

Albritton explained that she would request, through the Masters Law Firm, to Paula Swenson from Gunnison County who would chair the meeting, that Ouray County wanted a transparent, open session that was recorded, and that any interested party could attend. Ouray County was not trying to be covert. Ouray County had issues with process that the Commissioners wanted aired out.

Linda Munson-Haley, Clerk of the Board, had nothing to discuss:

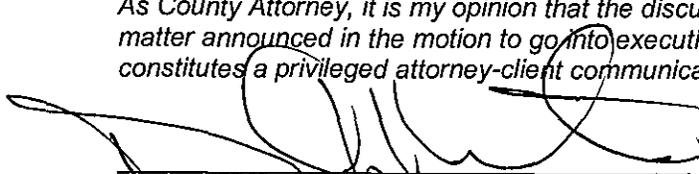
**F. 11:51 Executive Session pursuant to C.R.S. § 24-6-402(4)(f) for positions relative to personnel matters:**

**M/S/P**—Motion was made by Commissioner Fedel and seconded by Commissioner Padgett to enter into executive session pursuant to C.R.S. § 24-6-402(4)(f) for discussion of a personnel matter and C.R.S. § 24-6-402(4)(b) for a conference with the County Attorney for the purpose of receiving legal advice. A roll call vote was taken on the motion with the following results.

Commissioner Albritton voted in the affirmative  
Commissioner Padgett voted in the affirmative  
Commissioner Fedel voted in the affirmative

There was no discussion. Motion passed unanimously.

As County Attorney, it is my opinion that the discussion of the matter announced in the motion to go into executive session constitutes a privileged attorney-client communication.

  
The Masters Law Firm, Interim County Attorneys

Heidi M. Albritton, Chair

Those present for the executive session were Commissioners Albritton, Padgett and Fedel; Kathryn Sellars, Interim County Attorney; and Connie Hunt, County Administrator.

**11:53 The Commissioners convened into executive session:**

**12:55 The Commissioners reconvened into regular session and recessed for lunch:**

Commissioner Albritton stated that no decisions were made in the executive session.

**G. 1:31 Public Hearing:**

**1. Laurence Gunn:**

**Purpose:** Notice and Order to show cause concerning removal of rubbish  
**Property Description:** The E½ of Section 11, Township 46N, Range 8W, the NW¼; the N½ SW¼ of Section 12, Township 46N, Range 8W; and the N½ NE¼ of Section 14, Township 46N, Range 8W.

Mark Maynes and Laurence Butch Gunn were present along with their attorney, Amy Ondos. Mark Castrodale, County Planner, was present.

An Attendance Roster was entered into the record as Exhibit G-1.

Commissioner Albritton opened the public hearing.

Kathryn Sellars, Interim County Attorney, explained that the issue of the tires on the property owner's property and in the Uncompahgre River and other places was first brought to the attention of the Board around August 23, 2011. Upon deliberation at the October 4, 2011 meeting the Board decided that the property owners, Laurence Gunn and the Life Estate Holder Mrs. Gunn, were in violation of Ordinance 95-1 and issued a Notice and Order to Show Cause requiring the landowner to clean up the property within 20 days. The purpose of the hearing was to determine compliance of the landowner with the Ordinance and the Order by the Board. The burden was on the landowner to show either compliance or request some other type of relief from the Board. The Board had the option to not enforce the Order that would entail the County cleaning up the landowner's property and charging the landowner for those costs, or extending the time for compliance, or if the landowner showed evidence of compliance the Board could address that, as well.

Commissioner Albritton noted for the record that the Commissioners were copied on an email from Jeff Emmons with the Colorado Department of Public Health and Environment (CDPHE Exhibit G-1), indicating that he had a compliance conference with Gunn and Maynes at their request and, although not finalized, was preparing to extend the

compliance schedules to allow Gunn and Maynes to have more time to remove the tires from the impacted waterways. The greatest time extension would be to January 2012 for the closure plan to be submitted. She also entered into the record an email from Tim Patterson, owner of the Riggs Fly Shop (*Public Exhibit G-1*).

Attorney Ondos explained that the Notice and Order asserted that Gunn had violated County Ordinance 95-1; however, his property had been deemed agricultural property by definition under Colorado Revised Statutes and by the Ouray County Ordinance. She presented a copy of a lease agreement executed on April 2, 2001 (*Respondent Exhibit G-1*). There had not been additional lease agreements adopted since that time but the parties had continued to operate under those terms since 2001. The Colorado Statutes defined ranching as a for profit operation but did not specify that the landowner had to profit from the ranch operations. Gunn had been receiving \$1 per year in rent but was receiving other compensation to allow the property to be grazed. The property historically had been overgrazed; however, Gunn had been working over the last several years to restore the property back to its natural state. For that reason they did not believe that there had been a violation of Ordinance 95-1 as it stated that an exception to it would be property used as agricultural property.

Commissioner Padgett asked, for the sake of argument, if the piece of ground where the tires were being deposited was being grazed for agricultural use. Ondos replied no. Commissioner Padgett asked Ondos if, according to her review of the Colorado State Statutes and the Ordinance, it meant that if a parcel was classified as ag then the entire property fell under that and nullified the ordinance on any spot of that property. Ondos noted that the portion of the property with the tires was such a small portion. The property was 640 acres and the area with the tires was such a small part of that so it was hard to say that that tiny portion of the property would make the entire parcel non-agricultural.

Sellars expressed concern that the lease agreement had no description of the property that was leased. There was some admission that the portion of the parcel where the tires were located was not used for ranching. The argument that the property was agricultural and that the Notice was not valid was defeated by the fact that that the portion was not being used for ranching.

Commissioner Padgett asked Gunn if he owned other property in the county.

Gunn replied no.

Commissioner Albritton posited that if Ondos's fundamental argument was true, it could mean that it was okay to have a rubbish dump on agricultural property. Sellars replied that was the way the Ordinance read.

Maynes asked what picture the Commissioners had in their minds of the tires. Was it a picture of tires deposited all over and under trees, etc?

Commissioner Albritton replied that the Commissioners had the pictures submitted by the CDPHE.

Maynes stated that they were vague. The tires were in a wash that could not be used for ranching because it was so deep. The area had fallen in and eroded away. There was documentation from the beginning of tires showing that they had been used for erosion control. There was no damage to water. They have been used for bumper ramps and boats across the nation for years.

Commissioner Albritton explained that the purpose of the hearing was not to debate the merits of using tires for erosion control but to see if Gunn and Maynes had complied with the Notice and Order. The County's legal opinion was that the Notice and Order did, indeed, apply to this property.

Sellars added that there was not ample evidence that where the tires were dumped was ag land. She asked if the lease was still in place to which Ondos replied yes. She asked if the lease was recorded in the County records. Gunn and Ondos replied no.

Commissioner Albritton explained that the Commissioners were going by the reports presented by CDPHE. She noted that the concept of these rules not applying had not been brought up before today. CDPHE and the Army Corps of Engineers (ACOE) and everyone else involved in the cleanup were proceeding forward under the assumption that this was Gunn's property and burden to bear. She felt that it was disingenuous to bring it up now.

Ondos advised that her clients were complying with the other federal and state agencies, and they were complying with the Order. The issue became, under the other agencies, how that affected the wash. Issues that were coming up now were that the federal waterways were being contaminated, polluted. Her clients were working with the agencies now for a cleanup plan. The reality was that if the wash was left alone it would continue to erode and continue to dump soil and rocks, etc. into other waterways. The tires were being used for erosion control. The problem was that when this project began many years ago no one thought they needed to get permission or approval. Many of the regulations were enacted after this was done. She suggested that Gunn was grandfathered in. He was trying to mitigate erosion control. She and her clients were trying to figure out what to do to work with all of the agencies. They could not do any further tire removal because the waters were still high and with the weather moving in more debris could be washed down the wash and into the river starting the process all over again.

Commissioner Albritton countered that if the tires had been an effective measure of erosion control the Commissioners would not be having this discussion today. The debate about whether or not tires were okay to use for erosion control was not what was being addressed today. Cleanup was the issue.

Ondos suggested that the deadline of twenty days was too short given the weather and current river levels. Until the flows went down over the winter it would be tough for the Maynes and Gunns to recover the tires. They had notified affected landowners. They were in compliance with everything requested at the State level at this point. She felt that

there should be some consideration for what the property was being used for. The rainstorm that washed the tires out was a once in a generation rainstorm. Neighbors had stated that they had not seen rain like that in thirty years of living in that area. One concern was that the local and state agencies, everyone, were assessing fines, civil penalties, and/or criminal penalties. The reality was that was not necessary. Her clients were complying and not trying to dodge their responsibility. Some of the federal penalties were \$25,000 per day per occurrence.

Butch Gunn advised the Commissioners that the Gunnison Tunnel had not been shut off yet for the winter. Once that was shut down the first of November he and Maynes could get in to retrieve the tires.

Commissioner Fedel referred to the letter from Jeff Emmons with the CDPHE that suggested that an agreement was in process. He read it to say that it would give more time to remove all of the tires from the impact of the waterways. It just said January 2012. Maynes explained that they set up January 15 as an ETA. Maynes and Gunn were supposed to receive a revised compliance order in a week or so. That was two weeks ago. He and Gunn had contacted all but five property owners who had property on the river from the Gunn property to Chipeta Park in Montrose County. Probably 95% reported that there was nothing on their property. Everyone who did report had been cleaned up or was waiting until the water level went down enough to have safe access to the sandbars to remove the remaining tires. Maynes had paid a registered hauler out of Olathe to haul the tires off to a registered facility. There were 44 tires remaining to be collected, 22 in Burro Creek and 22 in Cow Creek. Gunn noted that the Game and Fish refused to let them in. Maynes called the office in Grand Junction to ask for access and they were told they would not get access to the Division of Wildlife property. Keith Maynes told them that if they refused access it would be their problem then.

Commissioner Padgett asked about the properties that had been cleaned up and if, once the water dropped, Gunn and Maynes would be available to clean up any more tires that were deposited. Gunn and Maynes said yes, they had advised everyone to that fact. They retrieved 980 tires according to Gunn. Maynes explained that they found most of the tires on the sides of the river or on sandbars, not in the middle of the river.

Commissioner Albritton explained that the main goal was to get the river cleaned up but the Notice and Order was for rubbish on the property. Gunn replied that it was covered up at the present time. Commissioner Albritton asked if that was the method that the CDPHE indicated was acceptable for the cleanup.

Maynes explained that they were working with the CDPHE currently under a beneficial use. They showed at the hearing in Grand Junction that the tires were being used for beneficial use. The stuff that was released was because Gunn had an incident with the dozer breaking down. Everything that had been buried and compacted over the last few years had not moved. It was only the more recent tires from the last three or four years that were still being worked in. Light rainfall sent a little water down the wash and the sediment helped to stabilize the tires. The water would then disperse more evenly away from the wash. There was no garbage or trash. He invited everyone to look at what was being done. They were not trying to hide anything. It had been going on since 1990. As a tire shop, Maynes was never notified that they had to register as a retailer or a hauler.

Commissioner Albritton asked about the fees. Maynes explained that the fee originated as a waste tire fee on the sale or disposal of a tire. The State collected that. Maynes still had to pay for disposal on top of that fee. To avoid paying the fees people just picked up their old tires and disposed of them however they could. The State changed the fee from a disposal fee to a new tire sale. Maynes had to charge a separate amount to either pay someone or cover the cost of moving them someplace else to dispose of them. With Gunn, it was basically beneficial. Maynes did not have to charge for disposal and Gunn did not pay for the tires. It was a low cost method to use for a sub fill.

Gunn added that he had brought a Cat up to take care of the tires in the draw. The reason they were not covered was because the Cat had broken down. The part that had not been covered was what washed away.

Ondos added that if the Commissioners looked at the wash now they would not see any tires or rubbish. It was all mountain grass.

Commissioner Albritton pointed out that according to the CDPHE the subsurface was a problem and needed to be removed.

Ondos explained that was part of the plan.

Maynes clarified that if the tires were deemed to be a beneficial use then removal would not be required as long as Gunn could ensure that this event would not happen again. There was no environmental impact from the water being contaminated from tires.

Commissioner Padgett asked who had indicated that the tires as a pollution source were a big issue.

Ondos replied that it came from the EPA.

Commissioner Padgett saw metal in some of the tires, and other metal debris that had washed into the waterways.

Ondos stated that the EPA had tested the water and found no evidence of contamination.

Commissioner Padgett noted that with waste tires some big issues were mosquitoes and wildfire. If the tires caught fire it would be extremely expensive and difficult, if not impossible, to put out. Maynes noted that if the tires were underground they would not catch fire. The State did not present them with any of those concerns. Ondos added that burying and covering the tires with dirt would eliminate the mosquito issue. Commissioner Padgett continued to discuss the impacts. She had heard from the rafting community that it was fortunate that they had been warned about the tires because if tires had hit a raft full of people there could have been a tragedy. She received an email from a

guide who indicated that he had experienced financial impacts as a result of the tires. Just by hoping that there would not be another generational storm did not give her comfort. She asked about engineering studies. Maynes pointed out that it was a flat wash now rather than being a deep crevice. Everything with the State was still in the works. The State wanted to wait and see what the ACOE was going to say. Until someone took the lead, they were jumping through several different hoops and trying to comply with everyone as much as they could to get it cleaned up to everyone's standards.

Matthew Jurjonas with the Uncompahgre Watershed Partnership (UWP) had been talking with the Division of Wildlife about doing a volunteer cleanup day on the public land. He wondered if Maynes would be willing to use his hauling service if UWP did a cleanup day. Maynes replied, absolutely.

Ben Tisdell with the Friends of the River Uncompahgre (FORU) was concerned with the health of the habitat of the river. It was his understanding that the agricultural lease was from Gunn to a lessor. It appeared in the Assessor's records that there was a property very close to the property in question that Gunn was leasing, that was under a conservation easement. He wondered if Gunn was anticipating using that property in a similar way. He asked if there was ever an engineer for the erosion control scheme. Gunn replied no. Tisdell asked if he followed any industry standards for the use of tires for erosion control.

Maynes replied that at the time when the tires were buried there was none. There were few restrictions in 1989-1990 on what to do with waste tires and no hauling regulations. No other part of the Gunn property or the leased property was ever intended to be used for this purpose. It was a one event use to reclaim the area for wild grass for grazing.

Tisdell asked if there was documentation about the erosion situation. Maynes replied no, it was just an agreement between two people. About that time tires were being used for Dennis Weaver's house and that was probably where the idea came from to bury the tires.

Tisdell asked if in Maynes's opinion this uncontrolled, un-engineered 5,000 plus tires in the ground was an improvement.

Maynes replied yes. Anytime someone could improve ground for grazing he saw that as an improvement with no hazardous waste being deposited.

Tisdell suggested that between 1990 and July of this year 4,000 to 5,000 tires had been put in the ground there. After the washout, four-fifths still remained and were sitting there hopefully not for another flood but it could happen again next year and another 1,000 tires could wash out because there had never been any engineering done.

Maynes admitted that it was possible but that the tires that washed out were the ones that were not compacted and buried.

There was more discussion between Tisdell and Maynes.

Commissioner Albritton reiterated that the Notice and Order addressed the tires on the property only. Given what was said today the Commissioners did not have enough information to know if Gunn and Maynes were in compliance or not. The Commissioners were proceeding forward with the assumption that all of the tires would have to be removed from the property, even the buried ones. The Commissioners needed to have communication with the State and have Jeff Emmons come and give more specific technical information. Commissioner Padgett asked to invite the ACOE too.

Commissioner Fedel explained that the primary concern was stability and safety and he hoped that the CDPHE plan would address the specifics on that. Maynes replied that it would and that was part of the closure plan.

Sellers pointed out that the response date for Gunn and Maynes to respond to the ACOE letter was November 14. The Commissioners could continue the hearing to their next meeting and then set a date certain at that meeting, or continue it to a date certain. Commissioner Albritton preferred to leave it open to ensure that the experts would be available.

**M/S/P—***Motion was made by Commissioner Padgett and seconded by Commissioner Fedel to continue the hearing to December 6 at 2:30 p.m. tentatively and subject to change if the State or Corps did not have their reports done by then. There was no discussion. Motion passed unanimously.*

Commissioner Albritton continued the public hearing.

**2:43 The Commissioners recessed and reconvened at 2:52:**

**H. 2:52 Discussion of Low Altitude Tactical Navigation (LATN) issue and consideration of letter concerning the matter:**

Commissioner Albritton reiterated for the press and Montrose County that the Ouray County Board of County Commissioners had not taken any position yet on this issue. The Commissioners were only gathering information. The Commissioners had received a letter with a bullet point list from Sheelagh Williams on behalf of the Ridgway-Ouray Community Council (ROCC). She suggested that the County proceed forward requesting additional information if there was Board consensus.