

COUNTY OF LINCOLN

New Mexico Regular Meeting Board of County Commissioners

Jackie Powell, Chair
Preston Stone, Vice Chair

Kathryn Minter, Member
Mark Doth, Member
Dallas Draper, Member

Minutes Tuesday February 18, 2014

Minutes of the Special Meeting of the Lincoln County Commission held at 8:30 AM on February 18, 2014 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

Chair Powell called the Regular Meeting of the Board of County Commissioners to order at 8:33:11 AM.

2. Roll Call

Roll Call.

Present: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Rhonda Burrows, County Clerk.

3. Invocation

The invocation was presented by Commissioner Stone.

4. Pledge of Allegiance

- a. Pledge – U.S. A. Flag – Chair Powell
- b. Salute – N.M. Flag – Commissioner Doth

5. Approval of Agenda

Motion: Acceptance of the Agenda and authorized the Chair to move items as necessary,

Action: Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

6. Approval of Minutes

January 14, 2014 - Regular Commission Meeting

Motion: Approve the minutes of the January 14, 2014, Regular Commission Meeting

Action: Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending January 31, 2014
- c. DWI Prevention Program
- d. Amend Resolution 2013-26 Supporting the Full Funding of Payment in Lieu of Taxes (PILT) from the Federal Government by Resolution 2013 – 33 (corrects

the amount of dollars the federal budget removes in royalty payments from the State of New Mexico)

Motion: Approval of Consent items as presented, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Draper.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

SEE EXHIBIT A: Copies of Consent Items are attached hereto in reference thereto made a part hereof.

8. Smokey Bear District Ranger Update – Larry Cordova

Ms. Taylor informed Ranger David Warnack was on temporary assignment in Flagstaff, AZ for several months and Larry Cordova was the Acting District Ranger in his absence. Ms. Taylor stated Acting Ranger Cordova was unable to attend this meeting.

9. Greentree Solid Waste Authority

a. Rate Collection Activities

Ms. Taylor provided examples of complaints received from residents related to inconsistent billing practices. Ms. Taylor stated Debra Ingle, Operational Supervisor and Joe Lewandowski, Operations Consultant from GSWA were present and might be able to provide additional information to support practices and GSWA's request for liens to be placed on particular properties.

Ms. Taylor provided copies of the GSWA draft minutes of GSWA and financial statements.

b. Consideration / Action on GSWA Request for Filing of Liens

Debra Ingle, Operational Supervisor stated for the past twenty three years GSWA had mailed approximately 3,800 bills to customers on a quarterly basis. Ms. Ingle informed all of the twenty three liens currently presented for recording were approved for that action by the GSWA Board in 2011. Ms. Ingle stated subsequently these twenty three property owners entered into payment agreements with GSWA but they had since defaulted on those agreements resulting in the request for liens to be placed on the properties.

Ms. Taylor noted the bills do not reflect a property description which was confusing to the owner. Ms. Ingle stated a property owner number tying the bill to an Assessor's parcel record was referenced on the bill.

Commissioner Draper requested a copy of the associated payment agreements as supporting documentation for the liens. Commissioner Doth requested input from property owners regarding the placement of liens.

c. Current Status of County / GSWA Litigation; Negotiation efforts

Ms. Taylor provided a summary of actions including the hiring of the law firm of Melendres, Melendres, and Harrigan and sending the notice of intent to withdraw to GSWA. Chair Powell stated the County was working to remove "personality conflicts" from the issue by hiring outside counsel as a second opinion and requested GSWA consider similar action.

Commissioner Minter advocated for scheduling a public hearing for a rate increase as requested by GSWA. Chair Powell opined that scheduling a public hearing at this time would be premature. Commissioner Stone expressed belief the problems between the entities needed to be discussed by Commissioners and GSWA board members only, excluding attorneys and managers, in an effort to resolve issues.

10. Lincoln County Detention Center Update – Warden Anderson

Warden Arthur Anderson informed on monthly bookings and releases at the Lincoln County Detention Center and stated the total average daily population for the month of February 2014 was 136. Warden Anderson stated the current population was 137 including 17 BIA prisoners and zero US Marshal prisoners.

Chair Powell commended Warden Anderson for working with the New Mexico Association of Counties on their accreditation program for detention centers.

Chair Powell recessed the Regular Meeting and convened the Board of Finance at 8:57:38 AM.

11. Board of Finance – Glenna Robbins, Treasurer

Glenna Robbins, Treasurer provided a copy of the Treasurer's current investment policy and collateral agreement for review. Ms. Robbins also directed attention to the Treasurer's Financial Report for the month ending January 31, 2014.

Ms. Robbins stated the purpose of the investment policy as updated in 2008 was to provide necessary limitations and guidelines to assure compliance with NM State statutes. Ms. Robbins stated prudent investment objectives were safety, availability, and a reasonable rate of return on investments.

Ms. Robbins stated to meet safety objectives the investment policy defined types of investments and the associated collateral agreement needed to meet or exceed State requirements. Ms. Robbins explained Lincoln County set a higher safety standard by requiring deposits to be collateralized at 102% after FDIC insurance. Ms. Robbins noted in the Treasurer's Monthly Financial Report a list of each bank holding deposits in Lincoln County along with investment limits, current deposits, and current collateral.

Ms. Robbins stated the investment policy objective of diversity was addressed by the distribution of investments with current investments of 6% in Certificates of Deposit, 53% in Money Market investment accounts, 30% in operational interest earning accounts, 3% in debit service accounts held by New Mexico Finance Authority, and 8% held with LPL Financial. Ms. Robbins explained the 8% invested with LPL Financial was basically an amount equivalent to the 3/12th DFA required reserve. Ms. Robbins informed 89% of total investments where held by banks in Lincoln County.

Ms. Robbins stated 83% of all investments were liquid and ready for use to cover County expenses when needed. Ms. Robbins further detailed the current rate of return on investments and noted the average State overnight rate of return for the month of January 2014 was .06%. Ms. Robbins stated that even with a lower rate of return to attain 102% collateralization, Lincoln County still currently exceeded the State overnight rate of return on investments.

Ms. Robbins discussed how the Treasurer's office worked with the Finance Department to ensure budgeting compliance and to ensure sufficient funds in operational accounts prior to issuing payments.

Chair Powell adjourned the Board of Finance and reconvened the Regular Meeting at 9:06:56 AM.

18. Consideration and approval of a Proclamation

Ms. Taylor informed Magistrate Judge Martha McKnight Proctor retired from public office in January of 2014 after serving twenty five consecutive years as an elected official in Lincoln County. Ms. Taylor stated Judge Proctor had served as County Clerk for fourteen years and then Magistrate Judge for an additional eleven years. Ms. Taylor stated the Board of Commissioners wished to honor Judge Proctor for her dedication by proclamation.

Chair Powell read the proclamation and presented it to Judge Proctor in recognition of her years of service and many accomplishments. Chair Powell stated by virtue of the Proclamation February 18, 2014 was declared as Martha McKnight Proctor Day in Lincoln County.

12. Presentation – Capitan FFA National Forestry Team

Todd Proctor, Capitan FFA Advisor for more than twenty three years explained this was National FFA week commemorating the importance of agriculture and the natural resource sciences to both the County and the State of New Mexico.

Mr. Proctor stated Capitan FFA Forestry Team members first won the State FFA Forestry Contest and then traveled to the National FFA Convention in Louisville, Kentucky to represent the State of New Mexico. Mr. Proctor stated one individual on the team was also recognized at the competition as a Natural Science award winner.

Kylie Hutchison, Ian McWilliams, and Maggie Rich each discussed their experience competing at the State level and their attendance at the National FFA Convention. Members of the team not present were: Layne Southard, Walker Bymoen, and Wade Stearns.

Mr. Proctor acknowledge the support of the State and National Forestry departments in Captain, the Soil & Water Conservation District, the Lincoln County Fair Board, the County Commissioners and other organizations and members of the community. Mr. Proctor stated the FFA program provided opportunity for youth to grow and become better citizens in the community.

Chair Powell acknowledged the dedication of Todd Proctor in his service as an FFA Advisor. Ms. Taylor noted in addition to the teams' Silver Honor in the forestry competition, three members earned a silver medal, and Layne Southard earned a gold medal in the competition. Ms. Taylor stated the members encompassed the FFA ideals of leadership, personal growth, and career success.

13. Consideration / Action on MOU with the Village of Ruidoso Permitting Process in the County

Attorney Morel provided a brief history of actions and discussed the three options available including: developing an independent County inspection department; entering into an MOU with the State Construction Industries Division (CID) for all County inspections; or entering into an MOU with the Village of Ruidoso for inspections in specific areas of the County. Attorney Morel stated according to direction an MOU with the Village of Ruidoso was drafted and after multiple revisions a final draft was developed but not in time for presentation at this meeting.

Attorney Morel addressed some of the main issues encountered in drafting the MOU including issues on jurisdiction. Attorney Morel stated the Village and the County had agreed to disagree on whether one or the other of the entities had "exclusive" jurisdiction. Attorney Morel stated a map was developed which encompassed the area extending three miles from Village of Ruidoso municipal limits but also included complete subdivisions which were at least partially within the area. Attorney Morel stated language in the MOU regarding the duties of the Village of Ruidoso to maintain an inspection department was minimal as these requirements were defined by CID. Attorney Morel stated both the County and the Village would have termination ability dependent upon four months prior notice.

Attorney Morel reminded the Board of Commissioners had requested the Village remit to the County a \$25 fee for related County administration from the Village's current fee payments. Attorney Morel noted some of the Village permit fees were only \$25 and suggested for an initial six month period the Village furnish to the County a quarterly report of permits issued, fees charged, and the location of each permit. Attorney Morel stated the County could review the data to determine whether a County administrative fee was appropriate.

Attorney Morel stated the Village of Ruidoso council would review the MOU prior to presentation to Commissioners at the next regular meeting.

19. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS

Commissioner Stone stated he wished to express public support for the County Attorney and his representation of the County during the ongoing legal conflict with Greentree Solid Waste Authority. Commissioner Stone stated the Board of Commissioners acknowledged the integrity of Attorney Morel in all of his actions representing the County and further stated he took personal offense to efforts to disparage Attorney Morel. Commissioner Doth, Commissioner Draper, and Chair Powell voiced agreement with the comments.

Commissioner Minter reported on her recent attendance at a meeting in Utah of the American Lands Council which was devoted to the topic of State's reclaiming federal property. Commissioner Minter provided signed copies of a book written by William Perry Pendley titled: *Sagebrush Rebel: Reagan's Battle with Environmental Extremists and Why It Matters today* to each Commissioner along with copies to local libraries. Commissioner Minter noted there was continued effort in the NM State Legislature, though unsuccessful to date, to reclaim federal lands.

17. 9:00 A.M.: Consideration and Action on Lodger's Tax Applications with Backup Material:

Commissioner Doth recused himself from voting on the applications due to the possible appearance of a conflict of interest.

- a. Funding Request: \$17,400.00
Purpose: Smokey Bear Days
Date(s) of Event: May 2-4, 2014
Presenter: Bennie Long/Smokey Bear's Hometown Association
(TABLED BY LODGER'S TAX COMMITTEE)

- b. Funding Request: \$18,901.37
Purpose: Old Lincoln Days
Date(s) of Event: August 1-3, 2014
Presenter: Kristi Morrow/Lincoln Pageant & Festival Corp. Lincoln Historic Site

Motion: Approve the funding request of \$18,901.37 for Old Lincoln Days, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Chair Powell.

Commissioner Stone requested future applications contain information about the amount approved for the same request in prior years.

Vote: Motion passed (**summary:** Yes = 4, No = 0, Abstain = 1).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Abstain: Commissioner Doth.

14. Consideration / Approval of 2014/2015 Local Government Road Fund Projects/CAP/ COOP/School Bus Programs by Resolution 2013-31

Ms. Taylor presented the proposed Resolution for approval of the County's Fiscal Year 2014/2015 State Highway Cooperative funded projects. Ms. Taylor detailed the CAP/COOP/School Bus Route projects as follows:

- a. School Bus: State funds of \$60,871.77 / County match of \$20,290.59 for .85 miles work on Laughing Horse Trail with a total project cost of \$81,162.36.
- b. COOP: State funds of \$54,660.29 / County match of \$18,220.09 for .45 miles work on Laughing Horse Trail with a total project cost of \$72,880.39.
- c. CAP: State funds of \$147,264.11 / County match of \$49,088.04 for 1.77 miles of work on Bancroft Road; .21 miles of work on Biscuit Hill Road; and .14 miles of work on Apple Blossom Road with a total project cost of \$196,342.15.

Carl Palmer, Road Superintendent explained the projects were presented for Commission approval three separate times first for approval of the specific projects, then for approval of the agreements to complete the projects, and finally for reassignment of remaining funds to additional projects. Mr. Palmer stated the projects presented were scheduled for completion in 2015.

Motion: Adopt Resolution 2013-31, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

SEE EXHIBIT B: Copy of Resolution 2013-31 is attached hereto in reference thereto made a part hereof.

20. Consideration / Action on New Horizon Request

Patsy Sanchez, member of the Board of New Horizons presented a request for facility improvements at the County owned property. Ms. Sanchez noted residents of the facility were present in the audience and expressed the need for public education about the purpose and need for this type of facility.

Amy Mitchell, Acting Director discussed current conditions needing remedy including flooring problems, the lack of a backup generator to support the facility, and the need for an outside storage facility. Ms. Mitchell stated there were currently 19 residents in the facility with an

employed staff of approximately 30. Ms. Mitchell requested financial assistance from the Board of Commissioners.

Commissioner Draper agreed to promote education about New Horizons and initiate fundraising activities as a member of the Ruidoso Chamber of Commerce. Commissioner Doth suggested requesting discounts on goods and services needed as a non-profit and also suggested the Manager research the option of the facility participating in governmental pricing contracts. Commissioner Stone suggested the facility explore grant funding opportunities.

Ms. Sanchez requested the County, as owner of the property, approve applying to the Town of Carrizozo for a variance to locate a storage unit on the property. Chair Powell requested Attorney Morel or Curt Temple, Planning Director assist the facility with the application.

Chair Powell recessed the Regular Meeting at 10:02:23 AM and reconvened at 10:17:52 AM.

**15. Water issues/Forest/Wildlife Health Programs/Land and Natural Resources
Advisory Committee (LANRAC)**

Ms. Taylor introduced Rick Merrick as the new Rural Community Forester with South Central Mountain RC&D. Mr. Merrick explained he was hired to fill the position previously held by Mike Caggiano. Mr. Merrick stated he was excited about working in Lincoln County and working on projects such as the Community Wildfire Protection Plan in addition to community outreach programs to address fire danger and bug disease.

1. Ms. Taylor reported six new water rights notices were posted on the State Engineer's website as follows:

- a. Re-file of original Notice given on July 15, 2013. SEA GEM LLC and the Village of Ruidoso re-filed No. 01300-1; 01300-2; 01300-3; 0826-2 into 0275 et al; & H271 et al (T) to temporarily change the Surface and Supplemental Groundwater Points of Diversion and Change Place and Purpose of Use in the Hondo Underground Water Basin to the Village of Ruidoso for municipal purposes.
- b. Re-file of original Notice given on July 15, 2013. The Village of Ruidoso and SEA GEM re-filed Application No. H-50-1 into 0275-1 and H-272 et al (T) for permit to temporarily change point of diversion, place and purpose of use of 26.88 acre feet per annum of groundwater, and change point of diversion from groundwater to surface water and groundwater by ceasing the diversion of waters from well H-50, and severing waters from the commercial use of 8.40 acres of land for municipal purposes.
- c. On January 29, 2014, Monroy Montes and Jonny Montes, Jr. filed Application No. 0866-2 & h-249 for permit to change location of shallow well by abandoning the use of well no. H-249 and drilling well no. H-249-POD2. The purpose is to continue rights for the diversion of 11.52 acre feet per annum of shallow ground water for the irrigation of 3.6 acres of land located approximately 2.0 miles west of Glencoe.
- d. Re-file of original Notice given on September 23, 2013. The Village of Ruidoso and Ruidoso Properties Irrevocable Management Trust filed an application to temporarily change point diversion, place and purpose of use of 123.0 acre feet per annum of groundwater and change point of diversion from groundwater to surface water and groundwater by ceasing the diversion of waters and severing waters from commercial racetrack purposes within the Village of Ruidoso.
- e. On December 12, 2013, FNF Construction filed application T-6001 for permit to temporarily appropriate underground water within the Tularosa Underground Water Basin not to exceed 90 acre feet per annum for road construction purposes on Highway 54.
- f. On December 12, 2013, FNF Construction filed application T-6002 for permit to temporarily appropriate underground water within the Tularosa Underground Water Basin not to exceed 90 acre feet per annum for road construction purposes on Highway 54 at a separate site with different landowner.

Chair Powell reminded of the mountainous nature of the watershed and noted agricultural use of water was actually minimal in this County. Chair Powell stated applications to retire agriculture rights were not a solution to water problems throughout the County. Chair Powell reminded based on the lack of snowfall there would be minimal runoff for this year and to transfer water rights on paper did not increase the amount of water available.

Commissioner Draper reported on a presentation by the NM Environmental Impact Department about drinking water. Commissioner Draper stated EID agreed to provide a presentation for the Commissioners about various programs available to assist with water conservation. Chair Powell reminded of plans to sponsor a water forum.

2. Ms. Taylor provided a status update on the Mexican Wolf Environmental Impact Statement including actions to collect data, the posting of peer review comments on the proposed rule revision, the consideration of revisions based on comments received, and the plan for proposed meeting dates for the cooperating agency Interdisciplinary Project Team and the EIS tribal working group.

3. Ms. Taylor discussed the current Lincoln County Ordinance 2007-2 which prohibits the release into the wild, within the boundaries of Lincoln County, of predatory animals of the genera Canis, Ursus, and Fells. Ms. Taylor noted the ordinance does not offer protections or remedies as written and noted the Board of Commissioners had requested the Ordinance amended. The Manager recommended a public hearing scheduled to consider and potentially take action on a Wolf Ordinance. Ms. Taylor provided copies of similar ordinances enacted by Luna County and Catron County.

Commissioner Doth discussed the need to include a remedy in the Ordinance. Attorney Morel reminded there were federal rules and regulations applicable to any protected or endangered species. Commissioner Stone stated support for amendment of the Ordinance and incorporation of additional language from the ordinances developed by similarly affected counties.

There was a general consensus for Chair Powell, Commissioner Stone and Sheriff Sheppard to work with the Attorney to provide recommendations on revisions to the existing Ordinance.

16. Consideration of Approval of Required CDBG Policies by Resolution 2013-34

Ms. Taylor reminded of the award of a Community Development Block Grant (CDBG) in the amount of \$500,000 to assist in the construction of a new Senior Center in Carrizozo. Ms. Taylor stated acceptance of the grant required adoption of certain mandated federal and state policies as follows:

1. Citizen Participation Plan
2. Fair Housing Resolution
3. Residential Anti-Displacement & Resolution Assistance Plan
4. Section 3 Plan
5. State Procurement Plan

Motion: Adopt Resolution 2013-34, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Draper.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

SEE EXHIBIT C: Copy of Resolution 2013-34 is attached hereto in reference thereto made a part hereof.

21. Consideration / Action of Indigent Health Care Claims

Scott Annala, IHC Administrator presented the Sole Community Provider/Lincoln County Medical Center claims for approval. Mr. Annala processed 68 claims with 66 recommended for approval and 2 recommended for disapproval for a total authorization of \$118,159 and a year to date authorization of \$817,090. Mr. Annala noted the average monthly hospital claims to date was \$102,136 with a projected annual approval for FY 2013-2024 of approximately \$1.27 million.

Mr. Annala presented the Indigent Health Care Payments request for the month. Mr. Annala processed 60 claims with 54 recommended for approval and 6 recommended for disapproval. Mr. Annala stated the total of claims recommended for payment this month was \$9602.82 for a year to date total of \$170,784. Mr. Annala noted the average monthly indigent claims to date were \$21,348 with a projected annual expenditure of \$256,176. Mr. Annala reminded the FY 2013 -2014 budget for Indigent claims was \$393,278.

Motion: Approval and denial of the claims as indicated for Sole Community Provider and Indigent Health Care Program payments as recommended, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

Mr. Annala presented a flow chart detailing the current process for payment of the Sole Community Provider obligation from the County to the State and the subsequent receipt and disbursement of the federal match to the hospital.

Ms. Taylor confirmed under the current lease agreement with PHS any future payments to the uncompensated care pool by the County to the State would be made from mill levy funds prior to disbursement to LCMC.

Scott Annala discussed current bills moving through the State Legislature to support funding of the uncompensated care pool and the expansion of Medicaid by obligating a particular GRT match from the counties. Mr. Annala stated he would provide additional information regarding whichever particular bill the legislature passed to clarify the Counties' obligation to the State Human Services Department.

SEE EXHIBIT D: Copies of the Sole Community Provider and Indigent Health Care Payments are attached hereto in reference thereto made a part hereof.

**22. Consideration of Approval or Disapproval of a Cooperative Agreement and Lease-
Corona Senior Citizens Center**

Ms. Taylor reminded Lincoln County operated the Corona Senior Center in a building rented from the Village of Corona. Ms. Taylor presented a ten year agreement with a lease cost of \$1.00 per year for the term of the lease and standard lease terms.

Motion: Approve the Cooperative Agreement and Lease of the Corona Senior Center, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

23. Manager's Report

1. HATS OFF!

- a. The Manager commended Commissioner Kathryn Minter for earning her Certified Public Official and NM Certified County Commissioner designations and Curt Temple, Planning Director who earned his Certified Public Official designation. Both designations were awarded in January through New Mexico State University's certified NM EDGE Program.
- b. The Manager also acknowledged the work of Carl Palmer, Road Superintendent and members of the Road Department for their work on the Villa Madonna culvert project. The Manager relayed words of appreciation from Steve McCloskey, of the US Forest Service for the Road Department's work in supplying fill dirt for the project.

2. Other Training Initiatives. The Manager stated the County's newly formed "All Hazard Incident Management Team" had attended the NIMS ICS All-Hazard Incident Commander Course during the week of February 3rd in Salt Lake City. The Manager stated the course was designed to provide local and state level emergency responders with a robust understanding of the duties, responsibilities, and capabilities of an effective Incident Commander (IC) on an All-Hazard Incident Management team. The Lincoln County team attending the training consisted of the Incident Commander (IC) Spencer Baldwin, Deputy IC Curt Temple, Logistics Section Chief Samantha Mendez and Finance Lead Sherry Huddleston.

3. Workers Comp, Law Enforcement and Multi-Line Claims analysis. The Manager stated she and Commissioner Minter met with the NIMAC staff regarding Multi-Line, Law Enforcement and Worker's Compensation Pools to understand what types of claims were impacting Lincoln County:

Workers' Comp - Since 2004, the County had turned in 47 Workers' Compensation claims to NIMAC, with the payout for those claims totaling \$1,355,620.42. During that timeline, the County's annual contribution into the pool ranged from \$58k to \$90k with a loss ratio of 171.97%.

Multi-Line -- Since 2004, the County had turned in 119 Multi-Line claims, which include mainly auto, general liability and property, totaling \$1,834,555 with a loss ratio over 5 years of 124.09%. Since 2009, the County's annual contribution into the pool ranged from \$151k to \$207k.

Law Enforcement -- since 2004, the County law enforcement claims totaled \$507,390, claims being primarily for false arrest and breach of duty, with a loss

ratio for the past five years of 113.22%. During the past five years, the County's annual contribution into the pool ranged from \$60k to \$75k.

The Manager stated the current goal was to have the loss ratios at 100% or less so the County would pay into the various pools the same amount the pools were paying out to cover our claims. The Manager expressed belief increased risk management awareness would aid the County in reaching this goal.

4. Risk Awareness Program / Safety News. The Manager reminded that in September of last year, the Commission approved the County's participation in the NMAC Risk Awareness Program (RAP). Accordingly departmental RAP Representatives were identified and are now responsible for conducting weekly safety meetings. Departments participating include: Assessor, Treasurer, Clerk, Manager, Planning / EOC, Road, Senior Centers and Sheriff's Office. The Manager stated in addition to a scheduled weekly topic, the RAP Reps also incorporate recent county accidents into the discussion. The RAP meetings have made employees aware of county policies that need to be fine-tuned or significantly modified. The Manager expected recommended changes affecting policies such as cell phone usage, reporting of an accident, and the role and membership of the Accident Review Committee to be presented to the Commission for consideration in the next few months.

5. Lincoln Slash Disposal. Gary Cozzens, Manager of NM State Lincoln Historic Site had made the County aware of local efforts to work with the Bureau of Land Management (BLM) to reconsider and establish a new slash disposal area in Lincoln. Chuck Schmidt of the BLM informed several years ago, BLM fire staff worked with the Fire Chief of Lincoln to develop a slash removal program as a cooperative project. The project was of benefit to private landowners in the area and was funded by a BLM grant through the NRCS RC&D program. The initial grant money allowed the local fire Chief to hire help to assist the efforts to reduce the slash piles which had accumulated at the site. Although the funding source eventually dried up, BLM and the Lincoln Fire Department attempted to keep the site open. The site increased in popularity, with slash being brought in from outside of Lincoln. Last year, BLM was forced to bring in a roll-off bin to remove debris and made the decision to close the parking lot from slash disposal due to budget and staffing. BLM's Fuel Specialist continues to work with the local community toward a solution for slash disposal.

Commissioner Doth commented that during and after the Little Bear Fire when discussing slash disposal no other agency seemed to be aware of this slash disposal site. Commissioner Doth suggested exploring the possibility of seeking funding for other, similar slash disposal sites.

6. Legislative Update. The Manager reported on the passage of SB 268 related to funding for hospitals and uncompensated care. The Manager explained the final language requires a contribution from the County equivalent to 1/2th of the County's Indigent Health Care GRT.

7. Living in the WUI. The collaborative outreach effort continues to provide information and training to Lincoln County residents through its Speaker Series on Forest Health. The next session titled "Ready, Set, Go and Emergency Response to Wildfire and Flooding" was scheduled for March 4, 2014 and the Forest Health Expo was scheduled for April 11, 2014 at the Ruidoso Convention Center.

8. Departmental Updates.

- a. Office of Emergency Services – Joe Kenmore, Director of OES informed there were about six fires which started from "unattended" controlled burns in the last month. Mr. Kenmore stated current conditions and erratic winds were proving problematic in determining whether a burn ban should be declared in the County. Mr. Kenmore stated as the Chair of the RAP program he acknowledged the need to reduce risk and increase safety awareness.
- b. Curt Temple, Planning Director discussed pending grant applications being developed by Samantha Mendez of the department. Mr. Temple stated Rural Addressing would be updating addressing information to the State. Mr. Temple discussed the removal of A or B County Road signs to eliminate confusion with actual named street signs.

Chair Powell reminded of the need for grant money to assist smaller entities with auditing costs and requested the County be on the look-out for grants which might help our partner agencies. Commissioner Stone suggested recent policies by the State Engineer would create a greater

need for other assistance for smaller water projects. Mr. Temple explained the State Engineer's position to fund fewer projects to completion. Commissioner Stone objected to the State Engineer's management of Water Trust Board Funds.

Chair Powell recessed the Regular Meeting at 1:58:21 AM and reconvened at 1:03:08 PM.

Chair Powell recessed the Regular Meeting and convened the Public Hearing at 1:03:31 PM.

24. 1:00 P.M. Public Hearings with the second hearing following immediately:

- a. Public Hearing to Consider Ordinance 2014-01; Amending the Lincoln County Personnel Policies and Procedures Ordinance 2013-04.

Ms. Taylor explained the proposed changes and discussed the need to clarify the deadline for employees to use vacation time within the last payroll period in the calendar year versus the actual end day of the calendar year to avoid loss of vacation time accrued above the allowable carry over amount of 160 hours.

Receiving no public comment, Chair Powell recessed the Public Hearing and reconvened the Regular Meeting at 1:05:16 PM.

Motion: Adopt Ordinance 2014-01, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Draper.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

SEE EXHIBIT E: Copy of Ordinance 2014-01 is attached hereto in reference thereto made a part hereof.

Chair Powell recessed the Regular Meeting and reconvened the Public Hearing at 1:06:00 PM.

- b. Public Hearing to Consider 2014-02; Amending Ordinance 2011-05 Flood Damage Prevention

Attorney Morel informed the existing Ordinance 2011-05 acknowledged adoption by Lincoln County of the FEMA flood insurance rate maps, designated flood zones, flood boundary and floodway maps, and the associated regulations of flood hazard area land use. Subsequent to adoption of the Ordinance landowners sought help in understanding how to access their private property in the event their water crossings were washed out and they were unable to restore the crossing due to the burden of regulations imposed by the Ordinance and FEMA regulations.

Bill Borthwick, State Flood Plain Coordinator and Certified Flood Plain Manager explained the State of NM had 100 National Flood Insurance Program (NFIP) communities which participate in the program so residents might obtain low cost flood insurance. Mr. Borthwick discussed the impact of recent post fire floods and other cascading events such as wind, drought and fire which had cost the State of New Mexico approximately \$443 million dollars in damage since 2000. Mr. Borthwick noted costs of flood damage were driving a more decisive policy regarding flood plain management decreasing emphasis on flood insurance and increasing emphasis on preventative measures and compliance with regulations.

Mr. Borthwick addressed the question of whether an NFIP community such as Lincoln County should consider variances within the flood plain ordinance. Mr. Borthwick cautioned that the granting of variances might set a precedent which would eventually "dilute" the effectiveness of the Ordinance. Mr. Borthwick explained while the variance section of the Ordinance allowed for a hearing and special consideration of requests for variance no variance had been granted by any of the 100 NFIP communities.

Chair Powell expressed concern over long term residents who could no longer access their property in an affordable manner due to post fire damage and the resulting burden of creating an affordable crossing in compliance with Flood Plain Management practices.

Mr. Borthwick stated any resulting change to flood insurance premiums due to an action by the NFIP, in this case Lincoln County, such as approval of a variance would come as a result of action by FEMA not by the State of New Mexico. Mr. Borthwick further expressed concern any variance granted might create a liability situation for the County if adjacent properties were damaged by flooding after a variance was granted.

Chair Powell stated the federal requirements were unreasonable for private landowners to meet. Bill Bradshaw property owner in Lincoln questioned how the average person might afford a crossing. Mr. Borthwick stated he could not address the cost issue but only speak to policy.

Attorney Morel questioned if the Ordinance might be revised on certain points without jeopardizing participation in the program. Mr. Borthwick stated periodic "community assistance" visits to review compliance with FEMA regulations were conducted by the State and or FEMA but FEMA was the ultimate authority to decide whether a community was in compliance to obtain the National Flood Insurance reduced premiums. Mr. Borthwick suggested the County research and consider a "flood plain easement" as a potential remedy in certain situations.

Commissioner Stone discussed the language of the Ordinance as it related to the crossing in question in the Lincoln area. Commissioner Stone maintained the damage to the crossing was as a result of the improper actions of the USFS and NM State BLM. Commissioner Stone stated it was unfair for the private land owner to bear the cost of repair of damage caused by governmental action.

James Taylor, property owner provide a photograph of the crossing prior to silt damage to the culverts. Mr. Taylor explained the damaged culverts were removed and a temporary bridge was built over the site for access. Mr. Taylor commented on the multiple agencies involved in review of the crossing and discussed the prohibitive regulations associated with placement of a low water crossing. Mr. Taylor expressed concern about turning over County authority to federal and state agencies through adoption of this Ordinance.

There was a general discussion about the potential to grant a "flood plain easement" and the need to document and define responsibility for maintaining crossings and to designate the party responsible for any subsequent damage related to the granting of an "easement".

Commissioner Minter suggested the Ordinance language be refined to reflect a variance for low water and private crossings damaged by a catastrophic event. Attorney Morel recommended additional research to determine the consequences of adopting a flood plain easement on a case by case basis.

Chair Powell adjourned the Public Hearing and reconvened the Regular Meeting at 2:16:09 PM.

25. Authorization to Schedule Public Hearing to Consider Other Outdated or New Lincoln County Ordinance

- a. Ordinance 2007-2 An Ordinance Prohibiting the Import for Release into the Wild of Certain Genera

Motion: Schedule a public hearing to consider revision of Ordinance 2007-2, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Chair Powell.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

26. Consideration of Appointments and Removals from Boards/Commissioners/ Committees:

- a. Planning Commission

No action was taken.

- b. Lincoln Historic Preservation Board

Motion: Appoint Ginger Moore, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

- c. Senior Citizens Olympic Committee

No action was taken.

27. **Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H.(7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8).**

Motion: To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H.(7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8) and as follows:

New or Updated Matters since last report *:

1. Lodger's Tax Issue-Casa del Cocinero-making regular payments
2. *Cooper, Gale and DeBaca County News v. County of Lincoln, Sheriff of Lincoln County, et al.* D-1329-CV-200701364. Suit filed: October 15, 2007. Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information. Hearing took place Dec. 13, 2013 with new filings of Suggestion of Death December 19, 2013.
3. *Michael Wheaton v Paul F. Baca, Lincoln County Assessor, et. al.* D-1226-CV-2011-00341. Suit filed October 18, 2011. Notice of Appeal of Final Order of the Lincoln County Valuation Protests Board. Attorney has agreed to stay the case pending the decision from the Court of Appeals.
4. *Coble Constructors, LLC, et al v Carl Kelley Construction Ltd. Co, et al.* D-1226-CV-2012-00003. Suit filed January 15, 2012. Complaint to Foreclose Mechanic's Lien. Order granting motion for resetting 4/17/13. Motion for Substitution of Parties filed December 10, 2013.
5. *Alto Lakes Golf & Country Club, Inc. v. Barbara Fleming, and Jesus and Maria Guardiola, et al.* D-1226-CV-2011-00044. Suit filed February 18, 2011. Complaint to Foreclose Lien. Counterclaim and Crossclaim suit filed by Washington Federal Savings on September 21, 2012 naming Board of Commissioners of Lincoln County and Lincoln County Solid Waste Authority. Stipulated and Default Judgment, Decree for Foreclosure, Order of Sale, and Appointment of Special Master, entered by the Court on 8-12-13. The County's lien was not extinguished and is still a valid lien against the subject property. Order approving sale and Special Master's Report filed Oct. 23, 2013. Ownership has changed to Washington Federal and Lincoln County has not received any payments as of January 7, 2014.
6. *Johnathan Warren v. Lincoln County Detention Center, Emerald Healthcare Systems, et al.* 2-12-CV-01086-CG-LAM. Suit filed October 19, 2012. Complaint for the Recovery of Damages Caused by the Deprivation of Civil Rights.
- *7. *Greentree Solid Waste Authority v. Lincoln County, et al.* D-0101-CV-2013-00104. Suit filed January 9, 2013. Petition for Declaratory Judgment; Preliminary and Permanent Injunction. Order Granting ALW&SD's Motion for Judgment on the Pleadings and for Summary Judgment entered by the court on 6-15-13. Mediation with Mr. Walker Nov. 11, 2013 was unsuccessful. Plaintiff's Motion to Reconsider with Judge Singleton was denied in Hearing Jan. 24, 2013. Melendres, Melendres and Harrigan hired by the county to manage county's withdrawal from GSWA. Motion to Stay Judge Singleton's decision filed by Mr. Beauvais Feb. 10, 2014.
- *8. *Rio Grande-Alameda, Ltd. v Paul Baca, Lincoln County Assessor* D-1226-CV-2013-00005. Suit filed January 9, 2013. Complaint for Refund of Taxes Paid. Defendant's first motion to dismiss or Summary Judgment filed August 29, 2013, with plaintiff's response filed Oct. 4, 2013. Defendant's Reply to Motion to Dismiss or for Summary Judgment filed Oct. 21, 2013. Hearing was Jan. 6, 2014, and produced an Order of Dismissal. Notice of Hearing scheduled March 10, 2014.
9. *Washington Federal Savings v. Timothy Rose; Chanda Rose; and Lincoln County D-1226-CV-2013-00105.* Suit filed April 15, 2013. Complaint for Foreclosure. July 29, 2013 Letter to Bishop, White, Marshall & Weibel, P.S. advising of payoff amount through Aug. 5, 2013. Lots 139, 169, 170 paid in full. Stipulated and Default Judgment ordering foreclosure filed Nov. 22, 2013, with legal notices published in local newspapers.
10. *Wells Fargo Bank, NA, et al v. Jerry Turner, Board of County Commissioners of the County of Lincoln, New Mexico, et al.* D-1226-CV-2013-00129. Suit filed May 6, 2013. First Amended Complaint for Foreclosure filed by Morel on June 21, 2013, with Motion to Dismiss filed Dec. 27, 2013, with Order of Dismissal filed Jan. 6, 2014.
- *11. *Steven Miller, et al. v. State Forestry Division, NM Energy, Minerals, and Natural Resources Department, County of Lincoln, et al.* D-1226-CV-2013-00160. Suit filed June 15, 2013. Lincoln County Manager and Commissioners served July 9, 2013. Complaint for Negligence, Injury and Damages. On August 2, 2013, NMAC advised Attorney Bryan Evans has been assigned as counsel for Lincoln County. Peremptory challenge of Judge Angie Schneider filed by Commission Chair Jackie Powell. Judge Waylon Counts has been assigned the case Oct. 25, 2013. Hearing requested Nov. 25,

- 2013 for state's Motion to Dismiss, and Plaintiff's Response to Lincoln County's and State's Motion to Dismiss filed Jan. 3, 2014. Hearing scheduled for March 24, 2014 at 1:30 p.m. at the Otero County Courthouse.
- *12. *Barbara Diane Latham, et al v. Neal Cox, Ben Hazen, Lincoln County Sheriff's Department and the County of Lincoln. D-1226-CV-2013-00191.* Suit filed July 19, 2013. Complaint for Violation of Civil Rights, Wrongful Death and Damages by Attorney Gary Mitchell. LCSO and LC Manager were served on August 5, 2013. Tort Claim Notice was filed on October 27, 2011. Advised NIMAC has assigned the case to Brennan and Sullivan Law Firm 9/5/13. Case has been moved to Federal Court August 30, 2013. Plaintiff's First Set of Interrogatory Questions filed Jan. 27, 2014.
- *13. *State of NM/Lincoln County v. Gonzales Gonzales M-30-MR-2014-00004* Filed Jan. 7, 2014. Alleged bringing contraband into LCDC – Entry of Appearance, Exhibit List and Witness List filed with court.
- *14. *State of NM/Lincoln County v. Alberto Ruiz – M-30-MR-2014-00012* Filed Jan. 5, 2014. Alleged bringing contraband into LCDC – Entry of Appearance, Exhibit List, and Witness List filed with court.
- *15. *State of NM/Lincoln County v. Avalon-Construction, Ruidoso, NM D-1226-CV 2014-00006* Filed Jan. 6, 2014 Open complaint for Refund of Taxes paid. Case assigned to Basham & Basham/Dwyer. Peter Dwyer is lead attorney.
- *16. *US Bank National Association v. John C. Allen, et al. D-1226-CV 2013-00304* Filed Dec. 24, 2013 Foreclosure. Entry of Appearance filed Jan. 17, 2014 and Disclaimer of Interest filed January 20, 2014.
- *17. *State of NM/Lincoln County v. Nathan Little – M-30-MR-2014-00015* Filed Jan. 21, 2014. Alleged bring contraband into LCDC – Entry of Appearance, Exhibit List and Witness List filed with court.
- *18. *State of NM / Lincoln County v. Shann M. Marler M-30-MR-2014-00026* Alleged bringing contraband into LCDC. Arraignment was Feb. 6, 2014 with Entry of Appearance pending.

Tort Claims Notices Received or Threatened

- 2013**
- Allen, Katherine Elizabeth-** Notice of Tort Claim against Lincoln County Detention Center for alleged injuries sustained during transport.
- Borrego, Albert -** Tort Claim Notice received from attorney Gary Mitchell on June 14, 2013, alleging continued harassment to Albert G. Borrego by police while responding to a noise complaint at Mr. Borrego's residence on February 28, 2013, and a separate incident resulting in Mr. Borrego's arrest on March 5, 2013, due to an outstanding warrant, during which Mr. Borrego allegedly sustained injuries while in custody due to an existing broken back injury. Claim has been denied by NIMAC.
- Espinoza, Robert-Tort** Claim Notice received from Robert Espinoza on June 4, 2013, alleging property damage from vehicle accident while Linda Mullins, driving the LC Senior Center meal delivery van ran off road hitting chain link fence, poles and railroad ties.
- Harrisburg Documents-** Attempts to recover Lincoln County documents illegally taken from the county. County Clerk Rhonda Burrows has been in contact with Harrisburg, PA in recovery efforts.
- Montoya, Emilia L. -** Tort Claim Notice received by attorney Freda Howard McSwane on April 23, 2013, alleging injuries sustained by Ms. Montoya when a physical altercation took place at the LCDC.
- Ramos, Aaron -** Tort Claim Notice received by attorney Robert J. Beauvais on April 18, 2013, (correspondence dated September 13, 2011) alleging concerns about Mr. Ramos' safety and welfare and violation of his U.S. Constitutional rights.
- Silva, Elmo-Tort** Claim Notice received from attorney Richard Marquez November 6, 2013. Alleges false imprisonment for Mr. Silva, who was sentenced in the 12th Judicial District Court to 38 years filed on July 3, 1990.

2012

- Cathy and Steve Altstatt** Telephone conference with Cathy Altstatt on April 19, 2012, concerning their unbuildable and unsellable Deer Park Valley lot due to lot size, septic tank set back requirements, and an easement granted to Alto Lakes Water & Sanitation District for a water well.
- Riordan, J.T.** Correspondence received from Theresa Riordan on March 28, 2012, concerning her son's treatment and detention conditions while being held in LCDC.
- Sheridan, Michael** Tort Claim Notice received from Attorney, Jennifer Burrill on February 21, 2012, claiming the Lincoln County Sheriff's Department forced him to register as a sex offender when he did not meet the requirements.

Biggs, M. Jolene-Tort Claim Notice received from Attorney, Adam Ratkin on February 6, 2012, claiming liability by the County of Lincoln by failing to maintain the surface of the parking lot across from the Lincoln County Courthouse in Carrizozo, NM.

Action: Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

Chair Powell recessed the Regular Meeting and convened the Closed Session at 2:20:46 PM.

Chair Powell adjourned the Closed Session and reconvened the Regular Meeting at 3:20:40 PM.

Commissioner Doth attested that no action was taken during the closed session and items discussed were limited to those as stated in the motion for closure.

28. **Consideration / Action on Adopting Resolution 2013-32 Supporting Dona Ana County Efforts to Protect The Organ Mountains, and HR 4334 Organ Mountains National Monument Establishment Act, being introduced by Congressman Steve Pearce.**

Ms. Taylor informed the Resolution was in support of actions by Congressman Steve Pearce to oppose the designation of the Organ Mountains as a wilderness area and in particular any such designation by Executive Authority. Ms. Taylor explained Congressman Pearce proposed the Organ Mountain Monument Establishment Act as a less onerous alternative to be created by the proper legislative process. Ms. Taylor stated Congressman Pearce's proposal would not infringe on border patrol activity or private property rights.

Motion: Adopt Resolution 2013-32, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Doth.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Doth, Commissioner Draper.

SEE EXHIBIT F: Copy of Resolution 2013-32 is attached hereto in reference thereto made a part hereof.

29. **Signing of Official Documents**

30. **Next meetings:**

a. March 18, 2014 - Regular Commission Meeting

31. **Adjourn**

There being no further business to come before the Board of County Commissioners, Chair Powell adjourned the meeting at 3:25:52 PM.

County of Lincoln
Board of County Commissioners

Jackie Powell
Jackie Powell, Chair

Preston Stone, Vice Chair

Mark Doth, Member

Dallas Draper, Member

Kathryn J. Minter
Kathryn Minter, Member

ATTEST:

Rhonda Burrews
Rhonda Burrews, County Clerk

March 18, 2014
Date Approved

