

# **MEMORANDUM OF UNDERSTANDING**

This Standard Memorandum of Understanding ("MOU") is made and entered into this day of \_\_\_\_\_, 20\_\_, by and between Elbert County, a Colorado County ("County") executed by the Elbert County Board of County Commissioners (BOCC) and \_\_\_\_\_ (Operator").

Operator is the owner or lessee of oil and gas leasehold and/or mineral interests within unincorporated Elbert County, and, as of the time of the execution of this MOU, has the right and intent to further develop its oil and gas leasehold and/or mineral interests within said portion of the County.

The intent of this MOU is to document the Agreement of the parties under which Operator will develop and operate oil and gas facilities in the unincorporated portions of the County. Locations with more than one of the above mentioned types of equipment will also be considered to be one facility. Unless indicated otherwise, the definitions of terms used in the MOU shall be the same as in the Colorado Oil and Gas Conservation Commission's ("COGCC") Rules.

The following conditions will apply to all of Operator's newly permitted wells and facilities within unincorporated Elbert County, as of the effective date of the fully executed MOU between Elbert County and Operator. Site-specific conditions may be incorporated into the COGCC permit approval process through the LGD process and be regarded as Required Best Management Practices (BMPs) as described in the Commission's Rules, or by Sundry notice (COGCC Form 4) if there is agreement between Operator and Elbert County

NOW, THEREFORE, the Parties agree as follows:

1. Intent to Supplement COGCC Rules and Regulations. The Parties recognize that pursuant to the Colorado Oil and Gas Conservation Act, C.R.S. §§ 34-60-101, et seq. ("Act"), COGCC regulates the development and production of oil and gas resources in Colorado, and the Act authorizes COGCC to adopt statewide rules and regulations. The provisions of this MOU are intended to supplement and add to COGCC rules and regulations. An approval of an Administrative Use by Special Review for an Oil and Gas Facility shall automatically include as conditions of approval all provisions of the MOU executed by the applicant, except to the extent waived by CDS Director or the BOCC. An MOU acceptable to the County must have been executed by the applicant and the County and currently be in full force and effect, and the Oil and Gas Facility as proposed must be in compliance with the provisions of the MOU.
2. Operator's Pit Practices within the County. The Operator will comply, at minimum, with the following pit practices after the date this MOU is executed.

- a. An Operator will use closed-loop or modified closed-loop systems for drilling and completion operations. Permitted modified closed-loop systems include oil and gas well where air or fresh water is used to drill through the surface casing interval, defined as fifty (50) feet below the depth of the deepest aquifer, and a closed loop system is used for the remainder of the drilling and/or completion or recompletion process.
  - b. Water storage pits to contain Fresh Water are permitted. Fresh water is defined as containing total dissolved solids (TDS) less than or equal to 5,000 milligrams per liter (mg/l).
  - c. Pits that do not need County approval. Flare and Emergency Plugging However the County will be sent any notification sent to the COGCC along with any pit plans, remedial plans or analytical results submitted to the COGCC.
3. Setbacks. Any setbacks less than one-thousand feet (1000') from a building unit or outdoor venue or recreation area as defined by COGCC, shall be mitigated for noise, dust, lighting and visual impacts. This requirement can be waived by all surface owners within one-thousand feet (1000') of proposed well location as determined by the Oil and Gas Location Assessment (OGLA). If waived by affected surface owners setbacks shall comply, at minimum, with COGCC setback requirements.
4. Berms. Berms shall be inspected by Operator on a weekly basis for evidence of discharge. Berms shall be inspected within 48 hours of a precipitation event. Berm construction plans shall be submitted with application and reviewed and approved by the Elbert County Engineer.
5. Regular Meetings to Monitor and Discuss MOU Issues. The County and Operator agree to meet quarterly or as necessary, to monitor and discuss any pertinent issues associated with oil and gas facilities within the County.
6. Water Supply and Quality. In an effort to reduce truck traffic, where feasible, the Operator will identify a water source lawfully available for industrial use, including oil and gas development, close to the facility location, to be utilized by Operator and its suppliers. Operator will comply with the Colorado Department of Public Health and Environment (CDPHE) requirements concerning water quality. Where feasible, temporary surface water lines are encouraged and will be utilized. Operator may be permitted to utilize County Road Right-of-Way, and County drainage culverts, where practical, for the laying and operation of temporary water lines on the surface. If necessary, operator will bury temporary water lines at existing driveway and gravel road crossings, or utilize existing culverts, if available.

7. **Baseline Water Quality Testing.** Operator agrees to comply with the COGCC Rule 609 for Baseline Water Quality Testing as adopted or hereafter with Rule 609 as adopted and/or modified, in addition to any requirements provided herein. Facilities subject to the requirements of this section are oil and gas well-sites, tank batteries, compressor stations, pits/ponds, below-grade tanks and dehydration units. Operator will make such test results available for posting on the County web site when practicable.
  - a. **Criteria and Protocol:** Using the COGCC's criteria and protocol for sample analyses, types, orientation, and number, Operator will test up to four available water sources within a one half (1/2) mile radius of a new oil and gas facility.
  - b. **No available water sources within one half mile:** If there are no available water sources located within a 1/2 mile radius of a new oil and gas facility, the Operator will test the nearest downgradient available water source that is within a one-mile radius of the oil and gas facility.
  - c. **Private Water Well Owner Request.** Operator agrees to conduct a baseline test of any water well requested by the owner, on a one-time basis, if such well is within a 1/2 mile radius of a new oil and gas well or facility, or if such well is determined to be the closest downgradient well that is within a one-mile radius of the oil and gas facility. The requirement to test a well upon request does not apply if the water well has already been tested by any Operator. Water well test results will be posted for public viewing with permission of the well owner.
8. **Spill and Release Management.** Any spill or release that is reportable to the COGCC Rule 906 and any changes and/or amendments shall be simultaneously reported to the County by the Operator.
9. **Storm Water Management, Site Preparation and Stabilization.** Operator will provide the County copies of their Stormwater Management Plan and Post Construction Storm Water Program as required by COGCC Rule 1002. Operator shall include BMPs required by Rule 1002 on their form 2A.

Oil and gas operators shall implement and maintain BMPs at all oil and gas locations to control stormwater runoff in a manner that minimizes erosion, transport of sediment offsite, and site degradation. BMPs shall be maintained until the facility is abandoned and final reclamation is achieved pursuant to Rule 1004.
10. **Weed Control and Management.** Operator will be responsible for noxious weed control on any well pad, facility, or disturbed area, from the drilling or installation phase to the closure of the well or facility. Operator shall keep area inside berm area free of vegetative growth.
11. **Operator will provide a Waste Management Plan for Handling and Disposal of**

produced water.

12. Noise. Operator shall provide and post 24-hour, 7 days per week contact information to deal with all noise complaints arising from Operator's oil and gas facilities. Operator shall respond to all reasonable complaints regarding noise.
13. Emergency Response and Safety Plan. Operator will provide the County with an Emergency Response and Safety Plan (ERSP) that has been developed with the jurisdictional fire district to address all potential emergencies and safety hazards that may be associated with an oil and gas facility. A "will-serve" letter must be obtained from the appropriate emergency provider(s). The ERSP must be agreed upon by the Operator, the jurisdictional fire department and CDS Director.
14. Erosion Control. When required, the Operator agrees to apply for and obtain a Road Use Agreement through the Public Works Department, and satisfy all the terms and conditions of such Road Use Agreement, including any posting of bonds.
15. Private Roads. The Operator agrees to construct (unless already constructed) and maintain an access road as set forth in the Road Maintenance and Use agreement and the ESPR required by Section 27 of the Elbert County Zoning Regulations. Operator and County agree that spot inspections of access roads may be done by the County and/or appropriate emergency response agency, at such County or agency's sole risk and expense, to insure that emergency access in accordance with this section is maintained.
16. Public Roads. Operator agrees to apply for and obtain access permits and obtain a Road Use and Maintenance Agreement through the Public Works Department, and satisfy all the terms and conditions of such Road Use Agreement, including any posting of bonds.
17. Floodplain. Any disturbance within a floodplain will require the Operator to obtain a Floodplain Development Permit from the County and to comply with all the County's legally adopted floodplain regulations. (need to speak with Carolyn Parkinson about this).
18. Painting of Oil and Gas Facilities. Except for such facilities that must be painted a certain color for safety reasons, Operator agrees to paint all new (post-MOU) production facilities with uniform, non-contrasting, non-reflective color tones and with colors matched to, but slightly darker, than surrounding landscapes.
19. Lighting. All permanent lighting of oil and gas well sites shall be directed downward and inward in an effort to reduce light pollution, light trespass, glare and offensive light sources. Temporary lighting shall at minimum conform to the COGCC's Rules and Regulations. Operator shall respond to all reasonable complaints regarding lighting.

20. County Inspections. Operator agrees to allow County access to all oil and gas facilities for inspection, provided County personnel are equipped with all appropriate personal protection equipment (PPE) as required by the Operator, the personnel comply with the Operator's other and customary safety rules and the County is responsible for all costs and expenses of such inspections. The County shall use its best efforts to provide advance notice to the Operator prior to an inspection; however, the County reserves the right in its discretion to make inspections or to inspect without notice only in the event of an issue potentially involving an immediate risk to public safety, health or welfare or damage to the property of another. In such cases an effort to reach Operator will be made.

The County reserves the right to inspect pit locations prior to construction, during construction, and after construction. The County also reserves the right to contact the appropriate COGCC area inspector if non-compliance issues are suspected or identified as a result of construction plan reviews, reclamation plan review, field inspections, or if non-compliance issues are not resolved as soon as possible.

21. County Land Use Approvals. The Operator understands and agrees that prior to the development or operation of any oil and gas facility in unincorporated portions of the County, that Operator must first obtain approval from the County pursuant to any validly adopted provisions in the county land use regulations. The Operator agrees and consents that the provisions of this MOU are to be included among any conditions for the issuance of any land use approval or permit issued by the County unless, and to the extent, waived or modified in writing by the Director of CDS, or waived or modified on the record at a public hearing before the BOCC; further, the Operator understands and agrees that the provisions of this MOU shall remain conditions of such land use approval or permit regardless of the subsequent sale or other transfer of any oil and gas facilities, or interest therein, by the Operator.
22. State Oil and Gas Permit Approvals. The Operator agrees to include the contents of Exhibit A of this MOU in all Forms 2 and 2A that it submits to the COGCC and consents to the inclusion of the contents of Exhibit A of this MOU as conditions of the issuance of any permit or other form of approval by the COGCC with regard to the location, development or operation of an oil and gas facility in unincorporated portions of the County, unless, and to the extent, waived or modified in writing by the Director of CDS, or waived or modified on the record at a public hearing before the BOCC; further, Operator understands and agrees that the provisions of this MOU shall remain conditions of permit or other form of approval regardless of the subsequent sale or other transfer of any oil and gas facilities, or interest therein, by Operator.
  - a. The County through the LGD process described in the COGCC 's Rules may request that COGCC impose site specific conditions as part of the state permit process that are in addition to the Operator's practices or procedures agreed upon herein and the Operator may respond to same as set forth in the COGCC 's Rules.

b. If the state permit has already been approved and the County and Operator are in agreement as to any subsequent, additional conditions to be placed on the state permit, the Operator agrees to apply to the COGCC to modify the state permit by allowing such subsequent, additional conditions to be placed on the state permit.

20. **Applicability.** This MOU shall only apply to Oil and Gas Facilities for which Operator has applied for permits as of the date of this MOU and to any facilities with respect to which Operator receives COGCC approval after the date of this MOU. This MOU shall not be construed to apply to Oil and Gas Facilities for which another operator applies for a permit even though the Operator may have an interest but is not the Operator, and does not apply to wells drilled by the Operator prior to the date of this MOU. Additional facilities may be exempted from some or all of the terms of this MOU, but only if in approved in writing by the Director of CDS, or approved on the record at a public hearing before the BOCC.
21. **Term.** This MOU is effective upon the execution by both Parties and shall remain in effect so long as Operator, its subsidiaries, successors or assigns, are engaged in the development or operation of oil and gas facilities within the unincorporated portions of the County; provided, however, this MOU may be terminated by either Party with thirty (30) days prior written notice to the other Party if no site activity or construction (including site grading) has commenced. Should an MOU be terminated by either party any permit associated with that MOU shall be cancelled, suspended until new MOU is entered and executed or Operator successfully completes a Special Use by Review process outlined in the ECZR Section 17.

If there is a new development in state law, rules or judicial decisions that substantially affect any provision of this MOU, the Parties agree to negotiate in an attempt to update this MOU in light of same by a written amendment executed by both Parties. In the event this MOU expires or is otherwise terminated, the substantive requirements stated in this MOU shall survive and remain enforceable against the owner or operator of any oil and gas facilities that were permitted or otherwise approved during the term of this MOU, except to the extent waived or modified pursuant to the provisions of this MOU. Additionally, in the event this MOU expires or is otherwise terminated, no re-permitting of the wells shall be required solely as a result of the termination of this MOU.

22. **Obligation of Funds.** Nothing in this MOU shall commit either Party to obligate or transfer any funds to the other.
23. **Force Majeure.** Neither Party will be liable for any delay or failure in performing under this MOU in the event and to the extent that the delay or failure arises out of causes beyond a Party's reasonable control, including, without limitation, war, civil commotion, act of God, strike or other stoppage (whether partial or total) of labor, or any law, decree, regulation or order of any government or governmental body (including any court or tribunal).

- 24. Authority to Execute MOU. Each Party represents that it has the full right and authority to enter into this MOU.
- 25. Governing Law. This MOU shall be governed and construed in accordance with the laws of the State of Colorado without reference to its conflict of law provisions.
- 26. Entire Agreement. Except as expressly set forth herein, this MOU embodies the complete agreement between the Parties hereto with respect to the subject matter hereof and supersedes and preempts any prior understandings, agreements, or representations by or between the Parties, written or oral, which may have related to the subject matter hereof. No amendment to this MOU shall be effective unless in writing, signed by the Parties.
- 27. Third Party Beneficiaries. Except as specifically state herein, this MOU is not intended to, and does not, create any right, benefit, responsibility or obligation that may be enforced by any non-party.
- 28. Notices. All notices and other correspondence related to this MOU shall be in writing and shall be delivered by: (i) certified mail with return receipt, (ii) hand delivery with signature or delivery receipt provided by a third party courier service (such as FedEx, UPS, etc.), (iii) fax transmission of verification of receipt is obtained, or (iv) email with return receipt, to the designated representative of the Party as indicated below. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

County:

\_\_\_\_\_  
\_\_\_\_\_

Operator:

\_\_\_\_\_  
\_\_\_\_\_

- 29. Subsidiaries/Successors. The provisions of this MOU shall apply to all subsidiaries and successors-in-interest of the Operator with respect to any oil and gas facilities permitted or otherwise approved during the term of this MOU.
- 30. Default. If a Party defaults in the performance of an obligation under this MOU, the defaulting Party shall have ten (10) days to cure the default after receipt of written notice of such default from the non-defaulting Party, provided the defaulting Party shall be entitled to a longer cure period if the default cannot reasonably be cured within thirty (30) days and the defaulting Party commences the cure within such ten (10) day period and diligently pursues its completion; however, in the event that the default involves an issue that could have an immediate impact on public health, safety or welfare, or cause damage to property of another, the defaulting party shall immediately begin action to cure the default. Each alleged default shall be treated

separately under this paragraph and notice of an alleged default shall not affect the processing of permit applications while the notice is being evaluated, contested or corrected. In the event of a default, the Parties shall be entitled to seek specific performance as well as any other available remedies.

31. **Jurisdiction: Waiver of Rights.** The parties acknowledge, understand and agree that this agreement shall not be used as evidence that either party has waived any rights to assert its claims concerning the validity or extent of the County's land use jurisdiction. Nothing in this agreement shall be construed as an admission regarding the existence of proper jurisdictional authority or waiver by either party of any legal right or obligation, nor shall anything be construed as a bar to either party to seek any legal remedy available to it. The Operator agrees, however, that it will not exert jurisdictional or preemption arguments with respect to the specific performance obligations contained in this MOU.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by a duly authorized representative on the day and year indicated below.

**Operator:**

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Board of County Commissioners  
of Elbert County



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