

**BEFORE THE OIL & 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 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

DOCKET NO. 171200773

TYPE: DENSITY

**RESPONSE TO MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER JURISDICTION**

8 North LLC, Operator No. 10575 ("8 North" or "Applicant"), by and through its attorneys, Beatty & Wozniak, P.C., respectfully submits this Response to the Motion to Dismiss ("Response") 8 North's Application ("Application") in the subject docket jointly filed by the Board of County Commissioners of Boulder County ("Boulder") and the City of Lafayette ("Lafayette"). The Application requests an order authorizing nineteen (19) additional horizontal wells, for a total of twenty (20) horizontal wells, for the 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. ("Application Lands").

**I. Factual and Procedural Background**

***A. Introduction***

1. Applicant is a limited liability company duly authorized to conduct business in the State of Colorado, and has registered as an operator with the COGCC.

2. Applicant is an Owner with a right to drill in the Application Lands.

***B. 8 North's Spacing Application***

1. On February 19, 1992 (amended August 20, 1993), the Colorado Oil and Gas Conservation Commission ("Commission") entered Order No. 407-87, which, among other things, established 80-acre drilling and spacing units for the production of oil, gas and associated hydrocarbons from the Codell-Niobrara Formations.

2. On August 31, 2017, amended September 19, 2017, 8 North, by its attorneys, filed a verified application ("Spacing Application") in Docket No. 171000694 requesting an order to establish an approximate 1,280-acre drilling and spacing unit for

the Application Lands and authorize the drilling of one horizontal well within the proposed unit, for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations, with the treated intervals of the wellbore of any permitted well to be located not less than 460 feet from the unit boundaries and not less than 150 feet from the treated interval of any well being drilled or producing from the same formation without exception being granted by the Director.

3. On October 6, 2017, 8 North, by its attorneys, filed with the Commission a written request to approve the Spacing Application based on the merits of the verified Spacing Application and the supporting exhibits. Sworn written testimony and exhibits were submitted in support of the Spacing Application.

4. The Spacing Application has been protested by Boulder and Lafayette, and the Town of Erie.

C. *8 North's Density Application*

1. On September 19, 2017, 8 North, by its attorneys, filed a verified application in Docket No. 171200773 requesting an order to authorize the drilling of up to twenty (20) horizontal wells within an approximate 1,280-acre drilling and spacing unit proposed for the Applications Lands, for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations, with the treated intervals of the wellbore of any permitted wells to be located not less than 460 feet from the unit boundaries and not less than 150 feet from the treated interval of any well being drilled or producing from the same formation, unless an exception is granted by the Director.

2. The Application for additional wells has been protested by Boulder and Lafayette, and the Town of Erie.

II. **Standard of Review**

C.R.C.P. Rule 12(b)(1) requires the dismissal of an action where the tribunal lacks jurisdiction over the subject matter. *Trinity Broadcasting of Denver, Inc. v. The City of Westminster*, 848 P.2d 916, 924 (Colo. 1993)(*en banc*). Pursuant to Rule 519.a., the Commission adopts the rules of practice and procedure contained in the Colorado Rules of Civil Procedure insofar as the same may be applicable and not inconsistent with the Commission Rules.

### III. Analysis

The Colorado legislature, by enacting the Colorado Oil and Gas Conservation Act ("Act"), declared it to be in the public interest to "foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas" and to protect against waste. C.R.S. §§ 34-60-102(1)(a)(I), (II). To accomplish this legislative goal, the Commission is granted broad authority to establish drilling units with multiple wells in order to prevent or assist in preventing waste and protect correlative rights. C.R.S. §§ 34-60-116(1), (4). Further, the Commission is obligated to protect the public and private interests against waste in the production and utilization of oil and gas and to safeguard, protect, and enforce the co-equal and correlative rights of owners and producers in a common source or pool. C.R.S. § 34-60-102(1)(a)(I)-(III). Each drilling and spacing unit established by the Commission, therefore, should prioritize the orderly development of the reservoir, and the protection of the interests of the parties within the lands affected by the Application, and each applicant must demonstrate that its proposed unit satisfies this threshold. In modern unconventional resource development, in order to protect correlative rights (that is the opportunity to obtain one's just and equitable share, § 34-60-103(4), C.R.S.), drilling and spacing units with multiple wells are necessary. Without such units and multi-well development, it is less economic, and in some cases uneconomic, to develop unconventional reservoirs like the Codell and Niobrara Formations. Moreover, because a single horizontal well generally does not drain the minerals underlying an entire drilling and spacing unit, it is necessary to authorize additional wells to maximize hydrocarbon recovery and prevent stranding minerals. Thus, not only is the establishment of drilling and spacing units necessary to protect correlative rights, but multi-well units are necessary to prevent waste.

Boulder and Lafayette's Motion is a frivolous filing that has no basis in law or fact. Boulder and Lafayette's Motion argues that Commission lacks the statutory authority to allow additional wells to be approved where the initial horizontal well has yet to be drilled or completed. Boulder and Lafayette's contention is a misreading of Section 34-60-116, C.R.S., and inapposite to the Commission's Rules and precedent.

A. *The Commission has authority to grant 8 North's Application, and Boulder and Lafayette's Motion must be denied.*

Boulder and Lafayette assert pursuant to Sections 34-60-116(3) and (4), C.R.S., that Docket No. 171200773 cannot be approved unless and until a well is first drilled in the unit to be established by Docket No. 171000694. And, they argue, only after that well is drilled, can 8 North come back to the Commission to apply for additional wells. Boulder and Lafayette's argument is entirely without support under the Act.

Section 34-60-116(4), C.R.S., imposes no such drill-first obligation: "The commission, ***upon application, notice, and hearing, may*** decrease or 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 drilling of unnecessary wells, or to protect correlative rights." Emphasis added. The

Act's language is clear, that the only precondition to seeking additional wells is application, notice, and hearing.

Even if Boulder and Lafayette's argument had some basis in the actual language of the Act, which it does not, they place form over substance and ask the Commission to create a procedural fiction that ignores the Act's statutory scheme to foster development of the State's oil and gas resources and the Commission's broad authority to issue orders and do whatever is reasonably necessary to ensure responsible and efficient development.

Boulder and Lafayette assert that if the "COGCC had the authority [to] create a spacing unit for a single well and then allow 'additional density' in the same unit simultaneously, the statutory directive...would be meaningless." However, there is no timing component to Section 34-60-116(4), C.R.S. To that extent, the Commission may establish a drilling and spacing unit and ***immediately thereafter***, within the same order no less, authorize the drilling of additional wells. Arguments to the contrary ask the Commission to ignore years of precedent and hundreds, if not thousands, of orders approving multiple horizontal wells at the time the controlling drilling and spacing unit is established, including recently at the September 11-12, 2017 COGCC Hearing. See Order Nos. 535-844 and 535-845 (approving two 1,280-acre drilling and spacing units with one horizontal well in each); see also Docket Nos. 535-846 and 535-847 (approving four horizontal wells in the 1,280-acre drilling and spacing units established by Order Nos. 535-844 and 535-845 at the same hearing). Boulder and Lafayette's argument further asks the Commission to ignore the well-established science that recognizes that efficient and economic development of unconventional resources like the Codell and Niobrara Formations depends upon multiple wells within a unit.

### **III. Conclusion**

Boulder and Lafayette's argument that the Commission lacks subject matter jurisdiction to issue an order authorizing additional wells lacks any basis in fact or law by which to ask the Commission to dismiss the Application. The Application was properly noticed and provided sufficient facts by which the Commission could issue an order for additional wells. Boulder and Lafayette's arguments pertaining to the timing of the Application for additional wells are entirely inconsistent with Commission precedent and accepted practices. Accordingly, Boulder and Lafayette's motion to dismiss must be denied.

### **Relief Requested**

WHEREFORE, 8 North respectfully requests the following relief:

A. That the Hearing Officer deny Boulder and Lafayette's Motion to Dismiss in its entirety.

B. For such other findings and orders as the Commission may deem proper or advisable in the premises.

C. 8 North reserves the right to supplement this Response with additional factual information and/or legal arguments and to request additional relief.

DATED this 13<sup>th</sup> day of December, 2017.

Respectfully submitted,

**8 North LLC**

By: 

Jillian Fulcher  
James P. Parrot  
Jobediah J. Rittenhouse  
Beatty & Wozniak, P.C.  
Attorneys for 8 North LLC  
216 16th Street, Suite 1100  
Denver, Colorado 80202  
(303) 407-4499  
jfulcher@bwenergylaw.com  
jparrot@bwenergylaw.com  
jrittenhouse@bwenergylaw.com

Address of Movant:

Allyson Vistica Boies  
ATTN: Allyson Vistica Boies  
370 17th Street, Suite 5300  
Denver, CO 80202

### **CERTIFICATE OF SERVICE**

I hereby certify that, on December 13, 2017, Beatty & Wozniak, P.C. caused *8 North's Response to Motion to Dismiss For Lack of Subject Matter Jurisdiction* was served to the following as noted below:

#### **VIA EMAIL AND COURIER TO:**

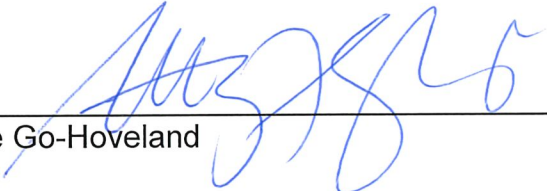
Colorado Oil and Gas Conservation Commission  
ATTN: James Rouse  
1120 Lincoln Street, Suite 810  
Denver, CO 80203  
[James.Rouse@state.co.us](mailto:James.Rouse@state.co.us)

#### **VIA EMAIL AND BY U.S. MAIL TO:**

David Hughes  
Katherine A. Burke  
Attorneys for Boulder County  
[dhughes@bouldercounty.org](mailto:dhughes@bouldercounty.org)  
[kaburke@bouldercounty.org](mailto:kaburke@bouldercounty.org)

Jeffrey Robbins  
Attorney for City of Lafayette  
[robbins@grn-law.com](mailto:robbins@grn-law.com)

A.J. Kreiger - Town Administrator  
Town of Erie  
645 Holbrook St.  
P.O. Box 750  
Erie, CO 80516  
[townadministrator@erieco.gov](mailto:townadministrator@erieco.gov)

  
\_\_\_\_\_  
Grace Go-Hoveland

**BEFORE THE OIL & 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

DOCKET NO. 171200774

TYPE: DENSITY

**RESPONSE TO MOTION TO DISMISS  
FOR LACK OF SUBJECT MATTER JURISDICTION**

8 North LLC, Operator No. 10575 ("8 North" or "Applicant"), by and through its attorneys, Beatty & Wozniak, P.C., respectfully submits this Response to the Motion to Dismiss ("Response") 8 North's Application ("Application") in the subject docket filed by the Board of County Commissioners of Boulder County ("Boulder"). The Application requests an order authorizing an additional thirty-one (31) horizontal wells, for a total of thirty-two (32) horizontal wells, for the production of oil, gas, and associated hydrocarbons 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. ("Application Lands").

**I. Factual and Procedural Background**

***A. Introduction***

1. Applicant is a limited liability company duly authorized to conduct business in the State of Colorado, and has registered as an operator with the COGCC.

2. Applicant is an Owner with a right to drill in the Application Lands.

***B. 8 North's Spacing Application***

1. On February 19, 1992 (amended August 20, 1993), the Colorado Oil and Gas Conservation Commission ("Commission") entered Order No. 407-87, which, among other things, established 80-acre drilling and spacing units for the production of oil, gas and associated hydrocarbons from the Codell-Niobrara Formations.

2. On or about May 16, 2017, the Commission entered Order No. 407-405, which, among other things, established an approximate 320-acre wellbore spacing unit for the S½ of Section 18, Township 2 North, Range 68 West, 6th P.M., and authorized the drilling of one horizontal well within the unit (to accommodate the planned Williams #3A-19H Well), for production of oil, gas, and associated hydrocarbons from the Niobrara Formation, with the treated interval of the wellbore to be located no closer than 460 feet from the boundary of the unit, without exception being granted by the Director of the Commission. Portions of the Application Lands are subject to Order No. 407-405.

3. On August 31, 2017, amended September 19, 2017, 8 North, by its attorneys, filed a verified application ("Spacing Application") in Docket No. 171000695 requesting an order to establish an approximate 2,720-acre drilling and spacing unit for the Application Lands and authorize the drilling of up to one horizontal well within the proposed unit, for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations, with the treated intervals of the wellbore of any permitted wells to be located not less than 460 feet from the unit boundaries and not less than 150 feet from the treated interval of any well being drilled or producing from the same formation without exception being granted by the Director.

4. On October 6, 2017, 8 North, by its attorneys, filed with the Commission a written request to approve the Spacing Application based on the merits of the verified Spacing Application and the supporting exhibits. Sworn written testimony and exhibits were submitted in support of the Spacing Application.

5. The Spacing Application has been protested by Boulder and Crestone Peak Resources.

*C. 8 North's Density Application*

1. On September 19, 2017, 8 North, by its attorneys, filed a verified application in Docket No. 171200774 requesting an order to authorize the drilling of up to thirty-two (32) horizontal wells within an approximate 2,720-acre drilling and spacing unit proposed for the Applications Lands, for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations, with the treated intervals of the wellbore of any permitted wells to be located not less than 460 feet from the unit boundaries and not less than 150 feet from the treated interval of any well being drilled or producing from the same formation, unless an exception is granted by the Director.

2. The Application for additional wells has been protested by Boulder, City of Longmont, and Crestone Peak Resources.

**II. Standard of Review**

C.R.C.P. Rule 12(b)(1) requires the dismissal of an action where the tribunal lacks jurisdiction over the subject matter. *Trinity Broadcasting of Denver, Inc. v. The City of Westminster*, 848 P.2d 916, 924 (Colo. 1993)(*en banc*). Pursuant to Rule 519.a., the Commission adopts the rules of practice and procedure contained in the



Colorado Rules of Civil Procedure insofar as the same may be applicable and not inconsistent with the Commission Rules.

### **III. Analysis**

The Colorado legislature, by enacting the Colorado Oil and Gas Conservation Act ("Act"), declared it to be in the public interest to "foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas" and to protect against waste. C.R.S. §§ 34-60-102(1)(a)(I), (II). To accomplish this legislative goal, the Commission is granted broad authority to establish drilling units with multiple wells in order to prevent or assist in preventing waste and protect correlative rights. C.R.S. §§ 34-60-116(1), (4). Further, the Commission is obligated to protect the public and private interests against waste in the production and utilization of oil and gas and to safeguard, protect, and enforce the co-equal and correlative rights of owners and producers in a common source or pool. C.R.S. § 34-60-102(1)(a)(I)-(III). Each drilling and spacing unit established by the Commission, therefore, should prioritize the orderly development of the reservoir, and the protection of the interests of the parties within the lands affected by the Application, and each applicant must demonstrate that its proposed unit satisfies this threshold. In modern unconventional resource development, in order to protect correlative rights (that is the opportunity to obtain one's just and equitable share, § 34-60-103(4), C.R.S.), drilling and spacing units with multiple wells are necessary. Without such units and multi-well development, it is less economic, and in some cases uneconomic, to develop unconventional reservoirs like the Codell and Niobrara Formations. Moreover, because a single horizontal well generally does not drain the minerals underlying an entire drilling and spacing unit, it is necessary to authorize additional wells to maximize hydrocarbon recovery and prevent stranding minerals. Thus, not only is the establishment of drilling and spacing units necessary to protect correlative rights, but multi-well units are necessary to prevent waste.

Boulder and Lafayette's Motion is a frivolous filing that has no basis in law or fact. Boulder and Lafayette's Motion argues that the Commission lacks the statutory authority to allow additional wells to be approved where the initial horizontal well has yet to be drilled or completed. Boulder and Lafayette's contention is a misreading of Section 34-60-116, C.R.S., and inapposite to the Commission's Rules and precedent.

A. *The Commission has authority to grant 8 North's Application, and Boulder and Lafayette's Motion must be denied.*

Boulder and Lafayette assert pursuant to Sections 34-60-116(3) and (4), C.R.S., that Docket No. 171200773 cannot be approved unless and until a well is first drilled in the unit to be established by Docket No. 171000694. And, they argue, only after that well is drilled, can 8 North come back to the Commission to apply for additional wells. Boulder and Lafayette's argument is entirely without support under the Act.

Section 34-60-116(4), C.R.S., imposes no such drill-first obligation: "The commission, ***upon application, notice, and hearing, may*** decrease or 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 drilling of unnecessary wells, or to protect correlative rights." Emphasis added. The Act's language is clear, that the only precondition to seeking additional wells is application, notice, and hearing.

Even if Boulder and Lafayette's argument had some basis in the actual language of the Act, which it does not, they place form over substance and ask the Commission to create a procedural fiction that ignores the Act's statutory scheme to foster development of the State's oil and gas resources and the Commission's broad authority to issue orders and do whatever is reasonably necessary to ensure responsible and efficient development.

Boulder and Lafayette assert that if the "COGCC had the authority [to] create a spacing unit for a single well and then allow 'additional density' in the same unit simultaneously, the statutory directive...would be meaningless." However, there is no timing component to Section 34-60-116(4), C.R.S. To that extent, the Commission may establish a drilling and spacing unit and ***immediately thereafter***, within the same order no less, authorize the drilling of additional wells. Arguments to the contrary ask the Commission to ignore years of precedent and hundreds of orders approving multiple horizontal wells at the time the controlling drilling and spacing unit is established, including recently at the September 11-12, 2017 COGCC Hearing. See Order Nos. 535-844 and 535-845 (approving two 1,280-acre drilling and spacing units with one horizontal well in each); see also Docket Nos. 535-846 and 535-847 (approving four horizontal wells in the 1,280-acre drilling and spacing units established by Order Nos. 535-844 and 535-845 at the same hearing). Boulder and Lafayette's argument further asks the Commission to ignore the well-established science that recognizes that efficient and economic development of unconventional resources like the Codell and Niobrara Formations depends upon multiple wells within a unit.

### III. Conclusion

Boulder and Lafayette's argument that the Commission lacks subject matter jurisdiction to issue an order authorizing additional wells lacks any basis in fact or law by which to ask the Commission to dismiss the Application. The Application was properly noticed and provided sufficient facts by which the Commission could issue an order for

additional wells. Boulder and Lafayette's arguments pertaining to the timing of the Application for additional wells are entirely inconsistent with Commission precedent and accepted practices. Accordingly, Boulder and Lafayette's motion to dismiss must be denied.

### **Relief Requested**

WHEREFORE, 8 North respectfully requests the following relief:

A. That the Hearing Officer deny Boulder and Lafayette's Motion to Dismiss in its entirety.

B. For such other findings and orders as the Commission may deem proper or advisable in the premises.

C. 8 North reserves the right to supplement this Response with additional factual information and/or legal arguments and to request additional relief.

DATED this 13<sup>th</sup> day of December, 2017.

Respectfully submitted,

**8 North LLC**

By: 

Jillian Fulcher  
James P. Parrot  
Jobediah J. Rittenhouse  
Beatty & Wozniak, P.C.  
Attorneys for 8 North LLC  
216 16th Street, Suite 1100  
Denver, Colorado 80202  
(303) 407-4499  
jfulcher@bwenergylaw.com  
jparrot@bwenergylaw.com  
jrittenhouse@bwenergylaw.com

### Address of Movant:

Allyson Vistica Boies  
ATTN: Allyson Vistica Boies  
370 17th Street, Suite 5300  
Denver, CO 80202

### **CERTIFICATE OF SERVICE**

I hereby certify that, on December 13, 2017, Beatty & Wozniak, P.C. caused *8 North's Response to Motion to Dismiss For Lack of Subject Matter Jurisdiction* was served to the following as noted below:

#### **VIA EMAIL AND COURIER TO:**

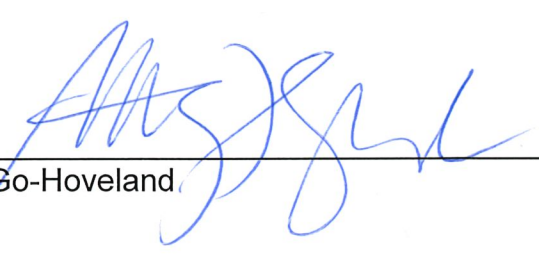
Colorado Oil and Gas Conservation Commission  
ATTN: James Rouse  
1120 Lincoln Street, Suite 810  
Denver, CO 80203  
[James.Rouse@state.co.us](mailto:James.Rouse@state.co.us)

#### **VIA EMAIL AND BY U.S. MAIL TO:**

David Hughes  
Katherine A. Burke  
Attorneys for Boulder County  
[dhughes@bouldercounty.org](mailto:dhughes@bouldercounty.org)  
[kaburke@bouldercounty.org](mailto:kaburke@bouldercounty.org)

Dan Kramer  
Attorney for City of Longmont  
[dan.kramer@longmontcolorado.gov](mailto:dan.kramer@longmontcolorado.gov)

Jamie Jost  
Kelsey Wasylenky  
Attorneys for Crestone Peak Resources Operating LLC  
[jjost@jostenergylaw.com](mailto:jjost@jostenergylaw.com)  
[kwasylenky@jostenergylaw.com](mailto:kwasylenky@jostenergylaw.com)

  
\_\_\_\_\_  
Grace Go-Hoveland