

**PROCEEDINGS OF THE BOARD OF COUNTY COMMISSIONERS**

**June 11, 2009**

**2 North Commercial Street, Rico Colorado**

**PUBLIC HEARING for Outlook Resource**

A Public Hearing on the Land Use Application filed by Outlook Resources, Inc. which seeks a right to conduct exploration activities, to conduct mining activities and which involves consideration of the performance standards identified in the Dolores County Land Use Code and any other relevant issues as the Board of County Commissioners deems appropriate and related to the Applicants proposed land uses including but not limited to the granting of vested rights.

Commissioner Williams called the meeting to order.

**PLEDGE OF ALLEGIANCE**

**Roll Call**

Commissioner Secretary, Margret Daves, conducted the roll call. Present for the meeting were: Commissioner Williams, Commissioner Stowe, Commissioner Kibel, County Attorney Dennis Golbricht, Attorney Todd Starr, assistant Dave Allen, & assistant Tasha Funk.

**Guests**

There were numerous guests in attendance.

**Opening Statements**

Commissioner Williams opened the public hearing at 7:10P.M.

**Introduction**

Commissioner Williams read this statement: Outlook Resources has submitted application for a Land Development Agreement and the application was subject to review and hearing by the Dolores County Planning Commission, and forwarded to the Board of County Commissioners for action.

Commissioner Williams said we have an important decision to make. We need facts to make a good decision. He thanked everyone for coming.

Commissioner Stowe moved to accept the agenda as presented , Commissioner Kibel seconded the motion. Motion passed unanimously.

Susan Baker, Rico Town Attorney, said, "I understand the applicant Marc Levin has submitted a 24 page addendum to the application in the last couple of days. The town got word of this today, and I would ask that this not be considered as part of the application or that we be given the opportunity to comment

on that supplement, otherwise she thinks it is a violation of the public notice requirements.” She also asked how notice of this meeting had been handled, when and where, and if there were any staff reports that have been given to the board that should be shared with the public.

County Attorney Todd Starr said he saw the Fed ex boxes being passed around, he has not seen the contents of them yet, his advise to the commissioners, would be not to allow the amendment at the last minute, but to call that a supplement to the record, and to allow 7 to 10 days for the board and the town to respond to the addendum. Todd told her as far as “staff reports” she has been provided with all the letters we have received thus far. As far as the “notice” Todd said it was noticed in the Dove Creek Press, he could not recite the exact date but it is a matter of record.

Commissioner Williams said we received the Fed ex boxes as we were leaving for this meeting.

Todd Starr there is no amending the application at this point, if there is anything new that came in they will receive that as part of the public comment as well as any other letters being presented tonight, and give the boards the appropriate time to comment.

Peter Keffler, Attorney from Golden Colorado, working with Marc Levin, clarified what they were discussing. He said the addendum or amendment to the application was really not an addendum, but a series of maps, showing the roads, they want to submit as part of the public record and the reason that it was late is they were just able to compile all that information, and get it to us. He said he understands the public record is still open.

Todd Starr said it is appropriate to receive it as part of the record, but not part of the application, and to give the town the appropriate time to respond.

Commissioner Williams said, “We should have time to review it also, it came so late we just loaded it up and brought it along.”

### **Introduction**

Commissioner Williams read this statement: Outlook Resources has submitted application for a Land Development Agreement and the application was subject to review and hearing by the Dolores County Planning Commission and forwarded on to the Board of County Commissioners for action.

Commissioner Williams read from the agenda about the time allotted for speakers.

Commissioner Stowe made a motion to open the applicant’s portion of the meeting, Commissioner Kibel seconded the motion. All three Commissioners voted yes. The applicant’s portion opened at 7:20P.M.

### **Applicants Portion**

Mark Levin, Outlook Resource. Explained a little bit about his company, and then he showed a power point presentation, which details his plan for this project.

He presented to the board a printed copy of his power point presentation. It is Exhibit # 59.

Marc said not only is this public hearing required, but any other permits required, will go through the same process of hearings, notices, and appeals. If this becomes a major Moly project, Federal Permits will be required, which require environmental assessment, or an environmental impact statement, which would be many years and millions of dollars of studies and plans and permits, with extensive opportunity for public comment.

Marc said, "If we were to receive a favorable decision by the county which says we have a mining land use, that doesn't mean we can go open the mine. There are lots of steps, before we can."

Marc talked about the road access

Marc said, "This is a world class resource, whether I am here or not, whatever you people do tonight, this deposit needs to be managed right."

His time ended at 7:50P.M.

### **Questions by Board of County Commissioners and County Staff**

#### **Began questions at 7:51P.M.**

Commissioner Kibel began the questioning. She said in going over the application it mentions Molybdenum mining and sulfide mining. She asked him if he is going to mine the sulfides, (copper, zinc, & lead) and then go after the Moly. Marc told her that Moly is a mineral. He said if they find some on the way to the Moly, they would look at that. He said right now he knows of no economic base level deposits of zinc, copper or lead. He said the previous miners have taken everything they knew was economic at the time. It is possible, but not likely, to have small scale, base metal mining. ( More details in tape transcript at approximately 38 minutes).

Commissioner Kibel said the water issue is a huge concern. She asked what chemicals he will be using to mine this. Would he use, hydrochloride acid, or cyanide?

Marc said not having found the resource yet, any answer would be based on a general processed knowledge of the industry. Mark said a process called flotation would be used, he explained that process. (more details in tape transcript at approximately 40.5 minutes) He said it is a wet process, ground down to a paste or powder. Then that material goes into floatation cells, where various oils, pine oil, diesel fuel, or kerosene are used to create a froth, the sulfides come up into the froth. They get captured, and dried and bagged. He said, "It is not a cyanide process, or leaching process, there is no hydrochloric acid, none of that kind of stuff. Flotation is recognized as a very benign process."

Marc said the impacts to the water are minimal. In this area all of the deposits that are the base metals are hosted as deposits in limestone. It acts as a buffering agent, which neutralizes the acid generating potential of pyrite and calcium pyrite, the active sulfide minerals.

Marc said as far as the water issues, no water can be discharged without a state discharge permit, which means having to meet stream standards, which the state health department monitors. (more details in tape transcript at approximately 43:13 minutes.)

Attorney Todd Starr asked Marc if he would agree, as part of a land development agreement, to disclose any and all chemical that he would use. Marc Levin said absolutely, DMRS would require it.

Commissioner Kibel had one more question. She said fluid drilling is marked on his application, as his type of drilling. She asked him if that is what he just explained. Marc said yes, the fluid would be generally water, with possibly something like bentonite, or little additives that are used under certain circumstances. He said the fluid used is basically water.

Commissioner Stowe said given the stages he has listed, exploratory, design, permitting, finance and then the development stage. He said in the initial exploratory stage, would that also include the prospecting, and how long that stage might take. Marc said prospecting and exploring are the same

thing. He said he doesn't have any idea how long that will take, because there are two questions on the table. One when will the money be provided for that. He said he doesn't know. Each hole could cost up to a million dollars, and could require up to 100 holes. He said, "That is a lot of money, and nowhere on the horizon, so I don't know when it would start. Secondly when does the bank think there is enough holes, to consider it frugal." Marc explained that the drilling is adapted, they either expand or contract according to the geologists. So any answer he can give is speculative. Marc said given the current market conditions, 3-5 years before they could get the finances, the moly price would have to recover, & it could take 5 to 10 years for the drilling.

Commissioner Stowe asked if the prospecting doesn't pay out will that be the end of the operation. Marc said essentially yes. But sometimes it could be a "put on the shelf" type deal until the market would come back, or some other mine plays out and this one is needed.

Commissioner Stowe said, "One of the biggest concerns of the people in Rico, is the access. When would the access be an issue." Marc said there are two levels of concern about the access. He said during the exploration phase, traffic is minimal. (more details in tape transcript at 49:30 minutes) He said for full scale molybdenum mining he doesn't see any major access going up Silver Creek. He said, "What I am willing to do, if we were to receive a land development agreement, at least for the road that is of great concern, I am more than willing to put time of day limitations, heavy truck traffic limitations, & number of trucks per day, imposing speed limits, I have no problem with that." He said he is very open to alternate routes, but there are some complexities.

Commissioner Stowe asked if he would have any problem, agreed upon by the Town of Rico and BOCC, to find an alternative route. Marc said no objection whatsoever. He said he would recommend a site visit to proposed alternative routes.

Commissioner Stowe asked about EMS services, how does Marc plan to address those?

Marc said he doesn't expect anything unusual, unless they are underground. Mine safety and health requires that you have a mine rescue team within 2 hours response time. He would contract with San Juan Mine Rescue Team, when that time comes. (more details on tape transcript at approximately 54 minutes.)

Commissioner Williams said, "In listening to this presentation, it looks like the prospecting requires very few permits, and why would you not do the prospecting, find out what's down there, before you even come to us with such a long range, we know the prospecting is 5 years out, we build the mine, another 10- 15 years out, we know the laws are going to change between now and then, and why would you not come to us when you know what's down there & then permit.

Marc said he is not asking for a full mine plan approval, I'm asking for a recognition that this property has a use by right for mining, and the reason is, he knows that nobody is going to put up the money for prospecting. He said he was told to contact Vernon Lurette, with the Planning Commission, he told Marc

any type of drilling would require a land development agreement, and they wanted to know what each phase would look like , if there is a fundamental mining land use. He said he is doing what the Planning Commission asked him to do. All he is asking Dolores County to do is, to designate this as mining property subject to further development reviews and amendments if anything else comes to pass. Marc said no one would put up any money for any drilling, if there is a question about the fundamental language. (more details that in tape transcript at 56.5 minutes)

Attorney Todd Starr said if Marc is granted permission to explore, which includes some sort of vested rights for mining, subject to the mining process going through a transparent public process years down the road when he begins that. Todd he said he would worry that in ten years, when they would be ready to start the mining process, Marc would argue that he got the right to mine, back in 2009, so he would be subject to the land use codes and statutes done in 2009, hypothetically it is 2019, we have better practices & codes, and Marc would not be subject to those practices. Todd said his question is, would that be something he would be amendable to as part of his land development agreement, understanding that he has a right to mine, & contracting that his application for the mining process itself would be governed on the laws and the regulations and the best known technology based on that date. Attorney Dennis Golbricht added that not just improved mining standards, but Dolores County in the near future, might have much stricter performance standards for mining. He asked Marc if he would be willing to contract to have those stricter standards apply to his practice if they come about in the future. Todd Starr said, "Understand we are not drafting those for him."

Marc said it is his understanding that if they had an operation, and had applied for a mining permit from DMRS, DMRS standards could change within a year or two. He said the state right now has primacy over all of the technical elements of the mining applications. Marc said "I think what would be reasonable is, we would stipulate that we would meet all applicable DMRS standards." He asked Todd what he had in mind. Todd Starr said, "Hypothetically we are talking ten years out, the DMRS Standards could change in 2010, 2014 & in 2019, those are the DMRS standards that are relevant, that is when the application for the actual mining process, you have a right to mine, but the process of mining would be under the Dolores County Land Use Code standards as written in 2019, as applicable." Todd asked Attorney Peter Keppler if, he were agreeable to that, and he said yes, Marc said, "Yes that is agreeable."

County Attorney Susan Baker said she would like to make an objection. She said, "This is a legal discussion about what a development agreement would look like, she said this is a public meeting and there are numerous people here who would like to make a comment, I feel this is a legal discussion and I feel that these issues could be dealt with at a later date." She said she would like to make note that the applicant has been on for an hour and fifteen minutes, and she thinks it's time to hear the public.

Attorney Dennis Golbricht said, "This isn't a legal discussion, this is more of a discussion as to what the applicant might be willing to agree to in some type of development agreement. These are all issues that are very pertinent to the situation, and I think the public should want to hear these things. The board is just beginning their questions, and I want them to make sure they have all their questions answered

before we turn it over, & we all knew this was going to be a long meeting.”

Marc said we have all seen the current performance standards are not adapted to mining. He said maybe Dolores County should have mining and zoning, & mine development standards. He said that is a public process and he welcomes that process.

Commissioner Williams said as you are doing your prospecting underground, would this be a shaft development. Marc said any prospecting would be core drilling. (More details at tape transcript, 1 hour 4 minutes.)

Commissioner Williams also asked said this project is very deep in the ground. The application has stated the incline might not be in Dolores County. He asked Marc where the incline would be. Marc said, “I do not know.” It would be an engineering decision. (More details at tape transcript 1 hour and 7 minutes.) Commissioner Williams said is there still the possibility of the incline portal being in Dolores County, & the transportation of the ore out at the point. Marc said that is a possibility, but he could not pre guess other engineers who are smarter than him. Marc also said it is also true that not necessarily any of the ore would be transported by truck. Commissioner Williams said would it be transported in a water slurry? Marc said one engineer suggested that as a possibility, but that would require a feasibility study. Marc said underground development can create a lot of non tributary water. Their thought was to have a slurry pipeline down the river corridor, possibly along an existing rail grade, where it can be serviced, with hundreds of million dollars of for the project. Marc explained the process in more detail. (tape transcript 1 hour 8 minutes.)

Commissioner Williams said with the amount of engineers on this project, it would be a very good idea to have some probable sites of possible portals. He said he is concerned that wherever it may come out there will be impacts for those citizens. It would be nice to know where a planned portal exit might be, for other citizens also even if they don’t live in Dolores County. Marc said he hasn’t done any research as to who owns those properties, & explained a little about that. He said the problem is, to commit to that, when we don’t even have the exploration project funded, whoever may come in may have a completely different idea. He said he would love to be able to give that to us but he can’t, & if he could have given that to us he would have.

Commissioner Kibel asked him where he plans to mill the molly? He said he doesn’t know. That would be determined by a feasibility study after a proven deposit. She asked him to give her an example of a possible pattern and, what kind of buildings are involved. Marc explained a slurry pipeline process with parallel water reclaim lines, he also said a hypothetical alternative to the slurry pipelines, could be a 500 to 1000 acre dry stack tailings facility. That would require some pretty good sized buildings (More details tape transcript 1 hour 11 minutes.)

Commissioner Williams apologized for this taking so long. Recessed for 5 to 10 minutes at 8:27P.M.

### Comments from the audience

**Jerrel Matthews, lives on 131 VanWinkle Avenue, Rico, CO.** She was concerned with the access to the mines. She explained that there were several sharp turns up to the mine, which people often get stuck on. Also, during the winter, there are large berms of snow, which make it hard to see the other traffic.

**Val Truelson, 206 Central Rd. Dolores,** is a Property owner in Dolores and Rico and owns mining claims. He submitted a paper from the Town of Dolores, which is already a part of the public record Exhibit # 32, & read the 2<sup>nd</sup> paragraph. He also submitted a letter on his own entered into public record as Exhibit 61, & 54. He felt that there were five major assets to Rico. Two current assets are the water quality of the Dolores River and the Scenic view of the Dolores River Valley. The undeveloped assets were the molybdenum deposits, as well as, he believed, lead, copper, and silver deposits. Also, he said there is a huge geothermal asset, and asked the commissioners to only allow exploration at this time. He asked that the geothermal assets be protected during exploration. He would like us to address mining as a vested right.

**Barbra Betts, 456 Silverglance Way, Rico CO,** Mayor of Rico speaking was a private citizen. She said she stands in opposition to this application. She is asking the commissioners to oppose this application in part or in whole. She said there are over 50 children in this community, & 200 year round residents. She said, "Some people think mining is our future, children are our future." She said she is asking the Commissioners to consider the lives of the citizens in Rico. She said "We are a small community but we are mighty of heart". She said the open-ended application was jeopardizing the safety of their children, their water, and their air.

**Lori Adams, 441 Silverglance Way, Rico, CO** thanked the Commissioners, & said we wanted facts. She said she has followed this since last summer. She feels there are many holes in this proposal. She said there are a lot of questions that are unanswered, such as where does the outtake go? She said for the Town of Rico they don't feel like there are any benefits for Rico. She said they felt that they only got the undesirable benefits.

**Gary Reid, 101 Hinkley Drive, Rico, CO** said he learned about this in November. He and his wife has put together a petition. The residents of Rico are very united on the use of the street. He is also concerned about the water use of the mine. He said they used to say "Rico is a mining town." Now that is a thing of the past, and Rico is a residential area. Gary said they are still having problems from the way things were done in the past. He said that we should learn from them and not make the same mistakes. Rico is still experiencing problems from past mining projects .He told the Commissioners, with this application they have an opportunity to stop this type of damage, and the responsibility to do so. Gary said the people who signed the petition want it split into two separate applications. They want it to be split into an exploration application and a mining application. He asked the commissioners to deny the application and start the process over.

**Benn Vernadakis, 2 Hinkley Drive, Rico, CO,** spoke on behalf of the Rico Fire department. He said there concerns are about public safety on the mountain roads, he said they don't have the equipment or

training to benefit supporting this application. They sent a letter to the Commissioners which is Exhibit #44. He said that the application should address the safety issues and the mining organization should provide what they need for safety measures.

**Ken Hazen, 115 Hinkley Drive, Rico, CO.** He said he is against heavy traffic on Hinkley road and wants Outlook Resources to find a different access to the mine. He also said there is discharge coming out of the old mine.

**Karyn Reid, 101 Hinkley Drive, Rico, CO** said she is opposed to commercial trucks on residential streets. She also feels this interfering with the scenic beauty of Rico. She said Jen Stark sent a letter which addresses many issues that the application did not address. She read a letter she had prepared & presented to the board at this meeting, Exhibit # 62. She asked that the applicant follow all rules, and not bypass Rico, as he did previously.

**Clair Wilcox, 219 Mill Road, Rico, CO** said a general mining law passed in 1872, which states that one can mine the National Forest. She said the mine is located right next to Forest Service land. She wants to protect our National Forest

**Steve Williams, 35 North River Street Rico, CO** said he is part time resident. His big concern is the watershed for Rico, and Dolores River tributaries. He asked the Commissioners to watch the applicant and the permits closely.

**Craig Spillman, 313 North Piedmont Ave, Rico, CO** handed out a letter – Exhibit # 63. Mining is strictly regulated, exploration is not. He wanted to address exploration, and the issues, such as water use, that occur during that process. He was also concerned about road use. He talked about “use by right.” 30 years ago that was a mine. However, Rico has been redeveloping itself as a community. That is a use by right. He said that he worked in the mining industry for 20 years. He said that he saw how mining affected communities. He said that when the mine was running, there were many people with jobs, but when the mine shut down, many people went bankrupt. He also said that he was concerned about the housing situation if the mine brought in a large amount of people to Rico.

**Mike Leisam, 32 River Street, Rico, CO** said his main concern is with federal clean air act and federal water act. He asked if Dolores County ready to step up and enforce those regulations.

**Todd Jones 213 S. Commercial Street, Rico, 40** year resident, said he worked in the mine when they first found the molly. He said he is not for or against the mining. However, he is the Fire Chief of Rico, said they don’t have enough people to help with situations now, much less if a mine begins. He asked “Is everyone as a group going to step up and help take care of what they need?” He said his biggest concern is EMS.

**Cindy Putnam , 443 Silverglance Way, Rico, CO** was opposed to the application as it stands. She encouraged the commissioners to read Jen Starks letter. She is speaking on behalf of the wildlife in the

area and was concerned with the effect the mining would have on the animals.

**Nora Belasco Lesem, 32 River Street, Rico, CO** is a summer resident. She and her husband sent in letters (Exhibit 5). She said that when mining comes and goes, the ending impact on the community is not worth the benefits that come in during the process.

**Gary Reid** asked the commissioners if they had told Mark Levin not to talk to the Town of Rico about the application. He said that Mark told them at the February 11 Planning Commission meeting that he was advised by the county not to tell Rico about the application. Commissioner Williams said that since he had become a county commissioner, they had worked closely with Rico and that he had never told anyone not to tell Rico something. Todd Starr said that he had been county attorney for over a decade, and he had never been asked by the commissioners to keep something from Rico. Gary said that his relationship with the commissioners had been good, and that he didn't doubt what he was told by Commissioner Williams or Todd.

**Patrick Berry, 101 Webster Way, Rico, CO** presented the coalition representing the protection of Hinkley road. He lives close to the Hinkley Road and said that most of the people who live on the road has signed on with the coalition. Read a letter which has already been submitted Exhibit 23. He presented some alternate routes. These were the repository route behind the old acid plant and the deadwood route, which goes up deadwood canyon. He said that they would stand behind any citizens that disagreed with the use of those routes. He said that everyone had a right to economic gain through mining, but he also had the right to economic gain through his real estate. He is against this mining project on all levels.

**Margaret Matzick, 204 South Picker Street, Rico,** is a summertime resident. She is a landowner and explained how the past mining in Rico affected the water and the residents badly. She also said that she had given up land because of mining and had helped clear up the Dolores River so that it could be inhabited. Patented mining claims are national resources. In Dolores County in 2007, the assessment for national resources went up 149%. All of the citizens of Rico pay a part of these taxes and those facts need to be looked at as well.

**Jim Baron 104 North Silver Lane, Rico,** thanked the commissioners for coming. The citizens of Rico were all surprised and pleased with the way the commissioners handled the situation, and the questions that they asked. He agreed with Ken Hazen and said that there was discharge from the mine. He was concerned about the water from the mine mixing with drinking water. He also said particulate emissions are an important issue. He was concerned that an increasing population and road travel would increase wood burning stoves and particulate emissions. Rico needs to band together, as citizens, to protect their future.

He thanked the council of Rico for all of their work. Jim commended the commissioners on being open-minded. He said taxation without representation is called tyranny, and he asked the

commissioners, "Please do not kill the goose that lays the golden egg."

**Virginia Lewis, 417 Silverglance, Rico, CO** preferred no mining, but if it has to be done, she wanted it done in the best possible way. She read a letter she wrote, and presented a document "Predicting Water Quality Problems with Hard Rock mines" Exhibit # 64. There are several unknowns about the mining. There should be detailed plans. She said mining affects the Dolores River valley greatly. She said they love Rico without mining.

**Kalin Grigg, 116 North Short Street, Rico** read a letter he already submitted, exhibit 50.

**Skip Zeller, 114 North Dolores River Trail, Rico** asked the commissioners to represent their constituents and vote intelligently.

**Tracy Taylor 207 Mill Road, Rico, CO** recommended denial to the application as it stands. He wanted to make the county aware that there could be a very low beneficial impact to Dolores County's economy. They might end up with only the consequences of the mine.

**Patsy Ingal, 132 North Silver Street, Rico, CO** has a mining claim. She presented, as a point of fact, as a mining claim owner her taxes were not very high, and not a good source of revenue for the county. She has confidence that the commissioners will use their power to protect the citizens of Rico. In the past, the Mill road was used to get to the mine. The use of the mill road has changed, however. The mining act of 1872, gives a person the right to use that road. When the mining stopped in the 1970s, there were five houses on Hinkley Road. These houses were built by the mining company. Since then, there have been three new house built on Hinkley and the old houses were renovated. When the mill stopped operating in the 70s, there were no houses on Mill Road. Now there are many houses on that road. She felt it is imperative that Outlook use another access that doesn't run through town. Rico has not been a mining town for decades. She asked for the application to be denied and also for a contingent upon the applicant to find an alternate route.

**Steve Garchar, 10059 Hwy 491 Dove Creek, CO.** His family bought land in Dolores County in 1917. He has seen farming boom and bust, mining boom and bust. He has seen county officials and town officials work together for the better of all citizens when one of these events occurred. He encourages the commissioner to approve this application. He felt the mine was an opportunity not to be missed.

**Keith Lindauer, 116 North Hancock Street, Rico,** read a letter submitted as Exhibit #65.

**Laird Davis, 108 South Commercial Street, Rico, CO** asked if the commissioners have asked for a financial statement. They said no. He said Marc has stated there is no money. He was curious as to how Marc was going to get the money to do his research.

**Mike Guskey, 416 Silverglance Way, Rico, CO,** said he was opposed to the application as it stands. He said there were too many open ended questions. He felt that if everyone was educated the how to go

about the mining process properly. He is concerned about the impact on roads, wildlife, and air quality. He said the application is vague. He felt that mining and Exploration should be done separately.

**Christy Roberts 107 North Garfield Street, Rico** asked the commissioners to deny the application, basically for the toxicity that mining produces. She also wondered who would be affected on the other side of the hill. She felt other communities will get involved.

**Greg Anderson, 39 North Hancock, Rico, CO** felt that words like 'use by right', were very strong words, and can be used in the future for a long amount of time. He felt that not enough information was given yet. He wondered whether the mine would bond or redo the road when they are done. He asked that all future building go through the county process and not just a staff approval. He also asked that all other county hearings about this issue be held in Rico. He agreed that exploration and mining should be separate applications. In guise of being good neighbors, he asked that the applicant give notice to all landowners in Rico, before a meeting. He wanted to know if the commissioners can guarantee that the recreational purposes of the mountain would be protected, especially the trails and roads.

**Scott Chloe, 19838 Hwy 145, 6 miles on the Rico side of Dolores** read a letter submitted as exhibit 13.

**Jennie Nunley**, Commissioner Williams said she had to leave, & asked if someone would please ask her to submit a letter.

**Commissioner Stowe moved to close the public comment period, Commissioner Kibel seconded. All three Commissioners voted yes. Closed the Public Comment Period at 10:15P.M.**

**Questions by Commissioners:** Commissioner Kibel asked about the mill again. Marc said there is a real shortage of mills in Colorado. The mill that is up Silver Creek is only suitable for a small mining project. (Tape transcript at 2:47) There is a possibility that another company may use the mill. She asked if the County could use it. Marc said another mine owner. Commissioner Kibel said within this county or from another county. Marc said there is an economic hauling distance. Given the size of that facility it cannot handle a large quantity anyway. Marc said this is not a major part of the application anyway.

Commissioner Kibel said when you go through the mining process there is always leftover substrate. She asked what is the plan is for the leftover substrate. Marc said that would be something the State would regulate. He explained (tape transcript 2:51-2:53) Marc said his recommendation would be to use underground paste backfill.

Commissioner Stowe said on the waterline in Rico that runs down Silver Creek, you state in the application that you don't anticipate the site operation would affect that line. If it does, how would you deal with that? Marc said it depends on the effect we are talking about. We know where the line runs, because they are very well mapped, and if it weren't well mapped the only thing that could happen, if you were doing some roadwork, & line were cut. It is underground and there is no surface mining proposed. (More details at tape transcript at 2:54) He said they would work out details with the Town if

they were to do any excavating.

Commissioner Williams said he sits on CDOT they do a 2035 plan, he said they ask us to look ahead, he asked Marc if he has contacted CDOT to see what their 2035 plan is and what the estimates are for then, and will your plan work with CDOT's plan for the highway. Marc said one of his engineers had talked to CDOT, with regard to access permits, but not about the 2035 plan. Marc said they have some time and will look into that. Commissioner Williams said as elected officials CDOT asks us to look ahead.

Todd Starr, said in the exploration phase only, describe the traffic, type of trucks, number of trips per day, daytime, nighttime, that he would expect in a worst case scenario. Marc explained the drill rig process. (tape transcript at 3:00) He said 6 or 7 light trucks, possibly some water trucks, 2 or 3 concrete trucks, for surface drilling. Marc said for underground drilling, a crew of miners, Todd Starr said, "You might do underground even during the exploration?" Marc said, "Yes, Anaconda did all their mining from underground, for several reasons. Gary Gus from the audience said Marc was right about what they did, and they also did some surface drilling. (Tape transcript at approximately 3:06)

Attorney Todd Starr asked for exploration, how many holes is he going to do? Todd asked if there is a minimum number of holes that he has to have to make this work. Marc said one company estimated there could be over 100 holes or more on 5 surface pads or less. (Tape transcript 3:07) Todd asked what the surface area of a pad is? Marc said probably a 50' by 50', & those pads already exist. Todd said for an approval to mean anything, you have to have 5 pads, & how many underground exploration sites do you need and what does that involve? Marc explained. (Tape transcript 3:08:22)

Commissioner Williams said we are saying there could be 100 holes up there, & can do Directional Drilling, you say the pads already exist. Right now there are no new trails planned to any existing pad. Marc said right now they say they can do it from the existing roads, and pads. There are no new pads expected, and it is to his advantage to use the existing roads. (Tape transcript at 3:10)

Commissioner Williams said he understands Directional Drilling, we are doing Direction Drilling in Dolores County. He said to do the core drilling, what is the limit of how far you can go from one bore hole? Marc said, he was told 10. (Tape transcript at 3:11) Commissioner Williams asked it the Directional Rig is larger than a core rig? Marc said, "No, it goes down the same hole." Marc explained. Commissioner Williams had more comments on Directional Drilling. (tape transcript 3:13) Commissioner Williams also said as it stands you can drill 100 bore holes from the land that is already cleared and accessible. Marc said, "I believe so, using underground as well as surface."

Todd Starr said, "Mr. Levin is it fair to say as we sit here tonight, you know there is a resource within our County, that you want to be a part of developing, but in exploring the scope of that resource, you are not sure tonight of how many, what the form of that exploration will be, in detail, in terms of where the holes will be, how many holes there will be, where the pads will be, how many pads there will be. Yes there will be holes, but you don't know how many or where they will be, yes there will be pads, but you

don't know how many or where they will be. You can't give this board the details of what the exploration will be." Marc said, "That is correct because it is exploration." Marc said we could say we know where couple pads can go now, and we know where the holes would go. Hypothetically it depends on what is found by the geologists.

Todd asked where the first hole will be, Marc said as we have it permitted right now, for two pad locations, the first one will be right in front of the mill site, and the other one would be on a waste pile across the creek. Todd asked, as permitted how many holes are going in. Marc said permitted for two pad sites, up to ten holes each pad with the possibility of two trunks each pad.

Commissioner Kibel asked earlier about fluid drilling, she said she assumed the main fluid would be water, Marc said yes the main fluid is water, and on occasion they may add grout, or bentonite, & sometimes polymers to stabilize the size of the holes. (Tape transcript 3:17) Commissioner Kibel asked how much water would be used. Marc said 2500 gallons per day per drill rig. Commissioner Kibel said in the application it stated he would use the main Rico line Marc said no, Rico has an existing water line. She asked him where he will get the water. He said he would go after the existing Blain water, or see if they can get other water rights.

Commissioner Kibel asked if he has done any baseline studies as to the water quality of Silver Creek. Marc said no, a lot of other people have and there is a lot of data. She asked him if there would be a way to check that periodically. Marc said yes, & explained. (Tape transcript at 3:19)

Commissioner Stowe asked if the drilling pit would be a line pit. Marc said yes, best practice is a line pit. He explained (Tape transcript at 3:20)

Commissioner Stowe also asked what happens if he hits a geothermal zone. Marc said the area that has already been drilled only hit 140 degrees, He said he doesn't think the geothermal zone is up there. (Tape transcript 3:21:30)

Commissioner Williams closed the Commissioner portion at 10:50P.M.

### **Comments by the Town of Rico**

**Mike England, Rico Town Manager**, read a letter, submitted as exhibit # 59, another issue he discussed was the road issue, and access, he showed a town boundary plat map. He submitted the letter, Exhibit #60, & maps, Exhibit # 53-58.

**Susan Baker, Rico County Attorney**, had some letters she wanted to make sure were on the record. letter from Dolores Water Conservancy, dated 6-01-09, Exhibit 32. A letter from her, dated 1-29-09, & one dated 11-22-08, which are Exhibit #15, & 16, a memo from her to the Planning Commission dated 11-12-08, Exhibit # 52. A letter from the Division of Wildlife, dated 3-23-09, Exhibit # 4, a letter from Jen Stark, dated 10-07-08, Exhibit #51. She referred to her letter of Jan 29, Exhibit # 15.

She said this is clearly a procedural issue. This application is too big & too incomplete for this board to consider tonight. She said the boards questions have been excellent, & have demonstrated the inadequacy of this application. She said, "Under the Dolores County Land Use Code, this is a new development, or a change in use. The applicant has stated various times that he is just looking for a validation of an historic mining use. What does that mean? Under your Land Use Code, because you don't have zoning, we have to go back and look at whether something has already been approved and in existence, which this isn't. It has been abandon for three decades, there hasn't been mining up there since the 1970's. In fact it has been subject to a voluntary cleanup, it has been remediated to address old mining issues." She said this is a new development, or change in land use. She said in the Land Use code, Section 1-B it defines what a new development involves, and it states that a Land Use Development Agreement is required by the BOCC. She said she doesn't see a Land Use Development agreement with this application, and said she doesn't see how one could even be written. This is too big. Under the Land Use Code certain Performance Standards are listed, they have been addressed by members of the public and the board. We are talking water, streets, noise, and on and on. None of those issues have been concretely addressed by the applicant. She said she hears vague answers from the applicant.

Susan read some quotes she wrote down by Marc. #1- This process is pure speculation, #2- After prospecting, he may put this on the shelf, & it may be in limbo for a while. #3- As far as financing a large scale mining operation, Susan said he said once he doesn't know if this will be a large scale or a small scale operation, she said, which is it, there is a big difference. #4- He is too small of a company. Susan said right there he is saying I can't pull this off. She said he also goes on to say, regarding the mill, to give you a definite answer would be stretching credibility.

Susan said, "What is this application, but a vague guess as to what is going to happen. How does the County even begin to give an approval & comply with its own Land Use Code. She said as the attorney's know, if you don't apply your own Land Use Codes, or your own standards you are subject to a "Rule 106 Action." She said that's an action under the Colorado Rules of Civil procedure, where a board gets sued, because it approves, in a quasi judicial hearing , an application such as this, & in doing so, abuses its discretion, by not following your own rules, your own land use, you are abusing your discretion." She said, "I am not threatening you with litigation, I am just saying this process cannot go forward."

Susan said, "A key component is that this application requires numerous state and federal approvals. Article 2 of your land use code says until these approvals are received by the applicant, you can't give yours. As you can see it is not possible until the DMRS defines what his notice of intent looks like. He says he has applied for it, but we don't even know what it looks like. How can you even begin to approve exploratory drilling? You do have local zoning authority, & that local authority allows you to govern where a milling operation would occur, what a building envelope looks like, where those pads might be located. Sure, a lot of your authority is per emptied by state and federal regulations, but you have your local zoning authority & I am urging you to exercise it, & in order to do it you need a complete application, & so tonight I think this application needs to be denied, & ask the applicant to come back with more specifics once he has complied with your own Land Use regulations and acquired his own state and federal permits. Thank You."

**Jen Stark Rico Town Planner**, She thanked the board for coming to Rico tonight, and everybody else for staying so late. She read a letter, presented as Exhibit #67

Susan Baker said she would like to ask who the applicant is representing in this application. She also said she had a Rico citizen approach her, he had to leave, and said he owns panted mining claims up there

where they are removing trees & apparently those trees are included in this application but he is not being represented by Mr. Levin. She said for the record she would like to know who Mr. Levin is representing because it is her understanding that he doesn't own the property that is part of this application. She said that could be heard later during the rebuttal.

Closed this portion of the hearing at 11:17P.M.

### **Applicant Rebuttal**

**11:32P.M.**

Marc said he didn't if he would be able to do a good job, taking on every point, so he would like to ask the board a procedural question. "Is it your intention to hold the record open for additional comments after tonight? Or for me to supplement & address some of these points after tonight, or do you need essentially an answer to everything that was raised right now?"

County Attorney, Dennis Golbrict said the agenda noticed the record being closed for comment at noon today. Marc said he would like to have the maps submitted that he brought today. Dennis said as public comment, but not part of the application. Much discussion was held on this issue. (tape transcript at 3:49:30-3:51)

Commissioner Williams said, "This is a comment from the board, after being here & looking at all of the information we have received tonight, we have not had a chance to look at the maps, I don't see how we could possibly make a decision tonight, without seeing every piece of the documents. He said he has a lot of questions, & would like to go into executive session to discuss those with our lawyer. I think we should hear Marc's rebuttal, & I think the Town of Rico should have a chance to look at the maps submitted. I would like to have a chance to look at all the maps & be able to ponder over all of this information. I think it would be very hard to make a decision right now. I have a couple of state and federal officials that I would like to call & ask them some questions." Todd Starr told Commissioner Williams, "No, if it doesn't come in at the hearing, you are not to go search evidence on your own. You are limited to what you hear or receive tonight."

Dennis Golbricht said the board has been accepting letters and documents here today as public comment, I think it would be unfair to Marc not to allow him to submit anything else he has for review. Marc said so today would be the cutoff? Todd Starr said we are going to have to come up with a reasonable time. Susan Baker said, "For the record, the applicant's information is not public comment. This hearing is for public comment, his application is his application, it should have been complete when it was submitted. Todd Starr asked her how long she needs, five days, she said she wants to take that under advisement, she thinks he is supplementing his application at this hearing & he is not about to do that, & that's all I have to say."

There was much discussion on this issue between the attorney's and the commissioners. (Tape transcript at 3:54-3:59)

Todd Starr told the Commissioners, "It is important for the citizens here, because they elected you and want to be able to call & talk to you. You cannot, you may not, speak to Marc, Marc's people, You may not talk to anyone from the town of Rico, & you may not respond to any telephone calls from any of these citizens, until this decision is made. No deliberations, no emails amongst yourselves, you're on your own." Dennis told them they could talk about it today, but after we leave here tonight, no discussions until a date certain.

Mike England, with the Town of Rico, was recording the meeting also, his tapes ran out & he is done

recording 11:44P.M.

Commissioner Williams said we will take information until the 18<sup>th</sup>, at our next meeting on the 15<sup>th</sup> we will pick a date within thirty days to come back to Rico to continue this hearing. He said a lot of people would like to hear the deliberations, and he said he feels like they should have that chance. Marc wanted clarification as to what could be submitted. Todd Starr explained.( Tape transcript at4:04) Susan Baker had comments, and Commissioner Kibel started with a comment when County Attorney, County Attorney, Dennis Golbricht suggested they call an Executive Session.

Commissioner Williams moved to go into executive session, Commissioner Kibel seconded the motion, all three Commissioners voted yes. The commissioners will be receiving legal advise from the County Attorneys, no transcript will be taken, Pursuant to CRS-24-6-402-4B. The executive session began at 11:47P.M. and ended at 12:04A.M.

Dennis Golbricht said, "A clarification on procedure, the applicant will be allowed time now to his rebuttal, as to any additional materials he submitted, he will be allowed right now, to explain what is in them and why its relevant, and what the board needs to consider from that, & there will be no more supplement."

Marc said tonight there will be no more written submittals. He said you have been receiving written materials all night. Todd Starr said yes, but the hearing will be closed tonight, there will be no more submittals after tonight.

Dennis Golbricht said as a point what we have been receiving tonight, is from people as they are orally presented. He told Marc if he would like to present orally what he brought here tonight, it would be allowed.

Marc said what he is submitting is a continuation of the material he presented March 6 to the county and to Rico concerning a Good Neighbor Agreement,(tape transcript at 4:08) He also said he would like to put into record a number of maps, he referenced the maps. Presented as exhibit #'s- 48-A,-48-AAA. Marc said he would like to see the board make a strong case, in order to have the flexibility to look at alternate routes, which he thinks is a good idea, at least seasonal alternate routes, the county needs to take a strong stand to say and confirm that all these old roads are in fact 2477 roads. (tape transcript 4:10) He said they have done thousands of dollars of research on the roads in Dolores County. Marc explained more of the maps and said there is also a CD that goes with the maps. Exhibit # 48-BBB. Marc said they have extensively documented the bypass route,(tape transcript 4:13) Marc said he would like to do a walk-through of the alternate roads proposed, as a public meeting.

Susan Baker said she would urge the board to deliberate tonight.

Dennis Golbricht told her not to interrupt, and to give the applicant his time.

Marc said he looked at all of the letters he has received, and took the time to respond to those in a very open way. He said he took those to heart, and he said, "I really want to do this right." He said he wrote up a response to that, and it supplements his power point presentation.

Marc said, "We have a fundamental land use, basically what I am asking for is to recognize that mining is a historic use. It is a use by right. I think all the technical details can be worked out through the framework of a Land Development Agreement, at a later date."

NOTE:

At this point the main tape recorder ran out of time. Another one was used, that transcript has had technical problems and has been unusable. We have had two computer technicians, Russell Tope and Jim Mackey, look at the tape recorder, but both determined the tape is un-retrievable. Time was approximately 12:17A.M.

I refer to the tape transcript a lot in typing the official minutes. I will leave them as written the night of the meeting. They are very incomplete for approximately 15 minutes worth of inaccessible tape transcript. Margret Daves, Commissioner Secretary.

Dennis Golbricht said this proceeding has had two tape recorders going on the whole time, the Town of Rico's recorder ran out of tapes, but the smaller one has been running the whole time. Todd Starr pointed out that the smaller one is the official tape recorder.

Marc said he is amendable to,( New tape recorder)

Marc said Vernon Lerette told him that we the county would make notification to the town of Rico, Water line construction, referring to the 1951 waterline.

Staff Report, 90 percent of this property would remain open space.

There would be a way to come in and amend

What is the use of those patented mining claims, if not this. What other appropriate land use are they for.

This could be a wonderful thing , if it is done right and he said he wants to do it right.

Tape

Susan Baker asked about ownership, Marc said the owners of record have signed the application and those are in the application.

Commissioner Stowe said. tape

Marc said

Mines are a depletable resource, if it plays out like it portrays there could be 60 years.

Vesting,

Susan asked about clarification of Vesting rights, and if the attorneys have the legal ramifications.

NOTE:

At this point, Attorney Dennis Golbricht turned on the spare cassette tape recorder. It is very hard to hear, and has approximately 21 minutes recorded on it. (MD)-Approximate time 12:31A.M.

Commissioner Williams asked Marc if he were offered a large amount of money for all the work he has done on this issue, what would he do. Marc said the Land development agreement would have to be written in such a way as to protective provisions regardless of who the developer is.

Commissioner Stowe asked Marc if he would be willing to work together with all of the parties involved, to get a LDA together. Marc said yes & explained in more detail.

Todd said it would be premature to discuss the possibilities of a land development agreement.

Marc said is it possible to essentially develop a draft?

Todd said, the Counties land use code states the LDA's are supposed to be done after the board has

approved a project.

Commissioner Stowe moved to close the applicant portion of the hearing. 12:37A.M.

Dennis Golbricht, said the commissioners are free to deliberate among themselves. No public comment is allowed at this time.

Commissioner Kibel said she would strongly deny this application, because of the patented mining claims, & future management plan proposals. She doesn't like the 30 year plan. "I deny the application based on those facts."

She said she would strongly suggest we all work together for a future management plan.

Commissioner Stowe said for the record he is not anti- oil development, mining or anything like that, he said we need those things. He said he does not feel this application is complete as he sees it. Some of the issues he would like to see addressed in more detail, are residential road access with the ability of alternate routes & water taps issues, among others. He said he agrees with some of Commissioner Kibel's comments. He would be in favor of not approving this application as submitted, but resubmitted in a more complete form.

Commissioner Williams said he has done a lot of research on this issue, in our county mining is still assessed as patented mining claims, which means in the State of Colorado, as you pay taxes on those claims, you have vested rights for mineral extraction. The vested rights issue was done in a court of law. Commissioner Williams said his personal opinion is that the application as it is written, is too open-ended. He said he does not like the 30 years. He said the county needs development but the development needs to support itself. He said the county would support the 2477 rule, on roads to look for alternate routes. He said he is a firm believer that any type of development should be paid for by the developer, not the town. But towns will always be impacted.

Commissioner Williams said this document was sent to us as a complete application, it was sent with no recommendations. He said he has a hard time with no recommendation. He said he would like to see it resubmitted with a very detailed explanation, not open-ended. He said he would like to see him come to the county to discuss some of these issues before hand. Todd Starr said to clarify, Commissioner Williams was quoting, as an individual commissioner, the term vested rights.

Commissioner Kibel moved to take a vote on this application as written, to approve or deny the application as written. There was some confusion as to the wording of the motion. Attorney Dennis Golbricht clarified. He said the motion was to vote on the application. All three commissioners voted yes on that motion.

Commissioner Williams said the motion on the table now, is either to accept the application as written, or deny the application as written. Dennis said, to approve or deny the application as submitted.

Dennis Golbricht took the vote:

Commissioner Kibel, "I vote to deny the application as written." Commissioner Stowe, "I deny the application as written." Commissioner Williams: "Before I give my vote I want to thank Mark for all the work he has done on this application, I vote no as written."

Commissioner Williams moved to adjourn the meeting, Commissioner Stowe seconded the motion. All three commissioners voted yes.

The meeting was adjourned at 12:52A.M.



Chairman of the board  
Ernie Williams

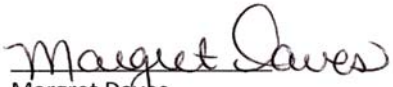


Commissioner  
Julie Kibel



Commissioner  
Doug Stowe

LaRita Randolph  
Clerk



Margret Daves  
Deputy to the Board of County Commissioner