

March 4, 2020

The Lincoln County Board of Commissioners met for a regular session on March 4, 2020, in the Lincoln County Courthouse, Libby, Montana. Present were Commissioner Bennett, Commissioner Letcher, Commissioner Peck, County Administrator Patrick McFadden and Deputy Clerk and Recorder Chris Nelson.

Commissioner Peck opened the meeting with the **Pledge of Allegiance**.

10:30 AM **Administrative Issues:** Present were Nikki Meyer, Derrick Perkins, Bonnie Larson and DC Orr.

- Commissioner Peck signed an acceptance letter for the Emergency Management Performance Grant from the Montana Department of Emergency Services.
- Sheriff Darren Short has requested a modification of the agreement with Troy to end this month for juvenile detention. Commissioner Peck signed the modification agreement.
- Patrick also presented the commissioners with letters to Montana's congressional delegates expressing their strong opposition to the southern re-route proposed by the Yaak Valley Forest Council.
- The board reviewed Lincoln County's annual certification of mileage. Commissioner Bennett wanted each road district to check the miles in their district before submitting it to the Montana Department of Transportation.
- **MOTION** by Commissioner Bennett to approve the minutes of February 26, 2020 minutes with one correction. Second by Commissioner Letcher, motion carried.

10:45 AM **Public Comment Time:** Present were DC Orr, Bonnie Larson, Derrick Perkins, and Nikki Meyer.

DC Orr said he saw that O&M was on the agenda. He has been trying for three months to get information on ICs from the Asbestos Resource Program (ARP) and said they don't answer his questions. He said the funds are being mismanaged and the board is ignoring the problem. He ended up paying a lot of money to have his house cleaned and said it shouldn't be his liability to clean it as he didn't put vermiculite in his house or yard. This has been going on for way to long and the ARP is a waste of money. How do I get an answer? Commissioner Peck said it hasn't been settled and he needs to go to the meeting in the afternoon. Commissioner Peck said that the ARP has sat down with him and that it is purely DCs opinion that ARP lied. DC said he is sick of trying to hunt down answers. He said he knows a lot of people that have had to pay out of their own pocket. Commissioner Peck said every concern DC has are the same arguments the board has been trying to solve for over three years. And EPA is changing stuff in the O&M pertaining to liability. DC said the language in the ROD needs to be changed. DC said it is a problem when he asks a question to the ARP.

Sheriff Darren Short contacted the state on the way to the dump the two mile stretch and see who adopted it and see about helping them or taking it over and cleaning it.

11:00 AM Troy Rural Fire District: Public Hearing: Present were DC Orr, Bonnie Larson, Derrick Perkins, Nikki Meyer and Election Administrator Leigh Riggelman. The board opened the public hearing for a single property requesting to be annexed into Troy Rural Fire District. No one from the public made comment. **MOTION** by Commissioner Bennett approve Resolution 2020-06 to annex the property at 3759 Sinclair Creek Road in Troy into the Troy Rural Fire District in Troy. Second by Commissioner Letcher, motion carried unanimously.

11:30 AM Road Dept HB 473 Discussion: Present were DC Orr, Wendy Drake, Dave Kyriss, Dale Buyer, Marc McCully, Derrick Perkins and Nikki Meyer. On the rotation for the gas tax monies is the Troy Road District this year. Wendy said the amount is \$288,033 and asked if Dave had a project in mind. Dave said the Angel Island bridge needs to be replaced as both sides are pretty much shot. Commissioner Letcher asked if it goes up each year. Wendy said it is a percentage of the gas tax, so it fluctuates. She said she will need all the details and the prices and will check what date she needs that information by.

2:00 PM Updated Elected Official on Superfund O&M Transition: Present were Brett McCully, Bret Romney, Chuck Ekstedt, TJ Boswell, Dallas Carr, Amanda Harcourt, Kathi Hooper, Duncan Adams, Mike Cuffe, Brent Teske, Ron Mahoney, Tracy McNew, Zach McNew, Peggy Williams, Jim Hammons, Brad Black, Bryan Alkire, Elzhon Anderson and George Jamison.

Commissioner Peck said we are at a pivotal moment in the superfund site that will affect property owners in the Libby and Troy area. Publicly it is associated with Libby, but Troy has also dealt with it and he wanted to thank everyone for attending. On April 1st, the superfund site moves into Operation and Maintenance (O & M) and switches oversight to Montana Department of Environmental Quality (DEQ). It's very complex and things that need to be worked out hasn't been. So here we are, three to four weeks out, and we don't have the answers. Commissioner Peck said today we will be discussing what activities will be funded moving forward and who will be paying for what. Also, George Jamison put together a comprehensive cost analysis which he will go over. After that the board has three options to choose from:

1. Take no action and accept current conditions.
2. Accommodate to keep things running while seeking a legislative fix.
3. Or don't accept the current conditions and seek resolution through court or bypassing DEQ and going to the EPA for a remedy.

The county has three or four weeks before DEQ takes over but Commissioner Peck feels the DEQ has known what they wouldn't cover for weeks and just sat on it so the county wouldn't have much time.

George Jamison said he doesn't feel property owners shouldn't bear any responsibility for testing and cleanup of their property, ever. This is the policy of the commissioners and the board of health and this is what is required and should always be strived for. George said the document he handed out with the county and board of health's concerns was submitted to the DEQ and they have not even acknowledged or replied until the end of last month. George said from the beginning they have had questions

and the emphasis was asking DEQ to clearly explain what they would pay for. They finally decided they would be better served asking what DEQ wouldn't pay for with the goal that everything would be covered. After finally receiving the draft copy of the DEQ response George said he was disappointed with their response. (The following is DEQ's draft response to Lincoln County.)

The 6 situations discussed are:

1. Property Development -specifically if a developer is proposing the work.
 - a. Example scenario: Someone has a 20-acre lot that they divide into two 10 acre lots on which houses will be built, or a new subdivision. The State has concerns about funding a windfall for a developer, wherein someone purchases property at a distressed price, receives funding to remediate it, and then sells the property at a higher price because of that remediation.

DEQ's position on this scenario is that sampling and cleanup costs are part of the cost of development and state-held funds should not be expended on these costs. DEQ's approach is consistent with due diligence and windfall provisions of CERCLA.

This doesn't preclude individual situations being presented, evaluated, and recommended by LASOC on a case by case basis, and a determination may be made by DEQ as to whether state-held O&M funds should be made available.

- b. A potential disqualification to note: The Superfund remedy was specific to Libby Amphibole Asbestos (LAA) from mining operations. If a subdivision is going to be developed in an area where excavations are into native material, O&M should not apply since any LAA encountered would be naturally occurring.
2. If the property and/or engineered controls have not been maintained.
 - a. Example scenario: the property owner has not maintained their property (e.g., negligence) or has not taken the measures that would be expected of a normal property owner to maintain their property.

DEQ's position on this scenario is that state-held O&M should not be used on properties where the homeowner has failed to maintain the remedy.

- b. Additional note: O&M funds are specifically for activities ensuring protection of the remedy. Public health impacts are beyond those activities and may be the responsibility of the local governmental agencies.
3. If the property is a refusal.
 - a. Example scenario: the property owner refused to allow EPA access to investigate and/or remediate their property. Properties that were refusals had Notice of Environmental Contamination/Notice of Potential Environmental Contamination filed in their property file with the Lincoln County Clerk and Recorder's office. Over last year, the owners of several refusal properties wanted the status of their properties changed, and they took on the costs

associated with this on their own, submitted the information to EPA, and had their property status changed (i.e., their property files with the Clerk and Recorder's office had documentation added that rescinded the NOEC/NOPEC that had been filed previously). This sets the stage in the community for the financial responsibility of the property owner in future scenarios.

DEQ's position is that state-held funds should not be expended on any sampling or cleanup costs associated with refusals. Given that notices are on file with the Clerk and Records office, potential buyers should be aware of potential or actual contamination at the property through due diligence and will be able to address this during real estate negotiations.

This doesn't preclude individual situation being presented, evaluated and recommended by LASOC on a case by case basis, and a determination may be made by DEQ as to whether state-held O&M funds should be made available.

4. If insurance will be paying for part or all LAA abatement costs and insurance information is not provided.
 - a. Example scenarios: (1) A home fire wherein the homeowner had insurance but didn't want to file a claim (and risk a higher rates) but wanted the Superfund project to do all the "cleanup". (2) A home where the Superfund project paid for the LAA related work, and the insurance company ALSO paid for it.

DEQ's position is that state-held funds should not be expended on paying for part or all LAA abatement costs when no insurance information is provided. Also, in a scenario of a home fire wherein the homeowner had no insurance, DEQ's position is that state-held funds should not be expended outside of LAA abatement (e.g. property restoration, etc.).

5. Is this a change in the EPA-defined use?
 - a. Example scenario: An area that was considered a limited-use area (LUA) is changed to a use that entails more exposure time, such as changing an unused wooded portion of a lot to a lawn, or demolishing sheds and decks and exposing previously inaccessible areas. The "land use" (frequency and type) is what was used in the risk assessment for the purposes of determining potential exposure time; this does NOT equate to land uses that one normally thinks of for zoning, etc.

The ROS indicates that changes in land use will be tracked but does not specify whether this would be "deferred remediation."

- b. Both DEQ and EPA believe that this scenario will need to be evaluated on a case by case basis to determine if additional clean-up is needed. EPA's position is that federal funds can only be used for sampling after changes are complete (i.e. confirmation sampling only). However, federal funds could be used for cleanup. DEQs position is that state-held O&M funds could be used

- for any sampling (i.e. investigative and confirmation sampling) and cleanup costs in lieu of federal funds.
6. A “miss” or “unforeseen condition”
 - a. These terms are not defined in the Record of Decision (ROD), but the ROD states that EPA would come back to conduct response activities for these scenarios on a case by case basis. Currently, the outlined process for a decision is to further discuss with EPA at such time.
 - b. DEQ’s position is that if EPA has determined that if federal funds can’t be used, then state-held funds should be available.

George said when you look at what the DEQ isn’t going to pay for he is amazed the EPA is paying for as much as they are. Commissioner Peck said this just blows him away. He said if he bought property at market value and there is asbestos found after he would have to pay for cleanup and that is a no go. He would also like “naturally occurring” clearly defined. This is happening in April said Commissioner Peck, and the county has no say in what is done; we will be flying completely blind on this thing. Commissioner Peck doesn’t feel any of the three options are good options and it is further complicated by receiving their draft response weeks before the transition. This has to be done but it has to be done right. Commissioner Peck said he told the EPA if this isn’t finished right everything that has been done over the last twenty years has been done in vain. There are a lot of things that DEQ does not have in place and it doesn’t have to be that way. It is an absolute disgrace they waited this long to respond. Kristin Smith asked why not try for an injunction? Jen Merriman said she would need to look into that option before answering. Commissioner Bennett said unless you hold their feet to the fire they will not come around; this is their normal way of operating. George said most funding for DEQ will be federal money and they are wondering if they have their eye on the state funds. Cuffe said other communities with superfund sites received funding for economic redevelopment but Lincoln County has not. He said this bothers him a lot and everyone is frustrated.

Commissioner Peck said he thinks of the three options they could do two and three concurrently. Kristin said litigation can cost a lot, but it at least gets the DEQ to the table. Cuffe asked if the EPA would be willing to extend the deadline for the switch to DEQ oversight. Commissioner Peck said he will check in to it. He added the next oversight committee meeting will be March 18 and they really need the public in attendance. Bruce Vincent said the governor needs to be invited as the DEQ Director was appointed by him. Dr. Black asked who will make sure we are not having any negative health impacts. Commissioner Peck said the only metric that will show success is looking at the epidemiology and seeing if the numbers are going down.

Commissioner Peck said overall, he is hearing that the board should pursue legal action while also beginning work on a legislative fix. DC Orr said he supports pursuing legal action, but he has a problem with the county attorney being involved saying a prior county attorney dropped the ball before.

Jen McCully stopped by to give a quick update on the Corona Virus. Jen said the CDC had just made a couple of updates but there are still zero cases in Montana. People coming from countries like China and Italy are being asked to self-quarantine for fourteen days.

Meeting adjourned at 3 PM.

LINCOLN COUNTY BOARD OF COMMISSIONERS

Mark Peck, Chairman

ATTEST: _____
Chris Nelson, Deputy Clerk of the Board