

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO**

IN THE MATTER OF THE APPLICATION OF)	CAUSE NO. 1
CRESTONE PEAK RESOURCES OPERATING)	
LLC FOR AN ORDER TO: (1) ESTABLISH AND)	DOCKET NO. 170500189
APPROVE A RULE 216 COMPREHENSIVE)	
DRILLING PLAN FOR SECTIONS 1, 2, 3, 10, 11)	TYPE: GENERAL
AND 12, TOWNSHIP 1 NORTH, RANGE 69)	ADMINISTRATIVE
WEST, 6 th P.M. AND SECTIONS 25, 26, 27, 34, 35)	
AND 36, TOWNSHIP 2 NORTH, RANGE 69)	
WEST, 6 TH P.M. FOR THE COMPREHENSIVE)	
DEVELOPMENT AND OPERATION OF THE)	
CODELL AND NIOBRARA FORMATIONS,)	
WATTENBERG FIELD, BOULDER COUNTY,)	
COLORADO, AND (2) TO APPROVE A RULE)	
502.b. VARIANCE TO COMMISSION RULE 303.)	

IN THE MATTER OF THE APPLICATION OF)	CAUSE NO. 407
CRESTONE PEAK RESOURCES OPERATING)	
LLC FOR AN ORDER TO: (1) ESTABLISH AN)	DOCKET NO. 170500190
APPROXIMATE 2,560-ACRE DRILLING AND)	
SPACING UNIT FOR SECTIONS 1 AND 12,)	TYPE: SPACING
TOWNSHIP 1 NORTH, RANGE 69 WEST AND)	
SECTIONS 25 AND 36, TOWNSHIP 2 NORTH,)	
RANGE 69 WEST, 6 TH P.M. IN ACCORDANCE)	
WITH A CORRESPONDING COMMISSION)	
RULE 216 COMPREHENSIVE DRILLING PLAN,)	
(2) ALLOW UP TO 72 HORIZONTAL WELLS IN)	
THE 2,560 ACRE DRILLING AND SPACING)	
UNIT IN ACCORDANCE WITH A)	
CORRESPONDING COMMISSION RULE 216)	
COMPREHENSIVE DRILLING PLAN, (3) TO)	
APPROVE UP TO SIX OIL AND GAS)	
LOCATIONS/WELLPADS (LOCATIONS TO BE)	
DETERMINED) IN ACCORDANCE WITH A)	
CORRESPONDING COMMISSION RULE 216)	
COMPREHENSIVE DRILLING PLAN FOR THE)	
DEVELOPMENT AND OPERATION OF THE)	
CODELL AND NIOBRARA FORMATIONS,)	
WATTENBERG FIELD, BOULDER COUNTY,)	
COLORADO, AND (4) TO APPROVE A RULE)	
502.b. VARIANCE TO COMMISSION RULE 303.)	

IN THE MATTER OF THE APPLICATION OF CRESTONE PEAK RESOURCES OPERATING LLC FOR AN ORDER TO: (1) ESTABLISH AN APPROXIMATE 2,560-ACRE DRILLING AND SPACING UNIT FOR SECTIONS 2 AND 11, TOWNSHIP 1 NORTH, RANGE 69 WEST AND SECTIONS 26 AND 35, TOWNSHIP 2 NORTH, RANGE 69 WEST, 6TH P.M. IN ACCORDANCE WITH A CORRESPONDING COMMISSION RULE 216 COMPREHENSIVE DRILLING PLAN, (2) ALLOW UP TO 72 HORIZONTAL WELLS IN THE 2,560 ACRE DRILLING AND SPACING UNIT IN ACCORDANCE WITH A CORRESPONDING COMMISSION RULE 216 COMPREHENSIVE DRILLING PLAN, (3) TO APPROVE UP TO SIX OIL AND GAS LOCATIONS/WELLPADS (LOCATIONS TO BE DETERMINED) IN ACCORDANCE WITH A CORRESPONDING COMMISSION RULE 216 COMPREHENSIVE DRILLING PLAN FOR THE DEVELOPMENT AND OPERATION OF THE CODELL AND NIOBRARA FORMATIONS, WATTENBERG FIELD, BOULDER COUNTY, COLORADO, AND (4) TO APPROVE A RULE 502.b. VARIANCE TO COMMISSION RULE 303.

CAUSE NO. 407

DOCKET NO. 170500191

TYPE: SPACING

IN THE MATTER OF THE APPLICATION OF CRESTONE PEAK RESOURCES OPERATING LLC FOR AN ORDER TO: (1) ESTABLISH AN APPROXIMATE 2,560-ACRE DRILLING AND SPACING UNIT FOR SECTIONS 3 AND 10, TOWNSHIP 1 NORTH, RANGE 69 WEST AND SECTIONS 27 AND 34, TOWNSHIP 2 NORTH, RANGE 69 WEST, 6TH P.M. IN ACCORDANCE WITH A CORRESPONDING COMMISSION RULE 216 COMPREHENSIVE DRILLING PLAN, (2) ALLOW UP TO 72 HORIZONTAL WELLS IN THE 2,560 ACRE DRILLING AND SPACING UNIT IN ACCORDANCE WITH A CORRESPONDING COMMISSION RULE 216 COMPREHENSIVE DRILLING PLAN, (3) TO APPROVE UP TO SIX OIL AND GAS LOCATIONS/WELLPADS (LOCATIONS TO BE DETERMINED) IN ACCORDANCE WITH A CORRESPONDING COMMISSION RULE 216 COMPREHENSIVE DRILLING PLAN FOR THE DEVELOPMENT AND OPERATION OF THE CODELL AND NIOBRARA FORMATIONS, WATTENBERG FIELD, BOULDER COUNTY, COLORADO, AND (4) TO APPROVE A RULE 502.b. VARIANCE TO COMMISSION RULE 303.

CAUSE NO. 407

DOCKET NO. 170500192

TYPE: SPACING

CRESTONE PEAK RESOURCES OPERATING LLC'S TRIAL BRIEF

Crestone Peak Resources Operating LLC ("Crestone Peak" or "Applicant"), Operator No. 10633, by and through its attorneys, Jost Energy Law, P.C., respectfully submits this consolidated Trial Brief in the above-captioned Docket Nos. 170500189, 170500190, 170500191 and 170500192:

A. Introduction

Crestone Peak is pursuing a Commission Rule 216 Comprehensive Drilling Plan ("CDP") Application for numerous reasons, including but not limited to: (a) to ensure that re-entry into Boulder County, Colorado for oil and gas development is pursued in a collaborative, methodical and transparent manner, (b) to identify foreseeable oil and gas activities in a defined geographic area, (c) to facilitate discussions about potential impacts, (d) to identify measures to minimize adverse impacts to public health, safety, welfare, and the environment, including wildlife resources, from such oil and gas activities and operations, (e) to engage with local and state agencies and other necessary stakeholders to develop a reasonable and workable Rule 216 Comprehensive Drilling Plan, and (f) to ensure Applicant's leasehold interests, and the fee and State-owned mineral interests, in the Application Lands are protected and are included in a reasoned plan that ultimately provides for responsible oil and gas development and operations in Boulder County, Colorado.

Crestone Peak's request for a temporary standstill on Form 2 and Form 2A's within the CDP Area, as defined in Crestone Peak's Amended Application and Prehearing Statement, is to allow Crestone Peak and the appropriate stakeholders to work with Crestone Peak in its development of the CDP Area in a responsible manner and to avoid the "permit war" or "landrush" of permits in an *ad hoc* manner in Boulder County, Colorado when the current moratorium expires on May 1, 2017. Since Boulder County banned oil and gas development in 2012, no operator has filed Form 2 and Form 2A's with the Commission although the opportunity to do so remained. The Commission has witnessed various "permit wars" and "spacing unit wars" over the past several months and has commented that it is concerned with those types of situations. *See Director Lepore's presentation to the Commission, January 30, 2017.* Crestone Peak intentionally considered the effect that the above-referenced "permit wars and spacing unit wars" (many of which involving Extraction or its subsidiaries) have created for operators, the Commission Staff, the Commission, local governments, surface owners and other citizens. Crestone Peak's intention of seeking the Rule 502.b. variance for a temporary standstill of Form 2 and Form 2A filings is to prevent this permit war and drilling and spacing unit war situation from occurring in Boulder County, Colorado after the expiration of the current moratorium.

Despite assertions to the contrary by Kerr-McGee Oil & Gas Onshore LP ("Kerr-McGee") and 8 North, LLC, a wholly owned subsidiary of Extraction Oil & Gas, Inc. ("8 North/Extraction"), Crestone Peak's request for a temporary standstill on such filings, and the Commission's approval of such standstill, is in accordance with the Commission's authority and supports the Commission's mandate under the Colorado Oil and Gas Conservation Act ("Act") to, among other things, foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources." *C.R.S. 34-60-102(1)(a)(I).*

- B. Party and/or Intervenor Information. See Crestone Peak's Prehearing Statement.
- C. Factual Background. See Crestone Peak's Prehearing Statement.
- D. Procedural Background. See Crestone Peak's Prehearing Statement.
- E. Open Legal Issues:

1. Does the Commission have authority to allow Crestone Peak's requested relief to approve a Rule 502.b. variance to Rule 303 by placing a temporary hold on accepting and processing any new Form 2 Application for Permit to Drill ("APD") or Form 2A Oil and Gas Location Assessment for the Application Lands from any Owner (as defined by C.R.S. 34-60-103(7)) except Applicant as part of the Rule 216 Comprehensive Drilling Plan process, up to and until the Commission has the opportunity to notice, hear and enter an Order on Crestone Peak's Rule 216 Comprehensive Drilling Plan Application for the Application Lands, with such Order including the Applicant's ability to file Form 2's and Form 2A's within a certain amount of time upon entry of such Order as part of Applicant's overall Rule 216 Comprehensive Drilling Plan?

2. Should the Commission apply such authority in the above-referenced dockets?

- F. Short Answers:

1. Yes, the Commission has express statutory authority, in addition to authority under its current Rules, to allow Crestone Peak's requested relief to approve a Rule 502.b. variance to Rule 303 by placing a temporary hold on accepting and processing any new Form 2 or Form 2A for the Application Lands from any Owner (as defined by C.R.S. 34-60-103(7)) except Applicant as part of the Rule 216 Comprehensive Drilling Plan process, up to and until the Commission has the opportunity to notice, hear and enter an Order on Crestone Peak's Rule 216 Comprehensive Drilling Plan Application for the Application Lands, with such Order including the Applicant's ability to file Form 2's and Form 2A's within a certain amount of time upon entry of such Order as part of Applicant's overall Rule 216 Comprehensive Drilling Plan.

2. Yes, the Commission should apply such authority in the above-referenced dockets to grant Crestone Peak's requested relief over 8 North/Extraction and Kerr-McGee's unsupported objections to the contrary. If such authority is not applied in this instance, then the entire purpose of a CDP will be undermined and the Commission will not be fulfilling its statutory mandate to utilize orderly development of the oil and gas field underlying the proposed CDP. Failure to apply the Commission's authority under the Act and COGCC Rules and would in fact increase adverse impacts to public health, safety, welfare, and the environment, including wildlife resources, from oil and gas activities and operations within the Application Lands.

G. Crestone Peak's Legal Analysis¹

1. Statutory Authority.

The Commission has general and express statutory authority to allow Crestone Peak's requested relief.

The Act expressly provides with Commission with jurisdiction "over all persons and property, public and private, necessary to enforce the provisions of this article, and has the power to make and enforce rules, regulations, and orders pursuant to this article, and to do whatever may reasonably be necessary to carry out the provisions of this article." *C.R.S. § 34-60-105(1)*. Further, the Act expressly declares that it is in the public interest to:

(I) Foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources;

(II) Protect the public and private interests against waste in the production and utilization of oil and gas;

(III) Safeguard, protect, and enforce the coequal and correlative rights of owners and producers in a common source or pool of oil and gas to the end that each such owner and producer in a common pool or source of supply of oil and gas may obtain a just and equitable share of production therefrom; and

(IV) Plan and manage oil and gas operations in a manner that balances development with wildlife conservation in recognition of the state's obligation to protect wildlife resources and the hunting, fishing, and recreation traditions they support, which are an important part of Colorado's economy and culture. Pursuant to section 33-1-101 , C.R.S., it is the policy of the state of Colorado that wildlife and their environment are to be protected, preserved, enhanced, and managed for the use, benefit, and enjoyment of the people of this state and its visitors.

C.R.S. § 34-60-102(a)(I) – (IV). Each of these statutory mandates support Crestone Peak's CDP Application and the Rule 502.b. variance request as applied to Docket Nos. 170500189, 170500190, 170500191 and 170500192. The Commission can utilize its general authority under C.R.S. § 34-60-105(1) to enter an Order on the Rule 502.b. variance in this instance to ensure that it is applying

¹ Crestone Peak does not address any constitutional issues of "disparate treatment" alleged by 8 North/Extraction or a "regulatory taking of 8 North's leasehold interests" as the Commission does not have authority to determine constitutional allegations in this instance. *See 8 North/Extraction's Protest, page 5, and Prehearing Statement, page 2; see also audio of April 19, 2017 Prehearing Conference wherein the Commission Hearing Officer confirmed the Commission's lack of authority to determine constitutional allegations and issues.* If the Commission determines that it will hear such arguments, then Crestone Peak will address the constitutional issues at that time.

other provisions of the Act, including the provisions to protect the public interest in § 34-60-102(a)(I) – (IV), which is the intent of Rule 216 and a Comprehensive Drilling Plan.

The Act also provides the Commission with express authority to enter an Order approving Crestone Peak’s Rule 502.b. request under C.R.S. § 34-60-106(2)(a) and (d), which provides:

(2) The commission has the authority to regulate:

(a) The drilling, producing, and plugging of wells and all other operations for the production of oil or gas;

...

(d) Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, including protection of the environment and wildlife resources, taking into consideration cost-effectiveness and technical feasibility.

C.R.S. § 34-60-106(2)(a) and (d). The drilling of wells is only allowed by an approved Application for Permit to Drill (“APD”) filed under Commission Rule 303. Under the plain language of C.R.S. § 34-60-106(2)(a), the Commission has all authority to determine, via a Rule 502.b request for variance or other mechanism, whether to allow APD’s to be issued in certain situations. Further, the Commission has the authority to regulate oil and gas operations to prevent and mitigate significant adverse environmental impacts. *C.R.S. § 34-60-106(2)(d).* Because the Commission has express authority to regulate oil and gas operations, it also has the authority to place a temporary standstill on Form 2 and Form 2A’s to prevent and mitigate adverse impacts in the CDP Area. Here, in an effort to ensure that the Application Lands are protected and are included in a reasoned plan that ultimately provides for responsible oil and gas development and operations in Boulder County, Colorado, Crestone Peak has requested that the Commission utilize its authority under the Act, including C.R.S. § 34-60-106(2)(a) and (d), to place a temporary standstill on Form 2’s and Form 2A’s in the CDP Area.

The Act also provides a mandate to establish standards for minimizing adverse impacts to wildlife resources affected by oil and gas operations and to ensure the proper reclamation of wildlife habitat during and following such operations by “encouraging operators to utilize comprehensive development plans and geographic area analysis strategies to provide for orderly development of oil and gas fields...” *C.R.S. § 30-60-128(3)(d)(II).* “Orderly development” cannot occur if the Commission allows “permit and spacing wars” within the CDP Area – which is exactly what Kerr-McGee and 8 North/Extraction are jointly and collectively proposing in their Protests to Crestone Peak’s Rule 502.b. variance request as part of the overall CDP process.

The Act further mandates that the Commission shall “promulgate rules to establish a timely and efficient procedure for the review of applications for a permit to drill and applications for an order establishing or amending a drilling and spacing unit.” *C.R.S. § 34-60-106(11)(a)(I)(A).* The Commission promulgated such rules in 2008, via rulemaking, and adopted Rule 303. Notwithstanding Kerr-McGee’s and 8 North/Extraction’s assertions to the contrary, the 2008 rulemaking retained the concept and express allowance of a variance to all Commission Rules under

Rule 502.b., including a variance to the application of Rule 303 to all operators. Rule 502.b provides:

b. Variances.

(1) Variances to any Commission rules, regulations, or orders may be granted in writing by the Director without a hearing upon written request by an operator to the Director, or by the Commission after hearing upon application. The operator or the applicant requesting the variance shall make a showing that it has made a good faith effort to comply, or is unable to comply with the specific requirements contained in the rules, regulations, or orders, from which it seeks a variance, including, without limitation, securing a waiver or an exception, if any, and that the requested variance will not violate the basic intent of the Oil and Gas Conservation Act.

Commission Rule 502.b. In this instance, Crestone Peak is requesting that the Commission grant a Rule 502.b. variance to Rule 303 in order to allow the Rule 216 CDP Application, stakeholder process and development plan to proceed without interference of Form 2 and Form 2A's confusing the issues, the stakeholders, and Crestone Peak's ultimate development plan for the CDP Area. Specifically, Crestone Peak's request for a Rule 502.b. variance to Rule 303 is the only procedural way to request such temporary standstill. To be clear, the requested Rule 502.b. variance only requests a temporary standstill on the filing of Form 2 and 2A's until the Commission has had the opportunity to notice, hear and enter an Order on Crestone Peak's Rule 216 Comprehensive Drilling Plan Application for the Application Lands, with such Order including the Applicant's ability to file Form 2's and Form 2A's within a certain amount of time upon entry of such Order as part of the Applicant's overall Rule 216 Comprehensive Drilling Plan. The Commission has the authority to allow this variance under the Act and the requested variance will not violate the basic intent of the Oil and Gas Conservation Act. In fact, the requested variance will expressly support the basic intent of the Oil and Gas Conservation Act as set forth above.

2. Regulatory Authority.

Commission Rule 216 is a unique rule that, as stated above, presents a matter of first impression to the Commission, interested parties and all stakeholders involved in Crestone Peak's CDP application and corresponding drilling and spacing unit applications. It is clear, however, that the Commission, in the 2008 rulemaking, anticipated that any CDP would include the siting of "more than one (1) proposed oil and gas location within a geologic basin, but its scope may otherwise be customized *by the operator* to address specific issues in particular areas." *See Commission Rule 216.b.(emphasis added)*. It is also clear that the Commission, in the 2008 rulemaking, encouraged an operator "to develop joint Comprehensive Drilling Plans covering the proposed activities of multiple operators where appropriate", and that any CDP "will typically cover the activities of *one operator*." *Id. (emphasis added)*. Rule 216 does not, in any way, shape or form, require Crestone Peak to obtain the consent of Kerr-McGee and/or 8 North/Extraction as misrepresented by both operators and, in fact, anticipates that a CDP covers one operator's plans for the ultimate development of the hydrocarbons and utilization of the surface within the CDP Area.

Further, Rule 216.d. expressly provides as follows:

d. Procedure.

(1) One or more operator(s) may submit a proposed Comprehensive Drilling Plan to the Commission, describing the operator's reasonably foreseeable oil and gas development activities in a specified geographic area within a geologic basin. The Director may request an operator to initiate a Comprehensive Drilling Plan, but the decision to do so rests solely with the operator.

(2) The operator(s) shall invite the *Colorado Department of Public Health and Environment, the Colorado Parks and Wildlife, local governmental designee(s), and all surface owners to participate in the development of the Comprehensive Drilling Plan*. In many cases, participation by these agencies and individuals will facilitate identification of potential impacts and development of conditions of approval to minimize adverse impacts.

(3) *The operator(s), the Director, and participants involved in the Comprehensive Drilling Plan process shall review the proposal, identify information needs, discuss operations and potential impacts, and establish measures to minimize adverse impacts resulting from oil and gas development activities covered by the Plan.*

Commission Rule 216.d.(emphasis added). Again, the language of Rule 216 clearly contemplates that one operator will submit information, which Crestone Peak has done in accordance with Commission Staff requests (See Crestone Peak's Prehearing Statement and attached Exhibits), and will coordinate with the "Colorado Department of Public Health and Environment, the Colorado Parks and Wildlife, local governmental designee(s), and all surface owners" to participate in the development of the CDP. *Commission Rule 216.d.(2)*. Rule 216 does not mandate, or contemplate, that all working interest owners and/or other operators be invited or included in the development of the CDP. It is encouraged, of course, but is not mandated. In this instance, Crestone Peak did include Kerr-McGee and 8 North/Extraction in its discussions of the CDP Area. *See Crestone Peak's Prehearing Statement, Section D, Paragraphs 23 and 24*. In fact, in a co-development meeting on March 23, 2017, Kerr-McGee representatives informed Crestone Peak that it did support the CDP in Boulder County.

Additionally, Commission Rule 303 is governed by the Act, C.R.S. § 34-60-106(2)(a) and (d), as set forth above in Section G.1. The Commission has authority to interpret and apply its own Rules in accordance with the Act. The Commission can determine when to "regulate the drilling of wells" by regulating the filing of APDs or Form 2A's under Rule 303. *C.R.S. § 34-60-106(2)(a); Commission Rule 303*. In this instance, Crestone Peak is requesting that the Commission interpret Rule 502.b. (described above), which is the only procedural mechanism available under the Rules to bring a request such as this to the Commission, to allow a temporary standstill on the filing of APDs and Form 2A's under Rule 303 for all other operators up to and until the Commission has the opportunity to notice, hear and enter an Order on this Rule 216 Comprehensive Drilling Plan Application for the Application Lands, with such Order including the Applicant's ability to file Form 2's and Form 2A's within a certain amount of time upon entry of such Order as part of Applicant's overall Rule 216 Comprehensive Drilling Plan.

Under a CDP proposal, this is not an unreasonable request, especially when Rule 216 acknowledges that while “operators are encouraged to develop joint Comprehensive Drilling Plans covering the proposed activities of multiple operators where appropriate, Comprehensive Drilling Plans will typically cover the activities of one operator.” *See Commission Rule 216.b.* It is a reasonable request for a single operator seeking a CDP under Rule 216 to ask the Commission to allow such operator the time to fully develop the CDP prior to bringing it to the Commission for review and approval. This is especially true when Rule 216.f. expressly contemplates incentives for operators who propose CDP’s with “information substantially equivalent to that which would be required in a Form 2A for the proposed oil and gas location and the Comprehensive Drilling Plan has been subject to procedures substantially equivalent to those required for a Form 2A, then a Form 2A shall not be required for a proposed oil and gas location that was included in the Comprehensive Drilling Plan and does not involve a variance from the Plan or a variance from these rules not addressed in the Comprehensive Drilling Plan.” *See Commission Rule 216.f.* The Commission’s own Rule 216 acknowledges and contemplates that an operator seeking an approved CDP may submit Form 2A’s, and therefore the corresponding Form 2’s, as part of such CDP. *Id.* If the Commission does not apply the temporary standstill as requested by Crestone Peak, then it is effectively allowing Kerr-McGee, 8 North/Extraction, or any other working interest owner to take full advantage, with priority on Form 2A APD filings, of Crestone Peak’s diligent, time-intensive efforts to establish an orderly development plan for the CDP Area. This allowance would not serve to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas within the subject area in Boulder County, Colorado.

Further, if the Commission does not apply the temporary standstill as requested by Crestone Peak, it would ignore the basic intent of Rule 216, it would ignore the application of an allowed variance to Rule 303, and it would allow Kerr-McGee and 8 North/Extraction to defeat Crestone Peak’s variance request based on an artificial and narrow interpretation of the COGCC Rules – that Rule 502.b. does not allow the requested relief because it did not contemplate variances to apply to operators other than the operator seeking the variance. *See Kerr-McGee and 8 North/Extraction’s Protests.* If the Commission agrees with Kerr-McGee and 8 North/Extraction’s artificial interpretation of Rule 502.b., then Crestone Peak would likely be forced to terminate the CDP plan as continuing the CDP plan in that event would afford no protection to Crestone Peak, as an operator with a substantial interest within the CDP Area, or to the Commission Staff, the local governments, the surface owners and other stakeholders who have been diligently involved in the planning process to proceed with proposing orderly development of the Application Lands. The Commission would be replacing the comprehensive and coordinated CDP process with an *ad hoc* process, encouraging the “spacing and permit wars” to occur in Boulder County, like other areas of the basin, thus requiring operators, local governments and other stakeholders to have their challenges heard in an *ad hoc*, disorderly basis under other sections of the Act and Commission rules. Crestone Peak’s intent of the CDP, along with the Rule 502.b. variance request, was to avoid such application of the Act and the Rules.

H. Crestone Peak’s Response to Kerr-McGee Position

Crestone Peak acknowledges that its Boulder County CDP Application is a case of first impression for the Commission and all stakeholders. However, a case of first impression should not automatically be discounted because it is unique or it does not fit precisely within the Commission’s rules as strictly interpreted by Kerr-McGee. This case of first impression resulted from many

months of Crestone Peak's creative thinking, ingenuity, cooperation, collaboration and conversations with many different stakeholders, including Kerr-McGee and 8 North/Extraction.

Kerr-McGee's Protest and position against the Rule 502.b. variance allowance are based on two claims: (1) that Crestone Peak's Rule 502.b. variance request is improper, and (2) that Crestone Peak has not complied with Rule 216. As to the first point, Crestone Peak maintains that its Rule 502.b. variance request is proper, complies with the Commission Rules and is supported by the general and express authority granted to the Commission under the referenced provisions of the Act. *See Section G above.* As to the second point, Crestone Peak filed this application with the clear intention of complying with Rule 216 prior to the time any CDP would be presented to the Commission for review and hearing, after meaningful engagement with the necessary stakeholders, including but not limited to, the surface owners who may be affected by any proposed Oil and Gas Location, Kerr-McGee, 8 North/Extraction, the Town of Erie, Boulder County and other state agencies. Crestone Peak and the Commission Staff have recognized that this is a unique and complex application and that certain aspects of the Application, including the process for review and development of the CDP itself, are a matter of first impression. While Kerr-McGee asserts that each and every aspect of Rule 216 must be applied prior to filing an application for a CDP, Kerr-McGee offers no legal basis for this assertion. Crestone Peak disagrees with Kerr-McGee's position and maintains that its CDP Application supports the purpose of a CDP as a whole, pursuant to Rule 216.a., and that Rule 216.b. recognizes that a CDP typically covers the activities of only one operator. *See Commission Rule 216.a.; Commission Rule 216.b.*

Further, Kerr-McGee has not alleged or even implied that it has a drilling or development plan for its Boulder County assets. Crestone Peak is proposing a responsible and methodical way to develop those assets within not only the CDP Area, but also within drilling and spacing units that will ultimately prevent waste, protect correlative rights and will provide for efficient and economic recovery of the hydrocarbon resources. Kerr-McGee, and its parent company Anadarko Petroleum Corporation, are well aware of the political climate in Colorado between industry, local government and citizens, and are using Kerr-McGee's Protest as a way to undermine the very collaboration that the company has proposed as a compromise to the State, the COGCC and citizens for years. Crestone Peak has collaborated with many stakeholders already in its effort to put this CDP Application and plan together, and has followed many recommendations from the Governor's Blue Ribbon Task Force, on which a representative of Anadarko participated.

I. Crestone Peak's Initial Response to 8 North/Extraction Protest

8 North/Extraction's Protest and position are based on two claims: (1) that Crestone Peak's Rule 502.b. variance request is improper and that it will result in disparate treatment, and (2) that it is upset that Crestone Peak was "first to file." As to the first point, Crestone Peak maintains that its Rule 502.b. variance request is proper, complies with the Commission Rules, and is supported by the general and express authority granted to the Commission under the referenced provisions of the Act. *See Section G above.* As to the second point, Crestone Peak maintains that 8 North/Extraction's drilling plans are speculative at best. 8 North/Extraction expressly states that 8 North has not filed APDs with the COGCC for its leasehold in the Application Lands to date as a result of Boulder County's ongoing moratorium. *See 8 North/Extraction's Protest, Paragraph 10, page 3.* Instead, 8 North claims it is sufficient that it has taken preliminary steps to develop its leasehold in the Application Lands, including meeting with Boulder County's Planning Department. *Id.* There are

two fundamental flaws with 8 North/Extraction's reasoning. First, if 8 North/Extraction was truly taking steps to develop the acreage in Boulder County, then it would have, and could have, filed its APDs with the Commission as there was not, and has never been, any bar on filing APDs for Boulder County assets with the Commission. If 8 North/Extraction was truly proceeding with a development plan in Boulder County, then its first evidence of intent would have been to file the APDs with the Commission. It did not. Second, 8 North maintains that the first step to "develop its leasehold" is a meeting with Boulder County's Planning Department. Crestone Peak agrees that it is vitally important to collaborate with local government representatives; however, a local meeting cannot trump the steps required under the Rules for developing 8 North/Extraction's assets, such as filing a CDP Application, DSU Application or APD's prior to another operator. 8 North/Extraction did not take any such substantive steps and, by its own recognition, the Commission can review Crestone Peak's CDP filing under the first-to-file policy.

Crestone Peak further maintains that 8 North/Extraction's position that it will be adversely affected by the Commission's allowance of a variance is misplaced and mischaracterized. 8 North/Extraction's position is that any approval of Crestone Peak's Rule 502.b. variance request is the equivalent of the ultimate approval of the Crestone Peak's overall CDP Application, DSU Applications, and Form 2's and Form 2A's for the Application Lands. This is not the case. Crestone Peak, the Commission and each of the other stakeholders recognize that the variance request is only the first step in the overall requested relief sought by Crestone Peak. An approval of the Rule 502.b. variance request does not ultimately grant the approval of the remaining request for relief, including approval of Form 2 and 2A's. 8 North/Extraction will have an opportunity to have a hearing and present its evidence in contradiction of each of the next steps in this CDP process. The May 1, 2017 hearing, if the 502.b. variance is approved under the Commission's authority, only applies the temporary standstill and does not approve the ultimate plan as misrepresented by 8 North/Extraction.

J. Conclusion.

The Commission has express authority under the Act and its own Rules to approve Crestone Peak's Rule 502.b. variance to Rule 303 by placing a temporary hold on accepting and processing any new Form 2 or Form 2A for the Application Lands from any Owner (as defined by C.R.S. 34-60-103(7)) except Applicant as part of the Rule 216 Comprehensive Drilling Plan process, up to and until the Commission has the opportunity to notice, hear and enter an Order on this Rule 216 Comprehensive Drilling Plan Application for the Application Lands, with such Order including the Applicant's ability to file Form 2's and Form 2A's within a certain amount of time upon entry of such Order as part of Applicant's overall Rule 216 Comprehensive Drilling Plan.

The Commission should apply the authority in the above-referenced dockets for the following reasons:

- (a) the application of such authority supports the purpose and mandate of the Act;
- (b) the application of such authority supports the purpose of Rule 216;
- (c) Crestone Peak has presented a strong basis supporting the continuation of the coordinated CDP process and the Commission should allow Crestone Peak to utilize the CDP process without

interference of operators who wish to engage in a “spacing and permit war” instead of proceeding with a plan for orderly development as mandated by statute;

(d) Crestone Peak should be allowed to continue the collaboration and cooperation with all stakeholders, including Kerr-McGee and 8 North/Extraction, as the CDP process continues in order to foster the reasonable and responsible development of minerals underlying the CDP Area;

(e) the application of the Commission’s authority will be limited to precedent in the CDP context only, and can clearly be confined to a CDP context by the Commission itself;

(f) the Commission would prevent any additional burden to the Commission Staff, Director and others that would occur if *ad hoc* spacing applications and APDs were allowed to be filed by Kerr-McGee and/or 8 North/Extraction as Crestone Peak, and likely others, would protest such applications, would file applications to deny any APD and/or Form 2A, and other filings that would result from an *ad hoc* filing allowance within the CDP Area; and

(g) the application of such authority would support the 2015 Governor’s Task Force Recommendations for collaboration with all stakeholders, including local governments, and would encourage comprehensive drilling plans in controversial areas.

K. Relief Requested.

Now, therefore, in consideration of the foregoing and in the information presented to the Commission by Crestone Peak to date, Crestone Peak respectfully requests the following relief:

1. That the Commission approve Crestone Peak’s requested relief to approve a Rule 502.b. variance to Rule 303 by placing a temporary hold on accepting and processing any new Form 2 or Form 2A for the Application Lands from any Owner (as defined by C.R.S. 34-60-103(7)) except Applicant as part of the Rule 216 Comprehensive Drilling Plan process, up to and until the Commission has the opportunity to notice, hear and enter an Order on this Rule 216 Comprehensive Drilling Plan Application for the Application Lands, with such Order including the Applicant’s ability to file Form 2’s and Form 2A’s within a certain amount of time upon entry of such Order as part of Applicant’s overall Rule 216 Comprehensive Drilling Plan.

2. That the Commission deny 8 North/Extraction’s Protests in Docket Nos. 170500189, 170500190, 170500191 and 170500192;

3. That the Commission deny Kerr-McGee’s Protests in Docket Nos. 170500189, 170500190, 170500191 and 170500192; and

4. For such other findings and orders as the Commission may deem proper or advisable in this matter.

Dated: April 24, 2017

Respectfully submitted:

Crestone Peak Resources Operating, LLC

By: 

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CERTIFICATE OF SERVICE

I hereby certify that, on April 24, 2017, Jost Energy Law, P.C. caused Crestone Peak Resources Operating LLC's Trial Brief in Colorado Oil and Gas Conservation Commission Docket Nos. 170500189, 170500190, 170500191 and 170500192 to be served via electronic mail to the Counsel set forth below and the Colorado Oil and Gas Conservation Commission pursuant to the applicable rules, and by courier/U.S. mail at the addresses listed below:

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