

Date: December 6th, 2018

TO: Town of Rico Board of Trustees
FROM: Kari Distefano
SUBJECT: Town Manager's Report

1. Broadband Information

I know that better broadband service has been an issue in Rico for quite some time, but it has taken me awhile to devote any attention to it. Right before Thanksgiving, Jim Ostrem contacted me and asked me to look into Ophir's broadband efforts and find out how they managed to get broadband and what level of service they were getting. I contacted a man named Brian Morgan, who helped get Ophir's system up and running and has done a lot of IT work in this area. He told me what Ophir did. The way I understand it, they ran fiber up to a power pole in the middle of town that houses a wireless LTE radio. Areas of Ophir that are closer to the power pole will get better service but the whole town should have it. They got a grant through DOLA for \$220,000 to fund the project. I asked Brian if he would be interested in helping Rico develop a plan to upgrade our internet.

Apparently there is fiber from Cortez to Telluride along Highway 145. Direct Communications has access to it until somewhere around the Ophir Loop and Century Link owns it the rest of the way. Following our conversation Brian contacted Direct Communications and later a man named Brigham Griffin, who is a marketing manager for Direct Communications, called me. He was very helpful and I believe that I finally have some understanding of our broadband situation.

Right now, as you probably know, there are four levels of service available. 4 MBPS, 6 MBPS, 10 MBPS and a special service called +MBPS. Prices range from \$64.95 - \$79.95 per month for the 4 – 10MBPS. The +MBPS service required a special quote. Currently the service is DSL, which is linked to a phone line. There is a higher level of service that is called VDSL. VDSL can offer much higher download and upload speeds - up to 50 MBPS. According to Mr. Griffin, most of the infrastructure for the VDSL is in Rico now. He said that all they would need to complete the installation is 10 – 20 customers that would commit to purchasing it.

The other thing that we talked about was separating the cost of the landline. I know that there are quite a few people in Rico that don't use landlines and would happily pay more money

for better internet if they could get rid of their landline cost. Mr. Griffin said that whether or not Direct Com can do that would depend on their license through the FCC.

The last thing we talked about was fiber through Town. This would be the optimum situation. Fiber would bring high speed – 50 MBPS – to everybody. Direct Com inherited rights to the conduit that can be seen around town poking out of the ground. I don't know what kind of shape it is in after however many years that it has been lying unused, but we discussed the prospect of his engineers coming to Rico in the spring and examining the possibility of getting a grant from DOLA to thread fiber through it.

2. Transit Update

We received a grant from the Rico Center for a larger bus. The bus has been ordered and should be on its way. There is a San Miguel Authority for Regional Transit Meeting on December 20th to approve an agreement with the Town of Rico regarding service. Hopefully we will be able to consider it and sign it at our next meeting and get the larger bus going shortly thereafter.

3. 2nd reading of an ordinance to adopt the Rico Town Budget for 2019

We are still waiting on November's deposit slips to re-calculate expected costs for this year. I will have a revised budget at our meeting, but I do not have it yet.

Based on the discussion last month regarding the Rico Center, I thought that it would be helpful to include in this packet a table summarizing grants and their associated projects.

4. Letter of Engagement with Maya Kane

At the special meeting on October 24th, the Rico Board of Trustees approved a motion to intervene in a court case supporting the US Forest Service's Rico West Dolores Travel Management Plan generated by the Dolores Public Lands Office and issued on July 30, 2018. As you recall, the Trail's Preservation Alliance, the San Juan Trail Riders and the Public Access Preservation Association filed a complaint in court against the plan because it prohibited motorized vehicle use on a number of trails including Burnett Creek and Horse Creek. After some discussion with Marla Fox of WildEarth Guardians and John Mellgren of Western Environmental Law Center and based on their recommendation, we decided to file an amicus (friend of the court) brief in support of the Travel Management Plan. John Mellgran recommended Maya Kane as an attorney that may be willing to file the brief. We contacted her and she agreed. I have included her letter of engagement as well as the letter

soliciting her services in this packet. The letter of engagement will need to be approved and signed by the Board if they are in favor.

5. Soda Street Partial Roadway Vacation Request

The applicant, Raegan Ellease, on behalf of owners Thomas Lunifeld and Mina Hakami is requesting a partial roadway vacation of Soda Street at the corner of Soda and Hancock. The old assay office encroaches on Soda Street for a distance of 3.8 feet at the eastern end and 3.1 feet at the western end of the building. Please see the Improvement Location Certificate that is included in the application. Ms. Ellease would like to buy the parcel and restore the old building. However she is unwilling to put money into the building if she does not own it in its entirety.

I have reviewed the roadway vacation application according to the following checklist and the application is complete:

- Title Certificate from a title company or attorney opinion letter listing the name of the property owner(s), liens, easements, judgments, etc., affecting title to the property – The application includes a commitment for title insurance from Westcor Land Title Insurance Company
- Statement from County Treasurer showing status of current taxes due on affected property. – A statement from the Dolores County Treasurer showing the status of current taxes on affected property is included in the application.
- Narrative indicating existing zoning and predominate existing uses within 300 feet of the property – A narrative including existing zoning and predominate uses is included in the application.
- Statement by applicant describing how the vacation application meets applicable standards in Section 482 of the Rico Land Use Code – A narrative describing the vacation application and how the application meets applicable standards in Section 482 is included in the application.

The following are the standards, which should apply when the Rico Planning Commission is evaluating a road vacation application:

- The topography of the public right-of-way does not allow road building to meet the

- design standards in Section 478 of the Rico Land Use Code;
- The public right-of-way does not provide any public benefit, including but not limited to: pedestrian access, recreational access, off-street parking, and open space buffer lot between developable lots; or, the requested vacation is part of an application which would result in the Town acquiring property or rights-of-way which has a greater public benefit than the vacated public right-of-way; and,
- Sufficient easements or rights-of-way for utilities are retained or provided.
- The Trustees shall enact a public right-of-way vacation by ordinance;
- The ordinance shall specifically amend the Present Road Status Map and Designated Road Use Map;
- The vacated right-of-way shall be divided at the midpoint and title shall pass to the adjoining property owners;
- Vacated rights-of-way shall be subject to the provisions of this RLUC and shall be included in the same Zone District as the adjoining property, unless otherwise determined by the Trustees; and;
- The Town may not receive any monetary compensation in return for any vacated public right-of-way.

Gregg Anderson, one of the neighbors called and indicated his support for this vacation. He would like to see the building preserved. One possibility would be to offer approval contingent on the restoration of the building.

6. Approval of a Temporary and Renewal of the Liquor License for Mountain Top Liquor

Mountain Top needs a temporary liquor license to continue to sell liquor. We are waiting to hear from them about whether or not they got the paperwork they need to renew it this year.

7. Rico Land Use Code Revisions

I have made more progress with the Rico Land Use Code revisions. Copies of the articles that I have finished are attached to this packet. Article VIII addresses areas of environmental concern. These are flood zones, wetlands areas, avalanche areas, geological hazards and wildfire hazards. This portion of the Land Use Code will also address areas with soil contamination from mining activities, areas that both have and have not been remediated. We are trying to schedule a conference call with representatives from BP and Mark Rudolph of the CDPHE this month. If this call takes place prior to our meeting, I will include an update at the meeting. Article IX deals with developed campgrounds. I thought that this was worth adding because it is my hope that at some point we will have one within the Town limits. Article X is the part of the RLUC that talks about Historic Buildings and building in the Historic Commercial Zone District. I used some of Telluride's guidelines in this section. Article XI discusses annexation. Many of those regulations are mandated by the State of Colorado. Article XII addresses building permits. Please feel free to offer any comments you have. The revisions are also posted on the Town website for the general public.

Project (beginning January 1 st , 2017)	Funding Organization	Funding Amount	Town Match¹	Amount Spent to Date (as of Oct. 31st)	Balance
Community Meetings	The Rico Center	\$5,000	\$0	\$5,110.17	\$1,889.83
	The Sonoran Institute	\$2,000			
River Corridor²	The Rico Center	\$20,460	\$0	\$2,2342.20	\$0 ⁵
Rico Land Use Code Revisions²	The Rico Center	\$13,293	\$0	\$3,074.00	\$13,219.00
	The Sonoran Institute	\$3,000			
Geothermal²	The Rico Center	\$8,000	\$0	\$0	\$8,000
Transit	The Rico Center	\$86,400	\$0	\$72,150	\$14,250
Electric Vehicle Charging Station	Charge Ahead Colorado	\$9,000	Cost of additional plumbing work ³	\$10061	\$939
	San Miguel Power Assoc.	\$2,000			
Visit Rico Marketing Collaboration Project	Paradox Community Trust	\$8,000	\$0	\$2,500	\$5,500
Preliminary Engineering Report - Sewer	Department of Local Affairs	\$74,000	50% of the total cost of the work	\$57,764.08	

Preliminary Engineering Report - Water	Colorado Water Conservation Board	\$60,000	25% of the total cost of the work	\$31,556.02	
	Southwest Water Conservation Board	\$30,000			
Rico Infrastructure Improvement Economic Analysis	Rural Economic Development Initiative	\$8,000	\$0		
	The Telluride Foundation ⁴		\$0		
Parks, Open Space & Trails Program⁶	The Rico Center	\$66,000	\$0	\$41,200.43	\$24,799.57
Rico Town Hall Bathroom Remodel⁶	The Rico Center	\$25,000	\$0		

Notes:

1. Town matches are indicated in dollar amounts. This does not include the time that I spend on these programs.
2. These projects were undertaken prior to 2017. The numbers in the table do not include work done prior to 2017.
3. When the electrician who was wiring for the electric vehicle charger called the Colorado State Electrical inspector to get an inspection, we were told that our electric panel was too close to the propane hook-up. We are currently operating the electricity for the Town Hall under a temporary permit. We are going to have to fix this prior to finalizing the hook up for the electric vehicle charger. At this time, we are not sure what that will cost.
4. I have applied to the Telluride Foundation for some additional funding for the Rico Infrastructure Improvement Analysis from the Telluride Foundation. I have not received word about whether or not we will get this grant.

5. It does not look as though we are going to need the remainder of the River Corridor funding so I asked the Rico Center if we could transfer that money over to the transit fund. They agreed.
6. In addition to requesting \$29,000 from the Rico Center for the Parks, Open Space and Trails, we have also requested \$25,000 to remodel the Town Hall bathroom and make it ADA accessible. We don't know yet whether or not we will get that funding.

**TOWN OF RICO
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November 15th, 2018

Maya Kane
Kane Law LLC
3602 Silverton Ave.
Durango Colorado, 81301

Dear Ms. Kane,

Travis Stills gave me your name as someone who may be interested in drafting an amicus brief on the behalf of the Town of Rico supporting the Rico West Dolores Travel Management Plan generated by the Dolores Public Lands Office and issued by the USFS on July 30, 2018.

On September 14th, 2018, a group of motorized users, the Trail's Preservation Alliance, the San Juan Trail Riders and the Public Access Preservation Association filed a complaint in court against the USFS Travel Management Plan. A copy of that filing is attached to this letter. Subsequently Rico Board of Trustees member, Nicole Pieterse and I participated in a conference call with Marla Fox of WildEarth Guardians and John Mellgren of Western Environmental Law Center. They are filing to intervene supporting the USFS Travel Management Plan and countersue the USFS for allowing the remaining motorized trails to be used during elk calving season.

At the Rico Trustee's meeting on October 15th, the Trustees expressed interest in intervening to support the USFS Travel Management Plan but they were less enthusiastic about countersuing the USFS for allowing motorized use on the Forest during elk calving season. The Town of Rico's interest lies mainly in trails in the area and the possibility that the suit filed by the motorized users will discourage and delay the USFS from proceeding with proposed trail maintenance and construction. Ultimately the Ms. Fox and Mr. Mellgren's clients would not agree to a joint representation agreement since the Town of Rico does not want to participate in a countersuit. Nevertheless the Town, as well as the Rico Trails Alliance, a local non-motorized trails organization, would like to investigate the possibility of filing an amicus brief.

Is that something in which you would be interested and if so would you be available for a telephone conversation regarding this matter in the near future? Please let me know. I can be reached at (970) 967-2863 or at townmanager@ricocolorado.gov.

Sincerely,

Kari Distefano
Rico Town Manager

Legal Representation Agreement

Rico Trails Alliance, a Colorado nonprofit corporation located in Rico, Colorado, and Rico, an incorporated town in Dolores County, Colorado (collectively “Client”) do hereby enter into this Legal Representation Agreement (“Agreement”) effective December ____, 2018, which establishes and confirms the terms and conditions for attorney Maya Kane (“Counsel”) to provide legal representation to Client.

A. Legal Counsel.

Counsel confirms the attorney-client relationship between Counsel and Client. Client and Counsel are subject to the legal obligations imposed by that relationship.

B. Scope of Representation.

The scope of this representation is to prepare and file a single amicus brief on behalf of Client in the matter of *Trails Preservation Alliance, et al. v. United States Forest Service, et al.*, Civil Action No. 1:18-cv-02354-WYD (the “Case”). Should the Case be consolidated with another matter, the scope of this representation shall apply to such consolidated case. The scope of representation does not include such matters as tax advice, employee/employer, real estate, or any other legal matter(s) unrelated to the challenged agency actions.

The goals of this representation are supportive of the Client’s involvement in public lands management, some of which involve litigation and formal administrative matters. Whether Counsel will initiate other litigation or provide counsel and/or representation on other specific projects will be addressed in advance, on a case-by-case basis.

This Agreement does not contemplate Counsel’s representation of the Client in any other specific administrative or judicial forum until and unless the Client and Counsel have reached agreement on such actions.

Legal work carried out on Client’s behalf will not extend this Agreement to include responsibility for other matters unless Client and Counsel specifically agree to extend the scope of representation.

Client carry out their mission as non-profit public interest or governmental organizations, and the scope of representation is limited to the charitable or public purposes common to each organizations. Counsel recognizes that Counsel works on behalf of a Public Interest Environmental Law firm, and the scope of representation is limited to those matters customarily addressed by such firms.

C. Conflicts of Interest and Joint Representation.

Counsel cannot represent conflicting interests of different clients. We are not currently unaware of any conflict of interest between Client and any other clients of Counsel.

This engagement includes the representation of more than one party or interest. Counsel has determined based on the stated objective of both parties that your interests are aligned and that there is no conflict between them. But please be advised that Counsel's concurrent representation of you could create a conflict of interest should the issues or your objectives change. Counsel cannot and will not advise either party as to any matters upon which an actual conflict of interest develops between you. Counsel will make every effort during the course of the representation to confirm that each party has a commonality of interest in connection with the positions asserted on your respective behalves.

Client also acknowledges that, as among you, there is no right to assert the attorney/client privilege as to communications we receive from any of you in connection with the joint representation. You confirm by executing this letter that (1) you understand that if any litigation ensues between you concerning the matters involved in this engagement the privilege will not protect any such communications and must be disclosed to the other party and (2) that you expressly consent to the communication of all information received by Counsel from one party to the other party. You further acknowledge that Counsel may have an ethical duty to disclose such information to the other party and, if there is any doubt as to the duty to do so, Counsel will disclose it.

Should any actual or potential conflicts arise during the course of the litigation that may impact the scope of representation, Counsel and Client will confer on the matter and seek a resolution that is consistent with ethical obligations and each party's interests. As a starting point, Counsel will attempt to identify resolutions by which she can continue to represent Client in the litigation. If Counsel determines that resolution is infeasible, Counsel shall withdraw from the representation.

Counsel reserves the right to work and consult with other attorneys, special counsel, and experts. This Agreement does not cover those relationships.

Counsel and Client anticipate that other staff attorneys and public interest environmental law firms may provide legal services on the same or similar terms set forth herein and that Counsel may work closely with such attorneys.

D. Nature of Representation.

Client's expectations concerning legal services must be understood and agreed upon for effective services and representation to be provided by Counsel. If there is a difference between what Client seeks from legal services and what Counsel believes can be provided, Client is entitled to pursue other arrangements, including retention of other legal counsel. Client shall immediately inform Counsel of any such acts that will affect this Agreement, including the nature and scope of representation.

Each party agrees to work closely with the other to obtain as benefit much as possible from the legal services, but to recognize and account for the inherent limitations of those services.

Client and Counsel recognize that each plays a vital role in this representation. Each must contribute to the efforts of the other party to ensure effective efforts.

E. Attorney Fees.

The flat fee for the legal services contemplated by this Agreement shall be \$2,000.00. Client shall pay such fee completion of the representation. In the event that the Case settles before Counsel has completed the legal services described in the scope of the representation, Counsel shall charge Client only for the percentage of work completed on the date of settlement. *Client understands that Client is NOT entering into an hourly fee arrangement. This means that Counsel will devote such time to the representation as is necessary, but Counsel's fee will not be increased or decreased based upon the number of hours spent.*

F. Costs

Client shall pay reasonable costs associated with the attorney/client relationship (e.g., filing fees, document reproduction, expert fees, deposition costs, travel costs, and other similar expenses). For the scope, Counsel expects such costs not to exceed regular court-filing fees associated with filing an amicus brief. If additional costs are likely, unless unfeasible, Counsel will inform Client and seek authorization before incurring them.

G. Reporting.

Counsel will promptly provide copies of all materials filed or received to Client. Client agrees to promptly forward any relevant information or documents received by Client to Counsel.

H. Opposing Counsel Fees or Costs.

Client is solely liable for any fees or costs of the opposing party in the event that a court of competent jurisdiction awards fees or costs to the opposing party. Client agrees to pay any such fees or costs and defend, indemnify, and hold harmless Counsel for the same.

I. Public Relations and Media.

Counsel and Client agree that all press releases, interviews, publicly available postings on the internet, or other contacts with the media regarding specific matters undertaken by Counsel will be jointly managed to the greatest extent feasible.

J. Client Liaison.

For purposes of this Agreement, Kari Distefano and Nicole Pieterse are designated as Client Liaisons for Client. Counsel and Client Liaisons will confer as needed regarding the status and progress of the representation. Client shall notify Counsel in writing, of

