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Colorado Court Places Oil & Gas Development Above Public Health Interests

Denver, Colorado – On Friday, Denver District Court Judge J. Eric Elliff affirmed Colorado Oil and Gas Conservation Commission's (COGCC) order to deny the fracking petition brought by seven young plaintiffs, stating that the Commission is required to “strike a balance between the regulation of oil and gas operations and protecting public health, the environment, and wildlife resources.” Judge Elliff is not the judge who was originally assigned the case and who denied the COGCC's earlier motion to dismiss the case.

“It's a preposterous idea that the Commission need to strike a balance between regulation of oil and gas operations and protecting the health of Coloradans,” said Xiuhtezcatl Roske-Martinez, 15-year-old petitioner and youth director of Earth Guardians. “The Commission's priority should be the health and safety of us, the people. Right now, our government is putting their profits above our futures and that needs to stop. I'm working with my attorneys to discuss next steps.”

Contrary to the plain language of the Colorado Oil and Gas Conservation Act, the court said that is was appropriate for the COGCC to “balance” oil and gas development with the need to protect public health, the environment, and wildlife. In reaching this conclusion, the court ignored plaintiffs' arguments that such an interpretation of Colorado's statutes would allow for the continued infringement of their constitutional rights, including “the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and of seeking and obtaining their safety and happiness,” rights that oil and gas development are harming. The court also chose to ignore the plethora of evidence before it detailing the harms that oil and gas development is causing to Coloradans public's health and to the environment.

The case was brought by seven inspiring youth who are all members of the Boulder-based organization Earth Guardians. The youths' case against the Commission arose out of a petition for rulemaking that asked the Commission to suspend the issuance of permits that allow oil and gas drilling until it is proven that drilling can be conducted without adversely impacting human health and safety and without harming the environment and wildlife. The Commission denied the petition, finding that it did not have the authority to issue the requested rule and that “other Commission priorities...must take precedence.” The plaintiffs challenged this decision, arguing that the Commission must place human health and safety above the interests of the oil and gas industry in Colorado.

“Pay careful attention to this ruling, Coloradans,” warned Julia Olson, a native Coloradan and Executive Director and chief legal counsel at Our Children’s Trust. “Your public health, safety and welfare are now subordinate to the interests of fossil fuel industry’s development of oil and gas resources. Under this court’s strained statutory interpretation, which is contrary to judicial rules of statutory interpretation and without regard to the state’s constitutional obligations, the Commission need not prioritize protecting your public health interests over interests in the development, production, and utilization of the natural resources of oil and gas.”

Olson continued, “Without question, this decision places public health at a level that is only as important as corporate dollars. Your health can be compromised if corporate dollars are advanced. While no one suggests that public health, safety and welfare should be the sole factors, they should certainly be the primary factors in everything the state does, including natural resource development. This court went so far as to say that there is no legislative intent to make public health the primary factor in Defendants’ decisions to issue oil and gas permits.”

“The idea that the legislature intended to put public health – the health of our children and our communities and the air we breathe – on a scale, and weigh those against the billions of dollars that developers were making at the peak of our fracking boom, means the public is going to come out losing every time,” said Kate Toan, plaintiffs’ attorney. “I don’t think that’s what our legislature meant when they said that development should be done in a manner consistent with protecting the public health.”

Plaintiffs are working with their attorneys to discuss next steps. An appeal is very likely.

Earth Guardians is a Colorado-based nonprofit organization with youth chapters on five continents, and multiple groups in the United States with thousands of members working together to protect the Earth, the water, the air, and the atmosphere, creating healthy sustainable communities globally. We inspire and empower young leaders, families, schools, organizations, cities, and government officials to make positive change locally, nationally, and globally to address the critical state of the Earth. www.earthguardians.org

Colorado Environmental Law is the law practice of Katherine Toan, Esq., based in Boulder, Colorado. Katherine works on behalf of individuals (primarily farmers and ranchers), nonprofit organizations, and local governments in a variety of environmental and natural resource law issues, including oil and gas, wildlife, and land use.

MindDrive Legal Services founder, Dan Leftwich, has decades of experience in complex litigation, class action, high profile mediations, jury trials, and appeals in state and federal courts around the country.

Our Children's Trust is a nonprofit organization advocating for urgent emissions reductions on behalf of youth and future generations, who have the most to lose if emissions are not reduced. OCT is spearheading the international human rights and environmental TRUST Campaign to compel governments to safeguard the atmosphere as a "public trust" resource. We use law, film, and media to elevate their compelling voices. Our ultimate goal is for governments to adopt and implement enforceable science-based Climate Recovery Plans with annual emissions reductions to return to an atmospheric carbon dioxide concentration of 350 ppm.

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