moratorium.”

7. The Plaintiffs’ Complaint similarly seeks declaratory judgment invalidating Defendants’ Continuous Moratorium. The Proposed Plaintiff-Intervenors’ Complaint does not add any causes of action that have not already been plead by the Plaintiffs.

8. The Proposed Plaintiff-Intervenors seek to intervene in this action on behalf of themselves and their members who are companies engaged in the exploration, production, and development of oil and natural gas in Colorado. COGA and API have members who own mineral leasehold interests within Boulder County, and who are injured by the Continuous Moratorium, which has made it impossible to develop their leasehold interests. The COGA and API members who own mineral leasehold interests within Boulder County have standing to bring this action in their own right.

9. The Proposed Plaintiff-Intervenors and their members dispute Defendants’ authority to enact a Continuous Moratorium lasting over five years because such a prohibition on new oil and gas development is preempted by state law, including the Oil and Gas Conservation Act and its implementing regulations. The Proposed Plaintiff-Intervenors and their members have already suffered and will continue to suffer loss and injury to their businesses and economic interests as a result of Defendants’ Continuous Moratorium.

10. This motion is timely. Plaintiffs' Complaint was filed on February 14, 2017, only 10 days ago. Defendants have not answered the Plaintiffs' Complaint, the case is not yet at issue, no other motions have been filed, and no case management orders have been entered.

11. Disposition of this action directly affects the ability of the Proposed Plaintiff-Intervenors' members to develop their property in Boulder County. Disposition of this action also may, as a practical matter, impair or impede the ability of the Proposed Plaintiff-Intervenors to protect their interests and those of its members because of this action's persuasive value and as the result of collateral estoppel or other preclusive doctrines.

12. The interests of the Proposed Plaintiff-Intervenors and their members are not adequately represented by existing parties. Although the Proposed Plaintiff-Intervenors and the Plaintiffs agree that the Continuous Moratorium is unlawful, their interests conflict to the extent that Plaintiffs are charged with representing and balancing the various interests of the general public, whereas the Proposed Plaintiff-Intervenors represent private companies that are directly affected by the Continuous Moratorium and whose oil and gas operations are extensively regulated under state law. A robust body of case law holds that government representation may not adequately represent private interest:

We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners in intervention, a task which is on its face impossible. The cases correctly hold that this kind of a conflict satisfies the minimal burden of showing inadequacy of representation.

National Farm Lines v. Interstate Commerce Comm'n, 564 F.2d 381, 384 (10th Cir.1977).

13. An applicant must only show that there “may” be inadequate representation and the applicant’s burden of so showing is “minimal.” *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1254 (10th Cir. 2001)(internal quotation omitted).

14. The Proposed Plaintiff-Intervenors’ intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. The Proposed Plaintiff-Intervenors will adhere to all deadlines to which the Plaintiffs are subject.

15. Intervention will avoid a multiplicity of suits and allow the Court to decide the Proposed Plaintiff-Intervenors’ and the Plaintiffs’ challenges to the Continuous Moratorium in a single action.

16. As mentioned above, the Proposed Plaintiff-Intervenors’ Joint Complaint does not add any causes of action that are not already before the Court. The Proposed Plaintiff-Intervenors’ participation in this action will not expand the scope of the litigation, and Plaintiffs and Defendants do not oppose the intervention of COGA and API.

17. Accordingly, the Proposed Plaintiff-Intervenors respectfully request an order allowing them to intervene in this litigation as a matter of right or, in the alternative, permissively. A Proposed Order granting the request sought herein is attached. The Proposed Plaintiff-Intervenors further request that the Court accept for filing the Joint Complaint submitted herewith by the Proposed Plaintiff-Intervenors.

Respectfully submitted this 24th day of February, 2017.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

s/ Mark J. Mathews

Mark J. Mathews, #23749

Julia E. Rhine, #45360

ATTORNEYS FOR PROPOSED
PLAINTIFF-INTERVENORS COLORADO
OIL AND GAS ASSOCIATION AND AMERICAN
PETROLEUM INSTITUTE

CERTIFICATE OF SERVICE

I hereby certify that on this 24th of February, 2017, I electronically filed a true and correct copy of the foregoing **COLORADO OIL AND GAS ASSOCIATION'S AND AMERICAN PETROLEUM INSTITUTE'S JOINT UNOPPOSED MOTION TO INTERVENE** with the clerk of Court via the Colorado Courts E-Filing system which will send notification and service of such filing to the following:

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s/ Paulette M. Chesson

Paulette M. Chesson, Paralegal

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<p>Plaintiff: PEOPLE OF THE STATE OF COLORADO <i>ex rel.</i> CYNTHIA H. COFFMAN, in her official capacity as Colorado Attorney General;</p> <p>Plaintiff: THE STATE OF COLORADO;</p> <p>and</p> <p>Plaintiff-Intervenors: COLORADO OIL AND GAS ASSOCIATION; AMERICAN PETROLEUM INSTITUTE</p> <p>v.</p> <p>Defendant: COUNTY OF BOULDER, COLORADO;</p> <p>Defendant: THE BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, COLORADO.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;">COLORADO OIL AND GAS ASSOCIATION’S AND AMERICAN PETROLEUM INSTITUTE’S JOINT COMPLAINT</p>	

The Colorado Oil & Gas Association (“COGA”) and the American Petroleum Institute (“API”) (collectively, “Plaintiff-Intervenors”), by and through counsel, submit this Joint Complaint for Declaratory Relief and state:

INTRODUCTION

1. Over five years ago, on February 2, 2012, Boulder County’s Board of County Commissioners (“Boulder” or the “County”) enacted Resolution 2012-16, which imposed a six-month moratorium on the Boulder County Land Use Department’s acceptance, processing, and approval of any applications for oil and gas development within unincorporated Boulder County.

2. Boulder subsequently enacted eight additional resolutions continuing the ban on the acceptance, processing, and approval of any applications for oil and gas development in the County, with the most recent ban extension set to expire on May 1, 2017. Because, as described below in further detail, each new moratorium or moratorium extension went into effect on the same day as the previous one expired or earlier, Boulder has not allowed the Boulder County Land Use Department to accept, process, or approve any application for oil and gas development within Boulder County at any time for over five years. Collectively, these uninterrupted moratoria will be referred to herein as the “Continuous Moratorium.”

3. Last year, the Colorado Supreme Court unanimously determined that local governments lack the authority to prohibit oil and gas development within their borders. *City of Longmont v. Colo. Oil & Gas Ass’n*, 2016 CO 29, 369 P.3d 573 (Colo. 2016) (striking down a permanent ban on oil and gas production involving the common practice of hydraulic fracturing); *City of Fort Collins v. Colo. Oil & Gas Ass’n*, 2016 CO 28, 369 P.3d 586 (Colo. 2016) (striking down a five-year moratorium on hydraulic fracturing that had been in effect for less than two and a half years).

4. In *Longmont* and *Fort Collins*, the Colorado Supreme Court held that the Colorado Oil and Gas Conservation Act (the “Act”) expresses and embodies the state’s “strong interest” in the “uniform regulation” of oil and gas activities. *Fort Collins*, ¶29; *Longmont* ¶ 53.

5. In *Fort Collins*, the Court held that a five-year moratorium, which by the time of the Court’s ruling had been in place for only two and a half years, “materially impedes the effectuation of the state’s interest in the efficient and responsible development of oil and gas resources” by “render[ing] the state’s statutory and regulatory scheme superfluous, at least for a lengthy period of time.” *Fort Collins*, ¶¶ 30, 38.

6. Moratoria on oil and gas activities, including the well stimulation technique of hydraulic fracturing, prevent operators who abide by state rules and regulations from engaging in oil and gas activities. The Act, together with the rules and regulations promulgated thereunder, thus facially preempts local bans on oil and gas development.

7. The Continuous Moratorium has been in place twice as long as was the temporary ban on hydraulic fracturing that the Court struck down in *Fort Collins*.

8. Because the Continuous Moratorium defies the Colorado Supreme Court's rulings and is preempted by state law, Plaintiff-Intervenors seek declaratory relief invalidating the enactment of the Continuous Moratorium.

PARTIES

9. The Plaintiffs are the People of Colorado *ex rel.* the Attorney General and the State of Colorado, represented by the Office of the Attorney General, located at 1300 Broadway, 10th Floor, Denver, Colorado 80203.

10. The Defendants are the County of Boulder, Colorado, and its governing body, the Board of County Commissioners. The Board of County Commissioners' office is located at 1325 Pearl Street, Boulder, Colorado 80302.

11. Plaintiff-Intervenors are the Colorado Oil and Gas Association ("COGA") and the American Petroleum Institute ("API").

12. COGA is a Colorado nonprofit corporation and nationally-recognized trade association whose purpose is to foster and promote the beneficial, efficient, responsible, and environmentally sound development, production, and use of Colorado oil and natural gas. COGA promotes the expansion of Rocky Mountain oil and natural gas supply, markets, and transportation infrastructure. COGA's office is located at 1800 Glenarm Pl. #1100, Denver, CO, 80202.

13. API is the primary national trade association of the oil and gas industry in the United States and is involved in all aspects of the industry, including exploration and production, refining, and marketing and transportation of petroleum and petroleum products. API's mission is to promote safety across the industry globally and to ensure a strong, viable oil and natural gas industry capable of meeting the energy needs of our Nation and Colorado in a safe and environmentally responsible manner. API has a strong presence in the State of Colorado through its Colorado Petroleum Council division, and API members have invested billions of dollars in Colorado's oil and natural gas industry. API's national headquarters is located at 1220 L Street, NW Washington, DC 20005-4070, and the Colorado Petroleum Council is located at 1660 Lincoln St. #1460, Denver, CO, 80264.

14. COGA and API have members who own mineral leasehold interests within Boulder County. These members seek to be engaged in the exploration, production, and development of oil and natural gas in Boulder County. These members have been prevented from developing their mineral leasehold interests in Boulder County by the Continuous Moratorium.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction because the events complained of occurred in Colorado and the resolution of this dispute requires the application of Colorado law. Colo. Const. art. VI, § 9(1).

16. Under §§ 13-51-101 to -115, C.R.S., and C.R.C.P. 57, this Court may declare the parties' respective rights, status, and other legal relations.

17. The Court has personal jurisdiction over the Defendants. § 13-1-124(1), C.R.S.

18. Venue is proper pursuant to C.R.C.P. 98(b)(2) and (c).

19. All necessary parties are before the Court pursuant to C.R.C.P. 57(j), an actual and justiciable controversy exists regarding the parties' respective rights, and a declaratory judgment will terminate the controversy giving rise to this proceeding.

GENERAL ALLEGATIONS

I. Because State Law Embodies a Strong Interest in the Efficient and Responsible Development of Oil and Gas Resources, Local Government Laws Banning Oil and Gas Development Are Preempted.

20. The Colorado Supreme Court has recognized that there is a “need for uniform statewide regulation” of oil and gas activities. *Fort Collins*, ¶ 16; *Longmont*, ¶ 31.

21. Accordingly, the General Assembly enacted the Act, §§ 34-60-101 to -130, C.R.S., to regulate virtually every aspect of oil and gas development and operations within the state.

22. The intent and purpose of the Act is “to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources.” § 34-60-102(1)(b), C.R.S.

23. As authorized by the Act, the state, through its administrative agencies, has promulgated “exhaustive” and comprehensive regulations governing the development of oil and gas resources and operation of oil and gas activities in Colorado. *Fort Collins*, ¶¶ 27–29; *Longmont*, ¶¶ 50–52.

24. The Act and its implementing regulations contain comprehensive substantive and technical requirements relating to oil and gas development and operations. *Fort Collins*, ¶¶ 28–29; *Longmont*, ¶¶ 51–52.

25. The Act and its implementing regulations include substantive and technical requirements governing new development of oil and gas resources.

26. The regulations provide opportunities for local governments to participate in state permitting decisions through Local Governmental Designees, who can influence and collaborate in oil and gas development, including by receiving advance notice of permit applications and by providing comments regarding permits. *See, e.g.*, COGCC Rules 100, 214, 216(d)(2), 305.

27. Local laws that operationally conflict with the Act are preempted. *Fort Collins*, ¶ 39; *Longmont*, ¶ 54.

28. This includes local laws that ban oil and gas development for a “limited duration.” *Fort Collins*, ¶¶ 34, 35.

II. The Enactment of the Continuous Moratorium and the Colorado Supreme Court’s Rulings on Local Government Bans on Oil and Gas Development.

29. From February 2, 2012, through the present, Boulder has enforced its Continuous Moratorium on all new applications for oil and gas development activities within the unincorporated territory of Boulder County.

30. The Continuous Moratorium is not merely a regulation regarding oil and gas development activities. The Continuous Moratorium is a prohibition on new oil and gas development activities.

31. The Continuous Moratorium began on February 2, 2012, when the County adopted Resolution 2012-16, which imposed an immediately effective six-month ban on the acceptance, processing, or approval of any applications for oil and gas development. *Pls.’ Ex. A.*

32. One of the stated reasons for the necessity of Resolution 2012-16 was Boulder’s acknowledgement that, “during the past few years,” there had been “substantial advances in [oil and gas] technology.” *Id.* at A. *See also id.* at D. (discussing “technological changes in drilling operations”).

33. Resolution 2012-16 was set to expire six months later, on August 2, 2012. However, on May 1, 2012, Boulder adopted Resolution 2012-46, which extended the ban on application acceptance, processing, and approval for an additional six months, through February 4, 2013. *Pls.’ Ex. B.* Resolution 2012-46 took effect retroactively on April 16, 2012. *Id.* at 4. Boulder claimed that the extension afforded by Resolution 2012-46 was necessary to appropriately amend the County’s regulations due, in part, to the changes in oil and gas technology, including specifically acknowledging the method of hydraulic fracturing (“fracking”) of horizontally drilled wells. *Id.* at 1.

34. While Resolution 2012-46 was in effect and as directed by it, County staff proposed amendments to County oil and gas regulations. The County then unanimously adopted those amendments on December 20, 2012 by enacting Resolution 2012-142. Pls.’ Ex. C. Resolution 2012-142 provided that the amendments would go into effect when the Continuous Moratorium was lifted. *Id.* at 3. However, because the County has repeatedly extended the Continuous Moratorium, these unanimously approved amended regulations have never gone into effect.

35. On February 5, 2013, Boulder adopted Resolution 2013-18, which again extended the ban on accepting, processing, and approving applications for oil and gas development, this time for approximately four months, through June 10, 2013. Pls.’ Ex. D. Resolution 2013-18 took effect retroactively on January 24, 2013. *Id.* at 5.

36. Boulder claimed that the extension of Resolution 2013-18 was necessary “to allow the staff sufficient time to prepare to accept applications under the new regulations.” *Id.* at 4.

37. On June 11, 2013, the County adopted Resolution 2013-50, which extended the ban on accepting, processing, and approving applications for oil and gas development through June 24, 2013. Pls.’ Ex. E. Resolution 2013-50 took effect retroactively on June 6, 2013. *Id.* at 2.

38. Resolution 2013-50 reflects that the Board of County Commissioners did not initially vote to further extend the Continuous Moratorium, but at a joint session of the Planning Commission and the Board of County Commissioners on June 5, 2013, the Planning Commission requested the County to reconsider extending the ban. *Id.* at 1.

39. Less than two weeks later, on June 20, 2013, Boulder adopted Resolution 2013-55, which extended the Continuous Moratorium for an additional 18 months, through January 1, 2015. Pls.’ Ex. F. Resolution 2013-55 took effect retroactively on June 18, 2013. *Id.* at 11.

40. As in previous Resolutions, Boulder claimed that Resolution 2013-55 was required because County staff needed more time to consider promulgating new oil and gas regulations. *Id.* at 5, 8.

41. On November 25, 2014, Boulder adopted Resolution 2014-88, which extended the Continuous Moratorium for an additional three-and-a-half years, through July 1, 2018. Pls.’ Ex. G.

42. Boulder again claimed that the extension was necessary to allow continued consideration of existing and possible future regulations. *Id.* at 1-3.

43. On May 2, 2016, the Colorado Supreme Court issued its opinions in *Longmont* and *Fort Collins*, holding that local prohibitions on oil and gas development are preempted.

44. In *Longmont*, the Colorado Supreme Court held that a permanent ban on hydraulic fracturing, a well stimulation technique used in “virtually all oil and gas wells” in Colorado, “materially impede[d] the application of state law, namely, the Oil and Gas Conservation Act and the regulations promulgated thereunder” and was therefore operationally preempted by state law. ¶¶ 33, 54.

45. The Court explained that “a local ordinance that ... forbids what state law authorizes will necessarily satisfy” the “materially impedes” standard. *Id.* ¶ 42.

46. In *Fort Collins*, the Colorado Supreme Court held that Fort Collins’ five-year moratorium on hydraulic fracturing, which at the time had been in effect for less than two and a half years, was preempted because it “render[ed] the state’s statutory and regulatory scheme superfluous, at least for a lengthy period of time” by preventing operators who complied with state law from engaging in oil and gas development. ¶ 30.

47. The Court held that the temporary moratorium “materially impede[d] the effectuation of the state’s interest in the efficient and responsible development of oil and gas resources.” *Id.* ¶ 30.

48. The Court rejected the argument that Fort Collins’ moratorium was only a “temporary ‘time-out’” that would allow the city “to study the impact of [hydraulic fracturing] on public health.” *Id.* ¶¶ 31, 32.

49. Even a temporary ban, the Court held, “deleteriously affects what is intended to be a state-wide program of regulation” and “impedes the goals of the Oil and Gas Conservation Act.” *Id.* ¶ 37.

50. In *Longmont* and *Fort Collins*, the Colorado Supreme Court rejected the assertion that questions of preemption require factual development.

51. To the contrary, “in virtually all cases,” the preemption analysis requires only “a facial evaluation of the respective regulatory schemes, not a factual inquiry as to the effect of those schemes ‘on the ground.’” *Longmont*, ¶ 15; *see also id.* ¶ 55 (explaining that any “purported factual disputes” were “immaterial” because the only “material facts” involved a legal question, namely “the interplay between [the local ban] and state law”); *Fort Collins*, ¶ 38 (rejecting the claim that the “bare factual record” prevented the Court from striking down the city’s temporary ban on hydraulic fracturing).

52. After *Fort Collins* and *Longmont* were handed down, Boulder held a hearing on May 19, 2016, to discuss the implications of those decisions on County’s Continuous Moratoria.

53. At that hearing, counsel for Boulder said on the record: “[W]ere we to be challenged on our current moratorium ... we think that it’s likely that a court would find it hard

to distinguish our moratorium from Fort Collins' moratorium, which was just overturned. So it would be very hard to defend our current moratorium.”

54. Counsel for Boulder nonetheless continued that: “[W]e do think that there’s some ability to—if you feel that the current regulations do need updating, . . . to adopt a new moratorium, but, really, only for the period of time that is truly necessary to update our regulations.”

55. At the conclusion of the May 19, 2016 hearing, the County adopted Resolution 2016-65, which made Boulder’s ban on the acceptance, processing, and approval of all oil and gas development applications expire on November 18, 2016 instead of July 1, 2018. Pls.’ Ex. J.

56. Resolution 2016-65 noted that, given the decisions in *Fort Collins* and *Longmont*, the legal status of ending Boulder’s Continuous Moratorium on July 1, 2018, was “uncertain.” *Id.* at 1.

57. Resolution 2016-65 repeated Boulder’s then-four-year position of stating that “the County’s current oil and gas regulations need to be updated.” *Id.* at 2.

58. Boulder’s practice of delaying the implementation of its updated oil and gas regulations continued on November 17, 2016, when Boulder adopted Resolution 2016-130, which again extended the ban on the acceptance, processing, and approval of all oil and gas development applications. Pls.’ Ex. K. Resolution 2016-130 took effect retroactively on November 15, 2016, and provided that the decision of whether to extend the ban yet further would be considered by the Board at a public hearing on December 13, 2016. *Id.* at 2.

59. Two days before Boulder adopted Resolution 2016-130, on November 15, 2016, counsel for the Colorado Oil and Gas Conservation Commission testified at a public hearing that “[i]f the moratorium is extended, it would be contrary to the Supreme Court cases.”

60. On December 15, 2016, Boulder once more extended its ban on the acceptance, processing, and approval of all oil and gas development applications through May 1, 2017, with the enactment of Resolution 2016-137. Pls.’ Ex. L.

61. The stated rationale for Resolution 2016-137 is no different from that which Boulder had been relying upon for nearly five years at that point—a purported need to amend local regulations. *Id.* at 1.

62. The Continuous Moratorium remains in place as of the date of this Complaint.

63. The Continuous Moratorium has now been in effect for over five years. As such, the Continuous Moratorium has been in effect longer than the intended duration of the moratorium in *Fort Collins*, which was struck down after being in effect for less than two and a half years.

64. Boulder has not agreed to rescind the Continuous Moratorium.

65. Boulder has not provided any assurance that it will deviate from its now over five-year course of extending its ban on the acceptance, processing, and approval of all oil and gas development applications.

CLAIM FOR RELIEF
(Declaratory Judgment)

66. Plaintiff-Intervenors incorporate the above allegations by reference.

67. The Continuous Moratorium on the acceptance, processing, and approval of applications for oil and gas development within Boulder County is a de facto impermissible moratorium on the new exploration for and extraction of oil and natural gas resources within Boulder County and the Continuous Moratorium therefore results in the uneven and wasteful production of oil and natural gas reservoirs that underlie the County and extend beyond its boundaries.

68. The Continuous Moratorium, which has been operative in some iteration for over five years, is preempted by the dominant state interest in the efficient development and production of oil and natural gas resources in Colorado as evidenced by the Act and its implementing rules and regulations and is therefore unlawful and invalid.

69. Accordingly, Plaintiff-Intervenors seek a judgment declaring that the Continuous Moratorium is preempted by the Act and its implementing rules and regulations and is therefore unlawful and invalid.

PRAYER FOR RELIEF

Based on the above allegations, Plaintiff-Intervenors respectfully request that this Court:

1. Declare that Boulder's Continuous Moratorium is preempted by the Act and its implementing rules and regulations and is therefore unlawful and invalid;
2. Enter judgment in favor of the Plaintiffs and the Plaintiff-Intervenors;
3. Award Plaintiffs and Plaintiff-Intervenors any other relief that the Court deems just and reasonable.

Respectfully submitted this 24th day of February, 2017.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

s/ Mark J. Mathews

Mark J. Mathews, #23749

Julia E. Rhine, #45360

ATTORNEYS FOR PLAINTIFF-INTERVENORS
COLORADO OIL AND GAS ASSOCIATION and
AMERICAN PETROLEUM INSTITUTE

CERTIFICATE OF SERVICE

I hereby certify that on this 24th of February, 2017, I electronically filed a true and correct copy of the foregoing **COLORADO OIL AND GAS ASSOCIATION'S AND AMERICAN PETROLEUM INSTITUTE'S JOINT COMPLAINT** with the clerk of Court via the Colorado Courts E-Filing system which will send notification and service of such filing to the following:

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