

**District Court, Boulder County, Colorado**  
1777 6<sup>th</sup> St., Boulder, CO 80302

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**Plaintiffs:**

PEOPLE OF THE STATE OF COLORADO *ex rel.*  
CYNTHIA H. COFFMAN, in her official capacity as  
Colorado Attorney General; and THE STATE OF  
COLORADO,

and

**Plaintiff Intervenors:**

COLORADO OIL AND GAS ASSOCIATION;  
AMERICAN PETROLEUM INSTITUTE

v.

**Defendants:**

COUNTY OF BOULDER, COLORADO; and THE  
BOARD OF COUNTY COMMISSIONERS OF  
BOULDER COUNTY.

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**Attorneys for Defendant:**

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Case Number: 2017 CV 30151

Div.: 3

**MOTION TO DISMISS COLORADO OIL AND GAS ASSOCIATION'S AND  
AMERICAN PETROLEUM INSTITUTE'S JOINT COMPLAINT**

Defendants, the County of Boulder, Colorado,<sup>1</sup> and the Board of County Commissioners of Boulder County (the “Board”) (together “the County”), under C.R.C.P. 12(b)(1) and (5), request that the Court dismiss this case with prejudice. In support, the County states as follows:

### **CONFERRAL**

Under C.R.C.P. 121 § 1-15, counsel for the County conferred with Plaintiffs’ counsel and counsel for the Intervenors, both of whom oppose the motion.

### **OVERVIEW**

The Colorado Oil and Gas Association and the American Petroleum Institute (“COGA/API”) intervened in a case brought by the State of Colorado (the “State”) against the County. Both COGA/API and the State have challenged two of the County’s legislative acts: (1) a moratorium on accepting and processing oil and gas development applications adopted in 2012 and terminated in May 2016 (the “Expired Moratorium”), *see* Resolution 2016-65, ¶ 1, attached as Ex. J to the State’s Complaint for Declaratory and Injunctive Relief (“Complaint” or “Compl.”); and (2) a moratorium on accepting and processing oil and gas development applications enacted in May 2016 that expires by its own terms on May 1, 2017 (the “Current Moratorium”). *Id.* at ¶ 2; Resolution 2016-137, Compl. Ex. L.

Like the State, COGA/API makes two critical but erroneous assertions in its complaint: (1) that the County has had a single moratorium in place since 2012; and (2) that local governments across Colorado are forbidden by state law from enacting moratoria of any duration

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<sup>1</sup> The Court should dismiss all claims against “Boulder County” because a Colorado county may only be sued as the board of county commissioners and any attempt to sue a county under a different name is a nullity. *See* § 30-11-105, C.R.S.; *Calahan v. Jefferson County*, 429 P.2d 301, 302 (Colo. 1967).

on oil and gas development. *See* Colo. Oil and Gas Ass’n & Am. Petroleum Inst. Joint Compl. (“COGA/API Compl.”), ¶¶ 2 and 28. Based on these errors, COGA/API claims that the interests of its members have been negatively affected by the County’s moratoria and ask that the Court declare the Expired Moratorium and the Current Moratorium unlawful and invalid. *Id.* at 9. But as the specifics of the Resolutions cited in COGA/API’s Complaint and attached to the State’s Complaint illustrate, and as shown below, the Court should dismiss COGA/API’s claims for two reasons.

First, COGA/API is attempting to initiate litigation over a moratorium the County terminated nearly a year ago, which does not present a live case or controversy. Therefore, this Court lacks subject matter jurisdiction over the Expired Moratorium because the issue is moot. Likewise, COGA/API’s challenge to the Current Moratorium likely will become moot upon its expiration on May 1, and it is unlikely that this litigation will have resolved COGA/API’s claims related to the Current Moratorium by that date.

Second, COGA/API’s claims related to the Expired Moratorium are time-barred because COGA/API filed beyond the applicable statute of limitations.

Because the issues presented in this motion are essentially the same as the arguments presented in the County’s March 7, 2017, Motion to Dismiss State of Colorado’s Complaint for Declaratory and Injunctive Relief (“Motion”), the County incorporates the relevant portions of the Motion into this motion and refers to them without unnecessary repetition below.

### **STATEMENT OF FACTS**

The County incorporates and refers the Court to sections A-C of the Statement of Facts in the Motion. *See* Motion at 3-10. Although COGA/API did not attach the County’s Resolutions as

exhibits to its complaint, COGA/API's Complaint refers to and incorporates these Resolutions by citing the State's exhibits in its Complaint and, therefore, this Court can consider the Resolutions in ruling on this motion. *See Yadon v. Lowry*, 126 P.3d 332, 336 (Colo. App. 2005) (a document referred to in the complaint is not a matter outside of the pleading even if it is not attached to the complaint).<sup>2</sup>

### ARGUMENT

**A. The Court lacks subject matter jurisdiction because COGA/API's challenges to the Expired Moratorium are moot and its challenges to the Current Moratorium are likely to be moot on May 2, 2017.**

As discussed on pages 11-16 of the Motion, the County enacted two separate moratoria.<sup>3</sup> Litigation over the Expired Moratorium is moot because the County terminated it in May 2016 and a ruling by this Court on the Expired Moratorium will have no practical effect. Likewise, the County's Current Moratorium expires by its own terms on May 1, 2017, and this litigation will not likely be resolved by that date. Thus, COGA/API's claims are moot or are likely to become moot and the Court lacks subject matter jurisdiction.

**B. COGA/API's claims regarding the Expired Moratorium are barred by the statute of limitations.**

As discussed on pages 20-21 of the Motion, COGA/API filed claims regarding the Expired Moratorium well beyond the two year statute of limitations. Accordingly, COGA/API's failure to act timely bars its claims regarding the Expired Moratorium. For these reasons, if not dismissed on mootness grounds, the County requests that the Court dismiss COGA/API's claims

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<sup>2</sup> Like the Statement of Facts, the applicable standard of review is the same as that stated on pages 10-11 of the County's Motion.

<sup>3</sup> COGA/API characterizes the moratoria differently than the State. *Compare* COGA/API Compl. ¶ 2 (calling the moratoria the "Continuous Moratorium") *with* Compl. ¶¶ 1 and 2 (alleging the County enacted a single moratorium in 2012 and extended it for over five years). These different characterizations are immaterial because the County's legislative actions are documented in the Resolutions attached as exhibits to the State's Complaint.

as they relate to the Expired Moratorium for failure to state a claim upon which relief can be granted.

Respectfully submitted this 17th day of March 2017.

**BOULDER COUNTY ATTORNEY**

By: *S/ David Hughes*

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Assistant County Attorney

**ATTORNEYS FOR DEFENDANTS**

**CERTIFICATE OF SERVICE**

I certify that on March 17, 2017, I electronically filed the foregoing **MOTION TO DISMISS COLORADO OIL AND GAS ASSOCIATION'S AND AMERICAN PETROLEUM INSTITUTE'S JOINT COMPLAINT** via Colorado Courts E-Filing System, who will either serve the same via e-mail or United States mail to the following:

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S/ Cathy Peterson  
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