

Colorado Oil and Gas Conservation Commission  
ATTN: Matthew Lepore, Greg Deranlau, John Noto, and Rebecca  
Treitz  
COGCC Main Office  
1120 Lincoln Street Suite 801  
Denver, CO 80203

RE: Crestone Boulder County Comprehensive Drilling Plan:  
Docket No. 170500189

Dear Colorado Oil and Gas Conservation Commission:

The following constitute our major concerns about the proposed  
Crestone CDP.

1. No agreement of any kind should be entered into with Crestone  
Peak (CDP) or any other drilling company until after the COGCC  
has concluded rule making, as it must under state law, to comply  
with the decision of the Colorado Court of Appeals: *Martinez v.*  
*COGCC*, 2017 COA 37. (Colo. App. 2017).

In that opinion the court reminded the agency that its first duty,  
indeed its primary statutory duty, was to protect public health and  
safety and ensure the protection of wildlife and the environment.  
The agency had argued that it was obligated to protect public  
health only 50 percent of the time. The rest of the time its mission  
was to encourage oil and gas development. This formulation is  
something akin to a pediatrician arguing that no internal conflict  
would be created if her mornings were spent ensuring child health,  
while her afternoons were spent pushing cigarettes on playgrounds.  
This imbecilic, “splitting-the-baby” argument is, in our opinion,

inherently and irremediably contradictory. The court apparently agreed.

Unbelievably the agency, under the direction of Matt Lepore, has totally ignored that directive, which, with its issuance, became the law of the state. Thus in essence, a state agency is openly breaking the law. It has started no comprehensive rulemaking, it has held no public hearings to gather information or solicit public opinion. By continuing down the path of business as usual, it has deigned itself immune to the law as it seeks "clarification" from the state Supreme Court, a course of action an either astoundingly weak or incompetent governor said he did not want to pursue. The COGCC is an agency within his executive. By continuing to process and approve drilling permits absent compliance with Martinez, its actions are criminally negligent.

In our opinion, if the county government were to proceed with its own rulemaking absent rules governing how the COGCC will protect the people of Colorado and our environment, it, too, would be guilty of lawlessness.

2. In support of our position of no CDP review without full COGCC rulemaking we offer the following information.

a. The present setback rules, 500 feet for residences, 1000 feet of high-density habitation, are arbitrary and capricious as the record shows. These setbacks have no scientific basis, but were set as a compromise that the oil and gas industry and mineral estate owners could live with, public health and safety be damned. The Martinez ruling above invalidates this balancing act. In fact, our state constitution, Art II, section 3, Inalienable Rights, specifically disallows the protection of commercial interests if in so doing the public interest can or could be hurt:

All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness.

Just as important to this argument, is Section I, Vestment of Political Power, for, indeed, government dedicated to protecting the “good of the whole” can not be realized by making many people guinea pigs for dangerous industrial operations out their back door or in their neighborhood, just so a few mineral-rights owners and oil tycoons, would be and otherwise, can realize their commercial dreams of getting rich:

All political power is vested in and derived from the people; all government, of right, originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

We would remind the COGCC that we have asked it and the governor for scientifically supportable setbacks that are the same for drillers and real estate developers. If protection public health and safety is the desired outcome as the Martinez decisions declares, new housing setbacks should be the same as those for drilling and steadfastly enforced. As it stand developers have no established setback from oil and gas wells. In some case new houses can be as close as 75 feet, perhaps closer. A similar setback formulation should be considered for closed and abandoned wells, as well. Certainly homes should not be allowed to be built over old wells as has been documented to have occurred in the past.

b. Boulder County has asked the people for tens of millions of dollars to acquire open space to be dedicated to protecting

undeveloped land and encouraging public, low-impact recreation there upon. The county has no authority to break that promise by allowing Crestone to set up a large scale industrial operation on land the people acquired for their long-term enjoyment and protection. Gas spewing oil rigs and poison-belching storage tanks do not provide a respite from the work-a-day world.

Surely such an act as Crestone CDP approval would go beyond simple deceit, and enter the realm of public fraud. The county has an almost sacred obligation to postpone any decision on allowing destruction of open space land it has acquired with taxpayer money until the deep conflict between public protection and private oil developer rights can be openly discussed and resolved through rulemaking as the Martinez decision anticipates. Any other action is unthinkable, and would be criminal in our opinion.

3. The COGCC's rulemaking hearings last week, which many city and county officials attended and testified at, further underscore the reason for no decision making until after the COGCC complies with the Martinez decision. It had to be clear to all attending that the whole issue of pipeline safety is basically a regulatory black hole. The COGCC wants the cities and counties to call the old 811, "Call Before You Dig." information number for the location of pipelines. The 811 system is run by a non-profit organization in Golden whose members include most Colorado utilities, some excavating contractors and local government representatives. This non-governmental entity has not heretofore included oil and gas operators.

The COGCC's "give-it-to-Mikey" solution is flummoxing. Sure, the oil industry apparently promises to comply and update its records so that reliable information is available. But the 811 system is used primarily by general-contractors before beginning excavation operations, and as many people commented, is simply inadequate as a vehicle for first responders or city and county long-

range planning. In fact, the hearings went so poorly, embarrassingly so, that the commission postponed rulemaking. This means that over 8 months have passed since the governor promised no more Firestones, and, yet, the issues of pipeline safety and comprehensive pipeline mapping appear no closer to resolution than they were at the time of the fire.

Our takeaway from the hearings is that the public has no idea where pipelines are, but neither does the COGCC, and the COGCC would like to keep it that way with fumbling arguments about the possibility of gas stealing from pipelines to terrorism attacks if the public did know. Clearly, foreign terrorists did not cause the Firestone fire, and it is that sort of event the public wants to protect itself against.

Startling to us was the limited scope of this rulemaking given the public alarm over the Firestone tragedy and the uninspected and apparently forgotten pipeline that caused it. We judged the COGCC's efforts to be basically frivolous, a deception played on the public, for their proposed rules only deal with the small, mostly on-site lines, called flow lines, used to move oil and gas at the well site. The rulemaking does not include the tens of thousands of miles of major pipelines in the state. The COGCC would have us believe that these lines are well cared for. But the facts tell us otherwise. There are almost 3 million miles of oil and gas pipelines in this country, and leaks occur daily, sometimes they are devastatingly large. A small cadre of 88 federal inspectors is responsible for oversight of the interstate lines. That force could get even smaller given the Trump administrations antipathy to any regulation that might hurt the bottom line of the extractive industries. The COGCC has 28 inspectors to cover all of its safety responsibilities on 55,000 active wells including flow lines. It has similar, if less pressing responsibilities, for an even larger number of inactive or abandoned wells. It was one of the inactive wells

that had recently been brought back into production that was the gas source for the Firestone fire.

Closer to home, the PUC is responsible for all intrastate lines and all gathering lines, the latter are the lines that lead from the well operations to processing and storage facilities. There are tens of thousands of miles of these lines in Colorado, the exact location and mileage unknown apparently. In addition there are 9 gas storage reservoirs like California's Aliso Canyon over which the PUC's pipe inspection section also has inspection responsibilities.

There are 3 inspectors on the PUC payroll, from what we've been able to learn. Can anybody think this kind of oversight is reasonable or adequate?

4. On several occasions we have recommended that Boulder County determine a fracker's financial fitness before it enters into any agreement allowing the company to conduct business in the county. We think the COGCC should adopt a similar requirement. The agency's recent admission that it is tracking 66 financially strapped fracking companies in the state only strengthens the reasoning behind that recommendation. We made this suggestion and continue to advocate for it because, as an industry, frackers, although generating billions of dollars in sales, have never posted an industry wide profit, even in the days when oil was selling at \$120 a barrel. As a group, they are almost a trillion dollars in debt. These facts have led many analysts to define fracking as nothing more than a Ponzi scheme.

We would add that the financial risk the county is subject to if there is an accident or explosion at a well site are also daunting. COGCC bonding requirements with regard to such events are totally inadequate, which it admits. A fracker must post a \$20,000 bond for a single well, \$60,000 if it operates 99 wells or some lesser multiple, and only \$100,000 if the frackers operate more

than 100 wells. The COGCC claims it spent over \$100,000 and 10,000 man-hours on the Firestone fire. This does not include the costs to the numerous local fire departments that battled the fire and investigated to determine its cause. Anadarko, the owner of the well that caused the fire, has promised to pay these several municipalities back. But what if the fire had been caused by Crestone? They are a privately held Canadian company that bought out Encana, another Canadian company, at fire sale prices as Encana lurched towards insolvency. Would Crestone be able to foot the bill if a major disaster were to occur at one of its wells in Boulder County? Clearly, the costs might be in the millions, not the thousands, particularly if human injury or life were involved. This question cannot be answered in the positive given the present rules and bonding requirement.

A collective shudder should be felt when we report that the Aliso Canyon gas leak in California, which lasted for months, caused the extended evacuation of over 8,000 nearby homes at a cost of over \$500 million. While Boulder County doesn't have any storage reservoirs like Aliso Canyon, the state has 9 of them, 6 on the front range. Clearly, rule making under Martinez should cover this subject and public protection.

Too, the issue of closing and monitoring abandoned and orphaned wells is finally getting some deserved attention, even from the COGCC. It claims it costs about \$83,000 to properly close one of these wells. At some point, all of Colorado's over 100,000 wells, operating and non-operating, will have to be properly closed and monitored. Bonding and protection of the public purse to cover this certain future cost should become a serious subject under the Martinez rulemaking. Any other decision places the people of Boulder County and the state under extreme and unnecessary safety and financial risk. The province of Alberta in Canada, estimates its costs of closing abandoned wells at as much as \$83 billion.

5. Finally, reports on air and water contamination from fracking operations are legion and relentlessly unsettling. While we cannot document even a small portion of those reports here, we invite your attention to the compendium on fracking prepared and maintained by the organization, Health Professionals of NY. It was information from this source that caused the chief medical officer of New York to recommend a ban on fracking in the state. The governor acted on his recommendation and banned the practice. He recently extended the ban. The compendium can be found online at: <http://concernedhealthny.org/compendium/>.

Included in the Compendium are epidemiological studies by Dr. Lisa McKenzie at the Colorado School of Public Health. She's shown increases in birth defects and leukemia for residents in Colorado residing near oil and gas wells.

The summary conclusion from the fourth update to the Compendium, published in November 2016, is as follows:

All together, findings to date from scientific, medical, and journalistic investigations combine to demonstrate that fracking poses significant threats to air, water, health, public safety, climate stability, seismic stability, community cohesion, and long-term economic vitality. Emerging data from a rapidly expanding body of evidence continue to reveal a plethora of recurring problems and harms that cannot be averted or cannot be sufficiently averted through regulatory frameworks. There is no evidence that fracking can operate without threatening public health directly or without imperiling climate stability upon which public health depends.



In summary, Boulder County, in our opinion, must stand with its citizens in insisting on what is not only a social imperative for good governance, but a matter of law—the COGCC must publish rules on how it will protect the public and the environment. These rules must be widely circulated and publicly debated before any new drilling permits or pipeline construction can take place in Boulder County or elsewhere. Any other course of action would conflict with Boulder County's first responsibility to protect its citizens and their public investments and, most importantly, the environment in which they live and on which they must depend.

Our hope is that at some point the official world, the political world, will recognize what many citizens already know. The dangers and costs described above do not occur when we use and develop renewable energy. Moreover, renewables are already cheaper to develop in many cases and are always exponentially cheaper when we add in the secondary costs, some of which have been described above.

Clearly, oil and gas will be needed into the future, maybe for all time in some areas such as medicine, but the continuing gamble to develop more and more oil and gas by a demonstrably uneconomic means, threatens the state's committed and necessary transition to renewables. A visitor from another planet would have no choice but to view our waffling indecision as a form of insanity.

Phillip Doe  
Environmental Director  
Be the Change

CC: Boulder County Commissioners