

# **MALHEUR COUNTY COURT MINUTES**

**December 11, 2019**

The regularly scheduled meeting of the County Court was called to order by Judge Dan Joyce at 9:00 a.m. in the County Court Office of the Malheur County Courthouse with Commissioner Don Hodge and Commissioner Larry Wilson present. Staff present was Administrative Officer Lorinda DuBois. Others present were Owyhee County, Idaho Commissioner Jerry Hoagland and Larry Meyer of the Argus Observer. Notice of the meeting was posted on the County website and Courthouse public bulletin board; and emailed to the Argus Observer, Malheur Enterprise, and those persons who have requested notice.

## **COURT MINUTES**

Commissioner Hodge moved to approve Court Minutes of December 4, 2019 as written. Commissioner Wilson seconded and the motion passed unanimously.

## **SUPPLEMENTAL BUDGET RESOLUTION**

Commissioner Wilson moved to approve Resolution R19-35: In the Matter of Fiscal Year 2019/2020 Supplemental Budget by Resolution Under Local Budget Law ORS 294.471. Commissioner Hodge seconded and the motion passed unanimously. The purpose of the supplemental budget is to allocate additional funds from the Oregon Health Authority (OHA) and fees generated by programs that were not anticipated when the adopted budget was prepared - the funds are to be used per the agreement between OHA and the County. See instrument #[2019-4554](#)

## **CROSSING PERMIT**

Commissioner Hodge moved to approve Crossing Permit #31-19 to Cascade Natural Gas to bore on Clark Blvd. #755. Commissioner Wilson seconded and the motion passed unanimously. The original permit will be kept on file at the Road Department.

## **VECTOR CONTROL DISTRICT**

Commissioner Hodge moved to reappoint Ray Waldo to the Vector Control Board of Trustees. Commissioner Wilson seconded and the motion passed unanimously.

## **WEED ADVISORY BOARD**

Commissioner Wilson moved to reappoint Jean Findley to the Weed Advisory Board. Commissioner Hodge seconded and the motion passed unanimously.

## **NACO DUES**

Commissioner Hodge moved to authorize payment of NACo (National Association of Counties) 2020 membership dues in the amount of \$626. Commissioner Wilson seconded and the motion passed unanimously.

### **ORDER CREATING LIEN – EASOM**

Commissioner Wilson moved to approve Order Go-13-19: Order Creating Lien Against Real Property - 1337 Alameda Drive, Ontario; Reference #8296 Map #18S4709 Tax Lot #4200. Commissioner Hodge seconded and the motion passed unanimously. Malheur County incurred costs and expenses in abating the public nuisances on the property and those costs and expenses have not been paid. Pursuant to County Code a lien will be placed on the property. See instrument [#2019-4555](#)

Commissioner Wilson moved to approve Notice of Lien to be recorded in the real property records of the County Clerk. Commissioner Hodge seconded and the motion passed unanimously. See instrument [#2019-4556](#)

Joe Siess from the Malheur Enterprise joined the meeting.

Surveyor/Engineer Tom Edwards and Planner Eric Evans joined the meeting.

### **SAGE GROUSE LOCAL IMPLEMENTATION TEAM (LIT)**

Sage grouse LIT Coordinator Julie Unfried, Owyhee County, Idaho, Commissioner Jerry Hoagland, and Staff Jim Desmond met with the Court. Also present were Weed Inspector Gary Page, Jordan Valley Cooperative Weed Management Area (JV CWMA) Coordinator Eric Morrison, and Dave Bunker. Commissioner Hoagland gave a brief background on the Owyhee County local working group; meetings are well attended and include representatives of US Fish & Wildlife Service, Idaho Department of Fish & Game, Idaho Office of Species Conservation, Nature Conservancy, Idaho Department of Lands, Idaho Department of Agriculture, BLM (Bureau of Land Management), and private landowners and has been active since 1998.

Mr. Desmond explained that in 1998 a MOU (Memorandum of Understanding) was signed between Idaho Department of Fish & Game and the Owyhee County Planning Committee to establish working relationships to facilitate a local sage grouse working group. The Owyhee County Planning Committee eventually became the Owyhee County Natural Resources Committee (NRC) and the Owyhee County Sage Grouse Local Working Group is a subcommittee the NRC. The Natural Resources Committee makes recommendations to the Owyhee County Board of Commissioners. The local working group was the first in the state as was the plan it developed. Owyhee County provides a note taker for committee meetings and acts as the fiscal agent for the endangered species fund (various projects have been done with these funds in the county).

Ms. Unfried gave a history of Sage-Grouse Local Implementation Teams (LITs). Five LITs were initially convened in 2005 when ODFW (Oregon Department of Fish and Wildlife) published its sage-grouse plan that identified 300 actions that could be taken on the landscape that would benefit sage grouse populations or habitat. By 2012 the LITs had stopped meeting because one person was charged with coordinating all the meetings across the state. In 2016 it was apparent in the Baker area that the sage grouse were not doing well and action needed to take place; ODFW convened meetings again in that area and the local representatives were involved and a robust strategy developed which resulted in grant funding to implement identified projects. ODFW has since partnered with BLM, Pheasants Forever, and the Intermountain West Joint Venture to create

the LIT Coordinator position. Ms. Unfried works in the ODFW office in Hines and is an employee of Pheasants Forever and is the LIT Coordinator for the Malheur area and Prineville area. The LITs are open to anyone who wishes to attend and contribute. Interests and priorities are being identified in order to develop a plan with the intent to eventually seek out grant funding (funding through the legislature is not available as is in some states). A priority for the Malheur local working groups is to identify what good work has already been completed on the landscape and how to fill in the gaps.

Mr. Evans commented that currently a developer pays a sage grouse mitigation fee to ODFW and it may be more beneficial if that was paid into a local working group fund that would have the ability to fund sage grouse projects. (This is a suggestion for the LITs to consider.)

Judge Joyce inquired about predation studies. Ms. Unfried explained that Baker LIT is currently doing a large raven study and have framed it as raven predation is a short-term solution and is part of the problem but needs to be complemented with other practices.

Those present further visited about predators and sage grouse; Judge Joyce mentioned the 1948 Oregon Game Commission study about sage grouse and predation. Mr. Bunker encouraged the County Court to be involved in the LIT process.

Pat Caldwell and Yadira Lopez of the Malheur Enterprise joined the meeting.

### **CALICO RESOURCES - GRASSY MOUNTAIN PROJECT**

Andy Bentz, Paramount Gold President Glen Van Treek, Carlo Buffone, and Chris Theodossiou briefly met with the Court. Commissioner Wilson was out of the room during the majority of this visit. Introductions were conducted. Calico Resources filed its Consolidated Permit Application with DOGAMI (Department of Geology and Mineral Industries) in November; there is now a 90-day review period of the application. Public hearings may begin in January 2020.

County Counsel Stephanie Williams joined the meeting.

### **RELOAD FACILITY PROJECT UPDATE**

Economic Development Director Contractor and MCDC (Malheur County Development Corporation) Board Member Greg Smith and Staff John Braese met with the Court. Also present were Malheur County Development Corporation (MCDC) Board Chair Grant Kitamura and Board Members Kay Riley, Corey Maag, and Jason Pearson; Watermaster Ron Jacobs; and public members Ken Landreth, Kathy Clarich, Andy Bentz and Dave Bunker. (Mr. Bentz and Mr. Bunker left before the session was complete.) Malheur Enterprise live-streamed the session via Facebook.

Mr. Smith provided a background of the MCDC board members:

- Chair Grant Kitamura is a co-owner of Baker Murakami Produce, has been in the onion business his entire life and has extensive experience in shipping and processing of onions; he has also been appointed by Governor Brown to the Oregon State Board of Agriculture.

- Corey Maag is a farmer, cattleman, and businessman; he is the owner of Y1 Farms and Jamieson Produce and is a lifelong farmer with extensive experience in agriculture and agricultural development.
- Mr. Riley is a partner in Snake River Produce and a former president of the National Onion Association. Mr. Riley grew up on a farm and has been with Snake River Produce since 1999.
- Mr. Pearson is the newest board member; he is a native of Nyssa and is an onion commodity manager for Eagle Eye Produce.
- Lynn Findley is currently a House Representative; he has extensive background with BLM (Bureau of Land Management) and was a city manager for the City of Vale; he has extensive knowledge in land use planning and development.
- Toni Parrish is vice-president of Northwest Farm Credit Services and has extensive experience in agricultural lending; she has been a tremendous resource in the financial management considerations of the project.

Mr. Braese is Mr. Smith's assistant working on the project. Mr. Smith spoke recently at the northwest's largest business and environmental conference; he was asked to speak on public finance, economic development, and the politics of local government and how to move projects forward. Mr. Smith has over 25 years of economic and industrial development experience; the County contracts with Mr. Smith to provide these services and he brings with him a team of professionals and a depth of experience. Mr. Smith is currently assisting on a project at the request of the Port of Morrow, Port of Umatilla, Morrow County, Umatilla County, and the Confederated Tribes of Umatilla - the project is the development of over 19,000 acres of property owned by the US Army and converted into industrial use.

Mr. Smith shared a site layout map with the Court members and explained that as the project moves forward you constantly have to adjust to the issues at hand; the project will continue to adjust until completion. In this project the flow of traffic is important - it is extremely important to maximize throughput time (do not want to have trucks sitting idle, do not want labor sitting idle, and do not want to create a backlog on any of the roads). The design is in such a way that trucks arrive, weigh, stage, back in, unload and load, and proceed on through. Additionally, included is another route that will allow for emergency services and future development.

Mr. Smith provided an overview of how the project site was selected. The MCDC Board looked at five different locations throughout the county - locations in Ontario, Nyssa, and other areas of the county. Regional managers who serve as the key engineering team for Union Pacific (UP) also made site visits and provided their expertise. Not all industrial land is the same - very few pieces of industrial land have the needed space requirements of the project. In order to bring a unit train off of the UP mainline you must, at a minimum, have a one-mile stretch of property. A cost comparison of the real estate, development, and utilities was done. The cost per acre was comparable to a like purchase of property in the Vale area which was \$10,000 per acre and was not adjacent to the UP mainline. The owner of the property was approached by Mr. Smith. (Farmers (property owners) did not solicit for the purchase.)

Public member Sarah Ray joined the meeting.

An appraisal of the property was done. Because the appraisal was on over 280 acres there was not a lot of comparable land in Oregon. An additional appraisal can be done in the future as the property is divided into smaller pieces; when the 65 acres for the reload center is partitioned the value will increase. Additionally, as industrial utility services, road and rail spur development is completed the value of the property will increase. The price of the property needed to be locked before it increased.

Commissioner Wilson commented that in order to be on the Union Pacific railroad the only area that could be considered was from the south end of Ontario to the north end of Nyssa.

Mr. Smith explained that property in Nyssa was considered but it had significant mitigation issues along with not meeting the needs of Union Pacific. (Union Pacific is a critical piece of the project as their engineering requirements must be met.) Parcels of property in Ontario were considered but the price was 4 to 5 times higher than the selected property with an equal or greater amount of industrial utility development; and there were concerns about the impact to area residents.

As a requirement of the Oregon Department of Transportation (ODOT) pre-application process a feasibility study was conducted to evaluate the ability of the facility to operate profitably. EcoNorthwest was retained; extensive interviews with industry, shippers, and others were conducted and a proforma was created. (A proforma is an estimate of potential revenues and expenses.) The intent of MCDC is to enter into a triple net lease agreement with a private operator with extensive experience nationwide in shipping agricultural commodities. MCDC will negotiate with an operator; a lease payment will be made to MCDC and property taxes will be paid. The operator will negotiate with shippers for the movement of commodities through the facility to destinations throughout the United States. It is believed that the negotiation with the potential operator will serve existing markets as well as open up many new markets.

Commissioner Wilson requested Mr. Smith explain some of the repayment options for the County; and explained that the parameters of funding for the project have changed as originally it was thought that the ODOT funds would be used for the entire project rather than just approximately 65 acres and now the County has been considering various options of funds to purchase the property. The Special Public Works Fund is only available to public agencies and an application for the fund has been made by the County. The Farmer property is one parcel of approximately 290 acres (mix zoning of industrial and EFU (Exclusive farm Use)); the property for the reload center is within this 290 acre parcel and as such needs to be purchased by the County; after purchase the parcel for the reload center will be partitioned from the parent parcel. The Court also inquired of Eastern Oregon Border Board of possible funding avenues for the property purchase.

Mr. Smith explained that the Special Public Works Fund (SPWF) will allow the County to purchase the 290.35 acres, commonly known as the Farmer Property; this will also include 51.1 acres of water rights from a ground irrigation well and 52 acres of water rights from the Snake River. The SPWF interest rate is currently 2.81%. Repayment negotiations will take place and it is anticipated that payments will begin 3 to 5 years from now. Sources of repayment for the SPWF loan include:

- Lease income from the triple net lease agreement with an operating company (\$26 million has been appropriated from the legislature to build the facility - this is not a loan)
- Lease income from real estate in the reload facility as well as the industrial park that can be leased to future tenants
- Sale of property within the industrial park
- Reimbursement from ODOT (Connect Oregon) for purchase of the 65 acres for the reload facility
- Sale of the industrial property that has enhanced value due to rail spur, water, sewer, and road infrastructure
- Regionally Significant Industrial Site (RSIS) program (An application has been submitted for this program); this program allows for repayment of expenses associated with industrial improvements. State income tax reimbursements go to the applicant (County) when a qualifying company (employs a minimum of 25 employees and qualifying wages) locates on the designated site to repay industrial investments.

Commissioner Hodge asked about the payments on the SPWF; Mr. Smith explained that the terms of the loan will be negotiated and contained in a contract to be executed between the County and the State. There is no prepayment penalty. Commissioner Hodge noted he wants to be involved in the negotiations with the State.

Mr. Smith reiterated that after/if the County acquires the Farmer Property it will then go through the partition process to separate the 65 acres for the reload center; it is anticipated that an updated appraisal will then be acquired on the smaller parcel.

Mr. Smith stressed there is a lot of navigation that goes on in a project like this; and this is the first time that Malheur County has taken on a development project of this type. Continued updates with the Court and staff will take place; MCDC will also be a part of the County's annual audit process. As part of the financial process for the project, invoices will be submitted to the CPA (Certified Public Accountant) who will aggregate them; Chair Kitamura, Mr. Smith, a County representative, and the line of credit lender will review the invoices and recommend approval; invoices will be paid with dual signatures; after the checks clear (using auto pay) a request for reimbursement from ODOT will be made; reimbursement will be made to MCDC. It is important to have a seamless process in order to keep interest charges down.

Commissioner Hodge noted that he recently met with the line of credit lender.

Commissioner Wilson noted that Farmers are retaining 5 acres as part of the purchase and sale agreement the County entered into with the Farmers. Commissioner Wilson also noted that he owns Malheur Realty; the Farmer property was not listed and he has no beneficial gain from the transaction; he has no personal or business interest in the sale of the property.

Mr. Smith reiterated that he approached Jim Farmer after a site analysis was conducted; the MCDC board looked at all the options and determined what they believed was an appropriate location and price. Mr. Smith commented that Commissioner Wilson has done nothing but try to be above board on this transaction and during times of critique has shared multiple times with Mr. Smith and the public that he wanted to make sure the project was done for the public's benefit. The

Court has made it clear that they want the project done correctly and transparently and they want project information shared with the public. MCDC board meetings are currently held every Tuesday and these are public meetings and public questions are allowed at the meeting.

Commissioner Wilson commended the MCDC board members and their vast knowledge; they have stake in the county and the community. The MCDC board members are volunteers and have invested extensive time in the project.

Mr. Smith explained that next steps include significant negotiations with a potential operator and with Union Pacific; possible rates and schedules are being examined as well as new market opportunities.

Commissioner Wilson explained that the Court will need to determine if it will accept the Special Public Works Fund loan and provide direction to staff.

Mr. Smith thanked the County staff for their work.

MCDC Chair Grant Kitamura commended Mr. Smith and his staff for their work on the project; Mr. Smith's experience and connections have really helped to navigate through the hurdles in the project; and stated that the project is for the good of all - not just the onion industry; it will help the whole economy.

Mr. Smith and the Court answered various questions from the public and media present.

#### **SPECIAL PUBLIC WORKS FUND**

Commissioner Wilson moved to accept the full award for the Special Public Works Fund, Treasure Valley Reload Center Land Purchase in the amount of \$2,444,650; and to appropriate general fund contingency funds for the remainder of the needed funds for the land purchase(s). Commissioner Hodge seconded and the motion passed unanimously. Staff will proceed with the supplemental budget process for the funds. A contract with the State will be prepared for the Special Public Works Fund.

#### **COURT ADJOURNMENT**

The meeting was adjourned.