

Pursuant to NRS a joint meeting of the Nye County Board of Commissioners, Nye County Board of Highway Commissioners, Nye County Licensing and Liquor Board, as the Nye County Board of Health, as the Governing Body of the Unincorporated Town of Pahrump, as the Governing Body of the Unincorporated Towns of Beatty, Belmont, Gabbs, Manhattan, and Railroad Valley, and as the Board of Trustees for the Pahrump Pool District, was held at 10:00 a.m. in the Commissioners' Chambers, 101 Radar Road, Tonopah, Nevada 89049.

John Koenig, Chair
Dan Schinhofen, Vice-Chair
Lorinda Wichman, Commissioner
Butch Borasky, Commissioner
Donna Cox, Commissioner
Sandra L. Merlino, Ex-Officio Clerk of the Board
Angela Bello, District Attorney
Sharon Wehrly, Sheriff
Tim Sutton, County Manager

Also present: Kelly Sidman, Deputy Clerk; Samantha Tackett, Administrative Manager; Ronni Boskovich, Deputy District Attorney

1. Pledge of Allegiance

The Pledge was recited.

2. GENERAL PUBLIC COMMENT (Three-minute time limit per person.) Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item (first).

Wade Hinden said the Albertson's parking plaza on Highway 160 had its sprinkler heads going and he wondered why they were watering after an inch and a half of rain. He was also told Mountain Falls had its sprinkler heads on. Mr. Hinden thought conserving water should start with the big boys in town.

Robert Adams said on January 16, 2018, the BLM would have a public comment meeting in Pahrump at the Nugget. He said this was more than a rehash of the 2014 resource management plan (RMP) as the 2018 RMP grabbed another nearly million acres of wilderness in Clark and southern Nye Counties. Mr. Adams asked everyone to attend the meeting.

Rich Lauber stated self-protection was the mission of everyone here today. Realtors needed stable property values to support commissions and keep buyers and sellers happy. One acre landowners needed to be able to drill wells.

Commissioner Koenig interrupted Mr. Lauber and asked him to wait to comment until that agenda item was opened.

2. GENERAL PUBLIC COMMENT (Three-minute time limit per person.) Action will not be taken on the matters considered during this period until specifically included on an agenda as an action item (first).-Cont'd.

Tina Trenner said quite a few years ago she was watching Nightline and a fellow named T.B. Pickens was on. He talked about water and how he was going to buy up all kinds of water rights and anything that dealt with water because he felt water would be a commodity in the future. Ms. Trenner did not think water was a commodity when it came to life and asked everyone to think about water as life and a human right that absolutely had to be had.

Richard Goldstein advised tomorrow was the monthly meeting of the American Veterans Foundation of Pahrump and anyone interested in learning about the banner program was welcome to come. The application process had been re-opened for the next 90 days. The meeting was at 1:30 p.m. at the Nye Community Coalition.

Tim Sutton added that item would come before the Board first to approve the reopening of the deadline.

Walt Turner thanked Commissioners Schinhofen and Koenig for showing up at the 4-H fundraiser last night.

Dennis Hof said he was a well owner and supported the well owners. He implored the County to protect their interests.

John Zurovski listed his ideas for ways to save the community which included, among other things, increasing water distribution coverage; metering wells; reducing domestic wells; and cutting down remaining salt cedar trees. Mr. Zurovski said members of a governmental body who had commercial or private interest in water rights beyond a domestic well should recuse themselves from any governmental enterprise regarding water rights and distribution.

SITTING AS THE GOVERNING BODY OF UNINCORPORATED TOWN OF PAHRUMP

3. For Possible Action – Discussion and deliberation to consider hiring an attorney to take legal action in opposition of Order #1293 that was issued by the Office of the State Engineer of the State of Nevada on December 19, 2017.

Commissioner Koenig cautioned everyone on their behavior during this item and said per the Open Meeting Law he could have them removed.

Commissioner Wichman read a disclosure statement. She was elected in District I to represent Nye County. If people believed a Commissioner should only have a loyalty to their district then she still represented her district as it took in everything north of Bell Vista Avenue. The Nye County Water District (NCWD) is a separate subdivision of the State of Nevada created by a legislative action. This Board of County Commissioners

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had no authority to direct their work or approve their contracts. While her husband was under a contract with the NCWD, Commissioner Wichman stated neither item on this agenda would have any impact on her household and therefore she would vote as she was elected to do.

Darrell Lacy, Planning Director, explained this was in response to Order 1293 from the State Engineer's Office which primarily focused on restricting future domestic wells. The order stated that water rights were required for new domestic wells on lots that did not already have water dedicated to them. From the best Mr. Lacy could tell at least half the lots in the valley were formed with water rights so to say this made all lots unbuildable was definitely misleading. For lots that did not have water rights already dedicated to them there were other ways to develop them without domestic wells, like community wells and central water systems which were cheaper options than domestic wells even before this went into effect. Mr. Lacy agreed this was a major issue, and a big policy issue, but said it was not at the level some people had been discussing it in the valley.

Don Cox said one way to solve the water problem was to not allow developers to come in and build hundreds of homes and felt there should be a moratorium on development when it came to track homes.

Kenny Bent said it was important that everybody understood that the State Engineer did not have the authority to do this. When Jason King got on the phone Mr. Bent said the question would be who to appeal this too. He thought it was an administrative appeal that the District Attorney or Tim Sutton could file to make the deadline.

Walt Turner said this order was for new wells and in all reality it provided no relief to the water basin in any form. It simply cleaned up over-allocated water rights and encouraged everyone who purchased water rights to use it all. It also raised the price to build a home on an acre. He asked the Board to not entertain community wells either as it was still the same amount of homes using the same amount of water.

Commissioner Schinhofen pointed out one of the things the NCWD worked on was a conservation plan with the RPC which was approved and became effective June 5, 2017.

Dwight Lilly said he was against this item as he thought a lawsuit should be the last step taken in civil discourse. He would prefer to see a delegation of the private well owners sent up to meet with Jason King to try to come up with a solution.

John Bosta stated his objection to the County governing board sitting as the Pahrump Town Board spending the town's money on lawsuits to oppose the order.

3. For Possible Action – Discussion and deliberation to consider hiring an attorney to take legal action in opposition of Order #1293 that was issued by the Office of the State Engineer of the State of Nevada on December 19, 2017.-Cont'd.

Debra Gaylord-Thomas said the County would lose tax money and services due to Order 1293 and suggested a moratorium on subdivisions until the core problem was solved.

Assessor Sheree Stringer asked the taxpayers to please direct their frustration to the NCWD instead of her employees as the Assessor had nothing to do with this. She said taxpayers were stating their vacant properties were worthless, but according to NAC 361.1182(3)(b) her office had to use three years of sales values to determine value of vacant land and could not just randomly remove values. As a taxpayer herself, Mrs. Stringer said severe reductions in land values equated to less taxes which lead to budget reductions and less services.

Commissioner Schinhofen asked what the value of a bare acre was.

Mrs. Stringer said it was about \$100.00 or \$120.00.

Harley Kulkin said the real problem was density and it needed to be controlled. He totally supported taking legal action, but was concerned about the Town of Pahrump paying for it as this was a County issue.

Attorney Dave Rigdon from Taggart & Taggart said this was difficult for him to do because normally when he sat down to consult with a client it was done in an attorney-client privilege setting and he could not do that in this setting. He offered being retained, without charging the County, for the limited purpose of having an attorney-client briefing so he could outline the process.

Horace Carlyle hoped the governing board for Pahrump did not support litigation against the State Water Engineer as he acted to try to protect the status quo.

Michael Lach stated his opinion that the order was issued out of frustration as it conserved no actual water in Basin 162. Charging money for paper to drill a well versus drilling a well did not save water, unless the intent was to make it cost prohibitive to drill a well, which the order did. The idea of a conservation well was suggested as an option, not a State order, to give the landowner a choice. Mr. Lach said the order was not equitable or defensible.

Norma Jean Opatik said anyone living in a desert community realized that water needed to be conserved and the consensus here today was that Order 1293 did not conserve water. With respect to the Assessor, Ms. Opatik understood there were ways they did things, but on average she said a bare acre of land was about \$100.00 of tax base money. Building a home on it increased the value of that rapidly so now that tax base had been stopped.

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Yvette Chevalier explained this was not litigation. This was the remedy that the statutes provided to contest an order unwelcomed by a town. She thought an unintended consequence of this could be that the owners of the parcels would try to build the wells themselves, which was a hazard to the health, safety and wellbeing of the community. Looking at it from a constitutional point of view, Ms. Chevalier said making this ruling retroactive was a taking and that was not allowed, particularly against domestic water use.

Patricia Rippie did not think the onus for conservation should be put on the acre owners. The other problem with requiring water rights was it sucked up the water rights and the cost would be burdensome to people trying to do commercial development.

Ralph Hushbeck discussed proofing. Certificated water rights had to be proven every five years and Mr. Hushbeck suggested telling the large holders of water rights that they could retain their certificates if they just agreed to non-use for five or ten years to conserve quickly. He felt proofing was an absolute waste of a lot of water.

Commissioner Koenig said the Board could not control that and it was controlled by the State. He added there was a bill in the last legislative session that tried to do that, but it did not pass and met with a lot of opposition from Pahrump residents.

Rich Lauber thought the Board should send a letter to the State Engineer addressing the concerns about the economic strain the decision put on the community. He discussed the loss of property tax revenue that would occur during the next few years. He suggested either reducing the current well owners to 1.5 acre feet with no meters unless there was a reason to suspect overuse, or a half acre conservation well with the ability to purchase one acre to be equivalent to existing wells. Those suggestions would reduce the over-allocation more than the order and people would be allowed to drill, there would be increased tax revenue, and the well owners would be protected better.

Gerald Schulte, owner of Factory Home Center, said he represented low-income housing, which hardly existed anymore especially if thousands of dollars were added for a well. He told the Board they were affecting his business because if this went through there was no longer a reason for low income housing here. He said he could put a house on an acre and a quarter with the well, the septic and everything for \$120,000.00, which was good for people on a fixed income.

Lou Baker said this act had restricted the growth in Pahrump and wondered if all the land surrounding Pahrump would sit in waste because there was no water. He thought there were things that could be done to make this work for the community.

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Debra Strickland said the reason hiring an attorney needed to be considered was because that was the only remedy to find out legislatively if this action was taken for the citizens' protection or if it was something the State Engineer did that arbitrarily affected everyone. She then polled the audience about hiring an attorney, the majority of which raised their hands.

Wendy O'Neal said she recently purchased land in Pahrump and was denied a well on December 19, 2017, because the order was signed that day. When she spoke to Jason King he said he felt sorry for her situation but that he needed to do what he needed to do. Mrs. O'Neal said she did not have the money to purchase two acre feet of water rights so her only option was to uproot her family again and go back to Las Vegas to live. She asked for a suggestion as to what she should do as a property owner that had no water and could not get water to the land.

Andrea Finkler opposed Order 1293. The order did not conserve water and while Pahrump would continue to grow, people would buy half acres instead of acres and would live in congested subdivisions.

Henry Neth thought this was a long-term problem and was going to take a long-term solution. He did not think Order 1293 was the answer, but the water engineer took the only steps he could take, which he had the absolute right to take based on the designation of the basin. Mr. Neth felt there had to be a way to curtail the wells that would be drilled until such time as the conservation plan was in place.

Judith Holmgren said water rights seemed to be the problem with the over-allocation. She realized water rights were ruled to be private property, but they also appeared to be an item of speculation. She wanted a legal opinion as to whether water rights were an uncontrolled commodity that the Securities and Exchange Commission should be looking into. If that required an attorney's opinion Mrs. Holmgren wanted the Commissioners to go forward with hiring the attorney.

Gene Hobson felt this was taking his water rights. He had no problem with conserving, but he saw that the Board was willing to let people grow marijuana which took more water than his grass which made no sense to him. He felt the Board needed to start looking at the industries that wanted to come in to see what their water usage would be.

Dawn Murphy suggested a moratorium on subdivisions.

Jason King, the State Engineer, was present via telephone along with Deputy Attorney General Micheline Fairbank, Levi Kryder, and Kristen Geddes, Chief of the Hearing Section of the Department of Water Resources. Mr. King said he was happy to discuss

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issues related to Order 1293, but he wanted to restrict his comments to that with no philosophical discussions or what-if scenarios.

Commissioner Schinhofen asked Mr. King when he started to write this order.

Mr. King said the genesis of this thought of prohibiting domestic wells was probably a couple of years old. In terms of when they started drafting it, Mr. King stated they had been drafting it for months.

Commissioner Schinhofen said he knew the NCWD when they started the committee to study Basin 162 had at least 100 public meetings. He noted that in 2015 and 2017 the idea of conservation wells was floated and asked if some of the same people here today testified against that.

Mr. King said that was correct. His recollection of the 2015 legislature was that there was a bill draft that did not get much traction over the session. This last session there were two bill drafts that were trying to do something with this issue, one of which was a conservation well, and it went down in flames. He said they tried to do something for domestic well owners and based on opposition that did not pass either.

Commissioner Schinhofen said some of the data the NCWD brought forward showed that over the last 30 years on average there were about 50 acre feet of water a year the State Engineer was removing from the books.

Mr. King explained that was an analysis and estimate put together by the NCWD and the State worked closely with them. Based on a review of the history that was the best guess of what was either cancelled or forfeited in the valley. He said if they did not see a steady application of effort to put the water to beneficial use then they were going to call people on it.

Commissioner Borasky made a motion to talk to the attorney that was present contingent upon possibly representing Nye County, the Town of Pahrump in particular, and go into a closed session to do so.

Angela Bello clarified the motion would be to retain Taggart & Taggart for purposes of consultation only. If that passed, they would be hired and it would be a litigation meeting (a non-meeting) and the Board would then make a motion to retain them.

Commissioner Cox seconded the motion to retain Taggart & Taggart for purposes of consultation only; 2 years. Commissioners Wichman, Schinhofen and Koenig voted no. The motion failed.

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Darrell Lacy explained in planning they talked about entitlements, which could be an existing subdivision map in which the lots were formed, and the County had given out entitlements through development agreements. He was not arguing that at some time historically the County gave out a lot of subdivision maps and development agreements. Ten years ago there were 20,000 lots under entitlement through development agreements. Mr. Lacy said they had been able to get rid of about 7,500 of those, and any large subdivision maps done in the last few years had been done in areas already under development agreements. Mr. Lacy said the County was not giving any new entitlements, just trying to find the right way to develop what it already committed to.

SITTING AS THE BOARD OF COUNTY COMMISSIONERS

4. For Possible Action – Discussion and deliberation to direct the Water District Governing Board to: 1) identify, quantify and investigate the relinquishment of water rights within subdivisions without infrastructure; 2) investigate the feasibility of community wells; and 3) investigate the feasibility to give an option in the Town of Pahrump to choose a conservation well as opposed to purchasing two (2) acre feet of water rights.

Commissioner Schinhofen said he asked for this item, but he would like to drop the third one because without a motion from the legislature the State Engineer did not have the authority to do conservation wells at this point.

Commissioner Schinhofen made a motion to direct the NCWD to identify, quantify and investigate the relinquishment of water rights within subdivisions without infrastructure and investigate the feasibility of community wells; seconded by Commissioner Wichman amending it to asking the NCWD as the Commissioners had no authority to direct them.

Commissioner Koenig questioned not having the third item in the motion.

Commissioner Schinhofen amended his motion to also have the discussion on conservation wells and what would be the path forward to get that done; Commissioner Wichman amended her second.

Kenneth Searles said when he was a member of the NCWD a letter was sent to Jason King about what would be done with the over-dedicated water rights not to be used by utilities. Mr. King responded that he was looking into it, but to Mr. Searles' knowledge nothing had been done.

Michael Lach wanted to know if Mr. King was in favor of a conservation well and if so, would he allow the NCWD to write that as an option to his order that people could

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choose in just this valley. Mr. Lach also wondered if there was an 80,000 acre foot recharge if Mr. King would have issued this order.

Kenny Bent suggested before moving this forward to the NCWD that the Board consider a public workshop so the public could bring in some suggestions.

Commissioner Koenig commented that he had no problem with a community workshop, but he wanted to leave that up to the NCWD so they could hear it.

John Bosta thought the Board should first require the State Engineer to do beneficial use on all utility companies' water rights. There were water rights in the neighborhood of 3,000 acre feet that had not been put to beneficial use since 1986. After he had done that and it was cleared away, the remaining water rights needed to be looked at before the three items were started.

Dwight Lilly thought a steering committee was needed made up of Pahrump realtors, drillers, well holders, and stakeholders, to solve the problem in the basin. He also thought the rural component of Pahrump needed to be acknowledged regardless of whatever was done with a conservation well.

Debra Strickland stated the State Engineer's Office was responsible for determining what parcels had existing water rights. She described the difficulty she encountered with the 32 parcels she sent in to have that determined.

Harley Kulkin asked for an explanation of community wells and conservation wells.

Commissioner Koenig said a community well sat in the middle of ten lots. All of the lots fed from the same well and all used the same amount of water they would have if they had their own well. It was also metered. As far as a conservation well, a person would go to the State and say they wanted to drill a well. Mr. King would give the option of using half an acre foot a year and they could drill their well or they could buy two acre feet of water and drill their well.

Commissioner Wichman added that a community well had to be less than 14 hook-ups and less than 25 persons using it in order to stay below the qualifications for a quasi-municipal well.

Mr. Kulkin said he did not mind the well sharing suggestion, but he thought the have-nots were always the ones suffering.

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Melissa Campbell said she was new to Pahrump. She bought five acres and was to drill a well after she got her tax money back. She explained the problem with a community well was she was far out of town and her nearest neighbor was half a mile away. She asked if she was metered if that was based upon how many acres she had. She also wondered if she would have to purchase more water rights and who to get those from.

Commissioner Koenig said these were suggestions for the NCWD to kick around.

Mrs. Campbell was concerned about enacting a bill so hastily without coming up with solutions sooner.

Tina Trenner asked if Mrs. Campbell wanted to drill a well if she would have to acquire two acre feet of water.

Commissioner Koenig said under today's scenario yes, unless there was water already dedicated to that piece of property.

Ms. Trenner wondered if the State extrapolated numbers from one well that would be drilled to so many homes that would be developed in the development.

Commissioner Koenig did not know and asked everyone to get back on the agenda item.

Andrea Finkler, a Pahrump realtor, said Mrs. Campbell was one of 250 people that bought an acre in the past year that the realtors would now have to explain to that they made their purchase under false pretenses. She asked if the Commissioners continued to move on that they help the realtors help the community.

Rich Lauber said one of the suggestions was to look into the community well possibility. He did not understand how that gained anything as a community well still required two acre feet per parcel which meant still having the entire cost minus the simple drilling. If there were ten parcels on a community well then 20 acre feet of water rights would need to be purchased.

Commissioner Wichman was not present.

Michael Blay said he purchased a lot six days ago and was just learning he may have to spend another \$20,000.00 for a well which basically curtailed his dreams. He thought a conservation well was a great idea, but it was not sufficient as it would not cut the use of

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water that much. He thought the goal should be conservation and limiting the use of the water based on the size of the lot. Salt cedar and other non-native trees also needed to be curtailed.

Dawn Murphy thought this was done very sneakily and needed to be investigated. She said she did not want to be on a community well and felt this action would put everyone in a CC&R or an HOA.

Gerald Schulte said he was representing low-income housing, which was needed in Pahrump and why people were buying land here. He stated he could not meet appraisers right now because the appraisers did not see a lot of the costs that went into a manufactured home that were needless, such as the soils report for \$1,500.00. He proposed doing away with some of those costs to help the lower income people.

Walt Turner advised the citizens were prepared in case the Commissioners shot down the option of hiring legal services. There was a coalition that would be filing the appeal in lieu of the Commissioners.

Commissioner Cox stated she did not own any water rights and was only this fight for the people. She did not support the NCWD and this was one of the reasons she brought forth SB21. Unfortunately that got hijacked by a couple of Commissioners and a few other people from other areas when it went to the Assembly and it was never introduced. She did not want to give the NCWD any control over anything anymore. She felt Oz Wichman and Jason King were running that board and she would not vote to put any of this in their hands. Commissioner Cox did not understand why the County Commissioners did not have the right to reverse this order through a letter and a vote of the Board or to at least be able to make a motion to put it on hold until it was worked out through the courts. She asked if an item could be put on the agenda to either reverse the order of the State Engineer or the motion made by the NCWD to approve them putting this order through.

Tim Sutton said he was pretty sure the Board did not have the authority to reverse the order of the State Water Engineer. As far as appealing or challenging the NCWD's determination, he would defer to legal counsel.

Angela Bello said there were two questions there. The answer to reversing the order was no. The option was to bring judicial review in front of the courts and ask them to overturn the order. The order was binding until it was overruled by a court. As far as the letter, it already went out so to have the NCWD withdraw the letter did not change

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the fact the order was out there. She said the water district act was not clear as to whether the Board could take its own action as far as disagreeing with actions by the NCWD. People have the right to appeal any decision of the NCWD up to this Board, but there was no authority for the Board to bring its own action saying it disagreed. However, the Board could direct staff to issue a letter that stated the Board's disagreement.

The motion asking the NCWD to identify, quantify and investigate the relinquishment of water rights within subdivisions without infrastructure, investigate the feasibility of community wells, and have the discussion on conservation wells and what would be the path forward to get that done, failed with 2 yeas. Commissioners Borasky and Cox voted no. Commissioner Wichman was not present.

**5. GENERAL PUBLIC COMMENT (up to three-minute time limit per person.)
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Dwight Lilly said the Town of Pahrump and Nye County had been driven by developers and utility companies for a long time and those actions were reflected in the motions by Board members. Mr. Lilly said elections were coming in November and those choices could be changed.

Michael Lach clarified that when he mentioned a conservation well he was mentioning it as an option. He was not trying to take anyone's rights, but he believed that 90% of the people that wanted to move to Pahrump and have a single family home were going to be fine with that number. He advised that when the idea of a community well came up he did some research and found it would be virtually impossible to do a community well and have the agreement between the community well owners to transfer with the sale of any house or even get a mortgage. Mr. Lach thought the Board was wasting time and money on something that would never happen and obviously would not save water.

Yvette Chevalier urged the Board to replace the NCWD with people that were trustworthy, honest and ethical who would share information with the Board as it appeared the Board was blindsided in this matter. She also said the State Engineer had no authority to override the Constitution of the United States and the State of Nevada which required due process for the people.

Commissioner Schinhofen was not present.

5. GENERAL PUBLIC COMMENT (up to three-minute time limit per person.)
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Don Cox suggested defunding the NCWD. He stated no one had any right to take anything from the people that came with the land and the water came with the land.

John Bosta asked the Commissioners to request that the State Engineer review all certificates of water that he was supposed to issue on each subdivision or water company map. Mr. Bosta said he contacted the State Engineer's Office about the document for unit 14 and received a document which said the water was denied. He further noted that for every sale of real estate the realtor had to give to the buyer the certificate of water right for their land and that had not been done in this community since day one.

Harley Kulkin pointed out the whole purpose of this conversation was supposedly to conserve water, but it seemed like the mood was to favor wealthy interests. He noted how the Board wanted to buy a golf course, which apparently meant buying that course and watering the grass was more important than people's rights to have a piece of property and put a house on it for their family.

Debra Strickland explained effluents were created by housing which created golf courses. The reason that golf course was purchased in her opinion was so the homeowners around that golf course and the future utility company would be able to water.

Horace Carlyle asked for the NCWD and the County Commissioners to work with the State Water Engineer for a pragmatic solution to water conservation that might be able to amend Order 1293. He thanked Jason King for his intervention, goodwill, and attempt to protect Basin 162 and the current well owners while trying to continue development.

Jason King addressed Ms. Strickland's comments about the importance of being able to know with certainty where water rights were previously relinquished. He said that was a number one priority and they were working hard on that.

Angela Bello asked for a recess so she could interpret an NRS regarding tie votes. In some situations if there was a tie the vote needed to be postponed until the next meeting and she needed to see if that applied to this situation.

The Chairman declined taking a recess.

Ms. Bello said it would just come back automatically then if the law required it.


6. ADJOURN


Commissioner Koenig adjourned the meeting.

APPROVED this 20th day

ATTEST:

Of February, 2018.


Chair


Nye County Clerk / Deputy