

# COMMISSIONERS PROCEEDINGS 1

## BOARD OF COUNTY COMMISSIONERS Minutes of Meeting October 15, 2020

As reflected in posted agenda:

The County Will Be Abiding By the Social Distancing Requirements in Public Health Order 20-28 for This Meeting. Due To Limited Space In The Assembly Room, Remote Attendance Is Encouraged. If You Have Any Questions Regarding Attending The Meeting, Please Contact Karla Powell at 970-542-3500.

To participate in the Citizen's Comment Period you must connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/84870066867> If you cannot connect via Zoom, you may submit written public comment to [bccmorganc@co.morgan.co.us](mailto:bccmorganc@co.morgan.co.us) by email by 3 p.m. on Wednesday October 14, 2020.

To participate in Public Hearings you may connect via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/84870066867> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 848 7006 6867

To watch and/or listen to the meeting but not participate, you may do so by connecting via Zoom Conferencing Access Information: <https://us02web.zoom.us/j/83445694959> or to listen via phone, please dial: 1-312-626-6799, Meeting ID: 848 7006 6867

The Board of Morgan County Commissioners met Thursday, October 15, 2020 at 9:04 a.m. with Chairman Mark Arndt, Commissioner James Zwetzig and Commissioner Jon Becker in attendance. County Attorney Jeff Parker was also present, in person. Chairman Arndt asked Commissioner James Zwetzig to lead the meeting in the Pledge of Allegiance.

### PUBLIC HEARING

Chairman Arndt called the hearing to order at 9:05 a.m. in the Assembly Room of the Morgan County Administration Building. Present were Chairman Mark Arndt, Commissioner James Zwetzig, Commissioner Jon Becker, and Morgan County Planning and Zoning Director Pam Cherry.

**Continued from September 10, 2020**

**1. Erin Kress and Travis Hertneky/THEngineering, LLC** – Applicant  
**Bullseye Holdings, LLC/Kevin Lamb**- Landowner

**Legal Description**- Located in the W ½, and South and West of the Bijou Canal, Section 26, T3N, R 58W of the 6<sup>th</sup> PM, Morgan County, aka 16098 County Rd O, Fort Morgan, CO 80701

**Reason**- Use by Special Review Application to operate and re-establish a Confined Animal Feeding Operation for no more than 9000 head pursuant to Section 3-180 (O) and Appendix B Table 3 of the Morgan County Zoning Regulations

Ms. Cherry explained this application was continued from September 10, 2020. She stated she has not received any new information since the last hearing held on September 10, 2020. County Attorney Jeff Parker noted that the information the Board has in their packet is a part of the record.

At this time, Chairman Arndt asked if the applicant had any further information to add at which time the applicant, Travis Hertneky, ADDRESS, stated they have no additional information with the exception of what was provided prior to the September meeting and asked to present the information as a review in response to the continuation of the hearing. Commissioner Zwetzig asked if it could be reviewed as to the reason for the continuance of this hearing until today with Mr. Parker responding that the public hearing was continued until today's date and that the public comment portion was not closed, it is only a continuation of the previous hearing.

Stuart Corbridge, 5303 Spine Road, Boulder Colorado, asked to note that when the hearing was continued in September, it was partly due based on health concerns and the fact that Mr. Lamb had indicated he was pursuing additional water supply and requested the additional 30 days.

At this time, the applicant presented to the Board the items that were continued on, presenting by power point, the information the board had asked for clarification on. This presentation will be made a part of the record.

Chairman Arndt asked for clarification regarding the lining, with Mr. Hertneky explained the liner could be plastic or clay lined. Further discussion followed regarding the lagoons, seepage and asked for clarification of their process with Mr. Hertneky providing a detailed response. Discussion also followed regarding the water calculations with the applicant providing a response. Chairman Arndt noted there was nothing new from the previous hearing regarding the information from the state engineering that had expired. Mr. Lamb stated he submitted this information to the Planning Administrator, with Ms. Cherry stating she would have to review her emails. Commissioner Zwetzig noted that it was his understanding that their packets include all the information needed for today's hearing, so hopefully, there are some submittals that are not included in their packet noting the dates of the documents they do have in their packet at this time.

County Attorney Parker asked if the applicant has a copy of the letter regarding the water issue that he made mention of, and could introduce it into the record at this time. Mr. Lamb stated he is looking for the information at this time. Chairman Arndt noted the pause in the hearing is waiting on the applicant to provide a letter to the Board that they are not showing in their file at this time.

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Mr. Lamb stated he will be forwarding an updated copy of the Substitute Water Supply Plan (SWSP) to be a part of the record.

At this time, Chairman Arndt opened the hearing for public comment asking if there was anyone present who wished to speak.

John Rusch, 14267 County Road 17, Fort Morgan, spoke stating he still takes issue with the way this is being presented, as a special use permit, stating there is a truck wash in place on the property, not a feedlot. He spoke expressing his concerns and opposition to the application naming several property owners who have expressed the same concerns. He further spoke about a meeting that was attended in August at the Bijou office, and spoke about the outcome of this meeting stating this is a bad idea. Mr. Hertnecky responded to concerns expressed by Mr. Rusch during his public comment. Mr. Rusch stated he does not believe Item I, in the file summary cannot be "checked", as the water supply issue has not been met in his opinion. He ended by saying a 9000 animal unit feedlot on this parcel of land is a bad idea stating he will support whatever decision is made by the Board.

Commissioner Zwetzig asked about the statement that 9000 head is not an appropriate use on this parcel, and if there is a number that would be appropriate, with Mr. Rusch stating he would have to say no.

Stuart Corbridge, 5303 Spine road, Boulder, Colorado, spoke in opposition to the application providing his concerns and reasons why in detail. He stated that at this point, the Bijou Ditch Company is willing to defer to the Board the decisions made on the water supply. He further spoke of the concerns he has about the project being completed in phases and what the details and assurance there will be that there is no further discharge problems, which is the prime concern of the Bijou Irrigation Company. He spoke about the berm that needs to be put in place and that be a condition of the permit if it would be allowed that the facility is to grow, speaking further of what limitations and conditions that would need to be put in place if this permit is approved.

David Steward, 4001 Harbor Walk Lane, Fort Collins, Colorado, spoke about the berm that is very important to the Bijou Irrigation Company, explaining the reasons why. He further spoke about what they do agree with but feels the berm needs to be built to protect the ditch.

John Rusch, again spoke, stating the reason we are here today is there was a continuation last month and Mr. Lamb was purchasing additional water supply and would like to know the answer to that issue.

At this time, Chairman Arndt closed the public comment portion of the hearing.

At this time, Chairman Arndt moved into discussion and decision.

At this time, the applicant spoke with Kevin Lamb, providing information about the meeting held with Bijou and was receptive to the concerns that were discussed. He stated he feels they do have water there and the SWSP was provided, and this was confirmed by Ms. Cherry, and stated if granted, they will apply for another SWSP up to the maximum they can have that will allow them to place the number of cattle that they can. He further explained in detail the options that would be viable, explaining those include Kiowa Basin Water, Fort Morgan Irrigation Water and Weldona Irrigation water, stating one of those three would be the direction they would pursue.

Chairman Arndt stated there was talk with Bijou Irrigation regarding the berm being built and the phases being built, if they would be acceptable to this being completed all done up front with Mr. Hertnecky stating he believes that is acceptable with Mr. Lamb in agreement.

At this time, dust suppression was discussed with Chairman Arndt asking what the applicants plan for dust suppression is at this time, noting the concerns he sees. Mr. Hertnecky spoke regarding the several methods they have regarding dust suppression, stating a formal dust suppression system was not something they have proposed. He spoke about permanent installed sprinklers, which would come at a high cost using additional water resources; secondly, there could be temporary water trucks and then basically pen maintenance. He spoke about good pen maintenance, and in the early phase, they are only speaking about feeding season, which would be in the fall/winter period, and the dust issue would be at a minimum.

Commissioner Zwetzig asked a procedural question of the County Attorney, about the criteria that is required that include water supply and availability as well the financial aspect. County Attorney Parker responded to this question, stating basically it requires for the water supply, that the applicant has demonstrated adequate water supply and reliability, and that is answered in their packet, in the file summary, staff report. He stated with respect to the financial requirements, he noted the information that has been presented in the staff report as well. Mr. Parker confirmed that this criteria is what needs to be proven in order for the Board to approve the special use permit.

Russell Sprague, 131 W. Emerson Street, Holyoke Colorado, legal counsel on the permitting piece to Bullseye Holdings, stated he has not being involved in the underlying SWSP, addressed a couple of items, regarding the two items of criteria being questioned. He stated the financial letter provided in this proceeding is similar to that of which was presented in the wash out hearing. He further explained what the criteria and portion of the ordinance as to what is needed for this project, currently most of the infrastructure is already in place, not speaking about a brand new designed dairy/processing plant, and the way that he understood the letter from the Bank, those current needs to get this up and moving will be met and he has seen the letter. He then addressed the secondary piece, stating he does believe it would be difficult to have a banker provide an unequivocal letter, explaining why he stated that. He stated the way he reads the letter, is that Bullseye has good standing with the bank and has the financial backing to move forward with this project stating again it is difficult for a bank to provide an unequivocal letter, Commissioner Zwetzig expressed a concern about the way the letter is written, asking Mr. Sprague to review the letter and explain his findings, with Mr. Sprague stating it is how he is reading into the letter as it is written, with Commissioner Zwetzig stating that is his assumption and he will take it from there.

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Mr. Sprague further spoke about water supply and detailed the willingness of the applicant to comply with what would be considered as workable for this project to work. Bullseye does hold the position that the facility is grandfathered and is still continuous, and wants that to be on record.

Commissioner Zwetzig asked to speak further about the water supply, mentioning is the reliability a term that the Commissioners are to loosely interpret or is there a general consensus on how that is handled. County Parker responded to this question with guidance as to how they should consider this requirement. Further discussion ensued regarding this subject matter. Mr. Hertnecky provided a response to the discussion, explaining what he sees as the key answer to the concern.

Chairman Arndt commented about the last minute exhibit that has arrived and feels it is important to be able to ask someone to come forward in regards to this information. The information was provided to Mr. Corbridge, who reviewed the information, stating as Bijou's water counsel, he is familiar with the approval. He further stated, as noted earlier, Bijou is willing to defer to the Commissioners the decision about the water availability and reliability. He asked to add to the record, about the situation spoken about the well, and the yield that is available long term explaining that requirement and obligation. He stated he wants to be sure the board looks at what is the long term available supply.

Mr. Hertnecky provided final comments explaining the phasing that relates to both water and storm water containment understanding the County does not want to be responsible for policing this. He stated the way he thinks the way the Board should implement the permit is the 9000 animal head that is in compliance with the available water and be in compliance with state CAFO requirements 61 and 81. He spoke about what CAFO will be overseeing and policing. He stated he is hopeful that will help to take the County out of having to police the issues he spoke of.

He responded to the comment that was made by Mr. Rusch, as to the suffering from the feed yard, stating the economic impact that it brings to the County, understanding the feed yard does have consequences but has positive benefits as well to the community.

Commissioner Zwetzig asked to see the slide that reflects the proposed phases by the applicant, with questioning about the building of the berm from north end to south end, with Mr. Hertnecky stating they are in agreement to building the berm in phase 1, with 3119 animal head. Chairman Arndt made note that the 3,119 animal head units would be for a total of 120 days a year, with Mr. Hertnecky stating or 9,000 head for 30 days. Discussion followed regarding this matter regarding the oversight of compliance of the number of animal head, having to assume this is for a full year, and who will be counting the number of animal heads at any given time. Mr. Hertnecky stated the 3,119 animal head was based on the water availability and the pen space.

At the question from Commissioner Zwetzig, Mr. Hertnecky stated that the way they propose the build out of all the phases as being, Phase 1 being current; Phase 2 and 3, within the next year; Phase 4, could be several years out and Phase 5, the maximum number for the total of 365 days, not sure they will ever get to that number. He stated that #1, #2, and #3, would fall within a three year period.

Mr. Hertnecky further provided information, at the request of County Attorney Parker, the information found in the presentation, with Mr. Hertnecky stating in their submittal there was details as to what would be implemented within each phase of the project. He stated they are willing to state that a continuous berm will be built from end to end and the registration with the State will be updated at each phase.

Mr. Hertnecky explained each phase as being:

Phase 1 - contain a berm from one end to the other, it is the berm along pond 1, the emergency spillway built on the south end of pond 1, the berm will be lined with the seepage requirements as requested by CDPHE.

Phase 2 – include all corrals that will drain to ponds 1-2-3, the berm will already be in place and they will remove the bunks by pond 3. Construction of the overflow ditch from ponds 3-1, installation of the overflow pipe between ponds 3-1 and the relining of pond 2.

Phase 3- roll into the feed area up to the north, the containment berm will already be in place and they will enlarge and line pond 4.

Phase 4 and 5 – only add additional water.

Mr. Sprague indicated this information is included in the board's packet after Mr. Corbridge's letter titled Bullseye Feedlot Phased Implementation Details.

At this time, Mr. Rusch spoke about his name being mentioned about economic benefits, responding to Mr. Hertnecky about the consideration of economic benefits, stating if the Board issues a 9000 head permit, there will be huge economic benefit to the applicant. And further spoke about the augmentation ponds downstream, farms downstream and expressed his concerns about the drainage issues and the fact the economic value decreasing explaining his concerns stating the economic benefit goes both ways.

Chairman Arndt stated he has comments that he believes should be what the Board is considering in regards to this application, mentioning the water supply concerns, feeling he has not seen proof that there is any real good chance of providing an adequate supply of water, asking the board to approve a facility for 9000 head with 26 acre feet of water and to look at it for a 120 day period for 3000 head. He also spoke about is the site appropriate for this type of facility, is it appropriate to be placed right next to a ditch, speaking about the fact yes, there was a feed yard in place in the past, but was it right stating we are in a new time, and is this an appropriate place for 9000 head. He further spoke about dust suppression, knowing it is in an ag zone, but again the neighborhoods are changing, and that has to

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be considered sitting there is an entire new atmosphere from when the feedlot existed in the past. He does not believe there is a clear picture of this facility meeting the conditions and the quantity of the water, permanent supply plan, when the Board signs the permit, they are committing to many years of approval.

Commissioner Becker stated he respects many of those who spoke and testified today, but does not know how to go any further with a SWSP, explaining his concerns and feels the letter is milk toast, but the letter is pretty close to what he has seen on projects he had done on his own, and moving forward. He stated he does not care about his finances, believing it is the applicant's business between the applicant and the bank. He further spoke about not having a problem with the financial letter and the SWSP, he did have a problem with the berm and understands they will be building the berm, and understands the applicant knows the risks he is facing knowing the State is who he will be facing as they will be the authority. He agreed with the statement that the County is not able to go out and check if it is done.

Believes in talking about all the hurdles that have to be met, as for water supply, he is confident as he can be at this point, has reservations in approving the permit, but believes they have met the requirements feeling they have met the hurdles for him.

Commissioner Zwetzig then spoke expressing ironic that 3000 head in phase 1 for 120 days is almost equivalent to 9000 head for 1 year, and stated they have met the needs for the 120 days. He stated he has a strong concern in following the County's regulations, and expressed his feelings about the regulations that are in place and the need to follow them or change them if they do not want to follow them. He further stated he has a hard time, providing the analogy about a processing plant that was acted upon, explaining how that was approved. He stated he has a problem with the presented application and will not support a 9000 animal unit.

Further discussion followed with Commissioner Zwetzig stating he has listened to concerns expressed by the neighbors and expressed his opinion in listening to their testimony as to what they have stated and the fact that he does not feel they are opposed to a feedlot but the concerns that have been expressed are important to him in making the decision today, affecting the size of the parcel and location to be a permitted 9000 animal unit CAFO.

Commissioner Becker further spoke stating in approving a permit for Phase 1, explaining the issues he sees in approving the project in just phases and does that cause issues for the applicant. Commissioner Zwetzig made response to this comment, stating the Board's decision is strictly a land use decision, and is what is proposed is it appropriate for this piece of property.

Further discussion followed regarding the applicant's ability to build and purchase water, Mr. Hertnecky stated it was purchasing water as well as the physical improvements on site per phase. He further outlined the phases and the water supply for each. He stated he feels they would be amicable to changing Phase 2 and explained what they would be in agreement to in obtaining the water for that next phase. He stated the applicant has water for 3000 animal units, and has the path to get to the 6700 animal head.

Mr. Sprague spoke stating one of the things there is "chicken and egg", water in this area is a high commodity and can be very expensive, and to make the investment for the water before it is even permitted, could be fairly burdensome on the applicant, explaining what he sees would be best logistically. He further stated from a legal perspective, there is the current provision to amend permits, in the meantime, if some of the regulations change how that affects the previously permitted parcel. He stated he does agree with Mr. Hertnecky and Bullseye is in agreement if they could be permitted up to Phase 2, and then be able to obtain the future water supply. Mr. Hertnecky stated phase 2 and phase 3 would include the same number of animal units, and that would allow them to build the additional pond believing that would be better protection for everyone.

Chairman Arndt spoke asking what portion of the property the animals will be located, explaining what he is seeing in the slide presentation, asking are they limiting the site plan, to consider in looking at the map, are they limiting that some of the corrals cannot be used. Mr. Hertnecky stated that is why he is asking to look at approval of phase 1 through Phase 3, explaining what would then be implemented. The numbers they are proposing are being proposed to best protect all aspects of concern explaining this will have a higher standard placed than other facilities in the State of Colorado.

Discussion followed with review of information pertaining to what the applicant is requesting, a permit to go to 6,700 animal head, and all construction will be done before moving to Phase 2, with Mr. Hertnecky stating he is proposing everything will be done in Phase 1 with the exception of the feed pond explaining what he would like to see approved in detail. Commissioner Becker stated it still runs into the problem that there is nothing for the County to go out and look at, but if those ponds could possibly be built before, what is the burden of getting that done, if it is based on cost. Mr. Hertnecky stated it is a substantial cost that would come into play to get this completed in phase 1 and asked if there is a time frame that could be imposed to allow for this to be completed in phase 1 and stated it has to be in compliance with CDPHE standards. Commissioner Becker asked what the time frame for building this out would be with Mr. Lamb and Mr. Hertnecky stating one year. Commissioner Becker asked to clarify what the one year would entail, with Mr. Hertnecky stating one year from the approval of the permit. Further discussion followed regarding the number of animal head units would be allowed, with Mr. Hertnecky explaining it would require compliance with CDPHE.

Chairman Arndt stated he is not comfortable with the number of animal head units being proposed explaining his reasons why. He stated that he would like to see the site proves itself and that they are doing the right thing before they expand.

A procedural question was asked by Commissioner Zwetzig if the application has to be acted on, or could it be amended and be acted upon at a later time. County Attorney Parker has the option to make an approval based on what they wish to approve explaining what the Board's options were. Mr. Hertnecky asked if there is any way for

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them to propose an application for approval of each additional phase, for the 9000 animal head, explaining the time that has been spent on moving through this process.

County Attorney Parker explained what the Board could approve with subject to what they would request, however, if they feel they are uncomfortable, they could approve it at the 3000 animal head units, if it is felt it does not meet the land use criteria. Chairman Arndt clarified what can be done as to the approval and how that will be clarified for future approvals.

Commissioner Becker stated the County has a history of approving phasing, and does not feel it is unreasonable to ask to approve in phases, reading aloud the boilerplate language that is placed in approval of permit application and is comfortable with allowing Phase 3 to go through and explained his thoughts about this plan.

Commissioner Zwetzig commented that he is not willing to go above the 3000 animal head without the entire infrastructure in place as he does not believe it meets the land use criteria. Discussion followed regarding this statement, with Commissioner Zwetzig stating he would want all the infrastructure through phase 3, and the next step would be theirs to ask for an increase of animal units over the 3000 animal units.

Mr. Sprague asked if the process is followed asking what would be appropriate to bring to the Board as to the adequate water supply, would a letter of intent be appropriate, asking for clarification or direction from the board of what would satisfy any sort of concerns and met the sufficiency they are looking for at that point. Commissioner Zwetzig stated the comment of a letter of intent is more than what the Board has at this time, stating a letter of intent identifies what is being done. County Attorney Parker feels there could be a staff conversation, but something that would have a little more certainty that would show they would have the water supply available for the time they plan to operate and the Commissioners could decide what the language should be to reflect what they will require.

County Attorney Parker suggested the applicant work through staff and staff makes the appropriate recommendation.

Mr. Hertnecky stated as the applicant, they would like to see the 6000 head animal unit number as what would be approved, but if the board is most comfortable with the 3000 head, they would leave it to the Board, with Mr. Sprague stating the applicant would prefer to have the 9000 animal head approved, but would be open to what the Board is comfortable. Commissioner Becker commented as to what he is comfortable with explaining his reasons.

Discussion ensued between the Board as to the motion to be made and those items of concern to consider.

Commissioner Zwetzig made a motion to approve an animal unit 3,119 with the conditions that all the berm be extended prior to any use, and the infrastructure phases up to phase 3 be finished and the fourth pond be built within one year and deferred to County Attorney Parker for any additional conditions. County Attorney Parker stated:

1. The facility shall not commence operations until it has received approval from all agencies with jurisdiction over the operation and all required permits have been issued. Mr. Parker stated that condition does not need to change.
2. Mr. Parker stated the condition will be adjusted to reflect the motion to be all infrastructure be completed prior to construction, the berm be extended fully. There was further discussion as to the 4<sup>th</sup> pond being completed as well. Mr. Parker stated again that this condition will be changed to reflect the motion.
3. The facility shall operate the Bullseye 3T well, Permit No. 80348-F in compliance with all well permit conditions and the applicable substitute water supply plan and/or permanent augmentation plan as determined by the State. Mr. Parker stated this will remain the same.
4. Generally accepted best management practices as recommended by the Natural Resources Conservation Service and established in applicable publications of Colorado State University for land application of manure and waste water shall be followed. Mr. Parker stated this will remain the same.
5. Any increased to the 3,119 head as approved by this resolution shall require an amendment to this permit. Further discussion to take out this condition.
6. The applicant shall obtain necessary permits and comply with the requirements and conditions of those permits as determined by other governmental agencies with jurisdiction over this operation. Mr. Parker stated this will remain the same.
7. Bijou Irrigation shall be granted access to the Bijou ditch for the purpose of inspection and maintenance of the irrigation ditch. Mr. Parker stated this will remain the same.

At this time, Commissioner Zwetzig asked to withdraw his motion so the terms brought forward to review before a permanent decision is made. County Attorney stated that would require a continuation of this hearing and there be a draft resolution that can be reviewed by everyone and the Commissioners can review it at the next meeting.

Commissioner Becker would prefer to take action on this application considering they will be able to see the conditions in written form before they are approved. Mr. Parker stated that the approval can be with these conditions subject to final review and approval of the resolution. Mr. Parker can get the resolution drafted for the next meeting, with Commissioner Zwetzig stating he is fine with that.

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Commissioner Zwetzig reinstated his motion with all the terms as outlined by the Attorney, along with the conditional approval upon review of the resolution before being considered approved, also wanting a firmer letter of financial ability that states they will put in a letter that says they are in good standing, with Mr. Sprague stating they will obtain a letter that indicates the applicant is in good standing with all the banks in question.

Commissioner Becker seconded the motion, noting he does not like the conditions, further stating he does not necessarily like the conditions of this application but not sure that the applicant will see a better motion and specifically does not like the condition about the financial letter is needed. Chairman Arndt stated for the record, as testified the ponds are lined, with Mr. Hertneky stating before population of that section, they will be lined, two are lined, the other two are not but before operations they will be lined. Commissioner Zwetzig stated although he is reluctant to approve the 3000 animal unit, if they even come back before the board he is hopeful they come in with the approval from the landowners in the area as well as Bijou, or urges them to not even come before the Board, with Chairman Arndt stating that right is never taken away.

At this time, the motion carried 3-0. County Attorney Parker stated he will prepare the resolution for the next available meeting, October 27, 2020.

Chairman Arndt asked if there was any further business to bring before the Board, and upon hearing none, the meeting was adjourned at 11:23 a.m.

Respectfully Submitted,  
Susan L. Bailey  
Clerk to the Board  
(Minutes ratified October 27, 2020)

**THE BOARD OF COUNTY COMMISSIONERS  
MORGAN COUNTY, COLORADO**

\_\_\_\_\_  
s/Mark A. Arndt  
Mark A. Arndt, Chairman

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s/ Jon J. Becker  
Jon J. Becker, Commissioner

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s/James P. Zwetzig  
James P. Zwetzig, Commissioner

(SEAL)

**ATTEST:**

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s/ Susan L. Bailey  
Susan L. Bailey