

Opinion

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EDITORIAL

Be cautious, Baker County

It's reasonable for Baker County commissioners to strive to ensure the public can drive on roads for which there is legal access.

But commissioners need to be cautious as they pursue a legal judgment requiring a landowner to unlock a gate on a road in the eastern part of the county.

Although some people will appreciate the commissioners' efforts to regain public access, the public won't be pleased if the county runs up a big tab for legal services but ultimately fails.

That's what happened in 2016 when a judge ordered the county to pay \$324,000 in legal fees to David McCarty, who owns a helicopter business in Baker Valley that county officials contended violated zoning laws. The county lost its case in court and was saddled with the full legal bill.

Commissioner Mark Bennett said he has been "assured on multiple occasions" that the commissioners' decision Wednesday to file a civil complaint asking a judge to order the gate to be unlocked can't make the county liable for the landowner's legal costs.

This is a good thing, because the county's arguments in the matter of the locked gate are not compelling.

The road in question connects two county roads — Daly Creek Road, northeast of Lookout Mountain, and the Snake River Road just above Brownlee Reservoir.

The road is commonly called Connor Creek Road, as it follows that stream for a few miles from its eastern terminus at the Snake River Road. The gate, however, is at the opposite, western end of the road. Todd Longgood, who along with Dennis Omar Hansen bought a parcel of land in that area in early 2017, locked the gate in August 2017.

On Wednesday commissioners agreed to file a civil complaint asking a judge to order Longgood to unlock the gate. The complaint cites two reasons why the road through Longgood's property is public and thus can't be blocked.

The first is a resolution passed by commissioners in 2002 after a different property owner, on the eastern end of the road at the Connor Creek Mine, also put in a locked gate. That resolution, citing a one-sentence federal statute from 1866 that assures public access to routes not otherwise reserved, states that the entire Connor Creek Road, including the section crossing the property Longgood now owns, is a public right-of-way that can't be blocked.

Alternatively, the commissioners argue, if a judge doesn't conclude that the 2002 resolution confirms that the entire road is public, then that 1866 statute, known as RS 2477, does so.

The weakness of the county's case has much to do with maps and property deeds.

As Longgood's attorney, Charles F. Hudson, outlined in a July 2018 letter to the county's attorney, Larry Sullivan, multiple historic maps, the earliest from an 1882 survey, do not show a road following the route of the current gated

road on Longgood's property.

Those maps do, however, show a road on a different alignment, to the south.

For a road to be declared public under RS 2477, there must be evidence that the route existed, on public land, before the land was withdrawn for other purposes — including being transferred to private ownership.

Hudson included with his letter copies of deed records showing that the property Longgood owns was transferred from public to private ownership between 1912 and 1923. Hudson also cites a 1933 map which does not show the current road — the road Longgood gated — but does show the road to the south.

Hudson contends that the earliest record of a road that follows, at least in places, the route of the current gated road is a 1938 federal survey.

But because that survey was done more than a decade after the property became private, that road can't be deemed public under RS 2477 because it must have been built after the land was transferred to private owners, Hudson argues.

Hudson also wrote that in 1978 the BLM negotiated an easement to use the road to allow logging on public land in the area. That easement "expressly acknowledged that the road was private and might be locked by the owner," Hudson wrote in his letter.

As for the county's contention that the 2002 resolution suffices to establish the entire Connor Creek Road as public, Hudson argues that although the resolution refers to the entire road, the county in 2002 focused on the section near the mine, and did not notify other property owners, including the then-owner of the Longgood property, that the entire road could be, and subsequently was, deemed public under RS 2477.

Hudson argues that the lack of notification invalidates the county's claim that the entire road — most notably the section crossing Longgood's property — is a public right-of-way.

Flimsy though the county's case might be, it's reasonable to at least bring the matter before a judge, so long as, per Bennett's point, the county isn't risking having to pay Hudson's fees as well as Sullivan's.

But if the judge denies the county's claim, commissioners would be wise to seek a compromise — it might be possible to reopen an older road that has better evidence for RS 2477 status, for instance — rather than amass additional legal bills.

Dan Forsea, a Richland rancher whose family owns property adjacent to Longgood's, pointed out in a Jan. 30 letter to the editor that the public already has access to the area from the east, via the lower section of the Connor Creek Road. That's true, although that section of the road is much rougher than the upper section through Longgood's property.

— Jayson Jacoby, Baker City Herald editor

Your views

Fly the American flag to show support for our veterans

Bible prophecy from our Father's Holy word is coming true faster than ever. Our veterans and their families have suffered a great deal in combat for our freedom. There has been a great deal of sacrifice by all armed forces of our country. When coming home after hard living in combat, they are not the same person that we knew before they left for war. Do they really receive the thanks they have earned from the people at home? And when I say home, I'm talking of the town they live in. The answer is no. But there must be a way.

The way comes from many veterans and I might say, the answers come from many soldiers who suffer from extreme PTSD. A very strong mental problem from what they had to do to save their brothers' lives and their own. What they really see from the citizens of their towns and country is when the American flag is being flown on their front porches, as a great appreciation and a thousand thank yous for their sacrifices, and don't forget their families. Let's put this town as a symbol to our country as to what a real thank you is to our beloved veterans and their families, who also suffer from PTSD. Our flag stands for our freedom and the sacrifice of our men and women who serve to keep us free. United we stand under the true God of Israel, and divided we fall to evil. Fly that American flag seven days a week, 24 hours a day until our Lord and Saviour returns.

Gary Robinson
Baker City

Letters to the editor

- We welcome letters on any issue of public interest. Customer complaints about specific businesses will not be printed.
- The Baker City Herald will not knowingly print false or misleading claims. However, we cannot verify the accuracy of all statements in letters to the editor.
- Letters are limited to 350 words; longer letters will be edited for length. Writers are limited to one letter every 15 days.

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Taking a stroll on a rare soggy day in Baker

My family went for a stroll on a recent Sunday morning and I must have told my son, Max, who's 7 and believes his galoshes possess special powers, at least 15 times to stop splashing in the puddles of slush that littered our route.

It was the sort of sodden day which is exceedingly rare in Baker City.

We live not in a rain shadow but in a pair of rain shadows.

The Pacific Ocean incubates many juicy storms (it's a lot of water, after all), and the hurricane-force winds of the jet stream frequently shunt these weather fronts directly into Oregon. But the Cascade Mountains, which force the air to rise, cool and thus precipitate, siphon a great deal of the moisture from these storms before they've made it even a third of the way across the state.

(There is of course a much more detailed explanation for this phenomenon, known as "orographic lifting" but I presume this would require much use of mathematical equations, all of which frighten and confuse me.)

And the storms that retain much of their soggy energy when they reach Baker County expend the bulk of it when they confront the



JAYSON JACOBY

formidable wall of the Elkhorns.

Baker City, then, gets what amounts to the dregs in the bottom of a glass after a pair of thirsty people have passed it around.

The airport's annual precipitation average of about 10 inches is less than one-third of what falls in the Willamette Valley.

Baker City is even arid compared with places that hardly have the reputation of a rainforest. Pendleton's yearly average exceeds ours by about 2½ inches, and La Grande seems positively saturated with its average of about 17 inches.

There are two notable exceptions to Baker City's general absence of dampness.

One is the thundershower, most common in the spring and summer. These storms typically form east of the Cascades so they're not affected by that range's rain shadow. The isolated nature of thunderstorms, and their tendency to meander rather than follow a more predictable path as with Pacific storms, also means they sometimes skirt

the Elkhorns and dump their often prodigious amounts of rain directly on Baker City.

The other circumstance — the one that so delighted Max and so tested the resilience of his rubber boots — is a midwinter thaw that follows both snowfall and a period of subfreezing temperatures.

The combination of rapid melting and frozen ground is ideal for making puddles — although puddle seems to me a misleadingly diminutive word in this case. Some of the bodies of water that lured Max during our walk ought to have a name, a boat ramp and a trout-stocking schedule.

As we squelched our way around town I was thinking of a news story I had read the day before, and written by a company colleague, Stephen Hamway from The Bulletin in Bend.

Hamway's topic was a new study which concludes, in effect, that the warming climate hasn't shrunk mountain snowpacks in Oregon and the West as much in the past 35 years as the authors believe is likely to happen in the next 35 years.

The study, co-authored by Nick Siler, an assistant professor at Oregon State University, posits

that natural fluctuations in climate patterns have insulated the region from the effects of warmer average temperatures — an increase of about 1 degree Celsius at snow-measuring sites since the early 1980s. The most notable effect, naturally, would be skimpier snowpacks, as balmer temperatures mean storms that previously brought snow instead deliver rain.

But Siler told Hamway that his research suggests that the warmer temperatures, and likely soon, will begin to eat away at snowpacks on a regular basis.

"I'm fairly confident that the assist that we've had from nature for the last 35 years is very unlikely to continue for the next 35 years," Siler said.

This is a troubling prospect.

The importance of mountain snow for Baker County — and indeed, for much of the state — can hardly be overstated.

It's melted snow, not rain, that keeps streams and springs flowing and refills the reservoirs that are so vital to the local economy, both by irrigating crops and attracting anglers and boaters.

Baker City is fortunate in one sense in that the Elkhorns, the same range that casts its consider-

able rain (and snow) shadow over the city and much of the rest of northern Baker County, in doing so wrings much moisture from Pacific clouds that haven't been sapped completely by the Cascades.

The Elkhorn snowpack is the source of the city's drinking water, among other rather vital uses.

Even a relatively modest drop in average mountain snowpacks over an extended period — say 20 percent over a decade or so — could cause significant problems for our region.

This possibility, as I pondered Hamway's story, cast a pall over the optimism I felt during our walk.

Notwithstanding the minor annoyance of trying to prevent Max from submerging some part of himself not clad in impermeable fabric, I relish those rare days when water lies heavy on the land and meltwater makes a tuneful trickle wherever curb and street meet.

There is no sound quite so fresh as the music of flowing water, and the glistening ground, so often dusty and desiccated, seems refreshed.

Jayson Jacoby is editor of the Baker City Herald.