

John Nissel

From: Alden Roth <aldenroth@gmail.com>
Sent: Wednesday, February 5, 2025 4:17 PM
To: John Nissel
Cc: Astottlemyer@ctubwv.com
Subject: Public Comment Regarding Potential CTUB and Sidewinder Agreement

Hi John

I'd like to make a comment about CTUBs agreement with Sidewinder Enterprises LLC in regards to the water bottling facility. This comment was made during public comment at today's meeting.

First, I want to make it clear that I opposed the water bottling facility. I think it is a bad deal for the community. There is a high risk of polluting our counties groundwater and wells running dry, not to mention the immense impact the facility would have on Middleway, disturbing the historic nature of the community and potentially destroying the historic buildings. But I realize this is not a meeting about the water bottling plant itself.

If Sidewinder is permitted to move forward with their project, I think it is in the public's best interest for CTUB to be the utility attached to it. The agreement between CTUB and Sidewinder is one that strengthens the position of CTUB in the county, which is a good thing. If the project moves forward, and the wells of Middleway dry up, it would be much better for those people to be able to tap into CTUB utilities, instead of being forced to pay the exorbitant rates of American water.

If Sidewinders project goes thru, and CTUB is not attached as the utility, American Water will happily slither in, giving them more of a presence in the county and further putting our county's public utilities at risk. Public utilities are a public good, and they should serve the public. American water does not. It serves its corporate shareholders.

Again, I don't want the water bottling plant in our county. But if it is going to be here, I think the agreement between Sidewinder and CTUB is the best option when it comes to the plants pipeline and water utilities.

CTUB/ Sidewinder agreement Comments,

2/04/2025, By Don Rebmann.

Good evening, my name is Don Rebmann, I live in Middleway just up the hill from Lake Louise.

I've been trying to make sense of why CTUB would even consider making this water line agreement with Sidewinder, other than getting the ownership of the pipeline once installed, *it doesn't really provide any immediate monetary benefit. My understanding is that without some sort of "Utility" representation, Sidewinder cannot get easement approval through WVDOT to run their water line along the roads to the plant, so it would seem Sidewinder needs CTUB. I am aware of The Jefferson County Foundation's principle that it would be better for CTUB to have this agreement than a "private" utility just for the "accountability reasons" to the public.*

I am also very impressed and grateful for what Chris and the foundation have been doing to help educate everyone to stop this bottling plant from being approved. But I feel that making any kind of agreement with Sidewinder is basically showing support for this project *and may be giving Sidewinder a benefit reason to be granted easements for their pipeline and may only fuel Sidewinders argument for the planning commission to approve their proposal, or in the event this goes to title 12(?) or even possibly going to court.*

I don't know everyone's position on this proposed bottling plant, but hopefully most of *you, if not all, are against it.*

If I remember correctly, this water agreement is based on a proposal that may eventually provide up to 200 (est.) homes with water, if necessary, from Sidewinders wells. A quick look at Google maps and you'll see that there are only about a hundred homes within a $\frac{1}{2}$ *mile of the proposed plant. Then going a mile out putting Happy creek in range may get 200.* Going beyond that the houses become further apart and it becomes more rural. The infrastructure necessary to provide service to these homes would cost millions of dollars for very little return.

In my honest opinion, and I'm by no means an expert on this, but most private water companies are going to look for investments that will be profitable from the start. I don't think a private company would look at this plan the way it is and consider it profitable with just having access to this water line and small treatment plant(?), which is not specifically detailed, and basically nonfunctional without all the other infrastructure in place to supply paying customers in this rural area.

There would have to be miles of underground pipeline from the water treatment plant to as many houses as possible which would require immense undertaking and millions of dollars of investment which would take years of "water bills" before any profit would be realized. Not only that, Sidewinder maintains ownership and control of the wells and the property where they're located. Something a private corporation might not agree to.

Also, as most of you probably know, trenching underground in this area can be very difficult with all the limestone and rock just below the surface, it would require a lot of "jackhammering" which could put historic structures of Middleway in jeopardy. This would also be huge additional cost to anyone wishing to provide water to the local residents.

And that's only if there is enough water in the ground to supply any of this. I think we all believe there should be a water feasibility study performed before any of this moves forward.

So, in closing, I'm not really convinced that "we" or CTUB should be concerned with Sidewinder finding another private "utility" to pair up with to help with their easements.

But, if an agreement is produced and accepted, it should be noted that CTUB does not in any way promote or approve of groundwater extraction or support the water bottling plant proposal.

Final thought, I think all this needs to be put aside until the planning commission has made a final decision on the water plant proposal. Then this can be brought back to the table with more specific details.

Thank you.

A handwritten signature in black ink, appearing to read "Dan Rhea", with a long, sweeping horizontal line extending to the right.

**Public Comment for Charles Town Utilities Board Special Meeting
Meeting of February 5, 2025,
CTUB Office @ 4:00pm**

Dear CTUB,

If you don't get this right, it's all on you as government officials...

because once the protected wetlands are gone, they're gone forever.

Now comes, David Tabb and makes the following public comments:

As a life long resident, tax payer, business owner, business permit applicant, conservationist, EPA-DEP, Public Service Commission, Pro Se litigator that promotes both State and U.S. Constitutional rights of Due Process that *"no one shall be deprived of life, liberty or property without due process of law"*. (Fifth and Fourteen Amendments) are also referred to as *"Due Process Clause"*; a legal obligation of all states.

I, David Tabb, appeal to this Board to **DENY** CTUB's proposed agreement with *"Sidewinder - Mountain Pure – Triad Group"*. This permit already bears the name CTUB yet, CTUB has no experience or permitting to use extraction wells, only surface water. Who will hold the liability if the extracted water permitted causes the loss of water, accustomed by others, to include damage or destruction of a State and Federal protected wetland?

I have been entrusted, with the heritage of my family and the other lifelong Jefferson County residents, to protect our properties as one. I have been entrusted with the defined stewardship as a: *"theological belief that humans are responsible for the world, humanity and the gifts and resources that have been entrusted to us"*, for Jefferson County by and through my lifelong residence that can be traced back to pre-revolutionary war.

The topics listed are of concerns, arguments and any other hidden agendas:

This Board, before moving forward with any agreement, after affirming that the previous application and agreement was not properly displayed within open meeting proceedings, needs CTUB to resubmit the required permits and allow the public to make comments within the permitting process.

Abandoned Industrial Site: has no grandfather clause and all previous permits are abandoned as well.

The only grandfathered rights are held by the general public as they have been accustomed.

Abandoned Industrial Site to include its toxicity (brownfield): With change of ownership and the change of use, the WV DEP is required to have studies that includes stormwater controls and possible remediation to require a possible cap cover to prevent any water to touch the entire toxic industrial site. This permitting is to include a study of the above and below ground water and any protected endangered species; both plants and wildlife to include their habitat.

Change of Use – Industrial Site – Department of Transportation: All of these topics need a new highway study and impact on existing roads and neighborhoods. An update all of new industrial use requirements. The Department of Transportation has yet to permit a new industrial site application/permit of the updated requirements (previous highway permit is invalid due to the abandonment of the previous industrial site). The inadequate turning radius to accommodate 53' trailer and tractor (combo), including the impact of heavy use within a historic registered town (Middleway), with narrow roads and where the residents are not accustomed to the noise and vibration to their historic homes. All of these topics would violate a new application for an industrial highway and use permit.

Conditional use permit: access to surface water (not extraction wells), sewer, utilities, environmental, road and highway (if not in continuous use, all previous permits have expired!). *Note: The 3M/Kodak facility never had an extraction well permit nor did they own the proposed extraction site.*

False identification when applying for permits: CTUB allowed Sidewinder/Mountain Pure to submit permit application in CTUB's name to the WV DEP, Department of Highways and the Public Service Commission as an industrial extraction site. This has not been approved as industrial nor does it have the required setbacks for the proposed extraction site. The well study completed by Triad used the wrong base to review water usage; not the karst guidelines.

Department of Transportation has only permitted a 6" line for a subdivision rural area (a subdivision assigned as agriculture use) to follow Rt 51 to Old Middleway Road to East Street (East St has a 16' right of way) to Grace Street (East) (16' right of way to Queen St) Intersection of Queen St to Grace St (West). This permit can only be used for the subdivision not for an industrial site use. Furthermore, this permit requires a min of a 20' right of way to be approved. There are grave sites, that have been identified within the right of way of East St, that have yet been addressed.

Department of Transportation for an industrial water use requires a different water line easement permit that the Department of Highway can't permit since the rural usage has an agriculture restriction. Any water line over 6" needs the Corp of Engineers' approval and supervision at the time of installation and or any additional lines.

Emergency Service and Public Safety appears to not have been addressed: Middleway Volunteer Fire Company has failed to respond to safety application requirements. I have not seen any request or response to or from the Local Emergency Planning Committee or a safety plan that would address a catastrophe eruption of the proposed high-pressure, high-volume water line.

The environmental impact - if you get this wrong: According to a Watershed Assessment of the WV DEP, dated Feb 10, 2022, Turkey Run Spring, the 5th largest spring in WV, is a rare marl wetland. This marl wetland covers "...52 acres and is comprised of a large mosaic of different vegetation...with multiple smaller springs...". The main environmental concern is protecting the plants, wildlife, and the habitat that includes 5 different rock and soil tips. Turkey Run and Lake Louise is a delicate wetland and "...any introduction of pollutants, sediment or stormwater loading will degrade the wetland..." along with the habitats for over 30 rare plants, multiple protected animals such as the eastern cricket frog and the spotted turtle.

Note: All West Virginia wetlands fall under the jurisdiction of the Federal Clean Water Act of 1972 and the Food Security Act of 1985.

Further statements to the above information:

The public, in general, has requested a water study; to include whether there is a sufficient capacity of water to handle both the existing public consumption and the 1.7 to 2 million gallons per day of now ground water extraction verses surface water listed previously under **Conditional Use Permit** (*now expired*). The other concern is failure to show/present the water to be used for a "water bottling facility" of a possible 1.7 to 2 million gallons per day. When in fact, CTUB's agreement is for 200-unit times 150 gallons equaling 30,000 gallons per day (max). The test results indicate 1,200 gallons per minute, times 60 mins per hour, is 7,200 gallons (per hour), times 24 hours equals 1.728 million gallons per day.

So, where is the rest of the water over the (30,000 gallons per day) that you, CTUB, has been permitted and will the extraction permit be more than 30,000 gallons of water per day? If more water is extracted, how much and where or what would that water be used for? Will this additional water have a conditional use permit or be unlimited?

Fish and Wildlife is working on scheduling a visit sometime this spring or early summer to update the protection of Turkey Run and Lake Louise wetland site.

In the last week, Mr. Tabb has purchased a sonar devise to measure the water levels. The data collection indicates GPS locations (ownership) to include elevations where water levels can be determined.

With all the statements above, I David Tabb, request that this Board find the "Sidewinder - Mountain Pure – Triad Group" application to CTUB as incomplete and deny the proposed current agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Tabb", written in a cursive style.

David Tabb

Good Afternoon,

There are a few items of concerns that I believe the CTUB Directors should consider pertaining to the Sidewinder agreement on the agenda today.

1. **Page 1 Cover:** Is CTUB obtaining the water source mentioned in this agreement?

WHEREAS, CTUB desires to obtain a water source for treatment and sale to DEVELOPER and to the other customers; and,

2. **Section 3.04:** Are there any procedural terms of the conveyance of the infrastructure that CTUB will own?

Section 3.04. Upon completion of the construction of the Project, the DEVELOPER shall lease to CTUB the site upon which the water treatment facilities are located, and convey, free of all liens and encumbrances, the raw water transmission line, finished water mains for domestic service and the water treatment plant. The Lease shall be for a term of one hundred (100) years at an annual rental rate of one dollar (\$1.00).

3. **Section 4.03:** Does the first right of refusal without an agreed purchase price force or pigeon-hole the utility to pay whatever the developer wants in the future?

Section 4.03. DEVELOPER further agrees that in the event it should decide to discontinue operation of the wells or seek to transfer ownership to the wells and facilities necessary to supply raw water to its Development, it will offer to CTUB the right of first refusal to purchase said wells and facilities.

4. **Section 7.01:** If the developer operates and maintains the wells at its expense and in charge of pumping water for CTUB serving future customers, how does this agreement protect the interests of CTUB and its statutory compliance obligations under such titles as 64, should Sidewinder breach the contract? CTUB not owning or operating the water source despite being able to shut the pipe may still pose a reliability risk for CTUB to comply with statutory requirements in serving customers other than the developer who maintains the pumpswitch?

5. **Section 7.01:** Why does the agreement refer to multiple wells when the permit is for only one well? Will CTUB be receiving water from more than one well?

Section 7.01. DEVELOPER shall operate and maintain the wells at its expense and shall pump water to the treatment plant for CTUB to treat and sell to its customers. CTUB shall operate and maintain the raw water main and the treatment plant at its expense and in accordance with all federal, state and local regulatory requirements. It is understood that the water treatment will be designed to treat true-groundwater sources only and will not be a filtration plant. The water treatment plant will be designed in accordance with the WVBPH requirements. In the event that the source water is determined to be Ground Water Under the Direct Influence of Surface Water, the plant will meet all WVBPH requirements.

6. **Section 7.02:** What provisions has the agreement made to allow CTUB to drill a new well or expand capacity on land not owned by CTUB but is leased from the developer?
7. **Section 7.02:** The agreement states that if CTUB wants to expand at its own expense, it has to perform environmental assessments to show that the expansion will not impair the quality of the existing water wells. Does CTUB possess a baseline water quality assessment of the water it intends to serve the developer and future CTUB customers from the company and a plausible strategic plan for how this expansion would occur?
8. **Section 7.02:** Expansion for the developer on CTUB infrastructure should be done through Title 150 Water Rules, not capacity improvement fees alone.

Section 7.02. Except as provided in Section 5.02, after transfer of ownership to CTUB of the Project, CTUB shall be responsible for the costs of any and all operations and maintenance changes, as well as capital changes and upgrades to all federal, state and local governmental regulations. CTUB has the right, at its sole expense to expand the capacity of the treatment plant when such expansion may be necessary for public use provided that (a) CTUB performs Phase I and Phase II environmental assessments to prove that the expansion of the capacity (including the drilling of new wells) will not impair the quality of the existing water wells, (b) such expansion would not limit the yield or capacity of water products with respect to DEVELOPER's customers; and (c) nothing herein shall preclude DEVELOPER from producing water from other wells on other properties that DEVELOPER now or in the future may own. Should the DEVELOPER require expansion of the plant for dedicated use, assessment of Capacity Improvement Fees may apply.

9. **Section 4.01:** In this agreement, CTUB should not be anticipating 200 non-existent customers. CTUB is not the developer in this agreement. CTUB does not own nor does it operate the well and pump to the water source that would provide span and control of service. CTUB should not be contemplating serving any customers with this project aside from the developer's declaration of anticipated hook ups.

Section 4.01. DEVELOPER shall pump water from the wells for CTUB to treat and sell to its customers, an amount sufficient to serve the DEVELOPER'S potable supply requirements on the Development plus an additional amount to serve 200 equivalent dwelling units (EDUs). The DEVELOPER'S requirements on the Development and customers served by the additional amount shall be collectively referred to herein as "CTUB Customers". For purposes of this Agreement an equivalent dwelling unit shall be equal to 150 gallons per day. Any increase in the allocation to CTUB shall be subject to agreement by CTUB and DEVELOPER.

10. I received an email response from the developer representative named in this agreement. The question was generally why does CTUB's name and management appear on the well permit when the CTUB isn't the owner? The answer was that CTUB is a managerial partner. When was this partnership voted on publicly by the Board of Directors?