

**MEMORANDUM OF UNDERSTANDING BETWEEN THE BOARD OF  
COUNTY COMMISSIONERS OF EL PASO COUNTY, COLORADO AND  
THE COLORADO OIL AND GAS CONSERVATION COMMISSION**

**I. Parties**

The parties to this Memorandum of Understanding (“MOU”) are the Board of County Commissioners of El Paso County, Colorado (the “County”) and the Colorado Oil and Gas Conservation Commission (“Commission” and, collectively the “Parties”).

**II. Background**

On October 31, 2011, the County proposed certain amendments to its Land Development Code (“Code”) to address oil and gas operations. The Commission objected to some of the proposed amendments as potentially conflicting with the Commission Rules of Practice and Procedure, 2 CCR 404-1, or the Colorado Oil and Gas Conservation Act, C.R.S. § 34-60-101 *et seq.* (the “Act”).

On January 31, 2012, the County approved the addition of Section 5.2.37 to the Code pertaining to transportation impacts, noxious weed management, emergency response, and water sampling related to oil and gas operations (the “Code Amendments”).

On February 21, 2012, the County clarified the Code Amendments via Resolution No. 12-69, which provides that any well permit issued by the Commission containing a condition of approval requiring water quality testing in accordance with the current Baseline Ground Water Quality Sampling Program established by the Colorado Oil & Gas Association in consultation with the Commission (“Water Quality Sampling Program,” attached as **Exhibit 1**) shall be deemed to satisfy the water quality sampling requirements of Section 5.2.37.

**III. Water Quality Sampling**

A. The Commission intends, in its discretion and pursuant to Commission Rule 305.d., to require water quality sampling pursuant to the Water Quality Sampling Program as a condition of approval for a Permit-to-Drill, Form 2, for any well located in El Paso County. There are no established producing wells and no established fields in El Paso County. Therefore, instituting the Water Quality Sampling Program in El Paso would allow the County and the Commission to document groundwater quality before oil and gas production occurs, as opposed to documenting “current conditions,” as represented by sampling efforts in other basins statewide.

B. In the event the Commission declines to require water quality sampling pursuant to the Water Quality Sampling Program as a condition of approval for a Permit-to-Drill for a well located in El Paso County, the County may request a hearing on the matter pursuant to Commission Rules 305.d (2) and 503.b (7). Approval of the Permit-to-Drill shall be suspended pending such hearing.

C. Upon the execution of this MOU, the County agrees to rescind the water sampling requirement contained in Section 5.2.37 of the Code and Resolution No. 12-69.

#### **IV. Reservation of Rights**

A. The Commission retains all inspection and enforcement authority, including authority to inspect and enforce alleged violations of the Act, or of any rule, regulation, or order of the Commission, or of any permit issued by the Director.

B. Following a Commission hearing at the County's request pursuant to Section III(B) above, if the Commission fails to require water quality sampling pursuant to the Water Quality Sampling Program as a condition of approval for the Permit-to-Drill, the County reserves the right to terminate this MOU and reinstate the water quality sampling requirements of Section 5.2.37 and/or Resolution No. 12-69.

C. The Commission and El Paso County entered into this MOU to clarify and coordinate the application of their respective regulatory programs, and to provide a predictable and consistent regulatory framework for oil and gas development within El Paso County. Nothing in this MOU shall give rise to a claim or defense of ratification, release, estoppel, waiver, or laches.

#### **V. Term and Termination of MOU**

This MOU takes effect upon the signature of both Parties, and shall remain in effect for three (3) years from the date of execution or until the Commission adopts a state-wide water sampling rule, whichever is earlier. This MOU may be terminated upon 30 days written notice by either party.

#### **VI. Miscellaneous Provisions**

A. Any information furnished pursuant to this MOU will be subject to disclosure to the extent allowed under the Freedom of Information Act (5 U.S.C. § 552), the Privacy Act (5 U.S.C. §552a), and/or the Colorado Open Records Act (C.R.S. § 24-72-201 *et seq.*).

B. This MOU in no way restricts the Parties from participating in similar activities with other public or private agencies, organizations, or individuals.

C. Each of the Parties will conduct its own activities and utilize its own resources, including expenditure of its own funds, in implementing this MOU. Each party will carry out its separate activities as expeditiously as possible in a coordinated and mutually beneficial manner.

D. Nothing in this MOU shall commit either party to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property between the Parties will require separate agreements and be contingent upon the availability of appropriated funds.


E. This MOU and the exhibit attached hereto contain the entire agreement of the Parties with respect to the subject matter of this MOU, and supersede all prior negotiations, agreements and understandings with respect thereto. This MOU may only be amended by a written document duly executed by the Parties.

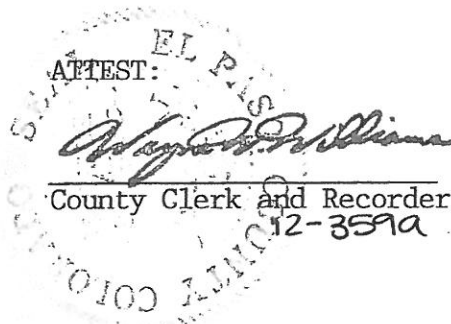
FOR THE COUNTY:

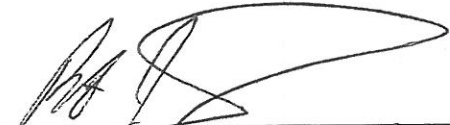
FOR THE COMMISSION:

  
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Amy Lathen, Chair

  
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Thomas L. Compton, Chairman

ATTEST:  
  
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County Clerk and Recorder  
12-359a



  
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Robert Frick, Secretary