

# COUNTY OF LINCOLN

## New Mexico Regular Meeting Board of County Commissioners

Todd F. Proctor, Chair  
Jon F. Crunk, Vice Chair

Samantha J. Serna, Member  
Mark G. Fischer, Member  
Pierre S. Pfeffer, Member

### Minutes Tuesday March 21, 2023

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on March 21, 2023, in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico. The meeting was also accessible via Zoom.

#### 1. Call to Order

Chair Proctor called the Regular Meeting of the Board of County Commissioners to order at 8:30 AM.

#### 2. Roll Call

##### Roll Call.

**Present:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

Others present included Ira Pearson, County Manager; Alan Morel, County Attorney; and Shannan Hemphill, County Clerk

#### 3. Invocation

The Invocation was presented by Commissioner Crunk.

#### 4. Pledge of Allegiance

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

#### 5. Approval of Agenda

**Motion:** Acceptance of the Agenda and authorized the Chair to move items as necessary.

**Action:** Approve, **Moved by** Commissioner Fischer, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

#### 6. Approval of Minutes:

- a. February 21, 2023, Regular Commission Meeting

**Motion:** Approve the minutes of February 21, 2023, Regular Commission Meeting, **Action:** Approve, **Moved by** Commissioner Serna, **Seconded by** Commissioner Pfeffer.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

#### 7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending February 28, 2023
- c. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims
- d. Approval of Procedures & Timeline for 2023-2024 Budget Preparation
- e. Cooperative Law Enforcement Agreement Between the County of Lincoln and the USDA, Forest Service, Lincoln National Forest
- f. Approval of Prior Year Invoice Received 3/13/2023 – Presbyterian -\$562.00.

- g. Approval of Subaward Recipient Agreement Between the County of Lea and the County of Lincoln
- h. 2022 Volunteer Firefighters Annual Reporting
  - Arabela Volunteer Fire Department
  - Bonito Volunteer Fire Department
  - Glencoe Palo Verde Volunteer Fire Department
  - Hondo Valley Volunteer Fire Department
  - Lincoln Volunteer Fire Department
  - Nogal Volunteer Fire Department
  - White Oaks Volunteer Fire Department

Chair Proctor questioned item 7f. and Manager Pearson stated it was for pre-employment physicals and the bills would be sent sooner in the future.

Commissioner Serna requested item 7b. Treasurer's Financial Report be pulled out of the Consent Agenda and be discussed separately.

**Motion:** Approve Consent Agenda excluding Item 7b., **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

7b. Sherrie Huddleston, Treasurer, provided a brief overview of the Treasurer's Financial Report for the Month ending February 28, 2023. Commissioner Fischer questioned the risks of the funds deposited in banks right now. Treasurer Huddleston informed them they were currently insured at 102%.

Commissioner Pfeffer questioned the long-term planning of Annual Budgets. Commissioner Serna explained the County had a comprehensive plan however, it was last updated in 2008 and may need to be revisited. Commissioner Pfeffer requested it be brought as an agenda item in the next Regular Commission Meeting.

**Motion:** Approve Item 7b., **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Pfeffer.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**SEE EXHIBIT A:** Copies of the Consent Agenda items are attached hereto in reference thereto made a part hereof.

#### **8. Approval of Budget Adjustment FY 22/23 by Resolution 2023-43**

Manager Pearson explained the Budget adjustments and detailed the changes in the line items. Manager Pearson stated the increase in the road department was due to a match in the Local Government Transportation Project Fund. Manager Pearson informed them they moved the Colonias to a separate line item and created its own fund. Manager Pearson stated the Indigent funds Safety Net Care Pool would be \$68,000 short so a budget adjustment would be needed to cover it.

**Motion:** Approve Budget Adjustment FY 22/23 by Resolution 2023-43, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**SEE EXHIBIT B:** Copy of Resolution 2023-43 is attached hereto in reference thereto made a part hereof.

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

- a. Smokey Bear Ranger District

Jennifer Thomas, Smokey Bear Ranger District, briefed on three projects; fence construction around the blue lake area, McBride post fire vegetation treatment at Warrior Dr and Gavilan Rd, and the OCEC power line replacement around FR117 and stated the comment period would be open until April 20, 2023. Ms. Thomas stated the funding for the McBride fire restoration and repair would be used to reseed areas not yet covered.

Ms. Thomas spoke about the Declaration of Fire Danger being considered by the County and said she did not feel it was needed but if the Commissioners felt it necessary it should be considered.

Commissioner Fischer questioned the work with the allotment owners and the reduction of cattle in the allotment areas. Ms. Thomas stated the District had not limited current permittees and they work together with permittees when issues arise. Chair Proctor stated Bonito Lake was full again and was questioning the work with the City of Alamogordo to refresh the entire area.

b. Lincoln County / NMSU Extension Services

Melody Gaines, Family Consumer Science Agent, detailed some of the happenings in the office over the last month. Mrs. Gaines explained some upcoming events around the state which the office and youth of the County would be participating in.

c. South Central Mountain RC & D

Robert Barber, Board of Directors RC&D, updated on the progress with the EWP and WUI Projects and explained they were ongoing and would need to be maintained. Mr. Barber stated Resolution 2017-25 Land Use Plan was being redone and they would need the County assistance in approval and enforcement.

d. Upper Hondo Soil & Water Conservation District

Mr. Barber informed the EWP in the Hondo Valley was being hampered with the larger water flow, however the EWP in Nogal Canyon was proceeding well, and they would start seeding soon and using the waddles. Mr. Barber stated they were looking to hire an additional person.

e. Land and Natural Resources Advisory Committee-LANRAC

Mr. Barber explained they were monitoring the BLM grazing activity. Mr. Barber stated they had only seen chapters 1-2 of the draft EIS so far. Mr. Barber discussed the need for them to support the allotment owners.

Robert Shepperd, LANRAC, explained the Forrest Service owned the water rights and the mineral rights and how that affected the allotment owners.

**12. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS (Items are for discussion only – no action will be taken)**

Commissioner Fischer discussed the allotment owners and his concerns with the Federal Government having too much control.

Chair Proctor attended the Fire Station opening celebration along with fellow Commissioners. Chair Proctor attended the onsite meeting with Pattern energy to look at the variance request. Chair Proctor also attended the opening of the ballot boxes along with Commissioner Pfeffer.

Clerk Hemphill spoke about a couple of upcoming Special Elections which will be taking place in the County. Clerk Hemphill thanked the Commissioners who attended the opening of the ballot boxes and welcomed the Commissioners and the public to attend all election related activities in her office.

Treasurer Huddleston informed her office was mailing out notices letting everyone know the second half of the taxes were due.

Sheriff Wood detailed statistics from his office over the last month.

George Vega, Chief Appraiser, stated the notice of values would be mailed from the Assessor's Office at the end of the month.

Robert Shepperd, County resident, stated Elk were not native to area and they were brought into the area in the 1960's. Mr. Shepperd questioned the UTV usage, and the damage caused to property and livestock. Mr. Shepperd would like to see the Forest Service better assist the allotment owners with materials needed in the upkeep of their areas.

Steven Ochoa, Public Defender, stated he would be attending Commission meetings more often. Mr. Ochoa requested an Agenda item for a game and fish expert to present before the

Commission. Mr. Ochoa detailed some of the Elk hunts in the area and the amount of Elk tags which had been issued.

Gary Popplewell, resident, reviewed the discussion list he presented last month and requested the items be reviewed, discussed, and added to future agendas.

Cynthia Black, resident and business owner, spoke on the threats by the Federal Government on the rights of the citizens as well as the attempted power grab from the State over the local government's ability to regulate themselves. Ms. Black mirrored Mr. Popplewell's concerns.

Chair Proctor recessed the Commission meeting at 9:52 AM and reconvened the Regular Commission meeting at 10:00 AM.

**10. Consideration of Variance Request for Pattern SC Holdings LLC, Ancho Wind LLC, Cowboy Mesa LLC, and Mesa Canyon Wind, LLC (collectively the "SunZia South Project"), Lincoln County WECS**

Jeremy Turner, Pattern Energy, introduced McKenna Carrusso, Associate Business Analyst, and detailed her extensive involvement in the wind farm process.

Mr. Turner explained the blade tip height and reviewed the variance requested. Mr. Turner explained they meet the setback required on 3 of the 4 setback requirements, the only one not meeting the setbacks are the road setback requirements. Mr. Turner discussed turbine collapses and when and how they handle them and stated the Dutch handbook showed there were 1/17,000 collapses.

Commissioner Pfeffer questioned the icing and shut down procedures and verified the turbines would be shut down in icy weather no matter the set-back.

Chair Proctor discussed the safety concerns and stated he was content after participating in the on-site visit. Chair Proctor felt it important to continue with the placement of each of the turbines as the property owners were expecting them to be placed.

**Motion:** Approve the Variance Request for Pattern Energy on the 4 sites as described, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Fischer.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**11. Lincoln County Clerk:**  
**a. Board of Registration Update**

Clerk Hemphill detailed the process her office went through in conjunction with the Secretary of State's Office to ensure the accuracy of the voter rolls. Clerk Hemphill explained the 2023 Board of Registration convened on March 7, 2023, and consisted of three members from both parties, Charles Rick Preston, Jerry Maly and Margaret "Margo" J McKee, who reviewed the list of inactive voters, the certificates of registration and the electronic voter registration records. Clerk Hemphill stated there were no discrepancies found and the Board certified for removal all 764 voters presented on the list.

**b. Review, Discussion and Direction of the Master Software License Agreement Between the County of Lincoln and Pioneer Technology Group**

Clerk Hemphill explained there was a contract signed by the previous County Clerk for a new software system which they were in the process of implementing. Clerk Hemphill stated the new system would not work well with the current system being used in the Assessor's Office as well as the rest of the County offices. Clerk Hemphill informed the County may need to consider the option of switching County-wide to a new system which would work better for all offices involved.

Manager Pearson explained the current software company the County was using and the inadequacy of the software as it was an old IBM Dos system. Manager Pearson stated the previous Clerk requested quotes and found a company that would work for her office, which was a good idea, to get a new system with better functionality, the problem was the company chosen was specific to Clerk's offices and did not have modules for other County offices. Manager Pearson requested permission to go out to RFP for a County wide system.

Attorney Morel explained he had not reviewed the contract prior to signing and was unsure if the County would be able to get out of the contract or if they would have to continue with it, and he was unsure if the County Clerk even wanted out of the current contract. Clerk Hemphill stated they had already paid about \$9,000 to Pioneer for services so far and they ensured they would be able to work with the other offices if they moved to a non-IBM Dos based system.

Clerk Hemphill stated her office was only doing basic data entry in anticipation of switching software companies. Clerk Hemphill informed her office would be willing to wait on transitioning if they were able to get out of the current contract and the County as a whole would be going to another software provider, however if that was not possible, she would continue the process to switch to Pioneer Technology Group.

Commissioner Crunk questioned the amount of time expected prior to a new system being implemented. Manager Pearson stated there would be a 90-day window in reviewing the RFP's before the implementation could even begin. Commissioner Crunk stated the County had outgrown the old binary system and he felt it best for the County as a whole to be on a new software if possible.

Commissioner Pfeffer stated since none of the offices were happy with the current software provider the County would have to find a new provider in the not to distant future and he didn't feel it appropriate to delay the search. Chair Proctor requested Attorney Morel reach out to Pioneer to determine what terms and conditions would be required to terminate the contract. Chair Proctor felt it best to have all departments on the same software. Manager Pearson stated he would prepare an RFP for approval at the next Commission meeting.

### **13. Lincoln County Detention Center Update- Warden, Ross Castleton**

Manager Pearson provided an update on the detention center and informed BIA picked up the entire BIA population and took them for medical review and then housed them in Colorado and elsewhere. Manager Pearson stated a new contract was being worked on.

Mr. Ochoa, Public Defender, explained local holds were being held in another state. Mr. Ochoa informed them they were unable to communicate with their clients and hoped the contract would be worked out soon.

Attorney Morel stated the County should contact Mescalero directly and make sure they were aware it was not the County who removed them from the local Detention Center. Commissioner Crunk questioned the ability to include the US Senators in working through the process immediately.

### **14. Lincoln County Medical Center:**

#### **a. Update – Todd Oberheu**

Todd Oberheu updated on the Hondo clinic and the security changes of the clinic. Mr. Oberheu stated there was a potential solution found for the drainage at the Medical Center. Mr. Oberheu informed us the bridge exiting the back of the hospital was too rough and needed some changes.

Mr. Oberheu explained Heritage moved out of their space, so Presbyterian was looking to move Dr. Rath and Dr. Combs to that location to make a future Women's Clinic and free up some space in the medical complex.

Mr. Oberheu stated he was working with Sandy Nunnally to increase to 24-hour ambulance stations in three locations, Carrizozo, Alto and Ruidoso.

Mr. Oberheu detailed the Unity Point and Presbyterian merger and stated until 2021 the President of Unity was the COO of Presbyterian. Mr. Oberheu felt it would be strong organization after the merger was complete.

Commissioner Pfeffer requested County Attorney stay focused on the Merger to make sure the County still had a say and easy working relationship with the organization after the merger was complete.

#### **b. Discussion and Direction Regarding the Medical Director Agreement for Volunteer Fire Department and Emergency Medical Dispatch**

Mr. Oberheu informed Dr. Otero oversees the process and is available to Dispatch and the Fire Department for consultation on medical needs. Mr. Oberheu stated funding was available for

training of EMS and possible Fire Department and Emergency Medical Dispatch personnel to become fully EMS trained.

**Motion:** Approve the Medical Director Agreement for the Volunteer Fire Department and Emergency Medical Dispatch, **Action:** Approve, **Moved by** Commissioner Fischer, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

- c. Consideration and Approval of the Temporary Operating Agreement and Premises License Between the County of Lincoln and Presbyterian Healthcare Services (Hondo Valley Healthcare Clinic)

**Motion:** Approve the temporary operating agreement for the Hondo Valley Healthcare Clinic, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Fischer.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

## 15. Manager's Report

### 1) New Mexico Counties (NMC) Hosts Harassment Prevention Training – 2/23/2023

Mark Allen (NMC HR attorney) facilitates many trainings that are offered to our county at no cost. Some training courses are designed for supervisors, while this training was geared for all employees.

*This training will provide the participant an understanding of the behavior and conduct which constitutes unlawful harassment on the basis of sex, sexual orientation, gender identity, race, color, religion, national origin, age (40+), and disability. Participants will learn the difference between quid pro quo sexual harassment and hostile work environment, who can be considered harassers, and that illegal harassment is not limited to the workplace.*

### 2) Consolidated Dispatch Update

The Village of Ruidoso is still working on the Horton Complex that will contain the dispatch center. The County of Lincoln, Ruidoso and Ruidoso Downs are still working on finalizing an agreement between the entities. Preliminary numbers show that the County of Lincoln will be paying around \$500,000 per year based on charging per call volume. Current County dispatchers will be offered a VOR dispatch job when the consolidation takes place. Current budgeted FTE salary and benefit cost to the county is around \$417,000 – Seven positions.

### 3) Kick-off Meeting for the Lincoln County Multi-jurisdictional Hazard Mitigation Plan

Wendy Blackwell - SWCA Environmental Consultants – Lead the meeting to introduce and discuss the Planning Team role, planning process, timeline, and community involvement approach. The VOR is the Lead for the Contract. VOR, Ruidoso Downs, Village of Capitan and Lincoln County were all present (we discussed reaching out to Village of Corona). This is a new project for me and will have to learn as we go. Joe Kenmore and a few others have worked on Hazard Mitigation Plans in the past – We will be leaning on them for support.

### 4) Report a Road Concern is Up and Running on the Website.

[www.lincolncountynm.gov](http://www.lincolncountynm.gov) / How Do I / REPORT ROAD CONCERN

This form automatically emails Road Superintendent, Admin, me and the Road Foreman. Provided phone numbers, pictures and email addresses help staff respond to concerns and organize the work schedule.

Please ask residents, employees and elected officials to utilize this tool.

### 5) Meeting with Penasco Valley Telephone – Mitch Hibbard

Mitch Hibbard met with staff to update us on the Lincoln Fiber Project and the future plans of installing fiber in Lincoln County. He will be able to present at the 4/18/23 BOCC meeting.

**6) Sun Valley Fire Station – Open House 3/7/2023**

The open house was a great success. I want to thank everyone for attending and welcoming this new building to our fire team.

**7) Lincoln County Recovery Coordination Meeting (DR-4652)**

Every two weeks we join the NMDHSEM team to discuss the latest progress on our recovery efforts (McBride and Nogal Fires). FEMA NMDHS, County, VOR EDA and many more teams give the latest update and try to set achievable goals before the next meeting. Progress has been made with EDA (future funding opportunities). We still have NOT been reimbursed for CAT A & B (debris clean up).

**8) Pre-Bid Conference for IFB 22-23-3 Lincoln County Courthouse Drainage Improvements 3/10/23**

A virtual Pre-Bid conference was held for the courtyard drainage project. Only one company attended the discussion. Bids are due 3/21/2023. BOCC will get updates as soon as complete the IFB Process.

**9) Director's Reports**

**29. Discussion and Consideration of Purchasing a Back-Up Generator for Sheriff's Dispatch Center**

Nicholas Losito, DFA Local Government Division E911 Bureau, explained the best approach would be for the County to purchase the Generator, have it installed and be reimbursed through the FY24 Grant. Mr. Losito stated they could reimburse for a temporary generator through the FY23 Grant.

Joe Kenmore, OES, informed the electrician checked the location and they were currently running about 15KW so the 25KW generator from New Horizons would be sufficient. Mr. Kenmore stated it would cost about \$4,000 to pull the old generator, install and check the new one.

**Motion:** Approval of the purchase of a generator not to exceed \$75,000 and the purchase of the UPS replacement using the Statewide Price Agreement as presented, **Action:** Approve, **Moved by** Commissioner Pfeffer, **Seconded by** Commissioner Fischer.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

Chair Proctor recessed the Commission meeting at 12:27 PM and reconvened the Regular Commission Meeting at 1:00 PM.

**16. Lincoln County Fairgrounds House Update – Road Superintendent, Jeffrey Honeycutt**

Mr. Honeycutt stated they had an expected completion date of May 18, 2023, and they had spent about 32% of the approved funds so far.

**17. Lincoln County Lodger's Tax:**

- a. Obtain Board of County Commissioner's Approval to Select Two (2) Specific Lodgers for Audit:
  1. Condotel aka Vacation Rental Pros – NM
  2. Caldwell Investment Holdings, LLC

Manager Pearson explained per the County Ordinance section 9(2) the County Manager may choose to audit any vendor to verify the full amount of lodger's tax was collected.

**Motion:** Approve the two specific Lodgers for audit as presented, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

- b. Obtain Board of County Commissioner's Random Selection of Two (2) Additional Lodgers for FY 21/22 Annual Audit

The two additional Lodgers selected at random for audit were 111 (smaller size) and 14 (larger size). The alternate, number 69, was selected at random from the larger size.

- c. Approval of Lodger's Tax Funding Request:  
1. Event: Ride Ruidoso – Spring Thunder Concerts  
Amount Requested: \$20,000.00  
Date(s) of Event(s): May 20, 2023  
Presenter: Tim Roberts – Village of Ruidoso

Tim Roberts and Sydney Mallory, Village of Ruidoso, presented the funding request and detailed the Ride Ruidoso and Spring Thunder Concerts events. Mr. Roberts stated the overall budget was about \$65,000 and they were looking for additional partners and businesses in the County.

**Motion:** Approval of the Lodger's Tax Funding Request from the Village of Ruidoso in the amount of \$20,000, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

- d. Consideration and Approval to Appoint Ashley Roberts to Lodger's Tax Committee

**Motion:** Approve the appointment of Ashley Roberts to the Lodger's Tax Committee, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**18. Discussion and Consideration of Resolution 2023-45: Declaration of Fire Danger Emergency**

Joe Kenmore, OES Director, explained the vegetation was extremely dry and the winds weren't letting up. Mr. Kenmore stated it was important and the Ordinance required anyone who was going to do any type of burning to call into the dispatch center.

Commissioner Crunk questioned the timing and length of the Resolution and if it would be long enough to cover the entire season as needed. Manager Pearson stated per State Statute it could only be in place for 30 days but could be renewed again for an additional 30 days as needed.

**Motion:** Adopt Resolution 2023-45: Declaration of Fire Danger Emergency, **Action:** Adopt, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Fischer.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**SEE EXHIBIT C:** Copy of Resolution 2023-45 is attached hereto in reference thereto made a part hereof.

**19. Consideration of Lincoln County Sheriff's Office Omnibus Crime Bill Act/HB68 Spending Guidelines and Spending Plan**

Geraldine Martinez, Undersheriff LCSO, explained they were awarded a grant with required expenditures over a three-year period. Undersheriff Martinez stated they finally received clarification on the funding ability of the grant and informed the first amount was to be spent by June 30, 2023. Undersheriff Martinez explained the County would like to provide the stipend, as presented, to each of the Sheriff's Deputies with the full amount from the first year and then each quarter for the subsequent years.

Manager Pearson questioned the stipend and if it would affect their bargaining agreement. Sheriff Wood stated he did not believe it would affect their bargaining agreement.

Attorney Morel recommended revising it to say they must be in good standing, be certified, stay for at least a year, and it would be subject to applicable taxes.

**Motion:** Approve the Lincoln County Sheriff's Office Omnibus Crime Bill Act/HB68 spending guidelines and spending plan as outlined with recommended changes, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**20. Lincoln County Fairgrounds**

- a. Consideration to Approve the Fairgrounds Phase 1A Construction Contract/Purchase Order to Renegade Construction, LCC.

Eric Hamilton, Wilson & Company, detailed construction phase 1A and expected completion by July 4 rodeo. Commissioner Fischer questioned the ability to get some milestone progress reports. Mr. Hamilton stated the review would likely happen every 2 weeks. Commissioner Pfeffer questioned the schedule to determine if the July 4 rodeo would be able to be held without a problem if the construction phase was not able to be completed. Mr. Hamilton stated progress would be monitored at 30 and 45 days out to ensure accessibility for the event and a contingency plan would be in place.

Attorney Morel requested the addition to the contract with Renegade Construction there would be no penalties to the County if the project was not complete by the July 4 rodeo and they had to remobilize.

**Motion:** Approve the Fairgrounds Phase 1A Construction Contract/Purchase Order to Renegade Construction, LLC, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

- b. Consideration of a Professional Services Task Order for Part-Time Construction Management Services for the Fairgrounds Phase 1A Project to Wilson & Company

**Motion:** Approve the Professional Services Task Order for Part-Time Construction Management Services for the Fairgrounds Phase 1A Project to Wilson & Company, **Action:** Approve, **Moved by** Commissioner Serna, **Seconded by** Commissioner Crunk.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

- c. Discussion and Consideration of the Fairgrounds Phase 1B construction project, costs, available funding and Contract/Purchase Order

Eric Hamilton, Wilson & Company, explained the budget shortfall of \$900,000. Mr. Hamilton detailed Phase 1B of the construction project. Mr. Hamilton explained the drainage enhancements and storm drain need to be done together and the wash racks would be good to keep on the list for the present time; however, the sidewalk and the full perimeter fencing could be done in the future if needed. Mr. Hamilton recommended beginning Phase 1B after the Fair was over in August.

Commissioner Proctor questioned Wilson & Companies' ability to help find additional funding opportunities. Mr. Hamilton stated they had a Grantsmanship and Funding Team actively looking for additional funding streams.

**Motion:** Approve Fairgrounds Phase 1B Construction Project, costs, and available funding and Contract/Purchase Order using Lodgers Tax and ARPA for the shortfall, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**21. Lincoln Domestic Water Association**

- a. State Water Trust Board Funding Update

Rory McMinn, president of the Lincoln consumer domestic water association, stated the process started in 2018 after review of water tanks and needed upgrades. Mr. McMinn informed me that the initial grant was for \$2,360,000 with a match of \$280,000 which they had requested from the

County. Mr. McMinn explained they had planned to request an additional \$80,000, however it was now less, so they were requesting an additional \$74,000. Mr. McMinn stated the project should be complete in the first quarter of 2025.

Commissioner Crunk questioned the number of households the area serviced. Mr. McMinn explained they had 54 meters and were looking to add additional fire hydrants on the opposite side of the road and possibly a separate tank for fire use only. Mr. McMinn stated 30 of the 54 meters were owned by the State. Mr. McMinn informed us rates had been increased to help cover the additional costs.

- b. Consideration of Request for Additional Grant Match Dollars Using the American Rescue Plan Act (ARPA) Fund

**Motion:** Approve the additional \$74,000 using ARPA funds, **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Fischer.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**22. Consideration of Resolution 2023-46 Opposing the Listing of the Lesser Prairie Chicken as an Endangered Species**

Chair Proctor explained the resolution was the County's way of stating their opposition.

**Motion:** Adopt Resolution 2023-46 opposing the listing of the lesser prairie chicken as an endangered species, **Action:** Adopt, **Moved by** Commissioner Fischer, **Seconded by** Commissioner Crunk.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

**SEE EXHIBIT D:** Copy of Resolution 2023-46 is attached hereto in reference thereto made a part hereof.

**23. Discussion and Direction Regarding the Solid Waste Management Contract and the Issuance of a Request for Proposal (RFP)**

Manager Pearson requested direction on the issuance of an RFP for solid waste. Attorney Morel stated a special meeting may be an option as there were a large number of topics to be discussed. Treasurer Huddleston explained there was no money transferred into the solid waste department from the general fund. Francesca Herrera, public works director, stated the equipment purchased 8 years ago was out of date. Chair Proctor requested a workshop and then the agenda item be brought back at the next meeting.

**24. Lincoln County Executive Session Pursuant to the Open Meetings Act: Discussion of All Threatened and/or Pending Litigation, Section 10-15-1, Subparagraph (H)(7); And Discussion Of the Purchase Acquisition or Disposal of Real Property or Water Rights by the Public Body, Section 10-15-1, Subparagraph (H)(8); And Limited Personnel Matters, Section 10-15-1, Subparagraph (H)(2)**

**Motion:** To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation, Section 10-15-1, Subparagraph (H)(7); And Discussion Of the Purchase Acquisition or Disposal of Real Property or Water Rights by the Public Body, Section 10-15-1, Subparagraph (H)(8); And Limited Personnel Matters, Section 10-15-1, Subparagraph (H)(2), **Action:** Approve, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

Chair Proctor recessed the Regular Meeting and convened the Closed Session at 2:57 PM.

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

1. **Board of County Commissioners of Lincoln County v. Roger Romero D-1226-CV-2018-00055** Complaint for Foreclosure. Complaint was filed February 20, 2018. Defendant Roger Romero filed an Answer to the Complaint asserting a Counterclaim to be filed in the U.S. District Court on April 2, 2018. A Judicial Inquiry Hearing took place September 4, 2018. The case is still pending.

2. **Roger Romero v. State of New Mexico – D-1226-CV-2018-00113 (Underlying Cases are: Board of County Commissioners of Lincoln County v. Roger Romero, D-1226-CV-2018-00055, and State of N.M. v. Roger Romero M-30-MR-2016-00142)** A Petition for Writ of Habeas Corpus was filed requesting that the Judgment & Sentence entered by Judge Vega in Cause No. M-30-MR-2016-00142 be vacated and set aside. George Romero's Answer to Complaint and Counterclaim was filed April 30, 2018 in Cause No. D-1226-CV-2018-00055. On February 26, 2019, an Order Setting Aside Conviction was entered by Judge Counts.

**On March 25, 2019, a Notice of Appeal was filed with the N.M. Supreme Court, Case No. S-1-SC-37602** On January 8, 2021, the Supreme Court entered its Dispositional Order of Transfer transferring the case to the Court of Appeals for consideration and review.

**On January 28, 2021, a Dispositional Order was entered transferring the case to the NM Court of Appeals for consideration and review. Case No. A-1-CA-39446** On December 8, 2022, the case was submitted to a 3 Judge Panel for a decision.

3. **Romero, et al. v. Stone, et al. Cause No. D-1226-CV-2019-00271** Request for Appointment of Guardian Ad Litem for Plaintiffs and Complaint for Violation of Civil and Constitutional Rights, Negligence, Prima Facie Tort and Wrongful Taking was filed on October 9, 2019 along with a Jury Demand. Lisa B. Riley is the presiding Judge. The case is still pending.

4. **Brd. of County Commissioners of Lincoln County v. Amerisourcebergen Drug Corp., et. al – U.S. Dist. Court Case No. 2:19-cv-00462** – Complaint for Public Nuisance, Violations of Racketeer Influenced and Corrupt Organizations Act (RICO)... filed on May 20, 2019 by Attorneys Robles, Rail & Anaya, P.C., et. al. After receiving no oppositions to the transfer of the case, on June 17, 2019, the case was transferred to the Northern District of Ohio noting that as of December 5, 2017, 1,534 cases have been transferred to Ohio for further proceedings. Settlement has been reached with some of the Defendants and, Lincoln County has begun to receive payments from some of the settling Defendants. The case is still pending.

5. **Greentree Solid Waste Authority v. Lincoln County, Cause No. D-1226-CV-2014-00095** – Compromise and Settlement Agreement and Release executed on December 17, 2015.

6. **Debra Wilcox v. Board of County Commissioners, Deputy Samuel C. Hanna, Caroline McCoy and Former Sheriff Robert Shepperd, Cause No. D-1215-CV-2021-00574** Complaint for Damages was filed on the 2<sup>nd</sup> day of September, 2021 by Steven Sanders alleging personal injury resulting from an improper and grossly negligent investigation and for "malicious abuse of process". County Defendants were served on November 2, 2021. The case is still pending.

7. **Eby Revocable Trust AND William R. Moser v. Lincoln County Assessor, et al, Cause No. D-1226-CV-2021-0260** A Notice of Appeal of Decision of Tax Protest Board was filed on the 14<sup>th</sup> day of December, 2021 by Attorney Zach Cook. On January 27, 2022, New Mexico Counties assigned Attorney Daniel Macke to represent Lincoln County. The case is still pending.

8. **Crystal Buster v. Board of County Commissioners for Lincoln County, Correctional Solutions Group, LLC, et al, Cause No. 2:21-cv-01208** A Complaint for Recovery of Damages Caused by the Deprivation of Civil Rights with a Jury Demand was filed on the 12<sup>th</sup> day of December, 2021, by Coyte Law P.C., and the Law Offices of Matthew Vance, P.C. The case is still pending.

9. **Lionel Burns v. Lincoln County Sheriff's Department; Deputy Daniel Brawley; in their individual and official capacities, and Rhonda Burns, Cause No. D-1226-CV-2022-00032** A Complaint for Damages was filed on the 4<sup>th</sup> day of March, 2022, by Clayton E. Crowley, Esq. and Joseph J. Gribble, Esq.

**On April 22, 2022 the case was removed to the U.S. District Court for the District of New Mexico, Cause No. 1:22-cv-000304.** The case is still pending.

10. **Potential Recovery of County of Lincoln Losses from the McBride / Nogal Fires**

11. **Butch's Properties, LLC v. Vera Cruz Ranches, et al, Cause No. D-1226-CV-2022-00166** A Complaint to Quiet Title was filed on the 18<sup>th</sup> day of August, 2022 by Attorney William Griffin. Lincoln County was served on the 26<sup>th</sup> day of August, 2022, and filed its Answer to the Complaint on the 26<sup>th</sup> day of September, 2022. The case is still pending.

12. **Rosarita Brady, et al v. The Board of County Commissioners of the County of Lincoln, et al, Cause No. D-1226-CV-2022-00199** A Verified Complaint was filed by Attorneys Alexandra Bobbit and McKenzie St. Denis on the 27<sup>th</sup> day of September, 2022. Lincoln County

was served on the 22<sup>nd</sup> day of November, 2022. Lincoln County Defendants filed their Motion to Dismiss in Lieu of an Answer to the Complaint on the 6<sup>th</sup> day of January, 2023.

13. **Dennis Rich and Yvonne Rich, v. Walt Hill, et al, Cause No. D-1226-CV-2022-00230**  
A Complaint to Quiet Title was filed on the 22<sup>nd</sup> day of November, 2022 by Attorney H. John Underwood. The County of Lincoln has yet to be served.

14. **\*State of New Mexico v. Richard Jeremy Moisa, Cause No. M-30-MR-2022-00087A** A Complaint for Violation of Lincoln County's Animal Control Ordinance was filed by LCSO Sgt. Jesse Finley on the 29<sup>th</sup> day of August, 2022. A Final Pre-Trial Conference is scheduled to take place on the 28<sup>th</sup> day of March, 2023, and a Bench Trial is scheduled to take place before Judge Mickie Vega on the 4<sup>th</sup> day of April, 2023.

15. **\*BB Lane, LLC / 137 Bluebelle Lane** Violation of Lincoln County's Lodgers' Tax Ordinance.

#### **Tort Claims Notices Received or Threatened**

##### **2023**

**\*Smoley, Cinthia** – Tort Claim Notice received February 24, 2023, [Claimant also sent the Tort

Claim directly to New Mexico Counties Claims Department] alleging that beginning on November 28, 2022, she was subjected to a conspiracy of constitutional deprivations when she was unlawfully removed from her home at 105 Bluebird Lane, Ruidoso, NM. Her claims include that: she sustained injuries while being detained, she was abused during her incarceration at the Lincoln County Detention Center, she was assigned a Public Defender without her consent, and that all of her pets were immediately euthanized by the Lincoln County Humane Society the day of her arrest. Claimant has named the following agencies in her claim: Twelfth Judicial District Court, Lincoln county Sheriff's Office, Ruidoso Police Department, New Mexico State Police, Ruidoso Animal Control, Lincoln County Animal Control, Humane Society, Lincoln County Magistrate Court Judge, Katie Lund.

**\*Smoley, Robert** – Tort Claim Notice received February 24, 2023, [Claimant also sent the Tort

Claim directly to New Mexico Counties Claims Department] alleging that beginning on November 28, 2022, he was subjected to a conspiracy of constitutional deprivations when he was unlawfully removed from his sister's home at 105 Bluebird Lane, Ruidoso, NM where is resided. His claims include that he was abused during his incarceration at the Lincoln County Detention Center, he was assigned a Public Defender without his consent, and that all of his pets were immediately euthanized by the Lincoln County Humane Society the day of his arrest. Claimant has named the following agencies in his claim: Twelfth Judicial District Court, Lincoln county Sheriff's Office, Ruidoso Police Department, New Mexico State Police, Ruidoso Animal Control, Lincoln County Animal Control, Humane Society, Lincoln County Magistrate Court Judge, Katie Lund.

**Ramos, Heber** – Tort Claim Notice received on February 17, 2023, alleging Civil Rights Violations and injuries sustained while Mr. Ramos was incarcerated at the Lincoln County Detention Center.

**Booth, Marcus** – Tort Claim Notice received January 26, 2023, alleging injuries sustained by Claimants head due to the actions by staff of the Lincoln County Detention Center and staff's refusal to take Claimant for medical treatment.

**Ornelas, Mark** – Tort Claim Notice received on January 4, 2023, alleging injuries sustained on October 11, 2022, as a result of an automobile accident / rollover of the Detention Center Transport Van owned by Lincoln County while being transported from Eddy County Detention Center to Lincoln County Detention Center.

##### **2022**

**Schwartz, Neil** – Tort Claim Notice received on February 10, 2022 alleging malicious and/or tortious actions and/or omissions by the State of New Mexico, the Lincoln County Sheriff's Department, the New Mexico State Police, and the Twelfth Judicial District Attorney's Office resulting in damages to Claimant including, but not limited to, infliction of mental pain and suffering, injuries to Claimant's reputation, and current and future loss of earnings.

**Downs, Barbara** – Tort Claim Notice received May 6, 2022 alleging improper road and/or waterline maintenance resulting in a vehicle collision due to the icy road at the intersection of Sudderth Drive and Paradise Canyon in Ruidoso, New Mexico. A 2<sup>nd</sup> Tort Claim Notice was

received on May 9, 2022 for a separate source with the same allegations as those set out in the May 6, 2022 notice.

**McMinn, David** – Tort Claim Notice received on July 6, 2022, alleging multiple, serious issues due to the use of excessive force by BIA law enforcement who may have been agents of or acting on behalf of the Village of Ruidoso, Ruidoso Police Department, Lincoln County, N.M. State Police and the State of New Mexico.

**New Mexico Boys and Girls Ranches, Inc. and its Employee, Bridgman, Ted** – Tort Claim Notice received on August 9, 2022, alleging violation of civil rights and tort claims act, including a demand to cease and desist and the return of promotional materials confiscated by County representatives at the Lincoln County Fair.

**Estates of Wesley Clark and Linda Clark** – Tort Claim Notice received on October 11, 2022 alleging wrongful deaths as a result of the McBride Fire due in part to faulty siren warning systems.

**Snodgrass, Joshua** – Tort Claim Notice received on November 2, 2022 concerning loss of employment with the Lincoln County Sheriff's Office commencing on June 23, 2022.

**Grassie, Kurtis** - Loss of employment with the Lincoln County Sheriff's Office commencing on June 23, 2022.

## **2021**

**Cervantez, Adam** - Tort Claim Notice received on July 8, 2021 alleging the use of excessive force and related constitutional claims during his arrest on April 22, 2021.

**Kieter, Dave; Jakubcewicz, Mark; Riddle, Jasper; Patton, Van** – Tort claim Noticed received on July 27, 2021. Claimants each allege damages to personal and real property as a result of the extraordinary flooding experienced throughout Lincoln County.

**Myers, Sylvia** – Tort Claim Notice received August 30, 2021 alleging that Lincoln County Medical Center's treatment fell below the standard of care.

**Siegel, Erik** – Tort Claim Notice received August 30, 2021 alleging deprivation of rights involving tort, constitutional rights, and other claims.

**White, Lionel Glenn, Jr., and family members and tenants, Ralph Nosker and his family members, Barbara Arthur and her family members, and Barlou, LLC** – Tort Claim Notice received September 16, 2021 alleging inundation by water resulting in damages to existing roadways and parking in the Gavilan Canyon Road area which are all located within the municipality of the Village of Ruidoso.

**Smoley, Cinthia** – Ms. Smoley submitted to the Lincoln County Treasurer Department a Statement dated 11/2/2021, for "Arbitration Award/monies due for default".

**Vonderane, Glenn** – Tort Claim Notice received October 19, 2021 alleging personal injury while using a staircase at the Village of Ruidoso public parking lot located at 151 Center Street.

Chair Proctor adjourned the Closed Session and reconvened the Regular Meeting at 3:49 PM.

Commissioner Crunk attested matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting and no action was taken.

## **25. Approval to Sign and Submit the Teva and Allergan Opioid Settlement Participation Forms**

Chair Proctor confirmed this Agenda item was not needed at this time.

## **26. Consideration of Entering an Opioid Remediation Collaborative Joint Powers Agreement between the County of Lincoln and Other "Counties" or "Participating Entities"**

Adren Nance, Law firm of Nance, Pato & Stout, explained seven Counties had joined together in a Joint Powers Agreement to pool opioid remediation funds and other Counties were considering joining as well. Mr. Nance stated the funds were only available for Opioid remediation and their use was extremely limited. Mr. Nance spoke about the needs assessment and the plans to

collaborate and stated Valencia County would be Fiscal Agent. Mr. Nance explained an assessment would be done in each County to determine the needs.

Manager Pearson questioned the ability to remove the County from the JPA if it did not fit the County need. Commissioner Crunk questioned if the cost of running the facility was beyond the prescribed amount, would the County be required to add additional funds. Commissioner Pfeffer requested the Agenda Item be brought back in April for consideration.

**27. Discussion and Direction Regarding Construction Permitting, Oversight and Enforcement of the Memorandum of Understanding Between the Village of Ruidoso and the County of Lincoln for the Provision of Regulation Services of Residential and Commercial Construction Within Certain Specified Areas of the County of Lincoln.**

Attorney Morel detailed the Memorandum of Understanding and explained the lack of enforcement. Francesca Herrera, Public Works Director, explained they would need to work with the Sheriff's department on code enforcement.

There was a lengthy discussion about code enforcement. Commissioner Pfeffer requested the Agenda Item be brought back in April for consideration.

**28. Discussion and Direction Regarding Placing Cellular Towers on County of Lincoln Property**

Manager Pearson requested permission to gather information, when the county is approached about placing cell towers, and bringing the information to the Commission for approval.

**30. Signing of Official Documents**

**31. Next meeting:**

a. Tuesday, April 18, 2023, Regular Commission Meeting

**32. Adjourn**

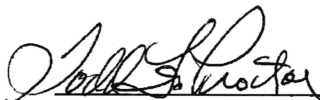
**Motion:** Adjourn, **Action:** Adjourn, **Moved by** Commissioner Crunk, **Seconded by** Commissioner Serna.

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

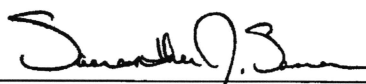
**Yes:** Commissioner Fischer, Commissioner Serna, Commissioner Pfeffer, Commissioner Crunk, Chair Proctor.

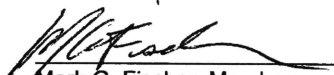
There being no further business to come before the Board of County Commissioners, Chair Proctor adjourned the meeting at 4:38 PM.

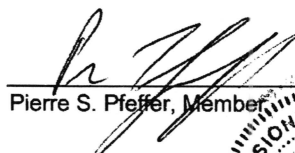
County of Lincoln  
Board of Commissioners

  
Todd F. Proctor, Chair


  
Jon F. Crunk, Vice Chair

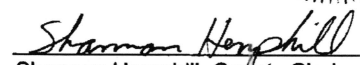
  
Samantha J. Serna, Member

  
Mark G. Fischer, Member

  
Pierre S. Pfeffer, Member

ATTEST:



  
Shannan Hemphill, County Clerk

April 18, 2023  
Date Approved