

Monday, December 14, 2009

The regular meeting of the Humboldt County Board of Commissioners was called to order on Monday, December 14, 2009, at 9:00 a.m. in the regular place of meeting at the Courthouse, Winnemucca, Nevada. Those present were Chairman Tom Fransway, Commissioners Chuck Giordano, Dan Cassinelli, Garley Amos Jr. and Mike Bell, District Attorney Russell Smith and/or Deputy District Attorney Angie Elquist, Administrator Bill Deist and Clerk of the Board Tami Rae Spero.

DISCUSSION & ACTION ON CORRECTION/APPROVAL OF MNUTES - November 2, 2009 and November 16, 2009: The following motion was made by Commissioner Amos and passed unanimously:

To approve minutes of the November 2, 2009 meeting.

The following motion was made by Commissioner Giordano and passed unanimously:

To approve the minutes as written for the November 16, 2009 meeting.

PUBLIC COMMENTS: Chairman Fransway asked for public comments. None were offered.

ADMINISTRATIVE REPORT:

CONSENT AGENDA: The following items were presented under the consent agenda by Administrator Deist for the Board's review/action:

1. **Request for TV/Radio Assessment Refund:** A copy of a request from the Quinn River TV District was provided to the Board for review. *Recommendation: That the Commission deny the request based on historical process and policy of the Quinn River T.V. District.*
2. **Clerk's 3rd quarter report:** A copy of the report was provided to the Board for review. *Recommendation: That the Commission acknowledge receipt of the report.*
3. **Approval of extension of AT&T contract for Centrex service:** A copy of the contract and correspondence regarding the issue was provided to the Board for review. *Recommendation: That the Commission approve the extension and authorize the Chair to sign.*
4. **Approval of 2010-2011 water budgets:** Copies of the budgets as prepared by the State Engineer were provided to the Board for review. *Recommendation: That the Commission approves the budgets as presented.*
5. **Request for review/modification of landfill assessments:** Copies of the requests were provided to the Board for review. *Recommendation: That the requests be approved based on the Landfill Committee's recommendation.*

After discussion about the extension of the AT&T contract the following motion was made by Commissioner Bell and passed unanimously:

To approve the Consent Agenda as presented.

SOLID WASTE MATTERS: Administrator Deist stated that he had nothing on this item.

PUBLIC LANDS PLANNING MATTERS & FORMULATION OF COUNTY POSITION ON BLM, FOREST SERVICE AND THE FEDERAL FISH AND WILDLIFE SERVICE PROPOSED

ACTIONS: Administrator Deist stated that he had nothing on this item.

MISCELLANEOUS REPORTS AND CORRESPONDENCE:

OTHER INFORMATION AND UPCOMING MEETINGS: Administrator Deist updated the Board on the audit for fiscal year ending June 30, 2009 noting that it will be presented to the Commission in January as there has been an extension granted by the State of Nevada to Humboldt County for filing; he stated that the Comptroller will try and distribute copies of the 2008-2009 CAFR to the Board before the end of December so there will be opportunity for review. Administrator Deist reviewed a letter received from the Nevada Division of Environmental Protection granting Humboldt County's request to return to semi-annual ground water monitoring in Grass Valley. Upcoming meetings and dates of importance were noted.

REPORTS FROM COMMISSIONERS REGARDING OTHER BOARDS AND COMMITTEES

THEY SERVE ON: Chairman Fransway discussed a workshop regarding RS 2477 which he had attended.

CLAIMS FOR EXPENDITURES OF COUNTY FUNDS: The following motion was made by Commissioner Cassinelli and passed unanimously:

To approve the claims for expenditures of County funds as presented.

COMMISSION POLICY ON REVIEW OF CONTRACTS AND OTHER LEGAL DOCUMENTS BY THE DISTRICT ATTORNEY'S OFFICE:

Provided to the Board was a memo from the Administrator discussing the current policy and its time in effect. Chairman Fransway stated that he had requested this item be placed on the agenda and that it revolves around the issue of the host agreement between Humboldt County and Jungo Land & Investment which the Commission has never had the opportunity to look at or give direction on; he noted that the Administrator refers to a policy in the memo which he has not seen, so if there is one it needs to be reviewed and if there isn't maybe one needs to be created. Administrator Deist stated that a policy could be drafted, that it has been unwritten policy that when contracts or other legal documents come in they go to the District Attorney for review to determine if there are issues that need to be changed before there is any further action on it to protect the liability and legal side of things. Chairman Fransway discussed what had occurred with these type of matters when he was previously on the Commission and commented on what has been said about the host agreement noting that the Regional Planning Commission (RPC) received a copy of the agreement when the Conditional Use Permit was discussed and asked why the

Commission has not seen it. Administrator Deist stated his belief was that the agreement that went to the RPC was the Lincoln County agreement which was used as an example; he stated that in his opinion it was a poor example. Chairman Fransway stated the agreement was provided to him by Planning as part of their packet; he continued noting that because of the agreement public trust has become an issue which he does not want to have happen, that when these agreements come they need to be put before the County Commission and that if this agreement had been handled that way it would have went along way towards transparency. Chairman Fransway suggested that the Commission consider a policy that long term binding contracts or agreements which potentially will have a fiscal impact or may involve the County in commitment or potential liability should be agendized at a regular County Commission meeting and staff or legal counsel should brief the Commission on the issue subsequently the Commission should give direction on where it goes. Administrator Deist stated that based on that direction he could not think of an agreement that would not have to come to the Commission before it went to legal counsel. District Attorney Smith concurred with Administrator Deist and stated that in his office they did not negotiate anything they just look at liability issues; he noted the number of contracts that go through his office on a regular basis. Chairman Fransway stated that was fine but the Commission would like to know that legal counsel is reviewing a document that is specifically so important that it is going to last a hundred years. District Attorney Smith stated that it should be the departments that are submitting the contracts that should be keeping the Commission informed. Chairman Fransway stated that staff would be asked to make sure that happens and that if the District Attorney is looking at it perhaps a copy should be provided to the Commission so they are aware as the buck stops with the Commission; he commented on his belief that the trust of the people has been breached. District Attorney Smith disagreed with the Chairman's comments and stated that he had just discussed this issue with the Deputy Attorney General George Taylor and the direction given was that whenever negotiations on any contract occur no board member should be part of the negotiations, if the board member becomes a part of the negotiations then those negotiations need to take place in a public meeting. District Attorney Smith stated that is not the way to negotiate contracts and detailed why. Discussion occurred regarding the District Attorney's opinion. District Attorney Smith explained what has occurred to this point with the host agreement as far as reviewing the liability issues. Chairman Fransway commented on his wish that the District Attorney or staff had informed the Board of the agreement and requested direction on it noting that then the public would have been aware of it; he continued citing the July 6, 2009 meeting minutes in which Mr. Frankovich referred to host agreement negotiations and commented on how that appears to the public. Commissioner Giordano asked if the statements identify who the negotiation is with; Chairman

Fransway said no. Commissioner Giordano asked the District Attorney if discussion had occurred regarding price or anything besides liability. District Attorney Smith stated no. Administrator Deist stated there is wording in agreements about that but it has not been discussed to the best of his knowledge only the legal/liability side has been looked at. Chairman Fransway stated that no one understands that and referred to articles in the media discussing the host agreement; he stated that discussion needs to occur as to how to prevent this from happening again even if it is at the retreat. District Attorney Smith stated again that it is the recommendation of the Attorney General's Office that no board get involved with the negotiations until it is something that is legal and the department involved has reviewed it, then it comes to the County Commission and then the Commission can either approve it or give direction on how it should be changed because if the Commission is involved from the beginning of the contract then all of the negotiations must take place in an open meeting setting which does not make sense for negotiations; he explained how the host agreement, if it was being negotiated, would be handled. Chairman Fransway stated his agreement with the District Attorney but noted that is not the way this has been handled according to what he reads in the minutes and the newspaper. District Attorney Smith commented that he did not know what Mr. Frankovich was referring to unless it meant the legal issues are being negotiated and that the press may view what is happening as negotiations but as far as a negotiation team that is set up to negotiate the contract that is not where this is at; he again noted what his office has done. Chairman Fransway asked the District Attorney to provide the Commission with the AG's opinion plus some sort of a memo from the District Attorney. District Attorney Smith stated that he would not be able to provide an AG's opinion as the information was provided over the phone not as an AG's written opinion it is the practice that is taking place in this state. Chairman Fransway stated that he did not want this to happen again and noted how controversial the issue is. District Attorney Smith agreed but noted that the controversy is not as a result of his office doing their due diligence; he discussed why the process is done early. Chairman Fransway commented on his wish that he would have seen the agreement behind this table so the public would have been aware that it was out there. Commissioner Giordano asked District Attorney Smith if he had a contract in front of him from Recology stating what is going to take place. District Attorney Smith stated that he has directed Deputy District Attorney Elquist to take a look at it and to research the legal issues and they have discussed how best to handle the issues for county liability and notes have been made on those issues and sent back to Recology a couple of times. Commissioner Giordano questioned if the contract has anything to do with money, what benefits the County could get from it or what Recology is looking for. District Attorney Smith stated that those things are written down but they have not been discussed by his office only the legal liabilities have

been dealt with. Chairman Fransway stated that he has a copy of a proposed host agreement between Humboldt County and Recology and offered it to anyone who would like to see it. District Attorney Smith asked that Chairman Fransway not give that to the other County Commissioners because this entire negotiation could be legally required to take place in an open meeting which would destroy the ability of the County to negotiate properly. Chairman Fransway stated that it is out there, it has been to the RPC. Commissioner Giordano stated that nothing has been before the Landfill Committee. Commissioner Amos concurred. Chairman Fransway reiterated his suggestion regarding how long term binding contracts should be handled. District Attorney Smith disagreed with the suggestion noting that if he is aware of something out there, as the official legally responsible for all legal issues for this County, and he decides to start doing his homework ahead of time, he should not have to come before the Commission and get their permission to do his duty nor should this body way try to hamper the District Attorney from doing his homework; he stated that what is being done is to prepare for something that could happen in the future. Discussion occurred between the District Attorney and Chairman Fransway about why the agreement was not brought before the Commission sooner, what the concerns of the District Attorney were if that had happened and what has occurred to this point. Commissioner Cassinelli noted that the Commissioners are the ones that must answer to the public and it has looked like the public knew more than the Board did and would ask questions that he would not know how to answer; he asked how that could be stopped. District Attorney Smith commented on the understanding of terminology and that what is currently being looked at is not a contract until there is agreement between both sides. Chairman Fransway stated that it is a draft. District Attorney Smith agreed. Commissioner Giordano stated his take was that it was a proposal from Recology and it is not a contract until it is between the Commission and Recology. District Attorney Smith agreed and discussed the Landfill Committee's involvement in the negotiations. Chairman Fransway asked how it would have jeopardized the County's position if the District Attorney had informed the Commission that there was a draft agreement out there that had been submitted by Recology. District Attorney Smith stated that his concern with that would be that he is getting permission to look at the legal issues under the Commission's direction then the Commission has become part of the process which might make the entire negotiation required to take place in a public meeting. Chairman Fransway stated that has been done a lot that the Commission has directed staff to work with legal counsel. District Attorney Smith stated that just because it has been done a lot does not mean it is being done right. Chairman Fransway commented on wanting it done right and the need to recognize the sensitivity of these things; he noted that he was not criticizing the District Attorney or the Commissioner's Office but it wasn't transparent and it should be in some form and

asked that the Commission get a heads up when something like this is floating around out there that could put the Commission in a situation like they are in now. Commissioner Giordano stated in his opinion he is very comfortable with how the procedures are done and how the District Attorney handled this but if a contract is floating out there the Commission needs to know what is on it they need to be informed but this is not at that point yet. Discussion occurred regarding rumors, statements in the media and other information that is out there. Chairman Fransway stated for the record that if this thing gets this far this Commission is gonna be in the driver's seat and he makes that promise that the Commission will be. Commissioner Giordano stated that the Commission is in the driver's seat, that it can't get past the Commission. Chairman Fransway stated they did not want it negotiated before hand either. Chairman Fransway asked for questions. Tom Brissenden offered comment on Recology's written applications and printed data and the information provided regarding Jungo Land & Investment Inc. and the need for the County to know who they are doing business with. Annie Drake commented on the need for guidelines for the issues being discussed regarding reviews of contracts and negotiations. District Attorney Smith responded to her comments. Chairman Fransway asked at what point does a document become public information and suggested that the issue be discussed later as a candidate for retreat discussion. District Attorney Smith responded regarding how negotiations occur with other entities. Commissioner Cassinelli asked if the Commission makes the final decision and that is no, can the County be sued? District Attorney Smith stated the Commission can say no and yes they can be sued; he noted that it would be his job to have a legal meeting with the Commission and explain the legal liabilities of any decision and then it would be the Commission's decision to make. Chairman Fransway stated that what he is trying to avoid is the public perception that negotiations and discussion has been occurring between Jungo Land and Humboldt County. District Attorney Smith stated that he would make a final statement to make it as clear as he could from a legal perspective; he stated that no negotiations have occurred, that what the District Attorney's Office has done is to take a look at what one group would like to see including starting to do research on each of those issues and as his office decides something is not good for the County they are writing up what they would like to see it changed to if it were to go through. Chairman Fransway asked the Humboldt Sun to please quote the District Attorney that no negotiations has been occurring. Heather Gula of the Humboldt Sun and Dee Holzel of the Silver Pinyon Journal offered comments from the audience on what had been reported in the media.

RECEIPT OF RESULTS FROM NEVADANS AGAINST GARBAGE SURVEY: Lianne Iroz, Annie Drake and Tami Vetter appeared before the Board on behalf of Nevadans Against Garbage. Ms. Iroz addressed the Board and reported on the results of a citizens petition including a review of procedures for