

## COUNTY OF LINCOLN

### New Mexico Regular Meeting Board of County Commissioners

Preston Stone, Chair  
Dallas Draper, Vice Chair

Thomas F. Stewart, Member  
Elaine Allen, Member  
Lynn Willard, Member

#### Minutes Tuesday, January 10, 2017

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on January 10, 2017 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

#### 1. Call to Order

Chair Stone called the Regular Meeting of the Board of County Commissioners to order at 8:28 AM.

#### 2. Roll Call

##### Roll Call.

**Present:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Rhonda Burrows, County Clerk.

#### 3. Invocation

The invocation was presented by Commissioner Stone.

#### 4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

#### 5. Selection of Chair and Vice Chair

**Motion:** Nominate Commissioner Stone to continue to serve as Chair, **Action:** Approve, **Moved** by Commissioner Draper, **Seconded** by Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Allen, Commissioner Draper, Commissioner Stewart, Commissioner Willard.

**Motion:** Nominate Commissioner Draper for Vice Chair, **Action:** Approve, **Moved** by Commissioner Stewart, **Seconded** by Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Allen, Commissioner Draper, Commissioner Stewart, Commissioner Willard.

#### 6. Approval of Agenda

**Motion:** Acceptance of the Agenda and authorized the Chair to move items as necessary, **Action:** Approve, **Moved** by Commissioner Stewart, **Seconded** by Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

#### 7. Approval of Minutes

- a. December 22, 2016 – Regular Commission Meeting

**Motion:** Approve the minutes of the December 22, 2016 Regular Meeting; **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

#### 8. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending December 31, 2016
- c. Resolution 2016-32 Renew Per Diem and Mileage Policy Rescinding Resolution 2016-10

Ms. Taylor informed the Treasurer's Financial Report was unavailable due to the timing of this meeting. Ms. Taylor stated similarly the end of year financial information for calendar year 2016 was not currently available for review by the Board of Finance. Ms. Taylor stated both items would appear on the February Regular Meeting Agenda.

Beverly Calaway, Treasurer provided some preliminary financial reports for review.

**Motion:** Approval of the Consent Agenda, withdrawing the Treasurer's Financial Report, as presented; **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Stewart commented on an expenditure related to cleaning of culverts on Cora Dutton Road noting the noting Lincoln County's recent acquisition of culvert cleaning equipment.

Jeff Honeycutt, Road Superintendent explained Lincoln County's new equipment was returned for warranty work and unavailable at the time.

Commissioner Willard questioned the expenditure of \$5000 to Roper Construction for sidewalk repair near the new Senior Center.

Ms. Taylor explained initially Lincoln County requested the City of Carrizozo repair the sidewalk at the new Senior Center. Ms. Taylor informed the City of Carrizozo by Ordinance requires property owners to maintain adjacent sidewalks.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**SEE EXHIBIT A:** Copies of the Consent Items including Resolution 2016-32 but without the Treasurer's Financial Report as approved are attached hereto in reference thereto made a part hereof.

#### 9. Board of Finance - County Treasurer

No action taken.

#### 10. Department of Cultural Affairs Update on Lincoln and Fort Stanton Historical Sites Presentation by Cabinet Secretary Veronica Gonzales

Cabinet Secretary Veronica Gonzales acknowledged the importance of the Lincoln and Fort Stanton Historic Sites. Secretary Gonzales recognized the contribution of the community volunteers as especially important as the Department deals with significant budget cuts during the NM State budget crisis.

Dr. Patrick Moore, recently appointed Director of Historic Sites discussed his plans to build on the Historic Sites as assets to create a broader narrative about the history of New Mexico. Dr. Moore discussed Secretary Gonzales' dedication to filling empty positions at the sites. Dr. Moore stated changes were implemented to avoid the replication of managerial duties and direct resources towards education and interpretation. Dr. Moore discussed the importance of the multiple "instructional coordinator" positions to educate and inform the public about the sites. Dr. Moore

reminded while the resources and opportunities at the Lincoln and Fort Stanton Historical Sites were "astronomical" the challenges were "daunting".

Tim Roberts, Regional Manager South Central Region for the New Mexico Historic Sites discussed plans to implement improvements including the recent grant application supported by the Board of County Commissioners to seek funding for development of a preservation plan at Fort Stanton. Mr. Roberts reported the Lincoln and Fort Stanton Sites were almost up to full force with one position still open in Fort Stanton. Mr. Roberts discussed ongoing preservation and restoration efforts including repairs at the Barrett's building in Fort Stanton and the old Lincoln County Courthouse in Lincoln. Mr. Roberts stated upcoming projects including restoration of the roof of the Torreon in Lincoln. Mr. Roberts stated instructional coordinators were working to bring more school tours to the sites and also doing some community outreach. Mr. Roberts stated he was also focusing on economic development opportunities to increase tourism to the sites.

Secretary Gonzales reported attendance at the Lincoln and Fort Stanton Sites increased by 20% in December and attributed the increase to additional advertising and community outreach efforts. Secretary Gonzales reminded all State Agencies were facing additional budget cuts and potential reduction in positions due to the State budget crisis and requested support during the New Legislative Session from the community.

#### **11. Forest, Land & Natural Resources Matters:**

##### **a) Smokey Bear Ranger District**

Ranger Jodi Canfield discussed her efforts to work with staff to acquaint herself with the Ranger District. Ranger Canfield stated additionally the District was working to fill multiple positions including filling the open Planning Position, adding a range technician, and interviewing for a wildlife technician position. Ranger Canfield stated she was meeting with collaborative partners.

Commissioner Stewart questioned if Ranger Canfield was aware of any military intent to conduct high altitude training in the White Mountain Wilderness.

Ranger Canfield stated she was not aware of any planned training but would research the question.

##### **b) Cibola National Forest**

Ms. Taylor stated there were no new updates on the Cibola Forest Plan Revision.

##### **c) Community Forester**

Rick Merrick with Southcentral Mountain Resource and Conservation District reported the Northern Sacramento Mountain Forest and Watershed Restoration Committee continued to hold strategy meetings and incorporate new partners.

##### **d) Upper Hondo Soil and Water Conservation District**

Ms. Taylor informed the Carrizozo Soil and Water Conservation District scheduled their first meeting to discuss the SWC District's Land Use Plan.

Robert Barber, Chair of the Land and Natural Resources Advisory Committee (LANRAC) stated the committee held an organizational meeting and established a primary goal to review various existing documents. Mr. Barber stated the purpose of the review was to identify consistencies in various plans with an intent to provide a consolidated position or plan to the US Forest Service during the Lincoln National Forest Plan Revision process. Mr. Barber stated both the Upper Hondo and the Carrizozo SWCD's and the SCMRCD were key partners in the process.

##### **e) Office of State Engineer-Water Issues**

Ms. Taylor reported there were no new applications or publications for water rights transfers posted on the state Engineer's website this month in Lincoln County.

Ms. Taylor reminded during the December Regular Meeting former Commissioner and resident of Hondo Valley, Jackie Powell led a discussion regarding the differences between an open, closed, and declared water basin. Ms. Taylor stated as a result of the discussion an invitation was issued to Tom Blaine, State Engineer and Andy Morley, District Supervisor to attend today's meeting for further discussion.

Commissioner Stewart questioned the process or procedure to officially close a basin.

Andy Morley, District Supervisor with the Roswell Office of the State Engineer stated the Hondo Underground Water Basin was a "declared" underground water basin with a couple of different closure dates. Mr. Morley stated the act of "declaring" an underground water basin created a status for the basin which required the Office of the State Engineer to review applications and issue permits for any water related activities within the basin. Mr. Morley stated water rights transfers could continue to occur in either a "declared" or "closed" water basin, however no new appropriations were permitted in a "closed" basin. Mr. Morley stated a basin was typically "closed" when there was evidence water in the area was being "mined" without recharge from the system. Mr. Morley stated while evidence might support closing a basin in a certain area due to the "mining" of water, conditions in other areas of these large underground basins could differ. Mr. Morley discussed the potential need for new appropriations for economic development, road projects, and industry such as wind generators. Mr. Morley stated in a "closed" basin the only option was to locate and transfer rights within the basin.

Commissioner Stewart questioned Mr. Morley as to the potential for OES approval of any new appropriations in Lincoln County.

Mr. Morley stated belief OES consideration of applications for new appropriations would depend on the location within the basin. Mr. Morley stated belief there was no opportunity for new appropriations along any of the stream systems in Lincoln County but there was a possibility of new appropriations in other areas such as in northern Lincoln County for a particular project which would not adversely affect the stream systems.

Chair Stone clarified as a "declared" underground water basin there was currently an option to request new appropriations in the Hondo Underground Water Basin.

Commissioner Willard clarified a "closed" basin would eliminate the possibility of any new appropriation and this could have an effect on economic development.

Commissioner Willard questioned if the Office of the State Engineer utilized or considered the US Geological Study of the local basin several years ago when reviewing applications.

Mr. Morley stated these types of studies or resources were utilized in any analysis of applications with the State Engineer.

Mr. Morley reminded in 1907 the Territorial Engineer closed surface water to new appropriations for stream systems. Mr. Morley reminded of the "first in time, first in line" doctrine for priority water rights. Mr. Morley opined because of the priority dates dating back to the 1800's the three stream systems in Lincoln County were fully developed and perhaps even "over appropriated" because as there was not adequate water to provide the existing water rights.

Chair Stone questioned the "likelihood" of the Office of the State Engineer (OES) approving any new appropriations on the three streams systems within Lincoln County.

Mr. Morley stated the OES was obligated to consider any new appropriation application and provide due diligence. Mr. Morley opined any such request for a new appropriation would receive numerous protests but during the analysis phase an application connected to the stream system would fail due to the "taxed" condition of the stream systems.

## **12. 9:30 AM: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS**

Walter Hill, newly elected Assessor expressed his appreciation for the position and support received from the people of Lincoln County.



Commissioner Stewart reported he continued to work with local military installations on a website to provide public information and to coordinate activities. Commissioner Stewart stated he was asked to serve as the Honorary Commander of a Remotely Piloted Vehicle Squadron at Holloman Air Force Base and looked forward to that relationship.

Commissioner Draper reported he and Commissioner Willard met with property managers to discuss the nightly rental issue. Commissioner Draper stated one issue identified was whether a nightly rental within Lincoln County was reporting and paying County Gross Receipts Tax and County Lodger's Tax or municipal taxes. Commissioner Draper suggested further investigation was needed to determine if the County was not benefitting properly from these revenues.

Beverly Calaway, Treasurer offered to work with the Assessor and the Manager's Department to research this issue. Ms. Calaway stated previously when the County sought specific information from the New Mexico Department of Taxation and Revenue regarding the distribution of gross receipt tax from a specific entity that information was not provided. Ms. Calaway stated she would continue to look into the matter.

Rhonda Burrows, Clerk reminded the public School Board Elections were set for February 7, 2017 and urged the public to vote.

Beverly Calaway, Treasurer reported the Treasurer's Office collected approximately 65% of the 2017 taxes from October through December 31, 2016. Ms. Calaway expressed appreciation for her staff and their excellent work. Ms. Calaway also expressed appreciation for the new windows in her office.

Steve Duffy, Interim President of Fort Stanton Inc. thanked Secretary Gonzales for her presence at the meeting today and her report on the historic sites. Mr. Duffy stated he and Rory McMinn, President of the Friends Group of Lincoln were invited to Santa Fe to participate in a very educational discussion with the Department of Cultural Affairs. Mr. Duffy stated since that time the "Friends Groups" were working with the new employees leading to a great deal of progress in a short period of time. Mr. Duffy stated this included the reopening of the museum gift shop at Fort Stanton. Mr. Duffy also commented on opportunities to seek grant funding in a public private collaborative effort.

Tony Davis, resident posed a question related to discussion of hydrological issues. Mr. Davis questioned if the State Engineer's office had a map of the underground basins in Lincoln County. Mr. Davis also questioned the efficacy and use of hydrological models.

Hoyt Graham, life-long resident commented on the proposal to transfer land at Ski Apache. Mr. Graham expressed belief any transfer of land would limit public access to the area and reminded the land in question was at the top of the watershed which could impact water rights.

#### **11. Forest, Land & Natural Resources Matters (continued)**

Andy Morley, OES District Supervisor informed there were four different orders which "declared" the Hondo Underground Water Basin beginning in the 1950's with the most recent being in 1993. Mr. Morley stated in 2005 the State Engineer, John D'Antonio, decided in order to "actively administer" the remaining "undeclared" water resources in the State, the State Engineer's Office would "declare" the remaining estimated 10% of "undeclared" area in the state. Mr. Morley stated this effectively requires an application for any transfer or declaration of any water right in the State of New Mexico.

Mr. Morley, in answer to a question posed during public comment, stated the hydrology of any underground basin was extremely complex. Mr. Morley stated the hydrologists in the OES Technical Division typically utilize data from existing well logs, USGS data, and other available data. Mr. Morley stated the OES relies heavily on these technical experts to determine how various systems are connected and how any appropriation might affect nearby users.

Commissioner Allen questioned if it was possible to fully "close" a portion of the basin within Lincoln County without closing the complete basin.

Mr. Morley pointed out during his time with the OES since 1993, to his knowledge there had never been a new appropriation application filed in the Hondo Underground Water Basin. Mr. Morley stated various portions of a basin could be "closed" or "declared".

Ms. Taylor questioned if the technical analysis and other reports associated with new applications were available for public review.

Mr. Morley stated any protested application was reviewed and analyzed by the OES and after a recommendation was publicized the supporting documentation was available to the public.

**13. Consideration and Discussion of Senate Joint Memorial 3; Requesting the US Congress to Transfer Eight Hundred Sixty Acres from the Lincoln National Forest to the United States Department of the Interior for the Use and Benefit of the Mescalero Apache Tribe**

Alan Morel, County Attorney declared a potential conflict of interest informing he represented Mescalero Apache Telecom which was a part of the Mescalero Tribe. Mr. Morel stated he did not represent the Mescalero Apache Tribe itself and noted John Wheeler and Nelva Cervantes, General Counsels for the Tribe were present along with John Underwood.

Attorney Morel stated the Board of County Commissioners received a request to table the agenda item and suggested the Commission address the request first. Attorney Morel stated the Commission could table the item, take evidence and then table the item, or take evidence and take action.

**Motion:** Consider the agenda item, hear testimony, review the Manager's letter from 2013 and consider tabling item until later in the meeting for the purpose of drafting a resolution, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

**Vote:** Motion passed by roll call vote (summary: Yes = 3, No = 2, Abstain = 0).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen.

**No:** Commissioner Draper, Commissioner Willard.

Ms. Taylor provide an analysis of Senate Joint Memorial 3 as proposed by Senator Cliff Pirtle of District 32. Ms. Taylor stated the Memorial requested the United States Congress transfer eight hundred sixty acres from the Lincoln National Forest to the United States Department of the Interior for the use and benefit of the Mescalero Apache Tribe. Ms. Taylor stated the Memorial referenced the plants and biological materials sacred to the Mescalero Apache people; the investment of more than \$20,000,000 in infrastructure on the land currently occupied pursuant to a USFS Special Use Permit; the advantage of Tribal forest management practices; and the potential economic benefit to Lincoln County, Otero County and the State of New Mexico. Ms. Taylor pointed out the Memorial stated the transfer would not create any additional water rights or change water consumption on Ski Apache land.

Ms. Taylor further reminded in 2013 after learning of a similar proposal, the Board of County Commissioners directed Ms. Taylor to write a letter of opposition to the proposed transfer of USFS land to the Mescalero Apache Tribe. Ms. Taylor further reminded in October of 2015 Tribal Officials met separately with various Commissioners and with Ms. Taylor to discuss the issue.

Chair Stone welcome public comment limited to facts and data related to the issue and informed presenters were limited to five to seven minutes.

Jackie Powell, resident of the Hondo Valley stated she was speaking in defense of existing water rights and current access to public land. Ms. Powell stated current evidence demonstrated the Upper Hondo Watershed region could not afford to sign away another single drop of water. Ms. Powell stated the first rule of water is to never give up control or access to headwaters, dams, diversions, or easements. Ms. Powell pointed out the Mescalero Apache Tribe posts "Keep Out" signs limiting access to current property and expressed belief the proposed transfer would additionally restrict public access to the area. Ms. Powell reminded the Mescalero Apache Tribe sued to claim 17,941.7 acre feet of surface and ground water per year in the Rio Hondo Stream System which was effectively the total flow of the Rio Ruidoso. Ms. Powell stated the Tribe was successful in securing approximately 2200 acre feet but noted there was no record of actual usage since the adjudication. Ms. Powell stated the US Forest Service (USFS) prepared an Environment Impact Study of the proposed transfer as far back as 1971 and found the proposal to be unfavorable at that time. Ms. Powell discussed the establishment during adjudication of the Tribe's right of diversion for 11 acre feet per year but noted 2006 pumping declarations indicated expanded pumping of 524 acre feet per year. Ms. Powell stated four declarations in 2006 for the expanded pumping were not advertised and therefor never protested. Ms. Powell

stated this expanded pumping was a good example of why the County should seek to formally "close" the basin. Ms. Powell pointed out the Village of Ruidoso was the "first loser" of any decline in water flow from the area. Ms. Powell stated belief Lincoln County should strongly oppose this transfer.

John Wheeler, General Counsel for the Mescalero Apache Tribe stated while he understood the concerns voiced regarding water rights, the principal benefit of the proposed transfer was not to control water but to allow the protection of a sacred site by the Mescalero Apache people. Mr. Wheeler stated the proposed transfer amounted to approximately .06% of the Lincoln National Forest and would have minimal impact on public access. Mr. Wheeler discussed the impact of the Little Bear Fire and the protection of infrastructure at Ski Apache during the fire by the Tribe rather than the USFS. Mr. Wheeler stated the protection of the infrastructure at Ski Apache through proven forest management practices by the Tribe had driven the request for the transfer. Mr. Wheeler suggested Tribal management would increase forest health and increase water flow into the system. Mr. Wheeler provided a map of the area and opined all of the headwaters of the water basin flowed through currently owned reservation land and the Mescalero Tribe would gain no advantage or additional water rights by virtue of the transfer. Mr. Wheeler requested Lincoln County support Senate Joint Memorial 3 for the benefit of the people who it was taken from in the first place.

Commissioner Stewart stated his main concern was related to the transfer of land from a conservation standpoint as held by the US Forest Service to what was in essence an economic plan. Commissioner Stewart suggested should the transfer occur, the Mescalero Tribe could rightfully utilize the land in any fashion it chose. Commissioner Stewart pointed out Sierra Blanca Peak was already part of the Mescalero Apache Reservation; most of the forest land referenced by Mr. Wheeler previously burned; and the Mescalero Tribe currently has management over the majority of land adjoining Ski Apache. Commissioner Stewart stated his concern was not for the immediate future but for future generations and the permanent withdrawal of the people's right to access in the area.

Mr. Wheeler stated the Tribe was willing to discuss access to these lands on mutually agreeable terms. Mr. Wheeler reiterated the intent of the Tribe was to manage the land for the betterment of the ecosystem and stated the US Forest Service was impeding better management practices.

Commissioner Draper discussed his family's close ties to the Mescalero Apache Tribe and voiced his respect for the preservation of sacred sites. Commissioner Draper reminded Senate Joint Memorial 3 was introduced without prior knowledge or input from the County of Lincoln. Commissioner Draper reminded it was his duty as County Commissioner to represent the residents of Lincoln County and many residents contacted him in opposition to the action.

John Underwood, lobbyist for the Mescalero Tribe explained the current administration of the Mescalero Apache Tribe was working to improve relations with Lincoln County and reiterated the proposed transfer was not related to water. Mr. Underwood stated the proposal was "not about water". Mr. Underwood explained the President of the Mescalero Tribe made a presentation to the NM Legislative Indian and Cultural Affairs Interim Committee regarding the proposed land transfer. Mr. Underwood stated Senator Carlos Cisneros suggested a Joint Resolution and as Senator Pirtle represents the area on the committee he agreed to sponsor the Joint Memorial. Mr. Underwood requested postponement of any action until the President of the Tribe could attend a County Commission meeting to discuss the issue. Mr. Underwood stated should the Commission postpone consideration he would ask Senator Pirtle to withdraw the Joint Memorial.

Chair Stone clarified if the Commission chose to table the item, the Joint Memorial would be withdrawn and no committee hearings would commence.

Commissioner Stewart read the proposed Resolution which defined the concerns "of public access and water conservation in Lincoln County" in support of the request to withdraw SJM3. Commissioner Stewart urged adoption of the Resolution, otherwise anyone appearing before the Legislative could not speak on behalf the entire Board of County Commissioners.

Mr. Wheeler stated if the Commission was resolute to take action rather than to postpone any pending additional testimony then the offer to withdraw the Joint Memorial was "off the table".

Beverly Calaway, Treasurer reminded Lincoln County's annual Payment in Lieu of Taxes (PILT) was based on the acreage of federal land within Lincoln County and suggested the transfer of 860 acres would have an impact on the PILT payment.

Jody Canfield, Smokey Bear District Ranger reported she had visited the Ski Area and agreed forest management work was needed in the area. Ranger Canfield committed, as the new District Ranger, to working with the Mescalero Tribe under the terms and conditions of the Special Use Permit which provides for management of vegetation through due process.

Chair Stone expressed belief County Commissioners were charged to be mindful of every person within Lincoln County. Chair Stone commented on the controversial nature of the issue and the need to seek an attitude of unity throughout the entire County.

**Motion:** Table Agenda Item 13, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

#### **14. Bogle Road Update**

Ms. Taylor provided a history of past meetings with Zia Natural Gas representatives to address the safety issues associated with hazardous gas lines located on Bogle Road. Ms. Taylor noted in prior discussions, Leslie Graham General Manager expressed a belief the entities could work cooperatively to resolve the problem areas and thus enable Lincoln County to safely maintain the road.

Ms. Taylor stated three basic solutions were proposed by Zia including lowering the pipeline where possible, adding base course or other material to the ditch, moving the ditch to the opposite side of the road from the pipeline location. Ms. Taylor reminded Zia Natural Gas had lowered a 500 foot portion of the pipeline in June of 2016.

Ms. Taylor stated the County Road Superintendent had determined moving the drainage ditch to the opposite side of the road was not a viable solution. Ms. Taylor stated during the most recent meeting on December 19, 2016 the option of "covering" shallow portions of the gas line with a six to eight inch concrete cap throughout the eleven to twelve mile stretch on Bogle Road. Ms. Taylor stated Ms. Graham had acknowledged the solution was utilized in the past and agreed to the solution on Bogle Road where necessary.

Jeff Honeycutt, Road Superintendent stated after shallow portions of the line were secured in the bar ditch areas by placement of a "cap", he would recommend placement of rip rap over those areas to provide erosion protection and avoid additional exposure. Mr. Honeycutt suggested the addition of four to six inches either caliche or base course material to the road service followed by a double penetration chip seal for the length of the project.

Ms. Taylor discussed potential funding sources and recommended redirection of CAP/Coop program funds previously dedicated to resurfacing Gavilan Canyon Road. Ms. Taylor also discussed utilizing FEMA funding which previously identified Bogle Road as damaged from severe flooding during 2014. Ms. Taylor discussed the various requirements to redirect or commit funds including the required County match for FEMA funding. Ms. Taylor stated additionally the County could request Zia Natural Gas provide some offset funding to road repair in addition to their agreement to the concrete cap work.

Chair Stone expressed concern about a double chip seal withstanding the heavy truck traffic associated with ranching activities in the area. Chair Stone also expressed concern about the expenditure of FEMA funding on a solution which might not be sustainable.

Commissioner Allen questioned why Lincoln County would accepting responsibility for the repairs associated with the pipeline rather than the company who placed or owned the currently owned the pipeline.

Attorney Morel reminded current regulations governing the placement and depth of pipelines in County Roads did not apply retroactively to this older pipeline.

There was a general discussion of other options, longevity of proposed solutions and associated costs.

Chair Stone reminded Zia Natural Gas Company was willing to work with the Board of County Commissioners and expressed belief the decision was how to accomplish the goal in partnership with Zia and the area residents.

Leslie Graham, General Manager Zia Natural Gas stated from Zia's perspective they inherited a pipeline which initially had proper cover but cover was removed as a result of maintenance work over time. Ms. Graham expressed support for the placement of the described caps over low spots. Ms. Graham stated her company had not had the opportunity to review the estimated costs associated with the proposed repairs and she was not prepared to discuss cost share options today.

Attorney Morel reminded no one was threatening any litigation and the parties were working cooperatively to try to identify solutions.

Commissioner Willard expressed support for the use of FEMA funding but expressed concern over redirecting CAP/Coop from needed repairs on Gavilan Canyon.

**Motion:** Approve the use of caliche or base coarse to build up the road surface utilizing FEMA funding but not utilizing CAP/Coop funding identified for Gavilan Canyon and authorize the Manager and Attorney to negotiate a cost share agreement with Zia Natural Gas, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

Commissioner Stewart questioned if the use of FEMA funding was applicable to the particular scenario for repair.

Manager Taylor confirmed this was an appropriate use of the FEMA funding.

Jeff Honeycutt, Road Superintendent informed the CAP/Coop funding was allocated for an overlay of Gavilan Canyon but the road was not prepared for overlay and needed more preparation. Mr. Honeycutt stated belief the County would need to change the defined scope of work for the project.

**Vote:** Motion passed by roll call vote (summary: Yes = 3, No = 2, Abstain = 0).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Willard.

**No:** Commissioner Allen, Commissioner Draper.

Chair Stone recessed the Regular Meeting at 12:04 PM and reconvened at 12:59 PM.

Chair Stone recessed the Regular Meeting and convened the Public Hearing at 1:00 PM.

**21. 1:00 PM: Public Hearing Consideration of the Adoption of an Ordinance Providing a Low Income Tax Rebate Pursuant to NMSA 7-2-14.3G on a County by County Option Basis**

Attorney Morel discussed the requirement defined in New Mexico State Statute 7-2-14.3G whereby "In January of every odd-numbered year in which a county does not have in effect an ordinance adopted ... the board of county commissioners of the county shall conduct a public hearing on the question of whether the property tax rebate provided in this section ... should be made available through adoption of a county ordinance."

Attorney Morel noted adoption of the rebate would shift the imposition of property taxes to other property owners not eligible for such a rebate. Attorney Morel stated while the Commission was required to conduct a public hearing and consider adoption, for approximately ten years past Boards of Lincoln County Commissioners had not elected to adopt the ordinance.

Chair Stone requested public comment and receiving none adjourned the Public Hearing and reconvened the Regular Meeting at 1:03 PM.

No action was taken.

**13. Consideration and Discussion of Senate Joint Memorial 3; Requesting the US Congress to Transfer Eight Hundred Sixty Acres from the Lincoln National Forest**



**to the United States Department of the Interior for the Use and Benefit of the Mescalero Apache Tribe (tabled)**

**Motion:** Remove Agenda Item 13 from the table, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Attorney Morel provided two Resolutions for consideration. Attorney Morel stated the Resolutions were identical except for the last paragraph in which one Resolution called for withdrawal of Senate Joint Memorial 3 "at this time" and the other simply requested withdrawal from consideration by the NM Legislature.

**Motion:** Adopt Resolution 2016-35 without inclusion of reference to "at this time", **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**SEE EXHIBIT B:** Copy of Resolution 2016-35 is attached hereto in reference thereto made a part hereof.

**15. Resolutions Amending Cap, Coop and School Bus Road Programs:**

Ms. Taylor explained the Resolutions were prepared to provide a process to change the location and terms of use for the previously dedicated Cap coop funds.

- a) Resolution 2016-29 Amending Resolution 2015-42 CAP FY 2016-2017 Road Programs
- b) Resolution 2016-30 Amending Resolution 2015-43 COOP Road Programs FY 2016-2017
- c) Resolution 2016-31 Amending Resolution 2015-44 School Bus Road Programs FY 2016-2017

**Motion:** Direct the Manager and the Road Superintendent to modify the CAP/COOP Agreement for Gavilan Canyon Road to include the necessary pavement sealing and repairs as recommended by the Road Superintendent, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Draper.

Commissioner Stewart reminded the Road Superintendent indicated paving on Gavilan was premature and the road needed additional prep work. Commissioner Stewart clarified his motion was to provide authority to modify the type of work originally defined in the agreement.

Manager Taylor stated she would work with the Road Superintendent to modify the Resolutions and present them at the next meeting.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**16. Resolution 2016-28: Mid-Year Budget Adjustment Fiscal Year 2016-2017**

Ms. Taylor reminded as per State Statute counties could request adjustments to budgets to accommodate changes in financial operations during the fiscal year including revenue increases due to grants and other revenues not contemplated or included in the budget as adopted. The Manager stated the revenue, transfer, and expense changes addressed in the Resolution maintained the balanced budget determination as calculated by the NM Department of Finance and Administration. Ms. Taylor also presented a request to modify position descriptions within the Road Department.



Chair Stone questioned the need for the additional funding for the Sheriff's Department.

Sheriff Robert Shepperd informed the New Mexico Association of Counties General Counsel had recommend a policy change for Sheriff's Departments to own and maintain standard weapons issued to deputies and to purchase standard ammunition. Sheriff Shepperd stated when deputy's used privately owned weapons the variety of ammunition required resulted in increased costs. Sheriff Shepperd discussed the cost saving advantages of utilizing uniform weapons and other equipment. Sheriff Shepperd also discussed the liability issues associated with use of privately owned weapons.

Chair Stone requested clarification of the increase for the Solid Waste Billing budget.

Ms. Taylor reported Sierra Contracting had requested a 3.03% increase in the monthly payment for services. Ms. Taylor stated the request was based on higher than anticipated expenses associated with picking up bulk waste and overflowing compactors and dumpsters. Ms. Taylor stated if approved the revised monthly payment to Sierra Contracting was \$50,950 and pointed out this was significantly less than the \$89,382 monthly payments made prior to January 2016. Ms. Taylor stated there were sufficient revenues in the fund to offset the increased payment without supplementing from the General Fund.

Commissioner Willard questioned the additional funding identified for transfer from the General Fund to the Road Department Fund for work on Cora Dutton Road.

Curt Temple, Planning Director informed the funding appropriated by the State of New Mexico was less than the actual cost resulting in a remainder of funding for the project. Mr. Temple stated the County identified water drainage issues on Cora Dutton Road and utilized the additional funding to hire a contractor to reshape the road and clean culverts.

Chair Stone questioned if Lincoln County actually lost \$85,000 in funding for the project.

Ms. Taylor stated a problem occurred when Lincoln County failed to carry over the 2015-2016 unspent Cap/Coop funds. Ms. Taylor stated as a result expenses were charged to the current CAP/Coop budget and the County did loose funds which were unspent. Ms. Taylor requested a transfer of \$104,000 from the General Fund to cover expenses from the prior fiscal year.

Commissioner Willard questioned why the funds were not appropriately carried over from the prior years.

Ms. Taylor discussed how CAP/Coop funds were allocated for a particular calendar year but noted eighteen months were provided to accomplish the work. Ms. Taylor stated in the past Cap/Coop funds were combined in one budget line item and funds carried over from other fiscal years were not clearly defined. Ms. Taylor stated additionally at times work was not completed within the eighteen months and a request was submitted for additional time. Ms. Taylor stated going forward the County would establish budget line items for each particular fiscal year.

**Motion:** Adopt Resolution 2016-28, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Draper.

Commissioner Stewart expressed concern about continued deficit spending.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**SEE EXHIBIT C:** Copy of Resolution 2016-28 is attached hereto in reference thereto made a part hereof.

**Motion:** Approve the requested title changes for two Operator III positions to Operator IV positions, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**17. Resolution 2016-33: Mid-Year Line Adjustments Fiscal Year 2016-2017**

Ms. Taylor reported the Resolution would authorize approval of line item budget adjustments for the Sheriff's Department, Lincoln Volunteer Fire Department, and Corrections for the current fiscal year. Ms. Taylor detailed the adjustments and informed the associated financial impact was zero.

**Motion:** Adopt Resolution 2016-33, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**SEE EXHIBIT D:** Copy of Resolution 2016-33 is attached hereto in reference thereto made a part hereof.

**18. Resolution 2016-34: Declaring the Intent of the Board of County Commissioners of Lincoln County, New Mexico, to Consider for Adoption an Ordinance Authorizing Issuance and Sale of Up to \$25,000,000 General Obligation Bonds, Series 2017, for the Purpose of Constructing, Designing, Equipping and Furnishing, and to Acquire Land for a County Hospital; and Directing the County Manager and County Clerk to Publish Notice of Intent to consider an Ordinance Authorizing Such Bonds in a Newspaper of General Circulation Within the County**

Attorney Morel presented the Resolution for review and noted references to the County Clerk were removed from the language to clarify the County Manager would assume responsibility for publication of the Notice of Intent.

**Motion:** Adopt Resolution 2016-34, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Willard.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**SEE EXHIBIT E:** Copy of Resolution 2016-34 is attached hereto in reference thereto made a part hereof.

**19. Manager's Report**

**New Hospital Update**

On November 22, 2016 the State Board of Finance (SBOF) received the mandatory information from Lincoln County to begin the approval process of the Amended and Restated Lease Agreement between the County and Presbyterian Healthcare Services (PHS). Consideration of the lease agreement was initially set for the SBOF's December Meeting, however due to the complicated nature of the lease agreement final consideration was reset for the January 18, 2016 meeting. The SBOF requested additional information and provided Lincoln County and PHS with a list of twenty seven questions or requests for clarifications to assist with their review. The Manager provided a copy of the questions and responses for review.

On December 20, 2016 the New Mexico Finance Authority Board convened to consider loan applications for approval. Chris Muirhead, Bond Counsel and Paul Cassidy of RBC Capital Markets joined Lincoln County and PHS for presentation of the loan application. The Manager reported Lincoln County's loan request was approved conditioned on the completion of the several "Readiness to Proceed" items including:

- a. Any additional information requested by the NMFA; and
- b. Loan documents shall conform to NMFA standard form and policies; and
- c. State Board of Finance approval.

The Manager stated subsequent to NMFA's conditional approval of the loan Lincoln County Attorney Alan Morel, Todd Oberhue (PHS), Troy Clark (PHS), Gabe Parra (PHS)

and the Manager met with the State Board of Finance Director Leila Burrows and Attorney Sally Malave in Santa Fe. The group worked through the twenty seven questions, resolved a number of concerns and ascertained a clearer definition of the remaining issues including possible resolutions. The Manager provided copy of a draft Amended Agreement in addition to a Memorandum detailing the line by line changes as prepared by Attorney Morel.

The Manager reported on January 6, 2016 the County received a follow-up list of concerns from the SBOF Director with responses due by January 11, 2016. The Manager stated Lincoln County was scheduled to present its Amended and Restated Lease Agreement to the State Board of Finance on January 18, 2016.

#### Legislative Update

The Manager reminded the NM Legislative Session would convene on January 17, 2017 and provided a list of key dates related to the session.

#### Carrizozo Senior Center Update

The Manager reported Lincoln County in conjunction with the Southern New Mexico Economic Development District and other partners associated with the design and construction of the Senior Center was working on a response to the Closeout Review Letter received from Department of Finance and Administration on the final requirements for this Community Development Block Grant project. There was discussion regarding setting a date for an "Open House" at the new center during the next Regular Commission Meeting.

#### Calendar of Events

The Manager provided a list of upcoming events including the New Mexico Association of Counties Legislative Conference beginning on January 17, 2016 and the State Board of Finance Meeting set for January 18, 2017 in Santa Fe.

#### Department Head Updates

a) **Jeff Honeycutt, Road Superintendent** reported his department was focused on training over the next six weeks including pipeline safety, flagging, and onsite loader and motor grader training conducted by the State of New Mexico Local Technical Assistance Program.

b) **Curt Temple, Planning Director** informed department personnel were working on alarm permit renewals, completing the readdressing of the Cedar Creek area, providing floodplain information and guidance for revision of Hazard Mitigation Plans, and coordinating quotes and work on the new Bonito Fire Station and the new building for the White Oaks Fire Department.

Commissioner Draper questioned if Mr. Temple had any additional data regarding the number of nightly rentals within the County.

Mr. Temple discussed the acquisition of data related to nightly rentals suggesting a search of websites which advertise nightly rentals to get an estimate of those available outside of municipalities but within the County.

Walter Hill, Assessor stated the Assessor's Office maintains some records of nightly rentals for assessment purposes and offered to provide a list of those on file.

c) **Joe Kenmore, Director Office of Emergency Services** discussed recent emergency rescue operations related to tourists with high altitude adjustment problems. Mr. Kenmore stated the department would start wildfire refresher trainings in anticipation of the upcoming fire season and driver trainings for Emergency Medical Service and Volunteer Fire personnel were set for February.

d) **Punkin Schlarb, Finance Director** stated the department was working to close out payroll for the calendar year, prepare W-2's, update vendor information, and begin preparations for next fiscal year's budget. Ms. Schlarb stated staff would also attend the New Mexico Association of Counties Affiliate Meetings.

e) **Billie Jo Guevara Administrative Assistant and Human Resources** informed representatives from Sun Life were coming to Lincoln County to assist employees with employee voluntary benefits signup. Ms. Guevara reported no applications were received after an initial posting of two Operator II Road Department positions therefore she would republish the openings. Ms. Guevara noted there were two open positions in the Assessor's Office.

Attorney Morel offered additional information regarding the State Board of Finance (SBOF) and the related lease revisions. Attorney Morel provided a memorandum addressing the original twenty seven issues identified but noted eleven additional issues were subsequently identified by the SBOF. Attorney Morel stated these additional issues were causing some concern for Presbyterian.

Attorney Morel reminded one of the steps taken to resolve initial SBOF concerns was to remove all reference to the clinics from the initial draft lease agreement. Attorney Morel reminded Lincoln County obtained a formal appraisal to support the lease agreement and the appraisal identified a fair market value for the existing facilities as \$1,159,515 which would necessitate an increase over the current \$1,100,000 payment. Attorney Morel anticipated an offset to the difference with uncompensated services. Attorney Morel stated the SBOF further recommended Lincoln County obtain a new appraisal or verification after construction to verify the appraisal remained accurate in all material respects. Attorney Morel stated he contacted the appraiser to ascertain the related costs. Attorney Morel reported the appraiser estimated \$2,500 to \$3,000 in costs to certify the current appraisal or approximately \$12,000 for a full new appraisal of the complex once completed.

Attorney Morel reported one of the other major issues the SBOF addressed was the need for a clarified definition of "uncompensated care" to ensure the hospital does not claim duplicate compensation for uncompensated services. Attorney Morel also discussed changes recommended by the SBOF to the lease agreement to delete any "County obligations" which Presbyterian was currently reviewing. Attorney Morel also noted the SBOF directives included a provision requiring a review by the SBOF if there were any revisions, deletions, or additions to the lease agreement.

Commissioner Willard noted a reference to the mill levy proceeds in the agreement and questioned if the reference needed clarification to identify the particular 2.0 mills dedicated to the hospital separately from the clinic mill levy of .6 mills.

There was general consensus to clarify the language and reference.

b) **Curt Temple, Planning Director (continued)** reminded of a prior request for signage at county boundaries on highways welcoming people to Historic Lincoln County. Mr. Temple submitted a design for review and informed he contacted the NM Department of Transportation to obtain requirements for posting of the signage.

There was general consensus to move forward with placement of the signage at the County boundaries.

## **20. Approval or Disapproval of Safety Net Care Pool and Indigent Health Care Claims**

Mr. Annala stated no Safety Net Care Provider Pool claims were submitted for the month of December 2016. Mr. Annala stated the lack of claims was likely related to the holidays and the rescheduling of the January Regular Commission Meeting.

Mr. Annala presented the Indigent Health Care Payments request for the month. Mr. Annala processed 9 claims with 6 claims recommended for approval and 3 claims are recommended for disapproval for a total payment this month of \$1,420.53. Mr. Annala stated approval of the claims would result in a total expenditure for Fiscal Year 2016-2017 to date of \$33,330 or a monthly average of \$4,761. Mr. Annala stated based on the current average he estimated expenditure of approximately \$57,138 of the \$100,000 budget.

**Motion:** Approval and denial of the claims as indicated for Indigent Health Care as recommended,  
**Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.  
**Vote:** Motion carried by unanimous vote (summary: Yes = 5).

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**SEE EXHIBIT F:** Copies of the Indigent Health Care Payments are attached hereto in reference thereto made a part hereof.

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

- a) Ordinance Authorizing Issuance and Sale of Up to \$25,000,000 General Obligation Bonds, Series 2017, for the Purpose of Constructing, Designing, Equipping and Furnishing, and to Acquire Land for a County Hospital; and Directing the County Manager and County Clerk to Publish Notice of Intent to consider an Ordinance Authorizing Such Bonds in a Newspaper of General Circulation Within the County

**Motion:** Schedule a public hearing to consider adoption of an Ordinance Authorizing Issuance and Sale of General Obligation Bonds, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**23. Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H.(7); and Discussion of the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8)**

**Motion:** To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H. (7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H. (8),

**New or Updated Matters since last report \***

1. **Water Rights Protests: New Mexico State Engineer Hearing Numbers: 14-039 and 14-041.** Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 *et. al.* and H-272 *et al* (T) and H-50-1 into H-272 *et. al.* (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs. Docketing Order filed Sept. 18, 2014. Kelly Cassels/Sanders, Bruin, Coll & Worley, P.A. has been retained by the County, entered his appearance Sept. 22, 2014 and has responded in behalf of the County.

2. **A. Preston, DeAnna v. County of Lincoln, Sheriff Robert Shepperd, Et. Seq. D-1226-CV-2015-00112** Notice of Appeal of Post Disciplinary Hearing filed June 10, 2015. Amended Complaint alleging Civil Rights Violation and Gender Based Discrimination filed on Oct. 13, 2015. Removed to Federal Court Nov. 12, 2015. Amended Complaint Appealing the Adverse Administrative Decision filed May 9, 2016 by Mr. Beauvais. Defendant's Notice of Filing Petition for Removal to Federal Court was filed May 19, 2016.

**B. "Preston, DeAnna v. County of Lincoln, Sheriff Robert Shepperd, Et Seq in the United States District Court For The District of New Mexico 2:15-cv-01029.** Defendants County of Lincoln and Sheriff Robert Shepperd's Motion to Dismiss entered November 19, 2015. Order Dismissing Without Prejudice entered by Judge Stephan Vidmar April 19, 2016. Amended Complaint Civil Rights Violation filed May 6, 2016 by Mr. Beauvais. Defendant's Motion for Summary Judgment and Qualified Immunity filed November 17, 2016. Plaintiff's Response to Defendant's Motion for Summary Judgment and Qualified Immunity filed December 12, 2016.

3. **\*Orlando Montes v. Pinnacle Propane, LLC, Allen Sultemeier, County of Lincoln, Lincoln County Fair Association, John Does: D-1226-CV-2016-00006 United States District Court for the District of New Mexico 2:16-cv-126.** Complaint for Wrongful Death, Statutory Tort, Violation of Constitutional Rights (Due Process), Negligence Per Se: Loss of Consortium, Negligent Infliction of Emotional Distress filed with the 12<sup>th</sup> Judicial District Court Jan. 19, 2016. Incident occurred at Lincoln County Fairgrounds July 2, 2015. County was served with Complaint on January 25, 2016. The case was removed to Federal Court Feb. 22, 2016. County of Lincoln's Answer to Complaint filed February 29, 2016. County's Response to Plaintiff's Motion for Partial Summary Judgment filed July 28, 2016. Estate of Montes and Orlando Montes' Response to County of Lincoln's Motion to Stay Discovery filed August 8, 2016. Settlement Conference took place September 6, 2016. The case did not settle. Motion to Dismiss was denied November 22,



2016.

4. \*Walter Ray Seidel / Brian Ray Seidel v. Anthony Manfredi, Lincoln County Sheriff Department M-32-CV-2016-00036 Civil Complaint filed March 9, 2016 alleging personal and property damage. County of Lincoln's Answer to Civil Complaint filed March 29, 2016. Motion for Continuance of Trial granted by Judge Buddy Hall on August 1, 2016. Motion for Dismissal was filed November 30, 2016. Motion Hearing is scheduled for January 18, 2017.

5. Sean McGarry v. Board of County Commissioners, Lincoln County Sheriff's Department, Deputy Mike Wood, Deputy Jason Green, Deputy David Hightower in their individual capacities and as employees of the Lincoln County Sheriff's Department in the United States District Court for the District of New Mexico 2:16-cv-00483 GBW GJF Complaint for damages resulting from the excessive use of force, false arrest, assault and battery, malicious prosecution and false imprisonment of Plaintiff by Defendants. Complaint filed May 26, 2016. Defendants Board of County Commissioners for Lincoln County and Lincoln County Sheriff's Department's Answer to Complaint for Civil Rights Violations filed August 11, 2016.

6. Greentree Solid Waste Authority v. County of Lincoln D-1226-CV-2014-00095 Verified Petition for Declaratory and Supplemental Relief: Injunction. County was served May 14, 2014. Stipulated Order of Dismissal Part With Prejudice and Part Without Prejudice was filed January 19, 2016 by Judge Jerry Ritter.

7. USA v. Dickerson, David, Lincoln County, et. al. 1:16-cv-00206-BL Complaint to Reduce to Judgment the Outstanding Joint Federal Income Tax Liabilities filed Nov. 23, 2016 and was received Dec. 1, 2016 at the Lincoln County Treasurer's office.

8. \*Cooper, Gale and DeBaca County News v. County of Lincoln, Sheriff of Lincoln County, et al. D-1329-CV-2007-01384 Suit filed October 15, 2007-Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information. Plaintiff filed Motion for Reconsideration and Rehearing July 8, 2016. Order Denying Motion for Reconsideration and Hearing was filed July 20, 2016. Plaintiff's Motion to Enforce Judgment on Awards filed Nov. 2, 2016. Motion Hearing is scheduled for February 2, 2017. Plaintiff filed Addendum to Motion to Enforce Judgement on Awards December 7, 2016. Defendant's Motion to Vacate Hearing and Dismiss Plaintiff's Addendum to Motion to Enforce Judgment on Award filed December 23, 2016. Hearing scheduled for February 2, 2017.

**Lincoln County Ordinance Violations:**  
**Alan P. Morel: 12<sup>th</sup> Judicial District Attorney's Office**  
**Special Prosecutor**

9. \*State of NM v. Romero, Roger M-30-MR-2016-00142 Violation of County Ordinance 2016-02 Accumulation of waste and litter on private property. A Non-Traffic Citation was issued by Sheriff's Deputy Evans on December 9, 2016. The Defendant appeared before Judge Vega December 23, 2016 and entered a plea of "Not Guilty." A Pre-Trial Hearing is scheduled for January 24, 2017 at 9 am on a Trailing Docket.

**Tort Claims Notices Received or Threatened**

**2016**

**Rains, Bonnie** – Tort Claim Notice received January 18, 2016 alleging failure of the County of Lincoln to maintain road surfaces during snow or ice conditions.

**Brazel, Stephanie** – Tort Claim Notice received January 20, 2016 alleging injuries incurred due to Claimant stepping in an alleged uncovered water meter hole at 2801 Sudderth Drive, Ruidoso, NM.

**William Gayford – Roger Linfoot** – Tort Claim Notice received February 17, 2016 from Attorney W. Chris Nedbalek alleging 4<sup>th</sup> and 14<sup>th</sup> Amendments violations and "possibly other constitutional, statutory, regulatory, legal or equitable rights not specifically named."

**Hill, Walter** – Tort Claim Notice received March 8, 2016 via emailed correspondence from Mr. Hill alleging the unlawful disclosure of confidential information from Mr. Hill's Lincoln County personnel file.

**Sonora Corporation (John Russell-CEO)**-Tort Claim Notice received April 6, 2016 via correspondence from Mr. Russell in response to a Notice of Investigation from NM Construction Industries Division due to an alleged lack of final inspection and deviation from approved plans of construction in 2012 at 119 Bald Eagle Court, Alto, NM.

**Jaramillo, Monica** – Tort Claim Notice received April 8, 2016 alleging Lincoln County road department employee in the performance of his road grading duties damaged Ms. Jaramillo's vehicle.

**Wagoner, John** – Tort Claim Notice received April 12, 2016 via telephone call to Mr. Morel's office when Mr. Wagoner threatened suit against Lincoln County with respect to alleged accumulation of garbage at property on Highway 70.

**Steward, Tynell** – Tort Claim Notice received April 18, 2016 alleging abuse while incarcerated in Lincoln County Detention Center.

**Coleman, Chad** – Tort Claim Notice received April 25, 2016 alleging warrantless search and seizure and malicious prosecution.



**Parsons-Williams, Karen** – Tort Claim Notice received June 2, 2016 alleging negligent or malicious medical procedure performed at Lincoln County Medical Center on March 9, 2016.

**Ceja, Dana** – Tort Claim Notice received September 22, 2016 alleging violations of the US and New Mexico Constitution and various charges while Mr. Joey Ceja was incarcerated at Lincoln County Detention Center.

**Vigil, Elisa** – Tort Claim Notice received October 3, 2016 alleging automobile damage due to Lincoln County road conditions.

**Rue, Barney** – Tort Claim Notice received October 4, 2016 via telephone to County Ordinance Administrator's office alleging Lincoln County's non-enforcement of its Solid Waste Ordinance regarding the alleged allowance of accumulation of waste.

**Town of Carrizozo** – Tort Claim Notice received November 14, 2016 from William N. Griffin alleging County of Lincoln's violation of the Town of Carrizozo's Ordinance 8-3-1, et. seq. regarding the County of Lincoln's effort to collect its own solid waste within municipal limits.

**New Mexico Department of Transportation** – Tort Claim Notice received December 9, 2016 involving property damage sustained to NMDOT property during a Lincoln County employee's transport of County equipment.

**Estate of Hector Acosta-Jimenez** – Tort Claim Notice received December 27, 2016 alleging negligence and/or failure to provide immediate necessary medical care, and/or allowing the death of Mr. Acosta-Jimenez while incarcerated at the Central New Mexico Correctional Facility and/or Lincoln County Detention Center.

## **2015**

**McDaniel, Carl** – Tort Claim Notice received Jan. 23, 2015 from Attorney John Sugg alleging violation of the Unfair Trade Practices Act and engaging in unfair or deceptive trade practices and/or unconscionable trade practices by GSWA.

**Sehorn, Sean M.** – Tort claim Notice received March 2, 2015 from Attorney Gary Mitchell alleging Lincoln County Detention Center failed to provide adequate medical treatment during inmate Sehorn's incarceration.

**Lavin, Erica L. and Rathgeber, Jack** – Tort Claim Notice received March 2, 2015 from Attorney Gary Mitchell alleging Constitutional Rights were violated resulting in wrongful termination.

**Hanley, Constance** – Tort Claim Notice received March 20, 2015 from Attorney John Sugg alleging violations of 42 USC section 1983, malicious prosecution, failure to investigate, defamation of character, libel and abuse of process.

**Capitan Iron Mine through A. Blair Dunn** – Threatened Litigation on April 1, 2015 against the County of Lincoln should Lincoln County require Capitan Iron Mine comply with Lincoln County Mine Ordinance 2009-01.

**Chavez, Billy** – Ordinance Violation: 2009-03 Regulating Refuse, Solid Waste and Litter in the County. March 10, 2015 certified letter mailed to Mr. Chavez giving him 30 days to dispose of debris on his property at 142 White Cat Road, San Patricio (Section 26, Township-10S, Range 16E, tract of land lying in the NE 4SE4). April 10, 2015 the property was inspected and noted no progress had been made.

**Culp, Susan v. LCMC/Lincoln County**: Tort Claim Notice received May 4, 2015 from Attorney Katherine Channing Roehl/Roehl Law Firm alleging medical malpractice, negligent supervision, negligent credentialing by staff, administrators and doctors at LCMC on or about March 3, 2015 during Ms. Culp's gall bladder removal surgery.

**Reyes, Roberto** – Tort Claim Notice received May 15, 2015 from Attorney Timothy White/Valdez White Law Firm alleging illegal seizure, illegal search, illegal imprisonment and wrongful conduct of the Lincoln County Sheriff's Department.

**Torres, Leopoldo**: Tort Claim Notice received June 4, 2015 from inmate Torres alleging inmate-initiated attack on inmate Torres at Lincoln County Detention Center.

**Wallace, Stephen**: Tort Claim Notice received June 11, 2015 from Attorney Gary Mitchell alleging deprivation of Constitutional rights due to false incarceration at Lincoln County Detention Center without proceeding with a timely extradition.

**Rodriguez, Victor** – Tort Claim Notice received July 13, 2015 from Attorney W. Chris Nedbalek alleging hostile treatment from fellow employees while employed at Lincoln County Detention Center.

**Prudencio, Fabian and Corinne** – Tort Claim Notice received July 24, 2015 from Attorney Daniel P. Ulibarri alleging negligence, personal injury, spoliation, indemnification and property damage against the County of Lincoln.

**Yates, Barbara** – Verbal Threat against the County issued July 21, 2015 due to ongoing flooding at her private property.

**Davis, Jack and Rema** – Verbal Threat against the County issued July 21, 2015 due to ongoing flooding at their private property.

**Capitan Iron Mine** – Tort Claim Notice received Sept. 24, 2014 via email from A. Blair Dunn, alleging County trespass on private property.

**L. Phillip Onsrud** – Tort Claim Notice received Nov. 3, 2015 via email alleging lack of medical care while incarcerated in Lincoln County Detention Center.

**Brown, Shelly** – Tort Claim Notice received December 31, 2015 alleged failure of the County of Lincoln to maintain road surfaces during snow or ice conditions.

**Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting and convened the Closed Session at 2:27 PM.

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 3:33 PM.

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

**24. Approval of Stipulation and Request for Order Regarding Lien Priority of Lincoln County: United States of America v. Susan Jane M. S. Dickerson, USAA Federal Savings Bank, Rocky River Associates, LTD, 24 Ruidoso Resort LLC, Jones County, and Lincoln County, Defendants. Civil No. 1:16-00206-BL**

Attorney Morel informed the lawsuit filed in the Northern District of Texas named Lincoln County as a defendant due to outstanding property taxes. Attorney Morel stated the agreement stipulated the Federal Government would have first claim on proceeds for payment of their costs and Lincoln County would receive payment of outstanding taxes second.

**Motion:** Approve the agreement and authorize the Chair to sign the agreement, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

Beverly Calaway, Treasurer questioned if the agreement was in conflict with NMSA 10-17-7 related to shortages in accounts of public officers.

Attorney Morel stated the agreement was not in conflict with NM State Statute as there was no diminishment of the debt and the agreement obligated payment of the outstanding taxes.

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

**Yes:** Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

**25. Signing of Official Documents**

**26. Next meetings:**

- a) February 21, 2017, Regular Commission Meeting: consideration of changing to February 22, 2017

Ms. Taylor reminded the issuance and sale of bonds for the construction of a new hospital would necessitate a public hearing to consider adoption of an Ordinance approving the terms of the sale. Ms. Taylor informed the bond sale date was set for the day after the Regular Commission Meeting which would necessitate either moving the date of the Regular Commission Meeting or calling for a Special Meeting to accommodate the associated public hearing and Ordinance adoption.

After a discussion of options, there was a general consensus to conduct the Regular Meeting on February 21, 2017 and set a Special Meeting for the purpose of holding a public hearing on February 23, 2017 at 10:00 AM at the Ruidoso Substation.

**27. Adjourn**

There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 3:46 PM.

County of Lincoln  
Board of County Commissioners

  
Preston Stone, Chair

  
Dallas Draper, Vice Chair

  
Elaine Allen, Member

  
Thomas F Stewart, Member

  
F Lynn Willard, Member

ATTEST:

  
Rhonda Burrows, County Clerk

February 21, 2017  
Date Approved

