

BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF AN APPLICATION BY 8 NORTH,)
LLC FOR AN ORDER AUTHORIZING NINETEEN (19))
ADDITIONAL HORIZONTAL WELLS, FOR A TOTAL) CAUSE NO. 407
OF TWENTY (20) HORIZONTAL WELLS, FOR)
PRODUCTION FROM THE CODELL AND NIOBRARA)
FORMATIONS IN AN APPROXIMATE 1,280-ACRE) DOCKET NO. 171200773
DRILLING AND SPACING UNIT PROPOSED FOR)
SECTIONS 35 AND 36, TOWNSHIP 1 NORTH, RANGE)
69 WEST, 6TH P.M., WATTENBERG FIELD, BOULDER) TYPE: DENSITY
COUNTY, COLORADO)

MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

Comes now, the Board of County Commissioners of Boulder County, Colorado, ("Boulder County") by Assistant County Attorney Katherine A. Burke and Deputy County Attorney David Hughes, and the City of Lafayette, Colorado, by Jeffery P. Robbins, and file this Motion to Dismiss for Lack of Subject Matter Jurisdiction, and in support state the following:

I. INTRODUCTION

8 North, LLC ("8 North") initiated this action by filing an application given Docket No. 171200773 seeking an order from the Colorado Oil and Gas Conservation Commission ("COGCC") authorizing the drilling of an additional nineteen (19) horizontal wells, for a total of twenty (20) horizontal wells, in an approximate 1,280 acre proposed, but not yet approved, drilling and spacing unit for certain property in Township 1 North, Range 69 West, 6th P.M., Sections 35 and 36. Boulder County and Lafayette move to dismiss Docket No. 171200773 because the COGCC lacks the statutory authority under C.R.S. Section 34-60-116 to allow additional wells to be approved for a spacing unit that has not yet been established. Further, the COGCC does not have the statutory authority to permit additional wells in the proposed spacing unit until a single approved well in the spacing unit is drilled and produced.

II. CONFERRAL

Counsel for Boulder County contacted counsel for 8 North regarding its position on the motion. 8 North opposes dismissal of the application.

III. LEGAL AUTHORITY

Unless there are inconsistencies with the Act or the COGCC Rules, the Colorado Rules of Civil Procedure govern Commission proceedings. COGCC Rule 519. A party

may file a motion to dismiss for lack of subject matter jurisdiction under C.R.C.P. 12(b)(1). The COGCC's authority to act on 8 North's application is governed by statute. State agencies are "creatures of statute and have only those powers conferred by the legislature." *Pawnee Well Users, Inc. v. Wolfe*, 320 P.3d 320, 326 (Colo. 2013). An agency's determination of its own jurisdiction is subject to de novo review by a court. *Hawes v. Colo. Div. of Ins.*, 65 P.3d 1008, 1015 (Colo. 2003). If the COGCC issues an order that exceeds its authority, the order is void. See *Colorado Consumer Health Initiative v. Colo. Bd. Of Health*, 240 P.3d 525, 528 (Colo. App. 2010).

IV. UNDISPUTED FACTS FOR MOTION TO DISMISS

The pertinent material allegations from the Application are as follows:

1. 8 North is a limited liability corporation duly authorized to conduct business in the State of Colorado, and has registered as an operator with the Commission. Application Paragraph 1.
2. 8 North is a mineral owner in the below-listed lands:

<u>Township 1 North, Range 69 West, 6th P.M.</u>	
Section 35:	All
Section 36:	All

1,280 acres, more or less, Boulder County, Colorado. Application Paragraph 2.
3. Pending before the Commission is Docket No. 171000694, currently scheduled for hearing on January 29-30, 2017 (the "First Spacing Application"). The First Spacing Application requested the Commission establish the Application Lands as an approximate 1,280-acre drilling and spacing unit for the Codell and Niobrara Formations and authorize the drilling of one horizontal well within the Application Lands for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations. See First Spacing Application Paragraph 6.
4. The First Spacing Application requested authorization to drill and complete up to twenty (20) horizontal wells in the approximate 1,280-acre drilling and spacing unit proposed for the Application Lands, for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations, as necessary to economically and efficiently recover resources, while minimizing surface impacts, creating efficiencies for drilling and production, increasing the ultimate recovery of the reserves, preventing waste, and protecting correlative rights. See First Spacing Application Paragraph 7.
5. On September 19, 2017, 8 North amended its spacing unit application to request authorization for only one well in the same proposed drilling and spacing unit (the

"Amended Spacing Application"). See Amended Spacing Application Paragraph 7.

6. Together with the Amended Spacing Application, 8 North filed the above-captioned application for additional density (the "Density Application"), requesting authorization for an additional 19 wells in the proposed drilling and spacing unit sought in the Amended Spacing Application. Both the Amended Spacing Application and the Density Application are scheduled for the January COGCC meeting.

V. ARGUMENT

The COGCC should reject 8 North's Application requesting an additional nineteen (19) wells in the proposed approximate 1,280-acre drilling and spacing unit because it lacks the statutory authority to issue an order granting the request.

C.R.S. Section 34-60-116(1) states: "To prevent or assist in preventing waste [and] to avoid the drilling of unnecessary wells ... the Commission ... has the power to establish drilling units of specified and approximately uniform size and shape covering any pool." Subsection 3 states: "The order establishing drilling units shall permit *only one well* to be drilled *and produced* from the common source of supply of a drilling unit and shall specify the location of the permitted well thereon." C.R.S. § 34-60-116(3) (emphasis added). Subsection 4 governs whether and to what extent additional wells can be approved for drilling within the unit. This section states, "the Commission... may increase the size of the drilling units or permit additional wells to be drilled within the *established units* in order to prevent or assist in preventing waste or to avoid the draining of unnecessary wells." C.R.S. § 34-60-116(4).

8 North has failed to allege, and cannot allege, in its Density Application that an existing unit has been established in the area of the requested additional density. Without an established unit, the COGCC has no statutory authority under which it can grant additional density. See C.R.S. § 34-60-116(4) (allowing COGCC approval of additional wells in "*established units*") (emphasis added). The procedural history of the applications demonstrates that 8 North has never really been interested in establishing a spacing unit with a single well as required under C.R.S. Section 34-60-116(3) and proposed in the Amended Spacing Application. 8 North originally applied for 20 wells in the same unit in which it now seeks approval of a single well, and contemporaneously seeks approval of the 19-well increased density. The splitting of 8 North's original application is a procedural gambit seeking to evade proper analysis of the 20 wells it seeks in its proposed unit.

8 North cannot grant the COGCC statutory authority it does not have by procedural sleight-of-hand. One of the stated purposes of Section 34-60-116(1) is "to avoid the drilling of unnecessary wells . . ." Accordingly, the statute expressly limits the Commission's authority to establish a drilling unit with "one well to be drilled and

produced in the drilling unit.” C.R.S. § 34-60-116(3). While a separate subsection of the statute grants the Commission authority to permit additional wells within a unit, such additional wells are only permitted in “established” units, and the statute further requires an additional application, notice, and hearing. C.R.S. § 34-60-116(4). The reasoning for these additional requirements is obvious: the Commission cannot properly evaluate an application for additional density for an “additional well” when the first well has not been drilled and produced. See C.R.S. § 34-60-116(3). If, as 8 North proposes, the COGCC had the authority create a spacing unit for a single well and then allow “additional density” in the same unit simultaneously, the statutory directive that only one well may be established per spacing unit would be meaningless. In reviewing a statute, the Commission should “give sensible effect to all parts.” *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1091 (Colo. 2011). For these reasons, the COGCC should find that it lacks the statutory authority to issue the requested order and dismiss the Density Application for lack of subject matter jurisdiction.

Respectfully submitted this 6th day of December, 2017.

BOULDER COUNTY ATTORNEY'S OFFICE

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-and-

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION** has been mailed and served electronically this 6th day of December, 2017 to the following entities that require notice of such filing and an original and two copies have been sent for filing with the COGCC:

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