

MALHEUR COUNTY COURT MINUTES

MAY 4, 2016

The Malheur County Court met on May 4, 2016 with Judge Dan Joyce presiding with Commissioner Don Hodge and Commissioner Larry Wilson present. Staff present was Administrative Officer Lorinda DuBois.

Also present was Larry Meyer of the Argus Observer.

PUBLIC HEARING - ADDITIONS TO NOXIOUS WEED LIST

Present for the public hearing to consider the additions of Ravenna grass and genetically engineered Glyphosate Tolerant Creeping Bentgrass to the County's Noxious Weed List were: Weed Inspector Gary Page; Weed Advisory Board Chair Jerry Erstrom; Old Owyhee Ditch Company Representatives Andy Peutz, Rod Frahm, Mike Blackaby, and Monty Culbertson; SWCD (Soil and Water Conservation District) Manager Linda Rowe; OSU (Oregon State University) Extension Agency Bill Buhrig; Clint Shock from OSU Experiment Station; and Ty Martin. Notice of the hearing was published in the Argus Observer and Malheur Enterprise.

Judge Joyce opened the public hearing and asked for a staff report.

Gary Page: I will cover Ravenna grass and Mr. Erstrom can talk about the Bentgrass issue. So we have two grasses we'd like your consideration for adding to the County weed list. First of all, Ravenna grass, the Weed Board suggested that that be added to the Class B list. And the reason for that addition, or their suggestion that we add it is, ODA, the Department of Ag, has sent a notice to all counties alerting them that Ravenna grass will be a problem and so far wasn't known to exist in Oregon. Although since then, they've found a fair amount. This is an ornamental grass initially, and it was thought that it was, the cultivars were not able to reproduce however, we've found out here that they're readily able to reproduce, both by seed and through rhizomatous activity. So, we have in this County seven confirmed sites; I'm sure there must be more, once we get to looking around there's going to be more. It's a definite problem, or will be a definite problem for, a major issue for irrigation districts, and that's the biggest concern for us. It likes moist conditions, wetter soils, so it's always going to be pretty close to water, or where it's wet most of the year. And where this stuff has shown up in Benton County and Washington, on the San Francisco Delta, they battle it year round and it costs quite a lot of money. So we don't want to see that happen here, the Weed Board was quite concerned; ODA was very concerned about it. There are, I think, three counties that have confirmed it in those counties, this being one of them. It's closely related to sugar cane; it's in the same genus; in fact it's genetically very closely related. As I mentioned, it's an ornamental, initially, from northern Italy.

Again, the major issue for us is going to be the invasion into irrigation systems and the associated costs of trying to control it. It's quite dense once it gets established, difficult to manage. So that was the thinking of the Weed Board and ODA; we wanted to try to head this off before it becomes a big problem. So many of the times, a lot of these issues we're kind of behind the curve many times and we wanted to try and prevent that from happening in this case. And again, they suggested that you add that to the Class B list, there's not much of it we think and that

should give us sufficient authority to try to get folks to manage it. That's about all I can tell you about that issue. Mr. Erstrom's going to talk about Creeping Bentgrass.

Jerry Erstrom: Scotts Company a few years ago brought in genetically modified Creeping Bentgrass and did some test plots with it on the Idaho side; two locations. For whatever reason, they wound up on the Oregon side. It's genetically modified, bottom line, Roundup resistant. It likes moist areas. It's been, US Fish and Wildlife are opposed to it because of the threat to environmental things along the rivers and potential danger to threatened endangered species. For us, it possess, the most significant, well a couple of three places, one is again irrigation systems. Scotts has had a gentleman spray every spring prior to the water going in to the canal and then post water, leaving the canal. Unfortunately by the time they spray after it leaves the canal it's already gone to seed and the seeds have gone downstream. To my knowledge there's been sites along, very close to the Malheur River and very, very close to the Snake River. So to assume that it's not in those systems is probably not valid.

Commissioner Hodge: It's probably there.

Mr. Erstrom: It's probably there. It does pose an issue besides the fact of the water; you're looking at the GMO (Genetically Modified Organism) thing, getting into and invading other crops. For example, myself, with the hay, it gets into the hay field, you have hay for export, it tests positive for GMO, it's done. And so there's an economic issue. The control of it, while there's nothing labled for it right now, and where it likes water, and there's nothing labled for it over water, very, very difficult to control. Scotts, to their credit, have been working very hard, there was a lot of sites originally, large sites, I think we're down to plus or minus 200 locations now in which this stuff is growing. Scotts are talking about pulling out and leaving this burden on Malheur County to take care of; we've talked about that in the past. Because of the danger to the economic side of things, what it could do to the water folks and their management, what it can do and has the potential to do with the folks raising crops and trying to get rid of it, we recommend that it be put on the Class A list and mandatory elimination wherever it's found.

Judge Joyce: Does that conclude your report?

Mr. Erstrom: Can you think of anything?

Mr. Page: No.

Commissioner Wilson: I've been in those meetings with you, I agree with you.

Mr. Erstrom: Did we cover everything?

Commissioner Wilson: I think so.

Clint Shock: There's a couple of things that I can add to Jerry's statement. First, it's not just a GMO, it's a non-released GMO. So it's supposed to be controlled. It's sort of like a little bit outside the laboratory setting but not something that should be outside of a controlled field at the present time. So it's not a released GMO. The Creeping Bentgrass has proven ability, and

already in Oregon has crossed with other grass species, and that's in the scientific literature; it's already happened. We have some preliminary data that show that it may have crossed with other species here which could pose more direct threat to crops. It's quite a precedence for APHIS (Animal and Plant Health Inspection Services), who's supposed to control, you know, exotic organisms or whatever to lose control of an organism and then just get to the point that they and the company that had control of it are tired of doing, of exercising their responsibility. And so they just throw up their hands. That's just quite a precedent that APHIS has established by doing this. You can imagine the stink that would be going on if they were doing this in Lane County or you know some other part of the country.

Judge Joyce: I'm going to take that as proponent testimony for putting it on the list.

Mr. Shock: Yeah, I think more should be done than just put it on the list.

Judge Joyce: Okay, is there any other proponent testimony?

Andy Peutz: Question, as far as if putting it on the list, does that take away Scotts liability of taking care of it?

Mr. Erstrom: Right now Scotts liability as we understand it, as it was explained to Larry and I and Gary the other day, that's an issue with APHIS in their process of deregulation. And that's what we are trying to get that deregulation stopped so that they will be required to continue their control efforts with Ty. Because once it's deregulated we're done, and that's the other thing I was going to bring up, when we get done this I've got a proposal to the Court.

Mr. Peutz: I do want to add one more thing, this is also in Prineville and Madras; this grass has been here how many years?

Mr. Martin: In Madras it's been since 2003 I believe.

Mr. Peutz: And it's over there, it exploded over there too.

Mr. Erstrom: We looked into that, we've called the weed folks in Madras and some of the other, I've talked to the weed, the grass growing community on the west side; guess what, who is one of the major contractors of grass seed in Jefferson County, Benton County, and who has a membership on at least two of the commissions, grass seed commissions; Scotts seed. The guys in Jefferson County was, to my understanding from the folks, the information I've got back was they couldn't complain, if they complained we could take our business someplace else. We don't have that issue here.

Mr. Martin: It all depends what grass growers you talk to.

Mr. Erstrom: Yeah, you're absolutely correct.

Mike Blackaby: Judge Joyce, if I could, I'm here on behalf of the Old Owyhee Ditch and Andy Peutz is chairman of the Old Owyhee Ditch and Ty is the person that has been contracted by Scott seed for seven years

Mr. Martin: No we've been doing it over here, this will be the fifth year.

Mr. Blackaby: Fifth year to try and control it. Monty rides ditch for us and has seen what can happen.

Unknown: And Rod's

Mr. Blackaby: And Rod's also on our board but he's right there where it really is the most, where it's growing the worst, if that's a proper description, so we're all here, at least this group from the Old Owyhee Ditch Improvement Company.

Mr. Erstrom: To Ty's credit there was a lot of stuff before, we're down to 200 or so sites now. He's reduced it that much but again, they're talking 200,000 probably a year to do that. If that goes away then that 200,000, that falls on all of us; if we were to even maintain that level of control. So that's why we would like it on the Class A weed list, mandatory.

Judge Joyce: So would that conclude the proponent testimony in terms of.

Rod Frahm: Shall I speak?

Judge Joyce: Sure

Mr. Frahm: Okay, I'm one of the lucky ones, I have it more on my place than anybody. I cannot raise alfalfa seed. I can't raise alfalfa, if it's non GMO to go to Japan. So that's hurt me real estate wise. Also grass, the people are worried about that, however, I'm very close to the river, it's over on Oft's, Starr Island's got it now, across from there, so it's in the river folks. I mean you're not kidding anybody, it's already gone, the problems gone, the cows out of the barn, so we've got a problem here.

Mr. Martin: Prior to, you know, this year, we've sprayed, like Jerry said, in the spring and the fall and we've sprayed during the summer, soy oil which would keep the plants from flowering. This year, as far as I've been told we will spray nothing during the summer. And so, things will flower and go to seed this year and probably spread.

Judge Joyce asked for opponent testimony. There was none.

Judge Joyce asked for a staff summary and recommendation.

Mr. Page: I recommend that you follow the Weed Board's recommendation to add them; particularly Ravenna grass, I have no issue with that. In fact, that needs to get done pretty quickly so we can act on it this season. As far as the Creeping Bentgrass, I don't really see the downside. It would require landowners to, you know, make an effort to try to control it. If this

thing with Scotts goes away and it's left to the landowners it's going to be up to the Court how strictly you want to enforce that. Because Class A would require them, if they have it, to stop it from going to seed, so that's a consideration you have.

Commissioner Hodge: Well if Scotts goes away or says they're not going to do anything is there going to be any litigation?

Mr. Erstrom: Yes

Mr. Page: Most likely.

Commissioner Hodge: Would that be, I mean is it going to be after the fact, or are you looking at something...

Mr. Erstrom: They have to wait for APHIS to make the decision at which point, as soon as APHIS makes a decision the litigation will be filed.

Commissioner Hodge: Okay

Bill Buhrig: There's no indication that it's going to be, the regulations going to be stopped. At this point the USDA's (United States Department of Agriculture) rules say that they're going to have to deregulate it. There's nothing stopping that at this point.

Mr. Erstrom: By putting this on the Class A weed list though it does give us, in addition to maintaining, helping environmentally here in Malheur County, it does give us a little bit of leverage as far as in court. The other counties downstream are putting it on their watch list and are working towards doing what we're doing here.

Commissioner Hodge: What do you have to use to control it?

Mr. Page. Well, I think Glyphosate is about the best choice, and that's what they've been using for some time. But again, you can't get it in the water, so timing is an issue for, you know, adequate control, it's difficult. In production fields where they use a lot of grass herbicides it's not an issue in the field so much, it's just, you know, headlands and...

Mr. Erstrom: perimeter

Mr. Page: Yeah. Laterals, things like that where it's a problem.

Judge Joyce: Well from what I've heard I think we're real close to closing the public hearing and making a decision, deliberation, if there's no other testimony. So we will close the public hearing and the Court will deliberate via motion or one way or another.

Commissioner Wilson: Well unless you guys have any questions, I'm in favor

Judge Joyce: I have no questions

Judge Joyce: So is that a motion?

Commissioner Hodge: *inaudible*

Commissioner Wilson: I would make that motion, Class B on the, Gary wanted on the Ravenna grass and Class A on the Creeping Bentgrass

Commissioner Hodge: I'll second

Judge Joyce: Second, discussion, hearing none vote, all those in favor Aye

Commissioner Wilson: Aye

Commissioner Hodge: Aye

Judge Joyce: Aye

The Court signed Resolution R16-8: In the Matter of: Resolution Adding Ravenna Grass and Genetically Engineered Glyphosate Tolerant Creeping Bentgrass to Malheur County's Noxious Weed List. See instrument #[2016-1510](#)

**** Please note that Scotts Co. has developed and released the genetically engineered Glyphosate Tolerant Creeping Bentgrass and not the local company known as Scotts Seed. Mr. Erstrom also told the Court that he has been in contact with Representative Walden's office and is in the process of creating a list of issues and struggles related to the Creeping Bentgrass matter with Department of Agriculture and APHIS and inquired if the Court would be receptive to reviewing and supporting a letter. The Court agreed to review the letter after it is drafted.

COURT MINUTES

Commissioner Wilson moved to approve Court Minutes of April 13, 2016 as written. Judge Joyce seconded and the motion passed. (Commissioner Hodge was not present for the meeting.) Judge Joyce moved to approve Court Minutes of April 20, 2016 as written. Commissioner Hodge seconded and the motion passed. (Commissioner Wilson was not present for the meeting.)

Commissioner Wilson moved to approve Court Minutes of April 27, 2016 as written. Commissioner Hodge seconded and the motion passed unanimously.

JUNTURA CUT-OFF ROAD

Commissioner Wilson moved to dedicate \$125,000 to the Juntura Cut-Off Road project. Commissioner Hodge seconded and the motion passed unanimously. (Ms. DuBois and Mr. Moulton are working together to determine what budget line-items the funds will be taken from.)

COMMUNITY IN ACTION (CinA)

Commissioner Hodge moved to sign a letter to Community in Action requesting their assistance in meeting the need for additional housing for homeless veterans and if necessary increasing

their motel stays if necessary to find sustainable housing. Commissioner Wilson seconded and the motion passed unanimously. This action was taken at the request of Community in Action for their Veterans Grant. See instrument #[2016-1514](#)

HOUSING AUTHORITY BOARD APPOINTMENT

Commissioner Wilson moved to appoint Ridg Medford to the Housing Authority of Malheur & Harney County's Board of Directors. Commissioner Hodge seconded and the motion passed unanimously.

DEED - KINCADE

Commissioner Wilson moved to approve Statutory Bargain and Sale Deed to Michael Kincade Revocable Trust of 2014 for properties purchased at the recent Land Sale (Ref. #12287; #15287; #12406; #12162; #12125). Commissioner Hodge seconded and the motion passed unanimously. See instrument #[2016-1507](#)

DEED - DOWELL

Commissioner Hodge moved to approve Statutory Bargain and Sale Deed to Jack and Mary Dowell for Ref. #11842 purchased at the recent Land Sale. Commissioner Wilson seconded and the motion passed unanimously. See instrument #[2016-1508](#)

DEEDS - GOVERNMENT LAND SALES

Commissioner Hodge moved to approve Statutory Bargain and Sale Deed to Government Land Sales for Ref. # 11794 purchased and the recent Land Sale; and Statutory Bargain and Sale Deed to Government Land Sales for Ref. # 12288 purchased at the recent Land Sale. Commissioner Wilson seconded and the motion passed unanimously. See instrument # [2016-1506](#) and [2016-1505](#)

PROCLAMATION - DRUG COURT

Present for the signing of the proclamation in support of drug court month were: Presiding Judge Lung Hung, Judge Patricia Sullivan, Drug Court Coordinator Lydia Machuca, Lieutenant Rachel Reyna, Deputy Cindy Padgett, SAFE Court Counselor Kevin Hill and Forensics Social Worker Crystal Copenhagen. Judge Hung gave a brief background and current information on drug court. The first drug court was created in 1989 in Florida. Malheur County's first drug court program was started in 2001; and has had 384 participants. Last year the 10th baby was born in the drug court program drug free. The Malheur drug court program attempts to follow best practices that are promulgated by the National Drug Court Program.

Judge Hung read the proclamation:

ALL RISE

Resolution/Proclamation in Support of National Drug Court Month

Whereas, drug courts and other treatment courts have served over 1.4 million individuals; and
Whereas, they are now recognized as the most successful criminal justice intervention in our nation's history; and
Whereas, they save up to \$27 for every \$1 invested and up to \$13,000 for every individual they serve; and
Whereas, 75% of treatment court graduates will never see another pair of handcuffs; and
Whereas, treatment courts significantly improve substance-abuse treatment outcomes, substantially reduce substance abuse and crime, and do so at less expense than any other criminal justice strategy; and
Whereas, treatment courts facilitate community-wide partnerships, bringing together public safety and public health professionals in the fight against substance abuse and criminality; and

Whereas, there are now 2,966 drug courts and other treatment courts nationwide; and
Whereas, drug courts and other treatment courts are the cornerstone of criminal justice reform sweeping the nation;
and
Whereas, treatment courts demonstrate that when one person rises out of substance use and crime, we all rise; and
Whereas, the time has come to put a treatment court within reach of every eligible person in need.
Therefore, be it resolved that Malheur County Court declares that Drug Court Month be established during the month of May 2016.

The Court members signed the proclamation.

DEED - KLOOSTERMAN

Commissioner Wilson moved to approve Statutory Bargain and Sale Deed to Andrew Kloosterman for Ref. #2322 recently purchased at the Land Sale. Commissioner Hodge seconded and the motion passed unanimously. See instrument #[2016-1504](#)

DEED - SEPULVEDA

Commissioner Hodge moved to approve Statutory Bargain and Sale Deed to Juan Manuel Nuno Sepulveda for Ref. #9791 and Ref. #9800. Commissioner Wilson seconded and the motion passed unanimously. Mr. Sepulveda recently paid off these properties under Contract to Sell with the County. See instrument #[2016-1503](#)

DEED - SEPULVEDA & NUNO

Commissioner Wilson moved to approve Statutory Bargain and Sale Deed to Juan Manuel Nuno Sepulveda and Alma Delia Nuno for Ref. #9792. Commissioner Hodge seconded and the motion passed unanimously. This property was recently paid off under the Contract to Sell with the County. See instrument #[2016-1502](#)

REF #1289

The Court discussed Ref. #1289, 136 NW 5th Street. The property was offered for sale at the recent County Land Sale and did not sell. Two written offers to purchase the property have since been received. ORS (Oregon Revised Statute) allows for the County to sell the property privately, for not less than 15% of the minimum bid, as the property was offered for sale publicly at the land sale and did not sell. The Court discussed the offers received. Fred McLeran offered \$2500. Gloria Sharrai offered \$3000 and is a neighboring landowner. Commissioner Hodge moved to accept the written offer from Gloria Sharrai in the amount of \$3000 cash (plus associated fees) for Ref. #1289. Commissioner Wilson seconded and the motion passed unanimously.

SUPPLEMENTAL BUDGET

Commissioner Hodge moved to approve Supplemental Budget Resolution R16-11: In the Matter of Fiscal Year 2015/2016 Supplemental Budget by Resolution Under Local Budget Law ORS 294.471. Commissioner Wilson seconded and the motion passed unanimously. The purpose of the supplemental budget is allocate the spending of additional Kindergarten Innovation Grant funds which were received but not anticipated when the adopted budget was prepared. The funds are to be used to perform Kindergarten assessment activities and/or programs. See instrument # [2016-1515](#)

CROSSING PERMITS

Commissioner Hodge moved to approve Crossing Permit #12-16 to Probst Electric for a new powerline on Snowmoody Way #1504; Crossing Permit #13-16 to Idaho Power for installation of overhead transformer bank on Stage Road #1011; and Crossing Permit #14-16 to Agri-Lines Irrigation for irrigation pipe on Annex Road #952. Commissioner Wilson seconded and the motion passed unanimously. Original permits will be kept on file at the Road Department.

CONTRACTS TO SELL - KINCADE

Commissioner Hodge moved to approve Contract to Sell/Installment Agreement Pursuant to ORS 275.190 with Michael Kincade Revocable Trust of 2014 for Ref. #12384; and Contract to Sell/Installment Agreement Pursuant to ORS 275.190 with Michael Kincade Revocable Trust of 2014 for Ref. #12344; and Contract to Sell/Installment Agreement Pursuant to ORS 275.190 with Michael Kincade Revocable Trust of 2014 for Ref. #13147. Commissioner Wilson seconded and the motion passed unanimously. The properties were purchased at the recent County Land Sale. See instrument # [2016-1511](#), [2016-1512](#), [2016-1513](#)

EXECUTIVE SESSION

Executive Session was called in accordance with ORS 162.660(2)(d) - Labor Negotiator Consultations with Judge Joyce presiding with Commissioner Hodge and Commissioner Wilson present. Also present was Administrative Officer Lorinda DuBois, Juvenile Department Director Susan Gregory and Larry Meyer of the Argus Observer. No decisions were made during or following the session.

PROCLAMATION - CORRECTIONS WEEK

Undersheriff Travis Johnson met with the Court and presented a proclamation for their consideration. Judge Joyce read the proclamation:

PROCLAMATION CORRECTIONAL DEPUTY WEEK
MAY 3-6, 2016 BY THE
MALHEUR COUNTY COURT, OREGON

Whereas, since 1984 the Congress of the United States, and the President of the United States have established the first week of May as National Correctional Officers' Week; and
Whereas, Malheur County considers the services of the Sheriff's Correctional Deputies to be critical to the interest of the community; and
Whereas, Corrections employees model ethical and pro-social behaviors while holding offenders accountable for their actions and reducing the risk of future criminal behavior and future victimization; and
Whereas, Corrections Deputies are highly trained and productive members of the County workforce; and
Whereas, our County enjoys a high standard of public health and safety and we owe a great deal of gratitude to them. During this special observance we extend a profound thank you to each member of the corrections staff.
Now, therefore, the Malheur County Court proclaims the week of May 3-6, 2016 to be Malheur County Corrections Week. We invite all residents to observe this week in honor of our Corrections Deputies who help to protect our health and safety.

The Court signed the proclamation

COURT ADJOURNMENT

Court was adjourned.