

## POT

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is no commercial property within the city limits that is more than 1,000 feet from the public school, said City Manager and Recorder Raamin Burrell.

As a result, recreational marijuana businesses cannot operate in Seneca, but the city receives about \$100 each quarter from statewide marijuana taxes, which goes into the city's general fund, she said.

Prairie City received \$2,706 in 2017 from the statewide marijuana taxes and put the money in the city's general fund, City Recorder Bobbie Brown said.

Canyon City received \$2,096, City Recorder Cory Rider said. The money was put in the general fund as miscellaneous funds in the same way the city deals with liquor and cigarette taxes, he said.

Mt. Vernon received \$1,561 in 2017 from statewide marijuana taxes and put the money in the city's general fund, City Recorder Tami Kowing said.

Dayville received \$446, City Recorder Ruthie Moore said. The money has not been designated for any specific purpose, she said. Monument received \$386 and Long Creek received \$580, Krawczyk said.

## Awareness programs

John Day, the largest city in the county, received \$4,945 as its share of statewide marijuana taxes. The John Day City Council on Feb. 13 unanimously approved providing the money to the Community Health Needs Assessment Substance Abuse Committee to support education on substance abuse issues.

Grant County received \$15,175 from the Department of Revenue for its share of the state marijuana tax. Blue Mountain Hospital CEO Derek Daly subsequently asked the county to provide the money to CHNA to fund a variety of projects to increase public awareness of substance abuse.

## LAWSUIT

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public records request," Sullivan said in the order. "... This appears to be a budget matter internal to Grant County. In any event, there are no facts pled as to why the defendants would be liable to the attorneys hired by the Sheriff or why he hired outside counsel, instead of availing the County Counsel for assistance, as would normally be done."

After the judge's order of dismissal, attorney Benjamin Boyd, on behalf of Palmer, DeFord and the sheriff's office, filed a motion to modify the judge's findings and to enter substitute findings and for leave to amend their original complaint July 20.

County Judge Scott Myers noted at the time that the county wasn't sure how the money should be spent, and the court unanimously approved the request. It has since been determined that this money was not earmarked for treatment and prevention, and the county could have spent the funds for law enforcement, roads or any other county needs.

On April 4, the county received \$18,362 from the Oregon Health Authority. According to Nicole Corbin, an adult behavioral health services manager at the Oregon Health Authority, that money was earmarked for alcohol and other drug treatment or prevention services. The money has not yet been spent by the county.

Altogether, CHNA in partnership with the Trauma Informed Care Community Task Force received \$20,120 from John Day and the county, about 43 percent of the total received by the county and its eight cities.

"The funding is being used to create awareness around both substance abuse and trauma-informed care through youth engagement as well as professional development for youth-serving organizations and agencies," said Lisa Weigum, a drug awareness coordinator at Community Counseling Solutions in John Day.

About \$14,000 has been allocated for youth engagement and community outreach, she said, including the Teen Health Fair in 2019.

"This fall, an award-winning global speaker, Kevin Hines, is scheduled to speak in our community to both students and the general public," Weigum said.

The remainder of the funding, about \$6,120, will be used for professional development, including a trauma-informed care workshop for educators scheduled in October. Other professional development opportunities, such as for substance abuse and mental health, are in the process of being scheduled, she said.

"Normally, a county official sued for an injunction pursuant to Oregon's Public Records Law would be able to avail him or herself of County Counsel for legal assistance," Boyd said in the motion. "In this highly irregular case, Grant County refused to afford Sheriff Palmer, Civil Deputy DeFord, and the Grant County Sheriff's Office such assistance and instead determined that it would not engage counsel to defend its officers."

Boyd also argued the judge failed to consider the full definition of a tort when ruling on the matter.

A hearing was held on the motion Aug. 10. The judge said she would take it under advisement and promptly make a decision.

## BEAVER

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Even if BDAs don't attract beavers to an area, they mimic the action of natural beaver dams — slowing stream flow, improving groundwater connectivity to the surrounding area and building up sediment to improve riparian areas. Juvenile fish can swim through gaps in BDAs, and the minimum fish-jumping height for older fish can be achieved by installing multiple BDAs.

Beaver dam analogs can also help reduce stream water temperature, according to Stephen Bennett, an adjunct professor in watershed sciences at Utah State University. BDAs can increase groundwater connectivity through annual spring flooding and by the hydraulic action of the standing water behind the dams.

The temperature underground is about 50 degrees, Bennett said. The log structures also provide some shade, and scouring around BDAs can create deeper pools, but the goal is to improve riparian areas, allowing hardwoods to grow and provide much needed shade.

Support for this new technique does not always extend to government agencies — many officials don't know how to regulate the structures. Some agencies have cited flood risks in denying permits for BDA projects.

In many cases, streams chosen for BDA projects provide habitat for endangered species, which adds to the bureaucratic hurdles, and installing structures that completely span a stream deemed navigable could trigger an Army Corps of Engineers review. Post-project monitoring might also be required.

The Oregon Department of State Lands attempted to draft new rules to expedite implementation of BDAs, but the process bogged down over statewide versus regional requirements and has been delayed.

## Professionals gather

Getting the word out on beaver dam analogs was the goal of a workshop held in



The Eagle/Richard Hanners

**Thirty-five stream restoration professionals traveled to Camp Creek in the Middle Fork John Day River drainage July 26 to study beaver dam analogs installed by the Forest Service in 2016. The fencing was installed to protect willows planted in the sedge meadow to provide food for beavers.**

Grant County this summer with 35 stream restoration professionals.

The purpose of the workshop was not just instructing people on how to build beaver dam analogs or persuading them to use the technique, but also to release new information on what's been accomplished, said Elise Delgado, project manager for the South Fork John Day Watershed Council.

"Not everyone will leave a believer," she said.

The workshop was sponsored by the John Day Basin Partnership, which represents groups from Prairie City to the Columbia River. Herb Winters, a project manager at the Gilliam Soil and Water Conservation District, sits on the partnership's steering committee.

"There's lots of angst about BDAs," he said.

Winters said he hopes to see the practice used across the basin, employing best management practices and completing quality projects.

"We don't want failures that will give BDAs a bad name," he said, calling them a potential game-changer.

Winters said he believes all the group's partners support BDAs, but they need to take the low-hanging fruit first and take it slow. He noted that many opinions exist on funding sources and permitting, but both state and federal agencies are taking a serious look at this new technology.

The goal should be low-impact construction with no heavy equipment and not to anger

people, Winters said. He noted that over time BDAs disappear as sediment builds up behind the structure and vegetation grows over them.

## Light on the land

Two BDA projects last year in Grant County took dramatically different approaches. While a project on private land on the South Fork John Day River near Izee was low-tech, with posts pounded in by hand and willows found at the site weaved in between, a Forest Service project on East Fork Beech Creek north of Mt. Vernon utilized heavy equipment, with excavators brought in to drive posts into the stream bed.

Nick Bouwes, a professor at the College of Natural Resources at Utah State University, advised workshop members to be efficient in how they build BDAs because a project might require a lot of them.

Bouwes was a leader in the largest beaver dam analog project in the United States, on Bridge Creek near Mitchell, where a powerful stream had gouged a 6- to 10-foot-deep incision. About 2.5 miles was treated to improve habitat for steelhead starting in 2005.

Bouwes and his team built 121 BDAs from 2009 to 2012. By 2013, beavers had fortified 60 of the BDAs and built 115 new dams. The stream bed gradually filled with sediment and rose back to the top of the trench, and the submerged area tripled.

Monitoring showed Bridge Creek produced nearly three

times as much fish as a nearby control stream, and water-temperature spiking eased. The results made Bridge Creek the poster child for BDA projects, drawing international attention and documentary filmmakers.

## Camp Creek project

A four-mile section of Camp Creek in the Middle Fork John Day River drainage has seen significant improvement since Malheur National Forest fisheries biologist Dan Armichard headed up a BDA project there in 2016. The goal was to protect mid-Columbia River steelhead, he said.

There's no beaver sign now at the three meadows on the project site, but Long Creek rancher Sharon Livingston recalls a large beaver dam at the site when she was a child. The Forest Service blew it up, she said, causing her to wonder why the government has changed its mind about beavers.

The science at the time called for removing beavers, Delgado said. But the science keeps changing. For years, the Forest Service built thousands of check dams across the West to slow stream flow. Made of rocks and intended to be permanent, many failed causing even more damage. The Forest Service also tried log weir dams, but 45 weir dams were removed at the Camp Creek site in 2011.

A five-foot high natural beaver dam exists on Camp Creek about three miles downstream from the project site at Pepper Creek, but the degraded riparian habitat at the project site was not good for fish or cattle. An 8-degree temperature rise had been recorded between the upstream and downstream ends of the 4-mile reach before the project.

The Forest Service installed 70 BDAs and numerous wood jams. About 3,500 cottonwoods and 1,500 willows were planted in the floodplain, but deer and elk ate them and fencing is now needed. Excavators were brought onto the sedge meadows to drive in large wooden posts for the BDAs, but no signs of the heavy equipment were visible to workshop members two years later.

## ROAD

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in Grant County to the county, was passed Nov. 5, 2002, by 1,796-1,436 with 76 percent turnout.

Ordinance 2013-01, which the county court passed unanimously May 23, 2013, ordained that all roads, trails, stock driveways and by-ways crossing public lands be kept open to the public for historic and customary uses unless authorized for closure by the county court and the county sheriff.

According to County Judge Scott Myers, an Access Committee established by the court had promoted the road ordinance, and Yockim had recommended it be passed as a resolution, not an ordinance.

## The complaint

Webb requested a declaration by the court that the measures and the ordinance are invalid due to procedural errors

in adoption and because they conflict with paramount state law and the state and U.S. constitutions.

In his Aug. 21 complaint, Webb noted that the United States ratified the U.N. Charter as a treaty, and the U.S. Constitution prohibits states and counties from making or changing treaties. He also noted that Measure 12-37 did not address a matter of county concern, as required by state law for citizen initiatives, and the measure conflicts with and is preempted by the U.S. Constitution.

By petitioning Congress, Measure 12-40 was an administrative act, not a legislative act, and therefore was outside the scope of the state's referendum or initiative process, Webb said in his complaint. He also noted that the measure did not approve or reject an ordinance previously enacted by the county court or propose a new ordinance.

The 2013 road ordinance also does not address a matter of county concern, Webb said in his complaint. As a result of the U.S. Constitution, the Federal Land Policy and Management Act and the National Forest Management Act, Grant

County is preempted from regulating federally owned roads, he said.

The exception were roads authorized by Revised Statute 2477 of the 1866 Mining Act and other rights-of-way established on federal public lands before the creation of the National Forest System, Webb said.

The road ordinance was also preempted by and conflicted with the 1859 Oregon Admission Acts, which stated that Oregon "shall not interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing title in said soil to bona fide purchasers thereof," Webb said in his complaint.

## Past challenges

Webb, a former county judge, has been successful in challenging county actions in the past. Most recently, he challenged Measure 12-72, the Second Amendment Preservation Ordinance. On June 29, Grant County Circuit Court Judge William D. Cramer Jr. ruled that the measure was preempted by state law and that the measure's language would have confused

voters. As a result, the measure will not appear on the November ballot.

Webb also challenged the establishment of a Grant County Public Forest Commission, which was created following a 1,634-1,579 vote in favor of the commission on Nov. 5, 2002. The initiative stated that "the people of Grant County ... shall assume responsibility to manage public lands within Grant County by creating a commission ... to create and administer policies for lands and natural resources in the public domain within Grant County."

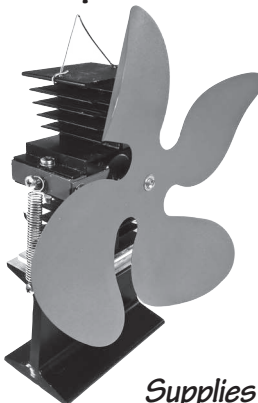
Webb requested a judicial review of the commission in March 2016. Cramer informed the county clerk in September that he intended to nullify the commission and issued his full opinion in November.

Cramer said the county was free to pass a measure to establish a forest commission to develop plans to manage public lands if and when the lands were owned by the county, or to advise the county so long as the measure clearly stated the commission's limits. He also ruled that the measure must meet procedural requirements and not violate other "superior or paramount laws."

## ThermaFan Kit!

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