

First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

HB25-1023

Local Government Review of Fencing Projects

House Sponsorship: Representative. M. Martinez

Senate Sponsorship: Senator. J. Gonzales, Senator. C. Simpson

Committees: Agriculture, Water & Natural Resources

Background

Legislative bill HB 25-1023 requires that before commencing a project to install or substantially repair a contiguous fence of a certain size in the Sangre de Cristo Land Grant Lands, a person must submit an application for the covered fencing project to the local government with jurisdiction over the covered fencing project on or after July 1, 2025.

Additionally, no later than 14 days after receiving the application the local government must submit a notice of the application on the local government's website. Further, no later than 60 days after the local government's reception of an application, the local government must either approve or reject the application based on certain criteria.

Despite the criteria, a local government may approve an application if it determines that the benefits of the covered fencing project outweigh the harms. Also, the governing body of a local government may pass an ordinance or resolution opting out of these requirements.

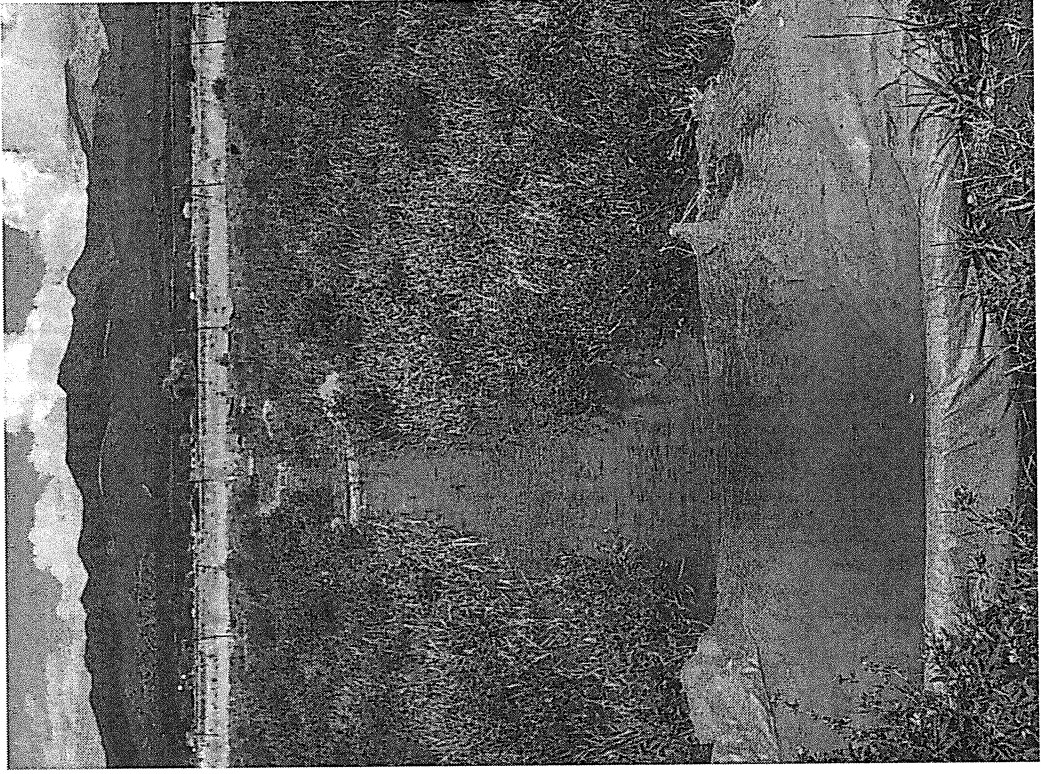
Why is it needed?

The Sangre De Cristo Land Grant Lands are at risk of landowners undertaking irrational and environmentally damaging fencing projects without oversight or intervention by a local government. The HB 25-1023 declares that certain fencing projects in the Sangre De Cristo Land Grant Lands are a matter of statewide concern and have a significant environmental benefit to the state.

The Bill would:

- Seek to avoid negative impacts to wildlife and vegetation before the fencing project begins.
- Endorse local governments the flexibility to approve fencing projects if it is the local determined that the benefits of the fencing project outweighs the harms.
- Encourage help to prevent soil erosion, maintain water quality, and provide further habitat for wildlife.
- Declare applications to contain at minimum: fence height, fence length, fence type, fence material, adjustments made to allow for wildlife passage, whether a disturbance has occurred or will occur due to the fencing project.
- Consider a fencing project necessary for public utility, Department of Transportation or the safety or security of a public school or prison.
- Authorize a local government to adopt an ordinance, resolution, regulation, or other law declaring the local government can opt out of requirements.

La Sierra Environmental Guardian Committee



La Sierra Environmental Guardian Committee

- We are a group of Costilla County residents, along with 3,482 petition signers, requesting your assistance in helping us protect our environment and holding William Harrison, an out-of-state, billionaire owner of the 88,000 acre Cielo Vista Ranch (“CVR” or “La Sierra”) accountable for:
 - 1) causing severe damage to wildlife habitat and migration in violation of environmental laws and Division of Wildlife rules;
 - 2) causing damage to our watershed in probable violation of the Clean Water Act and other laws; and
 - 3) interfering with the rights of county residents to have access to big game for sustenance hunting.
- As you probably know, Costilla County is one of the poorest counties in Colorado. Because we are a grassroots group of community members who lack the financial resources to fight against an out-of-state billionaire, we are pleading for your help to ensure that our environment is protected and all the applicable environmental laws and regulations are enforced.

- **BACKGROUND**

- San Luis, established in 1851, is the oldest town in Colorado. San Luis and the surrounding communities of San Pedro, San Pablo, Chama, Los Fuertes, San Francisco, and San Acacio are filled with hard working families who rely on the environment for our rural way of life.
- Our families have been farming and hunting in this area since before Colorado was a state.
- Because our ancestors settled this area under the Sangre de Cristo Land Grant, we have land-grant rights that provide us with the right to graze livestock and harvest timber/firewood on CVR, as was specified in the original deed to the property.
- In 2017 a Texas Billionaire, William Harrison, purchased the ranch and he began to unilaterally create rules that effectively restricted access and led to intimidation of the rights holders.
- The community was forced to take the wealthy landowner to court to protect it's rights.
- Judge Kenneth Plotz ruled in May, 2022 that Mr. Harrison did indeed inappropriately take advantage of his imbalance of power which led to the demeaning of the rights holders. He ruled that Mr. Harrison could not make up his own rules or restrictions on the use and access to the mountain ranch.

A New Problem

- Mr. Harrison has now created a new problem for this community.
- Three years ago, without any type of notice, permit, authorization, or study of the potential impacts, Mr. Harrison began construction of an 8-foot-tall game fence around the entire boundary of his 88,000-acre mountain ranch.
- This boundary is approximately 60 miles long with most of it over undeveloped mountainous areas and wildlife habitat, including steep slopes starting at an elevation of 8,200 feet and going up to over 14,000 feet.
- He is bulldozing a 12-foot-wide fence road along this extensive boundary with no apparent regard to topography, vegetation, soil type, or slope steepness.
- Once completed CVR will have disturbed the top soil along the boundary line of approximately 87 acres, most over undeveloped natural areas and steep slopes.
- At least 20-30 miles has already been completed and county residents have observed severe disturbances to wildlife migration patterns affecting the local resident's ability to hunt by preventing big game from leaving the ranch on their natural migration corridors and thus no longer available for hunting outside the ranch.
- They have also observed and documented the destruction of wildlife habitat of all large and small mammal species as at least 10 miles of fence with its 3 inch tightly woven mesh pattern is separating all wildlife from the creeks and riparian areas.
- The local residents have also observed and recorded severe erosion in many of the bulldozed hills resulting in drastic alteration in natural stormwater flow in the most destructive way possible.
- The deeply rutted fence road is now capturing much of the stormwater from the upper foothills and diverting this excess water along with extra tons of sediment straight down to our creeks, ditches, reservoir, and historical religious sites (Morada).
- The Environmental Protection Agency/Clean Water Act regulates sediment which is considered one of the most damaging pollutants.

SUMMARY OF EXHIBITS

These exhibits show an example of evidence of severe erosion in the Vallejos foothills in Costilla County along County Road K.S resulting from Cielo Vista Ranch's tall fence construction activities. There is a section of fence road bulldozed 3 years ago in the Western Vallejos foothills, just north of County Road K.S that has severely eroded. As a result, CVR has altered the natural flow of stormwater in this foothill region and did so in the most destructive way possible. This fence road travels north, halfway up the foothills, and up and down over 4 ridges. Deep ruts in this road now capture most of the stormwater from the upper foothills and redirects it down both sides of these ridges into 3 arroyos that then send the increased water along with tons of sediment straight down towards the Vallejos Creek. The comparison satellite photos from before and after bulldozing the fence road (exhibits A and B) now show new large sediment fields next to County Road K.5. This is only one example of what is a much more widespread problem occurring over the 20 plus miles of bulldozed fence road over steep slopes of several other foothill regions.

EXHIBITS

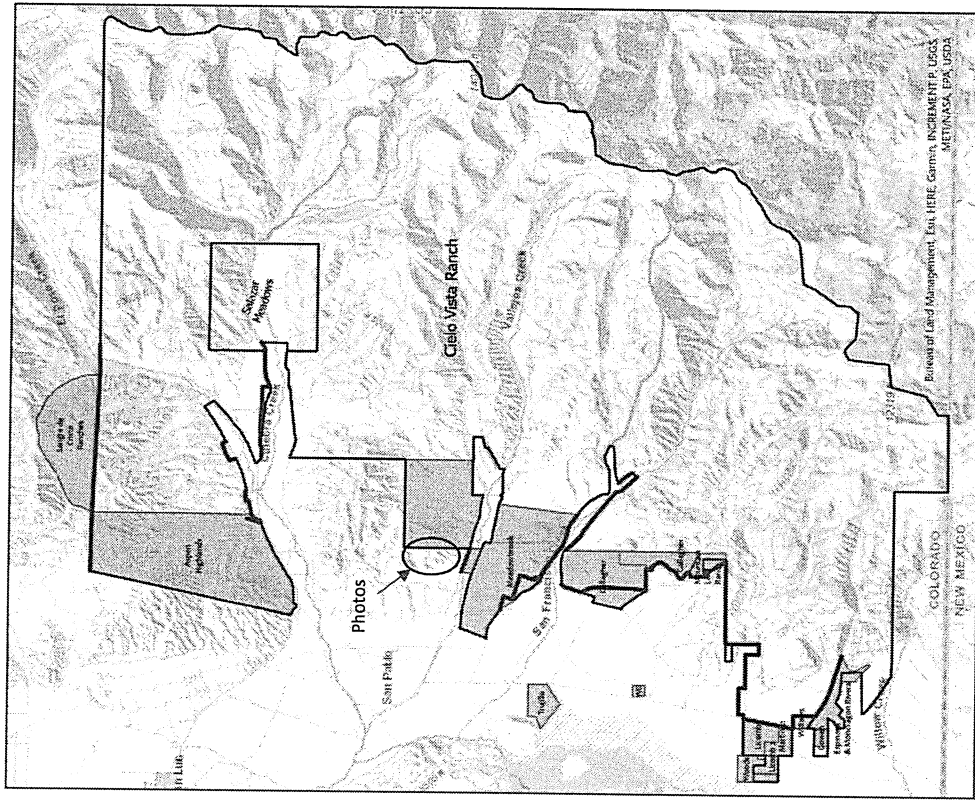
DESCRIPTION

A. Overview of western slopes of the Vallejos foothills

B. Overview of ridges and arroyos

1. View south from top of ridge 4
2. View north from top of ridge 3
3. View south from top of ridge 3
4. Beginning of arroyo 2 between ridge 2 and 3
5. Beginning of arroyo 3 between ridge 3 and 4
6. Arroyo 3 photos showing recently uprooted trees from increased storm water flow
7. Same as 6
8. Same as 6
9. New 257 feet wide sediment field next to County Road K5 and originating from Arroyo 2. This sediment field is also seen also on google earth exhibit 11
10. September 1999 google earth photo of area where sediment field later appears after CVR bulldozed fence line 3 years ago. Notice that this same area is pristine with no sediment visible.
11. Present day google earth photo showing new sediment field pictured in exhibit 9. This sediment is not present in google earth photos prior to time CVR bulldozed fence road in the Vallejos region 3 years ago.
12. Fence Photo
13. Fence Photos

Cielo Vista Ranch (La Sierra)



- CVR II Cielo Vista Boundary_MirGp
- High Fence
- Rocky Mountain Elk Foundation



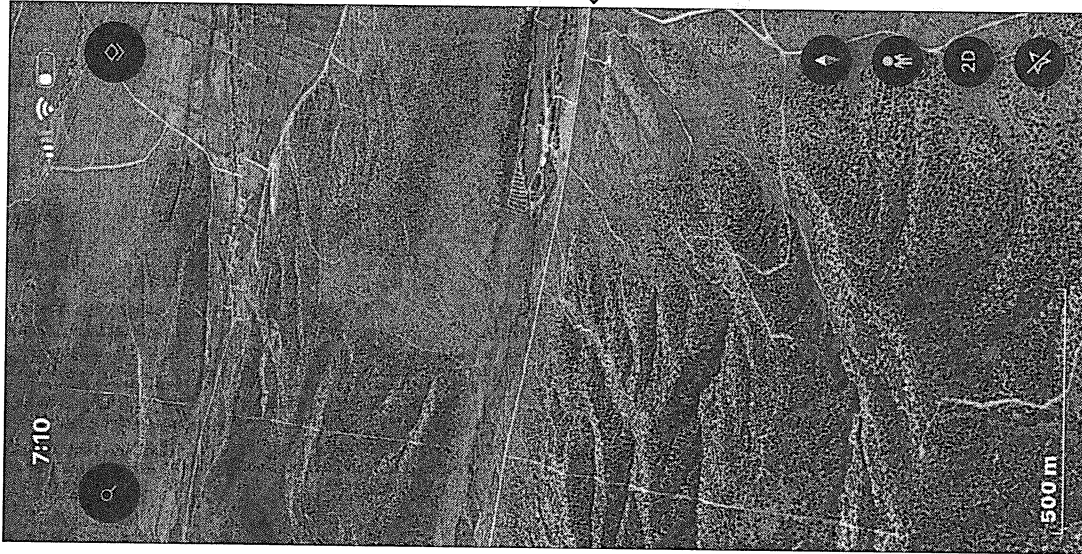
Overview of Area near County Road K.5



0 0.07 0.15 0.3 Miles



Exhibit A
 Western Vallejos Foot Hills
 2016 Photo

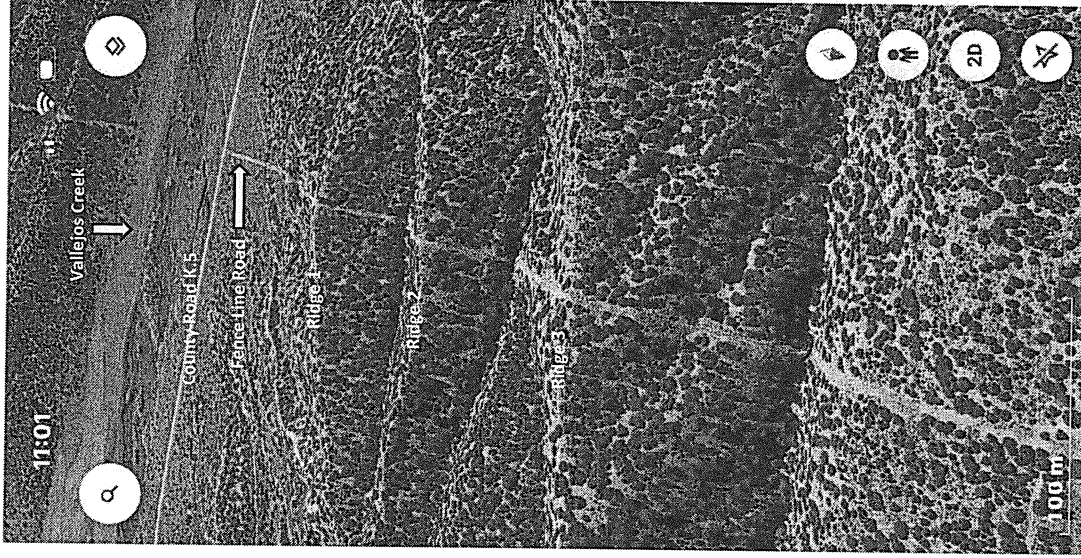


← San Francisco, CO

← CR K.5 to San Pablo, CO

Exhibit B

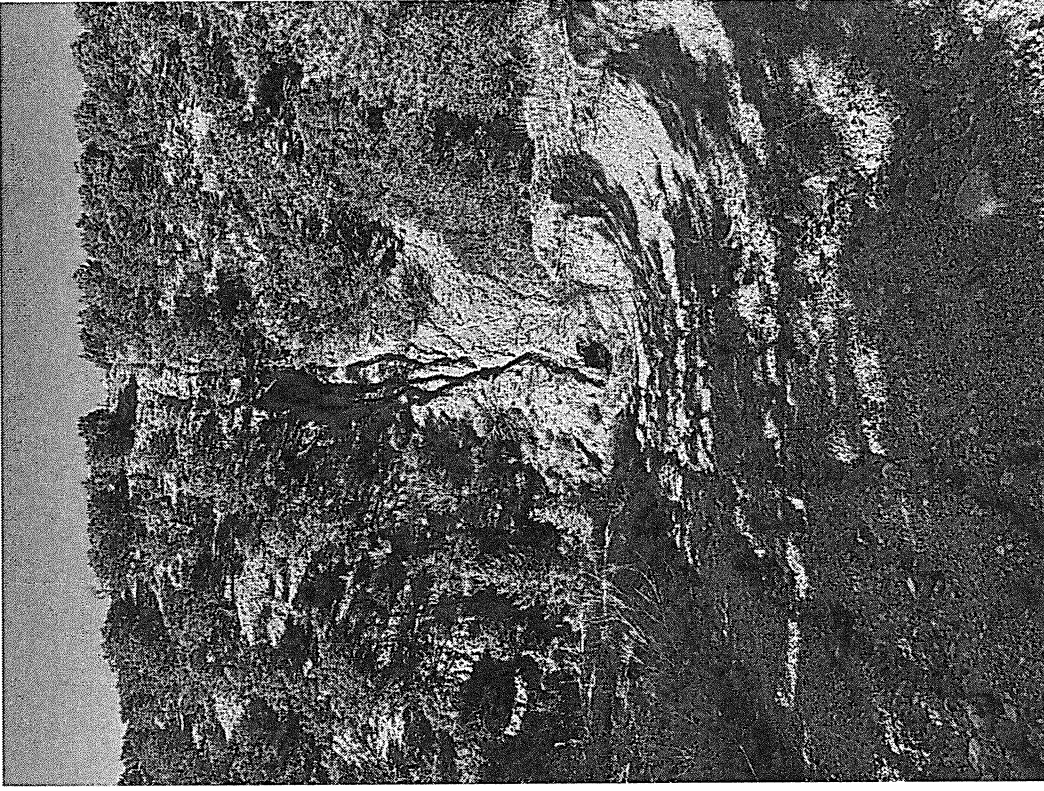
Overview of ridges and arroyos in the Vallejos foot hills



← Arroyo 1

← Arroyo 2

Exhibit B-2



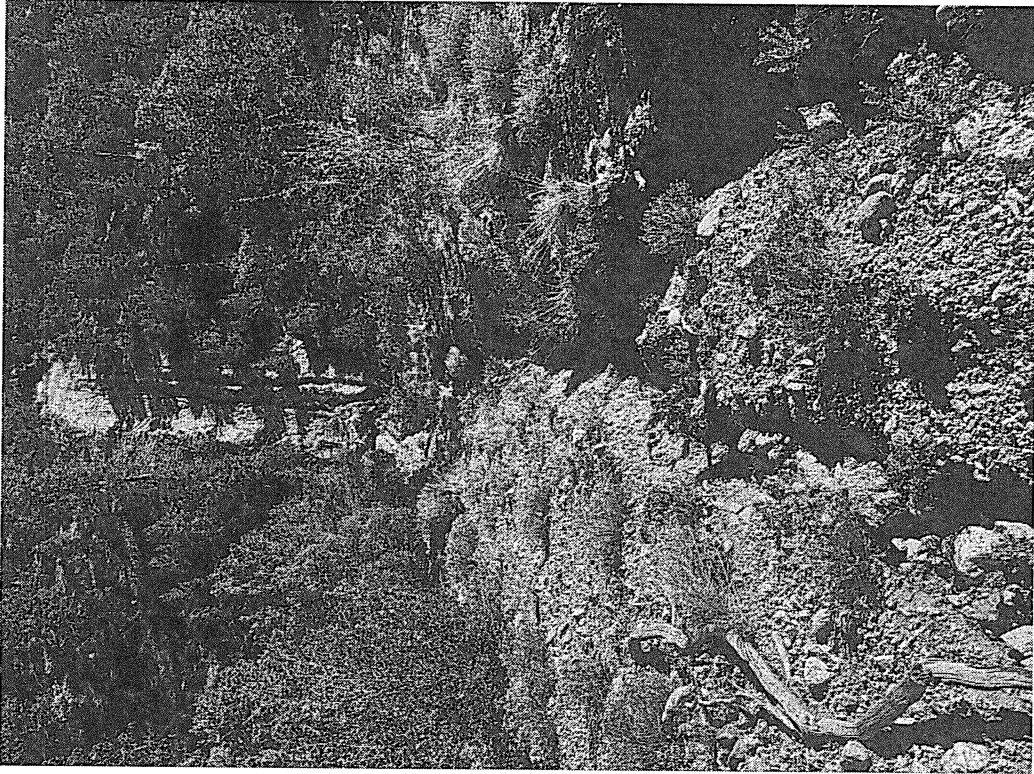
View North from top of ridge 3—9/23

Exhibit B-1



View South from top of ridge 4—9/23

Exhibit B-3



View South from top of ridge 3—9/23

Exhibit B-4



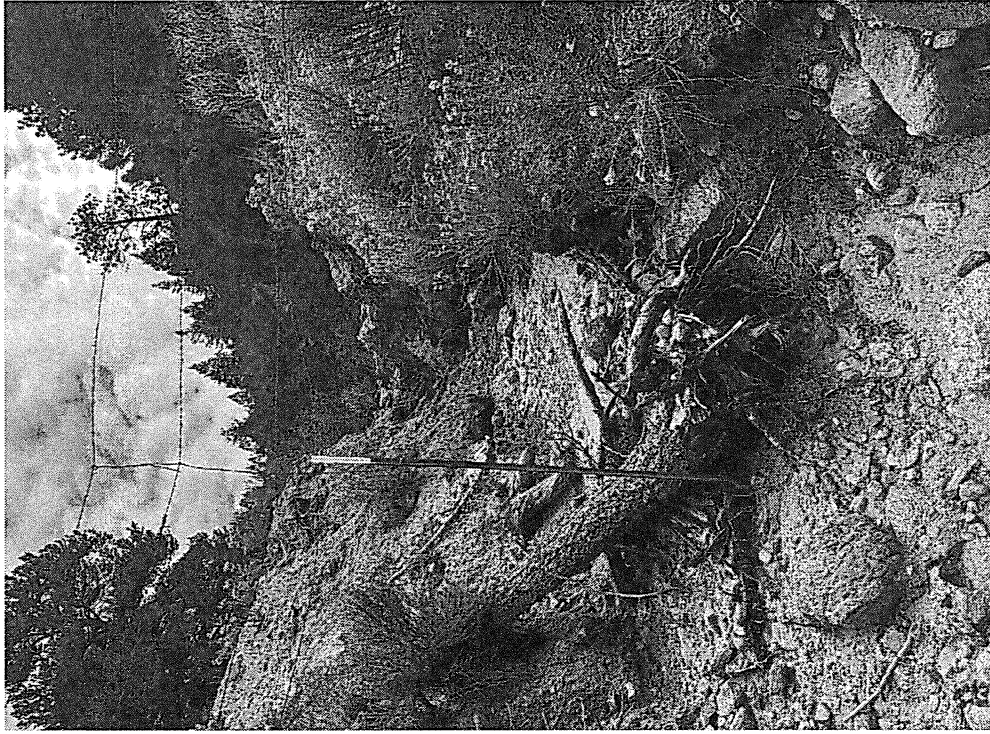
Beginning of Arroyo 2—9/2023

Exhibit B-6



Arroyo 3 photos showing recently uprooted trees from increased storm water flow

Exhibit B-5



Beginning of arroyo 3

Exhibit B-7



Arroyo 3 photos showing recently uprooted trees from increased storm water flow.

Exhibit B-8



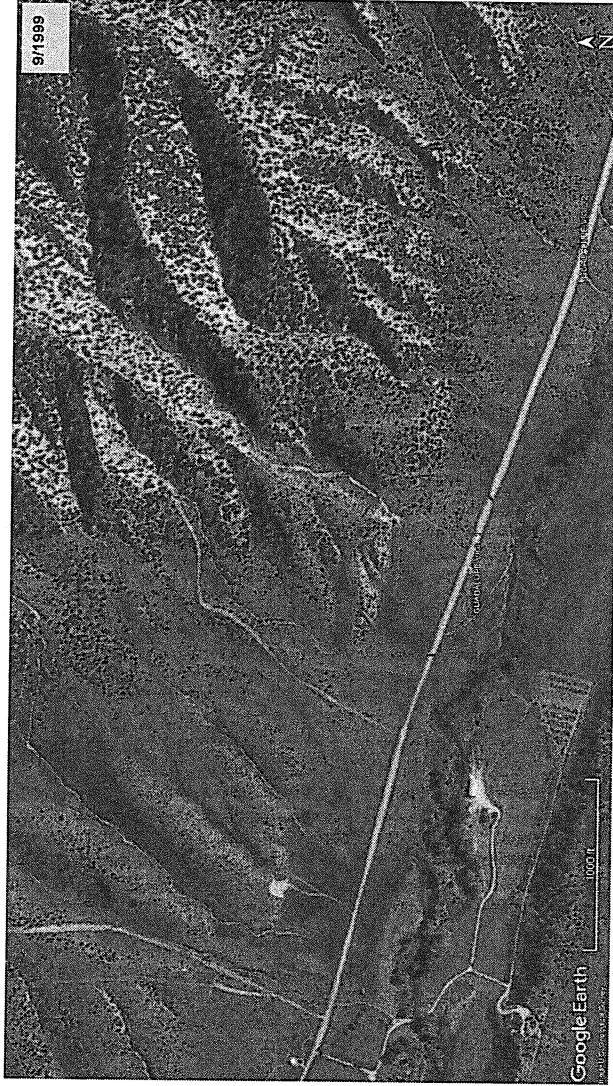
Arroyo 3 photos showing recently uprooted trees from increased storm water flow.

Exhibit B-9



New sediment field about 257 feet wide next to County Road K5 and originating from arroyo 2. This sediment field is also seen on aerial photo, Exhibit B-11.

Exhibit B-10

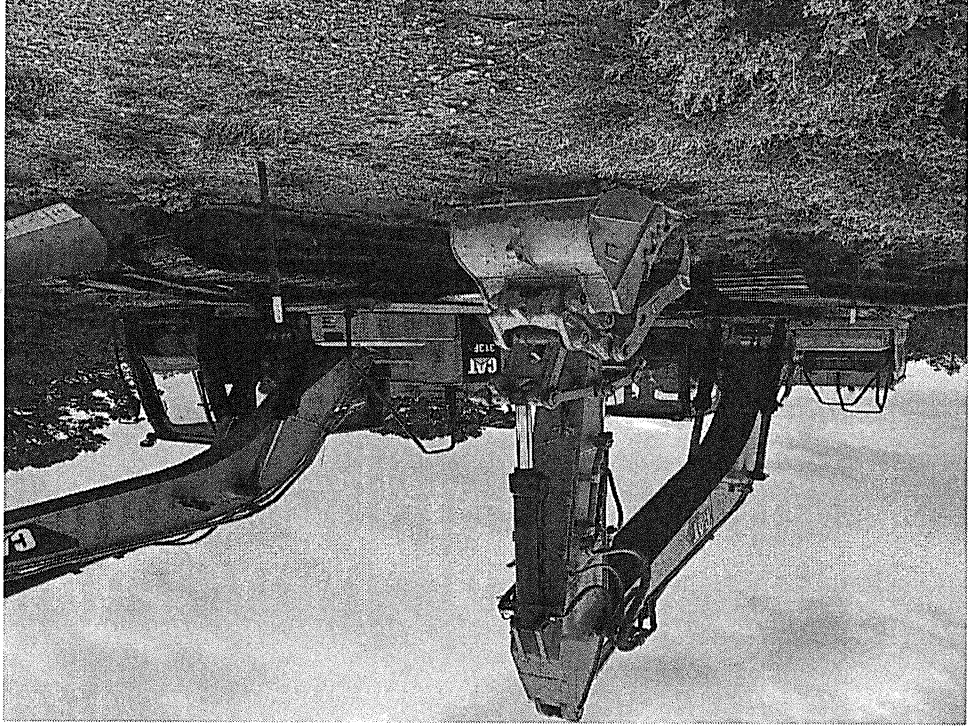


This Google Earth photo was taken on 9/1999 shows no significant sediment. There is little doubt that CVR's bull dozing three years ago had a significant impact on the sediment fields shown in the 2023 aerial photo in Exhibit B-11.

Exhibit B-11

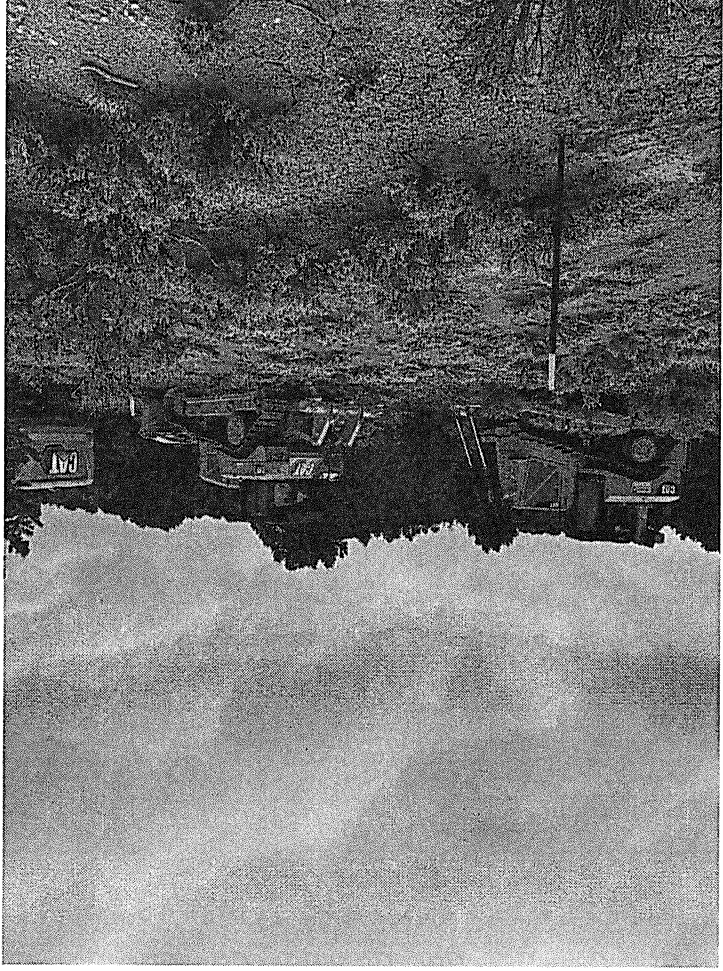


ESRI World Image (Download 1-12-2024)



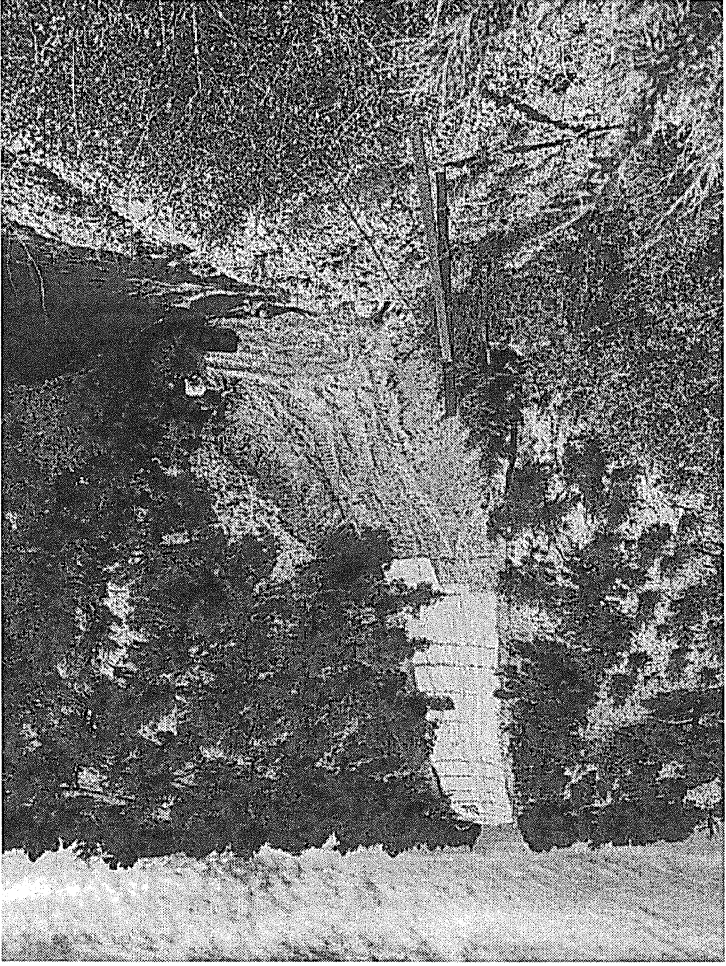
6/9/2024

Remediation Begins

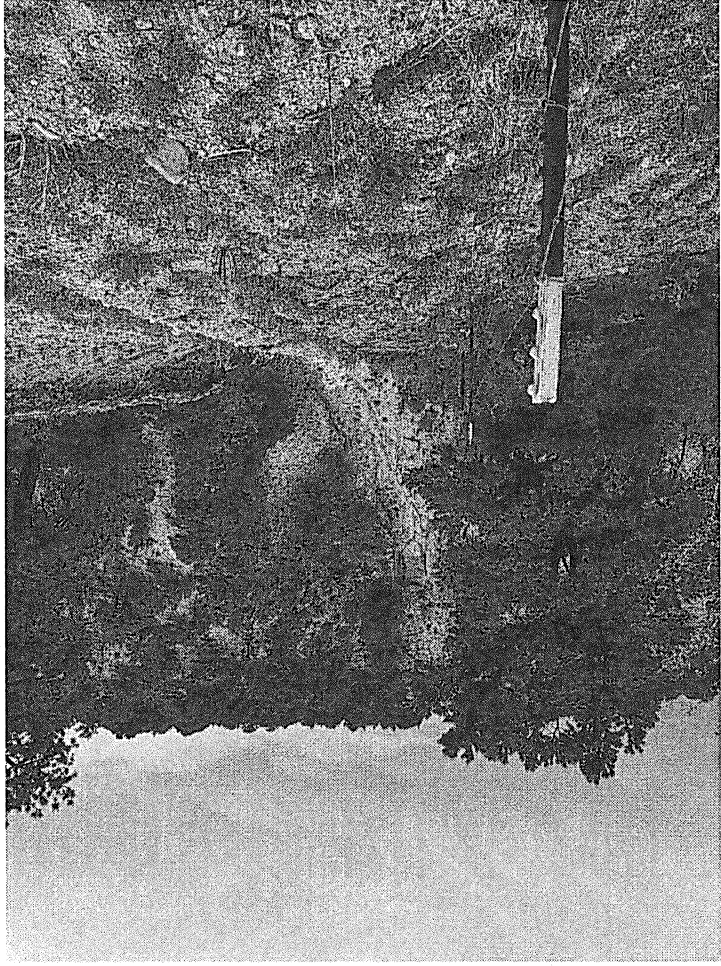


6/9/2024

Remediation Begins

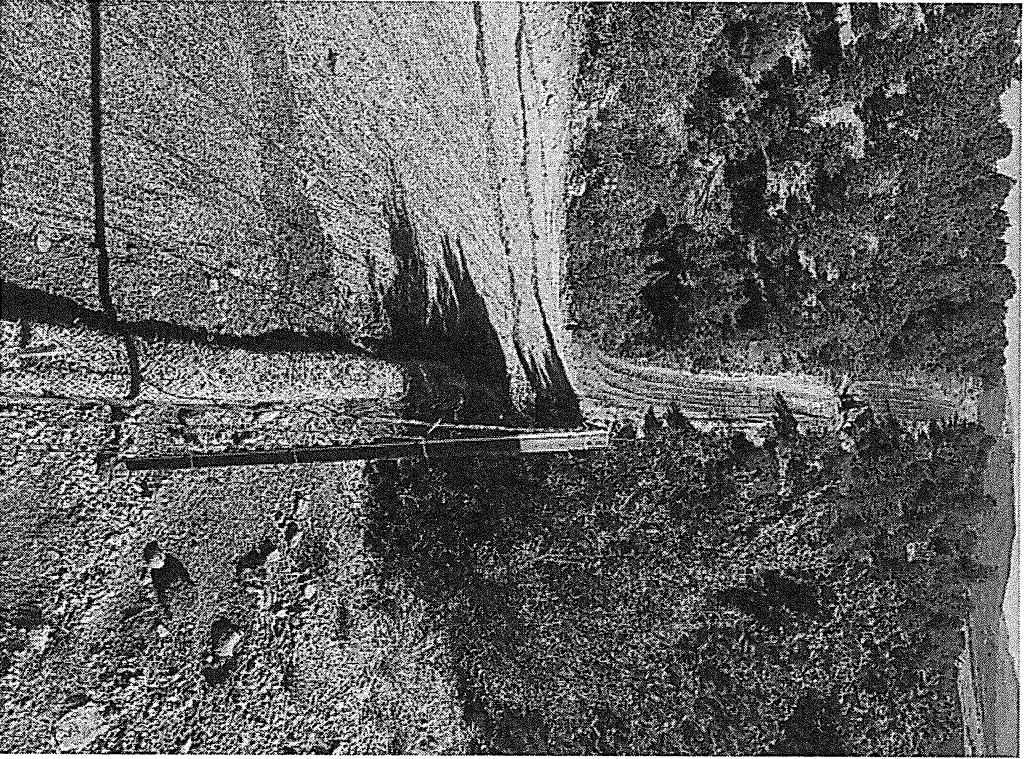


Remediation

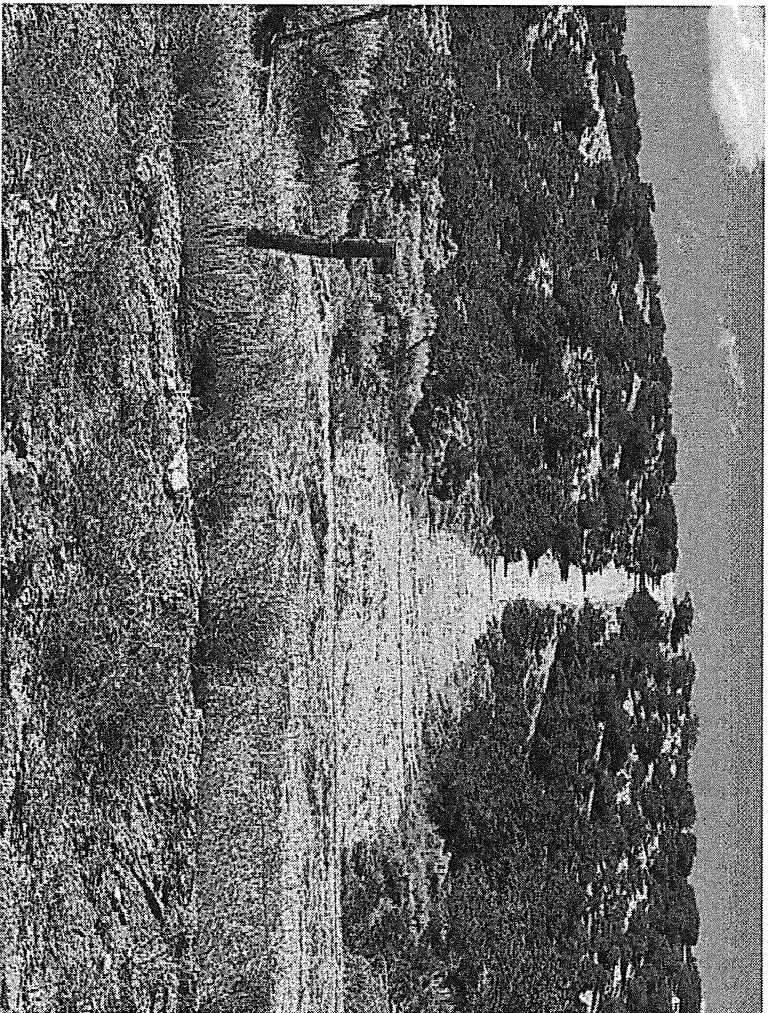


Remediation Begins

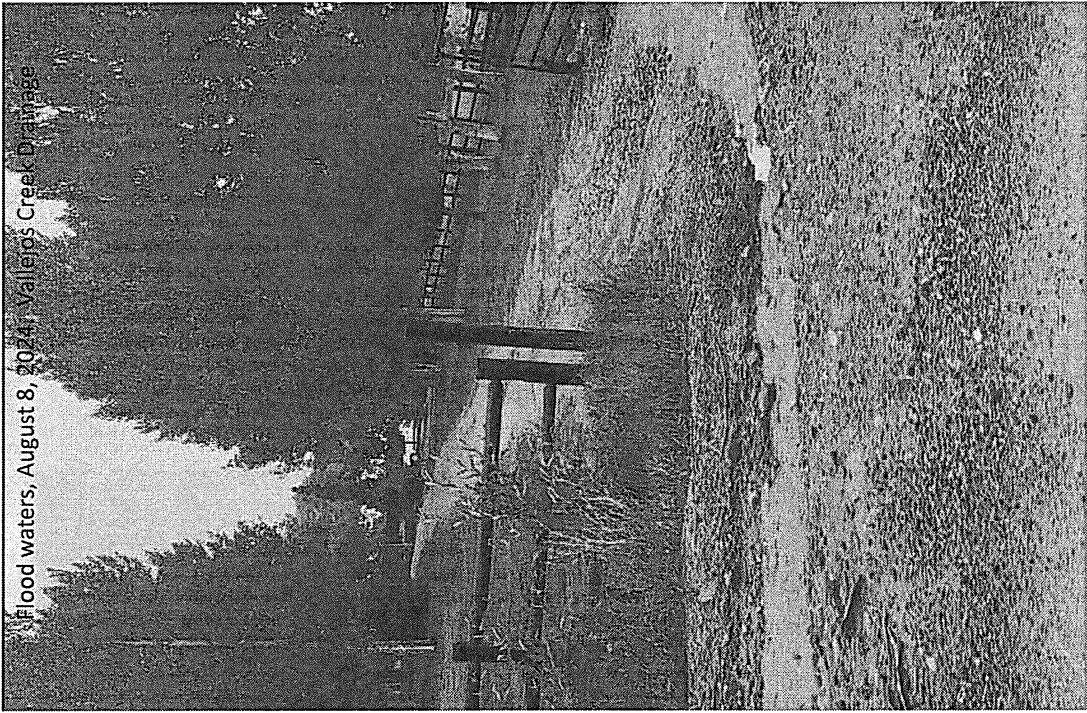
6/9/2024



Remediation



Remediation



Flood waters, August 8, 2024, Valleys Creek Drainage

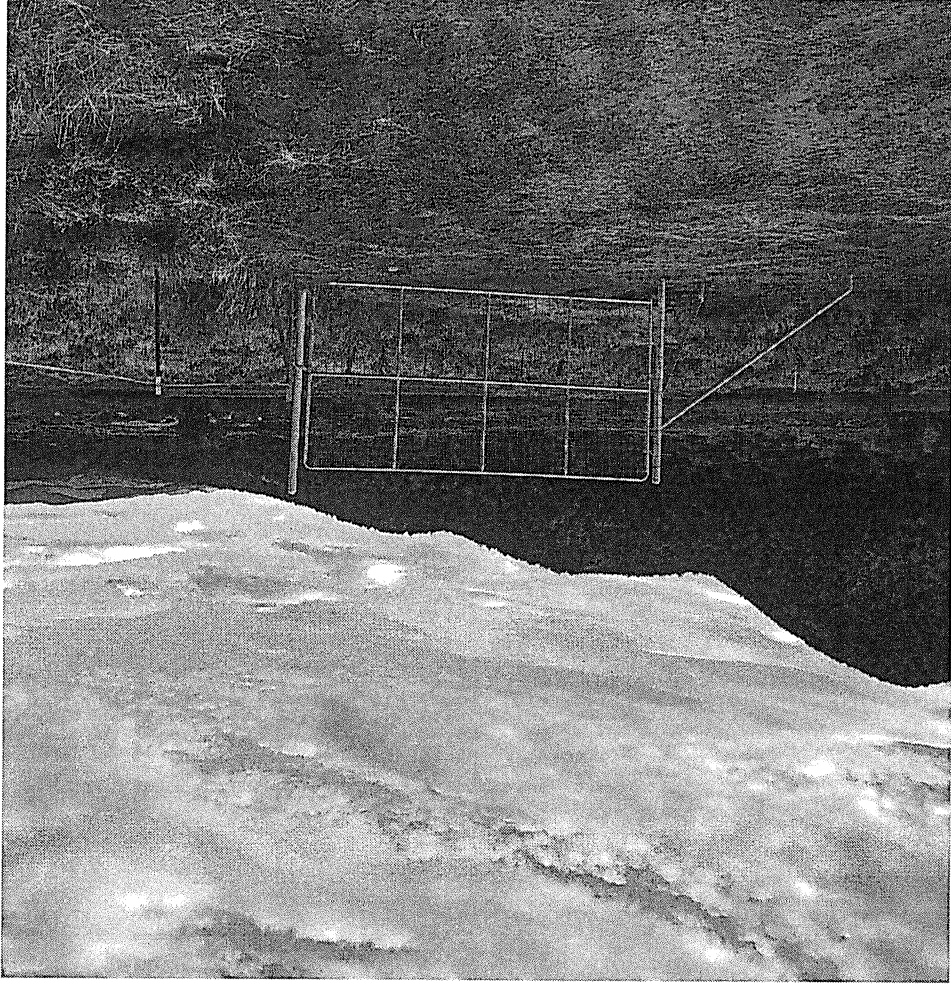
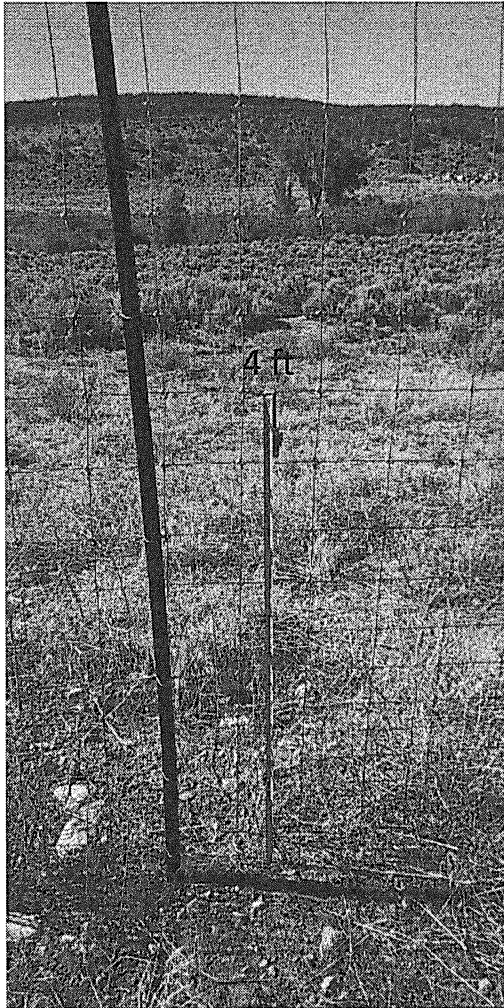


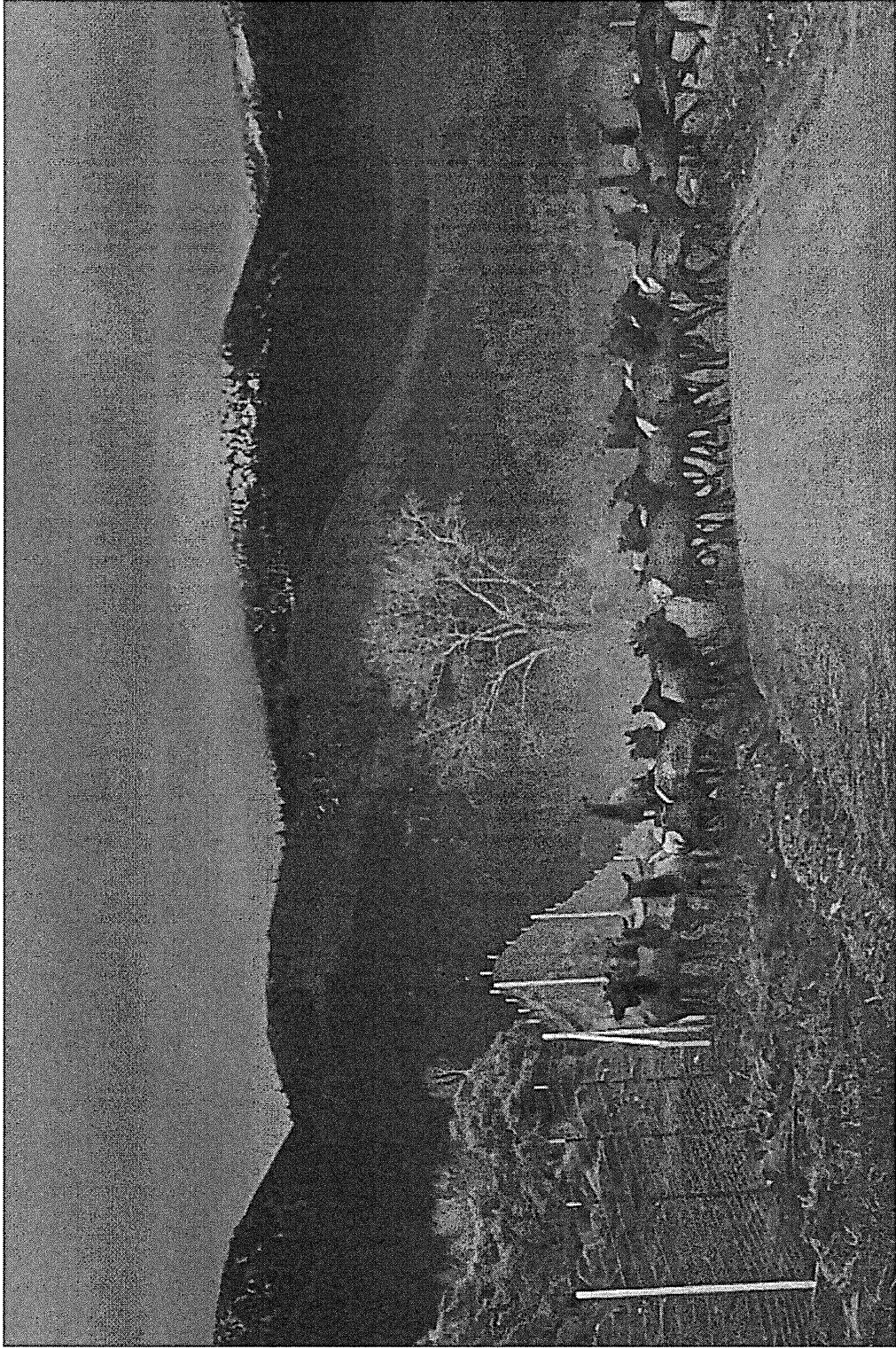
Exhibit B-12

Cielo Vista Fence- Looking North, overlooking the Rael Ranch, San Francisco, CO.
Showing the new fence and gate height compared to the existing fence.

Exhibit B-13

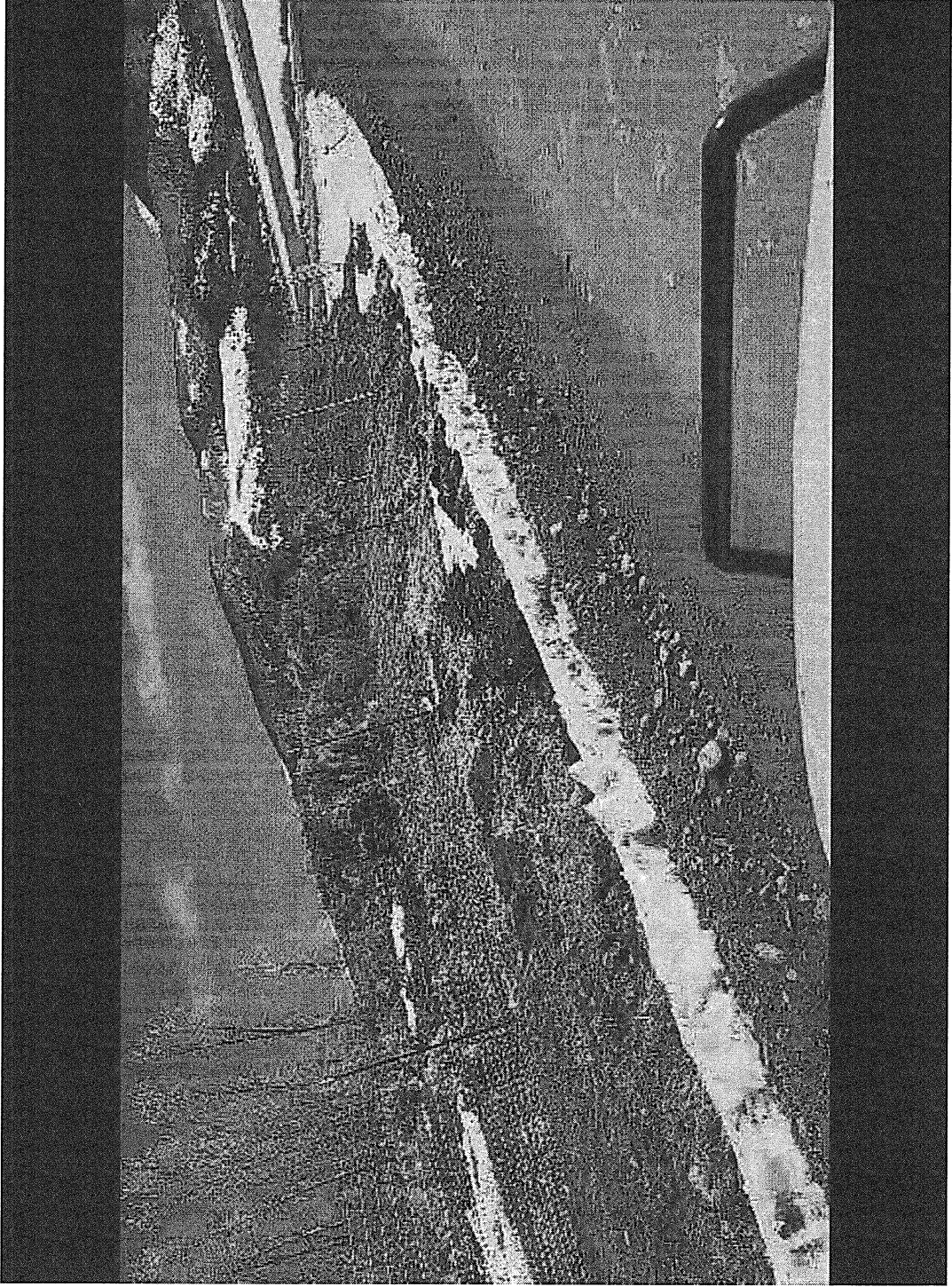


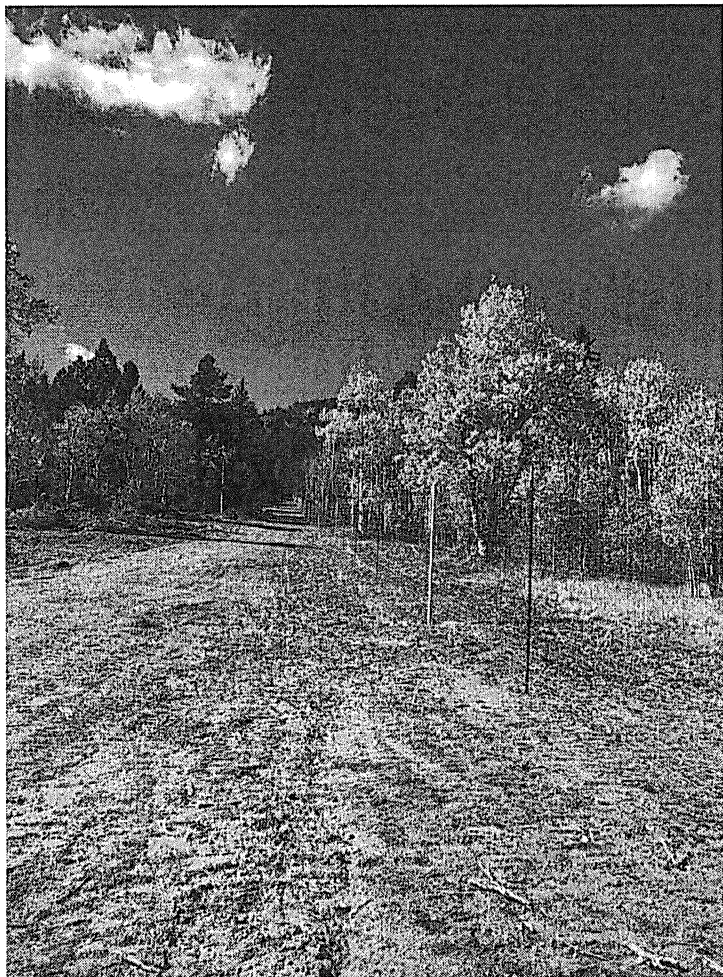
Photograph of Cielo Vista Ranch fence showing dimensions of fence openings of the fence.



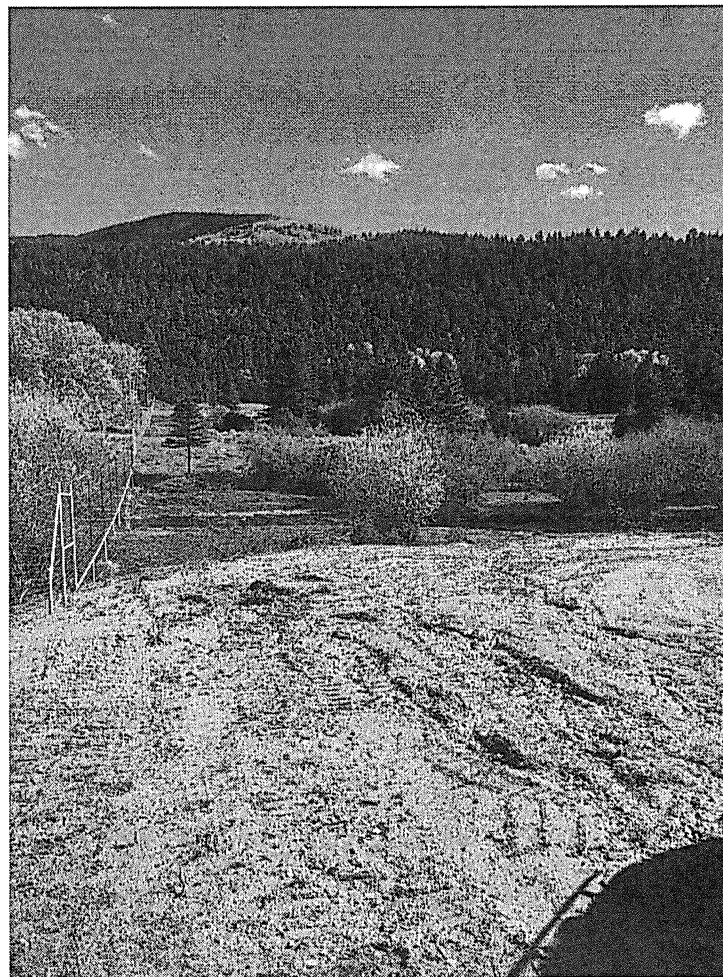
April 26, 2024 6:14 AM _ Eli Rael

Dwight Mondragon 2-29-2024 10:54 am



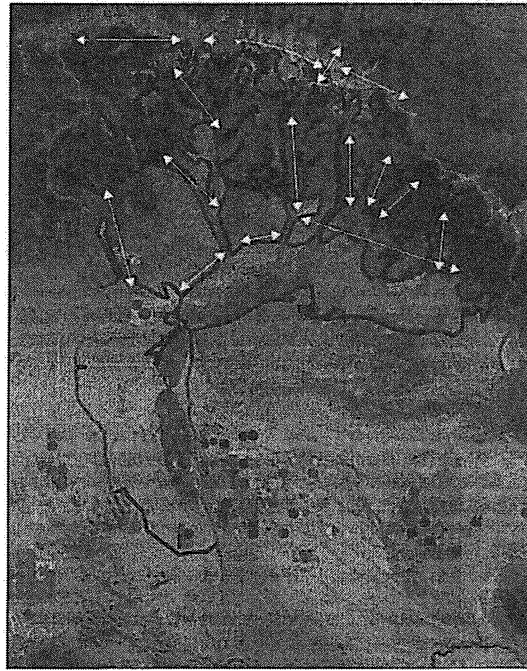


El Poso Creek 10/23/2023 Facing West



El Poso Creek 10/23/2023 Facing East

Expected habitat areas within the Culebra Watershed were identified based on presence of herbaceous vegetation in the NLCD (USGS, 2019) and riparian meadow areas identified as part of the Rangeland Assessment, Chapter 8. East-west migration routes are anticipated to follow stream corridors due to topography through much of the middle elevation portions of the range. North-south migrations are more likely to occur within the lower elevation valleys and foothills and within the alpine regions (Figure 9-4).

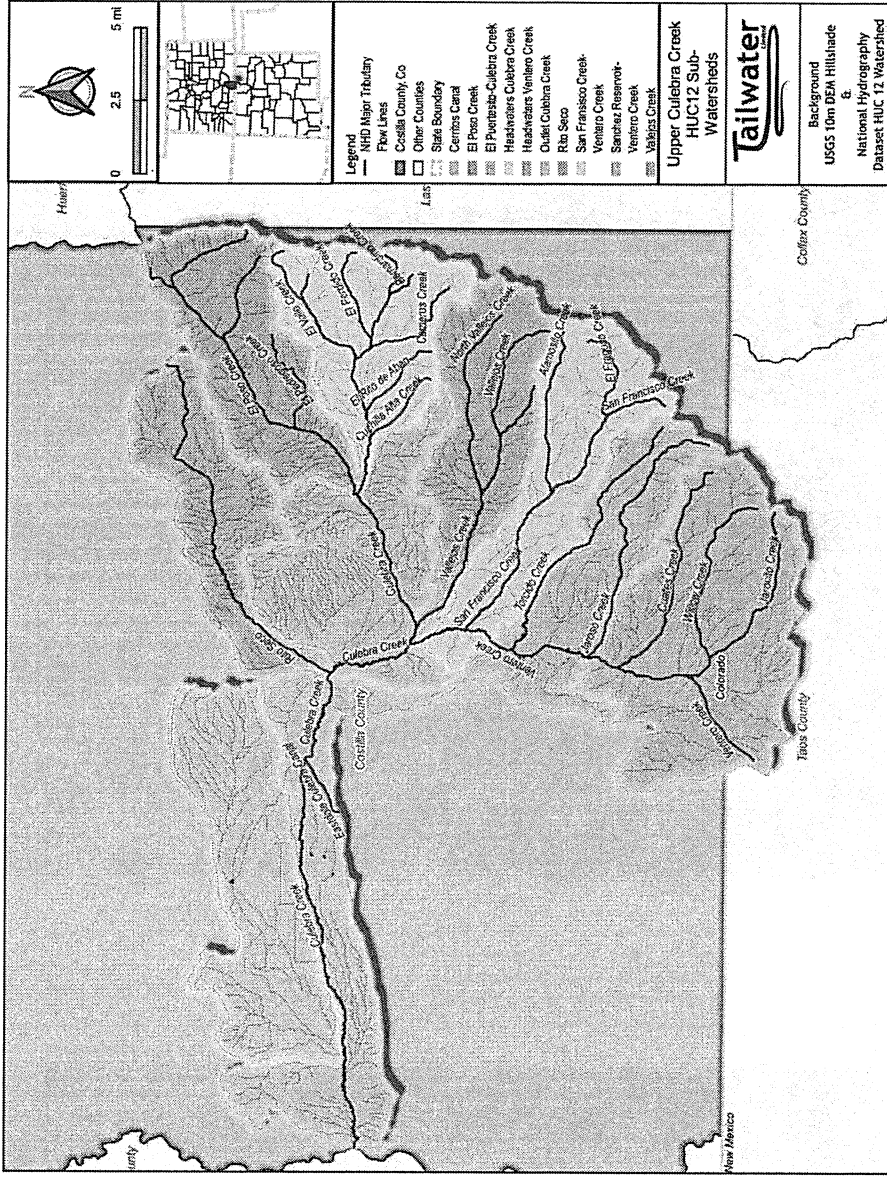


- ◆ Probable Ungulate Habitat
 - Culebra Watershed
- Ungulates migrate over Sangre Range likely along drainages. Ungulates are likely to migrate along stream corridors which are typically oriented east-west and along areas with lower topographical relief such as the valley, foothills, and alpine areas.

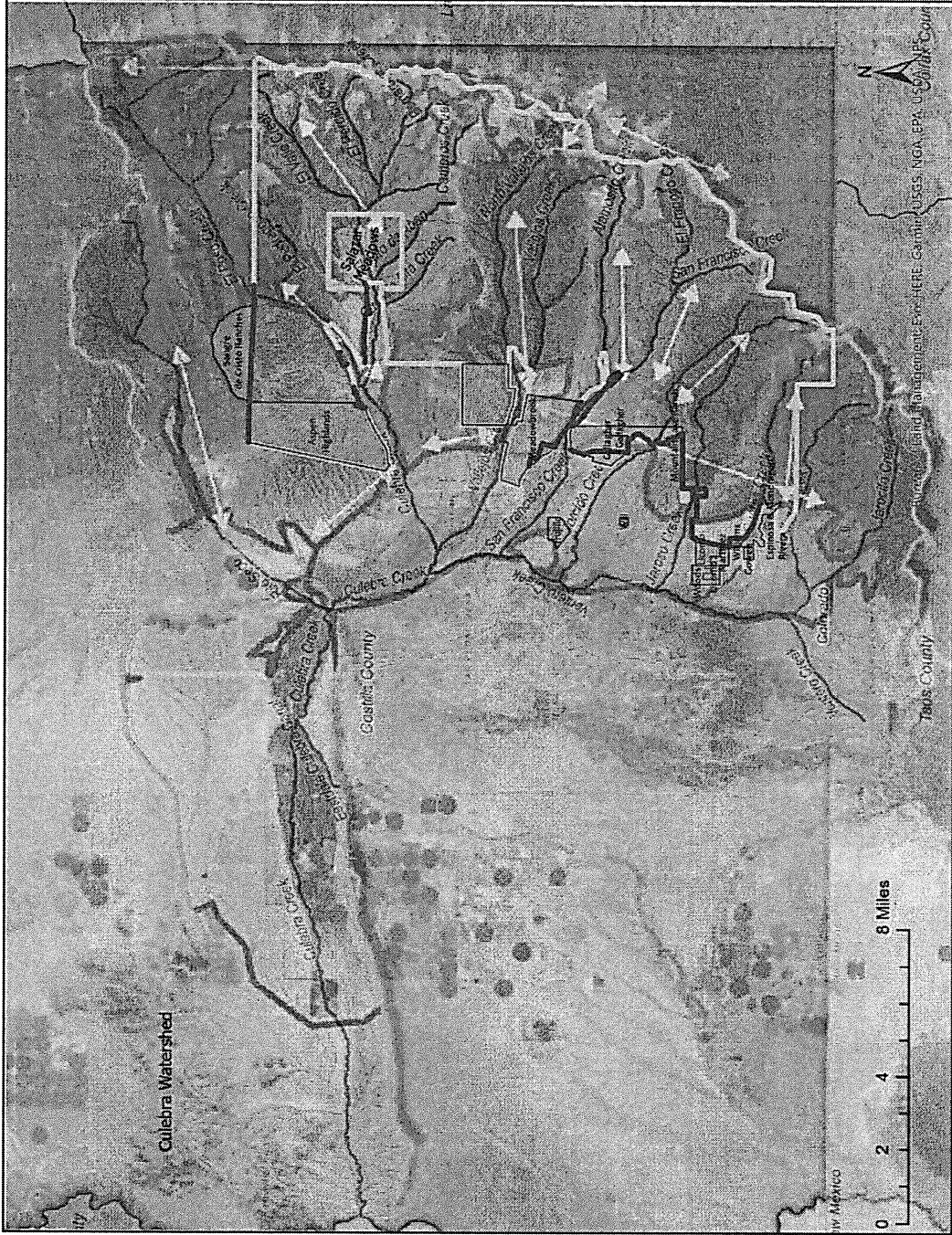
Background 2021 NIP aerial imagery.

Figure 9-4 Probable ungulate habitat and ungulate migration routes within the Culebra Watershed. Habitat areas identified from areas delineated as part of the Rangeland Assessment, described in Chapter 8, and areas where NLCD classified land cover as herbaceous or grasslands. Migration routes generally described based on range topography.

<https://www.costillaccd.org/wp-content/uploads/2022/07/subwatersheds-1.pdf>



Sub-watershed and Ungulate Migration Overlay



Pollinators are important because of the services they provide that support both agricultural and native plant production and native biodiversity (Pollinator Partnership and NAFPC). Pollinators include bees, butterflies, moths, birds, and bats. High value habitat for pollinators includes areas with abundant food (nectar), shelter, and water. Utilizing criteria developed by Pimental and others (2021) parameters of dispersal distance and land cover were developed for woody wetlands, and emergent herbaceous wetlands. Overlaying these two areas within the Culberta watershed yields the distribution of habitat shown in Figure 9-7. These areas were high quality pollinator habitat is likely to occur. Enhancement of habitat through grazing management, disturbance avoidance, avoidance of pesticides, and planting of pollinator friendly vegetation could improve overall habitat quality.

9.3. Data gaps

Documentation of species present within the basin is limited. Encouraging science and studies within the basin through public-private partnerships could increase the body of knowledge and overall interest in the basin. Identifying species within the basin can help protect sensitive species and improve funding opportunities for projects within the basin.

9.4. Recommendations

The following general recommendations were developed to provide guidance to protect wildlife within the Culberta Watershed.

9.4.1. Riparian Corridors

Riparian corridors and wet meadows provide key habitat for many of the wildlife found within the Culberta Watershed. These areas are critical to supporting many of the key species including many of the species listed with special status by the State of Colorado and the USFWS. Stream channel restoration and wetting has reduced the extent of the wet meadows within the watershed. Restoration of the floodplain connection will increase available habitat and support greater population resilience in many of the species.

9.4.2. Fencing

The following information is summarized from the Fencing with Wildlife in Mind available at: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs14422_045777.pdf and a Landowner's Guide to Wildlife Friendly Fences: How to Build Fence with Wildlife in Mind available at: https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs14422_026389.pdf. Whenever installing fencing, consider the goals of the installation, plan and construct the fence to meet those goals. Always consider whether a permanent fence is necessary or if a temporary fence would meet the goals and if the fence would separate wildlife from food or water source or security cover.

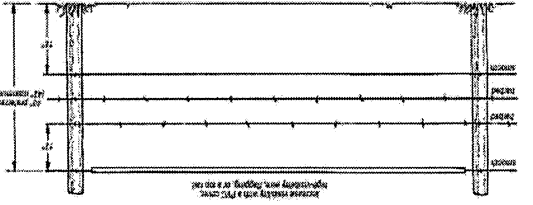
In the case of all new fence installations, the fences should be flagged to improve visibility. When installing fencing on sloped landscapes the height of the fencing needs to be adjusted to compensate for the additional height caused by the slope on the downhill side of the fence. Remove any fences that are no longer used or necessary to protect both wildlife and livestock.

9.4.2.1. Wire Fencing

Fences should be constructed with smooth bottom and top wires; middle wire may be barbed. Bottom wire should be placed at least 16" above the ground to allow farms and calves to navigate the fences. The top wire should be less than 40" above the ground for Fronghorn and less than 42" above the ground for deer and elk. The middle wire should be 12" below the top wire. The top wire should be kept tight to prevent entanglement. Fencing should not include vertical stays. Three wire high-tensile wire fencing is preferred where acceptable for livestock control. Additional improvements can be incorporated to fences to improve conditions for wildlife. These improvements include installing white vinyl coated wire, removable sections, and/or elk jumps as described below. Deer and elk are more likely to use these sections if placed near cover, or at the corners of the pasture.

- Lay-down fences are good in winter in unusual pastures. Sections of the fence are constructed so that they may be laid over to allow game to pass and prevent winter fence damage.
- Adjustable wire fences are constructed so that the top and second wires can be reduced to a height of approximately 25" to be more negotiable to deer and elk. This also prevents damage to fence by wildlife during migration.
- Elk jumps are sections of the fence that are constructed of corral poles at a height less than 40-42" and at least 14" wide to allow animals to cross.
- Removable sections can reduce blockage to migration during winter and be replaced when needed for livestock management or when wildlife are in their summer range.

IDEAL WILDLIFE FRIENDLY FENCE



The fences are very visible and show with marks to help prevent or stop trespassing, digging or a pole slip under the wires or rails.

Figure 9-8 Wildlife friendly fence from A Landowner's Guide to Wildlife Friendly Fences: How to Build Fence with Wildlife in Mind (Paige, 2008)



- COSTILLA COUNTY'S RESPONSE

- Once the county residents started noticing the adverse effects of this massive fence construction, they notified the County Commissioners of their concerns.
- The Commissioners adopted a moratorium on tall fence construction on October 5, 2023.
- Mr. Harrison unlawfully ignored the moratorium and he continued to build his fence.
- This forced the County to obtain from the court a restraining order against Mr. Harrison.
- However, several miles of additional fencing were constructed after the moratorium. This moratorium is effective for 6 months and new fencing regulations prohibiting fences over 4 feet tall (without a permit) have recently been adopted.
- CVR has appealed and we suspect it will continue to ignore our county regulations for as long as it takes to complete their fence.
- This fence has no reasonable purpose and its harms include interfering with tens of thousands of all manner of mammalian wildlife, severe erosion, and interference with local hunters' rights which far exceed any benefits that Mr. Harrison claims (fencing in 60 bison in an 88,000 ranch).
- A recent Oxfam International report published November 7, 2022 revealed that each of the top 25 billionaires cause one million times more environmental destruction than the average person in the bottom 90%.
- This fence project is one example how the billionaire class creates environmental destruction with projects that are unnecessary and are damaging to the environment and local community. It is time that society and our elected leaders recognize and stop this kind of massive injustice to humanity.

OUR REQUESTS

EROSION:

- The bulldozing of miles of fence road over steep slopes has already started causing severe erosion (see exhibits A, B and 1-11). This is likely to exponentially worsen as the years and decades go by.
- We know that there are erosion laws that exist and that the Clean Water Act also has laws and we believe that both are likely being violated. We request you send down a stormwater specialist and erosion experts to Costilla County to investigate the existing and accelerating erosion and the potential future erosion risk from this fencing project.

Once investigated we request:

- 1) CVR be held accountable for any erosion law or Clean Water Act violations including failure to obtain a National Pollution Discharge Elimination System (NPDES) permit.
- 2) Force CVR to remediate already eroded areas to reduce future pollution of our water ways.
- 3) Force CVR to mitigate all recently bulldozed areas that have not yet eroded.
- 4) Make a determination if CVR should be held legally liable for current damages from the erosion and potential future damages in perpetuity from the likely increasing damages to our waterways and from sediment buildup on neighboring properties, ditches, reservoirs and creeks

WILDLIFE:

We presented 3,700 signatures in support of asking for your help in protecting us, our wildlife, our environment and our water from the destructive fencing activities of CVR. We are aware that the Parks and Wildlife has authority to regulate and protect wildlife. We were disappointed that our local Division of Wildlife officials showed no interest in getting involved to protect the wildlife habitat and migration corridors from these 60 miles 8-foot-tall fence. We ask the following:

- **1) Send a high-level Parks and Wildlife official to Costilla County to investigate how this fence is harming wildlife habitat and migration corridors.**
- 2) Assist our county in any way possible to help it enforce its new fencing regulations prohibiting fences over 4 feet tall against the overwhelming efforts of a billionaire to circumvent these regulations.
- 3) Investigate why our local Parks and Wildlife officials appear to be derelict in their duty to protect our local wildlife.
- 4) Use the authority of the State of Colorado Parks and Wildlife to demand that the 20 plus miles of already constructed fence be taken down, or at the minimum demand that the existing fence be modified to allow passage of all wildlife both over and under this tightly woven tall fence every 1,000 feet as per guidelines so they can access water and their riparian habitat.
- 5) Demand that the section of fence constructed after the moratorium was put in place October 5, 2023 and upheld by a judge be immediately taken down. The judge did leave room for government officials to do what they needed on this portion of the fence built after the moratorium.

- We thank you for your consideration of these matters.
- We, the public, rely on our elected officials and government agencies to protect us and our environment from the destructive, unnecessary activities that only the ultrawealthy can afford and who believe they are above the law.
- Please contact Bernadette Lucero for questions or further information at 719-588-9194 or blamapepi@yahoo.com or Shirley Romero Otero 970-640-8104 or shirleymromero@yahoo.com.

New Fence San Francisco Creek



Thank you!