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MICHELLE NAUER, OURAY COUNTY, CO. CLERK & RECORDER

The Board of County Commissioners met in special session on October 5, 2010. Those present for the session were Lynn M. Padgett, Chair; K. Keith Meinert, Vice-Chair; Heidi M. Albritton, Member; Connie Hunt, County Administrator; and Linda Munson-Haley, Clerk of the Board.

- **Note – This meeting was recorded for reference purposes.**

Commissioner Padgett opened the meeting and made introductions.

Division of Reclamation Mining and Safety (DRMS) Presentation

David Berry, Director of the Office of Mined Land Reclamation with the Division of Reclamation Mining and Safety (DRMS), provided a PowerPoint presentation. He discussed the organization chart and pointed out that the Mined Land Reclamation Board (MLRB) was a seven-member body appointed by the Governor that served as an appellate body in the Minerals Program and helped to set policy. The MLRB regulated 1,559 permitted mining operations, 23% of which were county operations. The Minerals Program's authority and mandate came from two statutes: 1) the Mined Land Reclamation Act that focused on hardrock projects, and 2) the Colorado Land Reclamation Act for Extraction of Construction Materials. State law acknowledged that mining was an acceptable activity and the DRMS mandate was to assist in allowing operations to occur but the operations, by law, needed to be done in a way that was protective of the resources and public health and safety in terms of environmental-related risks. Striking a balance was the challenge.

The DRMS jurisdiction was limited to environmental impacts and reclamation and offsite damage prevention associated with environmental impacts. It was the County's call as to whether a mine could be located in a certain area. DRMS did not have jurisdiction over noise, dust, traffic, safety, visual impact, aesthetics or matters controlled by other agencies. DRMS tried to coordinate to the extent that there was communication but also tried to maintain its jurisdiction within its statutory bounds.

To a question regarding "offsite" Berry explained that for his purposes "offsite" referred to landslides, hydrologic damage, acid mine drainage, lasting impacts, etc. but their law did not allow DRMS to get into traffic, which was traditionally more of a local issue. Mine safety was a function of MSHA (Mine Safety and Health Administration). Regarding offsite stockpiles, stockpiles or processing areas immediately adjacent would fall under DRMS's jurisdiction; however, if, for example, an asphalt company had a batch plant thirty miles down the road he had seen the board alternate on whether or not DRMS had jurisdiction. In terms of hardrock waste piles, DRMS had been aggressive in obtaining jurisdiction on those because of the environmental impact. In locations where there was just a mill facility not associated with a mine, it became more of a health department jurisdiction issue. It was a gray area.

Berry discussed the types of permits under the Hardrock Law. A Notice of Intent to Prospect (NOI) was required for prospecting activity on anything over 1,600 square feet. Environmental protection standards and bonding were associated with the notices. A recent ruling this year required applicants for NOIs to notify local governments.

Other permits included 110 for smaller operations of 10 acres or less and 112 for more than 10 acres. DMO (Designated Mining Operation) was a category of mining where acid or toxic-forming materials would be used or potentially exposed. All uranium mines were considered DMOs. The 110 process was quicker than the 112 process.

Berry listed the general requirements for a new application.

In the late 1980s, local government approval that had been a prerequisite to the application process was separated out. Whereas an entity had to meet with the local governments, DRMS could not hold the process up for local approvals.

The prospecting application process did not have the 110/112 breakdown. It was simply a Prospecting Notice.

Berry discussed the Reclamation Plan Review process. Public participation was a major part of the program. By statute, people had the right to weigh in, and comments and objections were allowed on all applications and active operations. Prospecting permits were subject to public comment and an appeal process. That aspect of the Act and the 2008 legislation was controversial.

Procedurally, when DRMS received an application, notices were sent out to the Boards of County Commissioners (BOCC) and planning departments. The applicants were required to make notice to the BOCC, local landowners and adjacent landowners, and to publish the notice in newspapers, etc. Any entity could weigh in by commenting within ten days from the first publication in a local newspaper on 110s and longer on 112s. There was also an assumption that the applicant was making parallel contact and application to the local governments. Generally the way it played out was that the applicant started a reclamation permit going with DRMS, the comments and objections came in, while, typically, the applicant was making local applications at the same time to get land use approvals in place.

Commissioner Padgett asked if there was a way to share between the local entities and DRMS, or were some things confidential. What information did the local entities receive to be able to have thoughtful input?

Berry replied that the application submitted to DRMS, with the exception of the Prospecting Notices, was required to be filed with the local Clerk and Recorder. DRMS had an imaging system on the internet where, for the most part, people could see an application's contents on the web page. The application should be published in the local newspaper within a few days of filing. Prospecting included exploratory drilling. DRMS was required to publish new applications on its website including Prospecting Notices. Local governments could weigh in on the DRMS process and DRMS would address issues in its jurisdiction but the local governments had their own processes and regulations. It was helpful to have two-way communications between DRMS and the local entities.

Berry explained that bonding was a major priority for the DRMS program. The State should be able to reclaim a site if an operator defaulted or the permit was revoked because of compliance issues. It was a contentious issue. DRMS fought to ensure that a bond was adequate but it was a constant fight. A computerized program was used to determine the amount of a bond. DRMS did not bond for perpetual treatment. Jocelyn Mullen noted that when DRMS only bonded for issues it had control over, this presented a huge gap for perpetual drainage issues. Berry agreed, adding that DRMS was told not to approve permits with long-term drainage, but in reality it happened.

Commissioner Meinert discussed the possibility of MOUs (Memorandums of Understanding) between Ouray County and the various entities.

Berry explained that DRMS had MOUs with the Forest Service, BLM, and the Water Quality Control division of the health department but had been hesitant to engage in MOUs county by county because there were so many entities to deal with formally and consistently. It was a challenging issue. The thought had been not to engage on a county by county basis but to codify the expectations in some way.

Berry discussed bonding instruments and noted that DRMS held about $350 million in bonds currently on permits and almost $70 million on Prospecting Notices. With regard to the bond release process, there were standards to which reclamation occurred. When a mine operator or Prospecting Notice wanted release of the bond they made application to DRMS for release. DRMS inspected the site on its merits to decide whether or not to release. People could weigh into the process, as well, and that could get ugly at times.

With regard to inspections, Berry explained that DMOs were inspected frequently. For the other more routine sites, they were not inspected on a regular basis and it could be three, four or five years. There was not enough staff to visit 1600 mines a year.

DRMS replied to citizen complaints within thirty days.

Weed management was a major issue throughout the West. The best time to weigh in on what was appropriate in a specific location and seed mix along with weed management was during the application process. DRMS realized that coordination was important and tried to coordinate with the local weed programs.

Berry spoke to enforcement procedures. DRMS tried to be proactive and issue corrective action orders. If there was noncompliance, it moved into the enforcement stage where staff collected evidence and brought it back to the DRMS board who decided if a violation had occurred. If a violation had occurred, the board ordered a Cease and Desist Order until the action was corrected. Civil penalties were levied. The board tended to suspend portions of the civil penalties if there was compliance within the timeframe. In the worst case, DRMS moved to permit revocation and bond forfeiture.

Commissioner Albritton asked if he was aware of local mine safety teams and if they were related to DRMS. She wanted to get more information on the team who kept equipment at the Land Use / Road and Bridge facility.

Berry replied that there was a small section in his division, the Mine Safety Group, whose major function was training, and there were mine safety trainers located in Grand Junction. He referred Commissioner Albritton to Bill York-Feirn who was the leader of the Mine Safety Group if she had questions.

The Commissioners received Berry's permission to put his presentation on the Ouray County website.

10:34 There was a break and the group reconvened at 10:43:

Forest Service Presentation

Liz Mauch introduced herself and related that she worked in the Montrose office of the Forest Service for the Ouray District. She explained the Forest Service's permitting process. The simplest proposal was when people came in for recreation and wanted to go gold panning. No paperwork was required for that. The Forest Service could offer guidance but it was the panners' responsibilities to know where they could and could not go. If they wanted to use mechanical equipment, such as for dredging work, they would need to fill out a Notice of Intent alerting the Forest Service that there might be some surface disturbance. The Forest Service had fifteen days to respond. More often, they would be going directly into a Plan of Operation. The Forest Service had the authority to regulate surface resources. There were a lot of similarities between the Forest Service Plan and the State's plan. Once a Plan was submitted the Forest Service had thirty days to respond. The response allowed for five choices: 1) approved as proposed, 2) no Plan was necessary for the activity being proposed, 3) the Forest Service needed additional information from the applicant and once the applicant responded with the additional information the Forest Service had another thirty days to look at it, 4) needed more time to look at the Plan for up to sixty days or additional time if weather caused a problem with getting to the site, or 5) an EIS was required that could take years.

Mauch explained that early in the process the Forest Service was in communication with the State (DRMS). As far as the local office, her District Ranger was open to communication early on, even though the Forest Service did not have a final plan that had been deemed complete, but to advise that an application was in process. She distributed copies of an MOU. A Plan of Operation was considered complete when the Environmental Analysis (EA) could begin. Depending on the level of the activity, if it was simple, it could be Categorically Excluded (CE) rather than going into a full-blown EA. Before beginning the NEPA (National Environmental Policy Act) process the Forest Service had more latitude to get information from the applicant, the County, and the Road Department to determine early-on what the issues would be in order to build into the action alternatives some Best Management Practices (BMP) to address them. Once the formal NEPA process began it was more rigorous as far as opportunities for public participation. The County could respond at that point to the scoping letters during the comment period.

As part of the NEPA analysis the Forest Service had to analyze the No Action Alternative that served as the baseline for comparing all of the other alternatives to. This eventually would lead to a decision that would choose an action alternative and it may identify additional mitigation or additional BMP or necessary monitoring. At that point, the Forest Service had not yet approved the operations. The applicants would still have to get other applicable permits that needed to be in place, as well. The applicants would then need to take the decision document and incorporate the additional stated measures into their Plan of Operation. At that point, the Forest Service was in a position to approve the Plan.

With regard to patented mining claims that were surrounded by the National Forest, The Forest Service had to allow for reasonable access. Most likely the applicants would have special use permits in place if they needed to build a trail or a road. If they needed to construct a road, there would be a road use permit for construction along with a bond. Once operational, the applicants may still need a road use permit for ongoing maintenance of the road and a special use permit for the road. Any offsite staging areas would need to be permitted.

Barb Sharrow asked if the Forest Service could deny a mine application on Forest Service surface lands because it did not want a mine there.

Mauch replied no, they had review the master plat to make sure that the proposal would be located in an area open to mineral entry and check the Forest Plan to determine acceptable uses of that surface. The Forest Service could not just say no. The Forest Service had to respect the rights afforded under the 1872 Mining Law and would address more *how* the applicants mined as to *whether* they mined.

BLM Presentation

Rob Ernst, Geologist with the BLM, began by stating that minerals were where you found them. Miners were stuck with finding them and working them where they were located. The 1872 Mining Law was passed to give all citizens the right to locate claims on federal lands open to mineral entry. Locatable minerals were generally metallics, gems, and uncommon variety materials. There were two types of mining claims: Lode and Placer. Lode applied to rock and was designed to accommodate veins that were rectangular and about 20 acres. Placer claims were staked over gravel deposits and were square in shape. In 1981, the BLM got the regulations that managed the surface under the 1872 Mining Law. Operators with claims needed to follow the rules and regulations to work the claims. The regulations required operators to submit mining-related plans, provide reclamation bonding, and complete reclamation to BLM and State standards. Placer gold was found in the Uncompahgre River; however, not a lot of people have applied to do section dredging on the Uncompahgre. Coal was a leasable material, not locatable, and he showed a slide of existing coal and oil & gas leases in Ouray County. There was some coal potential under Cimarron Ridge.

With Land Use Planning the BLM looked at various rights. All areas with federal mineral rights were open to locatable minerals. The Resource Management Plan established areas that were open and closed to solid and fluid leasing. The BLM had a report coming out that delved into the development potential for oil and gas in the field office and in Ouray County.

To a question regarding who determined what areas were specifically withdrawn from locatable minerals, Barb Sharrow replied that it was the Secretary of the Interior. In the land use plan, the BLM field office could identify areas to petition the Secretary to withdraw. Ernst added that locatable minerals could be withdrawn by an Act of Congress or the Secretary but for leasable minerals the field office could designate areas as open or closed to oil & gas leasing, coal leasing or saleable minerals.

More complications arose when separating the surface from the mineral estate, which was called split estate lands. BLM had a lot of mineral estates but not surface estates. It could be divided further into oil & gas, coal, areas with both coal and oil & gas, all minerals, etc. The mineral rights had been determined by courts to be the dominant estate; they had primacy over the surface. A mineral owner must show good regard for the interests of the surface estate owner and occupy only those portions of the surface that were reasonably necessary to develop the mineral estate. Part of the reason for split estates was that during WWI the federal government was concerned about the availability of mineral resources to support the war effort and began to retain the mineral rights on lands whose surface rights they were patenting. He showed slides of and discussed different types of minerals.

Ernst discussed the affects of the Resource Management Plan (RMP) Decisions. Locatable minerals under the 1872 Mining Law were not discretionary. They were a legal mineral right given to all legal citizens that met the Law's requirements. The salable and leasable minerals, both solid and fluid, energy or non-energy, were discretionary. There was no legal right to these materials. With regard to locatable minerals, the RMP could stipulate that certain designated areas be withdrawn from mineral entry by recommending that the Secretary of the Interior be petitioned to issue a Public Land Order to remove the lands from the jurisdiction of the 1872 Mining Law. For leasable and salable minerals, alternatives in the RMP could stipulate that the areas be closed and not available for leasing or disposal sales contracts. Locatable mineral rights could be withdrawn by an Act of Congress, or by designation as Wild in the Wild and Scenic River Act Designation, or by a Public Land Order issued by the Secretary of the Interior.

Ernst discussed several land designations that could affect mineral operations. Wilderness Study Areas (WSAs), until they were designated as Wilderness in a Congressional Act, were not withdrawn and mining claims were allowed. However, a mining plan of operation was required and the area was managed to protect its unique wilderness characteristics. RMP decisions could close the areas to salable and leasable mineral activities. Areas of Critical Environmental Concern (ACECs) were not withdrawn from mineral entry, either. A plan of operation was required as with the WSAs. The Secretary of the Interior could be petitioned to withdraw these areas from mineral entry and RMP decisions could close them to salable and leasable mineral activities. Another designation was Wild and Scenic Rivers (W&SR). Until they were designated as Wild in a Congressional Act, they were not withdrawn and mining claims were allowed. The W&SR Act had three designations: Wild, Scenic and Recreation. It was only under the Wild designation that

areas were withdrawn when Congress passed an act. The Scenic and Recreation designations were still open to mineral entry but managed like the WSAs. RMP decisions could close these areas to salable and leasable mineral activities.

The BLM would manage operations proposed for areas where it was private surface and federal minerals, all minerals, that would be the hardrock minerals. The Forest Service managed the minerals on their surface. Under the Leasable Act, BLM managed the oil & gas on all federal surfaces and worked in conjunction with the Forest Service to do the leasing, lease sales, etc. When it came to applications for permits to drill they worked together.

Commissioner Meinert wanted to clarify the difference between locatable, leasable and salable, and that the only activity under the 1872 Mining Act was locatable. Ernst agreed. In the 1920s, oil and gas and coal were separated out from the Mining Law. Then in the 1940s, sand and gravel was sorted out. Mauch pointed out that the 1872 Mining Law was applicable to public domain lands, not acquired lands. Ernst discussed other minerals and that was where the government acquired or reacquired the mineral estate by someone giving it back to the government. Those minerals were managed as leasable. Mauch pointed out that it became a discretional action, also, because it was under the leasable authority. Sharrow added that on the acquired lands that the Forest Service acquired, they would have all authority over those lands. Mauch pointed out that the Forest Service did not like split estates so in the instance of the lands on Red Mountain they would have acquired the mineral as well as the surface estate. Commissioner Padgett asked when the Forest Service took lands back that had been conserved that were patented, private mining claims that were donated back into the public land system, presumably with the mineral rights, were those parcels open for mining. Sharrow said that the Forest Plan would have to be consulted to determine that. Mauch explained that as soon as the Forest Service got a proposal they checked to see the status of the land and the minerals on it. If it was public domain it put it into the 1872 Mining Law. If it was acquired land it put it into leasable that had discretionary authority, and the Forest Service had more teeth in working with the BLM. A discussion followed.

Ernst noted that the BLM permit was similar to the DRMS permit as far as regulations.

Commissioner Padgett asked if there would be a situation where an operator would have to bond with the Forest Service and with the BLM and with DRMS for the same activity. Ernst explained that they did a joint bond.

Jocelyn Mullen suggested that it would be good to outline in the Plans of Operation who would take the lead when problems arose and who else had jurisdiction.

Sharrow noted that Ouray County had a lot of private/private that would not involve the BLM or Forest Service except for access and potential offsite impacts, and needed to have controls in place.

Ernst pointed out that some people stake claims and think that it is private property. They just have a right to the minerals; they do not have a private property right to the surface. Even the rights to the minerals can be challenged.

Commissioner Meinert simplified it to they have a right to mine but the agency asserted jurisdiction over the impacts of that mining and had responsibility over how it was mined.

Sharrow agreed but noted that Ernst had a good point, too, that mining had always been a speculative venture and people would stake mining claims for things that could not geologically be there and the BLM had a role to prove the validity of that mining claim.

Mullen added that the question of whether or not to mine may be a moot point but how they mined was within the agencies' control to some extent. She was not anti mining but pro responsibility so that their activities did not cost the taxpayer to clean up after them.

Ernst explained that for the patented claims, private surface / private minerals, neither the BLM nor the Forest Service managed minerals on private minerals. If it was BLM surface they would get involved with a special use permit.

The next slide showed mining claims in Ouray County. Commissioner Meinert offered that Ouray County had 1,392 patented claims.

Ernst discussed the BLM's Locatable Minerals Permitting Process. Generally, operators would call him to find out who they needed to work with or they would submit a plan that was, generally, what they submitted to the State. Once all of the information was complete and accurate the BLM looked at what was involved. If it was less than five acres they did a mining notice. Notices were generally just for exploration; they were not meant to mine under. It was not a federal action and did not require an EA or NEPA document but the BLM did review the proposal for impacts to T&E (Threatened and Endangered) species and cultural resources. They would then issue an authorization to do the activity. For greater than five acres of surface disturbance the BLM did a Mine Plan that was a federal action and NEPA was required, and usually they would do an EA. Once the notices came in, the BLM had fifteen days to respond. It usually took longer than that to do the checklist. If the companies wanted to speed it up they would do the bird, plant, and cultural surveys and send them into the BLM. Once reviewed, the BLM issued a go-ahead authorization to start.

Commissioner Meinert noted that Ernst and Mauch referred to the NEPA and EA processes required for activities on federal lands. He asked if that part of the BLM's process was handled by DRMS on private lands. Ernst replied yes. It was pointed out that NEPA was a federal process. Commissioner Meinert affirmed that Ernst's division had a responsibility for environmental impacts. He asked what process was followed by DRMS. Berry explained that DRMS's process was guided by the Mined Land Reclamation Act. He thought that it was similar to NEPA but, for example, the socioeconomic impacts were addressed under NEPA but would not be addressed under his process. Cultural and historic resources were addressed as well as anything that needed to be protected or mitigated. He coordinated with the wildlife agencies for T&E species. Commissioner Padgett asked if NEPA would apply if it was federal mineral and private surface. Ernst replied yes.

Ernst continued to explain the process. The BLM did a scoping and got the issues out. They notified the public through various means. They received comments and then made a decision whether to do an EA or an EIS (Environmental Impact Statement). The BLM analyzed the direct and indirect cumulative impacts to the many and varied resources. The County could get involved at this point. Through the NEPA process they would identify mitigation measures. Requirements and compliance issues were generated and attached to the authorization. The operators could change their Plans to include the identified mitigation measures. The BLM worked with them to perfect their Plans.

Part of the Mine Plan was a Reclamation Plan that got into the details of what they would do when they were done, where they would do it, and how they would do it. Part of that was a cost estimate to dismantle the buildings and haul them off, dozer time, spreader time, labor costs, equipment costs, etc. that all got factored in. The BLM then added fringe and overhead and contract management. If the operators hired a third-party contractor they would have to pay federal wage rates. It could get complex and the BLM worked together with the State, who generated bond amounts separately, and agreed to the higher amount. Most of his bonds had been under $20,000 for exploration drilling.

The BLM and State did joint inspections for compliance with the Plan. Failure to comply could result in the operation being shut down. A final inspection was done and all reclamation activities were required to conform to BLM and DRMS standards using current BMPs. The State held the bonds and would release them when appropriate. The bonds could be released in different stages: part could be released after demolition, part released after the earthwork was completed, and part after revegetation. DRMS would hold a portion of the bond for 5 to 10 years for revegetation, if required, and weed management.

The Commissioners received Ernst's permission to put his presentation on the Ouray County website.

Colorado Department of Public Health and Environment Water Quality Division Presentation

Jocelyn Mullen with the Colorado Department of Public Health and Environment, Water Quality Division (CDPHE), explained that her division had primacy for implementation of the Clean Water Act (CWA) in Colorado and the Drinking Water Act (DWA) in Colorado. This would apply to drinking water facilities for a big mining operation that served greater than 15 connections or 25 people more than 60 days a year. This would qualify it as a public water supply. With any mining operation they looked at 3 or 4 different types of activities. They looked at any types of process water that was created or generated by the mining operation and they only looked at the surface discharge. If it was kept inside the mine and remained a groundwater it was outside of their authority. They had MOUs with DRMS that if it was an industrial discharged groundwater DRMS was the agency of primacy. Her agency only dealt with industrial surface water discharges. If it was a domestic wastewater system associated with mining operations they had full authority over it, whether ground or surface. Byproducts from the mine process were considered industrial so surface water was regulated by CDPHE and groundwater by DRMS. CDPHE also looked at stormwater issues, as well as permanent dewatering or construction dewatering, which required permits as well.

The big picture of how that worked was if someone came in with a mining application, no matter whose land – federal, state or private, if they were planning to use any water or generate any water that would be disposed of, they would have to go to the appropriate entity. If they proposed to build a big pond and allow it to percolate from the bottom to groundwater, it would become part of DRMS's permitting process. If they were proposing a pipe coming out of an adit discharging water to any surface location, that would become CDPHE's area of authority. Similar to any other discharge, CDPHE would require a fee for development of Preliminary Effluent Limitations (PEL) that required CDPHE to look at the nature of the activity creating the discharge and where it was being discharged with regard to the water quality standards for that particular body of water. They would look at the size of the discharge with regard to the size of the receiving body and they would then back into what the discharger could discharge for any number of parameters. It was very complicated. Through the PEL process the discharger would be notified of the limits they would be held to. The permittee would then be required to do adequate engineering, chemistry, and whatever else was necessary to say that they would be able to meet the discharge standards.

If it was domestic wastewater, she would review the technology and the processes by which the permittee claimed they would be able to meet the discharge standards. For industrial waste she had no authority to do an engineering review and had to wait until after the discharge to determine if the permittee was doing what they said they would do. She found that disconcerting. It was a big gap that there was no requirement for engineering review of the treatment proposed to meet discharge standards from an industrial discharge.

In a straightforward case, the permittee would be issued a PEL and would advise CDPHE that they would get the black boxes that would meet the discharge standards, go through a construction period to do that, notify the CDPHE 180 days prior to discharge, CDPHE would issue the permit based on the activities, and the permittee would be given the locations for monitoring, what they had to monitor for, and frequency, etc.. With that permit came an inspection frequency.

There were about 10,000 plus discharges in the state of Colorado and the CDPHE inspected about 300 a year. Some had never been inspected and many would never be inspected because the CDPHE did not have the resources to do that. Pretty much all domestic wastewaters were inspected. There were two classifications: 1) minors that were less than one million gallons a day, and 2) majors that were greater than a million gallons a day. Major dischargers, either industrial or domestic, had a good chance of being inspected. Industrial dischargers would be inspected sometime in a three to five-year period; domestic dischargers were inspected every year. Because the CDPHE had been so vigilant with inspections of majors and most were now in compliance, the CDPHE has begun to up its inspections of the minors. The CDPHE rarely looked at construction permanent subterranean dewatering permits.

Mullen discussed some of the issues she had seen with some of the hardrock mines. She used the Zanett Tunnel as an example. Zanett decided they did not want to be in the mining business anymore and sold/gave/donated their land to Trust for Public Lands (TPL). TPL traded or sold the land back to the Forest Service. In the midst of all of this a small 25 gpm discharge was completely abandoned or orphaned. Zanett said that when he gave away the land, he

gave away the discharge. TPL and the Forest Service said that when they took the land they did not take the discharge. So, now, there was no responsible party. There was reasonable potential for concern for zinc and cadmium, at a minimum. Her concern was that every time there was an unregulated, unpermitted, uncontrolled discharge that went into the lakes and rivers it made it harder for a legitimate permitted entity to get a permit with conditions that they could readily meet down the road. If, for example, the CDPHE determined that a lake or river had a capacity of 100 lbs. of contaminant x and all of the unregulated discharges were dumping 99 lbs. of unregulated contaminant x there, that left a capacity of only 1 lb. of contaminant x to come from the legitimate, permitted sources who would have much stricter limits imposed on them. She encouraged everyone to think about the fact that if point source polluters were not required to meet permit limits other point source polluters, *i.e.* municipal wastewater plants, and other permitted entities would bear the cost of more stringent regulations to even things out. She was pushing the agency to look at those things when doing PELs and permits.

Mullen related that another issue that she had seen was that mines were often encouraged, or guided, to try to maintain the water sources that build up inside the mines, inside the mines, and not to allow them to become a point source that discharged outside of the mines. This resulted in increased springs, or seep activities, or other manifestations of that water popping out as a non point source and became one of those unregulated sources that then impacted the capacity of the stream segments that things were being discharged to. She had spoken with Berry about the issue. Human activities exacerbated the ore, not just the fact that the ore was there in the first place. It was her position that if these activities were going to occur, the process needed to reflect the full cost, the externalized cost, and make it an internalized cost of developing the ore body. It was the only way that the taxpayers did not end up paying the costs down the road while someone else was reaping the profits.

Commissioner Padgett asked if, when the State determined that there was a discharge, they contacted the CDPHE.

Mullen replied that either the applicant or the State contacted CDPHE and would be working with the permits unit of the agency. She was the field presence who did the inspections and verifying that the permittee was meeting the requirements of the permit.

Commissioner Padgett asked about opportunities for local governments to weigh in or if there was even a need.

Mullen replied that there definitely was a need. When a permit was issued there was at least a 30-day comment period and it was noticed on the CDPHE's website along with the particulars of the permit. It was not within CDPHE's jurisdiction to say if mining was appropriate. If people were going to mine, these were the conditions that would be regulated. The truth of the matter was that violations were going on all of the time and the agency was slow to respond to the violators. This was where the local authority could come into play.

Commissioner Meinert asked if DRMS had a checklist or a list of referral agencies including the CDPHE that were contacted when an application was made to get their comments and input to ensure that their activities were taken into account before issuing a permit.

Berry advised that DRMS did have a list and the CDPHE was on the list. DRMS did not, however, follow up during the permitting stage to make sure that the other agencies were following through. When DRMS noticed violations onsite they notified the other agencies.

Commissioner Meinert addressed the first-come, first-served ability for polluting the water systems. He asked if that was the philosophy that DRMS used to determine the amount of effluent into a groundwater system.

Berry replied not exactly. DRMS was the implementing agency for groundwater protection; however, the standards to which groundwater was protected were set by the Water Quality Control Commission and DRMS came in with whatever measures were necessary to ensure that those standards were met. It was not a driving philosophy; it was a hydrologic reality that pollution came into play.

Commissioner Meinert discussed the possibility of more mining activity in this area because of the potential for strategic metals being located in this area. If that activity was prevented from obtaining a discharge permit because of the unregulated discharge sources, it would impede the County's ability to ensure that that activity could occur in the area. He took Mullen's point that the unregulated discharges were harming the ability of the conscientious legitimate operators to undertake hardrock mining in a responsible manner.

Cheryl Roberts had a question on discharge going down to the point of dilution that made it safe, and above that, and asked if the discharger was required by the permitting process to alert the communities in the area that they were going for a permit.

Mullen did not believe that there was a public notification requirement. In the site permitting process for domestic wastewater facility permitting, the CDPHE required public notice at the location of the proposed facility. She was not sure if that requirement held for industrial wastewater operations. She would look into that. Before a permit was issued there was public notice on CDPHE's website. When there was a spill, a single event upset where the permittee had knowingly exceeded the permit limits, they were required to notify the CDPHE within 24 hours of them understanding that there was a spill, and the CDPHE would notify downstream users depending on the nature of the contaminant. The concept of "dilution being the solution to pollution" was a basic premise of how water permitting was done. Part of that came from the fact that natural ecosystems had assimilative capacities and the abilities through the presence of aquatic organisms and bacteria to provide treatment of human waste in a natural environment. That process was capitalized on in wastewater treatment plants in a more rapid capacity. Water Quality Control was not simply looking to dilute in the natural environment but looking at the assimilative capacity of the natural environment to treat the contaminants.

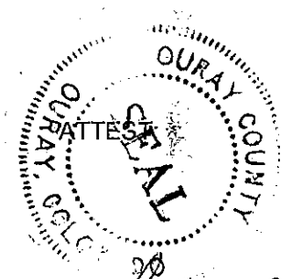
Mullen concluded by speaking to the question of redundancies in bonding and oversight saying that she did not think that it was a bad idea. It was not a bad thing for local governments to have the authority even if they did not have to use it. She encouraged them to generate that authority for the cases where it was needed.

Commissioner Padgett asked for a break to try to reach Chip Hancock with the Colorado Department of Public Health and Environment, Air Quality Division, who had been on standby while the County tried to get the telephone communications to work.

12:22 There was a brief break and the group reconvened at 12:35:

Commissioner Padgett explained that Hancock had gone to lunch. The Commissioners agreed to continue the work session to a later date and invite Hancock to attend at that point, along with County Staff who had not had an opportunity to speak at this meeting.

12:35 The work session adjourned:



Michelle Nauer, County Clerk and Recorder
by: Linda Munson-Haley, Clerk of the Board

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OURAY, COLORADO

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