

HART INTERCIVIC E00718900JB

**Draft Minutes**

Special Meeting

July 1, 2009

The Board of Commissioners held a Special Meeting on Wednesday, July 1, 2009 in the Commissioners Meeting Room in the Courthouse. Board members present were Chairman Frank Holman, Commissioner Tim Glenn and Commissioner Dennis Giese. Others present were County Attorney Jenny Davis, Deputy County Clerk Merrilou Cicerelli, County Development Services Director Don Reimer and County Special Land Use Counsel Barbara Green.

Following the Pledge of Allegiance, Chairman Holman called the meeting to order at 1:00 p.m.

Chairman Holman stated that the Board of Commissioners was holding this special meeting as a continuance of the special meetings to consider the request for Nestle Waters of North America for a Special Land Use Permit and a 1041 Permit. He asked Deputy Clerk Cicerelli if the agendas had been distributed appropriately. Deputy Clerk Cicerelli stated that they had.

Chairman Holman asked County Attorney Davis to review the criteria for the meeting.

County Attorney Davis stated that the Board would not take any testimony. The public comment portion and the written documentation portion of the hearing had been closed.

Chairman Holman stated that today the Board of Commissioners would be considering this application for a Special Land Use Permit and the 1041 Permit.

County Attorney Davis reminded the Board that the 1041 set the criteria that the Board needed to look at. She knew that the staff report had been organized in terms of each of the criteria. She did not know if the Board wanted to start off by going through the criteria or not as it was up to the Board as how they wanted to proceed with that.

The Board was presented a table for Nestle Waters' 1041 Application Review Criteria. The table is a part of the record and is shown below. The Board will refer to this table during their discussions.

**NESTLE WATERS 1041 APPLICATION REVIEW CRITERIA**

CHAPTER 3 – Municipal and Industrial Water Projects							
Standard (No and descrip)	Applicant Submittals (See note above)	County Consultant Reports	Agency Comments	Staff Comments	Staff Recommendation - Standard Met?	Comments	Staff proposed condition to satisfy criteria, if permit approved
3-303 (1)(a) Need for Project	Nestle commitment letter 1-29-09 (Ex E) Ex RR - 3-20- 09 letter			No project alternatives submitted	No	PC – submittals do not ID need, but not relevant to this project - met	None, no condition can satisfy. Not necessarily relevant
3-303 (1)(b) Consistency with Planning documents	♦ BHFS – several documents respondin g to staff reports and	CF 4/16/09	USFS 4-15- 09 AHRA 4-6- 09	Inconsistent with Comp Plan guidelines, Comm LUP on traffic, econ div, nat	No	PC, specifically not met w/respect to Comp Plan Resource section # 1, 2, 3	♦ Ded 60' ROW CR 300 (pub access) ♦ Wade fish easement on each parcel (river access)

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Standard (No and descrip)	Applicant Submittals (See note above)	County Consultant Reports	Agency Comments	Staff Comments	Staff Recommendation - Standard Met?	Comments	Staff proposed condition to satisfy criteria, if permit approved
	<ul style="list-style-type: none"><li>comments</li><li>AECOM – air quality report</li><li>Wilkinson – corridor traffic study</li><li>THK 5/4/09</li><li>Site plans</li><li>Westco – local drivers</li></ul>			resource, visual protection			<ul style="list-style-type: none"><li>Limit peak hour trucking (traffic)</li><li>Lobby CDOT to improve Trout Ck Pass (traffic)</li><li>Local const jobs, trucking jobs (Econ diversity)</li><li>Mitigation, arbitration (tax burden)</li><li>Remove / Restore hatchery (visual)</li></ul>
3-303 (1)(c) Efficient use of water					Yes		
3-303 (1)(d) Water rights	Draft SWSP (Ex F) Water lease (Ex F) Response to UAWCD 2-25-09 (Ex N) Raley 3-20-09 (Ex SS)	FMC 2-24-09 Wheeler 2-27-09 FMC 5/3/09	UAWCD 4-17-09 UAWCD 2-05-09	Not met unless water counsel's comments resolved	No	Concerns with proposed SWSP, augmentation plan operational impacts on water resources in Ark River basin	<ul style="list-style-type: none"><li>See Jim Culichia Summary, rec conditions</li><li>UAWCD rec condition</li><li>RICD – cooperate with VFP</li></ul>
3-303 (1)(e) – Surface Water Quality							
3-303 (1)(e)(i) Quality of downstream surface water	App H	FMC 2-24-09 Wheeler 2-27-09 Geomega 5/3/09 FMC 5/3/09		Water counsel comments require resolution. Wetland Monitoring Plan required	No	Data does not support no impact to wetlands at Bighorn	<ul style="list-style-type: none"><li>See Jim Culichia Summary, rec conditions</li><li>No operations at Bighorn; may apply to amend after adequate study</li></ul>
3-303 (1)(e)(ii) Surface Water Pollution	App H	Wheeler 2-27-09			Yes		
3-303 (1)(f) – Degrade groundwater quality							
3-303 (1)(f)(i) aquifer recharge rates, GW levels, aquifer capacity	App I, J	Wheeler 2-27-09			Yes		
3-303 (1)(f)(ii) Nearby well function	App I, J	Wheeler 2-27-09 Geomega 5/3/09 FMC 5/3/09	USFS 4-15-09		Yes	PC – rec GW monitoring plan	groundwater monitoring plan, with operational restrictions if impacts identified
3-303 (1)(f)(iii) Changes in well water quality	App I, J	Wheeler 2-27-09			Yes		
3-303 (1)(g) Construction impact on adjacent properties	App D Ex B 12-5-09 Ex I letter 2-19-09 Ex L 2-17-09 Ex O 2-26-09 Ex FF 3-16-09 Ex GG 3-16-09 Site plans		BVSD 3-2-09	Need SLUP approval, compliance with conditions, resolution of comments in proposed construction section	No		SLUP approval, Access permits, ROW dedication, right of way permits, County easements / license, security deposit to ensure mitigation of construction impacts, weed deposit

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

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Standard (No and descrip)	Applicant Submittals (See note above)	County Consultant Reports	Agency Comments	Staff Comments	Staff Recommendation - Standard Met?	Comments	Staff proposed condition to satisfy criteria, if permit approved
3-303 (1)(h) – Project will not deteriorate:							
3-303 (1)(h)(i) Air Quality	AECOM – air quality report			Submittal received May 4	No		Limit traffic to 25 loaded trucks per day maximum Trucks meet most stringent fed, state or local emission stds No truck idling during loading
3-303 (1)(h)(ii) Wetlands and Floodplain areas	App I, J, M Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09 GM 4-16-09 GM 5/3/09	DOW 4-1- 09 DOW 2-24- 09		No	Data does not support no impact to wetlands at Bighorn	<ul style="list-style-type: none"> <li>◆ No operations at Bighorn; may apply to amend after adequate study</li> <li>◆ Remove / Restore hatchery</li> <li>◆ Approve, implement land management plans</li> </ul>
3-303 (1)(h)(iii) Terrestrial or aquatic animal life	App N Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09 GM 4-16-09	DOW 4-1- 09 DOW 2-24- 09		No		<ul style="list-style-type: none"> <li>◆ No operations at Bighorn; may apply to amend after adequate study</li> <li>◆ Remove / Restore hatchery</li> <li>◆ Approve, implement land management plans</li> </ul>
3-303 (1)(h)(iv) Terrestrial plant life or habitat	App M Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09 GM 4-16-09	DOW 4-1- 09 DOW 2-24- 09		No		<ul style="list-style-type: none"> <li>◆ No operations at Bighorn; may apply to amend after adequate study</li> <li>◆ Remove / Restore hatchery</li> <li>◆ Approve, implement land management plans</li> </ul>
3-303 (1)(h)(v) Soils and Geologic conditions				No concerns related to project	Yes		
3-303 (1)(h)(vi) Visual quality	BHFS letter commit to restore Ruby wetland, remove hatchery		AHRA 4-6- 09		No		<ul style="list-style-type: none"> <li>◆ Remove / Restore hatchery</li> </ul>
3-303 (1)(i) Noise, vibrations or odors				See SLUP comments in Feb 27 and Apr 16 memos	Yes if SLUP compliance		SLUP approval, conditions related to operation
3-303 (1)(j) Risk from Natural Hazards				No concerns related to project	Yes		
3-303 (k) - Adverse net effect on economy within County or impact area							
3-303 (1)(k)(i) Changes to each sector, including	Append K THK 2-13-09 (Ex H) THK 4-7-09 (Ex	EPS 1-30- 09 CF 4-16-09	USFS 4-15- 09		No		<ul style="list-style-type: none"> <li>◆ Limit peak hour trucking (traffic)</li> <li>◆ Lobby</li> </ul>

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mining, rec, ag	XX) THK 5/4/09						CDOT to improve Trout Ck Pass (traffic) ♦ Ensure no impact to USFS springs
3-303 (1)(k)(ii) recreation visitation				Concern with additional traffic on visitation	No		♦ Limit peak hour trucking (traffic) ♦ Lobby CDOT to improve Trout Ck Pass (traffic)
3-303 (1)(k)(iii) Quality or quantity of recreation experience			AHRA 4-6- 09	Concern with additional traffic, visual quality related to experience	No		♦ Limit peak hour trucking (traffic) ♦ Lobby CDOT to improve Trout Ck Pass (traffic) ♦ Remove / restore hatchery
3-303 (1)(k)(iv) Changes in value of lands, loss of tax revenue	App K THK 2-13-09 (Ex H) THK 4-7-09 (Ex XX)	EPS 1-30- 09 CF 4-16-09		Property tax assessments may not offset County service costs	No		Mitigation fund to offset future costs, arbitration in permit enforcement action
3-303 (1)(k)(v) opportunities for economic diversification		CF 4-16-09		No diversification related to project. Removal of resource may reduce future opportunities	No		♦ Local const jobs, trucking jobs (Econ diversity)
3-303 (1)(k)(vi) benefits accruing County and citizens outweigh loss of resources or losses of opportunity to develop resources	Letters proposing endowment	CF 4-16-09	AHRA 4-6- 09	Many benefits are not benefits as they are status quo or are short term or temporary benefits only. Property tax assessments may not offset County service costs	No	PC – concur with staff, added that if hatchery restoration is completed through conclusion that would be benefit.	Remove / restore hatchery Create proposed endowment Commit to local construction and trucking jobs
Chapter 9 – Significant Impact on Areas of Statewide Importance							
9-303 (1)(a) - Adverse affect on wildlife species							
9-303 (1)(a)(i) disturb or harass wildlife species	App N Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09 GM 4-16-09	DOW 4-1- 09 DOW 2-24- 09	Potential wildlife impacts related to potential impacts to wetlands		Data does not support no impact to wetlands at Bighorn	♦ No operations at Bighorn; may apply to amend after adequate study ♦ Remove / Restore hatchery ♦ Approve, implement land managemen t plan
9-303 (1)(a)(ii) disruption of life cycle functions	App N Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09 GM 4-16-09	DOW 4-1- 09 DOW 2-24- 09				♦ No operations at Bighorn; may apply to amend after adequate study

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							<ul style="list-style-type: none"> <li>◆ Remove / Restore hatchery</li> <li>◆ Approve, implement land management plan</li> </ul>
9-303 (1)(b) - Wildlife habitat or protection areas, migratory routes, calving grounds, migratory habitats, nesting areas, rare and endangered species habitat							
9-303 (1)(b)(i) Revegetation plan to minimize weed invasion	Weed Plan (Ex HH)		DOW 4-1-09 DOW 2-24-09	Plan approved by County Weed Manager 3-17-09 Weed Dept rec \$10K security deposit (Ex 3.W)	Yes		Weed management / revegetation deposit. \$10 K rec by Weed Dept
9-303 (1)(b)(ii) Water to implement revegetation	Weed Plan (Ex HH)		DOW 4-1-09 DOW 2-24-09	Plan approved by County Weed Manager 3-17-09	Yes		Weed management / revegetation deposit. \$10 K rec by Weed Dept
9-303 (1)(b)(iii) vegetation removal or alteration	App M Grazing Plan (Ex PP) Land Man Plan (Ex QQ)		DOW 4-1-09 DOW 2-24-09	Potential wetland / riparian vegetation alteration	No	Data does not support no impact to wetlands at Bighorn	<ul style="list-style-type: none"> <li>◆ No operations at Bighorn; may apply to amend after adequate study</li> <li>◆ Remove / Restore hatchery</li> <li>◆ Approve, implement land management plan</li> </ul>
9-303 (1)(b)(iv) Surface and subsurface water quality and quantity	Land management plans Wetland monitoring plan GW monitoring plan	CNHP 1-29-09 CNHP 3-2-09 CNHP 4-6-09 GM 4-16-09			No		<ul style="list-style-type: none"> <li>◆ No operations at Bighorn; may apply to amend after adequate study</li> <li>◆ Remove / Restore hatchery</li> <li>◆ Approve, implement land management plan</li> </ul>
9-303 (1)(c) - Adverse effect on wildlife movement, displacement and adaptation							
9-303 (1)(c)(i) blocking wildlife from using habitat	App N Land management plans Wetland monitoring plan	CNHP 1-29-09 CNHP 3-2-09 CNHP 4-6-09	DOW 4-1-09 DOW 2-24-09	Potential wildlife impacts related to potential impacts to wetlands	No	Data does not support no impact to wetlands at Bighorn	<ul style="list-style-type: none"> <li>◆ No operations at Bighorn; may apply to amend after adequate study</li> <li>◆ Remove / Restore hatchery</li> <li>◆ Approve, implement land management plan</li> </ul>

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9-303 (1)(c)(ii) cause wildlife to find new routes	App N Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09	DOW 4-1- 09 DOW 2-24- 09	Potential wildlife impacts related to potential impacts to wetlands	No		<ul style="list-style-type: none"><li>◆ No operations at Bighorn; may apply to amend after adequate study</li><li>◆ Remove / Restore hatchery</li><li>◆ Approve, implement land managemen t plan</li></ul>
9-303 (1)(c)(iii) ability of specie to adapt to alteration	App N Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09 GM 4-16-09	DOW 4-1- 09 DOW 2-24- 09	Potential wildlife impacts related to potential impacts to wetlands	No		<ul style="list-style-type: none"><li>◆ No operations at Bighorn; may apply to amend after adequate study</li><li>◆ Remove / Restore hatchery</li><li>◆ Approve, implement land managemen t plan</li></ul>
9-303 (1)(c)(iv) Ability to find new habitat	App N Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09 GM 4-16-09	DOW 4-1- 09 DOW 2-24- 09	Potential wildlife impacts related to potential impacts to wetlands	No	Data does not support no impact to wetlands at Bighorn	<ul style="list-style-type: none"><li>◆ No operations at Bighorn; may apply to amend after adequate study</li><li>◆ Remove / Restore hatchery</li><li>◆ Approve, implement land managemen t plan</li></ul>
9-303 (1)(d) project administered to function in harmony with habitat	App N Land management plans Wetland monitoring plan	CNHP 1-29- 09 CNHP 3-2- 09 CNHP 4-6- 09 GM 4-16-09	DOW 4-1- 09 DOW 2-24- 09	Potential wildlife impacts related to potential impacts to wetlands	No		<ul style="list-style-type: none"><li>◆ No operations at Bighorn; may apply to amend after adequate study</li><li>◆ Remove / Restore hatchery</li><li>◆ Approve, implement land managemen t plan</li></ul>
9-303 (1)(e) Favorable comment from DOW AWM	Land management plans Wetland monitoring plan		DOW 4-1- 09 DOW 2-24- 09		Yes if DOW comments incorporated		Incorporate DOW comments into permit conditions

Chairman Holman asked the Board how they wanted to proceed, by reviewing step by step.

Commissioner Glenn felt it would be a good idea to go through it step by step. If they look at the particular part of the standard and at staff recommendation, whether they concur or not, or whether they have a different issue, he felt that they could get those issues out of the way. They would all agree on them right “off the bat” and not deliberate on each one of them on their own merits. At this point of time it would be better for them to go back to the ones where there were discrepancies. They could set it off to the side, come back later and revisit it.

Chairman Holman stated that was fine. He stated that the first standard was the need for a project.

Commissioner Glenn stated that staff recommendation was that the standard had not been met. However, the Planning Commission did somewhat disagree with that. He would like to set that one aside because he was not sure that he agreed with the Planning Commission's recommendations.

Chairman Holman stated that was fine. He felt that there was consistency with the planning documents.

Commissioner Giese stated that the staff recommendation was no. However, he felt that all of the evidence that had been submitted, they had met that specific criteria.

Chairman Holman stated that he agreed.

Commissioner Glenn stated that did cover a pretty broad range. He stated that there was traffic, there was economics and there was a whole host of things that fell within that area. He was not sure that he agreed that all of them were met. He was not sure if he knew which was the proper venue or area to discuss some of those. Therefore, in that light he would like to set that one aside as well.

Chairman Holman stated that they could come back after they saw what fit on that.

County Land Use Counsel Green stated that on that particular point, when the Board came back to it, they needed to take into consideration the difference between comprehensive plan policies that were just policy statements verses those that were some sort of enforceable standard. When the Board reviews it because to the extent it was a broad policy, it probably would not even be enforceable in the end. They would have to have some discussion on that point.

Chairman Holman thanked County Land Use Counsel Green. He stated that the next standard was efficient use of water.

Commissioner Glenn stated that staff recommendation was that the standard had been met. He agreed with staff's recommendation.

Commissioner Giese also agreed.

Chairman Holman also agreed. He stated that the next standard was water rights.

Commissioner Giese stated that he would like to discuss this one and would like to come back to it because there were some conditions and a few things that he felt that needed to be discussed a little bit further.

Chairman Holman stated that the next standard was surface water quality. He was not sure if that was a separate topic. He felt that quality downstream water quality would be the next one.

Commissioner Giese stated that he felt that this fell under the same kind of area that the previous one did under 303-1-b and e. He felt that it went along with items that were talked about as far as County Water Counsel Jim Culichia's summary and recommendations but he would discuss this too.

Chairman Holman stated that the next standard was surface water pollution.

Commissioner Glenn stated that staff recommendation was that standard had been met. He agreed with staff recommendations that the standard had been met.

Commissioner Giese agreed.

Chairman Holman also agreed. He stated that the next standard was grade groundwater quality.

Commissioner Glenn stated that had the same staff recommendation. He agreed the standard had been met.

Commissioner Giese agreed.

Chairman Holman agreed. He stated that the next standard was nearby well function.

Commissioner Glenn stated that the same staff recommendation standard was met. He stated that there were a few more notes on that but believed that all things considered that standard was met.

Commissioner Giese agreed with that.

Chairman Holman agreed as well. He stated that the next standard was changes in well water quality.

Commissioner Giese felt that fell under the standard above and the staff recommended that they had met that. He agreed that they had.

Commissioner Glenn agreed as well.

Chairman Holman agreed. He stated that the next standard was construction impact on adjacent properties.

Commissioner Glenn stated that staff recommendation was that this standard had not been met, but this particular item dealt more closely with the Special Land Use Permit of which he would like to deal with after the Board went through the 1041 part of this. He asked to set this aside under that particular area but did not want to dwell too much on that one until they had gone through the rest.

Chairman Holman stated that the next standard was air quality.

Commissioner Giese stated that his belief was the staff recommendation was no but felt that there were some conditions that possibly that the information presented did meet the standards.

Commissioner Glenn asked for some clarification. He believed the discussion was that there would be a limit of x amount of truck traffic. He believed that was staff's concern but if he recalled, Nestle Waters had agreed to this condition already about limiting the truck traffic.

County Attorney Davis stated that was correct.

Commissioner Glenn stated that then he believed the standard had been met.

Chairman Holman agreed. He stated that the next standard was wetlands and floodplain areas.

Commissioner Giese stated that certainly the staff recommendation was no on this. He stated that now that the Big Horn Springs had been pulled out which was most of the wetland, almost 99% of the wetland, due to or talked about, his question was with that being taken off had they met the standard or did they still need to discuss the wetlands area that was or was not on the Hagan property.

Commissioner Glenn felt that was part of GeoMega's list of things that they needed to take into consideration, even though the Big Horn Springs was off the table. He asked



how potentially did pumping at the Ruby Mountain Site effect all those areas as well as how would it effect a new potential wetland and riparian area. Therefore, he did not think the standards been met.

Commissioner Giese stated that they needed to have a discussion about even though the Big Horn Springs was off monitoring the Big Horn Springs as far as pumping at Ruby Mountain and how that would look. He felt that probably the next two standards were on the same subject. He felt that it dealt with the wetlands monitoring until they get to standard 1-H-5 which was recommended that they met the standard.

Commissioner Glenn stated that would be okay.

Chairman Holman stated that they would come back to these. He stated that the next standard was soils and geologic conditions.

Commissioner Giese stated that Staff Recommendation was that the standard was met. He agreed.

Commissioner Glenn also agreed.

Chairman Holman agreed also. He stated that the next standard was visual quality.

Commissioner Giese stated that Staff Recommendation was no. He felt that was based on not knowing where the appropriate area was for the Hagan cutout of the project or where it would be carved out. He felt that was decided. For him, he felt that the visual quality of the application standard had been met.

Commissioner Glenn felt that it would be met under certain conditions or could be met under certain conditions but was not sure that he was totally comfortable with all of the conditions that dealt with that, particularly the restoration of the hatchery. He felt that needed to be firmed up a little tighter but felt it could be met.

Chairman Holman stated that the next standard was risk from natural hazards.

Commissioner Glenn stated that the recommendation was that the standard was met. He did not hear any testimony or any concerns that it was not. Therefore, he agreed that it was met.

Chairman Holman agreed also.

Commissioner Giese also agreed.

Chairman Holman stated that the next standard was adverse net effect on economy within County or impact area, changes to each sector, including mining, recreation and agricultural.

Commissioner Glenn stated that this was one of his concerns that he raised on the very first or the second standard where the Board discussed economics within the comprehensive plan as well as in the standards. Therefore, he did not believe it had been met.

Commissioner Giese stated that when the Board discussed these standards going down through the list, none of them had been recommended by the staff and they all hinged on the economic development and diversity. He felt that by looking at the whole group of six and discussing them as a whole instead of each individual standard.

County Land Use Counsel Green stated that the actual standard here was 3-303-4 which was adverse net effect on economy within County or impact area. She stated that was the standard and all of the sub-headings that the Board was to take into account when determining whether or not this project had any adverse net effect on the economy.

Chairman Holman thanked County Land Use Counsel Green for her help. He stated that the Board would come back to this standard. The next standard was adverse effect on wildlife species.

County Land Use Counsel Green stated that this was the same sort of standard. It was written as no net adverse effect on wildlife species. Then it gave guidelines as to what it was not limiting these considerations to. These were the sorts of things the Board could consider in determining if that has been met.

Commissioner Giese stated that again the staff did not recommend anything on these two as far as yes or no.

Chairman Holman stated that given what he knew about the wildlife and what was going to happen, he did not think there was going to be an impact. If anything, he felt it was going to be a positive impact.

Commissioner Glenn stated that he felt it depended on the conditions that were part of the permit approval. If the conditions that were proposed were acceptable, then he would feel that Chairman Holman was probably right. If the conditions were not acceptable, then he would feel that there was an issue.

Commissioner Giese stated that he felt specifically to the Big Horn Springs wetlands and the land management plans and the condition if approved would be key to these two bullets of this standard. Therefore, he felt if the Board discussed some of these others standard, these two standards would "wrap" into them.

Chairman Holman stated that the next standard did also. Regarding the weed plan, the staff stated that the standard had been met for the revegetation to minimize the weed invasion.

Commissioner Giese stated that he felt that the last two bullets 3 and 4 addressed the same problem or issue about what the plan for the Big Horn Springs was and it probably would be when the Board discusses the one up above as it would be part of that same discussion.

Chairman Holman stated that the weed plan had already been approved by County Weed Manager Larry Walker.

Commissioner Glenn asked if the Board was in agreement that the revegetation plan 9-303-1-B-1 was met and 9-303-1-B-2 was met also.

Chairman Holman stated that he felt it was.

Commissioner Giese agreed.

Commissioner Glenn agreed.

Commissioner Giese stated that regarding the standard as a whole, the last two items he felt still did not mean that the whole standard had been met, but the Board had been advised by their attorney that those were two of the considerations.

Chairman Holman stated that the next two standards had to do with vegetation removal and surface and subsurface water quality and quantity.

Commissioner Giese stated that he felt these two standards had a part in this whole thing.

Chairman Holman stated that the next standard was adverse effect on wildlife movement, displacement and adaptation - blocking wildlife from using habitat. He stated that these were all going to be the same.

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Commissioner Giese stated that he felt that these were going to be the same, which was yes. He felt that it came back to the same points that the Board discussed before what was the management plan and wildlife plan for the Big Horn Springs and Ruby Mountain might be on conditions that the applicant had added to that. The Board needed to discuss these.

Commissioner Glenn agreed.

Chairman Holman stated that they would start at the beginning.

Commissioner Glenn stated that he would prefer to begin at 3-303-1-B.

Chairman Holman stated that would be fine.

Commissioner Giese felt that some of the things that were in this go back to the economic report which was 303-k and the traffic study. He stated that they could discuss those items and wait until later.

Commissioner Glenn had some concerns that the standards had not been met. His concerns were the conditions. Whether looking at the economics or at the travel corridor or whatever, he did not want to say that the standards were met under the comprehensive plan document and then the standards were not met. The comprehensive plan sets guiding objectives of which the standards in a lot of respects relate to. For the Board to look at this particular one in a vacuum before considering the others, he did not if that was the way he would like to go.

Chairman Holman felt that many of the others were going to fit into this. He stated that the Board would be handling them one at a time from now on. The first one was the efficient use of water and water rights.

Commissioner Glenn stated that water rights 3-303-1-D was the next one on the list.

Commissioner Giese stated that some of the concerns were expressed by the Upper Arkansas as to whether this water right was consistent with Aurora and the possibility of drought and what happens to that. He did not see any evidence presented that he felt was in opposition. He struggled trying to figure out the Upper Arkansas' concerns. The scenario used that over 5 years that possibly Aurora would be short 1000 acre feet. The agreement with the applicant and Aurora was pretty specific about when and if in a drought condition when they could have water or not have water. He stated that he struggled with the agency commenting about the water right.

Commissioner Glenn stated that he did not necessarily disagree with that but he really did struggle on how to tie all of these together because they did lap over in so many different aspects. He had expressed those concerns as well. These was testimony from at least the general manager of the agency who is charged with virtually every aspect of the protection of every aspect of water within not just Chaffee County but Fremont and Custer Counties and he raised a significant concern. He felt that while not knowing much about the Prairie Waters Project since it did not have a major impact on Chaffee County but when the salvation of any problems that they might run into that was not very compelling to him when the person who is charged specifically Mr. Scanga with "going to bat for every water right and every ag producer" in Chaffee County. His testimony was rather fairly compelling.

Commissioner Giese asked Commissioner Glenn was his concern whether the contract or agreement with Aurora and the applicant basically about a dry year or the long term over a five year period was his example and whether what he was saying was legitimate. Commissioner Glenn stated that was correct. He felt it was legitimate. He remembered specifically asking Mr. Scanga in this scenario if would there be the potential for harm to agricultural interest. If he recalled his comment correctly and his testimony what that these Aurora rights were very senior and under this scenario. It indeed could cause some

problems with the agricultural producers who may have more junior rights. Of course, when looking at the river as a whole, these have to be taken into consideration.

Commissioner Giese asked Commissioner Glenn if what he was saying was because Aurora's water right was senior to some of the agricultural uses that if a call was on the river that this could be a call and someone might lose 3 tenths of a cfs.

Commissioner Glenn stated that was not correct. He thought what Mr. Scanga was trying to convey at least how he understood was that under the points that happen and while 200 acre feet was not perhaps a huge amount of water in comparison to 20 cfs or something like that when you get the compounded effect and it come up to 1000 acre feet or 2000 acre feet in that drought year scenario where the storage had been depleted through the removal of this where the storage had been depleted. Then all of a sudden it triggers that drought year and then there would be a 2000 acre feet deficient and Aurora would tell Nestle Waters that they could not take their water but what that had now done because of compounded use of that would have a negative effect on the more junior water right owners in Chaffee County. So potentially because of this compounding then Chairman Holman gets called out earlier that he normally would have because now Aurora utilizes their and your right in their senior exchanges and taking the water out. He thought that was what Mr. Scanga's testimony was. His concern was not whether or not they would augment 200 acre feet, but it was the compounded effect after the storage drop.

Commissioner Giese stated that in response to that was this project that Aurora was putting in they stated that they would or would not need that much water.

Commissioner Glenn stated that the comment he meant was that they would have enough water for the next 100 years. He did not know for sure what the comment was, but it was something similar to that. The fact of the matter was that maybe Aurora did not want to use their Prairie Water Project. Maybe they wanted to say that they had Arkansas River Water and they were going to take it through the Antero Pipeline. He did not know. He did not think that there had been anything in the conditions that had been stated that Aurora would absolutely invoke or whatever in the event of a drought. There was nothing that stated that. In water rights, there were senior water rights unless it was written and agreed upon that it cannot be taken.

Commissioner Giese stated that he was reviewing the ten points that the County's Water Attorney had addressed the conditions to that. County Land Use Attorney Green asked Commissioner Giese which letter he was referring to.

Commissioner Giese stated that he was referring to the letter by County Water Attorney Jim Culichia dated February 24, 2009.

County Land Use Attorney Green stated that there was also a May 4, 2009 letter that updated that one.

Commissioner Giese stated that was the one he was looking for. He stated that it did address all of those concerns.

Commissioner Glenn stated that he did not think that it did address the concerns and why it did not. The only thing that addressed the concerns was because the testimony they heard from Nestle Waters stated that they cannot tell Aurora how to use their water. Public Health Nurse Director Susan Ellis had no control over that. All they can do was what Aurora allowed them to do within the agreement of their lease. There was a behemoth group in Aurora that had significant interest in the Arkansas Valley of 54,000 acre feet or whatever the number was. If they decided to use that water, they could use that water. If it had an impact on our agricultural users because of the compounded effect that Mr. Scanga had a concern with, so be it. That was what was found out in water court if they were not there as objectors. The court issued a decree. Then they lived with it

regardless of what their water right was. He felt that there was a significant concern out there that he did not know had been addressed now. Maybe it could be addressed. Maybe they could say get an agreement with Aurora that stated clearly that they were not going to draw down their storage in the Arkansas Basin and they would have a negative impact under that scenario. They would use their Prairie Water Project or whatever condition but he felt that there was a significant concern that the ability to damage agricultural interest in Chaffee County as did Mr. Scanga.

Commissioner Giese stated that basically the condition needed to state if Aurora could not damage Chaffee County water interest or rights on the long term because of leasing water to Nestle Waters over the 5 -10 year period that there was a deficit in their reservoir that it would not effect Chaffee County water users.

Chairman Holman felt that the last bullet basically stated that.

Commissioner Glenn felt that what the last bullet stated was that the ability or the requirement to augment from the source above where the removal of the springs was that there was no impact or any baring on Mr. Scanga's concern because that was all conditioned on the drawdown of the reserves which triggered the exchanges which created the 1000-2000 acre foot problem. The last bullet stated that Nestle Waters will through their lesser augment the source.

Chairman Holman stated that County Water Attorney Culichia noted that this was in accordance with concerns noted by the Upper Arkansas Water Conservancy District.

Commissioner Giese stated that the Board was discussing water rights, which was his biggest concern on his my mind, Upper Arkansas and its long term storage and depletion.

Commissioner Glenn stated that the next staff criteria that dealt with the RICD, he felt would strictly be a concern of the County. If there was a drought year, it would not only affect agricultural but it would affect RICD. It would have even more effect on the RICD that it potentially have on some agriculture.

Commissioner Giese stated that was addressed in the next to the last bullet.

Commissioner Glenn thought that those concerns that County Water Attorney Culichia had expressed dealt with the removal of the 200 acre feet. He did not disagree with that and Aurora would augment the 200 acre feet on Nestle Waters. He did not disagree with that. He felt where the concern was accumulative depletions, the draw down of the storages and then the need to either replace those storages or take more out of the Antero pump station to satisfy Aurora in a drought year which would leave even more of a void creating more of a problem because of the seniority of the rights. He did not feel that County Water Attorney Culichia's concerns or recommendation addressed that concern. In addition, it was inconsistent with the Aurora Agreement and with the Upper Arkansas. Maybe there was two ways to remedy the problem. One way to remedy the problem would obviously be to open a whole host of other issues and not let local entities augment the water. This way local entities would be concerned with local issues in Chaffee County. The other way would be as he had stated before to have Aurora state that they were not going to draw down those depletions, they were not going to evoke our ability to exchange and they were not going to cause more damage effect as Mr. Scanga pointed out in the cycle of drought years. When that does occur, they will strictly move over to Prairie Water and will let the Arkansas Basin recover on its own. He seriously doubted that would happen but perhaps it was something that could be considered.

Chairman Holman felt that they were viewing this differently. He stated that by backing up four bullets, drawing water from project wells was covered on one page one bullet page 3.

Commissioner Glenn felt that maybe he was not expressing himself very well.

Chairman Holman stated that they felt he was. He just disagreed.

Commissioner Giese stated that the key point was that there was the concern about the long term drawdown and the effect that would have over 5 -10 years with the Aurora water.

Commissioner Glenn stated that he did not know where Mr. Scanga's letter was, but stated to go back and read his letter, which clearly stated what his concern was. It was not a 200 acre feet concern, not a 1,000 acre feet and in some certain conditions it could be 2,000 acre feet. This was a lot of water, not a miniscule amount of water and that was his concern.

Chairman Holman stated that on the other hand, if this was changed to require local water, there would be the same issues.

Commissioner Glenn stated that there might be. He did not know if there would be the same issues because there would not be an agreement that spelled out how certain things could happen when in certain trigger points. You almost have to live through the Aurora Upper Arkansas Agreement which he did to appreciate everything that went into it. When Mr. Scanga testified, you knew it was a significant agreement. It had significant things put in there to protect the Upper Basin against the negative effect of a drought year. Unless he really missed Mr. Scanga's comments, he felt he was right in his assumptions in a lot of ways. He felt what they were trying to prevent which was injury to water rights water users. He was not sure that was what they were trying to do but that certainly was what the 1041 attempted to do in trying to prevent these negative impacts.

Commissioner Giese asked if he may move in a little different direction. He also asked other than this issue what other items were there that were not addressed in County Water Attorney Culichia's letter or other concerns concerning the water right issues or water lease.

Commissioner Glenn thought with Nestle's ability to augment their depletion, he felt that the issue was resolved to remove 2000 acres feet and to replace it with 200 acre feet. He did not disagree with that. He wanted to go back and dwell on the issue because he had already dwelled on that the problem at hand. As far as the water rights, the only other concern he would have was to go in blind faith down the road. The state engineer approved the substitute water supply plan that would make everything alright and approved a permit before a water court proceeding was through. He stated that was his concern. In the back of his mind, he looked at how the Board looks at a lot of different things. The Board generally did not approve things on something that was not final.

Commissioner Giese asked Commissioner Glenn what he was saying.

Commissioner Glenn stated that was one of Mr. Scanga's early comments was passed. Therefore he could probably pass it as well.

Commissioner Giese stated the Commissioner Glenn's concern was getting them a temporary use until the final decree came through on a permanent basis.

Commissioner Glenn felt if that was what was needed to get it through. If water court did not give final approval, the permits would be null and void. He felt that would be the way to handle it. Even a short term water supply plan that the State engineer might approved that may do some type of damage, obvious it would not be a lot of permanent damage, he felt that he could get by with that.

Commissioner Giese thought that a good point was to try to get a conditional water right on the spring. Then work on a substitute water supply plant for 40 years. He agreed with having a decree but the Board cannot control when the water court decrees a water right. He stated that the Board could set it for 10 years. If they have not issued a final decree by then, the permit would be null and void.

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County Land Use Counsel Green stated that perhaps on the particular issue, she felt the staff understand where the Board was going. The concern was about temporary versus permanent. She stated that if the Board decided to approve this permit with conditions, they were going to want to have a condition on this. The Board could just direct the staff to deal with it in conjunction with their water counsel and come back to the Board at the next meeting or before the 60 days with a proposal condition that could be considered as to whether or not it actually was what the Board was looking at.

Chairman Holman stated probably that was the only way they were going to get there.

Commissioner Giese stated that the key point was the concern about the long term draw down of the Aurora water supply and reservoirs and how that be would effected. Whether its 5 - 7 or 10 years was how that would affect water users down stream, water rights and calls on water.

Commissioner Glenn stated that was his biggest issue on the water component.

Chairman Holman stated that the Board would direct staff to develop conditions to satisfy their concerns, including quality of down stream surface water.

Commissioner Glenn thought that the Board would need to make sure again that the conditions addressed the manner satisfactory of the County Water Counsel and Consultants. He felt that the standards had been met on that one. The County's legal concern was from water counsel as long as the conditions were there, then it would be alright with him.

Commissioner Giese felt that the big issue which was addressed a couple of places. He thought that County Water Attorney Culichia's letter addressed that this augmentation be trans-mountain water for water quality and be addressed through the Aurora lease.

Chairman Holman stated that the next condition was surface water pollution.

Commissioner Giese thought that all of those had been met. Under 303-1-g- construction impact, this was through the Special Land Use Permit. He agreed with Commissioner Glenn that basically all of those items would be covered under the Special Land Use Permit Application. Depending on what the Board did with the 1041, he felt that they would be covered under that one. Under 303-1-h air quality, he thought that the Board might discuss a little bit about traffic and a few things like that. His feeling was that the information presented on air quality as far as trucks were concerned the limit of 25 trucks per day maximum and trucks meet the most stringent federal and state, local emissions was key in the air quality. He was not talking about traffic, but talk about number of trucks. He felt that his estimation on these items met the air quality. He thought part of the concerns staff had and their comment was about all the information concerning the trucks and pollution and shutting trucks off while loading.

Commissioner Glenn stated that this was a question that had a lot of conditions that had been already agreed to. Some of these conditions were no more that 25 trucks per day or whatever, using green efficient truck and making sure that it sill continued after the final approval.

County Land Use Counsel Green asked what if the Board were to approve the project.

Commissioner Glenn clarified by stating that the first 6 trips come to Chaffee County were in green fuel efficient trucks that would not have any air pollution but the next 20 for the next 10 years were just a regular truck.

County Land Use Counsel Green stated that if the Board were to approve a permit with conditions in any context, any violation of a condition would be subject to an enforcement proceeding in the same way the Board enforces any of their regulations.

Commissioner Glenn stated in all fairness to everyone, there has to be a standard established for that not a standard under the regulations but a standard that Nestle has agreed to meet regarding the kind of trucks. Then staff can state that in the standard.

Commissioner Giese stated that his questions were on any of the standards and or any of the overall standards and or any of the conditions and or how are the enforcements done and what was reasonable and a deterrent to the applicant not to do them. In other words the deterrent had to be significant enough if anyone of these standards to say that they would not take the County too because one of the trucks did not have this or that or whatever. His question was that if they went in that direction that would be fine, but if do not meet the standard, what would be the enforcement or the deterrent.

County Land Use Counsel Green stated that was correct. If the Board would give conditional approval, one of the things the staff would work on between when the decision was made and coming back to the Board would be to make sure that a permit had an appropriate language in it that any condition would be enforceable in the most expeditious way.

Commissioner Giese stated that he was not going to stand out there to see if they were all the same ones. He stated that basically the question was if they met most federal, state and local conditions and local emissions data. He stated that they were pretty stringent and were now getting more stringent in regards to diesel trucks.

Chairman Holman stated that as long as there were between 2 - 3 year old trucks, the conditions were continually improved and getting more stringent each year. He thought that the Board might be able to place a condition on a certain age of truck, but was not sure.

County Land Use Counsel Green stated that they could work on that for you, with the understanding that what the Board was trying to achieve was compliance with the standards, including recording requirements.

Chairman Holman stated that would be fine.

Commissioner Giese stated that the next standard was the wetlands and the Big Horn Springs, which were the major concerns over this restoration of the hatchery area, removing the current building and restoring the hatchery area. Probably the biggest concern was addressed by the consultants and the public, which were the wetlands on the Big Horn Springs Area. His understanding was that he had heard or read Nestle Natural Resources Manager Bruce Lauerman state that they were going ahead with the original part of the application for the land management plan on the Ruby Mountain Site concerning fencing that off and allow some grazing in the wetlands.

Chairman Holman asked Commissioner Giese if he meant Big Horn Springs.

Commissioner Giese asked if that addressed the next three bullets ii, iii and iv.

Commissioner Glenn stated that he had not reviewed the monitoring plans, but as he recalled from what information he could partially gather from GeoMega's presentation at the last hearing was that while nobody thought that these were tied together, they did not know that. Even though there would be no pumping at Big Horn Springs, the concern he believed still was any pumping at Ruby Mountain would have an effect on that. Everyone thought it would not.

County Land Use Counsel Green stated that after permanent approval, a wetlands monitoring and mitigation plan had to be approved by the staff and its consultants. In this particular case, there already had been significant plans and topics submitted but there could always be a condition just to make sure that what ever was actually written out was in the language that the County enforce, can understand and that the County staff can



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work with. It was an option that the Board could choose not to deny the Petitioner's request and uphold the Assessor's valuation for that basis.

Commissioner Glenn stated that one of his concerns was it gets into the realm of the wetlands as well as the agricultural practices surrounding as well as drought as well as possible expense to the County down the road. If there was a change in agricultural practices and there was a decline in the wetlands, he asked how that would affect everything. He asked how they were to know what was causing the problem.

Commissioner Giese felt that they needed the monitoring of the area and the well defined if in fact it did go down. He asked what the causes were and what would cause them to tell the applicant that they had to quit pumping. One of the issues he had with that bullet was it was 250 gallons a minute. He had reviewed the hydrology report, which stated that 250 gallons per minute was not sustainable at Ruby Mountain. The most that they could pump was 150 gallons per minute which was way over. If approved, the amount of 200 acre foot by almost 2000 gallons per minute. His concern was how much water they did need to pump. Obviously they were only going to augment 195 acre feet with their 5 acre feet as depletion as the Board would limit the amount of pumping on Ruby Mountain to a point the produced the 200 acre feet and about 150 gallons a minute. This was sustainable by their own report with draw downs and the cone. Therefore, this might be another part of the application that would be key. He felt that monitoring the Big Horn Springs or the wetland at Big Horn Springs with the pumping at Ruby Mountain if approved was key also and well defined about what the causes were or what would be causes. If approved for the applicant to stop pumping until the County could determine the cause, such as could it be upland, did someone quit irrigation, was it actually the pumping or whatever. It would be stopped until someone could determine how that was affecting the wetlands.

Chairman Holman stated that was really covered in the third bullet that wells would be monitored and no pumping from the river. The Ruby Mountain Wells would be done when the water level was at or below what the wetlands needed to be maintained and sustained. Therefore, the Board needed to determine what that was and then they would be covered.

Commissioner Glenn believed that this was the baseline data that everyone had talked about.

Commissioner Giese stated that it covered it as for the aquifer recharge and rate and ground water levels and that would be part of it, which was the next one. We had stated that there was part of it met, but he believed that they needed to put a limit. It was obvious that they could not pump more than they had. By putting a limit on those two wells say was the maximum because they could pump or not pump for 3 days, pump at 250 for 4 days and still meet it. He did not know that it would be his concern. Obviously there might be days that they did not need it because of their storage but what was the rate of pumping that did. His understanding was it did have an effect on how much they pumped the aquifer and the cone of depression and recharge of their own wells. Obviously they could not pump down below as they stated a foot above their screen. If they were pumping 300 gallons a minute and get down to the recharge, they could not or would not want to pump below that. His concern was more consistent pumping that pump hard for 5 days, stop for a week, pump hard for 5 days, stop for a day, but they did not have that type of storage. He did not know if they could get past quality of surface water or where they were with that one. He moved down to down to 1F which the Board said they had met the standards but he had some concerns about the line of pumping rates and how they pump.

Chairman Holman felt that could possibly change over time too once they had baseline data then they would better know but initially perhaps a limited amount of gallons per hour could be written into the conditions until proven otherwise. He stated that in the conditions, they limited the number of gallons until they knew from the baseline

monitoring what was going to happen. Therefore they should be covered, knowing that anytime the wetlands were impacted and the pumping has to cease.

Commissioner Giese stated only until they can determine what affected the wetlands.

Chairman Holman stated that part of it would work.

County Land Use Counsel Green thanked the Board. She stated that they would work on it and get back to the Board.

Chairman Holman stated that the next condition was the visual quality.

Commissioner Giese thought the biggest portion of that was on the Hagen property removal and restoration of the hatchery. The Board had talked about this which was where the carve out was on the Hagan Property

Commissioner Glenn stated that it seemed to him that Nestle's evaluation of the timeline on the restoration of the hatchery was a little inadequate.

Chairman Holman asked Commissioner Glenn if he meant too long.

Commissioner Glenn stated that was correct. He felt that the Board made a pretty compelling argument that they wanted to do it right. The citizens of Chaffee County what to do it right. There was no doubt about that he did not want the Board to "sit on it and do nothing over a ten period". Then all of a sudden have it done in ten years. He was a little uncomfortable in saying try to get things going in 2 years. Nestle will really have something going in five years and will guarantee it will be done in 10 years. He was not comfortable that it would be done in 10 years.

Chairman Holman stated that he was not either. Once the hatchery is removed, it needed to move quickly. He did not see a reason why it could not.

Commissioner Glenn felt that once the permit was approved then that had to be a priority to start working on removing the hatchery and returning it back to wetlands and natural state. He was not comfortable with having it stretched out over 10 years.

Commissioner Giese was in agreement with that.

Commissioner Glenn stated that he was comfortable with a good community involvement process that involved all kinds of concerned citizens, experts and everything else like that to work through that for a year or a year and a half to get a great design. He was okay with that. He was okay with getting a good product and getting what the community wanted but then once that came then getting the thing built. He was not comfortable in stretching it out 10 years. He was not sure that he knew how realistic 5 years was, but he knew in his mind that 10 years was not acceptable.

County Land Use Counsel Green stated that along the same line of what was discussed, one way to address this would be a condition relating to visual impacts about hatchery restoration. Before the project could commence, the staff would approve a timeframe and modules that would be a part of the restoration project. This would be one way to do it, but the staff would need to have some sense of timeframe. It would be important to understand the different targets of different things that were going to happen along the way. As long as they were moving to achieve targets within a timely manner then the Board would need to know what was happening. One way to approach this would be to have a condition that stated that the applicant shall submit a time table and elements of the hatchery restoration plan in a manor acceptable to the staff prior to commencement of construction.

Chairman Holman agreed with County Land Use Counsel Green. He stated that the Board could not sit here and determine what the time was but there did need to be one.

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County Land Use Counsel Green stated that the only question would be whether or not the restoration plan and time table was acceptable to be deferred to the staff that would allow them to make that choice or did the Board want it back to them.

Commissioner Glenn felt that it did not need to come back to the Board. He felt that the Board had given their direction that 10 years was unacceptable but wanted it to be a good process, wanted it done right and wanted it done as expediently as possible. He stated once again that once you get through the planning process and get the design process, he did not want "it to sit". He wanted construction happening pretty quickly and getting it done.

Chairman Holman stated that they all did.

Commissioner Giese agreed. However, he felt that he would like a deadline date.

Commissioner Glenn wanted one too but did not know what it would be.

Commissioner Giese stated that deadlines had a tendency to make people move a little bit faster and not that the Board wanted to rush things but if it was left open ended, he struggled with the year and one half of public input that was worst than the application. He felt 60 days out would work for him. It just seemed that the key or the goal was if approved the wetlands would be used as educational and these types of things that they wanted. Five years seemed way too long for him, but if some kind of deadline would be approved to be completed by this specific time which was talked about, this would be the key.

County Land Use Counsel Green stated that this could be the condition.

Commissioner Giese stated that his concern was if approved and this was a nebulous type of thing that Nestle still sat on this for 5 - 6 years and did not do anything other than tear the building down. Then all of a sudden they decided that they were going to quit pumping. Now there is what they promised to do not there, they went on to some other place and it was not done. If it is approved, there needs to be a specific deadline. Whether or not Nestle leaves, it is done. This is what he wanted.

County Land Use Counsel Green asked Commissioner Giese if he was thinking of this as a larger issue. If the Board was to conditionally approve, they probably needed to talk more about it. If the Board would want performance guarantee in place in case the developer would walk, the County can step in and complete it.

Commissioner Giese stated that he had not thought about it in that way. He suggested treating them as an up front cost like the developers on infrastructure. When various parts are completed, their money is returned.

County Land Use Counsel Green stated that if the Board were to approve this with conditions, there may be several conditions where the performance needed to be guaranteed in some fashion. The staff and finance director could propose back to you for your final decision.

Commissioner Giese stated that was his concern.

Chairman Holman stated that the Board would encourage staff to have a condition that moves this along as quickly as possible with some protection built in. The next condition was the adverse net effect on economy within the County or impact area.

Commissioner Glenn stated that this had probably been one of the biggest issues at least for him that he had been concerned with and the standard itself. He asked County Land Use Counsel Green if this project had any negative impact aspect of the local economy and if it did, when could they consider a future loss of opportunity.

County Land Use Counsel Green stated that in determining whether or not there was a negative impact on any sector of the economy, the County's regulations had a lot of considerations that went into making that determination. Then the Board had the report from the consultants for the applicant and the report from Coley Forest in addition to the oral testimony.

Commissioner Glenn stated that in looking at the Coley Forest report from County Economic Counsel Townsend stated that there was a loss of future economic opportunity. It also stated clearly that the people of Chaffee County had put a higher value on spring water than on river water. It stated clearly that Nestle Waters of North America had put a significant value on natural spring water as compared to river water. Therefore, at least through testimony, a significant valuable resource received a benefit from bottling water. Obviously bottled water had the potential over a fish hatchery since that was what it been used for before. If he looked at it from the perspective of the loss of future opportunity, then he would see that there were issues. There was testimony by Nestle Natural Resources Manager Bruce Lauerman that the springs would supply enough water to satisfy the Denver bottling plant. He stated that they were going to look for other sources as well because they did not want to put "all their eggs in one basket". Commissioner Glenn stated that the Board had a resource here now that had the ability to create a very large economic benefit. There was a written documentation stating that Ice Bottle Mountain Facility opened in Macosta County Michigan, representing a \$110,000,000 investment which would not be possible without that resource, natural spring resource. Today it employs 250 to 3000 employees and 16,000 million dollar annual payroll and with a generosity and giving of a couple of million annually. That is significant. The Board had numerous public comments, verbal and written by the citizens of the value of a bottling plant in Chaffee County from "let's use that spring and have a Mt. Princeton bottled water" to "maybe there's another company that wants to come in and develop this spring and build a bottling plant in Johnson Village rather than a trucking plant in Johnson Village". Commissioner Glenn stated that this project from the prospective in his mind had a negative affect on the segment of the economy of Chaffee County because of the forever inability now to develop the resource to have major economic benefit to Chaffee County.

Chairman Holman understood what Commissioner Glenn was saying, but he looked at it that way simply because there were so many ifs. If there was someone who wanted to build a bottling plant, there were other springs available too. This particular spring water had been setting there doing basically nothing for a long time and not adding value to the community. Now there was an opportunity to add something whether it was enough or not, he did not know but it did add value in his mind. He could not look into a crystal ball and see what the future was going to be and he felt that they should not.

Commissioner Glenn stated that if they go back and look at it historically, it did add value to this community. The Hagan's chose not to continue the fish hatchery business that was their choice and he respected that and did not have a problem with that. If you take the resource away now, you may not have the opportunity again. We can look at fish hatcheries right here in our local community and the value of those. The Board had heard a lot of testimony from the public who stated it was a valuable resource and it should be considered a valuable resource and should have benefits to the people of Chaffee County. He tended to agree with them, but on the other hand they have a project. He did not disagree with Chairman Holman that this project would add some value to this community. He absolutely did not disagree with that. He just was not to the point and time that he felt that maybe the benefits did not out weigh the potential for the losses.

Commissioner Giese stated that was where he disagreed a little on the potential if there was a potential. He referred back to the April 21<sup>st</sup> letter from Nestles Water. He struggled with looking at the project as if the Board would want something else to happen on that property. He saw that as whoever whether Nestles or some other land developer had brought this piece of property to do something with it and for the Board to sit here and to deny this application because we think that it would be better used for something else was really not in our domain or choice. The Board would like to see that. He would like to

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see more jobs like a bottling plant or whatever in Chaffee County. He felt that they would most certainly have an argument about where it was at and how they got there. He understood the issue about a resource being a valuable resource obviously and this particular applicant Nestles had found it. Somebody else did not find it. Sure maybe someone could have bought it. In the Coley Forest Report, this piece of property had been on and off the market for over 15 years and the DOW or some other private fishing or fishery could make it into private fishing. He felt that all those types of things would have come forward then this would have been a good thing but for the Board to sit here and "Say well maybe we better not do that because it could be used for a fish hatchery. It could be used for Bio Tech, etc or could be used for other things". He did not think it was their part as the government entity to deny an application stating that this piece of property could be used for something else. He had seen that same thing with developments. Some prime agricultural ground had been purchased by somebody and divided into lots but those applications were not denied because the Board thought it was valuable for agriculture. It should not be denied because they met the law, they choose to buy it and develop it in that way. He would like to see some more economic type of things most certainly but he really struggled with the loss of a valuable asset. A company had come in and identified this as a valuable asset and had come before the Board to develop it as that asset.

Commissioner Glenn stated he did not necessarily disagree with Commissioner Giese. He did not believe that he stated he was in favor of denying this application. He thought what he had stated that the economics had always been troubling to him and this was a valuable resource that had value.

Commissioner Giese stated that he would not disagree with Commissioner Glenn. In fact he had been waiting three days to tell him that. He stated that the point was that all of us, the public, and everybody involved would like to see more economic development or more benefit for the County out of this project, the problem was that it did not produce that type of economic development in the size of the project it was. A bottling plant would be better. His concern was the small economic things such as taxes and things like that. He saw a problem with the economics part of this regarding the County and its staff being on the side of regulating it and what it would cost to do that. It did not produce the type of money, tax and whatever to the County to offset the cost to the County. The mitigation fund would be used to off set future costs. The Board took that as a part of a condition. He felt that he really struggles with the growth and economic part of it.

Commissioner Glenn stated that he certainly struggled with that as well. His concern about this project was Nestle made the decision not to create a lot of economic benefit in Chaffee County. It was just their decision. Nestle opted to through their own testimony that they went to Aurora and spent \$200,000 a year leasing water to augment their project when he believed the dollars could have been spent right here locally. He disagreed with Nestlé's testimony that staff indicated that they should go out of the basin to find a water source. He did not think staff made that recommendation. Staff basically stated that they were concerned about basin water but there were ways to get around that so that was a cognizant decision that Nestlé's made was to spend \$200,000 a year with the City of Aurora rather than whatever the money amount may or may not have been with the Upper Ark and Salida and or with Poncha Springs and or Buena Vista and or whoever else might have been able to give them the water to augment. Again he wanted to make it clear that he did not say that he wanted to deny the Petitioner's request and uphold the Assessor's valuation of this application because of this what he was saying was by Nestle coming in, they were taking a valuable resource out of the system and they were giving very little back in the way of utilizing that resource that was his concern. He felt it was a concern to the public through a lot of testimony the public had major concerns with that.

County Land Use Counsel Green suggested that the Board may want to just read the standards again just to make sure that they were clear on what the decision they were making.

Commissioner Glenn asked if the standard for the proposed project had any negative affect on the economy whatever it may be. He suggested having the standard have a mitigating component to it stating that the Board could consider their loss of future economic opportunities.

County Land Use Counsel Green stated that in considering whether or not there was a negative impact, one of the things that can be considered was a permanent loss of any resource.

Chairman Holman stated that it may have more to do with the fish hatchery, which was a million dollar a year operation and they were charging. Then he would say yes to creating an adverse affect on future economic values to the County, but in this case that was not so.

Commissioner Glenn stated that he did agree that it depended on how the standard was interpreted.

Commissioner Giese stated that the part of the standard that he really struggled with was the opportunity to develop that gets into many "should Is, would Is, could Is", but it made him really struggle with the whole part of it. The Board had discussed a lot about the possibility of loss to the County. If he approved staff terms, monitoring how that was involved, there was some discussion on and concern by everyone involved with the traffic and how that could or could not affect recreation. Therefore, he felt that this was all in one standard. He still again struggled with the concept of the loss of opportunity if there were 6 or 7 different things. If they had a choice of those opportunities, then he would say that would be possible.

Chairman Holman recessed the meeting at 2:48 p.m.

Chairman Holman reconvened the meeting at 3:02 p.m. He asked the Board if they wanted to start with 303-1-K-ii recreation visitation.

Commissioner Giese thought that the whole issue about recreation and visitation was centered around traffic. The concern that the Board heard from the public was the number of trucks on Trout Creek Pass and the corridor. He felt that what he looked at as far as the number of trucks when and how it involved was the Wilkerson Transportation Report and what their findings were. He understood the public's concern. He thought this report was scientifically based and reported on the entire traffic corridor. In his own experience going up that pass either in a passenger car or in a truck, he agreed as far as traffic and the number of trucks and felt that the applicant or the truck traffic would not add to the traffic. As stated in the report, it would only add 1% during the peak travel month and at 90% of the year it still fell in the low service of the CDOT (Colorado Department of Transportation) service. Therefore, the concerns he had about traffic was noted by the staff as a possible condition with limited peak hour traffic or peak truck traffic during busy times. He would agree to that especially during a busy weekend like this one coming up a lot of traffic. His concern was holiday truck traffic and how that would be affected especially on 3-day holidays. The report stated the busiest time was in July and or holiday traffic. He did not agree to truck traffic being added to the corridor or Trout Creek adding truck traffic. He did not agree with the one suggestion for slow traffic stop out pull out areas. The worst thing in the world for a truck was to pull over and let traffic by on an uphill grade because once they pull back, they start from zero and within a half of mile they have the same number of vehicles behind them. Continuing up would be better, which he had a concern for a long time in his former life and job was not having passing lanes on that pass. He was amazed of all the places that there were not passing lanes, Trout Creek being one. He did not feel that the amount of traffic added to this proposal was that significant by this report but his concern was during high peak volume, holiday traffic and how that would add to that traffic time.

Commissioner Glenn questioned Commissioner Giese as to just peak hours or peak hours during holidays.

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Commissioner Giese stated that was correct regarding peak hours during holidays. As an example, this coming weekend including the County and then there was the summer, plan on traffic in that corridor increasing on Thursday, slowing down a little bit on Monday but Monday before that traffic really gets out on the weekend. He would like Nestle's to be off on Thursday and Friday. He felt by limiting the number of trucks on holidays or eliminating them on certain holidays would be positive to elevate adding trucks. It would really be a tough call. He really struggled with the whole thing of saying to one person that they were not going to allow 25 trucks when another company could pull 10 trucks a day in 3 hours and they could be right behind each other. He did have a concern about holiday weekend as far as the number of trucks on the road at that point and time. He did not see that addressed anywhere.

Commissioner Glenn stated that there had been a lot of concern about the travel and safety concerns. He agreed with Commissioner Giese regarding the Wilkerson's report that they had studied the report and CDOT had studied the corridor. Everyone had studied the corridors. He felt that the frustration to get up and down the pass at certain times was the best information received from that report. He would agree on doing something on the holiday travel and maybe even during peak travel hours during the summer time. Obviously the visitors were recreation visitors and we do have a lot of recreation within the summer.

Chairman Holman also believed that this report was well done and contained good information. He did understand Commissioner Giese's point concerning weekends and holidays. He felt that perhaps they could limit the amount the amounts of trucks during the day, but he felt the nights were still fine as there was really not that much traffic at night. He stated that they needed keep in mind that anytime you do take them off the road, then they will need to multiply the times their going to be on the road. He stated that they needed to be very careful in doing this for holidays and from a certain time in the morning to a certain time at night.

Commissioner Giese agreed to that. The next standard that he wanted to discuss was opportunities for economic diversification, reduced future opportunities. Local construction jobs would be fairly minimal. He felt that one of the minor aspect in having some economic benefit to the county was the applicant stated about the 50% as a goal. He felt that should be a minimum. He would like to use at least that number of drivers living in Chaffee County. He would even go one step further stating that would be a minimum but they would have to have a Chaffee County address. It just seemed to him that this would at least help some of the businesses if they live in Chaffee County. Another item for discussion he stated was # 7 the applicant's mitigation fund as a condition. The applicant requested putting the endowment fund as part of one of their conditions. His next concern was that there would not be a loss to the County. There had been some discussions regarding the monitoring of the mitigation funds. He questioned as to what point does the Board tell the applicant that if approved that they have to stop pumping or will they end up in court. He stated that early there was discussion on a possible performance bond on restoration of the hatchery. He asked what would be involved in that and what would be the conditions.

Commissioner Glenn asked the Board to go back to economic diversification. He agreed with Commissioner Giese requiring 50% of the truckers if they were available, if they had applied and if they were available to be hired from Chaffee County. He thought that had to be continued not just the first hiring but through out the duration of the project. He had made it clear that he saw a lack of benefit. He saw benefit in this area to make sure that as much of this construction be done by local contractors. Nestle had agreed to hire local contractors. He would like to look a little step past that. If there were other things that this project needed through the duration as well as after the completion of the pipeline, he would like local contractors do those repairs. He would local materials purchased. He would any type of benefit for our local merchants, our local contractors and our local people because he was not giving up. If there were negative benefits to this project down the road, they can be countered with positive benefits going forward.



Chairman Holman stated that it would be just a matter of how the conditions are put in. He would state a minimum of 50 % of the truck drivers if possible.

Commissioner Glenn stated that there was going to be a hatchery restoration. He would like to have that done by local contractors. There were issues where that cannot happen. He did know if there was anyone in Chaffee County that did directional drilling so obviously that cannot happen. He understood that, but certainly anything that could, he certainly would like to see it now and into the future.

Chairman Holman agreed.

Commissioner Giese asked what items would be included in this mitigation fund and how would they be administered. He felt that there needed to be some type of discussion of what items needed to be a part of that or should not be a part of that.

Commissioner Glenn agreed. There was a lot of public comments received. A big concern was what would happen if the County got into a lawsuit with Nestle's because that could be big money. This was discussed a little at one of the hearings. The Board received recommendations from County Special Water Counsel Culichia. However, that would preclude them from getting into water court case well, which would cost the taxpayers of Chaffee County money. He felt that they still needed to review any issue that was directly brought about by this project. He did not feel that the taxpayers should be responsible for litigation, which will be a big issue moving forward. Commissioner Giese was absolutely right loading more work on to staff without dollars to cover it, which would just almost be impossible. Staff would probably "farm" a lot of that monitoring out to experts. He felt that it should be covered and should be addressed. He thought litigation monitoring these issues were critical in this project in moving forward because these were things that cost a lot of money.

Commissioner Giese stated that his best analogy of this was like when two people get married, they do not plan on a divorce. Nestle stated that they do not plan on being in litigation but the County has to plan on that. He agreed with Commissioner Glenn as to the things that were said by the public. He thought that one of their major concerns which he agreed was the cost to the taxpayers to monitor and or litigation possible litigation for whatever reason not anyone person or group was planning. The traffic report stated the possible increase to County staff, fire, EMS on Trout Creek Pass. In making a list, anything that would directly be involved with one of those trucks that our staff would respond to a part of that also. They are directly involved because if there were a water truck accident up there, that would be a direct cost. He agreed with Commissioner Glenn that the County staff did not have the expertise and have the time to constantly monitor what was going on. The State Water Engineer monitors the amount of water that is going to be pumped but all the other things involved with this is going to have to be from outside source which he felt was going to cost somebody some money. He did not want it to cost the County.

Chairman Holman agreed. If there was monitoring to be done and if this project was done right, it should be very little, but whatever there was, the County should not have to pay for it. In regard to fire response and those types of things, he totally disagreed. He felt that they hire people to do that job and its part of their job. He did not think anyone should have to pay for that. The taxpayer pays for it and its part of their service that government provides. He did not see passing that on to anyone else. If there was a hazardous material incident with diesel or whatever, the trucking company will pay for that anyway. As far as our people responding, that is their job. They are on the payroll. It will not cost the County anymore. He did not agree with that.

Commissioner Glenn respectfully disagreed. EMS was not a statutorily required function that the County taxpayers were required to pay for. The County Sheriff was. This was something that the County chose to do. If there was a major response by emergency



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personnel now because of a directly related issue, he did not feel that the County taxpayers should accept that entire burden.

Chairman Holman asked Commissioner Glenn if a private individual caused the incident was the County going to bill them.

Commissioner Glenn stated that the Board was looking at no negative impact to the County and this would be a negative impact.

Chairman Holman stated through no fault of their own.

Commissioner Glenn stated that was correct. If the State had given them control over the 1041 Regulations, the County can not control whether someone from Texas comes for a vacation in a motor home and causes a thirty car accident. The County can not control that. The State did give the County the ability to look at 1041 Regulations and mitigate concerns to or costs to the County.

County Land Use Counsel Green stated that County Economic Counsel Townsend discussed the idea of figuring out what the new tax money being brought into the County. Nestle would cover and then using the fund for anything over and above that.

Commissioner Giese stated that was correct. This was not the greatest amount of money. They could use that up in 30 minutes with the right people involved at today's prices.

Commissioner Glenn agreed. He asked how would you get from point A to point B. When they say to Nestle Waters to "pony up" \$10,000 and they say no. It was not their problem. He continued his question by asking now is the County in a lawsuit and who is going to pay.

County Land Use Counsel Green believed that County Economic Counsel Townsend was recommending that there be some kind of evergreen fund that was always funded at some sort of level. Therefore, the County would not be in a position of having to go and say to Nestle "give us money", but the details for that she never worked out. Those were just some concepts she had worked on that she remembered her discussing.

Chairman Holman asked if in fact the Board approved this and something occurred that they were not suppose to do that violated Nestle's application and their permit, why would they have to go to court.

County Land Use Counsel Green stated that the Board would not have to. Under the County's regulations, the initial thing that was done was you write them a notice of violation. Then they have 30 days within to which they can correct, correspond or leave town or whatever they choose to do unless there was an emergency in which you can give them 5 days written notice. Then there is a hearing. At that hearing, the applicant will say that they corrected the problem during the 30 days, they disagreed or they did not feel that there was a violation. The Board actually held a hearing on it but during that time she believed they had the opportunity to suspend everything. She would have to double check but she knew that suspension and revocation were part of the Board's administrative remedies. Now that would not prevent a permit holder from turning around and taking the County to court for revoking their permit but they did have those steps. This puts the Board in a better position then under a lot of regulatory regimes where the only alternative was just to go to court. This allows an applicant to come into compliance. It really minimizes the cost by the County having that in its regulations.

Commissioner Glenn thought that was the key. It might not be a legal action initiated by the County. It may very well be a legal action that could be initiated by the permittee. Then, the County would have to defend that action and use county resources to defend that action again. These were the things that he thought they needed to make sure that they mitigated.

Chairman Holman asked if it was outside the scope of the application or the permit why would they have to defend anything.

Commissioner Glenn gave a scenario. The Big Horn Springs goes dry for what ever purpose. The County shuts down the pumping. Nestle states that it was not their problem. The County did not shut them down in that case. They potentially could bring an action to get Nestle to shutdown. The County might have to bring an action on the flip side of that if Nestle would bring an action against them for the same purpose. The County would have to defend that action if they stated that the County required them to illegally shutdown and they disagreed with us. Therefore, Nestle is taking the County to court because they had to shutdown their pump and are now losing x amount of revenue. The County had not been threatened with these kinds of uses since he had been on that Board. He felt that they have to defend those actions if someone sues them under those circumstances.

County Land Use Counsel Green stated that if the Board was leaning toward a mitigation fund, they had outlined the applicant to be responsible for all direct costs associated with their project that would not otherwise be covered by what they bring into the county. She felt from that direction they would have to consult with County Economic Counsel Townsend and others about what exactly this would look like and what it meant and then get back to the Board.

County Attorney Davis stated that she was glad County Land Use Counsel Green brought that up. There were other options even to mandatory arbitration because a lot of times they end up looking just like a courtroom but somewhere else. It is just as expensive but you can do mediation first and all kinds of steps before going to court.

Chairman Holman stated that he really struggled with this because they would not do this sort of thing with any other company. It was simple because of the 1041 that they were able to do this. He had a problem with that, but he also understood that they did need to protect the taxpayers, which had been a huge issue. He was not willing to have them pay the firefighters and the EMS.

Commissioner Glenn felt that what County Land Use Counsel Green stated was anything that was not covered under what the tax revenue would bring into Chaffee County. Fire was covered under that but EMS was not. He meant that was not something that our taxpayers pay. It was out of the general fund, not out of its own dedicated source.

Chairman Holman stated that another major issue was if one of their trucks was involved in an accident and not at fault, he did not see how you could go there.

Commissioner Glenn felt it would be something to consider. If they were not at fault, they were not at fault.

Chairman Holman stated that he could deal with that.

Commissioner Giese stated that was his intent. If because they were involved in an accident, it did not mean they were at fault. What he meant obviously was being talked about but if an accident was caused by them, it would be different.

Chairman Holman agreed that would be different.

Commissioner Giese stated that his biggest point about the whole mitigation fund because of the low economic impact on the County could be millions of dollars. There could be litigation that no one wanted. This fund should cover it. The Board had discussed what those points should be or not. He felt that they could probably talk about it forever about what should or should not be but he felt that the bottom line should be protecting the taxpayers. He stated that since he did not know how the Board could discuss this any more, he asked to discuss the endowment fund. The applicant had

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agreed to this. Some of their proposals were great but he was really struggling with this. He thought giving was something that he considered as what you do as a responsible person and or company not mandatory but Nestle had chosen to do that. His point was that he was not holding any company ransom saying "you have to start a fund". They choose to do that. He stated to the applicant that if this was approved what you have chosen to do was wonderful but 3 or 4 organizations can raise that much money in 3 days. In fact, the FYI Board just raised \$25,000 in a down economy in this community because of the giving of the people is how it is done.

Chairman Holman stated that there would be conditions regarding the mitigation, final conditions on the trucking. There also needed to be a condition regarding new future repairs and construction to make every effort to be done locally.

Commissioner Glenn stated that he would like to see that they tried to purchase material locally. All of those things bring big benefits to our community and that could help him move past the lost of future opportunities.

Chairman Holman stated that the next condition would be disturb or harass wildlife species.

Commissioner Glenn stated that there were a couple of issues here. He thought perhaps through this area was where he saw one of the biggest benefits of this project. When Nestles publically amended their application by doing a permanent conservation on not only the Big Horn Springs Site but at the Ruby Site that was a big deal. The DOW testified that not having development on these properties was a benefit to wildlife and it is. He knew that. When he heard that testimony, he saw it in relationship to just temporary conservation. It had no meaning to him, but when Nestle stated that they were going to conserve this property permanently regardless. This was a big, permanent benefit to this community under those conditions. There were not any conditions because Nestle had voluntarily agreed to a permanent conservation on those sites as long as those terms of the easement were consistent. This was not a requirement through this permit process but Nestle had agreed that they would do this, which was a huge benefit of this project that he saw.

Chairman Holman agreed, stating that it was also a large expense.

Commissioner Giese wanted to make sure he understood. Before Nestle was just going to manage the area and not put it into a conservation easement, but now they had agreed to put it in a conservation easement, manage the wetlands, monitor the wetlands and basically do everything that they talked about in their application other than the placing it in an easement and not pumping from the other side of the hill. If this correct, then he agreed with that too.

Commissioner Glenn stated that being on the river was quite valuable and could have the potential of being a development. This was where he really saw a major benefit. It did address the standards. This will include no development other than what was necessary to operate the project.

Commissioner Giese thought that the other part was the fifteen acres.

Commissioner Glenn stated that was correct, but that was not part of this application.

Commissioner Giese stated that one of his major concerns originally was if Nestle stopped pumping like it was talked about in 5 -10 years, they could sell the property. Then it could be developed, but under this circumstance, it could not be developed and that was huge. He wanted to clarify that was under the original plan.

Chairman Holman stated that the Board had already discussed the weeds re-vegetation.

Commissioner Giese felt that the last two items under this needed to be discussed.

Chairman Holman asked if they were already discussed.

Commissioner Giese stated that he did not know this was any different from vegetation removal, surface subsurface quality and quantity.

Chairman Holman stated that it was different because through the agreement it will be placed in the conservation easement. There will also be monitoring of the wetlands.

Commissioner Glenn agreed. He thought that this went back to their discussion on the water and wetlands itself. This was the perspective that was looked at. The wildlife was virtually the same. If the condition of water rights was worked through, the conditions on the wildlife would work through. To him, they were almost identical. He felt that the Board had deliberated that pretty thorough.

Commissioner Giese asked if that applied to all of 303 (1) (c).

Commissioner Glenn thought that regarding the wildlife related issues, the wetlands would sure they stayed healthy. Regarding the conservation, they already agreed not to pump at Big Horn Springs. He believed the land management plan would not allow sheep and goats with the Big Horn Sheep because they can contact a lot of disease from domestic sheep and goats. These were all very big issues but they were issues that were addressed. He felt that the wildlife issue along with the testimony of the DOW, which was a benefit for wildlife, was pretty compelling. He felt that the standard for the most part was pretty well there.

Chairman Holman agreed.

Commissioner Giese agreed. He felt that the DOW's testimony regarding the restoration of the hatchery and putting it into a conservation easement was a benefit. He knew it was something positive that was going to happen out of a development which was usually the opposite. He felt that the DOW gave a very powerful statement that this was going to be a benefit because usually they were on the other side worrying about things.

Chairman Holman stated that the Board was finished.

Commissioner Glenn stated that he wanted to go back to the comprehensive plan. County Land Use Counsel Green brought up the issue that the plan was a guiding document and not necessarily regulatory. He asked County Land Use Counsel Green to give the Board a little more direction on that.

County Land Use Counsel Green stated that under normal circumstances in Colorado, a master plan or comprehensive plan was guiding only. It did not have any regulatory affect. However, when it was incorporated in reference to duly adopted regulations as it had been here, it did become mandatory. The County had made compliance with their master plan. Mandatory on the other hand in order for any county regulations to be enforceable, it had to be significantly specific to constrain the Board's discretion and provide for meaningful judicial review. This meant that if there was any element of the master plan that was like a "chicken in every pot", they would want the County to be clean and a well lit place. Those would probably not be sufficient for the basis of a denial. If the Board were going to deny for failure to comply with the master plan, it would have to be one of the provisions of the master plan that was specific enough that others were on notice of what the requirement was and a court could determine if whether or not that had been satisfied.

Commissioner Giese felt that they had met all the areas. He thought that the first one 1-A was a really hard standard for anyone to meet and really open to an individual's perspective of it. If they wanted to be for this permit, they could really justify it. The opposite was also true. Therefore, it was really hard for him to say they had or had not but because the standard was needed for the project. That was a personal interpretation. His point was that it was imposible to defend either for or against this standard because

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of how it was worded. The second part of "B" was addressed in other parts of the application and should really take that one into consideration regarding air quality, traffic and economic development. It was his belief that the two had met the standard in the best of possible conditions.

Commissioner Glenn stated that one of the things on the comprehensive plan and this preserving access to the river was a big deal. They had heard DOW testify that they did not believe that it was appropriate to have public trails crisscrossing this property because that would be a deterrent to wildlife. He agreed with that, but they also heard that the applicant was somewhat reluctant to have anything but wade type of fishing. He felt that there could be some type of limited access with some amount of fishing access to where you did not have to be standing out in the middle of the river in order to accomplish that. He thought that would be consistent with the comprehensive plan.

Chairman Holman remembered the DOW stating that if there was access, it needed to be very limited because of the damage they could do to the wetlands. He was not sure what could be done with a parking lot.

Commissioner Glenn stated that was exactly what they proposed. If there was a really small parking area and a defined trail then that will limit the amount of use to begin with. If there were very sensitive areas, do not allow people to be there but there will be some areas within that property that he thought would be contusive to having some bank fishing and public angling access.

Commissioner Giese disagreed with the fact that there was not public access to start with. There never had been. If there was public access, they were trespassing onto a point it was allowed to happen. He struggled with the point requiring someone that owns private property access as a part of the application he understood what the comprehensive plan stated. He agreed with that but if some individual bought that piece of property and now had to allow the public not only to access to the river but to park on the property, he really struggled with that. It was not like that was the only place anybody could go fishing. They could go up river or down river on that one location and fish where not limited or taking away from current use of the river by this application. The applicant at least had allowed wade fishing which was not probably allowed. If the right person wanted to, this could really be limited at that point right now. He felt that public access was that it was private ground, which they had stated if they wanted the wetlands to be an educational thing which did allow access at their discretion as to what part of it but would allow fishing. The DOW had stated a lot of what should not have been because of disturbing the wetlands. He did not agree with that part that they needed to provide public access other than what they had agreed to for educational purposes to the river to fish other than the wade fishing. He did not think it was so far off what the County did require from other land use requirements. They required public access by a public right of way and when someone subdivided it. He can drive in on that road if he wanted want to and could park on that road that was private property to start with, but in order to do that they were asking for this and the public was asking for some type of benefit. The state gave the County the ability to look at these projects and to derive benefit from these projects, which were a big benefit. The County was a recreational geared community. People like to fish. He was not saying to put in a boat ramp and have commercial boat launches. He felt that would be a detriment visual quality. For the public to have the ability to access the river on a very limited basis was a very good opportunity and something that was well within the Board's consideration to look at on a limited type scale.

Commissioner Giese stated that he just really did not understand what Commissioner Glenn was saying. He would agree with him if in fact there was not just 300 yards down the road. They could do whatever they wanted at the Ruby Mountain Park. Then they could fish the whole river right in there to a point. He felt that subdivisions was a whole different aspect of it obviously but in this small area a large portion of it is. The DOW did not want it and for the small area which is the Hagan Property less than 400 - 500 feet, could be shielded from the shore. He asked how this would fit in with the whole wetlands

type of situation. He understood that they would have to mandate public access where there had not been before.

Commission Glenn did not think that the DOW had stated that they did not want access, as that access was not important to them. What they stated in their letter was that just total public access where people could bike, hike, ride and tromp around the entire property that was a deterrent. What they did state was that limited access to the river for fishing was very desirable. The County could control that limited access through a very small parking area.

Chairman Holman stated another concern for him at least was keeping disturbance to the wildlife as minimal as possible. Perhaps not doing this, would help that as you do not want people out there chasing your sheep.

Commissioner Glenn stated that they would be walking the other way from where the sheep were.

Commissioner Giese asked where the Board was at with the whole thing now, since they had talked about all the issues and where they agreed and disagreed.

Chairman Holman stated that he did not see how the Board could make a decision today without seeing the conditions and making sure that they mitigate all of their concerns. He was at a point where they needed to see conditions.

Commissioner Giese stated that there was two parts of that they had spent three hours talking about this condition or that condition. He agreed that before he would be ready to make any decision, he would need to see if he agreed or disagreed. He could not vote now because he had not seen what all the conditions were and whether they had met the standards.

Commissioner Glenn read from the DOW letter. It stated that it would be beneficial to wildlife and the public of Colorado if the Arkansas River at the project area was opened to public fishing. The recommendation of the Colorado DOW would be to provide one small parking lot adjacent to the county road about a quarter mile north of Ruby Mountain's existing fishing and allow foot access from that point to the public would be restricted to the use of one straight foot path to the river. Then use the river within 50 feet of the ordinary high water line. This would keep the public from entering pump areas and other Nestle project areas sensitive to human activity.

Commissioner Giese stated that he read the same thing, but it did not mean that he agreed with it.

Commissioner Glenn stated that State Parks had asked for a boat ramp for people to be able to launch from. He did not agree with that. He felt that was a very intrusive aspect that would not be consistent with what was going on. For the ability of a two car parking lot for someone to go down there to fish from time to time, he did not think this was outside of what they should consider. It was a matter of what fit and what did not. Obviously access was a big issue to the public. He would not doubt it, but was not sure if there was a letter from Trout Unlimited looking for something like that. They usually were.

Commissioner Giese stated that his concern was about forcing somebody to have public access.

Chairman Holman agreed completely, but in this case he did not think it had any impact to the owner. It was going to be a conservation easement anyway and private property.

Both Commissioner Giese and Commissioner Glenn agreed it was still private property.

Chairman Holman stated that when it was a conservation easement, it was not exactly private property.

HART INTERCIVIC E00718900JB

Commissioner Giese stated that his concern would be the development of the wetlands being put in the conditions.

Chairman Holman stated that they did not have to accept it as a condition.

Commissioner Giese stated that Nestle Waters had committed to as the DOW asked to carefully consider the possibility of improved public fishing to the Arkansas River but he also heard the applicant state that they were not too much in favor of that.

Commissioner Glenn felt that it was a good opportunity for the public. When the public was not getting significant benefits in a lot of aspects, he felt that was a small opportunity for them.

Chairman Holman stated that they could put it in a condition and see what it looks like.

Commissioner Glenn thought that it was in the letter what they were looking at and just guide by the letter.

Chairman Holman reminded everyone that all conditions that were agreed to at the last meeting by the applicant shall be imposed. He wanted to make sure that the Board had all of those down, which they did. He wanted to see them in writing.

Commissioner Glenn asked if the first condition had been discussed as he had asked to skip over it and discuss it later. He felt that it was not a huge issue.

Chairman Holman thought that they covered it a few minutes ago.

Commissioner Glenn questioned as to the very first one regarding the need for the project.

Commissioner Giese stated yes. He thought what he stated was not to labor the whole thing. It was one of those types of statements that could be either way, depending on which side of the fence you could be on.

Commissioner Glenn thought that Commissioner Giese was talking about the Comprehensive Plan so he was mistaken. He thought they were on the Comprehensive Plan issue rather than the project but he was okay with the project. He was okay with this as far as the Planning Commission recommendations that the standards were met.

Chairman Holman stated that they would continue this meeting contingent on when the conditions could be formulated.

County Attorney Davis stated that County Development Services Director Reimer had asked if the Board wanted to discuss the Special Land Use Permit today.

Chairman Holman felt that everything hinged on whether the Board approved the 1041 Permit.

Commissioner Giese agreed stating that he felt there was no need in discussing the Special Land Use Permit until the Board decided on the 1041. He hoped that the Board would get to a point in the next couple of weeks that they could have review those conditions before the meeting. He did not know what the legality was for this but it seemed reasonable.

Chairman Holman would like to have the next meeting within a couple of weeks if they could. He called for a recess at 4:10 p.m.

Chairman Holman reconvened the meeting at 4:22 p.m.

County Attorney Davis Jenny stated that County Land Use Counsel Green and she were discussing some concerns. There was a provision that required action within 60 days but County Land Use Counsel Green pointed out it was sixty days after completion of the permit hearings. Therefore, the sixty days did not really begin until the Board had closed the deliberation and closed the hearing.

Chairman Holman asked time wise, were they okay.

County Attorney Davis stated that they were okay on the timeline.

County Land Use Counsel Green stated that they were considering August 15<sup>th</sup> for a good job with conditions that the different experts could weigh into that were consistently worded and make sense and were enforceable. She felt that they could not move any faster as there were too many people. Otherwise she just did not think it would be a good product.

Chairman Holman stated that August 15<sup>th</sup> was a Saturday.

County Land Use Counsel Green asked the Board if they could meet after that.

Commissioner Glenn stated that they wanted a good project.

Chairman Holman agreed. He asked about the date of August 19<sup>th</sup>. He stated that would give the Board a couple of days to review conditions.

Chairman Holman asked if Nestle Manager Lauerman wanted to speak.

County Land Use Counsel Green stated that it would not be on the record. It would be up to Chairman Holman.

Nestle Manager Lauerman stated that he would like to have it sooner. He wanted to do it right. He understood that there was a lot of people to get together but he would think certainly by the end of July, they should have something done.

County Land Use Counsel Green asked him why he would say that. They just conferred with their calendars and schedules in terms of time to make sure that they do it well. She knew that they would be really interested in doing it well.

Nestle Manager Lauerman stated that the date that was proposed was now 49 days from today, which seemed like an awful long time away, 7 weeks. His understanding was that County Land Use Counsel Green stated that many of these issues associated with County Water Counsel Culichia had largely been resolved. They were now just waiting for direction from the Board.

County Land Use Counsel Green stated that he already knew exactly the wording for those conditions that he was going to impose.

Nestle Manager Lauerman stated that he had idea of the working of those conditions.

County Land Use Counsel Green stated that they had not seen those from him.

Nestle Manager Lauerman stated that he had told them that he was waiting to get direction from the Board today. He did not want to rush the meeting.

County Land Use Counsel Green stated no. She stated to have the meeting next week.

County Attorney Davis had a concern with her schedule too.



HART INTERCIVIC E00718900JB

County Land Use Counsel Green stated that she did not want to hold things up. If everyone can work with County Water Counsel Culichia and take care of it. Let us move forward.

Nestle Manager Lauerman stated that he was not aware of County Land Use Counsel Green's schedule, but felt it was important that she was involved.

Commissioner Giese agreed that he would rather get this over sooner than later. The Board wanted to take the time to get it done right, but if they could shoot for the end of July to see if there was something put together by then. If not then they can shoot for the later. If it takes 49 days, it takes 49 days.

County Land Use Counsel Green stated no, her company did not operate like that. They will do it just as soon as they can as this is not the only project that they have July deadlines on. It was fine with her if they backed out at this point so that they did not hold things up. They had enough of a record and there was enough other people to help.

Commissioner Giese suggested setting a tentative date of August the 5<sup>th</sup> if that was available. If not, set a date of August 19<sup>th</sup>.

County Attorney Davis stated that if the meeting was held on August 5<sup>th</sup>, she had a concern. She did value County Land Use Counsel Green's input on the wordsmithing.

Chairman Holman asked when they could review what everyone had put together. He also asked if County Land Use Counsel Green could do that sometime in July.

County Land Use Counsel Green stated that she was to start working on it right away.

Commissioner Glenn stated that his issue was if they rushed this they were going to get into a situation where they did not have what was needed and it was not going to be complete. They are going to be hustling around to try to get what they want. He meant that they had already been down that road a few times. He did not want to rush it. If it took until the 19<sup>th</sup>, they can do it on the 19<sup>th</sup>.

County Land Use Counsel Green asked why they did not try what Commissioner Giese suggested. She was just trying to figure out what she could delegate to internally. They, at Sullivan, Green and Sevey, could start looking at something if the staff put together the pool of everything that had been discussed because there were discussions that they were not even part of. They can start on their end on July 20<sup>th</sup> which would be the soonest.

Commissioner Glenn stated that if they look at the 5<sup>th</sup> of August, then they realize that they were not there. He just wanted everybody to make sure that they understand that they were not there. They were going to coming and continue this hearing without any deliberation until the 19<sup>th</sup>. He just wanted to make sure that everybody understood that so they do not have another "hurry up".

County Land Use Counsel Green stated her concern was that they could not even possibly start till the 20<sup>th</sup> of July but set it for August 1<sup>st</sup> or whatever.

County Attorney Davis stated that it was the 5<sup>th</sup>.

County Land Use Counsel Green stated that they would just keep the staff upraised at the end of that July 20<sup>th</sup> week as to where they are.

Commissioner Giese asked if the time would be 8 a.m. or 10 a.m. on 5<sup>th</sup>.

Commissioner Glenn stated that 9 a.m. would be fine.

Commissioner Giese stated 9 a.m. on the 5<sup>th</sup> of August if possible.

County Land Use Counsel Green stated that meant they would have to have those to the Board by the 30<sup>th</sup> of July.

Chairman Holman stated for the 3<sup>rd</sup>.

County Attorney Davis stated if the Board was comfortable with looking at it on Monday the 3<sup>rd</sup>, then the information will be available to you on August 3<sup>rd</sup>.

County Land Use Counsel Green stated that if they know well in advance of the 3<sup>rd</sup> as to whether or not it was working, the Board will know not just their availability as there were other people they have to pull in. They all have to be consistent.

Commissioner Giese stated that somewhere in the week of July the 27-31, County Land Use Counsel Green would have some type of date as a drop-dead date as far as knowing that they were ready.

County Land Use Counsel Green stated that was correct.

Commissioner Giese stated that he appreciated all the things that County Land Use Counsel Green was involved in, but he felt for everybody involved they needed to get a resolution to this as soon as possible.

County Land Use Counsel Green stated that they work as fast as they can. They do not know everybody else's schedules either. There are a lot of people going on vacation. She will get something to the Board by the 3<sup>rd</sup> or will let them know well before that. She stated that if they finish sooner, the Board could hold it sooner as it was just a continuance.

Chairman Holman stated that they would reconvene on August 5, 2009 at 9:00 a.m.

Commissioner Giese made a motion that we continue the deliberation to August 5<sup>th</sup> at 9 o'clock. Commissioner Glenn seconded the motion. On the question, the motion carried 3 – 0. The Special Meeting ended at 4:44 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.