

**BOARD OF SUPERVISORS MINUTES  
GILA COUNTY, ARIZONA**

Date: August 10, 2010

**MICHAEL A. PASTOR**  
Chairman

**JOHN F. NELSON**  
Clerk of the Board

**TOMMIE C. MARTIN**  
Vice-Chairman

By: Marilyn Brewer  
Deputy Clerk

**SHIRLEY L. DAWSON**  
Member

Gila County Courthouse  
Globe, Arizona

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PRESENT: Michael A. Pastor, Chairman; Tommie C. Martin, Vice-Chairman; Shirley L. Dawson, Supervisor; Don McDaniel, County Manager; John Nelson, Deputy County Manager/Clerk; Marian Sheppard, Chief Deputy Clerk; and Bryan Chambers, Chief Deputy County Attorney.

**Item 1 – Call to Order – Pledge of Allegiance**

The Gila County Board of Supervisors met in Regular Session and a Work Session at 10:00 a.m. this date in the Board of Supervisors hearing room. Bryan Chambers led the Pledge of Allegiance.

**Item 2 - Information/Discussion/Action to adopt Resolution No. 10-08-03 authorizing the Board of Supervisors to submit a letter to the Governor of the State of Arizona and a letter to the United States Environmental Protection Agency (EPA) in opposition to the EPA's recent proposal to designate the area of Hayden, Arizona, as being in nonattainment of the National Ambient Air Quality Standard (NAAQS) for lead.**

Supervisor Dawson stated that the Environmental Protection Agency (EPA) has acted like it is doing ASARCO, a copper mining company, a favor by labeling the area of Hayden, Arizona, as a non-attainment area. Supervisor Dawson noted that she has met with members of ASARCO, which is owned by Grupo Mexico, a company that has made every effort to meet the EPA requirements. Grupo has the ability to close ASARCO down and it could very easily happen if the company decides it can spend its money wiser some place where it is wanted. She recommended that the Board of Supervisors adopt a resolution authorizing the Board to submit a letter to the Governor of the State of Arizona and to the EPA in opposition to the EPA's recent proposal. Supervisor Dawson then read aloud the Resolution. If approved, a letter to the Governor of Arizona and the San Francisco EPA will follow. Upon motion by Supervisor Dawson, seconded by Vice-Chairman Martin, the Board unanimously adopted

Resolution No. 10-08-03 authorizing the Board of Supervisors to submit a letter to the Governor of the State of Arizona and a letter to the United States Environmental Protection Agency (EPA) in opposition to the EPA's recent proposal to designate the area of Hayden, Arizona, as being in nonattainment of the National Ambient Air Quality Standard (NAAQS) for lead. **(A copy of the Resolution is permanently on file in the Board of Supervisors' Office.)**

### **WORK SESSION**

#### **Item 3 - Information/Discussion with members of the Gila County Planning and Zoning Commission regarding the Gila County Land Use Resource Policy Plan (LURPP).**

Robert Gould, Community Development Division Director, stated that members of the Gila County Planning and Zoning (P & Z) Commission have completely reviewed the Gila County Land Use Resource Policy Plan (LURPP) and the major change has been in its "tone". In 1997 when the Board adopted the LURPP, it contained language stating that Gila County would work cooperatively, putting the onus on the County. In this revision, the wording has been changed to state that the federal and state agencies must "coordinate" with Gila County. Another change is that all of the policies now contain a statement that Gila County may request peer review from professional, scientific or academic agencies where disputes are involved in regard to working with the federal government. Also added were 3 policy areas--Scenic Sites, Historic Sites and Payments in Lieu of Taxes (PILT). Mr. Gould stated that 4 public meetings have been held—the first meeting was held in Tonto Basin in conjunction with Chairman Pastor's regular monthly meeting and there were about 25-30 people in attendance; the second meeting was held at the City of Globe in which only 1 person attended; the third meeting was held at the Town of Payson with no one in attendance; and the final meeting was held in Young on a rainy Saturday and again no one showed up. The lack of attendance was baffling to the members because in Young there was actually a billboard sign out in front advertising the meeting. He stated, "We just don't believe people were concerned about it." At the Tonto Basin meeting, the residents there were very supportive of the LURPP with no negative comments being given. Prior to the 4 public meetings, a comment was submitted by Terry Wheeler and Tom Hale requesting a review of the wording and advising that a strong emphasis should be included regarding "coordination." When the members of the P & Z Commission reviewed and researched this issue, it was agreed that the suggestion given was appropriate so that change was made in the draft document that the Board was reviewing. He stated that 2 more meetings are scheduled—one with the entire Planning & Zoning Commission is scheduled on August 19<sup>th</sup> with the original intent of approving a recommendation to the Board on how to proceed with the final draft; however, very few changes have been made. The final meeting is scheduled for the end of September with the Board. The new draft with all the additional changes of

the LURPP will be mailed to all public agencies after this meeting so that everyone has it prior to the next hearings. Mr. Gould then called on Jay Spehar, a member of the P & Z Commission. Mr. Spehar stated that the first LURPP was written in 1997, which was led by Ron Christensen, former County Supervisor, to get the County a “badly needed document.” Then, approximately 1-1/2 years ago, the Board of Supervisors asked the P & Z Commission to take a look at the original LURPP because it was in need of revision and, in fact, revision was required and hadn’t been done over a long period of time. A committee comprised of members of the P & Z Commission reviewed the LURPP. The original LURPP was based on the word “cooperation,” which is a technical term under NEPA (National Environmental Protection Act), and the way federal agencies are expected to cooperate with local communities through administrative procedures acts and other federal statutes. He stated that the revised plan, the 2010 draft the Board has for review today, is based on “coordination.” It’s altogether a similar process and is embedded in numerous statutes that the federal government is required to “coordinate” with the local entities. Also, Senate Bill 1398 was passed in the last session of the Arizona State Legislature and it requires “coordination” between local communities and municipalities as well as counties and the federal government in certain instances. So the P & Z Commission believes it is following the law. Mr. Spehar stated, “We understand and are not so naïve as to think that this puts us in the driver’s seat regarding the federal management of the vast majority of the land in Gila County. We know it does not do that, but we believe it’s an important tool in the tool box that we, as a community, have to work with the federal agencies to at least have our voice heard during the planning process and decision-making, not thereafter.” Mr. Spehar again briefly reviewed the elements that had been added to the LURPP draft. In the Multiple Use and Sustained Yield Act, the members parroted categorically those things that are identified in that Act as multiple use activities on federal land. Also added was “water rights” because it was a glaring omission from the original LURPP and land can’t be managed in Gila County if the water sheds can’t be managed; it’s an integral part. Also reviewed was the “Payments in Lieu of Taxes” (PILT) and the short story is there’s a huge disparity. In bringing the Board up to date, Mr. Spehar advised that the 10-year average that an acre of private land produces in revenue to the County through fiscal years 2009-2010 is \$133.91 per acre of tax revenue accruing to the County tax base. PILT, on the other hand, looking back 10 years, is \$1.10 per acre. So there’s this huge disparity and in reviewing the detail of this, Mr. Spehar stated that the P & Z committee have humbly offered a suggestion as to how that might be addressed going forward. He concluded by stating that the committee members from the P & Z Commission, including himself; Don Ascoli, P & Z Commission Chairman; Mickie Nye, Commissioner; and Ron Christensen, Commissioner, under Mr. Gould’s careful leadership put a lot of work into this including working during evenings and weekends and they appreciate everything the Board has done to support this effort. Supervisor Dawson thanked the committee for its diligent work on this project. She stated, “I

remember when one of my political opponents came into the office and was telling me how useless the study was and that actually the only place we could get a good study done was by the Cattlemen's Association. I think you've done an excellent job." She stated that the federal government certainly has not figured out for counties like Gila County, which has so much federal land, that the tax burden ends up on a very small percentage of the land and the County has to end up having to fight to try to get even get a \$1.10 per acre. She believes that will probably be reduced and will continue to be reduced instead of going to what it's really valued at. That's the reason she looks forward to government agencies and non-profits looking to the state and federal government for land to put a college or job corps on or at least make productive use of it, along with "coordination" of the U.S. Forest Service and the federal agencies with the Board of Supervisors. She agreed that there's no forcing a federal agency to work with the County Board of Supervisors, but at least the wording is included in the LURPP and the Board can try to get their cooperation in "coordinating" with the County, but that will be an exercise to be watched as things develop. Mr. Ascoli stated, "The Commission itself took this very much as a serious task to look at what is going on in our County in our relationship to facing the federal government. In Arizona 42.2% of the state is owned by the federal government and in our County it's well over 80%. It is important that we, as a community, as a body of people, can use the resources within the County. Our County, and it is just absolutely beautiful, needs to be opened and be allowed to be shared more with the citizens of the County and the state and beyond. This is one way to make our statement, which I believe we have a legal right to do, to those that manage the land today that we are a part of the team. We belong in having a seat at the table. I enthusiastically support this proposal and hope that the Board will allow us to move forward with it." Vice-Chairman Martin stated that from the beginning her main concern has been whether "coordination" is enforceable and a long time ago she also had the same conversation with Terry Wheeler, City of Globe Councilman. She stated that if it is enforceable, then she wants the County to enforce it; if it isn't then it seems like "we are participating in a political theater." Vice-Chairman Martin advised that she has been talking to every western county possible and inquiring where they stood in this process. She also talked to Howard Hutchinson, Executive Director of the Coalition of Arizona/New Mexico Counties, and found that we might be able to drag the Bureau of Land Management to the table with this language, but we probably will never drag the U.S. Forest Service to the table with this language. She has also talked to legal people who double that it is enforceable. She talked to the U.S. Forest Service legal counsel out of the Washington, D.C. office and they have said that what we have is "cooperating agency status." She stated, "You can ask for anything, but if you're not asking for 'cooperating agency status' then there is no legal teeth to what you are doing in regard to the U.S. Forest Service. If the County wants to ask for 'coordination' it can, but if 'cooperating agency status' is not included then the County has no legal standing; there is no legal precedence; there's no legal teeth." She didn't know how far as a

county the Board would want to push dropping the rest of it and asking only for “coordination.” She stated that Howard Hutchinson’s and Karen Bud Fallen’s recommendation to other counties is to use the words “coordinating,” “cooperating” and they now add the word “collaborating” and they put all of those words into the other county plans so that they are covering all bases. Vice-Chairman Martin stated, “I’ve also told the Forest Service that we are now, by state law, required to demand ‘coordination’ and they said basically, ‘demand and be damned—demand away.’” Vice-Chairman Martin stated that in regard to PILT, the federal government should keep its PILT funds and let the counties put that land to use, which she prefers, but until they do, the Board needs to push all it can on the PILT funds. She stated that also from legal advice at the state level, the new Arizona law probably allows the County to bring the Arizona Department of Water Resources and the Arizona Game & Fish and other state agencies to the table in a way that we haven’t been able to do before. It is unknown where counties stand with the federal agencies, but the U.S. Forest Service has said that these Plans are showing up in various counties, but from a legal standing they don’t look at it as any legal standing and they also recommend that the County not drop ‘cooperating agency status’ out of the LURPP because one does not dilute the other in their mind, but in fact it covers all the bases. Vice-Chairman Martin stated that her recommendation would be that until someone actually has the money and the tenacity to go to court and see if in fact “coordinating” is enforceable, that we in fact don’t drop our other tools such as “cooperative agency status.” Vice-Chairman Martin stated that she is also the chairman for the Natural Resource Conservation District (NRCD), which also has “cooperating agency status” with the U.S. Forest Service. The U.S. Forest Service requested “cooperating agency status” in this case because through the Board of Supervisors, the Board for the NRCD and the University of Arizona Cooperative Extension office, there is now monitoring data across this County that was never available before and the Forest Service doesn’t have it and never had it before, so we are able to insert that data into their planning process. She has also asked the U.S. Forest Service exactly what “cooperating agency status” means and what it brings to us. They replied that it lets the U.S. Forest Service incorporate information that we may have. Also, to the counties in particular, the U.S. Forest Service looks for socio-economic information. They are not so much looking at the monitoring that NRCD brings to them because they realize that we don’t have that kind of data necessarily in our hands, but they do and are more and more looking to us for socio-economic information, which is why the LURPP position was so interesting to them. Vice-Chairman Martin stated that she would caution the Board not to drop that other language. Mr. Spehar thanked everyone for the comments and noted that the original LURRP contained a paragraph that stated “cooperating, consulting and coordinating,” however, the decision was made to remove the former two words because the theory was that it’s possibly diluting the latter term. Mr. Spehar stated that is a business decision that the County will have to make and if the County is more comfortable with the document stating “coordinating and cooperating,” as

the Chairman of this subgroup, he would recommend same. Mr. Spehar stated that regarding the conversations with the U.S. Forest Service today, he would respectively submit that they are a little quiet sometimes and that's the reason the County lost the whole north face of the Pinal Mountains to habitat for the Mexican Spotted Owl without any opportunity to comment because this was decided at midnight by some federal agency and it wasn't the U.S. Forest Service. He thanked Vice-Chairman Martin for her comments and for doing her homework. Vice-Chairman Martin stated that she has been watching Fred Kelly Grant, President of American Stewards of Liberty, since the mid-1990s and that's where this language is coming from, but again she questions, "is it enforceable?" She would like to know, at some time in the future, if in fact it is enforceable. Mr. Spehar stated that Vice-Chairman Martin was raising an extremely good point; however, "We don't expect to go litigate this to find out the answer to that question, but I do expect some county or some coalition of counties somewhere will do that some day. Meantime, the next step that we see in this process would be to get the County to sit down with the agencies and negotiate a Memorandum of Understanding, whereby a process such as this can be put into place and have regular meetings between those agency leaders and the elected officials of Gila County. That would be a matter of getting the right language and enlisting their cooperation because without it, it goes nowhere and we understand." Vice-Chairman Martin also briefed the Board on the Four Forest Restoration Initiative (4FRI), which is a collaborative effort to restore forest ecosystems on portions of four National Forests—Coconino, Kaibab, Apache-Sitgreaves and Tonto—along the Mogollon Rim in northern Arizona. It is about cleaning off 2.5 million acres in 30,000 acre lots in those 4 forests using a chipboard plant in Winslow, Arizona. It is being asked of the U.S. Forest Service in 4FRI that the contract be for 20-30 years to ensure fuel for the plant because currently the U.S. Forest Service will only provide a 1-year supply, which does not allow business to grow. Also being requested in 4FRI is a way to sidestep the Federal Advisory Committee Act (FACA). She advised that the County needs to be careful in agreements with the U.S. Forest Service because "we run straight into this FACA, which the environmental community has put in place so that industry cannot get too close to the agencies." She will provide more information to the Board at a later date. Because of all these other things that are going on, Vice-Chairman Martin stated that is the reason she is being cautious in the wording in LURPP. Supervisor Dawson stated that she understands "cooperating agencies;" however, when the U.S. Forest Service wants to do something, they go ahead and do it. The County gets the U.S. Forest Service form letter stating the right to comment; however, by then they've already closed a road or a facility, etc. She stated, "One of the frustrations when we came into office was that we were being criticized because the Board hadn't hired someone to respond to all those letters, when, in fact, it doesn't matter if we respond. We do send responses, but they've pretty much studied what they are going to do and they go right ahead and do it. I would like language that reflects 'required coordination' because 'cooperation' is just something they say like 'we mailed you a form

letter,' but if they are 'required,' the County could say, 'Wait a minute, you were required to coordinate with us...'” Vice-Chairman Martin stated, “I don’t mind using ‘required;’ however, the U.S. Forest Service is telling me that we can require all we want to and it doesn’t mean flip. But the ‘cooperative agency status’ is not that they would cooperate with the County; it’s a legal designation that we can apply for and be on a different plane with them. Whether we get what we want out of this is a little more control over this land; you know we can stand and demand from now on. I believe that until we run out of money as a country, we are going to put up with nonsense until then...I just don’t want to cut off our nose to spite our face in some of the language.” Mickie Nye, P & Z Commission member, stated that he believes the County is just asking to be at the table because the County is not going to demand anything from anybody because they (U.S. Forest Service) will do what it chooses. He stated, “But if we politely ask to be at the table as we would like some input as to what the U.S. Forest Service is going to end up deciding, I think that’s what we’ve tried to do in this document with the exception of PILT. I think this is a great model for what we want for PILT. We would love to change land for what we think they owe us, but the reality is we get nowhere if we’re not at the table. Now we are asking in this document, that they would have to accept, that there is somebody on record, there is somebody on notice that you need to notify in Gila County that needs to come to the table and have input and I think that’s where this really makes sense.” Vice-Chairman Martin stated, “But you know that by doing this, that doesn’t put us at the table. But asking for ‘collaborative cooperating agency’ status puts us at the table...I just again would like to have those other words in the LURPP, too.” Supervisor Pastor stated that the times he has dealt with the U.S. Forest Service and the Bureau of Land Management concerning Supervisorial District 2 emergencies, he has heard the words “cooperating agency status” in many discussions. However, he also believes that using “coordination” will give the County “more teeth” and more tools to use. He stated, “I don’t think we are really stepping away from ‘cooperating agency status’ or ‘collaboration’ or any types of those terminologies when we meet with these federal agencies.” Don McDaniel, County Manager, inquired whether the P & Z Commission or committee has thought about the steps it would take to actually present this at its public meetings. Mr. Gould stated that a process was discussed by the group because it will be mandatory to get this implemented and somebody has to be appointed in the form of a liaison. Mr. Spehar also added that the process needs to be detailed and will wind up in a negotiated agreement between the County and those other agencies. Chairman Pastor opened the public hearing for comments from the public and called on Terry Wheeler. Mr. Wheeler, a resident of Globe, stated that the first time he heard about “coordination” was about 9 months ago at the annual NRCD meeting in Flagstaff. Margaret Byfield, Executive Director of the American Stewards of Liberty, which used to be Stewards of the Range, and Fred Kelly Grant, President, made a presentation about “coordination” and they provided workbooks and information that they had prepared going back to the beginning legislation that

talked about coordination. Mr. Wheeler stated that the framers of the Constitution of this country set it up so that the power is in the people at the bottom rung of government and at the local level and they intended for it to work up, but over the years that's turned around the other way. However, the legislation doesn't say that; it still says that the power is in the people. Mr. Wheeler then gave a summary of some congressional mandates stating that the first land use statute on the federal level that required "coordination" with local governments was the Federal Land Policy and Management Act (FLPMA) passed in 1976. Congress defined the term "coordination" by specifying exactly how the federal agency should negotiate with the local government. The United States Code, Title 43, Chapter 35, Subchapter II, §1712, orders that the Bureau of Land Management coordinate its land use inventory planning management actions with any local government. In the U.S. Forest Service National Forest Management Act of 1976, the primary statute that governs the administration of national forests, in Section 1604--National Forest System land and resource management plans--it states, "...the Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies." Mr. Wheeler cited an example in Texas where the Texas Legislature failed to stop the Trans Texas Corridor, which was a quarter of a mile wide NAFTA (North American Free Trade Agreement) superhighway from the Mexican border through Texas and into Kansas and financed by billions of dollars from Spain. This road was to go through 5 small Texas farm towns splitting these towns in half with no border posts and no port of entry until reaching Kansas. Five small towns and their school districts implemented "coordination" with the Texas Department of Transportation (TXDOT), the largest state agency in the nation, and the latest result is that in October 2009, TXDOT announced they would not be building the I-35 Trans Texas Corridor. Although the fight is not over, it is a phenomenal victory for "coordination." Mr. Wheeler stated, "If that can be done in that kind of situation, I think that maybe we can sit down and talk to these guys and tell them that we have a set of plans and this is what we would like to see done through 'coordination.'" He also cited the example of the Winkelman NRCD, the first conservation district in Arizona to assert "coordination" with the federal agencies. They have been working on a couple of projects, one of which is the potential routing of the SunZia Electrical Transmission line through the District's jurisdiction requiring coordination with the Bureau of Land Management (BLM) as well as the SunZia Corporation, responsible for the building of the line. This SunZia Southwest Transmission Project, comprised of a deal between Tucson Electric Power, Salt River Project, Shell WindEnergy, Southwestern Power Group II, etc. is proposed to be approximately 460 miles of 500 kV transmission lines and associated substations, one a solar field and one a coal-fired plant, that will connect and deliver renewable energy resources in Arizona and New Mexico to population centers in the Desert Southwest.

These transmission lines were going to come in from New Mexico through Arizona across the mountains and between San Manuel and Winkelman in an area where there are no lines, and the mountains are not all chewed up, there are no roads and it's a wilderness-type area to create a mile-wide path through there to put in this power corridor. The line would pass through the Winkelman District with no opportunity to tie into the electricity and benefit from the resource. The Winkelman NRCD group called several coordination meetings, which were very well organized with limitations on who could speak so they didn't get out of control and, as a result, additional route selections are being considered. The Winkelman NRCD is also working in coordination with the U.S. Fish and Wildlife Service (USFWS) on the potential endangered species listing of the Sonoran Desert Tortoise. Under the Endangered Species Act, the USFWS is obligated to take into account the best scientific information, which Winkelman has now submitted through their "coordination" process. This issue will be ongoing for several years; however, Winkelman is now in a position to ensure the best information is taken into account and that the agency "coordinates" each step of their listing process with the Winkelman NRCD. Mr. Wheeler also noted his experience lately in the Apache-Sitgreaves Forest where people are really beginning to work together up there because they are now able to take the plan of the ranch or the community to the U.S. Forest Service. In regard to the NEPA in that area, the U.S. Forest Service is advised of the Plan, whereby it becomes a preferred alternative and it's working really well. He stated, "I think that we're starting to be able to talk with the U.S. Forest Service..." Mr. Wheeler concluded by recommending that the P & Z Commission set up a workshop with Ms. Byfield and Mr. Grant of the American Stewards of Liberty. Vice-Chairman Martin stated that the Eastern Arizona Counties Organization has been trying to get in contact with them for about 7 months and they won't return a phone call. Mr. Wheeler stated that he would contact Ms. Byfield for them. Mr. Spehar added an additional comment stating, "You have coordinating rights as a county; you have consulting rights as a county; you have cooperating rights as a county; because you said so in some document. I think not. I think you have them anyway regardless of what the work says. That's why we're here to get this input and it's very constructive. I just wanted to make the point that the important thing about this work is not so much to me whether it says 'coordinating, consulting, cooperating,' it's that this County leadership has stood up and said 'these are our policy statements. These are the things we think about historic sites and federal land acts and water shed management and all the things that drive our ecosystem and therefore our economy.' That's the major issue about having a document like this so when you follow the process and you are down to the MOU and you have the agreement in place, and you're sitting down talking about what should happen on the watershed of the Pinals, you can say, 'Well you know gentlemen, ladies, this is our policy statement as a county. The nearest and dearest form of elected representation in America, this is what they think about.' That, I believe, is the value of this document." Vice-Chairman Martin stated that her other concern was that the Board has not sat down

together and had a discussion on the revised LURPP. She stated, "I felt like we are getting the cart before the horse. I have no problems with what we're saying here, but I felt like we needed to have the opportunity to have that heart-to-heart discussion before we launched it on the public." Chairman Pastor stated that he was a little disappointed that the public participation wasn't as strong as it should have been. He thanked the P & Z Committee and Mr. Gould for the work done on the LURPP. Vice-Chairman Martin also thanked the members and appreciates the time and effort and thought put into the LURPP. No action was taken by the Board.

There being no further business to come before the Board of Supervisors, Chairman Pastor adjourned the meeting at 11:02 a.m.

**APPROVED:**



Michael A. Pastor, Chairman

**ATTEST:**



Marian Sheppard, Chief Deputy Clerk