

**SAN JUAN COUNTY COMMISSION MEETING**  
**June 2, 2014**

The regular meeting of the San Juan County Commission was held at 10:00 A.M. in the Commission Room at Monticello, Utah.

Present:        Bruce Adams, Chairman  
                  Kenneth Maryboy, Commission Vice Chairman  
                  Phil Lyman, Commissioner  
                  Kelly Pehrson, Chief Administrative Officer  
                  Norman L. Johnson, County Clerk /Auditor

Attendees: Monte Wells, Jerry McNeely, Marilyn Boynton, Nick Sandberg, Bob Turri, David Boyle, Wesley Hunt, David Redd, Jon Hunt, Calvin Hunt, Kay Shumway, Phil Mueller, Frank Morrell, David Bronson, Larry Sorrell, Jennifer Swanson, Cody Deeter, Lynn Stevens, Howard Randall, Jim Hurst, David Bylis, Jeff Nielson, Arlan Henderson, Tim Chamberlain, Jason Davis, Crystal Holt

The minutes of May 27, 2014 were approved on a motion by Commissioner Lyman and seconded by Commissioner Maryboy. Voting was unanimous.

Crystal Holt – SJC Personnel Office

Crystal presented the name of Heather Howell as the LaSal Sr. Center Aid, step 1, with Todd Gruber as an alternate and Marty Shupe as the Deputy Treasurer, step 38, with Crystal Adair as an alternate. After a brief discussion a motion to approve the hires, as presented, was made by Commissioner Lyman and seconded by Commissioner Maryboy. Voting was unanimous.

Kelly Pehrson – SJC CAO

Kelly presented the bids for engineering design and construction management on the 3 Step Road repair work. Creamer & Noble bid \$12,011.40 for Design and \$10,318.45 for Construction Management. Jones and DeMille bid \$10,000.00 for Design and \$8,000.00 for Construction Management. Following a brief discussion a motion was made by Commissioner Maryboy and seconded by Commissioner Lyman to award the bids to Jones & DeMille. The voting was unanimous.

Kelly presented one (1) building permit:

Matt Zunich – shop – Spanish Valley

Commissioner Lyman made a motion to approve the permit provided all appropriate signatures and payments are in place. The motion was seconded by Commissioner Maryboy. Voting was unanimous.

In other matters Kelly reported that the final walk thru on Piute Bridge will be Wednesday and that this Saturday is the County Health Fair at USU in Blanding.

Jerry McNeely – SJC Liaison

Jerry reported on meetings with SITLA about widening the ATV Trails to 60” and requested the Commissioners sign a letter of support for the action. Jerry gave the commission a copy of the memo from SITLA to BLM on the Master Leasing alternative plans and a copy of the latest competitive bid statistics. Commissioner Adams also reported on how the competitive bid money helps us through the CIB. Commissioner Adams said the CIB is very healthy as some of the early loan money is now being repaid and is available for redistribution.

Jerry also mentioned that the BLM is continuing to work on the Copper Mine site and working with them on a seismic project which could expand the mine. He said with the short week there was little contact with the Forrest Service or NPS but he did attend a Housing Authority meeting.

Nick Sandberg – SJC Planner

Nick discussed the activities of the Gunnison Sage Grouse (GSG) implementation team, which will meet again on Tuesday in Grand Junction. He asked if the County would have any interest in participating and giving financial assistance to hire a facilitator on some of the Forrest Service projects. The Commissioners expressed interest if they are there as coordinators not cooperators.

Commission Reports:

Commissioner Lyman was in St George Wednesday at the five county uranium withdrawal working group. He met with the Heritage Council and will be meeting with the lands council tomorrow at the Dugout Ranch. They have divided up the County into 6 areas and have worked through 2 of them and hope to go through 2 tomorrow. Commissioner Lyman asked about the TV service for Navajo Mountain and reminded the Commissioners we need to do something with the Mexican Hat Service District budget by Fall. Commissioner Lyman has spent a great deal of time working on the Resolution which will be presented later in the meeting today.

Commissioner Adams attended the CIB retreat in Cedar City. He flew over in the county plane and was shown how it needs new headphones but with the recent upgrade work it is otherwise in great shape. Commissioner Adams reported that on the 5<sup>th</sup> UDOT will bring their bridge inspection equipment to look over the Mexican Hat Bridge. The inspection will take 2 hours and the road will have to be closed for that period of time.

Commissioner Maryboy had stepped out of the room and did not make a report.

Public Comments:

Howard Randall, SJC Assessor presented the Commission the 2014 list of exempt properties and indicated it was a final list to date. With a brief discussion a motion was made by Commissioner Lyman and seconded by Commissioner Adams to approve the list. Voting was unanimous. Commissioner Maryboy was not present for the vote.

Norman Johnson, SJC Clerk / Auditor requested permission to sign and send a local consent

form to Comb Ridge Coffee so they could acquire a State DABC License to sell 3.2 beer, already licensed by the County, in their restaurant if they so desired.

Marilyn Boynton, Citizen from Blanding, clarified that her request for support of the San Juan Hill Road, last week, was in reference to the access road going from the State Highway down to the bottom of the hill not the San Juan Hill itself. Marilyn also said that Charles Delorme had reported there have been many requests for information about ATV Trail riding locations in SJC since the Recapture exposure.

#### Recapture Trail Resolution – Commissioner Phil Lyman

Commissioner Lyman presented and reviewed the changes made in Resolution 2014-03 which was presented last week as a draft.

#### **Resolution 2014-03**

#### **A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY, UTAH, ASSERTING SAN JUAN COUNTY'S VALID EXISTING RIGHT-OF-WAY RELATED TO THE ROADS/TRAILS IN RECAPTURE CANYON.**

(The entirety of the signed resolution is made as an attachment to the minutes hereto)

There was considerable discussion from the Commissioners, staff and the public including Nick Sandberg, David Bronson, former Commissioner Lynn Stevens and Bob Turri. Commissioner Lyman said he is working through this resolution to try and decriminalize the Recapture issue and past actions. Several times there was mentioned the sensitivity of this Issue to the Native American citizens. Commissioner Lyman said he has a meeting next week with the Ute Mountain Chairman and has spoken to Malcom Lehi. Commissioner Lyman stated he means no disrespect to the Native American concerns.

Commissioner Maryboy said he knows each of the Commissioners have worked together to support each other on many issues but that this is a very sensitive issue to him and does not think it appropriate for Recapture Canyon to become a tourist area. It needs more discussion. The Canyon should be quiet and peaceful, like a cemetery and he would like to see additional input from the Native Americans

There was additional discussion about including Indian Creek in the Resolution. It was decided the purpose of the Resolution is to gain local jurisdiction not ATV use, therefore the Indian Creek issue will be studied further.

Commissioner Lyman made a motion to adopt Resolution 2014-03. There was no second. Commissioner Adams passed the Chair to Commissioner Maryboy and then Commissioner Adams seconded the motion. Commissioner Maryboy, acting as Chair, called for a vote. Voting was 2 in favor (Adams & Lyman) and one (Maryboy) opposed. Commissioner Maryboy declared the motion passed and handed the chair back to Commissioner Adams.

12:03 PM Commissioner Lyman made a motion to go into an executive session which was seconded by Commissioner Maryboy. Voting was unanimous

Exit the Executive Session and Adjourn 12:25 PM.

**RESOLUTION NUMBER 2014-03**

**OF THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY,  
UTAH, ASSERTING SAN JUAN COUNTY'S VALID EXISTING RIGHT-OF-WAY  
RELATED TO THE ROADS/TRAILS IN RECAPTURE CANYON.**

JUNE 2, 2014

WHEREAS, The legislative body of San Juan County, Utah has been duly elected by the citizens of San Juan County, and

WHEREAS, San Juan County, Utah is designated as a political sub-unit of the State of Utah with authority to act to provide for health, safety and welfare of its citizens, and to ensure the integrity of its roads and streets and the appropriate use of the rights of way, and

WHEREAS, There are many trails and roads in San Juan County, most of which are identified on the Bureau of Land Management's (BLM's) Travel Management Plan, but many of which were overlooked by the BLM or the County in the adoption of the Travel Management Plan, and

WHEREAS, San Juan County is on record as protesting the 2008 BLM Resource Management Plan (RMP), specifically the Travel Management Plan's 1) absence of an "open to cross country OHV use area" and 2) absence of prescriptions to develop/implement OHV Management Plans, and

WHEREAS, As the Board of Commissioners of San Juan County, and on behalf of the citizens of this County and of the public who travel here, we claim these roads and trails as valid and existing, with the right and responsibility to maintain and, where appropriate, improve them, unless and until such claim has been formally abandoned by the public and by the County, and

WHEREAS, We acknowledge that the Public Land within the geographic boundaries of San Juan County is property held in trust by the United States Government with all proprietary rights thereto, and that the BLM, through the passage of the Federal Land Policy and Management Act of 1976 (FLPMA), (an act to establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development and enhancement of the public lands, and for other purposes), is charged to manage these lands, and

WHEREAS, Recapture Canyon, located within San Juan County and running North to South immediately east of Blanding, Utah, was acknowledged as "open to cross country OHV use" in BLM's 1991 San Juan Resource Management Plan (RMP), and

WHEREAS, On March 30, 2006, the County, at the request of the City of Blanding and others interested in promoting an existing trail through the bottom of Recapture Canyon, and under advisement of and consultation with the then current management and staff of the local BLM office, applied for a Right-of-Way (ROW) under Title V of FLPMA, and

WHEREAS, the ROW application was not for construction of a new trail, but was to perform routine maintenance to existing trails and routes in an effort to encourage travel in the canyon to remain on a single established route through the canyon, and

WHEREAS, Nothing in Title V of FLPMA “shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted,” (quoted from FLPMA Title V, existing rights-of-way), and

WHEREAS, Since at least 2005, the BLM had been aware of the desire to promote the Recapture Trail, and had provided feedback on the location of the trail, and BLM personnel, including archaeologists, had worked with County personnel to realign and design a trail to avoid or minimize resource impacts and had expressed verbal approval of the project including the improvements to the existing trail, and

WHEREAS, On September 13, 2007, the Acting Field Manager of the Monticello Field Office of BLM issued a temporary “travel restriction” pursuant to Title 43 Code of Federal Regulations 43 (C.F.R) § 8341.2, and

WHEREAS, BLM Instruction Memorandum (IM) No. 2010 – 028 adopted 12/17/2009 clarifies that “A closure or restriction order should be considered only after other management strategies and alternatives have been explored including cooperative efforts with local governments and organizations,” and

WHEREAS, IM No. 2010-028 further clarifies that: “The BLM policy limits the duration of temporary closure or restriction orders to 24 months or less,” (even though this IM was issued in 2009, just over two years after the temporary closure order on Recapture Canyon was issued, this IM would have been effective on the closure from the time of its issuance), and

WHEREAS, Under the terms of the travel restriction, a twelve mile stretch of Recapture Canyon, was closed to Off-Highway Vehicle (OHV) use, citing considerable adverse effects from OHV use on cultural resources as the reason for the action, and

WHEREAS, the closure area as identified on the closure map was much larger than the area of concern that would rise to the level of an emergency, and

WHEREAS, the existing County D road was unnecessarily included in the emergency closure despite having no significant impacts from the use of OHVs on the road, and

WHEREAS, This closure order was NOT intended to be a permanent order and did not change the designation from “open to cross-country motorized use,” but was closed to OHV use UNTIL the alleged considerable adverse effects leading to the closure had been eliminated and measures implemented to prevent recurrence, and

WHEREAS, Since the travel restriction was implemented, San Juan County has, in good faith participated in numerous coordination meeting and cooperating entity meetings with BLM and other consulting parties to arrive at an amenable resolution, and

WHEREAS, Recapture Canyon is rich in archaeological resources which San Juan County recognizes as valuable and worth protecting as far as possible, and

WHEREAS, San Juan County recognizes that archaeological sites, once damaged, are greatly diminished in value, and

WHEREAS, The main trail through the bottom of Recapture Canyon, while existing as a cattle trail, wagon road, or early motorized trail, has crossed known archaeological sites for more than a century, thus diminishing the archaeological value of a small number of sites in the canyon, and

WHEREAS, Congress, in FLPMA, directed the Secretary, among other things, to coordinate the inventory, planning and management of public lands with the planning and management programs of States and local governments, and provide for meaningful public involvement of State and local government officials in the development of land use programs, land use regulations, and land use decisions for public lands - 43 U.S.C. § 1712(c) (9), and

WHEREAS, in a coordination meeting between BLM and San Juan County on January 27, 2014, BLM Area Manager, Lance Porter, stated that the BLM may be prevented indefinitely from actually making a decision on land use due to procedures and the likelihood of appeal or law suit, and

WHEREAS, San Juan County informed BLM at the January 27, 2014 coordination meeting that, while a bureaucratic stalemate between wilderness advocacy groups and BLM may be acceptable to BLM, it was not acceptable to San Juan County, and that the County would explore other options within their jurisdiction, and

WHEREAS, San Juan County, as part of their working with the consulting parties, and the BLM agreed in early 2011, (with assurances given by BLM and other consulting parties for a streamlined resolution on the remaining trail), to drop the southern 7 miles of road and the Jenny’s Canyon routes, and BLM was notified in a letter dated February 1, 2011, and the last amendment to the ROW application [Nov. 13, 2012] did not include these routes, and

WHEREAS, only the routes depicted in the “closed section” were considered closed and “The areas outside the closure area were to remain “open” to all types of recreational use including motorized, in accordance with the 1991 RMP, and

WHEREAS, San Juan County is damaged by the endless delays of the BLM process, and the residents who enjoy this canyon are being unjustly discriminated against in their use of this resource, and

WHEREAS, San Juan County was told at the time of the travel restriction that a resolution would take six months as an estimate, and

WHEREAS, San Juan County has been more than reasonable in their participation and good faith reliance on assurances throughout the duration of this failed process.

NOW, THEREFORE, BE IT RESOLVED that The San Juan County Board of Commissioners, on behalf of San Juan County and its residents claims a valid existing right-of-way on the trail through Recapture Canyon, including the pipeline maintenance road, and

BE IT FURTHER RESOLVED that San Juan County desires to protect its valid existing right-of-way while, at the same time, protecting archaeological sites from damage or from further damage, and is willing to reroute trails so long as proposed reroutes are done in accordance with existing laws and in coordination with the County’s Master Plan; (Sec. 6 of Amended Resolution No. 2008-01 of the Master Plan is to Achieve and Maintain Traditional Access to Outdoor Recreational Opportunities Available in the Public Lands Region. Sec. 7 is to Maintain and Keep Open All Roads in the Public Lands Region That Appear On San Juan County’s Most Recent Transportation Map, and Provide for Such Additional Roads and Trails As May Be Necessary from Time to Time), and

BE IT FURTHER RESOLVED that roads and trails, many of which have been used for decades or even centuries, are of major interest to the County and are not to be closed by any federal agency except in compliance with federal law that permits such closure “only after other management strategies and alternatives have been explored including cooperative efforts with local governments and organizations,” according to BLM Instruction Memorandum No. 2010 – 028, and

BE IT FURTHER RESOLVED that San Juan County asserts jurisdiction over the public right-of-way roads and trails in San Juan County, including Recapture Trail, and that even after the issuance of BLM IM 2010-028, the BLM failed to resolve the closure in a timely manner as required, making the emergency closure void, and

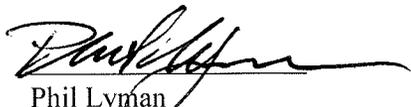
BE IT FURTHER RESOLVED that, San Juan County will voluntarily close Recapture Canyon to OHV use for a period of sixty (60) days, beginning June 10, 2014, during which time the County will determine what management course they will pursue related the existing trail, and

BE IT FURTHER RESOLVED that, in regard to the Recapture Trail, what some have called “illegal construction,” San Juan County deems ordinary and customary maintenance in accordance with maintaining our valid existing right-of-way.

Adopted by the San Juan County Board of Commissioners this 2nd day of June, 2014:

  
\_\_\_\_\_  
Bruce Adams  
Chairman

*Yoted NAY*  
\_\_\_\_\_  
Kenneth Maryboy  
Commissioner

  
\_\_\_\_\_  
Phil Lyman  
Commissioner