

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 AN))	
ADDITIONAL THIRTY-ONE (31) HORIZONTAL))	CAUSE NO. 407
WELLS, FOR A TOTAL OF THIRTY-TWO (32)))	
HORIZONTAL WELLS, FOR PRODUCTION FROM))	
THE CODELL AND NIOBRARA FORMATIONS IN))	DOCKET NO. 171200774
AN APPROXIMATE 2,720-ACRE DRILLING AND))	
SPACING UNIT PROPOSED FOR SECTIONS))	
13, 14, 23, AND 24, TOWNSHIP 2 NORTH, RANGE 69))	TYPE: DENSITY
WEST, 6 TH P.M. AND SECTION 18 TOWNSHIP 2))	
NORTH, RANGE 68 WEST, 6 TH P.M., WATTENBERG))	
FIELD, BOULDER AND WELD COUNTIES,))	
COLORADO))	

AMENDED PROTEST AND INTERVENTION BY BOULDER COUNTY

Pursuant to Commission Rule 509, the Board of County Commissioners of the County of Boulder (the "County"), by its undersigned counsel, files this amended protest and intervention by right ("Protest") to the above-referenced Application submitted on September 25, 2017, by 8 North, LLC ("Applicant").

**A. GENERAL STATEMENT OF FACTUAL AND/OR LEGAL BASIS
FOR THE AMENDED PROTEST AND INTERVENTION**

1. The County is a body corporate and politic in the state of Colorado with powers conferred under applicable law, including §30-11-101, C.R.S.
2. The County is the Local Government with land use jurisdiction for the Application Lands and has elected to intervene as a matter of right on behalf of its citizens pursuant to Rule 509. In its capacity as regulator of land use, the County states: (i) that the public issues raised by the Application reasonably relate to significant adverse impacts to the public health, safety and welfare of citizens, including environment and wildlife resources, that are within the Commission's jurisdiction to remedy; (ii) that potential impacts are not adequately addressed by the Application; and (iii) that the potential impacts are not adequately addressed by the Rules and Regulations of the Commission. These impacts may adversely affect public health, safety and welfare, damage private and public mineral and surface rights, allow the drilling of unnecessary and uneconomic wells, damage important environmental and agricultural resources, create waste and damage correlative rights.

3. The County has significant ownership and regulatory interests in the Application Lands, which, as will be shown at the hearing on the Application, are likely to be affected by the proposed development.
 - a. The County owns the majority of the lands in the Application Lands, purchased with taxpayer dollars to preserve important agricultural and environmental resources.
 - b. Dry Creek runs through the Application Lands, which includes areas of significant concern that the County regulates:
 - i. Dry Creek poses floodplain and floodway concerns for nearby development;
 - ii. Dry Creek provides important riparian and wildlife habitat.
 - c. The Application Lands contain several important wetlands that the County protects through its land use power.
 - d. The land in the Application Lands is among the most productive, valuable, irrigated cropland owned by the County.
 - e. Active agriculture in the Application Lands uses five existing center-pivot irrigation systems and near-term plans call for three more, none of which can be interrupted by oil and gas activities.
 - f. The Application Lands contain sensitive wildlife nesting areas and nesting buffers that the County protects through its land use power.
 - g. County roads in the Application Lands will be affected.
 - h. The Application Lands encompass 25 rural residences that may be affected by the scale of proposed development.
4. Applicant is requesting an order that authorizes 31 additional wells in a spacing unit requested in Docket No. 171000695 (the "Spacing Application"). That spacing unit has not yet been established by Commission order, no Form 2A or Form 2 permits have been issued to Applicant for that unit and no resulting well has been drilled by Applicant. Nonetheless, Applicant now requests the right to drill additional wells in the proposed unit "to economically and efficiently recover resources," which is inconsistent with the Oil and Gas Conservation Act for the following reasons:
 - a. The proposed unit in which the additional wells are requested has not yet been established.

- b. If the Commission does issue an order establishing the unit, the order “*shall* permit only one well to be drilled *and produced.*” § 34-60-116(3), C.R.S. (emphasis added). The Spacing Application properly requests authorization for a single well and the statute makes clear that only that well can be drilled and go into production once an order establishes the unit.
 - c. Additional wells may *thereafter* be authorized in “the *established* units” to prevent waste. § 34-60-116(4), C.R.S. (emphasis added). The only way the Commission can determine if the additional wells sought by the Application are necessary to prevent waste is by considering the efficiencies of the original well drilled and producing in the unit. Only on evidence that the single well, after it is in production, is not able to effectively drain the resource in that area can additional wells be authorized under the Act.
5. The County objects to the Application because it fails to allege facts that satisfy the standard set by the Colorado Court of Appeals in *Martinez, et al. v. Colorado Oil and Gas Conservation Commission, et al.*, 2017 COA 37 (March 23, 2017) , *cert. granted January 29, 2018.*
 6. The Commission has a duty to foster the responsible, balanced development of oil and gas natural resources and to protect public health, safety and welfare. It also has the authority to prevent waste and the drilling of unnecessary or uneconomic wells, and to protect correlative rights. *See* C.R.S. §§34-60-102, 116.
 7. It is widely recognized that current market conditions are not favorable to the owner of mineral interests. As the owner of mineral interests within the Application Lands, the County does not find it economically beneficial to move forward with development of its mineral interests at this time. Granting the Application may lead to the County’s mineral rights being statutorily pooled without due process of law and just compensation and in violation of the United States and Colorado Constitutions and the imposition of a joint ownership relationship that violates Article XI, Sec. 2 of the Colorado Constitution.
 8. The County reserves all other objections which it has the right to present, as well as its right to amend this Protest.
 9. The County requests that the Commission deny the Application for the reasons set forth above.

B. RELIEF REQUESTED

WHEREFORE, Boulder County respectfully requests the following:

1. That Boulder County be allowed to participate as a local government with land use jurisdiction and a surface owner; and
2. That the Commission deny the Application and enter such other findings and orders as the Commission may deem proper or advisable in this matter.

C. RESERVATION OF RIGHTS

Boulder County reserves all rights to supplement this Protest with additional factual information and/or legal arguments and to request additional relief. Boulder County further reserves the right to require Applicant to prove its case, and to file any motions or other responsive pleadings to the Application based upon a Scheduling Order from this Commission.

D. REQUEST FOR IMMEDIATE SCHEDULING ORDER

The County respectfully requests that the Commission Hearing Officer issue a Scheduling Order including, but not limited to, the following dates:

1. Motions Deadline, including dates to file motions, responses to motions and replies to motions and any necessary briefs in support;
2. Disclosure and Discovery Schedule;
3. Pre-Hearing Statement Deadline;
4. Witness List Deadline;
5. Exhibit List and Submission of Exhibit Deadline; and
6. Deadline for Submission of Draft Order.

The County respectfully requests that it be provided with a complete list of all interested parties in this Docket and any necessary updates thereto.

E. DESCRIPTION OF INTENDED PRESENTATION

1. The County will present testimony and evidence in support of the facts and arguments stated within this Protest.
2. The County reserves the right to present additional witnesses as necessary to supplement the above facts and/or rebut any evidence, argument or witness testimony presented by Applicant at the hearing.


F. TIME ESTIMATE FOR PROTEST

The County estimates that it will require approximately one hour to present its evidence and testimony in support of this Protest and in response to Applicant's evidence.

Dated this 20th day of March, 2018.

Respectfully submitted,

BOARD OF COUNTY COMMISSIONERS
BOULDER COUNTY

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ATTORNEYS FOR BOULDER COUNTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **AMENDED PROTEST AND INTERVENTION BY BOULDER COUNTY** has been mailed or served electronically this 20th day of March, 2018, to the following entities that require notice of such filing and an original and two copies have been sent or filed with the COGCC:

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