

Grand County Planning Commission Minutes

January 12, 2011

A regular meeting of the Grand County Planning Commission convened on the above date at 6:00 PM in the Grand County Courthouse.

Members Present: Chair Kalen Jones, Dave Stolfa, Ed Bridges, Mike Duncan, Pam Hackley, and Dave Cozzens

Members Absent: Dave Tubbs

Staff Present: Krissie Killooy, Mary Hoffine, and Mark Wright

County Council Liaison: Gene Ciarus

The Chair called the meeting to order at 6:00 PM, asked that all cell phones be turned off or silenced, then introduced staff and members of the Commission. Dr. Downs was introduced as the County's professional expert for the subject on tonight's agenda and Council representative, Gene Ciarus. The Chair asked the members of the Commission if there were any conflicts of interest or ex-parte communication to disclose. There were none.

Review and Acceptance of Resolution 2944 Establishing Authorization of and Procedures for Electronic Meetings. The Chair gave a brief explanation of the ordinance and asked if the Commission had questions.

Commissioner Hackley moved to table, stating that she would like to have time to review and discuss with the Commission and would like to postpone action until the next meeting. The Chair called for a second. The motion dies for lack of second.

Dave Cozzens moved to approve the resolution as written, Mike Duncan seconded.

Discussion:

Dave Stolfa is concerned that telephonic participation may be disruptive.

Ed Bridges would like to revisit the policy at a later to date to better fit the Commission. He feels that the non-verbal attributes are important during discussion and agrees that telephonic participation can be disruptive.

Kalen Jones feels this agenda item may require additional time. He feels those participating by phone may be less engaged and that if full participation is allowed there may be less incentive to attend the meetings in person.

Dave Cozzens stated that if Commissioners are not permitted to participate telephonically, then the public should not be permitted to attend telephonically either. He would like to see public participation by phone eliminated.

Dave Cozzens amended the motion to add that if the motion includes a stipulation the does not allow for Commission members to participate telephonically than neither should other individuals except where required by ADA. Ed Bridges seconded.

With no further discussion the Chair called the question.

Dave Cozzens and Ed Bridges voted in favor, Kalen Jones, Mike Duncan, Pam Hackley and Dave Stolfa voted against. Motion on the amendment does not carry.

Further Discussion on the original motion:

Mike Duncan stated that telephonic participation should be used judiciously, and that secondly, members should be prepared even if they need to participate electronically. It is incumbent on members to be in attendance. He likes the flexibility but understands the problem that could occur.

Ed Bridges does not see this as a problem with a body of seven because generally there is a quorum at every meeting.

Dave Stolfa questioned the resolution and asked if Planning Commission needs to approve the policy, seeing as it has already been approved by the County Council. Staff explained that individual boards need to adopt the resolution as part of their established procedures/ policies for running meetings. The resolution, as passed by County Council, does not require the Commission to allow electronic participation. The Commission must first formally accept the policy as part of their procedures for running meetings.

Ed Bridges called the question.

The Chair restated the motion to adopt the County resolution verbatim – Dave Stolfa, Dave Cozzens, and Ed Bridges voted “aye”; Pam Hackley, Mike Duncan and Kalen Jones voted “nay” motion fails.

Ed Bridges moved to table the discussion and decision of Resolution 2944 to the next meeting of the Planning Commission. Pam Hackley seconded.

The Chair asked if there was any discussion on the motion, with none the Chair called for a vote.

All voted in favor.

Public Hearing Continued From December 8th

WestWater Farms LLC, Application for a Conditional Use Permit for a Production Water Disposal and Recycling Facility

Staff read into the record: the General Plan as amended to date, the Grand County Land Use Code as amended to date, the staff report, supplemental insert, and draft resolution.

Citizens to Be Heard

The Chair recognized Mark Wright, County Engineer. Mark noted that the Citizens to Be Heard item on the agenda had been skipped. The Chair apologized and explained that this is a relatively new item on the agenda and asked if there were any citizens that would like to speak on items not on the agenda.

Jim Bradish - Chief Executive Officer of Danish Flat Environmental (DFE). He stated that neither he nor DFE representatives attended the December 8th Planning Commission meeting where our name/corporation was brought into the presentations on numerous occasions and would like to read a letter from Fredrick Aldrich, Aldrich Law Firm, LLC to Westwater Farms, LLC, Thomas Warnes, and Deane Little, New Sky Energy, Inc. The letter (attached) was read into the record by Jim Bradish.

With no other citizens to be heard the Chair returned to the public hearing.

Public Hearing Continued From December 8th

WestWater Farms LLC, Application for a Conditional Use Permit for a Production Water Disposal and Recycling Facility

Ms. Killoy explained that she will provide a brief overview of the project, specifically (1) to clarify the issue of phasing, and (2) go over the four items specific to motion of December 8th. She also corrected the staff report, noting that the subject parcel consists of approximately 23 acres. .

Summary

Phase1: The applicant proposes to accept production water from oil and gas wells in Utah and Colorado for disposal in a single, class II injection well. The water will be trucked to the facility and offloaded into holding tanks. Hydrocarbons will be removed from the water and pumped into adjacent tanks for resale. Water will then be disposed of in a class II injection well as regulated by the Utah Division of Oil, Gas, and Mining (UDOGM), Underground Injection Control (UIC) permitting standards.

Phase 2: Application materials include a secondary phase of development for the construction of a water treatment facility. Treated water planned for on-site irrigation, direct discharge, or off-site resale will be required to meet state referral agency standards prior to issuance of an operational certification letter for this phase of the project. Net water will be disposed of in the injection well. Concentrated brine will be disposed of in the injection well or processed through the electrochemical reactor as proposed in phase three. Other waste streams will be either recycled or classified as solid or hazardous waste and transported to selected vendors.

Phase 3: The final development phase anticipates the construction of an electrochemical reactor for the processing of waste salts generated as a byproduct from the water treatment facility. A separate operational certification letter will also be required for this phase of the project. This phase of the project seeks to recycle a portion of the waste stream generated in phase two.

Ms. Killoy further explained that the applicant has provided a supplemental insert / revised report (January 3, 2011: REVISED Report to Accompany the Conditional Use Permit Application) to address the concerns raised by Commissioners and staff at the December 8th public hearing, specifically with respect to the outstanding use-specific standards identified in the motion:

1. Bonding. The Applicant currently has two collateral bonds posted with the state of Utah for a total of \$25,000. The Applicant is proposing to submit to the County an additional surety bond for all phases and has revised the proposed cost estimate to account for each phase of the project. The County Engineer has approved the proposed bonding amounts. Prior to Council approval the County Clerk and County Attorney will review for form and content.

2. Underground Injection Control Permit. The Utah Division of Oil, Gas, and Mining (UDOGM) approved the UIC permit application for a class II injection well for the subject application, thus setting in motion the procedures for drafting and finalizing the UIC permit and operating parameters. Applicant will give further details about the permit.

3. Operator. The Applicant has revised submittal materials clearly stating that an operator will be on site at all times.

4. Monitoring. The site will be subject to routine monitoring inspections. Staff monitoring reports will be available for review in the County Engineer's office. The Applicant has revised submittal materials clearly addressing methods for tracking the number of barrels received and provisions for locating a sampling port post treatment and prior to injection.

The Commission provided questions to staff for Dr. Downs, as requested at the last meeting. Staff did not receive Dr. Down's response in time to get written comments into Planning Commissioners' packets. Accordingly, Dr. Down's is present at tonight's meeting to submit his response and to review the information with the Commission.

Dr. Downs was given the floor and introduced himself. He submitted into the record information relating to the injection zone and the Colorado River, assumptions used, and a graphic.

Dr. Downs explained that the proposed injection zone is the Wingate formation, which is a 300 foot thick formation located about 1,000 feet below ground surface. The injected water will move down slope toward the Uinta Basin; at worst case it would take 1,500 years of injection at 10,000 barrels per day to fill the area and make its way toward the Colorado River. Additionally, the water would have to be pumped 885 feet uphill over a five mile stretch toward the Colorado River. Dr. Downs also noted that the first water to be pushed toward the river would be formation water not injected water.

Mike Duncan stated he is less uncomfortable with the process than he was a year ago, but has concerns about the possibility of injected water moving through fractures or old well bores and finding its way into the Entrada or the surface. Mr. Duncan asked if this is likely and if monitoring would be a good idea. Dr. Downs stated monitoring is always a good idea, but that fractures in the Kayenta (300 ft thick above the Wingate) is not likely. Mike Duncan stated he is mostly concerned with the contamination of the relatively fresh water / wells in the area. Dr. Downs has looked at well logs within two miles of the proposed injection site and feels it is improbable, but that a monitoring plan is a good idea. Mike Duncan asked what kind of monitoring plan would be suggested. Dr. Downs explained that monitoring wells within a radius around the inject site would be a suggestion.

Ed Bridges asked whether UDOGM, since they are issuing the UIC permit, has the jurisdiction in the consideration of monitoring wells. The County's process is just the Conditional Use Permit.

Mark Wright explained that UDOGM does have exclusive jurisdiction on determining subsurface impacts. He stated that the Planning Commission is exceeding the County's authority, if extraordinary conditions are put into the CUP.

The County Attorney, Andrew Fitzgerald, explained that the jurisdiction for conditions on subsurface permits is exclusive to the State of Utah. The ability of the County to set conditions is limited to surface impacts and he read the section of the state code to the Commission regarding the State's jurisdictional responsibilities. Mr. Fitzgerald further stated the County's concerns are related to surface impacts, if the County goes beyond those boundaries it could lead to litigation problems and damages to parties and costs which would come from general tax payer funds. Mr. Fitzgerald's recommendation was that the application be passed without a ton of conditions that could cause liability to the county. Mr. Fitzgerald would like to work with the applicant on a Memorandum of Understanding (MOU) so monitoring is in place. Mr. Fitzgerald understands that they are willing to work with the county, but forcing is problematic. Working together is the route to take.

The Chair called on the applicant to make their presentation.

Dave Stewart introduced himself; he is from Stewart Environmental, the Chief Technical Officer of Produced Water Development and a partner in the Westwater Farms project. Mr. Stewart explained that there were four conditions from the December 8th meeting that needed to be addressed. We are expecting the UIC signed order approval tomorrow and within a few days the operating permit should be issued by UDOGM. The other issues were

addressed by staff. Mr. Stewart stated it was not their intent to disparage Danish Flats and will work with them to resolve that issue.

Questions from the Commission – Pam Hackley asked about the diagram from Dr. Down's report, it came from Stewart Environmental, and why it didn't include the same text. Dr. Downs explained that the text she is referring to was directed towards answering a different question. Dr. Downs explained that he used the graphic (rather than create one of his own) in conjunction with the notes on the following page to verify that the numbers were correct – and they were.

Mike Duncan asked if the UIC permit allows water to be injected with a mean TDS greater than that of the formation water. Mr. Stewart explained that UIC permit regulations has different TDS allowances depending on the receiving body. He explained that if the TDS of the receiving body is above 10,000 - then the TDS of the injected water is essentially not regulated. Legally they are allowed to inject up to 50,000 TDS although it is difficult to get there because of the membrane process.

Mike Duncan also asked about the brine that will be produced on site that New Sky proposes to use. Mr. Stewart explained that they will not make any of the products that Dr. Little showed on December 8th. Rather they will produce a chemistry (acid and base) and sell that chemistry to the market place.

Mike Duncan asked how they will dispose of the brine in the event it is not sold to the market place. Mike asked if they plan to inject the brine and if so will it have a TDS greater than 50,000. Mr. Stewart explained that yes they plan to inject it and it would have a TDS of around 55-60,000 TDS.

Mr. Stewart stated that in order to meet the requirements of the UIC permit they will need to use/run the well one day a year.

Citizen Comment

Pat Shea asked if he and two others could group their time for a total of nine minutes. Mr. Shea introduced himself as an Attorney from Salt Lake City retained to represent Living Rivers. He is also a Research Professor of Biology at the University of Utah and a teacher for Westminster College.

Mr. Shea stated he would like to submit a legal document demonstrating conflicting advice on whether or not the County has the right to put conditions on this type of permit. Mr. Shea disputed the assertion that UDOGM has exclusive jurisdiction on UIC permits. According to Mr. Shea, the UDOGM Board stated at their December 8th hearing that the UDOGM Board cannot do anything other than approve these permits unless dire consequences that are immediately predictable exist. Mr. Shea has submitted a 12 page objection to findings of fact and conclusion of law and order. Depending on what happens at the state and County level, Mr. Shea and his client are prepared to file a law suit in federal court specifically on the failure of UDOGM to uphold the delegated authority they have from the EPA in reviewing and approving injection wells. He does not think their limited view of their authority is consistent with NEPA, specifically with the Clean Water Act.

Would like the Commission to find that the Colorado River is possibly a drinking water resource and that the injection well may have some adverse effect on that drinking water. At the UGDOGGM hearing when asked where the injected water would go, it was stated that it would spill over into the Uinta Basin with no possibility that it can migrate into the Colorado River. Mr. Shea, however, believes that unless there are more detailed analysis of possible cracks, fractures, or faults one cannot make such statements with certainty. The Grand County Planning Commission has a public health and well-being responsibility that should set a standard for monitoring.

Living Rivers will not object to the Westwater project of if the applicant commits to the following: (1) establishing monitoring wells that will protect public drinking water, in the form of the Colorado River, and (2) contractually commit to the County that they will complete the project. Mr. Shea stated it would be a mistake and a dereliction of duty for the Planning Commission to simply accept the word of an applicant that they (WWF) are planning all phases, although it appears likely that will occur. The Planning Commission has a governmental responsibility that you have to say we are willing to grant the use permit based on the following plan, with at least one year's time, with the applicant required to report back on the progress or lack thereof.

Mike Duncan asked staff if the current ordinance requires an annual review. Staff stated yes there is a statement in the resolution that requires an annual review and statement of compliance.

Dave Stolfa asked the County Attorney if there is anything the County can do other than just wait and see regarding potential adverse impact on the Colorado River. Andrew stated that is not the case. He stated there is discussion about getting monitoring in place. Mr. Fitzgerald explained that there is overlap between the State and County. He further explained that when this happens it is often the state that prevails. Commissioner Duncan stated he would like to read the UIC permit. Mr. Duncan asked Mr. Wright if a recommendation was forwarded tonight, what happens with the UIC permit? Mr. Wright stated that it would be read and forwarded to the Council.

Dave Stewart was given an additional five minutes to respond. Mr. Stewart stated that they do not necessarily agree with Mr. Shea's position. UDOGM does have primacy under the Safe Drinking Water Act for Class II injection wells, which is a promulgated program under Federal EPA. UDOGM did consider underground monitoring wells by their technical staff and rejected that during their public hearing. Also Mr. Fitzgerald suggested we work together and we are willing to explore that. We would have issues if constraints are put on us outside of the CUP. We do have a monitoring program worked out with the US Fish and Wildlife and would like to provide that for the record. Additionally, Ms. Hackley had a question regarding water quality. Mr. Stewart submitted a water chemistry report into the record as well.

Ed Bridges moved to forward a favorable recommendation to the County Council subject to the conditions referenced in the staff report and the draft resolution. For clarity staff read into record the following as the conditions:

1. **Bonding.** Submission (prior to being scheduled for Council) of a Surety Bond in the amount of \$105,843 to be reviewed and approved by the County Clerk and County Attorney.
2. **Underground Injection Control Permit.** Submission (prior to being scheduled for Council) of the Utah Division of Oil, Gas, and Mining Underground Injection Control Permit and associated operating parameters.
3. **Operational Certification Letters.** The Applicant shall apply for and receive from the County separate operational certification letters for both the water treatment facility and the brine recovery facility prior to going into production.
4. **Water Quality.** Prior to issuance of operational certification letters the Applicant shall provide to the County in writing applicable state approvals and associated water quality standards for all proposed treated water uses;
5. **Fee Payment Process.** Westwater Farms shall submit a monthly summary report of barrels received to the County Clerk by the 5th day of the following month. Billing invoices for the monitoring fee shall be subject to a standard 30 day payment term;
6. **Annual Statement of Compliance.** In addition to Sec. 3.2.4.Gq (Permit Review) the annual statement of compliance shall include an update of progress made toward the development of a water treatment facility, including volume treated, water quality obtained, and end uses.

Dave Cozzens 2nd

Discussion –

Ed Bridges would like to see this moved forward it's been around long enough. Ed Bridges asked the following questions:

Is the Colorado River considered drinking water and what is the current percentage of TDS of the river water? Mark Wright explained that the Colorado is considered a drinking water source as it serves communities down river, but it is treated prior to being used as drinking water. Do not know the TDS of the river.

Mr. Bridges asked - Would the native water in the Wingate be the first water to enter the Colorado River if indeed the water reaches the river; is the water in the Wingate formation heavier in TDS than the river. Mark Wright answered yes to both questions.

Mr. Bridges asked - Can existing wells in the vicinity of the injection wells be used as monitoring wells. Mark Wright stated that it would depend on how the wells are sealed, if they are closed-in, probably not.

Mike Duncan moved to Amend the original motion to include that the County Attorney initiate an attempt to negotiate a Memorandum of Understanding (MOU) with UDOGM and the applicant regarding a post injection monitoring program. Dave Stolfa seconded

Discussion – clarification by Mr. Duncan- the monitoring program would be a good thing. The applicant seems receptive and it would be in the County's best interest for at least a minimal post monitoring program.

Pam Hackley asked Mr. Duncan to explain what he means by post injection. Mr. Duncan explained that the applicant has already agreed to monitor the water prior to injection (what comes off the trucks) – post monitoring would be to watch for leakage paths to the surface, to the river before it happens.

Kalen Jones is concerned that we would be asking the applicant to participate in something (monitoring wells) that would take place off their property. He stated he is most concerned about cumulative impacts if there are additional injection wells. This concern would best be addressed with a network of monitoring wells on BLM and SITLA land between the injection field and waters of concern. The County collects a monitoring fee based on the volume of water accepted and wonders if we could have the government entities do the monitoring and use the fees to pay for the monitoring systems. It may address the concerns of the public more definitively if monitoring was done by the county or state.

Mike Duncan stated that there is at least one (and possibly four) permits in the area for injection wells, the monitoring program would need to include all wells. Mr. Duncan requested that the County make an effort to talk with all the entities.

Terry Leech – local driller, pointed out that in the 1980s the Federal Government put in monitoring wells, because of complaints from Mexico that the salinity of the Colorado River was becoming excessive. Our government is already doing what you are asking these people to do.

Ed Bridges stated this is a nebulous amendment to the motion. He stated that the MOU may or may not happen and worries if it doesn't happen that the resolution may not go forward. We have objective items that need to be met and this is an added subjective item.

Kalen Jones asked that Mr. Duncan clarify his amendment.

Mike Duncan stated that the amendment proposes that the county attorney make an attempt to communicate with the various parties, including the State and Federal entities, to see if a reasonable monitoring program can be worked out.

Dave Stolfa stated that if we approve the amendment, the MOU would need to be negotiated before the County, if there are not negotiations the application could still go before the Council for approval even if the MOU doesn't come about. It would be up to the Council to approve the MOU.

Andrew Fitzgerald stated that the amendment will complicate the resolution. The applicant is willing to work with the County, there seems to be a good relationship. The applicant has indicated they are willing to talk to us. It may be that there is nothing we can do, but his understanding is that they are reasonable people.

There was a discussion about withdrawing the amendment; the decision was to vote on the amendment.

Pam stated she is glad to see that there is so much support for monitoring for injection wells in the Harley Dome area and it would be great if the applicant and others would step forward and do this. She appreciates Mr. Duncan's amendment -the Council can accept the recommendation or not. She feels there is some uncertainty with respect to the potential effects of injecting into the Wingate. She feels that the County has a responsibility not to exacerbate external impacts of something we approve.

Dave Cozzens –feels that in reality the amendment has no teeth in it.

The Chair called for the vote Mike Duncan, Pam Hackley, Dave Stolfa, and Kalen voted "aye" Dave Cozzens and Ed Bridges voted "nay" amendment passes.

Kalen Jones moved to amend the draft resolution as follows:

Whereas compliance with Ordinance No 490. 3, a. and c. cannot be fully assessed, due to incomplete knowledge of the underground geology and hydrology of the site and area between the site and surface water, especially the Colorado River,

Insert at the end of the conditions:

1. Ten years from the date of issuance of the CUP at least one of the following conditions shall be met:
 - a. Net annual injection volume is less than 500 barrels a day, or
 - b. A network of monitoring wells has been established to better assess flow of injectate towards vulnerable surface waters; or
 - c. Applicant shall provide proof of insurance for remediation of groundwater in the event of contamination.

Pam Hackly seconded.

Discussion: Kalen Jones - The intention of the amendment was to provide for a variety of avenues to relieve the fears of citizens. The insurance company would calculate the risk and payout. Mr. Jones further explained that Ordinance 490 (Liability and Mitigation) states that the applicant is responsible for damages and that this is a possible way to address enforcement of remediation.

The County Attorney was asked if this is overstepping our boundaries.

Mr. Duncan stated he felt this is a larger/area-wide problem and that it would not be fair to put this all on WestWater Farms.

The County Attorney pointed out that it would be unfair to Westwater Farms if the problem is a County wide problem. The petitioner currently has a five million dollar insurance policy. He cautioned the Commission about the liability of putting conditions on applicants that are not reasonable and about putting conditions on one applicant that are not put on another applicant.

Ed Bridges called for the question. The Chair asked if any Commissioners had other comments.

The Chair called for a vote on the amendment to the motion. Kalen Jones and Pam Hackley voted in favor. Ed Bridges, Dave Cozzens, Dave Stolfa, and Mike Duncan, voted against – motion fails.

Pam Hackley moved to table the motion, she would like to see the UIC and have additional time to review materials. The motion fails for lack of a second.

The Public Hearing was closed.

Ed Bridges called the question – The Chair called for a vote on the motion to read as follows:

1. **Bonding.** Submission (prior to being scheduled on the County Council's agenda) of a Surety Bond in the amount of \$105,843 to be reviewed and approved by the County Clerk and County Attorney;
2. **Underground Injection Control Permit.** Submission (prior to being scheduled on the County Council's agenda) of the Utah Division of Oil, Gas, and Mining Underground Injection Control Permit and associated operating parameters;
3. **Operational Certification Letters.** The Applicant shall apply for and receive from the County separate operational certification letters for both the water treatment facility and the brine recovery facility prior to going into production;
4. **Water Quality.** Prior to issuance of operational certification letters the Applicant shall provide to the County in writing applicable state approvals and associated water quality standards for all proposed treated water uses;
5. **Fee Payment Process.** Westwater Farms shall submit a monthly summary report of barrels received to the County Clerk by the 5th day of the following month. Billing invoices for the monitoring fee shall be subject to a standard 30 day payment term;
6. **Annual Statement of Compliance.** In addition to Sec. 3.2.4.Gq (Permit Review) the annual statement of compliance shall include an update of progress made toward the development of a water treatment facility, including volume treated, water quality obtained, and end uses; and
7. **Post Injection Monitoring Plan.** The County Attorney shall initiate an attempt to negotiate a Memorandum of Understanding (MOU) with the applicant and the Utah Division of Oil, Gas, and Mining for a post injection monitoring plan.

Kalen Jones, Ed Bridges, Dave Cozzens, Dave Stolfa, and Mike Duncan voted in favor. Pam Hackley voted against. Motion passes.

The Chair called a recess at 7:55 PM
The meeting was reconvened at 8:05 PM

The Chair introduced Gabe Preston from RPI Consultants. Mr. Preston gave a brief introduction of the plan and the work that has been done by the Working Group.

The Commission felt they did not have enough time at this meeting to review the draft as needed and would like Mr. Preston to come back to the next meeting for further discussion.

After discussion the Commission decided to have a workshop on the 26th of January at 2:00 PM in the Courthouse. If the Commission would like their written comments to be applied to the draft, please have them to Gabe by 4:00 PM on January 21st.

Future Considerations – Pam Hackley asked staff to provide an update on Danish Flats CUP and operations at the next meeting.

Approval of Minutes – Due to the lateness of the meeting and the length of the December 8th minutes the Commission decided to wait until the next meeting to approve the minutes.

County Council Update – Gene Ciarus had left the meeting at 9:00 P.M. – no Council update was available.

Adjournment: The meeting was adjourned at 9:20 P.M.