

**Court of Appeals, State of Colorado  
2 East 14th Ave, Denver, CO 80203**

**Name & Address of Lower Court**

District Court, Larimer County, Colorado  
201 La Porte Avenue, Suite 100  
Fort Collins, Colorado 80521

**Trial Court Judge:** The Honorable Gregory M.  
Lammons

**Case Number:** 2013CV31385

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**Appellants:** CITIZENS FOR A HEALTHY FORT  
COLLINS, SIERRA CLUB, AND EARTHWORKS

**Appellant:** CITY OF FORT COLLINS, COLORADO

v.

**Appellee:** COLORADO OIL & GAS ASSOCIATION

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*Attorneys for Citizens for a Healthy Fort Collins,  
Sierra Club, and Earthworks ("Measure  
Proponents")*

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**COURT USE ONLY**

Court of Appeals  
Case Number:  
2014CA1991

**MOTION TO INTERVENE**

Pursuant to the Clerk of the Court of Appeal's direction, Citizens for a Healthy Fort Collins, Sierra Club, and Earthworks ("Measure Proponents") file this Motion to Intervene in case number 2014CA1991. The intervention issue has been briefed extensively in the district court, case number 2013CV31385, and the Court of Appeals, case number 2014CA780.

Measure Proponents are entitled to join this appeal while awaiting a ruling from the Court of Appeals on the intervention issue. Joining the appeal protects Measure Proponents' right to participate in the merits of the case once intervention is granted. 15A C. Wright & A. Miller, Fed. Prac. & Proc. Juris. § 3902.1 (2d ed.1992). Furthermore, consideration of these issues together is appropriate because the intervention and merits issues involve the same parties and many of the same facts and issues, such as the local impact that fracking has on communities. Colorado courts have consolidated intervention appeals and merits appeals under similar circumstances. *See, e.g., Dillon Cos. v. Boulder*, 515 P.2d 627, 631 (Colo. 1973).

Measure Proponents respectfully request the Court to grant Measure Proponents' Motion to Intervene, accept the Protective Appeal, and consolidate the appeals as necessary.

Dated this 5th day of November, 2014

By: /s/ Kevin J. Lynch

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 5th of November, 2014, a true and correct copy of the above and foregoing **MOTION TO INTERVENE** was served via the Integrated Colorado Courts E-Filing System (ICCES), on:

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APPENDIX 1

Motion to Intervene as Defendants in the District Court Case 2013CV31385  
dated February 13<sup>th</sup>, 2014.

DISTRICT COURT, LARIMER COUNTY, COLORADO	
201 La Porte Avenue, Suite 100 Fort Collins, Colorado 80521 Tel: 970.494.3500	
<b>Plaintiff:</b>	
COLORADO OIL & GAS ASSOCIATION	
v.	
<b>Defendant:</b>	
CITY OF FORT COLLINS, COLORADO	
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<b>COURT USE ONLY</b>	
Case Number: 2013CV31385	
Div: Civ Ctrm: 5B	
<b>MEASURE PROPONENTS' MOTION TO INTERVENE AS DEFENDANTS</b>	

**Certification of Conferral Pursuant to C.R.C.P. 121 § 1-15(8)**

Counsel for Citizens for a Healthy Fort Collins, the Sierra Club, and Earthworks (collectively, "Measure Proponents") have conferred with the Plaintiff, Colorado Oil and Gas Association ("COGA"), who opposes this motion. Additionally, counsel for Measure Proponents made contact with counsel for the City of Fort Collins on February 11 and 12, 2014. Counsel for Defendant City of Fort Collins advised that they would need "weeks" to determine their position on this matter. Because this motion is already opposed by one party, and the Measure Proponents have a burden to show a motion to intervene is timely, we have chosen to file the motion at this time.

## Introduction

On November 5, 2013, the citizens of Fort Collins voted to protect their inalienable rights guaranteed under Article II, Section 3 of the Colorado Constitution. The Fort Collins Public Health, Safety, and Wellness Act (“Fracking Moratorium”) places a five-year time-out on the utilization of an industrial process called hydraulic fracturing (“fracking”) and the storage of fracking wastes within the City of Fort Collins and lands under the City’s jurisdiction. The purpose of the moratorium is to allow studies to be conducted so that the effects of fracking on property, property values, public health, safety, and welfare can be better understood.

COGA challenges the validity of the Fracking Moratorium and asks this Court to declare the moratorium preempted by the Colorado Oil and Gas Act. Additionally, COGA seeks permanent injunctive relief enjoining the enforcement of the moratorium.

The proponents of the Fracking Moratorium (collectively, “Measure Proponents”) include members of Citizens for a Healthy Fort Collins, the Sierra Club, and Earthworks. Citizens for a Healthy Fort Collins is a non-partisan coalition of citizens who sponsored the Fracking Moratorium. This group of citizens includes people who live in Fort Collins, have children attending school there, and those with businesses and other property in Fort Collins. Their interests include protecting their health, safety, property, and property values. *See* Ron Holleman Aff. ¶ 9. Sierra Club is a national nonprofit organization with members dedicated to exploring, enjoying and protecting the wild places of the earth, practicing and promoting the responsible use of the Earth’s ecosystems and resources, and educating and enlisting humanity to protect and restore the quality of the natural and human environment.

Over 800 members of Sierra Club’s Rocky Mountain Chapter reside in Fort Collins. This includes members with oil and gas wells and facilities on or near their property and members who live near proposed oil and gas wells. *See* Mary Anderson Aff. ¶ 4. Members of both Sierra Club and Citizens for a Healthy Fort Collins initiated and campaigned for the Fracking Moratorium. *See* Elizabeth Giddens Aff. ¶ 5.

Earthworks is a nonprofit organization that runs the Oil and Gas Accountability Project (“OGAP”). Bruce Baizel Aff. ¶ 2. OGAP’s mission is to work with tribal, urban, and rural communities to protect their homes and the environment from the devastating impacts of oil and gas development in Colorado. *Id.* There are 51 members of Earthworks residing in Fort Collins. *Id.* OGAP members have oil and gas wells and facilities on or near their property. *Id.* at 3. OGAP members work for greater community control over oil and gas development and support measures like the Fracking Moratorium in the advancement of that goal. *Id.* at 6.

The Measure Proponents spent their time, money, and energy to ensure protection

of their health, safety, and wellness. *See* Ron Holleman Aff. ¶¶ 8, 9; Dolores Williams Aff. ¶ 8. They actively participated in community outreach and education, and despite a lack of support from the City Council, the voters of Fort Collins approved the Fracking Moratorium. Therefore, the Measure Proponents file this timely motion because their interests will be impaired or impeded if COGA's challenge to the Fracking Moratorium is successful. Further, because the City must balance various competing interests, the City cannot and does not adequately represent the interests of the Measure Proponents.

Therefore, the Measure Proponents respectfully request the Court to grant them intervention as a matter of right and, alternatively, request the Court grant them permissive intervention.

### **Legal Background**

Under C.R.C.P. 24(a), a party is entitled to intervene in a pending action as a matter of right when: (1) the application is timely; (2) the applicant claims an interest relating to the property or transaction which is the subject of the action; (3) the applicant is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest; and (4) the applicant's interest is not adequately represented by existing parties. *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 26 (Colo. 2001). The intervention rule is liberally interpreted. *Id.*

The determination of timeliness of an intervention is within the discretion of the court. *Moreland v. Alpert*, 124 P.3d 896, 904 (Colo. App. 2005). To make this determination, the court considers all the circumstances of the case. *Diamond Lumber, Inc. v. H.C.M.C., Ltd.*, 746 P.2d 76, 78 (Colo. App. 1987).

Similarly, Colorado applies a "flexible approach" to determining when a party has an interest in the subject of the lawsuit. *Feigin*, 19 P.3d at 29. "[T]he existence of an interest under Colorado's Rule 24(a)(2) should be determined in a liberal manner" and "should not be viewed formalistically." *Id.* Moreover, the interest asserted need not be only economic, interests in environmental protection and public safety also support intervention. *See Dillon Cos., v. City of Boulder*, 515 P.2d 627, 629 (Colo. 1973) (protecting children's safety and concerns that additional asphalt would worsen stormwater drainage satisfied the interest prong of Rule 24(a)). "The interest prong is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 404 (Colo. 2011).

When considering the third requirement for intervention by right, the Colorado Supreme Court held an applicant meets this requirement when its interests would be "affected" by a judgment in the case. *Dillon Cos.*, 515 P.2d at 629. *Feigin* clarified this standard, stating, "[a]n intervenor's interest is impaired if the disposition of the action in



which intervention is sought will prevent any future attempts by the applicant to pursue his interest.” *Feigin*, 19 P.3d at 30. The Tenth Circuit Court of Appeals has held that “a would-be intervenor must show only that impairment of its substantial legal interest is possible if intervention is denied. This burden is minimal.”<sup>1</sup> *Utah Ass’n of Cntys. v. Clinton*, 255 F.3d 1246, 1253 (10th Cir. 2001)(internal citations omitted). A court determines if an interest is being impaired by looking at the case practically. *Cherokee Metro. Dist.*, 266 P.3d at 406-07.

Finally, the Colorado Supreme Court has held that a party’s representation of an intervenor is inadequate “if the representative has or represents some interest adverse to that of the petitioner. . . .” *Denver Chapter of Colo. Motel Ass’n v. City & Cnty. of Denver*, 374 P.2d 494, 495-96 (Colo. 1962); *Feigin*, 19 P.3d at 32 n.13. The Colorado Supreme Court also held that an intervenor is inadequately represented when the parties have **similar, but not identical** interests. *Meridian*, 266 P.3d at 407(emphasis added) (quoting 7C Charles Alan Wright, Arthur R. Miller, Mary Kay Kane & Richard L. Marcus, Federal Practice and Procedure § 1909 (3d ed. 1997)). For example, the Tenth Circuit has held that a government entity has the duty to protect and represent the broad public interest, and therefore, government representation might not adequately represent an intervenor’s interest. *Utah Ass’n of Cntys*, 255 F.3d at 1255. A government entity’s public mission and necessary public neutrality cause an inherent conflict with the particular interests of intervening parties. See *WildEarth Guardians v. U.S. Forest Service*, 573 F.3d 992, 997 (10th Cir. 2009).

Alternatively, Rule 24(b) allows permissive intervention when: (1) “an applicant’s claim or defense and the main action have a question of law or fact in common” unless (2) “the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” C.R.C.P. 24(b)(2). Trial courts are given “considerable discretion” when deciding if a party may permissively intervene. *In re Marriage of Paul*, 978 P.2d 136, 139 (Colo. App. 1998). When utilizing its discretion, the court may also consider whether the intervention aids in “the just, speedy, and inexpensive determination” of the case. See C.R.C.P. 1(a).

### **Factual Background**

In conformance with the Fort Collins Charter, on August 5, 2013, Citizens for a Healthy Fort Collins submitted a petition to initiate a moratorium on hydraulic fracturing

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<sup>1</sup> C.R.C.P. 24(a) is substantively identical to its federal counterpart. Compare F.R.C.P. 24 with C.R.C.P. 24. As such, Colorado courts may look to federal case law for guidance in interpreting Rule 24. See *People v. Dore*, 997 P.2d 1214, 1219 (Colo. App. 1999); see, e.g., *Feigin*, 19 P.3d at 31 (relying on federal law treatise).

and storage of fracking wastes within the city limits and on land under the City's jurisdiction for a period of five years. The petition was the result of the Measure Proponents' concern over Colorado's rapidly developing oil and gas industry as well as the City's decision to exempt existing oil and gas wells from a council-enacted hydraulic fracturing ban. *See* City of Fort Collins, Ordinance 32, 2013 (providing an exemption to all oil and gas wells and pad sites existing within the City as of Feb. 19, 2013).

Colorado has recently faced a major influx of oil and gas drilling. For example, from 1991 till 2001 there were 16,368 new permits issued. From 2002 till 2013, 55,445 new drilling permits have been issued – an increase of more than 300 percent. *See* Colo. Oil and Gas Conservation Comm'n., *Colorado Weekly & Monthly Oil & Gas Statistics*, February 5, 2014, at 3, *available at* <http://cogcc.state.co.us/Library/Statistics/CoWklyMnthlyOGStats.pdf> (last visited Feb. 12, 2014). This drilling boom transforms the Colorado landscape, replacing the peaceful plains with noise, chemical pollution, and earth moving equipment. These disturbances have resulted in many concerned citizens raising questions about the safety of hydraulic fracturing. *See* Food and Water Watch, *Fracking Colorado: Illusory Benefits, Hidden Costs*, Aug. 2013, *available at* [http://documents.foodandwaterwatch.org/doc/Colorado\\_fracking\\_costs.pdf](http://documents.foodandwaterwatch.org/doc/Colorado_fracking_costs.pdf) (last visited Feb. 12, 2014). The Measure Proponents are among these concerned groups of citizens.

The Measure Proponents submitted their petition to the City Clerk on August 5, 2013. On August 12, 2013, the Clerk certified the results of the circulated petition and determined that the Measure Proponents had gathered “more than” the 3,907 signatures required to place the petition on the November 5, 2013 ballot (they had, in fact, gathered nearly twice the required number of signatures). On August 20, 2013, the City Council voted to place the initiative on the November ballot rather than adopting the measure directly- a procedure allowed under the Fort Collins Charter.

On October 1, 2013, after placing the Fracking Moratorium on the ballot, the Council adopted a resolution urging citizens to vote against the moratorium. *City Res. 2013-085 available at* <http://citydocs.fcgov.com/?dt=RESOLUTION&dn=City+Clerk&vid=4&cmd=showdt> (last visited Feb. 12, 2014). Despite this, the voters of Fort Collins approved the moratorium by a margin of 56.53% to 43.47%. *See* City of Fort Collins Elections, <http://www.fcgov.com/cityclerk/elections2013nov.php> (last visited Feb. 12, 2014). In response to the passage of the Fracking Moratorium, COGA filed a complaint against the City of Fort Collins. On February 3, 2014, the City filed its answer to COGA's complaint.

### **Argument**

The Measure Proponents should be granted intervention by right in this case because (1) the motion to intervene is timely; (2) the applicants spent their time, money,

and energy in ensuring the Fracking Moratorium was placed on the ballot; (3) a judgment on this matter could both impair and impede their ability to protect their health, safety, property, and wellbeing; and (4) the Measure Proponents' interests are not adequately represented by the City of Fort Collins.

Alternatively, if the Court determines that the Measure Proponents are not entitled to intervene as a matter of right, the Measure Proponents request to be admitted as permissive intervenors.

#### **A. THIS MOTION TO INTERVENE IS TIMELY**

Considering all the circumstances of the case, the Measure Proponents' motion to intervene is timely. COGA filed its complaint on December 3, 2013. The City filed its answer on February 3, 2014. There has been no substantive briefing in this case. Further, while the Court has determined the case "at issue" as of February 4, 2014, "[t]he point of progress in the lawsuit is only one factor to be considered and is not, in itself, determinative; the timeliness of the attempted intervention is to be gathered from all the circumstances in the case." *Diamond Lumber*, 746 P.2d at 78.

Counsel for the Measure Proponents have worked diligently to file this motion to intervene as quickly as possible. Therefore, allowing the Measure Proponents' intervention would not delay the proceedings or prejudice any of the parties. Instead, acceptance of this motion would provide greater justice to Measure Proponents by allowing them to state their position in defense of the Fracking Moratorium- a measure to which they committed enormous amounts of time, energy, and financial support.

#### **B. THE MEASURE PROPONENTS HAVE A UNIQUE INTEREST IN THE FRACKING MORATORIUM.**

As the Fracking Moratorium's caretakers, the Measure Proponents have 3 interests sufficient to support intervention: (1) the Measure Proponents have invested a lot of time and energy in getting the moratorium passed, (2) they have an interest in protecting their health and safety, and (3) they have property interests within Fort Collins.

The Measure Proponents devoted their time, energy, and money into drafting the language of the ballot measure and ensuring that it complied with all applicable requirements. Moreover, the Measure Proponents printed and circulated petitions in order to gather the requisite number of signatures on a timeline that ensured the people of Fort Collins could vote on the Fracking Moratorium in the November 2013 special election. The Measure Proponents' interests lie in the protection of their members' individual property, health, safety, and wellness.

The Fracking Moratorium directly addresses the Measure Proponents' health and safety concerns associated with fracking. *See Mary Anderson Aff.* ¶ 13. Many of the Measure Proponents' members live or have lived near areas of oil and gas drilling and must breathe the fumes, smell waste, navigate heavy traffic, hear industrial noise, and adjust their habits to mitigate the disturbance that results from fracking. *Bruce Baizel Aff.* ¶ 3.

The Fracking Moratorium also protects the Measure Proponents' property interests. Property values are determined based on various factors, including access to clean water, air quality, surrounding traffic, and the character of the neighborhood. Because fracking creates a concern about water contamination, emits fumes from large industrial equipment, and necessitates the movement of numerous large diesel trucks in the area, Measure Proponents believe that fracking near their homes could result in lowered property values. By providing a five-year period of time to fully study the impacts of fracking on property values, the Fracking Moratorium serves to protect the Measure Proponents' individual property interests.

### **C. THIS CASE MAY IMPAIR OR IMPEDE THE MEASURE PROPONENTS' ABILITY TO PROTECT THEIR INTERESTS.**

The Measure Proponents have an interest in defending the Fracking Moratorium and protecting their members' health, safety, and property. COGA has asked the Court to declare the Fracking Moratorium invalid and to permanently enjoin its enforcement. Therefore, a judgment in this case will impair and/or impede the Measure Proponents' ability to protect their interests. Without intervention, the Measure Proponents cannot assert their rights for the following reasons.

First, without intervention, the Measure Proponents will not have the opportunity to legally defend the Fracking Moratorium that they committed time, energy, and financial resources in support of. The Measure Proponents began advocating for the Fracking Moratorium by gathering over 8,000 signatures, nearly twice the required number of signatures to get the measure on the ballot. Then the Measure Proponents campaigned for the Fracking Moratorium, despite the City Council's resolution urging citizens to vote against the ordinance. If COGA prevails, the Measure Proponents will have lost six months of their time and effort.

Second, if the challenge to the Fracking Moratorium is successful, the Measure Proponents will no longer be able to protect their health and safety against the harms associated with fracking. The purpose of the moratorium was to allow various studies to be completed so that the effects of fracking could be better understood by the citizens as well as the City. In effect, the people of Fort Collins voted for a time-out to determine if this technology is safe. Therefore, the Measure Proponents' interests in protecting themselves and their families will be impaired by a ruling against the Fracking Moratorium

Finally, if fracking is allowed to begin in Fort Collins, the Measure Proponents will no longer be able to enjoy their properties as expected and they will similarly be unable to guarantee to prospective buyers that they will not be subject to having this industrial process in their backyard. The Measure Proponents will suffer from the associated nuisances of large diesel trucks running through their neighborhoods, possible damage to the roads, dust, and noise- common annoyances that landowners living near fracking sites complain about. The Fracking Moratorium temporarily prevents these injuries. If the moratorium is overturned, the Measure Proponents will be without a means to protect these interests.

#### **D. THE CITY OF FORT COLLINS DOES NOT ADEQUATELY REPRESENT THE INTERESTS OF THE MEASURE PROPONENTS.**

The City has a duty to balance many competing interests. These interests include protection of the public health and ensuring continued generation of revenue from various activities including oil and gas development. In making this determination, the City must consider a wide range of views when representing the public interest, including those that are adverse to the Measure Proponents.

Other stated interests of the City include defending its right to self-governance, protecting its businesses, minimizing legal exposure, and generating revenue. *See City Meeting Minutes, October 1, 2013, available at* <http://www.fcgov.com/cityclerk/agendas.php?year=2013> (last visited Feb. 12, 2014). The City cannot, therefore, adequately represent the interests of private citizens who seek to protect their individual health, safety, and property values. The Measure Proponents do not have to balance competing interests- their focus is to ensure that the moratorium remains in place for five years, enabling them to obtain the results of various studies on the impacts of fracking. As a result, the City cannot adequately represent the Measure Proponents' interests in this suit.

The City Council, through the adoption of Resolution 2013-085, made its position on the Fracking Moratorium known to the voters of Fort Collins. The resolution, adopted by a majority vote of the council, urged voters to reject the Fracking Moratorium. The same councilmembers who urged voters to reject the ballot measure continue to serve on the City Council. In support of the resolution, the City noted that the moratorium would undermine its operating agreement with Prospect Energy, and could result in "costly, protracted, litigation against the City." *See City Res. 2013-085*. Furthermore, the City Council has stated that its "Energy by Design" process is the "best strategy" and that the Fracking Moratorium will "work to the detriment of the City." *Id.* The City's competing interests divert it from adequately representing the Measure Proponents' interests in preserving the Fracking Moratorium.

Therefore, the City does not adequately represent the Measure Proponents' interests in their members' health and safety. While the City is charged with protecting the public health and maintaining certain standards of quality, the City invariably has to allow some development to generate revenue. As an example, on March 5, 2013, the City Council adopted an ordinance banning fracking and the storage of fracking wastes within the City of Fort Collins. *See City Ord. 32, 2013*. However, this ordinance provided an exemption for any oil and gas wells or well pads in existence within the city as of February 19, 2013. *Id.* So while it appears that the City Council also had concerns over hydraulic fracturing, the fact that they allowed for this exemption shows how the Measure Proponents' and City's interests and objectives differ in regards to this litigation.

Furthermore, the City does not adequately represent the Measure Proponents' property interests because the City has to consider the value of the city's resources rather than the value of the Measure Proponents' personal property. For example, the City is concerned with the cost of litigation and the effect of the moratorium on City resources. *See City Res. 2013-085*. The Measure Proponents fear that industrial development will decrease individual property values. These concerns are juxtaposed because the City's concern with resources (personnel, income, and time) will cause the City to evaluate the costs of actions in such a way that promotes the City's interests, including business interests. However, the Measure Proponents' entire strategy will be to maintain the Fracking Moratorium until better study of the industrial process is completed, ensuring fracking does not destroy their members' property, health, and wellness.

Additionally, the Measure Proponents will be presenting arguments to protect the Fracking Moratorium that the City has not raised. Specifically, the City has not asserted the argument that the constitution gives citizens the right to have clean air and water. As the Fracking Moratorium seeks to protect the citizens' inalienable rights, the Fracking Moratorium is protected by the Colorado Constitution. *See COLO. CONST. art. II, § 3*.

Finally, because the City has already expressed concern over the litigation costs associated with defending the Fracking Moratorium, the Measure Proponents have a valid concern that, unlike themselves, the City would not appeal an adverse ruling in this case. *See Dillon Co.*, 515 P.2d 627, 629; *Cnty. of Fresno v. Andrus*, 622 F.2d 436, 439 (9th Cir. 1980) (holding that even though parties made the same arguments, unwillingness to appeal indicates they would not fully represent intervenors' interests); *see also Herdman v. Town of Angelica*, 163 F.R.D. 180, 189-91 (W.D.N.Y. 1995) (holding that intervenors could intervene as a matter of right in action challenging town law in part due to town's limited resources).

In sum, even if "both entities occupy the same posture in the litigation," the Court cannot assume that the City's approach to defending the Fracking Moratorium will adequately represent the Measure Proponents. *Utah Ass'n of Cntys.*, 255 F.3d at 1255-56 (allowing a number of environmental groups to intervene on behalf of the government).

The Measure Proponents approach this lawsuit with the goal of preserving and maximizing protections for their health, property, use and enjoyment of public areas, water, and wildlife until the technology has been proven to be safe. The Measure Proponents will argue that the moratorium helps protect their inalienable rights- an assertion that was not raised by the City in its answer. Therefore the Measure Proponents meet the minimal burden of showing that the City may not adequately represent their interests.

**E. ALTERNATIVELY, THE COURT SHOULD ALLOW MEASURE PROPONENTS TO PERMISSIVELY INTERVENE.**

If the Court does not grant the Measure Proponents' request to intervene as of right, the Measure Proponents request the Court allow them to permissively intervene. Rule 24(b) allows permissive intervention when: (1) "an applicant's claim or defense and the main action have a question of law or fact in common" unless (2) "the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." C.R.C.P. 24(b)(2). The determination of timeliness of an intervention is within the discretion of the court. *Moreland*, 124 P.3d at 904. The Measure Proponents satisfy both elements of Rule 24(b), and the Court should permit intervention because the Measure Proponents will substantially contribute to the Court's determination of the case.

First, the Measure Proponents' defense of the Fracking Moratorium has a common question of law and fact with the main action. COGA has requested the Court evaluate whether state law preempts this moratorium. COGA Compl. ¶ 54. The Measure Proponents will assert that state law does not preempt the Fracking Moratorium because it is a matter of local concern or, alternatively, the COGCC rules and the Colorado Oil and Gas Conservation Act can be harmonized with the local ordinance. The Measure Proponents' defenses will be in direct response to the claims asserted by COGA, and will be argued under the same statutes. Therefore, the defenses have a common question of law.

Second, the Measure Proponents will not cause any undue delay or prejudice to the existing parties. As of the filing of this motion, the only pleadings that have been filed are COGA's complaint and the City's answer. Additionally, the Measure Proponents agreed to joint representation to minimize any inconvenience to the original parties. Joint representation reduces litigation costs and the potential for scheduling conflicts. Because the case is in the early stages and the Measure Proponents have already taken steps to mitigate any undue delay or prejudice, the addition of the Measure Proponents to the litigation will not cause undue delay or prejudice.

Lastly, the Measure Proponents will aid in "the just, speedy, and inexpensive determination" of the case. *See* C.R.C.P. 1(a). The Measure Proponents' inclusion in the litigation will allow for a descriptive richness that may otherwise be absent from this case. Especially because Colorado requires a preemption analysis to be completed on an ad hoc basis, *Bd. of Cnty. Comm'rs, La Plata Cnty. v. Bowen/Edwards*, 830 P.2d 1045, 1060 (Colo.

1992), Measure Proponents will shed necessary and helpful light on the Fracking Moratorium and its protection of health, safety, and property. Because the Measure Proponents meet the requirements for permissive intervention and will add factual richness to an ad hoc determination, the Court should permit them to intervene in this litigation.

Therefore, the Measure Proponents respectfully request the Court enter an order granting them intervention by right in this action as defendants. Alternatively, if the Court denies this request, the Measure Proponents request that the Court grant them permissive intervention.

DATED this 13th day of February, 2014.

Respectfully submitted,

/s/ Kevin Lynch

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Elizabeth Kutch, Student Attorney  
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*This document was filed electronically pursuant to C.R.C.P. 121 § 1-26. The original signed document is on file with the University of Denver Environmental Law Clinic.*



**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of February, 2014, a true and correct copy of the above and foregoing **MEASURE PROPONENTS' MOTION TO INTERVENE** was served via the Integrated Colorado Courts E-Filing System (ICCES), on:

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