



State of Colorado Sues Boulder County and the Boulder Board of County Commissioners over Boulder’s Perpetual Temporary Moratorium on Oil and Gas Development

By: [Malinda Morain](#)

The State of Colorado followed through on its promise to take legal action if Boulder County did not lift its latest moratorium on oil and gas development. On February 14, the state filed suit against Boulder County and the Board of County Commissioners over Boulder County’s five-year “temporary” moratorium on oil and gas development, initially enacted in February of 2012.

The state’s complaint (“Complaint”), available [here](#), requests that the District Court for Boulder County: (1) declare that Boulder County’s moratorium is preempted by the Colorado Oil and Gas Conservation Act (the “Act”); and (2) permanently enjoin the County from enforcing its moratorium or from imposing any similar new moratorium or other restriction on new oil and gas development in Boulder County.

Since February 2012, Boulder County has imposed a moratorium (the “Moratorium”) on all new applications for oil and gas development within Boulder County. In asserting that the Moratorium is preempted by state law, the Complaint specifically references the Colorado Supreme Court’s decisions in [Longmont](#) and [Fort Collins](#), both of which upheld lower court decisions holding that local regulations restricting the development of oil and gas within their borders were preempted by state law. Both of these decisions recognized the state’s dominant interest in the statewide development of oil and gas resources and the uniform regulation of oil and gas activities.

Of particular relevance to the Boulder case is *Fort Collins* (in which the Board of Commissioners for Boulder County filed an *amicus* brief). In that case, the Supreme Court held that a five-year temporary moratorium on hydraulic fracturing or the storage of hydraulic fracturing fluids operationally conflicted with state law. The Supreme Court found that Fort Collins’s moratorium rendered the state’s statutory and regulatory scheme “superfluous” because it prevented operators who abide by the Colorado Oil and Gas Conservation Commission’s rules and regulations from drilling and completing oil and gas wells using hydraulic fracturing during the term of the moratorium. Thus, the court found that the five-year moratorium materially impaired the state’s interest in efficient and responsible development of its oil and gas resources.

The Board’s stated justification for the most recent extension of Boulder’s moratorium—made December 16, 2016 and effective through May 1, 2017—is a purported need to update its local oil and gas regulations. However, as the Complaint points out, the last proposed amendments to

Boulder County's oil and gas regulations were made by County Staff within the first year of the Moratorium, in December of 2012. The County has never placed the amended regulations into effect, undermining the County's claim that the purpose of the moratorium is truly a temporary measure to allow the Board to consider and implement new industry regulations.

In fact, the *Fort Collins* decision specifically addressed the argument that five-year "temporary" bans were necessary for local municipalities to consider and update local regulations. Fort Collins alleged that its five-year hydraulic fracturing moratorium was simply an "interim measure" designed to maintain the status quo pending further study and enactment of local regulations. The Supreme Court disagreed. It held that the five-year moratorium adversely affected a state-wide program of regulation and stood in the way of the Colorado Oil and Gas Conservation Commission's goals of responsible oil and gas development and its rules and regulations governing the exact practice regulated by Fort Collins's moratorium.

Thus, Boulder faces established precedent that a similar-length moratorium (which at the time of the initial decision had been in effect only a few years), was not valid because of its alleged "temporary" nature or the need to restrict development while considering further local regulations.

Unless the County seeks an extension, Boulder County has until March 7 to answer the state's Complaint.

For further background, Jill Fulcher's summary of the State of Colorado's January 26, 2017 letter to the Board requesting rescission of the County's moratorium is available [here](#); and Karen Spaulding's previous detailed summary of the *Fort Collins* and *Longmont* decisions is available [here](#).

For more information regarding the State of Colorado's suit, please contact [Malinda Morain](#) or [Karen Spaulding](#).