

Watershed Ranch LLC  
18840 Mountain View Drive  
Buena Vista, Colorado 8121

Thursday, September 13, 2018

Ms. Patricia Gillis  
Environmental Protection Specialist  
Office of Energy Projects  
Division of Hydropower Administration and Compliance  
Federal Energy Regulatory Commission

**Subject: Response to Motions to Intervene and Protest Transfer of License Project #10102**

Dear Ms. Gillis:

Please accept this letter in response to letters submitted by Mr. Kevin Brooker and Mr. Judson Davis, dated May 18, 2018 and May 27, 2018, respectively, in protest to the application to transfer the license of hydro project #10102 (the "Project") from Mr. Franklin Springer to Watershed Ranch LLC. The letters make several claims, some of them overlapping. In the interest of clarity and brevity, this response consolidates the claims:

**1. Claim: The Anderson Ditch Pipeline Improvement was installed unlawfully and continues to harm federal lands.**

**Response:** The Anderson Ditch Pipeline Improvement (the "Pipeline Improvement") was installed as part of a federal project, was largely funded by the federal government, and fully accomplished conservation aims. Specifically, the Pipeline Improvement was completed as part of a National Resources Conservation Service (or NRCSC, an agency of the United States Department of Agriculture) project wherein Mr. Springer was contracted to install the pipeline "for the purpose of reducing irrigation induced soil erosion and to improve water use efficiency." (See enclosed letter dated October 9, 2012 from Mr. Gardiner (NRCS) to Mr. Morrissey (United States Forest Service).

While the Pipeline Improvement may not be popular (as cited in these letters and the referenced *Chaffee County Times* article and youtube video), it fully accomplishes the conservation aim of halting erosion. To the extent that the project ran into compliance issues, it is Watershed Ranch's understanding that those issues were resolved via forest remediation efforts to the satisfaction of the USFS Leadville Ranger District.

**2. Claim: The Project has generated power from unauthorized water sources.**

**Response:** The primary source of water for Project #10102 to generate hydroelectricity is Morrison Creek, for which Watershed Ranch LLC owns a 3 CFS non-consumptive water right for the purposes of generating hydropower year-round. Contrary to Mr. Davis's assertion, Morrison Creek flows year-round, a fact that District 11 Water Commissioner Mr. Brian Sutton can corroborate.

Pine Creek water does flow through the Project at times. Much of this flow is inadvertent: water rights holders located above Watershed Ranch irrigate with Pine Creek water, which water then drains into Early Dawn Lake and Waupaca 2 Reservoirs, where it then flows out via the pipeline leading to the Project and ultimately into the Arkansas River. Further, to the extent that water flows to the Arkansas River via the pipeline, it does so to the benefit of all downstream water uses. This is because the

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pipeline allows the water to reach the Arkansas River more rapidly and with less evaporation than if it were to remain in Pine Creek.

Finally, Commissioner Sutton has historically permitted Mr. Springer as well as Watershed Ranch to allow Pine Creek water to flow through the pipeline in the winter months for two reasons: first, in order to protect the pipeline from freezing; and second, to allow the water to reach the Arkansas River more quickly and with less evaporation.

**3. Claim: There are no accurate measurement gauges on the Project's water sources.**

**Response:** Both Morrison Creek and McFadden Creek have functioning measurement gauges, which we have personally shown to Commissioner Sutton and his staff. Further, since purchasing the property and Project, Watershed Ranch and other rights holders on Pine Creek have been in the process of repairing a measuring device on Pine Creek under the oversight of the Commissioner Sutton and his staff.

**4. Claim: FERC has not properly investigated the above matters.**

**Response:** The extensive records on file with respect to this project clearly prove that FERC has thoroughly and repeatedly investigated Project #10102. Further, the Project has been subject to and passed multiple on-site inspections by FERC, including a successful inspection as recently as September 2016.

We hope you will find this letter satisfactory in responding to the concerns raised by Mr. Brooker and Mr. Judson. Further, we respectfully request that FERC not penalize the transferee for any alleged transgressions of the transferor. Instead, we would ask that FERC evaluate the transfer on the merits of Watershed Ranch's performance, rather than that of Mr. Springer. To that end, we invite you to speak with Mr. Brian Sutton, Water Commissioner, District 11, Colorado Division of Water Resources at (719) 221-0367 or [brian.sutton@state.co.us](mailto:brian.sutton@state.co.us). We are certain that Commissioner Sutton will report that we have been nothing but forthcoming, cooperative, and compliant in all respects of managing our water and hydroelectricity operation.

Thank you for your consideration.

Sincerely,



Kathryn Welter

Member and Manager, Watershed Ranch LLC

Enclosed: Letter from NRCS District Conservationist Bill Gardiner to Leadville District Ranger Jon Morrissey dated October 9, 2012.

United States Department of Agriculture



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October 9<sup>th</sup>,2012

Jon Morrissey  
District Ranger  
Leadville Ranger District  
San Isabel National Forest

Dear Mr. Morrissey,

Thanks for the opportunity to clarify the terms of Mr. Springer's USDA-NRCS contract #748B05090SV. One important point to note is that this is a federal USDA contract and not a grant. Mr. Springer is obligated to install several conservation practices for the purpose of reducing irrigation induced soil erosion and to improve water use efficiency. The pipeline installation was identified as the best solution by the Forest Engineer, Robert D. Bishop who scoped out the problems and possible solutions in a letter dated June 20, 1985 (attached). Unfortunately, it has taken years to secure appropriate funding for the project. Thanks to NRCS's - Environmental Quality Incentive Program (EQIP) and Springer's commitment to soil and water conservation the third and final phase of the project is funded. I am including a copy of the contract's schedule of operations form CPA-1156. It shows the practices, quantities and federal funding contribution covered in the contract and answers many of the questions you posed in your last email. This form defines exactly what the funding is to be used for. This includes the range seeding/critical area planting and rehabilitation practices of rip-rapping the exposed slopes noted on the pipeline design. The process for compensation is reimbursement after the practices are installed in a functional condition and certified to meet NRCS Standards and Specifications. Please find the relevant Standards and Specifications for the practices covered in the contract attached to the email.

The NRCS position on the recent construction is that it is a good start to get the practices installed but winter will soon suspend installation if he is not allowed to proceed in a timely manner. The one shortcoming to the recent construction is that he has not received administrative permission from the Forest Service for proceeding with installation of the pipeline and head gate/settling pond structure followed up with the needed reseeding and erosion control practices. In order to comply with NRCS administrative policies and procedures, he will need that permit in order to receive payment from the contract. As I understand it, several other concerned parties in addition to NRCS approve of successfully finishing the project including the Corp of Engineers and the Colorado Division of Water Resources Water Commissioner, Dave Kelly. NRCS's position is that the collective benefits to Pine Creek and Arkansas River water quality, soil conservation, public safety (including trail users), the Feds and the State are best served by swift project completion and restoration activities.

As documented in Form AD-1156, the implementation deadline is rapidly approaching at the end of 2012. He has been granted two waivers so far and is now outside of current contracting policy for practice installation. The contract officially expires on Sept 30<sup>th</sup> 2013. By NRCS policy, all practices are to be installed one year before contract expiration. Any further contract extensions (if possible) would require written approval by Phyllis Philipps the State Conservationist of the Denver Office. That extension, if granted, would require specific written timelines and clear procedures for project completion with Forest Service approval.

If there is any other way I can help, please do not hesitate to contact me. I would be happy to meet with you to satisfy additional administrative or technical needs you have for successful resolution for all parties and contract completion.

Sincerely,

A handwritten signature in blue ink that reads "William Gardiner". The signature is cursive and fluid.

Bill Gardiner  
District Conservationist

Enclosures: Schedule of Operations form CPA-1156, Standards and Specs for 430 DD - Underground Pipeline, Structure for Water Control (head gate/sediment basin) and Critical Area Planting. Forest Engineer letter dated June 20, 1985.