

MINUTES  
BOX ELDER COUNTY COMMISSION  
JULY 27, 2010

The Board of County Commissioners of Box Elder County, Utah met in an Administrative/Operational Session at the County Courthouse, 01 South Main Street in Brigham City, Utah at 8:00 a.m. on **JULY 27, 2010**. The following members were present:

Rich VanDyke	Chairman
Jay E. Hardy	Commissioner
Brian K. Shaffer	Commissioner
LuAnn Adams	Recorder/Clerk

The following items were discussed:

1. Agenda Review/Supporting Documents
2. Commissioners' Correspondence
3. Staff Reports
4. Correspondence
5. Assignment Review
6. Property Access Assurances for Dejarnatt Dam – Lee Beverley
7. Grant Gerber – Attorney, Elko, NV – Commissioner Hardy

The Administrative/Operational Session adjourned at 8:59 a.m.

The regular session was called to order by Chairman VanDyke at 9:00 a.m. with the following members present, constituting a quorum:

Rich VanDyke	Chairman
Jay E. Hardy	Commissioner
Brian K. Shaffer	Commissioner
LuAnn Adams	Recorder/Clerk

The prayer was offered by Chairman VanDyke.  
Pledge of Allegiance – Led by Maya Moody, Girl Scout

#### **APPROVAL OF MINUTES**

**THE MINUTES OF THE REGULAR MEETING OF JULY 20, 2010 WERE APPROVED AS WRITTEN ON A MOTION BY COMMISSIONER SHAFFER, SECONDED BY CHAIRMAN VANDYKE AND UNANIMOUSLY CARRIED.**

**AGENDA: ATTACHMENT NO. 1**

**FOLLOW-UP BUSINESS - COMMISSIONERS**

MOTION: A motion was made by Commissioner Shaffer to authorize the chair to sign the 2010 Victim Advocate Grant. The motion was seconded by Commissioner Hardy and unanimously carried.

### **GRANT GERBER - ATTORNEY, ELKO, NV – COMMISSIONER HARDY**

Attorney Grant Gerber said he has been involved in land issues for over 30 years and 95% of the work he has done on resource issues, he has donated. Mr. Gerber received a call from Elko County Commissioner DeMar Dahl and was asked to start doing some digging; that is when he started making phone calls and finding out that other counties were as concerned as Elko County. Mr. Gerber said the first thing that needs to be let known is Western Watersheds has said it is time to end public lands grazing. El Paso has now become the funder to help do that. Mr. Gerber believes if the counties combine and work together, they can stop the \$20M from El Paso.

Mr. Gerber said Western Watersheds is a radical environmental group based in Idaho that has substantially hurt the agriculture industry in Southern Idaho and is now reaching into other states. They are getting significant funding, much of it from the federal government, by filing lawsuit after lawsuit and then having the federal government pay them attorney fees, even if they win just a tiny piece of any lawsuit. They are gaining in strength in their goal to eliminate grazing. Mr. Gerber said Western Watersheds threatened a lawsuit against El Paso Pipeline and El Paso caved in and agreed to pay them \$20M. We are in the dark as to whether the money has been paid or not or if the deal has even been finalized because they have not given the contract to anyone. He said the very first thing we should do is demand a full accounting and a full explanation of what this is and look at the documents to see if they have been signed. He is not convinced it is a done deal.

Mr. Gerber has spoken with Nevada Department of Agriculture Director, Tony Lesperance, who stated it will be a direct \$400M loss annually if Western Watershed succeeds. Dr. Lesperance has done economic studies that relate to Oregon, Utah and Idaho and found it would exceed a two billion dollar loss annually for all those states if Western Watershed succeeds. Mr. Gerber said that amount is only for the agricultural industry, it does not include the huge damage it will do to mining, oil and gas, recreation and hunting.

Mr. Gerber wants to especially impress the point that because of the success of organizations like Western Watershed, millions of animals have been burned and millions more will burn. The fires in Nevada have jumped from an average of 25,000 acres per year in the 1950's, to a huge jump in the 1980's and 1990's, to where we are now with 600,000 acres burning annually. He said with cattle and sheep being taken off the range and not grazing, the fuel for fires has increased.

Mr. Gerber said last year we started the Smoked Bear Project to educate the people about these fires. He said we have taken the project in to the schools, have radio ads, and are currently working on a television ad to get the message out.

Mr. Gerber commended the Commissioners for being the first to hold a meeting to talk about these issues and encouraged the Commissioners to hold firm so this attack may be stopped.

**WESTERN WATERSHED GRANT/U.S. PIPELINE – COMMISSIONER HARDY**

El Paso Regional Director Loren Locher thanked the Commissioners for the invitation to explain where El Paso is on this agreement and to give an update on the project. Mr. Locher said we have been coming to Box Elder County and other counties along the route for nearly three years now working to get this project in the ground. This project is a natural gas pipeline that will bring natural gas out of the Rocky Basins including parts of Utah, Wyoming and Colorado, then bring it to Opal, Wyoming, where that pipeline will be put into a new pipeline that has yet to be built. The pipeline will cross all of northern Utah, all of northern Nevada and part of Oregon. It is proposed to be a 42” pipeline that will carry 1.1 to 1.5 billion cubic ft. of natural gas a day.

Mr. Locher asked to rectify some misinformation about the agreement stating that the \$20M is not given to Western Watershed but is paid over 10 years into a third party trust fund that will be administered by three directors. One director is to be selected by Western Watershed, one by El Paso and one to be selected jointly by the other two directors. The money will be set aside and under the discretion of the directors on how they want to proceed forward with the money. Mr. Locher said in addition to the three directors, Commissioner Hardy has suggested we get some interest from the counties and ranchers to sit on an advisory panel to help guide where the money goes. We are working very diligently to make sure that happens.

Tim Munns read the 1934 Taylor Grazing Act from the U.S. Code and said he thinks El Paso doesn't have any rights to buy permits or watershed. He said we need to follow the constitution and according to the Taylor Grazing Act, it is illegal to own them anyway.

Loren Locher said the agreement allows for the purchase of grazing permits only from a willing seller, not at auction or from someone who is unwilling to sell. He said this project is federally regulated and has been going through a three year permitting process. Western Watershed is very litigious and has formerly objected to the project. El Paso thought to solve the issue by forming a coalition where the money is not given directly to them, but administered by a three director process, to help negate them as opposition to the project. The downside is the viewpoint is now that this is a really bad thing, where we were trying to make it a neutral thing.

Mr. Locher said these are 501C-3 trust funds administered under the IRS Code, which means El Paso can not engage in lobbying practices. He reiterated that the \$20M is paid over 10 years at \$2M a year and the Ad Valorem Taxes Ruby Pipeline will be paying to Box Elder County is \$6.3M estimated annually, so over 10 years that is \$63M to Box Elder County.

Environmental Consultant Neil Artz stated his fear with the advisory committee approach is it seems to have one and a half representatives with the avowed purpose of stopping public lands grazing and one and a half people from El Paso which has no statutory, mandatory or required expertise in the matter. He said with \$20M going to an avowed anti-grazing organization you are giving them a really big stick to swing.

Commissioner Hardy said the problem is that the proper people are not on the board. He said ranchers, BLM personnel and County Commissioners need to be on the board to direct that money.

Loren Locher said he appreciates Commissioner Hardy's comments and has taken his message back to top management. He said management is very interested in understanding more about how that portion of where the counties would be involved on a committee level, would come in to play. Mr. Locher said this is something we really need to work hard on and is a message he will continue to take back to top management, that we need ancillary input from experts on both sides of the issue to find the best common ground.

Dave Eliason, Utah Cattle Association, said the fund we are talking about is called the Sagebrush Conservation Fund and was set up by John Marble and his Western Watershed Project. He said Western Watershed is about litigation and has to be stopped. It can turn into racketeering; if we don't sell to them, then they will make life so miserable for us that we will.

Kelly Kunzler, Park Valley, said Western Watershed comes across as environmentalists, but can be bought off for \$20M. Western Watershed is about their purpose, they are not environmentalists or they could not be bought. Mr. Kunzler said he can guarantee you could not come to the ranchers and buy off their morals or what they stand for, for \$15 million, it just wouldn't happen.

Rick Ellis, Box Elder County, said it looks to him like it all comes down to money. He thinks El Paso needs to look at a word called "integrity" and figure out what the word means, there is more to it than money.

Jeff Roche, Box Elder County/Nevada Rancher, said he knows John Marble personally and this is a matter of his agenda, he wants livestock off the range. Mr. Roche feels the way the representatives on the board have been set up is bogus. He said this is a wakeup call for the ranchers to understand how powerful Western Watershed is and the private ranchers need to get together to handle this. El Paso is not our problem, the problem is John Marble.

Chairman of West Box Elder Conservation District Ken Spackman said the main reason he is here is to let the Commissioners know what the landowners want to do. He said the conservation districts have changed from soil conservation to just a conservation district because we need to save the wildlife, the water, the air quality, and very importantly the economics and livelihoods of the people in our areas. Western Watershed is big threat to the livelihood of the West Box Elder Conservation District. Mr. Spackman said 80% - 90% of the people living in this district rely on public property sometime during the year. He encourages the Commissioners to do whatever needs to be done to represent the landowners and that the district will be behind them in whatever decision can be made to stop this.

Jonathan Tiechert, Lincoln County, WY, said in the last five years Western Watershed has appealed every gas lease sale and grazing lease that has come thru his county. He is concerned about the precedence this is setting. None of the others have caved in to Western Watershed; El Paso is the first and he would like an explanation.

Kathy Smith said the federal government is represented here in this meeting and hopes they will hear from all of us that the NEPA law protects us as property owners, so if this is going to impact the custom, the culture and the stability of our communities, there has to be that kind of study done. Ms. Smith inquired how the three directors were chosen. She thinks everyone realizes there is no equal vote there, no real representation and an advisory board does not mean anything, it is the three people who vote on those decisions. Ms. Smith said you don't have to be an attorney to know the constitution, look at how well the ranchers know it.

Jay Tanner, Grouse Creek, asked if you are donating money, why not donate it to some groups that have a track record of conservation work on the ground rather than litigation. It seems to him Western Watershed has the worst track record of actually doing any conservation work. We can find plenty of groups that have done a lot to accomplish something. Western Watershed's goal is to remove cattle from the range. Mr. Tanner said most of us involved in the county have, in one way or another, supported El Paso's project so far but the likelihood of that support has gone down dramatically with this decision.

Dave Eliason, Utah Cattle Association said it looks to him as if they have their minds set. The integrity of El Paso Gas and Ruby Pipeline have been compromised by caving into Western Watershed. He encourages the County Commissioners and the Department of Agriculture to step up and do what can be done to stop this.

Neil Artz said this pipeline project has gone through NEPA, through the Endangered Species Act and review after review. Every one of those processes is open to the public. He said at this point, once a decision is made and this deal is made, it disappears from a public forum into a private, behind closed doors negotiation. He said it involves only El Paso and an organization that does not do on the ground conservation work but does only one thing and that is litigate every grazing decision that comes down the pipe. What happened to the public involvement? This is moving a potent force in public land management completely off the public screen. Mr. Artz said the intent of NEPA is to make decision makers and the public aware of any significant impact on the human environment. This decision certainly has arguably more impact than the project had in the first place. Evidently that is why they were willing to drop their original protest to the project. He said this is the most significant impact the project could potentially have and it is off the playing field of public involvement. Most of these decisions get challenged successfully on process grounds not on actual environmental grounds and this certainly seems like a breach of process.

Loren Locher thanked the Commissioners for the opportunity to be here and will take these comments back to management.

### **RECESS**

The Commissioners took a recess at 10:16 a.m. and reconvened at 10:28 a.m.

**PUBLIC HEARING/U.S. PIPELINE STAGING AREA – COMMISSIONERS**

*(See Attachment No. 2 – Attendance List.)*

Chairman VanDyke declared the public hearing open at 10:00 a.m.

Community Development Director Kevin Hamilton said the county received a proposal from Ruby Pipeline to lease some property at the race track on West Forest Street. The property would be used as a staging area and a place to put trailers for temporary office space during construction. Mr. Hamilton said any time the county leases or sells property a public hearing must be held.

Chairman VanDyke asked for comments from those in attendance.

Harry Hinck, representing the Golden Spike Racing Association, said the race track was the best anywhere in the intermountain areas but was abandoned two years ago because it was too expensive for the few remaining members to maintain. He said they would like to recover some of their things from the building.

**MOTION:** A motion was made by Commissioner Hardy to close the public hearing at 10:33 a.m. The motion was seconded by Commissioner Shaffer and unanimously carried.

**PUBLIC HEARING/MURRAY GRAVEL PIT – COMMISSIONERS**

*(See Attachment No. 3 – Attendance List.)*

Chairman VanDyke declared the public hearing open at 10:05 a.m.

County Planner Tamara Wright said this public hearing is for the Murray Gravel pit to rezone their property from R-120 to MG-EX. The property has recently been de annexed from Willard City. Ms. Wright said when application was made to re-zone the whole property, the Planning Commission was hesitant and proposed that portions of the property on the east side of the canal be re-zoned to MG-EX. In addition the Planning Commission states the County Commission may consider re-zoning a portion west of the canal to MG-EX for the purpose of allowing the property owners an area for stockpiling and a scale house.

Chairman VanDyke asked for comments from those in attendance.

Joel Murray said the area east of the canal is a good area but we wouldn't have any room to get things started because of new power lines that are there. We need some more room to stock pile the gravel and to help mitigate the noise. The gravel will be belted across the canal.

Jason Murray said at the Planning Commission level we discussed two different options. It was proposed we take the furthest most point of the canal as it goes around the mountain and take the most western point and draw a line straight to the north to try and make a little room. Mr. Murray

said we have prepared legal descriptions for the entire parcel and for what was suggested by the Planning Commission, but we are hoping we can get just a little bit more.

MOTION: A motion was made by Commissioner Shaffer to close the public hearing at 10:42 a.m. The motion was seconded by Commissioner Hardy and unanimously carried.

MOTION: A motion was made by Commissioner Shaffer to direct staff to prepare an ordinance for the re-zoning of this property to include parcels C and D and also prepare the ordinance to state that we can determine there will be no mining operations other than the stockpile of material and a scale house on the west side of the canal. The motion was seconded by Commissioner Hardy and unanimously carried.

**PARK VALLEY FIRE STATION/CONDITIONAL USE PERMIT – TAMARA WRIGHT**

County Planner Tamara Wright presented the Conditional Use Permit for Park Valley to construct a new fire station and asked the chair to sign.

MOTION: A motion was made by Commission Shaffer to approve the Conditional Use Permit for the Park Valley Fired Department to construct a new building for the storage of fire equipment and allow the chair to sign. The motion was seconded by Commissioner Hardy and unanimously carried.

**FLOOD DAMAGE PREVENTION ORDINANCE – KEVIN HAMILTON/TAMARA WRIGHT**

Director of Community Development Kevin Hamilton met with representatives from the Department of Homeland Security who manage the flood insurance program. Mr. Hamilton said an ordinance needs to be in place and recommended he work with the GIS Department.

MOTION: A motion was made by Commissioner Hardy to direct staff to continue to work on the ordinance for flood damage prevention. The motion was seconded by Commissioner Shaffer and unanimously carried.

**ASSURANCES RELATING TO REAL PROPERTY ACQUISITION NRCS – KEVIN HAMILTON**

This item was cancelled.

**SIGNATURE APPROVING DEJARNATT DAM SPECIFICATIONS – KEVIN HAMILTON**

MOTION: A motion was made by Commissioner Shaffer to authorize the chair to sign the Dejarnatt Dam Project Plans. The motion was seconded by Commissioner Hardy and unanimously carried.

### **DEJARNATT BASIN CLEANOUT BID RECOMMENDATION – BILL GILSON**

Road Department Supervisor Bill Gilson said the low bidder for the basin cleanout project was Southwest Pipeline out of California. It was discovered a clerical error was made and Southwest requested their bid be changed from \$356,000 to \$465,000. Mr. Gilson informed them they may either retain the bid that was sent or ask the Commission to dismiss the bid.

Mr. Gilson said the next lowest bid was Randy Marriott and after much consideration recommends the Commissioners award the bid to Randy Marriot Construction.

MOTION: A motion was made to by Commissioner Hardy to allow Southwest Pipeline to withdraw their bid. The motion was seconded by Commissioner Shaffer and unanimously carried.

MOTION: A motion was made by Commissioner Shaffer to recommend staff prepare a bid document to be presented tentatively for Randy Marriott Construction to be signed next week as we get the contractual documents prepared and signed with the ditch company and the county as well as the easement agreements. The motion was seconded by Commissioner Hardy and unanimously carried.

### **WARRANT REGISTER – COMMISSIONERS**

The Warrant Register was signed and the following claims were approved for payment: Claims 71130 through 71253 and 7010015 in the amount of \$475,639.42.

### **ADJOURNMENT**

A motion was made by Commissioner Hardy to adjourn. Commissioner Shaffer seconded the motion, and the meeting adjourned at 11:10 a.m.

**ADOPTED AND APPROVED** in regular session this 3rd day of August 2010.

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Rich VanDyke, Chairman

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Jay E. Hardy, Commissioner

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Brian K. Shaffer, Commissioner

ATTEST:

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LuAnn Adams, Recorder/Clerk