

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 La Porte Avenue, Suite 100 Fort Collins, Colorado 80521 Tel: 970.494.3500	DATE FILED: December 3, 2013 4:48 PM FILING ID: EB7057AF247E3 CASE NUMBER: 2013CV31385
<b>Plaintiff:</b>  COLORADO OIL & GAS ASSOCIATION  v.  <b>Defendant:</b>  CITY OF FORT COLLINS, COLORADO	▲ COURT USE ONLY ▲  Case No.  Division/Courtroom: 5B  Greg Lemmans
<b>Attorneys for Plaintiff</b>  Name: Hugh Q. Gottschalk (Atty. Reg. #9750) Scott S. Barker (Atty. Reg. #11177) Wheeler Trigg O'Donnell LLP Address: 370 Seventeenth Street, Suite 4500 Denver, Colorado 80202-5647 Phone No.: 303.244.1800 Fax No: 303.244.1879 Email: gottschalk@wtotrial.com barker@wtotrial.com	
<b>COMPLAINT</b>	

The Colorado Oil & Gas Association ("COGA") asserts the following claims pursuant to Colorado Rules of Civil Procedure 3(a), 7(a), 8(a), 57 and Colorado Revised Statutes §§ 13-51-105, 13-51-106:

**PARTIES**

1. COGA is a Colorado nonprofit corporation and nationally recognized trade association whose purpose is to foster and promote the beneficial, efficient, responsible, and environmentally sound development, production, and use of Colorado's oil and gas.
2. COGA promotes the expansion of oil and gas supplies, markets, and transportation infrastructure.
3. COGA represents its members in a variety of government forums.



4. COGA brings this action on behalf of itself and its members who have property interests within the City of Fort Collins ("City") or estates under its territorial jurisdiction.

5. COGA's members include (a) companies and individuals engaged in the exploration, production, and development of oil and gas in Colorado, (b) companies and individuals who have leasehold interests within or under the City's territorial jurisdiction, and (c) companies and individuals who operate wells within and under the City's territorial jurisdiction.

6. The City is a home-rule city under the Colorado Constitution whose municipal boundaries are within Larimer County, Colorado.

7. At all relevant times material to this action, the City acted pursuant to its Home Rule Charter.

#### **JURISDICTION AND VENUE**

8. The Court has subject matter jurisdiction over this action. Colo. Const. art. VI, § 9(1).

9. The Court has personal jurisdiction over the City. Colo. Rev. Stat. § 13-1-124(1).

10. Venue is proper in this district. Colo. R. Civ. P. 98(c).

#### **FACTUAL ALLEGATIONS**

11. The City's citizens passed Ballot Measure 2A on November 5, 2013.

12. Ballot Measure 2A bans hydraulic fracturing ("fracking") and certain conduct associated therewith within the City or estates under its jurisdiction for five years.

#### **The Oil and Gas Conservation Act, Colo. Rev. Stat. §§ 34-60-102 to 34-60-129**

13. The General Assembly has declared it to be in the public interest to foster the responsible and balanced development, production, and utilization of the natural resources of oil and gas in Colorado in a manner consistent with protection of public health, safety, and welfare, including protection of the environment and wildlife resources.

14. The General Assembly has declared it to be in the public interest to protect the public and private interests against waste in the production and utilization of oil and gas.

15. The General Assembly has declared it to be in the public interest to 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.



16. The General Assembly has declared it to be in the public interest to 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.

17. The General Assembly has declared it to be in the public interest to permit each oil and gas pool in Colorado to produce up to its maximum efficient rate of production, subject to the prevention of waste and consistent with the protection of public health, safety, and welfare.

18. The efficient and equitable development of oil and gas within Colorado requires uniform regulation of the technical aspects of drilling and production.

19. The Act and its implementing regulations contain technical requirements relating to oil and gas operations, including the use of fracking.

20. The Oil and Gas Conservation Act established the Colorado Oil and Gas Conservation Commission ("Commission") and vested it with the authority to enforce the Act's provisions, make and enforce rules and orders pursuant to the Act, and to do whatever may reasonably be necessary to carry out the provisions of the Act.

21. The Commission administers rules, regulations, and orders with respect to operations for the production of oil and gas.

22. The Commission regulates the permitting, drilling, production, plugging, spacing, and chemical treatment of wells.

23. The Commission regulates oil and gas operations in a manner designed to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource.

24. The Commission regulates oil and gas operations in a manner designed to protect the public health, safety, and welfare of Colorado citizens.

25. The Commission regulates oil and gas operations in a manner designed to protect the environment and wildlife resources.

26. The Oil and Gas Conservation Act mandates that the Commission shall:

- a. Establish a timely and efficient permitting procedure and prices for reviewing applications to establish or amend a drilling and spacing unit;
- b. Regulate to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations;



- c. Regulate to ensure the proper reclamation of the land and soil affected by oil and gas operations and the protection of the topsoil during operations;
- d. Require operators to provide financial assurances to protect surface owners against unreasonable crop loss and land damage, and to guarantee compliance with health, safety, welfare, and reclamation requirements; and
- e. Order a responsible party to perform mitigation of significant adverse environmental impacts on air, water, soil, or biological resources resulting from oil and gas operations and, if necessary, pay for such mitigation out of the oil and gas conservation and environmental response fund and sue the responsible party for recovery.

### **The Commission's Regulations**

27. The Commission promulgated rules and regulations governing oil and gas operations including, among other things: (a) management and disposal of produced water, drilling fluids, and other waste; (b) maintenance and disclosure of chemical inventories, including disclosure of chemicals used in fracking operations; and (c) protection of water resources, including public water systems, groundwater, and surface waters, through setbacks, water well sampling, regulation of the underground disposal of water, and monitoring of well pressure during fracking operations.

28. The Commission's rules and regulations allow a local governmental designee to seek conditions of approval on individual permits through comment and consultation; and if the Commission staff rejects a requested condition of approval, the local governmental designee has a right to petition the full Commission to attach the desired condition to the application.

### **Ballot Measure 2A**

29. Ballot Measure 2A provides: "An ordinance placing a moratorium on hydraulic fracturing and the storage of its waste products within the City of Fort Collins or on lands under its jurisdiction for a period of five years, without exemption or exception, in order to fully study the impacts of this process on property values and human health, which moratorium can be lifted upon a ballot measure approved by the people of the City of Fort Collins and which shall apply retroactively as of the date this measure was found to have qualified for placement on the ballot."

30. The City adopted Ballot Measure 2A as an ordinance upon certification of the November 5, 2013 election results. City of Fort Collins Home Rule Charter art. X, § 6(d).

31. Fracking is a well stimulation technique that is essential to extract oil and gas from the tight sand and shale formations that are the target of exploration and development in Larimer County.



32. Ballot Measure 2A's fracking ban prohibits drilling for oil and gas in a responsible manner without waste because the only known, economically viable oil and gas in Larimer County is located in tight sand and shale formations.

33. The Commission has exclusive and plenary jurisdiction under the Oil and Gas Conservation Act to decide whether a well is drilled, where it is drilled, and how it is drilled.

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34. The Commission has exclusive and plenary jurisdiction under the Oil and Gas Conservation Act to decide how a well is operated.

35. The Commission has exclusive and plenary jurisdiction under the Oil and Gas Conservation Act to decide whether and how to reclaim a well.

36. Ballot Measure 2A conflicts with the Commission's regulations that govern well stimulation, such as fracking.

37. The application of Ballot Measure 2A to COGA's and its members' activities impedes their ability to promote, develop, and produce oil and gas in Larimer County in conformity with the Oil and Gas Conservation Act.

38. Ballot Measure 2A adversely affects development, production, utilization, and reclamation of oil and gas because it prohibits COGA's members and/or operators from drilling a permitted well to recover oil or gas.

39. The regulatory scheme under Ballot Measure 2A injures COGA's current and future activities by denying it the right to (a) promote the beneficial, efficient, responsible, and environmentally sound development, production, and use of Colorado's oil and gas in Larimer County, and (b) promote the expansion of oil and gas supplies, markets, and transportation infrastructure in Larimer County.

40. Ballot Measure 2A economically impacted COGA because the association has been – or will in the immediate future be – required to increase member dues or raise funds in order to respond to the City's ban on fracking through litigation and other means.

41. Ballot Measure 2A adversely affects COGA's ability to recruit new members, maintain its current membership, and to sustain the financing needed to carry out its mission.

42. Ballot Measure 2A adversely impacts the development of oil and gas in Larimer County, thereby hindering COGA's mission and economically affecting some of its members' property rights.

43. Ballot Measure 2A adversely affects COGA's and its members' plans for oil and gas development within Larimer County in conformity with the provisions of the Oil and Gas Conservation Act.



44. Ballot Measure 2A adversely affects and injures COGA members' present and/or future oil and gas activities within the City, including the drilling of wells within the City's territorial jurisdiction and the extension of horizontal wellbores under the City.

45. An irreconcilable express and operational conflict exists between Ballot Measure 2A and the Commission's power to regulate the drilling of oil and gas wells in Colorado, including all activities ancillary to drilling operations.

46. Ballot Measure 2A is inconsistent with and preempted by the Oil and Gas Conservation Act, the powers delegated to the Commission under the Act, and the regulations the Commission promulgated pursuant to the Act.

47. COGA has the right to effectuate its mission without interference from a local regulation preempted by the Oil and Gas Conservation Act.

48. COGA's members have the right to develop and produce oil and gas in Larimer County without interference from a local regulation preempted by the Oil and Gas Conservation Act.

#### **FIRST CLAIM FOR RELIEF**

#### **Declaratory Judgment That the Oil and Gas Conservation Act Preempts Ballot Measure 2A**

49. COGA incorporates each allegation of the preceding paragraphs as if set forth herein.

50. Ballot Measure 2A adversely affects COGA's and its members' rights, status, and legal relations.

51. COGA asserts that Ballot Measure 2A is invalid and, on information and belief, the City asserts that Ballot Measure 2A is valid.

52. A real and substantial controversy therefore exists between the parties for which declaratory relief is appropriate.

53. The controversy is one upon which the judgment of this Court will effectively operate and upon which a judicial determination will have the force and effect of a final judgment regarding the parties' rights.

54. COGA seeks a judicial determination that:

- a. The Oil and Gas Conservation Act and the Commission's rules permit oil and gas development through, among other means, the use of fracking;
- b. Ballot Measure 2A prohibits and bans, without exemption or exception, oil and gas development through the use of fracking;



- c. An express or operational conflict exists between (a) the Oil and Gas Conservation Act and the Commission's rules, and (b) Ballot Measure 2A; and
  - d. The Oil and Gas Conservation Act and the Commission's rules preempt Ballot Measure 2A because the regulation of oil and gas development is a matter of State concern or is a mixed matter of State and local concern.
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**SECOND CLAIM FOR RELIEF**

**Permanent Injunction Enjoining Ballot Measure 2A**

55. COGA incorporates each allegation of the preceding paragraphs as if set forth herein.

56. Ballot Measure 2A is preempted by the Oil and Gas Conservation Act and the Commission's rules and, therefore, is unlawful and invalid.

57. COGA and its members will suffer certain, immediate, and irreparable harm if Ballot Measure 2A is not permanently enjoined.

58. The injury to COGA and its members outweighs the harm, if any, to the City if Ballot Measure 2A is permanently enjoined.

59. The injunction, if issued, will not adversely affect the public interest.

**PRAYER FOR RELIEF**

WHEREFORE, COGA respectfully requests that the Court:

1. Enter judgment in favor of COGA and against the City on COGA's declaratory judgment claim, declaring Ballot Measure 2A unlawful and invalid because the Oil and Gas Conservation Act and Commission's regulations/rules preempt the local regulation;
2. Permanently enjoin the enforcement of Ballot Measure 2A because it is an invalid and unlawful exercise of local government power;
3. Award COGA its costs under Colorado Rule of Civil Procedure 54(d); and
4. Award COGA any other relief it deems just and reasonable.

Dated: December 3, 2013.

Respectfully submitted,

*s/ Scott S. Barker*

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Hugh Q. Gottschalk

Scott S. Barker

Wheeler Trigg O'Donnell LLP

Attorneys for Plaintiff  
Colorado Oil & Gas Association  
1800 Glenarm Place  
Denver, Colorado 80202