

*****Monday, January 05, 2015**, Commissioners met in regular session with Chairman Dan Dinning, Commissioner LeAlan Pinkerton, Commissioner Walt Kirby, Clerk Glenda Poston, and Deputy Clerk Michelle Rohrwasser.

Commissioners gave the opening invocation and said the Pledge of Allegiance.

County resident Terry Capurso and Blue Sky Broadcasting Reporter Mike Brown joined the meeting.

9:00 a.m., Road and Bridge Superintendent Jeff Gutshall and Road and Bridge Office Manager Renee Nelson joined the meeting to give the departmental report. Mr. Gutshall did not present a written report. Mr. Gutshall briefly mentioned damage to Deep Creek Bridge #1 caused by a vehicle accident towards the south end of Deep Creek Loop.

Mr. Gutshall presented Commissioners with a copy of the Local Highway Technical Assistance Council (LHTAC) 2015-2016 Rural Application for the proposed Deep Creek Loop Pavement Overlay Project. Mr. Gutshall said he is asking for a heavy leveling course with an overlay. This project would start just north of Lion's Den Road where the last overlay ends and the work will total 3.05 miles in length. The county's match is 7.34%, according to Ms. Nelson. The project cost estimate is \$1,096,000 with a local match of \$80,446. If approved, the requested construction year will be 2017, but will probably go beyond that, according to Mr. Gutshall. Mr. Gutshall said the traffic count is 601 near the golf course, 800 at the south end of Deep Creek Loop and approximately 900 at the junction of Deep Creek Loop and School House Road. LHTAC would like Commissioners to confirm that Road and Bridge is working on pavement and sign management and keeping up with the Capital Improvement Plan. Mr. Gutshall presented Commissioners with a copy of the Plan. Mr. Gutshall said the Transportation Plan has been updated and was adopted by resolution. The Capital Improvement Plan is a five year plan that is reviewed every year and consists of projects that are really intended to be completed. A letter signed by Commissioners will be submitted with the LHTAC 2015/2016 Rural Application, according to Mr. Gutshall.

Commissioner Kirby moved to authorize the Chairman to sign the Local Highway Technical Assistance Council (LHTAC) 2015/2016 Rural Application for the Deep Creek Overlay Project in the amount of \$1,096,000. Commissioner Pinkerton second. Motion passed unanimously.

Commissioner Kirby moved to sign the letter to the Local Highway Technical Assistance Council (LHTAC) ranking committee to confirm the following documents: Capital Improvement Plan for Roads and Bridges, Pavement Management Program Updates (IWORQ), and Sign Management Program Updates (IWORQ). Commissioner Pinkerton second. Motion passed unanimously.

Commissioner Pinkerton moved to adopt Resolution 2015-4. A resolution supporting the project identification submittal for the Deep Creek Loop Pavement Overlay Project. Commissioner Kirby second. Motion passed unanimously. Resolution 2015-4 reads as follows:

BOUNDARY COUNTY
RESOLUTION #2015-4

A RESOLUTION SUPPORTING THE PROJECT IDENTIFICATION SUBMITTAL FOR THE DEEP CREEK LOOP PAVEMENT
OVERLAY PROJECT

WHEREAS, the Board of County Commissioners of Boundary County, Idaho, does support the project identification submittal for the Deep Creek Loop Pavement Overlay Project to the Local Highway Technical Assistance Council (LHTAC), and

WHEREAS, the total project cost estimate is \$1,096,000, which will require \$80,446 of local matching funds to be made available from Boundary County,

NOW THEREFORE BE IT RESOLVED, that the Chairman of the Board of Boundary County Commissioners is hereby authorized and directed to sign the project identification packet and submit it to LHTAC for prioritization.

Adopted this 5th day of January, 2015.

BOUNDARY COUNTY
BOARD OF COMMISSIONERS

s/ _____

Dan R. Dinning, Chairman

s/ _____

LeAlan Pinkerton, Commissioner

s/ _____

Walt Kirby, Commissioner

ATTEST:

s/ _____

GLENDIA POSTON, Clerk

Recorded as instrument #262661

The meeting with Mr. Gutshall and Ms. Nelson ended at 9:35 a.m.

9:35 a.m., Commissioners participated in a conference call with County Civil Counsel Tevis Hull to review various matters.

Chairman Dinning asked Attorney Hull about his review of the Idaho Department of Lands (IDL) Memorandum of Understanding/Annual Contract (MOU) for the Community Protection Project. Attorney Hull said IDL changed their format a bit so he has some questions because IDL recognizes the format and procedures used in the past were different. Attorney Hull said compensation remains the same, but there is some required planning on the county's part. Page 2 of 15 of the MOU, Subparagraph D, is where IDL has highlighted sections that are different than the past. Chairman Dinning said the county has a Wildland Urban Interface committee that meets to prioritize hazardous fuels treatment projects and that would suit this MOU. Attorney Hull said page 6 of 15 of the MOU, under General Terms #1, is a new subsection that states the grantee will not provide subgrants with funds received. Chairman Dinning said he would contact IDL staff member Tyre Holfeltz about the changes as private parties are used to do the work and receive reimbursement after their work had been completed and inspected.

Mr. Capurso and Mr. Brown left the meeting at 9:40 a.m.

Commissioner Kirby moved to go into executive session under Idaho Code 67-2345(1) f, to communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated, and b, to consider the evaluation, dismissal or disciplining of, or to her complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student. Commissioner

Pinkerton second. Commissioners voted as follows: Chairman Dinning "aye", Commissioner Pinkerton "aye", and Commissioner Kirby "aye". Motion passed unanimously. 10:07 a.m., Commissioner Pinkerton moved to go out of executive session. Commissioner Kirby second. Motion passed unanimously. No action was taken.

The call to Attorney Hull ended.

Deputy Clerk Nancy Ryals joined the meeting at 10:07 a.m.

Commissioner Pinkerton moved to go into closed session under Idaho Code 31-874. Commissioner Kirby second. Motion passed unanimously. 10:10 a.m., Commissioner Kirby moved to go out of closed session. Commissioner Pinkerton second. Motion passed unanimously.

Mr. Capurso returned to the meeting.

Commissioner Pinkerton moved to deny indigent application 2015-6 as per the Clerk's recommendation. Commissioner Kirby second. Motion passed unanimously.

Commissioner Pinkerton moved to accept assignments on the following indigent accounts to the Catastrophic Health Care Cost Program: Accounts 2013-23, 2013-24, 2013-36, and 2014-10 in the total amount of 87.98%, account 2013-33 in the amount of 73.86%, account 2104-13 in the amount of 13.80%, accounts 2014-6 and 2014-16 in the total amount of 41.01%, account 2014-15 in the amount of 53.33%, and accounts 2014-23 and 2014-53 in the total amount of 21.62%. Commissioner Kirby second. Motion passed unanimously.

Deputy Clerk Ryals left the meeting at 10:15 a.m.

Commissioner Kirby moved to approve minutes of December 22 & 23, 2014. Commissioner Pinkerton second. Motion passed unanimously.

Commissioner Pinkerton moved to approve and sign the junior college certificate of residency forms for M. Wander and K. Bryan once Boundary County residency has been confirmed. Commissioner Kirby second. Motion passed unanimously.

Commissioner Pinkerton moved to approve and sign the junior college certificate of residency affidavits for the following students: J. Carle, S. Lewandowski, C. Trocke, J. Trocke, and J. Lovse. Commissioner Kirby second. Motion passed unanimously.

Commissioner Kirby moved to cancel taxes for year 2014 totaling \$153.34 for parcel #OC60N01W287210A due to a change in square footage. Commissioner Pinkerton second. Motion passed unanimously.

Commissioner Kirby moved to cancel taxes for year 2014 totaling \$382.74 for parcel #SR62N02E332414 due to an incorrect value for sub-roll building. Commissioner Pinkerton second. Motion passed unanimously.

Commissioner Pinkerton moved to adopt Resolution 2015-5. A resolution appointing Tim Heenan to the Planning and Zoning Commission. Commissioner Kirby second. Motion passed unanimously. Resolution 2015-5 reads as follows:

**RESOLUTION APPOINTING MEMBER TO
PLANNING AND ZONING COMMISSION**

RESOLUTION NO. 2015-5

WHEREAS, Chapter 65 of Title 67 does empower Boundary County to create a Planning and Zoning Commission, and Chapter 3, Section 1 of the Boundary County Zoning and Subdivision Ordinance did establish such a commission; and

WHEREAS, member John Moss, has vacated his position on the commission prior to the completion of his term on the Planning and Zoning Commission; and

WHEREAS; Tim Heenan has expressed interest in and does qualify to serve on the commission and does meet the residency requirements set forth at Section 67-6504, IC; and

WHEREAS, the Board of County Commissioners are desirous of appointing Tim Heenan as a member of the Boundary County Planning and Zoning Commission with a term to expire January 31, 2019; and

NOW, THEREFORE BE IT RESOLVED by the Board of County Commissioners of Boundary County, Idaho, that Tim Heenan be appointed to membership on the Boundary County Planning and Zoning Commission for a term commencing January 2, 2015, and ending on January 31, 2019.

Regularly passed and approved on this 5th day of January, 2015.

COUNTY OF BOUNDARY
BOARD OF COMMISSIONERS
s/ _____
DAN R. DINNING, CHAIRMAN
s/ _____
LEALAN L. PINKERTON, COMMISSIONER
s/ _____
WALT KIRBY, COMMISSIONER

ATTEST:
s/ _____
GLENDA POSTON
Clerk of the Board of County Commissioners
Recorded as instrument #262675

Commissioner Pinkerton moved to approve and sign the Assignments of Hangar/Ground Leases for Dan Studer and Bob Loosemore pending final review. Commissioner Kirby second. Motion passed unanimously.

Commissioners tended to administrative duties.

10:44 a.m., Dottie Gray representing the Historical Society/Boundary County Museum stopped by Commissioners' Office to provide an update on the Proclamation for the Creation of Boundary County. Dave Gray also joined the meeting. Ms. Gray said the date of the event will be Saturday afternoon on January 24, 2015. The City of Bonners Ferry will be approached about blocking off the intersection at the location of the old hotel, which is the Groove Gallery, near Mugsy's and Boardwalk Boutique, for one hour. Ms. Gray showed Commissioners an old photo of the event when Boundary County was created from the northern portion of Bonner County back in year 1915. Ms. Gray said the Historical Society hopes to have the American Legion, Knights of Pythias, Bonners Ferry High School band as well as hopefully having the fourth graders sing it's a long, long ways to Bonners Ferry. Ms. Gray said we're trying to recreate the original event. Once the outdoor portion of the event is over, it will move to the Boundary County Museum for cake and social time. Ms. Gray presented Commissioners with a proclamation for them to consider signing and she added that she will ask the Kootenai Tribe of Idaho and the City of Bonners Ferry Mayor to sign the proclamation as well. The proclamation is to be presented by county commissioners as it is a county affair. Ms. Gray asked if a commissioner would read the proclamation aloud at the event and she added that if the original bill establishing Boundary County is in hand, someone will be asked to read that as well as it has a lot of historical information. Ms. Gray said the event will need to have insurance coverage while the street is blocked off for one hour or so and she asked if that is something the county would cover or would the Historical Society's insurance coverage be enough. Chairman Dinning said he would think the museum's insurance is sufficient, but he suggested Ms. Gray contact Pace-Kerby about that. If there is an issue with the museum's coverage, the county could help out with coverage under Idaho Counties Risk Management Program, which is also the insurance carrier for the City of Bonners Ferry.

Commissioner Pinkerton moved to approve and sign the Proclamation for the Creation of Boundary County, Idaho declaring January 24, 2015 the beginning of the centennial year of Boundary County, Idaho. Commissioner Kirby second. Motion passed unanimously.

Mr. and Ms. Gray left the meeting at 10:54 a.m.

Commissioner Kirby moved to approve minutes of December 8 & 9, 2014. Commissioner Kirby second. Motion passed unanimously.

Commissioners tended to administrative duties.

11:01 a.m., Commissioners spoke to Idaho County Commissioner Jim Chmelik via telephone to discuss land use matters pertaining to the Forest Service. Also present were: Blue Sky Broadcasting Reporter Mike Brown, Terry Capurso, and Carl Stout and Pam Stout.

Idaho County Commissioner Chmelik said he had attended a meeting last year about putting together a marketing campaign, but he uncovered some information and now he feels the county should move in a different direction. Idaho County Commissioner Chmelik said funds should still be raised, but instead go in the direction of litigation. There is mismanagement of federal lands. The Forest Service and Bureau of Land Management (BLM) are at the hands of the federal government and they're keeping the county tied up. Idaho County Commissioner Chmelik said as a county we're taking the shot gun approach, but he would like pinpoint accuracy. Idaho County Commissioner Chmelik mentioned utilizing the Equal Access to Justice Act (EJA) under health, safety, and welfare for a peaceful tranquility for the community due to the Forest Service's inability to respond. Counties are being put under conditions that are

hazardous to health due to smoke, dirty air, and water and counties don't have the ability to use resources to their benefit, put people to work, etc. The environmental community is equally concerned going down that route. Idaho County Commissioner Chmelik said he needed funds from the counties. Idaho County Commissioner Chmelik said he doesn't know what Boundary County has done since year 2000, but his county has contributed \$75,000. The funds need to be redirected to a group of counties and a contribution of \$3,000 to \$5,000 from each county could provide leverage and in addition he could approach the school districts to explain what is happening. Idaho County Commissioner Chmelik said when looking at a contingency, the attorneys won't take this case unless they think they can win. After the counties and schools the group of counties can leverage private enterprise. Idaho County Commissioner Chmelik said he has been trying to round up enthusiasm and he has spoken to 20 counties and two-thirds of the counties are getting on board with this idea. Commitment letters from the counties are needed listing the commitment of \$3,000 to \$5,000. Idaho County Commissioner Chmelik spoke of forming a 501(c)3 to consist of a board member from every state involved. Idaho County Commissioner Chmelik said he has spoken with a few key people in some states to include Idaho, New Mexico, Arizona, and California, and he is almost done drawing up a business plan. The need is for a county to sue the Forest Service and next is a class action lawsuit. Idaho County Commissioner Chmelik asked if Boundary County would be interested in looking into this and if so, he could come to Boundary County to talk further. Washington D.C. is difficult to fix this problem and the state capital is another difficult place, according to Idaho County Commissioner Chmelik. If 100 to 200 counties and school districts were fighting on the same side, he doesn't think the environmental community could keep up with that and he added that we're a much bigger and agile target and the environmental community doesn't tell the truth and they spread propaganda. Taking these steps would also help people get to know their commissioners, according to Idaho County Commissioner Chmelik adding that he did not pick this fight.

Commissioner Pinkerton asked for an explanation of a 501(c)3 in this case. Idaho County Commissioner Chmelik said there needs to be a separate non-governmental agency (NGO) who will sue on behalf of the counties through the EJA, and we just want to be above board and have a board that can report back to the counties and have trust in the board's representation. Those boards can have discussions and vote on these things. An internal board would be set up and would be directed to do the things only being talked about here.

Idaho County Commissioner Chmelik mentioned the private sector. The environmental community is not about protecting the environment. There is an opportunity here and a marketing and ad campaign can be created, but also create a lobbying campaign where counties can do offense. A 501(c)3 is needed to carry out these operations.

Commissioner Pinkerton said getting back to that, who would be on the board. Idaho County Commissioner Chmelik said he doesn't want to mention names just yet, but they are known and trusted people. Idaho County Commissioner Chmelik said he is supposed to talk to people in Washington State as he needs reputable people. These are people who should have great finances as they are generally successful in what they do, and these are people with great wisdom, so he will look for the best people he possibly can. Various states were listed as ones to approach. Idaho County Commissioner Chmelik said he already has people willing to fund him for his travel expenses while he talks to other counties. Twenty years ago we looked at lobbying congress for Secure Rural Schools (SRS) and payment in lieu of taxes (PILT). Back then commissioners did everything they could, but this process is now failing us and we have to play offense, according to Idaho County Commissioner Chmelik. We don't want to look back

and say we could've done something different. Most things Americans are concerned about is the failure of government, not the economy. We need to put people back to work.

Chairman Dinning said having not done this before, can a county legally take tax dollars and put it into a 501©3. Idaho County Commissioner Chmelik said yes, under the same avenue as tort claims. We're looking to take legal action on behalf of people of the county. Chairman Dinning said tort claims are under the county's budget. Idaho County Commissioner Chmelik said we could still take legal action against the federal government and he doesn't see any other avenue. It can be done. Chairman Dinning said there is a case filed out of southwest Washington for exactly what Idaho County Commissioner Chmelik is describing so where has that case gone. Idaho County Commissioner Chmelik said Skamania County, Washington has filed a resolution, but they have not filed suit. Chairman Dinning said going forward, the suit would be for damages and say we won, how in that does it change the current law and policy? Idaho County Commissioner Chmelik said if you win, the entire dynamic has changed. The great thing is if you win one EJA case like this, it blows up the environmental cases. While the process is still broken it gets us down the road of using the National Environmental Policy Act (NEPA) properly. If counties are able to sue on the class action, it is not for a couple hundred dollars, it's across the west for many billions of dollars. A suit can be filed for economic damages. Idaho County Commissioner Chmelik said in the Shelby County versus Alabama case the court struck down Section 5. As far as the Affordable Care Act, Justice Roberts said states are separate independent fathers. The Federal government cannot make states expand Medicaid. The timing is right to do this and blow a hole in the environmentalist's strategy in how they sue us. There is also billions of dollars in rewards. That is what happens when you win. Chairman Dinning said it makes sense to a degree. Outside of action, you will not change NEPA. Chairman Dinning said we deal a lot with the Endangered Species Act (ACT) in north Idaho. It will take another action at the federal level to change those two. Chairman Dinning said he thinks Idaho County Commissioner Chmelik is saying this is one step in a series of steps. Idaho County Commissioner Chmelik said one step is using the EJA. The other is not a step, but a nuclear bomb. There will be an award for economic damages. It's not just those damages, but a civil rights issue as we have been guaranteed a republican form of government. It's a civil rights violation. Idaho County Commissioner Chmelik said we can move this in the right direction. The second thing is the "bomb." We have to raise the funds and go down both avenues at the same time. The beauty is that this is a one-time thing.

Idaho County Commissioner Chmelik said he has talked to approximately 20 counties and approximately 13 counties seem to be favorable for writing letters of commitment. We just need \$50,000 and a 501©3, and the attorneys said they can get started. Washington County and Shoshone County are supposed to send a commitment letter. Idaho County will submit funds for \$5,000 and Shoshone will contribute \$3,000. The group will be a part of a county coalition to do what we just talked about to join under a 501©3 to take legal action under health, safety, and prosperity and a class action across the west. Idaho County Commissioner Chmelik said he could send Boundary County Commissioners bullet points on what is needed. Chairman Dinning said there are two paths to go down and he asked Idaho County Commissioner Chmelik to send information on those. Chairman Dinning said there is no doubt things need to change.

Commissioner Pinkerton said he has been saying for years a lawsuit needs to be filed against the Department of Agriculture. We've been losing as we've been afraid to do that, but the opposition has been doing this quite effectively so let's take their game plan and use it. We would be in deficit not using it, according to Commissioner Pinkerton. Idaho County Commissioner Chmelik said he would speak to the Public Lands about this as well as the National Association of Counties (NACo) steering committee, and he added that this should not be an issue for the west. Today this is a moral issue such as slavery

was an issue back in 1800's. The federal government is nothing more than serfs on a plantation, according to Idaho County Commissioner Chmelik. Courage isn't a lack of fear, but the courage to stand for something.

Chairman Dinning asked Idaho County Commissioner Chmelik if he had any luck with the mid-eastern states. Idaho County Commissioner Chmelik said Missouri has been working on a similar resolution, he believes. This has just all come together in the last six weeks, according to Idaho County Commissioner Chmelik. Chairman Dinning said he just hears that it is normally only the western states, but it sounds like there are others now. Commissioner Pinkerton asked for the bullet points so Commissioners can make it fit Boundary County's needs.

The conference with Idaho County Commissioner Chmelik call ended at 11:32 a.m.

Commissioner Pinkerton said he would like to see the jargon on the commitment letter and added that \$3,000 to \$5,000 is a small price to pay, even if it fails.

Clerk Poston left the meeting at 11:34 a.m.

Commissioners resume their discussion previously held with Idaho County Commissioner Chmelik. Chairman Dinning asked if Commissioners would receive the white paper in order to see the legal basis.

Commissioner Pinkerton moved to tentatively approve the use of \$3,000 to \$5,000 for a lawsuit against the United States Department of Agriculture and to write a letter of support. Commissioner Kirby second. Motion passed unanimously.

Commissioners said they would make sure this process is legal and to personally analyze the legal foundation the attorneys feel applies.

Mr. Capurso said on this particular issue Idaho County Commissioner Chmelik did mention an urgency in the time frame.

11:40 a.m., County GIS Mapper Gary Falcon joined the meeting at Commissioners' request to discuss a matter involving addressing for Sam and Deneise Fodge's business. Mr. Falcon said Boundary County doesn't have an address with that number. The City of Bonners Ferry has a grid system and this address falls within the grid of these numbers. The addressing for the county is based on distance. The address number of 6683 on a Garmin takes a person to the junction of Kootenai Trail as opposed to the Fodge's location. Mr. Falcon said he's been trying to think of what to do about this. Mr. Falcon said this issue comes up when someone uses a Garmin to find an address so he will talk to City of Bonners Ferry Administrator Stephen Boorman to work something out and call the road going into the Fodge's property a private road and issue a house number off of that. Commissioner Pinkerton said we need to fix this as this is also a 911 system besides the issues with the deliveries.

The meeting with Mr. Falcon ended.

County resident Wayne Nishek joined the meeting at 11:43 a.m.

Mr. Nishek presented Commissioners with information on a cost share program for a fish ladder system he would like to see along Cow Creek Road. Mr. Nishek informed Commissioners that he has an old mine

on Cow Creek Road and that he has a permit from former Commissioners to use the pit and develop it. Commissioners said they would forward the information on the fish ladder and pit to Road and Bridge Superintendent Jeff Gutshall.

Mr. Nishek left the meeting.

Commissioner Pinkerton left the meeting.

Commissioners received a telephone call from Arnold and Lisa Tuttle with Tuttle's Cleaning Service. Mr. Tuttle expressed concern that the de-icer is ruining the sealer and wax on the Courthouse floors. Chairman Dinning said these are safety issues and the walkways and parking lot need to have the de-icer so the floors will just have to be redone. Mr. Tuttle said if the second set of stairs going to the top floor becomes affected by the de-icer, he could work at the Courthouse on Tuesdays and Thursdays to sweep them, but that would be an additional cost. Chairman Dinning conferred with Commissioner Kirby and they felt that would not be necessary. Chairman Dinning said the county will just have to tend to the floors in the spring.

The phone call with the Mr. Tuttle ended at 12:08 p.m.

There being no further business for the week, the meeting adjourned at 12:08 p.m.

DAN R. DINNING, Chairman

ATTEST:

GLENDIA POSTON, Clerk
By: Michelle Rohrwasser, Deputy Clerk