

Board of Commissioners Meeting  
December 7, 2016

Present: Commissioner Steve McClure  
Commissioner Mark D. Davidson  
Commissioner Jack Howard

Commissioner McClure opened the meeting at 9:00 a.m. and the pledge of allegiance was given with all three commissioners present.

**Public Comments and Concerns**

Partition Plat, Valley View

Jeff Hsu, Bagget-Griffith & Blackman, presented for the commissioners' consideration a partition plat on Valley View Road in Elgin that requires a road dedication. **Commissioner Howard moved approval of the Valley View partition plat. Commissioner Davidson seconded. Motion carried unanimously.**

Partition Plat, Lance Lane

Rick Robinson, Bagget-Griffith & Blackman, presented a partition plat for the commissioners' consideration on Lance Lane in Cove. The right-of-way was created by a petition, which now needs to be legalized. This action would increase the right-of-way from 40 feet to 60 feet. Commissioner McClure stated that it is a good time to make those adjustments. **Commissioner Howard moved approval of the Lance Lane Partition Plat. Commissioner Davidson seconded. Motion carried unanimously.**

Public Right-of-Way Dedication

Mike Boquist, City of La Grande Planning Department, presented for the commissioners' consideration a right-of-way dedication for the future construction of 24<sup>th</sup> Street. Parcel 1 is seeking city services. The City of La Grande Public Works have evaluated the most efficient way to serve this property and surrounding properties; in order to run those utilities, it has to be in a public right-of-way.

Commissioner Davidson asked if the City of La Grande had approved the document; Mr. Boquist stated that they had approved and signed it.

Commissioner Howard asked if the Union County Planning Department reviews these submissions; Mr. Boquist did not think that they did, but it could be done in the future. Commissioner Davidson stated that Union County's agreement with the City of La Grande includes the county adopting the City's ordinances and land development code for the area within the Urban Growth Boundary and then the City administers it. Mr. Boquist stated that it would be good practice to include notice and a conversation with the County Planning Department in the future.

**Commissioner Howard moved approval of the Public Right-of-Way dedication for 24<sup>th</sup> Street. Commissioner Davidson seconded. Motion carried unanimously.**

### B2H Public Comment

Jim Kreider, 60366 Marvin Rd, La Grande, stated that Idaho Power (IP) is in the third month of a six month process. He added that Public Utility Commissioner Savage says that they have not approved the line construction and there is a need requirement. Mr. Kreider found that IP under-projects their conservation by 15% and over-projects their consumption significantly; Simplot Foods and Cane Foods have lodged complaints that IP is overbuilding Gateway West and the B2H for overcapacity. There are more renewables coming online; the Oregon PUC has a battery storage project underway. The next IP meeting to deal with distributed energy resources and their potential to defer grid investments. He and others have convinced IP to look at distributed energy, microgrids, and the lack of need to build huge infrastructure. IP is basically a front person for Pacific Corps; B2H is a segment of about ten different lines that Pacific Power is building west of the Rocky Mountains. The deadline to comment on the Environmental Impact Statement (EIS) is December 25. In their executive summary, they say that this corridor could become a defacto utility corridor; once it is put in, who knows what more they will put along the corridor. They had the 386 corridor to the south that President Obama ordered to use but it is not being used. We need to think about what this means for the future and what it means for the county and our citizens. He is extremely concerned that none of the citizens have been notified of the new route. When he asked the BLM and IP, they feel they have no obligation to notify landowners. The proposed route that was sent to Washington, D.C. is not the same route that came back; the recommendations were changed. BLM allowed 30 days to comment on their land management plan, the U.S. Forest Service allowed 45 days to comment on their land management plan, and the Governor is allowed 60 days. He has been in touch with the Governor's Energy Advisor and has asked for an extended comment period on her comments because the BLM State Director has to share state land use plans that have to change to accommodate the B2H line with the Governor. Oregon Department of Energy's Legislative Oversight Committee is looking into reorganizing them and downgrading wildlife protections in the state for the siting of wind farms. Umatilla County has land use laws that allow the county planning office and commissioners more control over where and how to site wind farms; Union County does not have that. There are approximately 20 wind farms waiting to be sited in eastern Oregon if B2H is approved. He would like the opportunity to bring information to the commission in a more comprehensive way. He believes that IP has cooked the books and used data that is favorable to their argument; he has been able to question that data. The commissioners can speak to IP and the BLM on the citizens' behalf. He would like to hear what the commissioners are doing and what others are saying. Lines like this don't create a lot of jobs; the landowner gets rent, but what does the rest of the community get? He would like to know about the county's strategy and the long term consequences of the B2H line. He wants the public to be informed with facts vetted by reasonable individuals and what they can do to participate in the process.

Commissioner Davidson encouraged Mr. Krieder to talk to Morrow, Gilliam and Sherman Counties; they have lucrative strategic investment program (SIP) agreements and are reinvesting the proceeds in their communities. Union County's Elkhorn Windfarm is a poor example of a SIP, but it could be compared to the SIPs in the other counties. Mr. Kreider stated that if the wind farm in Union County wasn't the best deal, then let's find out what is because more are coming. Mr. Kreider hopes that the commissioners will feel a responsibility to notify landowners of the new B2H route.

Commissioner McClure stated that he is always willing to listen to constituents and could set a time to hear from Mr. Kreider on December 21. He wondered if IP and the BLM should also be invited to listen; Mr. Kreider stated that he had informed those agencies that he would be talking about this. Commissioner McClure stated that it would be an informal session outside of the regular agenda that could go back into regular session if needed. Mr. Kreider asked what type of outline was needed for the session; this should be a cooperative effort. Commissioner McClure stated that Mr. Kreider made some interesting comments and is assuming that there is some basis for that. He would like to make sure everyone understands that this is a federal process and the county is being drug along with it. The county did not initiate the power line, but it has been going through the process for almost ten years.

Mr. Kreider prefers that the session take place in the evening. Commissioner McClure stated that the commissioners would hold the session on Wednesday, December 21 at 6:00 p.m. in the Misener Conference Room. Commissioner Howard volunteered to work with Mr. Kreider to establish the agenda. Commissioner McClure reiterated that he would like the BLM and IP to be invited to speak at the meeting. Mr. Kreider stated that he would call those agencies as a heads up, but the invitation should come from the county. Commissioner McClure stated that Scott Hartell had contact information and could help with those invitations. Commissioner McClure stated that the meeting would have to go into regular session if any decisions were to be made.

#### B2H Public Comment

Irene Gilbert, 2502 Adams Avenue, La Grande, stated that she has concerns with the B2H project because it impacts wildlife, cultural heritage, and property rights. It will mean some property is condemned and will result in significant negative consequences for landowners. Amounts are astronomical when thinking about logging and benefits to the community; it will be an economic consequence for 50 years. The B2H project is divisive in the community and it reminds her of the Antelope Ridge wind farm project, which negatively impacted the community. In talking with Umatilla Electric Cooperative, they have had contact with 12 new proposed developments as a result of this line. The B2H line offers very little benefit to Union County citizens. One of her concerns with the final EIS is one of the exceptions they are asking for; the BLM is saying that they would have to change their land use plans around viewscapes and the wetland rules. The county should think about those kinds of exceptions. The B2H Advisory Committee voted to send a request to the commissioners to ask for more time to comment on the EIS, but the commissioners never got that information. The length of the document is a reason for the commission to ask for more time; reviewing 3,000 pages in a 30-day period is an unreasonable amount of time. There probably will not be enough time to respond after the December 21 listening session. Another reason to ask for more time is that the time between Thanksgiving and Christmas can create staff shortages and make it difficult to respond. She would like to see the county contact landowners to inform them of the route changes. The reality is that the recommended route is not the same route that was recommended by the Union County B2H Advisory Committee or by the Union County Commissioners.

#### B2H Public Comment

Lois Barry, 60688 Morgan Lake Road, La Grande, stated that Commissioner McClure indicated that this is a federal process that Idaho Power (IP) put on the county's desk ten years ago. She knows that IP is an individual subsidy of Idacorp. When they requested the B2H transmission

line, the EIS was given to BLM; however, IP is the initial applicant. Their shareholders expect to make money and there is a great deal of money to be made if B2H is installed. IP's stock is worth twice as much as it was ten years ago and their investors have made 176% on their investment in the last five years. She read that one Wall Street analyst said that the level of capital investment is relatively low; IP appears to be milking the corporation. They are not investing in upgrading their transmission lines; they want to build new lines. The cost was estimated at \$1.2 billion several years ago. The profit margin on building a transmission line can go up to 12%; that is a nice return for the corporation shareholders. She does not think the county should give IP any more dignity to its figures that it is providing to the public than it would give to McDonald's if they said they wanted to construct more restaurants across the county. She asked that the commissioners have some reservations about information given by IP. IP has overestimated need and underestimated conservation.

#### Constituent Inquiries

There were no constituent inquiries.

#### **Elected Official, Department Head & Employee Comments**

##### ConnectOregon VI Grant Agreement

Doug Wright, Public Works Director, presented Grant Agreement 31636 for the Rappel Base building project. The total project cost is estimated at \$3,885,311. Oregon Department of Transportation would provide grant funds in an amount not to exceed \$1,000,000 or 70% of the total eligible project costs, whichever is less. This has been a successful grant program for Union County to leverage money; this would be used to build the Rappel Base at the airport.

Commissioner McClure stated that the county is in the process of finding a lender for the remaining funds; it is believed that the State of Oregon will provide that. Union County has a firm term lease with the U.S. Forest Service for that building; revenue from the lease will pay for the remaining costs.

Mr. Wright stated that the preliminary design review meeting went well and he has been assured that the project is a go. Commissioner McClure asked when it would go out for bid. Mr. Wright stated that when the lease agreement is signed, the county can invoke the schedule that is within the lease and establish a bid date. The county is moving forward with the project.

Commissioner Davidson asked if there had been any significant change in the design that would cause the project cost estimate to be off target. Mr. Wright stated that those discussions had taken place. Tenant improvements are specific things that the U.S. Forest Service wants in the building and the tenant negotiates for those, which is happening now. If the cost exceeds the project cost estimate, then the tenant negotiates for that cost. The shell of the building has not changed in the design and the square footage remains the same; some wall and window locations have changed. Commissioner McClure asked about the helipads. Mr. Wright stated that helipads are tenant improvements; the tenant would have to pay for them. **Commissioner Howard moved approval of Grant Agreement No. 31636 as presented. Commissioner Davidson seconded. Motion carried unanimously.**

### **Consent Agenda**

**Commissioner Howard moved approval of the Consent Agenda, which included minutes from the November 2 Board of Commissioners Meeting and Claims Journals for November 1, 2, 3, 9, 10, 16, 17. Commissioner Davidson seconded. Motion carried unanimously.**

### **Administrative Matters**

#### **Agreement for Engineering Services**

Lorcinda Johnston, Department Specialist, stated that on September 21, 2016 the commissioners approved awarding the Consulting Engineer of Record to Anderson Perry & Associates. This approval was based on the results of the RFQ process conducted in August and September. This agreement documents the award and is for an initial three-year period with an option to renew for an additional two years as was indicated in the RFQ process. The agreement was presented for the commission's approval and signature. **Commissioner Howard moved approval of the Agreement for Engineering Services. Commissioner Davidson seconded. Motion carried unanimously.**

#### **Court Order 2016-38, Appointment to the Local Community Advisory Council (LCAC) for the Eastern Oregon Coordinated Care Organization (EOCCO)**

Mrs. Johnston stated that there was a need to reappoint members to the LCAC for the EOCCO; Lisa Ladendorff and Commissioner Jack Howard are interested in continuing to serve. This action would reappoint Lisa Ladendorff and Jack Howard to the LCAC for the EOCCO with terms expiring December 31, 2018. **Commissioner Davidson moved approval of Court Order 2016-38. Commissioner Howard seconded. Motion carried unanimously.**

#### **Court Order 2016-39, Appointment to the Union County Vector Control District Board of Directors**

Mrs. Johnston stated that Marlene Perkins had been an active member on the Union County Vector Control District Board of Directors and her term was due to expire. This action would reappoint Marlene Perkins with a term expiring December 31, 2020. **Commissioner Howard moved approval of Court Order 2016-39. Commissioner Davidson seconded. Motion carried unanimously.**

#### **Court Order 2016-40, Appointment to the Union County Fair Association Board of Directors**

Mrs. Johnston stated that Nan Bigej had been actively serving on the Union County Fair Association Board of Directors but is relocating out of the area, creating a need to appoint a new member. Several applications for the position were received and made available for the commission's consideration.

Commissioner McClure noted that there were a lot of dedicated people wanting to serve. Commissioner McClure asked if Commissioner Howard had a recommendation as the liaison to the Fair Board; Commissioner Howard stated that he would let the other two commissioners choose an applicant to appoint. Commissioner Davidson thought it would be appropriate to interview the applicants since there are multiple qualified candidates. Commissioner Howard

thought that was a great idea. There was a consensus to table the item until interviews could take place.

Court Order 2016-41, Appointment to the Northeast Oregon Economic Development District Board of Directors (NEOEDD)

Mrs. Johnston stated that Delmer Hanson's term on the NEOEDD Board of Directors was up for renewal and he would like to continue serving. This action would reappoint Delmer Hanson to the NEOEDD Board with a term expiring December 31, 2019. **Commissioner Howard moved approval of Court Order 2016-41. Commissioner Davidson seconded. Motion carried unanimously.**

**PUBLIC HEARING: Livestock District #1 Annexation/Boundaries**

Staff Report

Scott Hartell, Union County Planning Director, 1001 Fourth Street, La Grande, stated that the commissioners adopted Court Order 2016-29 setting this date, time, and place to hold a public hearing on a petition to annex about 401.77 acres into Union County Livestock District #1 submitted by Joel Rice. When the commission has held public hearings on Livestock District issues in the past, they were informed that they did not have discretion in the matter. Mr. Hartell felt that ORS 607.013(3) did allow discretion in reviewing the petition. Mr. Hartell requested county legal counsel, Wyatt Baum, to review ORS 607.013(3) to determine the latitude given to the commissioners in making the final determination. Mr. Baum advised that "the statute gives ultimate decision making authority to the commissioners regardless of whether the applicant complies with all the requirements. The language states, 'If, after a full hearing, the county court or board of county commissioners is of the opinion that the boundaries of the proposed livestock district should be changed, the county court or board of county commissioners may make the necessary changes.' The commissioners can make the ultimate decision based on whether or not they are of the opinion there is a need."

Commissioner Howard stated that in looking at Mr. Hartell's staff report, his statement that commissioners were informed that they did not have discretion would be a past legal opinion. Mr. Hartell stated that it was a past determination from the Oregon Department of Agriculture. Commissioner Howard asked if it was a legal opinion from county counsel; Mr. Hartell stated that it was not a legal opinion at the time. Commissioner Howard stated that Mr. Hartell's staff report indicated that the commissioners had discretion in reviewing the petition, but the word 'discretion' is not in the ORS. Commissioner Howard noted that Mr. Baum's phrasing in his legal opinion is the word 'latitude.' Commissioner Howard asked if Mr. Hartell was saying that the word 'discretion' was the same as 'latitude.' Mr. Hartell agreed. Commissioner Howard noted that Mr. Baum's legal opinion indicated that the statute gives ultimate decision making authority, but the phrase 'decision making' doesn't appear in the ORS either; it introduces a different phrase altogether. Commissioner Howard stated that Mr. Baum's phrase of 'decision making' isn't a phrase that Mr. Hartell used either; the language moved from discretion, which seems to reflect ministerial duties, to wise interpretation based upon the decision making authority. He is a little concerned about the differences in the phrasing and the distinction about potential ministerial duties being described, and most importantly Mr. Baum's statement that he was asked to determine the latitude given to the commissioners. He is not sure that Mr. Hartell asked Mr.

Baum to determine the latitude. A range of latitude could be very minor. He is a little concerned about the state of the legal opinion presented in terms of its clarity as it is based upon other interpretations of ORS. He did not know if there was a shepherding of the ORS statute itself; he did not see it. He is concerned about the actual decision about the specific language that has been employed and any relevant case law.

Commissioner McClure stated that going back to the original language of ORS 607.013(3), the last sentence says the county court or board of county commissioners may make the necessary changes. The word 'may' to him means discretionary. It is plain in the statute that the word 'may' gives the commissioners the discretion of whether to make changes or not. He concurred with Mr. Baum's legal opinion; the commission might be challenged on it, but from his review of the statute, the commissioners have discretion. He would like to move forward with the hearing based on the staff report and Mr. Baum's legal opinion and then make a decision based on public testimony.

Commissioner Howard stated that the word 'may' does suggest permissiveness; more importantly, it has been run through county counsel so he was in agreement with Commissioner McClure's position.

Commissioner McClure opened the public hearing.

PUBLIC COMMENT – Livestock Annexation Petition

Mary McCracken, 63036 Buchanan Lane, La Grande, stated that she has property on Glass Hill but is not familiar with the acres under discussion. She does not have cows there but she owns cows and keeps them fenced in. Her goals for landownership, which she thinks are similar to Mr. Rice's, is to give the landscape an opportunity and encouragement to refer back to its native state after many years of overgrazing. She is familiar with the history of cows on Mr. Rice's land and knows that livestock owners were not responsive to the issue before Mr. Rice lost his temper. Since then, livestock owners have been more responsive when their cattle are found on Mr. Rice's property. She believes that if this section of land is added to the livestock district, it would help ensure that there is a prompt response to calls indicating there are trespassing cows. It has run smoothly this past year; fences have been improved and fewer cows are getting through. She understands that it is difficult to keep the cows in, but it is the responsibility of livestock owners to keep animals on their own property. The relationship has improved between cattle owners and landowners who do not want cows on their land. She knows it hasn't been easy for the cattle owners, but they are profiting from it and the landowners do not. Mr. Rice is providing a recreation area that is nicer to visit than MERA; it is open to the public for all non-motorized recreational use. He has planted native plants on his property and the cows have caused damage to them. She supports adding the 400 acres to the Livestock District.

PUBLIC COMMENT – Livestock Annexation Petition

Erwin Smutz, 59074 Foothill Road, La Grande, stated that due to his age and his wife dying, he has not been able to hike the hill so he rented the pasture to another cattle owner. The petitioner, Mr. Rice, killed eight cows that came from Mr. Smutz's property and he is trying to forgive him for that. The area has been open range since the pioneers settled it. It is a high elk traffic area and they go right through the fences; 450 elk have had to be relocated from the area. When Mr. Rice

bought the land, the cattle owners really worked to keep the cows in the fences. The fences are difficult to maintain when wildlife, people, and bicyclists cause problems. He stated that he has also had his land open to the public for recreation. When the cows were shot, it was because they got through a fence that had been cut by a bicyclist who wrapped the wires around two trees. He and the cattle owners have tried to keep the cows off of Mr. Rice's property, but a fence can be repaired one day and torn out the next day. Years ago when his dad and other cattle owners had cows get outside the fences and get mixed up, they would just trade them back the next fall and it was not a big deal. The area has a rough road that is difficult to drive even with four-wheel drive, and now it is closed range. In regards to an earlier comment about livestock owners making a profit, he lost a lot this year. His renters went in the middle of the night to get their cows after being called by Mr. Rice who told them that if any of their cows trespassed on his property, then he did not want the owners coming to get them. He told them he would just round them up and take them to the sale yard. Mr. Rice has never done anything to repair or take care of any fences. At the time that the cows were shot, Mr. Smutz hired someone to go around the whole fence and clear the brush so it could be accessed and maintained. He is really opposed to Mr. Rice's petition. He is already damaged, but there are other ranchers that run their cows in that area. A few months after he lost his renters, he got a call from Mary McCracken in regards to trespassing cattle; he got blamed for it, but they were not his cattle. He would like the commissioners to revoke the closed range designation that is up there now because it cannot be enforced. No one can keep the fences from being torn up even though they have repaired them as soon as they could. When he and others discovered that there were some cows missing, they found them shot by Mr. Rice's driveway. Eight cows had been gut shot and died slowly. To retrieve those cows, they had to go across wire that had been laid down on the ground. As soon as the land was designated closed range, Mr. Rice told neighbors that they didn't have to have fences anymore and to just lay them down on the ground. Horses got tangled up in the downed barbed wire. It has not been a good situation. That kind of rugged land can't be designated that way; the elk run through there and prepare the way for cattle to get through fences. He wished that there was some way to rescind the established livestock district.

Commissioner Davidson asked which parcels Mr. Smutz thought should be removed from the livestock district. Mr. Smutz stated that his property borders Mr. Rice's property on two sides close to Glass Hill Road. When Mr. Rice bought the land, Oregon Department of Fish & Wildlife (ODF&W) couldn't come up with the cash fast enough. Mr. Rice bought part of it for the Elk Foundation and then eventually half of the land was deeded to ODF&W.

Mr. Smutz stated that the ranchers have not felt good about the situation; they have just tolerated it but can't handle it anymore. He got along with Mr. Rice before, but the stress levels went up when Mr. Rice would call him about cattle being on his property. One cow was found slit down the side; he didn't have a gun to take care of it and by the time he got back to her, she had died. He knew he had to get back through to his property before Mr. Rice saw him. In regards to Ms. McCracken's statement, he has not been a profitable person. He was never told that the cows were gut shot and left to die on Mr. Rice's property; he just found the eight carcasses because of the bad smell.



PUBLIC COMMENT – Livestock Annexation Petition

Mark Gomes, 64926 Airport Lane, stated that he has run cows on land bordering Mr. Rice's property for four years. Mr. Rice has a complete disregard for fences and livestock. Every grazing season, he finds fences under felled trees for firewood and fences have been cut for 4-wheelers and left that way. If Mr. Rice could be given some responsibility for the fences, then he might encourage his hunters and bicyclists using his land to take care of the fences. He thinks Mr. Rice must tell people that when they come across a fence, they can just lay it down. Numerous times he has found gates open and fences down because of people using the land. If the existing livestock district was removed, then maybe Mr. Rice would encourage people to take care of the fences. He has not found these problems on other land that he runs cattle, so the attitude has to be coming from somewhere.

PUBLIC COMMENT – Livestock Annexation Petition

John Collins, 64126 Marks Road, La Grande, stated that he runs cattle on Glass Hill. He owns some of the adjacent property and leases some of it to others; they run about 75-80 pair of cattle on it. If the petition is approved, the commission will be creating a box. There are some small property ownerships in the area and adding to the livestock district will become a nightmare. There are 3,000 elk within five miles of La Grande; if you don't think they cause damage, he will show you. It is a continual problem and no one can keep cows out of the area. There are also recreationists that cause problems with the fences. He gave up a lease because of mountain bikers; they cause problems by tearing fences down and creating bike paths. There has already been one serious problem when the cows were shot; if the commissioners approve the petition, they are compounding the problem. The commissioners would be asking the cattlemen to keep up Mr. Rice's property. Right now the ranchers work together and put cattle back where they belong. When you have a person like Mr. Rice who wants to create a nightmare for everyone else on land that has been open range for hundreds of years, there's going to be a problem. If annexing the property creates problems for other small parcels, then his alternative is to make changes to access on his property. No one except Forest Capital has a lease across his property; he will block it off and people will have to come in from some other way. There are other ways to access the area, but it would not be a nice access. He is asking the commissioners to look at the issue seriously. The property requested to be annexed is in an A4 timber grazing zone. The livestock district plan zone identifies the intended use as primary timber production and livestock grazing. If the plan and zone indicates that the area's intended use is for running cattle on it, which has been the historic use of the land, then the commission should also question putting it into a livestock district. That is what the livestock district plan has dictated since its inception in the 1970s. He requested that the land not be annexed because it would cause a lot of problems.

Commissioner Davidson asked where the district boundaries should be placed. Mr. Collins stated that by looking at the map he could not believe how the district ever became the way it is; Mr. Smutz is already blocked out. There is an island in the middle of the district that will be a problem. So many people don't understand the elk herds that run through the area; 300 to 400 is nothing when he has seen 1,500 on one of his leases. The elk cause a lot of problems with the fences and there are holes every week; no one can keep their fences up. There needs to be a stop to the encroachment on open range; we are stuck with it, but let's not keep compounding it. The cattle industry creates a lot of dollars for this community; for the last couple of years it has

been the number one commodity in Union County and the State. It is important to keep it going, but this problem will run cattlemen out. He doesn't have a good answer for the problem, but can say that what is happening is not good for the whole industry.

PUBLIC COMMENT – Livestock Annexation Petition

Rodger Huffman, 854 N. First, Union, President of Union County Cattlemen Association, stated that the UCCA have discussed the petition. He is aware of the issues in the area, familiar with the general area and knows the cattlemen that run livestock in the area due to his previous employment with the Department of Agriculture. When you look at the whole scenario, it is a natural place for the cattle to come down in the fall. It is also a place where the elk are heavy; there really isn't a way to keep fences in good working order on a consistent basis. Annexing the land would be detrimental to the livestock industry and it still would not solve any problems. It is concerning to him. If Mr. Rice is making no attempt at all to maintain fences or if he is just calling people to get their cattle off his property with no effort whatsoever, then that will make the issues even worse. When property is taken out of production by purchasing land like Mr. Rice has done and not putting livestock on it, natural species are grown but it also creates a lot of cow feed. Fences are challenged much more because it is more tempting for cows in the fall when there is nice green lush feed that is a foot high across the fence and they are on land where the elk have already grazed. He has private land in Catherine Creek and it happens to him every year. No fence will keep cows out of that kind of scenario. He doesn't know if it is of any value to the county to approve the petition. He retired last September after 31 years with the Department of Agriculture in charge of brand inspections, livestock, and livestock districts. From that, he can say that there are people who just started working at the Dept. of Ag who will answer questions; they don't always have an idea of what they're talking about and give information that they think they heard from the person in the next cubicle. You can't take their answers as a legal opinion or as gospel unless it has come from someone like him who is in charge and will defend it. New people don't have the history, knowledge and experience. To his knowledge, there hasn't been any case law or challenges to the law. Even though laws don't always spell out what you can or can't do, or expected to as a county commission in ORS 607, there are inferences. Like in open range, it doesn't say people have to fence out livestock; it just says that you have to keep your cattle off other land. It is nearly impossible to do that if a land owner is doing nothing to maintain fences. The only cure to this problem, and he wonders if this is the ultimate goal, is to have no cattle in the area. In some cases that may be the intent, but he is not sure that is the intent in this area. Annexing more land to the livestock district solves nothing. It is good to hear from Ms. McCracken that producers are more reactive and responsive when their cattle are found on other property, because the producers don't want them there either. That is good livestock husbandry and is what should continue to happen.

PUBLIC COMMENT – Livestock Annexation Petition

Sharon Beck, 64841 Imbler Rd, Cove, stated that she and her husband Bob have ranched in this community for 60 years. She submitted a written statement opposing the livestock district annexation and read it into the record (see attached). It occurred to her that the petition request should be for a zone change from timber grazing to recreation, which is what the commission will essentially do if it approves the petition.

PUBLIC COMMENT – Livestock Annexation Petition

Bob Beck, 64841 Imbler Rd, Cove, stated that livestock districts started when towns began expanding into agricultural land and everyone had milking cows and hogs. Livestock districts weren't meant for open range land to go under control; it should be kept where the population is to protect them.

PUBLIC COMMENT – Livestock Annexation Petition

Nathan Smutz, 59074 Foothill Road, La Grande, asked if his family was accused of being wealthy by an earlier commenter. Looking at the relative wealth and a person's livelihood being based on the property they own, he doesn't know if this is an issue related to having trouble with gentrification in the urban areas. He guesses that by force of wealth, prices are driven up and people who were there are driven out. In this case, there is a person with an immense level of wealth relative to his neighbors; he can afford to take land out of production for the sake of a luxury and then destroy the livelihood of his next door neighbor. We need to decide if that's something we want to allow to happen. This particular case has some extra history to it; we can't talk about what might happen, but what has happened. Renters have been threatened and scared off. Gates have been found open. A corral was set up with very explicit mentions that it wasn't intended to gather up their own cattle. As far as they can tell with their best judgment, there was some harm intended to them in that situation. If another adjacent landowner was making payments on their land and suddenly lost a major portion of their livelihood, he could have taken someone else's land from them.

PUBLIC COMMENT – Livestock Annexation Petition

Mary McCracken stated that she was confused by earlier comments because the property already in the livestock district was purchased from the Smutz family. They sold it to someone who was not a cattleman and who was willing to dedicate a large part of it for elk feed, which she supposes could seem like cow feed. She doesn't understand how property owned by a non-cattle owner, that can't be used for cattlemen's production, could drive cattlemen out of business and be the fault of the non-cattle owner. The problem was initiated when a landowner leased property to other cattlemen; non-cattle owners don't know whose cows are on their property. In order to find out whose cattle is on their property, they would have to get close enough to the cows to determine the color of the ear tag, the number, and which ear it is in. She empathizes with the Smutz family who primarily leased their land to others. Along with ownership of property is the responsibility to care for that land. Everyone has a different definition of caring for land. Mr. Rice's definition is very different than cattlemen's. In order to allow Mr. Rice to care for his property, you need to make rules that encourage the cattlemen and cattle to stay off his property. Extending the livestock district is one way of doing that. It doesn't give Mr. Rice the right to shoot the cows but it does give him the right to report those cows. Mr. Rice reported the cows for years. After the cows were killed, a picture showed the ranchers fixing a piece of the fence, which they said they pushed half the cows out of and the people in the picture testified to the newspaper that cows would come back in through the same opening. They only closed the fence after the cows were killed. If you want to look at history, there were Indians, no fences and no cattle before ranchers. We are where we are now and things change. Some people feel that owning property and protecting property means letting it recover. She thinks in order to do that, the livestock district should be extended and include Mr. Rice's 400 acres.

Commissioner McClure closed the public hearing.

Commissioner Howard stated that he was concerned about the changes and confrontation considering the conditions described. Mr. Smutz's comment about gentrification rings true for him in an oddly reversed way. There is consistent intention of use and land use clearly makes some type of good fencing between neighbors' problems. That won't be solved today; it will be an ongoing condition. There is a sense of pushing new balance but Mr. Huffman's comments ring true to him, which is that the commission is searching for a type of valuation on the use of the land. The only thing that militates in favor of the request is a comment ironically made by Sharon Beck when she talks about shifting the responsibility to Mr. Rice to manage his own property to that of his neighboring property owner. While she may be thinking that it is an argument for denying the request, to him that is an argument for improving the practices of Mr. Rice. His primary concern is not what has happened in the past in terms of mistakes, which in his mind cannot be excused. Based especially on Nathan's and Mr. Huffman's comments, the historical use of that land should balance towards keeping the present use of the land valued as it has been used for one hundred years.

Commissioner Davidson stated that it was clear that an annexation would be inappropriate given the historical use and zoning of the area. **Commissioner Davidson moved to deny the petition request. Commissioner Howard seconded.**

Commissioner McClure suggested that the commission request findings on their decision due to the question about the commission's authority to deny the petition. The language he reads in the statute makes it discretionary and the commission can deny the petition. The important thing is that this is a timber grazing zone and it is reasonable to expect that grazing will happen in that zone. He does not think it is appropriate to rehash the history and what Mr. Rice did in the past. He wished that he had realized that there was discretion when the commissioners made the first decision to annex property to the livestock district years ago. He is glad that they have discretion now and he thinks they need to assert that. He will work with Scott Hartell to prepare findings to show the basis for the commission's decision. The final decision will be made on December 21, 2016 at 10:00 a.m.

Commissioner Howard agreed with the attempt to develop findings for a final decision.

PUBLIC COMMENT – Livestock Annexation Petition

Mary McCracken asked who was notified of the current hearing. Mr. Hartell stated that the original petition application was reviewed administratively. On that application, there was a request to notify the adjacent landowners in accordance with statute. This hearing was set time-certain administratively through the court order, therefore the county did not have to re-notice any action that would happen at the public hearing. They again set time and date certain for the final action, so the county does not have to re-notice the application.

PUBLIC COMMENT – Livestock Annexation Petition

Mr. Huffman stated that not everything is spelled out in the statute; open range is defined as a place wherein livestock may run at large. It does not say anything about fencing. It only asks if there is an adequate fence when livestock is possibly trespassing and then defines adequate

fencing. The fact that the statute requires the commission to have a hearing, a hearing by the basic standards, there is no sense in having a hearing if there's nothing to decide. He thinks it is very clear that the commissioners have the decision making authority to accept or deny the petition based on the testimony at the hearing. A hearing in general with no testimony or with a predetermined outcome is really not a hearing.

Commissioner Howard stated that any time a type of discretion is involved, and even in a ministerial act, that range of information gathering may be performed just to get the facts to show that the facts were presented in order to comply with the most minimum number of steps required. It is possible that there are three steps that are involved and the facts support those three steps. When range of discretion is talked about, it could be taking information on historical attitudes or behaviors or social cultural studies. That could be 30 steps, so it is not clear from the language. He would be more comfortable with Mr. Hartell providing the commission with a shepherdized report, too.

Commissioner McClure stated that once the commission reviews and approves the findings, the commission will make a final decision at 10:00 a.m. on December 21, 2016 to support or refute the tentative decision.

**Roll call on the Livestock District #1 Annexation/Boundaries Petition: Commissioner Davidson, no. Commissioner Howard, no. Commissioner McClure, no. Motion to deny the petition request carried unanimously.**

**Next Meeting and Location**

The next meeting is scheduled to take place on December 21, 2016 at 9:00 a.m. in the Misener Conference Room.

**Adjournment**

The meeting adjourned at 11:10 a.m.

Respectfully Submitted,

Lorcinda Johnston  
Sr. Dept. Specialist II