

Proceedings of the Board of County Commissioners, Chaffee County, Colorado

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Draft Minutes
Special Meeting
April 29, 2009

The Board of Commissioners held a Special Meeting in the Theater of the Salida Steam Plant, 220 West Sackett Avenue, Salida. Board members present were Chairman Frank Holman, Commissioner Tim Glenn and Commissioner Dennis Giese. Others present were County Attorney Jenny Davis, County Development Services Director Don Reimer, Special 1041 Land Use Counsel Barbara Green, County Clerk Joyce Reno and Deputy County Clerk Merrilou Cicerelli.

After the pledge of allegiance, Chairman Holman called the meeting to order at 1:13 p.m.

Chairman Holman asked Deputy County Clerk Cicerelli for verification regarding the distribution of the agendas. Deputy Clerk Cicerelli stated that the agendas were properly distributed.

Chairman Holman stated the reason for this special meeting was the continuation of public hearing to consider request from Nestle Waters North America, Inc. – Special Land Use Permit and 1041 Permit. The request was for the development of spring water source, associated transmission pipeline and loading facility. The location is 12916 and 12974 Highway 24/285, Johnson Village, 22565 and tbd County Road 300, Nathrop. The pipeline will be located on the subject properties and within the rights-of-way for County Road 300, County Road 301 and County Road 310 and within easements proposed for publicly and privately owned lands between the project properties.

County Attorney Davis reviewed the Quasi Judicial Meeting Rules.

Chairman Holman asked District Manager Terry Scanga, the Upper Arkansas Water Conservancy District, to give a more detailed report of the information that he had given at the last meeting.

Terry Scanga, 9180 County Road 156, Salida, General Manager of the Upper Arkansas Water Conservancy District, stated that his report was neither pro nor con to this proposal. The decreed augmentation that Nestle had agreed to with the City of Aurora was not decreed for consumptive use. He gave a detailed explanation as to the reason that he felt the Aurora water augmentation lease might be triggered if there were a severe drought on the Front Range. He stated that there had been a rebuttal from Nestle Waters that Aurora did not need that much water in storage, because of Aurora's Prairie Water Project. He had rebutted that comment based upon an agreement that Aurora had entered into with the Upper Arkansas Water Conservancy District on March 18, 2009 to settle mitigation. He read a part of the agreement. He felt it was unusual that an out of district entity would be able to lease water out of the basin.

Commissioner Glenn asked how this might affect the agricultural users or recreation users in the County.

General Manager Scanga felt that the potential of water being stored in the Pueblo Reservoir, which was lower down the river, would not help to replenish the void in the Upper Arkansas in time of drought.

Commissioner Glenn asked about the voluntary flow program and if this would be affected.

General Manager Scanga stated that this lease with Aurora might harm that program.

Chairman Holman asked that anyone in the audience that was planning to testify to please stand and be sworn in. He then asked if public person had any questions for District Manager Scanga regarding his comments.

Carlos Boyd, 29320 County Road 361 #16, Buena Vista, asked if the Upper Arkansas Water Conservancy District was involved in the 1041 process of the Nestle Waters application. He also asked if they had a problem with the augmentation coming from Twin Lakes and not replenishing the water from where Nestle Waters would be taking it from.

General Manager Scanga stated that the Upper Arkansas Water Conservancy District was not involved with the County's 1041 process. The problem with augmentation would be the calling of local water rights.

Billy Carlisle, 208 Mesa Court, Salida, stated his concern was the legality of the water plan of Nestle Waters because if the water was not granted what affect would that have on the 1041 process.

General Manager Scanga explained that Nestle Waters had two processes that they had to follow. The first one would be the 1041 with the County. Then they would have to file application with water court to get an adjudicated water augmentation, because the water right that Nestle Waters was purchasing was not consumptive water rights. Nestle Waters water use would be totally consumptive.

John Cogswell, 15099 County Road 350, Buena Vista, wanted clarification from General Manager Scanga. He asked if Aurora had the right to 54,000 acre feet a year under a decree.

General Manager Scanga stated that Aurora had an agreement with the Upper Arkansas Water Conservancy District and the South Eastern Water District that placed the limitations of what Aurora could take out of the Arkansas Basin. Aurora did own about 45,000 acre feet of water rights in the basin. The agreement and the Memorandum of Understanding (MOU) show that the spirit of the settlement was that Aurora would utilize the demands of their population in their cities.

Mr. Cogswell asked if Aurora did not have the right to lease water to Nestle Waters.

General Manager Scanga stated that he did not state that they did not have the right to lease the water. What he meant was that the lease would have an impact, because it would increase their demand for water. Unfortunately the accumulative impact of this in a drought year could be very injurious to this water basin.

Mr. Cogswell asked currently how much water Aurora was taking out of the 54,000.

General Manager Scanga stated that he did not know off the top of his head, but probably about 45,000 acre foot.

Mr. Cogswell asked if Aurora could lawfully just go lease an extra 9,000 to someone else. He also asked if that did not involve a 1041 permit the County would just have to live with the impacts. He asked if was that correct.

General Manager Scanga stated that was absolutely correct.

Mr. Cogswell asked if it was also true to say that if Aurora did lease the extra 1,000 acre foot that had the impact that Mr. Scanga talked about, it would be an impact equal to 1,000 over the 54,000 which was approximately 2%.

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General Manager Scanga stated that was not correct. The impact cannot be measured because there was a 60% trigger that resulted in not leasing the water. The issue was that Aurora was not using their water rights from this basin to satisfy the demand of the City of Aurora.

Mr. Cogswell asked if they are taking 45,000 acre feet now and if they took that for the next 3-4 years and then they add 200 more then impact of the percentage going Nestle Waters was 200 divided by 54,000 which would be .4 of 1000th of a percent.

General Manager Scanga stated that was correct. However, the impact cannot be measured that way. It would be figured by 1,000 foot by what the flow was in the river in a drought year.

Mr. Cogswell asked for Aurora that impact would be there if the water was used in some capacity other than a project subject to a 1041 permit.

General Manager Scanga stated that was correct.

Mr. Cogswell asked if Mr. Scanga had an opinion if this was a material adverse negative effect on the environment of Chaffee County by virtue of the 200 acre foot a year and the potentiality of a catch up of the drought years.

General Manager Scanga stated that there was a difference if you have an in basin entity who was not obligated and they were augmenting using that as a replacement source, you would not have the same impact as the City of Aurora. This would be a negative impact in addition to the Nestle Waters use of those wells would be adverse to the basin.

Mr. Cogswell asked if it would be significantly adverse to the basin.

General Manager Scanga stated that was correct. He believed it would be a 1,000 acre foot would be significant in a dry year. He stated that the spirit of the settlement was that Aurora would utilize the water taken out of our basin to meet the demands of their city. They wanted them to utilize that water the best way possible and even entered into an understanding that they would reuse their water to maximize use to meet the demands of their city. They also gave them the ability and negotiated and they agreed that they could come in and lease additional water if they needed to get up to that 54,000 acre foot per year, extracted from their basin total to meet the demand of their city, which was the intent of their agreement.

Mr. Cogswell asked if he was saying that they did not have the right to lease water to Nestle because their consumption was limited to their demands in Aurora.

General Manager Scanga stated no. He was not saying that they did not have the right to lease. He was saying that there would be an impact from them leasing that to Nestle Waters, because of an additional impact due to the increased demand.

Mr. Cogswell asked if the same impact was created for 200 acre foot every time some rancher irrigated his approximately 100 acres of land. The impact of someone irrigating 100 acres of land and this entire valley would be the same as Nestle Waters using 200 acre foot of water.

General Manager Scanga asked Mr. Cogswell to restate the question.

Mr. Cogswell asked if 200 acre foot by Nestle Waters would be the same as someone irrigating 100 acres in the county off the Arkansas River.

General Manager Scanga stated that if someone irrigated 100 acres in the county the depletion from those 100 acres was 200 acre foot of water a year. On average that would be the impact that Nestle Waters would have. In other words if Nestle Waters took out 200 acre foot out of this basin, it had to be replaced under the law through an

augmentation plan. To mitigate that impact was what he was talking about. What he was stating was that the replacement source would be Aurora, which was a trans-basin diverter out of this basin who was obligated to use their water resources to meet the demands of their City. When they instead lease the water to Nestle Waters that compounds the impact to the basin, it was not just the 200 acre foot taken out by Nestle Waters. There was the impact of a dry year on the replacement source.

Mr. Cogswell stated that a person with a high priority water right who was taking 200 acre foot was creating the same impact to the flow as Nestle Waters would be.

General Manager Scanga stated that except the senior water right would be entitled to do that.

Mr. Cogswell asked would the impact not be the same.

General Manager Scanga stated that it sure would be.

Mr. Cogswell stated that what he was trying to say was the impact would be the same either way.

Chairman Holman asked for other questions for General Manager Scanga.

Bruce Lauerman, 2690 Park Drive, Helena, Montana, Nestle Waters Project Manager, asked for clarification that that the Upper Arkansas Water Conservancy District was not taking a stance on this application.

General Manager Scanga stated that was correct.

Project Manager Lauerman asked even with the concerns that he stated today.

General Manager Scanga answered that the concerns were with the replacement source that Nestle Waters had.

Project Manager Lauerman asked if the replacement water came from the Colorado River basin would Mr. Scanga have the same concerns.

General Manager Scanga answered that could be but let us understand that you are not going to get anymore water out of the Colorado River Basin. In order to do the augmentation for the amount of water coming over the mountain, it was not going to change. Whatever amount of water was in our basin was going to stay the same. Whatever transmountain water that was going to Aurora would stay the same. He stated that if it comes from Pot A instead of Pot B, the impact was still going to be the same.

Project Manager Lauerman asked if Mr. Scanga was aware that Aurora had numerous sources of water not just the Arkansas River basin.

General Manager Scanga stated that he was.

Project Manager Lauerman asked regarding the 5-7 year drought, where did Mr. Scanga get his information.

General Manager Scanga answered that was historical records and on average data.

Project Manager Lauerman asked if Mr. Scanga had documentation on the drought data.

General Manager Scanga answered that he did not have that information with him but he could provide it later.

Project Manager Lauerman stated that would be helpful. He stated the previous gentleman had commented on the minuscule amount of water that Nestle Waters would

be taking which would be about 0.3 CFS (cubic foot per second). Today the low flow of the river was 2.3 CFS. He did not follow Mr. Scanga's math that over 5 years the impact would be accumulative. He thought that it would be year to year and in a drought year the call would be 200 acre feet, but using Mr. Scanga's math the 48,000 to 54,000 acre foot a year that Aurora had available over 5 years then 250,000 acre feet. The concern was that Nestles 1000 acres feet over that period of time would be material.

General Manager Scanga stated that it was specifically with the source coming from Aurora.

Nestle's Attorney Holly Strablizky, 410 17th Street, Denver, Colorado, asked Mr. Scanga about the basin of origin and why was it that he thought that the Colorado River Water that comes over the basin was the same as the Arkansas River Water.

General Manager Scanga stated it met the same demands.

Attorney Strablizky stated that Nestle Waters had not and would not historically be relying on the Fry Pan Water.

General Manager Scanga stated the Arkansas Valley absolutely, Twin Lakes Water and the Fry Pan Ark Project was about 160,000 acre feet of water per year that comes into this basin.

Attorney Strablizky asked Mr. Scanga if the City of Aurora had a certain amount of water rights to the Colorado River Water.

General Manager Scanga stated that it was not a question of the rights.

Attorney Strablizky stated that it was a question of the rights. She asked if Nestle Waters were using Colorado River Water only would he still have the same concern.

General Manager Scanga stated absolutely because the total amount of water that goes into Aurora's assets to meet demand included in the 54,000 acre feet per year diversion out of their basin. He stated that included in the basin are the native water rights as well as their trans-basin water, their homestake water as well as Twin Lake Waters.

Attorney Strablizky stated contrary to Colorado Water Law, Mr. Scanga was stating that the Arkansas River Valley relies on the Colorado River Water.

General Manager Scanga stated that he did not say that.

Attorney Strablizky stated that the Arkansas River Water in his opinion had a right to the City of Aurora's Colorado River Water.

General Manager Scanga stated that he did not say that.

Attorney Strablizky asked if the source of the 200 acre feet of augmentation came from the City of Aurora's right from Colorado River Water would he still have the same opinion.

General Manger Scanga stated yes.

Attorney Strablizky thanked Mr. Scanga for his answers.

Karin Adams, 11460 County Road 140, Poncha Springs, stated her question was there or was there other water available.

General Manager Scanga asked to whom.

Ms Adams stated for Nestle's use.

General Manager Scanga stated that he supposed there would be. He knew that the City of Salida was approached by Nestles for water. His district was approached for water, but the Pueblo Board of Water Works had water available. They just had an offer of some long 40 year agreements on 5000 acre foot of water, but they were only allowed to lease somewhere near 500 acre feet. He felt that there was another water source available.

Ms Adams asked was there a reason that would not have been used then.

General Manager Scanga stated he did not know, for example like the Pueblo Water.

Ms Adams stated with the district or with the city.

General Manager Scanga stated that the Upper District made an offer to Nestle. They had approached the City of Salida and them. The Upper District put a joint offer together for them. The cost was more than the City of Aurora had offered and that was the reason it was turned down.

Ms Adams asked was that a price that he could share. She asked what the difference was.

General Manager Scanga stated that offer from the City of Salida and the Upper District made was \$500,000 a year and the numbers from Aurora was \$180,000 to \$200,000 a year.

Mr. Boyd asked how long Mr. Scanga had been on the Board of the Upper Arkansas Water Conservancy District.

General Manager Scanga stated that he had become a director in 1988 and took over as the manager of the District in 2001.

Mr. Boyd stated that he was around when Mr. Moltz filled up his reservoir. He asked if that had any affect on the Ruby Mountain Springs that would be used to extract water for Nestle Waters bottling.

General Manager Scanga stated he had reviewed some of the hydrology reports but not close enough to answer that question.

Mr. Boyd asked about the water decrees that were on the books and how they were written and if they said anything about using the water for bottling.

General Manager Scanga stated when water rights were first decreed the use was mostly for domestic use. Bottled water would be domestic use of the water.

Mr. Boyd asked when ranchers do ranch and irrigate their fields, does some of that water go back into the aquifer so it was not a total negative impact.

General Manager Scanga stated for the total amount of the diversion that was correct.

There were no further questions for General Manager Scanga.

Chairman Holman stated that the sustainability group had a consultant that they brought on board that would speak next.

John Emerick, 111 Mountain Lion Drive, Redstone, Professor Merits of the Colorado School of Mines, Division of Environmental Science and Engineering, commented on the Nestle Waters 1041 and Special Land Use Permit Applications. He stated most of his studies were in wetlands, ecology, geo chemistry and hydrology. His focus would be on the wetland part of the application. The topics would include wetland quality and composition, impacts of water withdrawals and sustainability and climate changes. He had not been to the wetlands in the Big Horn Springs but he was familiar with wetlands at

similar setting a short distance across the river. The wetlands had probably been in existence since early post glacier times which meant they were perhaps 10-12 thousand years old. They harbor at least one state endangered plant species that he knew of. He did not know if wetland #2 had any peat soils, but he suspected that it did. His clue had come from the GEOMEGA report of Nestle Waters draft of the monitoring plant where they mentioned peat soils. In his view, the consultant's methods did not appear amenable to the conduct of an appropriate search. The wetlands were apparently delineated using standard vs. Army Corp of Engineering Methods which required identification of only the dominate species to determine whether a wetland was subject to the jurisdiction of Section 404 of the Clean Water Act, that was the only reason they existed. In his view, those methods were inappropriate to developing a comprehensive species or more importantly why the sort of quantity of data used as a baseline in monitoring purposes. Furthermore unless he was missing something in the documents over the last couple of days he had a chance to review, this field work was apparently done during a three month time period in the spring of 2008. During that part of the season, plant growth probably would not be significantly advanced to allow proper identification of the plant species that grow in these wetlands. The point was that these wetlands may well be special but they could not know how special until a more comprehensive investigation with qualified botanist would be done. He recommended getting a crew from the National Heritage Group this summer to do an evaluation. The second item was the impacts of proposed water withdrawals on wetland sustainability. There was skeptical of the applicant's conclusion that the wetlands would be magnetically impacted by the withdrawal. They really did not know how the wetlands function and to what extent the plant species present were tolerant of fluctuating water discharge. In his opinion, there needed to be significant baseline information from the wetlands prior to the start up of Nestle Waters operations. His review of Nestle Waters monitoring and mitigation plan to their credit indicated that they plan to do this. He explained the well types that would be used. He felt that they should be monitored for two years before commencement of commercial pumping operations. Once the baselines were established, pump well tests could begin at 40 gallons a minutes for at least 5 days. Then there would be a much better estimate of the hydrologic impact of the proposed operation. There needed to be a better idea of the species present and how they respond to a fluctuating hydrology. Nestle Waters needed to come up with a set of criteria that defined how much degradation of wetlands hydrology or vegetation was allowed before sensation of pumping activities should occur. The third item would be the convenient truth, "Climate Change". The Colorado Natural Heritage Program and the review of the Nestle Waters application recommended that the County and Nestle Waters view this proposed project in the context of climate change. He could not agree more. A number of reputable scientific organizations and a growing host of really smart scientists from around the world tell us that climate change was not only possible but that we are in it now. The Colorado Natural Heritage Review referred to climate trends in the Arkansas Valley that if they continue, it may well be inconsistent with the assumptions of this application. As smart as those scientists are, no one really knows what the eventual result of climate change would be. He was sure that there were some present who believed that no applicant should be held hostage to somebody's climate change scenario. He stated that after this was only a prediction, as there was not a lot of solid data. However, there maybe a way to get around this. In the project area, there was a ground water system that maybe immiscible to the development of hydrologic model or hydro-active modeling techniques that accurately depict the systems boundary conditions that by reasonable prediction of the discharges given withdrawals and recharge rates. There are a few hydrologists who are capable of developing such a model or using those types of techniques that could eventually provide insight as to what might happen to the system's hydrology including its wetlands given final change scenarios. He thought that this was not rocket science though it could be close. It was a tool that was becoming increasingly more common. He stated timing might work out. During two years of wetland monitoring, a hydro-active module could be developed and tested although a few more holes may needed to fully understand the characteristics. In the essence of this type of proactive approach to assessing the impact of climate change, he would recommend a really conservative path and directions on this project. The bottom line was during times of economic uncertainty, a number of us become more conservative in the management of

our finances. During certain climate times the government might do well to be conservative with its natural resources. He thanked the Board for their time and consideration.

Project Manager Lauerman stated that he was pleased to hear the testimony was not much different from the testimony of all the people that looked at wetlands. It was unclear whether their operations would have any impact on wetlands, but the wells should give them a good baseline, established and appropriate mitigation if necessary. He was not a wetland hydrologist or wetland specialist and did not know if Mr. Emerick claims of the techniques were not being sufficient or correct. The people that he could rely on were the people who wrote the Colorado Natural Heritage Program Report, which was conducted to the USACE standards of satisfactory. He stated additionally Nestle Waters had recently submitted a draft of wetland monitoring and mitigation plan. The monitoring method was described in the plan and was suitable for assessing the impact of water withdrawal of wetland functions within the project areas. Similarly the process for assessing whether water withdrawal was necessary appeared to scientifically based. They felt that the role of the Colorado Division of Wildlife in the evaluation of the results in their decision making authority and responding to mitigation needs was appropriately described in the plan. The experts on wetland were committed to a good wetlands monitoring plan to collecting baseline data for a sufficient period of time. He was not in agreement with two years of monitoring. He could not commit to that length, but before any withdrawals were made, he did think that they were talking about the Big Horn Springs Site. Before any withdrawals were made, Nestle Waters could commit to making sure that sufficient baseline data would be collected and a good monitoring program was in place. He understood that Mr. Emerick did not visit the site or looking more that a couple of days at the reports which were extensive. He stated that their water testing had been on the order of 40 gallons a minute and 70 gallons a minute for another test. He stated that may be problematic as they had conducted three separate tests in that location. The purpose of those tests was not to look at the impact on the wetlands, but to determine a sustainable yield and draw to look at impact to the spring flow. He agreed that the applicant should not be held hostage at a theoretical impact of global warming as this was not included in the 1041 criteria. He stated that the Wheeler Report had stated that they felt that the global changes would not cause impact from the pumping process of the steams. Nestle Waters dealt with climate changes with a very intensive network of monitoring wells that gage precipitation, snowfall and irrigation to measure flows. They did not have all the answers for climate change but they will be monitoring it and have a program in place to address it.

Mr. Emerick responded to Project Manager Lauerman's comments. He asked for measurement of the pump test that needed to be monitored.

Project Manager Lauerman stated that he had conducted hydrologic modeling and had found that modeling was only as good as the in put. He felt that collecting real data was better that modeling.

Mr. Emerick stated that he felt the same. However, he stated that if the data was not known, then reasonable scenarios need to be made as to what climate change may produce.

Project Manager Lauerman had an opinion of global change. His point was that Nestle Waters had a plan to monitor in the context of global change.

Commissioner Glenn asked for clarification did Mr. Emerick visit the site and were you talking specifically about the Big Horn Sheep Site.

Mr. Emerick stated that the wetland that he saw in the application that Nestle Waters considered to be a high quality site. He could not comment on the others because he did not know that much about them, but he felt all the wetland should be monitored.

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Commissioner Glenn asked how Mr. Emerick had come up with his conclusions and recommendation. He asked if it was by reviewing the other data or just by comparing the wetland across the river and your concern about what might happen.

Mr. Emerick stated he had done this by measuring the recommendations of plants. The point was that wetland especially #2 wetland had been there as long as it had with peat soils. The age of that wetland may provide the kind of environment where there might be rare plants. He stated that there just had not been enough data. He could only see a handful of plant species that were listed for any of the wetlands and not just wetlands.

Project Manager Lauerman stated that they were personally committed to install wetland monitor networks this week. His crew had been out there this week but had to abort because there were too many cows in the field and had run into a bull that made them stop completely. The point was that these wetlands were heavily grazed. One reason they may not see a diverse species of plants in those wetlands was because they were grazed so heavily for many years. One of the proposals in the wetlands plan was to fence off those wetlands to prevent grazing and give them a chance to revegetate. The Division of Wildlife had requested that they alter grazing to a couple of weeks a year.

Mr. Emerick stated that there were actually some rare orchids in Boulder County. The County decided to stop grazing in the area. They had to reintroduce grazing in order to maintain the orchids.

Project Manager Lauerman stated that he would like to see the wetlands replenished.

Chairman Holman reviewed over the ground rules for the public comments portion on the meeting. He stated that they would have a strict three minute rule. The Clerk will give the speaker notice when 30 seconds are left. At three minutes, he would shut them off. He informed the audience to beware because the Board wanted to make sure that everyone had an opportunity to speak. If someone had more information than could be given in the three minutes, please submit it in writing and that would become part of the record. It would be reviewed by the staff and Board.

EJ Sherrie, 10213 West Cheyenne Circle, Salida, stated that many of them had come and had spent a lot of time doing research and had been held hostage listening to Nestle Waters presentations for hours. He thought that the Board should allow the participants that wanted to speak to let them air their concerns. If it takes one person one minute, perfect and if takes another two minutes, perfect. There had been consultants that just go on and on who had questions and had not been stopped. He did not think that was a fair way of doing things. He would ask the Board of Commissioners to reconsider that decision for the bench.

Chairman Holman stated that the suggestion had been noted.

Project Manager Lauerman agreed with Dr. Sherrie. He had no problem with people taking the time they needed to talk. He stated that Nestle Waters had not held people hostage as they needed to present information that was required to obtain a 1041. They had collected extensive information and that took time. They appreciated that some people had taken the time to sit through these meetings. He had no objections if the Commissioner did not either. His only request would be that people who had spoken on the 21st not speak again, as they had had their chance.

Mr. Sherrie stated that he disagreed. If someone had done additional research in this time period, they should be allowed to update their comments as Nestle had been able to update theirs.

Chairman Holman thanked Mr. Sherrie.

Robert Lowe, 117 North D Street, Salida, agreed with Dr. Sherrie. He felt that three minutes was a bit severe and suggested seven minutes or seven and one half minutes because three minutes was tough.

Commissioner Glenn stated that it was up to the Chairman as to what would ultimately be done. As he said at one other continuance meeting "he was getting paid to sit up here so he would sit here all night if you wanted him to".

Commissioner Giese stated that the Board wanted to hear the people and had been now for two days going on three, had tentatively sat here and listened to they had wanted to do that. His comment would be that he did want to hear from everyone that wanted to speak. It would be nice if those who do spoke would make it to the point as possible and limit that time to three to five minutes to allow the Board to hear all of the people who wish to speak. He would ask that those persons that had spoken at a previous meeting, even though they might have some other things to speak about that the Board allow those who did not get a chance to speak on the 21st get a chance to speak today as opposed to those that did speak on the 21st.

Chairman Holman stated that he would compromise to five minutes but this would be kept strict. If anyone had any further information, this can be submitted in writing. The Board would be accepting written information up to the 12th of May. He stated to get your comments in to allow the Board to read them before they start their deliberations. One other thing he again asked was that there not be clapping and catcalls as this time. He was going to enforce it because he did not feel that the Board had been shown very much respect. If it started, the people involved would be escorted out and would not get an opportunity to speak.

Chairman Holman called for a recess at 2:45 p.m.

Chairman Holman reconvened the meeting at 2:54 p.m. He stated that the Board would break for dinner at 5 p.m. until 6 p.m. He asked that those who spoke at the 18th and 21st meetings wait until those who had not had a chance to speak do so first.

Ed Berg, 1408 K Street, Salida, stated that he was a petroleum geologist. He wanted to address the Nestle Waters 1041 Application as a professional with 40 years of international experience in resource extraction. He stated Nestle Waters proposes to draw 200 acre feet of water annually without interruption for the next 99 years with no 1041 language to guarantee reduced pumping. During years of reduced precipitation, they based their prediction of no significant impact on the affected wetlands on tow measurements taken in May of 2007, the wettest year in the last 20 years according to data collected in Salida and Buena Vista. This prediction was not only impossible but it also contradicted studies. He quoted from the Colorado Official State Website "The past 12 years in Colorado were the warmest on record. Colorado is experiencing warmer shorter winters, thinner snowpack, earlier run off, less precipitation with more falling as rain than snow and longer droughts, lower river flows, less hydroelectric power production, degraded water quality and more stress on reservoirs". He stated that yet there was no language addressing this in the application. Daily precipitation records for the last century were available on the internet for a few dollars but they were not presented by the applicant. In addition to not addressing the drying trend, Nestle Waters application ignored local impacts due to the future petroleum supply. Colorado State Geologist Vince Mathews described Colorado as metro resources last week and the goal was no. They had entered the era of supply interruptions and price spikes. Dr. Mathews confirmed that coming shortages of virtually all natural resources not just fuel and water. He stated fuel and water shortages directly affected our food supply in Chaffee County because we import about 89% of all of our food from out of state. Agriculture was the single largest consumer of petroleum used in the manufacturing of fertilizers and pesticides and as transportation and fuel were all stages of food production from planning to packaging. In view of almost absolutely certain coming fuel shortage, reduced rain and snowfall was as sobering to realize that only 1% of Chaffee County's food was supplied locally. The consequences of this were that on our shelf food supply was only good for

three days as we learned the two winters past. Nestle Waters did not expect the supply of cheap oil to last for the next 99 years or even the next five. They count on fuel shortage so that the world's short food supply dramatically increases food prices as we learned last summer. Monopoly was their proven operational mode, world wide and that included their projects in McCloud, California, Frieberg, Maine and Lilly Springs, Florida, where counter to their assurance to these counties. They will be responsible consumers and residents. Local water consumption was now curtailed due to local springs drying up since Nestle Waters stated pumping. The list was long but the results were identical. The only way to counter Nestle Waters and other food monopolies was to rebuild a local food supply that existed in Chaffee County in the 1920's to 1940's that takes clean water, local investment, municipality commitment not international industrial extraction. Chaffee County must deal with tow realities now and during the coming years. First the fuel that we depend on to bring us our out of state food is moving into short supply. Second the region is drying out with no language addressing these issues coupled with Nestle Waters proven record of resource and legal abuse. The applicant's 1041 permit was critically flawed and must be rejected.

Joe Cogan, 24899 U. S. Highway 285, Nathrop, stated that Mr. Lauerman had taken his wife and himself to dinner at the Buffalo to explain Nestle Waters plan to them as neighbors should. His families ground abuts Nestle Waters property for about 100 feet by the Spring and two more places of 1/4 mile each. He felt he had more at stake than anyone present. Nestle Waters will construct two wells and a modest home on their two properties. They will restore the springs to the condition they were when he first hunted ducks and trapped muskrats 64 years ago. This quiet use of their property would enable a lot of Rocky Mountain sheep to continue to use the corridor to the other numerous springs on the Arkansas River. The three tenths of a cubic second that Nestle Waters needed would reduce the spring's flow 5 to 10%, impossible to measure except with technical instruments. This water would be replaced to the river by imported water or other means. He stated that would have to pass the State Water Board and our own Terry Scanga's water district (Upper Arkansas). He recommended that the Commissioners approve this application so that Nestle Waters could go ahead and do this. He stated many of you did not know this so called wetland had not always been a wetland. A wetland fed by the irrigation water from the Polena Ditch that runs 22 cubic feet per second and the Trout Creek Ditch that comes out of Cottonwood at about 12 cubic feet per second and Mr. Moltz's right, the earliest in the district from Trout Creek. When this was spread on the ground then it becomes spring water cleaned by nature and comes out at the fish hatchery. When they refurbish the fish hatchery, it would not be hard to put it back to the condition. He remembered it some 64 years ago, when it was only gravel. He did not remember seeing peat or soil anywhere. It was petals at the edge of the swamps, where there was a plant shaped like petals. Otherwise all of the spring was watercress. He stated if we take all the water off of the farmstead to the north, this would reduce to quite a little amount. If we return Trout Creek to its original channel that empties near Fisherman's Bridge, there would be even less. This spring was not a natural spring by enlarging a very small portion that is. He appreciated the three minutes and the Board, but his saddle was getting lumps in it.

Mark Miner, 689 County Road 4, Howard, stated that he was doing Michelle Ruggles a favor by reading a letter addressed to the Chaffee County Commissioners from an organization called Food and Water Watch Out of Washington D. C. that had worked for eight years to protect water sources. They published a report entitled "All bottled Up", which the Commissioners received a copy. The report details Nestle Waters adverse affects on communities across the nation. He continued to read the letter, which is on file.

Sharon Miller stated that her biggest and largest concern about this whole entire project was the spirituality of water. She stated if any of you know anything about what the scientist had already proven that water had spirituality. When we take water that was God given, put it in a bottle and sell it for profit, it has lost its spirituality. Many, many people have moved here from other states because of the spirituality of our communities and our valley. We take our natural resources out and sell it, we have lost that spirituality.

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Other communities around the United States have had trouble with this big corporation. She stated that alone seemed to her like the thing we should take as our cue was not to deal with this company. If other communities had been sued or had to sue this company, why would we even consider this. She did not understand why we were even thinking of doing this. She would suggest that the Board go back and listen to what Ed Berg stated and consider his testimony very seriously. He made some very good points. Ms Miller stated that spirituality was her most important concern. Her second concern was that she drove 285 into Denver as she had family there and had been passed by many other cars that are impatient because of slow traffic. She had witnessed a huge truck 3 years ago that had an accident on Trout Creek. She did not know what the cause was but it blocked the highway for several hours. When there is a sloshing liquid in a tanker truck sloshing back and forth, the truck cannot be controlled. If there was some kind of an emergency on the highway and that truck had to stop, it could not stop. It would have a cargo that would not stop sloshing in the back. She stated think about that the next time you go into Denver. She would not be taking 285 if this went through because she was afraid of big trucks, as they were dangerous. She thanked the Board for listening.

PJ Bergman 126 ½ F Street, Salida, stated that he would like to let all the Commissioners know that he was opposed to the project and would encourage them to deny the application request as Nestle Waters had not satisfied all the required standards. The County had been presented with a one time opportunity to make a huge impact on the quality of life and their resources. This could either be a positive decision in keeping Nestle Waters out of our valley or it very well may be a negative impact. He stated that the Board was being asked to look years into the future to consider all the costs and risks that may come up. They must then make a decision that had a lasting affect long after the Commissioners making this decision are retired. Nestle Waters was a multi-national corporation with vast and economic resources far outstripping what resources Chaffee County had while their crystal ball was not better than the County's. The County had the ability to walk away from this at any time. He stated this would leave the County to provide solutions for the damages left behind and at their costly legal battles to recover these costs. He stated it was a lose, lose situation if Nestle Waters was to be allowed to set up operations in Chaffee County. He stated pure water was the most precious resource that the County had, followed by the scenic view and clear air of our valley even if there was a clear revenue stream for our residents. He asked why they would ever trade away an irreplaceable resource like water. The County had adopted the 1041 Plan, which provided protection of our natural resources while encouraging good growth and economic development that complements our natural resources not just destroy them. All the cards were stacked in Nestle Waters favor with years of experience of knowing how to skim the surface and get by with just enough promises to get what they wanted. He stated for our once in a lifetime opportunity we are magically expected to be instantly smarter than our applicant. Our own consultants tell us that this was not a deal with hidden costs and short term construction jobs was the only financial benefit. He stated that to him this looked like a classic Las Vegas situation with a large professional gambling house enticing a small time gambler. The odds are guaranteed for the gambler to loose. It is just a matter of seeing how much our lost was going to be. He urged the Board of Commissioners to not gamble with our resources and in our future and to deny the application for the Special Land Use Permit. The burden of truth was on the applicant and they had clearly failed to make their case.

Bill Sidler, 6620 Archer Lane, Salida, stated his sincere thanks to the Commissioners and staff for the work they had put in on this project as it was not something he would like to do. He wanted to reference three conditions of the 1041 Paragraph 2 in Article 4, 2, 3 and 5. He stated that 2 and 3 addressed the purchase of performance bonds to assure completion of the project to the satisfaction of the Board of Commissioners, payable to Chaffee County and toward the cost of returning the site to its original condition. As far as he could tell neither of these had been address in any of the 1041 hearings and yet they appeared as conditions of the 1041 regulations. Therefore both must be included in the written discussion of the Commissioners. Commonly are customarily the amount of the performance bond of twice the cost of the project and returning the site to its original condition. He stated paragraph 5 described that it required a description of the benefits

accruing to the County and its citizens outweighed the losses of any natural agricultural resources within the County. He stated that so far the Nestle Waters testimony had clearly failed to show any benefits outweighing our losses or expenses. Most importantly by May 15th, he begged the Board of Commissioners to agree that Nestle Waters did not fully satisfy the 1041 requirements and to just say no to Nestle Waters so we could get back to our lives. He stated that if Nestle Waters sued, we stand with the commissioners in their denial of the project and perhaps we could help others in Colorado resist Nestle Waters.

Jason Anderson, 146 Windwalker Lane, Buena Vista, stated he did not realize that such a significant amount of water was being taken out of the Arkansas River and sent to Aurora. He stated that we should be thankful that they were not taking everything that they were entitled to. To address the truck issue 24 or 25 trucks a day was so insignificant in his business. He drives Highway 285 all the time and 24 trucks even in one trip were very insignificant. He would much rather have a water truck in front of him that hazardous materials. As far as the springs and the wetland, he had rafted most of his life and had seen this area a lot of times. He would rather see a revegetated area than the fish hatchery on a subdivision. The wetlands were pretty well trampled by the cattle and that had been going on for years in the areas.

Peggy Edwards, 9775 County Road 175, Salida, stated that she felt that the Planning Department Staff had done a good job. Their reports showed that there were many regulations that had not been compiled with. She encouraged the Board of Commissioners to follow the staff recommendations as the burden of truth was on the applicant. The Planning Commission and Zoning Committee gave conditional approval of the Nestle Waters Special Land Use Permit application prior to the submittal of many additional reports by county consultants. It seemed evident that any decision made two months ago would now be out dated and invalid. She asked the Board to deny the application.

Mr. Sherrie stated that after reading the rules the State had set out to insure that any intended land use be beneficial to the state and its residents, he believed that they would all agree that they would want this entity to be a good neighbor. These were some of Nestle Waters good neighbor policies, selling infant formula in emerging countries in violation of an agreement with the work health organization as late as 2008. He presented a list of items taken from a German website declaring abuses of Nestle Waters.

Cecelia Young, 534 Palmer Street, Salida, stated that she represented quite a few people that were not in attendance who had great faith in the three Commissioners and their judgment that was why they had been elected. They would stand behind them in whatever decision that was made. They had put in hours and hours of time to hear all the public view in this process. If someone was to come to one of these meetings and listen to the testimony, you would think that a majority of the community was against this project, but she did not think that was the case. The people that were native to this area of the County know the value of a natural resource and what it actually was.

John Hollenbeck, 28453 County Road 357, Buena Vista, stated that he wanted to speak in support of the Nestle Project. Nestle had committed to support local contractors. He was employed by a local contractor who had to lay off 50% of his staff in January and this project will bring work and money back into the community. This meant 10 - 15 employees will be re-employed for the duration of the building project through production and delivery of materials of construction of the pipeline. Public access was currently not on the property. He did not understand why this was such an important subject. One truck an hour should not impact the traffic on Trout Creek. He felt that staff had been very nitpicky about the pollution issue of the trucks. The trucks would only come down the hill, be turned off for pumping of water and then turn on again and go back up the hill. This will not release any more pollution into the air that an older car might. He continued on talking about staff's report and the problems he felt had been already fixed. He stated no offense to the Hagen's but this project would be cleaning up an unsightly mess that was

currently there and would result in a visual positive to the County. The removal of the current liquor store and the placement of the green friendly pumping station would also be a visual positive to the County. He commented that at the last meeting, someone had brought up the fact that Nestle Waters products would be sold out of the state and was not legal. If that was true, it would be against the law for Coors, Pepsi Bottling and Coca Cola Bottling do the same and should be shut down for selling products made with Colorado water. He felt that the law had definitely been taken out of context. He encouraged the County Commissioners to look at the true facts and make their decision based on the completion and the fulfillment of the criteria of the standards and requirements of the application and not to be swayed by slanted non-ethical ballyhoo stated by public comments or threats by county citizens. He stated whatever decision the Board of Commissioners came to, be assured that your time and efforts have been appreciated.

Robert Lowe, 117 North D Street, Salida, stated that no analysis was done on the impact of fifty tanker trucks traveling Highway 285 each day. There was no impact analysis done on the air quality. A traffic study was not done which was a requirement of the 1041 Regulations and required by the Planning Commission. The traffic study would include the speed of loaded tanker trucks going up Trout Creek, Red Mountain Pass and Kenosha Pass, between Johnson Village and Denver. Water quality cannot be caused to be violated. He stated removing high quality water from the river and replacing it with plain river water, because that causes a rise in mineral content of the river, particularly through the winter months. He explained the metal results that came from the Leadville area mines. Fishing could be in danger, because the clean water that comes from the springs would not be flowing into the Arkansas River since Trout needed pure water to thrive. There was no evidence in the Nestles 1041 that they had analyzed any water quality standards. He asked if the citizens of Chaffee County and the Chaffee County Commissioners were being served by a continuous controversy over something that did not benefit the county. He asked if the audience here today believed him that after passing out 350 leaflets about Nestle Waters that 90% of people did not want Nestle here in the Valley.

Jane Carpenter, 513 River Drive, Salida, stated that she was a caregiver for Wendell Hutchinson. She read a letter from Mr. Hutchinson that stated he was against water being taken from the river. The letter became part of the record.

Jeanine Zeman, 13535 Shavano Drive, Nathrop, stated that she had many serious concerns about this project. She read a Web Page, StopNestle's.org, by Tom Chandler concerning Nestlé's track record with places around the country that had tried to work with Nestlé's. She did not present the hard copy to the Board for the record.

Clark T. Roberts stated that he had lived in the County for fifteen years. He stated that what needed to be looked at for the 1041 regulations. He stated that what the Board decided would affect next November's election. Nestle must document and prove that this project shows benefits that would outweigh the negative impacts.

Kathy Gray, 31164 Elephant Rock Way, Buena Vista, felt that the County needed to look at the background of any company that wanted to come into our County. She stated that Nestle had been presented the Black Planet Award in Germany that spoke volumes to the ethics of this Corporation. Part of that award was linked to water monopolization. She felt that Nestle would have a negative impact on our County.

Paula Lallier, 9400 County Road 178A, Salida, stated she had attended most of the meetings on this issue. She was concerned with the problems that Mr. Scanga brought up issues concerning the Aurora water. After looking at Standards 3-303-e, the proposed project and the diversion of water, she felt Mr. Scanga had presented very serious consequences with the Aurora water lease. She urged the Board to look at his comments very carefully.

Felicia Larson stated that she had heard a lot of statistics but she wanted to talk about the affect that this project might have on us, the humans. She stated the affect of 50 trucks a day added to noise pollution, air pollution and that added to accidents. She stated was it an equal trade to us here in Salida with Nestles replacing that water. She stated if Nestle was approved, they would then have a foot here in Salida and what would keep them from putting in their other foot.

Dorothy Sanchez, 948 G Street, Salida, stated that she had some questions. She asked why the Special Land Use Permit was for 99 years instead of five or ten years. She also asked since there were a lot of concerns expressed by the citizens, could those concerns be written into the contract with Nestles.

Commissioner Giese stated that County Development Services Director Reimer would get back to Ms Sanchez with her answers.

Marilyn Whitney, 1127 I Street, Salida, stated she had worked in Salida for eight years but had owned water rights in Southern Colorado and had irrigated hay fields before. She was speaking to raise her opposition to the Nestle project. She had researched the project. Her passion concern was the mining of our water and trucking it out to Denver to make a profit that did not benefit our valley. She would suggest that it would be appropriate to reject this project on several points and make the time for something that would be better for this County.

David Maier, 10010 Highway 50 Apartment C8, Poncha Springs, stated that the County was entering into a deal with a bad company. If a drought were to occur, this County would be in a bad way. What we do know is that Nestle had a water augmentation that uses water from Aurora. It had been told to us that a drought happens every five to seven years and was a real problem. He asked how we make Nestle stop pumping when Aurora goes into an emergency mode. These are questions that need to be spelled out. "The devil is in the detail". He felt that the Board needed a complete plan to be assured that all the kinks had been worked out. Mr. Scanga had testified that in 20 years there would be a bidding war going on in this County for water rights. We need to keep as much water as possible in this valley for our children.

Richard Tyler, 6545 County Road 110, Salida, stated that he was opposed to the application of Nestle Waters. His feeling of the removal of sixty four million gallons of our native spring water would cause many problems. Spring water and river water were two very separate types of water. The Arkansas River provides a great economic benefit to the County.

Darien Riem, 11311 County Road 191A, Nathrop stated that she lives about one half mile from the pumping site that Nestle Waters was proposing. She moved here 10 years ago from New Mexico because big companies had compromised the water table there by building huge subdivisions with huge golf courses. She stated that those knew that the area as a high country desert had fought against it. She stated that big companies lie.

Bernie Biehner, 224 Mesa Court, Salida, stated that he had written a letter to the editor that was in the newspaper this morning. Nestle Waters had some big humungous trucks that do not belong on our roads. He would like the Board of Commissioners to go home and read his article.

Joice Fairchild, 8522 Chaparral Way, Salida, stated that by now everyone knew that there was no real economic advantage of the Nestle Waters Project. The economic report had stated that they would have to hire some type of an engineering specialist that would "eat up" more than the taxes we would receive. There would also be loss in the community and loss of value in our infrastructure. In the last few weeks she had heard a lot of double talk from Nestle Waters. Mr. Leaper had spoken to the Board a few weeks again. Her main concern was that water was not just water. She stated that taking this water would not be lawful. When she had lived in Evergreen, they had saved the main gateway to the town by going to the State Lottery and asking for funds.

James Henry, 136 North C Street, Salida, stated that he was very opposed to Nestle Waters coming to the area. He explained some items he had read on the internet about other towns that had problems with Nestle Waters.

Debbie Browning, 15185 Haywood Lane, Nathrop, stated that water was a very powerful finite resource. Letting some big company like Nestle Waters come in here and take that resource away was just asking for problems. She had worked in Eagle County for 38 years and had seen many businesses come into that area that unfortunately had turned that County into an extremely greedy area. She stated if the Commissioners allow this to happen, they would be opening Pandora's Box that would create many problems in the future for this County as well as the State of Colorado.

Andy Warner, 130 W Sackett, #5, Salida, stated that Nestle Waters wanted to come here, take our water, put it into plastic bottles and burn our fuel to ship it where it did not belong. As long as he remembered, people had been worried about the trash in the landfills and the possibility of rivers running dry. By now we should know that this whole Nestle Waters thing was crazy and should not be considered. He hope the Commissioner would do the right thing.

Lisa O'Dell, 5504 East Highway 50, Salida stated that she was against this project. She would ask the Commissioners to consider testimony that had been presented at the last meeting given by a gentleman by the name of Dutch, who stated that the National Forest Service had concerns about this project. She had looked for the letter on the website but had not found it. She stated that Section 2-202-5 of the 1041 Regulations gave the County authority to increase the application fee to cover the meetings and wanted to know if that had been done. She made the statement "Stop buying bottled water".

Tom Bell, 29750 County Road 353, Buena Vista, stated that he had taken the time to see the site and to talk with some of the people in places that had Nestle Waters in their communities. Most of those areas had seen positive community benefits and have become good neighbors to these communities. These people gave several examples of good things that Nestle Waters had done in these communities. He presented the letters to Chairman Holman.

Nancy O'Connor, 24350 County Road 324, Buena Vista, stated that she had no financial interest in this project. The land and the water belong to the Hagan's that was a property owners rights. The County did not own the water. She asked that this be remembered by the people who keep talking about our water, our land, because that water and land belong to Mr. and Mrs. Hagan.

Dave Ward, 147 W 5th Street, Salida, stated that water was important to humans and all the life in the valley. He had been assigned the task of going out to survey the people around town to see if they were against this project. He stated that by and large most were against the project. The only ones that stated they were for the project was getting something out of this. He asked why the Commissioners would approve Nestle Waters if they did not vote for you. He stated that "new" had succeeded to split the County.

Mr. Boyd stated that the wetlands had been exploited for the past 163 years since the process of mining both down stream and up stream. The super sites upstream had been started to be worked on but those down stream had not. Water held a vibration with spirituality that was needed to neutralize the contaminants that come from agricultural pesticides, heavy metals and fertilizers that pollute the river. The seeding of clouds created greenhouse gas and caused holes in o-zone. He felt that the people of Chaffee County should be allowed to vote to allow or deny this application. He asked that the Commissioners not make any decisions on this for at least 60 days to get more information. As a Native American, he would ask that before the pipeline was started an archeologist be brought in to make sure there were no Indian burial grounds or artifacts. If there are, he asked to have them documented and treated with respect. Finally he would like to say that the highway traffic would be greater impacted if the Cristo Project

would be approved. He stated it was our constitutional right to life, liberty and the pursuit of happiness as the constitution guarantees.

Alan Rule, 774 County Road 4, Howard, stated that he would like to support the Commissioners today in denying this request. According to the economic report on the best day, the County would break even. He was still concerned about passing three cars on Trout Creek. He commented about that the trophy home that would be built on an undetermined parcel on the Big Horn Springs land. He felt there was no clear written plan for this project. He was concerned about the restriction on historical access to the property being denied. Nestle Waters had referred to the unanimous approval by the Planning Commission for the Special Land Use Permit, when in reality there was conditions that were put on that approval. He commented on the Chaffee County roundtable and felt that those people would want to be involved in this decision. He felt that the citizens of Chaffee County should be able to take a look at whether or not industrial water extraction for profit by a foreign country fit into the goal objectives of this County.

Jane Browning, 774 County Road 4, Howard, stated that those in Howard felt that this was not just a Chaffee County issue. Her main concern was the contamination of the water and how that would affect the aquatic life and wildlife in the valley. She felt that a spring water source should not be interrupted. The Exxon Valdez incident showed the need to have baseline data before a project. She was here to ask the Board of Commissioners to deny this project and put a moratorium on any industrial application in the future and immediately pursue to investigate if industrial water extraction projects of this kind were appropriate for this valley and the State of Colorado.

Bob Grether, 502 Ouray, Salida, stated that because he was a retail business person in Salida, he was concerned about traffic problems that would be caused by the truck traffic between Johnson Village and Trout Creek Pass. He commented that as we all know it was very easy to manipulate statistics to make your case. His concern was how that would affect the tourist traffic in the valley. He urged the County to hire their own traffic analysis to do a qualitative traffic study. He also urged the Board to deny the 1041 Application for failure to comply with the regulations.

Jim Ruggles, 1500 County Road 182, Salida stated that his main concern was the traffic and the varying numbers that were being reported. He commented that Nestle Waters stated that they wanted to be a good neighbor, but it seemed that that only happened when the places that they go to do what they want them to do. Nestle Waters track record shows that this was true. He felt that the County should pay for any legal issues that come up. He asked who would be responsible if the water would start going dry and what kind of recourse would the people and the County have. He commented that if Frank McMurry wanted to sell his land, there were land trusts and land conservancy groups that he could do this with. All of the County's consultant's reports had poked holes in Nestle Waters reports. He did not feel that Nestle Waters had come in here honorably. They had spread a lot of lies and untruths.

Beverly Coggins, 27999 County Road 301, Buena Vista, Salida, stated that she had spent the last day and a half calling communities across the nation that had Nestle Waters in their communities. She asked the people in the audience and the Board to call some of these places, talk with the people and find out how Nestle Waters had helped or hurt their communities. She had learned a lot and felt that the Board needed to make the time and call these communities and talk to them before any decision was made on the application.

Yolanda Walton, 1426 H Street, Salida, stated that she was against Nestle Waters coming into our county and taking our water. She had been a business person here for the past 20 years. She felt there had not been enough research on the wetland and the traffic.

Marilyn Moore, 414 East 2nd Street, Salida stated she had sent a letter to the Board that outlined her concerns. She wanted to correct a misimpression that the Board may have received from the statement made by Nancy O'Connor. She stated that "it is our water", according to the Constitution of Colorado, "and the water is owned by the citizens of Colorado". She explained that there were people that own property rights. A right that was heirs provided they put it to use for the good of citizens. In Board's deliberations, she would ask them to consider whether bottling our water and shipping it out of state was a benefit to your citizens.

Chairman Holman recessed the meeting at 5:00 p.m.

Chairman Holman resumed the meeting at 6:10 p.m. He reviewed the time limits and the audience behavior. He swore in anyone that had not been sworn in and wanted to testify in the public hearing.

Laura Bussing, 5483 Longbrush Road, Salida, stated that she owned Bussey Construction and was United States Park Ranger. She had a vested interest in protecting the County's natural resources. It was important to look at the standards and the regulations of a 1041. She felt that those had not been met and it was the responsibility of this Board to act on that. In her job, she had sworn to uphold the law. At the end of the day if you have not taken everything into account, you have not followed the law and you compromise our integrity. She stated that the Board must measure the standards and regulations and apply the law.

Jeannie Sutherland, 909 E Street, Salida, stated that she had been a resident of Salida since 1977. She was totally opposed to Nestle Waters coming to the area. She hoped that the Board would realize what a hardship this would bring to the area.

Ann Marie Swann, 337 Ouray Avenue, Salida, stated that she was here to ask you all to deny this application because it violated the first purpose of the 1041 regulations and guidelines, which was to promote the health, safety and the welfare of the citizens of Chaffee County. Her main concern was the traffic along the Trout Creek Corridor and how it would increase the number of accidents. This project would affect her family directly. Her husband Glen Barnett drives the corridor to work in Denver. She stated that was the only way that her family could afford to live here. She could not count the icy, windy nights that her husband has had close calls with big trucks in South Park, when trucks had jackknifed causing horrific accidents. She felt that the traffic study had been inadequate because this report did not consider the notorious hazards of winter driving in South Park with additional tanker truck traffic. Her family had invested every penny of their life savings in Chaffee County. They are in deep as they own a few commercial properties. They paid \$10,000 in property taxes alone. If Nestle Waters 1041 Application was approved, they would seriously consider leaving Chaffee County, because her husband's travel to work would become perilous. She asked the Board to please say no to this project.

Mary Lou Church, 522 Teller Street # F, Salida, stated that she was very opposed to this application. She was very concerned about climate change and was afraid that if the Nestle Waters application was approved and if Mr. Scanga's fears of drought came true, we in Chaffee County would be in a very bad way. She stated that we live in a dry climate and this would only make things worst.

Bonnie Wessel, 10244 West Cheyenne Circle, Salida, stated that she had written a letter at the last meeting. A few weeks ago she had heard about the precautionary principle, meaning considering the possible affects of an action before it is acted upon. She hoped the Board would consider using this principle on this application. The traffic in the winter could very well cause accidents that would kill people. She was concerned with the fact that our climate was a semi-desert and by taking the water from the river and springs would impact the area. Another of her concerns was that Nestle Waters would start buying up more property and water in the area. By taking these possible negative impacts into consideration, she was asking the Board to use the precautionary principle

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to deny Petitioner's Request and uphold the Assessor's Valuation of Nestle Waters 1041 Application.

Karin Adams, 11460 County Road 140, Poncha Springs, stated that she had been in Chaffee County for over 40 years. She wanted first to say that she had no monetary interest in this project. She did feel that this issue was deeper than the application itself. She felt that it came down to was Chaffee County open for business with positive attitudes that were willing to help instead of hinder construction of good development. She stated that Chaffee County did have rules and regulations in place that do protect and guard the citizens. She felt that Nestle Waters had been very thorough going through and complying with all of the regulations and standards. She thought that all three of the Commissioners had campaigned to address economic development and this might send the wrong idea to future possible developments. She had faith in the current Board to make the right decision on the outcome of this hearing.

Matthew Clark, 139 E Street, Salida, read a letter that he had presented the Board. He stated that it had clearly been shown by the people of Chaffee County that Nestle Waters had not met the requirements for the 1041 and the Special Land Use Permit. He would ask the Board to deny this request and to listen to their constituents that had been against this project from the beginning and to uphold democracy by rejecting the Nestle Waters project in this valley. He felt that this was an ethical question. This project could be devastating to the people of Chaffee County. He asked if the Board as public elected officials upheld the will of the people with ethical integrity or would service the interest of the big corporation. The people of Chaffee County could make a lot more money by harvesting the water themselves and the County would be in a much smarter and stronger position.

John Graham, 9555 County Road 175, Salida, stated that if someone was considering doing business with a company, it was prudent practice to make inquiries into past activities of that company and its representatives. Several months ago according to the Colorado National Heritage Program, one of the County's referral consultants had released a draft detailing potential impacts of the Nestle project to natural resources in the area. He felt that the draft had sited a large number of concerns regarding the analysis both in assumptions made and conclusions reached. Both Nestles and its consultants objected to and countered the issues raised by the CNHP report. He stated that Bruce Lauerman had stated in writing that in his opinion the CNHP report had not been supported by scientific evidence. Mr. Lauerman now stated CNHP had released a final report that concluded that Nestle Waters complied with the 1041 Regulations with "no ifs and no buts". From the cover letter, it was also learned that Mr. Lauerman and Dr. Hagan, a property owner with a pending land contract, had both directly contacted CNHP. Mr. Graham stated that they were not told anything else. They did know that Mr. Lauerman did ask Don Reimer of the County staff if it would be okay to speak with CNHP. Mr. Reimer stated that he strongly discouraged that with the consultant. They also did know that Dr. Hagan was a member of the CSU staff and that CNHP, a non profit organization, was a sponsor program of the same University and department. The opportunity for improprieties was unmistakable to him, when two individuals with large financial gains make direct contact with a consultant who issued a report that was highly critical of the applicant's analysis. In his mind the creditability of the integrity of the application was highly compromised by the actions of Mr. Lauerman and Dr. Hagan.

Dan Zedler, 228 Crestone Avenue, Salida, stated that he held rights in both the Hillside and the Oakmont Ditches. He was an attorney and also had a master degree in political science. He first objected to any limitation on any time length that he might speak. He stated that County regulation 1-301-5 stating all relevant testimony shall be heard at the public hearing and considered by the Commissioners. He stated any limitations in terms of time on individuals that wish to be heard was a violation of those regulations and did constitute an abusive desecration and would force the Board to reopen this process. Nestle Waters had failed to meet its burden under County 1041 Regulations, significant impact had been shown, with confident evidence. Nestle Waters had offer to monitor and correct once this significant impact occurs was nothing more a wolf in sheep's clothing.

The County was unable to provide the necessary technical assistance to monitor Nestle Waters activities once the 1041 permit had been granted. This was by design. He had spoken with the Army Corp of Engineers and the lead person on the project, Dianna Humphreys, who stated from her Pueblo office, on April 21st, he paraphrased "Nestle is purposely avoiding the need for a 404 permit under the Clean Water Act by the design of the project and the specific location of their wells. Unfortunately there are ways to drain wetlands dry without attaining a permit from the Clean Water Act without the approval of the Army Corp of Engineers and Nestle was using this by design." Any claim by Nestle that they would be regulated by the Clean Water Act and the Army Corp of Engineers was a deception. Any claim that the Division of Wildlife would be monitoring the wetlands and any other significant impacts was a deception. The DOW (Division of Wildlife) stated in their letter that they would not be monitoring, and that jurisdiction was with the Army Corp of Engineers. Mr. Zedler stated that Nestle had specifically chosen this County because they knew that we did not have the technical resources, the time and the money to address those impacts that we do not know. The law was quite simple under C.R.S. 26-6.5-5014, if the proposed activity does not comply with guidelines and regulations the permit shall be denied. Unless it is the burden of the applicant to satisfactorily demonstrate compliance with the criteria. There was not sufficient information of any material feature of a proposed project. A permit authority may deny the application. The City of Colorado Springs and the City of Aurora vs. the Board of Commissioners of the County of Eagle, a case where the County Commissioners denied a permit, because of a rare moss, that was the only basis, was upheld by the Colorado Appellate Court in 1994. He stated what they had stated was that you had the right to deny the permit if not supported by competent evidence defined significantly deteriorate any of the criteria as meant to make infer in quality value, rather than a trivial reduction in quality. He felt basically that they had significant evidence under the three sub-sections of the regulations. He quoted the three regulations. He stated that the County's own evaluators had found that the negative benefits out weigh the positive benefits. He did feel that the County had the resources or the money to monitor this project. Chairman Holman told him he had 30 seconds. He again wanted to lodge an objection about the time limitation. He commented on draft report #12909 noted that NWA's report showed no detrimental impact to wetlands was not supported. The accumulative withdrawal may exceed the sustainability of the aquifer and they noted that the testing data was insignificant. Even in their new report, the CNHP 4609 report, noted that the water at the supply was relatively small. The effects of extractions of the springs should be evaluated by a local hydrologist.

Chairman Holman told Mr. Zedler that his time was up but that he would gladly allow him to continue after the other people signed up had their chance to testify.

Mr. Zedler stated that he again wanted to lodge a complaint as he had other relative comments to make and Chairman Holman was not allowing him to make them.

Chairman Holman stated he would encourage Mr. Zedler to submit his written comments.

Mr. Zedler stated that he wanted to be heard and it was his right to do so. He stated under the Board's own guidelines, he had a right to be heard. Anyone else that wanted to be heard also had that right, which was what this was. He stated if you wanted to shut him down, say that I can not be heard then do so.

Chairman Holman stated that the Board would continue to take testimony at the end of that Mr. Zedler could continue.

Debra Stien, 330 East 4th Street, Salida, stated she just had an observation. It seemed to her that this was an overwhelming decision on the citizens of Chaffee County. We have voted you in to vote how we feel and how we say it is. She stated therefore, there should be no other decision but to say no to Nestle Waters. If it is voted in, then there is only one other option and that is to vote you out. She stated she was not threatening, but she would not vote for you next time. She stated that it was not a threat. It was a fact. She would not vote for you. She was sure there were many other people who felt the same way.

Ruth Sparling, 1133 G Street, Salida, stated that she was a native Coloradoan, who was born ten months after the dust bowl began in the Panhandle of Oklahoma. She knew what drought was. From the moment she was born, her parents had discussed the importance of water. Whenever a well was drilled and a dry hole was found, it was devastating to her family. When she was ten, she came to Salida. From that first moment she knew that ranches were important. Here the railroad was also important. There was a lot of business going on here and it was a good place to raise a family. Her husband and her moved here 45 years ago and have seen the change here in the valley and the climate. Things had changed and they had to adapt. She had seen what happened in Park County when Aurora purchased the water and began to drain it into the water shed for the Front Range. She also knew however that our state constitution and our degrees of our courts have made water a thing of ownership. The individuals who have spent their lives and their families' lives have as much right as the new comers who are simply here for the environment. While people who were growing up in other areas were putting their money into 401 K's which may or may not be worth anything, the ranchers were putting their lives into the land and the water rights and they have ownership. The water does not belong to all of us and the affects of it may. The state courts had made decisions that say this is private ownership, this is the law and we need to comply with that law. She stated that threats against the Commissioners were not a valid way of causing the Commissioners to break the law. She stated that we need to be law abiding citizens as well as environmentally sensitive.

Frank McMurry stated that he had not planned to speak tonight but after what had come out in the Mountain Mail this last week he felt he should speak up. An individual had accused him of selling water was completely wrong. He stated that there are liars in this world and then there are damn liars. He felt this person was the second type of a liar. He also felt that way about a lot of the testimony that was being heard tonight, truth or half truth. It had been stated that fast moving water trucks crossing South Park and slow moving water trucks going across South Park could not be had. He stated that there should not be that kind of an innuendo for you gentlemen to make a decision on. It did not matter if the vote was 99 to 1. The Board is obligated by state law to follow the laws set before you. Public opinion and mob action like in Buena Vista awhile back had no bearing upon the decision that the Board must make on this application. He hoped that they made a just decision that followed the laws of the State of Colorado.

Mr. Clark stated that he was going through three comparisons between Nestle Waters and the average citizen. The first comparison was the amounts of water. Nestle Waters proposed to permanently remove amounted equal to twice the consumptive use of all the wells in Chaffee County combined. The second comparison was about money and profits. Nestle Waters stood to make thirty million dollars a year compared to Chaffee County getting twenty thousand dollars give or take a year and maybe some improvements and wetland protection that may or may not happen. He proposed that the Commissioners consider instead of Nestle Waters making all the money Chaffee County and its citizens could stand to make a much better revenue from our water by harvesting it in a sustainable manner ourselves. The County would be in a much smarter and stronger position to contract locally. We could provide more jobs and to use more refillable, returnable five gallon bottles. Instead this precious recourse and revenue seemed to be on the brink of permanent loss from our county unless this Nestle Waters contract was cancelled. The third comparison was one of a huge disparity, the sheer number of bottles and the subsequent environmental impact as well as the proper and lawful use of this water. The number of bottles was pointed out at the last meeting. Water was a part of the public trust and must be of the benefit of the official use of the people of Colorado. Nestle Waters would produce nearly 500,000,000 plastic bottles a year. There are less than 4 million people in the State of Colorado, which only proves that a majority of our water that Nestle Waters proposes to take out of the state and would not be of benefit to the citizens of the State of Colorado. He asked furthermore where the empty bottles ended up. The answer was the ones that did not make it to the area recycling facility would most likely end up in the waters of the world. He would like to point out that there were eight giant garbage patches floating on the oceans of the world. The one in

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the Pacific Ocean was twice the size of Texas and was about seventy percent plastic. He would bet that the Nestle Corporation and other multi million nationals were contributors to this. All of us were responsible as consumers. It helps not even to buy any of this bottled water. It was a time for a mass boycott of wasteful unnecessary items and the corporations that sell them. He would also like to know for each plastic bottle of Nestle Water what the oil use was and what the carbon footprint was given all the energy use used to make the bottles. The whole concept was to make people rich and be extremely wasteful of resources. The number of bottles that anyone needs is only one.

Commissioner Glenn asked Mr. Clark if he had heard correctly that he stated that the 200 acre feet of water that Nestle Waters had proposed was more than the consumptive use of all the wells in Chaffee County. He asked if that was correct.

Mr. Clark stated that had been what he was told.

Commissioner Glenn asked where that information came from.

Mr. Clark stated that it was in their testimony, the residential wells.

Commissioner Glenn asked if that was from the State Engineers report.

Fred Cline, 204 North F Street, Salida, stated that amount of water represented the consumptive use of all the wells in Chaffee County, based on a report by Kenneth Watts, entitled Hydrogeology and quality of ground water in the upper Arkansas River basin from Buena Vista to Salida Colorado 2000-2003. In that report, it was stated that there was an estimated 3343 wells which pumped 690 - 1240 acre feet. The net amount of water used by Nestle Waters ended up being double what the total consumptive use of the wells was.

Chairman Holman asked if that included the municipal use.

Mr. Cline stated that it did not include that use. He stated that would equal about 153 acre feet a year. He had found this report looking through the references of the Nestles report. Mr. Watts' name came up a few times. He then goggled the name, came up with several of his hydrology reports and came across this information.

Mr. Zedler continued stating that he was reviewing the CNHP report of April 6, 2009 where they noted amounts of water extraction of the current springs should be evaluated specifically in the context of the local hydrology and not only the context but of the entire aquifer, which was done by Nestle. They had not looked at in their localized effect. The Nestles conclusions of sustainability could be different if used in the complex of the local hydrology. They did note that in niche of the water sheds that the aquifer was relatively small. These factors would indicate that springs would be susceptible to moderate tribulation and susceptible to pumping of Nestle Waters. He did know that the report Nestle had not taken into account the correct water shed. The Wheeler Report again noted that the pumping tests that were done by Nestle Waters were relatively small and of short duration. Conclusions could be drawn based on that. He stated that the report of Jim Coli basically stated the same things. Mr. Lauerman had noted on April 21st it remained to be seen if there would be an impact to the wetlands. Secondly he had noted that the measuring devises did not adequately measure the depletion of the springs. He quoted items from the letter of Dan Goodman and Bryan Duffy on the economic challenges. He felt that Nestle Waters had played funny with the money issues. There would be detrimental effects on the rafting in Browns Canyon during construction of the pipeline. He asked the Board to think about the effects of the construction on the narrow Ruby Mountain Road. Finally the fact that the spring water had a unique value, such as creating fish hatcheries free from whirling disease, high end fishing clubs and resorts. Reduction of the natural spring water would result in loss opportunities. Again he would want to note the statements of Dianna Humphries of the Army Corp of Engineers, in Pueblo, who stated that Nestle Waters by design had set up a project where they could drain the wetlands without monitoring. They could drain them dry and that was what they

were going to do. He did not feel that they were going to have sufficient legal, technical or economic resources to stand up to them. Without the baseline data about what the impact was going to be the wetlands and without new numbers as to the benefit of the project, he would ask the Board to deny this request.

Mr. Henry stated his main concern was safety on a road that claims many lives, Trout Creek Pass. He had heard that the traffic would not be all that bad, but we all know those of us in this room that the road was crowded for us. This was particularly true on weekends during the summer. One of these trucks with six cars behind them, one of those drivers that decide to over take the truck and that would be a dangerous situation obviously. He felt that traffic problems on Trout Creek were a big concern to those who drive regularly to Denver. The other concern that he had was that Nestle Waters had stated that they would provide Chaffee County with an endowment of \$500,000 that would provide us maybe \$25,000 a year, which was a ploy that was paltry and almost insulting. He asked if our restaurants, stores and motels would see their businesses decline because our jewel of a valley had become tainted by big city traffic snarls and noise due to the trucks constantly on the move. He stated for him this was an important ill fitting albatross unnecessarily around our necks. A quiet slow paced life was what the beauty and the magnet to thousands of city dwellers everywhere. We need to look for development that will preserve our beauty and history in the valley. The public would continue to come here to visit and to live. We must not loose that to a corporate giant.

Joice Fairchild, 8522 Chaparral Way, Salida, stated that she felt new to this community only being here for a year. In the last few weeks, she had felt love, and a new feeling in the community, but had seen love for the environment and each other flourish. We would be giving up our pride if we allow this application. We did not have to take in people that we do not want in our County. When she lived in Evergreen, there was a beautiful piece of property on the way into town. The developers were going to build houses on it. The people got together just like we are doing here and had gone to Colorado Open Space. They all worked together to create a beautiful park that is now at the gate way to Evergreen. This community can do better. They can come together and find a way to restore this land. There was a lot of other things that we could do besides this. We just need to come together as a group and decide what we want and what would make everybody really feel good about where we live and who we are.

Carlos Boyd stated that he was speaking for John Groy, who had explained to him that the aquifer and how the water did not follow the river but split up and push against the area of Poncha Springs that in turn crash against the hot rocks and create the hot springs. He was also speaking for Brian Welker who had fought for his country and had some issues. His father had been a Commissioner. Mr. Welker's children owned property along the river. We know if he was here, he would be protecting the water rights for his children. If it was any indication of how Nestle was going to be a good neighbor with us, everyone that he had talked to about this had always returned his phone calls, except for Apex who was too busy to talk to him. He stated that when you do not return his phone call and you do not have a minute for him even here today, that is an example. Mr. Lauerman will go back to whatever Apex will be representing them. He works for another organization called Citizens for Corporate Accountability. For years they had been trying to get Shell to move the gas tanks out of the highway and that has not been done yet. The organization has been trying to clean up the superfund. He stated that was the accountability. If it happened, citizens were going to have to come forward and make sure that they were accountable.

Noreen Haines, 13 Silver Spruce Drive, Salida, stated that this was just an emotional response to the traffic on 285. She wanted the Board to ask themselves how they were going to live with themselves if one of their loved ones dies, because it will inevitable happen from an accident on that road. She stated it could be any one of theirs. It could be one of your granddaughters that dies from a wreck from one of these trucks. She asked how would they feel and what else was there to ask themselves. She stated that they know how the highway is.

Laughten Eddy, 218 Scott Street, Salida, stated that she had spent the day with an eight year old girl. She thought this would be a neat thing for her to come and listen too. When they had gotten home, the girl had asked they did with the water. The little girl asked if she remembered the book that they read "The Seattle Story". The girl had asked her to come and say this to the Commissioners "The Earth is our mother. The bear and the eagle are our brothers. The trees are our sisters. The water is the blood of our grandfather that unites us all. We did not create the web and whatever we do to the web, we do to ourselves. And to the government "please love it as we love it". The girl had asked her to ask if Nestle was doing anything that had to do with love.

Chairman Holman stated that the Board would take a break and come back for rebuttal from Nestles. He recessed the meeting at 7:29 p.m.

Chairman Holman reconvened the meeting at 7:42 p.m.

Commissioner Glenn stated that he had been given the information from Mr. Clark about the consumption numbers. He wanted that to be part of the public record.

Chairman Holman stated that they would start with Mr. Lauerman and the Nestle Waters rebuttal.

Project Manager Lauerman stated that he would start with information and communication. Some have said too much had been given and others say not enough was given. Since he had started coming to Chaffee County, he had spoken to a great amount of people. These were people that were concerned about their valley, about 500 people over the last few years. He had not just spoken to them but he had also been listening closely to what they had to say. There was a process called stakeholder outreach. The very vocal objections that had been very strange to him because until the last few weeks people had called him with questions that he willing answered and when people came out to the sight and saw the plans most were very energetic about it. He talked about the fact that he was surprised by the large bill that the County had given him today, but if it costs that much money and everyone learns what they want then it was worth it. A 1041 was a very exhaustive process. There was a lot of due diligence that was required before they make a 15 million dollar investment. One of the problems in the 1041 here in Chaffee County was that the code did not allow sufficient time to review documents. He was willing through this whole project to give County staff more time to review documents. For the Commissioners to have them to review the necessary documents, he felt that was a wise thing to do, but he did take exception to these things when people start saying that Nestle Waters somehow rushed this process. They had definitely had tried to make the time more reasonable. Nestle Waters reputation took some beatings today with the allegations of what a terrible company Nestle Waters was. He did not see that. He had worked for Nestle Waters for 12 years. There are about 8500 people that are employed just in his region alone. These are hard working people. He did not view this as a multi-nation conglomerate greedy corporation. It seemed that a lot of the information being testified about here seemed to be internet based. He did agree that if you did Google Nestle Waters, you would be able to find some unflattering thing about Nestle Waters, but if you drill down a bit further you would find that Nestle Waters was not the big monster that some here tonight want you to believe. He wondered if Safeway or Wal-Mart had any lawsuits out there or UPS or even the Post Office. If so would, he asked if these lawsuits would be cited as being part of a bad corporation. He did not know if that was a fair way to judge a corporation. He stated that lawyers were needed to make sure that things were done legally. He had provided the Commissioners with a list of contacts through out the country. The people on those lists are people just like yourselves, Commissioners, planners, property owners, business people and officials. He felt the Ms Coggin's had been right about all these people. They are not pansies. They give you the straight story. They will tell you where things have been good and where things had been bad when working with Nestle Waters. He encouraged the Commissioners to go ahead and reach out to those people and find out what they had to say. In this room some people compared Nestle Waters to AIG, which was a terrible comparison. They were not looking for a bail out in this country. They were actually

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creating jobs and making investments in the United States. He had read last month that Nestle Waters had broke ground on a facility that would be putting 500 employees to work. His next topic would be Nestle Waters economics. He realized people struggled trying to figure out how much money Nestle Waters would make of such a profit like this. One thing that they did have in common was what they routinely over estimate this drastically. Nestle Waters was going to be putting a great deal of money into this project. He estimated upwards to 50 million dollars in this operation here in Chaffee County. If they were successful, another 35 million dollars invested in their bottling plant in Denver. There would be another 50 million dollars a year in operating costs for their raw materials, their employees and their vendors. He stated that their investment here in Chaffee County alone would take years to recoup. They would have to make sure that they keep up with this investment to make sure that they would get a good return. Their operating profit was more on the side of 6 to 7%. You cannot look at what you pay for a bottle of water at the Rockies game or at the 7-11 store. They sell wholesale cases of water, as that is their business. They have been making a very little profit for quite sometime. There were quite a few costs, such as operating cost for their raw materials and their vendors. He was from Helena, Montana which was a community much like Chaffee County with the resources and the beautiful mountains. He stated sustainability was what we all strive for. People riding their bikes and composting was admirable, but almost everything that is used in Chaffee County is trucked in here. Nestle Waters would be more sustainable by driving trucks at a savings of 500,000 miles a year by having the water pumped here in Chaffee County and driven to the bottling plant in Denver instead of having to transport water all the way from California. He explained that the Colorado Department of Transportation had issued Nestle Waters a permit. They had a traffic study done to double check that they would not be adding too much of an increase to the traffic situation. If the road conditions were bad, they would stop their trucks and wait for better conditions. As far as the pumping test, he was a hydrologist. The other experts at Nestle Waters and he had no question of the ability of the well that would be used to adequately meet the needs without causing any disruption to the wetland or the other water sources in the area. He agreed that 2008 had been a banner year for moisture and the last year had been very dry but that did not segue the data. He explained the draw down and the purpose of the testing. The water that they used for their bottling must meet FDA standards and must show that there was recovery of that same quality. He explained the recharge of the springs. The well was self-limiting and Nestle Waters had proposed a limit that water would never get lower than the screen. He explained how ground water was a renewable resource. If Nestle Waters ever did walk away, the water would always come back to the same level as it was today. He explained what the wetlands needed and the required monitoring. G GEOMEGA, CNHP, the DOW and Nestle Waters had all agreed that they did not know what would happen to the wetland. Nestle Waters cared about the wetland and could not commit to pumping any water from the Big Horn until the monitoring of the wetland was in place. Dianna Humphries had been asked to help the Army Corp of Engineers. Nestle Waters was not trying to avoid a 404 permit. He urged the staff or the Commissioners to contact Ms Humphries to find out the truth about her comments. He explained that most of the impact at the Big Horn site was from cattle grazing in the wetlands and that the DOW would like to have grazing limited to only a few weeks out of the year. They had started putting in petro meters in the wetland areas at the Big Horn site to monitor the wetlands. They had to band that effort yesterday because there were cows in the wetlands. There was a big bull there that his staff did not want to mess with. One thing that had been proposed in the land management plan was the fencing of the stream area in the wetlands to protect those wetlands from cattle grazing. Nestle Waters cared about those wetlands and did not want them to disappear. Nestle Waters had looked around for other augmentation waters. He stated that they had approached the Upper Arkansas Water Conservancy District, but found that Nestle Waters would have nearly bankrupted their program by asking for 200 acre feet of water. They would have had less water available for residences that they sold to in Chaffee County. He stated the UAWCD offered a price of \$35,000 a square foot making it 7 million dollars to purchase that 200 acre foot of water. It would have been another \$150,000 in annual maintenance fees, which would have been a very expensive proposition, one that would not have been viewed favorable in the county. There was another approach with Salida, somewhat of a mutual approach. The first thing he had

stated to Salida was "We need to make sure this is as transparent as possible because I did not want any criticism that Nestle Waters was doing something not above board. We need to make sure that you have done your accounting and you feel that you do have enough water to meet our needs." They had talked about a concept about a lease with Salida that Nestle Waters would lease for 10 years with an option to renew for another 10 years at a thousand dollars an acre foot. Salida could not meet all of their needs. They would have had to patch together some water rights during the non- agricultural months. They entered the Upper Arkansas Water Conservancy District and their approach was for Salida to give them Salida's water. They would administer it and supplement it with some of their decreed water. Unfortunately that was a bit expensive, a lot expensive. He would not say that they were done with Salida. They would look for a potential solution with Salida in the future, but it would have to be economic and be one that would be a benefit to Chaffee County. The augmentation water from Aurora, he disagreed with Mr. Scanga on this, was very reliable. He did not feel that it placed an undo burden on Arkansas River water even during times of a drought. If Aurora decided that they could not produce augmentations water for Nestle Waters, Nestle Waters would have to stop pumping or find another source of water to use for augmentation. Regarding Economics, Project Manager Lauerman stated that there had been three consultants that had looked at this project. Two of the three had been in agreement. Now the third consultant had come on board and had a completely different opinion about potential benefits. Nestle Waters had initially agreed with the county consultants. There had been a question if the study had been exhaustive enough. He might have agreed with that it needed to be look at more closely, but he was not willing to admit or concede yet that the latest consultant had the right answers. It did not make sense to him that a \$15,000,000 investment would have such small return in tax revenue to Chaffee County. He did believe that the diesel calculation was a mistake and so did the County's consultant but those fees are paid to the state for road construction not to the county. The electric and utility tax should be something that goes to the county. The amount of property taxes and other taxes paid to the county was yet to be determined. Nestle Waters was working with this latest County consultant on this. Contrary to what others thought, he believed that it would be tens of thousands in revenue to the county. He felt the Tabor issues had been grossly mischaracterized. He felt that Nestle Waters taxes would be equal to either ten businesses in town or two forty room motels and what level of service would be needed for those businesses and the people who were staying in the 80 motel rooms. He submitted Nestle Waters would need much less county services. He stated however if it was determined that there was potential there for significant services, for emergency response or some other form. The newest consultant had suggested that Nestle Waters put together some deposit and Nestle Waters was not opposed to that idea. He stated it needed to be reasonable and needed to be settled on what services would be considered extraordinary. The direct benefits here would be about a two million dollar payroll for the time during construction and these jobs were going to be done largely by Chaffee County businesses. He stated that they had already two led contracts, one for the pipeline and the other for the building of the load station and well houses that would add over two million dollars to the local economy. They had been running ads in the local newspapers for qualified tanker truck drivers and were planning on hiring six to eight full time drivers from this area. These would be good paying jobs. The contractors that had bid for the construction jobs had told him that they had no jobs lined up in 2009 because of the slow construction business in Chaffee County and had actually had to lay off employees in the past months. He stated that this may be the bridge that was needed in Chaffee County to bring economic development and to get these construction workers over the hump. He spoke about the endowment commitment that Nestle Waters wanted to make. He asked that the endowment be placed as a condition to their application. Nestle Waters also had a track record of contributing to local projects such as 4 H, music festivals. A panel on the back of the bottle labels would also bring notice to Chaffee County. The question was had Nestle Waters met the regulation and rules of the 1041. His answer would be that they had. He felt that the staff needed to update their report because there had been much information that had come in to the staff in the three weeks. He felt that the economics piece still needed some work. He felt that the wetlands issue could be addressed by some conditions, which they wanted to work out. The Big Horn Parcel was where most of the questions on the wetlands were. Nestle Waters was committed not to

do any pumping on that land until the proper baseline data had been received. He felt that one of the major problems working through all of this was the lack of communication between the staff, the county consultants and Nestle Waters. He felt that the county staff and the county consultants had not been responsive nor willing to work with Nestle Waters on what Nestle Waters could do to convince the staff that the conditions had been either met or were being addressed with conditions. He needed help to get responses from these consultants and staff. He asked the Commissioners to direct staff to ask these people to come together and work with Nestle Waters. He stated that they were committed to meeting the 1041 requirements, but they needed to know what the County's interpretation of those requirements actually was. It was his understanding that the 1041 permit would be reviewed annually and that the Special Land Use Permit was a permit good for ten years and then review neither of these permits were for 99 years as had been mentioned in the meetings. He felt that they could either show that they had met the 1041 requirements or that they would be willing to work toward meeting the requirements or provide conditions in the permit to address those requirement concerns. He addressed some specific statements that had been made in the last couple of meetings. Someone had stated that they needed a holistic management plan. Nestle Waters already had that in the land management plan. Someone had commented that Nestle Waters consumption would be two times the amount of the consumption of the wells in Chaffee County, but a domestic well was augmented at .5 acre foot per use. If there were 3500 wells in Chaffee County that would come out to about 350 acre foot of water much more than the 200 acre foot planning to be used by Nestle Waters, but he did not want to debate that at this point. There had been some allegations that the CHNP had been influenced by Dr. Hagan and himself. For the record he did not go to County Planner Reimer and ask him specifically if he could go talk with CNHP. County Planner Reimer had a general policy that he would rather not have the applicant contact the consultants. He viewed CNHP as a review agency because it was state funded and no different than the Division of Wildlife of whom we did have free access to. He felt that it was a very bold statement to state that CNHP had changed their report because of contact with himself. He felt that conspiracy theory was interesting but not compelling. They did appreciate the comments from Jane Browning as she seemed to be very knowledgeable on wildlife but so was the Division of Wildlife who had stated that they did not see any danger to the wildlife or wildlife habitat. The Colorado Trout Unlimited were some of the first persons to visit the site and were very interested in what might had been concerns about the fish and the water. None of them had many concerns about the fish or fish flow problems in the interface of the springs and the river. The concerns some had that Nestle Waters was looking for other springs in Chaffee County was a rumor and not true. He agreed that they were looking for other sources in Colorado but not here in Chaffee County. He stated that Joe Cogan had asked him to mention that there was also a rumor that Mr. Cogan was going to sell his land and water to Nestle Waters. This was not true. Mr. Cogan's land and water would go to his family and his family would always come first. He stated that Frank McMurry had also been beaten up pretty bad saying that he had some type of vested interest in Nestle Waters success but Mr. McMurry had already sold the land to Nestle Waters. Whether they succeeded or failed now had no bearing on Mr. McMurry who would profit no further. The concept of water being used only in Colorado came from a beneficial use in Colorado. If it would be of beneficial use, there would be employees with real jobs for Coloradoans and jobs for people here in Chaffee County as well. Someone had made the comment that if water could not be shipped out of Colorado, then Coors better shut it down fast. Any farmer that exports hay out of Colorado better stop doing that or even cattle. Nestle Waters was committed to a project in Chaffee County. They had invested over two million dollars, \$114,000 in County Consultant fees. They had made an investment here and wanted to continue. They believed their project was low impact with significant benefits to Chaffee County. It protected and preserved the way of life here in Chaffee County. Nestle Waters project would commit to protect the wetlands and the wildlife here in Chaffee County. He hoped that this hearing would be continued until next week so that they could work through the 1041 issues. He also would ask that the staff up date their report reflective of the latest data that had been received. He would also ask staff to review the conditions that Nestle Waters had proposed. He stated a comment on those conditions, modify them, and propose additional conditions to meet the 1041 as appropriate. He also would ask the

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staff to direct the County Consultants to engage with Nestle Waters so that they can get through this project.

Mr. Boyd asked Mr. Lauerman if he felt that their science in hydraulics was a proven science.

Project Manager Lauerman stated that he felt that he had proven that the science and consultants that they had used were the best in the business.

Mr. Boyd asked if Mr. Lauerman was familiar with the Army Corps of Engineers miscalculations with the Lake Poncatrain, in Louisiana or the boat harbor in Santa Cruz that was build and designed by the Army Corps of Engineers.

Project Manager Lauerman asked if this was relevant.

Mr. Boyd stated that it was as long as Nestle Waters was going to use the Army Corps of Engineers.

Project Manager Lauerman stated that he was not using the Army Corps of Engineers. They had oversight on their project just as the Division of Wildlife did.

Commissioner Glenn stated that he just wanted to make sure that he had gotten everything clear. He wanted to know how all of the benefits to wildlife and the wetland would continue if this project was not permanent.

Project Manager Lauerman stated that the DOW had stated that any improvement would be better than what was there today. The restoration of the fish farm would be permanent and also the endowment would remain.

Commissioner Glenn wanted more information on the event of a drought. He asked what would Nestle Waters in a severe drought to produce water.

Project Manager Lauerman stated that before there would ever be a problem, the drought would have to be at a stage three drought. In that case Nestle Waters would temporarily stop pumping.

Commissioner Glenn asked about the wetland monitoring and how that would be done in a drought.

Project Manager Lauerman stated that there would be monitoring at the levels very closely. Irrigation practices should increase not decrease in the area. He would work with other groups to work with land of the Colorado Department of Corrections.

Commissioner Glenn asked if Nestle was putting in such a huge amount of money for this project, how they could be willing to stop pumping in case of a drought.

Project Manager Lauerman stated that these springs had been here for a very long time. Nestle Waters was willing to gamble on these springs producing the amount of water that they needed for their project. The fact was that a drought would not cause them to stop pumping.

Chairman Holman asked if Nestle Waters was willing to hire 50% of the qualified drivers from Chaffee County and could that be part of the permit conditioning.

Project Manager Lauerman stated that he would like to commit to that but would like to see how the applications were coming in from the Salida and Buena Vista area before totally committing to that. Their commitment was to try and get that many drivers from the county area and bring jobs here to Chaffee County.

Chairman Holman stated his other question was what happens to the fish.

Project Manager Lauerman stated that he was sure that those fish would be released to the river. He stated that who knows maybe they would have a community fish fry.

Mr. Ruggles asked questions about the truck traffic increase and how it was calculated.

Project Manager Lauerman stated that the study was at the local traffic of vehicles, a day done at the Gunsmoke Café.

Mr. Ruggles asked about the peak traffic numbers.

Project Manager Lauerman stated that truck traffic did not usually affect peak traffic. Those would mostly be car vehicles.

Mr. Ruggles asked when Nestle Waters had submitted the permit application. Project Manager Lauerman stated that they had submitted the application in November 2008. It was deemed complete by the Board of Commissioners on December 6, 2008. By that, he meant administratively complete.

Mr. Ruggles stated that it just seemed to him that for Nestle Waters to state that it was complete was inaccurate because this had not been completed yet. There were so many things that had not been done.

Project Manager Lauerman explained the permitting process again.

Commissioner Giese asked questions about the trucking firm and who had control over that company.

Project Manager Lauerman gave an explanation on why a larger trucking firm would be used for their business.

David Myers stated that he had been a professional truck driver for most of his life. His experience with working with a sub-contactor such as this was that they basically just wanting to get the product to its destination. Even though Nestle Waters thought that it would be able to regulate the one truck per hour scenarios, in his experience that was not going to happen. He could see scenarios where the plant needed water, there was lots of trucks here, there has been a storm, the trucks have piled up here, they get filled up here as fast as they can and they leave just as fast as they can. He asked what was going to stop that from happening. He had a proposition for Nestle Waters, but he would like to have Nestle Waters answer first.

Project Manager Lauerman stated this was all about active management. Nestle Waters was a very efficient business. They actually managed the usage of the trucks and are in radio contact with each other. Nestle Waters was going to work as hard as they could do possibly just that.

Mr. Myers stated that his proposition would be that Nestle Waters limit that amount of water that was pumped up.

Project Manager Lauerman stated that it would take about 30 minutes to fill a truck.

County Attorney Davis stated that she wanted clarification on a request from Mr. Lauerman on having the consultants speak with each other. She knew that Mr. Culichia and Ms Townsend had been in contact with Nestle Waters Consultants within the last week. She wanted to know exactly what Mr. Lauerman wanted in this regard.

Project Manager Lauerman stated that there was still work that needed to be done and just wanted to understand what Ms Townsend's assumptions were. What they really needed to know from staff was why the staff felt that certain standards were not met and how Nestles could address those needs. Both Nestle Waters and the staff working with Chaffee County need to put their heads together and understand what was going on. The e-mail from Mr. Culichia had stated just "well I am going to check on a couple of things and I'll get back to you". He felt that was not an effective approach to a corporate response.

County Attorney Davis stated that she did not understand that these people had issued reports. She did not know what other information that Nestle Waters wanted.

Project Manager Lauerman stated that Ken Kolm, Nestle Waters, wanted him to come to the site so that he could look at the pezometor locations in the wetlands to help guide them as to what exactly he was looking for them to do. This did not happen. He stated that they had proposed a number of conditions to Mr. Culichia for him to review. Mr. Culichia had told them he had a few other conditions that he was going to propose but they never had heard from him. Ms Townsend had spoken with Dan Short and Nestles but he would like more of that sit down type of conversation to understand what Ms Townsend was looking for.

County Attorney Davis stated that she still did not understand because she was under the impression that Ms Townsend was through with the process and had given the data to Nestle Waters. She thought that Ms Townsend and Nestle Waters had agreed to disagree.

Project Manager Lauerman felt there was still work to be done on the economics.

County Attorney Davis stated that she had given instructions to Ms Townsend that they wanted to have her share data as much as possible, but that there would not be any type of negotiation in terms of what was going to be in reports.

Project Manager Lauerman stated that Nestle Waters needed to understand what Ms Townsend's assumptions were and work closely with her to try to agree as closely as possible.

County Attorney Davis asked on the continuance what was Nestle Waters asking for at the next hearing. She knew that they had asked staff to give a revised report at the next hearing.

Project Manager Lauerman stated that was correct regarding the reflective information that had been received prior to this meeting.

County Attorney Davis asked if there was anything else that Nestle Waters was asking for at the next meeting.

Project Manager Lauerman stated he would like to present at the next meeting how Nestle Waters had met the 1041 regulations criteria, the outstanding 1041 criteria and they would like to have some discussion with the County Commissioners and staff regarding their thought on why they think Nestle Waters did or did not meet that. He would also like some discussion of potential conditions which either complement or bolster the 1041 requirements.

Chairman Holman stated that they would now address when the next meeting was going to take place and what the agenda would be.

County Attorney Davis stated that she felt that they needed to also discuss how they were going to address some of the requests that Nestle Waters had made. She had some concerns certainly with engaging in negotiations with the Commissioners on the conditions. She did not see the process occurring where the applicant, the staff and Commissioners engaging in what the conditions were. She believed that Nestle Waters had proposed some conditions that Jim Culichia had started preparing comments on. She thought there would be plenty of opportunity during deliberations for staff to get some direction from the Commissioners as to what their thoughts were for the staff to develop some conditions based on that. And that would be in addition to anything that had been proposed by Nestle Waters. She thought that the Board needed to respond to what exactly was going to happen at the next meeting and respond to whether they want an updated staff report from County Planner Reimer. Then they would need to get some feed back from as to whether the can update a staff report in a timely manor to have it in time for review prior to the next meeting. The staff had tried to look at different dates that the Board could potentially meet before the May 15th deadline and to have dates where both Jim Culichia and Barbara Green could attend were somewhat limited. The only day would be next Tuesday, May 5, 2009 but if it was the Boards desire for County Planner Reimer to update the staff report, whether that could happen she was not sure.

Commissioner Glenn stated that he would like to know what new information the staff had received that they had not received prior to April 21st that would compel the Board to instruct County Planner Reimer to update the staff report. He thought County Planner Reimer had updated the staff report after he received more information from Nestle Waters on several different issues. He guessed the question he was asking was there more information available for County Planner Reimer to update or did County Planner Reimer need more information.

County Planner Reimer stated there had been more information submitted in the form of the Coley/Forest report as an example, Jim Culichia had sent comments and testimony of the traffic impact study and Terry Scanga's comments. There was some information out there. There was probably limited value in actually going through the process of updating that staff report at this point. He stated the thought that a more efficient exercise would be to do a quick summary very similar to the Planning Commissions recommendations, a few pages of this is and this is not, or else an identifying of what may have changed since the last one. He did not know that there had been a lot of information submitted that would cause him to change staff recommendation because in the staff report it actually identified that the standards were not satisfied because of x, y or z was missing. He stated such as in the case of wetlands for example no baseline data that had not changed and monitoring had been suggested and proposed a condition that still did not mean that the standard had been satisfied. The proposal was a condition to mitigate that there was not much to update as a result of that.

County Attorney Davis stated that she would have some more questions for Mr. Lauerman as to what he had indicated that he wanted to happen to have an opportunity for Nestle Waters to present again at the next hearing. She asked what new information they were planning on presenting.

Project Manager Lauerman stated that he did not know if there would be any new information. He thought that they had a difference of opinion here with staff respectfully. In many of the places, they did not meet the criteria. For instance the theme that ran through the comments such as Nestle Waters had not presented any plan for preservation, protection of land. If the land management plan was not a plan for preservation and protection of the land, he did not know what would be a plan for that.

County Attorney Davis stated that she did think that he had made that comment at the last meeting.

Project Manager Lauerman stated that some other things that had changed were tourism would be affected by traffic. They had a traffic analysis that did shed light on that. With respect to the wetlands, they were all in an agreement that there was a new report out from the latest consultants. They were all in agreement that it was hard to find what the impacts may be, what the baseline conditions needed to be set and what the monitoring needed to be set at. Nestle Waters would not turn on any pumps at the Big Horn until such time as those conditions were met. He felt that the staff reports should be reflective of this condition that this criteria was not met. A condition could be proposed that would mitigate this concern. These are the type of comments he would like to see and the type of discussion he would like to have at the next meeting. They could go through each of the specific criteria that had not being met. He would like to go through those specific criteria. They could either agree that it was not being met or have a discussion on how to mitigate the condition. He believed that they had met most of these criteria. He thought that they could meet them with conditions. He felt the one that was out there was the economic conditions.

County Attorney Davis stated again though it seemed that at the last hearing, you did go through and address a lot of the differences of opinions that you had with the staff report so you already have essentially done that. She stated that you had gone through and highlighted before the Commissioners the areas where you felt you had met the criteria and disagreed with staff or staff believed that you had not.

Project Manager Lauerman stated that he did not think they had spent the time necessary on that. They were actually limited to an hour on their presentation, which talked about a traffic study, economic impact and somewhat breezed through their conditions. The issue as an example was the land management plan. As someone stated earlier "the devil is in the detail", they wanted to work through these details.

Chairman Holman stated that would be very helpful to him because until he could hear each item specifically worked out, he did not feel he had enough detail.

County Planner Reimer stated that he would agree on that and agreed with Mr. Lauerman on that point, but at the same point it would almost be pointless for him to update his staff report because he would be reiterating the same points over and over that Nestle Waters would still have disagreement with. He stated it really needed to come down to going through them point by point.

Chairman Holman stated that was his point, but did understand until this was done point by point, it would not do any good to up date the staff report.

Project Manager Lauerman felt that while there was a number of items that the staff felt that there were standards that had not been met. It was a similar comment that ran through many of these. He felt that there was only a couple of issues that were out there that were affecting numerous criteria. They would like to work through that.

Commissioner Glenn stated that he was a bit uncomfortable and would like to get some legal advice before making any decisions as to whether or not at a continued meeting that they would discuss an exchange with the Board of Commissioners and the applicant criteria and conditions. He was not sure that was their place and he was not sure that was the direction that they needed to go. He was not totally sure that was a proper procedural way. Therefore, he would like to get some legal advice before making a decision on how to deal with that issue.

County Attorney Davis asked if the Board wanted to go into a brief Executive Session on the procedural issue.

Commissioner Glenn stated he would like to do just that.

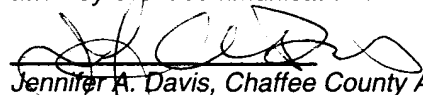
Commissioner Giese stated that his concern was his understanding of what was being asked and what was being talked about was another word for negotiating. As he understood the 1041 permit was not negotiable. You have to meet the conditions of each one of them and or provide mitigation. It was not up to the Board to decide here and say well if you do this or that it was up to the applicant to present those to us and then we decide if they are appropriate or meet all of the standards. For the Board to sit in a meeting and negotiate, he did not know if that was a legal procedure. He would also like to have some legal advice on that also. This was not a negotiation you have to provide information. The Board will have to decide if it was adequate.

Project Manager Lauerman stated that he understood. He would agree with Commissioner Giese. He was asking that they have the ability to at least discuss openly whether or not the criteria had been met. He asked If the criteria had not been met would it be appropriate to make a condition to be determined that could satisfy the criteria. He did not want to negotiate the conditions but they had offered some potential conditions. They would like the staff to take a look at them and give them some feed back on them. They would be happy to do this anyway that the Board of Commissioners wanted.

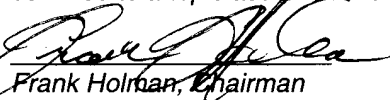
County Attorney Davis quoted C.R.S. 24-6-402(4)(b) for the purpose of receiving legal advice on legal questions concerning the Nestle Waters application for a 1041 Regulation and a Special Land Use Permit.

Commissioner Giese made a motion that we go into executive session under the statute C.R.S. 24-6-402(4) (b). Commissioner Glenn seconded the motion. On the question, the motion carried 3 - 0.

I, Jennifer A. Davis, Chaffee County Attorney, do hereby attest that the portion of the executive session held on April 29, 2009, during which the recorder was directed to take no minutes constituted a privileged attorney-client communication.


Jennifer A. Davis, Chaffee County Attorney

I, Frank Holman, Chairman of the Chaffee County Board of County Commissioners, do hereby attest that the portion of the executive session held on, April 29, 2009, during which no minutes were taken was confined to a topic authorized for discussion in an executive session.


Frank Holman, Chairman

The Board went into executive session at 9:43 p.m.

Chairman Holman reconvened the meeting at 9:58 p.m. stating that there were no decisions made during the executive session.

Commissioner Glenn made a motion to reconvene from executive session. Commissioner Giese seconded the motion. On the question the motion carried 3 - 0.

Commissioner Giese stated that he felt that they would continue the hearing to the possible date of May 5, 2009 when two of their legal counsels could be present. He felt it was up to the applicant and the staff not the Board of Commissioners to decide if there were areas of disagreement on a permit and what those areas were. He did not believe it was the purpose or the place for the county consultants. This was not the time for the Commissioners and the applicant to negotiate.

County Attorney Davis stated that if the Board of Commissioners decided to approve the application, then the Board of Commissioners would direct staff to put together the conditions list and when those recommendations would need to be completed. Once the Board of Commissioners close the public hearing, the Board of Commissioners would

then have 60 days to work on the specific conditions. During that time, the Board could have deliberation meetings.

Commissioner Glenn stated that there were still a couple of requests that Nestle Waters had made. The first one was to continue until next week. He had no problems with that. The second one was to have staff update their report with three working days until the next meeting. When staff had stated that while there was some new information, he did not feel that was a reasonable request. The third was to direct staff to engage consultants. He felt that was totally outside of the scope of where they are at. He agreed with Commissioner Giese that he did not think they should direct staff to engage in reconciliation of consultants. For consultants to share methodology, that was fine. So that they were all speaking the same language, he thought that was what they had done. He stated as far as determining conditions, he felt that was premature at this point and time. He felt that was something that they as a Board when they start into their deliberations could look at as they move down that line. Out of the four requests, he was okay with continuing until next week.

Commissioner Giese stated that they had beaten this up since 1 p.m. He felt it would be appropriate for a motion to continue the hearing until May 5, 2009.

County Attorney Davis stated that she would like further clarification on the May 5, 2009 meeting. She thought that Nestle Waters had asked for an opportunity to present. She felt that the Board needed to set the parameters of what was going to happen. The general public should also have time to comment on that as well. The scope of those comments could be limited to the any new information that was presented. If the Board had questions for consultants they could ask those. If County Development Services Director Reimer gave an oral presentation, Nestle Waters would have an opportunity to rebut that. The Board might want to look at setting a deadline for written comments and communications before that meeting.

Chairman Holman stated that would probably have to be the 3rd of May.

After some discussion, the Board decided to set a deadline for written comments to noon on May 4, 2009.

Nestle Attorney Strablizky stated that it would be nice to have those be accepted up to the time of the hearing.

There was discussion on this subject about deliberation, public testimony and public comment.

Commissioner Glenn made a motion to continue the hearing until May 5, 2009 at 1 p.m. at the Salida Steam Plant and all written testimony would be accepted until May 4, 2009 at noon and the Board would have an updated verbal staff report on criteria that had not been met, and questions by the Board for the consultants. Commissioner Giese seconded the motion. On the question, the motion carried 3 – 0.

Frank McMurry asked if opposing attorneys could sit down and talk or could Nestle Waters and the County Staff sit down and talk after all communication was what this was all about. He asked if a 1041 was to stop a project or mitigate the problems. He suggested not writing a letter if it had been stated before. He asked why the Board could not cut off public comment early.

County Attorney Davis stated that it was fine for engineers and consultants to talk about the information. In order to be fair you would have to allow both the public and the applicant to respond to testimony that was given.

Commissioner Glenn stated that the process that the Board was not incumbent upon the applicant to negotiate on anything nor was the public. It was not incumbent on the consultants to come to a consensus because he believed that if that was the direction then it would be construed that the decision had already been determined in what they could not do. The Board cannot sit here and already prejudge the outcome of this hearing. This was where he had an issue about directing consultants to talk about reconciling the differences. He stated to him that just sent the implication that it was an already done deal. It was not a prejudged deal. He felt they needed to show and have to be as Commissioners transparent in this issue. Now Nestle Waters and Don Reimer can talk for 24 hours a day if they want to. There was no problem with that. They can discuss all the issues and that was fine. Ms Davis and Holly can talk as much as they want. Contact and direct contact with Commissioners cannot happen.

Mr. Boyd asked if the public could request from Mr. Laureman to talk about the impact of the back fill of the pipeline. He stated why he asked was because sometimes pipelines had a tendency to attract water and precipitation. The public hearing sign was no longer posted by the liquor store. He felt as long as the public hearing was continued he felt the sign should be there. He asked if they could request from Mr. Laureman a written report of what happened to the hydraulics in Michigan and Wisconsin.

Karin Adams stated that she just wanted clarification on what would be taking place on May 5, 2009. She asked if the Board would be taking written comment until noon on May 4, 2009, and then it would be a regular Commissioner meeting where there would be a question and answer period between staff, consultants and the applicants.

Commissioner Glenn stated that what he had in mind was that County Development Services Director Reimer would give his verbal staff report specifying what criteria and standards had not been met. Then Nestle Waters could indicate where were the areas that they disagreed and here were the points why. Then the Commissioners could question consultants and staff and try to get the information they need to go into the next phase which would be deliberation.

Project Manager Lauerman asked for one more clarification. The staff would submit a written report stating which criteria had not been met and why.

County Attorney Davis stated that it was her understanding that the presentation from staff would be a verbal update on outstanding criteria that needed to be met, but they would also be telling them why they did not meet the criteria.

David Meyer asked if after deliberation, a decision would be made and then that would a permit for 10 years.

Commissioner Glenn stated there are a number of things that could happen. Once deliberation was started, there would not be anymore public comment.

County Attorney Davis stated that condition might be placed during the deliberation period but there would not be any public comment. The decisions made during deliberation would be made with the information that had been collected during the public hearing process.

Mr. Meyer felt that there should be public input on the conditions.

Nestle Attorney Strablizky stated that they were working hard to get these condition done but would like to make sure that it was clear that once deliberation were started, they would have the opportunity to have counsel to counsel hammer out the proper language of the conditions.

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County Attorney Davis stated that would be fine. She would always be happy to sit down but again she did not think it would be the staff's function to propose conditions that would help satisfy the deficiencies application.

Nestle Attorney Ms. Strablizky explained how she had seen these opportunities in the past for both the 1041 permit and the Special Land Use Permit.

Commissioner Giese made a motion to adjourn this portion of the public hearing and continue to May 5, 2009. Commissioner Glenn seconded the motion. On the question, the motion carried 3 – 0. The meeting was adjourned at 10:48 p.m.

Attest:



Joyce M. Reno
Chaffee County Clerk

"The Board of County Commissioners (the "Board") acknowledges receipt of the above of the above draft meeting minutes. It is the policy of the Board, adopted at a regular meeting held on October 20, 2009, that the CD taken at the meeting shall constitute the official minutes of the meeting. To the extent that the above textual summary provides an overview of the subject matter discussed and action taken by the Board, the above shall constitute the visual text record of the Board. Any further detail, including summaries of testimony and deliberations, has not been approved by the Board should not be considered minutes of the Board."

Clerk's Note:

Since the Board of County Commissioners (the Board) did not approve the above minutes, they will remain as draft minutes as minutes of record. A CD is available for the official recording of this meeting.