

The Board of County Commissioners, in and for the County of Otero, State of New Mexico, met in a Public Hearing at the Otero County Courthouse in Alamogordo, County and State aforesaid. Meeting called to order by the Chair person at 1:00 p.m., March 23, 2005; and she announced that reasonable notice for this meeting was given to the Alamogordo Daily News, and to Radio Stations, KPSA, KINN and KYEE.

Present:

Clarissa McGinn	Chair person
Doug Moore	Vice-Chairman
Michael Nivison	Member
Ruth Hooser	County Manager
Ray Backstrom	Assistant County Manager
Dan Bryant	County Attorney
Lynn Estrada	Deputy Clerk

DRAFT

Michael Shinaberry gave the invocation. Commissioner McGinn led the Pledge of Allegiance and the Salute to the Flag of the State of New Mexico.

The purpose of this Public Hearing is to consider Ordinance No.02-05 relating to enacting in addition to the Otero County Interim Comprehensive Land Use Plan that contains specific stipulations and requirements for Oil and Gas production and exploration on lands within the political boundaries of Otero County.

The first Public Hearing was held March 1, 2005 for the purpose of protection of potential ground water contamination and aquifers associated with Oil and Gas activities on the lands within Otero County. We

We heard comments from the public, Bureau of Land Management (BLM) and industry. The conclusion of the March 1st Hearing was to gain more information on current regulations and developing an infrastructure in the County that would allow us to act as lead agents in the activities associated with Oil and Gas exploration within the land of Otero County. The Ordinance that was presented, considers current regulations that exist for Oil and Gas activities and where Otero County will be involved as lead agent on activities within its boundaries.

Commissioner McGinn opened the floor for comments from the audience.

Dan Bryant, County Attorney, stated that we have learned a lot since our last meeting on March 1st. We have received copies of ordinances that are similar to the ordinance that has been presented to us that has been passed by a number of cities in New Mexico that are doing the same regulations. During the course of our last meeting in our conversation with representatives from the BLM, they have received a Notice of Intent to sue over the published decision to amend the RMP in Sierra and Otero County with respect to fluid minerals, leasing and development in the area. This Notice of Intent is dated January 26, 2005. Under the rules that apply the Notice of Intent is issued and then for 60 days the parties are required to communicate with each other about the issues that are in the Notice of Intent. If they are able to settle their differences nothing happens. If not, after 60 days the parties that issued the Notice of Intent is free to sue. The 60 days will expire at the end of March. Mr. Bryant is fairly certain that all of the issues that have been raised in the Notice are not going to be settled without a lawsuit. One of the early things that will happen, the Plaintiff will ask the Federal Court to issue an injunction to stay the processing of fluid minerals development in Sierra and Otero County while the lawsuit is pending. We may be in a situation where further development by BLM in the area is going to be stopped by Federal Litigation.

Commissioner McGinn stated that the thrust of this ordinance is to have some enforcement capabilities within the County as the lead Cooperative Agent. We will look into how to develop the infrastructure that would be needed for the County to participate as the lead agent in terms of personnel and resources.

Debra Seligman, New Mexico Oil and Gas, stated that within the ordinance there is a tremendous amount of language outside the scope of statutory language as well as rules, regulations and guidelines for the oil conservation division. There are specific rules that apply to Otero County that were adopted in 2004 that addresses some of the same issues that are in the ordinance, except the ordinance goes a little bit beyond what the oil conservation division has. Debra stated that she is not an attorney, but the only jurisdiction allowable within state statute for a County or Municipality to have stronger rules or regulations, is only to protect that immediate water shed for that County. She believes that there are some things in our ordinance that are outside that scope.

Dan Bryant stated that we are going to have to look at what we want to regulate and measure that against the threats we perceive and we are comfortable with the significance of that connection between the two subjects. Commissioner McGinn stated that in the review of the County's authority that we need to state something within the Ordinance or within the Comprehensive Plan that states the purpose of creating such regulations. Being that there has been spills that have affected water quality elsewhere. Dan stated that really this is part of the Public Hearing process. He has a number of documents that can be introduced into the records that Mr. Jones has provided from the last hearing and documents from OCD operations in Northwestern New Mexico and Southeastern New Mexico that details a number of issues that needed to be addressed.

Commissioner McGinn stated that Jane Schaffer submitted a letter to be read. Commissioner Moore read the letter to the audience.

Pat Wise, City Manager of Lovington, New Mexico, spoke about their ordinance that they enacted after they became aware of what the oil companies were doing to their land. He was appalled at the lack of enforcement activities of the Oil Conservation Division (OCD) out of Santa Fe. We immediately moved toward an ordinance that would protect our water system and our water supply. It took several months before we were successful. There is nothing in our ordinance that a responsible operator wouldn't be doing.

Leonard Carpenter, Harvey Yates Company. He would like to have a little more detail if the City of Lovington has 18 wells or 18 acres. Mr. Wise stated that we have about 1800 acres with 23 oil and gas operators within this acreage.

Patrick McMann, Lovington City Attorney, stated that he was one of many that help put the ordinance together for the City of Lovington. At that particular time we were experiencing some problems in our well fields. We would have a leak or spill and we would not have that leak or spill reported to us. Once we came across the leak or spill we had a tremendous amount of difficulty in having some of the companies that were operating out on the fields, address that leak or spill. Having gone to the OCD and talked to them about the problem, the City was not satisfied with the response they received. The OCD doesn't have the resources or the manpower to address these issues. There are two things that Otero County needs to look at. One is preventing a leak or spill. By encouraging the companies to provide additional reports, which we have required in our ordinance which helps maintain the facilities and keeps them in better condition. The second thing is if we have a leak or spill, we want it noticed right away, and we want action taken as soon as possible. The first responder to a leak or spill is the oil company, then they report to the City when the leak occurred, what type of fluid it was, the volume, and what their immediate plans are to prevent any further release. Our consultant will go out and look at the leak or spill and look at all the reports that were

leak or spill and look at all the reports that were filed. If it's a small leak OCD usually doesn't come out to the site. Mr. McMann stated that he doesn't see OCD out on the oil fields very often.

Mark Fesmire and Tim Gumm from Oil Conservation Division, Santa Fe, stated that they didn't respond to every reported leak because of understaffing.

Mark Fesmire stated that a lot of the things that we are worried about are adequately addressed in the OCD Regulations. He suggested that OCD be present with the Commission to go over the Regulations as we have the expertise, but not the staff and the County's part in this may be the part that OCD can't cover. We do have the rule structure in place to address most of the issues at hand. Commissioner McGinn asked if Mr. Fesmire agrees that there are several provisions out there that are more guidelines than actual rules and regulations? Mr. Fesmire stated yes there are guidelines out there and we may need in our ordinance to address OCD guidelines and make them part of our ordinance.

The Commission discussed putting together a technical committee including BLM, the Commission, the Public and Industry.

Commissioner Moore made a motion to convene a technical committee for review of Ordinance No.02-05 for review and revision. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously.

Commissioner McGinn stated that we will have a telephonic discussion first with everyone involved to set up a meeting date and time. Anyone that is interested may go to Administration where there will be a sign-up sheet to be part of this committee.

There being no further business before the Board the Chair person adjourned the meeting at 3:10 p.m.

APPROVED:

Clarissa McGinn, Chair person

ATTEST:

Robyn Silva, County Clerk

Public Hearing March 23, 2005