

Board of County Commissioners of Lincoln County
Agenda for June 18, 2013

9:00 Call to order and Pledge of Allegiance

9:00 Casey Toyne with Farm Service Agency to discuss emergency grazing

10:00 Human Services Director Colette Barksdale to conduct further training on the financing of human services, including budgets and allocations

1:00 Continue discussion on a property access issue

1. Approve the minutes from the June 6, 2013 meeting
2. Review the May reports from the County Clerk and the Treasurer
3. Review the budget modification for the Immunization Core Services and the executed option letter for the Core Nursing Contract, both received from the Colorado Department of Public Health and Environment
4. Review and sign a memorandum of understanding with Public Health for use of the fairgrounds events building in case of a disaster
5. Review a proposal from Plains Heating & Air Conditioning for an air conditioning unit for the courthouse
6. Review information received from County Technical Services, Inc. concerning naming an agent to receive notices of claims pursuant to C.R.R. 24-10-109 and notifying the Department of Local Affairs of such agent
7. County Commissioners' reports
8. County Administrator's report
9. County Attorney's report
10. Old business
11. New business

The Board of Lincoln County Commissioners met at 9:00 a.m. on June 18, 2013. The following attended: Chairman Ted Lyons, Commissioners Greg King and Doug Stone, County Administrator Roxie Devers, and Clerk to the Board Corinne M. Lengel. County Attorney Stan Kimble attended in the afternoon, and Will Bublitz with The Limon Leader and Eastern Colorado Plainsman attended until noon.

Chairman Lyons called the meeting to order and asked Casey Toyne with Farm Service Agency to lead the Pledge of Allegiance.

Mr. Lyons then asked him what the county would have to do to receive the emergency haying/grazing designation, but Mr. Toyne responded that since the county is in the primary nesting and grazing season until July 15, they cannot even request the designation until after that time. He added that the problem is that the northern half of the county has received adequate moisture, while the southern half has not, and the whole county has to meet the threshold of a forty percent loss in precipitation in the past four months, which it doesn't unless they split the county. Ultimately, it is the county committee's decision, but he wants to submit the request as soon as possible, hoping to send the paperwork to the state by July 8. Mr. Lyons didn't understand why they had to wait since the county has been declared a disaster county, but Mr. Toyne explained that they are two different things and receiving the disaster declaration doesn't have an impact on emergency haying and grazing.

Mr. Lyons asked if a letter from the commissioners would help in any way, and Mr. Toyne replied that it wouldn't hurt, but he honestly didn't see the approval being given prior to July 15. Mr. King commented that he always appreciated a letter from the county when he was in Mr. Toyne's position.

Mr. Stone asked about crop insurance, as he had received questions from farmers down south, and Mr. Toyne told him that there can be a reduction in payments if the farmer has a loss on their crop. Mr. Stone said they are working the ground to meet the deadlines, but the winds have been so bad that they don't really make any progress. Mr. Toyne said they could possibly plant after the final planting date and the county committee could adjust it.

Mr. King put in that the rules are basically written for the Corn Belt. Historically, if Texas, Kansas and Oklahoma are in trouble, Colorado will see some relief; otherwise, generally not.

Mr. Toyne had brought a newsletter that he shared with the commissioners and covered a few of its main topics: DCP sign-up ends August 2; acreage certification for spring crops is July 15; and the county committee nomination period ends on August 1. He also asked if the commissioners would like for him to meet with them on a quarterly basis, and the Board agreed it may be beneficial.

Fairgrounds Manager Julie Joffe stopped in to let the Board know she had purchased twenty solar lights for the area along the creek bed and that she wants to mount them on ground stakes but has not yet purchased the lumber. She also handed out pictures she had taken after

the Rodeo Bible Camp event and stated that there needs to be a general understanding of what rules apply when large groups rent the fairgrounds, as she has had problems with people not obeying the posted parking signs. Not only did the last group have numerous 4-wheeler or ATV-type vehicles, but they also had animals in the area designated for motor vehicles, which left quite a mess. She stated that if there had been an event scheduled for the Ellis Allen building immediately following, people would have had trouble walking through the parking lot. It should be understood that rental of the entire fairgrounds does not mean that renters have free access to everything, nor should they be allowed to disregard all parking signs. She had asked Ms. Devers to provide one of the maps of the grounds, which designates parking, to each renter when they request use of the fairgrounds, and believes that may help.

Mr. Stone said he'd spoken with Alan Carr, sponsor of the event, and was told they would try to do a better job next year. Mr. Carr said to let him know if there was anything he needed to do. Ms. Joffe said she may get in touch with him and have him clean the parking lot.

Mr. Lyons said he thought the county had a liability issue with the ATVs, which was one of the reasons they disallowed them in the first place, and Mr. Stone said the vehicles he had seen when he was out there were Gators or Workhorses, not actual 4-wheelers, but Ms. Joffe disagreed. Ms. Devers said that the rules specified all ATV-type vehicles unless authorized by fair personnel or used by fair employees were not to be allowed on the grounds.

Ms. Joffe then passed around several pictures she had taken of the damage she noticed in the Ellis Allen building after the wedding reception on May 31. Ms. Devers and Ms. Joffe had met with the bride, who asked why they were not getting their deposit back. She told Ms. Devers that they did not use tape, but they had taken a couple of the baffles down. When Ms. Devers gave her the reasons the county was not returning the deposit, she said they weren't told all those things; that they had to clean out the trash cans, clean the parking lot, or couldn't use staples. She also said there were already numerous staples in the walls which made them think they could be used. Ms. Devers said she had told her that was true; those things were not specifically listed in the contract, and asked the Board if they would like to return all, or a portion, of the deposit in light of that fact. Also, family members had restacked the tables that were not there when the tables were set up so they did not know how they should be stacked on the carts.

Ms. Devers said she has updated the rules to include cleaning the parking lot and trash cans, and allowing nothing to be used on the walls to affix decorations. Ms. Lengel asked how patrons will be able to decorate if they can't use anything to hold up their decorations, so the rule was then changed to allow push pins only.

Mr. Stone said that things happen and people don't always clean up as well as you would like them to and that it can't cost too much to replace the two torn baffles. Mr. King agreed, stating that he wasn't sure that some of the baffles didn't have previous damage, and it was hard to know for sure. Mr. Stone made a motion to return \$200 of the \$300 damage deposit to Rick

Sandersfeld for use of the fairgrounds on May 31. Mr. King seconded the motion, which carried unanimously.

Ms. Joffe asked the commissioners if it was okay to enforce the parking signs at the fairgrounds and if her idea to hand out copies of the map to parties renting the facilities was also acceptable, and the Board agreed to both.

Human Services Director Colette Barksdale then met with the Board to conduct further training on the financing of human services, including budgets and allocations. Ms. Lengel excused herself from the meeting until Ms. Barksdale had finished.

Travis Nall came in to discuss the bid request for the courthouse roof repairs that the past commissioners had approved. Ms. Devers asked if the roof jacks and sewer vents need to be replaced, but actually all the roof jacks around the vents need to be replaced. Travis said that the bid request should include the requirement that the current sealant be removed down to the existing roof and that it be replaced with an equivalent, or better, product. Also, there are a total of ninety-two vents that the roof jacks need to be replaced around. Ms. Devers said she would set up a date and time for interested bidders to come and look at the roof, so that they did not have to go up several different times, and the group agreed on July 9, at 9 a.m.

Mr. King made a motion to approve the minutes from the meeting held on June 6, 2013, as submitted. Mr. Stone seconded the motion, which carried unanimously.

The Board reviewed the May reports from the County Clerk, Treasurer, and Assessor, as well as the Public Health budget modification for the Immunization Core Services and the executed option letter for the Core Nursing Contract. Ms. Devers said she'd had Mr. Lyons come in and sign the budget modification for an increase of \$5,193, as it had arrived after the June 6 meeting and had to be back to the state by June 14. Mr. Stone made a motion to sign the modification, Mr. King seconded the motion, and it carried unanimously. The Core Nursing Contract did not need a signature but basically stated the new renewal period starts July 1, 2013, in the amount of \$25,323.

Mr. King made a motion to sign a memorandum of understanding with Public Health for use of the fairgrounds events building in case of a disaster. Mr. Stone seconded the motion, which carried unanimously.

Mr. Stone made a motion to sign the proposal to Plains Heating and Air Conditioning for the replacement of an air conditioning unit in the amount of \$6,034. Mr. King seconded the motion, which carried unanimously.

The Board reviewed information received from County Technical Services, Inc. concerning naming an agent to receive notices of claims pursuant to C.R.R. 24-10-109, and notifying the Department of Local Affairs of such agent. Mr. King made a motion to appoint Roxie Devers as the agent, Mr. Stone seconded the motion, and it carried unanimously.

Mr. Stone reported checking on washed-out roads after the meeting on June 6, attending the meeting regarding prisons in Limon on June 10, and the Assessment Appeals training on June 11. On June 12, he checked on some roads that the road crew was putting hot mix on, and on the Fourteenth he went by the fairgrounds to check on the Rodeo Bible Camp and then came to the courthouse for the annual county picnic.

Mr. King reported attending the same meetings as Mr. Stone on June 10 and 11, and on the Thirteenth he attended the Centennial Mental Health meeting in Wray where they discussed the role of the hospital and the sheriff's department in relation to juvenile placement. They are working on an MOU to help each agency recognize their responsibilities. Mr. King also said he'd received several phone calls and visits about statehood. He also wanted to report a minor incident with one of his truck drivers who hit a power pole and slightly damaged it. K.C. Electric will bill the county for a new power pole, but the truck was not damaged at all.

Mr. Lyons had also attended the meeting on June 10 in Limon, and reported that Paul Norris with K.C. Electric had contacted him to let him know that they reached an agreement with Ravenkamps and will be putting in the new section of power lines and poles on County Road 2W. Ms. Devers had left Mr. Lyons a message to call Brandy DeLange with CCI about the prison meeting and give his feedback on it. He said he'd called Ms. DeLange back and let her know that he didn't believe the meeting was very helpful. Mr. Lyons had also received a phone call from Carl Stogsdill about seceding from the State of Colorado, and he also went by the landfill and by Carl Tudor's place one day when it was windy to listen to some of the wind towers. He said he'd listened from the road at Fisher's and in other areas as well, and hadn't noticed a lot of noise from the towers. Mr. Lyons reported that Gene Vick had also contacted him about seceding from the state, and he'd received another couple of phone calls regarding people farming up to section lines. On June 14, Mr. Lyons checked on the oil wells and attended the county picnic. Lastly, he stopped by the landfill the previous day and noticed that they were extremely busy. He asked if it would be possible to get them some extra help through Useful Public Service. Ms. Devers said they could check with Lori Nunn and see if she had anyone that could be used.

At 1:00 p.m., discussion continued on a property access issue. Others attending the discussion were Sheriff Tom Nestor and Undersheriff Gordon Nall, County Assessor Jeremiah Higgins, Roger Hogan, Dale Bode, Ralph, Kimel and Matthew Brent, and Steve Monks.

Mr. Kimble began the discussion by stating that Ms. Devers had done extensive searching and found a couple of maps; one dated 1963 that reads, "State Highway System Revised as of Jan. 1, 1976/County Road System Revised as of Jan. 1, 1976," and a 1979 Mylar map that someone had handwritten the road numbers on. Ms. Devers wasn't sure where the Mylar map had come from, but believed it must have been used to create the 1992 map—that hangs on the commissioners' wall—with road and house numbers on it. The 1979 map was done when the federal aid highway system was started. Neither of the maps Ms. Devers found shows the trail being disputed by the Brents and Mr. Bode. Mr. Kimble added that Mr. Monks is representing the Brents and stated that most likely the Brents will have to take the matter to court, as the

county map used to make other decisions should actually be considered as the official county road map. He added that a private citizen *can* establish a county road as a public road on a section line *if* they can prove everything necessary according to statute, such as continuous use for twenty years.

Ralph Brent argued that every deed or land abstract a person gets when they purchase property states that access to that property is granted through section lines, and Mr. Kimble stated that he assumes there will be litigation from their standpoint, but from the commissioners' standpoint, the road is not on their map; therefore, it is a court decision.

Mr. Brent said they were discussing two different things; establishing a road versus access down a section line, and Mr. King wanted to know why the county was even being involved in the situation. Mr. Monks stated that he doesn't believe the county actually should be, because even though the county has the ability to build a road on every section line, it doesn't mean that it has to.

Mr. Kimble said it was his belief that Mr. Monks wanted assurance from the county commissioners that the county would not prohibit the road from becoming a county road if the court deems that it should be one, and the commissioners agreed that was true, although Mr. King added that he, for one, does not want to buy right-of-way. Mr. Kimble added that the road would have to be built for public good and he assumed it would take some kind of a study to determine how much use it would actually get. Mr. Lyons said that if it were to become a county road it would have to be maintained and turned into the state for HUTF funds, or it could be left as is with a thirty foot easement on either side. Dale Bode responded that that was the problem—someone wasn't following the 30' rule.

Mr. Kimble stated that they were having this discussion to determine which map to use, and Mr. Lyons said it appeared to him that they would need to compare the 1979 map with the 1992 map, update the map to reflect changes made since 1992, and adopt it. Mr. Kimble said they may need to hold a hearing, but based on what Ms. Devers had found, the map on the commissioners' wall can be used as the official county map until it is updated.

Mr. Monks spoke up to state that everything goes back to the 1887 Road Order recorded in the County Clerk's office, and asked the commissioners not to ignore its existence.

Mr. Lyons said that at this time the Board will designate the 1992 map on the commissioners' office wall as the official county map in order to meet state statute, at least until it can be updated, and any decisions about anything else will be up to the courts. Mr. King added that he feels a precedent has been set since other decisions have been made using the map in the commissioners' room as the official county map.

Mr. Stone made a motion to designate the map hanging in the commissioners' meeting room, dated 1992, as the official county road map, and to begin the process to update the map. Mr. King seconded the motion, which carried unanimously.

Mr. Lyons wanted to be clear that the Brents do not have the right to treat the trail in question as a county road until something is determined in court, and Matthew Brent asked why they would have to prove it in court when public access has already been determined on section lines through the 1887 Road Order. Mr. Monks stated that public access was designated by the federal government, states and counties, and that in 1887 the county commissioners said that all section lines and township lines could be used as public access.

Mr. Kimble asked Sheriff Nestor if he was obligated to keep any road other than a county road open, and the sheriff responded that he was asking for guidance, as he imagined the next step would be a call to him about trespassers, and he wanted to know how to handle that situation when the time comes. Mr. Higgins asked if trespassing would be more than thirty feet either side of the section line and was told that it would be.

Matthew Brent stated that it is evident that the trail was a road at one time. They had spoken with Chopper McCue, the previous landowner, who told them that they farmed it but it was definitely a public access route to the property beyond. Mr. Brent said it would be better to keep it the way it is than turn it into a road, and since the law was already established in 1887, he didn't understand why they would have to prove they can have access when they have always had it before. He added that, "you [the commissioners] will have all kinds of people down here because there are roads like this all over the county."

Mr. Kimble explained that the county is not *required* to keep all the section lines open unless they are actually designated as county roads; they simply have the right to build county roads on them.

Ralph Brent asked if it would be an option to declare the trail a county road but not maintain it, but Mr. Lyons said as far as he is concerned they do not have access to the trail and cannot use it until a court determines that they can. He added that in his opinion it is not a road, nor has it ever been a road, according to county maps.

Mr. Kimble said that the Board will not interfere with a complaint based on the 1887 order if it is determined that the road is a public road, but then the commissioners will have to decide if they want to make it a county road.

Mr. Stone explained that the commissioners are not taking sides; they understand both points, but that they have to make decisions based on past decisions that were made using the 1992 map.

Mr. Kimble added that each issue concerning future disputes may have to be looked at on a case-by-case basis.

Sheriff Nestor asked what would happen if the group all were to agree that they want the section line to be an unmaintained county road, but Mr. Kimble said that no matter what it is called, if it is a county road it will be open to the public by definition.

When Ralph Brent stated that the commissioners were saying that they cannot use the road as an access route, Mr. Lyons said that the commissioners aren't saying anything other than it isn't a county road because it's not on the official map. He asked Mr. Brent to turn it around and put himself in Mr. Bode's position; would he freely allow anyone to have access if it were his property that was being driven on? Mr. Brent said he wouldn't like it, but if he had to he would do it.

Mr. Monks provided a copy of an Order of Board of County Commissioners of Elbert County document that he felt provided further information.

Mr. Kimble said that the issue had come up again at his attorney's conference and everyone felt that there has to be intent by the county to designate a road beyond just an order, adding that it may take a lot to determine if the 1887 order really has any merit. He went on to say that the county can put a road wherever they deem necessary if they want to pay for it and as long as there is a public need for it. It seemed to him that Brents were asking that every section line remain open for access and that the county enforce that, and he added that in 1902 all section lines were declared public highways, but that didn't mean that they have to be *designated* as such.

All but Sheriff Nestor and Mr. Higgins left the meeting at that time, and Julie Joffe came back with a pole and one of the solar lights she had purchased to show the commissioners. They agreed to allow her to purchase twenty poles to mount the lights on at a cost of approximately \$5 each.

Sheriff Nestor had left the room to consult with the undersheriff and returned to say that the undersheriff had spoken with Deputy District Attorney Jim Bartkus who said that the document provided by Mr. Monks seemed to simply give the county the authority to declare every section line as a public highway, but didn't necessarily mean that the county had ever actually done so. In his opinion, if the commissioners at the time did not take the next step to adopt a resolution stating that all section lines actually were public highways, the order didn't really mean anything at all, adding that every section line does not automatically give public access. The Sheriff went on to say that he will treat any trespassing issues as such and the D.A. will prosecute them accordingly.

Mr. Lyons called for the Administrator's report and Ms. Devers wanted to know if the commissioners had all received their legislative forms that will need to be completed if they have legislative issues they would like to see addressed in the next session. She had also received a letter stating that the county needs a flood plain ordinance, so she emailed the gentleman to let him know that the unincorporated portion of the county has not been

mapped for flood plains. She added that they will need to adopt regulations that are in line with state rules.

Mr. Kimble reported speaking with Barbara Green about 1041 regulations at the county attorney conference and stated that she had helped other counties such as Prowers, Bent and possibly Baca complete theirs. He also attended the property tax seminar with Mr. King and Mr. Stone on June 10, as well as the following day's seminars on case preparation with Mr. Higgins.

He mentioned the Open Records (CORA) policy, and Ms. Lengel said she'd read it but had a few questions for him. He again stated that something should be in place prior to the next election cycle as there is a portion regarding a stay that may be beneficial.

There was no old business, but Ms. Devers provided the May Public Health and County General fund reports for the Board's review, and then Mr. Stone asked if the county has a fire ban in effect, as he had been asked by residents of Karval and he had not seen a county truck down in that area for trash collection. According to the county's website, most areas other than Tri-County (which showed a Level 3 ban) are in a Level 2 fire ban, meaning household trash is allowed to be burned in fully-contained fireproof containers only. Ms. Devers contacted Sheriff Nestor who said that he believed Tri-County is also on a Level 2 ban and he will have the website updated.

With no further business to come before the Board, the meeting was adjourned until 9:00 a.m. on June 27, 2013.

Corinne M. Lengel, Clerk to the Board

Ted Lyons, Chairman