

BE IT REMEMBERED, that at a regular term of the Union County Board of Commissioners, for the County of Union, sitting for the transaction of County business, begun and held at the Joseph Building Annex in the City of La Grande, in said County and State, on Wednesday of said month and the time fixed by law for holding a regular term of said Court, when were present:

The Honorable COLLEEN MACLEOD CHAIRMAN
STEVE MCCLURE COMMISSIONER
JOHN J. HOWARD COMMISSIONER

WHEN, on Wednesday, the 5th day of May, 1999, among others the following proceedings were had to-wit:

IN THE MATTER OF DENYING A)
VACATION REQUEST FOR THE)
SOUTH 5940 FEET OF)
MCINTYRE ROAD)

COURT ORDER
1999-18

FILED
MAY 10 1999
AT O'CLOCK M
R. NELLIE BOGUE HIBBERT, CLERK

WHEREAS, A Petition to Vacate was submitted on March 9, 1999;

WHEREAS, The Board of Commissioners have processed the request per ORS 368.326 through 368.366;

WHEREAS, Public testimony was provided orally and in writing in support and opposition to the proposed road vacation.

NOW THEREFORE, BE IT ORDAINED BY THE UNION COUNTY BOARD OF COMMISSIONERS, STATE OF OREGON:

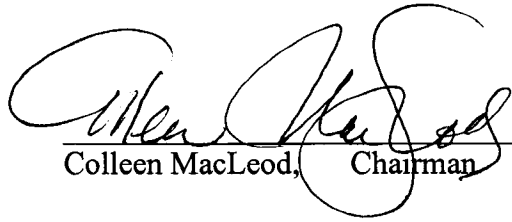
SECTION 1: DENY PETITION TO VACATE

The Petition to Vacate the south 5940 feet of McIntyre Road is denied because a clear public interest has not been shown to exist.

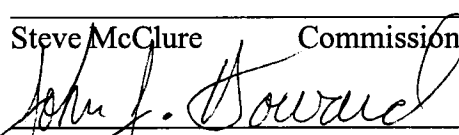
SECTION 2: SUPPORTING FINDINGS

The "Union County Board of Commissioners McIntyre Road Vacation Supporting Findings & Conclusions – May 5, 1999" document is attached and affixed hereto becoming a part of this order.

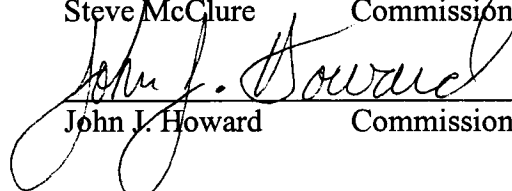
PASSED AND ADOPTED this 5th day of May, 1999 by a vote of the following members of the Union County Board of Commissioners voting therefore.



Colleen MacLeod, Chairman



Steve McClure Commissioner



John J. Howard Commissioner

UNION COUNTY BOARD OF COMMISSIONERS
MCINTYRE ROAD VACATION
SUPPORTING FINDINGS & CONCLUSIONS
MAY 5, 1999

INTRODUCTION

Union County received a Petition to Vacate the "south portion of McIntyre Road approximately 5,940 feet" on March 9, 1999, filed by adjacent landowners Robert Correa, Vicky Correa, Mitchell Hays and Margaret Hays (joint owners of Twp. 4S, Range 35 EWM, Tax Lot 1900).

The County Board of Commissioners advertised in The Observer on March 19 & 29, 1999 for a public hearing on April 7 (hereafter all dates are in 1999). Notice was also mailed to the applicants, adjacent landowners, interested parties and Richard Comstock, County Public Works Director.

Public testimony was received in support and opposition to the road vacation on April 7 and the Board agreed to accept written testimony until 4:00 p.m. April 16. The north end of the proposed vacation segment was observed by Commissioners MacLeod and Howard on April 13 and Commissioner McClure on April 26. The hearing was continued until April 21 with only the opportunity for Board deliberation. The Board postponed a final decision until May 5.

BASIC FINDINGS

1. ORS 368.326 through 368.366 establishes the vacation procedures and requirements by which the Board of County Commissioners may vacate a public road under the jurisdiction of the county.
2. ORS 368.331 states a county "shall not vacate public lands... if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner".
3. ORS 368.356(1) After considering matters presented under ORS 368.346 or 368.351, a county governing body shall determine whether vacation of the property is in

the public interest and shall enter an order or resolution granting or denying the vacation of the property under ORS 368.326 to 368.366.

4. A Petition to Vacate was filed by 100 percent of the adjacent landowners on March 9.
5. Union County records show the subject roadway was petitioned open about October 18, 1890.
6. John Schiller testified on April 7 the subject roadway has historically been used by his family for a cattle driveway. Mr. Schiller also stated he has a livestock lease with the USFS on nearby land and the subject roadway has value for moving his livestock to lower elevations during snow conditions in higher elevations.
7. Ed Hardt testified on April 7 that he believed court cases and R.S. 2477 preserved the subject roadway for public access.
8. Dale Mammen, lawyer, submitted a FAX with a handwritten comment that "Ila and James Dial have no objection to the road vacation of McIntyre Road provided the attached easement is duly executed and recorded in deed records in Union County, Oregon. The "attached easement" does not include any signatures, dates, notary or record number. The "attached easement" does not state it is transferable.
9. Bob O'Rourke, Kottkamp & O'Rourke LLC, in a letter dated April 15 restated that the Vey Ranch has historically used and continues to need the use of the subject roadway for their livestock operation.
10. The Board of Commissioners individually observed the north portion of the subject roadway. An unimproved roadway is apparent with fence remnants scattered along both sides.
11. The current petitioners' property is described as Twp. 4S, Range 35 EWM, Tax Lot 1900, about 1968.3 acres, in an A-4 Timber-Grazing Zone that has a 320 acre minimum parcel size for predominantly rangeland parcels.

ULTIMATE FINDINGS & CONCLUSIONS

12. The proposed road vacation should not be so ordered because the roadway has historically been used for a livestock driveway and continues to have value for livestock management on nearby US Forest Service lease lands.
13. A properly executed easement was not provided for the Ila & James Dial property that would otherwise be landlocked if the subject roadway was vacated.
14. The petitioners' property could be partitioned into as many as five or six parcels under current land use regulations that would each require legal access. The subject roadway could provide such access should the need arise.
15. In conclusion, a clear public interest to vacate the south 5,940 feet of McIntyre Road has not been shown to exist.