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Energy in the Law

City of Longmont Litigation Update

By: [Karen Spaulding](#)

2012 was a busy year for the City of Longmont in its efforts to quash oil and gas exploration and development within its borders with the stated purposes of protecting its citizens' health, safety and welfare and protecting citizens' property values from declining.

First, the City Council passed Ordinance 2012-O-25 (Ordinance) on July 24, 2012 in which it updated its oil and gas regulations in certain areas, including, but not limited to:

- Prohibiting surface facilities and operations in residential zoning districts,
- Instituting well location, spacing and operational setbacks for water bodies and wildlife and wildlife habitat in excess of those set forth in the Colorado Oil & Gas Conservation Commission's (COGCC) rules and regulations (Rules), and
- Requiring the operator to consolidate wells on multi-well pad sites and drill directional or horizontal wells "whenever possible and appropriate."

Soon thereafter, the COGCC filed a lawsuit in Boulder County District Court against Longmont, arguing that these Ordinance provisions, among others, were invalid because they were pre-empted by state statutes and existing COGCC Rules. This litigation is commonly referenced as "Longmont I," and is based on the theory that the state, and only the state, has the authority to regulate the development of oil and gas in Colorado in these enumerated areas because such development is a matter of "statewide concern."

Second, since the City's revised oil and gas regulations did not prohibit the hydraulic fracturing of oil and gas wells within the City's limits, the citizens of Longmont forged ahead with their own initiative to do so. Longmont voters obtained approval for the inclusion of Ballot Measure 300 in the November 6, 2012 general election.

Ballot Measure 300, which prohibits any hydraulic fracturing within the City's limits, was approved by Longmont's citizens, and was adopted by the City Council as Article XVI of the Longmont Municipal Code. Specifically, Article XVI prohibits the use of hydraulic fracturing in the completion of oil and gas wells within the City's limits and prohibits the storage or disposal of hydraulic fracturing fluids in the City.

After the adoption of Ballot Measure 300 in the November 6, 2012 election, the Colorado Oil & Gas Association (COGA) filed a lawsuit against the City arguing that Article XVI is pre-empted by state statutes and COGCC Rules because hydraulic fracturing of oil and gas wells, and the related storage and transportation of hydraulic fracturing fluids, are matters of statewide concern. This litigation is commonly referenced as Longmont II. COGA asked the Court to invalidate Article XVI because hydraulic fracturing of wells and the storage and disposal of hydraulic fracturing fluids may only be regulated by the State and not the City. The Court later joined the COGCC as a necessary party in Longmont II.

While Longmont II was not yet "at issue," the COGCC and COGA filed motions for summary judgment in Longmont I. As a result of statements made by the City's expert witness in an affidavit attached to the City's response and cross-motion for summary judgment, the COGCC sought a stay in Longmont I pending the outcome of Longmont II because if the Court upheld the hydraulic fracturing bans in Longmont II, no operator would drill an oil and gas well in the City, which would render the challenge to the Ordinance provisions at issue in Longmont I essentially moot. Once the City withdrew its objection to the stay of Longmont I, the Court Ordered the matter stayed on March 12, 2014.

Thereafter, COGA, the COGCC, and TOP Operating, a Plaintiff-Intervenor, each filed their respective motions for summary judgment in Longmont II. In response, the City sought a C.R.C.P. 56(f) continuance requesting that

discovery proceed prior to the filing of its and the Defendant-Intervenor's response pleading. The Court granted the City's motion, in part, and permitted the City to take the depositions of the four individuals who had prepared affidavits which were attached to the Plaintiffs motions for summary judgment. The Court further Ordered the City's and Defendant-Intervenors' responses to the motions for summary judgment be filed no later than May 30, 2014. Plaintiffs reply briefs are due 14 days after the filing of these response pleadings.

Judge D.D. Mallard scheduled oral argument on the Plaintiff's motions for summary judgment in Longmont II for July 9, 2014 at 1:30 pm for ½ day. The evidentiary hearing was scheduled by the Court for ten days, at the insistence of the Defendants, from April 13 to 24, 2015.

For additional information on these cases, please contact [Karen Spaulding](#) at Beatty & Wozniak.

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