THIS MEMORANDUM OF AGREEMENT (MOA) is entered into this 28th day of August, 1990, by and between the Colorado Department of Health, Water Quality Control Commission (WQCC), Water Quality Control Division (WQCD), the Colorado Department of Natural Resources (DNR) and the Colorado Oil and Gas Conservation Commission (OGCC).

Section 1. **BACKGROUND**

1.1 A major portion of Senate Bill 181 is intended to eliminate some potential problems between the setting of “standards and classifications” and the implementation of those standards and classification by agencies with specific responsibilities in the area of water quality control for certain industries or activities.

Prior to the passage of SB 181 and for many years, there has been a spirit of cooperation between the WQCC, the WQCD, and the OGCC. The staffs of each agency have frequently met to discuss issues where their responsibilities to the people of Colorado coincide. In 1972, following the passage of the Water Quality Control Act by the legislature, the formation of the WQCC and the establishment of stream classifications and standards, the OGCC adopted rules providing that any “operator” as defined by the Oil and Gas Conservation Act, releasing water or other material to the continuously flowing streams of the state, must meet the standards set for those streams by the WQCC and obtain a permit from the WQCD for such discharge. At the same time, the WQCD, through a Memorandum of Agreement, authorized the OGCC to act as its agent in matters relating to the disposal of produced waters, and other oil field wastes other than surface discharges. Following this agreement, the OGCC held numerous hearings to determine the status of ground water in various oil and gas producing areas of the state and issued orders relating to construction of earthen pits to assure protection of ground waters that might be potential supplies for domestic or agricultural purposes.

Following the 1983 amendment to the Solid Waste Act, it became apparent to both the CDH and the OGCC that there could be problems with the administration of earthen pits used for disposal of water produced in oil and gas operations. Recognizing the responsibilities of the CDH and the counties under this amendment to grant “Certificate of Designation,” several meetings were held between the staffs of the CDH and the OGCC as well as representatives from the counties to discuss the most appropriate way for each agency to administer its responsibilities while not duplicating efforts or imposing unreasonable burdens on those persons or entities affected. It was agreed that the OGCC would permit and administer on-site surface facilities and those facilities centrally located which received produced water from more than one lease or operator. It was further agreed that the counties, with
technical recommendations from the Hazardous Materials Waste Management Division (HMWMD) of the CDH, would permit and administer those “commercial” surface facilities, which were operated by persons other than the oil and gas operators producing the water these facilities received. The OGCC amended its regulations regarding these various kinds of surface facilities, and the HMWMD adopted regulations for commercial facilities.

1.2 BACKGROUND -- SB 181

Subsection 25-8-202(7) of the 1989 amendments to the state Water Quality Control Act (SB 181) restates and clarifies existing law, and provides a procedure for coordination between state agencies vested with responsibilities to implement water quality protection of state waters. Key among the provisions is the requirement that the WQCC and the WQCD recognize the water quality responsibilities of the following entities, referred to in the subsection as the “implementing agencies”: the Mined Land Reclamation Division; the State Engineer; the Oil and Gas Conservation Commission; and the state agency responsible for activities related to the federal “Resource Conservation and Recovery Act of 1975” as amended. Currently, this is the Hazardous Material and Waste Management Division located in the state Health Department.

The WQCC is to remain solely responsible for the adoption of water quality standards and classifications for state waters. Each implementing agency is to apply these water quality standards and classifications adopted by the WQCC through their own programs after consultation with the WQCC and the WQCD. Generally, application of the standards and classifications would be limited to nonpoint surface discharges and to sub-surface discharges as the WQCD remains solely responsible for the issuance and enforcement of permits for point source discharges into state surface waters. The implementing agencies are to specify applicable points of compliance for groundwater discharges. The points of compliance are to be adopted in accordance with criteria established through public rulemaking following consultation with the WQCC and the WQCD.

By requiring the implementing agencies to apply the standards and classifications established by the WQCC, the legislature has attempted to clarify the primary regulatory authorities responsible for assuring uniform water quality protection for all waters of the state.

In acknowledging the water quality responsibilities of the implementing agencies cited in the act, the amendments further specify that the WQCC and the WQCD shall not require permits for, or otherwise regulate, activities subject to the jurisdiction of the implementing agencies unless the WQCC finds, pursuant to section 25-8-202(7) (b) (II), and after notice and public hearing, that such regulation is necessary to assure compliance with the federal Clean Water Act, the water quality requirements contained in the Colorado water rights statutes, or water quality classifications and standards; to protect present and future beneficial uses of water; to avoid the imposition of a disproportionate burden on other dischargers, or classes of dischargers; or in the event an implementing agency fails to provide reasonable assurance that compliance has been obtained through
its own programs.

In the event the WQCC must take regulatory action to ensure compliance, WQCC action shall be undertaken solely through the adoption of control regulations under section 25-8-205, or through the permit regulations under section 25-8-501. The WQCD may enforce such regulations.

Section 2. **PURPOSE**

This agreement is being entered into by the above-mentioned parties for the following purposes:

2.1 To recognize that each agency has responsibilities to protect water quality within the State of Colorado;

2.2 To formalize the previous informal cooperative relationships between the parties; and

2.3 To provide procedures for communication, exchange of information, and resolution of problems as necessary to carry out the provisions of Senate Bill 181.

Section 3. **AUTHORITY**


Section 4. **DEFINITIONS**

4.1 “Designated Official” means a person representing one of the parties to this agreement appointed to implement this agreement and to negotiate on behalf of that party. The designated official for the OGCC shall be the Director of the OGCC; the designated official of the WQCC shall be its Administrator; and the designated official for the WQCD shall be the Director of the WQCD.

4.2 “Implementing Agency” means any of the state agencies referred to in section 25-8-202(7), C.R.S. whose water quality responsibilities the WQCC and the WQCD are to recognize. For purposes of this agreement, the implementing agency is the Oil and Gas Conservation Commission.

4.3 “Points of Compliance” means one or more points or locations at which compliance with applicable groundwater standards must be achieved.

Section 5. **RESPONSIBILITIES**

The responsibilities of the Water Quality Control Commission (WQCC), the Water Quality control Division (WQCD), and the Oil and Gas Conservation Commission (OGCC), as they relate to the mandates of SB 181, are presented below.
5.1 Oil and Gas Conservation Commission:

a. The OGCC shall recognize that the WQCC is solely responsible for the adoption of water quality standards and classifications for state waters in accordance with section 25-8-202(7).

b. The OGCC shall recognize that the WQCD is solely responsible for issuance and enforcement of permits authorizing all point source discharges to surface waters of the state as well as enforcing any control or permit regulation adopted by the WQCC under section 25-8-202(7)(b)(III).

c. The OGCC has been designated an implementing agency through the provisions of Senate Bill 181. As such, the OGCC is responsible for implementing standards and classifications for discharges other than point source discharges to surface water, through its own regulatory programs after consultation with the WQCC and the WQCD. Examples of activities regulated by the OGCC in this regard include but may not be limited to, drilling, casing, operation and plugging of seismic holes or exploratory wells, the shooting and chemical treatment of wells, the disposal of salt waters and oil field wastes, the protection of underground sources of drinking water affected by the construction and/or operation of Class II injection wells, the protection of the health, safety and welfare of persons at oil or gas wells, and protection of the health, safety and welfare of the general public. (Section 34-60-106 C.R.S.)

d. The OGCC is responsible for adopting applicable points of compliance for statewide and site-specific standards and classifications for discharges into state waters, other than surface waters, in accordance with criteria established through rulemaking after public hearing and consultation with the WQCC and the WQCD. Such points of compliance shall be established so as to protect present and future beneficial uses of water.

e. In the event that the OGCC receives written notice from the WQCC or the WQCD that circumstances exist which may result in a basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B) or (C) the OGCC shall respond, in writing, to the notice within 15 working days. The OGCC, through its designated official, will meet informally with the designated officials of the WQCC and the WQCD through one or more meetings to attempt to resolve the concern.

f. In the event that the OGCC receives notification from the WQCC of its intent to publish a Notice of Public Hearing to consider the adoption of control regulations or permit regulations for one or more of the water quality responsibilities currently within the jurisdiction of the OGCC, the OGCC shall respond to such notification within thirty days.

The response from the OGCC will provide information to the WQCC
that demonstrates that there is no basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B) and (C), or if such a basis may exist, identifies the action(s), if any, to be undertaken by the OGCC to address the situation.

g. Prior to the adoption of any water quality related regulation by the OGCC, the OGCC shall notify the WQCC and the WQCD and allow their participation in any committee meetings or hearings where such proposals are to be discussed.

h. Within 90 days following the execution of this Memorandum of Agreement, the OGCC shall provide to the WQCC and the WQCD a written report that identifies relevant proposed or existing regulations and describes how its programs will assure compliance with water quality standards and classifications for activities subject to OGCC jurisdiction, including but not limited to, the drilling, casing, operation and plugging of seismic holes or exploratory wells, the shooting and chemical treatment of wells, the disposal of salt waters and oil field wastes, the protection of underground sources of drinking water affected by the construction and/or operation of Class II injection wells, the protection of the health, safety and welfare of persons at oil or gas wells, and protection of the health, safety, and welfare of the general public, in sufficient detail to provide reasonable assurance that compliance with standards and classifications will be obtained. This written report shall be updated annually by the OGCC. The annual update shall be limited to changes made by the OGCC during the course of the year and will include an annual summary of the activities and concerns of the OGCC relative to the implementation of standards and classifications.

5.2 Water Quality Control Division:

a. The WQCD shall recognize the water quality responsibilities of the OGCC and its designation as an implementing agency in accordance with section 25-8-202(7).

b. The WQCD shall be solely responsible for the issuance and enforcement of permits authorizing point source discharges into surface waters of the State. See sections 25-8-501, 503 and 504, C.R.S. (1989).

c. The WQCD shall not require permits for, or otherwise regulate, activities subject to the jurisdiction of the OGCC unless such regulation is promulgated by the WQCC as provided under section 5.3. e. and f. below.

d. In the event that the WQCD has reason to believe that circumstances exist which may result in a basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B) or (C) the designated official from the WQCD shall notify the Director of the OGCC, in writing of such circumstances. The notice shall specify the circumstances which may result in a basis for WQCC action, and provide an explanation of the basis for the WQCD’s concern(s), including any supporting documentation. Copies of this correspondence shall be forwarded to the WQCC. The designated official of the WQCD will attempt to resolve the concern(s) informally with the designated
officials of the WQCC and the OGCC through one or more meetings. All reasonable efforts will be made, at the agency level, to resolve the concern(s) identified.

e. In the event that the WQCD determines that the circumstances identified in accordance with subsection (d) above cannot be remedied through informal discussions at the agency level, it shall so notify the WQCC.

5.3 Water Quality Control Commission:

a. The WQCC shall recognize the water quality responsibilities of the OGCC and its designation as an implementing agency in accordance with section 25-8-202(7).

b. The WQCC shall be solely responsible for adoption of water quality standards and classifications for all State waters.

c. In adopting water quality standards and classifications for state waters other than surface waters, the WQCC shall not specify points of compliance applicable to discharges regulated by the OGCC. Such points of compliance shall be adopted by the OGCC in accordance with criteria established through rulemaking as provided under Section 5.1.d of this agreement.

d. In the event that the WQCC has reason to believe that circumstances exist which may result in a basis for WQCC action in accordance with section 25-8-202(7)(b)(II)(A), (B) or (C), it shall proceed in the following manner:

i. Unless the WQCD has previously provided such notice as specified under paragraph 5.2(d) of this memorandum, the WQCC, or its designated official, shall notify the Director of the OGCC in writing of such circumstances. A copy of such notice shall be provided to the WQCD. The notice shall specify the circumstances which may result in a basis for WQCC action and provide an explanation of the basis for the WQCC’s concern(s), including supporting documentation.

ii. The WQCC shall direct its designated official to meet with the designated officials of the OGCC and the WQCD to attempt to resolve the concern(s) informally. All reasonable efforts will be made to resolve the concern(s) at the agency level. Any such resolution shall be presented to the full WQCC for its approval.

iii. If the OGCC, the WQCC and the WQCD are unable to reach agreement regarding the implementation of water quality responsibilities as outlined in section 25-8-207(7)(a), the directors of the Department of Health and the Department of Natural Resources will address the issues in dispute, after consultation with the Attorney General’s Office and, if possible, recommend a resolution to the WQCC and the OGCC for their consideration.

e. In the event that the WQCC determines that the circumstances identified in accordance with subsection (d) above cannot be remedied through informal discussions, it shall notify the OGCC of its intent to publish a Notice of
Public Hearing to consider the adoption of control regulations or permit regulations for the activities subject to the jurisdiction of OGCC which are the subject of concern. Such notification to the OGCC shall precede the publication of the WQCC’s Notice of a Public Hearing by no less than forty-five (45) days, unless the WQCC determines that an emergency rulemaking must be initiated to assure compliance with either the federal Clean Water Act or the Colorado Water Quality Control Act. In such event, the WQCC shall give the OGCC as much advance notice as possible. If the WQCC receives information from the OGCC pursuant to section 5.1(f), the WQCC shall not proceed with the publication of the Notice of Public Hearing unless the WQCC has determined that the proposed rulemaking is still necessary after it has reviewed the information at the next WQCC public meeting.

f. The WQCC shall adopt appropriate control regulations or permit regulations to address one or more of the water quality responsibilities within the jurisdiction of the OGCC only if it makes a written finding, after public hearing, that:

i. Such regulation is necessary to assure compliance with the Federal Clean Water Act, the provisions of Articles 80 to 93 of Title 37, C.R.S., or water quality standards and classifications adopted for State waters, or to protect present and future beneficial uses of water; or

ii. Such regulation is necessary to avoid the imposition of a disproportionate burden on other dischargers or classes of dischargers to the affected State waters who are subject to the requirements of this article; or

iii. The OGCC fails to provide a reasonable assurance that compliance with standards and classifications has been obtained through its own programs.

g. The WQCC shall provide to the OGCC rulemaking and informational hearing notices and agendas and allow participation in formal proceedings addressing the establishment of standards and classifications, or any other matter which could have an impact on OGCC operations, and informal proceedings in which OGCC has expressed an interest.

h. The WQCC shall schedule a presentation by OGCC to discuss the annual report prepared and submitted by the OGCC at a regular public meeting, and shall provide the public with notice and an opportunity to comment on such report.

Section 6. SPECIAL PROVISIONS

6.1 Access to Records:

Each agency shall, to the extent allowed by law, make available to the other, information within its possession. Requests for information shall not impose an unreasonable resource burden on either agency.
6.2 **Effect on Prior Agreement:**

When executed, this agreement shall supercede any prior agreement regarding the implementation of Senate Bill 181 whether written or implied.

6.3 **Effective Date and Termination:**

This agreement shall become effective on the date of execution by the last signatory party. It may be amended upon the mutual agreement of the WQCC, the WQCD and the OGCC, or it may be terminated upon 30 days written notice to the other parties by the WQCC, the WQCD or the OGCC.

**Section 7. APPROVALS**

Department of Natural Resources
Oil and Gas Conservation Commission
Division

Chairman
Oil and Gas Conservation Commission

Executive Director
Department of Natural Resources Commission

Director
Oil and Gas Conservation Commission Division

Colorado Department of Health
Water Quality Control Commission
Water Quality Control Division

Executive Director
Colorado Department of Health Commission

Chairman
Water Quality Control Commission

Director
Water Quality Control Division

Date: August, 1990