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 1,280-ACRE DRILLING AND SPACING UNIT FOR SECTIONS 35 AND 36, TOWNSHIP 1 NORTH, RANGE 69 WEST, 6TH P.M., FOR HORIZONTAL WELL DEVELOPMENT OF THE CODELL AND NIOBRARA FORMATIONS, WATTENBERG FIELD, BOULDER COUNTY, COLORADO	)	CAUSE NO. 407 DOCKET NO. 171000694 TYPE: SPACING

BOULDER COUNTY'S AND CITY OF LAFAYETTE'S RESPONSE TO MOTION TO DISMISS

Boulder County (the "County") and the City of Lafayette (the "City"), through their respective undersigned counsel, hereby submit this Response to Motion to Dismiss.

I. Protests are not subject to dismissal under C.R.C.P. 12(b)(5).

8 North incorrectly attempts to apply C.R.C.P. 12(b)(5) to the protest filed by the County and the City to the application for a spacing order filed in the above-captioned matter (the "Application"). Under, C.R.C.P. 12(b)(5), a party may file a motion to dismiss on the grounds of "failure to *state a claim* upon which relief can be granted." (Emphasis added). This type of motion is allowed under the Rules of Civil Procedure because the rules specifically require that a complaint filed with the court contain "a short and plain statement of the claim showing that the pleader is entitled to relief . . ." C.R.C.P. 8.

Under COGCC Rule 519, the Colorado Rules of Civil Procedure apply "unless they are inconsistent with Commission Rules." Even assuming the Rules of Civil Procedure could be interpreted to require that an entity or individual wishing to file a protest in a COGCC matter state a claim, such a requirement is inconsistent with the specific requirements in COGCC rules regarding protests. Specifically, a protest is a request for "the right to *participate formally* in any adjudicatory proceeding." Rule 509(a) (emphasis added). COGCC rules do not require that a protestor "state a claim" or otherwise prove the protestor is entitled to relief. Instead, to participate in the proceeding, the protestor need only "include information to demonstrate that the person is a protestant under these rules in order for the protest to be accepted by the Commission." Rule 509(b)(2)(A). Therefore, C.R.C.P. 12(b)(5) is inconsistent with Rule 509 and inapplicable to protests. Accordingly, 8 North's motion to dismiss is an invalid procedural maneuver and the COGCC should deny it.

II. The County and the City's protest comports with Rule 509, which is all that is required for them to participate in the proceeding.

Commission rules identify two types of protests. Local governments, like the County and the City, are permitted to intervene as a "matter of right." Rule 509(B). For those types of

protests, intervenors need only provide information on the criteria listed in Rule 509(a)(2)(B). So long as the protest includes the information, the protest must be accepted by the Commission. The Commission is only entitled to exercise its discretion if the protestor is "a party desiring to intervene by permission." Rule 509(C). For those protests, the party must include information demonstrating "why the intervention will serve the public interest . . ." *Id.* Significantly, even for intervention by permission, the protestor is not required by rule to state a claim for relief.

8 North argues in its motion that the County and the City have failed to provide "supportive facts or detail," "supporting allegations," "supporting facts," or "evidence or basis for [their] assertion[s]." Especially with respect to interventions as a matter of right, nothing in Rule 509 requires that a protestor identify supporting facts or evidence. For example, local governments are merely required to "describe" concerns related to public health, safety, and welfare. The rule contemplates that details may be provided later. Specifically, the request for intervention must include "[a] description of the intended presentation including a list of proposed witnesses." Rule 509(a)(3)(B). In their protest, the County and the City specifically stated that they will "present testimony and evidence in support of the facts and arguments within this protest." Boulder County and City of Lafayette's Protest and Intervention ¶ E(1). Because the County and the City have met the requirements for protests under Rule 509, they should be permitted to participate in the proceeding.

III. Public health, safety and welfare are relevant to the Application.

a. The COGCC should not ignore the Court of Appeals.

8 North encourages the COGCC to ignore the published decision of the Colorado Court of Appeals in *Martinez* because the COGCC filed a petition for certiorari with the Colorado Supreme Court and the Court of Appeals has not yet issued its mandate. While 8 North correctly notes that *Martinez* does not yet constitute binding precedent, it fails to explain why a State agency should ignore a published decision of the Court of Appeals when the Colorado Supreme Court has not even decided whether it will review the decision. The COGCC risks rendering a legally invalid decision should it choose to ignore an appellate court decision. Conversely, the COGCC risks nothing by simply applying the most current judicial interpretation of the law. If the COGCC is determined to hear from the Colorado Supreme Court before acting in accordance with the Colorado Court of Appeals' decision, it should stay this and all other proceedings until such time as certiorari is denied or, if cert is granted, until the Colorado Supreme Court issues an opinion.

b. Even in the absence of the Martinez decision, the COGCC is required to consider public health and safety, especially if raised by a local government.

The COGCC's duty to address health, safety and welfare is not limited to particular types of proceedings within the long process of oil and gas development permitting. The General Assembly declared that all *development* of oil and gas must be "in a manner consistent with protection of public health, safety, and welfare." § 34-60-102(1)(a)(I), C.R.S. Authorizing additional wells in established drilling and spacing units is an important step in the development process and clearly implicates health, safety and welfare issues. In fact, COGCC rules for protest and intervention specifically *require* a local government to describe "concerns related to

the public health, safety and welfare . . . raised by the application," regardless of the form of the application. *See* Rule 509(2)(B). Rule 509 would be nonsensical if governments were required to address public health and safety in a protest application but the COGCC could not consider the issue. Therefore, the Protest properly asserts potential adverse impacts on public health, safety and welfare.

IV. The applicability of Rule 508 is not relevant to the validity of the Protest.

When 8 North filed its Motion, the County's Rule 508 request for a local public forum had not been decided upon by the COGCC. At the December 11, 2017, COGCC meeting, the Commission denied the request. Therefore, this issue is moot.

V. Public comment at the Form 2 and Form 2A stage is not a substitute for party status.

8 North argues that the County and City can adequately participate in the COGCC's determination on the Application by way of making public comment on any Form 2 or Form 2A filed by 8 North in connection with the proposed drilling and spacing unit. Public comment, whether written or in the form of a Rule 510 oral statement, is no substitute for participation as a party in a proceeding. As parties, the County and City will receive evidence from 8 North, will have the chance to cross-examine 8 North witnesses, will be able to present its own witnesses, and will be able to answer questions that arise for the commissioners. While 8 North alleges that the County and City filed their protests simply to delay 8 North's pursuit of its economic interests, in fact the protests are the best, and virtually only, chance the parties have to both gain and provide important information regarding the large-scale planned development. Public comment during the Form 2 or Form 2A permitting process simply does not suffice. Further, in the Form 2 or 2A process, 8 North is likely to argue that certain issues like the appropriate number of wells or the general location of the wells are dictated by the spacing order now sought and cannot be raised in the Form 2 or 2A process. Thus, the only meaningful participation available to the County and the City – the local governments with land use jurisdiction in the area of the proposed unit and an affected landowner – is by intervening as parties in the Applications.

VI. The Commission should not establish overlapping units without explanation.

8 North dismisses the County's arguments regarding overlapping spacing units on the basis that such has been the COGCC's practice. The drilling and spacing unit is a device to prevent waste, avoid the drilling of unnecessary wells and to protect correlative rights. § 34-60-116(1), C.R.S. As 8 North explains, units are to be determined with reference to "evidence introduced at the hearing" regarding, among other things, the existence of a common pool and the appropriate acreage to be embraced in the unit. § 34-60-116(2), C.R.S. Nothing in the statute, and no logical interpretation of it, allows for subsequent units to be established on top of existing ones. If the evidence produced leads the COGCC to determine that a pool exists and that the appropriate acreage has been embraced in the overlying unit, there is no reason to make a separate determination later that a different pool and a different set of acreage *also* are appropriate in the same area. Yet, this clearly occurs and 8 North asks the COGCC to do it again.

Long practice is not a sufficient reason for COGCC orders to violate the clear language of the governing statute. 8 North did not cite any previous ruling or other sufficient explanation to support the perhaps long-standing custom of establishing overlapping units. Without such justification, the COGCC should not continue to endorse the practice in this case.

For the above reasons, the County and the City request that the Hearing Officer deny the Motion to Dismiss and allow the County and the City to participate as parties in the above-captioned matter.

Dated this 13th day of December 2017.

Respectfully submitted,

BOULDER COUNTY ATTORNEY'S OFFICE

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CITY OF LAFAYETTE

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ATTORNEYS FOR
CITY OF LAFAYETTE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **BOULDER COUNTY'S AND CITY OF LAFAYETTE'S RESPONSE TO MOTION TO DISMISS** has been mailed or served electronically this 13th day of December 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
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jfulcher@bwenergylaw.com
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Cathy Peterson

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

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protection of public health, safety, and welfare." § 34-60-102(1)(a)(I), C.R.S. Authorizing spacing units is an important step in the development process and clearly implicates health, safety and welfare issues. In fact, COGCC rules for protest and intervention specifically *require* a local government to describe "concerns related to the public health, safety and welfare . . . raised by the application," regardless of the form of the application. *See* Rule 509(2)(B). Rule 509 would be nonsensical if governments were required to address public health and safety in a protest application but the COGCC could not consider the issue. Therefore, the Protest properly asserts potential adverse impacts on public health, safety and welfare.

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8 North argues that the County can adequately participate in the COGCC's determination on the Application by way of making public comment on any Form 2 or Form 2A filed by 8 North in connection with the proposed drilling and spacing unit. Public comment, whether written or in the form of a Rule 510 oral statement, is no substitute for participation as a party in a proceeding. As a party, the County will receive evidence from 8 North, will have the chance to cross-examine 8 North witnesses, will be able to present its own witnesses, and will be able to answer questions that arise for the commissioners. While 8 North alleges that the County filed its protest simply to delay 8 North's pursuit of its economic interests, in fact the protests are the best, and virtually only, chance the County has to both gain and provide important information regarding the large-scale planned development. Public comment during the Form 2 or Form 2A permitting process simply does not suffice. Further, in the Form 2 or 2A process, 8 North is likely to argue that certain issues like the appropriate number of wells or the general location of the wells are dictated by the spacing order now sought and cannot be raised in the Form 2 or 2A process. Thus, the only meaningful participation available to the County – the local government with land use jurisdiction in the area of the proposed unit and an affected landowner – is by intervening as a party in the Applications.

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DATED this 13th day of December 2017.

Respectfully submitted,

BOULDER COUNTY ATTORNEY'S OFFICE

By: _____

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Assistant County Attorney
David Hughes, #24425
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kaburke@bouldercounty.org

ATTORNEYS FOR BOULDER COUNTY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **BOULDER COUNTY'S RESPONSE TO MOTION TO DISMISS** has been mailed or served electronically this 13th day of December, 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
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Jillian Fulcher
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jjost@jostenergylaw.com
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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 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

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VI. 8 North's interpretation of the statute ignores explicit language.

Contrary to 8 North's arguments, the Oil and Gas Conservation Act is clear that additional wells, such as those requested in the Application, can only be authorized after a drilling and spacing unit has been established *and* after the well authorized for such unit has been drilled and gone into production. *See* §§ 34-60-116(3), (4). Moreover, COGCC rules clarify that "those owners . . . within the *existing* drilling unit to be affected" may apply for "additional wells within *existing* units." Rule 503.b(1).

8 North recognizes the principle behind the County and City's argument. Its original spacing unit application requested authorization for 20 wells. Shortly thereafter, it amended its spacing unit application to request authorization for a single well, in acknowledgement that a unit can only be established by COGCC order for a single well. Simultaneously, it filed the Application for additional density in the same unit, again implicitly acknowledging that the additional density step must come second. The statutory and logical piece that 8 North nonetheless ignores is that the single, authorized well in the established unit must be both drilled and produced before additional wells can be authorized. *See* § 34-60-116(3), C.R.S. ("The order establishing drilling units shall permit only one well to be drilled *and produced* from the common source of supply. . . .") (emphasis added).

COGCC orders have not typically followed this statutory directive. In the past, the COGCC has approved units with authorization for multiple wells. However, to the County's and the City's knowledge, until recently, no party raised the issue of the scope of the COGCC's statutory authority and thus the COGCC has never specifically addressed this issue. The procedural feint used by 8 North in this case to split its request for 20 wells in a unit into two applications has only been used very recently, and the COGCC has approved such split applications without any specific finding on its authority to do so. *See*, e.g. Sept. 11, 2017, Order 535-844 (establishing two drilling and spacing units with one well each and, in the same order, approving three additional wells in the units). The splitting of applications ignores important aspects of Sections 34-60-116(3) and (4) and is a superficial and inadequate attempt to comport with statutory requirements. Accepted practice that is contrary to the governing statute is not authoritative precedent that should be carried forward simply because it has not previously been raised or analyzed. Although 8 North offers a "parade of horribles" argument regarding past COGCC decision, it fails to point to any legal authority indicating that past COGCC decisions must comport with new COGCC determinations or risk being invalidated.

For the above reasons, the County and the City request that the Hearing Officer deny the Motion to Dismiss and allow the County and the City to participate as parties in the above-captioned matter.

Dated this 13th day of December 2017.

Respectfully submitted,

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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 DOCKET NO. 171200774 TYPE: DENSITY

BOULDER COUNTY'S AND CITY OF LONGMONT'S RESPONSE TO MOTION TO DISMISS

Boulder County (the "County") and the City of Longmont (the "City"), through their respective undersigned counsel, submit this Response to Motion to Dismiss. The County and the City filed separate protests, with the City joining the majority of the County's protest. 8 North, LLC, filed a single motion asking the Commission to dismiss both protests. Therefore, the County and the City file this joint Response.

I. Protests are not subject to dismissal under C.R.C.P. 12(b)(5).

8 North incorrectly attempts to apply C.R.C.P. 12(b)(5) to the protest filed by the County and the City to the application for additional wells filed in the above-captioned matter (the "Application"). Under, C.R.C.P. 12(b)(5), a party may file a motion to dismiss on the grounds of "failure to *state a claim* upon which relief can be granted." (Emphasis added). This type of motion is allowed under the Rules of Civil Procedure because the rules specifically require that a complaint filed with the court contain "a short and plain statement of the claim showing that the pleader is entitled to relief . . ." C.R.C.P. 8.

Under COGCC Rule 519, the Colorado Rules of Civil Procedure apply "unless they are inconsistent with Commission Rules." Even assuming the Rules of Civil Procedure could be interpreted to require that an entity or individual wishing to file a protest in a COGCC matter state a claim, such a requirement is inconsistent with the specific requirements in COGCC rules regarding protests. Specifically, a protest is a request for "the right to *participate formally* in any adjudicatory proceeding." Rule 509(a) (emphasis added). COGCC rules do not require that a protestor "state a claim" or otherwise prove the protestor is entitled to relief. Instead, to participate in the proceeding, the protestor need only "include information to demonstrate that the person is a protestant under these rules in order for the protest to be accepted by the Commission." Rule 509(b)(2)(A). Therefore, C.R.C.P. 12(b)(5) is inconsistent with Rule 509

and inapplicable to protests. Accordingly, 8 North's motion to dismiss is an invalid procedural maneuver and the COGCC should deny it.

II. The County and the City's protest comports with Rule 509, which is all that is required for them to participate in the proceeding.

Commission rules identify two types of protests. Local governments, like the County and the City, are permitted to intervene as a "matter of right." Rule 509(B). For those types of protests, intervenors need only provide information on the criteria listed in Rule 509(a)(2)(B). So long as the protest includes the information, the protest must be accepted by the Commission. The Commission is only entitled to exercise its discretion if the protestor is "a party desiring to intervene by permission." Rule 509(C). For those protests, the party must include information demonstrating "why the intervention will serve the public interest . . ." *Id.* Significantly, even for intervention by permission, the protestor is not required by rule to state a claim for relief.

8 North argues in its motion that the County and the City have failed to provide "supportive facts or detail," "supporting allegations," "supporting facts," or "evidence or basis for [their] assertion[s]." Especially with respect to interventions as a matter of right, nothing in Rule 509 requires that a protestor identify supporting facts or evidence. For example, local governments are merely required to "describe" concerns related to public health, safety, and welfare. The rule contemplates that details may be provided later. Specifically, the request for intervention must include "[a] description of the intended presentation including a list of proposed witnesses." Rule 509(a)(3)(B). In their protests, the County and the City specifically stated that they will "present testimony and evidence in support of the facts and arguments within this protest." Boulder County's Protest and Intervention ¶ E(1); City of Longmont's Protest and Intervention ¶ 6. Because the County and the City have met the requirements for protests under Rule 509, they should be permitted to participate in the proceeding.

III. Public health, safety and welfare are relevant to the Application.

a. The COGCC should not ignore the Court of Appeals.

8 North encourages the COGCC to ignore the published decision of the Colorado Court of Appeals in *Martinez* because the COGCC filed a petition for certiorari with the Colorado Supreme Court and the Court of Appeals has not yet issued its mandate. While 8 North correctly notes that *Martinez* does not yet constitute binding precedent, it fails to explain why a State agency should ignore a published decision of the Court of Appeals when the Colorado Supreme Court has not even decided whether it will review the decision. The COGCC risks rendering a legally invalid decision should it choose to ignore an appellate court decision. Conversely, the COGCC risks nothing by simply applying the most current judicial interpretation of the law. If the COGCC is determined to hear from the Colorado Supreme Court before acting in accordance with the Colorado Court of Appeals' decision, it should stay this and all other proceedings until such time as certiorari is denied or, if cert is granted, until the Colorado Supreme Court issues an opinion.

b. *Even in the absence of the Martinez decision, the COGCC is required to consider public health and safety, especially if raised by a local government.*

The COGCC's duty to address health, safety and welfare is not limited to particular types of proceedings within the long process of oil and gas development permitting. The General Assembly declared that all *development* of oil and gas must be "in a manner consistent with protection of public health, safety, and welfare." § 34-60-102(1)(a)(I), C.R.S. Authorizing additional wells in established drilling and spacing units is an important step in the development process and clearly implicates health, safety and welfare issues. In fact, COGCC rules specifically recognize that "impacts to public health, safety and welfare including the environment and wildlife resources . . . may be raised by an application for increased well density." Rule 508.b(1). Further, the COGCC rule for protest and intervention specifically *requires* a local government to describe "concerns related to the public health, safety and welfare . . . raised by the application," regardless of the form of the application. *See* Rule 509(2)(B). Rule 509 would be nonsensical if governments were required to address public health and safety in a protest application but the COGCC could not consider the issue. Therefore, the Protest properly asserts potential adverse impacts on public health, safety and welfare.

IV. The applicability of Rule 508 is not relevant to the validity of the Protest.

When 8 North filed its Motion, the County's Rule 508 request for a local public forum had not been decided upon by the COGCC. At the December 11, 2017, COGCC meeting, the Commission denied the request. Therefore, this issue is moot.

V. Public comment at the Form 2 and Form 2A stage is not a substitute for party status.

8 North argues that the County and City can adequately participate in the COGCC's determination on the Application by way of making public comment on any Form 2 or Form 2A filed by 8 North in connection with the proposed drilling and spacing unit. Public comment, whether written or in the form of a Rule 510 oral statement, is no substitute for participation as a party in a proceeding. As parties, the County and City will receive evidence from 8 North, will have the chance to cross-examine 8 North witnesses, will be able to present its own witnesses, and will be able to answer questions that arise for the commissioners. While 8 North alleges that the County and City filed their protests simply to delay 8 North's pursuit of its economic interests, in fact the protests are the best, and virtually only, chance the parties have to both gain and provide important information regarding the large-scale planned development. Public comment during the Form 2 or Form 2A permitting process simply does not suffice. Further, in the Form 2 or 2A process, 8 North is likely to argue that certain issues like the appropriate number of wells or the general location of the wells are dictated by the spacing order now sought and cannot be raised in the Form 2 or 2A process. Thus, the only meaningful participation available to the County and the City – the local governments with land use jurisdiction in the area of the proposed unit and an affected landowner – is by intervening as parties in the Applications.

VI. 8 North's interpretation of the statute ignores explicit language.

Contrary to 8 North's arguments, the Oil and Gas Conservation Act is clear that additional wells, such as those requested in the Application, can only be authorized after a drilling and spacing unit has been established *and* after the well authorized for such unit has been drilled and gone into production. *See* §§ 34-60-116(3), (4). Moreover, COGCC rules clarify that "those owners . . . within the *existing* drilling unit to be affected" may apply for "additional wells within *existing* units." Rule 503.b(1).

8 North recognizes the principle behind the County's argument. Its original spacing unit application requested authorization for 20 wells. Shortly thereafter, it amended its spacing unit application to request authorization for a single well, in acknowledgement that a unit can only be established by COGCC order for a single well. Simultaneously, it filed the Application for additional density in the same unit, again implicitly acknowledging that the additional density step must come second. The statutory and logical piece that 8 North nonetheless ignores is that the single, authorized well in the established unit must be both drilled and produced before additional wells can be authorized. *See* § 34-60-116(3), C.R.S. ("The order establishing drilling units shall permit only one well to be drilled *and produced* from the common source of supply. . . .") (emphasis added).

COGCC orders have not typically followed this statutory directive. In the past, the COGCC has approved units with authorization for multiple wells. However, to the County's and the City's knowledge, until recently, no party raised the issue of the scope of the COGCC's statutory authority and thus the COGCC has never specifically addressed this issue. The procedural feint used by 8 North in this case to split its request for 20 wells in a unit into two applications has only been used very recently, and the COGCC has approved such split applications without any specific finding on its authority to do so. *See*, e.g. Sept. 11, 2017, Order 535-844 (establishing two drilling and spacing units with one well each and, in the same order, approving three additional wells in the units). The splitting of applications ignores important aspects of Sections 34-60-116(3) and (4) and is a superficial and inadequate attempt to comport with statutory requirements. Accepted practice that is contrary to the governing statute is not authoritative precedent that should be carried forward simply because it has not previously been raised or analyzed. Although 8 North offers a "parade of horribles" argument regarding the effect of a determination on this issue on past COGCC decisions, it fails to point to any legal authority indicating that past COGCC decisions must comport with new COGCC determinations or risk being invalidated.

VII. Longmont is authorized to raise the issue of well locations in its protest.

Contrary to 8 North's arguments, the Commission has the authority to condition approvals for increased well density as necessary to protect the public health, safety, and welfare. See, e.g., Rule 508.i(4). Accordingly, Longmont's protest based on the location of proposed well sites relative to school and park sites should not be dismissed.

For the above reasons, the County and the City request that the Hearing Officer deny the Motion to Dismiss and allow the County and the City to participate as parties in the above-captioned matter.

Dated this 13th day of December 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **BOULDER COUNTY'S AND CITY OF LONGMONT'S RESPONSE TO MOTION TO DISMISS** has been mailed or served electronically this 13th day of December, 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:

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