

**MINUTES**  
**UMATILLA COUNTY BOARD OF COMMISSIONERS**  
Board of Commissioners' Meeting of February 6, 2013  
9:00 a.m., Room 114, County Courthouse  
Pendleton, Oregon

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**COMMISSIONERS PRESENT:** Larry Givens, Chairman; Bill Elfering, Vice-Chairman; Dennis D. Doherty, Commissioner

**COUNTY COUNSEL:** Doug Olsen

**MEMBERS & GUESTS PRESENT:** Connie Caplinger, Umatilla County Executive Assistant, Bob Heffner, Umatilla County Budget Officer; Jack Esp, Candidate for Umatilla County Commissioner; Dale Primmer, Umatilla County Community Corrections Assistant Director; Tammy Sundin, Umatilla County Community Corrections Office Manager; Geri Burrow, Umatilla County Community Corrections Office Assistant; Rob Teal, Umatilla County Community Corrections Probation Officer; Bob Stoltz, Umatilla County Print Shop Manager; Mike Jewett, Sanitary Disposal Transfer Service Manager; Ron Yokim, Counsel for South Fork of the Walla Walla Land Owners' Association (SFWWLOA); Nolan Wright, SFWWLOA member; Richard Wright, SFWWLOA member; Clara Wright, SFWWLOA member; Tim Brown, SFWWLOA member; Larry Widner, SFWWLOA member; Mary Widner, SFWWLOA member; Don Widner, SFWWLOA member; Paul Chalmers, Umatilla County Assessment and Taxation Director; Jessica Widner, SFWWLOA member; Greg Widner, SFWWLOA member; Ken Hague, SFWWLOA member; Jack Wallace, SFWWLOA member; John Ehart, SFWWLOA member; Sean Bambock, SFWWLOA member; Gary Sheridan, SFWWLOA member; Rich Weaver, SFWWLOA member; Tom Fellows, Umatilla County Public Works Director; Kat Brigham, Confederated Tribes of the Umatilla Indian Reservation Board of Trustees Secretary/Inter-Tribal Council Fish and Wildlife Commission Chair; Theron Sheridan, SFWWLOA member; Audi Huber, Confederated Tribes of the Umatilla Indian Reservation Department of Natural Resources; Bonnie Ehart, SFWWLOA member

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**CALL TO ORDER**

The meeting was called to order at 8:59 a.m. Chairman Givens reminded all present that the meeting is a public forum and reviewed the county's mission statement as it appeared on the agenda.

**BUSINESS ON AGENDA**

**Employee of the Month:** Commissioner Elfering read the resolution naming Geri Burrow the February, 2013, Umatilla County Employee of the Month. Commissioner Doherty seconded. The motion carried 3-0.

**Approval of Minutes:** The minutes of the Senior Manger meeting of January 23, 2013, the administrative meeting of December 27, 2012 and the Board of Commissioners' meeting of December 19, 2013 were presented for approval. **Commissioner Doherty moved approval of the minutes of January 23, 2013; December 27, 2012 and December 19, 2012 as written. Commissioner Elfering seconded and the motion carried 3-0.**

**Additions to the agenda:**

1. Agreement for Extended Abatement for Enterprise Zone (add/placeholder)
2. Stubblefield Property offer (Addition)
3. Re-appointment to EOTEC Authority Board (add)
4. LRA appointment

**Consent Agenda:**

1. Authorize purchase of fourteen new rugs - \$1715.13
2. Authorization to solicit bids for a replacement vehicle
3. Waive the hiring freeze and authorize recruit and hire of a Pest Technician for the spray program in Milton-Freewater

**Commissioner Elfering moved to approve the consent agenda as presented. Commissioner Doherty seconded. The motion carried 3-0.**

**Agenda Items:**

1. **Supplemental Budgets (4) - Public Hearing:** Commissioner Givens opened the public hearing at 9:08 a.m. Bob Heffner provided the staff report for each supplemental budget as related below. With no questions from the Board, Commissioner Givens opened the floor to public comment at 9:11 a.m. and, again receiving no questions or comment, closed the floor at 9:12 a.m.

a. **ESD CARE, Budget Order 2013-30:** The supplemental budget for this program was the result of receipt of a new local grant. **Commissioner Doherty, in the matter of a resolution adopting a supplemental budget pursuant to ORS 294-471 for the fiscal year ending June 30, 2013, moved adoption of Budget Order 2013-30. Commissioner Elfering seconded. The motion carried 3-0.**

b. **Drug Court, Budget Order 2013-31:** Drug Court received an amendment to its grant, resulting in an increase of funds available, which required the supplemental budget. **Commissioner Elfering, in the matter of a resolution pursuant to ORS 294-471 for the fiscal year ending June 30, 2013, moved approval of Budget Order 2013-31. Commissioner Doherty seconded and the motion carried 3-0.**

c. **Maternal Child Health, Budget Order 2013-32:** This supplemental budget was required as a result of an increase in its materials and services appropriations relative to medical supplies. **Commissioner Doherty, in the matter of a resolution adopting a supplemental budget pursuant to ORS 294.471 for the fiscal year ending June 30, 2013, moved adoption of Budget Order 2013-32. Commissioner Elfering seconded. The motion carried 3-0.**

d. **Corrections Assessment, Budget Order 2013-33:** This program's materials and services appropriations required an increase from the transfers out appropriations, resulting in the supplemental budget. **Commissioner Elfering, in the matter of a resolution adopting a supplemental budget pursuant to ORS 294.471 for the fiscal year ending June 30, 2013, moved**

**approval of Budget Order 2013-33. Commissioner Doherty seconded and the motion carried 3-0.**

2. **Correction to Order - Sanitary Disposal rate increase (Public Hearing)**: Commissioner Givens opened the public hearing at 9:17 a.m. Doug Olsen provided the staff report, stating that when the rate increase proposal was submitted by Desert Wind, a mistake was made that carried through to the order. As a result, a public hearing was needed to approve the correction. Therefore, the solid waste committee met and approved the recommended change and public notice was properly made.

Mike Jewitt, the manager for Desert Wind, stated that he made the error in calculation. The cost was supposed to be \$5.40 per cubic yard and he transposed the digits resulting in an accounting error. That was discovered when the company's books were determined to be out of balance.

Commissioner Elfering asked who the correction was to impact. Mike Jewitt explained that it would impact the retail customer who used bulk weight collection and transfers.

Commissioner Elfering asked whether it would not impact the container rate. Mike Jewitt answered that the container rate would remain the same. Commissioner Givens opened the floor for public comment at 9:23 a.m. and receiving none, closed the floor in the same moment. **Commissioner Doherty moved, in the matter of approving increase in disposal rates for Desert Wind, Inc. Sanitary Disposal Transfer Station, adoption of Order Number BCC2013-022. Commissioner Elfering seconded. The motion carried 3-0.**

3. **UMADRA update**: Commissioner Elfering opened the report, commenting that he attended his first reuse authority meeting as the county's official delegate. His understanding was that the position of the reuse authority was that the land mass had been pretty well determined as to allocation, although some small portions were not quite in line. Specifically still to be worked out was a possible land trade between Umatilla County and the Oregon National Guard (ONG) to gain access to the gate area. That road at that location, narrowed such that the access for heavy trucks and equipment would be difficult at best. There was a team currently negotiating with the ONG. The meeting ran so late, however, that there was not a quorum available when time to vote was reached due to overlapping schedules for some members.

The reuse authority had two consultant firms working on the zoning characterization of the property and on feasibility studies. All of the member agencies representatives attended the meeting. Commissioner Givens commented that engineering firms were expected to do the feasibility studies in order to avoid last minute changes due to economics.

Commissioner Elfering pointed out, however, that the BRAC funds were subject to sequestration. Should sequestration take place, there would be no funding.

Commissioner Doherty asked if the membership seemed to be in consensus on the plans. Commissioner Elfering felt that the membership was united on the allocation of land, but not as united with the ONG's proposals in terms of usage and shared spaces. He felt that the reuse authority members believed the ONG was playing hardball and their claim was that their decision maker used specific principles to determine the allowed uses.

Commissioner Givens commented that one of the concerns was the question of whether the agricultural easements to the north and east of the depot would be released on the transfer of the land. The ONG was not supportive of release for properties on the north. The Port of Morrow was supportive of Umatilla County's stance on the southern boundary piece.

Commissioner Doherty observed that Don Chance was attempting to maintain a collaborative spirit while entities seem to be gravitating toward negotiations.

Connie Caplinger pointed out that a 40 foot right of way was currently part of the southern boundary and that the ONG understood that Umatilla County wanted to take another 11 acres out of the ONG portion to expand that to the county standard 60 foot right of way.

Commissioner Givens stated that he expected that if Don Chance worked that out with the ONG an agreement could be reached regarding the rest. However, DLCD represented by Jon Jinings would not commit to zoning characterization equity for each county.

Commissioner Elfering stated that the next meeting was expected to be one month out because the ONG was not willing to wait for the completion of the feasibility studies. Connie Caplinger commented that the major driver of the schedule would be the federal budget and the potential sequestration of BRAC funds and subsequent loss of them.

4. **Contract ratification:** Connie Caplinger reported that the management team finished bargaining with the deputy district attorneys (DDA), reaching an agreement on a 3 year contract which had been ratified by the DDA association.

In summary, the first year of the contract, currently retroactive to July 1, 2012, provided a 5% increase in pay and a one-time \$5,000 payment per DDA to offset student loan debt. The offset was taken from private sector practice.

The second year of the contract, 2013-14, was the most significant with a 0% salary increase. Then, the third year of the contract, 2014-15, gave the DDAs a 3.25% increase. The contract itself ended up with no language changes.

Commissioner Elfering asked what the courthouse employees' ordinary rate of pay was to increase for the current year. Connie Caplinger reported that was 3%. Commissioner Elfering then commented that the county was giving a 5% increase for the current budget year and the \$5,000 student loan lump sum also for 2012-13 and, in exchange, receiving a 0% increase for the DDAs for 2013-14.

Commissioner Doherty asked of the 4 position categories for 7 DDAs, how many DDAs applied to each. Connie Caplinger replied that there were no DDA1s and Doug Olsen stated that there were 3 DDAlIs. The rest were DDAlIIs.

Connie Caplinger reported that the recent changes in the department and compensation had resulted in a fairly stable work force after many years of losing DDAs to other agencies and the private sector. Commissioner Doherty commented that that there was a long training process, so that being able to retain DDAs was an advantage to the county.

BCC Minutes

2/6/13

Page 4 of 16

Commissioner Elfering asked if there were salary and benefit comparators for use. Connie Caplinger commented that there were comparators, but that they were all on the other side of state.

Commissioner Elfering stated that would make it difficult to compare compensation. Connie Caplinger commented that there were other factors that fed into that. Such as, most of the counties compared had low tax rates because many of them received a lot of O&C funds and timber funds. The county's DDAs were paid about average in and overall comparison with the entire state. Commissioner Givens felt that the county was setting a bad precedent for the \$5,000 loan bump and that was exacerbated because the county only budgeted for a 3% increase. He calculated that the total overall increase came to 8.25%, which felt high. He asked for Bob Heffner for input relative to the imbalance. Commissioner Doherty commented that he was supportive and would note for the record that the employee group has accepted 0% for the next fiscal year, which would be a favorable concession and a sign that the group understood the budget dynamics. He also state that he did not think that put the DDAs out of line with comparable counties and that it was in the interest of the county to resolve the contract negotiations. Commissioner Doherty was inclined to vote for it and concentrate the management team's energies in the upcoming negotiation for two different contracts for the next fiscal year. Commissioner Elfering commented that the package put Umatilla County in the median group for compensation and that the \$5,000 one-time shot was useful for retention of experienced DDAs. **Commissioner Elfering moved to ratify the DDA AFSCME contract as presented. Commissioner Doherty seconded. The motion carried 2-1 with Commissioner Givens voting against the motion.** Commissioner Doherty thanked Connie Caplinger, Doug Olsen and Dan Primus for their work on the negotiations and he expressed his appreciation for the conclusion of the contract.

5. **Agreement for Extended Abatement for Enterprise Zone:** Doug Olsen reported that the proposal under the Pioneer seed expansion project in the enterprise zone was set for the automatic 3 year abatement. The company's proposal was to extend it to a 5 year abatement with nothing to be received in return other than the facility development, which was in line with what the original facility received.

Commissioner Elfering asked if the abatement applied only for new construction. Commissioner Doherty commented that the Board approved the contribution to the build out incentive previously and that the enterprise zone was part of that package. He was supportive. Paul Chalmers commented for clarity that the county gave the extended abatement for the company's first two projects.

Commissioner Givens asked for the approximate value of the entire project. Paul Chalmers reported that it was in the \$70 million range for all three Pioneer projects. **Commissioner Doherty moved to approve the agreement for the enterprise zone extended abatement for the Dupont project. Commissioner Elfering seconded and the motion carried 3-0.**

6. **Stubblefield Property offer (Addition):** Doug Olsen reported that the county foreclosed on the lot, located in Lehman Hot Springs. It went through the auction process and received no bids. The county since received an offer for \$8,700.

Commissioner Elfering asked if there were any recent sales there. Doug Olsen replied that the only sales were on tax foreclosed property and that they were in same sale price range. Paul Chalmers commented that there were still questions regarding the sewer capacity for the subdivision which played into the

property valuation. There were lots available that would be RV capable only due to the uncertainty relative to water and sewer capacity.

Commissioner Elfering asked if the property considered was attached to any sort of sewer now. Paul Chalmers replied that it was not to his knowledge.

Commissioner Givens asked if the property was subject to any legal action. Paul answered that it was not.

Commissioner Doherty asked about accessibility to the property from the highway. Paul Chalmers stated that it was maybe ¼ to ½ mile from the highway and that there were no improved roads there.

Commissioner Doherty commented that he would be able to infer that the cost was not unreasonable. Paul Chalmers agreed. **Commissioner Elfering, in the matter of selling to Fee Stubblefield property acquired as a result of delinquent property taxes, moved approval of Order Number BCC2013-023. Commissioner Doherty seconded. The motion carried 3-0.**

5. **Re-appointment to EOTEC Authority Board (add):** Commissioner Doherty stated that he asked that the re-appointment be added to the agenda for this meeting. The position was the joint city and county appointment designated in the EOTEC IGA and earmarked for the hoteliers representative. It was important to the development of and continuing TPA to support, which provided the funds for marketing EOTEC. Vijay Patel had been serving for the past year. The reappointment would be a 4 year position. Vijay Patel was willing to stay on and the city supported. Commissioner Elfering commented that he would vouch for the appointment. **Commissioner Elfering, in the matter of appointment of Vijay Patel to the Eastern Oregon Trade and Event Center Authority Board of Directors, moved approval of Order Number BCC2013-024. Commissioner Doherty seconded and the motion carried 3-0.**

6. **Umatilla Army Depot Reuse Authority aka LRA (UMADRA) appointment:** Doug Olsen stated that in December the Board adopted an order appointing the Commissioner Elect Elfering as the Board of Commissioners representative and George Anderson as the county's lay member. The order presented appoints Commissioner Givens as the alternate. **Commissioner Doherty, in the matter of appointments to Umatilla Army Depot Reuse Authority Board, moved adoption of Order Number BCC2013-025. Commissioner Elfering seconded. The motion carried 3-0.**

7. **RS2477 declaration for South Fork of the Walla Walla River Road - Public Hearing:** Commissioner Givens opened the hearing at 10:18 a.m., reminding those wishing to provide input that they were requested to provide their name and address for the record when addressing the group.

a. **Staff report:** Doug Olsen reported that the county received a petition to declare the South Fork of the Walla Walla River Road as an RS2477 road from the landowners. The road would be designated a local access road in order to meet the requirements to be an RS2477 road under federal statute, which had been in existence prior to 1976 and referred to non-public lands accessed by such roads. ORS 368 provided authorization to the board to make that determination. He added that he had provided the board a memorandum relative to the property transactional history. Doug Olsen also stated that counsel for the landowners' association was at the meeting to answer questions.

Commissioner Doherty commented that when he arrived at the office, he had copy of Tribes' cover letter and legal analysis and asked if county counsel received a copy of that letter prior to the meeting. Doug Olsen replied that the letter was e-mailed to him the previous day.

b. **Landowners' association counsel's presentation:** Ron Yokim, counsel for the South Fork of the Walla Walla River Road Landowners' Association at PO Box 2056, Roseburg, stated that the road involved property that approached the county's Harris Park and extended to his clients' properties in Township 4N R38E.

At least one of the properties existed in 1905, pursuant to the last GLO map from 1905. In that map, dash lines showed a trail in existence along the river with subsequent branch trails dating from the era of 1879 to 1907. The road following that trail continuously served cabin sites and was primarily used prior to 1976 which was the key cut-off date restricting any new RS2477 road development. That cut-off date grandfathered those roads already in use.

Two requests were being made of the Board of Commissioners: that the county declare South Fork of the Walla Walla River Road as an RS2477 road and establish it as a public access road which would allow the county to claim the road but absolve it from any maintenance or improvement requirements.

In 1866-1877 changes to the original statute relative to ensuring westward expansion prior to establishment of the Forest Service reserves, allowed for building of roads for public use. Spencer, the originally identified landowner, was building a road in the early 1900's, as documentation from the patent land office records verify. This alone would make it an established road under the RS2477 designation because it can be established that Spencer built the road and that there were 3 to 4 other cabins further up the road.

Through at least the 1960s, there were at least 9 other leaseholds and cabins along the road and multiple affidavits filed relative to the road established in 1912 that Spencer noted that his land was in cultivation and had structures on it.

George Cow (sp?), filed a visitor affidavit dated 1912 and Joseph W. Dykes also filed an affidavit in the same year related to the property the area, showing knowledge of at least 5 cabin sites from Spencer property up the river as far back as 1905.

In the 1950's descendants and subsequent property purchasers were using 4 wheel drive vehicles to access their properties, which showed continuity of use by more than Spencer. This continued through 1976.

Since then the clients and the BLM had been negotiating the use of road with the BLM claiming that damage was occurring. The BLM closed part of the road as a result, but no limitations were placed on the clients' use at that time. The BLM continued with limitations increasing to the extent that his clients' were unable to use their property at this time.

The board designation would allow his clients more leverage in enforcing access, if necessary, to file a quiet title action in federal court against the BLM.

Commissioner Givens asked if the Tribes' counsel was attending or if there were BLM representatives at the meeting.

Commissioner Doherty thought the county's role was to provide support, but he understood now that the board was being asked to make a decision. He anticipated that would result in an appeal of the board decision. Ron Yokim replied that the BLM did not make the RS 2477 determination and was restricted from doing so. Therefore, the county would make the determination under state law, then if the BLM did not agree and continued to block access, a quiet title action would be brought in federal court by the landowners.

Commissioner Doherty commented that if the board was expected to make a decision based on state law, he felt that the board would be expected to ignore the RS2477 designation. Ron Yokim summarized the Wallowa County case applying to state law in the context of RS2477, involving the county's determination as it related to the width of county road rights of way, similar to the right of way width requirement in Umatilla County.

Commissioner Doherty stated he would like the state law designation so that county road designation would not be confusing the issue. He noted that nothing had occurred that would constitute abandonment of the road or that the road would require such a declaration by county. Ron Yokim replied that nothing existed relative to abandonment of a county road which would likely apply to a public (local) access road, but that would also not allow private landowners to block or restrict the access road.

Commissioner Doherty asked that if he wanted to be briefed, would Mr. Yokim be available. Ron Yokim agreed and added that the AOC roadmasters' manual had good documentation related to the RS2477 designation.

Commissioner Doherty requested a thumbnail background on Mr. Yokim's experience. Ron Yokim reported that he became a specialist in Public Land law early after graduating from law school. Subsequently, he became the assistant director of public lands for the state, establishing his knowledge of history and the RS 2477 designation. Some time later he returned to private practice and was currently representing Harney County relative to OO Road as a RS 2477 matter, was also counsel for Grant County with RS 2477 matters relative to mining claims and was currently representing Douglas County on various public lands matters including RS 2477 designations. Many of those roads started as Indian trails and most RS 2477 qualifying roads were natural travel ways from which spurs moved into homesteading locations.

Commissioner Doherty asked if there were currently properties involved in deliberations that were leaseholds on the South Fork of the Walla Wall River Road. Ron Yokim stated that nearly everything above the cabins was either National Forest or BLM land, which when tying those into context, began as reserves, became preserves and then became national forest making clear the BLM's intent to reserve them from settlement. The reserves were created between 1905 and 1907 and those lands became restricted for road development.

Commissioner Doherty commented that the determination required being correct on facts and how federal and state law were applied to those facts. Commissioner Givens was concerned about



ensuring differentiation between a local access and county road. Ron Yokim stated that there was not much difference in the terms public use road and local access as their characterization was fairly synonymous.

Commissioner Elfering asked how much travel occurred on the road currently. Ron Yokim replied that in the 1950s traffic on the road occurred on a regular basis, concentrated mostly in the summer and fall. One family used the road on a weekly basis, but there was a record of continuity for varied use and the other attendees would speak to that.

Commissioner Elfering asked whether it would be an RS2477 road or that would be a qualifier. Ron Yokim state that, in his opinion, the road was an RS 2477, but because the board was needed to decide that, he would say professionally that it qualifies. He then explained that the board had three avenues to approach a decision.

c. **Public comment:** Commissioner Givens opened the floor to public comment at 11:03 a.m.

**Larry Widner, 84941 Triangle Station Road, Milton-Freewater:** Larry Widner commented that he was about 3 years old when his family's new cabin was being built, which was prior to 1960. The entire family would travel up to the site each weekend, hauling in wood. They had horses on the property there, but the Wright family was the largest landowner along the road.

He reported that John McMunn sold his property to an individual who then sold it to the Nature Conservancy. The Nature Conservancy turned over that property to the BLM.

During those times 4 wheel drive clubs gathered on the properties, having 30 to 40 rigs up there at a time to access fishing opportunities. At that time, there was no effect on bull trout based on a study of steelhead conducted by the BLM that showed the fish were spawning further up river from the properties.

Salmon, which were a non-native species were introduced at about that time. The Tribes allotted 100 salmon per member annually a couple years ago because of the increase in the salmon population.

He noted that there was also a forest service ranger station above Rogers Ridge which was served by the road.

Larry Widner concluded that the BLM's actions had taken away the ability to pass on the family traditions to subsequent generations and to allow the elderly access to their properties due to the restrictions and actions by the BLM.

Commissioner Doherty asked if any of the cabins or ground was privately owned rather than held by easement or lease. Larry Widner stated that his family's property was privately held land and that out of the 159 original acres, they retained 58 acres. The remainder was now BLM land. Commissioner Doherty stated that his point was to determine whether the road served privately owned ground.

**Richard Wright, 1905 Southview Cannon Street, Kennewick:** Richard Wright reported that his family had been traveling up to their property since about 1957. They were cabin owners and friends of cabin owners in the area. His father purchased land there and began building a cabin 30 years ago.

Upon completion, the BLM placed boulders in the road forcing them to take a logging road that created more dangerous access. He and his family had traveled up there on a weekly basis.

When asked, the BLM's expressed concern was that the public was crossing the river too much and that a pick-up truck would cause the bridge to collapse. Richard Wright obtained an independent opinion from an engineer who expressed that he would suggest a 50,000 pound weight limit only on the bridges, well in excess of the weight of a fully loaded pick-up truck.

Richard Wright would urge that the county make the determination that the South Fork of the Walla Walla River Road was an RS 2477 road.

Commissioner Elfering asked when Mr. Wright's family purchased the property. Richard Wright stated that he believed that it took place in the late 1950's as he recalled that his father researched the land and purchased it with his partner Dick Taylor. The Wrights' personal cabin was built in the 1980s, but Dick Taylor built the first cabin.

Commissioner Doherty asked if he still owned the land. Richard Wright replied that his mother owned the land and that he and his sister owned the cabin.

Commissioner Doherty asked if the bridges were still in place when the engineer's opinion survey was provided. Richard Wright confirmed that the bridges were all in place, adding that those having all their stringers remaining were determined to be able to withstand 100,000 pounds and restated that the alternate route was much more dangerous with unguarded sheer cliffs.

Commissioner Doherty commented that the BLM removed three bridges that did not need to be removed and therefore caused the landowners to ford the river. Richard Wright agreed that was the case.

Commissioner Doherty stated that only then was there some concern over the effect on the wildlife and water. Richard Wright confirmed that there was no concern regarding the wildlife and water until then.

Commissioner Givens asked if all the bridges were removed. Richard Wright confirmed that all but one bridge was removed. A Boise Cascade bridge was left at the beginning of road.

Commissioner Givens asked if the bridge abutments were still in the other bridges' locations. Richard Wright confirmed that they were still in place.

Commissioner Elfering asked if there was a response to the engineering study. Richard Wright stated he did not remember any response.

Commissioner Givens asked if, over the years, any of the bridges were washed out due to flooding. Richard Wright responded that none of the bridges washed out in his memory.

Commissioner Doherty asked county counsel if the BLM was notified of the hearing. Doug Olsen stated that both the BLM and Forest Service were notified and there was no response from them.

Commissioner Doherty asked when they were notified and Doug Olsen stated that the notice was submitted to the local and regional BLM and Forest Service offices on January 18, 2013.

**Nolan Wright, 4003 South Anderson, Kennewick:** Nolan Wright stated that he was personally using the family property for family gatherings frequently prior to moving out of the area for work. When he returned, he found more restrictions.

He began asking questions of an agency representative and, speaking of salmon regulations with a Tribal authority he met along the trail, he asked about how many crossings were affected by the regulations. That individual told him that 3 of the 5 crossings were affected by the regulations at that time.

Commissioner Doherty asked if the county determined that the road was a public access road, could such access be given with some restrictions on the use. Ron Yokim suggested that restrictions could be put in place and that the landowners could also gate the road. Commissioner Doherty was asking that because the roadway was receiving considerable public access and fishing use when access was less restricted. In his opinion, unless the property owners would be opposed that the access should be for personal purposes rather than access for the general public. Nolan Wright agreed with the concept.

Commissioner Doherty asked how Nolan Wright felt about a sideboard that limited uses to the property owners and asked how that might be implemented. Nolan Wright stated that would be open to that sort of discussion and that the implementation would need consideration.

Ron Yokim pointed out that there was a Forest Service trail that crossed through the area that would require consideration as well.

**Ken Hague, 5314 Biscuit Range Road, Waitsburg:** Ken Hague reported that his family purchased its first cabin along the road approximately 30 years ago. Since, he noted that elk hunters came up in the area by four wheel drive vehicles and that, from that, year round access would be key.

Commissioner Doherty asked whether in the historical experience people were driving all over the country. Ken Hague replied that it seemed they were only going to individual properties, other than for a short period after the BLM took over previously privately owned property, some people tore up the hillside.

Commissioner Doherty asked if, with limitations, could it be expected that the people would only access the private land. Ken Hague stated that anything of that sort would seem reasonable, but when considering limiting time and access in the area, the agencies needed to be reasonable, allowing landowners to get supplies in, i.e. propane tanks.

Commissioner Doherty asked if that were possible while remaining sensitive to the fish habitat. Ken Hague stated that was where there was a problem because there was a history of un-verified damage.

**Richard Weaver, 53254 Stateline Road, Milton-Freewater:** Richard Weaver introduced himself as a former forest service employee, having worked for the forest service during the time the South Fork area was subject to flooding and then a following environmental assessment (EA) for trail replacement that resulted from the flood. His perspective on the BLM and forest service history of the bridge removal was that the EA revealed that the bridges should be replaced.

Following that, a 2005 biological opinion was provided to the forest service that indicated vehicle access would not be harmful to the fish population. There was a 2006 finding of no significant impact and the forest service prepared to grant access to landowners from July 1 through December 31<sup>st</sup> of that year.

A 2007 undated letter was subsequently issued restricting the access to an August 15<sup>th</sup> termination date that year due to a Tribal request. In a joint watershed study by the Corps of Engineers with the Tribes documented that no water right or property rights were lost, since the BLM had

annually restricted use of the road. However, a recent court case showed that prior use created no effect on fish and resulted in no anticipated future effect.

Commissioner Givens asked how the forest service gained access to maintain the trails. Richard Weaver commented that since his tenure dated from the post flood era, his understanding was that prior to then, the forest service used the Walla Walla River Road as well as the ODF&W who also used the forest service's caretaker's cabin.

The trail had been designated a motorcycle and horse trail and was set that way because of concerns expressed by the landowners related to vandalism. Commissioner Givens stated that the trail was only open to motorcycles in terms of motorized conveyances. Richard Weaver stated that the hydrologist indicated that reconstruction of the bridges was minor in terms of concerns for movement of sediment.

Commissioner Elfering asked when the bridges were removed and whether a determination that they should be replaced when funds became available was made. Richard Weaver stated that he recalled part of a letter in that time frame stated that the BLM was doing everything in its power to restrict access to the area.

Commissioner Doherty commented that 1996 was a large flood year and asked if the main exposure occurred then. Richard Wright confirmed that it did and Commissioner Doherty cited studies had followed for some time afterward. Richard Wright added that he and others had done research for some time afterward also.

Commissioner Doherty stated that he understood that the landowners believed that more reasonable access could be devised without damaging the land or wildlife. Richard Wright commented that in his opinion, the people working for the BLM were not willing to be reasonable.

Commissioner Doherty asked if access could be restored without negative effect on the environment. Richard Wright confirmed that it could and indicated that he suggested alternates to reduce sediment deposits.

Commissioner Doherty asked if there was any serious study done to mitigate the effects rather than removal of the bridges. Richard Wright stated, that not having been invited to any meetings, he was surprised that when a decision was made that landowners were not provided an opportunity to work out an agreement to maintain or repair the bridges.

Commissioner Givens asked if any cabin owner was notified of any public input related to the decision. There was no response from any of the attendees.

Commissioner Doherty asked how many landowners were involved. Ron Yokim replied that there were 9 landowners.

Commissioner Doherty stated that he understood that the board was being asked to make a judicial decision and that Mr. Yokim and the landowners believed the board had the authority to put sideboards on the decision. After the board's decision was done would there be another factual hearing if there was another agency involved.

Ron Yokim stated that he believed if the county made the determination and the BLM or another agency came in, the matter would likely be played out in federal court in a quiet title action. He held discussion with his clients over their past efforts when they were trying to make agreements so that access, consistent with the abilities and age of the clients to property, was the ultimate goal. He provided a copy of the state statutes and the 1930 ORS annotated cite setting right of way restrictions as well as a copy of the homestead claim by the original road builder and the accompanying statement by the surveyor referencing the road.

**John Ehart, 108 Dehaven, Milton-Freewater:** John Ehart stated that he owned 20 acres of property on the road and would simply briefly mention that any future access by forest service trail was poor, except for a little more than a month. He pointed out that one item not mentioned was that the road use so restricted access to the property that fire protection was a problem and in that location it was only a matter of when there would be a fire. He also stated that although the salmon introduction was wonderful, there was very little discussion of damage to the reds (???) and mitigation of that damage.

**Kat Brigham, CTUIR Board of Trustees and Chair of the Tribal Wildlife Commission:** Kat Brigham announced that a bill had been dropped in the state legislature to declare that damage occurred on crossings and commented that the meeting was the first time she had met all the landowners. She stated that the Tribes had never been approached by the landowners and reported that they did not support the RS 2477 designation due to expected damage to the salmon habitat.

Commissioner Doherty commented that he had not had a chance to read the memorandum, but the gist was that the Tribes did not support the RS 2477 declaration. Kat Brigham agreed that they did not support the designation. Commissioner Doherty suggested that if the Tribes were invited to participate in a mitigation discussion, he would like to see some partnership with the local entities.

Kat Brigham provided a copy of the proposed bill. Commissioner Doherty scanned HB 2401 and noted that there was a representative noted as "Doherty" as a sponsor and would like to take the moment to declare no conflict of interest and indicate for the record that he did not know that representative.

- d. **Enter Exhibits:** Commissioner Doherty moved to enter the following as exhibits by number: Petition and Memorandum from Attorney Yokim, Exhibits 1 and 2; Letter from Tribe, Exhibit 3; HB2401, Exhibit 4; Maps, Exhibits 5 and 6; 1930 ORS, Exhibit 7; Spencer land records, Exhibit 8. Commissioner Elfering seconded. A brief discussion of whether to continue the hearing after lunch was entered, but Commissioner Doherty reported that he had a calendar conflict. Question was called and the motion carried 3-0.

Rich weaver asked if it was appropriate for the commissioners to weigh in on HB 2401. Commissioner Givens stated that as the commissioners had not read it, it was probably not part of the discussion.

- e. **Close hearing:** Commissioner Givens stated that if no one else wished to speak, he proposed that the hearing be closed and the board could reserve deliberation to a later date. Commissioner Doherty was supportive and commented that he would presume that there would be further reviews.

He asked Rich Weaver if he expected the board to take a position on the proposed legislation. Rich Weaver stated the he would suggest that some discussion should be had on grandfathering access to properties.

Ron Yokim thanked the board for taking the time to hear the matter and offered to answer any further questions via county counsel.

Commissioner Givens closed the hearing and the record at 12:07 p.m.

The deliberation and decision were to be scheduled and Doug Olsen suggested that the Board could follow the land use model in crafting findings. Commissioner Doherty stated that that he supported continuing the deliberation and decision to March 20th to encourage the landowners to contact Kat Brigham to bring some collaboration to the table, which could affect the board's decision relative to restrictions. The deliberation and decision were set for March 20, 2013 at 10:00 a.m. in Room 114 at the Pendleton Courthouse.

**New Business:** None.

**Commissioners reports:**

Commissioner Givens reported that he would be attending a meeting in Milton-Freewater on the ongoing public safety concerns on Friday, February 8<sup>th</sup> at 7:00 p.m.

**Scheduling of Next Meeting:** The next meeting will be held February 20, 2013.

## **ADJOURNMENT**

The meeting was adjourned at 12:18 p.m.

Respectfully submitted,

Laura Headley  
Executive Secretary  
Umatilla County  
Board of Commissioners