



STATE OF
COLORADO

Gibson - DNR, Amber <amber.gibson@state.co.us>

Comments received by the Division for the Seeley Reservoir Stockpiles M-2023-043 Application

1 message

Gibson - DNR, Amber <amber.gibson@state.co.us>

Tue, Jan 21, 2025 at 1:10 PM

To: Tim Naylor <tnaylor@agpros.com>, Scott Cockroft <srccockroft@gmail.com>

Good afternoon,

Attached for your consideration are follow-up comments received by the Division from the landowners of Lots A, B, and D on Tuesday January 21, 2025 in regard to your Seeley Reservoir Stockpiles, M-2023-043 permit application.

Thank you,

Amber M. Gibson
Environmental Protection Specialist I



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

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Mailing: DRMS Room 215, 1001 E 62nd Ave, Denver, CO 80216

Physical: 1313 Sherman Street, Room 215, Denver, CO 80203

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



Keirnes Second Comments following Inspection.pdf
1783K



Charles Keirnes
PO BOX 7
Eaton, CO, 80615
970-539-2204
Charles@keirnescompanies.com

January 21, 2024

Amber M. Gibson
Division of Reclamation, Mining and Safety
1313 Sherman Street, Room 215
Denver, CO 80203

RE: Seeley Reservoir Stockpiles, File No. M-2023-043 (Adequacy Review/Additional Application Comments)

Amber,

On behalf of the landowners of Lots' A and B of REC EXEMPT RE-5061 and Lot D of REC EXEMPT RECX15-0012, below are our additional comments /concerns related to Permit # M-2023043 in relation to our noted affected properties.

1. In response to, **Hydrologic Balance and Sediment Control: "Applicant will be required to provide the engineering specifications and justification as to why this structure and the side-slope configuration is and will be stable, as part of their responses to the Division's adequacy review."**

We continue to have great ongoing concerns in relation to various Regulatory Entities jurisdictional oversight noted in our first comments, impacts related to our EVF PUD Detention Pond Discharge and the overall soundness/integrity of the 2nd structure and the associated configuration trespassing/impacting our land. Please see Exhibit 1 with our third-party Engineers comments and associated construction images/context of the 2nd unapproved and retroactively engineered/salvaged structure. Need to confirm the structure as stated by the applicant, in fact been examined by a Dam Safety engineer, or related Regulatory entities and is the State Engineer aware of the contradictions between what was built compared to the retroactively engineered stamped plans dated 6.26.2024?

2. In response to, **Right of Entry: "Applicant that the legal right to enter forms submitted with the application do not satisfy the requirements of Rule 6.4.14"**

As a group, we are willing to grant access to the Property to satisfy Ogilvy's obligations under the permit only if issued on terms and conditions acceptable by our group and will not waive, limit, or release any obligations of Ogilvy under the Seeley Lake Maintenance Project Agreement dated March 4, 2024.

3. In response to, **Reclamation Success: Backfilling, Grading, and Revegetation: “The Applicant submitted two options for reclamation. Option 1 allows for the material in the perimeter berms around the northern properties to remain, whereas the material within the rest of the northern property and the material in the southern property will be removed upon the permit’s issuance (see the enclosed Reclamation Plan Map Option 1). After the inspection, the Division is under the impression that Option 2 may be removed upon adequacy, as Option 1 appeared to be the preferred option by all parties.”**

As a group, we are willing to grant access solely based on Option 1, as our sole intention as the owners of the stockpiled material is to fully remove the stockpile located on Lot D shown in Picture 6, “which is pictured on the right is the stockpile that will be removed via reclamation option”. As for **Photo 7**: “Looking east at a small stockpile located on the west side of Seeley Lake that will be removed via reclamation option 1 or will remain via reclamation option 2.” This small stockpile will in fact stay via option 1 and the option 1 reclamation plan needs to be corrected, showing that stockpile as a permanent berm.

4. In response to, **Reclamation Success: Backfilling, Grading, and Revegetation: “During the inspection, the landowners brought the inspectors and the Applicant to the location where they believed remaining materials needed to be reclaimed and included in the affected area of the permit boundary (Map 1; Figure 1; Photo 13). Photo 13: Looking southeast at the area mentioned in the landowner’s complaint. The survey sticks in the photo indicate the end of the landowner’s property. The remaining material (arrows) is located on Ogilvy’s property. The reclamation of this portion of the permit will need to be further addressed and accounted for in the Applicant’s adequacy responses.”**

We agree that this area needs to be addressed, our posture remains the same that the excess inorganic material/debris left over from the subject project, needs to be fully disposed of and that disturbed area needs to be fully reclaimed. Otherwise, the precedent being set here is (out of sight out of mind) and would allow for future applicants to place material on adjacent properties as a loophole.

We appreciate your ongoing efforts and further consideration of our comments, questions and concerns related to the impacts this permit directly has on our subject properties. Please don’t hesitate to reach out to me with any question.

Sincerely,

Charles Keirnes

Charles Keirnes

Exhibit 1

JKP Consulting LLC

1211 9th Street, Greeley, CO 80631 | 970.590.6061 | kris@jkpconsulting.co

October 23, 2024

Mr.
Skogg
Partner
Kutak Rock LLP – Denver

**RE: Review of the Ogilvy Ditch Company
Structure Keirnes Land Company, LLC/Eagle
View Farms, LLC Weld County, Colorado**

Mr. Skogg,

On behalf of the Keirnes, we met many times on-site to discuss several concerns raised in relation to the Ogilvy's new measuring device/sediment structure located on Keirnes' property. This is our reflection and summary of the issues as we understand. The ditch company installed a measuring device/flume which not only is physically outside of the recorded easement but causes several issues. From what has been conveyed and the information that we've reviewed, it appears that these are the primary issues.

1. Keirnes indicated there is a contract with the Ogilvy Ditch Company that requires the Keirnes' review and approval of any physical improvements the Ogilvy contemplates to their ditch through Keirnes' property. It appears Ogilvy installed this structure in violation of this contract. Stamped engineered plans were provided after the improvements were installed.

2. The installed flume is located physically outside of the recorded easement through Keirnes' property. This would appear to constitute trespass on their behalf.

3. We question why Ogilvy wants to place a measuring device in the ditch at this location. When asked the purpose of measuring the flow, the indication was they needed to measure the amount of water the Greeley No. 2 Canal conveyed to them. Given a substantial amount of groundwater enters the ditch downstream of Hwy 392, it seems more appropriate for this measuring device to be a couple thousand feet north of its current location or possibly north of Hwy 392.

4. If the Ogilvy Ditch Company needs a measuring flume in the general location as the new one on Keirnes' property, we offer the following considerations:

a. Simplify the design to measure the flow/capture sediment and lessen the overall magnitude/scale of the impacted area on Keirnes' property. This could be similar to the previously used and now submerged structure.

b. The flume should be centered in the easement and located approximately 100 to 200 feet north of its current location. The elevation of the flume should be placed at the historical flowline elevation (approximately 4 feet lower). Basically, it should be at the same elevation as the measuring flume that was previously installed in the historical flowline (and now submerged).

c. The current flume has several issues. We don't know if it was constructed properly and are aware of contradictions with the retroactively provided final stamped engineered plans. Are there compaction reports, concrete testing or other inspection reports from a qualified firm? The current flume impounds water 800 to 900 feet north of the structure potentially creating a public nuisance, for several reasons (e.g. creating a new stagnant body of water above the historical flowline). Does this create any kind of permittable condition, like a well permit or other regulatory permits? Will the impounded water create wetlands? Does this impoundment affect the performance and required discharge rates of the Eagle View Farms detention pond/outlet (which is already silting in)?

d. Current structure design/location is already showing signs of erosion to the detriment of Keirnes' property, as 3:1 slopes have not been achieved in the subject area and also required by the Division of Mining, Safety and Regulation (DMRS).

A new simplified overall design/structure is achievable per contract and would mitigate the above noted concerns. Let us know if you have any questions regarding our understanding and summary.

JKP Consulting LLC



Kris A. Pickett

Its: Manager

LandOne Engineering LLC



Daniel Hull, P.E.

Its: Manager

Sincerely,

Cc: Brad Keirnes

Charles Keirnes

Spencer Keirnes

Exhibit 1 (Continued) Images # 1 - 4

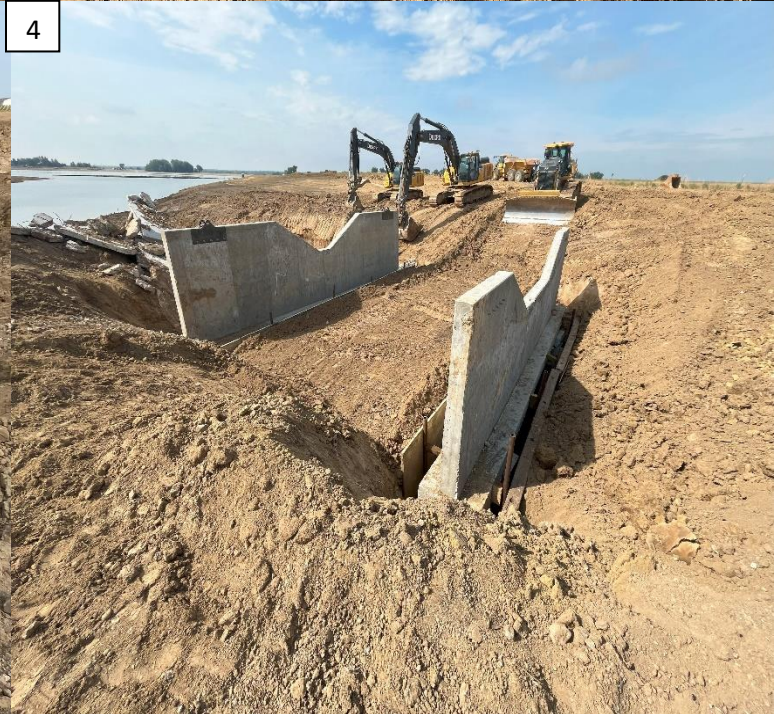


Exhibit 1 (Continued) Images # 5 - 8

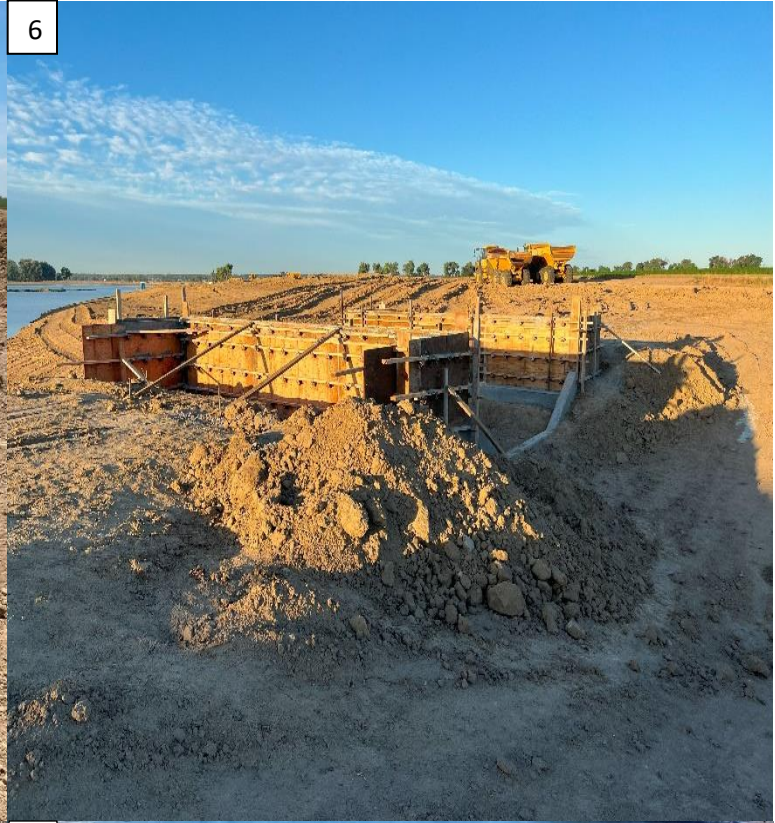


Exhibit 1 (Continued) Images # 1- 8 Context

- Image 1 - Shows the first unapproved failed structure and damages caused, due to the non-engineering (as stamped engineered plans were nonexistent). Our general observations contradict the claimed cause of failure and we believe it was due to head wall pressure by damming up the historical flow of water.
- Image 2 - Shows the 2nd structure utilizing the salvaged headwall set on crushed concrete, elevated 4ft +/- resting on concrete blocks (neither of these components are shown on engineered drawings), skewed/moved outside of the historical flowline.
- Image 3 – Shows formed footers via railroad ties on top of crushed concrete, with no horizontal rebar or vertical rebar ties connecting the salvaged headwall.
- Image 4 – Shows uncompacted back fill and no compaction test nor mechanical compaction were provided or verified.
- Image 5 – Shows the railroad tie forms left and backfilled in place and again no mechanical compaction were provided or verified.
- Image 6 – Shows skewed forming of unneeded height on top of headwall making the overall height of the structure 11 ½ ft top to bottom.
- Image 7 – Shows historical flowline altered and moved west during construction (see Image 8 for historical context). It shows the new detained/impounded body of water footprint (5ft deep x 50ft wide x 1000 ft long). The gross magnitude of the structure (7ft + above HWL) and the impounded body of water upstream of the Seeley Lake Reservoir is not justifiable per our third party engineer.
- Image 8 – Show the subject areas' historical positive flow of water down gradient to the Seeley Lake Reservoir, before creating the new detained body of water outside of the reservoirs original foot print shown in image 7.

*Images 1- 8 if fully taken into account by the reviewing regulatory entities and are compared to retroactively provided engineered plans and the Applicants pending required justification, will justify/reiterate our third party engineers' point, that the gross magnitude of the structure/contradicting engineered plans are unwarranted and justify our numerous ongoing concerns.