

DISTRICT COURT, LARIMER COUNTY, COLORADO

201 La Porte Avenue, Suite 100  
Fort Collins, CO 80521  
Phone: (970) 494-3500

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**Plaintiff:**

**COLORADO OIL AND GAS ASSOCIATION,**

v.

**Defendant:**

**CITY OF FORT COLLINS, COLORADO**

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**Attorneys:**

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Case Number: 2013CV31385

Division/Courtroom: 5B

**ANSWER**

Defendant City of Fort Collins, Colorado, (the "City") by and through its undersigned attorneys, Sullivan Green Seavy LLC, answers the allegations of the Complaint of Colorado Oil & Gas Association ("COGA") as follows:

## PARTIES

1. The City admits that COGA is a trade association that is involved with the production of oil and natural gas in Colorado. The City lacks sufficient information to admit or deny the remaining allegations of paragraph 1 and therefore denies same.

2. The City lacks sufficient information to admit or deny the allegations of paragraph 2 and therefore denies same.

3. The City lacks sufficient information to admit or deny the allegations of paragraph 3 and therefore denies same.

4. The City lacks sufficient information to admit or deny the allegations of paragraph 4 and therefore denies same.

5. The City lacks sufficient information to admit or deny the allegations of paragraph 5 and therefore denies same.

6. The City admits the allegations of paragraph 6.

7. The City admits the allegations of paragraph 7, and affirmatively states that the City and its citizens exercised the powers conferred upon them under Article XX, Section 6 of the Colorado Constitution as well as under the City's Charter.

## JURISDICTION AND VENUE

8-10. The City admits the allegations of paragraphs 8-10 regarding jurisdiction and venue.

## FACTUAL ALLEGATIONS

11. The City admits the allegations of paragraph 11.

12. The City denies the allegations of paragraph 12 and states that the language of Ballot Measure 2A speaks for itself.

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

13-26. The allegations of paragraphs 13-26 of the Complaint appear to paraphrase the language of provisions of Colorado statutes and regulations. The Oil and Gas Conservation Act and its implementing regulations speak for themselves. To the extent that paragraphs 13-26 allege facts inconsistent with the Act and the regulations, they are denied.

## **The Commission's Regulations**

27-28. The allegations of paragraphs 27-28 of the Complaint appear to paraphrase the language of COGCC regulations. The regulations speak for themselves. To the extent that paragraphs 27-28 allege facts inconsistent with the regulations, they are denied.

## **Ballot Measure 2A**

29. The City admits that paragraph 29 states the language of Ballot Measure 2A that was approved at a special City election held on November 5, 2013, and Ballot Measure 2A speaks for itself.

30. The City admits that it adopted Ballot Measure 2A as an ordinance upon certification of the November 5, 2013 election results pursuant to the City's Charter.

31. The City admits that fracking is a technique used to extract oil and gas from underground rock formations. The City lacks sufficient information to admit or deny the remaining allegations of paragraph 31 and therefore denies same.

32. The City denies that Ballot Measure 2A is a fracking ban. The City lacks sufficient information to admit or deny the remaining allegations of paragraph 32 and therefore denies same. The City affirmatively states that Ballot Measure 2A's language places a five year moratorium "on hydraulic fracturing and the storage of its waste products within the City of Fort Collins or on lands under its jurisdiction [. . .] in order to fully study the impacts of this process on property values and human health, [and this] moratorium can be lifted upon a ballot measure approved by the people of the City of Fort Collins."

33-35. The City states that the allegations of paragraphs 33-35 appear to state legal conclusions and no response is required. To the extent paragraphs 33-35 allege facts, they are denied.

36. The City denies the allegations of paragraph 36.

37. The City denies the allegations of paragraph 37.

38. The City denies the allegations of paragraph 38.

39. The City denies the allegations of paragraph 39.

40. The City denies that Ballot Measure 2A is a fracking ban. The City lacks sufficient information to admit or deny the remaining allegations of paragraph 40 and therefore denies same.

41. The City lacks sufficient information to admit or deny the allegations of paragraph 41 and therefore denies same.

42. The City denies the allegations of paragraph 42.

43. The City lacks sufficient information to admit or deny the allegations of paragraph 43 and therefore denies same.

44-48. The City denies the allegations of paragraphs 44-48 and states that the Ballot Measure is not a preempted local regulation.

#### FIRST CLAIM FOR RELIEF

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

49. The City incorporates its responses to each allegation of the preceding paragraphs as if set forth herein.

50. The City denies the allegations of paragraph 50.

51. In response to paragraph 51 of the Complaint, the City states that Ballot Measure 2A is valid exercise of the power of the City of Fort Collins and its citizens, and denies the remaining allegations of paragraph 51.

52. The City lacks sufficient information to admit or deny the allegation that there is a real and substantial controversy between the parties for which declaratory relief is appropriate, and therefore denies paragraph 52.

53. The City lacks sufficient information to admit or deny the allegations of paragraph 53 and therefore denies same.

54. The City denies the allegations of paragraph 54 and that Plaintiff is entitled to the judicial determinations alleged in paragraph 54.

#### SECOND CLAIM FOR RELIEF

##### Permanent Injunction Enjoining Ballot Measure 2A

55. The City incorporates its responses to each allegation of the preceding paragraphs as if set forth herein.

56-59. The City denies the allegations of paragraphs 56-59, and the City affirmatively states that the Court should refrain from issuing an injunction that prevents the City from fully studying the impacts of the fracking process on property values and human health upon the lands

and citizens within the jurisdiction of the City of Fort Collins during the moratorium period, as contemplated under Ballot Measure 2A.

60. The City denies all allegations of the Complaint not expressly admitted to above.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief may be granted.
2. Plaintiff's claims are barred in whole or in part by the fact that Plaintiff has sustained no injury in fact to a legally protected interest as a result of Ballot Measure 2A.
3. Plaintiff's claims are barred in whole or in part because the City of Fort Collins is a home rule city under Article XX, Section 6 of the Colorado Constitution, whose citizens have the full right of self-government in local and municipal matters.
4. Plaintiff's claims are barred in whole or in part by a lack of standing.

WHEREFORE, the City respectfully requests the Court to deny all claims alleged in Plaintiff's Complaint, enter an order dismissing the Complaint with Prejudice, and award the City all costs and attorney's fees incurred in defending against Plaintiff's claims.

Dated this 3<sup>rd</sup> day of February, 2014.

SULLIVAN GREEN SEAVY LLC

By: /s/ Original signature on file  
Barbara J. B. Green, No. 15022  
John T. Sullivan, No. 17069

CITY OF FORT COLLINS

By: /s/ Original signature on file  
Steven J. Roy, No. 0893

ATTORNEYS FOR DEFENDANT CITY  
OF FORT COLLINS

**CERTIFICATE OF SERVICE**

I do hereby certify that on this 3<sup>rd</sup> day of February, a true and correct copy of the foregoing **ANSWER** was served electronically via ICCES to the following persons:

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/s/ Original signature on file  
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