AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Ratification of Correspondence; Governor John W. Hickenlooper, Department of Natural Resources Executive Director Mike King, and Chief Strategy Officer Alan Salazar; Draft Legislation Concerning Oil and Gas Development

Action Requested: Board of County Commissioners' Signature

Parties to the Agreement:

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

Summary:
Ratify BOCC signature of letter to Governor Hickenlooper, Mike King of DNR and Alan Salazar regarding draft legislation concerning oil and gas development

Fiscal Impact:

Submitted by: brenda wiseman **Submitter's Email Address:** bwiseman@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: 6/23/2014

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted:

Agenda Date: 7/1/2014 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

June 11, 2014

Honorable Governor John W. Hickenlooper
136 State Capitol
Denver, CO. 80203
Email: john.hickenlooper@state.co.us

Mike King
Executive Director
Department of Natural Resources
1313 Sherman Street, Room 718
Denver, CO 80203
Email: mike.king@state.co.us

Alan Salazar
Chief Strategy Officer
Office of Policy and Initiatives
136 State Capitol
Denver, CO 80203
Email: alan.salazar@state.co.us

Re: Draft Legislation Concerning Oil and Gas Development

Dear Sirs,

The Board of County Commissioners of the County of Gunnison, Colorado ("Gunnison County") commends you on the draft legislation that may be the subject of a special legislative session that the Governor is considering to convene.

As you are well aware, Gunnison County has its own fundamental policy regarding oil and gas development which ties to our regulations of this industry. We believe that oil and gas are natural resources that should to be developed; particularly if Colorado and the United States are to have a measure of energy independence. There are potential consequences, both positive and negative of that development and it is an obligation of the developer to avoid the negative consequences. Therefore, there is a role of each level of government to adopt and enforce appropriate regulations to ensure that the obligation to avoid negative consequences is met.

In 2012, Governor John W. Hickenlooper initiated a significant review of the relationship between state and local government authority regarding oil and gas development in Executive Order B 2012-002, which stated in part:

> "The Colorado Oil and Gas Conservation Act, C.R.S. § 34-60-101, *et seq.*, charges the Colorado Oil and Gas Conservation Commission ("COGCC") with fostering the responsible development of Colorado's oil and gas resources in a manner consistent with the protection of public health, safety and welfare, including protection of the environment and wildlife. Pursuant to this statutory directive, the COGCC has broad powers to further the state's interest in oil and gas development. This includes the power to pass regulations governing development and the COGCC has comprehensively updated its regulations to address both surface and subsurface protections. The state's regulations also provide multiple opportunities for local government participation...
>
> At the same time, local jurisdictions have the duty to provide planned and orderly development within Colorado and have statutory authority to balance basic human needs and environmental concerns when regulating the use of land within their boundaries. The increased oil and gas activity that is occurring in new areas and that involves new technology has caused a number of local jurisdictions to revisit the adequacy of their own regulations...
>
> 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..."

The draft legislation, which we are hopeful is the subject of a special legislative session, would help clarify and strengthen the relationship between state and local authority. The draft legislation:

- Recognizes state and local dual authority over oil & gas operations and expressly states that local and state requirements are to be implemented harmoniously, to the extent possible, and that the goals of the state from the Oil and Gas Act are to be harmonized with local requirements, to the extent possible.
- Confirms state authority found within Oil and Gas Act.
- Confirms local authority as it pertains to land use, setbacks, surface effects, health, safety, welfare and police power authority otherwise granted to local governments.

- Grants authority to local governments to enact setbacks from homes and high occupancy structures.
- Grants authority to local governments to regulate noise associated with oil and gas operations.
- Grants authority to allow local governments to conduct inspections and monitoring for compliance with local permit conditions. Allows local government to charge reasonable fees to cover costs.
- Establishes that state health, safety and welfare and environmental standards are the minimal standards for oil and gas operations. Establishes that local regulations in the areas of land use, setbacks, surface effects, health, and safety or welfare requirements may be more stringent than state requirements, provided said regulations are not preempted.
- Recognizes that a local regulation that is an operational conflict is preempted. Clarifies operational conflict standard to establish that a local government requirement is preempted if it materially impedes the recovery of the oil and gas resource impacted by the local requirement.
- Recognizes discretionary authority to local governments to operational conflict waiver hearing process, with appeal of adverse local government decision going to the appropriate district court.
- Provides for local government authority to enact moratorium covering oil and gas operations providing the length of time is not arbitrary or excessive and the moratorium is based upon a length of time reasonably necessary to facilitate informed decision-making and planning to regulate oil and gas operations.
- Grants local governments monitoring for state standard compliance to be able to assess fees to cover the costs of monitoring.
- Provides that local governments must act on a completed application within 180 days of it being deemed complete by the local government.
- Provides that the act does not alter or affect existing local government regulations, neither shall requirements enacted pursuant to the act by local governments be construed to alter or diminish valid existing rights as of the date the new requirements are enacted.

A very significant component of the bill is that it contemplates various choices of procedures by different local communities, because conditions that might be reasonable for resource recovery in one place might not be reasonable in another. Thus, giving communities substantially more control over oil and gas development than some parties recognize today. This will allow for citizens on our state to effect oil and gas development in their respective communities.

The proposed legislation is by no means perfect; indeed, it would be unreasonable to expect perfection in an individual piece of legislation. But the legislation would partially solve what have been historically intractable problems that have led to costly and burdensome litigation.

Two of Colorado's major daily newspaper has recognized the positive value of the potential legislation and the leadership that has led to a possible special legislation session to consider it. The Grand Junction Daily Sentinel on Tuesday, June 10, 20014 in its lead editorial stated: "If (Governor) Hickenlooper can get opposing sides to find some reasonable middle ground on regulating oil and gas development, it will be a testament to the governors gritty resolve to act in everybody's best interest. It will be the governor succeeding where lawmakers failed to act when they had a chance… In a legislative compromise, both sides would have to give up something. There wouldn't be a clear winner, but there wouldn't be a loser either… (Governor) Hickenlooper succeeded in getting the oil executives and environmentalists to agree on rules to fight air pollution by the industry. Let's hope he can pull another rabbit out of his hat." The Denver Post on Tuesday, June 10, 2014, stated in its lead editorial that: "…while reasonable people will disagree whether the bill should be adopted, law makers and other interested parties should at least consider the measure with an open mind before reaching any conclusions."

Gunnison County respectfully offers its support to the Governor should he determine to call a special legislative session, and to the legislature should that session be convened.

Sincerely,

The Board of County Commissioners
of the County of Gunnison, Colorado

Paula Swenson	Phil Chamberland	Jonathan Houck
Chairperson	Vice-Chairperson	Commissioner