

**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. 2nd 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 H. =
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: Michael P. Richards Acting Chairman
~~Howard D. Richards, Sr.,~~
Southern Ute Indian Tribe Council

Date: 1-13-05