



**BOARD OF COMMISSIONERS**  
HILARY COOPER KRIS HOLSTROM LANCE WARING

**REGULAR MEETING AGENDA**

**Wednesday, May 20, 2020**

335 West Colorado Ave, Telluride Colorado (WEST WING) Audio and Video

1. **9:30 am CALL TO ORDER - Zoom.us - Join a Meeting, Meeting Id # 534.180.495, Password 014764, audio 1-301-715-8592 or 1-253-215-878**
2. **REVIEW OF AGENDA - Public Comment on matters not on the Agenda.**
3. **CALENDAR REVIEW**
4. **9:35 am CONSENT AGENDA**
  - a. Ratification of Commissioners' signature on a comment letter concerning the 2020 Special Recreation Permit Applications.
  - b. Ratification of Commissioners' signature on an Environmental Assessment (EA) proposed pipeline and Fall Creek footbridge project analyses.
  - c. Approval of Minutes: April 16, 2020; April 17, 2020; April 20, 2020; April 21, 2020; April 22, 2020; April 23, 2020; April 24, 2020; and April 27, 2020.
  - d. Ratification of Chair's signature on County Veterans Service Officer's April 2020 Report.
  - e. Approval of scoping comments on the TRFO BLM Dawson Vegetation Treatment Project
  - f. Approval of Comments on Spring Creek Basin Herd Management Area Plan (HMAP) Revision
  - g. Other, as needed.
5. **9:40 am ADMINISTRATIVE MATTERS**
  - a. Presentation of Employee recognition for their years of service to San Miguel County: Todd Rector, 20 years; John Huebner, 20 years; Amy Erickson, 22 years, Ramona Rummel, 30 years, Michael Westcott 30 years; Jennifer Dinsmore, 20 years.  
10 mins            Mike Bordogna, County Manager
  - b. 9:45 am Update with Road and Bridge on the status of the High Country Passes.  
10 mins            Ryan Righetti, County Road and Bridge Superintendent
  - c. 9:55 am Discussion on mine closures (or planned) in the High Country and/or

the West End of San Miguel County.

25 mins            Jeff Litteral, Inactive Mines Reclamation Program, Colorado  
Division of Reclamation

- d. Consideration of Memorandum of Understanding regarding the Gondola Operating Requirements./MOTION

5 mins            Amy Markwell, County Attorney

- e. Other, as needed.

6. **10:30 am SOCIAL SERVICES MATTERS**

*(Board of Commissioners sitting as the San Miguel County Board of Social Services.)*

- a. Approval of Chair's signature on Social Services Department Balance Sheet March 2020, Earned Revenue and Expenditures March 2020, Expenditures through Electronic Benefit Transfers April 2020, Check Register for the Month of April 2020, County Allocation/MOE Report MAR-20, and 2020 Caseload Report/MOTION

20 mins            Carol Friedrich, County Social Services Director

- b. Other, as needed.

7. **10:50 am GOVERNMENT AFFAIRS/NATURAL RESOURCES**

- a. Consideration of INVESTMENT GRADE AUDIT REPORT AND ENERGY PERFORMANCE CONTRACTING PROJECT PROPOSAL CONTRACT with Siemens Industry, Inc.

10 mins            Lynn Padgett, Government Affairs/Natural Resource Director

- b. Discussion of West End Trails Proposal and public comment period open until May 31, 2020.

5 mins            Lynn Padgett, Government Affairs/Natural Resource Director

- c. Update on pending items and deadlines; other as needed

5 mins            Lynn Padgett, Government Affairs/Natural Resource Director

- d. Other, as needed.

8. **11:10 am PARKS AND OPEN SPACE MATTERS**

- a. Update with Julie Kolb, County Weed Manager.

15 mins

- b. Consideration of Chair's signature on an addendum to Intergovernmental Agreement for Noxious Weed Program Management./MOTION

5 mins            Janet Kask, County Parks and Open Space Director

- c. Other, as needed.

9. **11:30 am UPDATE WITH THE COUNTY MANAGER/Mike Bordogna (30mins)**

- a. Acknowledgment of County Managers' signature on an agreement with

storage of the Gyro Stand Cart.

- b. Acknowledgment of County Managers' signature on an agreement with the Diggity Dog Cart.
- c. Acknowledgment of County Managers' signature on an lease agreement with Telluride TV.
- d. Other, as needed.

10. **Lunch Break 12:00 pm - 12:30 pm**

*(Board of Commissioners sitting as the San Miguel County Housing Authority.)*

11. **12:30 pm UPDATE WITH PUBLIC HEALTH AND ENVIRONMENT**

*(Board of Commissioners sitting as the San Miguel County Board of Public Health and Environment.)*

- a. Update with Grace Franklin, Public Health Director  
15 mins
- b. Update with Henry Mitchell, County Emergency Management Coordinator  
15 mins
- c. Executive Session: Discussion of Public Health Communication and strategically moving forward, citation (4)(f).  

Mike Bordogna, County Manager and Grace Franklin, Public Health Director
- d. Other, as needed.

12. **1:00 pm ATTORNEY MATTERS/Amy Markwell, County Attorney**

*(Any of these items may involve an Executive Session C.R.S 24-6-402)*

- a. Brief Discussion on the COGCC new schedule Mission Change Rulemaking.
- b. Discussion and advisement on applying for Party Status for Mission Change on the 800,900, and 1200, series of rules./MOTION
- c. Potential Ext Session - Mark Hamilton (Holland and Hart) Water Opposition case with San Miguel Water Conservation District.
- d. Potential Executive Session: Exxon/Suncor Litigation, citation (4)(b).
- e. Update on Litigation
- f. Other, as needed.

13. **1:45 pm County Commissioner Updates and Public Comment on items on the Agenda.**

- a. Other, as needed

14. **2:00 pm ADJOURNMENT**

**NOTE: This agenda is subject to change, including the addition of items up to 24 hours in advance or the deletion of items at any time. All times are approximate. The County Manager reports may include administrative items not listed. Regular Meetings, Public Hearings, and Special Meetings are recorded, and ACTION MAY BE TAKEN ON ANY ITEM. Formal Action cannot be taken at Work Sessions. For further information, contact the County Administration office at 970-728-3174. If special accommodations are necessary per ADA, contact 970-728-3174 prior to the meeting.**

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AGENDA ITEM - 4.a.

**TITLE:**

Ratification of Commissioners' signature on a comment letter concerning the 2020 Special Recreation Permit Applications.

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

See attached letter.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
<b>Description:</b>			

**ATTACHMENTS:**

Description

Comment Letter

Upload Date

5/7/2020



## BOARD OF COMMISSIONERS

HILARY COOPER KRIS HOLSTROM LANCE WARING

May 7, 2020

Tatyana Sukharnikova  
Special Recreation Permit Administrator  
Bureau of Land Management  
Uncompahgre Field Office  
2465 S. Townsend Ave.  
Montrose, CO 81401  
Via Email: [tsukharnikova@blm.gov](mailto:tsukharnikova@blm.gov)

RE: 2020 Special Recreation Permit Applications

Dear Tatyana,

San Miguel County reviewed the Special Recreation Permit (SRP) applications that appear to intersect lands managed by UFO BLM within the County. We are pleased to see permits that involve guided photography tours and interpretive hikes as low impacts activities. Colorado Parks and Wildlife Game Management Units (GMU) 61 and 70 intersect San Miguel County.

Designated critical habitat of the threatened Gunnison sage grouse lies within GMUs 61 and 70. UFO BLM land in Beaver Canyon, Beaver Mesa, and Hamilton Mesa abuts or intersects GuSG critical habitat. UFO BLM lands are within 2-miles of active leks in the Beaver Creek-Beaver Mesa-Saltado Creek areas. We understand that SRPs are "day-use" only, but we ask that the BLM place appropriate conditions on SRP activities to ensure that there are no negative impacts from human presence or noise to the species and their habitat, especially during mating, nesting, and brood-rearing periods.

Thank you for providing the opportunity to comment.

Sincerely,

Hilary Cooper, Chair

Lance Waring, Vice Chair

Kris Holstrom, Commissioner

cc: File



AGENDA ITEM - 4.b.

**TITLE:**

Ratification of Commissioners' signature on an Environmental Assessment (EA) proposed pipeline and Fall Creek footbridge project analyses.

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

See attached document.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
<b>Description:</b>			

**ATTACHMENTS:**

Description  
Proposed pipeline and fall creek footbridge

Upload Date  
5/7/2020



## BOARD OF COMMISSIONERS

HILARY COOPER KRIS HOLSTROM LANCE WARING

May 7, 2020

Jana Moe  
Realty Specialist  
Bureau of Land Management  
Uncompahgre Field Office  
2465 S. Townsend Ave.  
Montrose, CO 81401  
Via Email: [jpmoe@blm.gov](mailto:jpmoe@blm.gov)

RE: Proposed pipeline and Fall Creek footbridge project analyses

Dear Jana,

Thank you for reaching out to San Miguel County regarding two potential projects being considered by the Uncompahgre Field Office.

Regarding the project that would bury the existing gas pipeline on slopes of the San Miguel River Canyon near Old Placerville, we appreciate the opportunity to provide the following considerations for the Environmental Assessment (EA).

- Public input should be accommodated at the front end of this process and before a final decision for this project. We understand from the BLM staff that the draft EA is targeted for the end of May followed by public comment. We recommend a minimum 30-day public comment period to allow time for review and discussion or action during public meetings.
- The project area is within the Unaweep-Tabeguache Scenic Byway. We ask that the Scenic Byway committee's input be strongly considered. The EA should consider alternatives that mitigate or eliminate impacts on the unique and high-quality visual resources and comply with guidance from the Scenic Byway process.
- The project proposes to "protect" a small existing pipeline on slopes over 50 percent within a recommended Wild and Scenic River corridor, Area of Critical Environmental Concern, Special Recreation Management Area, and other special designated lands under the 2020 Resource Management Plan. How will the alternatives consider these designations?

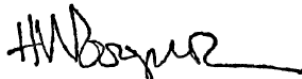
- The project proposes to bury the pipeline in shallow soils with rock outcrops on slopes greater than 50 percent and in a debris-flow prone area. When loose material and rock is mobilized by intense monsoonal precipitation events, it often flows across Highway 145, creating a safety concern and impacts from road closures and debris flow cleanup. The alternatives should consider whether the risk from ground disturbance outweighs the benefits of “protecting” the pipeline by burying it in such conditions. If erosion scars develop and expand it will lead to long-term impacts to visual resources. The EA should include a discussion of why boring has been ruled out as an option.
- A description of the proposed duration and timing of construction activities should be provided. Potential impacts to the traveling public including road or lane closures, must be provided. The COVID-19 crisis has greatly restricted our local economy and we do not want traffic closures to add to those impacts. We ask that the timing of construction and site management be coordinated with local public health orders.

Thank you for notifying the County about a proposed private footbridge over Fall Creek to allow a landowner to access an existing cabin. We offer the following comments:

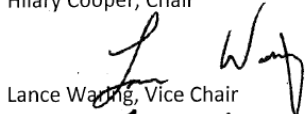
- This project should be coordinated through the San Miguel County Planning Department before providing an easement. Kaye Simonson, County Planning Director, can be reached at [kayes@sanmiguelcountyco.gov](mailto:kayes@sanmiguelcountyco.gov) or (970)369-5436.
- The private parcel of interest is currently unimproved according to County records, and any existing or proposed cabin would need the appropriate Planning and Building Department permits in advance. We do not have any pending applications for building improvements on this parcel.
- Fall Creek is prone to flooding and debris flows from snowmelt and summer monsoonal precipitation events. Fall Creek’s channel appears to vary between 30 and 60 feet in width in the project vicinity. Constructing a bridge that would be engineered to accommodate the dynamic conditions of Fall Creek is critical.

Thank you for reaching out to San Miguel County. We appreciate being able to work collaboratively with the UFO BLM on the development of these projects and emphasize the importance of public comment opportunities for all BLM actions.

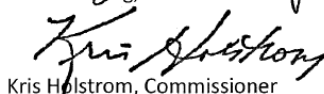
Sincerely,



Hilary Cooper, Chair



Lance Waring, Vice Chair



Kris Holstrom, Commissioner



AGENDA ITEM - 4.c.

**TITLE:**

Approval of Minutes: April 16, 2020; April 17, 2020; April 20, 2020; April 21, 2020; April 22, 2020; April 23, 2020; April 24, 2020; and April 27, 2020.

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
<b>Description:</b>			

**ATTACHMENTS:**

Description	Upload Date
Draft Minutes 4.16.2020	5/15/2020
Draft Minutes 4.17.2020	5/15/2020
Draft Minutes 4.20.2020	5/15/2020
Draft Minutes 4.21.2020	5/15/2020
Draft Minutes 4.22.2020	5/15/2020
Draft Minutes 4.23.2020	5/15/2020

Draft Minutes 4.24.2020

Draft Minutes 4.27.2020

5/15/2020

5/15/2020

# SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

## SPECIAL MEETING MINUTES

Thursday, April 16, 2020

335 West Colorado Ave, Telluride Colorado (WEST WING) AUDIO ONLY  
Telluride, Colorado

Present: Hilary Cooper, Chair  
Lance Waring, Vice-Chair  
Kris Holstrom, Commissioner

Staff Present: Mike Bordogna, County Manager  
Grace Franklin, County Public Health Director  
Amy Markwell, County Attorney  
Carmen Warfield, Clerk to the Board  
John Huebner, Senior Planner

Others Present via phone: Todd Brown, Town of Telluride  
Ross Herzog, Town of Telluride  
Delanie Young, Town of Telluride  
Kim Montgomery, Town of Mountain Village  
Laila Benitez, Town of Mountain Village  
Katherine Warren, Town of Mountain Village  
Kieffer Parrino, Town of Norwood  
Ken Haynes, Town of Ophir  
Megan Eno, Norwood District Ranger  
Doug Tooley, San Miguel County resident

1. **CALL TO ORDER.**

12:46 p.m.

2. **ADMINISTRATIVE MATTERS**

- a. Discussion and update with the San Miguel County Stakeholders and Commissioners on the virus outbreak.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director; Megan Eno, Norwood District Ranger; Henry Mitchell, Emergency Manager

Note: 1:28 p.m. Grace Franklin left the meeting.

1:43 p.m. Recessed.

1:46 p.m. Reconvened.

Note: Henry Mitchell left the meeting.

- b. Potential Executive Session: Continued discussion on the need for additional staffing for communication for the Board of County Commissioners, citation (4)(b).

**MOTION** by Lance Waring to go into executive session to discuss the need for additional staffing and communication for the Board of County Commissioners, citation (4)(b). **SECONDED** by Kris Holstrom. **PASSED 3-0.**

Note: Susan Lilly, Public Information Officer, attended part of this Executive Session, 2:01 p.m. arrived; 2:31 p.m. left the meeting.

1:46 p.m. Recessed.

2:52 p.m. Reconvened.

**MOTION** by Lance Waring to come out of executive session. **SECONDED** by Kris Holstrom. **PASSED 3-0.**

4. **ADJOURNMENT**

2:55 p.m.



20200416-BOCC-Audio

Respectfully submitted,

\_\_\_\_\_  
Carmen Warfield, Chief Deputy Clerk

Approved .

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Hilary Cooper, Chair

ATTEST:

\_\_\_\_\_  
Mike Bordogna, County Manager

**SAN MIGUEL COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING MINUTES**

**Friday, April 17, 2020**

335 West Colorado Ave, Telluride Colorado (WEST WING) AUDIO ONLY  
Telluride, Colorado

Present: Hilary Cooper, Chair  
Lance Waring, Vice-Chair  
Kris Holstrom, Commissioner

Staff Present: Mike Bordogna, County Manager  
Grace Franklin, County Public Health Director  
Amy Markwell, County Attorney  
John Huebner, Senior Planner

Others Present via phone: Todd Brown, Town of Telluride  
Ross Herzog, Town of Telluride  
Adrienne Christy, Town of Telluride  
Laila Benitez, Town of Mountain Village  
Katherine Warren, Town of Mountain Village  
Kieffer Parrino, Town of Norwood  
Karen Winkelman, Telluride Medical Center

1. **CALL TO ORDER.**

12:50 p.m.

2. **ADMINISTRATIVE MATTERS**

- a. Discussion and update with the San Miguel County Stakeholders and Commissioners on the virus outbreak.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director

- b. Executive Session: Continued discussion regarding UBI sample storage and validation, citation (4)(c).

**MOTION** by Lance Waring to go into executive session to have a continued discussion regarding UBI sample storage and validation, citation (4)(c). **SECONDED** by Kris Holstrom. **PASSED 3-0.**

1:08 p.m. Recessed.

1:58 p.m. Reconvened.

**MOTION** by Lance Waring to adjourn the meeting. **SECONDED** by Kris Holstrom. **PASSED 3-0.**

4. **ADJOURNMENT**

1:39 p.m.

20200417-BOCC-Audio

Respectfully submitted,

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Carmen Warfield, Chief Deputy Clerk

Approved .

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

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Hilary Cooper, Chair

ATTEST:

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Mike Bordogna, County Manager

**SAN MIGUEL COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING MINUTES**

**Monday, April 20, 2020**

335 West Colorado Ave, Telluride Colorado (WEST WING) AUDIO ONLY  
Telluride, Colorado

Present: Hilary Cooper, Chair  
Lance Waring, Vice-Chair  
Kris Holstrom, Commissioner

Staff Present: Mike Bordogna, County Manager  
Grace Franklin, County Public Health Director  
Amy Markwell, County Attorney  
Carmen Warfield, Chief Deputy Clerk  
Carol Friedrich, Social Services Director  
Todd Herman, County Building Official

Others Present via phone: Todd Brown, Town of Telluride  
John Bennett, Town of Telluride  
Ross Herzog, Town of Telluride  
Ron Quarles, Town of Telluride  
Kim Montgomery, Town of Mountain Village  
Laila Benitez, Town of Mountain Village  
Ken Haynes, Town of Ophir  
Kieffer Parrino, Town of Norwood  
Doug Tooley, San Miguel County resident

1. **CALL TO ORDER.**  
12:47 p.m.

2. **ADMINISTRATIVE MATTERS**

- a. Discussion and update with the San Miguel County Stakeholders and Commissioners on the virus outbreak.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director

- b. Discussion on Construction guidelines within the Towns and throughout San Miguel County.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director; Todd Herman, County Building Official

2:57 p.m. Recessed.  
3:06 p.m. Reconvened.

- c. Discussion on the workings of the Recovery Work Groups in San Miguel County.

Present: Carol Friedrich, Dept of Social Services Director

**MOTION** by Kris Holsrom to adjourn the meeting. **SECONDED** by Lance Waring.  
**PASSED 3-0.**

4. **ADJOURNMENT**  
3:53 p.m.

20200420-BOCC-Audio

Respectfully submitted,

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Carmen Warfield, Chief Deputy Clerk

Approved .

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Hilary Cooper, Chair

ATTEST:

\_\_\_\_\_  
Mike Bordogna, County Manager

**SAN MIGUEL COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING MINUTES**

**Tuesday, April 21, 2020**

335 West Colorado Ave, Telluride Colorado (WEST WING) AUDIO ONLY  
Telluride, Colorado

Present: Hilary Cooper, Chair  
Lance Waring, Vice-Chair  
Kris Holstrom, Commissioner, via phone

Staff Present: Mike Bordogna, County Manager  
Grace Franklin, County Public Health Director  
Amy Markwell, County Attorney  
Carmen Warfield, Chief Deputy Clerk  
Dr. Sharon Grundy, County Public Officer

Others Present via phone: Kim Montgomery, Town of Mountain Village  
Kieffer Parrino, Town of Norwood  
Doug Tooley, San Miguel County resident

1. **CALL TO ORDER.**  
12:49 p.m.

2. **ADMINISTRATIVE MATTERS**  
a. Discussion and update with the San Miguel County Stakeholders and Commissioners on the virus outbreak.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director; Dr. Sharon Grundy, County Public Medical Officer

**MOTION** by Lance Waring to adjourn the meeting. **SECONDED** by Kris Holstrom.  
**PASSED 3-0.**

4. **ADJOURNMENT**  
3:53 p.m.

20200421-BOCC-Audio

Respectfully submitted,

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Carmen Warfield, Chief Deputy Clerk

Approved .

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

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Hilary Cooper, Chair

ATTEST:

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Mike Bordogna, County Manager

**SAN MIGUEL COUNTY BOARD OF COMMISSIONERS  
MINUTES**

**Wednesday, April 22, 2020**

335 West Colorado Ave, Telluride Colorado (WEST WING) AUDIO ONLY

Present:               Hilary Cooper, Chair  
                          Lance Waring, Vice-chair  
                          Kris Holstrom, Commissioner

Staff Present:       Mike Bordogna, County Manager  
                          Amy Markwell, County Attorney  
                          Carmen Warfield, Chief Deputy Clerk

**1. CALL TO ORDER**

9:31 a.m.

**2. REVIEW OF AGENDA**

**3. CALENDAR REVIEW**

**4. CONSENT AGENDA**

- a. Approval of Minutes: February 19, 2020, March 10, 2020, March 13, 2020, March 16, 2020, March 17, 2020, March 24, 2020, March 25, 2020, March 26, 2020, March 27, 2020, March 30, 2020, March 31, 2020, April 2, 2020, April 3, 2020, April 6, 2020.
- b. Acceptance of the Public Trustee Report for the First Quarter 2020, January 1, 2020 through March 31, 2020. (ATTACHMENT I)
- c. Approval of the Sheriff's office to appoint John Bockrath and Melissa Tuohy to a four-year term on the Western Regional EMS and Trauma Advisory Council (WRETAC).
- d. Acceptance of the December 2019, January 2020, and February 2020, Road Report
- e. Authorization of February and March 2020 Payroll and Vendor payments. (ATTACHMENT II)
- f. Ratification of Chair's signature on the County Veterans Service Officers' monthly report for March 2020.
- g. Approval of Chair's signature on a letter of support on behalf of Tri-County Health Network to continue the placement of Americorps Vista volunteers.
- h. Late Addition: Approval of Chair's signature on a grant application for \$15,000 for the Norwood Fire Department to get need equipment for their fire department and AED's for the Road and Bridge Department.

**MOTION** by Kris Holstrom to approve the consent agenda with item 4.g. corrected to a plural wording format. **SECONDED** by Lance Waring. **PASSED 3-0.**

**5. ADMINISTRATIVE MATTERS**

- a. Discussion and update with the San Miguel County Stakeholders and Commissioners on the virus outbreak.

Present: Mike Bordogna, County Manager

**12. Public Comments and Commissioner Updates**

- a. Acknowledgment of public letters received or commented referenced items on the agenda.
- ~~b. Consideration of joining other elected officials to support the Land and Water Conservation Fund letter for the next stimulus package.~~
- c. Lance Waring – Update on the 2020 Multi-Modal Options Fund  
Kris Holstrom – Delta/Montrose Recovery Group  
Hilary Cooper – Resources online for assistance for pet food and help to care for an animal if the owner cannot, Oximeters

**6. PLANNING MATTERS**

- a. Consideration of an Annual Review: Spitfire Realty, LLC Special Use Permit to allow restricted use of two Aircraft Landing Areas located on 418-acre parcel within T44N, R10W, Hastings Mesa.

Present: John Huebner, Senior Planner; Kaye Simonson, Planning Director; Brad Switzer, representative for the applicant

**MOTION** by Lance Waring to approve the recommendation [that no changes are made to the terms or conditions of the Spitfire Realty LLC Special Use Permit, based on the finding that Spitfire has complied with the Special Use Permit terms and conditions of approval, and to add a second annual review by the CPC and BOCC after the second full calendar year of operation February 2021]. **SECONDED** by Kris Holstrom. **PASSED 3-0.**

7. **SOCIAL SERVICES MATTERS**

*(Board of Commissioners sitting as the San Miguel County Board of Social Services.)*

- a. Approval of Chair's signature on Social Services Department Balance Sheet February 2020, Earned Revenue and Expenditures February 2020, Expenditures through Electronic Benefit Transfers March 2020, Check Register for the Month of March 2020, County Allocation/MOE Report FEB- 20, and 2020 Caseload Report.

Present: Carol Friedrich, County Social Services Director

**MOTION** by Kris Holstrom to approve the report as presented. **SECONDED** by Lance Waring. **PASSED 3-0.**

- b. Other, as needed.
  1. Update on SNAP benefits
  2. Update on the trending benefits from February through March 2020 is a 250% increase in caseloads
  3. Emergency Disaster TANF
  4. Update on Stimulus Checks - individuals in arrears in child support will see a reduction in their stimulus check

10:38 a.m. Recessed.

10:47 a.m. Reconvened.

8. **GOVERNMENT AFFAIRS/NATURAL RESOURCES**

- a. EPC Selection Recommendation.

Present: Lynn Padgett, Government Affairs/Natural Resource Director

**MOTION** by Lance Waring to approve staff to move forward with the EPC recommendation of [Siemens] drafting a contract for execution. **SECONDED** by Kris Holstrom. **PASSED 3-0.**

- b. Discussion on the 2020 Special Recreation Permit Applications through the BLM (request for public comment).

Present: Lynn Padgett, Government Affairs/Natural Resource Director

Staff direction: To draft comments and send them to the Commissioners for review.

- c. Other, as needed
  1. Proposed Footbridge in the Fall Creek area
  2. Proposed Pipeline – Scheduled for further discussion on Friday, April 24, 2020.

9. **ADMINISTRATIVE MATTERS – continued**

- d. Presentation of the "Dashboard" information site prepared for the San Miguel County website.

Present: Heather Widlund, County GIS Coordinator, via zoom; Grace Franklin, Public Health Director

- b. Other, as needed.
  1. Update on educating the public on best practices.

Present: Grace Franklin, Public Health Director



10. **UPDATE WITH THE COUNTY MANAGER**

- a. Consideration of approval of the Construction guidelines within the Towns and throughout San Miguel County.

Present: Mike Bordogna, County Manager; Grace Franklin, Public Health Director; Todd Herman, Building official, via zoom

Note: Final approval of drafted guidelines was completed on Thursday, April 23, 2020.

12:54 p.m. Recessed.

1:11 p.m. Reconvened.

13. **UPDATE WITH PUBLIC HEALTH AND ENVIRONMENT**

*(Board of Commissioners sitting as the San Miguel County Board of Public Health and Environment.)*

- a. Update with Henry Mitchell, County Emergency Management Coordinator.

Presenter: Henry Mitchell, Emergency Manager; Carol Friedrich, Director of Social Services; Grace Franklin, Public Health Director

9. **ADMINISTRATIVE MATTERS - continued**

- a. Consideration of the Board supporting a letter from the Town of Ophir on the Swamp Canyon Mine closures.

Present: Mike Bordogna, County Manager

Board Consensus: to be in support of comments but do not send our own [written] support letter.

- b. ~~Discussion concerning the upcoming summer Recreation Ranger programs.~~
- c. Consideration of Chair's signature on a 5-year renewal agreement with the USFS to manage the Alpine areas of the Uncompahgre National Forest within San Miguel County.

Present: Janet Kask, Parks and Open Space Director; via zoom

**MOTION** by Kris Holstrom to approve the collection agreement as specified. **SECONDED** by Lance Waring. **PASSED 3-0.**

11. **ATTORNEY MATTERS**

(Any of these items may involve an Executive Session C.R.S 24-6-402)

- b. Update on Litigation.
  1. Request outside council to assist with a civil rights violation with the Public Health Orders.
- a. Potential Ext Session: Discussion to revisit the request to join the "Notice of Intent" from Rocky Mountain Wild, citation (4)(e).

Present: Amy Markwell, County Attorney

**MOTION** by Kris Holstrom to go into Executive Session to discuss a request to join the "Notice of Intent" from Rocky Mountain Wild, citation (4)(e). **SECONDED** by Lance Waring. **PASSED 3-0.**

2:27 p.m. Recessed.

2:32 p.m. Reconvened.

**MOTION** by Kris Holstrom to come out of Executive Session. **SECONDED** by Lance Waring. **PASSED 3-0.**

Staff direction: Direction made outside of Executive Session to sign a letter of intent for the ACDEC ongoing issues.

**MOTION** by Kris Holstrom to adjourn the meeting. **SECONDED** by Lance Waring. **PASSED 3-0.**

14. **ADJOURNMENT**  
2:32 p.m.

20200422-BOCC-Audio

Respectfully submitted,

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Carmen Warfield, Chief Deputy Clerk

Approved .

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

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Hilary Cooper, Chair

ATTEST:

---

Mike Bordogna, County Manager

**SAN MIGUEL COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING MINUTES**

**Thursday, April 23, 2020**

335 West Colorado Ave, Telluride Colorado (WEST WING) AUDIO ONLY  
Telluride, Colorado

Present: Hilary Cooper, Chair  
Lance Waring, Vice-Chair  
Kris Holstrom, Commissioner

Staff Present: Mike Bordogna, County Manager  
Grace Franklin, County Public Health Director  
Amy Markwell, County Attorney  
Carmen Warfield, Chief Deputy Clerk

Others Present via phone: Kieffer Parrino, Town of Norwood

1. **CALL TO ORDER.**

12:45 p.m.

2. **ADMINISTRATIVE MATTERS**

- a. Discussion and update with the San Miguel County Stakeholders and Commissioners on the virus outbreak.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director

- b. Discussion with the Public Health Director concerning the process of contact tracing.

Present: Grace Franklin, County Public Health Director

- c. Consideration of approval for the Construction guidelines within the Towns and throughout San Miguel County.

Present: Mike Bordogna, County Manager; Kaye Simonson, County Planning Director; Todd Herman, Building Official

**MOTION** by Kris Holstrom to authorize recommendations allowing the [implementation] of the construction guidelines. **SECONDED** by Lance Waring. **PASSED 3-0.**

**MOTION** by Kris Holstrom to authorize the Public Health Director to allow the [implementation] of the construction guidelines as presented. **SECONDED** by Lance Waring. **PASSED 3-0.**

- d. Approval of Chair's signature on an agreement for professional services with Marketing Telluride Inc. d/b/a Telluride Tourism Board to assist with communication services concerning the COVID-19 as defined in the agreement.

Present: Mike Bordogna, County Manager

**MOTION** by Lance Waring to approve the agreement for professional services with Marketing Telluride with the addition of the statement that the commissioners will have the "final say."  
**SECONDED** by Kris Holstrom. **PASSED 3-0.**

2:22 p.m. Recessed.

2:37 p.m. Reconvened.

- e. Executive Session: Update with the Public Health Director concerning new public health orders, citation (4)(b).

Present: Grace Franklin, Public Health Director

**Motion** by Lance Waring to go into Executive session updating the Public Health Director concerning new public health orders, citation (4)(b). **SECONDED** by Kris Holstrom. **PASSED 3-0.**

2:37 p.m. Recessed.  
3:57 p.m. Reconved.

**MOTION** by Lance Waring to come out of Executive Session. **SECONDED** by Kris Holstrom. **PASSED 3-0.**

**MOTION** by Kris Holstrom to adjourn the meeting. **SECONDED** by Lance Waring. **PASSED 3-0.**

3. **ADJOURNMENT**  
3:57 p.m.

20200423-BOCC-Audio

Respectfully submitted,

\_\_\_\_\_  
Carmen Warfield, Chief Deputy Clerk

Approved .

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Hilary Cooper, Chair

ATTEST:

\_\_\_\_\_  
Mike Bordogna, County Manager

**SAN MIGUEL COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING MINUTES**

**Friday, April 24, 2020**

335 West Colorado Ave, Telluride Colorado (WEST WING) AUDIO ONLY  
Telluride, Colorado

Present: Hilary Cooper, Chair  
Lance Waring, Vice-Chair  
Kris Holstrom, Commissioner

Staff Present: Mike Bordogna, County Manager  
Grace Franklin, County Public Health Director  
Amy Markwell, County Attorney  
Henry Mitchell, Emergency Manager  
John Huebner, Senior Planner

Others Present via phone: Todd Brown, Town of Telluride  
Ross Herzog, Town of Telluride  
Kim Montgomery, Town of Mountain Village  
Kieffer Parrino, Town of Norwood

1. **CALL TO ORDER.**  
12:45 p.m.

2. **ADMINISTRATIVE MATTERS**

- a. Discussion and update with the San Miguel County Stakeholders and Commissioners on the virus outbreak.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director

- b. Continued discussion on the draft recovery plan with a review of an Organizational Chart for the Short and Long term recovery needs.

Present: Henry Mitchell, Emergency Manager

- d. Review of a draft job description for a proposed new position COVID Public Health Education.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director

- c. Discussion on comments concerning a proposed pipeline “protection” in Old Placerville in the San Miguel County Canyon.

Present: Lynn Padgett, Government Affairs/Natural Resources Director, via phone

Board Direction to have Lynn Padgett draft a letter for BOCC consideration at a future meeting.

- e. Discussion on replying to Constituents via email. – Note: Continued to a future meeting.

**MOTION** by Kris Holstrom to adjourn the meeting. **SECONDED** by Lance Waring.  
**PASSED 3-0.**

3. **ADJOURNMENT**  
2:12 p.m.

20200424-BOCC-Audio

Respectfully submitted,

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Carmen Warfield, Chief Deputy Clerk

Approved .

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
Hilary Cooper, Chair

ATTEST:

\_\_\_\_\_  
Mike Bordogna, County Manager

**SAN MIGUEL COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING MINUTES**

**Monday, April 27, 2020**

335 West Colorado Ave, Telluride Colorado (WEST WING) AUDIO ONLY  
Telluride, Colorado

Present: Hilary Cooper, Chair  
Lance Waring, Vice-Chair, via phone  
Kris Holstrom, Commissioner, via phone

Staff Present: Mike Bordogna, County Manager  
Grace Franklin, County Public Health Director  
Amy Markwell, County Attorney  
Carmen Warfield, Chief Deputy Clerk

Others Present via phone: Todd Brown, Town of Telluride  
Ross Herzog, Town of Telluride  
Kim Montgomery, Town of Mountain Village  
Kieffer Parrino, Town of Norwood

1. **CALL TO ORDER.**  
12:45 p.m.

2. **ADMINISTRATIVE MATTERS**

a. Discussion and update with the San Miguel County Stakeholders and Commissioners on the virus outbreak.

Present: Mike Bordogna, County Manager, Grace Franklin, County Public Health Director

b. Discussion with CDOT on construction safety for their staff and our residents.

Present: Mike Bordogna, County Manager, Nancy Shanks, CDOT

**MOTION** by Kris Holstrom to adjourn the meeting. **SECONDED** by Lance Waring.  
**PASSED 3-0.**

3. **ADJOURNMENT**  
1:52 p.m.

20200427-BOCC-Audio

Respectfully submitted,

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Carmen Warfield, Chief Deputy Clerk

Approved .

SAN MIGUEL COUNTY BOARD OF COMMISSIONERS

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Hilary Cooper, Chair

ATTEST:

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Mike Bordogna, County Manager



AGENDA ITEM - 4.d.

**TITLE:**

Ratification of Chair's signature on County Veterans Service Officer's April 2020 Report.

**Presented by:**

**Time needed:**

**PREPARED BY:**

Jim Botenhagen, VSO Officer

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

Jim has been on weekly web meeting with the Colorado Division of Veteran's Affairs. These calls have been helpful as the revolving Covid 19 virus continues to change. Continued assistance with veterans concerning the lengthy paperwork required for any request.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
<b>Description:</b>			

**ATTACHMENTS:**

Description

Veterans Report April 2020

Upload Date

5/12/2020





**Colorado Department of Military and Veterans Affairs**  
**County Veterans Service Officers Monthly Report and Certification of Pay**

County of San Miguel Month of APR. 2020

GENERAL INFORMATION		REQUEST FOR MEDICAL RECORDS	
Telephone Calls	<b>12</b>	21-4142 & 21-4142a	
Office Visits		MILITARY RECORDS/CORRECTIONS	
Home Visits		SF180	
Outreach Visits		DD149	
Community Events		DD293	
Request for Medal		NA13075	
Operation Recognition		Other	
Correspondence Rec'd		NSC PENSION	
Correspondence Written		21-527EZ	
Info/Referral/Inquiries	<b>1</b>	21-8416	
VCAA Notice		WIDOWS PENSION	
State Benefits		21-534EZ	
Income Verifications		21-8416	
NEW CLAIMS INITIATED		DIC	
21-22 CVA		21-5234EZ	
21-22 others		WAIVERS/COMPROMISE	
SC ENTITLEMENT		21-5655	
21-526EZ		APPEALS	
21-0966 Informal		21-0985 NOD	
21-4138		VA Form 9	
21-526EZ Reinstate		20-0995	
21-526EZ IU		20-0996	
21-8940 IU		10182	

SC ENTITLEMENT CONTINUED		INSURANCE CLAIMS	
21-4192 IU Employer		29-357	
21-4138 SMC		29-4364	
21-686c Dependency		29-336 Beneficiary	
21-674 School Attendance		29-4125 Lump Sum	
VA HEALTHCARE		VTF REQUESTS	
10-10EZ		Rental Assistance	
CHAMPVA		Utilities Assistance	
HOMELESS VETERANS CLAIMS		Prescription Assistance	
Service Connection		Food Assistance	
NSC Pension		Transportation Assistance	
VOC REHAB		Clothing Assistance	
28-1900 CH31		Other	
MISC CLAIMS		VA HOME LOAN	
21-8678 Clothing Allow		26-1800	
21-4502 Adaptive Equip.		26-1817	
26-4555 Housing		SURVEYS	
10-0103 HISA Grant		County VSO Feedback and Comment Forms Submitted:	
CRSC		OTHER	
BURIAL ALLOWANCE			
21P-530			
40-1330			
21-2008			
INCARCERATED VETERANS			
21-526EZ Reinstatement			
21-4138 Apportionment			

### Certification by County Veterans Service Officer

I hereby certify, the above captioned monthly report is true and accurate. I have been paid the following amount(s) for the month of APRIL, 2020 from SAN MIGUEL county.

Salary	\$ 925.00	1 x month
Expenses	\$	
Office Space	\$	
Telephone	\$ 48.85	1 x month-Paid by SMC
Office Supplies	\$	
Travel	\$	
Training Conference	\$	
Other- Fringe Benefits	\$ 70.76	1 x month-Paid by SMC
CC VSOA Membership	\$	1 x year – Paid by SMC
TOTAL	\$ 1044.61	

J. Botkin  
Signature of County Veterans Service Officer

MAY 1, 2020  
Date

### Certification by County Commissioner or Designee

In accordance with CRS 28-5-707, I hereby certify the accuracy of the Report CVA-26 revised 2-15-2019:

H. Lopez County Commissioner or Designee of  
SAN MIGUEL County  
May 12, 2020 Date

This certification, submitted monthly, properly signed and executed is considered as application for the monetary benefits to the County General Fund in accordance with 28-5-804 (2002) Colorado Revised State Statute.

Submit this form no later than the 15<sup>th</sup> day the following month.

Mail to:  
Colorado Division of Veterans Affairs  
Attention: Director  
1355 South Colorado Blvd.  
Building C, Suite 113  
Denver, Colorado 80222

Telephone - T, Email - E	Month of <b>APRIL 2020</b>
<b>Contact</b>	<b>Services Provided</b>
	Assistance with filling out forms and paperwork
	Benefits Representation - Filing VA Claims and appeals, Pension and Aid
	Burial Benefits, funeral benefits, Headstones and Markers
	Colorado State and Veterans Nursing Homes/Nursing home care
	Community Outreach and Advocacy Type: _____
	Medals Request, Replacement of - military records, medals, awards
	Disability Compensation
	Education and Training
	Employment Assistance, Vocational rehabilitation
	Home Loans
	Incarcerated Veterans and Homeless Veterans Initiatives
	Life Insurance
	Memorial benefits
	Operation Recognition
	Survivor benefits
4-1 4-8 4-15 4-22 4-29	WEB-MEETINGS WITH COLO. DIV. OF VETERANS AFFAIRS; JOANNE IGLESIA Other: <u>AND BRIAN ONEY</u>

John Tenbrun  
Signature of County Veterans Service Officer

MAY 1, 2020  
DATE



AGENDA ITEM - 4.e.

**TITLE:**

Approval of scoping comments on the TRFO BLM Dawson Vegetation Treatment Project

**Presented by:**

**Time needed:**

**PREPARED BY:**

Lynn Padgett

**RECOMMENDED ACTION/MOTION:**

Consideration of Commissioners' signatures on scoping comments for the Tres Rios Field Office of the BLM's proposed Dawson Vegetation Treatment Project.

**INTRODUCTION/BACKGROUND:**

This project DOI-BLM-CO-S010-2020-0020-EA (Dawson Vegetation Treatment) has scoping documents posted at <https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=200014950>.

The project as proposed by BLM would "prescribe burn approximately 8,900 acres within a 34,376-acre project area (see map). Mastication and hand thinning would be used to reinforce containment lines, as needed. Some supplemental seeding and/or herbicide treatment would follow if determined necessary."

The project area extends south from Disappointment Valley Road in San Miguel and Dolores Counties into pinyon-juniper woodland. As mapped, it is bounded by the McKenzie (Temple) Butte Wilderness Study Area and Spring Creek Basin Wild Horse Herd Management Area, and private lands in San Miguel and Dolores Counties.

GANR met with Connie Clementson (TRFO Manager) and Ian Barrett (Fire Specialist), ranch manager TJ Holmes, and a neighboring rancher on Disappointment Valley Road, May 12, to learn more about the proposal and listen to landowner questions and concerns. TRFO was requested to visit with its grazing allotment holder as well who leases BLM and adjacent private lands. GANR received GIS files of the treatment and project areas on 5/13.

TRFO will accept scoping comments from adjacent landowners and San Miguel County beyond the original

May 2 deadline. They will most helpful if finalized on 5/20.

**FISCAL IMPACT:**

<b>Contract Number:</b>	<b>Date Executed</b>	<b>End Date</b>	<b>Department(s)</b>
YYYY-###			Government Services- Natural Resources
<b>Description:</b>			

**ATTACHMENTS:**

Description

BLM Scoping Letter, Map & Draft Design Features

Upload Date

5/15/2020

Dawson Vegetation Treatment  
Draft Proposed Action and Design Features (updated Apr 2, 2020):

The BLM is proposing to implement prescribed fire over a twenty-year period. Mastication and hand thinning would be used to bolster existing containment features as needed.

This project would consist of low to high severity prescribed fire application depending on vegetation restoration needs. Prescribed fire would be the main disturbance agent utilized, but a combination of mechanical (chainsaw and machine), chemical, and seeding treatments would be used to help meet the goals and objectives of the RMP while ensuring the desired project outcomes are attained. Treatments would occur throughout the year as appropriate based on wildlife impacts, soil disturbance likelihood and weather conditions as described below in the design features. Implementation would be designed specifically for each fuel type, successional class, and location. The analysis area (project area) is 34,376 acres, and any subsequent treatments deemed necessary outside of the initial treatment area would be analyzed separately under an additional NEPA decision document.

Design Features:

1. Utilize existing roads, trails, and/or natural features for containment lines as much as possible.
2. All mowed vegetation shall be shred such that 60 percent of the mulch material is less than 4 inches in diameter and 12 inches long. 80 percent of the mulch and slash resulting from the mowing and shredding must be distributed on the ground surface at a depth less than 6 inches. A small portion of the slash resulting from the mowing and shredding (not more than 20%) may be higher than 6 inches but no more than 18 inches above the ground.
3. Avoid damage to survey monuments, fences, gates, utility poles, claim stakes, survey witness trees and cultural sites.
4. Hazardous materials and spills: Use of hazardous materials and/or petroleum products requires that all appropriate State and Federal Regulations be complied with including, but not limited to, Material Safety Data Sheets (MSDS) on hand and use of necessary Personal Protective Clothing (PPE). Contamination of the worksite with any hazardous materials or waste including hydrocarbons is not authorized. Any on-site contamination will be remediated and reclaimed. All project wastes, including any contaminated material (soil or water), will be disposed of at appropriate permitted waste facilities. Avoid prescribed fire and mechanical treatments during migratory bird peak nesting season from May 1 –June 30. This timeframe encompasses the core breeding period for the majority of migratory birds in the project area, if burning is unavoidable limit size of burn to minimize impacts. (TRFO RMP Guideline 2.4.44)
5. To ensure protection of nesting raptors and Bald and Golden eagles, pre-treatment surveys would be performed for presence of key species in suitable habitat. If an active raptor nest is discovered in any unit, a species-specific spatial or temporal buffer would be applied until the nest either successfully fledges young as follows: Golden Eagle and Bald Eagle - no disturbance within .5 miles Jan. 15 – July 15. Cooper's Hawk – No

disturbance within 0.5 miles March 15- July 15. (TRFO RMP Standard 2.4.25, Guideline 2.4.39)

6. Avoid conducting treatments within big game critical and severe range, and winter concentration areas between December 1 and April 30<sup>th</sup> .
7. In coordination with affected livestock permittees, grazing management actions that provide for rest or deferment from grazing would be planned as necessary following treatment activities.
8. Range permittees would be coordinated with in advance of treatments to offset and temporary loss of forage or lack of access due to the need to rest units prior to or after prescribed fire.
9. Avoid any damage to existing range improvement infrastructure.
10. Prior to any prescribed fire of ground disturbing mechanical treatment (with the exception of any hand thinning and piling, prescribed fire line preparation), the planned units would be analyzed for composition of native grasses relative to invasive species (i.e. cheatgrass) presence. The analysis would determine if the composition and vigor of the native/seeded species relative to the abundance, vigor, and seed potential of cheatgrass in each unit is such that the natives are likely to out-compete cheatgrass or any other invasive weeds post-treatment.
11. Treatment locations would be determined by resilience and resistance characteristics of the sites.
12. Pre-treatment of invasive weeds may be required prior to implementation if the analysis shows invasive weeds comprise over 10 percent of the site biomass.
13. Post-treatment monitoring for exotic/noxious species presence would determine if additional management would need to occur, 2 and 5 year monitoring frequency is suggested.
14. All vehicles and off highway vehicles associated with mechanical and prescribed fire implementation would be pressure washed prior to moving on-site to prevent the spread of invasive weeds.
15. Prior to implementation, cultural sites would be flagged for avoidance from project activities if determined necessary. Sites determined to be excluded by the TRFO archeologist would be buffered with control lines and fired separately from the main prescribed fire ignition to ensure avoidance.
16. Fire control lines would be flagged prior to implementation by a TRFO archeologist if known sites are in proximity and determined necessary to avoid any impact.
17. Mining claim corner posts within the units would be identified prior to implementation and avoided.
18. Any control lines created for prescribed fire activities would be hidden or obliterated where they intersect roads after the prescribed fire is called out to discourage off road travel, and would be rehabilitated within the treatment season.



19. Units will be signed at all road entry points one week prior to implementation with a notice of the intended action with a map. Prior to prescribed fire implementation, the units would be checked and cleared of campers or hunters inside the unit for public safety.
20. Ruts created by machinery would not exceed 10 feet long and/or 4 inches deep.
21. Ephemeral drainages would be buffered by a distance of 50 feet from all mechanical treatments on both sides of the drainage. During prescribed fire implementation, no ignition would occur within this buffer, but fire would be allowed to back into drainages.
22. Springs would be buffered by a distance of 100 feet from all mechanical treatments. A no ignition buffer would be placed 50 feet from the spring during prescribed fire. Fire would be allowed to burn through the spring area.
23. In pinyon/juniper areas that receive mechanical and/or prescribed fire treatments, seeding would occur after the treatments are completed with a seed mix recommended by the appropriate specialist if deemed necessary.
24. A Colorado Department of Public Health and Environment issued smoke permit is required prior to any prescribed fire.
25. Prior to implementation, an Interdisciplinary Team will review proposed treatment units and complete any resource specific inventories, on-sites, etc. necessary to implement pending planned projects.



AGENDA ITEM - 4.f.

**TITLE:**

Approval of Comments on Spring Creek Basin Herd Management Area Plan (HMAP) Revision

**Presented by:**

**Time needed:**

**PREPARED BY:**

Lynn Padgett, GANR

**RECOMMENDED ACTION/MOTION:**

Consideration of Commissioners' signatures on comments regarding the Spring Creek Basin Herd Management Area Plan (HMAP) Revision Environmental Assessment.

**INTRODUCTION/BACKGROUND:**

This Spring Creek Basin Herd Management Area (HMA) is located within the Spring Creek Basin portion of Disappointment Valley in Southwest Colorado. The HMA is approximately 21,932 acres in size and lies within both Dolores and San Miguel Counties. The HMAP Revision will include the proposal for constructing two water catchment structures which will result in approximately 1.0 acres of total ground disturbance.

Overall the draft EA is favorable. San Miguel County provided initial comments earlier in 2020.

The Tres Rios Field Office (TRFO) BLM documents are found on eplanning:

DOI-BLM-CO-S010-2020-0009-EA (Spring Creek Basin Herd Management Area Plan Revision). The direct link to the draft EA materials open for public comment until May 30 is at:

[https://eplanning.blm.gov/epl-front-office/eplanning/docset\\_view.do?](https://eplanning.blm.gov/epl-front-office/eplanning/docset_view.do?projectId=1503484&currentPageId=200010880&documentId=20017057)

[projectId=1503484&currentPageId=200010880&documentId=20017057](https://eplanning.blm.gov/epl-front-office/eplanning/docset_view.do?projectId=1503484&currentPageId=200010880&documentId=20017057)

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources

<b>Description:</b>	
---------------------	--

**ATTACHMENTS:**

Description

Upload Date

Map of Spring Creek Basin Wild Horse Herd Management Area

5/15/2020





AGENDA ITEM - 5.a.

**TITLE:**

Presentation of Employee recognition for their years of service to San Miguel County: Todd Rector, 20 years; John Huebner, 20 years; Amy Erickson, 22 years, Ramona Rummel, 30 years, Michael Westcott 30 years; Jennifer Dinsmore, 20 years.

**Presented by:** Mike Bordogna, County Manager

**Time needed:** 10 mins

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 5.b.

**TITLE:**

9:45 am Update with Road and Bridge on the status of the High Country Passes.

**Presented by:** Ryan Righetti, County Road and Bridge Superintendent

**Time needed:** 10 mins

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 5.c.

**TITLE:**

9:55 am Discussion on mine closures (or planned) in the High Country and/or the West End of San Miguel County.

**Presented by:** Jeff Litteral, Inactive Mines Reclamation Program, Colorado Division of Reclamation

**Time needed:** 25 mins

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

On Tue, Apr 7, 2020 at 3:34 PM Litteral - DNR, Jeff <jeff.litteral@state.co.us> wrote:

Hi Carmen

Yes I can be available, assume the time will be decided once more clear what the agenda looks like? I have some PDF documents on the projects we have for scheduled construction this year and could provide additional info on planned projects as well. The PDF's are fairly large to email, I could share a Google Drive link? If these are not of interest at this time just let me know.

Thanks

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

**ATTACHMENTS:**

Description

Upload Date

Colorado Division of Reclamation

5/1/2020

DRMS Fact Sheet

5/1/2020





## **COLORADO DIVISION OF RECLAMATION MINING AND SAFETY**

Department of Natural Resources; Colorado Division of Reclamation, Mining and Safety; Inactive Mine Reclamation Program (Abandoned Mine Lands/AML); DRMS also includes Minerals and Coal Regulatory Programs and Mine Safety and Subsidence Programs.

<https://www.colorado.gov/pacific/drms>

The Inactive Mine Reclamation Program (IMRP) addresses hazards and environmental problems associated with abandoned or inactive "legacy" mines. Projects completed by the program include coal fire reclamation, coal mine subsidence abatement, non-coal mine safety closures, and water quality improvement projects. The IMRP also coordinates reclamation of sites with revoked permits and forfeited financial warranties. Since 1980, the Inactive Mine Reclamation Program has safeguarded over 10,500 hazardous openings and reclaimed more than 4,000 acres of abandoned mined land statewide. Roughly 200 mines have been safeguarded in San Miguel County on mixture of BLM, Forest and private sites for hard rock, uranium and coal mine sites. For fiscal year 2019 approximately \$4 million dollars were spent statewide on 85 projects, safeguarding 268 mines and 98 acres were reclaimed.

### **MINE SAFETY CLOSURE PROCESS:**

DRMS Project Manager develops mine sites for closure and enters in to DRMS Brasscap database, Mine Site Field Forms are generated and given to our Federal Agency partners to begin National Environmental Policy Act (NEPA) analysis. DRMS contracts the archaeological surveys and completes NEPA on private sites. Federal agencies finalize NEPA documents and conducts scoping with local communities. DRMS Project Manager drafts bid documents specifying closure methods and NEPA requirements and posts bid on the States Vendor Self Service website. DRMS conducts a Pre Bid on site meeting with interested contractors to show the mine sites to be included in the project. Contractors submit bids and qualifying low bidder is awarded the project. DRMS procurement staff complete contract award and documentation. Project Managers notify contractor of contract award and begin project implementation. Project Manager on site as needed to manage contractors during project construction and ensure bid specifications (see below) and contract requirements are implemented satisfactorily. Project Managers process contractor invoices and coordinates as needed with Federal Agencies. Project Managers inspect each feature prior to invoice approval and complete all project closure requirements.

Funding is approximately 80% Federal U. S. Office of Surface Mining (OSM) funds and majority of remainder from Colorado Severance Tax and Federal agency funding.

### **RECLAMATION PROJECTS:**

DRMS Project Managers work with Forest Service, BLM, EPA and private entities to complete mine reclamation projects such as tailings repositories, waste rock mitigation, revegetation projects and bond forfeiture sites. Conduct water quality monitoring and waste rock/tailings analysis to determine environmental impacts, typically in conjunction with local watershed groups. Partner with Federal agencies to complete CERCLA requirements when applicable to complete construction. Bidding process similar as described in mine safety closure section.

# Colorado Inactive Mine Reclamation Program

Division of Reclamation, Mining & Safety  
Department of Natural Resources  
State of Colorado

Department of Natural Resources

## March 2009

are intended to accompany

# Colorado Inactive Mine Reclamation Program

**Division of Reclamation, Mining & Safety  
Department of Natural Resources  
State of Colorado**

**March 2009**

**These General Bid Specifications are intended to accompany Special Conditions for each bid**

The technical drawing shows a cross-section of a lock box assembly. Key components labeled include:

- "stiffener, welded to bars"
- "x2"x " door frame
- LOCK BOX DETAIL B
- \*Maximum free-play in door.
- Expansion type bolt anchored 8" minimum into competent rock, @ 12" O.C. around perimeter of opening
- Tack weld nut after
- Back plate
- Front plate welded to frame and grating
- Hinge detail showing "extra hinges with non-removal"



**COLORADO**  
Division of Reclamation,  
Mining and Safety  
Department of Natural Resources

**May 6, 2020**

RE: DRMS IMRP Project Update

TO: San Miguel County Board of County Commissioners

FROM: Jeff Litteral, DRMS Inactive Mine Program, Project Manager  
P.O. Box 2058, Ridgway CO 81432  
[jeff.litteral@state.co.us](mailto:jeff.litteral@state.co.us)  
970-216-1330

The following is a list of project DRMS IMRP has planned for implementation or in the development phase in San Miguel County.

**Grays Basin Mine Safety Closure Project: Sites along Silver Lake Trail, Bridal Veil Trail and Grays Basin**

The project work will include safeguarding 21 adits and 3 shafts and one stope. Fifteen of the sites are on the Grand Mesa Uncompahgre Gunnison (GMUG) National Forest and 9 (7 adits and 2 shafts) are on a private claim owned by the Idarado Mining Company. Eight sites are in Ouray County and 17 in San Miguel County. Mine closure methods include grates, bulkheads, some with Corrugated Steel Pipes and bat grates, backfill, cable netting and polyurethane foam. Many features are hike-in only and will require a helicopter to fly-in materials. The Idarado Mining Company has agreed to allow access for a helicopter landing zone. Requirements for UTV access past the gate on Bridal Veil basin are outlined in the U.S. Forest Service (FS) NEPA Decision Memo.

**The project is located at high elevations from 11,000 – 13,000 feet. Due to the lack of access roads and sensitive alpine environment, no off-road equipment or vehicle travel will be allowed, unless authorized.**

A virtual construction Prebid is scheduled for May 19, 2020 (no qualified bids were received during previous prebid in October, 2019). Project implementation scheduled for July 15, 2020.

**Swamp Canyon Mine Safety Closure Project: Ophir Valley, Waterfall Canyon area**

Previous staff at DRMS developed a project called New Dominion which included 3 adits that were developed by a contractor during the due diligence for the acquired private mining claims. The New Dominion project has been separated from the mine safety closure work and the FS GMUG is planning on completing an Engineering Evaluation and Cost Analysis (EECA) this summer. The NEPA field work and funding for the closure work was available for the GMUG, therefore completion of the mine safety closures has been scheduled for summer 2020. The contractor developed the sites under Swamp Canyon title, therefore the project was called Swamp Canyon. GMUG is processing scoping comments and finalizing NEPA.

### **Centennial Mine Phase 2: Disappointment Valley/Joe Davis Hill, County Road 16R**

Previous work by Camille Price in 2016 involved reclamation of an eroding uranium waste rock pile (letter of support from BOCC).

The Centennial Mine Reclamation Project was completed in the fall of 2016 and included repairing a head cut in the uranium mine waste rock and installing a channel with rock check dams and sediment pond. The reclaimed area was capped with native topsoil and hydroseeded with pinon juniper seed mix. The revegetation had established well, however additional seeding was completed in December 2020.

The original project implementation was successful at preventing offsite migration of the waste rock material, however due to the natural erosive nature of the soils at the project area and heavy rainfall events, the sediment pond has filled with sediment and the drainage channel needs maintenance to some of the rock check dams. The soils excavated from the sediment pond will be spread on to remaining bare spots and revegetated.

Reams Construction completed the original reclamation construction and is under contract to implement Phase 2, to be completed mid May 2020.

### **Bald Eagle Mine Safety Closure Project: Big Gypsum Valley, County Road 20R**

The project work will include safeguarding 16 adits or prospects and one shaft. Closure methods will include backfill, bulkhead, grated corrugated steel pipe, cable net and grated shaft. Many features will include bat compatible grates or otherwise require exclusions prior to backfill or bulkhead. The uranium mine closure Safety, Health and Environmental Action Plan requirements will be applied.

The project area is located in dry, remote locations on public property managed by the U.S. Bureau of Land Management (BLM) Tres Rios field office, with a few sites on private mining claims. Some of the closures are foot access only due to their location along cliff lines or lack of access roads. Equipment traffic will be limited to existing roads and two tracks and will require approval of BLM and Project Manager prior to equipment access. Equipment access will also be limited by the number trips for certain sites. Site access roads cross private property boundaries for which consent has been given, all cattle fences will be left as found and if closed, immediately reclosed after opening. Dangerous rock overhangs and fractured rock are located at many of the mine openings.

Project implementation delayed from last year, waiting on BLM NEPA and funding. Virtual Pre-bid tentatively scheduled for June 3, 2020 with implementation October 1 – December 1, 2020.

### **Klondike Basin Mine Safety Closure Project: County Road S22**

The project work will include safeguarding 29 adits or prospects and 5 shafts. Closure methods will include backfill, bulkhead, grated corrugated steel pipe, cable net and bat grate. Many features will include bat compatible grates or otherwise require exclusions prior to backfill or bulkhead. The uranium mine closure Safety, Health and Environmental Action Plan requirements will be applied.

The project area is located in dry, remote locations on public property managed by the U.S. Bureau of Land Management (BLM) with a few sites on private mining claims. Some of the closures are foot access only due to their location along cliff lines or lack of access roads. Equipment traffic will be limited to existing roads and two tracks and will require approval of BLM and Project Manager prior to equipment access. Equipment access will also be limited by the number trips for certain sites. Site access roads cross private property boundaries for which consent has been given, all cattle fences will be left as found

and if closed, immediately reclosed after opening. See attached map defining private parcel boundaries in dotted red lines. Dangerous rock overhangs and fractured rock are located at many of the mine openings.

Project implementation delayed from last year, waiting on BLM NEPA and funding. Virtual Pre-bid tentatively scheduled for June 3, 2020 with implementation October 1 – December 1, 2020.

**Matterhorn Mill: San Bernardo, Priest Lane**

This project will include 3 phases and is located at the historic Matterhorn Mill:

Phase 1: The project work will include stabilization of structural concerns related to worker safety in the Matterhorn Mill building for future cleanup of mill wastes in the building. Implement late summer 2020.

Phase 2: Cleanup of mill wastes in the mill building and consolidate wastes in existing tailings impoundment. Implement fall 2020.

Phase 3: Construct tailings repository from onsite historic tailings impoundment on FS GMUG property and include tailings located on adjacent County owned Pathfinder parcel. GMUG has completed EECA and DRMS has assisted with Engineering Design contract.

**Spud Patch Mine Safety Closure Project: County Road K8 and L9**

Thirty-four (34) mine sites developed in coordination with BLM Tres Rios for future mine safety closure project implementation 2021.



AGENDA ITEM - 5.d.

**TITLE:**

Consideration of Memorandum of Understanding regarding the Gondola Operating Requirements./MOTION

**Presented by:** Amy Markwell, County Attorney

**Time needed:** 5 mins

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

As background, the County, Town of Mountain Village, TMVOA and TSG Ski & Golf are parties to an Amended and Restated Gondola Operating Agreement from 1999 that requires the gondola to run a minimum amount of hours per year. Due to COVID-19 and the County's public health orders, the gondola will not be able to meet the minimum requirements. This MOU is meant to formalize this mutual understanding between the parties.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
<b>Description:</b>			

**ATTACHMENTS:**

Description

MOU

Upload Date

5/11/2020

**MEMORANUM OF UNDERSTANDING BETWEEN  
THE BOARD OF COUNTY COMMISSIONERS OF SAN MIGUEL COUNTY, COLORADO,  
THE TOWN OF MOUNTAIN VILLAGE, COLORADO, THE TELLURIDE MOUNTAIN  
VILLAGE OWNERS ASSOCIATION, AND TSG SKI & GOLF CONCERNING GONDOLA  
OPERATING HOUR REQUIREMENTS FOR THE YEAR OF 2020 DUE TO COVID-19**

This Memorandum of Understanding Concerning Gondola Operating Hour Requirements for the Year of 2020 Due to Covid-19 (the “MOU”) is made and entered into this \_\_\_\_ day of May, 2020, between the COUNTY OF SAN MIGUEL, COLORADO, acting by and through the Board of County Commissioners, hereinafter referred to as “County”; the TOWN OF MOUNTAIN VILLAGE, COLORADO, acting by and through the Town Council, hereinafter referred to as “Town”; TSG Ski and Golf, LLC, a Delaware limited liability company, hereinafter referred to as “TSG” and the TELLURIDE MOUNTAIN VILLAGE OWNERS ASSOCIATION a Colorado non-profit corporation, hereinafter referred to as “TMVOA”.

**RECITALS**

WHEREAS, The Town, County, TSG (as the successor entity to Telluride Ski and Golf Company) and TMVOA (as the successor entity to Mountain Village Metropolitan Services, Inc.) are parties to the July 28, 1999 Amended and Restated Gondola Operating Agreement which governs the operating requirements of the Gondola connecting the Town of Mountain Village and the Town of Telluride (the “Gondola Operating Agreement”); and

WHEREAS, The Town of Mountain Village is the successor in interest to the Telluride Gondola Transit Company, a dissolved Colorado non-profit corporation (“TGTC”), and the Mountain Village Metropolitan District, a dissolved quasi-municipal corporation (“Metro District”), with respect to the operating requirements pursuant to the Gondola Operating Agreement; and

WHEREAS, The State of Colorado, the County, the Town and the Town of Telluride have all declared local disasters due to the Covid-19 Pandemic; and

WHEREAS, The Gondola Operating Agreement requires that TMVOA fund and the Town operate the Gondola a minimum number of 4,400 hours per year and 275 with a grace period down to 250 days per year under certain circumstances (the “Minimum Requirements”); and

WHEREAS, Due to the Covid-19 Pandemic, the Town will be unable to meet the Minimum Requirements; and

WHEREAS, the County, the Town, TSG and TMVOA desire to enter into this MOU in order to provide the Town and TMVOA with relief from the Minimum Requirements pursuant to the terms and conditions of this MOU.

NOW, THEREFORE in consideration of the mutual promises set forth herein, it is agreed by and between the County, the Town, TSG and TMVOA as follows:

## **SECTION I. GONDOLA OPERATING AGREEMENT MINIMUM HOUR REQUIREMENTS**

The Town and TMVOA shall be relieved of the Minimum Requirements as required by the Gondola Operating Agreement for the 2020 calendar year. Notwithstanding the foregoing, the Town shall operate the Gondola to the extent practical and following safety and operational standards related to the Covid-19 Pandemic in conjunction with the County. In the event the circumstances with the Covid-19 Pandemic improve so as to allow the Gondola to operate at normal hours, the Town shall do so, but the parties hereto acknowledge and agree that even at normal operating hours the Town would not be able to achieve the Minimum Requirements due to the impacts of restrictions imposed by the County as a result of the Covid-19 Pandemic which have already limited the operational days and hours of the Gondola.

## **SECTION II. FUNDING**

TMVOA shall continue to fund the Gondola as required by the Gondola Operating Agreement; however, any cost realized due to the Town not operating the Gondola for the Minimum Requirements may be retained by TMVOA at the end of the 2020 calendar year.

## **SECTION III. TERM**

The term of this MOU shall be from the date first written above through December 31, 2020, unless extended pursuant to mutual written agreement of the Town, County, TSG and TMVOA.

## **SECTION IV. EFFECT OF MOU**

The parties recognize and agree that this MOU is due to the unexpected and unprecedented circumstance of the Covid-19 Pandemic and that this MOU is being entered into to provide relief to the Minimum Requirements of the Gondola Operating Agreement for a temporary period of time and shall not alter the long term obligations of the Gondola Operating Agreement.

## **SECTION V. MISCELLANEOUS**

In the event litigation is commenced in this matter, venue and jurisdiction shall be proper only in San Miguel County District Court. Each party hereto hereby reserves all rights pursuant to Colorado law to enforce this MOU including, without limit, the right of specific performance. Should a Court of competent jurisdiction find and determine that a specific provision or provisions of this MOU are legally void, invalid, or otherwise unenforceable, such specific provision or provisions shall be deemed to be severable from the remainder of this MOU, which shall remain legally valid and in full force and effect. Each party hereto shall have the right to recover reasonable attorney's fees and costs it may incur to enforce this MOU, regardless of whether a lawsuit is ever commenced. Colorado law shall govern and construe this MOU, except that it shall not be construed against any party hereto as each acknowledges that they have had an opportunity to receive the advice of legal counsel.



IN WITNESS WHEREOF, the respective parties have entered into and executed this MOU as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS  
SAN MIGUEL COUNTY, COLORADO

By: \_\_\_\_\_  
Hillary Cooper, Chair

ATTEST:

\_\_\_\_\_  
Chief Deputy Clerk to the Board

Approved as to Form:

\_\_\_\_\_  
Amy T. Markwell, County Attorney #36434

TOWN OF MOUNTAIN VILLAGE, COLORADO

By: \_\_\_\_\_  
Dan Caton, Mayor Pro-Tem

ATTEST:

\_\_\_\_\_  
Susan Johnston, Town Clerk

Approved as to Form:

\_\_\_\_\_  
James D. "Jim" Mahoney, Town Attorney #35977

TELLURIDE MOUNTAIN VILLAGE OWNERS  
ASSOCIATION

By: \_\_\_\_\_  
Anton Benitez, President & CEO

ATTEST:

\_\_\_\_\_  
Secretary

TSG SKI & GOLF, LLC

By: \_\_\_\_\_  
Bill Jensen, CEO

ATTEST:

\_\_\_\_\_  
Secretary



AGENDA ITEM - 6.a.

**TITLE:**

Approval of Chair's signature on Social Services Department Balance Sheet March 2020, Earned Revenue and Expenditures March 2020, Expenditures through Electronic Benefit Transfers April 2020, Check Register for the Month of April 2020, County Allocation/MOE Report MAR-20, and 2020 Caseload Report/MOTION

**Presented by:** Carol Friedrich, County Social Services Director

**Time needed:** 20 mins

**PREPARED BY:**

Carol Friedrich

**RECOMMENDED ACTION/MOTION:**

Approval of Chair's signature on Social Services Department Balance Sheet March 2020, Earned Revenue and Expenditures March 2020, Expenditures through Electronic Benefit Transfers April 2020, Check Register for the Month of April 2020, County Allocation/MOE Report MAR-20, and 2020 Caseload Report

**INTRODUCTION/BACKGROUND:**

Director's Update

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
			Social Services
Description:			

**ATTACHMENTS:**

Description  
May Packet

Upload Date  
5/13/2020

# DEPARTMENT OF SOCIAL SERVICES

SAN MIGUEL COUNTY  
PO BOX 96  
TELLURIDE, CO 81435  
phone (970) 728-4411  
fax (970) 728-4412

---

I, Carol Friedrich, Director of Social Services of San Miguel County, Colorado,  
hereby present the attached financial reports:

Balance Sheet, March 2020  
Earned Revenue and Expenditures, March 2020  
Expenditures through Electronic Benefit Transfers, April 2020  
Check Register for the Month of April 2020  
County Allocation / MOE Report, MAR-20  
  
2020 Caseload Report

and certify that detailed, additional financial reports are available for inspection.



---

Carol Friedrich, Director

I, \_\_\_\_\_, Chair of San Miguel County Board of Commissioners,  
hereby certify that the payments that are listed and set forth on the attached  
reports have been approved, and the payments issued from the Social Services  
fund.

---

Chair, May 20, 2020

SAN MIGUEL COUNTY DEPT OF SOCIAL SERVICES  
BALANCE SHEET  
MARCH 2020

ASSETS:

CASH:

101.1000	CASH - GENERAL	16,748.97	
101.2000	CASH - IV-E RESERVES	0.00	
101.3000	CASH - PARENTAL FEES	6,792.09	
101.4000	CASH - CSBG	0.00	
101.5000	CASH - PETTY	50.00	
101.4381	CASH - CBMS	0.00	
115.1000	A/R - TANF	15,916.57	
115.2000	A/R - AND	687.00	
115.3000	A/R - OAP	571.50	
115.4000	A/R - CC	0.00	
115.5000	A/R - LEAP	0.00	
115.6000	A/R - MEDICAID	0.00	
115.7000	A/R - FOOD ASSISTANCE	18,138.54	
115.8000	A/R - CHILD SUPPORT	125,549.19	
115.9000	A/R - ERRONEOUS DISBURSEMENTS	0.00	
	TOTAL CASH		184,453.86

DUE TO DUE FROM

132.4200	DTDF - TANF	2,049.53	
132.2300	DTDF - CHILD CARE	(194.77)	
132.2500	DTDF - CORE	0.00	
132.1210	DTDF - CHILD WELFARE	8,147.06	
132.M100	DTDF - MEDICAID	3,249.92	
132.7000	DTDF - ADMIN	3,050.85	
132.4011	DTDF - NON ALLOCATED ADMIN	(62.82)	
132.1010	DTDF - ADULT PROTECTION	576.02	
132.8000	DTDF - CHILD SUPPORT	279.40	
132.6300	DTDT - FA JOB SEARCH	0.00	
132.5000	DTDF - LEAP	0.00	
132.4800	DTDF - AND	(67.34)	
132.4600	DTDF - HOME CARE ALLOWANCE	0.00	
132.4050	DTDF - OAP ADMIN	703.83	
132.9700	DTDF - TANF WORK PARTICIPATION	0.00	
132.8500	DTDF - TANF COLLECTIONS	106.96	
132.1296	DTDF - FA COLLECTIONS	0.00	
132.9800	DTDT - COST ALLOCATION	0.00	
132.9430	DTDF - STATE INCENTIVES	0.00	
132.9450	DTDF - FEDERAL INCENTIVES	137.27	
132.0000	DTDF - ADVANCES	4,000.00	
132.0310	DTDF - IV-E SANCTIONS	0.00	
132.1296	DTDF - CW DISCRETIONARY GRANT	0.00	
132.1590	DTDF - PARENTAL FEE	0.00	
132.9820	DTDF - CW SUB ADOPT	(102.75)	
	TOTAL DUE TO DUE FROM		21,873.16

FIXED ASSETS

		18,749.00	
	TOTAL ASSETS		18,749.00
			225,076.02

LIABILITIES:

215.1000	A/R CONTRA - TANF	(15,916.57)
215.2000	A/R CONTRA - AND	(687.00)
215.3000	A/R CONTRA - OAP	(571.50)
215.4000	A/R CONTRA - CC	0.00
215.5000	A/R CONTRA - LEAP	0.00
215.6000	A/R CONTRA - MEDICAID	0.00
215.7000	A/R CONTRA - FOOD ASSISTANCE	(18,138.54)
215.8000	A/R CONTRA - CHILD SUPPORT	(125,549.19)
215.9000	A/R CONTRA - ERRONEOUS DISBURSEMENTS	0.00
220.4000	DEFERRED REVENUE - IV-E	0.00
220.5000	DEFERRED REVENUE - PARENTAL	(6,792.09)
220.6000	DEFERRED REVENUE - CSBG	0.00
220.4381	DEFERRED REVENUE - CBMS	0.00
220.7000	A/P - INDIRECT COST ALLOCATION	0.00
220.8200	DEFERRED REVENUE IV-D FED INC	0.00
221.1000	SUSPENSE - MISC	(32.63)
221.2000	SUSPENSE - MT	(32.63)
221.4000	SUSPENSE - TEFAP	0.00
		<hr/>
	TOTAL LIABILITIES	(167,720.15)

RESERVE:

	FUND BALANCE AS OF 03/31/20	(38,639.50)
		<hr/> (18,749.00)
	TOTAL RESERVE	<hr/> (57,388.50)
	TOTAL LIABILITIES AND RESERVE	<hr/> (225,108.65)

SAN MIGUEL COUNTY DSS  
EARNED REVENUE YTD 100%  
MARCH 2020

	REVISED BUDGET	YTD REVENUES EARNED	% OF REVENUES COLLECTED
CURRENT PROPERTY TAX	137,000.00	60,973.15	45%
SPECIFIC OWNERSHIP	4,000.00	1,313.65	33%
DELINQUENT & INTEREST	700.00	21.31	3%
 COLORADO WORKS			
ADMIN	40,000.00	6,291.68	16%
GRANTS	40,000.00	3,811.62	10%
 CHILD CARE			
ADMIN	10,000.00	2,399.57	24%
CLIENT BENEFITS	90,000.00	21,589.89	24%
 CHILD WELFARE			
CHILD WELFARE 80/20	280,000.00	77,410.32	28%
CHILD WELFARE 100%	10,000.00	158.42	2%
IV-E SANCTIONS		0.00	
CW - DISCRETIONARY GRANT		0.00	
 COUNTY ADMINISTRATION	76,000.00	21,600.42	28%
HCPF - MEDICAID	56,800.00	17,543.07	31%
ADULT PROTECTION	12,000.00	2,897.19	24%
ADULT PROTECTION CLIENT	1,600.00	0.00	0%
 CW CORE SERVICES 80/20	16,000.00	1,130.00	7%
CW CORE DAY TREATMENT 100%	28,000.00	1,288.98	5%
 CHILD SUPPORT	9,600.00	2,052.28	21%
 LEAP			
ADMIN/OUTREACH	450.00	0.00	0%
BASIC	50,000.00	14,834.64	30%
 OAP			
HOME CARE ALLOWANCE		0.00	
ADMIN	6,000.00	1,675.20	28%
GRANTS	40,000.00	7,249.36	18%
 AID TO NEEDY DISABLED	2,400.00	269.38	11%
 MEDICAID TRANSPORTATION	15,000.00	10,903.79	73%
FS JOB SEARCH/EMPLOYMENT 1ST		0.00	
FOOD ASSISTANCE BENEFITS	400,000.00	83,444.72	21%
GRANTS/INCENTIVES	5,000.00	289.30	6%
RETAINED COLLECTIONS	800.00	160.88	20%
COUNTY BACKFILL	20,000.00	0.00	0%
 <b>TOTAL BUDGETED REVENUES</b>	<b>1,351,350.00</b>	<b>339,308.82</b>	<b>25%</b>

SAN MIGUEL COUNTY DSS  
EXPENDITURES YTD 100%  
MARCH 2020

	REVISED BUDGET	EXPENDITURES YTD	% OF BUDGET EXPENDITURES SPENT
TANF			
ADMIN	45,000.00	7,874.89	17%
GRANTS	45,000.00	5,447.19	12%
CHILD CARE			
ADMIN	10,000.00	2,399.57	24%
CLIENT BENEFITS	100,000.00	24,190.89	24%
CHILD WELFARE			
CHILD WELFARE 80/20%	325,000.00	89,111.72	27%
CHILD WELFARE 100%	10,000.00	158.42	2%
CW - DISCRETIONARY GRANT	0.00	0.00	
		0.00	
COUNTY ADMINISTRATION	95,000.00	21,112.02	22%
HCPF - MEDICAID	71,000.00	20,554.99	
NON ALLOCATED ADMIN		188.46	
ADULT PROTECTION	15,000.00	3,621.50	24%
ADULT PROTECTION CLIENT	2,000.00	0.00	0%
CW CORE SERVICES 80/20	20,000.00	2,701.48	14%
CW CORE DAY TREATMENT 100%	28,000.00	0.00	0%
CHILD SUPPORT	12,000.00	2,361.52	20%
LEAP			
LEAP ADMIN/OUTREACH	450.00	0.00	0%
LEAP BASIC BENEFITS	50,000.00	14,834.64	30%
OAP			
OAP HOME CARE ALLOWANCE		0.00	
OAP ADMIN	6,000.00	1,675.20	28%
OAP GRANTS	40,000.00	7,249.36	18%
AID TO NEEDY DISABLED	3,000.00	336.72	11%
FS JOB SEARCH/EMPLOYMENT 1ST		0.00	
GENERAL ASSISTANCE	10,000.00	300.00	3%
MEDICAID TRANSPORTATION	15,000.00	3,854.24	26%
FA REFUNDS		0.00	
FOOD ASSISTANCE BENEFITS	400,000.00	83,444.72	21%
DIRECT COST ALLOCATION	(6,000.00)	(2,692.08)	45%
COUNTY FUNDED GRANTS	62,500.00	46,900.00	75%
COUNTY ONLY EXPENSES		388.70	
<b>TOTAL BUDGETED EXPENDITURES</b>	<b>1,358,950.00</b>	<b>336,014.15</b>	<b>25%</b>



**SAN MIGUEL COUNTY DEPT OF SOCIAL SERVICES**  
**CHECK REGISTER**  
**APRIL 2020**

<b>Warrant No.</b>	<b>Date</b>	<b>To</b>	<b>WARRANT AMOUNT</b>
30991	5-Apr	SAM'S SERVICE	40.00
30992	5-Apr	SAN MIGUEL ROAD DEPT	47.94
30993	5-Apr	100TH MERIDIAN LAW GROUP	1,593.00
30994	5-Apr	CARD SERVICES	215.47
30995	5-Apr	NEMT	435.60
30996	5-Apr	NEMT	337.92
30997	5-Apr	NEMT	198.00
30998	5-Apr	NEMT	880.44
30999	5-Apr	NEMT	510.40
31000	5-Apr	CENTURY LINK	65.29
31001	5-Apr	CAROL FRIEDRICH	117.20
	10-Apr	PAYROLL	16,596.46
		CCOERA	793.34
31002		SAN MIGUEL DSS	2,362.36
	10-Apr		-2,362.36
	10-Apr	AT&T	87.64
	10-Apr	CHP	6,775.05
	10-Apr	LINCOLN FINANCIAL	102.03
31003	15-Apr	E470 PUBLIC HWY AUTH	\$4.65
31004	15-Apr	XEROX	\$164.26
31005	15-Apr	FLORADORA SALOON	\$1,200.00
31006	15-Apr	SMC CLERK / RECORDER	\$139.73
31007	15-Apr	SAN MIGUEL DSS	\$1,620.00
			(\$1,620.00)
31008	15-Apr	GENERAL ASSISTANCE	\$41.49
31009	15-Apr	SAN MIGUEL DSS	\$239.36
			(\$239.36)
31010	15-Apr	NEMT	\$123.20
31011	15-Apr	NEMT	\$116.16
31012	15-Apr	XEROX	\$204.45
31013	15-Apr	CENTURY LINK	\$65.01
	17-Apr	CENTURY LINK	\$22.67
	24-Apr	PAYROLL	\$16,760.22
	24-Apr	CCOERA	\$800.48
	30-Apr	CO STATE TREASURER	\$283.83
<b>TOTALS</b>			<b>48,721.93</b>

SAN MIGUEL COUNTY DSS  
EXPENDITURES THROUGH ELECTRONIC BENEFIT TRANSFER  
APRIL 2020

	CASES	TOTAL COST
TANF(Temporary Aid to Needy Families)	11	11,003.00
OAP(Old Age Pension)	8	2,653.95
AND(Aid to Needy Disabled)	1	217.00
CHILD CARE	35	21,803.18
CHILD WELFARE	11	21,232.21
CORE SERVICES	2	462.50
FOOD ASSISTANCE	193	77,584.00
LEAP(Low-income Energy Assistance Program)	1	486.46
TOTALS	262	135,442.30

\*THESE ARE OUR BEST ESTIMATES BASED  
ON THE DISCREPANCIES BETWEEN THE  
COLORADO FINANCIAL MANAGEMENT SYSTEM  
AND THE COLORADO BENEFIT MANAGEMENT  
SYSTEM.

# San Miguel County Allocation / MOE Report

Period: MAR-20

CTY=113 (San Miguel)

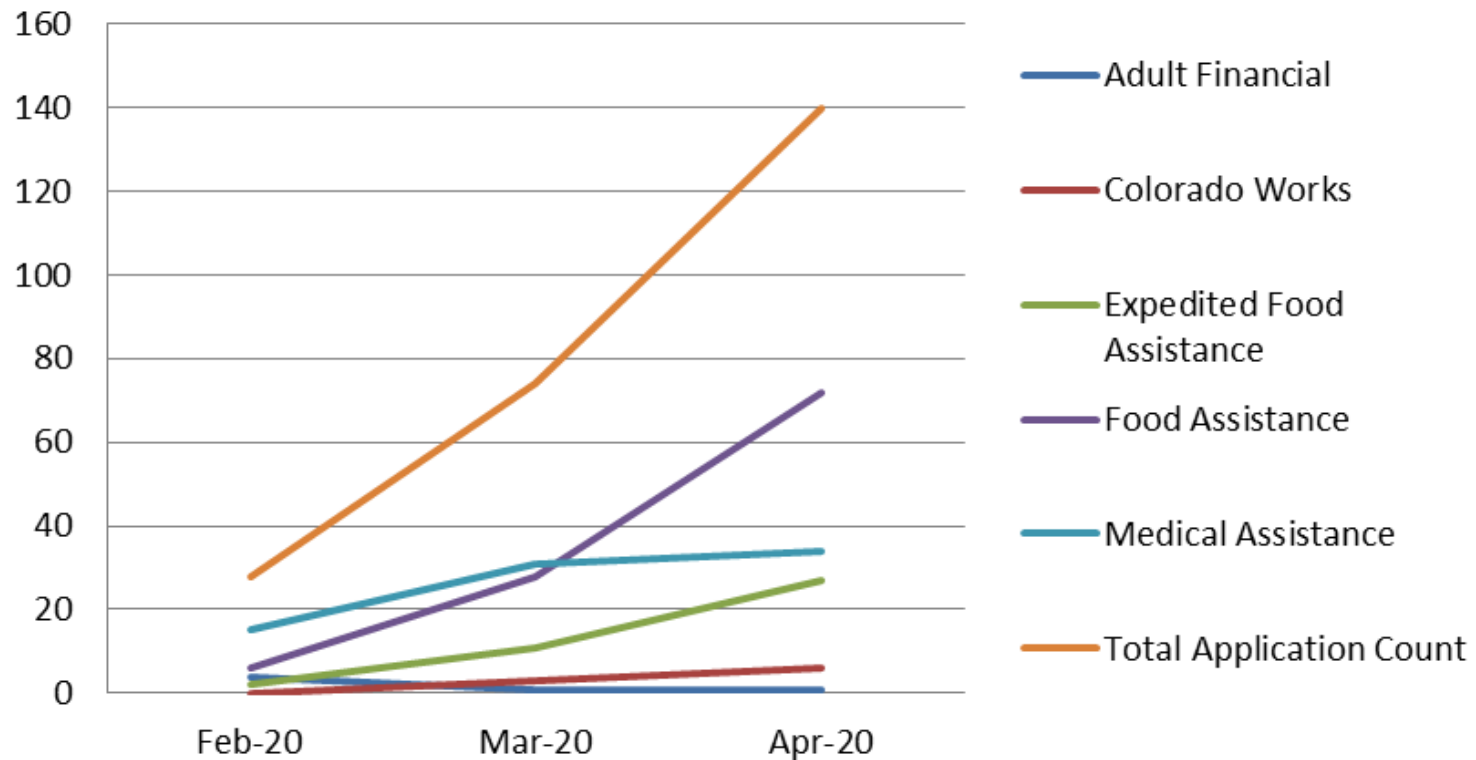
	FY BUDGET BALANCES	FY ACTUAL YTD EXPENDITURES	FUNDS AVAILABLE	BUDGET VS ACTUALS FY VARIANCE
COLORADO WORKS BLOCK GRANT	97,065.30	52,542.72	44,522.58	54.13
NET COLORADO WORKS MOE	11,371.20	10,234.08	1,137.12	(90.00)
CHILD CARE ALLOCATION				
CHILD CARE DIRECT	0.00	78,630.65	(78,630.65)	n/m
CHILD CARE ADMINISTRATION	0.00	7,721.76	(7,721.76)	n/m
TOTAL CHILD CARE ALLOCATION	0.00	86,352.41	(86,352.41)	n/m
NET CHILD CARE COUNTY MOE	7,803.00	7,803.00	0.00	(100.00)
CHILD CARE TANF TRANSFER	0.00	0.00	0.00	n/m
CHILD WELFARE ALLOCATION:				
CHILD WELFARE 80/20 ALLOCATION ITEMS:				
CHILD WELFARE OUT-OF-HOME ALLOCATION	129,045.57	53,720.31	75,325.26	41.63
CHILD WELFARE ADMIN 80/20	0.00	194,322.68	(194,322.68)	n/m
CHILD WELFARE CASE SERVICES	0.00	2,890.00	(2,890.00)	n/m
CHILD WELFARE RELATED CHILD CARE	0.00	6,944.14	(6,944.14)	n/m
TOTAL CHILD WELFARE 80/20 ALLOCATION	129,045.57	257,877.13	(128,831.56)	199.83
CHILD WELFARE 100% ADMINISTRATION *	11,701.03	329.10	11,371.93	2.81
TOTAL CHILD WELFARE 80/20 AND 100% ALLOCATION	140,746.60	258,206.23	(117,459.63)	183.45
CHILD WELFARE TRCCF ALLOCATION	0.00	0.00	0.00	n/m
CHILD WELFARE CHRP ALLOCATION *	0.00	0.00	0.00	n/m
CHILD WELFARE PRTE - FFS *	5,637.17	0.00	5,637.17	0.00
TOTAL CHILD WELFARE ALLOCATION	146,383.77	258,206.23	(111,822.46)	176.39

<b>CDHS ADMINISTRATION ALLOCATION</b>	<u>76,916.32</u>	<u>79,533.07</u>	<u>(2,616.75)</u>	<u>103.40</u>
<b>TOTAL CDHS ADMINISTRATION ALLOCATION</b>	76,916.32	79,533.07	(2,616.75)	103.40
<b>HCPF REGULAR ADMINISTRATION ALLOCATION</b>	20,826.80	27,048.43	(6,221.63)	129.87
<b>HCPF ENHANCED ADMINISTRATION ALLOCATION</b>	34,971.88	30,631.68	4,340.20	87.59
<b>ADULT PROTECTION ADMINISTRATION ALLOCATION</b>	18,252.23	9,479.73	8,772.50	51.94
<b>ADULT PROTECTION CLIENT NEEDS ALLOCATION</b>	2,000.00	689.11	1,310.89	34.46
<b>CORE SERVICES ALLOCATION:</b>				
<b>CORE SERVICES MENTAL HEALTH 100%</b>	0.00	1,075.00	(1,075.00)	n/m
<b>CORE SERVICE ADAD 100%</b>	0.00	0.00	0.00	n/m
<b>CORE SERVICES SPECIAL ECONOMIC ASSIST 100%</b>	664.69	438.98	225.71	66.04
<b>CORE SERVICES OTHER 100%</b>	28,238.08	0.00	28,238.08	0.00
<b>CORE SERVICES 80/20</b>	<u>15,490.70</u>	<u>2,935.00</u>	<u>12,555.70</u>	<u>18.95</u>
<b>TOTAL CORE SERVICES ALLOCATION</b>	44,393.47	4,448.98	39,944.49	10.02
<b>EMPLOYMENT FIRST 80/20 PARTICIPANT REIMB</b>	0.00	0.00	0.00	n/m
<b>EMPLOYMENT FIRST 100%</b>	0.00	0.00	0.00	n/m
<b>FEDERAL FISCAL YEAR PROGRAMS (ENDING SEPT 30): **</b>				
<b>PROMOTING SAFE &amp; STABLE FAMILIES (IV-B SUB-PT 2)</b>	0.00	0.00	0.00	n/m
<b>LEAP ADMINISTRATION ALLOCATION</b>	0.00	0.00	0.00	n/m
<b>LEAP OUTREACH ALLOCATION</b>	0.00	0.00	0.00	n/m
<b>NON-FISCAL YEAR PROGRAMS: **</b>				
* NOTE: Allocations for Child Welfare 100%, CHRP, PRTF - Care Policy & Financing in addition to those allocated fr				
** - NOTE: Expenditures Refer to State Fiscal Year-To-Dat				

SAN MIGUEL COUNTY BOARD OF SOCIAL SERVICES  
CASELOAD REPORT 2020

	TANF	DIVER- SION	O.A.P + HCA	AND,SSI +SSA	HCBS	MED	LEAP	CHILD CARE	FS	GA	TOTAL
April 2019	4	0	9	88	16	673	45	24	131	1	991
May 2019	3	0	9	88	16	690	0	23	143	0	972
June 2019	3	0	9	88	17	655	0	23	140	3	938
July 2019	3	0	8	87	15	657	0	24	138	2	934
August 2019	2	0	8	80	15	656	0	24	137	2	924
September 2019	2	0	7	76	15	651	0	26	137	0	914
October 2019	3	0	8	80	16	663	0	26	129	5	930
November 2019	3	0	8	77	14	670	19	26	122	5	939
December 2019	2	0	6	75	14	647	19	35	136	2	941
<b>January 2020</b>	<b>1</b>	<b>0</b>	<b>7</b>	<b>77</b>	<b>15</b>	<b>661</b>	<b>42</b>	<b>28</b>	<b>132</b>	<b>4</b>	<b>967</b>
<b>February 2020</b>	<b>2</b>	<b>0</b>	<b>7</b>	<b>73</b>	<b>15</b>	<b>632</b>	<b>57</b>	<b>31</b>	<b>121</b>	<b>0</b>	<b>938</b>
<b>March 2020</b>	<b>2</b>	<b>0</b>	<b>8</b>	<b>71</b>	<b>15</b>	<b>619</b>	<b>60</b>	<b>32</b>	<b>124</b>	<b>0</b>	<b>931</b>
<b>April 2020</b>	<b>3</b>	<b>6</b>	<b>8</b>	<b>71</b>	<b>18</b>	<b>717</b>	<b>74</b>	<b>3</b>	<b>200</b>	<b>0</b>	<b>1100</b>
TANF	Temporary Need to Aid to Needy Families (Colorado Works)					LEAP		Low Income Energy Assistance Program			
DIVERSION	Colorado Works Diversion Program					CHILD CARE		Child Care Assistance Program			
OAP + HCA	Old Age Pension + Home Care Allowance					FS		Supplemental Nutrition Assistance Program			
AND, SSI, SSA	Aid to Needy Disabled, Social Security							(AKA Food Stamps)			
HCBS	Home Care Based Services					EF		Employment First			
MED	Medicaid					GA		General Assistance			

## San Miguel New Applications





AGENDA ITEM - 7.a.

**TITLE:**

Consideration of INVESTMENT GRADE AUDIT REPORT AND ENERGY PERFORMANCE CONTRACTING PROJECT PROPOSAL CONTRACT with Siemens Industry, Inc.

**Presented by:** Lynn Padgett, Government Affairs/Natural Resource Director

**Time needed:** 10 mins

**PREPARED BY:**

Lynn Padgett

**RECOMMENDED ACTION/MOTION:**

Consideration of draft contract and readiness for execution with Chair's Signature.

**INTRODUCTION/BACKGROUND:**

This contract scopes an investment grade audit under the Colorado Energy Office Energy Performance Contracting program to identify possible energy efficiency projects at key county facilities. It also scopes design of energy generation and storage systems that are part of the County's DOLA RENW project.

The contract materials being provided on 5/15 are DRAFT, and are under final review by Siemens' legal department. Final contract documents and any changes will be discussed at the 5/20 BOCC meeting. County Attorney Amy Markwell has reviewed these drafts and input has been incorporated.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources
<b>Description:</b>			

**ATTACHMENTS:**

Description

Upload Date

1-IGA Draft Contract	5/15/2020
2-IGA Exhibit A Draft 515	5/15/2020
3-IGA Exhibit B 515	5/15/2020
4-IGA Exhibit C Draft 515	5/15/2020



**STATE OF COLORADO**  
**COLORADO ENERGY OFFICE – ENERGY PERFORMANCE CONTRACTING PROGRAM**



**COLORADO**

**Energy Office**

Energy Performance Contracting

**INVESTMENT GRADE AUDIT REPORT AND ENERGY PERFORMANCE CONTRACTING PROJECT  
PROPOSAL CONTRACT**

**FOR COLORADO POLITICAL SUBDIVISIONS** (municipality, county, special district, or school  
district (**§29-12.5-101 (5) C.R.S.**)

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POLITICAL SUBDIVISION:

San Miguel County

ENERGY SERVICE COMPANY  
(STATE REGISTERED NAME):

Siemens Industry, Inc.

PROJECT NAME:

San Miguel County Energy Performance Contract

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## PARTIES

This Investment Grade Audit Report and Energy Performance Contracting Project Proposal Contract (this "Contract" or this "IGA," as defined below in Article I) is entered into by and between **SIEMENS INDUSTRY INC.**, having its offices at 7810 Shaffer Parkway Suite 100, Littleton, CO, 80127 (the "Contractor" or the "ESCO," as defined below in the Definitions), and the **SAN MIGUEL COUNTY, COLORADO** (the "Political Subdivision"), being a Political Subdivision as defined below in Article 1.

## RECITALS

**WHEREAS**, authority for the Political Subdivision to enter into this Contract exists in the law, including **§29-12.5-101, C.R.S.** and other applicable state statutes and charter and code provisions, and funds have been budgeted, appropriated and otherwise made available, and a sufficient unencumbered balance thereof remains available for payment of the amounts due hereunder, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision; and

**WHEREAS**, required authorizations, approvals, clearance and coordination have been accomplished by the Political Subdivision; and

**WHEREAS**, the Political Subdivision is entering into this Contract in order to (a) engage the Contractor to identify utility cost-savings measures and facility improvement measures, including operation and maintenance cost savings and vehicle fleet operational or fuel cost savings in facilities owned or leased by the Political Subdivision, as set forth in **§29-12.5-101(3), C.R.S.**, and (b) if the savings exceed "annual contract payments" as set forth in **§29-12.5-101(3)(b), C.R.S.** and the Governing Body (as defined below) of the Political Subdivision determines to do so, to negotiate an Energy Performance Contract; and

**WHEREAS**, this Contract was adapted by the Colorado Energy Office (CEO) for use by Colorado "Political Subdivisions," as defined in **§29-12.5-101, C.R.S.**, based on a contract created jointly by CEO and the Office of the State Architect (OSA), in order to obtain an Investment Grade Audit report and a proposal for an Energy Performance Contracting project for a Facility (as defined below) from a CEO pre-approved energy service company (ESCO), the purpose of the IGA being to perform the Work set forth in **Article 3** below; and

**WHEREAS**, the Contractor was selected and determined to be the most qualified, and fees were negotiated in accordance with the procurement rules of the Political Subdivision; and

**NOW THEREFORE**, in consideration of the premises and mutual agreements and covenants hereinafter set forth, and intending to be legally bound, the Political Subdivision and the Contractor hereby agree to the terms and conditions in this Contract.

## EFFECTIVE DATE AND NOTICE OF NON-LIABILITY

This Contract shall not be valid or enforceable until it is authorized and approved by the Governing Body (defined below in Article 1) of the Political Subdivision, by applicable resolution, ordinance or other authorizing action of the Governing Body, and executed by a duly authorized representative of the Political Subdivision, as set forth in such resolution, ordinance or other authorizing action (defined below as the "Principal Representative"), on the date set forth in **Section 19** hereof in the signature block of the Political Subdivision (the "Effective Date"). The Political Subdivision shall not be bound by any provision of this Contract before the Effective Date, and shall have no obligation to pay the Contractor for any Work performed or expense incurred before the Effective Date or after the expiration or sooner termination of this Contract.

All references in this Contract to "Article," "Section," "Subsections," "Exhibits" or other "attachments," whether spelled out or using the § symbol, are references to Articles, Sections, Subsections, Exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

## ARTICLE 1 DEFINITIONS

### A. Business Day

"Business Day" means any day in which the Political Subdivision is open and conducting business, but shall not include Saturday, Sunday or any holidays observed by the Political Subdivision.

### B. Contract

"Contract" means this Contract, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Contract, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to applicable laws, charter and code provisions and policies and procedures of the Political Subdivision.

### C. Contract Funds

"Contract Funds" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the Political Subdivision to the Contractor for the performance of the Work under this Contract.

### D. Contractor's Intellectual Property

"Contractor's Intellectual Property" means the items purchased, licensed or developed by the Contractor prior to or outside of the Contract or purchased, licensed or developed by the Contractor or its Subcontractors as a tool for their use in performing the Services, plus any modifications or enhancements thereto and derivative works based thereon.

### E. Colorado Open Records Act (CORA)

"CORA" means the Colorado Open Records Act, **§§24-72-200.1 et seq., C.R.S.**

### F. C.R.S.

"C.R.S." means the Colorado Revised Statutes, as amended.

### G. Exhibits and other Attachments

The following "Exhibits and other Attachments" are attached hereto and incorporated by reference herein: IGA **Exhibit A** - Scope of Work, IGA **Exhibit B** - Location of Energy Audit, and IGA **Exhibit C** - Cost and Pricing Elements.

### H. Facility

"Facility" or "Facilities" means any building or utility owned or operated by the Political Subdivision, as set forth on **Exhibit B** - Location of Energy Audit.

### I. Fiscal Year

"Fiscal Year" means a 12-month period beginning on [insert month and day] of each calendar year and ending on [insert month and day].

### J. Goods:

"Goods" means the tangible material acquired, produced, or delivered by the Contractor either separately or in conjunction with the Work performed by the Contractor, and the Services the Contractor renders hereunder.

### K. Governing Body

"Governing Body" means the governing body of the Political Subdivision, a governing body (city or town council, board of trustees, etc.) of any municipality or home rule county, a board of county commissioners of any county, a board of directors of any special district, or a board of education of any school district as defined in **§29-12.5-101(1), C.R.S.**

### L. Incident

"Incident" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, pursuant to **§§24-37.5-401 et. seq. C.R.S.** Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

**M. Investment Grade Audit Contract**

"Investment Grade Audit Contract" (IGA) means that certain contract between the Contractor and the Political Subdivision and entered into pursuant to **§29-12.5-102, C.R.S.**, and pursuant to which the Contractor conducted the IGA. The IGA Contract shall determine the feasibility of whether to enter into an Energy Performance Contract to provide for the implementation of Utility Cost Savings Measures, Facility Improvement Measures, and Operation and Maintenance Cost Savings Measures in Facilities owned or leased by the Political Subdivision and vehicle fleet operational and fuel cost saving measures at the Premises of the Political Subdivision.

**N. Investment Grade Audit Report**

"Investment Grade Audit" or "IGA" means a detailed audit of Political Subdivision Premises, conducted by Contractor] pursuant to the IGA Contract, pursuant to **§29-12.5-102, C.R.S.**, which may serve as the basis for an Energy Performance Contract.

**O. Party or Parties**

"Party" means the Political Subdivision or the Contractor and "Parties" means both the Political Subdivision and the Contractor.

**P. Political Subdivision**

"Political Subdivision" means the Political Subdivision set forth above as a Party to this Contract, being a municipality, county, special district or school district as defined in **§29-12.5-101(5), C.R.S.**

**Q. Political Subdivision Confidential Information**

"Political Subdivision Confidential Information" means any and all Political Subdivision Records not subject to disclosure under CORA. Political Subdivision Confidential Information shall include, but is not limited to PII, Tax Information, and Political Subdivision personnel records not subject to disclosure under CORA.

**R. Political Subdivision Records**

"Political Subdivision Records" means any and all data, information, and records, regardless of physical form.

**S. Premises**

"Premises" means the Facilities owned or controlled by the Political Subdivision as identified on **Exhibit B - Location of Energy Audit**.

**T. Principal Representative**

"Principal Representative" means the person or persons designated by the Governing Body of the Political Subdivision to act as the Principal Representative of the Political Subdivision under the terms of and as set forth in this Contract. The Principal Representative may delegate his or her authority hereunder, in writing, if authorized to do so pursuant to the related authorizing resolution or ordinance of the Governing Body. The Contractor shall have the right to inquire regarding the delegated authority of any of the Principal Representative's designees under the terms of this Contract and shall be provided with a response in writing when requested.

**U. Services**

"Services" means the required services to be performed by the Contractor pursuant to this Contract.

**V. Subcontractor**

"Subcontractor" means third parties, if any, engaged by Contractor to aid in performance of the Work.

**W. Tax Information**

"Tax Information" means federal and State of Colorado tax information including, without limitation, federal and state tax returns, return information, and such other tax-related information as may be protected by federal and state law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.

**X. Work**

"Work" means the tasks and activities the Contractor is required to perform to fulfill its obligations under this Contract and **Exhibit A**, including the performance of the Services and delivery of the Goods.

**Y. Work Product**

“Work Product” means the tangible or intangible results of the Contractor’s Work, including, but not limited to, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type (but not including software), including drafts. Work Product does not include the Contractor’s Intellectual Property.

*Any other term used in this Contract that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.*

**ARTICLE 2 TERM and EARLY TERMINATION**

**A. Initial Term-Work Commencement**

The Parties’ respective performances under this Contract shall commence on the later of either the Effective Date or [May 20, 2020]. This Contract shall terminate on [May 20, 2022] unless sooner terminated or further extended as specified elsewhere herein.

**B. Early Termination in the Public Interest**

The Political Subdivision is entering into this Contract for the purpose of carrying out the public policy of the Political Subdivision as determined by the Governing Body. If this Contract ceases to further the public policy of the Political Subdivision, the Governing Body, in its sole discretion, may terminate this Contract in whole or in part. Exercise by the Governing Body of this right shall not constitute a breach of the Political Subdivision’s obligations hereunder. This subsection shall not apply to a termination of this Contract by the Political Subdivision for cause or breach by the Contractor, which shall be governed by **Article 10(A)** or as otherwise specifically provided for herein.

**i. Method and Content**

The Principal Representative shall notify the Contractor of such termination in accordance with **Article 13**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

**ii. Obligations and Rights**

Upon receipt of a termination notice, the Contractor shall be subject to and comply with the same obligations and rights set forth in **Article 11(A)(i)**.

**iii. Payments**

If this Contract is terminated by the Governing Body pursuant to this **Article 2B**, the Contractor shall be paid an amount that bears the same ratio to the total reimbursement under this Contract as Contractor’s obligations that were satisfactorily performed bear to the total obligations set forth in this Contract, less payments previously made. Additionally, if this Contract is less than 60% completed, the Political Subdivision may, but is not obligated to, reimburse the Contractor for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by Contractor which are directly attributable to the uncompleted portion of Contractor’s obligations hereunder. The sum of any and all reimbursements under this **Article 2B** shall not exceed the maximum amount payable to the Contractor hereunder and any and all such reimbursements shall be payable only from funds that have been budgeted, appropriated and otherwise made available and in respect of which a sufficient unencumbered balance thereof remains available for payment of such reimbursements, all within applicable constitutional, statutory, charter, code or other limitations applicable to the Political Subdivision.

**ARTICLE 3 STATEMENT OF WORK**

**A. Work**

Contractor shall perform an Investment Grade Audit in accordance with **IGA Exhibit A – Scope of Work**. The Investment Grade Audit shall be performed at the location(s) listed in **IGA Exhibit B – Location of Audit**. If the Governing Body, in its sole discretion, desires to accept the Contractor’s Investment Grade Audit Report and the EPC Project Proposal, which acceptance, if made, shall be made within [60] days of the Principal Representative’s receipt of such proposal in the form of the Notice of Acceptance of the Investment Grade Audit Report and EPC Project Proposal set forth below in **Article 3(E)**. The Parties may, but are not obligated

to, enter into a new contract, entitled "Energy Performance Contract," based on such proposal, the form of which shall be supplied by the Political Subdivision and shall comply with **§29-12.5-101, C.R.S., et seq.**

**B. Time of Performance**

The Work under this Contract shall be completed during the initial term, which is set forth in **Article 2**, or any extension thereof.

**C. Goods and Services**

Contractor shall procure Goods and Services necessary to complete the Work. Such procurement shall be paid from the Contract Funds and shall not increase the maximum amount payable hereunder by the Political Subdivision.

**D. Employees or Agents**

All persons employed by the Contractor or Subcontractors to perform Work under this Contract shall be the Contractor's or Subcontractors' employee(s) or agents for all purposes hereunder and shall not be employees or agents of the Political Subdivision for any purpose as a result of this Contract.

**E. Acceptance**

Once the Contractor has signed the draft "Notice of Acceptance" for the Investment Grade Audit Report and EPC Project Proposal, it shall submit that draft Notice of Acceptance to the Principal Representative for review and approval by the Governing Body. If the IGA Report and EPC Project Proposal meet the statutory requirements set forth in **§29-12.5-101, C.R.S., et seq.**, and upon receipt of a completed IGA Record of Review from CEO, the Governing Body may, in its discretion, authorize the Principal Representative to issue the Notice of Acceptance.

**ARTICLE 4 PAYMENTS TO CONTRACTOR**

The Political Subdivision shall, in accordance with the provisions of this **Article 4**, pay the Contractor in the amounts and using the methods set forth below:

**A. Project with Insufficient Cost Savings**

If the Contractor determines at any time during the Investment Grade Audit that savings cannot be attained to meet the Political Subdivision's statutory requirements set forth in **§29-12.5-101, C.R.S., et seq.**, the Investment Grade Audit shall be terminated in accordance with **Article 11(B)** and **Article 13**.

**B. Maximum IGA Payment Amount**

Except as provided for below in subsections (i) and (ii), and (iii) of this **Article 4**, within [45] days after the Notice of Acceptance is issued by the Governing Body, which indicates the completion of the Investment Grade Audit Report and the related proposal for the Energy Performance Contract Project, Principal Representative shall pay to the Contractor a sum not to exceed \$76,899 in accordance with IGA **Exhibits B and C** to this Contract.

**i. Payment Without Financing of Energy Performance Contract**

After the Notice of Acceptance has been issued, at the Governing Body's sole discretion, the Governing Body may exercise one of the two options set forth below, if the Governing Body of the Political Subdivision determines to pay out of available funds specifically appropriated for the purpose of performance of this Contract:

**a. Payment for performance of IGA only without authorization of Energy Performance Contract**

If the Governing Body decides not to proceed with an Energy Performance Contract, the Political Subdivision shall pay the Contractor for the due performance of the IGA from available funds which have been specifically appropriated for this purpose by the Governing Body in the ordinance or resolution authorizing the Political Subdivision to enter into this Contract. The Political Subdivision reserves the right to use such information from the Investment Grade Audit Report as it deems appropriate. Any unilateral use by the Political Subdivision of the Investment Grade Audit Report and any related underlying data for completing, using, maintaining or adding to any facilities of the Political Subdivision shall be at the sole risk of the Political Subdivision and without liability to the Contractor or Contractor consultants.

**b. Payment Without Financing Arranged Under Energy Performance Contract**

If the Governing Body authorizes the Political Subdivision to enter into an Energy Performance Contract with the Contractor, the Governing Body may determine to pay the Contractor for the

due performance of the IGA from available funds specifically appropriated for this purpose or from separate lease purchase [INSERT suitable variations for other forms of financing such as "enterprise" revenue bond financing], rather than finance the related project from the lease purchase or enterprise revenue bond financing provided through the Energy Performance Contract. The Political Subdivision will pay the Contractor within [90] days after the Notice of Acceptance is issued.

**ii. Payment with Financing Arranged Under Energy Performance Contract**

If the Governing Body authorizes the Political Subdivision to enter into (a) an Energy Performance Contract with the Contractor and (b) the financing of the IGA cost and the costs of the related project from the lease purchase financing [INSERT suitable variations for other forms of financing such as "enterprise" revenue bond financing] provided through the Energy Performance Contract, the Political Subdivision will have no direct payment obligations to the Contractor under this Contract, provided that the Contractor and the Political Subdivision execute an Energy Performance Contract and enter into such financing within [90] days after the issuance of the Notice of Acceptance. The above stated cost of the completed Investment Grade Audit shall be incorporated into the Contractor's total project costs and paid from the lease purchase [INSERT suitable variations for other forms of financing such as "enterprise" revenue bond financing] provided through the Energy Performance Contract.

**iii. Payment Without the issuance of the Notice of Acceptance**

Within [60] days after the date on which the Contractor submits the draft Notice of Acceptance to the Principal Representative, the Principal Representative shall review and may object and propose revisions, in writing, to the Contractor regarding the Investment Grade Audit Report and EPC Project Proposal. If the Political Subdivision has received the completed IGA Record of Review from CEO and such IGA Record of Review and the analysis of the Principal Representative reflect that the IGA Report and the EPC Project Proposal each meet the statutory requirements set forth in §29-12.5-101, C.R.S., *et seq.*, but the Political Subdivision does not issue the Notice of Acceptance, the Notice of Acceptance will be deemed issued as of the [61<sup>st</sup>] day after the Contractor's submission of the draft Notice of Acceptance. If the Notice of Acceptance is deemed issued, the Political Subdivision shall be obligated to pay the Contractor for its performance hereunder as set forth in **Article 4(B)(i)**, and the Contractor shall provide the complete Investment Grade Audit Report and any related underlying data including building, infrastructure, and equipment specifications, blueprints, etc., to the Political Subdivision for its records and use.

**C. Payment**

**i. Payments**

Contractor shall initiate any payment requests by submitting invoices to the Principal Representative in the form and manner set forth and approved by the Principal Representative and delivered to the San Miguel County Finance Office. Approved invoices that are received by the Finance Office before the 1<sup>st</sup> day of the month will be paid on the tenth day of the month; invoices received in the Finance Office the 2<sup>nd</sup> through the 10<sup>th</sup> day of the month will be paid on the 20<sup>th</sup> day of the month; invoices received on the 11<sup>th</sup> through the 20<sup>th</sup> day of the month will be paid on the last working day of the month. Payment of invoices does not constitute final acceptance of work, nor shall it be construed as a waiver by the County of any of its rights as may be provided by law.

Contractor represents and warrants that the prices, charges, or fees outlined in this Agreement (on the whole) are at least as favorable as the prices, charges, or fees Contractor charges (on the whole) to other of its customers/clients for the same or substantially similar services provided under the same or similar circumstances, terms, and conditions. If Contractor agrees or contracts with other customers/clients similarly situated during the term of this Agreement, and offers or agrees to a financial term more favorable than those set forth herein (on the whole), Contractor agrees that it will reduce the prices, charges, or fees charged to the County concerning the products/services hereunder to the most favorable rates received by those other customers/clients.

**ii. Available Funds-Contingency-Termination**



The Political Subdivision is prohibited by law from making financial commitments beyond the term of the current Fiscal Year. This Contract shall not constitute a debt or a multiple Fiscal Year financial obligation under any Colorado constitutional or statutory provisions or limitations. Payment to the Contractor beyond the current Fiscal Year is contingent on the appropriation and continuing availability of Contract Funds in any subsequent year. If federal funds or funds from any other source not from the Political Subdivision constitute all or some of the Contract Funds, the obligation of the Political Subdivision to pay the Contractor shall be contingent upon such funding continuing to be made available for payment. Payments to be made pursuant to this Contract shall be made only from Contract Funds, and the Political Subdivision's liability for such payments shall be limited to the amount remaining of such Contract Funds. If other funds are not appropriated, or otherwise become unavailable to fund this Contract, the Political Subdivision may, upon written notice, terminate this Contract, in whole or in part, without incurring further liability in accordance with the provisions hereof.

**iii. Erroneous Payments**

At the Governing Body's sole discretion, payments made to the Contractor in error for any reason, including, but not limited to overpayments or improper payments and unexpended or excess funds received by the Contractor, the Political Subdivision may recover from the Contractor by deduction from subsequent payments under this Contract or other contracts, grants or agreements between the Political Subdivision and the Contractor or by other appropriate methods and collected as a payment due to the Political Subdivision. Such payments shall not be made to any party other than the Political Subdivision.

**D. Use of Funds**

Contract Funds shall be used only for eligible costs identified herein.

**ARTICLE 5 REPORTING - NOTIFICATION**

Reports, Evaluations, and Reviews required under this **Article 5** shall be in accordance with the procedures of and in such form as prescribed by the Political Subdivision and in accordance with **Article 13**, if applicable.

**A. Litigation Reporting**

If Contractor is served with a pleading or other document in connection with an action before a court or other administrative decision-making body, and such pleading or document relates to this Contract or may affect Contractor's ability to perform its obligations under this Contract, Contractor shall, within 10 days after being served, notify the Political Subdivision of such action and deliver copies of such pleading or document to the Principal Representative of the Political Subdivision identified in **Article 13**.

**B. Performance Outside the State of Colorado and/or the United States**

*[This §5.B shall not apply if the Contract Funds include any Federal funds]* Following the Effective Date, Contractor shall provide written notice to the Political Subdivision by notice to the Principal Representative, in accordance with **Article 13**, within twenty (20) days of the earlier to occur of Contractor's decision to perform, or its execution of an agreement with a Subcontractor to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. Knowing failure by Contractor to provide notice to the Political Subdivision under this **Article 5(B)** shall constitute a material breach of this Contract.

**C. Noncompliance**

Contractor's failure to provide reports and notify the Principal Representative of the Political Subdivision in a timely manner in accordance with this **Article 5** may result in the delay of payment of funds and/or termination as provided under this Contract.

**ARTICLE 6 CONTRACTOR RECORDS**

**A. Maintenance**

Contractor shall maintain a file of all documents, records, communications, notes and other materials relating to the Work (the "Contractor Records"). Contractor Records shall include all documents, records, communications, notes and other materials maintained by Contractor that relate to any Work performed

by Subcontractors, and Contractor shall maintain all records related to the Work performed by Subcontractors required to ensure proper performance of that Work. Contractor shall maintain Contractor Records until the last to occur of: **(i)** the date [3] years after the date this Contract expires or is terminated, **(ii)** final payment under this Contract is made, **(iii)** the resolution of any pending Contract matters, or **(iv)** if a Contract audit is occurring, or Contractor has received notice that a Contract audit is pending, the date such Contract audit is completed and its findings have been resolved (the "Record Retention Period").

**B. Inspection**

Contractor shall permit the Political Subdivision to audit, inspect, examine, excerpt, copy and transcribe Contractor Records during the Record Retention Period. Contractor shall make Contractor Records available during normal business hours at Contractor's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than [2] Business Days' notice from the Principal Representative, unless the Principal Representative determines that a shorter period of notice, or no notice, is necessary to protect the interests of the Political Subdivision.

**C. Monitoring**

The Principal Representative, in its discretion, may monitor Contractor's performance of its obligations under this Contract using procedures as determined by the Political Subdivision. The Principal Representative shall monitor Contractor's performance in a manner that does not unduly interfere with Contractor's performance of the Work.

**D. Final Contract Audit Report**

Contractor shall promptly submit to the Political Subdivision a copy of any final Contract audit report of a Contract audit performed on Contractor's records that relates to or affects this Contract or the Work, whether the audit is conducted by Contractor or a third party.

**ARTICLE 7 CONFIDENTIAL INFORMATION AND POLITICAL SUBDIVISION RECORDS**

Contractor shall comply with the provisions of this **Article 7** if it becomes privy to confidential information in connection with its performance hereunder. Confidential information includes, but is not necessarily limited to, any Political Subdivision records, personnel records, and information concerning individuals. Such information shall not include information required to be disclosed pursuant to CORA.

**A. Confidentiality**

Contractor shall keep confidential, and cause all Subcontractors to keep confidential, all Political Subdivision Records, unless those Records are publicly available. Contractor shall not, without prior written approval of the Governing Body, use, publish, copy, disclose to any third party, or permit the use by any third party of any Political Subdivision Records, except as otherwise stated in this Contract, permitted by law, or approved in writing by the Governing Body. Contractor shall provide for the security of all Political Subdivision Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. Contractor shall immediately forward any request or demand for Political Subdivision Records to the Principal Representative.

**B. Other Entity Access and Nondisclosure Agreements**

Contractor may provide Political Subdivision Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to Political Subdivision Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Contract. Contractor shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Contract, and that the nondisclosure provisions are in force at all times that the agent, employee, assign or Subcontractor has access to any Political Subdivision Confidential Information. Contractor shall provide copies of those signed nondisclosure provisions to the Principal Representative upon execution of the nondisclosure provisions if requested by the Principal Representative.

**C. Use, Security, and Retention**

Contractor shall use, hold and maintain Political Subdivision Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Political Subdivision Confidential Information. Contractor shall provide the Principal Representative with access, subject to Contractor's

reasonable security requirements, for purposes of inspecting and monitoring access and use of Political Subdivision Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Contract, Contractor shall return Political Subdivision Records provided to Contractor or destroy such Political Subdivision Records and certify to the Governing Body that it has done so, as directed by the Principal Representative. If Contractor is prevented by law or regulation from returning or destroying Political Subdivision Confidential Information, Contractor warrants that it will guarantee the confidentiality of, and cease to use, such Political Subdivision Confidential Information.

**D. Incident Notice and Remediation**

If Contractor becomes aware of any Incident, it shall notify the Principal Representative immediately and cooperate with the Political Subdivision regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the Principal Representative. Unless Contractor can establish that Contractor and its Subcontractors are not the cause or source of the Incident, Contractor shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Contractor shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the Principal Representative, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the Governing Body at no additional cost to the Political Subdivision. The Governing Body may adjust or direct modifications to this plan in its sole discretion, and Contractor shall make all modifications as directed by the Principal Representative. If Contractor cannot produce its analysis and plan within the allotted time, the Principal Representative, in its sole discretion, may perform such analysis and produce a remediation plan, and Contractor shall reimburse the Political Subdivision for the actual costs thereof.

**E. Data Protection and Handling**

Contractor shall ensure that all Political Subdivision Records and Work Product in the possession of Contractor or any Subcontractors are protected and handled in accordance with the requirements of this Contract at all times.

**F. Safeguarding PII**

If Contractor or any of its Subcontractors will or may receive PII under this Contract, Contractor shall provide for the security of such PII, in a manner and form acceptable to the Principal Representative, including, without limitation, Political Subdivision non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

**ARTICLE 8 CONFLICTS OF INTEREST**

**A. Actual Conflicts of Interest**

Contractor shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Contractor under this Contract. Such a conflict of interest would arise when a Contractor or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the Political Subdivision, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Contract.

**B. Apparent Conflicts of Interest**

Contractor acknowledges that, with respect to this Contract, even the appearance of a conflict of interest shall be harmful to the Political Subdivision's interests. Absent the Governing Body's prior written approval, Contractor shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Contractor's obligations under this Contract.

**C. Disclosure to the Political Subdivision**

If a conflict or the appearance of a conflict arises, or if Contractor is uncertain whether a conflict or the appearance of a conflict has arisen, Contractor shall submit to the Principal Representative a disclosure statement setting forth the relevant details for the Political Subdivision's consideration. Failure to promptly submit a disclosure statement or to follow the Principal Representative's direction in regard to the actual or apparent conflict constitutes a breach of this Contract.

ARTICLE 9 INSURANCE Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Contract. All insurance policies required by this Contract shall be issued by insurance companies with an AM Best rating of A-VIII or better.

**A. Workers' Compensation**

Workers' compensation insurance as required by State statute and any other requirements of the Political Subdivision, and employers' liability insurance covering all Contractor or Subcontractor employees acting within the course and scope of their employment.

**B. General Liability**

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

\$1,000,000 each occurrence;

\$1,000,000 general aggregate;

\$1,000,000 products and completed operations aggregate; and

\$50,000 any 1 fire.

**C. Automobile Liability**

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

**D. Professional Liability Insurance**

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

\$1,000,000 each occurrence; and

\$1,000,000 general aggregate.

**E. Crime Insurance**

Crime insurance including employee dishonesty coverage with minimum limits as follows:

\$1,000,000 each occurrence; and

\$1,000,000 general aggregate.

**F. Additional Insured**

The Political Subdivision shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Contractor and Subcontractors.

**G. Primacy of Coverage**

Coverage required of Contractor and each Subcontractor shall be primary over any insurance or self-insurance program carried by Contractor or the Political Subdivision.

**H. Cancellation**

The above insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor shall forward such notice to the Principal Representative in accordance with **Article 13** within 7 days of Contractor's receipt of such notice.

**I. Subrogation Waiver**

All insurance policies secured or maintained by Contractor or its Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Contractor or the Political Subdivision, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

**J. Public Entities**

If Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, **§24-10-101, et seq., C.R.S.** (the GIA), Contractor shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Contract such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Contractor shall ensure that the Subcontractor maintains at all times during the terms

of this Contract, in lieu of the liability insurance requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

**K. Certificates**

Contractor shall provide to the Principal Representative, for the records of the Political Subdivision, certificates evidencing Contractor's insurance coverage required in this Contract within 7 Business Days following the Effective Date. Contractor shall provide to the Principal Representative, for the records of the Political Subdivision, certificates evidencing Subcontractor insurance coverage required under this Contract within 7 Business Days following the Effective Date; except that, if Contractor's subcontract is not in effect as of the Effective Date, Contractor shall provide to the Principal Representative certificates showing Subcontractor insurance coverage required under this Contract within 7 Business Days following Contractor's execution of the subcontract. No later than 15 days before the expiration date of Contractor's or any Subcontractor's coverage, Contractor shall deliver to the Principal Representative certificates of insurance evidencing renewals of coverage. At any other time during the term of this Contract, upon request by the Principal Representative, Contractor shall, within 7 Business Days following the request by the Principal Representative, supply to the Principal Representative evidence satisfactory to the Principal Representative of compliance with the provisions of this **Article 9**.

**ARTICLE 10. BREACH**

**A. Defined**

In addition to any breaches specified in other sections of this Contract, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

**B. Notice and Cure Period**

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in **§13**. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the Political Subdivision may exercise any of the remedies set forth in **§11**. Notwithstanding anything to the contrary herein, the Governing Body, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Contract in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

**ARTICLE 11. REMEDIES**

If Contractor is in breach under any provision of this Contract, the Political Subdivision shall have all of the remedies listed in this **Article 11** in addition to all other remedies set forth in other sections of this Contract following the notice and cure period set forth in **Article 10(B)**. The Political Subdivision may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

**A. Termination for Cause and/or Breach**

The Political Subdivision may terminate this entire Contract or any part of this Contract. Exercise by the Political Subdivision of this right shall not be a breach of its obligations hereunder. Contractor shall continue performance of this Contract to the extent not terminated, if any.

**i. Obligations and Rights**

To the extent specified in any termination notice, Contractor shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Contractor shall complete and deliver to the Principal Representative all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Contract's terms. At the sole discretion of the Governing Body, Contractor shall assign to the Political Subdivision all of Contractor's right, title, and interest under such terminated orders or subcontracts; provided that Contractor's obligations with respect to Contractor's Intellectual Property are set forth in **Article 14** below. Upon

termination, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials owned by the Political Subdivision in the possession of Contractor shall be immediately returned to the Political Subdivision. All Work Product, at the option of the Political Subdivision, shall be delivered by Contractor to the Principal Representative and shall become the Political Subdivision's personal property.

**ii. Payments**

The Political Subdivision shall reimburse Contractor only for accepted performance up to the date of termination. If, after termination by the Political Subdivision, it is determined that Contractor was not in breach or that Contractor's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Contract had been terminated in the public interest, as described herein.

**iii. Damages and Withholding**

Notwithstanding any other remedial action by the Political Subdivision, Contractor shall remain liable to the Political Subdivision for any damages sustained by the Political Subdivision by virtue of any breach under this Contract by Contractor and the Political Subdivision may withhold any payment to Contractor for the purpose of mitigating the Political Subdivision's damages, until such time as the exact amount of damages due to the Political Subdivision from Contractor is determined. The Principal Representative may withhold any amount that may be due Contractor as the Governing Body deems necessary to protect the Political Subdivision against loss, including loss as a result of outstanding liens, claims of former lien holders, or for the excess costs incurred in procuring similar goods or services. Contractor shall be liable for excess costs incurred by the Political Subdivision in procuring from third parties replacement Work, Services or substitute Goods as cover.

**B. Early Termination for Insufficient Cost Savings**

The Contractor is entering into this Contract for the purpose of carrying out an Investment Grade Audit and Energy Performance Contract Project Proposal. The Contractor may terminate this Contract in accordance with **Article 4(A)(iii)** prior or subsequent to the completion of the Investment Grade Audit. The Contractor shall notify the Governing Body in writing that Contractor is unable to guarantee savings which exceeds the costs associated with performing the audit, installing the improvements, and related maintenance and monitoring services as required and set forth in **§29-12.5-101, C.R.S., et seq.** Exercise by the Contractor of this Early Termination for Insufficient Cost Savings, shall not be deemed a breach of the Contractor's obligations hereunder.

**i. Method and Content**

The Contractor shall notify Governing Body of such termination in accordance with **Article 13**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Contract.

**ii. Obligations and Rights**

Upon receipt of a termination notice, Contractor shall take timely, reasonable and necessary action to protect and preserve property in the possession of Contractor in which the Political Subdivision has an interest. All materials owned by the Political Subdivision in the possession of Contractor shall be immediately returned to the Political Subdivision.

**iii. Payments**

In this event this Contract shall be terminated and the Political Subdivision shall not be liable to pay Contractor, in whole or part, the amount specified in **Article 4(A)**.

**C. Remedies Not Involving Termination**

The Governing Body, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

**i. Suspend Performance**

Suspend Contractor's performance with respect to all or any portion of this Contract pending necessary corrective action as specified by the Principal Representative of the Governing Body of the Political Subdivision without entitling Contractor to an adjustment in price/cost or performance schedule. Contractor shall promptly cease performance and incurring costs in accordance with the

Principal Representative's directive and the Political Subdivision shall not be liable for costs incurred by Contractor after the suspension of performance under this provision.

**ii. Withhold Payment**

Withhold payment to Contractor until corrections in Contractor's performance are satisfactorily made and completed.

**iii. Deny Payment**

Deny payment for those obligations not performed, that due to Contractor's actions or inactions, cannot be performed or, if performed, would be of no value to the Political Subdivision; provided, that any denial of payment shall be reasonably related to the value to the Political Subdivision of the obligations not performed.

**iv. Removal**

Notwithstanding any other provision herein, the Principal Representative of the Governing Body of the Political Subdivision may demand immediate removal of any of Contractor's employees, agents, or subcontractors whom the Principal Representative deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Contract is deemed to be contrary to the public interest or the Political Subdivision's best interest.

**v. Intellectual Property**

If Contractor infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Contract, Contractor shall, at the Governing Body's option (a) obtain for the Political Subdivision or Contractor the right to use such products and services; (b) replace any Goods, Services or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services or products and refund to the Political Subdivision the amounts paid by the Political Subdivision for any such infringing Goods, Services or products.

**D. Contractor's Remedies**

If the Political Subdivision is in breach of any provision of this Contract and does not cure such breach, Contractor, following the notice and cure period in **Article10.B** and the dispute resolution process in **Article12**, shall have all remedies available at law and equity.

**ARTICLE 12 DISPUTE RESOLUTION**

**A. Initial Resolution**

Except as herein specifically provided otherwise, disputes concerning the performance of this Contract which cannot be resolved by the designated Contract Representatives shall be referred in writing to a senior manager designated by the Political Subdivision and a senior manager designated by Contractor for resolution.

**B. Resolution of Controversies**

If the initial resolution described in **Article12.A** fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the Political Subdivision to the [insert title of designee].

**ARTICLE 13 NOTICES and REPRESENTATIVES**

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Contract shall be in writing, and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party's principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address or (iv) by overnight courier to the address set forth below, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this **Article13** without a formal

amendment to this Contract. Unless otherwise provided in this Contract, notices shall be effective upon delivery of the written notice.

**A. Political Subdivision Designee:**

Name and title of Person Lynn Padgett / Amy Markwell
Department Name Government Affairs and Natural Resources / County Attorney
Address PO Box 1170
City/Town, State Zip Telluride, CO 81435
Email <a href="mailto:lynnp@sanmiguelcountyco.gov">lynnp@sanmiguelcountyco.gov</a> / <a href="mailto:amym@sanmiguelcountyco.gov">amym@sanmiguelcountyco.gov</a>

**B. Contractor:**

Marc Bouchard – Legal Counsel
Smart Infrastructure – Energy Performance Services
887 Deerfield Parkway
Buffalo Grove, IL 60089
Marc.bouchard@siemens.com

**ARTICLE 14 RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE**

Except for Contractor's Intellectual Property, any research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Contractor in the performance of its obligations under this Contract shall be the nonexclusive personal property of the Political Subdivision and all Work Product shall be delivered to the Principal Representative, for the records of the Political Subdivision, by Contractor upon completion or termination hereof. The Political Subdivision's nonexclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer and prepare derivative works.

**ARTICLE 15 GOVERNMENTAL IMMUNITY**

Liability for claims for injuries to persons or property arising from the negligence of the Political Subdivision and its departments, institutions, agencies, boards, officials, and employees, including the members of the Governing Body and the Principal Representative, is controlled and limited by the provisions of the Governmental Immunity Act **§24-10-101, C.R.S., et seq.**

**ARTICLE 16 GENERAL PROVISIONS**

**A. Assignment**

Contractor's rights and obligations under this Contract are personal and may not be transferred or assigned without the prior, written consent of the Governing Body. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by the Governing Body shall be subject to the provisions of this Contract.

**B. Subcontracts**

Contractor shall not enter into any subcontract in connection with its obligations under this Contract without the prior, written approval of the Governing Body of the Political Subdivision. Contractor shall submit to the Principal Representative a copy of each such subcontract upon request by the Principal Representative. All subcontracts entered into by Contractor in connection with this Contract shall comply with all applicable federal, state and Political Subdivision laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Contract.

**C. Binding Effect**

Except as otherwise provided in **Article 17(A)**, all provisions of this Contract, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.



**D. Authority**

Each Party represents and warrants to the other that the execution and delivery of this Contract and the performance of such Party's obligations have been duly authorized.

**E. Captions and References**

The captions and headings in this Contract are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Contract to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

**F. Counterparts**

This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

**G. Entire Understanding**

This Contract represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Contract. Prior or contemporaneous additions, deletions, or other changes to this Contract shall not have any force or affect whatsoever, unless embodied herein.

**H. Jurisdiction and Venue**

All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado.

**I. Modification**

Except as otherwise provided in this Contract, any modification to this Contract shall only be effective if agreed to in a formal amendment to this Contract, properly executed and approved in accordance with applicable laws and the fiscal rules and policies of the Political Subdivision. Modifications permitted under this Contract, other than contract amendments, shall conform to the policies promulgated by the Political Subdivision.

**J. Statutes, Regulations, Fiscal Rules and Other Authority.**

Any reference in this Contract to a statute, regulation, Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Contract.

**K. Order of Precedence**

In the event of conflicts or inconsistencies between this Contract and any Exhibits or attachments such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Political Subdivision General Provisions in the main body of this Contract,
- ii. The provisions of the other sections of the main body of this Contract,
- iii. IGA Exhibit A - Scope of Work,
- iv. IGA Exhibit B - Location of Audit and
- v. IGA Exhibit C - Cost and Pricing Elements.

**L. Severability**

The invalidity or unenforceability of any provision of this Contract shall not affect the validity or enforceability of any other provision of this Contract, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Contract in accordance with the intent of the Contract.

**M. Survival of Certain Contract Terms**

Any provision of this Contract that imposes an obligation on a Party after termination or expiration of the Contract shall survive the termination or expiration of the Contract and shall be enforceable by the other Party.

**N. Taxes**

The Political Subdivision is exempt from all federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from Colorado state and local government sales and use taxes under **§§39-26-704(1), et seq. C.R.S.** The Political Subdivision shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political

subdivision of the State of Colorado imposes such taxes on Contractor. Contractor shall be solely responsible for any exemptions from the collection of excise, sales, or use taxes that Contractor may wish to have in place in connection with this Contract.

**O. Third Party Beneficiaries**

Except for the Parties' respective successors and assigns described in Article 17, this Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Contract and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Contract are incidental to the Contract, and do not create any rights for such third parties.

**P. Waiver**

A Party's failure or delay in exercising any right, power, or privilege under this Contract, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

**Q. Colorado Open Records Act Disclosure**

The Parties acknowledge that the Political Subdivision is a governmental entity formed pursuant to Colorado law, and as such, is subject to the Colorado Open Records Act, C.R.S. § 24-72-200 *et seq.* ("CORA"). In the event the Political Subdivision receives a request under CORA that would require production of records related to Contractor, the Political Subdivision will inform Contractor of such request and provide Contractor with a copy of any such written request. Contractor shall promptly notify the Political Subdivision if: (i) production of the requested record would disclose Contractor's trade secrets, privileged information, and/or confidential commercial or financial data pursuant to C.R.S. § 24-72-204(3)(a)(IV); or (ii) Contractor desires to pursue a legal action to prevent disclosure of such documents. The Political Subdivision shall determine whether to deny the request. If the Political Subdivision's denial of a request is challenged, the Political Subdivision will notify Contractor of such challenge and provide the Company with a written copy of any such challenge. Contractor shall indemnify and hold the Political Subdivision harmless from any claim or judgment as well as any costs and attorney's fees incurred in denying such request or otherwise assisting Contractor in response to a denial and/or legal challenge to the denial.

**R. Standard and Manner of Performance**

Contractor shall perform its obligations under this Contract in accordance with the highest standards of care, skill and diligence in Contractor's industry, trade, or profession.

**S. Licenses, Permits, and Other Authorizations.**

Contractor shall secure, prior to the Effective Date, and maintain at all times during the term of this Contract, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Contract, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Contract.

**T. Indemnification**

**i. General Indemnification**

Contractor shall indemnify, save, and hold harmless the Political Subdivision, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relation to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with this Contract.

**ii. Confidential Information Indemnification**

Disclosure or use of Political Subdivision Confidential Information by Contractor in violation of **Article 7** may be cause for legal action by third parties against Contractor, the Political Subdivision, or their respective agents. Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by the Political Subdivision in relation to any act or omission by Contractor, or its employees, agents, assigns, or Subcontractors in violation of **Article 7**.

iii. Intellectual Property Indemnification

Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right.

**ARTICLE 17 COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-1)**

**A. APPROVAL**

This Contract shall not be valid until it has been approved by the Board of County Commissioners.

**B. FUNDS AVAILABILITY**

Financial obligations of the Political Subdivision payable after the current Fiscal Year are contingent upon funds for that purpose being budgeted, appropriated and encumbered for the purposes of this Contract as given in **§24-30-202(5.5), C.R.S.**

**C. GOVERNMENTAL IMMUNITY.**

No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, **§24-10-101, et seq. C.R.S.** or the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b).

**D. INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the Political Subdivision. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the Political Subdivision and the Political Subdivision shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall not have authorization, express or implied, to bind the Political Subdivision to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(i)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(ii)** provide proof thereof when requested by the Principal Representative, and **(iii)** be solely responsible for its acts and those of its employees and agents.

**E. COMPLIANCE WITH LAW.**

Contractor shall strictly comply with all applicable federal, State and local laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW.**

Colorado law and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or

otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Contract, to the extent capable of execution.

**G. BINDING ARBITRATION PROHIBITED.**

The Political Subdivision does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Contract or incorporated herein by reference shall be null and void.

**H. SOFTWARE PIRACY PROHIBITION** Political Subdivision or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the Political Subdivision determines that Contractor is in violation of this provision, the Political Subdivision may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST**

The signatories aver that to their knowledge, no employee of the Political Subdivision has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET**

The Political Subdivision's Controller may withhold payment for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges; **(iii)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the Political Subdivision as a result of final agency determination or judicial action.

**K. PUBLIC CONTRACTS FOR SERVICES**

Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program established under Pub. L. 104-208 or the State verification program established pursuant to **§8-17.5-102(5)(c), C.R.S.**, Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the Principal Representative within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to **§8-17.5-102(5), C.R.S.**, by the Colorado Department of Labor and Employment. If Contractor participates in the State program, Contractor shall deliver to the Principal Representative, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Contractor fails to comply with any requirement of this provision or **§§8-17.5-101, et seq., C.R.S.**, the Political Subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS**

Contractor, if a natural person 18 years of age or older, hereby swears and affirms under penalty of perjury that he or she **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)**

shall comply with the provisions of **§§24-76.5-101, et seq., C.R.S.**, and (iii) has produced one form of identification required by **§24-76.5-103, C.R.S.** prior to the Effective Date of this Contract.

**M. LOCAL PREFERENCE**

The provisions of the Political Subdivision's Purchasing Policy are applicable to this Contract. In the procurement of professional services and construction contracts, Contractor shall endeavor to give preference to vendors and service providers located in San Miguel County and the western slope region of Colorado. If all other evaluation criteria set forth herein, or in the invitation for bids or requests for proposals, are equal to bidders located outside of county, preference should be given to vendors and service providers located in the County. 9.2 Criteria to be considered a "local" vendor or service provider: a) Company maintains its principal and/or primary place of business in the County. b) Company's vehicles are registered in San Miguel County. c) Majority of company's owners reside in San Miguel County. d) Local preference may not be in an amount to exceed five percent (5%) of the total price. Please see the following table for reference. Local preference should be given as follows: Purchases under \$5,000 5% Purchases between \$5,000 and 25,000 3% Purchases over \$25,000 2%

**N. COLORADO LABOR PREFERENCE**

The provisions of C.R.S. §§ 8-17-101 and 102, are applicable to this Contract. Colorado labor must be employed to perform the work to the extent of not less than eighty percent of each type or class of labor in the several classifications of skilled and common labor employed on the Project. "Colorado labor" means any person who is a resident of the State of Colorado, at the time of employment, without discrimination as to race, color, creed, sex, age, or religion except when sex or age is a bona fide occupational qualification. The Political Subdivision may waive the 80% requirement if there is reasonable evidence to demonstrate insufficient Colorado labor to perform the work of the project and if compliance would create an undue burden that could substantially prevent the completion of the project.

**O. TRANSPARENCY AND DOCUMENTATION OF SUB-CONTRACTOR SELECTION CRITERIA**

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**ARTICLE 18. SIGNATURE PAGE**

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

\* Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the Political Subdivision is relying on their representations to that effect.

<p><b>CONTRACTOR</b> <b>Siemens Industry, Inc</b> By: INSERT-Name of Authorized Individual Title: INSERT-Official Title of Authorized Individual</p> <p>_____</p> <p>*Signature</p> <p>Date: _____</p>	<p><b>POLITICAL SUBDIVISION</b> <b>San Miguel County</b> <b>Board of County Commissioners</b></p> <p>_____</p> <p>By: Hilary Cooper, Chair</p> <p>Date: _____</p>
	<p><b>LEGAL REVIEW</b> <b>Amy Markwell, County Attorney</b></p> <p>By: _____</p> <p>Signature - Title</p> <p>Date: _____</p> <p><b>ADD OTHER APPLICABLE REQUIRED SIGNATURES</b></p>

**IGA EXHIBIT A – SCOPE OF WORK**

DRAFT

**IGA EXHIBIT B – LOCATION OF ENERGY AUDIT**

DRAFT



**IGA EXHIBIT C - COST AND PRICING ELEMENTS**

DRAFT

# IGA Exhibit A

## Scope of Work

- [SECTION 1. Energy Performance Contract Definitions and Terms](#)
- [SECTION 2. Pre-Audit Conference](#)
- [SECTION 3. Data Collection and Building/Equipment Schedules](#)
- [SECTION 4. Establish Baseline Period Consumption](#)
- [SECTION 5. Preliminary Analysis and Discussion of Utility Cost-Savings Measures and FIMs and other ESCO Services](#)
- [SECTION 6. Detailed Analysis of Utility Cost-Savings Measures and FIMs and other ESCO Services](#)
- [SECTION 7. Draft Investment Grade Audit Report](#)
- [SECTION 8. Post Draft Investment Grade Audit Report Conference](#)
- [SECTION 9. Final Investment Grade Audit Report and Energy Performance Contract Project Proposal](#)

### **Purpose of the Investment Grade Audit and this Scope of Work Exhibit**

The purpose of the Investment Grade Audit (IGA) is to review the Political Subdivision's facilities and infrastructure with the intent to present an IGA audit report and an Energy Performance Contract (EPC) Project Proposal. The Scope of Work exhibit is a general outline of the process from the initial Pre-Audit Conference to an accepted IGA report and an EPC Project Proposal. The Scope of Work outlines the information collected, how it is analyzed, the methodology used for calculations, an initial but not exclusive list of Utility Cost-Savings Measures and FIMs to consider, a proposed financing performance, and a format for the report. The EPC Project Proposal should include proposed equipment (or equal) to be installed, proposed facility modifications, expected utility savings, expected project costs, proposed project design and construction schedule, a measurement and verification plan, and long-term Energy Service Company (ESCO) and Political Subdivision maintenance requirements.

The ESCO shall conduct all necessary conference(s) and produce associated documentation to initiate and complete Work under the IGA Contract. The ESCO will facilitate all reviews and collect all the comments starting with the Pre-Audit Conference (reference this **Section 2**) through the Post-Audit Conference (reference **Section 8**). The ESCO will develop the draft and final Investment Grade Audit report and develop the Energy Performance Contract Project Proposal.

If the Political Subdivision (Municipality, County, School District, or Special District) and the ESCO (with CEO review) determine that any of the following services detailed below are not required for a given project, the Scope of Work can be modified by the Political Subdivision by striking through the identified services.

### **SECTION 1. Energy Performance Contract Definitions and Terms**

The following terms are used in the Investment Grade Audit and Project Proposal Contract. The Energy Performance Contract shall be construed and interpreted as follows:

- A. Adjusted-Baseline Energy**  
"Adjusted-Baseline Energy" means the energy use of the baseline period, adjusted to a different set of operating conditions.
- B. American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE)**  
"American Society of Heating, Refrigeration, and Air Conditioning Engineers" or "ASHRAE" means the recognized professional organization with standards and guidelines that may be referenced for additional definitions, procedures, and technical information as necessary in this Scope of Work and the IGA Project Proposal Report.
- C. Baseline Energy**  
"Baseline Energy" means the energy use (units) occurring during the Baseline Period without adjustments.
- D. Baseline Period**

## IGA Exhibit A

### Scope of Work

“Baseline Period” means the period of time chosen to represent operation of the facility or system before implementation of a Utility Cost-Savings Measure or any applicable FIM, as defined herein. This period may be as short as the time required for an instantaneous measurement of a constant quantity, or long enough to reflect one full operating cycle of a system or facility with variable operations.

**E. Baseline**

“Baseline” means and pertains to the baseline period.

**F. Commissioning**

“Commissioning” means a process for achieving, verifying and documenting the performance of equipment to meet the operational needs of the facility within the capabilities of the design, and to meet the design documentation and the Political Subdivision's functional criteria, including preparation of operating personnel. Retro-commissioning is the application of the Commissioning process to existing buildings.

**G. Cost-Weighted Average Service Life**

“Cost-Weighted Average Service Life” means the calculation is based upon the service life of the equipment (ASHRAE Handbook - HVAC Applications or other approved source), the cost of each Utility Cost-Savings Measure or FIM (excluding the audit cost and Political Subdivision's contingency), and the total cost of all the measures. The formula is the sum of each measure cost divided by the total cost multiplied by its service life.  $\text{Cost-Weighted Average Service Life} = \sum \text{each measure} \div \text{total cost} \times \text{service life}$ .

**H. Energy**

“Energy” means electricity (both usage and demand), natural gas, steam, water (potable or non-potable), or any other Utility-charged service.

**I. Energy Conservation Measure (ECM)**

“Energy Conservation Measure” or “ECM” means an Energy Saving Measure or Utility Cost-Savings Measure as defined in **§29-12.5-101(4) and §29-12.5-101(9), C.R.S.**, respectively. An ECM is an activity or set of activities designed to increase the efficiency (energy, water, or other utility) of a facility, system or piece of equipment. ECMs may also conserve energy without changing efficiency. An ECM may involve one or more of: physical changes to facility equipment, revisions to operating and maintenance procedures, software changes, or new means of training or managing users of the space or operations and maintenance staff. An ECM may be applied as a retrofit to an existing system or facility, or as a modification to a design before construction of a new system or facility. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**J. Energy Cost-Savings Contract**

“Energy Cost-Savings Contract” means a Utility Cost-Savings Contract or a Vehicle Fleet Operational and Fuel Cost-Savings Contract as defined in **§29-12.5-101(2.5), C.R.S.**

**K. Energy Cost-Savings Measure**

“Energy Cost-Savings Measure” means a Utility Cost-Savings Measure or a Vehicle Fleet Operational and Fuel Cost-Savings Measure. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**L. Energy Performance Contract**

“Energy Performance Contract” (“EPC”) as defined in **§29-12.5-101(3), C.R.S.**, is a contract for evaluations, recommendations or implementation of one or more Utility Cost-Savings Measures designed to produce Utility Cost-Savings, Operation and Maintenance Cost Savings, or Vehicle Fleet Operational and Fuel Cost-Savings, which:

- i. Sets forth savings attributable to calculated Utility Cost-Savings or Operation and Maintenance Cost Savings for each year during the Contract Term;
- ii. Provides that the amount of actual savings for each year during the Contract Term shall exceed annual contract payments, including maintenance costs, to be made during such year by the Political Subdivision contracting for the Energy Cost-Savings Measures;
- iii. Requires the party entering into the Energy Performance Contract with the Political Subdivision to provide a written guarantee that the sum of Energy Cost-Savings and Operation and Maintenance Cost

## IGA Exhibit A

### Scope of Work

Savings for each year during the first three years of the Contract period shall not be less than the calculated savings for that year;

- iv. Requires a minimum of one-tenth of payments by the Political Subdivision to be made within the first two years. Requires remaining payments by the Political Subdivision to be made within 12 years after the date of the execution of the contract, except that the maximum term of the payments shall be less than the Cost-Weighted Average Service Life of energy cost-savings equipment for which the contract is made, not to exceed 25 years.

**M. Energy Service Company**

“Energy Service Company” or “ESCO” means the energy service company entity entering into a contract to design and construct the Project with the Political Subdivision. The Energy Service Company may also be referred to as “Contractor” in this Contract or in related schedules, exhibits, attachments, contract modification or procedural documents. The ESCO may be the architect/engineer for the Utility Cost-Savings Measures or may contract out these professional services with approval of the Governing Body.

**N. Facility Improvement Measure**

“Facility Improvement Measure” or “FIMS” is an activity or set of activities designed to improve the structural or operational conditions of a facility, system or piece of equipment. A FIM may be an activity associated with an Energy Cost-Savings Measure and funded as part of an EPC. A FIM may be an activity requested by the Political Subdivision, but is not an Energy Cost-Savings Measure, but funds have been budgeted, appropriated and otherwise made available to be included in an EPC. Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

**O. Federal Energy Management Program (FEMP) Measurement & Verification Guidelines**

“Federal Energy Management Program (“FEMP”) Measurement and Verification (M&V) Guidelines” means the current M&V Guidelines prepared by the U.S. Department of Energy. The FEMP M&V Guidelines contains specific procedures for applying concepts originating in the IPMVP (definition below). The FEMP M&V Guidelines represents a specific application of the IPMVP to EPC projects. It outlines procedures for determining M&V approaches, evaluating M&V plans and reports, and establishing the basis of payment for energy savings during the contract. These procedures are intended to be fully compatible and consistent with the IPMVP.

**P. Finance Agreement Term**

“Finance Agreement Term” means the original term and all renewal terms of any Lease-Purchase Agreement or any other financing or funding agreement of the Political Subdivision for the costs of this contract.

**Q. Guarantee Period**

“Guarantee Period” means a period of time commencing upon M&V Commencement Date and terminating on the termination of the M&V Term. The Guarantee Period is a mutually agreed to time period after the M&V Commencement Date, during which Guaranteed Annual Cost Savings resulting from the Project are measured and verified by the ESCO set forth in **EPC Schedule D**.

**R. International Performance Measurement and Verification Protocol**

“International Performance Measurement and Verification Protocol” or “IPMVP” means the current document prepared by the Efficiency Valuation Organization on the Effective Date of the IGA contract. It is the industry standard for current best practice techniques available for verifying results of energy efficiency, water efficiency, and renewable energy projects associated with the Investment Grade Audit Report and Energy Performance Contract Project Proposal (**reference Section 7**).

**S. kW**

“kW” is Kilowatt (abbreviation)

**T. kWh**

“kWh” is Kilowatt-hour (abbreviation)

**U. Measurement and Verification**

“Measurement and Verification” or “M&V” means the process of using measurements to reliably determine and verify the actual savings created within buildings, infrastructure, or systems resulting from an energy management program. Savings cannot be directly measured, since they represent the absence of energy

## IGA Exhibit A

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use. Instead, savings are determined by comparing measured use before and after implementation of a project, making appropriate adjustments for changes in conditions. M&V follows the standards and definitions in the current International Performance Measurement and Verification Protocol ("IPMVP"), as may be amended by the Efficiency Valuation Organization on the Effective Date of this contract. The CEO Measurement and Verification Policy may allow alternative verification standards as appropriate for select Utility Cost-Savings Measures or FIMs.

**V. M&V Commencement Date**

"M&V Commencement Date" means the first day of the month following the completion by ESCO and acceptance by the Governing Body of the Political Subdivision of the Project.

**W. M&V Fee**

"M&V Fee" means an annual fee paid to ESCO by the Political Subdivision for ESCO's satisfactory performance of the M&V Services, as set forth in **EPC contract Article 13**. The M&V Fee is included as a part of the EPC Maximum Contract Price.

**X. M&V Plan**

"M&V Plan" defines how savings will be calculated and specifies any ongoing activities that will occur during the Contract Term. The details of the M&V Plan are in **EPC Contract Schedule D**.

**Y. M&V Services**

"M&V Services" means Services or activities relating to the measurement and verification by ESCO of the efficiency and effectiveness of the Project, pursuant to this Contract and the CEO Measurement and Verification Policy as applied.

**Z. M&V Term**

"M&V Term" has the meaning as described to it in **EPC Contract Article 13**.

**AA. MMBtu**

"MMBtu" means 1 Million British thermal unit (abbreviation).

**BB. O&M**

"O&M" means Operations and Maintenance (abbreviation).

**CC. Operations and Maintenance Cost Savings**

"Operation and Maintenance Cost Savings" as defined in **§29-12.5-101 (4.5), C.R.S.**, means the measurable decrease in operation and maintenance (O&M) costs that is a direct result of the implementation of one or more Utility Cost-Savings Measures. Such savings shall be calculated in comparison with an established baseline of operation and maintenance costs.

**DD. Rebate**

"Rebate" means moneys used for ESCO's compensation that are not the moneys of the Political Subdivision [or moneys from a Third-Party Lessor], including solar RECs and utility rebates, all as described in **Schedule B** and on **Schedule G**.

**EE. Repair or Replace**

"Repair or Replace" means to repair or replace equipment or components as necessary based upon the age, usage, O&M cost, potential efficiency improvement, etc.

**FF. Savings Calculations**

"Savings Calculations" means the manner in which Savings is calculated, as set forth in **EPC contract Schedule C**.

**GG. Simple Payback**

"Simple Payback" means the length of time, typically presented in years, required to recover the cost of a measure or project.

**HH. Third-Party Lessor**

"Third-Party Lessor" means a third-party entity entering into a Lease Purchase Agreement, as lessor, with the Political Subdivision, as lessee, for the lease purchase financing of the Equipment and the Services pursuant to this Contract.

**II. Utility or Utilities**

"Utility" or "Utilities" means the water, sewer services, electricity payments to energy service companies, purchase of energy conservation equipment, and all heating fuels. Utility may include compressed air, chilled water, or other systems or services as agreed to with the Governing Body of the Political Subdivision.

**JJ. Utility Cost Savings**

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“Utility Cost Savings” means the definition set forth in **§29-12.5-101(7), C.R.S.**, is the combination of either or both of the following:

- i. A cost savings caused by a reduction in metered or measured physical quantities of a bulk fuel or Utility resulting from the implementation of one or more Utility Cost-Savings Measures or FIMs when compared with an established baseline of usage; or
- ii. A decrease in utility costs as a result of changes in applicable utility rates or utility service suppliers. The savings shall be calculated in comparison with an established baseline of utility costs.

#### **KK. Utility Cost-Savings Contract**

“Utility Cost-Savings Contract” means an Energy Performance Contract or any other agreement in which Utility Cost Savings are used to pay for services or equipment set forth in **§29-12.5-101(8), C.R.S.**

#### **LL. Utility Cost-Savings Measure**

“Utility Cost-Savings Measure” means the definition set forth in **§29-12.5-101(9), C.R.S.**, is the installation, modification or service that is designed to reduce energy and water consumption and related operating costs in buildings and other facilities and includes, but is not limited to, the following:

- i. Insulation in walls, roof, floors and foundations, and in heating and cooling distribution systems;
- ii. Storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated window and door systems, additional glazing, reductions in glass area, and other window and door system modifications that reduce energy consumption;
- iii. Automatic energy control systems;
- iv. Heating, ventilating or air conditioning and distribution system modifications or replacements in buildings or central plants;
- v. Caulking or weather stripping;
- vi. Replacement or modification of lighting fixtures to increase the energy efficiency of the system without increasing the overall illumination of a facility unless such increase in illumination is necessary to conform to the applicable building code for the proposed lighting system;
- vii. Energy recovery systems;
- viii. Renewable energy and alternate energy systems;
- ix. Cogeneration systems that produce steam or forms of energy, such as heat or electricity, for use primarily within a building or complex of buildings;
- x. Devices that reduce water consumption or sewer charges;
- xi. Changes in operation and maintenance practices;
- xii. Procurement of low-cost energy supplies of all types, including electricity, natural gas and other fuel sources, and water;
- xiii. Indoor air quality improvements that conform to applicable building code requirements;
- xiv. Daylighting systems;
- xv. Building operation programs that reduce utility and operating costs including computerized energy management and consumption tracking programs, staff and occupant training, and other similar activities;
- xvi. Services to reduce utility costs by identifying utility errors and optimizing existing rate schedules;
- xvii. Any other location, orientation, or design choice related to, or installation, modification of installation or remodeling of, building infrastructure improvements that produce utility or operational cost savings for their appointed functions in compliance with applicable state and local building codes;
- xviii. Vehicle fleet operational and fuel cost savings;
- xix.** When an energy saving measure involves a cogeneration system, the sale of excess cogenerated energy shall be subject to the same state and federal regulatory requirements as the sale of all other cogenerated energy, as set forth in **§29-12.5-103(3), C.R.S.**

Within this Contract, Utility Cost-Savings Measures, Energy Saving Measures, Energy Cost-Saving Measures, Energy Conservation Measures (ECMs) and Facility Improvement Measures (FIMs) shall be interchangeable as necessary and may include vehicle fleet operational and fuel cost savings measures.

#### **MM. Vehicle Fleet Operational and Fuel Cost Savings**

“Vehicle Fleet Operational and Fuel Cost Savings” means a measurable decrease in the operation and maintenance costs of Political Subdivision vehicles that is associated with fuel or maintenance based on higher efficiency ratings or alternative fueling methods, including but not limited to savings from the

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reduction in maintenance requirements and a reduction in or the elimination of projected fuel purchase expenses as a direct result of investment in higher efficiency or alternative fuel vehicles or vehicle or charging infrastructure.

#### **NN. Vehicle Fleet Operational and Fuel Cost-Savings Contract**

“Vehicle Fleet Operational and Fuel Cost-Savings Contract” means the definition set forth in **§29-12.5-101(11), C.R.S.**, means an Energy Performance Contract or any other agreement in which Vehicle Fleet Operational and Fuel Cost Savings are used to pay for the cost of the vehicle or associated capital investments.

#### **OO. Vehicle Fleet Operational and Fuel Cost-Savings Measure**

“Vehicle Fleet Operational and Fuel Cost-Savings Measure” is defined in **§29-12.5-101(12), C.R.S.**, means any installation, modification, or service that is designed to reduce energy consumption and related operating costs in vehicles and includes, but is not limited to, the following:

- i. Vehicle purchase or lease costs either in full or in part;
- ii. Charging or fueling infrastructure to appropriately charge or fuel alternative fuel vehicles included in an energy performance contract.

### **SECTION 2. Pre-Audit Conference**

The Pre-Audit Conference is the initial meeting including the Political Subdivision’s key staff, the Colorado Energy Office (CEO) representative, and all critical ESCO staff to present and discuss the Investment Grade Audit (IGA) approach, its activities, individual and mutual responsibilities, and proposed schedule.

ESCO shall prepare an agenda and conference record to include, but not be limited to, the following agenda outline and topics:

#### **A. Introductions/Roles**

- i. Roles of key representatives
- ii. Preferred means of communication and protocols
- iii. Contact Information

#### **B. Objectives and Goals**

- i. Political Subdivision’s interests, goals, objectives and priorities (Owner/Political Subdivision project requirements)
- ii. Level of management, facility, and staff support
- iii. Discussion by ESCO of their approach to the project
- iv. Review of CEO program support documents, process, forms (CEO IGA/EPC Review Matrix, Record of Review, M&V Policy, other items)

#### **C. Technical Expectations**

- i. General discussion on EPC scope, buildings and potential Utility Cost-Savings Measures or FIMS to be considered
- ii. Discussion of any Federal, State, Local, or Political Subdivision environmental, occupancy, construction specifications, performance or other reporting or certification requirements
- iii. Long-term plans at the facilities including additional capacity, demolition, new construction
- iv. Operations and maintenance, training and educational needs and expectations
- v. Commissioning (Cx) and Retro-Commissioning (RCx) priorities for EPC scope and the existing facilities
- vi. Deferred maintenance project priorities of the facilities
- vii. Code Compliance: State and local jurisdiction building code requirements, as applicable
- viii. Hazardous materials and other considerations/issues
- ix. Other studies, reports information available

#### **D. Project Financial Parameters**

- i. Simple payback, contract term, utility escalation rates, inflation rate, capital and other financial contributions, and other investment parameters
- ii. Potential cost of Political Subdivision’s Maintenance Responsibilities (as indicated in an **EPC Schedule**) or any other long-term Operation and Maintenance (O&M) services as applicable, and the Political Subdivision’s desire or ability to support these costs
- iii. M&V savings verification options and extent

## IGA Exhibit A Scope of Work

- iv. Rebates and other financial incentives
- E. Investment Grade Audit Process and Schedule**
  - i. Logistics and access; testing/metering to be accomplished
  - ii. Security and access requirements to restricted areas, escorts, tool control, etc.
  - iii. Safety requirements, training, hazards
- F. Schedule/timeline with significant milestones**
  - i. Action Items & Next Steps
  - ii. Recap of action items including directives from the Political Subdivision
  - iii. Set next meeting or conference call time.

### **SECTION 3. Data Collection and Building/Equipment Schedules**

ESCO shall coordinate collection of Political Subdivision-provided facility data and additional information with the goal of developing the existing conditions, operating schedules and utility usage/cost to determine the Political Subdivision's accepted baselines. The Political Subdivision shall provide the necessary and available information referenced in this **Section 3** or as required for ESCO to perform Work under the IGA Contract, concerning facility operation and energy use.

- A. Building Data** (by Building/infrastructure as listed in IGA Exhibit B):
  - i. Construction date(s) of buildings and major additions including building envelope.
  - ii. Infrastructure information as necessary (tunnels, steam lines, chiller water lines, water treatment plants, etc.).
  - iii. Inventory and description of the existing facilities and their major mechanical, electrical, water systems and any other systems as necessary (itemized by energy source, equipment type, capacity, services years, and condition).
  - iv. Building operation/occupancy schedules, equipment operation schedules (including weekly and seasonal use schedules, unoccupied buildings and areas).
  - v. Drawings of mechanical, plumbing, electrical, building automation and temperature controls, structural, architectural, infrastructure, modifications and remodels, etc., as available.
  - vi. Original construction submittals and factory data such as equipment specifications, pump curves, etc., as available.
  - vii. Operating engineer logs, maintenance work orders, etc., as available.
  - viii. Records of maintenance expenditures on energy-using equipment, including service contracts.
  - ix. Prior energy audits or studies.
- B. Utility Data:**

Political Subdivision shall provide, at a minimum, one year of actual historical utility invoices, and provide access to utility service providers for historical energy and water use (by energy source provider and master, sub-metered areas), for the designated three years (last three years or selected number of years by mutual agreement, as available).
- C. Energy Management:**
  - i. Description of energy management program
  - ii. Description of any building automation systems and other control systems/procedures
  - iii. Description of any energy or water-related improvement projects, completed or in progress
  - iv. Description of any changes in the facility or energy-using or water-using equipment
- D. Capital Construction Projects:**
  - i. Description of existing capital construction projects
  - ii. Description of future plans regarding building modifications, renovations, repairs, decommissioning, or equipment modifications, replacements
- E. Interviews:**

ESCO shall coordinate and conduct, in conjunction with the Political Subdivision, the interviews. The Political Subdivision shall make available individuals with knowledge of the facility such as the facility or plant manager, maintenance staff, and occupants of each building regarding:

  - i. Facility operation, including energy management systems and procedures
  - ii. Equipment maintenance problems including deferred and un-scheduled maintenance
  - iii. Occupant comfort problems and standards of comfort requirements



## IGA Exhibit A

### Scope of Work

- iv. Equipment reliability including frequency of unscheduled or emergency maintenance and potential loss-of-use of facility, building, or portions thereof
- v. Projected equipment needs including upgrade, replacement, and/or repairs
- vi. Occupancy and weekly use schedules for the facility and specific equipment
- vii. Facility improvements – past, planned and desired

**F. Systems Survey:**

Political Subdivision shall provide site-knowledgeable escorts and facility access to ESCO who shall identify major utility-impacting components, which may include, but is not limited to, lighting, both indoor and outdoor; heating and heat distribution systems, cooling systems and related equipment, central plants, automatic temperature control systems and equipment, air distribution systems and equipment, outdoor ventilation systems and equipment; exhaust systems and equipment; hot water generation and distribution systems, electric motors, transmission and drive systems, special systems such as kitchen/dining equipment, laundry equipment, renewable energy systems, other energy using systems, water consuming systems, such as restroom fixtures, water treatment plant, wastewater treatment plant, water features and irrigation systems; and building envelope.

#### **SECTION 4. Establish Baseline Period Consumption**

Establish appropriate baseline period consumption by evaluation of appropriate utility meter data, and utility bills (reference **Section 3**) for electricity, natural gas, propane, steam, water, and any other applicable utilities. Compile baseline period consumption in terms of:

**A. Utility provider accounts:**

Prepare summary of all utility bills for all fuel types and water. Develop description and itemization of current accounts, billing rates, schedules, riders, and related terms or agreements that affect consumption and energy costs. Consult with Political Subdivision to account for any anomalous schedule or operating conditions on billings that could skew the Baseline. ESCO shall account for periods of time when equipment was broken or malfunctioning in calculating the Baseline Period, provided this information is available from the Political Subdivision's representative.

- i. Energy and Water Units: Units of energy in kWh, kW, ccf, "Therms", thousand gallons, or other units used in bills. List appropriate, supplier-verified conversion factors and convert natural gas, methane, fuel oil, biomass, and propane to MMBtu; show electricity in both kW and kWh and the MMBtu equivalent. Units of water (kgal).
- ii. Energy and Water Units per building square foot per year
- iii. Energy Cost (in dollars) per building square foot per year

**B. Describe the process used to determine the baseline period and baseline energy**

**C. Describe the process to reconcile the proposed utility baseline information with the actual consumption**

#### **SECTION 5. Preliminary Analysis and Discussion of Utility Cost-Savings Measures and FIMs and other ESCO Services**

ESCO shall prepare and present a preliminary analysis of all Utility Cost-Savings Measures or FIMs considered, initial construction cost estimates and schedule, initial utility and other savings, initial measurement and verification plan, initial training, initial operation and maintenance cost impacts, and other items as requested (mutual agreement between Political Subdivision and ESCO) to determine prioritization of measures for the draft EPC Project Proposal. A draft financial package should be reviewed that includes potential interest rates and potential financing terms, grants, rebates, Political Subdivision capital contributions (one-time or annually), and other potential project funding sources.

**A. Preliminary Utility Cost-Savings Measures and FIMs List**

- i. Consider technologies in a comprehensive approach including, but not limited to: lighting systems, heating/ventilating/air conditioning equipment and distribution systems, controls systems, building envelope, motors, kitchen equipment, pools, renewable energy systems, other special equipment, irrigation systems, other infrastructure systems (steam, chilled water, compressed air, etc), and water saving devices

## **IGA Exhibit A**

### **Scope of Work**

- ii. Consider services that modify existing equipment/systems/procedures through programs including, but not limited to: commissioning, deep retrofits, ENERGY STAR rating, an existing buildings registration/certification program, or another verification or certification program
- iii. Include services to complete applications/forms for compliance with State statute or policies, for compliance with applicable executive orders, or any other Political Subdivision reporting requirements (if requested by Political Subdivision)

#### **B. Review the Project Financial Parameters**

At this stage in the development of the Investment Grade Audit, the project financial parameters need review and updates prior to refining the list of Utility Cost-Savings Measures and FIMs for further analysis. To keep the project on schedule and control the number of re-analyses of the project's financial performance, it is to the benefit of the project that the financial parameters be refined. To sufficiently change the project financial parameters after the detailed analysis is presented by the ESCO could add sufficient time to the delivery of an acceptable report.

- i. Discuss the capability of Political Subdivision to make capital contributions to the project to improve the Project's Financial Performance. Capital contribution could be from a one-time addition of appropriated funds
- ii. Discuss an acceptable range on the financial term and interest rate
- iii. Discuss an acceptable escalation rate for each utility for each year. Reference the CEO/OSA Escalation Policy
- iv. Discuss an acceptance of any operation or maintenance savings. Discuss how these would be determined, escalated, and the maximum number of years allowed
- v. List any known utility rebates, grants, or other financial incentives that affect cost of installation or final maximum project cost

#### **C. Preliminary Measurement and Verification Plan Discussion**

The goal of measurement and verification is to reduce the risk to Political Subdivisions by providing a mechanism to evaluate the performance of a project throughout the term of the contract. The challenge of M&V is to balance M&V costs with the value of increased certainty in the cost savings from the conservation measure. At the heart of a performance contract is a guarantee of a specified level of cost savings and performance. One of the primary purposes of M&V is to reduce the risk of non-performance to an acceptable level, which is a subjective judgment based on the Political Subdivision's priorities and preferences.

- i. ESCO should provide a presentation on measurement and verification. The presentation should cover important project risks, assess their potential impacts, and clarify the party responsible for managing the risk. The presentation should discuss the CEO Measurement and Verification Policy. The presentation should cover the four IPMVP M&V options and their advantages and disadvantages.
- ii. For each potential Utility Cost-Savings Measure or FIM, the ESCO shall present the initial M&V options. The ESCO shall provide sufficient information to understand the risk, cost, and responsibilities for each M&V option.
- iii. ESCO shall record for the final M&V plan and post construction M&V discussion, the Political Subdivision's and ESCO's M&V initial responsibilities.

#### **D. Develop a list of recommended measures for further analysis.**

Describe how the projected project economics meet the Political Subdivision's Project Financial Goals for completing the final Investment Grade Audit report and the Energy Performance Contract Project Proposal. Discuss assessment of energy use, savings potential, project opportunities, and potential for developing an energy performance contract. The Political Subdivision shall at its discretion have the option to reject any presented calculation of savings; potential savings allowed or project recommendations.

### **SECTION 6. Detailed Analysis of Utility Cost-Savings Measures and FIMs and other ESCO Services**

ESCO shall conduct detailed analysis of recommended measures for further analysis, including construction cost and schedule, utility and other savings, code compliance estimate and permit costs (reference section 2, C, vii), measurement and verification plan, training, operation and maintenance cost impacts, and other items as requested (mutual agreement between Political Subdivision and ESCO) to complete the final Investment Grade Audit report and the negotiated Energy Performance Contract Project Proposal. A financial package should be prepared that

## IGA Exhibit A

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includes potential interest rates and financing terms, grants, rebates, Political Subdivision capital contributions (one time or annual), and other potential project funding sources. The ESCO may need to work with the Colorado Department of the Treasury to verify financial options.

ESCO shall evaluate facility and equipment schedules and baseline utility use and costs relative to Work and EPC Project Proposed associated with this IGA Contract including, but not limited to:

**A. Weekly Use and Operational Schedule:**

ESCO to perform "late-night," weekend trend monitoring devices, and field surveys outside of normal business hours or on weekends to confirm building system and occupancy schedules "impacting measures for further analysis."

**B. Evaluate actual operation schedules, conditions for the facilities, equipment and buildings (hours, temperatures, air flows, humidity, etc.):**

- i. Estimate loads as necessary and applicable. Equipment loads can change over time. Changes in load can show up as increases or decreases in "savings," depending on the M&V Services. Clarify whether equipment loads are to be measured or stipulated and what the impact will be if they change.
- ii. Where loading or usage is highly uncertain (including variable loads such as cooling), ESCO will use its best judgment, spot measurements or short-term monitoring. ESCO should not assume that equipment run hours equal the operating hours of the building(s) or facility staff estimates.

**C. Description of Utility Cost-Savings Measures and FIMs:**

Provide a technical description for each Utility Cost-Savings Measure and FIM. Consider the following parameters for each system, component, and associated conservation measure:

- i. Comfort and maintenance problems
- ii. Energy or water source, use, loads, proper sizing, efficiencies and hours of operation
- iii. Current existing systems, controls, and operating condition
- iv. Remaining service life
- v. Feasibility of system replacement
- vi. Hazardous materials and other environmental concerns
- vii. Political Subdivision's future plans for equipment replacement or building renovations
- viii. Facility operation and maintenance procedures that could be affected
- ix. Procedure to measure and verify savings (M&V) (necessary M&V equipment including meters, sub-meters, data-loggers, and control system monitoring/reporting capabilities)

**D. Cost Estimate Analysis:**

ESCO shall identify and perform next-level analysis on measures which appear potentially cost-effective. The analysis shall include itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs and estimates of vehicle fleet operational and fuel cost measures, as set forth in **§29-12.5-102(2), C.R.S.** The analysis may consider the following sources of data for design and construction cost, potential operation and maintenance costs or other categories as identified by ESCO or Political Subdivision:

- i. Political Subdivision's representative list of acceptable/preferred manufacturers or vendors
- ii. Political Subdivision's construction specifications, requirements, standards
- iii. ESCO's Subcontractor material and labor cost estimates
- iv. ESCO's Subcontractor professional design firm's cost estimates
- v. ESCO's pricing information from historical projects
- vi. ESCO's product specification information
- vii. ESCO's or Political Subdivision's pricing information for hazardous/environmental work

**E. Cost Savings Analysis:**

For each potentially cost-effective measure, prepare an estimate of utility cost savings, operation and maintenance cost savings and vehicle fleet operational and fuel cost savings. Analysis shall include the description of analysis methodology and supporting calculations and assumptions used to estimate savings. Include itemized costs of design, engineering, equipment, materials, installation, maintenance, repairs, all costs of vehicle operational and fuel cost savings measures, and debt service as required under **§29-12.5-102(2), C.R.S.**

- i. Follow the methodology of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) or other nationally-recognized authorities following the engineering principle(s) identified for each retrofit option

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- ii. Utilize assumptions, projections and the baseline period energy consumption and/or the mutually agreed-upon adjusted baseline energy, whichever best represents the value of future energy or operational savings
  - iii. Include accurate energy unit costs at the time the analysis is performed, documentation of material and labor cost savings, adjustments to the baseline to reflect current conditions at the facility, and calculations which account for the interactive effects of the recommended measures
  - iv. Use best judgment regarding the employment of instrumentation and recording durations so as to achieve an accurate and faithful characterization of energy use
  - v. Develop a preliminary measurement and verification plan for each measure
- F. Finalize Project Financial Parameters**
- i. Discuss the willingness and capability of Political Subdivision to make capital contributions to the project to improve the Project's Financial Performance. Capital contribution could be from a one-time addition of funds, monetized value of capital cost avoidance from equipment replacement, or any other Political Subdivision acceptable contribution.
  - ii. Discuss an acceptable financial term and interest rate or a range on term and interest rate.
  - iii. Discuss an acceptable escalation rate for each utility for each year. The escalation rates may be different each year. Reference the CEO/OSA Escalation Policy.
  - iv. Discuss an acceptance of any operation or maintenance savings. Discuss how these would be determined, escalated, and the maximum number of years allowed.
  - v. List any known utility rebates, grants, or other financial incentives that effect cost of insulation or final maximum project cost.

### SECTION 7. Draft Investment Grade Audit Report

ESCO shall prepare a draft IGA Report. The Draft and Final IGA Report shall follow this outline format including, but not limited to:

**A. Executive Summary:**

- i. Project Background and Introduction
- ii. Political Subdivision's Project Requirements (accepted changes to original)
- iii. Summary of Recommended Facility Improvement Measures
- iv. Summary of Total Savings (energy, (units and cost by utility) water, maintenance or other Political Subdivision approved items)
- v. Summary of Project Financials including initial total project cost, potential interest rates (from recent projects or current industry rates), capital contributions (projected or identified), and financing term (per Political Subdivision's requirements). Total project cost is the maximum, not-to-exceed amount Political Subdivision shall pay for the project and ESCO's services.
- vi. Conclusions and Recommendations

**B. Facility and Building Data:**

For each facility identified in Exhibit B, the ESCO shall provide a brief building description, including the use, square footage, hours of operation and lighting, mechanical and water systems and building envelope/construction;

**C. Baseline Period Utility Consumption:**

Compile and provide a concise and well organized analysis and written report of the data gathered and necessary to provide baseline utility consumption pursuant to the baseline period consumption **Section 4** of this **Exhibit A** which may include, but not limited to:

- i. Description and itemization of current billing rates, including schedules and riders
- ii. Summary of all utility bills for all energy types
- iii. Identification and definition of baseline energy and period and description of how established
- iv. Reconciliation of estimated end use consumption (i.e. lighting, cooling, heating, fans, plug loads, etc.) with base year (include discussion of any unusual findings)

**D. Utility Cost-Savings Measures and FIMs:**

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### Scope of Work

Update, compile, and provide comprehensive analysis of recommended Utility Cost-Savings Measures and FIMs for consideration, review and comments by the Political Subdivision which include, but are not limited to the following:

**Conservation Measure List** – Prepare a summary, in table format, of recommended Utility Cost-Savings Measures and FIMs as referenced in **Section 6** of this **Exhibit A**. The summary shall include an itemization for each measure of total design and construction cost, annual operation and maintenance costs, the first year savings (cost avoidance), (in dollars and appropriate utility units), Simple Payback and major equipment service life. The summary shall further include tabulated utility consumption savings per system, building, or facility separated out by contributing Utility Cost-Savings Measure or FIM. For each recommended energy and utility saving conservation measures, provide a summary of the following:

- a. **Existing Conditions** Describe existing conditions, systems, etc. to be affected by the proposed utility conservation measures, and the specific benefits of each to modify each condition, including but not limited to, energy, water or resource conservation, capital improvement, deferred maintenance, long-term performance and reduction of operating costs, etc.
- b. **Project Scope of Work:** Description of improvements, equipment, etc. to be installed and how it shall function
- c. **O&M Procedures:** Include discussion of facility operations and maintenance procedures that shall be affected by installation or implementation
- d. **Implementation Plan:** Present a conceptual plan for the proposed EPC project indicating design and construction timeframes for the Utility Cost-Savings Measure or FIM. Indicate any potential installation time constraints or critical start/completion dates
- e. **Utility Savings Calculations:**
  - a) **Base -Year Consumption:** base year utility use and cost
  - b) **End-Use Consumption Estimate:** Post-retrofit utility use and cost
  - c) **Annual Savings Estimates:** The Utility Cost Savings and Operation and Maintenance Cost Savings shall be determined for each year during the contract period. Savings shall be achieved by the implementation of such measures on an annual basis. Savings shall be limited to savings allowed by the State Statute or Governing Body of the Political Subdivision
  - d) **O&M Savings:** Operation and maintenance savings, including detailed calculations and description. Ensure that maintenance savings are only applied in the applicable years and only during the lifetime of the particular equipment. Operation and Maintenance Cost Savings if considered in the EPC Project Proposal will require Political Subdivision approval and signature on the Record of Reviews
  - e) **Methodology for Savings Estimates:**
    1. Savings estimates including the methodology used in analysis, supporting calculations and assumptions used. Analysis and methodology shall also include description and calculations for any proposed rate changes. Analysis shall further include an explanation of how savings between retrofit options are accounted for in calculations
    2. If computer simulation is used, include a short description and indicate key input data. If requested by Political Subdivision, access shall be provided to the program and all assumptions and inputs used. Printouts shall also be provided of all input files and important output files and included in the Investment Grade Audit with documentation that explains how the final savings figures are derived from the simulation program output printouts
    3. If manual calculations are employed, formulas, assumptions and key data shall be stated
- f. **Conclusions and Analysis: Provide other observations, caveats, etc.**

**E. M&V Plan:**

Summary of the Measurement and Verification Plan. Cost of the M&V services per year through the financing term.

**F. Cost Estimate Analysis:**

Summary and update of cost assessment initiated under **Section 6.D** of this **Exhibit A**.

**G. Cost Savings Analysis:**

## **IGA Exhibit A**

### **Scope of Work**

Summary and update of analysis initiated under **Section 6.E** of this **Exhibit A**, including calculation of cost savings expected if all recommended measures are implemented and total percentage savings of total facility utility cost.

**G. Excluded Measures:**

List all Utility Cost-Savings Measures or FIMs considered but not recommended with a short paragraph on why it was not included.

**H. Political Subdivision Review, Comments, and Prioritization:**

Summary of documentation or conference records of Political Subdivision priorities, stipulations, and designated compliance with statute, requirements and policies.

**I. Draft Investment Grade Audit Report:**

Pursuant to **Section 9** of this **Exhibit A** the Draft IGA Report shall be prepared in the format of the final IGA Report (as required in the IGA Contract and **Section 7** of this **Exhibit A**). The ESCO shall comply with the following items:

- i. Draft IGA Report shall be submitted in a format acceptable to the Political Subdivision labeled to include the project title "Investment Grade Audit report and Energy Performance Contract Project Proposal," the Political Subdivision facility name, name of the ESCO, and date of issuance or revision. Provide additional sets of these documents as requested or required by the Project Representative.
- ii. Contents shall be formatted and tabbed in the exact form and alphanumeric sequence of the outline of **Section 7.A. – Section 7.H** of this **Exhibit A**, with additional outlined formats for other referenced sections of this **Exhibit A**. Content elements not otherwise referenced or required in this **Exhibit A**, if provided, shall appear at the end of the IGA Report under its own tab(s) or in separate document(s).
- iii. Contents contained in the IGA Report shall be complete. ESCOs are encouraged to respond in a concise manner. The use of charts and spreadsheets to summarize certain information is especially encouraged; said information may be accompanied by an explanatory narrative.
- iv. An electronic version of the draft IGA Report and any additional provided or requested information shall be submitted with the written report.

#### **SECTION 8. Post Draft Investment Grade Audit Report Conference**

- A.** The ESCO shall prepare an agenda consistent with the format of the Pre-Audit Conference in **Section 2** of this **Exhibit A**, including any modifications as a result of the Pre-Audit Conference. ESCO shall conduct all necessary conference(s) and produce associated documentation to engage the Political Subdivision to review the recommendations, savings calculations and impact of the measures on the operations of the facility. Describe how the projected project economics meet the Political Subdivision's terms for completing the IGA Report. Revise audit as directed by Political Subdivision.
- B. Political Subdivision Review and Comments**
  - i. ESCO shall provide all services and deliverables to include, but not be limited to, draft, project proposal(s), supplemental documents and ESCO's responses, etc. necessary to support written acceptance by Political Subdivision.
  - ii. The Political Subdivision and CEO shall perform concurrent reviews and all comments are shared by all parties, including CEO third party reviews.
  - iii. The Political Subdivision and CEO may submit written comments at any time during the IGA Contract and the ESCO shall provide supplemental responses.
- C. Finalize Political Subdivision Financial Targets:** Capital contribution, maximum financial term and interest rate, utility escalation rates, and operation and maintenance information.
- D. Responses to Political Subdivision Comments** – Revise IGA Report as directed by Political Subdivision which shall be included in the final Energy Performance Contract Proposal.

#### **SECTION 9. Final Investment Grade Audit Report and Energy Performance Contract Project Proposal**

- A. Present Final IGA Report.** ESCO to complete and deliver final documents defined in this **Section 7** to Political Subdivision for approval.
- B. EPC Project Proposal.** Pending approval of the Final IGA Report, and the execution of the Notice of Acceptance, prepare an Energy Performance Contract using CEO's Energy Performance Contract documents, subject to IGA Contract terms and provisions, and subject to negotiation and agreement

## **IGA Exhibit A**

### **Scope of Work**

between the Parties pursuant to applicable Federal and State regulatory requirements and the CEO Standards for Success. ESCO shall prepare the applicable schedules to be incorporated in an Energy Performance Contract that includes the following:

- i. Total Project Cost Proposal: the maximum, not-to-exceed amount Political Subdivision shall pay for the project and ESCO's services. Costs shall be consistent with mutually agreed on markups and fees established in IGA **Exhibit C**.
  - ii. Cost Estimate: Include all information required under Cost Savings Analysis in **Section 6** above, as well as a detailed scope of the construction work suitable for cost estimating. Include all anticipated costs associated with installation, implementation, and categories outlined in **IGA Exhibit C**. Provide preliminary specifications for major mechanical components as well as detailed lighting and water fixture counts. The following shall also be included:
    - a. Engineering/design costs
    - b. ESCO/vendor estimates for labor, materials, and equipment; include special provisions, overtime, and all other appropriate items, as needed to accomplish the work with minimum disruption to the operations of the facilities
    - c. Code compliance estimate and permit costs (reference section 2, C, vii)
    - d. Costs (disposal, avoided emissions, handling of hazardous materials, and any other related costs) as relates to handling and disposal of hazardous lighting materials, but not as relates to remediation or abatement work
  - iii. Base-Year Consumption: Disclose baseline basis for cost savings. Summary of annual utility use by type and costs of existing or base year condition.
  - iv. Cost Savings Calculations: Calculation of cost savings expected if all recommended utility conservation measures are implemented and total percentage savings of total facility utility cost.
  - v. End-Use Consumption Estimate: Outline the proposed utility use reduction and end use consumption for the system or facility.
  - vi. Contract Term: Years of the Energy Performance Contract.
  - vii. Utility Rate Escalation Factor: Escalation or decline based on historical trends, utility provider rate forecasts, and economic forces of supply and demand (global, national, local or regional), natural resource availability, technology, utility capital investment, and environmental requirements. (Consistent with CEO/OSA Utility Escalation Policy).
  - viii. Financial Terms: Description of how the project may be financed, including available indicative interest rates and potential financing terms, based on interest rates likely available to Political Subdivision at this time and based on interest rate lock options available. Analysis of annual cash flow for Political Subdivision during the contract term.
  - ix. Weather Adjustments: If applicable, proposed modification to how the savings shall be calculated and adjusted due to weather (such as heating and cooling degree days), occupancy or other factors.
  - x. Measurement and Verification: Proposal consistent with the CEO Measurement and Verification Policy at time this contract is made:
  - xi. Commissioning Plan: Preliminary Commissioning plan
  - xii. Operations and Maintenance Plan
  - xiii. Implementation Plan and Schedule
- The ESCO shall propose a milestone schedule with activity durations of all Energy Performance Contract phases, including, but not limited to, ESCO services, commissioning, M&V activities, etc. to include written acceptance by the Political Subdivision, as follows:
- a. The ESCOs shall submit an implementation plan for all Utility Savings and Cost Savings measures with a narrative describing design-build and bidding strategies and recommended delivery options;
  - b. Training, operation and maintenance activities, interim and milestone responsibilities for maintenance, etc.

#### **END OF EXHIBIT A – SCOPE OF WORK**

## IGA Exhibit B Location of Audit

Buildings and Infrastructure Included in Scope of Work  
(Update the tables as necessary for the IGA contract.  
Update the tables for the IGA audit report and the  
Energy Performance Contract Project Proposal)

Political Subdivision Name: San Miguel County

The following tables lists the buildings included in the Investment Grade Audit (IGA) Scope of Work. Add additional rows as necessary to list all buildings and non-typical facilities. Since building names may change over time, a unique agency building shall be included.

**EXHIBIT B, TABLE 1 - BASE COST TABLE**

Building Name & Address	Building Type	Building Age	Building Gross Square Feet-GSF	Bldg. Audit \$/SF	Bldg. Total Audit \$
County Courthouse -305 W. Colorado Ave, Telluride	Courthouse	133 (new addition is 43 yrs)	11,202	\$0.30/SF	\$3,361
Ilium Sheriff Office/Jail – 684 CR 63L, Telluride	Jail	23	13,470	\$0.30/SF	\$4,041
Miramonte Building – 333 W. Colorado Ave, Telluride	Office	33	20,250	\$0.30/SF	\$6,075
West Annex – 335 W. Colorado Ave, Telluride	Office	120	6,373	\$0.30/SF	\$1,912
Glockson Building – 1120 Summit St, Norwood	Office	30	4,800	\$0.30/SF	\$1,440
Coonskin Ridge Comm Tower – Mountain Village	Radio Tower	1	165	\$0.30/SF	\$50
Fairgrounds/Event Center – 1165 Summit St, Norwood	Events Space	26	10,000	\$0.30/SF	\$3,000
Deep Creek R&B – 155555 HWY 145, Telluride	Shop/Garage	35	5,000	\$0.30/SF	\$1,500
Deep Creek R&B Garage – 155555 HWY 145, Telluride	Shop/Garage	26	4,500	\$0.30/SF	\$1,350
Norwood R&B – 39595 HWY 145, Norwood	Shop/Garage	4	2,480	\$0.30/SF	\$744
BASE COST TOTAL					\$23,472

Indicate the cost for Non-Typical facilities (buildings or infrastructure) where the GSF audit fee may not be appropriate, e.g., water treatment plants, wastewater treatment plants, warehouses, arenas, street lighting and others. (Consult with CEO for appropriateness of fees).

**EXHIBIT B, TABLE 2 - NON-TYPICAL FACILITY COST TABLE**

Building or Infrastructure	Facility Type	Facility Age	Facility GSF (or other applicable measurement)	Unit cost for audit (if applicable)	Facility Total Audit Cost \$
DOLA Grant Application Scope	Courthouse, Ilium Jail, Glockson	See Above	29,472	N/A	\$47,607
NON-TYPICAL FACILITY COST TOTAL					\$47,607



**TOTAL COST OF IGA: \$71,079**

---

DRAFT

## IGA Exhibit C

### COST AND PRICING ELEMENTS

#### COST AND PRICING

The cost of the IGA is calculated from the Base Cost plus the cost for any Non-Typical Facilities. The Base Cost is established by the Colorado Energy Performance Contracting Program for participating ESCOs and is determined by the sum of the cost associated with each building's total square footage and location. The Non-Typical Facilities cost for infrastructure and other non-building projects is negotiated prior to signing the IGA contract. The Pricing for the Project Percentages and Annual Cost are calculated based upon the specific project scope of Work and the information each ESCO submitted in the proposal/renewal provided to the Colorado Energy Office (CEO). The calculated cost is equal to or less than the ESCO's maximum established percentages submitted to CEO.

#### IGA Costs (base cost plus non-typical facilities cost)

The proposal includes the initial list of buildings with their square footage and the distance from the CEO office.

The Base cost of the IGA is determined by the CEO-established table similar to the table below. All ESCOs shall use the CEO-developed IGA costs in their proposal.

Standard IGA Pricing Table				
Tiered Pricing (\$/sq ft)		Total Facility Square Footage		
		Under 250K	250 – 500K	500K +
Distance from CEO at 1580 Logan St., Denver	Under 75 miles	\$ 0.250	\$ 0.225	\$ 0.200
	75 – 150 miles	\$ 0.275	\$ 0.250	\$ 0.225
	Over 150 miles	\$ 0.300	\$ 0.275	\$ 0.250

Political Subdivisions with Non-Typical Facilities (e.g. waste water treatment, irrigation systems, pools, street lighting, etc.) should incorporate information about these types of facilities and infrastructure in their proposal. The additional costs for performing the IGA on these Non-Typical Facilities shall be negotiated with the selected ESCO as part of finalizing the IGA contract. The final, negotiated cost of the IGA is indicated on an updated IGA Exhibit B.

<b>The Base Cost (from Exhibit B, Table 1) is</b>	<b>\$23,472</b>
<b>The Non-Typical Facility Cost (from Exhibit B, Table 2) is</b>	<b>\$47,607</b>
<b>Total Investment Grade Audit Cost is</b>	<b>\$71,079</b>

#### Project Percentages

Percentages of the total project for each line item shall be calculated and should not exceed what is stated for the duration of the project. Use only the categories shown. Supplying ranges for the percentages is acceptable.

Project Costing Categories		IGA Contract Maximum % of Total Project Cost	Actual Final IGA Calculated % of Total Project Cost	Actual Final IGA Cost	Sub-Totals	Totals
<b>Investment Grade Audit (IGA)</b>						
	Total Facility Area	78,240		78,240		
	\$ / Sq Ft	\$ 0.300		\$0.300		
	Investment Grade Audit Total Cost				\$ 23,472.00	
<b>Implementation Costs</b>						
	Pre-Construction Costs*					
	Design and Other Engineering	5%-8%	0.00%			
	Pre-Construction Services	2%-4%	0.00%			
	Other Pre-Construction Costs	1%-3%	0.00%			
	Pre-Construction Cost Subtotal		0.00%		\$ -	
	Construction Costs*					
	Trade Subcontracts		0.00%			
	Design/Build Subcontracts		0.00%			
	Direct Purchase Equipment		0.00%			
	Construction Management	5%-8%	0.00%			
	Project Engineering	2%-3%	0.00%			
	General Conditions	1%-2%	0.00%			
	Construction Completion	3%-4%	0.00%			
	Other Construction Costs	3%-5%	0.00%			
	Construction Cost Subtotal		0.00%		\$ -	
	Implementation Costs Subtotal*					\$ -
	Profit*	7%-10%				\$ -
	Estimated Project Amount*					\$ -
	Contingency*	4%-6%				\$ -
	Total Funded Amount*					\$ 23,472.00

### Annual Costs

Use only the categories shown. Proper cost determination and expected length of service should be noted for all services.

ANNUAL COSTS			
Category	Total Annual Cost	How Price is Determined	Years Applied (One-time, Annual, etc.)
Warranty	TBD	Warranty is determined by the following factors: length of warranty offered/required and manufacturers' begin and end warranty date. Customer may desire an extended warranty whose costs will be determined by the manufacturer	Extended Warranty is Usually a one-Time Expense
Measurement and Verification	TBD (Typically .5%-1.5% of Total Project Costs)	Measurement and Verification (M&V) costs are determined by a specific M&V plan. A specific M&V plan varies by: type of measurement and analysis required, frequency of measurement, frequency of field inspections, necessity to model, and requirements for reporting (in cases of greater than annual reporting).	Annual During Required M&V Term
Solar PV Maintenance	TBD (Typically \$3,000-\$5,000 depending on size and location of arrays)	Costs are based on discounted labor rates and on specific requirements of other services requested/required. Maintenance programs will be customized and negotiated to meet individual needs/wants.	Annual During Term of Guarantee



AGENDA ITEM - 7.b.

**TITLE:**

Discussion of West End Trails Proposal and public comment period open until May 31, 2020.

**Presented by:** Lynn Padgett, Government Affairs/Natural Resource Director

**Time needed:** 5 mins

**PREPARED BY:**

Lynn Padgett

**RECOMMENDED ACTION/MOTION:**

Discussion and direction of the Montrose West - West End Trails Proposal and public comment period open until May 31, 2020.

**INTRODUCTION/BACKGROUND:**

On May 14 GANR received an email notifying us of the availability of the West End Trails study and an open public comment period until May 31.

The online comment form and 16 page study document is at: <https://publiclandsolutions.org/westend/>.

The study areas are all located in Montrose County accessible to Nucla and Naturita (see attached map).

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources
<b>Description:</b>			

**ATTACHMENTS:**

Description

Notice of availability

Upload Date

5/15/2020



## Lynn Padgett

---

**From:** Janet Kask <janetk@sanmiguelcountyco.gov> on behalf of Janet Kask  
**Sent:** Thursday, May 14, 2020 4:27 PM  
**To:** Lynn Padgett  
**Subject:** Re: West End Trails Proposal: Requesting Public Feedback

Thanks. I distributed to Rich and the OSC for input.  
I'll keep you posted with comments on this end.

On Thu, May 14, 2020 at 4:16 PM Lynn Padgett <[lynnp@sanmiguelcountyco.gov](mailto:lynnp@sanmiguelcountyco.gov)> wrote:

I just forwarded it out. I tried calling to check with you, to see if there was already a lead on it. What do you prefer? Definitely getting open space input seems important. I think there is only one BOCC meeting before comments are due.

On Thu, May 14, 2020, 3:01 PM Janet Kask <[janetk@sanmiguelcountyco.gov](mailto:janetk@sanmiguelcountyco.gov)> wrote:

Hi Lynn,  
Are you handling the response for the County?  
I was going to forward to the OSC for input.  
Please let me know how you'd like to proceed.  
Thanks.  
Janet

On Thu, May 14, 2020 at 1:21 PM Lynn Padgett <[lynnp@sanmiguelcountyco.gov](mailto:lynnp@sanmiguelcountyco.gov)> wrote:

Bocc is bcc'd. I will put on 5/20 meeting for discussion.

Best, Lynn

----- Forwarded message -----

From: **Sheamus Croke** <[vista@telluridefoundation.org](mailto:vista@telluridefoundation.org)>  
Date: Thu, May 14, 2020, 1:17 PM  
Subject: West End Trails Proposal: Requesting Public Feedback  
To:

Greetings,

We are reaching out to you because Montrose West Recreation is seeking public feedback until May 31<sup>st</sup> on [The West End Trails Proposal](#), which is currently available to read and comment online at: <https://publiclandsolutions.org/westend/>

Hard copies are also available for viewing at the **Norwood, Naturita, Nucla Town Halls and Libraries.**

We apologize if you have received multiple notifications about this proposal, but we are trying our best to ensure that anyone who wants to comment has the opportunity to do so.

Thank you for your interest in this important project.

This is a cooperative project by:

Montrose West Recreation

Colorado Parks and Wildlife

West End Trails Alliance

Telluride Foundation

West End Economic Development Corporation

Colorado Plateau Mountain Bike Trail Association

Thanks again!

Sheamus Croke

*Strong Neighbors Initiative Coordinator*

[Telluride Foundation](#)

W: (970) 728-8717

C: (970) 729-2448

[Please Consider a Donation to Our Regional COVID-19 Response Fund:](#)



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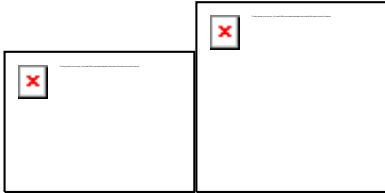
**Janet Kask**, Director

Parks & Open Space, San Miguel County

P.O. Box 1170, Telluride, CO 81435

Phone: (970)369-5469, Fax: (970)728-3718

[janetk@sanmiguelcountyco.gov](mailto:janetk@sanmiguelcountyco.gov)



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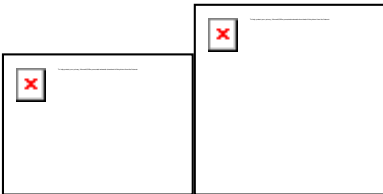
**Janet Kask**, Director

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P.O. Box 1170, Telluride, CO 81435

Phone: (970)369-5469, Fax: (970)728-3718

[janetk@sanmiguelcountyco.gov](mailto:janetk@sanmiguelcountyco.gov)



# Naturita / Nucla Recreation Asset Review: Trail Opportunities

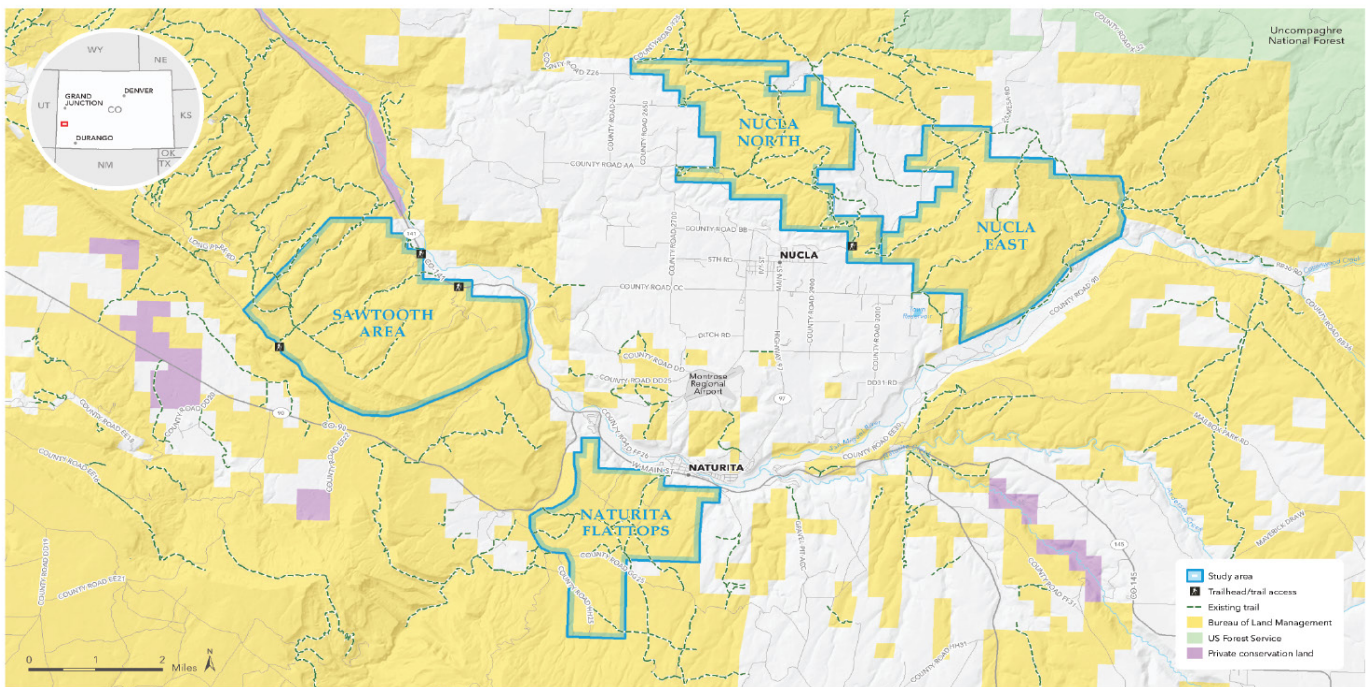
## Project Overview

Montrose West Recreation, a local non-profit, partnered with the Telluride Foundation, the West End Economic Development Corporation, the Trust for Public Land, and Colorado Parks and Wildlife to engage Public Land Solutions to facilitate a stakeholder process to determine the need and feasibility of new trail development in the Nucla / Naturita area.



## Introduction

Communities across the west are facing challenges associated with reliance on a single economic driver. In most cases, this is a reliance on the extraction industry<sup>1</sup>, and when those facilities close, the cities and towns near those closures face an economic crisis. As local and state governments work to mitigate the effects of losing an important source of revenue, research is showing that a well-planned pivot<sup>2,3</sup> to other economic sectors can help a community transition.



## Study areas

### WEST END TRAILS MASTER DEVELOPMENT PLAN, MONTROSE COUNTY, COLORADO

September 6, 2019. Copyright © The Trust for Public Land. The Trust for Public Land and The Trust for Public Land logo are federally registered marks of The Trust for Public Land. Information on this map is provided for purposes of discussion and visualization only. [www.tht.org](https://www.tht.org)



Naturita and Nucla, CO are in a prime location for benefitting from the recreation economy. The scenic natural spaces surrounding these towns serve as perfect venues for the development of recreational opportunities that would attract visitors and businesses to the West End Region. Public Land Solutions, in concert with the West End Economic Development Association, have gathered community input from stakeholders of all types to create the following proposal for developing and enhancing trails to improve the recreational assets in this region.



AGENDA ITEM - 7.c.

**TITLE:**

Update on pending items and deadlines; other as needed

**Presented by:** Lynn Padgett, Government Affairs/Natural Resource Director

**Time needed:** 5 mins

**PREPARED BY:**

Lynn Padgett

**RECOMMENDED ACTION/MOTION:**

Discussion.

**INTRODUCTION/BACKGROUND:**

Update on pending items and deadlines; other items as needed.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Government Services- Natural Resources
<b>Description:</b>			

**ATTACHMENTS:**

Description

GANR Tracker, updated 5/15/20

Upload Date

5/15/2020

GANR Comment Deadline Tracker: Updated 5/15/2020

SUBMITTAL DEADLINE TO AGENCY	BOCC DEADLINE FOR COMMENT	AGENCY	TITLE	SUBJECT	LEAD	TECHNICAL LEVEL OF REVIEW	NOTES	URL
<b>May 2 (extended to May 20)</b>	Emailed 5/1; discussed during 5/6.  <b>5/20 meeting deadline.</b>	BLM TRFO	DOI-BLM-CO-S010-2020-0020-EA (Dawson Vegetation Treatment)	<b>PJ mastication &amp; controlled burn near Disappointment Valley</b>		Light, include input from TJ-landowners	No record of receiving a Notice from TRFO; found 5/1 on e-planning; does not intersect (but is adjacent to) McKenna WSA & SCWHHMA  May 12 will be a field trip with TJ Holmes to learn from Connie and staff. Connie will accept comments on May 20.	<a href="https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&amp;currentPageId=200014950">https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&amp;currentPageId=200014950</a>
<b>May 30</b>	Emailed 5/1; discussed during 5/6.  <b>5/20 meeting deadline.</b>	BLM TRFO	DOI-BLM-CO-S010-2020-0009-EA (Spring Creek Basin Herd Management Area Plan Revision)	<b>Spring Creek Basin Wild Horse Herd Management Plan Revision</b>		Mirror our scoping comments and TJ comments	SMC provided scoping comments in February 2020. Recommend cross-referencing our comments with draft EA and collaborate with TJ Holmes, local expert.	<a href="https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&amp;currentPageId=200010880">https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&amp;currentPageId=200010880</a>
<b>May 31</b>	Emailed 5/14; to be discussed during 5/20.  <b>5/20 meeting deadline.</b>	TPL – Public Land Solutions, WETA	West End Trails Proposal, Naturita, Nucla, Montrose County	<b>Collaborative feasibility study of new trails near Nucla &amp; Naturita</b>			Generalized polygons show trail project areas scoped; all in Montrose County. Telluride Foundation is a partner in the study.	<a href="https://publiclandsolutions.org/westend/">https://publiclandsolutions.org/westend/</a>
<b>5/20; Evolving</b>	To be discussed during 5/20	COGCC (Colorado Oil & Gas Conservation Commission)	Mission Statement, Rule 800-900-1200 Series Strawdog Drafts	<b>SB 181 Implementation/COGCC Rulemaking</b>	Maki/La Plata County/Amy M	Varied	Review as requested.	<a href="https://drive.google.com/drive/folders/1PCVV-y0j6EPdmDk30iVnzS06lww66_h">https://drive.google.com/drive/folders/1PCVV-y0j6EPdmDk30iVnzS06lww66_h</a>





AGENDA ITEM - 8.a.

**TITLE:**

Update with Julie Kolb, County Weed Manager.

**Presented by:**

**Time needed:** 15 mins

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

Discussion on weed control and chemicals used.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 8.b.

**TITLE:**

Consideration of Chair's signature on an addendum to Intergovernmental Agreement for Noxious Weed Program Management./MOTION

**Presented by:** Janet Kask, County Parks and Open Space Director

**Time needed:** 5 mins

**PREPARED BY:**

Janet Kask, County Parks and Open Space Director

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

This addendum is necessary to be extended by an additional two months due to the late hiring of weed techs and an additional period of time with the incoming weed manager.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
<b>Description:</b>			

**ATTACHMENTS:**

Description

Addendum to the Intergov agreement

Upload Date

5/14/2020

**ADDENDUM TO INTERGOVERNMENTAL AGREEMENT  
FOR NOXIOUS WEED PROGRAM MANAGEMENT**

This Addendum to IGA is made between the Board of County Commissioners of the County of Ouray and the Board of County Commissioners of the County of San Miguel.

**WHEREAS**, the Counties entered an Intergovernmental Agreement Noxious Weed Program Management effective January 1, 2020 (Weed Program IGA);

**WHEREAS**, the Weed Program IGA set forth a transition period where the retiring weed manager and the incoming weed manager worked together during a four (4) month transition period as set forth on exhibit B of Weed Program IGA; and

**WHEREAS**, the Counties have agreed and desire to extend the transition period for an additional two (2) months.

**NOW THEREFORE**, in consideration of the mutual promises between the parties, the above recitals and other good and valuable consideration, the receipt and sufficiency of which each hereby acknowledge; the parties agree as follows:

1. Paragraph 2 of Weed Program IGA is amended to replace Exhibit B with a new Amended Exhibit B which reflects the cost allocations for extending the transition period by two months.
2. The parties agree that the transition period for the retiring and incoming weed manager should be extended by an additional two months until June 30, 2020.
3. All other terms and conditions remain the same.

Dated this 19th day of May 2020.

BOARD OF COUNTY COMMISSIONERS  
OF OURAY COUNTY, COLORADO

---

Don Batchelder, Chair

Attest:

---

Michelle Nauer, Ouray County Clerk,  
By: Hannah Hollenbeck, Deputy Clerk

BOARD OF COUNTY COMMISSIONERS OF  
SAN MIGUEL COUNTY, COLORADO

---

Hilary Cooper, Chair

Attest:

---

Deputy Clerk of the Board



**Weed Program Management  
San Miguel County / Ouray County**

[(Reflects 2-Mths Additional Transition Work for a total of 6-Mths (January - June, 2020)]

**2020**

	Annual				Subtotal	10% Admin.	Total	
	Compensation	FICA	Retirement	Insurance	Annual	Overhead	Annual	Monthly
San Miguel County 390 hours through June 30, 2020 (15 hours per week)	\$ 11,887.20	\$ 909.37	\$ 594.36	\$ 2,181.00	\$ 15,571.93	\$ 1,557.19	\$ 17,129.12	\$ 2,854.85
Ouray County 390 hours through June 30, 2020 (15 hours per week)	\$ 11,887.20	\$ 909.37	\$ 594.36	\$ 2,181.00	\$ 15,571.93		\$ 15,571.93	\$ 2,595.32
Totals	\$11,887.20	\$909.37	\$594.36	\$ 2,181.00	\$31,143.86	\$1,557.19	\$32,701.05	
<b>Total Hourly Reimbursement Rate</b>							<u><u>\$ 43.92</u></u>	



AGENDA ITEM - 9.a.

**TITLE:**

Acknowledgment of County Managers' signature on an agreement with storage of the Gyro Stand Cart.

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

Backup to follow.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 9.b.

**TITLE:**

Acknowledgment of County Managers' signature on an agreement with the Diggity Dog Cart.

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

Backup to follow.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 9.c.

**TITLE:**

Acknowledgment of County Managers' signature on an lease agreement with Telluride TV.

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

Backup to follow.

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 11.a.

**TITLE:**

Brief Discussion on the COGCC new schedule Mission Change Rulemaking.

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

see attached powerpoint presentation given by Director Robbins at yesterday's COGCC meeting regarding the new schedule

On Wed, Apr 29, 2020 at 11:37 AM Maki Iatridis <makiiatridis@gmail.com> wrote:

The COGCC continued the mission change rulemaking hearing dates to August 24 - Sept 10. Staff will release the revised 800, 900, and 1200 Series soon and they will all be part of Mission Change Rulemaking. The Hearing Officer will issue a pre-hearing scheduling order with more details and intermediate dates soon. Party openings are likely due July 13, re July 30, and written testimony due August 14.

Attachments

area

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commission
Description:			



AGENDA ITEM - 11.b.

**TITLE:**

Discussion and advisement on applying for Party Status for Mission Change on the 800,900, and 1200, series of rules./MOTION

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

**Amy Markwell**

May 6, 2020, 10:19 AM (1 day ago)

tome,Nancy,Lynn,Mike,Hilary

Carmen,

Can we please add these materials for discussion with the BOCC at the May 20 meeting? We have party status for Mission Change on the 100-600 series of rules and there are deadl schedule in July and August.

The next set of rulemaking will be for the 800, 900 and 1200 series of rules. Staff will be reviewing these documents to be able to give the BOCC some staff input so that the BOCC determine if they want to apply for Party Status. That deadline is May 29, 2020 and there are deadlines scheduled in June through late July.

Thanks!

*Amy*

Amy T. Markwell

San Miguel County Attorney

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			

**ATTACHMENTS:**

Description

Backup

Upload Date

5/7/2020



## MISSION CHANGE RULEMAKING SCHEDULE

---

At its April 29 Hearing, the Commission announced a revised schedule for the Mission Change Rulemaking. The Commission determined that it was not feasible to begin the Mission Change rulemaking hearings on April 29. The schedule announced on April 29 provides additional time for parties to identify issues with proposed Mission Change rules and to come up with solutions.

The new schedule also incorporates the hearing schedule for the 800, 900 and 1200 Series Rules. On May 1, 2020, Staff released strawdog 800, 900 and 1200 Series Rules. As set forth in the schedule below, Staff is soliciting stakeholder input on the 800, 900 and 1200 Series Rules. Staff requests stakeholders provide written feedback on these strawdog Rules no later than **5:00 pm Friday, May 15, 2020**. Feedback on the 800, 900 and 1200 Series Rules should include a summary of the issues the stakeholder identifies in the Rule Series. The summary should be accompanied by a redline of the Rule Series that includes the stakeholder's proposed revisions to the Rule Series, and when necessary and helpful, comment bubbles that explain the rationale for the proposed revision.

Staff may contact stakeholders to schedule meetings during the week of May 18 to review issue summaries so as to better understand the stakeholder's comments. The stakeholder feedback received will help to inform any revisions Staff may make to the proposed 800, 900 and 1200 Series Rules. Staff intends to file the Notice of Rulemaking for the 800, 900 and 1200 Series Rules no later than June 16, 2020.

The Commission believes that the schedule below allows greater time for stakeholders, parties and the Commissioners to prepare for the Mission Change rulemaking hearings.

Mission Change Rulemaking Schedule

May 1, 2020

Page 2

**Mission Change Rulemaking Schedule**

<b>Date</b>	<b>Action</b>	<b>Rule Series</b>
May 1	Strawdog Rules released	800, 900, & 1200
May 15	Stakeholder feedback on Strawdog Rules	800, 900, & 1200
May 18-22	Meetings with Stakeholders to go over redlines	800, 900, & 1200
May 22	Initial Input on Issues due from Parties	100-600
May 26-June 12	Party discussions to work through identified issues	100-600
June 16	Notice of Rulemaking filed	800, 900, & 1200
June 22	Request for Party Status due	800, 900, & 1200
June 26	Staff files revised redline rules	100-600
July 13	Prehearing Statements	100-600, 800, 900, & 1200
July 31	Responsive Prehearing Statements	100-600, 800, 900, & 1200
August 14	Pre-filed Written Testimony	100-600, 800, 900, & 1200
August 24-September 10	Commission Hearings	100-600, 800, 900, & 1200
November 1	Effective Date of Rules	100-600, 800, 900, & 1200



# ***SB 19-181***

# ***Mission Change Rulemaking***

# ***Overview***

April 29, 2020

Jeff Robbins  
Director

# *Mission Change Rulemaking - Timeline*

- March 15 - Notice of Rulemaking for 100-600 Series Rules filed with CO Secretary of State
- Hearings noticed to begin April 29 and end by May 29
- At March 29 Commission hearing, Director briefed the Commission that the Mission Change rulemaking should be paused due to COVID-19 Pandemic



# *Mission Change Rulemaking - Timeline*

- April 24<sup>th</sup> deadline to request party status
- 97 Parties
- April 28<sup>th</sup> Prehearing Conference



- You are being pulled in disparate directions. This week you received:
- Letter from Garfield County and 23 other communities to halt rulemaking until we can meet in person
- Letter from 63 local elected officials to move forward post haste with rulemaking even if its virtual hearings

# *800, 900, & 1200 Series Rules*

- Staff has continued work on strawdog 800, 900, & 1200 Series Rules
- Expect these strawdog rules to be released the week of May 4th
- The 800, 900, & 1200 Series Rules will be considered during the Mission Change Rulemaking hearing



# *Mission Change Rulemaking*

- Transformative
- Complex, highly technical issues
- The changes to the Series are difficult to hear in isolation
  - Changes in one Series affect other Rule Series
- Parties and Commissioners need time to prepare for marathon rulemaking hearings
- Tackling this rulemaking with all participants being virtual is not preferred, but we will work on virtual rulemaking if necessary



# *Mission Change Rulemaking*

- Current Commission serves for 8 ½ more weeks, through June 30, 2020
- Not enough time to allow for party filings (prehearing statements, responses, written testimony) and three weeks of hearings
- Not enough time to allow for stakeholder conversations/resolution of issues
- Also would not allow for inclusion of 800, 900, & 1200 Series Rules



# *Proposed Schedule - 100-600 Series Rules*

- May 22 - Party Initial Input due
- May 26-June 12 - Party meetings/discussions to work through issues
- June 26 - Staff files revised redline rules
- July 13 - Prehearing Statements





# *Proposed Schedule - 100-600 Series Rules*

- July 31 - Responsive Prehearing Statements
- August 14 - Pre-filed Written Testimony



# *Proposed Schedule - 800, 900, & 1200 Series Rules*

- Week of May 4 - Strawdog Rules released
- May 22 - Notice of Rulemaking filed
- May 29 - Request for Party Status due
- June 12 - Prehearing Statements



# *Proposed Schedule - 800, 900, & 1200 Series Rules*

- July 3 - Responsive Prehearing Statements
- July 20 - Pre-filed Written Testimony



# *Commission Hearings - 100-600, 800, 900, & 1200 Series Rules*

- August 24 - September 10
- November 1 - Effective Date of Rules





# *Questions?*



**COLORADO**

**Oil & Gas Conservation  
Commission**

Department of Natural Resources

## DEFINITIONS 100 SERIES

**AVOID ADVERSE IMPACTS** means to differentially select sites or methods for Oil and Gas Operations so that those operations will not cause quantifiable adverse impacts to the potentially affected resource(s).

**HIGH PRIORITY HABITAT** means habitat areas identified by Colorado Parks and Wildlife where measures to avoid, minimize, and mitigate impacts to wildlife have been identified to protect breeding, nesting, foraging, migrating, or other uses by wildlife.

**MINIMIZE ADVERSE IMPACTS** means, as provided by § 34-60-106(2.5), C.R.S., providing necessary and reasonable protections to reduce the extent, severity, significance, or duration of unavoidable adverse impacts to public health, safety, welfare, the environment, or wildlife resources from oil and gas operations.

**MITIGATE ADVERSE IMPACTS** means, with respect to wildlife resources, measures that compensate for unavoidable adverse impacts and loss of such resources, including, as appropriate, habitat replacement, on- or off-site habitat enhancement, habitat banking, or financial payment in lieu of habitat replacement or enhancement to compensate for the loss of habitat.

**RESTRICTED SURFACE OCCUPANCY AREA** shall mean the following:

- ~~rocky mountain bighorn sheep production areas;~~
- ~~desert bighorn sheep production areas;~~
- ~~areas within 0.6 miles of any greater sage-grouse, Gunnison sage-grouse, and lesser prairie-chicken lek (strutting and booming grounds);~~
- ~~areas within 0.4 miles of any Columbian sharp-tailed grouse or plains sharp-tailed grouse lek (strutting grounds);~~
- ~~areas within 1/4 mile of active Bald Eagle nest sites, Golden Eagle nest sites, or Osprey nest sites;~~
- ~~areas within 1/2 mile of active Ferruginous Hawk nest sites, Northern Goshawk nest sites, Peregrine Falcon nest sites, or Prairie Falcon nest sites;~~
- ~~areas located within 300 feet of the ordinary high-water mark of any stream segment located within designated Cutthroat Trout habitat; and~~
- ~~areas within 300 feet of the ordinary high-water mark of a stream or lake designated by the Colorado Parks and Wildlife as "Gold Medal."~~

**SENSITIVE WILDLIFE HABITAT** shall mean:

- ~~mule deer critical winter range (being both mule deer winter concentration areas (that part of the winter range where densities are at least 200% of the surrounding winter range density during the same period used to define winter range in 5 out of 10 winters), and mule deer severe winter range (that part of the winter range where 90% of the individuals are located during the average 5 winters out of 10 from the first heavy snowfall to spring green-up)) (west of Interstate 25 and excluding Las Animas County);~~
- ~~elk winter concentration areas (west of Interstate 25 and excluding Las Animas County);~~



- ~~pronghorn antelope winter concentration areas (west of Interstate 25);~~
- ~~bighorn sheep winter range;~~
- ~~elk production areas (being that part of the overall range occupied by the females for calving) (west of Interstate 25 and excluding Las Animas County);~~
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- ~~greater sage-grouse and Gunnison sage-grouse production areas (being an area that contains 80% of nesting and brood-rearing habitat for any population identified in the Colorado Greater Sage-Grouse Conservation Plan (CPW, 2008) or the Gunnison Sage-Grouse Range-Wide Conservation Plan (May 2005), respectively);~~
- ~~lesser prairie chicken production areas (being an area that includes 80% of nesting and brood-rearing habitat);~~
- ~~black-footed ferret release areas;~~
- ~~Bald Eagle nest sites and winter night roost sites; and~~
- ~~Golden Eagle nest sites.~~

~~Maps showing and spatial data identifying the individual and combined extents of the above habitat areas shall be maintained by the Commission and made available on the Commission website, and copies of the maps shall be attached as Appendix VIII. The extent of sensitive wildlife habitat is subject to update on a periodic but no more frequent than biennial basis and may be modified only through the Commission's rulemaking procedures, as provided in Rule 529. Any modifications to sensitive wildlife habitat shall not affect Form 2As or Comprehensive Drilling Plans approved prior to the effective date of such changes.~~

**PERMITTING PROCESS  
300 SERIES  
[Rest of 300 Series Omitted]**

**304. FORM 2A: OIL AND GAS LOCATION ASSESSMENT APPLICATION**

- b. **Information Requirements.** All Form 2A, Oil and Gas Location Assessments Applications must include the following information:

**(2) Alternative Location Analysis.**

- A. **Applicability:** This Rule 304.b.(2) applies to any proposed Oil and Gas Location that does not meet the criteria of Rule 302.b.(2), and meets one or more of the following criteria:
- iv. The proposed Oil and Gas Location is within High Priority Habitat and the applicant did not obtain a waiver from Colorado Parks and Wildlife through a pre-application consultation; or

**309. CONSULTATION**

e. **Colorado Parks and Wildlife.**

- (1) **When Consultation Must Occur.** The Operator will consult with the Surface Owner (unless the Surface Owner has waived their right to participate pursuant to 309.e.(3).C) and with Colorado Parks and Wildlife about a Form 2A, Oil and Gas Location Assessment, Oil and Gas Development Plan, Comprehensive Area Plan, or other matter where:
- A. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor falls within High Priority Habitat, a State Park, or a State Wildlife Area.
- B. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor falls within federally designated Critical Habitat for a Threatened or Endangered species.
- C. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor falls within an existing or proposed conservation easement established wholly or partly for wildlife habitat.
- D. Colorado Parks and Wildlife requests consultation because consultation is necessary to minimize or mitigate unavoidable impacts to wildlife resources from an Oil and Gas Development Plan proposed where consultation is not otherwise required.
- E. The Operator seeks a variance from a provision in the Commission's 1200 Series Rules.
- F. The Director determines that consultation would assist the Director in determining whether to recommend approving or denying an Oil and Gas Development Plan or Comprehensive Area Plan.
- G. Notwithstanding the foregoing, the requirement to consult with Colorado Parks and Wildlife may be waived by Colorado Parks and Wildlife at any time.



**(2) When Consultation is Not Required.** Consultation will not be required if:

- A.** The Director has previously approved a Form 2A, Oil and Gas Location Assessment or Comprehensive Area Plan and associated Wildlife Protection Plan that addresses the proposed new Oil and Gas Location and the proposed operations are in compliance with previously approved plans.
- B.** Colorado Parks and Wildlife has previously approved, in writing, a Wildlife Protection Plan, Wildlife Mitigation Plan, or other conservation plan that remains in effect for the area that includes the proposed new Oil and Gas Location and the proposed operations are in compliance with such plan.
- C.** The Operator demonstrates and Colorado Parks and Wildlife agrees in writing that:
  - i.** The identified habitat and/or species triggering the consultation is no longer present and unlikely to return to the area; and
  - ii.** The proposed Oil and Gas Location is within an area either primarily or completely developed for incompatible residential, agricultural, commercial, or industrial use.
- D.** The proposed new Oil and Gas Location would involve a one-time increase in surface disturbance of 1 acre or less contiguous with an existing Oil and Gas Location with an approved Wildlife Protection Plan.
- E.** A Commission Order limits the density of Oil and Gas Locations within a Drilling and Spacing Unit to 1 per section, and the Order includes a Colorado Parks and Wildlife-approved Wildlife Protection Plan, Wildlife Mitigation Plan, or other conservation plan that remains in effect for the area.

**(3) Procedures for Consultation.**

- A.** The Operator will provide:
  - i.** The Oil and Gas Development Plan or Comprehensive Area Plan, if applicable, or for consultations that do not involve an Oil and Gas Development Plan or Comprehensive Area Plan, a description of the proposed Oil and Gas Operations, including their location and the phasing and duration of operations consistent with Rules 303 and 304, and, if applicable Rule 314; and
  - ii.** Any other relevant available information about the proposed Oil and Gas Operations and the affected wildlife resources, including the Wildlife Habitat Map and information required by Rule 1201.
- B.** The Operator, the Director, the Surface Owner, and Colorado Parks and Wildlife will have 60 days to conduct the consultation required by this Rule 309.e. The time period for consultation will begin concurrent with the start of the public comment period on an Oil and Gas Development Plan or Comprehensive Area Plan pursuant to Rule 303.d.(1).A. If the Operator has made no reasonable accommodation for consultation within such 60-day period, the Director will have discretion to postpone making a decision about an Oil and Gas Development Plan or Comprehensive Area Plan in order to allow consultation to occur if the Director believes the information from consultation is necessary

to determine how to protect and avoid, mitigate, and minimize adverse impacts to wildlife resources.

- C. The Surface Owner may waive its right to participate in the consultation and is not obligated to provide access to its surface for such consultation. If access to the surface is not granted, the Operator will arrange a consultation meeting with Colorado Parks and Wildlife at a mutually agreeable time and location and the consultation will be based on best available data.
- (4) **Result of Consultation.** As a result of consultation required by this Rule 309.e, Colorado Parks and Wildlife may make written recommendations to the Director about conditions of approval that are necessary and reasonable to avoid, minimize, or mitigate adverse impacts to wildlife resources as set forth in Rules 1203 and 1204. Colorado Parks and Wildlife may also recommend that the Commission deny an Oil and Gas Development Plan or Comprehensive Area Plan due to risks to wildlife resources that cannot be mitigated. Where applicable, Colorado Parks and Wildlife may also make written recommendations on whether a variance request should be granted, under what conditions, and the reasons for any such recommendations. CPW may also waive, in writing, any operating or mitigation requirements otherwise required by Rules 1203 or 1204.
- (5) **Conditions of Approval.**
- A. If the Director agrees that the conditions of approval recommended by Colorado Parks and Wildlife are necessary and reasonable to avoid, minimize, or mitigate adverse impacts to wildlife resources or habitat, the Director will incorporate Colorado Parks and Wildlife's recommended conditions into the Director's Recommendation on an Oil and Gas Development Plan or Comprehensive Area Plan.
  - B. The Director will not incorporate conditions of approval to avoid, minimize, or mitigate adverse impacts to wildlife resources or habitat into the Director's Recommendation without consent of the affected Surface Owner. This provision does not apply to conditions of approval to avoid, minimize, or mitigate impacts to wildlife resources or habitat that do not directly impact the affected Surface Owner's property or use of that property including, but not limited to, off-site compensatory mitigation requirements.
  - C. If the Director determines that any conditions of approval recommended by Colorado Parks and Wildlife are not necessary to avoid, minimize, or mitigate adverse impacts to wildlife resources or habitat, the Director will explain the grounds for the disagreement in the Director's Recommendation.
  - D. The Commission will determine whether to follow the Colorado Parks and Wildlife's recommendation when making a final decision to approve or deny an Oil and Gas Development Plan or Comprehensive Area Plan.
- (6) **Notification of Decision to Consulting Agency.** Pursuant to Rule 306.c.(6), if consultation occurred under this Rule 309.e, the Director will provide the Director's Recommendation to Colorado Parks and Wildlife on the same day that it announces the decision. Colorado Parks and Wildlife may petition the Director's Recommendation before the Commission pursuant to Rule 507.c.

**RULES OF PRACTICE AND PROCEDURE**  
**500 SERIES**  
**[Rest of 500 Series Omitted]**

**529. RULEMAKING PROCEEDINGS**

- d. **Development of Proposed Rules.** Prior to the notice of proposed rulemaking, the Commission or Director will establish a representative group of participants with an interest in the subject of the rulemaking as provided by § 24-4-103(2), C.R.S. The Commission or Director may also use other means to gather information, including, but not limited to public forums, investigation by Commission staff, and formation of rulemaking teams. Commissioners may participate in such informal proceedings.
- (1) **Colorado Parks and Wildlife Consultation.** For new basin-wide orders or modifications of existing basin-wide or field-wide orders, on issues pertaining to wildlife or wildlife-related environmental concerns or protections, or for acreage that includes High Priority Habitat, the Commission will consult with Colorado Parks and Wildlife during the stakeholder process.

**PROTECTION OF WILDLIFE RESOURCES  
1200 SERIES**

**1201. WILDLIFE PROTECTION PLAN**

- a.** Proposed Oil and Gas Operations on new or amended Oil and Gas Locations require a Wildlife Protection Plan that includes a description of the Rule 1203.a. operating requirements applicable to the Oil and Gas Location.
- b.** Wildlife Protection Plans for proposed Oil and Gas Operations on new or amended Oil and Gas Locations within High Priority Habitat will also include:

  - (1)** A description of any pre-application consultation, which may include an Alternative Location Analysis pursuant to Rule 304.b.(2).A.iv., or identifying site-specific measures to avoid, minimize, or mitigate adverse impacts to wildlife resources;
  - (2)** A description of Best Management Practices incorporated into the proposed Oil and Gas Operations that the Operator commits to implementing for the purposes of minimizing impacts to wildlife;
  - (3)** A description of the Rule 1203.b. operating requirements applicable to the Oil and Gas Location; and
  - (4)** A description of the Rule 1204 mitigation commitments to offset unavoidable adverse impacts to wildlife resources.

**1202. CONSULTATION**

- a.** The purpose of consultation with Colorado Parks and Wildlife (CPW) under Rule 309.e is to provide the Director the information necessary to determine whether conditions of approval are necessary to avoid, minimize, or mitigate adverse impacts to wildlife resources associated with High Priority Habitats, and protect against adverse environmental impacts resulting from Oil and Gas Operations.
- b.** Factors that CPW may take into consideration during consultation include, but are not limited to, the following:

  - (1)** Anticipated direct and indirect effects of the proposed Oil and Gas Operations on wildlife resources;
  - (2)** The extent to which the proposed Oil and Gas Operations incorporate alternative siting of facilities to avoid and minimize impacts;
  - (3)** The extent to which the proposed Oil and Gas Operations incorporate the use of existing facilities, roads, and pipeline corridors and limit new surface disturbance and habitat fragmentation;
  - (4)** The extent to which the proposed Oil and Gas Operations use technology and Best Management Practices which are protective of wildlife resources, including but not limited to seasonal construction and drilling limitations, noise limitations, remote operations, and transporting and storing liquids through pipelines and large tanks or other measures to reduce traffic volumes; and

- (5) The extent to which the proposed Oil and Gas Operations are within land used for residential, industrial, commercial, agricultural, or other purposes, and the existing wildlife disturbance associated with such use.

### **1203. OPERATING REQUIREMENTS.**

- a. The operating requirements identified below apply statewide unless the Operator obtains a signed waiver from Colorado Parks and Wildlife (CPW) and following approval of a Form 4, Sundry Notice or Form 2A, Oil and Gas Location Assessment documenting the relief.
- (1) In black bear habitat, Operators will install and utilize bear-proof dumpsters and trash receptacles for food-related trash at all facilities that generate trash.
  - (2) Operators will disinfect water suction hoses and water transportation tanks withdrawing from or discharging into surface waters (other than contained pits) used previously in another river, perennial stream, lake, pond, or wetland and discard rinse water in an approved disposal facility. Disinfection practices will be repeated after completing work or before moving to the next water body. Disinfection may be performed by removing mud and debris and invasive aquatic species and then implementing one of the following practices:
    - A. Spray/soak equipment with a disinfectant solution capable of killing whirling disease spores and other Aquatic Nuisance Species (ANS) defined by CPW; or
    - B. Spray/soak equipment with water greater than 140° F for at least 10 minutes.
  - (3) At new and existing Oil and Gas Locations, Operators will not situate new staging, refueling, or chemical storage areas within 300 feet of the Ordinary High Water Mark (OHWM) of any river, perennial or intermittent stream, lake, pond, or wetland.
  - (4) To prevent access by wildlife, including birds and bats, Operators will fence and net Drilling Pits, Production Pits, and other Pits associated with Oil and Gas Operations that are intended to contain fluids. Such fencing and netting will be installed within 5 days after the cessation of active drilling and completion activities and maintained until removed. Netting will be removed when the Pit is removed from service and dried or closed pursuant to the Commission's 900 Series Rules.
  - (5) For trenches that are left open for more than 5 consecutive days during construction of pipelines regulated under the Commission's 1100 Series Rules, Operators will install wildlife escape ramps at a minimum of one ramp per 1/4 mile of trench.
  - (6) When conducting interim and final reclamation under Rules 1003 and 1004, Operators will use CPW-recommended seed mixes for reclamation when consistent with the Surface Owner's approval and any local soil conservation district requirements.
  - (7) Operators will use CPW-recommended fence designs when consistent with the Surface Owner's approval and any Local Government requirements.
- b. The operating requirements identified below apply to all Oil and Gas Operations in High Priority Habitats unless the Operator obtains a signed waiver from CPW and following approval of a Form 4, Sundry Notice or Form 2A, Oil and Gas Location Assessment documenting the relief.

- (1) Operators will bore, rather than trench, flowline and utility crossings of perennial streams identified as aquatic High Priority Habitat.
  - (2) Operators will treat Drilling Pits, Production Pits, and any other Pit associated with Oil and Gas Operations containing water that provides a medium for breeding mosquitoes with Bti (*Bacillus thuringiensis v. israelensis*) or take other effective action to control mosquito larvae that may spread West Nile Virus to wildlife.
- c. Except as specified in Rule 1203.c.(2), below, Operators will not conduct any new ground disturbance and well work, including access road and pad construction, drilling and completion activities, and flowline/utility corridor clearing and installation activities in the High Priority Habitats listed in Rule 1203.c.(1).
- (1) High Priority Habitats subject to this Rule 1203.c include:
- A. Bighorn sheep migration corridors, production areas, and winter range;
  - B. Columbian sharp-tailed grouse (within 0.6 miles of the lek site);
  - C. Greater prairie chicken (within 0.6 miles of the lek site);
  - D. Greater sage-grouse (within 1.0 miles of the lek site);
  - E. Gunnison sage-grouse (within 0.6 miles of the lek site);
  - F. Lesser prairie chicken (within 1.25 miles of the lek site);
  - G. Plains sharp-tailed grouse (within 0.4 miles of the lek site);
  - H. Bald eagle (within 0.25 miles of an active nest);
  - I. Ferruginous hawk (within 0.5 miles of an active nest);
  - J. Golden eagle (within 0.25 miles of an active nest);
  - K. Northern goshawk (within 0.5 miles of an active nest);
  - L. Peregrine falcon (within 0.5 miles of an active nest);
  - M. Prairie falcon (within 0.5 miles of an active nest);
  - N. Swainson's hawk (within 0.25 miles of an active nest);
  - O. Least tern production area;
  - P. Piping plover production area;
  - Q. Townsend's big-eared bat, Mexican free-tailed bat, and myotis (within 350 feet of winter hibernacula);
  - R. Native Species Conservation Waters (within 300 feet of OHWM);
  - S. Sportfish Management Waters (within 300 feet of OHWM); and
  - T. State Wildlife Areas and State Parks.

- (2) This Rule 1203.c does not apply to:
- A. Production operations at existing Oil and Gas Locations, including:
    - i. Routine maintenance, repairs and replacements of surface equipment that do not require a drilling or workover rig;
    - ii. Emergency operations;
    - iii. Spill and Release response;
    - iv. Ongoing reclamation and site maintenance activities; or
    - v. Habitat improvements to offset adverse impacts at existing facilities.
  - B. Non-emergency workovers, including uphole recompletions, plugging operations, and site investigation and remediation at existing Oil and Gas Locations, if:
    - i. The Operator has obtained prior approval from the Director;
    - ii. The Operator has consulted with CPW; and
    - iii. The Operator minimizes adverse impacts to the species for which the High Priority Habitat exists.
- d. All Oil and Gas Development Plans submitted after [rule effective date], including amendments to previously-approved Form 2As, Oil and Gas Location Assessments that cause the density of Oil and Gas Locations to exceed 1 per square mile in the High Priority Habitats listed in Rule 1203.d require a CPW-approved Wildlife Protection Plan pursuant to Rule 1201, Wildlife Mitigation Plan, or other conservation plan. This Rule 1203.d. applies to the following High Priority Habitat types:
- (1) Elk migration corridors, production areas, severe winter range, and winter concentration areas;
  - (2) Mule deer migration corridors, severe winter range, and winter concentration areas;
  - (3) Pronghorn migration corridors and winter concentration areas;
  - (4) Greater sage-grouse priority habitat management areas;
  - (5) Columbian sharp-tailed grouse production areas;
  - (6) Greater prairie chicken production areas;
  - (7) Gunnison sage-grouse occupied habitat and production areas;
  - (8) Lesser prairie chicken focal areas; and
  - (9) Plains sharp-tailed grouse production areas.

#### **1204. COMPENSATORY MITIGATION FOR WILDLIFE RESOURCES**

- a.** In High Priority Habitats listed in Rules 1203.d, if impacts to wildlife resources from proposed Oil and Gas Operations are unavoidable, the Operator will complete compensatory mitigation to offset direct or indirect impacts as specified in Rules 1204.b–d below. Direct impacts to wildlife occur from direct mortality or displacement during construction activities and habitat conversion to industrial facilities. Indirect impacts to wildlife occur from the cumulative functional habitat loss from fragmentation and modified habitat use as development density increases. The Director, after consultation with Colorado Parks and Wildlife (CPW), will have discretion to determine whether compensatory mitigation proposed by the Operator is sufficient. An Operator may comply with the obligation to complete compensatory mitigation by:
- (1)** Completing the compensatory mitigation through a project approved by CPW and the Director and managed or overseen by the Operator as described in Rule 1204.b; or
  - (2)** Paying a habitat mitigation fee to CPW, as provided by Rules 1204.c and 1204.d. Any fee per Rule 1204.c and 1204.d will be calculated to reimburse all reasonable and necessary direct and indirect costs that will be incurred by CPW in completing compensatory mitigation sufficient to offset the unavoidable direct and indirect impacts to wildlife resources caused by the proposed Oil and Gas Operations.
  - (3)** The Director may grant an exception from the compensatory mitigation requirement set forth in this Rule 1204 after consulting with CPW pursuant to Rule 309.e.(4).
- b.** If an Operator chooses to complete or cause to be completed compensatory mitigation to offset the direct and indirect adverse impacts to wildlife resources:
- (1)** The Operator will submit a Compensatory Mitigation Plan with a level of detail commensurate with the scale and scope of the impacts to the Director that includes, as appropriate:
    - A.** Plan objectives or mitigation goal;
    - B.** Site selection;
    - C.** Site protection instrument;
    - D.** Valuation determination;
    - E.** Baseline information;
    - F.** Mitigation schedule and workplan;
    - G.** Maintenance plan;
    - H.** Performance standards;
    - I.** Monitoring requirements;
    - J.** Long-term management plan;
    - K.** Adaptive management plan, if necessary;



L. Financial assurances; and

M. Other information as required by the Director

(2) The Director will consult with CPW about the adequacy of the proposed Compensatory Mitigation Plan.

(3) The Director may accept the Operator's Compensatory Mitigation Plan if it meets the criteria of Rule 1204.b.(1) and, in the Director's judgment, provides adequate compensation for direct and indirect impacts to wildlife resources from the proposed Oil and Gas Operation.

c. **Direct Impact Habitat Mitigation Fee.** An Operator may comply with its obligation to mitigate direct impacts to wildlife caused by new ground disturbance within High Priority Habitat types listed in Rule 1203.d. by paying to Colorado Parks and Wildlife a habitat mitigation fee in the amount listed in Table 1204-1.

**Table 1204-1**

<b>Direct Impact Habitat Mitigation Fee</b>	
<b><u>Total Disturbance Acres</u></b>	<b><u>Fee</u></b>
1.0-10.99	\$13,750
11.0+	Determined based on site-specific conditions and consultation with Colorado Parks and Wildlife

d. **Indirect Impacts.**

(1) In High Priority Habitats listed in 1203.d with a density of Oil and Gas Locations less than 5 per square mile, Colorado Parks and Wildlife (CPW) will recommend to the Director whether compensatory mitigation is required to address indirect impacts of habitat fragmentation caused by the proposed Oil and Gas Development Plan.

(2) When determining whether compensatory mitigation is required for indirect impacts, factors that Colorado Parks and Wildlife may consider include, but are not limited to:

A. The existing landscape context, and extent to which the proposed Oil and Gas Operations are within land already used for residential, industrial, commercial, agricultural, or other purposes, and the existing wildlife disturbance associated with such land uses;

B. The estimated lifespan of the proposed Oil and Gas Operations;

C. The extent to which the proposed Oil and Gas Operations incorporate alternative siting of Oil and Gas Facilities or Oil and Gas Locations to avoid and minimize impacts;

D. The extent to which the proposed Oil and Gas Operations incorporate the use of existing Oil and Gas Facilities and Oil and Gas Locations to limit new surface disturbance and habitat fragmentation;

- E.** The extent to which the proposed Oil and Gas Operations use technology and practices which protect wildlife resources, including but not limited to:
- i.** Seasonal construction and drilling limitations;
  - ii.** Noise limitations;
  - iii.** Remote operations; or
  - iv.** Measures to reduce traffic volumes, including but not limited to transport of liquids through the use of pipelines and storage in large tanks.
- (3)** If the Director determines that compensatory mitigation for indirect impacts is necessary, the Operator may comply with its obligation to mitigate the indirect impacts of its proposed Oil and Gas Operations by paying a habitat mitigation fee to CPW. The Director will determine the amount of the fee for each proposed Oil and Gas Location based on CPW's estimate of costs to reimburse all reasonable and necessary expenditures to complete compensatory mitigation sufficient to offset the indirect impacts to wildlife resources from the proposed disturbance.

## DEFINITIONS 100 SERIES

**AVOID ADVERSE IMPACTS** means to differentially select sites or methods for Oil and Gas Operations so that those operations will not cause quantifiable adverse impacts to the potentially affected resource(s).

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- ~~desert bighorn sheep production areas;~~
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- ~~elk winter concentration areas (west of Interstate 25 and excluding Las Animas County);~~

- ~~pronghorn antelope winter concentration areas (west of Interstate 25);~~
- ~~bighorn sheep winter range;~~
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~~Maps showing and spatial data identifying the individual and combined extents of the above habitat areas shall be maintained by the Commission and made available on the Commission website, and copies of the maps shall be attached as Appendix VIII. The extent of sensitive wildlife habitat is subject to update on a periodic but no more frequent than biennial basis and may be modified only through the Commission's rulemaking procedures, as provided in Rule 529. Any modifications to sensitive wildlife habitat shall not affect Form 2As or Comprehensive Drilling Plans approved prior to the effective date of such changes.~~

**PERMITTING PROCESS  
300 SERIES  
[Rest of 300 Series Omitted]**

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- A. **Applicability:** This Rule 304.b.(2) applies to any proposed Oil and Gas Location that does not meet the criteria of Rule 302.b.(2), and meets one or more of the following criteria:
- iv. The proposed Oil and Gas Location is within High Priority Habitat and the applicant did not obtain a waiver from Colorado Parks and Wildlife through a pre-application consultation; or

**309. CONSULTATION**

e. **Colorado Parks and Wildlife.**

- (1) **When Consultation Must Occur.** The Operator will consult with the Surface Owner (unless the Surface Owner has waived their right to participate pursuant to 309.e.(3).C) and with Colorado Parks and Wildlife about a Form 2A, Oil and Gas Location Assessment, Oil and Gas Development Plan, Comprehensive Area Plan, or other matter where:
- A. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor falls within High Priority Habitat, a State Park, or a State Wildlife Area.
- B. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor falls within federally designated Critical Habitat for a Threatened or Endangered species.
- C. A proposed Oil and Gas Location or associated new access road, utility, or pipeline corridor falls within an existing or proposed conservation easement established wholly or partly for wildlife habitat.
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- E. The Operator seeks a variance from a provision in the Commission's 1200 Series Rules.
- F. The Director determines that consultation would assist the Director in determining whether to recommend approving or denying an Oil and Gas Development Plan or Comprehensive Area Plan.
- G. Notwithstanding the foregoing, the requirement to consult with Colorado Parks and Wildlife may be waived by Colorado Parks and Wildlife at any time.

**(2) When Consultation is Not Required.** Consultation will not be required if:

- A.** The Director has previously approved a Form 2A, Oil and Gas Location Assessment or Comprehensive Area Plan and associated Wildlife Protection Plan that addresses the proposed new Oil and Gas Location and the proposed operations are in compliance with previously approved plans.
- B.** Colorado Parks and Wildlife has previously approved, in writing, a Wildlife Protection Plan, Wildlife Mitigation Plan, or other conservation plan that remains in effect for the area that includes the proposed new Oil and Gas Location and the proposed operations are in compliance with such plan.
- C.** The Operator demonstrates and Colorado Parks and Wildlife agrees in writing that:
  - i.** The identified habitat and/or species triggering the consultation is no longer present and unlikely to return to the area; and
  - ii.** The proposed Oil and Gas Location is within an area either primarily or completely developed for incompatible residential, agricultural, commercial, or industrial use.
- D.** The proposed new Oil and Gas Location would involve a one-time increase in surface disturbance of 1 acre or less contiguous with an existing Oil and Gas Location with an approved Wildlife Protection Plan.
- E.** A Commission Order limits the density of Oil and Gas Locations within a Drilling and Spacing Unit to 1 per section, and the Order includes a Colorado Parks and Wildlife-approved Wildlife Protection Plan, Wildlife Mitigation Plan, or other conservation plan that remains in effect for the area.

**(3) Procedures for Consultation.**

- A.** The Operator will provide:
  - i.** The Oil and Gas Development Plan or Comprehensive Area Plan, if applicable, or for consultations that do not involve an Oil and Gas Development Plan or Comprehensive Area Plan, a description of the proposed Oil and Gas Operations, including their location and the phasing and duration of operations consistent with Rules 303 and 304, and, if applicable Rule 314; and
  - ii.** Any other relevant available information about the proposed Oil and Gas Operations and the affected wildlife resources, including the Wildlife Habitat Map and information required by Rule 1201.
- B.** The Operator, the Director, the Surface Owner, and Colorado Parks and Wildlife will have 60 days to conduct the consultation required by this Rule 309.e. The time period for consultation will begin concurrent with the start of the public comment period on an Oil and Gas Development Plan or Comprehensive Area Plan pursuant to Rule 303.d.(1).A. If the Operator has made no reasonable accommodation for consultation within such 60-day period, the Director will have discretion to postpone making a decision about an Oil and Gas Development Plan or Comprehensive Area Plan in order to allow consultation to occur if the Director believes the information from consultation is necessary

to determine how to protect and avoid, mitigate, and minimize adverse impacts to wildlife resources.

- C. The Surface Owner may waive its right to participate in the consultation and is not obligated to provide access to its surface for such consultation. If access to the surface is not granted, the Operator will arrange a consultation meeting with Colorado Parks and Wildlife at a mutually agreeable time and location and the consultation will be based on best available data.
- (4) **Result of Consultation.** As a result of consultation required by this Rule 309.e, Colorado Parks and Wildlife may make written recommendations to the Director about conditions of approval that are necessary and reasonable to avoid, minimize, or mitigate adverse impacts to wildlife resources as set forth in Rules 1203 and 1204. Colorado Parks and Wildlife may also recommend that the Commission deny an Oil and Gas Development Plan or Comprehensive Area Plan due to risks to wildlife resources that cannot be mitigated. Where applicable, Colorado Parks and Wildlife may also make written recommendations on whether a variance request should be granted, under what conditions, and the reasons for any such recommendations. CPW may also waive, in writing, any operating or mitigation requirements otherwise required by Rules 1203 or 1204.
- (5) **Conditions of Approval.**
- A. If the Director agrees that the conditions of approval recommended by Colorado Parks and Wildlife are necessary and reasonable to avoid, minimize, or mitigate adverse impacts to wildlife resources or habitat, the Director will incorporate Colorado Parks and Wildlife's recommended conditions into the Director's Recommendation on an Oil and Gas Development Plan or Comprehensive Area Plan.
  - B. The Director will not incorporate conditions of approval to avoid, minimize, or mitigate adverse impacts to wildlife resources or habitat into the Director's Recommendation without consent of the affected Surface Owner. This provision does not apply to conditions of approval to avoid, minimize, or mitigate impacts to wildlife resources or habitat that do not directly impact the affected Surface Owner's property or use of that property including, but not limited to, off-site compensatory mitigation requirements.
  - C. If the Director determines that any conditions of approval recommended by Colorado Parks and Wildlife are not necessary to avoid, minimize, or mitigate adverse impacts to wildlife resources or habitat, the Director will explain the grounds for the disagreement in the Director's Recommendation.
  - D. The Commission will determine whether to follow the Colorado Parks and Wildlife's recommendation when making a final decision to approve or deny an Oil and Gas Development Plan or Comprehensive Area Plan.
- (6) **Notification of Decision to Consulting Agency.** Pursuant to Rule 306.c.(6), if consultation occurred under this Rule 309.e, the Director will provide the Director's Recommendation to Colorado Parks and Wildlife on the same day that it announces the decision. Colorado Parks and Wildlife may petition the Director's Recommendation before the Commission pursuant to Rule 507.c.

**RULES OF PRACTICE AND PROCEDURE**  
**500 SERIES**  
**[Rest of 500 Series Omitted]**

**529. RULEMAKING PROCEEDINGS**

- d. **Development of Proposed Rules.** Prior to the notice of proposed rulemaking, the Commission or Director will establish a representative group of participants with an interest in the subject of the rulemaking as provided by § 24-4-103(2), C.R.S. The Commission or Director may also use other means to gather information, including, but not limited to public forums, investigation by Commission staff, and formation of rulemaking teams. Commissioners may participate in such informal proceedings.
- (1) **Colorado Parks and Wildlife Consultation.** For new basin-wide orders or modifications of existing basin-wide or field-wide orders, on issues pertaining to wildlife or wildlife-related environmental concerns or protections, or for acreage that includes High Priority Habitat, the Commission will consult with Colorado Parks and Wildlife during the stakeholder process.



**PROTECTION OF WILDLIFE RESOURCES  
1200 SERIES**

**1201. WILDLIFE PROTECTION PLAN**

- a.** Proposed Oil and Gas Operations on new or amended Oil and Gas Locations require a Wildlife Protection Plan that includes a description of the Rule 1203.a. operating requirements applicable to the Oil and Gas Location.
- b.** Wildlife Protection Plans for proposed Oil and Gas Operations on new or amended Oil and Gas Locations within High Priority Habitat will also include:

  - (1)** A description of any pre-application consultation, which may include an Alternative Location Analysis pursuant to Rule 304.b.(2).A.iv., or identifying site-specific measures to avoid, minimize, or mitigate adverse impacts to wildlife resources;
  - (2)** A description of Best Management Practices incorporated into the proposed Oil and Gas Operations that the Operator commits to implementing for the purposes of minimizing impacts to wildlife;
  - (3)** A description of the Rule 1203.b. operating requirements applicable to the Oil and Gas Location; and
  - (4)** A description of the Rule 1204 mitigation commitments to offset unavoidable adverse impacts to wildlife resources.

**1202. CONSULTATION**

- a.** The purpose of consultation with Colorado Parks and Wildlife (CPW) under Rule 309.e is to provide the Director the information necessary to determine whether conditions of approval are necessary to avoid, minimize, or mitigate adverse impacts to wildlife resources associated with High Priority Habitats, and protect against adverse environmental impacts resulting from Oil and Gas Operations.
- b.** Factors that CPW may take into consideration during consultation include, but are not limited to, the following:

  - (1)** Anticipated direct and indirect effects of the proposed Oil and Gas Operations on wildlife resources;
  - (2)** The extent to which the proposed Oil and Gas Operations incorporate alternative siting of facilities to avoid and minimize impacts;
  - (3)** The extent to which the proposed Oil and Gas Operations incorporate the use of existing facilities, roads, and pipeline corridors and limit new surface disturbance and habitat fragmentation;
  - (4)** The extent to which the proposed Oil and Gas Operations use technology and Best Management Practices which are protective of wildlife resources, including but not limited to seasonal construction and drilling limitations, noise limitations, remote operations, and transporting and storing liquids through pipelines and large tanks or other measures to reduce traffic volumes; and

- (5) The extent to which the proposed Oil and Gas Operations are within land used for residential, industrial, commercial, agricultural, or other purposes, and the existing wildlife disturbance associated with such use.

### **1203. OPERATING REQUIREMENTS.**

- a. The operating requirements identified below apply statewide unless the Operator obtains a signed waiver from Colorado Parks and Wildlife (CPW) and following approval of a Form 4, Sundry Notice or Form 2A, Oil and Gas Location Assessment documenting the relief.
- (1) In black bear habitat, Operators will install and utilize bear-proof dumpsters and trash receptacles for food-related trash at all facilities that generate trash.
  - (2) Operators will disinfect water suction hoses and water transportation tanks withdrawing from or discharging into surface waters (other than contained pits) used previously in another river, perennial stream, lake, pond, or wetland and discard rinse water in an approved disposal facility. Disinfection practices will be repeated after completing work or before moving to the next water body. Disinfection may be performed by removing mud and debris and invasive aquatic species and then implementing one of the following practices:
    - A. Spray/soak equipment with a disinfectant solution capable of killing whirling disease spores and other Aquatic Nuisance Species (ANS) defined by CPW; or
    - B. Spray/soak equipment with water greater than 140° F for at least 10 minutes.
  - (3) At new and existing Oil and Gas Locations, Operators will not situate new staging, refueling, or chemical storage areas within 300 feet of the Ordinary High Water Mark (OHWM) of any river, perennial or intermittent stream, lake, pond, or wetland.
  - (4) To prevent access by wildlife, including birds and bats, Operators will fence and net Drilling Pits, Production Pits, and other Pits associated with Oil and Gas Operations that are intended to contain fluids. Such fencing and netting will be installed within 5 days after the cessation of active drilling and completion activities and maintained until removed. Netting will be removed when the Pit is removed from service and dried or closed pursuant to the Commission's 900 Series Rules.
  - (5) For trenches that are left open for more than 5 consecutive days during construction of pipelines regulated under the Commission's 1100 Series Rules, Operators will install wildlife escape ramps at a minimum of one ramp per 1/4 mile of trench.
  - (6) When conducting interim and final reclamation under Rules 1003 and 1004, Operators will use CPW-recommended seed mixes for reclamation when consistent with the Surface Owner's approval and any local soil conservation district requirements.
  - (7) Operators will use CPW-recommended fence designs when consistent with the Surface Owner's approval and any Local Government requirements.
- b. The operating requirements identified below apply to all Oil and Gas Operations in High Priority Habitats unless the Operator obtains a signed waiver from CPW and following approval of a Form 4, Sundry Notice or Form 2A, Oil and Gas Location Assessment documenting the relief.

- (1) Operators will bore, rather than trench, flowline and utility crossings of perennial streams identified as aquatic High Priority Habitat.
  - (2) Operators will treat Drilling Pits, Production Pits, and any other Pit associated with Oil and Gas Operations containing water that provides a medium for breeding mosquitoes with Bti (*Bacillus thuringiensis v. israelensis*) or take other effective action to control mosquito larvae that may spread West Nile Virus to wildlife.
- c. Except as specified in Rule 1203.c.(2), below, Operators will not conduct any new ground disturbance and well work, including access road and pad construction, drilling and completion activities, and flowline/utility corridor clearing and installation activities in the High Priority Habitats listed in Rule 1203.c.(1).
- (1) High Priority Habitats subject to this Rule 1203.c include:
- A. Bighorn sheep migration corridors, production areas, and winter range;
  - B. Columbian sharp-tailed grouse (within 0.6 miles of the lek site);
  - C. Greater prairie chicken (within 0.6 miles of the lek site);
  - D. Greater sage-grouse (within 1.0 miles of the lek site);
  - E. Gunnison sage-grouse (within 0.6 miles of the lek site);
  - F. Lesser prairie chicken (within 1.25 miles of the lek site);
  - G. Plains sharp-tailed grouse (within 0.4 miles of the lek site);
  - H. Bald eagle (within 0.25 miles of an active nest);
  - I. Ferruginous hawk (within 0.5 miles of an active nest);
  - J. Golden eagle (within 0.25 miles of an active nest);
  - K. Northern goshawk (within 0.5 miles of an active nest);
  - L. Peregrine falcon (within 0.5 miles of an active nest);
  - M. Prairie falcon (within 0.5 miles of an active nest);
  - N. Swainson's hawk (within 0.25 miles of an active nest);
  - O. Least tern production area;
  - P. Piping plover production area;
  - Q. Townsend's big-eared bat, Mexican free-tailed bat, and myotis (within 350 feet of winter hibernacula);
  - R. Native Species Conservation Waters (within 300 feet of OHWM);
  - S. Sportfish Management Waters (within 300 feet of OHWM); and
  - T. State Wildlife Areas and State Parks.

- (2) This Rule 1203.c does not apply to:
- A. Production operations at existing Oil and Gas Locations, including:
    - i. Routine maintenance, repairs and replacements of surface equipment that do not require a drilling or workover rig;
    - ii. Emergency operations;
    - iii. Spill and Release response;
    - iv. Ongoing reclamation and site maintenance activities; or
    - v. Habitat improvements to offset adverse impacts at existing facilities.
  - B. Non-emergency workovers, including uphole recompletions, plugging operations, and site investigation and remediation at existing Oil and Gas Locations, if:
    - i. The Operator has obtained prior approval from the Director;
    - ii. The Operator has consulted with CPW; and
    - iii. The Operator minimizes adverse impacts to the species for which the High Priority Habitat exists.
- d. All Oil and Gas Development Plans submitted after [rule effective date], including amendments to previously-approved Form 2As, Oil and Gas Location Assessments that cause the density of Oil and Gas Locations to exceed 1 per square mile in the High Priority Habitats listed in Rule 1203.d require a CPW-approved Wildlife Protection Plan pursuant to Rule 1201, Wildlife Mitigation Plan, or other conservation plan. This Rule 1203.d. applies to the following High Priority Habitat types:
- (1) Elk migration corridors, production areas, severe winter range, and winter concentration areas;
  - (2) Mule deer migration corridors, severe winter range, and winter concentration areas;
  - (3) Pronghorn migration corridors and winter concentration areas;
  - (4) Greater sage-grouse priority habitat management areas;
  - (5) Columbian sharp-tailed grouse production areas;
  - (6) Greater prairie chicken production areas;
  - (7) Gunnison sage-grouse occupied habitat and production areas;
  - (8) Lesser prairie chicken focal areas; and
  - (9) Plains sharp-tailed grouse production areas.

#### **1204. COMPENSATORY MITIGATION FOR WILDLIFE RESOURCES**

- a.** In High Priority Habitats listed in Rules 1203.d, if impacts to wildlife resources from proposed Oil and Gas Operations are unavoidable, the Operator will complete compensatory mitigation to offset direct or indirect impacts as specified in Rules 1204.b–d below. Direct impacts to wildlife occur from direct mortality or displacement during construction activities and habitat conversion to industrial facilities. Indirect impacts to wildlife occur from the cumulative functional habitat loss from fragmentation and modified habitat use as development density increases. The Director, after consultation with Colorado Parks and Wildlife (CPW), will have discretion to determine whether compensatory mitigation proposed by the Operator is sufficient. An Operator may comply with the obligation to complete compensatory mitigation by:
- (1)** Completing the compensatory mitigation through a project approved by CPW and the Director and managed or overseen by the Operator as described in Rule 1204.b; or
  - (2)** Paying a habitat mitigation fee to CPW, as provided by Rules 1204.c and 1204.d. Any fee per Rule 1204.c and 1204.d will be calculated to reimburse all reasonable and necessary direct and indirect costs that will be incurred by CPW in completing compensatory mitigation sufficient to offset the unavoidable direct and indirect impacts to wildlife resources caused by the proposed Oil and Gas Operations.
  - (3)** The Director may grant an exception from the compensatory mitigation requirement set forth in this Rule 1204 after consulting with CPW pursuant to Rule 309.e.(4).
- b.** If an Operator chooses to complete or cause to be completed compensatory mitigation to offset the direct and indirect adverse impacts to wildlife resources:
- (1)** The Operator will submit a Compensatory Mitigation Plan with a level of detail commensurate with the scale and scope of the impacts to the Director that includes, as appropriate:
    - A.** Plan objectives or mitigation goal;
    - B.** Site selection;
    - C.** Site protection instrument;
    - D.** Valuation determination;
    - E.** Baseline information;
    - F.** Mitigation schedule and workplan;
    - G.** Maintenance plan;
    - H.** Performance standards;
    - I.** Monitoring requirements;
    - J.** Long-term management plan;
    - K.** Adaptive management plan, if necessary;

L. Financial assurances; and

M. Other information as required by the Director

(2) The Director will consult with CPW about the adequacy of the proposed Compensatory Mitigation Plan.

(3) The Director may accept the Operator's Compensatory Mitigation Plan if it meets the criteria of Rule 1204.b.(1) and, in the Director's judgment, provides adequate compensation for direct and indirect impacts to wildlife resources from the proposed Oil and Gas Operation.

c. **Direct Impact Habitat Mitigation Fee.** An Operator may comply with its obligation to mitigate direct impacts to wildlife caused by new ground disturbance within High Priority Habitat types listed in Rule 1203.d. by paying to Colorado Parks and Wildlife a habitat mitigation fee in the amount listed in Table 1204-1.

**Table 1204-1**

<b>Direct Impact Habitat Mitigation Fee</b>	
<b><u>Total Disturbance Acres</u></b>	<b><u>Fee</u></b>
1.0-10.99	\$13,750
11.0+	Determined based on site-specific conditions and consultation with Colorado Parks and Wildlife

d. **Indirect Impacts.**

(1) In High Priority Habitats listed in 1203.d with a density of Oil and Gas Locations less than 5 per square mile, Colorado Parks and Wildlife (CPW) will recommend to the Director whether compensatory mitigation is required to address indirect impacts of habitat fragmentation caused by the proposed Oil and Gas Development Plan.

(2) When determining whether compensatory mitigation is required for indirect impacts, factors that Colorado Parks and Wildlife may consider include, but are not limited to:

A. The existing landscape context, and extent to which the proposed Oil and Gas Operations are within land already used for residential, industrial, commercial, agricultural, or other purposes, and the existing wildlife disturbance associated with such land uses;

B. The estimated lifespan of the proposed Oil and Gas Operations;

C. The extent to which the proposed Oil and Gas Operations incorporate alternative siting of Oil and Gas Facilities or Oil and Gas Locations to avoid and minimize impacts;

D. The extent to which the proposed Oil and Gas Operations incorporate the use of existing Oil and Gas Facilities and Oil and Gas Locations to limit new surface disturbance and habitat fragmentation;

- E.** The extent to which the proposed Oil and Gas Operations use technology and practices which protect wildlife resources, including but not limited to:
- i.** Seasonal construction and drilling limitations;
  - ii.** Noise limitations;
  - iii.** Remote operations; or
  - iv.** Measures to reduce traffic volumes, including but not limited to transport of liquids through the use of pipelines and storage in large tanks.
- (3)** If the Director determines that compensatory mitigation for indirect impacts is necessary, the Operator may comply with its obligation to mitigate the indirect impacts of its proposed Oil and Gas Operations by paying a habitat mitigation fee to CPW. The Director will determine the amount of the fee for each proposed Oil and Gas Location based on CPW's estimate of costs to reimburse all reasonable and necessary expenditures to complete compensatory mitigation sufficient to offset the indirect impacts to wildlife resources from the proposed disturbance.

## DEFINITIONS 100 SERIES

**COMMENCEMENT OF PRODUCTION OPERATIONS** means ~~the date that~~ a Well ~~has been completed at an Oil and Gas Location and Flowback has ended~~ is capable of producing either separable gas or salable liquid hydrocarbons.

**COMPLETED WELL.** A well will be considered completed when oil or gas is produced through wellhead equipment from the producing interval(s) after the production string has been run.

**CUTTINGS TRENCH** ~~shall mean~~ means a pit used specifically for the onsite disposal of dried cuttings, ~~treated as necessary.~~

**FLARING** means the combustion of gas during upstream Oil and Gas Operations.

**FLOWBACK** means the process of allowing fluids and entrained solids to flow from a Well following a treatment, either in preparation for a subsequent phase of treatment or in preparation for cleanup and returning the Well to production. The term flowback also means the fluids and entrained solids that emerge from a Well during the flowback process. The flowback period beginning with opening of the formation begins when material introduced into the Well during the treatment returns to the surface and ending following hydraulic fracturing or refracturing. The flowback period ends when gas is produced in separable quantities.

**INVESTIGATION-DERIVED WASTE** means those materials generated during site investigation and remediation activities, including but not limited to personal protective equipment, soil cuttings, drilling mud, purged Groundwater, decontamination fluids, and disposable or consumable equipment and supplies.

**LAND APPLICATION** ~~shall mean~~ means the disposal method by which treated E&P ~~waste~~ Waste is spread upon and mixed into soils.

**LAND TREATMENT** ~~shall mean~~ means the treatment method by which E&P ~~waste~~ Waste is treated to result in a reduction of hydrocarbon concentration by biodegradation and other natural attenuation processes. Land ~~treatment~~ Treatment may be enhanced by tilling, disking, aerating, composting and the addition of nutrients or microbes.

**OILY WASTE** means those materials containing crude oil, condensate, or ~~other~~ material, such as soil, frac sand, drilling fluids, cuttings, and pit sludge that contain hydrocarbons.

**POLLUTION** means man-made or man-induced contamination or other degradation of the physical, chemical, biological, or radiological integrity of air, water, soil, or biological resource that is not authorized by the Commission's Rules or applicable regulations promulgated by another federal, state, or local government agency.

**PRODUCTIVITY TEST** means a test for determination of a reservoir's ability to produce economic quantities of oil or gas.

**PRODUCTION EVALUATION** means an evaluation of production potential for determination of requirements for infrastructure capacity and equipment sizing.

**UPSET CONDITION** means a sudden, unavoidable failure, breakdown, or malfunction, beyond the reasonable control of the Operator, of any equipment or process that results in abnormal operations and requires correction.

**VENTING** means intentionally allowing natural gas to escape into the air.



**ENVIRONMENTAL IMPACT PREVENTION  
900 SERIES**

**901. GENERAL STANDARDS.**

~~a. **Scope of Exploration & Production Waste Rules.** The Commission's Rules for Exploration and Production Waste (E&P Waste) apply to E&P Waste as defined in § 34-60-103(4.5), C.R.S. and the 100 Series of the Commission's Rules, or other solid waste where the Colorado Department of Public Health and Environment has allowed remediation and oversight by the Commission.~~

**b.a. Addressing Impacts and Potential Impacts to Public Health, Safety, Welfare, the Environment, and Wildlife Resources.** Whenever the Director has reasonable cause to believe that an Operator, in the conduct of any Oil and Gas Operations, is performing or has performed any act or practice which impacts or threatens to impact public health, safety, welfare, the environment, or wildlife resources, the Director may require the Operator to take action to prevent the potential impacts to public health, safety, welfare, the environment, or wildlife resources, including but not limited to:

- (1) Suspending operations or initiating immediate mitigation measures until the cause of the threat or potential threat to public health, safety, welfare, the environment, or wildlife resources is identified and the threat or potential threat to public health, safety, welfare, the environment, or wildlife resources is corrected.
- (2) Submitting a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~ for site characterization, remediation, monitoring, permitting, and the establishment of points of compliance.
- (3) If the Director requires an Operator to take action pursuant to this Rule 901.b., the Operator may appeal the Director's decision to the Commission pursuant to Rule 503.g.(10). The matter will not be assigned to an Administrative Law Judge pursuant to Rule 503.h. The Commission will hear the appeal at its next regularly scheduled meeting. Operators will continue to comply with any requirements identified by the Director pursuant to this Rule 901.b. until the Commission makes a decision on the appeal. The Commission may uphold the Director's decision if the Commission determines the Director had reasonable cause to believe that an Operator's actions impacted or threatened to impact public health, safety, welfare, the environmental, or wildlife resources.

**c.b. Incorporation by Reference.** Pursuant to § 24-4-103(12.5), C.R.S., the Commission hereby incorporates by reference into these 900 Series Rules the following codes, standards, guidelines, and rules of other federal agencies, state agencies, and nationally recognized organizations and associations.

**(1) Where Materials May Be Found.**

- A. Copies of all materials incorporated by reference are available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203.
- B. Copies of all materials incorporated by reference are also available at the office or website of the agency or organization that issued the code, standard, guideline, or rule, as specified below.
- C. For any materials that are not available to the public on the internet for no cost, copies of the materials may also be examined at any state publications depository library.

- (2) **Current Version.** Only the version of the code, standard, guideline, or rule in effect as of July 1, 2020, [rule effective date], and no later amendments or editions of the code, standard, guideline, or rule are incorporated by reference, unless otherwise specified below.
- (3) **Materials Incorporated.**
- A. Colorado Department of Public Health and Environment, Water Quality Control Commission (WQCC), Regulation Number 41, The Basic Standards for Ground Water, 5 C.C.R. § 1002-41, *et seq.* (hereinafter “WQCC Regulation 41”). Only the version of WQCC Regulation 41 in effect as of [rule effective date] applies; later amendments do not apply. WQCC Regulation 41 may be examined at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and is available online at <https://www.colorado.gov/pacific/cdphe/water-quality-control-commission-regulations>.
  - B. Colorado Department of Public Health and Environment, Solid and Hazardous Waste Commission (SHWC), Regulations Pertaining to Solid Waste, 6 C.C.R. § 1007-2, *et seq.* (hereinafter “SHWC Solid Waste Regulations”). Only the version of the SHWC Solid Waste Regulations in effect as of [rule effective date] applies; later amendments do not apply. The SHWC Solid Waste Regulations may be examined at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and are available online at <https://www.colorado.gov/pacific/cdphe/solid-waste-regulations>.
  - C. Colorado Department of Public Health and Environment, Solid and Hazardous Waste Commission (SHWC), Regulations Pertaining to Hazardous Waste, 6 C.C.R. § 1007-3, *et seq.* (hereinafter “SHWC Hazardous Waste Regulations”). Only the version of the SHWC Hazardous Waste Regulations in effect as of [rule effective date] applies; later amendments do not apply. The SHWC Hazardous Waste Regulations may be examined at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and are available online at <https://www.colorado.gov/pacific/cdphe/hazardous-waste-regulations>.
  - ~~D. [HOLD]~~
  - D. Colorado Department of Public Health and Environment, Air Quality Control Commission (AQCC), Regulation No. 7, Control of Ozone Via Ozone Precursors and Control of Hydrocarbons Via Oil and Gas Emissions (Emissions of Volatile Organic Compounds and Nitrogen Oxides), 5 C.C.R. § 1001-9, *et seq.* (hereinafter “AQCC Regulation No. 7”). Only the version of AQCC Regulation No. 7 in effect as of [rule effective date] applies; later amendments do not apply. AQCC Regulation No. 7 may be examined at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and is available online at <https://www.colorado.gov/pacific/cdphe/aqcc-regs>.
  - E. Colorado State Board of Examiners of Water Well Construction and Pump Installation Contractors, Rules and Regulations for Water Well Construction, Pump Installation, Cistern Installation, and Monitoring and Observation Hole/Well Construction, 2 C.C.R. § 402-2, *et seq.* (hereinafter State Engineer’s Water Well Construction and Permitting Rules”). Only the version of the State Engineer’s Water Well Construction Rules in effect as of [rule effective date] applies; later amendments do not apply. The State Engineer’s Water Well Construction Rules may be examined at the Colorado Division of Water Resources, 1313 Sherman St., Suite 821, Denver, CO 80203, and are available online at <http://water.state.co.us/groundwater/BOE/Pages/BOERules.aspx>.

- F. U.S. Environmental Protection Agency, Test Methods for Evaluating Solid Waste: Physical/Chemical Methods (May 2019 edition) (hereinafter, "EPA SW-846"). Only the May 2019, "Update VI" edition of EP SW-846 applies to this rule; later amendments do not apply. EPA SW-846 may be examined at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and is available online at <https://www.epa.gov/hw-sw846/sw-846-compendium>.

**G. ~~[HOLD]~~**

- G. U.S. Environmental Protection Agency, 40 C.F.R. § 60.5375a, What GHG and VOC standards apply to well affected facilities? (2016) (hereinafter, "40 C.F.R. § 60.5375a"). Only the version of 40 C.F.R. § 60.5375a that became effective on August 2, 2016 applies to this rule; later amendments do not apply. 40 C.F.R. § 60.5375a may be examined at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and is available online at <https://www.govinfo.gov/content/pkg/FR-2016-06-03/pdf/2016-11971.pdf>.
- H. U.S. Environmental Protection Agency, Regional Screening Levels for Chemical Contaminants at Super Fund Sites (hereinafter, "EPA's RSLs"). Only the version of EPA's RSLs in effect as of [rule effective date] applies; later amendments do not apply. EPA's RSLs may be examined at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and are available online at <https://www.epa.gov/risk/regional-screening-levels-rsls>.
- I. Western Coordinating Committee on Nutrient Management, Soil, Plant, and Water Reference Methods for the Western Region (4th edition, 2013). Only the 4th edition (2013) of the Soil, Plant, and Water Reference Methods for the Western Region applies to this rule; later amendments do not apply. Soil, Plant, and Water Reference Methods for the Western Region may be examined at the Soil Science Society of America, 5585 Guilford Road, Madison, WI 53711, and is available online at <https://www.naptprogram.org/files/napt/publications/method-papers/western-states-methods-manual-2013.pdf>.

**902. POLLUTION.**

- a. Operators will prevent Pollution.
- b. Operators will prevent adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations and will protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.
- c. Operators will prevent the unauthorized discharge or disposal of oil, condensate, gas, E&P waste, chemical substances, trash, discarded equipment, and other oil field waste.
- d. No Operator, in the conduct of any Oil or Gas Operation, may perform any act or practice which ~~constitutes a violation of~~violates numeric or narrative water quality standards or classifications established by the Water Quality Control Commission for Waters of the State, or any ~~point~~Point of ~~compliance~~Compliance established by the Director pursuant to Rule 914. The Director may require the Operator to establish one or more points of compliance for any event of ~~pollution~~Pollution, which will be complied with by all parties determined to be a responsible party for such ~~pollution~~Pollution.
- e. No Operator, in the conduct of any Oil or Gas Operation, may perform any act or practice which ~~shall constitute~~constitutes a violation of any applicable air quality laws, regulations, ~~and/or~~ permits as administered by the Air Quality Control Commission or any other local or federal agency with authority for regulating air quality associated with such activities.

- f. No person may accept water produced from Oil and Gas Operations, or other oil field waste for disposal in a commercial disposal facility, without first obtaining a Certificate of Designation from the County in which such facility is located, in accordance with the regulations pertaining to solid waste disposal sites and facilities as promulgated by the Colorado Department of Public Health and Environment.

**903. ~~Natural Gas Emissions, Venting and Flaring, and Prevention of Waste.~~**

**a. ~~General.~~**

- (1) ~~**Commission Authority.** The Commission has authority to regulate emissions from oil and gas operations pursuant to §§ 34-60-105(1) and 34-60-106(2), C.R.S.~~
- (2) ~~**Natural Gas Waste.** Pursuant to its authority to regulate waste, §§ 34-60-103(11), & 34-60-107, C.R.S., the Commission determines that the following constitutes prohibited waste:~~
- ~~**A.** The escape, blowing, or releasing, directly or indirectly into the open air, of any gas from wells productive of gas only;~~
- ~~**B.** The escape, blowing, or releasing, directly or indirectly into the open air, of gas in an excessive or unreasonable amount from wells producing oil or both oil and gas. The Commission determines that the release of gas is excessive and unreasonable if it does not comply with the standards provided in this Rule 903.~~
- ~~**C.** Nonproduction of gas from a formation will not constitute waste if nonproduction is required to comply with this Rule 903, if the Director or Commission determines that such nonproduction is necessary to protect public health, safety, welfare, the environment, or wildlife resources.~~
- (3) ~~**Conflicting Requirements.** All Oil and Gas Operations will comply with all emissions and waste regulations in this Rule 903. Additionally, all Oil and Gas Operations will comply with all applicable Colorado Department of Public Health and Environment, Air Quality Control Commission regulations, and any applicable federal or Local Government emissions regulations.~~
- ~~**A.** If there are differences between this Rule 903 and any regulations promulgated by the Air Quality Control Commission, or a Local Government, Operators will comply with the more protective or stricter regulation.~~

**903.** ~~If an Operator believes that it is impossible to comply with both this Rule 903 and a regulation promulgated by the Air Quality Control Commission, or a local government, the Operator may notify the Director with a Sundry Notice, Form 4~~ **VENTING OR FLARING NATURAL GAS**

~~**A.**~~

- ~~**i.** The Sundry Notice, Form 4, must specify the reason the Operator believes it is impossible to comply with both requirements.~~
- ~~**ii.** Upon receipt of such a notification, the Director will consult with the other agency or agencies whose regulations arguably conflict with the Commission's Rules to identify a mechanism for the Operator to comply with both the Commission's Rules and the applicable regulation from another agency or agencies.~~

- ~~iii. Submitting a Form 4, Sundry Notice does not excuse an Operator from its ongoing obligation to comply with both this Rule 903 and regulations promulgated by the Air Quality Control Commission or a Local Government.~~

**a. Notice to Local Governments and Emergency Responders.**

- ~~(2)~~(1) **Prior Notice.** As soon as practicable prior to any planned combustion of natural gas allowed pursuant to this Rule 903, Operators will provide verbal, written, or electronic notice to the Local Governmental Designee, if applicable, and to the local emergency response authorities.
- ~~(3)~~(2) **Subsequent Notice.** In the event of unplanned combustion, ~~operators~~Operators will immediately provide verbal, written, or electronic notice to the Local Governmental Designee, if applicable, and to the local emergency response authorities.
- ~~(4)~~(3) **Waiver.** Local Governments and local emergency response authorities may waive their right to notice under this Rule 903.~~b-a~~ at any time, pursuant to Rule ~~308~~302.f.(1).A.
- ~~(5)~~(4) **Recordkeeping.** Operators will maintain records of notice provided pursuant to this Rule 903.~~ba~~, and provide the records to the Director upon request.

**b. Emissions During Drilling Operations.**

- (1) Operators will ~~use the best available technology to~~ capture or combust ~~all~~ gas escaping from the ~~well~~Well during drilling operations ~~using the best available technology.~~
- (2) If capturing or combusting gas would pose safety risks to onsite personnel, Operators may request the Director's approval to allow gas to escape into the air. ~~Operators may obtain verbal approval, but will obtain subsequent written document verbal approval from the Director and by submitting a Form 4, Sundry Notice within 7 days. The Operator~~ need not seek a formal variance pursuant to Rule 502.a. A Form 23 may also be required if the criteria in Rule 428.c. are met.
- (3) Combustors will be located a minimum of 100 feet from the surface hole location ~~and enclosed.~~
- ~~(4) Combustors will be enclosed and designed to achieve 98% control efficiency for hydrocarbons.~~

**c. Emissions During Completion Operations.**

- ~~(1)~~ **Green completion practices**Completions Practices.
- A. Green Completion Practices are required on all newly completed and re-completed oil and gas wells.
- B. ~~Unless~~To comply with the Green Completion Practices required by Rule 903.c.(1).A, unless otherwise specified in this Rule 903.~~d.,c.~~, Operators will adhere to the standards for well completion and re-completion in 40 C.F.R. § 60.5375a, as incorporated by reference in Rule 901.c.
- ~~(5) Operators will submit all reports required by 40 C.F.R. § 60.5375a, as incorporated by reference in Rule 901.c., to the Director in addition to submitting them to the U.S.~~



Environmental Protection Agency and/or the Air Pollution Control Division of the Colorado Department of Public Health and Environment.

~~(2)~~ All salable quality gas will be directed to the sales line or shut in and conserved. Flaring of salable gas is not permitted, and will constitute waste. Prior to the Commencement of Production Operations, Operators will capture gas, unless flaring is permitted pursuant to Rule 903.c.(3).

~~(2)(3)~~ Prior to the Commencement of Production Operations, Operators may only flare salable gas during completion operations with specific written approval from the Director, under any one of the following circumstances:

~~A.~~ If an~~The~~ Operator has not submitted a~~obtains~~ the Director's approval to Flare through an approved Gas Capture Plan pursuant to Rule 903.e.

~~B.~~ The~~f, the~~ Operator will submit~~submits, and the Director approves, a Form 4, Sundry Notice, requesting permission allowing the Operator to flare, if flaring gas that would otherwise not be permitted pursuant to Rule 903.c.~~

~~i.~~ On the Form 4, Sundry Notice, the Operator will explain why Flaring is necessary to protect or minimize adverse impacts to public health, safety, welfare, the environment, or wildlife resources.

~~ii.~~ Operators requesting permission to flare gas during completion operations~~On the Form 4, Sundry Notice, the Operator will~~ estimate anticipated flaring~~Flaring volume, and duration.~~

~~iii.~~ On the Form 4, Sundry Notice, the Operator will explain why flaring is necessary to protect public health, safety, welfare, the environment, and wildlife resources, and explain the Operators'its plan to connect the facility to a gathering line, or otherwise utilize the gas, in the future.

~~iii-iv.~~ The Director may approve a request to flare~~Form 4, Sundry Notice requesting permission to Flare~~ during completion if the Director determines that the flaring~~Flaring~~ is necessary to protect public health, safety, welfare, the environment, and wildlife resources.

~~A.~~ In addition to flaring approved by the Director, Operators~~The Operator~~ may direct natural gas to an emission control device and combust the gas if necessary to protect~~ensure~~ safety or during an emergency, or as permitted by Rule 903.d.(1). Combusting natural gas during completion operations pursuant to green completion requirements, due to emergency conditions, or to protect public safety or worker safety will not constitute waste. Operators will report emergencies~~Upset Condition. Within 7 days of the Flaring event, the Operator will submit a Form 4, Sundry Notice reporting the Upset Condition or safety issues that result in a flaring event to the Director within 24 hours pursuant to Rule 602.g.~~

~~(6)~~ Produced fluids will be stored~~resulted~~ in sealed tanks that comply with Rule 608, including appropriate emission controls.

~~(7)~~ Sealed tanks will utilize backpressure systems that exert a minimum of 4 ounces~~the Flaring event and include the estimated volume of backpressure and a maximum that does not exceed the pressure rating of the tank to facilitate gathering and combustion of tank vapors. Vent/back pressure valves, the combustor, lines to the combustor, and knock-outs will be~~

sized and maintained so as to safely accommodate any surge the system may encounter. Operators will properly maintain, and periodically test, tank seals to ensure that they provide the required back pressure and prevent emissions.

B-C. All flared gas shall be combusted in an enclosed device with 98% control efficiency for hydrocarbon gas Flared.

**d. Emissions During Production.**

(1) After the Commencement of Production Operations at an Oil and Gas Location, ~~venting and flaring~~ Venting or Flaring of natural gas produced from any Completed Well is prohibited ~~unless expressly permitted by this Rule 903.e.(1) except under the following circumstances:~~

A. Gas ~~flared~~ Flared or ~~vented~~ Vented during an Upset Condition is allowed for a period necessary to address the upset, not to exceed 24 ~~continuous~~ cumulative hours. Operators will maintain records of the date, cause, estimated volume of gas Flared or Vented, and duration of each Upset Condition resulting in ~~flaring~~ Flaring or ~~venting~~ Venting, and will make such records available to the Director upon request.

B. Gas ~~vented~~ Vented during gauging, sampling, or the loading out of liquids to transport vehicles ~~or~~, as long as the Venting is not prohibited by AQCC Regulation No. 7, 5 C.C.R. § 1001-9, as incorporated by reference in Rule 901.c.

B-C. Gas Vented during active and required maintenance ~~is not prohibited by this Rule 913.e~~, as long as the ~~duration of the venting~~ Venting is ~~minimized in accordance with not prohibited by AQCC Regulation No. 7, 5 C.C.R. § 1001-9, as incorporated by reference in Rule 913.e.(2)~~ 901.c.

D. Gas Vented from an access point on a storage tank that does not (and that is not required by AQCC Regulation No. 7, 5 C.C.R. § 1001-9 to) employ air pollution control equipment, unless the Venting is otherwise prohibited by the Commission's Rules or AQCC Regulation No. 7, 5 C.C.R. § 1001-9, as incorporated by reference in Rule 901.c.

C-E. If approved by the Director on a Gas Capture Plan pursuant to Rule 903.e, gas ~~vented~~ Vented or ~~flared~~ Flared during a ~~production evaluation or productivity test~~ Production Evaluation or Productivity Test for a period not to exceed 60 days.

F. ~~If an Operator believes that flaring is necessary~~ Gas Vented during a Bradenhead Test or Bradenhead Monitoring pursuant to produce a Rule 419.

G. Well liquids unloading, as long as the well and liquids unloading employs best management practices to minimize hydrocarbon emissions as required by the AQCC Regulation No. 7, 5 C.C.R. § 1001-9, as incorporated by reference in Rule 901.c. Operators will ~~protect~~ flare gas escaping into the air during liquids unloading if the escape of the gas poses a risk to public health, safety, or welfare, due to the environment ~~risk of a fire, explosion, or wildlife resources inhalation.~~

(2) At wells that are not connected to a gathering line, the Operator may request permission from the Director to ~~waste~~ Flare natural gas, or to Vent casinghead gas, by submitting a Sundry Notice, Form 4. The Director may ~~only~~ approve a request to ~~waste the gas if flaring the gas~~ Flare, or Vent casinghead gas, for a period not to exceed 12 months, if the Director determines that Flaring the gas or Venting casinghead gas is necessary to produce the well Well and will protect public health, safety, welfare, the environment, ~~or and~~ and wildlife resources. The Form 4, Sundry Notice will describe:

- A. The estimated volume and content of the gas to be ~~vented or flared~~ Flared;
- B. Gas analysis including hydrogen sulfide for the subject well;
- C. For requests based on lack of available infrastructure, the Operator will state why the Well cannot be connected to infrastructure;
- D. When the Well(s) will be connected to infrastructure, and why the ~~operator~~ Operator commenced production of the Well before infrastructure was available; and
- E. ~~Discuss options~~ Options for using the gas instead of Flaring or Venting, including to generate electricity, gas processing to natural gas liquid, or other options for using the gas.

**(3) Measurement and Reporting.**

- A. Operators will measure the volume of gas ~~vented, flared~~ Vented, Flared, or used at an Oil and Gas Location by direct measurement or by estimating the volume of gas ~~vented~~ Vented or ~~flared~~ Flared. The volume of gas ~~vented, flared~~ Vented, Flared, or used will be reported on a per well basis on the ~~Operator's~~ Operator's Form 7, Monthly Report of Operations, ~~Form 7~~.
- B. Operators will notify all mineral owners of the volume of oil and gas that is ~~vented, flared~~ Vented, Flared, or used on-lease. Operators will maintain records of such notice and provide the records to the Director upon request.

- (4)** All ~~flared~~ Flared gas will be combusted in an enclosed device with 98% control efficiency for hydrocarbons.

- ~~**(8)**~~ ~~**Pits.**~~ Pits with uncontrolled actual Volatile Organic Compound (VOC) emissions of greater than 5 tons per year (tpy) will not be located within 2,000 feet of a Building Unit or a Designated Outside Activity Area. Operators will provide the basis for their determination of applicability under this Rule to the Director on a Form 4, Sundry Notice, ~~Form 4~~, no later than ~~July 1, 2021~~.

- ~~**(5)**~~ ~~**Leak Detection and Repair Reports.**~~ Upon request, an Operator will submit to the Director all Leak Detection And Repair records that the Operator maintains pursuant to AQCC Regulation 7, as incorporated by reference in Rule 901.c., and reports to the Colorado Department of Public Health and Environment pursuant to AQCC Regulation 7, as incorporated by reference in Rule 901.c. year from rule effective date].

**e. Gas Capture Plans.**

**(1) Gas Capture Plan Submission.**

- A. Operators will submit a Gas Capture Plan as an attachment to their Form 2A, ~~as required by~~ pursuant to Rule ~~303304.c.(1112)~~.
- B. Gas Capture Plans will include the following information:
  - i. A description and map of the location of the closest natural gas gathering system or point of sale.
  - ii. The name of the company operating the closest natural gas gathering system.



- iii. The Operator's plan for connecting their facility to the natural gas gathering systems, including:
    - aa. Discussion of rights of way issues;
    - bb. Construction schedules;
    - cc. Date of availability of the gas gathering line;
    - dd. Design capacity and capacity demand for the nearest gathering system at the time of application; and
    - ee. Alternatives to flaring prior to connection to gas gathering lines, including, but not limited to: onsite use, natural gas liquid processing, electrical power generation, gas to liquid, or other options.
  - iv. For a Wildcat (Exploratory) Well or if the Operator anticipates conducting a ~~production evaluation~~ Production Evaluation or ~~productivity test~~ Productivity Test, a description of the planned ~~production evaluation~~ Production Evaluation or ~~productivity test~~ Productivity Test and any issues related to the Operator's ability to connect to a gas gathering line.
  - v. Any anticipated safety risks that will require the Operator to allow gas to escape, rather than being captured during drilling operations, ~~as required by~~ pursuant to Rule 903.~~eb~~.(2).
- (2) **Verification.** Operators will verify that their facility has been connected to a gathering line by submitting a Form 10, Certificate of Clearance pursuant to Rule 219.
- (3) **Compliance.** If an Operator does not connect its facility to a gathering line as described in the Operator's Gas Capture Plan, the Director may require the Operator to shut in ~~the well~~ a Well until it is connected to a gathering line.

**~~g. Air Monitoring.~~**

- (1) ~~**Applicability.** This Rule 903.g applies to any proposed Oil and Gas Location with a Working Pad Surface within 2000 feet of 44 or more Building Units in a semi-circle, 88 or more Building Units in a full circle, or 1 or more High Occupancy Building Units, for which a Form 2A has not been approved prior to August 1, 2020.~~
- (2) ~~**Continuous Monitoring.** Operators of Oil and Gas Facilities subject to Rule 903.g.(1) will continuously monitor ambient air concentrations of total Volatile Organic Compounds (VOCs), using a method approved by the Director pursuant to Rule 903.g.(3). The Director may require Operators subject to Rule 903.g.(1) to monitor additional pollutants based on data gathered as part of the study required by Rule 904.~~
- (3) ~~**Ambient Air Monitoring Plan.** Operators will submit an Ambient Air Monitoring Plan as an attachment to their Form 2A, as required by Rule 303.c.(17). The Ambient Air Monitoring Plan will identify the best available technology and Best Management Practices the Operator will use to continuously monitor total VOCs and any other pollutants identified by the Director pursuant to Rule 903.g.(2). At a minimum, the Emissions Monitoring Plan will specify:~~
- ~~A. Monitoring equipment, including sensitivity of monitoring equipment;~~
  - ~~B. Monitor siting;~~

~~C. Frequency of measurements;~~

~~D. Meteorological data gathering protocol;~~

~~E. Data quality assurance procedures;~~

~~F. Equipment maintenance procedures;~~

~~G. **Data reporting procedures.** At a minimum, the Operator will report monthly to the Director the results of their monitoring during the pre-production phase of operations, and report quarterly following the date of first production. At a minimum, reports will include:~~

~~i. Summary of oil and gas operations during the reporting period, including details of operations occurring when ambient air concentrations may pose risks to public health;~~

~~ii. Summary of upset conditions and shut in periods during the reporting period;~~

~~iii. Summary of monitoring results, including maximum concentrations, periodic averages, and standard deviation data;~~

~~iv. Summary and details of ambient concentrations identified as potential risks to public health or that are otherwise identified in the Ambient Air Monitoring Plan;~~

~~v. Raw and post-processed monitoring data, including timely online publication of the data;~~

~~vi. Quality assurance data;~~

~~vii. Meteorological data; and~~

~~viii. Map of monitoring stations; and~~

~~H. A method for collecting appropriate speciated samples of chemical constituents identified by the Director, when indicated to be necessary based on site specific total VOC concentration thresholds.~~

~~(4) **Duration of Monitoring.**~~

~~A. Operators will initiate the continuous monitoring required by Rule 903.g.(2) no less than 3 days prior to the commencement of construction of the Oil and Gas Location.~~

~~B. Operators will continuously monitor total VOCs pursuant to Rule 903.g.(2) until all Wells at the Oil and Gas Location have been plugged and abandoned.~~

~~C. After Commencement of Production Operations at all Wells at the Oil and Gas Location, the Operator may seek the Director's approval to suspend continuous monitoring required by Rule 903.g.(2).~~

~~i. The Operator may seek the Director's approval by submitting a Form 4, Sundry Notice, with no less than 1 full year of data after the date of first reported production of the last Well developed at the facility demonstrating that monitoring emissions from the Oil and Gas Location is not necessary to protect public health, safety, welfare, the environment, or wildlife resources.~~

- ~~ii. The Director may approve the Operator's request to suspend continuous monitoring if, in the Director's judgment, continuous monitoring at the Working Pad Surface is not necessary to protect public health, safety, welfare, the environment, or wildlife resources. The Director may deny the Operator's request to suspend continuous monitoring if, in the Director's judgment, continuous monitoring is necessary to protect public health, safety, welfare, the environment, or wildlife resources.~~
- ~~iii. As a condition of approving a request to suspend continuous monitoring, the Director may require the Operator to periodically re-initiate continuous monitoring, including but not limited to during high potential emissions activities such as workover, re-completion, and well unloading.~~

~~(5) Public Health Protection.~~

- ~~A. If continuous ambient air monitoring data indicates that pollutant concentrations may pose risks to public health, the Director may require an Operator to suspend operations or initiate immediate response actions until the cause of the elevated pollutant levels is identified, and as appropriate, corrected. If the Operator is unable to correct the elevated pollutant levels within 24 hours, the Director may require the Operator to temporarily shut in the well or wells at the Oil and Gas Location.~~
- ~~B. If the Director requires an Operator to temporarily shut in a well or wells pursuant to Rule 903.g.(5).A, the Operator may appeal the Director's decision to the Commission pursuant to Rule 503.g.(10). The matter will be heard by the Commission pursuant to Rule 503.h. The Commission will hear the appeal at its next regularly scheduled meeting. Operators will continue to comply with all requirements identified by the Director pursuant to Rule 903.g.(5).A until the Commission makes a decision on the appeal. The Commission may uphold the Director's decision if the Commission determines the Director had reasonable cause to believe that emissions from the Operator's facility posed a threat to public health.~~

#### 904. EVALUATING CUMULATIVE AIR EMISSIONS IMPACTS

- a. ~~As a condition of approving an Oil and Gas Development Plan pursuant to Rule 307.b.(1), the Commission may require an Operator to participate in studies evaluating cumulative air emissions impacts of oil and gas development, conducted in consultation with the Colorado Department of Public Health and the Environment, the Director will oversee study(s) to evaluate and address the potential cumulative air emissions impacts of oil and gas development.~~
- b. The study(s) will ~~evaluate at least the following topics~~ include, but not be limited to, evaluation of:
- ~~(1) Greenhouse~~ Cumulative greenhouse gas emissions;
  - (1) ~~Hazardous air pollutant monitoring techniques;~~ and
  - (2) Cumulative hazardous air pollutant emissions and monitoring techniques.
- ~~b. The Commission may require an Operator to participate in the studies as a condition of approving an Oil and Gas Development Plan pursuant to Rule 305.b.(1).B.~~
- ~~c. The Director will report the results of the studies and any recommendations to address cumulative impacts based on the studies to the Commission by no later than July 1, 2022.~~

#### 905. MANAGEMENT OF E&P WASTE

##### a. General Requirements.

- (1) **Operator Obligations.** Operators will ensure that E&P ~~waste~~Waste is properly stored, handled, transported, treated, recycled, or disposed to prevent threatened or actual adverse environmental impacts to air, water, soil, or biological resources or to the extent necessary to ensure compliance with the concentration levels in Table 915-1, and WQCC Regulation 41 numeric and narrative ~~ground-water~~groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
- (2) **Protecting Waters of the State.** Operators will conduct E&P ~~waste~~Waste management activities, and construct and operate all Oil and Gas ~~Facilities~~Locations, to protect the Waters of the State from any adverse environmental impacts caused by E&P ~~waste~~Waste.
- (3) **Reuse and Recycling.** To encourage and promote waste minimization, Operators may propose plans for managing E&P ~~waste~~Waste through beneficial use, reuse, and recycling by submitting a written management plan to the Director for approval on a Form 4, Sundry Notice, ~~Form 4~~. Such plans will describe, at a minimum:
  - A. The type(s) of waste;
  - B. The proposed volume and use of the waste;
  - C. The method of waste treatment;
  - D. Product quality assurance;
  - E. Final disposition of the waste;
  - F. A copy of any certification or authorization that may be required by other laws and regulations; ~~and~~

G. A proposed timeline for reuse and recycling; and

G.H. Any additional information requested by the Director.

- (4) **Waste Management Plans.** Each Operator ~~who~~that generates E&P Waste as a result of their operations will prepare a comprehensive ~~waste management plan~~Waste Management Plan detailing how ~~they~~the Operator will treat, store, dispose, and transport all types of waste generated. The Waste Management Plan will include any proposed haul routes.

A. Operators will submit their Waste Management Plans with their Form 2A, Oil and Gas Development Plan or Oil and Gas Location Assessment, ~~Form 2A~~, pursuant to ~~Rules 302 and 303~~Rule 304.c.(11).

B. If an Operator seeks to change ~~their~~its E&P Waste management practice, the Operator will update ~~their~~its Waste Management ~~Plans~~Plan by submitting a revised Waste Management Plan for the Director's approval or denial on a Form 4, Sundry Notice, ~~Form 4~~.

- (5) Should future conditions at any Oil and Gas Location or Oil and Gas Facility where produced fluids and E&P ~~waste~~Waste were generated, stored, treated, or disposed indicate contaminant concentrations in soils or Groundwater exceeding applicable standards, then further investigation, remediation, and reclamation may be required by the current Operator of record or the last Operator of record if the location is no longer active.

**b. Waste Transportation.**

- (1) **Off-Site Transportation Within Colorado.** Operators will only transport E&P Waste off-site within Colorado to facilities authorized by the Director or waste disposal facilities approved to receive E&P Waste by the Colorado Department of Public Health and Environment.

- (2) **Off-Site Transportation Outside of Colorado.** Operators will only transport E&P Waste off-site outside of Colorado for treatment to facilities authorized and permitted by the appropriate regulatory agency in the receiving state.

- (3) **Waste Generator Requirements.** Any Operator that generates E&P Waste that is transported off-site will maintain, for not less than 5 years, copies of each invoice, bill, or ticket, and such other records as necessary to document the requirements listed in Rule 905.b.(~~23~~).A–F. Such records will be signed by the transporter, and provided to the Director upon request.

- A. The date of the transport;
- B. The identity of the waste generator;
- C. The identity of the waste transporter;
- D. The location of the waste pickup site;
- E. The type and volume of waste; and
- F. The name and location of the treatment or disposal site.

**c. Produced Water.**

- (1) **Treatment of Produced Water.** Operators will treat produced water prior to placing it in a production pit to prevent crude oil, condensate, or hydrocarbon sheen from entering the pit.
- (2) **Produced Water Disposal.** Produced water may be disposed as follows:
- A. Injection into a Class II well, permitted ~~in accordance with Rule 434~~ pursuant to the Commission's 800 Series Rules;
  - B. Evaporation/percolation in a properly permitted pit at an Oil and Gas Location, operated in accordance with permit conditions and in a manner that prevents adverse impacts to ~~groundwater~~ Groundwater resources;
  - C. Disposal at permitted commercial facilities;
  - D. Discharging into Waters of the State, ~~in accordance with~~ pursuant to the Water Quality Control Act and ~~the rules and all applicable~~ regulations ~~promulgated thereunder~~.
  - i. Operators will provide the Colorado discharge permit number, latitude and longitude coordinates, ~~in accordance with~~ pursuant to Rule ~~245.f~~ 216.e, of the discharge outfall, and sources of produced water on a Form 26, Source of Produced Water for Disposal, ~~Form 26~~, and will include a U.S. Geological Survey topographic map showing the location of the discharge outfall.
    - ii. Produced water discharged pursuant to this Rule 905.c.(2).D. may be put to beneficial use in accordance with applicable state statutes and regulations governing the use and administration of water.
  - E. Evaporation in a properly lined pit at a Centralized E&P Waste Management ~~facility~~ Facility permitted ~~in accordance with~~ pursuant to Rule 907.
- (3) **Produced Water Reuse and Recycling.** Operators may reuse produced water for enhanced recovery, drilling, and other approved uses in a manner consistent with existing water rights and in consideration of water quality standards and classifications established by the Water Quality Control Commission for Waters of the State, or any ~~point~~ Point of ~~compliance~~ Compliance established by the Director pursuant to Rule 914.
- (4) **Mitigation.** Operators may use water produced during operation of an oil or gas ~~well~~ Well to provide an alternative domestic water supply to Surface Owners within the oil or gas field, ~~in accordance with~~ pursuant to all applicable laws, including, but not limited to, obtaining the necessary approvals from the Water Quality Control Division for constructing a new "waterworks," as defined by § 25-1-~~407.5-203~~ (1)(~~Xb~~)(II)(A), C.R.S. Any produced water not so used will be disposed of ~~in accordance with~~ pursuant to Rule 905.c.(2) or (3). Providing produced water for domestic use within the meaning of this Rule 905.c.(4) will not constitute an admission by the Operator that the well is dewatering or impacting any existing water well. The water produced will be to the benefit of the Surface Owner within the oil and gas field and may not be sold for profit or traded.
- (5) **Water Sharing Agreements.** Operators will submit agreements for sharing produced water for the Director's approval or denial no less than 60 days in advance of implementing the water sharing plan. The plan will be submitted as a Waste Management Plan pursuant to Rule 905.a.(4).

d. **Drilling Fluids.**

- (1) **~~Reuse and Recycling and Reuse.~~** Operators may recycle drilling pit contents for reuse at another drilling pit that is properly permitted and operated pursuant to ~~Rule~~Rules 908, 909, and 910.
- (2) **Treatment and Disposal.** Operators will treat or dispose of drilling fluids through:
- A. ~~A.~~ Injection into a Class II well permitted ~~in accordance with Rule 431~~pursuant to the Commission's 800 Series Rules;
  - B. ~~B.~~ Disposal at a commercial solid waste disposal facility; or
  - C. ~~C.~~ Land ~~treatment~~Treatment or ~~land application~~Land Application at a Centralized E&P Waste Management Facility permitted pursuant to Rule 907.
- (3) **Additional Authorized Disposal of Water-Based Bentonitic Drilling Fluids.** Operators may dispose of water-based bentonitic drilling fluids through one of the following methods:
- A. Drying and burial in pits on non-crop land, if:
    - i. The resulting concentrations will not exceed the concentration levels in Table 915-1; and
    - ii. The Director approves the Operator's plan for closing the pit pursuant to a prior approved Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~.
  - B. Land Application if permitted by a Waste Management Plan approved by the Director pursuant to Rule 905.a.(4), and if the Operator complies with the following standards:
    - i. **Application Methods.** Acceptable methods of Land Application include, but are not limited to, production facility construction and maintenance, lease road maintenance, and offsite beneficial reuse, subject to Rule 905.a.(4).
    - ii. **Land Application Requirements.**
      - aa. The average thickness of water-based bentonitic drilling fluid waste applied will be no more than 3 inches.
      - bb. Operators will incorporate the drilling fluid waste through mechanical means into the uppermost soil horizon.
      - cc. The waste will be applied to prevent ponding or erosion and will be incorporated as a beneficial amendment into the native soils within 10 days of application.
      - dd. Operators may only apply water-based bentonitic drilling fluid to Crop Land.
      - ee. Concentrations of contaminants of concern in water-based bentonitic drilling fluids will not exceed those in Table 915-1 prior to application.
      - ff. The results of sampling analysis demonstrating compliance with Table 915-1 will be provided to the Director upon request.
    - iii. **Surface Owner Approval.** Operators will obtain written authorization from the Surface Owner prior to Land Application of water-based bentonitic drilling fluids and provide the written authorization to the Director upon request.



- iv. **Recordkeeping.** Operators will maintain records of the information listed in Rule 905.d.(3).B.iv.aa–cc. ~~for 5 years, pursuant to Rule 206.f.~~ Operators will provide all such records to the Director within 5 days, upon request:

- aa. The source of any water-based bentonitic drilling fluids applied;
- bb. The volume of any water-based bentonitic drilling fluids applied; and
- cc. The location where the ~~land application~~ Land Application of the water-based bentonitic drilling fluid occurred.

- v. **Operator Responsibility.** The Operator with control and authority over the ~~well~~ Well(s) from which the water-based bentonitic drilling fluid wastes were obtained retains responsibility for the Land Application operation. All Operators will cooperate with the Director in responding to complaints regarding Land Application of water-based bentonitic drilling fluids.

e. **Oily ~~waste~~ Waste.**

- (1) **Treatment and Disposal.** Operators may treat or dispose of ~~oily waste~~ Oily Waste through one of the following methods:

- A. Disposal at a commercial solid waste disposal facility;
- B. Land Treatment onsite; pursuant to 905.e.(2); or
- C. Land Treatment at a Centralized E&P Waste Management ~~facility~~ Facility permitted ~~in accordance with~~ pursuant to Rule 907.
- D. Onsite treatment, for ~~oily waste~~ Oily Waste other than tank bottoms, using alternative methods described on a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~ submitted to the Director for prior approval ~~pursuant to Rule 905.a.(3).~~

(2) **Land Treatment Requirements.**

- A. Prior to commencing any ~~land treatment~~ Land Treatment, Operators will submit and obtain approval of a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~. The Form 27 will include, at a minimum:
  - i. ~~i.~~
  - ii. The duration of the planned treatment; and
  - iii. The Operator's plan for final disposition of the treated ~~oily waste~~ Oily Waste.
- B. Operators will adhere to the approved plan provided with the Form 27, and Rules 907 and 915, when performing Land Treatment.
- C. Operators will remove free oil from the ~~oily waste~~ Oily Waste prior to Land Treatment.
- D. Operators will spread ~~oily waste~~ Oily Waste evenly to prevent pooling, ponding, and runoff.



- E. Operators will prevent contamination of stormwater runoff, Groundwater, and surface water.
  - F. Operators will enhance biodegradation ~~will~~ by routine disking, tilling, aerating, or addition of nutrients, microbes, water or other amendments, at a predetermined frequency ~~in accordance with~~ pursuant to the approved Form 27.
  - G. When Operators incorporate land-treated Oily Waste in place or beneficially reuse it, the treated waste may not exceed the cleanup concentrations in Table 915-1, including inorganic constituents and metals.
  - H. **Surface Owner Consent.**
    - i. If an Operator intends to conduct Land Treatment in an area not being utilized for Oil and Gas Operations, the Operator will obtain the Surface Owner's consent to conduct the Land Treatment operations on the Surface Owner's property, and provide a copy of the signed agreement with the Surface Owner to the Director with the Form 27 prior to proceeding with Land Treatment.
    - ii. If an Operator intends to conduct Land Treatment on an approved Oil and Gas Location prior to completion of interim reclamation or on the surface disturbance remaining after interim reclamation, the Operator will provide notice to the Surface Owner at least 30 days before commencing the Land Treatment. Notice will, at a minimum, include a site diagram depicting the location of the planned Land Treatment area, the duration of the planned treatment, and planned final disposition of the waste.
  - I. Operators will conduct Land Treatment in a manner that does not preclude compliance with Rules 1003 and 1004.
  - J. Operators will not conduct Land Treatment of Oily Waste on an Oil and Gas Location after the final ~~well~~ Well has been plugged. Oily Waste will be treated or disposed pursuant to Rule 905.e.1.(A) or (C).
  - K. Operators will conduct Land Treatment in a manner that achieves compliance with Table 915-1 concentrations in three years or less. If the treated waste does not comply with Table 915-1 within three years of the date of Land Treatment, the Operator will submit a Form 28, Centralized E&P Waste Management Facility Permit at least 90 days in advance of the 3 year anniversary of the Land Treatment Form 27 approval date. Failure to comply with Table 915-1 in 3 years or submit a Form 28, will result in the requirement to immediately remove and properly dispose any remaining ~~oily waste.~~ Oily Waste pursuant to Rule 905.e.1.(A) or (C).
- f. **Other E&P Waste.** Operators may treat and dispose other E&P Waste, including but not limited to workover fluids, tank bottoms, pigging wastes from pipelines, and gas gathering, processing, and storage wastes through one of the following methods:
- (1) Disposal at a commercial solid waste disposal facility;
  - (2) Treatment at a Centralized E&P Waste Management Facility permitted ~~in accordance with~~ pursuant to Rule 907;
  - (3) Injection into a Class II injection ~~well~~ Well permitted ~~in accordance with Rule 434~~ pursuant to the Commission's 800 Series Rules; or

- (4) An alternative method proposed in a ~~waste management plan in accordance with~~ Waste Management Plan pursuant to Rule 905.a.(4) and approved by the Director.

**g. Drill Cuttings.** Operators will treat or dispose of drill cuttings through one of the following methods:

- (1) **Oily Waste.** Operators will manage the following drill cuttings as Oily Waste pursuant to Rule 905.e.:

- A. Drill cuttings generated from oil-based drilling fluids;
- B. Drill cuttings that exceed Table 915-1 concentrations for organic compounds in soil; and
- C. Drill cuttings that have not been sampled and analyzed to demonstrate compliance with Table 915-1 for organic compounds in soil.

- (2) **Drill Cuttings.** Operators will demonstrate compliance with Table 915-1 through sampling and analysis. Operators may manage drill cuttings that comply with Table 915-1 and are generated using water-based bentonitic drilling fluids through one of the following methods:

- A. Disposal at a commercial solid waste disposal facility;
- B. Disposal at a Centralized E&P Waste Management Facility permitted pursuant to Rule 907;
- C. Subject to Surface Owner approval, ~~land application~~ Land Application as a beneficial soil amendment to native soil ~~in accordance with an~~ subject to a Waste Management Plan approved ~~waste management plan~~ pursuant to Rule 905.a.(4).
- D. ~~Subject~~ If permitted by Rule 1003.d, and subject to Surface Owner approval, drying and burial in on-location drilling pits that ~~comply with Rule 911 and~~ are documented with a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~ submitted for prior Director approval for closure; or
- E. Subject to Surface Owner approval, burial in a ~~cuttings trench~~ Cuttings Trench, subject to a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~ submitted for prior Director approval.

**906. MANAGEMENT OF NON-E&P WASTE**

- a. Certain wastes generated by Oil and Gas ~~Activities~~ Operations that do not meet the 100 Series definition of E&P Waste are regulated as solid or hazardous wastes by the Colorado Department of Public Health and Environment, Solid and Hazardous Waste Commission (SHWC). Operators will properly identify and dispose of these wastes pursuant to applicable state and federal regulations.
- b. The SHWC Hazardous Waste Rules, as incorporated by reference in Rule 901.c., require that a hazardous waste determination be made for any non-E&P solid waste. Operators will comply with all hazardous waste storage, treatment, and disposal requirements in the SHWC's Hazardous Waste Rules, as incorporated by reference in Rule 901.c.
- c. All non-hazardous/non-E&P wastes are considered solid waste. Operators will comply with all storage, treatment, and disposal requirements in the SHWC's Solid Waste Rules, as incorporated by reference in Rule 901.c.
- d. Operators will not burn or bury non-E&P waste on Oil and Gas Locations.

## 907. CENTRALIZED E&P WASTE MANAGEMENT FACILITIES

- a. **Applicability.** Operators may establish non-commercial, Centralized E&P Waste Management Facilities for the treatment, disposal, recycling, or beneficial reuse of E&P Waste. This Rule 907 applies only to non-commercial facilities, which means the Operator does not represent itself as providing E&P Waste management services to third parties, except as part of a unitized area or joint operating agreement or in response to an emergency. Centralized E&P Waste Management Facilities may include components such as Land Treatment or ~~land application~~ Land Application sites, pits, and recycling equipment.
- b. **Permit Requirements.** Before any Operator commences construction of a Centralized E&P Waste Management Facility, the Operator will file and obtain the Director's approval of an application on a Form 28, Centralized E&P Waste Management Facility Permit and pay a filing fee established by the Commission (see Appendix III). In addition to the information required for and provided on the approved Form 2A, Oil and Gas Location Assessment, the Form 28 will contain the following:
- (1) The name, address, phone and email address of the Operator, and a designated contact person.
  - (2) The name, address, phone number, email address, and written authorization of the Surface Owner of the site, if not the Operator.
  - (3) The legal description of the site.
  - (4) A general topographic, geologic, and hydrologic description of the site, including immediately adjacent land uses, a topographic map of a scale no less than 1:24,000 showing the location, and the average annual precipitation and evaporation rates at the site.
  - (5) Centralized E&P Waste Management Facility Siting Requirements.
    - A. A site plan showing drainage patterns and any diversion or containment structures, and facilities such as roads, fencing, tanks, pits, buildings, and other construction details.
    - B. Scaled drawings of entire sections containing the proposed facility. The field measured distances from the nearer north or south and nearer east or west section lines will be measured at 90 degrees from said section lines to facility boundaries and referenced on the drawing. A survey will be provided including a complete description of established monuments or collateral evidence found and all aliquot corners.
    - C. The facility will be designed to control public access, prevent unauthorized vehicular traffic, provide for site security both during and after operating hours, and prevent illegal dumping of wastes. Appropriate measures will also be implemented to prevent access to the Centralized E&P Waste Management Facility by wildlife or domestic animals.
    - D. Centralized E&P Waste Management Facilities will have a fire lane of at least 10 feet in width around the perimeter of the active treatment areas and within the facility fencing. In addition, a buffer zone of at least 10 feet will be maintained within the perimeter fire lane.
    - E. Surface water diversion structures, including, but not limited to, berms and ditches, will be constructed to accommodate a 100-year, 24-hour storm event. The facility will be designed and constructed with a run-on control system to prevent flow onto the facility

during peak discharge and a run-off control system to contain the water volume from a 25-year, 24-hour storm event.

- F. Operators will provide evidence that ~~the Operator has~~they have complied with any Local Government land use regulations and facility siting or construction or operation requirements.
- (6) **Waste Profile.** For each type of waste, Operators will estimate the amounts to be received and managed by the facility on a monthly average basis. For each waste type to be treated, Operators will complete a characteristic waste profile, which will include analysis of representative waste samples by an accredited laboratory.
- (7) **Facility Design and Engineering.** Facility design and engineering data, including plans and elevations, design basis, calculations, and process description. Facility design, engineering, and as-constructed plans will be reviewed and stamped by a Colorado Professional Engineer (P.E.).
- A. Geologic data, including, but not limited to:
- i. Type and thickness of unconsolidated soils;
  - ii. Type and thickness of consolidated bedrock, if applicable;
  - iii. Local and regional geologic structures; and
  - iv. Any geologic hazards that may affect the design and operation of the facility.
- B. Hydrologic data, including, but not limited to:
- ~~i. Surface water features within 2 miles;~~
  - ~~ii.i. Depth to shallow Groundwater and major aquifers;~~
  - ~~iii.i. Water wells within 1 mile of the site boundary including, but not limited to, information such as well construction details, total depth, static water level, screened interval(s), yields, and aquifer name(s).~~
  - ~~ii. Surface water features within 2 miles;~~
  - ~~iii. Site location in relation to the floodplain of nearby surface water features;~~
  - ~~iv. Depth to shallow Groundwater and major aquifers;~~
  - ~~v. Existing quality of shallow Groundwater;~~
  - ~~iv-vi. Hydrologic properties of shallow Groundwater at the location including flow direction, flow rate, and potentiometric surface; and~~
  - ~~v.i. Site location in relation to the floodplain of nearby surface water features;~~
  - ~~ii. Existing quality of shallow Groundwater; and~~
  - ~~vi-vii. An evaluation of the potential for impacts to nearby surface water and Groundwater.~~

- C. Engineering data, including, but not limited to:
- i. Type and quantity of material required for use as a liner, including design components;
  - ii. Location and depth of cut for liners;
  - iii. Location, dimensions, and grades of all surface water diversion structures;
  - iv. Location and dimensions of all surface water containment structures; and
  - v. Location of all proposed facility structures and access roads.

**(8) Operating Plan.** An operating plan, including, but not limited to:

- A. A detailed description of the method of treatment, loading rates, and application of nutrients and soil amendments;
- B. Dust and moisture control;
- C. Sampling;
- D. Inspection and maintenance;
- E. Emergency response;
- F. ~~Record-keeping~~Recordkeeping;
- G. Site security;
- H. Hours of operation;
- I. Stormwater Management Plan;
- J. Noise and odor mitigation; and
- K. Final disposition of waste. If the Operator intends to beneficially reuse treated waste, the Operator will describe the reuse and method of product quality assurance.

**(9) Groundwater Monitoring.**

- A. **Water Wells.** Operators will collect water samples from water wells known to the Operator or registered with the Colorado State Engineer, following all protocols established by Rule ~~643615~~, except that the Operator will collect water samples from known water wells within 1 mile of the proposed Centralized E&P Waste Management Facility.
- B. **Site-Specific Monitoring Wells.**
  - i. Upon ~~the Director's~~ request ~~of the Director~~, the Operator will install site-specific monitoring wells to ensure compliance with the concentration levels in Table 915-1 and WQCC Regulation 41, as incorporated by reference in Rule 901.c., by establishing points of compliance.

- ii. All monitoring well construction must be completed ~~in accordance with~~pursuant to the State Engineer's Water Well Construction and Permitting Rules, as incorporated by reference in Rule 901.c.
- iii. Where monitoring is required, the direction of flow, Groundwater gradient and quality of water will be established by the installation of a minimum of 3 monitor wells, including an up-gradient well and 2 down-gradient wells that will serve as points of compliance, or other methods authorized by the Director.
- iv. The Operator will propose for prior Director approval monitoring schedules, reporting schedules, and appropriate analyte lists.

(10) **Surface Water Monitoring.** Where applicable, the Director will require baseline and periodic surface water monitoring to ensure compliance with Water Quality Control Commission surface water standards and classifications, including narrative standards. Operators will use reasonable good faith efforts to obtain access to such surface water for the purpose of collecting water samples. If access cannot be obtained, then the Operator ~~shall~~will notify the Director of the surface water for which access was not obtained and sampling of such surface water by the Operator will not be required.

(11) **Contingency Plan.** A contingency plan that describes the emergency response operations for the facility, 24-hour contact information for the person who has authority to initiate emergency response actions, and an outline of responsibilities under any joint operating agreement regarding maintenance, closure, and monitoring of the facility.

**c. Permit Review.**

- (1) The Director may approve the Centralized E&P Waste Management Facility permit if it protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources. ~~The Director may require any conditions of approval that are determined to be necessary and reasonable to protect public health, safety, welfare, the environment, and wildlife resources or to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations, or to the extent necessary to ensure compliance with the concentration levels in Table 915-1, or Water Quality Control Commission WQCC Regulation 41~~ Groundwater standards and classifications, as incorporated by reference in Rule 901.c.
- (2) The Director may deny a Centralized E&P Waste Management Facility permit if it does not adequately protect or minimize impacts to public health, safety, welfare, the environment, and wildlife resources, or protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations.

**d. Financial Assurance.** The ~~operator~~Operator of a Centralized E&P Waste Management Facility will submit for the Director's approval such financial assurance as required by Rule 704 prior to the Director issuing the operating permit.

**e. Facility Modifications.** Throughout the life of the facility, the Operator will submit proposed modifications to the facility design, operating plan, permit data, or permit conditions to the Director for prior approval through a Form 4, Sundry Notice, ~~Form 4~~.

**f. Permit Expiration.** The Form 28, Centralized E&P Waste Management Facility Permit will expire ~~one~~1 year after approval if the Operator has not commenced construction of the permitted facility.

**g. Annual Permit Review.** To ensure compliance with permit conditions and the Commission's Rules, the facility permit will be subject to an annual review by the Director. To facilitate this review,



the Operator will submit an annual report summarizing operations, including the types and volumes of waste actually handled at the facility. The Director may require additional information.

**h. Closure.**

- (1) **Preliminary Closure Plan.** A general preliminary plan for closure will be submitted with the Form 28, Centralized E&P Waste Management Facility Permit, ~~Form 28~~. The preliminary closure plan will include, but not be limited to:
  - A. A general plan for closure and reclamation of the entire facility, including a description of the activities required to decommission and remove all equipment, close and reclaim pits, dispose of or treat residual waste, collect samples as needed to verify compliance with soil and Groundwater standards, implement post-closure monitoring, and complete other remediation, as required.
  - B. An estimate of the cost to close and reclaim the entire facility and to conduct post-closure monitoring. Cost estimates will be subject to review by the Director to verify that the financial assurance provided pursuant to Rules 907.d and 704 is appropriate.
- (2) **Final Closure Plan.** A detailed Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~, will be submitted at least 60 days prior to closure for approval or denial by the Director. The workplan will include, but not be limited to, a description of the activities required to decommission and remove all equipment, close and reclaim pits, dispose of or treat residual waste, collect samples as needed to verify compliance with soil and Groundwater standards, implement post-closure monitoring, and complete other remediation, as required.

**908. PIT PERMITTING/REPORTING REQUIREMENTS**

- a. Operators will submit ~~ana Form 15, Earthen Pit Report/Permit~~, ~~Form 15~~, to the Director for review and approval prior to constructing any of the following:
  - (1) All production pits;
  - (2) Special purpose pits except those ~~reported under Rule~~ listed in Rules 908.b.c.(1) or Rule 908.b.(2);
  - (3) Drilling pits; and
  - (4) Multi-well pits, including those located at Centralized E&P Waste Management Facilities.
- b. Operators will submit ~~ana Form 15, Earthen Pit Report/Permit~~, to the Director for review and approval prior to enlarging or otherwise modifying an existing properly permitted pit.
- b.c. Operators will submit a Form 15, Earthen Pit Report/Permit within 30 days after constructing:
  - (1) Emergency Pits, Plugging Pits, and Workover Pits if they are used in the initial phase of an emergency response; and
  - (2) Cuttings Trenches approved on a Form 2A, Oil and Gas Location Assessment.
- c.d. In order to allow adequate time for pit permit review and approval, Operators will submit ~~ana Form 15, Earthen Pit Report/Permit~~, ~~Form 15~~, at the same time they submit ~~ana Form 2A, Oil and Gas Location Assessment~~, ~~Form 2A~~ or Oil and Gas Development Plan, ~~pursuant to Rule 302 or 303~~. The Director may condition approval of the Form 15, Earthen Pit Permit upon compliance with additional terms, provisions, or requirements necessary to protect public health, safety, welfare,

the environment, and wildlife resources. The Director may deny a Form 15, Earthen Pit Report/Permit if the Director determines it does not provide necessary and reasonable protections for public health, safety, welfare, the environment, and wildlife resources, or that it fails to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations. Notwithstanding the foregoing, no Form 15 will be approved until the associated Form 2A or Oil and Gas Development Plan is approved.

#### 909. PITS – CONSTRUCTION AND OPERATION

a. Operators will ensure that the pits they operate are:

- (1) Properly permitted through a Form 15, Earthen Pit Report approved by the Director, or registered in their names with an active Pit Facility ID;
- (2) Accurately mapped; and
- (3) Listed according to current facility records in the Commission's database. Operators may update facility records using ~~ana Form 15, Earthen Pit Report, Form 15.~~

b. Operators will construct and operate pits used for exploration and production of oil and gas in a manner that protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and protects against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations. Operators will maintain pits and pit liners to prevent spills and releases.

c. Operators will construct, monitor, and operate pits to provide for a minimum of 2 feet of freeboard at all times between the top of the pit wall at its point of lowest elevation and the fluid level of the pit. Operators will employ a method of monitoring and maintaining the freeboard. Operators will report any unauthorized release of fluids from a pit pursuant to Rule 912.

~~d.~~ Operators will not store oil or any other produced liquid hydrocarbon substance in earthen pits or reservoirs, except in emergencies where such substances cannot be otherwise contained. Operators will remove the oil or produced hydrocarbons as soon as the emergency is controlled. Operators will submit a Form 15, Earthen Pit Report for the Director's approval within 30 days of the emergency, pursuant to Rule 908.c.

~~d.e.~~ No liquid hydrocarbons may be present in a pit unless the pit is specifically permitted as a skim pit.

- (1) Immediately upon discovery or notification, Operators will ~~immediately~~ remove any accumulation of oil or condensate, including free product or hydrocarbon sheen, from a pit ~~upon discovery.~~ If the Operator is unable to immediately remove the accumulation, the accumulation ~~must~~will be removed within 24 hours of discovery.
- (2) Operators will use skimming, steam cleaning of exposed liners, or other safe and legal methods as necessary to maintain pits in clean condition and to control hydrocarbon odors.
- (3) If an Operator ~~repeatedly~~ allows oil or condensate (free product or sheen) to accumulate in a pit, then the Director may revoke the Operator's Form 15, Earthen Pit Permit, and require the Operator to close and remediate the pit.

~~e.f.~~ Operators will properly design, construct, fence, line, and net pits to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife, including adverse impacts to domestic animals and livestock.

~~f.g.~~ Operators may use Multi-well Pits for a period of no more than 3 years, except as permitted ~~in accordance with~~ pursuant to Rule 907 at a Centralized E&P Waste Management Facility.



~~b.~~ After August 1, 2020, Operators will not construct any new unlined pits, except as necessary during the initial phase of an emergency response.

~~g-h.~~ Operators will treat produced water ~~in accordance with~~ pursuant to Rule 905.c.(1) before placing it in a Production Pit.

~~h-i.~~ Operators will utilize appropriate biocide treatments to control bacterial growth and related odors.

~~i-j.~~ **Produced Water Quality Analyses.** Beginning ~~August 1, 2021, year from rule effective date~~, Operators will submit water quality analyses for produced water for each well from which produced water is placed into a permitted or registered pit.

(1) The water ~~quality analyses sample~~ will ~~include analysis of~~ be analyzed for the following:

~~A.~~ ~~Major anions (bromide, chloride, sulfate, and fluoride);~~

~~A.~~ ~~Major cations (potassium, sodium, magnesium, and calcium);~~

~~B.~~ Total dissolved solids;

~~B-A.~~ pH;

~~C-B.~~ Specific conductance;

C. Total dissolved solids (TDS);

D. Alkalinity (total, bicarbonate and carbonate as  $\text{CaCO}_3$ );

E. Major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, and phosphorus);

~~C.~~ Major cations (Benzene;

~~D.~~ Toluene;

~~E.~~ Ethylbenzene;

~~F.~~ Xylene isomers (total);

F. calcium, iron, magnesium, manganese, potassium, and sodium);

G. Other elements (barium, boron, selenium, and strontium);

~~D-H.~~ Naphthalene; and

~~E-I.~~ Total petroleum hydrocarbons (TPH), ~~including~~ as total volatile ~~and hydrocarbons ( $\text{C}_6$  to  $\text{C}_{10}$ ) and total extractable hydrocarbons- ( $\text{C}_{10}$  to  $\text{C}_{36}$ );~~

J. BTEX compounds (benzene, toluene, ethylbenzene, and xylenes); and

K. Radium ( $^{226}\text{Ra}$  and  $^{228}\text{Ra}$ ).

(2) Operators will submit water quality analysis data using a Form 43, and will include suitable electronic data deliverable (EDD) generated by the laboratory and a portable document

format (PDF) of lab reports. Results for the samples collected pursuant to Rule 909.j.(1) will be submitted no later than [1.5 years from rule effective date], or prior to pit closure, whichever is earlier.

- (3) Operators will collect samples according to standard environmental procedures.
- (4) Operators will analyze samples in an accredited laboratory using established methodologies. For those analytes with groundwater threshold concentrations listed in WQCC Regulation 41, as incorporated by reference in Rule 901.c., the analytical technique will be capable of achieving, and will achieve, reporting limits at concentrations less than the WQCC Regulation 41 thresholds in the matrix submitted. The Director may review the analytical standard used for each analyte and may request the analysis be run by a different method.

#### 910. PIT LINING REQUIREMENTS AND SPECIFICATIONS

- a. Except for pits constructed as an initial emergency response measure pursuant to Rule 908.b.c.(1), all pits constructed after August 1, 2020 [rule effective date] will be lined.
- b. **Skim Pits.** All skim pits, regardless of date of construction, will be lined. For any unlined skim pits in existence on the effective date of this Rule, the Operator will submit a Form 27, Site Investigation and Remediation Workplan, Form 27, outlining the Operator's plan to delineate and remediate any associated impacts and a plan to either properly line or close the pit. The Form 27 for an unlined skim pit must be submitted to the Director by October 1, 2020, [2 weeks from rule effective date]. If the pit will be lined and returned to service, the Operator will also obtain Director approval of a Form 15, Earthen Pit Permit/Report.
- c. Operators will construct all pits according to the following specifications:
  - (1) Materials used in lining pits will be of a synthetic material that is impervious, has high puncture and tear strength, has adequate elongation, and is resistant to deterioration by ultraviolet light, weathering, hydrocarbons, aqueous acids, alkali, fungi, or other substances in the produced water.
  - (2) All pit lining systems will be designed, constructed, installed, and maintained in accordance with the manufacturers' specifications and good engineering practices. Operators will maintain records demonstrating that the Operator followed manufacturers' specifications, and provide them to the Director upon request.
  - (3) Field seams will be installed and tested in accordance with manufacturer specifications and good engineering practices. Operators will maintain testing results, repair documentation (including the dates of tests and repairs), and provide them to the Director upon request.
- d. Operators will construct all pits, except those at Centralized E&P Waste Management Facilities, according to the following specifications:
  - (1) Liners will have a minimum thickness of 24 mils. The synthetic or fabricated liner will cover the bottom and interior sides of the pit with the edges secured with at least a 12 inch deep anchor trench around the pit perimeter. The anchor trench will be designed to secure, and prevent slippage or destruction of, the liner materials.
  - (2) The foundation for the liner will be constructed with material containing no sharp rocks, debris or other material that could puncture the liner. The foundation for the liner will have a minimum thickness of 12 inches after compaction, cover the entire bottom and interior sides of the pit, and be constructed so that the hydraulic conductivity will not exceed 1.0 x

10<sup>-7</sup> cm/sec after testing and compaction. Operators will maintain compaction and permeability test results measured in the laboratory and field and provide the results to the Director upon request.

- (3) As an alternative to the soil foundation described in Rule 910.d.(2), Operators may construct the foundation with bedding material that exceeds a hydraulic conductivity of 1.0 x 10<sup>-7</sup> cm/sec, if a double synthetic liner system is used; however, the bottom and sides of the pit will be padded with soil or synthetic matting type material and will be free of sharp rocks or other material that are capable of puncturing the liner. Each synthetic liner will have a minimum thickness of 24 mils.

e. Operators will construct pits used at Centralized E&P Waste Management Facilities according to the following specifications:

- (1) Liners will have a minimum thickness of 60 mils. The synthetic or fabricated liner will cover the bottom and interior sides of the pit with the edges secured with at least a 12 inch deep anchor trench around the pit perimeter or in accordance with the liner manufacturer's specifications. The anchor trench will be designed to secure, and prevent slippage or destruction of, the liner materials.
- (2) The foundation for the liner will be constructed with material containing no sharp rocks, debris or other material that could puncture the liner. The foundation for the liner will have a minimum thickness of 24 inches after compaction, cover the entire bottom and interior sides of the pit, and be constructed so that the hydraulic conductivity will not exceed 1.0 x 10<sup>-7</sup> cm/sec after testing and compaction. Operators will maintain compaction and permeability test results measured in the laboratory and field and provide them to the Director upon request.
- (3) As an alternative to the soil foundation described in Rule 910.e.(2), Operators may use a secondary liner consisting of a geosynthetic clay liner, which is a manufactured hydraulic barrier typically consisting of bentonite clay or other very low permeability material, supported by geotextiles or geomembranes, which are held together by needling, stitching, or chemical adhesives.
- (4) As an alternative to the soil foundation described in Rule 910.e.(2), Operators may use a double synthetic liner system; ~~however,~~ However, the bottom and sides of the pit will be padded with soil or synthetic matting type material and will be free of sharp rocks or other materials that are capable of puncturing the liner. Each synthetic liner will have a maximum thickness of 60 mils.

f. The Director may require the use of additional liners or a leak detection system for the pit or other equivalent protective measures, including but not limited to, increased ~~record-keeping~~recordkeeping requirements, monitoring systems, and underlying gravel filled sumps and lateral systems. In making such a determination, the Director will consider the site-specific information provided by the Operator, including but not limited to surface and subsurface geology, the presence and depth to Groundwater, the quality of the produced water, the hydraulic conductivity of the surrounding soils, the distance to surface water and water wells, and the type of liner.

## 911. CLOSURE OF OIL AND GAS FACILITIES

a. Operators will close all Oil and Gas Facilities, including Drilling Pits, in accordance with an approved Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~.

- (1) Operators will obtain the Director's approval of the Form 27, Site Investigation and Remediation Workplan prior to conducting any investigation or closure operations.

- (2) The Form 27, Site Investigation and Remediation Workplan will include a description of the proposed investigation and remediation activities ~~in accordance with~~ pursuant to Rule ~~908~~913.
  - (3) Operators will close and remediate emergency pits as soon as the initial phase of emergency response operations are complete or any process upset conditions are controlled.
  - (4) Oil and Gas Facility closure ~~subject~~pursuant to this Rule 911.a will be at the time of final site closure, plugging and abandonment, or decommissioning, unless the Director determines that a substantive change to the site requires a Form 27, or a reportable spill or an historic impact is discovered during facility operation or removal.
- b. **Discovery of a Spill or Release During Closure.** If an ~~operator~~Operator discovers a spill or release during closure operations, the Operator will report the spill or release on ~~the~~ Form 19, Spill/Release Report, ~~Form 19~~, pursuant to Rule 912.
- c. **Inactive Oil and Gas Facilities.** Operators will report any equipment or improvement at an Oil and Gas Location, including a Pit, that is not in use for a period of 6 months or more to the Director via Form 4, Sundry Notice. On its Form 4, the Operator will describe the necessity for keeping the equipment or improvement and a schedule for returning it to service.
- (1) If the Director approves the return to service schedule, the Operator will submit a Form 4, Sundry Notice, ~~Form 4~~ notifying the Director within 30 days of return to service.
  - (2) The Director may require closure or removal of the inactive equipment or improvement, subject to an approved Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~.
  - (3) Operators will maintain any facilities or equipment that are not in use in compliance with all applicable Commission Rules.

## 912. SPILLS AND RELEASES

### a. General.

- (1) Immediately upon discovering any spills or releases of E&P ~~waste~~Waste, gas, or produced fluids, regardless of size or volume, Operators will control and contain the spill or release to protect public health, safety, welfare, the environment, and wildlife resources.
- (2) Operators will immediately investigate, clean up, and document impacts resulting from spills and releases.
- (3) The Director may require the Operator to perform any action the Director determines to be necessary and reasonable to prevent or mitigate adverse impacts on any air, water, soil, or biological resource caused by a spill or release.
- (4) Operators will document and maintain records to demonstrate compliance with the concentration levels in Table 915-1, and, if surface water or Groundwater are impacted, WQCC Regulation 41 numeric and narrative watergroundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
- (5) For any spills or releases that do not meet the reporting requirements of Rule 912.b.~~7.2~~, Operators will document cleanup efforts and provide documentation of the cleanup to the Director upon request.

**b. Reporting Spills or Releases of E&P Waste, Gas, or Produced Fluids.**

- (1) **Report to the Director.** Operators will submit an Initial Report of a spill or release of E&P Waste, gas, or produced fluids that meet any of the following criteria to the Director verbally or in writing, within 24 hours of discovery, unless otherwise specified below.
- A. A spill or release of any size that impacts or threatens to impact any Waters of the State, Public Water System, residence or occupied structure, livestock, wildlife, or publicly-maintained road;
  - B. A spill or release in which 1 barrel or more of E&P Waste or produced fluids is spilled or released outside of berms or other secondary containment;
  - C. A spill or release of 5 barrels or more regardless of whether the spill or release is completely contained within berms or other secondary containment.
  - D. Within 6 hours of discovery, a Grade 1 Gas Leak. For a Grade 1 Gas Leak from a ~~flowline~~Flowline, the Operator also must submit the Form 19, COGCC Spill/Release Report, ~~Form 19~~, document number on a Form 44, Flowline Report, ~~Form 44~~ for the Grade 1 Gas Leak.
  - E. A spill or release of any volume that daylights from the subsurface.
  - F. The discovery of ~~410~~ cubic ~~yard~~yards or more of impacted material resulting from a current or historic spill or release. Discovery and reporting will not be contingent upon confirmation samples demonstrating exceedance of Table 915-1 standards.
  - G. The discovery of impacted Groundwater or surface water. Discovery and reporting will not be contingent upon confirmation samples demonstrating exceedance of Table 915-1 standards. The presence of free product or hydrocarbon sheen on Groundwater or surface water is reportable. ~~—The presence of contaminated soil in contact with Groundwater or surface water is reportable.~~
  - H. A suspected or actual spill or release of any volume where the volume cannot be determined.
  - I. A spill or release of any volume of liquids, including vaporized mists, that leave the Oil and Gas Location and impacts or threatens to impact off-location property.
  - J. A release of natural gas that results in an accumulation of soil gas or gas seeps.
  - K. A release that results in natural gas in groundwater.
- (2) The Initial Report to the Director will include, at a minimum,
- A. The specific location of the spill/release including Global Positioning System data that meets the standards of Rule 216;
  - B. Certification that the Operator provided additional party notifications as required by Rules 912.b.(7)–(10), below;
  - C. A description of any threat to Waters of the State, Public Water System, residences or occupied structures, livestock, wildlife, air quality, or publicly-maintained road from the spill or release; and

- D. Any information available to the Operator about the type and volume of fluid or waste involved, including whether it is controlled or uncontrolled at the time of submitting the Initial Report.
- (3) If the Operator did not submit its Initial Report through a Form 19, Spill/Release Report, ~~Form 19~~, the Operator will submit a Form 19 with the Initial Report information no less than 72 hours after discovery of the spill or release unless ~~extended by~~ the Director extends the timeframe in writing.
- (4) In addition to the Initial Report to the Director, the Operator will make a supplemental report on a Form 19 not more than 10 days after the spill or release is discovered that includes:
- A. A topographic map showing the governmental section and location of the spill or an aerial photograph showing the location of the specific spill site, ~~including Global Positioning System data that meets the standards of Rule 216.~~
- B. All pertinent information about the spill or release known to the Operator that has not been reported previously, including photo documentation showing the source of the spill or release, the impacted area, and initial cleanup activity; and
- C. Information relating to the initial mitigation, site investigation, and remediation measures conducted by the Operator.
- (5) The Director may require any additional supplemental reports or information the Director determines are necessary.
- (6) No later than 60 days after a spill or release is discovered, the Operator will have submitted, and obtained the Director's approval of either:
- A. A Form 19, Spill/Release Report requesting closure ~~in accordance with~~ pursuant to Rule 913.h and supported by adequate documentation to demonstrate that the spill or release has been fully cleaned up and complies with Table 915-1; or
- B. A Form 27, if: Site Investigation and Remediation Workplan if:
- i. A Form 27 is required by the Commission's Rules;
- ii. Cleanup or remediation will continue for longer than 60 days after the spill or release was discovered; or
- iii. The Director requests a Form 27.
- ~~(2)~~ **Notification to Local Governments.** At the same time the Operator submits an Initial Report to the Director, pursuant to Rule 912.b.(1), the Operator will provide verbal or written notification to the entity with jurisdiction over emergency response within the local municipality if the spill or release occurred within a municipality or the local county if the spill or release did not occur within a municipality.
- (7) The notification will include, at a minimum, the information provided in the Initial Report to the Director.
- ~~A. The Operator will comply with all Local Government spill or release reporting requirements, unless they are less protective than the Commission's Rules.~~



(8) **Notification to the Surface Owner.** The Operator will provide verbal or written notification to the affected Surface Owner or the Surface Owner's appointed tenant concurrent with providing an Initial Report to the Director pursuant to Rule 912.b.(1).

- A. If the Surface Owner cannot be reached within 24 hours, the Operator will continue to make good faith efforts to notify the Surface Owner until notice has been provided.
- B. The verbal or written notification will include, at a minimum, the information provided in the Initial Report to the Director.
- C. The Operator will document the notification including the name of the person contacted, phone number or email of contact, date and time.

(9) **Report to Environmental Release/Incident Report Hotline.** Operators will report a spill or release of any size which impacts or threatens to impact Waters of the State to the Director and to the Environmental Release/Incident Report Hotline (1-877-518-5608). Spills and releases that impact or threaten a ~~Surface~~Public Water ~~Intake~~System intake, as described in Rule ~~408411~~411.b.~~1~~2, will be verbally reported to the emergency contact for that facility immediately after discovery.

~~(10)~~ At the same time the Operator submits an Initial Report to the Director pursuant to Rule 912.b.(1), the Operator will provide verbal or written notification to Colorado Parks and Wildlife if the spill or release occurred within 300 feet of surface Waters of the State, or within High Priority Habitat.

~~(10)~~(11) **Reporting Chemical Spills or Releases.** Operators will report chemical spills and releases ~~will in accordance with~~pursuant to applicable state and federal laws, including the Emergency Planning and Community Right-to-Know Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Oil Pollution Act, and the Clean Water Act, ~~as applicable.~~

c. **Remediation of Spills or Releases.**

(1) The Director may require Operators to submit a ~~Form 27~~Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~, if the Director identifies any threatened or actual adverse impacts to any air, water, soil, wildlife, or other environmental resource from a spill or release, or if necessary to ensure compliance with the concentration levels in Table 915-1 and WQCC Regulation 41 numeric and narrative ~~groundwater~~Groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.

(2) Not including initial emergency response operations, the Operator will notify and consult with ~~the any~~ affected Surface ~~Owner~~Owners, or the Surface Owner's appointed tenant, prior to commencing operations to remediate a spill or release in an area not being utilized for ~~oil~~Oil and ~~gas operations~~Gas Operations. It is the Operator's burden to timely notify and negotiate access with the Surface Owner. Failure to do so will not relieve the Operator from its responsibility to commence or complete remediation approved by the Director.

d. **Spill and Release Prevention.**

(1) Operators will determine and document the cause of a spill or release of E&P Waste or produced fluids, or a gas leak, or a near miss of a spill or release. ~~After identifying the cause, Operators will implement measures to prevent spills or releases due to similar causes in the future, and document all changes made.~~

- (2) The Director may take enforcement action if a spill occurs at any site subject to control of the same Operator as a result of similar causes identified in Rule 912.d.(1).
- (3) Operators will provide documentation of the spill or release evaluation and any steps taken to prevent spills or releases due to similar causes in the future to the Director upon request.

**e. Suspected Spill or Release Closure.**

- (1) Operators will submit a Supplemental Form 19, Spill/Release Report providing documentation that any suspected spill or release reported ~~in accordance with~~ pursuant to Rule 912.b.(1).H. did not exceed any applicable reporting thresholds. The Operator will clean up any actual spill below the reporting threshold of Rule 912.b. pursuant to the requirements of Rule ~~906~~912.a.(5).
- (2) If the suspected spill or release reported pursuant to Rule 912.b.(1).H did in fact exceed any reporting threshold identified in Rule 912.b.(1), the Operator will clean up the spill pursuant to the requirements of Rule 912.c.

**f. Changes of Operator.** Pursuant to Rule 218.a.(3), upon the Director's approval of a Form 9, Transfer of Permits, a new Operator will submit a supplemental Form 19, Spill/Release Report designating the responsible Operator for all open spills and releases.

**913. SITE INVESTIGATION, REMEDIATION, AND CLOSURE**

**a. Applicability.** This Rule 913 applies to the investigation, remediation, and reporting required for all spills and releases, remediation projects, and decommissioning of ~~oil~~Oil and ~~gas facilities.~~Gas Facilities. All site investigation, remediation, and closure operations will be conducted in accordance with the Commission's Rules, including the Commission's 1000 Series Rules.

**b. General Site Investigation and Remediation Requirements.**

- (1) **Site Investigation and Remediation Workplan.** Operators will submit and obtain the Director's approval of a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~, whenever it is required by the Commission's Rules, prior to commencing the operations addressed by the Form 27.
- (2) **Sampling and Analyses.** Operators will conduct sampling and analysis of soil and Groundwater ~~in accordance with~~ pursuant to Rule 915 to determine the horizontal and vertical extent of any contamination in excess of the cleanup concentrations in Table 915-1 or in WQCC Regulation 41, ~~including the~~ numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
  - A. Sampling and analyses will be required to profile E&P Waste, delineate extent of contamination, and confirm compliance with applicable standards upon completion of remediation.
  - B. Laboratory detection limits must be less than or equal to Table 915-1 or WQCC Regulation 41 standards, as incorporated by reference in Rule 901.c.
  - C. Composite sample results may be submitted for preliminary analysis and waste profiling. Discrete sample results will be required for confirmation sampling.
- (3) **Management of Investigation-Derived Waste.** Investigation-~~derived~~Derived waste will be managed ~~in accordance with Rule~~ pursuant to Rules 905 or 906.



(4) **Pit Evacuation.** Prior to site investigation and remediation, E&P ~~waste~~Waste will be treated or disposed ~~in accordance with~~pursuant to Rule 905.

(5) **Remediation.**

A. Remediation will be performed in a manner that reduces or removes contamination that exceeds the cleanup concentrations in Table 915-1 or in WQCC Regulation ~~Number 4141 numeric and narrative groundwater quality standards and classifications,~~ as incorporated by reference in Rule 901.c, and that protects and mitigates adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

B. When conducting remediation activities, Operators will conform to the following standards:

i. Operators will fence open excavations to prevent access when sites are not attended.

ii. Operators will protect topsoil, consistent with the Commission's 1000 Series Rules.

iii. Operators will minimize surface disturbance.

iv. Operators will properly store, handle, and manage all E&P ~~waste~~Waste to prevent contamination of stormwater, surface water, Groundwater, and soil.

v. If remediation occurs within High Priority Habitat, the Operator will incorporate Best Management Practices protective of the relevant wildlife species or habitat in the Operator's Form 27, Site Investigation and Remediation Work Plan.

C. Groundwater that does not meet the cleanup concentrations in Table 915-1 or WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c-1, will be remediated ~~in accordance with~~pursuant to a Form 27, Site Investigation and Remediation Workplan, Form 27.

(6) **Surface Reclamation.** If the Director approves the closure of a remediation project, the Operator will reclaim the ~~sites in accordance with~~site(s) pursuant to the Commission's 1000 Series Rules.

c. **Form 27, Site Investigation and Remediation Workplan, Form 27.** Operators will prepare and obtain the Director's approval of a Form 27, Site Investigation and Remediation Workplan, Form 27, prior to conducting the following operations and remediation activities:

(1) Pit closure;

(2) Buried or partially buried vessel closure;

(3) Remediation of spills and releases ~~in accordance with~~pursuant to Rule 912;

(4) Land Treatment of ~~oily waste in accordance with~~Oily Waste pursuant to Rule 905.e-1;

(5) Closure of Centralized E&P Waste Management Facilities ~~in accordance with~~pursuant to Rule 907.g-h;

(6) Remediation of impacted Groundwater ~~in accordance with~~pursuant to Rule 915.be.(4)-i).D, and the contaminant concentrations in Table 915-1;

- (7) Investigation and remediation of natural gas in soil or groundwater;
  - (8) When requested by the Director due to any potential risk to soil, Groundwater, or surface water, ~~or wildlife resources~~; and
  - (9) Decommissioning of Oil and Gas Facilities.
- d. **Implementation Schedule.** Each Form 27, Site Investigation and Remediation Workplan will include a specific implementation schedule to complete investigation and remediation.
- (1) Operators will immediately investigate impacts to soil, Groundwater and surface water.
  - (2) Any change from the approved implementation schedule will be requested at least 30 days in advance, and the Operator may not make the change without the Director's approval.
  - ~~(3) Operators will complete remediation within 3 years of the Director's approval of the initial Site Investigation and Remediation Workplan, Form 27.~~
    - ~~A. The Director may extend this timeframe if an Operator demonstrates that remediation requires more than 3 years to accomplish.~~
    - ~~B. Extensions will only be granted for good cause at the Director's discretion.~~
- e. **Reporting Schedule.** After initial approval of a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~, the Operator will provide quarterly update reports in a Supplemental Form 27 to document progress of site investigation and remediation, unless an alternative reporting schedule has been requested by the Operator and approved by the Director. ~~The Director may request a more frequent reporting schedule based on site-specific conditions.~~
- (1) Operators may not change the reporting schedule without the Director's approval.
  - (2) By January 1, 2021, [3 months from rule effective date], Operators of existing remediation projects approved prior August 1, 2020 to [rule effective date] will submit a supplemental Site Investigation and Remediation Workplan, Supplemental Form 27 with a detailed project summary and status.
  - (3) For existing remediation projects approved prior to August 1, 2020, [rule effective date], the Operator will adopt a quarterly reporting schedule unless a more frequent or specific reporting schedule was already approved by the Director.
- f. **Discovery of a Spill or Release During Closure.** If a spill or release is discovered during facility closure operations, the Operator will report it to the Director on a Form 19, Spill or Release Report, Form 19 in accordance with pursuant to Rule 912.
- g. **Changes of Operator.** Upon Pursuant to Rule 218.a.(3), upon the Director's approval of a Form 9, Transfer of Permits, ~~thea~~ new Operator will submit a supplemental Form 27 designating the ~~new~~ responsible Operator for all open remediation projects.
- h. **Closure.**
- (1) Remediation will be considered complete when the Operator has demonstrated compliance with:
    - A. The cleanup concentrations in Table 915-1;

- B. WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.7.1, if applicable; and
  - C. Any condition of approval of a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~.
- (2) ~~Operators~~An Operator may request the Director's approval of a variance through Rule 502.a to comply with an alternative ~~standards~~standard in lieu of one or more of the standards in Rule 913.h.(1).A–C. In addition to applying for a variance, ~~an~~the Operator will also submit a Form 27 demonstrating that their alternative clean-up process protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources.
- (3) For contaminated groundwater where periodic monitoring has been required, closure may not occur until after 4 consecutive quarters of sampling and analysis demonstrating compliance with Table 915-1 and WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.7.1, if applicable.
- (4) **Notification of Completion.** Within 30 days after conclusion of site remediation activities:
- A. Operators conducting remediation operations ~~in accordance with~~pursuant to an approved Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~ will submit to the Director a Supplemental ~~Site Investigation and Remediation Workplan~~, Form 27, containing documentation sufficient to demonstrate compliance with the Commission's Rules.
  - B. Operators will coordinate with the Director through a Form 4, Sundry Notice, ~~Form 4~~, regarding additional surface reclamation ~~requirements~~ required by the Commission's 1000 Series Rules, if applicable.
- i. **Release of Financial Assurance.** Financial assurance required by Rule 706. may be held by the Director until the required remediation of soil and/or ground water impacts is completed in accordance with the approved workplan, or until cleanup goals are met.
- 914. CRITERIA TO ESTABLISH POINTS OF COMPLIANCE.** In determining a ~~point~~Point of ~~compliance~~Compliance, the Director will take into consideration recommendations of the Operator or any responsible party or parties, if applicable, together with the following factors:
- a. The classified use established by the Water Quality Control Commission, for any Groundwater or surface water that was impacted by contamination. If not so classified, the Director will consider the quality, quantity, potential economic use, and accessibility of such water;
  - b. The geologic and hydrologic characteristics of the site, such as depth to ~~groundwater~~Groundwater, Groundwater flow, direction and velocity, soil types, surface water impacts, and climate;
  - c. The toxicity, mobility, and persistence in the environment of contaminants released or discharged from the site;
  - d. Established wellhead protection areas;
  - e. The potential of the site as an aquifer recharge area;
  - f. The distance to the nearest permitted domestic water well or ~~public water~~Public Water System supply well completed in the same aquifer affected by the event; and

- g. The distance to the nearest permitted livestock or irrigation water well completed in the same aquifer affected by the event.

#### 915. CONCENTRATIONS AND SAMPLING FOR SOIL AND GROUNDWATER.

- a. **Soil Concentrations.** Operators will adhere to the concentrations for soil cleanup in Table 915-1 ~~or WQCC Regulation 41 as incorporated by reference in Rule 901.c.~~ Operators will use Residential Soil Screening Level Concentrations as cleanup levels unless required otherwise by the Director. The Director will require adherence to the Protection of Groundwater Soil Screening Levels when a pathway to groundwater exists. When the Director has reasonable cause to believe that oil and gas exploration-related compounds or parameters other than those listed in Table 915-1 may be present, the Director may require additional analyses of compounds included in the EPA ~~Regional Screening Levels~~ RSLs, as incorporated by reference in Rule 901.c.
- b. **Soil Suitability for Reclamation.** Operators will adhere to the concentrations for soil in Table 915-1 for restoring soil to the agronomic properties for electrical conductivity (EC), sodium adsorption ratio (SAR), pH, and boron for soils. Subject to prior approval by the Director, Operators may leave materials with elevated concentrations of EC, SAR, or pH in situ. In such cases, the Operator will provide a detailed reclamation plan that includes, but is not limited to, soil analysis from adjacent undisturbed lands, revegetation techniques, site stabilization, and details of seeded species.
- c. **Groundwater Concentrations.** Operators will adhere to the concentrations for Groundwater in Table 915-1. The Groundwater standards and analytical methods are derived from the Groundwater standards and classifications established by WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
- d. **Additional Groundwater Analyses.** When the Director has reasonable cause to believe that oil and gas exploration-related compounds or parameters other than those listed in Table 915-1 may be present, the Director may require additional analyses beyond the list of compounds included in Table 915-1 for Groundwater including but not limited to:
- (1) Any element, compound or parameter listed in Table A and Tables 1, 2, 3, and 4 of WQCC Regulation 41, as incorporated by reference in Rule 901.c.
  - (2) In accordance with the Narrative Standards of WQCC Regulation 41, ~~41.5A.5.A~~, any element, compound, or parameter not listed in Table A or Tables 1, 2, 3, and 4 of WQCC Regulation 41, as incorporated by reference in Rule 901.c. which alone or in combination with other substances, are in concentrations shown to be:
    - A. Carcinogenic, mutagenic, teratogenic, or toxic to human beings; or,
    - B. A danger to public health, safety, welfare, the environment, or wildlife resources.
- e. **Sampling and Analysis.** Analysis will be conducted using EPA SW-846 analytical methods, as incorporated by reference in Rule 901.c. or, with the Director's approval, other ~~consensus~~ analytical methods published by nationally-recognized organizations. Analyses of samples will be performed by laboratories that maintain state or national accreditation programs. The use of specialized and appropriate agricultural analytical methods are recommended for analysis of the Soil Suitability parameters, and are required as partially described in footnote ~~52~~ to Table 915-1.
- (1) **Existing Workplans.** Sampling and analysis for sites subject to an approved workplan will be conducted in accordance with the workplan and the sampling and analysis requirements described in this Rule 915.

(2) **Methods for Sampling and Analysis.** Sampling and analysis for site investigation or confirmation of successful remediation will be conducted to determine the nature and extent of impact and confirm compliance with appropriate concentration levels in Table 915-1 and WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.

- A. **Field Analysis.** Field measurements and field tests will be conducted using appropriate equipment, calibrated and operated according to manufacturer specifications, by personnel trained and familiar with the equipment. Operators will provide all field measurements and tests to the Director upon request, including but not limited to, field notes, field screening logs, soil boring logs, monitor well construction logs, pump test reports, photographs, and soil vapor screening results.
- B. **Sample Collection.** Samples will be collected, preserved, documented, and shipped or delivered to a laboratory under a chain-of-custody protocol using standard environmental sampling procedures in a manner to ensure accurate representation of site conditions.
- C. **Laboratory Analytical Methods.** Laboratories will analyze samples using standard methods (including but not limited to EPA SW-846, as incorporated by reference in Rule 901.c) appropriate for detecting the target analyte. The method selected will have detection limits less than or equal to the cleanup concentrations in Table 915-1 and WQCC Regulation 41, as incorporated by reference in Rule 901.c.
- D. **Background Sampling.** The Director may require the Operator to take site-specific samples, outside of the area disturbed by oil and gas operations, of comparable, nearby, non-impacted, native soil, Groundwater or other media to establish background conditions.

(3) **Soil Sampling and Analysis.**

- A. **Applicability.** If soil contamination is suspected or known to exist as a result of spills or releases or E&P ~~waste~~Waste management, Operators will collect and analyze representative samples of soil ~~in accordance with~~pursuant to this Rule 915.~~be~~(3).
- B. **Sample Collection.** Samples will be collected from areas most likely to have been impacted, and the horizontal and vertical extent of contamination will be determined. The number and location of samples will be appropriate to determine the horizontal and vertical extent of the impact.
- C. **Sample Analysis.** Operators will analyze soil samples for contaminants of concern listed in Table 915-1 as appropriate to assess the impact or confirm remediation. ~~Operators~~If an Operator believes it is appropriate to modify the list of contaminants of concern, the Operator will submit, and obtain the Director's approval of, ~~analytical parameters~~a modified list of contaminants of concern through a Form 19, Spill/Release Report, or Form 27, Site Investigation and Remediation Workplan, as applicable. ~~Analytical parameters~~The list will be based on site-specific ~~conditions~~, E&P Waste profile, and process knowledge. Operators will analyze samples for additional ~~analytes~~contaminants of concern upon the Director's request.
- D. **Soil Background Determination.** For impacts to soil due to E&P Waste, samples from comparable, nearby non-impacted native soil will be collected and analyzed for purposes of establishing background soil conditions including pH, electrical conductivity (EC), sodium adsorption ratio (SAR), and other constituents as identified in the E&P Waste profile.

**(4) Groundwater Sampling and Analysis.**

- A. Applicability.** Operators will collect and analyze representative samples of Groundwater if:
- i. Groundwater contamination is suspected or is known to exceed the concentrations in cleanup Table 915-1 or WQCC Regulation Number 4141 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c;
  - ii. Impacted soils are in contact with Groundwater; or
  - iii. Impacts to soils extend down to the high water table.
- B. Sample Collection.** Operators will collect samples as soon as possible from areas most likely to have been impacted: immediately downgradient or in the middle of excavated areas in close proximity to the source of the impact.
- i. The number and location of samples will be appropriate to determine the horizontal and vertical extent of the impact.
  - ii. If the cleanup concentrations in Table 915-1 or WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c~~1~~, are exceeded, the direction of flow and a ground water gradient will be established.
  - iii. The Director may require the installation of temporary or permanent monitoring wells as necessary for sample collection. All monitoring wells will be constructed and permitted in accordance with the State Engineer's Water Well Construction and Permitting Rules, as incorporated by reference in Rule 901.c~~1~~.
- C. Sample Analysis.** ~~Groundwater Operators will analyze groundwater samples will be analyzed for constituents of concern listed in Table 915-1 or other parameters as appropriate for evaluating to assess the impact. The or confirm remediation. If an Operator believes it is appropriate to modify the list of constituents of concern, the Operator will submit, and obtain the Director's approval of, the analytical parameters. Analytical parameters will be selected a modified list of constituents of concern through a Form 19, Spill/Release Report, or Form 27, Site Investigation and Remediation Workplan, as applicable. The list will be based on site-specific conditions, E&P Waste profile, and process knowledge. Operators will analyze samples for additional constituents of concern upon the Director's request.~~
- D. Impacted Groundwater.** ~~Where Pursuant to Rule 913.c(6), if~~ Groundwater contaminants exceed the concentrations listed in Table 915-1 or in WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c~~1~~, Operators will notify the Director and submit to the Director for prior approval a Form 27, Site Investigation and Remediation Workplan, ~~Form 27~~, for the investigation, remediation, or monitoring of Groundwater to meet the required cleanup concentrations in Table 915-1 or in WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.

- (5) Waste and Produced Fluids Sampling and Analysis.** When required by the Director, Operators will collect samples necessary to adequately characterize the composition of produced oil, condensate, water, drilling fluids, drill cuttings, production gases, bradenhead gases, soil gas, and soil gas seeps. The Operator will submit, and obtain the Director's



approval of the number of samples collected, the analyte lists, and analytical methods appropriate to the waste or production stream.

- f. **Remediations in Progress.** For sites that are subject to an open Form 19, Spill/Release Report or Form 27, Site Investigation and Remediation Workplan as of [rule effective date], Operators may seek the Director's permission to comply with the version of Table 910-1 that was in effect [prior to rule effective date], if remediation is completed by [one year from rule effective date]. If remediation at a site subject to an open Form 19 or Form 27 is not completed by [one year from rule effective date], then the Operator will comply with the current version of Table 915-1.

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**Table 915-1  
CLEANUP CONCENTRATIONS**

Contaminant of Concern	Concentrations
Soil TPH (total volatile [C <sub>6</sub> -C <sub>10</sub> ] and extractable [C <sub>10</sub> -C <sub>36</sub> ] hydrocarbons)	500mg/kg
Soils and Groundwater - liquid hydrocarbons including condensate and oil	below visual detection limits
<b>Soil Suitability for Reclamation</b>	
Electrical conductivity (EC) (by saturated paste method) <sup>1,2</sup>	<4mmhos/cm
Sodium adsorption ratio (SAR) (by saturated paste method) <sup>1,2,3</sup>	<6
pH (by saturated paste method) <sup>1,2</sup>	6–8.3
boron (hot water soluble soil extract) <sup>1,3</sup>	2mg/l
<b>Organic Compounds in Groundwater<sup>4</sup></b>	
benzene	5µg/l
toluene <sup>5</sup>	560 to 1,000µg/l
ethylbenzene	700µg/l
xylene (sum of o-, m- and p- isomers = total xylenes) <sup>5</sup>	1,400 to 10,000µg/l
naphthalene	140µg/l
1,2,4-trimethylbenzene	7µg/l
1,3,5-trimethylbenzene	7µg/l
<b>Groundwater Inorganic Parameters<sup>4</sup></b>	
total dissolved solids (TDS) <sup>1</sup>	<1.25 X local background
chloride ion <sup>1</sup>	250mg/l or <1.25 X local background
sulfate ion <sup>1</sup>	250mg/l or <1.25 X local background



Table 915-1 (continued)

Contaminant of Concern	Concentrations	
	Residential Soil Screening Level Concentrations (mg/kg) <sup>7</sup>	Protection of Groundwater Soil Screening Level Concentrations (mg/kg) Risk Based (R) and MCL Based (M) <sup>7,8</sup>
<b>Organic Compounds in Soils<sup>6</sup></b>		
benzene	1.2	0.0026 (M)
toluene	490	0.69 (M)
ethylbenzene	5.8	0.78 (M)
xylene (sum of o-, m- and p- isomers = total xylenes)	58	9.9 (M)
1,2,4-trimethylbenzene	30	0.0081 (R)
1,3,5-trimethylbenzene	27	0.0087 (R)
acenaphthene	360	0.55 (R)
anthracene	1800	5.8 (R)
benz(a)anthracene	1.1	0.011 (R)
benzo(b)fluoranthene	1.1	0.3 (R)
benzo(k)fluoranthene	11	2.9 (R)
benzo(a)pyrene	0.11	0.24 (M)
chrysene	110	9 (R)
dibenzo(a,h)anthracene	0.11	0.096 (R)
fluoranthene	240	8.9 (R)
fluorene	240	0.54 (R)
indeno(1,2,3-cd)pyrene	1.1	0.98 (R)
1-methylnaphthalene	18	0.006 (R)
2-methylnaphthalene	24	0.019 (R)
naphthalene	38	0.00054 (R)
pyrene	180	1.3 (R)
<b>Metals in Soils<sup>1,6</sup></b>		
arsenic <sup>4</sup> arsenic	0.68 or <1.25 X local background	0.29 (M)
barium	1500	82 (M)
cadmium	7.1	0.38 (M)
chromium (III)	12000	-
chromium (VI)	0.3	0.00067 (R)
copper	310	46 (M)
lead	400	14 (M)
nickel	150	2.6 (R)
selenium	39	0.26 (M)
silver	39	0.08 (R)
zinc	2300	37 (R)

### Table 915-1 (continued) footnotes

<sup>1</sup> The Director will consider adjacent background concentrations or reference levels in native soils and Groundwater.

<sup>2</sup> ~~Thresholds~~ Soil suitability thresholds for electrical conductivity (EC), pH and sodium adsorption ratio (SAR), ~~and pH~~ in soils are based on use of saturated paste methods. ~~Analysis preparation methods followed by USDA Agricultural Handbook 60 method (20B) with analysis.~~ Soil suitability thresholds for available boron are based on hot water soluble cations determined (or DPTA/sorbitol) extraction followed by method (2) analysis. Methods for preparation and analysis of the soil suitability parameters can be found in Soil, Plant, and Water Reference Methods for the Western Region, as incorporated by reference in Rule 901.c. ~~Method (20B) – estimation of exchangeable sodium percentage and exchangeable potassium percentage from soluble cations. Method (2) – saturated paste method (note: each analysis requires a unique sample of at least 500 grams). If soils are saturated, USDA Agricultural Handbook 60 with soluble cations determined by method (3A) saturation extraction method, as incorporated by reference in Rule 901.c.~~

<sup>3</sup> With the Director's prior approval, SAR levels and the concentration for hot water soluble boron may be modified based on type of crop or native plants, land use, depth, or characteristics of the vegetative community.

<sup>4</sup> Concentrations for Groundwater are taken from WQCC Regulation 41, as incorporated by reference in Rule 901.c.

<sup>5</sup> For toluene and xylenes (total), the first number in the range is a strictly health-based value, based on the WQCC's established methodology for human health-based standards. The second number in the range is a maximum contaminant level (MCL), established under the ~~Federal~~ federal Safe Drinking Water Act which has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. The WQCC intends that control requirements for this chemical be implemented to attain a level of ambient water quality that is at least equal to the first number in the range except as follows: 1) where ground water quality exceeds the first number in the range due to a release of contaminants that occurred prior to September 14, 2004 (regardless of the date of discovery or subsequent migration of such contaminants) clean-up levels for the entire contaminant plume will be no more restrictive than the second number in the range or the ~~ground water~~ groundwater quality resulting from such release, whichever is more protective, and 2) whenever the WQCC has adopted alternative, site-specific standards for the chemical, the site-specific standards will apply instead of these statewide standards.

<sup>6</sup> Concentrations for organic compounds and metals in soils are taken from EPA Regional Screening Levels ("EPA RSLs") for Chemical Contaminants at Superfund Sites. ~~(accessed February 14, 2020). Regional Screening Level Summary Table (TR=1X10<sup>-6</sup>, THQ=0.1) November 2019, as incorporated by reference in Rule 901.c.~~

<sup>7</sup> If there is no pathway ~~to~~ for communication with Groundwater, then Residential Soil Screening Levels apply for organic compounds and metals. If the Director determines that a pathway to Groundwater exists, then the Protection of Groundwater Soil Screening Levels will apply, secondary to actual measured concentrations of the contaminants of concern in Groundwater

<sup>8</sup> (R) indicates that following a Protection of Groundwater soil screening levels indicates concentration derived from risk based approach. (M) indicates that, following a Protection of Groundwater soil screening levels indicates concentration derived drinking water maximum contaminant levels (MCL).

## DEFINITIONS 100 SERIES

**COMMENCEMENT OF PRODUCTION OPERATIONS** means that a Well is capable of producing either separable gas or salable liquid hydrocarbons.

**COMPLETED WELL.** A well will be considered completed when oil or gas is produced through wellhead equipment from the producing interval(s) after the production string has been run.

**CUTTINGS TRENCH** means a pit used specifically for the onsite disposal of dried cuttings.

**FLARING** means the combustion of gas during upstream Oil and Gas Operations.

**FLOWBACK** means the process of allowing fluids and entrained solids to flow from a Well following a treatment, either in preparation for a subsequent phase of treatment or in preparation for cleanup and returning the Well to production. The term flowback also means the fluids and entrained solids that emerge from a Well during the flowback process. The flowback period begins when material introduced into the Well during the treatment returns to the surface following hydraulic fracturing or refracturing. The flowback period ends when gas is produced in separable quantities.

**INVESTIGATION-DERIVED WASTE** means those materials generated during site investigation and remediation activities, including but not limited to personal protective equipment, soil cuttings, drilling mud, purged Groundwater, decontamination fluids, and disposable or consumable equipment and supplies.

**LAND APPLICATION** means the disposal method by which treated E&P Waste is spread upon and mixed into soils.

**LAND TREATMENT** means the treatment method by which E&P Waste is treated to result in a reduction of hydrocarbon concentration by biodegradation and other natural attenuation processes. Land Treatment may be enhanced by tilling, disking, aerating, composting and the addition of nutrients or microbes.

**OILY WASTE** means those materials containing crude oil, condensate, or other material, such as soil, frac sand, drilling fluids, cuttings, and pit sludge that contain hydrocarbons.

**POLLUTION** means man-made or man-induced contamination or other degradation of the physical, chemical, biological, or radiological integrity of air, water, soil, or biological resource that is not authorized by the Commission's Rules or applicable regulations promulgated by another federal, state, or local government agency.

**PRODUCTIVITY TEST** means a test for determination of a reservoir's ability to produce economic quantities of oil or gas.

**PRODUCTION EVALUATION** means an evaluation of production potential for determination of requirements for infrastructure capacity and equipment sizing.

**UPSET CONDITION** means a sudden, unavoidable failure, breakdown, or malfunction, beyond the reasonable control of the Operator, of any equipment or process that results in abnormal operations and requires correction.

**VENTING** means intentionally allowing natural gas to escape into the air.

**ENVIRONMENTAL IMPACT PREVENTION  
900 SERIES**

**901. GENERAL STANDARDS**

- a. **Addressing Impacts and Potential Impacts to Public Health, Safety, Welfare, the Environment, and Wildlife Resources.** Whenever the Director has reasonable cause to believe that an Operator, in the conduct of any Oil and Gas Operations, is performing or has performed any act or practice which impacts or threatens to impact public health, safety, welfare, the environment, or wildlife resources, the Director may require the Operator to take action to prevent the potential impacts to public health, safety, welfare, the environment, or wildlife resources, including but not limited to:
- (1) Suspending operations or initiating immediate mitigation measures until the cause of the threat or potential threat to public health, safety, welfare, the environment, or wildlife resources is identified and the threat or potential threat to public health, safety, welfare, the environment, or wildlife resources is corrected.
  - (2) Submitting a Form 27, Site Investigation and Remediation Workplan, for site characterization, remediation, monitoring, permitting, and the establishment of points of compliance.
  - (3) If the Director requires an Operator to take action pursuant to this Rule 901.b, the Operator may appeal the Director's decision to the Commission pursuant to Rule 503.g.(10). The matter will not be assigned to an Administrative Law Judge pursuant to Rule 503.h. The Commission will hear the appeal at its next regularly scheduled meeting. Operators will continue to comply with any requirements identified by the Director pursuant to this Rule 901.b until the Commission makes a decision on the appeal. The Commission may uphold the Director's decision if the Commission determines the Director had reasonable cause to believe that an Operator's actions impacted or threatened to impact public health, safety, welfare, the environmental, or wildlife resources.
- b. **Incorporation by Reference.** Pursuant to § 24-4-103(12.5), C.R.S., the Commission hereby incorporates by reference into these 900 Series Rules the following codes, standards, guidelines, and rules of other federal agencies, state agencies, and nationally recognized organizations and associations.
- (1) **Where Materials May Be Found.**
    - A. Copies of all materials incorporated by reference are available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203.
    - B. Copies of all materials incorporated by reference are also available at the office or website of the agency or organization that issued the code, standard, guideline, or rule, as specified below.
    - C. For any materials that are not available to the public on the internet for no cost, copies of the materials may also be examined at any state publications depository library.
  - (2) **Current Version.** Only the version of the code, standard, guideline, or rule in effect as of [rule effective date], and no later amendments or editions of the code, standard, guideline, or rule are incorporated by reference, unless otherwise specified below.
  - (3) **Materials Incorporated.**

- A.** Colorado Department of Public Health and Environment, Water Quality Control Commission (WQCC), Regulation Number 41, The Basic Standards for Ground Water, 5 C.C.R. § 1002-41, *et seq.* (hereinafter “WQCC Regulation 41”). Only the version of WQCC Regulation 41 in effect as of [rule effective date] applies; later amendments do not apply. WQCC Regulation 41 may be examined at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and is available online at <https://www.colorado.gov/pacific/cdphe/water-quality-control-commission-regulations>.
- B.** Colorado Department of Public Health and Environment, Solid and Hazardous Waste Commission (SHWC), Regulations Pertaining to Solid Waste, 6 C.C.R. § 1007-2, *et seq.* (hereinafter “SHWC Solid Waste Regulations”). Only the version of the SHWC Solid Waste Regulations in effect as of [rule effective date] applies; later amendments do not apply. The SHWC Solid Waste Regulations may be examined at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and are available online at <https://www.colorado.gov/pacific/cdphe/solid-waste-regulations>.
- C.** Colorado Department of Public Health and Environment, Solid and Hazardous Waste Commission (SHWC), Regulations Pertaining to Hazardous Waste, 6 C.C.R. § 1007-3, *et seq.* (hereinafter “SHWC Hazardous Waste Regulations”). Only the version of the SHWC Hazardous Waste Regulations in effect as of [rule effective date] applies; later amendments do not apply. The SHWC Hazardous Waste Regulations may be examined at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and are available online at <https://www.colorado.gov/pacific/cdphe/hazardous-waste-regulations>.
- D.** Colorado Department of Public Health and Environment, Air Quality Control Commission (AQCC), Regulation No. 7, Control of Ozone Via Ozone Precursors and Control of Hydrocarbons Via Oil and Gas Emissions (Emissions of Volatile Organic Compounds and Nitrogen Oxides), 5 C.C.R. § 1001-9, *et seq.* (hereinafter “AQCC Regulation No. 7”). Only the version of AQCC Regulation No. 7 in effect as of [rule effective date] applies; later amendments do not apply. AQCC Regulation No. 7 may be examined at the Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246, and is available online at <https://www.colorado.gov/pacific/cdphe/aqcc-regs>.
- E.** Colorado State Board of Examiners of Water Well Construction and Pump Installation Contractors, Rules and Regulations for Water Well Construction, Pump Installation, Cistern Installation, and Monitoring and Observation Hole/Well Construction, 2 C.C.R. § 402-2, *et seq.* (hereinafter State Engineer’s Water Well Construction and Permitting Rules”). Only the version of the State Engineer’s Water Well Construction Rules in effect as of [rule effective date] applies; later amendments do not apply. The State Engineer’s Water Well Construction Rules may be examined at the Colorado Division of Water Resources, 1313 Sherman St., Suite 821, Denver, CO 80203, and are available online at <http://water.state.co.us/groundwater/BOE/Pages/BOERules.aspx>.
- F.** U.S. Environmental Protection Agency, Test Methods for Evaluating Solid Waste: Physical/Chemical Methods (May 2019 edition) (hereinafter, “EPA SW-846”). Only the May 2019, “Update VI” edition of EP SW-846 applies to this rule; later amendments do not apply. EPA SW-846 may be examined at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and is available online at <https://www.epa.gov/hw-sw846/sw-846-compendium>.
- G.** U.S. Environmental Protection Agency, 40 C.F.R. § 60.5375a, What GHG and VOC standards apply to well affected facilities? (2016) (hereinafter, “40 C.F.R. § 60.5375a”).

Only the version of 40 C.F.R. § 60.5375a that became effective on August 2, 2016 applies to this rule; later amendments do not apply. 40 C.F.R. § 60.5375a may be examined at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and is available online at <https://www.govinfo.gov/content/pkg/FR-2016-06-03/pdf/2016-11971.pdf>.

- H. U.S. Environmental Protection Agency, Regional Screening Levels for Chemical Contaminants at Super Fund Sites (hereinafter, "EPA's RSLs"). Only the version of EPA's RSLs in effect as of [rule effective date] applies; later amendments do not apply. EPA's RSLs may be examined at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and are available online at <https://www.epa.gov/risk/regional-screening-levels-rsls>.
- I. Western Coordinating Committee on Nutrient Management, Soil, Plant, and Water Reference Methods for the Western Region (4th edition, 2013). Only the 4th edition (2013) of the Soil, Plant, and Water Reference Methods for the Western Region applies to this rule; later amendments do not apply. Soil, Plant, and Water Reference Methods for the Western Region may be examined at the Soil Science Society of America, 5585 Guilford Road, Madison, WI 53711, and is available online at <https://www.naptprogram.org/files/napt/publications/method-papers/western-states-methods-manual-2013.pdf>.

## **902. POLLUTION**

- a. Operators will prevent Pollution.
- b. Operators will prevent adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations and will protect and minimize adverse impacts to public health, safety, welfare, the environment, and wildlife resources.
- c. Operators will prevent the unauthorized discharge or disposal of oil, condensate, gas, E&P waste, chemical substances, trash, discarded equipment, and other oil field waste.
- d. No Operator, in the conduct of any Oil or Gas Operation, may perform any act or practice which violates numeric or narrative water quality standards or classifications established by the Water Quality Control Commission for Waters of the State, or any Point of Compliance established by the Director pursuant to Rule 914. The Director may require the Operator to establish one or more points of compliance for any event of Pollution, which will be complied with by all parties determined to be a responsible party for such Pollution.
- e. No Operator, in the conduct of any Oil or Gas Operation, may perform any act or practice which constitutes a violation of any applicable air quality laws, regulations, or permits as administered by the Air Quality Control Commission or any other local or federal agency with authority for regulating air quality associated with such activities.
- f. No person may accept water produced from Oil and Gas Operations, or other oil field waste for disposal in a commercial disposal facility, without first obtaining a Certificate of Designation from the County in which such facility is located, in accordance with the regulations pertaining to solid waste disposal sites and facilities as promulgated by the Colorado Department of Public Health and Environment.

## **903. VENTING OR FLARING NATURAL GAS**

- a. **Notice to Local Governments and Emergency Responders.**

- (1) **Prior Notice.** As soon as practicable prior to any planned combustion of natural gas allowed pursuant to this Rule 903, Operators will provide verbal, written, or electronic notice to the Local Governmental Designee, if applicable, and to the local emergency response authorities.
- (2) **Subsequent Notice.** In the event of unplanned combustion, Operators will immediately provide verbal, written, or electronic notice to the Local Governmental Designee, if applicable, and to the local emergency response authorities.
- (3) **Waiver.** Local Governments and local emergency response authorities may waive their right to notice under this Rule 903.a at any time, pursuant to Rule 302.f.(1).A.
- (4) **Recordkeeping.** Operators will maintain records of notice provided pursuant to this Rule 903.a, and provide the records to the Director upon request.

**b. Emissions During Drilling Operations.**

- (1) Operators will capture or combust gas escaping from the Well during drilling operations using the best available technology.
- (2) If capturing or combusting gas would pose safety risks to onsite personnel, Operators may request the Director's approval to allow gas to escape into the air. Operators may obtain verbal approval, but will document verbal approval by submitting a Form 4, Sundry Notice within 7 days. The Operator need not seek a formal variance pursuant to Rule 502.a. A Form 23 may also be required if the criteria in Rule 428.c. are met.
- (3) Combustors will be located a minimum of 100 feet from the surface hole location and enclosed.

**c. Emissions During Completion Operations.**

**(1) Green Completions Practices.**

- A.** Green Completion Practices are required on all newly completed and re-completed oil and gas wells.
  - B.** To comply with the Green Completion Practices required by Rule 903.c.(1).A, unless otherwise specified in this Rule 903.c, Operators will adhere to the standards for well completion and re-completion in 40 C.F.R. § 60.5375a, as incorporated by reference in Rule 901.c.
- (2) Prior to the Commencement of Production Operations, Operators will capture gas, unless flaring is permitted pursuant to Rule 903.c.(3).
  - (3) Prior to the Commencement of Production Operations, Operators may Flare gas during completion operations with specific written approval from the Director under any one of the following circumstances:
    - A.** The Operator obtains the Director's approval to Flare through an approved Gas Capture Plan pursuant to Rule 903.e.
    - B.** The Operator submits, and the Director approves, a Form 4, Sundry Notice, allowing the Operator to flare gas that would otherwise not be permitted pursuant to Rule 903.c.

- i. On the Form 4, Sundry Notice, the Operator will explain why Flaring is necessary to protect or minimize adverse impacts to public health, safety, welfare, the environment, or wildlife resources.
    - ii. On the Form 4, Sundry Notice, the Operator will estimate anticipated Flaring volume and duration.
    - iii. On the Form 4, Sundry Notice, the Operator will explain its plan to connect the facility to a gathering line or otherwise utilize the gas, in the future.
    - iv. The Director may approve a Form 4, Sundry Notice requesting permission to Flare during completion if the Director determines that the Flaring is necessary to protect public health, safety, welfare, the environment, and wildlife resources.
  - C. The Operator may direct gas to an emission control device and combust the gas if necessary to ensure safety or during an Upset Condition. Within 7 days of the Flaring event, the Operator will submit a Form 4, Sundry Notice reporting the Upset Condition or safety issues that resulted in the Flaring event and include the estimated volume of gas Flared.
- d. **Emissions During Production.**
  - (1) After the Commencement of Production Operations at an Oil and Gas Location, Venting or Flaring of natural gas produced from any Completed Well is prohibited except under the following circumstances:
    - A. Gas Flared or Vented during an Upset Condition is allowed for a period necessary to address the upset, not to exceed 24 cumulative hours. Operators will maintain records of the date, cause, estimated volume of gas Flared or Vented, and duration of each Upset Condition resulting in Flaring or Venting, and will make such records available to the Director upon request.
    - B. Gas Vented during gauging, sampling, or the loading out of liquids to transport vehicles, as long as the Venting is not prohibited by AQCC Regulation No. 7, 5 C.C.R. § 1001-9, as incorporated by reference in Rule 901.c.
    - C. Gas Vented during active and required maintenance, as long as the Venting is not prohibited by AQCC Regulation No. 7, 5 C.C.R. § 1001-9, as incorporated by reference in Rule 901.c.
    - D. Gas Vented from an access point on a storage tank that does not (and that is not required by AQCC Regulation No. 7, 5 C.C.R. § 1001-9 to) employ air pollution control equipment, unless the Venting is otherwise prohibited by the Commission's Rules or AQCC Regulation No. 7, 5 C.C.R. § 1001-9, as incorporated by reference in Rule 901.c.
    - E. If approved by the Director on a Gas Capture Plan pursuant to Rule 903.e, gas Vented or Flared during a Production Evaluation or Productivity Test for a period not to exceed 60 days.
    - F. Gas Vented during a Bradenhead Test or Bradenhead Monitoring pursuant to Rule 419.
    - G. Well liquids unloading, as long as the well liquids unloading employs best management practices to minimize hydrocarbon emissions as required by the AQCC Regulation No. 7, 5 C.C.R. § 1001-9, as incorporated by reference in Rule 901.c. Operators will flare



gas escaping into the air during liquids unloading if the escape of the gas poses a risk to public health, safety, or welfare due to the risk of a fire, explosion, or inhalation.

- (2) At wells that are not connected to a gathering line, the Operator may request permission from the Director to Flare natural gas, or to Vent casinghead gas, by submitting a Sundry Notice, Form 4. The Director may approve a request to Flare, or Vent casinghead gas, for a period not to exceed 12 months, if the Director determines that Flaring the gas or Venting casinghead gas is necessary to produce the Well and will protect public health, safety, welfare, the environment, and wildlife resources. The Form 4, Sundry Notice will describe:

- A. The estimated volume and content of the gas to be Flared;
- B. Gas analysis including hydrogen sulfide for the subject well;
- C. For requests based on lack of available infrastructure, the Operator will state why the Well cannot be connected to infrastructure;
- D. When the Well(s) will be connected to infrastructure, and why the Operator commenced production of the Well before infrastructure was available; and
- E. Options for using the gas instead of Flaring or Venting, including to generate electricity, gas processing to natural gas liquid, or other options for using the gas.

(3) **Measurement and Reporting.**

- A. Operators will measure the volume of gas Vented, Flared, or used at an Oil and Gas Location by direct measurement or by estimating the volume of gas Vented or Flared. The volume of gas Vented, Flared, or used will be reported on a per well basis on the Operator's Form 7, Monthly Report of Operations.
- B. Operators will notify all mineral owners of the volume of oil and gas that is Vented, Flared, or used on-lease. Operators will maintain records of such notice and provide the records to the Director upon request.

- (4) All Flared gas will be combusted in an enclosed device with 98% control efficiency for hydrocarbons.

- (5) **Pits.** Pits with uncontrolled actual Volatile Organic Compound (VOC) emissions of greater than 5 tons per year (tpy) will not be located within 2,000 feet of a Building Unit or a Designated Outside Activity Area. Operators will provide the basis for their determination of applicability under this Rule to the Director on a Form 4, Sundry Notice no later than [1 year from rule effective date].

e. **Gas Capture Plans.**

(1) **Gas Capture Plan Submission.**

- A. Operators will submit a Gas Capture Plan as an attachment to their Form 2A, pursuant to Rule 304.c.(12).
- B. Gas Capture Plans will include the following information:
  - i. A description and map of the location of the closest natural gas gathering system or point of sale.
  - ii. The name of the company operating the closest natural gas gathering system.

- iii. The Operator's plan for connecting their facility to the natural gas gathering systems, including:
    - aa. Discussion of rights of way issues;
    - bb. Construction schedules;
    - cc. Date of availability of the gas gathering line;
    - dd. Design capacity and capacity demand for the nearest gathering system at the time of application; and
    - ee. Alternatives to flaring prior to connection to gas gathering lines, including, but not limited to: onsite use, natural gas liquid processing, electrical power generation, gas to liquid, or other options.
  - iv. For a Wildcat (Exploratory) Well or if the Operator anticipates conducting a Production Evaluation or Productivity Test, a description of the planned Production Evaluation or Productivity Test and any issues related to the Operator's ability to connect to a gas gathering line.
  - v. Any anticipated safety risks that will require the Operator to allow gas to escape, rather than being captured during drilling operations, pursuant to Rule 903.b.(2).
- (2) **Verification.** Operators will verify that their facility has been connected to a gathering line by submitting a Form 10, Certificate of Clearance pursuant to Rule 219.
- (3) **Compliance.** If an Operator does not connect its facility to a gathering line as described in the Operator's Gas Capture Plan, the Director may require the Operator to shut in a Well until it is connected to a gathering line.

#### 904. EVALUATING CUMULATIVE AIR EMISSIONS IMPACTS

- a. As a condition of approving an Oil and Gas Development Plan pursuant to Rule 307.b.(1), the Commission may require an Operator to participate in studies evaluating cumulative air emissions impacts of oil and gas development, conducted in consultation with the Colorado Department of Public Health and the Environment.
- b. The study(s) will include, but not be limited to, evaluation of:
  - (1) Cumulative greenhouse gas emissions; and
  - (2) Cumulative hazardous air pollutant emissions and monitoring techniques.

#### 905. MANAGEMENT OF E&P WASTE

##### a. General Requirements.

- (1) **Operator Obligations.** Operators will ensure that E&P Waste is properly stored, handled, transported, treated, recycled, or disposed to prevent threatened or actual adverse environmental impacts to air, water, soil, or biological resources or to the extent necessary to ensure compliance with the concentration levels in Table 915-1, and WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.

- (2) **Protecting Waters of the State.** Operators will conduct E&P Waste management activities, and construct and operate all Oil and Gas Locations, to protect the Waters of the State from any adverse environmental impacts caused by E&P Waste.
- (3) **Reuse and Recycling.** To encourage and promote waste minimization, Operators may propose plans for managing E&P Waste through beneficial use, reuse, and recycling by submitting a written management plan to the Director for approval on a Form 4, Sundry Notice. Such plans will describe, at a minimum:
- A. The type(s) of waste;
  - B. The proposed volume and use of the waste;
  - C. The method of waste treatment;
  - D. Product quality assurance;
  - E. Final disposition of the waste;
  - F. A copy of any certification or authorization that may be required by other laws and regulations;
  - G. A proposed timeline for reuse and recycling; and
  - H. Any additional information requested by the Director.
- (4) **Waste Management Plans.** Each Operator that generates E&P Waste as a result of their operations will prepare a comprehensive Waste Management Plan detailing how the Operator will treat, store, dispose, and transport all types of waste generated. The Waste Management Plan will include any proposed haul routes.
- A. Operators will submit their Waste Management Plans with their Form 2A, Oil and Gas Development Plan or Oil and Gas Location Assessment, pursuant to Rule 304.c.(11).
  - B. If an Operator seeks to change its E&P Waste management practice, the Operator will update its Waste Management Plan by submitting a revised Waste Management Plan for the Director's approval or denial on a Form 4, Sundry Notice.
- (5) Should future conditions at any Oil and Gas Location or Oil and Gas Facility where produced fluids and E&P Waste were generated, stored, treated, or disposed indicate contaminant concentrations in soils or Groundwater exceeding applicable standards, then further investigation, remediation, and reclamation may be required by the current Operator of record or the last Operator of record if the location is no longer active.
- b. **Waste Transportation.**
- (1) **Off-Site Transportation Within Colorado.** Operators will only transport E&P Waste off-site within Colorado to facilities authorized by the Director or waste disposal facilities approved to receive E&P Waste by the Colorado Department of Public Health and Environment.
  - (2) **Off-Site Transportation Outside of Colorado.** Operators will only transport E&P Waste off-site outside of Colorado for treatment to facilities authorized and permitted by the appropriate regulatory agency in the receiving state.

(3) **Waste Generator Requirements.** Any Operator that generates E&P Waste that is transported off-site will maintain, for not less than 5 years, copies of each invoice, bill, or ticket, and such other records as necessary to document the requirements listed in Rule 905.b.(3).A–F. Such records will be signed by the transporter, and provided to the Director upon request.

- A. The date of the transport;
- B. The identity of the waste generator;
- C. The identity of the waste transporter;
- D. The location of the waste pickup site;
- E. The type and volume of waste; and
- F. The name and location of the treatment or disposal site.

c. **Produced Water.**

(1) **Treatment of Produced Water.** Operators will treat produced water prior to placing it in a production pit to prevent crude oil, condensate, or hydrocarbon sheen from entering the pit.

(2) **Produced Water Disposal.** Produced water may be disposed as follows:

- A. Injection into a Class II well, permitted pursuant to the Commission's 800 Series Rules;
- B. Evaporation/percolation in a properly permitted pit at an Oil and Gas Location, operated in accordance with permit conditions and in a manner that prevents adverse impacts to Groundwater resources;
- C. Disposal at permitted commercial facilities;
- D. Discharging into Waters of the State, pursuant to the Water Quality Control Act and all applicable regulations.
  - i. Operators will provide the Colorado discharge permit number, latitude and longitude coordinates, pursuant to Rule 216.e, of the discharge outfall, and sources of produced water on a Form 26, Source of Produced Water for Disposal, and will include a U.S. Geological Survey topographic map showing the location of the discharge outfall.
  - ii. Produced water discharged pursuant to this Rule 905.c.(2).D may be put to beneficial use in accordance with applicable state statutes and regulations governing the use and administration of water.
- E. Evaporation in a properly lined pit at a Centralized E&P Waste Management Facility permitted pursuant to Rule 907.

(3) **Produced Water Reuse and Recycling.** Operators may reuse produced water for enhanced recovery, drilling, and other approved uses in a manner consistent with existing water rights and in consideration of water quality standards and classifications established by the Water Quality Control Commission for Waters of the State, or any Point of Compliance established by the Director pursuant to Rule 914.

- (4) **Mitigation.** Operators may use water produced during operation of an oil or gas Well to provide an alternative domestic water supply to Surface Owners within the oil or gas field, pursuant to all applicable laws, including, but not limited to, obtaining the necessary approvals from the Water Quality Control Division for constructing a new “waterworks,” as defined by § 25-1.5-203(1)(b)(II)(A), C.R.S. Any produced water not so used will be disposed of pursuant to Rule 905.c.(2) or (3). Providing produced water for domestic use within the meaning of this Rule 905.c.(4) will not constitute an admission by the Operator that the well is dewatering or impacting any existing water well. The water produced will be to the benefit of the Surface Owner within the oil and gas field and may not be sold for profit or traded.
- (5) **Water Sharing Agreements.** Operators will submit agreements for sharing produced water for the Director’s approval or denial no less than 60 days in advance of implementing the water sharing plan. The plan will be submitted as a Waste Management Plan pursuant to Rule 905.a.(4).

d. **Drilling Fluids.**

- (1) **Reuse and Recycling.** Operators may recycle drilling pit contents for reuse at another drilling pit that is properly permitted and operated pursuant to Rules 908, 909, and 910.
- (2) **Treatment and Disposal.** Operators will treat or dispose of drilling fluids through:
- A. Injection into a Class II well permitted pursuant to the Commission’s 800 Series Rules;
  - B. Disposal at a commercial solid waste disposal facility; or
  - C. Land Treatment or Land Application at a Centralized E&P Waste Management Facility permitted pursuant to Rule 907.
- (3) **Additional Authorized Disposal of Water-Based Bentonitic Drilling Fluids.** Operators may dispose of water-based bentonitic drilling fluids through one of the following methods:
- A. Drying and burial in pits on non-crop land, if:
    - i. The resulting concentrations will not exceed the concentration levels in Table 915-1; and
    - ii. The Director approves the Operator’s plan for closing the pit pursuant to a prior approved Form 27, Site Investigation and Remediation Workplan.
  - B. Land Application if permitted by a Waste Management Plan approved by the Director pursuant to Rule 905.a.(4), and if the Operator complies with the following standards:
    - i. **Application Methods.** Acceptable methods of Land Application include, but are not limited to, production facility construction and maintenance, lease road maintenance, and offsite beneficial reuse, subject to Rule 905.a.(4).
    - ii. **Land Application Requirements.**
      - aa. The average thickness of water-based bentonitic drilling fluid waste applied will be no more than 3 inches.
      - bb. Operators will incorporate the drilling fluid waste through mechanical means into the uppermost soil horizon.

- cc. The waste will be applied to prevent ponding or erosion and will be incorporated as a beneficial amendment into the native soils within 10 days of application.
    - dd. Operators may only apply water-based bentonitic drilling fluid to Crop Land.
    - ee. Concentrations of contaminants of concern in water-based bentonitic drilling fluids will not exceed those in Table 915-1 prior to application.
    - ff. The results of sampling analysis demonstrating compliance with Table 915-1 will be provided to the Director upon request.
  - iii. **Surface Owner Approval.** Operators will obtain written authorization from the Surface Owner prior to Land Application of water-based bentonitic drilling fluids and provide the written authorization to the Director upon request.
  - iv. **Recordkeeping.** Operators will maintain records of the information listed in Rule 905.d.(3).B.iv.aa–cc for 5 years, pursuant to Rule 206.f. Operators will provide all such records to the Director within 5 days, upon request:
    - aa. The source of any water-based bentonitic drilling fluids applied;
    - bb. The volume of any water-based bentonitic drilling fluids applied; and
    - cc. The location where the Land Application of the water-based bentonitic drilling fluid occurred.
  - v. **Operator Responsibility.** The Operator with control and authority over the Well(s) from which the water-based bentonitic drilling fluid wastes were obtained retains responsibility for the Land Application operation. All Operators will cooperate with the Director in responding to complaints regarding Land Application of water-based bentonitic drilling fluids.
- e. **Oily Waste.**
  - (1) **Treatment and Disposal.** Operators may treat or dispose of Oily Waste through one of the following methods:
    - A. Disposal at a commercial solid waste disposal facility;
    - B. Land Treatment onsite pursuant to 905.e.(2); or
    - C. Land Treatment at a Centralized E&P Waste Management Facility permitted pursuant to Rule 907.
    - D. Onsite treatment, for Oily Waste other than tank bottoms, using alternative methods described on a Form 27, Site Investigation and Remediation Workplan submitted to the Director for prior approval.
  - (2) **Land Treatment Requirements.**
    - A. Prior to commencing any Land Treatment, Operators will submit and obtain approval of a Form 27, Site Investigation and Remediation Workplan. The Form 27 will include, at a minimum:

- i. A site diagram depicting the location of the planned Land Treatment area;
  - ii. The duration of the planned treatment; and
  - iii. The Operator's plan for final disposition of the treated Oily Waste.
- B. Operators will adhere to the approved plan provided with the Form 27, and Rules 907 and 915, when performing Land Treatment.
- C. Operators will remove free oil from the Oily Waste prior to Land Treatment.
- D. Operators will spread Oily Waste evenly to prevent pooling, ponding, and runoff.
- E. Operators will prevent contamination of stormwater runoff, Groundwater, and surface water.
- F. Operators will enhance biodegradation by routine disking, tilling, aerating, or addition of nutrients, microbes, water or other amendments, at a predetermined frequency pursuant to the approved Form 27.
- G. When Operators incorporate land-treated Oily Waste in place or beneficially reuse it, the treated waste may not exceed the cleanup concentrations in Table 915-1, including inorganic constituents and metals.
- H. **Surface Owner Consent.**
  - i. If an Operator intends to conduct Land Treatment in an area not being utilized for Oil and Gas Operations, the Operator will obtain the Surface Owner's consent to conduct the Land Treatment operations on the Surface Owner's property, and provide a copy of the signed agreement with the Surface Owner to the Director with the Form 27 prior to proceeding with Land Treatment.
  - ii. If an Operator intends to conduct Land Treatment on an approved Oil and Gas Location prior to completion of interim reclamation or on the surface disturbance remaining after interim reclamation, the Operator will provide notice to the Surface Owner at least 30 days before commencing the Land Treatment. Notice will, at a minimum, include a site diagram depicting the location of the planned Land Treatment area, the duration of the planned treatment, and planned final disposition of the waste.
- I. Operators will conduct Land Treatment in a manner that does not preclude compliance with Rules 1003 and 1004.
- J. Operators will not conduct Land Treatment of Oily Waste on an Oil and Gas Location after the final Well has been plugged. Oily Waste will be treated or disposed pursuant to Rule 905.e.1.(A) or (C).
- K. Operators will conduct Land Treatment in a manner that achieves compliance with Table 915-1 concentrations in three years or less. If the treated waste does not comply with Table 915-1 within three years of the date of Land Treatment, the Operator will submit a Form 28, Centralized E&P Waste Management Facility Permit at least 90 days in advance of the 3 year anniversary of the Land Treatment Form 27 approval date. Failure to comply with Table 915-1 in 3 years or submit a Form 28, will result in the requirement to immediately remove and properly dispose any remaining Oily Waste pursuant to Rule 905.e.1.(A) or (C).

- f. **Other E&P Waste.** Operators may treat and dispose other E&P Waste, including but not limited to workover fluids, tank bottoms, pigging wastes from pipelines, and gas gathering, processing, and storage wastes through one of the following methods:
- (1) Disposal at a commercial solid waste disposal facility;
  - (2) Treatment at a Centralized E&P Waste Management Facility permitted pursuant to Rule 907;
  - (3) Injection into a Class II injection Well permitted pursuant to the Commission's 800 Series Rules; or
  - (4) An alternative method proposed in a Waste Management Plan pursuant to Rule 905.a.(4) and approved by the Director.
- g. **Drill Cuttings.** Operators will treat or dispose of drill cuttings through one of the following methods:
- (1) **Oily Waste.** Operators will manage the following drill cuttings as Oily Waste pursuant to Rule 905.e:
    - A. Drill cuttings generated from oil-based drilling fluids;
    - B. Drill cuttings that exceed Table 915-1 concentrations for organic compounds in soil; and
    - C. Drill cuttings that have not been sampled and analyzed to demonstrate compliance with Table 915-1 for organic compounds in soil.
  - (2) **Drill Cuttings.** Operators will demonstrate compliance with Table 915-1 through sampling and analysis. Operators may manage drill cuttings that comply with Table 915-1 and are generated using water-based bentonitic drilling fluids through one of the following methods:
    - A. Disposal at a commercial solid waste disposal facility;
    - B. Disposal at a Centralized E&P Waste Management Facility permitted pursuant to Rule 907;
    - C. Subject to Surface Owner approval, Land Application as a beneficial soil amendment to native soil subject to a Waste Management Plan approved pursuant to Rule 905.a.(4).
    - D. If permitted by Rule 1003.d, and subject to Surface Owner approval, drying and burial in on-location drilling pits that are documented with a Form 27, Site Investigation and Remediation Workplan submitted for prior Director approval for closure; or
    - E. Subject to Surface Owner approval, burial in a Cuttings Trench, subject to a Form 27, Site Investigation and Remediation Workplan submitted for prior Director approval.

## **906. MANAGEMENT OF NON-E&P WASTE**

- a. Certain wastes generated by Oil and Gas Operations that do not meet the 100 Series definition of E&P Waste are regulated as solid or hazardous wastes by the Colorado Department of Public Health and Environment, Solid and Hazardous Waste Commission (SHWC). Operators will properly identify and dispose of these wastes pursuant to applicable state and federal regulations.



- b. The SHWC Hazardous Waste Rules, as incorporated by reference in Rule 901.c, require that a hazardous waste determination be made for any non-E&P solid waste. Operators will comply with all hazardous waste storage, treatment, and disposal requirements in the SHWC's Hazardous Waste Rules, as incorporated by reference in Rule 901.c.
- c. All non-hazardous/non-E&P wastes are considered solid waste. Operators will comply with all storage, treatment, and disposal requirements in the SHWC's Solid Waste Rules, as incorporated by reference in Rule 901.c.
- d. Operators will not burn or bury non-E&P waste on Oil and Gas Locations.

#### **907. CENTRALIZED E&P WASTE MANAGEMENT FACILITIES**

- a. **Applicability.** Operators may establish non-commercial, Centralized E&P Waste Management Facilities for the treatment, disposal, recycling, or beneficial reuse of E&P Waste. This Rule 907 applies only to non-commercial facilities, which means the Operator does not represent itself as providing E&P Waste management services to third parties, except as part of a unitized area or joint operating agreement or in response to an emergency. Centralized E&P Waste Management Facilities may include components such as Land Treatment or Land Application sites, pits, and recycling equipment.
- b. **Permit Requirements.** Before any Operator commences construction of a Centralized E&P Waste Management Facility, the Operator will file and obtain the Director's approval of an application on a Form 28, Centralized E&P Waste Management Facility Permit and pay a filing fee established by the Commission (see Appendix III). In addition to the information required for and provided on the approved Form 2A, Oil and Gas Location Assessment, the Form 28 will contain the following:
  - (1) The name, address, phone and email address of the Operator, and a designated contact person.
  - (2) The name, address, phone number, email address, and written authorization of the Surface Owner of the site, if not the Operator.
  - (3) The legal description of the site.
  - (4) A general topographic, geologic, and hydrologic description of the site, including immediately adjacent land uses, a topographic map of a scale no less than 1:24,000 showing the location, and the average annual precipitation and evaporation rates at the site.
  - (5) Centralized E&P Waste Management Facility Siting Requirements.
    - A. A site plan showing drainage patterns and any diversion or containment structures, and facilities such as roads, fencing, tanks, pits, buildings, and other construction details.
    - B. Scaled drawings of entire sections containing the proposed facility. The field measured distances from the nearer north or south and nearer east or west section lines will be measured at 90 degrees from said section lines to facility boundaries and referenced on the drawing. A survey will be provided including a complete description of established monuments or collateral evidence found and all aliquot corners.
    - C. The facility will be designed to control public access, prevent unauthorized vehicular traffic, provide for site security both during and after operating hours, and prevent illegal dumping of wastes. Appropriate measures will also be implemented to prevent access to the Centralized E&P Waste Management Facility by wildlife or domestic animals.

- D. Centralized E&P Waste Management Facilities will have a fire lane of at least 10 feet in width around the perimeter of the active treatment areas and within the facility fencing. In addition, a buffer zone of at least 10 feet will be maintained within the perimeter fire lane.
  - E. Surface water diversion structures, including, but not limited to, berms and ditches, will be constructed to accommodate a 100-year, 24-hour storm event. The facility will be designed and constructed with a run-on control system to prevent flow onto the facility during peak discharge and a run-off control system to contain the water volume from a 25-year, 24-hour storm event.
  - F. Operators will provide evidence that they have complied with any Local Government land use regulations and facility siting or construction or operation requirements.
- (6) **Waste Profile.** For each type of waste, Operators will estimate the amounts to be received and managed by the facility on a monthly average basis. For each waste type to be treated, Operators will complete a characteristic waste profile, which will include analysis of representative waste samples by an accredited laboratory.
- (7) **Facility Design and Engineering.** Facility design and engineering data, including plans and elevations, design basis, calculations, and process description. Facility design, engineering, and as-constructed plans will be reviewed and stamped by a Colorado Professional Engineer (P.E.).
- A. Geologic data, including, but not limited to:
    - i. Type and thickness of unconsolidated soils;
    - ii. Type and thickness of consolidated bedrock, if applicable;
    - iii. Local and regional geologic structures; and
    - iv. Any geologic hazards that may affect the design and operation of the facility.
  - B. Hydrologic data, including, but not limited to:
    - i. Water wells within 1 mile of the site boundary including, but not limited to, information such as well construction details, total depth, static water level, screened interval(s), yields, and aquifer name(s).
    - ii. Surface water features within 2 miles;
    - iii. Site location in relation to the floodplain of nearby surface water features;
    - iv. Depth to shallow Groundwater and major aquifers;
    - v. Existing quality of shallow Groundwater;
    - vi. Hydrologic properties of shallow Groundwater at the location including flow direction, flow rate, and potentiometric surface; and
    - vii. An evaluation of the potential for impacts to nearby surface water and Groundwater.

- C. Engineering data, including, but not limited to:
- i. Type and quantity of material required for use as a liner, including design components;
  - ii. Location and depth of cut for liners;
  - iii. Location, dimensions, and grades of all surface water diversion structures;
  - iv. Location and dimensions of all surface water containment structures; and
  - v. Location of all proposed facility structures and access roads.

**(8) Operating Plan.** An operating plan, including, but not limited to:

- A. A detailed description of the method of treatment, loading rates, and application of nutrients and soil amendments;
- B. Dust and moisture control;
- C. Sampling;
- D. Inspection and maintenance;
- E. Emergency response;
- F. Recordkeeping;
- G. Site security;
- H. Hours of operation;
- I. Stormwater Management Plan;
- J. Noise and odor mitigation; and
- K. Final disposition of waste. If the Operator intends to beneficially reuse treated waste, the Operator will describe the reuse and method of product quality assurance.

**(9) Groundwater Monitoring.**

- A. **Water Wells.** Operators will collect water samples from water wells known to the Operator or registered with the Colorado State Engineer, following all protocols established by Rule 615, except that the Operator will collect water samples from known water wells within 1 mile of the proposed Centralized E&P Waste Management Facility.
- B. **Site-Specific Monitoring Wells.**
  - i. Upon the Director's request, the Operator will install site-specific monitoring wells to ensure compliance with the concentration levels in Table 915-1 and WQCC Regulation 41, as incorporated by reference in Rule 901.c., by establishing points of compliance.

- ii. All monitoring well construction must be completed pursuant to the State Engineer's Water Well Construction and Permitting Rules, as incorporated by reference in Rule 901.c.
    - iii. Where monitoring is required, the direction of flow, Groundwater gradient and quality of water will be established by the installation of a minimum of 3 monitor wells, including an up-gradient well and 2 down-gradient wells that will serve as points of compliance, or other methods authorized by the Director.
    - iv. The Operator will propose for prior Director approval monitoring schedules, reporting schedules, and appropriate analyte lists.
  - (10) **Surface Water Monitoring.** Where applicable, the Director will require baseline and periodic surface water monitoring to ensure compliance with Water Quality Control Commission surface water standards and classifications, including narrative standards. Operators will use reasonable good faith efforts to obtain access to such surface water for the purpose of collecting water samples. If access cannot be obtained, then the Operator will notify the Director of the surface water for which access was not obtained and sampling of such surface water by the Operator will not be required.
  - (11) **Contingency Plan.** A contingency plan that describes the emergency response operations for the facility, 24-hour contact information for the person who has authority to initiate emergency response actions, and an outline of responsibilities under any joint operating agreement regarding maintenance, closure, and monitoring of the facility.
- c. **Permit Review.**
- (1) The Director may approve the Centralized E&P Waste Management Facility permit if it protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources. The Director may require any conditions of approval that are determined to be necessary and reasonable to protect public health, safety, welfare, the environment, and wildlife resources or to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations, or to the extent necessary to ensure compliance with the concentration levels in Table 915-1, or WQCC Regulation 41 Groundwater standards and classifications, as incorporated by reference in Rule 901.c.
  - (2) The Director may deny a Centralized E&P Waste Management Facility permit if it does not adequately protect or minimize impacts to public health, safety, welfare, the environment, and wildlife resources, or protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations.
- d. **Financial Assurance.** The Operator of a Centralized E&P Waste Management Facility will submit for the Director's approval such financial assurance as required by Rule 704 prior to the Director issuing the operating permit.
- e. **Facility Modifications.** Throughout the life of the facility, the Operator will submit proposed modifications to the facility design, operating plan, permit data, or permit conditions to the Director for prior approval through a Form 4, Sundry Notice.
- f. **Permit Expiration.** The Form 28, Centralized E&P Waste Management Facility Permit will expire 1 year after approval if the Operator has not commenced construction of the permitted facility.
- g. **Annual Permit Review.** To ensure compliance with permit conditions and the Commission's Rules, the facility permit will be subject to an annual review by the Director. To facilitate this review,

the Operator will submit an annual report summarizing operations, including the types and volumes of waste actually handled at the facility. The Director may require additional information.

**h. Closure.**

- (1) Preliminary Closure Plan.** A general preliminary plan for closure will be submitted with the Form 28, Centralized E&P Waste Management Facility Permit. The preliminary closure plan will include, but not be limited to:
  - A.** A general plan for closure and reclamation of the entire facility, including a description of the activities required to decommission and remove all equipment, close and reclaim pits, dispose of or treat residual waste, collect samples as needed to verify compliance with soil and Groundwater standards, implement post-closure monitoring, and complete other remediation, as required.
  - B.** An estimate of the cost to close and reclaim the entire facility and to conduct post-closure monitoring. Cost estimates will be subject to review by the Director to verify that the financial assurance provided pursuant to Rules 907.d and 704 is appropriate.
- (2) Final Closure Plan.** A detailed Form 27, Site Investigation and Remediation Workplan, will be submitted at least 60 days prior to closure for approval or denial by the Director. The workplan will include, but not be limited to, a description of the activities required to decommission and remove all equipment, close and reclaim pits, dispose of or treat residual waste, collect samples as needed to verify compliance with soil and Groundwater standards, implement post-closure monitoring, and complete other remediation, as required.

**908. PIT PERMITTING/REPORTING REQUIREMENTS**

- a.** Operators will submit a Form 15, Earthen Pit Report/Permit to the Director for review and approval prior to constructing any of the following:
  - (1)** All production pits;
  - (2)** Special purpose pits except those listed in Rules 908.c.(1) or (2);
  - (3)** Drilling pits; and
  - (4)** Multi-well pits, including those located at Centralized E&P Waste Management Facilities.
- b.** Operators will submit a Form 15, Earthen Pit Report/Permit to the Director for review and approval prior to enlarging or otherwise modifying an existing properly permitted pit.
- c.** Operators will submit a Form 15, Earthen Pit Report/Permit within 30 days after constructing:
  - (1)** Emergency Pits, Plugging Pits, and Workover Pits if they are used in the initial phase of an emergency response; and
  - (2)** Cuttings Trenches approved on a Form 2A, Oil and Gas Location Assessment.
- d.** In order to allow adequate time for pit permit review and approval, Operators will submit a Form 15, Earthen Pit Report/Permit at the same time they submit a Form 2A, Oil and Gas Location Assessment, or Oil and Gas Development Plan. The Director may condition approval of the Form 15, Earthen Pit Permit upon compliance with additional terms, provisions, or requirements necessary to protect public health, safety, welfare, the environment, and wildlife resources. The Director may deny a Form 15, Earthen Pit Report/Permit if the Director determines it does not

provide necessary and reasonable protections for public health, safety, welfare, the environment, and wildlife resources, or that it fails to protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations. Notwithstanding the foregoing, no Form 15 will be approved until the associated Form 2A or Oil and Gas Development Plan is approved.

#### **909. PITS – CONSTRUCTION AND OPERATION**

- a.** Operators will ensure that the pits they operate are:
  - (1)** Properly permitted through a Form 15, Earthen Pit Report approved by the Director, or registered in their names with an active Pit Facility ID;
  - (2)** Accurately mapped; and
  - (3)** Listed according to current facility records in the Commission's database. Operators may update facility records using a Form 15, Earthen Pit Report.
- b.** Operators will construct and operate pits used for exploration and production of oil and gas in a manner that protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources, and protects against adverse environmental impacts on any air, water, soil, or biological resource resulting from Oil and Gas Operations. Operators will maintain pits and pit liners to prevent spills and releases.
- c.** Operators will construct, monitor, and operate pits to provide for a minimum of 2 feet of freeboard at all times between the top of the pit wall at its point of lowest elevation and the fluid level of the pit. Operators will employ a method of monitoring and maintaining the freeboard. Operators will report any unauthorized release of fluids from a pit pursuant to Rule 912.
- d.** Operators will not store oil or any other produced liquid hydrocarbon substance in earthen pits or reservoirs, except in emergencies where such substances cannot be otherwise contained. Operators will remove the oil or produced hydrocarbons as soon as the emergency is controlled. Operators will submit a Form 15, Earthen Pit Report for the Director's approval within 30 days of the emergency, pursuant to Rule 908.c.
- e.** No liquid hydrocarbons may be present in a pit unless the pit is specifically permitted as a skim pit.
  - (1)** Immediately upon discovery or notification, Operators will remove any accumulation of oil or condensate, including free product or hydrocarbon sheen, from a pit. If the Operator is unable to immediately remove the accumulation, the accumulation will be removed within 24 hours of discovery.
  - (2)** Operators will use skimming, steam cleaning of exposed liners, or other safe and legal methods as necessary to maintain pits in clean condition and to control hydrocarbon odors.
  - (3)** If an Operator allows oil or condensate (free product or sheen) to accumulate in a pit, then the Director may revoke the Operator's Form 15, Earthen Pit Permit, and require the Operator to close and remediate the pit.
- f.** Operators will properly design, construct, fence, line, and net pits to avoid, minimize, or mitigate adverse impacts to public health, safety, welfare, the environment, and wildlife, including adverse impacts to domestic animals and livestock.
- g.** Operators may use Multi-well Pits for a period of no more than 3 years, except as permitted pursuant to Rule 907 at a Centralized E&P Waste Management Facility.

- h. Operators will treat produced water pursuant to Rule 905.c.(1) before placing it in a Production Pit.
- i. Operators will utilize appropriate biocide treatments to control bacterial growth and related odors.
- j. **Produced Water Quality Analyses.** Beginning [1 year from rule effective date], Operators will submit water quality analyses for produced water for each well from which produced water is placed into a permitted or registered pit.
  - (1) The water sample will be analyzed for the following:
    - A. pH;
    - B. Specific conductance;
    - C. Total dissolved solids (TDS);
    - D. Alkalinity (total, bicarbonate and carbonate as  $\text{CaCO}_3$ );
    - E. Major anions (bromide, chloride, fluoride, sulfate, nitrate and nitrite as N, and phosphorus);
    - F. Major cations (calcium, iron, magnesium, manganese, potassium, and sodium);
    - G. Other elements (barium, boron, selenium, and strontium);
    - H. Naphthalene;
    - I. Total petroleum hydrocarbons (TPH) as total volatile hydrocarbons ( $\text{C}_6$  to  $\text{C}_{10}$ ) and total extractable hydrocarbons ( $\text{C}_{10}$  to  $\text{C}_{36}$ );
    - J. BTEX compounds (benzene, toluene, ethylbenzene, and xylenes); and
    - K. Radium ( $^{226}\text{Ra}$  and  $^{228}\text{Ra}$ ).
  - (2) Operators will submit water quality analysis data using a Form 43, and will include suitable electronic data deliverable (EDD) generated by the laboratory and a portable document format (PDF) of lab reports. Results for the samples collected pursuant to Rule 909.j.(1) will be submitted no later than [1.5 years from rule effective date], or prior to pit closure, whichever is earlier.
  - (3) Operators will collect samples according to standard environmental procedures.
  - (4) Operators will analyze samples in an accredited laboratory using established methodologies. For those analytes with groundwater threshold concentrations listed in WQCC Regulation 41, as incorporated by reference in Rule 901.c., the analytical technique will be capable of achieving, and will achieve, reporting limits at concentrations less than the WQCC Regulation 41 thresholds in the matrix submitted. The Director may review the analytical standard used for each analyte and may request the analysis be run by a different method.

#### 910. PIT LINING REQUIREMENTS AND SPECIFICATIONS

- a. Except for pits constructed as an initial emergency response measure pursuant to Rule 908.c.(1), all pits constructed after [rule effective date] will be lined.

- b. Skim Pits.** All skim pits, regardless of date of construction, will be lined. For any unlined skim pits in existence on the effective date of this Rule, the Operator will submit a Form 27, Site Investigation and Remediation Workplan, outlining the Operator's plan to delineate and remediate any associated impacts and a plan to either properly line or close the pit. The Form 27 for an unlined skim pit must be submitted to the Director by [2 weeks from rule effective date]. If the pit will be lined and returned to service, the Operator will also obtain Director approval of a Form 15, Earthen Pit Permit/Report.
- c.** Operators will construct all pits according to the following specifications:
- (1)** Materials used in lining pits will be of a synthetic material that is impervious, has high puncture and tear strength, has adequate elongation, and is resistant to deterioration by ultraviolet light, weathering, hydrocarbons, aqueous acids, alkali, fungi, or other substances in the produced water.
  - (2)** All pit lining systems will be designed, constructed, installed, and maintained in accordance with the manufacturers' specifications and good engineering practices. Operators will maintain records demonstrating that the Operator followed manufacturers' specifications, and provide them to the Director upon request.
  - (3)** Field seams will be installed and tested in accordance with manufacturer specifications and good engineering practices. Operators will maintain testing results, repair documentation (including the dates of tests and repairs), and provide them to the Director upon request.
- d.** Operators will construct all pits, except those at Centralized E&P Waste Management Facilities, according to the following specifications:
- (1)** Liners will have a minimum thickness of 24 mils. The synthetic or fabricated liner will cover the bottom and interior sides of the pit with the edges secured with at least a 12 inch deep anchor trench around the pit perimeter. The anchor trench will be designed to secure, and prevent slippage or destruction of, the liner materials.
  - (2)** The foundation for the liner will be constructed with material containing no sharp rocks, debris or other material that could puncture the liner. The foundation for the liner will have a minimum thickness of 12 inches after compaction, cover the entire bottom and interior sides of the pit, and be constructed so that the hydraulic conductivity will not exceed  $1.0 \times 10^{-7}$  cm/sec after testing and compaction. Operators will maintain compaction and permeability test results measured in the laboratory and field and provide the results to the Director upon request.
  - (3)** As an alternative to the soil foundation described in Rule 910.d.(2), Operators may construct the foundation with bedding material that exceeds a hydraulic conductivity of  $1.0 \times 10^{-7}$  cm/sec, if a double synthetic liner system is used; however, the bottom and sides of the pit will be padded with soil or synthetic matting type material and will be free of sharp rocks or other material that are capable of puncturing the liner. Each synthetic liner will have a minimum thickness of 24 mils.
- e.** Operators will construct pits used at Centralized E&P Waste Management Facilities according to the following specifications:
- (1)** Liners will have a minimum thickness of 60 mils. The synthetic or fabricated liner will cover the bottom and interior sides of the pit with the edges secured with at least a 12 inch deep anchor trench around the pit perimeter or in accordance with the liner manufacturer's specifications. The anchor trench will be designed to secure, and prevent slippage or destruction of, the liner materials.



- (2) The foundation for the liner will be constructed with material containing no sharp rocks, debris or other material that could puncture the liner. The foundation for the liner will have a minimum thickness of 24 inches after compaction, cover the entire bottom and interior sides of the pit, and be constructed so that the hydraulic conductivity will not exceed  $1.0 \times 10^{-7}$  cm/sec after testing and compaction. Operators will maintain compaction and permeability test results measured in the laboratory and field and provide them to the Director upon request.
  - (3) As an alternative to the soil foundation described in Rule 910.e.(2), Operators may use a secondary liner consisting of a geosynthetic clay liner, which is a manufactured hydraulic barrier typically consisting of bentonite clay or other very low permeability material, supported by geotextiles or geomembranes, which are held together by needling, stitching, or chemical adhesives.
  - (4) As an alternative to the soil foundation described in Rule 910.e.(2), Operators may use a double synthetic liner system. However, the bottom and sides of the pit will be padded with soil or synthetic matting type material and will be free of sharp rocks or other materials that are capable of puncturing the liner. Each synthetic liner will have a maximum thickness of 60 mils.
- f. The Director may require the use of additional liners or a leak detection system for the pit or other equivalent protective measures, including but not limited to, increased recordkeeping requirements, monitoring systems, and underlying gravel filled sumps and lateral systems. In making such a determination, the Director will consider the site-specific information provided by the Operator, including but not limited to surface and subsurface geology, the presence and depth to Groundwater, the quality of the produced water, the hydraulic conductivity of the surrounding soils, the distance to surface water and water wells, and the type of liner.

## **911. CLOSURE OF OIL AND GAS FACILITIES**

- a. Operators will close all Oil and Gas Facilities, including Drilling Pits, in accordance with an approved Form 27, Site Investigation and Remediation Workplan.
- (1) Operators will obtain the Director's approval of the Form 27, Site Investigation and Remediation Workplan prior to conducting any investigation or closure operations.
  - (2) The Form 27, Site Investigation and Remediation Workplan will include a description of the proposed investigation and remediation activities pursuant to Rule 913.
  - (3) Operators will close and remediate emergency pits as soon as the initial phase of emergency response operations are complete or any process upset conditions are controlled.
  - (4) Oil and Gas Facility closure pursuant to this Rule 911.a will be at the time of final site closure, plugging and abandonment, or decommissioning, unless the Director determines that a substantive change to the site requires a Form 27, or a reportable spill or an historic impact is discovered during facility operation or removal.
- b. **Discovery of a Spill or Release During Closure.** If an Operator discovers a spill or release during closure operations, the Operator will report the spill or release on a Form 19, Spill/Release Report, pursuant to Rule 912.
- c. **Inactive Oil and Gas Facilities.** Operators will report any equipment or improvement at an Oil and Gas Location, including a Pit, that is not in use for a period of 6 months or more to the Director

via Form 4, Sundry Notice. On its Form 4, the Operator will describe the necessity for keeping the equipment or improvement and a schedule for returning it to service.

- (1) If the Director approves the return to service schedule, the Operator will submit a Form 4, Sundry Notice notifying the Director within 30 days of return to service.
- (2) The Director may require closure or removal of the inactive equipment or improvement, subject to an approved Form 27, Site Investigation and Remediation Workplan.
- (3) Operators will maintain any facilities or equipment that are not in use in compliance with all applicable Commission Rules.

## **912. SPILLS AND RELEASES**

### **a. General.**

- (1) Immediately upon discovering any spills or releases of E&P Waste, gas, or produced fluids, regardless of size or volume, Operators will control and contain the spill or release to protect public health, safety, welfare, the environment, and wildlife resources.
- (2) Operators will immediately investigate, clean up, and document impacts resulting from spills and releases.
- (3) The Director may require the Operator to perform any action the Director determines to be necessary and reasonable to prevent or mitigate adverse impacts on any air, water, soil, or biological resource caused by a spill or release.
- (4) Operators will document and maintain records to demonstrate compliance with the concentration levels in Table 915-1, and, if surface water or Groundwater are impacted, WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
- (5) For any spills or releases that do not meet the reporting requirements of Rule 912.b, Operators will document cleanup efforts and provide documentation of the cleanup to the Director upon request.

### **b. Reporting Spills or Releases of E&P Waste, Gas, or Produced Fluids.**

- (1) **Report to the Director.** Operators will submit an Initial Report of a spill or release of E&P Waste, gas, or produced fluids that meet any of the following criteria to the Director verbally or in writing, within 24 hours of discovery, unless otherwise specified below.
  - A. A spill or release of any size that impacts or threatens to impact any Waters of the State, Public Water System, residence or occupied structure, livestock, wildlife, or publicly-maintained road;
  - B. A spill or release in which 1 barrel or more of E&P Waste or produced fluids is spilled or released outside of berms or other secondary containment;
  - C. A spill or release of 5 barrels or more regardless of whether the spill or release is completely contained within berms or other secondary containment.
  - D. Within 6 hours of discovery, a Grade 1 Gas Leak. For a Grade 1 Gas Leak from a Flowline, the Operator also must submit the Form 19, COGCC Spill/Release Report, document number on a Form 44, Flowline Report for the Grade 1 Gas Leak.

- E.** A spill or release of any volume that daylights from the subsurface.
  - F.** The discovery of 10 cubic yards or more of impacted material resulting from a current or historic spill or release. Discovery and reporting will not be contingent upon confirmation samples demonstrating exceedance of Table 915-1 standards.
  - G.** The discovery of impacted Groundwater or surface water. Discovery and reporting will not be contingent upon confirmation samples demonstrating exceedance of Table 915-1 standards. The presence of free product or hydrocarbon sheen on Groundwater or surface water is reportable. The presence of contaminated soil in contact with Groundwater or surface water is reportable.
  - H.** A suspected or actual spill or release of any volume where the volume cannot be determined.
  - I.** A spill or release of any volume of liquids, including vaporized mists, that leave the Oil and Gas Location and impacts or threatens to impact off-location property.
  - J.** A release of natural gas that results in an accumulation of soil gas or gas seeps.
  - K.** A release that results in natural gas in groundwater.
- (2)** The Initial Report to the Director will include, at a minimum,
- A.** The specific location of the spill/release including Global Positioning System data that meets the standards of Rule 216;
  - B.** Certification that the Operator provided additional party notifications as required by Rules 912.b.(7)–(10), below;
  - C.** A description of any threat to Waters of the State, Public Water System, residences or occupied structures, livestock, wildlife, air quality, or publicly-maintained road from the spill or release; and
  - D.** Any information available to the Operator about the type and volume of fluid or waste involved, including whether it is controlled or uncontrolled at the time of submitting the Initial Report.
- (3)** If the Operator did not submit its Initial Report through a Form 19, Spill/Release Report, the Operator will submit a Form 19 with the Initial Report information no less than 72 hours after discovery of the spill or release unless the Director extends the timeframe in writing.
- (4)** In addition to the Initial Report to the Director, the Operator will make a supplemental report on a Form 19 not more than 10 days after the spill or release is discovered that includes:
- A.** A topographic map showing the governmental section and location of the spill or an aerial photograph showing the location of the specific spill site.
  - B.** All pertinent information about the spill or release known to the Operator that has not been reported previously, including photo documentation showing the source of the spill or release, the impacted area, and initial cleanup activity; and
  - C.** Information relating to the initial mitigation, site investigation, and remediation measures conducted by the Operator.

- (5) The Director may require any additional supplemental reports or information the Director determines are necessary.
- (6) No later than 60 days after a spill or release is discovered, the Operator will have submitted, and obtained the Director's approval of either:
- A. A Form 19, Spill/Release Report requesting closure pursuant to Rule 913.h and supported by adequate documentation to demonstrate that the spill or release has been fully cleaned up and complies with Table 915-1; or
  - B. A Form 27, Site Investigation and Remediation Workplan if:
    - i. A Form 27 is required by the Commission's Rules;
    - ii. Cleanup or remediation will continue for longer than 60 days after the spill or release was discovered; or
    - iii. The Director requests a Form 27.
- (7) **Notification to Local Governments.** At the same time the Operator submits an Initial Report to the Director pursuant to Rule 912.b.(1), the Operator will provide verbal or written notification to the entity with jurisdiction over emergency response within the local municipality if the spill or release occurred within a municipality or the local county if the spill or release did not occur within a municipality. The notification will include, at a minimum, the information provided in the Initial Report to the Director.
- (8) **Notification to the Surface Owner.** The Operator will provide verbal or written notification to the affected Surface Owner or the Surface Owner's appointed tenant concurrent with providing an Initial Report to the Director pursuant to Rule 912.b.(1).
- A. If the Surface Owner cannot be reached within 24 hours, the Operator will continue to make good faith efforts to notify the Surface Owner until notice has been provided.
  - B. The verbal or written notification will include, at a minimum, the information provided in the Initial Report to the Director.
  - C. The Operator will document the notification including the name of the person contacted, phone number or email of contact, date and time.
- (9) **Report to Environmental Release/Incident Report Hotline.** Operators will report a spill or release of any size which impacts or threatens to impact Waters of the State to the Director and to the Environmental Release/Incident Report Hotline (1-877-518-5608). Spills and releases that impact or threaten a Public Water System intake, as described in Rule 411.b, will be verbally reported to the emergency contact for that facility immediately after discovery.
- (10) At the same time the Operator submits an Initial Report to the Director pursuant to Rule 912.b.(1), the Operator will provide verbal or written notification to Colorado Parks and Wildlife if the spill or release occurred within 300 feet of surface Waters of the State, or within High Priority Habitat.
- (11) **Reporting Chemical Spills or Releases.** Operators will report chemical spills and releases pursuant to applicable state and federal laws, including the Emergency Planning and Community Right-to-Know Act, the Comprehensive Environmental Response, Compensation, and Liability Act, the Oil Pollution Act, and the Clean Water Act.

**c. Remediation of Spills or Releases.**

- (1) The Director may require Operators to submit a Form 27, Site Investigation and Remediation Workplan, if the Director identifies any threatened or actual adverse impacts to any air, water, soil, wildlife, or other environmental resource from a spill or release, or if necessary to ensure compliance with the concentration levels in Table 915-1 and WQCC Regulation 41 numeric and narrative Groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
- (2) Not including initial emergency response operations, the Operator will notify and consult with any affected Surface Owners, or the Surface Owner's appointed tenant, prior to commencing operations to remediate a spill or release in an area not being utilized for Oil and Gas Operations. It is the Operator's burden to timely notify and negotiate access with the Surface Owner. Failure to do so will not relieve the Operator from its responsibility to commence or complete remediation approved by the Director.

**d. Spill and Release Prevention.**

- (1) Operators will determine and document the cause of a spill or release of E&P Waste or produced fluids, or a gas leak, or a near miss of a spill or release. After identifying the cause, Operators will implement measures to prevent spills or releases due to similar causes in the future, and document all changes made.
- (2) The Director may take enforcement action if a spill occurs at any site subject to control of the same Operator as a result of similar causes identified in Rule 912.d.(1).
- (3) Operators will provide documentation of the spill or release evaluation and any steps taken to prevent spills or releases due to similar causes in the future to the Director upon request.

**e. Suspected Spill or Release Closure.**

- (1) Operators will submit a Supplemental Form 19, Spill/Release Report providing documentation that any suspected spill or release reported pursuant to Rule 912.b.(1).H. did not exceed any applicable reporting thresholds. The Operator will clean up any actual spill below the reporting threshold of Rule 912.b pursuant to the requirements of Rule 912.a.(5).
- (2) If the suspected spill or release reported pursuant to Rule 912.b.(1).H did in fact exceed any reporting threshold identified in Rule 912.b.(1), the Operator will clean up the spill pursuant to the requirements of Rule 912.c.

- f. Changes of Operator.** Pursuant to Rule 218.a.(3), upon the Director's approval of a Form 9, Transfer of Permits, a new Operator will submit a supplemental Form 19, Spill/Release Report designating the responsible Operator for all open spills and releases.

**913. SITE INVESTIGATION, REMEDIATION, AND CLOSURE**

- a. Applicability.** This Rule 913 applies to the investigation, remediation, and reporting required for all spills and releases, remediation projects, and decommissioning of Oil and Gas Facilities. All site investigation, remediation, and closure operations will be conducted in accordance with the Commission's Rules, including the Commission's 1000 Series Rules.

**b. General Site Investigation and Remediation Requirements.**

- (1) **Site Investigation and Remediation Workplan.** Operators will submit and obtain the Director's approval of a Form 27, Site Investigation and Remediation Workplan whenever

it is required by the Commission's Rules, prior to commencing the operations addressed by the Form 27.

- (2) **Sampling and Analyses.** Operators will conduct sampling and analysis of soil and Groundwater pursuant to Rule 915 to determine the horizontal and vertical extent of any contamination in excess of the cleanup concentrations in Table 915-1 or in WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
  - A. Sampling and analyses will be required to profile E&P Waste, delineate extent of contamination, and confirm compliance with applicable standards upon completion of remediation.
  - B. Laboratory detection limits must be less than or equal to Table 915-1 or WQCC Regulation 41 standards, as incorporated by reference in Rule 901.c.
  - C. Composite sample results may be submitted for preliminary analysis and waste profiling. Discrete sample results will be required for confirmation sampling.
- (3) **Management of Investigation-Derived Waste.** Investigation-Derived waste will be managed pursuant to Rules 905 or 906.
- (4) **Pit Evacuation.** Prior to site investigation and remediation, E&P Waste will be treated or disposed pursuant to Rule 905.
- (5) **Remediation.**
  - A. Remediation will be performed in a manner that reduces or removes contamination that exceeds the cleanup concentrations in Table 915-1 or in WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c, and that protects and mitigates adverse impacts to public health, safety, welfare, the environment, and wildlife resources.
  - B. When conducting remediation activities, Operators will conform to the following standards:
    - i. Operators will fence open excavations to prevent access when sites are not attended.
    - ii. Operators will protect topsoil, consistent with the Commission's 1000 Series Rules.
    - iii. Operators will minimize surface disturbance.
    - iv. Operators will properly store, handle, and manage all E&P Waste to prevent contamination of stormwater, surface water, Groundwater, and soil.
    - v. If remediation occurs within High Priority Habitat, the Operator will incorporate Best Management Practices protective of the relevant wildlife species or habitat in the Operator's Form 27, Site Investigation and Remediation Work Plan.
  - C. Groundwater that does not meet the cleanup concentrations in Table 915-1 or WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c, will be remediated pursuant to a Form 27, Site Investigation and Remediation Workplan.

- (6) **Surface Reclamation.** If the Director approves the closure of a remediation project, the Operator will reclaim the site(s) pursuant to the Commission's 1000 Series Rules.
- c. **Form 27, Site Investigation and Remediation Workplan.** Operators will prepare and obtain the Director's approval of a Form 27, Site Investigation and Remediation Workplan, prior to conducting the following operations and remediation activities:
- (1) Pit closure;
  - (2) Buried or partially buried vessel closure;
  - (3) Remediation of spills and releases pursuant to Rule 912;
  - (4) Land Treatment of Oily Waste pursuant to Rule 905.e;
  - (5) Closure of Centralized E&P Waste Management Facilities pursuant to Rule 907.h;
  - (6) Remediation of impacted Groundwater pursuant to Rule 915.e.(4).D, and the contaminant concentrations in Table 915-1;
  - (7) Investigation and remediation of natural gas in soil or groundwater;
  - (8) When requested by the Director due to any potential risk to soil, Groundwater, or surface water; and
  - (9) Decommissioning of Oil and Gas Facilities.
- d. **Implementation Schedule.** Each Form 27, Site Investigation and Remediation Workplan will include a specific implementation schedule to complete investigation and remediation.
- (1) Operators will immediately investigate impacts to soil, Groundwater and surface water.
  - (2) Any change from the approved implementation schedule will be requested at least 30 days in advance, and the Operator may not make the change without the Director's approval.
- e. **Reporting Schedule.** After initial approval of a Form 27, Site Investigation and Remediation Workplan, the Operator will provide quarterly update reports in a Supplemental Form 27 to document progress of site investigation and remediation, unless an alternative reporting schedule has been requested by the Operator and approved by the Director. The Director may request a more frequent reporting schedule based on site-specific conditions.
- (1) Operators may not change the reporting schedule without the Director's approval.
  - (2) By [3 months from rule effective date], Operators of existing remediation projects approved prior to [rule effective date] will submit a Supplemental Form 27 with a detailed project summary and status.
  - (3) For existing remediation projects approved prior to [rule effective date], the Operator will adopt a quarterly reporting schedule unless a more frequent or specific reporting schedule was already approved by the Director.
- f. **Discovery of a Spill or Release During Closure.** If a spill or release is discovered during facility closure operations, the Operator will report it to the Director on a Form 19, Spill or Release Report, pursuant to Rule 912.

**g. Changes of Operator.** Pursuant to Rule 218.a.(3), upon the Director's approval of a Form 9, Transfer of Permits, a new Operator will submit a supplemental Form 27 designating the responsible Operator for all open remediation projects.

**h. Closure.**

(1) Remediation will be considered complete when the Operator has demonstrated compliance with:

- A. The cleanup concentrations in Table 915-1;
- B. WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c, if applicable; and
- C. Any condition of approval of a Form 27, Site Investigation and Remediation Workplan.

(2) An Operator may request the Director's approval of a variance through Rule 502.a to comply with an alternative standard in lieu of one or more of the standards in Rule 913.h.(1).A–C. In addition to applying for a variance, the Operator will also submit a Form 27 demonstrating that their alternative clean-up process protects and minimizes adverse impacts to public health, safety, welfare, the environment, and wildlife resources.

(3) For contaminated groundwater where periodic monitoring has been required, closure may not occur until after 4 consecutive quarters of sampling and analysis demonstrating compliance with Table 915-1 and WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c, if applicable.

(4) **Notification of Completion.** Within 30 days after conclusion of site remediation activities:

- A. Operators conducting remediation operations pursuant to an approved Form 27, Site Investigation and Remediation Workplan will submit to the Director a Supplemental Form 27 containing documentation sufficient to demonstrate compliance with the Commission's Rules.
- B. Operators will coordinate with the Director through a Form 4, Sundry Notice regarding additional surface reclamation required by the Commission's 1000 Series Rules, if applicable.

**i. Release of Financial Assurance.** Financial assurance required by Rule 706 may be held by the Director until the required remediation of soil and/or ground water impacts is completed in accordance with the approved workplan, or until cleanup goals are met.

**914. CRITERIA TO ESTABLISH POINTS OF COMPLIANCE.** In determining a Point of Compliance, the Director will take into consideration recommendations of the Operator or any responsible party or parties, if applicable, together with the following factors:

- a. The classified use established by the Water Quality Control Commission, for any Groundwater or surface water that was impacted by contamination. If not so classified, the Director will consider the quality, quantity, potential economic use, and accessibility of such water;
- b. The geologic and hydrologic characteristics of the site, such as depth to Groundwater, Groundwater flow, direction and velocity, soil types, surface water impacts, and climate;
- c. The toxicity, mobility, and persistence in the environment of contaminants released or discharged from the site;



- d. Established wellhead protection areas;
- e. The potential of the site as an aquifer recharge area;
- f. The distance to the nearest permitted domestic water well or Public Water System supply well completed in the same aquifer affected by the event; and
- g. The distance to the nearest permitted livestock or irrigation water well completed in the same aquifer affected by the event.

#### 915. CONCENTRATIONS AND SAMPLING FOR SOIL AND GROUNDWATER.

- a. **Soil Concentrations.** Operators will adhere to the concentrations for soil cleanup in Table 915-1. Operators will use Residential Soil Screening Level Concentrations as cleanup levels unless required otherwise by the Director. The Director will require adherence to the Protection of Groundwater Soil Screening Levels when a pathway to groundwater exists. When the Director has reasonable cause to believe that oil and gas exploration-related compounds or parameters other than those listed in Table 915-1 may be present, the Director may require additional analyses of compounds included in the EPA RSLs, as incorporated by reference in Rule 901.c.
- b. **Soil Suitability for Reclamation.** Operators will adhere to the concentrations for soil in Table 915-1 for restoring soil to the agronomic properties for electrical conductivity (EC), sodium adsorption ratio (SAR), pH, and boron for soils. Subject to prior approval by the Director, Operators may leave materials with elevated concentrations of EC, SAR, or pH in situ. In such cases, the Operator will provide a detailed reclamation plan that includes, but is not limited to, soil analysis from adjacent undisturbed lands, revegetation techniques, site stabilization, and details of seeded species.
- c. **Groundwater Concentrations.** Operators will adhere to the concentrations for Groundwater in Table 915-1. The Groundwater standards and analytical methods are derived from the Groundwater standards and classifications established by WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
- d. **Additional Groundwater Analyses.** When the Director has reasonable cause to believe that oil and gas exploration-related compounds or parameters other than those listed in Table 915-1 may be present, the Director may require additional analyses beyond the list of compounds included in Table 915-1 for Groundwater including but not limited to:
  - (1) Any element, compound or parameter listed in Table A and Tables 1, 2, 3, and 4 of WQCC Regulation 41, as incorporated by reference in Rule 901.c.
  - (2) In accordance with the Narrative Standards of WQCC Regulation 41.5.A, any element, compound, or parameter not listed in Table A or Tables 1, 2, 3, and 4 of WQCC Regulation 41, as incorporated by reference in Rule 901.c, which alone or in combination with other substances, are in concentrations shown to be:
    - A. Carcinogenic, mutagenic, teratogenic, or toxic to human beings; or,
    - B. A danger to public health, safety, welfare, the environment, or wildlife resources.
- e. **Sampling and Analysis.** Analysis will be conducted using EPA SW-846 analytical methods, as incorporated by reference in Rule 901.c, or, with the Director's approval, other analytical methods published by nationally-recognized organizations. Analyses of samples will be performed by laboratories that maintain state or national accreditation programs. The use of specialized and

appropriate agricultural analytical methods are recommended for analysis of the Soil Suitability parameters, and are required as partially described in footnote 2 to Table 915-1.

- (1) **Existing Workplans.** Sampling and analysis for sites subject to an approved workplan will be conducted in accordance with the workplan and the sampling and analysis requirements described in this Rule 915.
- (2) **Methods for Sampling and Analysis.** Sampling and analysis for site investigation or confirmation of successful remediation will be conducted to determine the nature and extent of impact and confirm compliance with appropriate concentration levels in Table 915-1 and WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.
  - A. **Field Analysis.** Field measurements and field tests will be conducted using appropriate equipment, calibrated and operated according to manufacturer specifications, by personnel trained and familiar with the equipment. Operators will provide all field measurements and tests to the Director upon request, including but not limited to field notes, field screening logs, soil boring logs, monitor well construction logs, pump test reports, photographs, and soil vapor screening results.
  - B. **Sample Collection.** Samples will be collected, preserved, documented, and shipped or delivered to a laboratory under a chain-of-custody protocol using standard environmental sampling procedures in a manner to ensure accurate representation of site conditions.
  - C. **Laboratory Analytical Methods.** Laboratories will analyze samples using standard methods (including but not limited to EPA SW-846, as incorporated by reference in Rule 901.c) appropriate for detecting the target analyte. The method selected will have detection limits less than or equal to the cleanup concentrations in Table 915-1 and WQCC Regulation 41, as incorporated by reference in Rule 901.c.
  - D. **Background Sampling.** The Director may require the Operator to take site-specific samples, outside of the area disturbed by oil and gas operations, of comparable, nearby, non-impacted, native soil, Groundwater or other media to establish background conditions.
- (3) **Soil Sampling and Analysis.**
  - A. **Applicability.** If soil contamination is suspected or known to exist as a result of spills or releases or E&P Waste management, Operators will collect and analyze representative samples of soil pursuant to this Rule 915.e.(3).
  - B. **Sample Collection.** Samples will be collected from areas most likely to have been impacted, and the horizontal and vertical extent of contamination will be determined. The number and location of samples will be appropriate to determine the horizontal and vertical extent of the impact.
  - C. **Sample Analysis.** Operators will analyze soil samples for contaminants of concern listed in Table 915-1 as appropriate to assess the impact or confirm remediation. If an Operator believes it is appropriate to modify the list of contaminants of concern, the Operator will submit, and obtain the Director's approval of, a modified list of contaminants of concern through a Form 19, Spill/Release Report, or Form 27, Site Investigation and Remediation Workplan, as applicable. The list will be based on site specific E&P Waste profile and process knowledge. Operators will analyze samples for additional contaminants of concern upon the Director's request.

- D. Soil Background Determination.** For impacts to soil due to E&P Waste, samples from comparable, nearby non-impacted native soil will be collected and analyzed for purposes of establishing background soil conditions including pH, electrical conductivity (EC), sodium adsorption ratio (SAR), and other constituents as identified in the E&P Waste profile.

**(4) Groundwater Sampling and Analysis.**

- A. Applicability.** Operators will collect and analyze representative samples of Groundwater if:
- i. Groundwater contamination is suspected or is known to exceed the concentrations in cleanup Table 915-1 or WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c;
  - ii. Impacted soils are in contact with Groundwater; or
  - iii. Impacts to soils extend down to the high water table.
- B. Sample Collection.** Operators will collect samples as soon as possible from areas most likely to have been impacted: immediately downgradient or in the middle of excavated areas in close proximity to the source of the impact.
- i. The number and location of samples will be appropriate to determine the horizontal and vertical extent of the impact.
  - ii. If the cleanup concentrations in Table 915-1 or WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c, are exceeded, the direction of flow and a ground water gradient will be established.
  - iii. The Director may require the installation of temporary or permanent monitoring wells as necessary for sample collection. All monitoring wells will be constructed and permitted in accordance with the State Engineer's Water Well Construction and Permitting Rules, as incorporated by reference in Rule 901.c.
- C. Sample Analysis.** Operators will analyze groundwater samples for constituents of concern listed in Table 915-1 as appropriate to assess the impact or confirm remediation. If an Operator believes it is appropriate to modify the list of constituents of concern, the Operator will submit, and obtain the Director's approval of, a modified list of constituents of concern through a Form 19, Spill/Release Report, or Form 27, Site Investigation and Remediation Workplan, as applicable. The list will be based on site specific E&P Waste profile and process knowledge. Operators will analyze samples for additional constituents of concern upon the Director's request.
- D. Impacted Groundwater.** Pursuant to Rule 913.c.(6), if Groundwater contaminants exceed the concentrations listed in Table 915-1 or in WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c, Operators will notify the Director and submit to the Director for prior approval a Form 27, Site Investigation and Remediation Workplan, for the investigation, remediation, or monitoring of Groundwater to meet the required cleanup concentrations in Table 915-1 or in WQCC Regulation 41 numeric and narrative groundwater quality standards and classifications, as incorporated by reference in Rule 901.c.

- (5) **Waste and Produced Fluids Sampling and Analysis.** When required by the Director, Operators will collect samples necessary to adequately characterize the composition of produced oil, condensate, water, drilling fluids, drill cuttings, production gases, bradenhead gases, soil gas, and soil gas seeps. The Operator will submit, and obtain the Director's approval of the number of samples collected, the analyte lists, and analytical methods appropriate to the waste or production stream.
- f. **Remediations in Progress.** For sites that are subject to an open Form 19, Spill/Release Report or Form 27, Site Investigation and Remediation Workplan as of [rule effective date], Operators may seek the Director's permission to comply with the version of Table 910-1 that was in effect [prior to rule effective date], if remediation is completed by [one year from rule effective date]. If remediation at a site subject to an open Form 19 or Form 27 is not completed by [one year from rule effective date], then the Operator will comply with the current version of Table 915-1.

**Table 915-1  
CLEANUP CONCENTRATIONS**

<b>Contaminant of Concern</b>	<b>Concentrations</b>
Soil TPH (total volatile [C <sub>6</sub> -C <sub>10</sub> ] and extractable [C <sub>10</sub> -C <sub>36</sub> ] hydrocarbons)	500mg/kg
Soils and Groundwater - liquid hydrocarbons including condensate and oil	below visual detection limits
<b>Soil Suitability for Reclamation</b>	
Electrical conductivity (EC) (by saturated paste method) <sup>1,2</sup>	<4mmhos/cm
Sodium adsorption ratio (SAR) (by saturated paste method) <sup>1,2,3</sup>	<6
pH (by saturated paste method) <sup>1,2</sup>	6–8.3
boron (hot water soluble soil extract) <sup>1,3</sup>	2mg/l
<b>Organic Compounds in Groundwater<sup>4</sup></b>	
benzene	5µg/l
toluene <sup>5</sup>	560 to 1,000µg/l
ethylbenzene	700µg/l
xylene (sum of o-, m- and p- isomers = total xylenes) <sup>5</sup>	1,400 to 10,000µg/l
naphthalene	140µg/l
1,2,4-trimethylbenzene	7µg/l
1,3,5-trimethylbenzene	7µg/l
<b>Groundwater Inorganic Parameters<sup>4</sup></b>	
total dissolved solids (TDS) <sup>1</sup>	<1.25 X local background
chloride ion <sup>1</sup>	250mg/l or <1.25 X local background
sulfate ion <sup>1</sup>	250mg/l or <1.25 X local background

Table 915-1 (continued)

Contaminant of Concern	Concentrations	
	Residential Soil Screening Level Concentrations (mg/kg) <sup>7</sup>	Protection of Groundwater Soil Screening Level Concentrations (mg/kg) Risk Based (R) and MCL Based (M) <sup>7,8</sup>
<b>Organic Compounds in Soils<sup>6</sup></b>		
benzene	1.2	0.0026 (M)
toluene	490	0.69 (M)
ethylbenzene	5.8	0.78 (M)
xylene (sum of o-, m- and p- isomers = total xylenes)	58	9.9 (M)
1,2,4-trimethylbenzene	30	0.0081 (R)
1,3,5-trimethylbenzene	27	0.0087 (R)
acenaphthene	360	0.55 (R)
anthracene	1800	5.8 (R)
benz(a)anthracene	1.1	0.011 (R)
benzo(b)fluoranthene	1.1	0.3 (R)
benzo(k)fluoranthene	11	2.9 (R)
benzo(a)pyrene	0.11	0.24 (M)
chrysene	110	9 (R)
dibenzo(a,h)anthracene	0.11	0.096 (R)
fluoranthene	240	8.9 (R)
fluorene	240	0.54 (R)
indeno(1,2,3-cd)pyrene	1.1	0.98 (R)
1-methylnaphthalene	18	0.006 (R)
2-methylnaphthalene	24	0.019 (R)
naphthalene	38	0.00054 (R)
pyrene	180	1.3 (R)
<b>Metals in Soils<sup>1, 6</sup></b>		
arsenic	0.68 or <1.25 X local background	0.29 (M)
barium	1500	82 (M)
cadmium	7.1	0.38 (M)
chromium (VI)	0.3	0.00067 (R)
copper	310	46 (M)
lead	400	14 (M)
nickel	150	2.6 (R)
selenium	39	0.26 (M)
silver	39	0.08 (R)
zinc	2300	37 (R)

### Table 915-1 (continued) footnotes

<sup>1</sup> The Director will consider adjacent background concentrations or reference levels in native soils and Groundwater.

<sup>2</sup> Soil suitability thresholds for electrical conductivity (EC), pH and sodium adsorption ratio (SAR) in soils are based on use of saturated paste methods preparation methods followed by analysis. Soil suitability thresholds for available boron are based on hot water soluble (or DPTA/sorbitol) extraction followed by analysis. Methods for preparation and analysis of the soil suitability parameters can be found in Soil, Plant, and Water Reference Methods for the Western Region, as incorporated by reference in Rule 901.c.

<sup>3</sup> With the Director's prior approval, SAR levels and the concentration for hot water soluble boron may be modified based on land use, depth, or characteristics of the vegetative community.

<sup>4</sup> Concentrations for Groundwater are taken from WQCC Regulation 41, as incorporated by reference in Rule 901.c.

<sup>5</sup> For toluene and xylenes (total), the first number in the range is a strictly health-based value, based on the WQCC's established methodology for human health-based standards. The second number in the range is a maximum contaminant level (MCL), established under the federal Safe Drinking Water Act which has been determined to be an acceptable level of this chemical in public water supplies, taking treatability and laboratory detection limits into account. The WQCC intends that control requirements for this chemical be implemented to attain a level of ambient water quality that is at least equal to the first number in the range except as follows: 1) where ground water quality exceeds the first number in the range due to a release of contaminants that occurred prior to September 14, 2004 (regardless of the date of discovery or subsequent migration of such contaminants) clean-up levels for the entire contaminant plume will be no more restrictive than the second number in the range or the groundwater quality resulting from such release, whichever is more protective, and 2) whenever the WQCC has adopted alternative, site-specific standards for the chemical, the site-specific standards will apply instead of these statewide standards.

<sup>6</sup> Concentrations for organic compounds and metals in soils are taken from EPA Regional Screening Levels ("EPA RSLs") for Chemical Contaminants at Superfund Sites, as incorporated by reference in Rule 901.c.

<sup>7</sup> If there is no pathway for communication with Groundwater, then Residential Soil Screening Levels apply for organic compounds and metals. If the Director determines that a pathway to Groundwater exists, then the Protection of Groundwater Soil Screening Levels will apply, secondary to actual measured concentrations of the contaminants of concern in Groundwater

<sup>8</sup> (R) indicates that following a Protection of Groundwater soil screening levels indicates concentration derived from risk based approach. (M) indicates that, following a Protection of Groundwater soil screening levels indicates concentration derived drinking water maximum contaminant levels (MCL).

## 100 SERIES DEFINITIONS

**COMMERCIAL DISPOSAL WELL** means an injection well that receives Class II exploration and production waste from multiple operators.

**UIC AQUIFER** means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

**UNDERGROUND SOURCE OF DRINKING WATER** means an UIC Aquifer or its portion:

- a. Which supplies any public water system; or
- b. Which contains a sufficient quantity of ground water to supply a public water system; and
  - (1) Currently supplies drinking water for human consumption; or
  - (2) Contains fewer than 10,000 mg/l total dissolved solids; and
- ~~(c).~~ Which is not an exempted UIC Aquifer under Rule 802.

## 800 SERIES UNDERGROUND INJECTION FOR DISPOSAL AND ENHANCED RECOVERY PROJECTS

### 801. CLASS II UNDERGROUND INJECTION CONTROL WELLS.

An injection well will not be authorized if the proposed well or operations will result in the presence of any physical, chemical, biological or radiological substance or matter in an ~~underground source of drinking water that may cause a violation of any primary drinking water regulation in effect as of July 12, 1982 and found at 40 C.F.R. Part 141, or may otherwise adversely affect the health of persons.~~ Underground Source of Drinking Water that may adversely affect the health of persons or cause a violation of any of the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations, 40 C.F.R. Part 141. Only the version of 40 C.F.R. Part 141 in effect as of [rule effective date] applies to this rule; later amendments do not apply. 40 C.F.R. Part 141 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203, and at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and is available online at [https://www.epa.gov/sites/production/files/2015-11/documents/howepargulates\\_cfr-2003-title40-vol20-part141\\_0.pdf](https://www.epa.gov/sites/production/files/2015-11/documents/howepargulates_cfr-2003-title40-vol20-part141_0.pdf).

### 802. ~~EXEMPT~~EXEMPTED UIC AQUIFERS.

- a. **Criteria for UIC Aquifer exemption.** An UIC Aquifer or a portion thereof may be designated by the Director or the Commission as an exempted UIC Aquifer, in connection with the filing of an application pursuant to ~~Rule~~Rules 803, ~~Rule 807, Rule 808, 809 or Rule 809~~810, and after notification to the Colorado Department of Public Health and Environment, Water Quality Control Division and U.S. Environmental Protection Agency, if it meets the following criteria:
  - (1) It does not currently serve as a source of drinking water, and either ~~subparagraph (Rule 802.a.(2) or (802.a.(3) below~~ apply;
  - (2) It cannot now and will not in the future serve as a source of drinking water because:



- A. It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a person filing an application pursuant to ~~Rule~~Rules 803, ~~Rule 807, Rule 808, 809~~ or ~~Rule 809810~~, to contain minerals or hydrocarbons that, considering their quantity and location, are expected to be commercially producible; or
  - B. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or
  - C. It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption.
- (3) The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 milligrams per liter and it is not reasonably expected to supply a public water system.

b. **UIC Aquifer ~~exemption public notice~~Exemption Public Notice.** If an UIC Aquifer exemption is required as part of an injection permit application process, the injection well applicant will apply for an UIC Aquifer exemption. This application will contain data and information that show the applicable UIC Aquifer exemption criteria set forth in Rule 802.a- are met. After evaluation of the application and prior to designating an UIC Aquifer or a portion thereof as an exempted UIC Aquifer, the Director will publish a notice of proposed designation in a newspaper of general circulation serving the area where the UIC Aquifer is located. The notice will identify such UIC Aquifer or portion thereof which the Director proposes to designate as exempted, and will state that any person who can make a showing to the Director that the requested designation does not meet the criteria set forth in Rule 802.a- may request the Commission to hold a hearing thereon.

c. **Evaluation of ~~written requests~~Written Requests for ~~public hearing~~Public Hearing.** Written requests for a public hearing before the Commission will be reviewed and evaluated by the Director in consultation with the applicant to determine if the criteria set forth in Rule 802.a- have been met. If, within 30 days after publication of the notice, the Commission receives a hearing request for which the Director determines the criteria set forth in Rule 801 have not been met, the Commission will hold such a hearing in accordance with ~~Commission~~-Rule 510. If no request for hearing is filed within 30 days, the UIC Aquifer or portion thereof will be considered exempted 30 days after publication of the notice.

### 803. APPLICATION REQUIREMENTS FOR CLASS II UNDERGROUND INJECTION CONTROL WELLS.

- a. ~~The~~Unless otherwise noted in this section, the requirements of this section apply to all Class II underground injection control wells, including: Dedicated Injection Wells (disposal and enhanced recovery); Simultaneous Injection Wells, and Commercial Disposal Well Facilities.
- b. An application for a Class II underground injection control well will, ~~as applicable,~~ satisfy the 300 Series permitting requirements ~~for an, including submission of a Form 2A, Oil and Gas Development Plan as set forth in the 300 Series~~Location Assessment, and Form 2, Application for Permit to Drill, as applicable.
- c. **Multiple ~~injection well applications~~Disposal Well Applications.** The injection zone radius for ~~each well~~disposal wells will not interfere with the injection zone radius of any other ~~injection wells~~disposal wells. ~~This Rule 803.c will not apply to enhanced recovery floods.~~
- d. Neither construction of nor operation of a Class II underground injection well will occur without the Director's approval of an Underground Injection Formation Permit Application, Form 31 and Injection Well Permit Application, Form 33.

- (1) **Form 31, Underground Injection Formation Permit Application.** Form 31 permits the injection zone, and will be approved prior to completing an injection zone. A Form 31 ~~must be approved prior to injection in any new injection facility.~~ Underground Injection Formation Permit Application – Intent, must be approved prior to sampling, stimulating, and testing the Well(s). A Form 31, Underground Injection Formation Permit Application – Subsequent must be approved prior to injection.
  - (2) **Form 33, Injection Well Permit Application.** Form 33 permits the injection well, and will be approved prior to completing the well. A Form 33, Injection Well Permit Application – Intent, must be approved prior to sampling, stimulating, and testing the Well(s). A Form 31, Underground Injection Formation Permit Application – Subsequent must be approved prior to injection ~~in any new injection well.~~
- e. **Withholding ~~approval~~Approval of ~~underground disposal~~Underground Disposal of Class II Exploration and Production Waste.** If the Director determines that a proposed Class II underground injection well is not protective of public health, safety, welfare, the environment and wildlife resources, and will not protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations, the Director will deny the Underground Injection Formation Permit Application, Form 31 and any related Injection Well Permit Application, Form 33. In accordance with Rule 503, the Operator may seek the Commission's review of the Director's rejection of a Form 31 and Form 33 application.
- f. **Maximum ~~allowable~~Allowable Injection Rate and Pressure.**
- (1) The maximum allowable injection rate, total volume, and surface injection pressure will be set by the Director with an approved Form 33.
  - (2) Except during stimulation, the maximum allowable injection pressure will be set so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone.
- g. **Form 31, Underground Injection Formation Permit Application – Intent.** Application An application for aan injection well will include the following information:
- (1) **Operator.** The Operator of the well or the designated Operator of a unitized or cooperative project will execute the application.
  - (2) **Surface and Mineral Owners Map and List of Addresses.** The names, addresses and holdings of all Surface ~~Owner~~Owners and mineral ~~owners,~~Owners within 1/2 mile of the proposed vertical disposal well or wells, or ~~owners~~all Surface Owners and mineral Owners within 1/2 mile of the injection zone in directional or ~~all owners of record in the field~~ horizontal wells, or if a field-wide system is proposed, all Surface Owners and mineral Owners of record in the field and within 1/2 mile of the unit or project boundary. These Surface Owners and mineral ~~owners~~Owners will be specifically outlined and identified on a base map, and a related list of addresses will be provided with the application.
  - (3) **Surface Use Agreements.** A Surface Use Agreement is required for construction or recompletion of the well at the surface location. Multiple Surface Use Agreements are required for ~~subsurface rights~~constructing or recompleting the well if the injection zone is beneath or crosses onto the property of different Surface Owner(s). All Surface Use Agreements with Surface Owners above the injection zone will specifically allow for use of pore space within the injection zone below the ground surface.
- A. Surface Use Agreement(s) for pore space use in the injection zone will include a ~~1/4~~1/4 mile buffer around the surface hole location and a 1/4 mile buffer around the completed

interval in the well-path, projected to surface in plan view for vertical, directional, and horizontal wells, in both new wells and recompleted wells.

- B. Surface Use Agreements will state explicitly that the injected water is salt water produced from Oil and Gas Operations and other approved EPA Class II waste or Class II Exploration and Production Waste.

(4) **Surface Facility Diagram and Process Flow Diagram.** A diagram of the surface facility showing all Pipelines and Tanks associated with the system and a process flow diagram.

(5) **Proposed Injection Program.** The application will include the following:

- A. An overall summary of the proposed injection program.

B. **Geologic Formation Summary.** The application will include a geologic formation summary for all wells being converted to injection and all new injection wells. For a new injection well, the application may reference any available geophysical logging data from offset well(s) within 1 mile of the proposed injection well to estimate formation depths and thickness. Starting from the surface, down to the proposed total depth of the well, the application will include a stratigraphic chart with the geologic formations present, along with the names, descriptions, depths, and thickness of the following:

- i. The formations which will receive any fluids to be injected;
- ii. The overlying and underlying confining formations capable of limiting the movement of any fluids to be injected;
- iii. The formations from which oil and gas wells are producing or have produced; and
- iv. All underground sources of drinking water; and

C. A water analysis of the fluid to be injected; and

D. A water analysis of receiving formation(s) (if the total dissolved solids of the injection formation is determined to less than 10,000 milligrams per liter, the UIC Aquifer must be exempted in accordance with Rule 802); and

E. A description of the compatibility of the injection fluid with the receiving formation(s); and

F. A description of the source(s) of the fluid and a description of the transport method from the source(s) to the injection well(s); and

G. A general description of the surface facilities, separation, and treatment processes; and

H. The estimated volume to be injected daily; and

I. The anticipated injection pressures and known or calculated fracture gradient.

(6) **Seismicity Evaluation.** Class II injection wells will not be permitted in areas where they would inject into a formation which is separated from any underground source Underground Source of drinking water Drinking Water by a confining zone with known open faults or fractures within the Area of Review. No new injection wells are permitted within 300 feet in a vertical dimension from the top of any Precambrian basement formation. The application will include a seismic evaluation with the following information:

- A. A geological and geophysical evaluation of known transmissive or sealing faults or shear zones within 12 -miles of the injection well and the potential for induced seismicity-;
  - B. An exhibit of the historical seismic activity within 12 -miles of the proposed injection well utilizing data from the USGS Earthquake Catalog-;
  - C. An exhibit showing the potential for seismic activity based on USGS probability within 12 -miles of the proposed injection well-; and
  - D. A wellbore diagram of the injection zone depicting the well's bottomhole location relative to the Precambrian basement.
- (7) **Oil and Gas Well Map and List-;** The application will include a base map covering the area within 1 -mile of the proposed injection wellbore(s), showing the wellbore path projected to surface in plan view and all oil and gas wells within a 1 -mile radius of the injection wellbore(s). Labels on the map will identify all oil and gas wells within 1/2-1/2 mile of the proposed injection wellbore(s) that are producing from the proposed injection zone at the time of the application. A list will provide additional details for all oil and gas wellsWells shown on the Oil and Gas Well Map and their total depth, completed interval depths, completed formation names, and producing or injecting status at the time of application.
- (8) **Domestic and Irrigation Water Wells Map and List.** The application will include a map and list of all domestic and irrigation wells of public record, within 1 -mile of the proposed injection well(s), including their location and depth. Water well permit and construction information and may be obtained from the Colorado Division of Water Resources.
- (9) **Area of Review.** The application will include a review of all offset oil and gas wellsWells within 1/2 mile of proposed injection wellbore(s), describing existing isolation of injection formations, oil and gas production formations, confining formations, and underground sources of drinking water.
- (10) **Remedial Correction Plan.** For any well within 1/4 mile of the proposed injection wellbore(s) in which the injection zone is not adequately confined the applicant will include a remedial correction plan. The applicant will include a plan to plug, re-plug, or provide remedial cement for any well(s) penetrating the injection zone within 1/4 mile of the proposed injection wellbore(s), which the applicant may or may not operate and a plan for the performance of any such remedial work.
- (11) **Stimulation Program.** The application will include a summary of any proposed stimulation program.
- (12) **Disposal Formation Hydrocarbon Evaluation.** For disposal wells, the application will include the Operator's proposed method of evaluating hydrocarbon production potential of the proposed injection zone. This Rule 803.g.(12) will not apply to enhanced recovery wells.
- (13) **Class II Waste Source List.** The application will include a listing of all sources of Class II Exploration and Production Waste to be injected on a Form 26, Source of Produced Water for Disposal-; Form 26.
- (14) **Notice of Application.** A notice of application for an injection well will be given by the applicant by registered or certified mail or by personal delivery to the persons listed below. The application will include a certificate of service demonstrating that the applicant served a copy of the application on all persons entitled to notice pursuant to the Commission's

Rules. The certificate of service will include the names and addresses of those persons the applicant notified, and the applicant will certify that notice was given by registered or certified mail, or by personal delivery, to each:

- A. Surface Owners and mineral Owners within 1/4 mile of the proposed well(s); and
  - B. **Disposal Wells.** Owners and Operators of oil and gas ~~wells~~Wells producing from the injection zone and the mineral ~~owner~~Owner of the injection zone within 1/2 mile of the disposal wellbore and to ~~owners~~Owners of cornering and contiguous units where injection will occur into the producing zones, whichever is the greater distance; or
  - C. **Enhanced Recovery Wells.** If injection of fluids is proposed for an enhanced recovery project, an entire copy of the application will be given by the applicant by registered or certified mail or by personal delivery to each ~~owner~~Owner of record of the reservoir involved within the unit and within 1/4 mile of the proposed unit boundary.
- (15) ~~The application will include a certificate of service demonstrating that the applicant served a copy of the application on all persons entitled to notice pursuant to the Commission's Rules. The certificate of service will include the names and addresses of those persons the applicant notified, and the applicant will certify that notice was given by registered or certified mail, or by personal delivery.~~ **Notice of Application Requirements.** The notice of application will briefly describe the injection application and include legal location, proposed injection zone(s), depth of injection, and other relevant information.
- A. The notice will specifically state that any person who would be directly and adversely affected or aggrieved by the authorization of the underground injection into the ~~propose~~proposed injection zone, pursuant to Rule 507.a, may file, within 15 days of notification, a written request for a public hearing before the Commission, provided such request meets the petition requirements specified in ~~subparagraph k. of this rule~~Rule 803.k.
  - B. The notice will state that additional information ~~on~~about the operation of the proposed disposal well may be obtained at the ~~Commission~~Commission's office. The notice will provide the appropriate Commission staff contact information.
  - C. A copy of the notice of application will be included with the injection application filed with the Commission.
- h. **Form 31, Underground Injection Formation Permit Application – Subsequent.** ~~The Operator will file within~~ Within 30 -days of a successful mechanical integrity test for an injection well, the Operator will file a Form 31, Underground Injection Formation Permit Application – Subsequent, which will include the following information:
- (1) **Injection Zone Water Analysis.** A water analysis from the injection formation (if the total dissolved solids of the injection formation is determined to less than 10,000 milligrams per liter, the UIC Aquifer must be exempted ~~in accordance with~~pursuant to Rule 802).
  - (2) **Geophysical Logs.** Openhole resistivity and neutron/density logs from the bottom of the surface casing to total depth of the injection well.
  - (3) **Step Rate or Injectivity Test Documentation.** If the Operator performs a step rate test or injectivity test, the Operator will submit the test results.



- (4) **Disposal Well Hydrocarbon Evaluation Results.** Summary of the Operator's evaluation of productivity test results in the injection formation. This Rule 803.h.(4) will not apply to enhanced recovery wells.
- i. **Form 33, Injection Well Permit Application – Intent.** The Operator will file a Form 33, Injection Well Permit Application –Intent, which includes the following information:
- (1) **Wellbore Diagram.** A existing and proposed schematic drawing showing all casing strings with cement volumes and tops, plug back total depth, isolation devices, remedial cement work, depth of any existing open or squeezed perforations, setting depths of any ~~bridge plugs~~ existing or proposed bridge plugs, formation tops, planned perforations in the injection zone, tubing and packer size, and setting depth.
  - (2) **Casing and Cementing Plan.** The application will include a full description of the proposed casing and cement in the injection well or wells. This will include any previous and proposed remedial cement work.
  - (3) **Casing Integrity.** For existing wells, the Operator will check the condition of the casing with a pipe analysis log or a caliper log and include a copy of the log with the application.
- j. **Form 33, Injection Well Permit Application – Subsequent.** ~~The~~ After an injection well is drilled, the Operator will file a Form 33, which will include the following as-constructed details:
- (1) **Wellbore Diagram.** The subsequent report will include a final schematic drawing showing all casing strings with cement volumes and tops, plug back total depth, isolation devices, depth of any existing open or squeezed perforations, setting depths of any bridge plugs, formation tops, perforations in the injection zone, tubing and packer size, and setting depths.
  - (2) **Casing and Cementing.** The subsequent report will include a full description of the final casing and cement in the injection well, any existing remedial cement confirmed during the work, and remedial cement placed during the work.
  - (3) **Cement Bond Log.** Unless already provided to the Commission, to determine if the cement has been placed to adequately isolate the injection zone, production zones, and groundwater, a cement bond or other cement evaluation log will be run and provided with this report as a means of verifying cementing records.
  - (4) **Mechanical ~~integrity testing requirement~~ Integrity Testing Requirement.** Prior to application approval, the proposed disposal well must satisfactorily pass a mechanical integrity test ~~in accordance with~~ pursuant to Rule 417 and be witnessed by the Director.
- k. **Evaluation of ~~written requests~~ Written Requests for ~~public hearing~~ Public Hearing.** Written requests for public hearing before the Commission by a person, notified ~~in accordance with~~ pursuant to Rule ~~805-d-803.g~~ notice application requirements, who may be directly and adversely affected or aggrieved by the authorization of the underground injection into the proposed injection zone pursuant to Rule 507.a, will be reviewed and evaluated by the Director in consultation with the applicant. Written protests will specifically provide information on:
- (1) Possible conflicts between the injection zone's proposed injection use and present or future use as a source of drinking water or as a source of hydrocarbon production; ~~or~~
  - (2) Operations at the well site which may affect potential and current sources of drinking water.

- l. **Injection ~~well public notice.~~Well Public Notice.** The Director will publish a notice of the proposed injection permit for injection wells in a newspaper of general circulation serving the area where the well(s) is (are) located. The notice will briefly describe the disposal application and include legal location, proposed injection zone, depth of injection, and other relevant information. The comment period on the proposed injection application will end 30 days after the date of publication. If any data, information, or arguments submitted during the public comment period demonstrate that the proposed injection well permit is not protective of public health, safety, welfare, the environment ~~and, or~~ wildlife resources, the Director will request that the Commission hold a hearing to consider whether to approve the application.
- m. **Injection ~~application—deadlines.~~Application Deadlines.** If all of the data or information necessary to approve the injection application (a Form 31, ~~Underground Injection Formation Permit Application – Intent~~, or a Form 33, ~~Injection Well Permit Application – Intent~~) has not been received within 6 months of the date of approval of the application Intent, the application will be withdrawn from consideration. However, for good cause shown, a 90 day extension may be granted, if requested prior to the date of expiration.
- n. **Notice of ~~commencement.~~Commencement.** Immediately upon the commencement of injection operations, the Operator will notify the Commission of the injection date by a Form 5A, Completed Interval Report.
- o. **Notice of ~~discontinuance.~~Discontinuance.** Within 10 days after the discontinuance of injection operations, the Operator will submit a Form 4, Sundry Notice to notify the Commission of the date of such discontinuance and the reasons ~~therefor~~for the discontinuance.

#### 804. ANALYTICAL REQUIREMENTS FOR INJECTION FLUID ANALYSES.

- a. Collection and analysis of water samples for ~~Rule~~Rules 803, ~~Rule 807, Rule 808, 809, or Rule 809810~~ injection well applications must comply with the Commission's approved Underground Injection Control Quality Assurance Project Plan, effective October 8, 1997.
- b. Water analyses must include total dissolved solids and major anions and cations using routine U.S. ~~EPA~~Environmental Protection Agency or oilfield methods.
- c. If requested by the Director, the Operator will analyze samples for other constituents that may be present in the injection fluids.
- d. All analysis of water samples will be reported with the Electronic Data Deliverable (EDD) through ~~Form 43-~~COGCC~~the Commission's Environmental Database~~on a Form 43, Analytic Sample Submittal.

#### 805. TIMING OF INJECTION FLUID SAMPLING AND ANALYSIS

- a. **Initial Analysis.** An injection fluid analysis from a sample collected at the injection facility is required within 1 -year of commencing injection after approval of an injection application.
- b. **Periodic Analysis.** An injection fluid analysis from a sample collected at the injection facility is required every 5 -years after the initial analysis or 5 -years after the most recent change of source analysis.
- c. **Change of Sources.** An injection fluid analysis is required when there is a change in the quality of the injection fluid and as required by Rule 806.

#### 806. FORM 26~~7~~1 SOURCES OF PRODUCED WATER.

After approval of a Form 31, Underground Injection Formation Permit Application – Intent, or Form 33, Injection Well Permit Application – Intent. Operators will submit and obtain approval of a Form 26, Source of Produced Water for Disposal ~~concurrent with~~prior to approval of a Form 31 or Form 33 Subsequent. All changes in source water will be reported within 90 -days on a new Source of Produced Water for Disposal, Form 26 for Disposal. Water analyses will be included for new, individual source wells.

#### 807. NON-PRODUCED CLASS II EXPLORATION AND PRODUCTION WASTE INJECTION

- a. Form 14A, ~~Source of non-produced~~Non-Produced Class II ~~exploration~~Exploration and ~~production waste.~~Production Waste. Operators will submit and obtain approval of a Form 14A, Source of Non-Produced Class II Exploration and Production Waste for disposal prior to the injection of Class II Exploration and Production waste other than produced water, ~~as described in~~pursuant to Rule 413.b., into any formation in a dedicated Class II Underground Injection Control well. Examples of non-produced water include, but are not limited to, ~~ground water~~groundwater recovered during a remediation project or chemical treatments.

- (1) The Form 14A will include a description of the nature and source of the fluids to be injected, the types of chemicals used to treat such fluids, and the proposed date of initial fluid injection.
- (2) ~~The Operators will submit a~~ Form 14A ~~must be submitted,~~ and ~~approved~~obtain the Director's approval, for ~~any~~ new disposal facility, and for any changes in the source of non-produced Class II waste for an existing facility.

- b. Form 14, ~~Monthly report~~Report of ~~non-produced~~Non-Produced Class II ~~exploration~~Exploration and ~~production waste injected~~Production Waste Injected.

- (1) Operators engaged in the injection of approved ~~non-produced~~ Class II waste ~~as described in~~pursuant to Rule 807.a. in a dedicated Class II Underground Injection Control well will submit a Form 14, Monthly Report of Non-Produced Class II Exploration and Production Waste Injected within 45 days after the end of each month. This report will include the type and amount of waste ~~received from transporters.~~injected.
- (2) Operators of simultaneous injection wells will, by March 1 of each year, report to the Director the calculated injected volume for the previous year, by month, on a Form 14.

#### 808. SIMULTANEOUS INJECTION WELL APPLICATION REQUIREMENTS

Simultaneous Injection Well applications will:

- a. Satisfy the requirements of ~~Rule~~Rules 803, ~~Rule~~ 804, ~~Rule~~ 805, 806, and 807.
- b. Include downhole pump specifications, ~~together with~~and a calculation of maximum discharge pressure created under proposed wellbore configuration. Downhole pump configurations will be designed to inject below the injection zone fracture gradient.

#### 809. COMMERCIAL DISPOSAL WELLS AND FACILITIES

- a. Commercial ~~disposal well~~Disposal Well applications will:

- (1) Satisfy the requirements of ~~Rule~~Rules 803, ~~Rule~~ 804, ~~Rule~~ 805, 806, and 807.
- (2) Meet the financial assurance requirements of Rules 706, 707, and 712.



- b. Commercial Disposal Well Facilities will perform continuous seismic monitoring. The Operator will provide seismic monitoring data to the Director upon request.

#### 810. ENHANCED RECOVERY INJECTION PROJECTS

- a. No person will perform any enhanced recovery operations, cycling, or recycling operations including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, nor will any person carry on any other method of unit or cooperative development or operation of a field or a part of either, without having first obtained written authorization from the Commission following a hearing pursuant to Rule 503.g.(10).
- b. ~~Enhanced~~Hearing applications for enhanced recovery injection ~~well applications-projects~~ will include the following information:
  - (1) Demonstration that the proposed project satisfies the requirements of ~~Rule~~Rules 803, ~~Rule~~ 804, ~~Rule~~ 805, 806, and 807, unless otherwise noted in those Rules.
  - (2) Be filed by the Operator, or any one or more of the parties involved in the proposed enhanced recovery injection project.
  - (3) **Operator Contact.** The name, phone, email and address of all ~~operators~~Operators in the unit.
  - (4) **Unit and Operating Agreements.** Copies of the unit or co-operative agreement and operating agreement, unless these agreements have already been provided to the Commission.
  - (5) **Multiple ~~well applications~~-Well Applications.** An application may include the use of more than 1 disposal well on the same location, or on more than 1 location. Wherever feasible and applicable, the application will contemplate a coordinated plan for the entire field.
  - (6) **Unit Plan of Operations.** This information will supplement the Proposed Injection Program summary required by Rule 803. The Plan of Operations will describe how the enhanced recovery project will be operated as a system.
  - (7) **Casing and Cementing for Enhanced Recovery Injection Wells.** Wells used for injection of fluids into the producing formation will be cased with safe and adequate casing or tubing so as to prevent leakage, and will be so set or cemented that damage will not be caused to groundwater, oil, or gas resources.
  - (8) **Unit Area Owners Map.** If the plan of operation involves injection of fluids for enhanced recovery operations, such map will show the names of ~~owners~~Owners of record within the unit and within 1/4 mile of the unit boundary, indicating whether they are ~~surface owners~~Surface Owners, mineral interest ~~owners~~Owners, or working interest ~~owners~~Owners.
  - (9) **Unit Area Well Plat.** A plat showing the area involved, together with the ~~well~~Well or ~~wells~~Wells, including drilling ~~wells~~Wells and dry and abandoned ~~wells~~Wells located thereon, all properly designated.
  - (10) **Unit Area Domestic and Irrigation Water Wells Map and List.** The application will include a map and list of all domestic and irrigation wells of public record, within the unit area and within 1/4 mile of the unit boundary, including their location and depth. ~~Water well~~

~~permit and construction information and may be obtained from the Colorado Division of Water Resources.~~

- (11) **Unit Area of Review.** The application will include a review of all offset Wells within the unit area and within 1/4 mile of the unit boundary, describing existing isolation of injection formations, oil and gas production formations, confining formations, and underground sources of drinking water.

- c. **Notice and Date of Hearing for Enhanced Recovery Injection Projects.** Upon the filing of an enhanced recovery injection project application, the Commission will issue a notice of hearing in accordance with Commission Rule ~~5XX503.a~~. The application will be set for public hearing at ~~such a~~ time as designated by the Commission ~~may fix~~.

d. **Notices for Enhanced Recovery Operations.**

- (1) When any well in an approved enhanced recovery unit operation is converted to or from an injection status, notice will be given on a Sundry Notice, Form 4, within 30 days.

- ~~(2) Before plugging any intake well, the Owner of the well will be plugged, provide notice will be given to the Commission by the owner of said well, and. The Owner will follow the same procedure will be followed in the plugging of such well as is provided procedures for the plugging of Wells.~~

- ~~(2) **GAS STORAGE PROJECTS.** These provisions will not apply an intake well as the procedure for plugging a Well pursuant to existing Gas Storage Wells, gas storage projects or to projects that have received approval of the Federal Energy Regulatory Commission; provided however, that a copy of such application and approval will be submitted to the Commission and made Rule 434 a part of their records.~~

## **100 SERIES DEFINITIONS**

**COMMERCIAL DISPOSAL WELL** means an injection well that receives Class II exploration and production waste from multiple operators.

**UIC AQUIFER** means a geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

**UNDERGROUND SOURCE OF DRINKING WATER** means an UIC Aquifer or its portion:

- a. Which supplies any public water system; or
- b. Which contains a sufficient quantity of ground water to supply a public water system; and
  - (1) Currently supplies drinking water for human consumption; or
  - (2) Contains fewer than 10,000 mg/l total dissolved solids; and
- c. Which is not an exempted UIC Aquifer under Rule 802.

## **800 SERIES UNDERGROUND INJECTION FOR DISPOSAL AND ENHANCED RECOVERY PROJECTS**

### **801. CLASS II UNDERGROUND INJECTION CONTROL WELLS.**

An injection well will not be authorized if the proposed well or operations will result in the presence of any physical, chemical, biological or radiological substance or matter in an Underground Source of Drinking Water that may adversely affect the health of persons or cause a violation of any of the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations, 40 C.F.R. Part 141. Only the version of 40 C.F.R. Part 141 in effect as of [rule effective date] applies to this rule; later amendments do not apply. 40 C.F.R. Part 141 is available for public inspection during normal business hours from the Public Room Administrator at the office of the Commission, 1120 Lincoln Street, Suite 801, Denver, Colorado 80203, and at the U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop St, Denver, CO 80202, and is available online at [https://www.epa.gov/sites/production/files/2015-11/documents/howepargulates\\_cfr-2003-title40-vol20-part141\\_0.pdf](https://www.epa.gov/sites/production/files/2015-11/documents/howepargulates_cfr-2003-title40-vol20-part141_0.pdf).

### **802. EXEMPTED UIC AQUIFERS.**

- a. **Criteria for UIC Aquifer exemption.** An UIC Aquifer or a portion thereof may be designated by the Director or the Commission as an exempted UIC Aquifer, in connection with the filing of an application pursuant to Rules 803, 808, 809 or 810, and after notification to the Colorado Department of Public Health and Environment, Water Quality Control Division and U.S. Environmental Protection Agency, if it meets the following criteria:
  - (1) It does not currently serve as a source of drinking water, and either Rule 802.a.(2) or 802.a.(3) apply;
  - (2) It cannot now and will not in the future serve as a source of drinking water because:
    - A. It is mineral, hydrocarbon or geothermal energy producing, or can be demonstrated by a person filing an application pursuant to Rules 803, 808, 809 or 810, to contain minerals

or hydrocarbons that, considering their quantity and location, are expected to be commercially producible; or

B. It is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical; or

C. It is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption.

(3) The total dissolved solids content of the ground water is more than 3,000 and less than 10,000 milligrams per liter and it is not reasonably expected to supply a public water system.

b. **UIC Aquifer Exemption Public Notice.** If an UIC Aquifer exemption is required as part of an injection permit application process, the injection well applicant will apply for an UIC Aquifer exemption. This application will contain data and information that show the applicable UIC Aquifer exemption criteria set forth in Rule 802.a are met. After evaluation of the application and prior to designating an UIC Aquifer or a portion thereof as an exempted UIC Aquifer, the Director will publish a notice of proposed designation in a newspaper of general circulation serving the area where the UIC Aquifer is located. The notice will identify such UIC Aquifer or portion thereof which the Director proposes to designate as exempted, and will state that any person who can make a showing to the Director that the requested designation does not meet the criteria set forth in Rule 802.a may request the Commission to hold a hearing thereon.

c. **Evaluation of Written Requests for Public Hearing.** Written requests for a public hearing before the Commission will be reviewed and evaluated by the Director in consultation with the applicant to determine if the criteria set forth in Rule 802.a have been met. If, within 30 days after publication of the notice, the Commission receives a hearing request for which the Director determines the criteria set forth in Rule 801 have not been met, the Commission will hold such a hearing in accordance with Rule 510. If no request for hearing is filed within 30 days, the UIC Aquifer or portion thereof will be considered exempted 30 days after publication of the notice.

### 803. APPLICATION REQUIREMENTS FOR CLASS II UNDERGROUND INJECTION CONTROL WELLS.

a. Unless otherwise noted in this section, the requirements of this section apply to all Class II underground injection control wells, including: Dedicated Injection Wells (disposal and enhanced recovery); Simultaneous Injection Wells, and Commercial Disposal Well Facilities.

b. An application for a Class II underground injection control well will satisfy the 300 Series permitting requirements, including submission of a Form 2A, Oil and Gas Location Assessment, and Form 2, Application for Permit to Drill, as applicable.

c. **Multiple Disposal Well Applications.** The injection zone radius for disposal wells will not interfere with the injection zone radius of any other disposal wells. This Rule 803.c will not apply to enhanced recovery floods.

d. Neither construction of nor operation of a Class II underground injection well will occur without the Director's approval of an Underground Injection Formation Permit Application, Form 31 and Injection Well Permit Application, Form 33.

(1) **Form 31, Underground Injection Formation Permit Application.** Form 31 permits the injection zone, and will be approved prior to completing an injection zone. A Form 31, Underground Injection Formation Permit Application – Intent, must be approved prior to

sampling, stimulating, and testing the Well(s). A Form 31, Underground Injection Formation Permit Application – Subsequent must be approved prior to injection.

- (2) **Form 33, Injection Well Permit Application.** Form 33 permits the injection well, and will be approved prior to completing the well. A Form 33, Injection Well Permit Application – Intent, must be approved prior to sampling, stimulating, and testing the Well(s). A Form 31, Underground Injection Formation Permit Application – Subsequent must be approved prior to injection.

- e. **Withholding Approval of Underground Disposal of Class II Exploration and Production Waste.** If the Director determines that a proposed Class II underground injection well is not protective of public health, safety, welfare, the environment and wildlife resources, and will not protect against adverse environmental impacts on any air, water, soil, or biological resource resulting from oil and gas operations, the Director will deny the Underground Injection Formation Permit Application, Form 31 and any related Injection Well Permit Application, Form 33. In accordance with Rule 503, the Operator may seek the Commission's review of the Director's rejection of a Form 31 and Form 33 application.

- f. **Maximum Allowable Injection Rate and Pressure.**

- (1) The maximum allowable injection rate, total volume, and surface injection pressure will be set by the Director with an approved Form 33.
- (2) Except during stimulation, the maximum allowable injection pressure will be set so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone.

- g. **Form 31, Underground Injection Formation Permit Application – Intent.** An application for an injection well will include the following information:

- (1) **Operator.** The Operator of the well or the designated Operator of a unitized or cooperative project will execute the application.
- (2) **Surface and Mineral Owners Map and List of Addresses.** The names, addresses and holdings of all Surface Owners and mineral Owners within 1/2 mile of the proposed vertical disposal well or wells, or all Surface Owners and mineral Owners within 1/2 mile of the injection zone in directional or horizontal wells, or if a field-wide system is proposed all Surface Owners and mineral Owners of record in the field and within 1/2 mile of the unit or project boundary. These Surface Owners and mineral Owners will be specifically outlined and identified on a base map, and a related list of addresses will be provided with the application.
- (3) **Surface Use Agreements.** A Surface Use Agreement is required for construction or recompletion of the well at the surface location. Multiple Surface Use Agreements are required for constructing or recompleting the well if the injection zone is beneath or crosses onto the property of different Surface Owner(s). All Surface Use Agreements with Surface Owners above the injection zone will specifically allow for use of pore space within the injection zone below the ground surface.

- A. Surface Use Agreement(s) for pore space use in the injection zone will include a 1/4 mile buffer around the surface hole location and a 1/4 mile buffer around the completed interval in the well, projected to surface in plan view for vertical, directional, and horizontal wells, in both new wells and recompleted wells.

- B. Surface Use Agreements will state explicitly that the injected water is salt water produced from Oil and Gas Operations and other approved EPA Class II waste or Class II Exploration and Production Waste.
- (4) **Surface Facility Diagram and Process Flow Diagram.** A diagram of the surface facility showing all Pipelines and Tanks associated with the system and a process flow diagram.
- (5) **Proposed Injection Program.** The application will include the following:
- A. An overall summary of the proposed injection program.
  - B. **Geologic Formation Summary.** The application will include a geologic formation summary for all wells being converted to injection and all new injection wells. For a new injection well, the application may reference any available geophysical logging data from offset well(s) within 1 mile of the proposed injection well to estimate formation depths and thickness. Starting from the surface, down to the proposed total depth of the well, the application will include a stratigraphic chart with the geologic formations present, along with the names, descriptions, depths, and thickness of the following:
    - i. The formations which will receive any fluids to be injected;
    - ii. The overlying and underlying confining formations capable of limiting the movement of any fluids to be injected;
    - iii. The formations from which oil and gas wells are producing or have produced; and
    - iv. All underground sources of drinking water.
  - C. A water analysis of the fluid to be injected.
  - D. A water analysis of receiving formation(s) (if the total dissolved solids of the injection formation is determined to less than 10,000 milligrams per liter, the UIC Aquifer must be exempted in accordance with Rule 802).
  - E. A description of the compatibility of the injection fluid with the receiving formation(s).
  - F. A description of the source(s) of the fluid and a description of the transport method from the source(s) to the injection well(s).
  - G. A general description of the surface facilities, separation, and treatment processes.
  - H. The estimated volume to be injected daily.
  - I. The anticipated injection pressures and known or calculated fracture gradient.
- (6) **Seismicity Evaluation.** Class II injection wells will not be permitted in areas where they would inject into a formation which is separated from any Underground Source of Drinking Water by a confining zone with known open faults or fractures within the Area of Review. No new injection wells are permitted within 300 feet in a vertical dimension from the top of any Precambrian basement formation. The application will include a seismic evaluation with the following information:
- A. A geological and geophysical evaluation of known transmissive or sealing faults or shear zones within 12 miles of the injection well and the potential for induced seismicity;

- B. An exhibit of the historical seismic activity within 12 miles of the proposed injection well;
  - C. An exhibit showing the potential for seismic activity within 12 miles of the proposed injection well; and
  - D. A wellbore diagram of the injection zone depicting the well's bottomhole location relative to the Precambrian basement.
- (7) **Oil and Gas Well Map and List.** The application will include a base map covering the area within 1 mile of the proposed injection wellbore(s), showing the wellbore path projected to surface in plan view and all oil and gas wells within a 1 mile radius of the injection wellbore(s). Labels on the map will identify all oil and gas wells within 1/2 mile of the proposed injection wellbore(s) that are producing from the proposed injection zone at the time of the application. A list will provide additional details for all oil and gas Wells shown on the Oil and Gas Well Map and their total depth, completed interval depths, completed formation names, and producing or injecting status at the time of application.
- (8) **Domestic and Irrigation Water Wells Map and List.** The application will include a map and list of all domestic and irrigation wells of public record, within 1 mile of the proposed injection well(s), including their location and depth.
- (9) **Area of Review.** The application will include a review of all offset oil and gas Wells within 1/2 mile of proposed injection wellbore(s), describing existing isolation of injection formations, oil and gas production formations, confining formations, and underground sources of drinking water.
- (10) **Remedial Correction Plan.** For any well within 1/4 mile of the proposed injection wellbore(s) in which the injection zone is not adequately confined the applicant will include a remedial correction plan. The applicant will include a plan to plug, re-plug, or provide remedial cement for any well(s) penetrating the injection zone within 1/4 mile of the proposed injection wellbore(s), which the applicant may or may not operate and a plan for the performance of any such remedial work.
- (11) **Stimulation Program.** The application will include a summary of any proposed stimulation program.
- (12) **Disposal Formation Hydrocarbon Evaluation.** For disposal wells, the application will include the Operator's proposed method of evaluating hydrocarbon production potential of the proposed injection zone. This Rule 803.g.(12) will not apply to enhanced recovery wells.
- (13) **Class II Waste Source List.** The application will include a listing of all sources of Class II Exploration and Production Waste to be injected on a Form 26, Source of Produced Water for Disposal.
- (14) **Notice of Application.** A notice of application for an injection well will be given by the applicant by registered or certified mail or by personal delivery to the persons listed below. The application will include a certificate of service demonstrating that the applicant served a copy of the application on all persons entitled to notice pursuant to the Commission's Rules. The certificate of service will include the names and addresses of those persons the applicant notified, and the applicant will certify that notice was given by registered or certified mail, or by personal delivery.
- A. Surface Owners and mineral Owners within 1/4 mile of the proposed well(s); and

- B. **Disposal Wells.** Owners and Operators of oil and gas Wells producing from the injection zone and the mineral Owner of the injection zone within 1/2 mile of the disposal wellbore and to Owners of cornering and contiguous units where injection will occur into the producing zones, whichever is the greater distance; or
  - C. **Enhanced Recovery Wells.** If injection of fluids is proposed for an enhanced recovery project, an entire copy of the application will be given by the applicant by registered or certified mail or by personal delivery to each Owner of record of the reservoir involved within the unit and within 1/4 mile of the proposed unit boundary.
- (15) **Notice of Application Requirements.** The notice of application will briefly describe the injection application and include legal location, proposed injection zone(s), depth of injection, and other relevant information.
- A. The notice will specifically state that any person who would be directly and adversely affected or aggrieved by the authorization of the underground injection into the proposed injection zone, pursuant to Rule 507.a, may file, within 15 days of notification, a written request for a public hearing before the Commission, provided such request meets the petition requirements specified in Rule 803.k.
  - B. The notice will state that additional information about the operation of the proposed disposal well may be obtained at the Commission's office. The notice will provide the appropriate Commission staff contact information.
  - C. A copy of the notice of application will be included with the injection application filed with the Commission.
- h. **Form 31, Underground Injection Formation Permit Application – Subsequent.** Within 30 days of a successful mechanical integrity test for an injection well, the Operator will file a Form 31, Underground Injection Formation Permit Application – Subsequent, which will include the following information:
- (1) **Injection Zone Water Analysis.** A water analysis from the injection formation (if the total dissolved solids of the injection formation is determined to be less than 10,000 milligrams per liter, the UIC Aquifer must be exempted pursuant to Rule 802).
  - (2) **Geophysical Logs.** Openhole resistivity and neutron/density logs from the bottom of the surface casing to total depth of the injection well.
  - (3) **Step Rate or Injectivity Test Documentation.** If the Operator performs a step rate test or injectivity test, the Operator will submit the test results.
  - (4) **Disposal Well Hydrocarbon Evaluation Results.** Summary of the Operator's evaluation of productivity test results in the injection formation. This Rule 803.h.(4) will not apply to enhanced recovery wells.
- i. **Form 33, Injection Well Permit Application – Intent.** The Operator will file a Form 33, Injection Well Permit Application – Intent, which includes the following information:
- (1) **Wellbore Diagram.** A existing and proposed schematic drawing showing all casing strings with cement volumes and tops, plug back total depth, isolation devices, remedial cement work, depth of any existing open or squeezed perforations, setting depths of any existing or proposed bridge plugs, formation tops, planned perforations in the injection zone, tubing and packer size, and setting depth.



- (2) **Casing and Cementing Plan.** The application will include a full description of the proposed casing and cement in the injection well or wells. This will include any previous and proposed remedial cement work.
  - (3) **Casing Integrity.** For existing wells, the Operator will check the condition of the casing with a pipe analysis log or a caliper log and include a copy of the log with the application.
- j. **Form 33, Injection Well Permit Application – Subsequent.** After an injection well is drilled, the Operator will file a Form 33, which will include the following as-constructed details:
  - (1) **Wellbore Diagram.** The subsequent report will include a final schematic drawing showing all casing strings with cement volumes and tops, plug back total depth, isolation devices, depth of any existing open or squeezed perforations, setting depths of any bridge plugs, formation tops, perforations in the injection zone, tubing and packer size, and setting depths.
  - (2) **Casing and Cementing.** The subsequent report will include a full description of the final casing and cement in the injection well, any existing remedial cement confirmed during the work, and remedial cement placed during the work.
  - (3) **Cement Bond Log.** Unless already provided to the Commission, to determine if the cement has been placed to adequately isolate the injection zone, production zones, and groundwater, a cement bond or other cement evaluation log will be run and provided with this report as a means of verifying cementing records.
  - (4) **Mechanical Integrity Testing Requirement.** Prior to application approval, the proposed disposal well must satisfactorily pass a mechanical integrity test pursuant to Rule 417 and be witnessed by the Director.
- k. **Evaluation of Written Requests for Public Hearing.** Written requests for public hearing before the Commission by a person, notified pursuant to Rule 803.g notice application requirements, who may be directly and adversely affected or aggrieved by the authorization of the underground injection into the proposed injection zone pursuant to Rule 507.a, will be reviewed and evaluated by the Director in consultation with the applicant. Written protests will specifically provide information on:
  - (1) Possible conflicts between the injection zone's proposed injection use and present or future use as a source of drinking water or as a source of hydrocarbon production; or
  - (2) Operations at the well site which may affect potential and current sources of drinking water.
- l. **Injection Well Public Notice.** The Director will publish a notice of the proposed injection permit for injection wells in a newspaper of general circulation serving the area where the well(s) is (are) located. The notice will briefly describe the disposal application and include legal location, proposed injection zone, depth of injection, and other relevant information. The comment period on the proposed injection application will end 30 days after the date of publication. If any data, information, or arguments submitted during the public comment period demonstrate that the proposed injection well permit is not protective of public health, safety, welfare, the environment, or wildlife resources, the Director will request that the Commission hold a hearing to consider whether to approve the application.
- m. **Injection Application Deadlines.** If all of the data or information necessary to approve the injection application (a Form 31, Underground Injection Formation Permit Application – Intent, or a Form 33, Injection Well Permit Application – Intent) has not been received within 6 months of the date of approval of the application Intent, the application will be withdrawn from

consideration. However, for good cause shown, a 90 day extension may be granted, if requested prior to the date of expiration.

- n. **Notice of Commencement.** Immediately upon the commencement of injection operations, the Operator will notify the Commission of the injection date by a Form 5A, Completed Interval Report.
- o. **Notice of Discontinuance.** Within 10 days after the discontinuance of injection operations, the Operator will submit a Form 4, Sundry Notice to notify the Commission of the date of such discontinuance and the reasons for the discontinuance.

#### **804. ANALYTICAL REQUIREMENTS FOR INJECTION FLUID ANALYSES**

- a. Collection and analysis of water samples for Rules 803, 808, 809, or 810 injection well applications must comply with the Commission's approved Underground Injection Control Quality Assurance Project Plan, effective October 8, 1997.
- b. Water analyses must include total dissolved solids and major anions and cations using routine U.S. Environmental Protection Agency or oilfield methods.
- c. If requested by the Director, the Operator will analyze samples for other constituents that may be present in the injection fluids.
- d. All analysis of water samples will be reported with the Electronic Data Deliverable (EDD) through the Commission's Environmental Database on a Form 43, Analytic Sample Submittal.

#### **805. TIMING OF INJECTION FLUID SAMPLING AND ANALYSIS**

- a. **Initial Analysis.** An injection fluid analysis from a sample collected at the injection facility is required within 1 year of commencing injection after approval of an injection application.
- b. **Periodic Analysis.** An injection fluid analysis from a sample collected at the injection facility is required every 5 years after the initial analysis or 5 years after the most recent change of source analysis.
- c. **Change of Sources.** An injection fluid analysis is required when there is a change in the quality of the injection fluid and as required by Rule 806.

#### **806. FORM 26, SOURCES OF PRODUCED WATER**

After approval of a Form 31, Underground Injection Formation Permit Application – Intent, or Form 33, Injection Well Permit Application – Intent, Operators will submit and obtain approval of a Form 26, Source of Produced Water for Disposal prior to approval of a Form 31 or Form 33 Subsequent. All changes in source water will be reported within 90 days on a new Source of Produced Water for Disposal, Form 26 for Disposal. Water analyses will be included for new, individual source wells.

#### **807. NON-PRODUCED CLASS II EXPLORATION AND PRODUCTION WASTE INJECTION**

- a. **Form 14A, Source of Non-Produced Class II Exploration and Production Waste.** Operators will submit and obtain approval of a Form 14A, Source of Non-Produced Class II Exploration and Production Waste for disposal prior to the injection of Class II Exploration and Production waste other than produced water, pursuant to Rule 413.b., into any formation in a dedicated Class II Underground Injection Control well. Examples of non-produced water include, but are not limited to, groundwater recovered during a remediation project or chemical treatments.

- (1) The Form 14A will include a description of the nature and source of the fluids to be injected, the types of chemicals used to treat such fluids, and the proposed date of initial fluid injection.
- (2) Operators will submit a Form 14A, and obtain the Director's approval, for any new disposal facility, and for any changes in the source of non-produced Class II waste for an existing facility.

**b. Form 14, Monthly Report of Non-Produced Class II Exploration and Production Waste Injected.**

- (1) Operators engaged in the injection of approved non-produced Class II waste pursuant to Rule 807.a in a dedicated Class II Underground Injection Control well will submit a Form 14, Monthly Report of Non-Produced Class II Exploration and Production Waste Injected within 45 days after the end of each month. This report will include the type and amount of waste injected.
- (2) Operators of simultaneous injection wells will, by March 1 of each year, report to the Director the calculated injected volume for the previous year, by month, on a Form 14.

**808. SIMULTANEOUS INJECTION WELL APPLICATION REQUIREMENTS**

Simultaneous Injection Well applications will:

- a. Satisfy the requirements of Rules 803, 804, 805, 806, and 807.
- b. Include downhole pump specifications, and a calculation of maximum discharge pressure created under proposed wellbore configuration. Downhole pump configurations will be designed to inject below the injection zone fracture gradient.

**809. COMMERCIAL DISPOSAL WELLS AND FACILITIES**

- a. Commercial Disposal Well applications will:
  - (1) Satisfy the requirements of Rules 803, 804, 805, 806, and 807.
  - (2) Meet the financial assurance requirements of Rules 706, 707, and 712.
- b. Commercial Disposal Well Facilities will perform continuous seismic monitoring. The Operator will provide seismic monitoring data to the Director upon request.

**810. ENHANCED RECOVERY INJECTION PROJECTS**

- a. No person will perform any enhanced recovery operations, cycling, or recycling operations including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, nor will any person carry on any other method of unit or cooperative development or operation of a field or a part of either, without having first obtained written authorization from the Commission following a hearing pursuant to Rule 503.g.(10).
- b. Hearing applications for enhanced recovery injection projects will include the following information:
  - (1) Demonstration that the proposed project satisfies the requirements of Rules 803, 804, 805, 806, and 807, unless otherwise noted in those Rules.

- (2) Be filed by the Operator, or any one or more of the parties involved in the proposed enhanced recovery injection project.
  - (3) **Operator Contact.** The name, phone, email and address of all Operators in the unit.
  - (4) **Unit and Operating Agreements.** Copies of the unit or co-operative agreement and operating agreement, unless these agreements have already been provided to the Commission.
  - (5) **Multiple Well Applications.** An application may include the use of more than 1 disposal well on the same location, or on more than 1 location. Wherever feasible and applicable, the application will contemplate a coordinated plan for the entire field.
  - (6) **Unit Plan of Operations.** This information will supplement the Proposed Injection Program summary required by Rule 803. The Plan of Operations will describe how the enhanced recovery project will be operated as a system.
  - (7) **Casing and Cementing for Enhanced Recovery Injection Wells.** Wells used for injection of fluids into the producing formation will be cased with safe and adequate casing or tubing so as to prevent leakage, and will be so set or cemented that damage will not be caused to groundwater, oil, or gas resources.
  - (8) **Unit Area Owners Map.** If the plan of operation involves injection of fluids for enhanced recovery operations, such map will show the names of Owners of record within the unit and within 1/4 mile of the unit boundary, indicating whether they are Surface Owners, mineral interest Owners, or working interest Owners.
  - (9) **Unit Area Well Plat.** A plat showing the area involved, together with the Well or Wells, including drilling Wells and dry and abandoned Wells located thereon, all properly designated.
  - (10) **Unit Area Domestic and Irrigation Water Wells Map and List.** The application will include a map and list of all domestic and irrigation wells of public record, within the unit area and within 1/4 mile of the unit boundary, including their location and depth.
  - (11) **Unit Area of Review.** The application will include a review of all offset Wells within the unit area and within 1/4 mile of the unit boundary, describing existing isolation of injection formations, oil and gas production formations, confining formations, and underground sources of drinking water.
- c. **Notice and Date of Hearing for Enhanced Recovery Injection Projects.** Upon the filing of an enhanced recovery injection project application, the Commission will issue a notice of hearing in accordance with Commission Rule 503.a. The application will be set for public hearing at a time designated by the Commission.
- d. **Notices for Enhanced Recovery Operations.**
- (1) When any well in an approved enhanced recovery unit operation is converted to or from an injection status, notice will be given on a Sundry Notice, Form 4, within 30 days.
  - (2) Before plugging any intake well, the Owner of the well will provide notice to the Commission. The Owner will follow the same procedures for plugging an intake well as the procedure for plugging a Well pursuant to Rule 434.a.



AGENDA ITEM - 11.c.

**TITLE:**

Potential Ext Session - Mark Hamilton (Holland and Hart) Water Opposition case with San Miguel Water Conservation District.

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

Per Amy 2.3.20

**INTRODUCTION/BACKGROUND:**

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			



AGENDA ITEM - 11.d.

**TITLE:**

Potential Executive Session: Exxon/Suncor Litigation, citation (4)(b).

**Presented by:**

**Time needed:**

**PREPARED BY:**

**RECOMMENDED ACTION/MOTION:**

**INTRODUCTION/BACKGROUND:**

**FISCAL IMPACT:**

Contract Number:	Date Executed	End Date	Department(s)
YYYY-###			Board of County Commissioner Staff
Description:			