

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, Colorado 80202</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiffs:</p> <p>BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, Colorado; and CITY OF LAFAYETTE, Colorado;</p> <p>v.</p> <p>Defendants:</p> <p>COLORADO OIL AND GAS CONSERVATION COMMISSION, an agency of the State of Colorado; and 8 NORTH, LLC, a Delaware limited liability company</p>	
<p>Attorneys for Plaintiffs: BOULDER COUNTY ATTORNEY David Hughes, #24425 Deputy County Attorney Katherine A. Burke, #35716 Senior Assistant County Attorney Boulder County Attorney's Office P.O. Box 471 Boulder, Colorado 80306 Phone: 303-441-3190 Fax: 303-441-4794 Email: dhughes@bouldercounty.org kaburke@bouldercounty.org</p> <p>Goldman, Robbins, Nicholson & Mack, P.C. Jeffery P. Robbins, #26649 P.O. Box 2270 Durango, CO 81302 Phone: 970-259-8747 Fax: 970 259 8790 Email: robbins@grn-law.com</p>	<p>Case Number:</p> <p>Div:</p>
<p>COMPLAINT</p>	

Plaintiffs Board of County Commissioners of Boulder County, Colorado and the City of Lafayette allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Boulder County is a political subdivision of the State of Colorado and a body politic and corporate. Plaintiff Board of County Commissioners of Boulder County (“Boulder County”) is the duly constituted governing body of Boulder County, and is authorized to sue and be sued.

2. The City of Lafayette (“Lafayette”) is a home rule city of the State of Colorado, and is authorized to sue and be sued.

3. Defendant Colorado Oil and Gas Conservation Commission (the “Commission”) is the Colorado regulatory agency with the jurisdiction and authority to implement the Colorado Oil and Gas Conservation Act, C.R.S. § 34-60-101 *et seq.* (the “Oil and Gas Act”). The Commission may promulgate rules and regulations to implement the provisions of the establishment of spacing units under C.R.S. § 34-60-116, C.R.S. The Commission promulgates rules and regulations pertaining to oil and gas in the State of Colorado. The Commission's authority is outlined in C.R.S. §§ 34-60-105 and 106.

4. The Commission's authority is subject to limitations set forth in the Colorado Administrative Procedure Act, C.R.S. § 24-4-101 *et seq.* (the “APA”).

5. The Commission is a resident of the City and County of Denver pursuant to the APA.

6. Defendant 8 North, LLC (“8 North”), is a Delaware limited liability company with principal offices at 370 17th Street, Suite 5300, Denver, Colorado. 8 North is authorized to conduct business in the State of Colorado and is a registered oil and gas operator with the Commission.

7. Jurisdiction is proper in this Court pursuant to the APA, as a Court of general jurisdiction under the Colorado Constitution. Jurisdiction is also proper under the judicial review provision of the Colorado Oil and Gas Conservation Act, which states that any final order or determination by the commission shall be subject to judicial review in accordance with the provisions of the APA.

8. Boulder County and Lafayette seek judicial review of three final orders of the Commission, all of which were issued July 31, 2018, in Docket Nos. 171000695, 1712000773, 171000774 (the “Commission Orders”). The effective date of the Commission Orders was July 31, 2018. The Orders constitute final agency actions for the purposes of judicial review.

9. Boulder County and Lafayette were parties to the Commission’s agency adjudicatory proceedings, the Commission’s final hearing, and Commission Orders that are the subject of this Complaint.

10. The Commission Orders exceed the Commission’s jurisdiction, are arbitrary and capricious, and constitute an abuse of discretion. The Commission’s adjudicatory proceedings and determinations made in the Commission Orders constitute clear reversible legal error.

11. Under the APA and Commission Rule 501(c), any person adversely affected or aggrieved by a final Order of the Commission is entitled to judicial review of the Commission's action.

12. The APA serves as a gap-filler, and its provisions apply to agency actions unless they conflict with a specific provision of the agency's statute or another statutory provision preempts the provisions of the APA.

13. The agency-specific authorities on jurisdiction applicable to this Complaint are the Oil and Gas Act and the Commission's own rules that govern hearings before the Commission.

14. Boulder County and Lafayette exercised and exhausted all of their administrative remedies and no plain, speedy, and adequate remedy is otherwise provided by law.

15. Venue is proper under C.R.C.P. 98(c) and C.R.S. § 24-4-106(4) because the Commission, a state agency, resides in the City and County of Denver. Boulder County, Lafayette and 8 North are the parties to the Commission's agency proceedings giving rise to this action.

GENERAL ALLEGATIONS

16. The Commission's agency proceedings that are the subject of this Complaint concern 8 North's application to the Commission for the establishment of a drilling and spacing unit ("DSU") and two applications by 8 North for additional density within two DSUs proposed to be located in the Greater Wattenberg Area in Colorado. Boulder County and Lafayette object to the Commission's approval of such applications and to the sufficiency and adequacy of the rules governing the approval process.

17. Portions of the DSUs in which 8 North sought additional density are in unincorporated Boulder County, and a portion of one of the DSUs is within Lafayette. The residents of Boulder County and Lafayette are or will be adversely affected by the Commission's decisions. Boulder County and Lafayette are local governments with land use jurisdiction within portions of the DSUs.

18. Boulder County owns mineral interests within both DSUs. Boulder County's mineral interests are or will be adversely affected by the Commission's decisions. Among those adverse effects, 8 North will, if necessary, involuntarily pool Boulder County's mineral interests for development, against the will and desire of Boulder County.

19. Boulder County owns surface rights within both DSUs. Boulder County's surface rights are or will be adversely affected by the Commission's decisions. Specifically, Boulder County owns conservation easements in portions of the DSUs, and 8 North may use surface leases, pooling, and/or forced pooling to interfere with or destroy the conservation easement values in those units by establishing multi-well pads within the DSUs.

20. On August 31, 2017, amended September 19, 2017, 8 North filed an application in Docket No. 171000695 ("Northern Spacing Application") requesting an order to establish an approximate 2,720-acre drilling and spacing unit ("Northern 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. 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

21. On September 19, 2017, 8 North filed an application in Docket No. 171200774 (“Northern Density Application”) (collectively, the Northern Spacing Application and the Northern Density Application are referred to as the “Northern DSU Applications”) 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 yet-to-be-established Northern Spacing Unit.

22. On October 16, 2017, Boulder County filed a protest against the Northern Spacing Application. On November 15, 2017, Boulder County filed a protest against the Northern Density Application. On March 22, 2018, Boulder County filed an amended protest in Docket No. 171200774.

23. On March 30, 2018, Boulder filed a new Protest and Intervention in Docket No. 171000695. On June 7, 2018, Boulder re-filed its Second Spacing Protest.

24. On July 31, the Commission held a hearing on the Northern DSU Applications. At the close of the hearing, the Commission, on a vote of 8-1, approved the Northern Spacing Unit and the Northern Density Application.

25. On August 31, 2017, amended September 19, 2017, 8 North submitted an application in Docket No. 171000694 (“Southern Spacing Application”) requesting an order to establish an approximate 1,280-acre drilling and spacing unit (“Southern Spacing Unit”) for Sections 35 and 36, in Township 1, Range 69 West, 6th P.M., and the drilling of one horizontal well within the proposed drilling and spacing unit be authorized, for the production of oil, gas, and associated hydrocarbons from the Niobrara and Codell Formations.

26. On September 19, 2017, 8 North filed with the Commission an application in Docket No. 171200773 (“Southern Density Application”) (collectively, the Southern Spacing Application and the Southern Density Application are referred to as the “Southern DSU Applications”) for an order to approve nineteen (19) additional horizontal wells, for a total of up to twenty (20) horizontal wells, within the yet-to-be-established Southern Spacing Unit for production of oil, gas, and associated hydrocarbons from the Niobrara and Codell Formations.

27. On November 15, 2017, Boulder County and Lafayette filed a joint protest against the Southern DSU Applications. On March 22, 2017, Boulder County and Lafayette filed an Amended Protest and Intervention against the Southern Density Application only.

28. On July 31, the Commission held a hearing on Southern Density Application. At the close of the hearing, the Commission, on a vote of 8-1, approved the Southern Spacing Application and the Southern Density Application.

29. On August 29, 2018, the Commission issued written final written orders in Docket Nos. 171000695, 1712000773, 171000774, which orders approved each of the applications.

CLAIM FOR RELIEF
(Review of Agency Action under the APA)

30. The Commission Orders are unlawful and must be set aside by this Court as specified under the APA. The Commission’s actions and orders were arbitrary or capricious, a denial of statutory right, contrary to constitutional rights, in excess of statutory jurisdiction, authority, purposes, or limitations, not in accord with the procedures or procedural limitations of the APA or as otherwise required by law, an abuse or clearly unwarranted exercise of discretion, based upon findings of fact that are clearly erroneous on the whole record, unsupported by competent and sufficient evidence when the record is considered as a whole, and/or otherwise contrary to law for one or more of the following reasons:

- A. Under Commission Rules, 8 North was required to establish that it was an owner of mineral rights within the application lands. Over the objection of Boulder County and Lafayette, the Commission improperly admitted and improperly relied upon summary and hearsay evidence of mineral ownership that did not comport with Commission Rules, the Colorado Rules of Evidence, or the APA. Moreover, the admitted evidence was insufficient to prove the requisite mineral ownership. In the absence of competent proof of ownership, 8 North did not meet the requirements for DSUs or additional density approval and the Commission should have denied 8 North’s DSU and density applications.
- B. When 8 North filed its additional density applications, the applicable statutory provision stated: “The order establishing drilling units shall permit only one well to be drilled and produced from the common source of supply. . . .” § 34-60-116(3), C.R.S. (2017) *amended effective* July 1, 2018. C.R.S. The Oil and Gas Conservation Act is clear that additional wells, such as those requested in the Northern Density Application and Southern Density 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. Moreover, Commission Rules clarify that only “those owners . . . within the *existing* drilling unit to be affected” may apply for “additional wells within *existing* units” (emphasis added). Rule 503.b(1). The Commission Orders allowed additional density in the DSUs in excess of Commission authority and allowed multiple wells to be drilled within the DSUs without requiring that a single well first be drilled and put into production in each of the units.
- C. Under § 34-60-116, C.R.S. (2017), the Commission, after notice and a hearing, may establish one or more drilling units of specified size and shape covering any pool or portion of a pool. To establish drilling units, the Commission must determine the appropriate acreage to be embraced within the unit. The Commission may also permit additional wells to be drilled within the established units. The General Assembly failed to establish adequate legislative guidelines to ensure that the Commission’s administrative action determining the size and shape of drilling units and the necessity of additional wells will be rational and consistent in the first instance and that subsequent judicial review of the action is available and will be effective. Under the Oil and Gas Act, the Commission has the power to make

and enforce rules and regulations and to do whatever may be reasonably necessary to carry out the provisions of the Oil and Gas Act. The Commission's Rules and Orders are insufficient to limit the exercise of broad discretionary power of the Commission.

D. The Commission's findings are not supported by substantial evidence in the record.

WHEREFORE, Boulder County and Lafayette respectfully request that judgment enter in their favor, and against Defendants, as follows:

A. Determining that the Commission Orders exceeded the Commission's jurisdiction and abused its discretion, were arbitrary and capricious, were not supported by the record, and were not in accordance with law;

B. Determining that the Oil and Gas Act and Commission Orders and Rules are inadequate to limit the Commission's exercise of discretion with respect to establishing DSUs and increasing the number of wells within such DSUs;

C. Setting aside or vacating the Commission Orders;

D. Granting all recoverable fees and costs; and

E. For all such further relief the Court deems appropriate.

DATED: August 31, 2018

BOULDER COUNTY ATTORNEY'S OFFICE

/s/David Hughes

David Hughes,
Deputy County Attorney
Katherine A. Burke,
Senior Assistant County Attorney

*Attorneys for Plaintiff Board Of County Commissioners
Of Boulder County*

DATED: August 31, 2018

Goldman, Robbins, Nicholson & Mack, P.C.

/s/Jeffrey P. Robbins

Jeffery P. Robbins

Attorney for Plaintiff City Of Lafayette

DISTRICT COURT , CITY AND COUNTY OF DENVER COUNTY, COLORADO 1437 Bannock Street, Denver, Colorado 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT	

- 1. This cover sheet shall be filed with each pleading containing an initial claim for relief in every district court civil (CV) case, and shall be served on all parties along with the pleading.** It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

2. Check one of the following:

This case is governed by C.R.C.P. 16.1 because:

- The case is not a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; *AND*
- A monetary judgment over \$100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

The case is a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.

A monetary judgment over \$100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

Another party has previously indicated in a Case Cover Sheet that the simplified procedure under C.R.C.P. 16.1 does not apply to the case.

NOTE: In any case to which C.R.C.P. 16.1 does not apply, the parties may elect to use the simplified procedure by separately filing a Stipulation to be governed by the rule within 49 days of the at-issue date. See C.R.C.P. 16.1(e). In any case to which C.R.C.P. 16.1 applies, the parties may opt out of the rule by separately filing a Notice to Elect Exclusion (JDF 602) within 35 days of the at-issue date. See C.R.C.P. 16.1(d).

A Stipulation or Notice with respect to C.R.C.P. 16.1 has been separately filed with the Court, indicating:

C.R.C.P. 16.1 applies to this case.

C.R.C.P. 16.1 does not apply to this case.

3. This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

DATED: August 31, 2018.

BOULDER COUNTY ATTORNEY'S OFFICE

/s/David Hughes

David Hughes,
Deputy County Attorney
Katherine A. Burke,
Senior Assistant County Attorney

*Attorneys for Plaintiff Board Of County Commissioners
Of Boulder County*