

BEFORE THE SHOSHONE COUNTY BOARD OF COUNTY COMMISSIONERS

In the matter of:

Rehearing of Petition for Validation of
"WEST FORK PINE CREEK ROAD"
Shoshone County, Idaho as a public road
and/or right-of-way.

AMENDED
**FINDINGS OF FACT, CONCLUSIONS
AND DECISION**

A Petition for a re-hearing to Validate a Portion of West Pine Creek Road, Shoshone County, Idaho, dated July 19, 2022, was submitted to the Shoshone County Board of County Commissioners by Sawtooth Law representing Petitioner, Paul Loutzenhiser, pursuant to Idaho Code § 40-208(2). A public re-hearing on that petition was duly held on September 8, 2022, in the county of Shoshone, state of Idaho, with notice being provided pursuant to Idaho Code § 40-203. A decision regarding the matter was made by the Shoshone County Board of County Commissioners on October 20, 2022. This order constitutes the formal Findings of Fact, Conclusions of Law, and Decision, upon which an appeal may be taken.

FINDINGS OF FACT AND CONCLUSIONS

FINDINGS OF FACT

The following Findings of Fact were relied upon to reach the determination made by the Shoshone County Board of County Commissioners. If any of these Findings of Fact are deemed to also constitute Conclusions of Law, they shall be incorporated therein. The Findings of Fact consist of a summary of those facts and exhibits presented on the record at the public hearing in this matter which the Board of County Commissioners have relied upon in reaching their determination, and herein incorporate by reference the full testimony or exhibit related to said fact that was received and admitted at the time of the public hearing.

A. The Board finds the public re-hearing record is comprised of:

1. Petition for re-hearing Validation filed by Sawtooth Law who represents Petitioners

1 and dated July 19, 2022;

2 2. Audio recording of public hearing dated March 29, 2022;

3 3. Findings of Fact, Conclusions and Decision dated June 21, 2022:

4 4. Staff report provided by Jim Cason, Public Works supervisor, read by Stephanie
5 Featherstone regarding the finding of no proof of Shoshone County receiving
6 reimbursement from FDAA that was submitted in 1974.

7 5. Petitioner Exhibits as follows:

8 i. Petitioner Exhibit A – Illustrations from Shoshone County Assessor’s office
9 maps.

10 ii. Petitioner Exhibit B – Excerpts of proceedings of Commissioner’s dated
11 April 19, 1909 approving survey of the route in Exhibit A.

12 iii. Petitioner Exhibit C – Photos and copies of completed damage survey
13 reports and summary submitted for repairs resulting from 1974 flood.

14 iv. Petitioner Exhibit D – Various governmental maps dating from the 1940s,
15 1960s, and 1970s, and geological surveys dating from 1961, and 1965
16 Metsker’s map, and 1970s survey.

17 v. Petitioner Exhibit E – Timberland Eligibility Determination Form dated
18 4/18/88.

19 vi. Petitioner Exhibit F & G – Legal and easement descriptions by private
20 landowners, and their retained surveyors.

21 vii. Petitioner Exhibit H – Copy of BOCC minutes throughout various years
22 authorizing for contract of W. Fork Pine Creek Bridge replacement.

23 viii. Petitioner Exhibit I & J – E-mail correspondence between Paul Loutzenhiser
24 and Darrell Raver, President of NITB, Todd Higen, Idaho Dept. of Water
25 Resources, and Kajsa Eagle Van de Riet, CDA Basin Restoration Plan
26 Coordinator.

- ix. Petitioner Exhibit K & L – E-mail correspondence between Paul Loutzenhiser and Brian White, Outdoor Rec Planner for CDA Field Office, Darrell Raver, NITB President, BOCC, BOCC Secretary and Jim Cason.

6. Exhibits from the Public:

- i. Public Exhibit PC-1 – Letter and attached documents from David E. Wynkoop, Sherer & Wynkoop, LLP to Shoshone County Board of Commissioners, dated August 25, 2022 on behalf of John Hancock Life Insurance Company (USA) to uphold denial of original petition decision on April 26, 2022;
- ii. Public Exhibit PC-2 – Letter from Joe Avery, submitted September 8, 2022 with copies of photos of beaver dam in road W. Fork Pine Creek May 2020, copy of minutes from BOCC April 7, 1909, Joe Avery's Public Records Request 8/31/2022, and damaged survey report dated January 31, 1974.
- iii. Public Works Statement read by Stephanie Featherstone which articulated that no documentation was found where the county was compensated from FDAA for reimbursements pertaining to 1974 storm/flood disaster.
- iv. Public statements opposed to the validation presented from the following: Cathy Nestor, Tim Traugher, Matt Beehner, Jann Higdem, Sid Clark, and Dayton Wiksten.

B. As to procedural items, the Board finds the following:

- 1. The Petition for a rehearing of the Validation was submitted to the Shoshone County Board of Commissioners seeking validation of West Fork Pine Creek Road on July 19, 2022;
- 2. A Notice of Public Hearing on this request for rehearing and reconsideration of application was authorized with a hearing to be held on September 8, 2022 at 9:30

1 a.m. in the 3rd Floor District Courtroom of the Shoshone County Courthouse, 700
2 Bank Street, Wallace Idaho 83873, with a legal notice published in the Shoshone
3 News Press August 5, 2022, August 19, 2022, and September 2, 2022;

4 3. On September 8, 2022, a public hearing was held where:

5 i. The Petitioner presented supporting statements and exhibits in aid of their
6 petition for the rehearing.

7 ii. Oral and written public testimonies were given in support and opposition.

8 4. The matter was taken under advisement for a decision to occur on October 20, 2022,
9 at 9:30 a.m.

11 **APPLICABLE LEGAL STANDARDS**

12 C. Idaho Code § 40-203A:

13 I.C. § 40-203A provides that any resident or property holder within the county may petition
14 the Board of Commissioners to validate a highway or public right-of-way if the legal
15 existence of such highway or right-of-way is unknown or in dispute. The Board must follow
16 the procedures set forth in Idaho Code § 40-203 if proceedings are initiated (the statute
17 used to determine abandonment of a public roadway) and must decide whether validation
18 of the road or public right of way is in the public interest. I.C. § 40-203(1)(h). Idaho Code
19 § 40-203A defines the standard for validating such roadway in pertinent part as follows:

20 (2) If proceedings for validation of a highway or public right-of-way are
21 initiated, the commissioners shall follow the procedure set forth in section
22 40-203, Idaho Code, and shall:

23 (a) If the commissioners determine it is necessary, cause the
24 highway or public right-of-way to be surveyed;

25 (b) Cause a report to be prepared, including consideration of any
26 survey and any other information required by the

1 commissioners;

2 (c) Establish a hearing date on the proceedings for validation;

3 (d) Cause notice of the proceedings to be provided in the same
4 manner as for abandonment and vacation proceedings; and

5 (e) At the hearing, the commissioners shall consider all
6 information relating to the proceedings and shall accept
7 testimony from persons having an interest in the proposed
8 validation.

9 ...

10 (5) When a board of commissioners validates a highway or public right-of-
11 way, it shall cause the order validating the highway or public right-of-way,
12 and if surveyed, cause the survey to be recorded in the county records and
13 shall amend the official highway system map of the respective county or
14 highway district.

15
16 **CONCLUSIONS**

17 The Board of County Commissioners of Shoshone County hereby finds that the record, including
18 testimony and evidence produced at the public rehearing hereon, supports the following conclusions:

- 19 1. Evidence is not sufficient to support the County's recognition and/or acceptance of the petitioned
20 West Fork Pine Creek Road as a public road and/or right-of-way.
- 21 2. Evidence is not sufficient to support that the Petitioned West Fork Pine Creek Road has been
22 used as a public road and/or right-of-way; and
- 23 3. Evidence is not sufficient to support that validation of the Petitioned West Fork Pine Creek Road
24 as a public road and/or right-of-way is in the public interest.
- 25
26

DECISION

DENIED

DATED this 5th day of January 2023

Tracy Casady
Tracy Casady, Commissioner

Attested to by: James Eberhard

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