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FIFTH 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 9:31 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 Carol Papen, Deputy Clerk.

Pastor Steve Schwartz from Seventh Day Adventist 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 stated that the minutes for February 24th of 2009 have not yet been completed. Commissioner Lasha also stated that the minutes for February 10th were very large and thought that the commissioners should have more time to review them. He also suggested item #5 of the consent agenda be moved to New Business. With those changes to the Consent Agenda, Commissioner Lasha moved to approve the Agenda. Commissioner Norden seconded the motion with changes. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commission Stiehl, aye. The motion carried.

CONSENT AGENDA

Commissioner Lasha moved to approve consent agenda with the changes made to the agenda.

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 and 24, 2009
2. Approval of Bills, March 10, 2009 / \$708,464.94
3. SCHEDULE PUBLIC HEARINGS / None
4. **LIQUOR LICENSES**
Whitewater Bar & Grill Inc.
Whitewater Bar & Grill
45045 Hwy 50 West
Canon City, CO 81212
Hotel and Restaurant Liquor License Renewal – Malt, vinous and spirituous

Royal Gorge CO of Colorado
Christine Blazer
PO Box 549
Canon City, CO 81212-0549
Optional Premises Renewal – Malt, vinous and spirituous liquors
5. Adoption of Resolution #14, Series of 2009, Special Review Use Permit

File Number SRU 08-004 Southern Delivery System.

ADMINISTRATIVE / INFORMATIONAL

1. Staff and Elected Officials

County Clerk Hatfield reported earnings in the month of February to be \$569,674.11 down from one year ago \$62,082.09. Monies turned over to Treasurer for distribution to various entities that receive this money, earnings was \$354,291.65 minus \$63,519.33. In sales tax, the county collected \$49,341.00 which was an increase of \$3,729.54. Commissioner Norden moved to approve the County Clerk's report. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried.

Commissioner Norden noted the Fremont Pride 2009 Clean Up Campaign is under way. The City of Canon City and Fremont County have begun distributing their trash vouchers. Fremont County vouchers for this year that are available at the County Commissioners office. The vouchers are free to pick up and will be on a first come first serve basis until they are gone. Commissioner Norden was also notified yesterday that Holcim is still working on setting up their "Tire Collection Day" in mid April as part of the 2009 Fremont Pride Clean Up Campaign. Once they get that information locked in, Norden stated that it would be publicized.

2. Citizens not scheduled:

Toni Eilert with the Department of Corrections, Canon minimum centers stated on behalf of Warden Ron Leyba that they are going to have an open house for community leaders as a thank you. The future date of the open house will be forthcoming. Commissioner Norden stated that he had an outdated list of contact names and numbers for inmate work crews and requested that Ms. Eilert please send him a memo with the updated information. Norden commented that they do appreciate having the inmate work crews available.

OLD BUSINESS – NONE

NEW BUSINESS

ITEM #1 – Imposition of Fire Ban

Sheriff Beicher requested the imposition of a fire ban based on specific parts of the county being extremely dry and high risk for wildland fire. Given the conditions, there are several other sheriffs in the surrounding areas that have already imposed bans or are in the process of imposing bans. Sheriff Beicher would like to impose the lowest restriction regarding the ban at this time. Citizens may obtain the details of the different levels of restriction from the county website or call the Fremont County Sheriff's office. Commissioner Lasha moved to approve resolution #16 and the imposition of a fire ban that would be a stage one fire ban at this time. Commissioner Norden seconded the motion. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried

County Attorney Jackson stated that Canon City Fire District has started this year with burn permits that are free. To obtain the permit you must apply for a permit and have one issued before you are able to burn in the Canon district. The permit must be applied for each year.

ITEM #2 – Jane Mannon/Cripple Creek & Victor Gold Mining Co. Update on Operations

Jane Mannon, Manager of Community Affairs, along with Larry Newcomber, General Manager of Cripple Creek & Victor Gold Mining Company presented annual update.

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1. CC&V has received State of Colorado, Department of Public Health and Environment, the Gold Leader Category in their environmental leadership program. CC&V is the first gold mining company in the state to receive this status.
2. CC&V was presented with the “Senior Participant With Special Recognition Environmental Stewardship & Pollution Prevention Award 2008” in February of this year. Part of this award was based on a recycling program for employees.

Other topics presented for the annual update included the following:

- Regional Economic Impact 2008
- CC&V employees in Fremont County 2008
- Taxes Paid 2008
- 2008 Production
- Summer Mine Tour
- Mine Life Extension
- 2009, budgeted production, construction start, continuing exploration program, reclamation activities and an audit of Environmental Management System

ITEM #3 – Notice of Bid Award – Fremont County Guardrail Project County Road 11

County Manager George Sugars stated the county advertised for bids on January the 18th of 2009 for four locations on County Road 11 to place guardrail along roadside where there is steep drop offs. The County received one bid on February 24, 2009 from Cruise Construction in the amount of \$81,341.80. County Manager Sugars recommended giving the notice of award to Cruise Construction for that amount.

Commissioner Norden moved to approve the bid award for construction of guardrail on County Road 11 to Cruise Construction for \$81,341.80. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried

PUBLIC HEARING

ITEM #1 – Request: CUP 08-003 Salt Canyon Project

REPRESENTATIVE: Angela Bellantoni of Environmental Alternatives. Also present is Verne Stuessy, Pueblo Plant Manager, Terry Tew, Mining Manager and Gary Romontio, Manager of Energy & Raw Materials.

The site Vicinity is located on the northeast corner of Fremont County, approximately 11 mile north of Penrose. The location is approximately two miles south of El Paso County line and surrounded by state land to the west and Ft. Carson to the east of Hwy 115.

Colorado State Land Board is the owner of the property and GCC secured the lease on February 21st of 2008. The lease encompasses 560 acres of which the majority is not mineable reserve. Royalty and lease fees contribute to the State of Colorado School Fund. The lease is limited to gypsum only which preserves the bluffs.

The history of the site has two permits which are relatively current permits. The first permit from Fremont County, CUP 1997-08 was for gypsum and granted for four to seven trucks per day to mine 70,000 tons per year maximum. The second permit, CUP 2001-01 gravel mine that was permitted. This permit was a 111 permit which indicates that it was

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specific to road improvements for a four lane road improvement through that area but was never operated.

There is an existing bonded state permit from the Division of Reclamation Mining and Safety which is for the 9.73 acres (including interior haul roads). State permits must include all effected areas. The current permit is a bonded permit with a current disturbance of 3.76 acres. The access that the Western Nutrients Company was using is referred to as Mile Marker 25.

Ms. Bellantoni stated that the Salt Canyon Permit Application as required by Fremont County encompasses the entire parcel which is the approximate 560 acres of the leased area. When looking at the deposits that would potentially be incorporated into mining activity and a 112 permit if it is pursued would be limited to just the targeted gypsum deposits as that is the limit of the lease.

The three phases are delineated for speculation to encompass the visual observation of the outcrops of the gypsum which would include the 296 acres. It is anticipated that of the 64 acres GCC is hoping that confidently 60% of that ore will be of cement grade gypsum or 38 acres of the leased 560 acres that may have a four foot thick deposit on it. The current 110 permit has 9.73 acres.

The presentation was turned over to Terry Tew, Mining Manager, who will be overseeing the mining activity and the reclamation activity. Terry has significant experience with GCC in developing mines and performing reclamation.

Terry Tew stated he would like to “key on” the Salt Canyon Project Goals listed in the presentation:

- Supplement or replace gypsum purchased in Oklahoma (which provides the grade necessary for quality control)
- Oklahoma contract expires December 31, 2009
- Market and quality of material will determine production
- Low grade ore may be sold as agricultural gypsum if a market can be found

Mr Tew states they have assumed DRMS M-1997-064 via succession of operators approved March 6, 2009. Mining is intended within the limits and according to the approved conditions of M-1997-064. They will perform exploration to define the quality of the ore body more specifically. In the event viable ore bodies are identified, a 112 permit may be pursued if justified by cement market. Mr Tew states that they are in the same position as anyone else today with sales down so demand is dependant upon how the industry reacts to their stimulus package and everything else.

The Site Development Plan is 9.73 acre site – active DRMS 110 permit. Mr Tew said that the life of the mine in this area gives them about 1-3 years of mining. He also stated that they anticipate no permanent structures. They would come in with a contractor and mine what they feel is necessary for yearly production as forecasted. In addition, they would coexist with the present cattle grazing leases that are in the area as requested by the State Land Board.

The mining operation could operate Monday thru Saturday from sunrise to sunset. This would be an intermittent mining operation which would mean that they would mine and stockpile for six weeks and that would hopefully give them enough material for one year operation. They would mine from the Southwest corner of 110 area proceeding north into deposit. The mining equipment would include a crusher and screen. If blasting becomes necessary due to the integrity of the deposit, it will be conducted by a licensed blasting contractor.

Commissioner Norden stated that Mr. Tew has already commented on the 110 and would like him to address the 112 into relation as to what is being conveyed in presentation showing the effected area of 9.73 acres.

Ms. Bellantoni states that there is a substantial buffer between actual outcrops and the delineation which is actually a "guestimate". The hatched areas in the presentation are referring to the 64 total outcropped areas. There is some room, not knowing exactly where the deposit is or the grade. From that 64 acres, you shrink into what is hoped for which is the 60%, then the 112 would encompass more of the closer outcrops. Ms. Bellantoni further explained in worst case scenario of the 112, the 64 acres of exploration they would do in conjunction with CUP in operating out of the 110 would allow them to narrow in on the deposits that are cement grade.

Mr. Tew stated that they have had some concerns from the Planning Commission on the Viewshed Protection Practices. He explained that there would be a minimal impacted area. This would have limited maximum production of 82,500 tons per year. This area would be less than a 20 acre impacted area at any one time and they would minimize haul road impacts. Reclamation would be concurrent with mining. The majority of the outcrops are not visible from Hwy 115 due to two natural ridge lines. They are setback approximately ½ mile from Hwy 115.

Commissioner Stiehl stated that a large number of those areas mentioned in Ms. Bellantoni's presentation are much closer than a ½ mile from 115. Commissioner Stiehl also stated that the two closest to the curve are approximately 15 acres and the other would be a 1½ acre tract. Commissioner Stiehl asked if Mr. Tew is saying that they would not mine those areas and they would stay ½ mile away. Mr. Tew replied that they would not. He then stated that they would be looking at what they are evaluating. The planning commission has requested that the area known as "Pork Chop Hill" be left as is to be one of the conditions that they agreed to. If they got into a 112 type permit they would actually start at the Northwest toward the corner and come back through which is dependant upon the exploration, what they find for grades, what they find for ore, and present plans for the 110 area. Commissioner Stiehl stated that when Mr. Tew is talking about ½ mile, he is speaking about the current 110. Mr. Tew agreed with that statement.

Mr. Tew said that they would be mining Northwest to Southeast to keep the natural topography always in front of them. When mining they would try to minimize visual impact and do what they can to have the smallest footprint possible. Concurrent reclamation also would be reclaiming the material behind them so that they wouldn't have a large area of disturbance.

There would be a maximum of 82,500 tons/year. They would haul an average of 11 trucks or 22 trips per day (275 tons). Trucks will all proceed south to pueblo plant via Highways 115 and 50.

Ms. Bellantoni speaking to the Master Plan regarding District 3 Mountain District stated that the lands are federally controlled and speaks to different agricultural, cattle grazing and mining operation on those federal lands. The proposed project road has minimum visual impact. Proposed mining operations in this district will address and propose mitigation for wildlife and visual impacts of the proposed operation.

Visual Resource Management Program is considered part of the Master Plan. This discusses large setbacks – the current disturbance is approximately ½ mile from Hwy 115 and there is a substantial portion of that 32 acres that is more than ½ mile back. There are at least two natural ridges that on the property in phase one and phase two that buffer the property from 115. Direct mitigation measures would be reclaiming concurrently with mining and then minimizing the length of the haul roads. This has two impacts which are the amount of ground which has to be consumed in road construction for the haul trucks and the other issue is the environmental fugitive dust off of a short road off of mile marker 125 regarding the recommendations off of the table mountain access.

Ms. Bellantoni's presentation also included Planning Commission Recommendations which include Condition H: Haul truck traffic, Condition K: Water storage, Condition L.4: Access, and Condition R: Preserve small hill.

Condition H: Truck traffic. Is written as “not to exceed 15 trips per day.” The applicant (GCC) has requested an average of 22 trips per day. Commission recommended 22 trips per day. The average over one week is request to allow for bad weather and plant operations.

Condition K: Water storage. As written provides adequate water storage in the event of fire. The condition re-supported by Chief Sundermann of Penrose Volunteer Fire District both verbally and written. The commission recommended 3000 gallon storage regardless of structures. The applicant requests condition as written as the operation is intermittent and will have at least 2000 gallon water truck on site during mining activity.

Condition L.4: Access. Condition L4: “use of the existing access from Colorado State Hwy 115. Currently two options which are 3 Western Nutrients (MM25) – existing site access per CUP 1997-08 and Table Mountain – not site access – almost ½ mile north. The applicant requests use of MM25 existing access with CDOT improvements. CDOT preferred MM25 and granted access permit for four land and south bound traffic.

Condition R: Preserve small hill. The commission requested “preserve and protect (no mining) the small hill” for visual “screen”. Visual screen is extensive setback from Hwy 115 almost ½ mile. GCC will accept this condition even though it may change the future economics of the project by potentially removing viable ore from project.

In summary, GCC is requesting a CUP for life of mine to extract gypsum. The production is 82,500 tons/year for an average of 22 trips per day. This would be an intermittent mining activity. Further exploration if the CUP is granted would delineate the ore bodies as well as provide that gypsum for the plant that it needs today so that the 112 could be more specifically limited and the current phases as they are on the CUP are based on its estimation.

Commissioner Norden asked Ms. Bellantoni to address excavation and how far they would excavate on a site like this. Commissioner Norden also asked her to explain phases in regards to “crushing” and “stock piling”, specifically in regards to how high, how big, how long and how wide.

Initial calculations according to Mr. Tew would be approximately 75 by 75 by 20 feet high and that would be for the maximum production. With that stock pile they would have to stabilize since they would be hauling out of it all year. There are different stabilizers that they would use. Mr. Tew stated that with gypsum you would not want a fine powder. They do not want to break it up, instead they would like to keep it in a rock form so you don’t grind or crush it up very fine. It also limits the kind of equipment they use such as a jaw crusher and that type. Depth of the deposit is going to be varied right now on some of the ridges and outcrops. There are intermittent beds from some state drilling that was done but unfortunately the state drilling was not done in the exact deposits they are looking at. Mr. Tew said that they may have a face of 25-35 feet high which in the mining business is a typical bench size. In comparison, this would be a size of a bench such as Victor is using for Cripple Creek and that type of situation.

Commissioner Norden asked if they were taking the bench that they are excavating down. Mr. Tew replied that they won’t know yet because the only thing that they can see is the surface crop material and the quality of that. There is the possibility that they could go down a little bit but usually in these sedimentary type deposits there would be more of a flat line deposit. Mr. Tew went on to explain that until they can get in there and test it and be able to do some drilling they can not give a definite answer.

Commissioner Norden then asked in regards to the 75 by 75 by 25 feet high are, then what is the visual impact of that kind of a stock pile in relation to the tarp or location or highway, basically what is someone going to see.

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Mr. Tew said from the road presently, in the 110 permit, one would see nothing. Basically there is a draw which would hide anything that could be seen from the road.

Commissioner Stiehl inquired about when crushing and screening, during the six weeks would GCC contract and then move the equipment in.

Mr. Tew replied that they would bid to qualified local contractors in the area. At that point the contractor would be brought in under their specifications and the contractor would bring in their equipment and the contractor would perform the necessary services to mine material. He said that they would then leave the site in an environmentally sound condition at the end of their period for that year. They would then set it up to be able to haul the material out as needed to the plant.

Commissioner Stiehl then asked if GCC's operation is to haul.

Mr. Tew stated that they would contract the crushing. He said that he would oversee and contract the crusher but for 12 months out of the year they would be hauling out of the site. For an intermittent period GCC would try to produce what they forecast for consumption for the year based on economics.

Commissioner Steihl stated that Ms. Bellantoni said that the lease for the landlord is for gypsum. Ms. Bellantoni concurred. Commissioner Steihl then asked if it was possible for the life of the mine to renegotiate with the landlord to mine for other minerals. Ms. Ballentoni stated that would then take on a whole new hearing and a whole new lease. She also stated the GCC does not want to go into any other business other than the gypsum cement business. Mr. Tew said that in relations with the State Land Board if someone were to go for aggregates the lease would actually have to be re-bid. GCC could not go for it them selves. It was indicated that for any other mineral the lease would have to be re-bid. Basically GCC is looking at this for their plant and their product. This is GCC's primary goal.

Planning & Zoning Director Bill Giordano stated that Ms. Bellantoni did a very good job of presenting the Planning Commissions side of it. Mr. Giordano stated that part of the requirements that have been met and haven't been mentioned is the posting of the property that you noted in one of the pictures that the sign was placed as in court regulations. The publication has taken place as well as the notification of property owners. He made note that the county has received some additional comment letters that are in the packets given to the commissioners. One of the letters was from Dean Sandoval. Mr. Giordano wanted to note that at the planning commission, the vote was a 3-2 vote in favor of the application with Mr. Doxey and Mr. Sandoval voting "no". This letter from Mr. Sandoval basically reaffirmed that he was concerned with the visibility of the site and the disturbance to Highway 115. Mr. Giordano said that he has also received letters from the County Reviewing Engineer. The County Engineer's comments were basically CDOT highway access permit and he is concerned with the storm water management plan being provided that shows best management practices for erosion control and control of mud from trucks leaving the site. Mr. Giordano goes on to explain that there is a low lying site where the asphalt goes to the site which is a very low area that is prone to flooding. He thinks that the engineer was also concerned with mud and things to that nature. The Planning Commission had proposed to raise that area. Mr. Giordano said that we may want to get some follow up on that as to how that will be taken care of. In addition, El Paso County sent Mr. Giordano an email stating that since the trucks would be en route to Pueblo that they were not concerned with the project and had no comments. He said that they also received a letter from the Fire District concerning the water issue being on site. The Fire District stated that they would be happy with the 2,000 tank and Mr. Giordano would be in agreement with Angela in regards to if there is a desire to have water on the site or any kind of fire protection, then Condition K should be re-worded to address the 2,000 gallon or whatever the desire may be on that. Mr. Giordano also made note that in discussion with the Board on our review of this, that item L, on the Division of Reclamation Mining and Safety with the 110 permit it was mentioned that we would put GCC on notice that if they did apply for a 112 that they may be subject to an amendment to you permit and we

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may need to come back. Mr. Giordano said that this needed clarification. He did want to remind the Board that this would require a resolution to be drafted for the next meeting.

Commissioner Norden asked if anything was mentioned in the Planning Commission regarding this issue of any dust control or issues on the haul road. Mr. Giordano said that they did not have anything stated in the minutes for the Planning Commission for this issue. Commissioner Norden wanted to know the distance they would be traveling from the stock pile to the asphalt access. Ms. Bellantoni stated that the distance is 1,861 ft which is approximately 1/3 mile. What is actually visible from the road is 1,400 ft before you hit the ridge.

Commissioner Stiehl asked what was being done in regards to the mud issue. Mr. Tew explained that there are various methods that could be used. The most common being a gravel track out to the asphalt. It was also discussed that the February 11, 2009 letter from the County Reviewing Engineer speaks to the mud issue that is in question.

Tom Berry - 1475 17th St., Penrose, CO – speaking against the CUP 08-003 Salt Canyon Project. Tom stated that Fremont County is known for its natural beauty, scenic wonders and are known throughout the country as well as the world for these features. The economy here relies very heavily on tourism, real estate sales, and residential construction and development. Mr. Berry stated that all of these things could be affected by the approval of this project. Mr. Berry expressed his concerns as to Highway 115 and how it is viewed by travelers visually during this project. Mr. Berry said once the mining is complete that the landscape may not be returned to the state in which it was originally found.

Susan Sandoval – 3003 North Street., Canon City – speaking against the CUP 08-003 Salt Canyon Project. Ms. Sandoval wanted to know how many jobs this would create for the County. She also wanted to persuade the Commissioners into tabling this project for at least one month to give the people just a little more time. Lastly, she stated that there were parts in Ms. Bellantoni presentation that often it was mentioned that the work started approximately 2,000 feet from the highway but that seems to only address the southern areas of the portion of the property. She stated that the Northerly section along the highway seemed as though those areas were quite close to the highway.

PUBLIC HEARING CLOSED

Commissioner Norden said that he would like to go back to previous question that was addressed to the applicant. Commissioner Norden stated that he is having difficulty understanding going from a 110 permit to a 112 permit, the current phases that are purposed and how the whole process would look. He asked if going to 112 permit, would you not have phases that you would go through during the process. Commissioner Norden stated that the purpose of his question is toward the goal of limiting as much activity on the site as possible to as few acres at one time and allowing the reclamation to catch up as you move from point to point.

Ms. Bellantoni explained how bonding and reclamation today is different today than it has been in the past. It is now more stringent and regulated than it was years ago. GCC has accepted the responsibility to reclaim the current disturbances of Western Nutrients and they had to provide proof of bond to the State as was accepted on March 6th with the 82,500 maximum ever. GCC is anticipating 20 acres total impact at any one time and that has to include the haul road, process area or any effected area at all as well as an active mine site.

Commissioner Norden asked what they were arguing regarding the 3,000 gallons of water and the structures on site. Ms. Bellantoni stated they would put in a storage tank as Mr. Tew mentioned during mining activities to fill the water trucks and the depending where the water is coming from for the haul road even during hauling is going to have to be abated as well. That would mean that there would be water there in a temporary structure. Commissioner Norden stated that if the application proceeds to approval today

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that he would like to add a condition. He would like the applicant be required to use dust suppressant measures on the haul road from the quarry area to the asphalt access. Also he would like to see protecting the gravel pad in relation to removing mud from the truck wheels as part of that condition.

Commissioner Lasha asked if they could give him an idea of what reclamation would look like after an area is mined. Mr. Tew stated that there would be a processing plant, they would also have a stock pile and some area to park equipment and be able to move on site. They would have to have a safe distance away if they should have to incur blasting.

Commissioner Lasha also inquired about the life of the mine being 15 years in phase in the recommended conditions but does that mean that GCC will be done in 15 years. Estimation per Ms. Bellantoni for the life of the mine would be 15 years if all 64 acres have the appropriate grade of material. According to Ms. Bellantoni this would be a guess.

Commissioner Norden stated that if there is a limited amount of disturbed area being mined at one time, GCC would be required to reclaim as they extract material. Ms. Bellantoni stated that since mining is done horizontally in this case and not vertically, it is possible to reclaim and move forward as part of the process. This would also minimize the stock piles of over burden and plant media.

Commissioner Norden offered motion to approve on the condition to be considered in two weeks to address the issue of requiring using dust suppressant measures from the haul road to address concern about mitigating ways to keep mud from getting onto the highway to focus the approval of the permit on the access of Mile Marker 25 as well as limit disturbed areas of operations to 10 acres.

Commissioner Lasha would like to add two conditions to this before seconding the motion which are: Would like firmer issue on the traffic regarding "K" street. Commissioner Norden agreed. Commissioner Lasha would also like to talk about the eleven trips per day on average. Truck traffic is still a concern. Commissioner Norden would like to add to also have specified in the conditions that this is for traffic headed to Pueblo only under this permit and there would be no truck traffic leaving this site northbound on Highway 115. Commissioner Lasha seconded motion. Commissioner Stiehl expressed his concerns for the life of the mine and he is opposed to the life of the mine for any permit. Commissioner Stiehl also expressed concern about haul trucks on any county road and not just "K" street. Commissioner Stiehl agrees with Commissioner Lasha in regards to the eleven trips per day. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, no. The motion carried.

RE-OPEN PUBLIC HEARING

ITEM #2 – Request: ZC 08-007 Kaiser Zone Change

Representative: Matt Koch, Cornerstone Surveying, LLC

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. The property presently houses a framed retail sales building, a single-family dwelling, a framed garage and a shed. The property to be rezoned contains 6.5 acres.

Mr. Koch stated that the property for rezoning is located between Texas Creek and Cotopaxi. Tezaks gravel pit is just to the west of this property. This property currently has an existing house as well as the building that is going to be used for the business which is approximately 264 square ft. It is a stand alone building, there is no pump,

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plumbing or anything in it, restrooms or anything of that nature. As far as the contingencies, Mr. Koch stated that they have received back from CDOT the approval for the access with no requirements for any improvements along Highway 50. Mr. Koch also states that they have received documentation from the Division of Water Resources requesting them to put the well into the property name as well as the form to fill out to bring the well under performance as use of a business. The County Health Inspector has reviewed the septic and found it in working order. There was never any documentation found on who installed or anything of that nature. Mr. Koch said that they are requesting two waivers. The first waiver is regarding the buffering and landscaping. They are trying to keep this a natural looking lot and use in the area as well as the surfacing, lighting and landscaping for the parking and driving area in the areas.

Planning and Zoning Director Bill Giordano noted that this is required by regulation again to post the property and send notification out and publication in the newspaper which have all been completed. On February 3rd of 2009 the Planning Commission did recommend approval of the application with the conditions or contingencies that Mr. Koch has already presented. The Planning Commission did recommend waiving the buffering, lighting and landscaping and also the hard surfacing for the parking area.

CLOSE PUBLIC HEARING

Commissioner Norden moved to approve Resolution #17 Zone Change 08-007 Kaiser with the following findings for justification of re-zoning a) the property was not properly zoned when the existing zoning was imposed and b) no effect on existing traffic, no effect on adjacent uses and the development and harmony of compatible with the surrounding area. Adopting the recommended contingencies 1-8 with the two waivers for landscaping and buffering strip as well as the off street parking. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried

BACK TO NEW BUSINSS

ITEM #4 – Request: Extend Cessation of Cup 06-003 Northfield Coal Mine

Request approval to extend the initial cessagtion of the Conditional Use Permit for file #CUP06-003 Northfield Coal Mine for an additional two (2) years. The CUP is for the operation of an underground coal mine and surface processing facility (to include hauling), originally approved February 27, 2007 with an initial two (2) year cessation period. Due to the difficult economic situation during the summer of 2008, Northfield was unable to commence site development within the initial period of cessation. The property is generally located approximately 0.5 miles west of the intersections of County Road #11A and County Road #79, on the north side of County road #79 in the Williamsburg Area.

REPRESENTATIVE: Angela Bellantoni, Environmental Alternatives

Ms. Bellantoni started her presentation with information describing the progress of mine development to date. Ms. Bellantoni states that the coal mine got caught in the economic downturn last October. Northfield received a commitment letter three days after having state approval last year from GE Capital. When October came the commitment was rescinded. Northfield is in a bit of a slow down regarding financing of the project. However, as the January 28th correspondence states the partners decided to pursue all of the permitting, all of the safety and as the engineering as possible so that when the financing finally is solidified bond can be posted and dirt moving can begin.

Ms. Bellantoni goes on to say that in addition to the January 28th correspondence the following things have happened in the last couple of months or less.

- a) Harrison Western Corporation is preparing and engineering a cost analysis for the slope and shack design to determine the ultimate configuration and their considering a vertical shaft versus a sloped shaft.
- b) They have made requests for equipment cost quotes for manufacturers and suppliers.

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- c) Mshaw has approved the surface training plan for miners which is yet another training program prepared by Gary Carol, the safety expert on the coal team. Additionally the underground training team for miners has been mailed to Mshaw for approval and this would bring them to a total of four Mshaw plans that are up for approval or will be approved.
- d) Marshall Miller Associates has finalized the preliminary ventilation design. That design has been sent to Sendrick Fan Company to design the main line fan.
- e) Bruno Engineering prepared a report of the projected mining after callode. This report was provided to the Black Hills Energy Company from which Tom Wenzel is currently constructing a power distribution model for them.
- f) Chris Sanchez of Bishop Frogden who did the water presentation two years ago is continuing to work with the Upper Arkansas Water Conservation District on leasing their water for the augmentation plan.
- g) Reynolds Construction Company has been provided a construction cost time line estimate for mine surface development and a potential quote.

Ms. Bellantoni states that Northfield continues to pursue financing and their goal is as soon as the green light goes on financing, post bond and start the process of developing the site.

Commissioner Norden state that the other CUP would not be required if they were going to use a rail load out. Ms. Bellantoni said that would be a correct statement.

Commissioner Stiehl asked what the amount of water would be for augmentation. Ms. Bellantoni replied that it would be approximately 19 acre ft per year. Commissioner Steihl then stated that this would include dust suppression as well. Ms. Bellantoni was in agreement with that.

Planning and Zoning Director Bill Giordano stated that the only reason this is before the Board is that when the original application was applied for the Commissioners granted a two year cessation which has allowed for by regulation any further cessations after that which would need approved by the Board.

Commissioner Lasha moved to approve to extend the initial cessation of the CUP 06-003 for Northfield Coal Mine for an additional two years. Commissioner Norden seconded. Upon vote: Commissioner Lasha, aye; Commissioner Norden, aye; Commissioner Stiehl, aye. The motion carried

ITEM #5 – Request: Adoption of Resolution #14, Series of 2009, Special Review Use4 Permit File Number SRU 08-004 Southern Delivery System

REPRESENTATIVE: Jennifer Hunt, Special Counsel for Colorado Springs Utilities and John Fredell, Project Director for Southern Delivery System

Jennifer Hunt, Special Counsel for Colorado Springs Utilities, wanted to clear up some confusion on some of the language regarding conditions. Commissioner Norden stated that he offered some options to Mr. Fredell regarding item “KK”. Commissioner Norden stated that he was looking for something a little more affirmative such as “Colorado Springs Utilities would stand ready to help on the potential storm water detention ponds development”. Commissioner Norden offered this as an alternative to the final two lines as it is written now.

John Fredell, Project Director for Southern Delivery System stated that he reviewed the language that Commissioner Norden used and thought it looked great. Mr. Fredell did ask consideration of adding in three words after pipeline corridor. Mr. Fredell asked if the Board would consider adding “in Fremont County” after the following sentence which says “if suitable excess soil is excavated from the pipeline corridor.”

Mr. Fredell then stated as he understood the last two lines would be deleted and these sentences would be substituted. All agreed on the adjusted language.

Ms. Hunt stated that the only remaining issue was on condition LL. She said that they suggested alternate language and the Board had indicated that it needed to go back to the original language and that was on "easements". Ms. Hunt stated this was on the use in Penrose in particular for the use of easements on the SDS project. She thought that maybe there was some confusion as to what they were talking about regarding Penrose and what Penrose was able to use regarding SDS easements. Colorado Springs Utilities (CSU) has been working with Penrose to work out a way to alleviate their concerns about being able to locate their pipeline. The problem with CSU being able to let another entity use their easement is that this would really be up to the landowners. The easement that CSU will be getting will be for a pipeline. It won't be for multiple pipelines that haven't been planned or permanent. For legal matters, CSU will not be able to let another pipeline in there. That would be an issue for the landowner. CSU can object to any other use in the easement or near it because they have dominant use. What CSU has committed to doing is "not objecting" and to cooperate to the extent that it is physically possible in a location with co-location of the pipeline. This is why CSU has suggested that language that they did which is language from the draft agreement that CSU proposed to Penrose that they are still working out.

County Attorney Jackson stated that the language that CSU is proposing came from the MOU that they are working out with Penrose which is why County Attorney Jackson wanted CSU to present it themselves to the Board.

Commissioner Stiehl stated that he thought the original language answered what the problem is: Without Colorado Springs Southern Delivery System here, Penrose Water and Beaver Park Water were working on a plan and CSU has interrupted that plan. They have funding and engineering in place to move forward on that. Commissioner Stiehl states that he is interested in the "failsafe" so that if they can't negotiate with CSU then they are not prevented from doing something else.

Mr. Fredell stated that he thinks they have addressed that issue because the way SDS sees this provision is that it would clearly survive any lack of agreement related to the other provisions in terms of partnership. Mr. Fredell stated that they have two legal problems that they are trying to address with the language that they have used here. First of all, SDS in the event they had to condemn for a right-of-way for an easement, they cannot do that on behalf of somebody else so that would be one problem they have with the initial way that this was set up. Secondly, SDS has a restriction in their charter that they cannot give away property basically. They are trying to artfully craft this language so that they could go forward with allowing someone else in their easement because typically, what SDS would do is acquire a corridor for the pipeline and then they would make it clear through this agreement that they would allow Penrose to co-locate with their pipeline. What Penrose would have to do is come in and get the permission from the underlying landowner who currently would have given SDS permission to locate there. The landowner would then give permission and SDS would not object, Penrose could co-locate within that same corridor and they would not have to pay SDS anything. Penrose would have to work out any sort of payment with the underlying landowner in terms of an easement. In terms of property that SDS owned in fee, Penrose would have to cross and they would have to pay fair market value of an easement to get across that property. Again this would be to avoid, legal limitation about giving property away under their charter without a vote of the people which would be problematic.

Commissioner Steihl asked granting an easement is considered giving away property. Mr. Fredell said that any easement or any interest in real property would be. Ms. Hunt said that what they are trying to do is to put Penrose in the same situation they were in as if CSU had not been there. Penrose would not have to pay CSU but they would have to do whatever they had to do anyway. CSU would not object and they would cooperate with Penrose on being able to be in an SDS easement.

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Mr. Fredell stated that one other legal issue is in terms of easement is their limitations in the code about providing easements to anyone in the city. Basically, what SDS grants is some sort of license.

After further deliberation between Ms. Hunt and Mr. Fredell, alternate language was able to be agreed upon. The last sentence would read as follows:

To prevent that to occur, the applicant shall cooperate with Penrose Water District in it's efforts to obtain rights to construct and maintain itself facilities adjacent to and if not prohibited by physical attributes of the site within utilities SDS project easements, rights of way and properties for the construction of the project contemplated in a district preliminary plan contingent upon the district obtaining all necessary approvals and with respect to utilities owned properties payment of fair market value for the use granted of those properties.

Commissioner Norden approved the final changes to the conditions noted and discussed on the record specifically to items "KK", language provided to both the applicant and to the Planning Department with the language Commissioner Norden provided plus adding the three words "in Fremont County" after the words pipeline corridor and the changes to "LL" as noted in the quote offered by Mr. Fredell to clarify what language was being adopted. Commissioner Lasha seconded the motion. Upon vote: Commissioner Norden, aye; Commissioner Lasha, aye; Commissioner Stiehl, aye. The motion carried

Commissioner Stiehl adjourned the meeting at 12:12 PM

Clerk and Recorder