

DISTRICT COURT, DENVER COUNTY, COLORADO 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>PLAINTIFFS: WELD AIR AND WATER; SIERRA CLUB; NAACP COLORADO STATE CONFERENCE; AND WALL OF WOMEN</p> <p>v.</p> <p>DEFENDANT: COLORADO OIL AND GAS CONSERVATION COMMISSION</p> <p>DEFENDANT-INTERVENOR: EXTRACTION OIL & GAS, INC.</p>	
<p><i>Attorneys for Plaintiffs:</i> Tim Estep (CO Bar No. 48553) Kevin Lynch (CO Bar No. 39873) Environmental Law Clinic University of Denver Sturm College of Law 2255 E. Evans Avenue, Denver, CO, 80208 (303) 871-6140 testep@law.du.edu; klynch@law.du.edu;</p>	<p>Case Number: 2017CV31315 Courtroom: 309</p>
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR EMERGENCY CONSIDERATION/IMMEDIATE DISPOSITION	

CERTIFICATE OF CONFERRAL/NOTICE

Pursuant to C.R.C.P. 65 and C.R.C.P. 121 § 1-15(8), counsel for Plaintiffs Weld Air & Water, Sierra Club, NAACP Colorado State Conference, and Wall of Women (collectively, "Public Health Advocates") certify that, via email on June 7, 2018, they notified counsel for Colorado Oil & Gas Conservation Commission and Extraction Oil & Gas, Inc. of Public Health Advocates' intent to file this motion. Both oppose the motion.

MOTION FOR TEMPORARY RESTRAINING ORDER

Public Health Advocates bring this motion pursuant to C.R.C.P. 65(b) and in support therefore show as follows:

1. Immediate and irreparable injury, loss or damage will result to Public Health Advocates before the adverse parties can be heard in opposition;¹
2. Public Health Advocates' attorney has given notice to opposing parties of this motion;
3. This motion is based on Public Health Advocates pending Motion to Postpone or for Injunction (hereafter the "Injunction Motion"), including the supplements thereto, which are incorporated by reference as if repeated verbatim herein. Regarding the serious and irreparable harm occurring, Public Health Advocates direct the court to the declarations of Dr. Carol Kwiatkowski (Ex. B to Second Supplement to Motion to Postpone); Shirley Smithson (Ex. A to Second Supplement to Motion to Postpone); and the declarations of Public Health Advocates members (Exhibits attached Public Health Advocates' Opening Brief).
4. This motion calls for "immediate disposition" under C.R.C.P. 121 § 1-15(4). Public Health Advocates ask the court to issue immediately a 14 day temporary restraining order (TRO) pursuant to Rule 65(b); order Defendants and Intervenors to file their written

¹ A temporary restraining order may be issued if a party shows that it will suffer specific, immediate, and irreparable harm without the injunction. *City of Golden v. Simpson*, 83 P.3d 87, 96 (Colo. 2004). The health harms, which are associated with living, working, and recreating close to an oil and gas development, are specific and irreparable. *See, e.g., Nat. Ass'n of Farmworkers Orgs v. Marshall*, 628 F.2d 604, 613-14 (D.C. Cir. 1980).

responses, if any, within three days of this motion pursuant to Rule 121 §1-15(1)(b); and schedule this matter for hearing as soon as possible thereafter regarding extending the TRO and/or issuing an injunction pending a final decision on the merits.²

REQUEST FOR EMERGENCY CONSIDERATION/IMMEDIATE DISPOSITION

This case was filed April 24, 2017. Merits briefing was concluded September 22, 2017. Because Extraction would not agree to hold off operations, Public Health Advocates filed their Motion to Postpone the Effective Date of the Vetting Form 2A Approvals and in the Alternative for Injunctive Relief (“Injunction Motion”) on November 16, 2017. The Court heard oral argument on the merits on December 22, 2017, but did not hear argument on the Injunction Motion.

Extraction began construction at the site in early February, 2018. Public Health Advocates promptly supplemented their Injunction Motion on February 10, 2018 documenting this, as well as Extraction’s violations of its Form 2As.

Because there was still no ruling on the Injunction Motion, on April 5, 2018 Public Health Advocates sought a temporary restraining order to prevent further deterioration of the *status quo* and to protect their members’ health, safety, and welfare from Extraction’s drilling 24-wells in such close proximity to homes and the Bella Romero school. The court denied that on April 9, 2018, on the sole ground it planned to rule for Defendants on the merits.

² To satisfy Rule 65(c) Public Health Advocates request that only a nominal bond be required. *See* Injunction Motion, pp 14-15.

The merits ruling has not been forthcoming. Meanwhile, Extraction's operations have intensified. To address these changes in the *status quo*, Extraction's continuing violations of it Form 2A, and new information on the operations and health impacts, Public Health Advocates filed a Second Supplement to the Injunction Motion on May 16, 2018; and asked for expedited treatment.³ In spite of this, Extraction began drilling on May 18, 2018. *See* Ex. A – Supplemental Declaration of Carl B. Erickson; Ex. B – Supplemental Declaration of Patricia Nelson.

Having received no response from the court, on May 31, 2018, counsel for Public Health asked chambers via telephone for a hearing on the Injunction Motion, which was denied. The Commission and Extraction responded to the latest supplement on June 6, 2018. The Injunction motion remains pending.

The court's delay in ruling on the injunction motion or on the merits has put Public Health Advocates in the untenable position where there is no final or appealable ruling under C.R.C.P. 54, so Public Health Advocates cannot seek relief from the Court of Appeals to stop the on-going harm to the Bella Romero students and nearby community members. Accordingly, if this court denies this TRO request, Public Health Advocates request an

³ This supplemental information also goes to the likelihood of success on Public Health Advocates' claims, particularly that the Commission's actions are not "consistent with the public health, safety and welfare," C.R.S. § 34-60-102(1)(a)(I); and are arbitrary and capricious, an abuse of discretion or contrary to the record as a whole, C.R.S. § 24-4-106(7). Public Health Advocates request that the Court reconsider its stated intent to rule for Defendants on the merits accordingly. *See* Injunction Motion, pp 9-10; Second Supplement, pp 1, 10-11.

immediate ruling on the injunction (or final ruling on the merits) to enable them to seek emergency relief in the Court of Appeals.

CONCLUSION

For the reasons set forth above, Public Health Advocates respectfully request that the court issue a Temporary Restraining Order: (1) immediately enjoining the Commission and Extraction, and its officers, employees, agents, and servants (including contractors and subcontractors) from engaging in any sort of construction, drilling, or operational activity at the Vetting Development; and (2) directing the parties to appear at a hearing regarding further relief on a date provided by the Court. A proposed order is attached.

In the alternative, Public Health Advocates request that, should the Court deny this motion, the Court expressly treat that denial as applying to Public Health Advocates Injunction Motion to enable an immediate appeal.

Respectfully submitted June 7, 2018.

s/Timothy Estep
Timothy Estep
Kevin Lynch
Attorneys for Plaintiffs
Weld Air & Water, Sierra Club,
NAACP Colorado State Conference, and
Wall of Women

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2018, I electronically filed the foregoing **PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND REQUEST FOR EMERGENCY CONSIDERATION/IMMEDIATE DISPOSITION** and that the Colorado Courts E-Filing System will serve notification of such filing to all counsel of record.

s/Timothy Estep