

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

Docket Nos. 170500189, 170500190, 170500191, 170500192

BOULDER COUNTY'S RULE 510 STATEMENT

For the reasons below, Boulder County supports Crestone's CDP variance request.

A. Crestone's variance request conforms to COGCC Rules and the Oil and Gas Conservation Act

Under COGCC Rule 502.b.(1), Crestone has to show: (1) it has made a good faith effort to comply with the requirements of the rules and (2) the variance will not violate the basic tenets of the Oil and Gas Conservation Act. Although protestor Kerr-McGee argues that Crestone has not shown a good faith effort to comply with Rule 303, the focus should be on Crestone's compliance with Rule 216 governing CDPs. Rule 216 is designed to "facilitate discussions about potential impacts, and identify measures to minimize adverse impacts to public health, safety, welfare, and the environment." Rule 216.a. CDPs are intended to "cover more than one (1) proposed oil and gas location within a geologic basin" and may "cover[] the proposed activities of multiple operators." Rule 216.b. As pointed out by Kerr-McGee, a CDP may take significant time to develop because its purpose is comprehensive planning involving numerous stakeholders. *See* Rule 216.d. If operators are allowed to file Form 2As and Form 2s in the CDP area during the time it takes to complete the CDP, coordinated planning will be impossible and the entire purpose of Rule 216 will be frustrated. Rather than an efficient plan for well locations to best drain the minerals with the least surface impacts, wells may be sited for the immediate convenience of particular operators without adequate local government input or the benefit of analysis of the larger area. The Commission should not interpret its own rules in such a way as to write Rule 216 out of existence.

Secondly, the variance will not violate the basic tenets of the Act as the protestors argue. In addition to protecting correlative rights, the Act is designed for "responsible, balanced development, production, and utilization of the natural resources of oil and gas . . . in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources." § 34-60-102(1)(a)(I), C.R.S.; *see also* *Martinez v. Colorado Oil & Gas Conservation Comm'n*, 2017 COA 37, ¶ 25 (plain meaning of the Act indicates that fostering balanced, nonwasteful development is in the public interest when that development is completed *subject to* protection of public health, safety, and welfare). The Act also "[p]rotect[s] the public and private interests against waste in the production and utilization of oil and gas," § 34-60-102(1)(a)(II), C.R.S. The variance will allow Crestone and the stakeholders, including other operators in the CDP area, to design the most complete and efficient manner of mineral development that can be designed to minimize adverse impacts and prevent waste. Thus, the variance request meets both aspects of Rule 502.

Moreover, in the absence of the variance, the Commission's "first to file" precedent will result in rushed applications without the benefit of careful planning, which can yield situations like the disputed applications of Extraction and Cub Creek in Longmont, currently on the Commission's docket. Instances like that one are not in any party's best interest, including the local government whose regulatory process may be set aside in such contests.

B. The COGCC has authority to make modifications to the variance request and the final CDP

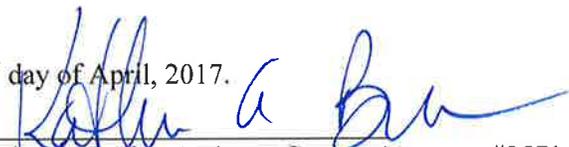
Protestor 8 North LLC argues that the variance request will result in unequal treatment of operators. If the Commission has concerns on this score, it can modify the request to apply it equally to all operators. The Commission has previously approved applications with modifications from what the applicant requests. For example, the Colorado Court of Appeals held that the Commission was legally authorized to grant Dedicated Outdoor Activity Area status to only a portion of the lands put forward in the application. *Chase v. Colorado Oil & Gas Conservation Comm'n*, 284 P.3d 161, 168–69 (Colo. Ct. App. 2012). This discretion follows from the Commission’s authority under Rule 528.g. to make its findings and order based on the evidence presented. As long as the Commission adheres to its rules and bases its order on evidence in the record and sufficient reasoning, it has the discretion to make modifications to Crestone’s request. *See, e.g., FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513 (2009) (an agency must “examine the relevant data and articulate a satisfactory explanation for its action”). In this way, the Commission can address any fairness concerns with the request while furthering the intent of the Act and Rule 216.

C. Boulder County has concerns about the process and criteria by which the Commission will analyze the CDP itself.

Additional to its support of Crestone’s variance request, Boulder County takes this opportunity to note its concerns about the process and criteria for decision applicable to the upcoming analysis of the CDP itself. The CDP area is not only home to numerous County residents but contains significant agricultural lands and important wildlife habitat that the County and its residents have been preserving and protecting for several decades. The scale of development proposed in the CDP poses significant challenges to the County’s and the Commission’s responsibility to protect the health and welfare of its citizens and the land, air and water in its jurisdiction. For these reasons, the County supports the variance request to allow for robust comprehensive planning but expects that the process to complete the CDP will be predictable, transparent and thorough. Rule 216 does not provide a clear process for receiving stakeholder input or specific criteria for staff’s or the Commission’s consideration of Crestone’s application. Neither the County nor many of its residents who have already voiced concerns can predict or plan for the next opportunity to provide input or tailor that input to any criteria that will guide the Commission’s ultimate decision. These issues demand attention to ensure both the adequacy of the Commission’s evaluation of the application and the required due process for affected persons and entities. Because Crestone’s is the first CDP application on the Front Range but may well be followed by others, the Commission and its staff now have the opportunity to design and solidify a robust evaluation process. As a local government representing its constituents and as a surface owner stakeholder, the County requests the Commission clarify and publicize an evaluation process for this and other CDP applications that maximizes transparency and opportunities for meaningful input.

In closing, because Crestone’s variance request conforms to COGCC Rules and the OGCA, the Commission should approve it.

Verified by signature below and dated this 21st day of April, 2017.

By: 
Katherine A. Burke, Assistant County Attorney, #35716
BOULDER COUNTY ATTORNEY
P. O. Box 471, Boulder, CO 80306
Phone No.: 303-441-3190
Fax No.: 303-441-4794
Email: kaburke@bouldercounty.org