

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

IN THE MATTER OF THE APPLICATION OF)	CAUSE NO. 1
CRESTONE RESOURCES OPERATING LLC FOR)	
AN ORDER TO: 1) ESTABLISH AND APPROVE A)	
RULE 216 COMPREHENSIVE DRILLING PLAN)	DOCKET NO. 170500189
FOR SECTIONS 1, 2, 3, 10, 11 AND 12, TOWNSHIP)	
1 NORTH, RANGE 69 WEST, 6 TH P.M. AND)	
SECTIONS 25, 26, 27, 34, 35 AND 36, TOWNSHIP)	TYPE: GENERAL
2 NORTH, RANGE 69 WEST, 6 TH P.M. FOR THE)	ADMINISTRATIVE
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.)	

**BOULDER COUNTY’S COMMENTS TO THIRD DRAFT PRELIMINARY
COMPREHENSIVE DRILLING PLAN ELEMENTS**

The following comments are submitted on behalf of Boulder County by County staff members. For ease of reference, staff submitting these comments will be referred to below as “the County.” However, these comments are not the result of a full review of any kind, including a review under the Boulder County Land Use Code (“the Code”) by the Board of County Commissioners, which will be required even if the Comprehensive Drilling Plan (“CDP”) is approved by the COGCC. For purposes of the CDP process only, staff has compiled the following comments on Crestone Resources Operating LLC’s Third Draft Preliminary Comprehensive Plan Elements (“Third Draft”). The County reserves the right to supplement or amend them at any time.

I. Crestone still has not demonstrated its right to extract the minerals in the CDP.

In its comments to the second draft CDP, the County argued that the CDP process should be put on hold until Crestone meets critical threshold issues, one of which is proving its right to develop the minerals it proposes to drill in the CDP area. Crestone provided five lease documents with the Third Draft that the County is reviewing, but Crestone has not identified how or under what terms they obtained the rights to any of those leases. Moreover, the five leases provided do little to support Crestone’s claim of “approximately 43% working interest” ownership in the overall CDP area. The County again urges the COGCC to require, immediately, actual proof of Crestone’s specific right

to drill the minerals it seeks to develop with the CDP before the final draft can be accepted.

II. Crestone is overburdening County-owned open space lands that are protected from development.

The Third Draft proposes five large-scale facilities on three County-owned open space properties. As Crestone and the COGCC are aware, Boulder County taxpayers have invested millions of dollars over several decades to purchase and preserve these open space lands for the very purpose of protecting critical agricultural, ecological and recreational values. The newly proposed multi-well locations and their associated completions pads, drill pads, facilities pads and workover areas are all proposed in the Boulder County Comprehensive Plan's East County Environmental Conservation Area and designated for rural preservation in the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement ("Super IGA") among Boulder County and seven municipalities. The specific multi-well pad proposals sit on: (1) the Wheeler property (Section 1), which was very recently purchased for \$8,000,000 after being on the County's open space acquisition list for decades in part due to its 15 acres of sensitive wetlands and 55 acres of riparian features at the confluence of two important waterways which provide potential restoration habitat for the federally endangered Preble's meadow jumping mouse, as well as to prevent flood damage by keeping flood-prone lands free of development; (2) the Vicklund property (Section 2), which is designated as Significant Agricultural Lands of National Importance due to its highly arable, irrigated farmland; and (3) the Haley property (Section 3), which is also highly prized, irrigated cropland. All three open space properties' agricultural, ecological and cultural value will be virtually wiped out by the large-scale facilities proposed, which will obliterate their agricultural uses essentially permanently.

The County joins and emphasizes Colorado Parks & Wildlife's (CPW) comments regarding South Boulder Creek and Coal Creek on the Wheeler property and their importance as Aquatic Recovery and Conservation Waters. The County also endorses CPW's requests and recommendations for specific wildlife surveys before any construction or preparation activities take place.

In addition to existing preserved open space and conservation easement lands, several jurisdictions have long-existing plans for recreational trails through the area near the large-scale facility proposed on the Wheeler open space property.

While the County sees potential value in the CDP process to evaluate a larger area to determine the optimal sites for surface development with respect to all relevant considerations, Crestone is not able to select the optimal sites in the 12 square mile CDP area because it cannot find a way to access significant surface area currently controlled by other competing operators. For example, the only reason Crestone has given for not

seeking sites on privately owned land to the north of the Highway 52 corridor is that Extraction Oil and Gas owns mineral rights in some of those areas and Crestone has been unable to reach any agreement with Extraction and, to the County's knowledge, the surface owners. The COGCC should not countenance the obstruction of the kind of comprehensive planning promised by Rule 216 on this flimsy basis. Furthermore, Boulder County taxpayers and residents should not be burdened, nor should publicly-owned land preserved for its significant values be destroyed, due to Crestone's inability to acquire surface rights in other parts of the CDP.

III. The Third Draft locates a larger facility (56 wells) in an identified floodway and critical wetlands areas.

The County pointed out in its last set of comments, and notes again, that the former proposed multi-well location on the Wheeler open space property is within the properly measured *floodway* (as opposed to the floodplain). The floodway is the portion of a floodplain that will actually convey the bulk of the flood flow, while the floodplain will experience stagnant or lower velocity flow. *See, e.g., 44 C.F.R. 59.1* (defining "regulatory floodway" as the "channel of a river . . . and the adjacent land areas that *must be reserved* in order to discharge the base flood") (emphasis added). Thus, the floodway poses significantly more hazards to development than the remainder of the floodplain.

Approximately seven years ago, the Colorado Water Conservation Board, a sister agency to COGCC within the Department of Natural Resources, adopted a six-inch water rise measure to delineate floodways. Exhibit A depicts the former one-foot rise floodway (darker purple) and the updated six-inch rise floodway (lighter purple with hatching) surrounding the large-scale facility proposed on the Wheeler open space. It is clear from Exhibit A that even the outdated, more conservative measure of the floodway covers the 56 well site proposed on the Wheeler open space property and the newer floodway delineation encompasses the entirety of both pads. The former proposed 36-well site on the Wheeler open space parcel was partially within only the six-inch rise floodway, and the new 56-well proposal has moved the critical above-ground equipment more deeply into the floodway as defined under any measurement.

During the 2013 Flood in Boulder County, the existing, single Wheeler G Unit #1 well, located close to the newly proposed multi-well pads, took enough damage that the storage tank leaked hydrocarbons. Containment berms were heavily damaged at four well sites and six sites were inundated along South Boulder Creek. Yet, in this particular stream reach, the 2013 Flood represented only a 50-year event, even though it was more significant in western areas, meaning that events equivalent to the 2013 Flood and much larger are likely to reoccur frequently in the area purchased as the Wheeler open space.

Because of its floodway and floodplain designations, the Federal Emergency Management Agency (FEMA), through the Community Rating System (CRS) which is a

national program developed by FEMA, gives credit points to Boulder County for preserving the Wheeler property as open space. The *CRS Coordinator's Manual* spells out the credits for community activities and programs that go above and beyond the minimum requirements for participation in FEMA's National Flood Insurance Program (NFIP) and encourages state, local, and private programs and projects that preserve or restore the natural state of floodplains and protect their functions. Specifically, CRS credits communities because of program priorities as described below:

- Goal 3 'Foster comprehensive floodplain management' of 'Goals of the Community Rating System' – beginning on page 110-111. "The CRS recognizes local efforts that protect lives; further public health, safety, and welfare; minimize damage and disruption to infrastructure and critical facilities; preserve and restore the natural functions and resources of floodplains and coastal areas; and ensure that new development does not cause adverse impacts elsewhere in the watershed or on other properties."
- 'Other Program Priorities -- Natural Floodplain Functions' –page 110-112. "The CRS provides special credit for community activities that protect and/or restore natural floodplain functions.... When kept open and free of development, floodplains provide the necessary flood water conveyance and flood water storage needed by a river When the floodplain is allowed to perform its natural function, flood velocities and peak flows are reduced downstream."
- 'Preserving Open Space – Activity 420' described beginning on page 420-421. "Floods are natural processes and floodplains are necessary to every river and coastal system. Floodplains can also be regarded as the land needed by a river or stream to convey and store flood waters ... Preserving the floodplain as open space allows it to serve these primary natural functions and many other important functions. Keeping the floodplain free of development... means that the community can return to normal quickly after flooding occurs."

(*CRS Coordinator's Manual*: https://www.fema.gov/media-library-data/1493905477815-d794671adeed5beab6a6304d8ba0b207/633300_2017_CRS_Coordinators_Manual_508.pdf)

COGCC rules address only mitigation measures relevant to the less-hazardous floodplain area and are inadequate to protect such sensitive infrastructure in the floodway. With the entire CDP area under consideration, there is no reason for proposed placement on the Wheeler site. Regardless of the area under consideration for the CDP, siting large-scale oil and gas facilities in the floodway should be avoided.

In addition to floodway concerns, other water-related issues are raised by the new double multi-well pads on the Wheeler site. The massive pads are squarely in a large

wetlands area, which is ecologically and geologically sensitive and should not be disturbed. As stated below, the maps Crestone is using omit numerous water bodies, including ponds and irrigation ditches that have been in place for decades, and cannot be relied upon, which means none of the related proposals can be fully analyzed. None of these issues are referenced in the narrative.

IV. The Third Draft proposes large pads too close to numerous homes.

Even while over-burdening County open space, the new proposals are also unacceptably close to numerous homes, including the entire Crystal Views platted subdivision and the individual farmsteads south of Hwy 52. Several individual homes appear to be within or right at the minimum 500' setback. If Crestone had the mineral ownership or surface control it needs to make the CDP effective, it would not need to encroach so intensely on existing residences where incessant and significant impacts from oil and gas development and disruption to residents' lives will be severely experienced. As long as any other options are available, such disruption must be avoided.

V. The Third Draft proposal will entail severe agricultural interruption and fails to identify critical irrigation ditches.

All of the proposed large-scale facilities currently proposed sit on active agricultural lands. All are large enough to effectively wipe out all or a significant amount of the production on the parcels. Farmers lease these sites from the County and make their livings from their products. The reasonable accommodation doctrine does not allow Crestone to use these sites to effectively prevent any agricultural uses on these prime farmlands and destroy the livelihoods of individual farmers. Moreover, Crestone has made no response to the County's earlier and repeated concerns about accommodating irrigation systems, if any such activities could continue at all near such massive pads.

Secondly, the Third Draft does not adequately identify existing irrigation ditches and ditch laterals. Many identified "streams" and "stream crossings" on Crestone's Attachment C are actually ditches and ditch crossings and many ditch or lateral crossings are simply not identified. These important crossings cannot be adequately designed and constructed to accommodate irrigation if they have not even been identified.

Finally, the newly proposed well pad on the Vicklund open space requires that the Leggett Ditch company be added to the list of entities that must be contacted.

VI. Crestone proposes to make excessive use of surface locations to drill minerals from miles away.

While the leases provided with the Third Draft are relevant to the newly proposed sites, Crestone has neither demonstrated how it has obtained rights under those leases nor

how those leases give Crestone the right to construct massive 28 and 56 well pads on particular parcels to extract pooled minerals from two or more miles beyond such sites. The leases supplied grant the right to use the surface to extract minerals under those sites or from other sites unitized with those leases. They do not grant the right to use so much of any given surface as is necessary to drain a four-square-mile area. The County is not aware of a legal rule or principle that requires a single parcel to accommodate all the drilling a leaseholder wants to do as far in any direction as technology allows. Until Crestone can prove that it owns the leasehold interests it asserts and that its leasehold rights allow it to place massive, multi-acre facilities on a given parcel, such proposals should not be approved.

VII. The Third Draft leaves the majority of earlier comments unanswered, fails to use updated information and is therefore not adequate to lead to a final draft as contemplated by the COGCC timeline.

The County acknowledges that Crestone made changes to its proposed locations in the Third Draft that were suggested by some stakeholders, but it wholly ignored significant and specific problems with former drafts and did not respond to requests for corrections and further information from numerous commenters, including the County. Crestone made no direct response to any of the specific comments offered on its second draft. Numerous comments on the first draft have yet to be acknowledged or answered.

Some of the most important issues that Crestone has not addressed are: pipelines are still not identified as above or below ground; there is still no mention of sensitive plant species and how they will be identified or protected; there has been no estimate of truck trips required to transport waste and wastewater; the County provided a list of Planned Unit Developments in the CDP area including Crystal Views NUPUD in close proximity to where one of the multi-well pads has been relocated in this third proposal, but the Third Draft says Crestone is “continuing to determine whether there are any PUDs in the CDP area;” Crestone has continued to stay silent on its plans to obtain water for drilling and completing; the topographic maps Crestone is using are badly outdated and lack significant water bodies and updated wildlife information; and, critically, Crestone has still not identified any of the variances that it foresees to Rules 303, the entire 1000 series and “other applicable rules,” leaving the CDP wide open to major modification by variance at any point in the development process.

In the Third Draft, two of the maps at Attachment C appear to show a well pad outside the CDP area to the south, south of Jasper Road. No development outside the CDP should be part of CDP consideration, and if Crestone has mineral interests in that area, they should be developed from the pads proposed as part of the CDP.

Stakeholders have spent dozens and possibly hundreds of hours commenting on Crestone’s first two drafts and Crestone’s failure to acknowledge the bulk of those

comments and questions undercuts the value of the stakeholder process. Even if the answer is “these matters will be addressed at a later stage,” commenters deserve some response.

VIII. Final comments.

For all the reasons stated, together with the comments in the County’s responses to the first and second drafts, it seems unlikely that the Third Draft can become an acceptable final draft in the current timeline. The County appreciates COGCC’s willingness to adjust the timeline as necessary and hopes that it will do so again if the next draft is not ready to be deemed final.



Boulder County Transportation Department

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Lower Boulder Creek Floodway Extent

Legend

Date: 1/10/2018

Access Road

Completions Pad

Drill Pad

Facilities Pad

Well Location

Workover Area

Floodway (Boulder County)

100-Year Floodplain -
Zones AE, A, AO, and
AH (Boulder County)

Potential 0.5 foot
Encroached Floodway

Potential Extent of
0.5 foot Encroached
Floodway

Stream

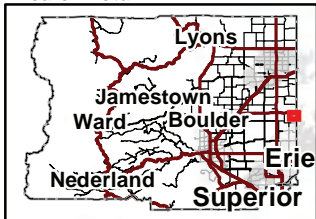
Perennial Lake or
Reservoir

0 500 1,000

Feet



Area of Detail



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