

The Saguache County Board of Commissioners will hold a Public Hearing at the Saguache County Courthouse – 501 4th Street, Saguache, Colorado on the following date:

TUESDAY, October 4, 2022 at 2 PM

To consider AN ORDINANCE RESTRICTING THE DRILLING OF WELLS INTO THE MARSHALL CREEK ALLUVIUM AQUIFER ADJACENT TO MARSHALL CREEK FROM THE CONFLUENCE OF INDIAN CREEK AND AMRSHALL CREEK TO THE CONFLUENCE OF TOMICHI CREEK AND MARSHALL CREEK NEAR THE TOWN OF SARGENTS, SAGUACHE COUNTY, STATE OF COLORADO

To view the proposed ORDINANCE, you may contact the Saguache County Administration Department by calling 719-655-2231 or email Wendi Maez at wmaez@saguachecounty-co.gov, or you may also view the Ordinance on our website at www.saguachecounty.colorado.gov.

Written comments will be accepted until Friday, September 30, 2022 at 3pm, and may be sent to Saguache County Administration at PO Box 100, Saguache, CO 81149 or email to wmaez@saguachecounty-co.gov.

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Ordered published in the Saguache Crescent for two (2) weeks beginning the week of September 12, 2022

Gunnison Country Times please publish for two (2) consecutive weeks beginning the week of September 12, 2022

Please submit proof of publication along with billing

Sincerely,
Ann Cunningham
Saguache County
PO Box 100
Saguache, CO 81149 719-655-2231

**ORDINANCE
OF THE
BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF SAGUACHE, STATE OF COLORADO**

ORDINANCE NO. 22-_____

**AN ORDINANCE RESTRICTING THE DRILLING OF WELLS INTO THE
MARSHALL CREEK ALLUVIUM AQUIFER ADJACENT TO MARSHALL CREEK
FROM THE CONFLUENCE OF INDIAN CREEK AND MARSHALL CREEK TO THE
CONFLUENCE OF TOMICHI CREEK AND MARSHALL CREEK NEAR THE TOWN
OF SARGENTS, SAGUACHE COUNTY, STATE OF COLORADO**

WHEREAS, pursuant to Section 24-65-101, *et. seq.*, C.R.S.; Section 30-28-101, *et. seq.*, C.R.S.; Section 30-28-201, *et. seq.*, C.R.S.; and Section 29-20-101, *et. seq.*, C.R.S.; the Board of County Commissioners of Saguache County (hereinafter the “County”), Colorado (hereinafter the “Board”), has the power to adopt ordinances for the protection of the public health, safety, and welfare of the inhabitants of Saguache County; and

WHEREAS the Board has previously adopted the County Master Plan and “Guidelines and Regulations for Areas and Activities of State Interest of the County of Saguache, State of Colorado”; and

WHEREAS the Pitch Mine Reclamation Project (hereinafter “Pitch Site”) is located in Saguache County, Colorado, in Township 48 North, Range 6 East, approximately 12 miles east of Highway 50 and the Town of Sargents at an elevation of 11,000 feet in heavily timbered, moderately mountainous terrain; and

WHEREAS the Pitch Site is a former uranium mine currently owned and being reclaimed by Homestake Mining Company (hereinafter “Homestake”) under the oversight of the Colorado Division of Reclamation and Mining Safety (hereinafter “DRMS”) pursuant to permit #M77-004HR, and also is regulated by the Colorado Department of Public Health and the Environment (hereinafter “CDPHE”); and

WHEREAS Homestake, as part of its reclamation efforts, and in compliance with CDPHE Water Quality Control Division permit number CO0022756, has evaluated and continues to evaluate best management practices to establish the lowest practical level of uranium in Segment 20 of the Gunnison River Basin, also known as Indian Creek; and

WHEREAS Homestake has evaluated and continues to evaluate surface-water and groundwater dynamics along Indian Creek and Marshall Creek upstream and within the Town of Sargents, and has determined that uranium levels in Marshall Creek near Sargents exceed CDPHE drinking-water standards on a regular basis, but do not exceed CDPHE aquatic standards; and

WHEREAS Homestake’s water-quality evaluations have continued to demonstrate that Marshall Creek is not affecting uranium concentrations in residential-water wells in Sargents; and

WHEREAS the County has not undergone an independent analysis of water quality, and

wholly relies on Homestake's representations regarding water quality, contaminants, and their cause, and makes no representations whatsoever, by way of this Ordinance or otherwise, regarding water quality, contaminants, or their cause; and

WHEREAS Homestake's water-quality evaluations have shown infiltration of contaminants from septic fields adjacent to Marshall Creek that may pose a risk to residential wells that are currently drilled in the Marshall Creek Alluvium. However, the County has not undertaken an independent analysis, and wholly relies on Homestake's representations regarding the contaminants and their cause, and the County makes no representations, by this Ordinance, or otherwise, regarding contaminants, or their cause; and

WHEREAS Homestake has evaluated the potential to re-drill new, deeper wells to replace certain residential wells currently drilled into the Marshall Creek Alluvium that extends to no deeper than 75 feet from the surface, according to Homestake's research, data, and analysis; and

WHEREAS, relying on Homestake's research, evaluations, and representations, the Board has determined that to protect the health and wellbeing of the inhabitants of Saguache County, it is necessary to prevent drilling future water-supply wells, or the replacement or supplementation of current water-supply wells, for the appropriation of water within 200 feet of the Marshall Creek Alluvium (defined as water supply wells with a perforated casing less than 75 feet below the ground surface), through the adoption of this Ordinance preventing the same; and

WHEREAS Homestake has determined that re-drilling wells to make them deeper will reduce any current connection or future potential connection between Marshall Creek and residential-water wells in Sargents, and has concluded that the aquifer that underlies the Marshall Creek Alluvium would support such wells; and

WHEREAS Homestake, at its own cost, has agreed to re-drill residential-water-supply wells that currently are drawing water from less than 75 feet deep so that they access the deeper aquifer, in order to provide a turnkey-viable water supply as defined by CDPHE's Water Quality Control Division's Water Supply Identification Methodology; and

WHEREAS Homestake will enter into bilateral contractual agreements with any owners or operators of such wells ("Well Owners") to re-drill such existing wells (but will not agree to drill any new wells) (*see* Map of Qualifying Wells, **Exhibit 1**, attached), and the County shall be not be a party in such contractual agreements; and

WHEREAS the County shall not be involved or associated with the re-drilling of any wells that are subject to this Ordinance, and therefore shall be held harmless by Homestake and Well Owners for any breach of contract, negligence, or other action for damages or in equity that may arise from the re-drilling of wells as set forth herein; and

WHEREAS Homestake shall be considered a private contractor of each Well Owner with which Homestake enters into an agreement to re-drill a well and shall not be a contractor for the County. All disputes, conditions, repairs, work, and actions taken shall be as agreed to between the Well Owner(s), on the one hand, and Homestake on the other hand, and any causes of action arising from those agreements shall give rise only to private causes of action between Homestake and Well Owner(s), subject to the County's right to injunctive relief as stated herein;

and

WHEREAS Homestake agrees to reimburse the County for any damages, attorneys fees, costs, and expenses of litigation related to any allegation, claim, or cause of action asserted or filed against the County arising from the re-drilling of wells subject to this Ordinance; and

WHEREAS the Board has further determined that this restriction should remain in place in perpetuity or until such time as a community water-treatment system is constructed to serve the residents of the area impacted by this restriction; and

WHEREAS notice of a public hearing to consider this Ordinance was published in the Saguache Crescent on _____, _____, and _____; and

WHEREAS, at the public hearing on _____, various witnesses and exhibits were heard and presented for the Board's consideration, and testimony was taken from the general public and all persons desiring to appear and give such testimony and present evidence; and

WHEREAS the Board pursuant to the authority granted to the County under Colorado law desires to adopt this Ordinance restricting the drilling of water-supply wells in the Marshall Creek Alluvium between Marshall Creek's confluence with Indian Creek and its confluence with Tomichi Creek.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Saguache County as follows:

This Ordinance applies to all properties overlying the Marshall Creek Alluvium, between Marshall Creek's confluence with Indian Creek and its confluence with Tomichi Creek. This Ordinance restricts the drilling of future water-supply wells or the replacement or the supplementation of current water-supply wells within 200 horizontal feet of the Marshall Creek Alluvium, and whose perforated casings are 75 feet or less from the ground surface.

The re-drilling of all wells subject to this Ordinance, along with any services associated therewith, shall be the sole venture and responsibility of Homestake and anyone who owns or operates a well and who agrees with Homestake to provide well-re-drilling services. Homestake shall contract with each party receiving well-re-drilling services, and any services associated therewith. The County will not enter into any contracts related to the well-re-drilling services under this Ordinance.

The County shall be held harmless from any and all allegations, claims, causes of action, or damages arising from the re-drilling of wells subject to this Ordinance by Homestake and any party for which Homestake provides well-re-drilling services. Homestake accepts all liability for any causes of action or damages arising from this Ordinance.

This Ordinance is intended to promote the health, safety, and welfare of the citizens of the County, and the County makes no representations as to the quality of work associated with the re-drilling of wells by Homestake and makes no guarantees regarding the same.

County does not verify or attest to the accuracy of the studies, data, or other information indicated herein by Homestake regarding levels of uranium, or other causes of contamination.

Homestake, upon each Well Owner's request and agreement with Homestake, shall be responsible for re-drilling all wells subject to this Ordinance, and shall do so pursuant to and in compliance with all local, state, and federal laws.

County by this Ordinance does not choose, determine, limit, or define what wells are to be re-drilled, and all wells to be re-drilled by Homestake shall be determined and agreed upon between Homestake and Well Owners.

Applicability. Nothing in this Ordinance is intended nor shall be construed to prohibit the re-drilling of wells through the Marshall Creek Alluvium to access the aquifer below the Marshall Creek Alluvium, between Marshall Creek's confluence with Indian Creek and its confluence with Tomichi Creek, so long as the top of the perforated well casing is at least 75 feet below the ground surface and complies with all applicable Colorado statutes and regulations.

Additionally, nothing in this Ordinance is intended nor shall be construed to prohibit drilling wells for purposes of testing or monitoring water in the Marshall Creek Alluvium.

Additionally, nothing in this Ordinance is intended nor shall be construed to prohibit drilling of wells by federal, state, or local authorities for purposes other than water-supply use.

Purpose. The Board hereby finds, determines, and declares that this Ordinance is necessary for the health, safety, and welfare of the inhabitants of Saguache County, Colorado, and that the purpose of this Ordinance is to promote the health and safety of the current and future inhabitants of Saguache County.

Unlawful Acts. It shall be a violation of this Ordinance to drill a well into the Marshall Creek Alluvium to extract water from that alluvium, or otherwise to take water from the Marshall Creek Alluvium, for the purposes of residential consumption.

Injunctive Relief. The County, through the County Attorney, may seek an injunction or other equitable relief in court to stop any violation of this Ordinance of any acts outlined and may recover costs of any such action.

Publication and Effective Date. The foregoing text is the authentic text of Saguache County Ordinance No. _____. The first reading of said Ordinance took place on _____ at a regular Board of County Commissioners Meeting. It was published in full in the Saguache Crescent on _____. The Ordinance was adopted on second reading at a regular Board of County Commissioners Meeting on _____ and shall take effect _____.

Exhibit 1

- ⊕ Wells That Qualify for Redrilling Pursuant to Ordinance

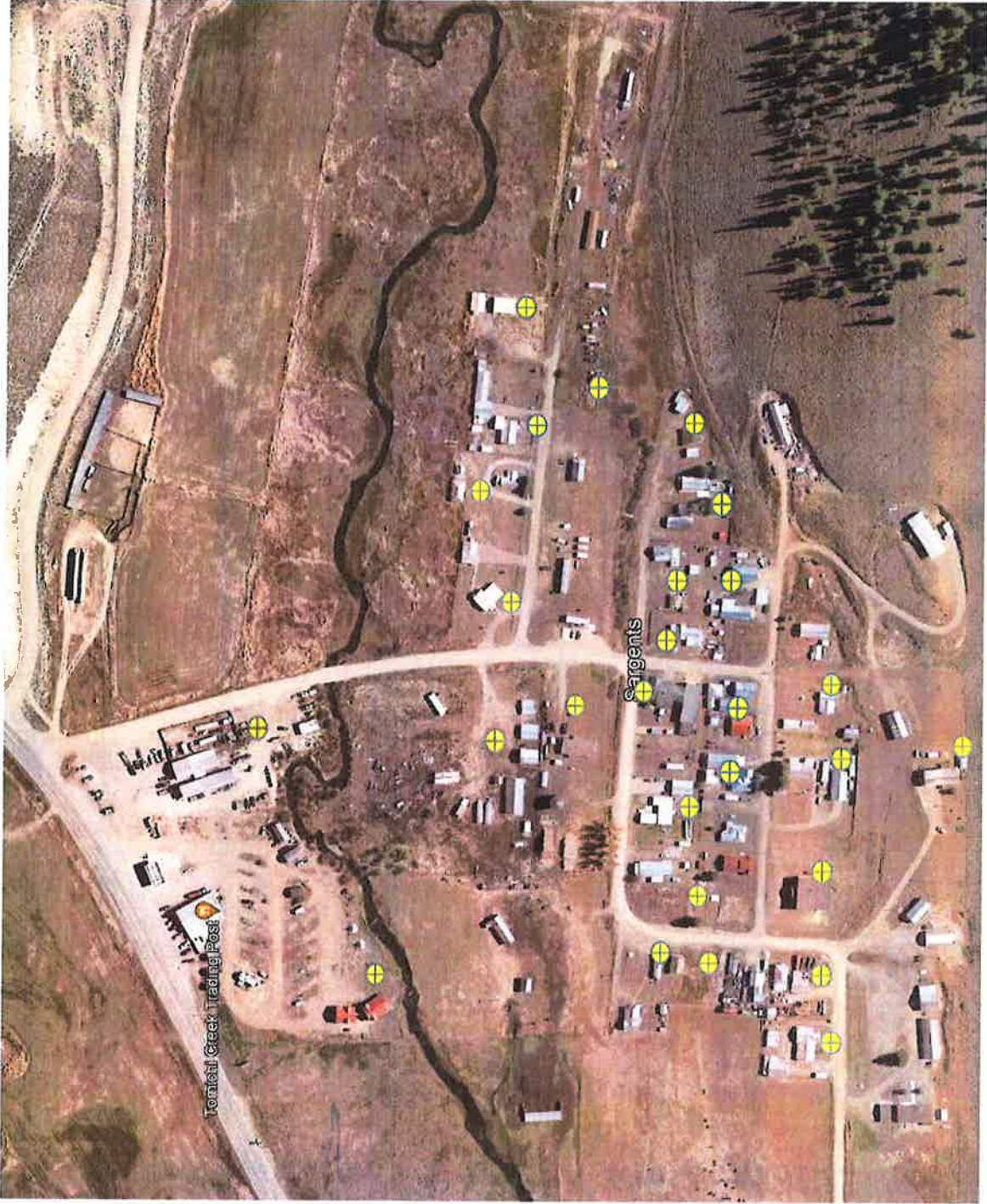


Exhibit 1
⊕ Wells That
Qualify for
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