

April 28, 2019

Delta Board of County Commissioners
County Courthouse
501 Palmer Street
Delta, CO 81416

**RE: Appeal of 3D Iron Point and Trail Gulch Seismic Application Approval
Application numbers SD-19-001 and SD-19-002**

Dear Delta County Commissioners,

Pursuant to Article IV, Section 3 of the Specific Development Regulations, Citizens for a Healthy Community (CHC) and Pat Stucker (hereinafter "Impacted Citizens") hereby appeal the administrative decision to approve the 3D Iron Point and Trail Gulch Seismic Applications dated April 15, 2019. Notice of the decision was made to the applicant and the County Commissioners on April 18, 2019.

Impacted Citizens have standing to appeal this decision as they have been aggrieved by the decision and have engaged in these applications over the last six months having submitted multiple comment letters on the Iron Point and Trail Gulch seismic projects, hereby incorporated by reference:

- October 11, 2018 –Letter requesting that Delta County enforce its regulations and submit scoping comments to the USFS.
- November 7, 2018—Letter to Delta County
- November 12, 2018—Comment letter on 3D Seismic Application—procedural issues
- November 13, 2018—Supplementary letter on 3D Seismic Application—incorporating USFS scoping letters of October 19 and October 26, 2018
- November 13, 2018—Comment letter --2D Seismic Application
- December 4, 2018—Letter to BoCC on USFS Trail Gulch application
- March 11, 2019—Letter to Planning Department on 3D Iron Point and Trail Gulch applications

We hereby appeal the administrative decision on the following grounds:

1. Violation of Regulation in Issuing Final Approval Prior to USFS Approval.
Appendix 1, C(3)(a) of the Specific Development Regulations (Oil and Gas Regulations) states that "An applicant is required to obtain federal or state permit approval(s) before the County can grant final approval". As of the date of the County approval of this application, the USFS has not approved the 3D Iron Point or 3D Trail Gulch applications. The County has failed to follow its own regulations in approving the portion of the applications that apply to federal lands. The County acknowledges

on page 3 of the Development Agreement that “the majority of the project will occur on federal lands. Delta County’s review of the project on federal lands is limited to offsite impacts. GELLC shall provide evidence that the project has been approved by the US Forest Service for that portion of the project on Federal Lands. In the event GELLC does not receive US Forest Service approval, GELLC shall notify Delta County and modify its application and this Development Agreement accordingly.” However, this is not stated in the Conditions of Approval. Even if it were explicitly stated in the Conditions of Approval, it is still a violation of Appendix 1, C(3)(a). The regulations clearly state that in this case, the USFS must approve prior to the County granting final approval. A modification clause and requiring the applicant to notify the County should the Forest Service not approve does not satisfy the obligation of the county to withhold final approval until the applicant obtains the required federal approval. The Development Agreement as it applies to operations that require federal approval must be vacated.

The County’s failure to follow its own regulations harms the public trust. The public’s confidence in the ability of the County to protect the public interest through its regulations becomes meaningless when the County violates a simple and clear directive such as this one. We acknowledge, that irrespective of the County’s failure here, the operator cannot begin operations on federal lands until the USFS has approved its application. We also acknowledge that the USFS states in its Draft Conditions of Approval that the applicant must obtain all state and local approvals prior to the Forest Service granting approval. Nonetheless, the County has violated its own governing regulations.

2. Failure to Ensure Irrigation Infrastructure Is Uninterrupted

Appendix 1 C(6)(a) states “Where irrigation and waste water ditches, pipelines, waterways or any other means of conveyance cross or adjoin the land proposed to be developed, adequate provisions shall be made to *ensure* [emphasis added] that their use, including maintenance thereof, will continue uninterrupted.” Protecting agriculture is the County’s priority. Yet, the County ignored vital information regarding geological hazards and the concerns of Terror Ditch and Reservoir Company (TDRC) and the families, farms, and wineries that depend upon Terror Creek water. Forty percent of the wineries in the North Fork Valley, which are an engine of economic growth, depend on Terror Creek water. In addition, hay, vegetable, hemp and lavender farms, a cow-calf operation, a Black-Welsh Mountain Sheep farm (rare genetic lineage), goat farm and dairy, and dozens of hobby farms and gardens depend on Terror Creek water. TDRC has explained to the County on numerous occasions, that the Terror Creek Dam is a Class 1 Hazardous Dam, and that the Reservoir and irrigation ditch and ditch bank are extremely vulnerable to landslide from the slightest vibration. There is an approximately 1.25 mile section of the TDRC ditch bank on BLM land that traverses extremely steep (sometimes as much as 75-80% slopes above and below the ditch road) and rocky terrain (hereinafter “risk zone”). This stretch of ditch road has approximately ten retaining walls, with an increasing number of boulders tumbling down and causing damage

every year for the last 15 years. Granular sand and rocks hold these boulders in place. The slightest artificially-induced vibration on top of erosion from wind, rain and wildlife can loosen these boulders over time. More importantly, upon inspecting the ditch bank this Spring, after the snowmelt, it has become evident that artificially-induced stresses could lead to destruction of the ditch road and retaining walls in the risk zone, which would be impossible to rebuild, interfering with maintenance of the ditch and conveyance of irrigation water. It could also result in a substantial loss of County tax revenue, which is tied to the businesses and livelihoods dependent on Terror Creek water.¹

The Development Agreement and County's Conditions of Approval (COA) fail to ensure that use and maintenance of the ditch remain uninterrupted because:

1. Damage is not defined. TDRC is concerned about the cumulative impact of artificially-induced vibrations over time, whereas the operator, according to a statement made at a Forest Service meeting on November 18, 2018 and in the meeting with TDRC on February 13, 2019, defines damage as physical change to structures that is immediately visible, generally within 24 hours. However, it is the cumulative impact of the slightest artificially-induced vibrations that are often immediately undetectable that can cause rocks and boulders to dislodge over time, and cause water to change direction or travel underground, thereby triggering a landslide.² Damage must be clearly defined to address the risks to the use and maintenance of the ditch.
 - a. The COA requiring GELLC to "immediately repair, remediate, or restore any irrigation infrastructure that is damaged as a direct result of this seismic project" is inadequate and must, at a minimum, be amended to include a time-frame that reflects the cumulative and long-term impact of artificially-induced vibrations from the seismic project. This time-frame needs to be a minimum of two years.
2. The COA does not provide for a means to determine causation of damage resulting from the seismic mapping operations. The COA must be amended, at a minimum, to require vibration sensors and monitoring in the risk zone, and an intermediary early warning location at the Confluence of East and West Terror Creek. Such sensors are necessary to determine impact at the time the shotholes are detonated and cumulatively as a result of multiple detonations, and to capture the unknown ground movement potential identified by the Colorado Geological Society in their letter to Delta County dated March 6, 2019. If vibration is picked up by these sensors then a COA is required that suspends further activity.

3. Failure to Adequately Protect Water Quality.

The Development Agreement and COA do not adequately protect groundwater when drilled shotholes and explosives encounter groundwater. As mentioned in earlier comment letters, the County must step in to protect groundwater when state and

¹ Declaration of Richard Rudin, April 27, 2019. Natasha Léger, Executive Director of CHC conducted a site visit of the risk zone on April 9, 2019.

² See TDRC comment letter dated March 19, 2019

federal regulatory gaps exist. The performance standard on Water Quality in Appendix 1, C(16) authorizes the County to require water quality sampling. The COA and Development Agreement failed to acknowledge potential groundwater contamination from the project encountering groundwater and failed to require sampling to establish baseline data to determine causality between the any potential contamination and defective bio-remediation of unexploded devices, TNT from explosives, and improper plugging of shotholes.

As stated in CHC's comment letter dated March 11, 2019, the BoCC Special Meeting to approve processing of the applications was improper, and created a situation in which the Commissioners improperly engaged in the merits and substance of the project, rendering this appeal process also improper. Nonetheless, Article IV, Section 3 requires appeal of the administrative decision to the County Commissioners.

We request a public hearing for this appeal pursuant to Article IV, Section 3.

Respectfully,



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Attachments:

- Richard Rudin Declaration, April 27, 2019
- Richard Rudin Comment Letter, March 19, 2019