

DRAFT

MEMORANDUM OF UNDERSTANDING

Revised 2/12/13, This Memorandum of Understanding (MOU) is made and entered into this ____ day of _____, 2013 by and between Elbert County, a Colorado county, whose address is 215 Comanche Street, P.O. Box 7, Kiowa, Colorado 80117, and _____, a _____ corporation (_____), whose address is _____. Elbert County and _____ may be referred to individually as a "Party" or collectively as the "Parties".

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BACKGROUND

A. _____ is the owner of oil; and gas leasehold and mineral interests within Elbert County boundaries and has the right to develop, subject to the requirements of applicable statutes, regulations, and ordinances, its current and future oil and gas leasehold and mineral interests by drilling wells within Elbert County boundaries.

Comment [RM1]: COPC: STRIKE semicolon

Comment [RM2]: COPC: and/or

Comment [RM3]: COPC: and/or

B. Elbert County and _____ value a balanced approach to oil and gas development that is protective of human health, safety and welfare, as well as the environment, surface waters and aquifers, and wildlife. To that end, in order to achieve such goals in a cooperative manner, Elbert County and _____ enter into this MOU to identify Best Management Practices (BMPs) for _____'s future operations within Elbert County's boundaries.

NOW THEREFORE, the Parties agree to the following:

1. Effective Date. The effective date of this MOU is _____, 2013.
2. Intent to Supplement Colorado Oil and Gas Conservation Commission Rules and Regulations. The Parties recognize that pursuant to the Colorado Oil and Gas Conservation Act, C.R.S. §34-60-101 et seq. (the "Act"), the Colorado Oil and Gas Conservation Commission (the "Commission") regulates the development and production of oil and gas resources in Colorado, and the Act authorizes the Commission to adopt statewide rules and regulations, which the Commission has done. The BMPs

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identified in this MOU are intended to supplement and are in addition to Commission rules and regulations.

3. _____'s Best Management Practices within Elbert County boundaries. _____ shall include the BMPs listed in Addendum "A" on all Forms 2, Application for Permit to Drill and Forms 2A, Oil and Gas Location Assessment submitted to the Commission for new wells _____ drilled after the Effective Date within Elbert County boundaries. For purposes of this MOU, Elbert County's boundary shall mean the legal boundary limits of Elbert County.

Comment [RM4]: COPC:
STRIKE "on all Forms 2, Application for Permit to Drill and Frons 2A, Oil and Gas Location Assessment submitted to the Commission"

4. Elbert County Regulatory Approvals. Upon approval of this MOU by the Board of County Commissioners, Elbert County will endeavor to process any and all permits, licenses, applications and other approval requests properly submitted by _____ within thirty (30) days or the time period required by applicable law, code, rule, or regulation, whichever is shorter, including those filings for which the corresponding Form 2, Application for Permit to Drill and/or Form 2A, Oil and Gas Location Assessment is pending approval with the Commission. In all cases, Elbert County shall process applications within the time period required by applicable law, code, rule or regulations. The company agrees to comply with the "Performance Standards" set forth in Section 26.2(F) of the Elbert County Zoning Regulations, except to the extent that these standards are expressly modified by this agreement.

Comment [RM5]: COPC:
STRIKE: "endeavor to"

5. Applicability. This MOU shall apply to all wells which _____ drills after the Effective Date within Elbert County's boundaries unless modifications are required under 26.2, D of the Elbert County Zoning Regulations. Further, this MOU shall apply to any successor owners/operators of any wells initially drilled and/or operated by _____, and this MOU shall be binding upon _____'s successors or assigns.

Comment [RM6]: COPC:
STRKE "including those filings for which the corresponding Form 2, Application for Permit to Drill and/or Form 2A, Oil and Gas Location Assessment is pending approval with the Commission"

6. Term. This MOU is effective upon the Effective Date and shall remain in effect so long as operations are conducted and through well abandonment.

7. No Waiver of Rights. _____ does not waive the rights it has pursuant to its current and future oil and gas interest to explore for, drill and produce the oil and gas underlying Elbert County's boundaries. Except as set forth in this MOU, Elbert County does not waive the rights it has pursuant to the laws of the State of Colorado or Elbert County rules and regulations. (COPC: ADD: The parties acknowledge, understand and agree that this agreement shall not be used as evidence that either party has waived any rights to assert its claims concerning the validity or

Comment [RM7]: COPC:
ADD: The parties acknowledge, understand and agree that this agreement shall not be used as evidence that either party has waived any rights to assert its claims concerning the validity or extent of the County's land use jurisdiction. Nothing in this agreement shall be construed as an admission regarding the existence of proper jurisdictional authority or 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.

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extent of the County's land use jurisdiction. Nothing in this agreement shall be construed as an admission regarding the existence of proper jurisdictional authority or 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. Force Majeure. Neither Party will be liable for any delay or failure in performing under this MOU in the event and to the extent that the delay or failure arises out of causes beyond a Party's reasonable control, including, without limitation, war, civil commotion, act of God, strike or stoppage (whether partial or total) of labor, or any law, decree, regulation or order of any government or governmental body (including any court or tribunal). Notwithstanding anything in this MOU to the contrary, in no event shall either Party be responsible to the other for any form of damages, whether compensatory, punitive, exemplary, economic or lost profits.

9. Authority to Execute MOU. Each Party represents that it has the full right and authority to enter into this MOU.

10. Governing Law. This MOU shall be governed and construed in accordance with the laws of the State of Colorado without reference to its conflicts of laws provisions.

11. Notices. All notices and other correspondence related to this MOU shall be in writing and shall be delivered by: (i) certified mail with return receipt. A Party may change its designated representative for notice purposes at any time by written notice to the other Party. The initial representatives of the Parties are as follows:

Comment [RM8]: COPC:
STRIKE colon and (i)

Elbert County:

Elbert County

215 Comanche Street

P.O. Box 7

Kiowa, Colorado 80117

Attn: Local Government Designee

Phone: 303.621.3136

Fax: 303.621.3165

Email: _____@elbertcounty-co.gov

(Add oil and gas company name and address here)

12. Default. If a Party defaults in the performance under this MOU, the defaulting Party shall have thirty (30) days to cure the default after receipt of written notice of such default from the non-defaulting Party, provided the defaulting Party shall be entitled to a longer cure period if the default cannot reasonably be cured within thirty (30) day period and diligently pursues its completion. If the defaulting Party fails to cure the default within the applicable cure period, then the non-defaulting Party shall have the right to immediately terminate this MOU upon written notice to the defaulting Party. If the MOU is terminated, the Special Use Permit issued for the defaulting oil and/or gas facility, shall be immediately revoked.

Comment [RM9]: COPC:
STRIKE: "If the MOU is terminated, the Special Use Permit issued for the defaulting oil and/or gas facility, shall be immediately revoked"

13. Specific Performance. If a Party defaults in the performance under this MOU, the non-defaulting Party may file the necessary documentation with the District Court to compel performance of the terms and conditions of this MOU.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by a duly authorized representative on the day and year first above written.

ELBERT COUNTY:

The Board of County Commissioners

By: _____
Chair

By: _____
Co-Chair

By: _____
Commissioner

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Date: _____

Oil and Gas Company:

By: _____

Name

Title: _____

Notary Signature

(This space intentionally left blank.)

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Revised 2/12/13

ADDENDUM "A"

OIL AND GAS PRODUCTION BEST MANAGEMENT PRACTICES FOR FACILITIES WITHIN ELBERT COUNTY BOUNDARIES

Pursuant to the terms of this MOU, _____ **shall comply with include** the Best Management Practices listed below **on all Forms 2, Application for Permit to Drill, and Forms 2A, Oil and Gas Location Assessment (for new well sites only), submitted to the Commission for new wells** _____ drills after the Effective Date within Elbert County boundaries.

1. There shall be a minimum of 1,320 feet between the wellhead and any residential structure, domestic well or platted building envelope. A setback of at least 200 feet shall be maintained between the wellhead and the closest property line. The entire pad site with the oil and gas facility shall be located a minimum of 1,000 feet from any water body (SWN:) larger than 1/4 acre or the centerline of creeks (SWN:) that flow all year (with exception of drought years). Chemicals, liquids, or re-fueling areas shall not be placed within 1,000 feet of wetlands or riparian areas.
2. Prior to commencement of any new drilling or completion operations, _____ shall provide notification to landowners within one (1) mile of the well site or ancillary facility not located on the drilling pad. Should the one (1) mile notification area include any lot within a platted subdivision; the lot owners within the entire subdivision shall be notified.
3. Prior to commencement of any new drilling or completion operations, _____ shall provide Elbert County Community & Development Services Office the following for the well site information, which _____ may revise from time to time during operations:
 - (a.) a summary of planned operations, a map of haul routes and access points approved by Elbert County Public Works Department, and operational timelines, for posting to the Elbert County oil and gas information website;
 - (b.) a site plan which addresses site preparation, mobilization and demobilization;
 - (c.) a plan for interim reclamation and re-vegetation of the site and final reclamation of the site;
 - (d.) a traffic management plan and dust mitigation plan; and

Comment [RM10]: COPC: INSERT: comply with STRIKE include

Deleted: shall

Comment [RM11]: COPC: STRIKE "on all Forms 2, Application for Permit to Drill, and Forms 2A, Oil and Gas Location Assessment (for new well sites only); submitted to the Commission"

Comment [RM12]: SWN: 600 FT
COPC: 500 FT

Comment [RM13]: SWN: What is a platted building envelope?

Deleted: .

Comment [RM14]: SWN: ADD: unless express written consent is given by landowner. When such consent is granted, State offset rules shall apply..

Comment [RM15]: COPC: STRIKE "The entire pad site with the oil and gas facility shall be located a minimum of 1,000 feet from any water body or the centerline of creeks. Chemicals, liquids, or re-fueling areas shall not be placed within 1,000 feet of wetlands or riparian areas." (REST OF PARAGRAPH)

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Comment [RM16]: SWN: 600FT
COPC: 500 FT

Comment [RM17]: SWN: 650 FT

Comment [RM18]: SWN: This is attempting to get some degree of "safety" by being far way from something. That doesn't create safety. Best practices and proper well construction and facility design is what creates safety

Comment [RM19]: SWN: Isn't this already required as part of the County Section 26 rules? Or is this another notice? How soon before the commencement of drilling? If a rig moves from one well to another that is 10' apart, must the same people be contact again?

Comment [RM20]: COPC: STRIKE "Should the one (1) mile notification area include any lot ... [1]

Comment [RM21]: SWN: I am not sure why this is in the MOU. Isn't all this required anyway as part of ... [2]

(e.) any updates of this information if plans change during operations.

4. Utilize steel-rim berms around tanks and separators instead of sand or soil berms.

5. On-site containment and disposal of water associated with oil and/or gas facilities shall be in accordance with applicable Federal, State and County requirements and all other provisions of this MOU. No liquids may be disposed of on site or on roadways. Only closed-loop drilling systems shall be permitted in Elbert County (SWN:) ADD: when an operator is drilling with Oil Based Muds, or any fluids that contain any measurable amount hydrocarbons of any kind. It is the intent of the county to limit the use of pits in general, however, it is understood that properly lined and maintained pits maybe the best solution for some water based drilling applications. AND STRIKE: for drilling and completion operations rather than open earthen pits. COPC: ADD: however, Elbert County supports the use of lined pits for the storage of fresh water, where feasible.

There shall be a "no spill, no liquids on the ground" policy for all facilities. The Applicant shall incorporate on-site treatment of, and adequate on-site storage capacity for, produced and back-flow waters to reduce the volume of water used in the drilling process and to reduce truck volume on County roads. Except during drilling and completion, operators shall use reasonable efforts to transport produced water by pipeline, to a central treatment location site or transport the produced water to a Colorado Department of Public Health and Environment (CDPHE) approved facility for disposal. The final disposition of produced water from any oil and/or gas operation shall be by the most environmentally beneficial method, based upon its relevant characteristics. The disposal method will be determined in consultation with the COGCC and the CDPHE, in accordance with relevant regulatory agency requirements and industry best management practices. Produced and back-flow liquids shall be removed from the County unless taken to an integrated recycling facility whose construction is approved pursuant to the requirement set forth in Elbert County Zoning Regulations. Disposal wells are permitted only as a Major Oil and/or Gas Facility, if included in an approved integrated recycling facility. No surface application of backflow and produced water shall be allowed on the ground or on roadways. SWN: ADD: When gas markets (pipelines) are within 1/2 mile from a proposed oil or gas well, and after a well has been completed and is producing in 'paying quantities', the Operator shall install a vapor recovery unit (VRU) system within 90 days of

Comment [RM22]: SWN: impermeable vs 'steel' My suggestion is to require the operator to use an impermeable material, but allow our engineers to determine what that material should be. Steel berms have their short comings.

Comment [RM23]: SWN: strike: "instead of sand or soil berms" The MOU is a living document. New products and materials hit the market every day, many may be better than the still rim birms which rust, and actually can cut into liners. Allow Operators to utilize the best engineered solutions to achieve your desired results.

Comment [RM24]: SWN: strike: "No liquids may be disposed of on site or on roadways"

Comment [RM25]: COPC: STRIKE: "No liquids may be disposed of on site or on roadways. Only closed-loop drilling systems shall be permitted in Elbert County for"

Comment [RM26]: COPC STRIKE "There shall be a "no spill, no liquids on the ground" policy for all facilities."

Comment [RM27]: SWN: "to the extent practical"

Comment [RM28]: SWN: strike "transport produced water"

Comment [RM29]: SWN: strike: "by the most environmentally beneficial method, based on relevant characteristics. The disposal method will be . . ."

Comment [RM30]: SWN: strike this sentence

Comment [RM31]: SWN: strike this sentence

Deleted: ¶ 6.

Comment [RM32]: SWN: add this section

Deleted: .

commercial production and connect to the existing gas lines. This requirement shall be waived if ROW agreements cannot be obtained from the surface owner.

SWN: STRIKE: Utilize a high-low pressure vessel (HLP) and vapor recovery unit (VRU) or install oxidizer units for new wells drilled.

7. Prior to commencement of any drilling operations, the Operator will contact, by certified mail, all surrounding property owners with active domestic wells, irrigation or livestock wells, or springs that fall within one (1) mile radius of the well head; and ask permission to conduct water sampling and analysis pre-drilling, post drilling, post completion, and post production every three (3) years for a period of fifteen (15) years. The results of the water tests shall be sent to C&DS and the water well owner. Should the owner of the well desire to keep the results of the well test private, the owner shall submit a signed statement to C&DS indicating that the well owner wants to keep the test results private. Should a water well owner refuse to have their well tested, the Applicant shall submit a signed statement to C&DS indicating that the owner (provide owner's name and address) has refused water testing.
8. The Operator will make every effort to locate abandoned oil/gas wells within a one (1) mile radius of the well pad. "Every effort" includes contacting all adjacent property owners to identify abandoned wells not previously identified by the COGCC. Notification of previously unknown wells will be forwarded to the **COGCC**.
9. _____'s Hydraulic Fracturing *Responsible Products Program*. _____ has developed and is implementing a company-wide *Responsible Products Program* to manage the fluid products used in its hydraulic fracturing operations. This *Responsible Products Program* helps _____ evaluate the hydraulic fracturing fluid products it uses in its operations for safety, effectiveness and potential environmental impacts. As part of this program, _____ has informed all of its hydraulic fracturing fluid products suppliers that any product containing diesel, Butoxyethanol (2-BE) or benzene cannot be used in hydraulic fracturing at _____ operations within Elbert County's boundaries. _____ will continue to conduct its hydraulic fracturing operations within the Elbert County boundaries in accordance with its *Responsible Products Program*. (Note: replace *Responsible Products Program* with the appropriate terminology used by the subject oil and gas company.)

Comment [RM33]: SWN: STRIKE "Utilize a high-low pressure vessel (HLP) and vapor recovery unit (VRU) or install oxidizer units for new wells drilled."

As written, it was unclear what the intent of the rule is. I assume the county would prefer to not have tanks on location that could vent? However, that depends on the Reid Vapor Pressure of the oil. As written, where would the gas going thru the VRU be piped? To a flare? This rule attempts to engineer a solution for a well in which we don't know the parameters? What if there is no solution gas? What if there is no pipeline in which to inject the gas from the VRU? What is the county attempting to secure by having... [3]

Comment [RM34]: COPC: STRIKE entire paragraph: "7. Prior to commencement of any drilling operations, the Operator will contact, by certified mail, all surrounding property owners with active domestic wells, irrigation or livestock wells, or springs that fall within one (1) mile radius of the well head; and ask permission to conduct water sampling and analysis pre-drilling, post drilling, post comp... [4]

Comment [RM35]: SWN: This needs more discussion, and is significantly different than what is being proposed by the COGCC. SWN will support some effort along this path, but will not accept the liability associated with publishing people's well data.

Comment [RM36]: COPC: STRIKE entire paragraph, insert instead: "Operator agrees that it will not use any product containing diesel, Butoxyethanol (2-BE) or benzene in it's hydraulic fracturing operations"

Comment [RM37]: SWN: SWN voluntarily participates in Frac Focus, where we post all of the products used in our fracturing treatments on line. All of SWN's Colorado wells will be disclosed in this manner. I would support this to be in the MOU. The RRP that you mention is an proprietary Encana program (I believe). SWN is developing our own program called "Right Products Program", which no doubt will... [5]

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COPC: REPLACE ENTIRE PARAGRAPH WITH: "Operator agrees that it will not use any product containing diesel, Butoxyethanol (2-BE) or benzene in it's hydraulic fracturing operations"

10. Water Supply. In an effort to reduce truck traffic, Elbert County and _____ will have discussions to identify a water resource close to the well site locations to be utilized by _____ and its suppliers, which may include water from various municipalities, when determined feasible by _____.

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Comment [RM38]: SWN:

And finally, SWN is an industry leader in disclosing the products we use in all of our hydraulic fracturing programs. We voluntarily disclose 100% of our Colorado wells on Frac Focus. We have made a companywide commitment, no matter which state or county we operate in, to not utilize diesel fuel in our hydraulic fracturing treatments. SWN is in the process of developing a more detailed "Right Products Program", which is most likely similar to the one you have motioned in the MOU, but until our's is finalized and implemented, SWN would be reluctant to make any additional specific product claims.

Comment [RM39]: COPC:

These comments may not completely capture all of our concerns, and the documents in their entirety are subject to ConocoPhillips' management approval, however, I believe the comments should provide us with a basis for discussion, which we look forward to engaging in more detail with the county and the community. Please consider the attached redline versions as our first pass through the proposals. Again, we would appreciate an opportunity to discuss these documents in greater detail with the desire of reaching agreeable regulations that will work for all parties.

COPC:

STRIKE "Should the one (1) mile notification area include any lot within a platted subdivision; the lot owners within the entire subdivision shall be notified."

SWN: I am not sure why this is in the MOU. Isn't all this required anyway as part of the UBSR process? I don't have an issue with it, as long as it doesn't have to be twice.

SWN:

STRIKE "Utilize a high-low pressure vessel (HLP) and vapor recovery unit (VRU) or install oxidizer units for new wells drilled."

As written, it was unclear what the intent of the rule is. I assume the county would prefer to not have tanks on location that could vent? However, that depends on the Reid Vapor Pressure of the oil. As written, where would the gas going thru the VRU be piped? To a flare? This rule attempts to engineer a solution for a well in which we don't know the parameters? What if there is no solution gas? What if there is no pipeline in which to inject the gas from the VRU? What is the county attempting to secure by having this in the MOU?

COPC:

STRIKE entire paragraph:

"7. Prior to commencement of any drilling operations, the Operator will contact, by certified mail, all surrounding property owners with active domestic wells, irrigation or livestock wells, or springs that fall within one (1) mile radius of the well head; and ask permission to conduct water sampling and analysis pre-drilling, post drilling, post completion, and post production every three (3) years for a period of fifteen (15) years. The results of the water tests shall be sent to C&DS and the water well owner. Should the owner of the well desire to keep the results of the well test private, the owner shall submit a signed statement to C&DS indicating that the well owner wants to keep the test results private. Should a water well owner refuse to have their well tested, the Applicant shall submit a signed statement to C&DS indicating that the owner (provide owner's name and address) has refused water testing. "

SWN: SWN voluntarily participates in Frac Focus, where we post all of the products used in our fracturing treatments on line. All of SWN's Colorado wells will be disclosed in this manner. I would support this to be in the MOU. The RRP that you mention is an proprietary Encana program (I believe). SWN is developing our own program called "Right Products Program", which no doubt will be similar. However, it is not fully implemented yet. To make this a requirement as part of the MOU steps way beyond regulating surface use, to attempting to regulate oil and gas operations. I do not support this as being part of the MOU.