

Joe Avery Testimony September 8, 2022 Rehearing West Pine Fork Road

First, please let the record reflect that the petitioner Paul Loutzenheiser lacks legal standing to request this or the first hearing. Per Idaho Code 40-203A, anyone who lives or owns property in the county may submit a petition. He neither lives in nor owns real property in Shoshone County; however, he does live, work and own property in Kootenai County.

Regarding public access in the West Fork Pine Creek, there are two different routes. One, that I allow across my property, is the Langlois system, or also called the West Fork Road. The other is from Latour Creek on the Boise Peak-Mirror Lake Road. Once a person comes into the West Fork Pine Creek, all public roads on the BLM have seasonal motorized use restrictions, or are closed to motorized use.

The old creek bottom road that the petitioner, Paul Loutzenheiser seems to be asking for the validation of are 2 private property parcels followed by BLM administered land that they officially closed to motorized use with their 2007 Resource Management Plan.

This road has several water issues. Kajsa van de Riet from the Idaho Department of Environmental Quality, in an email to the petitioner, addressed creek crossings and the beaver dam that has been built on the road. (Exhibit A). I own two other parcels of land in this area. Due to the non-motorized designation on the BLM-managed land, I just walk to my properties. If the road is validated as a county road, will the County re-construct it, or will I be allowed to re-construct it myself to access my lands? Or, is it just to be a jeep trail for the Trailblazers?

There is confusion about how far this road is to be validated. In the original petition, the petitioner said across Avery's property to the BLM land. But the Commissioners' "Findings of Facts and Conclusions", page 6 line 24, says the terminus location of the portion of the West Fork Pine Creek Road being requested for validation is at the County line. The "County line" is not defined, but would probably mean the road across the BLM-managed lands to the Kootenai County line. This would take in the North Idaho Trailblazers' playground they call "The Roller Coaster". The Roller Coaster is a series of holes and mounds dug with excavators and logs and rocks placed as obstacles for "off-road" use. In one area, the road is blocked and totally non-traversable, unless a person is in a rock crawling sized jeep. For that area, one has to go "off road" to get around the blockage. Will this playground still be allowed on a county road? Would the County be liable for accidents?

JOE AVERY

In a meeting with Prosecuting Attorney Ben Allen, I asked how is that Paul Loutzenheiser, who, per a County public records request, is **not** a resident or a property owner in the County, is allowed to petition for a road validation when Idaho Code 40-203A is very clear that a petitioner has to be a resident or property owner in the County. Mr. Allen's reply was that the commissioners can ask for a validation at any time, so we would probably be in the same place now. My question is: why didn't the commissioners ask for the validation themselves over a year ago? The commissioners had 17 months from the time the County removed the road blockage until the time Paul Loutzenheiser petitioned for the validation. In the same meeting with Mr. Allen, he mentioned that in some cases roads can be validated and then immediately closed (or abandoned) or certain restrictions applied such as "non-motorized use". This is the way that road is now. In reference to a similar road validation known as Trapper Creek Road, the County validated Trapper Creek Road as a county road. First American Title has said that they will not guarantee access on this road to anyone, until the Warranty Deeds from the land owners have been recorded. This would mean the County must first purchase the road's land from the land owners, and since August 2019, the land owners have still not been paid a cent for the land taken for the road.

Purchase of property on the West Fork Pine Creek Road, if validated, will be required in order for a title company to verify it as a county road, just like Trapper Creek. If they County fails to pay the land owners for the road's land, & the land owners still have title, who will be held liable in the event of an accident?

Minutes from two commissioners' meetings in 1909 (Exhibit B) discuss the creation of a road near the West Fork of Pine Creek, including mentioning that a survey and report must be completed before they would create the road. The second meeting noted that based on the report, they agreed to create the West Fork Pine Creek Road. I submitted a public records request for the survey and report the minutes referred to (Exhibit C). Neither document exists, which in my opinion, gives no legal credence to the creation of the road.

In the description of the road, it incorrectly states that it begins at the confluence of the West and East Forks of Pine Creek in section 19. The confluence is actually in section 20, not 19. I showed these 1909 minutes to the title company and they said the minutes were completely meaningless to them. There was no recorded survey or other follow-up actions.

The Damage Survey Reports; C-223 & C-224 (Exhibit D) for maintenance and/or repair on the West Fork Pine Creek Road both show an inspection date of January 31, 1974. These reports pertain to flood damage and the copies are faded and virtually impossible to read. Report C-224 mentions the West Fork Road 1,000 feet from the Langlois junction. From this wording, one cannot tell where this actually is. Report C-223 states ahead junction Langlois Creek Road and 100 feet of road washed out. Again, one cannot tell where this actually is. These reports contain only estimated costs and fail to depict any percentage of the estimated repair work that was done. Therefore, due to the lack of precise location language and evidence the estimated work was ever done, both of these reports fail to definitively demonstrate that public funds were ever spent on the portion of the road subject to this validation hearing.

Who is paying for all of this? In the Trapper Creek Road validation, the petitioners were ordered to pay for the survey. If the West Fork Pine Creek Road is validated all the way to the county line as depicted in the Facts of Findings and Conclusions, the survey will be extremely expensive. Let's make sure that this petitioner must pay for the survey as well; not the residents and property owners of Shoshone County.

If the commissioners validate this as a county road, that road will see public motorized access. The County can then reconstruct the road to meet the legal standards, and I'll have motorized access to my other isolated properties in the area instead of having to walk miles to them. Then there will be no need for public access on my Langlois Road. I do not want to have two public roads across my property.

JOE AVERY



Jay Huber

Paul Loutzenhiser <p.loutz1976@gmail.com>

Monday, April 04, 2022 4:10 PM

Mike Fitzgerald

From: Sent: To: Cc:

Subject:

bob jutila; Jay Huber; Jim Cason; John Hansen; Lori Teeters (BOCC Secretary); Shoshone County Prosecutor; Darrell Raver

Dept. of Environmental equality's Opinion of West Fork Pine Creek rd

CAUTION: This email originated from outside of the Shoshone County email system. Be extra cautious, especially if you are not expecting this email!

DO NOT CLICK links or open attachments unless you recognize the sender and know the content is safe If there is any doubt, hit the Phish Alert button!

Sent from my iPhone

Begin forwarded message:

From: Kajsa.Vanderiet@deq.idaho.gov

Date: September 3, 2021 at 7:29:28 PM PDT

To: p.loutz1976@gmail.com

Cc: idahorubicon@gmail.com, Robert.Steed@deq.idaho.gov, Chantilly.Higbee@deq.idaho.gov

Subject: Re: Your trip up to Rollercoaster with Chris Shafer and BLM

Hi Paul,

you to Robert Steed (robert.steed@deq.idaho.gov) and Chantilly Higbee (Chantilly.higbee@deq.idaho.gov). I'm cc-ing both on this I'm sorry for the delay. I'm actually leaving my position with DEQ for family health reasons. My last day is today. I will have to refer

problems too room for improvement down there, but that looked achievable. When folks are getting off trail, obviously that can pose other there had been a beaver dam and there were trout present in that pool where the vehicles drive when we visited. There's some place where that seemed to be a problem was at the very bottom where the trail travels some distance up a side channel where conclusion. Nearly all of the fords across the stream appeared stable and crossed at a 90-degree angle to minimize impact. The only brief look. It is quite a distance from water, which is helpful. I wasn't able to do a very in-depth review so others may have a different aquatic habitat perspective, I did not see obvious water quality impacts from the roller coaster portion of the trail during our very concerns, but those are not really DEQ's bailiwick. That seems to be more of an issue for BLM to handle. From a water quality and Personally, I thought your trail looked like fun. I understand there are land use/trespassing issues/landowner agreement - type

important to protect those resources while still being able to have some fun and access public lands. West Fork of Pine Creek is actually in pretty decent shape and contains some healthy trout and invertebrate populations. It's

contamination from upstream mine sites. Highland Creeks where vehicles are traveling in the actual stream channels and where the in-channel sediments contain From what I've seen up there, I am more concerned about the water quality impacts of vehicle traffic in Grouse, Denver, and

I hope that helps. Sorry again for the delay.

Kajsa Eagle Van de Riet Coeur d'Alene Basin Restoration Plan Coordinator Water Quality Analyst

Coeur d'Alene Regional Office

2110 Ironwood Parkway, Coeur d'Alene, Idaho 83814

Direct: (208) 666-4633

Email: kajsa.vanderiet@deq.idaho.gov

Web: http://www.deq.idaho.gov/restoration-partnership & http://www.deq.idaho.gov/basin-watershed-advisory-groups

This picture of beaverdam in road. W. Fork Pinecreek photo taken May 2022

other picture of same beaverdam when Vehicles driveing thru it. photo oct 2020





LINCOLLEDINGS COUNTY COMMISSIONERS

Shoshone County, State of Idaho.

Regular April Term, 190.9..

Seventh

Day.

Wallace, Idaho.

April 19th, 1909.

The Board met pursuant to adjournment:-

Present:-

Commissioners:-

Robert Sterling,
John F.Murphy,
D.E.Keys,
Stenley P. Feirwesther.

The following proceedings were had to-wit:-

The record of yesterdays proceedings was read and approved:-

The petition and bond of 0.E. Anders-on and others for the establishment of a public highway commencing at the confluence of the East and West Forks of Pine Creek in Sec. 19, Tp. 48, N.R. 2, E.B.M., following said thence one fourth mile across Sec. 36, Tp. 48, N.R. 1 E.B.M., thence southerly across Sections 1 and 12, thence Westerly across Secs. 13, 14 and 15 of Tp. 47, N.R. 1, E.B.M., was examined and approved, and George and I.S. theore and I.S. Trank, C.H.Strope and W.H.Stokes were appointed viewers to lay out and survey said proposed road and to report to this Board thereon.

The following bills and claims against the County were examined and approved, and in the payment of the same, the Auditor is hereby ordered and directed to draw warrants on the several County Funds as follows, to-

CURRENT EXPENSE.

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PROCEEDINGS COUNTY COMMISSIONERS.

Shoshone County, State of Idaho

Regular July

Term, 190.9...

Twelfth

ay.

Wednesday. Wallace, Idaho. July 28,1909.

The Board met pursuant to adjournment:

Present:

Commissioners:

Robert Sterling, John F.Murphy,

Clerk:

D.E.Keys, Stanley P.Fairweather.

The following proceedings were had to-wit:

The record of yesterdays proceedings was read and approved.

The official bond of L.F.Bechtel as Road Overseer of Road District No. 7, with John Mann and William J.Mann as sureties in the penal sum of \$300.00, was examined, approved and ordered recorded.

The report of the viewers heretofore appointed on the proposed wagon road beginning at the confluence of the East and West forks of Pine Creek, thence in a generally southerly course along the said West Fork of Pine Creek to the East end of the old State wagon road in Sec. 15, Tp. 48, N.R. 1 E.B.M., was examined and approved, and it was ordered that a wagon road commencing at a point near the confluence of the East and West Forks of Pine Creek in Sec. 19, Tp. 48, N.R.2 E.B.M., thence in a generally Southerly direction along said West Fork of Pine Creek to Brushs Cabin situate thereon near the East line of Sec. 15, Tp. 47, N.R.1 E.B.M., be, and the same is hereby declared to be a public highway.

It appearing to the Board that the condition of the stream from the confluence of the East Fork of Pine Creek up the West Fork thereof to Brush's Cabin, on account of brush and timber being in said stream tends to endanger the county road along the benks thereof, and the bridges across said stream by reason of the liklehood of washing away said bridges and overflowing onto said road, it was ordered that the brush and timber now in said stream be cleared out and the stream cleaned from the confluence of the East Fork of Pine Creek up the West Fork thereof to Brush's Cabin, a distance of about seven miles, and that Frank Brooks be authorized to clear said brush and timber and clean said stream.

In the matter of the equalization of property assessments in Shoshone County, Idaho, for the year 1909, the Board sitting as a Board of Equalization, denied the petitions and applications of the Edward Rutledge Timber Co., the Milwaukee Land Company, the Potlatch Lumber Company, the Clearwater Timber Company, Ltd., the McGoldrick Lumber Company, the Stack-Gibbs Lumber Company, the Cameron Lumber Company, and C.R.Smith for a reduction of the assessed valuation of the timber, timber lands and other property assessed to said persons, firms and corporations as the same now appear on the assessment roll for the year 1909.

and at this time the Board adjourned until to-morrow morning at 9 o'clock.

APPROVED:-

Rober &

CHAIRIAN .

ATTEST:>

CLERK.

Hanweaker



Exhibit 3-C



Ref. No.

PUBLIC RECORDS REQUEST SHOSHONE COUNTY

700 BANK STREET, WALLACE, IDAHO 83873 Phone: (208) 752-3331

Email Note: County employee e-mail addresses typically follow the format of first initial and last name. For example: Joe Doe = <u>jdoe@co.shoshone.id.us</u> or <u>jdoe@shoshoneso.com</u>

T 0	1	
Name: Joe Avery	Date: 8/31/2022	Time:
Mailing Address, City, State, Zip: 3054 B W. Fork Pinecreek	Phone (208) 682-47	60
Pinehurst Idaho 83850	Fanc	
	-	
Email:	Prefer delivery by: Email Mail	Will pick up in person
All requests for public information must be made in writing. Please indicate Please make your request specific and concise, including department(s request. Please also fill out the email attachment form, as well, if you a) and document type(s), as this will expedite are requesting copies of County emails.	the processing of your
I am requesting to copy or examine certain records of (the) Shoshone Couridentified as follows:		
Survey and report as noted in the	2 attached documents re	eferencing the
public highway.		,
certify that the information reviewed or received will <u>not</u> be used as a	mailing or telephone list as probibited w	oder Idaho Codo 874 420
Signature of Requesting Party: Que average	- and the second of the second	nesio ouet 314-120.
Respo	nse	- Territoria de Partido de Associações de Caracidado de Ca
Request Granted: The requested record is attached.		
Response Delayed		
Additional time is necessary to locate or retrieve the requested reco following the date of your request.	rd. You should receive a response no later t	han ten (10) working days
The electronic records requested will have to be converted to anoth following the date of your request to respond. Please contact (the) Sho discuss when you can expect to receive a response.	er electronic format, which will take more the shone County	an ten (10) working days
Advance Payment Required: Advance payment of the cost associated Shoshone County	with responding to your request is required. cuss the amount and manner of the advance	Please contact (the)
Unable to Respond for One or More of the Following Reasons		
☐ The request is ambiguous. Please provide additional information to	clarify your request.	
The requested records are not known to exist.		
This office or department is not the custodian of the requested record	d.	
☐ Notice of Denial: The requested record is exempt from disclosure pursua	ant to Idaho Code § 74(104-111).	

	Notice of Partial Denial: Your request has been partially denied. Certain information has been determined to be exempt from disclosure pursuant to Idaho Code § 74 (104-111), and has therefore been redacted from the requested record. A copy of the requested record with the record is attached.
	If your request has been denied or partially denied, an attorney for Shoshone County has reviewed the request, or Shoshone County has had the opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so.
1	If you wish to appeal the denial or partial denial of your request for public records you may do so pursuant to the provisions of Idaho Code § 74-115 which requires that a petition be filed in the District Court within 180 days from the date of the mailing of the notice of denial or partial denial. Signature of Responding Official/Custodian Date:
1	Signature of Responding Official/Custodian Date: 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2

BOOKE 409-608

PROCEEDINGS COUNTY COMMISSIONERS.

Shoshone County, State of Idaho.

.... Ragular April

Term, 190 9.

Seventh

Wallace, Idaho.

April 29th, 1909.

The Board met pursuant to adjournment:-

Present:-

Commissioners:-

Robert Sterling,

John F.Murphy, D.E.Keys, Stanley P. Felrwesther,

The following proceedings were had to-wit;-

The record of yesterdays proceedings was read and approved:-

The petition and bond of 0.E. Anders-on and others for the establishment of a public highway commencing at the confluence of the East and West Fork of Pine Creek in Sec. 19. Tp. 48, N.R. 2. E.B.M., following said thence one fourth mile across Sec. 36, Tp. 48, N.R. 1 E.B.M., thence and fourth mile across Sec. 36, Tp. 48, N.R. 1 E.B.M., thence and 15 of Tp. 47, N.R. 1, E.B.M., was exemined and approved, and George Reinsk, O.H.Strope and W.H.Stokes Were appointed viewer to lay out and Eurvey said proposed road and to report to this Board thereon.

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CURRENT EXPENSE.

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PROCEEDINGS COUNTY COMMISSIONERS.

Shoshone County, State of Idaho

Regular July Term, 1909 Twelfth Day

Wallace, Idaho. July 28,1909. The Board met pursuant to adjournment:

> Robert Sterling, John F. Hurphy, D. E. Keys,

Wednesday.

Clerk:

Stanley P. Fairweather.

The following proceedings were had to-wit:

Present:

The record of yesterdays proceedings was read and approved.

Commissioners:

The official bond of L.F. Bechtel as Road Overseer of Road District No. 7, with John Mann and William J. Mann as sureties in the penal sum of \$300.00, was examined, approved and ordered recorded.

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In the matter of the equalization of property assessments in Shoshone County, Idaho, for the year 1909, the Board sitting as a Board of Equalization, denied the petitions and applications of the Edward Rutledge Timber Co., the Milwaukee Lend Company, the Potlatch Lumber Company, the Clearwater Timber Company, Ltd., the McGoldrick Lumber Company, the Stack-Gibbs Lumber Company, the Cameron Lumber Company, and C.R.Smith for a reduction of the assessed valuation of the timber, timber lands and other property assessed to Baid persons, firms and corporations as the same now appear on the assessment roll for the year 1909.

and at this time the Board adjourned until to-morrow morning at 9 o'clock.

APPROVED:-

Calely Develing CHAIRIAN.

ATTEST:

CLERE.

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DAMAGE SURVEY REPORT

(Under Public Law 606, 91st Congress)

EXECUTIVE OFFICE OF TH	IE PRESIDENT	U		
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a. YES b. NO	c. REPRESENTATI	VE OF APPLICANT (Signature)		d. DATE
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FOR FEDERAL OFFICIALS, OEP CIRCULAR 4000.6B



DAMAGE SURVEY REPORT

(Under Public Law 606, 91st Congress)

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a. YES b. NO	c. STATE INSPECT	OR (Signature) d. AGENCY OR OFFICE		e. DATE
a. YES b. NO	c. REPRESENTATI	VE OF APPLICANT (Signature)	-	d. DATE

Form OEP 164 February 1971

INSTRUCTIONS FOR COMPLETING THIS FORM ARE CONTAINED IN MANUAL FOR FEDERAL OFFICIALS, OEP CIRCULAR 4000.6B