



LINCOLN COUNTY BOARD OF COMMISSIONERS

February 16, 2016
Commission Chambers
Lincoln County Courthouse
181 Main Street
Pioche, Nevada

Commissioners

Paul Mathews
Kevin Phillips, Chair
Adam Katschke, Vice Chair
Paul Donohue
Varlin Higbee

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

Kevin called the meeting to order at 9:06 a.m. Clerk Lisa Lloyd called the roll.

PRESENT: PAUL DONOHUE
ADAM KATSCHKE
KEVIN PHILLIPS
VARLIN HIGBEE
PAUL MATHEWS

LISA LLOYD, Clerk
DANIEL HOOGE, District Attorney

There is a quorum present and the agenda was posted on 2-9-16. The Invocation was offered by Kathy Hiatt and Varlin led the Pledge of Allegiance.

#2-PUBLIC COMMENT

Kevin called for public comment. David Perkins discussed current events of today. Any government is a reflection of the mass consciousness of the people. The rise and fall of nations can all be written in the rise and fall of ideas implanted in the minds of men, said Herbert Hoover. The people have been fed an enormous amount of erroneous ideas, including the public lands issues. Western lands have been in contention since the beginning, before the Constitution. The only thing the federal government was charged with doing in the trust compacts was that they could make new states and dispose of it. There are 16 western states that were settled under completely different rules than the eastern states. We've known forever that the ranchers have rights under the public lands. No one has been able to point to it until now. Dr. Angus McIntosh has researched it and can point to the grants wherein Congress granted the ranchers rights. There are four separate components in the water based range. Water, easements and right of ways/reservoir sites, forage rights, and improvements. Ranchers have been granted 60 acres at each of the reservoir sites. Water and improvements have been recognized and settled, but the others have not. An interest in land is not an intangible. When we say we want the federal government to give us back our lands they must think we are crazy because there isn't much that isn't already in our possession. With knowledge of the truth, we have to remember that this country was founded under the direction of divine providence. Federal government doesn't have divine providence on its side.

CONSENT AGENDA

- #3 Approve/Deny minutes of the February 5 meeting.
- #4 Approve/Deny original and renewed business licenses according to staff recommendations (an itemized list of business licenses is available for public review in the Building Department prior to the meeting).

Adam made a motion to approve the consent agenda; seconded by Paul D. All voted in favor.

#5-VOUCHERS

Recorder/Auditor Leslie Boucher presented the cash balance report. General County has a balance of \$937,376.22 with estimated expenditures being \$177,960.22. General County will have a balance of \$759,416.00. **Adam made a motion to approve the vouchers as presented with the exception of the LCTS, A&H Katschke, LTD, and Mountain Merc vouchers; seconded by Varlin. All voted in favor. Adam made a motion to approve the LCTS vouchers; seconded by Varlin. Paul D. disclosed he is an employee of the telephone company; he abstained. Motion carried. Adam made a motion to approve the Mountain Merc vouchers; seconded by Paul D. Kevin disclosed that he is part owner of the Merc; he abstained.**

Motion carried. Paul M. made a motion to approve the A&H Katschke, LTD vouchers; seconded by Paul D. Adam disclosed he is an owner of the firm; he abstained. Motion carried.

#6-OFFICER/DEPARTMENT HEAD REPORTS

TREASURER Shawn Frehner presented the monthly report for January. \$1,745,496.97 is the total amount of receipts. **DISTRICT ATTORNEY** Daniel Hooge attended mediation last week with regards to the Hardy Construction case; it didn't get us anywhere so we will go forward with the appeal in the Supreme Court. Daniel discussed AB 191, the fuel index tax bill. Clerk Lisa Lloyd presented a copy of NRS 295.121, which requires the Board to set up ballot question committees. NACO is working on draft language for the question as well as obtaining a legal opinion from LCB concerning the bill, but due to timelines, the committees need to be advertised for and appointed soon. The bill requires the counties to vote on it and it will be the total fuel tax including the state's portion, not just the amount that goes to the county. Every year it will be adjusted based on the CPI.

#7-HIGHWAY COMMISSION

This item was handled under a separate agenda.

#8-LINCOLN COUNTY FIRE DISTRICT

This item was covered under a separate agenda.

#9-PANACA FIRE DISTRICT

This item was handled under a separate agenda.

#10-DOMAIN REGISTRATION

Paul M. made a motion to approve the request from Tracy Lee to amend the letter sent to .GovDomainRegistration on January 27, 2016 to remove the language "and email addresses"; seconded by Paul D. All voted in favor.

#11-PANACA VALLEY GROUNDWATER ASSESSMENT

Paul D. made a motion to approve the special assessment on all taxable property within the confines of the Panaca Valley groundwater basin for FY 2016-2017 in the amount of \$3,937.72; seconded by Paul M. All voted in favor.

#12-NEVADA HIGHWAY PATROL OFFICE SPACE LEASE

This item concerns the renewal of the lease agreement for NV Highway Patrol offices in both Pioche and Alamo. The total amount being paid for both offices right now is \$150 per month, including utilities. The Board previously discussed increasing this rate. Denice Brown advised that the Board will have to work with the state in order to make changes to the lease. Daniel advised that the increase from \$150 to about \$425 is based on what others are being charged for use of space in the Panaca Town Center. The term of the lease is subject to negotiation. Kevin and Adam agree that negotiations for an increase be started. **Paul M. made a motion to have Daniel negotiate the increase with the state; seconded by Varlin.** Paul D. questioned what there is to gain by increasing the lease amount. Adam commented that a great deal of taxpayer money is spent to cover the maintenance of these buildings. The increase offsets the costs a little bit. **Paul D. was opposed. Motion carried.**

#13-ASH SPRINGS RECREATION SITE

Cory Lytle presented a letter with recommendations to the BLM for management of the Ash Springs Recreation site. The Friends of Pahranaagat Valley have put together a proposal. The Planning Commission supports the Friend's plan. At this point in time, it is only public scoping. BLM will work on the EA in the near future. Will the EA address the endangered species issues? No. It'll make note of them but will not address them. Once the EA comes out, Cory believes someone from F&W will come and present options. The options are different based on whether or not it'll be used by the public. The proposal by the Friends addresses the fish. The fish rely on humans as part of their ecosystem now because contact has been in place for so long, this is one theory. The County isn't financially tying itself to anything right now. BLM wants to get rid of Ash Springs for a reason, and Paul D. is opposed to the County taking this on. The Friends are very enthusiastic but Kevin

questioned what will happen in 40 years when the group has petered out. Paul M. suggested that SNPLMA might be an avenue for financial help. The writing of the endangered species plan will be what determines whether or not the property is managed by the County. Paul M. cautioned the Board to be aware of the different agencies taking part in this so we maximize the financial benefit from BLM as well as the agency ties for the endangered species. There are many options that can be explored once the EA comes out, including fee areas. **Paul M. made a motion to send the letter of support to BLM concerning the plan created by the Friends; seconded by Paul D. All voted in favor.**

#14-LC BICYCLE PLAN

This item concerns the draft LC Bicycle Plan completed through the NV Department of Transportation and Kimley-Horn. Caliente hasn't had time to look at this yet. The Planning Commission (PC) has some serious concerns about funding in this plan. PC wants Caliente to review this prior to bringing it back next month for action. With some of the other projects going on, Cory recommended tying 317 from Caliente in to Kershaw with a shared use path. Cory has looked at shared use paths in Pioche as well for the kids to get to and from school. Anything that benefits the community first is a good direction. Paul M. stated he was happy to let Caliente review this first before bringing it back to the Board next month. No action was taken.

#15-LC PARTNERS NON-MOTORIZED MULTIPURPOSE TRAILS PRELIMINARY ENVIRONMENTAL ASSESSMENT

Paul M. made a motion to approve the comment letter to the Bureau of Land Management concerning the LC Partners Non-Motorized Multipurpose Trails preliminary environmental assessment; seconded by Adam. All voted in favor.

#16-LC NUCLEAR OVERSIGHT PROGRAM

Connie Simkins addressed the Board and offered an update. The President has released his budget. It contains nothing for the oversight program. It expands several other programs, including WIPP and the Savannah River project. Hanford is being added and Oakridge has been given funding to remove the last of the five buildings where they enriched uranium. Three reactors in Japan are being taken out of service. South Africa and Spain are getting into nuclear power plants. France has added to the powers of their version of the Nuclear Regulatory Commission. Australia is inviting storage and disposal. The NRC has authorized WY to permit a private company for uranium production. NY will continue to close the Entergy plant at Fitzpatrick. There have been seven other conventional power plants closed during this Administration. Connie will attend meetings in Ely, Eureka, and Carson this week. Connie will meet with Dr. Baughman to fill out the five questions concerning our vision for how they should go about gathering site based consent. The Administration has issued two new rules and their final policy for revisions to the critical habitat rules for sage grouse. April 9th, the N-4 Grazing Board will help to host the workshop featuring Dr. Angus McIntosh. All 127 ranchers in LC and White Pine will be invited as will the other grazing boards in NV.

#17-ENERGY CLEANUP WORKSHOP

Adam made a motion to approve the attendance of two individuals at the annual Department of Energy Cleanup Workshop on September 14-15 in Washington, DC; seconded by Paul D. All voted in favor.

#18-ENERGY COMMUNITIES ALLIANCE

Paul D. made a motion to approve the payment of the Energy Communities Alliance dues in the amount of \$2,500; seconded by Paul M. All voted in favor.

#19-STATE EMERGENCY RESPONSE GRANT

Paul D. made a motion to approve the signing of the State Emergency Response Commission (SERC) FY 2017 grant application in an amount not to exceed \$29,000; seconded by Paul M. All voted in favor.

#20-WESTERN ELITE YOUTH FUNDS

Paul D. made a motion to approve the request from Pahrnagat valley High School for Western Elite Youth funds in the amount of \$3,000 for grad night; seconded by Adam. All voted in favor.

#21-GRANTS

Adam made a motion to sign the Notification of Grant Award from NV Aging and Disability Services Division for the LC Senior Services Nutrition Services Incentive Program (NSIP) in the amount of \$3,058; seconded by Paul D. All voted in favor.

#22-LC AIRPORT

Paul D. made a motion to sign Task Order A, attachment to the professional services agreement with Armstrong Consultants, Inc. to provide the engineering services for the LC Airport rotating beacon replacement project; seconded by Varlin. All voted in favor.

#23-ALAMO LANDING FIELD

Adam made a motion to sign Task Order A, attachment to the professional services agreement with Armstrong Consultants, Inc. to provide engineering services for the Alamo Landing Field apron, bypass taxiway, and taxilane construction project; seconded by Paul D. All voted in favor.

#24-ALAMO LANDING FIELD

Adam made a motion to sign the Disadvantaged Business Enterprise program policy statement for the Alamo Landing Field; seconded by Paul D. All voted in favor.

#25-TAX AUCTION

Paul D. made a motion to proceed with the tax auction on April 8, 2016; seconded by Adam. All voted in favor.

#26-GRAZING ISSUES

This item concerned the discussion of grazing issues and the determination of action that the County may take. Kevin reviewed the various meetings and ways the Board members have been working on this. Varlin called upon the grazers/public land users to lay out the problems they have with the administration of their allotments. Kena Lytle Gloeckner discussed their allotment. BLM came into existence and in 1968 they gave a 29% reduction. This decision was appealed and went through the courts. They ended up cutting 17.5% after this went through the administrative law court. In 1974 an additional 3,000 AUMs were cut by BLM for the wild horses. BLM had already established an AML before this; the ranchers again appealed as the Horse Thief chaining was just done. The ranchers had either earned these forage rights in the 1800s via homestead or they'd purchased them. The Lytle and Delmue families have been here since the 1860s. A great deal of money has been spent buying others out with original rights. In 1992 another 35% of the whole remaining allotment was cut. Every time this was done a letter was received saying that the grazing privileges that are reduced will be considered as nonuse and will be restored as rapidly as possible as soon as forage is available. To date, not one AUM has been restored. BLM was taken to court again in 1992 and thousands were spent. Before this, the ranchers had to hire range consultants to refute their data. Under the stipulation to withdraw the lawsuit, the BLM and ranchers had certain requirements to meet. The ranchers had to establish certain improvements, which they did. Re-monitoring in five years was supposed to be done by BLM and if all conditions were met the AUMs were to be restored. The re-monitoring never took place. In 2000, BLM said everything looked good but no AUMs have ever been restored. Water rights and forage rights are based on use. BLM was supposed to compensate the Lytles for 11 springs, but this never happened. BLM is now saying they are going to take 50-75% of the allotments, and for one of the ranchers they're taking 100%. This will put all of the ranchers out of business. Kena believes the ranchers own both the forage and water rights. According to Angus McIntosh, the ranchers own 100% of the 1.8 million acres. Kena advised that they can't go through the court system. Every rancher in the west spent money helping Wayne Hage. 30 years later it was overturned in the 9th Circuit Court. The judge awarded them \$14 million as the BLM was out of control. The 9th Circuit Court overturned this ruling and said that the judge that awarded the \$14 million was biased. In 2013, the BLM took ½ to 100% of everything the ranchers own based on the 17 range land health indicators. The people that created the range land health indicator system told Kena that it was never to be used as a means to determine stocking rate. The Appropriate Management Level (AML for horses) is 100-210. The current count of horses is in the thousands. BLM used an average of two flights to determine the amount of wild horses; Kena advised that the amount they determined is ludicrous and completely wrong. Excess wild horses are supposed to be removed for public safety then for private property. Kena advised that the horses have mangled their property. BLM has advised

the Lytles to fence their springs. If they fenced off the springs where would the wildlife drink? BLM told them to fence it off and pipe the water. BLM hasn't done one single thing in the stipulation to withdraw. If Angus McIntosh is correct, the federal government can't dictate to the County Commission what goes on anywhere that these rights exist. If the federal government directs the County to close roads, they can respond that they will not close the roads due to prior claims on the land. On any land where there was a previous claim, the federal government can't dictate to the County what must be done. BLM can't deny access to the general public by closing roads as they already have easements on them. The Sheriff and Board of Commissioners must support the ranchers in order to prevent the closures. Adam asked how hard it is to take pictures of the springs and file a lawsuit. The minute you go into court you've lost already. The Hage case was the ranchers' only hope. Adam suggested that they sue over damage to private property instead of grazing rights. Kena responded that it wouldn't make a difference; every legal angle has been exhausted. Kevin stated that "police powers" be cited: the right to look after the health, safety, and welfare of the citizenry. These powers reside with state and local governments. Kena stated that the ranchers must take the responsibility and create a map. Every rancher creates his allotment, including all the water and the five things that are easements. Pretty soon this allotment will be filled with lines that go back and forth. Once this is done, it'll demonstrate and prove that those are personal property rights. This doesn't include mining claims. The grants are the same for mining claims. Kevin suggested that if a map were created and it was superimposed with all of the rights that have been granted there most likely wouldn't be any bare spots. Kena agreed. Kena asked that the Board attend Angus McIntosh's seminar in Ely. Kevin attended his seminar in Boise and he gained the same understanding that Kena has. Varlin attended as well and agreed that Kena and Kevin have the correct understanding. Pete Delmue stated that you don't have rights until someone dies, then you have to pay inheritance taxes. Of the 14,000 allotments they have over 6,000 are suspended. Agriculture in this county has been the most sustainable and taxable enterprise in this county for over 100 years. BLM is looking at giving Pete a 75% reduction on his prime allotment. There are hundreds of horses on that area so they can't say it's for rangeland health because they're ruining it. When BLM was questioned, they told the ranchers they are the only ones they can control. Kevin asked Daniel about equal justice, which allows the environmentalists to be paid for attorney fees. Daniel will study this and let the Board know the results of his research. Kevin asked if the ranchers can use the equal access funds as well. Varlin stated the grazing association is a non-profit entity. Tyra Lytle stated they'd have to file for non-profit prior to qualifying for that status. Adam asked why a 501(c)(3) couldn't be set up. This would preserve the integrity of the grazers in LC and help gain the correct status. Kevin has a 501(c)(3) called A Better Nevada and he'd be willing to authorize this for use by the ranchers. Kevin suggested this is an avenue that could be explored. David Perkins asked that if these are private property rights, where they fall. Wouldn't they fall under the purveyance of the County Assessor? It is really quite simple, it falls under the Assessor. By application of existing legal rules, David believes it falls under the County. It gives them plausible deniability without causing them to admit they've been running a scam for 100 years. Kena stated the federal government had to purchase the land that Hoover Dam sits on from the State of NV. In their thinking, it's public land and they shouldn't have ever had to purchase it because it's federal land. In all the state enabling act it says the people of the state will disclaim any right, title, or interest to the public land. That's because these lands were held in trust by the federal government for disposal. Quiet title would give clear title so they could dispose of it. David stated that we've been taught that this applies to all of it but, according to Angus' research, the rangelands have already been appropriated so they don't qualify under unappropriated public land. Again, this gives them plausible deniability. Kevin agrees with all of the statements made but asked what the Board does now. What do we do? Where do we go? Tyra Lytle has been looking at different options. The County can let the BLM know that the Sheriff can and will deny access on private land to BLM; this will end up in the Courts but the precedence needs to be set. Tyra referred to Article 1, Section 8, of the Constitution and Article 4, Clause B. You have the right to come into the Union on equal footing with every other state. Texas was allowed to come in without federal ground but all of the remaining states after that were required to have federal ground. This "right" has never been questioned in the higher courts. If the people in the County petition the County Commissioner for permission to go to the state, then the state needs to petition Washington. This would then go to the Supreme Court and we would have a case that says we have been treated unconstitutionally as states. If you go into the lower courts you will not prevail. Kevin stated that Utah is there right now; they're plowing the ground and ready to go. They're putting up national monuments as quickly as they can because it clouds the issue. Is it possible to have an injunction issued that will stop BLM until this is all addressed? BLM will be on the phone asking how they can get around the ranchers if this goes forward. There is a case in NM using the property clause of Article 4. The right part of that must be used or you'll be stymied and turned back.

They'll simply tell us we don't have the Constitutional right to be here. Tyra asked how it can be worked altogether and how BLM can be stopped right now. What will stop them from taking any more AUMs? The critical point is how we stop BLM from taking anymore AUMs. This will have to go through the court system and it will go on for years. Tyra asked if the County can bring forward an injunction. Ken Newby has been in the ranching business for nearly 40 years. Every since he's been involved, this problem has existed. We simply can't afford to defend what ranchers love to do, which is ranching. Ken stated that we're too busy out making a living on the ranch to defend it. The better we can get along with BLM, the better. Ken stated if we take care of our ranges and water the best we can there is a lot of money available through NRCS. Ken has done too projects and he's been reimbursed. Ken has gotten approval from BLM and everything he's done has made his ranch better; the BLM has been very pleased with the improvements. The biggest problem we have is that we don't know how to clean up our backyard. It's hard to take our hard earned money and make improvements on property that we don't own. Ken has asked why BLM can't help the ranchers. BLM responded that they are so busy preparing for the next fight with the environmentalists that they don't have time to address the ranchers' problems. Ken was advised to document the problem as well as the solutions/improvements being made. Ken has been told to pay his range permits according to how they were written. When asked why Ken's permits were changed, BLM responded that it looks better on paper when they go up against the environmentalists. Ken suggested that the ranchers go back to their range permits and run them the way they want and suffer the consequences. If the ranchers try to fight it, it'll break them. Brent Stewart stated he has no issues with BLM nor has John Sanders. Half of the allotments are probably fine. That isn't the point, it's that they're coming after the ranchers one at a time. Kena believes this is driven by the SNWA, not the horses. Carl Spencer advised the Board to educate the people, who then need to unite and make a decision. When this happens, everyone needs to be prepared to back them. Carl stated the thing with Cliven Bundy had nothing to do with grazing fees. It was over water rights. If water rights aren't used for a certain period of time and beneficial use isn't shown BLM takes the rights away. Brent asked if the Commissioners could take the situation with Delmues, Lytles and the Wilson Creek allotment and meet with them and someone from BLM. The issue is with SNWA and what they're doing with their sheep on that allotment. Adam asked if the County can earmark funds to help then write a letter outlining the County's assessment of an allotment, that we are granting whomever to put those AUMs there. The letter can also address the horses. Brent suggested that the Commission needs to tell the BLM these are our properties, our people, and these are the people's rights. Kena commented that BLM has had a 100% turnover in staff. Varlin said what needs to happen is that we need to go back to the 1964 when they took property away for the horses. AML levels need to be rolled back to 1964. The horse levels that were out there weren't wild. People turned them out when they didn't want to feed them. Varlin stated a letter needs to be put together stating that the RMP needs to be stopped and the County needs to take responsibility for the grazing rights. If BLM won't accept the payments, then they can be paid to the County and put in a trust. If Angus is correct, these grazing rights are part of the tax base. Varlin will work with the DA's office to draft a letter for the Board's consideration. No action was taken on this item.

#27-COMMISSIONER REPORTS

COMMISSIONER PAUL MATHEWS has been in communication with Brandon Vaught of Tri-County Weed, who needs their budget augmented. **COMMISSIONER VARLIN HIGBEE** attended meetings in both St. George and Boise. **COMMISSIONER KEVIN PHILLIPS** will attend the Tri-County meeting on 2-22. There will be no NACO meetings this month due to the National NACO meetings. **COMMISSIONER ADAM KATSCHKE** attended mediation with regards to the Hardy Construction case. Adam attended the Tri-Partite meeting last week. **COMMISSIONER PAUL DONOHUE** discussed the gravel pit east of Panaca and the bike trails that will be going through disposal lands. Bike trails will be allowed but the gravel pit still has to be closed since it's on disposal grounds. Paul D. intends to ask for a right-of-way where the gravel pit is currently located. When the law was made, BLM drew a few circles around the communities outlining areas for disposal in the RMP; these aren't areas that the County requested to be disposed. Paul D. attended the Pioche Town Board meeting. During the snow storm concerns were raised about vehicles parked in the roads. There are several cars that have been parked on the streets for years. It is possible that Pioche Town will be pursuing the removal of some of these vehicles via the nuisance ordinance.

#28-PUBLIC COMMENT

Kevin called for public comment. Connie Simkins confirmed with Dr. Angus McIntosh that he can make his presentation on April 16 at 10:00 a.m. in Ely. Emilia Cargill, NV Ranches/Geysers Ranch, advised that four of the allotments in Wilson Creek belong to Geysers Ranch, LLC. Some of the water rights Kena and Pete Tony have referred to have been heavily discussed. Each of them have water rights in each other's pastures that stem from a long time ago when Kerry Holt was the owner. When the ranch was sold to Geysers Ranch there was a division of water rights and allotments. They've been working to resolve and reconcile the water rights so that each only has water rights in their respective pastures. The state will not allow you to prove up a water right in a grazing allotment unless you are actively grazing cattle in it. They are working to resolve these water issues so none of them lose their water rights. Dylan Frehner commented on leasing to the NV Highway Patrol. The Board decided to use a fair market value for the LC Water District and he suggested this same approach be used with NV Highway Patrol.

#29-ADJOURN

There being no further business for the Board to attend to, Kevin adjourned the meeting at 12:28 p.m.

Attest: _____ Approve: _____

[Large, stylized red ink signature or stamp, possibly reading "DORIS"]