

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, 6TH P.M. AND SECTION 18 TOWNSHIP 2))
NORTH, RANGE 68 WEST, 6TH P.M., 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 above-referenced Application submitted on September 25, 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 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 with oversight 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, and create waste and damage correlative rights.

3. The County filed a request that a Rule 508 local public forum be completed before the Application is considered, which must precede a hearing on the Application, and a Rule 508 public issues hearing may also be necessary before the Commission can rule on the Application.
4. 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.
5. 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."
6. Applicant has not submitted a Proposed Plan as contemplated by Rule 503.c.
7. Boulder 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).
8. The Application is premature and cannot be granted for several 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 drill 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 support additional wells under the Act.
9. 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).

10. 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 taken without due process of law and just compensation in violation of the United States and Colorado Constitutions and Article XI, Sec. 1 (No Pledge of Credit) of the Colorado Constitution.
11. The County reserves all other objections which it has the right to present, as well as its right to amend this Protest.
12. 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 a local government with land use jurisdiction;
2. That the provisions of Rule 508 be applied in this matter;
3. That the Commission deny the Application and enter such other findings and orders as the Commission may deem proper or advisable in this matter; and
4. That any hearing on the Application be held in Denver no earlier than 60 days after any Rule 508 and pre-hearing processes have been completed.

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 and City respectfully request 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;
6. Deadline for Submission of Draft Order; and
7. Rule 508 hearing procedures.

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 case.

Dated this 15th day of November 2017.

Respectfully submitted,

BOULDER COUNTY ATTORNEY'S OFFICE

By: 

Katherine A. Burke, #35716

Assistant County Attorney

David Hughes, #24425

Deputy County Attorney

P.O. Box 471

Boulder, CO 80306

kaburke@bouldercounty.org

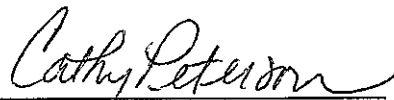
ATTORNEYS FOR BOULDER COUNTY

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 15th day of November 2017 to the following entities that require notice of such filing and an original and two copies have been sent or filed with the COGCC:

James P. Rouse
Hearing Officer
Oil and Gas Conservation Commission
1120 Lincoln Street, Ste. 801
Denver, CO 80203
James.Rouse@state.co.us

Jillian Fulcher
Jobediah J. Rittenhouse
Beatty & Wozniak, P.C.
216 16th Street, Suite 1100
Denver, CO 80202
jfulcher@bwenergylaw.com
jrittenhouse@bwenergylaw.com



Cathy Peterson