

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

IN THE MATTER OF AN AMENDED APPLICATION	)	
BY 8 NORTH LLC FOR AN ORDER ESTABLISHING	)	
A 2,720-ACRE DRILLING AND SPACING UNIT FOR	)	CAUSE NO. 407
SECTIONS 13, 14, 23, and 24, TOWNSHIP 2 NORTH,	)	
RANGE 69 WEST, 6 <sup>TH</sup> P.M. AND SECTION	)	DOCKET NO. 171000695
18, TOWNSHIP 2 NORTH, RANGE 68 WEST, 6 <sup>TH</sup>	)	
P.M., FOR HORIZONTAL WELL DEVELOPMENT OF	)	TYPE: SPACING
THE CODELL AND NIOBRARA FORMATIONS,	)	
WATTENBERG FIELD, BOULDER AND WELD	)	
COUNTIES, COLORADO	)	

**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 protest and intervention by right ("Protest") to the Amended Application originally submitted on September 19, 2017, by 8 North LLC ("Applicant").

**A. GENERAL STATEMENT OF FACTUAL AND/OR LEGAL BASIS  
FOR THE 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 an Owner, as that term is defined by statute, of interests on, within and under the Application Lands. The County is also one of the Local Governments 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 proposed development under the Application and the companion application for additional wells in the Application Lands, Docket No. 171200774.
  - 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. The County can present legal arguments demonstrating that the proposed unit cannot be approved. The County is in possession of five oil and gas leases for minerals under lands owned by the County that limit the size of any unit into which the leased minerals can be combined.
  - a. Four leases in Section 24 (Township 2N, Range 69W) of the Application Lands (Boulder County Clerk and Recorder Reception Nos. 323938, 387761, 387762, and 387763) can only be combined into units “not exceeding the minimum size tract on which a well may be drilled under laws, rules, or regulations in force at

the time of such pooling or unitization.” On information and belief, the only spacing order relevant to Section 24 T2N R69W and in force at this time is Order 407-87, which establishes 80-acre units per well. Therefore, no unit can be established including the lands subject to these leases that is larger than 80 acres.

- b. A lease in Section 14 (Township 2N, Range 69W) of the Application Lands (Boulder County Clerk and Recorder Reception No. 489996) can only be combined into units “not exceeding in area the acreage prescribed or required in any Federal or State law, order, rule or regulation for the drilling or operation of one well, or for obtaining the maximum allowable production from one well” or, if larger, “40 acres each for the production of oil, or 640 acres each for the production of gas.” Again, Order 407-87 covers the lands subject to this lease and established 80-acre spacing units. Therefore, no unit can be established including the lands subject to this lease that is larger than 80 acres (or 640 acres if for recovery of gas only).
  - c. Applicant is requesting an order establishing a 2,720-acre unit that encompasses the lands identified in the five leases noted herein. The proposed unit cannot be established due to the limitations in the cited leases (the County does not currently have knowledge whether other leases in the Application Lands have similar limitations but may supplement with such facts at the hearing on the Application).
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 relief:

1. That Boulder County be allowed to participate as an Owner and a local government with land use jurisdiction; 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 to respond to Applicant's case.

Dated this 30th day of March 2018.

Respectfully submitted,

BOULDER COUNTY ATTORNEY'S  
OFFICE

By:



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**ATTORNEYS FOR INTERVENOR  
BOULDER COUNTY**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PROTEST AND INTERVENTION BY BOULDER COUNTY** has been mailed or served electronically this 30th 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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