Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	
Appeal from District Court, Larimer County Civil Action No.: 2013CV31385, Div. 5B Judge Gregory M. Lammons	▲ **COURT USE ONLY** ▲
Plaintiff-Appellee: Colorado Oil and Gas Association, v. **Defendant-Appellant:** City of Fort Collins Colorado.	Court of Appeals Case No.: 2014CA1991
Attorneys for *Amicus Curiae* Conservation Colorado: Michael Freeman, Atty. Bar No. #30007 Earthjustice 633 17th Street, Suite 1600 Denver, Colorado 80202-3625 Phone: (303) 623-9466 Fax: (303) 623-8083 E-mail: mfreeman@earthjustice.org	
BRIEF OF CONSERVATION COLORADO AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT CITY OF FORT COLLINS	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

This brief contains 8,983 words.

This brief complies with C.A.R. 28(k) because it contains under a separate heading: (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) no citation to the precise location in the record is necessary since the issues raised and ruled on did not involve the (i) admission or exclusion of evidence, (ii) giving or refusing to give a jury instruction, or (iii) any other act or ruling which required the City of Fort Collins to make an objection or perform some other act to preserve appellate review.

Respectfully submitted this 6th day of February, 2015.

/s/Michael S. Freeman
Michael S. Freeman
Attorney for *Amicus Curiae*
Conservation Colorado

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Amicus curiae Conservation Colorado respectfully submits this brief in support of the position of Defendant-Appellant City of Fort Collins that the district court decision should be reversed.

STATEMENT OF ISSUES

Conservation Colorado incorporates by reference the statement of issues presented by Fort Collins' opening brief.

STATEMENT OF CASE AND STANDARD OF REVIEW

Conservation Colorado incorporates by reference the statement of the case and standard of review presented by Fort Collins' opening brief.

INTRODUCTION

Fort Collins is one of many local governments in Colorado seeking to ensure that the health of their citizens and the environment are adequately protected in the face of a boom in unconventional oil and gas drilling. While numerous scientific studies are underway to better understand the air, water and public health impacts of drilling and hydraulic fracturing, major uncertainties currently exist that make it impractical to determine what measures are needed to provide a margin of safety. Fort Collins adopted a moratorium to provide breathing room to study those impacts before unconventional drilling and hydraulic fracturing move forward in the city. Conservation Colorado submits this brief to more fully describe the

uncertainty surrounding this issue and explain the benefits that the moratorium provides.

This brief also highlights several fundamental flaws in the district court's decision that, if affirmed, could adversely affect local communities and Conservation Colorado members across the state. First, the court's ruling that the moratorium is impliedly preempted by the Colorado Oil and Gas Conservation Act, C.R.S. § 34-60-101 et seq. (the Act or Oil and Gas Act), cannot be reconciled with controlling precedent. Colorado courts have repeatedly held that local oil and gas laws are only preempted where they operationally conflict with state laws.

Second, the district court's ruling that the moratorium operationally conflicts with state law should be reversed as legal error. The state interest is not in proceeding with oil and gas development as fast as possible, or in letting development occur on a schedule dictated by energy companies. Instead, the Act defines Colorado's interests as providing for efficient development that avoids the waste of oil and gas, and in balancing oil and gas development with protection of public health, safety, the environment and wildlife. See C.R.S. § 34-60-102(1). As a matter of law, there is no conflict between these state interests and a reasonable moratorium.

Third, the district court erred in finding an operational conflict without a fully-developed evidentiary record. There is no evidence in the record of any state permit or other approval that operationally conflicts with the Fort Collins moratorium. In fact, state records call into question whether any drilling or hydraulic fracturing would be occurring in Fort Collins even in the absence of the moratorium. The Court should reverse the district court's decision.

INTEREST OF AMICUS CURIAE

Conservation Colorado is a statewide grassroots organization made up of more than 8,300 members working to protect Colorado's air, land, water and people. Its mission is to protect Colorado's environment and quality of life by mobilizing people and electing conservation-minded policymakers. Conservation Colorado was formed in 2013 by the merger of Colorado Environmental Coalition and Colorado Conservation Voters. Many Conservation Colorado members live in communities where oil and gas wells have been drilled in residential neighborhoods and in close proximity to homes and schools. Many more of its members, including 272 members in Fort Collins, reside in cities and towns adjacent to heavily-drilled areas and where future oil and gas development presents a significant threat.

Conservation Colorado (including its predecessor organizations) has worked for years to minimize impacts from oil and gas drilling. It actively supported state legislation in 2007 that changed the makeup of the Colorado Oil and Gas Conservation Commission (the COGCC) and required that agency to update its regulations. In recent years Conservation Colorado also supported legislation to increase penalties for companies violating COGCC rules, as well as other (unsuccessful) bills that would have commissioned studies to better understand the impacts of hydraulic fracturing, improved groundwater monitoring at oil and gas sites, and further reformed the COGCC. Conservation Colorado also works actively at the state administrative level. It was a party to the 2008 COGCC rulemaking proceedings where the agency overhauled its rules to improve environmental protections. Since 2008, Conservation Colorado has continued to push for further reforms, including disclosure of hydraulic fracturing chemicals, increased setbacks between oil and gas wells and buildings, and reducing air pollution and methane leakage from oil and gas operations.

While strong state regulation is essential, minimizing impacts from drilling also requires robust local land use planning. Managing <u>where</u> polluting industrial activities occur – in which neighborhoods and at what distance from homes and schools – is often as important as <u>what</u> companies are allowed to emit under their

state permits. Moreover, county and municipal governments generally have a deeper knowledge of local conditions than do state agencies. As such, Colorado has long recognized that local land use regulation plays a central role in protecting the environment and preserving the quality of life in communities. C.R.S. §§ 29-20-102(1), 104(1).

Conservation Colorado members also have found that local governments often are more responsive to their constituents than state agencies like the COGCC. For example, the COGCC has tight deadlines for submittal of public comments and does not allow most citizens to appeal the issuance of drilling permits, regardless of how seriously the drilling would affect them. See Colo. Oil & Gas Conservation Comm'n v. Grand Valley Citizens' Alliance, 279 P.3d 646, 649 (Colo. 2012). These limitations contrast with the practice of local governments (and most other administrative agencies today), which allow extensive public involvement and provide broad appeal rights to adversely affected persons. In response to their constituents, many local governments also have supported a cautious approach seeking to ensure that public health and environmental impacts are better understood before unconventional oil and gas development proceeds on a large scale.

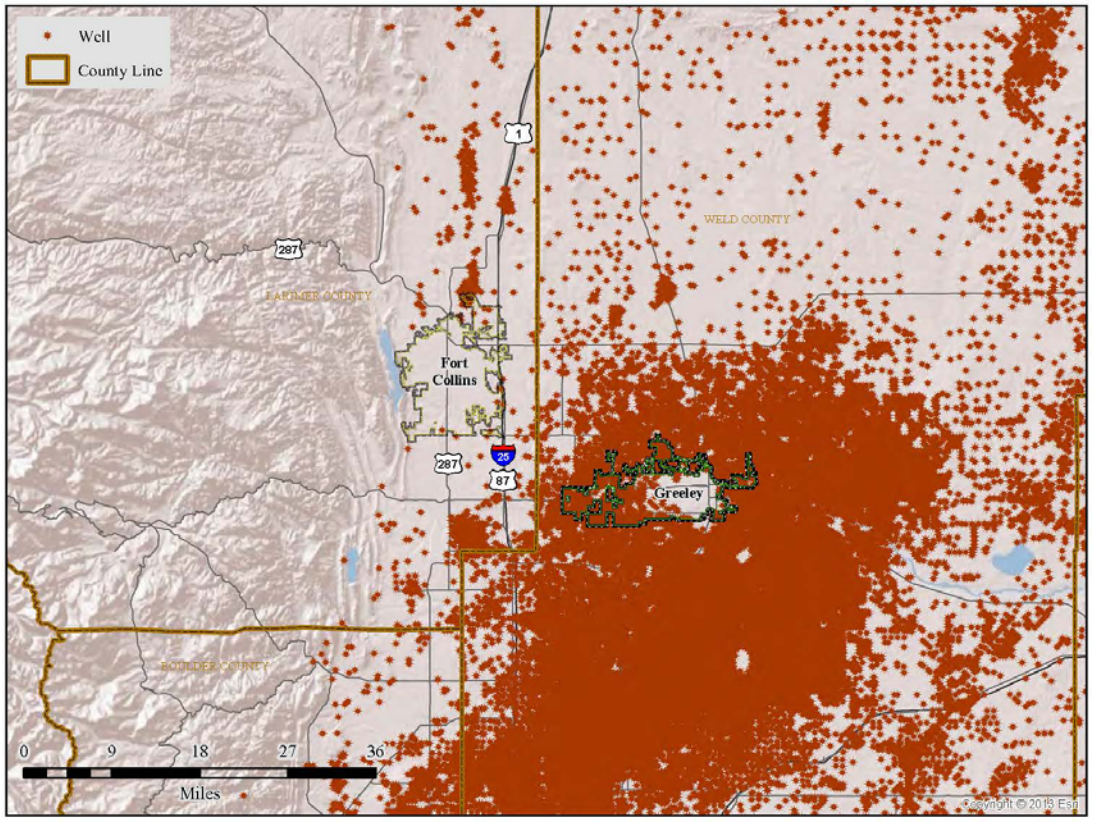
Conservation Colorado therefore submits this brief to support the right of local governments to adopt their own laws protecting the public health and environment in their communities – including adoption of moratoria.

BACKGROUND

I. The Boom In Unconventional Oil And Gas Development

In recent years, Colorado (like other parts of the country) has experienced a major boom in unconventional oil and gas development. There are currently more than 53,000 active oil and gas wells in Colorado, a figure that has doubled since 2006. Weld County, in northeastern Colorado, has been the epicenter of the drilling boom: more than 41 percent of the active wells (21,994) in the state are located there. Addendum 275 ¶ 14.

To date, the drilling boom has not reached Fort Collins. But the city lies just a few miles west of some of the most heavily-drilled areas of Weld County.



See Addendum 277.

Like people living in other towns near Weld County, residents of Fort Collins have sought to prepare for the potential spread of large-scale unconventional drilling to their community. Responding to the current boom presents unusual challenges for local governments. "Unlike previous oil and gas developments, the recent push has brought a large number of wells within close proximity to more heavily populated areas" in Colorado. Addendum 001. A 2013 study by the University of Colorado School of Public Affairs reported that "citizens and the local governments of communities who have not experienced the

activities associated with oil and natural gas drilling and extraction are often shocked by the impact the industry has on their day-to-day lives." Addendum 016. The nature and intensity of unconventional drilling – including its use of high-volume hydraulic fracturing – in close proximity to homes also raises numerous questions about public health and environmental impacts. These include air pollution (such as air toxics), contamination of groundwater and discharges to rivers and streams, and even earthquakes. See pp. 12-22, infra.

Researchers studying the impacts of oil and gas development have observed that local communities can be "overwhelmed" when an energy boom occurs. Addendum 020. As one study explained:

> Local governments are often caught unprepared by the waves of new growth and are at a disadvantage to mitigate potential growth problems. Some of these disa[d]vantages include a lack of information, growth volatility, lack of jurisdiction, conflict between long-term residents and new residents, resistance to new government policy or planning strategies, shortage of staff or expertise, and a lack of or lag in sufficient revenue.

Id. at 020-21 (emphasis omitted). Researchers who study the boomtown phenomenon recommend that communities develop planning and mitigation strategies in advance when oil and gas development is foreseeable. Id. at 022.

II. A Moratorium Is An Essential Tool In Planning For Development.

One of the necessary tools for land use planning is a moratorium (also known as interim development controls). The United States Supreme Court has described the moratorium as "an essential tool of successful development." Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 337-38 (2002). The court noted that "moratoria . . . are used widely among land-use planners to preserve the status quo while formulating a more permanent development strategy." Id. at 337. Similarly, the Colorado Supreme Court has explained that moratoria are an "essential tool" because they allow local governments to "preserve the status quo in a particular area while developing a long-term plan for development." Droste v. Board of County Comm'rs, 159 P.3d 601, 606 (Colo. 2007); see also Williams v. City of Central, 907 P.2d 701, 706 (Colo. App. 1995) (temporary moratoria "designed to maintain the status quo pending study and governmental decision making . . . . merely suspend the use to which the property may be put" while those studies are conducted).

A prominent treatise on zoning and planning observes that it is "general practice" for municipalities to issue moratoria pending the results of studies that, upon completion, will form the basis of the municipality's land use decisions. 4 Arden H. Rathkopf & Daren A. Rathkopf, Rathkopf's The Law of Zoning and

Planning § 69.15 (4th ed. 1988). This step provides a number of important public benefits. As the treatise explains:

> The purposes of the study might be completely frustrated if, while the study was being conducted and suggestions for change were being discussed, landowners could secure permits to build structures that might be nonconforming in height or bulk, or that might not provide the amount of off-street parking to be required under the new regulations, or that might be intended for uses which would be forbidden in locations to which the permits related.

Id.

Moreover, a moratorium gives the local government flexibility that avoids more restrictive controls on development:

> With the planning so protected, there is no need for hasty adoption of permanent controls in order to avoid the establishment of nonconforming uses, or to respond in an ad hoc fashion to specific problems. Instead, the planning and implementation process may be permitted to run its full and natural course with widespread citizen input and involvement, public debate, and full consideration of all issues and points of view.

Tahoe-Sierra, 535 U.S. at 338 n.33 (quoting Elizabeth A. Garvin & Martin L. Leitner, Drafting Interim Development Ordinances: Creating Time to Plan, 48 Land Use Law & Zoning Digest 3 (June 1996)).

Relatedly, "temporary development moratoria prevent developers and landowners from racing to carry out development that is destructive of the

community's interests before a new plan goes into effect. Such a race-to-development would permit property owners to evade the land-use plan and undermine its goals." Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency, 216 F.3d 764, 777 (9th Cir. 2000), aff'd, 535 U.S. 302 (2002), citing Garvin & Leitner. To the extent that communities are forced to abandon using moratoria, companies "have incentives to develop their property quickly before a comprehensive plan can be enacted, thereby fostering inefficient and ill-conceived growth." Tahoe-Sierra, 535 U.S. at 339.

In addition, a temporary moratorium provides "breathing room" that allows more public participation in the planning process. Tahoe-Sierra, 216 F.3d at 777. That involvement can ultimately benefit both the companies planning to develop and other citizens by helping to ensure the process is responsive to all of their concerns. Id.

For all of these reasons, Colorado courts have consistently recognized that temporary moratoria are central to local land use regulation. Courts uphold them "so long as the duration is reasonable" and the moratorium is nondiscriminatory and in good faith. Williams, 907 P.2d at 706; see also Droste, 159 P.3d at 607 (state statute authorizes local governments to adopt moratoria of "reasonable" duration).

III. Why Fort Collins Called A "Time Out"

Fort Collins imposed a moratorium so that it could address numerous unanswered questions about unconventional oil and gas development and hydraulic fracturing. Because hydraulic fracturing came into widespread use in populated areas only over the past few years, many uncertainties remain about how this heavy industrial activity affects residents living in close proximity to it.[1] Those data gaps make it especially difficult for communities to determine what measures are necessary to adequately protect public health and the environment. The Union of Concerned Scientists observes that "the pace of growth is driving many communities to make decisions without access to comprehensive and reliable scientific information about the potential impacts of hydraulic fracturing on their local air and water quality, community health, safety, economy, environment, and overall quality of life." Addendum 034. Other researchers have described the

[1] Hydraulic fracturing has become a major controversy in part because its use has led oil and gas companies to begin to operate within heavily populated areas of Colorado. Hydraulic fracturing facilitates recovery of oil and gas from "unconventional" formations (often impermeable shale formations like the Niobrara), which, until recently, were otherwise too expensive to develop. Appellee Colorado Oil and Gas Association recognizes the connection between hydraulic fracturing and the current boom, even claiming that a moratorium on hydraulic fracturing is "for all intents and purposes, a moratorium on all oil and gas development." Addendum 031.

growth of unconventional oil and gas development as "an uncontrolled health experiment on an enormous scale." Addendum 267.

Fort Collins called a time out to avoid making such uninformed decisions. Its 2013 ballot initiative imposed a moratorium on hydraulic fracturing and related waste storage "in order to fully study the impacts of this process on property values and human health." Appeal Record (Rec.) 120 § 3. For example, the initiative noted that the State of Colorado was expected to conduct "a health impact assessment to assess the risks posed by hydraulic fracturing and unconventional oil and gas development." Id. § 2.

A. Uncertainty About The Impacts Of Hydraulic Fracturing And Unconventional Drilling

The State of Colorado has repeatedly acknowledged the need for more information about the safety of hydraulic fracturing and unconventional oil and gas development. In 2014, the Colorado Department of Public Health and Environment (CDPHE) observed that "[m]ajor uncertainties" exist about the public health impacts of unconventional oil and gas development, and that research is needed to determine the threat posed. Addendum 053. CDPHE stated that "comprehensive" studies are "underway in Colorado to fill this data gap" and that "it is important for COGCC and other stakeholders to continue to explore methods

for filling the critical data gaps on . . . health impacts from oil and gas activities." Id. at 054.[2]

Similarly, the COGCC in 2012 acknowledged that its rules governing setbacks between oil and gas operations and buildings did not attempt to provide an adequate buffer for protection of human health. Instead, the agency stated that it "believes that there are numerous data gaps related to oil and gas development's potential effect on human health and that such data gaps warrant further study." Rec. 273; see also Addendum 064 (2008 statement by COGCC recognizing "significant" data gaps on air quality and public health impacts where oil and gas development occurs in "close proximity to residential developments").

The State of New York has recognized the same uncertainty. In late 2014, after an extensive public health review, the New York State Department of Health reported that "there are significant uncertainties about the kinds of adverse health outcomes that may be associated with [hydraulic fracturing], the likelihood of the occurrence of adverse health outcomes, and the effectiveness of some of the mitigation measures in reducing or preventing environmental impacts which could

[2] CDPHE also noted that while only "three published population-based epidemiological studies" have addressed the potential health impacts of oil and gas development, two of them "reported significant associations between health outcomes and proximity to oil and gas-related facilities." CDPHE, however, viewed these studies as having "significant limitations." Addendum 054.

adversely affect public health." Addendum 073. New York acknowledged that "[a]s with most complex human activities in modern societies, absolute scientific certainty regarding the relative contributions of positive and negative impacts of [hydraulic fracturing] on public health is unlikely to ever be attained." Id. The report concluded, however, that currently-available scientific information is insufficient "to determine . . . whether the risks can be adequately managed." Id. It determined that the level of uncertainty was great enough that hydraulic fracturing should not be permitted in New York. Id. Similarly, Scotland in January 2015 imposed a moratorium on unconventional oil and gas development pending further research such as a public health assessment, and the consideration of tighter environmental regulations. Addendum 271-73.

Apart from its novelty, several factors contribute to the scientific uncertainty around hydraulic fracturing. For example, the oil and gas industry is exempt from a number of federal environmental laws that would otherwise require the collection of data that could inform public health research. These statutory exemptions include the Toxics Release Inventory, the Safe Drinking Water Act's Underground Injection Control Program, and the Resource Conservation and Recovery Act. Addendum 085.

In addition, anecdotal reports indicate that when oil and gas companies pay landowners for damages associated with water contamination, soil degradation, illness, or death of livestock, the companies frequently insist on non-disclosure agreements. These non-disclosure agreements have the effect of obscuring data sources and hiding evidence of environmental damage. Addendum 085, 086-87.

Moreover, efforts to close the research gaps often have been delayed by "fierce opposition" from industry trade associations like Plaintiff-Appellee Colorado Oil and Gas Association (COGA). Addendum 055-58, 089-92. For example:

- Fort Collins adopted its moratorium with the understanding that the State of Colorado planned to conduct a health impact assessment. See p. 13, supra. But in 2014, state legislation that would have required such a study into the health and quality-of-life impacts of oil and gas production along Colorado's Front Range failed in the face of industry opposition. According to news reports, COGA opposed the bill because of concerns that the study (which would have been conducted by the CDPHE) "would have a political bent." Rec. 283. State legislation to review the health risks of drilling also failed in 2013. Addendum 093-94.

- A 2010 draft assessment commissioned by Garfield County, Colorado and conducted by the Colorado School of Public Health predicted that extensive new drilling within a neighborhood could result in small increases in risks of cancer, headaches and lung ailments. Addendum 103-122. Following objections from COGA and other industry members, the County terminated the study in 2011. Addendum 096-102.
- In 2011, the United States Environmental Protection Agency (EPA) investigated complaints of hydraulic fracturing-related groundwater contamination in Pavilion, Wyoming. In December of that year, the agency released initial results finding contamination of drinking water wells "consistent with gas production and hydraulic fracturing fluids." Addendum 123, 125. The industry responded with heated criticism. Addendum 089-92. EPA subsequently discontinued its study and allowed the State of Wyoming to take over the investigation. Wyoming's study is being funded by the company accused of causing the contamination. Addendum 136-38; see also Addendum 089-92, 125, 127-32.
- In 2012 and 2013, EPA dropped other investigations in Dimock, Pennsylvania and Parker County, Texas where agency staff had identified

groundwater contamination linked to oil and gas drilling. Addendum 055-58.

- At Congress's direction, EPA in 2010 initiated a study to assess the potential impacts of hydraulic fracturing on drinking water sources and public health. Addendum 141-42. Initial results from that study were originally scheduled to be released in 2012. Addendum 161. EPA has delayed the study multiple times and the agency now says it expects it to be completed in 2016. Addendum 162.
- According to a 2013 news report, "[EPA] officials acknowledge that fierce pressure from the drilling industry and its powerful allies on Capitol Hill – as well as financial constraints and a delicate policy balance sought by the White House – is squelching their ability to scrutinize" the effects of oil and gas drilling. Addendum 089.

With the industry actively delaying federal and state research, localities like Fort Collins recognize the need to enact moratoria while other researchers conduct the necessary studies.

B. Numerous Studies Are Underway To Better Understand The Impacts of Hydraulic Fracturing.

Despite the delays, a growing body of research has begun to develop that will help inform Fort Collins' planning. A survey in January 2015 reported that "there has been a surge of peer-reviewed scientific papers published in recent years. . . . In fact, of all the available literature on the impacts of shale gas development, over 75% has been published since January 1, 2013." Addendum 166.[3] This survey indicated that the number of peer-reviewed publications doubled between 2011 and 2012 and then doubled again between 2012 and 2013. In 2014 alone, 173 studies were published. Id. The survey found that while "many data gaps remain," the large majority of studies to date "indicated negative impacts of shale and/or tight gas development" involving public health, air pollution, water pollution, or other impacts. Id. at 166, 172-76. As one news report observed nationally, "the science is far from settled, but there is a growing body of research to consider." Addendum 185.

Fort Collins' moratorium allows the City to use this new research to ensure that future oil and gas development is managed with an adequate margin of safety for public health and the environment. The studies will help Fort Collins better assess how large buffer zones should be between homes and oil and gas wells, how

[3] See also http://www.psehealthyenergy.org/site/view/1180 (survey database).

great a risk toxic air pollution from oil and gas wells poses (and at what distances), and the extent to which lakes, streams and groundwater are threatened by nearby drilling. For example:

- In early 2015, the National Institutes of Health released preliminary study results finding that for households with a ground-fed water supply, proximity of natural gas wells may be associated with skin and respiratory conditions in residents living within a kilometer of natural gas extraction activities. Addendum 189-94.
- A 2014 study by the Colorado School of Public Health and Brown University examined babies born in rural Colorado locations. It found that for women who lived within ten miles of gas wells, certain birth defects were associated with a higher density of natural gas development. For instance, it reported that babies born to mothers who lived in areas dense with gas wells were 30 percent more likely to have congenital heart defects. While this study did not attempt to establish a causal relationship, it concluded that further investigation was warranted. Addendum 195-204.
- In 2013, two peer-reviewed studies were released from Colorado. One found that even after remediation, more than half of oil and gas spill sites still showed elevated levels of benzene, which is a known carcinogen. The

other study found higher estrogenic, anti-estrogenic, or anti-androgenic activities near gas operations. Addendum 206.

- In May 2014, the University of Colorado released a research study finding substantial leaks of benzene (an air toxic) from oil and gas operations in northeast Colorado. The study determined that benzene emissions from oil and gas activities were seven times higher than previous estimates by state and federal agencies. Addendum 207-08.
- Colorado State University researchers are studying emissions of toxic air pollutants, and ozone (smog) forming air pollution, from oil and gas wells in Garfield County, and assessing how those emissions disperse downwind of the wells. This study, which is funded by the county and several oil and gas companies, is scheduled to be completed later this year. Addendum 217-236.
- Colorado State has also begun a similar study of air pollution emissions from oil and gas sources on the Front Range. That study is expected to be completed in late 2016. Id.
- EPA is conducting "a comprehensive research study to investigate the potential adverse impact that hydraulic fracturing may have on water quality and public health." Addendum 141. While that study has been

repeatedly delayed, it is now expected to be completed in 2016. See p. 18, supra.

- As noted by Fort Collins, a number of other studies related to oil and gas development are ongoing and may yield relevant results between now and 2018. These include research sponsored by several different federal and state agencies. Rec. 291, 296-97.
- Fort Collins itself is working to study the impacts of hydraulic fracturing on human health and property values in the city. Rec. 291, 298-99.

As this research suggests, "the scientific community is only now beginning to understand the environmental and public health implications" of unconventional oil and gas development. Addendum 166. These new and ongoing studies illustrate the reasonableness of Fort Collins' decision to call a time out before hydraulic fracturing proceeds in the city.

DISCUSSION

In the district court, COGA did not argue that Fort Collins' decision to call a "time out" was arbitrary or unreasonable in light of the numerous uncertainties about the impacts of hydraulic fracturing. Instead, COGA argued that the moratorium was preempted by state law.

In Colorado, a state statute can preempt a local law in three ways: (a) through the express language of the state law; (b) by "implied preemption," where the legislature intends to "completely occupy a given field" and allow no role for local regulation; and (c) through operational conflict preemption, where a local law is partially preempted if its operation conflicts with the application of state law. Board of County Comm'rs v. Bowen/Edwards Associates, Inc., 830 P.2d 1045, 1056-57 (Colo. 1992). Operational conflict arises where application of a local law "materially impede[s] or destroy[s] the state interest." Id. at 1059.

The Colorado Supreme Court has held that local oil and gas regulations are not expressly or impliedly preempted by the state Act, but rather are subject only to operational conflict preemption. Id. at 1057-59; Voss v. Lundvall Bros, Inc., 830 P.2d 1061, 1066 (Colo. 1992).[4] Moreover, the COGCC regulations themselves state that local laws are preempted only to the extent they operationally conflict with state requirements. 2 C.C.R. 404-1, Rule 201.

Despite this law, the district court erroneously ruled that the Act impliedly preempts the Fort Collins moratorium. Rec. 501-502. The court also mistakenly

[4] The Act expressly preempts local laws in two circumstances, neither of which applies here. See C.R.S. §§ 34-60-106(15) (precluding certain local government inspection charges), 34-60-106(17)(a) (COGCC has exclusive authority to regulate closures of underground natural gas storage caverns).

found that the moratorium created an operational conflict with state law. Id. at 503. The district court decision should be reversed.

I. The Act Does Not Impliedly Preempt Local Land Use Regulation.

The district court erred in finding that the Act impliedly preempted Fort Collins' moratorium. The Colorado Supreme Court and Court of Appeals have repeatedly ruled that the Act does not impliedly preempt local oil and gas regulations – even where those regulations ban all drilling. Bowen/Edwards, 830 P.2d at 1057-59; Voss, 830 P.2d at 1066; Town of Frederick v. N. Am. Res. Co., 60 P.3d 758, 763 (Colo. App. 2002); see also La Plata County v. Colo. Oil & Gas Conservation Comm'n, 81 P.3d 1119, 1123 (Colo. App. 2003).

The district court nevertheless found implied preemption because Fort Collins' moratorium "substantially impedes the state's significant interest in oil and gas development and production." Rec. 502. Whether regulations "substantially impede" or "materially impede" state purposes is, however, the test for operational conflict, rather than implied preemption. See Bowen/Edwards, 830 P.2d at 1059 (operational conflict arises when local regulation "materially impede[s]" state interest). The district court simply applied the wrong standard when finding implied preemption.

In support of its implied preemption holding, the district court cited the Supreme Court's Voss decision. Voss, however, holds exactly the opposite. In Voss, the court addressed a permanent ban on all drilling in the City of Greeley, and rejected a lower court holding that "there is no room whatever for local land-use control" under the Oil and Gas Act. 830 P.2d at 1069. The Supreme Court explained that "[t]he state's interest in oil and gas activities is not so patently dominant over a county's interest in land-use control . . . as to eliminate by necessary implication any prospect for a harmonious application of both regulatory regimes." Id. at 1068 (quoting Bowen/Edwards, 830 P.2d at 1058). Instead of finding the Greeley ban impliedly preempted (as the lower court had held), the court applied an operational conflict analysis: "we must analyze Greeley's total ban on drilling against the state regulatory scheme to determine if the Greeley ordinances conflict with the state interest . . . ." 830 P.2d at 1066. Voss makes clear that when analyzing local regulations and the Oil and Gas Act, operational conflict preemption applies – not implied preemption.

The Supreme Court's 2009 decision in Colorado Mining Association v. Summit County, 199 P.3d 718 (Colo. 2009), confirms that Voss found only an operational conflict:

> We concluded in Voss that a home rule city's ban against drilling would contravene the state's interest in efficient development of oil and gas resources. . . . In holding that the state's interest took precedence over the local ban, we took care to emphasize that local land use regulations could be consistent with the Oil and Gas Conservation Act if the local and state regulations could be harmonized.

Id. at 730 (emphasis added). The Summit County decision went on to say that "[a]s shown by Voss . . . local ban ordinances that conflict with state statutes in an overlapping field of regulation are subject to preemption." Id. at 724 (emphasis added). Had Voss involved implied preemption (also called "field" preemption), there would have been no room at all for "overlapping" fields of state and local regulations – instead, the state would have completely occupied the field. As Summit County recognized, Voss instead ruled that local oil and gas land use regulations are only preempted to the extent they conflict with overlapping state regulations. Id.

The district court appears to have believed that bans are subject to implied preemption, while all other local land use laws are reviewed only for operational conflict. See Rec. 502 (finding implied preemption because "the Ordinance does not attempt to exercise any land-use authority that is harmonious with the Act. The [Ordinance] is a total ban.") This distinction does not withstand scrutiny because implied preemption turns on the area of regulation and the legislature's intent – not

the details of the local law. By definition, implied (or "field") preemption applies where the legislature intends to "completely occupy a given field by reason of a dominant state interest." Bowen/Edwards, 830 P.2d at 1056-57 (emphasis added); see also Board of County Comm'rs v. BDS Int'l LLC, 159 P.3d 773, 778 (Colo. App. 2006) (implied preemption occurs where "legislative intent is to occupy completely a given field"). In Bowen/Edwards, the Supreme Court held that the Colorado legislature had no intent to completely occupy the field of regulation for oil and gas development. 830 P.2d at 1058-59. Given that conclusion, local government's land use authority over oil and gas development is not impliedly preempted – regardless of the specific measures involved. Instead, Colorado courts analyze local limits on oil and gas development for operational conflict with the state Act.

II. The District Court Erred In Striking Down Fort Collins' Moratorium On The Basis Of An Operational Conflict With State Law.

Under the operational conflict standard, a local oil and gas regulation can be "partially preempted" to the extent its operational effect "conflicts with the application of the state statute or state regulations." Bowen/Edwards, 830 P.2d at 1059. Operational conflict preemption can result where "the effectuation of a local interest would materially impede or destroy the state interest." Id. But "[a]ny determination that there exists an operational conflict . . . must be resolved on an

ad-hoc basis under a fully developed evidentiary record." Id. at 1060. And while the Supreme Court in Voss ruled that a permanent ban on all drilling created such an operational conflict, the Voss Court nevertheless held that local laws must be given effect to the extent they can be "harmonized" with the application of state law. 830 P.2d at 1068-69.

The district court erred in finding an operational conflict. First, as a matter of law, a moratorium of reasonable duration does not result in an operational conflict because delay alone does not impede the state's interests. Second, there is no evidence in the record that a conflict actually exists between the Fort Collins moratorium and the operation of the state Act. Without a showing that the moratorium has the effect of impeding any state interest related to oil and gas development, there was no basis for the district court's ruling.

A. As A Matter Of Law, A Reasonable Moratorium Does Not Operationally Conflict With The Act.

Local governments have authority to adopt moratoria that last a "reasonable period of time." Droste, 159 P.3d at 607; Williams, 907 P.2d at 706. As a matter of law, there is no conflict between such a moratorium and the state's interests under the Act.

A moratorium does not preclude future mineral development: it merely "preserve[s] the status quo" so that local governments can adequately plan for that

development. Droste, 159 P.3d at 606. The state's interest is not in ensuring that oil and gas development occurs as quickly as possible, or on a schedule dictated by energy companies. As a division of this Court recognized in Frederick, "although the Town's [permitting] process may delay drilling," that delay alone did not "materially impede or destroy the state's interest" related to oil and gas development. 60 P.3d at 766.

1. The state's interests under the Act are not impeded by a reasonable delay in drilling.

The Act makes clear that its purpose lies in efficient oil and gas development that is protective of public health and the environment. The legislative declaration of the Act describes the following state interests:

(a) Fostering "balanced development, production and utilization" of oil and gas while protecting "public health, safety, and welfare, including protection of the environment and wildlife resources;"

(b) Preventing "waste in the production and utilization of oil and gas;"

(c) Protecting the "correlative rights of owners and producers in a common source or pool of oil and gas;"[5] and

(d) "Plan[ning] and manag[ing] oil and gas operations in a manner that balances development with wildlife conservation . . . ."

[5] "Correlative rights" refer to the ability of an owner or producer "to obtain and produce his just and equitable share of the oil and gas underlying" a common pool or supply of oil and gas. C.R.S. § 34-60-103(4).

C.R.S. § 34-60-102(1)(a). These state goals are entirely consistent with (and sometimes require) delaying or slowing down oil and gas development.

The state goals of preventing waste of oil and gas and protecting mineral owners from harming the correlative rights of other owners in that same pool (interests (b) and (c)) do not conflict with Fort Collins' decision to call a time out. First, there is no evidence that oil and gas will be wasted during the moratorium, or that any correlative rights will be harmed by a delay.

More broadly, slowing the pace of oil and gas development does not conflict with these state interests. In fact, one of the central goals of state oil and gas regulation is to control drilling in order to prevent the waste of oil and gas that results from the industry's rush to develop. As one commentator explained more than forty years ago:

> The process of unregulated development and exploitation of petroleum deposits tends to be a race for possession by competitive operators. The results are dense drilling, especially along property lines . . . rapid dissipation of reservoir pressure [and] loss of ultimate recovery. [In addition,] production of oil and gas may outrun the construction of pipelines and gas processing facilities, so that oil . . . must be stored in makeshift tanks, or open pits, where it is subject to loss through leakage, overflow, fire, and evaporation, and gas must be vented or flared as produced. The density of activity and the haste to complete wells and get oil to the surface [in unregulated

> development] also increase the likelihood of damages external to the industry.[6]

Many of those problems continue to exist today. One prominent commentator observed that the waste of oil and gas and other impacts associated with the race to drill "are present with the current development of oil and natural gas from shale formations." Addendum 245 n.24. For example, companies in North Dakota and other states are drilling for oil without waiting for construction of pipelines and processing facilities to manage the natural gas found with the oil. As a result, enormous quantities of valuable natural gas are being vented to the atmosphere or burned off ("flared") in those oilfields. Id.; see also Addendum 265-66 (North Dakota aims to reduce natural gas flaring).

In Colorado, the COGCC seeks to prevent waste and protect correlative rights using a variety of mechanisms that often limit the amount of drilling and the

[6] Stephen L. McDonald, Petroleum Conservation in the United States (Resources for the Future 1971), quoted in Bruce M. Kramer, Pooling and Unitization: An Historical Perspective and an Introduction to Basic Vocabulary in 1 Federal Onshore Oil & Gas Pooling & Unitization, Paper No. 1, at *1-5, (Rocky Mountain Mineral Law Foundation 2014) (Addendum 245). This race for possession has been attributed to the "rule of capture" that governed oil and gas rights. The "rule of capture" meant that the owner of a tract of land acquires title to the oil and gas he produces from the wells drilled on that land, including oil and gas that migrated from other lands. Id.; see also INB Land & Cattle, LLC v. Kerr-McGee Rocky Mountain Corp., 190 P.3d 806, 808 (Colo. App. 2008) ("Colorado has recognized the common law rule of capture."). Thus, in the absence of state regulation controlling well development, a property owner could lose the oil and gas under his land because his neighbor is drilling, a process called "drainage."

pace of development. See, e.g., C.R.S. § 34-60-106(3)(a) (COGCC has authority to "[l]imit the production of oil or gas . . . from any pool or field for the prevention of waste," to protect correlative rights and to prevent drainage).[7] As one commentator observed, "Often it is advisable for a reservoir of oil and gas to be developed on a basis that restricts both the number of wells drilled and the rates of production on those wells" because doing so will prevent waste and ultimately result in more efficient production. 1B Krendl & Krendl, Colo. Methods of Practice § 14:2. Fort Collins' decision to slow the pace of oil and gas development presents no inherent conflict with these state interests.

[7] While the COGCC has authority to limit production to prevent waste or protect correlative rights, C.R.S. § 34-60-106(3)(a), the Act does not permit "market demand proration" of production. In market demand proration, the state addresses an excess in supply of oil and gas by requiring that each operator in the state make a "pro rata cutback in his allowable production so that all owners proportionately share the lack of market." 1B Cathy Stricklin Krendl & James R. Krendl, Colo. Methods of Practice § 14.4 (6th ed. 2005); see also Stephen L. McDonald, Prorationing of Natural Gas Production: An Economic Analysis, 57 U. Colo. L. Rev. 153, 159-60 (1986) (market demand prorationing "assure[s] a share in the market for oil and gas" to all producers). Colorado's Act expressly precludes such proration, stating that "it is not the intent nor the purpose of [the Act] to require or permit the proration or distribution" of oil and gas production statewide "on the basis of market demand." C.R.S. § 34-60-102(1)(b); see also C.R.S. § 34-60-119 (no proration of production allowed). The Act makes clear, however, that production may be limited to advance the other state interests discussed above: it states that each pool may "produce up to its maximum efficient rate of production, subject to the prevention of waste, consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources . . . ." C.R.S. § 34-60-102(1)(b) (emphasis added).

The lack of any conflict is even more apparent for the state's interests in balancing oil and gas development to protect "public health, safety, and welfare, including protection of the environment and wildlife resources" (interests (a) and (d)). The Fort Collins moratorium aims to do the same thing. In fact, the ballot initiative expressly stated that "the best way to . . . ensure the 'protection of public health, safety, and welfare, including protection of the environment and wildlife resources'," is to call a time out "in order to fully study the impacts" of hydraulic fracturing. Rec. 120 § 3.

Colorado law does not require local governments to leave the advancement of these interests solely to the state. In BDS, a locality adopted oil and gas rules addressing issues that also were covered by COGCC regulations, such as protection of water quality, livestock, wildlife and vegetation, as well as prevention of soil erosion, wildfires and geological hazards. A division of this Court ruled that local requirements promoting the same interest as state rules "are not, on their face, contrary to state law." 159 P.3d at 780-82; see also Bowen/Edwards, 830 P.2d at 1059-60 (similar).[8]

[8] COGCC regulations acknowledge that involvement by local governments – which have more detailed knowledge and understanding of specific local conditions – is necessary to effectively protect public health and the environment. For example, the state requires that companies seeking to drill consult with local governments and makes them participants in the development of large-scale

While permanent local regulations on oil and gas development can potentially create an operational conflict if they impose terms that are inconsistent with COGCC requirements, such a risk does not exist here. Rather than adopting new regulations to mitigate environmental threats, Fort Collins has merely called a time out so it can study those threats. On its face, that delay does not operationally conflict with the Act. Frederick, 60 P.3d at 766.

2. The district court erred in equating a moratorium with a permanent ban.

The district court should have reviewed the moratorium only to determine whether its duration is "reasonable." See Droste, 159 P.3d at 607. Instead, the district court based its preemption ruling on the view that a moratorium equates to "a total ban" on hydraulic fracturing. Rec. 502-503 (finding that "the preemption analysis does not change [between a moratorium and a permanent ban]. A city ordinance is preempted by state law regardless of how long that ordinance has legal effect"). This premise has no support in Colorado law. Temporary moratoria "are not subject to the same degree of judicial scrutiny as are permanent regulations" under Colorado law. Williams, 907 P.2d at 706.

"geographic area" plans for development. 2 C.C.R. 404-1, Rules 306.b, 513.c. Local governments also are among the limited categories of entities who can appeal the approvals of drilling permits. Id. Rule 503.b.7.

The district court failed to cite a single Colorado case supporting its view that a moratorium can be equated with a permanent ban. Rec. 498.[9] The court relied on two Colorado Supreme Court cases involving permanent bans – Voss and Summit County – but it ignored the Supreme Court's Droste decision upholding a local moratorium. 159 P.3d at 607-08. In ruling that a state planning statute "does not conflict with, preempt, or control the local government's necessarily implied authority to adopt a reasonable moratorium," Droste did not even mention the court's earlier Voss decision striking down a permanent ban. Id. at 608 (emphasis added).[10]

The district court's reasoning also conflicts with Colorado oil and gas precedent. According to the district court, a moratorium is preempted for the same reason as a ban because it temporarily "prohibits what state law allows" and for the duration of the moratorium "substantially impedes the state's significant interest"

[9] The district court cited three out-of-state cases from New Jersey, Georgia and California that applied a preemption analysis to local moratoria. Rec. 498. Those cases, however, found express or implied preemption of an entire field under statutory schemes far different than the Oil and Gas Act. As noted above, the Act does not expressly or impliedly preempt local land use authority. None of the three cases address the question of whether a moratorium should be treated like a permanent ban when assessing whether an operational conflict exists. And the California case upheld the local moratorium against a preemption challenge. City of Claremont v. Kruse, 177 Cal. App. 4th 1153 (Cal. Ct. App. 2d Dist. 2009).

[10] Similarly, the Supreme Court's 2009 Summit County decision did not analyze or distinguish Droste.

in oil and gas development. Rec. 501-02. Under this approach, however, any local law that prevents a company from drilling for any time period – whether five years or five weeks – would be treated like a permanent ban on development.

Colorado courts have squarely rejected this result. As noted above, a division of this Court upheld a local permitting requirement for oil and gas operations despite the delays that it required. Frederick, 60 P.3d at 764. And the Colorado Supreme Court rejected a facial challenge to county rules that required planning-commission approvals and other types of approval processes for oil and gas facilities. Bowen/Edwards, 830 P.2d at 1060-61. Those permitting processes necessarily involve months of delay that temporarily prohibit what state law allows, but they represent an entirely reasonable exercise of local land use authority. As the United States Supreme Court has observed, there is no reason "why moratoria should be treated differently from ordinary permit delays." Tahoe-Sierra, 535 U.S. at 337 n.31.

The district court erred in equating a moratorium with a permanent ban. As a matter of law, a moratorium of reasonable duration cannot operationally conflict with the Act because a delay in drilling does not impede any state interests. This Court should reverse and remand the case for the district court to determine whether the duration of Fort Collins' moratorium was "reasonable." Droste, 159

P.3d at 607. For the reasons stated above, Conservation Colorado believes the law should pass that test. Pp. 9-22, supra.

B. There Is No Evidence That The Operation Of The Moratorium Conflicts With Any COGCC Orders Or Permits.

The district court also erred in finding an operational conflict without a fully-developed evidentiary record. The court held that Fort Collins' law was preempted because it "conflicts with the application of the Act" and "prohibits what the Act expressly authorizes [the state COGCC] to permit." Rec. 502.

The problem with this holding is that there was no evidence the COGCC had permitted anything that conflicted with the Fort Collins law or that it will do so during the life of the moratorium.[11] The district court record did not show that any permits to drill had been issued in Fort Collins, or even applied for, when the moratorium was adopted. A review of COGCC records indicates that the same is true today. Addendum 274 ¶¶ 3, 5-6. COGA itself acknowledged in October 2014 that "no oil and gas drilling is imminent" in Fort Collins. Rec. 570.

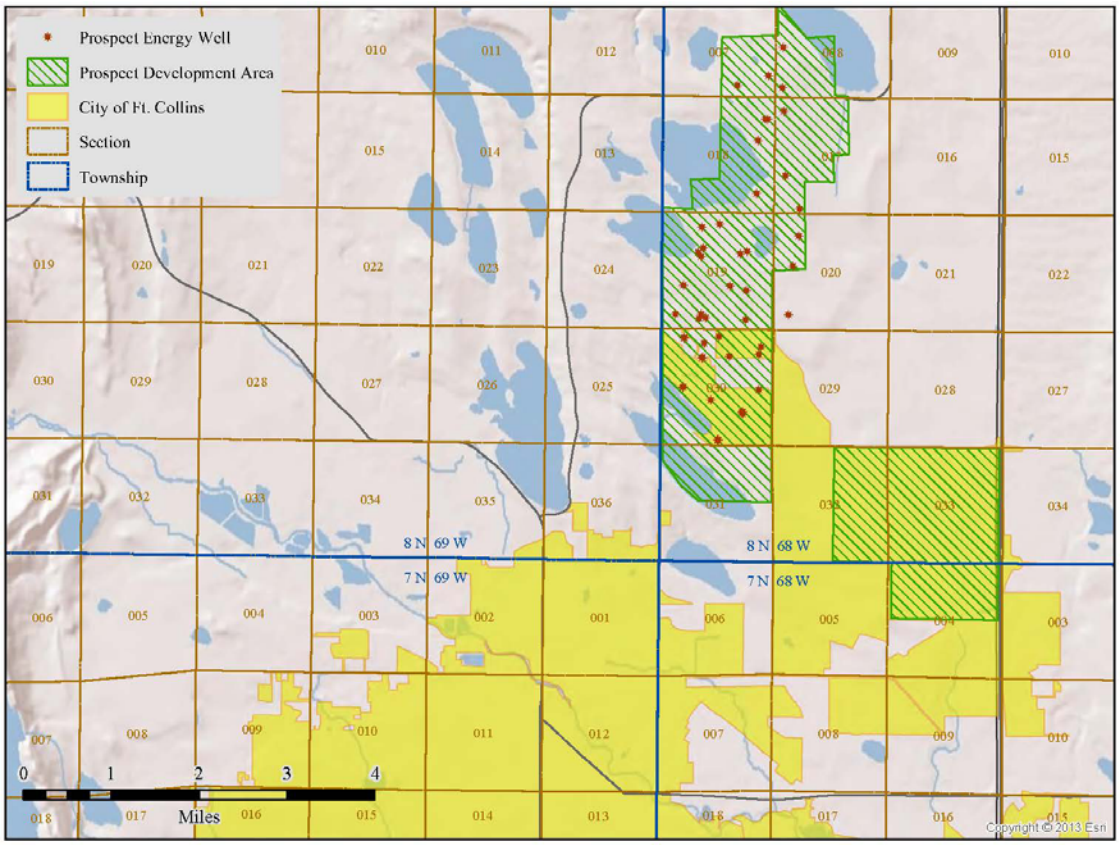
[11] The court's holding also misstates the applicable standard. The operational conflict test does not preclude all conflicting or different local laws – it only preempts those operational conflicts that "materially impede or destroy the state interest" and cannot be harmonized with the state law. See La Plata County, 81 P.3d at 1125 (invalidating state regulation that purported to preempt "any conflicting" local requirements because it had a "much broader meaning than 'operationally conflicting'"); see also Frederick, 60 P.3d at 765 (rejecting prohibit-authorize test because Bowen/Edwards operational conflict standard governs).

Fort Collins adopted the moratorium because it wanted breathing room to better understand the impacts of unconventional oil and gas development before it commenced on a large scale in the city. But subsequent events show that the market for oil and gas is providing that breathing room on its own. As noted above, Larimer County (where Fort Collins is located) lies just outside the area of northeastern Colorado facing the unconventional drilling boom. See map, p. 7, supra. In adjacent Weld County, the COGCC approved nearly 2,500 drilling permits in 2013, and more than 2,000 permits in 2014. By contrast, only two drilling permits were approved in all of Larimer County in 2013, and only four permits there in 2014. Addendum 275 ¶¶ 7-8. County-wide, only four new wells were drilled in Larimer County in 2013, and one in 2014. Id. ¶ 10 (well starts). Given these figures, the record does not show that Fort Collins' moratorium is materially impeding oil and gas development. Cf. Frederick, 60 P.3d at 760, 765-66 (finding certain local requirements preempted where COGCC had already issued permit to drill).

Moreover, since Fort Collins called its time out, the "bust" phase of the industry's boom and bust cycle appears to have hit Colorado. In 2014, the price of oil dropped steeply. Addendum 269-70. New applications for drilling permits have already started to decline statewide, Addendum 275 ¶ 11, and news reports

indicate that broader production cuts and layoffs are coming soon in the oil and gas industry. See Addendum 269-70 (Federal Reserve Survey reports a quarter of companies planning "significant" layoffs, and most plan to cut capital spending). This market downturn makes it increasingly unlikely that Fort Collins' time out will actually affect any development.

Even before the downturn, only one company had begun exploring in Fort Collins. That company, Prospect Energy, works in an area that is largely north of and outside the city limits. Addendum 274 ¶ 2.



See Addendum 276.

Prospect has no pending applications for permits to drill within the city limits. COGCC records also show that Prospect has not filed any applications to drill wells outside the City limits. Addendum 274 ¶ 3. Nor has Prospect been hydraulically fracturing wells in the area. According to the FracFocus database, the last time Prospect hydraulically fractured a well inside the Fort Collins city limits was in April 2011 – fully 2 ½ years before the moratorium was passed. Id. ¶ 5. Even outside of Fort Collins, Prospect has not fractured a well anywhere in Larimer County since October 2012 (a year before Fort Collins adopted its moratorium). Id.

Even if Prospect were to seek approval for drilling during the life of the moratorium, the record does not support the district court's assumption that it could not be harmonized with the moratorium. Companies in northeastern Colorado routinely drill well bores that extend up to two miles horizontally from the surface location where the drilling rig is located. Addendum 275 ¶ 13. Prospect operates at least 21 oil and gas sites that are outside of Fort Collins but lie within a mile of the city limits. Addendum 274 ¶ 4. While the summary judgment record before the district court is very limited, it may be entirely feasible for Prospect to reach the minerals it wants to develop inside the city by drilling

horizontal wells from its existing locations outside the city limits.[12] Such an approach could harmonize Fort Collins' exercise of its land use authority with any state interest in oil and gas development. Without a fully-developed evidentiary record on this option, the Court cannot assume that an operational conflict exists.

Finally, the district court also found an operational conflict based on an operator agreement between the City and Prospect that the court believed was due to expire in 2018, shortly before the scheduled end date of the moratorium. Rec. 502-503 ("This situation creates an operational conflict between what Prospect Energy contracted for, as permitted by state law, and what the five-year ban prohibits"). This finding was simply mistaken: while the initial term of the agreement lasts five years, the agreement also provides that it will automatically renew for another five-year term unless a party terminates it. Rec. 314. The

[12] The Fort Collins moratorium language applies to surface land use activities within the City, but does not specify whether it also applies to subsurface well bores. In interpreting the ordinance, this Court has an obligation to harmonize it with state law if possible, and to interpret the law in a manner that upholds its constitutionality. Droste, 159 P.3d at 607 ("We must harmonize, if possible, [local government's] broad authority contained in the Land Use Enabling Act and [provisions of other statutes], giving effect to each and all of them."); Bowen/Edwards, 830 P.2d at 1058 (preemption analysis requires assessing "prospect for a harmonious application of both regulatory schemes"); People ex rel. City of Arvada v. Nissen, 650 P.2d 547, 550 (Colo. 1982) ("If a challenged ordinance lends itself to alternate constructions, one of which is constitutional, the constitutional interpretation must be adopted.").

Prospect agreement was not a contract to allow development to proceed only during the initial five years.

Moreover, the district court erred in relying on this agreement as a basis for preemption. Even if the moratorium eventually does require Prospect to change its development plans from what was contemplated in the agreement, that result does not raise a preemption issue. The need to revise a contract between the City and Prospect does not show an operational conflict with the Act, which is what a preemption claim requires.

CONCLUSION

For the reasons stated above, the district court's ruling should be reversed.

DATED: February 6, 2015

Michael S. Freeman
Earthjustice
633 17th Street, Suite 1600
Denver, CO 80202
Attorney for *Amicus Curiae*
Conservation Colorado

CERTIFICATE OF SERVICE

I do hereby certify that on this 6th day of February, 2015 a true and correct copy of **BRIEF OF CONSERVATION COLORADO AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT CITY OF FORT COLLINS** was served electronically via ICCES or e-mail, or placed in the U.S. Mail, addressed to the following persons:

Mark J. Mathews (mmathews@bhfs.com)
John V. McDermott (jmcdermottt@bhfs.com)
Wayne F. Forman (wforman@bhfs.com)
Michael D. Hoke (mhoke@bhfs.com)
BROWNSTEIN HYATT FARBER SCHRECK, LLP
410 Seventeenth Street, Suite 2200
Denver, Colorado 80202-4437
Phone: (303) 223-1100
Fax: (303) 223-1111

John T. Sullivan (john@sullivangreenseavy.com)
Barbara J.B. Green (barbara@sullivangreenseavy.com)
Sullivan Green Seavy, LLC
3223 Arapahoe Avenue, Suite 300
Boulder, Colorado 80303
Phone: (303) 440-9101 (John T. Sullivan)
Phone: (303) 355-4405 (Barbara J.B. Green)
Fax: (303) 443-3914

John R. Duval (jduval@fcgov.com)
Carrie Mineart Daggett (cdaggett@fcgov.com)
Fort Collins City Attorney's Office
300 La Porte Avenue
P.O. Box 580
Fort Collins, Colorado 80522-0580
Phone: (970) 221-6520
Fax: (970) 221-6327

Kevin J. Lynch (klynch@law.du.edu)
Brad Arthur Bartlett (bbartlett@law.du.edu)
University of Denver Sturm College of Law
Student Law Office
2255 E. Evans Avenue
Suite 335
Denver, Colorado 80208
Phone: (303) 871-6140
Fax: (303) 871-6847

s/Michael S. Freeman