

**FINAL**

**Torrance County Board of Commissioners**

**Regular Commission Meeting**

**November 17, 2022**

**9:00 AM**

**Commissioners Present:** RYAN SCHWEBACH – CHAIR  
KEVIN MCCALL – VICE CHAIR  
LEROY CANDELARIA – MEMBER

**Others Present:** JANICE BARELA - COUNTY MANAGER  
JUAN TORRES - DEPUTY COUNTY MANAGER,  
INTERIM FINANCE DIRECTOR  
SYLVIA CHAVEZ - CHIEF DEPUTY CLERK  
VALERIE SMITH – ADMINISTRATIVE ASSISTANT  
GREG GALLEGOS - CONSULTANT

**1. CALL MEETING TO ORDER**

**Chairman Schwebach:** Called meeting to order at 9:04 A.M.

**2. PLEDGE**

**Chairman Schwebach:** Led the Pledge of Allegiance.

**INVOCATION:**

**Commissioner McCall:** Led the invocation.

**3. PUBLIC COMMENT AND COMMUNICATIONS**

**Chairman Schwebach:** Asked if there was anyone signed up for public comment.

**Madam County Manager Barela:** Introduced those who had signed up in person for public comment.

**Valerie Smith, County Clerk Admin Assistant III:** Read a speech (hereto attached) expressing support for Deputy County Clerk Sylvia Chavez, who has stepped into the role of County Clerk Yvonne Otero. Ms. Otero has not been seen at the County Clerk's Office for over 40 days.

**Stephen Garrett, Resident, Candidate:** Submitted a written request to the canvass board, pursuant to Election Code 1-13-9, for a recheck of the canvass.

**Shari Thigpen:** Read from the NM Constitution, explained that the Constitution is the supreme law of the land and believes that the government of New Mexico needs to pay attention and start following it better.

She worked as a Challenger on Election Day. She felt that the Challengers were not welcome there, and that they were treated rudely. She said that people were not listened to. She read Section 8 of the Constitution, which states that the people of New Mexico have a right to a free and fair election. She believes that because the precincts are allowed to vote wherever they want, that the Voting Convenience Centers have made voting easier to cheat. She said that she believes her and others right to vote was suppressed.

Ms. Thigpen said that the report submitted to the Secretary of State did not match during the canvass. She said that there was no way to verify that the ballots matched and that the people that voted had their vote count.

**Samantha Bowman, Torrance County Resident:** Stated that it was difficult for her and her friends to vote because the lines were so long, and she believes that their right to vote was stolen from them because they had plans and couldn't wait in line to vote without missing out on their plans.

She believes that the Commission should not vote to certify the canvass. She does not want them to be held accountable for mistakes she believes have happened and that will come to light at some point in the future.

**Brady Ness, of the American People:** He understands that there are concerns with voting systems, but believes it is due to massive fraud and that there is corruption on every level of government. He mentioned that the government is just a shadow government run by a corporation. He believes that they are stealing the American

people's land. He also believes that there are questions about the primary election at best, but treason at worst.

He wants to know how votes went down in multiple major races in New Mexico.

**Destry Hunt:** Mr. Hunt does not like the new Voter Convenience Centers (VCCs) and thinks they have been pushed on the people. Believes VCCs are inconvenient.

The Clerk's Office handled watchers and challengers well during the General Midterm Election. He said he only saw Libertarians at the voting precincts watching or challenging.

The Canvass Board is meeting today. He believes it is not possible with VCC's for transparency.

**Sam Chavez:** Spoke out about Deputy County Clerk Sylvia Chavez and how she has fulfilled her role very well during the General Midterm Election. He also went on to say that County Clerk Yvonne Otero is still being paid her salary yet has not worked in over 40 days, and that it was not right, and it is job abandonment. Deputy Clerk Chavez is a professional, is dedicated to her job and her employees, and she will back up her work.

**Stefani Lord, Representative- House District 22 (REP):** Found an attorney to look over the audit that was done. Ms. Lord and her team reached out to the Secretary of State and received a very vague letter back. They are sending another letter and expressed that they are frustrated.

She brought forth a bill to stop using Dominion voting machines, but that bill died.

She believes it is in Torrance County's best interest to do an audit, but she is wondering where all the people who were "screaming for a forensic audit on social media" went. She doesn't see them, or any money they have raised to do the audit. She needs to find out how much a recount would cost. She is afraid that one anomaly will lead to another and wants to know what happened.

Speaking about Yvonne Otero, County Clerk, she said that someone who is an elected official and has done something wrong, been exposed, and will not step down should be impeached.

**Shane Lutrick:** Thanked Stefani Lord for her help. He said that he and a lot of people he knows have put their lives on hold and have put a lot of their own money forth to do the audits. He thinks this is a non-partisan issue. A lot of the

Libertarians used to be Republicans but wanted to be more involved, so they switched parties. He is learning the best he can about the voting system. He wants to know how to reconcile the numbers on the absentee roster. He wants people to know that he understands how Deputy County Clerk Sylvia Chavez's hands have been tied throughout this election process, but that she has worked as much as she can to fix the election process here in Torrance County.

**Jenette Hunt, Torrance County Resident:** She knows that people were excited to have Yvonne Otero as County Clerk as she has worked in the Clerk's office for many years, and then her true character was shown. She is upset that Ms. Otero is still collecting a paycheck but has not done anything in months. She said that she had heard good things about Deputy County Clerk Sylvia Chavez, but you don't truly know anyone's character until you see how they have worked.

She sees that the Commissioners like to delegate to the County Manager but does not see what they themselves are doing.

She is upset that the Commission will not be doing everything they can do. She believes that they did not do everything that they should have done while being the Canvass Board. She said that she would like to see them do something now. She doesn't believe they should vote to certify.

**Rob Wagner, Torrance County Resident:** Disappointed that the machines are still being used. He believes that paying for an audit is the only thing that makes any sense these days. He is upset that they have laid out their time and money and he doesn't see anything changing. He said that he is tired of being at the County offices every week and that he wished that he "didn't have to be."

#### **4. ADOPTION OF RESOLUTION**

**A. ROAD: Resolution 2022-56, approving Transportation Project Fund Agreement for completion of Martinez Road paving project with revised agreement provided by New Mexico Department of Transportation (NMDOT) to correct NMDOT share.**

**Chairman Schwebach:** Opened the floor for discussion regarding Resolution 2022-56.

**Cheryl Allen, Torrance County Grants Manager:** This resolution supersedes 2022-53. This agreement was issued previously by the NMDOT for the Martinez Road Project. Their share of the project cost, which was supposed to be 95% of the total cost, was reported as greater than the total cost. This is the corrected agreement that must be signed before the project may commence. The total cost shows as \$767,987.75. The NMDOT share will be \$729,588.36. The County's required matching share of 5% is \$38,399.39. Anything that goes over the estimated amount, the County shall be required to cover.

**ACTION TAKEN:**

**Chairman Schwebach:** Made a motion to approve Resolution 2022-56, approving Transportation Project Fund Agreement for completion of Martinez Road paving project with revised agreement provided by New Mexico Department of Transportation (NMDOT) to correct NMDOT share.

**Commissioner Candelaria:** Seconded the motion.

**Roll Call Vote:**

**Commissioner Candelaria:** Yes; **Chairman Schwebach:** Yes;  
**Commissioner McCall:** Yes.

**MOTION PASSED.**

**5. APPROVALS**

**A. FIRE: Discussion/Approval of Memorandum of Understanding (MOU) between the City of Moriarty and Torrance County for mutual aid involving fire suppression. (Deferred from 11/9/2022)**

**Chairman Schwebach:** Opened the floor for discussion of item.

**Don Dirks, Torrance County Fire Chief:** This was carried over from the previous meeting and was left on a question of the EMS agreement involved in this. Moriarty decided they wanted to change the terms at the last minute; Madam County Manager Barela went to one of their meetings. The agreement now no longer includes EMS, just automatic and mutual aid with the Fire Departments for

fire suppression.

**Chairman Schwebach:** There are pending contract negotiations with Superior and the County's overall departments. It is a conversation that needs to be had soon.

**Madam County Manager Barela:** She said that the City of Moriarty is not going to stop helping the County occasionally because they took the EMS services out of the contract.

**Chief Dirks:** Thinks that this was a political move and that they have still lined up to help Torrance County.

**Commissioner McCall:** Wanted to know what Moriarty will cover regarding automatic aid.

**Chief Dirks:** As far as Automatic Aid is concerned, there is a map in the back of the agreement that shows where they will still help in Torrance and gave examples of Echo Ridge and Sunset Acres.

**Commissioner McCall:** Asked when the contract with Superior is expiring and asked Chief Dirks if he had reached out to Superior to see if they could mend the relationship between Torrance and Superior.

**Chief Dirks:** The end of January in 2023 is when it expires.

**Madam County Manager Barela:** Chris Archuleta of Superior has prepared a counteroffer; this includes working with just one ambulance instead of two.

**Chairman Schwebach:** This defines automatic versus mutual aid. He said that the EMS pulling out is necessary due to the County's current negotiations. He said it makes more sense to have the option to add it back in later, rather than to have to remove it later.

#### **ACTION TAKEN:**

**Chairman Schwebach:** Made a motion to approve the Memorandum of Understanding (MOU) between the City of Moriarty and Torrance County for mutual aid involving fire suppression.

**Commissioner Candelaria:** Seconded the motion.

#### **Roll Call Vote:**

**Commissioner Candelaria:** Yes; **Chairman Schwebach:** Yes; **Commissioner McCall:** Yes.

**MOTION PASSED.**

**B. FIRE: Seeking additional funding for District 2's renovation due to issues that arose during the renovation. (Deferred from 11/9/2022)**

**Chairman Schwebach:** Opened the floor for discussion regarding seeking additional funding for District 2's renovation due to issues that arose during the renovation.

**Chief Dirks:** The Chief had contacted six separate companies, and only two companies replied. The first, Nick Quint of Southwest Land Development, came and did a quote which is in the packet. The other gentleman from IDIQ gave a quote. There is a large price difference, one is a poly tank, and one is a concrete tank.

The tank that is in there is leaking and will not hold water.

Levi from the NM Environment came out and did an inspection to tell them what they needed to get back up to code.

**Chairman Schwebach:** Prefers to go for the concrete sewer.

**Don Dirks, Torrance County Fire Chief:** Explained that he had called about six different septic places, wants to go with the proposal from IDIQ. he was only able to speak to two companies. The difference is around \$7,500 between IDIQ on the lower end and Southwest Land Development in the higher end.

**ACTION TAKEN:**

**Commissioner McCall:** Made a motion to go with the bid for the basic job from IDIQ.

**Chairman Schwebach:** Seconded the motion.

**Roll Call Vote:**

**Commissioner Candelaria: Yes; Chairman Schwebach: Yes; Commissioner McCall: Yes.**

**MOTION PASSED.**

**BRREAK from approximately 9:10 to 9:18.**

**Chairman Schwebach:** Reconvened the meeting, and then asked Attorney Mike Garcia for an explanation regarding Stephen Garrett's request that was put forth during Public Comment.

**Attorney Mike Garcia:** Explained what Mr. Garrett had asked for. He wants a judge to do a check of the canvass. It can be as simple as taking it at face value. This does not authorize and automatically trigger a hand count. If a judge orders it, then that is a different situation. Until that happens, it is just a request for a check of the canvass until then.

**C. CLERK: Torrance County Board of County Commissioners convene as County Canvassing Board to review/certify the canvass of 2022 General Election.**

**Chairman Schwebach:** Turned over the discussion to Chief Deputy Clerk Sylvia Chavez.

**Chief Deputy Clerk Chavez:** Introduced herself and explained what she would be presenting. She thanked her election workers and thanked her staff for their long hours and dedication to their jobs. She thanked Attorney Mike Garcia for his help in gaining access to the ballot boxes via a signed judicial order. Some of the election workers forgot to leave the write-in hand tally ballots out of the ballot box so that they may be counted. She successfully retrieved them.

She explained that she had sworn and took an oath to be prepared to do this job, that is to present the votes that were cast. As the Chief Deputy Clerk, she has confirmed that she has the power to oversee an election in the case of the County Clerk's absence, as this did happen this election.

The first item that Chief Deputy Clerk Chavez presented was Item #1 (see packet) and that would have been known in the past as roster cover, signature roster cover and end of day roster cover. It had how many ballots were printed and how many spoiled ballots there were, and the signatures of the election officials. The first page tells how many ballots were issued (414 at Estancia High School Gym) and the last page tells how many people voted (414, same location.) She then went through all the polling locations.



Looking at the Early/In Person Torrance County Admin in Estancia, the total is 673, with one provisional ballot voted, and the total ballots is 673. The second page says that there were 673 people that voted at the Torrance County Admin Building.

**Commissioner Schwebach:** Asked what happened with the provisional ballot.

**Chief Deputy Clerk Chavez:** that the system that day had been running very slow, and she was a same-day registration walk-in. She had waited about 45 minutes, so she had her vote provisional.

**Commissioner McCall:** Asked if there were a certain number of ballots printed and ready to go, and if they are printed by the machine, why can't it print one just for her?

**Chief Deputy Clerk Chavez:** No, they are printed on demand, and she was not in the system yet because the Same Day Registration (SDR) was running slowly. She had to vote provisional because she was not in the system.

The next page is for Early/ In Person Alternate site. The tabulator total is 1423. There is a discrepancy on this. A permit was printed twice for the same voter, and they couldn't go back the next day to fix it, but it was not a ballot, just a permit.

She went on to the Absentee Roster Reconciliation Sheet. This is always difficult to decipher. The accounting says that 595 ballots were accepted, with three UOCAVA (overseas voters). That is a total of 598 absentee. On the second part, it says 587 total ballots went through the machine, with eight hand tally ballots and three UOCAVA. That is 598 absentees.

**Chairman Schwebach:** Asked for more clarification on the absentee ballots. There were 646 ballots issued, but not everyone returns them.

**Chief Deputy Clerk Chavez:** Explained the same thing again. On the side it says ballots rejected, and those rejections could be for several reasons, such as not being able to be fed into the machine, or that the machine could not read it. There could be ambiguous mark somewhere on the ballot, or their information is not spelled correctly. These are unable to be accepted.

**Commissioner McCall:** Asked about all the spoiled ballots.

**Deputy Clerk Chavez:** Explained that a lot of them are because someone inadvertently voted twice in the same race.

She then explained the absentee by mail. There are tapes for every day that the polls were open. Every race is on the tapes, and nothing was cut off. She explained about the tapes with all zeros, those are called zeros tapes, and they are done before the polls have accepted any ballots to show that there are no ballots already in the machine. She read the total numbers from the tapes, which all matched the end of day roster covers. The tape is long because there are tapes for every day that the polls were open. Every day the polls were open, there are signatures because they needed to be signed at the end of every day.

The next site, Early-in person voting did the same thing.

**Commissioner McCall:** Asked about the numbers on the tape for the absentee machine.

**Chairman Schwebach:** Asked what the “protective counter” number is.

**Chief Deputy Clerk Chavez:** Explained that the absentee/early voting office is the only place that that machine had been. They are given a name and serial number. On the roster cover and end of day report, they have the tabulator number and serial number. The “protective counter” number is a number that tells you the lifespan of the tabulator. It is how many ballots have been counted over the life of it.

She continued to read the tape totals and look at the roster covers. All the totals reconcile with the end of day totals and roster numbers.

She explained that when looking at the tabulator tapes, they all have a number and name. If you look at the numbers of ballots that were printed, ballot on demand gives the same numbers. That is the check-and balance. For the one she was looking at, the Mountainair Dr. Saul Community Center, the name is VCCABS0894 Absentee, and this number coincides with the number on the next report that she showed the Commission.

She then explained to the Commission how she and Genell Morris did not have the write-ins. If there is a write-in, when you look at the tabulator tapes, it will say that there are “x” amount of write-ins. This is how we knew that we didn’t have them. A write-in will automatically get kicked aside to the write-in bin and will be counted as a write-in. At the end of election night, the election workers were to put the write-ins in a separate folder they are given labeled “write-in ballots,” and they were supposed to be given to Ms. Chavez on election night. Ms. Chavez and Mrs. Morris figured out that the tabulator tapes said they had write-ins but there were

some missing from what they had been given. With the help of Attorney Mike Garcia, they were able to obtain a court order to open five ballot boxes to retrieve the write-ins that had not been given to Ms. Chavez.

**Chairman Schwebach:** Asked why the Torreon Community Center had numbers that did not look the same as the others, that the start of the roll said “106 cast,” and “106 votes,” then a sign off there, with a zero count, then at the end it says, “total cast, total voters 61?”

**Chief Deputy Clerk Chavez:** They started to lose power. When the machine turned back on, it gave a number. When it was plugged back in there were 61 voters so far. It kept the total of 61 as a fail-safe so that number was not lost. It is like the early vote, it got to a power save point. It wouldn't accept any ballots without being fully charged. The tape that says 61 should not have been placed at the end of the Torreon packet, it should have been with the totals.

**Madam County Manager Barela:** She requested and received the documents that showed the totals, on one separated, and on one together.

**Chairman Schwebach:** Asked if these can be printed at any time or only when the power goes down.

**Chief Deputy Clerk Chavez:** Only when the power goes down.

**Chairman Schwebach:** Asked if this had happened before.

**Chief Deputy Clerk Chavez:** This was the first time for her.

Chief Deputy Chavez then presented Exhibit 3, the Canvass of the Returns of the General Election. This report shows exactly how many votes each candidate received at each polling location. She read every candidate's total votes. There were no questions.

She then moved on to Exhibit 4, the Summary by Site. This tells you how many voters there were at each polling location, and which precinct they came from.

Chief Deputy Clerk Chavez showed the Commission that having VCCs works for the County, as exhibited by the amount of people that vote in precincts other than their own. She gave the Commission this exhibit as an extra frame of reference for where the people vote and how many voters are in the County. This also shows just what the people of the County need.

**Commissioner McCall:** Asked if the tabulator will alert when there is a double print, for instance with the 1424/1423?

**Chief Deputy Clerk Chavez:** The tabulator will not, but at the end of day when the numbers are input from the tabulator to the ballot on demand, it will give an indication that the numbers do not balance. Green shows a balanced number, red shows it is not balanced.

The next report, Exhibit 5, shows the total amounts of voters in each location. She read all the final numbers, including hand tallies, provisionals and write-ins. There were no questions. Ms. Chavez explained that blue is absentee, green is early voting, and yellow is election day voting.

She gave the actual race totals.

Exhibit 6 shows the Election Summary Report of all contests, all districts, all tabulators, and all counting groups.

**Chairman Schwebach:** Asked Chief Deputy Chavez to explain the write-ins.

**Chief Deputy Clerk Chavez:** Explained the write-ins that were up for election.

There were 2 write-in candidates, the first being United States Representative, District 1, and the Commissioner of Public Lands. There were 58 ballots altogether that were kicked into the write-in bucket, but only 42 of them counted as a vote.

**Chairman Schwebach:** Asked why only 42 counted, and if all the races were hand tallied or if just the write-ins were hand-tallied.

**Chief Deputy Clerk Chavez:** Everything except the write-in candidate race is counted by the tabulator. The ones that are not valid are the ones where someone circled the write in but didn't write the actual name. Say for instance a name is misspelled; if they can see the intention of the voter, it will be counted.

**Chairman Schwebach:** Asked about the court order to get the write-ins.

**Chief Deputy Clerk Chavez:** Explained again that with the help of Attorney Mike Garcia, they were able to obtain a court order to open five ballot boxes to retrieve the write-ins that had not been given to Ms. Chavez on election night.

**Chairman Schwebach:** Asked Mr. Greg Gallegos what he had to say as a consultant to the County for the election canvass.

**Greg Gallegos, Consultant:** Said that Chief Deputy Chavez did a great job with the election, provided everything that was needed, and he did not see any discrepancies, minus the hand tallies and provisionals, and they all balance out.

**Chairman Schwebach:** Said that he looked at all the tapes, the tabulators IDs which all matched up, and he sees no discrepancy.

**Commissioner McCall:** Asked Chief Deputy Chavez if she had implemented the counting of the ballots by precinct workers at the end of election night.

**Chief Deputy Clerk Chavez:** Answered in the affirmative. All but one of the precincts gave her their count sheet, and the ballots added up. She asked that the Commissioners approve her certification of the Election Canvass for the 2022 General Election.

#### **ACTION TAKEN:**

**Chairman Schwebach:** Made a motion to approve certification of the 2022 General Election Certification.

**Commissioner Candelaria:** Seconded the motion.

**Chairman Schwebach:** From what he has seen, and considering all of the issues that have arisen previously, he believes that Chief Deputy County Clerk Sylvia Chavez has done a great job of running the election, and that he sees no discrepancies in the results.

#### **Roll Call Vote:**

**Commissioner Candelaria: Yes; Chairman Schwebach: Yes; Commissioner McCall: Yes.**

#### **MOTION PASSED.**

## **6. DISCUSSION**

**A. MANAGER: Update on Torrance County Unofficial Audit of 2022 Primary Election.**

**Madam County Manager Barela:** Gave a follow up on the unofficial audit of the 2022 Primary Election. She wanted to follow up on some of the comments made during the public comment portion of the meeting.

First, when she first did her audit, she stated that there were 284 ballots from the Republican party missing. Since then, someone recommended that she contact Bobbie S. Shearer, former NM Elections Director. Ms. Shearer came the next day to look at what Madam County Manager had in hopes of reconciling the numbers she had with the canvass sent to the State of New Mexico. She suggested that Madam County Manager look again at the write-in ballots. She did this, and it showed that there was a Republican candidate on the ballot across all precincts. There was a total of 313 votes. The largest amount voted had been in Moriarty/Edgewood schools with 66. She said that she was told by the County Clerk that she was not allowed to have the ballots because there was a small number of ballots and was told that it would compromise the privacy of the voters. She does not believe that 313 is such a small number that it would have compromised anyone's privacy. If she were allowed to have them from the beginning, that there would have been a completely different audit report. She thinks that a thorough report would have been able to be completed. Chief Deputy Clerk Chavez provided Madam County Manager Barela with the absentee ballots that were not previously provided. Within this group there were 10 hand tallied ballots, one Libertarian and nine Republican. On the ballot tabulator tape, it says that there were 14 write-ins, she went through the other ballots and found the five write-ins that were missing for the Republicans because the tape machine did not kick them to the write-in bin as it is programmed to do.

Madam County Manager Barela and Senaida Anaya went through the copies of the ballots again. They were able to identify one more write-in for the Libertarians, and an additional 42 that were supposed to be diverted but were not. This means that she is missing 271 Republican ballots. The additional deleted that she was able to account for leaves 262 missing Republican ballots. They would like for Chief Deputy Clerk Sylvia Chavez or if possible, to get Yvonne Otero, the County Clerk, to call the Clerk's office and let them know where the ballots are.

She knows that if she had just gotten the ballots that she had asked for, she would have been able to reconcile the votes with the canvass and there would not have been such a gigantic issue.

She is hoping that she can get access to the ballots and then give a final report.

**Commissioner Candelaria:** Asked what this audit has cost the County so far.

**Deputy County Manager Juan Torres:** There is not an accurate accounting for the audit cost. The grand total is roughly \$37,434. The employee time is what is not accurate, but right now it looks like the total is around \$21,000.

**Chairman Schwebach:** Thanked Chief Deputy Clerk Sylvia Chavez for everything she has done.

## **7. EXECUTIVE SESSION**

**A. COMMISSION:** Discuss threatened or pending litigation in which the public body is or may become a participant, closed pursuant to NMSA, Section 10-15-1(H)(7) specifically, 2022 General Election Issues.

**There was no executive session this day.**

## **8. ADJOURN**

### **ACTION TAKEN:**

**Chairman Schwebach:** Made a motion to adjourn the meeting at approximately 11:57 A.M.

**Commissioner McCall:** Seconded the motion.

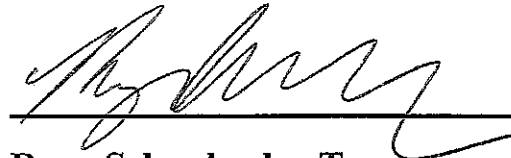
### **Roll Call Vote:**

**Commissioner Candelaria: Yes; Chairman Schwebach: Yes; Commissioner McCall: Yes.**

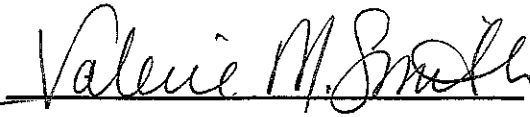
**MOTION PASSED.**

**MEETING ADJOURNED AT: 11:57 A.M. APPROXIMATELY**

**Signed By:**



**Ryan Schwebach – Torrance  
County Board of Commission  
Chairman**



**Valerie Smith – Admin Assistant,  
Torrance County Clerk’s Office**

**Date: 12/19/2022**

**The Video of this meeting can be viewed in its entirety on the Torrance County NM website. Audio discs of this meeting can be purchased in the Torrance County Clerk’s Office.**

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