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

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

**REPLY IN SUPPORT OF 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 Reply in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, and in support state the following:

## I. INTRODUCTION

8 North, LLC's ("8 North") Response to Motion to Dismiss for Lack of Subject Matter Jurisdiction ("Response") shows that the jurisdictional issue in this case does not involve any factual dispute and is purely a question of statutory interpretation. As shown below, the plain language of C.R.S. Section 34-60-116 demonstrates that the COGCC does not have jurisdiction to act on 8 North's Application and therefore should dismiss it.

## II. 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.

8 North advances two arguments in its Response. First, 8 North argues that, as a practical matter, multi-well development is necessary for the economic extraction from unconventional reservoirs like the Codell and Niobrara Formations and therefore the COGCC should permit multi-well spacing units. Second, it argues that C.R.S. Section 34-60-116 does not have an explicit timing component and therefore the Commission has the authority to issue permits for additional density immediately after issuing a spacing order. As shown below, both of 8 North's arguments must fail.

A. The COGCC cannot grant itself authority it does not have simply because complying with a statutory mandate would be inefficient for operators.

8 North argues that well-established science recognizes that multiple wells are necessary for efficient and economic development in the Codell and Niobrara formations and that the COGCC has broad authority to establish drilling units with multiple wells in order to prevent waste. However, the COGCC's authority is not so broad that it may ignore statutory limitations: "[a]s a creature of state statue, the COGCC has powers conferred by that statute." *Chase v. Colo. Oil and Gas Conservation Comm'n*, 284 P.3d 161, 166 (Colo.App. 2012). By pointing to the practical necessity of multi-well development, 8 North is arguing that the statutory requirement that only one well be drilled and produced within a spacing unit is impractical or inefficient. Even assuming the accuracy of that argument, "[t]he Commission . . . has the authority to remedy only issues that are within its jurisdiction." *Id.; see also McCool v. Sears*, 186 P.3d 147, 151 (Colo.App. 2002) ("[a]n agency regulation or rule may not modify or contravene an existing statute"). If 8 North believes the statutory requirements for establishing density within an existing spacing unit are outdated or unreasonable, its remedy is to go to the legislature for a statutory change—not to ask the COGCC to take action beyond its jurisdiction.

8 North attempts to bolster its argument that the COGCC has jurisdiction to act as 8 North proposes because the COGCC has taken such action in the past. Specifically, 8 North points to four instances where the COGCC has granted spacing orders that also include additional wells for the brand-new units. However, none of the COGCC orders referenced by 8 North address the COGCC's jurisdiction to issue multi-well spacing orders or to authorize additional wells in a unit before the original well is drilled and produced under C.R.S. Section 34-60-116, nor does it appear that any party to those proceedings raised the issue. Further, 8 North fails to point to any authority indicating that once a State agency takes an action that exceeds its jurisdiction the agency may continue to do so with impunity.

B. 8 North's interpretation of C.R.S. Section 34-60-116 ignores the specific language of the statute.

8 North argues that the only statutory preconditions to the COGCC authorizing additional wells in an established spacing unit are an application, notice, and a hearing. *See* § 34-60-116(4), C.R.S. However, the COGCC only has the authority to authorize "additional wells" within "established" units. *Id.* Accordingly, establishing a spacing unit is clearly an additional precondition to an order for additional wells. 8 North implicitly conceded that such a precondition exists by filing a separate spacing application for a single well immediately followed by an application for additional density. This procedural maneuver does not cure the underlying jurisdictional problem.

8 North's argument that the COGCC can immediately, or even in the same order, allow for additional density ignores additional, specific statutory language. An order

creating an established unit "shall permit only one well to be drilled *and produced* from the common source of supply of a drilling unit . . ." § 34-60-116(3). C.R.S. (emphasis added). If, as requested by 8 North, the COGCC issues two orders on the same day allowing both a single original well and 31 additional wells in a new spacing unit, then the COGCC will have issued an order permitting the drilling and production of 32 wells in the new unit, not "only one well." If, as argued by 8 North, the additional well provisions in subsection 4 effectively supersede the one-well limit in subsection 3, then it renders the one-well limit meaningless. *See Larson v. Sinclair Transp. Co.,* 284 P.3d 42, 47 (Colo. 2012) ("We avoid constructions that would render words of the statute superfluous"). Failing to acknowledge *any* circumstances in which the one-well limit would come into play, 8 North asks the Commission to render subsection 3 superfluous. If the legislature had intended to grant the COGGC unlimited discretion to determine the number of wells in a new unit, it would not have included an explicit one-well limitation. *Id.* ("Our role is to effectuate the intent of the General Assembly.").

Because 8 North has failed to advance arguments demonstrating the COGCC has jurisdiction in this matter, the Commission should dismiss the application under C.R.C.P. 12(b)(1).

Respectfully submitted this 18th day of December, 2017.

BOULDER COUNTY ATTORNEY'S OFFICE

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION** has been mailed and served electronically this 18th 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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Cathy Peterson

Cathy Peterson

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

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Respectfully submitted this 18th day of December, 2017.

BOULDER COUNTY ATTORNEY'S OFFICE

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