

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

IN THE MATTER OF THE APPLICATION OF)	
CRESTONE PEAK RESOURCES OPERATING)	
LLC FOR AN ORDER TO ESTABLISH AND APPROVE)	CAUSE NO. 1
A RULE 216 COMPREHENSIVE DRILLING PLAN)	
FOR PORTIONS OF SECTIONS 1, 2, 3, 10, 11 AND 12,)	
TOWNSHIP 1 NORTH, RANGE 69 WEST, 6 TH)	DOCKET NO. 170500189
P.M. AND PORTIONS OF SECTIONS 25, 26, 27, 34, 35)	
AND 36, TOWNSHIP 2 NORTH, RANGE 69 WEST,)	
6 TH P.M. FOR THE COMPREHENSIVE DEVELOPMENT)	TYPE: GENERAL
AND OPERATION OF THE CODELL AND NIOBRARA)	ADMINISTRATIVE
FORMATIONS, WATTENBERG FIELD, BOULDER)	
COUNTY, COLORADO.)	

PROTEST AND INTERVENTION BY BOULDER COUNTY

Pursuant to Commission Rule 509, the Board of County Commissioners of the County of Boulder (the “County”), by its undersigned counsel and local governmental designee, files this protest and intervention by right (“Protest”) to the plan submitted June 15, 2018, in the above docket (the “CDP”) by Crestone Peak Resources Operating LLC (“Crestone”).

**A. GENERAL STATEMENT OF FACTUAL AND/OR LEGAL BASIS
FOR THE PROTEST AND INTERVENTION**

1. The County is a body corporate and politic in the state of Colorado with powers conferred under applicable law, including §30-11-101, C.R.S.

2. The County is an Owner, as that term is defined by statute, of interests on, within and under the area subject to the CDP (the “Application Lands”). The County is also the Local Government with land use jurisdiction for the Application Lands and has elected to protest and intervene as a matter of right on behalf of its citizens pursuant to Rule 509. In its capacity as regulator of land use, the County states: (i) that the public issues raised by the CDP reasonably relate to significant adverse impacts to the public health, safety and welfare of citizens, including environment and wildlife resources, that are within the Commission's jurisdiction to remedy; (ii) that potential impacts are not adequately addressed by the CDP; and (iii) that the potential impacts are not adequately addressed by the Rules and Regulations of the Commission. These impacts may adversely affect public health, safety and welfare, damage private and public mineral and surface rights, allow the drilling of unnecessary and uneconomic wells, damage important environmental and agricultural resources, create waste and

damage correlative rights.

3. The development proposed in the CDP – which includes a 28-well site and two 56-well sites, plus an alternative site that would place 84 wells in close proximity – would create the largest complex of dense well pads in the state. The impacts on health, safety, and the environment of development at this scale are unprecedented and unknown. The Application Lands, where over 2,000 people reside and where hundreds of millions of dollars in public funds have been spent to purchase, manage and protect valuable agricultural lands and ecological resources, should not be the site of an experiment of such magnitude and risk.
4. The CDP process has been flawed, leading to an inadequate “final” proposal. Commission Rule 216 does not contain a defined process by which a CDP is to be developed and analyzed, so it is COGCC’s responsibility to create such a process. However, instead of controlling its own process, COGCC staff allowed Crestone to impose its own interpretation of Rule 216 and shape the process to its own convenience. Also, despite Boulder County’s repeated requests, no meaningful criteria for approval were developed. While staff responded to the County’s process requests to some degree, the result was faulty at each step. The outcome is a CDP that grows out of industry needs while not fully evaluating public health and safety or exploring development options comprehensively as a CDP is intended to do. One clear demonstration of the flawed process is a “final” CDP with two sites proposed as alternatives to one another. The entire purpose of this planning effort and all of the stakeholder input is frustrated if the Commission is asked to approve an array of possible sites or is asked to approve an alternative site that has not been the subject of any public meetings or analysis. Moreover, the process has resulted in a final CDP where all proposed or alternative sites are on protected County-owned open space property or lands where the County owns conservation easements. Neither Crestone nor staff has pointed to any standard by which the Commission may weigh the conservation values of open space against the proposed development. Yet approval of the Application could result in destruction of the conservation values on the affected parcels. In addition to its specific flaws, this process and outcome should not be allowed to set the precedent for future CDPs.
5. The County disputes significant aspects of certain oil and gas leases and County-owned conservation easements, aspects which implicate Crestone’s rights to carry out the development at the locations and in the manner proposed in the CDP. These disputes largely involve legal issues outside of the COGCC’s jurisdiction. However, the Commission should not hold a hearing on the CDP, nor should it approve the CDP, when underlying legal issues may render the CDP unworkable or, as a practical matter, invalid. Crestone is well aware of these issues and has not addressed them directly with the County or within the context of the CDP.

6. The County has significant ownership and regulatory interests in the Application Lands, which, as will be shown at the hearing on the CDP, are likely to be affected by proposed development under the CDP. These concerns include the following:
 - a. The County owns a significant portion of the surface in the Application Lands and owns conservation easements over much of the remainder, all purchased with taxpayer dollars and other public funds to restrict development and preserve important agricultural and environmental resources.
 - b. The County owns the minerals under much of its fee-owned surface properties in the Application Lands, some of which remain unleased and all of which were purchased with county tax funds and other public monies.
 - c. Lower Boulder Creek runs through the Application Lands, which poses significant concerns:
 - i. One of the proposed multi-pad sites, for 56 wells is located within the floodway of Lower Boulder Creek;
 - ii. The Lower Boulder Creek corridor provides important riparian and wildlife habitat.
 - d. The Application Lands contain several important wetlands that the County protects through its land use power.
 - e. The land in the Application Lands is among the most productive, valuable, irrigated cropland owned by the County.
 - f. Active agriculture in the Application Lands uses numerous existing center-pivot irrigation systems and extensive subsurface drainage tile systems that cannot be interrupted by oil and gas activities.
 - g. The Application Lands contain sensitive wildlife nesting areas and nesting buffers that the County protects through its land use power.
 - h. County roads in the Application Lands will be affected by construction, drilling and operational activities.
 - i. The Application Lands encompass numerous rural residences and neighborhoods that will undoubtedly be disrupted by the scale of proposed development in such close proximity.
7. Significant legal issues affect the viability of the CDP and any approval from the

Commission, including the following:

- a. Crestone Peak asserts that it owns certain percentages of the minerals in the CDP area and that it has the right to use the surface at its proposed sites, but it has provided no competent evidence of those fundamental facts. The Director's Finding of Suitability states that the sites are "viable and legal locations," but no analysis can support that statement where no documentary evidence of ownership or surface rights has been submitted. The County has repeatedly requested that Crestone provide proof of its ownership and Crestone has consistently refused. The summarizing maps and conclusory statements it submits are inadmissible as evidence of mineral ownership or surface use rights. *See* COGCC Rule 519.b (the Colorado Rules of Evidence generally apply in Commission proceedings); CRE 1002 (to prove the content of written documents, the original document must be submitted); CRE 1006 (a summary of voluminous written documents may be admitted if the underlying documents are made available for the parties' inspection prior to a hearing); *U.S. Welding, Inc. v. B&C Steel, Inc.*, 261 P.3d 513, 517 (Colo. App. 2011) (proponent of summary evidence must "(1) identify the documents underlying the summary and show them to be voluminous; (2) establish that the underlying documents are otherwise admissible evidence; (3) provide the other party with a copy of the summary in advance of its use; and (4) provide the opposing party with a reasonable time and place for examination of the available documents underlying such summary.") (internal citations omitted); *Murray v. Just in Case Business Lighthouse LLC* 2016 CO 47M ¶ 57 (2016) (summary charts and testimony admissible because underlying documents were also admitted in evidence). Moreover, the summary maps and statements asserting very specific percentages of mineral ownership were created by Crestone without a stated basis. They contain no detail supporting (i) Crestone's ownership; (ii) any particular percentage of ownership; or (iii) the reliability of the proffered evidence and any materials on which it is based. Therefore, the CDP cannot be approved because there is no admissible evidence, and only insufficient evidence, offered on the most fundamental questions.
- b. Commission Rule 216 governing the CDP provides no criteria or standards by which the CDP can be measured. "Sufficient standards are 'necessary to give fair notice of the criteria to be used so that a case may be prepared, to ensure that all decision makers are using uniform criteria, and to provide a meaningful basis for judicial review.'" *State Farm Mut. Auto. Ins. Co. v. City of Lakewood*, 788 P.2d 808, 816 (Colo. 1990) (internal citations omitted); *see also Moya v. Colorado Ltd. Gaming Control Comm'n*, 870 P.2d 620, 622 (Colo. App. 1994) (first part of analysis under Administrative Procedures Act is whether the controlling rules are "sufficient to insure that administrative action will be rational and consistent in the first instance and that subsequent judicial review of the action is available and will be effective"). Proper standards for agency decision-making "protect against unnecessary and uncontrolled exercise of discretionary power." *Cottrell v. City &*

County of Denver, 636 P.2d 703, 709 (Colo. 1981). Any approval of the CDP before sufficient standards and criteria are developed is vulnerable to attack as an arbitrary and capricious action and in violation of due process rights. *See Farmer v. Colorado Parks & Wildlife Comm'n*, 2016 COA 120, ¶ 24 (insufficient standards for agency decisions can be considered under due process principles or as arbitrary and capricious action under the APA).

8. The County objects to the Application because it fails to allege facts that satisfy the standard set by the Colorado Court of Appeals in *Martinez, et al. v. Colorado Oil and Gas Conservation Commission, et al.*, 2017 COA 37 (March 23, 2017) , *cert. granted January 29, 2018*.
9. The Commission has a duty to foster the responsible, balanced development of oil and gas natural resources and to protect public health, safety and welfare. It also has the authority to prevent waste and the drilling of unnecessary or uneconomic wells, and to protect correlative rights. *See C.R.S. §§34-60-102, 116*.
10. Approval of the CDP may lead to the County's mineral rights in the Application Lands being statutorily pooled without due process of law and just compensation and in violation of the United States and Colorado Constitutions, as well as the imposition of a joint ownership relationship that violates Article XI, Sec. 2 of the Colorado Constitution.
11. The County reserves all other objections which it has the right to present, as well as its right to amend this Protest and Intervention.

B. RELIEF REQUESTED

WHEREFORE, Boulder County respectfully requests the following relief:

1. That Boulder County be allowed to participate in proceedings on the CDP as an Owner and the local government with land use jurisdiction; and
2. That the Commission delay taking action of the CDP until underlying legal issues are resolved;
3. Or, in the alternative to delaying action, that the Commission deny the CDP and enter such other findings and orders as the Commission may deem proper or advisable in this matter.

C. RESERVATION OF RIGHTS

Boulder County reserves all rights to supplement this Protest and Intervention with additional factual information and/or legal arguments and to request additional relief. Boulder County further reserves the right to require Crestone to prove its case, and to file any motions or other responsive pleadings to the CDP based upon a Scheduling Order from this Commission.

D. DESCRIPTION OF INTENDED PRESENTATION

1. The County will present legal argument, witness testimony and documentary evidence in support of the facts and arguments stated within this Protest and Intervention.
2. The County reserves the right to present additional witnesses and evidence as necessary to supplement the above facts and/or rebut any evidence, argument or witness testimony presented by Crestone at the hearing.

E. TIME ESTIMATE FOR PROTEST

The County estimates that it will require approximately two hours to present its evidence and testimony in support of this Protest and Intervention and to respond to Crestone's case.

Signatures on following page

Dated this 24th day of August, 2018.

Respectfully submitted,

BOULDER COUNTY ATTORNEY'S
OFFICE

By: 

Katherine A. Burke, Atty. Reg. #35716
Senior Assistant County Attorney
David Hughes, Atty. Reg. #24425
Deputy County Attorney
P.O. Box 471
Boulder, CO 80306
kaburke@bouldercounty.org
dhughes@bouldercounty.org

**ATTORNEYS FOR PROTESTOR
AND INTERVENOR BOULDER
COUNTY**

LOCAL GOVERNMENTAL DESIGNEE

By: 

Kimberly Sanchez
Senior Chief Planner and LGD
P.O. Box 471
Boulder, CO 80306
ksanchez@bouldercounty.org

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PROTEST AND INTERVENTION BY BOULDER COUNTY** has been mailed or served electronically this 24th day of August, 2018, to the following entities that require notice of such filing and an original and two copies will subsequently be sent or filed with the COGCC:

James P. Rouse
Hearing Officer
Oil and Gas Conservation Commission
1120 Lincoln Street, Ste. 801
Denver, CO 80203
James.Rouse@state.co.us

Jamie Jost
Kelsey Wasylenky
Jost Energy Law, P.C.
jjost@jostenergylaw.com
kwasylenky@jostenergylaw.com



Katherine A. Burke