

Regular Meeting

April 17, 2007

The Board of County Commissioners, in and for the County of Otero, State of New Mexico, met in a Regular Meeting at the Otero County Courthouse in Alamogordo, County and State aforesaid. Meeting called to order by the Chairman at 6:00 p.m., April 17, 2007; and he announced that reasonable notice for this meeting was given to the Alamogordo Daily News, and to Radio Stations, KPSA, KINN and KYEE.

Present:

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| Doug Moore | Chairman |
| Clarissa McGinn | Vice-Chair person |
| Michael Nivison | Member |
| Dr. Martin Moore | County Manager |
| Ray Backstrom | Assistant County Manager |
| Dan Bryant | County Attorney |
| Pamela Heltner | Commission Liaison |
| Bill Lee Parker | Road Superintendent |
| Lynn Estrada | Deputy Clerk |

DRAFT

Dan Bryant gave the invocation. Commissioner Moore led the Pledge of Allegiance and the Salute to the Flag of the State of New Mexico.

Proclamation: Proclamation and Certificate of Appreciation for the Retired & Senior Volunteer Program.

Commissioner McGinn read the proclamation into the records.

Proclamation: Meth Awareness Week.

Commissioner McGinn read the proclamation into the records, proclaiming April 16th through April 27, 2007 Meth Awareness Week.

Presentation: Presentation regarding the Upper Pecos Watershed and Regional Water Planning. Stuart Hanson, Water Master for the Hondo Sub Basin of the lower Pecos Watershed and Juan Hernandez, Basin Supervisor, approached the Board to answer any questions the Commission or the public had.

Commissioner Moore stated that we had received some information from the State, that since a portion of Otero County falls in that watershed, the extreme eastern part, the discussion was in the near future that some funding might be required from us and a tax might be put in place levied against those properties through which that watershed ran, and through which those folks may or may not have had declared water rights. Mr. Hanson stated that it would not be necessary for the County's to pay for the Water Masters, because at the last Legislative Session funding was passed to pay the Water Masters at the State level. What the Water Master does is day to day in the field interface between the Office of the State Engineer and the water users of the State of New Mexico. The Roswell Artesian Basin is a very mature water use area. It has been metered for over 50 years and a model of success as far as water management, for all purposes municipal and irrigation. It has shown the way of what needs to happen in the rest of the state, especially as population, pressure and demands on the water supply increase.

Commissioner Moore asked Mr. Hanson if he also controls surface water. Mr. Hanson stated that yes he does. Commissioner Moore stated that to those dynamics the surface water, where the little streams flow off into there some of the historic land owners up there have some rights to that surface water, do they not. Mr. Hanson stated that this is correct. I know as we move forward with these water issues there will be challenges against declaration and quantity. Let's say we have a farming operation that is

irrigating and they have a declared right, do you guys go look at that operation and are they actually metering the diversion off that surface flow? Mr. Hanson stated that in many places we are and many places we are not. We help them whenever we can with periodic physical measurements, we actually get in the stream with our tools and measure the flow. There will be a metering order at some point for the Hondo Basin. When that will be issued by the State Engineer, Mr. Hanson is not sure. As the demand on the water supply increases, measurement at all levels becomes absolutely necessary.

Commissioner Moore stated that the concerns with our residents in the mountains, is that many times on a water right the age of the original right of the document that they perceived gave them that and many times is used as seniority. As the uses become more and more and if we suffer more drought years, the supply may diminish greatly. There were some concerns that the potential for them to lose some of their historic, what they felt like, diversion rights. They are not worried so much about well water as they are the surface water. They are at or near the point of origin of that water source and there were some concerns that the residents in the valley that are running farming operations, might very well make a run and be successful at it. Saying they had a senior right that would take all the water that the shed could produce. Mr. Hanson stated that New Mexico is a priority state, and what that means is that the boldest demonstrated beneficial use of the water has priority. In New Mexico the state owns the water and the individuals have the right to use the water.

Commissioner Moore thanked Mr. Hanson and Mr. Hernandez for coming tonight and looks forward to working with them in the future.

1. Consent Agenda:

Commissioner McGinn made a motion to approve all items under the consent agenda with the exception of numbers 6, 9, 10, 11, 12, 15, 18 and 20. The motion was seconded by Commissioner

Nivison. A vote was taken and the motion passed unanimously. See pages

Item 6: Commissioner McGinn made a motion to approve sealed bid #07-024, plumbing supplies for Twin Forks MCWCA, contingent upon the New Mexico Environment Departments approval. The motion was seconded by Commissioner Nivison.

Evelyn Schultz, President for Twin Forks mutual domestic in Mayhill, stated that the bids and amounts are fine, but there are two grants here and only one has been signed. The one that was signed in item #10 for \$103,000 is listed as a severance tax bond, this is incorrect it is a general fund.

Commissioner Moore stated that we are only discussing item 6. Ms. Schultz stated that they agree with the bids that have been received for item 6. A vote was taken and the motion passed unanimously. See pages.

Item 7: Commissioner McGinn made a motion to approve Resolution No. 04-17-07/95-60 for budget adjustments for the Upper Cox Canyon VFD, to reflect the receipt of a grant from the State Fire Marshals Office in the amount of \$180,000. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

Item 10: Commissioner McGinn made a motion to approve Resolution No. 04-17-07/95-61 for budget adjustments for the Legislative Grant Fund to reflect the receipt of a grant from the Environmental Department, for the Twin Forks Mutual Domestic Water Consumers Association in the amount of \$103,000. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

Item 11: Commissioner McGinn made a motion approving the agreement between Twin Forks Mutual Domestic Water Consumers Association and Otero County, to permit grant funded (06-1169) work replacing old water lines. The motion was seconded by Commissioner Nivison. A vote was

taken and the motion passed unanimously. See pages

Item 12: Commissioner Nivison made a motion to consider approving Resolution No. 04-17-07/95-62, banning burning in Otero County. The motion was seconded by Commissioner McGinn for discussion.

Commissioner McGinn requested a briefing from Paul Quairol, Safety Coordinator, of the reasons for the burn ban at this time. Mr. Quairol stated that the recommendations have been made due to the light flashy fuels that have grown since our rain event in 2006. The dry grass and twigs have grown considerable since that time period. The weather patterns that are also in effect now, the red flag warnings and high winds are assisting in drying out these fuels. We have also had a minimum of 15 fires that are related back to wild land fire type incidents, whether it be people burning off their grasses and it got away from them or burning their grass and not taking the proper precautions. We also have serious conditions in the Lincoln National Forest, Cloudcroft, Sunspot and leading into Mescalero; a bug that is defoliating trees and causing a higher fire danger in those that can actually start into a crown fire. Commissioner Moore stated that there hasn't been a summer go by that we haven't done a burn ban, but we haven't done one this early in the year. He has received several phone calls from residents, for agricultural purposes, they would like the Commission to delay this decision. There are also some requirements from the state statutes that require projections of drought and dry conditions and continuation of that event for 60 days. Dan Bryant stated that those statutory requirements are contained in the fireworks ban portion of the law. Many years we have combined the two together, because the fireworks ban has the high drought condition precursor and it must be reviewed every 30 days. In this particular draft we have not incorporated a fireworks ban at all, because we are way out in front of the fireworks season and have two or three meetings where we can monitor conditions. The other rule on

fireworks is that the ban has to be in place at least 20 days ahead of the holiday, so our trigger date is always June the 14th. We make sure we take action prior to June 14th. Commissioner Moore asked if the Forest Service had implemented any fire ban on their portion of controlled management? Paul Quairola stated that at this point they have not. The fire condition on the forest was several areas of high fire danger, nothing is extreme yet, but there was high danger and moderate danger.

Commissioner Moore likes the language in the resolution, but he can't support it at this time. He would like to give the farmers a few more weeks to take care of their agricultural needs. With the rain and winds they haven't been able to burn their fields.

Being 6:30 p.m. the Chairman called the Public Hearing on adoption of Otero County Ordinance No. 07-04, a Revenue Bond Ordinance for the construction of an I.C.E. Detention Facility in Chaparral, New Mexico to order. The Chairman recessed the Public Hearing and returned to the discussion in the Regular Meeting.

Norbert Sanchez, Under Sheriff for Otero County, stated that he has received numerous phone calls from residents through out the County, concerned about not being able to burn their property or clean out their properties because of the winds. They are concerned that if the ban goes into effect , their property will be overrun with weeds, which will be a fire danger in itself. Mr. Sanchez stated that he has spoken with the Forest Service and they don't have any intentions of having any fire restrictions in the near future. If we could consider giving the residents until the end of May the beginning of June to get their fields burned. Commissioner McGinn stated that in some of the conversations over the years when we considered these burn bans, has been the collection of yard waste, poses a potential fire hazard as well. Residents are looking to burn some of this off versus not being able to burn through a ban. Commissioner Nivison stated that the fuel load in the mountains is over whelming. For his

district, he isn't relying on the Forest Service to take the lead. One year we had a resolution that addressed the flats and agriculture and the mountains also. It may be appropriate to do the same thing this year.

Wayne Glidden, La Luz Fire Chief, stated that he encourages the Commission to pass this resolution.

Fred Reeser, Upper Cox Canyon Fire Chief, stated the he also encourages the Commission to pass the resolution on the burn ban.

Commissioner Moore called the question, all those in favor of approving Resolution No. 04-17-07/95-62. A vote was taken and the motion did not pass with Commissioner Moore voting no, Commissioner McGinn voting no and Commissioner Nivison voting yes. See pages

Item 15: Consider approving the renewal of a CO-OP agreement between the U.S. Department of Agriculture, Forest Service and Otero County, to continue county road maintenance on 122.27 miles of U.S. Forest Service roads.

Commissioner McGinn made a motion to table this item for attorney review, with Mr. Parker from the Road Department. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously.

Item 18: Request approval of the project agreement between USDA Natural Resources Conservation Service and Otero County, to restore the floodway channel of the Upper Rio Penasco by removing cobble and rock from the river channel and adjacent fields within the floodway.

Commissioner McGinn made a motion to approve the project agreement as stated. The motion was seconded by Commissioner Nivison.

Dan Abercrombie approached the Board and gave a brief description of the agreement. Mr.

Abercrombie stated that all this work will be done on private land. Dikes will be made from the debris to give us some protection from the flow of water. We are going to try and put the water back to it's original path.

A vote was taken and the motion passed unanimously. See pages

Item 20: Request approval to post an RFP for the proposed replacement of Legacy Software with a Comprehensive Intergraded Assessor's-Treasurer's Software Package. The proposed down payment is \$150,000 with an estimated total price of \$400,000 to be paid within a four to five year period.

Commissioner McGinn made a motion to post an RFP for the proposed replacement of Legacy Software with a Comprehensive Intergraded Assessor's-Treasurer's Software Package. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously. See pages

2. Public Hearing:

Commissioner Moore called the Public Hearing on the adoption of Otero County Ordinance No. 07-04 back to order.

Dan Bryant, County Attorney, stated that this ordinance is the revenue bonding ordinance to start phase III of the Detention Facilities at Chaparral, New Mexico. This phase will house I.C.E. prisoners, which are immigrations prisoners. It will be located immediately next door and just to the west of the existing facility. There will be some modifications to certain of the operations, waste water treatment and things like that at the site, due to the increase size. This facility will add approximately 1,000 beds to the existing site. The bond ordinance is designed to create a funding stream necessary to construct the facility and to provide some operational cost coverage while the facility is ramping up to full population, as well as to provide for some furnishings and equipment at the facility. Like phases I and

II, this is a pure revenue bond, revenue stream facility. Included in your agenda report is a copy of the statement that appears throughout the bonding ordinance that makes it clear that this is a revenue bond facility. The facilities revenue will generate the payment and the only thing that secures the bonding program are the revenues of the facility. Additional funds, monies, and property and equipment that belong to Otero County, are not part of the security stream with respect to the bonding ordinance. The immigration service has desperate need for a facility quick. The construction program is on a very quick and tight schedule and our plan is to open the facility and begin accepting prisoners sometime between August and November 2007.

Commissioner Nivison made a motion to adopt the Otero County Ordinance No. 07-04, a Revenue Bond Ordinance for the construction of an I.C.E. Detention Facility in Chaparral, New Mexico. The motion was seconded by Commissioner McGinn. A vote was taken and the motion passed unanimously. See pages

The Chairman closed the Public Hearing and returned to the Regular Meeting.

3. Commission Discussions/Correspondence:

a. Commissioner Moore stated that he attended a New Mexico Association of Counties meeting in Albuquerque. They presented information that San Miguel County in conjunction with New Mexico Association of Counties has prevailed in litigation against the State of New Mexico, requiring that the State Department of Corrections provide funding to house detained paroles on state charges. In the language of the State Supreme Court, who caught the final appeal, was the amount of monies budgeted is irrelevant to the states responsibility. The State Legislators, in the past, have provided minimum funds that were never adequate to address the need. Within the past legislative session they supplemented their 1.5 million with an additional 5 million. The mechanism by which counties, who

run Detention Facilities, will be able to access this funding is still in the development stages.

b. Commissioner Moore stated that there is some proposed language change within the Medicare, Medicaid ordinance that is coming from the federal level, which if enacted, would reduce the amount of monies that all the states receive as matching funds for our medical services. If the language change that is proposed at the federal level is enacted, we could lose seventy five percent of all the funds that we currently have to provide what minimal resources that we can. We intend to vehemently oppose this through our alliances with the Association of Counties, as well as separate Counties. New Mexico Department of Health has called a meeting and has invited the county government's as well as the Hospital Association to discuss those proposed language changes.

c. Commissioner Nivison stated that we are having a meeting tomorrow at 10: 00 a.m. on the condition of the forest, in Cloudcroft at the Village Office. We will also be touring the infected areas of the forest.

4. Unscheduled Citizen Communications:

a. Homer Holcomb approached the Board to thank them for their interest and concern for the residents of Otero County.

5. Executive Session:

Commissioner McGinn made a motion to go into executive session to discuss items list under B. pending and threatening litigation- Forest Guardians vs. U.S. Forest Service, Thistle de-listing, C. Personnel-Organizational restructuring, personnel contracts and job duties for new managers, D. Land-disposal and acquisition of land, Aces School, F. Detention Center- discuss additional prison facilities in Chaparral, G. extend County Attorney contract until June 30, 2007, direction on County Attorney bid award process. The motion was seconded by Commissioner Nivision. Roll call was as follows:

Commissioner McGinn	yes
Commissioner Nivison	yes
Commissioner Moore	yes

Commissioner McGinn made a motion to come out of executive session having discussed items listed under B., C., D., F., and G, having made no decisions. The motion was seconded by Commissioner Moore. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Moore	yes
Commissioner Nivison	yes

With the information discussed on item B.2, pending threatening litigation, regarding thistle de-listing, Commissioner McGinn made a motion to authorize the new petition to de-list the thistle. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously.

Commissioner McGinn stated under item G., contracts as discussed in executive session, Commissioner McGinn made a motion to appoint the Board of County Commissioners as the evaluation committee for the contract for county wide legal services. In light of the previous appointed evaluation committee, providing no recommendation on the bid proposals for county legal services. The motion was seconded by Commissioner Nivison. A vote was taken and the motion passed unanimously.

Commissioner McGinn made a motion to go back into executive session to discuss and act as the evaluation committee to review bid proposals for county wide legal services. The motion was seconded by Commissioner Nivison. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Nivison	yes

There being no further business before the Board, the Chairman adjourned the meeting at 8:45 p.m.

APPROVED:

Doug Moore, Chairman

ATTEST:

Robyn Silva, County Clerk

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