

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 (1) ESTABLISH AND ACCEPT	)	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 <sup>TH</sup>	)	DOCKET NO. 170500189
P.M. AND PORTIONS OF SECTIONS 25, 26, 27, 34, 35	)	
AND 36, TOWNSHIP 2 NORTH, RANGE 69 WEST,	)	
6 <sup>TH</sup> P.M. FOR THE COMPREHENSIVE DEVELOPMENT	)	TYPE: GENERAL
AND OPERATION OF THE CODELL AND NIOBRARA	)	ADMINISTRATIVE
FORMATIONS, WATTENBERG FIELD, BOULDER	)	
COUNTY, COLORADO, AND (2) TO APPROVE A RULE	)	
502.b. VARIANCE TO COMMISSION RULE 303.	)	

**BOULDER COUNTY’S MOTION TO CONTINUE HEARING**

Protestant the Board of County Commissioners of the County of Boulder (the “County”), by its undersigned counsel and local governmental designee, files this Motion to Continue the consolidated hearing scheduled for the above-captioned dockets. As reasons for its Motion, the County states as follows:

1. Throughout the 18-month development of the Comprehensive Drilling Plan (“CDP”) described in this docket, the County has alerted Crestone Peak Resources LLC (“Crestone”) about lease and conservation easement issues relating to the establishment of the CDP and the associated drilling and spacing units in Docket Nos. 170500190, 170500191 and 170500192. The County has raised these issues in comments to CDP drafts, in letters to Crestone, in letters to private landowners copied to Crestone and in its protests to the associated DSU applications.
2. Rather than responding to the County’s lease and contractual concerns and seeking any type of resolution, Crestone has either ignored the County’s concerns or stated flatly that it disputes the County’s position without offering any basis for that dispute.
3. Because Crestone would not engage in discussion over these issues, on September 20, 2018, the County informed Crestone that it intended to file a lawsuit based on the numerous lease disputes between Crestone and the County.
4. The County conferred with counsel for Crestone on this motion to continue the COGCC hearing on this docket due to the important lease issues raised in the lawsuit.

Crestone's attorney indicated opposition to a continuance.

5. The County conferred with protestants and intervenors on this motion. The City of Boulder, Earthworks, Sierra Club and Jeff Thompson support the motion. The Kenosha Road group takes no position on the motion.
6. The County filed a lawsuit against Crestone on September 25, 2018, seeking judicial resolution of several lease and easement issues, which are outside COGCC jurisdiction but directly affect Crestone's right to pursue the relief requested in the above docket. A copy of the complaint is attached as Exhibit A.
7. As shown in Exhibit A, numerous lease-related disputes exist between Crestone and the County, including disputes affecting each of the four drilling sites proposed in the CDP. The claims cover matters including:
  - a. Whether Crestone continues to have mineral and associated surface rights to the Section 1 or Haley property, on which it proposes a pad site;
  - b. Even assuming Crestone has surface rights on the Haley property, whether those surface rights or the reasonable accommodation allow for construction of a 56-well pad as proposed by Crestone;
  - c. Whether Crestone continues to have mineral rights in other leases in the CDP area, which Crestone used in its representations to the COGCC of its mineral ownership supporting the CDP proposal and intends to develop with the CDP;
  - d. Whether establishment of the three DSUs associated with the CDP violate terms of several mineral leases between the County and Crestone that limit the size of pooling and unitization;
  - e. Whether the proposed pad site on the Section 36 or Canino property would violate the terms of a conservation easement owned by the County;
  - f. Whether the proposed pad site on the Section 35 or Van Thuyne property would violate the terms of a conservation easement owned by the County;
  - g. Whether the 56-well pad proposed on the Section 1 or Wheeler site violates the terms of the lease between County and Crestone or the reasonable accommodation doctrine.
8. The unresolved issues raised in the complaint are contractual interpretation matters that fall outside of the COGCC's jurisdiction. *See, e.g., Chase v. Colo. Oil & Gas Conservation Comm'n.*, 2012 COA 94, ¶ 36, 284 P.3d 161, 168 (Colo. App. 2012) ("the COGCC's determination that it lacked jurisdiction to interpret the contract was

reasonable”).

9. A court must resolve these legal issues prior to the COGCC’s further consideration of the CDP application and associated DSUs. If, as proposed by Crestone, the COGCC proceeds to hear and decide the applications prior to the legal issues being resolved, the COGCC may end up approving a CDP that cannot be implemented and DSUs that are invalid because of contradictory rulings from a court of law. In contrast, by staying the hearing until the legal issues between the parties are resolved, the COGCC will be able to issue a decision on the CDP and associated DSU that complements any associated court rulings and focus its attention on issues within its jurisdiction.
10. Continuing the scheduled hearing will preserve critical time and staff resources for the COGCC, in addition to streamlining and clarifying those issues requiring COGCC consideration and those that do not.


WHEREFORE, the County requests that the COGCC vacate the hearing on this docket currently scheduled for the COGCC’s October 29-30 meeting and that the hearing be reset once the legal issues between the parties have been resolved.

Dated this 25th day of September, 2018.

Respectfully submitted,

BOULDER COUNTY, COLORADO

By: \_\_\_\_\_

  
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By: \_\_\_\_\_

  
Kimberly Sanchez  
Senior Chief Planner and LGD

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **BOULDER COUNTY'S MOTION TO CONTINUE HEARING** has been mailed or served electronically this 25th day of September, 2018, to the following entities that require notice of such filing and an original and two copies have been sent or filed with the COGCC:

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A handwritten signature in blue ink that reads "Cathy Peterson". The signature is written in a cursive style with a horizontal line underneath it.

Cathy Peterson  
Legal Assistant