

**GRAND JUNCTION CITY COUNCIL
MINUTES OF THE SPECIAL MEETING**

July 29, 1997

The City Council of the City of Grand Junction, Colorado, convened into special session the 29th day of July, 1997, at 7:00 p.m. in the City/County Auditorium at City Hall. Those present were Cindy Enos-Martinez, Gene Kinsey, Earl Payne, Jack Scott, Mike Sutherland, Reford Theobald, and President of the Council Janet Terry. Also present were City Manager Mark Achen, City Attorney Dan Wilson, and City Clerk Stephanie Nye.

Council President Terry called the meeting to order.

TRANSCOLORADO REQUEST FOR TEMPORARY ACCESS TO THE CITY'S SOMERVILLE RANCH PROPERTY

Since the last Council meeting, City staff and TransColorado staff have continued to develop information and negotiate a right-of-entry permit to allow TransColorado access to City-owned lands on Grand Mesa for purposes of project surveying and engineering studies.

Mayor Terry explained the purpose of the special meeting is to make a decision on the request for a special permit for access to the City's Somerville Ranch property for survey purposes in the event that a final permit is allowed for a gas pipeline across the property. Tonight Council will be familiarized with the history of the project. Utilities Manager Greg Trainor will explain issues and chain of events. City Attorney Dan Wilson will then discuss the temporary access permit and answer outstanding questions. TransColorado will have an opportunity to make its presentation. Public comments will follow TransColorado's presentation. The discussion will then go back to Council for a decision.

Utilities Manager Greg Trainor introduced District Manager for the Montrose BLM (the lead federal agency) Mark Stiles, District Manager for the Grand Junction BLM Kathryn Robertson, and Jim Majors, attorney representing the Town of Palisade. Cliff and Judy Davis, the ranch lessees for the Somerville Ranch were also introduced. Mr. Bob Lovell, attorney for TransColorado, introduced legal counsel Terry Farina, local attorney, Wes Hahn, TransColorado Executive Committee, and Tom Boita, local manager for KN Energy. Terry

Farina will be spokesperson for TransColorado at this meeting.

Mr. Trainor identified the BLM map which outlined City properties which the pipeline will cross, also desert lands east of Whitewater. He also presented a flow chart for making key decisions, a time table of significant events and color photos that were part of the third party evaluation of the draft environmental impact statement produced by the engineering company Kempf, Dresser and McKee. He briefly went through the timetable. TransColorado applied to the BLM and the U.S. Forest Service in January, 1990. Six and one half years have since transpired. Given the markets today, it's not surprising that this time period has gone by. The City bought the Somerville Ranch in the same month (January, 1990). In September, 1990, the BLM held scoping meetings in which the City provided verbal discussion and written presentations stating important issues. In August, 1991, the BLM published the draft environmental impact statement. In November, 1991, the City developed comments concerning the impact statement and submitted them to the BLM for consideration and inclusion into the final environmental impact statement. In July, 1992, the BLM issued a final environmental impact statement and in December, 1992, issued a record of decision to issue a right-of-way, assuming certain conditions were met which were outlined and discussed in the draft and final impact statements. The conditions were also pending additional study and work by the applicant concerning how the pipeline would be constructed through the various sections of the route which were identified in the final impact statement. Two years later (July, 1994) the City met with TransColorado and began talks on upcoming construction season in summer, 1995. There was discussion at that time about whether Public Service Company would continue to be a partner in this project. In August, 1994, the City reviewed with TransColorado various local rerouting options of the pipeline on the sections which were critical to the City, particularly below the rim of the Mesa. In September, 1994, the City submitted additional letters to TransColorado requesting additional information. In October, 1996 (late summer, fall) TransColorado requested to enter upon City property and conduct final studies and reestablish the center line of the pipeline. The City staff denied the request by TransColorado on the basis that there had been no settlement of the previous damage issues, and access through the Town of Palisade property had not been resolved. Three weeks later the City met with TransColorado about their need to access City property and complete their studies and finalize their work for detailed design and plan of development, as well as to re-establish the centerline to the pipeline. The lateness

of the season (mid-November) caused discussion concerning recent snows. TransColorado decided to come back to the City in the spring of 1997 to seriously apply for a right-of-entry in order to complete the final stage of their work prior to developing detailed design. A new City Council came on board in May, 1997, and TransColorado requested to meet with the City in June, 1997 to brief the City Council. At this time El Paso Natural Gas, which had replaced Public Service of Colorado, was also now out of the project. This explains the timing of TransColorado's request to gain access to the City's property because El Paso's role was to be responsible for the right-of-way and the environmental compliance aspects of the project. That was probably why the City was not approached sooner.

There were no questions at this time. Mr. Trainor then showed overhead slides regarding City options. The decision tree was provided to Council. Mr. Trainor explained the decision tree by saying if the City says no to an option, then they go on to other options. If the decision is maybe, then a temporary access permit will be issued for TransColorado to begin its work. The City can examine options concerning permanent use of City property by the pipeline company during this period of time.

After the study period is concluded, there will be a draft of the detailed plan of development prepared by the company and submitted to the Bureau of Land Management, U.S. Forest Service, the City of Grand Junction and the Town of Palisade. At some point in time, TransColorado would apply for a permanent right-of-way. They would again meet with the City and initiate a process to acquire a long term easement across the City property. At that point, the City can wait for the Town of Palisade to make a decision, or the City can proceed on its own. The Town of Palisade will be faced with a similar decision. If Palisade makes a yes decision and the City of Grand Junction says yes, then both can work in concert to negotiate with TransColorado a permanent right of way and easements for eventual construction of this project. If the Town of Palisade says yes and the City says no, then there is a conflict with the Town of Palisade and the pipeline company in terms of permanent disposition or construction of the pipeline on City property. If the Town of Palisade said no and the City also said no, there would be a conflict with TransColorado, and the City would deal with other options. If the Town of Palisade said no and the City of Grand Junction said yes, there is a conflict with the Town of Palisade.

The first question is if the City will allow TransColorado temporary access to City lands to conduct studies by their engineers and geotechnical people and surveyors to develop final data which they need to do final design on the project and prepare a detailed plan of development.

Councilmember Scott asked what the term of the temporary permit would be. City Attorney Dan Wilson said once approved until October 1, 1997.

Councilmember Theobald asked for the term of the original request. Mr. Trainor said initially they wanted to begin mid-July through the first of November (60 to 75 days). The time period would be somewhat constrained by the weather.

Mayor Terry asked how the route was determined. Mr. Trainor said a number of questions were brought up in 1991 by the City's engineering consultant. The environmental impact statement was not site specific. It lacked a quantitative analysis of the various routes that were under consideration. A number of routing alternatives were relegated to the appendix such as the Grand Valley alternative. One route in the draft impact statement was never addressed (Colorado River route along I-70). Some routes were preferable to others. Some components were positive in regard to one route, and negative in regard to others. The City had no objective method of analyzing the routes.

Mayor Terry said the environmental impact statement presented to Council addressed and compared only two routes, the proposed and the preferred. Mr. Trainor confirmed the two routes were the project proponents' alternative and the agency's preferred alternative which were almost identical.

Councilmember Theobald asked if the route in Council's literature is the final route. Mr. Trainor said yes. Councilmember Theobald said the literature shows the pipeline coming straight south from Maybell down to DeBeque, then to the Grand Mesa, and then cuts around the face of the Mesa. Mr. Trainor said that is the proposed route of which none has been constructed.

Councilmember Theobald said there are staff photos of a barren swath across the mountain at Parachute. He asked if that is part of this project or merely a sample of their work. Mr. Trainor said one of the sets of photos depicted a typical pipeline construction in the area of Parachute. Some of the photos were of recent construction and for illustration only. They were part of a local collection system. Another set of photos from KN Energy were of a

pipeline that has been constructed in the last several years between Rifle and Avon, with revegetation, low grasses and stream crossings.

Mr. Trainor provided Council with a time table of dates regarding various aspects of the project. He reviewed the timetable. The pipeline company is working presently to complete a plan of development as well as a detailed design to be submitted to the BLM by the end of November, 1997. Then the BLM will review the plan of development from November, 1997 to January, 1998 (6 to 8 weeks). The plan will then go to the Town of Palisade and the City of Grand Junction for review. A final plan of development will presumably take one more month, until the end of February. Palisade's watershed permit process can take up to eight months from the time the company applies to the City for permanent access on the City property for construction of the pipeline. Mr. Trainor presumed the process would begin at the time the plan of development is in its draft stage and continue up to eight months (July 30, 1998). He did not know if it will actually take that long. The acquisition of the conditional use permits would take up to three months through the County process. He presumed the applications would be made at the time the plan of development has gone through a draft review with the cities and the BLM, and could be completed by April 30, 1998. Construction will take place in two phases - first the construction of the compressor stations, then the pipeline portion. The pipeline portion is expected to take four months to construct (end of May through the end of September). That period is the deadline imposed by the present F.E.R.C. order (September 28, 1998). Mr. Trainor said most of the deadlines on the schedule are out of the City's control.

Councilmember Theobald said the timetable shows negotiations beginning for the permanent right-of-way in March and completed in July, 1998. The pipeline construction schedule also begins in March, 1998. It implies that in order to get everything done by the September date, they must spend two months building their compressors and two months building their pipeline before it is expected they will obtain right-of-way to build the pipeline, and a permit from Palisade to be in their watershed, and one month before the County issues their permits. It appears they are already behind schedule, and will have to build without the permits. Mr. Trainor said the timeline is extremely simplified. It's difficult to figure out how it will all come together. A permanent right-of-way is going to be dependent on the quality of information received in the plan of development. It also depends on when

TransColorado produces a plan of development and if it proceeds with a timely process with the City.

Councilmember Theobold asked if TransColorado has provided a list of all their partners over the years. Mr. Trainor said he had not asked for such a list. He asked for a list of property owners in the pipeline. KN Energy, Questar and Public Service were the partners in this project until fall of 1996 when Public Service was out, and El Paso Natural Gas was in. Subsequently, in spring of 1997, El Paso Natural Gas was out of the project, leaving the two remaining partners. He did not know if there have been other partners over time. Councilmember Theobold was under the impression there were more than four. Mr. Trainor said the City asked TransColorado for a list of private properties that must be crossed, and the status of negotiations on those private parcels. That information is still forthcoming.

Councilmember Theobold asked what else has been asked for and not obtained from TransColorado. Mr. Trainor said one piece of important information is a detail of what is supposed to take place on City property within the next 30 days, i.e. how many survey crews, when will their engineers be on the property, same time as surveyors, etc. The number of people and timing of TransColorado's entry upon City property has not been specifically stated, only generally. The City needs to know what kind of resources it will need to keep track of this effort in the next 30 days (determining cost to monitor this project).

Councilmember Theobold asked when the City first asked for this information. City Attorney Wilson said the City begins by asking for general information. In the last several days in trying to craft language to deal with the concerns, the City has been focusing on the specifics. The City hoped TransColorado would have a more definitive plan earlier. Today is the first time the City asked specifically.

Mr. Trainor said general discussions have taken place over the past three weeks. They met with TransColorado's engineering consultant to discuss the needed survey work and walk through by the design engineers and geotechnical people. The City has been waiting for more specific information.

Councilmember Theobold asked if the problem with providing information is not a reluctance to provide it, but rather they may not have that level of detail worked out in their own planning process. Mr. Trainor said he believed that was the case. The TransColorado staff has tried to provide the City with all the information it has requested. They have a

huge project of which this is only one 6 or 7-mile segment out of 300 miles. It has been difficult for them. They have upwards to 70 survey crews they are trying to coordinate throughout the pipeline corridor to complete the final centerline. The logistics of managing this many crews is one of the hindrances to getting information.

Councilmember Payne said the entry permit is actually for 60 days, not 30. Mr. Trainor concurred, contingent upon other constraints that TransColorado may have. One of those constraints is the City's present lease with Cliff and Judy Davis, their right and opportunity to ranch the property and to manage the hunting on the property. The Davises want them out by August 29, 1997. That is the critical constraint.

City Attorney Wilson said the language in the environmental impact study could lead one to believe that initially to do archeological studies, it may require drilling, blasting, checking, doing wells, digging for old artifacts, etc. (worst case scenario). October 1 was the original date from the very first cut. The City discovered the temporary entry permit is a "walking tour." TransColorado believes it can be off the property by the 29th of August. The critical date was to preserve the bowhunting season so there was no interference with hunters. Actually, the assumption is the company will be a very minor presence on the ground, and the time period would not force them to come back for reissuance of another permit. From TransColorado's perspective, they were looking for several weeks on the tail end. Mr. Trainor said this preserves TransColorado's option if they were able to negotiate something different with the lessees than is presently outlined.

City Attorney Wilson itemized in detail the outstanding issues of the permit. The first permit was generated by the City's Public Works staff and was a standard form city access permit. Following that, Mr. Wilson and Robert Lovell got involved. They took the basic framework and tried to particularize what he just described as a worst case scenario. After looking at the environmental impact study and having fears of what could happen, he wrote broad statements covering the bases which included a number of issues in tonight's draft that he is assuming will be relegated to a final permit discussion time. He was referring to items on page 2 of the draft. They have not been deleted in the final access permit because all are issues that should be addressed, but only at final permit. It is at that time that the City would be giving permission for the actual construction, so a lot more of the terrain will be removed, trenched, pipe placed, more trees cut, and a

lot more vehicles. Today the permit is an evaluation of what is on the surface. Mr. Wilson said this latest draft (written up this afternoon).

The original recitals described the 1991 cutting by a surveying crew. That issue has been resolved by the payment of \$20,000 and is no longer addressed in the permit and there should be no further reference in the permit.

Mr. Wilson referred to the bottom of paragraph b and said the original draft indicated that condemnation was being discussed if terms were not reached. Such references have been substantially reduced if not removed from the permit terms.

Mr. Wilson addressed why they are going on the land. The bottom of page 1 describes the general terms which are to prepare a plan of development which is the more detailed aspect on an environmental impact statement. It says precisely what is going to happen at each stream crossing, etc. They will attempt to get detailed engineering design ready for the project. They will do a land survey, geological and geotechnical studies. They will again look at threatened and endangered species that are on the list, archeological and cultural resource which is a term that addresses old Indian living quarters, fire pits, and relatively new Ute and other Indian activities that could be on the property. There may be a couple that the pipeline may have to realign to avoid. That will have to be checked. Paragraph 1 on page 2 of the actual terms, the term would run through October 1st. Paragraph 3 includes a new third sentence that tries to limit the potential activities and describes that "there shall be no excavating, drilling or other invasive activities with the City's designee's consent." There will be a City person on site at all times. Invasive is a term that is a little bit loose, but they may want to take a grab sample of earth for geologic or hydrologic purposes. If there is to be no damage, the designee could say, "Yes, do so." Drilling to establish monitoring wells or other activities, including blasting or cutting of vegetation" is not allowed unless the designee is on site and approves it and, as proposed is only allowed for 3" caliber and smaller trees, measured 2" above the ground. Mr. Wilson said a lot of discussion took place regarding cutting of trees because initially the City was informed that TransColorado needed to re-cut the swath that was cut years ago. The City's Public Works Director Jim Shanks, as a surveyor, said global positioning technology should suffice, so they wouldn't need to cut anything. The Public Works Director has now been convinced that the regulation should be

to allow cutting of a 3' wide swath (page 3, item f) which would allow them to do a line of site so it's clear where the alignment is. The Public Works Director felt there wasn't a great deal of damage allowing that to happen, but even so it's only going to take place when it's necessary. If their survey equipment won't allow shooting the line of site without cutting a 3" tree, then the City's on-site person can approve. An attempt will be made to limit the frequency of it, although it is not a critical item at this stage.

Paragraph 4 - The original permit set a permit fee of \$44,500. The number it was based on included \$10,000 for the past damage and an estimate by staff of the amount of City staff time and experts that would be required to shepherd this process. Mr. Wilson left the number in. This afternoon a solution was discussed that is acceptable to the Staff. The original permit said to post \$30,000 that will go into an expense fund called the "designee fund" to pay for the City's on-site designee. The fund could be used for both monitoring day to day for surveying, and also pay for a botanist or hydrologist if needed by the City. TransColorado proposed collapsing the two together. The proposal now is a permit fee of \$35,000 which is intended to both pay the City for the temporary right of access and also pay the City for the out of pocket expenses to hire any appropriate experts. The experts that the City will recommend hiring is a botanist to do a walk through before TransColorado gets access, in order to update threatened and endangered species lists. If the permit is approved, a botanist could begin as soon as this weekend to do the walk through of the property to make sure there are no environmental issues that were not addressed previously. Mr. Wilson clarified the \$35,000 would pay the City for the right of entry, and out of that amount, the City would pay the costs of the experts.

Mayor Terry said the original draft called the \$44,500 the permit fee only. The \$30,000 was in addition to the \$44,500 for the purpose of hiring the experts. Mr. Wilson said the last draft said that if the \$30,000 was not used, it would be paid back to TransColorado. But the \$44,500 was kept by the City. The second draft combines the two, and for a \$35,000 total number. The \$30,000 has been added to the \$44,500, and the total is now \$35,000. Mr. Farina and Mr. Lovell will address the addition of these two figures later in the meeting.

Councilmember Theobold asked how much of the \$35,000 would be spent. Mr. Wilson said if the City hired people full time on the project, \$25,000 could be spent. They suggest the botanical report can be given to the botanist for review,

leaving only a walk through required by the botanist, which would keep the costs down. They also have other archeological resources where a full blown study will not be required.

Mayor Terry asked if that information was in the final environmental impact statement. Mr. Wilson said he did not see reference to it, but apparently the data is available. There are two components that the City would spend the money on. The first would be sending a botanist up within the next week, as well as the archeologist, if necessary, so the City can see it before TransColorado's activities could change the circumstances. Second, a larger expense will be on site monitoring as their survey crews go up over the next 30 days.

Councilmember Scott asked who is going to be the monitor. Mr. Wilson said it could be City staff or a City hired consultant.

City Attorney Wilson said by October 1, this phase will be over, and those monies will be retained, if not spent. The balance of what is retained would consist of the permit fee for temporary access.

Councilmember Theobald asked what the in-kind (City staff) costs would be involved in this permit process. Mr. Wilson said if going back to June, 1990, he would estimate approximately 50 hours for himself, even more time for Assistant City Attorney John Shaver, Utilities Manager Greg Trainor and City Property agent Tim Woodmansee. That could come to approximately \$5,000 to \$10,000.

Councilmember Theobald asked what is worst case scenario for everything. Mr. Wilson said on-site monitoring using up the entire \$35,000 could result, in effect, the City has no fee. Councilmember Theobald asked if the on-site could go over \$35,000. Mr. Wilson said it's possible, although it is not expected. Councilmember Theobald said the fee now appears to be roughly what it's going to cost the City in staff time and out of pocket expenses to monitor the project. He felt already there is no fee. Mr. Wilson said if you figure from 1990, that's so, but if you figure from June 15, 1997, the amount is substantially lower.

Mayor Terry asked if there was any discussion of what would result if the City's expenses exceed the \$35,000. Mr. Wilson said a proposal was an alternative of a \$5,000 fee and expenses would be paid by TransColorado, plus 5% administrative fee to the City. That did not include any staff time - that was outside consultants only. Mr. Trainor

said there was discussion that if the City's costs got out of hand, TransColorado still had to come back to the City and negotiate a permanent right-of-way.

Councilmember Theobald asked if everything is predicated on the assumption that there will be a final right-of-way granted. He was not sure the City should share that view since the decision has not been made. He felt the City's costs should be covered, because if the permit were to be denied, TransColorado will have little motivation to pay the City any kind of fee. Councilmember Sutherland said Council needs to assume TransColorado will be coming back. If Council has outstanding expenses that need to be discussed, it can be the first issue on the agenda.

Mr. Wilson said paragraph 5 is simply a recitation that the Town of Palisade has given their Board's approval. The actual document has not been delivered. That language is saying the permission to use Rabbit Creek and Cottonwood Creek to get to the Somerville property, and therefore to get to the temporary access permit, has been approved. Paragraph 6 acknowledges the existing ranch lease and associated hunting rights. The last line indicates TransColorado must enter into a written agreement with Cliff and Judy Davis. The City wants to be in the position of assisting the process, yet not being direct negotiators for either party. The City wants to make sure its lessees are protected.

Mr. Wilson continued that paragraph 7 talks about the City designee being on-site. Paragraph 7.b. indicates that TransColorado must call the City 24 hours in advance of when they plan to do activities so the City can have appropriate on-site monitoring. Paragraph 7.d. says that if the City fails to show up, TransColorado does not have to stop work.

Mayor Terry said she was concerned with the notification time if the City has to give notice to an expert to accompany their access. Mr. Wilson said the City's primary experts, people with specialty knowledge, are going to be before. Most of the rest of the City's work is going to be on-site monitoring in construction inspection kinds of skills as opposed to hydrological skills.

Paragraph 7.f. says no motorized vehicles on City property except ATV's and except on designated City roads, making sure there were no chainsaws or other motorized equipment and tools because of fire concerns, to make sure game was not run off any more than necessary, and keep the noise level down. Paragraph 7.g. says the City will designate the appropriate roads.

Mayor Terry referred to paragraph 7.d., forfeiting performance bonds. She asked what would happen if those requirements were violated. City Attorney Wilson said the reaction was so strong, that for the purpose of trying to lead to a resolution, he said the City will put money in the bank and the City will pay itself for damages, but the City will not conduct an entire forfeiture. That was a negotiated item.

Mr. Wilson said paragraph 7.f. talks about the City's botanist and entry onto the property. Paragraph 8.a. addresses the fund. He said \$100,000 would be placed in the fund from which the City would pay to implement and enforce the terms or to correct damages. Paragraph 8.b. is a boiler plate for lawyers. Paragraph c. indicates how the Finance Director will invest the money. The interest accrues to the benefit of TransColorado. Paragraph 9.a. is a standard term in the typical permit that sets a standard of care for general responsible behavior. Paragraph b.(1) is an indemnification and a waiver of TransColorado's actions against the City for TransColorado's activities. Paragraph b.(2) asks Trans-Colorado to stand between the City in any damages to the Town of Palisade's water supply located on Kruzen Springs. Paragraphs c., d., e. and f. are standard permit changes and there have been no changes. Paragraph 9.g. applies to final permit regarding construction techniques, methodologies and protections. This paragraph can be deleted.

Paragraph 10 is standard permit language. Paragraph 11 is a statement of the City's relationship and an indemnification clause whereas TransColorado will stand behind its own activities.

Paragraph 12 states if the City Attorney or Assistant City Attorney engage another attorney to enforce the permit, TransColorado agrees to pay the City's legal costs in doing so.

Paragraph 13 is a typical clause. Mr. Wilson said the balance of the items are totally non-controversial and stock language.

Leaving aside the policy question, this document protects the City of Grand Junction for the temporary access period. The only thing left is the amount of the permit fee.

Councilmember Scott asked if the permit property description includes all the portions crossing the property, also the desert area. Mr. Wilson said yes.

Councilmember Theobald said other than the five crossings of the City property and crossing the Palisade property, everything in the area is either U.S. Forest or BLM property. Mr. Wilson said there is some other private property in the area. Mayor Terry said the City has not received the list of private property owners.

Mr. Trainor said the Lumbardy Ranch is west of the Somerville property. As of a couple of days, they had not been contacted by TransColorado concerning access.

Councilmember Sutherland asked, considering the time of year, if the City should talk about what would happen if there were any forest fires in the area. Mr. Wilson said that is why vehicles and motorized equipment were limited. If activities cause a fire, TransColorado will be responsible for paying for damages. It has been discussed for final permit because it is a significant concern when there's gas in the pipeline.

Mr. Terry Farina, 2673 Homestead Road, was present on behalf of TransColorado. He emphasized this is a request for a permit for a very limited purpose as stated in recital C. Before construction of a pipeline, TransColorado must come back to City Council. TransColorado now sees the need to get the process going early with staff. In addition, a conditional use permit would be required from Mesa County. TransColorado has approached the Town of Palisade regarding one of two permits for limited purposes. On July 22, 1997, TransColorado requested from the Town of Palisade a permit to use Cottonwood Creek and Rapid Creek Roads to access the Somerville Ranch. That permit was granted conditioned on the City of Grand Junction granting tonight's permit. In addition to the Town of Palisade permit, on August 12, 1997 for entry onto their land, TransColorado must also go through a similar process to tonight's. They are not in such a compressed time with the Town of Palisade. This permit has a number of safeguards for the City. He pointed out items in the permit in favor of the City. TransColorado has been collaborative and has made an effort to meet all the requirements of staff, and will continue to do so. He referred to several pages and paragraphs and commented on each. He felt this is more than a balanced document in favor of the City.

Mr. Farina explained the \$44,500 was Mr. Wilson's guess. The \$5,000 is what Mr. Lovell thought was the deal, and represented that figure to his management. There has been some miscommunication. TransColorado is basically placing \$135,000 in the City's coffers.

Mr. Farina said the oil and gas industry has contributed to Colorado, and exports the State's excess gas. Everyone benefits as a result. Mesa County would receive \$700,000 in ad valorem taxes per year. There is no cost to the City for servicing the line. KN Energy is a good corporate citizen. There are a number of environmental safeguards if construction goes forward. He said TransColorado's purpose tonight is to get in within the 30 days and do the required work.

Mayor Terry asked what permit fee is being paid to the other land owners along the pipeline route, and if the City's fee is a normal fee. Mr. Farina said normally there is no fee because they are usually welcomed with open arms due to economic development.

Councilmember Theobold referenced the \$20,000 payment for previous damages. He felt the bad acts and bad faith from 1991 flavor Council's view of this project and how the permit is drafted. Mr. Farina hoped it doesn't flavor future projects. He suggested closing the book and taking a look at the document and going forward in a collaborative manner.

Councilmember Theobold said his point is not that the credibility of TransColorado has been wholly restored. He suggested that Mr. Farina's implication that the City should count the \$20,000 damage payment as part of the money the City is getting for the entry permit is not agreeable to Council. Mr. Farina said he only mentioned that as an act of good faith. He felt more importantly there is \$135,000 that is being placed under the direct control of the City with very few constraints.

Councilmember Scott said if they do what they're supposed to, the \$100,000, plus interest, goes back to TransColorado. Mr. Farina said that is true but there are no constraints on how the City determines damages. TransColorado is trusting the Council and staff to be fair. A lot of that is not written in the agreement.

Councilmember Theobold asked how the County receives ad valorem tax revenue for something that is underground instead of above ground. Mr. Farina said he has been told that approximately \$3.5 million will be generated in ad valorem taxes, and approximately \$700,000 will go to Mesa County as a result of the pipeline. Mr. Lovell said the reason Mesa County is receiving a larger portion is because of the compressor station within the County boundaries. KN Energy has a payroll of \$1.2 million. Mr. Lovell said 87 miles of

pipeline in Mesa County, a compressor station and the tap to supply the area generates \$700,000 in taxes (property value on the pipe and the facility). Mr. Lovell felt the value will probably increase. Mr. Farina suggested additional information will be available at the final permit.

Councilmember Theobald said Council was told in July, 1997 the pipeline was to bring natural gas from Wyoming to the southwest (Texas, California, mid-west). He said tonight Council has heard it is also going to be a local connection from Mesa County into the pipeline. Mr. Farina said that information could be confirmed at the final permit. Mr. Lovell said this opens up additional transportation sources for local production which means Colorado producers will now have access to additional markets. The gas will be flowing from north to south, and will go to a marketing hub down to Blanco, which will allow the gas to go to the mid-west or California. He was not sure about Texas. If it goes there, it will just go to the northeast through a pipeline connection, and will not be consumed in Texas. There is definitely a potential for putting local gas into the pipeline as long as the production sources are developed.

Mayor Terry said Council understands the importance of the agreement in terms of economic impact, as well as the environmental resources. Council is taking this decision very seriously and looking at the agreement carefully.

RECESS

Mayor Terry declared a five-minute recess at 9:01 p.m. Upon reconvening, all members of Council were present.

At this time Mayor Terry solicited comment from the audience.

Mr. Newt Burkholder, 908 26 1/2 Road, said he has worked in the oil and gas business since 1953. He said there is already a pipeline over the Grand Mesa which belonged to Rocky Mountain Natural Gas and now belongs to KN Energy. He felt the pipeline has created no environmental impact. The pipeline will not be seen once it is installed. He said the gas industry is a clean industry and wished to allay Council's fears, there is no problem with a gas line.

Mr. Max Krey, 2015 Overlook Drive, said the producers need this pipeline. He said the only way to get continuation of leases is to have production coming out of that ground. Producers are at the mercy of the pipeliners. Property taxes will be paid on wells and equipment. A 2% severance tax is

also paid by the producers, as well as a State production tax.

Cliff and Judy Davis, lessees of the Somerville Ranch, said they signed an agreement on the 15th of July, 1997 with TransColorado. The agreement said the Davises had no problem with TransColorado entering the property with the exception of a concern with hunting. There are outfitters and hunters booked for the hunting season. TransColorado said they will be out of the area by August 29, 1997. The Davises want assurance of that final date. Mayor Terry appreciated the Davises comments. There were no questions of the Davises.

Mr. Don Moyer, 3223 Windsor Court, did not feel City Council is the body that should be deciding on this issue. The property is not located within the City of Grand Junction. The City is a landowner of the property like the other landowners. He felt the terms and conditions of the permit could not be demanded by the other landowners. He felt TransColorado should be commended for undertaking this scope of a project. He said the City has gone overboard with its requirements of TransColorado.

There were no other public comments.

Utilities Manager Greg Trainor addressed the availability of a City Staff person or designee for supervision. He has been in touch with local botanists and biologists who are willing to help the City if needed. He also has estimates of costs. He has been in contact with a local firm named Harding Larson, a local office of a Salt Lake and Denver based engineering firm. Two hydrogeologists are presently located in Grand Junction and work for that firm. They are available for immediate assistance and 24 hours notice as the work takes place over the next 30 days. Costs could be approximately \$34,000 for engineers. Adding biologists could bring the cost to \$36,000 (expenses for them to be available 60% of the time).

Councilmember Kinsey was under the impression that the City designee would not necessarily be an engineer or botanist. Such specialists would be used for specific tasks, and the person monitoring the work would not necessarily be a specialist. Mr. Trainor said it would be beneficial to have a monitor in that field with training, although if a person can be found on a consulting basis that can watch the surveyors, then the cost could be lower.

Mayor Terry said the person accompanying the survey crew would need to have knowledge of endangered species, etc.

Councilmember Kinsey felt it was unlikely, in a 20 or 30 day walk through, that a geologist could walk by a particular formation and get any relevant information.

Mr. Trainor said if the City's caretaker, Dan Vanover, who knows the territory, was available to spend time up there with the surveyors, the City would draw on that type a person to represent the City. The ideal would be to match the right person with the right job, but there is not a lot of time in which to do that.

Councilmember Kinsey felt the primary purpose for having a City representative on the job was to guarantee the survey crews would not cut down certain trees or dig a hole. Mr. Trainor said if only surveying was being done, the City would not need an engineer or hydrologist. However, the City will be reviewing the detailed plans of development which will describe how the landslides will be crossed, and how the wetlands areas and spring systems will be dealt with. He felt there is a benefit in having someone who represents the City reviewing the site conditions, conducting conversations and taking field notes.

Mayor Terry said City Staff does not necessarily have the expertise in all areas to assure Council that all concerns are being satisfied. That is the purpose of such specialists. They will provide the expertise to review the information that's ascertained by the surveying crew of TransColorado. Their findings will be formulated into the final plan of development.

City Attorney Wilson said it is not known exactly what will be found during the walk through, thus once TransColorado details the work, the City can determine when a City expert needs to be involved.

Councilmember Sutherland suggested a knowledgeable technical person be there every day throughout the survey to identify when expertise is needed. If the City exceeds the dollar figure decided upon, it can be addressed to TransColorado when they come back for permanent access.

City Manager Achen asked for Council's expectations. Is the City to do its own study and make its own judgments as to how it is to be built, or is the City expected to develop its own expertise to react to the study once it is submitted? One expert could not possibly cover all the concerns. He said Staff needs direction as to Council's expectations as a result of the field work portion.

City Manager Achen said TransColorado is going to hire someone to go through and look at what needs to be done and then determine how problems are to be resolved.

Councilmember Payne said the City should be cautious. At the same time, he felt there could be an absolute overkill. He felt TransColorado will share their reports with the City. He said the City needs a monitor, but not a highly paid geologist for 20 days. The \$35,000 might cover the cost. If not, the City can sit down with TransColorado and discuss it.

Mayor Terry and other councilmembers concurred with Councilmember Payne.

Councilmember Enos-Martinez was concerned about Staff wanting to hire engineers and experts, yet Staff came up with a \$35,000 fee for a monitor. Mayor Terry said Council needs to decide at what point a specialist is to be hired and what the specialist is to do. She is hearing from Council that it wants someone to go in preliminarily to survey.

Councilmember Kinsey said the original conditions were for a botanist, possibly an archeologist, to walk through. A monitor would be hired to accompany the survey crew.

City Manager Achen gave his interpretation of Council's expectations: (1) To assure no damage is done during the study phase (geology and watershed issues); (2) Restoration and revegetation (aesthetic portion); and (3) Preserve archeological and endangered resources. The study will show what KN Energy discovers and their proposed solutions in the plan of development. The City will hire someone to confirm those findings. He asked if the City wants to replicate that work in order to be sure it can trust KN's information.

City Attorney Wilson said he has read the environmental impact statement and has concluded there has been no walk through since 1991. There have been changes to the federal list since that time and there is a need to check for any additions. TransColorado said the botanist crew would also have a "raptor" (eagles and hawk expert) who would look for those endangered species. Before the crew went on the premises, it would make sense to send in an independent consultant. TransColorado wants to send in a survey crew first. They don't know whether the botanist or archeologist should go first.

Mayor Terry said Council has agreed on \$35,000 as the fee to cover expenses. Council concurred.

City Attorney Wilson confirmed for Councilmember Payne that item 9.g. has been deleted.

Mayor Terry asked if the concerns of Cliff and Judy Davis are protected. City Attorney Wilson said the City's permit (paragraph 6) requires that the Davises be protected.

Councilmember Theobold said paragraph 2 opens up the possibility of some real conflict. The City needs time to find, hire and send out experts to do the survey. It leaves only three weeks to do the work. The City needs to be sensitive to the lessee's concerns and protect them. He was not sure TransColorado is ready to begin such a large project. They haven't contacted all the property owners involved, the timeflow chart appears next to impossible to meet, and they have not managed to conquer their own problems.

Councilmember Scott suggested letting TransColorado run their own business.

Councilmember Theobold felt poor planning on the part of TransColorado does not make an emergency on the part of Council. It is important that the data collected in this survey be complete, accurate, reliable and substantial. He felt TransColorado should be given a wider timeframe. Three weeks in August is not sufficient time. He suggested the permit be issued from April 1, 1998 to July 1, 1998 so the job can be done properly. There would be no problem with hunters. It would allow time to contact landowners, and get all permits needed from every entity. The job could then be done right.

Mayor Terry suggested August 29, 1997 be listed in the permit as the deadline. If the work is not complete, there is no extension. The Davises would not be compromised.

Councilmember Theobold said that would solve part of the problem, but he did not think the data would be complete. He said TransColorado said it would take 75 days when they thought they had plenty of time, and now say it can be done in three weeks. He suspected the work will not be as complete. The City can look at the data and say it's insufficient, and go back later. He liked the idea of terminating the job on August 29, 1997. He felt spring, 1998 is a better timeframe.

Mayor Terry said Councilmember Theobold's concerns were well stated. She asked if the Bureau of Land Management can determine if the data is sufficient to meet the environmental

impact statement requirements. Ms. Kathryn Robertson, BLM representative, said they would be able to make that determination; that is their job. They would work closely with the City because of the partnership they have with the Grand Mesa Slopes.

Councilmember Sutherland asked if the project can be stopped by the BLM if the information is not complete. Ms. Robertson said the plan of development needs to be very detailed. They look at the impact on the entire route. The City is not alone in the hiring of experts. There is no reason for the City to be replicating skills that are within the BLM or U.S. Forest Service organization.

City Attorney Wilson asked if the City should have someone check out the route before TransColorado survey crew enters the property. Ms. Robertson reiterated Mr. Farina's comment that the City has gotten TransColorado's attention. She felt there is a real commitment on their part to work closely with the City. She did not feel it was necessary to walk the area before work begins. The previous study by the Natural Heritage group inventoried the conservation areas for Mesa County, and was very comprehensive, and identified some areas on the slopes (mostly BLM lands). She said many plants go dormant this time of year.

Councilmember Kinsey reminded Council that the City is allowing hunters to go up there and walk all over the slopes. Ms. Robertson said the issue is surface disturbance of the habitat.

City Attorney Wilson said TransColorado is not planning to do the walk through at this point. He asked when the walk through should be done in order to get to the plan of development. Ms. Robertson said it would be done with the City's right of access during the 30 day period. A lot of data is already out there. The BLM has concerns on steep slopes and watershed. Access is needed to get answers to these questions. She felt all entities need to look at the issue of shared resources so there are no duplicated expenses.

Councilmember Scott agreed with setting the deadline for August 29, 1997. If TransColorado waits until April, it may cost them additional money. He felt TransColorado should at least be given the opportunity to try to meet the August 29 deadline.

Councilmember Theobald said if Council's preference is to place the August 29, 1997 deadline, he would accept that. He

appreciated the BLM's offer of coordinating expertise. He still felt the City should have its own people out there before TransColorado's survey crew. The reasons being:

1. He wanted to see what the area looks like before the survey group gets out there so damage can be assessed;
2. He did not want to put faith in a general survey done of the Mesa previously. He wanted to put his faith in a specific survey of their route, so the City knows what is there.
3. He wanted the City pre-survey inspection to be conducted.

Councilmember Sutherland suggested a City representative could spend one day with a video camera to cover a two-mile terrain. Councilmember Theobold felt it would answer the damage question, but would not answer the plants, animal, endangered specie and archeological questions. Councilmember Sutherland said he was comfortable with the BLM's means to determine if the survey is adequate.

Councilmember Scott said he never heard TransColorado say they could do a good job and be out of there by the 29th of August. If they can do that, fine. If they cannot, then he agreed they should wait until April, 1998. Councilmember Payne said they did not say that this evening, but they indicated that at the last meeting with Council.

Mayor Terry asked City Attorney Wilson if the October 1, 1997 deadline was discussed with TransColorado specifically in reference to the conflict that it presents for Cliff and Judy Davis. Mr. Wilson said no. It was mainly getting people off the ground in time for the game to come back into the area before hunting season. August 29th is the latest date acceptable to the Davises.

Councilmember Kinsey felt it would be necessary to send an isolated expert back after the survey crew is there, to go back and take another look at a particular fault or spring. He did not feel two engineers walking the area would necessarily chase off the game. Mayor Terry said the specifics of re-entry after the dates would be identified, Council might be willing to do that in conjunction with the Davises.

City Attorney Wilson suggested letting City Manager Achen decide if experts are needed or not. Councilmember Theobold disagreed saying Council needs a pre-survey inspection by City hired experts and should require it. Councilmembers

Kinsey, Payne, Sutherland, Scott and Enos-Martinez agreed with letting the City Manager make that decision.

Mayor Terry asked City Attorney Wilson to elaborate on the decisions required of Council tonight. Mr. Wilson said a formal motion authorizing the City Manager to sign the temporary access permit, as amended, would be in order. Council must first decide on approval of the temporary access permit. Staff has questioned whether there is a right of condemnation by TransColorado. In most of the circuits in the U.S. there is a right. There is a question of whether condemnation law can apply to public lands or is dedicated to public purpose. He said there is no clear answer in this circuit. TransColorado has said if it cannot negotiate a permit, they will condemn the right-of-way. If the EIS is not specific enough so the alternate routes can be balanced for the public, under NEPA, the City could challenge the route selection, not to stop the pipeline, but to locate it somewhere else. If Council believes TransColorado's completion of construction date of September 30, 1998 under the F.E.R.C. permit is going to be delayed, once they ask for a deadline extension, the door is opened for additional negotiation. Questions can then be asked such as is the EIS sufficient for F.E.R.C., or can alternate routes be considered. Mr. Wilson needed further direction regarding how far Council wants him to pursue further investigation.

Upon motion by Councilmember Payne, seconded by Councilmember Scott and carried, the temporary right of entry permit was granted to TransColorado as submitted on the latest draft, with changes in page 2, item 2, October 1 be changed to August 29, 1997, 11:59 p.m., page 3, item f. was changed to "may", page 4, item 9.g. was deleted, and the City Manager was authorized to sign the permit as amended.

ADJOURNMENT

Upon motion by Councilmember Kinsey, seconded by Councilmember Scott and carried, the meeting was adjourned at 10:53 p.m.

Stephanie Nye, CMC/AAE
City Clerk