

# **EXHIBIT "B"**

**Testimony of Robert J. Zahradnik**

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
STATE OF COLORADO**

**IN THE MATTER OF CHANGES TO THE            )            CAUSE NO. 1R  
RULES AND REGULATIONS OF THE OIL        )  
AND GAS CONSERVATION COMMISSION        )            DOCKET NO. 0803-RM-02**

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**TESTIMONY OF ROBERT J. ZAHRADNIK  
May 13, 2008**

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1. I am Robert J. Zahradnik, the Operating Director of the Southern Ute Indian Tribe Growth Fund (“Growth Fund”), a division of the Southern Ute Indian Tribe (“Tribe”) formed in 2000 to manage the Tribe’s business enterprises and the Tribe’s Energy Department. I have served in that position since the formation of the Growth Fund. The Operating Director is one of three Growth Fund Directors who conduct day-to-day supervision of the Growth Fund, subject to the ultimate control of the Southern Ute Indian Tribal Council (“Tribal Council”), the Tribe’s governing body. Prior to becoming the Operating Director, I served as president and chief executive officer of Red Willow Production Company, the Tribe’s oil and gas exploration and development company, which was established in 1992. I am a reservoir engineer by background, including employment in that capacity with Exxon.

2. As Operating Director of the Growth Fund and from my experience in prior positions with the Tribe, I am familiar with much of the Tribe’s history regarding energy development. The Southern Ute Indian Reservation (“Reservation”) is located in southwestern Colorado. The exterior boundaries of the Reservation were confirmed by Congress in 1984. As a result of different federal laws and policies described in the Tribe’s motion of May 9, 2008, the lands within the Reservation are a multi-dimensional checkerboard of ownerships. The map attached to this testimony as Exhibit B-1 depicts the exterior boundaries of the Reservation and the surface ownership of Reservation lands. The map attached hereto as Exhibit B-2 depicts the mineral ownership on the Reservation.

3. The boundaries of the Reservation include substantial portions of the northern San Juan Basin, a geologic basin extending from Colorado into New Mexico. The San Juan Basin has historically been a prolific area of natural gas development. Exploration and development of natural gas on the Reservation began in the late 1940s and early 1950s pursuant to standard oil and gas lease forms prepared and approved by the Bureau of Indian Affairs issued under the Indian Mineral Leasing Act of 1938. Between 1974 and 1985, the Southern Ute Indian Tribal Council placed a moratorium on tribal oil and gas leasing, even though the principal source of the Tribe’s small revenues consisted of royalties derived from oil and gas leases. I have been told by leaders of the Tribe that the moratorium on leasing resulted from the Tribal Council’s lack of confidence in the

technical expertise and management practices of the Bureau of Indian Affairs and the United States Geological Survey.

4. Under the leadership of long-time former Chairman, Leonard C. Burch, and the Tribal Council, the Tribe created its own Energy Department in 1980. I went to work for the Energy Department in the late 1980s. The initial tasks of the Energy Department were to collect copies of the Tribe's leases and production information and to evaluate potential natural gas resources on the Reservation.

5. In 1982, Congress provided Indian tribes with an important tool by enacting the Indian Mineral Development Act ("IMDA"), which authorized tribes to negotiate directly with oil and gas companies and to develop flexible agreements related to the development of tribal energy resources. Negotiated agreements under IMDA remained subject to the approval of the Secretary of the Interior, through the Bureau of Indian Affairs, following review of those terms and of anticipated environmental impacts under the National Environmental Policy Act. Because the Tribe was still in the process of data collection and analysis, it did not utilize IMDA until the mid-1980s.

6. By the mid-1980s, several oil and gas companies had refined the technology for developing coalbed methane. The Reservation contains vast quantities of coal, the characteristics of which facilitate optimal production of coalbed methane. Commencing in the mid-1980s, the Tribe began to negotiate mineral agreements with various oil and gas companies. Utilizing the information that had been collected by the Energy Department, the Tribe also initiated meaningful actions to enforce the terms of pre-existing leases. Reporting requirements associated with the Tribe's Severance Tax, adopted in 1982, also provided the Tribe with important production data.

7. The Tribe was extremely concerned about the effect of oil and gas development on the environment, archeological resources, and the health and safety of the public. For example, the Tribe was the first governmental entity in the region that insisted that water produced from coalbed methane wells be re-injected underground at depths thousands of feet below formations where usable groundwater was found. In doing so, the Tribe confronted oil and gas companies who desired to dispose of produced water in evaporation pits, which were less expensive, environmentally disfavored, and largely ineffective. As coalbed methane development proceeded, the Tribe also developed extensive stipulations related to surface impacts associated with the installation of wellpads, pipelines, and related facilities.

8. The early 1990s brought forth a flurry of activity associated with coalbed methane development on the Reservation. That activity also led to discussions among representatives of the Tribe, the COGCC, the Bureau of Indian Affairs, and the Bureau of Land Management regarding their respective roles in regulating on-Reservation oil and gas activities, including the establishment of spacing units, well density and field rules. As a result of those discussions, the parties entered into two memoranda of understanding that have been described in and attached to the Tribe's motion filed in these proceedings on May 9, 2008. Those memoranda of understanding focused on cooperation, but also

emphasized the importance of tribal consent to COGCC involvement in those subjects and the ultimate jurisdiction of the Bureau of Land Management with respect to those matters.

9. Following the Secretary of the Interior's approval of the business plan for Red Willow Production Company ("Red Willow") in 1992, the Tribe provided the initial capital needed to form its own exploration and production company. Through Red Willow, the Tribe acquired working interests in oil and gas leases that had been previously issued by the Tribe and commenced operational activities associated with wells on the Reservation. The Tribal Council recognized that its natural gas resources were finite and that by compounding the economic value associated with royalty revenue, working interest revenue, and severance taxes, the Tribe could increase the financial effect of energy development for the long-term best interests of the Tribe and its members. By performing its own operational activities, the Tribe could also establish best practice standards associated for mitigating the adverse environmental impacts associated with natural gas development on the Reservation.

10. In 1994, the Tribe entered into a joint venture with WG Acquisition, Inc., an Arkansas corporation, to acquire one of three major pipeline gathering companies conducting activities on the Reservation. There were several motivations for forming the joint venture, known as Red Cedar Gathering Company. First, the existing gathering companies located on the Reservation, when presented with projections of the anticipated volumes of production associated with future coalbed methane activities, refused to expand the infrastructure needed to market on-Reservation coalbed methane. This unwillingness presented significant threats to the future success of coalbed methane production activities on the Reservation. Second, the Tribe recognized that fees obtained for gathering and treating produced natural gas would provide another source of revenue to the Tribe. In recent years, approximately one percent of the Nation's natural gas supply has been gathered by Red Cedar Gathering Company facilities. The Tribe is the majority owner of Red Cedar Gathering Company.

11. Commencing in 2000, with the formation of the Growth Fund, the Tribe actively engaged in diversification of its energy development activities outside the boundaries of the Reservation, including exploration in the Gulf of Mexico, Texas, New Mexico, Louisiana, California, and New York. Its on-Reservation activities still account for approximately 67% of the Tribe's annual energy revenues and almost 40% of the Tribe's annual operating income. The revenue the Tribe receives from these activities is critical to the Tribe's economic security and political integrity. The revenues the Tribe has received from its active management of on-Reservation energy resources has helped the Tribe fund extensive education programs, retirement benefits for its elderly members, water treatment facilities, waste water treatment facilities, state of the art recreational facilities, a modern justice complex, improved regional health facilities, affordable housing and many other programs and facilities that benefit the Indian and non-Indian residents of the Four Corners Region. The Tribe is also the largest employer in La Plata County.

12. The Tribe is concerned with many aspects of the Proposed Regulations and their potential adverse effect if applied to the Tribe and to Reservation lands in which the Tribe has an interest. As set forth in the Tribe's motion of May 9, 2008, the Tribe believes that the COGCC lacks the jurisdiction to impose the Proposed Rules upon the Tribe and its lessees and operators on tribal and allotted land within the Reservation. The Proposed Rules establish substantive standards that conflict with the operational standards established by federal laws and regulations and by the Tribe's stipulations, and place the COGCC and its Director in the position of having veto power over the conduct of operations, the location of key facilities, and time periods during which operations may be conducted. The Proposed Regulations also require the reporting of information that the Tribe views as being proprietary and confidential to the Tribe.

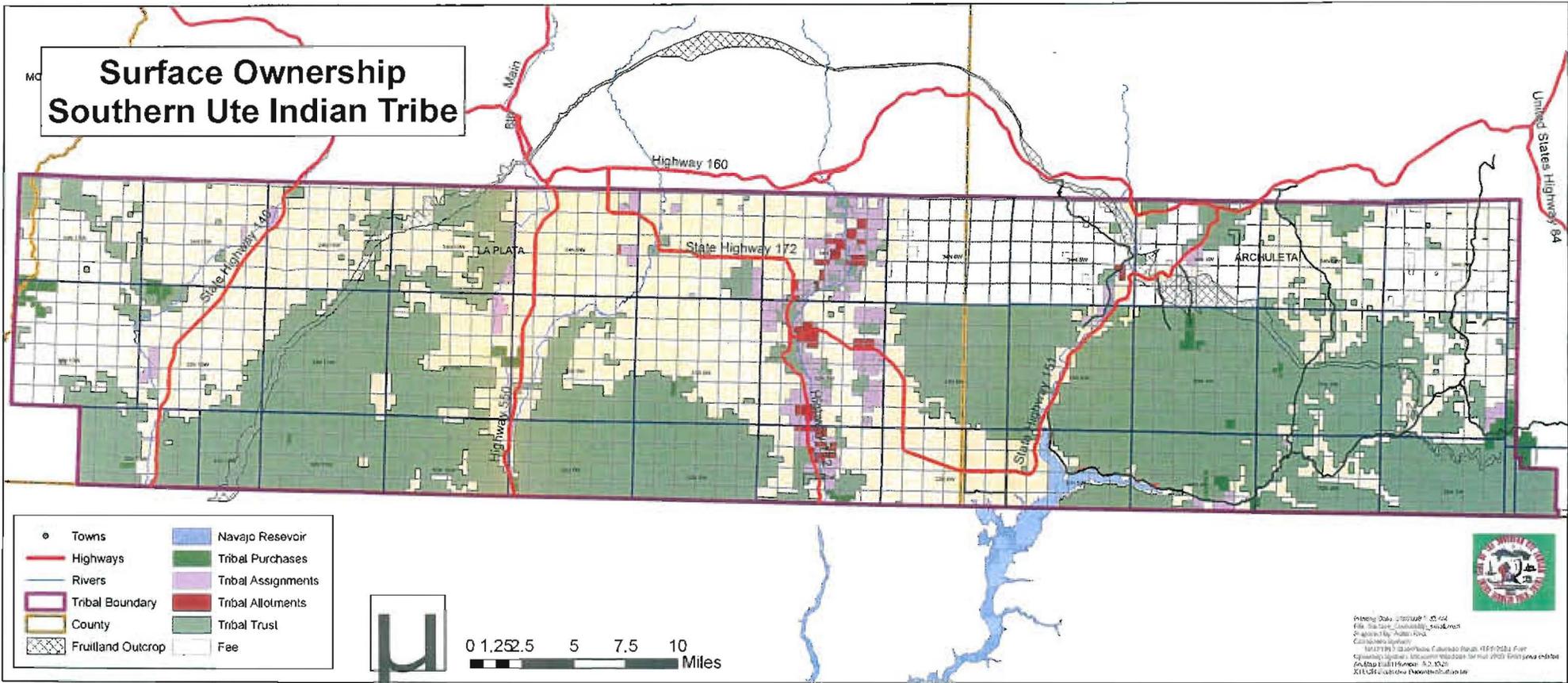
13. The Tribe has worked cooperatively with the COGCC with respect to on-Reservation oil and gas activities. In addition to the memoranda of understanding, the Tribe was a substantial contributor of money and expertise to the COGCC's study of methane seepage in the northern San Juan Basin, known as the 3-M study. The Tribe has been a key player in monitoring and modeling air quality issues associated with regional oil and gas development. When operators on the Reservation proposed increasing the density of coalbed methane wells, the Tribe insisted that those activities be conducted through use of existing well pads and directional drilling in order to minimize surface disturbance. The Tribe has also been instrumental in obtaining the use of compression facilities and equipment with improved efficiency with the objective of achieving an overall net decrease in emissions of greenhouse gases from Reservation sources. The Tribe and its Environmental Programs Division have been actively involved in the establishment of on-Reservation water quality standards and in the formation of a joint tribal/state commission for regulating air quality on the Reservation.

14. For many years, the Tribe has also maintained its own Wildlife Division within the Tribe's Department of Natural Resources. The Tribe conducts its own wildlife surveys and regulates its own hunting seasons, which have often included tribally-regulated hunting by non-tribal members on tribal lands. Many of these activities have been conducted through government-to-government cooperation with the State.

15. In summary, over many decades the Tribe has exercised its inherent powers and those recognized under federal law to manage the development of its resources on the Reservation in an effective manner. That management has required the Tribe to balance multiple factors in furtherance of the Tribe's best interests. In balancing those interests, the Tribe has worked closely with the Bureau of Indian Affairs and the Bureau of Land Management, which have extensively defined roles in the conduct of oil and gas activities on Indian lands. The Tribe has also worked cooperatively with the COGCC and other State agencies. The Tribe maintains that the COGCC lacks the jurisdiction to impose its rules on the Tribe and Reservation lands in which the Tribe owns an interest. Based on the history of dealings between the Tribe and the COGCC, the absence of COGCC jurisdiction over the Tribe and its lands has not established a threat to the public health, safety, or welfare that would justify the unilateral imposition of the Proposed Rules by the COGCC.



# Surface Ownership Southern Ute Indian Tribe



Printing Date: 12/20/2018 10:44 AM  
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 Project: SU\_tribal\_ownership  
 Coordinate System: NAD83  
 Scale: 1:250,000  
 Map Scale: 1 inch = 2.083 miles  
 Author: [Name]  
 Date: 12/20/2018



# **EXHIBIT "C"**

**Testimony of Barbara Wickman**

**BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
STATE OF COLORADO**

**IN THE MATTER OF CHANGES TO THE ) CAUSE NO. 1R  
RULES AND REGULATIONS OF THE OIL )  
AND GAS CONSERVATION COMMISSION ) DOCKET NO. 0803-RM-02**

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**TESTIMONY OF BARBARA WICKMAN  
May 13, 2008**

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1. I am Barbara Wickman, president of Red Willow Production Company (“Red Willow”), the exploration and production company of the Southern Ute Indian Tribe (“Tribe”). In February 2000, I became the chief operating officer of Red Willow. In January 2008, my title was changed to president. I am a geologist by education and background. I oversee the day-to-day activities of Red Willow, subject to the immediate supervision of Robert J. Zahradnik, Operating Director of the Southern Ute Indian Tribe Growth Fund (“Growth Fund”), and the Growth Fund Management Committee. The Southern Ute Indian Tribal Council ultimately controls the Growth Fund and Red Willow.

2. Red Willow operates approximately 347 wells within the exterior boundaries of the Southern Ute Indian Reservation. Red Willow also has non-operating interests in several hundred more wells located on the Reservation.

3. Regulations of the Department of the Interior delegate federal administrative responsibility to the Bureau of Indian Affairs for a number of activities related to oil and gas activities on tribal and individually allotted Indian lands. For example, the Bureau of Indian Affairs has the authority to approve oil and gas leases issued by the Tribe under 25 CFR Part 211 and the authority to approve oil and gas leases issued by allottees under 25 CFR Part 212. Under 25 CFR Part 225, the Bureau of Indian Affairs also has the authority to approve minerals agreements negotiated and issued under the Indian Mineral Development Act of 1982. Other regulations delegate to the Bureau of Indian Affairs the authority to issue rights-of-way across tribal lands, with tribal consent, including rights-of-way related to pipelines and roads associated with oil and gas development. 25 CFR Part 169. Additionally, the Bureau of Indian Affairs has the authority to review and approve surface leases, including those that may be issued by the Tribe for surface facilities associated with oil and gas development. 25 CFR Part 162.

4. The regulations governing the applicability of the rules of the Bureau of Indian Affairs specifically state that “none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof . . . shall be applicable to” Indian lands leased by an Indian owner, unless the Secretary of the Interior or the authorized representative Secretary finds that application of those enactments is needed

to serve the best interests of the Indian owner following consultation with the Indian owner? 25 CFR § 1.4.

5. The regulations of the Bureau of Indian Affairs also assign to the Bureau of Land Management the authority to manage subsurface activities undertaken pursuant to Indian oil and gas leases. See for example, 25 CFR §§ 211.4 and 225.32.

6. The regulations of the Bureau of Indian Affairs also permit tribes, like the Tribe, organized under the Indian Reorganization Act of 1934, to supersede the regulations of the Bureau of Indian Affairs so long as the tribe's enactments do not conflict with federal statutes. 25 CFR § 211.29.

7. Accordingly, in conducting Red Willow's activities on tribal lands, including lands where the tribe owns only the mineral estates, Red Willow, like other lessees and operators, is required to follow the regulations of the Bureau of Indian Affairs and the Bureau of Land Management, as well as the policies and regulatory enactments of the Tribe.

8. As describe in the Tribe's motion of May 9, 2008, the surface and mineral ownerships within the Reservation are checkerboarded and are often severed depending upon whether the lands were patented to non-Indians and depending upon the time of issuance of such patents.

9. Pursuant to two memoranda of understanding described in the Tribe's motion of May 9, 2008, the Tribe and the Bureau of Land Management work cooperatively with the Colorado Oil and Gas Conservation Commission ("COGCC") in establishing spacing and well density within the Reservation. In order for an application to be heard, however, the Tribe must first consent, and the Bureau of Land Management reserves the power to modify or amend the findings and proposed orders of the COGCC. Particularly given the checkerboarded nature of the Reservation, these procedures help protect correlative rights regardless of land status within the Reservation.

10. Because many mineral tracts within the boundaries of the Reservation are smaller than spacing unit acreages, agreements are often reached among the constituent mineral interest owners that pool or communitize the various tracts within a spacing unit for well density purposes. Such communitization agreements are subject to approval by the Bureau of Indian Affairs and typically require that the operations conducted under them are subject to the continuing supervision of the federal government. 25 CFR § 211.28. Because of the effect of communitization agreements, it is not unusual for wells affecting tribal lands and minerals to be drilled on tracts involving fee minerals. In fact, Red Willow operates approximately 90 wells located on fee tracts. The revenues associated with mineral production on communitized lands are divided among the various interest holders based on the provisions in the communitization agreements.

11. In conducting its activities on the Reservation, Red Willow typically negotiates with the surface owners affected by Red Willow activities in order to accommodate those

surface owners and in order to minimize adverse surface impacts. In almost all instances, surface use agreements are entered into between Red Willow and fee surface owners. When tribal or allotted surface acreage is involved Red Willow follows the Tribe's stipulations and the requirements of the Bureau of Indian Affairs. The Tribe's Energy Department and Natural Resources Department typically insist upon facility locations that minimize surface disturbance, disturbance of archeological resources, disruption of sensitive wildlife, interruption of natural drainages, and construction on steep slopes.

12. In 2005, the Tribe entered into a memorandum of understanding with the Board of County Commissioners of La Plata County, Colorado that establishes a consultation process among the County's planning staff, the Red Willow and affected fee surface owners in the event that the County receives complaints regarding Red Willow's activities on fee surface within the Reservation. A copy of that memorandum of understanding is attached as Exhibit C-1. Application of the consultation procedures has been unnecessary in almost all instances. Under the memorandum of understanding, the County and the Tribe have preserved their respective jurisdictional arguments and positions.

13. Red Willow conducts its activities professionally and respects the interests and sensibilities of surface owners within the Reservation, regardless of whether the surface owners are tribal, allotted, or private fee owners. Red Willow is also aware of the importance of its activities to the Tribe and its sovereignty.

(Intentionally omitted)

After having been duly sworn, the undersigned states that the foregoing testimony is true and correct to the best of my knowledge.

  
Barbara Wickman

Date: 5/13/08

STATE OF COLORADO            )  
  )ss  
County of La Plata            )

Subscribed and sworn to before me this 13th day of May, 2008, by  
Barbara Wickman.

WITNESS my hand and official seal.            v

My Commission Expires: September 11, 2010



**MEMORANDUM OF UNDERSTANDING  
CONCERNING OIL AND GAS FACILITIES BUILT AND OPERATED ON NON-  
INDIAN FEE LAND WITHIN THE SOUTHERN UTE INDIAN RESERVATION**

**THIS MEMORANDUM OF UNDERSTANDING is made and entered into by and between the SOUTHERN UTE INDIAN TRIBE (Tribe) and the BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO (County).**

**WHEREAS, the Tribe is a federally recognized Indian tribe organized under a constitution, approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461, et seq.); and**

**WHEREAS, the Tribal Council of the Southern Ute Indian Tribe is authorized to act for the Tribe by the Constitution adopted by the Tribe and approved by the Secretary of the Interior on November 4, 1936, and approved as amended on October 1, 1975 and August 27, 1991; and**

**WHEREAS, La Plata County is a political subdivision of the State of Colorado authorized to act through its Board of Commissioners; and**

**WHEREAS, pursuant to Section 90-20(b) of the La Plata County Oil and Gas Regulations of the La Plata County Land Use Code (LPLUC), the County requires that the construction, installation and operation of oil and gas facilities within the unincorporated areas of the County shall not commence until granted approval by the County planning department or the Board of County Commissioners; and**

**WHEREAS, the Oil and Gas Regulations also set performance standards which must be met before any oil and gas facility may be approved, and the purpose of these standards is to minimize conflicts between differing land uses and land users by addressing such issues as well setbacks, sound emissions, mitigation of visual impacts, protection of land forms, water resources and wildlife, mitigation of impacts on residences, agriculture and other commercial enterprises, among other things; and**

**WHEREAS, as an independent sovereign, the Tribe asserts that it is not subject to the LPLUC and the County's Oil and Gas Regulations concerning the construction, installation, operation and approval of oil and gas facilities, as applied to oil and gas facilities located within the exterior boundaries of the Southern Ute Indian Reservation (Reservation), including those facilities located on non-Indian fee land within the Reservation; and**

**WHEREAS, the Tribe d/b/a Red Willow Production Company (Red Willow) presently operates oil and gas facilities located within the boundaries of the Reservation, including facilities on non-Indian fee land within the Reservation, and plans to engage in**

further construction, installation and operation of such tribally-owned facilities on non-Indian fee land within the Reservation; and

WHEREAS, the Tribe and the County share a common concern for ensuring that the development of oil and gas facilities is done in a manner that minimizes conflicts between differing land uses and land users; and

WHEREAS, the County has asked the Tribe to consider voluntarily entering into a plan to allow consultation between the County, the Tribe and affected land users and to consider the performance standards of the County's Oil and Gas Regulations when developing tribally-owned oil and gas facilities on non-Indian fee land within the exterior boundaries of the Reservation; and

WHEREAS, the Tribe believes that the establishment of a consultation process for the development of its oil and gas facilities on non-Indian fee land within the Reservation will enable all parties to have a better understanding of the development process, such communication will minimize misunderstandings between the parties, and that a consultation process will therefore be in the best interests of the Tribe, the County and the affected land users; and

WHEREAS, the Tribe is concerned about conducting its oil and gas development, wherever such development is located, in a manner that is sensitive to the issues addressed in the County's Oil and Gas Regulation performance standards, and the Tribe and Red Willow are willing to consider the County's performance standards, in addition to any other guidelines, that help meet the Tribe's oil and gas development goals; and

WHEREAS, the Tribe and the County have previously entered into several Memorandums of Understanding (MOU's) concerning matters of mutual regulatory interest, such as tribal construction of accesses onto County roads located on the Reservation and mitigation of impacts to sections of County roads caused by gravel trucks operating from tribally-owned gravel pits within the exterior boundaries of the Reservation, which establish protocols for consultation between the Tribe and the County, and both the Tribe and the County believe that these MOU's have been beneficial to both parties through the creation of efficient and economical procedures for resolving areas of potential regulatory conflict; and

WHEREAS, it is the intent of the parties to establish a protocol for consultation between the County, the Tribe and affected land users regarding development of tribally-owned oil and gas facilities on non-Indian fee land within the exterior boundaries of the Reservation, including consideration of the performance standards of the County's Oil and Gas Regulations.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Definitions.

a. "Tribally-Owned Oil and Gas Facility" shall mean a major or minor oil and gas facility, as defined in Section 90-19 of the County's Oil and Gas Regulations, developed by the Tribe and located on non-Indian fee land within the exterior boundaries of the Reservation as described in Public Law No. 98-290.

b. "County's Oil and Gas Regulations" shall mean the regulations set forth at Chapter 90, Natural Resources, La Plata County Land Use Code, and any subsequent amendments to those regulations.

**2. County impact notification and consultation.**

a. Whenever the County receives a complaint from an affected land user or otherwise has reason to believe that development of Tribally-Owned Oil and Gas Facilities is being conducted in a manner that conflicts with the performance standards of the County's Oil and Gas Regulations, the County may notify the Tribe. Initial notification shall be provided in-person, by phone or in writing by the County Planner to the President of Red Willow.

b. At the request of the President of Red Willow, the County Planner or the County Planner's staff and the affected land user may, along with representatives of Red Willow, conduct an on-site inspection of the subject Tribally-Owned Oil and Gas Facility.

c. Following the on-site inspection, the County may provide a recommendation for modification of the subject development that avoids any identified conflicts with the County's Oil and Gas Regulations. The recommendation shall be in writing and contain a detailed explanation of the identified conflicts with the County's Oil and Gas Regulations, as well as a detailed proposal for modification to the development that will eliminate the identified conflicts. The recommendation shall also identify the particular Tribally-Owned Oil and Gas Facility that is the subject of the modification recommendation and shall include detailed specifications for any proposed modification to the development of the facility, as well as how those modifications better meet the performance standards of the Oil and Gas Regulations.

**3. Tribal response to County recommendation.** Following receipt of a recommendation from the County pursuant to this Agreement for modification of the development of a Tribally-Owned Oil and Gas Facility, the Tribe will consider and evaluate the County's recommendation, the comments of the affected land user, if any, and the performance standards of the County's Oil and Gas Regulations and shall provide the County with a written response to the recommendation within five (5) working days of receipt of the County's recommendation. In the Tribe's sole discretion, the County's recommendation may be accepted or rejected, or an alternative to the County's recommendations may be proposed by the Tribe. The basis for the Tribe's response shall be set forth in a written response to the County.

4. County response to tribal proposal. Following receipt of an alternative development recommendation from the Tribe pursuant to this Agreement, the County may consider and evaluate the Tribe's proposal and provide the Tribe with a written response to the proposal within five (5) working days. In the Tribe's sole discretion, any modifications proposed in the County's response may be accepted, rejected, or an alternative to the County's proposal may be adopted by the Tribe.

5. Tribal impact notification and consultation.

a. Notwithstanding the lack of any notice from the County, prior to commencing or allowing the commencement of development of a new Tribally-Owned Oil and Gas Facility, the Tribe shall notify the County Planner regarding the new development. The President of Red Willow shall provide initial notification in-person, by phone or in writing to the County Planner or the County Planner's staff.

b. At the request of the County Planner, the President of Red Willow shall provide an on-site inspection of the subject Tribally-Owned Oil and Gas Facility to the County Planner and other interested County personnel. The County Planner shall submit the request for an on-site inspection to the President of Red Willow within five (5) working days of receipt of the initial notification pursuant to Paragraph 4(a). The on-site inspection shall be conducted within the same five working day period and the County Planner and other interested personnel shall be available within this period or the right to the on-site inspection shall be deemed waived by the County.

c. Following the on-site inspection, the County may make recommendations for modification with opportunity for Tribal and County response in accordance with the procedures stated in Paragraphs 1(c), 2, and 3 of this Agreement.

6. In-person Consultation. As an alternative to the procedures for exchange of written recommendations and responses stated in Paragraphs 1 through 4, either party may request an in-person consultation between the parties wherein the County may make a recommendation for modification of the development of a Tribally-Owned Oil and Gas Facility to reduce identified conflicts with the performance standards of the County's Oil and Gas Regulations. The County Planner shall make the request for an in-person consultation to the President of Red Willow. The parties shall meet and engage in consultation within five (5) working days of the request. In the Tribe's sole discretion, any modifications proposed by the County during the in-person consultation may be accepted or rejected, or an alternative to the County's proposal may be adopted by the Tribe. The Tribe shall notify the County Planner of its decision to accept, reject or otherwise modify the County's proposal within five (5) working days of the in-person consultation.

7. Preservation of claims. The parties are entering this agreement only to establish a protocol for consultation between the County, the Tribe and affected land users regarding development of Tribally-Owned Oil and Gas Facilities. By entering into this agreement, neither the Tribe nor the County concedes or waives any legal claims. The parties acknowledge, understand and agree that this agreement shall not operate as a bar,

constitute a waiver of any rights of the parties, or in any respect affect the ability of any party to this agreement to assert its claims concerning any legal right or obligation. Nothing in this agreement shall be construed as an admission regarding the existence or validity of the authority of either party to regulate the development of Tribally-Owned Oil and Gas Facilities or as a 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.

8. General provisions.

a. Effective date and termination. This agreement shall be effective from the date of the last party to sign and may be terminated upon thirty (30) days' advance written notice. If the Tribe fails to fully incorporate modifications to a Tribally-Owned Oil and Gas Facility proposed by the County, the County shall have the right to terminate this Agreement immediately upon providing written notice of such immediate termination to the Tribe.

b. Amendments. This agreement may not be modified or amended in any manner except by an instrument in writing signed by the parties.

c. Notices. Except as otherwise provided herein, all notices under this agreement shall be sent to the addresses set forth below, or to such other address as the parties may provide in writing:

**Tribe:** Tribal Chairman  
Southern Ute Indian Tribe  
P.O. Box 737  
Ignacio, Colorado 81137

**Copy to:** President, Red Willow Production Company  
P.O. Box 350

Ignacio, CO 81137

County: Board of County Commissioners  
La Plata County  
1060 E. 2<sup>nd</sup> Avenue  
Durango CO 81301

d. Counterparts. This agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same original instrument.

e. Governing Law and venue. The terms and conditions of this agreement shall be construed, interpreted and enforced in accordance with applicable laws. If any legal action is necessary to enforce the terms and conditions of this agreement, the parties agree that the jurisdiction and venue for bringing such action shall be in an appropriate court of competent jurisdiction.

f. Non-waiver of immunity. Nothing in this agreement shall be construed as constituting a waiver of any immunity by the Tribe or County for any purpose whatsoever.

g. No Waiver. No failure by either party to exercise any right it may have shall be deemed to be a waiver of that right or of the right to demand exact compliance with the terms of this agreement.

h. No third party beneficiaries. The parties do not intend to benefit any person who is not expressly a party to this Agreement. No person or entity, other than the parties, shall have any right, whether legal or equitable, to enforce any provision of this Agreement.

Now, therefore, the parties have executed this agreement on the dates set forth below.

(SEAL)  
COMMISSIONERS

Cook, L. J.  
Clerk to the Board

Date: 12-8-04

BOARD OF COUNTY  
LA PLATA COUNTY, COLORADO

By: Robert A. Lieb  
Robert A. Lieb, Chairman

Date: 12-8-04

SOUTHERN UTE INDIAN TRIBE

By: Howard D. Richards, Sr. *Active Chairman*

Southern Ute Indian Tribe Council

Date: 1-13-05