COLORADO SUPREME COURT 2 East 14th Avenue, Fourth Floor Denver, Colorado 80203 Telephone 303-861-1111 Colorado Court of Appeals Judge Daniel Taubman (concurring Vogt and Ney, JJ) (Case No. 04CA1679) District Court, Gunnison County, Colorado Judge J. Steven Patrick (Case No. 03CV76) **Petitioners:** GUNNISON ENERGY CORPORATION, Defendant-Appellee; COLORADO OIL AND GAS CONSERVATION COMMISSION, Intervenor-Appellee. *vs* **Respondent:** BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO, Plaintiff-Appellant. **Attorneys for *Amicus* Movant Colorado Petroleum Association** Keith D. Tooley (16243) Kathryn Haight (16969) WELBORN SULLIVAN MECK & TOOLEY, PC 821- 17th Street, Suite 500 Denver, Colorado 80202 Tel. 303-830-2500 – Fax. 303-832-2366 ktooley@wsmtlaw.com; khaight@wsmtlaw.com	☐COURT USE ONLY☐ Case No. 07 SC 75

MOTION OF COLORDO PETROLEUM ASSOCIATION FOR LEAVE TO APPEAR AND FILE ATTACHED BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONS FOR WRIT OF *CERTIORARI*

The Colorado Petroleum Association ("*CPA*") submits this Motion pursuant to Rules 29, 49(2) and (3), and 52, C.A.R., for permission to appear and file the attached brief of *amicus curiae* in support of the petitions for writ of *certiorari* filed by the Gunnison Energy Corporation ("*GEC*") and the Colorado Oil and Gas Conservation Commission ("*COGCC*") to review the December 14, 2006 decision of the Colorado Court of Appeals herein, Board of County Commissioners of Gunnison County v. BDS International, LLC, *et al.*, Case No. 04CA1679.

In BDS, the Court of Appeals erred by *not* holding that the temporary oil and gas regulations at issue approved by the Board of County Commissioners of Gunnison County ("*County*") (i) were preempted by the COGCC's state-wide oil and gas regulations adopted pursuant to legislative subject-matter mandate, and (ii) were preempted as to Federal lands by Federal law and regulations adopted by the U.S. Department of the Interior. The Court of Appeals failure to so hold in this case is contrary to congressional and legislative intent and established precedent. *See e.g.*, Board of County Comm'rs. v. Bowen/ Edwards, 830 P.2d 1045 (Colo. 1992); Town of Frederick v. North American Resources Co., 60 P.3d 764 (Colo. App. 2002).

As grounds for this Motion, the CPA, as proposed *amicus curiae*, states:

1. The CPA is a non-profit trade organization representing petroleum and natural gas producers before regional, State and Federal governmental entities in Colorado and the Rocky Mountain region. For over 55 years the CPA has advised and represented the interests of independent and major oil and gas companies – public and private – regarding legislative and regulatory operational compliance.

2. Members of the CPA own or operate oil and natural gas wells and related production facilities on Federal, State and fee lands in Gunnison and other Counties in Colorado. Their operations are subject to substantial regulation.

3. The CPA was founded in 1951 when the Oil and Gas Conservation Act ("*Conservation Act*") was enacted and the COGCC was established. Section 34-60-101, *et seq*., C.R.S. Pursuant thereto, the COGCC promulgated rules and regulations governing all aspects of oil and gas exploration and production. *See* 2 CCR 404-1, *et seq*. The COGCC has broad state-wide jurisdiction over all persons and property and has "the power to make and enforce rules, regulations, and orders" and to "do whatever may reasonably be necessary to carry out the provisions" of the Conservation Act. Section 34-60-105(1), C.R.S. (1981).

4. Similarly, pursuant to the Mineral Leasing Act of 1920, 41 Stat. 437, as amended, 30 U.S.C. § 181, *et seq*., (and other Federal laws), Federal lands are

subject to comprehensive Federal oil and gas regulations and to the jurisdiction of the U.S. Department of Interior and its agencies. *E.g.*, 43 CFR Parts 3160 through 3190, *et seq*. The objective of Federal oil and gas regulation is "to promote the orderly and efficient exploration, development and production of oil and gas." 43 CFR § 3160.0-4. In order to accomplish its objective, all operations conducted on a Federal oil and gas lease are subject to Federal jurisdiction and regulation by the Secretary of Interior. See 30 U.S.C. § 180 *et seq*.; 43 CFR § 3161.1(a). Also of some applicability are the oil and gas conservation laws of the State as evidenced by statute (e.g., § 34-60-120, C.R.S.; 30 U.S.C. § 184a), by contract,[1] or other Federal delegation of authority to the State.[2]

5. Neither Congress nor the Colorado Legislature has ever authorized county governments to regulate oil and gas operations as to matters within the express jurisdiction of State and Federal regulators.

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[1] *See e.g.*, 43 CFR § 3186.1, Model Federal Unit Agreement, ¶¶ 1, 16, 21, 24.

[2] *See e.g.*, 43 CFR § 3191.1-1 ("Governor or other authorized official of any eligible State may request … that the Director delegate … his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on Federal lands within the State …"); 43 CFR § 3191.2 ("Authority delegated to a State under this subpart shall not be redelegated.")

6. The CPA and its members have relied on the express grants of authority to State and Federal regulators, and on duly adopted rules and requirements, in pursuing their lawful business interests.

7. Significantly, many of today's plans for oil and gas exploration, drilling, and production were made before Gunnison County determined to adopt temporary county regulations. CPA members' business plans are based on detailed projections – *e.g.*, labor, equipment, geology, financing, market prices, and permitting, drilling, production, reporting, and reclamation expenses – all within the framework of State and Federal permitting and regulatory requirements. CPA members' investment-backed decisions are based on profitability calculations, and those calculations are time-based. Thus, the County's imposition of temporary regulations covering the same subject matter as State and Federal regulations necessarily impacts oil and gas producers and their employees.

8. The County's additional layer of regulation cannot be legally justified. The County's temporary regulations at issue are, as recognized in BDS, the subjects of express legislative grant to the COGCC and encompassed within specific COGCC regulations. As a result, such County regulations are subject to invalidation and preemption as a matter of law, based upon the correct application of precedent.

9. The CPA believes that, as an advisor and representative of a significant segment of Colorado's economy impacted by the decision in BDS, its appearance here as *amicus curiae* would have practical value to this Court in reviewing the decision in BDS and in reaching a just resolution.

10. The Court of Appeals' decision incorrectly implicates and invites additional regulatory activity by all of Colorado's sixty-four Counties. In the absence of this Court's review on *certiorari*, the effect of the unreviewed holding in BDS will unsettle the industry and render uncertain both the regulatory climate and the intendment of prior Colorado appellate decisions.

WHEREFORE, based on the foregoing, the Colorado Petroleum Association requests that this Motion for Leave to Appear and File the Attached Brief of *Amicus Curiae* in Support of Petitions for Writ of Certiorari be granted.

Respectfully submitted this 29th day of January, 2007.

WELBORN SULLIVAN MECK & TOOLEY, PC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 29th day of January, 2007, a true and correct copy of the foregoing MOTION OF COLORDO PETROLEUM ASSOCIATION FOR LEAVE TO APPEAR AND FILE ATTACHED BRIEF OF *AMICUS CURIAE* IN SUPPORT OF PETITIONS FOR WRIT OF *CERTIORARI* was placed in the United States mail, first-class postage prepaid and properly addressed, to:

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CERTIFICATION OF WORD COUNT: 2,637

COLORADO SUPREME COURT 2 East 14th Avenue, Fourth Floor Denver, Colorado 80203 Telephone 303-861-1111 Colorado Court of Appeals Hon. Daniel Taubman (concurring Vogt and Ney, JJ) (Case No. 04CA1679) District Court, Gunnison County, Colorado Hon. J. Steven Patrick, Judge (Case No. 03CV76) **Petitioners:** GUNNISON ENERGY CORPORATION, Defendant-Appellee; COLORADO OIL AND GAS CONSERVATION COMMISSION, Intervenor-Appellee. *vs* **Respondent:** BOARD OF COUNTY COMMISSIONERS OF GUNNISON COUNTY, COLORADO, Plaintiff-Appellant. **Attorneys for *Amicus* Colorado Petroleum Association** Keith D. Tooley (16243) Kathryn Haight (16969) WELBORN SULLIVAN MECK & TOOLEY, PC 821- 17th Street, Suite 500 Denver, Colorado 80202 Tel. 303-830-2500 – Fax. 303-832-2366 ktooley@wsmtlaw.com; khaight@wsmtlaw.com	□COURT USE ONLY□ Case No. 07 SC 75

BRIEF OF *AMICUS CURIAE* COLORDO PETROLEUM ASSOCIATION IN SUPPORT OF PETITIONS FOR WRIT OF *CERTIORARI*

The Colorado Petroleum Association ("*CPA*") submits this Brief of *Amicus Curiae* in support of the petitions for writ of *certiorari* filed by the Gunnison Energy Corporation ("*GEC*") and the Colorado Oil and Gas Conservation Commission ("*COGCC*") pursuant to C.A.R. 29, 49(2) and (3), and 52(b). The petitioners seek review of the decision of the Colorado Court of Appeals in Board of County Commissioners of Gunnison County v. BDS International, LLC, *et al.*, Case No. 04CA1679.

ISSUES

1. Did the Court of Appeals incorrectly apply precedent in ruling that the Colorado Oil and Gas Conservation Act ("*Conservation Act*") and the state-wide oil and gas regulations adopted by the COGCC thereunder did not preempt certain same-subject temporary oil and gas regulations enacted by the Board of County Commissioners of Gunnison County ("*County*")?

2. Did the Court of Appeals err as a matter of law in ruling that Congress's authorization of the U.S. Department of the Interior and its agencies to regulate oil and gas production on Federal lands did not preempt Gunnison County from exercising regulatory authority on federal lands?

JURISDICTION

This Court has jurisdiction pursuant to C.A.R. 29, 49(2) and (3), and 52. The Court of Appeals decision in BDS was issued on December 14, 2006. The time for seeking a rehearing expired December 28, 2006. Therefore, petitions for *certiorari* (and *amicus* briefs in support thereof) are timely filed on or before Monday, January 29, 2007, pursuant to C.A.R. 52(3).

STATEMENT OF THE CASE

The CPA adopts the statements of the case set forth in the petitions for writ of *certiorari*.

ARGUMENT

I. THE CONSERVATION ACT AND COGCC'S STATE-WIDE OIL AND GAS REGULATIONS PREEMPT, AS A MATTER OF LAW, THE SAME-SUBJECT TEMPORARY OIL AND GAS REGULATIONS ENACTED BY THE COUNTY.

In 1951 the Colorado Legislature enacted the Oil and Gas Conservation Act. See § 34-60-101, *et seq.*, C.R.S. Although amended many times over the years, the legislative declaration reflects its broad goals:

> (1) It is declared to be in the public interest to foster, encourage, and promote the development, production, and utilization of the natural resources of oil and gas in the state of Colorado in a manner consistent with protection of public health, safety, and welfare; to protect the public and private interests against the evils of waste . . . to permit each oil and gas pool in Colorado to produce up to its

> maximum efficient rate of production, subject to the prohibition of waste, and subject further to the enforcement and protection of the coequal and correlative rights of the owners and producers of a common source of oil and gas, so that each . . . may obtain a just and equitable share of production therefrom.

§ 34-60-102(1), C.R.S. (L.1994). The Conservation Act applies "to all lands within the State" subject only to certain limitations with respect to Federal lands. § 34-60-120, C.R.S. (L.1971).

The COGCC has promulgated rules and regulations governing all aspects of oil and gas exploration and production. *See* 2 CCR 404-1, *et seq.*[1] The COGCC has broad state-wide jurisdiction over all persons and property and has "the power to make and enforce rules, regulations, and orders" and to "do whatever may reasonably be necessary to carry out the provisions" of the Conservation Act. § 34-60-105(1), C.R.S. (L.1981).

The Conservation Act does not preclude local governments from charging fees for "inspection and monitoring for road damage and compliance with local fire codes, land use permit conditions, and local building codes." § 34-60-106(15), C.R.S. (L.2001). Assuming, *arguendo*, that the Conservation Act does not now fully occupy the remainder of the field of oil and gas regulation, the BDS Court's

[1] The COGCC regulations are available at: http://oil-gas.state.co.us/

decision not to find the County's temporary regulations operationally preempted evidences a misapprehension and misapplication of applicable law.

In upholding the preemption of certain County regulations, the BDS Court correctly recognized the rule that local governments may not attempt to regulate the "technical" aspects of oil and gas operations. Slip Op. pp. 6, 9. As this Court held in Board of County Commissioners v. Bowen/Edwards Associates, Inc., 830 P.2d 1045, 1058 (Colo.1992):

> There is no question that the efficient and equitable development and production of oil and gas resources within the state requires uniform regulation of the technical aspects of drilling, pumping, plugging, waste prevention, safety precautions, and environmental restoration. *Oil and gas production is closely tied to well location, with the result that the need for uniform regulation extends also to the location and spacing of wells.*

(Emphasis added.)

The BDS Court did not, however, apply the corollary rule that local governments may not regulate "the very same subjects" that are within the statutory rulemaking authority of the COGCC.[2] *See* Oborne v. Board of County Comm'rs of Douglas County, 764 P.2d 397, 402 (Colo.App.1988), *cert. denied*,

[2] Section 29-20-107 of the Land Use Act also prohibits a County from disregarding the limits of its authority. That statute provides that "where other procedural or substantive requirements for the planning for or regulation of the use of land are provided by law, such requirements shall control." See also Board of County Comm'rs of Douglas County v. Bainbridge, Inc., 929 P.2d 691, 707 (Colo.1997); Pennobscot, Inc. v. Board of County Comm'rs, 642 P.2d 915, 919 (Colo. 1982).

778 P.2d 1370 (Colo.1989) ("it was the intent of the General Assembly to vest in the Commission the sole authority to regulate those subjects addressed by the Act and to bar any local regulation addressing those subjects.") See Bowen/Edwards, 830 P.2d at 1060 *fn.*7 (discussing Oborne).[3]

The same-subject rule recognized in Oborne and in Bowen/Edwards was applied in Town of Frederick v. North American Resources Co., 60 P.3d 758, 763 (Colo.App. 2002). In Town of Frederick the Court of Appeals affirmed the trial court's invalidation of the Town's oil and gas ordinances concerning "setback, noise abatement, and visual impact" since they were subjects of specific COGCC regulation and, therefore, preempted.

In BDS, however, the Court of Appeals declined to preempt the County regulations at issue even though they were within the purview of the Conservation Act and the COGCC's rules. Although acknowledging that the County's regulations and provisions of the Conservation Act and COGCC's rules encompassed the same subjects, the Court did not find the County's regulations

[3] Finding that State preemption by reason of operational conflict can arise where a local regulation would materially impede or destroy the State interest, *id.* 830 P.2d at 1059, the Bowen/Edwards Court remanded the case before it to afford the plaintiffs the opportunity to identify the particular county regulations subject to preemption by the "state statutory or regulatory scheme." *Id.* at 1060.

preempted. Instead, the BDS Court remanded for an evidentiary hearing despite its recognition that (i) the County's regulations pertaining to water quality, soil erosion, wildlife, vegetation, and livestock were encompassed within § 34-60-106(2)(d)[4] and COGCC rules, and (ii) the County's regulations pertaining to cultural and historic resources, geologic hazards, wildfire protection, recreation impacts, and permit duration were within the COGCC's authority pursuant to § 34-60-106(11)[5] and subject to its rules.[6] In effect, the BDS Court held that if the

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[4] Section 34-60-106(2)(d), C.R.S. (L.1996), provides that the COGCC "has the authority to regulate": "(d) Oil and gas operations so as to prevent and mitigate significant adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations to the extent necessary to protect public health, safety, and welfare, taking into consideration cost-effectiveness and technical feasibility."

[5] Section 34-60-106(11), C.R.S (L.1986), provides: "The commission shall promulgate rules and regulations to protect the health, safety, and welfare of the general public in the conduct of oil and gas operations."

[6] The COGCC has enacted rules encompassing all aspects of its regulatory authority. 2 CCR 404-1. For example: permitting (303), notices (305, 507), required consultation with surface owners (306(a)), operator financial assurance requirements (304, 701 et seq), locating wells (318), complaint procedure (336), public hearings and procedures (500 et seq.), high density area procedures (603), setback requirements (603), location requirements (603e(6)), fencing (603), removal of trash (603e(10)), access roads (603e(14)), public highways and roads (334), designated outside recreation or activity areas (603d), berm construction (603e(12)), noise abatement (802), lighting (803), visual impact mitigation (804), fire protection and prevention (603e(8) and 606A), production facilities/equipment requirements (604), E&P waste management (901 et seq), site preparation and interim and final reclamation (1001 et seq.), unique geologic or archaeologic

County's temporary regulations merely mimic rather than contradict or differ from the COGCC's rules, they may survive even though they can be of no effect.

Requiring an evidentiary hearing under these circumstances sanctions the performance of a futile act. Because the County's temporary regulations relating to oil and gas issues are the subjects of State law and regulation, they are preempted. It matters not whether they are contrary or identical to the COGCC's rules, they are trumped by the specific grant of authority to the COGCC set forth in Section 34-60-106(d)(2) and (11) and the resulting regulation of those issues by COGCC rules. GEC's rights and obligations in recompleting already-permitted and regulated wells should not be further delayed.

II. CONGRESS' GRANT OF AUTHORITY TO THE U.S. DEPARTMENT OF THE INTERIOR TO REGULATE OIL AND GAS PRODUCTION ON FEDERAL LANDS PREEMPTS GUNNISON COUNTY FROM EXERCISING REGULATORY AUTHORITY WITH REGARD TO GEC'S FEDERAL LEASE.

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conditions (318c), livestock issues (325g, 902a, 908b5(c), 1002), wildlife (902a, 908b5(c)), soil (338, 910, 1001 et seq.), vegetation (1001 et seq.), water (325, 339, 910), site investigation and remediation workplan (340, 909), spills and releases (337, 906), pollution (324A), environmental response fund (310B), abandonment (319). Additionally, local public forums allow the COGCC to address issues such as "increased well density that relate to the environment or public health, safety, and welfare. Issues raised in the local public forum may include the following: (1) Impact to local infrastructure; (2) Impact to the environment; (3) Impact to wildlife; (4) Impact to ground water resources; (5) Potential reclamation impact; and (6) Other impact to public health, safety and welfare." Rule 508g.

At issue in BDS are natural gas wells subject to Federal leases located on Federal lands. Under the Mineral Leasing Act of 1920, 41 Stat. 437, as amended, 30 U.S.C. § 181, *et seq.* (and other Federal laws[7]), the Secretary of the Interior has been granted the right to lease federal lands for oil and gas exploration and production under such terms as the Secretary chooses consistent with applicable law. *See e.g.* 30 U.S.C. §§ 186, 188. Federal lands and mineral leases are therefore subject to comprehensive Federal oil and gas regulations and to the jurisdiction of the U.S. Department of Interior. *E.g.*, 43 CFR Parts 3160 through 3190, *et seq.*

The objective of Federal oil and gas regulation is "to promote the orderly and efficient exploration, development and production of oil and gas." 43 CFR § 3160.0-4. In order to accomplish its objective, all operations conducted on a Federal oil and gas lease are subject to Federal jurisdiction and regulation. *See* 30 U.S.C. § 180 *et seq.*; 43 CFR § 3161.1(a). Also of limited applicability are the oil and gas conservation laws of the appropriate state as evidenced by statute (*e.g.*, §

[7] *See* the National Forest Management Act, 16 U.S.C. § 1600, *et seq.*, and the Federal Land Policy Management Act, 43 U.S.C. § 1701, *et seq.*

34-60-120, C.R.S.; 30 U.S.C. § 184a), by agreement,[8] or other Federal delegation of authority to the State.[9]

The Court of Appeals erroneously rejected GEC's argument that local control over its wells is subject to implied Federal preemption. In so holding, the BDS Court mistakenly relied on 30 U.S.C. § 189 of the Mineral Leasing Act, which provides.

> The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter [Leases and Prospecting Permits]. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

(Emphasis added.)

The applicability of the first sentence of the statute is clear because it provides further evidence of the authority of the Secretary to promulgate rules and

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[8] *See e.g.*, 43 CFR § 3186.1, Model Federal Unit Agreement, ¶¶ 1, 16, 21, 24.

[9] *See e.g.*, 43 CFR § 3191.1-1 ("Governor or other authorized official of any eligible State may request … that the Director delegate … his/her authority and responsibility for inspection, enforcement and investigation on oil and gas leases on Federal lands within the State …"); 43 CFR § 3191.2 ("Authority delegated to a State under this subpart shall not be redelegated.")

regulations governing Federal leases. The second sentence is of no application and is the sentence upon which the BDS Court substantially relied. The second sentence, which states that the Act shall not be "construed or held to affect the rights of the states *or other local authority* ..." was contemporaneously construed in Mid-Northern Oil Co. v. Walker, 268 U.S. 45, 45 S.Ct. 440, 69 L.Ed. 841 (1925), as expressing a limited intent to "put beyond doubt the authority of the states [or local authorities] *to impose taxes* upon lessees in respect of their property." 268 U.S. at 49 (emphasis added). The particular objects described in the statute were held to constitute the "enumeration of taxable things" and to evidence "the intention of Congress that persons and corporations contracting with the United States under the act, should not, for that reason, be exempt from any form of state taxation otherwise lawful." 268 U.S. at 49-50.

Even more important is that no "local authority" in Colorado has ever been statutorily granted the authority to regulate Federal oil and gas leases. Pursuant to the Conservation Act, only the State through the COGCC, has been granted the express authority to regulate lands in the State, including certain Federal lands. § 34-60-120(1)(a) and (b). *See* also Kirkpatrick Oil & Gas Company v. United States, 675 F.2d 1122, 1126 (10th Cir.1982) ("fair interpretation of the Mineral Lands Leasing Act of 1920 requires us to hold that a state communitization order

may not bind federally owned land, or extend leases of such land within the unit, without the consent of the Secretary of the Interior.") No other statute or case relied on by the BDS Court appears to recognize the right of a local authority (rather than a state) to regulate Federal mineral leases.

In considering preemption, the goal of the County regulation must be analyzed in the context of the otherwise legitimate uses of Federal land. In Brubaker v. Board of County Commissioners, 652 P.2d 1050 (Colo.1982), this Court reversed the denial of a special use permit to conduct test drillings on unpatented mining claims located on Federal land. This Court found that the county's application of its zoning regulations effectively and improperly prohibited a use of federal lands authorized by federal law. In so holding, the Brubaker Court found apposite the decision in Ventura County v. Gulf Oil Corp., 601 F.2d 1080 (9th Cir. 1979), *aff'd mem.* 445 U.S. 947, 100 S.Ct. 1593, 63 L.Ed.2d 782 (1980), which is also applicable here.

In Ventura the county attempted, through its zoning ordinances, to prevent a federal oil lessee from conducting drilling operations on federal land until it obtained a permit from the county. In finding that the county's ordinances were preempted, the Ninth Circuit held that the Supremacy Clause precluded enforcement of the ordinances against the lessee because the "federal government

has authorized a specific use of federal lands, and Ventura cannot prohibit that use, *either temporarily or permanently*, in an attempt to substitute its judgment for that of Congress." 601 F.2d at 1084 (emphasis added.) Here, too, the Federal government has authorized GEC to perform its redrilling work on wells subject to Federal leases. Gunnison County cannot impose a regulation that would impede or second guess the deliberate decisions of the Federal government respecting its lands.

Based on this Court's decision and rationale in Brubaker and on the foregoing statutory and case law, the BDS Court erred in concluding that Gunnison County was not preempted from regulating GEC's Federal leases.

CONCLUSION

The Court of Appeals' decision incorrectly implicates and invites additional regulatory activity by all of Colorado's sixty-four Counties, not only with respect to State and fee lands, but also Federal lands. In the absence of this Court's review on *certiorari*, the effect of the unreviewed holding in BDS will unsettle the industry and render uncertain both the regulatory climate and the meaning of prior Colorado appellate decisions.

WHEREFORE, based on the foregoing, the Colorado Petroleum Association requests that the petitions for writ of *certiorari* filed by the Gunnison Energy

Corporation and the Colorado Oil and Gas Conservation Commission to review the December 14, 2006 decision in Board of County Commissioners of Gunnison County v. BDS International, LLC, *et al.*, Case No. 04CA1679, be granted.

Respectfully submitted this 29th day of January, 2007.

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By: _____
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Kathryn Haight
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CERTIFICATE OF SERVICE

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