

LAWSUIT

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McCarty's complaint involves the Pine Creek Road, and specifically the approximately 2.5 miles of the road that runs across the 1,560-acre property that McCarty, who lives nearby, bought in September 2020.

Although the road is extremely rough and accessible only to four-wheel drive vehicles and ATVs, it is a popular access route for hunters, campers and other recreationists. The road, after leaving McCarty's property, enters the Wallowa-Whitman National Forest and leads to Pine Creek Reservoir and to an unofficial trail to Rock Creek Lake.

Soon after buying the property, McCarty installed a metal gate, with a lock, at his eastern property boundary, near the edge of Baker Valley.

Joelleen Linstrom, who lives with McCarty, said last fall that McCarty didn't oppose people hiking on the road if they asked for permission, but that he was concerned because people had trespassed on his property and started campfires despite the high fire danger late last summer and early in the fall.

On Sept. 30, 2020, the Baker County Commissioners voted 3-0 to order workers from the county road department to remove the lock. That happened on Oct. 1.

In an Oct. 1, 2020, letter to Andrew Martin, the county's attorney, Larsen, who represents McCarty, wrote that "As our client has tried to explain, he does not wish to dispute any valid county road if one can be shown to exist, and is not opposed to exploring other cooperative resolutions. When he locked the road, he offered keys to permit access by county officials for fire and other public safety concerns. Indeed, he locked the road primarily in response to these concerns."

According to the lawsuit, before he bought the property, McCarty reviewed the title report and other documents, none of which showed a public road through the land.

After commissioners contended that the Pine Creek Road is a public route, including the section through McCarty's property, McCarty asked county officials to supply records documenting the road's status as public.

During their Sept. 30 meeting, commissioners referred to an 1891 county document that describes the surveying of a road along Pine Creek. The document includes a map of the route that, based on the township, range and sections shown on the map,



Contributed Photo, October 2020

David McCarty installed this gate across the Pine Creek Road at his property boundary during the fall of 2020. The road passes through property that McCarty owns.

"The County's attitude of indifference towards McCarty's private property rights has, in turn, emboldened the public to treat the property as if the public has an unrestricted and unfettered right of access to and use of the McCarty Property."

— Excerpt from lawsuit David McCarty filed against Baker County

appears to follow the route of the existing road through the eastern portion of McCarty's property, although it doesn't show a route through the western part of the property.

In the lawsuit, McCarty contends that the 1891 document does not prove a legal public right-of-way across his property.

McCarty cites two other records regarding his property, neither of which mentions the existence of a public road across the land.

One is a 1966 transfer of the property, which has "no reference to a public road," according to the lawsuit.

McCarty also notes that when the county approved a subdivision near the Pine Creek Road in the early 1970s, county officials did not require that any public road be vacated in the area.

"In other words, at that time, no County official was asserting that a public road existed in the area ...," according to the lawsuit.

Public records requests

In the lawsuit, McCarty also contends that county officials failed to comply with Oregon's Public Records Law when he asked for documen-

tation that a public right-of-way crosses his property.

McCarty submitted a public records request to the county on Sept. 22, 2020. The county asked for a payment of \$2,300 to cover the costs of providing those documents, according to the lawsuit, "which the County acknowledged to be an arbitrary estimate."

McCarty submitted a second request, on Oct. 9, for a "narrower scope of documents," according to the lawsuit. He also sent the county a check for \$250 for staff time to research the documents he asked for.

In a Feb. 26, 2021, letter to Larsen and Martin, Greg Baxter, Baker County district attorney, wrote that the county had supplied some but not all of the documents McCarty requested.

Baxter ordered the county to produce any records that McCarty had not received from his requests of Sept. 22 and Oct. 9.

In the lawsuit, McCarty contends that the county, while failing to provide all the documents he has asked for, has "activity engaged in conduct that undermines McCarty's property rights, including continuing to support the public's uncontrolled use of the McCarty Property. The County's attitude of indifference towards McCarty's private property rights has, in turn, emboldened the public to treat the property as if the public has an unrestricted and unfettered right of access to and use of the McCarty Property."

McCarty prevailed in previous lawsuit

This is the second time McCarty has been involved in a lawsuit with Baker County.

In the previous matter, however, the county was the plaintiff and McCarty, who

owns a helicopter business, Columbia Basin Helicopters in Baker Valley, was the defendant.

The county claimed McCarty had violated land-use laws by operating the business on his property on Ben Dier Lane, about 12 miles northwest of Baker City.

But a judge ruled in McCarty's favor.

In a subsequent judgment, the judge ordered the county to pay \$324,000 in legal fees to McCarty.

County also involved in second lawsuit involving different disputed road

In February 2019 the county sued Todd Longgood, who owns property near Lookout Mountain in eastern Baker County, after Longgood installed a locked gate on a road.

The point of contention is basically the same as in McCarty's lawsuit — whether a public right-of-way exists across a parcel of private property. In its lawsuit against Longgood, the county contends that the road Longgood blocked, which connects the Daly Creek Road to the Snake River Road via Connor Creek, is a historic public route that can't be blocked.

Longgood's attorney argues that the county hasn't proved that a public right-of-way exists.

A judicial settlement conference in the lawsuit is scheduled for Aug. 6, 2021.

If the lawsuit isn't settled, a trial is tentatively scheduled for Oct. 11-15, 2021.

Read the lawsuit

The 26-page complaint is available on the Baker City Herald's website, www.bakercityherald.com.

State forester resigning May 31

PORTLAND (AP) — Oregon's state forester and the leader of the long-struggling Department of Forestry, Peter Daugherty, has resigned effective May 31.

Daugherty submitted his resignation to the state Board of Forestry, which oversees the department, The Oregonian/OregonLive reported Friday.

Daugherty has led the agency since 2016, and his tenure has been marked by department financial problems, a dysfunctional relationship with the Board of Forestry and the loss of state lawmakers' confidence. That's all as the agency is looking for a large infusion of new resources to better respond to increasingly extreme wildfire seasons.

Daugherty's resignation comes following a critical report from outside accounting consultant MGO, which described a fundamental lack of financial controls and oversight within the agency. The report was reviewed in a hearing this week before the Legislature's Natural Resources subcommittee of Ways and Means, prompting some incredulity from lawmakers.

Sen. Kathleen Taylor, D-Portland, said she believes the Legislature should be overseeing the Department of Forestry.

"The board has been given this awesome responsibility by the public ... and I'm concerned the board did not do its duties of overseeing the department," she said.

Rep. Paul Holvey, D-Eugene, said many of the shortcomings revealed in the report had been noted in a 2015 department audit by the Secretary of State.

"We are six years later dealing with the same damn issue and I don't see any improvement," he said.

In Daugherty's resignation letter, he said he had discussed the decision with the governor's office and decided it would be in the best interest of the newly reconstituted board and the department to select a new state forester.

The Board of Forestry has the authority to hire and fire the state forester, which left the governor's office and lawmakers with less control as financial problems grew. The board put Daugherty on a performance improvement plan while lawmakers demanded that Daugherty begin submitting monthly financial reports.

Gov. Kate Brown also expressed frustration last fall with her inability to remake the board and bring stronger financial expertise to its ranks, as lawmakers from timber-dependent counties joined Republicans to deny her board nominees. That changed this spring, as the Senate confirmed three of her nominees to the board, effectively remaking it.

COUNCIL

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"This is an opportunity for the City and County to discuss united efforts to improve the situation regarding COVID within Baker City," Cannon wrote in his report to councilors.

Over the past two weeks, Baker City Mayor Kerry McQuisten has been interviewed on several television and radio programs to talk about the resolution the Council passed, by a 5-2 vote, on March 23.

The resolution declares "an economic, mental health and criminal activity crisis due to the current COVID-related state emergency declaration and relating OSHA mandates and guidance."

Although the resolution acknowledges that the city has "no legal ability to summarily flout these mandates, guidelines and enforcement by OSHA, and therefore cannot protect any local businesses from State-directed targeting, repercussions and penalties if such local business personally chooses to ...," several other cities have either passed similar resolutions or discussed doing so in the wake of the publicity over Baker City's action.

Other items on the council's agenda for Tuesday include:

- A proposal to extend for five years the city's contract with Baker Aircraft to serve as the fixed base operator at the city-owned Baker City Airport.

Under the current five-year contract, which expires June 30, 2021, the city pays the company \$22,000 per year. Baker Aircraft is responsible for plowing snow off the runways as well as other maintenance. The company also offers charter flights, aircraft fueling and maintenance, and flight instruction.

The current contract includes a provision for up to two five-year extensions with Baker Aircraft, which is owned by Troy and Genevieve Woydziak.

- Approving a resolution authorizing the temporary closure of the Court Plaza, on Court Avenue between Main and Resort streets, for the weekly Baker City Farmers Market. The event is scheduled on Wednesdays starting June 2 and continuing through Oct. 31. The Court Plaza would be used between noon and 7 p.m.

- Approve proclamations declaring May as Mental Health Month and Wildfire Awareness Month.

Former Grant County sheriff Palmer takes job as marine patrol deputy

Palmer, who lost bid for sixth term, working for Sherman County Sheriff's Office

By Jonathan Levinson

Oregon Public Broadcasting

JOHN DAY — Glenn Palmer, the former Grant County sheriff who had a controversy-riddled, 20-year stint in office, has taken a new job as a marine deputy with the Sherman County Sheriff's Office.

Palmer lost his bid for a sixth term as sheriff in November 2020.

The Sherman County sheriff's marine patrol is a seasonal operation responsible for providing boater safety services, doing boat inspections and conducting patrols along the county's stretch of the Hood River.

"We advertised through the newspapers and we advertised on our website," said Sherman County Sheriff Brad Lohrey, who added it's not an easy position to fill. "We got one applicant and that was him."

The marine patrol is a

part-time position that is only staffed Friday, Saturday and Sunday from the end of May to Sept. 1.

Palmer, a self-described "constitutional sheriff" who believes the sheriff occupies the highest executive position in the county, made a name for himself when he met with leaders of the Malheur National Wildlife Refuge occupation in 2016. Palmer called the armed militants "patriots," even as they barricaded themselves inside government buildings with a wide array of weapons.

During his tenure, Palmer also deputized his brother, along with nearly 70 other Grant County residents without law enforcement training, refused to enforce state gun laws, and allegedly used his power to intimidate people who challenged him or his



Palmer

political viewpoints.

Numerous complaints have been lodged against Palmer since 2016. He briefly offered his resignation in 2019 after a retired Oregon State Police trooper filed an ethics complaint alleging Palmer had failed to return his stolen property. Palmer quickly rescinded his resignation and stayed in office.

In August 2020, the Oregon Department of Public Safety and Standards declined to take action against Palmer stemming from that complaint.

Other complaints allege Palmer and his department had a policy of not enforcing restraining orders. A DPSSST investigator determined the allegations were outside the agency's jurisdiction.

Boaters from Portland and along the Columbia River Gorge this summer might interact with Deputy Palmer, who has recently taken to

social media to make fun of Black hairstyles, mock President Joe Biden's stutter, undermine COVID-19 restrictions, and spread misinformation about vaccines. On May 2, the day before starting in his new role, he called Democrats "the enemy in our midst."

Eighteen percent of Sherman County voters and 30% of neighboring Wasco County voters are registered Democrats.

Palmer did not immediately return phone calls seeking comment.

Palmer's social media activity, however, walks a fine line with Sherman County department policy, which restricts what can be said in an official capacity or while representing the department.

"I will look into it," Sheriff Lohrey said. "I haven't looked at his Facebook page, if he has one, in forever."

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Spring is here for ranchers... Please watch for animals!



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