

**Morrow County Court
March 11, 2015
Boardman, Oregon**

Present

Commissioner Leann Rea
Commissioner Don Russell
Karen Wolff, Executive Secretary/Personnel Director
Justin Nelson, District Attorney
Steve Myren, Undersheriff
Mike Gorman, Assessor/Tax Collector
Roberta Lutcher, Court Executive Assistant

Excused

Judge Terry Tallman

Commissioner Rea called the meeting to order at 9:01 a.m.

City and Citizen Comments – Irrigon

No comments

Open Agenda

Ms. Wolff said Vern Frederickson will speak to the Court around 10:00 a.m. about funding for Oregon State University Experiment & Extension Centers.

Bid Award – Portable Toilets

On the recommendation of Morrow County Public Works, Commissioner Russell moved to award the bid for Portable Toilets to Doug's Septic Service, Inc. Commissioner Rea seconded. Unanimous approval.

New Business

Contracts

Commissioner Rea moved to approve the Contract for Materials and Supplies – Portable Toilets, dated March 11, 2015 with Doug's Septic Service, Inc. Commissioner Russell seconded. Unanimous approval.

Purchasing Pre-Authorization Request

Ms. Wolff reviewed the quote for a TV, wall mount, and cables which will be used in the conference room in the Finance Office during Budget Hearings. Jordan Standley, IT Department, InterMountain Education Service District, provided the quote which totals \$806.19. Ms. Wolff said she requested adapters for use with iPads and PCs. Mr. Standley said he had some older, unused laptops that he can set up to stay with the TV so people making presentations will only need to plug in a zip drive and the rest will be ready to go. The plans are to move the

TV, mount and cables to one of the conference rooms in the new Administration Building, upon its completion.

Commissioner Rea moved to approve the Purchasing Pre-Authorization Request from the County Court for a TV, wall mount and cables in the amount of \$806.19 and authorize Commissioner Rea to sign on behalf of the County. Commissioner Russell seconded. Unanimous approval.

Minutes

Commissioner Russell moved to approve the minutes of March 4th, as presented. Commissioner Rea seconded. Unanimous approval.

Claims

Commissioner Russell moved to approve the Payroll Payables, Monthlies, dated February 24, 2015; March 2015 Retirement Taxes, dated March 5, 2015; and Accounts Payable, dated March 12, 2015, in the amount of \$74,641.00. Commissioner Rea seconded. Unanimous approval.

Commissioner Reports

Commissioner Rea said she attended last night's Fair Board meeting and when she informed them of the estimated cost for the parking lot paving project, the Board agreed it wasn't necessary. They did request that handicap parking places be widened to accommodate more area for maneuvering walkers, etc.

Ms. Wolff said she has arranged a tour of the Fairgrounds on April 1st with the Commissioners and Fair Board members. This is an opportunity for Fair Board members to point out what they'd like and visit with the Commissioners.

Commissioner Rea said in lieu of paving, the County may be able to help with the moveable bleachers the Fair Board would like. She said they would like three or four units at a cost of \$4,000 each and they will bring the request to the Budget Hearings in April.

Commissioner Rea said she asked the Fair Board to submit a request to the County Court to officially appoint Angie Hanson as a Fair Board member, which they said they will do.

Commissioner Rea said she attended the Columbia Development Authority (CDA) meeting along with representatives of Umatilla County, and it became apparent Morrow County's approach toward hiring a new Manager/Chief Executive Officer for CDA is different from Umatilla County's. We've scheduled another meeting on March 17th in hopes of working this out. Umatilla County would like this new person to be an economic development person. Commissioner Russell said we don't need an economic development person in Morrow County; Commissioner Rea agreed. Brief discussion.

Department Report

Planning Update

Carla McLane, Planning Director

- The proposed Montague Wind Power Facility in Gilliam County has a valid permit from the Energy Facility Siting Council which expires this year, but Ms. McLane said she has the sense the company is contemplating letting the permit go. There has been interest in the project from companies who want to be able to fly their “green” flag.
- Pacific Northwest Regional Infrastructure Team (PNWIT), which is a consortium of governor’s office representatives from Oregon, Washington and Idaho, and attempts to bring federal and state representatives to the same table, met in February. The topic was the Boardman to Hemingway (B2H) Transmission Line and its local impact to irrigated agriculture and the Bombing Range. PNWIT will meet again next week and Ms. McLane said she will attend in order to make sure Morrow County has a venue for conversations with the Bureau of Land Management, one of the agencies compiling the Draft Environmental Impact Statement for the proposed B2H line.
- Ms. McLane reviewed points to be made in comment letters to BLM on B2H from the County and another from the Military Airspace Advisory Committee.
- Devin Oil filed an appeal to the conditional use permit issued to Love’s Travel Stops. The hearing has to be held within 30 days and April 8th appears to be the best option.
- Ms. McLane said she continues to make the rounds to various meetings and gatherings in the County to inform people about the Comprehensive Plan update currently being undertaken by her office and the Planning Commission.

Discussion - Lack of County Counsel Representation

The following discussion took place with regards to the current lack of representation by County Counsel, Ryan Swinburnson:

Ms. McLane asked, “What is Ryan Swinburnson’s status?” Commissioner Rea said that is for Judge Tallman to answer. Undersheriff Myren said he requested information from Mr. Swinburnson and his reply was he’s no longer doing the job. Mr. Nelson said he also sent an e-mail and Mr. Swinburnson replied he wasn’t County Counsel any longer. I thought there would be a transition, so I was wondering his status too.

Undersheriff Myren said he’d encourage the Court to do it quickly, we have to have representation. I need County Counsel’s recommendation on a few things now. This is darn near the point of declaring an emergency.

Commissioner Russell said the Court talked about this when Judge Tallman was here and a few options will be explored when he returns from vacation, such as meeting with our Deputy District Attorney and interviewing someone from Will Carey’s law firm in Hood River. However, we won’t be doing this until Judge Tallman is back.

Commissioner Rea said, I disagree, I think we need to request services. There have been conversations with Will Carey about engaging him on a short term basis until this can be resolved, but we need legal counsel now. Mr. Gorman said he agreed.

Undersheriff Myren said since the County already has someone in-house, can the Court do that in the interim while a decision is being made.

Mr. Nelson had the following to say, from my perspective, there are other DA offices that do this and they take into account the specialized aspect and things are unique and take specialists. That's the hard part – figuring out the balance of what I'm comfortable doing and what the Court wants for the long run. Hood River would be great but I don't think they'll be here for the meetings all the time.

Commissioner Rea asked about availability with Mr. Nelson's office. Mr. Nelson said meetings and workloads can be moved around and Circuit Court does not meet on Wednesdays, we could probably make it work. Our case management system allows us to do work from home, so we can do some work on weekends. We can have people for the County Court meetings, if it's important for the Court and we would be around for quick responses.

Commissioner Russell said our previous County Counsel rarely showed up to County Court meetings, maybe he did before. Undersheriff Myren said this is why he leans the direction of using the DA's office. We can walk upstairs and ask them to come down to the meetings, when they are held in Heppner. I doubt an attorney in Hood River will drop everything and come with a few days' notice. Commissioner Rea explained Judge Tallman said Mr. Carey's law firm has three other attorneys and they provide County Counsel services to several counties.

Commissioner Russell said I'd like to see it in-house with the understanding if there is stuff outside your area of expertise, you will tell us and we can work in combination with an outside law firm that may have that expertise. Most of the stuff we see is boiler plate contracts. We just want assurance they're ok and sign off. On occasion we may get stuff outside your comfort zone; as long as you're comfortable saying something is outside your comfort zone.

Mr. Nelson said we can come on March 18th and talk about this. Before I e-mailed Mr. Swinburnson I thought he was here for a while and a transition would take place before the end of the budget year. However, he's gone and it puts the County in a tough position. I looked into the County's ejectment case regarding the privately owned mobile home in Boardman on County-owned property. Mr. Swinburnson filed the ejectment order in December and indicated he was following up, but nothing has been done since then. I have no idea of the status or where this goes now.

Mr. Nelson said several years ago he talked to the Court about the DA's office doing County Counsel work and some research was done at that time. I just recently requested copies of Mr. Swinburnson's invoices from Finance Director Rick Worden in order to see what the County pays on average and to work on my proposal. If I propose a set salary, then that amount is guaranteed and doesn't fluctuate. There's a lot to consider, this is an important role. I can guarantee you attorneys in Portland would represent the County just fine and would love the drive here, and they'd charge you for that.

Commissioner Russell said he's not sure we need County Counsel at each of our meetings. Undersheriff Myren said he just wants someone who will answer a phone call and return e-mails. Both Mr. Gorman and Ms. McLane agreed.

Commissioner Rea said there can be times when you can have something you think isn't a big issue and then it does turn into an issue; you need County Counsel there. She then said to Mr. Nelson one of her concerns with using the DA's office is on several occasions she'd been informed someone is an elected official and doesn't answer to the Commissioners. If the County Court wants to go a certain way and you think a different way, I can see it as an issue. Mr. Gorman said County Counsel is not an elected position, the Court could make a change if that happens. Commissioner Rea said this is one reason I'm looking at the Deputy DA.

Mr. Nelson said it would still be through the DA's Office, it's true...and I don't get checks from Morrow County for my pay...you can cancel at any time and go someplace else and I won't have anything to say.

Commissioner Rea asked if Mr. Nelson would feel comfortable wearing two hats. Mr. Nelson said he knows other DAs who do. Commissioner Rea followed up – and not cause an issue? Mr. Nelson said, I've talked to others who are County Counsels and I think we can do good work for the County. You're in a tough spot but you pay County Counsel a lot of money, at least when I checked, it was a decent amount. The County is already paying for my computers and office space and other attorneys will factor that in.

Commissioner Rea asked Mr. Nelson if he will have the time. I estimate an additional 10 hours possibly for the two of us (DA and Deputy DA), but I need to review the most recent bills, but I don't have a problem.

Discussing the difference between criminal law and work performed by a county counsel, Mr. Nelson said, I was previously on the Planning Commission, I can do it. I majored in Environmental Law/Land Use in law school. I'm a criminal attorney...law school teaches you how to pass the bar exam. One thing we are good at is in court and litigation. Nowadays, many attorneys are afraid of going to trial. We have an intimate knowledge of the court here, the court staff and how it works and we're not afraid to be in court – that's where we excel.

Ms. McLane said she is concerned if Mr. Nelson reviews Mr. Swinburnson's most recent invoices to estimate the level of need for the County they won't give a true reflection because he wasn't responding to people. Maybe you need to poll about six people who frequently use County Counsel and ask the real need.

Commissioner Rea moved to engage the services of our District Attorney and Deputy District Attorney to serve as County Counsel beginning March 11, 2015 and ending on April 15, 2015 to allow time for discussion/research of other options during the interim. Commissioner Russell seconded. Unanimous approval.

Miscellaneous – OSU Funding Request

Vern Frederickson, Hermiston

Mr. Frederickson said there's been a change in the way OSU funds its Experiment Stations - OSU has decided 25% of the base funding needs to come from local sources. He said he thinks the money Morrow and Umatilla Counties contribute should count as a portion of that local

support. Ms. Wolff distributed copies of Morrow County budgets showing the total amount to OSU Extension Service in 2014-2015 is \$126,532. This figure includes funding for both the local OSU/Morrow County Office and the Hermiston Agricultural Research and Extension Center (HAREC). Mr. Frederickson said a group, comprised mainly of irrigated agriculture farmers and suppliers, has met several times to discuss how to sustain HAREC so OSU won't slowly ratchet down its support of the station and render it ineffective. The total amount needed is in the \$200,000 range and the group is considering creating a self-imposed assessment on irrigated acres, but maybe the whole burden shouldn't be on irrigated agriculture alone, others receive benefits from HAREC. Commissioner Rea said livestock producers are just one example. Mr. Frederickson said he's looked into forming a special taxing district but that doesn't seem feasible...we need to figure out a way so others step up and pay their piece. He also said he is here today to plant the seed for further discussion. Commissioner Rea discussed the possibility of using energy money designated for Long Range Planning goals. Mr. Gorman suggested the group approach the Columbia River Enterprise Zone II Board because some of the agreements are a direct result from farming, such as ConAgra, but those are time-limited funds as are Long Range Planning funds.

Mr. Frederickson asked the Commissioners to consider this for a while and the group will firm up some options. He said he thinks OSU should contribute more – this arbitrary 25% was instituted when OSU was in a budget crisis and they aren't any more. They need to reexamine their position. They aren't doing as much as they used to, for example, there is still one horticulturist position not filled. Commissioner Rea said we will talk about this again at Budget Hearing time. Mr. Frederickson said he will make this same appeal to the Board of Commissioners in Umatilla County. Commissioner Rea said she would like to know how many Extension people are in Morrow County and how many are in Umatilla County...I know the Extension Office provides a vast amount of information for irrigated agriculture, including the development of a new potato lower in acrylamide. Mr. Gorman added OSU also does a lot of work for dry land wheat. Commissioner Rea said Umatilla County should contribute more than Morrow County because they have access to so many more people there. Mr. Frederickson thanked the Commissioners for their time.

County Counsel Discussion, continued

Ms. McLane asked the Commissioners if the County needs to request records related to the Love's Travel Stop appeals be returned to the County by Mr. Swinburnson. Ms. Wolff said she believes Judge Tallman plans to ask Mr. Swinburnson to stay on for the Love's/Devin Oil appeals.

Sheriff's Office Requests for Exception to Vacation Accrual Limit

Undersheriff Steve Myren

Undersheriff Myren said he is seeking approval to allow two employees to exceed the Vacation Accrual Limit. The first is for Detective Terry Harper who is approximately 15-20 hours over the 256 hour limit and wants permission to let it continue to accrue. He will be taking some time off shortly, but plans to take three weeks of vacation in August.

Commissioner Rea asked, "Are we beginning to set a precedent?"

Undersheriff Myren said there are a few employees for whom he doesn't come to the Court with requests because some like to hoard it and others just don't take the vacation time and are aware of the limit – they know; it's not our job to hold their hand. The request for this individual and the next haven't had much opportunity to take time off, and it then becomes incumbent upon me to say they need this exception.

Ms. Wolff said this is the first she's heard – this hasn't been brought to me, we haven't discussed it. The Personnel Manual says the Court can grant the request but the employee has to take vacation within a month. Undersheriff Myren said Det. Harper will take a little time within the next few weeks, but no other time off is scheduled and he will be 15-18 hours over. Ms. Wolff said this isn't the first time Det. Harper has done this. Commissioner Rea said she didn't have a problem with the request and Commissioner Russell agreed.

Commissioner Russell moved to approve the extended vacation hours overage stated by Undersheriff Myren for Detective Terry Harper to allow Detective Harper to go over the limit on a temporary basis, with the understanding he will use vacation time in August 2015. Commissioner Rea seconded. Unanimous approval.

Undersheriff Myren explained Communications Director Kristen Bowles is over her limit, but he's now sure by how much. She has not been able to take time off because new dispatchers have been hired and have not been able to work independently. Sergeant Bowles wants to use her vacation time and won't exceed the 60 days.

Commissioner Russell moved to allow Sgt. Kristen Bowles going over the Vacation Limit because the Sheriff's Office has been short staffed and management didn't do a good job managing while short staffed, with the understanding when new employees are able to work independently, Sgt. Bowles will quickly use some of this time to go below the limit. Commissioner Rea seconded. Unanimous approval.

Undersheriff Myren said Sgt. Bowles will get her vacation hours down within 60 days and he would inform Det. Harper we won't do this again next year.

Commissioner Rea suggested this policy be reviewed at the next Department Heads & Elected Officials meeting.

10:50 a.m. Executive Session

ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

Ms. Wolff said we will be coming out of Executive Session and making a decision. Commissioner Rea said we're recessing the regular Court meeting now with the intention of coming out of Executive Session and making a decision.

10:57 a.m. Closed Executive Session

Commissioner Russell moved to approve Ms. Wolff's recommendation that the County engage outside counsel regarding Summons No. 14CV251, In the Circuit Court of the State of Oregon for the County of Morrow, Denise Williams, Plaintiff, v. Morrow County, Defendant. Commissioner Rea seconded. Unanimous approval.

Miscellaneous

Assessor's Office

Mr. Gorman said he was hoping to have quotes for new computers, as mentioned last week, but the quotes have not yet arrived. Ms. Wolff asked Mr. Gorman to let her know the amounts so she can first check the Computer Budget.

District Attorney's Office

Mr. Nelson said he's talked to the Commissioners in the past about the possibility of relocating the Child Enforcement Office to the Courthouse once the new Administration Building is completed and the County Court offices are vacated. I understand a decision hasn't been made as to the use of those offices. Mr. Gorman said with the recent sewer damage at the Courthouse which resulted in the relocation of Assessor's Office employees to the County Court offices, he's realized those offices may be more suitable than their current offices. Mr. Gorman proposed moving the Victim's Assistance and Child Enforcement Offices to the current Assessor's Office and move Mr. Gorman's office into the Victim's Assistance Office so the Assessor's personnel are located in the same wing of the Courthouse. My current office could be used for records storage for Child Support & Victim's Assistance, but I haven't run this by my employees yet. Mr. Nelson said he hasn't either. Commissioner Rea reminded them they are supervisors and can make the decision. She also said she goes back to Mr. Nelson's previous request to move Child Support Enforcement into Judge Tallman's current office, which would necessitate reconfiguring the office to create secure storage. This will have a negative impact on the historical layout of the building. I like this new idea better to let the District Attorney have the current Assessor's Office because that back office would be an ideal storage space. Discussion. Mr. Gorman said he's not sure he's willing to do this yet. Commissioner Rea said she has major issues with distorting Judge Tallman's office by trying to build a secure file area.

Adjourned: 11:12 a.m.