FOURTH MEETING

The Board of Commissioners of the County of Fremont, State of Colorado, met in Regular Session on, 615 Macon Avenue, Room LL3, Fremont County Administration Building, Cañon City, Colorado. Commissioner Chairman Michael J. Stiehl called the meeting to order at 9:34 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	Absent

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 Lasha moved to change the Agenda under New Business: Item #1, Item #2 and Item #5 be moved to after Administration and Information prior to Old Business. Add under New Business to Authorize the Chairman to sign the Employment Contract for the County Manager.
Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commission Stiehl, aye. The motion carried.

CONSENT AGENDA

Commissioner Stiehl stated the Minutes from February 10, 2009 are not prepared and to strike Item #1.
Commissioner Lasha moved to approve the Consent Agenda with the removal of Item #1. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

1. Approval of Minutes February 10, 2009 - REMOVED
2. Approval of Bills, February 24, 2009 / $524,425.57
3. SCHEDULE PUBLIC HEARINGS for 10:00 a.m. March 24, 2009
   1. Adoption of Driveway Access Regulations
   2. Hearing on a Colorado Division of Housing Grant for the North Canon Sewer Improvement District.
4. LIQUOR LICENSES
   Lincoln Thomas H Lincoln Sandra J
   Marv's Place
   103 Broadway
   Penrose, CO 81240-9010
   Tavern Liquor License Renewal - Malt, Vinous, and Spirituous

   Iovinella Gary M
   Penrose Plaza Liquor
   930 St. Hwy 115
   Penrose, CO 81240
   Retail Liquor Store License Renewal - Malt, vinous and spirituous

ADMINISTRAVTIVE / INFORMATIONAL

1. Staff and Elected Officials

Commissioner Norden stated the Fremont County Commissioners and Fremont Sanitation District are hosting a Public Meeting at the Skyline Elementary School, Thursday, February 26th from 6 P.M. to 8 P.M. for the residents of the North Cañon area

that are impacted by North Cañon Sewer Improvements District that the Commissioners voted to create last November. George Maderas from the Sanitation District and his staff will be there give a current update on the progress of the grant and loans that are in place for this project. Residents who are either in favor or against are particularly encouraged to attend because there will information shared as to legal steps to get this project off the ground as well as logistical steps by the Sanitation District finish engineering and go to advertising for bids.

2. Citizens not scheduled – None

PRE NEW BUSINESS

SCHEDULE DATE AND TIME FOR SPECIAL NOTICE OF DETERMINATION HEARING SCHEDULED #999-20-451

Commissioner Stiehl moved to schedule the hearing time for March 17th at 9:00 A.M. Commissioner Norden seconded the motion. Commissioner Norden stated this is sitting as the Board of Commissioners as opposed to the Board of Equalization and call the special meeting with the County Assessor as a determination meeting. County Attorney Jackson stated it is a denial of an Abatement.
Upon vote: Commissioner Stiehl, aye; Commissioner Norden, aye; Commissioner Lasha, aye. The motion carried.

FREMONT COUNTY TREASURER – REIMBURSEMENT OF TAX LEIN

Fremont County Treasurer Pat McFarland stated the property did not get transferred and went to Tax Lien Sale. The transfer has been completed and we need to pay the person who bought the property at the Tax Lien Sale. The total reimbursement is $56.67.
Commissioner Lasha moved to approve **Resolution #13, Series 2009** for the reimbursement of Tax Lien #3664, Schedule # 770-11-7520. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

GEOFF GERK – COTOPAXI SCHOOL / REFERENCE GOCO MINI-GRANT

Cotopaxi School students / baseball players Cole Whitlow and Sarah Leatherbery, stated they are applying for a grant to build a bathroom at their baseball field. Ms. Leatherbery stated the grant is $42,500.00. Geoff Gerk, Superintendant of the Cotopaxi School stated they are looking for a letter of support from the Commissioners. The grant application is due March 2nd. They have received three (3) GOCO grants for the baseball facility over the past nine (9) years. This would be the fourth and final one. They have also received a lot of community support in the building of the facility. Commissioner Lasha commented that it is nice to see the students involved in the project and they have done a great job.
Commissioner Norden made a motion that the Fremont County Board of Commissioners and Fremont County act as the sponsoring agent for the Cotopaxi School GOCO Mini-Grant Application for restrooms for the baseball field for $42,500.00. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

Commissioner Stiehl returned to the regular Agenda.

OLD BUSINESS

REQUEST: SRU 08-004 SOUTHERN DELIVERY SYSTEM

The Public Hearing held on February 10, 2009 was closed and the request was tabled to allow the Board to consider and develop conditions, and contingencies of the permit, if approved.

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

Commissioner Stiehl stated this is a consideration of the SRU 08-004 Southern Delivery System. The Public Meeting was held on February 10th. The Public Hearing was closed at that time. This meeting will be a follow up with the participants of meeting. We will have a report back from Colorado Springs Utilities (CSU) as to where we are with agreements with Penrose Water District and Beaver Park Water. We will have comments from those entities also and the negotiations of Memorandums of Understanding (MOU). We will talk about the conditions that we have been working on should we approved this project.

Commissioner Norden stated for the record as to what as been happening over the last two week. There has been some due diligence by a number of people: Penrose Water, Beaver Park Water and CSU. There was also some information that we had from the NRCS in relations to some storm water issues in Penrose. Though the Public Hearing was closed, it was clear that we had intended for communication to continue between those entities and for the Board to continue to get new information from both the applicant and the other entities. There were other communications that have come in the mist of all of this and he thinks that has been part of the frustration as to what we were to focused on as far as appropriate exchanges of communication and what was information that was coming to us in the aftermath of the Public Hearing. There was one other follow up meeting yesterday afternoon on SDS with staff that he was not able to attend and now there are voluminous papers to sift through. He stated he would like to hear verbally from the applicant and the other entities to where they see that we are today. Commissioner Stiehl stated we should separate the Conditions and the agreements with the water companies and focus on certain areas.

Project Director for SDS of Colorado Springs Utilities, John Fredell stated they reviewed the draft Conditions earlier in the week and he has gone through the Conditions that arrived today and they appear to be consistent if not exactly the same. They look reasonable to them.

County Attorney Jackson stated that there is one additional Conditional and that is KK that was added yesterday by staff. But any incorporated changes that were sent back to us have all been done and accepted. Mr. Fredell stated that Condition has been discussed with conversation that they have had with NRCS.

Commissioner Stiehl stated that the other applicant for the project SDS, Pueblo has chosen to go a little different way as far as how they go about their Conditions. Pueblo is restating may of the Conditions that are already in the Bureau of Reclamations requirements for the project. We are assuming that those are the things that the Bureau will be enforcing so we are not including them in our Conditions. We also are not including in our discussion the conditions for water law because that is State Engineering. He stated what our job is to do is to identify the concerns that we have and the potential impacts that have been identified by public comment and at the Public Hearing.

Commissioner Lasha asked John Fredell to brief the Commissioners on the concerns of the last meeting of Penrose Water and Beaver Park and what progress has been made. Mr.

Fredell stated that they have had numerous conversations with both Beaver Park Board and the Penrose Board. In terms of discussions with Penrose Water District we have had a number of conversations but they have really focused on discussions between Beaver Park and Penrose. There is interest at this point in the two partnering. Partnering in terms of perhaps Penrose could act as a project participant and actually water could be moved through that agreement for Beaver Park. We support that idea from the aspect that creates efficiencies from them to work with the project. The details are not worked out at this point. He stated that they have had two meetings with Beaver Park and have developed some modifications to the MOU. We presented them back to Beaver Park over the weekend. Mr. Fredell stated they have come closer to an agreement but there are still issues to work out. Some of the issues are going to take some time in terms of engineering and determining exactly where they would like us to delivery water off the pipeline and developing costs based upon that engineering information. Both the agreements are draft agreements to set up timelines for the entities to provide them with information and then for us to give information back so we can get into the costs information and determine whether or not the project works for them. It is very clear in the MOU's that both of the entities have the option to join the project. They are not locked in by signing these agreements to actually participate. They can make that decision at a later date.
Commissioner Stiehl inquired about third party beneficiaries delivering water for re-sale. Mr. Fredell stated this is included in both agreements. Basically it says the agreements are to benefit the parties Utilities and Beaver Park or Utilities and Penrose. The agreement is to benefit the two parties only. This precludes a third party from stepping in under the two existing MOU's and claiming that they have some rights under the existing agreement. It does not preclude CSU from developing any number of additional agreements. County Attorney Jackson stated the provision essentially say who can enforce the contract. The third party beneficiary provision says that no one other than the parties to the agreement can enforce the contract between them. It precludes other people from stepping in and trying to enforce the agreement between the parties.
Commissioner Norden requested an overview of the agreements or disagreements with the parties on the issue of environmental impacts assessment that maybe required of Penrose Water and how relates to EIS in relation to the Bureau and the HWY 115 Alternative. Mr. Fredell said there is a provision in each of the agreements that states when we are nearing the end of the EIS process for the project and it has been completed by the current participant. The provision makes it clear that there may need to be additional environmental review required by the Bureau of Reclamation. If a project participant changes and some additional assessment need to be done, the new participant would have to pay for additional costs. Each participant pays for a portion of that based on their participation in the pipeline. I do not see it as an additional environmental impact statement but as an environmental assessment but we can not provide a guarantee at this point because it is not our decision. Commissioner Norden inquired if it is a sticking point in the negotiations if the participants have to pay their own way. Mr. Fredell stated it is definitely issue but they would provide the baseline work that has been done free of cost.
Commissioner Stiehl stated that regarding Penrose that there is a potential for Penrose to pay more money to participate in SDS than they would with their own project. If there is some way to limit their financial liability and come out with no lose to them and a potential gain. Mr. Fredell agreed. Until they know in more detail as to where the connection would be they can't target the exact dollars. Sharing some preliminary numbers with Penrose the saving could be about $2,000,000.00 or more. We have tried to address the issue if what happens if Penrose doesn't participate in our project. Penrose can go ahead and build their pipeline. If SDS does build the project and Penrose does not participate because of funding, then we would allow Penrose within our own easement. Basically they would have to get all the permissions and there would be compensations involved in the underlying key owner. We think that this can be accomplished very easily.
Commission Stiehl inquired about a range of the cost for the EIS. Mr. Fredell stated he does not know. It will be the decision of the Bureau of what they may need. They generally don't give an estimate. We have address about every environment issue in terms of the pipeline, endangered species, water quantity, quality etc. It is basically going to be limited to the different types of water and where they might go.
Commissioners Norden inquired based on the negotiations as they stand now with the entities, how close is CSU to suggesting what a possible Condition might read like in

relation to the Conditions we would have before the Commissioners dealing with the MOU's that you are working on. Mr. Fredell stated the draft Condition that exist is excellent. We have been pushing this to try to ensure we address the issue of both Beaver Park and Penrose and try to move this to a conclusion.
Commissioner Stiehl inquired about the ten (10) year agreement for buying water. Why is there a limitation? Mr. Fredell stated that there are two opportunities for Beaver Park. The first is to participate in the project so they have that alternative to be a part of the project and move their water through the project at all times and that would be the ten (10) years or however long the pipeline exists. We wanted to provide another alternative that would allow them to move water. We move water for ten (10) years on a firm basis of an if and when price so they could schedule their deliveries. If and when meaning when there is capacity in the pipe but if there is not and don't move water the price is obviously less. What we are talking about is the pumping charges and administrative cost. The reason why we limited it to ten (10) initially was because we do not know exactly how fast the capacity is going to fill up in the pipe. Obviously a participant that is bought into the pipe they are going to want to be able to use that capacity. If there is still excess capacity after ten (10) years then we continue to move water but there is not we have to an if and when basis.
Commissioner Stiehl stated he sees a positive economic impact to the area should they build through here for three or four years but he also sees that over time there is going to be rebuilding which will also be a benefit.
President of Beaver Park Water Gary Rutkovick stated they have had a lot of their issues address and have agreed to as far as construction. They have told them and have in writing how they are going to proceed with construction, how they are going to protect their systems and they are fairly comfortable with that. The Beaver Park Board has not read the latest MOU. Commissioner Norden inquired what is it that they need from the Board in the Conditions that will aide them in what they want. What is Beaver Park's reaction to Contingency #4? Are they seem comfortable with negotiation in good faith or is there something specific that you are looking for? Mr. Rutkovick stated that is what they want to see and that they do want to negotiate in good faith to try and get a lot of the up stream issues resolved. Commissioner Norden stated they wanted to make sure that they design a Condition that protects everybody's interest and keeps everybody at the table until common ground can be reached. The frustration and it comes from both sides is that if we approve this and we don't have an agreement between the parties then CSU doesn't have any reason to stay at the table. The other side of this is if we keep delay the decision and drag this out then we will play the waiting game forever. We need to make sure that there is open and honest communication to write a Condition that keeps it fair for everybody. Vice President of Beaver Park Water Jack Tyler stated the largest problem that they have is that CSU is not ready to enter into contacts with anyone except for an MOU. We might not be able to afford to participate. Commissioner Norden stated that given where they are and that you have not sorted through the language of the latest communication, what would be requesting of this Board today in relation to additional time. Mr. Rutkovick stated they haven't discussed how much longer that they would need. Commissioner Norden inquired if they would vote today to approve would that cause problems for you. Mr. Rutkovick stated no. He stated that there is wording that they don't totally agree with yet. Commissioner Norden inquired if they get a vote of approval is there any reason that you don't think they would negotiate in good faith. Mr. Rutkovick stated it would lessen their incentive to negotiate but he does think that they would continue to negotiate. Initially they wanted their own tape off of SDS but after negotiations with SDS and Penrose Water District we felt a joint tape is best for the community. The big stumbling block now is what it is going to cost each entity to own it. Mr. Rutkovick said that the Penrose area needs to realize the benefits from SDS if the pipeline does go through.
Commissioner Stiehl stated one of his concerns from the beginning with the Penrose water companies is that you would be unrealistic and unreasonable in your request. I am please to say that you are trying to take a strong stand and that your requests are valid issues.
Commissioner Norden inquired where Penrose Water was with their negotiations with CSU and how can the Board be assistance to them in language of the Conditions.
President of the Board of Directors for the Penrose Water District Lissa Pinello stated that the language in the present Conditions that you offer today is probably as

strong as it can get. Our concerns are that we really need more time. Our Board has been working among it selves and have not had the opportunity to interact much with our professionals. We have been working diligently with CSU to get our present concerns on the table about construction and capital development. We have not had a chance to discuss what the future aspect would be or change in operations might effect of also. Our main concern is still the EIS. We need a good cost estimate so we can plan. Commissioner Norden inquired if SDS did not go through would they still have to do an EIS. Ms. Pinello stated yes. Commissioner Norden inquired if they have asked CSU to pay for the EIS. Ms. Pinello stated that they did not want their costs to exceed a certain number and they have given that to them. Mr. Fredell stated that is was not their determination to make, it is the Federal Government.

Commissioner Norden inquired what could Penrose Water and CSU accomplish in two more weeks. Ms Pinello said helping them get an idea of what their total cost would be. Commissioner Lasha inquired if they have reviewed the latest MOU. Ms. Pinello stated it does seem to address all of their issues but the EIS. Mr. Fredell stated that there were no changes to the Penrose Water MOU. Commissioner Norden inquired about CSU change in position of allowing a pipeline for Penrose Water in their easement. Mr. Fredell stated that this exceptional. Commissioner Norden inquired if it was appropriate to separate this issue in Conditions. County Attorney Jackson stated they have already made the offer to do that. In addressing the cost, Mr. Fredell stated they have given a preliminary estimate. He is not sure that they are going to get real close in terms of numbers for all the participants. Basically they have a percentage of the project that they are going to utilize and they are paying that percentage of the cost. This will be the cost at the end of the project after it is constructed, so things will change. They will provide an estimate but the costs will be based upon the final costs. What they have tried to do is lay what is the method to establish that cost and determine that fair percentage in terms of what facilities the different partners would be involved with.

Commissioner Norden affirmed that they would be committed to putting language in the Conditions that CSU would share the easement with Penrose Water if that was the eventual choice as opposed to delivering their water. Mr. Fredell said they would because they have already agreed to that in the MOU. Commissioner Norden inquired if that would be a benefit to put in the Conditions. Ms. Pinello stated yes.

Tom Sanders, Superintendant of Beaver Park Water concern was the company's ability to afford the project. They are a mutual ditch company that is run by only the assessment of the County so they have a limited budget. He also stated concern about the ten (10) year contract that when it becomes a if and when delivery they may not have water. Also once SDS has established the easement through the area of Penrose, will it restrict Beaver Park Water from doing any improvements? Mr. Fredell stated in terms of crossing our pipeline we have made it clear that if there are additional cost to the entity because of their requirement that they would pay the cost. There also is not cost to Beaver Park Water in the billion dollar pipeline. Their costs are only for pumping costs for electricity to run the motors, administrative fees and the tapping cost.

Commissioner Stiehl inquired about the flood drainage and plans with NRCS. Project and **Construction Delivery Manager Dan Higgins** stated they have meet with NRCS along with CH2M Hill the consulting engineer and have identified where the three (3) dams were being proposed. Commissioner Stiehl stated this is another benefit to Penrose. SDS has apparently agreed to provide soil if is acceptable and if it needed. He inquired if there were any comments from CSU to participate in helping in the construction. Mr. Higgins said that is undetermined at this time. Commissioner Norden inquired if something could be designed to benefit the Penrose area in the relation of storm water detention that would not pose any harm to either the CSU easement or the power lines. Chief Water Services Officer Bruce McCormick requested a five minute break so they could address these issues of potential uncertainties.

John Fredell stated they have a couple of ideas on how to move forward and to make sure of the assurances that you need to issue a permit today. The two issues that have been talked about in some detail are the NRCS and providing water to Beaver Park and Penrose. In terms of the NRCS the current Condition is fairly acceptable to them but what they would like to do is put more specifics in terms of the material that we would provide and how we would provide it. We would take material that is excess from the project. We would remove it from the project and provide it onsite. Obviously that material has to

acceptable to the NRCS and they will have to make that decision. Commissioner Stiehl stated that they would need to do that in a time frame that would be convenient while you are working in that area as opposed when you are in El Paso County and hauling it back. Mr. Fredell said yes. They would make the commitment to provide the material and put some parameters time, location and from where they would bring the material. In terms of the water supply issue what we need to do is to potentially provide for a contingency that would allow a check in period after the permit is issued such as 90 days for them to work with Beaver Park and Penrose. We will put some parameters around this so that it clear whether or not we have reached a goal in terms of all the parties to work towards their expectation. I proposed that they provide us their capacity information that CSU needs to have in order to prepare a cost estimates to finalize those capacity details with us within two (2) weeks from today. We need to know capacity and where they want the water delivered. We would have two (2) weeks after that to provide back cost information. We would basically use the next three (3) weeks to negotiate between the parties to try and reach a final MOU. At this point if we haven't reached any kind of agreement then the decision makers from each of the parties and could name them in the Contingencies in terms of Board President and Vice President and two (2) members from the utilities would sit down at a meeting and attempt at that meeting to resolve the issues. Provide a week for that. If they haven't been able to resolve issues in that week then the parties would go to mediation to resolve the final issues and CSU would pay for that. The mediation would be none binding. After the mediation allow a week or two for further discussions to try to reach an agreement. That should be about ninety (90) days. We then come back before you and have you make the determination whether we have actually complied with the three parties in terms of what you have laid out to try to get to an agreement. At that point we have either reached an agreement or haven't. We would execute the agreements or move one. Commissioner Stiehl inquired what move on look like. Mr. Fredell said the move on would be that the two parties that they don't want to take part in either direct participation or moving water through the project. Commissioner Stiehl stated that the Contingencies that have been discussed today about allowing an additional pipeline in your easement would then still be in effect. Mr. Fredell said yes. If you look at either or both of the MOU's there are things that will happen regardless of whether we reach agreement on participation. Commissioner Norden inquired about the NRCS issue. Because there is such an unknown about the engineering aspects of what kind of facilities might be needed to effect some storm water control in those areas that the NRCS has briefed us on and also the issue that you can't have water backing up into the easement or power lines. Is there some way a Condition could be written based on what you have said that you would be willing to provide material and that material would be was ready to go? Is there some how that you could write a Condition that you participate in effecting some sort of storm water control that does not negatively impact your facilities or Black Hills facilities. I understand that this has to be some how open ended because the condition would not necessarily be asking you to construct but at least we would be trying to get a certain volume of material in a certain place so that we could minimize as much of the construction costs as possible. Mr. Fredell said they could draft a condition to the best of their ability reduce costs. We need to coordinate to make sure we understand what each of our perspective goals are. Commissioner Lasha stated that all the issues are important but this one in particular has an impact on our County. 2001 and 2006 we had a significant flood. We have spent almost a full year improving the conditions that was created by the 2006 flooding. Mr. Fredell said it was important to them also because their project is there. Commissioner Norden stated if they could craft some condition language that some how better identifies what you feel that you can contribute toward that end that holds you harmless that will get us as close as possible to what ever kind of facility that is engineered by NRCS. Granted what NRCS says may need to be for a 100 year frequency flood may be out the realm of possibility for this particular place and those three water sheds that were shown on the map. Commissioner Stiehl stated that the NRCS has approached this issue in 2001 and again in 2006 and they were unable to get funding and or engineering all together at the same time. Now they have an engineering commitment but we don't have funding. There is a possibility that this may not go forward again. The commitment to deliver soil could be very valuable in kind contributions as funding moves forward and might entice some grants. It is good to hear that SDS and Black Hills is aware

of the potential for flooding in that area so the pipeline and electrical lines can be protected.
Commissioner Norden stated that the Board was adopting the Commitments Documents as a Condition and if there were any conflicts with the Conditions that we set forth here supersede any language in the Commitments Document. Mr. Fredell said they support that.
Commissioner Norden inquired what commitment the CSU has made to the Florence River Park. County Attorney Jackson stated it is in Condition BB.
Commissioner Norden inquired about the Grisenti's who were not contacted as owner of the diversion or water rights on the Lester-Atteberry Ditch. Mr. Fredell stated they have talked to the Grisenti's and talked through issues and pledge to continue have communication with them.
Commissioner Stiehl inquired about the 190 CFS flow and if there would be a problem for Fremont Sanitation if they require more. Keith Riley stated that there is a stipulation in the exchange decrees calls the 190 CFS as the minimum flow. For there to be support by CSU for a different level would bring inconsistency to the decrees.
Commissioner Norden moved to approve SRU 08-004 Southern Delivery System with Conditions Items A through KK with Recommended Contingencies 1 through 9. Asking staff and CSU to work on the language for a Condition that addresses the shared easement for Penrose Water District with the Colorado Springs easement so that we come up with a language that should there not be an agreement for Penrose Water District to deliver water that there be a condition language so that Penrose Water District can share that easement. Some of the other issues we are going to have to leave to the negotiations in the MOU's . Would like to see some language that specifically address what Mr. Fredell discussed here in last segment in relation to negotiations on storm water mitigation in relation to very preliminary information that we have from NRCS. That Condition would address assessment form NRCS towards what ever commitments that the CSU might be willing to make at this early stage lacking the specific engineering of solution would be in place. To give the applicant until June 1, 2009 to report back to the Department and Board of Commissioners as to the progress with the negotiation on MOU's with Penrose Water District and Beaver Park Water and adopt the offer from CSU for the proposed negotiation within that 90 day period to accomplish that end of those MOU's. A note based on his comments that made earlier, it still comes with the expectation that CSU will continue to negotiate in good faith to ends sought by both Penrose Water District and Beaver Park Water. Commissioner Lasha seconded the motion. Commissioner Lasha stated that there are some issues that certainly are important to us that deal with Beaver Park, Penrose Water, NRCS and obviously the County. Our discussions and negotiations with CSU have been very open and fair. He stated that we have moved into his seconded today on understanding of good faith and the future relationship that we do have if this project does go through. Commissioner Norden stated the language of the other Conditions are to be back to Board on the Agenda in two (2) weeks from today and the final resolution for the language of adoption. Commissioner Stiehl stated there has been a lot of time spent and energy from Colorado Springs and the other participants. The schedule for negotiations and promise to mediate at the expense of CSU answers his concerns. As far as the Conditions, he had said initially two weeks ago that the conditions that we impose need to be thoughtful, effective and enforceable. Many of the things that we have come up with in discussions in our work sessions indicated we either don't have jurisdiction in those areas or there can't enforce so we have not included those in our Conditions. He feels that they have identified and addressed their concerns as well as the people that spoke in the Hearing during Public Comment. This will be **Resolution 14, Series 2009**. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye.

AUTHORIZE THE CHAIRMAN TO SIGN COUNTY MANAGER EMPLOYMENT CONTRACT

Commissioner Lasha moved to authorize the Chairman to sign the Employment Contract for the County Manager. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

REAPPOINTMENT OF HAROLD SERVEN AND JOSEPH SCRANTON TO THE BOARD OF ZONING ADJUSTMENT

Planning and Zoning Director Bill Giordano stated this is a reappointment and they both are for a three (3) year term. They review appeals of any decisions made by the department and grant variances. Commissioner Lasha moved to reappoint Harold Serven and Joseph Scranton to the Board of Zoning Adjustment for a three (3) year term. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

PENROSE COMMUNITY LIBRARY – APPOINTMENT OF LISA REID AND DIANA ARMSTRONG TO THE BOARD OF TRUSTEES

Commissioner Stiehl stated the Penrose Community Library is just now moving into their new facility. They have asked the Commissioners to add Lisa Reid and Diana Armstrong to the Board of Trustees.

Commissioner Norden moved to appoint Lisa Reid and Diana Armstrong to the Board of Trustees to the Penrose Community Library. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

REQUEST: REVOCATION OF CUP 01-005 HOLCIM GRAVEL PIT

Request approval to revoke the Conditional Use Permit for file # CUP 01- 005 HOLCIM GRAVEL PIT. In a December 24, 2008 letter, the Colorado Division of Reclamation, Mining and Safety (DRMS) released Holcim (US) Inc. from further responsibility for the Holcim Gravel Pit. In a letter dated January 19, 2009, Holcim (US) Inc. requested that the Conditional Use Permit for this gravel pit be terminated. The property is generally located approximately ½ mile west of the Holcim Cement Plant on the north side of Colorado State Highway 120, in the Portland area.

REPRESENTATIVE: Fremont County Department of Planning & Zoning

Planning and Zoning Director Bill Giordano stated they have met all of their reclamation requirements and we do have a letter that they have been released of their warranties. They did convert this into a nature trail which will be open in June, 2009.

Commissioner Lasha stated that another benefit was the replacement of bridge on Harts Gravel Creek. County Attorney Jackson stated this is **Resolution 15, Series 2009.**

Commissioner Norden moved to revoke CUP 01-005. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

REQUEST: RESCISSION OF SRU 06-002 VERIZON WIRELESS TOWER (CORNELLA PROPERTY)

Request approval to rescind the Special Review Use Permit for file # SRU 06-002 VERIZON WIRELESS TOWER (CORNELLA PROPERTY). The existing Special Review Use Permit was issued to allow for the installation of a one-hundred (100) foot tower, by Verizon Wireless, on property owned by Cornella Brothers, LLC. The permit was approved on October 10, 2006 and recorded on December 1, 2006. A building permit for the tower was approved on July 6, 2007 and renewed on August 2, 2008, but the building permit was never picked up. No construction has taken place. The property is located approximately one-thousand (1,000) feet north of the intersection of 9th and Candlewood, on the east side of 9th Street in the North Cañon Area (an existing mini-storage facility).

REPRESENTATIVE: Fremont County Department of Planning & Zoning

Jean Johnson stated she is a consultant who works for a G2 Consultants which is employed by Verizon Wireless. She stated it is their intent to build the Tower. Right now it is slotted for 2011 based on budgetary alignment and we would like to see if we could get the SRU extended.

Planning and Zoning Director Bill Giordano stated the regulation allow for a cessation for up to two (2) years. This SRU expired in December, 2008. Basically what you are doing is back dating the SRU another two (2) year cessation if you approve this today.

Commissioner Norden inquired what assurances are there that they will build in the next two year versus the past two years. Ms. Johnson stated Verizon has their priorities for the sites that they do build. There are no guarantees that this will be built but it is slated for 2011. They put a lot of time, money and due diligence in securing the lease at the Cornella property. The lease has been extended as well. Commissioner Norden stated is concern is that some of this is starting to see some residential development push northward in the area of 11th Street toward that area.
Commissioner Lasha moved to extend SRU 06-002 for Verizon Wireless Tower that will expire December, 2010. Commissioner Stiehl seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Stiehl, aye; Commissioner Norden, nay. The motion carried.

REQUEST: MS 08-004 FRED & JANES SUBDIVISION
Request approval of a two (2) lot minor subdivision, Department file #MS 08-004 Fred & Janes Subdivision, by Fredric L. Gifford & Jane Fox-Gifford, for their property which is located on the north side of Crawford Drive, approximately 350 feet west of the intersection of Crawford Drive and MacKenzie Avenue, in the Fourmile Area. Proposed lot 1 will consist of 0.645 acres and contains a framed garage, which is under construction. Proposed lot 2 consists of 0.285 acres and houses a single-family dwelling and three sheds. The side yard setbacks for the three sheds are non-compliant with the setback requirements of the Low Density Residence Zone District (5 foot side-yard setback required-3.8 feet exists for each shed). Two of the sheds can be relocated or removed to comply with setback requirements, which is proposed and will be required. The other shed is placed on a foundation and cannot be relocated. The property is currently being used for residential uses. The property consists of approximately 0.936 acres.
REPRESENTATIVE: Matt Koch, Cornerstone Land Surveying, LLC

Matt Koch stated that they are requesting a two (2) lot split for property located on Crawford Drive and is just less than one acre. Lot 2 will house the existing house and some out building, shed and a garage. The new lot will house a new garage that is just being completed. There was an issue about the sewer tap being purchased prior to recording. We do have a letter from the Sewer District stating there is no need as long as the plat is recorded within one year.
Planning and Zoning Director Bill Giordano state that the Planning Commission did change the Condition that if the received documentation from the Sanitation District that that would be acceptable. The Planning Commission did recommend approval. There are fifteen Contingency items. The right-of-way access there is forty (40') foot. The applicant is proposing to provide twenty-five (25') feet from the center which effectively be a fifty (50') foot right-of-way if you got it from both sides of the street. But they can only give their half. The regulations do allow for thirty (30') feet from center line or sixty (60') feet but in this particular instance we probably do not want to go the thirty (30') feet because the twenty-five (25') feet is probably going to put in most of the house as non conformance with the front set back requirement of Crawford now. The twenty-five (25') feet is reasonable and brings us into compliance with our regulations. We did receive today a letter dated February 23rd from Don Moore. There are going to put in a ten (10') foot wide channel for drainage and there was a couple of plat statements that Don Moore wants on. The motion can stand as it is in the Planning Commissioner. Director Giordano said there are three shed that are in non-compliance. Two (2) of them have been removed. One is on a permanent foundation and the applicant requested that we treat it as non-conforming and allow it to stay but if it every is removed they have put a statement on the plat that they will comply at the time it is removed with applicable set back that there are.
Commissioner Lasha moved to approve MS 08-004 Fred & Janes Subdivision with the 15 Conditions and the approval of the waiver request for the shed and if it is ever taken down it will come into compliance. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried.

RECOMMENDED CONTINGENCIES
The Planning commission recommended that approval be contingent upon the following items being provided to the Department of Planning and Zoning, within six (6) months

(*with no extensions except through regulatory process*) after final approval by the Board of County Commissioners:

1. Final plat and copies (*copies to be provided after recordation of the plat*) as required by the Fremont County Subdivision Regulations (FCSR).
2. An updated title insurance commitment or policy shall be required prior to the recording of the subdivision plat, if said recording date is more than sixty (60) days from the effective date of the title insurance commitment or policy. An updated title commitment may result in additional requirements of the applicant.
3. A copy of a recorded Release of Deed of Trust or an executed Ratification, Consent and Release form for document found at Reception Number 848956 of the Fremont County Clerk and Recorder's records.
4. An executed quitclaim deed with a deed restriction addressing the maintenance of any drainage facilities, drainage easements, rights-of-way, etc.
5. A quit-claim deed to the County for a twenty-five (25) foot or thirty (30) foot right-of-way from the centerline of Crawford Avenue, along the entire property frontage. (*Subdivision regulations require a 50 to 60 foot right-of-way, which is to be determined by the Board of County Commissioners.*)
   The Planning Commission recommended a twenty-five (25) foot right-of-way from the centerline of Crawford Avenue, along the entire property frontage.
6. Compliance with the requirements as per the County Reviewing Engineer as noted in a letter dated December 30, 2008.
7. If all required improvements (*drainage facilities*) are not completed prior to recording of the plat, an executed improvement and escrow agreement shall be provided.
8. Cost estimates for all proposed improvements shall be approved by the County Reviewing Engineer.
9. A letter from a Colorado Professional Engineer, who designed the improvements, stating the specified improvements were constructed to the Engineer's design, prior to recording of the plat and/or release of escrow funds from an improvement and escrow agreement.
10. The sheds labeled as to be moved shall be relocated so as to comply with required zone district setbacks prior to recording of the plat.
11. A copy of the executed water contract from the City of Cañon City for the second water tap.
12. Proof of purchase of sewer tap prior to expiration of letter of availability dated January 8, 2009.
13. If sewer tap is not purchased on or before January 8, 2010 or prior to recording of the plat, an executed improvement and escrow agreement shall be provided.

    The Planning Commission recommended that if the applicant provides the Department with a signed commitment from the Fremont County Sanitation District indicating that the availability of a sewer tap is not limited to a one (1) year period then it will not be necessary to execute an improvement and escrow agreement nor need to provide proof of purchase prior to January 8, 2009.

14. Information to enable Department to compute addresses.
15. Closure sheets for each lot and boundary.

WAIVER REQUEST - GRANTED

The applicant has requested that the non-compliant shed, labeled as being placed on a concrete foundation, be accepted as non-conforming; due to the fact the shed is placed on a permanent foundation.

Planning Commission recommended allowing the shed, which is located on a permanent foundation, to be considered as a non-conforming building, provided the following statement is placed on the final recorded plat: "The replacement of any non-compliant structures shall be required to meet all Fremont County zoning requirements at the time of replacement."

Commissioner Stiehl adjourned the meeting at 11:20 A.M.

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Clerk and Recorder