



Office of the County Attorney

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Director Matt Lepore
Colorado Oil & Gas Commission
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BY EMAIL ONLY

July 7, 2017

Re: Process for Rule 216 CDP Determination

Dear Director Lepore:

Thank you for inviting Boulder County to provide suggestions for the COGCC's process for reviewing and analyzing the Rule 216 Comprehensive Drilling Plan application filed by Crestone Peak Resources, LLC. The Crestone CDP gives the COGCC an opportunity to flesh out the requirements and procedures sketched out in Rule 216 to create a substantive, transparent process for all affected parties involved in this or future CDPs.

Currently, there is significant confusion over the Crestone CDP and the COGCC's processes leading to its ultimate approval or disapproval, both among our residents and internally at the County. Affected landowners and our staff do not have an indication of when or how they will be able to participate in the development of the plan or how it will be ultimately approved or denied. Such confusion exacerbates the level of anxiety over oil and gas development, especially at the intensive scales proposed by Crestone and other area operators. Moreover, in light of recent events at Triple Creek, Broomfield, Firestone and Mead, and given that the County has not seen new oil and gas development for some years and has just adopted new regulations, we are particularly concerned with the development of Crestone's CDP. As you have said on several occasions, the COGCC is creating the CDP evaluation process as it goes along, yet numerous parties are looking for clarity and involvement. Therefore, the COGCC should design and publicize a clear and predictable process.

You indicated that Crestone needs to drive the process rather than the COGCC. This makes some sense as it is Crestone's application. However, because the COGCC is the reviewing State agency and the final arbiter on the plan, it should set the requirements toward final review in order to ensure due process. Therefore, we feel strongly that the COGCC should create a formalized process to review and evaluate CDPs, including Crestone's.

On that basis, we provide the following comments and suggestions for strengthening the procedure hinted at in Rule 216 in a way that will provide clarity and predictability while maximizing opportunities for meaningful stakeholder engagement.

1. Timing

The operators' stipulated stand-still agreement runs to February 1, 2018. By email on May 9, 2017, hearing officer James Rouse indicated the matter was scheduled for the Commission's December 11-12, 2017, hearing, but also said this date was "the latest one the Commission currently has set," indicating that the matter could also be heard in January or February, at the end of the stipulation period as described at the May 1 hearing. He also mentioned that Crestone could request an earlier hearing.

In addition, although COGCC has defined the conceptual (which was presumably completed May 1 with the operators' stipulation), preliminary and final phases, there is no indication

when either the preliminary or final phase ends or begins. This question is particularly important because the matrix the COGCC created for the information to be submitted by Crestone identifies certain items to come at the preliminary or the final phases.

Another timing issue centers on stakeholder participation. We have been invited to COGCC-hosted stakeholder meetings on the CDP but generally have not been provided information prior to the meetings on which we could formulate questions or responses. More than once, we were shown material at those meetings and asked to respond on the spot, which prevented us from engaging in careful consideration, review and participation by our staff experts, or any part of the public process required for the County to take formal positions.

For these reasons, we recommend the COGCC:

- i. Define the beginning and endpoints of the preliminary and final phases of consideration;
- ii. Define associated due dates for the information required at each phase;
- iii. Define (or require the operator to define) dates for stakeholder meetings that are preceded by information sharing deadlines that give ample time to formulate responses.

2. Methods of participation

Rule 216 defines “participants” and “stakeholders” to CDPs, and provides for “consultation” and “participation” and “involvement,” but it does not describe how those are to happen. Crestone initially proposed monthly stakeholder meetings following the May 1 hearing, but none have been scheduled as of this letter. Moreover, those meetings have not yet included the affected landowners. Each week that goes by without opportunities to participate in the development of the plan shortens the time available before the final hearing may occur.

As mentioned above, even if meetings are scheduled, thus far they have not provided ample time to first review information or to formulate or provide responses. The surface owners are numerous and, therefore, a procedure by which they can provide meaningful input is especially critical. A public presentation by Crestone to a crowded room would not constitute meaningful consultation or involvement.

For these reasons, we recommend the COGCC:

- i. Define a minimum number of meetings or opportunities for input by all stakeholders, including landowners, in each of the preliminary and final phases and at the final hearing;
- ii. Define the methods by which stakeholders can provide input (e.g., in writing to the COGCC, in person at meetings, to the operator directly).

3. Criteria

Rule 216 provides no criteria by which the COGCC will measure either the sufficiency of the information the operator provides or the acceptability of the ultimate proposed plan. In the absence of standards, Crestone, the County, and other affected parties cannot effectively formulate or target their comments on Crestone’s submissions. Moreover, the Commission cannot make a well-considered determination on the final plan, while providing due process to all participants, without criteria by which to measure it.

For these reasons, we recommend the COGCC:

- i. Ensure that its requests for information from Crestone, as set forth in the matrix or to be forthcoming, make clear the essential elements and standards to be contained in that information;
- ii. Develop criteria on which a CDP will be approved or denied by the Commission, together with direction whether the Commission can approve a CDP with modifications or conditions at its hearing.

4. Transparency

For all the reasons stated above, we strongly recommend that the COGCC issue public information on the process developed. For example, we have previously requested but still do not see any procedural information on the COGCC website regarding the Crestone CDP. Even a robust process does little good if those interested in it don't know what it is.

Ultimately, the COGCC should conduct a rulemaking to address the issues discussed here. This would allow the COGCC to take input from all interested parties to build and formally publicize a robust CDP procedure that provides adequate due process and maximizes the opportunity for truly comprehensive planning.

Sincerely,



Kate Burke
Assistant County Attorney



Kim Sanchez
Chief Planner