

## DAILY PLANNER

### TODAY

Today is Monday, Feb. 18, the 49th day of 2019. There are 316 days left in the year.



### TODAY'S HIGHLIGHT

On Feb. 18, 2001, auto racing star Dale Earnhardt Sr. died in a crash at the Daytona 500; he was 49.

### ON THIS DATE

In 1861, Jefferson Davis was sworn in as provisional president of the Confederate States of America in Montgomery, Alabama.

In 1913, Mexican President Francisco I. Madero and Vice President Jose Maria Pino Suarez were arrested during a military coup (both were shot to death on Feb. 22).

In 1930, photographic evidence of Pluto (now designated a "dwarf planet") was discovered by Clyde W. Tombaugh at Lowell Observatory in Flagstaff, Arizona.

In 1943, Madame Chiang Kai-shek, wife of the Chinese leader, addressed members of the Senate and then the House, becoming the first Chinese national to address both houses of the U.S. Congress.

### LOTTERY

**Megabucks:** \$8.3 million  
1-12-22-26-39-48

**Mega Millions:** \$206 million  
10-38-40-43-65-12-x2

**Powerball:** \$282 million  
29-30-41-48-64-PB 1-x4

**Win for Life:** Feb. 16  
20-37-52-56

**Pick 4:** Feb. 17

- 1 p.m.: 7-0-8-6
- 4 p.m.: 6-6-3-7
- 7 p.m.: 8-0-9-2
- 10 p.m.: 6-2-0-2

**Pick 4:** Feb. 16

- 1 p.m.: 2-4-3-0
- 4 p.m.: 3-9-5-1
- 7 p.m.: 1-3-1-8
- 10 p.m.: 8-6-8-7

**Pick 4:** Feb. 15

- 1 p.m.: 7-4-5-0
- 4 p.m.: 1-2-4-3
- 7 p.m.: 8-0-1-6
- 10 p.m.: 3-4-6-4

### ROAD REPORT

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- Inside Oregon: 800-977-6368.
- Outside Oregon: 503-588-2941.

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### QUOTE OF THE DAY

"Temperament is temper that is too old to spank."

— Charlotte Greenwood, American actress-comedian (1893-1978)

# Lawyers question county's authority over public land

By Jayson Jacoby  
WesCom News Service

Bill Harvey gives a rueful chuckle as he leafs through an article in a legal journal whose authors argue that Baker County's natural resources plan greatly overstates the county's authority over managing public lands within its borders.

It's not that Harvey, who recently started his second four-year term as chairman of the county's three-member Board of Commissioners, is particularly amused by the topic.

But this isn't the first article he has read that challenges his contentions about how the county can influence federal agencies that manage the public land that makes up about 51 percent of the county's 2 million acres.

And his minor degree of mirth derives from the reality that multiple attorneys have written what he believes are misleading interpretations of how much power the county actually claims for itself.

"We don't have supremacy over the (public) land," Harvey said Thursday from his office in the Courthouse. "We fully understand that (federal agencies) are in charge of managing the land. But Congress gave us the authority to help plan the management of these lands, to be a part of the planning process."

The authority Harvey refers to is known as "coordination."

As outlined in federal law, coordination states that federal agencies such as the Forest Service and BLM will work with local officials to try to make sure management of public land is consistent with the goals outlined in, for instance, a county's natural resources plan.

The law notes, however, that this effort to be consistent does not supersede the requirement that public land be managed in accordance with environmental laws such as the Endangered Species Act and Clean Water Act.

If there is a conflict — for instance, if an agency would have to violate a federal law to be consistent with a county goal — then the federal law, not the county plan, would dictate the agency's decision.

Coordination has been a centerpiece of Harvey's political career since he first ran for his current position in 2014, and it's also the subject of the article that sits on his desk, many sections of which he has highlighted in brilliant yellow.

The article, "Coordinating with the Federal Government: Assessing County Efforts to Control Decision-making on Public Lands," was published in 2017 in the Public Land and Resources Law Review.

The authors are Michael C. Blumm and James A. Fraser of Lewis and Clark Law

School in Portland.

A story last week in The Blue Mountain Eagle newspaper in John Day cited Blumm's and Fraser's article, in reference to Grant County commissioners' discussion about their county employment coordination.

The attorneys' article focuses on Baker County's natural resources plan, which county commissioners adopted on July 20, 2016, and the county's claims about coordination.

In a summary of the article, Blumm and Fraser write, referring to Baker County's plan, that "most of its provisions are preempted by federal law and, therefore, unenforceable."

The authors also contend that Baker County's plan, and similar ones in other counties, "mislead their supporters into believing the plans are enforceable."

But Harvey contends that that word "mislead" is more appropriate for Blumm's and Fraser's article.

Harvey said the county's natural resources plan is not intended to assert that the county can dictate to federal agencies how they manage public land.

He argues that a reasonable and thorough reading of the 48-page plan would show that although the county considers the management of those public lands critically important to the county's economy and culture, there are defined, and recognized, limits on the county's ability to influence federal agencies' decisions.

"The federal government is in charge of managing the lands," Harvey said. "The (natural resources) plan is a guideline. It doesn't set federal law, but it says how we want those lands to be managed."

Harvey points to several references in Blumm's and Fraser's articles which imply — wrongly, in Harvey's view — that the county has asserted a level of authority which he agrees does not exist.

As an example, he mentions the section of the county plan that says roads accessing authorized uses of public land, such as grazing allotments, "shall remain open."

Blumm and Fraser write that "These provisions suggest that the county has complete authority to regulate travel routes across public lands."

But Harvey said the county has not, and does not, claim to have such sweeping authority.

That section of the plan, he said, refers not to all roads, but only to roads that either access uses on public land, such as grazing, that the federal agencies have already

approved, or that lead to private property.

The attorneys' article also cites a section of the county plan dealing with logging on public land. That section states that "the county's forest resources must be governed in the best interest of local citizens while promoting the healthy of the forests."

The attorneys write that "These provisions suggest that local needs are superior to the needs of other public land users, when in fact, all Americans hold an equal claim of ownership to federal land."

Harvey doesn't dispute that public lands belong to all Americans.

But he said the section of the plan cited in the article isn't intended to argue that federal agencies must, for instance, cut trees on public land solely because that's beneficial to the local economy and because the county insists it's necessary.

The point of that statement, Harvey said, is to acknowledge that although county residents have no special legal rights regarding the management of public lands within the county's borders, they tend to be more directly affected by management decisions simply because those lands are, quite literally in some cases, in their backyards.

"We don't have supremacy over the land, but we care for it to protect a resource for everyone," Harvey said.

The attorneys do quote passages from the county's natural resources plan with more specific and direct language regarding the relationship between the county and federal agencies.

For instance, the section titled "Watersheds" states that "Baker County shall direct the US Forest Service, Bureau of Land Management... to manage the watershed, including municipal watersheds, to meet the multiple needs of residents and promote health forests."

The attorneys contend that this brand of "mandatory language" — the county directing to federal agencies how they must manage watersheds — could imply to residents that coordination gives county commissioners "greater power over federal land planning and management decisions. These suggestions are erroneous interpretations of the county's role in federal law."

Harvey concedes that the county's plan expresses, in direct terms, the county's priorities for managing public land within its borders.

But he reiterates his point that, however the authors interpret passages in the plan, he doesn't believe that the plan, or the coordination law,

gives the county anything resembling veto power over federal agencies.

If that were the case, Harvey said, then he would likely advocate for the county to file legal challenges over every decision federal agencies make that doesn't fully satisfy every goal listed in the county's plan.

But that hasn't happened, and the reason, he said, is that he and his fellow commissioners, Mark Bennett and Bruce Nichols, understand the limits the county has on managing public land.

"We're not going to get everything we want, 100 percent," Harvey said. "But I'm certainly not going to settle for 10 percent."

Although some of what Harvey argues are misleading parts in Blumm's and Fraser's article might be attributed to semantics — hence the attorneys' writing that aspects of the county plan "appear to" or "suggest" that the county is claiming authority it lacks — there are examples where the two positions are diametrically opposed. ■

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