

**BEFORE THE OIL & 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
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., FOR HORIZONTAL WELL DEVELOPMENT OF
THE CODELL AND NIOBRARA FORMATIONS,
WATTENBERG FIELD, BOULDER AND WELD
COUNTIES, COLORADO

CAUSE NO. 407

DOCKET NO. 171000695

TYPE: SPACING

**8 NORTH LLC'S RESPONSE TO BOULDER COUNTY'S
EXCEPTION TO THE HEARING OFFICER ORDER STRIKING
THE SECOND PROTEST BY BOULDER COUNTY**

8 North LLC (Operator No. 10575) ("8 North" or "Applicant"), by and through its attorneys, Beatty & Wozniak, P.C., respectfully submits this Response ("Response") to the Exception to the Hearing Officer's Order Striking the Second Protest ("Exception") filed by the Board of County Commissioners of the County of Boulder ("Boulder"). In support of its Response, 8 North states as follows:

I. Introduction

Boulder's latest effort to delay and stall mineral development is a thinly-veiled guise of Boulder's prevailing tactic in this series of dockets. Absent legal authority but desperate to thwart Commission proceedings, Boulder continues to put forth groundless arguments, the foundation for which is based on Boulder's admitted confusion regarding Colorado law and the Rules and Regulations of the Colorado Oil and Gas Conservation Commission ("COGCC" or "Commission") and disagreement regarding the application thereof. Boulder has been afforded greater lenience in this proceeding than the common protestant and has even been granted reprieve from 8 North in related dockets. Yet, Boulder has not taken these additional opportunities to reshape its arguments into sound legal discourse; rather, Boulder remains steadfast in its imperious view that the rules should not apply to Boulder. Boulder has not asserted any basis for error on the part of the Hearing Officer, the Exception should be denied, and this docket should be permitted to proceed forward without further delay.

II. Procedural History

1. On August 31, 2017, amended September 19, 2017, 8 North, by its attorneys, filed a verified application ("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 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.

2. On September 19, 2017, 8 North, by its attorneys, filed a verified Application ("Density Application") in Docket No. 171200774 requesting an order authorizing thirty-one (31) additional horizontal wells, for a total of thirty-two (32) horizontal wells, for the production from the Codell and Niobrara Formations, in the approximate 2,720-acre drilling and spacing unit proposed in Docket No. 171000695 for the Application 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 without exception being granted by the Director, to be drilled from no more than three (3) multi-well pads on the surface of the drilling unit, or on adjacent lands with consent of the landowner.

3. On September 21, 2017, the Commission issued its Notice of Hearing in Docket No. 171000695 ("Notice of Hearing"), attached hereto as Exhibit 1. Per the Notice of Hearing, "[a]ny interested party desiring to protest or intervene should file with the Commission a written protest or intervention in accordance with Rule 509., **no later than October 16, 2017.**" Exhibit 1 at p. 2-3 (emphasis added).

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

5. On October 16, 2017, Boulder timely filed a protest ("Initial Protest") to 8 North's Application in Docket No. 171000695¹ alleging that (1) public issues raised by the Application reasonably relate to significant adverse impacts to the public health, safety, and welfare of Boulder's citizens; (2) the Applicant has not specified the proposed location of the well; (3) the requirements of Rule 508 have not been satisfied; (4) the Application fails to allege facts that satisfy the standard set by the Colorado Court of Appeals in *Martinez v. Colorado Oil and Gas Conserv. Comm'n*, 2017 COA 37 (March 23, 2017); (5) granting the Application will result in overlapping spacing; and (6) current market conditions are not favorable and therefore not economically beneficial to move forward with development.

¹ Boulder also filed a Protest to 8 North's Density Application in Docket No. 171200774. In December 2017, 8 North filed a motion to dismiss this protest. Responsive briefs were filed thereafter, and an order has been entered granting 8 North's motion in Docket No. 171200774.

6. On December 6, 2017, 8 North filed a Motion to Dismiss ("8 North's Motion") the Initial Protest filed by Boulder arguing that Boulder had failed to state a claim upon which relief may be granted as it had failed to allege sufficient facts in its Initial Protest necessary to satisfy the plausibility standard in *Warne v. Hall*, 373 P. 3d 588 (Colo. 2016) ("*Warne*"). Responsive briefs were filed thereafter.

7. On January 4, 2018, the Hearing Officer entered an order in Docket No. 171000695 on the pending motion to dismiss. The order granted 8 North's Motion.

8. On January 11, 2018, in response to inquiry from counsel for Boulder, the Hearing Officer indicated that Boulder was permitted to file an exception to the January 4, 2018 order pursuant to the State Administrative Procedure Act, C.R.S. §§ 24-4-101 to -108 ("APA").

9. On January 16, 2018, Boulder filed an exception as permitted under the APA in other related dockets, including Docket No. 171200774 regarding 8 North's Density Application. The exception filed in Docket No. 171200774 makes no reference to existing or on-going efforts to compete due diligence regarding the Application Lands. Boulder did not file an exception in the subject docket, nor did Boulder otherwise request leave to file an amended protest.

10. On February 5, 2018, 8 North filed its response to the exception filed in Docket No. 171200774. Boulder thereafter filed its supportive brief.

11. On March 13, 2018, 8 North, by counsel, communicated to the Hearing Officer that 8 North and Boulder had entered an agreement, whereby Boulder would withdraw its Exception Request and Motion for Reconsideration, filed January 16, 2018, in Docket Nos. 171200773 and 171200774, and would subsequently file amended protests in Docket Nos. 171200773 and 171200774 on or before March 22, 2018, without objection from 8 North. Additionally, 8 North agreed not to contest the sufficiency of the amended protests per the terms of the agreement between 8 North and Boulder. No reference was made to any of the proceedings in the subject docket.

12. Subsequent thereto Boulder withdrew its Exception Request and Motion for Reconsideration in Docket Nos. 171200773 and 171200774, and on March 30, 2018, Boulder filed amended protests in Docket Nos. 171200773 and 171200774. Additionally, on March 30, 2018, Boulder filed a new Protest and Intervention ("Late Protest") in the subject docket.

13. On April 4, 2018, 8 North submitted an Objection to Boulder's Late Protest.

14. On April 5, 2018, a prehearing conference was held for Docket Nos. 1712000773 and 1712000774, during which 8 North and Boulder were both provided the opportunity to present oral argument on Boulder's Late Protest.

15. On April 11, 2018, the Hearing Officer entered an order striking Boulder's Late Protest ("Order").

III. Standard of Review

In its Exception, Boulder does not identify the standard of review governing the appropriate scope of review to be employed by the Commission when reviewing the decision of the Hearing Officer. As a state agency with statewide territorial jurisdiction, the Commission's actions are governed by the State Administrative Procedure Act, §§24-4-101 to -108, C.R.S. C.R.S. § 24-4-105(15)(b) of the APA sets forth the appropriate scope of review as follows:

(b) The findings of evidentiary fact, as distinguished from ultimate conclusions of fact, made by the administrative law judge or the hearing officer shall not be set aside by the agency on review of the initial decision unless such findings of evidentiary fact are contrary to the weight of the evidence.

C.R.S. § 24-4-105(15)(b).

Thus, the Commission's ability to review and to set aside the findings of a hearing officer hinges upon whether the finding is one of "evidentiary" or "ultimate" fact. See *State Bd. of Med. Exam'rs v. McCroskey*, 880 P.2d 1188, 1193 (Colo. 1994). Findings of evidentiary or historical facts made by the administrative law judge "shall not be set aside by the agency on review of the initial decision unless such findings of evidentiary fact are contrary to the weight of the evidence." *Romero v. Colo. Dep't of Human Servs.*, 2018 COA 2, ¶ 34. In contrast, the Commission can substitute its own judgment for that of the hearing officer on "ultimate conclusions of fact" as long as the Commission's conclusions have a reasonable basis in law and are supported by substantial evidence in the record. *Id.* at ¶ 34. The distinction between evidentiary facts and ultimate conclusions of fact is not always clear. *Id.* at ¶ 35. Generally, evidentiary facts are the detailed factual or historical findings upon which a legal determination rests. *Id.* Alternatively, ultimate conclusions of fact typically involve "a conclusion of law, or at least a mixed question of law and fact," and often "settle[] the rights and liabilities of the parties." *Id.* Unlike evidentiary facts, ultimate conclusions of fact usually are phrased in the language of the controlling statute or legal standard. *McCroskey*, 880 P.2d at 1193-94; see, e.g., *Lee v. State Bd. of Dental Exam'rs*, 654 P.2d 839, 844 (Colo. 1982) (board's determinations were findings of ultimate fact because they were stated in terms of the controlling legal standards).

Ultimate findings of fact "may only be disturbed on appellate review only if it is unsupported by any competent evidence or is based on an incorrect legal conclusion applied to the underlying facts." *Barrett v. Univ. of Colo. Health Scis. Ctr.*, 851 P.2d 258, 261 (Colo. App. 1993). Furthermore, the agency's interpretation of its own rules is entitled to deference unless it is plainly erroneous or inconsistent with such rule or the underlying statute. *Id.*

IV. Analysis

Strenuous and persistent denial of the interpretations of the Commission is not a basis by which to seek exception of the Order. Nonetheless, Boulder, in exhausting fashion, has asserted that it disagrees with Commission practice and precedent. Boulder's persistent nonacceptance of Commission adjudications serves as additional evidence that Boulder is not engaged in this process to present meaningful and/or viable objections. 8 North supports the decision by the Hearing Officer as it is based on a reasonable interpretation of Commission Rules 506.c and 509. The Late Protest of Boulder is not an amendment to an existing protest in this docket but is a new protest that was filed without leave and filed months after the deadline for such a filing.

The decision of the Hearing Officer to strike Boulder's Late Protest is an ultimate conclusion of law based on the Hearing Officer's interpretation of the Commission Rules. Boulder has not provided any basis by which to grant its Exception under the relevant legal standard, and the Exception should be denied. The decision of the Hearing Officer to strike the Late Protest is supported by a proper legal interpretation of Commission Rules, and Boulder provides no other viable means to warrant further consideration of the Hearing Officer Order.

An administrative agency's interpretation of a rule should be given great weight unless plainly erroneous or inconsistent with the rule. *Khelik v. City & Cty. of Denver*, 2016 COA 55, ¶ 16. Similarly, deference should be provided to the agency's reasonable interpretation involving matters within the agency's area of expertise. *Id.*, citing *Sheep Mountain All. v. Bd. of Cty. Comm'rs*, 271 P.3d 597, 601 (Colo. App. 2011); see, e.g., *Huddleston v. Grand Cnty. Bd. of Equalization*, 913 P.2d 15, 17 (Colo. 1996) (judicial deference to an administrative agency's interpretation of its governing statute is appropriate when the statute is subject to different reasonable interpretations and the issue comes within the agency's special expertise).

Commission Rule 519.c. provides that the Colorado Rules of Civil Procedure are applicable to Commission proceedings unless they are inconsistent with Commission Rules or the Colorado Oil and Gas Conservation Act. C.R.C.P. 15(a) provides that "a party may amend his pleading once as a matter of course at any time before a responsive pleading is filed."

Commission Rule 509.a.(1) provides that a "protest or intervention shall be filed with the Secretary, and served on the applicant and its counsel at least 14 days prior to the hearing date." Commission Rule 509.a.(3)E. provides that a protest must include a "certificate of service attesting that the pleading has been served, at least 14 days prior to the first hearing date on the matter, on the applicant." Emphasis added. Commission Rule 506.c provides that "[a]ny continuance of a hearing shall not extend the filing deadline for the filing of protests or interventions in accordance with Rule 509, unless the application is amended, or as otherwise allowed by the Commission."

- A. Boulder did not file its Late Protest in accordance with the deadline established by Commission Rule 506.c. and as set out in the Notice of Hearing.

Boulder's Late Protest is not an amendment of a previously filed protest, but is a new, and substantially untimely protest. Boulder failed unequivocally to file its Late Protest in accordance with the appropriate Commission Rules. The Hearing Officer's interpretation of Commission Rules 506.c. and 509 is reasonable, and the Exception should be denied.

Little explanation is necessary to demonstrate that the Colorado Rules of Civil Procedure are inconsistent with Commission Rules with regard to the deadline for filing of a protest and whether leave is otherwise necessary for an extension. In the Exception, Boulder states the following:

[Boulder] disagrees that C.R.C.P. 12(b) and C.R.C.P. 8 apply to COGCC protests because the principles of "claims of relief" and notice pleading standards conflict with the COGCC Rule 509 requirements for protests by local governments. Nonetheless, the Hearing Officer strictly applied the rules of procedure to the original protest but did apply them to the [Late] Protest.

Exception at 5. Stated differently, Boulder's position can be summarized as follows: (1) Boulder disagrees with Commission practice and precedent and (2) the Rules of Civil Procedure were applied one time, thus, the Rules of Procedure must always apply.

This reasoning is illogical and devoid of any legal analysis. Rule 509 requires a protest include a "general statement of the factual or legal basis for the protest or intervention." "This is the essence of notice pleading." Order RE: Motions to Dismiss dated January 4, 2018 at ¶ 26. Similarly, C.R.C.P. 8 requires notice pleading. *Id.* at ¶ 27. Thus, there is no conflict between the Commission Rule and the Colorado Rules of Civil Procedure with regard to what is substantively required of a protest to survive a motion to dismiss. However, Boulder's implication that C.R.C.P. must therefore apply to all rules and standards pertaining to protest is an obtuse oversimplification.

Commission Rule 509.a.(1) states that a protest must be filed "at least 14 days prior to the hearing date." Rule 509.a.(3)E. elaborates that the protest must include a certificate of service "attesting that the pleading has been served, at least 14 days prior to the **first** hearing date on the matter." Emphasis added. Commission Rule 506.c further clarifies this deadline by providing that a continuance shall not extend the protest deadline, but does provide the Commission with authority to alter the protest deadline. See Rule 509.c. To that extent, the ultimate deadline for filing of a protest is provided in the notice of hearing, issued by the Commission. Thus, reading these rules together, a protest must be filed at least 14 days prior to the initial hearing date specified in the application, not the hearing date at which the application is ultimately considered.

Conversely, C.R.C.P. 15(a), to which Boulder cites as supportive for its late protest, pertains to an amendment of a pleading. However, Boulder is not amending a pleading, in this case, a protest. Boulder's protest has been dismissed and this matter has been uncontested since January 2018. Therefore, reference to a rule of civil procedure pertaining to amended pleadings is unquestionably inconsistent with Commission Rules governing the deadline for the initial filing of a protest. Boulder's efforts to couch its "Second Protest"² as an amended pleading are disingenuous.

Boulder does not cite to any rule of civil procedure that would supplement the Commission Rules in a manner that would elucidate why precisely Boulder should be permitted to file a new protest more than seven months after the deadline specified in the Rules without leave. Boulder's Late Protest is not an amendment to a valid and existing protest as Boulder's Initial Protest in the subject docket has been dismissed. The Late Protest is a new protest and is subject the Commission Rules. In spite of Boulder's unsubstantiated position, the Commission Rules are quite clear about the deadline for filing a protest. That deadline is outlined in the Rules and was stated clearly in the Notice of Hearing for Docket No. 171000695: October 16, 2017. See Exhibit 1.

Boulder's Late Protest is just that—late. No amount of disagreement can alter the timeline of events which has led to this point. Since filing its Initial Protest in Docket No. 171000695 in October 2017, Boulder has had ample opportunity to amend its protest if it saw fit. Even upon dismissal of its initial protest for failing to comply with the *Warne* plausibility standard, Boulder was prompted and instructed of its opportunity to seek further relief related to that protest pursuant the APA. An opportunity that clearly was not lost on Boulder as it filed timely exceptions in Docket Nos. 171200773 and 171200774. Yet, now—seven months after filing its initial protest and four months after dismissal of the same—Boulder seeks to once again circumvent the rules that govern all participants before the Commission.

The Hearing Officer's interpretation of Commission Rules 506.c. and 509 is a reasonable and permissible construction of the rules governing the timeliness of protests. Therefore, the Exception should be denied.

B. Boulder did not obtain leave to file a new protest, nor was such leave warranted.

The Hearing Officer did not provide Boulder leave to file an amended, late, second, or new protest nor is such leave appropriate. The Application was filed nearly eight months ago, and originally noticed for the October 30, 2017 hearing. Boulder was properly served with a Notice of Hearing, directing Boulder to file a protest on or before October 16, 2017. Boulder County filed a timely initial protest; however, Boulder failed to raise factual allegations to sustain the protest under Rule 509 and the *Warne*

² Boulder does not even attempt to disguise the Late Protest as an amendment—the Late Protest in Docket No. 171000695 is titled "Protest and Intervention by Boulder County." Conversely, the amended protests filed in Docket Nos. 171200773 and 171200774 are each titled "Amended Protest and Intervention by Boulder County and City of Lafayette."

standard, and the protest was dismissed on January 2, 2018. Following dismissal, Boulder took no further action with respect to this docket until it improperly filed the Late Protest without leave on March 30, 2018. Boulder did not file an appeal of the Hearing Officer's dismissal order issued on January 2, 2018, in Docket No. 171000695. Nor Boulder did not request leave to file an amended protest following that order. And Boulder County did not confer with 8 North regarding its desire to file an amended protest. Boulder County attempted to circumvent the Commission rules by filing an amended protest without leave on March 30, 2018, and only thereafter, at the April 5, 2018 prehearing conference, did Boulder ask for leave to file the same amended protest after the fact, more than three months from the date Boulder's original protest was dismissed. Although the Hearing Officer did not enter an order relating to Boulder's oral request for leave, he essentially denied the request upon entering the Order Striking the Second Protest of Boulder. Having failed to obtain leave and to show that such leave is warranted, the decision of the Hearing Officer to strike the Late Protest is supported by Commission Rules, and the Exception should be denied.

Under well-established law, leave to amend is a discretionary matter which is left to the trial court (here, the Commission) to determine. *Dolan v. Fire & Police Pension Ass'n*, 2017 COA 55, ¶ 38. Under C.R.C.P. 15, "[a] trial court may properly deny leave to amend a complaint late in litigation if the proponent fails to show that the delay is justified." *Id.* C.R.C.P. 15(a) generally establishes that a court shall freely give leave to amend "when justice so requires." *Francis v. Aspen Mt. Condo. Ass'n*, 2017 COA 19, ¶ 26, 401 P.3d 125, 130. However, the requirement under C.R.C.P. 15(a) "of liberal leave to amend is not without limits." *Id.* In assessing a motion to amend, a trial court must weigh certain primary considerations:

If the underlying facts or circumstances relied upon by a plaintiff **may be a proper subject of relief**, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should, as the rules require, be "freely given."

Varner v. Dist. Court, 618 P.2d 1388, 1390 (Colo. 1980) (emphasis supplied).

Boulder alleges that it only recently has been able to complete due diligence for existing oil and gas leases underlying the Application Lands. Exception at p. 2. In addition to its significant delay in requesting leave to amend (and doing so after filing an amended protest without permission), leave to amend is improper for two reasons. First, the allegations related to the existing leases were known or should have been known to Boulder at the time of filing its original protest. The leases at issue purportedly cover minerals owned by Boulder, making Boulder the lessor under the terms of the leases. Moreover, the leases have been in existence for some time. The terms of the

leases have not changed, and Boulder, as a party to the leases, knew or should have known of this potential allegation when it first filed its protest in October of 2017. Failure to raise an allegation in an original pleading based on facts known to the party is not sufficient reason to grant leave to file an amended protest/intervention. See *Andrew v. Benight-Latcham Carpet Co.*, 72 Colo. 472, 211 P. 378 (1922) (holding that denial was proper where “the affidavit in support of the motion to amend shows no reason why the facts set up in the amended answer were not pleaded originally.”)

Second, the additional argument Boulder seeks to raise concerning the alleged new legal issues regarding lease limitations is not a proper subject of relief before the Commission. Putting aside the validity of Boulder’s argument concerning the leases, it is not for the Commission to determine whether 8 North can or cannot establish the unit requested under the terms of the lease, because to do so would require the Commission to interpret a private contract. The Commission has long recognized that it lacks jurisdiction to interpret contracts or rule on contractual disputes. See *Chase v. Colorado Oil and Gas Conserv. Comm’n*, 284 P.3d 161,165 (Colo. App. 2012); see also *Grynberg v. Colorado Oil and Gas Conserv. Comm’n*, 7 P.3d 1060 (Colo. App. 1999).

Finally, Boulder asserts that the remainder of its Late Protest addresses public health, safety, and welfare concerns that are within the purview of the Commission’s jurisdiction to address. However, these concerns are identical to those raised in Boulder’s timely filed Amended Protest in Docket No. 171200774, and thus will be adequately addressed by the Commission during the proceeding for the increased density application in Docket No. 171200774.

Boulder did not obtain leave to file an amended or second protest, and Boulder cannot show that the delay in bringing forth the new legal claims is justified. The issuance of the Order Striking the Second Protest of Boulder has the effect of denying Boulder’s oral request for leave. Therefore, the decision of the Hearing Officer is proper, and the Exception should be denied.

C. Equity demands the Commission leave the decision of the Hearing Officer unaffected.

It has been nearly seven months since Boulder first filed protests against four separate applications filed by 8 North in this and other dockets. In January 2018, the Hearing Officer dismissed all four of Boulder’s protests for failure to state a claim upon which relief could be granted under the *Warne* plausibility standard. At that time, Boulder did not seek leave to file an amended protest in any of the four dockets, nor did it allude to any on-going review of oil and gas leases. Upon instruction that it was permitted to file an exception of the Hearing Officer decision to dismiss the protests, Boulder filed exceptions in the density application matters, being Docket Nos. 171200773 and 171200774. Boulder did not file an exception in the subject docket. Thereafter 8 North and Boulder entered into an agreement whereby Boulder would file amended protests in the density matters—Docket Nos. 171200773 and 171200774—to which 8 North would not object. In spite of this agreement, Boulder additionally chose

to file a second protest in this docket, without seeking leave and without conferring with 8 North.

C.R.C.P. 15(a) governs the amendment of pleadings, and provides that where leave of court is required to amend a pleading, "leave shall be freely given when justice so requires." *Varner*, 618 P.2d at 1390. The rule explicitly reflects a liberal policy toward amendment, the purpose of which is "to secure the just, speedy, and inexpensive determination of every action." *Id.* The grounds upon which a court may deny a motion to amend include unfair prejudice, futility, and undue delay. *Civil Serv. Comm'n v. Carney*, 97 P.3d 961, 966 (Colo. 2004).

First, and as previously stated, Boulder has not been granted leave to file an amendment. Only after filing its late protest did Boulder request via oral motion leave to file a late and amended protest. While leave to amend shall be freely given, such leave to amend is "not without limits." *Francis*, 2017 COA 19, ¶ 26, 401 P.3d at 130. Boulder's efforts in this and other related dockets have resulted in a process that is anything but just, speedy, and inexpensive. 8 North has been required to respond to each filing, which to date have been lacking in substance, content, and/or compliance with Commission Rules.

8 North does not begrudge the involvement of local governments in Commission proceedings to voice concerns related to the development of oil and gas. In fact, 8 North welcomes the opportunity and supports the open discourse between industry and concerned citizens. However, Boulder's actions in this matter have resulted in undue delay and have detracted from cooperative and productive communications that can and should be occurring with engaged citizens looking to better the process. Boulder's tactics cannot be rewarded, and the frank reality is that such efforts have resulted in undue delay.

Boulder cites confusion as a basis for its failure to timely file an amended protest or to otherwise seek proper relief under Commission Rules. However, Boulder is a sophisticated party represented by legal counsel, and is not a pro se party. However, sound legal basis must exist for intervention. Boulder argues that on the basis of equity, it should be permitted a pass from the governing Rules of the Commission at the expense of 8 North and every other owner within the proposed drilling and spacing unit whose interests are implicated and affected by Boulder's persistent delay tactics. To permit such practice places unfair prejudice on 8 North that has complied with all rules and regulations pertaining to the establishment of a drilling and spacing unit.

Boulder's most recent protest is extremely untimely and providing Boulder further opportunity to stall this process incentivizes abuse of the process. Boulder has had months to assert or even draw attention to claims it alleges are critical for the Commission's consideration. If Boulder's aim was anything other than to delay mineral development, Boulder would have included facts provided in its latest protest in at least one of their numerous filings. Therefore, justice and equity to all participants coming before this Commission and the public policy of conserving administrative and judicial resources is best served by denying the Exception.

V. Conclusion

The Hearing Officer has rendered his decision based a reasonable interpretation of the relevant and applicable law, and Boulder has not exposed any reversible error. For the reasons stated herein, the Commission should deny the Exception to the Hearing Officer's Order Striking the Second Protest filed by the Board of County Commissioners of the County of Boulder.

DATED this 15th day of May, 2018

Respectfully submitted,

8 North LLC

By: Jobediah J. Rittenhouse
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:
8 North LLC
370 17th Street, Suite 5300
Denver, CO 80202

CERTIFICATE OF SERVICE

I hereby certify that, on May 15, 2018, Beatty & Wozniak, P.C. caused *8 North's Response to Boulder County's Exception to the Hearing Officer's Order Striking the Second Protest by Boulder County* was served to the following as noted below:

VIA EMAIL AND COURIER TO:

Colorado Oil and Gas Conservation Commission

ATTN: James Rouse

Julie Prine

1120 Lincoln Street, Suite 810

Denver, CO 80203

James.Rouse@state.co.us

Julie.Prine@state.co.us

VIA EMAIL:

David Hughes

Katherine A. Burke

Attorneys for Boulder County

dhughes@bouldercounty.org

kaburke@bouldercounty.org

A handwritten signature in blue ink, appearing to read "Jo Carter", is written over a horizontal line.

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

IN THE MATTER OF THE PROMULGATION AND)	CAUSE NO. 407
ESTABLISHMENT OF FIELD RULES TO GOVERN)	
OPERATIONS FOR THE CODELL AND NIOBRARA)	DOCKET NO. 171000695
FORMATIONS, WATTENBERG FIELD, BOULDER)	
AND WELD COUNTIES, COLORADO)	TYPE: SPACING

NOTICE OF HEARING

TO ALL INTERESTED PARTIES AND TO WHOM IT MAY CONCERN:

APPLICATION LANDS

Township 2 North, Range 69 West, 6th P.M.

Section 13: All

Section 14: All

Section 23: All

Section 24: All

Township 2 North, Range 68 West, 6th P.M.

Section 18: SW $\frac{1}{4}$

APPLICATION

On August 31, amended September 19, 2017, 8 North LLC, Operator No. 10575 ("8 North" or "Applicant") filed a verified application pursuant to §34-60-116, C.R.S., for an order to:

- 1) Establish an approximate 2,720-acre drilling and spacing unit for the Application Lands, for the production of oil, gas, and associated hydrocarbons from the Codell and Niobrara Formations;
- 2) Authorize the drilling of up to one horizontal well within the proposed unit;
- 3) Require the productive intervals of the wellbore of any permitted well to be located no closer than 460 feet from the unit boundaries, and no closer than 150 feet from the productive intervals of any other wellbore located in each unit.
- 4) Applicant states that any horizontal well to be drilled in the unit will be drilled from one pad on the surface of the drilling unit, or on adjacent lands with consent of the landowner, unless an exception is granted by the Director.

APPLICABLE RULES AND ORDERS

(available online at: <http://cogcc.state.co.us>, under "ORDERS")

- On April 27, 1998, the Commission adopted Rule 318A., which, among other things, allowed certain drilling locations to be utilized to drill or twin a well, deepen a well or recomplete a well and to commingle any or all of the Cretaceous Age Formations from the base of the Dakota Formation to the surface. On December 5, 2005, Rule 318A. was amended to allow interior infill and boundary wells to be drilled and wellbore spacing units to be established. On August 8, 2011, Rule 318A. was again amended to, among other things, address drilling of horizontal wells. The Amended Application Lands are subject to certain portions of Rule 318A.
- On or about February 19, 1992 (amended August 20, 1993), the 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.
- 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-18H Well (API No. 05-123-33423)), for the 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.

NOTICE IS HEREBY GIVEN, pursuant to §§ 34-60-101 to -130, C.R.S. and the Commission's Rules of Practice and Procedure, 2 CCR 404-1, that the Commission has scheduled this matter for hearing on:

Date: October 30–31, 2017
Time: 9:00 a.m.
Place: Colorado Oil and Gas Conservation Commission
The Chancery Building
1120 Lincoln Street, Suite 801
Denver, CO 80203

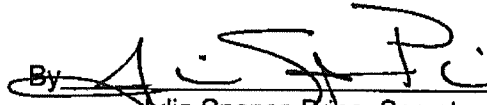
Additional information about the hearing on this Application will be in the Commission's Agenda, which is posted on the Commission website approximately 3 days before the hearing.

In accordance with the Americans with Disabilities Act, if any party requires special accommodations as a result of a disability for this hearing, please contact Margaret Humecki at (303) 894-2100 ext. 5139, prior to the hearing and arrangements will be made.

At hearing, the Commission will consider the Application and enter an order pursuant to its authority under the statute. **Any interested party desiring to protest or intervene should**

file with the Commission a written protest or intervention in accordance with Rule 509., no later than October 16, 2017. Such interested party shall, at the same time, serve a copy of the protest or intervention to the person filing the application. One electronic (cogcc.hearings_unit@state.co.us), one original and two copies shall be filed with the Commission. **Anyone who files a protest or intervention must be able to participate in a prehearing conference during the week of October 16, 2017, if a prehearing conference is requested by the Applicant, or any person who has filed a protest or intervention.** Pursuant to Rule 511., if the matter is uncontested, it may be approved without a hearing.

OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO

By 
Julie Spence Price, Secretary

Dated: September 21, 2016

Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, Colorado 80203
Website: <http://cogcc.state.co.us>
Phone: (303) 894-2100
Fax: (303) 894-2109

Attorneys for Applicant:
Jillian Fulcher
Jobediah J. Rittenhouse
Beatty & Wozniak, P.C.
216 16th Street, Suite 1100
Denver, Colorado 80202
(303) 407-4499
jfulcher@bwenerylaw.com
jrittenhouse@bwenerylaw.com