

Regular Meeting

June 11, 2002

The Board of County Commissioners, in and for the County of Otero, State of New Mexico, met in a Regular Meeting at the Otero County Courthouse in Alamogordo, County and State aforesaid. Meeting called to order by the Chairman at 9:00 AM, June 11, 2002; and he announced that reasonable notice for this meeting was given to the Alamogordo Daily News, Holloman Sunburst, Mountain Monthly, and to Radio Stations KPSA, KINN, and KYEE.

Those being present:

Richard Zierlein	Chairman
Tim McGinn	Vice-Chairman
Michael Nivison	Member
Ruth Hooser	County Manager
Ray Backstrom	Administrative Office Manager
Dan Bryant	County Attorney
Bill Parker	County Road Superintendent
LaDonna Adams	Department Assistant
Robyn Silva	Deputy Clerk

The Chairman called the meeting to order and gave the invocation. Commissioner McGinn led the Pledge of Allegiance and Commissioner Nivison led those assembled in the Salute to the flag of the State of New Mexico.

1. Discussion was held on the Consent Agenda. Commissioner McGinn made a motion to approve the Consent Agenda, Items A, B, C, and D. Commissioner Zierlein requested that Lisa Walker's name be pulled from Item C because she got another job. Commissioner

Nivison seconded the motion. A vote was taken and the motion passed unanimously. SEE BOOK

2. Mr. Klad Zimmerle approached the Board to request that they accept a parcel of land for a new fire sub-station for James Canyon up at the Silver Springs area. He stated that the property has been surveyed and was donated by the owner and we are now ready to go to the next stage which is to get a title policy and to schedule the closing.

Commissioner Nivison stated that in light of all of the fires, a new fire sub-station is probably a good idea.

Commissioner Nivison made a motion to accept the land and easements for the Silver Springs area. Commissioner McGinn seconded the motion. A vote was taken and the motion passed unanimously. SEE BOOK

3. Mrs. Elaine Chestnut approached the Board to discuss a possible problem that we might have in regards to a new business that wants to come in to Otero County. She stated that on May 20, May 27, and June 3 of 2001, there was a notice in the newspaper that some people wanted to change a domestic well into a commercial well and put in a truck wash. The property description that was listed in the newspaper was incorrect. They listed it as a piece of property that is located next to the Chestnuts on Mi Casa Lane. She stated that they then put in a protest, as well as 19 other residents in the area. She stated that they thought it had died because the people put the land up for sale and they didn't hear anything else about it. Mrs. Chestnut stated that they were notified last month that it is going to a hearing in Santa Fe on July 11, 2002, and she has provided the Commission with a copy of that information. She stated that they then went to the Assessor's Office to get a copy of the map of their property to verify its location and even the Assessor had a problem identifying where the property is located.

Mr. Chestnut read the description of the property that was in the newspaper and it was incorrect.

Mrs. Chestnut stated that they protested it because they thought there was a mistake made and they left out the Mi in front of Mi Casa. She stated that the people that are directly affected did not protest because of the incorrect land description given, they didn't realize it was next to them.

Mrs. Chestnut stated that the Hearing has been scheduled on July 11, 2002, to be held in Santa Fe and she has filed a Motion to move the Hearing to Otero County because there will be 20 of us that have to go to protest. Also, the people that will decide won't even see the property or know what we are talking about.

Mrs. Chestnut stated that the reason she would like the County Commission involved is because on the Pre-Hearing Scheduling Order, Item D, it states that if granting the application would be detrimental to the public welfare of the State, and Item E, if granting of the application be contrary to the conservation of water within the State. She stated that the Commission has been talking about conserving water and Commissioner McGinn has even been quoted in the newspaper in an article about saving our water. Mrs. Chestnut pointed out that we are in the middle of a drought, as we were last year when they applied for this.

Mrs. Chestnut asked that a representative from our Commission, represent our County regarding the water, at this Hearing.

Mr. Chestnut stated that another issue that they have a problem with is, if this does go in, it is suppose to be a truck wash. We are concerned with the types of chemicals and toxins that might be washed off of these vehicles. We understand that they are suppose to have a grease trap and we understand that the EPA is suppose to take care of the regulatory part of the

water flow. Mr. Chestnut asked what would happen if we get an overflow, what happens if the greasepit or tanks are not dumped on a regular basis and it does get into the ground water? What type of an effect will that have?

Mr. Chestnut stated that there are already two truck washes in Otero County.

Mrs. Chestnut stated that they are not located next to residences that have wells and use them for their own families. She stated that we need studies made on whether that will effect the wells.

Commissioner Nivison asked Mr. Bryant if the publication is incorrect if it has to be re-published? Mr. Bryant stated that if there is a problem with the publication, the Hearing Officer will examine the record, and will reach that conclusion, and make that process start over. Mr. Bryant stated that July 11, 2002, is not a Hearing on this case. He stated that it is only a Scheduling Conference to set up deadlines for witness disclosures, exhibit disclosures, and all of those issues. They will then set a Hearing on the application for a later date.

Mrs. Chestnut asked Mr. Bryant if they needed to be present at the Hearing on July 11, 2002? Mr. Bryant stated that, if she wanted to have input on dates when witnesses and exhibits have to be disclosed, when rebuttal witnesses and exhibits have to be disclosed, or when discovery is going to close. Also, if she wants to have input on when written objection to witness or exhibit lists are due. He stated that the scheduling for all of that will be done on July 11, 2002.

Mrs. Chestnut also stated that another problem is, for every person that wants to be heard, they have to send in \$25 or they can't speak. She stated that she doesn't think that is fair because some of the people that signed it, don't have the money and won't be able to travel all the way to Santa Fe to protect themselves. Mrs. Chestnut stated that her and her husband are going, but they won't be allowed to speak for anyone else because they are not attorneys. So

their friends that would be affected, but don't have the money to go, won't have a say in it. She stated that is not fair.

Mr. Chestnut asked if it would be possible for a County Commissioner to be present at the Hearing and represent the County and give a County view on the subject?

Mrs. Chestnut stated that this has to do with all the people that have wells, and she stated that Commissioner McGinn does have a well and it make effect his well eventually. She stated that we all live on the ground water, and if it is polluted, we will all be affected.

Commissioner Zierlein stated that what the Chestnuts are doing is asking the Commission, up front, to take a side. He stated that we have to look at the information and decide what side the Commission wants to take or if they even want to take a side. He stated that the Commission may decide that this is not a jeopardy, but a benefit to the County to have an additional business which would create more jobs and more economical development. Commissioner Zierlein stated that when ever you start a business, there is a risk. He stated that if a representative is present from the Commission, we will have to decide what position we are taking.

Mr. Chestnut stated that, if this was any other business that was not detremental to the water issue, we wouldn't be here.

Commissioner McGinn asked how many acre feet they are asking for? Mrs. Chestnut stated it is 10 acre feet.

Commissioner McGinn stated that we have been approving subdivisions that are 100 acre feet, and if we do that, how can we disapprove of an application for 10 acre feet?

Commissioner Zierlein stated that the water consumption is not an impact, and if they follow the regulations, we have to trust the State Agencies that they police and make sure

that they do. He stated that the pollution is just a minimal risk.

Mrs. Chestnut stated that we hope that the State regulates this, because we are depending on the State to do all of the work and we need to keep checking on that. She stated that is part of what they want the Commission to do, help them make sure the State does check on them.

Commissioner Zierlein stated that the County does not have the expertise, or the capability, or the authority to regulate the water, or monitor the pollution or contaminants that they put in the carwash. That is outside our purvue. We can talk to the State Environmental Department, we do that all of the time if there is a complaint or concern brought to us.

Commissioner Nivison suggested that they contact these people and find out exactly where the proposed truckwash is to be located. We also need to make sure that the list of concerned citizens is appropriate to the spot where the truckwash is going to be. He stated that, if there are a significant number of people close to this, that are affected, and are of low or moderate income, there are regulations that will allow the Hearing to be moved here for their convenience. Commissioner Nivison stated that he wouldn't have any trouble signing a letter of support to that affect. Commissioner Zierlein and Commissioner McGinn agreed.

Mr. Doug Moore stated that he has was just involved in one of those pre-trial Hearings and it was done by tele-conference. He stated that it was just as Mr. Bryant explained. All that they did was set dates for exhibits and response times. He stated that the people in the State Engineers Office in Las Cruces are very helpful and they make sure whether you are for or against, you have the opportunity to speak. Mr. Moore stated that if it doesn't fit the model of depletion of water table or if it will impact the surrounding wells, and doesn't meet their State standard that they go by, the application will be denied.

4. Ms. Sherry Fannell and Mr. Ted Dyer approached the Board because they have a concern with the water in Mescalero and are requesting that the Commission consider declaring an emergency situation due to the fact that Mescalero is in violation of the Clean Water Act from discharges of waste from the Mescalero sewage lagoons into the Rio Tularosa.

Commissioner Zierlein stated that he understands that the State is coming down today to do some testing on the wells and that they do have a water tank in place with potable water. Ms. Fannell agreed.

Commissioner Zierlein stated that what we need to do is to move forward so that we can help alleviate the problem in the future. He stated that since Mescalero is a Sovereign Nation, it is outside the realm of the County Commission, but under the State Environmental Department if there is a contamination problem.

Commissioner McGinn stated that he attended the meeting that was held on June 3, 2002, and there is a lot of evidence to show that the sewage lagoons on the Mescalero Tribal sewage disposal area are overflowing and flowing down into the Rio Tularosa (Also known as Tulie Creek), and flowing through Bent and into Tularosa. The newstation KOB asked the Mayor of Tularosa if they have had any problems and they have not. Commissioner McGinn stated that if you go to the sewage plant and see it spilling over and washing down into the creek and it is clearly raw sewage.

Commissioner McGinn stated that at the meeting there was a gentleman from the Indian Health Services, A Tribal Councilman, and the person incharge of the sewage disposal operation and they all said that the water is fine. However, there is plenty of evidence over there and videos that show that the sewage is overflowing and running into the creek. Commissioner McGinn stated that he feels this is a very serious situation.

Commissioner McGinn stated that there are a number of people in Bent that draw water out of the Rio Tularosa and they use it for bathing, all household uses, as well as drinking and cooking.

Commissioner McGinn stated that he has been told by some of the State officials that they can't do anything because they are dealing with a Sovereign Nation. He stated that the County should take the step of declaring a health emergency to get the State and the Federal EPA's attention so that something will be done. The tribe has a plan in place to have a new sewer system within the next year to be put in, but this has been going on for at least 8 or 10 years. Commissioner McGinn stated that the lagoons use to overflow only when there were heavy rains, now it is happening daily. He stated that maybe by the Commission declaring a state of emergency, maybe the State and the Feds would help out and shorten the time, that this is taking to correct, as well as having some interim measures to make the water safe up there for the users of the Rio Tularosa.

Commissioner McGinn stated that, if we need to supply water, the Air Force was generous enough to provide a water buffalo. He reminded the Commission that they had also done that back in 1996 when it overflowed and Tularosa did have an E-coli scare in which their water was infected for three weeks. He stated that since that time, Tularosa has not had that condition, but that the conditions may have existed in Bent but have gone untested.

Commissioner Nivison stated that he knows this is a serious issue. He stated that Representative Dub Williams has interceded on their behalf but that this really falls in the prevue of the State and the Federal Agencies. Commissioner Nivison stated that he felt it would be very appropriate for the Commission to haul water if needed. He stated that he would like to see the results that come back from the tests that are being preformed today. He stated that we need to

see what Representative Williams is requesting as the next step.

Commissioner Zierlein stated that Senator Domenci is working to help get the funding to elevate the problem permanently. The Tribe is also working to get it done. He stated that there are several people that are trying to take care of this problem. Commissioner Zierlein stated that he does agree that we need to watch the drinking water.

Mr. Ted Dyer stated that he has been in contact with the Indian Nation and they are trying to retrofit their sewer system that leads into that lagoon. He stated that there are some inflows to the sewer system that lead into the lagoon system and that is the cause of the overflows. Mr. Dyer stated, more importantly, they do have a fix for this, but the issue is, it is a long range fix. The immediate problem at hand is the safety, welfare and health of the residents all along the Rio Tularosa into Tularosa.

Commissioner McGinn agreed, stating that in 1996 this was an issue, and it has continued, but it has been untested. He stated that nothing has been said to the Board and the State Agencies have not gone out and tested the water since 1996.

Mr. Dyer stated that the issue still remains, if the County were to stand up now at this point, and declare an emergency situation, he didn't feel that they would be overstepping anyone's prerogative. He stated that he thinks it would say something to the Representatives at the State level, as well as Senator Domenci, that the County recognizes an issue of safety, and health and the welfare of its citizens. The County is responsible for those issues, to those residents, along that river and he asked that the County would prosecute Ordinance No. 92-03, which would guarantee that the Commissioners will protect the citizens of Otero County.

Commissioner Nivison stated that he would like to see the information that is gained today through the testing. He stated that the action that we should take right now is to

state an emergency, if there is water needed, we will bring that water.

Commissioner Nivison made a motion to declare an emergency and that we will bring water to Bent if they need it for potable use. Commissioner McGinn seconded the motion. Discussion was held. Mr. Bill Hornback stated that it is well known that the lagoons are overflowing. He stated that if it occurs in one part of the river, wouldn't it be in all of the river. He stated that our representatives from the EPA should be testing the water in Bent on a regular basis. Commissioner Nivison stated that most water systems are required to do testing on a regular basis and White Sands Labs can do that. Mr. Curtis stated White Sands Labs can only test for E-coli. He stated that another point that should be considered is, if this breaks out, its going to occur in a short period and then come through in mass. If nothing has been done to prevent that, it is already an emergency when it comes through in mass. If there is a large rain, it will flow down like a train. Commissioner McGinn stated that one's natural thought would be that the State Environmental Department should be doing something about this, but they stated publicly that they can't because we are dealing with a Sovereign Nation. Mr. Dyer stated that the foresight and the wisdom that was used in this County, to declare the burn area a disaster area, because of the rains that are forthcoming, if we get a rain into the lagoon area at Mescalero, we could be in for a disaster. A vote was taken and the motion passed unanimously. SEE BOOK

Commissioner McGinn stated that if this was a municipality discharging waste down the Rio Tularosa, the State would be all over them. They would be fined \$10,000 per day. They would shut them down. Commissioner McGinn stated that when the State said that it would be a year, we couldn't believe it.

Commissioner Zierlein stated that we have done all that we can do.

Mrs. Fannell stated that the lagoons in Mescalero were built in the early 1970s,

and since that time, the population of Mescalero has increased dramatically. This is why there is such a big problem.

Mr. Dan Fannell stated that we need to address the health issue by contacting the medical people in this area and have them looking out for viruses that might be caused by the water. We need some way to notify the people, if we do have an E-coli outbreak, they will get it in a timely manner.

5. The time being 10:00 AM, the Chairman called the Public Hearing to order to consider the approval of a preliminary plat for Tierra Verde Subdivision. Mr. Dale Palkki, Mr. Monroe Curtis, and the surveyor approached the board. Mr. Palkki stated that the proposed subdivision is a 31 acre tract of land, south of town, off of Southend Road. He stated that it is being divided into 27 lots, approximately 1 acre each with individual wells and septic systems. Mr. Palkki stated that it has passed through all of the proper stages up to this point, and been approved by all of the Governmental Agencies that it has been reviewed by. Mr. Curtis stated that as far as their review, this is one of the best subdivisions that has been put together. He stated that it was very well engineered. Mr. Curtis stated that the only contingency that they had was concerning a road situation, but that has been resolved so the Planning Commission definitely put their approval on it.

Commissioner Nivison made a motion to approve the Tierra Verde Subdivision, based on the recommendation of the staff. Commissioner McGinn seconded the motion. Mr. Dan Scott approached the Board and stated that he has proerpty down stream from the proposed subdivision. He stated that there is a well just south of this proposed subdivision, that the City put in back in the 60s or 70 s, and he was told by an engineer that the City over pumped this well and pulled salt water in to the well, out of the Basin, so they had to abandon it. He stated,

because of that, he is afraid that when they put all of those wells in there, it will do the same thing. Commissioner Zierlein stated that it has gone through the State Engineers Office, and they did approve it. He also stated that there are working wells on both sides of the proposed subdivision. Mr. Craig Lemke also lives close and he questioned if there will be any kind of regulations on the wells, how much they can pump? Commissioner Zierlein stated that all domestic wells are restricted to 3 acre feet. Mr. Curtis stated that it has been reviewed and it is in compliance. Mr. J.W. Stephenson approached the Board and was concerned because he hadn't seen any restrictive covenants. The Board gave him a copy to look through before they make final approval. Mr. Stephenson stated that he felt the restrictive covenants were good. A vote was taken and the motion passed unanimously. SEE Book Pages

6. The time being 10:15AM, the Chairman called the Public Hearing to order to consider approval of a road name change from Mesquite Lane to Star Thistle Lane in the Dog Canyon Fire District. Mr. Jack Rathgeber and Mr. Dale Palki stated that they received no protest on the name change.

Commissioner Nivison made a motion to approve the name change in the Dog Canyon Fire District from Mesquite Lane to Star Thistle Lane. Commissioner McGinn seconded the motion. A vote was taken and the motion passed unanimously. SEE BOOK

7. Commissioner Zierlein stated that Mrs. Elyse Beckman resigned her position as Otero County Treasurer and it is the County Commission's duty to appoint her replacement. In Mrs. Beckman's letter of resignation, she requested that Mrs. Cathe Prather be appointed who has been with her for all of these years. He stated that he has not had any other suggestions brought forward, and he thinks that is a good suggestion.

Commissioner Nivison stated that he thinks that since Mrs. Prather is the Chief

Deputy Treasurer, that would be appropriate to appoint her. Because of that, Commissioner Nivison made the recommendation that Cathe Prather be appointed to Otero County Treasurer for the duration of this term. Commissioner McGinn seconded the motion. Discussion was held. Commissioner Zierlein stated that, if something would have happened to the Treasurer, Mrs. Prather would have automatically been moved up. A vote was taken and the motion passed unanimously.

Mrs. Prather stated that she would like to appoint Mrs. Grace Gonzales as Chief Deputy and ask that that become effective at the beginning of the next pay period. Mr. Bryant stated that we will be in session one week from today and we can put this item on the agenda to confirm.

8. Mrs. Sherry Fannell, Mr. Ted Dyer and Mr. Fannell reapproached the Board concerning the water sewage problem in the Rio Tularosa. Mr. Dyer stated that he would like to read a letter sent from Mr. Samuel Coleman, Director Compliance Assurance and Enforcement Division, addressed to Ms Sara Misque, President Mescalero Apache Reservation. Mr. Dyer read the letter.

Commissioner McGinn asked if the Board thought it appropriate to send some letters to try and hurry this thing along to everyone involved including all of the elected State Representatives. The Commission agreed. Commissioner Nivison stated that he would like to call the EPA to make sure that they are following up.

Commissioner Nivison made a motion to diligently do their best to notify all of the Departments to get an immediate response. Commissioner McGinn seconded the motion. Discussion was held on content of the letter. Commissioner Zierlein stated that we should send a letter to the State, to the EPA and to the Mescalero Indina Tribe. We need to do this in a positive

light and let them know that we want to work with them. The Commission decided that the contents should be that we are aware of the problem and we want to know what action is being taken. A vote was taken and the motion passed unanimously.

9. Commissioner McGinn asked the Purchasing Agent if these are all low bids. He also asked if any were sole source? She stated that two were emergency purchases and the other two were low bids. One of the emergencies was for the jail and the other one for the well.

Commissioner McGinn made a motion to approve all of the Purchasing Items. Commissioner Nivison seconded the motion. A vote was taken and the motion passed unanimously.

10. Discussion was held on the request from the Fire Services Coordinator for permission from the County Commission to consider a Resolution to be passed regarding accepting a standardized numbering system for the Fire Departments within Otero County. Mr. Wayne Glidden approached the board on behalf of this request.

Commissioner Nivison made a motion to approve the request from the Fire Services Coordinator to pass a Resolution to standardize the numbering system for the VFD. Commissioner McGinn seconded the motion. Mr. Wayne Glidden, President of the VFD Association told the Board that they want to establish a guideline in which to follow for all VFD. The Otero County Firefighters Association is behind this 100 percent. This is for the safety of the people that are out fighting the fire. A vote was taken and the motion passed unanimously.

11. Commissioner McGinn made a motion to appoint Commissioner Michael Nivison as representative to attend meetings for the Lincoln County Cooperative Weed Management area. Commissioner Zierlein seconded the motion. A vote was taken and the motion passed unanimously.

12. Commissioner McGinn made a motion to approve Items B-H under the Administrator's Report. Commissioner Nivison seconded the motion. Discussion was held. Commissioner Nivison stated that under Item G which is an Urgent PILT letter, he stated that he visited with several of the Western Senators and that they are strongly opposed to any cuts. A vote was taken and the motion passed unanimously.

13. Commissioner McGinn stated that for 7 or 8 years, Highway 52 has been in the back of his mind. Highway 52 is the old Highway from the Tulie Gate across the range to Cabillo Lake. He stated if that road were open, it would take about 1 hour to get to Sierra County. Right now it takes about 2 and one half hours to get to Sierra County. Even if the road was open just on the weekends, the amount of tourist traffic that would come through our County would be fantastic. He would like to seek the approval from the other Commissioners to go forward with this. Commissioner Nivison stated that Mr. Adam Polley from Sierra County has done lots of research on this road. He stated that the road is in bad shape. He suggested that Commissioner McGinn contact Mr. Polley. Commissioner McTinn stated that the road would be an economic benefit to our county and he feels that the military would be happy to help us out in the community. The Commission gave Commissioner McGinn their blessing.

13. Commissioner Nivison made a motion to approve the Participating Agreement between the USDA Forest Service, Lincoln National Forest and the Board of County Commissioners as amended by the Attorney and that each Commissioner will approve individually before it is signed. Commissioner McGinn seconded the motion and seconded the amendment. A vote was taken and the motion passed unanimously.

14. Discussion was held on considering approval of a Professional Services Agreement for the County/City Partnership in the Lincoln National Forest Restoration Program

with Dr. Garrett and Pamella J. Garrett dba M3 Research. Commissioner Nivison stated that we are going to meet on this and get the paper work in place.

Mr. Bryant stated that back in April the Board approved a draft of this Contract that was designed for the Apached Sitgraves circumstance. He stated that since then, he has gone through the contract and corrected it for Lincoln National Forest issues and our issues, and getting the proper parties set up in the Contract. He stated that we lack a couple of steps from being able to put the Contract in place. One is we have to get a completely defined scope of work from Dr. Garrett which he is currently working on. He stated that we can pass this today or put it on the Agenda for June 17, 2002.

15. Commissioner Nivison asked that be put on the agenda for the Special Meeting of June 17th, 2002.

16. Commissioner McGinn made a motion to go into Executive Session.

Commissioner Nivison seconded the motion. Roll call was taken as follows:

Commissioner Zierlein - Aye

Commissioner McGinn - Yes

Commissioner Nivison - Aye

Commissioner Nivison made a motion to return to Regular Session and stated the only thing discussed were items on the Agenda. Commissioner McGinn seconded the motion.

Roll Call was taken as follows:

Commissioner Zierlein - Aye

Commissioner McGinn - Yes

Commissioner Nivison - Aye

The time being 11:45 AM, the Chairman adjourned the meeting.

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Chairman

ATTEST:

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Otero County Clerk

Regular Meeting of June 11, 2002.