

**Draft Minutes**

Special Meeting

May 5, 2009

The Board of Commissioners met in the Theater of the Salida Steam Plant, 220 West Sackett Street, 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 Land Use Counsel Barbara Green, County Water Attorney Jim Culichia, County Clerk Joyce Reno and Deputy County Clerk Merrilou Cicerelli.

Following the Pledge of Allegiance, Chairman Holman called the meeting to order at 1:15 p.m.

Chairman Holman asked for verification from the County Clerk that the Board of Commissioner's agendas were distributed appropriately. Deputy County Clerk Cicerelli stated that the agendas had been distributed appropriately.

Chairman Holman stated that the reason for this special meeting was the continuation of a Public Hearing to consider request from Nestles Waters North America, Inc. for a Special Land Use Permit and the 1041 Permit. The request is for the development of spring water source, associated transmission pipeline and loading facility. Location: 12916 and 12974 Highway 24/285, Johnson Village, 22565 and TBD County Road 300, Nathrop. 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 Land Use Counsel Green stated that the way they were going to proceed today was staff was going to summarize all of the outstanding issues. The staff was not going to go through every single criteria. Instead they would focus on those issues that in the staff's opinion still had not been satisfied. She stated that would include both the staff and any of the County's consultants who are acting as an arm of the staff. Then these would be grouped by issues. Following each issue grouping and discussion by the staff, the applicant will respond to that. At anytime during this, the Board will be allowed to ask questions of anyone presenting. Then after the back and forth between the applicant and the staff, the public comment will follow, then the applicant will have the opportunity to respond to the public comment. They are anticipating that there would probably be a need for one more meeting where the public portion of the testimony will be still open because the Board of County Commissioners received a lot of information from the public, the applicant and the staff that they still need to digest to do justice to this application. So they are anticipating that there will be a need to continue the public or open portion of this hearing one more time. After that, this whole public input process will be closed and the Board will continue the deliberative portion of the hearing until a later date. Under the regulations once the hearing closes, the Board has sixty days within which to deliberate and make a decision. All of that has to be on the record, but there will be no questions or answers or public input during the deliberative phase which analogues to being in the courtroom and the Judge is listening to all of the evidence. There will be no more evidence presented by any parties and the Judge begins his or hers decision making process. That will be the way the Board will proceed or hope to proceed today. She did not think they would take questions now and did not think this Board would allow people to yell out from the audience.

Chairman Holman stated that the Board would not.

County Land Use Counsel Green felt that the Board should proceed as had been outlined, with the opportunity for public comment to follow the staff and applicant presentation, unless the Board would like to establish a different procedure.

Chairman Holman stated that their plans were to follow the outlined procedure.

County Land Use Counsel Green stated that she would also like to add because she might have forgotten and it might help people, according to the regulations any person including any person that represents the public has the opportunity to ask questions of anyone presenting. For example, if Nestle Waters had someone presenting something, when they were finished, the public would also have the opportunity to quote "cross exam or ask questions". She thanked the Board.

Chairman Holman stated if the public did wish to ask questions to please sign the sign-up sheets up in the front. They would be asked to come to the microphone and introduce themselves with their name and address. He would do a mass swearing in again. He asked that they keep their testimony limited to 5 minutes and to the issues at hand. They would be dealing only with issues that the County staff would bring up today. If there were any outbursts as last time, you will be asked to leave and be escorted from the building. He asked to keep it calm and respectful.

County Development Services Director Reimer stated that since the last meeting, the staff and consultants had been met and summarized some of the various criteria. He stated whether the standard had been met and what outstanding issues there may be and in the event that the Board was inclined or the applicant had declined to propose a condition, some potential conditions might be useful and satisfying any outstanding review criteria. He did receive in addition to the staff memorandum dated May 4, 2009 some documents from Mr. Monson and Mr. Culichia regarding some water rights as well as some from GEOMEGA regarding some investigation on the wetlands and the hydrologic impacts. He stated Mr. Culichia would be giving a brief summary of his memorandum following his summary and the County consultants from GEOMEGA, Dr. Kolm, as well as Gary Thompson from W W Wheeler. They both would be available for any additional questions or clarifications from the Board. He presented a summary review of the approximately 35 different review criteria for the application.

#### **Application Review Memorandum ADDENDUM**

**Date:** May 4, 2009

**Subject:** Nestle Waters Special Land Use Permit Application and 1041 Permit Application

**Purpose:** Application 1041 Criteria and Condition Summary

#### **3-303(1) Action on Permit Application**

**a. service area is located within or partially within the boundaries of the County, the**

**need for the proposed project**

- **Applicant Submittals:** criterion is not directly applicable to this application, and the project is motivated by reducing fuel consumption in its current corporate operating plan
- **Staff:** applicant has not provided any specific alternatives to this project other than continue their current practices. The applicant has not provided any specific information substantiating the need for the project. Standard is not satisfied
- **PC:** Concur with staff that the submittal did not address the standard, however find that the standard is not necessarily applicable to this application.
- **App proposed Condition:** None
- **Staff proposed Condition:** None

**b. consistent with relevant provisions of adopted land use or comprehensive plans**

- **Applicant Submittal:** Applicant March 12 letter, Pages 4-13 describes their interpretation of applicability of the Comprehensive Plan and Commercial Land Use Policy to this application.
- **Staff:** applicant and staff disagree on the applicability of the documents and the consistency with those documents, as discussed in Pages 6-8 of April 16 staff report. Staff believes the following provisions are not satisfied:
  - Minimize the tax burden on citizens. Require development to assess impacts on public facilities and to pay fair share of costs for necessary services. (Comprehensive Plan, Objective E, page 3).
  - Promote economic diversity and economic development based on passive recreation, ranching/agriculture, and "light" industry to lessen the gap between incomes and cost of living in the County. (Comprehensive Plan, Objective F, page 3).
  - Provide a safe and efficient transportation system for all county residents. (Comprehensive Plan, Objective J, page 3).
  - Provide access to public lands and river/stream corridors. (Comprehensive Plan, page 37).

Standard is not satisfied

- **PC:** Standard is not satisfied as related to Comprehensive Plan items 1 (Protect scenic and visual quality), 2 (protect rural areas, agricultural lands, and wildlife habitat) and 3 (provide access to rivers and public lands).
- **App proposed Condition: None**
- **Staff proposed Condition:** Public fishing access to the river. Dedication of 60-foot right of way for County Road 300 on Ruby Mountain and Bighorn parcels. Cooperate with the County to encourage CDOT to make improvements, specifically to include climbing lanes, on US Highway 24 / 285 between Johnson Village and the top of Trout Creek Pass. Primarily utilize local firms in both construction and operation of the project to support local economy. Limit truck traffic to no more than two trucks per hour of any given day, 25 trucks total. Route loaded trucks through Leadville to I-70. Require trucks to pull over if blocking traffic. Project impacts mitigation fund to cover any expense to the County related to the project, including legal expenses.

**c. efficient use of water; prevent the pollution of aquifer recharge areas**

- **Staff:** Standard is satisfied
- **PC:** Concur with staff that standard is satisfied

**d. state and federal water supply, in-stream flow, and water quality requirements**

- **Applicant Submittals:** County water counsel's comments are being considered
- **Staff:** comply with the recommendations made by County water counsel. Standard is not satisfied unless and until such recommendations are resolved, and any recommended conditions included in the permit.
- **PC:** Concur with staff that standard is not satisfied unless water counsel comments resolved.
- **UAWCD:** Indicate standard is not satisfied if augmentation is coming from Aurora.
- **Applicant proposed Condition: None.**
- **Staff proposed Condition:** Require augmentation from source other than Aurora. Adopt conditions suggested from water counsel:
  - Proof of application for augmentation plan/SWSP if necessary
  - County approval of terms of decrees.

- Operate project in accordance with SWSP.
- All augmentation water delivered to main stem of Arkansas River upstream of Project depletions.
- No exchange or augmentation plan shall reduce flow to detriment of County's RICD.
- All assumptions (re pumping rates, replacement water timing, etc.) be a condition.
- Limit withdrawals to net replacement water.
- Replace lagged depletions even after cessation of pumping.
- Timing of deliver of augmentation water to match depletion.

**e1. Surface water: Changes to existing water quality.**

- **Applicant Submittals:** The applicant (March12, Page15-16) indicates consistency with the 208 Water Quality Plan; volume of withdrawals related to the overall Arkansas River flows; discusses the pump test methodology; and wetlands monitoring
- **Staff:** comply with the recommendations made by County water counsel, incorporating any recommended conditions. Standard is not satisfied unless and until such recommendations are resolved.
- **PC:** Concur with staff that standard is not satisfied unless water counsel comments resolved, and that if approved, a wetlands monitoring plan will be necessary.
- **App proposed Condition:** draft proposed condition (April 2 letter) related to on-going wetlands monitoring and mitigation
- **Staff proposed Condition:** See above conditions. Also:
  - Exclude Bighorn, since monitoring will not resolve its issues.
  - Perform a longer term pump test at Ruby Mountain so that aquifer boundary conditions can be better established.
  - The County should have approval authority over the wetlands restoration for Ruby Mountain, including the wetland species, etc.
  - Piezometers and monitoring wells and monitoring be installed and that no pumping from the Ruby Mountain wells can be done when the water level is at or below what the wetlands need to maintain and sustain.

**e2. Changes in non-point and point source pollution.**

- **Staff:** Standard is satisfied.
- **PC:** Concur with staff that standard is satisfied

**f1. Project shall not significantly degrade groundwater quality; Changes in aquifer recharge rates, groundwater levels and aquifer capacity**

- **Staff:** Standard is satisfied.
- **PC:** Concur with staff that standard is satisfied

**f2. Changes in capacity and function of wells within the Source Development Area**

- **Applicant Submittals:** applicant (March12, Page17) refers to comments in the final Wheeler report indicating no likely potential impact to owners of other groundwater wells.
- **Staff:** Standard is satisfied
- **PC:** Expressed concern that the aquifer may be impacted, so standard is not satisfied, and recommended an up-gradient groundwater monitoring plan be required.

- **App proposed Condition: None**
- **Staff proposed Condition:** Up-gradient groundwater monitoring plan.

### **f3. Changes in quality of well water within the Source Development Area**

- **Staff:** Standard is satisfied
- **PC:** Concur with staff that standard is satisfied.

### **g. Construction of structures, buildings, and improvements will not significantly impact and will be consistent with the County's regulations and ordinances**

- **Staff:** Standard is satisfied if the special land use permit is approved and the construction and operation is in accordance with the application documents and with special land use permit conditions.
- **PC:** Concur with staff that standard is satisfied if the Special Land Use Permit is approved
- **Applicant Proposed Conditions:** Conditions proposed to PC during PC approval.
- **Staff proposed Conditions:** See SLUP Portions of April 16 Update memo

### **h1. Project will not significantly deteriorate Air Quality**

- **Applicant Submittals:** applicant (March12, Page18) indicates per the EPA, Chaffee County air quality is unclassifiable, meaning it is treated as attainment and there are no measurements available to ascertain whether air quality standards are met; that "small truck emissions dissipate immediately into the air and cannot be measured"; and that the "de minimus truck emissions will not impact the County's air quality".
- **Staff:** The trucks utilized in the operations are required to meet state and federal emissions standards. Those standards include maximum emissions rates for various pollutants and each type of vehicle, and as such, an annual volume of pollutants contributed by the project can be estimated. Standard is not satisfied.
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant Proposed conditions:** None
- **Staff proposed Condition:** Limit truck traffic to no more than two trucks per hour of any given day, 25 trucks total.

### **h2. Project will not significantly deteriorate Wetlands and floodplain areas**

- **Applicant Submittal:** impacts to the wetlands at Ruby Mountain are not anticipated, and that project impacts to the wetlands associated with the Bighorn Springs will be monitored.
- **Staff:** It appears that the 15 acres affected by relocation of the Hagen residences includes some wetlands and a portion of the gulch formed by Bighorn Springs and Arnold Gulch. Standard is not satisfied unless and until all consultant recommendations regarding wetlands and location of the Hagen residences with respect to wetlands and sensitive areas are resolved.
- **PC:** Concur with staff that standard is not satisfied, and that depending on the location of the proposed exclusion there could be impacts to wetlands, and that if approved, a wetlands monitoring plan will be necessary.
- **Applicant Proposed Condition:** proposed a permit condition in their April 2 letter relative to wetlands monitoring
- **Staff proposed condition:** See conditions in e.1, above. Wetlands monitoring plan, including at minimum delineation of all springs, wetlands and riparian areas or zones and sensitive areas which may be impacted by the project. No pumping or operations shall occur until baselines are established. County and consultant review of monitoring reports and monitoring plan implementation. Satisfactory

grazing management, wetlands monitoring, and land management plans will be essential to determining impacts of the project operation on the wetlands. All development (including exclusion for potential Hagen residences) shall occur outside of and with an appropriate setback from wetlands, riparian areas and zones and other sensitive areas.

**h3. Project will not significantly deteriorate Terrestrial or aquatic animal life or its habitats**

- **Applicant Submittal:** March 12 letter, Page 19-21, indicates migratory bird habitat may be improved by the project; Gunnison's prairie dog may be temporarily displaced during pipeline construction; no impacts on cold water trout or fish habitat; grazing and land management practices will benefit wildlife; and hatchery restoration will benefit northern leopard frog. They also indicate their position that it is inappropriate to require permanent conservation easement, although they are investigating it.
- **Staff:** It appears that the 15 acres affected by relocation of the Hagen residences includes some wetlands and a portion of the gulch formed by Bighorn Springs and Arnold Gulch. Standard is not satisfied unless and until all consultant recommendations regarding wetlands and the location of the Hagen residences (with respect to proximity to wetlands and sensitive areas) are resolved.
- **PC:** Concur with staff that standard is not satisfied and that depending on the location of the proposed exclusion there could be impacts to wetlands, and that if approved, a wetlands monitoring plan will be necessary.
- **Applicant proposed condition:** The applicant proposed a permit condition in their March 12 and April 2 letters.
- **Staff proposed condition:** See h2, above.

**h4. Terrestrial plant life or plant habitat**

- **Staff:** Standard is satisfied
- **PC:** Concur with staff that standard is satisfied.

**h5. Soils and geologic conditions**

- **Staff:** Standard is satisfied
- **PC:** Concur with staff that standard is satisfied.

**h6. Existing visual quality**

- **Applicant Submittals:** March 12, Page 22) indicates "...except for the proposed well houses, NWNA does not intend to deviate from the existing scenery on the Springs Sites Properties"
- **Staff:** Applicant's statement appears to contradict the discussions of the Hagen residential option discussed elsewhere in their March 12 letter. It should be noted that the Hagen residential option is not a separate parcel, and is part of the existing Bighorn Springs Site. The location of the new residences may negatively impact visual quality. The Standard is not satisfied.
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant Proposed Condition:** Restore hatchery
- **Staff proposed condition:** Building envelopes for potential relocation of the Hagen residences be located to minimize impacts to visual quality.

**i. Project will not cause significant noise, vibrations or odors**

- **Staff:** Standard is satisfied if applicant complies with SLUP conditions
- **PC:** Concur with staff that standard is satisfied if applicant complies with Special Land Use Permit conditions.
- **Staff proposed Conditions:** See SLUP Portions of April 16 Update memo

**j. Project is not subject to significant risk from natural hazards**

- **Staff:** Standard is satisfied
- **PC:** Concur with staff that standard is satisfied.

**k. The proposed Project will not have a significantly adverse net effect on any segment of the local economy (e.g. recreation, tourism, agriculture, and mining) within the County or any portion of the impact area****k1. Changes to projected revenues generated from each economic sector (including****recreation, tourism, agriculture, and mining)**

- **Staff:** Recreation and Tourism. Changes to projected revenues is not specifically discussed in the application. These revenues are directly tied to the aesthetic of the area and recreational facilities available. Additional traffic on the highway may impact tourism levels. Per applicant's traffic report, some level of service parameters are approaching LOS D. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:** None
- **Staff proposed condition:** Cooperate with the County to encourage CDOT to make improvements, specifically to include climbing lanes, on US 24 / 285 between Johnson Village and the top of Trout Creek Pass. Cooperation may include financial contributions to the project.

**k2. Changes to existing and projected amounts of recreation visitation in the impact****area**

- **Applicant Submittals:** applicant (March 12, Page 23-24) indicates there will be no change in recreation visitation resulting from the project
- **Staff:** See k(i) above. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:** None
- **Staff proposed condition:** See k(i) above

**k3. Changes in the quality or quantity of the recreation experiences available**

- **Applicant Submittals:** applicant (March 12, Page 25) indicates there will be no change in recreation visitation resulting from the project and that the recreational experience will be enhanced through better grazing practices and hatchery restoration.
- **Staff:** See k(i) above. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:** Hatchery Restoration.
- **Staff proposed condition:** Commitment to restoration of the hatchery would have a positive impact on the recreation experience. A public fishing access would enhance recreation the experience. Also see k(i) above.

**k4. Changes in the value of agricultural, grazing, recreational, and other lands, and the loss of tax revenues caused by such lands being removed from production or****becoming unavailable for those uses**

- **Staff:** The applicant's consultant THK and County consultant Coley Forrest have submitted reports identifying economic impacts. There are distinct differences in the two reports. Standard is not satisfied

- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:** None.
- **Staff proposed condition:** Mitigation fund for future unknown impacts. Primarily require local contractors for the construction and operation of the project.

**k5. Changes in opportunities for economic diversification**

- **Staff:** See k(iv) above
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:** None.
- **Staff proposed condition:** Mitigation fund for future unknown impacts. Primarily require local contractors for the construction and operation of the project.

**k6. The benefits accruing to the County and its citizens from the Project outweigh the losses [of] any natural, agricultural, or recreational resources within the County, or the losses of opportunities to develop such resources**

- **Staff:** See k(iv) above. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied. The Planning Commission members felt the hatchery restoration could be considered a benefit if the restoration proposed in the timetable was committed through completion.
- **Applicant proposed condition:** Initial endowment of \$500,000 plus \$25,000 future annual contributions. Local labeling.
- **Staff proposed condition:** Applicant's proposed conditions. Public fishing access. Permanent conservation easement. Allow school educational groups reasonable access to the restored wetlands portion of the NWNA property for wetland interpretive opportunities.

**9-303(1) – Action on Permit Application**

**a1. The proposed Activity will not disturb or harass individual animals, groups of animals or wildlife species.**

- **Applicant Submittals:** refers to comments submitted under 1(h)(iii), above, including temporary displacement of prairie dogs, a proposed condition related to hatchery restoration, and grazing management plans. The applicant indicates that with the exception of excluding a portion of the Bighorn parcel for Hagen residential development, the properties will exist in agriculture.
- **Staff:** Project operations may impact wetlands. Also, it appears that the 15 acres affected by relocation of the Hagen residences includes some wetlands and sensitive areas and a portion of the gulch formed by Bighorn Springs and Arnold Gulch; adverse impacts on the wetlands could affect wildlife. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:**
- **Staff proposed condition:** See h.2, above. .

**a2. The proposed activity will not disrupt necessary life-cycle function resulting in**

**stress to the extent that physiological damage is done to an individual animal, group of animals or wildlife species. Examples include, but are not limited to, introduction of non-native vegetation, excessive use of fertilizers and other chemicals, placement of structures in close proximity to nesting and feeding areas and excessive exterior lighting.**



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- **Applicant Submittals:** DOW Feb 24 letter discusses no disruption of necessary life-cycle functions, submittal of a weed management plan, a proposed condition related to hatchery restoration, and grazing management plans. The applicant indicates that with the exception of excluding a portion of the Bighorn parcel for Hagen residential development, the properties will exist in agriculture.
  - **Staff:** See a(1) above. Standard is not satisfied
  - **PC:** Concur with staff that standard is not satisfied.
  - **Applicant proposed condition:**
  - **Staff proposed condition:** See a(1) above
- b1. The proposed activity will not significantly deteriorate wildlife habitat or other wildlife protection areas, aquatic habitats, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species: revegetation plans.**
- **Staff:** Standard is satisfied
  - **PC:** Concur with staff that standard is satisfied.
  - **Applicant proposed condition:** None
  - **Staff proposed condition:** Need adequate deposit to ensure on-going weed management
- b2. Adequate water supplies are available for successful implementation of revegetation plans**
- **Staff:** Standard is satisfied
  - **PC:** Concur with staff that standard is satisfied.
  - **Applicant proposed condition:** None.
  - **Staff proposed condition:** Need adequate deposit to ensure on-going weed management
- b3. Vegetation/habitat removal and/or alteration within the development site.**
- **Applicant Submittal:** approved Weed Management and Revegetation Plan has been submitted. Potential alteration resulting from changes in wetlands was not discussed in this particular section of the applicant's March 12 letter (Page 28).
  - **Staff:** The standard is not satisfied due to potential for changes in habitat.
  - **PC:** Concur with staff that standard is not satisfied.
  - **Applicant proposed condition:**
  - **Staff proposed condition:** See 3-303 - h.2 above.
- b4. The effect on surface and subsurface water quantity and quality.**
- **Applicant:** See Section 3-303 (1) (d) and (e) above
  - **Staff:** See Section 3-303 (1) (d) and (e) above. The standard is not satisfied
  - **PC:** Concur with staff that standard is not satisfied.
  - **Applicant proposed condition:**
  - **Staff proposed condition:** See 3-303 - d & e1, above.
- c1. significant adverse net effect on wildlife movement patterns/displacement and adaptation of wildlife populations: preventing wildlife from using habitat they would normally use**
- **Applicant Submittal:** applicant (March 12, Page 29) indicates that a wildlife friendly fencing plan is being developed, and with the exception of excluding a

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portion of the Bighorn parcel for Hagen residential development, the properties will exist in agriculture.

- **Staff:** Also see a(1) above. The project operations may impact wetlands. It appears that the 15 acres affected by relocation of the Hagen residences includes some wetlands and a portion of the gulch formed by Bighorn Springs and Arnold Gulch; impacts on the wetlands could affect wildlife movement patterns/etc. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:**
- **Staff proposed condition:** See 3-303 - h.2, above.

**c2. causing wildlife to find new routes that expose them to significantly increased predation, interaction with vehicles, intense human activity, or more severe topography and climactic conditions**

- **Applicant Submittals:** The applicant (March 12, Page 29) indicates that the exception of excluding a portion of the Bighorn parcel for Hagen residential development, the properties will exist in agriculture. The next paragraph indicates that the only structures to be constructed on the two sites will be a total of four well houses
- **Staff:** See (c)(i), above. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:**
- **Staff proposed condition:** See 3-303 - h.2, above.

**c3. species to adapt to significant alteration of their current habitat**

- **Applicant Submittals:** The applicant (March 12, Page 29) indicates that with the exception of excluding a portion of the Bighorn parcel for Hagen residential development, the properties will exist in agriculture.
- **Staff:** See (c)(i), above. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:**
- **Staff proposed condition:** See 3-303 - h.2, above.

**c4. Ability of the specie or species to find a new habitat that is sufficient to sustain the species over the long term**

- **Applicant Submittals:** The applicant (March 12, Page 29) indicates that with the exception of excluding a portion of the Bighorn parcel for Hagen residential development, the properties will exist in agriculture.
- **Staff:** See (c)(i), above. Standard is not satisfied
- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:**
- **Staff proposed condition:** See 3-303 - h.2, above.

**d. development is designated and will be administered, controlled and regulated to allow man to function in harmony with, rather than be destructive to, significant wildlife habitats**

- **Applicant Submittal:** The applicant (March 12, Page 31) indicates that with the exception of excluding a portion of the Bighorn parcel for Hagen residential development, the properties will exist in agriculture; and discusses proposed wetland monitoring and land management.
- **Staff:** See (c)(i), above. Standard is not satisfied

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- **PC:** Concur with staff that standard is not satisfied.
- **Applicant proposed condition:** None.
- **Staff proposed condition:** See 3-303 - h.2, above.

**e. The proposed development has been reviewed and received favorable comment from the Area Wildlife Manager**

- **Applicant Submittals:** The applicant (March 12, Page 31) indicates DOW prior comments appear favorable
- **Staff:** Standard is satisfied if conditions in DOW letter are implemented.
- **PC:** Concur with staff that standard is satisfied if conditions on the Division of Wildlife letter dated February 24, 2009 are implemented.
- **Applicant proposed condition:** None.
- **Staff proposed condition:** Implement DOW recommendations, including exclusion of sheep from all properties, wildlife friendly fencing of perimeter and wetlands, land and grazing management, bighorn sheep habitat protection, and public fishing access.

**Additional proposed conditions, consistent with the County's 1041 regulations:**

- The permit shall not be issued until the Nwana has deposited with the County amounts necessary to cover all costs and expenses incurred by the County in processing the application, including outside consultant fees and expenses.
- Prior to commencing any phase of the Project, the applicant file a guarantee of financial security guarantying that the applicant faithfully perform all requirements of the permit and regulations adopted by the County, including without limitation, completion of construction and restoration, fencing, and the wetlands restoration project. The amount of such security shall be determined by the Permit Authority within thirty days of submission of a cost estimate submitted by the applicant meeting the requirements of Section 2-402 of the County's 1041 regulations.

County Development Services Director Reimer stated that there were eight basic topics, which were Planning document consistency, Traffic impacts, Economics of the project, Wetlands and wildlife, Groundwater monitoring, Water rights, Air quality impacts and Visual impacts of the project on visual quality. He gave a brief summary of these eight basic topics.

Chairman Holman ask if Nestle Waters wanted to respond to any of the issues that County Development Services Director Reimer had summarized.

Holly Strablizky, Land Use Counsel for Nestle Waters, stated that she believed many of these items had been addressed in documentation that the County received yesterday. She had filed a letter that had outlined numerous conditions of approval suggested as conditions of approval. She presented an overview of all the conditions of criteria for the 1041 that they had prepared for the County.

Chairman Holman asked if there were any public questions for Land Use Counsel Strablizky.

Carlos Boyd, Buena Vista, stated his question was to Nestle Waters and staff management. He had a brief discussion with Steve Hansen. There were six more acres of property available on the property at the Gunsmoke. If Nestle Waters were to get their 1041 approved, go through water court, start building the pipeline and loading station, he would ask that Nestle Waters put the building in the back of the property where it would not be as visible.

Chairman Holman thanked Mr. Boyd for his comment but currently the Board was only taking comments that dealt with Ms. Strablizky's comment.

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County Land Use Counsel Green stated that she may have caused the confusion as she might not have been as clear as she meant to be. Right now this was your opportunity to cross examine Ms. Strablizky based on what she just said, not to propose suggestions. The public would have time to comment later in the day.

Jim Ruggles, 1500 County Road 182, Salida, asked if the access was going to be available to the Ruby Mountain Area while Nestle Waters was building the pipeline.

Alan Rule asked for clarification about the 60 foot right-of-way. He asked if it was on the road or access across Nestle Waters property to the river.

Nestle Land Use Counsel Strablizky stated that the effected roads would be kept open during construction. Most of the pipeline alignment was on County Road 301 not on County Road 300. The revised site plan reflected where the proposed 60 foot right-of-way was currently a 30 foot easement that went through both properties and would be adjusted to 60 foot.

Bernie McMenemy, 252 Mesa Circle, Salida, asked if the trucks would be tandem trucks.

Nestle Manager Lauerman stated that the trucks would be 65,000 gallon semi- tractor trailers that were smaller than fuel trucks. There would be no tandem trailers used.

Commissioner Glenn stated that he thought that the DOW (Division of Wildlife) had stated they did not want trails crisscrossing the property, but did want a trail that would access the river. He wanted clarification on that.

Nestle Manager Lauerman believed that was correct on what the DOW (Division of Wildlife) had testified but the general access was not a good idea.

Commissioner Glenn stated that he wanted more specifics from the DOW.

Nestle Manager Lauerman stated that he had talked with Randy Hancock, DOW, that morning. He had surgery on his foot and was unable to attend today's' meeting but would keep them updated.

E. J. Sherry, Salida, asked who would be paying for all the extra work by the staff that should have been submitted by the applicant long ago.

Nestle Manager Lauerman stated that Nestle Waters was paying for this cost of County staff and consultants.

Jay Hake, 7133 County Road 178, Salida, asked for clarification of the in-stream access of the river for fishing.

Nestle Manager Lauerman explained that the in-stream access would be for water quality. The DOW would grant access of a camping and picnic area where people could wade and fish up stream in front of the property then fish in the river. This could be a problem if people would trespass on the other side. The DOW would have to place signage about the wetland project.

County Development Services Director Reimer asked about the river access at the Big Horn Property.

Nestle Manager Lauerman stated that there would be such a small amount of river frontage that it would not be feasible.

County Development Services Director Reimer presented the traffic and conditions that he felt would be need to be done by Nestle Waters to be compliant.

County Land Use Counsel Green asked if there was any evidence that there was a link between problems that could exist between traffic and tourism.

County Development Services Director Reimer stated no. There had been public comment suggesting that there was a link.

Nestle Land Counsel Strablizky stated one of the suggestions for the conditions was to have a traffic study done by December 2009. Nestle Waters already had went ahead and did that. The study had shown that there would not be a significant impact. Nestle Waters would work with Colorado Department of Transportation in the future.

County Land Counsel Green stated that the issue two meetings ago was whether speed behind trucks going up the pass was a concern.

Nestle Manager Lauerman stated that a certified traffic engineer had done the study. Peak times showed the road reached a level D. The traffic engineer would be at the meeting later in the day to answer further questions.

Mr. Boyd asked if it had been factored in that the Cristo Project might be adding to traffic problems.

Chairman Holman asked Mr. Boyd to keep that question until the traffic engineer was present to answer it.

County Development Services Director Reimer gave an overview of the condition of the economics of the project.

Commissioner Glenn asked about recreation and tourism. He stated that Mr. Scanga had commented on the potential consequences on agriculture. He asked if Nestle Waters had looked at that.

County Water Counsel Culichia explained that he did not believe that they had explored that aspect yet.

Commissioner Glenn asked about the potential drought and if there was a call on the river would that have an effect on agriculture.

County Water Counsel Culichia stated he did not believe that had been studied.

Steve Simms, representing Brown, Stien, Hyatt, Nestle Waters Water Consultant, explained call practices on the Arkansas River. He stated only 25% of Aurora's water came from the Arkansas, which was less than one half CFS a day. He stated you have to look at Aurora's water levels with the Prairie Water Project on line. This would not be a problem and would not change any water exchanger pattern.

Commissioner Giese stated that Mr. Scanga's concern was a 5 year drought and how that would affect the call rights in the basin.

Nestle Water Consultant Simms stated that was just not going to happen with the Prairie Water Project. This was Colorado River Water being used not Arkansas River Water. He explained all of the water decrees that had been established.

County Water Counsel Culichia asked if Nestle Waters would agree to a turn of condition.

Nestle Water Consultant Simms stated that there was a provision in the Aurora lease that in a stage 3 drought, which was Nestle Waters would have to stop pumping water until conditions improved.

Mr. Hake asked if Mr. Simms would give his opinion if the lease with Aurora would be only Colorado River Water.

Nestle Water Consultant Simms stated that was not water from the Arkansas River. It was all Colorado River Water.

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Alida Phillips, County Road 190 W, Salida, stated that she had just installed her third well on her property. She was right next to the Arkansas River. She asked how this would affect the wells in the area around Ruby Mountain.

County Water Counsel Culichia stated that this was not a question that would be addressed with the Nestle Waters Project. This Project would not affect wells in other areas along the Arkansas River.

Nestle Manager Lauerman commented on Mr. Scanga's statements. He had not received the documents supporting the 5 year drought.

County Development Services Director Reimer stated that a fax from Mr. Scanga had showed the snow packs from 1961-1980. He stated that the County's Water Counsel had not had time to review it.

Commissioner Glenn that stated he was having a problem getting his head around the entire over laps of items.

County Development Services Director Reimer gave an overview of 3-303-D Water Right and Standard of Water Rights. Staff had proposed a condition that augmentation other than Aurora and proof that the augmentation water would be delivered up stream from where Nestle Waters would be taken out. He stated that any of the augmentation water must be the Colorado River Water.

County Water Counsel Culichia asked that a condition for any change of water (Aurora) require reopening a new 1041 application.

Nestle Water Consultant Simms asked for clarification from staff that since the water supply would not be from Aurora, what their recommendation would be.

County Water Counsel Culichia thought that was the Upper Arkansas Water Conservancy District's comment not his.

Nestle Water Consultant Simms asked that Aurora water would be okay.

County Water Counsel Culichia stated that was a good water source.

Nestle Water Consultant Simms questioned the water triggering a whole new 1041 reopening.

County Land Use Counsel Green stated that if any particular condition was changed, it was at the Board of Commissioners discretion to reopen the 1041 hearing on that particular element.

Nestle Water Consultant Simms stated that there would be a possibility of a change of water source because the current lease was only for 10 years but would always be released above the source. The Aurora supply was a good supply and they would love to keep it. He explained the Water Court procedure.

County Water Counsel Culichia stated the criteria for water rights were different than the 1041 Criteria. He mentioned the Colorado Division of Corrections water rights that were currently on the market.

Nestle Water Consultant Simms asked Mr. Culichia to review the May 4<sup>th</sup> letter and then come back to this.

Chairman Holman felt that the dialog between the two Water Counsels had been very helpful to him.

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Nestle Water Consultant Simms and County Water Counsel Culichia had discussion between them and agreed that most of the points in this area had been addressed and condition had been suggested but wanted to look them over before commenting further.

County Development Services Director Reimer asked that the Board go back to economics.

Chairman Holman recessed the meeting for a ten minute break at 3 p.m.

Chairman Holman reconvened the meeting at 3:10 p.m.

County Development Services Director Reimer stated that they would go back to economics K 3-303-K-1-6. He introduced Peter Elzi, Nestle Water Economic Expert.

Nestle Economic Expert Peter Elzi, THK, 2953 South Peoria Street, Aurora, reported that he had a new economic impact packet. He had estimated the duration of the project to be 30 years as that was what Nestle Waters was planning. The assessed evaluation of the parcels would be about \$96,000 at 29% for commercial use. The big question was how the assessor would value the pipeline that would initially cost 2.4 million dollars. Then depreciation on the pipeline would be looked at by the State and the County Assessor. He explained how Tabor would affect the County's limits that they could collect. He explained the school tax cap limits and the state equalization. He talked about the new construction jobs that would bring money into the County. He gave explanation of the way the diesel tax was used in the form of Highway Users Tax Fund. The electrical use tax would not be exempt from the sales tax. The cost to serve was very hard to judge, but Nestle Waters had agreed to come up with a way to pay the County any direct costs to serve for Nestle Waters. He gave an overview of the \$500,000 endowment fund and the hiring of local drivers and its affect on the economy.

Commissioner Glenn had questions about the discrepancy on the actual amount of assessed value.

Nestle Economic Expert Elzi stated that the assessed value would be on the cost of the project. He explained what tax revenues would be expected in 2010 and how the Tabor Law affected it. He explained it was very difficult to estimate that was why Nestle Waters had agreed to some type of mitigation program.

Commissioner Glenn asked about jobs and construction. He asked if there was a break down of what jobs could be in Chaffee County and then others that would have to be done by out of county contractors due to not having such workers in the county such as the directions drillers.

Nestle Engineer Brent Clay stated there were only two types of workers that he was sure would not be local those were the directional drillers and the silo site fabrication cause they had not been able to find anyone in the County that did that kind of construction.

Commissioner Giese asked about the school district and the amount of money that would be new money. He asked if it would only be about \$5000.

Nestle Economic Expert Elzi stated he would check with the school district financial director.

Commissioner Giese questioned the cost to serve and what items they were thinking about.

County Land Use Counsel Green stated that the standard was no net adverse impact but would have a positive impact. She wanted to know what the savings would be for the taxpayer.

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Commissioner Glenn stated that he would like to know how much a \$250,000 homes taxes would go down.

Nestle Economic Expert Elzi stated that he would get that information from the office and later in the meeting, he would give that information to the Board.

Steve Hansen, 2735 County Road 310, asked about construction wages and how many times would that turn over in the County. He stated that if 2.3 million dollars turns over twice that would mean that would be close to 6 million dollars in the county's economy.

Mr. Ruggles asked if there was anything in the TKH report about the possibility of long term litigation and who would pay for that.

Nestle Economic Expert Elzi stated that they did not include the cost for possible long term litigation.

Joice Fairchild, Salida, asked if the project was not approved and the land was sold to someone else and they built a hotel or shops of some kind, would there be the same economic impact.

Nestle Land Use Counsel Strablitzky gave clarification of the Colly Forrest Report, which was a one time benefit. She stated there was only way to look at it which was if the land was used any other way it would be the same.

Mr. Boyd asked what the net gain would be for Nestle Waters.

Nestle Manager Lauerman stated that numbers were between 30 and 65 million dollars that had been tossed around were nonsense and did not take into consideration of the investment of \$15,000,000 that will take years to recoup. Then Nestle Waters would only realize a 5.6% income of profits.

Lawrence Griffith was excited because what this might do was create 6 -12 truck driving jobs in Buena Vista.

Mary Frazee, Park County, stated that her friend's husband had been fired from driving for Nestle Waters and they live in Broomfield. She asked for an explanation.

Nestle Manager Lauerman restated that Nestle Waters' commitment was to hire half of the drivers from Chaffee County

Michelle Riggio, 233 F Street, Salida, asked if it was true what was stated in the Mountain Mail that there would be 2 million dollars in construction and 2 million dollars in sub contractors.

Nestle Manager Lauerman stated that this was not the first time he had been misquoted in the newspaper but that the 2 million plus would be in contracts which was for labor and materials.

Ms Riggio asked about the endowment and who would be handling it.

Nestle Manager Lauerman stated that he had not heard from the people who were setting up the endowment, but was anxious to get this worked out in the near future.

Steve Edmonds, 30433 Habitat Drive, Buena Vista, stated that he had a question for the Board of Commissioners.

Chairman Holman told Mr. Edmonds that the Board of Commissioners could not answer questions because this was a public hearing.



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Mr. Boyd asked if Mr. Lauerman had talked with the contractors or the other trucking outfits here in the County.

Nestle Manager Lauerman answered no.

Robert Barney, County Road 160, Salida, asked what each property owner would be saving in taxes.

Nestle Economic Expert Elzi stated that he would call his office during the break and will get that number.

Nestle Land Use Counsel Strablizky presented some clarification on the amounts over the next 30 years. They were now comparing apples to apples. She presented the Nestle Waters answers to the affects on items 3-202-K-1-6

- K-1 No impact on agricultural land or recreation
- K-2 Once construction was completed, there would be no visual impact and once the hatchery was restored a positive impact would be seen.
- K-3 Recreational experiences will not be impacted and would be improved in the visual aspects of Johnson village and the Land Management Plan showed this.
- K-4 Over and above cost, taxes would overall cover cost and get best of extraordinary costs tax revenues will be greater.
- K-5 Same as K-4 answer
- K-6 Spring water was a renewable resources that would come back year after year.

Benefit: Land management plan, Restoration of Hatchery, they are working towards make this a conservation easement, bottling labels stated Chaffee County Water, working with DOW (Division of Wildlife) for public fishing access were applicable, school groups will be encouraged to visit new wetlands for educational studies.

County Land Use Counsel Green stated it seemed like the idea of conservation easement had been listed as part of the application by discussing that the property would not developed. She asked if it would be possible if Nestle Waters would consider a conservation easement to simply amend their application and then be eligible for the conservation easement tax benefits and use that in their plus column.

Nestle Land Use Counsel Strablizky stated that they had talked with counsel. It was a condition of approval and it could not be a benefit.

Nestle Manager Lauerman stated that the answer might be maybe. He stated that Nestle Waters always tried to make the area a conservation easement, but staff had equated meeting the criteria with part of the approval and a condition. The Land Management Plan included raising management stream, bank fencing, Big Horn Sheep protection, wetlands fencing and wetlands monitoring. These were all part of the Hatchery Restoration Programming. This did not prove that they were going to protect the land. The written report was given a red-line version and the table or chart showed how Nestle Waters felt. They had complied these with the staff recommendation.

Commissioner Glenn asked if there was a permanent loss of the opportunities associated with that resource. He heard Nestle Waters stating that this was a short then a long term project. His question was if Nestle Waters left the project who would own or who would have access to the springs.

Nestle Manager Lauerman stated that the opportunity was there when it was bought and will be there if Nestle Waters was not permitted to use the area. Nestle Waters was looking to do this but would be more willing to do so if the County would show some Quip Pro Quo.

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Nestle Land Use Counsel Strabizky stated that Nestle Waters would only be using about 10% of the water from the springs as the rest went back to the river. Nestle Waters was committing itself to restoring as part of a condition the fish hatchery and that was a big benefit.

Chairman Holman asked if Nestle Waters should stop pumping and by stopping augmentation would the water just go back down the river.

Nestle Manager Lauerman stated that he did not want to leave Chaffee County but in the event they would leave Chaffee County, they want to leave the water. He paraphrased "If you put up a windmill to capture wind, then five years later take the windmill down, the wind would still be there".

Commissioner Glenn stated that he still had a few questions. The first one was regarding the duration. He asked if the permit was for 30 years, then what happens. His second question was what the loss opportunity that might happen was.

Nestle Manager Lauerman wanted to focus on the opportunity of what Nestle Waters would bring to the count. No one had a crystal ball but one of the opportunities he saw was working with their neighbors. He stated whether this was permanent or temporary, Nestle Waters was putting in a lot of money and did not want it to go away. The 1041 Permit requirements were only about those impacts during the project.

Lawrence Griffith stated that he was very impressed with the Nestle Waters group and their arguments. He would really dread for there to be a conflict between the Board of Commissioners and Nestle Waters. He asked if there was some type of arbitration for the full litigation of the application.

Nestle Manager Lauerman stated that there had not been any discussion on that. Every step had been to work with everyone. Nestle Waters had made consideration to the County.

Bob Grether, 502 Ouray Avenue, Salida, stated that as a retail business man in Salida, he was concerned about the traffic. It was disturbing that about 13% increase would be caused by the truck traffic. His concern was in peak traffic times. On a personal side, he had moved from California in the Bay area because of the traffic problems. He encouraged the Board to deny the application.

Mr. Ruggles stated that he had respect for the Board of Commissioners. He disagreed with the traffic study analysis. He felt there were more trucks on the road than the traffic engineer. He did not feel Nestle Waters was a good neighbor. He requested that the Board if they did approve this, to place in the contract a stipulation that if there were any litigation or lawsuits that Nestle Waters would have to pay for that.

Bev Coggins, 27395, County Road 301, Buena Vista, commended the Board of Commissioners for all of their hard work that they had done on the project. She had spent the last day and a half calling communities across the country that Nestle Waters were in there communities. She recommended that the Commissioners take one day, call these people, talk to them and ask them the pros and the cons. She had learned a lot. They can be very good to work with and in some places very hard to work with. She felt that if the Board really wanted to make a good decision, they should take the day and call these people.

Rhonda Walton, 1426 H Street, Salida, stated that she was against the project. She had concerns about the wetland and the traffic that the project would cause. They would harm her local business.

Marilyn Moore, 414 East 2<sup>nd</sup> Street, Salida stated that she had sent a letter to the Board of Commissioners with her concerns but she wanted to correct a miss impression that the Board might have gotten by the statement of Nancy O'Connor that it was our water. According to the Constitution the water is owned by the citizens of Colorado. There were

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people that own property rights. She stated that what the Board had to consider was bottling our water, shipping it out of state and that was not fair to the citizens of Chaffee County.

Nestle Manager Lauerman stated that Nestles was trying to work with everyone. They had made many concessions to the County. He stated that a 1041 could be a tool for the County to have smart growth and could be used as a hammer to not let anyone in. He stated arbitration was better than litigation. He ask the County to use this process as a good tool to help the County grow.

Sterling McQuinton, 15824 County Road 250, Buena Vista, asked how did Nestle come up to use only 10% of the water. He asked if there was any sort of cap to keep Nestle from asking for more water.

Nestle Manager Lauerman stated that what Nestle needed was 200 acre feet and 10% of the springs output. If Nestle in the future would find that they were able to use more than the 10% or 200 acre feet of water per year, they would have to reopen the 1041 process again. They were not contemplating doing that at this point and time.

Chairman Holman stated that there was a quick answer on the property tax question that had been asked of Mr. Elzi.

Nestle Economic Expert Elzi stated that a point had been brought up concerning the schools in Buena Vista's amount that would be received for the building repayment through the taxes and using the 2.4 million dollars tax the amount would be \$13,000 instead of the \$5,000. The amount of reduced taxes would only be about \$1.00 per household which is not significant but is still a positive to the County.

County Planner Reimer stated that the applicant's traffic engineer was now in attendance. He would like to check the traffic numbers that Nestle had used.

Martina Wilkinson, Wilkinson LLC, Traffic Engineer and Analyst for Nestle Waters, stated that many of the questions that had been presented by the public had to do with time sent following. The PCE (passenger car equivalence) for a truck would be 3 PCE meaning that the equivalent of a truck would be the same as three passenger cars. When CDOT (Colorado Department of Transportation) did studies for passing lanes, they use that equation. In her analysis, it would have been the easy way to do this. To say they have fifty truck trips a day, twenty five that would be uphill which would be equivalent to seventy five cars, but that was not really a fair way to do the analysis because of the heavy vehicle component. She had software that calculated and figured what the equivalent would be for the particular corridor. For the capacity calculations for this particular corridor was at 4.7, which made this a more conservative analysis. The steepest parts of the corridor would be a nine. Therefore, all that would be taken into consideration when figuring out the PCE for the corridor. Traffic counts were very important. She had done her own counts in 2008 in the early fall which seemed lower because of the high gas prices. She stated that CDOT had done counts back in 2006. She had used the two of them to get a baseline count. There was an automatic traffic counter embedded in the pavement on the roadway.

Commissioner Glenn asked when the peak traffic hours were and did they change on different days of the week or different months.

Nestle Traffic Engineer Wilkerson stated that there was a fluctuation between months with July being the highest. There seemed that most of the peak hours were about 3:00 p.m.

Mr. Ruggles asked what percentage of increase would be with the Nestle Waters trucks opposed to the traffic right now.

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Nestle Traffic Engineer Wilkerson stated that would vary, such as in the middle of the night if there was currently one truck per hour. With Nestle Waters truck it would be two so that would be 100% increase. In July during peak hours, there were thirty trucks. If you add one, you would have thirty one trucks. There is a big difference when you try to rationalize this.

Al Rule, 774 County Road 4, Howard, asked to address the inconvenience to the driver of a car in July that had to follow a truck.

Nestle Traffic Engineer Wilkerson stated that was why they came up with the time percent following the middle of the night it would be a very small percent but in July during peak hours that percent would be about 75% and with the Nestle Waters trucks that might go up to 76% time spent following.

Jay Emerick, 29855 County Road 354A, Buena Vista, asked if she was looking at a 20% increase or did she look into the safety portion of this. He stated sometimes someone who passes you and the truck at the same time.

Nestle Traffic Engineer Wilkerson stated that the analysis did factor that in.

Mr. Emerick asked if accidents were factored in.

Nestle Traffic Engineer Wilkerson stated that from the CDOT crash data stated that the downgrade and motorcycles traffic contributed to a good deal of the accident crashes in the corridor. The data that they had from CDOT did not show that crashes caused by passing slower moving trucks were a safety problem in this corridor.

Mr. Emerick asked if the exposure time going up hill was factored in.

Nestle Traffic Engineer Wilkerson stated that most of the crashes involved had excessive speed contributed. This particular corridor was in the jurisdiction of CDOT. Safety was a result of multiple items and very complex other than just a truck going to slow. One third of all of the traffic accidents in the corridor were with a wild animal. She stated accidents become a very complex situation. In the past history of this corridor, the heavy truck being involved was very under rated in the analysis.

Lee Hart, Salida, asked if this analysis had anything that projected out thirty years and what traffic might be at that time. She asked about the level of services like C and D if she could give a name of a corridor that had these similar levels of service.

Nestle Traffic Engineer Wilkerson stated that she had not done a time spent following analysis on other corridors such as this but what she could say was a capacity level of service which was also looked at was one of the things that they had looked at in the corridor. They were A or B levels, B being in the busy part of the summer. She stated that time spent following in almost every mountain corridor where you have volumes above a thousand, there are going to be service levels of C or D or even E. The reason being because as soon as you get above the 50% time spent following and you are going up a corridor half of your time will be spent behind some type of vehicle and the level of service will get into those levels of C, D or E. You do not get into level F until you would be at the maximum volume of the corridor. She explained the levels of service and how they worked.

Ms Hart asked if there were any other studies that maybe the Feds or somebody had done that showed what might trigger the change of patterns of travel in a certain corridor.

Nestle Traffic Engineer Wilkerson stated that she had never heard of such a study. People choose different travel routes when there is congestion and this corridor is nowhere near that point.

Ms Hart asked if choke points such as Bailey had been looked at.

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Nestle Traffic Engineer Wilkerson explained the highway capacity of the corridor and road all the way to Denver.

Ms Hart asked if there were higher impacts in July would Nestle consider a condition to run trucks at a different time of day during peak hours.

Nestle Manager Lauerman stated that it was in the best interest of everyone to spread the trucks out over a 24 hour period and to base their decision on science.

Mr. Rule asked if he was saying that Nestle Waters would have no impact on the people of Chaffee County.

Nestle Traffic Engineer Wilkerson stated that the impact of the traffic would be very insignificant to the traffic in Chaffee County.

Jane Browning, 774 County Road 4, Howard, asked if what Ms Wilkerson was saying was that safety issues were of little consequences because they were not easily measurable and being basically ignored. There were safety issues that she was not sure of that negates the concerns.

Nestle Traffic Engineer Wilkerson stated that she did not mean to imply that safety was not important. You have to look at this as a more holistically at the project use. You can only look at and address the issue if you have the data, but CDOT will not release that information.

Chairman Holman recessed the meeting at 6:00 p.m.

Chairman Holman resumed the meeting at 7:05 p.m.

County Planner Reimer stated that if they had finished with traffic, he would move on to air quality. He had received a document on May 4, 2009 that identified information on the truck emissions. The staff recommended limiting truck traffic to two trucks per hour in any day for a total of 25 trucks per day. During the Planning Commission Hearing on the Special Land Use Permit, the applicant had agreed to a condition that the truck shall not idle during loading. Furthermore the staff had recommended a condition of requiring that any trucks used in hauling be 2007 or newer and met the best emissions standards.

Lonnie Godin, AE Common Environment, Fort Collins, stated that she had helped put together the emissions packet presented to the Board. She stated that the trucks with be 2007 or newer and explained the EPS standards for diesel trucks and the public health emissions standards.

Nestle Manager Lauerman stated that Nestle Waters would agree to the condition to limit traffic to two trucks per hour per day, no idling while loading and the use of trucks that would be 2007 or newer. He asked with these conditions would staff and the Board feel that this standard had been met.

County Planner Reimer stated that he felt they would be met.

Nestle Manager Lauerman asked if there were no more questions for Ms Wilkerson or Ms Godin. If not, he asked if the Board would allow them to leave the meeting.

County Planner Reimer stated that would be alright. He stated the next standard to be addressed was 3-303-3 H 6, existing visual quality. This was mostly concerning the Big Horn Parcel and the restoration of the fish hatchery. He explained the Planning Commission had agreed that the restoration of the fish hatchery would be a positive. He felt that it just needed some wordsmithing done to the condition. There was a question on the Hagan residence building envelope that might be needed to meet this standard. He explained that the area of the Big Horn Springs and how the lay out was.

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Commissioner Giese asked how County Planner Reimer felt if there would be a problem if the current fish hatchery and the current buildings were going to be taken out.

County Planner Reimer explained that there was a concern if those buildings were taken out and moved up to the Big Horn Springs property. It would not be a positive impact.

Nestle Land Use Counsel Strablizky explained that the plans showed that the Hagan property did have a building envelope. She felt it was important to note that the property was zoned rural regardless. These are two houses that are only potential if the Hagans' decide to build something that would not be part of the Nestle Waters Application. It would be a use by right application that the Hagans' would have to apply for. They had committed to a one acre building envelope with the Hagans'. This would not be part of the 1041 application.

Commissioner Glenn asked if Nestle Waters owned the whole Big Horn Property.

Nestle Land Use Counsel Strablizky stated that the property would be deeded over to the Hagan property as soon as they purchased the property.

Commissioner Glenn stated that he did not understand how that would work with the river and the wetlands on the property.

County Land Use Counsel Green stated that the application before the Board was for a particular land use, which included using the springs, the load out facility and did not include anything more than that. Nestle Waters was not seeking any approval or proposing anything on the Hagan Parcel. She stated that the Board was on notice that the Hagan Parcel would be carved out and would not be protected. Therefore, when the Board go to weighing the benefits of the project, they can not assume that would also be protected, but likewise the Board can not assume anything about the impacts of this development either. She stated it was just not before this body.

Nestle Land Use Counsel Strablizky stated that Nestle Waters and the Hagans had agreed on an area of land that they would be allowed to build. There would be restrictions on that land that would mirror Nestle Waters preservation techniques on the balance of the other portions of the property.

Nestle Manager Lauerman stated that Nestle Waters had put an option on the Hagen property, the sixteen acres on Ruby Mountain and part of that option required that Nestle Waters deed fifteen acres on the Big Horn property to the Hagans if they executed their option. They were committed to that although they owned the 115 acres on the Big Horn Parcel. If this project come to fruition, they would have to carve out fifteen acres of the Big Horn Parcel for the Hagans to do whatever they wanted to, but the Hagans' would have to go through County process to do whatever, they pleased with that land. Nestle Waters had not included any development on that fifteen acre parcel. It was very well identified on the plan as well as the one acre where there might be two homes built. The deed restriction with the Hagans also included what they could and could not do to the property. The restrictions included that the Hagans could not junk it up, they could not store hazardous chemicals and some other things. Nestle Waters had done that to protect their business interests. The DOW had testified that even if there where homes built on that property, they did not feel that it would be detrimental to the environment of the property.

County Land Use Counsel Green asked if Nestle Waters was considering amending the proposal to exclude the Hagan Parcel that would mean that no one could use that parcel for the water project.

County Attorney Davis stated that she felt that Nestlé's position had always been that the fifteen acres in question had always been excluded and what staff was struggling with

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was where the fifteen acres would be located. Staff was aware of the exclusion but the concern was the relocation.

Nestle Manager Lauerman agreed that staff had been aware of the exclusion but this parcel did not have a survey of meets and boundaries, just a general area on the west side of the Big Horn Property. The one thing that had been stated a few times was that this building envelope was in the wetlands and that was not the case. The wetlands were located on the east side of the property.

Commissioner Glenn stated his concern was the location of the fifteen acres and if it would have any impact of the standards.

Nestle Manager Lauerman stated that he hoped that the figures shown today cleared up the confusion.

Commissioner Glenn stated it had.

Nestle Manager Lauerman stated he could not tell the Hagans where they had to put the building envelope.

Commissioner Giese stated that he was changing subjects. He wanted to know what the timeline was for the restoration of the fish hatchery.

Nestle Land Use Counsel Strablitzky stated that information was in the documents that the County had received on May 4, 2009. It stated that Nestle would restore the Ruby Mountain Fish Hatchery and must present to the County a restoration plan within six months of approval of the application. Within two years of the approval date, Nestle must complete removal of all residential structures on Ruby Mountain, must provide approval of documentation to the County from the required review agencies when granted and must complete the entire restoration project as identified by December 2014. These could be changed if necessary. She explained the process of getting this approved by the Federal and State agencies.

Nestle Manager Lauerman stated that this was going to be a collaborative effort to get this done. Ultimately this would need to be permitted by the Army Corps of Engineers.

Mr. Hake asked if the Special Land Use Permit request area on the Hagan property been surveyed and if not how do we know where that particular area would be.

Mr. Boyd asked if the wetlands and the home sites were part of the presentation that Mr. Lauerman had given.

Nestle Manager Lauerman stated no they were not.

Nestle Land Use Counsel Strablitzky explained the way the 15 acres on the Big Horn Springs Property would be separate from the land that would be used in the Special Land Use Permit Process. One of the problems with providing a survey with metes and bounds would be that it might be considered a subdivision and that was not the situation.

Nestle Manager Lauerman stated that if it was necessary then they would do a survey to give the exact location. He asked if they did this would that exclude this from the application.

County Land Use Counsel Green stated that staff had been struggling with this. If they knew specifically where that parcel would set, then the staff would know if there were any possible impacts associated with the parcel. Because the application had mentioned the 15 acre parcel, the staff assumed it was part of the application.

Nestle Manager Lauerman stated that during all of these meetings and in the application, Nestle Waters had stated the benefit had always been explained as 115 acres of the 130

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acres would be of benefit to the County as open space, including 16 acres at the Hagan Property and 114 acres at Big Horn Springs Parcel.

County Development Services Director Reimer stated that there was a USGS topographical map that had a scale of about ½ inch was 1000 foot. No survey control or boundaries of the Big Horn Springs area was submitted on February 23<sup>rd</sup>. The application had been submitted on November 3<sup>rd</sup>.

Nestle Manager Lauerman stated Mr. Reimer's response was that he needed survey control on this location.

County Development Services Director Reimer stated yes. He had pointed out at the March 18<sup>th</sup> commencement of this public hearing, it was challenging to the staff to identify the location of that exclusion as it related to the Big Horn Springs Parcel.

Nestle Manager Lauerman asked if he specifically asked for a survey.

County Development Services Director Reimer stated that he did not know if he specifically had asked for a survey. He had said it was difficult to identify the specific location of the parcel on that property.

Nestle Manager Lauerman stated that one thing he could tell them was whenever they had been asked for information by staff, the Board, public or anybody, they had worked very hard to provide that information. If they did not give the staff what they felt they needed it was because they did not make it clear what their request was. They had all along considered these fifteen acres to be excluded. They had provided a figure that had general specified that, an improved figure. If a survey was needed, they would provide one. The inference that they had tried to hide this for months that was not true.

Commissioner Giese stated that his issue was that the Board knew that they had fifteen acres but the question was where it was going to be. This was the bottom line that he needed to know. He asked to please show them where are they were going to put it.

Nestle Manager Lauerman stated he realized that it was a question on credibility, so he wanted to make a statement on that. He asked if we could move on if we could provide the metes and bounds of the approximate location.

During discussion, the Board concluded until they knew the location this would be an outstanding condition.

Nestle Manager Lauerman stated that the Division of Wildlife had told him that the general location of where they had felt the homes would be built would not be a problem to wildlife or wildlife habitat. He had heard the Board and they would provide a specific location and look forward to get past this one.

County Development Services Director Reimer stated that the next item would be a continuation of water rights.

County Water Counsel Jim Culichia stated that he had received an e-mail from Terry Scanga at 2:55 this afternoon.

Nestle Manager Lauerman stated that it was his understanding that no further written comment would be taken after noon yesterday. He did not feel that this e-mail content should be discussed or be allowed in the record.

Chairman Holman stated that he felt that would constitute opening of written comments and those were closed. He asked Mr. Culichia to continue without mention of Mr. Scanga's comments.



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County Water Counsel Culichia continued stating that the bullet items in the letter of May 4<sup>th</sup> from Ms. Strablizky would be gone over one by one and comment on items that had not met the standards. The top five items in the memo were almost word for word and did not need further discussion. The sixth item that stated there would be a maximum of two wells on the Ruby Mountain Site with peak withdrawal rate to be no more than 250 gallon per minute. He stated that related to some of the comments that he had in his memo to the Board dated May 3<sup>rd</sup>. He did not think there had been a complete agreement between staff and the applicant on this issue. One of the issues that were made in his memo was yesterday after consultation with Mr. Thompson and Dr. Koln from GEOMEGA related to Ruby Mountain and the need to conduct additional testing of the aquifer. He thought his discussions with Mr. Sims in the last few hours there was a need for additional pump tests and well tests at the Ruby Mountain Site. Staff had recommended that there be additional pumping tests at the site because more was needed to determine the hydrological impact at the site. He would recommend a monthly cap of 1600 foot and a daily cap of 1 acre foot per day with was 250 gallons per minute. These were things that he recommended. The next item was concerning any change in the original water source and whether that would reopen the permit process. He stated that Mr. Sims had proposed that if there was a reopening that it be limited to the permit issues directly related to the water supply. If there was a change from Aurora Water to another source, Nestle Waters would have to open a new application. He did not feel that any judgment on that issue needed to made today.

Commissioner Glenn asked if that meant that if Nestle Waters changed the water source they would have to open the complete process over again.

County Water Counsel Culichia stated that the applicant would fill an application identifying the areas of the criteria they believed were relevant and that would be the process assuming the staff agreed that those criteria's were the only one involved. If staff did not feel that traffic was a concern, then they would not request that information. It would be somewhat of a mini 1041 Application.

County Land Use Counsel Green stated that would be true with any condition that the applicant needed changed or if a condition was made in the final application changed.

County Water Counsel Culichia stated that staff wanted it to read was if there was a change in the water source, the applicant would require a reopening of the permit.

County Land Use Counsel Green stated that she felt that it should say any change in the augmentation source would require a permit amendment to ascertain the impacts that change.

County Water Counsel Culichia stated that one of the benefits of the Aurora water was that it was trans-basin to the Arkansas River. The suggested condition that the water augmentation source as the Lake County waters that Aurora owns. The other component of the pump test was the redevelopment of the wetlands. He stated that the wetlands were going to be rebuilt in that location but they did not know what the origin of the wetlands was at this time. The last condition was that there be no water rights acquisition to enhance the physically supply water project. It was the recommendation that the Big Horn Site be excluded because of the lack of information that could only come from pumping monitoring in that area.

County Development Services Director Reimer stated that the wetlands criteria were wetlands, wildlife and ground water monitoring all sort of tie together. He felt it would be a good discussion on each of these. He stated specifically to wetland and wildlife the criteria of 303-3-1 h 2 and h3 plus 9- 303-a1-a2, 303-3-b3-4and c1-6 and ground water 3-303-f2 since there was only one underground water monitoring. Staff's original comment based on the consultant reports was that the standard was satisfied. The Planning Commission's recommendation had some concerns that the aquifer up gradient of the project may be inactive and recommended upgrading ground water a monitoring plant may be required. Nestle Waters had submitted a draft of monitoring plans.

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Nestle Manager Lauerman addressed the monitoring of both parcels stating that they had been monitoring this since last year. They would continue the monitoring. If approved, they planned to create a ground water monitoring plant as had been recommended by the Planning Commission. They had not received any comments back from staff on the monitoring plan.

Commissioner Glenn asked how could the pumping at Ruby Mountain affected the springs which would be up gradient which would be the water supplies for the Bassam Basin. He also asked under what conditions the pump testing would give the Board that information.

Nestle Manager Lauerman stated that water that supplies the springs did not go up to that area. It came down from the Johnson Village area. These were called century wells. It was hard to believe that there could be any affect to the Bassam Basin Wells because those were in a different range.

Dr. Kolm stated that he would agree with that because it was unlikely that it would hit the Bedrock Springs.

Nestle Hydrologist Dennis Albaugh, AE Com, wanted to address this issue. From his prospective in view of the data that they had collected over the last few years in both locations Ruby Mountain and the Big Horn Springs, he wanted to go back to what Mr. Lauerman had commented on, a very valid point, from what he understood. He still had not seen a map of the location of these springs at the Bassam Basin and the Bedrock Springs but to his understanding both of those were up at a higher elevation and would be hydrographic to the ones Nestle Waters was dealing with at Big Horn Springs and Ruby Mountain. The Nestle Waters Springs were in an unconsolidated alluvial aquifer springs. They had been doing observed monitoring and had not seen any draw down. He suggested that there would be minimal to non existing impact.

Mr. Boyd wanted to state that he felt that Mr. Scanga's e-mail should be heard because he was a government official and for the benefit of the public that testimony should be held.

Chairman Holman thanked Mr. Boyd for his comment but stated that all written comment was closed.

Nestle Water Consultant Steve Sims stated he wanted to address Mr. Culichia's comments and also address the new condition concerning the up gradient recharge. On the reopen issue, Barb Green's suggestion was a good one but he would like to persuade the Board that this might be one of those terms that they might want to deal with up front. Regarding the addition of a new or different augmentation source, the lease is for 10 years with a 10 year renewal. There was the possibility that Nestle Waters would be at sometime in the future talking about a new source. Nestle Waters had spent a lot of time, energy and money on both sides of the table dealing with this. When there is this type of situation where there may be change in the future, it is not beyond your power to set some condition as to where you can go in and make a change without having to go through the process. It just becomes another part of the project. The reason he was mentioning this was not only because of the limited term of the lease but it was extremely common provision in water court decrees and even in such a water supply plans that an applicant be allowed to bring in new sources of water. Usually the other parties are allowed some warning before that happens. They would certainly commit to working with the staff to make sure that the staff had an idea of what they had in mind before they moved forward with any change in the augmentation. He stated but you have to ask yourself why we care about the augmentation source. The reason is how it connects back to the criteria in the 1041 Permit and Regulations. As long as that source was upstream of the springs, which is a very important factor, but another very important part of the criteria would be that any economic harm to the County in the event that Nestle Waters would go and buy agricultural lands and dry it up to make water available for

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augmentation. He stated that was obviously a very important detail that you would want to make sure that you had the right to say no in that situation. He did not understand why it made any difference where it came from, whether it is Colorado Springs, Denver, Eagle or wherever. He felt it would be best to address this now, so they would not have to go through this whole process again sometime in the future. Hopefully none of them would be around when that happens in the future. He would like to set some type of criteria. The Nestle Waters proposal as long as it was released above the place of depletion and as long as it was new water that did not come from dry up of any Chaffee County lands, they should be able to add in that source. In the event that you do want to open it up again to Ms Green's suggestion.

County Water Counsel Culichia stated that he at this time was not able to figure out all of the potential ways that could be done and that would force them to do that in advance. He stated as he had seen over the years people had very creative ways when it came to moving water around. He would hate to try to guess what it was going to be like in 20 years. It would not be his recommendation that the County try to grind out all of those different potentialities at this point.

Nestle Water Consultant Sims asked if the 1041 regulation criteria was what they really wanted for the goal.

County Water Counsel Culichia believed that was the jurisdiction of the Commissioners.

Nestle Water Consultant Sims stated regarding the recharge issue, when Mr. Culichia stated that he wanted a term that stated that Nestle Waters could not go out and acquire other water, not for augmentations their depletions but acquiring other water in Chaffee County to replace some of that water in the recharge to ensure that the alluvial aquifer continued to have a good production. He would ask the Board to remember that was not part of Nestle Waters proposal so that would be speculative to add that as a term. He stated secondly think of what you are doing. We all know because we all talked about it. The Department of Corrections had stranded water and had contacted Nestle Waters. They had asked them to help them to participate in acquiring this for them and use it as part of their regional supply. In doing that they would continue to insure the irrigation practice would be continued at least to the decree so that the recharge would continue to occur thru the deep percolation through the irrigation process. This was not part of this application. He stated that these had been discussions that had occurred. He asked why you would want to say no to this right now as it seemed to him that this might be very fruitful to encourage. He was just suggesting that the Board leave that one alone. He asked Mr. Culichia if he had miss understood that there had been a memo dated May 3<sup>rd</sup> or 4<sup>th</sup> that Nestle Waters had not seen to this point.

County Water Counsel Culichia stated that there had been a memo dated May 3<sup>rd</sup>.

Nestle Water Consultant Sims stated that they had not received that memo. He would like the opportunity to review it and respond to it content.

County Water Counsel Culichia thought it had been distributed but most of the items in it had been discussed today.

Mr. Boyd asked the two gentlemen about the expansion of the Moltz reservoir. He thought that in 2002, this drought period that Mr. Scanga had talked about when Mr. Moltz had filled that reservoir and the Hagan hatcheries wells dried up or the ground table dried up during that time in that same period. He stated there was only so much water.

Chairman Holman asked if there was a question in that.

Mr. Boyd stated that what we were trying to establish our litigation during a drought here. It could be 7 years from now and the question was what caused the springs to go dry back then and we did not know what future water would be coming from and when the reservoir gets filled on Mr. Moltz's property that could dry up below again. The question

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was we needed to establish a baseline on what had happened right immediately area in the past. In the baseline did you figure out what caused the drought in 2002. No one knows the answers. That was why he felt Mr. Scanga's testimony was so important. He wanted to know why they could not hear Mr. Scanga's testimony.

Chairman Holman stated he felt that would be opening a can of worms, as the Board had set a date and a time that all written information needed to be in by. Mr. Scanga's e-mail arrived well later than that date and time. If the Board allowed this to be read into the record where would they draw the line. He stated he did not want to go there.

County Land Use Counsel Green asked Chairman Holman if the Board did not close the public hearing tonight and start deliberating, she assumed that the public would have an opportunity to speak and ask questions at the next meeting. If so would Mr. Scanga, who is or is not a public official, based on who was talking, have an opportunity to present oral testimony at that next hearing.

Chairman Holman stated Mr. Scanga would have that opportunity at that time and would have had that opportunity today had he been here.

Mr. Hake asked what Mr. Culichia had meant by the fact that the Big Horn Site would be excluded.

County Water Attorney Culichia stated excluded from the production of water.

Mr. Hake asked if there had been a determination if there was going to be another meeting on this. He asked if the Board had set a date yet.

Chairman Holman stated that they most likely would have another meeting but the date had not been set. It would be determined at the end of the meeting tonight.

Nestle Water Consultant Sims wanted to clarify that the Big Horn Site was being excluded as it had slipped by them. He asked if the reason Mr. Culichia had requested the site be excluded was because they did not know if the pumping would affect the wetlands.

County Water Counsel Culichia stated that was correct because the previous consultants even Nestle Waters consultants had recognized that the impact to the Big Horn Site could not determine what the affects would be. He stated that was the basis of the recommendation.

Chairman Holman recessed the meeting for a break at 8:30 p.m.

Chairman Holman reconvened the meeting 8:45 p.m.

County Planner Reimer stated that they had left off at was a discussion of the wetlands particularly the Big Horn Parcel. He did want to run through the criteria and staff comments on potential conditions that maybe utilized to satisfy outstanding issues. He stated item 3-303-3 e 1 which was related to changes to water quality. The staff comments that the Board should comply with the recommendations make by County Water Counsel and incorporating their conditions. The applicant had proposed conditions relating to on going wetlands monitoring and mitigation. Staff came up with a number of proposed conditions including exclude pumping and monitoring would not resolve issues related to wetlands at that site. The second was to have longer pump tests at the Ruby Mountain Site so that aquifer boundary conditions could be better established. The third was that the County should have approval authority over the wetland restoration for Ruby Mountain including the wetland species. The fourth was the pelzometers and monitoring wells would be installed. No pumping could be done at the Ruby Mountain Site when the water level was at or below the level that the wetland needed to be sustained. He stated h-2, the project would not significantly deteriorate the wetlands and flood plain areas. Again staff had some comments related to the relocation of the Hagan residences and

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whether or not that would include some wetlands and a portion of the gulch by Big Horn Springs and Arnold Gulch, based on the site plan that was received yesterday that may or may not be true. They did need to further analyze and review that submittal. The applicant had proposed a condition in their April 2<sup>nd</sup> letter relative to the wetland monitoring. The staff proposed condition was E -1 above a wetland monitoring plan and delineation of all springs wetlands and riparian or zones and sensitive areas which may be impacted by the project. Some of those may include some areas that had not previously been identified by the applicant. No pumping operations shall occur until baselines were established. County consultant review monitoring plan and monitoring review plan applications, satisfactory grazing management well and wetlands monitoring and land management plan were essential to determining impact of the project operations of the wetland. All development including the provision for potential Hagan residences shall occur outside of and with an appropriate set back from where wetlands and riparian zones and other sensitive areas. He stated that 3 was similar to the conditions set on h2. He stated 9-303-1 a 1, staff proposed condition was very similar condition set on h2. He stated b1, b2, had been satisfied. He stated that b3 condition again were the same as h2. He stated that b4 was see that previous comment and c1 through c6 is ditto so if you look on the h2 on the top of page 5 that was the staff recommendation to satisfy staff criteria.

County Land Use Counsel Green asked if that list had incorporated Mr. Culichia's May 4<sup>th</sup> recommendations.

County Planner Reimer stated no it did not. He thanked her for that clarification. He stated that on top of page 5 satisfied all those subsequent to e-1. He made reference to e-1 on page 3 and the condition on h 2 on top of page 5.

Commissioner Glenn asked regarding wetland 6,7,8 and 9 were those wetlands or could they be impacted by pumping at Ruby Mountain since they were down gradient from the Big Horn Site but up gradient from Ruby Mountain. He also asked if they had the data on those wetlands to know if they would be affected.

County Planner Reimer stated he would like to have Dr. Kolm address that question.

Dr. Kolm stated that they were working with Nestle Waters to get things worked out. The best places for monitoring the well would be on these various wetland areas. On the wetlands that Commissioner Glenn asked about it was unlikely that they would be impacted because the multi well testing would be down at the Ruby Mountain Site so they could prove that it would not. These monitoring wells would clear Nestle Waters of any doubt that the pumping would cause detriment to those areas. The cone of depression would limit the boundaries. This was the same reason that they would not get into the bedrock springs area either.

Nestle Manager Lauerman explained the monitoring well tests that had been completed on the Ruby Mountain Site and how they showed that there would not be these problems. He was confident that the data that they had collected so far was conclusive. One of the conditions that Nestle Waters had agreed to tentatively was easy for them was to keep the level of the pumping water level in any production well above the level of the top of the screen. This was a way to make sure that none of the surface water or the river water comes in and was good sound well management.

Nestle Hydrologist Albaugh explained the water screen and its use. He stated given the amount of money that Nestle Waters had invested in the test production wells and bore holes under no circumstances would you want to dewater even the upper most portion of the screen. He presented statistics and hard numbers that demonstrated that the wells at Ruby Mountain would have no affect on the Big Horn Springs Site.

Commissioner Glenn asked Mr. Thompson if he had testified at one point that perhaps the duration of the pumping and perhaps the amounts being pumped maybe did not give a clear picture of how the entire aquifer worked. He asked Mr. Culichia if he

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recommended potentially looking at a different type of pump test. He also asked him to tell him how those two compared to what Nestle Waters had already done and what he recommended might be how those two would differ.

County Water Counsel Culichia thought that they had just had some data that he had not seen before, but in terms of the design of the pump test that would be better left to Dr. Kolm and Mr. Thompson as he was acting more as the mouthpiece conveying that particular information.

Dr. Kolm wanted to clarify that they were in the process of analyzing the pump test data from the February 2009 testing. All of the other figures that he gave were in the phase one hydro geologist report submitted in Appendix I in the application.

County Water Consultant Gary Thompson was interested to see a constant rate pumping test. It sounded like that was something that they had just completed, but the data was not available yet. The second reason for a long pumping test would be to look at the impact on the Ruby Mountain wetland interface. He understood that was something that Dr. Kolm would help design.

Commissioner Glenn asked what Dr. Kolm's recommendation would be for the amount to be pumped.

Dr. Kolm stated so far they had seen 170 gallons per minute. They wanted to see if they could go at a higher level that was the recommendation.

Nestle Hydrologist Albaugh stated that the February 2009 test ran at a constant rate of two hours at rate of 169.8 gallons per minute. When you do a 180 day projection under at no recharge scenario, they try to give you a feeling of the sustainable yield of that borehole might be. At the end of 180 days they still got almost 3 feet of water available draw down above the top of the screen, which was done under seasonal low conditions. The other thing that they were going to do was to run a simultaneous test of both wells at Ruby Mountain and see what those would run like. He would not suggest running either well at that amount for any duration. He planned to be talking with Dr. Kolm on a pumping test plan here in the near future to address the issues that he was raising.

Nestle Manager Lauerman presented a summary of the pumping test and explained the recovery times from the pumping tests. Because of these tests, he was struggling as to why County Counsel felt there needed to be more testing. If the reason for pumping more wells was to look at impact to wetlands at Ruby Mountain. He wanted to remind them that Ruby Mountain the only wetland recognized was very small. He doubted if they could fit in the area there that had been paved over by the exit door. The hatchery currently mows and weed whacks the wetland as of today because they had evasive species in them. The only reason they were even there now was because of the way the hatchery had been constructed with the concrete raceways. There were piping systems and different earth structures that had been put there. They are all pond water in these locations. None of these are natural wetlands. The area was called manmade wetlands. That was why they were going to spend some \$30,000 to do a pumping test to evaluate the impacts to the small wetlands at Ruby Mountain that were going to be removed along with the entire Ruby Mountain Site and reconfigured with a riparian system and a thousand fold improvements in wetland habitat and function there. He would ask if there was to be a discussion on the wetland that be about the Big Horn Site and not the Ruby Mountain Site that would be replaced with some serious wetlands. He asked Mr. Culichia why he felt that there was a need to exclude the Big Horn Site because he did not feel that monitoring would help resolve the problems.

County Water Counsel Culichia felt that it related to the question that the applicant met its burden of proving that the criteria had been satisfied.

Nestle Manager Lauerman did not feel that this was one of the criteria that had to be met at this point. He stated that all the counsels who had looked at this wetland cannot tell

what will happen in the future. He stated that was why they were working with Dr. Kolm currently. He asked how long they had to continue to do test pumping as he questioned that they would never find the boundary. He stated that they were proposing baseline monitoring of the wetlands. They were not planning on pumping anything on that parcel until a baseline had been completed. He explained his feelings on the wetland monitoring. Nestle Waters had agreed not to pump at the Big Horn Site until the baseline was satisfactory to the consultants. He went through County Development Services Director Reimer report and agreed with most of the recommendations.

County Development Services Director Reimer stated that the Army Corp of Engineers would be deeply involved with the restoration of the Ruby Mountain Hatchery Site, but would not be involved with anything at the Big Horn Springs Site.

Nestle Manager Lauerman stated while the Army Corp of Engineers would be involved with the Ruby Mountains because of the waters and those would be jurisdictional of the waters of the U.S., they agree and accept that. Dianna Humphries had visited the site over two years ago and had explained at that time that the only interest that they would have would be if they were going to dredge or fill in the wetlands. They were avoiding any wetlands with their pipeline crossings because they did not want to get into a situation that they would have to apply for a 404 permit and they had no reason to do so.

County Development Services Director Reimer stated that the second part of that would be the DOW (Division of Wildlife) letter of April 1<sup>st</sup> that stated that they had reviewed a number of Nestle Waters plans. They concluded that although they had an interest they were not a partner entity in the land management.

Nestle Manager Lauerman stated that they recognized the sensitivity of that and the land management plans that had been revised and had recognized the regulator oversight and the roles played in the plans. He did understand that the County did have the regulatory oversight on the wetlands. What he was suggesting was that if the DOW and the Army Corp of Engineers with those regulators might be suited to development of the wetlands and to review the wetland monitoring and to comment to the County for the County's action.

Commissioner Giese stated he was still struggling with the wetlands on one site. He stated was it clear that only a small amount of water would be taken from the Big Horn Site. Most of the water would come from the Ruby Mountain Site. He asked why in the world you do not want to get out of this problem and dump the Big Horn Springs Site and you would end your wetlands problems. As a business decision, it just would make more sense.

Nestle Manager Lauerman stated that they had bought the Big Horn Springs parcel mostly for a recharge center, but it was also a 50 gallon a minute spring. He would hate to walk away from that possibility. He really cared for the wetlands and right now those wetlands had been over grazed. He would like to oversee getting these back into a good condition. For at least a year, they would be testing and not pumping from the well. He just did not want to take that option off the table.

Nestle Land Use Counsel Strablitzky stated that they had met the conditions of the regulations of the 1041.

County Land Use Counsel Green felt that a plan of monitoring and mitigation needed to be precise in how and who would oversee this monitoring and the mitigation.

County Development Services Director Reimer stated that was the end of the list of conditions that needed to be met.

Nestle Manager Lauerman stated that he was hoping to get some feed back from the County's staff hydrologist about the need of test well at the Ruby Mountain Site.

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Dr. Kolm stated that he was concerned about the amount of water that could be pumped without harm.

Commissioner Glenn stated that his question was not how pumping at Ruby Mountain would affect the Ruby Mountain Wetland because those were actually a fish hatchery and not a true wetlands, but how pumping at Ruby Mountain would affect areas 6, 7, 8 and 9 in the Big Horn Area. He thought he had heard from the Nestle Waters that absolutely no possible way would it affect that. He no wanted to hear from the County's consultants again as what their thoughts were and why perhaps a pump test might be important. At least from his perspective, he was not that concerned about the affects on Ruby Mountain but he was concerned about those other issues that had already been raised.

Dr. Kolm stated that the recommendations were based on the fact that they had not seen the February testing, but now they had seen that testing. The best thing for them now would be to review those results and then get back to the Board of Commissioners directly.

Nestle Manager Lauerman stated that the report clearly showed that there was not influence on the Big Horn Springs with the pumping at the Ruby Mountain Springs. The monitoring well was located about mid-way between the sites.

Fred Kline stated that from the other specialist that he had heard talk suggested a pump test at a much higher volume and perhaps 10-12 days to determine something that mimics what would actually happen over the long term. His concern was that they might do tests for only 16 hours.

Nestle Manager Lauerman stated that he was a registered hydrologist and had been doing these types of test for many years. He explained how and why these test had been used.

Mr. Boyd stated that he wanted to thank the Board of Commissioners for doing all of this hard work. He was concerned about the carbon imprint. He felt the most logical use of this water would be to send the water to the railroad tracks and then down to Salida to a bottling plant. He did not understand how this would not cause a problem with the roads between here and Denver.

Dave Ward, 141 West 1<sup>st</sup> Street, Salida, stated his concerns were concerning the endowment fund. He stated that the \$25,000 contribution was not part of the application but were more like bribes and did not feel that the Commissioners should be put under the strain of accepting bribes. After reading today's paper that Nestle Waters had really put the Board behind the eight ball by offering contracts to three local firms contingent upon the Commissioners approving this permit, now the Commissioners were literally between a rock and a hard spot. They now will no longer be able to debate the issue freely and honestly. Now they will have to choose to approve it or be accused of loosing these jobs for our County. The reality for him was that money talks and the public be damned.

Alida Phillips, 10850 County Road 190, Salida, stated that she had just learned about this issue today but was concerned about the fact that she was a stockholder in Nestle Waters of America which is a Swiss Company. As a stockholder they can vote on the Board of Nestle Waters when they get a proxy notice, but the problem was that they get that notice without a booklet and then have to call to get the booklet. She believed that Nestle Waters was not interested in their stockholders. She was a bit worried about that and the relationship here in the valley because if Nestle Waters application is approved then they would all be somewhat stockholders of the company. She stated that bottled water in itself in her experience and memberships and organizations in that she had worked with and had been aware of over the years was approaching its demise as not only as an acceptable industry but as an industry period. She was for the geothermal piece because she felt that they could power the world from this valley. She felt that this was a Pandora's Box.



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E J Sherry, Salida, asked the Board if they intended to have further public comment.

Chairman Holman stated that the Board would be having public comment at the next meeting for the Board to ask questions, but no date had been set at this point.

Judy Shuford, 138 I Street, Salida, asked Mr. Culichia if the burden of proof lied on the applicant to provide proof that the 1041 had been met. She asked in relation to the testing that had been given so far was it true that they felt that had not been met.

County Water Counsel Culichia stated yes the burden of proof was on the applicant, but it was not up to the staff to make the decision. It would be up to the Board of Commissioners to decide if the proof had been met.

Ms Shuford then asked the Board if they felt the burden of proof had been met.

County Water Counsel Culichia did not feel that the Board of Commissioners could answer that as of yet because they had not engaged in their deliberations and the record was not closed yet.

Ms Shuford thanked him for his answer.

County Land Use Counsel Green stated once all of the open part of the record was closed then the whole public process, the staff input, the Board questions and the applicant statements were all closed then the Board engages into deliberation in an open meeting where everyone would get to hear their thinking process as to whether or not each one of the criteria had been satisfied. At that point they would not be able to have any comment of any kind.

Mr. Kline stated that he had met personally with Greg Polisky and Jim Aragon of the DOW (Division of Wildlife). They told him that they were quite distant from the idea of monitoring or being involved with the wetlands. They had told him that the jurisdictional group over this would be the Army Corp of Engineers. It seemed that the information that the Board was getting by way of Army Corp of Engineers tended to want to set it back to DOW. He stated neither one of them seemed to be picking up the ball on this.

Jay Hake, 7133 County Road 178, Salida, stated that he had a boss several years about that would say when things were moving forward at a pace that maybe decisions were getting made too quickly, he would say "It's best not to build your bicycle while you're riding it down hill". He stated that they all had been here a very long time and a lot of information had been given today, but there seemed to be a lot of information that still needed to be given. He explained his ideas of what the 1041 process was and how the conditions could be written. His concern was who would make sure that the conditions would be met. He asked if they had the ability to enforce at that point, would the County have the resources or the expertise to uphold or enforce the conditions.

Alan Rule, 774 County Road 4, Howard, stated his concern was that Nestle Waters was going to start trying to replace this water with water from within the valley. He felt that was a big deal. He wanted to know how much of our water that was going to be. His request was that the Board take a very hard look at this before making any decisions.

Nestle Manager Lauerman stated that Nestle Waters comment to the community continues to be strong. They would be hiring local companies. He stated that the citizens had requested that Nestle Waters start an endowment and they had done that. It was his impression that if this meeting was going to be continued that Nestle Waters had to request a continuation. They would be happy if it would give the Board more time to get information to do so. They were not trying to build the bicycle while riding down hill. They had been here for the past two years building the project. Formally he would like to request that this meeting be continued to the earliest possible time. He understood that would not be next week but would like it some time soon.

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Chairman Holman stated that they were looking at May 21, 2009.

Nestle Manager Lauerman asked if it would be possible for the meeting to be held in the northern part of the County, because there had been four of the five public hearings down here. He had heard from the people up in that area that would like to have the hearing in their area.

Commissioner Giese stated there were not very many places there in Buena Vista that could hold this many people. He stated that if staff could find a good venue then they would schedule it for Buena Vista.

Nestle Manager Lauerman stated that he would also ask that a projector be provided if possible.

Chairman Holman stated that at the next meeting they would have some public comment, time to answer follow up questions, clarification on some items that had been hazy and closing arguments from both sides. He hoped that the next meeting would allow the Board to close the comment process so they could move on to the deliberation process.

County Attorney Davis asked if the Board was anticipating further questions from the County's Counsel and Consultants. If so they needed to arrange with them to be here.

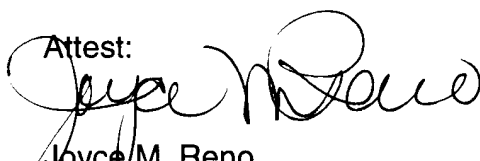
Commissioner Glenn stated that he suspected that Ms Townsend should attend because the written testimony had been cut off. Therefore these people need to be at the meeting to answer any questions that the Board may have.

Jerry Miller, 9551 County Road 175, Salida, felt that the venue would be very important. People need to be able to see and hear and be comfortable. He stated that should be more important than in what part of the county the meeting was to be held in.

Chairman Holman entertained a motion to recess or continue the public hearing until May 21, 2009.

Commissioner Glenn made a motion to approve to continue the public hearing until May 21, 2009 at 1:00 p.m. in a place to be determined by staff. Commissioner Giese seconded the motion. On the question, the motion carried 3 – 0. The meeting was adjourned at 10.43 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.