

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO

1437 Bannock Street
Denver, CO 80202

Complaint for Judicial Review of Final Agency Action and Request for Stay and Notice of Appeal of the Decision of the Colorado Oil and Gas Conservation Commission, City and County of Broomfield Order No. 407-2515, (Docket No. 170900522) and Order No. 407-2533 (Docket No. 180300276).

Plaintiff: CITY AND COUNTY OF
BROOMFIELD

Defendants: COLORADO OIL AND GAS
CONSERVATION COMMISSION,
CRESTONE PEAK RESOURCES
OPERATING, LLC, and KJERSTI
DROTT

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▲ COURT USE ONLY ▲

Case No.:

Courtroom:

**COMPLAINT FOR JUDICIAL REVIEW OF FINAL AGENCY ACTION AND REQUEST
FOR STAY**

Plaintiff City and County of Broomfield, a home-rule municipality, through its undersigned counsel, and pursuant to §24-4-106, C.R.S., C.R.C.P. 106(a)(2) and (4), and 2CCR 404-1 Rule 501.c., respectfully submits this Complaint for Judicial Review of Final Agency Action concerning the August 28, 2018 Report of the Colorado Oil and Gas Conservation Commission (“Commission”), Order No. 407-2515 (Docket No. 170900522) and the August 29, 2018 Report of the Commission, Order No. 407-2533 (Docket No. 180300276). As grounds for this Complaint, Plaintiff City and County of Broomfield (“Broomfield” or “Plaintiff”) states as follows:

I. JURISDICTION AND VENUE

1. Pursuant to C.R.S. §§24-4-106 and 34-60-111, and Commission Rule 501(c), any person adversely affected or aggrieved by a decision of a state administrative agency such as the Commission is entitled to judicial review of the agency’s action.

2. As described below, Broomfield was adversely affected by the August 28, 2018 Report of the Commission, Order No. 407-2515, Exhibit “1” hereto; and by the August 29, 2018 Report of the Commission, Order No. 407-2533, Exhibit “2” hereto, (sometimes collectively referred to as the “Reports”). The Reports reflect the Commission’s rulings that established a 1,920-acre drilling and spacing unit within Broomfield for portions of Sections 22, 23, 26 and 27, Township 1 North, Range 68 West (“Application Lands”), and authorized Defendant Crestone Peak Resources Operating, LLC (“Crestone”) to drill a total of up to 32 horizontal wells within the unit for the production of the oil, gas and associated hydrocarbons from the Niobrara and Codell Formations. For the reasons discussed herein, the Reports and the procedures used by the Commission exceed the Commission’s jurisdiction and are arbitrary,

capricious, an abuse of discretion and not in accordance with law, and deprived Broomfield of due process of law.

3. Pursuant to Rule 98(c) of the Colorado Rules of Civil Procedure and C.R.S. §24-4-106(4), venue is appropriate in this Court because the Commission resides in the City and County of Denver.

4. The Commission's Reports constitute final agency action for the purpose of judicial review.

5. Broomfield has exercised and exhausted all of its applicable administrative remedies.

6. No plain, speedy, and adequate remedy is otherwise provided by law.

II. FACTUAL BACKGROUND

7. Broomfield has been established pursuant to applicable law, including without limitations C.R.S. §30-5-101, *et seq.* and Article XX, Sections 10-13 of the Colorado Constitution.

8. A drilling and spacing unit establishes an area of land on which the Commission allows the drilling and operation of wells that are needed to efficiently and economically recover (drain) the oil and gas reserves within the area. The Applications filed by Crestone in these Dockets requested the creation of "a new approximate 1,920-acre drilling and spacing unit" for the purpose of oil and gas development. They also asked the Commission to establish rules applicable to the drilling of wells and producing of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations from the Application Lands.

9. Broomfield properly intervened as a party in the proceedings that are subject to the Reports per Commission Rule 509(a), because Broomfield is the Local Government with

land use jurisdiction for the Application Lands, and elected to intervene as a matter of right on behalf of its citizens. Broomfield also had the right to intervene because it owns open space and a trail within the Application Lands. Broomfield was entitled to intervene, in part, because: (i) the public issues raised by the Applications reasonably relate to potential significant adverse impacts to Broomfield's interests and the public health, safety and welfare of its citizens, including the environment and wildlife resources, that are within the Commission's jurisdiction to protect, mitigate or remedy; (ii) those potential impacts were not adequately addressed by Crestone's Applications; and (iii) the potential individual and cumulative impact of the Crestone wells are not adequately addressed by the Rules and Regulations of the Commission.

10. Broomfield alleged and was prepared to prove that those impacts could adversely affect public health, safety and welfare, damage private and public mineral and surface rights, allow the drilling of unnecessary and uneconomic wells, and potentially create waste and damage correlative rights. The Commission's procedures and the rulings in these Dockets deprived Broomfield of its right to prove those facts.

11. The Colorado Oil and Gas Conservation Act ("Act") states that the Commission has a duty to protect public health, safety and welfare, including protection of the environment and wildlife resources, and has the authority to prevent waste and the drilling of unnecessary or uneconomic wells, and to protect correlative rights. C.R.S. §§34-60-102, 116.

12. On April 27, 1998, the Commission adopted Rule 318A, which was titled the Greater Wattenberg Area Special Well Location, Spacing and Unit Designation Rule. The Application Lands are subject to this Rule for the Niobrara and Codell Formations.

13. On February 19, 1992, the Commission entered Order No. 407-87 (amended August 20, 1993) which, among other things; established 80-acre drilling and spacing units

for the production of oil, gas, and associated hydrocarbons from the Codell-Niobrara Formations, the Codell Formation, and the Niobrara Formation underlying certain lands, including the Application Lands.

14. As background, no horizontal well has ever been drilled within Broomfield. Crestone initially requested permission in Docket No. 170900522 to drill and complete “up to forty-four (44) horizontal wells in the approximate 1,920-acre drilling and spacing unit” in the Codell and Niobrara Formations”, and the right to locate the “productive interval” of any wellbore no closer than 150 feet from the treated interval of any other wellbore in the unit producing from the same formation, and no closer than 460 feet from the unit boundary (regardless of lease lines within the unit). Crestone filed its initial Application in Docket No. 170900522 on June 5, 2017. Crestone filed an Amended Application in early 2018 in that Docket in which it reduced its well request to a single well. Simultaneously, it filed its new Application in Docket No. 180300276, in which it asked the Commission to authorize Crestone to drill up to forty (40) horizontal “infill” wells on the Application Lands.

15. In other Applications which have been filed near the Application Lands, operators have requested a wide array of drilling and spacing units ranging from 320 to 1280 acres or more for the production of oil, gas and associated hydrocarbons from the Codell and Niobrara Formations. Broomfield’s protest in both Dockets explained that Crestone had not provided reasons why it should be allowed to drill so many wells before the results of production and drainage from the initial well were known, or why it proposed a drilling and spacing unit that is different and larger than other drilling units in the area.

16. Crestone’s Applications provided no allegations or proof that would allow Broomfield or the Commission to evaluate whether Crestone’s operations would protect public

health, safety and welfare, including the environment and wildlife, and whether those operations would prevent waste and the drilling of unnecessary or uneconomic wells, and protect correlative rights as required by C.R.S. §§34-60-102, 116.

17. Crestone did not provide economic or engineering data with its Applications.

18. Broomfield objected to the Applications because they requested an order to drill more than one well as part of the creation of the drillsite spacing unit, even though C.R.S. §34-60-116(3) allowed the Commission to permit no more than one well for such a newly-created spacing unit, and because Crestone requested “up to four (4) well pads within the unit, or adjacent thereto”, without identifying the location of the well pads or any well as required by C.R.S. §34-60-116(3).

19. Broomfield further objected to the Applications because they failed to allege facts that satisfy the requirements of C.R.S. §34-60-102, which was confirmed 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) (“*Martinez*”). Broomfield’s protests noted that the Commission’s COGIS – Complaint Reports site indicated that at least 25 Complaint Reports have been filed in 2017 by residents that live near Crestone’s operations.

20. On October 18, 2017, Ms. Kjersti Drott submitted her protest to the Application. Ms. Drott's protest was based on potential environmental impacts of oil and gas development on the Application Lands and the surrounding area.

21. On January 22, 2018, Crestone amended the initial spacing Application and changed its request from 44 horizontal wells within the proposed unit to one horizontal well.

22. On January 22, 2018, Crestone also filed a concurrent increased density

application in Docket No. 180300276 for an order to approve up to an additional 40 horizontal wells within the proposed approximate 1,920-acre drilling and spacing unit in Docket No. 170900522.

23. Crestone again modified its request in Docket No. 180300276 to limit its request to 32 horizontal wells in the proposed approximate 1,920-acre drilling and spacing unit for the production of oil, gas, and associated hydrocarbons from the Niobrara and Codell Formations.

24. Broomfield timely filed a protest to the increased density application, as did Ms. Drott.

25. In his April 5, 2018 Case Management Order, the Hearing Officer ruled “there shall be no formal discovery in these Dockets”, even though Commission Rule 519 provides that the Colorado Rules of Civil Procedure apply.

26. On May 10, 2018, Crestone submitted a Motion to Dismiss Ms. Drott's protest on the grounds that Ms. Drott allegedly lacked standing since she was not a mineral owner in the Application Lands.

27. On May 10, 2018, Crestone also filed a Motion to Strike Broomfield's Exhibits B-5 through B-17, to which Broomfield responded on May 17, 2018.

28. On July 17, 2018, a final prehearing conference was held at which the parties discussed the time allocations for hearing, witnesses and exhibits.

29. The Hearing Officer granted Crestone's Motion to Dismiss Ms. Drott's protest but allowed Ms. Drott to submit a revised written 510 Statement to the Commission and make an oral statement at hearing.

30. The Hearing Officer granted Crestone's Motion to Strike Broomfield's Hearing

Exhibits B-5 through B-17, finding that the Exhibits were irrelevant because they addressed health, safety, welfare and environmental concerns, rather than so-called “downhole issues”. In contravention of the “Legislative Declaration” in C.R.S. §30-60-102, the Hearing Officer and the Commission have taken the position that citizens’ health, safety, and welfare concerns, and the protection of the environment and wildlife need not be considered in a spacing application filed under §116(3) of the Act. At the hearing, Broomfield advised the Commission that it objected to the exclusion of its evidence and to the order that denied the parties’ right to conduct discovery. Broomfield asserted that its case was unfairly prejudiced by the Hearing Officer’s rulings and the Commission’s procedures.

31. On July 18, 2018, Broomfield submitted a written 510 Statement.

32. On July 18, 2018, Ms. Drott submitted a 510 Statement, with exhibits.

33. On July 22, 2018, the Hearing Officer issued a Final Prehearing Order which identified stipulated facts, issues for hearing, and admitted exhibits for hearing, witnesses, and provided the time allotted to each party at hearing.

34. Docket Nos. 170900522 and 180300276 were consolidated by the Hearing Officer for purposes of hearing.

35. On July 31, 2018, the Commission held a hearing, heard argument and received evidence from Broomfield, Ms. Drott and Defendants regarding Crestone’s Applications and Broomfield’s objections. As noted, prior to the hearing the Hearing Officer granted Crestone’s Evidentiary Objections to Broomfield’s Exhibits 7-19 and Motion to Strike. All of the excluded exhibits were intended to support Broomfield’s position that neither the Commission nor

Crestone had complied with Section 34-60-102 of the Act, or the Colorado Court of Appeals decision in *Martinez*.

36. After deliberations the Commission voted to grant Crestone's Applications.

37. On August 28 and 29, 2018, the Commission issued its Reports, memorializing its earlier decisions made at the hearing.

**FIRST CLAIM FOR RELIEF
(Review of Commission Reports and Procedures)**

38. Broomfield restates and incorporates by reference the allegations contained paragraphs 1 through 37 above.

39. The Commission's Reports arbitrarily denied Broomfield its administrative and statutory rights, exceeded the Commission's statutory authority and ignored its statutory duty under C.R.S. §§34-60-102 and 116, and abused any discretion which the Commission might have had in this matter, and denied Broomfield its right to due process of law. Alternatively, the Commission exercised its discretion in an unwarranted manner and in a way that is otherwise contrary to law.

40. The Rules of the Commission and the Oil and Gas Act require the Commission to allow a party to conduct discovery. Denying Broomfield the right to conduct discovery, and excluding Broomfield's evidence on the grounds that it was not relevant to a spacing unit application was arbitrary, did not comport with the Act and the Commission's Rules, and also denied Broomfield due process of law.

41. Broomfield is entitled to an order from this Court that vacates the Reports and orders the Commission to deny Crestone's Applications in these matters.

SECOND CLAIM FOR RELIEF
(Failure to Enforce the Act and to Protect Public Health, Safety and Welfare, and the Environment and Wildlife)

42. Broomfield restates and incorporates by reference the allegations contained paragraphs 1 through 41 above.

43. The Reports authorize Crestone to drill, complete and operate up to 32 wells on the Application Lands. The Act and Commission Rules also require that the Commission protect public health, safety and welfare and the environment and wildlife in any decision it issues.

44. At the Hearing, Crestone presented no evidence concerning the protection of public health, safety and welfare, and the environment and wildlife respecting the Application Lands. As noted above, the Commission excluded Broomfield's evidence regarding impacts to public health, safety and welfare, and the environment and wildlife. In fact, the Commission's Reports acknowledged that the impacts of "public health, safety and welfare" were not being taken into account by the Commission as part of the Reports.

45. Such failure was arbitrary, capricious, not in accordance with law, an abuse of discretion, and in excess of the Commission's statutory authority and its jurisdiction.

III. PRAYER FOR RELIEF

WHEREFORE, Broomfield respectfully requests that this Court enter an Order stating:

- A. That the Commission's Reports exceed its jurisdiction, are arbitrary, capricious, and an abuse of discretion, and are not in accordance with law and should be set aside and vacated.
- B. That the denial of discovery and the exclusion of Broomfield's exhibits denied Broomfield due process of law.
- C. That the Application Lands shall be protected from Crestone's oil and gas operations as provided by Commission Rules and the Act, including the requirement to protect public health, safety and welfare and the environment and wildlife.

- D. That the *status quo* be preserved during the pendency of this case and that Crestone shall not conduct any operations on the Application Lands until there has been a final determination in this case.
- E. That Broomfield is entitled to its attorneys fees, costs of suit, damages, as may be provided by law, and such other relief as may be appropriate.

DATED this 2d day of October, 2018.

Respectfully submitted,

PHILLIP D. BARBER, P.C.

By: Phillip Barber
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