

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.

Attorneys for Defendant:
David Hughes, Deputy County Attorney, #24425
Katherine A. Burke, Assistant County Attorney, #35716
Catherine Ruhland, Assistant County Attorney, #42426
BOULDER COUNTY ATTORNEY
P. O. Box 471, Boulder, CO 80306
Phone No.: 303-441-3190
Fax No.: 303-441-4794
Email: dhughes@bouldercounty.org
kaburke@bouldercounty.org
truhland@bouldercounty.org

▲ COURT USE ONLY ▲

Case Number: 2017 CV 30151

Div.: 3

**REPLY TO STATE'S MEMORANDUM IN OPPOSITION TO COUNTY'S MOTION
TO DISMISS STATE OF COLORADO'S COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Defendants, the County of Boulder, Colorado, and the Board of County Commissioners of Boulder County (the “Board”) (together “the County”), reply to the State’s Memorandum in Opposition 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. Comm. for Gail Schoettler, Inc.*, 24 P.3d 621, 623 (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 State is the inability of operators to apply for oil and gas permits in the County “today.” Resp. at 7. Because the Current Moratorium expires by its own terms on May 1, the State 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. The facts alleged in the State’s Complaint do not show that paving the way for an operator to file a County application on, for example, April 25 rather than May 2 would have any practical legal effect on oil and gas development in Boulder County or the State of Colorado.

¹ Contrary to the State’s position, the State 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).

The State argues that this case would not be moot after May 1 if the County extended the Current Moratorium beyond May 1. Resp. at 9. However, the State has not amended its 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 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 the State’s speculation that the County may extend the Current Moratorium.

In an effort to bolster its jurisdictional and equitable justifications for this litigation, the State accuses the County of attempting to circumvent the holdings of *Longmont* and *Fort Collins* and, in so doing, acting with unclean hands. Like its claim that the County may extend the Current Moratorium, the State’s assertion that the County’s elected officials acted in bad faith in response to the Supreme Court decisions is not supported by the facts. The actions that the County took prior the *Fort Collins* and *Longmont* cases, such as the extensions of the Expired Moratorium, could not have been taken to “circumvent” the holdings in those cases since those opinions did not exist. The County’s only post-*Fort Collins/Longmont* action is the Current Moratorium, a moratorium of a materially shorter duration than the moratorium in *Fort Collins*. Given the language in *Fort Collins*, the County’s adoption or extension of a short moratorium is not evidence of bad faith. *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

² Contrary to the State’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 the State, which speculates that the County will take further legislative action to extend the moratorium.

shorter duration”); *see also* Def.’s Mot. to Dismiss at 11-12 (explaining the legal framework for moratoria). Moreover, the State does not and cannot allege that the County failed to work diligently toward enacting new regulations during the timeframe of the Current Moratorium.³ *See Colorado Springs v. Dist. Ct. In and For El Paso County*, 519 P.2d 325, 327 (Colo. 1974) (“[I]n the absence of clear evidence to the contrary, courts presume that [public officials] have properly discharged their official duties.”).

Given the critical jurisdictional and equitable flaws in the State’s 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 11th day of April 2017.

BOULDER COUNTY ATTORNEY

By: S/ David Hughes

David Hughes, #24425
Deputy County Attorney
Katherine A. Burke, #35716
Assistant County Attorney
Catherine Ruhland, #42426
Assistant County Attorney

ATTORNEYS FOR DEFENDANTS

³ The County adopted its new oil and gas regulations at a public meeting held March 23, 2017.

CERTIFICATE OF SERVICE

I certify that on April 11, 2017, I electronically filed the foregoing **REPLY TO STATE'S MEMORANDUM IN OPPOSITION TO COUNTY'S MOTION TO DISMISS STATE OF COLORADO'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** via Colorado Courts E-Filing System, who will either serve the same via e-mail or United States mail to the following:

Frederick R. Yarger
Glenn E. Roper
COLORADO ATTORNEY GENERAL'S OFFICE
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 10th Floor
Denver, CO 80203
fred.yarger@coag.gov
glenn.roper@coag.gov

Mark J. Mathews, Colo. Atty. Reg. No. 23749
Julia E. Rhine, Colo. Atty. Reg. No. 45360
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202-4432
mmathews@bhfs.com
jrhine@bhfs.com

S/ Cathy Peterson
Cathy Peterson