

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 Friday, April 25, 2014

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on April 25, 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 8:32:11 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
- b. Salute – N.M. Flag

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 Doth.

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

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

6. Approval of Minutes

March 18, 2014 Regular Commission Meeting

Motion: Approve the minutes of the March 18, 2014 Regular Commission Meeting, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper

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 March 31, 2014
- c. 2014 Fire Fund Distribution Applications
- d. Road Name Change

Motion: Approval of Consent items as presented, **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 A Copies of Consent Items are attached hereto in reference thereto made a part hereof.

8. **Smokey Bear District Ranger Update**

Ranger David Warnack provided an overview of preparations for the upcoming fire season. Ranger Warnack discussed mixed seasonal outlook reports, the prolonged drought, and associated fuel build up. Ranger Warnack stated there were currently no fire restrictions on the District but weekly meetings were conducted with partners to evaluate conditions.

Ranger Warnack discussed enhancements for summer activities including zip lines and bike trails at the Ski Apache Recreation Area. Ranger Warnack stated the District would open two new fuel wood areas to assist with thinning and to enhance habitat and grazing opportunities.

Chair Powell reminded of the importance of grazing on allotments for fuel reduction. Ranger Warnack encouraged Chair Powell to provide similar comments during the scoping period for the fuel wood areas.

Ranger Warnack discussed a joint project on Bonito Lake Road with Lincoln County, the City of Alamogordo, and South Central RC & D to cut standing dead trees which pose a potential risk to traffic or people traveling on the road. Ranger Warnack also stated the Ranger District along with public and private partners received substantial funding to conduct fuel wood treatments adjacent to White Oaks.

Commissioner Stone questioned if there were any additional rehabilitation projects planned for the Little Bear Fire area. Ranger Warnack stated no projects were planned at this time but expressed belief the District was still eligible for post fire funding and requested any suggestions for projects be submitted to his office.

Commissioner Stone questioned what authority would issue a final decision on the proposed land swap between the US Forest Service and the Mescalero Apache Tribe. Ranger Warnack stated the decision would not be issued by his office but agreed to research the question.

Chair Powell suggested utilization of any available funding to reduced dead tree fall into stream beds in the Little Bear Fire area to reduce watershed damage.

18. **Consideration/Potential Action on Offer to Donate Building for Nogal Volunteer Fire Department**

Alan Morel, Attorney reported the Nogal Volunteer Fire Department received an offer to donate a new commercial grade three bay metal building for use as a fire station. Attorney Morel stated land for the proposed new fire station was previously donated by another individual and utilities were located at or near the proposed site. Attorney Morel explained the donation of the building was conditional on the County's agreement to dedicate and name the station "Abi Ann" in honor of the donor's daughter. Attorney Morel noted there was precedent within the County to dedicate fire stations to honor specific individuals.

Jim Rodella, Chief of the Nogal Fire Department reminded of the need for a fire station in the Loma Grande/Magado Creek area and discussed associated tasks such as construction of the foundation, site gradation and the cost to assemble the building. Chief Rodella stated the donor, a licensed contractor, also offered assistance to help offset or reduce assembly costs. Chief Rodella stated sufficient funding existed in the Nogal Fire District capital outlay budget to complete the project and the State Fire Marshall had approved the plan to construct a new station.

Motion: Accept the donation of a metal building from Don Hoffman for the Nogal Fire Department Substation in consideration of naming the substation "Abi Ann", **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Chair Powell.

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

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

Motion: Direct Chief Rodella to obtain firm construction estimates including utility connections, determine funding resources for associated costs; and present the proposal to the Board of County Commissioners for final approval, **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.

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

- a Funding Request: \$4,550.29; Art Loop July 4-6, 2014;
Application 1715 Presenter: Ronda Dougherty/Lincoln County Art Loop
- b Funding Request \$ 1,000 00, Christmas Jubilee November 7-9, 2014
Application 1716 Presenter. Linda McKinley/Ruidoso Valley Greeters
- c Funding Request: \$ 5,000 00; Fort Stanton Live July 11-13, 2014;
Application 1717 Presenter. Larry Auld/Fort Stanton, Inc.
- d. Funding Request \$ 2,800 00, Ruidoso Grindstone Trail Runs July 26, 2014
Application 1718 Presenter. Frederic Moras/Ski Run Road Challenge
- e. Funding Request: \$ 10,000.00; True Enchantment Tourism Board
March 1, 2014-February 28, 2015,
Application 1719 Presenter: Jim Boswell/Carrizozo Works, Inc.

Chair Powell requested information about unexpended funds budgeted for the current fiscal year and expenditures budgeted for the upcoming fiscal year.

Glenna Robbins, Treasurer informed the Treasurer's office tracked Lodger's Tax Revenues and stated this particular budget line reflected a current balance of \$15,000 of unencumbered funds. Ms Robbins stated actual final expenditures for the fiscal year might be less than what was currently encumbered but the unexpended requests were not tracked by the Treasurer's office

Chair Powell suggested the current requests for Lodger's Tax funding be tabled until the budget process was complete and voiced concern about actual revenues available in the Lodger's Tax Fund.

Commissioner Doth suggested the Lodger's Tax Committee be instructed to advise applicants that even though a request was approved this fiscal year, funding might not be available until the next fiscal year Ms. Robbins suggested the Lodger's Tax Committee be provided training on budgeting and expenditure of Lodger's Tax funds.

Motion: Table the requests for Lodger's Tax Funds until the Special Budget Meeting or the Regular Meeting in May, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Doth

Punkin Schlarb, Finance Director suggested the Finance Department provide training for applicants regarding approved funds being utilized for reimbursement rather than a lump sum cash payment. Ms Taylor suggested the County provide a list of requirements for reimbursement to applicants and provide a budget spreadsheet of revenues and expenditures to the Lodger's Tax Committee Commissioner Draper requested members of the Lodger's Tax Committee attend the next meeting to respond to questions

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

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

10. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS

Rick Rotert, President of Nogal Water Association provided an update on the financial problems the Association encountered due to increased audit requirements and costs associated with the receipt of grant funding to improve the community's water system Mr Rotert discussed recent legislative efforts to address the problem of unfunded mandates to accomplish audits but stated no legislative action was successful. Mr. Rotert stated on behalf of the Nogal Water Association he petitioned the Department of Finance and Administration (DFA) for a grant to assist with the

audit costs associated with their tier level. Mr. Rotert requested a letter in support of the grant application from the Board of Commissioners.

There was general consensus to provide a letter of support for the grant application of the Nogal Water Association. Commissioner Draper also volunteered to call DFA to voice his support.

Pam Robinson speaking on behalf of herself and Dr. Chris Robinson, as owners of property at 125 El Paso Road in Ruidoso, discussed problems related to the limited parking availability for the adjacent new professional office building (POB). Ms. Robinson stated her husband, who works for Presbyterian in the new office building, received six or more complaints from patients per day about parking and the distance from parking to the office building. Ms. Robinson stated the situation presented safety issues for those crossing El Paso Road from the main facility and noted parking often overflowed to an adjacent church.

Ms. Robinson briefly discussed the failed negotiations to sell their property to Presbyterian including the request to "donate" a portion of the sale back to the "Foundation" which provided financial support to LCMC. Ms. Robinson stated as a physician owner of the building Dr. Robinson was subject to the Stark Law and was obligated to sell the building at appraised cost.

Chair Powell recessed the Regular Meeting at 9:55:59 AM and reconvened at 10:03 52 AM.

Commissioner Minter provided public information about a recent visit to the County by Fred Black of the New Mexico Rural Water Association. Commissioner Minter stated Mr. Black visited the area to meet with local water districts about a grant loan program available to assist lower income private well owners and associations with rehabilitation of wells after a fire.

17. Consideration/Potential Action on Purchase of Water Tender for Bonito Volunteer Fire Department

Ms. Taylor presented a request from the Bonito Fire Department to transfer a 1991 water tender to the Ojo Sarco Fire Department in Rio Arriba County. Ms. Taylor stated Chief Carl Bartley also presented a proposal to purchase a new 2,000 gallon water tender. Ms. Taylor reported Chief Bartley sought and received approval for both the transfer of the older water tender and the purchase of a new water tender from the State Fire Marshall.

Motion: Approve the transfer of the 1991 water tender to Rio Arriba County and authorize the purchase of a new water tender by the Bonito Fire Department, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Minter

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

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

9. Response to County Request to Cibola National Forest for Investigation of Mountainair Ranger District

Ms. Taylor reminded Attorney Morel filed a request on January 22, 2014 for a formal investigation into the issuance of an order to remove livestock from grazing allotments on the Cibola National Forest. Ms. Taylor provided copy of the response received on March 20, 2014 from Calvin N. Joyner, USFS Regional Forester for the Southwestern Region.

Ms. Taylor stated belief the reply supported the actions of the District Ranger but also recognized the need for improved communication between the USFS and permittees. Ms. Taylor stated Regional Forester Joyner expressed a willingness to continue to work with the NM Department of Agriculture and the New Mexico State Range Task Force prior to the issuance of any similar decision. Ms. Taylor also presented an invitation received from Elaine Kohrman, Cibola Forest Supervisor for Lincoln County Commissioners to participate in planning meetings to revise the 1985 Forest Plan for future management of the Cibola National Forest.

Commissioner Stone stated the Regional Forester's response did not address the "act of malfeasance" which occurred on the Cibola Ranger District. Commissioner Stone contended the blanket removal without any accumulation of scientific data since 2006 on any of the 19 affected allotments was of particular concern. Commissioner Stone discussed the substantial financial burden the removal placed on permittees including the loss of projected annual agricultural income from which those livestock operations might never recover. Commissioner Stone expressed belief the County should continue to call for an investigation and not accept a "generic response".

Motion: Direct the County Attorney to continue to pursue an independent investigation into the actions of the Mountainair Ranger District, **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.

Motion: Direct LANRAC to participate in planning meetings for revision of the Cibola Forest Plan on behalf of Lincoln County, **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

10. Lincoln County Detention Center Update

Ms. Taylor provided the monthly report for review on behalf of Warden Arthur Anderson. The report provided statistics on monthly bookings and releases at the Lincoln County Detention Center and stated the current total average daily population as 132. The report further indicated the current population was 139 including 23 BIA prisoners and no US Marshal prisoners. Warden Anderson's report also noted the current population was composed of 23 female and 116 male prisoners.

11. Consideration / Potential Action on Resolution No. 2013-37: Relating to the Adoption and Establishment of Rules for the Accrual of Deduction of Time for Good Behavior and Industry

Attorney Morel presented the proposed Resolution and informed NM State Statute required the County adopt rules to define the process for accrual of any deduction of time for detainees. Attorney Morel reviewed the proposed language and discussed the requirement for judicial review to determine if an inmate was eligible to accrue "good time". Attorney Morel stated once the determination was made detention staff would document behavior and eligibility for each inmate. Attorney Morel stated Sheriff Shepperd and Warden Anderson reviewed the proposed Resolution and voiced no objections.

Motion: Adopt Resolution 2013-37, **Action:** Approve, **Moved by** Commissioner Minter, **Seconded by** Commissioner Doth.

Commissioner Minter questioned the exclusion of participation in "religious programs" as an activity eligible for "good time". Attorney Morel stated uncertainty about the purpose of the exclusion and agreed to research the question.

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 2013-37 is attached hereto in reference thereto made a part hereof

14. Manager's Report

1. **LCMC** – The Manager stated Al Santos, LCMC Administrator was on hand to provide information about key initiatives for the Medical Center and their clients

Al Santos, Administrator provided information and details about initiatives including the topics of LCMC's conversion to Electronic Records; Provider Recruitment, Medical Specialist Programs, and the Hospitalists Program.

Commissioner Minter requested Mr Santos work to resolve the parking issues associated with the new professional office building raised by Pam Robinson and other residents.

7. Departmental Updates:

- b. Roads – Carl Palmer

Carl Palmer, Road Superintendent discussed the need to rehabilitate Cedar Creek Road, the recent rise in road complaints associated with dry weather; and the proposed project with the USFS to work on Monjeau Road

Commissioner Doth questioned the most common complaint received by the Road Department Mr. Palmer stated requests to pave roads was the most common followed by complaints about rough conditions on dirt roads.

21. 11:30 A.M. Inspection of the Courthouse/Sheriff Expansion

Ms Taylor stated Nancy Kerr of Basic IDIQ would lead the tour of the current ongoing construction for the Courthouse/Sheriff Office expansion

Chair Powell recessed the Regular Meeting at 11 40.24 AM and all Commissioners, County Manager, County Attorney, other Elected Officials, and staff attend the tour

Chair Powell reconvened the Regular Meeting at 1:02:22 PM and recessed the Regular Meeting at 1 02:33 to convene the Public Hearing to consider County Ordinance 2014-3.

22. 1:00 P.M. Public Hearing to consider County Ordinance 2014 -3 to Dedicate to the Safety Net Care Pool Fund an Amount Equal to a Gross Receipts Tax Rate of One-Twelfth Percent; in Accordance with CS/SB268 – Sole Community Provider Hospital Federal Compliance

Attorney Morel explained the need to create a new Ordinance to comply with Senate Bill 268 and changing federal requirements for Sole Community Provider Hospital funding. Attorney Morel explained all counties were required by legislative action in Senate Bill 268 to dedicate the equivalent of 1/12th GRT to fund hospitals and uncompensated care. Attorney Morel explained counties had the option to fund the 1/12th in various ways including imposition of a new 1/12th GRT but explained the proposed Lincoln County Ordinance defined the source of funding as revenues derived from Mill Levy proceeds.

Commissioner Draper questioned the current amount equivalent to a 1/12th of the Gross Receipt Tax. Glenna Robbins, Treasurer stated currently a 1/12th of GRT was approximately \$414,000.

Attorney Morel informed SB 268 originally contained a "sunset clause" which the Governor line item vetoed Attorney Morel stated NMAC and counties were researching the validity of that veto power but at this time there was no sunset on this requirement.

Chair Powell questioned if the option to pay this obligation was addressed in the hospital lease agreement with Presbyterian. Attorney Morel confirmed the lease agreement contained language which addressed the County's right to make Sole Community Provider or other related payments to the State from Mill Levy proceeds prior to transferring those funds to LCMC

Receiving no public comment, Chair Powell adjourned the Public Hearing and reconvened the Regular Meeting at 1:08:37 PM.

Motion: Adopt Ordinance 2014-03, **Action:** Approve, **Moved by** Commissioner Doth, **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 C: Copy of Ordinance 2014-03 is attached hereto in reference thereto made a part hereof.

24. Cooperative Education Services – Presentation

Ms Taylor reminded the New Mexico State Procurement Code allowed local public bodies and state agencies to utilize cooperative procurement through a Joint Powers Agreement with Cooperative Education Services.

Robin Strauser, Deputy Executive Director of Cooperative Education Services presented an overview of the various types of service and agreements available to local government for different products and services Mr. Strauser explained how CES worked within the State Procurement Code to assist agencies in procuring service and agreements from 300 separate vendors

Mr Strauser explained approximately 50% of all CES contracts were now in construction and reminded the current County Courthouse expansion was contracted through CES. Mr. Strauser

stated advantages included saving staff time in developing and issuing requests for proposals, access to best price through group buying, and cost savings. Mr. Strauser stated CES operated without government funding but rather on a 1% administrative fee collected from the vendors.

Mr. Strauser discussed various methods of construction under CES contracts including Job Contracting; Construction Management at Risk (CMAR), Construction Manager Development, and Design/Build construction. Mr. Strauser explained under the Design/Build method the designer worked for the contractor which allowed a project to be "fast tracked". Mr. Strauser stated the Design/Build method was how the County Courthouse expansion was developed.

Commissioner Draper questioned if CES had a process in place to award work to local contractors. Mr. Strauser stated in response to increased pressure from members they were working, specifically with construction projects, to conduct workshops for local contractors on becoming vendors with CES.

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. 18, 2013, and case is ongoing.
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 Summary Judgment filed Jan. 29, 2014, Hearing scheduled April 24, 2014.
- *5. *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. 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. Meeting with both parties without attorneys and managers produced an agreed desire to discontinue appeal. Mr. Beauvais filed an appeal Feb. 27, 2014. Mr. Beauvais filed a Reply to Motion to Review Stay and Supersedeas Bond on April 16, 2014.
6. *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, with a Motion to Reconsider filed Jan. 8, 2014. Hearing on the Merits scheduled for May 12, 2014 in Carrizozo with Judge Parsons.
- *7. *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. Judge Waylon Counts has been assigned the case. Plaintiff's Response to Lincoln County's and State's Motion to Dismiss filed Jan. 3, 2014. Judge Counts granted Motion to Dismiss March 24, 2014.
8. *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 NMAC has assigned the case to Brennan and Sullivan Law.

- Firm 9/5/13 Case has been moved to Federal Court August 30, 2013 Order Settlement Conference scheduled for July 22, 2014
- 9 *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
- *10. *State of NM/Lincoln County v Warren Marker M 30 MR 2014-00046* Filed Feb. 28, 2014 Alleged bringing contraband into LCDC – Chris Nebalek with Gary Mitchell's firm assigned as public defender. Pre-Trial Hearing April 14, 2014 was attended by the Defendant who was removed from the court due to creating a disturbance.
- *11 *State of NM/Lincoln County v. Gonzales Gonzales M-30-MR-2014-00004* Filed Jan 7, 2014 Alleged bringing contraband into LCDC – Chris Nedbalek with Gary Mitchell's firm assigned as public defender Pre-Trial Hearing April 14, 2014 produced plea of No Contest Fine, court costs, probation assigned Case concluded.
- *12 *State of NM/Lincoln County v. Alberto Ruiz – M-30-MR-2014-00012* Filed Jan. 5, 2014. Alleged bringing contraband into LCDC – Chris Nedbalek with Gary Mitchell's firm assigned as public defender. Pre-Trial Hearing April 14, 2014 produced plea of No Contest Suspended fine, court costs and unsupervised probation assigned. Case concluded
- *13 *State of NM/Lincoln County v Nathan Little – M-30-MR-2014-00015* Filed Jan. 21, 2014. Alleged bring contraband into LCDC – Chris Nedbalek with Gary Mitchell's firm assigned as public defender Pre-Trial Hearing April 14, 2014 produced plea of No Contest Fine, court costs and unsupervised probation assigned Case concluded
- *14 *State of NM / Lincoln County v. Shann M Marler M-30-MR-2014-00026* Alleged bringing contraband into LCDC. Chris Nedbalek with Gary Mitchell's firm assigned as public defender Pre-Trial Hearing April 14, 2014 produced plea of No Contest Fine, court costs and unsupervised probation assigned. Case concluded.
- *15. *State of NM v Irene Howcroft – M-30-MR-201300190* Alleged animal nuisance. Ms. Howcroft pled not guilty August 22, 2013. Mr Morel received the case from the court. Non-Jury Trial April 14, 2014: Ms Howcroft did not appear. A bench warrant was issued Ms Howcroft's next date of appearance is scheduled for May 14, 2014
- *16 *State of NM v. Kimberly Mendez M 32 MR 2014-00073* alleged dogs and cats running at large. Arraignment scheduled April 21, 2014. Ms. Mendez pled guilty. Fine, court costs and suspended sentence assigned. Case concluded.
- *17. *State of NM v. Stephen D. Rabdurn M 32 MR 2014-00076* alleged dogs and cats running at large Arraignment scheduled April 28, 2014
- *18. *State of NM v. Sherrie Coronado M 32 MR 2014-00075* alleged dogs and cats running at large Arraignment scheduled April 28, 2014

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 NMAC.

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 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** 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 1 33 37 PM

Chair Powell adjourned the Closed Session and reconvened the Regular Meeting at 3 11 50 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

14. **Manager's Report (continued)**

7. **Departmental Updates:**

c. **Planning – Curt Temple**

Curt Temple, Planning Director provided updates on actions to coordinate permitting with the Village of Ruidoso under the new MOU. Mr. Temple discussed the County requirements associated with permitting and the associated documentation of actions to be completed prior to issuance of a permit by the Village of Ruidoso. Mr. Temple additionally reported the Planning Commission had met to begin consideration of a Land Development Ordinance, provided an update on pending grant applications, and discussed efforts by the Rural Addressing Department to replace obsolete County road signage

a. **Finance – Punkin Schlarb**

Charlene Schlarb, Finance Director introduced the new Inventory Assets and Information employee, Mickie Howard. Ms. Schlarb reported on attendance by Finance staff at an audit training class conducted by the current Lincoln County audit firm utilizing positive examples from the recent County audit for training purposes

Ms. Schlarb stated Finance, in conjunction with the Assessor and Treasurer provided a workshop for Commissioners and Commission candidates on budget preparation.

d. **EOC – Spencer Baldwin**

Spencer Baldwin, OES Coordinator stated recent fire activity was minimal. Mr. Baldwin discussed the recently acquired SIMs table, associated training, and potential updates. Mr. Baldwin proposed conducting a demonstration at the OES headquarters in the near future and informed on planned activities for Smokey Bear Days

Mr. Baldwin reported on recent information on "air burners" used for the destruction of slash. Mr. Baldwin discussed the three types of air burners available one of which required a large pit, one was permanently positioned, and a third type was portable. Mr. Baldwin stated the problem with disposal of slash by air burners was the associated permits and the multiple agencies involved. Mr. Baldwin reported there was opportunity to obtain a waiver for use of the portable air burner. Mr. Baldwin stated the smaller portable units were priced between \$50,000 and \$70,000

2. Finance/Treasurer/Assessor Overview to Commissioner Candidates: The Manager commented on the positive feedback from the overview provided by Finance along with the Assessor and Treasurer offices to candidates running for the three open County Commission seats.

3. Legislative Update: The Manager provided copy of the final Legislative Report from the 51st legislative session from Tasia Young, New Mexico Association of Counties.

4. **Ft. Stanton Cemetery:** The Manager stated on April 15, 2014 Governor Martinez announced Fort Stanton Cemetery was chosen as one of four locations in New Mexico to be submitted to Veterans Affairs, Washington, DC for designation as a Veterans Cemetery with burial available based on the same eligibility requirements as a national cemetery.

Commissioner Draper questioned if the selection was equivalent to final acceptance. Ms. Taylor stated the designation was not final until approved by the Department of Veterans Affairs. There was a general consensus to submit an additional letter of support.

5. **Upcoming Events:**

- a. April 29th. Lodgers Tax Committee meets;
- b. May 2nd. Special Commission Meeting – FY14-15 Budget Meeting. External program funding requests, Hospital & clinics; Detailed internal departmental review; unfunded optional requirements; ICIP input;
- c. May 7th. Planning Commission Meeting;
- d. May 15th. Lincoln Historic Preservation Meeting,
- e. May 20th. Regular Commission Meeting, Preliminary budget presentation for approval,
- f. May 22nd. State Transportation Committee Meeting in Ruidoso. Hubert Quintana to moderate with a request for Chair Powell to provide a five minute presentation on transportation needs along with other local government presenters.
- g. May 26th. Holiday – Memorial Day Observed

6. **Building Updates:**

- a. The Court / Sheriff's Complex expansion is proceeding on time and on budget.
- b. The energy-audit work prescribed by Veretterre, Inc. to replace windows, lighting and HVAC units in the existing building is being coordinated between Veretterre and Basic IDIQ. The Manager stated Veretterre would work with Basic IDIQ to complete the energy audit work once the courthouse expansion was complete.
- c. The Ft. Stanton Fire Department is well on its way to completion. The Manager anticipated a Grand Opening for the new Fire Station sometime in June.
- d. All funding in-hand to move forward with SNMEDD and Wilson & Co. to start working of Carrizozo Sr. Center.

20. **Consideration / Potential 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 34 claims with 30 recommended for approval and 4 recommended for disapproval for a total authorization of \$40,662 and a year to date authorization of \$930,162. Mr. Annala noted the average monthly hospital claims to date was \$93,016 with a projected annual approval for FY 2013-2024 of approximately \$1.1 million.

Mr. Annala presented the Indigent Health Care Payments request for the month and stated he processed 26 claims with 20 recommended for approval and 6 recommended for disapproval. Mr. Annala stated while there was a slowdown in applications, he had a large number of claims pending final approval or denial of eligibility from Medicaid. Mr. Annala stated the total of claims recommended for payment this month was \$13,503.08 for a year to date total of \$194,547.67. Mr. Annala noted the average monthly indigent claims to date were \$19,455 with a projected annual expenditure of \$233,460. Mr. Annala reminded the FY 2013-2014 budget for Indigent claims was \$393,278 and projected adequate funds for the fiscal year.

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 Doth.

Commissioner Minter questioned if the contract for Mental Health Services was funded from the Indigent Health Care Fund. Mr. Annala stated while the contract funding was from the Indigent Health Care GRT revenues, those services were paid as professional services not as claims.

Mr. Annala informed his long term, part time employee Mary Crenshaw was retiring after many years.

15. **Water issues/Forest/Wildlife Health Programs**

1. Ms. Taylor provided details of three new water right notices listed this month on the State Engineer's website as follows

Application T-1320-Enlarge filed December 23, 2013 by Jerry and Patricia Deal of Las Cruces, New Mexico to appropriate underground water within the Tularosa Underground Water Basin in Lincoln County in the amount of 145 75 acre feet per annum for irrigation purposes on 34.953 acres of land owned by the applicant, from existing wells to enlarge the existing place of use to 78 acres and increase total diversion of groundwater for irrigation purposes to 325 26 acre feet per annum located near Oscura, New Mexico.

Application T-5113-POD filed February 12, 2014 by the Town of Carrizozo to use a previously drilled temporary construction well for continued diversion of up to 706 acre feet per annum of underground water in partial, continued exercise of existing water rights owned by and supplemental to existing Town of Carrizozo rights to be used for municipal, commercial and recreational purposes within the Town of Carrizozo which may include the Valle del Sol Subdivision

Application T-6019 filed March 24, 2014 by FNF Construction, Inc. for permit to temporarily appropriate underground water within the Tularosa Underground Water Basin in Lincoln County in the amount not to exceed 90 acre feet from existing well located at the Carrizozo Golf Course owned by the Town of Carrizozo for road construction purposes on Highway 54 for a period of time not to exceed two years.

2. Ms Taylor provided details of four Legal Notices published April 10, 2014 in the Lincoln County News by the State Engineer's office. Ms. Taylor stated all of these applications were filed under the NM Water Use Leasing Act for temporary leases effective until October 31, 2021 which would allow applicants to move points of diversion and place and purpose of use by written request anytime during the lease period Ms Taylor stated the deadline for objections or protests were due by May 2, 2014 Ms Taylor detailed the four applications as follows:

- a Divert 246 acre feet per annum for municipal purposes located within the Village of Ruidoso with move from points of diversion and places of use located at the race track in Ruidoso Downs
- b. Discontinue diversion of 343.04 acre feet per annum from the Rio Ruidoso in Hondo and temporarily commence the diversion of 308 736 acre feet per annum of surface waters of the Rio Ruidoso from various wells and ditches in Hondo to the Village of Ruidoso
- c Temporarily divert 24 192 acre feet per annum for municipal use by the Village of Ruidoso with 50% return flow credit with the move from points of diversion in Hondo

Chair Powell commented on the need for the County to advocate for unincorporated communities to prevent the permanent loss of water rights Chair Powell discussed the adverse effects of "transferring" water from one aquifer to another Chair Powell voiced numerous concerns on behalf of residents of the Hondo Valley regarding the published water right transfers to the Village of Ruidoso. Chair Powell stated the requested transfers could not be satisfied with current surface water flow in the Rio Ruidoso and would necessitate pumping of groundwater causing additional damage to the watershed Chair Powell stated the situation was of "grave concern" and requested the Board of County Commissioners send comments to the State Engineer stating opposition to these particular applications for transfer based on the area having been previously designated as "impaired".

Motion: Direct the Manager to send a letter to the State Engineer requesting re-evaluation of the published application to divert water from Hondo to the Village of Ruidoso due to long term impairment in a critical management area, and further noting the applicant has utilized five years of allotted water rights in three years, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth

Commissioner Doth questioned the status of the ongoing USGS report and evaluation of the watershed Ms Taylor stated she would research status of the study and request an update for use in evaluation of applications for transfers

Commissioner Doth commented on the lack of water planning by the Village of Ruidoso including the lack of development of additional storage capacity.

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

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

No: Commissioner Draper.

Ms Taylor further reported on recent news reports regarding the Mescalero Apache Tribe's desire to acquire approximately 400 acres of US Forest Service land at Ski Apache Ms. Taylor provided a copy of a previous letter of objection to this land transfer sent to the New Mexico Congressional delegation

There was general consensus to send a follow up letter of opposition regarding the land swap proposed by the Mescalero Apache Tribe, to the NM Congressional Delegation, Bureau of Indian Affairs, Department of the Interior, Water Trust Board, State Engineer, Interstate Stream Commission and the Governor

3 Ms. Taylor stated the Wildfire Task Force convened by the NM Public Regulation Commission (PRC) included in its scope of work issues around utility lines across private and public lands and coordination of efforts to reduce problem trees around utility lines. Ms. Taylor stated on April 17, 2014 she and Commissioner Doth attended a meeting during which Commissioner Doth provided information regarding fire starts in Lincoln County and the Village of Ruidoso due to trees and limbs falling on power lines

Commissioner Doth suggested a Hazard Tree Ordinance be developed to assist with this safety problem Commissioner Doth stated the PRC was considering what level of enforcement was available to the agency to require entities to deal with hazardous tree removal. Commissioner Doth noted the Electric Cooperative Companies had expressed interest in working with counties to deal with the fire hazard issue

Chair Powell expressed concern about enforcement of any proposed Ordinance and the potential liability of non-enforcement. Attorney Morel stated he reviewed several Ordinances adopted by other entities. Attorney Morel stated legitimate concerns included cost of enforcement, limitations on enforcement by utility companies, and potential liability of non-enforcement. Attorney Morel stated an Ordinance could be drafted for discussion next month but adoption would be problematic until enforcement issues were resolved.

Commissioner Stone stated Otero County Electric Co-op was limited to a 20 foot easement for power lines and due to easement restrictions the Co-op could not cut trees outside of the right of way even if the height of the tree posed a hazard to the line. Commissioner Stone reminded no County Ordinance had jurisdiction on US Forest Service land and suggested the only enforcement area available to the County was private land

Commissioner Doth suggested the County might assign personnel to simply identify potential problems and inform the responsible party Commissioner Minter suggested public education and meeting with utilities to address the issue. Commissioner Minter discussed the limited resources available to deal with hazardous trees by both utility companies and also the County Road Department Commissioner Doth stated he spoke with District Ranger Dave Warnack and received assurance the Smokey Bear Ranger District would utilize their resources to review power lines running through US Forest Service land. Commissioner Draper suggested enlisting the assistance of utility companies to identify hazardous trees and notifying the landowner if the tree was outside the easement area. Chair Powell advocated for personal responsibility by landowners.

Spencer Baldwin, OES stated the majority of large fires last year in New Mexico were started by downed power lines and stated the utility companies were well aware of this problem Mr. Baldwin voiced concern about hazardous trees outside the power line easements and the potential financial burden placed on private landowners after a fire for which they were not responsible Mr Baldwin suggested additional research prior to developing an Ordinance.

Commissioner Doth suggested identifying funding to target all hazardous trees, as there were trees which were hazardous to road ways as well as power lines. Commissioner Doth advocated for additional research on the feasibility of an Ordinance.

There was a general consensus for Mr. Baldwin and Attorney Morel to continue to research the feasibility of developing an Ordinance or other potential solutions

4. Ms Taylor reported a Town Hall meeting on Water Planning, Development and Use was held in Albuquerque on April 15th and 16th with Commissioner Powell, Commissioner Stone, Commissioner Minter and herself in attendance Ms. Taylor provided copy of the Participant Packet which described topics, strategies, goals and some outcome from the meeting.

16. Consideration / Potential Action on Bid Awards:

Bid 13-14-009 - Resurfacing Cedar Creek Road

Ms Taylor detailed the two bids received to resurface Cedar Creek Road as follows

1. Mesa Verde Enterprises, Inc \$169,716.40
2. Renegade Construction, LLC \$199,568 38

Motion: Award Bid 13-14-009 to Mesa Verde Enterprises, Inc. for \$169,716 40, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Stone

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

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

19. Consideration/Potential Action on Substance Abuse Agreement

Ms Taylor stated the County entered into an agreement with Substance Abuse Services of Lincoln County on July 1, 2011 for the provision of mental health and electronic monitoring services to inmates in the Lincoln County Detention Center. Ms. Taylor stated under the terms of the contract the County agreed to pay Substance Abuse Services \$50.00 per hour for providing services, not to exceed \$50,000 annually. Ms Taylor stated due to high expense levels in the first three months of this year billing through March of 2014 was \$55,724.68 for services. Ms Taylor stated the contract also allowed "in the event the cost for services rendered exceeds \$50,000 per year, the parties to the Contract shall discuss additional funding and/or other options" Ms. Taylor recommended increasing the annual agreement limit to \$71,000 through June 30, 2014 to accommodate estimated expenses of \$5000 per month for the remainder of the fiscal year.

Motion: Amend the contract agreement to reflect an increase to \$71,000 of the budgeted amount for the remainder of the fiscal year ending June 30, 2014, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper

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

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

23. Report on Completed Lodgers' Tax Audits Per Requirements of County Ordinance 2004-04 for Calendar Year 2012

Ms. Taylor stated Dan Austin, CPA conducted the annual audit of lodgers subject to the Lodger's Tax. Ms. Taylor provided a copy of the audit and supporting documentation Ms Taylor detailed the audit findings which confirmed compliance and no exceptions by the Dragon Fly Inn Bed and Breakfast, Riverstone Ranch, Inc.; Varnadore Little Creek, and Elk Run Cabins and RV Park. Ms Taylor stated findings were forwarded by Mr. Austin to the NM Department of Finance and Administration as required

Motion: Approve the annual Lodgers' Tax Audits, **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

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

- a Ordinance Prohibiting Contraband in Lincoln County Detention Center

Motion: Schedule a Public Hearing to consider the Ordinance Prohibiting Contraband in the LC Detention Center for the next Regular Meeting, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Draper

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

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

- b. Hazardous Tree Ordinance

No action was taken

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

a. Lodger's Tax Committee

Motion: Reappoint Alice Seely to the Lodger's Tax Committee, 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

b Planning Commission

Motion: Reappoint Dennis Rich to the Planning Commission, Action: Approve, Moved by Commissioner Draper, 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. Tabled-Senior Citizens Olympic Committee

No action was taken

28. Signing of Official Documents

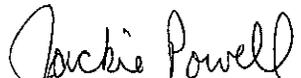
29. Next meetings:

- a. May 2, 2014 Special Regular Commission Meeting
- b. May 20, 2014 Regular Commission Meeting

30. Adjourn

There being no further business to come before the Board of County Commissioners, Chair Powell adjourned the meeting at 4 54 45 PM.

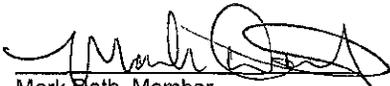
County of Lincoln
Board of County Commissioners



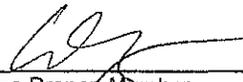
Jackie Powell, Chair



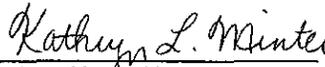
Preston Stone, Vice Chair



Mark Both, Member

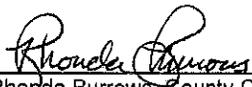


Dallas Draper, Member



Kathryn Minter, Member

ATTEST



Rhonda Burrows, County Clerk

May 20, 2014
Date Approved

