AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Ratification of Correspondence; Department of Natural Resources; Support for Continued Dialogue Regarding Draft Oil and Gas Regulations

Action Requested: Motion

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
The attached letter was emailed and mailed on 5/23/14.

Fiscal Impact:

Submitted by: Katherine Haase **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date: Certificate of Insurance Required

Yes ○ No ○

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 5/27/2014

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted:

Agenda Date: 6/3/2014 Follow Up Agenda Date:

Revised April 2013

Gunnison County
COLORADO

Gunnison County Board of County Commissioners
Phone: (970) 641–0248 • Fax: (970) 641–3061
Email: bocc@gunnisoncounty.org • www.GunnisonCounty.org

May 23, 2014

Mike King
Executive Director
Department of Natural Resources
1313 Sherman Street, Room 718
Denver, CO 80203

Re: Support for Continued Dialogue Regarding Draft Oil and Gas Regulation

Dear Director King:

The Board of County Commissioners of Gunnison County, Colorado appreciates the leadership that Governor Hickenlooper and his administration are demonstrating in continuing to seek solutions, including legislation, to resolve decades-old disputes regarding state and local government regulation of oil and gas resources.

Gunnison County continues to endorse a statement that Governor Hickenlooper made in Executive Order B2012-002: "The State, local jurisdictions, and industry share an interest in efficient and effective regulations that provide for the responsible development of the state's oil and gas resources. As such, the State and local jurisdictions, in collaboration with the oil and gas industry, seek to fashion mechanisms through which they can coordinate their efforts and achieve a complimentary regulatory structure that benefits our economy, health, environment and wildlife."

We know that there have been – and are – a host of proposals that have been discussed, and rejected, but that the current possible draft of legislation which might be the subject of a special legislative session is the "Young Draft" – a copy of which is attached to this letter.

There is much that is beneficial in the Young Draft:

1. The Young Draft's direct intent to codify in legislation the case law in Bowen/Edwards which recognizes that "the policy of this state is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions."

2. The Young Draft's intent to recognize in legislation while the Oil and Gas Conservation Act does not expressly or impliedly preempt any and all aspects of a county's land use authority over oil and gas activities, a county's imposition of its authority on a case by case basis may indeed "materially impede or destroy" the state's interest and, therefore, be "operationally preempted."

3. The Young Draft's clear articulation to "confirm" (as opposed to "create") local government authority regarding "land use, surface effects, health, safety, welfare, and police power authority over oil and gas development."

In a dialogue – and a legislative debate – over a bill such as the Young Draft, there inevitably will be disagreement over other aspects including where a "memorandum of understanding" actually is a regulation subject to challenge for an operation conflict. And, we recognize that some of the more intractable issues can only be identified in a preliminary manner in this legislation – with much more work to be accomplished later.

The example of the State and Gunnison County's successful efforts in this field give us confidence that larger scale efforts are necessary and can be accomplished.

We want to emphatically support the Governor's leadership in creating the opportunity to resolve these issues in a reasoned, mindful, respective and open dialogue among all stakeholders. Please know that the Board of County Commissioners of Gunnison County, Colorado, and its staff, are available to you in these efforts.

Sincerely,

Paula Swenson	Phil Chamberland	Jonathan Houck
Chairperson	Vice-Chairperson	Commissioner

Attachment: Young Draft

Cc: Andy Karsian, CCI

SECTION 1. In Colorado Revised Statutes, **add** 34-60-131 as follows:

34-60-131. State and local government jurisdiction and regulations - legislative declaration - preemption - definitions. (1) **Legislative declaration.** THE GENERAL ASSEMBLY INTENDS TO DEFINE THE INTERRELATIONSHIP BETWEEN STATE AND LOCAL GOVERNMENT JURISDICTION OVER OIL AND GAS OPERATIONS AND TO CLARIFY THE OPERATIONAL CONFLICT STANDARD ANNOUNCED IN *BOARD OF COUNTY COMM'RS V. BOWEN/EDWARDS ASSOCIATES*, 830 P.2d 1045 (COLO. 1992), AND, IN SO DOING, ESTABLISH THE INTENT OF THE GENERAL ASSEMBLY THAT LOCAL GOVERNMENT REGULATIONS AND STATE REGULATIONS OVER OIL AND GAS OPERATIONS BE IMPLEMENTED HARMONIOUSLY.

(2) **State and local government jurisdiction and regulations.** (a) OIL AND GAS OPERATIONS MUST COMPLY WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL GOVERNMENT REQUIREMENTS. THE GENERAL ASSEMBLY CONFIRMS THAT THE COMMISSION HAS JURISDICTION OVER OIL AND GAS OPERATIONS AS SET FORTH IN THIS ARTICLE. THE GENERAL ASSEMBLY ALSO CONFIRMS THE LAND USE, SURFACE EFFECTS, HEALTH, SAFETY, WELFARE, AND POLICE POWER AUTHORITY OVER OIL AND GAS DEVELOPMENT OTHERWISE GRANTED TO LOCAL GOVERNMENTS AND FURTHER PROVIDES THAT A LOCAL GOVERNMENT MAY:

(I) REGULATE NOISE ASSOCIATED WITH OIL AND GAS DEVELOPMENT;

(II) IMPOSE SETBACKS OR BUFFER ZONES BETWEEN OIL AND GAS DEVELOPMENT AND OTHER LAND USES IN A MANNER THAT REASONABLY BALANCES THE RECOVERY OF THE OIL AND GAS RESOURCE, THE INTERESTS OF THE SURFACE AND MINERAL ESTATES, AND THE INTERESTS OF THE SURROUNDING COMMUNITY. TO ACCOMMODATE A LOCAL GOVERNMENT SETBACK, THE COMMISSION MAY:

(A) ADJUST OTHERWISE APPLICABLE STATE SETBACKS FROM SURFACE PROPERTY LINES, LEASE LINES, OR DRILLING UNIT BOUNDARIES AS NECESSARY TO PRESERVE A SURFACE LOCATION. IN THESE CIRCUMSTANCES, THE COMMISSION SHALL ALLOW A CORRESPONDING REDUCED LEASE LINE OR DRILLING UNIT SETBACK TO THE OFFSET OWNER IN ORDER TO PROTECT THE OWNER'S CORRELATIVE RIGHTS.

(B) CONFIGURE DRILLING UNITS WHERE NECESSARY TO ALLOW ADDITIONAL SURFACE LOCATIONS FROM WHICH TO DRILL IN ORDER TO ASSURE DEVELOPMENT OF THE MINERAL OR LEASEHOLD ESTATE.

(III) CONDUCT INSPECTIONS OR MONITORING OF OIL AND GAS DEVELOPMENT TO ENSURE

COMPLIANCE WITH LOCAL PERMIT CONDITIONS AND CHARGE A REASONABLE AND NONDISCRIMINATORY FEE TO COVER THE COSTS OF THE INSPECTIONS OR MONITORING. THE AMOUNT OF THE FEE MUST BE A FAIR AND REASONABLE ESTIMATE OF THE COSTS OF ADMINISTRATION AND ENFORCEMENT OF THE LOCAL REGULATIONS.

[TWO POSSIBLE OPTIONS:

(IV) NO LOCAL GOVERNMENT MAY IMPOSE A MORATORIUM OR OTHER SUSPENSION ON THE FILING, PROCESSING OR APPROVAL OF LOCAL OIL AND GAS PERMIT APPLICATIONS THAT IS NOT REASONABLY RELATED TO FACILITATING INFORMED DECISION-MAKING AND PLANNING TO REGULATE OIL AND GAS OPERATIONS.

OR

(IV) NO LOCAL GOVERNMENT MAY IMPOSE A MORATORIUM THE LENGTH OF WHICH IS NOT REASONABLY RELATED TO ITS INTENDED PURPOSES.]

(b) UNLESS WITHDRAWN BY THE APPLICANT, ANY OIL AND GAS DEVELOPMENT APPLICATION THAT HAS BEEN NEITHER APPROVED, CONDITIONALLY APPROVED, NOR DENIED WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE LOCAL GOVERNMENT DETERMINES, CONSISTENT WITH THE LOCAL GOVERNMENT'S CRITERIA FOR THE APPLICATION SUBMISSION, THAT THE APPLICATION IS COMPLETE, IS DEEMED APPROVED.

(c) HEALTH, SAFETY, WELFARE, OR ENVIRONMENTAL STANDARDS IMPOSED BY STATE AGENCIES ARE THE MINIMUM STANDARDS FOR OIL AND GAS OPERATIONS. LOCAL GOVERNMENT REQUIREMENTS MAY INCLUDE LAND USE, SURFACE EFFECTS, HEALTH, SAFETY, OR WELFARE REQUIREMENTS OTHERWISE AUTHORIZED AND THAT IMPOSE MORE STRINGENT STANDARDS ON OIL AND GAS DEVELOPMENT THAN THOSE THAT ARE IMPOSED BY STATE AGENCIES; EXCEPT THAT A LOCAL GOVERNMENT REQUIREMENT MAY BE PREEMPTED AND DETERMINED INAPPLICABLE AS APPLIED TO AN OIL AND GAS DEVELOPMENT PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(3) **Preemption.** (a) A LOCAL GOVERNMENT REQUIREMENT THAT IS DETERMINED TO BE AN OPERATIONAL CONFLICT IS PREEMPTED. THE PARTY SEEKING OPERATIONAL CONFLICT PREEMPTION MUST ESTABLISH THAT THE LOCAL GOVERNMENT REQUIREMENT MATERIALLY IMPEDES THE RECOVERY OF THE OIL AND GAS RESOURCE IMPACTED BY THE LOCAL REQUIREMENT, WHICH MATERIAL IMPEDIMENT MAY INCLUDE THE IMPACT OF THE REQUIREMENT ON THE OWNER OR OPERATOR'S ECONOMIC RETURN.

(b) IF A LOCAL GOVERNMENT IMPOSES A REQUIREMENT THAT THE OPERATOR BELIEVES CREATES AN OPERATIONAL CONFLICT, THE OPERATOR MAY APPEAL THE LOCAL GOVERNMENT'S ACTION TO THE GOVERNING BODY OF THE LOCAL GOVERNMENT WITHIN THIRTY DAYS AFTER THE IMPOSITION OF THE REQUIREMENT. THE GOVERNING BODY SHALL MAKE A FINAL DETERMINATION ON THE APPEAL WITHIN SIXTY DAYS AFTER THE DATE THE APPEAL IS FILED. AN APPEAL OF AN ADVERSE DECISION BY THE LOCAL GOVERNMENT MUST BE MADE TO THE APPROPRIATE DISTRICT COURT.

(4) **Definitions.** AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "LOCAL GOVERNMENT" MEANS A:

(I) MUNICIPALITY OR CITY AND COUNTY WITHIN WHOSE BOUNDARIES AN OIL AND GAS DEVELOPMENT IS PROPOSED TO BE LOCATED; OR

(II) COUNTY, IF A PROPOSED OIL AND GAS DEVELOPMENT IS TO BE LOCATED WITHIN THE BOUNDARIES OF THE COUNTY BUT IS NOT LOCATED WITHIN A MUNICIPALITY OR CITY AND COUNTY.

(b) "REQUIREMENT" MEANS A REQUIREMENT IMPOSED BY THE FEDERAL, STATE, OR LOCAL GOVERNMENT ON A PROPOSED OIL AND GAS OPERATION. REQUIREMENTS MAY BE IMPOSED BY STATUTE, RULE, REGULATION, ORDINANCE, RESOLUTION, PERMIT, MEMORANDUM OF UNDERSTANDING, OR OTHER MEANS, INCLUDING IMPOSITION OF A FEE.

SECTION 2. [Two Options:

In Colorado Revised Statutes, 34-60-102, ADD (V):

34-60-102. Legislative declaration. (1) (a) It is declared to be in the public interest to:

(V) THE FOREGOING PUBLIC INTERESTS ARE TO BE HARMONIZED WITH LOCAL GOVERNMENT REGULATIONS PURSUANT TO SECTION 131.

OR

34-60-105(2) amend this section to add the following:

THE POWERS OF THE COMMISSION ARE TO BE EXERCISED IN A MANNER THAT IS HARMONIZED WITH LOCAL GOVERNMENT REGULATIONS PURSUANT TO SECTION 131.]

SECTION 3. In Colorado Revised Statutes, 34-60-106, **amend** (15) as follows:

34-60-106. Additional powers of commission - rules - repeal. (15) The commission may, as it deems appropriate, assign its inspection and monitoring function, but not its enforcement authority, through intergovernmental agreement or by private contract. ~~except that no~~ Such AN assignment ~~shall~~ MAY allow ~~for the imposition of any new tax or fee by~~ the assignee ~~in order to conduct such~~ TO IMPOSE A FEE TO COVER THE COSTS OF THE assigned inspection and monitoring ~~and no such assignment shall~~ BUT MUST NOT provide for compensation contingent on the number or nature of alleged violations referred to the commission by the assignee. ~~No local government may charge a tax or fee to conduct inspections or monitoring of oil and gas operations with regard to matters that are subject to rule, regulation, order, or permit condition administered by the commission.~~ Nothing in this subsection (15) shall affect the ability of a local government to charge a reasonable and nondiscriminatory fee for inspection, monitoring, ~~for~~ AND MITIGATION OF road damage and compliance with local fire codes, land use permit conditions, and local building codes.

SECTION 4. In Colorado Revised Statutes, 30-15-401, **amend** (1) (m) (II) (B) as follows:

30-15-401. General regulations - definitions. (1) In addition to those powers granted by sections 30-11-101 and 30-11-107 and by parts 1, 2, and 3 of this article, the board of county commissioners has the power to adopt ordinances for control or licensing of those matters of purely local concern that are described in the following enumerated powers:

(m) (II) Ordinances enacted to regulate noise on public and private property pursuant to subparagraph (I) of this paragraph (m) shall not apply to:

(B) Property used for: Manufacturing, industrial, or commercial business purposes; OR public utilities regulated pursuant to title 40, C.R.S. ~~and oil and gas production subject to the provisions of article 60 of title 34, C.R.S.~~

SECTION 5. Applicability. This act applies to conduct occurring on or after the effective date of this act.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Doug Young
Senior Policy Director
Governor John Hickenlooper
Office of Policy and Research
136 State Capitol, Denver, CO 80203
(303) 866-5465, cell: (303) 913-7833

<oil and gas bill (Gov staff draft) 5-2-14.docx>

James Martin | Beatty & Wozniak, P.C.
Attorney

<bwlogo.jpg> 216 Sixteenth Street, Ste. 1100
Denver, CO 80202-3115
303-407-4471

Confidentiality: This Beatty & Wozniak, P.C. email, its attachments and data ("email") are intended to be Confidential and may contain Attorney-Client Communications or Work Product. If you are not the intended recipient or may have received this message in error, notify the sender immediately and permanently delete the email and all copies thereof from any drives or storage media and destroy any printouts. Any use or distribution of any of the information in the email is Strictly Prohibited.

Federal Tax Advice Disclaimer: This email is not tax advice and is not intended be used for the purpose of avoiding federal tax penalties or promoting, marketing or recommending to another party any matters addressed herein. IRS Circular 230