

Memorandum of Understanding for Coordination of Certain Procedures Between Weld County's 1041 WOGLA Permitting and the Colorado Oil and Gas Conservation Commission's DSU Approval and Forms 2 and 2A Permitting Processes

This Memorandum of Understanding ("MOU") is by and between Weld County, Colorado, by and through the Board of County Commissioners of Weld County ("Weld County"), and Jeff Robbins, Director, Colorado Oil and Gas Conservation Commission ("COGCC"). Weld County and the COGCC are referred to collectively herein as "the MOU Parties," or in the singular as "MOU Party."

INTRODUCTION

On April 16, 2019, Senate Bill 19-181 ("SB 19-181") became effective upon the signature of Colorado Governor Jared Polis. SB 19-181 allows local governments to designate areas of oil and gas development as areas of State interest without requiring that the COGCC first identify that area as an area of State interest. SB 19-181, Section 1. SB 19-181 also gives enhanced land use authority to local governments through C.R.S. § 29-20-104(1)(h) to determine siting of oil and gas facilities and oil and gas locations and to regulate in a manner to minimize the adverse impacts of oil and gas operations. SB 19-181, Section 4. Weld County has designated its unincorporated area as a mineral resource (oil and gas) area of State interest. Weld County's 1041 Oil and Gas Location Assessment ("WOGLA") permitting process regulations became effective August 5, 2019.

SB 19-181 directs the COGCC to "regulate the development and production" of oil and gas "in a manner that protects the public health, safety, and welfare, including protection of the environment and wildlife resources." SB 19-181, Section 6. The COGCC does so through requiring oil and gas operators to submit applications for approval of drilling and spacing units ("DSU") and the filing of Forms 2 and 2A. SB 19-181 requires the COGCC to wait for disposition of the local government permit prior to approving DSU applications and Form 2s, unless the local government waives such requirement. SB 19-181, Sections 12 and 14.

PURPOSE

Because SB 19-181 authorizes regulatory permitting by both the COGCC and Weld County, it is desirable to have agreement between the two entities as to timing and order of processes. This is especially important because C.R.S. § 24-65.1-108 requires in an area designated as one of State interest that State permits be granted, denied, or a response given by the State within sixty (60) days after the filing of the State permit applications. Therefore, the purpose of this MOU is to provide such agreement to give the MOU Parties and applicants for permits to develop oil and gas resources in Weld County an understanding as to how the timing and order of processing of the COGCC Forms 2 and 2A, the COGCC DSU approval, and Weld County's 1041 WOGLA Permits will proceed.

AGREEMENT

Weld County and the COGCC agree to the following:

1. For the purposes of this MOU, the MOU Parties agree that the sixty (60) day time requirement set forth in C.R.S. § 24-65.1-108 applies to Forms 2 and 2A filed with the COGCC on or after August 5, 2019. The COGCC will grant, deny, or otherwise respond to the Form 2 applicant in the manner required by C.R.S. § 24-65.1-108 within sixty (60) days following its completeness determination for the Form 2. The COGCC will grant, deny, or otherwise respond to a Form 2A applicant in the manner required by C.R.S. § 24-65.1-108 within sixty (60) days following the later of the entry of the DSU order for the lands subject to the Form 2A or the COGCC completeness determination for the Form 2A application.
2. Section 21-5-330 of Weld County's 1041 WOGLA regulations requires a referral to the COGCC from Weld County prior to hearing of the 1041 WOGLA Permit by the County's hearing officer. The COGCC will review and comment on the 1041 WOGLA application within twenty-eight (28) days of the date of referral to the COGCC by Weld County.
3. The MOU Parties will share with each other the application information submitted by applicants for the MOU Parties' respective permits. Furthermore, the MOU Parties will communicate and coordinate regarding questions, comments, or concerns they may have regarding conditions of approval, best management practices, and/or development standards.
4. In accordance with the letter of Board of County Commissioners' Chair Barbara Kirkmeyer, dated August 2, 2019, a copy of which is attached hereto as Exhibit 1, the disposition of the 1041 WOGLA Permit is required only for Form 2 approval by the COGCC.
5. This MOU takes effect upon the signature of both MOU Parties, and shall remain in effect until terminated upon 30 days written notice by either MOU Party.
6. Miscellaneous Provisions:
 - a. Notices. Any notice or referral required under this MOU must be personally delivered, mailed by prepaid certified mail, or transmitted by electronic mail transmission to the mailing address or electronic mailing address of the MOU Parties as listed below. Unless otherwise provided above, notice or referral shall be deemed to be the date of personal delivery, three (3) days after mailing, or the day of electronic transmittal. The MOU Parties may, for purposes of this MOU, change the below contact information by giving notice pursuant to this Section 6.a.

Colorado Oil and Gas Conservation Commission

Attention: Jeff Robbins
Address 1: 1120 Lincoln Street, Suite 801
Address 2: Denver, Colorado 80203
Telephone: 303-894-2100, ext. 5122
Email: dnr.ogcc@state.co.us

Weld County, Colorado
Attention: Jason Maxey
Address 1: 1301 N. 17th Avenue
Address 2: Greeley, Colorado 80631
Telephone: 970-400-3579
Email: jmaxey@weldgov.com

- b. Authorities. This MOU is not intended to supersede existing state or federal law, rule or regulation. Nothing in this MOU will be construed as affecting the authorities of the MOU Parties or as binding beyond their respective authorities.
- c. Reservations. This MOU is entered into without prejudice to, and without waiving, any jurisdiction or other rights, powers and privileges of any of the MOU Parties thereto.
- d. Information Disclosure. 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.*).
- e. Similar Activities. This MOU in no way restricts the MOU Parties from participating in similar agreements or similar activities with other public agencies, organizations, or individuals.
- f. Separate Activities and Resources. Each of the MOU Parties will conduct its own activities and utilize its own resources, including expenditure of its own funds, in implementing this MOU.
- g. Obligation of Funds. Nothing in this MOU shall commit either MOU Party to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property between the MOU Parties will require separate agreements and be contingent upon the availability of appropriated funds.
- h. Entire Agreement. This MOU and the exhibit attached hereto contain the entire agreement of the MOU 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 executed by both MOU Parties.

By signature below, each of the MOU Parties certifies that it is authorized to act in its respective areas for matters related to this MOU.

Weld County, Colorado, by and through
the Board of County Commissioners of
Weld County



Mike Freeman, Chair Pro-Tem

DATE: AUG 28 2019

Colorado Oil and Gas Conservation
Commission, by and through Jeff Robbins,
Director



Jeff Robbins, Director

DATE: 9-3-19



OFFICE OF BOARD OF COMMISSIONERS
PHONE: 970-336-7204
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1150 O STREET
P.O. BOX 758
GREELEY, COLORADO 80632



August 2, 2019

Jeff Robbins, Director
Colorado Oil and Gas Conservation Commission
1120 Lincoln Street, Suite 801
Denver, CO 80203

Re: Rescission of Temporary Waiver; Affidavits to Demonstrate Compliance with C.R.S. § 34-60-106(2.5)(a)

Director Robbins:

This letter is to rescind effective August 5, 2019, the temporary waiver requested by Weld County Attorney Bruce Barker in his emails to you on May 17, 2019, for oil and gas locations in Weld County. The temporary waiver allows DSU applications, Form 2's and Form 2A's to proceed with COGCC process without the requirement of first obtaining a WOGLA permit from Weld County. As you are aware, Weld County's new 1041 regulations regarding oil and gas development become effective August 5th. Our intent is to have the waiver be made permanent for DSU applications and for Form 2A's so they may be processed by the COGCC without first obtaining a 1041 WOGLA Permit from Weld County. However, we wish for the COGCC to require such prerequisite prior to approving Form 2's.

It is the understanding of the Board of County Commissioners that the COGCC is currently allowing Weld County operators to sign an affidavit demonstrating their compliance with C.R.S. § 34-60-106(2.5)(a), for DSU applications. The Board concurs in such process.

If you have any questions or wish to discuss, please contact Mr. Barker at (970) 400-4200.

Sincerely,

BOARD OF COUNTY COMMISSIONERS OF WELD COUNTY


Barbara Kirkmeyer, Chair

pc: Bruce Barker, Weld County Attorney
Jason Maxey, Director, Weld County Oil and Gas Energy Department