

District Court, Boulder County, Colorado
1777 6th St., Boulder, CO 80302

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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Case Number: 2017 CV 30151

Div.: 3

**REPLY TO COGA/API'S JOINT RESPONSE TO COUNTY'S MOTION TO DISMISS
COGA/API'S JOINT COMPLAINT**

Defendants, the County of Boulder, Colorado, and the Board of County Commissioners of Boulder County (the "Board") (together "the County"), reply to the Colorado Oil and Gas

Association's and American Petroleum Institute's Joint Response to Boulder's Motion to Dismiss ("Resp.") as follows:

In the "separation of powers design of Colorado government, courts limit their exercise of judicial power through jurisprudential doctrines that include standing, mootness, and ripeness." *Bd. of Directors, Metro Wastewater Reclamation Dist. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 105 P.3d 653, 656 (Colo. 2005). The doctrine of mootness instructs courts not to grant relief "when the court's ruling would have no practical legal effect." *Davidson v. Committee for Gail Schoettler*, 24 P.3d 621, (Colo. 2001) (holding that the repeal and reenactment of a statute mooted the issue of the constitutionality of the prior version of the statute).¹

The only actual and existing controversy pointed to by the Colorado Oil and Gas Association and the American Petroleum Institute ("COGA/API") is the inability of COGA/API and their members to initiate oil and gas development in the County. Resp. at 5. Because the Current Moratorium expires by its own terms on May 1, COGA/API has all but conceded that this case will be moot in a matter of weeks. Moreover, even if the Court were to declare prior to May 1 that the Current Moratorium, the Expired Moratorium, or both were invalid, such declaration would have no practical legal effect. Although COGA/API alleges that their members seek to engage in oil and gas development in the County, nothing in the Joint Complaint indicates that the ability of their members to file a County application on, for

¹ Contrary to COGA/API's position, COGA/API has the burden to prove jurisdiction in response to the County's C.R.C.P. 12(b)(1) motion. *See Associated Governments of N.W. Colorado v. Colo. Pub. Utilities Comm'n*, 275 P.3d 646, 648 (Colo. 2012) ("In response to a C.R.C.P. 12(b)(1) challenge, the plaintiff has the burden of proving subject matter jurisdiction."); *Media v. State*, 35 P.3d 443, 452 (Colo. 2001); *Trinity Broad. of Denver, Inc. v. Westminster*, 848 P.2d 916, 925 (Colo. 1993).

example, April 25 rather than May 2, would have any practical effect on the development of their mineral leasehold interests.

COGA/API implies that this case may not be moot after May 1 if the County extended the Current Moratorium beyond May 1. *See* Resp. at 6. However, COGA/API has not amended its Joint Complaint to allege that the County extended the Current Moratorium and cannot do so because it has not happened.² The Court’s jurisdiction must be based on the facts alleged in the Joint Complaint: “when a court exercises its . . . declaratory judgment authority in a case, it must focus on a real set of facts involving an immediate controversy fit for judicial resolution.” *Bd. of Directors*, 105 P.3d at 656. The Court should not exercise jurisdiction based on COGA/API’s speculation that the County may extend the Current Moratorium.

In an attempt to bolster its jurisdictional argument, COGA/API claims that the Current Moratorium is an effort to avoid the holding in *Fort Collins*. Resp. at 6. However, even as extended, the Current Moratorium is less than a year long, which is a materially shorter duration than the moratorium in *Fort Collins*. Accordingly, the County’s adoption or extension of a short moratorium is consistent with *Fort Collins*’ specific language. *See Fort Collins v. Colo. Oil & Gas Ass’n*, 369 P.3d 586, 594 (Colo. 2016) (in which the Court expressed “no view as to the propriety of a moratorium of materially shorter duration”); *see also* Def.’s Mot. to Dismiss at 11-12 (explaining the legal framework for moratoria).

² Contrary to COGA/API’s arguments, the County does not need to “speculate” on expiration of the Current Moratorium since the expiration date is included in the Resolution. *See* Compl. Ex. L ¶ 1. The only speculation is on the part of COGA/API, which speculates that the County will take further legislative action to extend the moratorium.

Given the critical jurisdictional flaws in COGA/API's Joint Complaint, and in the absence of an actual and live controversy in which the Court can have a practical effect by taking jurisdiction, the Court should grant the County's motion to dismiss.

Respectfully submitted this 13th day of April 2017.

BOULDER COUNTY ATTORNEY

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CERTIFICATE OF SERVICE

I certify that on April 13, 2017, I electronically filed the foregoing **REPLY TO COGA/API'S JOINT RESPONSE TO COUNTY'S MOTION TO DISMISS COGA/API'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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