

# COUNTY OF LINCOLN

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## New Mexico Regular Meeting Board of County Commissioners

Jackie Powell, Chair  
Preston Stone, Vice Chair

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

### Minutes Tuesday, September 16, 2014

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on September 16, 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 8:30:52 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 – US Flag
- b. Salute – NM Flag

#### 5. Approval of Agenda

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

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

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

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

#### 6. Approval of Minutes

- a. August 19, 2014 Regular Commission Meeting
- b. September 8, 2014 Special Commission Meeting

**Motion:** Approve the minutes of the August 19, 2014 Regular Commission Meeting and the September 8, 2014 Special Commission Meeting; **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Chair Powell.

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

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

#### 7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending August 31, 2014

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

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

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

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

## **8. Smokey Bear District Ranger Update**

David Warnack, District Ranger announced a collaborative Range Management Workshop hosted by the USFS, Upper Hondo Soil and Water Conservation District and New Mexico State University to discuss and educate grazing allotment permittees about the Rapid Assessment Method of range evaluation on September 29, 2014. Ranger Warnack stated the workshop was an opportunity to share ideas about rangeland health and monitoring in a constructive manner.

Ranger Warnack provided a copy of the scoping letter initiating the White Oaks Restoration Project on State land near White Oaks. Ranger Warnack stated the USFS received a grant to work on both National Forest land and land managed by the New Mexico State Land Office in the area

Ranger Warnack detailed the completion of various prescribed burning projects in cooperation with other agencies within the County. Ranger Warnack expressed a desire to work with Joe Kenmore, Lincoln County Emergency Services Director to discuss ongoing risk management within the County and to plan a risk management workshop.

Commissioner Doth question if the Ranger District had conducted any reassessment of the Little Bear Fire burn area for erosion or potential reseeding areas. Ranger Warnack stated the District had reviewed a couple of specific areas within the burn including the North Fork of Eagle Creek associated with the Village of Ruidoso's Special Use Permit renewal.

Commissioner Stone questioned the status of grazing allotment reevaluations within the Ranger District. Ranger Warnack stated the reauthorization of livestock grazing on allotments required a periodic environmental assessment and due to the temporary reassignment of District staff those efforts would extend into 2015.

Chair Powell commented on a recent discussion at an Acequia Association meeting regarding a push for creation of additional wilderness areas in other Ranger Districts. Chair Powell opined watershed damage and other problems associated with recent large fires in the State, along with the availability of specific science associated with burns in Wilderness areas, did not support the argument for creation of additional wilderness areas. Chair Powell stated science now supported the position that healthy, well managed forests were more beneficial over time.

Ranger Warnack stated the consideration of additional wilderness areas arose in specific Ranger Districts which are in the process of revising of their individual Forest Plans. Ranger Warnack reminded the current Forest Plan for the Lincoln National Forest was created in approximately 1987. Ranger Warnack stated the Lincoln National Forest would begin a five year process to revise the current plan this fall. Ranger Warnack stated the public and all entities involved would have multiple opportunities to share science and comment on the plan.

## **9. Lincoln County Detention Center Update**

Warden Arthur Anderson provided the monthly statistics on bookings and releases at the Lincoln County Detention Center. Warden Anderson reported the Detention Center had an average total daily population of 137 with a current population of 141 prisoners which included 11 BIA prisoners and no US Marshal prisoners. Warden Anderson stated the current population was composed of 31 female and 110 male prisoners.

Ms. Taylor reminded of the quarterly inspection of the Detention Center set for this date and the Commissioners and public were invited.

## **26. Consideration/Action Betty Ann Bell Proclamation**

Ms. Taylor presented a Proclamation for approval in recognition of Mrs. Betty Ann Bell receiving the K. Rose Wood Outstanding Older Adult Award from the New Mexico Aging and Long Term Services Department. Ms. Taylor explained the prestigious award was presented in recognition

of Mrs. Bell's contribution to her life-long community of Corona as well as the County of Lincoln at the 2014 New Mexico Conference on Aging on August 20, 2014.

Commissioner Stone read the Proclamation and commended Ms. Bell for her many accomplishments and noted she was "the glue" in her community of Corona, New Mexico. There was a general consensus approving the Proclamation in honor of Mrs. Bell's service to her community and the County of Lincoln.

#### **10. Sun Zia Transmission Pipeline Project - Update/Presentation**

Ms. Taylor reminded Resolution 2013-5 was adopted at the July 15, 2013, Regular Meeting endorsing the construction and operation of the SunZia Southwest Transmission Project. Ms. Taylor noted Lincoln County had not advocated for a particular route as proposed by various parties. Ms. Taylor stated multiple entities were on hand to give an update to the Commission on the project's current status.

##### **a. Adrian Garcia and Chuck Schmidt of the Bureau of Land Management**

Mr. Garcia provided a brief history of BLM actions beginning in 2008 and discussed the current status of the State's Environmental Impact Assessment. Mr. Garcia informed 18 miles of the proposed Transmission Line were within Lincoln County of which 16.5 miles were privately owned and the remainder was State Land. Chuck Schmidt and Mark Matthews of the Roswell and Socorro BLM field office discussed the potential economic impact of even the minor length of line within Lincoln County.

##### **b. Martin Bailey, Real Property Manager - SunZia Southwest Transmission Project**

Mr. Bailey presented a brochure to address current critical issues for the project which he identified as primarily time related. Mr. Bailey commented on the recent approval of the BLM's Proposed Alternate Route as provided by Department of Defense Secretary Hagel to Department of the Interior Secretary Jewell. Mr. Bailey stated this interagency approval was contingent upon SunZia accommodating four significant mitigation issues including: hold harmless mutual covenants; the close coordination and non-interference of testing activities within White Sands Missile Range; the "micro siting" of certain tower locations; and the "undergrounding" of up to three segments of the proposed five miles of buried line

Mr. Bailey presented a timeline of the project beginning with conception in 2006 with regional planning and continuing to the proposed Commercial Operation Date in 2018. Mr. Bailey also discussed the ongoing arrangements with customers seeking additional sources of power.

Commissioner Minter questioned the status of grants or federal dollars for the project. Mr. Bailey clarified all funding was private funding at this time.

Commissioner Stone questioned if agreements were in place with the landowners of private land within the State. Mr. Bailey stated those agreements were not finalized due to the consideration of route changes. Mr. Bailey stated the transmission line would affect approximately 127 private landowners in New Mexico.

##### **c. Dan Hicks, White Sands Missile Range, Deputy Executive Director**

Mr. Hicks discussed the Department of Defense and other federal agencies filing protests of the initially proposed route through White Sands Missile Range. Mr. Hicks stated this resulted in an interagency dispute between the Department of Defense and the Department of the Interior. Mr. Hicks stated a compromise was reached to position five miles of buried line within WSMR and identify the four mitigation requirements. Mr. Hicks stated WSMR was working closely with BLM to complete the associated expanded Environmental Assessment Study.

Mr. Hicks expressed appreciation for the participation of Lincoln County in the ongoing Joint Land Use Study. Mr. Hicks anticipated the Implementation Committee to be highly beneficial as an enduring committee providing a forum for all related entities to participate in facilitating economic development without compromising the mission of neighboring military installations.

##### **d. Corona Land Owners Association**

Mac Bell with the Corona Land Owners Association stated the land owners were essentially "treading water". Mr. Bell stated agreements with developers interested in building the wind turbines associated with the transmission line were pending the building of the transmission line.

Mr. Bell stated SunZia was very good to work with and had engaged the community of Corona in multiple ways.

**11. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS**

Commissioner Draper informed he was invited to participate on the curriculum committee developing requirements for County College for Commissioners. Commissioner Draper discussed potential class requirements for Commissioners including the inclusion of a crisis management class.

Rhonda Burrows, County Clerk informed one of the new voting tabulators received for use in Lincoln County was available for inspection by the public in the lobby of the Commission Chambers. Ms. Burrows announced an election worker training and open house for the general public to view and use the new tabulators was scheduled for September 26<sup>th</sup> at the Horton Complex in Ruidoso. Ms. Burrows also reminded the Clerk's office was conducting the Alto Lakes Special Zoning District Election on this date.

Eric Russell representing Doubletree Glass and Window requested the opportunity to speak about and make part of the public record ongoing issues the business has had with Greentree Solid Waste Authority. Mr. Russell stated belief the company's current contract was null and void and informed they would contract with a different agency for waste disposal. Mr. Russell stated intent to present a request for GSWA to remove their property from the business location at the next meeting of that entity. Mr. Russell provided copies of the contract and stated he was in contact with the County Manager about the situation.

Chair Powell recessed the Regular Meeting at 10:00:45 AM and reconvened at 10:14:35 AM.

**12. Consideration of Approval or Disapproval of Indigent Health Care Claims**

Scott Annala, IHC Administrator presented the Sole Community Provider/Safety Net Care Provider Pool claims for approval. Mr. Annala processed 17 claims with 15 recommended for approval and 2 recommended for disapproval for a monthly authorization of \$9,877 an almost record low. Mr. Annala stated the total approval for SCP/SNCP claims for Fiscal Year 2014-2015 to date was \$73,219 with a monthly average of \$24,406. Mr. Annala stated this three month total was less than a single month's approval in the last fiscal year.

Mr. Annala presented the Indigent Health Care Payments request for the month and stated he processed 12 claims with 10 claims recommended for approval and 2 for disapproval for a total payment this month of \$1,764. Mr. Annala stated, pending approval, the total for IHC claims for Fiscal Year 2014-2015 to date was \$21,148 for an average monthly indigent claims payment of \$7,049. Mr. Annala projected an estimated authorization for the fiscal year of \$84,588.

**Motion:** Approval and denial of the claims as indicated for SCP/SNCP and Indigent Health Care as recommended, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth.

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

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

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

**13. Discussion and Reconsideration of the proposed Land Development Ordinance**

**Motion:** Table discussion and reconsideration of the proposed Land Development Ordinance until 2015, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stone.

Chair Powell stated support for the motion to provide opportunity for the three newly elected Commissioners to consider and vote on the proposed Ordinance.

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

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

**14. Consideration/Action on Agreements with South Central Mountain RC and D to Manage Forest Health Projects (Cedar Creek 2 NFL and 2014 WUI)**

Ms. Taylor stated the County was in the process of finalizing agreements with the Forestry Division of the New Mexico Energy, Minerals, and Natural Resources Department for two forest health projects: 1) Project Work Plan 15-05-1216: Cedar Creek 2 Non-Federal Land Hazardous Fuel Reduction and 2) Project Work Plan 15-15-1224: 2014 Wildland Urban Interface (WUI) in Lincoln County.

Ms. Taylor discussed the history of past services provided by and agreements with South Central Mountain RC and D Council, Inc. (SCMRCD) for assistance in coordination and implementation for similar grant requirements with the State Forestry Division. Ms. Taylor presented a Professional Services Agreement between the County and SCMRCD for these two Project Work Plans.

Commissioner Doth recused himself from the vote due to the potential appearance of a conflict.

**Motion:** Approve the Professional Service Agreement with South Central Mountain RC and D for the Project Work Plan 15-05-1216 and 15-15-1224, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Minter.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4, Abstained = 1).

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

**15. Manager's Report**

1. **THANKS:** Manager Taylor thanked the Commissioners, Elected Officials, County Attorney and County staff for stepping in and covering needed duties while she was out on emergency medical leave.
2. **Audit:** Manager Taylor reported the Accounting & Consulting Group, LLP was back in the County the first week in September to complete audit work. The firm spent significant time helping to identify and correct problems with Capital Inventory and the associated depreciation records which have been problematic for several years. Through painstaking scrutiny, errors in the data base were found and fixed, facilitating actions to produce a correct inventory and depreciation of capital assets. The Manager stated the auditors' would present findings back to County staff by month's end for response and forward findings to the State Auditor shortly thereafter.
3. **New Mexico Association of Counties** scheduled the "Better Informed Public Officials (BIPO) Conference for December 9 – 11, 2014 in Santa Fe. The conference, for newly elected Commissioners and Public Officials, will coincide with NM EDGE classes. The Manager provided a list of other key dates for NMAC activities through the end of the year. The Manager reported NMAC hired Brian Moore (from Clayton) to join its lobbyist team, following the retirement of long-term lobbyist Tito Chavez. The Manager noted Mr. Moore served as a member of the NM House of Representatives from 2001 – 2008 and from 2010 – 2012 worked as Deputy Chief of Staff for Governor Susana Martinez.
4. **Oil Painting, The Gift:** Mr. Walter Limacher requested the County accept as a gift his original oil painting, "The Gift". There was a general consensus to accept the gift with a thank you to Mr. Limacher.
5. **Courthouse Expansion Project:** The Manager reported:
  - The Manager along with Curt Temple, Planning Director participated in the punch-list walk thru on September 2, 2014,
  - Items not meeting the intent of the drawings and specifications were identified by the Architect, General Contractor, Local Contractor and Owner were noted and are in the process of being corrected;
  - Keys have been turned over to owner, and duplicates will be made for Court, Sheriff, Maintenance, and others.
  - Quote process for Communications System for Sheriff had commenced;
  - Associated Courthouse remodel of existing space had commenced;
  - Requested Commissioners begin to identify dates for Grand Opening;
  - Requested Commissioners consider if the new Courthouse addition should be named for any of the prior District Court Judges serving in Carrizozo.

6. **Carrizozo Sr. Center.** The Manager reported approval of the plans by the Governor's Commission on Disability was received after a number of modifications were made to the plans to comply with numerous building code requirements. The Architect Howard Kaplan anticipated the RFP would be issued within the next month or so.
7. **Wattles.** Since receiving Commission approval to move forward with a marketing plan for dispersal of remaining wattles, the Manager learned the original FEMA Project Worksheet contained specific language which stated the County would "give away" the wattles to land owners in the Little Bear Fire burn area. The Manager discussed plans to consult with NMDHSEM and FEMA to determine the County's ability to sell the wattles, as efforts to "give" them to Lincoln County landowners impacted by the fire were largely successful.
8. **FEMA Grant for "Education and Outreach" for Thinning Project throughout the County.** The Manager informed the first Education and Outreach Public Meeting to inform landowners of the current project and to identify interested parties was scheduled for September 23, 2014 at the Alto Lakes Golf & Country Club, at 6:00 p.m. The Manager provided copy of a letter sent to area property owners
9. **GSWA.** The Manager reported the next GSWA meeting was set for September 18, 2014 at 10:00 a.m. The Agenda was not yet posted on GSWA's website but the website advised readers rather "the agenda is posted at least 72 hours prior to each meeting in the public area of the GSWA Office located at 26590 US Hwy 70 Ruidoso Downs".

**10. Departmental Updates:**

- c) Curt Temple, Planning Director stated a Risk Mapping Assessment and Planning (MAP) meeting was held to coordinate and partner with FEMA and different communities. Mr. Temple stated the purpose of the meeting was to begin to identify hazards along river flood areas and to develop a mitigation plan to address those hazards for potential flooding in the Rio Hondo Water Basin. Mr. Temple stated Carl Palmer and Kim Roper of the County Road Department assisted in identification of potential road hazards in the area.
- a) Punkin Schlarb, Finance Director stated The Non Metro Area Agency on Aging required all contracted providers to establish financial records to reflect revenues and expenditures by service. Ms. Schlarb informed she and Renee Montes, Senior Program director developed a new budget report to revise budget reporting from a site report to a service report.
- b) Carl Palmer, Road Superintendent reported on some minor road issues resulting from recent rainfall. Mr. Palmer stated the Road Department would continue cleaning ditches and culverts as allowed.

Commissioner Doth questioned if the Road Department had decided to purchase previously discussed specialized equipment to clean the culverts. Mr. Palmer stated due to the requirement for a heated storage facility, the manufacturer discouraged the County from purchasing the equipment at this time.

- a) The Manager provided a report from Joe Kenmore, Director of the Office of Emergency Services. The Manager stated Mr. Kenmore attended the Emergency Management Conference in Albuquerque August 11 - 15, 2014 where he was recertified by the State as an Emergency Manager. The Manger stated the OES was assisting the Lincoln Fire Department in preparation for an ISO inspection for the newly constructed Ft. Stanton Fire Station scheduled for October.

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

1. **Water Rights Notice:** Application No. H-2028 was filed on June 16, 2014 by the State of New Mexico, General Services Department, Facilities Management Division to change the purpose and use from irrigation to domestic purposes for the Fort Hospital and Training Center. Applicant requested Emergency authorization of the permit.
2. **Water Rights Transfer Protest:** Chair Powell and Curt Temple, Planning Director attended a meeting with the State Engineer, Village of Ruidoso and other participants to discuss the pending litigation of water transfers from the Hondo Valley to the Village of Ruidoso.

Chair Powell stated the meeting included participation by both the State Engineer's Office and Tom Battin, Mayor of Village of Ruidoso. Chair Powell stated plans were made for tours of the Hondo Watershed area to illustrate "current and actual" water conditions and there was discussion of a potential Regional Water Plan. Chair Powell stated the meeting was a preliminary positive step to engage in mediation versus litigation.

**3. Risk Mapping, Assessment and Planning ("MAP") Program:** Ms. Taylor stated FEMA and the New Mexico Department of Homeland Security and Emergency Management (NMHSEM) had selected the Rio Hondo Watershed for the initial "Discovery" step in the Risk MAP Program. Ms. Taylor stated initial steps were being taken to identify potential hazards in the Watershed as described by Mr. Temple in his Departmental update.

**4. Update from South Central Mountain RC and D Forester Rick Merrick:** Mr. Merrick provided an overview of ongoing activities in the Ruidoso WUI including prescribed burning and thinning projects. Mr. Merrick stated the Community Fire Risk Protection Program (CFRP) grant administered by SCMRCD also provided funding for additional services such as obtaining a location for the upcoming watershed meeting, the potential purchase of an open burn fire pit and other projects to promote a more fire ready community.

**17. Discussion/Direction of El Capitan Precious Metals, Inc.'s Application for an Air Quality Permit for Construction of Iron Ore Crushing and Sizing Facility**

Ms. Taylor provided copy of a letter sent to certain residents in Lincoln County notifying of El Capitan Precious Metals, Inc., also titled El Capitan Mine, of intent to apply to the New Mexico Environmental Department for an air quality permit for the construction of an iron ore crushing and sizing facility. Included in the correspondence was a reference to a prior solicitation of comments by NMED about the construction or operation of this facility as part of the review process. Ms. Taylor stated it was important to note the County received no formal notification of this comment period.

Ms. Taylor reminded County Ordinance 2009-01 was adopted to provide a framework for the balance between protection of natural resources and supporting the mining industry within the County. Ms. Taylor stated once informed of the letter sent to Lincoln County residents, Attorney Morel initiated correspondence with several State and Federal Agencies on behalf of the County.

Alan Morel, County Attorney commented on reference in the correspondence which indicated notice was sent to County and Municipal officials. Attorney Morel stated to his knowledge the County received no notice of this Application. Attorney Morel stated El Capitan Mine currently had a minimum impact mining permit which they were endeavoring to expand to an impact area of approximately 40 acres. Attorney Morel stated in 2008 the County requested to be considered as a Cooperating Agency in this process with the NM Mining and Minerals Department and therefore should have received notice of the request to expand the permit.

Attorney Morel discussed comments received from multiple agencies during the initial comment period including the US Forest Service and the USDA Office of General Counsel. Attorney Morel stated there was a potential conflict between El Capitan and the US Forest Service regarding expansion of the proposed use of the associated road to the site.

Attorney Morel suggested contacting the attorney for El Capitan Mine to inform the company of the lack of proper notice to the County, to determine the current status of the application, and to request notification of any and all future actions pursuant to Lincoln County Ordinance 2009-01. Attorney Morel opined the potential conflict related to increased traffic on the US Forest Service road might prompt El Capitan Mine to seek assistance from the County in classifying the road as an RS247 road.

Commissioner Stone requested permission for the public to speak on the issue.

Lee Arnone commented on the expenditure of funds by both the County and Friends of the Capitan to develop the relevant County Ordinance. Mr. Arnone stated a visit to the site led him to understand the company would use 25 ton trucks on the road. Mr. Arnone stated from the current position of the crushing equipment there were several homes within one to two miles which would be impacted by the operations. Mr. Arnone stated there was also a significant historical artifact site nearby which was slated to be added to the historic site register. Mr. Arnone requested the County require El Capitan Mine adhere to the requirements of Ordinance 2009-01.

Attorney Morel stated he would provide a copy of the Ordinance to El Capitan Mine and request copies of any permits and relevant correspondence. Attorney Morel stated he would also research the related US Forest Service applications and report back on his findings.

There was a general consensus for the Attorney to proceed as recommended.

Chair Powell recessed the Regular Meeting at 11:30:29 AM for Inspection of the Detention Center.

**27. 11:30 A.M.: Inspection of the Lincoln County Detention Center/Lunch**

Chair Powell, Commissioner Minter, Commissioner Stone and Commissioner Doth attended the Inspection of the Detention Center. Also in attendance were Nita Taylor, County Manager and members of the staff and public.

Chair Powell reconvened the Regular Meeting at 1:01:53 PM.

Chair Powell recessed the Regular Meeting at 1:01:59 PM and convened the Public Hearing at 1:02:07 PM.

**29. 1:00 P.M.: Public Hearings to consider amending the following Ordinances:**

a. Ordinance 2014-5 amending Ordinance 2011-05 Flood Damage Prevention

"An ordinance of Lincoln County created for the purpose of adopting the flood insurance rate maps and the flood boundary and floodway maps; regulating flood hazard area land use and prescribing central measures, defining certain terms, providing for measures, defining certain terms, providing for administrative duties and appeal procedures, repealing all ordinances or parts of ordinances in conflict herewith, providing for severability, and fixing the effective date of this ordinance."

Attorney Morel reviewed the proposed language changes which were described as primarily "clean up" of particular minor typographical errors, reference dates and signatories.

Chair Powell requested comment from the public regarding proposed Ordinance 2014-5. There being none Chair Powell requested a review of changes to next proposed Ordinance 2014-6.

b. Ordinance 2014-6 amending Ordinance 2008-3 Lincoln County Indigent Hospital/Health Care Ordinance

"Adopting public assistance provisions relating to health care for indigents in accordance with the Indigent Hospital and County Health Care Act; providing for the annual adjustment to the IHC income and claims policy limit schedules; providing for the severability of parts hereof; repealing ordinances in conflict herewith and declaring an effective date."

Attorney Morel detailed numerous revisions including new definitions and language primarily related to the changes to State Statute resulting from the discontinuance of the Sole Community Provider program and consequential changes to the Indigent Health Care program.

Chair Powell requested public comment and receiving none adjourned the Public Hearing and reconvened the Regular Meeting at 1:12:54 PM.

**Motion:** Adopt Ordinance 2014-5, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

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

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

**Motion:** Adopt Ordinance 2014-6, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Minter.

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

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

**SEE EXHIBIT C:** Copies of Lincoln County Ordinance 2014-5 and 2014-6 are attached hereto in reference thereto made a part hereof.

**18. Consideration/Action on 2014 Lincoln County Community Wildfire Protection Plan (CWPP) Update**

Ms. Taylor informed the Community Wildfire Protection Plan document presented served as a combination and update of the Community Wildfire Protection Plan developed for the greater Ruidoso area in 2004 and separately developed for the County of Lincoln in 2008. Ms. Taylor stated the plan was designed to provide a framework to address wildfire risk in Lincoln County and encourage communities within the County to develop specific plans to address localized fire risk.

**Motion:** Approve the updated 2014 Lincoln County Community Wildfire Protection Plan, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth.

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

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

**19. Acknowledge DFA Approval of Final Budget for FY 2014**

Ms. Taylor presented the letter of approval of the Final Budget for 2014 received from the Department of Finance and Administration for FY 2014. Ms. Taylor reminded of the State requirement for the Board of County Commissioners to formally acknowledge the receipt of DFA's budget approval.

**Motion:** Acknowledge receipt of approval of the FY 2014 Final Budget from DFA, **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Doth.

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

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

**20. Lincoln County Tobacco Policy Resolution 2014-15 Amending Resolution 1993-32 Clean Indoor Air Policy for Lincoln County**

Ms. Taylor presented the Resolution as amended to conform with NMSA 24-16-2 also known as the 2011 Dee Johnson Indoor Clean Air Act. Ms. Taylor stated in addition the Resolution as presented would prohibit smoking in County vehicles, the use of E-cigarettes and the use of other smokeless tobacco products except in designated areas.

**Motion:** Adopt Resolution 2014-15, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Minter.

Commissioner Minter questioned if the Resolution was applicable to the Volunteer Fire Departments. Ms. Taylor confirmed the Resolution applied to all Lincoln County owned facilities.

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

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

**SEE EXHIBIT D:** Copy of Resolution 2014-15 is attached hereto in reference thereto made a part hereof.

**21. Consideration/Action on Resolution 2014-16 Budget Adjustment 2014/2015 for Bulldozer**

Ms. Taylor stated the Resolution was presented for approval of budget adjustments to accommodate changes to the previously adopted Fiscal Year 2014-2015 Budget. Ms. Taylor detailed the proposed adjustments as follows:

1.	Caterpillar Lease Proceeds (Revenue)	\$ 262,965.00	
	Wagner Principal Payment (Expense)		\$ 262,965.00
2.	Cell Tower Installations (Anticipated Revenue)	\$ 47,500.00	
	Cell Tower Consultant (Anticipated Expense)		\$ 47,500.00
3.	Unanticipated General Fund Expenses		
	Bronze Plaques		\$ 1,780.00
	Hail Damage Vehicle Repair		\$ 8,043.47

SIMS Table Software

\$ 2,016.00

Commissioner Doth questioned if the vehicle hail damage was covered by insurance. Ms. Taylor confirmed the vehicle was insured but explained the insurance payment was received in the prior fiscal year as revenue but as the repair work and expense occurred this fiscal year a budget adjustment was required.

4.	Additional General Fund Expenses for "Special Programs" and "Agreements"	
	NACO/NMAC/NM-AZ	\$ 3,550.00
	USGS Water Study	\$ 3,059.00
	USGS Streamflow Gage	\$ 17,160.00

Chair Powell stated the State Engineer's Office offered to contribute to the ongoing cost of maintenance for the gauges. Commissioner Doth questioned if USGS was the only source for placement and monitoring the gauges. Ms. Taylor suggested once the expense was budgeted she could conduct additional research on other potential providers. Commissioner Stone opined the cost of removal and reimplementation of the gauges might exceed the cost of maintenance by USGS.

5.	Unbudgeted Capital Expenses	
	Sheriff's Addition Telecommunication/Data System	\$ 25,000.00
	New Maintenance Vehicle	\$ 8,174.00
6.	Unanticipated Expense	
	Arabella Fire Station Generator	\$ 2,795.47

**Motion:** Adopt Budget Adjustment Resolution 2014-16, **Action:** Approve, **Moved by Commissioner Stone, Seconded by Commissioner Doth.**

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

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

**SEE EXHIBIT E:** Copy of Resolution 2014-16 is attached hereto in reference thereto made a part hereof.

## 22. Support of NMAC 2015 Legislative Priorities by Resolution 2014-17

Rhonda Burrows, Clerk and NMAC Board Representative for Lincoln County stated the New Mexico Association of Counties requested each Board of County Commissioners review the legislative priorities adopted by the NMAC Board each year and consider adoption of a Resolution in support of those priorities. Ms. Burrows identified the NMAC legislative priorities for the 2015 Legislative Session as:

- Safety Net Care Pool (prior Senate Bill 268)
- Keep Southwest Chief/Amtrak Service
- Tax Roll Corrections
- Delinquent Property Tax Payments
- Increase Detention Facilities Funding
- Job Creation and IRB Act Improvement
- Public Lands Task Force (Memorial)
- Inmate Options (Memorial)

Ms. Burrows, speaking as the NMAC Board Member, did not recommend approval of the Keep Southwest Chief/Amtrak Service priority and voiced concern about the potential reoccurring cost to taxpayers. There was a general discussion regarding the pros and cons of this particular priority.

**Motion:** Adopt Resolution 2014-17 after revision to remove the "Keep Southwest Chief/Amtrak Service" priority, **Action:** Approve, **Moved by Commissioner Doth, Seconded by Commissioner Stone.**

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

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

**SEE EXHIBIT F:** Copy of Resolution 2014-17 is attached hereto in reference thereto made a part hereof.

**23. Resolution 2014-18 Authorization to Sign and Enter into Contract(s) with the Non-Metro Area Agency on Aging**

Ms. Taylor stated the Non-Metro Agency on Aging required annual approval of a Resolution determining a need exists within the County to provide services for senior citizens.

**Motion:** Adopt Resolution 2014-18, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Draper.

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

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

**SEE EXHIBIT G:** Copy of Resolution 2014-18 is attached hereto in reference thereto made a part hereof.

**24. Resolution 2014-19 Cell Phone Policy amending Resolution 2006-10**

Ms. Taylor stated the current cell phone policy was too restrictive as written and discussed the need to update those titles or positions required to have cell phones for County business. Ms. Taylor also requested the County Manager be granted the authority to approve or disapprove additional titles for cell phone use. Ms. Taylor stated language was also amended to be in compliance with Lincoln County Resolution 2010-23 Consolidated Internal Revenue Service Fringe Benefit and Independent Contractor/Employee policy.

**Motion:** Adopt Resolution 2014-19, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Chair Powell.

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

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

**SEE EXHIBIT H:** Copy of Resolution 2014-19 is attached hereto in reference thereto made a part hereof.

**25. Resolution 2014-20 Amending Resolution 2008-46 Affirming A County Office of Emergency Services and Appointment of Key Members**

Ms. Taylor stated, as provided by State Statute NMSA 12-10-5 the County adopted Resolution 2008-46 Establishing an Office of Emergency Services on June 16, 2009. Ms. Taylor stated changes in personnel over time required amendment of the Resolution to reflect Joe Kenmore as the current Director of Emergency Services and Spencer Baldwin as the Emergency Services Coordinator. Ms. Taylor stated no other changes to the Resolution were proposed.

**Motion:** Adopt Resolution 2014-20, **Action:** Approve, **Moved by** Commissioner Stone, **Seconded by** Commissioner Doth.

Commissioner Doth suggested the insertion of specific names within the Resolution be avoided. Attorney Morel stated the Federal Emergency Management Agency (FEMA) required identification of specific individuals for the purposes of emergency management.

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

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

**SEE EXHIBIT I:** Copy of Resolution 2014-20 is attached hereto in reference thereto made a part hereof.

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

No action was taken.

**30. Consideration of Approval of Bid Award 14-15-002 Resurfacing Cedar Creek Road II**

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

1. Mesa Verde Enterprises, Inc. \$176,000.00

2. Renegade Construction, LLC \$193,604.88

**Motion:** Award Bid 14-15-002 to Mesa Verde Enterprises, Inc. for \$176,000, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Doth.

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

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

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

- a. Tabled-Senior Citizens Olympic Committee
- b. Appointment of County Commissioner(s) as Board Member and Alternate Board Member to GSWA Board of Directors

**Motion:** Appoint Jackie Powell as County Commission Board Member for GSWA, **Action:** Approve, **Moved by** Commissioner Doth, **Seconded by** Commissioner Stone.

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

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

**Motion:** Appoint Present Stone as Alternate or Proxy County Commission Board Member for GSWA, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Minter.

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

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

**32. 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. *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 Conclusion of Law/Order was filed May 15, 2014 entered in favor of Ms. Cooper. Ms. Cooper filed an appeal June 10, 2014.

2. *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. NM Supreme Court of Appeals decision has been rendered.

3. *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 for Jan. 5, 2015.

\*4. *Greentree Solid Waste Authority v. Lincoln County* D-1226-CV-2014-00095. Suit filed May 1, 2014 Verified Petition for Declaratory and Supplemental Relief: Injunction, Motion to Waive Time to Reassign District Judge (Judge Karen Parsons was disqualified). County was served May 14, 2014. Mr. Melendres has filed Answer, Motion to Disqualify Mr. Beauvais and Change of Venue. Motion to Join the New Mexico Finance Authority as an Indispensable Party filed July 22, 2014. Hearing on Rule 16 Scheduling Conference is scheduled for Sept. 18, 2014 and Hearing on All Pending Motions is scheduled Nov. 20 both with Judge Ritter.

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. Mr. Beauvais filed an appeal Feb. 27, 2014. Ruling on Reconsidering Stay denied by Judge Singleton June 11, 2014. Telephonic Mediation Conference scheduled for Sept. 19, 2014 and GSWA's Brief in Chief due Sept. 19, 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. Hearing was Jan. 6, 2014, and

produced an Order of Dismissal, with a Motion to Reconsider filed Jan. 8, 2014. Hearing on the Merits occurred May 12, 2014 in Carrizozo with Judge Parsons and produced an Order Granting Motion to Dismiss. Appeal was filed Aug. 4, 2014.

\*7. *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. Tort Claim Notice was filed on October 27, 2011. LCSO and LC Manager were served on August 5, 2013. Advised NMAC assigned the case to Brennan and Sullivan Law Firm Sept. 5, 2013. Case was moved to Federal Court August 30, 2013. Plaintiffs and Defendants Agreed Motion to Modify Scheduling Order filed Aug. 5, 2014. Ms. Latham filed a new action in federal court against Village of Capitan and Police Officer Kevin Kennedy filed July 25, 2014.

8. *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. Motion to Dismiss filed July 17, 2014.

\*9. *Bank of America, N.A. v. Howard D. Schafer, et.al. (County of Lincoln through LCSWA) D-1226-CV2014-00162* County was served Sept. 2, 2014. Complaint for Foreclosure filed Aug. 19, 2014 Lincoln County filed an Alarm Ordinance Lien and a LCSWA Lien.

10. Potential Litigation: Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 *et.al.* and H-272 *et al* (T) and H-50-1 into H-272 *et. al.* (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs.

## **Tort Claims Notices Received or Threatened**

### **2014**

**Ramos, Aaron** – Tort Claim Notice received from Mr. Ramos March 18, 2014 alleging his rights were violated during incarceration at Lincoln County Detention Center. Mr. Ramos alleges damages by not being granted detainee to detainee correspondence.

**Millerden, Kenneth and Anita** – Tort Claim Notice received May 9, 2014 alleging negligence from staff at Lincoln County Medical Center during prepartum care for their infant son.

**Ogden, John D** – Tort Claim Notice received May 26, 2014 alleging mistreatment while incarcerated at LCDC on March 11, 2014.

**Rounds, Christopher** – Tort Claim Notice received June 4, 2014 alleging being held in LCDC without being advised of his charges.

**Herbert, Crystal** – Tort Claim Notice received June 23, 2014 alleging false imprisonment, due process violations, unlawful detention of a minor, emotional distress.

**Class Action** – Tort Claim Notice received June 23, 2014 alleging false imprisonment, false arrest, deprivation of rights at LCDC that arise with Immigration and Customs Enforcement charges.

**Atwell, Stacey** – Tort Claim Notice received June 25, 2014 alleging unlawful seizure of her two minor children during a request for a deputy to assist in keeping the peace.

**Allen, Elaine** – Tort Claim Notice received July 28, 2014 claiming defamatory and false personal statements targeting her were published on Lincoln County's website.

**McGarry, Sean** – Tort Claim Notice received July 25, 2014 alleging wrongful arrest, false imprisonment, malicious prosecution, intentional or negligent infliction of emotional distress, abuse of process, wrongful termination and retaliatory discharge regarding discharge from the Capitan Police Department.

**Ramos, Aaron** – Tort Claim Notice received August 7, 2014 alleging lack of Due Process for inmates at LCDC.

\***Lambert, David and Bonnie** - Tort Claim Notice received Sept. 8, 2014 by attorney W. Chris Nedbalek alleging damage to Lambert property due to Mr. Rodney Bunsen using his own equipment to alter a platted County right of way without the authorization or knowledge of the County.

### **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 12<sup>th</sup> Judicial District Court to 38 years filed on July 3, 1990.

**Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Stone.

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

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

Commissioner Minter was excused from the meeting prior to Closed Session.

Chair Powell recessed the Regular Meeting and convened the Closed Session at 1:56:25 PM.

Chair Powell adjourned the Closed Session and reconvened the Regular Meeting at 2:59:19 PM.

Commissioner Doth attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

**Motion:** Direct Attorney Morel to file a disclaimer of interest as to the County's Alarm Lien in the matter of Bank of America vs. Shafer. **Action:** Approve, **Moved by** Chair Powell, **Seconded by** Commissioner Doth.

**Vote:** Motion carried by unanimous vote (**summary:** Yes = 4).

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

**Absent:** Commissioner Minter.

**33. Signing of Official Documents**

**34. Next meetings:**

October 21, 2014 - Regular Commission Meeting

**35. Adjourn**

There being no further business to come before the Board of County Commissioners, Chair Powell adjourned the meeting at 3:01:04 PM.

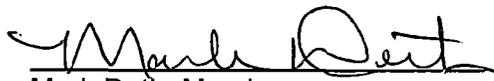
County of Lincoln  
Board of County Commissioners



Jackie Powell, Chair



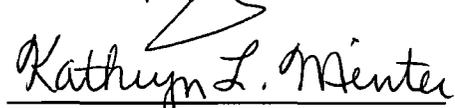
Preston Stone, Vice Chair



Mark Doth, Member



Dallas Draper, Member



Kathryn Minter, Member

ATTEST:

  
Rhonda Burrows, County Clerk

October 21, 2014  
Date Approved

