

MORGAN COUNTY, COLORADO
BOARD OF COUNTY COMMISSIONERS

RESOLUTION NO. 2017 BCC 26

A RESOLUTION IMPOSING A TEMPORARY MORATORIUM ON MORGAN COUNTY'S PROCESSING OF APPLICATIONS FOR PROPOSED INJECTION WELLS USED FOR THE STORAGE OR DISPOSAL OF EXPLORATION AND PRODUCTION WASTES AND OTHER OIL AND GAS WASTE AND PROPOSED FACILITIES TO TREAT WASTE FROM OIL AND GAS OPERATIONS IN ALL UNINCORPORATED PORTIONS OF MORGAN COUNTY PENDING CONSIDERATION OF AMENDMENTS TO COUNTY REGULATIONS

WHEREAS, oil and gas exploration and production is a rapidly developing and evolving industry across Colorado and particularly in counties adjacent to Morgan County;

WHEREAS, due to the rapid development of oil and gas exploration and production, there have been significant modifications and clarifications to the law governing the oil and gas industry during the past few years;

WHEREAS, the treatment of oil and gas waste and the storage and disposal of exploration and production wastes ("E&P waste") and other oil and gas waste through injection wells has a significant impact on the health, safety and welfare of the citizens of Morgan County (the "County") through increased noise, odor, dust, traffic, noxious weeds and other disturbances, as well as the potential to significantly impact the County's air, water, soil, wildlife habitat, floodplains, water, storm water, drainage and erosion control, transportation infrastructure, emergency response plans and commitment to agricultural production;

WHEREAS, in its role administrating County floodplain regulations, the County is concerned about increased interest in disposal of E&P waste and other oil and gas waste in mapped floodplain areas, posing potential serious risk to public health and safety;

WHEREAS, in its role administrating the County transportation system, the County is concerned about the potential increase in impacts due to the potential for injection wells and treatment facilities for oil and gas waste, including increased wear and tear on road from heavy truck traffic resulting in greater need for road and bridge improvements and maintenance;

WHEREAS, the Colorado Oil and Gas Conservation Act, C.R.S. § 37-60-101 *et seq.*, (the "Act") declares that it is in the public interest to foster the responsible, balanced development, production, and utilization of the natural resources of oil and gas in Colorado in a manner consistent with the protection of public health, safety, and welfare, including protection of the environment and wildlife resources;

WHEREAS, the Act grants the Colorado Oil and Gas Conservation Commission ("COGCC") authority to adopt statewide rules and regulations concerning the development and production of oil and gas resources and the COGCC has adopted such rules and regulations;

Official Records of Morgan County, CO
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WHEREAS, the Act provided that it is not intended to establish, alter, impair or negate the authority of county governments to regulate land use related to oil and gas operations;

WHEREAS, Colorado courts have continually recognized that the Act does not expressly or impliedly preempt a county's authority to enact land use regulations applicable to oil and gas operations within the county and thus a county's regulations pertaining to operations addressed in the Act are legal and valid as long as a county's regulations do not result in an operational conflict with state law with regard to the technical aspects of oil and gas operations;

WHEREAS, Colorado courts have not addressed the precise issue of a county's authority over, including the authority to prohibit within its jurisdiction, the disposal or storage of E&P Waste or other oil and gas waste when such treatment, storage or disposal is completely independent from any other oil and gas operations, including but not limited to drilling and extraction of oil and gas;

WHEREAS, the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101 *et seq.*, provides the County with the broad authority to plan for and regulate the use of land in order to provide for orderly development while balancing the health, safety and welfare of its citizens;

WHEREAS, the Local Government Land Use Control Enabling Act authorizes local governments within their respective jurisdictions to plan for and regulate the use of land by, among other actions, regulating development and activities in hazardous areas; protecting land from activities that would cause immediate or foreseeable material danger to significant wildlife habitat; regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and otherwise planning for and regulating the use of land so as to provide for the planned and orderly use of land;

WHEREAS, the Board believes it has the responsibility to its residents to plan for and regulate the use of land for the purposes laid out in the Local Government Land Use Control Enabling Act as well as those purposes specified in other applicable state and federal statutes and common law grants of authority, and to promote the health, safety and general welfare of its residents;

WHEREAS, the Board, pursuant to its land use authority, has from time to time adopted planning, zoning and other regulations governing land use in the incorporated portions of the County;

WHEREAS, the County's current zoning regulations regarding oil and gas operations were drafted nearly a decade ago, prior to the increase of oil and gas operations in Colorado and prior to several relevant Colorado court decisions concerning local authority to regulate oil and gas activities, and do not include regulations specifically related to the treatment, storage, and/or disposal of E&P Waste and other oil and gas waste, and therefore those regulations are ripe for review in light of the current significant concerns over the impact of continuing oil and gas development activities in Colorado;

WHEREAS, currently the County's zoning regulations do not expressly permit the treatment of oil and gas waste or the storage and/or disposal of E&P Waste and other oil and gas waste in any zone district within the unincorporated County;

WHEREAS, County staff has begun to analyze whether the existing zoning and other land use regulations that may be applicable to the storage and/or disposal of E&P Waste and other oil and gas wastes are sufficient to protect the public health, safety and welfare;

WHEREAS, the Board estimates that the time needed to perform the appropriate study and determine the appropriate action to govern the treatment of oil and gas waste, the storage and/or disposal of E&P Waste and other oil and gas wastes through injection wells, is approximately six months;

WHEREAS, if applications requesting approval to treat oil and gas waste and/or store and dispose of E&P Waste and other oil and gas waste through injection wells are submitted prior to the County having adequate time to conduct the appropriate studies and make necessary revisions to its zoning regulations, the Board believes irreparable harm may be done to the public health, safety and welfare;

WHEREAS, the U.S. Supreme Court and the Colorado Supreme Court recognize that in the field of land use regulation, temporary moratoria of reasonable duration are often employed to preserve the status quo in a particular area while developing a long-term plan for development; indeed, in countering the incentive of property owners to develop their property quickly to avoid the consequences of an impending land use plan for the jurisdiction, moratoria are a crucial tool for local governments and, therefore, pursuant to express and implied authority granted by the Colorado Revised Statutes and multiple Colorado and federal legal decisions upholding temporary moratoria on land use applications while amendments are considered, the Board has the legal authority to adopt a temporary moratorium in this situation; and

WHEREAS, in light of the foregoing recitals and findings, after a duly noticed public hearing held on August 21, 2017, the Board desires to adopt this temporary moratorium to protect the public health, safety, and welfare, and to avoid development which, during the County's planning and land use regulation amendment process, may contravene the results of this study and process put the public at risk.

NOW BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, COLORADO:

1. This temporary moratorium shall take effective immediately. The County Planning Department is directed not to accept, process, or approve any applications for uses of land that involve the treatment of oil and gas waste and /or the storage or disposal of E&P Waste or other oil and gas waste through injection wells.
2. This temporary moratorium shall remain in place until February 21, 2018, unless terminated or extended.

3. County staff is hereby directed to continue analyzing whether the County's Zoning Regulations pertaining to oil and gas operations are sufficient to protect the public health, safety and welfare, or whether amendments to the County's Zoning Regulations are necessary to adequately address the impacts of these uses.

4. The County hereby affirms that any treatment of oil and gas waste and/or the storage or disposal of E&P Waste and other oil and gas waste through injection wells without appropriate County approvals may be in violation of the Morgan County Zoning Regulations.

DATED this 24 day of October, 2017.

**BOARD OF COUNTY COMMISSIONERS
MORGAN COUNTY, COLORADO**

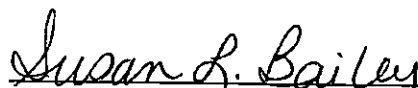

James P. Zwetzig, Chair


Laura D. Teague, Commissioner


Mark A. Arndt, Commissioner



ATTEST:


Susan Bailey, Clerk to the Board



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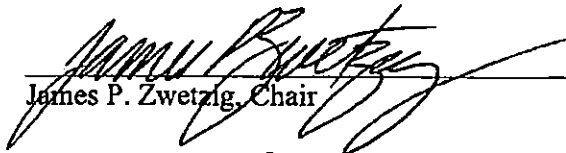
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4. The County hereby affirms that any treatment of oil and gas waste and/or the storage or disposal of E&P Waste and other oil and gas waste through injection wells without appropriate County approvals may be in violation of the Morgan County Zoning Regulations.

DATED this 21st day of August 2017.

**BOARD OF COUNTY COMMISSIONERS
MORGAN COUNTY, COLORADO**

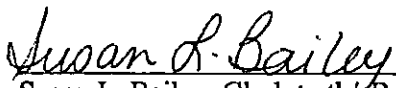

James P. Zwetzlg, Chair


Laura D. Teague, Commissioner


Mark A. Arndt, Commissioner



ATTEST:


Susan L. Bailey, Clerk to the Board