

**GUNNISON COUNTY BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING MINUTES
October 4, 2011**

The October 4, 2011 meeting was held in the Commissioners' boardroom in the Courthouse located at 200 E. Virginia, Gunnison, Colorado. Present were:

Hap Channell, Chairperson
Paula Swenson, Vice-Chairperson - ABSENT
Phil Chamberland, Commissioner

Matthew Birnie, County Manager
Katherine Haase, Clerk to the Board
Others Present as Listed in Text

CALL TO ORDER: Chairperson Channell called the meeting to order at 8:30 am.

AGENDA REVIEW: There were no changes to the agenda.

MINUTES APPROVAL: **Moved** by Commissioner Chamberland, seconded by Chairperson Channell to approve the Special Meeting minutes of September 27, 2011 as amended. Motion carried.

CONSENT AGENDA: Chairperson Channell requested that Consent Agenda Items #2 and #4 be pulled for further discussion. **Moved** by Commissioner Chamberland, seconded by Chairperson Channell to approve the Consent Agenda as presented, excluding Items #2 and #4. Motion carried.

1. Ratification of County Manager Authorization for Out-of-State Travel; Rocky Mountain Youth Corps and Youth Works Meetings; Gunnison County Substance Abuse Prevention Project Staff; Taos, NM; 9/26/11 – 9/27/11; \$581.08
2. **Pulled for Discussion and Separate Action:** Business & Office SystemS (BOSS) Rental Agreements; Great America Leasing Corporation; Leased Copiers for Sheriff, Detention, Community Development, Public Health and Attorney Offices
3. 7th Judicial District Victim Assistance and Law Enforcement Board Grant Contract; 1/1/12 thru 12/31/12; \$16,000
4. **Pulled for Discussion and Separate Action:** Acknowledgment of County Manager Signature; GE Johnson Construction Company, Inc. and Blythe Group + Co.; Change Order #15; Gunnison County Detention Center and Public Works Facility Projects
5. Acknowledgment of County Manager Signature; Colorado Department of Public Health and Environment Change Form; Gunnison County Department of Health and Human Services Immunization Program; Increase of \$3,547
6. Release of Development Improvements Agreement; Rocky Mountain Biological Laboratory; Securing the Cost of the Septic System for the Maroon Cabin Located on Lots 7 and 8, Block 8, Townsite of Gothic, County of Gunnison, State of Colorado
7. Release of Development Improvements Agreement; William P. Glatiotis and Helen J. Glatiotis; Guaranteeing the Developers' Required Improvements at Columbine Meadows Subdivision
8. Release of Development Improvements Agreement; Anton J. Kapushion & Company; Ensuring the Construction of a Private Road to Access Crested Butte Ski Ranches

CONSENT AGENDA ITEM #2: Chairperson Channell requested additional discussion about this contract because his packet did not include the routing sheet. Commissioner Chamberland shared his copy. **Moved** by Chairperson Channell, seconded by Commissioner Chamberland to approve Consent Agenda Item #2. Motion carried.

CONSENT AGENDA ITEM #4: Chairperson Channell requested additional discussion about this contract to verify that the change would be ADA compliant. County Manager Birnie explained that this redesign was due to insufficient room for wheelchairs to turn around. Chairperson Channell asked why the County is responsible for this cost since it stems from a design flaw. County Manager Birnie explained that the architects do not carry a contingency, but that the design was provided at no additional fee. **Moved** by Chairperson Channell, seconded by Commissioner Chamberland to approve Consent Agenda Item #4. Motion carried.

SCHEDULING: The Upcoming Meetings Schedule was discussed and updated.

COUNTY MANAGER'S REPORT: County Manager Birnie was present for discussion.

1. Crested Butte South Grant Application. County Manager Birnie informed the Board that he previously met with new CB South POA President Dan Vaughn, along with POA board members Al Smith and Kathy Frank, to discuss a GOCO grant that CB South would like to apply for. The POA has purchased two parcels by the river and would like to provide river access to the parcels, but the grant requires governmental sponsorship. County Manager Birnie gave verbal approval of the request for County sponsorship and informed Mr. Vaughn that this would go before the Board for official approval once the formal process begins. County Manager Birnie believes this river access will be a good amenity for the community. Mr. Smith will be in touch with Emergency Manager Scott Morrill regarding any related emergency preparedness issues.

2. 2012 County Grant Funding. County Manager Birnie informed the Board that requests for funding and meetings with the Board are coming in from organizations that are not on the final draft list. County Manager Birnie recommended that the Board consider executing contracts for services with those entities that will receive funding in 2012. Assistant County Manager Crosby was present for discussion and agreed with County Manager Birnie's proposal because contracting would allow relevant department(s) to provide input and maintain some control.
3. Public Works Facility Open House. County Manager Birnie informed the Board that the event is scheduled for 10/20/11. Assistant County Manager Crosby confirmed that her staff is transitioning to the new facility today, and Chairperson Channell volunteered to help with the move.
4. Capital Projects Update. County Manager Birnie informed the Board that the Public Safety Center is on target. The paving contractor for the Public Works facility will be visiting the facility this week. Chairperson Channell and County Manager Birnie will visit the Public Safety Center after the meeting concludes.

ASSISTANT COUNTY MANAGER'S REPORT AND PROJECT UPDATES: Assistant County Manager Marlene Crosby was present for discussion.

1. Possible Closure of McCabe Lane Wetlands to Hunting. Assistant County Manager Crosby requested that the Board consider closing McCabe Lane to hunting and vehicular traffic east to the wetlands due to issues with youth disrespecting the wetlands and persons shooting birds within close proximity to residences. **Moved** by Chairperson Channell, seconded by Commissioner Chamberland to authorize the Director of Public Works and Assistant County Manager to close the McCabe Lane wetland area to hunting and vehicular access. Motion carried.
2. 2011 – 2012 Snow Removal Permits.
 - a. Donald and Linda Wilson. Assistant County Manager Crosby informed the Board that Donald and Linda Wilson requested a new snow removal permit for an approximate 1,000-1,500 square foot space. **Moved** by Chairperson Channell, seconded by Commissioner Chamberland to approve a private snow plowing permit to Donald and Linda Wilson for the duration of one year for the Pagone Road. Motion carried.
 - b. Rocky Mountain Biological Laboratory. Assistant County Manager Crosby informed the Board that RMBL might submit a request for Gothic Road from Mt. Crested Butte to Gothic. She informed RMBL that the Board may approve plowing up to approximately Thanksgiving.
 - c. Stratman Property. Assistant County Manager Crosby informed the Board that the school bus has historically turned around at the intersection of Carbon Creek and Ohio Creek, but that it will turn in at the Stratman property this winter. To make this feasible, she informed the Stratmans that she would provide the necessary gravel. County Manager Birnie confirmed that this type of arrangement was generally discussed with the school district during a recent meeting.
 - d. Cottonwood Pass. Assistant County Manager Crosby requested permission to advertise in the local newspapers that the County will not plow Cottonwood Pass after 11/7/11. Chaffee County is in agreement with this proposed schedule. The Board agreed, but Chairperson Channell asked for time to contact some of the affected citizens prior to placing advertisements in order to ensure that the citizens agree with the proposal.
3. North Gunnison Sewer Project Update. Assistant County Manager Crosby informed the Board that two local contractors picked up bid packets, and the rest of the contractors were from out of town. The award of the bid will take place on 10/18/11.

2010 FINANCIAL AUDIT REPORT: Finance Director Linda Nienhueser, Treasurer Melody Marks, McMahan and Associates representative Paul Backes and CBS Accounting Certified Public Accountant Christine Stouder were present for discussion.

Mr. Backes informed the Board that the audit process was difficult due to the account reconciliation and software issues occurring in the Treasurer's Office. While the transition to new software at the end of 2010 has caused significant problems, he stated that it will be vital to reconcile the database. He strongly encouraged the County to formulate a plan that would return the Treasurer's Office to statutory compliance.

Ms. Stouder explained that Treasurer Marks brought her into this situation in June. She confirmed that she is helping to work through the software issues and that an accurate balance, through the month of February, was achieved yesterday. She noted that a lot has been learned about the software and what types of transactions are causing the errors. Improvements have also been made with regard to how transactions are being entered into the software program.

Chairperson Channell noted that, in addition to the software issues, the Treasurer's Office had also experienced personnel issues. He asked if these issues had been resolved. Treasurer Marks stated that she will know in time as there has been a very recent termination and a subsequent hiring.

Chairperson Channell asked if the software will always be problematic, but Ms. Stouder couldn't say. She noted that she has worked with other counties on similar issues and that, while they are improving, the systems are not perfect. County Manager Birnie stated that the County would have to be confident that the software problems would never be resolved before we abandoned the software because of the significant financial investment involved.

Mr. Backes recommended regular reporting from the Treasurer's Office to the Board until these issues are solved, and Ms. Stouder agreed. Chairperson Channell asked that reports come to the Board monthly, at a minimum. Finance Director Nienhueser agreed and expressed a deep concern that her office has not been receiving accurate information. She stated her belief that meeting monthly will not solve the entire problem without a game plan. Chairperson Channell asked for a list of what she needs, but County Manager Birnie explained that there is nothing that the Board can do as proper reporting is a statutory responsibility of the Treasurer.

Mr. Backes asked if it would be realistic to anticipate full compliance by the end of November. Ms. Stouder stated that this appears to be possible, but that things could change.

BOUNDARY LINE ADJUSTMENT; LOTS 121, 122 and 123, BLUE MESA SUBDIVISION UNIT 2; CARL AND CINDY ROBERTS: County Planner Cathie Pagano and applicants Carl and Cindy Roberts were present for discussion.

County Planner Pagano explained that the boundary adjustment would meet the setback requirements, and that the adjustment is a better option than a lot cluster. **Moved** by Commissioner Chamberland, seconded by Chairperson Channell to approve the lot boundary adjustment for Lots 121, 122 and 123 and authorize the Chairperson to sign the plat. Motion carried.

GUNNISON COUNTY BOARDS AND COMMISSIONS; TEMPORARY APPOINTMENTS TO THE BOARD OF ADJUSTMENTS AND THE BOARD OF APPEALS: Assistant Community Development Director Neal Starkebaum and Administrative Assistant III Bobbie Lucero were present for discussion.

Assistant Community Development Director Starkebaum explained that his department received several variance applications a few weeks ago, and that the process has stalled due to quorum issues with the board. One of the board members, Peter Bogardus, moved from the area without notice, which qualifies as a defacto resignation. Bob Williams, another board member, identified a conflict of interest with two of the applications. In light of these issues, Assistant Community Development Director Starkebaum requested that the Board fill at least one of these vacancies immediately so that the pending applications can be processed. Three Planning Commissioners have volunteered to fill the position temporarily, which is allowed per the County Attorney's Office.

Assistant Community Development Director Starkebaum stated that the Board adopted a resolution in 2008 to establish board member terms and discontinue appointment of alternates to these boards. He feels that this could be problematic in the case of a conflict of interest. Chairperson Channell explained that the previous Board did this to essentially make the membership of the two boards the same with the same persons and terms. Research indicates that the Planning Commission members can be appointed to the Board of Appeals and the Board of Adjustments.

Moved by Commissioner Chamberland, seconded by Chairperson Channell to sit Jim Seitz on the Board of Appeals and the Board of Adjustments as a regular member to fill (Peter) Bogardus' vacant term until February 2012. Motion carried.

INTERGOVERNMENTAL AGREEMENT (IGA) BETWEEN THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO AND THE GUNNISON COUNTY LIBRARY DISTRICT REGARDING ALLOCATION OF MILL LEVY: County Attorney Baumgarten and Library District Executive Director Larry Meredith were present for discussion.

The draft IGA was discussed. County Manager Birnie explained that continued County funding would allow the District to request less funding from the voters. However, the District has asked for all of the money needed to operate, plus some, without considering County funding. If the operating levy passes, the County may not necessarily need to continue to provide funding. The County provided \$750,000 to the Library District in 2011. Chairperson Channell asked for confirmation that the District has asked the voters to approve funding to replace the County's funding, plus additional funding to assist the District with building and operating the new facility. Mr. Meredith confirmed this statement.

County Manager Birnie explained that the draft IGA is a statement of intent because we cannot bind future Boards and we cannot allocate future funds. County Attorney Baumgarten confirmed that the language within Section 1.1 of the IGA could be clarified to clearly state this.

Commissioner Chamberland asked if executing this IGA was timely, or if the Board should suspend discussions until after Election Day. County Manager Birnie explained that the current IGA states that

County funding will cease when the District secures its own funding. Further discussion was suspended until 10/18/11.

POTENTIAL AMENDMENT TO BOCC RESOLUTION NO. 11-26 REGARDING SG INTERESTS I, LTD; POSSIBLE ACTION: County Attorney Baumgarten was present for discussion.

The draft resolution was discussed and agreed upon. **Moved** by Commissioner Chamberland, seconded by Chairperson Channell to approve the recommended changes to Item #6 on the SG Interests permits that were presented by the Planning Commission. County Attorney Baumgarten explained that approval would be granted via a resolution. Motion died for lack of a second. **Moved** by Commissioner Chamberland, seconded by Chairperson Channell to approve Resolution #2011-38, a Resolution Amending Resolution No: 11-26, a Resolution Approving the McIntyre Flowback Pits #1 and #2 Major Impact Oil and Gas Operations Permit No. 2011-06 Sections 23 & 24, Township 11 South, Range 90 West, 6th P.M.; and the McIntyre Flowback Pits #3 and #4 Major Impact Oil and Gas Operations Permit No. 2011-07 Section 26, Township 11 South, Range 90 West, 6th P.M., SG Interests 1, Ltd. Chairperson Channell noted that his objections to the original resolution have not changed, so his vote on this resolution shouldn't be construed as an approval of the permit. He clarified that his vote would be to amend a resolution that was previously approved, and that he would vote in the affirmative, but still maintain his original objections to the original approval. Motion carried.

BREAK: The meeting recessed from 10:32 until 10:45 am.

MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE COLORADO OIL AND GAS CONSERVATION COMMISSION (COGCC) AND GUNNISON COUNTY: County Attorney Baumgarten was present for discussion.

County Manager Birnie noted that the draft MOU was provided to the Board for comment. County Attorney Baumgarten stated that the COGCC would like a clear sign that the Board intends to sign the final MOU. County Attorney Baumgarten requested a motion stating this intent and authorizing signatures. The draft MOU was discussed, and it was agreed that all costs relevant to local inspections will be borne by the County.

Chairperson Channell stated his encouragement with the fact that both parties have been willing to sit down and discuss these issues as this sets an important precedence for local and state governments to work more efficiently together. Chairperson Channell and Commissioner Chamberland stated their intent to sign the final MOU. **Moved** by Chairperson Channell, seconded by Commissioner Chamberland to authorize the Board's signatures, ultimately, on the Memorandum of Understand between the Colorado Oil and Gas Conservation Commission and Gunnison County provided that the document stays essentially in the same form. Motion carried.

UNSCHEDULED CITIZENS: There were no Unscheduled Citizens present for discussion.

COMMISSIONER ITEMS:

Chairperson Channell:

1. Colorado Division of Water Quality Control Director Steve Gunderson Presentation. Chairperson Channell attended this presentation at the Gunnison Basin Roundtable meeting last night. He stated that this was a good presentation and that it had good attendance and representation. Discussion included the State of Kansas' concerns about the selenium content in the water coming from Colorado.
2. Energy Symposium at Western State College on 9/30/11. Chairperson Channell and Commissioner Chamberland attended this symposium. There was good information and multiple speakers. Dr. Scott Tinker from the University of Texas did an exceptional job. Dr. Tinker produced a full-length documentary that has not yet been distributed, but should be very worthwhile.
3. CB Film Festival Presentation; "Bag It". Chairperson Channell attended this presentation during the previous week. He stated that the interesting documentary, filmed by a woman from Telluride, CO, focused on single-use plastics such as bags and bottles. High Country Citizens' Alliance Public Lands Director Matt Reed was also in attendance and urged attendees to check out the short film "The Story of Stuff" on YouTube.
4. Senior Resources Workshops. Chairperson Channell stated that the Senior Resources Office is doing workshops for senior issues. He attended the Medicaid lecture and found it to be very helpful.
5. Economic Development Report. Chairperson Channell explained that, on 9/28/11, the report from the subcommittee working on the structure of the group was presented. Chairperson Channell and County Manager Birnie attended this discussion. Chairperson Channell noted that the County will be asked to fund this effort and that all work will be funneled through the local Chambers of Commerce. The annual budget of \$100,000 will be suggested for split between the County, the City of Gunnison, the Town of Crested Butte, the Town of Mt. Crested Butte and the business community. County Manager Birnie noted

that a direct appropriation will be difficult, but that the County could accomplish this by giving funding to the municipalities who will, in turn, give it to the economic development group.

- 6. Bear Ranch Land Exchange. Chairperson Channell spoke with US Forest Service Supervisor Charlie Richmond who informed him that the US Forest Service is keeping informed about issues such as the Bear Ranch Land Exchange. The US Forest Service will not support the parallel trail if this goes forward.

ADJOURN: Moved by Commissioner Chamberland, seconded by Chairperson Channell to adjourn the meeting. Motion carried. The meeting adjourned at 11:29 am.

Hap Channell, Chairperson

(Absent from meeting – no signature)

Paula Swenson, Vice-Chairperson

Phil Chamberland, Commissioner

Minutes Prepared By:

Katherine Haase, Deputy County Clerk

Attest:

Stella Dominguez, County Clerk

GUNNISON COUNTY BOARD OF COMMISSIONERS TEXT INCLUSION INTO MINUTES

**BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO
RESOLUTION NO: 11-38**

A RESOLUTION AMENDING RESOLUTION NO: 11-26, A RESOLUTION APPROVING THE MCINTYRE FLOWBACK PITS #1 AND #2 MAJOR IMPACT OIL AND GAS OPERATIONS PERMIT NO. 2011-06 SECTIONS 23 & 24, TOWNSHIP 11 SOUTH, RANGE 90 WEST, 6TH P.M.
AND
THE MCINTYRE FLOWBACK PITS #3 AND #4 MAJOR IMPACT OIL AND GAS OPERATIONS PERMIT NO. 2011-07 SECTION 26, TOWNSHIP 11 SOUTH, RANGE 90 WEST, 6TH P.M.
SG INTERESTS 1, LTD.

WHEREAS, on July 12, 2011, the Board of County Commissioners of the County of Gunnison, Colorado (hereinafter the "Board") adopted Resolution No. 11-26, approving The McIntyre Flowback Pits #1 and #2 Major Impact Oil and Gas Operations Permit No. 2011-06 and The McIntyre Flowback Pits #3 and #4 Major Impact Oil and Gas Operations Permit No. 2011-07 proposed by SG Interests I, Ltd ("SG"); and

WHEREAS, the Board approved the McIntyre Pits subject to certain conditions, including Condition No. 6 (requiring SG to execute and fund an inspection agreement), that are necessary to ensure that concerns about water quality impacts identified on the record would be addressed, and that the application for the McIntyre Pits would comply with Section 1-107 of the County Regulations (*see* Resolution No. 11-26, Finding 7 and 8); and

WHEREAS, the Board also found that use of a qualified consultant to perform monitoring/inspection is necessary to ensure compliance with the condition (*see* Resolution No. 11-26, Finding 9); and

WHEREAS, SG filed i) a complaint in District Court on June 2, 2011 challenging the Gunnison County Temporary Regulations for Oil and Gas Operations, ii) an amended complaint on August 5, 2011; and iii) a second amended complaint adding a fourth claim for relief relating to the Conditions of Approval; and

WHEREAS, on August 22, 2011, through its attorney Brian Tooley, SG gave notice, attached as Exhibit A, of its intent to proceed with construction of McIntyre Pits 3 and 4 without complying with Condition No. 6

and stated that it "will provide the County with timely notice of certain construction milestones and will grant entry to the County and its consultant, during pre-arranged business hours, to 'inspect and monitor' the construction of McIntyre Pits 3 and 4"; and

WHEREAS, the County and SG filed briefs regarding SG's fourth claim for relief, and on September 16, 2011 the District Court ruled that the County Regulations are not invalid "temporary regulations" but that Condition No. 6 is invalid on the grounds of operational conflict preemption which ruling is attached as Exhibit B; and

WHEREAS, a status conference was held on September 23, 2011 after which the Court issued a minute order which states that "the County has continuing jurisdiction under its permit and can evaluate what if anything further to do" and that "Mr. Tooley confirmed that inspections could be coordinated by the County with the COGCC. Further, he confirmed that the County could inspect at any time at its own risk in addition"; and

WHEREAS, the County Regulations state "[i]f the Operation complies with the oil and gas operation standards, the application shall be approved. If the Operation does not comply with the Oil and Gas Operation Standards, it shall be denied or conditions shall be imposed to ensure compliance with the Oil and Gas Operation Standards." Section 1-106 D.4.; and

WHEREAS, on September 27, 2011 the Board considered whether the McIntyre flowback pits would still be in compliance with the County Regulations and whether the water quality concerns would still be addressed without the inclusion of Condition No. 6.

NOW THEREFORE, the Board hereby finds that McIntyre Pits will comply with the County Regulations and that water quality concerns are likely be addressed so long as monitoring and inspection of the construction of the McIntyre Pits is conducted.

AND NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of the County of Gunnison, Colorado, that Resolution No: 11-26, A Resolution Approving The McIntyre Flowback Pits #1 and #2 Major Impact Oil and Gas Operations Permit No. 2011-06 Sections 23 & 24, Township 11 South, Range 90 West, 6th P.M. and The McIntyre Flowback Pits #3 and #4 Major Impact Oil and Gas Operations Permit No. 2011-07 Section 26, Township 11 South, Range 90 West, 6th P.M., which was recorded in the records of the Office of the Clerk and Recorder of Gunnison County, Colorado on July 13, 2011, bearing Reception No: 606659, shall be and hereby is amended as follows:

Condition of Approval 6 is deleted in its entirety and replaced with the following:

6. The County or its designee shall conduct inspections/monitoring during the construction and operation of the McIntyre Flowback Pits Nos. 1 - 4 for compliance with the County land use permit conditions and County Regulations. SG shall provide notice to the County or its designee at least 48 hours prior to the following milestones:

- a. Completion of pit excavation prior to placement of any fabric or geosynthetic liner material;
- b. Immediately prior to backfill of secondary liner anchor trench;
- c. Prior to backfilling and placement of primary liner of leak detection system (one visit per pond);
- d. After installation of the liner and prior to hydrostatic testing (one visit per pond);
- e. Hydrostatic testing (one visit per pond);
- f. Substantial completion including drainage basins and channels and bird netting; and
- g. First fracturing event.

INTRODUCED by Commissioner Chamberland, seconded by Commissioner Channell, and adopted this 4th day of October, 2011.

BOARD OF COUNTY COMMISSIONERS
OF GUNNISON COUNTY, COLORADO

Chamberland – yes; Channell – yes; Swenson – absent.