

Commissioners vote 4-1 to reject proposed settlement



Written by Dee Holzel

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WINNEMUCCA — Choosing to ignore the advice of their legal counsel and the federal magistrate, the Humboldt County Commissioners voted 4-1 to reject the proposed settlement that may have ended the federal lawsuit against the county. The vote occurred during the commissioners meeting on Monday (Dec. 20).

In voting to reject the settlement and continue to trial, the commissioners felt they were representing the will of the people – or at the least the ones who showed up on Monday and packed into the meeting room to encourage the commissioners to take the case to trial.

The suit was launched by Jungo Land & Investments after the commissioners voted last April to revoke the extended conditional use permit (CUP) the company needed to build a class 1 landfill on Jungo Rd. The CUP had been extended by the Regional Planning Commission earlier in the year. The commissioners revoked the CUP after deciding the company did not make a good-faith effort to begin construction – an allegation Jungo denied.

Commissioner Tom Fransway came out early against the proposed settlement, arguing there was no way for the county to be sure the company would stick to the agreement. Asbestos or sludge could be delivered to the landfill and no one in the county would know, he argued.

At one point Fransway held up the state's map of water basin resources, showing the basin the landfill will sit over as being very close to the one Winnemucca and Grass Valley rely on for water. He said, "No one can tell us the aquifers do not share water resources – that they don't go back and forth."

The concern being that contaminants from the landfill will leak into the water supply.

Commissioner Mike Bell took opportunity after opportunity to point out proceeding to trial could come at a terrible cost. He said, "This lawsuit could bankrupt the county AND we would still get the landfill." He later asked, "How much do you want to spend to get the landfill."

Although the commissioners may have voted with their hearts in April, there were procedural irregularities that could hurt the county at trial. Bell noted, "There are a myriad of problems. This is not a clean case ... it's not a slam dunk."

Commissioner Dan Cassinelli would later comment, when asked about the legacy they wanted to leave, that they may be remembered as the commission who took the county out of the black and into the red – and still got the landfill.

Commissioner Garley Amos also expressed concern the county may not win at trial. He told the crowd, "I think we ought to listen to the judge. I don't think we have a strong enough case to overturn this."

Commission Chairman Chuck Giordano expressed concerns about the settlement terms, which he acknowledged were vague. He explained to the crowd the commissioners and Jungo did not hammer out the settlement together at the same table. All was done by phone and through attorneys, which legal counsel noted was common practice.

Speaking for Jungo was their legal counsel John Frankovich of the Reno law firm MacDonald Carano Wilson. He noted most suits are settled so the "parties don't have to take the risk of all or nothing."

He pointed out the federal magistrate recommended the county settle the suit. Frankovich said, "That should not be taken lightly."

Former county administrator Kerry Hawkins asked about the consequences of not following the legal advice given by council. Will the PAIP (Public Agency Insurance Pool) continue to represent the county, she wondered.

Stephen Balkenbush, who is representing the county in the lawsuit, said he wasn't sure because it had never happened before.

Members of the audience asked about the November initiative where 70 percent of the voters voted against the landfill.

But, as Balkenbush explained, the initiative did not apply to Jungo. He noted the company received their CUP in 2007 and the extension in early 2010 – long before the initiative was passed. As the CUP was stayed by the federal court, it would not be subject to the initiative.

Despite all the commissioners said about the gamble of going to trial, the possibility it could cost considerable sums – with specific reference to damages – and they could still wind up with the landfill in the end, some members of the audience were adamant the commissioners should reject the proposed settlement and proceed to trial.

They were not concerned about the money, so many said, but about the environmental consequences and the negative impact of having a landfill 25 miles away. They also spoke of their distrust the NDEP would be able to properly monitor the site with so few on staff.

Addressing the commission was Cara Otto who said they weren't thinking about the cost; they were concerned for the health and future of the community and the children.

Several audience members noted if the landfill became a problem down the road, the people in the room would be dead and it would be future generations left to deal the mess.

While some members of the audience spoke passionately about their environmental concerns and concerns for the future, others threatened or made ugly comments.

Phil Jacka asked the commissioners how they would like a grand jury investigation.

While addressing individual members of the commission, Tom Brissenden, a member of the initiative committee, reminded Commissioner Amos the taxpayers paid to save his life and now he was leaving them without a leg to stand on.

Commissioner Amos is an amputee whose leg was removed about two years ago to save his life.

Members of the commission responded angrily to Brissenden's comments. Commissioner Cassinelli pointed out he has seen Amos struggling with movement – including his appearance in Reno to be deposed for the lawsuit -- and should be treated better.

The one person who spoke in favor of the landfill was John Siegfried, who advised the commissioners to take the emotion out of the debate and get back to basics and follow the facts.

He pointed out the county's sewer lagoons sit right on the Humboldt River within the city limits and local sludge is applied right on top of the dirt in a plot about two miles outside of town.

Siegfried recommended the company be given a chance to live up to the permits issued to them already by the county and state.

When all was said and done, though, the commissioners voted 4-1 to reject the proposed settlement with Amos casting the lone dissenting vote.

