

Minutes for June 10th, 2002

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059746 THE BOARD OF WHITMAN COUNTY COMMISSIONERS met in their Chambers in the Whitman County Courthouse, Colfax, Washington for **June 10, 2002 at 10:00 a.m.** Greg Partch, Chairman, Jerry Finch, Commissioner and Maribeth Becker, CMC, Clerk of the Board attended.

10:00 a.m. - Board Business.

D059746A 1. Call to Order/Pledge of Allegiance.

Present: Chris Anderson and Dane Dunford.

D059746B 2. Motion by Commissioner Finch to approve the Consent Agenda. Motion **seconded** by Commissioner Partch and **carried**.

059747 3. Claims/Payroll warrants numbered **135706-135779, 135783-135821 and 135846-135883** for **\$990,218.91** approved.

FUND #	FUND NAME	AMOUNT
001	Current Expense	\$ 705.83
102	Building & Development	16.26
103	Countywide Planning	45.94
110	County Roads	331,601.08
128	Crime Victims/Witnesses	170.00
400	Solid Waste	5,987.05
501	Equipment Rental & Revolving	15,261.96
690	Clearing & Suspense	251,764.44
ET	Electronic Transfer	384,666.35

059748 4. Motion by Commissioner Finch **seconded** by Commissioner Partch and **carried** to approve a questioned claim for Central Premix Prestress (sole source vendor) in the amount of \$47,549.55.

Motion by Commissioner Finch **seconded** by Commissioner Partch and **carried** to approve a question claim for Wilbert Precast, Inc. (sole source vendor) in the amount of \$14,301.63.

Mr. Dunford will draft a resolution to prevent any future problems with sole source vendors.

059749 5. June 3, 2002 minutes approved.

059750-059753 6. Personnel board orders approved.

10:05 a.m. - Jennifer Snead and Nathan Alford.

059754 7. A request for an extension to the Uniontown redevelopment project was received from Dale Miller. Approval was granted to September 30, 2002.

059755 8. The Public Employment Relations Commission dismissed a ruling on a motion for summary judgment granted in Whitman County's favor for the Deputy Sheriff's Association.

059756 9. A press release was received from the Washington Utilities and Transportation Commission concerning no increase in customer electricity rates proposed in the Avista settlement agreement.

059757 10. A copy of a letter sent to Governor Locke was received from Mike Werner regarding the State Supplementary Payment Program (SSP).

059758 11. A letter was sent to all Whitman County cities/towns requesting support for a State Building Code change to allow for a Rehabilitation Subcode.

059759 12. Information regarding the 2002 Farm Bill (Farm Security and Rural Investment Act of 2002) was received from the United States Department of Agriculture.

059760 13. An executed copy of the RAP/RATA agreement for the Peterson Bridge received.

059761 14. An executed copy of an interagency agreement with Whitman Hospital and Medical Center received.

D059761A 15. Commissioners' pending items reviewed.

10:30 a.m. - Tim Myers, Parks, Fair, Facilities and Risk Management.

Present: Tom Miller, Chris Anderson, Jennifer Snead, and Nathan Alford.

D059761B The following Facilities Management updates provided by Mr. Myers and Mr. Miller.

- Mr. Myers received the following estimates for county building signage:
Public Service Building \$138.34 w/Tax and Shipping
Island Street Building \$460.13 w/Tax and Shipping
Courthouse \$714.37 w/Tax and Shipping (includes Directory Board)
Chairman Partch suggested waiting to number the Courthouse in the event there are renovations and not to do anything at this time with the Island Street Building. Commissioner Finch concurred. Mr. Myers was instructed to proceed with the Public Service Building.
- When the weather allows maintenance will repaint the handicap parking area in the back of the Courthouse and a new handicap parking area will be created on the south side of the Courthouse.

- Mr. Miller is locking the Community Education Training Center (CETC) doors every evening in the absence of Bob Gronholz. He is also helping to install a wall and door at the Center. The Board said they did not want Mr. Miller doing any major work at the Center during county time because of his current workload.
- Restroom renovations are in progress at the Fairgrounds. Renovations to the Community Building kitchen are slated for later in the year.
- The wheelchairs at the Fairgrounds are now equipped to accommodate oxygen bottles.
- The Courthouse flag bunting banners are ready to hang on June 14th in recognition of Flag Day.
- The Bill Chipman Palouse Trail site recognitions plaques are now completed.
- A used sink and counter were installed in the Treasurer's office.
- The Courthouse mailroom door and keypad is installed; codes will be assigned shortly.
- The lighting project punch list is finished. Mr. Miller kept 113 of the light fixtures replaced of which 50 will be used at the Fairgrounds.
- The Courthouse HVAC System and window projects will begin after the bond money arrives.
- Lane County, Oregon Transit is removing their bus stands due to vandalism. Mr. Myers has contacted Lane County about procuring one or more of these stands for use as a shelter area at the Courthouse and possibly the Fairgrounds. They are working on an intergovernmental transfer. Transportation to move the stands to Whitman County will need to be addressed.
- A bench donated by the county employees in memory of Dick Brown has been ordered for the courtyard area of the Courthouse. Facilities Management will pay the difference for a plastic bench rather than a wood bench to eliminate future upkeep.

10:50 a.m. - Recess.

11:00 a.m. - Dane Dunford, Public Works Director.

Present: Mark Storey.

Action Items:

059762 1. **Motion** by Commissioner Finch **seconded** by Commissioner Partch and **carried** that the local agency change order for Green Hollow Road be signed as presented.

059763 2. **Motion** by Commissioner Finch **seconded** by Commissioner Partch and **carried** that the contract between Whitman County and A&R Construction contract for the Darden Bridge be signed as presented.

059764 3. **Motion** by Commissioner Finch **seconded** by Commissioner Partch and **carried** that the public notice for a meeting with residents regarding the Steptoe Trailer Park project be published.

Solid Waste Division:

D059764A 1. Through an interlocal agreement Latah County will tub grind Whitman County's yard waste material now and again in the fall.

Engineering Division:

D059764B 2. Preconstruction meetings for the Darden, Fitzgerald, and Warner Bridges will take place tomorrow afternoon.

D059764C 3. The contractor needs to finish paving the farm approaches and repair 4 areas on the north end of the Green Hollow Road project. The Department of Transportation's striping truck will be in our area in July and will paint the centerline on this road and bill the county. The county will put edge lines on the road this fall.

Planning Division:

D059764D 4. The Rodeen/Harrington/Turner hearing was convened last week by the Board of Adjustment, closed and continued for one month due to conflicting information. The Rodeen's were sent a letter asking for clarification of conditional use permit issues regarding access and water rights. If the information is not returned, the Board of Adjustment will consider this a dead issue.

D059764E 5. The Planning Commission decided not to proceed at this time with the Royal Garrison School request. The Commission also voted to move forward with the Comprehensive Plan issues. The members are now more in line with their thinking about cluster developments. There will be no Planning Commission meeting in June.

11:15 a.m. - Recess.

11:40 a.m. - Judy Allen, Community Action Agency.

059765 Ms. Allen reviewed the revised interlocal cooperation agreement with the 16 cities/towns concerning the Emergency Shelter program. **Motion** by Commissioner Finch **seconded** by Commissioner Partch and **carried** to sign the revised agreement.

11:45 a.m. - Recess.

2:10 p.m. - Coordinating Committee Members.

Present: Clarence Claypool, Cheryl Morgan, Randy Baldree, and Don Nelson.

059766 1. With respect to the burn barrel issue, Mr. Claypool noted the only open burning permitted by law is dry, natural vegetation and in some cases, clean, dry untreated, and unpainted wood that is not construction debris.

059767 2. Mr. Claypool stated the Committee is looking for support from the counties, cities, and livestock entities to put a stop to the infringements upon water rights. The way the law is worded, livestock water is exempt from R.C.W. 90.44.050. They prefer to remove this issue from the Department of Ecology and put it back into a state situation. The way the law reads now, DOE could revoke a water right for environmental reasons.

Whitman County is currently receiving support on this issue from the Cattlemen's Association, Wheat Growers Association, Farm Bureau, and the Whitman County Property Owners Association.

They would like a commitment from the commissioners in the event a cattleman ever gets into a litigation situation to get this backed off to what it says rather than how someone interprets it. They would like to keep it out of the legislature. If it gets into the legislature, they are concerned they will lose their rights.

Randy Baldree said DOE cites R.C.W. 90.44.050 in all their justifications for exemption status of wells. The statute states, "No water right permit is required for the withdrawal of up to 5,000 gallons of water per day from a well when the water is being used for: **livestock watering**, single or group domestic water supply, industrial purposes; or irrigation of no more than ½ acre of lawn or noncommercial garden." DOE's interpretation is that livestock watering should be exempt from a water right certificate or claim. They are saying livestock watering **is not exempt if it exceeds 5,000 gallons per day** of usage.

The statute continues, "After June 6, 1945, no withdrawal of public ground waters of the state shall be begun, nor shall any well or other works for such withdrawal be constructed, unless an application to appropriate such waters has been made to the department and a permit has been granted by it as herein provided: **EXCEPT, HOWEVER, That any withdrawal of public ground waters for stock-watering purposes**, or for the watering of a lawn or of a noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day, ...".

This means livestock is exempt from the 5,000-gallon cap. It is exempt from water right certification. There is no caveat to it, there is no limit to the withdrawals as it is written in the statute, and is a very important feature to note. We are challenging the DOE's interpretation. This is not a general or philosophical point. It is a very technical point. By being a technical point, the Committee believes that this can be argued successfully in a court of law.

Continuing on in this same statute, it talks about "watering lawns and noncommercial and garden not exceeding one-half acre, etc. in an amount not exceeding five thousand gallons a day...". The statute does put a maximum cap on the other uses that DOE has identified. It specifically exempts ground water for livestock watering purposes. Right now the DOE's policy is not to recognize that and they are not recognizing it.

The Committee feels the statute specifically exempts ground water withdrawals for livestock watering purposes. DOE disagrees with that interpretation. It has been discussed and there was an opinion given by the Attorney General's Office in November 1997. This is not something that recently came up. The Attorney General took an interesting position. After a rather lengthy discussion, he concluded that it was the legislative intent in 1945 for livestock waters to be included in this 5,000 maximum cap.

Mr. Baldree asked Prosecutor Jim Kaufman to review this information. Mr. Kaufman said the Committee has a point; it is confusing at best. Certainly, there is no clarification on this issue. As they see it, these kinds of technical points can be argued from the standpoint of a court case or challenge to the interpretation. There apparently is legal precedence that they can look at legislative intent and somehow influence a judge's decision as to whether this was appropriate or not. In general, there is a feeling that among the livestock industry that this should be challenged and there should be some accounting for this.

There are two routes to take: 1) challenge it in court, or 2) challenge it through the legislature. The problem with opening this up in the legislature is right now the language of the document reflects vagueness at best and in our opinion, out and out exempts livestock water withdrawals from having any type of certification requirement for a maximum withdrawal. If we go that route, through an elected body in Olympia where most of those folks are probably not from agricultural districts, we think there is a high probability we would lose the argument. Then what will in fact happen as a result of that would be that the legislature would not only rewrite the language, they would make it implicitly clear that the 5,000 gallon limit would apply to livestock water. Approaching this problem and resolving it to the satisfaction of the livestock industry, is to challenge it through some kind of court proceedings so DOE is legally challenged for their interpretation of the statute on the technical issues.

Mr. Baldree just learned today that a coalition of livestock folks had a meeting with DOE whereby it appears DOE has persuaded this coalition not to pursue the issue. Apparently this coalition has backed off. What that accomplishes is, it keeps DOE from having to address one more issue using their resources, their time, and their expertise to defend the policy. It is status quo for DOE because the policy is still on the books. This serves DOE's needs more than the livestock coalition's needs. Mr. Baldree pointed out he was speaking for himself as a personal citizen and not as the County Extension Agent.

Before this goes another step, Mr. Baldree said there must be a coalition of people who are committed and will share in some type of challenge. He hoped that would have been in place by today's meeting so the group could petition the commissioners to support the challenge. Mr. Claypool agreed to contact the Cattlemen's Association and other groups involved to find out just exactly what they plan to do.

Mr. Baldree did not want to portray this as a group of greedy livestock people that want to get their undue share of the water. He wanted to be clear that it is not the case. Many people, who are watering a herd of livestock that does in fact exceed 5,000 gallons per day, don't have a certificate of water rights for that usage. They never thought they had to have a certificate. They have been told their entire lives that water withdrawals for livestock watering were exempt and it states that in the statute. What will happen one day, especially with the concern over water quantity and water quantity issues, there is a real possibility those people will be in jeopardy. People who otherwise, had they known about it, would have been grandfathered. He didn't think it is fair to those people who have had to presume use all this time and by DOE's statement at the informal livestock coalition meeting are still allowing it. What will happen when the day comes that DOE's decides that they are going to tighten this down? Where does that leave a person who thought they had a legal right to use water on their property only to find out now that the agency has determined they can't do that. That is the most important feature associated with this issue. It is not to empower a 2000 cow dairy farm to use an exorbitant amount of water per day. That is probably where some of the rub is going to come. Mr. Baldree expressed his opinion that this issue definitely should be addressed.

Chairman Partch and Commissioner Finch said the county could support the issue but they are not able to provide financial assistance or be the lead agency.

059768 **3.** No further changes were proposed for revisions to the Coordinating County, Federal and State Government ordinance. **Motion** by Commissioner Finch **seconded** by Commissioner Partch and **carried** to publish the notice of hearing for revisions to the Coordinating County, Federal and State Government Actions Affecting Land and Natural Resource Use in Whitman County, Whitman County Code, Title 20, Chapter 20.01.

2:45 p.m. - Recess.

3:00 p.m. - Board Business Continued/BOCC Workshop.

Present: Dane Dunford, Mark Storey, and Julie Banks.

059769 The item of discussion was the 6-year transportation improvement program. No action taken.

4:00 p.m. - Adjournment.

D059769A Commissioner Finch **moved** to adjourn the **June 10, 2002** meeting. Motion **seconded** by Commissioner Wigen and **carried**. The Board will meet in regular session, in their Chambers', in the Whitman County Courthouse, Colfax, Washington, on **June 17, 2002**. The foregoing action made this **11th** day of **June 2002**.

ss/ JERRY FINCH, Commissioner

MARIBETH BECKER, CMC
Clerk of the Board

GREG PARTCH, Chairman
Board of County Commissioners