

<p>DISTRICT COURT, BOULDER COUNTY,          COLORADO          Boulder Justice Center          1777 Sixth Street          Boulder, CO 80302</p>	
<p><b>PLAINTIFFS:</b> COLORADO OIL AND GAS ASSOCIATION; TOP OPERATING COMPANY; COLORADO OIL AND GAS CONSERVATION COMMISSION</p> <p>v.</p> <p><b>DEFENDANTS:</b> CITY OF LONGMONT, COLORADO; OUR HEALTH, OUR FUTURE, OUR LONGMONT; FOOD &amp; WATER WATCH; SIERRA CLUB; AND EARTHWORKS</p>	
<p><i>Attorney for Defendant Our Health, Our Future, Our Longmont</i>          Joseph A. Salazar, #35196          COLORADO RISING FOR COMMUNITIES          PO Box 370          Eastlake, CO 80614-0370          Phone: (303) 895-7044          Email: jas@salazarlaw.net</p>	<p>Case No.: 2013CV63</p> <p>Division: 3</p>
<p><b>MOTION TO REOPEN CASE</b></p>	

Our Health, Our Future, Our Longmont (“Our Longmont”), by and through its attorney Joseph A. Salazar of Colorado Rising for Communities, hereby files this Motion to Reopen Case. In support thereof, Our Longmont states the following:

**CERTIFICATE OF CONFERRAL**

On August 8, 2019, undersigned counsel contacted the various counsel to the parties via email and/or telephone. Food & Water Watch does not object to the filing of this motion nor the

request sought herein. The City of Longmont takes no position on the motion or the relief requested herein. The Colorado Attorney General's Office indicated that it would need to confer with its client. No other response has been received from the Attorney General's Office since this initial communication. No response has been received from counsel representing Sierra Club, EarthWorks, Colorado Oil and Gas Association, or Top Operating Company.

1. On July 24, 2014, this Honorable Court granted motions for summary judgment filed on behalf of Plaintiffs Colorado Oil and Gas Association ("COGA"), Top Operating Company ("Top Operating"), and the Colorado Oil and Gas Conservation Commission ("Commission"). The Court found that the City of Longmont's Article XVI of the Longmont Municipal Charter, banning hydraulic fracturing within city limits, was in operational conflict with the Colorado Oil and Gas Conservation Act (the "Act") and Commission rules. A copy of the Court's decision is attached hereto as Exhibit 1.
2. This Honorable Court enjoined the City of Longmont from enforcing Article XVI, which was a voter-approved ballot initiative. Ex. 1, p. 17. Article XVI remains as part of the Longmont Municipal Charter.
3. In its analysis enjoining the City of Longmont from enforcing Article XVI, this Honorable Court made a curious observation:

*The Court recognizes that some of the case law described above may have been developed at a time when public policy strongly favored the development of mineral resources. Longmont and the environmental groups, the Defendant-Intervenors, are essentially asking this Court to establish a public policy that favors protection from health, safety, and environmental risks over the development of mineral resources. Whether public policy **should** be changed in that manner is a question for the legislative or a different court.*

*Id.* at p. 13. (Emphasis added).

4. On May 2, 2016, the Colorado Supreme Court affirmed this Court's decision to enjoin the City of Longmont from enforcing Article XVI because it was in operational conflict with the Act. *City of Longmont v. COGA*, 369 P.3d 573, 585 (Colo. 2016)
5. The law and public policy have now substantially changed.

6. On April 16, 2019, the Colorado General Assembly passed and Governor Jared S. Polis signed into law SB 19-181. A copy of the SB 19-181 is attached hereto as Exhibit 2.

7. SB 19-181 changes public policy by now favoring protection of public health, safety, welfare, environment and wildlife resources over oil and gas development. The Act now expressly states:

(1)(a) It is declared to be in the public interest *and the Commission is directed to:*

(I) *Regulate* the development *and* production of the natural resources of oil and gas in the state of Colorado in a manner *that protects* public health, safety, and welfare, including protection of the environment and wildlife resources.

§ 34-60-102(1)(a)(I), C.R.S. (2019) (emphasis added).

8. SB 19-181 also gives enormous power to local governments to regulate oil and gas operations such as, among other things, regulating surface impacts of oil and gas operations, land use authority such as location and siting of oil and gas facilities. §§ 29-20-104(1)(h), (h)(I)-(VI).

9. SB 19-181 also expressly assures that local governments can adopt stricter and more protective regulations than state requirements:

Local governments and state agencies, including the Commission and agencies listed in Section 34-60-105(1)(b), have *regulatory authority* over oil and gas development, including as specified in Sections 34-60-105(1)(b). *A local government's regulations may be more protective or stricter than state requirements.*

§ 34-60-131 (emphasis added).

10. There is no language in SB 19-181 prohibiting local governments from implementing moratoria or bans against fracking within their jurisdictions, particularly where the local government aims to protect and minimize adverse impacts to public health, safety, and welfare and the environment. § 29-20-104(1)(h). In fact, SB 19-181 is absolutely silent about moratoria and bans and it does not nullify Article XVI. Simply

put, if the legislature intended to prohibit local governments from banning oil and gas operations within their jurisdictions, it would have clearly said so. *Spahmer v. Gullette*, 113 P.3d 158, 162 (Colo. 2005) (“We will not create an addition to a statute that the plain language does not suggest or demand.”); *In re Marriage of Hartley*, 886 P.2d 665, 673 (Colo. 1994) (if the legislature intended statute to include a certain provision, it would have included it in the statute). Courts will not interpret a statute to mean that which it does not express. *Carruthers v. Carrier Access Corp.*, 251 P.3d 1199, 1204 (Colo. App. 2008).

11. Hence, Article XVI of Longmont’s Municipal Charter is no longer in operational conflict with the Act.

12. As this matter involves an injunction prohibiting the City of Longmont from enforcing Article XVI, and the basis upon which the injunction is no longer applicable, this Honorable Court must re-open this case. “It is always within the discretion of the trial court to permit the reopening of a case for the purpose of allowing additional evidence, and *it is the duty* of the trial court to thus reopen a case whenever the end of justice can be advanced thereby.” *Marshall v. Mahon*, 530 P.2d 1007, 1008 (Colo. App. 1974), citing *Green v. Pullen*, 173 P.2d 458 (Colo. 1946). (Emphasis added). Upon re-opening this matter, Our Longmont intends to move this Honorable Court to lift the injunction.

WHEREAS Article XVI of the Longmont Municipal Charter is no longer in operational conflict with state statute, this Honorable Court must re-open this matter so that Our Longmont may move this Honorable Court to lift the injunction. The ends of justice will not be advanced if the voter-approved Charter amendment cannot be enforced to provide protections to public health, safety, and welfare, environment and wildlife resources.

Date: August 13, 2019

Respectfully submitted,

/s/ Joseph A. Salazar

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**CERTIFICATE OF SERVICE**

I hereby certify on this 13<sup>th</sup> day of August, 2019 that a true and correct copy of the foregoing **MOTION TO REOPEN CASE** was served electronically via ICCES to the following:

<p>Office of the Colorado Attorney General Kyle Davenport, Esq. 1300 Broadway, 10<sup>th</sup> Floor Denver, CO 80203 <a href="mailto:kyle.davenport@coag.gov">kyle.davenport@coag.gov</a></p> <p><i>Attorneys for Colorado Oil and Gas Conservation Commission</i></p> <p>Thomas J. Kimmel, Esq. Zarlengo &amp; Kimmel, PC 1175 Sherman Street, #1375 Denver, CO 80203 <a href="mailto:Kimmell01@aol.com">Kimmell01@aol.com</a></p> <p><i>Attorney for Top Operating Company</i></p> <p>Karen Spaulding, Esq. Beatty &amp; Wozniak, LLC 216 Sixteenth Street, Suite 1100 Denver, CO 80202 <a href="mailto:kspaulding@bwenergy.com">kspaulding@bwenergy.com</a></p> <p><i>Attorney for COGA</i></p>	<p>Eugene Mei, Esq. Office of the City Attorney City of Longmont 350 Kimbark Street Longmont, CO 80501 <a href="mailto:eugene.mei@longmontcolorado.gov">eugene.mei@longmontcolorado.gov</a></p> <p>Kevin Lynch, Esq. Environmental Law Clinic University of Denver Sturm College of Law 2255 E. Evans Avenue Denver, CO 80208</p> <p><i>Attorneys for Food &amp; Water Watch, Sierra Club and EarthWorks</i></p> <p>Eric Huber, Esq. Sierra Club 1650 38<sup>th</sup> Street, Suite 102W Boulder, CO 80301</p> <p><i>Attorney for Sierra Club and EarthWorks</i></p>
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*s/ Joseph A. Salazar* \_\_\_\_\_  
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