COUNTY OF LINCOLN

New Mexico
Regular Meeting
Board of County Commissioners

Jackie Powell, Chair
Preston Stone, Vice Chair

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

Minutes
Tuesday, August 20, 2013

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on August 20, 2013 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 8:30:59 AM.

2. Roll Call

Roll Call.
Present: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.
Absent: Commissioner Doth.

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

3. Invocation

The invocation was presented by Pastor Joshua Watkins.

Nita Taylor, County Manager and Ranger David Warnack acknowledged the recent loss of Grant Dean who worked with multiple agencies on the Little Bear Fire recovery projects and expressed gratitude for his service to the County of Lincoln.

4. Pledge of Allegiance

a) Pledge – U.S. A. Flag – Chair Powell
b) Salute – N.M. Flag – Commissioner Draper

5. Approval of Agenda

Motion: Acceptance of the Agenda and authorized the Chair to move items as necessary.
Action: Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Minter.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

6. Approval of Minutes

July 9, 2013 - Special Commission Meeting
July 16, 2013 - Regular Commission Meeting

Motion: Approve the minutes of the July 09, 2013 Special Commission Meeting and the July 16, 2013 Regular Commission Meeting. **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Minter.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

7. Approval of Consent Agenda

a) Payroll/Accounts Payable/Budget/ Expenditures
b) Treasurer's Financial Report for the Month ending July 31, 2013
c) Road Name Request

d) Southeastern New Mexico Economic Development District Resolution 2013-11
e) Resolution 2013-08 Lease Agreement for land for Fort Stanton Fire Station
f) Acknowledge DFA Approval of Final Budget for FY 2014
g) Resolution 2013-07 COOP/CAP/School Bus FY 2013-2014

Motion: Approval of Consent items as presented. **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

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

8. US Forest Service Update

a) Smokey Bear Ranger District

Ranger Warnack discussed prescribed fire activities on the Smokey Bear District within the last month. Ranger Warnack stated prescribed burns were conducted or planned for the next month near Hale Lake, Cora Dutton Road, Carrizo Canyon and the Sierra Blanca Airport.

Ranger Warnack stated Environmental Assessments for the Hale Lake and East Hale Lake grazing allotments were now posted for review and comment by the public. Ranger Warnack stated proposed actions for both allotments included the authorization for continued livestock grazing. Ranger Warnack commented these particular allotments were not in use for more than ten years but were now under new permitee management. Ranger Warnack encouraged all interested parties to submit written comments.

Chair Powell stated the importance of supportive comments on Environmental Assessments as well as those of objection. Ranger Warnack stated all comments were useful in determining impacts to natural resources and social systems including economic impact.

Commissioner Stone questioned if the absence of grazing for the prior ten years was beneficial or detrimental to the allotment.

George Douds, Range Management Specialist for the Smokey Bear Ranger District stated the absence of grazing for ten years provided a good starting point to evaluate the benefits or drawbacks of grazing but would not express an opinion as to the current conditions.

There was a general consensus to write a letter of support for the Hale Lake Allotment grazing permits.

b) Cibola National Forest – Consideration of Resolution 2013-13 Opposing the Blanket Removal of Livestock from the Mountainair District of the Cibola National Forest

Karen Lessard, District Ranger for the Mountainair Ranger District of the Cibola National Forest provided a map of the Gallinas Division Grazing Allotments. Ranger Lessard discussed her recent decision to remove permitted livestock grazing from the Mountainair Ranger District. Ranger Lessard noted the area in question suffered from drought for the previous two years and was deemed to be in severe drought this year. Ranger Lessard acknowledged recent precipitation was beneficial but maintained a full year of non-grazing was necessary to allow for seed head development and reproduction of grass. Ranger Lessard stated continued grazing would inhibit recovery of the area and noted her decision was based on science.

Commissioner Stone questioned if monitoring points existed in the permitee agreements. Ranger Lessard stated permitees provided annual pictures for monitoring. Commissioner Stone questioned if the Ranger and her staff had personally inspected the area. Ranger Lessard confirmed she and her staff had reviewed a large portion of the area.

Commissioner Stone reminded that through past droughts in the 1930's and 1950's the agriculture community practiced good stewardship and suggested these families were more qualified to determine grazing capabilities than a government agency. Commissioner Stone noted livestock numbers were now the lowest in history and there were not sufficient livestock numbers now to restock grazing permits.

Gerald R. Perkins, speaking as a grazing permitee since 1928, expressed belief livestock grazing in reduced numbers was beneficial to assist in scattering the seed even during drought.

Mr. Perkins stated Ranger Lessard's notice to the permit holders was too short to allow for planning and the permitees should have been allowed some latitude to comply.

Chair Powell commented on the unreliability of blanket science as applied to this type of decision. Chair Powell stated support for the ranchers as stewards of the land and expressed belief this type of decision should have included local input.

Lorretta Sanchez, speaking as a grazing permitee, questioned if the USFS planned to remove some of the pinon and juniper growth from the area in question. Ms. Sanchez stated permit holders had requested removal of the trees for years. Ranger Lessard stated thinning was a part of the District's five year plan but the agency was faced with a lack of funding.

Commissioner Stone requested in addition to a Resolution of opposition to Ranger Lessard's action the Manager compose a letter to the County's congressional delegation regarding the removal of livestock grazing from Federal lands.

Commissioner Minter suggested Ranger Lessard acted appropriately and noted US Forest lands are multiple use areas. Commissioner Minter expressed support for a letter to federal representatives but stated the Resolution language as written was too harsh.

Commissioner Stone discussed the implications of the decision to revoke permits to the nineteen permitees within the District.

Motion: Adopt Resolution 2013-13. **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Draper.
Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).
Yes: Chair Powell, Commissioner Stone, Commissioner Draper.
No: Commissioner Minter.

SEE EXHIBIT B: Copy of Resolution 2013-13 is attached hereto in reference thereto made a part hereof.

13. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS

Dorianne J. Kabo stated she had received notice from the County Planning Department regarding her property on lower Eagle Creek informing she was in violation of Lincoln County Ordinance 2009-03 which regulated refuse, solid waste, and litter within the County. Ms. Kabo discussed prior placement and movement of dumpsters and the problem of ongoing illegal dumping. Ms. Kabo stated the large amount of debris in the area was not on her property but on the boundary of her property. Ms. Kabo stated she had spoken with the Sheriff and Commissioners and now had a better understanding of the illegal dumping situation.

Larry Paholski owner of a residence on Alpine Meadows Trail expressed frustration about road conditions in the area. Mr. Paholski discussed the placement of culverts adjacent to his driveway with one being totally full of debris resulting in damage to his driveway. Mr. Paholski stated he contacted the County over a period of two years with positive responses but no action. Mr. Paholski requested the County send someone from Road Department to evaluate the situation. Commissioner Draper stated he would contact Road Superintendent Carl Palmer.

Commissioner Draper stated he had resided in Alpine Village for approximately ten years. Commissioner Draper noted some portions of the area were within the municipal boundary while others were in the County. Commissioner Draper expressed concerns about the roads and garbage collection and made a commitment to work on problems in this particular area.

Commissioner Minter commented on her attendance at the recent Southeastern Regional Planning and Transportation Organization meeting on behalf of Lincoln County. Commissioner Minter noted Lincoln County had only one proposed project which was for sidewalks in Corona to accommodate the recent widening of Highway 54. Commissioner Minter stated funding for that project would be available in 2015. Commissioner Minter also informed construction would continue on sixteen miles of Highway 54 beginning in January of 2014 starting near Carrizozo.

9. Greentree Solid Waste Authority (GSWA) Update

Attorney Morel informed efforts were made to set a mediation hearing on August 27, 2013 but due to a scheduling conflict the mediation was canceled to be reset in mid September.

10. Lincoln County Detention Center Update

Warden Arthur Anderson informed on monthly bookings and releases and stated the total average capacity as of this date was 144.

Commissioner Stone questioned if a detainee were to file suit against the County of Lincoln would the action impact or restrict their privileges in any way. Warden Anderson stated there was no practice of restricting privileges under those circumstances.

11. Board of Finance

No action was taken. Chair Powell stated the item was rescheduled for next month.

12. 9:00 A.M.: Lodger's Tax Applications with backup material:

a) Application 1704: Christmas Jubilee November 8-10, 2013, Amount Requested: $1,000.00 Ruidoso Valley Greeters/Linda McKinley

Motion: Approve Application 1704 for $1000. **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Commissioner Minter requested the Manager's office determine if the Ruidoso Valley Greeters also received funding from the Village of Ruidoso.

14. Consideration of Approval or Disapproval of Indigent Health Care Claims

Scott Annala, IHC Administrator presented the Sole Community Provider/Lincoln County Medical Center claims for approval. Mr. Annala processed 71 claims with 70 recommended for approval and 1 recommended for disapproval for a total authorization of $117,341 and a year to date authorization of $223,995. Mr. Annala noted the average monthly hospital claims to date was $111,198 with a projected annual approval for FY 2013-2024 of approximately $1.3 million.

Mr. Annala presented the Indigent Health Care Payments request for the month. Mr. Annala processed 66 claims with 62 recommended for approval and 4 recommended for disapproval. Mr. Annala stated the total of claims recommended for payment this month was $25,736 for a year to date total of $47,952. Mr. Annala noted the average of total monthly indigent claims to date was $23,976 with a projected annual expenditure of $287,712. Mr. Annala reminded the FY 2013 -2014 budget for Indigent claims was $393,278.

Mr. Annala provided charts and graphs for comparison of current payments to prior fiscal years.

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** Commissioner Minter, **Seconded by** Commissioner Stone.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Mr. Annala informed the New Mexico Association of Counties Health Care Affiliate was holding a fall workshop in Ruidoso and invited the Commissioners to attend for discussion on changes to the Sole Community Provider Program.

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

Chair Powell recessed the Regular Meeting at 9:57:15 AM and reconvened at 10:13:40 AM.

16. Lincoln County Fair Board Presentation

Shad Cox, Vice President and Scott Daniels, Treasurer of Lincoln County Fair Board presented a summary of events for the past summer. Mr. Cox reported there were 798 total entrants for the Smokey Bear Days Rodeos an increase from 750 entrants last year. Mr. Cox informed there were approximately 6000 paid attendees for the July 4th events. Mr. Cox stated the revenue generated by the good attendance enabled the Fair Board to fully fund all of the Lincoln County Fair activities.

Mr. Cox stated the Junior Livestock Sale provided $111,700 directly to the participating youth of Lincoln County by auction of livestock, cakes, pies and other items. Mr. Cox stated the Benefit Ranch Rodeo earned over $6,200 to assist local individuals and families in need with a five year total for this event of over $38,000.

Mr. Cox stated this year's fair included a sponsor funded LED sign to inform the public about events and to acknowledge sponsors and individuals who assisted. Mr. Cox stated volunteers replaced the old show ring and used the old fencing for improvements to the lanes and pens.

Mr. Cox stated the Fair Board planned to request funding for capital improvements in the amount of $120,000 to build an extension on an existing barn to provide washing facilities for animals, new scales, along with plumbing and lighting improvements.

Chair Powell and Commissioner Stone thanked the group for the volunteer work donated over the years which had improved the facility and benefited the youth of Lincoln County.

Commissioner Minter requested the Fair Board post contact information for people interested in renting the facilities on the County website.

20. Lincoln County Building Permit/Inspection Process: Regulation & Licensing Superintendent Dee Dennis and CID Director Katherine Martinez

Ms. Taylor provided background on past inquiries and actions regarding options for the County to conduct building inspections. Ms. Taylor stated Construction Industries Director (CID), Katherine Martinez continued to disallow the hiring of contract work inspectors to conduct inspections based on recently passed legislation. Ms. Taylor stated CID maintained the position that inspectors must be employees of the state or a local government entity.

Superintendent Dee Dennis of NM State Regulation and Licensing discussed the duty and authority of CID including oversight of local jurisdictions in their capacity as inspectors. Mr. Dennis discussed the enactment of SB 249 to create more flexibility and options for local jurisdictions to control permitting and inspection. Mr. Dennis discussed the requirement for any local jurisdiction to have a Certified Building Inspector. Mr. Dennis stated the language of SB 249 excluded the option for local jurisdictions to contract with third party inspectors.

Mr. Dennis discussed local jurisdictions and the authority of the Village of Ruidoso to extend inspection authority within the three mile platting and planning radius but noted the annexation of the airport area and the Eagle Creek ballpark did not allow the Village to "bootstrap" the three mile area past the normal boundary limit. Mr. Dennis suggested an agreement needed to be reached between the Village of Ruidoso and the County to clarify consistent practices and authority for residents. Mr. Dennis noted the sharing of responsibilities between local governmental entities often provided economic benefits.

Mr. Dennis stated the County currently had three options to consider: 1) develop a County Permitting and Planning Department with their own Certified Building Inspector; 2) enter into a Memorandum of Understanding (MOU) with CID to provide for state inspections of local building projects with the understanding the State would enter into an agreement with the Village of Ruidoso to clarify areas of responsibility; or 3) enter into a MOU with the Village of Ruidoso or another local government entity to issue permits and perform inspections in the unincorporated areas of the County.

Chair Powell questioned if Mr. Dennis was aware of the cost variance between fees charged by the Village of Ruidoso and CID. Mr. Dennis acknowledged there was a significant difference in fees and stated CID had no plans to increase their permit fees.

Mike Buechter, local contractor spoke about the advantages of having a local, accessible office to review plans and answer questions. Mr. Buechter urged the County to work with the Village to provide inspections.

Fernando Guzman, resident of Rancho Ruidoso Valley Estates expressed confusion about the current jurisdiction for that area. Mr. Guzman, speaking on behalf of eight neighboring residents, expressed frustration with a specific resident who acting as a "sovereign citizen" had violated multiple building regulations over a period of several years without consequence. Mr. Guzman stated multiple contacts with multiple agencies had not resulted in any action.

John Cornelius, local contractor stated while the cost for permitting through the Village was greater than State permits, the local service made the added expense worthwhile. Mr. Cornelius pointed out when CID issued a permit; they did not consider local forestry,

addressing, and flood plain ordinances. Mr. Cornelius stated the Village of Ruidoso could work cooperatively with the County for enforcement of local ordinances.

Mary Stanfield, resident of Rancho Ruidoso Valley Estates presented copy of a 2011 letter of complaint written to the Attorney General and other agencies regarding the same resident Mr. Guzman spoke about. Ms. Stanfield stated originally Jaime Guzman of CID had responded to the complaint but then closed the case stating the area was part of the Village of Ruidoso's permitting jurisdiction. Ms. Stanfield stated there had been no response to complaints made to the Village of Ruidoso.

Terry Porr, Chairman of the Alto Special Zoning District discussed the authority of that District. Mr. Porr discussed the location of the District within the three mile platting and planning area and supported a cooperative agreement which would clarify and unify the permit process with the Zoning District.

Mr. Dennis stated an agreement between entities would allow for communities to be cohesively included under one permitting process. Mr. Porr questioned if, as an independent Zoning District, Alto Lakes could enter into an agreement with the Village of Ruidoso independent of the County for permitting and inspection. Mr. Dennis stated zoning districts do not have that authority.

Jim Benton, local contractor stated support for the Village of Ruidoso inspection process and commented on past problems and inconsistencies between CID inspectors.

Curt Temple, Planning Director presented background information on the County's consideration of permitting and inspection of construction in response to complaints about the response time of CID.

Mr. Temple also discussed the problem of enforcement of County Ordinances by both the State and the Village of Ruidoso. Mr. Temple presented examples of both agencies issuing permits to builders within the flood plain without flood plain determination as required by County Ordinance. Mr. Temple reminded hiring a third party inspector was proposed to address the underlying issue of enforcement of county ordinances.

Shawn Fort, Village of Ruidoso Building Official stated the Village was absolutely willing to work with the County on enforcement issues.

Mr. Dennis informed the responsibility of enforcement for violation of State construction code would ultimately fall to the State once a report was filed by any jurisdiction. Mr. Dennis discussed differences between the "quality" of construction and code enforcement.

Debi Lee, Village of Ruidoso Manager noted any memorandum of agreement which might be enacted would contain a termination clause. Ms. Lee stated current income from the permitting in the three mile area helped to support the Village's full service inspection department. Ms. Lee stated if the County were to begin permitting the Village probably would not maintain their department.

Commissioner Draper questioned the fee difference between the Village of Ruidoso permits and CID. Mr. Temple informed that not only were the Village of Ruidoso fees higher than CID but noted the Village charged an additional 10% of the cost for permitting within the County.

Attorney Morel suggested the County had two options, either to develop their own building department or to enter into a MOU with the Village of Ruidoso. Attorney Morel noted if the County chose to do nothing the State would enter into a MOU with the Village to define jurisdiction.

Ms. Lee stated even though the Village of Ruidoso subsidized their permitting department, they would be willing to charge the same fees to County residents as they do Village residents.

Commissioner Minter questioned if the County could enter into an MOU with the Village of Ruidoso to cover the entire County rather than just the three mile platting and planning area. Mr. Dennis stated this would be an option but might present logistical problems for the inspectors for the Village.

Attorney Morel recommended the County enter into a MOU with the Village of Ruidoso for a trial period of six months. Attorney Morel stated the County would need to decide on a level of oversight, consider if a portion of any fees charged to County residents should go to the County,

and develop procedures to ensure enforcement of county ordinances. Attorney Morel stated a plat could be developed to define specific areas and boundaries.

Commissioner Draper questioned how the area around the Village of Ruidoso annexations would be handled. Attorney Morel clarified the MOU would specifically define the areas to be included and the three mile platting and planning area would no longer be the defining restriction.

Motion: Enter into an MOU with the Village of Ruidoso for the purpose of issuing permits and inspections to include the proposed fee structure; assure compliance with county ordinances including the flood plain ordinance, and define enforcement responsibilities for a limited six month trial period. **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Chair Powell recessed the Regular Meeting at 11:48:19 AM and reconvened at 1:00:05 PM.

Chair Powell recessed the Regular Meeting and convened the 1:00 PM Public Hearing at 1:00:48 PM.

21. 1:00 P.M.: Public Hearing to consider rescinding a temporary moratorium on Subdivision Development within Lincoln County

Commissioner Minter questioned if the recently revised Subdivision Ordinance was now in effect. Attorney Morel confirmed the revised Ordinance became effective August 16, 2013.

Chair Powell expressed continued concern about ongoing drought conditions. Chair Powell discussed the potential for a transfer of water rights to create a new subdivision. Chair Powell noted the possession of water rights did not confirm water was present and suggested the moratorium be continued until next spring.

Commissioner Stone questioned the legality of continued imposition of the moratorium. Attorney Morel reminded the moratorium was adopted as a temporary measure to allow revision of the subdivision ordinance.

Commissioner Minter expressed belief the moratorium should be rescinded based on the enactment of the changes to the Subdivision Ordinance.

Receiving no public comment, Chair Powell adjourned the Public Hearing and reconvened the Regular Meeting at 1:05:35 PM.

Motion: Continue the Moratorium on Subdivision Development for six months after which time the Moratorium will automatically expire. **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Chair Powell.
Vote: Motion passed (**summary:** Yes = 3, No = 1, Abstain = 0).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone.
No: Commissioner Draper.

19. USGS Presentation: Hydrologic Characterization of the Upper Rio Hondo Basin / Budget Request for FY 2013-2014

Lauren Sherson of the USGS provided an overview of the ongoing project to study the Upper Hondo Basin and to advance surface water quality sampling to determine effects of the Little Bear Fire on the Rio Bonito, Eagle Creek, and Magado Creek.

Ms. Shearson reminded the project began in 2001 to address concerns about increased population and decreased precipitation. In 2004 a report was published comparing 2002 and 2003 data to current data and other historic information. Ms. Shearson stated the study focus changed to a data collection phase and to include a second report for data from 2010 to 2013.

Ms. Shearson stated the report addressing data through 2010 was being finalized for publication in the near future. Ms. Shearson stated the data indicated drought and the lack of precipitation had affected aquifer recharge. Ms. Shearson noted aquifers had limited storage capacity and were affected by climate factors including historically low snow melt. Ms. Shearson stated ground water well levels were also typically trending downward.

Ms. Shearson stated the primary tasks remaining were to write the final report but also to continue data collection. Ms. Shearson stated the second report would look at data from 2010 to 2013 and analyze Regional Water Quality. Ms. Shearson stated the County might wish to continue sampling past 2013. Chair Powell questioned the amount of funding which the County had expended on the study to date. Ms. Taylor stated $448,475 had been expended as of 2013. Chair Powell expressed disappointment with the lack of a final report and also with the lack of focus on the discharge portion of the water budget. Commissioner Minter questioned if the County were to discontinue funding whether the second report would be completed and published.

Matt Ely, USGS Hydrologist stated the original agreement with Lincoln County specified delivery of an original report which had been completed and was now under review. Mr. Ely stated the second report requested was a study of the impact of drought and wild land fire on the watershed. Mr. Ely concurred with Chair Powell that the data might not reflect the full picture but stressed additional values of the data. Mr. Ely stated if the County were to terminate funding at this point it would be difficult to complete the final report and additional data collection would likely be suspended. Mr. Ely reminded the USGS had also committed funding to the study and noted as a governmental entity the USGS was also faced with a decline in budgeted funding.

Commissioner Stone questioned if the current data collection would support a final report. Mr. Ely stated a report could be created but it would not reflect the upcoming snowpack data. Commissioner Minter expressed a desire to complete data collection through one more year. Mr. Ely stated despite limited funding it would be prudent to continue to collect data even if the network of data collection points was reduced. Mr. Ely stated the Little Bear Fire presented a unique opportunity to study the effect of the burn on water quality and recharge.

Chair Powell commented on Governor Martinez's announcement that state funding would be available for investigation of watershed properties and suggested the County write a letter to the Governor and the Congressional delegation requesting assistance to complete the study.

Mr. Ely noted current drought conditions in the southwest and particularly in New Mexico might provide an opportunity to pursue additional funding. Mr. Ely advocated for completion of the project as a unique opportunity to provide scientific evidence to support the anecdotal knowledge of local officials.

Commissioner Minter suggested the County pursue State funding with the assistance of the USGS. Mr. Ely commented on the non-regulatory nature of USGS and noted the sole purpose of the agency was to provide scientific information which tended to be more highly regarded as having been developed by an unbiased agency.

Mr. Ely stated the proposed budget included funding of $92,000 from the County and $72,000 from the USGS. Ms. Taylor reminded the funding for the project was currently in the approved budget. Ms. Taylor also reminded the County received Capital Outlay funding in the amount of $20,000 to fund the study.

Chair Powell requested support from the USGS for more public education about the overall decline of available water independent from occasional increases in precipitation.

Commissioner Draper questioned if any of the current data collection would reflect changes in the perception of water quality in the Village of Ruidoso. Ms. Shearson stated the planned October sampling might address this topic. Mr. Ely stated the USGS would be happy to conduct public meetings on this and other topics related to the study.

There was a general consensus to continue the study but to seek additional funding from the State and other federal agencies.

17. Consideration & Approval of Termination of Existing Lease for 6 Motor Graders and Purchase of 6 New Motor Graders

Ms. Taylor stated discussions with Carl Palmer, Road Superintendent; Alan Morel, Attorney; the Wagner Caterpillar Distributor; and CAT Financial Services were held regarding the replacement of six existing motor graders with new model equipment. Ms. Taylor detailed the reasons for the exchange of equipment including the lifetime hourly limit per year for a six year lease. Ms. Taylor stated the County could enter into a lease purchase agreement with Wagner for six years on a State Contract. Ms. Taylor noted the new models would provide for a 50% increase in annual hours which would reduce overuse fees and provide a small decrease in monthly lease payments.

Motion: Authorize the Manager, Attorney, and Road Superintendent to terminate the existing leases, to enter into a purchase agreement with Wagner Caterpillar, and to enter into a long term lease agreement with CAT Financial Services for six new motor graders. **Action:** Approve, **Moved by** Commissioner Minter **Seconded by** Commissioner Stone.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Chair Powell recessed the Regular Meeting at 2:15:36 PM and reconvened at 2:26:24 PM.

15. Manager's Report

1. ICIP Discussion and Request for Direction

The Manager reported the deadline for submission of the County's Infrastructure Capital Improvement Plan (ICIP) to the Department of Finance was September 30, 2013. Ms. Taylor presented a copy of last year's and a list of ten projects for consideration and ranking including:

a) Detention Center Expansion - $500,000
b) Relocation of Radio Tower from the Sheriff's Complex - $100,000
c) New Hondo Fire Station - $300,000 ICIP list for some time.
d) Fairground Improvements
    I. Water Crossings $318,000 - $1,370,000
    II. Improvements to existing facilities - $120,000
e) New Road Yard - $560,000
f) Expand White Oaks Fire Station - $152,000
g) Courthouse Energy Audit Improvements - $165,000
h) Glencoe Bridge – no cost estimate will request assistance from DOT
i) Fire Training Facility - $500,000
j) Fire Station Water Holding Tanks - $30,000

After lengthy discussion, there was a general consensus to rank the top priorities as: 1) Detention Center Expansion, 2) New Hondo Fire Station and 3) Fire Training Facility. There was consensus other projects would remain as prioritized except under Fairground Improvements for which Improvements to Existing Facilities would be prioritized above Water Crossings.

2. FY 2012-2013 Audit

The Manager informed The Accounting and Consulting Group, LLP began the annual audit in July. The Manager stated auditors met with various staff members regarding specific issues including the process to track FEMA funds and expenditures.

3. Forest Health Funding Initiatives

The Manager reported work continued on several initiatives with various partners including the NRCS EWP Process to be managed by SCRC and D with landowners providing the 25% match; finalization of the Homeland Security/FEMA grant including a benefit cost analysis with a benefit ratio of 20:1; also the 2012 projects in progress and application for 2014 WUI funds.

Curt Temple, Planning Director reminded of the Board's prior authorization to apply for a grant to assist in developing a Land Development Ordinance study. Mr. Temple stated qualification for potential funding was based on local income levels which Lincoln County no longer qualified. Mr. Temple stated unless the County allocated funds in the budget to hire a consultant the project was stalled. Commissioner Minter suggested consideration of a midyear budget adjustment in the amount of $50,000 to hire a consultant.

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

Ms. Taylor stated no new valid water right applications were posted on the State Engineer's website for Lincoln County since February of 2013.

Ms. Taylor informed the New Mexico Environmental Department Surface Water Quality Bureau had invited public comment on a Use Attainability Analysis supporting proposed amendments to

surface water quality standards for four surface waters in New Mexico, including Grindstone Canyon. Ms. Taylor stated the public comment period would close on September 13, 2013.

Ms. Taylor provided copy of a report from Brian Archuleta of the USDA Wildlife Services on efforts to thin the feral hog population including the removal of eleven feral hogs from the Capitan Mountain area.

Chair Powell suggested the County take the opportunity when appropriate to comment on the listing of the Jumping Mouse as an endangered species in support of other affected counties.

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

a) **Tabled** Road Review Advisory Committee

Motion: Remove the item from the table, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Motion: Appoint James Russ II to the Road Review Advisory Committee, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Minter.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Motion: Reappoint Lance Hale to the Road Review Advisory Committee, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Stone.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

b) **Tabled** Lodger's Tax Committee

Motion: Remove the item from the table, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Motion: Appoint Sue Hutchinson to the Lodger's Tax Committee as the General Public Member, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Chair Powell.

Attorney Morel informed that Sue Hutchinson was now employed by his firm. Attorney Morel stated Ms. Hutchinson's request for appointment to the Lodger's Tax Committee had preceded her employment and while he did not foresee a conflict he wished to disclose this fact.

Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

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

a) 2002-08 Property Tax Obligations

Motion: Schedule a Public Hearing to consider Property Tax Obligation Ordinance 2002-08, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

24. Consideration and Approval of an Alarm Permit Late Fee Lien Refund

Curt Temple, Planning Director presented a request from Mr. Jack Paul for a refund of the $100 late fee assessed by the County when a lien for nonpayment of his alarm permit was approved in June of 2013. Mr. Paul cited health issues and a lack of notice due to non-receipt of mail as grounds for the request. Mr. Temple noted Mr. Paul was not present to speak to his request.

No action was taken.

25. Road Review Requests:

Ms. Taylor noted the Road Review Committee met on August 13, 2013. Robert Barber, Chair of the Road Review Committee presented the requests and findings of the Committee.

a) Abandonment and Vacation of a part of Badger Court, High Sierra Estates and High Sierra Townhomes, Alto, NM. By William LeMasters

Mr. Barber informed during original construction a septic system was inadvertently located within an unused cul de sac. Mr. Barber reported after review of the site the committee recommended approval of the application.

Motion: Approve the abandonment and vacation of Badger Court, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Minter.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

b) Abandonment and Vacation of a part of Rillito Road with the Pine Cone Valley Subdivision, Ruidoso, NM. By Tomellen Burnett.

Mr. Barber reported a review of the plat indicated the County maintained road was partially located on private property and a private well was located on adjacent County property. Mr. Barber stated the owner was requesting an even exchange of property. Mr. Barber stated the committee recommended approval of the application.

Attorney Morel noted there was a lack of a definite description of the size of each parcel of the proposed exchange. Mr. Morel stated the County's ten year usage of the road provided for a prescriptive easement and suggested it would be more appropriate for the owner to purchase the County property on which the well was located and perhaps donate the road area to the County.

Motion: Approve the abandonment and vacation of a part of Rillito Road for sale to Mr. Burnett but deny the request for an exchange of land, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

26. New Medical Provider No. 52; the Ruidoso Physical Therapy Clinic, Inc.

Scott Annala stated the Ruidoso Physical Therapy Clinic, Inc. wished to enter into an agreement with the County to receive Indigent Health Care funding. Mr. Annala stated the current Resolution did not provide for payment for physical therapy services and requested guidance as to how to proceed with the request.

Attorney Morel stated the current Resolution would need to be revised to include this type of service.

Motion: Authorization to Amend the Resolution to include a payment category for physical therapy with an annual limit of $3000 and review other categories for adoption at the next meeting. **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

Motion: Table the request from Ruidoso Physical Therapy Clinic, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

27. Permission to Auction Surplus Inventory by Resolution 2013-10

Michelle Caskey, Fixed Assets requested permission to dispose of multiple items via online auction including items which were valued over $5000 at the time of purchase including five vehicles and multiple computers. Ms. Caskey stated all vehicle logos and decals were removed as well as hard drives for all computers prior to sale.

Ms. Caskey reminded a review by three elected officials of the items prior to sale was required. Commissioners Minter, Commissioner Draper, and Assessor Paul Baca agreed to review the items.

Motion: Adopt Resolution 2013-10, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Stone.
Vote: Motion carried by unanimous vote (**summary:** Yes = 4).
Yes: Chair Powell, Commissioner Minter, Commissioner Stone, Commissioner Draper.

SEE EXHIBIT D: Copy of Resolution 2013-10 is attached hereto in reference thereto made a part hereof.

Commissioner Minter was excused from the meeting at 4:03:51 PM.

28. Supporting the NMAC 2014 Legislative Priorities by Resolution 2013-12

Rhonda Burrows, Clerk presented the Resolution of support for the seven legislative priorities as adopted by the New Mexico Association of Counties (NMAC) Board of Directors. Ms. Burrows stated NMAC requested all counties adopt a resolution of support to assure understanding of and support for the priorities.

Motion: Adopt Resolution 2013-12 supporting the NMAC 2014 Legislative Priorities, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Draper.
Vote: Motion carried by unanimous vote (**summary:** Yes = 3).
Yes: Chair Powell, Commissioner Stone, Commissioner Draper.

Ms. Burrows requested guidance from the Board of Commissioners regarding an upcoming NMAC Board of Directors vote on the potential intercept of the Counties 1/8th Indigent Health Care GRT by the State to fund the Sole Community Provider program.

There was a general consensus to oppose the intercept of the County imposed Indigent Health Care GRT.

SEE EXHIBIT D: Copy of Resolution 2013-12 is attached hereto in reference thereto made a part hereof.

29. Consideration and Approval for Payment of Late Received Outstanding Invoices

Ms. Taylor informed invoices were received from the Lincoln County News in the amount of $272.82 for publications dating from May of 2007 to November 2007. Ms. Taylor noted proof of publication was provided. Attorney Morel noted the majority of invoices were over seven years old and would be exempt from payment under the Statute of Limitations. Chair Powell stated belief the invoices were too old and it was not the County's responsibility to accommodate billing which was so late.

Punkin Schlarb, Finance Director argued in favor of approval as the billing was from a vendor which the County had dealt with for decades and the error had occurred as a result of internal problems.

Beverly Calaway, Chief Deputy Treasurer commented her research of one billing found no purchase order was issued and expressed belief it would be a violation of the procurement code to pay the invoices.

Motion: Deny payment based on the age of the invoices, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stone.
Vote: Motion carried by unanimous vote (**summary:** Yes = 3).
Yes: Chair Powell, Commissioner Stone, Commissioner Draper.

30. 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

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.
3. *Green Tree Servicing, LLC v. William T. Joiner, Lincoln County, et. al. D-1226-CV-2010-394.* Suit filed November 17, 2010. Complaint for Enforcement of Contract and Foreclosure of Security Interest and Mortgage.
4. *Luis Grife as Personal Representative of The Estate of Arturo Grife, Jr., and Lizeth Grife v. County of Lincoln.* D-1226-CV-201100148. Complaint for Wrongful Death and Negligence, Jury Demand.
5. *New Mexico Ranch Sales v Mary T. Greene, LC Treasurer, et. al. D-1226-CV-2011-00226.* Suit filed August 1, 2011. Complaint In Rem to Foreclosure Mortgage Upon Real Property.
6. *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.
7. *New Mexico Ranch Sales v Marianne Clark, LC Treasurer, et. al. D-1226-CV-2011-00409.* Suit filed November 17, 2011. Complaint to Enforce and Collect Upon Promissory Note and to Foreclose Mortgage Upon Real Property.
8. *Bank of Clovis v Mona Bryant as Personal Representative of Marjorie Bryant (deceased), Village of Ruidoso, Lincoln County, et al. D-1226-CV-2011-00429.* Suit Filed February 10, 2012. Complaint for Foreclosure.
9. *New Mexico Ranch Sales v Tammy Palombi-Cade, LC Treasurer, et. al. D-1226-CV-2012-00042.* Suit filed February 13, 2012. Complaint to Enforce and Collect Upon Promissory Note and to Foreclose Mortgage Upon Real Property.
10. *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.
11. **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. L.C.'s lien was not extinguished and is still a valid lien against the subject property.
12. *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.
13. **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. *August 21, 2013 is the deadline for GSWA to file its Notice of Appeal. *In the process of scheduling Mediation.
14. *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.
15. **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 Ltr to Bishop, White, Marshall & Weibel, P.S. advising of payoff amount through Aug. 5, 2013.
16. *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.
17. **State of New Mexico (Lincoln County) v. Stephen Gore M-30-MR-2013-00113.* Citation filed June 17, 2013. Lincoln County Solid Waste Ordinance 2009-03 Violation. *June 17, 2013 Trial continued - Defendant given 60 days to complete clean up of property.
18. **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. Complaint for Negligence, Injury and Damages. *On August 2, 2013, NMAC advised Attorney Bryan Evans has been assigned as counsel for Lincoln County.
19. **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.
20. **State of New Mexico (Lincoln County) v. Emma Jim* (need approval to proceed with filing of Complaint prepared by Deputy David Hightower for possession of a Samsung cell phone with a charged cell phone battery contrary to L.C. Ordinance No. 2011-01.

21 *State of New Mexico (Lincoln County) v. Leandra Pino* (need approval to proceed with filing of Complaint prepared by Deputy David Hightower for possession of a Samsung cell phone with a charged cell phone battery contrary to L.C. Ordinance No. 2011-01.

22. *State of New Mexico (Lincoln County) v. Michael Mitchell* (need approval to proceed with filing of Complaint prepared by Deputy David Hightower for possession of a Samsung cell phone with a charged cell phone battery contrary to L.C. Ordinance No. 2011-01.

Tort Claims Notices Received or Threatened

2013

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.

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.

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. Constitution Fifth and Sixth Amendment rights.

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 Rafkin 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 Stone, **Seconded by** Chair Powell.
Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 3).
Yes: Chair Powell, Commissioner Stone, Commissioner Draper.
Absent: Commissioner Minter and Commissioner Doth.

Chair Powell recessed the Regular Meeting and convened the Closed Session at 4:17:21 PM.

Chair Powell adjourned the Closed Session and reconvened the Regular Meeting at 5:03:53 PM.

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

31. Signing of Official Documents

32. Next meetings:

September 17, 2013 - Regular Meeting

33. Adjournment

There being no further business to come before the Board of County Commissioners, Chair Powell adjourned the meeting at 5:04:13 PM.

County of Lincoln
Board of County Commissioners

Jackie Powell, Chair

Preston Stone, Vice Chair

Mark Doth, Member

Dallas Draper, Member

Kathryn Minter, Member

ATTEST:

Rhonda Burrows, County Clerk

September 17, 2013
Date Approved