

# Ranch partition upheld

By Steve Tool

Wallowa County Chieftain

Wallowa County Commissioners denied the appeal of the Lenahan family to stop the partitioning of the Hayes ranch in Joseph. The Lenahans appealed a Feb. 24 county planning commission decision allowing the partitioning of the ranch.

The Hayes ranch and Eastern Oregon Property Development want to create two two-acre parcels on the property, which the planning commission said was allowed under the auspices of Measure 49 and county law.

Commissioner Mike Hayward abstained from hearing the proceedings because of a conflict of interest. This left commissioners Susan Roberts and Paul Castilleja to hear the appeal.

Lenahan attorney Elaine Albrich opened the proceedings saying her appeal pertained to three issues: ownership of property, access roads, and the orientation of the parcels. Albrich said that although she mentioned these to the planning commission at the Feb 24



Steve Tool/Chieftain

Hayes ranch attorney Rahn Hostetter (standing at left) addresses Wallowa County commissioners during an appeal by the Lenahan family of Joseph to overturn the planning commission's decision to allow the partition of the ranch.

meeting, she thought the planning commission did not base its decision on the rule of law but on insubstantial evidence.

According to Albrich, an inventory of the Hayes estate does not include real estate assets. Albrich said that as the applicant was unable to provide a complete chain of title providing documentation of the property, the planning commission should not have found the Hayes estate was vested with title, which should legally prevent development.

Albrich argued that the two access roads to the property impacted more than the four acres comprising the two parcels, and were therefore illegal under Measure 49. She also questioned the need for two access roads, which she said further impacted the use of farm land.

Albrich said the unlawful impact from the roads required that either the planning commission decision be negated or the roads re-oriented to minimize impact. She also said the state requires the roads be accessed by an existing public access way, and neither road qualified.

The final argument Albrich made concerned the orientation of the two parcels, which she said were positioned too

close to allow maintenance to the Cove Ditch (an irrigation ditch), did not maximize the use of farm land and could cause erosion or poor water quality in the ditch.

Enterprise attorney Rahn Hostetter represented the applicants. Hostetter argued it was up to a circuit court, not the commissioners, to determine whether the estate inventory actually listed the property. He also said the Oregon Department of Land Conservation and Development had already awarded the homes to the applicants and no one appealed, and nothing changed in the law since then.

"It's not that complex and in any event, it's not an issue before you because it's already been decided by DLCD and unappealed by anyone."

Hostetter similarly dismissed the other claims saying that his clients have repeatedly tried since 2007 to appease the Lenahans, even reducing the size of their parcels from five to two acres to avoid the appeals. "If we changed it again, do you think the Lenahans will say, 'OK, good.' There is no location we could propose that wouldn't get appealed here and on to LUBA (Land Use Board of Appeals)." He said he doubted anything his clients did at this point would appease the Lenahans.

Hostetter went on citing provisions of Measures 37 and 49 attempting to prove his points. Albrich's response essentially reiterated her earlier arguments.

Both commissioners said they had ample time to review the issue and after having planning director Harold Black clarify a few questions, put the issue to a vote. Roberts and Castilleja voted to allow the partition.

The appellants have 21 days to appeal the decision.

# WATER: Permit would allow selling of water that can't be stored behind dam

Continued from Page A1

Marc Stauffer, chairman of the Enterprise Planning Commission and president of the Wallowa County Chamber of Commerce, raised other issues.

Others submitting comments were Chad Nash, of Enterprise; Garrett Lowe, of Wallowa; Robert Hipple, of Enterprise; and City of Joseph Attorney Wyatt Baum.

The Wallowa's Future Foundation (WFF), represented by President Robert Reading and associated with John Lenahan, submitted five pages of response to the application detailing what that nonprofit sees as shortcomings in the application.

Publicly listed as a Joseph-based charitable organization, WFF had \$269,877 in total net assets in 2011, according to the NonProfitFacts.com website. At one point in its public response opposing ADC's permit request, WFF states: "In short, there is no assessment (economic, social, ecological, or otherwise) of how the removal of 4,200 acre feet from the Wallowa basin will impact the binomy. Thus, it cannot be concluded that the application results in the maximum economic development of the waters involved..."

Stauffer's series of concerns include the possible vulnerability of Wallowa County during the early months of the proposed April 1 through Oct. 15 water release period when local flooding could become a problem.

Larry Waters, president of the Silver Lake Water Ditch Company — the oldest ditch company in the county — and an ADC board member suggests that much could change if the permit is approved and excess water behind Wallowa Lake Dam is sold. "If we get the dam refurbished (with funding from such sales of water), it would help the whole county," Waters says.

The problem, as presented by Waters, is that for safety purposes aging Wallowa Lake Dam cannot store more than 72 percent of its capacity, and there are unknown amounts of excess water that are "dumped" into the river at times of the year when moun-

tain flows into Wallowa Lake push the level of the dam beyond its allowed maximum capacity.

At a time when water for agricultural purposes is at a premium throughout the western states, not receiving any monetary return for that "dumped" lake water works against the owners of the privately-owned Wallowa Lake Dam, a group Waters describes as a "bunch of honest farmers."

Improvements on tunnels, gates, and even flumes leaving Wallowa Lake Dam have been made in the not-too-distant past, but funds to improve safety to store more water beyond the current 72 percent of capacity state mandate have been lacking.

J. R. Cook, director of the Northeast Oregon Water Association, a group with a vital interest in attaining water for agricultural growers in the Umatilla Basin, says he's well aware of the permit request made to Oregon Water Resources Department by the ADC about one year ago, but has had no recent contact with the owners of Wallowa Lake Dam.

According to Waters, no public disclosure will be made as to the estimated value of the 4,200 acre-feet of water in the event of its release from Wallowa Lake Dam and subsequent withdrawal from the Columbia River by growers in the Umatilla Basin. Cook, however, calculates that such water could compute into many millions of dollars of revenue were such a release of additional irrigation water indirectly infused into Oregon's economy via farmers, processors, and even grocery outlets.

A frequently asked question is: If circumstances were right, would Umatilla Basin growers be willing to upgrade Wallowa Lake Dam in return for future water from Wallowa Lake?

Cook, actively involved in other water-generating projects in the Umatilla Basin, including pipelines, is very precise in his response. "We would only agree to take excess water, not any water that is needed locally," he says. "We will not let this turn into a gold rush." Then Cook turns to the business side of the equation. Speaking for the businessmen he represents, Cook says such an arrangement could only work in a "cash flow for water" agreement that would guarantee the availability of water to the Umatilla Basin on a long-range, or permanent basis.

But before such a possibility even can be aired, the dissenting arguments made by six entities questioning the wisdom behind ADC's permit application must be addressed and either that application or another future application be approved by the Oregon Water Resources Department.

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Raymond Seal is the son of Lisa and Ryan Seal of Joseph. Raymond is a 4.0 student who takes advantage of upper division courses such as pre-calculus and advanced biology. Raymond is actively involved in FCCLA where he is currently the state president, FFA where he holds the office of District Secretary, he is a member of the National Honor Society, and is also a three sport athlete. The staff and administration would like to congratulate Raymond on this honor and would like to say thank you for being such an outstanding part of our school.

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