

Trailings - Hammond -

Legal - Hammond

To: Files

3 Nov 86

From: Assistant Refuge Manager
Malheur NWR

Reference: On-site meeting with Dwight Hammond

On October 24, Dave Johnson, Tom Downs, Dwight Hammond and I met at East Knox Pond to discuss spring grazing on Knox #4, trailing of cattle through Upper Bridge Creek Field and Mud Creek Field, handling of stray cattle, and communication with and responsibilities of "P" ranch substation personnel - Tom Downs.

Dwight asked what our policy on handling stray cattle was and how that affected our "Good Neighbor" policy. He said he normally rounds up all the cattle in his BLM fall grazing allotment, kicks out the strays into Upper Bridge Creek Field, and then trails his cattle to the refuge allotment or his ranch. He then advises the other ranchers as to the location of their stray cattle. These ranchers then pick-up their cattle as soon as convenient. He said if this was a problem he would pay the AUM charges for strays out of his pocket.

We said we were not as much concerned with the \$/AUM of cattle on the refuge as we were with the unauthorized, undetermined, and uncontrolled use of cattle in his or adjacent fields. We ask that strays be turned out before entering refuge or held in the Mud creek corral, and to then notify Tom of the # of cattle and their location. Tom would follow-up on the removal of cattle. Dwight talked at length on the "spite fence" Mazzoni built in Upper Bridge Creek field. He said that it threatens his ranch logistics and interfered with the "heart of his entire operations."

Dwight feels that he has the right to trail or use Upper Bridge Creek and East Canal whenever he needs to without notifying the refuge because of his past prior rights and/or privileges. He said "he doesn't want to give us a chance to say no. We can't control or limit his use of these fields. He said that 'he will pack a shotgun in his saddle and no one will challenge me!' His policy is to use the refuge field as the logistics of his ranching operation dictate. "Just do it and not tell anyone because he gets away with it 8 out of 10 times!"

We chose not to confront any of his statements. We stressed the need for open, face to face communications with Tom and the entire staff in order to clarify avoidable misunderstandings that clouded some basic fundamental differences we have on the operation of Malheur as National Wildlife Refuge. In subsequent conversation with Tom afterwards, Dwight said he would try harder to work with Tom on cattle movement on and through the refuge. Dwight also said he would be interested in Spring grazing on Knox #4 if the price could be worked out. We then adjourned to the Frenchglen hotel for lunch.

Leland Vls
J. E. A.
David Johnson

MLH - HM / Grazing
+ Hazing

TELEPHONE CONVERSATION RECORD

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

ROUTING

How did this turn out?

DATE: 2/13/87

1 Chambelain

4 RD/DRD CC 2/13

FILE REFERENCE:

2 DeBates

5

Malheur -
Grazing

3

6

NAME

ORGANIZATION AND TELEPHONE NUMBER

TO: Sandy Wilbur

FROM: George Constantino

Malheur

SUBJECT: Dwight Hammond grazing

CONVERSATION

George called to alert us that Dwight Hammond would probably be calling me, ARD or RD regarding trailing his cattle through Malheur Refuge. The issue is that Hammond must cross the refuge when he trails his cattle from one area to another. He has a right to do this on existing paths, but he has a tendency to stray into pasture areas and delay his herd for awhile. George has told him that he needs a refuge permit whenever he is off established trails. BLM has the same regulation that you must have a trailing permit if you move your stock through pasture that is not your own.

Hammond adamantly refuses to obtain a permit from the refuge, and George has warned him that he could be cited for trespass.

SW

MLH - HM/Hazing
+ Grazing

TELEPHONE CONVERSATION RECORD

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

ROUTING

DATE: 2/13/87

1 ~~Chamberlain~~ - VPR

4 RD/DRD CC 2/13

FILE REFERENCE:

2 DeBates

5

Malheur -
Grazing

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GW

~~ARD~~~~ARD - Refuges and Wildlife~~~~CRD~~~~Deputy ARD - Refuges and Wildlife (DARD)~~

ARD Secretary (SAWR)

X 3

RF - OR/WA

RF - ID/NV

RF - CA

Migratory Bird Coordination (MBC)

Wildlife Policy and Direction (WPD)

Refuge Operations Support (OPR)

Education-Publication-Interpretation-
Cultural Resources (EPIC)

Realty (RE)

Pacific Island Administration (PIA)

*Trade got with
Rolf 3/19, but
he was
unavailable**See RD's note of 3/17
requesting maps -*

X - Action

- File

Toss

Forward

Mailed to Dinger
on 2/20/87 myself

Y
Larry

ARW

February 20, 1987

MLH-AD-ROW

Mr. and Mrs. Dwight Hammond
Hammond Ranches Inc.
Diamond, Oregon 97722

Dear Mr. and Mrs. Hammond:

Per follow-up as promised to our meeting in Portland on February 17, I attempted to call you a number of times unsuccessfully on February 19 and February 20 to advise you on your appeal. I will be out of the office the next 2 weeks so this letter is my response to your appeal.

After considerable discussion and review of this issue and in a spirit of cooperation, I have advised George Constantino, our refuge manager, to not require a permit for trailing your cattle through the refuge this next year. I have also asked George to sit down with you prior to the grazing season to iron out the specific trailing details and expectations in this regard. Essentially, we want the trailing to be completed as quickly and straightforwardly as possible within reasonable time frames. We will work with you on that and monitor how it goes next year. If it doesn't work out satisfactorily, we will again consider a permit requirement in the next grazing season.

I have talked to our attorneys once again on your complaint about our boundary fence and the legality of the same. They have reassured me that we have every legal right to construct this boundary fence and any internal fences on our lands for our own wildlife management purposes. I understand you don't agree with that position, but there is really little else I can say.

I'm disappointed that we continue to have so many disagreements with you as permittee on the refuge. I would hope that we could put some of these issues behind us and try to work together in a positive manner in the future. Hopefully, next year we can show some progress on improving working relationships.

Sincerely,

Original signed by
Lawrence W. De Bates
Lawrence W. De Bates
Assistant Regional Director
Wildlife Resources

bcc:
Malheur NWR
Sandy Wilbur (RF-OR/WA)
RD/DRD/PAO

LWDe Bates:pdh:IBM:LWD#3:Hammond.lwd

Wilbur 2/20/87

- ~~105~~ 2 ~~ARD - Refuges and Wildlife~~
- 1 Deputy ARD - Refuges and Wildlife (DARD)
- ARD Secretary (SAWR)
- X 3 RF - OR/WA
- RF - ID/NV
- RF - CA
- Migratory Bird Coordination (MBC)
- Wildlife Policy and Direction (WPD)
- Refuge Operations Support (OPR)
- Education-Publication-Interpretation-Cultural Resources (EPIC)
- Realty (RE)
- Pacific Island Administration (PIA)

*Sandy -
I made a copy
of attached*

*MLH-HM -
Haym r Grazing*

X - Action

☒ File

Toss

Forward



memo

Regional Director's Office
Fish and Wildlife Service
Portland, Oregon
3-21-88

Is this not resolvable?
I've seen the history
(long)
The RD is gonna get
involved - sure as can
be. Best let me know
what's going on.
W



United States
Department of the Interior

Fish and Wildlife Service

Lloyd 500 Building, Suite 1692
500 N.E. Multnomah Street
Portland, Oregon 97232

In Reply Refer To:

Your Reference:

ARW

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Lawrence W. De Bates
Assistant Regional Director
Wildlife Resources

bcc: Sandy Milbur (RF-OR/MA)

ARD - Refuges and Wildlife
Deputy ARD - Refuges and Wildlife (DARD)

ARD Secretary (SAWR)

RF - OR/WA
RF - ID/NV
RF - CA
Migratory Bird Coordination (MBC)
Wildlife Policy and Direction (WPD)
Refuge Operations Support (OPR)
Education-Publication-Interpretation-
Cultural Resources (EPIC)
Realty (RE)
Pacific Island Administration (PIA)

Potential difficult
Problem - Ed C

X - Action

- File

Forward

Dated Material 3/25/87
Reply due

HAMMOND RANCHES, INC.
DIAMOND, OREGON 97722

MARCH 7, 1987

U. S. DEPT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LLOYD 500 BUILDING, SUITE 1692
500 N. E. MULTNOMAH STREET
PORTLAND, OREGON 97232



ATTENTION MR. LAWRENCE W. DEBATES

DEAR MR. DE BATES:

IN ANSWER TO YOUR LETTER OF FEBRUARY 20, 1987; SORRY YOU WERE UNABLE TO REACH US BY TELEPHONE AFTER WE WERE IN YOUR OFFICE. WE THOUGHT WE HAD MADE IT CLEAR TO YOU THAT WE DIDN'T EXPECT TO BE AT HOME AGAIN FOR 5 DAYS.

WE REALIZE WE CAUGHT YOU AT A VERY BUSY TIME, AND WE APPRECIATE YOUR TAKING TIME TO TALK WITH US, BUT, AFTER READING YOUR LETTER, WE FEEL THERE MUST HAVE BEEN A DIRECT GAP IN OUR COMMUNICATION, OR POSSIBLY YOU REALLY DIDN'T UNDERSTAND WHY WE WERE IN YOUR OFFICE.

AFTER NUMEROUS DISCUSSIONS LOCALLY, AND BEING TOLD THAT ALL THE DECISIONS WERE BEING MADE IN THE REGIONAL OFFICE, AND THAT WE WOULD NOT BE ABLE TO GO OUR NORMAL ROUTE TO OUR MOUNTAIN PASTURES, WE FELT THERE MUST HAVE BEEN SOME MISCONSTRUED INFORMATION. SUBSEQUENTLY, WE DROVE ALL THE WAY TO PORTLAND, WITH OUR MAPS, ETC., BECAUSE WE FELT WE COULD NOT ADEQUATELY ADDRESS OUR PROBLEM IN CORRESPONDANCE AND WE COULD NOT TALK REASONABLY WITH MR. CONSTANTINO, AND HADN'T BEEN ABLE TO CONSTRUCTIVELY COMMUNICATE ON THIS MATTER FOR NEARLY ONE YEAR.

WE WERE NOT ASKING FOR YOUR ASSISTANCE CONCERNING ANY GRAZING SEASON, OR TRAILING THROUGH THE REFUGE, BUT CONCERNING ACCESS AROUND THE PERIMETER OF THE REFUGE WHICH WE PERSONALLY HAVE USED FOR 23 YEARS, AND WHICH THE GENERAL PUBLIC HAS USED SINCE AT LEAST 1877, AND WHICH ACCESS IS THE ONLY GEOGRAPHICALLY POSSIBLE ACCESS AROUND THE REFUGE ON THAT SIDE, AND WHICH YOUR AGENCY BLOCKED BY CONSTRUCTING A FENCE OR FENCES ACROSS THE LAND, PROHIBITING ACESS TO OUR AND U. S. LANDS, IN VIOLATION OF YOUR OWN REFUGE MANUAL.

WE REALIZE THAT OUR LAWS GIVE YOU THE "RIGHT" TO FENCE YOUR BOUNDARIES, BUT WE FEEL THAT IT IS CERTAINLY NOT THE INTENTION OF THIS FREE, DEMOCRATIC COUNTRY TO BE SO SINGLE-MINDED AS TO CUT AN EXISTING RANCH IN TWO, MAKING IT VIRTUALLY IMPOSSIBLE TO OPERATE AND THEREFORE PUTTING US OUT OF BUSINESS.

3/11/87
cc - no/ono for info

PAGE 2
U. S. FISH AND WILDLIFE SERVICE
MARCH 7, 1987

YOUR FINAL PARAGRAPH IS VERY DISAPPOINTING TO US ALSO, AS IT FURTHER AMPLIFIES OUR SENTIMENTS THAT YOU ARE TRYING TO REMOVE PERMITTEES FROM THE REFUGE FOR ANY REASON. OUR PROBLEM HAD NOTHING TO DO WITH OUR "PERMIT" ON THE MALHEUR NATIONAL WILDLIFE REFUGE, BUT AS A NEIGHBORING LAND-OWNER, CONCERNING THE UNREASONABLE AND UNBEARABLE POLICIES OF YOUR MANAGEMENT.

OUR OFFICE RECEIVED A CALL FROM THE REFUGE OFFICE THIS WEEK, CONCERNING A MEETING IN THE NEAR FUTURE ON THIS MATTER, AND WE ARE MOST SINCERELY HOPING THAT THIS PROBLEM CAN BE RESOLVED AND THAT BUSINESS BETWEEN THE TWO OF US MAY GET ON TO A MORE PRODUCTIVE RELATIONSHIP.

SINCERELY,



DWIGHT L. HAMMOND
HAMMOND RANCHES, INC.

SAH

CC: GEORGE CONSTANTINO, MAN.; MALHEUR WILDLIFE REFUGE

BOB L. WILSON
1051 WWS 11 WIL 10-51
RECEIVED 112-51

HAMMOND RANCHES, INC.

DIAMOND, OREGON 97722

CLAIM CHECK
NO.

173703

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Oct. 1980

**IN RECEIPT
REQUESTED**

CERTIFIED

P 290 413 749

MAIL

U. S. DEPT. OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LOYD 500 BUILDING, SUITE 1692
500 N. E. MULTNOMAH STREET
PORTLAND, OREGON 97232





FISH AND WILDLIFE SERVICE
INTER-OFFICE TRANSMITTAL

<input type="checkbox"/>	DIRECTOR, _____
<input type="checkbox"/>	DENVER FINANCE CENTER, _____
<input checked="" type="checkbox"/>	REGIONAL DIRECTOR, , RDS, ARW/RF-OR/WA Wilbur
<input type="checkbox"/>	PROJECT LEADER, _____
<input type="checkbox"/>	OTHER, _____

<input type="checkbox"/>	REGULAR MAIL
<input type="checkbox"/>	AIR MAIL
<input type="checkbox"/>	ACTION
<input checked="" type="checkbox"/>	INFORMATION

FROM Refuge Manager	OFFICE MALHEUR NATIONAL WILDLIFE REFUGE BOX 245 PRINCETON, OREGON 97721
------------------------	--

DATE 03/20/87

SUBJECT Letter to Dwight Hammond re trailing through Refuge
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HAMMOND RANCHES, INC.
DIAMOND, OREGON 97722

MARCH 7, 1987

U. S. DEPT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LLOYD 500 BUILDING, SUITE 1692
500 N. E. MULTNOMAH STREET
PORTLAND, OREGON 97232

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Material 3/25/87

3/17/87 ARW



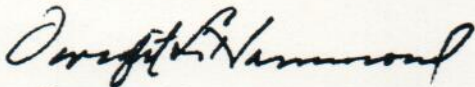
3/11/87
re - no/ono for info

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SINCERELY,



DWIGHT L. HAMMOND
HAMMOND RANCHES, INC.

SAH

CC: GEORGE CONSTANTINO, MAN.; MALHEUR WILDLIFE REFUGE

ARW - R-1

me too!

962

2.130

ARD - Refuges and Wildlife

~~Deputy ARD - Refuges and Wildlife (DARD)~~

ARD Secretary (SAWR)

351

RF - OR/WA

RF - ID/NV

RF - CA

Migratory Bird Coordination (MBC)

Wildlife Policy and Direction (WPD)

Refuge Operations Support (OPR)

Education-Publication-Interpretation-
Cultural Resources (EPIC)

Realty (RE)

Pacific Island Administration (PIA)

Considering how controversial
this has been, I'm surprised
no backup was assigned when
David 3 broke his ribs -

X - Action

✓File

Toss

Forward

EdC

Dated Material 3/30/87
Rep. etc.

HAMMOND RANCHES, INC.
DIAMOND, OREGON 97722

MARCH 12, 1987



U. S. DEPT. OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LLOYD 500 BUILDING, SUITE 1692
500 N. E. MULTNOMAH STREET
PORTLAND, OREGON 97232

ATTENTION MR. DE BATES:

DEAR MR. DE BATES:

I HAVE JUST COME FROM A MEETING WITH MR. CONSTANTINO. THIS IS THE 5TH TIME I HAVE GONE OUT OF MY WAY TO TRY AND RECTIFY YOUR PROBLEM, TO NO AVAIL.

THE MEETING WAS A DISASTER!!! AND, I AM SURE THAT MR. CONSTANTINO HAS DOCUMENTED "HIS" VERSION BY NOW, AND SENT "HIS FACTS" TO YOU AND EVERYONE CONCERNED, INCLUDING MYSELF, TO BE USED IN FUTURE REFERENCES AS "THE FACTS". WE DON'T HAVE THE TIME OR ENERGY TO DOCUMENT "OUR" SIDE OF THE "FACTS" FOR EVERY TWO-BIT "MEETING" HE REQUIRES, ESPECIALLY IF, IN THE END, THERE IS NO MOVEMENT TOWARD ANY KIND OF A SOLUTION.

I REQUEST THAT YOU, AT LEAST, ADVISE ME AS TO WHO IS RESPONSIBLE FOR YOUR PART OF THE COMING CALAMITY. IS IT YOUR MAINTENANCE MAN THAT FANTACIZES HIMSELF THE LOCAL FRENCHGLEN GESTAPO; OR YOUR LAW ENFORCEMENT PERSONNEL THAT STRAP ON THEIR SIDE ARMS TO PRANCE THROUGH OUR LOCAL, PEACE-LOVING, TAX PAYING, PIONEER COMMUNITIES (YOUR LIFE-BLOOD)?? THESE MEN MEET PEOPLE EVERY DAY WHO ARE HEIRS OF THE PEOPLE PUT OFF OF THE CHOICE GROUND IN THE COUNTY, TO RAISE AND PROTECT WILDLIFE. IN REALITY, PRODUCTION HAS DEMINISHED STEADILY, SINCE THE FEDERAL TAKE-OVER AND CONDEMNATION, EVEN BY ADMISSION OF YOUR OWN AGENCY PEOPLE AND PUBLICATIONS. I BELIEVE THIS REFUGE HAS IN EXCESS OF 180,000 ACRES, YET YOU PUT GREAT EMPHASIS ON SUDDENLY HAVING EXTREME INTEREST IN HABITAT, ETC., ON APPROXIMATELY 500 ACRES OF DRY, ROCKY HILLSIDE THAT HAS NEVER BEEN FENCED, UNTIL IT WAS DISCOVERED THAT I COULD NOT GEOGRAPHICALLY CROSS MY RANCH WITHOUT ACCESS THROUGH YOUR DEEDED LAND, WHICH I HAVE DONE FOR 23 YEARS, WITH NO PROBLEMS, AND THE HARNEY COUNTY MAPS VERIFY THIS PASSAGE AS HAVING BEEN USED SINCE AT LEAST 1877. -- OR, IS IT GEORGE CONSTANTINO, OR ARE YOU ACCEPTING FULL RESPONSIBILITY FOR THIS UPCOMING NO-WIN SITUATION, FOR ALL OF US, AND ARE YOUR SUPERIORS AWARE?

I AM GOING ACROSS, WITHOUT A PERMIT (MAYBE ONLY ONCE, I REALIZE), FOR YOU PEOPLE HAVE CREATED AN UNLIVEABLE SITUATION FOR US, TOTALLY AGAINST YOUR OWN REGULATIONS, AS I HAVE ALSO TALKED TO MY ATTORNEYS. THEY HAVE ADVISED ME THAT I WAS MORALLY RIGHT, AND THAT THE LAWS OF THE UNITED STATES OF AMERICA WERE NOT INTENDED TO DO TO ME WHAT YOU PEOPLE ARE TRYING TO DO.

THIS MESS COULD ALL BE AVOIDED, TODAY, AND FOR TOMORROW, AS THE PROBLEM IS NOT GOING TO GO AWAY, BY USING THE OLD BOUNDARY FENCE, AS IT WAS ESTABLISHED WHEN THE REFUGE CAME INTO BEING. THIS MUST HAVE BEEN THE REASON FOR THE ORIGINAL BOUNDARY FENCE CONSTRUCTION WHERE IT WAS.

I DID ADVISE GEORGE'S SECRETARIES THAT I WOULD PHONE AHEAD WHEN I WOULD BE CROSSING THE REFUGE, TO REQUEST THE PRESENCE OF OUR LOCAL SHERIFF, BECAUSE HE WAS GOING TO BE NEEDED. YOU HAVE PUSHED ME THE TOTAL LIMIT!!

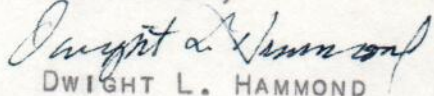
I WISH YOU WOULD LOOK AHEAD FAR ENOUGH TO GIVE YOUR PERSONNEL THE PROPER DICTATION FOR WHEN I START ACROSS THIS AREA IN MY USUAL MANNER.

I REALIZE THAT I AM SEEMING VERY NARROW-MINDED, ONE-SIDED, AND TOTALLY OBLIVIOUS TO THE LAW, BUT I HAVE LIVED WITH THIS EXTREME INCONVENIENCE FOR SEVERAL RECENT YEARS. YOUR NEW FENCE BEING IN PLACE, DOESN'T SEEM TO BE ENOUGH ANY MORE, AND YOU ARE NOT SATISFIED. AS TO GOING THROUGH THE "LEGAL" CHANNELS, THIS IS PROHIBITIVE, AS YOU ARE FIGHTING ME WITH MY OWN DOLLARS, AND I CANNOT AFFORD IT, OR WIN. HOWEVER, I WOULD STILL LIKE TO MAKE ONE LAST OFFER, AND WOULD PAY THE EXPENSES FOR YOUR TRAVEL, ROOM AND BOARD, TO COME AND PERSONALLY, PHYSICALLY OBSERVE THE PROBLEM, OR A REPRESENTATIVE OF YOUR CHOICE THAT WOULD HAVE THE AUTHORITY TO MAKE A REASONABLE DECISION, TAKING ALL FACTORS INTO CONSIDERATION. PREFERRABLE THIS WOULD NOT BE GEORGE CONSTANTINO, BECAUSE, AS OF OUR MEETING THIS MORNING, HE IS STILL, IN MY WIFE'S AND MY OPINION, IN "THE DARK", NOT KNOWING THE COMPLICATIONS OF THE SITUATION, OR EVEN AFTER ALL THIS TIME AND UPHEAVAL, THE LOCATIONS OF THE FENCES.

IN PRIOR COMMUNICATIONS, YOU HAVE USED THIS PROBLEM AS A THREAT AND ALSO, IT HAS BEEN PUT TO ME IN THE OFFICE AS A THREAT AGAINST ME IN REGARDS TO OUR REFUGE PERMIT. WE WOULD LIKE TO MAKE IT CLEAR THAT THIS PROBLEM HAS ABSOLUTELY NOTHING TO DO WITH OUR BEING A PERMITTEE ON THE MALHEUR NATIONAL WILDLIFE REFUGE, AND IF I AM, IN FACT, REMOVED, AS A RESULT, AS YOU AND GEORGE HAVE THREATENED, THE PROBLEM WILL BE GREATLY AMPLIFIED.

THANK YOU FOR YOUR TIME.

SINCERELY,



DWIGHT L. HAMMOND

P. S. NOTE - THIS IS IRRELEVANT TO THE PROBLEM AT HAND; BUT, MAYBE IT COULD BE ONE OF THE REASONS I WAS SO VERBAL WITH MR. CONSTANTINO. IN DEC., 1986, THE FIELD THAT MY CATTLE WERE USING AS A PERMIT IN THE REFUGE, HAD REACHED THE OPTIMUM LEVEL OF USE, ACCORDING TO REFUGE PERSONNEL, FOR BIRD HABITAT, AND I WAS ASKED TO MOVE MY CATTLE OUT EARLY. AT THAT TIME, I ASKED TO USE OTHER FEED ON THE REFUGE, AND WAS TOLD THERE WAS NO OTHER FEED AVAILABLE TO BE USED; HOWEVER, AS OF THE DATE OF THIS LETTER, THERE ARE STILL OTHER CATTLE ON THE REFUGE. I MUST DRIVE BY THIS ANYTIME I GO ANYPLACE FROM MY HOME, AND IT CAN'T HELP BUT CREATE A FEELING OF BIGOTED INJUSTICE. WE ARE TOLD THE ABSOLUTE DATE FOR REMOVAL OF ALL CATTLE ON THE REFUGE IS JANUARY 31. THIS IS MARCH 19. THESE CATTLE (NOT OURS) HAVE BEEN "TRAILING" THROUGH THE REFUGE FOR A MONTH????

HAMMOND RANCHES. INC.
DIAMOND, OREGON 97722



U. S. DEPT. OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LLOYD 500 BUILDING, SUITE 1692
500 N. E. MULTNOMAH STREET
PORTLAND, OREGON 97232

ATTENTION: LARRY DE BATES



1 ~~ARD - Refuges and Wildlife~~

5 RQ ~~Deputy ARD - Refuges and Wildlife (DARD)~~

2 ~~ARD Secretary (SAWR)~~ — ~~Send to AD(DND) for info.~~

SAZ ~~RF - OR/WA~~

RF - ID/NV

RF - CA

Migratory Bird Coordination (MBC)

Wildlife Policy and Direction (WPD)

Refuge Operations Support (OPR)

Education-Publication-Interpretation-Cultural Resources (EPIC)

Realty (RE)

Pacific Island Administration (PIA)

X - Action

- File

Toss

Forward

3/18

Larry -

attached are Constantino's report on his meeting with the Hammords and also a second letter from Dwight Hammord to you. I talked to George yesterday, and he is seriously concerned about a real physical confrontation with Hammord. From the tone of Hammords second letter, his concern seems legitimate.

I think we should send a letter to the Hammords strongly warning them against threatening our employees or interfering with refuge activities. Maybe the sheriff should also be alerted.

SPJ

3/18/87

SANDY

AGREE - BUT TALK TO OUR ATTORNEY'S FIRST. ALSO EITHER YOU & I OUGHT TO GO DOWN TO MACHON AND LOOK AT THIS ON THE GROUND. - Obviously You.

Larry

~~206~~
~~URD~~ ~~ARD - Refuges and Wildlife~~
 Deputy ARD - Refuges and Wildlife (DARD)
 ARD Secretary (SAWR)

~~SX 3~~ RF - OR/WA
 RF - ID/NV
 RF - CA
 Migratory Bird Coordination (MBC)
 Wildlife Policy and Direction (WPD)
 Refuge Operations Support (OPR)
 Education-Publication-Interpretation-
 Cultural Resources (EPIC)
 Realty (RE)
 Pacific Island Administration (PIA)

4/15/87

YES, ALSO A LETTER UNDER MY

SIGNATURE SHOULD GO BACK TO HAWAIIANS
 CAPSULIZING YOUR VISIT AND OUR POSITION ON
 THE POWER. ALSO SAY WE HAVE ATTEMPTED
 X - Action - File Toss Forward
 TO WORK THIS OUT, BUT WE SEE LITTLE EFFORT ON
 HIS PART. LARRY

March 19, 1987

Mr. Dwight L. Hammond
Hammond Ranches, Inc.
Diamond, Oregon 97722

I have reviewed your letters of March 7 and March 12 regarding access for your cattle through the Bridge Creek area of the Malheur National Wildlife Refuge. I have also reviewed George Constantino's report on your meeting with him. Unfortunately, there is obviously still some misunderstanding of what we are requiring of you.

Sandy Wilbur from my staff will visit Malheur Refuge on the ground in the next 3 weeks to review this situation and the other one you mention in your March 12 letter. He will contact you in the process. Perhaps we can yet find a mutually cooperative way to meet both your and our needs.

I have briefed the Regional Director on your situation, and I plan to keep informed on progress made by you and the refuge staff to reconcile your differences.

15/ Lawrence W. De Bates
Assistant Regional Director
Refuges and Wildlife

Name	Date
Schiller	3/19

ARW - R-1

2
CRD ARD - Refuges and Wildlife

~~Deputy ARD - Refuges and Wildlife (DARD)~~

ARD Secretary (SAWR)

63
~~RF - OR/WA~~

RF - ID/NV

RF - CA

Migratory Bird Coordination (MBC)

Wildlife Policy and Direction (WPD)

Refuge Operations Support (OPR)

Education-Publication-Interpretation-
Cultural Resources (EPIC)

Realty (RE)

Pacific Island Administration (PIA)

X - Action

- File

Toss

Forward



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
Box 245
Princeton, Oregon 97721

March 20, 1987

Mr. and Mrs. Dwight Hammond
Hammond Ranches, Inc
Diamond, Oregon 97722

Dear Dwight and Susie:

This is to confirm the discussion at our meeting of March 12, 1987 at my office. I had asked you to meet with me to discuss your trailing through the refuge in the Upper Bridge Creek area this spring.

I am sorry it had to end with ill feelings. I hope it was anger, not conviction that led you to imply that you would seriously injure me if I tried to stop you from trailing your cattle through the Bridge Creek area of the Refuge. As I tried to explain, we do not want to stop you from trailing through the Refuge, but set some reasonable guidelines to protect Refuge resources and prevent misunderstandings.

This letter is to document my verbal authorization to you to trail through the Refuge under the following conditions:

1. You may trail your cattle through the Bridge Creek area, entering, trailing through, and leaving the Refuge along the route marked in blue on the attached map.
2. We want the entire trailing operation to be done in one day.
3. Finally, you are to notify us at least 24 hours in advance before you begin trailing, so we may monitor your trailing operation.

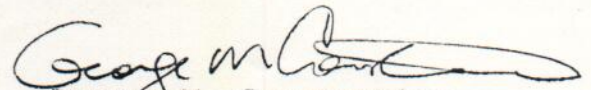
Dwight, I hope you can calm down and see that we are not being unreasonable and that there should not be any problems for you to trail your cattle through the Refuge under the preceding conditions. If your trailing this year can occur without problems, conditions 1 and 2 could be established for future trailing across Bridge Creek, and monitoring dropped.

All the anger, shouting, and threatening in the world cannot erase the fact that trailing through the Refuge is a privilege that can be controlled and yes, stopped by the Refuge. I am not "ignorant" to the fact that you hate this control over your activities or that you firmly believe that our goal is to stop your trailing through Bridge Creek. I can only repeat our good faith statements that we do not want to prevent you from trailing in this area, only to set reasonable rules to prevent harm to the resources or misuse of the privilege.

It's up to you where this disagreement will lead. I can assure you that how you, your family, and your employees conduct yourself on the Refuge and comply with rules and regulations, will all bear on whether you will continue to enjoy the privilege of trailing, haying, or grazing on the Refuge.

We want to work with you, but cannot accept a situation where you purposefully disregard our rules and guidelines.

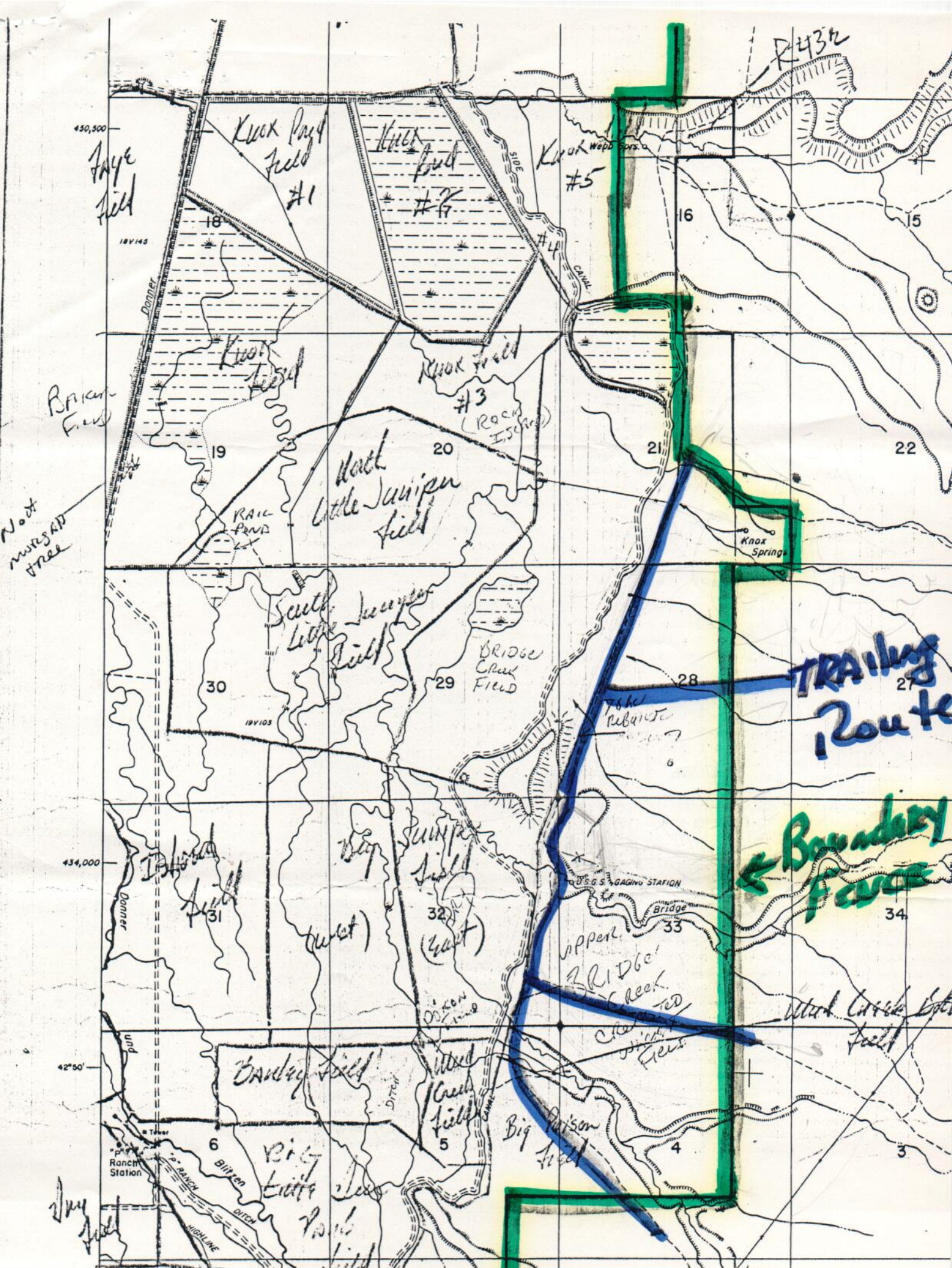
Sincerely,

A handwritten signature in dark ink, appearing to read "George M. Constantino", with a long, sweeping horizontal stroke extending to the right.

George M. Constantino
Refuge Manager

GMC/am

cc: Sandy Wilbur, Refuge District Supervisor
Tom Downs, P-Ranch





United States Department of the Interior

FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
Box 245
Princeton, Oregon 97721

March 20, 1987

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Hammond Ranches, Inc
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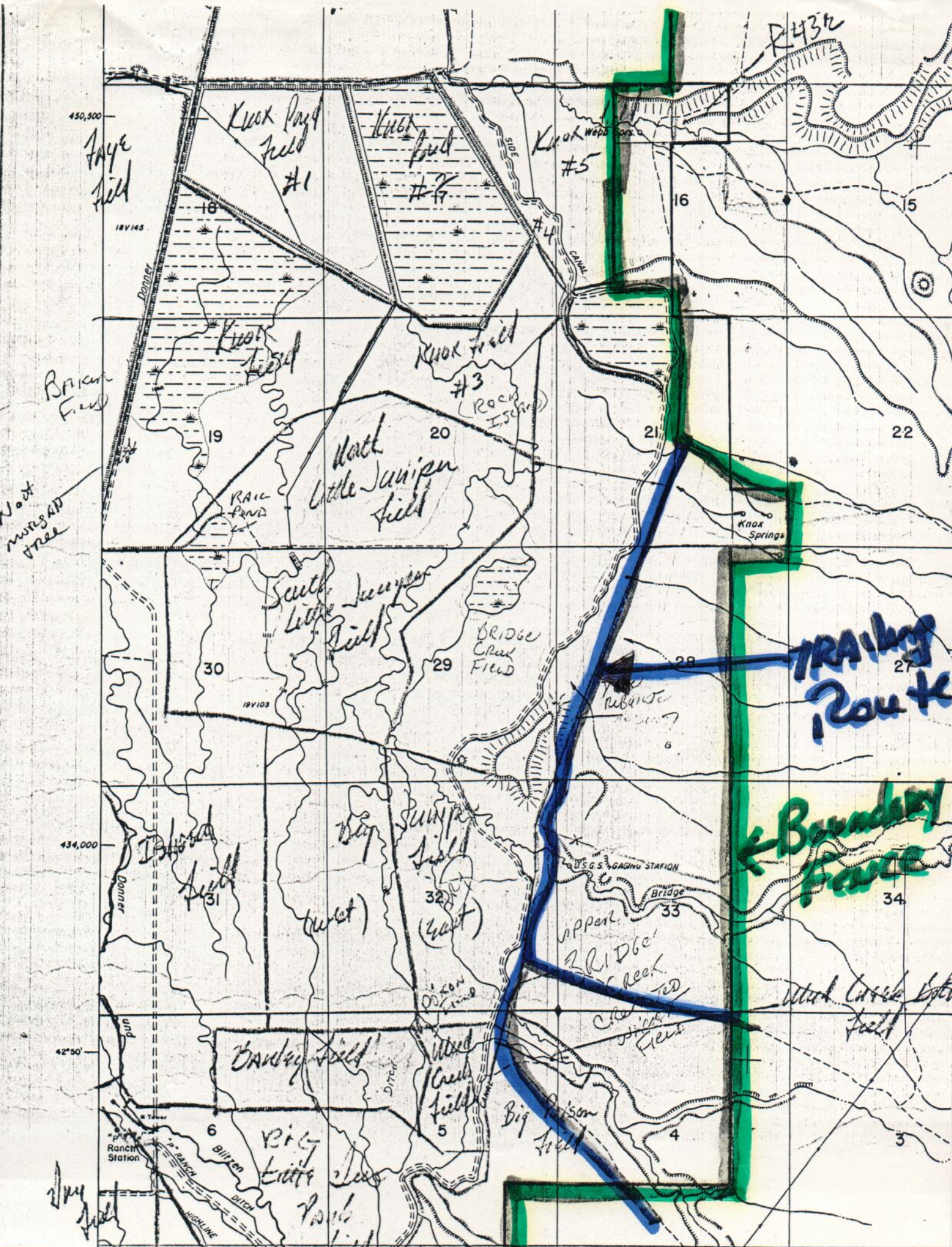
Sincerely,



George M. Constantino
Refuge Manager

GMC/am

cc: Sandy Wilbur, Refuge District Supervisor
Tom Downs, P-Ranch



FAXFORM To: Sandy Wilbur c/o Ruth @ Malheur NWR
From: Larry De Bates, FWS, Portland, OR
4/8/87 w/o attachment

Material

4/21/87

FOIA

HAMMOND RANCHES, INC.
DIAMOND, OREGON 97722

APRIL 2, 1987

U. S. DEPT. OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LLOYD 500 BUILDING, SUITE 1692
500 N. E. MULTNOMAH STREET
PORTLAND, OREGON 97232



ATTENTION: MR. LARRY DEBATES

DEAR MR. DEBATES:

THANK YOU FOR YOUR LETTER OF MARCH 19, 1987.

THIS LETTER WRITING SEEMS A POOR WAY TO SOLVE OUR PROBLEM, TO ME; BUT, SINCE YOU INSIST ON DOCUMENTING YOUR SIDE OF THIS SITUATION, WITHOUT EVEN SEEMING TO KNOW THAT SOME OF YOUR "POINTS" ARE NOT TRUE FACTS, AND THAT BECAUSE YOU WRITE THEM DOWN, DOES NOT MAKE THEM SO, I WILL WRITE TO YOU ONCE AGAIN.

YOU SEEM TO INFER IN YOUR CORRESPONDANCE, AND ALSO GEORGES LETTER OF MARCH 20, 1987, THAT THERE HAS NEVER BEEN A PROBLEM WITH MY TRAILING ACROSS THE REFUGE, AND THAT I MUST BE MISTAKEN AND SURELY ARE OFF BASE TO BE SO UPSET OVER SUCH A "MISUNDERSTANDING". I THOUGHT I HAD EXPLAINED IT TO YOU IN YOUR OFFICE, BUT I WILL TELL YOU AGAIN.

APPROXIMATELY A YEAR OR SO AGO, GEORGE CONSTANTINO TOLD ME I COULD NOT GO THROUGH THE REFUGE AS I HAD ALWAYS DONE. I REALLY DIDN'T TAKE HIM TOO SERIOUSLY, AS I KNEW THERE WAS NO OTHER WAY TO GO, AND I DIDN'T HAVE A CHOICE. I TOLD HIM THIS AT THAT TIME. WE HAD SEVERAL MEETINGS AFTER THAT, EACH TIME GEORGE TELLING ME I COULD NOT GO THROUGH THE REFUGE. THESE MEETINGS INCLUDED OTHER REFUGE PERSONNEL AND ALSO PEOPLE FROM THE BLM IN BURNS, OR. EACH TIME, HE WAS TOLD I COULDN'T GO ANY OTHER WAY. AROUND THE FIRST OF THE YEAR OR SO, WE HAD ANOTHER MEETING AND GEORGE PROPOSED A "PERMITTED" CROSSING THROUGH A PASSAGE THAT WAS VIRTUALLY IMPOSSIBLE. AT THAT TIME, I TOLD HIM I WOULD GIVE 1,000 TO ONE ODDS, IF HE AND ANY NUMBER OF COWBOYS HE CHOSE, COULD GET CATTLE THROUGH THE REFUGE ON THE TRAIL HE WAS PROPOSING. IT WAS ASININE!!!!!! AFTER MUCH DISCUSSION, ON GEORGE'S PART, HE DECIDED THAT, INDEED, I COULD GO THE WAY I HAD BEEN GOING, HOWEVER, I WOULD HAVE TO HAVE A PERMIT, AND BE SUPERVISED IN THE CROSSING. THIS IS NOT MY IDEA OF A "WORKING RELATIONSHIP".

IN YOUR FEB. 20, LETTER, YOU WROTE THAT GEORGE HAD BEEN ADVISED BY YOU TO NOT REQUIRE A PERMIT; THEREFORE, I FELT WE SHOULD HAVE HAD A CONSTRUCTIVE MEETING ON MARCH 12. THE VERY FIRST PART OF OUR CONVERSATION WAS THAT GEORGE WOULD LIKE TO GO OVER THIS, AGAIN, THAT THERE MUST BE SOMETHING HE WAS MISSING, AND WE SHOULD GET ON WITH THE MAKING OUT OF THE "PERMIT". I WAS INFORMED, AS I HAVE BEEN AGAIN IN GEORGE'S LETTER OF MARCH 20, THAT HE WAS "IN CONTROL" AND COULD STOP ME AT ANY TIME THAT I DIDN'T COMPLY WITH ONE OF HIS WHIMS.

I HAVE WASTED MANY HOURS OF MY TIME, THAT COULD HAVE BEEN PUT TO PRODUCTIVITY AND I AM SURE YOUR PERSONNEL HAVE DONE THE SAME, BUT THAT DOES NOT SEEM TO BE A FACTOR.

IN TRYING TO ANSWER YOUR LETTER, WE HAVE REVIEWED OUR PRIOR CORRESPONDANCE, AND IT SEEMS THAT WE HAVE EXPRESSED A NUMBER OF TIMES, THE IMPORTANT ISSUES CONCERNING OUR SIDE OF THIS PROBLEM, AS YOU HAVE YOURS. WE WENT TO PORTLAND, TO VISIT YOU, BECAUSE WE WERE TOLD SANDY WILBER WAS IN TOTAL AGREEMENT AS TO THE WAY GEORGE CONSTANTINO WAS HANDLING THIS SITUATION. WE DID NOT EVEN ASK TO SEE SANDY WILBER, FOR THAT REASON. THE SECRETARIES ROUTED OUR CALL THROUGH TO MR. WILBER, AND HE ASKED TO TALK WITH US SO WE OBLIGED, TO NO AVAIL. I STILL FELT THAT POSSIBLY WE HAD FAILED TO ADEQUATELY PRESENT OUR POSITION, THUS MADE THE OFFER TO PAY YOUR EXPENSES TO PERSONALLY ASSES THE PROBLEM, HERE, ON THE GROUND, YOURSELF. WE ALSO SAID THAT WE WOULD PAY YOUR PERSONAL REPRESENTATIVE'S EXPENSES, AND OUR OFFER STILL STANDS, EVEN IF IT WOULD BE SANDY WILBER, AND WE HAVE LITTLE FAITH THAT HE CAN ACCOMPLISH ANYTHING BECAUSE OF HIS TOTAL, APARENT AGREEMENT WITH GEORGE'S PAST POSITION. BUT, IF HE IS YOUR CHOICE, AND REPRESENTATIVE, SO BE IT. HOWEVER, WE FEEL THERE IS NO COMPROMISE LEFT IN US BECAUSE OF THE WAY THE SITUATION HAS BEEN HANDLED, NOT EVEN THE COMPROMISE OFFER OF HAMMOND RANCHES FURNISHING THE LABOR TO REPAIR THE OLD, PRIOR TO 1975, BOUNDARY FENCE. WE HAVE LIVED WITH THIS SITUATION AS LONG AS IT IS POSSIBLE, AS WE HAVE STATED IN ALL OUR LETTERS. WE WILL NOT BE SATISFIED UNTIL THIS SITUATION IS RESOLVED THIS TIME, SO AS TO PROTECT OUR RIGHTS FOR THE FUTURE, AS OBVIOUSLY YOU PEOPLE HAVE NOT BEEN SATISFIED, AND ARE STILL NOT SATISFIED, AND IT SEEMS, FROM OUR STANDPOINT, ARE ON A LONG-TERM PROPOSAL TO TERMINATE OUR BUSINESS. IF YOU FEEL THAT SANDY WILBER CAN HANDLE THIS TYPE OF COMPROMISE, WE WOULD BE THANKFUL FOR HIS ATTENDANCE; HOWEVER, THE PROBLEM, FROM OUR STANDPOINT, WILL NOT BE RESOLVED WITH LESS.

WE APPRECIATE YOUR RECOGNITION OF OUR HAVING TO USE THIS ROUTE TO TRAIL OUR CATTLE; BUT, WE FEEL THAT YOU ARE STILL BEING UNREASONABLE AS WE ARE NOT, APPARENTLY, MOVING OUR CATTLE TO YOUR SATISFACTION, AFTER THE CONSTRUCTION OF THE FENCE. THIS IS WHY WE FEEL WE HAVE NO ALTERNATIVE BUT TO GO BACK TO OUR 1975 AGREEMENTS WITH THE REFUGE, BLM, OWC AND OURSELVES. I REALIZE I AM SOMEWHAT INADEQUATELY EXPRESSING THE SITUATION, BUT, I WILL TRY AGAIN WITH THIS ENCLOSED MAP, SIGNED BY THE BLM, AT WHICH TIME THERE WAS PRESENT A REPRESENTATIVE FROM THE FOUR ABOVE GROUPS, AND WHICH WAS THE PRODUCT OF AN ON-THE-GROUND TOUR, CONDUCTED BY THE REFUGE, THUS VARIFYING THAT WE REALIZED THAT BRIDGE CREEK WAS A SENSATIVE AREA OVER 10 YEARS AGO. THE INSINUATION IN YOUR LETTER THAT OUR CATTLE HAVE DAMAGED THE BRIDGE CREEK REPARIAN AREA IS ANOTHER JAB AT US WITH A SHARP STICK, THAT WE RESENT, GIVING US A BLACK EYE IN THE ENVIRONMENTAL COMMUNITY. HAD THE AGREEMENT OF 1975 BEEN COMPLIED WITH, AS AGREED, BY THE REFUGE, THE PROBLEMS WOULD NOT NOW EXIST. WE ARE THE MOST PROMINENT CONSERVATIONISTS IN THIS AREA, AS WILDLIFE, BIRDS, AND FISH ARE ALL BEING FED BY US, YEAR ROUND, AND WE ARE NOT PAID ANY TAX DOLLARS TO OFFSET THEIR CARE AND WELFARE.

BOTTOM-LINE OF THIS WHOLE MAJOR PROBLEM STEMS FROM YOU PEOPLE NOT LIVING UP TO THE AGREEMENT OF 1975, CREATING A SITUATION THAT WAS TOUGH TO LIVE WITH, BUT WE DID, UP UNTIL THE TIME OF THE LOCAL GESTAPO'S EXERCISING HIS LAW-ENFORCEMENT ABILITIES (TOM DOWNS), GEORGE CONSTANTINO, HIS SUPERIOR, AND REFUGE MANAGER, AND SANDY WILBER, WHO IS BACKING HIM UP.

ALSO, IN REREADING OUR LETTERS, IT SEEMS TO ME THAT MAYBE THE IMPRESSION HAS BEEN MADE THAT MY "TRAILING" ACROSS THIS AREA ONLY HAPPENS ONCE A YEAR. I WOULD LIKE TO CLARIFY THIS, IN THAT EVERY TIME I TAKE CATTLE FROM ONE SIDE OF MY RANCH TO THE OTHER, FOR WHATEVER REASON, I MUST USE THIS ROUTE.

I TOO AM VERY CONCERNED THAT YOU THINK MY RELATIONSHIP WITH YOUR REFUGE STAFF HAS DETERIORATED TO ANY DEGREE. I HAVE SOME VERY OBVIOUS DEFINITE FEELINGS ABOUT THE ABILITIES OF TWO MEMBERS OF YOUR STAFF, AND OTHER THAN THAT, I HAVE NO PROBLEMS WITH REFUGE PERSONNEL. UNDER THE FREEDOM OF INFORMATION ACT, I WOULD LIKE FOR YOU TO INCLUDE, IN YOUR NEXT LETTER, A COPY OF THE DOCUMENTATION OF THE INCIDENT YOU REFER TO IN YOUR MARCH 19 LETTER.

AGAIN, I AM SORRY THIS WHOLE THING HAS GOTTEN SO BLOWN OUT OF PROPORTION, BUT I HAVE NO CHOICE BUT TO FIGHT BACK, AND THIS TIME FOR A PERMANENT SOLUTION, THIS BEING THE REMOVAL OF THE NEW FENCE AND GOING BACK TO THE OLD BOUNDARY FENCE THAT SERVED WITH ZERO FRICTION FOR AT LEAST 40 YEARS, AND THE NEW (1975) AGREEMENT WOULD HAVE PRESERVED THE RIPARIAN HABITAT IN BRIDGE CREEK.

SINCERELY,

DWIGHT L. HAMMOND

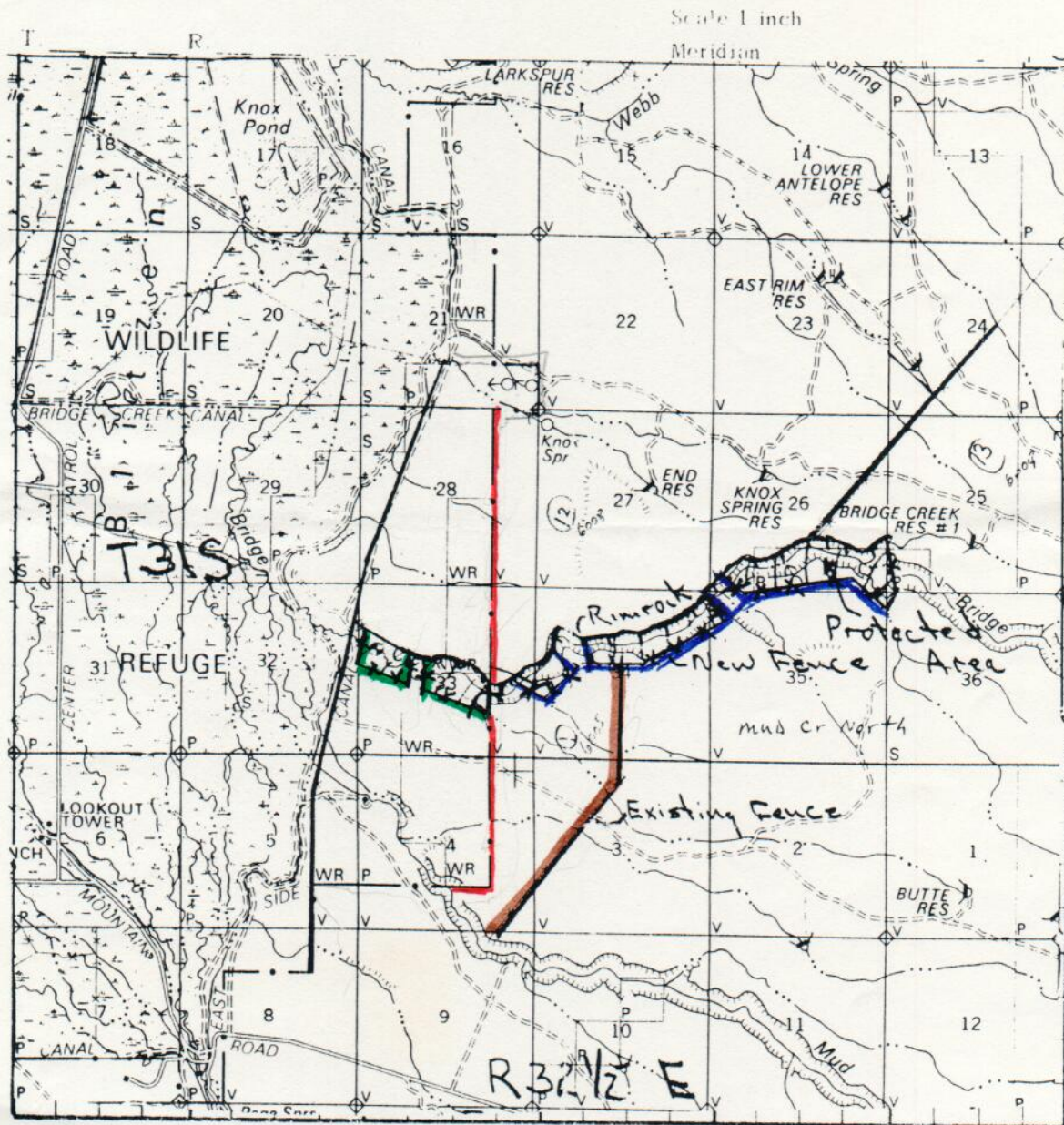
ENC: BLM JOB IDENTIFICATION INCLUDING MAP - 1975
COPY MALHEUR LETTER MARCH 20, 1987

APRIL 2, 1987

P. S. NOTE- AGAIN, NOT RELATED TO THE ENCLOSED CONFLICT, BUT PART OF THE MANAGEMENT DECISIONS THAT MAKE FOR POOR RELATIONSHIPS, AND SINCE, WHOEVER IS VISITING ON YOUR BEHALF MAY BE ENLIGHTENED, AND POSSIBLY INCORPORATE THIS KNOWLEDGE INTO THE VISIT, AND MAKE THIS A MORE PRODUCTIVE VISIT. OUR CATTLE, IN THE WINTER OF 1987 USE, HAD USED ALL THEIR ALLOTTED AUMS. THERE WAS STILL TIME LEFT ON THE PERMIT. WE WERE OUT OF FEED, AND WERE ASKED TO LEAVE, WHICH WE DID. AT THAT TIME, WE HAD ASKED TO USE EXCESS FEED THAT WAS IN A FIELD THAT WAS SITUATED WELL FOR US, AND WE WERE TOLD THERE WAS NO FEED FOR US IN THAT FIELD AS THEY WANTED TO PROTECT THE UPLANDS FOR NESTING HABITAT. APPROXIMATELY ONE MONTH LATER, ALL THAT FEED, THE UPLANDS AND WHATEVER, WAS TOTALLY DESTROYED BY THE REFUGE, THROUGH BURNING. THIS DID NOT CREATE ONE DOLLAR OF REVENUE TO OFF-SET THE TAXPAYER LOAD, BUT DID COST US. ALSO, THE EMERGENCY FORAGE BOARD HAS ASKED FOR ANY EXCESS FEED TO BE INCORPORATED INTO THE FORAGE NEEDS OF THE PEOPLE WHO ARE UNDER WATER IN THE LAKE. THE REFUGE HAS SAID THEY HAVE NO EXCESS FEED, YET THEY CAN STILL BURN AREAS THAT COULD HAVE BEEN ECONOMICALLY USED AND COULD HAVE CREATED SOME REVENUE. ADMITTEDLY THERE ARE A FEW AREAS ON THE REFUGE THAT CAN NOT BE DELT WITH IN ANY OTHER WAY, BUT THIS IS NOT WHAT WE SEE AS THE NORM. WHETHER WE USE THE FEED, THE EMERGENCY PEOPLE USE IT, OR IT IS PERMITTED IN SOME OTHER WAY IS REALLY IRRELLIVENT IF THERE WAS ONLY A TURN OVER OF A RENEWAL DOLLAR. PLUS, MAYBE THEN YOU COULD BE ABLE TO PAY OUR COUNTY IT'S FAIR SHARE FOR HAVING BEEN HERE, INSTEAD OF SHORT-CHANGING US YEAR AFTER YEAR, MAKING NO EFFORT TO BREAK EVEN.

WE REALIZE YOU BELIEVE WE ARE NOT BEING SINGLED OUT; HOWEVER, JUST THIS WEEK WE HAVE BEEN INFORMED THAT OUR GRAZING FOR THE UP-COMING YEAR IS BEING REDUCED, WHILE OTHERS SEEM TO BE GETTING INCREASES IN THEIR AUMS.

VI LOCATION PLAT



VII -- NARRATIVE DESCRIPTION OR JUSTIFICATION

This Fence will be constructed between Mud Creek & Frazier Field AMP's. The main purpose for this project is to eliminate cattle grazing & reduce soil loss & improve riparian habitat.

This is a cooperative project w/ the Refuge OWC and the BLM located between Frazier Field AMP #606 and Mud Cr. AMP #607.

Prepared by James L. Anderson

Title Natural Res. Spec. Date 12-22-75

Approved by [Signature]

Title Andrews Area Mgt Date 12-29-75

- LEGEND:
- ORIGINAL FENCE - REMOVED
 - PROPOSED FENCE - STARTED TO BE BUILT, BUT NOT COMPLETED
 - "NEW" FENCE - PROBLEM
 - FENCE BUILT AND MAINTAINED BY BLM, AFTER 1975 AGREEMENT

HAMMOND RANCHES. INC.
DIAMOND, OREGON 97722



U. S. DEPT. OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LLOYD 500 BUILDING, BUILT
500 N. E. MULTNOMAH STREET
PORTLAND, OREGON 97232

CERTIFIED

P 715 208 978

MAIL

Detached from
PS Form 3849-A
Oct. 1980

UNITED STATES GOVERNMENT

FISH AND WILDLIFE SERVICE
PORTLAND, OREGON

Memorandum

To: ARD - Refuges and Wildlife
Portland, OR (ARW)

From: Refuge Dist. Supervisor, Oregon/Washington
Portland, OR (ARW/RF-OR/WA)

Subject: Malheur NWR Grazing - Dwight Hammond Complaints

Date: 4/14/87

RW-MLH/HM/Grazing &
Haying

APR 14 1987

FWS - REFUGES & WILDLIFE
REGION 1 PORTLAND, OR

While at Malheur last week, I spent one entire day with the Refuge staff looking over the Bridge Creek area and discussing the Hammonds' complaints. Although I had arranged to stay over Saturday to meet with the Hammonds personally, they were unavailable and I could only talk with them by phone.

The immediate issue of Hammonds trailing cattle through the refuge appears to be worked out. No permit is being issued, as we are acknowledging their "historic" use of that trail, but David Johnson volunteered to accompany Hammonds on their drive to help out. It is the feeling of the refuge staff that passage through the refuge should not take over 6 hours. Right now, the first move of cattle is expected May 2 (255 head), with a second scheduled about June 11 (495 head).

Hammonds have raised several other issues of "unfair treatment", but it appears to me that they are being dealt with the same as all other refuge permittees. The real issue is still the fence we built on the refuge boundary several years ago. The fence was built before either George Constantino or I were involved, so we cannot address anyone's "intent" (Hammonds claim it was a "spite fence", erected solely to inconvenience them). However, it clearly is a good fence in that it protects springs and riparian areas, identifies our boundary, and does not create an access problem for Hammonds as long as they can trail cattle through the refuge. During my phone conversation with the Hammonds, it was made clear that nothing would satisfy them except the removal of the fence. I asked again for clarification of what the specific problem was. The answer was that, if I didn't know by now, I hadn't been listening.

My instruction to the refuge staff was to continue to treat the Hammonds as they would treat any other permittee on the refuge. This involves documenting compliance with permits and attempting to resolve problems at the local level as they occur. I think the refuge staff does this very well, taking a low key and generally non-confrontational approach that works well in almost all situations. Because I don't feel that Hammonds' complaints are justified, I recommend to you that we move control back to the field as quickly as possible. I suspect that the Hammonds will call the Regional Director since they aren't getting satisfaction from Refuges, so we should arrange a briefing for Rolf soon. ||

Sanford R. Wilbur
Sanford R. Wilbur

cc: Malheur NWR

RBOW:RDS4.DHCOMPL.SRW.MBB

Thompson, Excellent letter

<u>2</u>	REGIONAL DIRECTOR	
	DEPUTY REGIONAL DIRECTOR	(RD)
	SPECIAL ASSISTANT TO THE REGIONAL DIRECTOR	(DRD)
	ASSISTANT REGIONAL DIRECTOR--PUBLIC AFFAIRS	(SARD)
	ASSISTANT REGIONAL DIRECTOR--BUDGET AND ADMINISTRATION	(APA)
	Budget and Finance	(ABA)
	Contracting and General Services	(FI)
	Mailroom	(CGS)
	Engineering	(MR)
	Information Resource Management	(EN)
	Personnel Management	(IRM)
	Safety	(PH)
	ASSISTANT REGIONAL DIRECTOR--FISH AND WILDLIFE ENHANCEMENT	(SA)
	Deputy Assistant Regional Director--Federal Assistance	(AFWE)
	Endangered Species	(AFA)
	Federal Aid	(SE)
	Deputy Assistant Regional Director--Ecological Services	(FA)
	Ecological Services	(AES)
	National Wetlands Inventory	(ES)
	Environmental Contaminants	(IWI)
		(EC)
	ASSISTANT REGIONAL DIRECTOR--FISHERIES	
	ASSISTANT REGIONAL DIRECTOR--HUMAN RESOURCES	(AFR)
	ASSISTANT REGIONAL DIRECTOR--LAW ENFORCEMENT	(AHR)
	ASSISTANT REGIONAL DIRECTOR--REFUGES AND WILDLIFE	(ALE)
	Education, Publications, Interpretation, Cultural Resources	(ARH)
	Migratory Bird Coordination	(EPIC)
	Refuge Operations Support	(MBC)
	Refuge District Supervisors	(CA) (ID/NV)
	Realty	(OR/HA)
	Wildlife Policy and Direction	(RE)
	OFFICE OF MIGRATORY BIRD MANAGEMENT	(WPD)
	SOLICITOR (Portland) (Sacramento)	(MBMO)
	PACIFIC ISLANDS ADMINISTRATOR, HONOLULU, HAWAII	(SOL)
	Ecological Services - Portland Field Office	(PIA)

Sandy file

Action Desired:

*Sandy Wilbur --**See Top of page -- can you please answer.**Arlene See attached. Hammonds met with me, then with DeBates*From: *RD*
R1-21 (Rev. 10/86)Date Originated: *3/5/87* *SW*

mailed 5/21

ARW/RF-OR/WA

April 15, 1987

RW-MLH/HM/Grazing & Hay.

Dwight L. Hammond
Hammond Ranches, Inc.
Diamond, Oregon 97722

Dear Mr. Hammond:

Your April 2 letter regarding livestock use of Malheur National Wildlife Refuge requested that, under the Freedom of Information Act, we provide you with documentation of an incident in which you verbally abused and threatened refuge employees. That documentation is attached.

I understand that Mr. Wilbur was not able to meet you personally when he was at Malheur, but that he did talk to Mrs. Hammond by phone after he had reviewed the situation in the field. It appears that the immediate issue of moving your stock through the refuge this spring is being worked out with the refuge, but that you are still dissatisfied that we will not remove the refuge boundary fence constructed some years ago in the Bridge Creek area. Further evaluation of that situation confirms my earlier decision that the fence is in a desirable location and will continue to be maintained. If you have specific concerns about the fence as it affects your operations, please discuss them with Refuge Manager Constantino. Perhaps there is some accommodation that can be made.

Sincerely,

Original signed by

Lawrence W. De Bates

Assistant Regional Director
Refuges and Wildlife

Attachments

cc: Malheur NWR

SRWilbur:mbb

RBOW:RDS4.DHAMMOND.SRW.MBB

Name	Date
Chamberlain	4/16
SWilbur	4/16

4/21

~~Harry~~
Sandy } Discussed
this matter
@ length w/ DeClerk
4/21 am. He strongly
feels Ruth's & Arlene's
statements should,
he sent w/ George's.

His main points:

- ① withholding the 2 makes
the reply suspect.
- ② The 2 add much
strength to George's
statement and to
our decision.

I sent letter w/ 3
statements attached, EDC

4/20/87

TO: SANDY WILBUR

See note below.

4/16:

Larry -

I could not get Bill Back's opinion on the FOIA part of this. I hope he will say that we send Georgis, but not Arlene's or Ruth's, statements.

I called Bill at 4 p.m. today and he had it in his "rush" pile, so maybe you could call him ~~Friday~~ Monday and finalize this.

Sandy

~~4/20/86~~
TO: Sandy Wilbur

Telephone
1st 2145
2nd 2130 / 2337

~~Dick DeClonck wanted to counsel you on Friday AGAIN Before I signed this.~~

Larry

UNITED STATES GOVERNMENT

FISH AND WILDLIFE SERVICE

Memorandum

TO : Files

DATE: 03-12-87

FROM : Refuge Manager, Malheur NWR, Princeton, OR

SUBJECT: March 12th Meeting with Dwight and Susie Hammond re Trailing through Bridge Creek

I met with Mr. & Mrs. Hammond in my office at refuge headquarters to discuss his trailing through the refuge this spring. I had reviewed both ARW DeBates letter of February 20, 1987 and Dwight's letter of March 7, 1987 back to DeBates.

We began by reviewing what each other thought about the issue. I reviewed, with a map, Mr. Hammond's use and trailing patterns, both before and after the boundary fence was installed in the Bridge Creek area. The key point is that the most efficient way to move from his north area of operation to his south area of operation is to drive the cattle across the bottom section of Bridge Creek just east of where Bridge Creek meets the East Canal.

Mr. Hammond said that in his mind there was no problem with cattle grazing on the refuge and lower stretches of Bridge Creek in the old days.

I said that as best as I could reconstruct it, the refuge had decided in the 1970's that we wanted to afford the Knox Springs area and the Lower Bridge Creek area protection from grazing. We also wanted to bring this part of the refuge under refuge, not BLM, control. (Mr. Hammond's grazing activities in this area were under BLM permit).

He told me to look up the Refuge Policy on fences. We both looked up and read 9RM3.1 Policy - Fencing. Mr. Hammond interprets this section to prohibit the fence because it created a "conflict with adjacent landowner". I said we interpreted it to justify the fence based on the need for "management and protection of wildlife and refuge lands".

We then got to the heart of the issue. He asked me why his trailing was a problem now. I said that it was a problem when I found him putting approximately 125 cows and calves on the North Upper Bridge Creek Field last spring for several days before he trailed them across Bridge Creek. This triggered in my mind a need to discuss this with Mr. Hammond and set some rules or guidelines to guide his use of the refuge.

I then said ARW DeBates had instructed me to discuss this matter with the Hammond's one more time to establish a reasonable agreement for their trailing across the refuge. I said I knew we disagreed over his "right" to trail across the refuge, but we simply had the authority to oversee this type of activity on the refuge. We had no intention of stopping him from trailing through Bridge Creek, but did want to set some pre-established guidelines for this use.

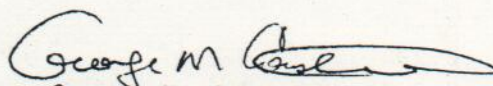
Mr. Hammond then told me I was an "ignorant son-of-a-bitch" and ^I did not understand what I was doing. He would never accept any permit or conditions covering his use because it meant that eventually we would stop him from trailing across Bridge Creek.

I said ARW DeBates had instructed me to write a letter to the Hammond's after our meeting and establish reasonable guidelines and I would do this, saying "the Hammond's could trail through Bridge Creek, to do it in one day, if possible, and that we would like 24-hour notice so we could monitor the use."

By this time Mr. Hammond was very angry. He first said that he might call me beforehand if it was convenient, then ~~saying~~ ^{He said} he would call me so he could be sure I was there to stop him from trailing across the refuge and that I should bring the sheriff so there would be a witness to watch him "tear your head off and sh-- down the hole".

He then told his wife to "get" and he started to leave. He slammed my office door as he left, ~~and~~ ^{He then} asked Refuge Assistant Warneke and Secretary Miller to speak privately with him in an empty office room. I overheard what Mr. Hammond said because he spoke in a very loud voice and had left the door to the room they were in open.

Mr. Hammond told them they worked for the most ignorant boss that had put him in a corner. "A mouse in a corner will fight for his life." He said in a month ~~He~~ ^{Hammond} would call to say he was coming through the refuge with his cattle and that they should call the sheriff and undertaker to come.


George M. Constantino

The following statement is required of me by my supervisor, Refuge Manager George M. Constantino. My co-worker, Refuge Assistant Ruth Warneke and I requested of Mr. Constantino that we not be forced to become involved. He was absolute that as federal employees, it was necessary that we comply.

On Thursday morning, March 12, 1987, after a meeting with Mr. Constantino, Dwight Hammond asked if he could speak to Ruth and me for a moment in private. We stepped into a vacant office. The door did not shut all the way and Mr. Constantino said that he did overhear parts of the ensuing comments.

It was plain to see that Mr. Hammond was extremely upset - this seemed totally out of character for the man. We, as office staff and contacts, have observed him many times as he negotiated and dealt with refuge management, but never before has he seemed under such stress.

Mr. Hammond stated that after repeated meetings just like this one, Mr. Constantino still refused to try and understand the situation they are in confrontation over. He stated that even a mouse will fight if forced into a corner - it will fight a panther or eagle or cougar. He said that Mr. Constantino "has maneuvered the mouse into a corner ... or thinks he has".

He told us that in about one month he will be moving cattle and would call us then, at which time we could phone Dave Glerup. He said that if we wanted a real gold star, we could also get hold of LaFollette, because this is what it has finally come down to for survival.

Girlene Miller

STATEMENT TO REFUGE MANAGER CONSTANTINO FROM REFUGE ASSISTANT RUTH WARNEKE

On March 12, 1987, after meeting with Refuge Manager Constantino, both Arlene Miller and myself were approached by Dwight Hammond and asked if he could speak to us in "private".

We went into the vacant office of the Asst. Manager which is located right across the hall from Mr. Constantino's office. The door was not closed all the way and I'm sure Mr. Constantino heard parts, if not all, of the conversation.

Shortly after, Manager Constantino requested that we write a statement, to the best of our recollection, of what Mr. Hammond had said to us, sign it, and present it to him. We tried to "beg off", on the grounds of not wanting to become involved in this controversy, but Mr. Constantino said it was our duty as Federal employees.

Mr. Hammond was very obviously upset. Consequently, it shocked and stunned me, as in all the years I have worked at the refuge, I had never seen him this way before. Because of this, I'm sure I didn't fully retain Mr. Hammond's remarks verbatim. He told us that we worked for a boss that was the most stupid man in the world. He made a strong point of telling us that a panther, (he named other animals, which I can't remember) and even a mouse will fight back if they are backed into a corner and this is what George has just done to me.

He went on to say he planned to move his cattle in approximately a month from now, and he was going to call us girls and let us know at that time. When he did, (call us) he wanted us to notify the Sheriff David Glerup. Then something to the effect that we might even want to call Jim LaFollette. (~~Underfaken~~ W Burns)

I was still in shock but am sure I did not say anything in reply to Mr. Hammond.

Ruth Warneke

ARW - R-1

6.1 ~~ARD - Refuges and Wildlife~~

Deputy ARD - Refuges and Wildlife (DARD)

ARD Secretary (SAWR)

5 X 2 ~~RF - OR/WA~~

RF - ID/NV

RF - CA

Migratory Bird Coordination (MBC)

Wildlife Policy and Direction (WPD)

Refuge Operations Support (OPR)

Education-Publication-Interpretation-
Cultural Resources (EPIC)

Realty (RE)

Pacific Island Administration (PIA)

FOIA Request sent to last TP

X - Action

- File

Toss

Forward

1 ~~ARD - Refuges and Wildlife~~

5 RQ ~~Deputy ARD - Refuges and Wildlife (DARD)~~

2 ~~ARD Secretary (SAWR)~~ — ~~Send to AD(DND)~~
for info.

SAZ ~~RF - OR/WA~~

RF - ID/NV

RF - CA

Migratory Bird Coordination (MBC)

Wildlife Policy and Direction (WPD)

Refuge Operations Support (OPR)

Education-Publication-Interpretation-
Cultural Resources (EPIC)

Realty (RE)

Pacific Island Administration (PIA)

X - Action

- File

Toss

Forward

~~206~~
~~URD~~ ~~ARD - Refuges and Wildlife~~
 Deputy ARD - Refuges and Wildlife (DARD)
 ARD Secretary (SAWR)

~~SX 3~~ RF - OR/WA
 RF - ID/NV
 RF - CA
 Migratory Bird Coordination (MBC)
 Wildlife Policy and Direction (WPD)
 Refuge Operations Support (OPR)
 Education-Publication-Interpretation-
 Cultural Resources (EPIC)
 Realty (RE)
 Pacific Island Administration (PIA)

4/15/87

~~YES, ALSO A LETTER UNDER MY~~

SIGNATURE SHOULD GO BACK TO HAWAIIANS
 CAPSULIZING YOUR VISIT AND OUR POSITION ON
 THE POWER. ALSO SAY WE HAVE ATTEMPTED
 X - Action - File Toss Forward
 TO WORK THIS OUT, BUT WE SEE LITTLE EFFORT ON
 HIS PART. LARRY

UNITED STATES GOVERNMENT

MLH - HM - Grassland
FISH AND WILDLIFE SERVICE Mgt.

Memorandum

TO : Hammond Files

DATE: May 6, 1987

FROM : Habitat Specialist

SUBJECT: Movement of Livestock Through Refuge on
April 28, 1987.

On the evening of Monday, April 27, 1987, at about 7:30 p.m., Dwight Hammond called me at home and told me that he would be moving cattle around Bridge Creek the following morning at 5:00 a.m. He explained that this was a sudden change of his earlier plan to move them on May 2, 1987, but the well drilling project he was working on was temporarily at a stand still pending drill parts, and this was a good opportunity for him to move his cattle.

I explained that I had just broken 3 ribs and would not be able to help him on horseback. I had also planned on helping the BLM in Krumbo Creek that day and would not be able to meet up with him until later in the morning. He said he planned on being done before noon and if I couldn't make it before about 8:00 a.m., there really wasn't any need for me to meet him. I told him I would try to check on his movements at about 9:30 or 10:00 a.m. and would change my schedule to repair the fence crossing in Bridge Creek.

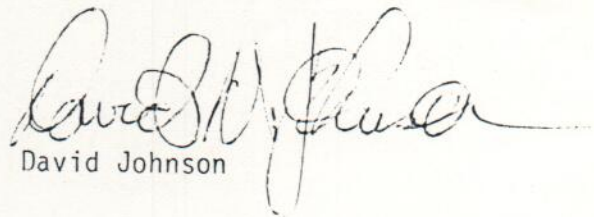
He then got defensive and asked "Are you coming down to help me get this job done, or are you just coming to monitor my operation? Because if you are just coming to monitor, then there is no need to come!!" I told him that in all honesty that because of my broken ribs I would be monitoring more than helping. It was a very awkward discussion, but I left it with the understanding that I would check with him in the field if I ran into him when I got to Bridge Creek. If he was having problems getting through the refuge, I would help however I could.

On Tuesday, April 28, 1987, I met with BLM personnel at 7:00 a.m. and cancelled my trip to Krumbo. I then picked up my truck from Burns Ford Garage and drove to headquarters where I picked up Mike Rule. We gathered most of the items we felt we would need for the fence and drove to Bridge Creek. Upon arrival, Mike observed Dwight Hammond and another person watering their horses in Bridge Creek. He also observed Russell Hammond and Destry Campbell riding their horses back from the BLM ground above the Upper Bridge Creek Field.

The movement was already completed by 10:00 a.m. when we arrived, and the riders were going back to the Hammond Ranch. I looked for where they had moved the cattle and could tell that they had crossed Bridge Creek at the lower end of the field below the gaging station. However, because we needed to unload and pack materials into the creek bottom, I did not make a full effort to retrace the whole movement - particularly since there were no obvious problems.

That night and the following day we received a couple of heavy rains and the trail was pretty insignificant when I tried to trace it. The attached map is my best guess at the actual route taken.

I did not see any significant resource damage as a result of this action.



David Johnson

DJ/jcv
enc.

cc: ARW/RF-OR/WA, RDS Wilbur

PELAFH

PELWC

170

PELWC

PSS

PELWC

Spring

PELWC

PELWC

Knob

Spring

PF

STOE

28

R2UBH

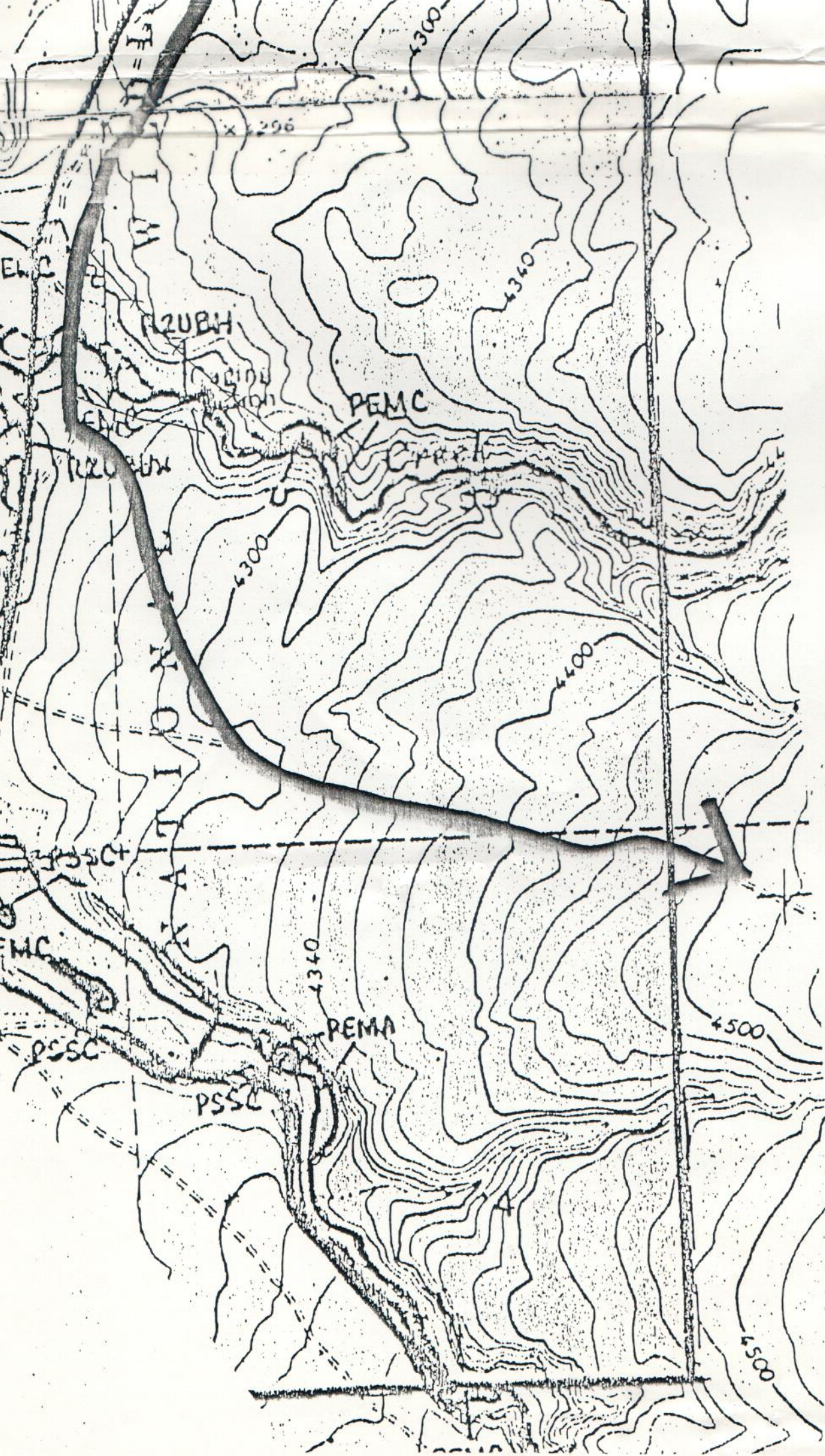
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§ 25.42

ager will so inform the applicant, giving the applicant all the necessary information as to how and where to apply.

§ 25.42 Permits required to be exhibited on request.

Any person on a national wildlife refuge shall upon request by any authorized official exhibit the required Federal or State permit or license authorizing their presence and activity on the area and shall furnish such other information for identification purposes as may be requested.

§ 25.43 Revocation of permits.

A permit may be terminated or revoked at any time for noncompliance with the terms thereof or of the regulations in this Subchapter C, for nonuse, for violation of any law, regulation or order applicable to the refuge, or to protect public health or safety or the resources of a national wildlife refuge.

§ 25.44 Easement area permits.

(a) The provisions of this subsection shall govern the regulation of activities that affect easement interests acquired by the United States. All other provisions of Subchapter C shall apply to activities within such easement areas, but only to the extent that those provisions are directly or indirectly related to the protection of those easement interests expressly acquired by the United States which are specified in the easement agreement itself, and are not inconsistent with the provisions of this subsection.

(b) Permits for use of easement areas administered by the Service are required where proposed activities may affect the property interest acquired by the United States. Applications for permits will be submitted in writing to the regional director or a designee. Special use permits may be granted to owners of servient estates, or to third parties with the owner's agreement, by the regional director or a designee, upon written determination that such permitted use is compatible with the purposes for which the easement was acquired. If it is ultimately determined that the requested use will not affect the United States'

50 CFR Ch. I (10-1-86 Edition)

interest, the regional director will issue a letter of non-objection.

(c) In instances where the third applicant is a governmental entity which has acquired a partial interest in the servient estate by subsequent condemnation, a special use permit may be granted to the governmental entity without the servient estate owner's agreement if the regional director or his or her designee determines:

(1) The permitted use is compatible with the purpose for which the Service's easement was acquired; and

(2) The permitted use is consistent with the partial property interests obtained through condemnation.

(d) The regional director or designee may require mitigation measures, as determined appropriate, within the easement area, in order to make the proposed use compatible with the purposes for which the easement was acquired. Such mitigation measures are solely for the purpose of complying with the requirement of the National Wildlife Refuge Administration Act that the use be compatible with the purpose for which the area was established. If the proposed use cannot be made compatible through permit stipulations and/or mitigation, the permit will be denied.

(e) Regulations pertaining to rights-of-way in easement areas are contained in 50 CFR Part 29.21.

[51 FR 7575, Mar. 5, 1986]

§ 25.45 Appeals procedure.

(a) *Who may appeal.* Any person who is adversely affected by a refuge manager's decision or order relating to the person's permit granted by the Service, or application for permit, within the National Wildlife Refuge System. This section does not apply to permits or applications for rights-of-way. See § 29.22 for the hearing and appeals procedure on rights-of-way.

(b) *Preliminary procedure.* Prior to making any adverse decision or order on a permit or application for permit, the refuge manager shall notify the permittee or applicant orally or in writing of the proposed action and its effective date. The permittee or applicant shall have twenty (20) days after notification in which to present to the

U.S. Fish and Wildlife Serv., Interior

refuge manager, orally or in writing, a statement in opposition to the proposed action or date. The permittee or applicant shall be notified in writing within twenty (20) days after receipt of the statement in opposition, of the refuge manager's final decision or order.

(c) *Appeals, how taken.* If the refuge manager still intends to proceed with the proposed action, the permittee or applicant shall have thirty (30) days from the postmarked date of the refuge manager's final decision or order in which to file a written appeal to the appropriate area manager. The appellant (permittee or applicant) shall be notified in writing within thirty (30) days from the postmarked date of the appeal of the area manager's decision. The appellant shall have (30) days from the postmarked date of the area manager's decision to further appeal in writing to the appropriate regional director.

(d) *Decision of regional director.* The regional director's decision shall be final and issued in writing to the appellant within thirty (30) days from the postmarked date of the appeal.

(e) *Oral presentation.* The appellant shall be provided an opportunity for oral presentation before the area manager or the regional director within the respective thirty (30) day appeal periods.

(f) *Addresses.* The addresses of the appropriate officials to whom appeals may be taken shall be furnished in each decision or order.

(g) *Suspension pending appeal.* Compliance with any decision or order of a refuge manager shall not be suspended by reason of an appeal having been taken unless such suspension is authorized in writing by the area manager or regional director (depending upon the official before whom the appeal is pending), and then only upon a determination by these officials that such suspension will not be detrimental to the interests of the United States or upon submission and acceptance of a bond deemed adequate to indemnify the United States from loss or damage.

[42 FR 64120, Dec. 22, 1977. Redesignated at 51 FR 7575, Mar. 5, 1986]

HAMMOND RANCHES, INC.
DIAMOND, OREGON 97722

Noted Material
Ready due 2-5-88

JANUARY 18, 1988

U. S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LLOYD 500 BUILDING, SUITE 1692
500 N.E. MULTNOMAH STREET
PORTLAND, OREGON 97232



ATTENTION: LAWRENCE W. DEBATES

DEAR MR. DEBATES:

ONCE AGAIN, IT IS COMING TO THE TIME OF OUR TRAILING OUR CATTLE TO OUR SPRING AND SUMMER RANGE. LAST YEAR WAS NOT A VERY GRATIFYING EXPERIENCE, AND WE WERE HOPING THAT GIVEN SOME TIME, AND ROOM FOR IMPROVEMENTS, POSSIBLY WE WOULD HAVE SOME CHANGE.

NOTHING HAS IMPROVED WITH OUR FENCING PROBLEM, AND IT IS A VERY UNLIVABLE SITUATION AS IT IS.

THE ONLY THING YOU PEOPLE HAVE DONE IS WRITE LETTERS TO THE EFFECT THAT THE PROBLEM NO LONGER EXISTS, AND THAT THE PROBLEM IS BEING WORKED OUT. NOTHING PHYSICAL, (WHICH IS THE REAL PROBLEM) HAS CHANGED.

WE WERE TOLD TO DISCUSS THIS WITH MR. CONSTANTINO. THAT HAS BEEN DONE SEVERAL TIMES. IN YOUR LETTER OF MARCH 19, 1987, YOU STATED THAT MR. SANDY WILBUR WAS TO CONTACT US; COME OVER AND LOOK AT THE PROBLEM, ON THE GROUND. HE HAS MADE SEVERAL TRIPS TO OUR AREA, AND HAS MADE NO ATTEMPT TO "LOOK" AT THE PROBLEM AND CONTACT US. MALHEUR NATIONAL WILDLIFE REFUGE OFFICE GIRLS DID CALL ONE FRIDAY AFTERNOON, APRIL 10, 1987, ASKING IF DWIGHT COULD MEET WITH MR. WILBUR THAT AFTERNOON. DWIGHT WAS NOT HOME AND MR. WILBUR COULD NOT BE HERE AFTER THAT DAY, ALTHOUGH WE BELIEVE HE HAD BEEN HERE FOR 2 OR 3 DAYS AT THAT TIME. THIS IS OUR VERY BUSIEST TIME OF YEAR; BUT, HAD WE HAD ANY ADVANCE NOTICE, WE WOULD HAVE MADE IT A POINT TO DROP EVERYTHING AND MEET WITH MR. WILBUR. WE WERE GIVEN NO NOTICE. MRS. HAMMOND RECEIVED A PASSIVE TELEPHONE CALL ON THE FOLLOWING MONDAY MORNING AND AFTER A VERY DISHEARTENING DISCUSSION, SHE TOLD MR. WILBUR THAT HE SHOULD BE TALKING TO MR. HAMMOND, NOT MRS. HAMMOND, AND HE HUNG UP - - WE HAVE NOT HEARD FROM HIM SINCE.

WE ARE GREATLY DISAPPOINTED IN U.S.F.W.S.; STARTING WITH THE MAINTENANCE MAN THAT AGGRAVATED THIS PROBLEM UNTIL WE REFUSED TO LIVE WITH IT ANY LONGER; AND, HIS SUPERIORS' REFUSAL TO ABIDE BY THEIR OWN FWS REGULATIONS, AND THEIR SUPERIOR'S TOTAL REFUSAL TO STRAIGHTEN THE MESS OUT. SO, IT IS TIME FOR US TO GO AHEAD WITH OUR PROMISE OF GOING ON UP THE CHAIN OF COMMAND UNTIL WE FIND SOMEONE WHO IS WILLING TO LOOK AT THE SITUATION AS TO WHY WE CANNOT LIVE WITH THIS PROBLEM.

IF YOU WILL PLEASE FORWARD THE NAME AND ADDRESS OF THIS PERSON WE WILL GET ON WITH IT.

THANK YOU.

SINCERELY,

DWIGHT L. HAMMOND
HAMMOND RANCHES, INC.

HAMMOND RANCHES, INC.
DIAMOND, OREGON 97722

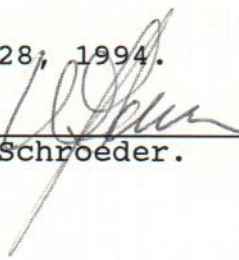
U. S. DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE
LOYD 500 BUILDING, SUITE 1692
500 N. E. MULTNOMAH STREET
PORTLAND, OREGON 97232

ATTENTION: LAWRENCE W. DEBATES



Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232-4181 and to Forrest Cameron, Refuge Manager, Malheur National Wildlife Refuge, HC-72 Box 245, Princeton, OR 97721 as prescribed by 43 CFR 4.701.

June 28, 1994.



W.F. Schroeder.

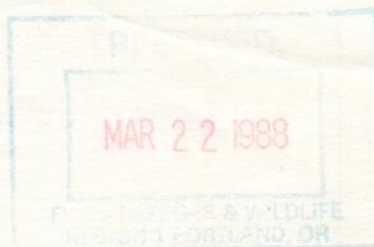
Initial Material 4/5/88
Reply due *lit* *SPD*

X ARW

HAMMOND RANCHES, INC.
DIAMOND, OREGON 97722

MARCH 15, 1988

U. S. FISH AND WILDLIFE SERVICE
ROLF WOLLENSTROM, REGIONAL DIRECTOR
LLOYD 500 BUILDING, SUITE 1692
500 N.E. MULTNOMAH STREET
PORTLAND, OREGON 97232



Rec'd 3/21/88

RE: APPEAL; ACCESS CONFLICT DECISION BETWEEN HAMMOND RANCHES,
INC., AND THE U. S. FISH AND WILDLIFE SERVICE.

DEAR MR. WOLLENSTROM:

ADDRESSING THE ABOVE MATTER: THIS ACCESS WAS NOT A CONTROVERSY, THAT WE KNOW OF, WHEN THE U. S. FISH AND WILDLIFE SERVICE PURCHASED THE BLITZEN VALLEY, OR LATER, BECAUSE OF THE LOCATION OF THE REFUGE'S ORIGINAL FENCE, BUILT IN THE 1930'S LEAVING THE MAIN NORTH-SOUTH ROAD ON THE OUTSIDE OF THE MAIN VALLEY FLOOR. THIS ROAD WAS THE ONLY ESTABLISHED ROUTE (SEE ATTACHED MAP (1877) #1) FROM NORTH TO SOUTH IN THE AREA AT ONE TIME. THE ROAD IS STILL CUT DOWN IN SPOTS, 2 FEET INTO HARD PAN AND BEDROCK FROM THE HEAVY USE OF WAGONS AND SHEEP AND CATTLE TRAILING OVER THE LAST 100+ YEARS. THE STATE HIWAY IS NOW LOCATED ON THE WEST SIDE OF THE VALLEY, AND THE MAIN TRAFFIC GOES THAT WAY; BUT, OUR RANCHES AND THEIR PREDECESSORS HAVE USED THIS "WAGON ROAD" CONTINUALLY AND EVERY YEAR, AS IT IS NOT POSSIBLE FOR US TO CHANGE, AS IT IS VIRTUALLY THE ONLY POSSIBLE GEOGRAPHIC ROUTE TO THE SOUTHERN HALF OF OUR RANCH. OUR RANCH IS GEOGRAPHICALLY COMPARED TO AN HOUR-GLASS, THE MID POINT BEING A CROSSING ON A PORTION OF THIS ORIGINAL ROAD, WHERE THE FENCE HAS BEEN RE-CONSTRUCTED. IN YEARS PAST, THE EARLY 1970'S, AS ENVIRONMENTAL ISSUES BECAME A FACTOR, IT WAS AGREED BY ALL PARTIES USING THIS AREA, THAT THERE WERE SOME PROBLEMS IN THE BRIDGE CREEK REPARIAN AREAS. IT WAS ALSO AGREED, IN 1975, THAT SOME OF THESE PROBLEMS COULD BE HELPED BY THE EXCLUSION OF CATTLE IN BRIDGE CREEK. AT THAT TIME, THE USFWS, HAMMOND RANCHES, THE BLM AND OREGON DEPT. OF FISH AND WILDLIFE MET, ON THE GROUND, AND CAME TO AN INTER-AGENCY AGREEMENT FOR FENCING, INCLUDING WATER GAPS FOR CATTLE WATERING ACCESS TO BRIDGE CREEK. THE MAIN PURPOSE OF THIS AGREEMENT WAS TO ELIMINATE CATTLE GRAZING IN THE BRIDGE CREEK REPARIAN AREA. EVERYONE AT THIS MEETING, INCLUDING A REPRESENTATIVE OF THE USFWS LOCALLY, AGREED TO DRAW UP A PLAN TO PROTECT THIS AREA. AN INTER-AGENCY AGREEMENT AND MAP, AS AGREED, WAS DRAWN UP AND SIGNED AT THAT TIME, BY EVERYONE CONCERNED, EXCEPT THE USFWS. WE DON'T KNOW WHY, AFTER THE TOTAL AGREEMENT, ON THE GROUND, THE USFWS DID NOT LIVE UP TO THEIR PORTION OF THE AGREEMENT. THE PROJECT WAS STARTED AND PARTIALLY COMPLETED AND SUDDENLY, THERE WERE DIFFERENT FENCES BEING BUILT, THAT WERE NOT AGREED UPON. WHEN WE WERE AWARE OF A PROBLEM, AND ASKED ABOUT THE DIFFERENT FENCES, WE WERE TOLD THAT THE COMMUNICATION BETWEEN THE REFUGE AND THE BUREAU OF LAND MANAGEMENT HAD DETERIORATED OVER OTHER ISSUES AND THAT THEY WERE BUILDING THE FENCE, ON THE BOUNDARY, WITH NO COORDINATION, AND ALL CONCERNED COULD JUST "LIVE WITH IT". HOWEVER, THE PART OF THE AGREEMENT, THE BUILDING

3/22/88

*cc: George Constantine, Multnomah
Sandy Wilson*

OF THE FENCE ON BRIDGE CREEK, BETWEEN THE BLM AND US, AS USERS, WAS ALREADY IN PLACE AND THIS PART OF THE AGREEMENT HAS BEEN HONORED BY HAMMOND RANCHES AND THE BLM SINCE. ALL THIS HAS BEEN VERY CRITICAL IN OUR USE, AS COMPARED TO THE HISTORIC USE, OF THE AREA; HOWEVER, WE HAVE HONORED THIS FENCE UNTIL THE TIME THAT GEORGE CONSTANTINO ADVISED US THAT WE COULD NO LONGER TRAIL CATTLE ACROSS BRIDGE CREEK, MAKING OUR RANCH TOTALLY INOPERABLE.

WE ARE UNFAMILIAR WITH THE PROPER PROCEDURES, BUT WE ARE DOING THE BEST THAT WE CAN, AS WE FEEL WE HAVE BEEN GROSSLY WRONGED, AND WILL TRY TO EXPLAIN WHY IN THIS LETTER, BUT AGAIN, IT IS VERY DIFFICULT WITHOUT SOME, ON THE GROUND OBSERVATION, AS TO THE DIFFICULT TERRAIN AND UNIQUE SITUATION WE ARE DEALING WITH. WE FEEL WE HAVE EXHAUSTED OUR EFFORTS WITH GEORGE CONSTANTINO AND HAVE TRIED TO TALK TO SANDY WILBUR AND LARRY DEBATES, WHO HAVE NOT LOOKED AT THE PROBLEM, ONLY STEADFASTLY BACKING GEORGE'S DECISION.

THE CHAIN OF EVENTS, AS WE UNDERSTAND THEM, ARE LISTED BELOW:

THE USFWS'S FAILURE TO HONOR THE 1975 AGREEMENT. (ENCLOSED #2)

A FENCE WAS BUILT BETWEEN MUD CREEK AND BRIDGE CREEK ON THE USFWS'S BOUNDARY (INDICATED IN GREEN ON #3). AGAIN, IN AN HOUR-GLASS SITUATION, A FENCE WAS BUILT, AT THAT NARROW CENTER POINT, WHERE IT WAS VIRTUALLY IMPOSSIBLE FOR OUR OPERATION TO OPERATE, WITHOUT GOING BETWEEN BRIDGE CREEK AND MUD CREEK WITH CATTLE AND, OR THE NEEDED VEHICLE MAINTENANCE OF THE SAME. THE USFWS BUILT A FENCE, WE LIVED WITH IT AND AT AN ECONOMIC LOSS FROM THE INCONVENIENCE AND ALSO FROM THE LOSS OF CATTLE EACH YEAR SINCE.

A FENCE WAS CONSTRUCTED AROUND KNOX SPRING (INDICATED IN RED ON #3), CONNECTING TO THE PRIOR 1975 FENCE THAT WAS THE OLD ESTABLISHED OUTSIDE BOUNDARY FENCE OF THE REFUGE, THOUGH NOT ON THE ACTUAL BOUNDARY (INDICATED IN BLUE ON #3), AND IT WAS A FEED AND WATER LOSS TO OUR GRAZING ON BLM MANAGED LAND, AND MORE INCONVENIENCE - - BUT, WE LIVED WITH IT.

THE REFUGE BUILT A FENCE BETWEEN BRIDGE CREEK AND KNOX SPRINGS, ON THE ACTUAL BOUNDARY, MAKING IT QUITE DIFFICULT FOR OUR OPERATION TO ADJUST, EVEN FURTHER, AND AGAIN VIRTUALLY IMPOSSIBLE, WITHOUT OUR GOING ACROSS THE SECOND, NEWLY ESTABLISHED "REFUGE JURISDICTION" INSTEAD OF THE PRIOR BLM MANAGEMENT GROUND. (BROWN ON #3)

WE WOULD POINT OUT, ON THE GROUND, WHY THERE IS A SITUATION OF CONTINUING ECONOMIC LOSS EACH YEAR, DUE TO CATTLE LOSS. IN OUR ANNUAL CATTLE MOVEMENTS, THERE IS A SITUATION THAT, IF COWS AND BABY CALVES SHOULD BECOME SEPARATED IN THE TRAILING, DUE TO THE FENCES, THAT YOU ADAMATELY DEFEND, THE COWS AND BABY CALVES CAN, AND DO, END UP LOOKING AT EACH OTHER, BAWLING ACROSS APPROXIMATELY 50'; HOWEVER, TO GET TOGETHER AGAIN, THEY MUST GO THROUGH AN OBSTACLE COURSE AND 3 FENCES, AND ACROSS 5 MILES TO ACTUALLY BE PHYSICALLY TOGETHER. THIS DOES NOT, AND WILL NOT HAPPEN NATURALLY.

WE HAVE LIVED WITH THIS SITUATION, ALTHOUGH MOST OF THE ADVERSE FEELINGS AND VOLUMES OF ADVERSE PAPER-WORK THAT HAS BEEN PRODUCED IN THE LAST 10 YEARS, ON OUR BEHALF, STEMS FROM THESE FENCES; BUT,

WE DID LIVE WITH THEM, UNTIL THE TIME THAT GEORGE WANTED TO PUT OUR TOTAL OPERATION, BY CONTROL OF A "PERMIT SYSTEM", UNDER HIS JURISDICTION. IT IS OBVIOUS, FROM A FREE ENTERPRISE POINT OF VIEW, THAT ANY CONTROL, BY "GMC", AFTER THE EXAMPLES HE HAS SET ON THE 180,000+ ACRES, THAT WE OBSERVE DAILY, AND HE "MANAGES", WOULD BE CERTAIN DEATH AND TOTALLY UNACCEPTABLE.

WE FEEL THAT TO LEAVE THE FENCES AS IS, IS IN TOTAL, VERY CLEAR VIOLATION OF THE USFWS'S "REFUGE MANUAL'S" POLICY (ATTACHED #4), AND JEOPARDIZES OUR TOTAL OPERATION. WE FEEL THAT THE ONLY SOLUTION, AT THIS TIME, WOULD BE REMOVAL OF THE FENCE BETWEEN MUD CREEK AND BRIDGE CREEK, AND BRIDGE CREEK AND KNOX SPRINGS, AND WE STILL CONCEDE THAT POSSIBLY YOU WOULD FEEL THAT THERE IS SOME REPARIAN ENHANCEMENT TO THE KNOX SPRING AREA, BUT, THAT IS ONE OF THE THINGS THAT WE WOULD LIKE EXPLAINED ON THE GROUND. ALSO, WE STILL RECOGNIZE THE NEED FOR THE REPARIAN ENHANCEMENT BY THE RESTRICTION OF CATTLE USE ON BRIDGE CREEK, AS OUR 1975 AGREEMENT STATED.

GEORGE'S DECISION MADE US VERY MUCH AWARE THAT WE CANNOT TOLLERATE THIS SITUATION ANY MORE, AS THESE FENCES HAVE SLOWLY COME INTO PLACE, OVER A NUMBER OF YEARS, AND WE CAN SEE THE WRITING ON THE WALL; THAT, UNLESS WE MAKE A STAND AND FIGHT, IT WILL BE DISASTEROUS TO OUR CHILDREN, OR WHOEVER MAY HAVE THIS RANCH IN THE FUTURE, AND THE AMERICAN HERITAGE CONCEPT. TO NOT LEAVE THESE FENCES IN PLACE, FOR A SITUATION TO DEVELOPE AGAIN, IN THE FUTURE, LIKE HAMMOND RANCHES ALLOWED IT TO DEVELOPE IN THE PAST, BY NOT OBJECTING, WHEN THE FIRST FENCE WAS BUILT, IS A MATTER OF SELF PRESERVATION. WITH THESE FENCES IN PLACE, OUR RANCH IS NOT AN ECONOMIC ENTITY.

WE HAVE TRIED TO EXPLAIN, TO THE BEST OF OUR ABILITY, OUR SITUATION, TO GEORGE CONSTANTINO, AND AGAIN, LET US STRESS THE IMPORTANCE OF AN "ON THE GROUND" LOOK. HE HAS NEVER COME TO THE PROBLEM AREA AND "LOOKED" AT THE PROBLEM. HOWEVER, HE HAS TRIED, AND PRETTY MUCH SET IN PLACE, THE INNOCENT (?) INVOLVEMENT OF THE OREGON FISH AND WILDLIFE DEPARTMENT, OREGON TROUT, AND LORD KNOWS WHO ELSE, TO INHANCE AND CREAT "HABITAT" THROUGH THE NEWLY PLANTED "COVER SEEDING WITHIN THE BRIDGE CREEK FIELD" (#7). PLEASE NOTE #4 AND #5 ON PAGE 3; ALTERNATIVE "A" PAGE 7, AND ALSO PAGE 10 "COMPATABLE???? NOT SIGNIFICANTLY AFFECTING THE QUALITY OF HUMAN ENVIRONMENT????". THIS IS CONSISTANT WITH ALL THE "BACK DOOR" APPROACHES TO ANY WORK OR "IMPROVEMENTS" THAT HAVE BEEN DONE IN THIS AREA IN THE LAST 10 YEARS AND NO ONE HAS EVER CONTACTED US REGARDING ANY OF THIS. THIS SAME "HABITAT" WAS SO SPECIAL THAT OUR CATTLE WERE NOT ALLOWED TO GRAZE THE AREA FOR THE LAST 10 YEARS, AS THEY HAD HISTORICALLY. THE SUGGESTION, BY GEORGE TO USE HIS PROPOSED ROUTE (MAP AND LETTER #5) CAN ONLY DRAMATIZE THE TOTAL AND COMPLETE LACK OF KNOWLEDGE OF ON THE GROUNDS WORKABILITY, AND THE ECONOMICS NECESSARY IN FREE ENTERPRISE, PLUS MOTHER NATURE'S NATURAL INSTINCTS, OUT OF THE "CLASSROOM". THE "GOOD NEIGHBOR POLICY" THAT IS REITERATED AT ALL THE LOCAL CIVIC GATHERINGS LOOSES IT'S SIGNIFICANCE.

WE REALIZE WE ARE APPEARING NARROW MINDED AND AS RADICAL, BUT IF YOU LOOK AT THE LAST 10 YEARS, FROM OUR STANDPOINT, WE WOULD NO LONGER BE IN BUSINESS, AS A VIABLE OPERATION, AS THE "WHIMPS" HAVE FADED FROM EXISTANCE VERY RAPIDLY. MAYBE WE ARE WRONG, AND WILL HAVE THIS ISSUE FARTHER CRAMMED DOWN OUR THROAT, BUT WE ARE A LONG WAY FROM BEING SUBDUED.

PARTIAL REASONING FOR OUR ADAMACY IN THIS SITUATION COMES FROM TRYING TO OBTAIN INFORMATION ON PAST HISTORY FROM THE REFUGE FILES. WE HAVE BEEN INFORMED THAT THEY DIDN'T KEEP FILES PAST 7 YEARS, THAT THEY WERE DESTROYED. WE FEEL THIS WOULD BE FINE, IF YOU ONLY PLANNED ON A 7-YEAR LIFE; BUT, WE HAVE BEEN ON THESE RANCHES FOR APPROXIMATELY 25 YEARS AND WE KNOW FROM PAST EXPERIENCES, AND PRIVATE RECORD KEEPING, THE IMPORTANCE OF ACCESSABILITY; THIS BEING DOCUMENTED BY THE ENCLOSED AFFIDAVIT (#6), VERIFYING THE LAST ATTEMPTED "TAKE-OVER" BY THE USFWS OF THE MAIN ACCESS TO THIS RANCH IN 1973, BEFORE OUR TENANCY. IS THIS CURRENT ACCESS BLOCKAGE ATTEMPT ANY DIFFERENT??

IF THIS SITUATION IS ALLOWED, AND DOES CONTINUE, THE MARXIST THEORY WILL HAVE TAKEN ANOTHER STEP IN CONQUERRING DEMOCRACY. CAN THIS POSSIBLY BE THE CONCEPT THAT AMERICA WAS BUILT ON?? OBVIOUSLY WE HAVE TRIED AND TRIED AND TRIED TO RESOLVE THIS SITUATION, AND STAY IN BUSINESS. WE STILL HAVE THE HOPES THAT OUR PLIGHT CAN BE RESOLVED AT THIS LEVEL, COEXISTENTLY.

THIS IS THE ISSUE, AND THE FACTS AS WE SEE THEM AT THIS TIME.

THANK YOU. WE WILL BE AWAITING YOUR REPLY.

SINCERELY,

Dwight L. Hammond

HAMMOND RANCHES, INC.
DWIGHT L. HAMMOND, PRES.

Larry/Rob -

3/17/88

- I have drafted letter back to the Harvards saying Rob would meet with them 4/11 and for them to call Rob to make arrangements.
- Suggest Rob review files and talk to me and George ahead of time if he has questions.
- It will take most of the day to get from Burns out to Bridge Creek and back. Dwight will want to show and explain the livestock trailing route across the refuge and also the fence location (both in the same area).
- Probably meet Dwight at Refuge Hq. or get directions to his ranch in Diamond. Suggest we let him decide whether or not he wants any of the refuge people to go on the show-me trip.

SRW

REGIONAL DIRECTOR	(RD)
DEPUTY REGIONAL DIRECTOR	(DRD)
SPECIAL ASSISTANT TO THE REGIONAL DIRECTOR	(SARD)
ASSISTANT REGIONAL DIRECTOR--PUBLIC AFFAIRS	(APA)
ASSISTANT REGIONAL DIRECTOR--BUDGET AND ADMINISTRATION	(ABA)
Budget and Finance	(FI)
Contracting and General Services	(CGS)
Mailroom	(MR)
Engineering	(EN)
Information Resource Management	(IRM)
Personnel Management	(PM)
Safety	(SA)
ASSISTANT REGIONAL DIRECTOR--FISH AND WILDLIFE ENHANCEMENT	(AFWE)
Deputy Assistant Regional Director--Federal Assistance	(AFA)
Endangered Species	(SE)
Federal Aid	(FA)
Deputy Assistant Regional Director--Ecological Services	(AES)
Ecological Services	(ES)
National Wetlands Inventory	(INWI)
Environmental Contaminants	(EC)
ASSISTANT REGIONAL DIRECTOR--FISHERIES	(AFR)
ASSISTANT REGIONAL DIRECTOR--HUMAN RESOURCES	(AHR)
ASSISTANT REGIONAL DIRECTOR--LAW ENFORCEMENT	(ALE)
ASSISTANT REGIONAL DIRECTOR--REFUGES AND WILDLIFE	(ARW)
Education, Publications, Interpretation, Cultural Resources	(EPIC)
Migratory Bird Coordination	(MBC)
Refuge Operations Support	(OPR)
Refuge District Supervisors (CA) (ID/HV)	(OR/WA)
Realty	(RE)
Wildlife Policy and Direction	(WPD)
OFFICE OF MIGRATORY BIRD MANAGEMENT	(MBMO)
SOLICITOR (Portland) (Sacramento)	(SOL)
PACIFIC ISLANDS ADMINISTRATOR, HONOLULU, HAWAII	(PIA)
Ecological Services - Portland Field Office	

Action Desired:

See RD note 3/15

SANDY - Please tell us the
Planned steps.

Jay

From:

SRD

Date Originated:

3/15

R1-21 (Rev. 10/86)

HAMMOND RANCHES, INC.
DIAMOND, OREGON 97722

FEBRUARY 20, 1988

U. S. FISH AND WILDLIFE SERVICE
LLOYD 500 BUILDING, SUITE 1692
500 N.E. MULTNOMAH STREET
PORTLAND, OR. 97232

ATTN: MR. ROLF WOLLENSTROM, REGIONAL DIRECTOR
RE: MALHEUR NATIONAL WILDLIFE REFUGE FENCE - TRAILING - CONTROVERSY

DEAR MR. WOLLENSTROM:

AS YOU WILL SEE FROM YOUR FILE REGARDING THE ABOVE MENTIONED MATTER, THIS HAS BEEN AN EXTENSIVE, AND ON-GOING CONTROVERSY FOR MANY YEARS. WE HAVE EXHAUSTED OUR EFFORTS WITH YOUR LOCAL MANAGER, AND WE HAVE TRIED TO TALK TO SANDY WILBUR, AND ALSO LARRY DEBATES OF YOUR STAFF. EVIDENTLY, THEY FEEL THEY CAN ONLY BE INVOLVED TO THE EXTENT OF STANDING BEHIND THE MANAGER OF THE REFUGE; BUT, WE FEEL WE HAVE BEEN GROSSLY WRONGED AND ARE ASKING FOR SOMEONE, ANYONE UNDERSTANDING AGRICULTURE, CATTLE, AND ECONOMICS, AS WELL AS YOUR OWN PROGRAMS AND GUIDELINES, TO PLEASE COME TO THE SITE OF THE PROBLEM, WITH THE AUTHORITY TO MAKE A DECISION, TAKING ALL ASPECTS INTO CONSIDERATION.

WE ASSUME THAT YOU WILL BE FILLED IN AS TO THE STAND OF THE U. S. FISH AND WILDLIFE SERVICES' SIDE OF THE CONFLICT, AND WE ARE PREPARED TO PRESENT OUR POSITION, IN DETAIL, AS WE HAVE PRESENTED IT BRIEFLY TO GEORGE CONSTANTINO, SANDY WILBUR, AND ALSO LARRY DEBATES; HOWEVER, IT IS VERY DIFFICULT TO PRESENT IT WITHOUT BEING ON THE GROUND AND SEEING, FIRST-HAND, THE PROBLEM. WE FEEL IT IS VERY SIMPLE IF LOOKED AT OPEN-MINDEDLY, HOWEVER, WE ARE UNABLE TO GET ANYONE WHO IS ABLE TO MAKE A DECISION TO COME AND LOOK AT THE UNLIVEABLE SITUATION THAT HAS BEEN CREATED BY THE USFWS. THE MOST CRITICAL PART OF THIS CONFLICT IS PROBABLY THE EVENTS OF THE LAST MORE THAN 10 YEARS, PRECEEDING THE USFWS' FINAL STAND. IF AT ALL POSSIBLE, WE WOULD LIKE TO GET WITH YOU; HOWEVER, WE KNOW YOU ARE A VERY BUSY MAN, AND IF THERE IS ANYONE THAT YOU COULD RECOMMEND THAT WAS CAPABLE OF LOOKING AT THE SITUATION, UNBIASEDLY, WE WOULD BE HAPPY TO RE-IMBURSE THE SERVICE FOR THE EXPENSES OF THIS PERSON'S LOOKING OVER THE PROBLEM.

THIS PROBLEM HAS NOT BEEN RESOLVED, AT ALL, AS THE REFUGE MANAGER, ETC. HAS LED ONE TO BELIEVE THROUGH THE CORRESPONDANCE.

AFTER WAITING NEARLY A MONTH FOR A REPLY TO OUR LETTER OF JANUARY 18, 1988, TO MR. DEBATES, AND SEVERAL TELEPHONE CALLS ASKING IF HE HAD RECEIVED OUR LETTER, WE WERE IN PORTLAND ON FEBRUARY 16, AND DROPPED BY MR. DEBATES' OFFICE. HE EVIDENTLY WAS PREDISPOSED AND WAS UNABLE TO ADJUST HIS SCHEDULE. MR. WILBUR WAS NOT IN, AND WE HAD THE PLEASURE OF VISITING WITH FORREST CAMERON, WHO SEEMED A VERY NICE MAN AND WAS HELPFUL IN THAT HE DID GIVE US YOUR NAME AND ADDRESS AND A COPY OF A REPLY LETTER DATED 2/4/88 FROM MR. DEBATES, WHICH WE MUST HAVE CROSSED IN TRANSIT. MR. CAMERON SHOWED US THE COURTESY OF LISTENING TO SOME OF OUR PROBLEM, IN A LENGTHLY CONVERSATION, EVEN THOUGH WE WERE NOT REALLY PREPARED TO PRESENT OUR PLIGHT, AND POSSIBLY HE COULD SHED SOME LIGHT ON OUR POSITION. WE WOULD VERY MUCH APPRECIATE ANY HELP WE COULD GET FROM YOU.

SINCERELY,

Dwight L. Hammond
DWIGHT L. HAMMOND
HAMMOND RANCHES, INC.

RD copy
Ret should see before going to ARW
only sent ARW 3/8
What's happening? 3/15/88
ARW
DRD
ARW
MAR 15 1988

ARW - R-1

~~ARW~~
~~RF~~

~~ARD - Refuges and Wildlife~~

Deputy ARD - Refuges and Wildlife (DARD)

ARD Secretary (SAWR)

~~5X2~~

~~RF - OR/WA~~

RF - ID/NV

RF - CA

Migratory Bird Coordination (MBC)

Wildlife Policy and Direction (WPD)

Refuge Operations Support (OPR)

Education-Publication-Interpretation-
Cultural Resources (EPIC)

Realty (RE)

Pacific Island Administration (PIA)

X - Action

✓File

Toss

Forward

In Reply Refer To:
ARW-OR/WA

March 23, 1988

Mr. Dwight L. Hammond
Hammond Ranches, Inc.
Diamond, Oregon 97722

Dear Mr. Hammond:

This is in reply to your February 20 and March 15 letters asking that someone meet with you regarding certain concerns you have about the Malheur National Wildlife Refuge operation. As a representative of this office, I have asked Dr. Robert Shallenberger, Deputy Assistant Regional Director, to meet with you during a trip to eastern Oregon in mid April. He could meet with you on Saturday, April 16. If this is convenient for you, please call him (503-231-6168) to make arrangements.

Sincerely,

Original Signed
by Wally Stucko

Adm Regional Director

cc:
Malheur NWR w/incoming

SRWilbur:wc

File:RW-OR/WA/MLH-ADM

Name	Date
<i>W. Stucko</i>	3/24/88
<i>SRWilbur</i>	3/24/88

UNITED STATES GOVERNMENT

FISH AND WILDLIFE SERVICE
PORTLAND, OREGON

Memorandum

To: Regional Director
Region 1

April 22, 1988

From: Deputy ARD-Refuges and Wildlife
Portland, OR (DARW)

MLH-AD-Hammond

Subject: Review of Dwight Hammond Appeal - Malheur NWR

As requested, I visited Dwight and Susie Hammond at their ranch on April 16, 1988, after a thorough review of the correspondence surrounding this issue. I explained my role (advisor to you) and reviewed the appeal process with them. We spoke at length before and after a site visit to the lands in question. I photographed the site to facilitate your briefing and any further discussions. I also spoke with George Constantino, both before and after my visit with the Hammonds. I have subsequently discussed various aspects of the issue with Larry De Bates, Sandy Wilbur, Joe Mazzoni (former refuge manager), Forrest Cameron, Ron Swan, and Bill Bright (former BLM Area Manager).

If this was a simple issue, it would have been resolved long ago. It has been complicated by a series of unrelated confrontations between the Hammonds and the refuge that have soured personal relationships, have created serious mutual distrust, and have made the possibilities for a negotiated resolution at the field level virtually impossible.

Before considering the options we have open to us, I suggest that you review the attached description of the several basic arguments raised by the Hammonds in their correspondence and numerous discussions with Service representatives (Attachment A). Although the narrative is a bit lengthy, I tried to capture the essence of their arguments and the Service's perspective as well.

We are dealing with issues both of practical significance and of principle. The Hammonds feel their back is to the wall and their livelihood is in jeopardy. Nothing we can say or do will change their attitude regarding the way they feel they have been treated. At the same time, refuge staff have experienced a long history of tough problems in working with the Hammonds. The Service is dealing in a fishbowl where the interactions with refuge permittees and adjacent ranchers are watched closely. The refuge is concerned about the precedent to be set in the resolution of this issue. Put bluntly, does the permittee who makes the most noise and creates the most headaches wind up with the most concessions from the Service?

It's clear to me that the Service folks involved in this from the beginning have always had the best interest of the resource at heart. Yet, I believe that we've done some things along the way that contributed to the problem.

1. We've referred to the Hammonds' trailing activity in correspondence and discussions as both a right and a privilege subject to our control. In strictly legal terms, it can't be both.
2. We made and implemented a decision to construct a boundary fence that involved a significant change in management direction without consultation with cooperators. We have the right to do this but it is rarely good business.

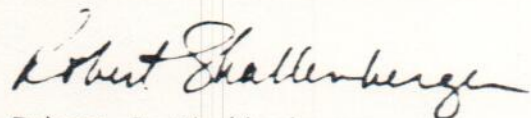
3. We've written a refuge manual that lacks clarity in its discussion of fencing policy.
4. We've implemented, in the apparent absence of a long term plan, a series of actions that have the appearance of unfairly singling out the Hammonds.
5. We delayed action on the enhancement of habitat within the area under contention until things were already hot, giving the appearance of a last minute effort to bolster our case. Here again, we failed to consult with the Hammonds.

On the other side of the ledger, the Service has, quite frankly, put up with a lot more problems in dealing with this permittee than any others at Malheur NWR. It was not until things got out of hand that we even invoked the permit issue, and we have since backed off that stance during the appeal process. We've also proposed numerous accommodations to facilitate the trailing process.

Recommendations:

I've posed six basic options, with some small variations, for your consideration (attachment B). I suspect we will come up with even more in discussion. I favor option 4a. By this option, you would send a letter (Attachment C) which acknowledges the historic use of the Bridge Creek trailing route and demonstrates your intention to see that this practice continues. You would also commit to the Hammonds that any future attempts to restrict or modify the trailing activity by the refuge manager would require the Regional Director's approval and would only occur if there was a blatant disregard of agreed-upon procedures (duration of trailing, etc.). You would acknowledge the difficulties inherent in the trailing route and offer to explore and implement (at his expense) appropriate compromises, such as holding corrals, additional gates, temporary watering facilities.

Implementation of this option may not prevent this from heading to court or the local Congressman's office, however I believe it will demonstrate our willingness to take steps to mitigate the problem and deal reasonably without abdicating our responsibility to manage the refuge effectively.



Robert J. Shallenberger

Attachments

RShallenberger:pdh:IBM:RS#2:Hammond.422:Draft4 22 88:4 26 88

cc:

Sandy Wilbur

Larry De Bates

Ron Swan w/note --

Forrest Cameron

DARW

Hammond Arguments1. He has a historic right to trail cattle across the refuge

Hammond has produced a map, dated 1877, which illustrates a historic road passing between the marsh and the west end of Bridge Creek. He argues that this route has been used for over a century and by him for the last 23 years. Both the refuge and the Hammonds have checked at the County Courthouse, but have found no official record establishing this cattle trailing route. However, Hammond argues that several other existing "public" roads through the refuge also do not appear in official records as historic routes.

Service correspondence with the Hammonds regarding their "right" to trail cattle along this route is contradictory. The Service has acknowledged their historic "use" of the trail both in past letters and discussions with the Hammonds. De Bates' March 19, 1987, letter to the Hammonds acknowledges their "need and right to trail cattle through the refuge over the historic route." Yet, Constantino's March 20, 1987, letter to the Hammonds refers to the trailing through the refuge as "a privilege that can be controlled and yes, stopped by the refuge." The distinction may seem minor on the surface but, to the Hammonds, it is the fundamental issue.

2. Right of the refuge to control trailing activity by a Special Use Permit

As a result of incidents involving stray cattle, prolonged trailing, and disregard of the refuge's authority to regulate trailing, Constantino told Hammond in 1986 that he would need a refuge permit to continue trailing along the established route. Hammond appealed this decision in a meeting with De Bates in February 1987. De Bates notified Hammond by letter of February 20, 1987, that he had advised Constantino to not require a permit for trailing in the upcoming year but indicated that a permit requirement would be reconsidered in the future if trailing was not completed within reasonable timeframes. Hammond regards the decision not to require a permit as virtually the same as putting him under a permit today. Simply stated, he does not feel the Service has the authority to regulate (or terminate) an activity which, he believes, is his historic "right." Hammond feels that an arrangement which leaves the decision of whether or not he can trail on this route up to the "whims" of a refuge manager renders his ranch unmanageable and dramatically diminishes its resale value. Constantino notes that cooperating ranchers and farmers often successfully finance their operations from loan institutions when their tenure on a refuge is subject to short term special use permits.

3. Construction of the boundary fence was contrary to prior agreements

Prior to the early 1970's, the refuge boundary fence was located along the canal bordering the east side of the marsh impoundments. Hammond grazed his cattle on refuge land east of this fence as part of a much larger BLM allotment. Hammond's trailing activities between winter and summer range were virtually unrestricted. Hammond argues that refuge, State, and BLM representatives met on the ground in 1975 to explore options for protecting

Knox Springs and Bridge Creek riparian areas from cattle damage. He has produced a map, signed by BLM representatives, illustrating a proposed fence along the north and south edges of the Bridge Creek drainage. He alleges that the refuge agreed to this plan, but then soon after proceeded to fence the actual refuge boundary, north and south of Bridge Creek. He refers to this as Mazzoni's "spite fence."

Bill Bright (BLM) indicates that he was as surprised as Hammond to see YACC kids installing the new boundary fence and had some words with Mazzoni about it. He acknowledges that the earlier allotment agreement signed by Mazzoni was revocable by either party but felt he had been led to believe that the allotment plan was working. Bright was particularly surprised by this action because the refuge had agreed to and shared in the cost of the earlier effort to seed the lands in question with crested wheatgrass.

Mazzoni argues that the refuge never agreed to the plan Hammond describes and that his efforts to fence the refuge boundary were a continuation of a process started before he arrived in the early 1970's. His plan was to move the fence out to the actual boundary in order to reclaim this overgrazed area as wildlife habitat. He acknowledges that BLM expressed concern about the proposed shift in fence alignment so the refuge placed an interim fence around Knox Springs to protect it until BLM could adjust its own fences in the adjacent allotments. Soon after, the boundary fence was completed.

4. The new boundary fence significantly hampers the trailing operation

Hammond argues that the boundary fence in its present location hampers his trailing operation and impacts him financially. To move south, he must now gather his cattle north of Knox Springs, move them through three separate gates. The route is significantly longer than used prior to movement of the boundary fence and forces movement of the herd in the opposite direction from where they are destined to go. He argues that this makes the operation take significantly longer, requires more cowboys, and, most importantly, results in the separation of some cows from their calves. He estimates that he actually loses about 1 in 100 calves, or roughly 5 per drive (estimated cost is \$2,500). Constantino suggests the actual loss may be closer to 1 calf per drive.

5. Quality of habitat protected by the fence doesn't justify impact on his operation

Hammond argues that the shifted boundary fence now encloses an area that is of virtually no value to wildlife. He acknowledges that the Knox Spring area provides cover for upland game and, potentially, nesting waterfowl but argues that it could have been (and still could be) protected by the much smaller fence that surrounds it. He points out that the State and the Service agreed to and helped fund crested wheatgrass seeding plan for the lands in question several years ago and only recently have begun to reverse the process by seeding the slopes with sagebrush and other cover plants. He thinks the recent replanting effort is a "sham arranged by Constantino" to bolster the arguments against removing the fence. The Service has, in fact, used the cover seeding project as partial rationale for denying requests for fence removal in correspondence with Hammond.

Mazzoni indicates it was his plan to identify key refuge lands outside existing fences, with potential for wildlife habitat restoration, and then

to protect these areas with fencing. This area was fenced with this objective in mind. Constantino has pursued the same objective although admits that little actual restoration work has been initiated on this parcel before the State approached him with its cover seeding proposal approximately 2 years ago. The seeding project, costing the State over \$20,000, is now nearly complete. In a letter dated February 3, 1988, Oregon SE Regional Supervisor Ron Bartels expressed his expectation that the habitat will greatly benefit mule deer (and deer hunters) and will also benefit small mammals, passerines, raptors, and upland game birds. Bartel recommended that cattle grazing on these lands be prevented at least until shrub habitat is reestablished.

6. Service actions conflict with our Refuge Manual

Hammond has pointed out, what he believes to be, serious conflicts between Service actions at Malheur and direction in the Refuge Manual. He notes that 9 RM 3.2 identified four objectives which must be met before fences are built, including one (9 RM 3.2B) which refers to protection of "the rights of adjacent (or included) landowners." He also cites the statement that "existing fences not contributing to these objectives should be removed."

The Service has argued, in correspondence and in conversations with Hammond, that it interprets the meaning of this section of the Refuge Manual differently. The Service has argued that it is not necessary to meet all four objectives in 9 RM 3.2 in order to construct or retain a fence. The boundary fence on the lands in question serves to "protect wildlife or its habitat" (9 RM 3.2C)*to attain refuge objectives (9 RM 3.2D).

It is worth noting that 6 RM 9 (Grazing and Haying Management), dated March 12, 1982, also includes some relevant policy guidance which appears not to have surfaced in the interaction with the Hammonds. 6 RM 9.10C(3) indicates that "all persons wishing to trail livestock across refuge lands for any purpose, will be required to obtain a crossing permit. In cases where an established right is involved, no charge will be made." To date, the Service has not put any ranchers at Malheur under trailing permits. 6 RM 9.18 addresses situations where adjustments in local grazing programs may be needed to bring them into conformance with policies in 6 RM 9. These changes "will be implemented in a manner that is fair and reasonable for existing permittees affected as is possible, and that minimizes economic impacts on existing permittees and local communities." This section also notes that "a plan for bringing programs into conformance with approved policy will be prepared by the refuge manager for review and approval by the Regional Director."

7. No reasonable alternatives to the existing trailing route

Hammond argues that there are no viable options to move his cattle between winter and summer range. Constantino proposed a route along the adjacent refuge dike to reduce conflicts. However, Hammond pointed out the difficulty in driving cattle along this more circuitous route and Constantino reconsidered. There are no other alternative routes east of the refuge boundary because of the steep terrain along Bridge Creek, at least as high as Bridge Creek Springs. As this location is above 6,500 feet, it is likely that the early season turnout could not be accomplished along this route.

Hammond could trail his cattle to the west along his access road and along the center patrol road to the south end of the refuge. This would nearly double the length of the route and complicate the drive considerably. Constantino points out, however, that some other ranchers who trail through refuge lands do so over routes which are considerably longer than Hammond's. Constantino also notes that Hammond could truck his cattle, if necessary, but acknowledges that it would be more costly and time consuming.

8. Service has treated Hammond unfairly on this issue because of previous or ongoing conflicts

Clearly, this issue is not an isolated confrontation with the Hammonds. Several problems relating to grazing permits, trailing operations, land exchanges, and water rights have arisen in the past and/or are pending. Hammond feels that the sequence of events relating to the Bridge Creek trailing operation reflects an effort on the part of the refuge to single him out. His allegations regarding unfair treatment are based upon the following: (a) the long series of other confrontations with Mazzone, Constantino, and others, (b) the Service's decision to fence only the parcel in question when much of the refuge periphery is fenced inside the actual boundary, (c) the refuge's decision to "renege" on prior agreements, (d) the proposal to put Hammond's operation under permit (no other cattle trailing is under permit at Malheur), and (e) the joint decision by the State and Service to undertake the cover seeding project only on this site and only after the controversy over the trailing operation and refuge boundary fence had become so heated. Hammond also points out that he was never consulted regarding the Service's Environmental Assessment on the cover seeding project (dated 8/31/87), although the EA identified no adverse socioeconomic effects nor significant controversy associated with the project. Constantino indicated that Hammond was not contacted because his views on the proposal were predictable.

Options

1. Reaffirm earlier responses to appeal: identify trailing as a privilege, subject to revocation based on performance, retain existing fences.
 - Pros:
 - Consistent with earlier responses
 - Retains refuge control
 - Does not favor this permittee over others
 - Cons:
 - Likely to go to court/political offices
 - Does not address trailing problems
 - 1a. As in 1 above, but also offer measures to facilitate driving operation (i.e., Bridge Creek holding corral, possible gate on refuge north boundary fence--at Hammond's expense).
 - Pros:
 - As in 1 above
 - Reduces calf loss problem somewhat
 - Shows effort to accommodate needs
 - Cons:
 - Does not address basic issue of trailing right
 - Still likely to wind up in court/congressional offices (Note: these particular solutions have been proposed in discussions but not accepted because they create some problems of their own and don't resolve the basic issue)
2. Remove boundary fence/rebuild old fence along canal. Manage lands as BLM allotments (as before).
 - Pros:
 - Would resolve principal Hammond concerns
 - Cons:
 - Would destroy State/Federal habitat enhancement project
 - Would prevent habitat recovery
 - Would be contrary to long-term refuge plans to fence off and effectively manage peripheral lands
 - 2a. As in 2 above, but remove only north fence (Hammond counter-proposal made 4/16/88).
 - Pros:
 - Would resolve principal Hammond concerns
 - Cons:
 - As in 2 above, although would retain ability to control grazing numbers in south allotment (would require additional fencing to protect south side of Bridge Creek crossing)
 - 2b. As in 2a, but retain Service management of south allotment. Would address most, but not all of Hammond's concerns.

Pros: -Would allow State/Federal habitat enhancement program to continue in south allotment (where it appears to have the best chance of success--for more existing thermal cover)

Cons: -As in 2 above, would require additional fence along south side of Bridge Creek crossing

3. Fence the trailing corridor/retain existing boundary fence.

Pros: -Would confine and facilitate cattle drive and protect developing adjacent habitat

Cons: -Does not address any of Hammond's concerns
-Not necessary
-Costly/not necessary if trailing done efficiently

4. Retain existing boundary fences but formally acknowledge right to trail. Do not require SUP at this time.

Pros: -Clear statement by RD of Service position (not subject to change by RM)

Cons: -No legal basis for formal acknowledgment of trailing right
-Conflicts with 6 RM 9.10C(3) - (trailing permit requirement) (Note: we are already in conflict with this direction for all trailing ranchers at Malheur, as none is under permit.)
-Does not satisfy Hammond's concern about legally binding right (i.e. ranch resale value, vulnerability to future change)

4a. Same as 4, but offer additional compromises (as in 1a.)

Pros: -Demonstrates basic agreement without new legally binding easement
-Attempts to facilitate cattle drive
-Retains control if terms are blatantly disregarded

Cons: -May not satisfy expectation of a legally binding easement

5. Put all trailing ranchers under refuge permits (as per 6 RM 9.10C)

Pros: -Would treat all the same
-Consistent with refuge manual

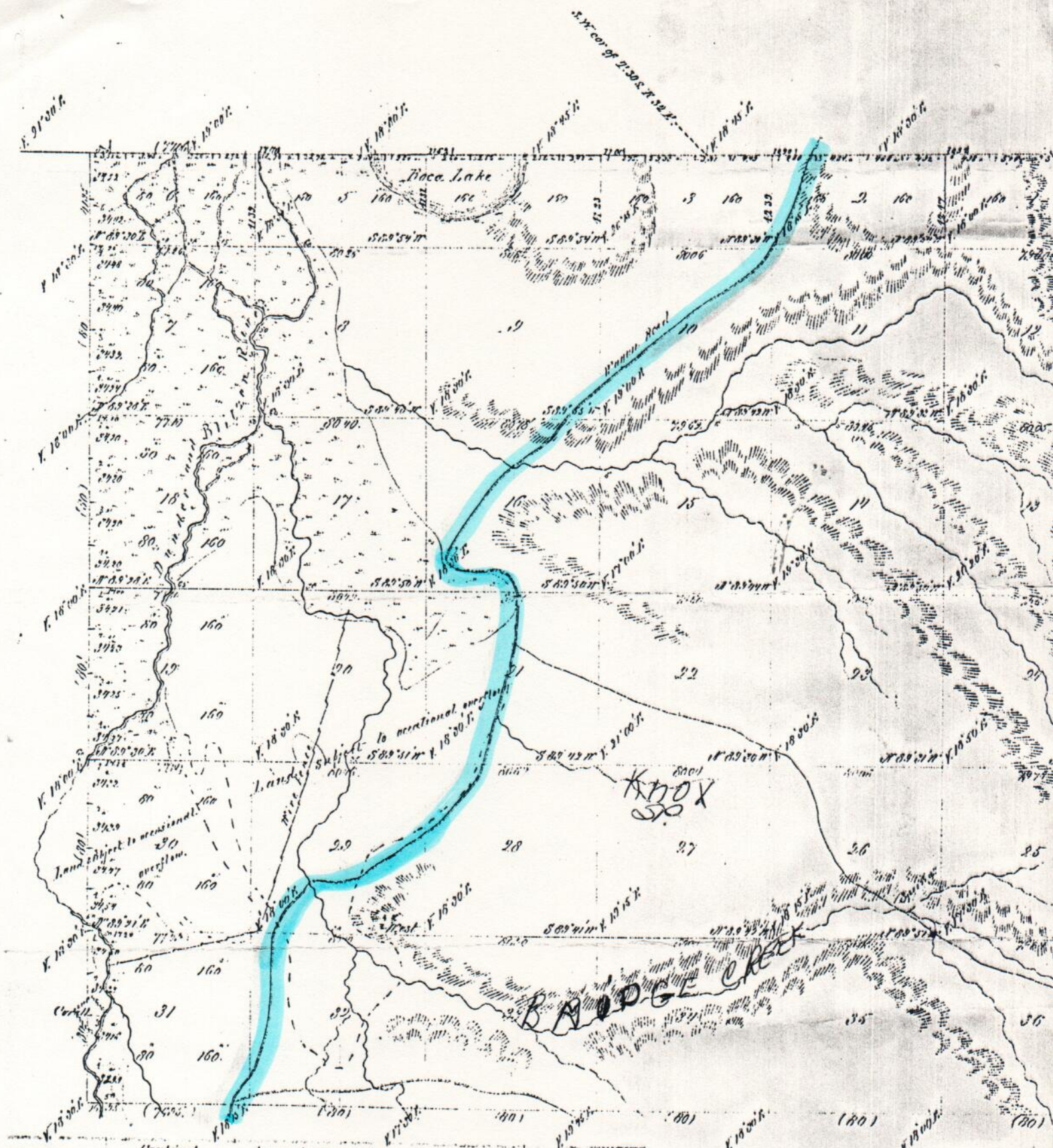
Cons: -Would provoke adverse response from others
-Cosmetic approach to problem with one rancher
-Would not address primary Hammond concerns (right to trail)

6. Issue Hammond legal right of way (easement for trailing cattle)

Pros: -Would address, but not fully resolve, Hammond's concerns (also subject to revocation for noncompliance with terms and conditions, but by RD, not RM)

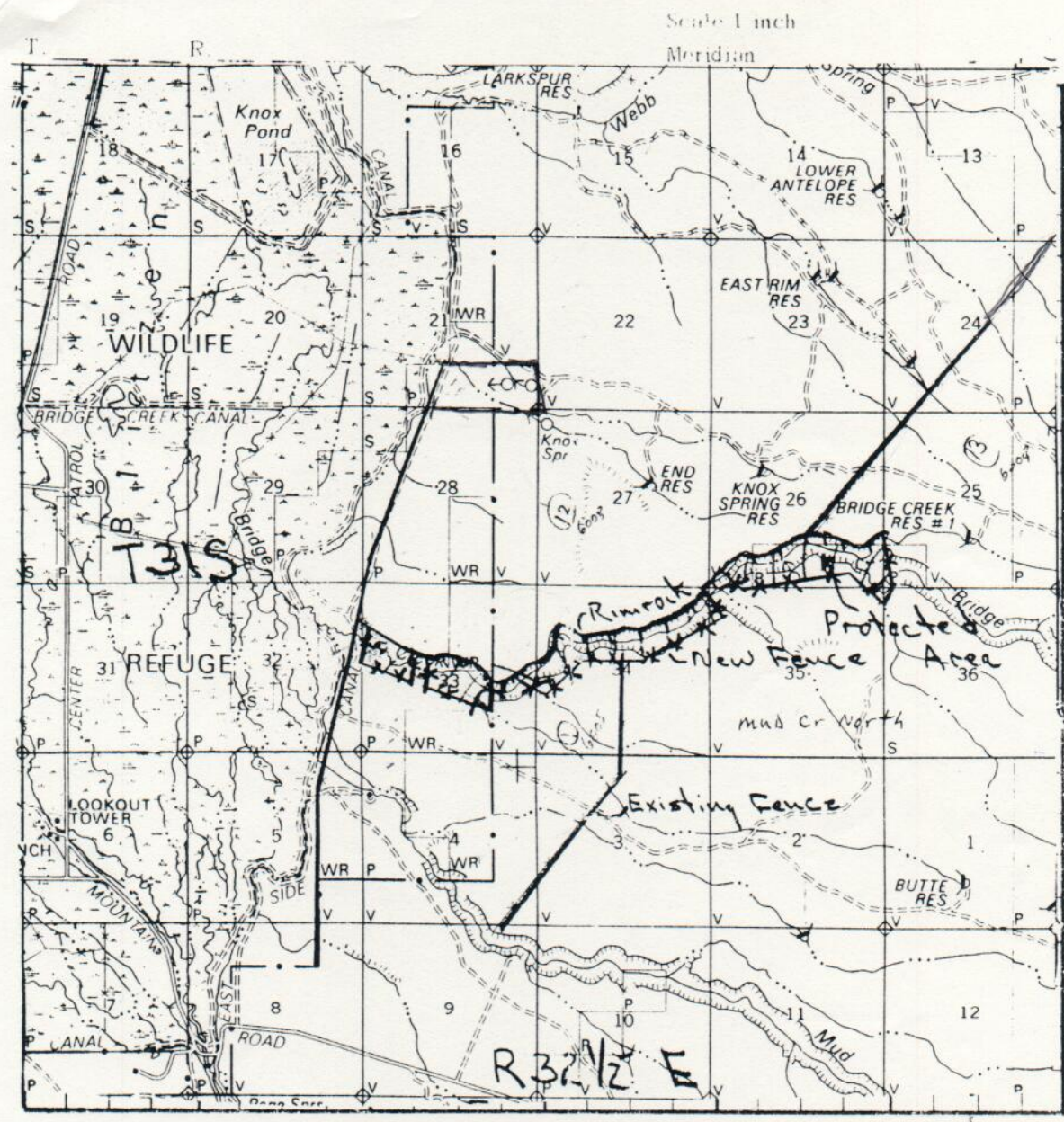
- Cons:
- Would prevent refuge from future exclusion of all cattle from these fields (not currently contemplated)
 - Could set difficult precedent regarding treatment of conflict (e.g. other trailing ranchers would request similar easements?)
 - No apparent provision to waive application fee, reimbursement for Service monitoring activities or basic value of easement (fair market value)

#1
Township No. 31 South Range No. 32 1/2 East Willamette Meridian, Oregon.



Contractor.	Contract No.	Date.	Amount Surveyed.			Commenced.	Completed.
			Acres.	Chains.	Links.		
W. H. McElroy	275	Oct 15 th 1877	57.	83.	5.9.	December 7 th 1877	December 13 th 1877.

The above Map of No. 32 1/2 East W the original field no have been examined
U. S. Surveyor Gen
Portland, Or
January

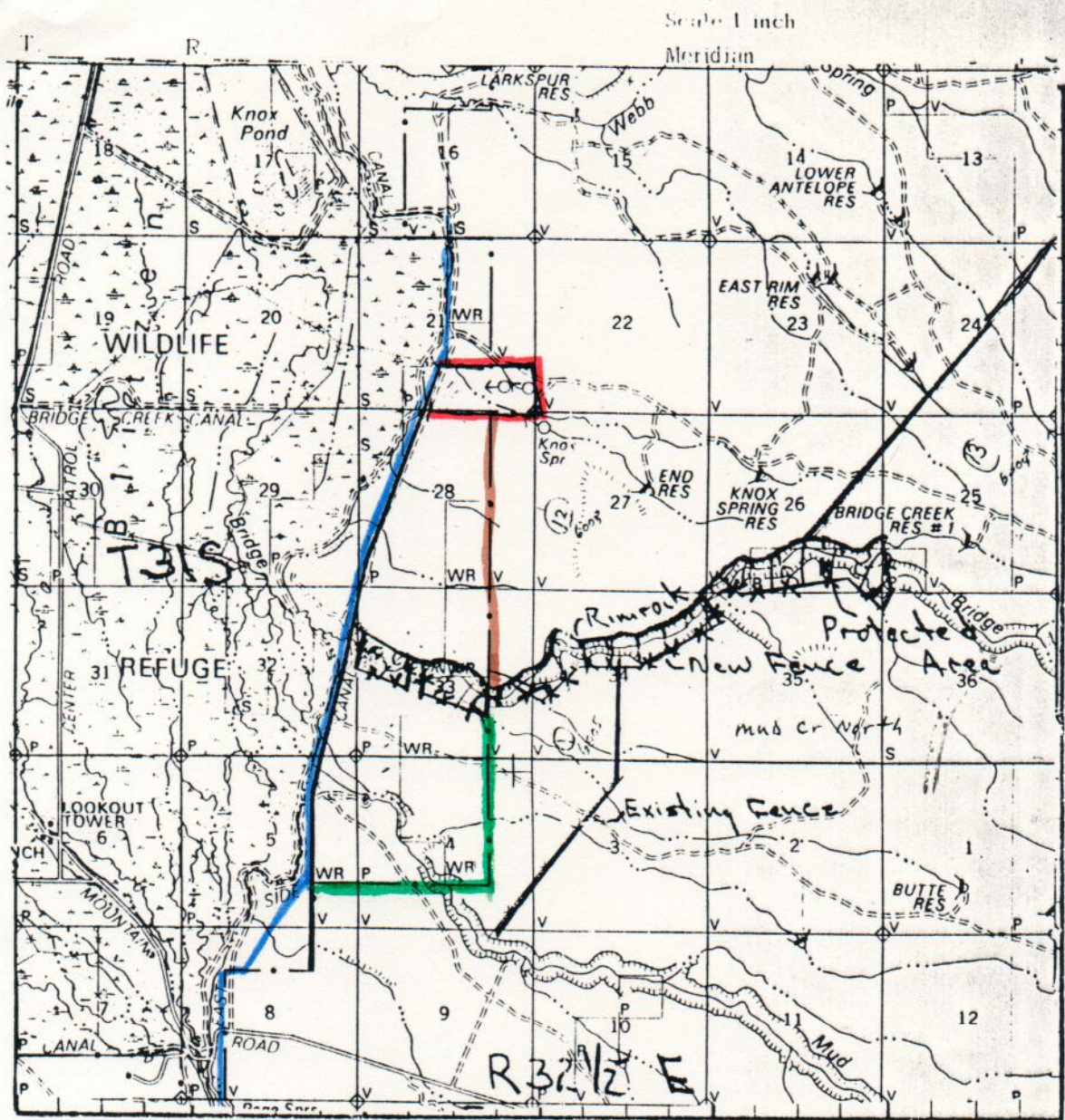


VII - NARRATIVE DESCRIPTION OR JUSTIFICATION

This Fence will be constructed between Mud Creek & Frazier Field AMP's. The main purpose for this project is to eliminate cattle grazing & reduce soil loss & improve riparian habitat. This is a cooperative project w/ the Refuge OWC and the BLM located between Frazier Field AMP #606 and Mud Cr. AMP #600.

Prepared by James L. Andersen	Title Natural Res. Spec.	Date 12-22-75
Approved by <i>[Signature]</i>	Title Andrews Area Mgr	Date 12-29-75

#3



VII -- NARRATIVE DESCRIPTION OR JUSTIFICATION

This Fence will be constructed between Mud Creek & Frazier Field AMP's. The main purpose for this project is to eliminate cattle grazing & reduce soil loss & improve riparian habitat.

This is a cooperative project w/ the Refuge, OWC and the BLM located between Frazier Field AMP #600 and Mud Cr. AMP #600.

Prepared by James L. Andersen	Title Natural Res. Spec.	Date 12-22-75
Approved by <i>[Signature]</i>	Title Andrews Area Mgr	Date 12-29-75



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
Box 245
Princeton, Oregon 97721

March 20, 1987

Mr. and Mrs. Dwight Hammond
Hammond Ranches, Inc
Diamond, Oregon 97722

Dear Dwight and Susie:

This is to confirm the discussion at our meeting of March 12, 1987 at my office. I had asked you to meet with me to discuss your trailing through the refuge in the Upper Bridge Creek area this spring.

I am sorry it had to end with ill feelings. I hope it was anger, not conviction that led you to imply that you would seriously injure me if I tried to stop you from trailing your cattle through the Bridge Creek area of the Refuge. As I tried to explain, we do not want to stop you from trailing through the Refuge, but set some reasonable guidelines to protect Refuge resources and prevent misunderstandings.

This letter is to document my verbal authorization to you to trail through the Refuge under the following conditions:

1. You may trail your cattle through the Bridge Creek area, entering, trailing through, and leaving the Refuge along the route marked in blue on the attached map.
2. We want the entire trailing operation to be done in one day.
3. Finally, you are to notify us at least 24 hours in advance before you begin trailing, so we may monitor your trailing operation.


Dwight, I hope you can calm down and see that we are not being unreasonable and that there should not be any problems for you to trail your cattle through the Refuge under the preceding conditions. If your trailing this year can occur without problems, conditions 1 and 2 could be established for future trailing across Bridge Creek, and monitoring dropped.

All the anger, shouting, and threatening in the world cannot erase the fact that trailing through the Refuge is a privilege that can be controlled and yes, stopped by the Refuge. I am not "ignorant" to the fact that you hate this control over your activities or that you firmly believe that our goal is to stop your trailing through Bridge Creek. I can only repeat our good faith statements that we do not want to prevent you from trailing in this area, only to set reasonable rules to prevent harm to the resources or misuse of the privilege.

It's up to you where this disagreement will lead. I can assure you that how you, your family, and your employees conduct yourself on the Refuge and comply with rules and regulations, will all bear on whether you will continue to enjoy the privilege of trailing, haying, or grazing on the Refuge.

We want to work with you, but cannot accept a situation where you purposefully disregard our rules and guidelines.

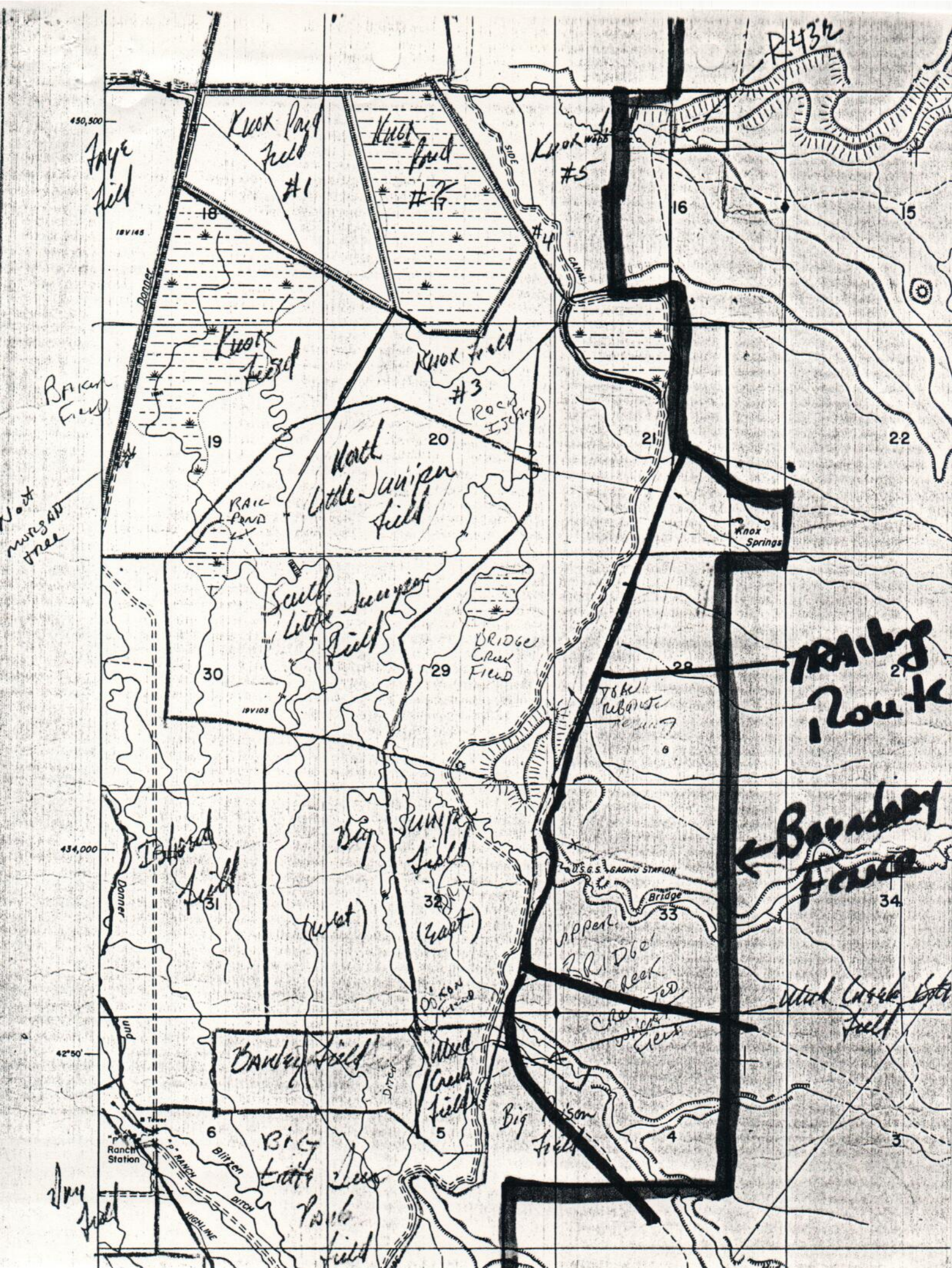
Sincerely,



George M. Constantino
Refuge Manager

GMC/am

cc: Sandy Wilbur, Refuge District Supervisor
Tom Downs, F-Ranch



REFUGE MANUAL

EQUIPMENT AND FACILITY MANAGEMENT

9 RM 3.1

3. Fencing

- 3.1 Policy. It is the policy of the Service to construct fences on national wildlife refuges only when essential to management and protection of wildlife and refuge lands; and to assure that such fences are constructed and maintained in a manner that minimizes conflict with adjacent land owners and refuge objectives. Fencing merely to denote ownership by the United States is not normally justified.
- 3.2 Objectives. Fences will be constructed and/or retained only where they:
- A. Facilitate safety programs. ???
 - B. Protect the rights of adjacent (or included) landowners.
 - C. Protect wildlife or its habitat.
 - D. Facilitate management of lands and waters as required to attain refuge objectives.
- These objectives apply to both boundary and interior fences. Existing fences not contributing to these objectives should be removed.
- 3.3 Aesthetics. Fencing and related facilities will be constructed and maintained in a manner that makes them as visually unobtrusive as practical, with due consideration given to scenic, aesthetic, and ecological factors.
- 3.4 Design. All fences constructed on refuge lands will be built to specifications designed to meet the required objectives consistent with sound engineering practice. In designing a fence, and depending upon the type and intended usage, State fencing laws should be considered. Adoption of State law requirements may help avoid a tort claim and can assure a better legal posture in trespass cases should it become necessary.
- 3.5 Alternatives. Before a decision to construct any fence is made, all feasible alternative means of obtaining necessary control must be considered. Fencing will be used only where alternatives are not feasible or would be more objectionable. Alternative management methods, that would not require fences, should also be considered.
- 3.6 Wildlife requirements. All fences constructed on refuge lands will be designed to minimize resistance to wildlife passage, except where restricting wildlife movement is a specific function of the facility.
- 3.7 Construction and maintenance costs. Facilities needed primarily for refuge purposes will be constructed and maintained at Service expense. Where mutual benefits accrue to both the refuge and to a permittee, the

Release:

003 March 12, 1982

NATIONAL WILDLIFE REFUGE SYSTEM

#6

A F F I D A V I T

STATE OF OREGON,)
County of Harney.) ss.

We, Elmer Ash, Wanda Ash, Fred Witzel and Clarence Miller, and each of us, each being duly sworn upon oath, depose and say:

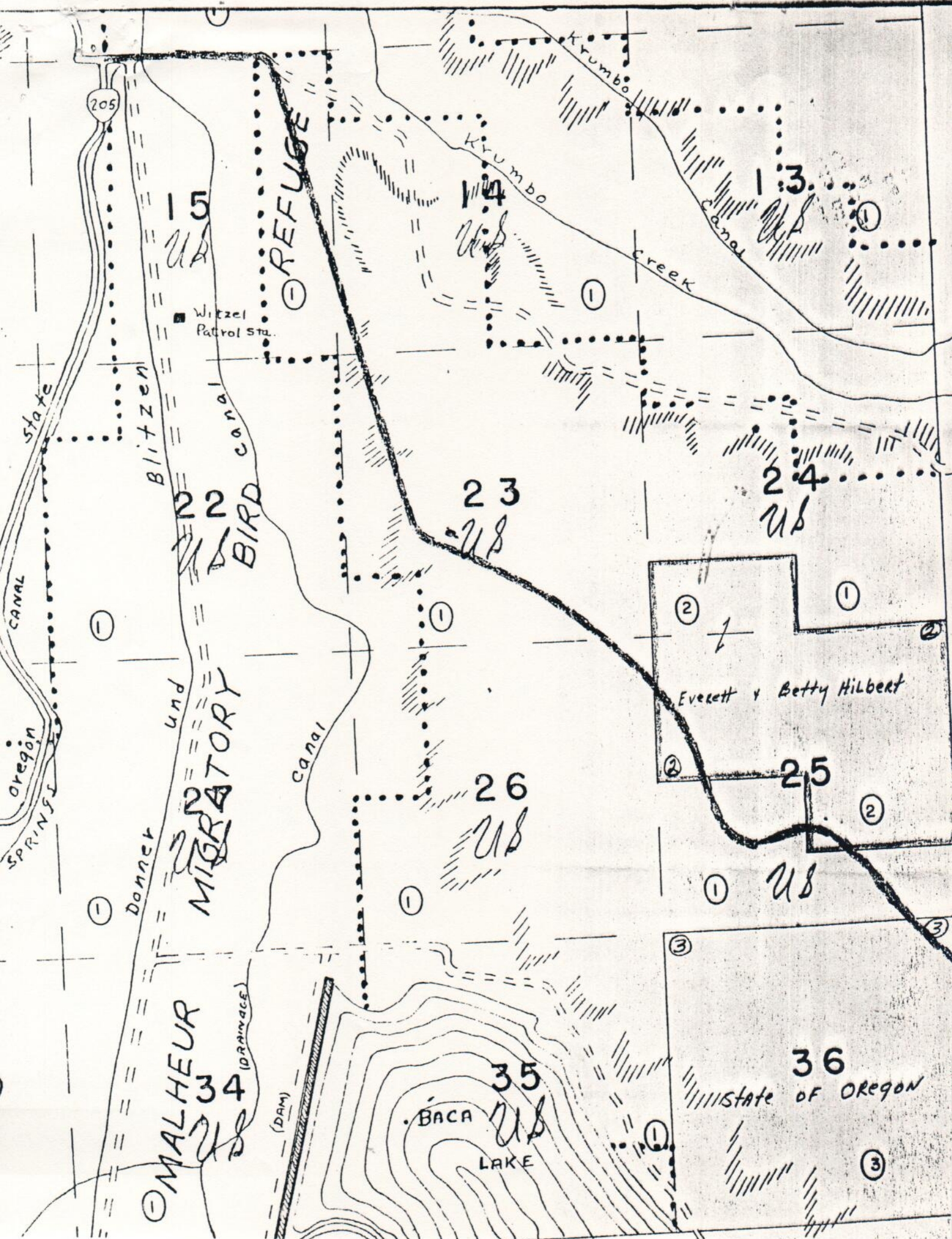
That we, and each of us, now are and for a period in excess of thirty years have been residents of Harney County, Oregon, residing in the area of Frenchglen, Oregon, and the Krumbo Reservoir area of Harney County, Oregon; and each of us is familiar with the location of the ranch land owned by Everett Hilbert and Betty Hilbert in Sections 24 and 25 of Township 30, South, Range 31 E., W.M., in Harney County, Oregon, and are familiar with the access road lying between said ranch land owned by the said Everett and Betty Hilbert, which said access road lies in and between Sections 15 and 25 of Township 30, Range 31 E.W.M., in Harney County, Oregon, and is depicted in red on the map of said area, which said map is annexed hereto and is by this reference incorporated herein and made a part hereof.

That we, and each of us, know of our own knowledge that said access road, for a continuous and uninterrupted period in excess of thirty years has been and is now in general use by land owners served by said access road, by employees of the federal government and of the state of Oregon, and by members of the public generally; and that at no time has the use of said access road, for a period in excess of the past thirty years, been denied to any member of the public or to any of the owners of any of the ranch land served by said access road.

Elmer Ash
Wanda Ash
Fred Witzel
Clarence Miller

Subscribed and sworn to before me this 8th day of ~~October, 1972.~~ February, 1973.

Anna M. Shurter
Notary Public for Oregon
My Commission Expires: Aug. 1, 1977



#17

ENVIRONMENTAL ASSESSMENT

COVER SEEDING WITHIN THE BRIDGE CREEK FIELD, MALHEUR REFUGE UPLANDS
(Descriptive Title for Proposed Action)

(FWS Unit Proposing the Action)

(Legal Mandate under which Action
Will Be Carried Out)

MALHEUR REFUGE UPLANDS
(Location of Action)

Jim Cadwell
(Author of Document)

08/31/87
(Date Prepared)

Section I: PURPOSE AND NEED FOR ACTION

1. Why is action being considered? (Discuss problems, opportunities, needs)

These refuge uplands have been used heavily in the past by wintering mule deer. Because of range fires, spraying, and crested wheatgrass seedings in the mid-60's to the early 1980's which eliminated the vegetative cover, deer use has dropped dramatically. In addition to decreased deer use, other game and nongame wildlife use is minimal.

2. How does the action relate to Service objectives?

1. Establishes vegetative diversity
2. Increase nongame bird use of the area.
3. Soil stability will be increased
4. Incorporates inter-agency cooperation including fund acquisition from Oregon Fish and Wildlife

3. What is the action supposed to accomplish?

1. Increase browse and thermal cover for big game
2. Increase nesting sites, cover and feed for game and nongame bird species
3. Project sites will tie in with adjacent BLM lands where additional habitat enhancement work is proposed
4. Increase utilization of existing native and exotic grasses by wildlife

Section II: ALTERNATIVES INCLUDING THE PROPOSED ACTION
(Identify one of the alternatives as the preferred alternative.
Add alternatives as necessary.)

A. No Action Alternative

1. Describe this alternative.

Area will be left as is

2. To what extent would this alternative satisfy the problems, opportunities or needs identified in Section I?

The problems would not be satisfied.

Cover would remain in scarce supply with poor distribution and utilization of this key winter range.

3. What are the principal environmental (biophysical) effects associated with implementation of this alternative? (Summarize effects from Section IV.)

Both plant and animal species diversity and numbers will remain low. Utilization of existing grasses by wildlife will be minimal.

4. What are the principal socioeconomic effects associated with implementation of this alternative? (Summarize effects from Section IV.)

None

5. Would implementation of this alternative likely result in significant controversy? Explain.

No

B. Cover Seedings on Malheur Refuge Uplands (Descriptive title for alternative)

1. Describe this alternative.

Using a rangeland disc and drill to establish Basin Big Sagebrush (Artemisia tridentata tridentata), Wyoming Sagebrush (Artemisia tridentata wyomingensis), Four-wing Saltbush (Atriplex canescens) and Western Juniper (Juniperus occidentalis) in a mosaic pattern throughout the proposed project area (see attached map).

2. To what extent would this alternative satisfy the problems, opportunities or needs identified in Section I?

The shrubs would provide thermal, hiding and nesting cover. Utilization of the existing grasses would be increased. When tied into proposed projects on adjoining BLM property, the overall result will be beneficial to a wide variety of wildlife.

3. What are the principal environmental (biophysical) effects associated with implementation of this alternative? (Summarize effects from Section IV.)

The shrub and tree component of the range will be increased. Up to six inches of soil disturbance will occur in specific areas where seeding is proposed.

- The proposed project area will be surveyed for cultural resources and areas of significant value will be dropped from the proposal.

4. What are the principal socioeconomic effects associated with implementation of this alternative? (Summarize effects from Section IV.)

Will lead to increased winter survival of mule deer which will lead to increased potential for hunter harvest and recreational opportunities.

5. Would implementation of this alternative likely result in significant controversy? Explain.

No.

C. NA (Descriptive title for alternative)

1. Describe this alternative.
2. To what extent would this alternative satisfy the problems, opportunities or needs identified in Section I?
3. What are the principal environmental (biophysical) effects associated with implementation of this alternative? (Summarize effects from Section IV.)
4. What are the principal socioeconomic effects associated with implementation of this alternative? (Summarize effects from Section IV.)
5. Would implementation of this alternative likely result in significant controversy? Explain.

ALTERNATIVES MATRIX

Based on the previous analyses, fill in the matrix, using short phrases to highlight key points. The complete chart should furnish the decision-maker with a clear and concise basis for choosing among alternatives. Supplement chart with other criteria as necessary (e.g., cost, public support, etc.).

ALTERNATIVES

DECISION-MAKING CRITERIA	No Action	Alternative #1	Alternative #2	Alternative #3
Extent to which problems, needs or opportunities would be satisfied	None of the needs would be satisfied	Wildlife cover from shrubs and trees would be restored		
Principal Environmental (Biophysical) Effects	The site would be very slow (if ever) to return to its original vegetative condition	Shrub component on the range would increase. Six inches of soil disturbance in seeding areas		
Principal Socio-Economic Effects	Minimal, the site is presently not grazed by cattle and receives almost no use by bird watchers	Increased deer survival with potential for increased hunter harvest and recreational opportunities		
Degree of Public Controversy	No controversy is expected	Same as no action		

Section III: AFFECTED ENVIRONMENT

Succinctly describe the area in which the proposed action is to occur. If the action will occur on a National Wildlife Refuge or National Fish Hatchery, attach the Refuge/Hatchery public information leaflet to help orient the reader to the general vicinity. For site-specific proposals, include page-sized maps of the general area and the project site. Particular mention should be made of the presence (or absence) of any endangered or threatened species or their critical habitat, historic or cultural resources, parklands, prime or unique farmlands, wetlands, 100-year floodplains, wild and scenic rivers, or other ecologically critical areas (e.g., wilderness areas, research natural areas, etc.).

1. Endangered or threatened species - none on project site
2. Historic or cultural resources - the entire area will receive an archeological survey. Any identified sites will be avoided
3. Park lands, farm lands, wetlands, 100-year flood plains, and perennial streams - none exist on project areas
4. Springs and seeps - two springs and one seep are either located on or drain into project area. Areas below the springs are proposed to be seeded. Spring heads will be protected.
5. Wilderness or Wilderness Study Areas - none on project area; BLM has adjacent WSA's
6. Only native shrub and tree species will be used.
7. A project site map is attached.

Section IV: ENVIRONMENTAL CONSEQUENCES

7

Develop the analysis for this section by referring to the checklists in Appendices A and B. For each alternative, discuss any item answered "Yes" in either the Significance Checklist or the General Environmental Checklist. Where adverse effects are identified, discuss any proposed mitigating measures. (Add pages to this section as necessary.)

Alternative A: No Action

No mitigation would be required

Alternative B: Cover Seedings on Malheur Refuge Uplands (Title)

The site would be treated so as to return it to a Wyoming and Basin Big Sagebrush site. This was the condition that existed before fires and crested wheatgrass (Agropyron desertorum) seedings changed that condition.

No mitigation would be required.

No other items listed on the environmental checklist would be adversely affected.

Section IV: ENVIRONMENTAL CONSEQUENCES (Cont.)

8

Alternative C: NA (Title)

Section V: CONSULTATION AND COORDINATION WITH OTHERS

List below parties contacted during the planning process. Summarize results of consultation or coordination with these parties. If the EA was circulated for public comment, also provide a summary of any significant issues raised and how they were resolved.

US Fish and Wildlife Service

George Constantino - Malheur Refuge Manager

Oregon Department of Fish and Wildlife

Jim Lemos - District Wildlife Biologist

Jerry Farstvedt - Regional Habitat Biologist

Jim Cadwell - Range Enhancement Technician

All parties are in agreement on project design.

Oregon Department of Fish and Wildlife will provide the needed funding.

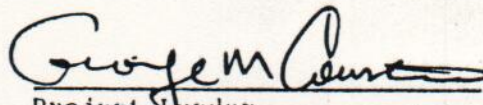
Lucile Housley, Director Malheur Field Station

Gary Sheeter, District Biologist, BLM

Section VI: CONCLUSIONS AND RECOMMENDATIONS

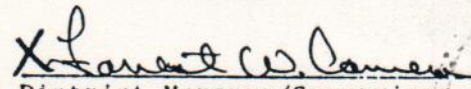
Based on the analysis contained in this document, I find that implementation of the proposed action:

- ☒ is compatible with the major purposes for which the area was established.
- ☐ is not compatible with the major purposes for which the area was established.
- ☐ Would constitute an action significantly affecting the quality of the human environment and, therefore, recommend an EIS be prepared. (Forward EA to RO for review).
- ☒ Would not constitute an action significantly affecting the quality of the human environment and, therefore, recommend a Finding of No Significant Impact (FONSI) be prepared. (District Manager/Supervisor signs FONSI on next page).


Project Leader

09/01/87

Date


District Manager/Supervisor

9/10/87
Date

NOTE: If it is uncertain whether an EIS or FONSI should be prepared, the District Manager/Supervisor may forward the EA to the AEP-ES for review. Additionally, the RD will retain NEPA sign off authority on those actions involving major planning efforts; those actions with potential regional or national policy implications for FWS; those actions involving major controversial issues of regional or national significance; and those actions involving land acquisition of any form.

FINDING OF NO SIGNIFICANT IMPACT

BRIDGE CREEK NATIVE SEEDING

(Title of Project)

Malheur NWR

(Name and Address of FWS Facility)

The U.S. Fish and Wildlife Service proposes to

Permit the Oregon Department of Fish & Wildlife to plant 19 native vegetation cover plot varying from one to sixty areas in size (269 areas total) in the Upper Bridge Creek Field.

The purpose of the proposal is to

Re-establish islands of native shrub within a crested wheat grass seeding. The primary species benefitting will be wintering mule deer.

FWS has analyzed a number of alternatives to the proposal, including the following: (List)

No action.

The proposal was selected over the other alternatives because: (List reasons)

It provides needed habitat diversity in the field and supports an on-going state-wide program of improving deer habitat in the state and in the Steens Mountain Management Unit.

Implementation of the preferred alternative would be expected to have the following environmental and socio-economic effects: (List)

- Improve vegetation diversity in the field.
- Increase native song bird use of the area.
- Increase soil stability.
- Increase browse and thermal cover for mule deer.

Measures to mitigate and/or minimize adverse effects have been incorporated into the proposal. These measures include: (List)

- Only native species will be planted.
- Areas with significant cultural resource values will be excluded from the project.

The proposal is not expected to have any significant effects on the environment because:

It will re-establish vegetative diversity in a non-native crested wheat grass area and no negative environmental impacts have been identified in the scoping or plan efforts.

The proposal has been thoroughly coordinated with all interested and affected parties. Parties contacted include: (List)

- Burns District Office of the Oregon Department of Fish & Wildlife.
- Director, Malheur Field Station.
- Burns District Office, Bureau of Land Management.

Therefore, it is my determination that the proposal does not constitute a major Federal action significantly affecting the quality of the human environment. As such, an environmental impact statement is not required. An environmental assessment has been prepared in support of this finding and is available upon request to the FWS facility identified above.

Reference: (List title of EA)

acting

X. J. [Signature]

XXXXXXXXXXXXXXXXXXXX
District Supervisor

XXXXXXXXXXXXXXXXXXXX

(cross out two)

9/10/87
Date:

Appendix A
SIGNIFICANCE CHECKLIST

This checklist is intended to help determine whether a given alternative would affect environmental features of special legal or policy significance. The list of 23 questions can be answered with a "yes" or "no" response. For any item answered "yes", discuss under the appropriate alternative in Section IV. The more items answered "yes", the stronger the likelihood that an EIS is necessary.

WOULD IMPLEMENTATION OF THE ALTERNATIVE BE EXPECTED TO AFFECT OR INVOLVE:

1. Federally listed threatened or endangered species or their critical habitats? (If "Yes", Section 7 internal consultation is required.) NO.
2. Properties either listed in or eligible for listing in the National Register of Historic Places? (If "Yes", consult with State Historic Preservation Office.) The proposed areas will be surveyed prior to seeding and significant areas excluded from the proposal.
3. Either surface or subsurface disturbance? (If "Yes", consult with SHPO.)
Yes - See #2.
4. Major loss or alteration of natural wetlands that would adversely affect biological productivity, habitat diversity, flood storage capacity, or aquifer recharge capacity? (If "Yes", see FWS floodplain/wetland regulations in November 20, 1979 issue of Federal Register.) NO.
5. Areas within the 100-year floodplain, in terms of increasing the flood hazard potential? (If "Yes", see November 20, 1979 issue of Federal Register.) NO.
6. Natural resources within the officially designated boundary of the State coastal zone? (If "Yes", consult with State Coastal Zone Management Office.) NO.
7. Discharge of dredged or fill materials in waters of the U.S. or adjacent wetlands? (If "Yes", Corps of Engineers' Section 404 permit is required.) NO.
8. Structures or facilities within, under or above a navigable waterway? (If "Yes", Corps of Engineers' Section 10 permit is required.) NO.
9. River segments designated for inclusion within the National Wild and Scenic Rivers System? (If "Yes", consult with National Park Service.) NO.
10. Any area included within the National Wilderness Preservation System? NO.
11. Use of toxic or environmentally hazardous substances, such as pesticides, herbicides, rodenticides, etc.? (If "Yes", consult with Environmental Contaminant Specialist, RO.) NO.
12. Significant degradation of water quality? (If "Yes", consult with State water quality agency and/or U.S. Environmental Protection Agency.) NO.
13. Significant degradation of air quality? (If "Yes", consult with State air quality agency and/or EPA.) NO.

14. Society as a whole? NO.
15. National interests? NO.
16. State or regional interests? NO.
17. Long-term irreversible or irretrievable commitments of resources? NO.
18. Public health or safety hazards? NO.
19. Widespread controversy? NO.
20. Highly uncertain effects with unique or unknown risks? NO.
21. Establishment of a precedent for future actions with significant effects, or a decision in principle about a future consideration? NO.
22. Other actions with individually insignificant but cumulatively significant impacts? NO.
23. Potential violation of Federal, State or local law or requirements imposed for the protection of the environment? NO.

Appendix B GENERAL ENVIRONMENTAL CHECKLIST

This checklist is intended to facilitate effects analysis for the various alternatives under consideration. The list of physical, biological and social considerations can be answered with a "yes" or "no" response. For any item answered "yes", discuss under the appropriate alternative in Section IV.

WOULD IMPLEMENTATION OF THE ALTERNATIVE BE EXPECTED TO AFFECT ANY OF THE PHYSICAL, BIOLOGICAL OR SOCIAL CONSIDERATIONS LISTED BELOW?

PHYSICAL CONSIDERATIONS

- | | |
|---|--|
| <p>A. 1. Climate NO
2. Air Quality NO</p> <p>B. Topography</p> <p>1. Relief NO
2. Cuts/Fills NO</p> <p>C. Geology</p> <p>1. Earthquake/Landslide NO
2. Minerals NO
3. Energy Resource Depletion/Conservation NO
4. Radioactive & Toxic Substances/Heavy Metals NO</p> | <p>D. 1. Erosion/Deposition NO
2. Siltation NO
3. Soil Quality NO</p> <p>E. Hydrology</p> <p>1. Surface & Ground Water Quality/Quantity NO
2. Absorption/Drainage NO
3. Flooding NO
4. Hydro/Geothermal Energy Source NO</p> |
|---|--|

BIOLOGICAL CONSIDERATIONS

- | | |
|---|--|
| <p>A. Vegetation</p> <p>1. Species of Special Concern NO
2. Critical Wildlife Habitat YES
3. Species Diversity/Abundance YES
4. Noxious Weeds/Exotic Plants/Pathogens YES</p> | <p>B. Wildlife</p> <p>1. Species of Special Concern NO
2. Species Diversity/Abundance YES
3. Game/Non-Game Species YES
4. Pests/Pathogens/Vectors/Predators/Feral or Exotic Animals NO</p> |
|---|--|

SOCIAL CONSIDERATIONS

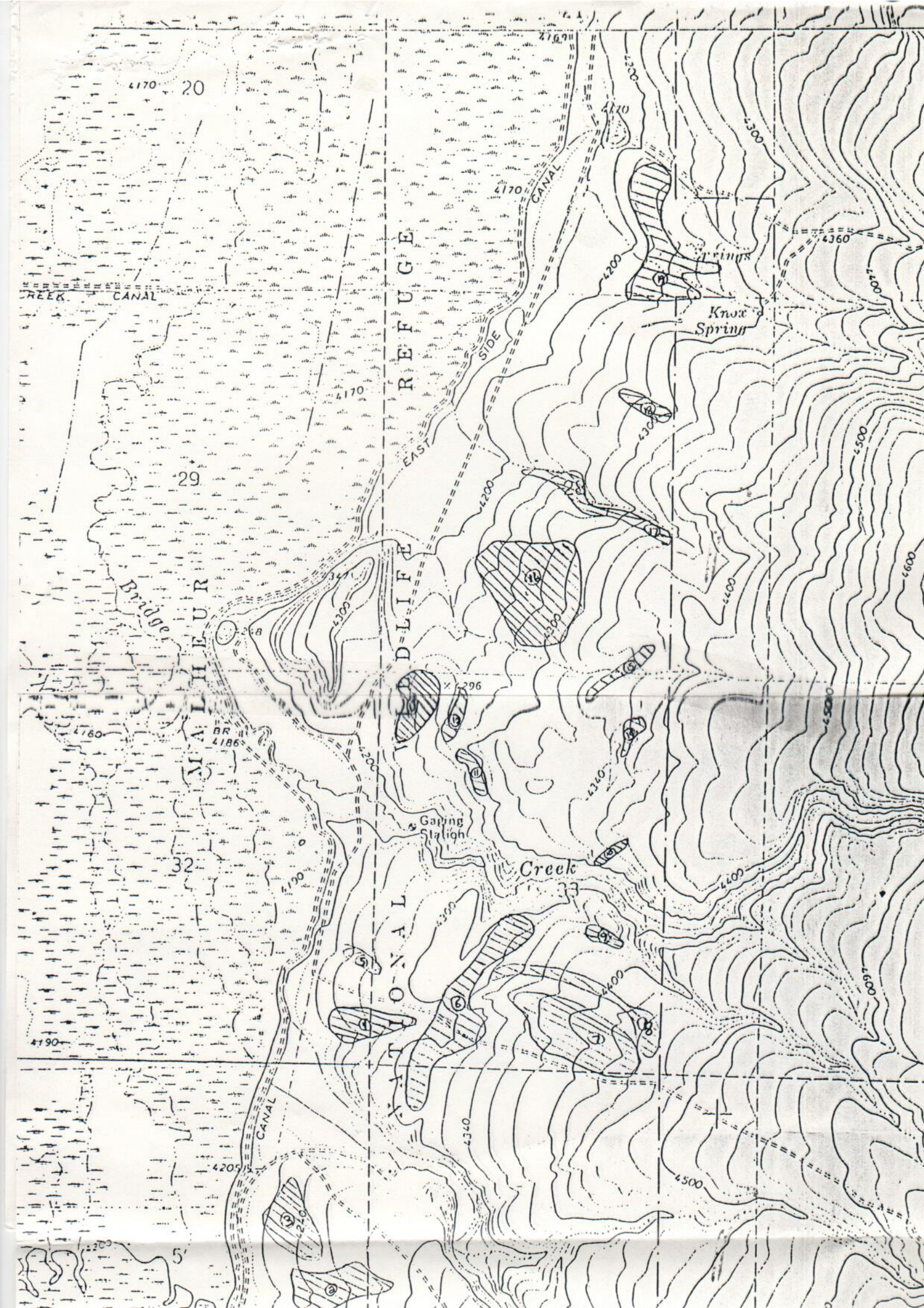
- | | |
|---|--|
| <p>A. Cultural</p> <p>1. Archaeologic/Historic Sites YES
2. Educational/Recreational Opportunities NO
3. Public Access NO</p> <p>B. Economic</p> <p>1. Cost YES
2. Employment NO
3. Commercial/Industrial Buildings NO
4. Taxes/Property Values NO</p> <p>C. Land Use</p> <p>1. Plans/Policies/Controls NO
2. Development/Growth NO
3. Farmland/Open Space, Natural Areas NO
4. Transportation Facilities/Public Utilities NO</p> | <p>D. Social</p> <p>1. Quality of Life YES
2. Community Cohesion NO
3. Residents/Residences NO
4. Population Change NO
5. Human Health/Safety NO
6. Public Services NO
7. National Defense NO</p> <p>E. Aesthetics</p> <p>1. Scenery YES, IMPROVED.
2. Noise NO
3. Odor NO</p> |
|---|--|

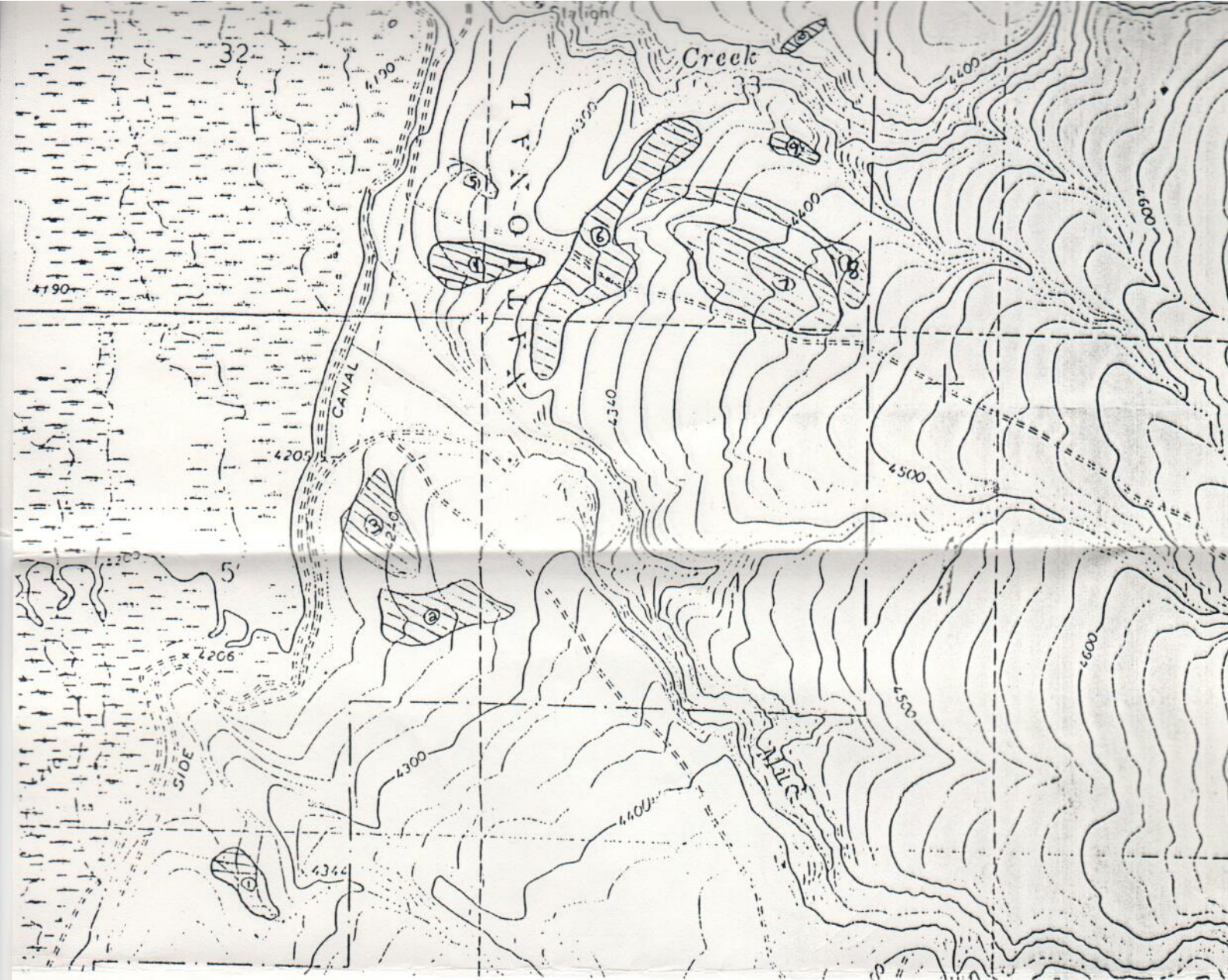
KEY TO COVER AREA MAP

1 - 6 acres
2 - 7 "
3 - 8 "
4 - 4 "
5 - 1 "
6 -28 "
7 -30 "
8 - 5 "
9 - 1 "
10 - 3 "
11 - 2 "
12 - 4 "
13 - 7 "
14 - 4 "
15 - 5 "
16 -80 "
17 - 9 "
18 - 5 "
19 -60 "

269 approximate acres

NOTE: Trees and shrubs to used: Juniper (Western)
Wyoming Sage
Basin Big Sage
4-Wing Saltbrush
Silverleaf Buffalo Berry (Only in 19)





Hammond Ranches, Inc.
Diamond, Oregon 97722

CERTIFIED

P 766 318 941

MAIL



United States Department of the Interior

FISH AND WILDLIFE SERVICE

LLOYD 500 BUILDING, SUITE 1692

500 N.E. MULTNOMAH STREET

PORTLAND, OREGON 97232

In reply refer to:
ARW

May 2, 1988

Mr. and Mrs. Dwight Hammond
Hammond Ranches, Inc.
Diamond, Oregon 97722

Dear Mr. and Mrs. Hammond:

I am writing in response to your formal appeal regarding actions taken by the Service to regulate your cattle trailing operation at Malheur National Wildlife Refuge. I have reviewed the correspondence surrounding this issue and have discussed the topic at length with staff from the refuge and Regional Office. I have also discussed it with Rob Shallenberger following his visit to your ranch. I'd like to express my appreciation for the courtesy you showed Rob and the information you shared with him. I'm sorry that I did not have the time available in my schedule to make the trip to Malheur myself.

After thorough review of this situation, it appears that there are some points on which we agree and others on which we do not. The Service acknowledges that the trailing route around the lower (west) end of Bridge Creek has been used historically, dating back well before you acquired the adjacent BLM allotment. We also agree that the movement of the boundary fence to the legal boundary has made your trailing operation more difficult and more costly. I will also agree that the Service took action to construct the new fence without full consultation with you and in conflict with what you believed was appropriate. I will also agree with you that the recent cooperative reseeding program with the State has the appearance of being initiated to bolster arguments in favor of maintaining the boundary fence.

The points on which we disagree make it difficult to resolve this issue in a mutually satisfactory manner. The Service does not believe that the historic use of the Bridge Creek trailing route confers on you a legal right to continue this activity, but it is Service policy not to take action that would jeopardize this use for landowners or permittees on adjacent parcels. We also don't agree regarding the potential wildlife or recreational value of the habitat now protected from unrestricted grazing by the boundary fence. It is entirely consistent with Service policy for refuge managers to systematically identify, protect, and take steps to enhance wildlife habitat within refuge boundaries. How quickly we accomplish objectives is dependent upon resource priorities, funding, and the participation of cooperating agencies.

You have expressed concern that the actions taken at Malheur are in conflict with the Refuge Manual direction regarding fencing. I believe the

problem lies more in ambiguous wording and differences of interpretation. The construction of the new boundary fence, in my opinion, satisfied the objectives of protecting wildlife and habitat and facilitating refuge management.

While I understand your perception of unfair treatment, I can find no evidence that you have been singled out in this issue. There have been other confrontations with the Service, on the trailing issue and on other unrelated activities. But the actions taken by the refuge to correct problems with the trailing at Bridge Creek were consistent with Service policy and within the authority of the refuge manager. He opted to use the refuge permit process only as a last resort when negotiation with you failed to bring the deviations from agreed-upon trailing procedures under control. I'm certain he would have done the same with any other rancher if confronted with a similar situation.

I should point out that it is also Service policy, outlined in the Refuge Manual [(6 RM 9.10C(3)], that all trailing activities on a refuge will be conducted under permit. We have chosen to not implement that policy at Malheur because of the well established historic trailing activities and the fine record of cooperation between the ranching community and the refuge on this point.

You have suggested that your "right" to trail cattle on the Bridge Creek route be legally established by conferring on you a right-of-way easement. I don't see this as a reasonable option. Your continued opportunity to use the route is not in jeopardy so the easement is unnecessary. You would also be subject by regulation to considerable additional expense, including fair market value for the easement, application fees, and reimbursement for Service administration. Finally, the easement would include formal "terms and conditions" similar to those now in place to minimize the adverse impacts of the trailing operation.

Let me conclude by ^{indicating} stating what we will do ^{in order} for you to reduce your problems. First, we will continue our policy of not issuing permits at Malheur for historically established trailing operations, including yours. This assumes that all livestock managers will move their stock through the refuge with as little impact on the land and forage as is possible, and will show respect for other refuge and permittee operations in the trailing areas. Only in the case of serious deviations from the "honor system" will the refuge manager recommend to his supervisors any change in this policy.

Second, if you would like to consider specific modifications that would facilitate your trailing operations and minimize the problems with cow-calf separation you have experienced in the past, I will ask the refuge manager to work with you to plan and develop these improvements. These might include additional gates in the boundary fence, a holding corral for over-night use, and/or a temporary watering facility.

Finally, we all recognize that harsh words and misunderstandings in the past have eroded your working relationship with the Malheur Refuge staff. Because "people are people," there is always the danger that relationships

Mr. and Mrs. Dwight Hammond

3

will not heal and might be less open and cooperative than with other refuge neighbors and permittees. I have respect for George Constantino and his co-workers and do not expect that to be the case. Nevertheless, because of the strong emotions generated by his issue, I intend to keep in closer touch with the situation than I would normally. I hope that there will be no need for any further intervention on my part.

Sincerely,

Regional Director

Insert

The Service recognizes that the trailing route around the lower (west) end of Bridge Creek has been used historically. However, the existence of such tracts and ways on the public lands do not give rise to legal rights of use. Notwithstanding this, it is the policy of the Service not to take action that would jeopardize such use for landowners or permittees on adjacent parcels. We also recognize that the recent movement of the boundary fence to the legally established boundary of the refuge has made your trailing operation more difficult. However, it is clear to us that the adjustment in the boundary fence was fully justified by management requirements and the need to identify, protect, and enhance the wildlife habitat within the refuge. While the Refuge Manual mentions that one goal in the construction of fences is the protection of the rights of adjacent landowners, this must be considered along with the need to protect wildlife and to facilitate the management of the land to attain refuge objectives. From a review of this matter, it is my conclusion that the construction of the new boundary fence reasonably satisfied all of these objectives.

I have directed my staff to keep me advised of the steps being taken in an attempt to alleviate the present situation. It is my hope that through mutual cooperation we will be able to arrive at solutions which provide you with adequate access across the refuge while at the same time permit the Service to satisfy its objectives of protecting wildlife and habitat and facilitating refuge management.

Sincerely,

Regional Director :

NEXT DAY SERVICE

▲ Fold and Detach Stub Here ▲

TO ADDRESSEE

B 78812765

Service Guarantee:

If this shipment is mailed at designated USPS Express Mail service facilities on or before the specified deposit time for next day delivery to the addressee, it will be delivered to the addressee or agent by 3:00 p.m. of the next day. Upon application by the mailer at the Express Mail originating office, USPS will refund the postage for this shipment if it is not delivered by 3:00 p.m. of the next day, unless delivery was attempted but could not be made or this shipment was delayed by strike or work stoppage. See Domestic Mail Manual Chapter 2 for details.



Express Mail International Service mailings are not covered by this service guarantee. See the International Mail Manual for details.

Insurance Coverage:

See section 294 of the Domestic Mail Manual for exclusions of coverage.

(1) *Merchandise Insurance*. Merchandise is insured against loss, damage or rifling up to a maximum of \$500. Indemnity will not be paid for spoilage of perishable items.
(2) *Document Reconstruction Insurance*. Non-negotiable documents are insured against loss, damage or rifling up to \$50,000 per piece subject to a limit of \$500,000 per occurrence.

- Signature is required upon delivery.
- Claims for delay, loss, damage or rifling must be made within 90 days. Claim forms may be obtained at the post office of mailing.
- The Customer Receipt must be presented when a claim is filed.

Customer:

Please tear off this stub and keep it for reference when depositing prepaid Express Mail Next Day Service shipments in Express Mail collection boxes or when giving prepaid Express Mail Next Day Service shipments to Postal Service delivery personnel. Affix the remaining label set to your shipment. For reference, write on this stub the date that the shipment was mailed (if deposited in an Express

Date Mailed:

Initials:

Mail Collection Box, also initial the stub). Deadlines for deposit for next day delivery differ according to the destination. To ensure next day delivery consult your local Express Mail Directory.

Postal Acceptance Employee:

After completing the "Origin" and "Acceptance" blocks on the mailing label, give this stub to the mailer along with the Customer Receipt copy.

Label II-B (March 1985)

EXPRESS MAIL NEXT DAY SERVICE®

EXPRESS MAIL
NEXT DAY SERVICE



POST OFFICE TO ADDRESSEE

B 78812765

ORIGIN		Date in:	Postage
Post Office ZIP Code	Time in:	A.M. P.M.	\$ 8.05
Initials of Receiving Clerk	Weight	lbs.	Return Receipt Fee \$
ACCEPTANCE			
<input type="checkbox"/> Accepted for next day delivery.			
<input type="checkbox"/> Accepted for this destination after deposit deadline for next day delivery; therefore, for delivery by second day.			
<input checked="" type="checkbox"/> Consult your local Express Mail Next Day Service directory for deposit deadlines for different destinations.			
Total Postage & Fees			\$

Account Number (if any)

(Using an authorized number indicates postage and fees paid.)

Express Mail Corporate Account No.:

Federal Agency Control No.:

P-121

FROM:

U.S. Fish and Wildlife Service (ARW)
500 NE Multnomah St., Suite 1692
Portland, OR 97232

For Postal Use

For Customer Use

CUSTOMER RECEIPT

TO:

Telephone Number: 503-493-2323

George Constantino, Ref. Mgr.
Mathew MMR
HC-72-Box 245
Princeton, OR 978 97721

Service Guarantee:

If this shipment is mailed at designated USPS Express Mail service facilities on or before the specified deposit time for next day delivery to the addressee, it will be delivered to the addressee or agent by 3:00 p.m. of the next day. Upon application by the mailer at the Express Mail service facility, the addressee will be notified by 3:00 p.m. of the next day, unless delivery was attempted but could not be made or this shipment was delayed by strike or work stoppage. See Domestic Mail Manual Chapter 2 for details.

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- Claims for delay, loss, damage or rifling must be made within 90 days. Claim forms may be obtained at the post office of mailing.
- The Customer Receipt must be presented when a claim is filed.

MEMORANDUM
OF CALL

1st document
DAS 4th.
Previous editions usable

TO:

FORREST

☐ YOU WERE CALLED BY-

☐ YOU WERE VISITED BY-

PETE NYLANDER

OF (Organization)

☐ PLEASE PHONE ▶

☐ FTS

☐ AUTOVON

503-682-6131

☐ WILL CALL AGAIN

FAX

682

☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE

Several Points:

- ① Asked if Thompson was aware of the JAN 15th Letter you sent to Hammons.
- ② Questioned use of the word "refuge personnel" when it was

RECEIVED BY

DATE

TIME

50363-111 NSN 7540-00-634-4018
*U.S. G.P.O.: 1994 - 300-891/00001

OPTIONAL FORM 363 (Rev. 1-94)
Prescribed by GSA

Div of LE personnel that
arrested Hammond. (Paragraph
#2 of Matasan letter).

③ Stated that any agreement
Thompson signs doesn't
bind us or Div of LE - it
only confuses matters.

④ Asked why Thompson ~~discussed~~
discussed these points with
Matasan w/o consulting
LE or us.

Please call him back. Feels
left out of the comm. loop.

LEGEND

- REFUGE BOUNDARY
- REFUGE PROPERTY
- BLM PROPERTY
- HAMMOND RANCHES PROPERTY
- ORIGINAL HAMMOND PROPERTY
- HAMMOND/BLM LAND EXCHANGE, 9/22/89
- *** HAMMOND CATTLE TRAILING ROUTE

DATE INDICATES WHEN TRACT LEFT FEDERAL OWNERSHIP OR WAS WITHDRAWN FOR REFUGE PURPOSES

1/10/1889

MALHEUR NATIONAL WILDLIFE REFUGE

Blitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON

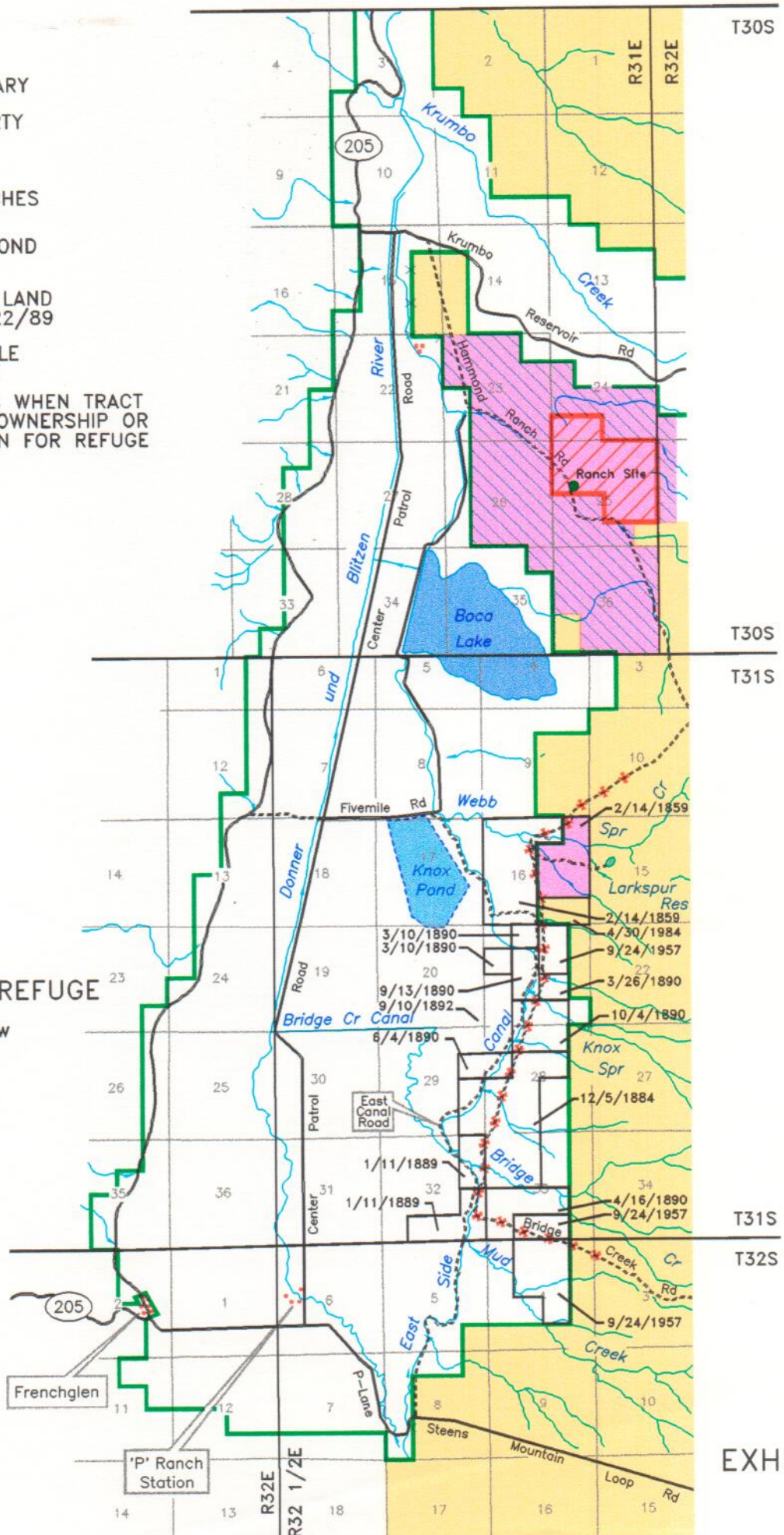
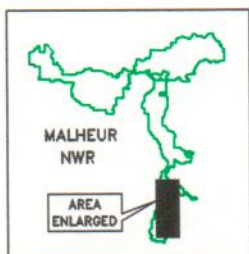


EXHIBIT #1

HRW

Rob-

RD would like this done again. He'd like the 2nd IP attached to allow 1st IP on 2nd page to be incorporated in it.

United States Department of the Interior

FISH AND WILDLIFE SERVICE

500 BUILDING, SUITE 1692
500 N.E. MULTNOMAH STREET
PORTLAND, OREGON 97232

In reply refer to:
ARW

May 5, 1988

Mr. and Mrs. Dwight Hammond
Hammond Ranches, Inc.
Diamond, Oregon 97722

Dear Mr. and Mrs. Hammond:

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insert (para 1)
insert para 2
in the Refuge
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was an appropriate course of action.

While I understand your perception of unfair treatment, I can find no evidence that you have been singled out in this issue. The actions taken by the refuge to correct problems with the trailing at Bridge Creek were consistent with Service policy and within the authority of the refuge manager. He opted to use the refuge permit process only as a last resort when negotiation with you failed to bring the deviations from agreed-upon trailing procedures under control. I'm certain he would have done the same with any other rancher if confronted with a similar situation.

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HAMMOND3. RS



United States Department of the Interior

FISH AND WILDLIFE SERVICE

LLOYD 500 BUILDING, SUITE 1692
500 N.E. MULTNOMAH STREET
PORTLAND, OREGON 97232

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insert (para 1)
insert para 2
in the Refuge Manual is confusing at first reading but I'm sure you can understand that the Service's primary goal in the construction of fences is the protection of the rights of adjacent landowners, this must be considered along with the need to protect wildlife and to facilitate the management of the lands to attain refuge objectives. Based upon this
The Service recognizes that the trailing route around the lower (west) end of Bridge Creek has been used historically. However, the existence of such tracts and ways on the public lands do not give rise to legal rights of use. Notwithstanding this, it is the policy of the Service not to take action that would jeopardize such use for landowners or permittees on adjacent parcels. We also recognize that the recent movement of the boundary fence to the legally established boundary of the refuge has made your trailing operation more difficult. However, it is clear to us that the adjustment in the boundary fence was fully justified by management requirements and the need to identify, protect, and enhance the wildlife habitat within the refuge. While the Refuge Manual mentions that one goal in the construction of fences is the protection of the rights of adjacent landowners, this must be considered along with the need to protect wildlife and to facilitate the management of the lands to attain refuge objectives. From a review of this matter, it is my conclusion that the construction of the new boundary fence reasonably satisfied all of these objectives.
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HAMMOND 03. RS

Mr. and Mrs. Dwight Hammond

2

You have suggested that your "right" to trail cattle on the Bridge Creek route be legally established by conferring on you a right-of-way easement. I don't see this as a reasonable option. Your continued opportunity to use the route is not in jeopardy so the easement is unnecessary. You would also be subject by regulation to considerable additional expense, including fair market value for the easement, application fees, and reimbursement for Service administration. Finally, the easement would include formal "terms and conditions" similar to those now in place to minimize the adverse impacts of the trailing operation.

Let me conclude by indicating what we will do in order to reduce your problems. First, we will continue our policy of not issuing permits at Malheur for historically established trailing operations, including yours. This assumes that all livestock managers will move their stock through the refuge with as little impact on the land and forage as is possible, and will show respect for other refuge and permittee operations in the trailing areas. Only in the case of serious deviations from the "honor system" will the refuge manager recommend to his supervisors any change in this policy.

Second, if you would like to consider specific modifications that would facilitate your trailing operations and minimize the problems with cow-calf separation you have experienced in the past, I will ask the refuge manager to work with you to plan and develop these improvements. These might include additional gates in the boundary fence, a holding corral for over-night use, and/or a temporary watering facility.

I have directed my staff to keep me advised of the steps being taken in an attempt to alleviate the present situation. It is my hope that through mutual cooperation we will be able to arrive at solutions which provide you with adequate access across the refuge while at the same time permit the Service to satisfy its objectives of protecting wildlife and habitat and facilitating refuge management.

Sincerely,

Regional Director

1
Insert page

The Service recognizes that the trailing route around the lower (west) end of Bridge Creek has been used historically. ~~It is the policy of the Service~~ While this historic use does not

give rise to a legal right, it is the policy of the Service not to take action that would jeopardize such use ~~by~~ by landowners or permittees on adjacent parcels. ~~as your continued opportunity to use this route is not threatened,~~ ~~The possible option of ~~conferring~~ on you a right-of-way easement does not appear to be a reasonable or appropriate course of action.~~ would not be appropriate. ^{In addition,} The easement option would burden you with considerable added expense, including the fair market value for the easement, application fees + reimbursement for Service administrative costs. ^{Finally,} ~~Further~~ the easement would include "formal" "terms & conditions" similar to those now in place to minimize the adverse impacts of the trailing operation.

we recognize that movement of the ^{retage} boundary fence to the legally established boundary of the ~~retage~~ has made your trailing

Insert 1:

Insert 2:

I agree that the ~~recent-m--~~ decision to move the boundary fence to the legally established boundary of the refuge has made your trailing operations more difficult. ~~However, I also believe that~~ and reduced the land available for grazing. I'm also aware that our efforts to recover and enhance this land as wildlife habitat has been slower than we had hoped. ~~I will also agree- Finally-~~ Finally, I will agree that ~~the--~~ the fencing policy in the Refuge Manual is confusing at first reading. However, I'm sure that you ~~under-~~ will understand when I say that the Service's primary consideration in any action is the need to protect wildlife and to facilitate the management of ~~the~~ refuge lands. Based upon a review of the actions taken, ~~It~~ it is my conclusion that the construction of the new boundary fence and the ~~recent~~ habitat enhancement program with the State of Oregon-- were appropriate. ~~and-justified,--~~

In reply refer to:
ARW

May 5, 1988

Mr. and Mrs. Dwight Hammond
Hammond Ranches, Inc.
Diamond, Oregon 97722

Dear Mr. and Mrs. Hammond:

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While I understand your perception of unfair treatment, I can find no evidence that you have been singled out in this issue. The actions taken by the refuge to correct problems with the trailing at Bridge Creek were consistent with Service policy and within the authority of the refuge manager. He opted to use the refuge permit process only as a last resort when negotiation with you failed to bring the deviations from agreed-upon trailing procedures under control. I'm certain he would have done the same with any other rancher if confronted with a similar situation.

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SW/16r 5/4/88
Shallenberger 5/4/88

Mr. and Mrs. Dwight Hammond

2

You have suggested that your "right" to trail cattle on the Bridge Creek route be legally established by conferring on you a right-of-way easement. I don't see this as a reasonable option. Your continued opportunity to use the route is not in jeopardy so the easement is unnecessary. You would also be subject by regulation to considerable additional expense, including fair market value for the easement, application fees, and reimbursement for Service administration. Finally, the easement would include formal "terms and conditions" similar to those now in place to minimize the adverse impacts of the trailing operation.

Let me conclude by indicating what we will do in order to reduce your problems. First, we will continue our policy of not issuing permits at Malheur for historically established trailing operations, including yours. This assumes that all livestock managers will move their stock through the refuge with as little impact on the land and forage as is possible, and will show respect for other refuge and permittee operations in the trailing areas. Only in the case of serious deviations from the "honor system" will the refuge manager recommend to his supervisors any change in this policy.

Second, if you would like to consider specific modifications that would facilitate your trailing operations and minimize the problems with cow-calf separation you have experienced in the past, I will ask the refuge manager to work with you to plan and develop these improvements. These might include additional gates in the boundary fence, a holding corral for overnight use, and/or a temporary watering facility.

I have directed my staff to keep me advised of the steps being taken in an attempt to alleviate the present situation. It is my hope that through mutual cooperation we will be able to arrive at solutions which provide you with adequate access across the refuge while at the same time permit the Service to satisfy its objectives of protecting wildlife and habitat and facilitating refuge management.

Sincerely,

Regional Director

RShallenberger:pdh:IBM:RS#2:Hammond2.sol

File designation:MHL:AD:Hammond

bcc (blue envelope):
George Constantino, Malheur NWR
Solicitor, Portland

Mr. and Mrs. Dwight Hammond
Hammond Ranches, Inc.
Diamond, Oregon 97722

DRAFT

Dear Mr. and Mrs. Hammond:

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After thorough review of this situation, it appears that there are some points on which we agree and others on which we do not. The Service acknowledges that the trailing route around the lower (west) end of Bridge Creek has been used historically, dating back well before you acquired the adjacent BLM allotment. We also agree that the movement of the boundary fence to the legal boundary has made your trailing operation more difficult and more costly. The potential alternative trailing routes are even more problematic. I will also agree that the Service took action to construct the new fence without full consultation with you and in conflict with what you and the BLM believed was appropriate. I will also agree with you that the recent cooperative reseeding program with the State has the appearance of being initiated to bolster arguments in favor of maintaining the boundary fence, and that you were not consulted adequately in the planning process.

The points on which we disagree make it difficult to resolve this issue in

a mutually satisfactory manner. The Service does not believe that the historic use of the Bridge Creek trailing route confers on you a legal right to continue this activity, but it is Service policy not to take action that would jeopardize this use for current or future landowners of adjacent parcels. We also don't agree regarding the potential wildlife or recreational value of the habitat now protected from unrestricted grazing by the boundary fence. It is entirely consistent with Service policy for refuge managers to systematically identify, protect, and take steps to enhance wildlife habitat within refuge boundaries. How quickly we accomplish this objective is dependent upon resource priorities, funding, and the participation of cooperating agencies.

You have expressed concern that the actions taken at Malheur are in conflict with the Refuge Manual direction regarding fencing. I believe the problem lies more in ambiguous wording and differences of interpretation. The construction of the new boundary fence, in my opinion, satisfied the objectives of protecting wildlife and habitat and facilitating refuge management.

While I understand your perception of unfair treatment, I can find no evidence that you have been singled out in this issue. There have been other confrontations with the Service, on the trailing issue and on other unrelated activities. But the actions taken by the refuge to correct problems with the trailing at Bridge Creek were consistent with Service policy and within the authority of the refuge manager. He opted to use the refuge permit process only as a last resort when negotiation with you failed to bring the deviations from agreed-upon trailing procedures under control. I'm certain he would have done the same with any other rancher if confronted with a similar situation.

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You have suggested that your "right" to trail cattle on the Bridge Creek route be legally established by conferring on you a right-of-way easement. I don't see this as a reasonable option. Your continued opportunity to use the route is not in jeopardy so the easement is unnecessary. You would also be subject by statute to considerable additional expense, including fair market value for the easement, application fees, and reimbursement for Service administration. Finally, the easement would include the same type of "terms and conditions" now in place to minimize the adverse impacts of the trailing operation.

Having said all of this, I'd like to propose the following measures to resolve the current situation. We will continue our policy of not issuing permits at Malheur for historically established trailing operations, including yours. I will instruct the refuge manager to obtain my approval for any future action he proposes that would further restrict or modify your trailing activity. I would grant that approval only if, in my opinion, you have blatantly disregarded agreed-upon procedures for the trailing operation. I will also instruct him to work with you to plan and allow you to implement, at your expense, actions that will facilitate your trailing operation and minimize the problems with cow-calf separation you have experienced in the past. This could include additional gates in the north boundary fence, a holding corral, and/or a temporary watering facility south of Bridge Creek.

DRAFT

I expect that you will work cooperatively to develop and abide by reasonable trailing procedures that will not jeopardize your operation while protecting the wildlife habitat in the Bridge Creek area. I hope we can put the harsh words behind us and reconstruct a good working relationship from this point on.

Sincerely,

Regional Director

RShallenberger:pdh:IBM:RS#2:HammondC.422

In reply refer to:
ARW

May 9, 1988

Mr. and Mrs. Dwight Hammond
Hammond Ranches, Inc.
Diamond, Oregon 97722

Dear Mr. and Mrs. Hammond:

I am writing in response to your formal appeal regarding actions taken by the Service to regulate your cattle trailing operation at Malheur National Wildlife Refuge. I have reviewed the correspondence surrounding this issue and have discussed the topic at length with staff from the refuge and Regional Office. I have also discussed it with Rob Shallenberger following his visit to your ranch. I'd like to express my appreciation for the courtesy you showed Rob and the information you shared with him. I'm sorry that I did not have the time available in my schedule to make the trip to Malheur myself.

The Service recognizes that the trailing route around the lower (west) end of Bridge Creek has been used historically. While this historic use does not give rise to a legal right, it is the policy of the Service not to take action that would jeopardize such use by landowners or permittees on adjacent parcels. As your continued opportunity to use this route is not threatened, the suggestion to confer on you a right-of-way easement would not be appropriate. In addition, the easement option would burden you with considerable expense, including the fair market value for the easement, application fees, and reimbursement for Service administrative costs. Finally, the easement would include formal "terms and conditions" similar to those now in place to minimize the adverse impacts of the trailing operation.

I agree that the decision to move the boundary fence to the legally established boundary of the refuge has made your trailing operations more difficult and reduced the land available for grazing. I'm also aware that our efforts to recover and enhance this land as wildlife habitat has been slower than we had hoped. Finally, I will agree that the fencing policy in the Refuge Manual is confusing at first reading. However, I'm sure that you will understand when I say that the Service's primary consideration in any action is the need to protect wildlife and to facilitate the management of refuge lands. Based upon a review of the actions taken, it is my conclusion that the construction of the new boundary fence and the recent habitat enhancement program with the State were appropriate.

While I understand your perception of unfair treatment, I can find no evidence that you have been singled out in this issue. The actions taken by the refuge to correct problems with the trailing at Bridge Creek were consistent with Service policy and within the authority of the refuge manager. He opted to use the refuge permit process only as a last resort.

5/2/88	5/9/88
Shallenberger	5/9/88
St	

RD letter

when negotiation with you failed to bring the deviations from agreed-upon trailing procedures under control. I'm certain he would have done the same with any other rancher if confronted with a similar situation.

I should point out that it is also Service policy, outlined in the Refuge Manual [(6 RM 9.10C(3)], that all trailing activities on a refuge will be conducted under permit. We have chosen to not implement that policy at Malheur because of the well established historic trailing activities and the fine record of cooperation between the ranching community and the refuge on this point.

Let me conclude by indicating what we will do in order to reduce your problems. First, we will continue our policy of not issuing permits at Malheur for historically established trailing operations, including yours. This assumes that all livestock managers will move their stock through the refuge with as little impact on the land and forage as is possible, and will show respect for other refuge and permittee operations in the trailing areas. Only in the case of serious deviations from the "honor system" will the refuge manager recommend to his supervisors any change in this policy.

Second, if you would like to consider specific modifications that would facilitate your trailing operations and minimize the problems with cow-calf separation you have experienced in the past, I will ask the refuge manager to work with you to plan and develop these improvements. These might include additional gates in the boundary fence, a holding corral for over-night use, and/or a temporary watering facility.

I have directed my staff to keep me advised of the steps being taken in an attempt to alleviate the present situation. It is my hope that through mutual cooperation we will be able to arrive at solutions which provide you with adequate access across the refuge while at the same time permit the Service to satisfy its objectives of protecting wildlife and habitat and facilitating refuge management.

Sincerely,

Rolf L. Wallenstrom

Regional Director

RShallenberger:pdh:IBM:RS#2:Hammond3.rs

File designation:MHL:AD:Hammond

bcc (blue envelope):

George Constantino, Malheur NWR - *Postal Express 5/11*
Solicitor, Portland

2	REGIONAL DIRECTOR	(RD)
1	DEPUTY REGIONAL DIRECTOR	(DRD)
	SPECIAL ASSISTANT TO THE REGIONAL DIRECTOR	(SARD)
	ASSISTANT REGIONAL DIRECTOR--PUBLIC AFFAIRS	(APA)
	ASSISTANT REGIONAL DIRECTOR--BUDGET AND ADMINISTRATION	(ABA)
	Budget and Finance	(FI)
	Contracting and General Services	(CGS)
	Mailroom	(MR)
	Engineering	(EN)
	Information Resource Management	(IRM)
	Personnel Management	(PM)
	Safety	(SA)
	ASSISTANT REGIONAL DIRECTOR--FISH AND WILDLIFE ENHANCEMENT	(AFWE)
	Deputy Assistant Regional Director--Federal Assistance	(AFA)
	Endangered Species	(SE)
	Federal Aid	(FA)
	Deputy Assistant Regional Director--Ecological Services	(AES)
	Ecological Services	(ES)
	National Wetlands Inventory	(INWI)
	Environmental Contaminants	(EC)
	ASSISTANT REGIONAL DIRECTOR--FISHERIES	(AFR)
	ASSISTANT REGIONAL DIRECTOR--HUMAN RESOURCES	(AHR)
	ASSISTANT REGIONAL DIRECTOR--LAW ENFORCEMENT	(ALE)
	ASSISTANT REGIONAL DIRECTOR--REFUGES AND WILDLIFE	(ARW)
	Education, Publications, Interpretation, Cultural Resources	(EPIC)
	Migratory Bird Coordination	(MBC)
	Refuge Operations Support	(OPR)
	Refuge District Supervisors	(CA) (ID/NV) (OR/WA)
	Realty	(RE)
	Wildlife Policy and Direction	(WPD)
	OFFICE OF MIGRATORY BIRD MANAGEMENT	(MBMO)
	SOLICITOR - NEWPORT (Portland) (Sacramento)	(SOL)
	PACIFIC ISLANDS ADMINISTRATOR, HONOLULU, HAWAII	(PIA)
	Ecological Services - Portland Field Office	5/4/88

Action Desired:

THE SOLICITORS RECOMMENDED A CONSIDERABLE RE-WRITE TO MAKE IT A LITTLE MORE FORCEFUL (SWAN & LAWTON). THE ORIGINAL LETTER PLUS THEIR SUGGESTIONS ARE ATTACHED AND THE LETTER RE-WITTEN ACCORDINGLY.

LARRY DO-BATES

GEO Constantino will talk to SMITH'S OFFICE ON THIS ISSUE AS SOON AS HE GETS THE COPY OF THE SIGNED LTR.

From:

Date Originated:

R1-21 (Rev. 10/86)



THE SECRETARY OF THE INTERIOR
WASHINGTON

Memorandum

To: Secretary

From: ^{Acting} Assistant Secretary for Fish and Wildlife and Parks
^{Acting} Assistant Secretary for Land and Minerals Management

Subject: Departmental Policy on Section 8 of the Act of
July 26, 1866, Revised Statute 2477 (Repealed),
Grant of Right-of-Way for Public Highways (RS 2477)

James H. ...
OCT 7 1988

Although RS 2477 was repealed nearly 12 years ago, controversies periodically arise regarding whether a public highway was established pursuant to the congressional grant under RS 2477 and the extent of rights obtained under that grant. Under RS 2477, the United States had (has) no duty or authority to adjudicate an assertion or application. However, it is necessary in the proper management of Federal lands to be able to recognize with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477.

With the passage of the Federal Land Policy and Management Act, the Bureau of Land Management (BLM) developed procedures, policy, and criteria for recognition, in cooperation with local governments, of the existence of such public highways and notation to the BLM's land records. This has allowed the BLM to develop land use plans and to make appropriate management decisions that consider the existence of these highway rights.

Issues have recently been raised by the State of Alaska and others which question not only the BLM policy but also the management actions by other bureaus within the Department. We have had the BLM review and report on the various issues and concerns (Attachment 2) and consulted with the State of Alaska, the BLM, the Fish and Wildlife Service, and the National Park Service.

We believe that the land management objectives of the Department will be improved with adoption of a Departmental policy and recommend that the attached policy (Attachment 1) be adopted for Departmentwide use.

Approve: *Ronald Paul Hodel*

Disapprove: _____

Date: December 7, 1988

Date: _____

Attachments: 1-RS 2477 Policy
2-BLM Report

EXHIBIT 2

Celebrating the United States Constitution

RS 2477 (43 U.S.C. 932) = Repealed by F.L.P.M.A. Co.

RS 2477
Section 8 of the Act of July 26, 1866
Revised Statute 2477 (43 U.S.C. 932)
Repealed October 21, 1976

Section 8 of the Act of July 26, 1866, provided:

"The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted."

Although this statute, 43 U.S.C. 932 (RS 2477), was repealed by Title VII of the Federal Land Policy and Management Act of October 21, 1976, 90 Stat. 2793, many rights-of-way (R/W) for public highways obtained under the statute exist or may exist on lands administered by the Department and other Federal agencies. The existence or lack of existence of such highway R/Ws has material bearing on the development and implementation of management plans for conservation system units and other areas of Federal lands. Land managing Bureaus of the Department should develop, as appropriate, internal procedures for administratively recognizing those highways meeting the following criteria and recording such recognized highways on the land status records for the area managed by that Bureau.

Acceptance:

To constitute acceptance, all three conditions must have been met:

1. The lands involved must have been public lands, not reserved for public uses, at the time of acceptance.
2. Some form of construction of the highway must have occurred.
3. The highway so constructed must be considered a public highway.

Public lands, not reserved for public uses:

Public lands were those lands of the United States that were open to the operation of the various public land laws enacted by Congress.

Public lands, not reserved for public uses, do not include public lands reserved or dedicated by Act of Congress, Executive Order, Secretarial Order, or, in some cases, classification actions authorized by statute, during the existence of that reservation or dedication.

Public lands, not reserved for public uses, do not include public lands pre-empted or entered by settlers under the public land laws or located under the mining laws which ceased to be public lands during the pendency of the entry, claim, or other.

Construction:

Construction must have occurred while the lands were public lands, not reserved for public uses.

Construction is a physical act of readying the highway for use by the public according to the available or intended mode of transportation - foot, horse, vehicle, etc. Removing high vegetation, moving large rocks out of the way, or filling low spots, etc., may be sufficient as construction for a particular case.

Survey, planning, or pronouncement by public authorities may initiate construction but does not, by itself, constitute construction. Construction must have been initiated prior to the repeal of RS 2477 and actual construction must have followed within a reasonable time.

Road maintenance over several years may equal actual construction.

The passage of vehicles by users over time may equal actual construction.

Public Highway:

A public highway is a definitive route or way that is freely open for all to use. It need not necessarily be open to vehicular traffic for a pedestrian or pack animal trail may qualify. A toll road or trail is still a public highway if the only limitation is the payment of the toll by all users. Multiple ways through a general area may not qualify as a definite route, however, evidence may show that one or another of the ways may qualify.

The inclusion of a highway in a State, county, or municipal road system constitutes being a public highway.

Expenditure of construction or maintenance money by an appropriate public body is evidence of the highway being a public highway.

Absent evidence to the contrary, a statement by an appropriate public body that the highway was and still is considered a public highway will be accepted.

Ancillary uses or facilities usual to public highways:

Facilities such as road drainage ditches, back and front slopes, turnouts, rest areas, and the like, that facilitate use of the highway by the public are considered part of the public highway R/W grant.

Other facilities such as telephone lines, electric lines, etc., that were often placed along highways do not facilitate use of the highway and are not considered part of the public highway R/W grant. An exception is the placement of such facilities along such R/W grants on lands administered by the Bureau of Land Management prior to November 7, 1974. Prior to this date, the requirement of filing an application for such facilities was waived. Any new facility, addition, modification of route, etc., after that date requires the filing of an application/permit for such facility. Facilities that were constructed, with permission of the R/W holder, between November 7, 1974, and the effective date of this policy, should, except in rare and unusual circumstances, be accommodated by issuance of a R/W or permit authorizing the continuance of such facility.

Width:

For those highway R/Ws in the State, county, or municipal road system, i.e., the R/W is held and maintained by the appropriate government body, the width of the R/W is as specified for the type of highway under State law, if any, in force at the time the grant could be accepted.

In some cases, the specific R/W may have been given a lesser or greater width at the time of creation of the public highway than that provided in State law.

Where State law does not exist or is not applicable to the specific highway R/W, the width will be determined in the same manner as non-governmentally controlled highways.

Where the highway R/W is not held by a local government or State law does not apply, the width is determined from the area, including appropriate back slopes, drainage ditches, etc., actually in use for the highway at the later of (1) acceptance of the grant or (2) loss of grant authority under RS 2477, e.g., repeal of RS 2477 on October 21, 1976, or an earlier removal of the land from the status of public lands not reserved for public uses.

Abandonment:

Abandonment, including relinquishment by proper authority, occurs in accordance with State, local or common law or Judicial precedence.

Responsibilities of Agency and Right-of-Way Holder:

This policy addresses the creation and abandonment of property interests under RS 2477 and the respective property rights of the holder of a R/W and the owner of the servient estate.

Under the grant offered by RS 2477 and validly accepted, the interests of the Department are that of owner of the servient estate and adjacent lands/resources. In this context, the Department has no management control under RS 2477 over proper uses of the highway and highway R/W unless we can demonstrate unnecessary degradation of the servient estate. It should be noted, however, that this policy does not deal with the applicability, if any, of other federal, state, and/or local laws on the management or regulation of R/Ws reserved pursuant to RS 2477.

Reasonable activities within the highway R/W are within the jurisdiction of the holder. As such, the Department has no authority under RS 2477 to review and/or approve such reasonable activities. However, review and approval may or may not occur, depending upon the applicability, if any, of other federal, state, or local laws or general relevance to the use of a R/W.