November 1, 2022

Neal Starkebaum  
Community Development Director  
La Plata County  
211 Rock Point  
Durango, Colorado 81301

Re: Comments on Proposed Revisions to La Plata County Land Use Code  
Chapter 90 – Oil and Gas Regulations

Dear Mr. Starkebaum:

The Southern Ute Indian Tribe respectfully submits these comments on the proposed revisions to La Plata County Land Use Code Chapter 90 – Oil and Gas Regulations. Additionally, the Tribe is offering its perspectives on some of the air quality-related comments that have been submitted by some members of the public.

Recognition of Exemptions and Existing Authorities

First, the Tribe appreciates the County recognizing, consistent with similar recognition found in State law and in the regulations of the Colorado Oil and Gas Conservation Commission, an exemption for oil and gas activities occurring on Indian trust lands and minerals and an exemption of the Tribe and its controlled companies within the exterior boundaries of the Southern Ute Indian Reservation (“Reservation”). We further appreciate the County’s recognition of existing applicable federal, state, and tribal authorities including the authority of the Southern Ute Indian Tribe/State of Colorado Environmental Commission (“Environmental Commission”). As you know, the scope of federal, state, tribal, and local regulatory authority over oil and gas activities on the Reservation is complicated and varies depending on several factors. The factors include, but are not necessarily limited to, the identity of the operator, the ownership status of the land, the nature of the activity, and the relative interests of the parties. By recognizing the exemption of Indian trust lands and minerals on the Reservation, the exemption of the Tribe’s activities anywhere on the Reservation, and the existing applicable authorities, the County is mitigating the possibility of a jurisdictional dispute concerning the scope of the interested government agencies’ regulatory authority.
We also appreciate the County acknowledging the County and Tribe's existing memorandum of understanding concerning oil and gas facilities built or operated on non-Indian fee land within the boundaries of the Reservation. The Tribe appreciates the County's cooperative working relationship with the Tribe on oil and gas and other matters of mutual interest.

Permitting

We understand that the County Attorney's Office and other County representatives are discussing with tribal representatives, the transferability of interests in Reservation lands and the effect of transfers (1) on the applicability of the County's proposed revised oil and gas regulations, and (2) on existing County oil and gas-related permits. Our hope is that the Tribe and County can reach a mutually satisfactory agreement on how best to address these complicated issues.

Tribe's Perspective on Air Quality-Related Comments

As you know, the Environmental Commission oversees air quality regulation and enforcement within the Reservation regardless of land ownership. The State and the Tribe each appoint members to the Environmental Commission, and Congress has statutorily recognized the Environmental Commission as the entity eligible to administer delegated air quality programs under federal law. Some commenters on the County's proposed revisions to its oil and gas regulations have urged the County to regulate air quality and to do so in a manner that is more restrictive than under current state laws and regulations. Specifically, the County has received requests for requiring operators to provide air quality protection plans, full-time air quality monitoring, more frequent leak detection and repair with infrared cameras, and faster repair when a leak is discovered. We are also informed that there is interest in whether the Environmental Commission should promulgate verification processes, like the processes on which the State's Air Pollution Control Division recently requested input, for defining how operators must calculate greenhouse gas emissions, monitor operations to ensure compliance, and account for emissions. It is our hope that the Tribe’s perspectives, set forth below, might assist the County in addressing the public’s air quality-related comments.

First, the Front Range has a plethora of air quality issues that are different from those facing Southwestern Colorado. For instance, natural gas and oil produced on the Front Range has considerably higher VOC content. While the Tribe understands the relationship of methane and greenhouse gases to climate change, neither the Tribe nor the Environmental Commission, at this time, is emphasizing development of methane capture and control regulations. The Tribe and the Environmental Commission have been pushing to seek delegation of established Clean Air Act programs, such as the Tribal Minor New Source Review program (“TMNSR”). TMNSR sources (also known as “minor sources”) have typically gone “uninspected” by EPA. Under an administrative delegation of the TMNSR program, the Tribe could regularly inspect minor sources on the Reservation and could ensure that minor sources are in compliance with current Clean Air Act regulations. The Tribe believes, with good certainty, that that approach will have a greater impact in the immediate short-term for controlling ozone pre-cursors as well as controlling greenhouse gas emissions such as methane. With the Environmental Commission’s support, the Tribe submitted its request for administrative delegation of the TMNSR program to EPA on April 30, 2020. The Tribe’s request was conditional upon EPA providing adequate grant
funding to enable the Tribe’s administration of the TMNSR program on the Reservation. Unfortunately, EPA has yet to provide the needed funding; however, we hope that this program will receive funding in the future.

Second, we question whether the County imposing a “stricter set of standards” than the State is a good idea. Because most of the oil and gas activity in the County is on the Reservation, the County’s standards will probably impact very few sources. Such standards may create an uneven playing field for those sources, compared to the standards applicable to sources on the Reservation. Additionally, the County might want to carefully consider the workload and expense associated with developing and implementing a County compliance and enforcement program. The Tribe’s Air Quality Program is keenly aware of those factors.

Third, at this time, the Tribe’s Air Quality Program requires annual emissions inventories from Clean Air Act Title V sources. Every three years, the Tribe’s Air Quality Program conducts a broader comprehensive emissions inventory to include Air Quality Program-calculated emission estimates for all oil and gas sources on the Reservation, using operator-supplied data that is obtained through a mandatory survey issued under the Tribe’s Clean Air Act Section 114 information collection request authority. In addition to oil and gas emissions, the triennial emissions inventory includes all other significant non-biogenic and biogenic sources (e.g., vehicle emissions, forest fires, trees, etc.). The Tribe’s triennial emissions inventory is a quality document meeting EPA level II standards for quality and can therefore be used for regulatory planning. The Tribe’s emissions inventories already estimate greenhouse gas emissions. To the Tribe’s knowledge, the Environmental Commission has no immediate plans to undertake a greenhouse gas rulemaking, similar to the State’s initiative, on the Reservation.

Finally, rather than the County seeking to implement a program more stringent than the State that affects relatively few sources, the Tribe would respectfully suggest that the County consider (1) supporting the Tribe’s requests for EPA funding for the Tribe’s administration of the TMNSR program, and (2) working with the Tribe and Environmental Commission in seeking funding assistance from the State for the Environmental Commission and for Environmental Commission-approved programs on the Reservation. Those actions, from the Tribe’s perspective, would be more beneficial to air quality in the short term and might help the Environmental Commission and the Tribe move towards implementing some State-like greenhouse gas initiatives or other air quality related initiatives on the Reservation in the future.

Conclusion

I hope these comments are helpful. If your legal counsel has questions about these comments, please contact either the Tribe’s Legal Department Director, David Smith, at (970) 563-2140 or dasmith@southernute-nsn.gov, or the Tribe’s outside oil and gas counsel, Thomas H. Shipps, at (970) 247-1755 or tshipps@mbssllp.com. If your staff has air quality-related questions, please contact either the Tribe’s Air Quality Program Manager, Danny Powers, at (970) 563-2265 or dpowers@southernute-nsn.gov, or the Tribe’s Environmental Programs Division Head, Mark Hutson, at (970) 563-2206.
Thank you for the opportunity to comment on the County’s proposed revisions to its oil and gas regulations and to offer the Tribe’s perspective on some of the air quality-related comments the County has received from members of the public.

Sincerely,

[Signature]

Melvin J. Baker, Chairman
Southern Ute Indian Tribal Council