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November 16, 2018

Via Email & U.S. Mail:

Kevin Lamb
16098 Morgan County Road O
P.O. Box 460
Fort Morgan, Colorado 80701

Kevin Lamb
P.O. Box 609
Queen Creek, AZ 85142

Re: Bullseye Special Use Permit Issues

Dear Mr. Lamb:

The Board of Directors of the Bijou Irrigation Company has asked me to provide this letter identifying the items that Bijou needs resolved in conjunction with Bullseye's application for a special use permit for the truck washout and the ongoing operations on the property located adjacent to the Bijou Canal in Section 26, Township 3 North, Range 58 West.

Bijou appreciates your efforts to schedule a site visit to further discussions about the proposed truck washout operations. Having further evaluated and discussed this matter and its ongoing concerns, Bijou has determined that, prior to engaging in a site visit, it wanted to provide this letter to you and reach agreement on the identified items. Bijou believes this approach will benefit both it and Bullseye in moving this matter to completion.

As you know, Bijou has substantial concerns about how operations on the property in question will interact with Bijou's operation and maintenance of the Bijou Canal. In order for Bijou to resolve its objection to Bullseye's special use permit application, Bullseye needs to:

- Acknowledge the entirety of Bijou's ditch easement rights across the Bullseye property, which rights include the operation and carriage of water in the Bijou

Canal, and the associated rights of ingress and egress on the adjacent properties on both the north and south sides of the canal to conduct canal operations and maintenance (both normal maintenance and in emergency situations) and the use of land on either side of the canal for such operations and maintenance, as reasonable and necessary to maintain the canal and allow the carriage of water.

- Provide a plan for the entire property (including the truck washout and effluent application area and the proposed new storage locations, and the historical feedlot lands and lagoons) that will prevent the drainage of water into the Bijou Canal, and conduct operations on the property in a manner that complies with this requirement. This would include:
 - A design for the entire property that will allow for the management of precipitation from a 100-year storm event in conjunction with the water generated by the proposed truck washout operations and associated effluent containment and effluent application (and any other proposed operations on the property).
 - Volumetric limits on the amount of water that can be pumped both monthly and annually for the truck washout and other property operations in accordance with the 100-year storm event water management plan for the property.
 - A proposal for the application of effluent from the truck washout operations that will not result in spray going into the Bijou Canal (either by the application method itself or from wind distribution). As noted at the October 23 hearing, Bijou believes that application off the property at a location farther away from the canal is the best option. At minimum, some type of drop head application should be used (rather than a big-gun/end-gun approach).
- Reimburse the Company for the existing, unpaid invoices that it has sent to Bullseye/you related to damage to the Bijou Canal from prior operations on the Bullseye property.

In addition to these items, the Board also needs the following from Bullseye:

- Provide documentation of the re-certification of the lagoons on the property that have historically been used with the feedlot operations, including the maximum

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allowed water level for the re-certified lagoons and how the certification was completed.

- Copies of all agreements for use of the Bullseye well.
- All documentation concerning the proposed subdivision of the property, including proof that all subdivision requirements have (or will) be met.

Finally, Bijou will need to see how Bullseye responds to the other items that were raised by the Board of County Commissioners at the October 23 special use permit hearing (as generally summarized in the October 25, 2018, letter provided by Jeff Parker).

Please know that Bijou is not singling out Bullseye concerning the protection of the Bijou Canal operations and Bijou's ditch easement rights. It has taken similar steps with other landowners in the past, and will continue to do so going forward to protect its interests and those of its shareholders, including use of whatever legal means are necessary.

Bijou appreciates your time and effort in considering and resolving the above items. You are welcome to contact either me or Denice Wagner with any response.

Sincerely,

VRANESH AND RAISCH, LLP


Stuart B. Corbridge, Esq.

SBC:cmc

November 27, 2018

Stuart Corbridge
Vranesh and Raisch, LLP
1720 14th Street, Su 200
Boulder, Colorado 80302

Re: Bullseye Special Use Permit Issues

Mr. Corbridge,

This letter is in response to your November 16, 2018 letter to Bullseye Holdings regarding the current special use permit (SUP) application for the livestock truck washout located in Section 23, Township 3N, Range 58W. I will also discuss some issues related to the adjacent feedlot operation and its future plans.

These written correspondences are a good start and a way to get in writing the discussions that need to occur; however, we feel they do not take the place of face to face conversations to **determine Bijou's and our concerns.**

1. ***Acknowledge the entirety of Bijou's ditch easement rights across the Bullseye property, which rights include the operation and carriage of water in the Bijou Canal, and the associated rights of ingress and egress on the adjacent properties on both the north and south sides of the canal to conduct canal operations and maintenance (both normal maintenance and in emergency situations) and the use of land on either side of the canal for such operations and maintenance, as reasonable and necessary to maintain the canal and allow the carriage of water.***

- Truck Washout, The current SUP application for the truck washout operation includes an approximately 1,200ft frontage with the Bijou canal along the edge of the land application site. No structures or improvements are planned along this frontage and thus maintaining access should not be a problem on this parcel. Bullseye had proposed a 35ft vegetative buffer for any land application as per standard best management practices. Due to Bijou and the commissioners' concerns Bullseye has agreed to a 100ft land application setback. Bullseye reserves their right to operate and maintain their **property adjacent to the ditch, but does not deny Bijou's ability to access and maintain** their property either.

- Feedlot, Bullseye does not deny the right of Bijou to maintain their infrastructure and is more than willing to give them all the access necessary and all the rights afforded to them in the prescriptive easement. The problem with granting a new uninhibited 50ft easement is that there are several structures already within this distance from the ditch. Structures that include feed bunks, corrals and current runoff ponds. There is no reason that these structures and the Bijou cannot coexist and the canal be maintained as it has for the last 100years.

Bullseye proposes that Bijou draft an access agreement that would guarantee Bijou's ability to access and maintain their canal.

2. *Provide a plan for the entire property (including the truck washout and effluent application area and the proposed new storage locations, and the historical feedlot lands and lagoons) that will prevent the drainage of water into the Bijou Canal, and conduct operations on the property in a manner that complies with this requirement. This would include:*

2a. *A design for the entire property that will allow for the management of precipitation from a 100-year storm event in conjunction with the water generated by the proposed truck washout operations and associated effluent containment and effluent application (and any other proposed operations on the property).*

- Truck Washout, Designing for the additional storm precipitation from the 100yr-24hr event as opposed to the 25yr-24hr event is relatively easy due to the small watershed. The watershed has been analyzed and determined that the currently proposed system can meet these requirements with minimal change to process water storage.

Bullseye agrees to designing and building the truck washout facility to contain runoff from a 100yr-24hr storm event. Design modifications will be provided to Morgan County prior to next SUP hearing.

- Feedlot, Preventing runoff from this site poses a more difficult challenge. The first is the additional surface area of the feedlot and minimal working volume as opposed to the truck washout which is heavy on process water and light on storm water. The second more difficult problem is the offsite runoff experienced during high rainfall events. Assuming the adjacent feeding operation is designed and operated appropriately, they are required to catch and contain the runoff from a 25yr-24hr storm event. In the event of a larger storm event this would leave Bullseye responsible for containing the balance of the runoff from the adjacent facility to prevent runoff from entering the Bijou canal.

Bullseye is not opposed to additional runoff prevention measures but stating a 100yr design standard may pose difficulties. The Feedlot has additional ideas to increase retention capacity on-site and help minimize risk of discharge to the Bijou canal. These ideas are best discussed in person as requested as there are many parts and many involve construction in the area adjacent to the ditch and within the easement area claimed by Bijou in item 1.

2b. *Volumetric limits on the amount of water that can be pumped both monthly and annually for the truck washout and other property operations in accordance with the 100-year storm event water management plan for the property.*

- Truck Washout/Feedlot, We are a bit uncertain/confused as to how these two items of storm events and well pumping relate to each other. We are interpreting this to mean Bullseye is supposed to curtail pumping their well when the ponds are above their 100yr pumpdown mark. This could put thousands of cattle at risk of no water after a storm where additional well pumping is not contributing to pond water levels.

As such, Bullseye would like to propose a clarification in their operations plan that indicates capacity must be maintained for the 100yr design storm for the truckwash and the 25yr storm for the feedlot (keep in mind our proposed plans for the feedlot will afford additional protections but 25yr is the regulatory requirement). This is the same standard utilized for all livestock feed operations and, again can best be discussed in detail in person.

2c. *A proposal for the application of effluent from the truck washout operations that will not result in spray going into the Bijou Canal (either by the application method itself or from wind distribution). As noted at the October 23 hearing, Bijou believes that application off the property at a location farther away from the canal is the best option. At minimum, some type of drop head application should be used (rather than a big-gun/end-gun approach).*

- Truck Washout, Application of water to the on-site land application site is not our preferred method of dewatering the ponds; however, it is an important option to maintain for emergency situations. Immediately following large precipitation events the facility can dewater to the adjacent land application site in a much more rapid fashion via direct pumping with pipeline and sprinkler system than hauling off-site. This does not imply flooding or dumping on the ground as all applications will be within the requirements of their nutrient management plan, but the close proximity of this site allows the ponds to be dewatered below their pumpdown mark thus reducing the risk of overtopping.

Proposed land application will be with a big gun traveler system, and as previously mentioned Bullseye agrees to a 100ft setback from the ditch. This 100ft setback should provide more than adequate protections from the Bijou canal as this puts the sprinkler approximately 250ft from the canal. **The term "big gun" has somewhat of a negative connotation** in northern Colorado due to their water use efficiency; however, lets be careful not to carry assumptions from one scenario to another. The traveler system is the best application method for this situation for many reasons. First the disturbance on the native soils is the least of all methods investigated in that the only traffic will be the periodic extending of the traveler by an ATV or similar means. The cart is then automatically pulled back at an adjustable rate to meet application needs. The application of water is applied to as large of a radius as possible which increases the wetted diameter and decreases the application rate resulting in the potential for less runoff than small sprinklers with small wetted diameter.

3. *Reimburse the Company for the existing, unpaid invoices that it has sent to Bullseye/you related to damage to the Bijou Canal from prior operations on the Bullseye property.*

- The unpaid invoices in question are unwarranted and not applicable. Invoices were for work which Bijou determined needed to be done as a result of the historic rains. The damage occurred adjacent to the Bullseye property; however, the runoff was from an act of god event, originated not only on the Bullseye property but from other adjacent properties that run on to Bullseye.

The invoices are for normal repairs, as experienced many places along the canal and by other properties, by an act of god and not due to actions by Bullseye. Request to pay invoices before Bijou agrees to meet is nothing more than extortion.

4. *Provide documentation of the re-certification of the lagoons on the property that have historically been used with the feedlot operations, including the maximum allowed water level for the re-certified lagoons and how the certification was completed.*

- Truck washout, All truck washout wastewater ponds will be new ponds and Bullseye will be more than happy to provide copies of as-built certifications to Morgan County upon completion.

- Feedlot, Existing ponds have a valid certification from 2006 demonstrating its seepage rate is far less than the regulatory requirements. Furthermore, the main pond has been re-tested and re-certified in 2018 at the request of Morgan County. These certifications have been provided to Morgan County.

5. *Copies of all agreements for use of the Bullseye well.*

- We are uncertain about how providing these to Bijou will help Bijou protect their water quality. All agreements are public record and made available as part of the truck washout SUP hearing.

6. *All documentation concerning the proposed subdivision of the property, including proof that all subdivision requirements have (or will) be met.*

- Again, we are confused how providing these to Bijou will help Bijou protect their water quality. All agreements are public record and made available as part of the truck washout SUP hearing.

7. *Finally, Bijou will need to see how Bullseye responds to the other items that were raised by the Board of County Commissioners at the October 23 special use permit hearing (as generally summarized in the October 25, 2018, letter provided by Jeff Parker).*

- I believe we have addressed in this letter the main issues that pertain to Bijou; however, if there are additional items we can discuss those in person.

In closing I think these letters are a good start to open the communication among parties; however, there are many items that could be better discussed in more detail in person. We are still requesting a meeting at your earliest convenience.

As always, **if you have any questions or concerns please don't hesitate to call.**



Travis Hertneky, PE
Agricultural Engineer

CC: Kevin Lamb, Bullseye Holdings
Morgan County Commissioners