

THIRD MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on February 10, 2009, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Michael J. Stiehl called the meeting to order at 9:33 A.M.

Michael J. Stiehl	Commissioner	Present
Edward H. Norden	Commissioner	Present
Larry Lasha	Commissioner	Present
Brenda Jackson	County Attorney	Present
Norma Hatfield	Clerk and Recorder	Present

Also present Bill Giordano, Planning and Zoning Director; George Sugars, County Manager and Tina Taylor, Deputy Clerk.

Pastor Benny Soto from the Mountainview Baptist Church gave the Morning Prayer.

Those present recited the Pledge of Allegiance to the Flag of the United States of America.

APPROVAL OF AGENDA

Commissioner Norden stated there is a change in the Consent Agenda. The list of Bills in the packet is correct but amount posted on the Consent Agenda should read instead of \$903,998.83 Item #2 Approval of Bills should read \$1,049,857.81. **Commissioner Stiehl** stated he has a change to the Minutes of January 13, 2009 on Page 3 “that if we contracted our work out that our County Attorney Jackson does it would break our bank should be stricken because it does not reflect what he said.

Commissioner Lasha moved to approve the Agenda with the two corrections stated. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

CONSENT AGENDA

Commissioner Norden moved to approve the Consent Agenda with the corrected Approval of Bills amount and the Minute correction. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

1. Approval of Minutes January 13 and January 27, 2009
2. Approval of Bills, February 10, 2009 / \$903,998.83 – AMOUNT CORRECTED TO \$1,049,857.81.
3. **SCHEDULE PUBLIC HEARINGS FOR MARCH 10, 2009**
REQUEST: ZC 08-007 KAISER ZONE CHANGE

Request approval of a **Zone Change from the Agricultural Forestry Zone District to the Business Zone District, Department file #ZC 08-007 Kaiser Zone Change, in conjunction with a site development plan**, by Justin Kaiser, for property owned by Justin H. and Juliann Kaiser which is *located on the south side of U.S. Highway 50, 0.17 miles east of Fremont County Road #37 (a.k.a. McCoy Gulch Road)*. The proposal is to allow seasonal retail sales and to allow the existing single-family dwelling to be used as a watchman's quarters which is no longer allowed in the current regulations as a separate structure; however this application was submitted prior to the amendment going into affect which no longer allows it to be used as a watchman's quarters.

REQUEST: CUP 08-003 SALT CANYON PROJECT

Request approval of a Conditional Use Permit, Department file #**CUP 08-003 Salt Canyon Project, to allow open pit mining of gypsum**, by GCC Rio Grande Inc./Ron Hedrick, for property leased from the Colorado State Board of Land Commissioners, which is located *on the northwesterly side*

of Colorado State Highway 115, approximately 4.85 miles northerly of Fremont County Road #F45 or southerly approximately 2.25 miles from the Fremont / El Paso County line. The property previously was permitted for mining under Conditional Use Permit, file #CUP 01-01; however the mine never operated under the CUP.

4. LIQUOR LICENSES

ALAN DS LLC
KWIK STOP #8
1410 ELM AVE.
CANON CITY, CO 81212-4434
3.2 Percent Beer Retail License Renewal

BUCKSKIN JOES REST & STAGE LINE INC
PO BOX 8
CANON CITY, CO 81212-0008
Hotel and Restaurant Liquor License with Optional Premises Renewal -
Malt, Vinous and Spirituous

ADMINISTRATIVE/INFORMATIONAL

1. Staff / Elected Official

Fremont County Clerk and Recorder Norma Hatfield submitted the Clerk's Report of January, 2009. Total revenues earned for the Clerk's Office was \$544,266.38 which was down \$82,450.99. County Sales Tax collected was \$47,402.33 which was down \$20,256.22. What was turned over to the County Treasurer for Distribution to the various entities was \$325,424.75 which was down \$38,505.89.

Clerk and Recorder Hatfield stated the shortages that we have suffered since 2004 was only around \$568,000.00 but overall since 2000 we have earned over \$1,000,000.00.

Clerk and Recorder Hatfield said for entities like the City, Special Districts, School Districts etc, which have a question on our ballot we are reimbursed. For doing their election overall we would have collected \$112,888.00. The Secretary of State last year when there was a question on the ballot payment was about \$38,000.00 but they only paid us about one-half of the amount. This year the State's costs was over \$100,000.00, Brookside was \$274.95, Cañon City was \$3,302.66, and Salida \$282.68.

Commissioner Lasha moved to approve the Clerk's Report. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

Commissioner Lasha stated that for the last couple of months we have talked about Adopt A County Road Program. We have put \$2,500.00 last year to start the Adopt A County Road Program. This year Nancy York with her group traveled County Road 79 and with the cooperation of our Road Foreman Gary Weirton and collected trash that was discarded over Oak Creek. We brought the program idea to our Maintenance Supervisor Tony Adamic and they have put up a sign to acknowledge their work. The area is almost three quarters of a mile and the group will be cleaning it three times a year. Commission Lasha wanted to acknowledge citizens who were doing a good job and doing a program that they actually developed for the County.

Commissioner Stiehl stated there will be an electronics collection by the Upper Area Arkansas Council of Government Recycling Board on Saturday, February 21, 2009 at the Walmart Super Center lot on East Hwy 50. There will be a \$10.00 charge to recycle monitors, \$5.00 for CPU's and laptops. We are just trying to keep these out of the landfill.

2. Citizens Not Scheduled

Melvin Cole from Cañon Minimum Centers introduced their new community liaison Cheryl Gillis who will be helping with the Community Outreach Program.

Commissioner Norden stated he appreciated seeing the inmate work crews in the last week were out on Highway 50 between Cañon City and the Airport. That area is a persistent problem with trash.

OLD BUSINESS – NONE

NEW BUSINESS

BID AWARD FOR THE DISTRICT 1 FIRE RECONSTRUCTION

County Manager George Sugars stated that there were two (2) bids for the rebuilding of the District 1 Building. One bid from Patch Construction for \$50,840.00 and Reynold Construction for \$56,780.00. We recommend the bid from Patch Construction. **Commissioner Stiehl** stated there was a fire at the road shop on Christmas Eve and this is for the reconstruction of the building that burned. There was some coverage by insurance. There was also some equipment in the building that was damaged and we are still working on a settlement for out Loader, Paver, Roller, chainsaws, hand tools, etc.

Commissioner Norden moved to approve the bid of \$50,840.00 from Patch Construction for refurbishing fire damage to the District 1 shop. **Commissioner Lasha** seconded the motion. Upon vote: **Commissioner Norden**, aye; **Commissioner Lasha**, aye; **Commissioner Stiehl**, aye. The motion carried.

FREMONT COUNTY ASSESSOR STACEY SEIFERT / ABATEMENT

Fremont County Assessor Stacey Seifert stated two abatements. One is for Catholic Health Initiatives for the building behind the old Saint Joseph Hospital. After it was transferred over to the City of Florence the property stayed on the tax. It is on the State exempt list. The abatement is for 2007 of \$3,999.20 and 2008 for \$4,047.96.

Commissioner Lasha moved to approve **Resolution #11** for abatement to Catholic Health Initiatives, Schedule #992-04-017 for the year 2007, \$3,999.20 and year 2008, \$4,047.96. **Commissioner Norden** seconded the motion.

County Assessor Seifert stated the second petition is for Alpine Depot, LLC. This is the old dinosaur depot that was purchased from Cañon City. This is the real estate holding portion of the Royal Gorge Scenic Railroad. They have elected to put this in the state assessed value because they are a railroad. The abatement is for \$7,065.44.

Commissioner Lasha moved to approve **Resolution #12** for abatement to Alpine Depot LLC., Schedule #983-05-028 for \$7,065.44. **Commissioner Norden** seconded the motion. Upon vote: **Commissioner Lasha**, aye; **Commissioner Norden**, aye; **Commissioner Stiehl**, aye. The motion carried.

Commissioner Stiehl closed the regular session and opened the Public Hearing.

PUBLIC HEARING

REQUEST: SRU 08-004 SOUTHERN DELIVERY SYSTEM

Request approval of a Special Review Use Permit, Department file #SRU 08-004 Southern Delivery System (*Public utilities buildings, regulators and substations*) for the construction of a water intake and pump station, along the Arkansas River, two additional pump stations (all pump stations will contain an electric substation), seventeen (17) miles of a sixty-six (66) inch diameter pipeline and an electric substation and transmission facilities, (to be operated and owned by Black Hills Energy and which will require a separate SRU application), by Colorado Springs Utilities, for property owned by various property owners. The proposed river intake and Pump Station #1 is to be located on the north side of the Arkansas River, west of Colorado State Highway 115, just east of the Fremont Sanitation District treatment plant, which is located east of Florence, Colorado. Pump Station #2 is proposed to be located north of 3rd Street approximately one-third (1/3) mile east of the extension of A Street to the north, in the Beaver Park Area. Pump Station #3 is proposed to be located approximately one-quarter (1/4) mile west of Colorado State Highway 115 and approximately two (2) driven miles north on Colorado State Highway 115 from its intersection with Fremont County Road #F45. The proposed stand-alone electric substation will be located approximately 0.6 miles south of the intersection of Colorado State Highways 115 and 120, southeast of

the Rainbow Park Area, which is located east of Florence, Colorado. The properties to be purchased or leased for the project will consist of approximately four-hundred and thirty-one (431) acres, within the Agricultural Forestry, Agricultural Living and Agricultural Estates Zone Districts.

REPRESENTATIVE: Colorado Springs Utilities, John Fredell

Colorado Springs Mayor Lionel Rivera thanked the Commissioners for giving Colorado Springs Utilities (CSU) time for making their presentation today. Mayor Rivera stated on behalf of Colorado Springs and the CSU he was here to say the Hwy 115 alternative is a viable alternative for them and there is an equal chance that they would go down Hwy 115 for the SDS as there is if they would come out of Pueblo Reservoir. There are some advantages for them to come out of the Reservoir but HWY 115 is an alternative option and one that we want to consider. We look forward to making our proposal to you. We are asking for your approval. We want to go through the due process and due diligence that is necessary to hear from the public as we do in our community.

Chief Water Service Officer Bruce McCormick provided an overview of the presentation that the staff will give. He provided a description of the project and showed what the construction will look like. He talked about the public outreach and collaboration that has been done in the community. He stated we believe there is some significant support for our project in your community. We will talk about our responsibility to avoid impacts to the residents of Fremont County and where those impacts can be avoided. We will also talk about the benefits that we see to Fremont County with this project.

Mr. McCormick stated that most people think of this as a Colorado Springs project, however, it is actually a partnership with Fountain and Security, CO. In addition to those partners we believe if we are able to build SDS in Fremont County there is opportunity for other water providers in Fremont County to benefit from this project. Commitments that we have made to your community are that we will not harm your water. We will not create problems for recreation and other water users. The water rights that we will use are junior to the other water rights in Fremont County. We do not have priority. We will restore any land that we disturb. We will compensate any land owners fairly for any impacts that we have. SDS will not cost Fremont County any money. We have an IGNA in place to cover your review costs and we will pay for any mitigation that is required as part of this project. We believe in this presentation we will address the issues that were raised during the Planning Commission Meeting approximately a month ago. This will include the Penrose Water District and Beaver Park Water and concerns and issues that they have and finally we will talk about the concerns raised by the Arkansas River Outfitters Assoc. Also conditions and concerns raised by the County staff as well as public comments that were raised at the Planning Commission Meeting. Mr. McCormick introduced Dan Higgins the Project and Construction Delivery Manager.

Project and Construction Delivery Manager Dan Higgins stated that he is responsible for building SDS in a manner that minimizes the disruption to the community. The SRUP process is very comprehensive and insures that the project is built in Fremont County to adhere to a strict set of standards and guidelines including conditions and contingencies. Mr. Higgins stated that he is in charge of making sure that they are in compliance with the SRUP. He stated the HWY 115 alternative includes a diversion Pump Station #1 located near the Lester-Atteberry Ditch on HWY 115 in Florence. The project includes pipeline between that pump station and Pump Station #2 near Brush Hollow Reservoir. There is additional pipeline extending up to Pump Station #3 near mile marker #23 along HWY 115. Power is also required for these facilities. This SRUP application is for the SDS project and we are including a description of the power facilities. The balance of the project will have facilities in El Paso County that includes the water treatment plant, storage reservoir and exchange reservoir. Mr. Higgins described what construction of a typical pipeline installation and the compilation of the various work areas that add up to the requirement for one hundred foot (100') easement for the pipeline. The permanent easements are one hundred feet (100') each for the pipeline and the electric transmission facilities. The pipeline does require some facilities (vents, drains, and access points) that are above the ground surface. Mr. Higgins explained the Construction Mitigation Commitments for Construction, Environmental and Public/County Interface. Through a slide presentation Mr. Higgins reviewed Protection of Open Excavations and Trenches,

Noise Control, Protection of Works/Public Safety, Road Rehabilitation, Traffic Planning/Control, Road Usage and Reconstruction, Avoiding Highway Closure, Dust Control, Managing Storm Water, Site Restoration with a \$2,000.00 performance bond for two (2) years, Weed Control, Protecting Plants and Wildlife, Protecting Livestock, Implementation of Green Construction Practices including changing the backup fuel supply for the pump station from diesel to propane. **Commissioner Stiehl** inquired about the backup power system for electrical outage was to continue to pump water. Mr. Higgins stated the back up power would be to supply lighting to the facility. He further explained Protection Surface Water Flows and there is no potential interference with irrigation ditches. In addition to protecting the flow of surface waters is the pipeline construction in some cases you want to insure that the ground water flow can continue and some cases you want to make sure that the ground water does not move having the pipe to become a drain for the wetland and those are engineering features that can be implemented. They will be protecting property by performing pre-construction assessments and documentation to be provided to the owner. They will also have provisions to have keys that cannot be duplicated and signature requirements for contractors. Mr. Higgins explained the construction and type of transmission lines that would be used in the SDS project and that this line would also allow for Black Hills Energy to potentially connect and provide increased reliability to about 300 homes and to the central portion of the county.

Commissioner Stiehl stated that some of the things that were included in the slides and comments are not included in the list of events. Mr. Clark stated that they are substantially similar in the slides as to what is in the packet. Commissioner Stiehl requested a copy of that presentation.

SDS Project Director John Fredell reviewed their Communication and Collaboration for the project. Mr. Fredell stated they have had productive meetings with Penrose Water District, Beaver Park Water, Inc. to be able to collaborate and make sure that they can move their water through the pipeline as well. Another group that they have worked with is the Arkansas River Outfitters Assoc. to specifically address concerns about flows on the Arkansas River. They will continue to honor their commitments to the Upper Arkansas Voluntary Flow Management Program.

Mr. Fredell explained that they will require approximately 50 easements for the pipeline. They will acquire property in fee for the three (3) pump stations. One pump station will be on private property and they don't anticipate acquisition of any home. Mr. Fredell reviewed the procedure for acquisition for property. They will pay for the initial appraisal of the property and appraisal requested by the landowner. A review appraisal will be done if necessary. This process assures that landowners will not have out of pocket costs. All the costs for title, closing costs, etc. are paid for by the project. They want to insure the landowners through the use of this process that landowners are fairly compensated for their easements that SDS needs to obtain. The easement will not limit the use by the landowner. The landowner will not be able to build a permanent structure on the easement but will be able to continue use for grazing, growing hay, etc. No acquisition for the project will be taken until the final alignment is done. Eminent domain is the last resort. The period in which we had to acquire all our property was originally six (6) months and we have asked to have that extended to one (1) year to gives them more time to be able to negotiate with property owners.

Mr. Fredell stated in terms with communication with property owners they have contacted all property owners in writing. Property owners were invited to six (6) information meetings. Informational brochures have been provided as well and information on SDS Web site.

Mr. Fredell introduced **Keith Riley the Program Manager for Planning and Permits** who will talk about additional efforts to avoid and mitigate impacts in Fremont County.

Keith Riley explained water rights issues. He stated that water rights in Colorado are allocated on the principle of prior appropriation. The projects waters rights are 1980's vintage. Most of the Fremont County's ditches have water rights that are more than one hundred years old. They will maintain flows of 190 cubic feet per second at the Portland Gauge which is down stream from the proposed intake site. Mitigation of water impacts will be enforced by the Bureau of Reclamation, Army Corps of Engineers and the State of Colorado. Maximum water with drawl rate of SDS on an average annual basis is 115 CFS.

Mr. Riley described the flow of water through the diversion canal allowing for a fish bypass, sedimentation basin and periodic removal of disposal of accumulated sediment.

Commissioner Stiehl inquired about their water rights. Is that water in the system right now or does that include future transmission diversion? Mr. Riley stated it is in the system. Commission Stiehl inquired if this was project water? Mr. Riley stated it originates as project water and what they are doing is exchange the return flow of the water. You will not see any reduction of the flow levels upstream from the diversion. Flow levels clear out 2046 are modeled to be almost identical as they are today, so you will see a reduction in flow downstream of the diversion.

John Fredell explained what the benefits are for Fremont County including 3 years of economic stimulus with Jobs, Contractors and workers buying local goods and services, Enhancement to Florence River Park, Improvement of roads used Emergency water for fire fighting and Partnerships with Penrose Water District and Beaver Park. Economic benefits for Phase I will going to entail about \$600,000,000.00 worth of construction. \$185,000,000.00 of that construction will be in Fremont County and of that about \$60,000,000.00 will be for construction labor.

Kevin Shanks a landscape architect with THK Associate, Inc. reviewed the proposed ideas for the Florence River Park that will include a boat launch area, bridge over wetland area, boat chute, create a trail system, wildlife viewing area and native vegetation plantings.

Bruce McCormick asked for approval of their permit. He stated it is very important that the project is moved forward. They plan to begin construction later this year in the fall.

Planning and Zoning Director Bill Giordano stated that he would be brief because most of the information has either been discussed or have in front of them. Director Giordano stated that this did go to the Planning Commission at the December 2, 2008 meeting. At that meeting the Commission did table the application until the January meeting to give them additional time to review all the information because it a very lengthy application and to review the concerns of the people at the meeting. At the second meeting on January 6th there was one motion that was made for approval. In that motion the Planning Commissioner had listed 18 separate Conditions that had been talked about. In one of the Conditions there is another 27 permits that are required of the applicant as part of those Conditions. As far as required Contingencies they asked if some of them could be one year. This gives them time to negotiate with property owners and secondly it would keep from having them to come back to ask for an extension when we already know that they need additional time. The Planning Commission did determine what notification was required. They did notify all property owners within 500 feet of each pump station. They also notified all property owners within 600 feet of the pipeline. The Commission also required 20 additional notifications of various agencies such as the Penrose Water District. Fourteen signs were put up along the route which started at the intake area in our right-of-ways or State highway right-of ways. Director Giordano stated that in terms of the 27 permits for County regulations a lot of the items of construction, working in flood plans, drainage, land use issues are included in the application but they are not specific to it. If the Board is considering approval of the permit and if there are any specifics that you may want that may not be covered by other regulations then they should be specifically listed. At the Planning Commissioner meeting there was a motion for approval but it was defeated by a 5-2 vote and basically it was thrown in with the Conditions, Contingencies, and Notifications. The Conditions and Contingencies went away. The notifications took place as stated and they all have been completed. We did get proof of publication. All the clerical items have been met and basically all the minimum requirements for the application have been met. The Planning Commission did make another motion for denial and it was a 5-2 vote. The votes were the same but reversed.

Commissioner Stiehl opened the hearing up for public comment.

Norbie Larsen stated that he is a resident and contractor who is for the project. It would be huge deal for the local economy. He has worked with CSU for twenty years and if they tell you they are going to do they do it. The waste material that comes off the project could benefit the airport runway extension. There will be large contractors that would be

flying in and who would also support the youth groups, Parks and Recreation, 4-H, sports teams, etc.

Sue Grisenti stated that she is speaking for Jane and Joseph Grisenti who are the majority owners of the Lester - Atteberry Ditch. She stated that they have not been contacted.

Commissioner Stiehl asked if what they have is the creek right. Ms. Grisenti stated they are the seasoned owner of three-fourths of the ditch and the intake and three percent of the water rights. The surrounding land belongs to the BLM.

President of Beaver Park Water Gary Rutkovick stated they are a private non-profit mutual ditch company. They are the only source of water into Penrose and owners of Bush Hollow Reservoir. They have met with SDS and would like their concerns with the project put into contract form. They are requesting a two week extension to finalize the terms and to have the contract included as Conditions of the SDS project.

Commissioner Norden referred a letter from John Tradeau of February 6th that addressed a lot the issues, some of the commitments and some of the progress they have apparently made in the discussion with you. Mr. Rutkovick stated that it was indicative as to how far they have. The points that he addressed are some of their requirements. They don't have a firm resolution for some of the issues that have been addressed.

Commissioner Stiehl stated they did not want to get involved with their negotiations with Colorado Springs. They would like to see a MOU or whatever form it would take for them to refer to as a condition. The Commissioners would like to see a finalized instrument.

Plant Manager of the Holcim Cement Plant, Jason Morin stated they had expressed their concerns at various meetings in the community when this project was first proposed. Holcim greatest issues were the flows and water volume of the river because they can't operate without it. They have had an opportunity to become better educated on the project both in the public information session done by CSU as well as talking directly with CSU and they are now comfortable that any risk to their operation will be adequately mitigated.

Commissioner Stiehl inquired about the earlier comment about the back up power stations for their pump stations if they were diesel, would it change their out look. Mr. Morin stated in understanding the details and the backup power was only for emergency for the control systems and the lighting, they would not be actually powering the pump motors.

Commissioner Norden inquired as to what was it that they heard from CSU that changed their mind. Mr. Morin stated that first it was issues around the flow and looking at the historical numbers on the flow. The commitment not to go with a flow rate lower than 190CFS at the Portland Gauge. We were also much more comfortable with the water rights being junior.

Doug Koehn representing the Fremont /Custer County Farm Bureau stated opposition to the project because of the potential decrease in property values due the easements and concern with which entity had more claim to water rights being agricultural or municipal, if water levels were low.

Commissioner Norden requested County Assessor Stacey Seifert to address the issue of property value. In information submitted in writing Mr. Jones raised the question about depreciation of property and how that might affect Fremont County property taxes.

County Assessor Stacey Seifert stated her comments are for the audience at large as well as the Board. In the initial stages of this project if the SRUP is approved, the easements are purchased and recorded against the land than in her position she is going to have to make some assumptions as to what that does to the values of those properties. Regardless of whether you can use the property to grow crops, to graze livestock or for your kids to play on, the fact remains that you can't ever build anything permanent on the easement and you would have to allow access for repairs to that system should it fail. This does affect the value of each individual property as a whole. In the beginning we would calculate what percentage of the property that the easement would affect. There would have to be an adjustment made to the land values. As we go into the system installed and some resales of properties around that system or viewing that system that is what will give the information as to the overall affect once the SDS is in and operating. There may or may not be an affect. We won't know that until we see some sale prices whether they are consistent, if they decline or have increase at a rate consistent with the rest of the County. There is going to be some tax revenue loss in the initial few years. She does not believe it will be substantial.

Commissioner Stiehl inquired about if we have a tract of land that could have been subdivided by our regulations some time in the future. Is there a way to access the future value of a property as our County grows and fills in for loss of development potential? Assessor Seifert stated that there is a way to appraise that value. There is not a way to assess the value. Assessor Seifert stated they are two very different things and the affect to the County is very different. To appraise the properties you are appraising future interest in the property under the current guidelines of what you could do with that property. This would affect the individual property owner. As far as assessment purposes we value and assess on what is there currently and do not give consideration to what could be there in the future. That declining value of a future use is not going to affect the tax base of the County but it could considerably affect the individual property owner. Commissioner Stiehl stated so that is a similar type of appraisal that is performed on properties that are for conservation easements for true value. Assessor Seifert stated yes. **Commissioner Norden** stated then during the three year construction period you would look at where the easement sits on the particular parcel in relation to both underground pipeline and power line and see what negative impact if any. Assessor Seifert stated they would be looking at what percentage of the whole those easements affect. This is the fairest way we can approach this from the Assessor's Office in order to account for a subjective reduction in value. Commissioner Norden stated then there is a possible negative to the entities that get property taxes and a possible benefit to the property owner if their values go down if they view it that way. Assessor Seifert stated yes.

President of the Board of Directors for the Penrose Water District Lissa Pinello stated they have been in negotiations with the CSU. They are working on the terms for an MOU for the water district. Most of the issues have been resolved but she does not have any indications if the District Board will sign the MOU. Their concerns are with their own easement for their proposed pipeline to be protected if they pursue their own project and the costs related to an EIS with the project. **Commissioner Stiehl** stated the most recent correspondence he has from CSU is that they are interested in talking to you about this but it would require a change in the EIS and the expenses from that would be born by the Penrose Water District. Ms. Pinello stated yes. Commissioner Stiehl stated in regard to the MOU they would like to see a finished product. **Commissioner Norden** inquired if they had any easements secured. Ms. Pinello stated no. Commissioner Norden stated from one their letters that they talked about is that they might want to use the same general pathway. Ms. Pinello stated yes. Commissioner Norden inquired how did they expect the Board to approach this if they have not been out in the field trying to secure easements. Ms. Pinello stated that they are working on that now.

Commissioner Norden stated that this is the same issue as with Beaver Park Water in that you both need more time to reach a memorandum of understanding. If we table this until you get together and produce a MOU is it going to benefit Penrose Water? Ms. Pinello stated they are not asking for more time, we are just expressing what our concerns are.

Penrose Water District Vice President Charlotte Norman stated their pipeline would extend from Lester-Atteberry ditch up to Brush Hollow Reservoir and raise the reservoir to 680 feet. They have not reached an agreement because after the Planning Commission meeting they said they could not partner with Penrose Water because it would violate their EIS.

Dennis Jones stated that he was against the project. He has provided written comments to the Commissioners. He stated that Fremont County should be cautious when considering this application. In essence he hoped the Commissioners would consider the inherent responsibility of preserving what the Florence and Cañon City councils were able to negotiate in the water stipulation of 1987. He stated the diversion jeopardized the quality of life we enjoy in our community. The application is incomplete. It fails to provide sufficient information regarding the HWY 115 Alternative and the Bureau of Reclamations recommendation. The final impact statement is written for the preferred alternative which lies in Pueblo County.

Rick Allen from the Rocky Mountain Environmental Labor Coalition stated the organization that seeks to ensure balance between rapid population growth, labor interest, and preservation of natural environment in the Rocky Mountain Region. They are against the SDS project because it will create adverse and environmental conditions in Fremont County and throughout the Arkansas River basin with little or not benefits to Fremont County.

SeEtta Moss the conservation chairperson for the Colorado Audubon Society expressed concerns for the birds and wildlife with their migrations and nesting habitats. She stated that until we get 1041 Regulations we should have nothing to do with this project.

Commissioner Norden asked SeEtta to address the sedimentation concern. She stated they need a mechanism that will not allow for excessive sedimentation in the river channel to avoid creating sandbars and change the river path.

Tony Keenan representing the Arkansas River Rafters Association stated they are a trade organization that represents thirty (30) or more rafting and fishing outfitters in the valley. This is about 90% of the commercial use on the river. He expressed concerns with the voluntary flow management plan. The management plan has been in existence for 18 years. It is a mutually cooperative agreement between my water owners and providers either via formal participation by sign the float program or water court decrees. He did not understand why SDS is going to do their voluntary flow management through the long term excess capacity storage contracts with Bureau of Reclamation. Their main concern is that their discussion with SDS will continued if the project is approved and that they will still be participating. They do support the SDS project with terms and conditions.

Steve Cool stated he was for the project. If it does not go through here it could go through Buena Vista where we would not have control. The way the economic times are today a \$600,000,000.00 will be a great benefit.

Denis Arey stated his main concern is that they live on a private road. He has heard that CSU leaves the roads better than how they found them. He is also concerned with the maintenance of the access roads as well.

Jim Crossey stated he is very concerned about the possibility of water coming out of Buena Vista. He stated that we should be receptive for the jobs and economic benefit that will come to the county.

Donna Murphy said that she is against the project. She wants to see all the conditions put in the approval along with the contracts for the Florence River Park.

David Sloane stated he was not against or for the project. He said they should do something for Penrose and Beaver Creek Water at their expense. He knew of the project because he is in construction but only received a registered letter the other day and didn't know that it was coming through his property.

Kathleen Perkins said she was concerned about disruption of the Penrose Water be it domestic, irrigation, or refilling Brush Hollow. She wants assurance that they have water and can refill Brush Hollow Reservoir.

Tom Kerr,s concern was what they were going to do about the things they can't fix such as destruction of old trees.

Commissioner Stiehl closed the Public Hearing and returned to regular session.

Commissioner Norden inquired about the process that CSU did to contact property owners, what contact that did you have with them and why Mr. Salon and any others have been only contacted registered letter just recently? Dan Higgins stated that they did contact extending back to the initiation of the environmental impact statement process. Some were contacted at that time to allow access to perform environmental studies various times in 2006. We have had meetings since the SRUP application was contemplated and mailings have gone out to any property that has been identified within the SRUP as having property affected by the project. The purpose of this was not to have anybody be surprised by having their property identified in the application. Subsequent to the application we had mailing go out to the property owners and have hosted public information meetings at the Gooseberry Patch in October, the Western Omelets, and Florence. Commissioner Norden inquired about the registered letter. Mr. Higgins stated it was a requirement of the SRU application.

Commissioner Stiehl inquired if the SRU that was initially deemed to be pump stations, but not the pipeline itself. Mr. Higgins stated it was the pipeline as well. Commissioner Lasha inquired about the lack of contact with the Lester-Atteberry ditch owners. Mr. Fredell stated that they have had a number of conversation with the BLM related to the property. They have not talked with the Grisentis at this point because they did not have anything in terms of a permanent alignment. What they are talking about in terms of improvements to the ditch for the intake at that site, and would it actually provide for every water user that is there to be able to continue in the same way that they are today.

Commissioner Stiehl stated it looks like from the drawing it would continue to convey sediment load into that intake so the sediment that they are experiencing would essentially be the same after the improvements. Mr. Fredell stated any water to the best of the engineering ability would have the same amount of sediments in it as it came in the intake. Commissioner Norden inquired as to who is going to assure us that everything continues to function properly. Mr. Fredell stated to address those concerns they would prepare a plan in terms of how it is operated. They are completely open for another engineer to check off on it. We are amenable to having a Condition that says we operate based upon that plan.

Commissioner Stiehl stated that he was also concerned that the same sediment particle sizes remains in the river because it will affect aquatic life. Too much sediment would deposit in sand banks and too much sediment removed would cause erosion to the stream banks.

Commissioner Norden inquired if CSU wants twelve (12) months to finish getting the easements in place how does this fit in with the construction plans in wanting to start 2009. Are you looking at just pump station construction or actually start pipeline work before all the easements are locked up? Mr. Fredell stated what they plan to do is bring along easements as quickly as possible but if they have a situation where they need additional time to be able to negotiate with the property owner they want that ability. We have a construction schedule to begin Fall of 2009 but what we are saying if it takes them longer to work through the process to negotiation the easements we want to have that ability and we will stop construction in order to do that if necessary.

Commissioner Stiehl stated DIS primarily addresses the preferred alternative alignment and a lot is specific to that alignment. How would they exercise the Hwy 115 alternative? Would that have to become the preferred alternative? How do the conditions or mitigating transfer to that alignment and would that require DIS? Keith Riley stated that Chapters 3 and 5 have been referred to as potentially needing changes if the preferred alternative is switched to the Fremont County Alternative. Actually Chapter 3 goes through discussions on the impacts of all seven (7) Alternatives relative to first to compare a no action alternative which is Alternative one (1), as it compares impacts to existing conditions. Each of the other Alternatives, #2 through #7 are compared to the impacts of Alternative 1. The assumption is that if we are not able to get contracts with the bureau at all for some reason we would build Alternative 1. So this is essentially a future condition if reclamation does not take action. Chapter 3 is pretty well laid out and wouldn't change if we were to ask for the preferred alternative to be changed. What would change is Chapter 5. You are right, the mitigations are written specifically for the preferred alternative, however many will stay essentially the same they would just be applied in a different location. The locations will describe the Fremont County Alternative. Commissioner Norden inquired about the time in relation of CSU wanting to get a decision and if you received a decision from Fremont County and reclamation then took a look at the Chapters of the EIS, it would almost appear that you would be on a faster pace than the Bureau of Reclamation. Mr. Riley stated that they have had this conversation with the Bureau and the response that they have heard is the modifications to Chapter 5 would only take a few weeks. The work has been done and making sure that mitigation is to apply to a pipeline route in Fremont County. There is habitat for certain endangered species that are not in Pueblo County. We would take preventive measures to make sure that we do not violate the endangered species act and that we don't have impact on those species. Commissioner Norden inquired about the potential impact if the Division of Wildlife is addressed anywhere and particularly to wildlife and fisheries on the Arkansas down stream from the diversion point to Pueblo Reservoir. Mr. Riley stated they are working through the development of the Wildlife Fish and Mitigation Plan with DOW that would also require a new look if we are going to be in Fremont County and be addressed specifically. All of the environmental analysis has been done. It is a matter of applying the appropriate mitigation for those expected conditions.

Commissioner Norden asked for clarification commitments for detours, notification, emergencies etc. Mr. Higgins stated in general what they will do is insure that emergency service providers are aware of any disruption to the roadway system that they would be using. The same is true for school system. We give notice two (2) weeks before. It is in the traffic control plans which requires it to be submitted and approved by both the county and CDOT officials.

Commissioner Norden inquired how much of the commitments document did the Planning Commissioner see? Mr. Higgins stated none. There is a set of conditions for Fremont County to address a specific measurable and enforceable mitigation measures that would be overseen by someone other than the Bureau of Reclamation.

Commissioner Stiehl stated that several pieces of the alignment are not yet known. Mr. Higgins stated that pump stations 1, 2, 3 and the pipeline alignment are in terms of design. Commissioner Stiehl inquired about a conflict of Penrose Waters enlargement plans. Mr. Higgins stated that they are being worked out. They have met with both Beaver Park and Penrose Water District staff. They have taken a field tour identifying locations of the irrigation ditches. They are avoiding plans that show where the alternatives are for modifying the spillway to Brush Hollow, so that we can insure that they do not interfere. Commissioner Stiehl stated that Pump Station #2 would then not interfere. Mr. Higgins stated yes.

Commissioner Norden asked for more specifics about the statement if Black Hills Energy could provide power to about three hundred (300) more homes with the transmission line. Mr. Higgins stated that Black Hills could connect into the transmission line for Pump Station 2 and 3 and increase their reliability.

Commissioner Norden inquired if the \$2,000.00 per acre performance bond was in the commitment. Mr. Higgins stated yes it is on Page 10 which is the end of Commitment C-9 under Site Restoration.

Commissioner Lasha inquired if the access to the electrical substation was off of Hwy 120. Mr. Higgins said it is accessed off Hwy 120 and also a private road. Commissioner Lasha inquired if the transmission of that electricity to the pump station will be similar to the overhead line. Mr. Higgins stated yes.

Commissioner Norden stated the Planning Commission raised the concern about the right-of way width on HWY 115. You have addressed that there is six (6) lanes for CDOT. Commissioner Norden asked if there was any follow up. Mr. Riley stated CDOT did inquire if the pipeline would be in their right of way. It was explained that it would not be and they were not concerned.

Commissioner Stiehl inquired about the Flow Management program and why have they not sign the document that everyone else has. Mr. Riley stated their concern with signing the Flow Management Agreement that the Arkansas River Outfitters Assoc. is that group meets periodically and they revise the flow program as necessary over time. So that could become one set of rules that changes the way we operate on the river. We have another set of rules that they have signed up to that determines how they participate in the flow program. It is contained in a MOU and it is attached to the Chafee County Recreational and Channel diversion. That MOU specifically states the conditions under which Colorado Springs would be exempted from the program on a temporary basis and then it includes conditions such as extreme drought or emergency upsets in our other delivery systems. There are some extreme conditions under which utilities needs to step away from the voluntary flow program in order to deliver drinking water to residence. So our concern with sign Flow Management Agreement is that it could eventually become a separate and distinct set operating requirement different from those that we have already signed up to, on a very long term basis. We also expect that the Bureau will require similar conditions to those described in the MOU as a requirement of their forty (40) year contract. Essentially we see that we have made commitments in an enforceable way to participate in the flow program which achieves the same end that the outfitters are looking for, and that is to meet target flows in the river as much of the time as possible. The flow targets for the program are measured at the Wesfield Gauge. The short term contracts that they operate under now with the Bureau of Reclamation, of which we are hoping to replace with a forty (40) year contract, currently call out the specific targets of the Flow Management Program. We will be conditioned to meet those targets as they occur at different times of the year. They have been participating in the flow program since 1990 with 99% compliance of the program. The 1% that they were unable to comply were due to conditions of extraordinary flow or emergency conditions where they did not have a choice but to get the water for drinking water purposes. Commissioner Stiehl inquired if the outfitters have looked at the MOU. Mr. Riley stated "yes they have discussed and they will be going back to take a closer look to make sure that it does meet the ultimate goal of keeping water in the river and meeting flow targets".

Commissioner Norden inquired if they intend to use any private roads for access after construction is completed. Mr. Higgins stated that what was stated in the commitments is there, they were required to use private roads or county roads that they would do rehabilitation on and to meet the access of first responders in case of emergency.

Commissioner Norden inquired about the emergency water for fire fighting and contact with Penrose Fire Dept. Mr. Higgins stated it would be from the pump stations and hydrants placed along pipeline. They have not done specific hydrant site yet.

Commissioner Norden inquired about the questions that Kathleen Perkins asked about disruptions to the Penrose Water System or Beaver Park. Mr. Higgins stated that in the event there was an activity that would disrupt they would be coordinating with the companies to make sure their tanks were full and disposable water would be available.

Commissioner Norden stated the commissioners are not in a position to dictate what goes in a Memorandum of Understanding between the CSU and those entities. How does CSU propose in their mind that they right a condition to get assurance that those MOU's will not only satisfy those entities but the citizens that they serve? John Fredell they would be happy with a condition to continue to address those issues. There may be the possibility that they may not want to participate due to lack of funds etc. but we have pushed very hard to get something put together that works and look at the alternatives. We think that in about two (2) weeks time we should know if we can get there or not.

Commissioner Norden inquired if there was a contract for the Florence River Park. Mr. Fredell stated no. We have spent thousands of dollars putting ideas together and we intend to follow through. We have no problem with working out an MOU with Florence. We would like to see this happen. Commissioner Norden inquired on how to right a condition on that. Mr. Fredell stated use our best efforts and they have work with Florence City Manager Tom Piltingsrud as well as the council who have been involved in what they are doing.

Commissioner Stiehl inquired about fixing a fair value for land with easements and what will happen in the future to the property value as the area grows. Mr. Fredell stated that we all have utility easements across our property. What we are looking at in terms of property acquisition process what they are looking at when they buy the easement from a landowner basically is what is the value now and what is value going to be with a pipeline line on it. That is the comparison that the appraiser is going to make. That will result in some establishment of value in terms of what they pay. Property tax is an issue. We would be more than willing to consider some sort of payment in lieu of taxes if there is projected shortfall based upon property valuations in terms of a change in value actually affecting directly the collections of taxes by the county. We would be open to looking at that so that the county does not have to suffer that impairment to their property tax system. Commissioner Norden inquired about the commitment documents that they received from CSU today. Are they to use it as the form to basically adopt conditions from? Mr. Fredell stated yes that they will stand by that.

Commissioner Stiehl stated he did not see a document for endangered species regarding the identification of and avoidance of either geography or in timing of their habit. Mr. Riley said it was done for the DIS process but it will be done again for preconstruction. Commission Stiehl also asked for identification of potential impacts of old trees. Mr. Riley said their commitment is to go out ahead of construction and resurvey the entire construction area to ensure conditions have not changed. They are not depending on the findings of the DIS to be those conditions that they will see in the field when they start construction. This commitment is under C-15 gives a brief explanation conducting surveys done by people that are subject matter experts in each of the fields.

Commissioner Stiehl inquired if there could be a commitment for them to purchase more of their material locally. Mr. Fredell stated absolutely.

Commissioner Norden said citizen who was not able to stay, inquired about the noise level from operating Pump #1. Mr. Fredell said you will not hear the pumps outside the pump station. He also inquired about endowment money to assure maintenance of any part which needs improvement. Commissioner Norden stated that would probably go with any agreement that they reach with the City of Florence. Mr. Fredell stated yes. They have not talked about on going maintenance. They have only talked about the capital commitment to get it done.

Commissioner Stiehl inquired if they could have a 5% preference to local area bidders. Mr. Fredell stated that has to do with their procurement regulations because they don't

have any time local preference even with projects they do in Colorado Springs but what he suggests that they have some sort of goal with some short bench marks in terms of labor. Commission Stiehl referred to a document that came from NRCS regarding flooding in Penrose north and west of Penrose downtown and west of HWY 115. He has been working with NRCS in constructing two to three flood water detention dams. Apparently there is some funding available but it will require some matching money or in kind activities from Fremont County in order to facilitate this. The alignment of the dam is the same as the pipeline. There needs to be coordination of the placement of those and time if this does go forward and maybe a contribution from CSU to help us control some flood dams. Mr. Fredell stated that they would like to hear what we have in mind. Beaver Park has actually given them a heads up on the situation. Commissioner Stiehl asked to have some assistance with Penrose, Beaver Park and NRCS. Mr. Fredell said he thinks they can do that.

Mr. McCormick stated they appreciated the consideration that they have been given. They have heard excellent comments from stake holders, citizens and the Commissioners as well. There has also been support letters from Fremont County Economic Development Corp., the Mayor of Florence and the Cañon City Mayor. They believe that they meet the SRUP requirements and have provided a detailed list of concrete commitments to mitigation for things like storm water, road repairs etc. We are also are committed to work to address concerns as they go forward. It would be great to have all issues resolved but yet they need a permit to go forward and select final alignments and designs, acquire easements and property and finalize agreements in a way that it is a win win situation with state holders on this project. We are very committed to working out the issues. As Bill Giordano mentioned earlier there are numerous permits still to get and they need this permit to be able to moved forward and meet the requirements for additional permits. We agree to continue to work with Beaver Park, Penrose Water and NRCS. We believe that we can reach agreements to meet those concerns in a short period of time. We ask that you move to approve this SRUP.

Commissioner Lasha commented on the quality of the application and thought it was very detailed. It is very difficult to submit two applications at the same. After a year of briefings, volumes of information from the applicants, public comments for and against from this public meeting and knowing that the size of the project has adverse issues and weighing everything that is presented he is in support of the application. He stated he is not in a position make a motion to approve the application today.

Commissioner Lasha made a motion to approve the delay for two weeks to put the Conditions in form wise manor where we can organize them and have discussions on them. We were presented additional information today with a couple of volumes, we had some very good comments from presentations made today and he would like to see the Conditions formalized before he makes a motion. Commissioner Lasha also commented that he had concerns about the issues regarding Holcim, one of the largest businesses in the community. He was glad to see that was addressed. Also with Penrose Water and Beaver Park Water he is glad to hear that communication is open and maybe in the two additional weeks some of the issues can be resolved. My motion in the future will not be conditional on everything being perfect because he doesn't think everything will be perfect. Commissioner Lasha made the motion to postpone two weeks to formalize the Conditions.

Commissioner Stiehl tabled until to the next Board meeting of February 24, 2009 a decision.

Commissioner Norden stated he had concerns that there may have to be some give and take on some of the conditions and he is not sure that they can be finalized in two weeks. Commissioner Norden seconded the motion with the intent we would seek and intend to make a final decision in two weeks and see how far they are in Conditions. We may need some reactionary time from both the applicant and staff. It is not going to be possible for the Board of Commissioners what goes into the MOU between CSU, Beaver Park Water and Penrose Water District. He would like to see what comes out in two weeks from the request the Gary Ratkovich sought. For that reason he thinks it a good reason to table it for two weeks for a final decision to make sure that all the entities, not only CSU but the people with Penrose and Beaver Park, if there is something they want. Commissioner Norden noted that this application process gleaned from the SDS. They have been involved in information meetings dating back to 2005 as well as informational meetings

FEBRUARY 10, 2009

14

on a monthly basis from CSU shared with the Board and Florence City Council. We may have been remiss at that time in not involving Beaver Park and Penrose in some of those informational meetings. He appreciated the commitment document that CSU delivered today. He wished that the Planning Commission had had an opportunity to see and react but they didn't. We have some Conditions that the Planning Commission put forth. He appreciated everyone's comments and appreciated what the property owners made. Not only was he interested whether Holcim was on board or not, he was also interested in hearing what the status of the property owners was. This Board of Commissioners from the beginning when SDS first contacted us and what our position was on it. We wanted to make sure the applicant did not seek the easements through eminent domain.

Commissioner Stiehl stated that the most difficult part is designing Conditions to mitigate the impacts that have been identified. The Conditions we design need to be realistic, fair and enforceable. If we can not get our Conditions put together in such a way that we feel that we have accomplished enforceable mitigation then we will not be approving it. He leans towards favoring the application but he does have some Conditions that may be difficult to put in place. Accordingly in the County regulation we have 45 days to make a decision following the closing of the Public Hearing.

Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye.

Commissioner Stiehl adjourned the meeting at 3:30 P.M.

County Clerk