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RESOLUTION NO. 12- 69

**BOARD OF COUNTY COMMISSIONERS,
COUNTY OF EL PASO, COLORADO**

**REQUEST FOR REVIEW AND DETERMINATION OF THE ADMINISTRATIVE
PROCESS FOR OIL AND GAS APPLICATIONS**

WHEREAS, on January 31, 2012 the Board of County Commissioners of El Paso County, Colorado (the "Board" or the "County"), approved the addition of Section 5.2.37 to the El Paso County Land Development Code (the "Code") in order to provide specific development standards and special use review criteria for oil and gas exploration and extraction in the unincorporated parts of El Paso County (the "Code Amendment"); and,

WHEREAS, prior to the Board's adoption of the Code Amendment, the Code did not permit oil and gas extraction as a use by right or as a special use in any county zoning district, thereby effectively prohibiting oil and gas extraction in El Paso County; thus, prior to the Board's adoption of the Code Amendment the County's land use process discouraged, rather than encouraged, the commercial exploitation of oil and gas resources in El Paso County; and,

WHEREAS, the Board's adoption of the Code Amendment encourages job growth and the investment of capital in El Paso County for oil and gas exploration and extraction by creating a simplified, one-stop administrative special use process in every county zoning district, which simplified process provides for the issuance of a permit for oil and gas operations, including both exploration and production; and,

WHEREAS, the record of the hearing on January 31, 2012 is not clear concerning which special use review standards the Board finally adopted for inclusion in Section 5.2.37 and, therefore, it is reasonable and necessary for the Board to resolve the review standards issue prior to the implementation of Section 5.2.37; and,

WHEREAS, given that General Assembly has comprehensively granted regulatory authority over oil and gas exploration and extraction to the Colorado Oil and Gas Commission (the "COGCC"), the Board's approved motion on January 31, 2012 intends adoption of the special use review criteria that staff presented to the Board in Alternative #3 (Clerk to the Board Exhibit ___) to be the special use review criteria that the Development Services Director (the "Director") applies when determining whether to administratively approve a special use for oil and gas exploration and extraction; furthermore, this approach to limiting the scope of special use review is consistent with County policy and practice in the context of land uses in which legislative, regulatory or judicial bodies have limited local government authority, for example, in land use issues involving telecommunication towers, adult uses and religious land uses; and,

WHEREAS, since the adoption of the current version of the Code in 2006, and as subsequently amended, the Board has increasingly granted administrative authority concerning special use applications; accordingly, in granting administrative special use authority over oil and gas exploration and extraction the Board intends, being aware that applicable case law precludes a local government authority from prohibiting oil and gas exploration at a location for

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which the COGCC has issued a permit, that the Director shall grant administrative special use approval in all instances in which the applicant for a special use for oil and gas exploration and extraction has obtained a permit from COGCC, and has satisfied the development standards in Section 5.2.37 adopted on January 31, 2012 pertaining to transportation impacts, noxious weed management, and emergency response, and has satisfied the water testing requirements as set forth in more detail in this Resolution, below; however, in the event the Director has a reasonable basis to conclude that the Department has developed clear and convincing reasons that the proposed oil and gas exploration and extraction site presents a material danger to the public health safety and welfare, the Director shall then confer with both the County Administrator and the County Attorney prior to making a decision to elevate the application to process before the Planning Commission and the Board or before making a decision to administratively deny the application; and,

WHEREAS, in recognition of the fact that COGCC has not adopted any statewide water quality testing rules at this time, the Board desires to strengthen the water quality testing standards adopted in Section 5.2.37 on January 31, 2012, by adopting the following implementation standard and instructing the Director that any well permit issued by COGCC (Form 2/2A) that contains the following implementation standards shall be deemed to satisfy Section 5.2.37 as adopted on January 31, 2012, specifically, a condition of approval whereby the permit holder is required at a minimum to conduct water quality pre-drilling and post-drilling testing in accordance with the Baseline Ground Water Quality Sampling Program (the “Water Quality Testing Program”) established under the auspices of the Colorado Oil & Gas Association and endorsed by the COGCC, except that in the case of Ultra Petroleum’s three pending¹ permits, the well permits shall contain the same condition of approval appended to its three approved permits whereby Ultra Petroleum is required, in addition to the above-stated provisions of the Water Quality Testing Program, to require that the first post-drilling testing occur during the first year following conclusion of drilling and that there be a second post-drilling testing that occurs during the third year following conclusion of drilling; and,

WHEREAS, in order to carry out the intent expressed in the provisions immediately above concerning the Water Quality Testing Program, the Board directs its El Paso County Local Government Designee (the “LGD”) to COGCC, pursuant to COGCC Rule 306 (c) and (d), to formally request that COGCC impose a condition of approval on all pending and future well permit applications according to the provisions set forth in the paragraph immediately above; and,

WHEREAS, in the event the COGCC Director declines to add the requested condition of approval to the well permit as per the above-stated provisions of this Resolution, the Board directs the LGD to file a hearing request on the matter pursuant to COGCC Rules 305.d (2) and 503.b (7), pursuant to which request for hearing the issuance of the well permit shall be suspended pending such hearing; and,

¹ Pending includes well permits for which Ultra has begun discussion with COGCC but for which Ultra has not yet made formal application.

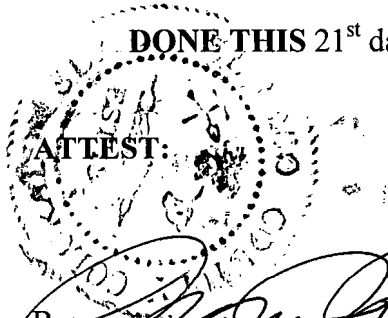
WHEREAS, in addition to the foregoing, the Board further directs its LGD and its staff to commence discussions and negotiations with the COGCC to develop an Inter-Governmental Agreement (“IGA”) for approval by both the Board and the COGCC, the provisions of which may address all aspects of Section 5.2.37, but at a minimum will address the establishment of the Water Quality Testing Program as a standard condition of approval for COGCC well permits in El Paso County and, upon such IGA becoming effective, the Board directs its staff to commence the process of amending the Code by rescinding or amending the relevant provisions of Section 5.2.37 so as not to be in conflict with the approved IGA; and,

WHEREAS, Representatives of the County, the Attorney General's Office and industry representatives negotiated the provisions of this Resolution in order to facilitate implementation of a water quality testing program in El Paso County without any delay from preemption litigation, and the same representatives concur that development of an IGA must proceed to a formal public process through the COGCC; and,

WHEREAS, the Board directs the County Administrator and the County Attorney to carry out and oversee the intent of the Board as expressed herein and the Board directs the County Administrator and the County Attorney to provide resources and support to the LGD as needed.

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of the County of El Paso County hereby approves this Resolution and directs the County Administrator and the County Attorney to carry out the intent of the Board as expressed herein.

DONE THIS 21st day of February at Colorado Springs, Colorado.



**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

By: *Wayne W. Williams*
Wayne W. Williams
Clerk and Recorder

By: *Amy Lathen*
Amy Lathen
Chair