AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Gas Gathering Pipeline Discussion

Action Requested:

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:

Please see the attached submitted by the Citizens for a Healthy Community

Fiscal Impact:

Submitted by: Josh Ost **Submitter's Email Address:** jost@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:
ok for discussion db 7/20/18

Reveiwed by: GUNCOUNTY1\dBaumgarten Discharge Date: 7/20/2018 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 7/20/2018

○ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted: 60

Agenda Date: 7/24/2018

Revised April 2015

Citizens for a Healthy Community

April 25, 2018

Gunnison Board of County Commissioners
200 E. Virginia Avenue
Gunnison, CO 81230

RE: GAS GATHERING PIPELINE REGULATORY GAP

Dear Commissioners,

Citizens for a Healthy Community (CHC) is a 500+ member-based grassroots nonprofit organization based in Paonia. Our mission is to protect the Delta County region's air, water, and foodsheds from the impacts of oil and gas development. On behalf of our Board, and our members, we would like to thank Gunnison County for developing progressive oil and gas regulations. In particular, we want to thank Gunnison County for extending its jurisdiction to gathering pipelines, as rural gas-gathering pipelines fall into somewhat of a regulatory black-hole.

We are reaching out to you to start a conversation around oil and gas activity that impacts our shared watershed in Delta and Gunnison County. We have been investigating the implications of this regulatory black hole at the federal and state level and believe this presents an opportunity for the County to fill a very important gap. We welcome the opportunity to present our concerns to you in a working session and discuss a path forward to closing these gaps to ensure the protection of public safety when it comes to unregulated pipelines.

We have discussed these concerns with David Baumgarten. Here is a recap of our conversation and concerns:

- PHMSA (Pipeline Hazardous Materials and Safety Administration), under the US Department of Transportation has exclusive jurisdiction over pipelines. It has excluded Class 1, rural gas-gathering pipelines from its regulations.
- Colorado Public Utilities Commission (COPUC) has intrastate jurisdiction over oil and gas pipelines through a certificate agreement with PHMSA. It too excludes Class 1, rural gas-gathering pipelines from its regulations, with the exception that operators must disclose incidents involving rural gas-gathering pipeline if an evacuation is required.

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- Colorado Oil and Gas Conservation Commission (COGCC) does not have jurisdiction over gathering pipelines, as gathering pipelines are deemed by the industry to be downstream of production. COGCC only has jurisdiction over production-related oil and gas activities. Despite not having jurisdiction over gathering pipelines, which means that it has no insight or oversight into construction, maintenance, monitoring, or compliance of these pipelines, it approves permits that include these pipelines, thereby clearing the path for their development.
- Over 50% of oil and gas activity in Colorado is on rural or agricultural land. This means that over 50% of gas-gathering infrastructure is unregulated.
- In Gunnison and Delta County the majority of oil and gas development is or will be on public lands and involving public minerals. The Bureau of Land Management does not have jurisdiction over gas-gathering pipelines, and does not analyze the risk of unregulated pipelines, claiming that they are non-jurisdictional.
- To date, both Delta and Gunnison County have been approving permits without taking a close look at these unregulated pipelines. This presents an opportunity for Gunnison County to build upon its progressive regulations, and look at the carrying capacity of the region with respect to the cumulative impacts of unregulated pipelines. For example, at best due to the current regulatory framework, the public is aware of 10% of gas-gathering pipeline failures. The public has no visibility into the incremental failures along rural gas-gathering pipelines that do not merit an evacuation. There are no reports of gas-gathering pipeline incidents in Delta or Gunnison County, because there is no obligation on the part of the operators to report incidents that do not merit an evacuation.

While we understand that reviewing your oil and gas regulations to address this regulatory gap will take some time; there is some urgency around an action-forcing event that merits the County's attention sooner rather than later. As you know, the Final EIS on the BLM's UFO Revised RMP is scheduled to come out in Fall 2018, and the Record of Decision is scheduled for Winter 2019. It is critically important that this issue be addressed in a supplemental comment letter to the BLM. The BLM is required to consider new information at any time during its revision process. A supplemental letter from Gunnison County expressing its concerns over this regulatory gap and BLM's lack of analysis will go a long way toward securing public health and safety protections. Please let us know if we can provide additional information.

Lastly, we wanted to bring to your attention the recent change to BLM policy on oil and gas leasing. The BLM published an internal memo (IM) on January 31, 2018. There are a number of disturbing changes, but most notably from a County government perspective is that public comments on oil and gas leasing are now optional. Counties comment on BLM proposals during the public comment period or when there is a cooperating agency relationship in place. We are concerned that this IM not only seeks to limit public comment from impacted citizens and nonprofit organizations like ours, but also acts as a means for potentially eroding local input on activities within county borders. We respectfully request that Gunnison County consider submitting a letter to the BLM regarding any concerns it may have about erosion of local control and the loss of its residents' ability to comment.

We have been developing a relationship with Delta County around both of these issues. Delta County is in the midst of revising its Master Plan, and reviewing its land use regulations. It is establishing an oil and gas working committee to review their Specific Development Regulations as they relate to oil and gas, and has expressed concern over the potential for erosion of local control resulting from the BLM IM. Delta County has also directed staff to look into the impact of oil and gas development on existing county revenues such as residential property tax and sales tax from agritourism and recreation, as a result of our economic report-- *Economic Impact of Natural Gas Development on Delta County, 2nd Edition.*

We hope we can be a resource to you and look forward to developing a relationship with Gunnison County around issues of mutual concern. In that spirit, we would like to request time on the schedule of an upcoming Board of County Commissioners' work session to discuss this in further detail.

Thank you again for your time and consideration.

Sincerely,

Natasha Léger
Executive Director (Interim)

David Inouye (7990 County Road 317, Crested Butte, CO 81224)
Board Chair

cc: David Baumgarten, County Attorney
Matthew Birnie, County Manager
Cathie Pagano, Director of Community Development

Rural Gas Gathering Lines: Regulatory Black Hole Fact Sheet

Background

- Gas gathering lines take natural gas from the wellhead to a transmission line or main.
- Advances in hydraulic fracturing and increased production from individual wells and well pads have transformed these historically small, low-pressure pipelines into large-diameter, high-pressure behemoths.
- There are an estimated 170,000 miles of gas gathering lines in the US. Less than 10% is subject to Pipeline Hazardous Material Safety Administration (PHMSA) or state-equivalent regulations.
- There are estimated 10,000 to 30,000 miles of gathering lines in Colorado, with less than 1,000 miles subject to Colorado Public Utilities Commission (CPUC) regulations.
- **Incident Rate on Regulated Infrastructure In Colorado:** In 2017 there were over 200 reported incidents involving water lines, flowlines, and regulated pipelines.

What are Class 1 Rural Gas Gathering Lines?

- Pipelines are regulated based on their class designation, which in turn are determined by "Class Location Units." A Class Location Unit is defined as an onshore area extending 220 yards to either side of the centerline of any continuous 1-mile length of pipeline. Based on that definition, a Class Location Unit is 80 acres in area.
- Class 1 units have 10 or fewer buildings intended for human habitation per class unit.
- This makes any mile of gathering line passing through an 80-acre area with 10 or fewer homes a Class 1 Gathering Line.

Regulatory Framework

- Federal Regulations:
  - **PHMSA**: exclusive jurisdiction for pipeline safety over all pipelines in the US. This authority can be delegated to states for any *intrastate* pipeline entirely within the state's boundary if the state demonstrates ability to effectively administer pipeline safety regulations.
  - **Bureau of Land Management (BLM)** and **United States Forest Service (USFS):** authority to regulate the Right of Way (ROW) for pipelines on lands these agencies manage. These agencies currently consider Class 1 Gathering Lines "non-jurisdictional."
- State (Colorado):
  - **CPUC:** Colorado has been certified by PHMSA to take responsibility for regulatory, inspection, and enforcement of *intrastate* pipelines within their borders. CPUC regulations mirror PHMSA regulations almost exactly.

- **Colorado Oil and Gas Conservation Commission (COGCC):** COGCC regulates all pipelines directly related to production. This does *not* include gathering lines, as these are designated as a part of the "midstream" process by the oil and gas industry, and not related to production.
- Local Authorities (Municipalities and Counties):
  - Counties can utilize their land use regulatory authority and police powers to protect human health, safety, and welfare.
  - These powers are limited by the doctrines of state and federal preemption.

Regulatory Black Hole

- *Class 1 Rural Gas Gathering Lines are effectively unregulated.*
- Federal level:
  - PHMSA regulations exempt Class 1 gathering lines from virtually all pipeline safety regulations. (The only exception is that operators of Class 1 gathering lines must report any incident that requires evacuation or the closure of a road or railway.) PHMSA does not even maintain a map of these Class 1 gathering lines.
  - BLM and USFS consider these gathering lines "non-jurisdictional," and do not consider them in their environmental analysis. These pipelines are often approved by default when these agencies approve individual natural gas development proposals without any issue-specific analysis.
- State level:
  - CPUC regulations have the same Class 1 exemption as the PHMSA regulations.
  - COGCC has no jurisdiction over gathering lines.
- Local level:
  - Counties and municipalities that choose to mitigate or prevent risks associated with unregulated gathering lines must rely on their police powers and land use authority. The doctrines of state and federal preemption make it challenging for local authorities to enact prescriptive pipeline safety regulations.

Issues and risks related to Unregulated Class 1 Rural Gas Gathering Lines

- As the incident rate on regulated infrastructure demonstrates, these pipelines are not failproof.
- Occasionally, these failures are catastrophic: an improperly sealed flowline caused a fatal explosion in Firestone, CO in 2016, and other regulated oil and gas infrastructure has exploded in Colorado, West Virginia, and Illinois in the first half of 2018.
- If regulated infrastructure can fail, it stands to reason that unregulated infrastructure can also fail, and likely at a higher rate. All pipelines leak at some point. Therefore, the more insidious environmental and human health risk comes from slow cumulative, incremental failures over time.
- State and federal authorities have far too few inspectors to ensure compliance with state and federal regulations, and Class 1 Gathering Lines are not subject to any inspection authority.