

March 13, 2018

The Lincoln County Board of Commissioners met for a **Lincoln County Port Authority (LCPA) Board Meeting** on March 13, 2018, in the Lincoln County Courthouse, Libby, Montana.

1:00 PM Present were LCPA board members Commissioner Bennett, Commissioner Cole, Commissioner Peck, Ted Werner and Tony Petrusa. Also present were County Administrator Darren Coldwell, Brett McCully, Tina Oliphant, Kevin Peck and Clerk and Recorder Robin Benson.

Tina submitted the following agenda as follows:

**Lincoln County Port Authority
Meeting Agenda
March 13, 2018 1:00 PM
Commissioner Chamber; Libby, MT**

1. Call to Order and Any Additions to Agenda
2. Review of Bylaws and Need for Changes
3. Election of Officers
4. Appointee of Loan Review Committee
5. Discussion on Port Authority Insurance
6. Discussion on the Libby Groundwater Superfund and International Paper
7. SK Finger Joint, Lease Agreement
8. Libby Creek Bank and EPA response
9. Structure and Dates for future Board Meetings
10. Future Agenda Formation.

Open for Public Comments

Adjourn meeting

1. Commissioner Cole called the meeting to order.

2. Commissioner Bennett suggested a subcommittee to review the LCPA Bylaws and bring recommended amendments to the whole board for decision. The draft amended bylaws will be reviewed by the county attorney's office. Tony and Commissioner Bennett will review and bring suggestions back to the whole board.

3. The Port Authority Board elected Commissioner Bennett as the Port Authority Board Chair and Commissioner Cole was elected as the Vice Chair. Commissioner Bennett said we need to clarify term limits. When the new board was set, it was determined new members would start at a 2year term and a 3year term to stagger term expiration dates. Ted said he would like to hold the 2year term and Tony volunteered to serve for the 3year term.

4. **Motion** by Commissioner Cole to appoint George Mercer, Ted Werner and Matt Skranak to serve on the Loan Review Committee. Commissioner Bennett commented the county will get clarification from the county attorney regarding private corporate applications as privileged information prior to approval. Commissioner Cole said the committee is to bring recommendations on loan approval/disapproval to the LCPA Board for final decision. Commissioner Peck commented we need to get an approved policy in place by the county attorney once an application is approved.

5. Kevin informed the board that an insurance renewal will go out to carriers by the 1st of April. Building coverage has been revised and the application is updated. Kevin reminded everyone that a lot has been paid out due to Stinger, fires, collapsed roof etc...and he is looking for a carrier for liability and potentially a couple of buildings. The group discussed different types/options of insurance coverage. Kevin said we need to review and update lease contracts and agreements to ensure properties and equipment are insured. Tina suggested we put selling properties on the next agenda to discuss process, authorities and the M.C.A. Codes that apply.

6. George Jamison was present via phone conference representing the County Board of Health (Board Member). Tina gave a brief history of the groundwater superfund site, International Paper (IP) involvement, and studies conducted. Tina said she believes there will be limited cooperation from IP until they are motivated by EPA and DEQ. With that in mind the port authority would like to learn of the Board of Health's willingness to require some level of cooperation from IP before any talks continue regarding the Controlled Groundwater Area.

The following document submitted by Tina Oliphant:

OUTLINE OF PRELIMINARY CONCERNS

Tech Memo: Numerical Modeling to Evaluate a Proposed Controlled Groundwater Area

Rev 3, Draft Final

AECOM Sep 26, 2017 .

Libby Groundwater Site, Libby, MT

November 2, 2017

(Revised November 7, 2017)

Revised November 7, 2017 following EPA presentation and discussion; added fourth area of concern.

INTRODUCTION:

The Lincoln County City-County Board of Health (BOH) was approached in the Spring of 2017 and asked if we would consider being the petitioner for the creation of a permanent Controlled Groundwater Area (CGA) associated with the Libby Groundwater Superfund Site. As a first step in considering that role, EPA provided the referenced Tech Memo for review and discussion.

The BOH and other County entities are also aware of ongoing activities at the Site, i.e., the Port Authority, related to both the Groundwater Site and the Libby Asbestos Superfund Site. Primary interaction with the regulatory community and others related to OU5 of the Asbestos site and the overall Groundwater Site is conducted by the Port Authority.

These comments and concerns are personal comments offered as a BOH member and Liaison (along with Commissioner Mark Peck) for Superfund Sites, and do not speak collectively for the Board. They do however represent a summary of concerns that will be reported to the BOH.

The use of CGA restrictions is an important institutional control, and has been essential on many groundwater contamination sites, either as a temporary or permanent instrument. cursory consideration suggests it being appropriate and necessary at this site, but as with any institutional control that imposes restrictions, careful consideration is warranted regarding necessity, extent, and operation of the control. A CGA is often viewed as a remedy element of last resort. Besides the obvious exposure protection and plume control benefits, a CGA also deprives future use of the groundwater resource.

Recognition is given to the complexity and uncertainty of defining site subsurface conditions, the distribution of contaminants, characterization of flow, transport and attenuation, etc. It is incumbent on stakeholders and regulators (including the BOH) to agree that the proposed CGA is based on a reasonable standard of care and sound professional judgement.

CONCERNS: Four areas of preliminary concern are offered as comment and feedback.

Technical:

The Tech Memo is of course more of a summary and not expected to include the volumes of information that support the modeling, conclusions and recommendations. To support being the petitioner, the BOH should be reasonably convinced that the technical bases for the analyses and the modeling are sound and reasonable. This should be accomplished by a detailed technical review. It is anticipated that this will include articulating multiple questions and comments, probably requiring the most interactions.

The Groundwater Resource:

The CGA will eliminate the use of groundwater within its limits. While this prohibition is already largely addressed, a CGA is a more permanent and final action. As mentioned in the Spring of this year when the BOH role in CGA was proposed by EPA, the BOH will be sensitive to questions related to the consequences of loss of the resource, especially related to water supply issues for the Port Authority and City of Libby.

Separability of Superfund Sites:

Board of Health, County, Port Authority and others are actively engaged in developing Institutional Controls for the Libby Asbestos site, as well as working with EPA and DEQ to develop the Operation and Maintenance plan for the site, which includes OU5. (OU5 is receiving considerable attention in an effort to achieve delisting.) As part of that activity, we are aware of linkage that EPA is expecting from the Port Authority whereby the Authority's support and commitment to the CGA is required before the EPA and DEQ will move forward with an asbestos-only Environmental Covenant for OU5.

This contingency linkage between the sites is troubling since it may present complications related to progress on the Asbestos site. Separability of the sites would be preferred, and would seem feasible given the distinctly different contaminants, exposure routes, etc.

Enforcement Issues:

The BOH will be concerned about the County's responsibilities for enforcement. We recognize the need for effective monitoring of compliance and enforcement, but need to be assured that we have the resources to meet our obligations. A shared responsibility with DNR should be explored. There is also concern that in the absence of a well user inventory, the extent of illegal wells within currently regulated areas (City) is unknown. It would seem prudent to "be current" on existing prohibitions and enforcement within the proposed CGA prior to implementing a new restriction.

SUGGESTIONS:

Technical:

A detailed independent technical review is recommended. The BOH would expect that the Port Authority would take the lead on this. It is also noted that the technical documents supporting the Tech Memo are not readily available on the EPA website or in a local document repository. A BOH representative may participate in the review, but not as the lead. It is also suggested that technical professionals interact closely to speed the review process.

The BOH should also be interested in the status of the Focused Feasibility Study and its implications for the CGA, or vice versa.

The Groundwater Resource:

The BOH objective should be to have assurances that the imposition of the CGA will not adversely affect the resolution of this issue, i.e., the consequences of loss of the resource, especially related to water supply issues for the Port Authority and City of Libby. Those assurances would likely be expected from the Port Authority and the City of Libby.

Separability of Superfund Sites:

It is strongly preferred that the linkage between the Sites be removed.

Enforcement Issues:

Consider a user inventory, and develop options for shared enforcement.

General:

It is suggested that an informal plan to address these concerns, and others as they arise, be developed.

Prepared by:

George Jamison

11/2/2017

11/7/2017

Commissioner Peck expressed that now we have a new board, we need to reopen these conversations with agencies and IP and potentially have a professional negotiator. We need to reestablish relationships to make this work for assurance of future water needs.

George said deprivation of a resource and in this case, groundwater, we need to concentrate on the cost of water sources. George said the City of Libby needs to be brought into this conversation. Commissioner Bennett questioned the cost of a water treatment plant off Libby Creek. Commissioner Peck suggested Mike Fraser's involvement; we have several options to look at and Fraser is somebody that can cost this out. Tony said he is interested in helping with the cost/option strategy.

7. Brett said SK Finger Joint burned down in November 2017. Ted commented on standard lease/policy clauses that should be in all agreements that acknowledges this type of situation. Brett said he anticipates clean up to be done by end of May. **Motion** by Commissioner Peck to allow Brett to negotiate a new lease with SK Finger Joint. Second by Ted Werner, motion carried unanimously.

8. Brett stated he firmly believes the bank/dike issue is due to EPA's failure to properly execute their own design. Commissioner Peck said it may be time to get senators and newspapers involved. Commissioner Peck said he will make some phone calls to our legislators.

9. Commissioner Bennett suggested the LCPA Board to meet weekly for the first 4 to 6 weeks and then reassess where we are at. Next meeting is scheduled for Monday, March 19 at 10:00 am.

3:00 PM **Meeting Adjourned**

LINCOLN COUNTY PORT AUTHORITY BOARD

Jerry Bennett, Chairman

ATTEST: _____
Robin A. Benson, Clerk and Recorder