

**REGULAR MEETING OF THE
BREWSTER COUNTY COMMISSIONERS COURT
MONDAY, MAY 11, 2009
9:30 A.M.**

Judge Beard called this meeting to order. Officers present are listed as follows:

VAL CLARK BEARD	COUNTY JUDGE
ASA STONE	COMMISSIONER PCT. 1
KATHY KILLINGSWORTH	COMMISSIONER PCT. 2
RUBEN ORTEGA	COMMISSIONER PCT. 3
MATILDE PALLANEZ	COMMISSIONER PCT. 4
CAROL OFENSTEIN	TREASURER
JERRY SOTELLO	J.P., PRECINCT 1
BERTA RIOS MARTINEZ	COUNTY CLERK
BETTY JO ROONEY	TAX ASSESSOR COLLECTOR

1. Invocation & Pledge of Allegiance

Judge Beard led the invocation and Pledge of Allegiance.

2. Minutes / additions / corrections / approval

The minutes from the April 28, 2009, and May 1, 2009, meetings were presented for approval.

Commissioner Ortega made a motion to approve the minutes, which was seconded by Commissioner Stone, and passed unanimously.

3. Treasurer

A. Pending Bills

1. General Bills

Treasurer Ofenstein noted some grant pay-outs for Stonegarden and Linebacker.

Commissioner Killingsworth noted that a bill for a survey was repeated, as it was done a second time because it wasn't done right the first time. Treasurer Ofenstein and Construction Manager Danny Butler will look into it.

Commissioner Killingsworth made a motion to approve the general bills, which was seconded by Commissioner Ortega, and passed unanimously.

2. Infrastructure Projects Bills

Commissioner Stone made a motion to approve the infrastructure bills, which was seconded by Commissioner Ortega, and passed unanimously.

3. Discussion and appropriate action concerning bills

Treasurer Ofenstein presented two walk-in bills, one for \$105 for refrigeration at the South County Community Center, and another for Randall Investigations for District Court.

Commissioner Ortega made a motion to approve the walk-in bills, which was seconded by Commissioner Stone, and passed unanimously.

B. Reaffirm long standing Commissioners Court policy that Treasurer is authorized to pay, in advance, utility bills, discount bills, and bills with late penalties, subject to subsequent affirmation of Commissioners Court / Discussion and appropriate action

Commissioner Stone made a motion to re-affirm the policy, which was seconded by Commissioner Killingsworth, and passed unanimously.

C. Other administrative matters related to Treasurer's Office / Discussion and appropriate action for work of Treasurer's office to go forward

4. Officials' Monthly Reports / approval

Commissioner Stone read the Officials' Monthly Reports for the record.

Commissioner Ortega made a motion to approve the reports, which was seconded by Commissioner Pallanez, and passed unanimously.

5. County Youth Recreation / Big Bend Little League / Request for payment of unclaimed 2008 funding in addition to 2009 funding / Discussion and appropriate action

BLL Pres. Roxann Chavez was present to request funding for the League. She said the League serves 273 children from Alpine, Marfa, Terlingua and Fort Davis.

A check issued for \$5,000 from last year was never cashed, and Treasurer Ofenstein put a stop payment on it.

Commissioner Ortega made a motion to fund the league with \$5,000 from 2008 and \$5,000 for 2009. Commissioner Pallanez seconded the motion, and it passed unanimously.

6. Road & Bridge Department / Community Facilities

A. Road & Bridge Superintendent's Report

General updates on maintenance and repairs for all county roads; road materials including, fuel, supplies including usage & inventories & future needs; equipment including heavy equipment, (maintenance repairs, future needs, replacement and additions), pickups, trailers and other light vehicles and accessories, and small equipment, (usage, future needs), equipment rentals; facilities (yards in Alpine, Marathon and S. County) and community facilities (assistance with maintenance and other related issues); assistance to other governmental entities and emergency responders; personnel issues, (vacancies, new hires, performance and safety)

Supt. Frenchie Causey said crews placed speed bumps and "children at play" signs at Peach Tree Street. They started the road up Bee Mountain for the water tank project in South County. He said the project is going quickly and smoothly. They bladed part of the North County Road, performed general maintenance at Post Park and ongoing equipment maintenance.

Commissioner Pallanez said the City has not done the repairs at Mosley Loop. He said the more time that passes, the likelier it is that the repairs will be forgotten.

Supt. Causey said he has spoken with the City a few times about it, but hasn't heard from them in a while.

Commissioner Pallanez said he and Supt. Causey need to make an appointment with the City Manager.

Supt. Causey said he thought they could go Thursday morning at 9 a.m.

Judge Beard said if the situation isn't resolved then, come back to Commissioners Court.

B. Certified County Road Mileage for TxDot / Discussion and appropriate action

Judge Beard said a small amount of state funding is based on this mileage.

Supt. Causey said the current County Road mileage is 149 miles. Including Esperanza Road and those at Double Diamond will bring the total to 161.5 miles.

Commissioner Ortega made a motion to approve the mileage, which was seconded by Commissioner Killingsworth, and passed unanimously.

Commissioner Stone made a motion to include the roads in Buena Vista Subdivision outlined in Item D, which was seconded by Commissioner Killingsworth, and passed unanimously.

C. TxDot Border Colonia Access Paving grant update / Discussion and appropriate action to go forward with project

Commissioner Killingsworth explained that it is the County's intent to bring all the roads in the Buena Vista Subdivision into the County system, which she recommends.

D. Buena Vista Subdivision / (S. Brewster County) Commissioner Pct. 2 request to give preliminary approval to bring all roads in this platted subdivision into County system, these roads to be part of the Border Colonia Access Project

Commissioner Killingsworth made a motion for preliminary approval, which was seconded by Commissioner Ortega, and passed unanimously.

E. Discussion and appropriate action for general work of Road & Bridge Department to go forward

7. Public Comment

No public comment was made.

8. Emergency Management Department

A. General Report including:

Recent emergency responses; emergency planning update; recent work with cooperating emergency responders: (ESD #1, all VFD's and EMS); update on needs, programs, training, recent work with other governmental entities; equipment for emergency response and updates regarding needs, maintenance, repairs, replacement and additions; and personnel issues related to emergency response / Discussion and appropriate action

EMC Tom Santry said there have been a couple of small fires, and the Alpine VFD responded to a downed plane which made an emergency landing Friday.

In September, several agencies will gather to discuss flooding, using last year's Presidio floods as the basis for an emergency plan.

B. H1N1 (Swine Flu) Virus / Update

Mr. Santry said he believes the state responded well to the virus.

He said, for Brewster County, the worry was mostly the jail. Federal prisoners such as those picked up for immigration violations from Mexico are housed in the jail. Precautions were taken to make sure that if the virus were present, it did not spread.

C. Invoices / Homeland Security Grants / Problems with payment related to State Administrative Agency software / Discussion and appropriate action

Mr. Santry said the Security Administrative Agency notified him in March that the software used to process invoices is down. It was supposed to be working again in April, but it is still not functional. Mr. Santry said there are agencies that have been waiting more than two months for payment.

He asked Commissioners if the County could front the money to those awaiting payment, and then pay it back.

He outlined the agencies which are waiting, including the Alpine, Marathon and Terlingua VFDs, as well as the Brewster County Emergency Management Department. The total is \$71,000.

Treasurer Ofenstein said the County can handle fronting the payments.

Commissioner Killingsworth made a motion to make the payments with the understanding the County will be reimbursed. Commissioner Stone seconded the motion, which passed unanimously.

D. Request to have Rural First Responders meeting in rural portion of COG region/ Discussion and appropriate action

Mr. Santry said he has spoken with Judge Beard and the EMCs in Jeff Davis and Presidio counties. He then sent a letter to the COG director, but he hasn't heard back yet. He is requesting that rural First Responders meet in the region.

Commissioner Killingsworth said she wonders why they don't take advantage of electronics to have conference calls or computer conferencing.

Judge Beard said she will speak with the COG today, and possibly draft another letter.

E. Repairs to AVFD Tanker Truck and other equipment / Update

Mr. Santry said the repairs cost less than \$1,000.

F. Legislation which could hinder recruiting and retaining Volunteer Fire Department members / H.B 3660 (Sunset Legislation on Commission on Fire Protection) / Discussion and appropriate action

Judge Beard said H.B. 3660 includes language which is bad for VFDs because it would allow the Commission to regulate volunteer firemen. She said, in our area, we already have a difficult time recruiting volunteers.

She has already advised the County's legislative consultant to work very hard on this Bill.

G. Other general administrative matters/ Discussion and appropriate action for work of Emergency Management Department to go forward

9. Pending Infrastructure Grant Matters

A. Colonia Construction Fund Application / (2nd Septic Tank Replacement Grant Application for S. Brewster County)

1. Update

Commissioner Killingsworth said they should hear next month if Brewster County has been approved. She is already receiving calls from people who want to fill out an application.

2. General administrative matters related to application for grant / Discussion and appropriate action to go forward with grant application and program

B. 2007 ORCA Infrastructure Grant / Discussion and appropriate action / Study Butte Water Corp. Improvements

1. Update & General Administrative Matters regarding grant

Commissioner Killingsworth said the waterline at the base of the hill is going to be extended up the higher part of the road.

2. Study Butte Water Corporation Tank Project

a. General update on progress

She said they are working on the tank bed, and that the Road & Bridge Department has done an excellent job on the road.

Bidding on the tank should begin soon.

b. Construction of Road to tank site / Update

c. Discussion and appropriate action for project to go forward

10. Pending Community/ Public Safety Infrastructure Projects / Discussion and appropriate action to go forward with all projects, including:

Major Projects:

South County Emergency Response Center (Housing for Terlingua Medics, Terlingua VFD, Deputy, J.P. & related support space)

Alpine/N. Brewster County Area Emergency Response Center (Fire Station for Alpine VFD & Brewster County Emergency Operations Center)

Marathon Law Enforcement Facility (Housing for Deputy, J.P. Pct. 3 & training room),

Brewster County Jail Renovation (focus on update of electronics)

Construction Assistance for Alpine Public Library, a non profit corporation

Smaller Projects:

Vehicle & Equipment Storage Building (shed design) for South Brewster County on 23221 FM 170, near Terlingua & Study Butte, covered outdoor area for Marathon Town Square Repairs & Modifications to Old County Library Building, 203 N. 7th Street, Alpine, Outdoor Meeting Space for Marathon Town Square, adjacent to Community Center

A. General matters related to all projects

1. Bids for Materials and smaller subcontracts due on May 11, 2009, including:

***Overhead Coiling Doors with Openers & Push Button Switches
Drywall
Interior and Exterior Metal Studs
Batt Insulation
Suspended Ceiling
FRP Board
Wood Doors & Wood Frames
Metal Doors & Metal Frames***

a. Open, read aloud and distribute bids for review

***Construction Manager Danny Butler opened and read the following bids aloud:
-CAS; Alpine Fire Station; doors, frames, hardware; \$86,257; alternate bid,***

\$64,300

- CAS; Marathon office building; drywall installation, suspended ceiling; \$13,792
- CAS, Marathon office building; doors, frames, hardware; \$45,870; alternate bid, \$22,830
- CAS, Terlingua ERC; doors, frames, hardware; \$100,332; alternate bid, \$59,432
- CAS, Alpine Fire Station; drywall installation, suspended ceiling; \$40,300
- CAS, Terlingua ERC; drywall installation, suspended ceiling: \$77,800
- Overhead Door of the Permian Basin; rolling steel doors for Alpine and Terlingua; \$87,433

Judge Beard said Mr. Butler will review the bids, and then come back to Commissioners Court, maybe at the next meeting May 26, and make his recommendations. After that, Commissioners may award or reject any or all bids.

b. Discussion and appropriate action concerning award of bids or other appropriate action related to bids

2. Update on pending subcontracts issued on April 16, 2009 / Discussion and appropriate action concerning contracts

Mr. Butler said all of the contracts have been sent out. They are in the process of doing their shop drawings. He said he expects work will start in another week.

3. Temporary Employees / Matters related to retaining temporary employees for projects/ Discussion and appropriate action

Supt. Causey said he has turned in all the applications he has received to Judge Beard's office. He and Mr. Butler will look them over today.

4. Architect's request for revision of construction documents to reflect Section 304.1 Business Group B. (building standards) to include fire stations / Discussion and appropriate action

Judge Beard said this is a building code specification that needs to be adopted for fire stations. Without it, an architect is required to put a sprinkler system in the building. This applies only to the buildings the County is working on now; it is not a County building code.

Commissioner Ortega made a motion to approve the revision, which was seconded by Commissioner Killingsworth, and passed unanimously.

B. Project Updates

1. Marathon Justice Center / Discussion and appropriate action to go

forward with project

2. Alpine VFD Fire station / Discussion and appropriate action to go Forward with project

Mr. Butler said the gas and power lines still need to be moved. He said the dogs which were holding up work at the site have been moved. Mr. Butler said there isn't very much prep work to be done at the site.

3. South County Emergency Response Center / Discussion and appropriate action to go forward with project

4. Alpine Public Library / Discussion and appropriate action to go forward with project

5. Smaller project planning update (Covered area on Marathon Town Square and Road & Bridge shed in South County) / Discussion and appropriate action to go forward with project

11. 2010 Budget Process / County Budget Officer

A. Review Process

Judge Beard said she intends to send out communication to all Department Heads next week, and she will begin assembling information. After that, information will be send to contracting agencies.

Shaw Skinner is starting the audit the week of June 8. The sooner he does that, the sooner the Commissioners can start, and complete, the budget process.

She is not anticipating any difficulties.

B. Announce start of process

12. Exterior Maintenance on County Tax office / Update

Judge Beard said the trim and railing were touched up last week. The work was satisfactory and is complete. The doors still need to be replaced.

13. County Volunteers / Recognize Edith Elfring for commendable work in maintaining Ratcliff Memorial Garden

Commissioner Stone made a motion to formally thank Ms. Elfring with a letter, which was seconded by Commissioner Killingsworth, and passed unanimously.

14. Brewster County Tourism Council / Marathon Visitor Contact Center

A. Review of Design Concept for Center / Discussion and appropriate action concerning approving design concept & moving forward with project

Travis Roberts gave design concept documents to members of the Commissioners Court.

He said the property has been staked.

The drawing shows RV spaces, parking and picnic tables.

The center is an open metal shed-type design. There are no water and sewer facilities.

Ron Sanders said the Chamber of Commerce has agreed to keep the area cleaned and maintained.

Commissioner Ortega made a motion to approve the design concept, which was seconded by Commissioner Stone, and passed unanimously.

Commissioner Killingsworth abstained from the vote.

B. Other general matters related to establishing Visitor Contact Center / Discussion and appropriate action to go forward with project

15. VINE Contract (Victim Information and Notification Everyday Program of Attorney General of Texas) / Judge's and Sheriff's request to renew contract / Discussion and appropriate action

Judge Beard said VINE is an automated system which notifies victims when various offenders are going to be released from jail. It does not cost the County to be involved.

Commissioner Stone made a motion to renew the contract, which was seconded by Commissioner Killingsworth, and passed unanimously.

16. H.B. 811 / S.B. 1737 / Discussion and appropriate action related to entering into a Memo of Understanding (MOU) with the Brewster County Groundwater Conservation District and City of Alpine, and endorsing a compromise amendment to H.B. 811 / S.B. 1737, or other appropriate action to reaffirm support for H.B. 811

A. Review of History of Issue & Background

Judge Beard said Rep. Gallego introduced the bill January 27, 2009, and it is identical to a bill introduced in the last session, which the City of Alpine endorsed. The Bill would make the City of Alpine subject to the rules of the GWCD. In February, the Commissioners passed a resolution in favor of the Bill.

The City of Alpine has been working very hard against H.B. 811, although Judge Beard said it is hard to understand exactly who is in charge of water policy: the City Attorney, one councilman and/or the City Manager.

Judge Beard said her office has been working very hard to meet the City's objections. However, as soon as one objection has been met, another has been raised.

B. Review of Recent Actions by GWCD & City of Alpine in relation to issues surrounding H.B. 811 / Clarification of what issues are or are not related to H.B. 811

One of the first objections is that the Bill would cost the City lots of money; however, it is not the GWCD's intent to charge the fees. If they did, the cost would be very, very minimal. Judge Beard also proposed that maximum statutory fees be set even lower.

The City has objected because it says it doesn't have representation on the GWCD. Judge Beard said the City is represented by a majority of the board, and has offered that the Mayor could be on the board for the next two years.

The City has objected because the board is not elected. Judge Beard said electing the board would allow for another taxing entity. If that it was the citizens want, that is fine, but nobody has said they do and there isn't time to do it.

The City says the GWCD has all the data it needs. The GWCD board disagrees. The City doesn't provide data to the Board without a public information request.

The City says the GWCD will regulate the Musquiz well field. That field is in Jeff Davis County and not subject to the Brewster County GWCD. Judge Beard has proposed that H.B. 811 be amended to make it doubly clear that the Brewster County GWCD does not regulate out-of-county wells.

Judge Beard met with Mayor Jerry Johnson about several of these items, and she recommended that he be placed in an open slot on the board and that the County continue to fund the GWCD at the 2009 level. Mayor Johnson signed a letter to Judge Beard outlining and agreeing with those things.

He said he would present that to the City at last week's meeting. However, at that time, he told the Council that he and the Judge had "agreed to disagree."

Judge Beard said the circularity continues, and the objections have now turned to fabrication. She asked if citizens no longer care about protecting our water resources, or are they split between Enron-style water marketers and water conservationists?

She presented an advertisement from the City's Environmental Advisory Board about water usage that she said she thinks is a fair representation of how citizens of Alpine feel about water. She said a strong GWCD is compatible with the ethic espoused in the ad.

Judge Beard presented an invoice from the City to KoJo Energy for a water sale that took 864,000 gallons out of the County at a cost of \$2,592.

She said a strong GWCD is a decided threat to large commercial export sales. Water to be exported out of the County was highly controversial recently.

The citizens of Alpine need to make an honest policy determination: commercial sale or protection and conservation.

Judge Beard made some personal remarks in response to issues that have been brought up.

She said she and her husband, Tom Beard, both have been outspoken in their belief that water is the key environmental and cultural issue before us. They struggle on their ranch in the summer, and they know, anecdotally, that there is not enough water here for export.

Along with the Commissioners Court, the Beards are opposed to the Clayton Williams water export plan, and believe that the GWCD is the only vehicle to protect against plans like his.

Judge Beard said she and her husband's outspoken support of H.B. 811 has angered some in City Hall. She said some misguided officials and employees have sought to explain their support for H.B. 811 as some sort of nefarious plot to steal Alpine's water, which, she said, is a lot easier than giving cogent reasons for their opposition.

Judge Beard said her family's support for H.B. 811 has nothing to do with any of the City's paranoid plots, but rather with doing the right thing for the environment.

She said that everyday she drives past the most recent paranoid focus of the City of Alpine. She said all of the Commissioners have driven past it as well, as has anyone who has ever been to the Beard home. Most people will recognize the earthen impoundment which collects surface water, or run-off, as a stock tank rather than a plot to tie up the City's water. Judge Beard said it is well over 100 years old. The family's surface water right here goes back to 1916. Most of the time, it is dry. When it rains, it collects surface water only, run-off from the Beard's own land. It stops erosion and waters native grasses, wildlife and livestock. It also recharges the water table.

Most significantly, said Judge Beard, while it's on the dry Musquiz creek bed, it is about 22 miles downstream from the City of Alpine.

Judge Beard said there is ancient litigation between her family and the State, a matter which has been pending since the 1980's. The matter dates back to Tom Beard's great uncle being told by the State that he did not have to fill out reports for the impoundment. He stopped at the State's instruction; the Beards assert in equity that the State was wrong the cease that right.

She said the litigation is no secret. Now, at the urging of one City Councilman and the City Attorney, the Council is "monitoring" the litigation and has given the City Attorney the authority to intervene if necessary.

Judge Beard asked if the City doesn't understand that it owns no surface water on Musquiz Creek. She said, apparently, the City Attorney has convinced the Council that the Beards might amend their pleadings in the ancient litigation and come after the well in Musquiz field.

Judge Beard said this looks like retaliation for speaking out, or, like the Council has, once again, had incompetent, unethical legal advice.

Either way, she said this is a very calculated attempt to divert attention from the real issue – whether or not the City wants to join the rest of the County in conserving groundwater.

She said if H.B. 811 doesn't pass, when Clayton Williams comes calling, nobody can say that Judge Beard and the Commissioners Court didn't present a warning.

Tom Santry, a GWCD board member, said if they do not have information about what is being produced, there is no way they can control or protect the County.

C. Discussion and appropriate action

17. Firefighter Recognition Week / Proposal to combine Firefighter's recognition with groundbreaking for new AVFD Station / Discussion and appropriate action to plan & sponsor event (Emergency Management Coordinator & Judge suggested as coordinators)

EMC Tom Santry said he and the Judge spoke with the editor of the newspaper and he is in favor of getting together to honor the firefighters across the County. He is planning a 16-page special section with the Avalanche.

The day after the section is published, Judge Beard said they are planning for the groundbreaking of the new fire station, along with personal recognitions. Marathon and Terlingua firefighters would be honored in the following week.

Commissioner Ortega suggested that a drive for more volunteers be held at the same time.

Commissioner Ortega made a motion to approve the County's sponsorship and coordination by Santry and Judge Beard, which was seconded by Commissioner Killingsworth, and passed unanimously.

18. Duties of County Employees / Judge's request to appoint County PIO to undertake news/event content updates for website and to compensate PIO for production of minutes and website content

A. Executive Session Pursuant to Section § 551.074, Government Code, VTCA, to discuss the appointment, employment, evaluation, reassignment, duties, compensation, or dismissal of a public officer or employee

At 11:10 a.m., Judge Beard announced that the Commissioners Court was going into Executive Session to discuss the appointment of a PIO to undertake news/event content updates for the County website and to compensate the PIO for the production of minutes and website content, pursuant to Section §551.074. The courtroom was cleared

Reconvene In Open Session

B. Discussion and appropriate action resulting from Executive Session

At 11:17 a.m., the Commissioners Court reconvened in open session. Judge Beard announced that the Court had been in Executive Session pursuant to Section §551.074 to discuss personnel matters. Judge Beard asked if any action was to be taken as a result of the Executive Session.

Commissioner Killingsworth made a motion to add a \$250/month extra duties stipend to Betse Esparza for work on Commissioners Court meetings minutes and the County website, effective immediately. Commissioner Ortega seconded the motion, which passed unanimously.

19. State Legislative Update / Review of recent work on pending bills which would impact County / Discussion and appropriate action

Judge Beard noted that the County has had a legislative consultant since Rio Nuevo.

She explained that the County's legislative consultant is doing a good job. Also, she noted that it is costing right at \$1,000 for someone to travel from Brewster County to Austin and stay a couple of days. A legislative consultant is very cost effective, and further knows the "ins and outs" of how things work in the capitol, sometimes even more so than does legislative staff.

Additionally, it is a good way to make in-roads with other rural counties who have the same interests as Brewster County.

Judge Beard reviewed some of the Legislative issues she has been working on:

Juvenile Justice issues

Fire Protection issues

Hotel/motel tax bill

Issues related to the Clayton Williams Bill, S.B. 2544

General procurement

Simplification for stray animals / Estray laws

Pecos River Authority Bill

Several other issues have been screened, including those that may add tremendous expense to the Clerk's Offices.

20. Federal Legislative Update / Clean Water Act proposed re-authorization and its impact on Counties / Discussion and appropriate action

Judge Beard will write a letter of concern about the Act.

Commissioner Ortega made a motion to adjourn, which was seconded by Commissioner Ortega, and passed unanimously.

VAL CLARK BEARD, COUNTY JUDGE

ATTEST:

BERTA RIOS MARTINEZ, COUNTY CLERK