

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT is made and entered into this 28th day of May, 2009, by and between the BOARD OF COUNTY COMMISSIONERS OF LA PLATA COUNTY, COLORADO, 1060 E. 2nd Avenue, Durango, Colorado 81301 and MCELVAIN OIL & GAS PROPERTIES, INC. 1050 17th Street, Suite 1800, Denver, Colorado 80265-1801.

DEFINITIONS

Abandonment or abandoned means the permanent abandonment of a well based on the operator's filing with the COGCC.

Best Management Practices means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices intended to prevent or reduce the pollution of waters of the State of Colorado as described in the regulations of the Colorado Department of Public Health and Environment, as amended from time to time.

BLM means the Bureau of Land Management.

McElvain or Applicant means McElvain Oil & Gas Properties, Inc.

COGCC means the Colorado Oil and Gas Conservation Commission of the State of Colorado.

Conventional gas well means a well producing from a non-coalbed methane formation found in the San Juan Basin, such as the Mesa Verde or Dakota Sandstone formations.

County means the Board of County Commissioners of La Plata County.

County approved subdivision means any subdivision created pursuant to state law, which has received subdivision approval by the Board of County Commissioners since September 1, 1972.

Easement means express or implied authorization by a property owner for the use of a designated portion of his property by another, for a specified purpose.

The *Environmental Response Fund* or ERF is "an emergency reserve" of unobligated funds to be maintained by the COGCC in the amount of \$1,000,000 and used in accordance with Colorado's Oil and Gas Act and Rule 701 of the COGCC's Rules. As described in Rule 701, the ERF fund is a mechanism to plug and abandon orphan wells, perform orphaned site reclamation and remediation and to conduct other authorized environmental activities.

Fruitland Coal Well means a gas well drilled for the purpose of producing gas from the Fruitland coal seams underlying the lands described in the Infill Application.

Gas well means a well having a pressure and volume of natural gas; specifically, producing methane, often in combination with a variety of other substances such as butane, propane and carbon dioxide.

Green completion means a technique whereby gas is recovered for sale or use instead of being vented or flared during initial completion flow back operations.

Heavy equipment means individual truck/trailer combination vehicles with a gross vehicle weight exceeding 5 tons.

Infill Application means the application filed by McElvain with the COGCC on or about March 16, 2009, seeking an order to allow two (2) optional additional infill wells, for a total of up to four (4) wells to be drilled in the 320-acre drilling and spacing unit for the production of gas and associated hydrocarbons from the Fruitland Coal Seams. One of the two (2) optional wells is on tribal land and not subject to this Agreement.

Infill Application Area means the area within La Plata County described in the Infill Application, also known as S½ of Section 20, Township 33 North, Range 8 West, N.M.P.M.

Infill County Permit means any permit the county issues pursuant to LPLUC for minor oil and gas facilities and major oil and gas facilities related to the Infill Application.

Infill Wells means those wells contemplated to be drilled by virtue of the Infill Application. One of the infill wells is on tribal land and not subject to this Agreement.

LPLUC means the La Plata County Land Use Code as of January 1, 2009.

Low bleed means pneumatic controllers installed on field equipment to replace high bleed devices that vent small amounts of methane continuously.

Major oil and gas facilities shall have the meaning set forth in Section 90-19 of LPLUC.

Minor oil and gas facilities shall have the meaning set forth in Section 90-19 of LPLUC.

Permanent operations means operations for an Infill Well after initial drilling, completion and interim reclamation and before abandonment.

Proposed Infill Well means an Infill Well for which an application for a minor facility has been submitted to La Plata County after the Effective Date of this Agreement.

Reasonable efforts means diligent and good faith efforts to accomplish a given objective.

Right-of-way means a tract or strip of land, separate and distinct from the underlying property, owned, occupied or intended to be occupied by an oil, gas and/or water pipeline.

Road Maintenance and Improvement Fees or *Fees* means the County road maintenance and improvement fees described in Article 3 below.

Water quality testing wells means domestic water wells within the vicinity of gas wells tested for water quality.

Well Pad means the flat graveled portion of the pad area in which permanent operations for the gas well take place.

RECITALS

A. La Plata County is a political subdivision of the State of Colorado authorized to act through its Board of Commissioners.

B. McElvain is a gas producing operator which has filed the Infill Application with the COGCC requesting an increase in the density of Fruitland Coal Wells in parts of La Plata County, Colorado. The Infill Application requests an order from the COGCC to permit, at the option of the operator, third and fourth optional wells to be drilled to and produce from the Fruitland Coal seams in an approximate 320 acre drilling and spacing unit within the Infill Application Area. One of the optional wells covered by the Infill Application is on tribal land and not subject to this Agreement.

C. The parties to this Agreement have differing legal positions regarding the degree and extent of the County's authority to regulate certain aspects of oil and gas operations. The parties prefer, if possible, to avoid expending their resources in advancing their legal positions. Notwithstanding these differences and in their desire to avoid protracted formal hearings, the County and McElvain are willing to agree to the terms contained herein.

D. The provisions of Chapter 90 of LPLUC require McElvain to obtain a county permit for the construction, installation and operation of oil and gas facilities within the unincorporated areas of the county except with respect to those lands where the County's jurisdiction is preempted by federal or state law, or by Southern Ute Indian Tribal jurisdiction.

E. The County seeks to facilitate the development of oil and gas resources within the above-described areas of the county while mitigating potential impacts from such development.

F. The County has determined that potential impacts attendant to future gas development would be best mitigated for the county as a whole if future Fruitland Coal Wells are drilled on existing well pads where practical and as prescribed in LPLUC

despite the fact that, in some instances, the use of existing well pads may further affect certain property owners and neighboring properties.

G. C.R.S. § 43-2-147 allows the County to, and describes the manner in which, the County shall regulate vehicular access to and from any public highway under its jurisdiction and from or to property adjoining a public highway in order to protect the public health, safety and welfare, to maintain smooth traffic flow, to maintain highway right-of-way drainage and to protect the functional level of public highways.

H. The County, as a matter of right, intervened in the adjudicatory proceedings before the COGCC related to the Infill Application to raise environmental or public health, safety and welfare concerns. In exchange for the agreements contained herein, the County will not protest McElvain's Infill Application, nor, if it intervenes in the adjudicatory proceedings related to the Infill Application, will it advocate any position inconsistent with any term contained in this Agreement.

I. McElvain and the County wish to have certain issues amicably resolved prior to the COGCC's adjudicatory proceedings on the Infill Application and they agree that certain provisions of this Agreement should be included (subject to COGCC approval) in the requested Infill order.

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AGREEMENT

In consideration of the mutual obligations and benefits set forth in this Agreement and for other good and valuable consideration, the receipt of which is acknowledged, McElvain and the County agree as follows:

ARTICLE I APPLICATION

This Agreement shall apply to lands presently within the unincorporated portions of the Infill Application Area within the County with the exception of those lands where the County's jurisdiction is preempted by federal or state law, or by Southern Ute Indian tribal jurisdiction.

ARTICLE II DENSITY AND USE OF EXISTING WELL PADS AND FACILITIES

2.1 *Density.* McElvain agrees that, except as provided in Article 2.2 herein or as may be otherwise permitted in the COGCC order approving McElvain's Infill Application, the density of Fruitland Coal Well Pads within the Infill Application Area shall not exceed two (2) within any drilling and spacing unit of 320-acres for the Fruitland Coal Seam. Notwithstanding the foregoing, nothing contained in this Article II shall be construed so as to require the closure or abandonment of any existing gas well.

2.2 *Well Location; Exceptions.* The County believes that the potential impacts attendant to future gas development would be best mitigated for the County as a whole if future Fruitland Coal Wells are drilled on existing well pads ("Pad Drilling"). In support of this policy, in situations where reasonable efforts fail to produce a surface use agreement concerning Pad Drilling between McElvain and the surface owner, the County, in its discretion, may approve the Infill County Permit for Pad Drilling. Special exceptions to Article 2.1 may be requested by McElvain in its applications for Infill County Permits. The County will grant special exceptions when the County finds that one or more of the following factors apply in a manner such that use of an existing Well Pad is rendered impractical:

- a. topographic characteristics of the site;
- b. natural resource constraints (e.g., wetlands);
- c. the location of utilities or similar services;
- d. geologic factors or where issues concerning distances between wells are present;
- e. other site conditions beyond the control of McElvain; or
- f. safety concerns.

In rare circumstances, the County may also, in its discretion, grant a special exception to Article 2.1 at the request of the surface owner and McElvain based upon other impacts that may arise from Pad Drilling. Nothing herein shall be construed or applied so as to

result in the complete preclusion of an Infill Well authorized by the COGCC. The limitation contained in Section 2.1 shall not apply in any instance in which the County denies a permit application to drill a well from an existing Well Pad or to expand an existing Well Pad.

2.3 *Use of Existing Infrastructure.* McElvain agrees, except as provided in Article 2.2, to use existing infrastructure, including but not limited to the use of existing roads, pipeline routes and Well Pads within the existing COGCC drilling windows in the Infill Application Area. Nothing contained in this Article 2.3 shall preclude McElvain from installing additional or substitute facilities within the existing roads, pipeline routes and Well Pads if reasonably required to produce and operate the Infill Wells. The County recognizes that some minor reconfiguration of the existing infrastructure or additional easements may be necessary due to the placement of multiple wells on existing Well Pads. At the request of the County, McElvain shall furnish information demonstrating McElvain's requested need for new facilities (roads, pipeline easements, well pads, *etc.*) and new facilities may be required due to:

a. The lack of existing infrastructure in a COGCC permitted Fruitland drilling window.

b. Engineering, geologic, safety, surface feature, economic, and/or without limitation any other constraints that make use of existing infrastructure reasonably impractical.

c. Facility ownership constraints that make the sharing or use of existing facilities reasonably impractical.

2.4 *Legal Non-Conforming Uses and Setbacks.* Section 90-122(b) of LPLUC establishes certain setback requirements. In some instances, existing minor oil and gas facilities which initially met such requirements would not meet the requirements if a current application were filed due to (i) the encroachment of other development into the setback area, (ii) because the regulation was not in effect when the original installation occurred or (iii) because a waiver previously was obtained. Because the County believes that the policy of utilizing existing well pads is critical to the mitigation of the overall impact of the Infill Wells on the county as a whole, the County agrees that in those instances where the setback requirements of Sections 90-122 (b)(1) and (2) cannot be met currently, the County will consider the use of the existing Well Pad site a legal nonconforming use not subject to the requirements of Sections 90-122 (b)(1) and (2), provided that the degree of the nonconformity is not in any way increased by the placement of the Infill Well on the existing Well Pad site. The degree of existing nonconformity shall be measured from the well head to the nearest residential structure and/or county approved subdivision as applicable. The degree of nonconformity for the new Proposed Infill Well shall be measured from the proposed well head to the nearest residential structure and/or county approved subdivision as applicable. The increase, if any, in degree of nonconformity shall be the net difference between the two above measured values.

2.5 *Expansion of Existing Well Pads.* In those instances where an existing Well Pad is used for an Infill Well, McElvain agrees to use reasonable efforts to minimize the expansion of the area of the existing Well Pad. The reasonableness of the expansion under the circumstances shall be demonstrated by McElvain to the County with its Infill County Permit application. McElvain agrees to exercise reasonable efforts to expand existing well pads away from nearby existing impacted residential structures.

ARTICLE III

PRIVATE ROADS AND ROAD MAINTENANCE AND IMPROVEMENT FEES

3.1 *Road Maintenance and Improvement Fees.* County and McElvain have determined that specific land use activities by McElvain within the Infill Application Area may create impacts on County roads and, therefore, mitigation in the form of negotiated road maintenance and improvement fees is proper and necessary. The parties recognize that these fees are not always a reliable or sufficient source of funds and that the County's ability to actually perform such work may be limited or hampered by reasons beyond its control. However, the County agrees to exercise good faith in its efforts to carry out the intent of this Agreement and to perform such work to the extent that monies are available and appropriated. The County shall control the sequencing and timing of such work and McElvain hereby waives its rights, if any, to insist upon completion of the work or to dictate the manner, sequencing and timing of the same. The County recognizes and acknowledges that the monies collected hereunder must be collected and spent in a manner consistent with the accounting practices set forth in C.R.S. § 29-1-801 *et seq.* and that such monies may only be spent on facilities that are directly and reasonably related to the mitigation of impacts related to the activities described in the Infill Application.

3.2 *Road Maintenance and Improvement Fees Calculation and Payment.* Based upon certain agreed upon assumptions, McElvain and the County have agreed to estimated Road Maintenance and Improvement Fees for minor oil and gas facilities with respect to the Infill Application of \$8,900. All major facilities shall pay fee(s) based upon a traffic study associated with the Class II permit for such major facility and such fee(s) shall be based upon the methodologies used by the parties to derive the fees set forth herein.

McElvain shall pay the County the actual Road Maintenance and Improvement Fee due and owing for the prescribed activity prior to the County's final approval of the Infill County Permit. If a Permit is not issued for the Proposed Infill Well, then the Fee will be returned to McElvain within ten (10) business days.

3.3 *Submission of Information.* The County seeks to efficiently and effectively schedule maintenance and improvement projects on its county roads. The use of such roads by heavy equipment related to construction or production activities in the Infill Application Area could have an effect on such projects. With respect to its operation of the well subject to this Agreement, the County seeks and McElvain agrees to provide the County a forecasted activity plan setting forth the expected location and

duration of minor oil and gas facilities and major oil and gas facilities operations as well as the county roads to be accessed and general proposed travel or haul routes, within the county. McElvain agrees to submit the desired information as part of its application for an Infill County Permit on the well subject to this Agreement. The disclosure of such plans and routes, if applicable, is for informational purposes only and shall not be construed as creating any obligation on the part of McElvain, including, without limitation, to create such plans or to conduct such operations, to limit the location and duration of such operations or to follow such routes. The County agrees to provide notice to McElvain of its intended projects and forecasted activity plan on an annual basis.

3.4 *Use of Subdivision Roads.* McElvain agrees that in those instances where it accesses Infill Wells in the Infill Application Area through a road or roads within a county-approved subdivision and a governing entity exists (*e.g.*, homeowners' association) with legal authority to bind the entity and its members, and with the authority to grant access rights over such roads and/or negotiate agreements with respect to their use, McElvain will use reasonable efforts to negotiate a fair and reasonable road maintenance or road improvement agreement with such entity for the purpose of paying or making in-kind contributions for its pro rata share of the cost of maintaining or improving the affected road(s). Such agreements or a memorandum thereof shall be recorded with the Clerk and Recorder of La Plata County. The existence, or lack thereof, of such executed and recorded agreements shall be noted in the Infill County Permit application for informational purposes only.

3.5 *Use of Equipment.* McElvain agrees that:

a. it will remove or require the removal of chains from its heavy equipment before entering a county road;

b. all new roads associated with the Infill Wells within the Infill Application Area shall have gravel access and Well Pads with a minimum of four inches (4") of Class 6 Aggregate Base Course as defined by the Colorado Department of Transportation Standard Specifications for Road and Bridge Construction over a stabilized base, both of which shall be maintained throughout permanent operations of the Well Pad; and

c. if mud and/or debris is tracked onto the county road by McElvain's equipment, McElvain shall remove same and restore the condition of the road as promptly as is reasonable under the circumstances.

3.6 *Produced Water Hauling.* In those instances where the utilization of a water hauling truck is required, McElvain agrees to strictly comply with the weight restrictions set forth in Chapter 42, Article V of the LPLUC.

ARTICLE IV AIR QUALITY

4.1 *Electrification.* McElvain agrees that with respect to Infill Wells drilled after the Effective Date of this Agreement within the Infill Application Area requiring long-term artificial lift, it shall utilize electric motors for all artificial lift installations provided the Well Pad is within 1320 feet of distribution voltage and the ability to do so is not cost prohibitive due to the demands of property owners from whom easements are required, topography or other physical features (e.g., the presence of a river). McElvain agrees that if distribution voltage is not currently within 1320 feet of the proposed Well Pad, it will contact and provide the surface owner an opportunity at the surface owner's cost to extend distribution voltage to within 1320 feet of the proposed Well Pad. The electrification requirements contemplated herein refer to the use of 3 phase power. McElvain shall use 3 phase power to satisfy the electrification requirements unless La Plata Electric Association provides evidence satisfactory to the County that 3 phase power is not feasible for a particular site. It is understood that gas powered artificial lift equipment may be used prior to the time that La Plata Electric Association brings power to the site. McElvain agrees to request that La Plata Electric Association place the power lines underground except in areas where the topography or subsurface conditions render it infeasible or in situations in which the landowner requests overhead lines.

4.2 *Greenhouse Gas Reduction.* McElvain agrees to utilize reasonable efforts to minimize methane emissions by using "green completion" techniques, and the installation of "low bleed" pneumatic instrumentation, when feasible.

4.3 *Emission Control Equipment.* McElvain will comply with existing EPA rules and any future regulations validly adopted by an authority with appropriate jurisdiction, including regulations that may be adopted by the Southern Ute Indian Tribe.

ARTICLE V WATER QUALITY

5.1 *Storm Water Management and Spill Prevention Containment and Control.* Even if not required to do so by any applicable regulation or law, McElvain agrees to utilize Best Management Practices for all pad expansions and new pads and for road and pipeline development or improvements.

5.2 *Water Well Monitoring.* If a conventional gas well exists within one quarter (1/4) mile of the bottom hole location of a Proposed Infill Well, then the two (2) closest water wells within a one-half (1/2) mile radius of the conventional gas well shall be sampled by McElvain as water quality testing wells. If possible, the water wells selected shall be on opposite sides of the existing conventional gas well not exceeding one-half (1/2) mile radius. If water wells on opposite sides of the conventional gas well cannot be identified, then the two (2) closest wells within one-half (1/2) mile radius shall be sampled. If two (2) or more conventional gas wells are located within one quarter (1/4) mile of the bottom hole location of the Proposed Infill Well, then the conventional gas well closest to a Proposed Infill Well shall be used for selecting wells for sampling.

If no conventional gas wells are located within one quarter (1/4) mile radius of the bottom hole location of the Proposed Infill Well, then the selected water wells shall be within one quarter (1/4) mile of the bottom hole location of the Proposed Infill Well. In areas where two (2) or more water wells exist within one quarter (1/4) mile of the bottom hole location of the Proposed Infill Well, then the two (2) closest water wells shall be sampled by McElvain. Ideally, if possible, the water wells selected should be on opposite sides of the bottom hole location of the Proposed Infill Well. If water wells on opposite sides of the bottom hole location of the Proposed Infill Well cannot be identified, then the two (2) closest wells within one quarter (1/4) mile radius shall be sampled by McElvain. If two (2) water wells do not exist within one quarter (1/4) mile radius, then the closest two water wells within a one-half (1/2) mile radius shall be selected.

If no water well is located within a one quarter (1/4) mile radius area or if access is denied, a water well within one-half (1/2) mile of the bottom hole location of the Proposed Infill Well shall be selected. If there are no water quality testing wells meeting the foregoing criteria, then sampling shall not be required. If the BLM or the COGCC have already acquired data on a water well within one quarter (1/4) mile of the conventional gas well, but it is not the closest water well, it shall be given preference in selecting a water quality testing well. The "initial baseline testing" described in this paragraph shall include all major cations and anions, TDS, iron and manganese, nutrients (nitrates, nitrites, selenium), dissolved methane, pH, presence of bacteria and specific conductance and field hydrogen sulfide.

If free gas or a methane concentration level greater than 2 mg/L is detected in a water quality testing well, compositional analysis and carbon isotopic analyses of methane carbon shall be performed to determine gas type (thermogenic, biogenic or an intermediate mix of both). If the testing results reveal biogenic gas, no further isotopic testing shall be

done. If the carbon isotope test results in a thermogenic or intermediate mix signature, annual testing shall be performed thereafter and an action plan shall be drafted by McElvain to determine the source of the gas. If the methane concentration level increases by more than 5 mg/L between sampling periods, or increase to more than 10 mg/L, an action plan shall be drafted to determine the source of the gas.

The initial baseline testing shall occur prior to the drilling of the Proposed Infill Well. Within one (1) year after completion of the Infill Well, a “post completion” test shall be performed for the same parameters above and repeated three (3) and six (6) years thereafter. If no significant changes from the baseline have been identified after the third test (the six year test), no further testing shall be required. The testing schedule will restart after the drilling of a new Infill Well on an existing Well Pad if the wells to be tested include those tested for the 160 acre infill program. Additional “post completion” test(s) may be required if changes in water quality are identified during follow-up testing. The Director of the COGCC may require further water well sampling at any time in response to complaints from water well owners.

Within three (3) months of collecting the samples used for the test, copies of all test results described above shall be provided to the COGCC and the surface owner where the water quality testing well is located.

ARTICLE VI PLUGGED AND ABANDONED WELLS/SOIL GAS VAPOR SURVEY

A soil gas vapor-monitoring program is designed to determine a possible lack of zonal isolation along wellbores of plugged and abandoned wells. McElvain will attempt to identify any plugged and abandoned wells located within 0.25 miles of the bottom hole location of any Proposed Infill Well. Any plugged and abandoned well within 0.25 miles of the bottom hole of a Proposed Infill Well will be assessed for risk, taking into account cementing practices reported in the plugged and abandoned reports. McElvain shall notify the COGCC of all results of all risk assessments of plugging procedures. The COGCC may appropriate funds under Rule 701 (the Environmental Response Fund) to conduct soil gas monitoring tests to further define the risks. If the monitoring reveals a possible lack of zonal isolation, the COGCC may then conduct or order any necessary remediation or other authorized activities.

ARTICLE VII INCLUSION INTO COGCC ORDER

McElvain and the County agree to jointly request that certain conditions, as set forth in attached Exhibit A, be incorporated into the COGCC order approving the Infill Application.

ARTICLE VIII
SITE SPECIFIC DEVELOPMENT PLAN AND FUTURE REGULATIONS

This Agreement shall not grant or create any common law or statutory vested development rights or exempt McElvain from any applicable County development review regulations or processes. The County reserves the right in the future to enact and apply prospectively oil and gas regulations that are general in nature and are applicable to all similarly situated oil and gas activities subject to land use regulation by the County, even though such regulations may be more or less stringent than the standards applicable to the Infill Wells by virtue of this Agreement.

ARTICLE IX
PRESERVATION OF RIGHTS

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 the validity 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.

ARTICLE X
ANNUAL REPORTING REQUIREMENT

Once the well subject to this Agreement is permitted by both the COGCC and the County, and the well is drilled, McElvain will provide summary information to the County regarding the status of McElvain's activities within the Infill Application Area. Specifically, McElvain shall provide information with respect to the following Sections:

Section 2.2 - well location exceptions, if applicable

Section 3.2 – confirm that road maintenance and improvement fees have been paid.

Section 4.1 - the nature of electrification measures used, if applicable, and

Section 4.2 – the nature of green completion techniques utilized.

This information will be presented in table format with the following fields:

- County permit number
- Well name
- Date well completed
- Exception location status (ie – is the well an exception location, if applicable)

- Reason for exception location (if applicable)
- Road impact fee tier and amount paid
- Date electrification implemented
- Target electrification date (if not already electrified)
- Green completion status (ie – were green completion practices used?)

If applicable, in addition to the summary information set forth above, McElvain will provide to the County an overview of its proposed drilling plans, if known, in the Infill Application Area for the following calendar year, with the recognition by the County that such plans would be tentative and subject to change and with the County's agreement that such plans would be kept confidential.

ARTICLE XI GENERAL PROVISIONS

The following general provisions shall govern the relationship between the parties with respect to Infill Fruitland Coal Wells within the Infill Application Area.

11.1 *Effective Date and Term.* Notwithstanding anything herein to the contrary, this Agreement shall be effective upon entry of the COGCC's order approving the Infill Application.

11.2 *Entire Agreement.* Except as otherwise expressly set forth herein, this Agreement embodies the complete agreement and understanding between the parties hereto with respect to the subject matter concerning the Infill Area hereof and supersedes and preempts any prior understandings, agreements or representations by or between the parties, written or oral, which may have related to the subject matter concerning the Infill Area hereof in any way.

11.3 *Successors and Assigns.* Except as otherwise provided herein, McElvain shall have the absolute right to transfer or sell any or part of its interest in the Infill Wells; provided, however, that in the event of transfer, McElvain's transferees, sublessees, successors and assigns shall be bound to comply with all terms hereof.

11.4 *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which when taken together shall constitute a single agreement.

11.5 *Amendment.* All covenants, representations and warranties herein and all other obligations, responsibilities and terms hereof shall continue to be fully binding and enforceable on the parties until expressly superseded by written agreement of the parties. No amendment to this Agreement shall be effective unless in writing, signed by all parties who are then subject to this Agreement.

11.6 *Waiver.* No failure on the part of any party hereto to exercise and no delay in exercising any right hereunder shall operate as a waiver of such right. The remedies

provided herein are cumulative and not exclusive of any remedies provided by law. No waiver of, or failure to exercise any right hereunder shall operate to prevent future enforcement of such right.

11.7. *Notices.* Notices hereunder may be given by certified mail, return receipt requested, or by facsimile or electronic mail transmission. Notices shall be effective on receipt, provided, however, that confirmation of receipt shall be required in all instances. Notice to the respective parties shall be given to:

To the County at:
Victoria Schmitt, PE
Planning Department
La Plata County
1060 E. 2nd Avenue
Durango, Colorado 81301

With Copies to:
Paul Kosnik, Esq.
La Plata County Attorney's Office
La Plata County
1099 Main Avenue, Suite 311
Durango, Colorado 81301

To McElvain at:
McElvain Oil & Gas Properties, Inc.
Attn.: David W. Siple
1050 17th Street, Suite 1800
Denver, CO 80265-1801

With Copies to:
Susan L. Aldridge, Esq.
Beatty & Wozniak, P.C.
216 16th St., Suite 1100
Denver, CO 80202

or to any other addresses as any party hereto may, from time to time, designate in writing and deliver in a like manner.

11.8 *Headings.* The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

11.9 *Further Acts.* Each of the parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

11.10 *No Partnership; Third Party Beneficiaries.* It is not intended by this Agreement to, and nothing contained in this agreement shall, create any partnership, joint venture or other arrangement between McElvain and the County. No term or provision of this Agreement is intended to or shall be for the benefit of any person, firm, organization or corporation not a party hereto and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

11.11 *Severability.* The provisions of this Agreement are deemed material and nonseverable. If an action is brought that results in any provision of this Agreement being determined or declared by a Court to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the parties shall negotiate in good faith for an equivalent or substitute provision or other appropriate adjustment to this Agreement. If the parties cannot reach agreement, or if so desired by the parties, then the issues in dispute shall be submitted to a mediator acceptable to both

parties for nonbinding mediation. Unless otherwise agreed to by the parties, such mediation shall occur within sixty (60) days of a party's receipt of a notice to mediate from the other party.

McElvain Oil & Gas Properties, Inc.

By:  _____

Name, Title: David W. Siple
Vice President, Land

BOARD OF COUNTY COMMISSIONERS
LA PLATA COUNTY, COLORADO

(SEAL)
ATTEST:

Kellie Hotter, Chair

Clerk to the Board

EXHIBIT A

PROPOSED CONDITIONS OF APPROVAL

Applicant MCELVAIN OIL & GAS PROPERTIES, INC. ("McElvain") and Intervenor La Plata County, Colorado ("La Plata County") respectfully request that an Order issued by the Commission in Cause No. 112, Docket No. 0905-AW-02 be made subject to and conditional upon the following:

1. Compliance with all terms, conditions and provisions of prior Commission Orders in Cause No. 112, including without limitation, the specific provisions of Order No. 112-157 including the Rule 508j.(3)B conditions attached thereto.
2. Compliance with the terms and provisions of all of the Commission's health, safety, welfare and environmental rules and regulations now or hereafter in effect.
3. Those certain provisions as set forth in the May __, 2009 Memorandum of Understanding, including Exhibit A, between McElvain and La Plata County as follows. In the event of any conflict between the terms of the Memorandum of Understanding and the terms of the Exhibit A to the Memorandum of Understanding, the terms of the Memorandum of Understanding shall govern.

A. Surface Density

The density of Fruitland Coal Well Pads within the Infill Application Area shall not exceed two (2) within any drilling and spacing unit of 320-acres for the Fruitland Coal Seam. Notwithstanding the foregoing, nothing contained in this provision shall be construed so as to require the closure or abandonment of any existing gas well.

B. Well Location; Exceptions

The Commission may grant a special exception allowing for a greater density of Fruitland Coal Well Pads (i.e., more than 4 per 640-acre section), at the request of McElvain and after consultation with the Local Governmental Designee, based upon a finding by the Commission that one or more of the following factors apply in a manner such that use of an existing Well Pad is rendered impractical:

- a. topographic characteristics of the site;
- b. natural resource constraints (e.g., wetlands);
- c. the location of utilities or similar services;
- d. geologic factors or where issues concerning distances between wells are present;
- e. other site conditions beyond the control of McElvain; or

- f. safety concerns.

C. *Water Well Monitoring.*

To the extent the following provisions have not already been completed pursuant to McElvain's operations subject to the Order No. 112-209, McElvain agrees:

If a conventional gas well exists within one quarter (1/4) mile of the bottom hole location of a Proposed Infill Well, then the two (2) closest water wells within a one-half (1/2) mile radius of the conventional gas well shall be sampled by McElvain as water quality testing wells. If possible, the water wells selected shall be on opposite sides of the existing conventional gas well not exceeding one-half (1/2) mile radius. If water wells on opposite sides of the conventional gas well cannot be identified, then the two (2) closest wells within one-half (1/2) mile radius shall be sampled. If two (2) or more conventional gas wells are located within one quarter (1/4) mile of the bottom hole location of the Proposed Infill Well, then the conventional gas well closest to a Proposed Infill Well shall be used for selecting wells for sampling.

If no conventional gas wells are located within one quarter (1/4) mile radius of the bottom hole location of the Proposed Infill Well, then the selected water wells shall be within one quarter (1/4) mile of the bottom hole location of the Proposed Infill Well. In areas where two (2) or more water wells exist within one quarter (1/4) mile of the bottom hole location of the Proposed Infill Well, then the two (2) closest water wells shall be sampled by McElvain. Ideally, if possible, the water wells selected should be on opposite sides of the bottom hole location of the Proposed Infill Well. If water wells on opposite sides of the bottom hole location of the Proposed Infill Well cannot be identified, then the two (2) closest wells within one quarter (1/4) mile radius shall be sampled by McElvain. If two (2) water wells do not exist within one quarter (1/4) mile radius, then the two closest single water wells within a one-half (1/2) mile radius shall be selected.

If no water well is located within a one quarter (1/4) mile radius area or if access is denied, a water well within one-half (1/2) mile of the bottom hole location of the Proposed Infill Well shall be selected. If there are no water quality testing wells meeting the foregoing criteria, then sampling shall not be required. If the BLM or the COGCC have already acquired data on a water well within one quarter (1/4) mile of the conventional gas well, but it is not the closest water well, it shall be given preference in selecting a water quality testing well. The "initial baseline testing" described in this paragraph shall include all major cations and anions, TDS, iron and manganese, nutrients (nitrates, nitrites, selenium), dissolved methane, pH, presence of bacteria and specific conductance and field hydrogen sulfide.

If free gas or a methane concentration level greater than 2 mg/L is detected in a water quality testing well, compositional analysis and carbon isotopic analyses of methane carbon shall be performed to determine gas type (thermogenic, biogenic or an intermediate mix of both). If the testing results reveal biogenic gas, no further isotopic testing shall be done. If the carbon isotope test results in a thermogenic or intermediate mix signature, annual testing shall be performed thereafter and an action plan shall be drafted by McElvain to determine the source of the gas. If the methane concentration level increases by more than 5 mg/L between sampling periods, or increase to more than 10 mg/L, an action plan shall be drafted to determine the source of the gas.

The initial baseline testing shall occur prior to the drilling of the Proposed Infill Well. Within one (1) year after completion of the Proposed Infill Well, a “post completion” test shall be performed for the same parameters above and repeated three (3) and six (6) years thereafter. If no significant changes from the baseline have been identified after the third test (the six year test), no further testing shall be required. The testing schedule will restart after the drilling of a new Infill Well on an existing Well Pad if the wells to be tested include those tested for the 160 acre infill program. Additional “post completion” test(s) may be required if changes in water quality are identified during follow-up testing. The Director of the COGCC may require further water well sampling at any time in response to complaints from water well owners.

Within three (3) months of collecting the samples used for the test, copies of all test results described above shall be provided to the COGCC and the surface owner where the water quality testing well is located

D. Plugged and Abandoned Wells/Soil Gas Vapor Survey

To the extent the following provisions have not already been completed pursuant to McElvain’s operations subject to COGCC Order No. 112-209, McElvain agrees

A soil gas vapor-monitoring program is designed to determine a possible lack of zonal isolation along wellbores of plugged and abandoned wells. McElvain will attempt to identify any plugged and abandoned wells located within 0.25 miles of the bottom hole location of any Proposed Infill Well. Any plugged and abandoned well within 0.25 miles of the bottom hole of a Proposed Infill Well will be assessed for risk, taking into account cementing practices reported in the plugged and abandoned reports. McElvain shall notify the COGCC of all results of all risk assessments of plugging procedures. The COGCC may appropriate funds under Rule 701 (the Environmental Response Fund) to conduct soil gas monitoring tests to further define the risks. If the monitoring reveals a possible lack of zonal isolation,

the COGCC may then conduct or order any necessary remediation or other authorized activities.

4. Compliance with all applicable regulations of the BLM, BIA and the Southern Ute Indian Tribe when conducting operations on lands subject to such agency's/government's jurisdiction.