PUBLIC HEARING

STAFF: Calvin Feik, Bill Long

RE: Application for a Permit to Conduct a Designated Activity of State Interest or to Engage in Development in a Designated Area of State Interest; filed by Colorado Dairy Partners, LLC

STAFF RECOMMENDATION:

Staff recommends conditional approval of the Application.

APPLICATION:

On November 2, 2017, an Application for a Permit to Conduct a Designated Activity of State Interest or to Engage in Development in a Designated Area of State Interest (“Application” or “1041 Application”) was submitted by Colorado Dairy Partners, LLC (“CDP”). The Application was accepted as complete on November 2, 2017 at 9:20 AM.

NOTICE:

Notice of the Application and hearing was published in the Bent County Democrat on Thursday, November 2, 2017, in accordance with Sections 1.304 and 2.301 of the Guidelines and Regulations for Areas and Activities of State Interest, County of Bent, State of Colorado (“1041 Regulations”).

APPLICANT:

Colorado Dairy Partners is a Colorado limited liability company.

DESCRIPTION OF PROPOSED DEVELOPMENT:

By its Application, CDP proposes to construct and operate a dairy, including up to 10,000 cows on approximately 500 acres. The water supply for the proposed dairy will be derived from existing deep ground water wells on the property, and other wells to be drilled/developed. CDP estimates a peak demand of between 300 and 350 gallons per minute. Augmentation for CDP’s wells will reportedly be provided by LAWMA shares.
The CDP property is located in part of the S½ of Section 8, and part of the N½ of Section 17, both in T22S, R51W, 6th P.M, Bent County, Colorado.

**CRITERIA REVIEW:**

Chapter 3, Section 3.304 of the Bent County Guidelines and Regulations for Areas and Activities of State Interest sets forth criteria for determination of the Application with respect to efficient utilization of municipal and industrial water projects:

(a)  *To the extent applicant’s service area is located within or partially within the boundaries of the County, whether the need for the proposed water project can be substantiated.*

Not applicable.

(b)  *Compatibility of the proposed water project with federal, state, regional and County planning policies regarding land use and water resources.*

Not applicable.

(c)  *Municipal and industrial water projects shall emphasize the most efficient use of water, including, to the extent permissible under existing law, the recycling and reuse of water. Urban development, population densities, and site layout and design of stormwater and sanitation systems shall be accomplished in a manner that will prevent the pollution of aquifer recharge areas.*

Not applicable.

(d)  *Provision has been made to ensure that the proposed water project will not contaminate surface water resources.*

Applicant must comply with all State of Colorado water quality regulations applicable to the proposed dairy operation.

(e)  *The proposed water project is capable of providing water pursuant to standards of the Colorado Department of Health & Environment.*

Applicant must comply with State of Colorado water quality regulations applicable to the proposed dairy operation.

(f)  *The proposed diversion of water will not decrease the quality of peripheral or downstream surface and subsurface water resources within the County below that designated by the Colorado Water Quality Control Division as of the date of the adoption of these Regulations.*

Applicant must comply with State of Colorado water quality regulations applicable to the proposed dairy operation.
The proposed development and the potential diversion of water will not significantly deteriorate aquatic habitats, marshlands and wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitats, or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreational areas, and unique areas of geologic, historic or archaeological importance.

To the extent Applicant utilizes LAWMA shares derived by new dry-up of lands in Bent County, such shares must be subject to and compliant with a Bent County 1041 permit.

The water treatment offset plan required by Section 3.303(16) has been approved by the Permit Authority and required fees associated therewith, if any, have been paid.

Not applicable to the extent wastewater treatment will be contained within project site.

The construction of structures, buildings, and improvements associated with the proposed development will not significantly impact existing or proposed communities.

Applicant must comply with the terms and conditions of any approval of any special use review approval for the proposed dairy (County Docket 170926-01-SRU).

RECOMMENDATION: Staff recommends that the Board of County Commissioners CONDITIONALLY APPROVE the Application, subject to the Board’s consideration of the following potential terms and conditions:

Commitments of Record. Applicant shall meet all of its commitments of record.

Augmentation using LAWMA Shares. Applicant shall confirm the source of augmentation water to be used for any wells, and, if applicable, shall provide certification that any LAWMA shares subject to a Bent County 1041 permit are in full compliance with such permit.

Term of Permit. The 1041 Permit shall be valid indefinitely for the life of the development, provided that Applicant is in compliance with the 1041 Permit. The 1041 Permit may be revoked or suspended for failure to comply with its terms in accordance with the Bent County 1041 Regulations.

Transfer of Permit. The 1041 Permit may only be transferred or assigned in whole or in part upon written approval of Bent County. Any proposed transferee or assignee shall demonstrate that it can and will comply with all terms and conditions of the 1041 Permit.

Compliance with Regulatory Requirements. Applicant shall comply with all state, local and federal regulatory requirements, permits, decrees and other approvals applicable to the development. Applicant shall provide copies of any such approvals, permits, and decrees to Bent County. If any such approval, permit, or decree results in a material change to the 1041 Permit, then Bent County shall determine whether a 1041 Permit amendment or suspension is
required. In the event of conflict between such other requirements, permits, decrees and other approvals and the 1041 Permit, the stricter standard shall be applicable.

**Other Bent County Regulations.** The 1041 Permit does not constitute an exemption from Bent County’s zoning, building, health or other applicable regulations and codes.

**Permit Amendment.** Any material change in the construction, use or operation of the Applicant’s development, together with the Applicant’s commitments of record, shall require a 1041 Permit amendment. For these purposes, a material change shall be any change in the development which significantly changes the nature of impacts considered in approval of the 1041 permit. The Applicant shall notify Bent County of any change in the development and Bent County shall determine whether an amendment or new permit is required.

**Compliance Reporting.**

A. The 1041 Permit shall be subject to both interim and ongoing review and assessment. The cost of studies or data produced by the Applicant as part of the required reviews, as well as of the County’s staff time to process the reviews, shall be borne by the Applicant.

B. Interim reviews shall occur (as measured from the date of the Board’s adoption of a resolution approving the Application) at the end of years one, three, and five and then occur every five years thereafter. Interim reviews shall be to review the monitoring/management plans and compliance with the permit terms, conditions, and commitments of the record.

**Noncompliance.** Noncompliance with the terms and conditions of the 1041 Permit shall suspend the 1041 Permit.

**Integrated Terms and Conditions.** Because any 1041 Permit issues may be based on a determination that the benefits accruing to Bent County and its citizens from the Applicant’s proposed development and activity outweigh the unavoidable impacts and losses of resources within Bent County, if any term or condition of the 1041 Permit is deemed invalid and unenforceable, then the 1041 Permit shall be rescinded or suspended unless, Bent County, in its discretion, approves a 1041 Permit amendment.