



Joanna Mann/Baker City Herald

Sofie Kaaen, 14, showed her rabbits at the Baker County Fair this week.

## FAIR

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Temperatures soared into the mid-nineties during the day, relieved by cool showers in the evening.

Fifteen-year-old Zoey Justus, who lives in Baker City and has been showing animals since she was just five years old, patted her market steer named Yankee before showing him on Wednesday.

"There's a lot of good cows here," Justus said. "I wouldn't be surprised if I didn't win."

Justus started showing chickens 10 years ago, and her first fair was in Halfway when she was seven. Currently she has six cows, three of which are heifers. Although she has been showing for most of her life, she still gets nervous each time.

"Today's competition is about the steer itself more than the person showing it," Justus said. "So it's more about their muscle and fat than my muscle and fat."

For some others, this was their first or second year showing at the Baker County Fair.

Lexi Rupel, 14, showed her two purebred rabbits, Daisy and June, for the first time in Baker City. Sofie Kaaen, who turns 14 this week, showed her rabbits, Peter and Marigold, for the second time at this fair.

Kids got to learn from the best in the business before showing their animals, thanks to classes held in the Leo Adler Ring. Grant Hooper answered questions on Tuesday, Aug. 3 about the best way to position the animals and what exactly he'd be looking for later that night.

Grand Champions in sheep, steer, swine and goat were announced Wednesday night, followed by live music. There was a nervous excitement with each show, as kids poked, prodded and answered technical questions about their animal.

One of the most popular events at the Fair every year,

the livestock auction, will take place Friday, Aug. 6 at 6 p.m. in the Cockram Arena, where competitors will find out whether last year's whopping \$307,070.09 record will be broken. That number broke the record of the year before, so if things are on track, 2021 could be the most successful auction yet.



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Lexi Rupel, 14, with one of her rabbits during this week's Baker County Fair.

## COVID

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The rate of positive tests rose from 1.6% for the week starting July 11, to 6.3% and then to 29.8% the week of July 25-31.

The trend has continued into August, with 32 cases reported in the county for the first three days — 10 on Aug. 1, seven on Aug. 2, and 15 on Aug. 3.

The Oregon Health Authority (OHA) also reported the 18th COVID-19-related death in Baker County, a 93-year-old woman who tested positive on July 8 and died on July 29 at Saint Alphonsus Hospital in Boise. She had underlying medical conditions, according to OHA.

"All of us at the Health Department are so sad to receive this report," Staten said in a press release. "A loss like this is never easy, and we're thinking of their family and friends during this difficult time."

### Vaccination rate rises slightly

Baker County daily vaccination rate has risen a bit over the past three weeks.

The running seven-day average dipped to eight doses per day on July 11 and 12, but it jumped to 16 per day on Aug. 2, according to OHA statistics.

The daily total of 32 doses on July 30 — 23 Moderna, six Johnson & Johnson, three Pfizer — was the most since 33 doses on July 2.

The county hasn't exceeded 40 vaccine doses in any day since June 11, when the total was 91.

### Hospital capacity

The surge has taxed the capacity of the Saint Alphonsus group of hospitals, including the one in Baker City, said Mark Snider, public relations and digital strategy coordinator for Saint Alphonsus Health System.

Snider said patient numbers are near record highs in all Saint Alphonsus hospitals, including the larger facilities in Boise and Nampa.

An increase in COVID-19 patients is contributing to the situation, Snider said.

At the start of July, people who tested positive for COVID-19 accounted for just 0.1%

of inpatients; the current figure is about 6%, Snider said.

He said the COVID-19 patients are much younger on average than what Saint Alphonsus hospitals were seeing earlier in the pandemic, with many patients in their 20s or 30s.

The pandemic has contributed to the influx of hospital patients in a less direct way, Snider said.

He said some people deferred treatment for illnesses during the pandemic, but now have symptoms severe enough, for conditions such as pneumonia, that they need hospital treatment.

In addition, summer tends to be a busy season for hospitals due to trauma causes from car crashes and outdoor activities, Snider said.

The rush has led to delays in moving patients from emergency departments to inpatient beds, he said.

Snider said Saint Alphonsus has the capacity to transfer seriously ill COVID-19 patients from its smaller hospitals, such as Baker City, to the Boise hospital.

## ROAD

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the disputed section of road, which runs for about 2 1/2 miles through the 1,560-acre property that McCarty bought in September 2020, as a public right-of-way based on Oregon law.

Commissioners approved a resolution on June 16 "declaring the necessity for the legalization of Pine Creek Lane."

Commissioners discussed during July hiring someone to survey the disputed road, but the judge's order forbids the county from "entering onto, inspecting, and/or surveying the McCarty Property."

The restraining order also prohibits the county "from making public announcements, declarations, or statements regarding the McCarty Property that mislead the public regarding its right to access, enter, and use any part of the McCarty Property."

In filings as part of his lawsuit, McCarty's attorney, Janet K. Larsen of Portland, contends that "as a result of the County's actions, the public continues to trespass on the entirety of the McCarty Property for reasons beyond the purpose of travel, including recreation such as hunting and camping. Indeed, on several occasions, trespassers to the McCarty Property have lit illegal fires which present a legitimate risk both to the McCarty Property and the public at large."

Forté ordered the county to appear on Aug. 16 in Baker County Circuit Court for a hearing regarding McCarty's motion for a preliminary injunction that would prevent the county from proceeding with its effort to declare a public road through McCarty's property.

The temporary restraining order will be in place in the meantime.

In his ruling, Forté wrote that without the restraining order being "immediately" imposed, "immediate and irreparable injury, loss, or damage will result to plaintiff."

Baker County Commissioner Mark Bennett said the county is not commenting on the ongoing litigation.

History of the dispute

In his lawsuit, McCarty says that before buying the timbered property through which the road runs, he reviewed the title report and other documents, none of which showed a public road through the land.

The existing road is steep and rough, but people have historically used it to access Pine Creek Reservoir, which is on the Wallowa-Whitman National Forest. The road, which is mainly traveled by ATVs and hikers, continues beyond the reservoir, and an unofficial trail crosses a ridge and drops to Rock Creek Lake.

Soon after buying the property, in September 2020, McCarty installed a metal gate, with a lock, at his eastern property boundary, near the edge of Baker Valley.

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

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, 2020, 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, appears to follow the route of the existing road through the eastern portion of McCarty's property, leading to the Baisley-Elkhorn mine, 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 a written response to McCarty's lawsuit, an attorney representing the county, Robert E. Franz Jr. of Springfield, contends that the road is a county road that has "been used by Defendant and members of the public since July 10, 1891 ..."

Franz also contends that McCarty himself, by using the road before he bought the property, in effect acknowledged that the road is public, and that he can't now argue in a lawsuit that there is no public right-of-way.

Franz also argues that because the public has used the road for decades, the county has "obtained title over the lands at issue where the roads are located by adverse possession ..."

In his lawsuit, McCarty, who requests a jury trial, is seeking either a declaration that the disputed section of the Pine Creek Road is not a public right-of-way, or, if a jury concludes there is legal public access, that the limits of that access be defined and that the county pay him \$480,000 to compensate for the lost value of the land based on the legal public access.

McCarty is also seeking a judgment requiring the county to pay him at least \$250,000 for "damages McCarty has incurred to investigate and respond to this dispute and to protect his property rights," according to the lawsuit.

Franz, in his response, argues that the county is entitled to have the lawsuit dismissed because the suit is not a "plain and concise statement of the ultimate facts," as required by law, but is "rambling and redundant improper pleading of evidence, maps, opinions, legal conclusions of law, hearsay, false facts" and "immaterial and irrelevant facts and conclusions."

### Motion for temporary restraining order

On July 28 McCarty's attorney, Larsen, filed a motion seeking the temporary restraining order and a hearing on a preliminary injunction to block the county from pursuing a legal designation of the road as a public right-of-way.

In the motion, Larsen wrote that the county has violated McCarty's due process rights by, in effect, encouraging the public to use the road through his property "when at best doubt existed regarding the precise location, nature, and scope of any purported public right."

Larsen also wrote in the motion that "McCarty and his agents have been harassed, verbally abused, and even physically attacked while attempting to secure the McCarty Property," issues she attributes to the county's actions that encourage the public to assume that a public right-of-way exists through McCarty's property.

"To date, the County has offered McCarty no assistance to address the public's violence, harassment, and unlawful and uncontrolled uses of the McCarty Property," Larsen wrote in the July 28 motion for a restraining order.

Larsen also wrote that McCarty has had to interrupt logging on his property "Due to the public's unfettered entry and use of the McCarty Property." McCarty "resorted to removing all the equipment he used for his logging activities on a daily basis to protect it from vandalism and damage," Larsen wrote.

Larsen contends that commissioners' decision to try to designate the road as a public right-of-way is tantamount to admitting that such a right-of-way doesn't exist now.

"These concessions confirm the County's lack of authority to declare the existence of a public road and an unrestricted public right of access to the McCarty Property when it did so on September 30, 2020 and that it was reckless, at best, when it directed its Roadmaster to enter onto the McCarty Property to cut the locks on gates McCarty has installed to secure and protect his property."

Larsen also reiterates a point McCarty has made since last fall — that the county has failed to provide public records related to the road.

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