



LINCOLN COUNTY BOARD OF COMMISSIONERS

September 4, 2012
Commission Chambers
Lincoln County Courthouse
181 Main Street
Pioche, Nevada

Commissioners

Paul Mathews
Kevin Phillips
Tommy Rowe
Paul Donohue
Ed Higbee

#1-CALL TO ORDER/ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

Chairman Tommy Rowe called the meeting to order at 9:04 a.m. Clerk Lisa Lloyd called the roll.

PRESENT: PAUL MATHEWS
PAUL DONOHUE
TOMMY ROWE
KEVIN PHILLIPS

LISA LLOYD, Clerk
TONY GRAF, Deputy District Attorney

ABSENT: ED HIGBEE

There is a quorum present and the agenda was posted on 8-29-12. The Invocation was offered by Tommy and Kevin led the Pledge of Allegiance.

#2-PUBLIC COMMENT

Tommy called for public comment. Chuck Reifsnyder advised that Items 4 and 14 are the same issue. Chuck requested that they be combined. Tommy stated that he believes that if people saw the item they might be confused so it can't be handled prior to the time listed on the agenda.

CONSENT AGENDA

- #3 Approve/Deny minutes of August 6 and 20 meetings.
- #4 Approve/Deny tax strike 2012-2013, APN 001-034-03, \$11,442.00 assessed, and tax refund 2011-2012 \$364.40; 2010-2011 \$417.70 for a total refund of \$78
2.10. Assessor's records reflect converted modular home. The home has not been converted to real property.
- #5 Modify Dawne Combs from full-time status to part-time/full-time; effective September 1, 2012.
- #6 Approve/Deny original and renewal business licenses with staff recommendations (an itemized list of business licenses is available for public review in the Building Department prior to the meeting).

Kevin made a motion to approve the consent agenda with the exception of Item 4, which was covered under Item 14; seconded by Paul D. All voted in favor.

#7-VOUCHERS

Recorder/Auditor Leslie Boucher presented the vouchers and cash balance report. General County has a balance of \$620,888.18 with estimated expenditures being \$153,361.81. This will leave General County with a balance of \$467,526.37. Transportation has a cash balance of \$34,901.26 with estimated expenditures being \$3,958.39. This will leave Transportation with a balance of \$30,942.87. Senior Nutrition has a balance of \$58,023.90 with estimated expenditures being \$12,472.49. This will leave Senior Nutrition with a balance of \$45,551.41. Detention Center has a cash balance of \$50,699.55 with estimated expenditures being \$79,977.16. Detention Center will have a negative balance of \$29,277.61. Solid Waste has a cash balance of \$22,949.34 with estimated expenditures being \$21,705.94. This will leave Solid Waste with a balance of \$1,243.40. Solid Waste owes LC Water Special Projects, Fund 87, \$27,484.15. Airport has a balance of \$1,046.60 with estimated expenditures being \$435.00. Airport will have a balance of \$611.60. Planning has a balance of \$16,697.56 with expenditures being \$2,818.65. Planning will have a balance of \$13,878.91. **Paul D. made a motion to approve the vouchers as presented with the exception of Mountain Merc and LCTS vouchers; seconded by Kevin. All voted in favor. Paul D. made a motion to approve the Mountain Merc vouchers; seconded by Paul M. Kevin disclosed that he is part owner of Mountain Merc; he abstained from the**

discussion and vote pertaining to these bills. Motion carried. Kevin made a motion to approve the vouchers for LCTS; seconded by Paul M. Paul D. abstained as he is an employee of LCTS. Motion carried.

#8-OFFICER/DEPARTMENT HEAD REPORTS

GRANTS ADMINISTRATOR Elaine Zimmerman received a request from FAA, who has found additional funding to add to the grant application. Elaine will include the changes to the application for discussion and action at the next meeting. We aren't committed to this grant as of yet. **SHERIFF** Kerry Lee stated that the weekend was very busy. There were 3 DUI arrests, 5 non-traffic arrests, over 200 traffic stops resulting in over 100 traffic citations. There was an incident on Saturday that involved a death. Clark County Detention Center is bursting at the seams; they are begging for every bed we have. Some time last year the Board approved the refilling of the part-time dispatch position; it is imperative that this position be filled as there are over 100 inmates. 95 is our max for Clark County inmates.

#9-HIGHWAY COMMISSION

This item was handled under separate agenda.

#10-LINCOLN COUNTY FIRE DISTRICT

This item was handled under separate agenda.

#11-THANKS FOR GIVING

Treasurer Shawn Frehner presented "Thanks for Giving" volunteer appreciation. Our community is run by volunteers; without it, it would be difficult to accomplish anything in our county. This program would include extending thanks to those who volunteer throughout the county. Individuals would be nominated by community members, the Commissioners would then review the applications and choose one nominee from each town to recognize. All the other people would receive certificates from the Commissioners for the services that they've done. This is a great idea and Shawn is willing to do the work. The program will be advertised and the nomination sheets will be made available throughout the county. Paul D. stated that this is an awesome idea and he offered to help in any way required. The five individuals chosen would be honored at their November town board meetings. **Paul M. made a motion to move forward with this program; seconded by Kevin. All voted in favor.**

#12-RESOLUTION #2012-22

Tommy read the resolution into the record. **Paul M. made a motion to approve the resolution to authorize a medium-term obligation for the purchase of 4 patrol/detention vehicles not to exceed \$105,000 for 36 months; seconded by Kevin. All voted in favor.**

#13-SAGE GROUSE

Mike Herder, Associate District Manager, Bureau of Land Management Ely District, discussed the potential for creating Greater Sage Grouse Areas of Critical Environmental Concern (ACEC) in Lincoln County. These ACECs would be for conservation of sage grouse. One of the other alternatives would be agency directed; it includes recommendations for ACECs put forward by various members of the community. In the process of developing the alternatives, Ely District went to NDOW and biologists on their staff to look at most crucial areas for protection of sage grouse within LC. The decision was that most of the counties have had enough issues with ACECs that BLM wouldn't put any forward. BLM received a request for one ACEC on Table Mountain where the previous Wilson Creek wind energy project was inserted. Mike advised that neither the alternative or maps are even written down at this point. The map that Mike presented is very preliminary for the proposed ACEC. There is no set description for what the management will be and this will allow BLM to look at where boundaries will be, what types of management will be put on the ground, and it proffers the opportunity for them to just say no, they aren't interested. At this point in time there are no restrictions. If restrictions are developed it will most likely be in the areas of what types of energy projects are allowed in this area. Mike couldn't promise that roads, trails, and grazing wouldn't be affected by this ACEC. At this point in time, there is no move to close down roads or trails. Paul D. asked that BLM not even worry about the sage grouse and stated that he gets the feeling that we are being hung. Tommy stated that with the Governor's plan, it is a lot better area than it has been. Paul D. asked that Mike tell his superiors to leave LC alone. Ronda Hornbeck said that ACECs make her

nervous; having dealt with them through the RMP process she knows they can be very restrictive. Ronda stated that the difference between NCA and ACEC allows BLM to change the management restrictions from time to time. NCA has boundaries that must be obeyed and they are fairly static. Ronda commented that we have very good stewards of the land in this area and once BLM starts putting restrictions on the land it will cause great problems. Cattle have run in this area for many years and the sage grouse population has come and gone over the years. Ronda would hate to see an ACEC in this area including the stringent restrictions. If this area gets listed, the restrictions could be severe and require everyone to get off the land. Ronda cautioned the Board about agreeing with this. Mike responded that once the ACEC management plans are put in place they don't change on a whim. Ronda commented that LC went through the RMP process, which allowed us to submit suggestions. Ronda asked if BLM had to acquiesce to our requests. No, but BLM took them into consideration. Ronda is concerned about the ACEC as there is no committee set up to receive input from the county. BLM would not have to follow any recommendations submitted by LC. Cory Lytle asked that the county have full involvement in any type of development related to a management plan. Tommy responded that the county has a sage grouse working group. Paul D. commented that the problem he sees is that this happens all the time. Every conversation deals with the cattle industry; they are usually the group that gets blasted. The cattle industry has been around for a very long time, and Paul D. gets the feeling that there are certain individuals who don't want that industry on the land. Sooner or later, LC will fight. LC is getting pushed hard into the corner with regards to solar, sage grouse, and tortoises. Paul D. stated that the county can fight and drag this out; this is the direction we are heading in. Paul D. suggested that we all take a step back and consider what is critical to the citizens of LC. Mike stated that at this point in time, F&W has a petition to list sage grouse. The option of stepping back and doing nothing will lead to a listing of the sage grouse. Tommy stated that they can't say we aren't doing nothing; we've spent millions of dollars on LC for habitat. Paul M. advised that the Board has approved the documents sent to the Governor that were created by his task force. The Board supports the proactive stance on this issue and hopes that BLM will also support the plan created by the state committee. LC has a great fear of being listed as the consequences will be severe. LC will stick closely to the recommendations made to the Governor through the state plan. Anything moving forward will reflect support of the state trying to have its own management plan to prevent the listing. Connie Simkins asked the Board to strenuously oppose the ACEC proposal. Connie commented that interpretations of rules and laws change, as do staff. LC has a common goal of supporting the Governor's efforts to improve the sage grouse. Connie commented that the first thing we can do is predator control on the ravens and coyotes. Connie discussed various examples of things that could result from the ACEC. It is possible for BLM to approve a right-of-way application in an ACEC and the rules can be changed at any time. Connie commented that the mountain needs to be protected and not excluded from multiple uses. Denice Brown stated that this ACEC puts her family in the middle of this issue. If the Listers/Browns are taken off the land, the water and feed will go with them as they are the ones currently providing it. LC had a committee for wilderness lands, but there is no requirement for the federal government to follow our requests or recommendations. Ronda asked if BLM didn't go with an ACEC what other recommendations do they have for the protection of the mountain and sage grouse. There are individuals trying to work with NRCS and F&W; they are trying to do what they can to protect the species. LC has worked hard to protect that mountain from other industries coming in and destroying the mountain. Other than ACECs, what can the Board look at? ACECs vary from one to the next, the management is entirely up to BLM and its constituents and partners to development what the management descriptions look like. At the present time, the only management prescription for this particular ACEC is the discussion about whether or not renewable energy would be excluded from this particular site; other things can be added and taken away from the management plan. Once the management plan is signed, it most likely will not change. The current management in the absent of ACEC is priority habitat. Mike encouraged LC to make their feelings known. If there is great reluctance to entertain the idea of ACEC it might be possible to pull the proposal at this point in time. Mike advised that the advantage of an ACEC is that the county will be able to specify what types of development can occur in this area. BLM wouldn't necessarily have to follow LC's input/requests. BLM considers the input and makes the best decision they can. Paul D. stated that the only place that LC's input has been included is in the state plan. The multiple uses in LC are severely hampered and there are so many activities that have been removed altogether. Connie asked Mike to explain the timing of this thing as compared to Wilson Creek Wind's appeal of cancellation of their application. Mike responded that the timing is completely independent and they aren't doing this to get rid of Wilson Creek appeal. Wilson Creek Wind has asked for a delay, which has been accepted by the Interior Board of Land Appeals (IBLA). Mary indicated to Connie that they would likely get a 120 day delay before the hearing before IBLA. Ronda asked Mike what he is asking for

from the Board with regards to the ACEC information. Mike responded that this was "floating the idea". As a partner in this planning effort for sage grouse, BLM tries to consider points of view from the county and incorporate that into planning. Ronda sat through the RMP process and BLM had quite a bit of information that had to be vetted. If the information met certain criteria then it would be brought up for ACEC. Ronda understood that BLM wasn't going to do any more ACECs for twenty or so years or until they went back through the RMP process. Relevance, importance, and whether or not it requires management over and above multiple use are the criteria for ACECs. The decision to list sage grouse includes discussions about inadequacy of existing regulatory mechanisms. BLM doesn't have enough criteria in its plan to say no to some of the large developments. The threats to these species include infrastructure development, predator control, and whether or not BLM issues authorizations to use the land. In order to do an ACEC and amendment to the RMP will have to be done. All RMPs are undergoing the amendment process right now. Ronda asked why they don't fix the RMP to address development in these areas instead of doing ACECs. Paul D. stated that it seems like "No" just isn't good enough. Everyone is creating plans and in the meantime LC residents are losing rights. Cory asked if there is a way for BLM to approach the county to do an amendment that focuses on sage grouse without drawing a line around Table Mountain or Hamblin Valley to create an ACEC. Mike responded that we can move forward with no ACECs in all alternative with the exception of the one proposed by Western Watersheds. Cory commented that the Western Watersheds is focused on removing livestock from the range. Mike stated we can go forward without ACECs, but they would identify areas to be managed in accordance with sage grouse management measures. There would be limited restrictions on renewable energy development and it would focus more on how much habitat would be given up by authorizing certain projects. Paul D. stated no matter what is done there will be restrictions on these areas. If an ACEC isn't done in these areas there will still be restrictions. The areas in priority habitat will have different management than they have now; it's likely that management will be more restrictive. Mike commented that we have the opportunity to identify areas that require even more restrictive management. About this time next year, BLM will have a better idea of what the alternatives look like. Mike advised that we are headed towards fairly drastic changes in management to keep the sage grouse from being listed. LC is a cooperating agency in the sage grouse planning amendment. Mike has the authority to return and let BLM know that LC isn't interested in an ACEC. There is a draft version of the Governor's plan and there is discussion between BLM/F&W about how to take the draft plan and convert it to one of the alternatives in BLM's planning process. Connie asked what the next step for the Board and interested persons can take. Mike responded that anytime there is an opportunity for BLM to provide information they will. As yet, BLM hasn't reached the decision point. No alternatives have been decided on except for Western Watersheds. BLM will return often to update the Board on the process. No action was taken on this item as it was discussion only.

#14-CHUCK REIFSNYDER REAL PROPERTY TAX

Chuck Reifsnyder is requesting the repayment of 13 years of real property tax that has been assessed to him in spite of the fact that his property was never converted to real property. Assessor Melanie McBride proffered a definition of what real property is. Mobile homes come with a title like a car; when they are placed on a permanent foundation the owner is responsible for filing an Affidavit of Conversion. This affidavit is recorded in the Recorder/Auditor's Office. That recorded affidavit and the title are then sent to manufactured housing to take away the title; this allows it to act like a stick built house as far as lenders and the Assessor's Office are concerned. When the Affidavit of Conversion is filed, the Assessor is required to sign off on it. At that time the Assessor's Office advising them to send it to the Division of Manufactured Housing. The Assessor's Office will then receive a Real Property Notice from Manufactured Housing; the property is then assessed as real property. The process wasn't completed on Chuck's property when it was under a different owner. The Affidavit of Conversion was filed but the owner never went any further. This happened in 1992 and the Assessor at that time appraised it as real property. There is not a reason that Melanie looks for it to be personal property once it is converted. Chuck stated they purchase the home in 1999 and everything indicated that it was real property. There was no real issue; Chuck just paid his taxes as assessed. Two weeks ago, Chuck started the process of updating home insurance. They found out that their property wasn't real property. Chuck then asked how he gets repaid for all of the taxes; he was told that he didn't complain about it in 1999 so he doesn't get it back. Assessor McBride has proposed to refund two years taxes and do a tax strike for the current year. Chuck stated that they aren't talking about an issues of facts. Any time state law puts out specific regulations it establishes a ministerial duty on the elected officials who deal with it. Chuck stated that this is ministerial neglect. The elected official doesn't have the ability to say that this has been converted unless it really has

been. Chuck has been paying a great deal more in taxes than required. At the original time the home was listed an error was made and Chuck cited that LC reassesses the property on a regular schedule. At any time, had the Assessor done their job to check the legal status of the property this problem would've been avoided. The regulation states that the board, after determining that an error was made, has the ability to make full reimbursement. Deputy DA Tony Graf commented that the statute specifies three years is the furthest that we can go back to correct errors. The adjustment may be a full refund or credit against taxes due to be allocated over a period not to exceed three years. According to NRS the county can't go beyond three years to issue refund. Tommy asked if there is anything that provides for an appeal. Chuck stated that everything he has indicates that it was real property; according to his title company it was real property. Both the lender and the people that did the title search believe that it went through as converted property; it is being researched further. Chuck's issue isn't the status of the property. The Assessor's Office found the error and Chuck's contention is that if it was that easy to find the error, why wasn't it discovered sooner. Paul D. asked that, as a property owner, where is Chuck's obligation to determine this. Paul D. feels the recourse should be taken up with the title company. The title company guaranteed Chuck when he purchased it that it was real property. Paul D. believes the title company is at fault. Chuck responded that the title company had title insurance but if it turns out that it was a modular home their insurance doesn't cover it. Melanie stated that Chuck wanted her to appraise the property for the last ten years. As an appraiser, she can't legally appraise for the last 13 years because it's not required. It appears that the apparent intent of the original intent was to convert it to real property. Everyone involved in the process considered this real property, and Paul M. stated that we are almost premature in taking action prior to getting all reports back. Chuck stated that the title company involved is going to get the title transferred into his name. Melanie said that most banks won't loan against personal property, but the interest rate in 1999 would've been about 14%. Real property home interest paid would've been about 7%. His error gave him thousands of dollars less on his interest rate. They all bonded and guaranteed the real property status. Melanie stated that when they reassess, they look at the property for physical changes. When that conversion takes place, from then on there is never a reason to look back unless something is brought to their attention. Melanie has done what she can to rectify it. Even if Chuck decides he wants to convert now, the refund/tax strike must be considered now since it isn't converted at this time. By law, three years is the maximum amount that the Board can address; there can be no negotiating. Item 4 is corrective action and is in accordance with the law. **Paul M. made a motion to approve the tax strike 2012-2013, APN 001-034-03, \$11,442.00 assessed, tax refund 2011-2012 \$364.40, 2010-2011 \$417.70 for a total refund of \$782.10; seconded by Paul D.** No action was taken with regards to the requested thirteen year refund. **All voted in favor.**

#15-QUARTERLY JAIL TOUR

Currently, there are 96 inmates at LC Detention Center; 84 Clark County and 12 Lincoln County. Housing women inmates continues to be an issue, but Sheriff Kerry Lee stated he believes they have a resolution. They will be renovating the current property room in order to house females. It is estimated they can get six beds in this room. The property will be stored in what is currently the evidence vault and all the evidence will be shifted to the connex box. Kerry estimates that it will cost about \$10,000 for renovations. The water softener has gone out and it's causing plumbing issues. Shortly, LCDC will be increasing to approximately 95 Clark County inmates. Burglaries in the county have increased by about 200% and the Labor Day arrests were higher than usual.

#16-PANACA TOWN BOARD

Kevin made a motion to accept the resignations of CaraLee Frehner and Pete Wells form the Panaca Town Board and to appoint Jim Hill and Shawn Hand to fill the vacancies; seconded by Paul M. All voted in favor.

#17-BUSHWHACKER MOTORCYCLE HARE SCRAMBLES

John Mathews has an 80 acre piece that includes locked gates; BLM is talking to him to see if the race can go through his property to eliminate some of the wear and tear. **Paul M. made a motion to approve the Bushwackers Motorcycle Hare Scrambles race to be held September 22 in the area north and west of Pioche and Caselton; seconded by Kevin. All voted in favor.**

#18-RESOURCE CONCEPTS

Kevin made a motion to approve the contract with Resource Concepts, Inc. to develop a Phase II Habitat Mitigation Plan for the Southwestern Willow Flycatcher; seconded by Paul D. All voted in favor.

#19-SHERIFF'S VEHICLE TRANSFER

Sheriff Kerry Lee stated they have two trucks that were purchased several years ago. One was transferred to PPU and the other will be transferred to Caliente Fire Department. Kerry requested that the vehicle be transferred at no cost. **Paul D. made a motion to approve the transfer of an older Chevrolet patrol truck from the Sheriff's Office to the Caliente Fire Department at no cost; seconded by Paul M. Tommy disclosed that his son, George Rowe, is the Fire Chief. He abstained from the vote. Motion carried.**

#20-COMMISSIONERS REPORT

COMMISSIONER TOMMY ROWE met with a representative from Dean Heller's Office to discuss LC's concerns, this includes the removal of our public lands and roads. Tommy participated in a teleconference concerning the Governor's Work Force Clean Energy Sector. **COMMISSIONER PAUL DONOHUE** advised that he and Kevin have the quarterly road meeting with BLM tomorrow.

#21-PUBLIC COMMENT

Tommy called for public comment. Ronda Hornbeck stated that there is a trust agreement for consideration for the HCP. Trust money will be taken from Caliente, ad valorem taxes, and UPRR. This money will be used for the time when the HCP runs out. The funds will be placed in a trust that earns interest but can't be touched. Ronda discussed Item 5 from the Consent Agenda. Dawne Combs is now a part-time, 20 hour per week individual. Ronda advised that anything over 19.5 hours per week requires the full payment of benefits and insurance, pursuant to law and county policy. Retirement will be prorated. The county will still pay life insurance, vacation days; these are prorated as well. Ronda commented that she came to this board and asked why they were keeping her at 19.5 hours. BLM had agreed to pay all of her insurance and benefits but the Board denied her request as it would set precedence for others to request the same. Ronda stated she gives the county a great deal of hours as she's required to stay under 19.5 per week. Ronda stated that she doesn't get paid for all of the things that she does. This leaves her without a retirement and she doesn't get paid for the additional hours she puts in. Ronda advised that there are other people that have been kept at 19.5 hours as the Board didn't want to pay retirement/insurance. Ronda suggested that the Board look at what other situations they've opened up. Ronda advised that through the policy, as it is written, if you get over the 19.5 hours, insurance and retirement must be paid. Paul D. responded that if any full time person has the opportunity to help the county save money, this is the precedence we set. The precedence isn't to cover those who want to increase costs. Dawne is a full time person who is being reduced. Cory Lytle stated that Dawne explicitly told the Board she is paying her benefits above 20 hours. Cory stated that the decision was made based on the backup material provided. In this particular scenario, this is how the Board made the decision. Ronda's point is that the county doesn't have to pay one single dime for her. BLM was willing to pay her full salary, including insurance and retirement but the county turned it down. Ty Chamberlain advised that there is new money for power generation; he suggested that the grant writer look at combined cycle generation. The county could do a couple of small plants. LC would have to have a need for the heat. San Francisco uses it to heat buildings, but we would be generating steam and it could be used for various items. The natural thing to do would be to use biofuel. Ty stated that biomass works on a small level. Paul D. commented that a great deal of these issues will be in direct competition with the LC Power District.

#22-ADJOURN

There being no further business for the Board to attend to, Tommy adjourned the meeting at 12:48 p.m.

Attest: _____ Approve: _____