

HART INTERCIVIC E00718900JB

Draft Minutes

Special Meeting

May 21, 2009

The Board of Commissioners held a Special Meeting at the Salida Steam Plant, 220 West Sackett Avenue, Salida on Thursday, May 21, 2009. Board members present were Chairman Frank Holman, Commissioner Tim Glenn and Commissioner Dennis Giese. Others attendance were County Attorney Jenny Davis, County Development Services Director Don Reimer, Special Land Use Counsel Barbara Green, County Water Counsel 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 1:14 p.m.

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

Chairman Holman stated that this special meeting was being held to continue testimony and discussion between the people of Colorado that had began on April 21, 2009 at the Salida Steam Plant.

County Attorney Davis stated that this meeting was a continuation of the Public Hearing on May 5, 2009 which was a Public Hearing to consider a request from Nestle Waters North America, Special Land Use Permit and a 1041 Permit. The request was 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. She stated that the same rules would apply as previous meetings. She asked that public comment be limited to comments concerning information given by the county consultants and the applicant. She stated that this would be held as a Quasi Judicial Hearing and provided the rules for such a meeting.

County Land Use Counsel Green stated that questions from the public must be particular to the information that had just been presented.

County Attorney Davis stated that the testimony given today was going to be updates and responses to some questions that had been raised by the Board at the last hearing.

Chairman Holman stated that County Development Services Director Reimer would start this and work through it topic by topic.

County Development Services Director Reimer stated that the applicant had requested that they be allowed to submit some proposed amendments to their application prior to staff presentation.

Bruce Lauerman, Nestle Waters Project Manager, 2690 Park Drive, Helena, Montana, stated that there were a few recent happenings. They had decided to withdraw any spring water development of the Big Horn Springs Site from their application. This meant no spring water development and no buildings associated with the development of spring water. It also meant no monitoring of those wetlands associated with pumping of any operations at that site. He stated what it did not mean was that they were not committed to do continued land management plans on that property. They were still planning on downing the wild life fencing and the other items that had been presented in their land management plan. The withdraw was for the production of spring water from the site. The second item was the desire by the community and citizens of Chaffee County for a permanent conservation easement on their lands. What he would propose was not as a condition of their permit as it could not be conditional as it would no longer be a charitable

contribution and then they would see some tax benefit from that charitable contribution. This would be making both the Big Horn Springs Site and the Ruby Mountain Springs Site into a permanent conservation easement. Once they were permitted and the operations at the Ruby Mountain Trout Hatchery had been completed they would then work with the DOW (Division of Wildlife) and had a local entity to hold that trust. They had been reluctant to commit to this but coupled with the land management plan they now had a hammer and a commitment from Nestle Waters to make this a permanent and positive affect on Chaffee County. What he was not implying was that this would need to be done in order for Nestle Waters to move forward with their project and to meet the 1041 criteria. It was something that was done voluntarily above and beyond the permit. There was another exhibit that he wanted to give the Board than had been requested from Nestle Waters at the last meeting, which was the accepted land that would be given to the Hagan's (15 acres). This was the survey showing the meets and bounds of the property as requested to provide clarity to the Board. The last was the fishing access discussion with the DOW. What they were proposing was that they would apply for a wade in stream fishing access from the DOW that would provide for wade access fishing at the Ruby Mountain Springs Area and possibly in the future some similar access at the Big Horn Sheep Site.

Chairman Holman thanked Project Manager Lauerman for the information. He stated that because of this new information he would ask that any comments being made today reflect this information. He asked them to please only ask questions today about the Ruby Mountain Springs as Big Horn Sheep Springs had been taken off of the table.

County Development Services Director Reimer presented a short Power Point presentation to address the outstanding issues from where they had left off on May 5, 2007. He stated that these issues had been outstanding as of the last staff memo of May 4, 2009. He stated that there were eight different areas that had outstanding issues. He continued to explain the outstanding issues.

There was a question from a person in the audience about the documents that had been submitted by the applicant and if they were being accepted.

County Development Services Director Reimer stated that the documents included the survey and a letter dated May 21, 2009.

County Attorney Davis stated she imagined there were going to be some questions on the survey and the document, specifically requested by the Board that the other documents were not. Therefore, she would need the Board to take action to accept those other documents into the record from staff's perspective. So staff could utilize and inform their comments but those additional documents would be limited. She stated that there would need to be some action from the Board to reopen the written information into the record unless it was limited to use by staff in formulating their report to the Board.

Commissioner Giese stated that basically County Attorney Davis was stating that there would have to be a motion reopen documentation.

County Attorney Davis stated that was her understanding of the Board's earlier action of closing the written documentation part of the hearing. She knew that the Board had discussed the survey itself which the Board had requested. She just wanted to make this clear for the record, because she knew there had been some concern and questions from a number of people as to what was and what was not being made part of the record.

Holly Strablizky, 410 17th Street, Denver, Nestle Waters Legal Counsel, stated that these written items had been asked for at the last hearing. She hoped that would help them formulate a way to accept those into the record. The items had been requested by the Board of Commissioners.

Commissioner Giese asked before they went any further with public or opening up public documents, they needed to find out if it was acceptable for legal counsel to review those

documents to see exactly what had been stated before by the applicant so that the information requested at the previous hearing, so the Board did not have to open up the public record again.

County Attorney Davis stated that she would review the documents for only documents containing the information that had been asked for by the Board.

Commissioner Giese asked County Attorney Davis to do that so that the Board could decide what to do on this question.

County Development Services Director Reimer stated because he had not reviewed those documents he would just refer to the verbal testimony made by the applicant. He continued on his overview of 303-1-3 Water Rights. He stated that County Water Counsel Culichia had been working with the applicant's water counsel to resolve and identify any outstanding issues. County Water Counsel Culichia would be giving a report later in the hearing. He had also received comment from the Upper Arkansas Water Conservancy District at prior hearings. Therefore, those may need to be considered in a condition if the Board was inclined in doing so. The staff did have a recommendation of a condition that the application and any subsequent water supply plan or augmentation plan complied with all aspects of the RICD (River in Channel Diversion) and voluntary flow plan to insure that there would be no issues. Some of the conditions were no longer applicable because of the verbal request of taking Big Horn Sheep off the table. He continued on with his recommendations. Economic Counsel Jean Townsend would address the economic conditions and outstanding issues.

County Economic Counsel Townsend, representing Colly Forrest, presented a power point presentation that updated information for her report of April 16, 2009. She stated that THK's reports had been reviewed. The amendments she felt were important. She had received information from the application that had changed the cost of the project. There would be an increase of tax monies collected. More information had been received from the applicant on the salary schedule that was a slight increase in money. She explained how the tax mill levy would work with the new tax base. The most important part of this was the mitigation fund that would neutralize the negatives that might be seen. She felt that there should be a preset amount set aside in an escrow account to be use for any impact that would be above the tax collected from Nestle Waters. Her last suggestion would be that as the mitigation fund was completed it should be replenished quickly by Nestle Waters as needed.

Commissioner Glenn stated that he assumed that County Economic Counsel Townsend had received the Tabor Issue corrected with THK. At the last hearing, there had been a question of the HUTF (Highway User Tax Fund). Currently Nestle Waters was trucking water in from California and presumably they were buying fuel somewhere after they crossed over into Colorado and stated in their application the idea of this was to reduce the amount of truck miles and perhaps fuel consumption. He stated as this is applied to Chaffee County true there might be more trips back and forth to Chaffee County but the way HUTF was distributed was by the amount of fuel that was purchased in Chaffee County and that was not the way it was distributed. It was distributed state wide not by the county were it was purchased. He asked because of the small amount, should it even be considered.

County Economic Counsel Townsend stated "yes" and it was in their report. She stated that THK had not looked at the fuel tax in their consideration. She stated that HUTF funds were distributed by road miles and because Nestle Waters Project did not generate any more miles. Therefore, it did not show any profit for the County.

Commissioner Glenn framed a scenario of how this might work. He asked if there would be costs to the County once the project took place as it might not be right now but later down the road. An example might be one of County Water Counsel Culichia's comments where the County should not be prevented if they approve this permit from filing an

objection in Water Court. If the County filed an objection in Water Court, what he thought would be a proper use of the mitigation fund.

County Economic Counsel Townsend stated that she felt that would be a possible use.

Peter Elzi, Economic Expert, THK, 2953 South Peoria Street, Aurora stated that County Economic Counsel Townsend and he were getting very close to agreement. They had acknowledged the Tabor Agreement. The balance and counter balance was still the difference on the real property of the value. There were not well houses and pump houses elsewhere in the County. Therefore, they would have to see how the assessor would value the property but it would be close to \$1,800,000.

County Economic Counsel Townsend felt there would be a downward adjustment now that the Big Horn Site would be a Conservation Easement. She still felt that her first report was accurate.

Discussion between the consultants from Nestle and the County on the possible negative and positive effects of the application and property rights was held.

Steve Hansen, 27200 County Road 310, Buena Vista, felt that the taxes would increase. He felt that would increase the benefit to the County.

James Henry, Salida, felt that the Board of Commissioners needed to have a special election to let the people decide if they wanted Nestle Waters here.

County Land Use Counsel Green told him that Colorado Law stated that the County must make the decision on 1041 Applications.

Jim Ruggles, 15000 County Road 182, Salida, felt the mitigation fund should be used for legal battles.

Chairman Holman called for a recess at 2:55 p.m.

Chairman Holman reconvened the meeting at 3:15 p.m.

County Development Services Director Reimer stated the next area would be Ground Water Interactions. He introduced Engineer Paul VanderHide and Dr. Ken Kolm with GEOMEGA.

Engineer VanderHide, Boulder, presented testimony concerning the data for the drill test done by Nestle Waters on the Big Horn Springs and the Ruby Mountain Site.

Dr. Svata Louda, 538 Crestone Avenue, Salida, stated he questioned the February test because it did not show the correct pump rate.

Engineer VanderHide stated there was only a minor adjustment in the pump rate and felt that the tests were reliable. The ditch collection was to the north of the pumping and would not be effected by pumping.

Hydrologist Dennis Albaugh, AECOM, commented that the spring water collection trench excavated in 2002 by the Hagan's collected on site. Nestle Waters was monitoring the accumulative discharge of it and many other springs in the area. He continued to explain the difference of the Bed Rock Springs and the springs Nestle Waters would be pumping.

Dr. Kolm agreed there would be no impact.

Carlos Boyd, Buena Vista, asked if the 1200 acres of land that the State of Colorado had west of the pump site would be affected.

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Hydrologist Albaugh felt that the trench would act as an interceptive drain and there would be 14-15 monitoring wells checking.

Joice Fairchild, Salida, asked who would be checking the monitoring.

County Water Counsel Culichia responded that once there was a permit and a filing at the State Water Court, Nestle Waters would be allowed to transfer water monitoring it.

Nestle Waters Project Manager Lauerman added a few points about the amount of water and gave an overview of the collection process. They would continue to monitor the project.

Commissioner Glenn stated that he had read the hatchery restoration plan. He asked Nestle Waters Project Manager Lauerman to go over that.

Nestle Waters Project Manager Lauerman gave an overview of the restoration plan for the hatchery. The plan called for completion from 2014-2018.

Michelle Riggio, Salida, asked if the capture zone was the same as the cone of depression.

Hydrologist Albaugh stated that the two were completely different.

Mr. Boyd asked how this affected the aquifer and if Mr. Moltz's reservoir had any affect on the area.

John Graham, Salida, stated that he was confused about the time frame for gathering data before pumping started.

County Water Counsel Culichia stated that there was a request from EGOMEGA for data collection before pumping.

Hydrologist Albaugh stated that baseline data had been compiled.

Mr. Ruggles questioned the fact that 2006 and 2007 had been very wet years. He felt that Nestle Waters should have to get data from a dry year.

Hydrologist Albaugh answered that one did not know the future of when a drought might happen. Therefore, you must use the information that you can get.

Mr. Ruggles asked regarding the cone of depression with being so close to the river and if the cone would be infiltrated what would Hydrologist Albaugh's opinion be on that.

Hydrologist Albaugh stated that the cone of depression was three dimensional. It expanded outward and the further out it might affect the wetlands but did not feel this would be an issue.

Nestle Waters Project Manager Lauerman commented that the water would be augmented and that Nestle Waters only wanted spring water. He uses an EPA test and that they would always make sure the water never went into the ground water. He felt two years of data would be plenty. He strongly objected to the process going on for another year.

Robert Lowe, 117 North D Street, Salida, stated that he liked to drink water.

Chairman Holman asked if Mr. Lowe had a question and if not he would be able to voice his opinion during the comment section of the hearing.

Ms. Fairchild asked if Nestle Waters was going to export water outside of the State of Colorado.

County Water Counsel Culichia stated that the public trust doctrine was not applicable to this project.

Steve Simms, Nestle Waters Water Attorney agreed with County Water Counsel Culichia this would only apply to ditches. This diversion would not apply.

Ms Fairchild asked what Nestle Waters would do if they did not get approved in Water Court.

The two water attorneys discussed this comment and concluded that the application had nothing to do with water court and that would have to be taken up at a later date.

Engineer VanderHide did not have all the information on what they did and did not have in the testing north of the wells because it was away from the seepage area. He would to have monitoring all the way to Big Horn Springs.

Nestle Waters Project Manager Lauerman explained the water contour maps that showed that the water from the Ruby Mountain Site did not have current wetlands attached. After the restoration of the hatchery, they would be building a new wetlands area.

Discussion continued concerning the monitoring baseline and what would be considered adequate.

Chairman Holman called for a recess at 5:23 p.m.

The meeting resumed at 5:44 p.m.

Chairman Holman stated that they would hear from County Development Services Director Reimer.

County Development Services Director Reimer stated that listening for the need for additional monitoring, he felt that there had been collection of data some 800 foot north of Ruby Mountain and at the edge of the capture line. Engineer VanderHide had showed that no measurable differences depending on the capture zone that could cause problems in discussion to installing a weir in order to catch flows. Nestle Waters had agreed to do this as a part of their monitoring and that may help the County more.

County Water Counsel Culichia commented that he felt that both Dr. Kolm and Engineer VanderHide had agreed that this would help in the monitoring. The request of the Upper Arkansas Water Conservancy District would be the condition that if approved the source of water provided by Aurora to Nestle Waters must be from water supplies that otherwise would be available to meet water demands within the City of Aurora nor could this water be made available to meet future demands within the City of Aurora. Mr. Scanga requested that this condition be put in. He commented about the Prairie Water supply would help Aurora with their drought supply. Therefore the Nestle Waters request would not cause any additional demand on the river. Most of his other comments had been covered in prior testimony. Nestle Waters had commented that the Division of Wildlife and or the Army Corp of Engineers would be the monitoring the wetland development but that was not the case here. The Board of Commissioners would have the final say on such matters. Aurora was already a member of the voluntary flow movement.

Steve Simms, Nestle Waters Water Counsel, gave an overview of the terms that County Water Counsel Culichia and he had worked on. The base flow terms where provisions that required them to describe the whole system. He felt that there was some type of mantra out there that there would be some obligation on Nestle Waters part to maintain a status quo or maintain a certain amount of base flow or spring flow from these springs. Nestle Waters had agreed to the weir and the condition that if the weir had to be taken out then a monitoring well would go in. Every drop of water that came out the springs

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must be replaced but they did not need to replace anymore than that and that was what they were committing to do. He was very disappointed that Mr. Scanga did not attend today's meeting. Nestle Waters had confirmed that this was not the position of the Upper Arkansas Water Conservancy District Board. It was the position of Mr. Scanga personally. It had the flavor of settling an old score, whether it was with Nestle Waters or with Aurora he was not sure but as to the Nestle Waters part, why would it be settling an old score. Upper Arkansas Water Conservancy District on December 22, 2008 made an offer to Nestle Waters to provide all of this augmentation water for a price that was greater than Nestle Waters would be paying to Aurora. The water was not from upstream Colorado River Water. It was from down stream river water that would have to be exchanged up with Chaffee County Water. Because they had listened to the Board which had asked them not to use Chaffee County Water, they told the Upper Arkansas Water Conservancy District no. He stated that ever since that time the Upper Arkansas Water Conservancy District or more accurately Mr. Scanga had not been supportive of the project. Now they suspect that there was a bias motivation. He stated that the agreement that they had with Aurora was for a lease of a term of 10 years, they did not by the water rights, but did have the potential to renew the lease for another 10 year period. He commented on the exchange issue about Aurora. He stated that Aurora was not before them today because Nestle Waters was not acquiring water by exchange. If Nestle Waters were to comply with this condition before them, they would have to go to Aurora and dictate to them who they operate and they could not do that. This project would not affect the RICD in anyway. He explained that the Moltz expansion had nothing to do with this application. He explained the two well configurations that were being requested.

There was discussion on what would or would not trigger the County to reopen a permit application between County Water Counsel Culichia, Nestle Water Consultant Simms and County Land Use Counsel Green.

Mr. Boyd stated that last week the Bessimer and St. Charles Ditches had changed their shares and some of the language to could take water from the Columbine Ditch and bring it to Leadville.

County Water Counsel Culichia stated that had nothing to do with this application.

County Development Services Director Reimer suggested that the GEOMEGA people could leave if there were no further questions of them. If that was okay, then the County and the County consultants had completed their presentation. He presented a summary in table format of what the staff's comments and conditions were.

Chip Cutler, 137 Emerald Island, Howard, asked County Water Counsel Culichia shared Nestle Waters Consultant Simms perspective that Nestle Waters could be treated in isolation of Aurora's obligation to the Upper Arkansas Water Conservancy District in terms of its application. He stated that Nestle Waters Consultant Simms had testified that Nestle Waters application should be treated in isolation of Aurora's obligation to the Water District. Essentially Nestle Waters should be looked at as something separate and different, but where they were contracting with the City of Aurora, binding them to Aurora's obligations in terms of the use of this water and the application of this water. He asked if they shared the same perspectives.

County Water Counsel Culichia stated he did.

Mr. Cutler then asked if Aurora was hamstrung by Nestle Waters use and taking of this spring water, how was it that Nestle Waters could not be addressed if they were separate entities and Nestle Waters taking of the spring water hamstrung Aurora's capability to comply with their obligations.

County Water Counsel Culichia answered if Aurora would be out of their obligations then that would be enforceable under the terms of the decrees associated with the RICD and the agreements in the Aurora exchange cases.

Mr. Cutler asked then if that case would Nestle Waters be shut down.

County Water Counsel Culichia stated that if Aurora would choose to do that, which he felt they had the right to do under their leases that could be the result.

Mr. Cutler stated that did not make sense that there was no way to distinguish Nestle Waters applications from the obligations of Aurora to this district.

County Water Counsel Culichia stated there were because of the limitations and jurisdictions of the other counties relative to the 1041's and they could isolate the impacts associated with the Nestle Waters pumping. Separate contractual obligations between Aurora and the County and the other water entities in the basin, all of those would be separately enforceable.

Mr. Cutler asked if Aurora had an obligation that was hamstrung by Nestle Waters, he understood that taking the 200 feet that Nestle Water Consultant Simms spoke about that it was unfair to link Nestle Waters to Aurora's obligations.

Nestle Water Consultant Simms felt he had already answered this question.

Chairman Holman recessed the meeting for a dinner break at 6:38 p.m.

Chairman Holman resumed the hearing at 7:24 p.m. stating that the Board would open public comments and that the comments would be limited to 5 minutes each.

Mr. Cutler commented that he disagreed with the representation that contracting parties were not linked as bounding obligation of those that they contracted with when it came to withdrawing water from a river basin. He believed that Nestle Waters would be looking for additional water from the basin whether down stream or up stream from the springs. He commented on the financial impact of this to the water users of Chaffee County. He stated that the water court process would take up to 3 to 4 years and that would be a cost to the County if they were to object to the usage. He commented on the testing process that had been talked about earlier in the day. His concern was that the tests were done during the wettest years that the area had in a long time. The Arkansas River would be impacted from the draw down of 200 gallons per minute. The water that Nestle Waters would be removing would be pristine spring water and be replaced with regular water. This would impact the quality of the water in the river. He commented that he was concerned about the fact that 25 trucks would be traveling through the riparian wetland and harming them each day.

Mary Lou Church, 522 Teller Street, Salida, stated that the question she had was that she did not understand how Nestle Waters could take water from the springs when there was a drought. She felt that the Board should write something in the conditions that would state that if there was a drought in the basin, Nestle Waters would have to stop pumping at the springs. She had a letter to read for the Commissioners that had not been sent in time to be accepted by the Board from Robert L. Parker, Coaldale, Colorado.

Alan Rule, 774 County Road 4, Howard, stated that he wanted to follow up on the specialist that Nestle Waters was going to use from the DOW. He had talked with the person that Nestle Waters Project Manager Lauerman had told him would be working on this project, who did not know anything about the project. His concern was that the County would have to be the ones that monitor the wetlands.

Michelle Riggio, 233 F Street, Salida, commented on the foundation. She asked if everyone was still on board regarding this endowment. Nestle Waters had walked away from a conference call. She did not know who Nestle Waters Project Manager Lauerman was talking with at the time. She stated wanted to know if the endowment program would be a condition in writing.

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E. J. Sherry, 10213 West Cheyenne Circle, Pinion Hills, Salida, commented that he had read the statutes concerning the 1041 Regulations. If Nestle Waters followed the regulations, then everyone should be very happy. He read in them that there should be a beneficial use to the citizens of Chaffee County. In the recent Mountain Mail, there had been several comments, about 97% of the people being in favor. One person stating the Commissioners should listen to the 97% and the other person stating they should not listen because this was not a democracy because the Commissioners have the total and soul authority to make this decision. He would agree the later part of that that the Commissioners did have the soul authority to make this decision, but he would also agree with the earlier comment that the Commissioners should listen to the 97% of the community who figure that Nestle Waters was not bringing a whole bunch of beneficial use to this community. He personally did not see any beneficial use to the community. The only plus he saw to the County was the endowment but no one knew who would be taking care of that. He felt that the Commissioners owed it to the citizens to find answers to these questions.

Jim Ruggles, 1500 County Road 182, Salida, commented that many of the persons in attendance that had written letters and commented at the hearings who were not protesters or tree huggers but just people who loved their community and did not believe that this was a good idea for them. He felt people were scared. He was one of those people. He believed that Nestle Waters had lied about everything about the project. There was a lot of misinformation being spread around. He commented that he did not feel that Nestle Waters had not been truthful with the Board of Commissioners.

Carlos Boyd, 29320 County Road 361 Space 13, Buena Vista, stated that the spring water held a spirit and electrical charge from all the stones that it flowed over. It was like an umbilical cord of the water. It is a life and like a vein and very important. It was very important that the spring water gets to the river for those purposes. He had been disappointed with economic value of the liquor store, because the construction workers would buy alcohol. Working 35 years with alcoholics and drug addicts, he would like to caution the County that this trucking operation had the potential of even having drug addicts and people on meth doing other things. When ACA hires truck drivers they have to take a drug and alcohol test. He asked that the truck drivers be at least 30 years old and have a clean driving record for the last 2 to 3 years and clean from alcohol and drugs for the same length of time. He would also like all of the pumps to use alternative energy to run. He felt that the endowment money interest should be reinvested into education of high school students that wanted to pursue an education in hydrological engineering. He commented that the carbon footprint of that trucks going to and from Denver was totally out of question. He would prefer if this operation was to happen that all the trucks and bottling happen right here in this County. He felt that the community should have oversight over the Army Corps of Engineers and whomever else that would be doing any part of the project. He commented that the highway engineer and the company that was hired the model was totally out dated. The community should be the ones to monitor the traffic situation for the next 5 to 10 years.

Jay Hake, 7133 County Road 178, Salida, stated he wanted to quickly address a bit of the process that was going on. In particular at the last hearing where public written testimony was cut off. He stated if you look at the County's 1041 Regulations, his reading of this was that there was no authority whatsoever to cut written testimony. The language specifically stated that during the time that the public hearing was in place, the Commissioners shall consider both written and oral testimony. He had talked with the County's Counsel about that and he felt it was important that this be brought up publically. This was specifically important when he walked in today and the applicant had written testimony that they were presenting. He would like to know if those submittals were going to be accepted. He stated that even the survey that was introduced at the last hearing was clearly a written submittal and an amendment to the application. If this public hearing was closed tonight and no one had the opportunity to review and no one had the opportunity to provide public comment, he felt that was a serious problem. The whole process was designed to get an application and at some point there was static and was something that people could get their hands around, review and make a meaningful

decision about whether to go forward with it, to support it or not to support it. He stated that opportunity still did not exist today. There had been tons of information thrown at them today from the applicant and the consultants and none of that would be in written form. He asked how that was going to help the Board in making a decision or anyone that was trying to review this process. He would request that the Board reconsider closing the hearing.

Joice Fairchild, 8522 Chaparral Way, Salida, commented that the traffic consultant did not have an accurate view of the traffic situation. She stated that if you look at Wal-Mart and their traffic use, they did have about the same amount of trucks on the road but they generate revenue in the form of real estate taxes and sales taxes that help the County. She commented that a statement by Nestle Waters Project Manager Lauerman that if there was a law against transporting water out of the State of Colorado then Coors should shut its doors. She had sent this statement to Coors and Coors took exception to that comment and told her that they had been following this law. It was a law and a part of the State Constitution for the last 130 years. Coors had asked her who had stated this and in what venue and they had told her that their lawyers were looking into it. She stated that this affected not just Chaffee County but the whole State of Colorado. There were a lot of things that were exported out of the State of Colorado but not water. There was a law and any exporting of water before the State Water Court stated they had to permission to do so would be against the law. She understood that the Board was in a difficult position and there were so much to understand with this. They were not water engineers and that was exactly why this should have gone on to the water courts first. The Board was just being used to get around the water courts so that they could say they had this permit so they could start doing stuff so that when they go to the water court they could say, "Well, we were already doing this and we have already got this in process". She stated that this was wrong and they should be stopped.

John Hollenbeck, 28453 County Road 337, Buena Vista, stated that he realized the grand decision that the Board of Commissioners was going to have to make and thanked them for doing such a good job. There were many who were looking for work in the Buena Vista area. Up to this time he had not been able to employ any of these individuals. They had truck drivers employed with their company that they had not been able to reemploy. He knew of a number of his own employees that they had to lay off that would be glad to the opportunity to be employed by Nestle Waters. He stated that the springs and the aquifers sustainability was a direct function of Nestle Waters bottling and sustainability. He asked how many of them would risk millions of dollars and then not take care of the resource that kept them in business. He felt that Nestle Waters had to have taken the time to make sure that this project would be a long term sustainable project.

Commissioner Glenn asked Mr. Hollenbeck if his company was going to be able to hire back some of his laid off employees if this project was approved.

Mr. Hollenbeck stated that as far as construction went, it might only be 2 - 4 months of work for 10-12 employees.

Don Zettler, 228 Crestone Avenue, Salida, stated he would argue that Nestle Waters tactics during this process had been to offer as little as possible in benefits in the beginning of the negotiations, offer misleading information supporting the project and then to throw the County some bones, once opposition arose and then the County hired its own experts. The focus intentionally on what exactly they had mislead the County on as far as whether or not the County should consider their testimony of Nestle Waters Project Manager Lauerman and their other experts as competent evidence. Nestle Waters had overstated their tax values by 67%. He commented on the comments of Mr. Scanga with the Upper Arkansas Water Conservancy District that had been called bias. They all know that yes he had a bias because he wanted to keep the Arkansas Water in the basin. He felt that Nestle Waters should have bought the augmentation water from the Upper Arkansas Water Conservancy District and not Aurora, because then someone would have monitored and assured the County that in drought years Nestle Waters would

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have limited flow. He stated Aurora on the other hand will say that if there was a drought they could go and seek additional sources of water. Nestle Waters position showed that they had not satisfied the criterion of the 1041 Regulations. He stated furthermore Nestle Water Consultant Simms' firm also represented the Aurora Water District so there may be some bias that was not being disclosed there. He also would note that THK also represented Cherry Creek Water District and was on their Board of Directors and their goal was to seek additional water for Arapahoe County which would clearly come from this basin. He summed up his comments with Nestle Waters position as stated by Nestle Water Consultant Simms and Nestle Waters Project Manager Lauerman who had stated they could not say what the effect would be on the aquifer, yet Nestle Water Consultant Simms today stated that if pumping results in depletion of base flows established by the monitoring and results the depletion of the aquifer would not effect the pumping amount by Nestle Waters. Nestle Waters was under no obligation to avoid depletion of the aquifer. He stated that Nestle Waters was saying that they would and could drain the aquifer, what their goal was here was to get approval of the 1041 application.

John Graham, 9555 County Road 175, Salida, stated he had a conceptual concerning the process of issuing either the Special Land Use Permit or the 1041 Permit to Nestle Waters. What he was observing at the public hearings was a position by Nestle Waters that they believed they had met the requirements for both permits, while Nestle Waters seem to acknowledge that there were a few gaps. He was hearing more and more conditions. Nestle Waters seemed to be saying that if they were granted their permits now, then they would be happy to agree to a large number of conditions but they expect the permits now so that they may begin work on some of the aspects of the project while working out other details while things progress. He saw that a significant contrast to the position which was supported by the regulations of the County saying here was the applications criteria. If you satisfy all the criteria we will go quietly as you view the permit. While he understood that the County was empowered to impose some additions under the regulations, he did not believe that anyone was obligated to agree to a large of number of conditions in order to assure or insure that the applicant would be able to meet the specific criteria of the regulations. These numerous conditions would take an incredible amount of time, energy and money. He was concerned that the conditions would end up causing the County a lot of problems. He stated to sum up his observations, he believed that the County had hired some very bright and capable people to help review the 1041 Application. He was very impressed with their level of thoroughness, the County Staff had done a tremendous job of analyzing the accumulation of documents not to mention details. He stated it was his sincere hope that the Board would give significant weight to their professional advice and recommendations. He would like to state for the record "that I am still far from satisfied with any of the public explanation that I had heard concerning the striking change between the initial draft of the CNHP report and the final report. I strongly suspect that some undue pressures were brought to bear on the matter".

Chris Foust, 9700 County Road 160, Salida, stated that the three biggest industries in the world were oil, electricity and water. This project stinks of oil, requires coal and electricity out of the ground and takes a tremendous amount of water out of the basin. He stated nobody, or at least most people in this room and in this County do not want water going out of basin. This was something that all the Board ran their campaigns on and something that we know you will all stick to. He had heard a lot of reports from both the applicant and the County council and some lean one way the other the other way, but hopefully the Board would take the advice of the people who you hired which have been very good and you will see to it that this permit not be approved.

Mr. Ruggles stated that this had been a huge undertaking for all the staff and for the Board. He commented on the recharge plan at the Big Horn Springs and 24 CFS being let run down the ditches and not used. He felt that this was being done to up the test studies on the wells. He felt that Nestle Waters should have to pay any lawyer fees that the County accrues. He spoke about the citizens that overwhelmingly disapprove of this project. These citizens would support the Board's denial of this application. He talked about a lawsuit now would be better than a lawsuit later after they had put in over 10

million dollars. Once Nestle Waters got their foot in the door there would be no stopping them. Often in the high court, there was time that things go up higher and higher and then the higher court often goes back to the municipal level and what the County decided could not be overturned. He had one question that he really did not expect an answer from the Board right now. He asked who would be responsible if someone's well or spring started going dry. He would think that Frank McMurry's wells might go dry first but if it did go dry, he asked who would be responsible. He asked the Board of Commissioners to honor their campaign promises to protect the County water. He stated it was raining today but what was going to happen in the future in 5 or so years.

Ms Fairchild stated in reference to the truck driving jobs, she did not feel that those jobs would be created anytime in the near future. She felt that there would actually be a loss in jobs because of all the traffic in the area. She would gladly show the Board her math but because they were only taking paperwork from one side she could not.

County Land Use Counsel Green stated that she believed that the Board had said that if anyone had a summary of their remarks that they made tonight that the Board would take that.

Jay Gingrich, 33481 County Road 373, Buena Vista, stated that today they had seen some changes to the permit application. At some point it would be a new proposal. It seemed like this resembled a workshop on the 1041 Applications. He stated that the written comments were cut off on what was an old application back about May 2nd and now it looked like the application had effectively changed as Mr. Hake had pointed out. The verbal comments were supposed to be cut off tonight, but no one had seen the new changes that Nestle Waters had proposed. He felt it was not appropriate to cut off the comment time. He could see Commissioner Glenn rolling his eyes because he wanted to get back to running the County as he had been hired to do. He stated if this was going to be a good public input process then it needed that public input, up to the point where the applicants input and the public input stops and then it should go into deliberations. If the applicant had not put that information in to the application, it seemed to him like the public comment must continue until that input had been considered and then at that point the 60 day deliberation process would have to start again. It seemed like the only reason to conduct the proceeding. He was also wondering with the new input into the application, whether County Development Services Director Reimer would have to do another review memo or update his old one.

County Attorney Davis stated that the applicant had voluntarily changed the land into a conservation trust situation in which would take the Big Horn Springs off the table. The amendments to the application were items that had been requested by the staff.

County Development Services Director Reimer stated that he agreed that the two amendments actually made the application better.

Chairman Holman asked if that answered Mr. Gingrich's question.

Mr. Gingrich stated he thought that would answer it. He thought the Commissions should be able to see a final review of this to see if any areas of the 1041 Regulations were met.

County Development Services Director Reimer stated that he felt that he had gone over this in his overview.

Mr. Gingrich stated that he was not sure of the integrity of Nestle Waters because they seemed to change when ever they meet any resistance and sweeten the pot. He was concerned that the Board of Commissioners would get bogged down dealing with this permit if one was issued, in enforcing it and monitoring it and it would take away from running the daily day to day and the long term strategic business of the County. He did not want to see that happen. He stated in conclusion in the 1041 Regulations Section 2-303-1, a permit for the proposed project may not be approved unless the applicant satisfactorily demonstrates the proposal including all the mitigation measures proposed

by the applicant complies with all applicable criteria set forth in the regulations, that meant unless all the criteria had been met the permit application must be denied. He would ask the Board to keep that in mind. He was not at the meeting to be radical or to protest or anything like that. He just deeply cared about the future of Chaffee County for not only ourselves but our children.

Commissioner Giese stated that later in the meeting he would like to go into Executive Session to answer some questions that he had concerning procedure and the application as far as the law was concerned.

Chairman Holman asked for any further public comment.

Mr. Sherry stated that he had been a project manager for many years and had never seen an RFP responded to like Nestle Waters had responded. He would suggest that the Board of Commissioners realize that Nestle Waters had just added and added and never had the whole thing laid out, so the public could say yes they had met this criteria or that requirement or no they had not met the criteria or requirement. He would suggest that the Board of Commissioners go into Executive Session vote tonight and deny the application and send them back to do a decent job so that the County did not have to listen to all of this hour after hour nonsense.

Mr. Cutler stated that the Nestle Waters had stated that they ran a cadillac quality test of what this pump thing would result in, in terms of impacts of the aquifer. He had read the posting from County Development Services Director Reimer on the screen that stated two out of the three testings for constant pumping were unreliable and had questionable results according to GEOMEGA but the science involved had been the basis of the hypothesis that at an 8% draw would have a minimum impact and that all pumping would be done above the river surface so there would not be any impact. He stated that the Board was in a rush to judgment situation, by a corporation that wanted to tell you that you had all the necessary information that it wanted to present. He stated that we were not in a fully informed situation and if Nestle Waters bears the cost of full information that was their burden not ours. He felt that they had not been proved that this information was correct. He asked that the Board hold Nestle Waters to the burden of proof, that this would not hurt the County.

Mr. Boyd stated just for the record he would like the Board to go online, go to progressive magazine and look at an interview by Maude Barlow that gave some really good insights about this water issue and the Colorado River. It was a very good article. At the Salida Library there was a book 1421 which dated back to the time before Columbus when the Chinese came here because they needed water and land to grow their food. They gave gold pottery and silk and gave a value to the water that was even greater than what we value water today.

Fred Kline, 204 North F Street, Salida, stated that thing had unraveled since the last meeting. At that meeting he had the feeling that Nestle Waters was going to have to prove that they had met the regulation. Now it seemed that Nestle Waters was going to be given permission and then have to prove the pump or even just maybe prove. He stated that this was very concerning to him. He did not understand why they could not have proof of long sustained pumping. This was being played out like a poker game. They did not know what their hand was and who was going to win what. He would once again encourage the Board to please very carefully consider this. He thought under the circumstances, the Board had to deny the application because he did not see any other way around it. He had been a business man for 30 years. This had been a dog and pony show and we can not buy into it.

Mr. Zettler stated that his concern was the May 4, 2009 memo items that County Development Services Director Reimer provided. The Board still had not been met based on County Development Services Director Reimer review of the application. He stated first noting that it did not promote economic diversity or development. It did not meet the State and Federal water supply in stream flow and water quality guidelines that he had

recommended. It also recommended that the water supply be augmented by water from someone other than Aurora and this had not occurred. He sent down a list of conditions that he felt had not been met. He did not see how the changes that Nestle Waters had made today would have any affect on any of these conditions.

Sue Mills, 340 E Street, Salida, stated that the thing that had come to her was one of the greatest strengths of Salida and Buena Vista was that people get along well and this project had divided the citizens of the County. Because of this she would like to ask that the Board take the time and look at all the pieces, but also get this done and to a point where there can be either healing or celebrating depending on which side you are on.

Chairman Holman recessed the meeting at 9:22 p.m. for a break.

Chairman Holman reconvened the meeting at 9:32 p.m. stating that they would hear closing statements by Nestle Waters Project Manager Lauerman.

Nestle Waters Project Manager Lauerman presented a power point presentation covering the conclusion of the application on the following issues:

Stakeholder outreach over past year

- o AHRA
- o Colorado Trout Unlimited
- o Chaffee County Businesses and Civic Leaders
- o Chaffee County Municipalities and Elected Officials
- o Environmental and Recycling Groups
- o School Districts/Educators
- o Neighbors/Concerned Citizens

Open, working relationships with regulators

- o Chaffee County Staff
- o State Engineers Office
- o Colorado Division of Wildlife
- o U.S. Army Corps of Engineers
- o Colorado Department of Transportation

Evolution of the project

- 5-mile pipeline to locate Load Station on U.S. Highway 24/285 in Johnson Village, instead of on County Road or Scenic Byway
- Custom designed Load Station—architecture, lowering and screening of storage silos
- Remove existing hatchery structures and residences. Restore area to high quality wetland/riparian habitat
- Conservation through Land Management Plans, of 115 acres along the Arkansas River: Open Space, Bighorn Sheep Habitat, Improved Grazing Practices, Wildlife-friendly, stream bank and wetlands fencing
- Extraordinary traffic studies of Trout Creek Corridor
- Removal of Bighorn Springs from Spring Development Project to address wetlands concerns
- DOW in-stream fishing easements
- Permanent conservation easements
- Hiring of local contractors and tanker drivers
- Commit to \$500,000 Non-Profit Endowment for Sustainable Economic Development in Chaffee County

Site Map

Chaffee County Permit Requests

- o SLUP for the Wells, Pipeline and Load Station
- o 1041 Permit Chapter 3, Efficient Utilization of Municipal and Industrial Water Projects ("Water Project 1041 Permit Request")

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- 1041 Permit Chapter 9, Development in Natural Resource Areas ("Natural Resources 1041 Permit Request")
- Pipeline Easement from Chaffee County to Nwana where pipeline crosses Arkansas River ("Pipeline Easement")

Application Process Timeline

- November 3, 2008: SLUP and 1041 Applications submitted
- December 16, 2008 Applications deemed "administratively complete".
- March 3 and 10, 2009: Planning Commission SLUP Public Hearings
- March 18; April 21, 28; May 5, 21, 2009: BOCC Permit Public Hearings

Special Land Use Permit Criteria

- Impact to Safety of Surrounding Areas
- Water Pollution
- Noise Impacts
- Vibration Impacts
- Smoke Impacts
- Dust Impacts
- Odor Impacts
- Heat Impacts
- Glare and Visual Impacts
- Snow Storage
- Wildfire Hazard
- Flood Hazard
- Geologic Hazards
- Outside Storage Impact
- Other Substantial Impacts

Special Land Use Permit

- P&Z Unanimously Recommended Approval
- P&Z suggested 10 Conditions of Approval based upon Findings of Fact
- Nwana will Comply with all P&Z Conditions

1041 Permit Summary Issues

- Truck Traffic
- Compliance with Comp Plan and County regulations
- Economics
- Remaining water-related issues

Truck Traffic on Trout Creek Pass

- Issues:
 - Impacts to tourism/recreation economies
 - Impacts to air quality
- Applicable Review Criteria:
 - 3-303(1)(k) Economic Benefits
 - 3-303(1)(h)(i) Deterioration of Air Quality
- Spring Project Does Not Cause Adverse Impacts:
 - CDOT has already issued Nwana a Highway Access Permit
 - Traffic Study concludes that Project Traffic will not change existing Level of Service—even during peak hour of peak month
 - Traffic Study concludes that Project increases traffic on Pass by less than 1%
 - Trucks to be used are fuel efficient and emit low volumes of air pollutants
 - Air Quality Report concludes that emissions are de minimus
- Nwana Commits to the Following:

- Maximum 25 Trucks Per Day—2 Trucks Per Hour During Peak Hour/Month
- Trout Creek Pass Lobbying CDOT for Improvements

County Regulations and Comp Plan

- Issues:
 - Access to Public Lands and Rivers
 - Minimizing Tax Burden on Chaffee County Citizens
 - Economic Diversity
 - Provision of Safe and Efficient Transportation System
 - Visual Quality
 - Protection of Rural Areas
 - Preservation of Critical Wildlife Habitat and River Corridors

Applicable Review Criteria:

- 3-303(1)(b) County Regulations Consistency
- 3-303(1)(k) Economic Benefits

Economic Impact

- Issues:
 - Impacts to Chaffee County economies
 - Impacts to Chaffee County Services
- Applicable Review Criteria:
 - 3-303(1)(k) Economic Benefits
 - NWNA Project Payment of Taxes, Mitigation Fund, Local Jobs and Commitment to Sustainability in the Chaffee County Community exceed increased County costs to serve the Project, if any/and therefore, does not cause a net adverse economic impact.
- Increased Assessed Property Values increase the TABOR County base spending limitation by \$8,000
- Annual Tax Payments each year of \$16,000 will decrease tax burden on all Chaffee County citizens
- Annual tax revenues to other county service providers:
 - \$50,000 BV School District/State Equalization Fund
 - \$8,000 Chaffee Fire District
 - \$5,000 Northern Chaffee County Library District
 - \$2,500 Salida Hospital District
- Local Conditional Contracts: Well House, Pipeline, and Load Station
- Commitment to Hire 50% Local Truck Drivers
- Financial Mitigation Agreement for unexpected costs to serve above and beyond NWNA taxes
- \$500,000 NWNA Endowment and programmatic spending

Remaining Water-Related Issues

Issues:

- Ruby Mountain Pumping to determine impacts on future constructed wetlands
- Aurora Lease impacts on Chaffee County water resources
- Applicable Review Criteria:
 - 3-303(1)(d) State and Federal Water Requirements
 - 3-303(1)(e)(i) Surface Water, Changes to Existing Water Quality
 - 3-303(1)(h)(ii) Deterioration of Wetlands and Floodplain
 - 9-303(1)(b)(iv) Effect of Project on Surface and Ground Water
- Springs will not adversely impact Chaffee County Water Resources:

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- No spring water extraction proposed at Bighorn Site
- Pumping at Ruby Mountain does not reach Bighorn wetlands
- A flume installed on the Hagen ditch to compliment data used to construct a Wetlands/Riparian restoration project
- Aurora Lease replaces every drop of water pumped from the Project with trans-mountain augmentation water
- Proposed 1041 conditions further protect Chaffee County water

Additional Conditions

- Arbitration Instead of Litigation in Enforcement Context
- Demolition Permits Required
- CDOT Access Permit Required
- Ditch Crossing Agreements, Easements and other ROW Dedications to be in Place Prior to Construction
- County Roads Shall be Open Throughout Pipeline Construction
- County Shall Grant Easement for Pipeline Under Arkansas River

Proposed Site Restoration

Land Management Plan

Project Benefits to Chaffee County

- Inherent protection and preservation of land water and rural character and heritage
- Removal of existing hatchery and residences. Restoration of high quality wetland/riparian habitat
- Committed conservation of 115 acres along the Arkansas River and within the AHRA through Land Management Plans and Permanent Conservation Easement
- In-stream public access fishing through DOW fishing easements
- Positive economic stimulus and impact

He closed his statement by thanking the Board of Commissioners and the people of Chaffee County for their assistance in the making of this project.

County Water Counsel Culichia asked Nestle Waters Project Manager Lauerman if there was a water monitoring program.

Nestle Waters Project Manager Lauerman stated that was already in the ground water quality plan. The water quality would be watched very carefully. He explained how they had evaluated the water quality of the river and various water systems in the area. The water that currently went into the river had a high mineral content.

Commissioner Giese asked that now that Nestle Waters had withdrawn the permit of the Big Horn Springs area would Nestle Waters still be fencing off the area and protecting the wildlife and wetlands in that area.

Nestle Waters Project Manager Lauerman stated that everything that they had originally stated that they would do, would still be done. They just were not going to go ahead with the pumping process. This was covered in the management plans. The one area that would not be continued most likely would be the wetland monitoring.

Commissioner Giese asked what would happen if in a month or six months, Nestle Waters would want to put the Big Horn Springs location back in, would Nestle Waters have to start a new 1041 application process again.

County Attorney Davis stated that would be the process.

Commissioner Giese asked for clarification on the fact that the Army Corp of Engineers or the DOW could be helping to monitor the wetlands or would they be helping build the wetlands area.

Nestle Waters Project Manager Lauerman thanked Commissioner Giese for bringing this up and letting him clarify this question. Nestle Waters would be hoping to ask the Army Corp of Engineers and or the DOW to help build the wetland with their expertise. He also wanted it to be known that Nestle Waters was looking to spend over one million dollars and would want it to be done the best it could be. Nestle Waters would be the one that would undertake the monitoring of the wetlands and that would be reviewed by various agencies within the County to make sure that those sites were healthy and that there were no impact from their operations. He stated that would be reported to the County in the form of a report.

Commissioner Giese asked if this was a condition of the application. Then the County would have to have some type of reporting process and or a report view of that monitoring to say whether you were in compliance or in non-compliance with what was stated in the application. He had a question for staff concerning what the additional cost would be to the County and more importantly what was in the permit or in the regulations that explained what would happen if the applicant was in violation of any of the conditions if approved how would that County handle that. He asked what would be the procedure or for a better word, fine or retribution.

County Development Services Director Reimer stated if there were to be enforcement actions occur, it would be because the permit was not in compliance and therefore be in violation of the County zoning regulations. He stated state statutes give guidelines on fines and or retribution penalties.

County Attorney Davis stated there was also a provision in the County's 1041 Regulations that tell about the penalties and tell them that they would also be able to revoke the 1041 Permit in necessary.

Commissioner Giese stated that if there was a violation to one of the conditions, he did not feel that Nestle Waters would want to violate the condition and neither would the County want to violate any condition.

Nestle Waters Project Manager Lauerman stated that Nestle Waters was willing to negotiate the mitigation fund. This was a good example of what the mitigation fund should be used for.

County Development Services Director Reimer stated because of the cost of going to court on any violation, the staff would like to propose that arbitration be used for these types of situations.

County Attorney Davis stated as a reminder that if the Board of Commissioners were to close the hearing tonight, there would be no conversations that could be held to discuss the mitigation funds.

County Land Use Counsel Green stated that one idea would be to direct staff to confer with the applicant on that topic and leave the record open for a report on just that topic. She stated however if the record were opened on that topic, it would mean that staff could tell you what the discussions yielded but then you would also have to allow the public and the applicant to also have time to address that issue. She felt that it would be possible to reopen for just one purpose. She asked County Attorney Davis if that could be done.

County Attorney Davis thought that would be okay but the key there was if you would reopen it on that one subject you would provide any person attending to be able to comment on that so it would be a reopening of the hearing.

County Land Use Counsel Green stated that the only other way would be if the Board chose to close the hearing all together then that issue, if you were to deliberate and at the end of deliberation, chose to impose a condition to do with mitigation, then you would be

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directing your staff at that point to actually write out a condition for you that you could then discuss. She stated that was the only way that she could see that there could be further discussion.

Nestle Waters Project Manager Lauerman commented that he hated to end this discussion on what happens if Nestle Waters violated the permit, because they did not plan to do that. They not only met the 1041 Regulations, they exceeded the criteria of the 1041 Regulations. He believed that this would be an improvement to Chaffee County. Besides that it was very important to them that they do not violate any of the conditions. It was important to Nestle Waters and him to continue this discussion through the staff and legal counsel for conditions of approval.

Chairman Holman felt that would be critical. He stated that they all understand what the conditions were because they were not going to get there tonight.

Nestle Waters Project Manager Lauerman stated he would give an example with the Special Land Use Permit process that was followed. There was this discussion of what appropriate condition would be and you would have a given conditions that at face value looked like something that would work but then when you read the specific wording of it, it was not what was said. The interpretation was open and then staff and Nestle Waters worked through it to craft the wording that both sides felt comfortable with. They did not want to violate any conditions. They wanted the conditions to be as protective as possible to Chaffee County as well as to Nestle Waters.

Chairman Holman stated that he would like to be able to present whatever conditions that there were to the public to get their input. He was okay with continuing this hearing.

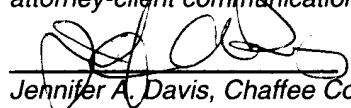
County Attorney Davis stated that the Board might be treading a fine line on receiving some legal advice, and it might be better suited for Executive Session. She stated Commissioner Giese had previously contemplated that the Board of Commissioners go into Executive Session.

Commissioner Giese stated he would like receive some legal advice from their attorneys concerning the process and further questions about some of the legality of the application.

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

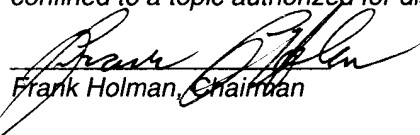
Commissioner Giese made a motion that we go into executive session under the statute C.R.S. 24-6-402(4) (b). Commissioner Glenn seconded the motion. On the question, the motion carried 3 - 0. The Board went into Executive Session at 10:22 p.m.

I, Jennifer A. Davis, Chaffee County Attorney, do hereby attest that the portion of the executive session held on May 21, 2009, during which the recorder was directed to take no minutes constituted a privileged attorney-client communication.



Jennifer A. Davis, Chaffee County Attorney

I, Frank Holman, Chairman of the Chaffee County Board of County Commissioners, do hereby attest that the portion of the executive session held on, May 21, 2009, during which no minutes were taken was confined to a topic authorized for discussion in an executive session.



Frank Holman, Chairman

Commissioner Giese made a motion to reconvene the public hearing at 10:47 p.m. Commissioner Glenn seconded the motion. On the question, the motion carried 3 - 0.

Chairman Holman stated that no decisions were made during the Executive Session.

Commissioner Glenn asked Nestle Waters Project Manager Lauerman if in the amended application Nestle Waters agreed to put permanent conservation easement on both of the sites (115 acres), what did that mean. There were a lot of different conservation easements and terms of easements that vary. He wanted to know specifically what type of conservation easement according to your land management and wetland management plan that had been stated. He asked if this easement would allow development that was totally restricted to just the 15 acre parcel that Hagan's would carve out. He wanted to know what Nestle Waters envisioned that easement to be.

Nestle Waters Project Manager Lauerman stated he was not sure but that it did not include the Hagan Parcel. It had to be protecting their business needs for now and into the future. He stated that in the spirit of what had been sought by the Board of Commissioners and the community, this would fairly well restrict any other types of development from happening.

Commissioner Glenn stated he was a bit concerned about something like that being a moving target.

Nestle Waters Project Manager Lauerman stated that his conversations with the Land Trust of the Upper Arkansas had been preliminary. He thought they saw value in Nestle Waters land in a conservation easement, if in fact if the restoration part was done. He stated that their plan was to go through a local land trust for the conservation easement. He wanted to make sure that this would protect their business operation, and not be restrictive to being able to keep levels of spring water flowing. It also protected their right come back to the County if needed for a new 1041 application.

Nestle Waters Water Consultant Simms explained that most conservation easements could be tailored to the individual needs. He believed this one would have would be to restrict any development on the property, other than the development already discussed.

Discussion was held on the pumping rate and how that would be spread out over the seven day work week and how the rates varied for the maintenance on the pipeline and cleaning. Limit of 1 acre square foot of water per hour would be the best scenario for everyone.

Chairman Holman stated that there had been some new testimony given. He would allow public comment of just this new testimony.

Mr. Boyd asked the Board why there was not going to be any metering done at Johnson Village storage facility. He also asked why they could not have a clipboard there and have the drivers sign out exactly how much water they were taking and then have the County Environmental Department take a water sample and check it monthly.

Chairman Holman stated that would be a question for Nestle Waters Project Manager Lauerman.

Nestle Waters Project Manager Lauerman stated that the water withdrawals were metered at the load station. He explained the procedure that had to be followed by each driver. This procedure was required by the State of Colorado Water Engineers Office. He stated that the flow metering was monitored and had a redundant system to make sure they had not water leakage. They did not want stagnant water and wanted to keep a slow and steady flow.

Commissioner Glenn stated that he wanted to go back over the Hagan property obligations one more time.

Nestle Waters Project Manager Lauerman stated that nothing had changed with the Hagan parcel due to the conservation easement.

Mr. Boyd asked if with the conservation easement in place, would there be less economic pluses, because of less tax liability.

Chairman Holman stated that Economic Counsel Townsend had covered that earlier in the day.

Ms Fairchild asked about the \$500,000 endowment and if Nestle Waters would be giving this to the County whether or not they this was approved.

Nestle Waters Project Manager Lauerman stated that he felt this was off topic as this public comment was supposed to be only on new information received. He stated however the \$500,000 endowment was a condition of the permit.

Chairman Holman told Ms Fairchild that this was not on topic and that they would move on.

Mr. Rule asked about the Big Horn Property, if there was a water right with that conservation easement. He was sure that the conservation easement would want to keep any water right that might be associated with the land.

Nestle Waters Project Manager Lauerman stated that there was no water right associated with the springs that he was aware of.

Ms Riggio stated that when they were talking about easement she distinctly heard the words "It gives us opportunity to seek additional withdraws". This whole time they had been talking about 200 acre feet as a minuscule amount. She was wondering if he was referring to seeking additional water sources.

Nestle Waters Project Manager Lauerman stated he was not refereeing anything. What he was saying was that they wanted to reserve the right to come back before the County with a 1041 Application process to apply for changes in their operation as needed.

County Attorney Davis stated that there were some documents that were presented. She stated that the Board needed to just clarify for the record if they intended to reopen the record to include these documents or not.

Chairman Holman stated that as County Development Services Director Reimer had stated earlier the Board really did not need to do that. He recommended that that the Board not reopen the record.

Commissioner Glenn asked County Attorney Davis to clarify what documents that she was specifically addressing here.

County Attorney Davis stated there were two maybe three different categories of documents. Summaries of testimony given tonight which she felt were permissible. There was information that was requested by the Board at the last meeting and the amendment to the application by the applicant. A letter that Nestle Waters provided tonight that was just a summary of the verbal testimony of the amendment regarding the Big Horn Springs and removing that from the application. She did not feel that it was necessary that this be part of the record in order for the applicant to remove the Big Horn Springs from the application.

Commissioner Glenn asked County Attorney Davis if she was asking the Board of Commissioners to reopen the written testimony to include the withdrawal of the Big Horn Springs Property.

County Attorney Davis stated no. She felt that applicant had done that through testimony today. It was just that these documents were presented by the applicant. She thought that outside of the summaries of testimony, she just wanted the record to be clear as to whether or not the Board was going to include these documents into the written record

evidence. She stated if the Board was inclined to include these documents into the written evidence, it would be a departure from the position that the Board took at the last meeting where they had closed the written evidence as of May 4, 2009.

Nestle Waters Project Manager Lauerman asked if he could make a suggestion. If it would be helpful, he would read that letter now and enter it into the record verbally, that way the Board would not have to worry about having a document considered.

County Attorney Davis stated that when she had read the letter, she had felt that Nestle Waters Project Manager Lauerman had already stated part of this letter in his testimony and opening remarks today when he indicated that Nestle Waters was withdrawing. In that respective, the letter was more of a summary of his earlier testimony. Therefore, she guessed that would leave the survey as to the questionable documents.

Commissioner Glenn asked if she was specifically talking about the survey as the only document that was new, but that survey was requested by the Board at the last meeting to identify the Hagan Parcel so it could be located and evaluated in the criteria. He stated now the Big Horn Property was off the table so it seemed like it should be a moot issue.

County Attorney Davis stated that was correct.

Commissioner Glenn stated that his thought would be if it was moot why would the Board want to reopen the public written comment when they would get zero value from it.

County Attorney Davis stated she just wanted to make sure.

Commissioner Glenn asked then that should be a question directed to my fellow Board members rather than my legal counsel.

Commissioner Giese stated he was very reluctant to reopen the written testimony part or allow written comments at this point in time because he felt that it would just open a big can of worms about this issue. His recommendation would be not to allow anymore written testimony or accept this written testimony tonight into the public record.

Commissioner Giese made a motion to not allow anymore written testimony or accept any written testimony received tonight into the public record. Commissioner Glenn seconded the motion. On the question, the motion carried 3 – 0.

Commissioner Giese stated it was hard for him to think that the Board and the public could beat up an issue anymore that had been done with this one. He stated that they had five public hearings on this allowing the public, the applicant and the staff to submit layers of information and clarification of the information. He felt to continue on with this would be redundant.

Commissioner Giese made a motion to close the public hearing of the Nestle Waters 1041 and Special Land Use Permit and open deliberations at a later date.

County Land Use Counsel Green asked to clarify Commissioner Giese suggestion to close the public segment of the hearing as opposed to closing the hearing, because the deliberations would be part of the hearing process.

Commissioner Giese amended his motion to public testimony part of the applications for testimony of the public, the applicant and the staff information and continues into deliberations at a later date.

Chairman Holman pointed out to the public that the Board was at a point where they would go into deliberation and depending on the result of that deliberation. If they deny it would be a denial of the application and if they accept it, they would accept the application with conditions. If that happens, the staff would start working on the

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Commissioner Glenn seconded the motion. He believed that the Board could probably go on with this issue for an eternity but it cannot go on forever. He felt that they had the information that they needed to make a decision on this application. On the question, the motion carried 3 – 0.

Chairman Holman stated that the public testimony of this hearing was now closed.

The Board discussed times for start of deliberation on the Nestle Waters Application.

Commissioner Giese made a motion to move the regular Board of Commissioners meeting to June 15, 2009 and to continue this hearing to a meeting on June 16, 2009 at 9 a.m. at the Board of Commissioners Meeting Room to start deliberations on the Nestle Waters 1041 Application. Commissioner Glenn seconded the motion. On the question, the motion carried 3 – 0. The meeting ended at 11:29 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.