

**PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS
REGULAR MEETING, NOVEMBER 9, 2010**

THE BOARD OF COUNTY COMMISSIONERS OF CUSTER COUNTY MET IN REGULAR SESSION IN THE COMMISSIONER'S BOARDROOM.

Commissioner Lynn Attebery called the meeting to order at 9:10 AM and the Pledge of Allegiance was recited

Roll Call was taken:

Lynn Attebery	Chairman	Present
Jim Austin	Vice-Chairman	Present
Carole Custer	Commissioner	Present
John Naylor	County Attorney	Present
Kris Lang	Deputy Clerk to the Board	Present

Also present was Steve Bauer, John Brandenburg, Ken Brandenburg, Bill Donley, Nora Drenner, reporter for the Wet Mountain Tribune, Tracey Garcia, Gloria Gutierrez, Chris Haga, Cindy Howard, Jerry Lacy, Terry Scanga, and Bob Senderhauf.

AGENDA:

Call meeting to order

Pledge of allegiance

Roll Call

Amend agenda

Audience introduction

Approval of minutes

County Attorney Discussions:

CR390 Hamilton update

Request for the county to vacate CR 190 update

Alvarado Creek Bridge update

Communication Right-Of-Way/Bureau of Land Management

Medical Marijuana (continued discussion)

Sangre De Cristo Association services at 2550 CR 328

Old Business:

Wet Mountain Valley Waste Minimization Project Update

Wetmore Project Update

South Colony Basin in the San Isabel National Forest continues discussion

Low Altitude Tactical Navigation continued discussion

Upper Arkansas Water Conservancy District Discussion

Terry Scanga, Bob Senderhauf, Bill Donley

Planning and Zoning Monthly Report

Treasurer Report

MOTION by Commissioner Attebery, seconded by Commissioner Austin:

To accept the posted agenda. The motion carried unanimously.

MOTION by Commissioner Austin, seconded by Commissioner Custer:

To approve the minutes of October 19, 28, 29 and Work Session of October 19, 2010 as presented. The motion carried unanimously.

The BOCC met with the County Attorney and the following topics were discussed:

- CR 390 Deed and Resolution adopted and recorded.
- CR 190 vacation request will be required in writing; the property owner will be notified.
- Alvarado Creek Bridge correspondence has been prepared by the County Attorney.
- BLM Communication right of way is an on going discussion and process.
- Medical Marijuana dispensaries were banned on November 2, 2010 in Custer County. The Federal and State guidelines allow a registered medical marijuana patient to have three mature marijuana plants. A licensed caregiver may serve no more than 5 patients on the registry at one time. A patient who is permitted to use medical marijuana must have in his/her possession a registry identification card at all times when in possession of the medical marijuana.
- The Sangre DeCristo Electric Association service at 2250 CR 328 will be reviewed at the Planning Commission meeting, November 9, 2010.

Gloria Gutierrez, Regional Representative from Senator Udall's office addressed the BOCC and stated that she was in attendance on behalf of Senator Mark Udall to express continued support for Custer County. Commissioner Austin expressed concern that Custer County had not been selected as the site for the Southern Colorado National Veterans Cemetery. He asked if Custer County could be considered as an alternate rural location in the future. Ms. Gutierrez suggested the BOCC send a specific letter requesting this consideration to the Senator's office. Commissioner Custer stated that when she met with the Custer County Veterans Cemetery Committee last week, she suggested that the committee prepare a series of questions. She offered to give them to the appropriate contact person for Veteran's Affairs at the Colorado Department of Human Services on Friday when she was in Denver for the State Board meeting.

Ralph (Terry) Scanga, Upper Arkansas Water Conservancy District (UAWCD), General Manager expressed concern regarding the recent action of the Custer County Commissioners to join the motion of Widefield Security Water and Sanitation District in water court seeking a dismissal of the water augmentation plan. Mr. Scanga stated the UAWCD felt the motion to dismiss the plan was premature and that all the information has not been presented. He asked the BOCC to reconsider their decision and withdraw the motion to support Widefield/Security Water and Sanitation District in this dismissal. He said the water augmentation plan will protect the county's water rights and that the UAWCD would like to continue supporting Custer County. Bill Donley stated that he does not support the motion of dismissal and does support the UAWCD. Bob Senderhauf stated that the UAWCD is asked on a regular basis to assist valley citizens with their concerns over the quality and quantity of water available in the county. He remarked that the previous BOCC had requested an augmentation plan to keep the water in the valley. Commissioner Attebery shared concerns that the BOCC and citizens were not given the opportunity to review the water augmentation plan prior to the filing by UAWCD. He said a further concern was the lack of communication from the UAWCD Board and the community. Commissioner Austin said it was his understanding that there was an agreement between the UAWCD and the previous BOCC for the review of the augmentation plan prior to filing. He expressed concern that the local UAWCD representatives did not follow-up on this agreement or keep the Board and the public adequately informed.

He also expressed concern that a local UAWCD representative could have a separate agenda because of his involvement in real estate and development.

Commissioner Austin said the UAWCD may have rushed the filing of the proposed augmentation plan to avoid the new Colorado Rules of Civil Procedure that went into effect on July 1, 2009. He said he thought that the county may have an obligation to protect the water rights of the home-owners in the Blumenau area. Mr. Scanga outlined the advantages of filing the augmentation plan before the July 9, 2009 date which included: that the new rules increase the burden on the water engineers, and therefore the cost of such engineers to all parties; the new rules do not increase the transparency of the process or make the water court process more open to the public and do not lessen the burden on the applicant to demonstrate to the water court that no injury will occur to other water rights owners. He said the filing of the plan of augmentation is not the end of public input or public meetings, rather it is the beginning of an open dialogue. Commissioner Austin said it has been a expressed concern from the Concerned Citizens For Custer County that it is the practice of UAWCD to sell the available augmented water to the first to ask and pay for it-first come, first served. He said he was concerned over the agricultural water usage status and wanted to make sure everyone is protected and not just those with the most money. He said he has not able to identify support of the plan but is aware where the opposition lies. Mr. Scanga responded that the concern expressed appears to be more of a water marketing plan issue than a water augmentation plan. Commissioner Custer said that she supported the UAWCD and stated for the record that she was not in attendance at the time during the October 5, 2010 BOCC meeting when the motion to join the Widefield/Security Water Sanitation District for dismissal of the augmentation plan was approved by the BOCC. She made a motion that Custer County would continue to be a partner of the UAWCD. County Attorney, John Naylor reported that the UAWCD was organized in 1979 and that Custer County joined in 1983. He said that once the Conservancy District was formed exclusion was not possible and that Custer County would remain in partnership. Commissioner Custer withdrew her motion. Commissioner Attebery asked for audience comments on the topic. Hal Julsen said that most people do not understand the water augmentation plan. Charles Proctor said he was one of the objectors when the UAWCD requested a reservoir in the Texas Creek area in 1995 and to date does not know the specifics involved. Bob Allison said the water proportions proposed by the UAWCD are out of scale. Vic Banes said he confirmed that previous Commissioners Dale Hoag and Dick Downey had an agreement with the UAWCD for full disclosure of the water augmentation plan prior to filing. In addition, priorities would be given to the out of compliance subdivisions and that the agricultural interests would be taken care of. He agreed that the public does not understand the specifics of the augmentation plan. Joe Arbuckle said the purpose of a water augmentation plan is for protection against depletion or non-compliance and to keep the water in the valley. Wilbur Miller said a blanket augmentation plan is a power play to replace the water court with the UAWCD. Lockett Pitman said he was not sure if the augmentation plan was a good or bad idea. He addressed the broken trust issue with the UAWCD. Sue Pitman said she was not clear on specifics of the augmentation plan and whether the county would need to have a engineer representing them in the future. Keith Hood said he objected because there are no specifics regarding the plan and that there never will be. He commented that it's a water shell game. Paul Snyder said he appreciated all the information shared today. He said throughout the process there has been a constant and reoccurring public statement of not having enough information along with fear of what is going to happen.

He stated that he feels the new Colorado Rules of Civil Procedures that became effective July 1, 2009 would have been beneficial to Custer County. He said the UAWCD violated the agreement with the county to review the water augmentation plan prior to filing. He encouraged the BOCC to stand up for the citizens of the community.

Commissioner Attebery said the motion to follow suit with Widefield/Security Sanitation District has been reviewed and discussed with the county attorney and their legal water representation. County Attorney, John Naylor stated that the decision did not have an impact on the process or status.

Commissioner Attebery thanked Mr. Scanga and the local UAWCD representatives for attending the meeting. He expressed appreciation to our local representatives and requested closing comments. Mr. Donley said that the public has every opportunity to attend the UAWCD Board meetings to obtain information. Mr. Senderhauf remarked that the local newspaper has published a series of articles and work session inviting the public to attend. Mr. Scanga agreed there has been a lack of communication and he will make every effort to stay in direct dialogue with the BOCC and the community. He said he was currently in communication with the C4 Group and the Conservation District to develop a collaboration. He stated that an augmentation plan done correctly will benefit the community and protect water rights.

Commissioner Attebery asked the Board if they would like to take any action at this time. Commissioner Austin suggested that John Naylor, County Attorney review and discuss the process and options with Duncan, Ostrader & Dingess, P.C. the county's legal representation in water court and advise the Board on the next step. Commissioner Custer asked Mr. Senderhauf and Mr. Donley if they supported the suggestion. Mr. Senderhauf and Mr. Donley agreed with the course of action.

The BOCC recessed at 11:00 AM.

The BOCC reconvened at 12:30 PM.

Jackie Hobby, Planning and Zoning Director met with the BOCC and reviewed the two agenda items for the BOCC Joint Session with the Planning Commission. A hearing request for a Special Use Permit (SUP) on the Historic Pines Youth Ranch and a hearing request for a replat/subdivision waiver for two acres of property located at 2250 CR328 along with a presentation for a Special Use Permit (SUP) BOCC/Sangre De Cristo Electric Association. She said the hearing for the SUP and Setback variance with the BZA would be scheduled on December 7, 2010.

Commissioner Austin reported that Dark Skies would provide two lights in the Wetmore area if the county would pick up the cost of the electricity.

Commissioner Attebery asked the Board if they had a preference regarding the front window replacement at the HHRC. He remarked that a heat protective reflective (mirror image) window would be an additional cost. Commissioner Custer said she preferred the standard window replacement to take advantage of the solar gain for heat in the facility. She commented that the energy efficient window quilt shades can be lowered during the day when we want to keep the rooms from getting to warm during summer hot days. The Board agreed.

The BOCC recessed at 12:50 PM.

The BOCC reconvened in the Joint Session with the Planning Commission at 1:03 PM.

MOTION by Commissioner Attebery, seconded by Commissioner Custer:

To accept the recommendation of the Planning Commission to approve the sub-wavier and replat for the property at 2250 CR 328. The motion carried unanimously.

MOTION by Commissioner Custer, seconded by Commissioner Austin:

To accept the recommendation of the Planning Commissioner to deny the Special Use Permit for the Historic Pines Ranch. The motion carried unanimously.

MOTION by Commissioner Attebery, seconded by Commissioner Custer:

To adjourn the Joint Session with the Planning Commission. The motion carried unanimously.

The meeting was adjourned at 4:16 PM.

Debbie Livengood, Clerk and Recorder
Attest

Lynn Attebery
Chairman