

November 8, 2018
LCPA / KLB Business Discussion

The Lincoln County Port Authority Board of Commissioners met for a special session on November 8, 2018 in the Lincoln County Courthouse, Libby, Montana. LCPA board members present were Commissioner Cole, Commissioner Bennett, Commissioner Peck, Ted Werner and Tony Petrusha. Representing KLB Business were Jennifer Bishop and Brion Lindseth. Also present were Clerk and Recorder Robin Benson, Tina Oliphant, Brett McCully and George Jamison.

The focus of the meeting is to discuss the strengths/weaknesses of various strategies or even litigation in reference to resource damages on the Libby Ground Water Super Fund and the activity on the Controlled Groundwater Area.

8:30 AM

Commissioner Bennett called the meeting to order.

Brian explained that he would like to talk about EPA responses to questions, status of some of the activities in other areas that may relate to today's discussion and talk about next steps.

Brion expressed that everyone is to talk very open and we want to share with the public as much information as possible; balance that with discussion regarding litigation strategies, not in a public forum. Jennifer explained attorney client privileges. Commissioner Peck said he is comfortable closing the meeting, but the LCPA needs to be very specific as to why the meeting is closed.

The group read and discussed a letter from EPA dated October 16, 2018 outlining responses to comments on Draft Controlled Groundwater Area (CGA) Petition Supporting Information, dated July 9, 2018. The joint responses are from the EPA, MDEQ, and IP to the City-County Board of Health for Lincoln County Board of Health comments on the Draft Controlled Groundwater Area Petition Supporting Information, Libby Groundwater Site, Revision 2, dated June 26, 2018 (draft CGA Petition).

The EPA letter can be obtained in its entirety from the Lincoln County Port Authority.

There was discussion about how to determine damages to the Port Authority and fair and reasonable compensation to the LCPA and homeowners that can no longer utilize their wells.

Commissioner Peck asked about the impact from a legal standpoint, does this groundwater control area negatively affect our standing if we get into litigation. Commissioner Peck questioned if we move forward, are we hurting ourselves down the road. Commissioner Peck expressed there has been no impact to the Port Authority other than common sense; the key question is what the damage is. Brion said it's a necessary discussion, but in a different forum. Brion explained the CGA process, public comment, and sponsorship from an agency vs. sponsorship at the county level.

There was a brief discussion of who carries the financial burden of hooking up and bringing city water to the industrial properties and resident landowners within the CGA. Brion explained that EPA will come to a protective conclusion, but negotiations will need to take place regarding compensation of who pays for an alternate water resource.

Brion commented that we should reengage with IP for further discussion that provides for replacement resource into the future and limiting access to the contamination. Commissioner Peck agreed, stating its critical to have discussion with IP.

In the EPA letter, the Agencies request an official response regarding the BOH's willingness to sponsor the proposed CGA by November 13, 2018. George commented that after listening to today's discussion, he is requesting from the County Commission if the Board of Health should be the sponsor, but an answer to the EPA request does need to be done. George said the BOH is capable of the sponsorship, but he is looking for guidance. Commissioner Bennett said the county needs to put this on the next meeting agenda to discuss and to give the BOH some guidance and recommendations. Commissioner Bennett asked the LCPA Board if anyone has any issues to having the BOH as the sponsor. Tina requested clarification on how that may affect future strategies. Ted asked if there was a negotiating advantage to include the BOH to participate in those strategies. Brion said "yes", it would be advantageous to include the BOH. Brion clarified that the BOH, the County, the City and the LCPA should reach a cohesive/collective agreed course of action.

Brion said this conversation is to move towards litigation position, strategy and compensation options in a closed session. Commissioner Bennett said we can close the meeting. **Motion** by Ted Werner to close the meeting at 10:50 A.M. Second by Commissioner Cole, motion carried. Commissioner Peck was absent.

Motion by Ted to conclude the closed meeting at 11:53 AM and to adjourn the original open meeting. Second by Commissioner Bennett, motion carried.

Meeting adjourned at 11:55 PM

LINCOLN COUNTY BOARD OF COMMISSIONERS

Jerry Bennett, LCPA Board Chairman

ATTEST: _____
Robin A. Benson, Clerk of the Board