

## Special Meeting February 9, 2024

### 1. Call to Order

**Chairman George Trujillo** called the meeting to order at *10:30 a.m.*

### 2. Pledge of Allegiance and Salute to the Flag of the State of New Mexico

All in attendance recited the Pledge of Allegiance and Saluted the Flag of the State of New Mexico.

### 3. Roll Call

**Deputy Clerk Duran polled the board:**

Commissioner George A. Trujillo	-	Present
Commissioner John H. Trujillo	-	Present
Commissioner Veronica M. Serna	-	Present

### 4. Approval of Agenda

**County Manager Joseph Garcia** stated I recommend we approve the agenda with the exception of item 12. f. This item will be discussed under item 11.

**Commissioner Veronica Serna** made a motion to approve the recommendation.

**Commissioner John Trujillo** seconded the motion.

*All in favor. Motion carried.*

### 5. Discussion/Action: Approval of Minutes

#### a. Minutes from December 7, 2023

**Manager Garcia** stated I recommend you approve the minutes for December 7, 2023.

**Commissioner John Trujillo** made a motion to approve the minutes.

**Commissioner Veronica Serna** seconded the motion.

*All in favor. Motion carried.*

#### b. Minutes from January 25, 2024

**Manager Garcia** stated I recommend you *table* the minutes for January 25, 2024.

**Commissioner John Trujillo** made a motion to *table* the minutes.

**Commissioner Veronica Serna** seconded the motion.

*All in favor. Motion carried.*

### 6. Discussion/Action: Resolution Approving County Manager Recommendation to Safeguard County Complex Construction Funding in an Interest-Bearing Account (Tabled on 2/1/2024)

**Manager Garcia** presented the item. Mr. Garcia stated what I wanted to do was gather those funds and put them with the State Treasurer so we can make interest instead of the money just sitting there. I believe they're still paying somewhere at 5%. At this time, it is only the Franken settlement funds in the amount of \$775,000 that are being recommended to be deposited today.

**Manager Garcia** stated I recommend the Commission approve the item.

**Commissioner Veronica Serna** made a motion to approve the recommendation.

**Commissioner John Trujillo** seconded the motion.

7. *All in favor. Motion carried.* **Discussion/Action: A Resolution Authorizing Second Withdrawal of Interest Proceeds Related to Senate Bill 6 Loans**

**Manager Garcia** presented the item. Mr. Garcia stated we have accrued \$273,000 from the interest. I'm asking to utilize the interest money for something later down the line, which is to purchase the bulldozer. I will explain further when that time comes. I recommend approval.

**Commissioner John Trujillo** made a motion to approve.

**Commissioner Veronica Serna** seconded the motion.

*All in favor. Motion carried.*

**County Attorney Ernestina Cruz** stated the resolution that's before you is titled "second withdrawal." The resolution does indicate that your first withdrawal was on December 19, 2023, in the amount of \$677,961. Since that time, you've had additional interest and the amount that's going to be withdrawn in this second withdrawal is \$273,000. The Manager and I have been in consultation with Jeremy Klass with the State Department of Homeland Security on some issues related to road equipment. He also addressed a question that we had for him, as it related to DFA and whether DFA had any restrictions on how interest funds could be utilized. By way of an email that I received from Mr. Klass, he wrote, "additionally, if there was any question, there are no stipulations as to what the County can or cannot spend the interest on Senate Bill 6 monies on". The resolution does refer to the fact that the County will be utilizing the funds for County operations, in particular, the purchase of heavy equipment for the Road Department.

8. **Discussion/Action: Approval to Purchase Bulldozer Utilizing SB6 Interest Funds**

**Manager Garcia** presented the item. Mr. Garcia stated the reason for another drawdown to purchasing a bulldozer is we could purchase this bulldozer for \$237,000 in comparison to leasing the bulldozer for five years with 8.5%. After five years, we've spent \$210,000. If you do the math on the cost savings, we're saving about \$127,000 in interest; the cost savings are significant. We can utilize the interest money, and that's my reasoning for it. I recommend approval.

**Commissioner John Trujillo** made a motion to approve.

**Commissioner Veronica Serna** seconded the motion.

*All in favor. Motion carried.*

9. **Discussion/Action: Resolution for the Trade-in of 2 Motor Graders**

**Manager Garcia** presented the item. Mr. Garcia stated we have two used motor graders that have been looked over by Four Rivers. Four Rivers is willing to give us a significant amount of trade in on a new six-wheel drive grader; we would have a balance of maybe \$24,000 approximately. We have \$280,000 that the Governor gave us to spend on a new grader. So, again, utilizing interest funds, we're able to move forward and get rid of old problematic equipment and get new equipment.

**Attorney Cruz** stated I reviewed that initial draft and edited it by taking a more careful look at the applicable law and statutory provisions. The language needs to reflect, in the resolution, that the existing graders are either unusable or no longer suitable for the work that needs to be done. In addition to that, notation that they're no longer economical, and the reason why they're no longer economical is the cost to rehabilitate and maintain, so they can be effectively used, far exceeds the overall value that will come in return to the County. In working with Four Rivers, it was determined that trade in would be the best option. The resolution does reflect that the County Manager's office and Finance Department will need to obtain approval from either the State Board of Finance as

required under State Law or if there's any other agency, they'll make sure that that process is likewise followed. Once that process has been followed, the trade in can move forward. The final provision of this resolution indicates that the Manager and Finance Department must follow any requisite disposal process to ensure compliance with State Law and the County's Procurement Policy. This is the first step. The Manager's office in the Finance Department will ensure that any other additional steps will likewise be followed. Further discussion took place related to operator training on heavy equipment.

**Commissioner John Trujillo** made a motion to approve.

**Commissioner Veronica Serna** seconded the motion.

*All in favor. Motion carried.*

**10. Discussion/Action: Resolution to Approve Job Description for Wildland Coordinator**

**Attorney Cruz** presented the item. Ms. Cruz stated item number 10 is a resolution to approve a Job Description for the Wildland Coordinator. The next item is a resolution to approve a grant funded Wildland Coordinator position. Cruz further stated: what you need to do at this time is approve the Job Description that's been put together by the Human Resources Department in coordination with State Forestry. What is recommended by way of the resolution is that you approve the Job Description in its current format. We'll be sending it to State Forestry for final review. If there are revisions that need to be made, they can be taken care of by way of the resolution through the discretion of the Manager and the Human Resource Department.

**Manager Garcia** stated I recommend you approve the Job Description for the Wildland Coordinator.

**Commissioner Veronica Serna** made a motion to approve the recommendation.

**Commissioner John Trujillo** seconded the motion.

*All in favor. Motion carried.*

**11. Discussion/Action: Resolution to Approve Grant for Funded Wildland Coordinator Position**

**Manager Garcia** presented the item. Mr. Garcia stated the County's share is \$2,500.00 per year. I recommend you approve.

**Commissioner John Trujillo** made a motion to approve.

**Commissioner Veronica Serna** seconded the motion.

*All in favor. Motion carried.*

**12. Discussion/Approval: Approval of Grant Award Agreements Between the State of New Mexico, Energy, Minerals and Natural Resources Department and Mora County**

- a. Buena Vista VFD: Agreement No. 24-521-0400-168
- b. CHET Fire VFD: Agreement No. 24-521-0400-0170
- c. Golondrinas VFD: Agreement No. 24-521-0400-0171
- d. Guadalupita VFD: Agreement No. 24-521-0400-0172
- e. Ledoux VFD: Agreement No. 24-521-0400-0173
- f. Mora County VFD: Agreement No. 24-521-0400-0161
- g. Rainsville VFD: Agreement No. 24-521-0400-0174
- h. Sierra Bonita Rincon VFD: Agreement No. 24-521-0400-0175
- i. Watrous VFD: Agreement No. 24-521-0400-0176

**Commissioner John Trujillo** made a motion to approve items 12. a, b, c, d, e, g, h and i.

**Commissioner Veronica Serna** seconded the motion.

*All in favor. Motion carried.*

Per Item 4, above, Item 12f was removed from the agenda. It was listed in error.

**13. Discussion/Action: Resolution Supporting Senate Bill 174 Titled "An Act Relating to Taxation; Providing a Gross Receipts Tax Deduction for the Sale of Legal Services to Recover Compensation Pursuant to the Federal Hermit's Peak/Calf Canyon Fire Assistance Act"**

**Attorney Cruz** presented the item. Ms. Cruz stated Manager Garcia reached out to me indicating that he had learned about Senate Bill 174 and inquired regarding whether he might be able to support this Legislation. I recommended to him that if it was his desire to be supportive of this Legislation, he should share with the Commission his recommendation by way of a resolution that the County Commission could then vote on whether the Commission believes this is Legislation that should be supported.

The Legislation itself is designed to ensure that claimants who have decided to retain legal counsel will not need to pay gross receipts tax on the legal services that are provided to them, based upon the amount of money that is going to be dispersed by way of compensation to the claimants. The overall benefit to Mora County is one that is, I think, important for this Commission to consider. What it ensures is that the claimants are made whole as best they can be, and if they don't have to pay the gross receipts tax on the legal services, that's additional monies that they can utilize for their own benefit as they move forward with the recovery effort.

My recommendation to you all, as Commissioners, is that if you have a claim, and you have legal counsel, you put it on the record so that disclosure has been made, and then you can go ahead and move forward with your vote, whether in support or an opposition, but it's important for purposes of transparency, that you're acknowledging that you have some type of a personal interest, and that's something that I wanted to recommend to you all on the front end. The Manager at this point can speak to why he believes this Legislation is important. After that, Manager, I would recommend that you hear from the audience.

**Manager Garcia** stated I heard about this bill, *for the record*, I don't have any losses and I didn't retain an attorney. I do see where supporting this bill would be beneficial to the people of Mora County who did lose and did hire an attorney. The other factor, the flip side of this is the taxes that would be garnished, paid through their attorneys. Which might seem like it's significant if the taxes were actually paid here. I see no downside whatsoever to not supporting this bill, as far as people are concerned, the people suffered enough, and if they can save a little bit of money by not paying those gross receipts tax, they benefit. The opposition to that saying that the County will lose Gross Receipts Taxes, that's just not the case. It doesn't make any sense to me not to support it. My recommendation to the Commission is to support this bill.

**Diego Rivera** stated I am also a fire victim. The Senate Bill 174 is in fact what you guys have been discussing, to help the fire victims save money. Everything the County Manager just stated is 100% true. We support that viewpoint, and we'd like to thank you for your resolution to support Bill 174. Thank you for your consideration.

**Brian Colon Singleton Schreiber Managing Partner** stated the resolution as presented was accurately stated. The only slight information that I want to provide that I think is relevant, I will say that in committee, I did testify and stand in support of Senate Bill 174. By the time we went to committee, I just want you to know, Mr. Chairman, members of the Commission, the concerns of Commissioner Serna, were heard loud and clear, and some of our other colleagues as to the County's lack of revenue that would be generated by that 1% that comes to you from gross receipts tax on services on these victims of the Hermit's Peak Calf Canyon Fire. We heard the concerns from Senator Jaramillo who is the bill sponsor, and a substitute bill was presented in committee and will be going forward. That substitute bill only alleviates the State portion of gross receipts tax on the victims of the Hermit's Peak Calf Canyon fire. They will still be required to pay the amount of gross receipts tax for the County.

This current Senate Bill 74, which is a substitute bill, that was presented in committee is only related to the State gross receipts tax.

**Commissioner Veronica Serna** stated I just want you to know, I like all of the attorneys. What I want to say is that when anyone hires an attorney 75% of that work for that attorney is to prove that someone harmed you. That has already been taken care of by the Federal Government raising their hand and taking responsibility for having harmed you. The other 25% is to get compensation. Most of the attorney's work has already been done, so to say that you know they're being shorted because they're only able to charge 20% instead of the 33 or 40%. A lot of their work has already been taken away because of that, and I'm speaking for the people.

The other thing is, you'll sacrifice the State's part of the taxes, and apparently, none of the attorneys are going to pay gross receipts tax here in Mora. I don't know how that can be adjusted or changed, but it's unfortunate. A lot of GRTs are used for emergency services and public services. Something that Tina said is GRT is the responsibility of the vendor providing a service, however, you can legally pass that tax on to the consumers, in this case, the claimants. So, you as vendors are passing that tax on to the claimants, but it's not the claimant's responsibility, it's the vendor's responsibility to pay that tax. My challenge to all the attorneys is carry that tax for the people.

**Attorney Cruz** stated I certainly was not saying that the attorneys are being shorted. What I was conveying was that the Federal Government recognized that there needs to be a significant benefit provided to the claimants, which is why they put the cap, as it relates to the work that's done by an attorney being 75%, 25%. Commissioner Serna, you know that I respect you and I value your perspective. I don't know that the practice of law is one that can be looked at through that kind of a lens, because it really does vary case by case, you may have a case where there is no question about liability, but then you have to invest a significant amount of time to prove that your client was actually hurt, and that's no less work than having to prove liability. Commissioner Serna is right, though, that as it relates to this work that's being done on the wildfire, the Federal Government's already acknowledged liability, so that's a big hurdle that the attorneys do not need to deal with. Nonetheless, there's a significant amount of work that needs to be done proving up damages. I will not speak about the specific work that's being done on your behalf by the team that you hired; It's a heavy lift. There's a lot of effort that goes into proving up what your damages are. I would just conclude by saying this. I don't have an interest, per se, in how you vote on this. I don't represent any individual claimants, so this isn't something that directly impacts me. I would end by saying this Chairman, the resolution was finalized yesterday, because that substitute bill was being discussed, and I needed to hear from Mr. Colon, what the current status was before the resolution was presented to you, so those are just some things that I wanted to clarify.

**Commissioner George Trujillo** stated *for the record* I do have an attorney to represent me and my claim. When the bill first came to my attention, there were a lot of things to the first bill, and it was confusing. Me doing my research into this bill, it's going to help the victims of the fire. There's over 2500 victims in Mora and San Miguel. To me, helping the victims and helping the County, like Veronica, said we probably won't get GRT tax from Mora County because their offices are in Albuquerque, but if it helps the victim, I'm all for that.

**Attorney Cruz** stated Chairman, you've made the disclosure if the other Commissioners have hired an attorney, and have their own personal claim, I welcome you to make a note of that on the record as well. The New Mexico Government Conduct Act that's found at 10-16-1, provision 10-16-4 reads as follows: It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officers or employees' financial interests, or financial position. This is not designed for the primary purpose of benefiting any one of you who has a claim and who has retained an attorney. The primary purpose is to provide global benefits to the entire County for those individuals that have retained legal counsel, that financial benefit will be significant as

it impacts the entire County. I'll go on to make reference to the then New Mexico Attorney General's Government Conduct Compliance Guide. It provides a recitation of the law and examples of how you apply the law to some hypothetical factual scenarios. I've comprehensively reviewed that guidance as well. The compliance guide provides as follows: "GCA generally disqualifies a public employee from taking an official act that directly affects the employees financial or the employee or officials, financial interests, unless the benefit to the public clearly outweighs the financial benefit to the employee." The benefit to the public is a massive one as it relates to GRT. When you compare that benefit Chairman, using your example to your personal benefit, yours is nominal in comparison to the public benefit. Based upon the statutory provision, the research that I did, my review of the compliance guide, you are allowed to vote on this. I think it's a recognition by the State Legislature that especially in small communities, such as Mora, when you have a mass tort of this type, you're all going to be impacted, and you cannot be sitting in your respective capacities as Elected Officials with your hands tied and say, well, I hired an attorney, I can't vote on this. That's why the law is designed in this way.

**Attorney Cruz** continued by stating I looked at the New Mexico Taxation and Revenue Department. I wanted the Commission and the public to be informed. Typically, GRT is charged based upon where the work is performed. That's the way the law is written, but there's an exception for Professional Services. Professional Services include those that need to have a license to do the work, lawyers need to have a law license, so lawyers fall within that scope of Professional Services, you then don't have to utilize the GRT where the work is performed, instead, you charge the GRT based upon where your principal place of business is located. I looked at that so that I could be able to inform you and advise you regarding whether the County would end up seeing a loss as it relates to gross receipts tax itself. There's a Compliance and Guidance Handbook at the New Mexico Taxation and Revenue Department that provides some examples of determining a reporting location. Here's an example, a certified public accountant in Las Cruces performs accounting services for a client in Ruidoso, because the CPA has been licensed by the State, the services being performed meet the definition of professional services, and the reporting location is the location where the services are performed the CPAs office in Las Cruces this is the case even if the CPA occasionally travels to the client's location in Ruidoso in order to perform some of the services. There's a handful of attorneys that are based out of Mora. You really don't have that much of a presence of attorneys that would end up paying GRT within your County. I wanted to know and understand whether Mora County would be impacted from a GRT perspective, and I did that additional resource research for your benefit today.

**Commissioner John Trujillo** made a motion to approve the recommendation.

**Commissioner George Trujillo** made a motion to second.

*Two in favor, one abstains. Motion carried.*

*Let the record reflect, Commissioner Veronica Serna abstains from vote and stated **for the record** I personally didn't experience damage from this. My husband and his family did and some of them have retained attorneys therefore I'm going to... (The recording reflects that Commissioner Serna did not complete the statement)*

**Commissioner George Trujillo** stated all in favor on a roll call vote:

<b>Commissioner John Trujillo</b>	-	<b>Yes</b>
<b>Commissioner Veronica Serna</b>	-	<b>No</b>
<b>Commissioner George Trujillo</b>	-	<b>Yes</b>

**Attorney Cruz** stated I am going to ask Commissioner John Trujillo *for the record* if he has retained legal counsel.

**Commissioner John Trujillo** stated no.

**14. Executive Session: Limited Personnel Matters including Employee Complaints and/or Investigations and Threatened Litigation related to HPCC Claim, John Paul Vigil, and Isaac Martinez matter**

**Commissioner Veronica** made a motion to enter Executive Session.

**Commissioner John Trujillo** seconded the motion.

*All in favor on a roll call vote:*

<b>Commissioner John Trujillo</b>	-	<b>Yes</b>
<b>Commissioner Veronica Serna</b>	-	<b>Yes</b>
<b>Commissioner George Trujillo</b>	-	<b>Yes</b>

**The Commission entered Executive Session at 11:44 a.m.**

**Commissioner Veronica** made a motion to reconvene Regular Session.

**Commissioner John Trujillo** seconded the motion.

*All in favor on a roll call vote:*

<b>Commissioner John Trujillo</b>	-	<b>Yes</b>
<b>Commissioner Veronica Serna</b>	-	<b>Yes</b>
<b>Commissioner George Trujillo</b>	-	<b>Yes</b>

**Commissioner George Trujillo** stated after a 3-hour Executive Session no action was taken or decisions made.

**The Commission reconvened Regular Session at 3:21 p.m.**

**15. Discussion: Other Informational Items**

**a. Regular Meeting of February 15, 2024, to be scheduled later in the month**

**Attorney Cruz** stated the meeting on February 15 will now be scheduled on February the 29th. The Chairman, the Manager, and I were able to visit about trying to coordinate a luncheon for the Senator during that meeting.

**Commissioner George Trujillo** stated I got to meet a lot of senators who are helping with obtaining the \$3 million that we need in matching funds. They were all happy with what we provided for Mora Day. Representative Sanchez told me that he was going to give \$200,000 to the courthouse, \$50,000 to the Veterans Committee. Senator Campos is working on the \$3 million to match the \$3 million we need for the upstairs of the courthouse. He said I am almost 100% sure you guys will get that money from him. There's \$1 million dollars for EMS, that the Governor is going to give them.

**Attorney Cruz** stated I've been receiving some additional information on the Martinez quiet title issue, the American Legion and the Mora Fire Department. I'm going to spend some time this weekend getting more familiarized with the materials that they recently presented, and hopefully be able to provide you with better direction on the 29th.

**16. Adjournment**

**Commissioner Veronica Serna** made a motion to adjourn.

**Commissioner John Trujillo** second the motion.

*All in favor. Motion Carried.*

*Meeting adjourned at 3:40 p.m.*

MORA COUNTY BOARD OF COMMISSION

George A. Trujillo  
George A. Trujillo  
Chairman

John H. Trujillo  
John H. Trujillo  
Vice-Chairman

Veronica M. Serna  
Veronica M. Serna  
Member

Carlos J. Arellano  
Carlos J. Arellano  
County Clerk

