

Trailings - Hammond -

Legal - Hammond

Malheur National Wildlife Refuge
HC 72 Box 245
Princeton, Oregon 97721
(503) 493-2612

February 18, 1994

CERTIFIED MAIL: RETURN RECEIPT REQUESTED

Dwight Hammond
Hammond Ranches Inc.
HC 72, Box 26
Diamond, OR 97722

Dear Mr. Hammond,

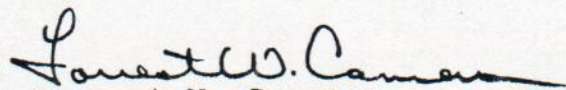
This letter is to notify you of my intent to not reissue a Special Use Permit to you for haying and grazing privileges on Malheur Refuge. This decision will be effective beginning with the 1994-95 haying and grazing season.

My proposal to make this decision is based upon a pattern of lack of compliance with refuge regulations over several years, and more recently the trespass of several hundred head of your cattle and your total disregard for the integrity of the new boundary fence in the Webb-Knox Spring area of Malheur Refuge. After a formal warning to you in my letter of June 1, 1993, stating that further violation of any refuge regulations could jeopardize your refuge permit, you have violated those regulations again.

These are serious actions that show such a disregard for refuge resources that I must propose this action of no longer allowing you to be a refuge permittee. If you have any information that you want considered before my decision is final you have 20 days from this notification to provide me with a statement in opposition. Please refer to the enclosed Appeals Procedure, copied from Title 50 of the Code of Federal Regulations, Section 25.45 for more information on this process.

I look forward to hearing from you.

Sincerely,


Forrest W. Cameron
Refuge Manager



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Malheur National Wildlife Refuge

HC 72 Box 245

Princeton, Oregon 97721

(503) 493-2612

March 15, 1994

CERTIFIED MAIL; RETURN RECEIPT REQUESTED

Dwight Hammond
Hammond Ranches, Inc.
HC 72 Box 26
Diamond, OR 97722

Dwight,

This letter is a follow-up to my letter of February 18, 1994, wherein you were given notice of a proposal to not renew your permit for grazing and haying privileges on Malheur National Wildlife Refuge. That letter cited rationale for the proposal not to renew your permit and told you that you had 20 days to respond to me with a statement of opposition.

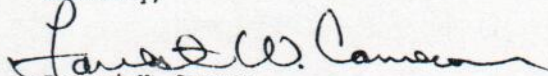
Subsequently on March 4, 1994, Mrs. Hammond was allowed to inspect files in our office and copied over 100 pages from them. Later that day we received a letter from you dated February 24, 1994 in which you asked to meet regarding your permit. Based on my March 14 telephone conversation with Mrs. Hammond, you chose to not meet about the permit, but instead to meet and discuss the Knox-Webb fence on March 15.

At that meeting you contended that our fence would not hold your cattle off Refuge land because it was not attached well to the rimrock at each end and that a gate was not installed on the north section. Thus cattle would get through the fence and be trapped without water inside the Refuge. You told us that you had cut the fence to allow cattle to move back and forth to water. You did not consider this to be trespass. However your description does not fit with our observations. One of your fence cuts was less than 50 yards from an existing gate that could have been opened for cattle movement. Also, we noted that the fence had been cut several days prior to when your cattle were moved into this area and you made no effort to contact us with concerns for the adequacy of our fence. Also, we saw cattle access onto the Refuge only through the three cuts in the fence and not around rimrock at the ends of the fence or at the missing gate. You refused to cooperate with us on locating more suitable gates or on repair of the fence that you cut. Your disregard for our new boundary fence and refusal to remove your cattle from Refuge land resulted in trespass of your cattle from January 28 until we fixed the fence and herded your cattle back onto your land on February 2, 1994.

For the incidents described above, based on a pattern of similar incidents in the past and also based on several incidents of noncompliance with regulations, including overt threats on the life and safety of refuge employees, I am confirming my proposed decision. My final decision is to not reissue a permit for you to hay or graze on Malheur Refuge.

A copy of your process for appeal of my decision was enclosed with my February 18 letter. Your next appeal step, if you wish to take it, is to contact within 30 days Mr. Sanford Wilbur, Refuge District Supervisor, C/O Regional Director, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232-4181. If you have any questions about this process call me at 493-2612.

Sincerely,


Forrest W. Cameron

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Dwight Hammond
Hammond Ranches, Inc.
HC 72 Box 26
Diamond, OR 97722
=====)

NOTICE OF APPEAL OF THE FINAL DECISION OF THE
MANAGER OF THE MALHEUR NATIONAL WILDLIFE REFUGE
DATED MARCH 15, 1994

On February 18, 1994 the manager of the identified Refuge issued a proposed decision of his intent not to reissue a Special Use Permit to Dwight Hammond, Hammond Ranches, Inc. (hereinafter, "Appellant") for haying and grazing on said Refuge. On February 24, 1994 the appellant issued to said manager a Freedom of Information Act Request and a statement in opposition to the proposed decision which, inter alia, expressed the need for the requested information to adequately make a statement in opposition. The manager has not responded to the Request.

On March 15, 1994 the manager of the identified Refuge issued a final decision not to reissue a permit to appellant to hay or graze on said Refuge. Appellant denies the allegations of the proposed and final decisions, reaffirms his letters of February 24, and appeals.

1. The pertinent regulations provide no mechanism for a Fish & Wildlife Service employee or another to receive, test, or decide with evidence, or for appellant to provide evidence or learn of or participate in the creation of a record for review. Appellant requests an agency hearing on the record for that purpose because the decision is part of a quasi-judicial proceeding wherein material facts are in dispute and material and substantial factual issues exist for the resolution of which procedural due process requires confrontation of witnesses and cross examination, all of which rights appellants claim.

Appellant request that the decision be suspended for such agency hearing and thereafter re-examined with the evidence adduced as was the case in Fishback v. United States, 519 F.Supp. 190 (D.N.M. 1981).

2. Although appellant is entitled to judicial review of the final administrative determination of the Department of the Interior, the procedure provided to appellant does not create a record which can be reviewed which would include reasonably specific allegations by the manager and appellant's response thereto. Appellant is not adequately informed of the reason for the decision or the allegations relied upon by the manager in making his decision. If the manager now or hereafter assembles any record, it will be unverified and unverifiable allegations and arguments in any form and from any source selected, post hoc, by the manager without providing appellant with the opportunity of examination and response, and it is, therefore, impossible for a judicial review to test the final administrative determination against the applicable legal standards. Appellant is thereby deprived of the right of judicial review to the extent permitted by law.

3. The Department of the Interior has adopted an appeal process which provides procedural due process by and through the Office of Hearings and Appeals (see 43 CFR Part 4, Subparts A, B, and E), and such process can be applied by said Service Appellant asserts that the lack of this which is requested and its consequence is reason for appeal, and if the request for a hearing on the record is denied, is reason for concluding that the

manager's actions are unlawful.

4. Appellant requests request an opportunity for an oral presentation at the headquarters of the Refuge. Appellant requests that said presentation shall occur after the manager responds to appellant's request for information and that the presentation includes an opportunity to present documentary evidence.

Appellant requests that said presentation shall also include an opportunity to examine under oath and on the record the manager and such other and additional persons as the appellant may then call.

5. Appellant requests the employees, officers and agents of the Service: (1) to provide appellant with a copy of every document which is filed in the administrative record of the final decision and every document which was reviewed and considered in reaching it, and (2) inform appellant of and provide appellant with evidence of every ex parte communication between the decider or members of his staff with the area manager or regional director or members of their staff relating to the subject matter of the final decision, and (3) provide appellant with a specific inventory at the time of the oral presentation of every writing which the manager claims is part of the administrative record.

6. This appeal is filed with Sanford Wilbur, Refuge District Supervisor, C/O Regional Director, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232-4181, the official which said final decision identifies as the appropriate official pursuant to 50 CFR 25.45(f).

April 12, 1994.

Dwight Hammond
Hammond Ranches, Inc.
Appellant.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue
Portland, Oregon 97232-4181

April 20, 1994

Dwight Hammond
Hammond Ranches, Inc.
HC72, Box 26
Diamond, Oregon 97722

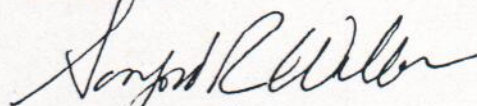
Dear Mr. Hammond:

Thank you for your April 12, 1994 letter, asking for reconsideration of Refuge Manager Forrest Cameron's March 15 decision not to reissue haying and grazing permits to you on Malheur National Wildlife Refuge.

Mr. Cameron's decision was based on your failure to comply with the conditions of previous permits and your reluctance to follow refuge rules and procedures. Your appeal does not provide any information for my further consideration. Therefore, I uphold Mr. Cameron's decision and deny your appeal.

Under 50 CFR 25.45, you may appeal my decision to Regional Director Marvin Plenert at this same address. Should you choose to appeal to this final authority, I urge you to present him with specific information that would help him understand the situation. You will need to persuade him that there are grounds for reconsideration.

Sincerely,



Sanford R. Wilbur

cc: Malheur NWR

UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Dwight Hammond
Hammond Ranches, Inc.
HC 72 Box 26
Diamond, OR 97722

=====)

NOTICE OF APPEAL OF THE FINAL DECISION OF THE
MANAGER OF THE MALHEUR NATIONAL WILDLIFE REFUGE
DATED MARCH 15, 1994

On February 18, 1994 the manager of the identified Refuge issued a proposed decision of his intent not to reissue a Special Use Permit to Dwight Hammond, Hammond Ranches, Inc. (hereinafter, "Appellant") for haying and grazing on said Refuge.

On February 24, 1994 the appellant issued to said manager a Freedom of Information Act Request and a statement in opposition to the proposed decision which, inter alia, expressed the need for the requested information to adequately make a statement in opposition.

On March 15, 1994 the manager of the identified Refuge issued a final decision not to reissue a permit to appellant to hay or graze on said Refuge.

The manager failed to respond to the Freedom of Information Act Request prior to April 12, 1994 and on that day appellant gave notice of appeal from the final decision to the appropriate area manager. Thereafter, and after the date on which said notice was required to be filed the manager partially responded by mailing on April 14, 1994.

On April 20, 1994 the appropriate area manager affirmed the final decision. On April 27, 1994 appellant renewed and amplified the Freedom of Information Act Request, such request is unanswered, and appellant continues unable to adequately make a statement in opposition.

Because of the application of 50 CFR 25.45, the time for appeal to the regional director expires on May 20, 1994 and, because of the failure of such officers to inform appellant as to reasons for making the identified decisions in any particular with respect to which appellant would be able to provide responding evidence, appellant is unable to do more than conjecture and respond in the same degree of generality as used by said decisions.

Copies of the proposed decision and the final decision, appellant's notice of appeal therefrom, and the affirming decision are attached hereto. All statements and requests within said notice of appeal are incorporated by this reference herein and reiterated as if herein expressed haec verba.

Appellant denies the allegations of the proposed and final decisions, reaffirms his letters of February 24, and April 27, 1994, and appeals to the regional director.

7. The proposed decision alleges that there exists a "pattern of lack of compliance with refuge regulations over several years, and more recently the trespass of several hundred head of ..cattle and your total disregard for the integrity of the new boundary fence in the Webb-Knox Spring area.." The final

decision alleges, on the one hand, that appellant's response thereto did not pertain to "the permit" but, on the other hand, pertained to the "Knox-Webb fence". Thus, appellant cannot certainly identify the reason for the decision from the text of the proposed and final decisions, appellant assumes that the reason involves a controversy respecting the fencing by Service personnel of the Diamond-Frenchglen Wagon Road.

This controversy is explained in appellant's letter to the regional director dated April 29, 1994, a copy of which is attached hereto and by this reference incorporated herein. The statements within appellant's letter are true. No officer of the Service has responded to said letter nor has the meeting referred to therein been called by any officer of the Service.

Neither the proposed or final decision identifies any other act or acts upon which it claims to justify its allegation of a "pattern" of noncompliance or any allegation of any noncompliance with regulations. Appellant denies any pattern of noncompliance or any noncompliance with regulations pertaining to its use of the refuge. Attached are letters of persons who are or were employees of the Refuge or those holding permits upon the Refuge; these persons have had the best opportunity to observe and evaluate appellant's grazing and haying practices within the Refuge.

The final decision alleges that an employee of appellant made "overt threats on the life and safety of refuge employees". Various employees of the refuge have carried side arms

during field conferences with employees of appellant and others, and employees of appellant have never been armed. The Service armaments created an environment which was not conducive to reasoned dialogue and at field meetings which pertained to the Diamond-Frenchglen Wagon Road, the armaments provoked anger on some occasions, but the exchange of words never erupted into any physical touching by any employee of appellant or any other kind of response that could be reasonably interpreted as a "threat on the life and safety of refuge employees." Moreover, given the armament of the Service employees on such occasions and the lack of armament of employees of appellant, the refuge employees could not have reasonably believe themselves threatened.

8. Appellant is an Oregon corporation and all of the stockholders are Dwight and Susan Hammond and their son, Steven. The corporation has been entitled to, and has used the refuge for livestock grazing and haying continuously since 1965. After that time, appellant moved livestock and vehicles over the Diamond-Frenchglen Wagon Road, and its employees know the location and course of said Road.

The Diamond-Frenchglen Wagon Road has the protection of Section 2477 and has been in public use since at least December 7, 1877. Attached is a copy of a map of the area prepared by authority of the United States Surveyor General. There are other maps predating 1976, currently available, disclosing the existence and course of said Road, including Metsker's Map of Harney County, Baca Lake, Oregon Quad of the U.S. Department of the Interior,

Bureau of Land Management, Malheur National Wildlife Refuge, Branch of Engineering, 1962, County Map Service, Harney County, Oregon: Eagle Productions, Inc.

From south to north, the Wagon Road traverses Range 32 1/2 East of the Willamette Meridian through Townships 32 and 31. Attached is a copy of the Harney County Tax Map disclosing features existing prior to 1976. The Wagon Road begins at Frenchglen to the west of Township 32, enters the Township in Section 6, courses south to Section 8, thence north through Sections 8 and 5.

Appended to the map of Township 32 is a photograph of a point along the course of the Wagon Road. The photograph references a number which corresponds to the indicated point.

Appended to the map of Township 31 are photographs of points along the course of the Wagon Road, and each references a number which corresponds to the indicated points. Within appellant's attached letter dated April 29, page 2, paragraph 1, there is the reference to a branch of the main stem running to the east from the Clemens Corral, and it is this branch of the Wagon Road that is used by appellant and others in movements of livestock and vehicles to the east. This branch begins at a crossing in the southeast quarter of the southeast quarter of Section 32, marked number 2 and continues to the southeast into Township 32.

Photograph number 3 is a gate within an old fence running in a north-south direction, and the gate is through the branch of the Wagon Road previously described. Photograph number 4

is a view facing north along the old fence. This fence had been regarded as the boundary of the Refuge, whereas the legal boundary was approximately one mile east at which photograph number 5 was taken to the west, looking at the Wagon Road. Photograph number 6 is a view of the Wagon Road looking west to the gate shown on photograph number 3.

Photograph number 7 is along the main stem of the Wagon Road looking north toward Bridge Creek. Numbers 8 and 9 are along the main stem of the Wagon Road looking to the north. The fence in view is the continuation of that shown on number 4 as marking what had been previously regarded as the eastern boundary of the Refuge.

Photograph number 10 is along the main stem of the Wagon Road looking north through a gate in an east-west fence line installed in approximately 1982. This gate was occasionally locked by Refuge employees. Number 11 is a view along the Wagon Road looking north. Photograph number 12 is along the main stem of the Wagon Road looking north through a gate in the fence line, the boundary of the Refuge east of the midsection line of Section 16. Number 13 is a view looking north along the main stem.

Photograph 14 is a view of the land of appellant east of the Refuge boundary along the midsection line of Section 16, through which the main stem of the Wagon Road is approaching the boundary. The boundary fence was constructed late in 1993 and crossed the Wagon Road without gating it. Appellant's employee was first aware of the fence closing of the Wagon Road as he was moving

hay with a tractor and trailer. It was impossible for him to reverse his direction or communicate with Refuge employees, and he cut the fence across the Road. This is the incident referred to in the third paragraph of the final decision of March 15, 1994. Number 15 is a view of the Wagon Road within the Refuge and number 16 is a view of the Wagon Road as it approaches the Refuge boundary with the land of appellant, shown to the east of the rock jacks. However, the employees of the Refuge failed to install a gate between the rock jacks and exposed the Refuge lands and appellant's private lands to the use of livestock grazing on the other.

The Wagon Road leaves the Refuge near the point of photograph number 16 at the northeast quarter of the northeast quarter of Section 16 and the Road continues to the northeast and to Diamond, Oregon.

9. This appeal is filed with Regional Director Marvin Plenert, United States Department of the Interior, Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232-4181, the official which is identified as the appropriate official pursuant to 50 CFR 25.45(f).

May 18, 1994.

Dwight Hammond
Dwight Hammond
Hammond Ranches, Inc.
Appellant.



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue

Portland, Oregon 97232-4181

JUN 09 1994

In reply refer to:
ARW-ID/OR/WA

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

Dear Mr. Hammond:

Thank you for your May 18, 1994, letter appealing a March 15, 1994, decision by Refuge Manager Forrest Cameron to not reissue haying and grazing permits to you on Malheur National Wildlife Refuge. I have discussed this topic with staff from the Refuge and Regional Office and have reviewed the correspondence surrounding the issue. Your maps and photographs were useful in reminding me of the area that I had personally visited in the fall of 1990 and again in 1992.

The decision to not reissue haying or grazing permits to you was based on your destruction of a government fence as you hauled hay from the fields under your permit on the east side of Malheur Refuge. Also, as a consequence of your action, your cattle were able to trespass into the Refuge through the cuts you made in the fence. You refused to remove the trespass cattle until the Refuge staff fixed the fence which you had cut. The final issue stated for not reissuing your permit was that you had made repeated and overt threats on the life and safety of Refuge employees.

Regarding the cutting of the Refuge's east boundary fence, you had initially contended that your action was justified to keep your cattle from being caught in an area without water, between two Refuge fences. You later said in your April 29, 1994, letter that your "movement could not be reasonably reversed or aborted, and could be continued only by cutting wire." I assume by records of other conversations that "movement" refers to hauling of hay from your Refuge permitted field to your stackyard just east of the Refuge boundary. On review of this situation I believe that the fence cutting was unnecessary on your part. First, you had been asked on two occasions during November of 1993, to work with the Refuge staff on choosing locations of the gates. Secondly, a gate was located immediately south of the cut that you made in the fence, and it is of ample width to be used

in your hay hauling if you had wanted to. Thirdly, the cutting of fence in other locations north of this site was not necessary for your hauling of hay, and in no way could your actions be warranted because your "movement could not be reasonably reversed or aborted."

Further, regarding destruction of government property, the "pattern of similar incidents of noncompliance" was documented in part regarding your breaching of the Refuge's Center Patrol Road. The possible consequences of this destruction of a road were discussed with you during your June 1993, Permittee Meeting. Also, in a June 1, 1993, letter you were warned that further violation could subject you to cancellation of your Refuge permit.

Regarding the trespass of your cattle on Refuge land from January 28 until February 2, 1994, I believe that this trespass was willful and could have been resolved had you cooperated with Refuge staff. It is your responsibility to remove cattle from permitted grazing fields on the Refuge to your private land and see that they stay there. If there was a problem with the new Refuge boundary fence, you could have notified a Refuge staff member. Not only did you not notify anyone, your three cuts were the primary routes of trespass for your cattle to enter the Refuge. Then, when you were asked to remove the cattle by Manager Cameron, you refused to remove the cattle and made no offer to cooperate in fixing the fence. You did not even offer to fix the portion that you had cut.

Regarding the assertion by Refuge Manager Cameron that your noncompliance with regulations included overt threats on the life and safety of Refuge employees, I take this most seriously. These instances occurring and documented on November 3, 1986, March 12, 1987, April 12, 1991, June 7, 1993, February 8, 1994, and March 15, 1994, clearly demonstrate a pattern as referred to by Manager Cameron. The incidents are a violation of law and have been reported to our Law Enforcement Division and to the Harney County Sheriff's Office. In your appeal you explain that the "exchange of words never erupted into any physical touching by any employee of the appellant or any other kind of response that could be reasonably interpreted as a 'threat on the life and safety of refuge employees.'" You explain further that Service employees were armed and your employees were not. In fact, the March 15, 1994 incident was the only time when an armed Service employee was present. On the advice of this Regional Office the Refuge Law Enforcement Officer was there because of the violent nature that you had shown in previous meetings. I am convinced that no "physical touching" occurred only because Refuge employees responded in a calm and mature way when exposed to your threats of violence.

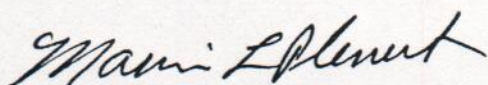
Regarding the reasons for Manager Cameron's decision to not reissue haying or grazing permits to you, I have reached the following conclusions:

- 1) I agree with Manager Cameron's conclusion that you violated your permit by cutting the Refuge's east boundary fence while removing hay from the Refuge.
- 2) I also agree with his conclusion that you did allow your cattle to trespass on Refuge land from January 28 until February 2, 1994. Further, that trespass was willful on your part and could have been avoided had you chosen to work cooperatively with Refuge staff.
- 3) I agree with Manager Cameron's conclusion that you have on numerous occasions threatened the life and safety of Refuge employees, and I will not tolerate that behavior from any permit holder on a national wildlife refuge.

For the above reasons I deny your appeal and affirm Refuge Manager Cameron's decision to not reissue a permit to you to hay or graze on Malheur National Wildlife Refuge.

It is obvious that the issue of your access through the east side of Malheur Refuge is as yet unresolved. I would like to have John Doebl, Assistant Regional Director, Refuges and Wildlife, meet with you on site sometime during the August-September period to work on the resolution of that issue. If you agree that such a meeting is possible, please work out the details with Forrest Cameron.

Sincerely,



MARVIN L. PLENERT
Regional Director

CERTIFIED

P 311 718 165

MAIL

Return Receipt Requested

SCHROEDER & LEZAMIZ LAW OFFICES

P.O. Box 267

BOISE, IDAHO 83701

Telephone (208) 384-1627

TO

Director

U.S. Department of the Interior
Office of Hearings & Appeals
4015 Wilson Boulevard
Room 1103 Ballston Tower No. 3
Arlington, VA 22203

RETURN POSTAGE GUARANTEED

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OFFICE OF HEARINGS & APPEALS

JUL 5 1994

DIRECTOR'S OFFICE

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208/384-1627
Lawyers for appellants.

BEFORE THE DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS

DIRECTOR
4015 Wilson Boulevard
Room 1103 Ballston Tower No. 3
Arlington, VA 22203

Dwight Hammond)
Hammond Ranches, Inc.)
HC 72 Box 26)
Diamond, OR 97722)

On June 9, 1994 the Regional Director of the Fish and Wildlife Service rendered his decision which affirmed a decision of the Refuge Manager of the Malheur National Wildlife Refuge not to reissue to appellant a Special Use Permit for haying and grazing privileges on the Refuge, effective beginning with the 1994-1995 haying and grazing season. This is the

NOTICE OF APPEAL

from that decision and the decision of the Refuge Manager of the Malheur National Wildlife Refuge.

Standing of appellant. Jurisdiction of Director. The person identified in the caption, the appellant, is directly affected by such determination and is aggrieved by the decision in that it deprives appellant of a permit to exercise privileges which it has annually exercised since 1964 and upon which appellant's private land and business depends.

This is a case within the jurisdiction of the Department of the Interior involving review functions of the Secretary that do not lie within the appellate review jurisdiction of an established Appeals Board and which are not specifically excepted in the general delegation of authority to the Director, insofar as is known to appellant. 43 CFR 4.1, 4.700.¹

Statement of facts. Attached are copies of the proposed decision of the Refuge Manager dated February 18, 1994, his final decision dated March 15, the notice of appeal therefrom dated April 12, the decision of the Refuge District Supervisor dated April 20, the notice of appeal therefrom dated May 18 (without exhibits), and the decision of the Regional Director. Each and every request, admission, denial, and statement of fact within each of the notices of appeal are by this reference incorporated herein, as if herein set forth haec verba. In addition, appellant has been deprived of oral presentation prescribed by 50 CFR 25.45(e).

The decision of the Refuge Manager and every subsequent administrative decision was made without providing appellant with

¹43 CFR 4.700 provides that a condition to the right of appeal invoked herein depends, in part, upon the existence of a regulation which "allow(s) a right of appeal to the head of the Department from such action or decision." The phrase, "head of the Department" is not defined. As to the Fish and Wildlife Service, see 50 CFR 1.7, 2.1. 43 CFR 1.2 defines "Department" as including any "unit of the Department of the Interior, whether in Washington, DC or in the field and any officer or employee thereof". 50 CFR 25.45 provides for a two level administrative appeal of a refuge manager's decision, to an area manager and the regional director whose decision "shall be final"; as such, it is the regional director who is the head of the Department within the meaning of 43 CFR 4.700. Because a regulation exists which "allow(s) a right of appeal to the head of the Department from such action or decision", the state condition is satisfied.

evidence supporting the factual determinations of the Manager and every subsequent administrative reviewer. Appellant is without knowledge as to whether or what evidence is claimed by the agency to exist and has had no opportunity to respond.

Relief requested.

1. 43 CFR 4.702 requires the appropriate official to transmit to the Director the official file as therein defined, writings which appellant has not seen as constituting the official file, except for the writings filed by appellant and the attached decisions to appellant. The filing is required within ten days after receipt of a copy of this Notice, there is no specific requirement for the service of a copy of such official file upon appellant, and appellant invokes the application of 43 CFR 4.22(b) to the official file.

2. 43 CFR 4.704 permits "a hearing upon the entire matter" and appellant requests a hearing because the deciding officer alleges facts and has made his decision based upon such allegations which appellant denies.

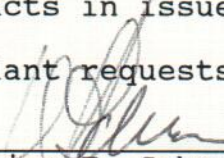
3. In the event a hearing is denied, appellant desires to file a brief as provided by 43 CFR 4.703, but the time within which it is required to do so is insufficient in consideration of the fact that appellant will not have examined the writings constituting the official file until approximately fourteen days after this date provided the appropriate official timely files the official file and simultaneously serves appellant. Appellant moves the Director for an extension of time to and including September 12 within which to serve and file its opening brief. Following the

conclusion of the briefing, appellant requests oral argument as permitted by 43 CFR 4.704 and that such argument should occur within the venue of the matter, Harney County, Oregon.

4. In the event a hearing is denied, appellant desires to respond to writings within the official file, augmenting it. Appellant desires to do so with affidavits and depositions of witnesses, including employees of the said department, including, but not limited to Forrest Cameron, Refuge Manager, and such others as the official file may disclose to have personal knowledge of facts upon which his decision depends. Appellant requests to and including October 3 within which to file such affidavits and depositions and to thereafter file an additional brief as permitted by 43 CFR 4.703 on or before October 24.

Appellant requests application of 43 CFR 4.26 and, within the limits of said regulation, requests the Director to now require as a general subpoena, the attendance of employees of the Fish and Wildlife Service who are disclosed by the official record to have knowledge of the facts in issue.

5. Appellant requests that the decision be reversed.

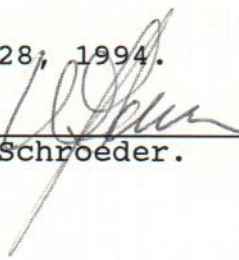

William F. Schroeder, of appellant's lawyers.

Certificate of Document, Filing and Service

My signature certifies this document as provided by 43 CFR 1.5. The time allowed within which to file and serve the within document expires on July 11, 1994. This document was transmitted to the office in which the filing is required (identified in the caption) before the end of the period in which it was required to be filed, such transmission being by delivery on June 28, 1994 to the United States Postal Service at Boise, Id. the original of said document within an envelope with postage prepaid thereon addressed for certified mailing to said office, requesting the return of a receipt for delivery thereof. On June 28, 1994 I mailed a copy of this document to Marvin L. Plenert, Regional Director, United States Department of the Interior, Fish and

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.



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region
500 N.E. Multnomah Street, Suite 607
Portland, Oregon 97232

July 14, 1994

Barry Hill, Director
Office of Hearings and Appeals
Department of the Interior
4015 Wilson Boulevard
Ballston Tower No. 3, Rm. 1103
Arlington, VA 22203

RE: Dwight Hammond v. U.S. Fish and Wildlife Service

Dear Mr. Hill:

Enclosed for filing is the Respondent's Motion to Dismiss and Memorandum in Support of Respondent's Motion to Dismiss, in the above-captioned case. Also attached is a Certificate of Service, certifying that a copy of the Respondent's Motion to Dismiss and the Memorandum in Support of Respondent's Motion to Dismiss has been served to the Appellant.

For your convenience, I have also enclosed is a copy of the Appellant's Notice of Appeal, with attachments.

Sincerely,

Diane K. Hoobler
Attorney
Pacific Northwest Region

Enclosures

OFFICE OF HEARINGS & APPEALS

JUL 15 1994

DIRECTOR'S OFFICE

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS

DWIGHT HAMMOND,)	
)	
Appellant,)	RESPONDENT'S MOTION
)	TO DISMISS
v.)	
)	
U.S. FISH AND WILDLIFE)	
SERVICE,)	
)	
Respondent.)	
)	

WHEREAS, Appellant has challenged a decision of the U.S. Fish and Wildlife Service Regional Director in Portland, Oregon, not to reissue a Special Use Permit for haying and grazing privileges on Malheur National Wildlife Refuge, Oregon; and

WHEREAS, pursuant to 50 C.F.R. § 25.45(d), the Regional Director's decision in this matter is final; and

WHEREAS, pursuant to 43 C.F.R. § 4.700, the Office of Hearings and Appeals has jurisdiction over proceedings only when Department of the Interior regulations allow a right of appeal to the Secretary of the Interior, and not when another Departmental official has sole administrative or discretionary authority;

NOW, THEREFORE, the Respondent moves that the Office of Hearings and Appeals dismiss this case based on lack of jurisdiction; and, further,

OFFICE OF HEARINGS & APPEALS

JUL 15 1994

DIRECTOR'S OFFICE

That the Respondent's time for transmitting any appeal file and filing any answering brief be tolled pending the Office's ruling on this motion.

Respectfully, submitted,

A handwritten signature in dark ink, appearing to read "Diane K. Hoobler", with a long, sweeping horizontal flourish extending to the right.

Diane K. Hoobler
Counsel for the
U.S. Fish and Wildlife Service

Dated: July 14, 1994

JUL 15 1994

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS

DIRECTOR'S OFFICE

DWIGHT HAMMOND,)	
)	
Appellant,)	MEMORANDUM IN SUPPORT
)	OF RESPONDENT'S
v.)	MOTION TO DISMISS
)	
U.S. FISH AND WILDLIFE)	
SERVICE,)	
)	
Respondent.)	
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I. Introduction

The Appellant filed this appeal on June 28, 1994, to challenge a decision by the U.S. Fish and Wildlife Service not to reissue him a Special Use Permit for haying and grazing privileges on the Malheur National Wildlife Refuge, Oregon. The Respondent hereby moves to dismiss this appeal because this matter is not within the jurisdiction of the Office of Hearings and Appeals.

II. Background

Under the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd-ee, Congress assigned management of the National Wildlife Refuge System to the Secretary of the Interior "through the United States Fish and Wildlife Service." 16 U.S.C. 668dd(a)(1). The Fish and Wildlife Service is authorized to permit other activities on a national wildlife refuge if such activities are compatible with the major purposes for which the

PAGE 1 - MEMORANDUM IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS

refuge was established. 16 U.S.C. 668dd(d) (A). The administration of refuge permits is governed by regulations promulgated by the Department of the Interior at 50 C.F.R. Part 25, Subpart D. Among other provisions, the regulations establish an appeals procedure for persons who are adversely affected by a refuge manager's decision concerning a permit or permit application. 50 C.F.R. § 25.45.

Under the regulations, prior to making any adverse decision on a permit or permit application, the refuge manager is first required to notify the permittee or applicant of the proposed action and provide twenty (20) days for the permittee or applicant to present a statement in opposition. 50 C.F.R. § 25.45(b). Within twenty (20) days after receipt of the statement in opposition, the refuge manager must notify the permittee or applicant of his or her final decision. Id. If the refuge manager intends to proceed with the proposed action, the permittee or applicant has thirty (30) days in which to file a written appeal to the appropriate area manager. 50 C.F.R. § 25.45(c). Within thirty (30) days of the postmarked date of the appeal, the area manager must notify the permittee or applicant of his or her decision. Id. The permittee or applicant then has thirty (30) days to further appeal to the appropriate regional director. Id. The regional director's decision must be issued within thirty (30) days of the postmarked date of appeal and is final. 50 C.F.R. § 25.45(d).

On February 18, 1994, Forrest W. Cameron, Refuge Manager of the Malheur National Wildlife Refuge, notified the Appellant of his intent not to reissue a Special Use Permit for haying and grazing privileges on the Refuge, effective beginning with the 1994-95 haying and grazing season. (See attachment to Appellant's Notice of Appeal.) In accord with 50 C.F.R. § 25.45(b), the Appellant was provided twenty (20) days to present a statement in opposition to the proposed decision. On March 15, 1994, Mr. Cameron notified the Appellant of his decision not to reissue a haying and grazing permit to the Appellant. (See attachment to Appellant's Notice of Appeal.) This decision was based on noncompliance with refuge regulations, including allowing cattle to trespass onto the Refuge and threatening the lives and safety of Refuge employees. Mr. Cameron also informed the Appellant of his right to appeal the decision to Mr. Sanford Wilbur, the Refuge District Supervisor, as the appropriate area manager pursuant to 50 C.F.R. § 25.45(c).

In a notice dated April 12, 1994, the Appellant asked the Refuge District Supervisor to reconsider the Refuge Manager's decision. (See attachment to Appellant's Notice of Appeal.) On April 20, 1994, the Refuge District Supervisor issued a decision upholding the Refuge Manager's decision. (See attachment to Appellant's Notice of Appeal.) Pursuant to 50 C.F.R. § 25.45(c), the Refuge District Supervisor also informed the Appellant of his right to appeal for a final decision to Marvin Plenert, Fish and Wildlife Service Regional Director in Portland, Oregon.

On May 18, 1994, the Appellant filed an appeal with the Regional Director. (See attachment to Appellant's Notice of Appeal.) On June 9, 1994, the Regional Director denied the appeal and affirmed the Refuge Manager's decision not to reissue the Appellant a permit to hay and graze on Malheur National Wildlife Refuge. (See attachment to Appellant's Notice of Appeal.)

III. Argument

Appeal procedures for persons who are adversely affected by a refuge manager's decision related to a permit or permit application for activities within the National Wildlife Refuge System are governed by Departmental regulations set forth at 50 C.F.R. § 25.45. These regulations explicitly provide that the final decision on such permit appeals rests with the appropriate U.S. Fish and Wildlife Service regional director. 50 C.F.R. § 25.45(d). Appellant has received a final decision from the appropriate regional director in accordance with these regulations, and has exhausted his administrative appeals.

In some instances, persons aggrieved by a decision of a Department official may appeal to the Director, Office of Hearings and Appeals. 43 C.F.R. § 4.700. However, this right of appeal is limited to cases "in which Departmental regulations allow a right of appeal to the head of the Department from such action or decision. . . ." Id.¹ Further, the regulations

¹ In addition, the case must not be one which lies within the appellate review jurisdiction of an established Appeals Board and is not excepted from the review authority delegated to the Director

explicitly provide that "[n]o appeal will lie when the action of the Departmental official was based solely upon administrative or discretionary authority of such official." Id. In this case, Departmental regulations do not allow a right of appeal to the head of the Department; decisions on refuge permit appeals clearly rest within the sole authority of the appropriate U.S. Fish and Wildlife Service regional director. See 50 C.F.R. § 25.45(d).²

In the face of the plain language of 50 C.F.R. § 25.45(d), the Appellant attempts to find ambiguity in the phrase "head of the Department." Appellant argues that, in this case, authorization to appeal to the Fish and Wildlife Service regional director is authorization to appeal to the "head of the department." See Appellant's Notice of Appeal at 2, n. 1 (June 28, 1994). However, this ignores 43 C.F.R. § 4.1 which states that the Office of Hearings and Appeals is a representative of the Secretary. Furthermore, taken to its logical conclusion, Appellant's argument that the Fish and Wildlife Service regional director is the "head of the department" would mean that any

of the Office of Hearings and Appeals. 43 C.F.R. § 4.700.

² Compare 50 C.F.R. § 25.45(d) to 50 C.F.R. §§ 11.21-.25, pertaining to the assessment of civil penalties for violations of certain wildlife laws. The latter regulations specifically allow for appeal of civil penalty assessment decisions by the Director of the Fish and Wildlife Service to the Office of Hearings and Appeals. See, e.g., U.S. Fish and Wildlife Service v. Tatum, Docket No. D 91-4, U.S. Department of the Interior, Office of Hearings and Appeals (July 2, 1993).

appeal to the regional director should have been directed to the Office of Hearings and Appeals. See 43 C.F.R. § 4.700.

In summary, Appellant has completed the administrative appeals accorded to him by applicable Departmental regulations. Under the unambiguous language of these regulations, the Appellant is not entitled to further appeal to the Office of Hearings and Appeals. The Office of Hearings and Appeals should grant this motion to dismiss.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Diane K. Hoobler", with a stylized flourish at the end.

Diane K. Hoobler
Counsel for the
U.S. Fish and Wildlife Service

Dated: July 14, 1994

ENDANGERED SPECIES OF FISH AND WILDLIFE

§§ 668aa-668cc-6. [Repealed]

HISTORY; ANCILLARY LAWS AND DIRECTIVES

These sections (Act Oct. 15, 1966, P. L. 89-669, §§ 1-3, 80 Stat. 926, 927; Dec. 5, 1969, P. L. 91-135, § 12, 83 Stat. 282; Dec. 5, 1969, P. L. 91-135, §§ 1-6, 83 Stat. 275-278) were repealed by Act Dec. 28, 1973, P. L. 93-205, § 14, 87 Stat. 903, effective 12/28/73, as provided by § 16 of such Act. Similar provisions as reenacted appear as 16 USCS §§ 1531 et seq.

Section 668aa set out the Congressional findings, declaration of policy, and statement of purposes in seeking the protection of endangered species of fish and wildlife; section 668bb set out the powers and duties of the Secretary of the Interior in carrying out the mandate of the Endangered Species Conservation Act of 1969; section 668cc covered the Secretary's duty to cooperate with the States, area administration, management agreements, and disposition of revenues; section 668cc-1, defined the terms "Secretary", "fish or wildlife", "United States", and "person"; section 668cc-2, covered the importation of endangered species and set out civil and criminal penalties by reference to the provisions of 16 USCS § 668cc-4; section 668cc-3 provided for the determination by the Secretary of the species threatened with extinction, the methods to be used and the factors determinative of the Secretary's determination, and the rule making procedures to be used; section 668cc-4 set out the penalties for violation of 16 USCS §§ 668cc-2, 668cc-3, and the provisions for their enforcement; section 668cc-5 covered international agreements for fish and wildlife preservation; section 668cc-6 called for the coordination of administration of provisions relating to endangered species of fish and wildlife with animal quarantine and tariff laws, and provided for the non-impairment of the functions of the Secretaries of Agriculture and Treasury under agriculture and tariff laws, including imports.

§ 668dd. National Wildlife Refuge System

(a) Designation; administration; continuance of resources-management-programs for refuge lands in Alaska; disposal of acquired lands; proceeds.

(1) For the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conservation of fish and wildlife, including species that are threatened with extinction, all lands, waters, and interests therein administered by the Secretary as wildlife refuges, areas for the protection and conservation of fish and wildlife that are threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the "National Wildlife Refuge System" (referred to herein as the "System"), which shall be subject to the provisions of this section, and shall be administered by the Secretary through the United States Fish and Wildlife Service. With respect to ref-

CONSERVATION

WILDLIFE

ACTIVES

3, 80 Stat. 926,
c. 5, 1969, P. L.
Dec. 28, 1973,
provided by § 16
6 USCS §§ 1531

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WILDLIFE PROTECTION

16 USCS § 668dd

uge lands in the State of Alaska, those programs relating to the manage-
ment of resources for which any other agency of the Federal Government
exercises administrative responsibility through cooperative agreement
shall remain in effect, subject to the direct supervision of the United States
Fish and Wildlife Service, as long as such agency agrees to exercise such
responsibility.

(2) No acquired lands which are or become a part of the System may be
transferred or otherwise disposed of under any provision of law (except by
exchange pursuant to subsection (b)(3) of this section) unless—

(A) the Secretary of the Interior determines with the approval of the
Migratory Bird Conservation Commission that such lands are no longer
needed for the purposes for which the System was established; and

(B) such lands are transferred or otherwise disposed of for an amount
not less than—

(i) the acquisition costs of such lands, in the case of lands of the
System which were purchased by the United States with funds from
the migratory bird conservation fund, or fair market value, which-
ever is greater; or

(ii) the fair market value of such lands (as determined by the Secre-
tary as of the date of the transfer or disposal), in the case of lands of
the System which were donated to the System.

The Secretary shall pay into the migratory bird conservation fund the ag-
gregate amount of the proceeds of any transfer or disposal referred to in
the preceding sentence.

(3) Each area which is included within the System on January 1, 1975, or
thereafter, and which was or is—

(A) designated as an area within such System by law, Executive order,
or secretarial order; or

(B) so included by public land withdrawal, donation, purchase, ex-
change, or pursuant to a cooperative agreement with any State or local
government, any Federal department or agency, or any other govern-
mental entity,

shall continue to be a part of the System until otherwise specified by Act
of Congress, except that nothing in this paragraph shall be construed as
precluding—

(i) the transfer or disposal of acquired lands within any such area pur-
suant to paragraph (2) of this subsection;

(ii) the exchange of lands within any such area pursuant to subsection
(b)(3) of this section; or

(iii) the disposal of any lands within any such area pursuant to the
terms of any cooperative agreement referred to in subparagraph (B) of
this paragraph.

(b) Administration; public accommodations contracts; acceptance and use of
funds; exchange of properties; cash equalization payments. In administering
the System, the Secretary is authorized—

(1) to enter into contracts with any person or public or private agency through negotiation for the provision of public accommodations when, and in such locations, and to the extent that the Secretary determines will not be inconsistent with the primary purpose for which the affected area was established.

(2) to accept donations of funds and to use such funds to acquire or manage lands or interests therein, and

(3) to acquire lands or interests therein by exchange (A) for acquired lands or public lands, or for interests in acquired or public lands, under his jurisdiction which he finds to be suitable for disposition, or (B) for the right to remove, in accordance with such terms and conditions as he may prescribe, products from the acquired or public lands within the System. The values of the properties so exchanged either shall be approximately equal, or if they are not approximately equal the values shall be equalized by the payment of cash to the grantor or to the Secretary as the circumstances require.

(c) Prohibited and permitted activities; application of mining and mineral leasing laws, hunting or fishing regulations, and State laws or regulations. No person shall knowingly disturb, injure, cut, burn, remove, destroy, or possess any real or personal property of the United States, including natural growth, in any area of the System; or take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof within any such area; or enter, use, or otherwise occupy any such area for any purpose; unless such activities are performed by persons authorized to manage such area, or unless such activities are permitted either under subsection (d) of this section or by express provision of the law, proclamation, Executive order, or public land order establishing the area, or amendment thereof: Provided, That the United States mining and mineral leasing laws shall continue to apply to any lands within the System to the same extent they apply prior to the effective date of this Act [Oct. 15, 1966] unless subsequently withdrawn under other authority of law. With the exception of endangered species and threatened species listed by the Secretary pursuant to section 4 of the Endangered Species Act of 1973 [16 USCS § 1533] in States wherein a cooperative agreement does not exist pursuant to section 6(c) of that Act [16 USCS § 1535(c)] nothing in this Act shall be construed to authorize the Secretary to control or regulate hunting or fishing of resident fish and wildlife on lands not within the system. The regulations permitting hunting and fishing of resident fish and wildlife within the System shall be, to the extent practicable, consistent with State fish and wildlife laws and regulations. The provisions of this Act shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate fish and resident wildlife under State law or regulations in any area within the System.

(d) Use of areas; administration of migratory bird sanctuaries as game taking areas; rights of way, easements, and reservations; payment of fair market value. (1) The Secretary is authorized, under such regulations as he may prescribe, to—

CONSERVATION

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WILDLIFE PROTECTION

16 USCS § 668dd

(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible with the major purposes for which such areas were established: Provided, That not to exceed 40 per centum at any one time of any area that has been, or hereafter may be acquired, reserved, or set apart as an inviolate sanctuary for migratory birds, under any law, proclamation, Executive order, or public land order may be administered by the Secretary as an area within which the taking of migratory game birds may be permitted under such regulations as he may prescribe unless the Secretary finds that the taking of any species of migratory game birds in more than 40 percent of such area would be beneficial to the species; and

(B) permit the use of, or grant easements in, over, across, upon, through, or under any areas within the System for purposes such as but not necessarily limited to, powerlines, telephone lines, canals, ditches, pipelines, and roads, including the construction, operation, and maintenance thereof, whenever he determines that such uses are compatible with the purposes for which these areas are established.

(2) Notwithstanding any other provision of law, the Secretary of the Interior may not grant to any Federal, State, or local agency or to any private individual or organization any right-of-way, easement, or reservation in, over, across, through, or under any area within the system in connection with any use permitted by him under paragraph (1)(B) of this subsection unless the grantee pays to the Secretary, at the option of the Secretary, either (A) in lump sum the fair market value (determined by the Secretary as of the date of conveyance to the grantee) of the right-of-way, easement, or reservation; or (B) annually in advance the fair market rental value (determined by the Secretary) of the right-of-way, easement, or reservation. If any Federal, State, or local agency is exempted from such payment by any other provision of Federal law, such agency shall otherwise compensate the Secretary by any other means agreeable to the Secretary, including, but not limited to, making other land available or the loan of equipment or personnel; except that (A) any such compensation shall relate to, and be consistent with, the objectives of the National Wildlife Refuge System, and (B) the Secretary may waive such requirement for compensation if he finds such requirement impracticable or unnecessary. All sums received by the Secretary of the Interior pursuant to this paragraph shall, after payment of any necessary expenses incurred by him in administering this paragraph, be deposited into the Migratory Bird Conservation Fund and shall be available to carry out the provisions for land acquisition of the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.) and the Migratory Bird Hunting Stamp Act (16 U.S.C. 718 et seq.).

(e) **Penalties.** Any person who violates or fails to comply with any of the provisions of this Act or any regulations issued thereunder shall be fined under title 18, United States Code, or imprisoned for not more than 1 year, or both.

(f) Enforcement provision; arrests, searches, and seizures; custody of property; forfeitures; disposition. Any person authorized by the Secretary of the Interior to enforce the provisions of this Act or any regulations issued thereunder, may, without a warrant, arrest any person violating this Act or regulations in his presence or view, and may execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations, and may with a search warrant search for and seize any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or nest or egg thereof, taken or possessed in violation of this Act or the regulations issued thereunder. Any property, fish, bird, mammal, or other wild vertebrate or invertebrate animals or part or egg thereof seized with or without a search warrant shall be held by such person or by a United States marshal, and upon conviction, shall be forfeited to the United States and disposed of by the Secretary, in accordance with law. The Director of the United States Fish and Wildlife Service is authorized to utilize by agreement, with or without reimbursement, the personnel and services of any other Federal or State agency for purposes of enhancing the enforcement of this Act.

(g) Regulations; continuation, modification, or rescission. Regulations applicable to areas of the System that are in effect on the date of enactment of this Act [Oct. 15, 1966] shall continue in effect until modified or rescinded.

(h) National conservation recreational area provisions; amendment, repeal, or modification. Nothing in this section shall be construed to amend, repeal, or otherwise modify the provision of the Act of September 28, 1962 (76 Stat. 653; 16 U.S.C. 460K-460K-4) which authorizes the Secretary of the Interior to administer the areas within the System for public recreation. The provisions of this section relating to recreation shall be administered in accordance with the provisions of said Act.

(i) Exemption from State water laws. Nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.

(Oct. 15, 1966, P. L. 89-669, § 4, 80 Stat. 927; July 18, 1968, P. L. 90-404, § 1, 82 Stat. 359; Dec. 28, 1973, P. L. 93-205, § 13(a), 87 Stat. 902; Dec. 3, 1974, P. L. 93-509, § 2, 88 Stat. 1603; Feb. 17, 1976, P. L. 94-215, § 5, 90 Stat. 190; Feb. 27, 1976, P. L. 94-223, 90 Stat. 199; Nov. 8, 1978, P. L. 95-616, §§ 3(f), 6, 92 Stat. 3111, 3114; Dec. 31, 1987, P. L. 100-226, § 4, 101 Stat. 1551; Nov. 14, 1988, P. L. 100-653, Title IX, § 904, 102 Stat. 3834.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"The United States mining and mineral leasing laws", referred to in subsec. (c), are classified generally to 30 USCS §§ 1 et seq.

"This Act", referred to in this section, is Act Oct. 15, 1966, P. L. 89-669, 80 Stat. 927, which generally enacted 16 USCS §§ 668aa-668ee, amended 16 USCS §§ 460k, 696, 696b, 715c, 715i-715k and 718d, and repealed 16 USCS §§ 715d-1, 715d-2, 715l, and 715m. For full classification of this Act, consult USCS Tables volumes.

of the establishment of any district the publication in one or more newspapers of a division in which such district or any date specified in such notice it shall be any class of livestock on lands in such lease made or permission granted by the fully grazes livestock on such lands after ity shall, upon conviction, be punished by

(54.)

Historical Note

Federal Forms

Free grazing

Maintenance and regulation

maintain, and regulate the use of, stock charge a fee for or permit the free use of

Livestock free of charge

person, including prospectors and miners, number of livestock upon any land included

Indians or other native or half-breed

to grant a permit or lease for a grazing on public lands to any Eskimo or other native or half-breed grazes his livestock on allotment held by other lessee or for said allotment shall be reduced in such native owned livestock to the total

(54.)

Historical Note

References

title.

624

§ 316m. Hearing and appeals

(a) Any lessee of or applicant for grazing privileges, including any person described in subsection (c) of section 316l of this title, may procure a review of any action or decision of any officer or employee of the Interior Department in respect of such privileges, by filing with such officer as the Secretary of the Interior may designate of the local land office an application for a hearing, stating the nature of the action or decision complained of and the grounds of complaint. Upon the filing of any such application such officer of such land office shall proceed to review such action or decision as nearly as may be in accordance with the rules of practice then applicable to applications to contest entries under the public land law. Subject to such rules of practice, appeals may be taken by any party in interest from the decision of such officer to the Secretary.

(b) The Secretary shall take no action which will adversely affect rights under any lease pursuant to this subchapter until notifying the holder of such lease that such action is proposed and giving such holder an opportunity for a hearing.

(Mar. 4, 1927, c. 513, § 14, 44 Stat. 1454; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100; July 18, 1968, Pub.L. 90-403, § 3, 82 Stat. 358.)

Historical Note

References in Text. The public land law, referred to in subsec. (a), is classified generally to this title.

Codification. Section was formerly classified to section 471m of Title 48, Territories and Insular Possessions.

1968 Amendment. Subsec. (a). Pub.L. 90-403 designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 90-403 added subsec. (b).

Transfer of Functions. "Secretary" was substituted for "Commissioner of the General

Land Office" and "such officer as the Secretary of the Interior may designate" and "such officer" for "register" on authority of section 403 of Reorg. Plan No. 3 of 1946, which abolished the General Land Office and the Commissioner thereof and transferred the functions of the General Land Office to a new agency in the Department of the Interior to be known as the Bureau of Land Management, and the functions of the Commissioner of the General Land Office to the Secretary of the Interior. See section 403 of Reorg. Plan No. 3 of 1946, set out as a note under section 1 of this title.

§ 316n. Administration

(a) The Secretary shall promulgate all rules and regulations necessary to the administration of this subchapter, shall execute its provisions, and may (1) in accordance with the civil service laws appoint such employees and in accordance with chapter 51 and subchapter III of chapter 53 of Title 5 fix their compensation, and (2) make such expenditures (including expenditures for personal service and rent at the seat of government and elsewhere, for law books, books of reference, periodicals, and for printing and binding) as may be necessary efficiently to execute the provisions of this subchapter.

(b) The Secretary of Agriculture is authorized to continue investigations, experiments and demonstrations for the welfare, improvement, and increase of the reindeer industry in Alaska, and upon the request of the Secretary of

In conclusion, because the patients have not demonstrated a legitimate entitlement to residence and continued services at Hale Mohalu, the due process clause does not require that they be granted a hearing before the state may close that facility. We therefore need not decide whether the patients were afforded sufficient notice and hearings to satisfy the fourteenth amendment.

AFFIRMED.



Charles E. SCHWENKE, Lester Earl Nickels, and Russell K. Nickels,
Plaintiffs-Appellees,

v.

SECRETARY OF THE INTERIOR, Director of the Fish and Wildlife Service and Refuge Manager of the Charles M. Russell National Wildlife Refuge, Defendant-Appellant,

and

National Wildlife Federation, Montana Wildlife Federation,
Defendants-Intervenors-Appellants.

Nos. 82-3132, 82-3175.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted Jan. 3, 1983.

Decided Oct. 14, 1983.

Ranchers holding grazing permits on wildlife range brought action against the Secretary of the Interior and officials of the Department of the Interior's Fish and Wildlife Service seeking declaratory judgment relating to the grazing of livestock on the wildlife range. The United States District Court for the District of Montana, James F. Battin, Chief District Judge, granted partial summary judgment in favor of ranch-

ers, holding that livestock grazing and livestock conservation were coequal priority and that grazing was to be administered under the Taylor Grazing Act, and the Secretary appealed. The Court of Appeals, Norris, Circuit Judge, held that: (1) executive order created limited priority for wildlife to range's forage resources, beyond which grazing and wildlife preservation had equal status; (2) the priority scheme had not been revoked by enactment of the Wildlife Refuge Act Amendment; and (3) while the Amendments did not change relative priorities of wildlife and livestock on the range, it did change statute under which the range was to be administered from the Taylor Grazing Act to the National Wildlife Refuge System Administration Act.

Vacated and remanded.

1. Game $\Rightarrow 2\frac{1}{2}$

Executive order established a limited priority in access to forage resources of Montana wildlife range for sharptail grouse, antelope, and secondary species reasonably necessary to maintain a balanced wildlife population and, beyond those limits, wildlife and livestock were to have equal priority in access to the range's forage resources.

2. Statutes $\Rightarrow 158$

Repeal of statute or order by implication is not favored.

3. Game $\Rightarrow 4$

Priority scheme established by executive order creating a limited priority for wildlife access to forage resources of wildlife range was not revoked by enactment of the Wildlife Refuge Act Amendments which transferred the control of the range from the Bureau of Land Management and the Fish and Wildlife Service jointly to the Service alone. National Wildlife Refuge System Administration Act of 1966, § 4, as amended, 16 U.S.C.A. § 668dd.

4. Game $\Rightarrow 2\frac{1}{2}$

While the Wildlife Refuge Act Amendments did not change relative priorities of

wildlife and livestock to forage resources on wildlife range, it did change statute under which the range was to be administered from the Taylor Grazing Act to the National Wildlife Refuge System Administration Act. Taylor Grazing Act, § 1 et seq., as amended, 43 U.S.C.A. § 315 et seq.; National Wildlife Refuge System Administration Act of 1966, §§ 4, 5, as amended, 16 U.S.C.A. §§ 668dd, 668ee.

C. Delos Putz, Jr., San Francisco, Cal., for plaintiffs-appellees.

Thomas France, Missoula, Mont., Thomas H. Pacheco, Dept. of Justice, Washington, D.C., for defendant-appellant.

Appeal from the United States District Court for the District of Montana.

Before FERGUSON, BOOCHEVER and NORRIS, Circuit Judges.

NORRIS, Circuit Judge.

This case involves a series of executive orders and statutes dealing with livestock grazing and wildlife preservation on the Charles M. Russell National Wildlife Range (Russell Range or Range), an area of approximately 823,456 acres in northeastern Montana owned by the United States. We are called upon first to decide the relative priorities of wildlife and livestock in access to the natural forage resources of the Range. Second, we must decide whether livestock grazing on the Russell Range is to be administered under the Taylor Grazing Act or the National Wildlife Refuge System Administration Act (Wildlife Refuge Act).

I

Plaintiffs are ranchers holding permits for grazing on the Russell Range. They brought this action against the Secretary of the Interior and officials of the Department of the Interior's Fish and Wildlife Service

seeking a declaratory judgment that livestock grazing on the Russell Range should be administered under the Taylor Grazing Act, rather than the Wildlife Refuge Act, as a use entitled to equal status with wildlife preservation, and that the Fish and Wildlife Service had unlawfully subordinated livestock grazing on the Russell Range to wildlife protection.

The district court granted partial summary judgment in favor of the ranchers,¹ holding that livestock grazing and wildlife conservation are of coequal priority and that grazing is to be administered under the Taylor Grazing Act. On appeal, the Secretary argues that the land constituting the Russell Range was set aside by the government in 1936 primarily for wildlife preservation and that livestock grazing was to be only an incidental use. Alternatively, the Secretary argues that if the government ever intended to accord livestock grazing and wildlife protection equal status, Congress changed that priority scheme by legislation passed in 1976. Finally, the Secretary contends that legislation passed by Congress in 1976 mandates that grazing on the Russell Range be administered under the Wildlife Refuge Act, not the Taylor Grazing Act.

II

The first important legislation dealing with livestock grazing in the Western States was the Taylor Grazing Act, ch. 865, 48 Stat. 1269 (codified as amended at 43 U.S.C. § 315 (Supp. V 1981)), enacted in 1934. The Act authorized the Secretary of the Interior "in his discretion, by order to establish grazing districts . . . [on public lands], which . . . in his opinion are chiefly valuable for grazing and raising forage crops." 43 U.S.C. § 315. The Act also established a system for administering the grazing districts, through the issuance of grazing permits and the collection of graz-

1. After the district court granted plaintiff's motion for partial summary judgment, both the plaintiffs and the Secretary filed notices of appeal invoking the jurisdiction of this court pursuant to 28 U.S.C. § 1292(a)(1) (1976). The

plaintiffs then filed a motion to dismiss the appeals, arguing that there was no jurisdiction under section 1292(a)(1). We denied the motion to dismiss, holding that we had jurisdiction to hear the appeals under section 1292.

a declaratory judgment that live-
stock grazing on the Russell Range should
be administered under the Taylor Grazing
Act rather than the Wildlife Refuge Act,
be entitled to equal status with wild-
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Wildlife Service had unlawfully subordinat-
ed livestock grazing on the Russell Range to
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The district court granted partial summa-
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grazing districts, through the issuance of
grazing permits and the collection of graz-

ing fees. Shortly after passage of the Act,
several grazing districts were created under
the Taylor Grazing Act, including districts
on the land that later became the Russell
Range.²

In 1936, two years after passage of the
Taylor Grazing Act, President Roosevelt is-
sued Executive Order No. 7509, 3 C.F.R. 227
(1936). That order contained several impor-
tant provisions. First, it created the Fort
Peck Game Range on the land that is now
the Charles M. Russell Range and ordered
that the Range was to be "withdrawn from
settlement, location, sale or entry and re-
served and set apart for the conservation
and development of natural wildlife re-
sources and for the protection and improve-
ment of public grazing land and natural
forage resources." *Id.*

Second, E.O. 7509 directed that conserva-
tion and development of wildlife on the
Range were to be under the joint jurisdic-
tion of the Secretary of the Interior and the
Secretary of Agriculture and that grazing
and natural forage resources on the Range
were to be under the sole jurisdiction of the
Secretary of the Interior.³

Third, the order specifically provided for
a wildlife use. Since it is this part of E.O.
7509 that is at the heart of the present
controversy, we set it out in full:

2. These grazing districts were established on
lands withdrawn from settlement and sale by
Executive Order No. 6910 (Nov. 26, 1934).
That order, signed in 1934, withdrew all unap-
propriated public land in several Western
States from settlement and sale pending deter-
mination of "the most useful purpose to which
such land may be put in consideration of the
provisions of the [Grazing] Act . . . and for
conservation and development of natural re-
sources." The district court held that the order
withdrew the Russell Range for grazing pur-
poses under the Taylor Grazing Act. Because
it could find no evidence that this withdrawal
has been revoked, the district court held that
grazing and wildlife had equal priority on the
Range and the Russell Range must still be ad-
ministered under the Taylor Grazing Act. The
Secretary argues, and the ranchers seem to
concede, Brief for Plaintiff-Appellees at 14 n. 3,
that the district court erred on this point. The
district court decision ignores Executive Order
No. 7274 (Jan. 14, 1936), signed by President
Roosevelt in 1936. That order amended E.O.

[T]he natural forage resources [on the
Range] shall be first utilized for the pur-
pose of sustaining in a healthy condition a
maximum of four hundred thousand
(400,000) sharptail grouse, and one thou-
sand five hundred (1,500) antelope, the
primary species, and such nonpredatory
secondary species in such numbers as may
be necessary to maintain a balanced wild-
life population, but in no case shall the
consumption of forage by the combined
population of the wildlife species be al-
lowed to increase the burden of the range
dedicated to the primary species.

Id. at 228

Finally, the order provided that "all the
forage resources within this range or pre-
serve shall be available, except as herein
otherwise provided with respect to wildlife,
for domestic livestock" under rules and reg-
ulations promulgated by the Secretary of
the Interior under the authority of the Tay-
lor Grazing Act. *Id.*

E.O. 7509 can be read in several ways. It
is possible, as the Secretary argues, to read
the order as establishing an absolute priori-
ty for wildlife over livestock. E.O. 7509
specifically provides that "the natural for-
age resources [of the Russell Range] shall
be first utilized" for the purpose of main-
taining primary and nonpredatory second-
ary species of wildlife in such numbers as

6910 to exclude "from the operation thereof all
lands which are now, or may hereafter be,
included within grazing districts duly estab-
lished pursuant to the provisions of the TGA so
long as such lands remain a part of any such
grazing district." This order, both parties
agree, revoked E.O. 6910 as to the Russell
Range. Thus any withdrawal of the Russell
Range lands effected by E.O. 6910 was no long-
er valid. The dispute in this case thus centers
not on the meaning of E.O. 6910, but instead on
the meaning of E.O. 7509, which followed it.

3. In 1936, when E.O. 7509 was issued, the Bu-
reau of Land Management was a part of the
Department of the Interior while the Fish and
Wildlife Service was a part of the Department
of Agriculture. It was not until three years
later, in 1939, that Fish and Wildlife Service
was moved to the Department of the Interior
and the Secretary of the Interior thereby be-
came responsible for administration of the en-
tire Range.

necessary to maintain a balanced wildlife population. While forage resources within the Range are available for livestock grazing, they are available "except as . . . otherwise provided [in the order] with respect to wildlife." The "first utilized" language applies to (1) primary species; (2) secondary species; and (3) a balanced wildlife population. It is not unreasonable to argue that the numbers set out in the order establish priority among types of wildlife and that the first utilized language, referring as it does to both "primary" and "secondary species," establishes an absolute priority for wildlife over livestock.

It is also possible to read E.O. 7509, as do the ranchers, as making no distinction between wildlife and livestock in terms of access to the resources of the Range. The preamble to E.O. 7509 provides that the Range is withdrawn from settlement and sale "for the conservation and development of natural wildlife resources and for the protection and improvement of public grazing lands and natural forage resources." *Id.* at 227. This passage, at least, does not distinguish between wildlife and livestock. Moreover, it is undisputed that from 1936 until 1976, the Bureau of Land Management and the Fish and Wildlife Service administered the Russell Range on the premise that wildlife and livestock had equal priority in access to the resources of the Range.

Neither the ranchers' nor the Secretary's position, however, is ultimately convincing. The ranchers' position—that grazing and wildlife preservation enjoy equal status on the Range—altogether ignores the language commanding that the resources of the Range shall be "first utilized" for the support of certain types of wildlife. The argument of the Secretary—that wildlife has absolute priority on the Range—ignores

forty years of administration of the Range by the Fish and Wildlife Service and the Bureau of Land Management.⁴ It also ignores the language of the order itself. E.O. 7509 refers to a "maximum" of 400,000 sharptail grouse and 1500 antelope. Had an absolute wildlife priority been intended, it is hard to see why such limits were established. Moreover, the last portion of E.O. 7509 provides that land

acquired and to be acquired by the United States for the use of the Department of Agriculture for the conservation of migratory birds and other wildlife, shall be and remain under the exclusive administration of the Secretary of Agriculture and may be utilized for public grazing purposes only to such extent as may be determined by the said Secretary to be compatible with the utilization of said lands for the purposes for which they were acquired as aforesaid under regulations prescribed by him.

Id. at 228. This language clearly established an absolute priority for wildlife on any lands that may be acquired by the Department of Agriculture for conservation of birds and wildlife. If such a priority had been intended on the entire Range, we would expect similarly explicit language to have been employed. Finally, if an absolute priority for wildlife had been intended on the entire Range there would have been no need then to carve out a priority for wildlife on particular parts of the Range.

[1] We therefore reject both of these extreme positions. We instead are persuaded by an intermediate position that seems to us to represent a fairer reading of E.O. 7509 than that advanced by either the ranchers or the Secretary. We believe E.O. 7509 establishes a limited priority for wildlife beyond which grazing and wildlife preservation have equal status. It is clear that

4. The ranchers argue that this historical practice should be dispositive in our interpretation of E.O. 7509. While lengthy historical practice can be a significant aid in interpreting unclear legislative or executive pronouncements, see *Bryant v. Yellen*, 447 U.S. 352, 100 S.Ct. 2232, 65 L.Ed.2d 184 (1980); *Andrus v. Shell Oil Co.*, 446 U.S. 657, 100 S.Ct. 1932, 64 L.Ed.2d 593

(1980), it is useful only in interpreting language that is facially unclear. In the case of E.O. 7509, we cannot ignore the order's explicit language establishing a limited priority for wildlife on the Russell Range, even if the Bureau of Land Management and the Fish and Wildlife Service chose to do so for a number of years.

some priority for wildlife was intended. E.O. 7509 specifically provides that the resources of the Range shall be "first utilized" to support the primary and secondary species. It is equally clear, however, that that priority was limited. The order provides that the Range shall be first utilized for wildlife up to a maximum of 400,000 sharptail grouse, 1500 antelope, and that number of secondary species necessary to maintain a balanced wildlife population. We thus hold that E.O. 7509 established a priority in access to the forage resources of the Range for, in numbers within the Secretary's discretion, a maximum of 400,000 sharptail grouse, 1500 antelope, and that number of secondary species reasonably necessary to maintain a balanced wildlife population. Beyond those limits, wildlife and livestock have equal priority in access to the forage resources of the Range.

We do not believe the Secretary would vigorously dispute our reading of E.O. 7509. Fundamentally, our reading is that of the Secretary tempered by the numerical limits on priority for wildlife set out explicitly in the order. The Secretary does, however, argue that E.O. 7509, regardless of how it is read, is irrelevant to the priority scheme that must currently be employed on the Range because legislation passed by Congress in 1976 revoked E.O. 7509 and set forth a new priority scheme for access to the forage resources of the Range. It is to that argument that we now turn.

III

On October 15, 1966, Congress enacted the National Wildlife Refuge System Administration Act, Pub.L. 89-669, 80 Stat. 927 (codified as amended at 16 U.S.C. §§ 668dd-668ee (1976)), establishing the National Wildlife Refuge System. Then, in 1976 Congress enacted the Wildlife Refuge Act Amendments, Pub.L. 94-223, 90 Stat. 199 (codified at 16 U.S.C. § 668dd (1976)). That legislation provided that

[f]or the purpose of consolidating the authorities relating to the various categories of areas that are administered by the Secretary of the Interior for the conser-

vation of fish and wildlife, . . . all lands, waters, and interests therein administered by the Secretary as wildlife refuges, . . . wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas are hereby designated as the 'National Wildlife Refuge System' (referred to herein as the 'System'), which shall be . . . administered by the Secretary through the United States Fish and Wildlife Service.

The legislation thus transferred control of the Russell Range from the Bureau of Land Management and the Fish and Wildlife Service jointly to the Fish and Wildlife Service alone. The Secretary argues that P.L. 94-223 was passed to assure that wildlife would have absolute priority in access to the forage resources of the Range and that the priority scheme it mandated superseded any scheme that may have been effected by E.O. 7509. Pursuant to this interpretation of the 1976 Amendments, on May 3, 1978 the Secretary issued Public Land Order 5635, 43 Fed.Reg. 19046 (1978), which transferred control of the Russell Range to the Fish and Wildlife Service, decreed that the Range was to be administered under the Wildlife Refuge Act, and declared that E.O. 7509 had been modified to the extent necessary to conform to these two orders.

The district court declared P.L.O. 5635 invalid. It held that the 1976 Amendments neither revoked the priority scheme set out in E.O. 7509 nor changed the statute under which the Range was to be administered. The district court held further that the only effect P.L. 94-223 had in regard to the Russell Range was to transfer administrative responsibility for the Range to the Fish and Wildlife Service. On appeal, the Secretary argues that we should reverse the district court and hold P.L.O. 5635 a valid exercise of his power.

The district court based its holding on the fact that the language of P.L. 94-223 did not explicitly revoke E.O. 7509 with respect to access to the forage resources of the Range. It refused to consider the legislative history of P.L. 94-223, relying on the "plain meaning" doctrine of statutory con-

struction. The court reasoned that because P.L. 94-223 was not "ambiguous"—because its meaning was plain—there was no need to resort to legislative history. This, we believe, was error.

First, the district court misapplied the plain meaning rule. As stated by the Supreme Court less than two years ago, "the plain-meaning rule is 'rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists.'" *Watt v. Alaska*, 451 U.S. 259, 101 S.Ct. 1673, 68 L.Ed.2d 80 (1981) (quoting *Boston Sand Co. v. United States*, 278 U.S. 41, 48, 49 S.Ct. 52, 54, 73 L.Ed. 170 (1928)). "[E]ven the most basic general principles of statutory construction," the Court stated, "must yield to clear contrary evidence of legislative intent." *National Railroad Passenger Corp. v. National Association of Railroad Passengers*, 414 U.S. 453, 458, 94 S.Ct. 690, 693, 38 L.Ed.2d 646 (1974).

Second, the meaning of P.L. 94-223 is not altogether clear. It is true that the language of the statute only transfers control of the Range to the Fish and Wildlife Service and does not mention the relative priorities of livestock and wildlife in access to the forage resources of the Range. However, the primary mission of the Fish and Wildlife Service is wildlife preservation. Fish and Wildlife Act of 1956, § 2, 16 U.S.C. § 742a (1976). It is certainly possible to argue that when Congress transferred administrative responsibility for the Range to the Fish and Wildlife Service it had in mind the primary mission of the agency and intended to change the relative priority between livestock and wildlife on the Range. In short, P.L. 94-223 is sufficiently ambiguous to justify resort to its legislative history.

When we consider the legislative history of P.L. 94-223, it is clear that both legislators and members of the Department of the Interior instrumental in the passage of P.L. 94-223 believed that wildlife either already had or would, after passage of the 1976 Amendments, have priority on the Range. The Assistant Secretary of the Interior not-

ed during the hearings on the Amendments that "[the] BLM will continue to manage the areas for the dominant use of wildlife." Letter from John Kyl, Assistant Secretary of the Interior, to Senator Warren G. Magnuson, Chairman, Senate Committee on Commerce (May 20, 1975), reprinted in 1976 U.S.Code Cong. & Ad.News 288, 296. One Congressman stated that the ranges under discussion "have been set aside primarily to protect the resident wildlife and their habitat All acknowledge that the law requires that fish and wildlife be first priority on these three ranges." 121 Cong.Rec. 36,597 (1975). The Senate Floor Manager of the bill explained that

[t]he Executive Order which created the game ranges specified that grazing would be permitted only when compatible with wildlife needs.

* * * * *

[The Fish and Wildlife Service intention is] to permit continuation of grazing on the game ranges where it does not interfere with the wildlife for which the areas were created.

* * * * *

What the bill does, simply is to say to the Fish and Wildlife Service "You administer this for the preservation of the wildlife and to the extent that it is compatible therewith, continue to issue grazing permits or whatever reasonable use there is of public lands."

* * * * *

[I]t is the legislative intent, so far as this bill is concerned, that the Fish and Wildlife Service will continue to manage these ranges to be utilized to whatever extent possible for other uses besides preservation of the fish and wildlife, so long as it does not impinge upon it and make it impossible to preserve those values.

122 Cong.Rec. 2294-2295 (1976).

Were we to consider only the statute, read in light of its legislative history, we would rule that P.L. 94-223 commands that wildlife have priority in access to the forage resources of the Range and that the Range is to be administered under the Wildlife

Refuge Act. We cannot consider the statute alone, however, for in determining its effect we must not only determine the meaning of P.L. 94-223 but must also determine whether the statute effectively revoked the contrary commands of E.O. 7509.

[2, 3] It is the law of our circuit that revocation or modification of an existing withdrawal should be express to be effective. See *United States v. Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 445-46 (9th Cir.1971). Repeal of a statute or order by implication is not favored. *Watt v. Alaska*, 451 U.S. 259, 267, 101 S.Ct. 1673, 1678, 68 L.Ed.2d 80 (1981). We believe, given this rule, the priority scheme established by E.O. 7509 has not been revoked. Nowhere in the 1976 Amendments is anything said about priority in access to the forage resources of the Range. There is simply no mention of livestock, grazing, or E.O. 7509. Furthermore, the legislative history on this point is more indicative of confusion regarding the existing priority scheme than of an intent to change priorities. Many legislators seemed to think E.O. 7509 had established an absolute wildlife priority. Such confusion is not sufficient to revoke E.O. 7509. We thus hold that P.L. 94-223 did not revoke the priority scheme for access to the resources of the Range established by E.O. 7509.

IV

The Secretary contends also that P.L. 94-223 mandates that any grazing activity on the Russell Range be administered under the Wildlife Refuge Act rather than the Taylor Grazing Act, under which the Range was previously administered. The district court, however, held that P.L. 94-223 did not change the statute under which the Range is to be administered. We agree with the Secretary.

While the language of P.L. 94-223 does not explicitly change administration of the Range from the Taylor Grazing Act to the Wildlife Refuge Act, when the statute is read in conjunction with its legislative history the intention to change Range management to the Wildlife Refuge Act is

clear. The Wildlife Refuge Act is the statute under which the Fish and Wildlife Service manages the National Wildlife Refuge System. It defies reason to suggest that Congress merely liked the personnel of the Fish and Wildlife Service more than those of the Bureau of Land Management. Congress clearly wanted the Russell Range administered by the Fish and Wildlife Service because of its underlying mission to protect wildlife. The Wildlife Refuge Act is an integral part of that mission and, we believe, was part of the change Congress intended in transferring administrative responsibility for the Russell Range from the Bureau of Land Management to the Fish and Wildlife Service.

Moreover, the legislative history of the 1976 Amendments indicates that at least some leading legislators believed that transfer of management from the Bureau of Land Management to the Fish and Wildlife Service changed the statute under which the Range was to be administered from the Taylor Grazing Act to the Wildlife Refuge Act. Senator Moss noted:

On behalf of the Committee on Commerce I would like to assure the Senator from Montana that sole administration of the Kofa, Russell, and Sheldon Game Ranges by the Fish and Wildlife Service will not result in the instantaneous termination of existing grazing privileges on these areas. Rather, it is the committee's understanding that the Service will continue to honor valid existing grazing permits that were issued by BLM under the Taylor Grazing Act. When these permits expire, the Service will then reexamine them to determine if continued grazing is compatible with wildlife needs. Grazing will be permitted to the extent compatible and will be administered by the Service pursuant to the National Wildlife Refuge Administration Act. I might note that the Service is currently administering over 1 million acres of refuge lands in 31 States for grazing purposes.

122 Cong.Rec. 2294 (1976).

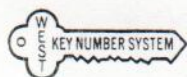
[4] We thus hold that, while P.L. 94-223 did not change the relative priorities of

wildlife and livestock on the Charles M. Russell National Wildlife Range, it did change the statute under which the Range is to be administered from the Taylor Grazing Act to the National Wildlife Refuge System Administration Act.

V

The judgment of the district court is VACATED to the extent that it is inconsistent with this opinion. The cause is remanded for entry of declaratory judgment that (1) wildlife has priority in access to the forage resources of the Range up to the limits specified in E.O. 7509; (2) beyond those limits, wildlife and livestock have equal priority in access to the resources of the Range; and (3) the Range is to be administered under the Wildlife Refuge Act.

REMANDED.



**NORTH STAR INTERNATIONAL, a
Nevada Corporation,
Plaintiff-Appellant,**

v.

**The ARIZONA CORPORATION
COMMISSION, et al.,
Defendants-Appellees.**

No. 82-5984.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted June 13, 1983.

Decided Oct. 18, 1983.

An action was filed challenging the Arizona statutes which make it a crime to sell securities "within or from" the state unless they are registered with the Arizona Corporation Commission and empower the Commission to deny registration of securities it found to be unfair or inequitable to

investors. The United States District Court for the District of Arizona, Earl H. Carroll, J., dismissed the complaint for failure to state a claim upon which relief could be granted. Appeal was taken. The Court of Appeals, Wallace, Circuit Judge, held that: (1) the complaint failed to state a cause of action upon which relief could be granted in connection with challenges to Arizona statutes on supremacy clause and commerce clause grounds, and (2) allegations that the statutes and rules and regulations promulgated thereunder were unconstitutional because they were vague and uncertain and were applied in an unevenhanded, arbitrary, capricious, and discriminatory manner were properly dismissed because the complaint was vague, conclusory and general and did not set forth any material facts in support of the allegations.

Affirmed.

1. Federal Courts ⇌ 763

Narrow scope of review on appeal from dismissal for failure to state claim upon which relief can be granted does not allow Court of Appeals to reach merits of issues. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.

2. Federal Courts ⇌ 724

Where corporation's claim that Arizona could not validly regulate securities offering from Arizona to residents of other states because Arizona's merit review provision was in fundamental conflict with disclosure provisions of Securities Act and placed impermissible burden on interstate commerce, but corporation did not allege that it intended to offer its securities to residents of other states or that it had applied for registration of those securities, Court of Appeals would not consider validity of Arizona statutes hypothetical situation. Fed.Rules Civ.Proc.Rule 12(b)(6), 28 U.S.C.A.; Securities Act of 1933, § 1 et seq., 15 U.S.C.A. § 77a et seq.; U.S.C.A. Const. Art. 1, § 8, cl. 3; Art. 6, cl. 2; A.R.S. §§ 44-1841, 44-1921, subd. 3.

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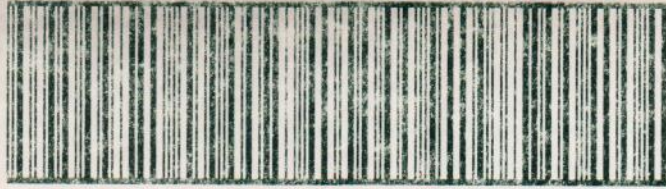
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LETTER

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22203-VA-US

19 NDV





United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

4015 WILSON BOULEVARD
ARLINGTON, VIRGINIA 22203



IN REPLY REFER TO:

July 15, 1994

IN THE MATTER OF	:	Docket No. D 94-34
	:	
DWIGHT HAMMOND	:	Special Use Permit
HAMMOND RANCHES, INC.	:	Haying and Grazing
	:	
	:	50 CFR Part 25
	:	
	:	Appeal Docketed and Ad Hoc Board
	:	of Appeals Appointed

NOTICE

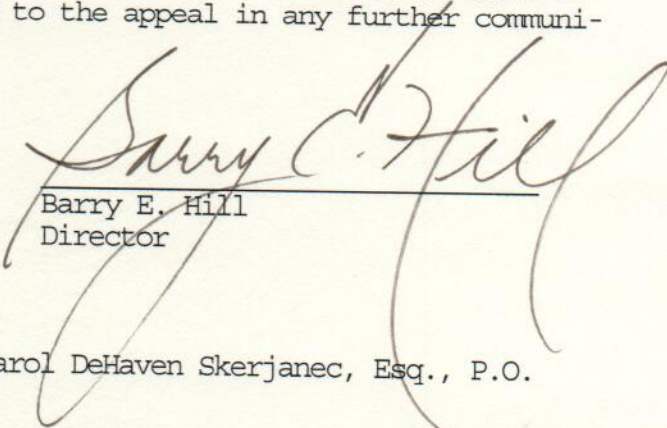
On July 5, 1994, the appeal of the above-named appellant was received in this office, and it has been assigned Docket No. D 94-34.

The appeal is assigned to an Ad Hoc Board of Appeals comprised of:

Kathryn A. Lynn, Chairperson
James L. Byrnes, Member
Bruce A. Johnson, Member

The Ad Hoc Board of Appeals will inform the parties of further procedures in this matter.

All further correspondence and inquiries in this appeal should be addressed to the Chairperson at the above address. Reference should be made to the docket number assigned to the appeal in any further communications to this office.


Barry E. Hill
Director

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Diane K. Hoobler, Attorney, U.S. Department of the Interior, Office
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July 15, 1994

IN THE MATTER OF	:	Docket No. D 94-34
	:	
DWIGHT HAMMOND	:	Special Use Permit
HAMMOND RANCHES, INC.	:	Haying and Grazing
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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS

4015 WILSON BOULEVARD

ARLINGTON, VIRGINIA 22203



IN REPLY REFER TO:

July 19, 1994

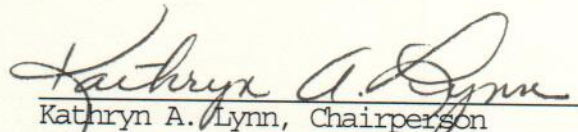
IN THE MATTER OF : Docket No. D 94-34
:
DWIGHT HAMMOND : Special Use Permit
HAMMOND RANCHES, INC. : Haying and Grazing
:
: 50 CFR Part 25
:
: Response to Motion to Dismiss
: Allowed

ORDER

On July 15, 1994, this matter was assigned to an Ad Hoc Board of Appeals for consideration. This proceeding is governed by regulations in 43 CFR Part 4, Subpart G (43 CFR 4.700-4.704).

Also on July 15, 1994, a motion to dismiss was received from the U.S. Fish and Wildlife Service (FWS). The motion shows that it was served on counsel for appellant Dwight Hammond. Appellant is given until August 5, 1994, to respond to the motion.

FWS need not prepare the administrative record in this matter until resolution of the motion to dismiss. If the motion is denied, the Ad Hoc Board will inform the parties of further procedures and timeframes.


Kathryn A. Lynn, Chairperson
Ad Hoc Board of Appeals

Distribution:

William F. Schroeder, Esq., Carol DeHaven Skerjanec, Esq., P.O.
Box 220, Vale, OR 97918

W. Alan Schroeder, Esq., P.O. Box 267, Boise, ID 83701

Marvin L. Plenert, Regional Director, U.S. Department of the
Interior, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland,
OR 97232-4181

Diane K. Hoobler, Attorney, U.S. Department of the Interior, Office
of the Solicitor, Pacific Northwest Region, 500 N.E. Multnomah St.,
Suite 607, Portland, OR 97232

OFFICE OF HEARINGS & APPEALS

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P.O. Box 220
Vale, OR 97918
503/473-3141
W.Alan Schroeder, Esq.
P.O. Box 267
Boise, ID 83701
208/384-1627
Lawyers for appellants.

JUL 25 1994

ji
DIRECTOR'S OFFICE

BEFORE THE DEPARTMENT OF THE INTERIOR

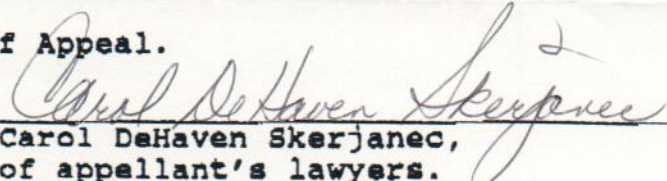
OFFICE OF HEARINGS AND APPEALS

DIRECTOR
4015 Wilson Boulevard
Room 1103 Ballston Tower No. 3
Arlington, VA 22203

In the matter of)	
Dwight Hammond,)	
Hammond Ranches, Inc.)	D 94-34
)	
Appellant,)	
)	
U.S. Fish & Wildlife)	
Service,)	
)	
Respondent.)	

Response to Motion to Dismiss Appeal

Appellant resists the Motion of the Fish & Wildlife Service to dismiss its appeal, dated July 14, 1994, and asserts the jurisdiction of the Office of Hearings and Appeals for the reasons expressed in its Notice of Appeal.



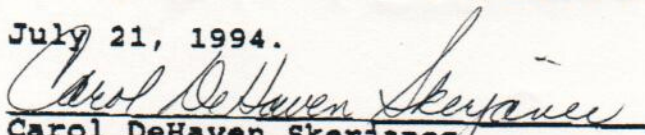
Carol DeHaven Skerjanec,
of appellant's lawyers.

Certificate of Document. Filing and Service

My signature certifies this document as provided by 43 CFR 1.5. The filing required by 43 CFR 4.22(a) is within the grace period allowed by 43 CFR 4.401(a) in that the document was transmitted to the office in which the filing is required

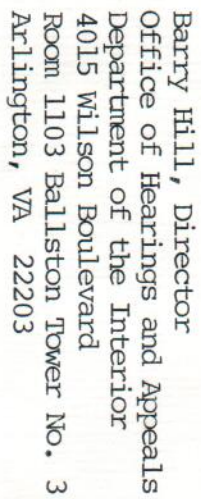
(identified in the caption) before the end of the period in which it was required to be filed, such transmission being by delivery on July 21, 1994 to the United States Postal Service at Vale, OR the original of said document within an envelope with postage prepaid thereon addressed for certified mailing to said office, requesting the return of a receipt for delivery thereof. The attorney for the U.S. Fish & Wildlife Service, and her address is: Diane K. Hoobler, U.S. Dept. of the Interior, Office of the Solicitor, Pacific Northwest Region, 500 NE Multnomah Street, Suite 607, Portland, Oregon 97232. The service required by 43 CFR 22(b) and 4.27(b) has been made as permitted by 43 CFR 4.401(c) and 4.473 by sending a copy of said document to her by delivery on July 21, 1994 to the United States Postal Service at Vale, OR said copy within an envelope with postage prepaid thereon addressed for certified mailing to her address identified within the Motion to which this Response is made, requesting the return of a receipt for delivery thereof.

July 21, 1994.


Carol DeHaven Skerjanec

Wale, Oregon 97914

P 851 782 402



Year	Number of cases
1990	100
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

1995 DEC -8 PM 1:56

FOR THE COUNTY OF HARNEY

TRIAL COURT CLERK

BY [Signature]

HAMMOND RANCHES, INC.,

Plaintiff,

Case No. 95-04-10907-E

vs.

WATER RESOURCES DEPARTMENT, STATE
OF OREGON and WATER RESOURCES
COMMISSION, STATE OF OREGON,

Defendants. *

ORDERS on PARTIES' MOTIONS
FOR SUMMARY JUDGMENT

&

SUMMARY JUDGMENT

INTRODUCTION

The above-entitled matter came before the Court on October 18th, 1995, on the Parties' Motions for Summary Judgment. ORCP 47. Both Parties are seeking summary judgment on the single issue presented.

The Plaintiff Hammond Ranches, Inc., was represented by and through Ben Lombard, Jr., of Counsel. The Defendants, the Water Resources Department and the Water Resources Commission of the State of Oregon, were represented by and through Denise G. Fjordbeck, Assistant Attorney General for the State of Oregon.

PETITION FOR REVIEW

On April 5th, 1995, Plaintiff Hammond Ranches, Inc., filed its Petition for Judicial Review. The review arises under ORS 183.484. In summary, the Petition contends:

That on September 28th, 1987, the United States Bureau of Land Management filed an Application with the Defendants to store unappropriated water for domestic livestock and wildlife from the MNWR East Side Canal, a tributary of the Donner and Blitzen River, within what is known as "Bird Waterhole #09-0879", said Bird Waterhole being situated in the Northwest quarter of Section 23, Township 30 South, Range 31 East, Willamette Meridian.

That the said Bird Waterhole provided water for the livestock of the Plaintiff.

That the Defendants assigned # -R69366 to the said Application.

That on September 22nd, 1989, the said United States Bureau of Land Management conveyed lands near the said Bird Waterhole including all rights, privileges, immunities, and appurtenances associated with the said lands.

That access to and use of the said Bird Waterhole was conveyed as a part of the said conveyance of lands.

CL: A 1145
12 8 27

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF HARNEY

*Filed
12-8-95*

HAMMOND RANCHES, INC.,

Plaintiff,

Case No. 95-04-10907-E

vs.

WATER RESOURCES DEPARTMENT, STATE
OF OREGON and WATER RESOURCES
COMMISSION, STATE OF OREGON,

Defendants. *

ORDERS on PARTIES' MOTIONS
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That on September 28th, 1987, the United States Bureau of Land Management filed an Application with the Defendants to store unappropriated water for domestic livestock and wildlife from the MNWR East Side Canal, a tributary of the Donner and Blitzen River, within what is known as "Bird Waterhole #09-0879", said Bird Waterhole being situated in the Northwest quarter of Section 23, Township 30 South, Range 31 East, Willamette Meridian.

That the said Bird Waterhole provided water for the livestock of the Plaintiff.

That the Defendants assigned # -R69366 to the said Application.

That on September 22nd, 1989, the said United States Bureau of Land Management conveyed lands near the said Bird Waterhole including all rights, privileges, immunities, and appurtenances associated with the said lands.

That access to and use of the said Bird Waterhole was conveyed as a part of the said conveyance of lands.

1 That Defendants concluded in its Satisfactory Report of Technical Review of the said
2 Application on November 14th, 1994, that the water was available in sufficient amount and
3 during periods which would reasonably support the proposed use and reserved for determination
4 whether the proposed water use impaired or was detrimental to the public interests under
5 standards set out in ORS 537.170(5) and OAR 690-11-195.

6 That Plaintiff filed its Assignment of rights and supporting materials in Application #
7 R69366 with the Defendant Water Resources Department on December 6th, 1994.

8 That on February 6th, 1995, the Defendant Water Resources Department filed its Order
9 permitting withdrawal of the said Application by the United States Bureau of Land Management,
10 which Order has adversely affected Plaintiff.

11 Plaintiff seeks reversal of the said Order of the Defendant Water Resources Department
12 and seeks its reasonable attorney fees, costs, and disbursements from the Defendants.
13
14

15 What is not stated in the said Petition for Review, but is pertinent in understanding the
16 significance of being able to claim the said Application, is that the United States Fish and
17 Wildlife Service [an entity which is not a party in these proceedings, just as the United States
18 Bureau of Land Management is not a party] intervened and asserted jurisdiction over the land on
19 which the said Bird Waterhole is located. This in turn caused the United States Bureau of Land
20 Management to exit the entire matter by withdrawing the said Application. This led to the
21 Defendant Water Resources Department to enter the said February 6th, 1995, Order and, in
22 essence, withdraw from the matter. The United States Fish and Wildlife Service then
23 subsequently cut off Plaintiff's use of the said Bird Waterhole by fencing off the said Bird
24 Waterhole.
25
26

27 Although it is obvious that many questions, both legal and factual, arise in the scenario
28 presented, the issue to be decided under the Parties' Motions for Summary Judgment is narrow in
29 scope.
30
31

32 *ISSUE*

33

34 Should the Defendant Water Resources Department have allowed and ordered the
35 withdrawal of Application # R-69366? and/or Did substantial evidence exist in Application
36 File #R-69366 which would permit a reasonable person to order the withdrawal of Application
37 #R-69366?
38

39 *SUMMARY OF DECISION*

40

41 No.
42
43

FINDINGS AND CONCLUSIONS OF FACT

I. FINDINGS AND CONCLUSIONS RELATED TO MATERIALS CONTAINED WITHIN THE STATE DEPARTMENT OF WATER RESOURCES FILE #R-69366 AND THUS KNOWN TO THE DEFENDANT WATER RESOURCES DEPARTMENT AND DEFENDANT WATER RESOURCES COMMISSION

1. On September 28th, 1987, the Burns District Office of the Federal Bureau of Land Management filed its Application to construct (it was in actuality a **pre-existing pond**) Bird Waterhole Reservoir (09-0849) for the storage of waters of Donner Und Blitzen River, a tributary of Malheur Lake, for the **use of livestock and wildlife**. (emphasis supplied) See WRD Designation of Record.¹

a. The Oregon Water Resources Department (a Defendant in this case) assigned the designation "R-69366" As the Application Number. See WRD1.

b. Application fees in the sum of \$300 was paid by the Bureau of Land Management on December 9th, 1987, and the sum of \$10 was paid by Plaintiff Hammond Ranches Inc. on the Assignment of Application on December 12th, 1994. Fees in the sum of \$100 to the Bureau of Land Management and \$10 to Plaintiff Hammond Ranches were returned on March 9th, 1995. See WRD1, WRD 2

c. The location of Bird Waterhole Reservoir was in the Northwest quarter (1/4) of the Southwest quarter (1/4) of Section 23, Township 30 South, Range 31 East, Willamette Meridian.. See WRD3, WRD4. The location was further delineated as being 1,240 feet South and 1,040 feet East of the quarter corner common to Sections 22 and 23. See WRD14. [Attachment A to Defendants' Motion for Summary Judgment shows on a breakdown of Section 23 the lands covered by the Plaintiff's Land Patent and the Subject Property.]

2. A Draft Permit to construct the Bird Waterhole Reservoir was prepared by the Defendant State Water Resources Department for issuance to the Bureau of Land Management. See WRD4, WRD6.

a. Storage was set at not more than 1.5 acre-feet with a maximum coverage of 0.4

¹ Defendants have filed the entire contents of the file of the Water Resources Department regarding Application No. R69366, the Application at issue in these proceedings. The contents consist of copies of sixty-two (62) unnumbered pages. This Court has for the sake of reference numbered the said pages in the lower right-hand corner of each page. References to the Water Resources Department file copy will simply be "WRD" followed by the number of the page assigned by the Court. As example would be "WRD1" which would mean the reference can be found in the Designation of Record of the Water Resources Department file at Page 1.

1 area and a maximum depth of 5.0 feet.

2
3 b. Construction work was to be completed on the Reservoir on or before October
4 1st, 1991.

5
6 3. On November 14th, 1994, a Technical Review was conducted by the Defendant Water
7 Resources Department Application No. R-69366. See WRD11.

8
9 a. The Defendant Water Resources Department showed the property on which the
10 Bird Waterhole Reservoir had been constructed to be owned by the United States Government
11 and under the control of the Bureau of Land Management.

12
13 b. The use continued to be for wildlife and livestock. See WRD11 (flip side).

14
15 c. Water availability for appropriation for storage was November 1st through
16 March 1st. See WRD12.

17
18 d. The only problem noted on the technical review was that the map of the
19 proposed place of water use needed a "CWRE stamp". See WRD11. "CWRE" stands for
20 "Certified Water Rights Examiner".

21
22 4. The Hines Office of the Bureau of Land Management was notified by letter dated
23 November 14th, 1994, of the results of the technical review was satisfactory and as summarized
24 above and of the need for the CWRE approval and a written oath that the representations
25 regarding the proposed water use was true and correct. See WRD15.

26
27 a. A second letter (appears to be form letter) bearing the date of November 14th,
28 1994, was also sent to the Bureau of Land Management regarding the said technical review. See
29 WRD16.

30
31 (1) Although the Bird Waterhole Reservoir had already been constructed
32 and was in use, this second letter stated that the technical review was only the first step in the
33 review process and "does not authorize you to construct a water system or to use the public
34 waters." It further stated that the second step would be an opportunity for other water users and
35 the general public to object through 5:00PM on January 24th, 1995.

36
37 (2) Attached to this second letter were the "Proposed Permit Conditions"
38 which would apply to the water use under Application No. R-69366. See WRD17.

39
40 b. The Defendant Water Resources Department also issued a Satisfactory Report
41 of Technical Review for Water Use Permit. See WRD18.

42
43 (1) The particulars remained the same as per Section 2. above except the

1 the flow was for 4.5 acre-feet (1.5 acre-feet x 3 fills per year).

2
3 5. A letter dated November 22nd, 1994, was sent to the Defendant Water Resources
4 Department from John Doebel of the Portland Office of the Fish and Wildlife Service advising
5 the Water Resources Department that the pre-existing pond known as Bird Waterhole was upon
6 lands subject to the jurisdiction of the United States Fish and Wildlife Service as a part of the
7 Malheur National Wildlife Refuge. Mr. Doebel asserted that the Service was entitled to hold all
8 water rights on the said Refuge and requested **withdrawal** of Application No. R-69366. See
9 WRD19.

10
11 a. Attached to the said November 22nd, 1994, letter was a copy of Public Land
12 Order 1511 dated September 24th, 1957. See WRD20 through 22. The said Public Land Order
13 includes the NW1/4SW1/4 of Sec. 23, T.30 S., R. 31 E., the area upon which the said Bird
14 Waterhole Reservoir is located. See WRD21 (left-hand column, thirteen lines from lower left
15 corner).

16
17 6. On December 12th, 1994, Plaintiff Hammond Ranches, Inc., paid a \$10.00 assignment
18 fee on Application No. R-69366 (See WRD23) and filed a document dated December 6th, 1994,
19 entitled "Assignment" with Defendant State Water Resources Department. See WCD24.

20
21 a. The document entitled "Assignment" was signed by Dwight Hammond on
22 behalf of Hammond Ranches, Inc., and had two (2) enclosures: 1) a Declaration and
23 Recommendation of Watermaster, District #10; and 2) a "Letter dated Dec 6, 1994 from the
24 Assignor to you." See WCD24.

25
26 (1) The Declaration and Recommendation of the Watermaster, District
27 #10, William H. Beal, included and thus gave notice to the Defendant Water Resources
28 Department of the following information:

29
30 "I have personal knowledge of the existence of the Bird Waterhole, the subject File R
31 69366, and had such knowledge for many years prior to the date of the application. Until
32 August 3, 1994 the Bird Waterhole was accessible for the stock watering of domestic
33 livestock grazing the adjacent lands to the north and east. During that time the boundary
34 fence of the Malheur National Wildlife Refuge was in place west of the Bird Waterhole.
35 "Although unfenced, the legal boundary of the Malheur National Wildlife Refuge is
36 approximately 1070 feet north of the fence constructed on August 3, 1994 by the claimed
37 authority of the Malheur National Wildlife Refuge administration and is approximately
38 1240 feet north of the Bird Waterhole.

39 "At the time of the application the land east of the Bird Waterhole was public land within
40 the jurisdiction of the applicant, the Bureau of Land Management and the Fish and
41 Wildlife Service. The public land was exclusively grazed by livestock belonging to
42 Hammond Ranches, Inc. (see attached Grazing Permits During the pendency of this
43 application public land was conveyed by the United States of America to Hammond

1 Ranches, Inc., with all appurtenances [emphasis supplied] (See attached patent.) In the
2 spring of 1994 conversations occurred between representatives of the Oregon Water
3 Resources Department and the Malheur National Wildlife Refuge pertaining to the
4 current validity of water rights within the Refuge (see attached letter). At that time the
5 Harney County Judge and I examined the status of the Bird Waterhole and concluded
6 that access and use was an appurtenance of the lands conveyed to and now owned
7 by Hammond Ranches, Inc. (see attached letter)

8 "I recommend that the Assignment of the Application which is the subject of File R
9 79377, to Hammond Ranches, Inc. should be allowed." See WRD25 and WRD26.

11 (a) See WRD27 and WRD28 for copies of the said Grazing
12 Permits

14 (b) See WRD31, 32, and 33 for copy of Land Patent from the
15 United States of America to Plaintiff Hammond Ranches, Inc., signed on September 22nd, 1989.
16 The said Land Patent includes in part the following:

18 A conveyance of the following property in Section 23, T. 30 S., R. 31 E., in which
19 Bird Waterhole is located: "W1/2NE1/4, SE1/4NE1/4, NW1/4, E1/2SW1/4 and
20 SE1/4" See WRD31. The Bird Waterhole is located just inside the East line of
21 the W1/2 of the S/W1/4 of Section 23. See WRD14. Plaintiff Hammond
22 Ranches thus acquired from the United States government the quarter section to
23 the North of Bird Waterhole and the East one-half of the quarter section within a
24 few feet to the East of the West quarter section on which the Bird Waterhole is
25 located. See WRD14.

27 The conveyance included "all the rights, privileges, immunities, and
28 appurtenances, of whatsoever nature, thereunto belonging, unto the said
29 Hammond Ranches, Inc.***" [emphasis supplied] See WRD31.

31 (c) A copy of the April 25th, 1994, letter from Wm. H. Beal to the
32 Malheur National Wildlife Refuge refers to "copies of a few pages of a refuge report put together
33 in September of 1962." [the said few pages of the said 1962 refuge report is not part of the
34 Defendant Water Resources Department file], which apparently refers to an "agreement with the
35 BLM *** still valid on the lands just as a water right transfers with the land". Mr. Beal advised
36 Defendant Water Resources Department that it might not be "familiar with this agreement and I
37 want to bring it to your attention to eliminate any problems with your people." [A copy of the
38 noted "agreement with BLM" is not part of the Water Resources Department's Designation of
39 Record]. See WRD29.

41 (d) A copy of the December 6th, 1994, letter from Michael T.
42 Green (Joe Petzold signed on behalf of Mr. Green) acknowledges the above-noted letter dated
43 November 22nd, 1994, written by the U.S. Fish and Wildlife Service to Defendant Water

Resources Department regarding the Application involved in this case and further states:

"The application was made by the Bureau of Land Management (BLM) on September 27, 1987. The BLM conveyed to Hammond Ranches, Inc., certain lands on September 22, 1989, by a patent of that date which is enclosed. **Lands conveyed by this patent were served by the Bird Waterhole which is the subject of this application and, therefore, any rights, title, and interest in this facility and application, if any, has been conveyed to Hammond Ranches, Inc., which is now the real party in interest.**" See WRD30.

7. By letter dated December 13th, 1994, and received by Defendant Water Resources on December 16th, 1994, Michael T. Green, District Manager of the Hines BLM Office wrote:

"The Bureau of Land Management is no longer interested in pursuing the above application made to your department. Therefore, by this letter, we formally withdraw our application Number R-69366." A copy of this letter was also sent by Mr. Green to the Malheur National Wildlife Refuge.

a. No explanation is given for the apparent change of position by the Hines BLM Office from its December 6th, 1994, letter which stated that any interest in the said Application had been **"conveyed to Hammond Ranches, Inc."** [emphasis supplied]. See WRD34.

8. By letter dated December 20th, 1994, from Thomas E. Shook, Water Right Specialist, for Defendant Water Resources Department to Plaintiff Hammond Ranches, Inc., Mr. Shook advised:

"We have received your request to have our records changed to show you as holder of application R-69366. Your check in the amount of \$10 was also received.

"Michael T. Green, District Manager for the BLM at Hines, has sent a letter asking us to withdraw their application. **We will honor that request unless the enclosed assignment form is signed by Mr. Green and he tells us to ignore his letter dated December 13, 1994.** (emphasis supplied)

"The information you submitted is enclosed." See WRD35 and WRD36.

9. By letter dated December 27th, 1994, Susan A. Hammond, on behalf of Plaintiff Hammond Ranches, Inc., responded to the December 20th, 1994, Water Resources Department letter and advised that Plaintiff did not feel that further correspondence with Mr. Green was necessary and that it was Plaintiff's view that ******you may not withdraw the application of the Bureau of Land Management except in favor of Hammond Ranches, Inc.**" Plaintiff further stated that if the Defendant Water Resources Department was unwilling to do so, it should ******** express it as a final order." See WRD37. The Assignment accompanying the

1 Department's December 20th, 1994, letter was apparently returned to the Department. See
2 WRD38.
3

4 10. By follow up letter dated January 9th, 1995, Wm. F. Schroeder, acting Counsel for
5 Plaintiff that time, sent a four page letter [See WRD39,40,41 and 42] amplifying the legal
6 positions [and in particular reviewing the provisions of ORS Chapter 537 pertaining to
7 Appropriation of In-Stream Water Rights Under 1909 Act (ORS 537.110 through ORS 537.330)]
8 being taken by the Plaintiff with respect to the status of Application #R-69366.
9

10 a. A telephone conversation occurred on January 23rd, 1995, between Thomas E.
11 Shook of the Defendant Water Resources Department and Michael T. Green of the Federal
12 Bureau of Land Management obviously pertaining to the Schroeder January 9th, 1995, letter, but
13 the only notation made on the letter is "THE SAID BLM IS NOT WILLING TO ASSIGN
14 APPLICATION. HE WILL SEND ANOTHER LETTER."
15

16 11. By letter dated January 13th, 1995, Carol D. Skerjanec, Counsel associated with the
17 said Wm. F. Schroeder, enclosed a "Certification" from Plaintiff and a Supplemental Water
18 Rights Application Map certified by Charles F. Palmer, CWRE. See WRD42, 43 and 44. These
19 filings were intended to address the requirements arising upon the Technical Review noted above
20 in section 4. of these Findings and addressed by Defendant Water Resources Department in their
21 November 14th, 1994, letter to the Federal Bureau of Land Management. See WRD15.
22

23 12. The Designation of Record contains an Objection WaterWatch of Oregon to the
24 Technical Report of Application #R-69366, as well as to thirty-nine (39) other Applications
25 originally being filed by the Federal Bureau of Land Management. See WRD45&46. [This
26 Objection assumes no significance with respect the the issue involving this case.]
27

28 13. By letter dated January 24th, 1995, Michael T. Green, District Manager for the Hines
29 Office of the Federal Bureau of Land Management, to Thomas T. Shook, Water Right Specialist,
30 for the Defendant Water Resources Department wrote (apparently in response to the telephone
31 conversation noted in section 10. of these Findings):as follows:
32

33 "On December 20, 1994, you wrote to Hammond Ranches, Inc., concerning its
34 request that the Department consider the Ranch as the holder of application R-
35 69366. You indicated that this request would be honored if Bureau of land
36 Management (BLM) executed an assignment of its application R-69366 and
37 advised the Board to ignore its letter of December 13, 1994, which formally
38 withdrew that application.
39

40 "In order to avoid any uncertainty concerning this matter, the BLM wishes to
41 advise you that it affirms its earlier request to withdraw its application R-
42 69366 and that if requested by the Hammond Ranch to make an assignment
43 of the application will decline to do so." See WRD47.

1 a. Copies of this correspondence were sent to Hammond Ranches, Inc., and to
2 William F. Schroeder.
3

4 14. By letter dated January 27th, 1995, to the Water Resources Department, and
5 specifically to Mr. Shook, Mr. Schroeder reemphasized on behalf of the Plaintiff Hammond
6 Ranches, Inc., that Plaintiff's position was that "**** it is already invested with the interest
7 involved." See WRD48.
8

9 a. Mr. Schroeder also cautioned the Defendant Water Resources Department
10 against becoming involved if the difficulties involving the Plaintiff and the Federal agencies.
11
12

13 15. The Defendant Water Resources Department, by and through its Director, entered its
14 February 6th, 1995, Order allowing the withdrawal of Application R-69366 by the Bureau of
15 Land Management and "ORDERED that the applications are of no further force or effect."
16 See WRD54
17

18 a. The Bureau of Land Management was advised and forwarded such order by
19 letter dated February 28th, 1995. See WRD51&52.
20

21 b. The Plaintiff Hammond Ranches, Inc., was advised by letter dated March 7th,
22 1995, of the said Order and that their assignment fee would be subsequently returned to it. See
23 WRD60. The Plaintiff Hammond Ranches, Inc., and their Counsel, William F. Schroeder, were
24 advised by certified letters dated March 24th, 1995. See WRD55&56.
25

26 c. The assignment fee of \$10 was returned by the Defendant Water Resources
27 Department, apparently through separate correspondence on March 13th, 1995. See
28 WRD50,55&61..
29

30 II. FINDINGS AND CONCLUSIONS RELATING TO ADDITIONAL MATERIALS 31 SUBMITTED ON SUMMARY JUDGMENT MOTIONS² 32

33 1. A Cooperative Agreement was entered into during May/June of 1964 between the
34 Bureau of Land Management and J. F. & Fred Witzel and Dell Witzel for the construction of
35 range improvements including Bird Waterhole, the Application for which is the subject of this

² Some materials attached have been attached to the Parties' Motions for Summary Judgment which are duplicates of those materials found in Defendants' File #R-69366. Materials delineated in this section are materials which are **not** found in the Defendants' file. A differentiation has been made in order to be able to properly assess the "substantial evidence" standard applicable in judicial review of an administrative order.

1 litigation. See Exhibit A to Plaintiff's Motion for Summary Judgment filed October 3rd, 1995.³

2
3 a. Exhibit B shows that the Bird Waterhole construction was actually completed
4 on October 17th, 1964, and noted on BLM maps on December 6th, 1964. See Exhibit E,
5 Plaintiff's Motion for Summary Judgment.
6

7 b. A Bureau of Land Management Project Inspection Report of Bird Reservoir
8 dated January 15th, 1965, includes in part the following information: "This will be used for
9 livestock water on the Baca lake seeding - because of the means or source this hole should
10 have continuous water for yearlong use if needed." (emphasis supplied) See Exhibit B,
11 Plaintiff's Motion for Summary Judgment. See Exhibit C, Plaintiff's Motion for Summary
12 Judgment.
13

14 c. It has not been shown, but can be inferred, that the Baca Lake seeding must
15 include lands traded to the Plaintiff. If so, it would appear that Bird Reservoir must have been
16 associated with the watering of livestock for almost thirty (30) years.
17

18 2. For some unexplained reason, a copy of the Application for a permit to construct Bird
19 Waterhole date stamped by the Defendant on September 28th, 1987, does not appear in
20 Defendant's Designation of Record (that is, the Defendants' File #R-69366) but does appear
21 attached to Plaintiff's Motion for Summary Judgment as Exhibit D. The document was prepared
22 by the Bureau of Land Management in Burns and filed with the Water Resources Department.
23 The BLM's Application shows in part that "(T)he impounded water will be used for livestock -
24 wildlife."
25
26
27

28 PRINCIPLES/RULES OF LAW

29
30 1. ORS 183.484(4)(c) and (5) provide that:
31

32 "(4) *** The court shall set aside or remand the order if it finds that the order is not
33 supported by substantial evidence in the record. Substantial evidence exists to support a finding
34 of fact when the record, viewed as a whole, would permit a reasonable person to make that
35 finding."
36

37 2. ORS 537.120 provides in pertinent part that "****all waters within the state may be

³ Exhibit A appears to be missing a copy of the second page of the said Cooperative Agreement covering item #s 4 through 6. We thus do not appear to have the entire document. Item 4 (See Exhibit A, Page 2 of 4) is referred to as a special condition but is not included within the materials comprising Exhibit A.

1 appropriated for beneficial use, as provided in the Water Rights Act and not otherwise; but
2 nothing contained in the Water Rights Act shall be so construed as to take away or impair
3 the vested right of any person to any water or to the use of any water." (emphasis supplied)
4

5 3. ORS 537.140 and OAR 690-11-020 cover what must be included within an application
6 for a permit to appropriate water. Once those procedural requirements are met, *****the Water**
7 **Resources Commission shall approve all applications made in proper form which**
8 **contemplate the application of water to a beneficial use, unless the proposed use conflicts**
9 **with existing rights.**" (emphasis supplied) ORS 537.160(1). ORS 327.170(1) further provides
10 that **"(I)f, in the judgment of the Water Resources Commission, the proposed use may**
11 **prejudicially affect the public interest *** the commission shall hold a public hearing on**
12 **the application on property notice to the applicant and to anyone objecting to the proposed**
13 **use."** (emphasis supplied)
14

15 4. "The approval of an application referred to in ORS 537.140 *** shall be set forth in
16 a water right permit issued by the Water Resources Commission." (emphasis supplied) ORS
17 537.211(1). "If an application referred to in ORS 537.140 *** is rejected, the commission
18 shall enter a written order setting forth the reasons for the rejection." (emphasis supplied)
19 ORS 537.211(2).
20

21 5. "Any permit or license to appropriate water may be assigned, subject the conditions
22 of the permit, **but no such assignment shall be binding except upon the parties to the**
23 **assignment, unless filed for record in the Water Resources Department.**" (emphasis
24 supplied) ORS 537.220.
25

26 6. OAR 690-11-200(7) states:
27

28 "Assignment or change of ownership of permit, groundwater registration or application:
29

30 (a) When a change of interest or ownership occurs in lands covered by a permit,
31 groundwater registration or pending application the record owner may request, in writing the
32 Director to record the assignment to the new owner.

33 (b) Should the record holder of the permit, groundwater registration or application be
34 unavailable, the current owner of the property involved may furnish proof of such
35 ownership to the Commission to obtain ownership of the permit, registration or application. The
36 Department shall also record a change in ownership to an heir or devisee under a will upon
37 receiving proof of death of the record holder, or to a trustee upon receiving proof of a transfer to
38 trust by the record holder. Proof of ownership of the involved lands shall include, but not be
39 limited to one or more of the following documents:

40 (A) A copy of the deed to the land;

41 (B) A copy of a land sales contract;

42 (C) A court order or decree; or

43 (D) Documentation of survivorship of property held jointly.

(emphasis supplied)

1 a. OAR 690-11-200(8) includes in part:
2
3

4 "All reviews and any determinations made in accordance with this section shall be
5 made part of the application file and shall contain sufficient detail to allow the
6 Director to determine how to proceed with the processing of the application,
7 in accordance with OAR 690-11-155 to 690-11-197."

8 b. OAR 690-11-155 (Public Notice and Comments) and 690-11-197 (Standards
9 for Public Interest Review) do not give guidance or assist with the questions presented in this
10 case.
11

12 7. Some general case law involving water rights associated with real property, which
13 may or may not be applicable depending upon what a fact finder determines with respect to the
14 use of Bird Waterhole for watering domestic livestock as related to plaintiff's land patent from
15 the Federal government, includes:
16

17 a. To appropriate with respect to water rights means to make water flowing on the
18 public domain one's own. See Black's Law Dictionary, Fourth Edition, Pg. 131. An
19 appurtenance is simply that which belongs to something else. A thing is generally deemed to be
20 incidental or appurtenant to land when it by right is used with the land for its benefit. See
21 Black's Law Dictionary, Fourth Edition, Pg. 133. "An easement is a privilege without profit
22 which the owner of one tenement has in an adjoining tenement, by which the servient owner is
23 obliged to suffer or not to do something on his own land for the advantage of the dominant
24 estate. Easements in watercourses are exclusively affirmative, that is, the exercise of the
25 easement obliges the servient owner to suffer something on his own land, which would be a
26 cause of action if the right did not exist. Such rights may be acquired by a contract, express or
27 implied, or by prescription, which presupposes a contract or grant from the long-continued
28 exercise of the right." See Gould on Waters, Contracts and Covenants, sec. 299, pg. 499.
29

30 b. The right of an owner of land to take or divert water from the land of another
31 may constitute an easement appurtenant. Although such an easement is a separate estate and not
32 unavoidably appurtenant to lands, an easement is normally appurtenant to the dominant estate.
33 Talbot vs. Joseph, 79 Or 308, 311-312, 155 P 184 (1916).
34

35 c. "If a water right is in its nature an appropriate and useful adjunct of the land
36 conveyed, having in view the intention of the grantee as to its use, *** it should be held to be an
37 easement appurtenant to the land ***." See 78 AmJur2d, Waters, sec. 233.
38

39 (1) A water right may pass with land as an appurtenance thereto, or as a
40 parcel thereof, but not necessarily so. Whether a water right passes as an appurtenance involves
41 two questions:
42

- 43 1) Whether the water-right is an appurtenance; and
2) Whether, being such, it was intended to pass.

Both questions are questions of fact. Dill vs. Killip, 174 Or 94, 98, 147 P2d 896 (1944).

(2) Whether the water-right is an appurtenance, depends on whether it is an incident, necessary to the enjoyment of the land. Dill vs. Killip, supra at 98.

(3) To create an easement by implication from the previous use of quasi dominant and quasi servient parts of a grantor's land it is generally held that the previous use must have been apparent, permanent and important for the enjoyment of the conveyed quasi-dominant parcel. These are not the only factors of importance but do constitute aids in drawing inferences of intention. Dressler et al vs. Issacs et al, 217 Or 586, 597-598, 343 P2d 714 (1959).

d. A private landowner may acquire the right to use water for livestock within Federal public domain by appropriation. To constitute an appropriation there must co-exist the intent to take accompanied by some open, physical demonstration of the intent coupled with some valuable use (such as, for example, watering livestock directly from the source). Hunter vs. United States, 388 F2d 148, 153 (1967 - 9th Cir).

DISCUSSION

There does not appear to be any specific statutory provision or rule which provides direction on how applications are to be **withdrawn**. There is a statute (see ORS 537.220 quoted above) and rule (see OAR 690-11-200 quoted above) dealing with an **assignment** of an application.. An assignment is not binding upon the Defendant Water Resources Department unless it is filed with the Defendant. ORS 537.220. The Defendant did file Plaintiff's assignment on December 12th, 1994. Once an assignment is filed, as occurred in this case, there does not appear to be any statutory or rule provisions regarding the return of filed assignment, such as was ordered in this case by the Defendant on February 6th, 1995.

While OAR 690-11-200(7) clearly encompasses action by the **record owner** (in this case, the Bureau of Land Management), the Rule clearly recognizes that **proof of ownership** of an **assignment** may be given to the Defendant Department by other means (such as occurred in this case). The Director of the Defendant Department must then "**determine how to proceed with the processing of the application ******". OAR 690-11-200(8).

One aspect is, however, abundantly clear: once the assignment is filed by the Defendant Department, it is the **Director and not the record holder** who will determine how the assignment aspect will be handled. In this case, it appears that rather than exercising that authority the Director of the Defendant Department, through the Department's employees, simply left that determination to the record holder.

The Defendants, the Department and Commission, cannot construe the processing of Applications under Appropriation Under 1909 Act for In-Stream Water Rights in any manner

1 which will "****take away or impair the vested right of any person to any water or to the
2 use of any water." ORS 537.120. It is apparent that if the Plaintiff possesses a right to the use of
3 water for livestock from Bird Waterhole as an appurtenance to the real property acquired by
4 Plaintiff from the Federal Government by land patent (See WRD31.32 and 33), the action of the
5 Defendants would in fact impair the right to the use of such water. At this point, the Plaintiff's
6 right, if any, to the use of such water has not been resolved. There is ample evidence in the
7 Defendant Department's file in support of Plaintiff's assertion of the ownership interest. The
8 record holder of the application, the BLM, supplied nothing to the Director to assist the Director
9 in making a determination of what to do with the assignment which had been filed with the
10 Defendant Department. In fact, the BLM as late as December 6th, 1994, stated by letter to the
11 Defendant Department that any interest in the Application involved in this case had been
12 "conveyed to Hammond Ranches, Inc." (See Finding of Fact #7)

13
14 It should have been apparent to the Director of the Defendant Department that the
15 Defendant Department would not be able to internally resolve the controversy regarding the
16 ownership of the Application involved in this case. It is just as apparent that Plaintiff's right, if
17 any, to the use of such water associated with the Application **will not be determined or**
18 **resolved in this proceeding by this Court.** The only question before this Court involves
19 whether the Defendant State Water Resources Department should have allowed the withdrawal
20 of Application #R-69366.

21
22 It is also important at this point to emphasize that Plaintiff's right, if any, to the use of
23 water at the Bird Waterhole **will also not be determined or resolved, as just noted, by the**
24 **Defendant State Water Resources Department, Defendant State Water Resources**
25 **Commission, the United States Bureau of Land Management, or the United States Fish and**
26 **Wildlife Service, or any of the employees and/or agents of those entities.**

27
28 What further notice and/or information could have been supplied to the Defendant Water
29 Resources Department that Plaintiff Hammond Ranches, Inc., claimed an interest in Application
30 #R-69366 because of the claim of a vested right to the use of waters in the Bird Waterhole is
31 indeed difficult to imagine.

32
33 We do not have the benefit of what legal basis and/or rationale served as a basis for the
34 decisions made by the Director of the Defendant State Water Resources Department in allowing
35 by Order the withdrawal of Application #R-69366. We only have the one line Order of February
36 6th, 1995.

37
38 In like fashion, we do not know what the rationale, reason(s), or basis that the personnel
39 of the Federal Bureau of Land Management might have had during December of 1994 in
40 reversing the position of the Bureau so rapidly on who had the right to determine what should be

1 done about Application #R-69366.⁴ Again however, while the information might be of interest,
2 it is not necessary for a determination of the narrow question presented by this case.
3

4 In like fashion, we do not know what the rationale, reason(s), or basis for any of the
5 actions taken by the Federal Fish and Wildlife Service might have been for the actions taken by
6 that Service other than perhaps the assertion that the Service is the owner and thus will make all
7 determinations regarding Bird Waterhole.. Nor do we know what may have occurred during
8 conversations taking place between personnel and/or agents of the State Water Resources
9 Department, the Federal Bureau of Land Management and the Federal Fish and Wildlife Service
10 before Application #R-69366 was allowed to be withdrawn. Again however, that information is
11 simply not necessary for a determination of the issue presented in this case. Mr. Schroeder, in
12 his letter of January 9th, 1995, to the Defendant Department attempted to point out this one
13 essential point, that is, that it was not up to the Defendant Department to be making some sort of
14 ownership decision. It is noted that there was obviously some sort of discussion arising from Mr.
15 Schroeder's letter on January 23rd, 1995, between Thomas E. Shook of the State Water
16 Resources Department and Michael T. Green of the Federal Bureau of Land Management. It
17 would have been difficult for any of those involved to have missed what Mr. Schroeder was
18 advising; that is: **the matter is out of your hands -- let those who will eventually have to**
19 **obtain the necessary answer pursue the task of doing so.** However, neither the State nor the
20 Federal Governmental officials involved listened, or if they did listen heeded the advice, and
21 thus the matter ends up with this Court simply reiterating once again in a more binding manner to
22 the Defendants: **in examining the Defendant Department's file the Director did not have**
23 **sufficient evidence to conclude that Plaintiff had no legal interest in the Application**
24 **regarding use of the waters of Bird Reservoir -- the Director, just as this Court, will have**
25 **to let those who will eventually have to obtain the necessary answer pursue the task of**
26 **doing so -- and while those entities are doing so the Defendants must return to the status**
27 **quo at the time before Application #R-69366 was withdrawn. That is, proper resolution of**
28 **this matter results in the Defendant Department's Order allowing withdrawal of**
29 **Application #R-69366 to have no effect.**
30

31 The Defendants appear to argue in their Motion/Memorandum for Summary Judgment
32 that rights to water do not arise except by ORS Chapter 537 and applicable Administrative Rule.
33 It may be that the Defendants are simply emphasizing the fact that the administrative process
34 involving Bird Waterhole was not yet completed, but if this be the argument of the Defendants, it

⁴ It is noted that the file of this case contains a letter dated January 10th, 1995, from William F. Schroeder, Counsel for Plaintiff at the time, to the Bureau of Land Management Director in Hines concerning Plaintiff's position and some background with respect to names, contacts, actions and positions of the Bureau's Office in Burns. It does not appear that a copy of this communication went to the Defendants nor does a copy of the document appear in Defendants' file #R-69366. See Affidavit and attached Letter of Wm. F. Schroeder filed in this case on October 3rd, 1995.

1 is simply incorrect. Prior appropriation in conformance with statutory provisions does not defeat
2 rights as between grantors and grantees or successors in interest. See as an example, the cite by
3 Plaintiff of Jewell vs. Kroe, 268 Or 103, 107, 517 P2d 657, 518 P1d 1305 (1974).
4

5 During oral argument the Defendants also suggested that OAR 690-11-05 pertaining to
6 "Incomplete Applications" was a proper basis for return of the Bird Waterhole Application in
7 this case. Upon review of all of the materials involved, it is apparent that the Defendant Water
8 Resources Department did not use this Rule as a basis for its decision nor would the use of the
9 Rule be justified in any event upon view of the Department's File #R-69366.
10

11 Although some general principles of law involving water right appurtenances, such notes
12 are not included for the purpose of making any sort of determination as to the status of Plaintiff's
13 claim, but rather to simply show the general state of the law, which knowledge can and should be
14 inferred to Defendants in handling matters involving applications such as the one involved in this
15 case.
16

17 CONCLUSIONS OF LAW

18
19
20 1. The information known to the Director of the State Water Resources Department
21 regarding Application #R-69366 did not constitute substantial evidence which would allow a
22 reasonable person, and thus allow the said Director, to enter the Department's Order of February
23 6th, 1995, allowing withdrawal of the said Application.
24

25 2. The substantial evidence known to the Director of the State Water Resources
26 Department regarding Application #R-69366 was such that a reasonable person in his position
27 would have been obligated to refuse to allow the withdrawal requested by the Federal Fish and
28 Wildlife Service/Federal Bureau of Land Management.
29

30 3. The Defendant Department of Water Resources Department should not have allowed
31 and ordered the withdrawal of Application #R-69366.
32

33 4. Plaintiff's Motion for Summary Judgment should be allowed. Defendants' Motion for
34 Summary Judgment should be denied.
35

36 ORDERS

37
38 NOW THEREFORE IT IS HEREBY ORDERED THAT:
39

40 1. PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BE, AND IT IS
41 HEREBY, ALLOWED.
42

43 2. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT BE, AND IT IS

1 *HEREBY, DENIED.*

2
3
4 *SUMMARY JUDGMENT*

5 *NOW THEREFORE IT IS HEREBY ORDERED THE SUMMARY JUDGMENT BE,*
6 *AND IT IS HEREBY, GIVEN IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANTS.*

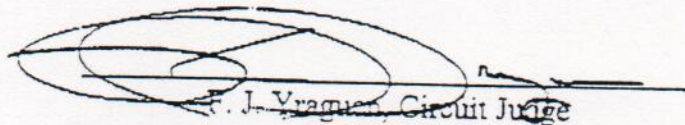
7
8 *AND AS A PART OF SUCH SUMMARY JUDGMENT:*

9
10 *IT IS FURTHER ORDERED THAT DEFENDANTS' ORDER OF FEBRUARY 6TH,*
11 *1995, ALLOWING WITHDRAWAL OF APPLICATION #R-69366 BE, AND IT IS*
12 *HEREBY, SET ASIDE. ORS 183.484(4)(c).*

13
14 *IT IS FURTHER ORDERED THAT DEFENDANTS ACCORD APPLICATION #R-*
15 *69366 ITS ORIGINAL PRIORITY DATE OF SEPTEMBER 28TH, 1987.*

16
17 *IT IS FURTHER ORDERED THAT THE MATTER BE, AND IT IS HEREBY,*
18 *REMANDED BACK TO DEFENDANTS FOR FURTHER ACTION UNDER ORS*
19 *CHAPTER 537.*

20
21 *DONE AND DATED this* 17 *day of December, 1995.*

22
23 
24 *F. J. Vraguen, Circuit Judge*
25

7/30/96

stay away from ROW

stay away from
could have agreement rather than S.U.P.

Negotiate in good faith all issues

Permits to ~~do~~ thing on refuge

Bridge Creek protection

1) not being able to file lawsuits

- 1) not being able to give up rights
- 2) any agreement would necessitate them giving up "rights"

judge: John Felderks - a settlement judge - Head River

Weak part of our case: who parked the scraper there?

I say will contend it just broke down.

What are the problems refuse has w/ Hammond?

Bird Waterhole - no water removal. No access

Grazing Permit - long term ability to get along, (8-10 yrs)
then we could accept & consider & bid from them.

Trailing - 24 hrs, no overnight. ^{then we}

Need mediator, (not binding)
FWS / AUSA / Hammond

Our issues now

Trailing

Raid waterhole - we went it resolved by ^{admin.}~~the~~ p

Cooperative effort in boundary mgt

Permit possibilities - long term change
compliance w/ rules maintaining relative

Rick Coleman

7/30/96

Stay within permit structure

Stay away from ROW

Could have agreement rather than SUP.

Diversion Agreement

Negotiate in good faith all issues

Trailing

Permits to do things on refuge

Bridge Creek protection

They did not go forward because:

1) not being able to file lawsuits

2) any agreement would necessitate them giving up "right

judge: John Felderks - a settlement judge - Hood River

Weak part of our case: who parked the scraper there?

They will contend it just broke down.

What are the problems refuge has w/ Hammonds?

4 - Issues

Bird Waterhole - no water removal. No access

Grazing Permit - long term ability to get along (8-10 yrs)

Trailing - 24 hrs, no overnight. ^{then we could accept & consider a bid from them}

Need mediator (not binding)
FWS / AUSA / Hammonds

Our issues now

Trailing

access thru refuge

Bird Waterhole - we want it resolved by ^{admin} ~~the~~

Cooperative effort in boundary mgmt

Permit possibilities - long term change

Compliance w/ rules

working relation

09/2/96

Issues

- (1) Trailing
- (2) Water - Bridge Creek + Bird Water Hole
- (3) Grazing & Hunting Permits - renewal if good behavior
- (4) Access to Hume Refuge
- (5) East Canal Road
 - access to ~~PLM~~ land grazing allotment
 - to look at their cattle - NEED Special Use Permit
 - Locked -- poachers.

What path & when & for what use?

Conditioned on good behavior

follow Refuge rules - closed guns, no poaching

- (6) No overnights on Refuge

Non Issues

- (7) No interference with Refuge property

- Bird Waterhole
- No water right
- Bridge Creek Water Gap
- Cattle "trash" the area



3 Factors affecting Permits

1. Relationship w/ Gort & Entres
2. No Violations of Permits / Contracts / Agreements / Conformity w/ Permits
3. Bid Price

No preference

can compete if qualify

1-year permit, not automatically renewable.

No trailing after this year w/o a Special Use Permit.

(2)

Thurs 8:30 AM Room 242

Joe Hertzberg
Bob Thompson 242
Forrest Cameron 307
Barbara Scott Bu 327

Larry Matagar
Dwight Susie & Steven Hammond

1. Improved Relations - Refuge + Hammond
Refuge Staff
Home - Family
Community
Permittees

→ PROACTIVE GOOD NEIGHBORS

2. Acceptance -
Recognition of Governmental Processes
of Special Use
Petitions

Legal (law) or Policy Requirements
Self-help vs. compliance

(Vehicle) Personal Access ^{own Lands.} ~~own~~ permit Lands
(b) Trailing

Web Creek - ~~Notch~~ - ok to use

Any other -

Need to discuss:

route; timing; purpose

(3)

TRAILING

- No side-off trails to road
ie Use road only
- Culvert Installed
- NOTICE
- 1 Day (no overnight in corrals or elsewhere)
- Special Use Permit

New Refuge Actions

Gate locked - road below Bridge Creek Gap
Fencing off Bridge Creek Gap riparian zone
Corral being removed

Need Special Use Permit

for economic use
that isn't allowed general public.

ALTERNATIVE

BLM Grazing Permit Krumbo Creek area
- allows cross refuge but must do in 1 day
→ could give Hammonds permission
via BLM Special Use Permit
requiring NOTICE & trailing w/ 1 day
[can trail in 4-5 hours]
IF BLM PERMIT, BLM would have to
agree to enforcement.

• INTERFERENCE w/ FED. PROPERTY

Jan 1993 - cutting fence 3 spots by Hammonds
FWS rebuilt fence
Hammonds haven't interfered since

3 Bases for Permit Not Granted to Hammonds

- (1) destroyed fence
- (2) trespass cattle + not removed
- (3) threats to staff

No automatic renewal permits for Hammonds
in near future if ever

Occasional pricing goes up for bid.

2 BIG ISSUES:

- ① How can Hammonds Demonstrate Good Faith?
- ② What's in it for Hammonds?

Good Faith Showing:

- BLM Permit
- County Govt
- Other FWS permits or Access
- Personal Access
- Trailering Access
- No interference
- No trespass
- Assist in FWS
- BLM boundaries + repairs
- WORK OUT PROBLEMS

HAMMOND Recent Performance

- 1994 - Trespass on BLM Permit
- 1994 - Built road Steers Mtn
- 1992 - Backhoe - destroyed FWS road
- 1994 - Disassembled Bridge Creek water Org.
- 1995 - + cattle trespass [assume Hammonds - their cattle]

TRUST BUILDING ON BOTH SIDESBENEFITS TO Hammond

Special Use Permit - Trailing
 Personal Access
 Drug Charges
 No retribution of costs

Land Exchange (1987 9-22-89)

- ▲ 5 BLM: 1 Hammond
- ▲ BLM appraisal for ~~water~~ rights
 but don't know if Hammonds
 saw appraisal
- ▲ FWS wasn't at table -
 BLM made Hammond neighbor of FWS

1987 - Refuge Mgr George Constantino said
 no Trailing without Special Use Permit



Garin Lan - "Lost" land w/ fencing, "lost" a spring.
 Still a good neighbor.

21 miles boundary fence
 built by neighbors
 some lost land

RELEASE CONDITIONS

- No direct contact w/ certain staff + family
- No violation of Refuge regulations
- Hammonds have complied

(6)

Common Ground

- ACCESS has prog
 - ^{BN prog} Trailing this cattle across Refuge.
 - Not advocate for prosecuting criminal charges against Hammond. But it is a signal to Wise Use Movement.
[Hammond is their poster child.]
- REAL ISSUES though aren't the crim. trespass.

NOT ON TABLE:

- water (use & right)
- fence on boundaries

IWS treating all same -
except been lighter on Hammonds.

GOOD FAITH

☒ KRUMBO CREEK settlement

- Hammonds not in total compliance
- Partially due to Watermaster Beale

How Long for Good Behavior?
anyone can do **3 years**.

Joe, Bob, Forrest, Barbara

9/3/96 (1)

Existence of their operation
depends on access across Refuge
Won't ask permission for access
fence
Special Use Permit

Because acknowledges permission + permission can
be denied

- PUBLIC RIGHT OF WAY
- WILL continue to use it without permission

Bob - 3 concerns of his

(1) Acknowledge - Preventing building of fence
wasn't appropriate way to deal with issue

(2) Hold harmless + indemnification

(3) Resolve access issue through legal process
and water issues through legal process

Forrest - Assurance from Hammonds
④ - No entry in Refuge office - communicate by phone or in writing
Once resolved thru legal process, they'll abide by it.

FALL 97
→ Bridge Creek Water Gap Fence

→ Remond Canals

Notice - will be taking out
of Hammonds think they have legal recourse
into it.

Trailings - Has it occurred this year?
US file suit for Preliminary Injunction to
preclude entry w/o a permit
→ DECLARATORY ORDER ACTION?

ACTIONS that could precipitate Hammonds:

- (1) Removing Clemens corals
- (2) Fencing real property line - Bridge Creek watergap
- (3) Locked gates to prevent public access
last side of refuge - prevents easy access to Refuge
Hammonds could drive around gates
- (4) Prevent trailing without permit into BLM land
in spring (April-May)

FWS ~~will~~ won't take any action ^{Hammonds} re trailing this year.
FWS will not allow trailing in spring w/o Special Use Permit
FWS won't remove coral or install fencing before Nov 4,
Monday.

Hammonds agree to Decl. Order action & will give Notice, for TRO
FWS prefers not to have Hammonds in the office
but for communications to be by telephone or
by letter.

★ FWS Send Letter to Hammonds of INTENT

They've violated 1988 letter, allowing
no Special Use Permit if no violations
But there have been violations

• NO trailing w/o Special Use Permit (after this date)

By spring Hammonds must ~~have~~ Spec. Use Permit

★ BLM Send letter?

Grazing permits not renewed if violate
Refuge rules (no Special Use Permit
to cross Refuge lands)

and receive Spec Use Permit

(3)

Hammonds - lead to FWS

NOTICE OF INTENT TO TRAIL, NOT BEFORE
DATE CERTAIN

FWS notify Hammonds (by phone or letter?)

intent to tear down corals

and to fence off Bridge Creek

Areas communication from Hammonds re "customary uses"

In general, where do they need access Routinely or regularly?

In particular if they wish to use roads not
used for general public use what do they
wish to do, when, & why?

FWS notify Hammonds re

intended actions that may impact Hammonds
when, where, why?

PARALLEL COMMUNICATIONS between FWS & Hammonds
in content & form

General

- General use of Web Spring areas
when how who what purpose
- Checking cattle thru trailing

Specific

- using other routes (locked)
- trailing

LIMITED OFFICIAL USE

Jeff Smith →
PAGE

Bruce Koenig

24th →

F/A. - To Port.
late 10/24

JJ + Teri



703-

630-6669

703-331-0938

10 30AM

Needs hotel

Intro

Recognizing your need for trailing but also Refuge need
Brief history for trailing occur under conditions that protect Refuge

- For some time Refuge has trying to work with you to reach reasonable terms for you to have trailing access across refuge.
- 1988 Refuge mgr proposed
- 1988 R.D.'s final decision give language "reasonable" & worked with refuge mgr - trailing compatible with refuge
- recently ~~we had a discussion~~ ^{Refuge has tried to work with you to get} reasonable conditions for trailing. Due to the failure to comply with terms it's necessary to formalize & for ^{him to} apply Special Use Permit

History of failure

Success history -
livestock crossing
over Bridge Creek

- 1 day
- notice
- stay on trail
- no use of corals

- enclosed is a ^(draft) Permit for your review. ^{plz sign or indicate} if there are other terms you'd like to recommend.

- If you want to trail in spring pl's necessary to move forward, plz return in [date - 2 wks?]

JX

x6260

Mtg w/ Barbara Scott Brier

Dec / 7, 1996

Re Hammond Case

Lynn Peterson ^{PO} SOL cannot approve offensive litigation at Portland level as hoped. BSB will tell AUSA Thomson that this type litigation must be approved in Wash DC. I will help though that AUSA office wants it.

- BSB ^{office} wants no dropping of criminal suit until civil case is ready.
- P³ SOL wants (to get civil case approval) to show a track record of us trying to make Hammonds comply w/ access & its failure.
- This means she ^{BSB} wants all memos etc of 1987-89 appeal & any notes (like FOIA).
- I need to brief Rick + ARD/RD on this & see how they feel about pushing this trespass case.
- BSB & I will write letter offering to work out egress & trailing 1st letter from me followup via Rick/RD if necessary to get response.



THE SECRETARY OF THE INTERIOR
WASHINGTON

74

Memorandum

JAN 22 1997

To: Assistant Secretary, Fish and Wildlife and Parks
Assistant Secretary, Land and Minerals Management
Assistant Secretary, Indian Affairs
Assistant Secretary, Water and Science

From: Secretary

Subject: Interim Departmental Policy on Revised Statute 2477 Grant of Right-of-Way for Public Highways; Revocation of December 7, 1988 Policy

Revised Statute 2477, which provided that "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted," was repealed on October 21, 1976, by the Federal Land Policy and Management Act (FLPMA). 43 U.S.C. § 1701 *et seq.* FLPMA did not terminate valid rights-of-way established under R.S. 2477 prior to its repeal. The existence and extent of valid rights-of-way previously established pursuant to R.S. 2477 remains an issue in some places.

States or local governments asserting that R.S. 2477 rights-of-way exist on federal lands can in appropriate situations file a lawsuit in federal court seeking to establish the validity of that assertion. In the alternative or in advance of filing such a lawsuit, the Department of the Interior may also be asked to give its views on such assertions.

On December 7, 1988, Secretary Hodel signed a memorandum that discussed his policy for making determinations whether the Department would recognize claims for rights-of-way under R.S. 2477. That policy was not promulgated according to rulemaking procedures and is not a rule. In fact, because the Department has not been making such determinations in recent years, that policy has not been carried out for several years. The purpose of this memo is to revoke the 1988 policy and establish a revised policy for carrying out any determinations the Department might be called upon to make regarding R.S. 2477.

Background

At the request of Congress, the Department submitted a Report to Congress on R.S. 2477 in June 1993. In accordance with that Report's recommendations, the Department determined that regulations should be written for R.S. 2477, and a Notice of Proposed Rulemaking was published in 1994. 59 Fed. Reg. 39,216 (August 1, 1994). Thereafter, Congress attached a provision to the Department's appropriation for fiscal year 1996 that prohibited using funds appropriated by that statute for "developing, promulgating, and thereafter implementing a

rule concerning rights-of-way under section 2477 of the Revised Statutes." Pub. L. 104-134, § 110, 110 Stat. 1321-177 (1996). The Department's appropriation for fiscal year 1997 permits the publication of final regulations but says they shall not take effect unless "expressly authorized by an Act of Congress subsequent to the date of enactment of this Act." Pub. L. 104-208, § 108, 110 Stat. 3009 (1996).

I addressed the issue of whether the Department should continue to make determinations regarding R.S. 2477 claims in my May 28, 1993, letter to Congress transmitting the Department's Report: "Until final rules are effective, I have instructed the Bureau of Land Management to defer any processing of R.S. 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations." This instruction is still in effect.

Revised Policy on R.S. 2477 Rights-of-way Determinations

Those making claims of the existence of valid R.S. 2477 rights-of-way continue to have the option of seeking to establish the validity of their claims in court. Nevertheless, it is possible that the Department may be asked, in advance of final rules taking effect, to make such determinations on the basis that such a demonstrated, compelling, and immediate need is claimed to exist. If so, until final rules are published and take effect, determinations regarding R.S. 2477 rights-of-way will be made by the Secretary of the Interior, in consultation with the appropriate Interior agency, according to the following policy:

1. **Claims.** An entity wishing the Secretary or any agencies of the Department of the Interior to make a determination whether an R.S. 2477 right-of-way exists shall file a written request with the Interior agency having jurisdiction over the lands underlying the asserted right-of-way, along with an explanation of why there is a compelling and immediate need for such a determination. The request should be accompanied by documents and maps that the entity wishes the agency to consider in making its recommendation to the Secretary. If, based on the information provided, the agency does not believe a compelling and immediate need for the determination exists, it should without further examination recommend the Secretary defer processing until final rules are effective.
2. **Withdrawals and Reservations.** The agency shall consult the public land records maintained by the Bureau of Land Management to determine the status of the lands over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable pursuant to R.S. 2477 at the time that the highway giving rise to the claim of an R.S. 2477 right-of-way was allegedly constructed and remained unavailable through October 21, 1976, the agency will recommend the Secretary deny the claim.
3. **Construction.** If the lands were not withdrawn, reserved, or otherwise unavailable pursuant to R.S. 2477, the agency shall examine all available documents and maps and perform an on-site examination to determine whether construction on the alleged right-of-way had occurred prior to the repeal of R.S. 2477 on October 21, 1976. If the agency

determines that construction did not occur, the agency will recommend the Secretary deny the claim.

4. **Highway.** The agency shall evaluate whether the alleged right-of-way constitutes a highway. A highway is a thoroughfare used prior to October 21, 1976, by the public for the passage of vehicles carrying people or goods from place to place. If the agency determines that the alleged right-of-way does not constitute a highway, the agency will recommend the Secretary deny the claim.

5. **Role of State Law.** In making its recommendations, the agency shall apply state law in effect on October 21, 1976, to the extent that it is consistent with federal law. The agency will in no case recommend approval of claims that do not comply with the requirements of applicable state law.

6. **Secretary's Determination.** The agency will make recommendations on the above-described issues to the Secretary. The Secretary will approve or disapprove those recommendations.

The December 7, 1988 policy, including attachment 1, is hereby revoked.



Bruce Babbitt

LEGEND

- REFUGE BOUNDARY
- REFUGE PROPERTY
- BLM PROPERTY
- HAMMOND RANCHES PROPERTY
- ORIGINAL HAMMOND PROPERTY
- HAMMOND/BLM LAND EXCHANGE, 9/22/89
- *** HAMMOND CATTLE TRAILING ROUTE
- DOCUMENTED HISTORICAL WAGON ROAD (GLO PLATS)
- DOCUMENTED WAGON ROAD FRENCH-GLENN LIVE STOCK CO. (11-27-08)

T30S

T30S

T31S

T31S

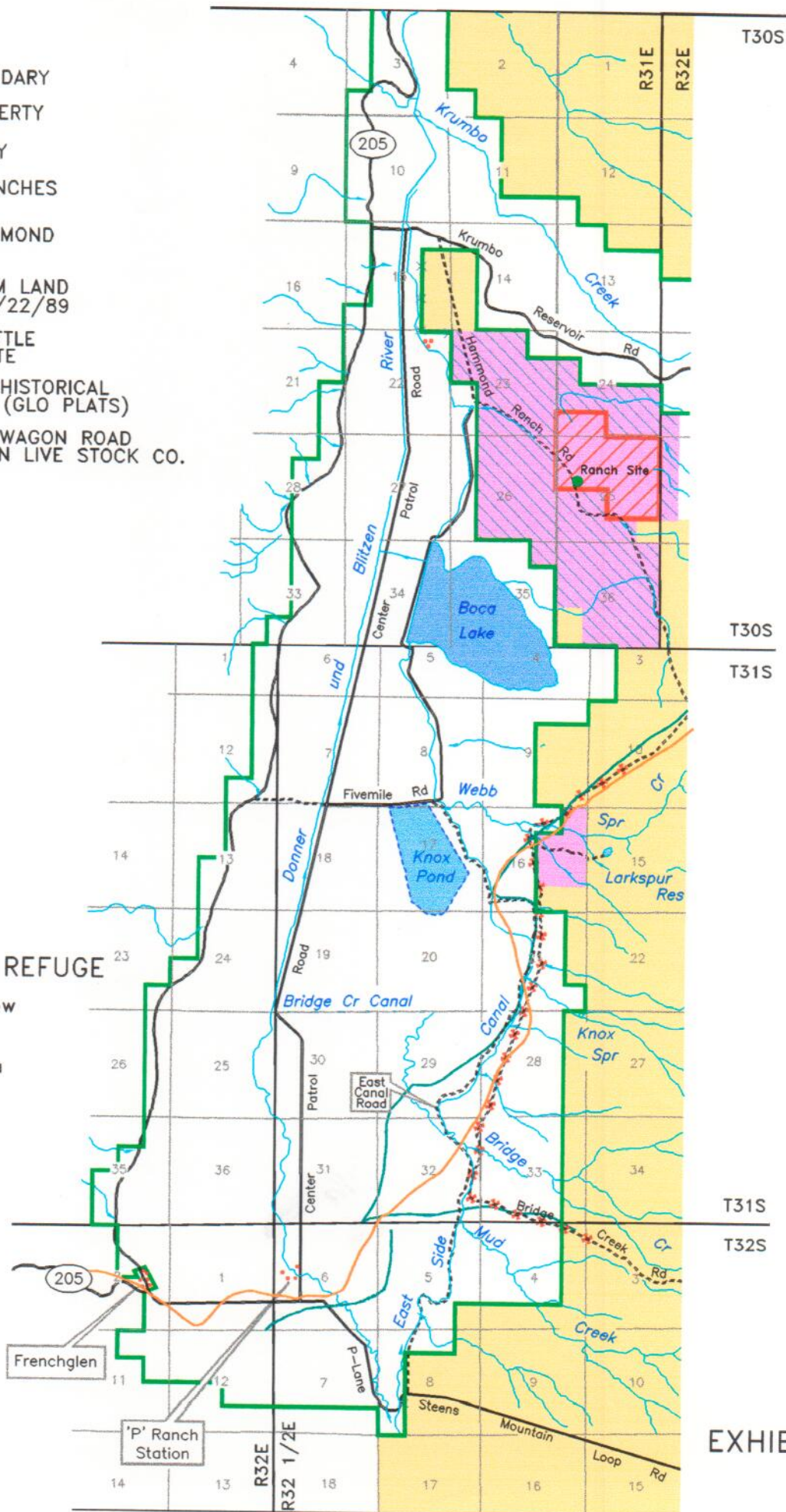
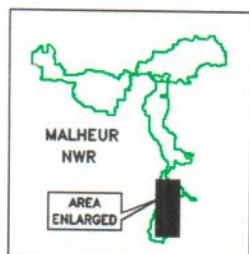
T32S

EXHIBIT #1

MALHEUR NATIONAL WILDLIFE REFUGE

Blitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON



LEGEND

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

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

1/10/1889

T30S

T30S

T31S

ALL OF SECTION 16, T31S, R32 1/2E, LEFT FEDERAL OWNERSHIP ON 2/14/1859.

T31S

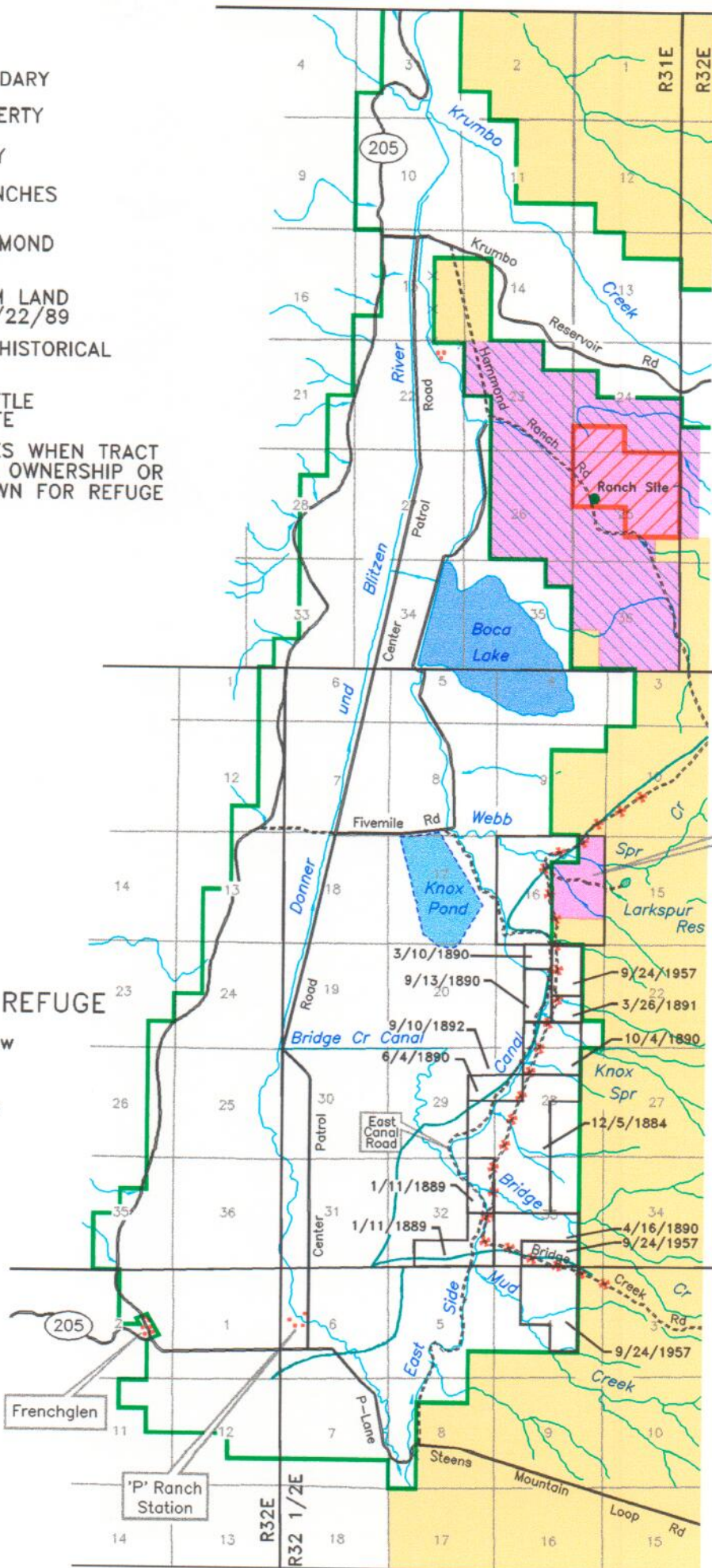
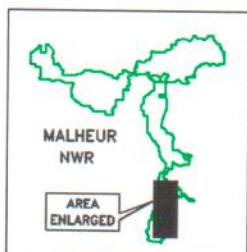
T32S

EXHIBIT #4

MALHEUR NATIONAL WILDLIFE REFUGE

Blitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON





THE SECRETARY OF THE INTERIOR
WASHINGTON

FEB 20 1997

Memorandum

To: Assistant Secretary, Fish and Wildlife and Parks
Assistant Secretary, Land and Minerals Management
Assistant Secretary, Indian Affairs
Assistant Secretary, Water and Science

From: Secretary *[Signature]*

Subject: Clarification to January 22, 1997, Interim Departmental
Policy on Revised Statute 2477 Grant of Right-of-Way
for Public Highways

My January 22 memo to you concerning the Department's interim policy on R.S. 2477 rights-of-way has created confusion regarding our position on the ability of those claiming R.S. 2477 rights-of-way to obtain judicial review of those claims. To clarify, the memo was not intended to express any opinion regarding the circumstances in which a lawsuit may be brought against the United States to determine the validity of rights claimed under R.S. 2477.

[Public Land Order 1511]

[1011399]

OREGON

ENLARGING MALHEUR NATIONAL WILDLIFE REFUGE; REVOKING EXECUTIVE ORDER NO. 929 OF AUGUST 18, 1908, ESTABLISHING LAKE MALHEUR RESERVATION, AND EXECUTIVE ORDERS NO. 5891 OF JULY 16, 1932, AND NO. 6152 OF JUNE 1, 1933, WITHDRAWING LANDS FOR CLASSIFICATION; AND AMENDING EXECUTIVE ORDER NO. 7106 OF JULY 19, 1935

By virtue of the authority vested in the President, and pursuant to Executive Order No. 10355 of May 26, 1952, it is ordered as follows:

1. Executive Order No. 7106 of July 19, 1935, establishing the Malheur Migratory Bird Refuge which was redesignated the Malheur National Wildlife Refuge by Proclamation No. 2416 of July 25, 1940, is hereby amended by eliminating from the first paragraph thereof the words "and in order to effectuate further the purposes of the Migratory Bird Conservation Act (45 Stat. 1222)."

2. Subject to valid existing rights, the following-described public lands in Harney County, Oregon, are hereby withdrawn from all forms of appropriation under the public-land laws, including the mining but not the mineral-leasing laws, and reserved under the jurisdiction of the Bureau of Sport Fisheries and Wildlife of the Department of the Interior as an addition to the Malheur National Wildlife Refuge:

WILLAMETTE MERIDIAN

T. 26 S., R. 28 E.,

Sec. 4, S $\frac{1}{2}$ SW $\frac{1}{4}$;

Sec. 9, all;

Sec. 14, NE $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 15, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 22, N $\frac{1}{2}$;

Sec. 23, N $\frac{1}{2}$, W $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 25, NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 26, all;

Sec. 34, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Page 1

Forrest-
Here is the
PUBLIC LAND ORDER
ADDING BIRD
WATERHOLE TO
MALHEUR NWR.

RECEIVED

MAR 3 1997

WILDLIFE SERVICE
REFUGE BURNS

4 is

age.

Sec. 35, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$.

T. 26 S., R. 29 E.,
 Sec. 25, S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 31, lot 4.

T. 27 S., R. 29 E.,
 Sec. 1, all fractional;
 Sec. 2, lots 1, 6, and 7;
 Sec. 6, lots 2 to 4, inclusive;
 Sec. 11, lots 1 to 5, inclusive;
 Sec. 14, all fractional;
 Sec. 23, lots 1 to 5, inclusive, NW $\frac{1}{4}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 24, all fractional;
 Sec. 25, lots 1 to 3 inclusive, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 27 S., R. 29 $\frac{1}{2}$ E.,
 Sec. 25, all fractional;
 Secs. 28 to 30, inclusive, all fractional;
 Sec. 32, NE $\frac{1}{4}$;
 Secs. 33 to 35, inclusive, all fractional;
 Sec. 36, lots 1 to 4, inclusive, and SE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 28 S., R. 29 $\frac{1}{2}$ E.,
 Sec. 1, lots 1 to 9, inclusive;
 Sec. 2, lots 1, 2, and lots 7 to 10, inclusive.

T. 28 S., R. 30 E. (north of Malheur Lake),
 Sec. 26, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 27, lots 1 to 7, inclusive, and S $\frac{1}{2}$ N $\frac{1}{2}$;
 Sec. 28, lots 1 to 4, inclusive, and S $\frac{1}{2}$ N $\frac{1}{2}$;
 Sec. 29, all fractional;
 Sec. 30, lots 3 to 9, inclusive, and NE $\frac{1}{4}$;
 Secs. 31, 34, and 35, all fractional;
 Sec. 36, lots 1 to 4, inclusive.

T. 27 S., R. 30 E.,
 Sec. 4, lots 3 and 12;
 Sec. 5, lots 3 to 5, inclusive;
 Sec. 8, lots 2 and 3, and 6 to 9, inclusive;
 Sec. 9, lot 3;
 Secs. 17 and 18, all fractional;
 Sec. 19, lots 1 to 4, inclusive, NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 20, lots 1 to 8, inclusive, and SE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 30, lots 1 to 4, inclusive, and E $\frac{1}{2}$ W $\frac{1}{2}$.

T. 26 S., R. 31 E. (north of Malheur Lake),
 Sec. 23, lot 2;
 Sec. 31, lots 3 to 6, inclusive, and NW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 28 S., R. 31 E.,
 Sec. 19, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 22, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 29, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 29 S., R. 31 E.,
 Sec. 1, W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 3, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 4, lot 2;
 Sec. 10, N $\frac{1}{2}$ NW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 12, NW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 15, E $\frac{1}{2}$ NW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 22, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 23, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 24, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 25, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 26, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 34, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 35, SW $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 30 S., R. 31 E.,
 Sec. 2, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 3, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 10, W $\frac{1}{2}$ W $\frac{1}{2}$;
 Sec. 11, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 12, SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 13, S $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 14, SE $\frac{1}{4}$ NW $\frac{1}{4}$ and E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 15, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 21, E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 22, NW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 23, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 24, SE $\frac{1}{4}$ N $\frac{1}{2}$;
 Sec. 26, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$ and SW $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 33, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 35, NW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 26 S., R. 32 E. (north of Malheur Lake),
 Sec. 3, lots 9 and 10.

T. 26 S., R. 32 E. (south of Malheur Lake),
 Sec. 13, lots 9 to 12, inclusive;
 Sec. 14, lots 1 and 2;
 Sec. 22, lot 7;

Page 2

Sec. 23, lot 7;
 Sec. 33, lot 15.

T. 27 S., R. 32 E.,
 Sec. 4, lot 11;
 Sec. 5, lots 6 to 8, inclusive.

T. 29 S., R. 32 E.,
 Sec. 7, lot 2, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 8, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 15, S $\frac{1}{2}$ NW $\frac{1}{4}$ and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 17, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 19, lot 3 and SE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 20, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 21, S $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 30, NE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 30 S., R. 32 E.,
 Sec. 18, lot 3, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 19, lot 3, NE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 20, NW $\frac{1}{4}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 29, NE $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 30, NE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 31 S., R. 32 E.,
 Sec. 1, lot 1 and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 12, SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 13, E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 23, lot 4;
 Sec. 24, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 35, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 32 S., R. 32 E.,
 Sec. 2, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 11, NE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 12, S $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 25 S., R. 32 $\frac{1}{2}$ E.,
 Sec. 23, lot 6;
 Sec. 24, lot 7.

T. 31 S., R. 32 $\frac{1}{2}$ E.,
 Sec. 3, lot 4 and W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 4, lots 1, 3, and 4; N $\frac{1}{2}$ SW $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 5, S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 8, NE $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 9, N $\frac{1}{2}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$;
 Sec. 21, W $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 28, W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 33, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 32 S., R. 32 $\frac{1}{2}$ E.,
 Sec. 4, lots 2 and 3, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 5, SE $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 25 S., R. 33 E.,
 Sec. 19, lot 6;
 Sec. 20, lots 4 and 5;
 Sec. 21, lots 1 and 2;
 Sec. 28, lots 2 to 7, inclusive, and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 33, all fractional;
 Sec. 34, lots 11, 14, and 15.

T. 26 S., R. 33 E.,
 Sec. 3, lot 14;
 Sec. 10, lots 6, 7, 10 and 11;
 Sec. 15, lots 4 to 6, inclusive, and SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 16, lot 2;
 Sec. 17, lots 8 to 10, inclusive;
 Sec. 18, lots 9 to 13, inclusive.

Together with all public lands within the record meander lines of Malheur and Harney Lakes, aggregating 18,017.54 acres.

3. This order shall take precedence over but not otherwise affect the Order of the Secretary of the Interior of July 9, 1935, establishing Oregon Grazing District No. 2.

4. Executive Order No. 929 of August 18, 1908, establishing the Lake Malheur Reservation and Executive Orders No. 5891 of July 16, 1932, and No. 6152 of June 1, 1933, withdrawing certain public lands for classification as to their suitability for migratory bird refuge purposes are hereby revoked. The lands in the former Lake Malheur Reservation and portions of the lands withdrawn by Executive Orders No. 5891 and No. 6152 are included in the withdrawal made by paragraph 2 hereof.

5. The public lands released by this order from the withdrawals made by Executive Orders No. 5891 and No. 6152 are described as follows:

WILLAMETTE MERIDIAN

T. 25 S., R. 27 E.,
 Secs. 25, 26, and 35;
 Also all unsurveyed islands and lands within the United States within the meander area of Silver Lake, in secs. 25, 26, 35, and 36.

T. 26 S., R. 27 E.,
 Sec. 1, lots 1, 2, 3, 6, 7, 8, 9, 10, 12, and 13;
 Sec. 2;
 Sec. 11, N $\frac{1}{2}$ SW $\frac{1}{4}$, and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 12, NE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, and S $\frac{1}{2}$;
 Sec. 13;
 Sec. 14, S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$, and SE $\frac{1}{4}$.

T. 25 S., R. 28 E.,
 Sec. 17, N $\frac{1}{2}$ N $\frac{1}{2}$, SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 18, lots 1 to 4, inclusive, NE $\frac{1}{4}$ NE $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, and SE $\frac{1}{4}$;
 Sec. 19, lots 1 to 4, inclusive, NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, N $\frac{1}{2}$ SE $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 20, N $\frac{1}{2}$, N $\frac{1}{2}$ S $\frac{1}{2}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 21, W $\frac{1}{2}$ W $\frac{1}{2}$ and NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 27, S $\frac{1}{2}$ NW $\frac{1}{4}$;
 Sec. 28, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 29, lots 3 and 4;
 Sec. 32, lots 3 and 4;
 Also all unsurveyed islands and lands within the United States within the meander area of Silver Lake, in secs. 19, 20, 29, 31, and 32.

T. 26 S., R. 28 E.,
 Sec. 5, lots 1 to 6, inclusive, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Secs. 6 to 8, inclusive;
 Secs. 17 to 21, inclusive;
 Sec. 22, S $\frac{1}{2}$;
 Secs. 27, 28, and 33;
 Sec. 34, N $\frac{1}{2}$, SW $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 27 S., R. 28 E.,
 Sec. 1.

T. 27 S., R. 29 E.,
 Sec. 5, SW $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 6, lots 5, 6, 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$, and SE $\frac{1}{4}$;
 Sec. 23, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 25, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$.

T. 26 S., R. 30 E. (north of Harney Lake),
 Sec. 26, SW $\frac{1}{4}$, and N $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 27, N $\frac{1}{2}$ N $\frac{1}{2}$;
 Sec. 28, N $\frac{1}{2}$ N $\frac{1}{2}$;
 Sec. 30, NW $\frac{1}{4}$;

T. 27 S., R. 30 E.,
 Sec. 3, SE $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 26 S., R. 31 E. (south of Malheur Lake),
 Sec. 30, lots 3, 6, 7;
 Sec. 32, SW $\frac{1}{4}$ NW $\frac{1}{4}$ and S $\frac{1}{2}$ S $\frac{1}{2}$.

T. 25 S., R. 32 E.,
 Sec. 33, NW $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 26 S., R. 32 E. (north of Malheur Lake),
 Sec. 6, N $\frac{1}{2}$ SE $\frac{1}{4}$.

T. 26 S., R. 32 E. (south of Malheur Lake),
 Sec. 14, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 27, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 27 S., R. 32 E.,
 Sec. 4, lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 5, lot 2 and NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 25 S., R. 32 $\frac{1}{2}$ E.,
 Sec. 24, lot 2.

T. 25 S., R. 33 E.,
 Sec. 21, NW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 27, lots 3 and 6, N $\frac{1}{2}$ NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 26 S., R. 33 E.,
 Sec. 3, lots 1, 2, 4, and 10, and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 10, W $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 14, lots 1 to 6, inclusive;
 Sec. 15, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 16, NE $\frac{1}{4}$ SE $\frac{1}{4}$ and S $\frac{1}{2}$ S $\frac{1}{2}$;
 Sec. 17, lots 1, 2, 5, and 6, and E $\frac{1}{2}$ SE $\frac{1}{4}$;
 Sec. 18, lot 1 and SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 20, lots 1 to 5, inclusive, and SW $\frac{1}{4}$ NE $\frac{1}{4}$;

Sec. 21, lots 4 and 5, NE $\frac{1}{4}$, NW $\frac{1}{4}$, and SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 22;
Sec. 23, lots 1 and 2, and NE $\frac{1}{4}$ NW $\frac{1}{4}$.

The areas described aggregate 22,016.54 acres.

6. Of the lands described in paragraph 5 of this order, the following have been patented:

T. 26 S., R. 30 E. (N. of Harney Lake),
Sec. 26, SW $\frac{1}{4}$, N $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 27, N $\frac{1}{4}$ NE $\frac{1}{4}$.
T. 26 S., R. 32 E. (S. of Malheur Lake),
Sec. 14, SE $\frac{1}{4}$ SE $\frac{1}{4}$.

7. The remaining lands described in paragraph 5 are primarily range lands, bearing a growth of native vegetation of sagebrush and greasewood, together with an understory of native grasses.

8. No application for the lands may be allowed under the homestead, desert-land, small tract, or any other nonmineral public-land law unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon the consideration of an application. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

9. Subject to any valid existing rights and the requirements of applicable law, the lands are hereby opened to filing of applications, selections, and locations in accordance with the following:

a. Applications and selections under the nonmineral public-land laws may be presented to the Manager mentioned below, beginning on the date of this order. Such applications and selections will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs:

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other

than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications under the Homestead, Desert Land, and Small Tract Laws by qualified veterans of World War II or of the Korean Conflict, and by others entitled to preference rights under the act of September 27, 1944 (58 Stat. 747; 43 U. S. C. 279-284 as amended), presented prior to 10:00 a. m. on October 30, 1957, will be considered as simultaneously filed at that hour. Rights under such preference right applications filed after that hour and before 10:00 a. m. on January 29, 1958, will be governed by the time of filing.

(3) All valid applications and selections under the nonmineral public-land laws, other than those coming under paragraphs (1) and (2) above, presented prior to 10:00 a. m. on January 29, 1958, will be considered as simultaneously filed at that hour. Rights under such applications and selections filed after that hour will be governed by the time of filing.

10. Persons claiming veterans preference rights must enclose with their applications proper evidence of military or naval service, preferably a complete photostatic copy of the certificate of honorable discharge. Persons claiming preference rights based upon valid settlement, statutory preference, or equitable claims must enclose properly corroborated statements in support of their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

11. The lands described in paragraph 5 have been open to applications and selections under the mineral-leasing laws and the location for metalliferous minerals. They will be open to location for non-metalliferous minerals under the United States mining laws beginning at 10:00 a. m. on January 29, 1958.

12. Inquiries concerning the opened lands shall be addressed to the Manager,

Land Office, Bureau of Land Management, Portland, Oregon.

ROGER ERNST,
Assistant Secretary of the Interior.

SEPTEMBER 24, 1957.

[F. R. Doc. 57-7980; Filed, Sept. 27, 1957; 8:45 a. m.]

*This PLO included
4,259.89 Acres of
Public Land already
Administered as part of
the refuge under a
previous order.
Our records should
add 13,757.65 acres.*



Cameron Copy
cc to BSB.

Call BSB on this week of
2/10/97

FAX TRANSMITTAL

U.S. FISH AND WILDLIFE SERVICE
DIVISION OF REALTY
911 N.E. 11TH AVENUE
PORTLAND, OREGON 97232
Telephone: 503-231-6201
FAX: 503-231-6161

TO: FARREST CAMERON
MALHEUR NUR

FAX 9-1-541-493-
2405

FROM: BOB HURR / SCOTT WISE

SUBJECT: Hammond Stock Driveway and RS 2477

NUMBER OF FAXED PAGES INCLUDING THIS PAGE 6

Here's our draft opinion - work it over. Call
Scott next week - Jim out 3/3-3/7.
Will clean this up & send to Barbara
Scott-B for review.

Prals
B. Miller 2/26/97

- Early OR map showing 2 roads
down east side of refuge by 1881.
Hard to show they are in present location
- Who owned land and when?



DRAFT2/28/97
15413

12

**COPY FOR YOUR
INFORMATION**

In Reply Refer To:

ARW/RE

LA-OR, Malheur NWR

General

Road Right-of-ways (R.S. 2477 and Hammond Ranch Stock Driveways)

Memorandum

To: Refuge Manager, Malheur NWR

Through: Refuge Supervisor, OR/WA/ID

From: Chief, Division of Realty

Subject: Malheur NWR Realty Opinion No. 2--Hammond Ranch Stock Driveway: A
Revised Statute (R.S.) 2477 Claim ?

stop You asked for an opinion whether Hammond Ranch (Ranch) has a right to move livestock (cattle) over Refuge lands based on an R.S. 2477 claim or assertion. The "Hammond cattle trailing route" is a Stock Driveway by definition and is shown on FWS Map, "MALHEUR NATIONAL WILDLIFE REFUGE, Blitzen Valley Below Krumbo Creek, Harney County, Oregon, 8/96," Exhibit 1. The Ranch has been moving cattle over this route. We have challenged them and declaring that they have no right to using Refuge land. We asked them to stop, or at least we want to have control over the livestock and people movement. Hammond Ranch says it's their right to use the route based on historic use and R.S. 2477. *except under refuge special use permit*

to find this dispute we need to resolve
The issue is, is there an R.S. 2477 claim, underlying the Stock Driveway, which guarantees Hammond Ranch and others a right of passage for livestock and other things?

As a lead-in to answering your questions, we offer an abbreviated history of R.S. 2477. Revised Statute 2477 is an 1866 Act (Federal law) "granting" highway rights of way over federal public lands stated in deceptively simple language:

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

This "grant" was originally found in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act. This act was later codified as Revised Statute (R.S.) 2477 and later recodified as 43 U.S.C. 932. It remained on the books until it was repealed by

Hiller#5;503-231-6201;C:\...row\malheur.or\opinion2 2/28/97

LA-OR, Malheur NWR, General, R/Ws: RS 2477 and Hammond Ranch
Page 1 of 5

Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq, the Bureau of Land Management's (Bureau or BLM) so-called "Organic Act." Because of the repeal, we are only concerned about "claims" of grants of right-of-ways "perfected" after 1866 and before October 21, 1976, or until the land underlying a claimed R.S. 2477 went into "reserve" status or was deeded out of Federal ownership.

R.S. 2477 has been the subject of inconsistent state statutes and court decisions, and a handful of inconsistent federal court decisions, during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties, the United States was not a party to them. An important point is that **the legislative history is silent as to the meaning of this section of the 1866 Act.** When we cannot easily determine what a law means from its language, we often look at the Congressional record of hearings and discussions on it. The records usually provide actual recorded commentary among members of Congress as to what the law is about and why it is to be enacted.

We know that for the longest time not much was made of or done with this provision of law. In fact it didn't elicit much reaction until after its repeal in 1976. It wasn't "important" until the large public lands set-asides of the 1970's and later, particularly Wilderness Act withdrawals and other withdrawals, came. The states found or "rediscovered" this wording, and asserted their claims for highways in existence or to be built. The states, in many cases, were counting on the R.S. 2477 claim(s) to block pending wilderness designations. (One of the criteria for land to be wilderness under the law is that it must be roadless.) Furthermore, State, counties and individuals have "found" this law to be prospectively useful for gaining "free" access across federal lands.

So, we have this 1866 law, renumbered in 1873, codified in 1938, and finally repealed in 1976. During this time no changes were made to the act, and the only understanding of it came from inconsistent case law. But we have a problem: States, counties, and others want to apply it, and have asserted/claimed it as a basis for right-of-ways across federal land. There were no regulations or specific guidance for application, so on October 7, 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as "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) (Exhibit 2)." With this mouth-filling subject, the Secretary set out to help us field folks ~~to~~ make the act work.

The Bureau was (and still is) tasked with processing the claims and determining them valid. Some have been "approved." The Interior Department and its Solicitor says "deciding validity" is adjudication, which the Bureau has no authority to do ~~so~~. Anyway, sorting it all out, cataloging them, and notifying other federal agencies of their existence is a daunting task at best. In 1992, Congress, after hearing from constituents and agencies about the problems of "figuring-out" these rights, ordered the Bureau to research the issues, canvass the public and other federal agencies; and ~~to~~ write, publish and institute (proposed) regulations (The regulations were supposed to create a regular process by which these claims of valid existing rights can be identified and evaluated. The regulations were also to define key statutory words - "construction," "highways," "unreserved public lands" - to establish standards against which to measure the claims.) BLM released its report on June 1, 1993, and was promptly shot-down by just about everyone. The results are no regulations to date, more court battles, and no "final"

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resolution. So, here comes the Ranch, with a possible ~~claim of/assertion of their rights to a~~ RS 2477 right-of-way.

Furthermore, before discussing the case at hand it is important to understand certain Definitions/Terms which I will try to define:

public lands: As used in this report, the term means Federal lands managed by any of the Executive Branch agencies and owned by the people of the United States. However, this term usually means the public domain (PD) lands managed by the BLM for United States. Technically, once land is reserved, withdrawn or otherwise "permanently" used or deeded away, it is no longer PD land. In general use, public lands means land owned by any government, Federal, State, and County/Borough.

claim/assertion: A person, persons, state, or county "emphatically" say(s) they have a right of passage across federal lands by virtue of RS 2477. They assert that they have met the intent and satisfied the provisions of the act, and are entitled the right, rather the right is already granted to them.

perfected: "ripen to usefulness." Completing the steps required by law that lead to the full benefits of the particular law.

reserve/reserved: (federal) land set-aside for some existing or future use or purpose, by Congress or the Executive Branch, e.g. a national wildlife refuge (existing), or a ditches and canals provision in a land patent for the conveyance of water, if needed (future).

third parties: a person/persons/entity not directly involved in an issue/dispute between two parties, e.g., the State vs. the Federal Government (2 parties), the third party being the Hammond's, for example.

Federal land patents or Patents: a Quickclaim Deed (QCD) from the United States to a grantee, giving all the US's right, title and interest away, EXCEPT those rights held-back by the US for some existing or prospective purpose. Usual reservations are minerals, oil and gas, geothermal, and certain kinds of right-of-ways, but not RS 2477's. The rights held-back can be any that are already granted to someone else. However, we usually try to extinguish those rights or have the jurisdiction over them transferred to the new land owner. Homesteading, or the agricultural settlement of certain federal land, frequently led to a Homestead Patent.

RS 2477 contains 3 Key Concepts for the ~~claim or assertion~~ to be accepted or acceptable, therefore legal or legitimate, all must be present (See Secretary Hodel memo, **Exhibit 2**):

1. The lands involved (under the claim) must have been public lands, not reserved for public uses, at the time of acceptance; *established before refuge meets the test*
2. Some form of construction of the highway must have occurred; and,
3. The highway so constructed must be considered a public highway.

Note that Exhibit 1 lays all this out and explains what each provision means. Remember, under this claim the United States has no duty or authority to adjudicate an assertion or application, but as a practical matter must be able to "recognize" with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477. We would mostly rely on the States ~~and counties~~ to show the existence of the RS 2477. I say "mostly" because we, the Federal government, have from time to time taken issue with state claims and the basis for them, and have gone to court.

Land Status Research/Facts: I looked at the following maps of the area over which the Stock Driveway is routed: Bureau Master Title Plats (MTP's) and Historical Indexes (HI's), a USGS quad of the area, a Fish and Wildlife Service Land Status Map, and a "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon, dated 11/27, 1908;" and, the "Executive Orders" file, which contains the history of the Refuge so far as reservations, withdrawals and transfers are concerned. I was looking for "unreserved public land" on which a public stock driveway (highway) existed between 1866 and 1976, and evidence of construction of the public stock driveways or highways. I was looking for public, constructed routes, which are the same ones Hammond Ranch is using and claiming a right to under RS 2477.

I found grants to the State of Oregon (State Grants) as far back as 1859 (the earliest State grant), though most occurred in the 1880's and early 1890's. I also found 1880's and 1890's Homestead Patents. Homestead Patents deeded the land out of Federal ownership. I found that Malheur National Wildlife Refuge was first set-aside or reserved in the area of the Stock Driveway by Executive Order 7106, 7/16/1935, "Establishing The Malheur Migratory Bird Refuge, Oregon." According to our Malheur Refuge Manager, the French-Glenn Livestock Company was probably begun in 1872 by Peter French buying land from the State of Oregon, settling some himself, and buying-out neighbors. The deeded and reserved lands were/are not available for an RS 2477 claim. However, there is a series of windows between 1866 and 1884 (The earliest recorded Patent); and later (from other Patents and State Grants) for an RS 2477 claim.

I did not find evidence of construction of a public highway for stock driving or other purposes. However, the "French-Glenn Map" shows a "wagon road" that roughly corresponds to the one Hammond Ranch is using. I don't know if this is a constructed road, and if so, when construction took place. Perhaps Harney County can provide evidence of a constructed highway corresponding to the Hammond Stock Driveway that existed during the "windows." I did not look at Patents for a reservation of an RS 2477 right-of-way or stock driveway or highway right-of-way that could be an RS 2477 claim. Additionally, I have not researched the administrative and court decisions on RS 2477's to see if a stock driveway is a highway for RS 2477 purposes. It is possible that a stockway is a highway by way of the definition of a highway: "a route of travel, trade and commerce." Live stock are items of trade and/or commerce, and they can travel or be moved.

In conclusion, I found there were a number of narrow windows between 1866 and 1892, during which there was unreserved Federal public land available for an RS 2477 claim. If construction of a stock driveway equals "construction of highways" cited in RS 2477, if the stockways were constructed at the proper time, if they are accepted as public highways, then predecessors of the Hammond Ranch and the Ranch could claim the cattle driveways under RS 2477. I think the ultimate decision rests with Harney County, if all else is true. Did they accept/acknowledge the stock driveway during any or all of the windows?

Back in July, 1994, I asked the BLM Oregon State Office if RS 2477 assertions are still allowed? The Office said yes, but the processing of RS 2477 assertions is on nation-wide hold pending the issuance of regulations. The national BLM Director can do an "emergency" processing. The assertion would be processed and "accepted" using the 1988 Model guidelines. I believe this is still the case.

BOTTOMLINE--AN RS 2477 CLAIM IS POSSIBLE.

LA-OR, Malheur NWR, General, R/Ws: RS 2477 and Hammond Ranch
Page 4 of 5

Action Item:
Follow up w/BLM state office

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I Ben, if an RS-2477 claim can be validated

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omit

What control does the Service/Refuge have over RS 2477 R/W's? What rights does Hammond Ranch have on them? We feel the Service has some control over these R/W's because we own the land. We do not believe that RS 2477 grants a right-of-way in fee, which takes the land out of our ownership. We have the same rights as other land owners with a road easement over them. As a landowner and conservation agency responsible by Federal law for our Refuge, we can respond to unnecessary degradation of the land. We can use the RS 2477 R/W's for Refuge purposes, and the public can use them on the Refuge and on other federal lands. Since the RS 2477 is likely a highway for trade, travel and commerce, it can be used commercially, publicly, and certainly by the Hammond Ranch. I don't think we could charge any kind of fees for the RS 2477 claim, since to have one requires it to pre-date our use. An existing RS 2477 highway would be a reservation to the State, county, or individual against our ownership.

If you have further questions, call Bob Hiller at 503-231-6201.

How, if it is a public

Attachment: as



RECEIVED

MAR 10 1997

WILDLIFE SERVICE
REFUGE BURNS, OR

U.S. Department of Justice

United States Attorney
District of Oregon (Medford Branch)

Suite 227
310 West Sixth Street
Medford, OR 97501

(temp)

(541) 776-3939

(541) 776-3925 FAX

March 4, 1997

Lawrence Matasar
Hoffman & Matasar
1020 SW Taylor St., Suite 330
Portland, Oregon 97205

Re: U.S. v. Dwight and Steven Hammond, CR 94-257(AS)


Dear Larry:

The Refuge has informed me that the Hammonds have not responded to their most recent letter. I did not expect that they would. If no response is forthcoming, the Refuge will take that as an indication that the Hammonds intend to trail their cattle without applying for a permit.

As we discussed earlier, however, we are in agreement about resolution of the criminal case. If the Hammonds live up to the conditions you set forth in your letter summarizing the agreement, including notifying the Refuge sufficiently in advance of their next cattle drive across the Refuge, we will dismiss the criminal case.

Very truly yours,

KRISTINE OLSON
United States Attorney


ROBERT G. THOMSON
Assistant U.S. Attorney

✓ bcc: Forest Cameron

FAX TRANSMITTAL

of pages 1

To <i>Pete Nylander</i>	From <i>F. Cameron</i>
Dept./Agency <i>LE Wilsonville</i>	Phone # <i>231-6169</i>
Fax # <i>503-682-6171</i>	Fax # <i>531</i>
NSN 7540-01-317-7368	5099-101

GENERAL SERVICES ADMINISTRATION

DRAFT FOR DISCUSSION

Robert Thomson
 Assistant U. S. Attorney
 xxxxxxxxx
 Medford, Oregon xxxxx

Dear Mr. Thomson,

On February 20, 1997, the Fish and Wildlife Service first became aware that apparently you have reached tentative agreement with Dwight and Stephen Hammond's attorney, Lawrence Matasar regarding four conditions in return for dismissal of the criminal cases against them. Mr. Matasar described those conditions in a November 19, 1996 letter to you. Apparently those conditions were transmitted to the U. S. District Court on November 25, 1996. This letter is to advise you that as written by Mr. Matasar the conditions are not adequate and may be misleading.

First, under condition #2, the Hammonds agree only not to file a false arrest or other civil action against Refuge personnel for any conduct at Bird Waterhole on August 3, 1994. Since the arrest was by Fish and Wildlife Service Special Agents who are not Refuge personnel, the Hammonds need to agree not to file an action against U. S. Fish and Wildlife Service personnel.

Second, under condition #4, the Hammonds agree to notify the Refuge when they intend to trail their cattle in the spring of 1997, "as long as the government agrees that this is merely a one time notice..." The Fish and Wildlife Service intends for the Hammonds to trail cattle across the Refuge only under a Special Use Permit and to give notice every time. Condition #4 needs to be revised by either 1) deleting the phrase reading "as long as the government agrees that this is merely a one time notice", or 2) by adding at the end of the sentence "including the Fish and Wildlife Service's position that trailing must occur under authority of a Special Use Permit and that one condition under the permit is that the Refuge receive reasonable notice prior to each trailing event", and by deleting the word "merely". These changes are essential so that condition #4 is not mistakenly read to mean that the Government will not require advance notice other than in the spring of 1997, and that there is a full understanding that the Fish and Wildlife Service does require a permit for trailing.

We request that you provide these corrected conditions to the Hammond's attorney as soon as possible and to the U. S. District Court. ???(It is the Fish and Wildlife Service's position that without these changes it would be preferable to dismiss the charges outright without condition.) ??? If you have any questions or wish to discuss these matters please contact Refuge Manager Forrest Cameron.

cc: Kristine Olson

Sincerely,
 Regional Director



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue
Portland, Oregon 97232-4181

FWS-ARW-ID/OR/WA

Robert Thomson
Assistant U. S. Attorney
310 West 6th, Room 106
Medford, Oregon 97501

RECEIVED

MAR 11 1997

MAR 06 1997

WILDLIFE SERVICE
REFUGE BURNS, OR

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First, under condition #2, the Hammonds agree only not to file a false arrest or other civil action against Refuge personnel for any conduct at Bird Waterhole on August 3, 1994. Since the arrest was by Fish and Wildlife Service Special Agents who are not Refuge personnel, the Hammonds need to agree not to file an action against U. S. Fish and Wildlife Service personnel.

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Robert Thomson, Assistant U.S. Attorney

2

We request that you provide these corrected conditions to the Hammond's attorney as soon as possible and to the U. S. District Court. Without these changes, the Fish and Wildlife Service does not agree to settlement of these cases. If you have any questions or wish to discuss these matters, please contact Refuge Manager Forrest Cameron at 541/493-2612.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles J. Finner", with a stylized, flowing script.

ACTING Regional Director

cc: Kristine Olson



IN REPLY REFER TO:

United States Department

FISH AND WILDLIFE
911 NE. 11
Portland, Oregon

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 2

To FORREST CAMERON	From PAM RUMAGE
Dept./Agency Where do I send the copy	Phone #
Fax # for Kristine Olson?	Fax #
NSN 7540-01-317-7368	5099-101 GENERAL SERVICES ADMINISTRATION

FWS-ARW-ID/OR/WA

Robert Thomson
Assistant U. S. Attorney
310 West 6th, Room 106
Medford, Oregon 97501

MAR 06 1997

Dear Mr. Thomson:

On February 20, 1997, the Fish and Wildlife Service first became aware that apparently you have reached tentative agreement with Dwight and Stephen Hammond's attorney, Lawrence Matasar, regarding four conditions in return for dismissal of the criminal cases against them. Mr. Matasar described those conditions in a November 19, 1996, letter to you. Apparently those conditions were transmitted to the U. S. District Court on November 25, 1996. Unfortunately, although Fish and Wildlife Service and Solicitor's Office staff met with you on December 2, 1996, we were not made aware at that time of the November 25 court hearing or the subsequent November 25 letter describing the proposed settlement conditions. This letter is to advise you that in our view the conditions for settlement, as written by Mr. Matasar, are not adequate and may be misleading.

First, under condition #2, the Hammonds agree only not to file a false arrest or other civil action against Refuge personnel for any conduct at Bird Waterhole on August 3, 1994. Since the arrest was by Fish and Wildlife Service Special Agents who are not Refuge personnel, the Hammonds need to agree not to file an action against U. S. Fish and Wildlife Service personnel.

Second, under condition #4, the Hammonds agree to notify the Refuge when they intend to trail their cattle in the spring of 1997, "as long as the government agrees that this is merely a one time notice...." The Fish and Wildlife Service intends for the Hammonds to trail cattle across the Refuge only under a Special Use Permit and for them to give notice every time. Condition #4 needs to be revised by either 1) deleting the phrase reading "as long as the government agrees that this is merely a one time notice", or 2) by adding at the end of the sentence "including the Fish and Wildlife Service's position that trailing must occur under authority of a Special Use Permit and that one condition under the permit is that the Refuge receive reasonable notice prior to each trailing event", and by deleting the word "merely". These changes are essential so that condition #4 is not mistakenly read to mean that the Government will not require advance notice other than in the spring of 1997, and that there is a full understanding that the Fish and Wildlife Service does require a permit for trailing.

Robert Thomson, Assistant U.S. Attorney

2

We request that you provide these corrected conditions to the Hammond's attorney as soon as possible and to the U. S. District Court. Without these changes, the Fish and Wildlife Service does not agree to settlement of these cases. If you have any questions or wish to discuss these matters, please contact Refuge Manager Forrest Cameron at 541/493-2612.

Sincerely,



ACTING Regional Director

cc: Kristine Olson

LEGEND

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

MALHEUR NATIONAL WILDLIFE REFUGE

Blitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON

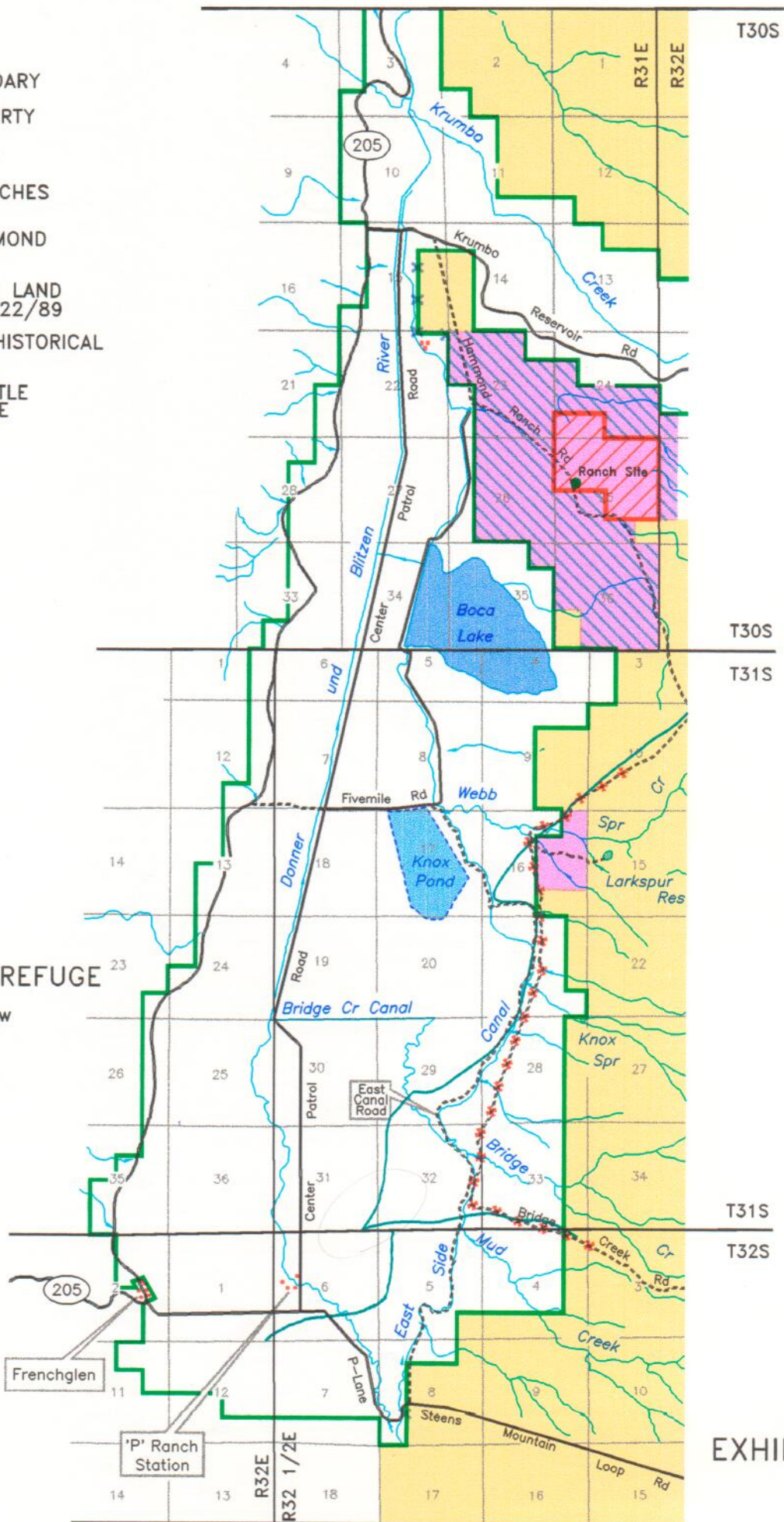
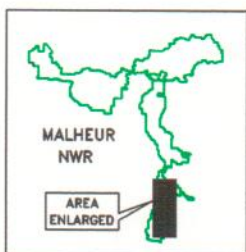


EXHIBIT #1

REFUGE BOUNDARY
REFUGE PROPERTY
BLM PROPERTY
HAMMOND RANCHES
PROPERTY
ORIGINAL HAMMOND
PROPERTY
HAMMOND/BLM LAND
EXCHANGE, 9/22/89
DOCUMENTED HISTORICAL
WAGON ROAD

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

1/10/1889

Blitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON

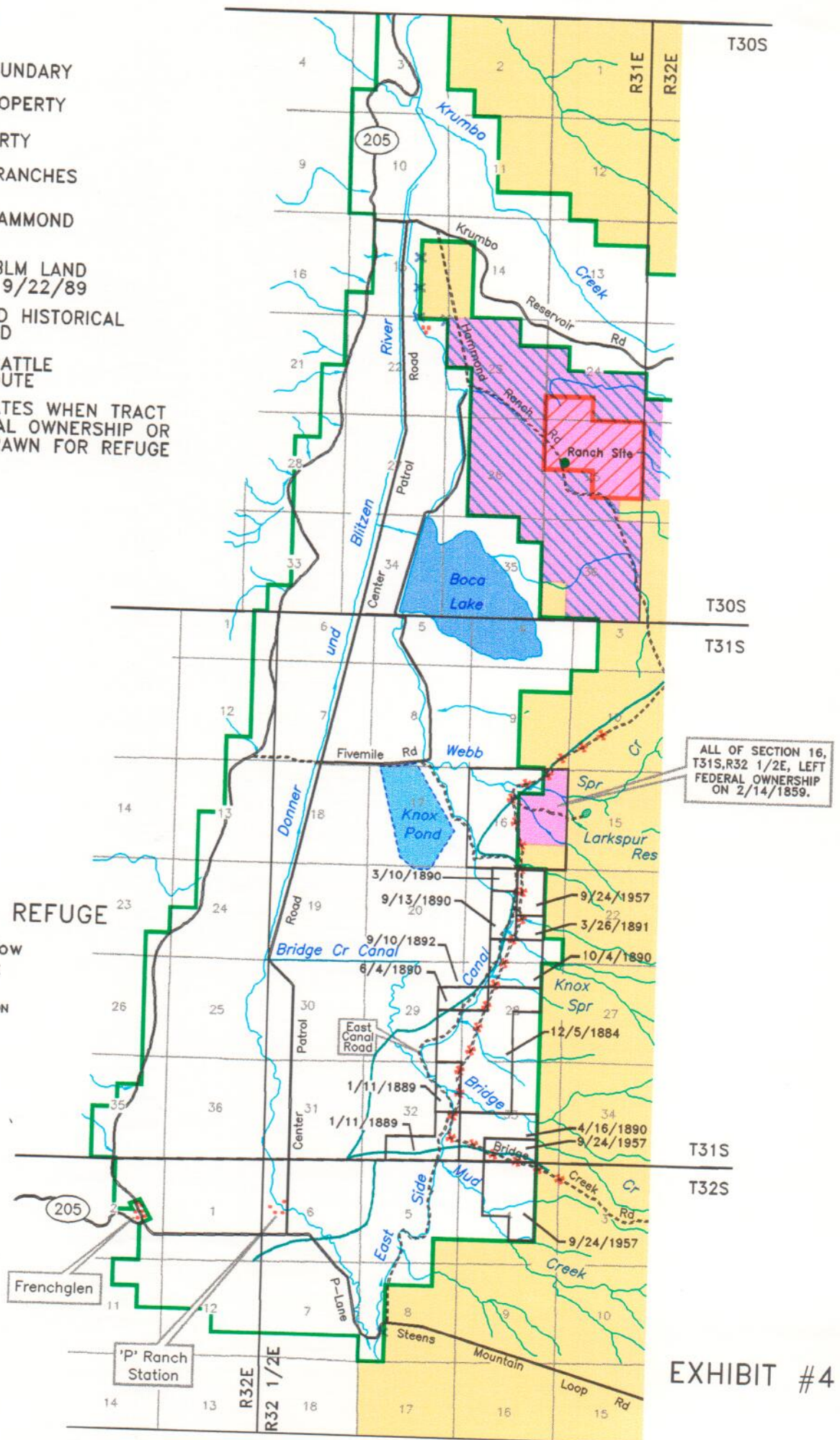
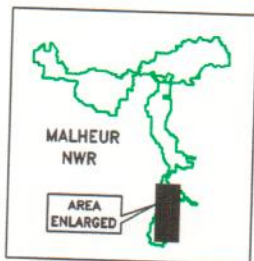


EXHIBIT #4



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Northwest Region
500 N. E. Multnomah Street, Suite 607
Portland, Oregon 97232

March 11, 1997



MEMORANDUM

TO: Forrest Cameron, Manager
Malheur National Wildlife Refuge

FROM: Barbara Scott Brier, Attorney
Office of the Regional Solicitor *PSB*

SUBJECT: Meeting Notes

Attached is a copy of my meeting notes from the September 2-3, 1996 negotiation session with the Hammonds.

Please call me at (503) 231-2139 if you have questions or wish to discuss these matters.

Attachments



U.S. FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
HC 72, Box 245
Princeton, Oregon 97721
(541) 493-2612
Fax Number (541) 493-2405



Facsimile Transmittal Cover Sheet

TO: Barbara Scott Brien

DATE: 3/19/97 TIME: 12:45

FAX PHONE NUMBER: 503/231-2166

☐ Deliver on Regular Mail Run
☐ Call to have picked up

FROM: Forrest Cameron

SUBJECT: Bob Thomson corr

?
1) Where is a letter ^{or agreement} where they
agreed to a SUP and calling?
This dismissed the criminal
cases.

Number of Pages (including Transmittal Sheet):

COMMENTS: You may not have
to Larry M. - L.

Also Bob called
phone log. I'll be
what that's about

Finally, we still
draft RS-2477. open

I'll be in tomorrow. Is that a good time? JWC

U.S. FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
HC 72, Box 245
Princeton, Oregon 97721
(541) 493-2612
Fax Number (541) 493-2405



Facsimile Transmittal Cover Sheet

TO: Barbara Scott Brier

DATE: 3/19/97 TIME: 12:45

FAX PHONE NUMBER: 503/231-2166

☐ Deliver on Regular Mail Run
☐ Call to have picked up
Phone Number: _____

FROM: Forrest Cameron

SUBJECT: Bob Thomson correspondence

Number of Pages (including Transmittal Sheet): _____

COMMENTS: You may not have a copy of Bob's latest note to Larry M. - I ts attached.

Also Bob called this morning & we are now playing phone tag. I'll let you know what that's about.

Finally, we still need to discuss the draft RS-2477 opinion. I'll be in tomorrow. Is that a good time? JWC



2. Withdrawals and Reservations. The agency involved (in this case, the Service) will consult the public land records of the Bureau of Land Management to determine the status of land over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable at the time that the highway was allegedly constructed and remained unavailable through October 21, 1976, the Service will recommend the Secretary deny the claim.

3. Construction. The Service will examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.

4. Highway. The Service will evaluate whether the alleged right-of-way constitutes a highway, that is, a thoroughfare used prior to October 21, 1976 by the public for passage of vehicles carrying people or goods from place to place.

5. Role of State Law. The Service will apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.

6. Secretary's Determination. The Service will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations.

This new policy is significantly different from prior policy. An important point is that the affected agency, not the Bureau of Land Management, makes the recommendation for the Secretary's approval.

Fish and Wildlife Service, Region 1 Realty Actions and Findings:

Land Grants, Transfers, Withdrawals and Reservations

The RS 2477 enactment date of July 26, 1866, and the various land grants, transfers, withdrawals and reservations through 1935, create a window during which an RS 2477 right could be claimed. The map, Exhibit 4, shows the respective dates when the federal lands along the route became unavailable for an RS 2477 claim because of a land grant, transfer, withdrawal, or reservation. (The date inside the land status box on the map is when the land left federal ownership or was withdrawn for Refuge purposes.)

We found the following:

- 1) Land grants were made to the State of Oregon (State Grants) that the present trailing route crosses. The earliest State Grant, near the north end of the route, is dated 1859. The lands in this grant would never have been available for an RS 2477 claim since the land grant predates passage of RS 2477 (1866). This land grant is the earliest gap in the trailing route. The gap bisects the trail

making it unusable as a continuous route. Other State Grants occurred in the 1880's and early 1890's;

2) Homestead Patents were granted in the 1880's and 1890's. Homestead Patents transferred lands out of federal ownership;

3) Malheur National Wildlife Refuge was first set-aside or reserved in the area of the trail on July 16, 1935, by Executive Order 7106, "Establishing The Malheur Migratory Bird Refuge, Oregon."

Maps, Plats, and Written Documents

We researched the land status underlying the trailing route by studying the following maps and plats: Bureau of Land Management Master Title Plats, Historical Indexes, and Government Land Office (GLO) plats, including an 1877 plat; a U.S. Geological Survey quadrangle map of the area; a Fish and Wildlife Service Land Status Map; and the "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon dated 11/27/1908. We also looked at the Executive Orders file, which contains the history of federal land reservations, withdrawals, and transfers concerning the refuge. We looked for unreserved public land on which a public highway existed or may have existed between 1866 and 1976.

We found the following. The 1877 plat shows a "wagon road" traversing the plat from NE to SW. This road corresponds in part to the trailing route the Ranch is using. The GLO survey was conducted in late 1877. It is likely that the road was in existence before the survey, although we do not know when. The 1908 "French-Glenn Map" shows a "wagon road" that corresponds in part to the route the Ranch is using.

We recommend reviewing the survey notes and records to determine whether there is any evidence as to when the wagon road was built.

Construction of Highways

We did not find evidence of construction of a public highway for passage of vehicles carrying people or goods. Few portions of the trailing route qualify as constructed road; and one of those places, a crossing over Bridge Creek, was constructed in the early 1990's.

We recommend looking at the Patents to determine whether there were any right-of-way reservation(s) in them. The Survey Branch suggested we review County and Road Commissioner's Journals, and reports from Road Supervisors, the County Road Master, and the County Surveyor. We recommend investigating records from Harney County and its predecessor to determine whether there were any petitions to open a road corresponding to the trailing route, and whether any monies were spent on

construction and/or maintenance for such a road.

Analysis:

The trailing route was actually broken as a continuous route in 1859 when the first State Grant of public lands occurred along the route. Assuming for argument's sake that the 1859 grant did not break the route, there were unreserved federal public lands along the trailing route between 1866 and 1884.

We found no evidence of construction between 1866 and 1976, although we found mention of a "wagon road."

A key question may be whether the County or State ever acknowledged prior to 1976 the entire route as a public highway. Another question is whether if there were a public highway, was it on the "wagon road" or the current trailing route. If the former, could there be a public highway on the trailing route since it deviates from the "wagon road."

Conclusion and Recommendations

In conclusion, at this time we have not found evidence supporting an RS 2477 claim. If even a small portion of the route was not a public highway, then in our view the claim would not be valid over the entire route.

However, as noted above, we recommend conducting additional research due to some uncertainties regarding this matter. First, we recommend that your office ask the Bureau of Land Management to provide some basic information from their files, particularly: dates of patents; any recognition of travel routes; any evidence of right(s)-of-way; and historical maps, photos or documents of travel routes in the trailing area. We recommend that we then review those documents as well as possibly County records. After the above research is complete, we may also need to research the certain issues such as the meaning of "construction of highways".

Thank you for your assistance in this matter. If you have further questions, please call Bob Hiller at 503-231-6201.

U.S. FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 4

To: Bob Miller	From: Forrest Cameron
Dept./Agency: Realty	Phone #: 493-2405
Fax #: 231-6161	Fax #: (541) 493-2612

NSN 7540-01-317-7368

5099-101

GENERAL SERVICES ADMINISTRATION

Sheet

Fax 4/10
10:15 L.W.



TO: Barbara Scott-Brier
(SOL)

DATE: 4/10¹⁵ 97 TIME: 10:00 am

FAX PHONE NUMBER: FAX (503) 231-2166

☐ Deliver on Regular Mail Run

☐ Call to have picked up

Phone Number: _____

FROM: Forrest Cameron

SUBJECT: New See Policy - RS-2477

Number of Pages (including Transmittal Sheet): _____

COMMENTS: This is the most recent guidance for the Department
on RS-2477. Enjoy!
Forrest



Faxed to BSE 4/10/97
Babbitts Policy

THE SECRETARY OF THE INTERIOR
WASHINGTON

JAN 22 1997

Memorandum

To: Assistant Secretary, Fish and Wildlife and Parks
Assistant Secretary, Land and Minerals Management
Assistant Secretary, Indian Affairs
Assistant Secretary, Water and Science

From: Secretary

Subject: Interim Departmental Policy on Revised Statute 2477 Grant of Right-of Way
for Public Highways; Revocation of December 7, 1988 Policy

Revised Statute 2477, which provided that "[t]he right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted." was repealed on October 21, 1976, by the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §1701 et seq. FLPMA did not terminate valid rights-of-way established under R.S. 2477 prior to its repeal. The existence and extent of valid rights-of-way previously established pursuant to R.S. 2477 remains an issue in some places.

States or local governments asserting that R.S. 2477 rights-of-way exist on federal lands can in appropriate situations file a lawsuit in federal court seeking to establish the validity of that assertion. In the alternative or in advance of filing such a lawsuit, the Department of the Interior may also be asked to give its views on such assertions.

On December 7, 1988, Secretary Hodel signed a memorandum that discussed his policy for making determinations whether the Department would recognize claims for rights-of-way under R.S. 2477. That policy was not promulgated according to rulemaking procedures and is not a rule. In fact, because the Department has not been making such determinations in recent years, that policy has not been carried out for several years. The purpose of this memo is to revoke the 1988 policy and establish a revised policy for carrying out any determinations the Department might be called upon to make regarding R.S. 2477.

Background

At the request of Congress, the Department submitted a Report to Congress on R.S. 2477 in June 1993. In accordance with that Report's recommendations, the Department determined that regulations should be written for R.S. 2477, and a Notice of Proposed Rulemaking was published in 1994. 59 Fed. Reg. 39,216 (August 1, 1994). Thereafter, Congress attached a provision to the Department's appropriation for fiscal year 1996 that prohibited using funds appropriated by that statute for "developing, promulgating, and thereafter implementing a

rule concerning rights-of-way under section 2477 of the Revised Statutes." Pub. L. 104-134, §110. 110 Stat. 1321-177 (1996). The Department's appropriation for fiscal year 1997 permits the publication of final regulations but says they shall not take effect unless "expressly authorized by an Act of Congress subsequent to the date of enactment of this Act." Pub. L. 104-208, §108, 110 Stat. 3009 (1996).

I addressed the issue of whether the Department should continue to make determinations regarding R.S. 2477 claims in my May 28, 1993, letter to Congress transmitting the Department's Report: "Until final rules are effective, I have instructed the Bureau of Land Management to defer any processing R.S. 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations." This instruction is still in effect.

Revised Policy on R.S. 2477 Rights-of-way Determinations

Those making claims of the existence of valid R.S. 2477 rights-of-way continue to have the option of seeking to establish the validity of their claims in court. Nevertheless, it is possible that the Department may be asked, in advance of final rules taking effect, to make such determinations on the basis that such a demonstrated, compelling, and immediate need is claimed to exist. If so, until final rules are published and take effect, determinations regarding R.S. 2477 rights-of-way will be made by the Secretary of the Interior in consultation with the appropriate Interior agency, according to the following policy:

1. **Claims.** An entity wishing the Secretary or any agencies of the Department of the Interior to make a determination whether an R.S. 2477 right-of-way exists shall file a written request with the Interior agency having jurisdiction over the lands underlying the asserted right-of-way, along with an explanation of why there is a compelling and immediate need for such a determination. The request should be accompanied by documents and maps that the entity wishes the agency to consider in making its recommendation to the Secretary. If, based on the information provided, the agency does not believe a compelling and immediate need for the determination exists, it should without further examination recommend the Secretary defer processing until final rules are effective.
2. **Withdrawals and Reservations.** The agency shall consult the public land records maintained by the Bureau of Land Management to determine the status of the lands over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable pursuant to R.S. 2477 at the time that the highway giving rise to the claim of an R.S. 2477 right-of-way was allegedly constructed and remained unavailable through October 21, 1976, the agency will recommend the Secretary deny the claim.
3. **Construction.** If the lands were not withdrawn, reserved, or otherwise unavailable pursuant to R.S. 2477, the agency shall examine all available documents and maps and perform an on-site examination to determine whether construction on the alleged right-of-way had occurred prior to the repeal of R.S. 2477 on October 21, 1976. If the agency

determines that construction did not occur, the agency will recommend the Secretary deny the claim.

4. **Highway.** The agency shall evaluate whether the alleged right-of-way constitutes a highway. A highway is a thoroughfare used prior to October 21, 1976, by the public for the passage of vehicles carrying people or goods from place to place. If the agency determines that the alleged right-of-way does not constitute a highway, the agency will recommend the Secretary deny the claim.

5. **Role of State Law.** In making its recommendations, the agency shall apply state law in effect on October 21, 1976, to the extent that it is consistent with federal law. The agency will in no case recommend approval of claims that do not comply with the requirements of applicable state law.

6. **Secretary's Determination.** The agency will make recommendations on the abovedescribed issues to the Secretary. The Secretary will approve or disapprove those recommendations.

The December 7, 1988 policy, including attachment 1, is hereby revoked.

Bruce Babbitt

TO: FORREST CAMERON
 10 RED LION HANFORD 509-943-8564

Barbara's 1st

FROM: Barbara Scott-Brier phone 503-231-2139
 To : Refuge Manager, Malheur NWR

Edit

From : Chief, Division of Realty

Subject: Potential RS 2477 Claim by Hammond Ranches Inc.

You asked for an opinion as to whether Hammond Ranches ^(Ranch) could have a valid RS 2477 claim to move livestock (cattle) across Refuge lands. ^{The current owner has operate the Ranch for about 30 years and} ~~The Ranch~~ has been moving cattle over this route. ^{The FWS has asserted} ~~Refuge staff challenged them declaring that they have no right to~~ use Refuge land except under Refuge Special Use Permit. ~~Hammond~~ ^{The Ranch} Ranches say it is their right to use the route based on historic use ^{without articulating any specific basis such as} and RS 2477.

To end this dispute we need to resolve the ^{potential} RS 2477 claim.

As a lead-in to answering your questions, we offer an abbreviated history of RS 2477. Revised Statute 2477 is an 1866 Act (Federal law) "granting" highway rights of way over federal public lands stated in deceptively simple language:

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

This "grant" was originally found in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act. This act was later codified as Revised Statute (R.S.) 2477 and later

P.02

APR-10-97 THU 11:36

2

P.03

APR-10-97 THU 11:37

particularly Wilderness Act withdrawals and other withdrawals, came. The states found ~~or "rediscovered"~~ this wording, and asserted their claims for highways in existence or to be built. The states, in many cases, were counting on the RS 2477 claim(s) to block pending wilderness designations. ^{since} One of the criteria for land to be wilderness under the law is that it must be roadless. Furthermore, state, counties and individuals have ~~"found"~~ this law to be prospectively useful for gaining "free" access across federal lands. X

In summary, between 1886 when the law was passed ~~So, we have this 1866 law,~~ (renumbered in 1873, codified in 1938, and ^{1976 when it was} finally repealed, ~~in 1976~~). During this time no changes were made to the act, and the only understanding of it came from inconsistent case law. ~~But we have a problem:~~ States, counties, and others want to apply ~~it~~ ^{the law}, and have asserted/claimed it as a basis for rights-of-way across federal land. There were no regulations or specific guidance for application, ^{Thus,} ~~so~~ on October 1988, Secretary of the Interior Model issued "Secretarial Guidance" as 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) (Exhibit 2)." ~~With this mouth-filling subject, the Secretary set out to help us field folks make the act work.~~ ^{BRIEFLY SUMMARIZE KEY POINTS} 3/8/89? clock

^{of Land Management (Bureau)}
The Bureau ²⁴⁷⁷ was (and still is) tasked with processing ~~the~~ claims and determining ^{their validity} ~~them valid~~. ~~Some have been "approved"~~.
~~The Interior Department and the Solicitor say "deciding validity"~~ OK

~~is adjudication, which the Bureau has no authority to do.~~

Sorting ^{out the claims,} ~~it all out,~~ cataloging them, and notifying other federal agencies of their existence ^{has been} ~~is~~ a daunting task at best. In 1992,

Congress, after hearing from constituents and agencies about the problems of ^{determining} ~~figuring out~~ these rights, ordered the Bureau to research the issues, canvas the public and other federal

agencies, ^{and} write, publish and institute (proposed) regulations

~~(The regulations were supposed to create a regular process by~~

which ~~these~~ claims of valid existing rights ^{could} ~~can~~ be identified and

evaluated. ^{and} ~~The regulations were also to define key statutory~~

~~words: "construction," "highways," "unreserved public lands"~~

to establish standards against which to measure the claims.) ^{The Bureau} ~~BLM~~

released its report on June 1, 1993, ^{but due to controversy surrounding} ~~and was promptly shot down~~

^{the report, there are} ~~by just about everyone.~~ The results are no regulations to date,

~~more court battles, and no "final" resolution. So, here comes~~

~~the Ranch, with a possible assertion RS 2477 right of way.~~

Insert from P. 7

RS 2477 contains ^{three} ~~3~~ key concepts for the claim to be acceptable to BLM, and all must be present. (See Secretary Hodel's memo, Exhibit 2):

1. ^{All} ~~The~~ lands involved in the claim 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; and,
3. The highway so constructed must be considered a public highway.

← (Note that Exhibit 1 lays all this out and explains what each provision means.) ^{Further} Remember, under ~~this~~ ^a claim the United States has no duty or authority to adjudicate an assertion or application, but as a practical matter must be able to recognize with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477. ^{Generally, the Bureau} We would mostly rely on the States to show the existence of the RS 2477, ^{but the} ~~I say~~ "mostly" because ~~we~~ ^{has} the Federal government, ~~have~~ from time to time taken issue with state claims and the basis for them, ~~and~~ ~~have gone to court.~~

Land Status Research/Facts: I looked at the following maps of the route in question: Bureau Master Title Plats (MTP's) and Historical Indexes (HI's); ¹ a USGS quad of the area; ² a Fish and Wildlife Service Land Status Map; ³ and a "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon dated 11/27, 1908; and, the "Executive Orders" file ⁴ which contains the history of the Refuge so far as reservations, withdrawals and transfers are concerned. ^{Since deeded or reserved lands are not available for a RS 2477 claim,} I was looking for "unreserved public land" on which a ^{may have} public stock driveway (highway) existed between 1866 and 1976; ^{and} evidence of construction of ^a public stock driveway or highways; ^{and evidence of} ~~I was looking for~~ public, constructed routes, which are the same as ^{the} Hammond Ranch is using and ^{may be} claiming a right to under RS 2477.

^{level route?} Regarding the trailing route in question I found the following: ^{EXPLAIN SIGNIFICANCE IF ANY of the Grants} ~~I found~~ grants to the State of Oregon (State Grants) as far back as 1859 (the earliest State grant), though most occurred in

5

the 1880's and early 1890's, ^{and} ~~I also found~~ 1880's and 1890's Homestead Patents, ^{which} ~~Homestead Patents~~ deed the land out of Federal ownership. ~~I found that~~ Malheur National Wildlife Refuge was first set-aside or reserved in the area by Executive Order 7106, 7/16/1935, "Establishing The Malheur Migratory Bird Refuge, Oregon." ~~According to the~~ Malheur Refuge Manager, French-Glenn Livestock Company was probably begun in 1872 by Peter French ~~buying land from the State of Oregon, settling some himself, and buying out neighbors. The deeded and reserved lands were/are not available for an RS 2477 claim. However, there~~ ^{are} a series of windows between 1866 ^(passage of RS 2477) and 1884 (the earliest recorded Patent) ^{and} later (from other Patents and State Grants) ^{for an RS 2477 claim.}

[Name the "windows" periods or is it one period 1866-1884?]
 [ONCE the 1st Patent was issued doesn't that break the route if there isn't]
 I did not find evidence of construction of a public highway ^{one already}
 for stock driving or any other purposes. ~~However,~~ The "French-Glenn Map" ^{of 1908} shows a "wagon road" that roughly corresponds to the route Hammond Ranch is using; ^{however, I found no evidence that I don't know if this is a} constructed road, and if so, when construction took place.
 Perhaps Harney County can provide evidence of ^{whether} a constructed highway corresponding to the Hammond trailing route ~~that~~ existed during the "windows." I did not look at Patents for a

reservation of an RS 2477 right-of-way or stock trailing route or highway right-of-way that could be an RS 2477 claim. [WHY NOT? WHO SHOULD DO THIS?]
 Additionally, I have not researched the administrative and court decisions on RS 2477's to see if ^{"wagon road" or a} a stock trailing route is a highway for RS 2477 purposes. [WHY NOT? WHO SHOULD DO THIS?]

6

Name each window above!

In conclusion, I found there were a number of narrow windows
~~between 1866 and 1892~~ ^{1884?} during which there was unreserved Federal

public land ~~available for an RS 2477 claim.~~ ^{along the entire route and thus a possible} ~~If use in moving~~ Although I

have found no evidence of such, if use in moving
 livestock equals "construction of highways" cited in RS 2477, if

the use was at the proper time, ^{and if the route} ~~if it is~~ accepted as a public

highway, then predecessors of the Hammond Ranch and the Ranch ^{itself}

could claim the route under RS 2477. ^{Thus, a key} A pertinent question is

whether the State acknowledged the entire route as a public

highway during any of the windows. ^{even} If ^{a portion} were not so
 acknowledged, the claim would not be valid.

in response to my inquiry, the Bureau's
~~Back~~ In July, 1994, ~~I asked the BLM Oregon State Office if~~ ^{stated}

RS 2477 assertions are still allowed? ~~The Office said yes,~~ but

the processing of RS 2477 assertions is on nation-wide hold

pending the issuance of regulations. That guidance ^{was} ~~has now been~~

modified by Secretary Babbitt's January 22, 1997 guidance memo,

Exhibit 3, which provided that [summarize. Does that affect
~~Attachment 3, which provided that~~ ^{4/15/97}

Thus, although an maybe
~~The bottom line is that~~ ^{an} RS 2477 claim is possible, ~~but~~ we have not

found a) record to support ~~or deny~~ such an assertion. ^{However, due to severe} ~~uncertainties regarding this matter,~~ ^{is certainly not yet}

compiled, My recommendation is that the Service ask the BLM Bureau's

State Office to provide some basic information from their files

that could provide information that might quickly clarify some of

our questions concerning dates of patents, existence of rights-

of-ways and historical maps of travel routes. I would be pleased

to work with you in drafting such a request.

If you have further questions, please call me or Bob Hiller at

503-231-6201.

7

TO: Elaine Zelinski, State Director

Bureau of Land Management

From: Regional Director, Pacific Region

Fish and Wildlife Service

Subj: RS 2477 Claim

Dear Elaine:

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon ^{are} ~~is~~ working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher ^{good} has said that he thinks he has an historic right to move his cattle through the Refuge, ^{although he has not articulated the basis, such as} ~~and has contended there is an RS 2477~~ right of way.

While at this point there is no formal RS 2477 claim, we would like to resolve this issue ~~on a nonconfrontational manner~~ if possible between Refuge staff and the neighbor. To do that we ask

that you ask your staff to research the following for the land in question of the attached map:

5. The existence of any established legal rights-of-way *(in the patents of land)* along the trailing route.
 1. The dates of the respective patents of the parcels of land along this trailing route. *(See map attached)*
 2. The ~~dates~~ *respective* that land along this trailing route were first reserved from public domain. *the parcels of*
 3. Any evidence that the State has recognized a public highway along some or all portions of the trailing route.
 4. The existence of any maps, ~~or~~ photos *of the area that* for records or documents might be pertinent in resolving this informal RS 2477 claim.
 6. ~~OTHER?~~ *Administrative record or court case law regarding whether a wagon route can be considered a highway.*

Yes Please provide our Realty Office *and Refuge Manager* with any information that you might find on these ~~these~~ issues. The contact in that office is Scott Wise, Branch Chief of Acquisition, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager at Malheur Refuge, at 541-493-2612.

Thank you for your help in resolving this matter.

1st Draft
to BSB

To : Refuge Manager, Malheur NWR

From : Chief, Division of Realty

Subject: Potential RS 2477 Claim by Hammond Ranches Inc.

You asked for an opinion as to whether Hammond Ranches could have a valid RS 2477 claim to move livestock (cattle) across Refuge lands. The Ranch has been moving cattle over this route. Refuge staff challenged them declaring that they have no right to use Refuge land except under Refuge Special Use Permit. Hammond Ranches say it is their right to use the route based on historic use and RS 2477.

To end this dispute we need to resolve the RS 2477 claim.

As a lead-in to answering your questions, we offer an abbreviated history of RS 2477. Revised Statute 2477 is an 1866 Act (Federal law) "granting" highway rights of way over federal public lands stated in deceptively simple language:

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

This "grant" was originally found in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act. This act was later codified as Revised Statute (R.S.) 2477 and later

recodified as 43 U.S.C. 932. It remained on the books until it was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq, the Bureau of Land Management's (Bureau or BLM) so-called "Organic Act." Because of the repeal, we are only concerned about "claims" of grants of right-of-ways "perfected" after 1866 and before October 21, 1976, or until the land underlying a claimed RS 2477 went into "reserve" status or was deeded out of Federal ownership.

RS 2477 has been the subject of inconsistent state statutes and court decisions, and a handful of inconsistent federal court decisions, during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them. An important point is that the legislative history is silent as to the meaning of this section of the 1866 Act. When we cannot easily determine what a law means from its language, we often look at the Congressional record of hearings and discussions on it. The records usually provide actual recorded commentary among members of congress as to what the law is about and why it is to be enacted.

We know that for the longest time not much was made of or done with this provision of law. In fact it didn't elicit much reaction until after its repeal in 1976. It wasn't "important" until the large public lands set-asides of the 1970's and later,

particularly Wilderness Act withdrawals and other withdrawals, came. The states found or "rediscovered" this wording, and asserted their claims for highways in existence or to be built. The states, in many cases, were counting on the RS 2477 claim(s) to block pending wilderness designations. (One of the criteria for land to be wilderness under the law is that it must be roadless.) furthermore, State, counties and individuals have "found" this law to be prospectively useful for gaining "free" access across federal lands.

So, we have this 1866 law, renumbered in 1873, codified in 1938, and finally repealed in 1976. During this time no changes were made to the act, and the only understanding of it came from inconsistent case law. But we have a problem: States, counties, and others want to apply it, and have asserted/claimed it as a basis for rights-of-way across federal land. There were no regulations or specific guidance for application, so on October, 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as Departmental Policy on Section 8 of the Act of July 26, 1866, Revised Statue 2477 (Repealed), Grant of Right-of-Way for Public Highways (RS 2477) (**Exhibit 2**). With this mouth-filling subject, the Secretary set out to help us field folks make the act work.

The Bureau was (and still is) tasked with processing the claims and determining them valid. Some have been "approved". The Interior Department and its Solicitor say "deciding validity"

is adjudication, which the Bureau has no authority to do. Sorting it all out, cataloging them, and notifying other federal agencies of their existence is a daunting task at best. In 1992, Congress, after hearing from constituents and agencies about the problems of "figuring-out" these rights, ordered the Bureau to research the issues, canvas the public and other federal agencies; and write, publish and institute (proposed) regulations (The regulations were supposed to create a regular process by which these claims of valid existing rights can be identified and evaluated. The regulations were also to define key statutory words - "construction," "highways," "unreserved public lands" - to establish standards against which to measure the claims.) BLM released its report on June 1, 1993, and was promptly shot-down by just about everyone. The results are no regulations to date, more court battles, and no "final" resolution. So, here comes the Ranch, with a possible assertion RS 2477 right-of-way.

RS 2477 contains 3 key concepts for the claim to be acceptable to BLM, and all must be present. See Secretary Hodel's memo, Exhibit 2:

1. The lands involved in the claim 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; and,
3. The highway so constructed must be considered a public highway.

Note that Exhibit 1 lays all this out and explains what each provision means. Remember, under this claim the United States has no duty or authority to adjudicate an assertion or application, but as a practical matter must be able to "recognize" with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477. We would mostly rely on the States to show the existence of the RS 2477. I say "mostly" because we, the Federal government, have from time to time taken issue with state claims and the basis for them, and have gone to court.

Land Status Research/Facts: I looked at the following maps of the route in question: Bureau Master Title Plats (MTP's) and Historical Indexes (HI's), a USGS quad of the area, a Fish and Wildlife Service Land Status Map, and a "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon dated 11/27, 1908; and, the "Executive Orders" file, which contains the history of the Refuge so far as reservations, withdrawals and transfers are concerned. I was looking for "unreserved public land" on which a public stock driveway (highway) existed between 1866 and 1976, and evidence of construction of the public stock driveways or highways. I was looking for public, constructed routes, which are the same as Hammond Ranch is using and claiming a right to under RS 2477.

I found grants to the State of Oregon (State Grants) as far back as 1859 (the earliest State grant), though most occurred in

the 1880's and early 1890's. I also found 1880's and 1890's Homestead Patents. Homestead Patents deed the land out of Federal ownership. I found that Malheur National Wildlife Refuge was first set-aside or reserved in the area by Executive Order 7106, 7/16/1935, "Establishing The Malheur Migratory Bird Refuge, Oregon." According to our Malheur Refuge Manager, French-Glenn Livestock Company was probably begun in 1872 by Peter French buying land from the State of Oregon, settling some himself, and buying-out neighbors. The deeded and reserved lands were/are not available for an RS 2477 claim. However, there is a series of windows between 1866 and 1884 (the earliest recorded Patent); and later (from other Patents and State Grants) for an RS 2477 claim.

I did not find evidence of construction of a public highway for stock driving or any other purposes. However, the "French-Glenn Map" shows a "wagon road" that roughly corresponds to the route Hammond Ranch is using. I don't know if this is a constructed road, and if so, when construction took place. Perhaps Harney County can provide evidence of a constructed highway corresponding to the Hammond trailing route that existed during the "windows." I did not look at Patents for a reservation of an RS 2477 right-of-way or stock trailing route or highway right-of-way that could be an RS 2477 claim. Additionally, I have not researched the administrative and court decisions on RS 2477's to see if a stock trailing route is a highway for RS 2477 purposes.

In conclusion, I found there were a number of narrow windows between 1866 and 1892, during which there was unreserved Federal public land available for an RS 2477 claim. If use in moving livestock equals "construction of highways" cited in RS 2477, if the use was at the proper time, if it is accepted as a public highway, then predecessors of the Hammond Ranch and the Ranch could claim the route under RS 2477. A pertinent question is whether the State acknowledged the entire route as a public highway during any of the windows.

Back in July, 1994, I asked the BLM Oregon State Office if RS 2477 assertions are still allowed? The Office said yes, but the processing of RS 2477 assertions is on nation-wide hold pending the issuance of regulations. That guidance has now been modified by Secretary Babbitt's January 22, 1997 guidance memo, Attachment 3.

The bottom line is that an RS 2477 claim is possible, but a record to support or deny such an assertion is certainly not yet compiled. My recommendation is that the Service ask the BLM State Office to provide some basic information from their files that could provide information that might quickly clarify some of our questions concerning dates of patents, existence of rights-of-ways and historical maps of travel routes. I would be pleased to work with you in drafting such a request.

If you have further questions, please call me or Bob Hiller at 503-231-6201.

TO: Elaine Zelinski, State Director
Bureau of Land Management

From: Regional Director, Pacific Region
Fish and Wildlife Service

Subj: RS 2477 Claim

Dear Elaine,

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge and has contended there is an RS 2477 right of way.

While at this point there is no formal RS 2477 claim, we would like to resolve this issue on a nonconfrontational manner if possible between Refuge staff and the neighbor. To do that we ask

that you ask your staff to research the following for the land in question of the attached map:

1. The existence of any established legal rights-of-way along the trailing route.
2. The dates that land along this trailing route were first reserved from public domain.
3. The existence of any maps or photos of the area that might be pertinent in resolving this informal RS 2477 claim.

Please provide our realty Office with any information that you might find on these three issues. The contact in that office is Scott Wise, Branch Chief of Acquisition, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager at Malheur Refuge, at 541-493-2612.

Thank you for your help in resolving this matter.

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To: Elaine Zelinski, State Director
Bureau of Land Management

From: Regional Director, Pacific Northwest Region
Fish and Wildlife Service

Subj:RS 2477 Claim

Dear Elaine:

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon are working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance a rancher on the east side of the Blitzen Valley has said that he thinks he has an historic right to move his cattle through the Refuge although he has not articulated the basis under an RS 2477 right-of-way.

While at this point there is no formal RS 2477 claim, we would like to resolve this issue if possible between Refuge staff and the neighbor. To do that we ask that you ask your staff to research the following for the land in question, described on the

/

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attached map:

1. The respective dates of the patents of the parcels of land along the training route.
2. The respective dates that land along this trailing route were first reserved from public domain.
3. Any evidence that the State has recognized a public highway along some or all portions of the trailing route.
4. The existence of any maps, photos, documents, or other records of the area that might be pertinent in resolving a potential RS 2477 claim.
5. The existence of any established legal rights-of-way along the trailing route.
6. Other?

Please provide our Realty Office and Refuge Manager with any information that you might find on these issues. The contact in that office is Scott Wise, Branch Chief of Acquisition, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager at Malheur Refuge, at 541-493-2612.

Thank you for your help in resolving this matter

BSB Review of RS 2477 opinion by Heller
+ " " Draft RD letter to BLM state Dir.

Heller letter -

My concerns were:

- speculation

- Opinion w/o fact

- Opening issues that may bite us later.

- His offering that a trailing route is a stock drive

- DFAs - Not sure of source, so just reference (if needed)

- His offering that the County could make a determination

- Is "abbreviated history" necessary? - 1/22/97

- Babbitt revoked Hodel's 12/7/88 policy.

- Need Attachments (Exhibits) map policy

- To send to state BLM Director.

BSB Conversation - 4/15/97

Will FAX to Red Lion Kauford (503) 288-4163 Home

How long have Hammond used route?

Call for Followup.

8-10am Wed

9-102880-

877 192 4094 8332

They talk about ROW but not so far as an RS 2477 claim.

Has the state recognized a route?

~~Advice~~ Send them a permit when they phone in notice
On letter. Proper permits.

Work on permits to all other people crossing refuge lands.

TO- FORREST CAMERON C/O RED LION HANFORD
 FAX 509-943-8564

FROM: BSB Call me at home tonight to discuss.
 To: Barbara Scott-Brier

3:30 PM 4/16/97

Office of the Solicitor, Pacific Northwest Region
 503-288-4163 Jax!
 Under BSB-RS 2477, have her secretary fax A-J after.

From: Chief, Division of Realty

Call after 3:30

231-2126 Colleen.

Subject: Potential RS 2477 Claim by Hammond Ranches Inc.

You asked for an opinion as to whether Hammond Ranches (the Ranch) may have a valid RS 2477 claim to move livestock (cattle) across Refuge lands. The current owner owned the property for about 18 years and has been moving cattle over this route. The Fish and Wildlife Service has asserted that the Ranch does not have a right to use Refuge land for trailing or other purposes except under Refuge Special Use Permit. Hammond Ranches say it is their right to use the route based on historic use but without articulating any specific basis such as RS 2477.

To end this dispute we need to resolve the potential RS 2477 claim.

As a lead-in to answering your questions, we offer an abbreviated history of RS 2477. Revised Statute 2477 is an 1866 Act (Federal law) "granting" highway rights-of-way over federal public lands stated in deceptively simple language:

(1) The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby

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granted.

[Handwritten signature]
This grant was originally found in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act, later codified in 1873 as Revised Statute (R.S.) 2477, and later recodified 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq, the so-called "Organic Act" of the Bureau of Land Management ~~(Bureau or BLM)~~ *the Bureau*. Because of the repeal, we are only concerned about claims of grants of right-of-ways perfected after July 26, 1866, and before October 21, 1976, or until the land underlying a claimed RS 2477 was reserved from the public domain or was deeded out of Federal ownership, whichever was earlier. *reserved or deeded.*

RS 2477 has been the subject of inconsistent state statutes and court decisions, and a handful of inconsistent federal court decisions, during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them. When we cannot easily determine what a law means from its language, we often look at the Congressional record of hearings and discussions on it. The records usually provide actual recorded commentary among members of congress as to what the law is about and why it is to be enacted. An important point is that the legislative history is silent as to the meaning of this section

[Handwritten signature]

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The
Insert on next page

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of the 1866 Act.

For a long time not much was made of or done with this provision of law. In fact, it didn't elicit much reaction until after its repeal in 1976 and the large public lands set-asides of the 1970's, and later, particularly when Wilderness Act withdrawals and other withdrawals occurred. The states found this provision, and asserted their claims for highways in existence or to be built. The states, in many cases, were counting on the RS 2477 claim(s) to block pending wilderness designations. (One of the criteria for land to be wilderness under the law is that it must be roadless.) Furthermore, States, counties, and individuals have found this law to be prospectively useful for gaining free access across federal lands.

Insert → In summary, between 1866 when the law was passed (codified in 1873, recodified in 1938), and 1976 when it was repealed, no changes were made to the act, and the only understanding of it came from inconsistent case law. States, counties, and others wanting to apply the law asserted ~~claimed~~ it as a basis for rights-of-way across federal land. There were no regulations or specific guidance for application. Thus, on October 7, 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as ¹¹ 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) (Exhibit 2)."

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The Bureau of Land Management (Bureau) was tasked by _____ with processing 2477 claims and determining their validity. (But see the next sentence). Some were "approved" by _____; however, the Department and the Solicitor determined that the Bureau had no authority to "decide the validity" of the claims but could sort them and _____. Sorting out the claims, cataloging them, and notifying other federal agencies of their existence has been a daunting task at best.

omit
?

6K In 1992, Congress, after hearing from constituents and agencies about the problems of determining these rights, ordered the Bureau to research the issues, canvas the public and other federal agencies, and write, publish and institute (proposed) regulations to create a process by which these claims of valid existing rights could be identified and evaluated, and to establish standards against which to measure the claims. The Bureau released its report on June 1, 1993, but due to the controversy associated with the report, there are no regulations to date.

In July 1994, in response to my inquiry, the Bureau's State Office State Office stated that RS 2477 claims [assertions?] are still allowed but the processing of RS 2477 claims was put on nation-wide hold pending the issuance of regulations. That policy was modified by Secretary Babbitt's January 22, 1997 guidance memorandum, Exhibit 3, which provided that

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RS 2477 contains three key requirements for the claim to be acceptable, and all three must be present. (See Secretary Hodel's memo, Exhibit 2):

Can we
refer to
Babbitt 1/22/97
?

1. The lands involved in the claim must have been public lands, not reserved from the public domain, at the time of the claim acceptance;
2. Some form of construction of the highway must have occurred; and,
3. The highway so constructed must be considered a public highway.

(Note that Exhibit 1 lays all this out and explains what each provision means.) Further, under a claim the United States has no duty or authority to adjudicate an assertion or application, but as a practical matter must be able to recognize with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477. Generally, the Bureau would ~~mostly~~ rely on the States to show the existence of the RS 2477, but the Federal government has from time to time taken issue with state claims and the basis for them.

Land Status Research/Facts: I looked at the following maps of the route in question: Bureau Master Title Plats (MTP's) and Historical Indexes (HI's); a USGS quadrangle map of the area; a Fish and Wildlife Service Land Status Map; a "Map of French-Glenn

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I did not find evidence of construction of a public highway for stock driving or any other purposes. The "French-Glenn Map" shows a "wagon road" that roughly corresponds to the route Hammond Ranches is using. I don't know if this is a constructed road, and if so, when construction took place and, if so, whether it was a "public" road. Perhaps Harney County can provide evidence of whether a constructed public highway corresponding to the Hammond trailing route existed during the windows. I did not look at Patents for a reservation [WHY NOT? WHO SHOULD DO THIS? WHO WOULD HAVE MADE THE RESERVATION? THE U.S.? IS THIS NECESSARY? PLZ EXPLAIN.] of an RS 2477 right-of-way or stock trailing route or highway right-of-way that could be an RS 2477 claim. Additionally, I have not researched the administrative and court decisions on RS 2477's to see if a stock trailing route is a "highway" for RS 2477 purposes. [WHY NOT? WHO SHOULD DO THIS?]

In conclusion, I found there were a number of narrow windows [NAME EACH WINDOW] between 1866 and 1884 1892, during which there was unreserved Federal public land along the entire route and thus available for an RS 2477 claim. Although I have found no evidence of such, if use in moving livestock equals "construction of highways" cited in RS 2477, if the use was at the proper time, and if the route is accepted as a public highway, then predecessors of the Ranch and the Ranch could claim the route under RS 2477. Thus, a key question is whether the State

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acknowledged the entire route as a public highway during any of the windows. If even a portion were not so acknowledged the claim would not be valid.

Thus although an RS 2477 claim may be possible, we have not found a record to support such an assertion. However, due to several uncertainties regarding this matter, my recommendation is that the Service ask the BLM State Office to provide some basic information from their files that could provide information that might quickly clarify some of our questions concerning dates of patents, existence of rights-of-ways and historical maps of travel routes. I would be pleased to work with you in drafting such a request.

If you have further questions, please call me or Bob Hiller at 503-231-6201.





UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Malheur National Wildlife Refuge

SPECIAL USE PERMIT

Station No. to be Credited	Permit Number
13570	N ^o 76132
Date	
<u>April 21, 1997</u> <i>Date of notice</i>	
Period of Use (inclusive)	
From	<u>19</u>
To	<u>04 31</u> 19 <u>97</u> <i>(Same year as date of notice)</i>

Permittee Name	Permittee Address
Hammond Ranches, Inc.	c/o Dwight Hammond Diamond, Oregon 97722

Purpose (specify in detail privilege requested, or units of products involved)

This permit is being issued to formalize your use of Refuge lands for the purpose of trailing cattle from your ranch across Malheur Refuge to land east of the Refuge in the Bridge Creek area, administered by the Bureau of Land Management

Description (specify unit numbers; metes and bounds, or other recognizable designations)

Across Malheur Refuge land from the Webb Spring area to the Bridge Creek area along ~~existing trails~~. This includes T31S R32 1/2 E Sections 16, 21, 28, 32 and 33; and T 32S R 32 1/2 E Section 4. ~~See attached map.~~

The trail delineated on the attached map.

Amount of fee \$ NA if not a fixed payment, specify rate and unit of charge: with the no

☐ Payment Exempt - Justification: This is a long time use for which there has not been a fee. With special conditions allowing no use of government facilities other than the trail, there is no cost to recover on the government's part. No fee will be assessed.

☐ Full Payment

☐ Partial Payment - Balance of payments to be made as follows:

Record of Payments

manager or Acting manager

Special Conditions

- 1) Notice will be given to the Refuge at least 24 hrs. in advance of your intended use
- 2) Your entire herd will be moved through the refuge in one day, both in the spring and the fall trailing periods
- 3) Your cattle will stay on the designated trailing route
- 4) No corrals (permanent or temporary) on Refuge land will be used during trailing
- 5) This permit may be renewed at the end of the 5 year period provided that the permittee follows the stated conditions.

This permit is issued by the U.S. Fish and Wildlife Service and accepted by the undersigned, subjected to the terms, covenants, obligations, and reservations, expressed or implied herein, and to the conditions and requirements appearing on the reverse side.

Permittee Signature	Issuing Officer Signature and Title
<i>H. Hammond</i>	Forrest W. Cameron, Refuge Manager or Acting

Malheur National Wildlife Refuge
HC 72 Box 245
Princeton, Oregon 97721

April 23, 1997

Memorandum

To: Forrest Cameron
From: Deborah Hickey
Subject: Conference Call

A conference call has been scheduled for 2:00 PM Pacific Standard Time for two hours. If you need to extend this call beyond the two hours, we need to let them know 30 minutes in advance. Please let me know if I need to make a call.

They will contact you first a few minutes before 2:00 PM, they will call Bob Hiller and then Barbara Scott Brier.

A handwritten signature in cursive script, appearing to read "Debbie", with a large, stylized initial "D" that loops around the first part of the name.

Malheur National Wildlife Refuge
HC 72 Box 245
Princeton, Oregon 97721

April 22, 1997

Memorandum

To: Conference Call Participant
From: Forrest Cameron
Subject: Conference Call

A conference call has been scheduled for 2:00 PM Pacific Standard Time.

To join this call, dial 1-800-432-2190 at 2:00 PM. A recording will ask you to enter your access code; your access code as a participant is 607702.

Forrest - 285527 - Last access

0 if needed

OPTIONAL FORM 99 (7-90)	
FAX TRANSMITTAL	
# of pages ► 1	
To <i>Bob Hiller</i>	From <i>Forrest Cameron</i>
Dept./Agency	Phone #
Fax # <i>231-6161</i>	Fax # <i>493-2405</i>
NSN 7540-01-317-7368	5099-101 GENERAL SERVICES ADMINISTRATION

OPTIONAL FORM 99 (7-90)	
FAX TRANSMITTAL	
# of pages ► 1	
To <i>Barbara Scott Brier</i>	From <i>Forrest Cameron</i>
Dept./Agency	Phone # <i>493-2612</i>
Fax # <i>231-62166</i>	Fax # <i>493-2405</i>
NSN 7540-01-317-7368	5099-101 GENERAL SERVICES ADMINISTRATION

**FAX TRANSMITTAL**

**U.S. FISH AND WILDLIFE SERVICE
DIVISION OF REALTY
911 N.E. 11TH AVENUE
PORTLAND, OREGON 97232
Telephone: 503-231-6201
FAX: 503-231-6161**

4/22/97

TO: FORREST CAMERON, MGR
MALHEUR NWR

tel# 541-493-2612
FAX 541-493-2405

FROM: BOB HULL
REALTY SPECIALIST

SUBJECT: RS 2477 - Follow-up Memo by Secy TO
Jan 22, 1997 memo

NUMBER OF FAXED PAGES INCLUDING THIS PAGE 2

As discussed 4/21/97, HULL's file 4/20/97
Follow-up memo.





THE SECRETARY OF THE INTERIOR
WASHINGTON

FEB 20 1997

Memorandum

To: Assistant Secretary, Fish and Wildlife and Parks
Assistant Secretary, Land and Minerals Management
Assistant Secretary, Indian Affairs
Assistant Secretary, Water and Science

From: Secretary

Subject: Clarification to January 22, 1997, Interim Departmental
Policy on Revised Statute 2477 Grant of Right-of-Way
for Public Highways

My January 22 memo to you concerning the Department's interim policy on R.S. 2477 rights-of-way has created confusion regarding our position on the ability of those claiming R.S. 2477 rights-of-way to obtain judicial review of those claims. To clarify, the memo was not intended to express any opinion regarding the circumstances in which a lawsuit may be brought against the United States to determine the validity of rights claimed under R.S. 2477.

DRAFT ^{2/28/97}
_{15:13}COPY FOR YOUR
INFORMATION

In Reply Refer To:

ARW/RE

LA-OR, Malheur NWR

General

Road Right-of-ways (R.S. 2477 and Hammond Ranch Stock Driveways)

Memorandum

To: Refuge Manager, Malheur NWR

Through: Refuge Supervisor, OR/WA/ID

From: Chief, Division of Realty

Subject: Malheur NWR Realty Opinion No. 2--Hammond Ranch Stock Driveway: A
Revised Statute (R.S.) 2477 Claim ?

appears You asked for an opinion whether Hammond Ranch (Ranch) has a right to move livestock (cattle) over Refuge lands based on an R.S. 2477 claim or assertion. The "Hammond cattle trailing route" is a Stock Driveway by definition and is shown on FWS Map, "MALHEUR NATIONAL WILDLIFE REFUGE, Blitzen Valley Below Krumbo Creek, Harney County, Oregon, 8/96," Exhibit 1. The Ranch has been moving cattle over this route. *except under refuge specific use permit* We have challenged them ~~and~~ declaring that they have no right to using Refuge land. We asked them to stop, or at least we want to have control over the livestock and people movement. Hammond Ranch says it's their right to use the route based on historic use and R.S. 2477. *To resolve this dispute we need to resolve* The issue is, is there an R.S. 2477 claim, underlying the Stock Driveway, which guarantees Hammond Ranch and others a right of passage for livestock and other things?

As a lead-in to answering your questions, we offer an abbreviated history of R.S. 2477. Revised Statute 2477 is an 1866 Act (Federal law) "granting" highway rights of way over federal public lands stated in deceptively simple language:

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

This "grant" was originally found in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act. This act was later codified as Revised Statute (R.S.) 2477 and later recodified as 43 U.S.C. 932. It remained on the books until it was repealed by

Hiller#5;503-231-6201;C:\...row\malheur.or\opinion2 2/28/97

LA-OR, Malheur NWR, General, R/Ws: RS 2477 and Hammond Ranch

Page 1 of 5

Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq, the Bureau of Land Management's (Bureau or BLM) so-called "Organic Act." Because of the repeal, we are only concerned about "claims" of grants of right-of-ways "perfected" after 1866 and before October 21, 1976, or until the land underlying a claimed R.S. 2477 went into "reserve" status or was deeded out of Federal ownership.

R.S. 2477 has been the subject of inconsistent state statutes and court decisions, and a handful of inconsistent federal court decisions, during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties, the United States was not a party to them. An important point is that **the legislative history is silent as to the meaning of this section of the 1866 Act.** When we cannot easily determine what a law means from its language, we often look at the Congressional record of hearings and discussions on it. The records usually provide actual recorded commentary among members of Congress as to what the law is about and why it is to be enacted.

We know that for the longest time not much was made of or done with this provision of law. In fact it didn't elicit much reaction until after its repeal in 1976. It wasn't "important" until the large public lands set-asides of the 1970's and later, particularly Wilderness Act withdrawals and other withdrawals, came. The states found or "rediscovered" this wording, and asserted their claims for highways in existence or to be built. The states, in many cases, were counting on the R.S. 2477 claim(s) to block pending wilderness designations. (One of the criteria for land to be wilderness under the law is that it must be roadless.) Furthermore, State, counties and individuals have "found" this law to be prospectively useful for gaining "free" access across federal lands.

So, we have this 1866 law, renumbered in 1873, codified in 1938, and finally repealed in 1976. During this time no changes were made to the act, and the only understanding of it came from inconsistent case law. But we have a problem: States, counties, and others want to apply it, and have asserted/claimed it as a basis for right-of-ways across federal land. There were no regulations or specific guidance for application, so on October 7, 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as "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) (Exhibit 2)." With this mouth-filling subject, the Secretary set out to help us field folks to make the act work.

The Bureau was (and still is) tasked with processing the claims and determining them valid. Some have been "approved." The Interior Department and its Solicitor says "deciding validity" is adjudication, which the Bureau has no authority to do so. Anyway, sorting it all out, cataloging them, and notifying other federal agencies of their existence is a daunting task at best. In 1992, Congress, after hearing from constituents and agencies about the problems of "figuring-out" these rights, ordered the Bureau to research the issues, canvass the public and other federal agencies; and to write, publish and institute (proposed) regulations (The regulations were supposed to create a regular process by which these claims of valid existing rights can be identified and evaluated. The regulations were also to define key statutory words - "construction," "highways," "unreserved public lands" - to establish standards against which to measure the claims.) BLM released its report on June 1, 1993, and was promptly shot-down by just about everyone. The results are no regulations to date, more court battles, and no "final"

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resolution. So, here comes the Ranch, with a possible claim-of/assertion of their rights to a RS 2477 right-of-way.

Furthermore, before discussing the case at hand it is important to understand certain Definitions/Terms which I will try to define:

public lands: As used in this report, the term means Federal lands managed by any of the Executive Branch agencies and owned by the people of the United States. However, this term usually means the public domain (PD) lands managed by the BLM for United States. Technically, once land is reserved, withdrawn or otherwise "permanently" used or deeded away, it is no longer PD land. In general use, public lands means land owned by any government, Federal, State, and County/Borough.

claim/assertion: A person, persons, state, or county "emphatically" say(s) they have a right of passage across federal lands by virtue of RS 2477. They assert that they have met the intent and satisfied the provisions of the act, and are entitled the right, rather the right is already granted to them.

perfected: "ripen to usefulness." Completing the steps required by law that lead to the full benefits of the particular law.

reserve/reserved: (federal) land set-aside for some existing or future use or purpose, by Congress or the Executive Branch, e.g. a national wildlife refuge (existing), or a ditches and canals provision in a land patent for the conveyance of water, if needed (future).

third parties: a person/persons/entity not directly involved in an issue/dispute between two parties, e.g., the State vs. the Federal Government (2 parties), the third party being the Hammond's, for example.

Federal land patents or Patents: a Quickclaim Deed (QCD) from the United States to a grantee, giving all the US's right, title and interest away, EXCEPT those rights held-back by the US for some existing or prospective purpose. Usual reservations are minerals, oil and gas, geothermal, and certain kinds of right-of-ways, but not RS 2477's. The rights held-back can be any that are already granted to someone else. However, we usually try to extinguish those rights or have the jurisdiction over them transferred to the new land owner. Homesteading, or the agricultural settlement of certain federal land, frequently led to a Homestead Patent.

RS 2477 contains 3 Key Concepts for the claim or assertion to be accepted or acceptable, — therefore legal or legitimate, all must be present (See Secretary Hodel memo, Exhibit 2):

1. The lands involved (under the claim) must have been public lands, not reserved for public uses, at the time of acceptance; *Established before refuge — meets this test*
2. Some form of construction of the highway must have occurred; and,
3. The highway so constructed must be considered a public highway.

Note that Exhibit 1 lays all this out and explains what each provision means. Remember, under this claim the United States has no duty or authority to adjudicate an assertion or application, but as a practical matter must be able to "recognize" with some certainty the existence, or lack thereof, of public highway grants obtained under RS 2477. We would mostly rely on the States and counties to show the existence of the RS 2477. I say "mostly" because we, the Federal government, have from time to time taken issue with state claims and the basis for them, and have gone to court.

route in question

Land Status Research/Facts: I looked at the following maps of the area over which the Stock Driveway is routed: Bureau Master Title Plats (MTP's) and Historical Indexes (HI's), a USGS quad of the area, a Fish and Wildlife Service Land Status Map, and a "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon, dated 11/27, 1908;" and, the "Executive Orders" file, which contains the history of the Refuge so far as reservations, withdrawals and transfers are concerned. I was looking for "unreserved public land" on which a public stock driveway (highway) existed between 1866 and 1976, and evidence of construction of the public stock driveways or highways. I was looking for public, constructed routes, which are the same ones as Hammond Ranch is using and claiming a right to under RS 2477.

I found grants to the State of Oregon (State Grants) as far back as 1859 (the earliest State grant), though most occurred in the 1880's and early 1890's. I also found 1880's/1890's Homestead Patents. Homestead Patents deeded the land out of Federal ownership. I found that Malheur National Wildlife Refuge was first set-aside or reserved in the area of the Stock Driveway by Executive Order 7106, 7/16/1935, "Establishing The Malheur Migratory Bird Refuge, Oregon." According to our Malheur Refuge Manager, the French-Glenn Livestock Company was probably begun in 1872 by Peter French buying land from the State of Oregon, settling some himself, and buying-out neighbors. The deeded and reserved lands were/are not available for an RS 2477 claim. However, there is a series of windows between 1866 and 1884 (The earliest recorded Patent); and later (from other Patents and State Grants) for an RS 2477 claim.

tract established during time - prior

I did not find evidence of construction of a public highway for stock driving or other purposes. However, the "French-Glenn Map" shows a "wagon road" that roughly corresponds to the one Hammond Ranch is using. I don't know if this is a constructed road, and if so, when construction took place. Perhaps Harney County can provide evidence of a constructed highway corresponding to the Hammond Stock Driveway that existed during the "windows." I did not look at Patents for a reservation of an RS 2477 right-of-way or stock driveway or highway right-of-way that could be an RS 2477 claim. Additionally, I have not researched the administrative and court decisions on RS 2477's to see if a stock driveway is a highway for RS 2477 purposes. *speculative* → It is possible that a stockway is a highway by way of the definition of a highway: "a route of travel, trade and commerce." Live stock are items of trade and/or commerce, and they can travel or be moved. *Not private yet 1884/above*

it was the entire area available all those years?

In conclusion, I found there were a number of narrow windows between 1866 and 1892, during which there was unreserved Federal public land available for an RS 2477 claim. If construction of a stock driveway equals "construction of highways" cited in RS 2477, if the stockways were constructed at the proper time, if they are accepted as public highways, then predecessors of the Hammond Ranch and the Ranch could claim the cattle driveways under RS 2477. I think the ultimate decision rests with Harney County, if all else is true. Did they accept/acknowledge the stock driveway during any or all of the windows? *was in public highway*

that is the reason for the inability to make such determination?

Back in July, 1994, I asked the BLM Oregon State Office if RS 2477 assertions are still allowed? The Office said yes, but the processing of RS 2477 assertions is on nation-wide hold pending the issuance of regulations. The national BLM Director can do an "emergency" processing. The assertion would be processed and "accepted" using the 1988 Model guidelines. I believe this is still the case.

BOTTOMLINE—AN RS 2477 CLAIM IS POSSIBLE.

LA-OR, Malheur NWR, General, R/Ws: RS 2477 and Hammond Ranch

Page 4 of 5

DRAFT

Action Item:
Follow up w/BLM state office

I Rev, if an RS-2477 claim can be validated

DRAFT

84

What control does the Service/Refuge have over RS 2477 R/W's? What rights does Hammond Ranch have on them? We feel the Service has some control over these R/W's because we own the land. We do not believe that RS 2477 grants a right-of-way in fee, which takes the land out of our ownership. We have the same rights as other land owners with a road easement over them. As a landowner and conservation agency responsible by Federal law for our Refuge, we can respond to unnecessary degradation of the land. We can use the RS 2477 R/W's for Refuge purposes, and the public can use them on the Refuge and on other federal lands. Since the RS 2477 is likely a highway for trade, travel and commerce, it can be used commercially, publicly, and certainly by the Hammond Ranch. I don't think we could charge any kind of fees for the RS 2477 claim, since to have one requires it to pre-date our use. An existing RS 2477 highway would be a reservation to the State, county, or individual against our ownership.

If you have further questions, call Bob Hiller at 503-231-6201.

How, if it is a public

Attachment: as

LAWRENCE MATASAR, P.C.

ATTORNEY AT LAW
1020 S.W. TAYLOR, SUITE 330
PORTLAND, OREGON 97205TELEPHONE: 503-222-9830
FACSIMILE: 503-274-8575

May 19, 1997

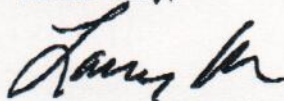
SENT VIA FAX - (541) 776-3583

Robert Thomson
Assistant U.S. Attorney
U.S. Attorney's Office
310 W 6th Street, Room 227
Medford, OR 97501RE: United States v. Dwight Hammond and Steven Hammond
U.S. District Court No. CR 94-257 AS

Dear Mr. Thomson:

As we have previously agreed, I am writing to provide you with notification of the Hammonds' trailing plans. At this time, they intend to trail the first group of cattle, no more than 150 head, beginning on May 26. I will provide additional notification at a later time.

Yours truly,



LAWRENCE MATASAR

LM/smw

cc: Dwight Hammond

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 1

To	FOREST CAMERON	From	AUSA ROBT THOMSON
Dept./Agency		Phone	(541) 776-3564
Fax #	(541) 793-2405	Fax #	(541) 776-3583
NBN 7540-01-317-7388		5099-101 GENERAL SERVICES ADMINISTRATION	



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Malheur National Wildlife Refuge
HC 72 Box 245
Princeton, OR 97721
(541)493-2612

May 21, 1997

Mr. Dwight Hammond
Hammond Ranches, Inc.
Diamond, OR 97720

Dear Mr. Hammond:

This letter is to confirm that we were notified by your attorney Larry Matasar, through Assistant U.S. Attorney Bob Thomson, that you intend to trail cattle through the Refuge beginning on May 26, 1997. As indicated in my January 15 letter, the Fish and Wildlife Service appreciates your need for trailing in order to more easily access the BLM land and wishes to work with you while meeting our need to assure protection of Refuge resources.

I have enclosed a Special Use Permit for your 1997 trailing operation. It contains provisions to protect Refuge lands. Signing and returning this permit and adhering to its conditions will assure continued use of Refuge lands for your trailing operations and protection of Refuge resources during these events.

We appreciate your cooperation during this year's trailing operation and look forward to long-term resolution of issues regarding your movement across Refuge land.

Sincerely,

Forrest W. Cameron
Refuge Manager



UNITED STATES DEPARTMENT OF THE INTERIOR
FISH AND WILDLIFE SERVICE

Malheur National Wildlife Refuge

SPECIAL USE PERMIT

Station No. to be Credited	Permit Number
13570	76134
Date May 22, 1997	
Period of Use (inclusive)	
From May 26	19 97
To October 31	19 97

Permittee Name Hammond Ranches, Inc.	Permittee Address c/o Dwight Hammond Diamond, Oregon 97722
---	--

Purpose (specify in detail privilege requested, or units of products involved)

This permit is being issued to formalize your use of Refuge lands for the purpose of trailing cattle from your ranch across Malheur Refuge to land east of the Refuge in the Bridge Creek area, administered by the Bureau of Land Management

Description (specify unit numbers; metes and bounds, or other recognizable designations)

Across Malheur Refuge land from the Webb Spring area to the Bridge Creek area along the trail delineated on the attached map. This includes T31S R32 1/2 E Sections 16, 21, 28, 32 and 33; and T 32S R 32 1/2 E Section 4.

Amount of fee \$ NA if not a fixed payment, specify rate and unit of charge: _____

☐ Payment Exempt - Justification: This is a use for which there will be no fee. With special conditions allowing no use of government facilities other than the trail, there is no cost to recover on the government's part. No fee will be assessed.

☐ Full Payment

☐ Partial Payment - Balance of payments to be made as follows: _____

Record of Payments

Special Conditions 1) Notice will be given to the Refuge Manager or Acting Manager at least 24 hrs. in advance of your intended use 2) Your entire herd will be moved through the refuge in one day, both in the spring and the fall trailing periods 3) Your cattle will stay on the designated trailing route 4) No corrals (permanent or temporary) on Refuge land will be used during trailing 5) This permit may be renewed at the end of each permit season, provided that the permittee follows the stated conditions.

This permit is issued by the U.S. Fish and Wildlife Service and accepted by the undersigned, subjected to the terms, covenants, obligations, and reservations, expressed or implied herein, and to the conditions and requirements appearing on the reverse side.

Permittee Signature Hammond Ranches Inc., Dwight Hammond	Issuing Officer Signature and Title Forrest W. Cameron, Refuge Manager or Acting
---	---

U.S. FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
HC 72, Box 245
Princeton, Oregon 97721
(541) 493-2612
Fax Number (541) 493-2405



Facsimile Transmittal Cover Sheet

TO: *Barbara Scott Brier*

DATE: *5/21/97*

TIME: *4pm*

FAX PHONE NUMBER: *503/231-2166*

☐ Deliver on Regular Mail Run

☐ Call to have picked up

Phone Number: _____

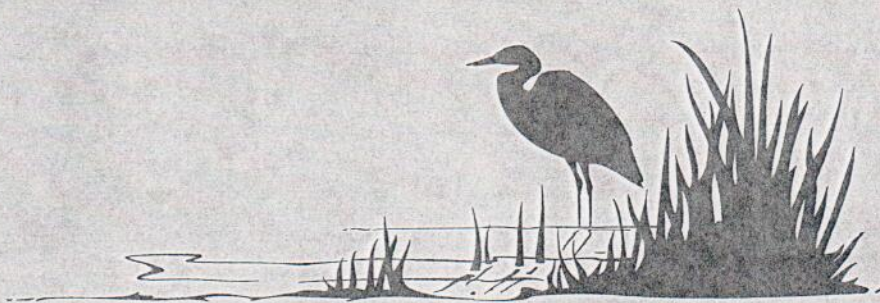
FROM:

J. Louis & Cameron

SUBJECT:

Number of Pages (including Transmittal Sheet): _____

COMMENTS:



LAWRENCE MATASAR, P.C.

ATTORNEY AT LAW
1020 S.W. TAYLOR, SUITE 330
PORTLAND, OREGON 97205TELEPHONE: 503-222-9830
FACSIMILE: 503-274-8575

May 19, 1997

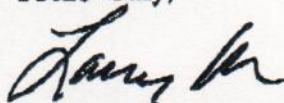
SENT VIA FAX - (541) 776-3583

Robert Thomson
Assistant U.S. Attorney
U.S. Attorney's Office
310 W 6th Street, Room 227
Medford, OR 97501RE: *United States v. Dwight Hammond and Steven Hammond*
U.S. District Court No. CR 94-257 AS

Dear Mr. Thomson:

As we have previously agreed, I am writing to provide you with notification of the Hammonds' trailing plans. At this time, they intend to trail the first group of cattle, no more than 150 head, beginning on May 26. I will provide additional notification at a later time.

Yours truly,



LAWRENCE MATASAR

LM/smw

cc: Dwight Hammond

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages 1

To	From
FOREST CAMERON	AUSA ROBT THOMSON
Dept./Agency	Phone #
	(541) 776-3564
Fax #	Fax #
(541) 793-2405	(541) 776-3583
NSN 7550-01-317-7368	5099-101
GENERAL SERVICES ADMINISTRATION	



FAX TRANSMITTAL

**U.S. FISH AND WILDLIFE SERVICE
DIVISION OF REALTY
911 N.E. 11TH AVENUE
PORTLAND, OREGON 97232
Telephone: 503-231-6201
FAX: 503-231-6161**



TO: FORREST CAMERON MN FAX 541-493-2405
MALHEUR NWR 541-493-2612
BARBARA SCOTT-BRIER
FROM: MN REGIONAL SULLIVAN PAX 503-231-2166
BOB HUCKER 5/22/97 503-231-2139
REALTY SPECIALIST
SUBJECT: RS 2477 + HAMMOND STEAK DRIVEWAY

NUMBER OF FAXED PAGES INCLUDING THIS PAGE 14

GREETINGS!

HERE'S THE LATEST DRAFT OF OUR MAPS TO
BARBARA + CLARE PLEASE LOOK THEM OVER
AND COMMENT TO ME. MAPS ARE NOT
READY TODAY - WILL BE TOMMORROW. HOWEVER,
I OUT OF THE OFFICE TUE TUES 5/27.

but I'm sending
A ROUGH DRAFT.

THANKS



To: Barbara Scott-Brier
Office of the Solicitor, Pacific Northwest Region

DRAFT

From: Chief, Division of Realty
Portland, Oregon

Subject: Potential Revised Statute (RS) 2477 Claim by Hammond Ranches, Inc.

Issue:

You asked for a review to determine whether Hammond Ranches (Ranch) may have a valid RS 2477 claim of a stock driveway for moving livestock (cattle) across Malheur National Wildlife Refuge land. The route is shown on Fish and Wildlife Service (Service) map Exhibit 1. The Service has told Hammond Ranches they do not have a right to use Refuge land without a Refuge Special Use Permit (SUP). The Hammond's say it is their historic right to use the route. However, to date, they have not asserted the right of use of the driveway based on RS 2477. To resolve this dispute we need to refute the historic use claim and potential RS 2477 assertion, and uphold our right to control use on the Refuge. One method of controlling and authorizing stock driveway use is to grant a SUP.

Hiller#5;c:\...row\malheur.or\hammond 5/22/97

Abbreviated Revised Statute (RS) 2477 History:

Revised Statute 2477 is an 1866 Act (Federal law) "granting" highway rights-of-way over Federal public lands stated in deceptively simple language:

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

This grant was originally found in law in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act; was subsequently codified as Revised Statute (R.S.) 2477; and was later recodified in 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA), Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq., the so-called "Organic Act" of the Bureau of Land Management (the Bureau). Because of the repeal, we are generally concerned about RS 2477 "claims" of grants of right-of-ways "perfected" after July 26, 1866 and before October 21, 1976. Specifically, we are interested in claims between July 26, 1866 and the date on which the underlying Federal public domain land was "set-aside" (federal land withdrawals and reservations) for some federal purpose, or was deeded (granted or transferred) out of Federal ownership.

Revised Statute 2477 has been the subject of inconsistent state statutes and court decisions, and a handful of inconsistent federal court decisions, during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them.

For a long time not much was made of or done with this provision of law. In fact it did not elicit much reaction until after its repeal in 1976. The large public lands set-asides (reservations and withdrawals) of the 1970's and later, particularly Wilderness Act withdrawals, caused the law to move to the forefront. States began citing this provision in asserting their claims for existing highways or those to be built on Federal lands. In many cases, the States were counting on RS 2477 claims to block pending wilderness designations. Furthermore, states, counties and individuals have found this law to be prospectively useful for gaining free access across Federal lands.

The legislative history is silent as to the meaning of Section 8 of the 1866 Act. This is a major reason why interpretation and application of the law is difficult and confusing. There is no legislative guidance as to what Congress had in mind for this grant of right-of-way across Federal lands.

Between its passage in 1866, and its repeal in 1976, no changes were made to Revised Statute 2477. The only understanding or interpretation of it comes from inconsistent case law. States, counties, and others wanting to apply the law asserted it as a basis for rights-of-way across federal land. There were no regulations or specific guidance for its application until 1988. On October 7, 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as "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)" (Exhibit 2).

The Bureau was tasked with processing RS 2477 claims and determining their validity. In 1992, Congress, after hearing from constituents and agencies about the problems of determining these rights, ordered the Bureau to research the issues. The Bureau was to canvas the public and other federal agencies, and publish proposed regulations. They were to create a process by which these claims of valid existing rights could be identified and evaluated. The Bureau was to establish standards against which the claims were to be decided. The Bureau released its report on June 1, 1993. The report created such controversy that no regulations have been finalized to date. In July 1994, in response to the Service's inquiry, the Bureau's Oregon State Office stated that RS 2477 assertions are still allowed, but their processing was on nationwide hold pending the issuance of final rules.

The Hodel policy was revoked by Secretary Babbitt's January 22, 1997 guidance memorandum (Exhibit 3). This established a revised policy for carrying out any determinations the Department might be called upon to make regarding RS 2477. The Secretary also reaffirmed his previous instructions to the Bureau to defer processing of RS 2477 assertions except in cases where there is a demonstrated, compelling and immediate need to make such determinations.

Secretary of Interior Babbitt's RS 2477 Policy:

Secretary Babbitt's January 1997 memorandum provides the following six provisions:

1. **Claims.** The entity requesting the Department to make a determination as to whether an RS 2477 right-of-way exists must file written information to be considered and must provide information on why there is a compelling and immediate need for such a determination.

2. Withdrawals and Reservations. The agency involved (the Service) will consult the public land records of the Bureau of Land Management to determine the status of land over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable at the time that the highway was allegedly constructed and remained unavailable through October 21, 1976, the Service would recommend the Secretary deny the claim.

3. Construction. The Service will examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.

4. Highway. The Service will evaluate whether the alleged right-of-way constitutes a highway, that is, a thoroughfare used prior to October 21, 1976 by the public for passage of vehicles carrying people or goods from place to place.

5. Role of State Law. The Service will apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.

6. Secretary's Determination. The Service will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations.

This new (Babbitt) policy is significantly different from prior (Hodel) policy. An important point is that the affected agency, not the Bureau makes the recommendation for the Secretary's final approval.

FWS Region 1 Realty Actions and Findings:**Maps, plats, and written documents**

We researched the land status underlying the stock driveway route by studying the following **maps and plats**: Bureau Master Title Plats, Historical Indexes, and Government Land Office (GLO) plat. The GLO plat shows a "Wagon Road" (highlighted) traversing the plat from NE to SW. This road mostly corresponds to the stock driveway the Hammond's are using. The Road would have to have been in existence at the time of the GLO survey in late 1877. It is likely that it had been in existence before the survey, though presently we do not know how long. We need to look at the survey notes/record to find out more about it. We should ask the Bureau to provide copies of the survey notes.

Land Grants, Transfers, Withdrawals and Reservations

The RS 2477 enactment date of July 26, 1866 and the various land grants, transfers, withdrawals and reservations starting in 1866 and ending in the 1890s, create a series of windows during which an RS 2477 could be claimed. Exhibit 1, map, shows these dates. The dates are when the Federal land became unavailable for an RS 2477 assertion because of a land grant, transfer, withdrawal or reservation. The date inside the "land status box" is when the land left Federal ownership or was withdrawn for Refuge purposes, closing the RS 2477 windows. We found: 1)

land grants to the State of Oregon (State Grants) that the present trailing route crosses. The earliest State Grant, near the north end of the route, is dated 1859. This grant is the earliest "gap" in the stock driveway's route because after the grant, the lands would be unavailable for an RS 2477 claim unless specifically reserved in the grant. The gap bisects the driveway making it unusable as a continuous route. Most State Grants occurred in the 1880's and early 1890's; 2) Homestead Patents granted in the 1880's and 1890's. Homestead Patents transferred land out of Federal ownership; 3) that Malheur National Wildlife Refuge was first set-aside or reserved in the area of the Ranch driveway by Executive Order 7106, on July 16, 1935, "Establishing The Malheur Migratory Bird Refuge, Oregon."

Construction of Highways

We did not find evidence of construction of a public highway for passage of vehicles carrying people or goods. The "French-Glenn Map" shows a "wagon road" that roughly corresponds to the route the Ranch is using. Few portions of this route qualify as constructed road, and one of those places, a crossing over Bridge Creek was constructed in the early 1990's. We did not look at Patents for a right-of-way reservation. Our Survey Branch suggested another source of evidence of trail or road construction, which we did not look at. These sources are County and Road Commissioner's Journals, Road Supervisor's Reports, the County Road Master, and the County Surveyor. Both Harney County and its predecessor county (Coos?) records should be investigated. We would look for petitions to open a road corresponding to the stock driveway, and monies spent on construction and/or maintenance for such road. However, because of the sensitivity of this issue, we would not recommend opening these discussions at this time.

Conclusion and Recommendation:

We found narrow windows of opportunity for an RS 2477 claim between 1866 and 1884. The windows occur because there was **unreserved Federal public land** along the stock driveway route. Unreserved land must be available for an RS 2477 assertion to be valid. Although we found no evidence of construction, if use of the stock driveway for moving livestock equals "**construction of highways**", cited in Secretary Babbitt's January 22, 1997 memorandum; and if the use was at the proper time, and if the route is accepted as a public highway, then predecessors of the Ranch and the Ranch could assert an RS 2477 claim. A key question is whether the County or State acknowledged the entire route as a public highway during any of the windows. If even a small portion of the route is not acknowledged as a public highway, then the claim would not be valid over the entire route. It is important to note that we did not look at the County sources described above which could have critical bearing on the assertion of an RS 2477 claim. An RS 2477 assertion may be possible. However, we have not found evidence supporting such a claim.

Due to several uncertainties regarding this matter, our recommendation is that the Solicitor should ask the Bureau's State Office to provide some basic information from their files that might quickly clarify some of our questions. Examples include dates of patents; recognition of travel routes; evidence of rights-of-ways; and historical maps, photos or documents of travel routes in the trailing area. Also at sometime in the future, we need to review the County records when the timing is appropriate. We don't want to alert the County early on.

If you have further questions, please call Bob Hiller at 503-231-6201.

TO: Elaine Zelinski, State Director
Bureau of Land Management

From: Office of the Solicitor, Pacific Northwest Region
Portland, Oregon

DRAFT

Subject: RS 2477 Claim

Dear Elaine:

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge without permission. He has not to date articulated the basis for his historic right under an RS 2477 right-of-way claim or assertion.

While at this point there is no formal RS 2477 claim that we know of, we would like to resolve this issue if possible between the Refuge staff and the neighbor. To do that we would like you to provide copies of the following information for the land in question shown on the attached map, Exhibit 4, and generally located as described below.

1. Copies of the following state grants and patents underlying the trailing route:

T31S,R321/2E, WM.,

Section 16, SG, 2/14/1859

OR 6773, Deed to US, 7/5/1949

Section 21, SG 8, 3/10/1890

SG 16, 9/13/1890

IL 6, 3/26/1891

Patent 772, 10/4/1890

Section 28, Patent 772, 10/4/1890

SG 28, 9/10/1892

Patent 426, 6/4/1890

Patent 7, 12/5/1884

Section 32, Patent 453, 1/11/1889

Patent 404, 1/11/1889

Section 33, Patent 7, 12/5/1884

Patent 1066, 4/16/1890

2. Copies of the GLO survey notes for T31S,R321/2E, WM.

3. Any evidence that the Bureau may have that the State of Oregon has recognized a public highway along some or all portions of the trailing route.

4. Any evidence of established legal rights-of-way along the trailing route.
5. The existence of any maps, photos or documents of the trailing route area that might be pertinent in resolving this possible RS 2477 claim.

Please provide me with any information that you might find on these issues. For additional information, the contact in Realty is Bob Hiller, Realty Specialist, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager at Malheur Refuge, at 541-493-2612.

Thank you for your help in resolving this matter.

4. Any evidence of established legal rights-of-way along the trailing route.
5. The existence of any maps, photos or documents of the trailing route area that might be pertinent in resolving this possible RS 2477 claim.

Please provide me with any information that you might find on these issues. For additional information, the contact in Realty is Bob Hiller, Realty Specialist, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager at Malheur Refuge, at 541-493-2612.

Thank you for your help in resolving this matter.

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

dates some thick lines the flood lines

Some thick lines as box lines body of the same for map.

EXHIBIT



HAMMOND/BLM LAND
EXCHANGE, 9/22/89

HAMMOND CATTLE
TRAILING ROUTE



DATE INDICATES WHEN
TRACT LEFT FEDERAL
OWNERSHIP

*or was
withdrawn for Refuge purposes*

*dates some
thick lines
the flock lines*

*Some thick lines
at box lines
body of the
same for
map.*

EXHIBIT

1

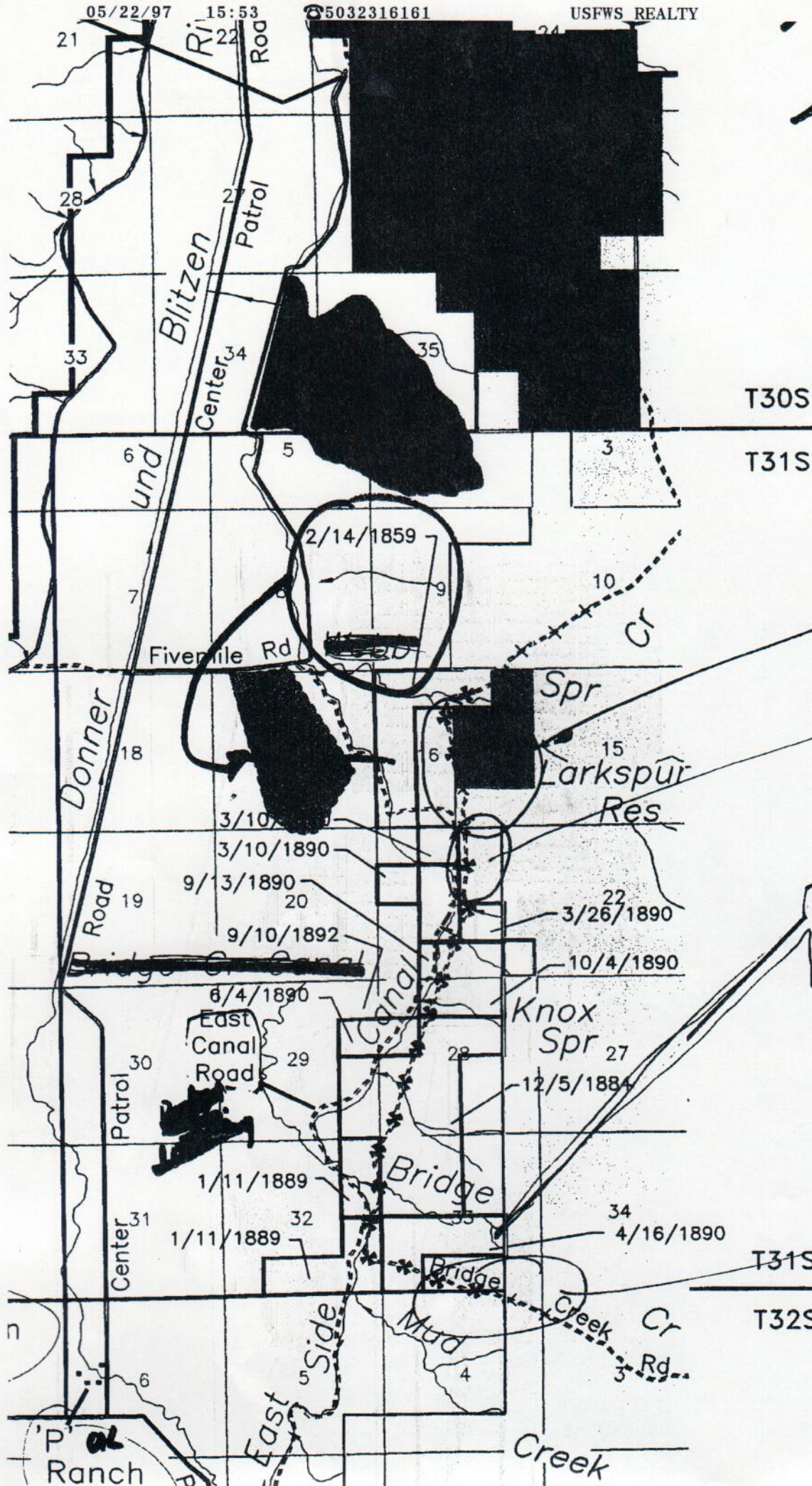
05/22/97

15:53

5032316161

USFWS REALTY

00



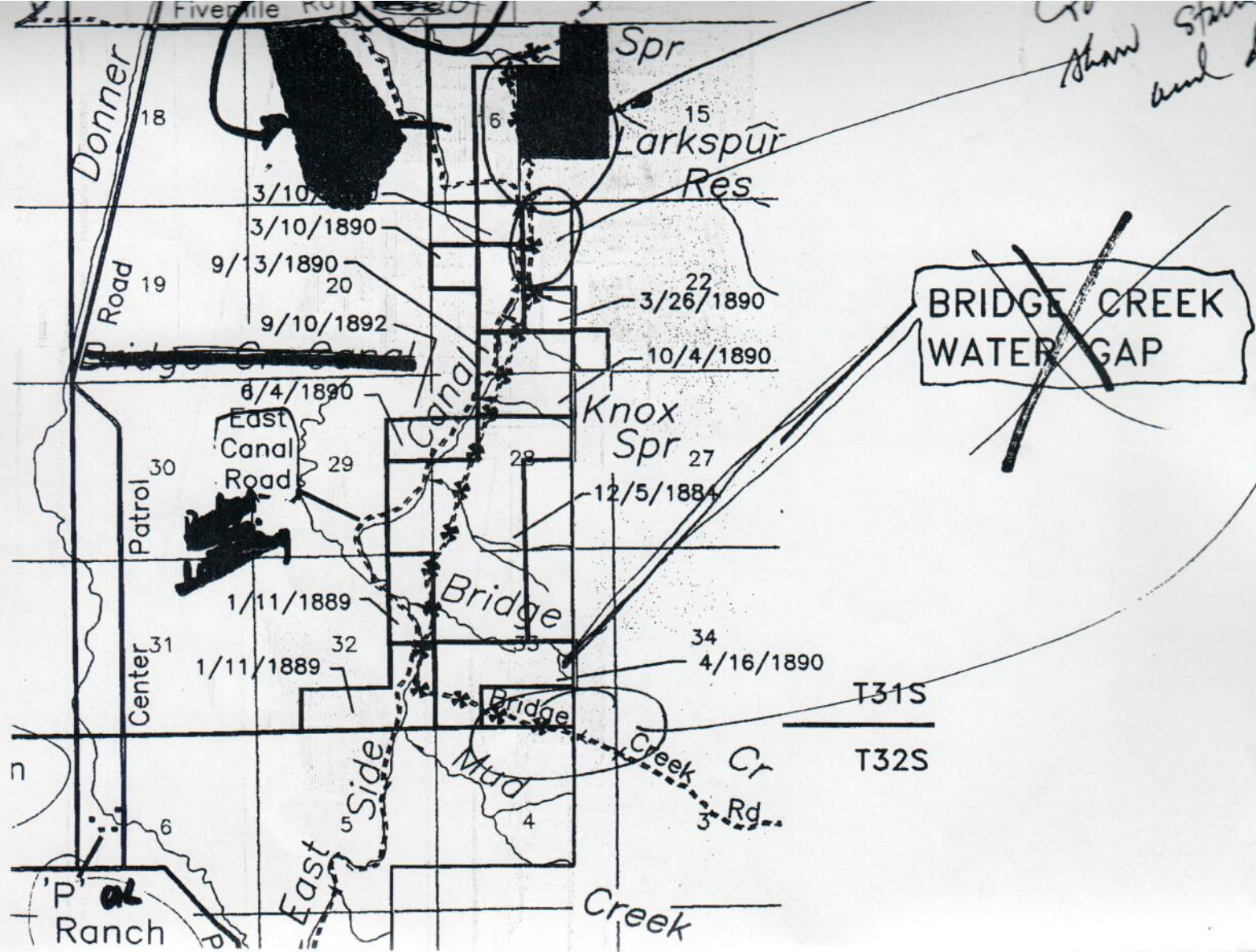
T30S

T31S

~~BRIDGE CREEK
WATER GAP~~

T31S

T32S



MEMORANDUM
OF CALL

Previous editions usable

TO:

Forrest

☐ YOU WERE CALLED BY—

☐ YOU WERE VISITED BY—

Bob Hiller

OF (Organization)

Dil. of Realty

☐ PLEASE PHONE ► (Enter area code, if necessary)

☐ DSN

503/231-6201

☐ WILL CALL AGAIN

☐ IS WAITING TO SEE YOU

☐ RETURNED YOUR CALL

☐ WISHES AN APPOINTMENT

MESSAGE

Call before noon Wed

OR

on Friday

RECEIVED BY

KB

DATE

5-27

TIME

330

NSN 7540-00-634-4018
50363-112

OPTIONAL FORM 363 (Rev. 7-
General Services Administration)

*U.S. Government Printing Office: 1996 - 404-762//

MEMORANDUM
OF CALL

Previous editions usable

TO:

Forrest



YOU WERE CALLED BY—



YOU WERE VISITED BY—

Barbara Scott Brier

OF (Organization)

Reg.



PLEASE PHONE ▶

(Enter area code,
if necessary)



DSN

at home 503-288-4163



WILL CALL AGAIN



IS WAITING TO SEE YOU



RETURNED YOUR CALL



WISHES AN APPOINTMENT

MESSAGE

*Will Jay comments on Realty ltr.
will be in Auditor all day Thurs.
but can be reached at home Thurs. p.m.
Also will be gone on Friday*

RECEIVED BY

Clad

DATE

5/28

TIME

1

NSN 7540-00-634-4018
50363-112

OPTIONAL FORM 36
General Services

*U.S. Government Printing Office: 1996 -



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region

500 N. E. Multnomah Street, Suite 607

Portland, Oregon 97232
(503) 231-2139

TRANSMISSION NOTICE: This facsimile transmission is intended only for the address(es) shown below. It may contain information that is privileged, confidential, or otherwise protected from disclosure. If the reader of this message is not an addressee or agent of the addressee, you are hereby notified that you have received this document in error. Any review, dissemination, copying, or use of this transmission or its contents is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us by mail at the address shown above.

TELEFAX MEMORANDUM

TO: *Forrest Cameron* 541-493-2405
Mulhearn Refuge

FROM: Barbara Scott-Brier, Attorney-Adviser
Pacific Northwest Region

SUBJECT: REALTY Letter

DATE/TIME: _____

Number of pages including this transmittal sheet: _____

H1, Forrest
Enclosed is Realty's redraft with my
comments annotated on it. I haven't
sent these to Realty. I suggest you
have them e-mail their draft to you
& you incorporate my comments with
your revisions / corrections to my comments
*& the draft. * (Wish they wrote as well as*
you -- Good luck!!) Thanks - Barb

**Or else add your handwritten to memo!*

PS - I still don't have the MAP!!

**Or else add your handwritten to memo!*
PS- I still don't have the MAP!!

05/22/97

15:56

5032316161

USFWS REALTY

→→→ OFC. OF REG. SOL

002

To: Barbara Scott-Brier
Office of the Solicitor, Pacific Northwest Region

From: Chief, Division of Realty
Portland, Oregon

DRAFT

Subject: Potential Revised Statue (RS) 2477 Claim by Hammond Ranches, Inc.

Issue:

assist in determining
right-of-way
trailing
asserted that the Ranch does
Ranch contends that
it has
they have
of the driveway
RS 2477
One method of controlling and
authorizing stock driveway use is to grant a SUP.

NO
BOLD
FACE

You asked for a review to ~~determine~~ whether Hammond Ranches (Ranch) may have a valid RS 2477 claim of a ~~stock driveway~~ for moving livestock (cattle) across Malheur National Wildlife Refuge land. The route is shown on Fish and Wildlife Service (Service) map Exhibit 1. The Service has ~~told Hammond Ranches they do~~ not have a right to use Refuge land without a Refuge Special Use Permit (SUP). The ~~Hammond's say~~ it is their historic right to use the route. However, to date, ~~they have~~ not asserted the right of use ~~of the driveway~~ based on RS 2477. ~~To resolve this dispute we need to refute the historic use claim and potential RS 2477 assertion, and uphold our right to control use on the Refuge.~~ One method of controlling and authorizing stock driveway use is to grant a SUP.

Hiller#5;c:\...row\malheur.or\hammond 5/22/97

History B
Abbreviated Revised Statute (RS) 2477 History

Revised Statute 2477 is an 1866 Act (Federal law) granting highway rights-of-way over Federal public lands stated in deceptively simple language:

[The right-of-way for the construction of highways over public lands, not reserved for public uses, is hereby granted.] *indent*

This grant was originally found in law in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act; *the act* was subsequently codified as Revised Statute (R.S.) 2477 and was later recodified in 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act of October 21, 1976 (FEDMA), Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, *et seq.*, the so-called "Organic Act" of the Bureau of Land Management (the Bureau). Because of the repeal, *at issue are* we are generally concerned about RS 2477

claims of grants of right-of-ways perfected after July 26, 1866 and before October 21, 1976.

on this matter, Specifically, we are interested in claims between July 26, 1866 and the date on which the underlying Federal public domain land was *set aside* (federal land withdrawals and reservations) for some federal purpose, or was deeded (granted or transferred) out of Federal ownership.

Revised Statute 2477 has been the subject of inconsistent state statutes and court decisions, and a handful of inconsistent federal court decisions during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them.

For a long time not much was ~~made of or~~ done with this provision of law. In fact it did not elicit much reaction until after its repeal in 1976. The large public lands set-asides (~~reservations and withdrawals~~) of the 1970's and later, ~~particularly~~ Wilderness Act withdrawals, caused the law to move to the forefront. States began citing ~~this provision in~~ ^{based on this provision} asserting their claims for existing highways or those ^{proposal} to be built on Federal lands. ~~In many cases, the States were counting on RS 2477 claims to block pending wilderness designations.~~ Furthermore, states, counties and individuals ^{appear to find} ~~have found~~ this law ^{in blocking wilderness designations and} ~~to be~~ prospectively useful for gaining free access across Federal lands.

~~REDAUNDANT~~
The legislative history is silent as to the meaning of Section 8 of the 1866 Act. ~~This is a major reason why interpretation and application of the law is difficult and confusing. There is no legislative guidance as to what Congress had in mind for this grant of right-of-way across Federal lands.~~

~~Between its passage in 1866, and its repeal in 1976, no changes were made to Revised Statute 2477. The only understanding or interpretation of it comes from inconsistent case law. States, counties, and others wanting to apply the law asserted it as a basis for rights-of-way across federal land. There were no regulations or specific guidance for its application until 1988. On October 7, 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as "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)" (Exhibit 2).~~

NOTA
under the Secretarial Guidance
The Bureau was tasked with processing RS 2477 claims and determining their validity.

P In 1992, Congress, after hearing from constituents and agencies about the problems of determining *RS 2477 claims* ~~these rights~~, ordered the Bureau to research the issues, ~~The Bureau was to~~ canvas the public and other federal agencies, and publish proposed regulations ~~to create a~~ process by which these claims ~~of valid existing rights~~ could be identified and evaluated. The Bureau was to establish standards against which the claims were to be decided. The Bureau released its report on June 1, 1993. The report created such controversy that no regulations have been finalized to date. ~~In July 1994, in response to the Service's inquiry, the Bureau's Oregon State Office stated that RS 2477 assertions are still allowed, but their processing was on nationwide hold pending the issuance of final rules.~~

Secretary Hodel's Secretarial Guidance
The Hodel ~~policy~~ was revoked by Secretary Babbitt's January 22, 1997, ~~guidance~~ memorandum (Exhibit 3). *which* ~~This~~ established a revised policy for carrying out any determinations the Department might be called upon to make regarding RS 2477. The Secretary also reaffirmed his previous instructions to the Bureau to defer processing of RS 2477 assertions except in cases where there is a demonstrated, compelling and immediate need to make such determinations.

Secretary of Interior Babbitt's RS 2477 ~~Policy~~ Memorandum:

Secretary Babbitt's January 1997 memorandum provides the following six provisions:

1. **Claims.** The entity requesting the Department to make a determination as to whether an RS 2477 right-of-way exists must file written information to be considered and must provide information on why there is a compelling and immediate need for such a determination.

2. Withdrawals and Reservations. The agency involved (the Service) will consult the public land records of the Bureau of Land Management to determine the status of land over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable at the time that the highway was allegedly constructed and remained unavailable through October 21, 1976, the Service ^{will} ~~would~~ recommend the Secretary deny the claim. *agency involved*

3. Construction. The Service will examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.

4. Highway. The Service will evaluate whether the alleged right-of-way constitutes a highway, that is, a thoroughfare used prior to October 21, 1976 by the public for passage of vehicles carrying people or goods from place to place.

5. Role of State Law. The Service will apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.

6. Secretary's Determination. The Service will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations.

This new (~~BLM~~) policy is significantly different from prior (~~BLM~~) policy. An important point is that the affected agency, not the Bureau ^{of Land Management} makes the recommendation for the Secretary's ~~final~~ approval.

FWS Region 1 Realty Actions and Findings:

Maps, plats, and written documents

We researched the land status underlying the ^{trailing} ~~stock~~ route by studying the following

maps and plats: Bureau, Master Title Plats, Historical Indexes, and Government Land Office

(GLO) plats, a USGS quad of the area, a Fish and Wildlife Service Land Status Map, and the

"Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon dated 11/27/1908. We

also looked at the "Executive Orders" file, which contains the history of the Refuge so far as

federal land reservations, withdrawals and transfers are concerned. We were looking for

unreserved public land on which a highway ^{may have} existed between 1866 and 1976, and for a ~~built~~

~~(constructed) public trail, road, or driveway which coincides with the route the Ranch is using.~~

The GLO plat shows a "Wagon Road" (highlighted) traversing the plat from NE to SW. This

road mostly corresponds to the ^{trailing route to the Ranch is} ~~stock driveway the Hammond's are using.~~ The road would have

to have been in existence at the time of the GLO survey in late 1877. It is likely that it had been

in existence before the survey, ^{although when it was constructed.} ~~though presently we do not know how long.~~ We need to look at

the survey notes/record to ^{and will need to request} ~~find out more about it.~~ We should ask the Bureau to provide copies of

the survey notes/record.

Land Grants, Transfers, Withdrawals and Reservations

The RS 2477 enactment date of July 26, 1866, and the various land grants, transfers, withdrawals

and reservations starting in 1859 and ending in the 1890's, create a series of ^{might} ~~windows~~ during

which an RS 2477 could be claimed. ^(The J) ~~Exhibit 1, map, shows these dates.~~ ^{the respective} ~~The dates are when the~~

Federal land ^{along the route} ~~became unavailable for an RS 2477~~ ^{claim} ~~because of a land grant, transfer,~~

withdrawal or reservation. ^{in the map} ~~(The date inside the "land status box" is when the land left Federal~~ ^{the following:}

ownership or was withdrawn for Refuge purposes) ~~closing the RS 2477 windows.~~ We found 1)

In what map & where doesn't it correspond? p22 be specific

Are we going to show it all on the same map, Exhibit 1? I'd prefer Exhibit 4.

assuming you found no specific grant of a public highway or right of way
[and grants to the State of Oregon (State Grants) that the present trailing route crosses. The

earliest State Grant, near the north end of the route, is dated 1859. This grant is the earliest

gap in the ^{trailing} stock driveway's route, ~~because~~ ^{The lands in this grant would have never been granted} after the grant, the lands would be unavailable for

an RS 2477 claim, ~~unless specifically reserved in the grant~~. The gap bisects the ^{trail} driveway making

it unusable as a continuous route. ^{other} Most State Grants occurred in the 1880's and early 1890's; 2)

Homestead Patents ^{were} granted in the 1880's and 1890's, ^{transferring} Homestead Patents transferred land out of

Federal ownership; 3) ~~that~~ Malheur National Wildlife Refuge was first set-aside or reserved in

the area of the ^{trail} Ranch driveway by Executive Order 7106, on July 16, 1935, "Establishing The

Malheur Migratory Bird Refuge, Oregon."

Construction of Highways

We did not find evidence of construction of a public highway for passage of vehicles carrying

people or goods. ¹⁹⁰⁸ The "French-Glenn Map" shows a "wagon road" that roughly corresponds to

the route the Ranch is using. Few portions of this route qualify as constructed road, and one of

those places, a crossing over Bridge Creek was constructed in the early 1990's. We did not look

at Patents for a right-of-way reservation. ^{The} Our Survey Branch suggested another source of

~~evidence of trail or road construction, which we did not look at. These sources are County and~~ ^{we reviewed}

Road Commissioner's Journals, Road Supervisor's Reports, the County Road Master, and the

County Surveyor. ~~Both~~ Harney County and its predecessor county (Coos?) records should be

investigated. ^{to} ~~We would~~ look for petitions to open a road corresponding to the ^{trailing route} stock driveway,

and monies spent on construction and/or maintenance for such road. ~~However, because of the~~

~~sensitivity of this issue, we would not recommend opening these discussions at this time.~~

*Why not? When
are you
going to do it?*

*We need
to review
all
sources!*
Agree.
Maybe MCH staff

Conclusion and Recommendation:

We found narrow windows ~~of opportunity~~ for an RS 2477 claim between 1866 and 1884. The ~~where there were windows~~ because there was unreserved Federal public land ^{trailing} along the stock driveway ^{Homener} route. Unreserved land must be available for an RS 2477 assertion to be valid. Although ~~we~~ ^{could confirm} ^{between 1866-1876} found no evidence of construction, ^{trailing route} use of the stock driveway for moving livestock equals

"construction of highways", cited in Secretary Dabbitt's January 22, 1997 memorandum; and ~~the use was at the proper time~~, and if the route is accepted as a public highway, then predecessors of the Ranch and the Ranch could assert an RS 2477 claim. ^{has been} A key question ^{Thus} is ~~whether the County or State acknowledged the entire route as a public highway during any of the windows.~~ If even a small portion of the route ^{was} not acknowledged as a public highway, then in

the claim would not be valid over the entire route. ~~It is important to note that we did not look at the County sources described above which could have critical bearing on the assertion of an RS 2477 claim.~~ An RS 2477 assertion may be possible. ^{As this time} However, we have not found evidence supporting ^{an RS 2477} such a claim; ^{homener as noted above}, we need to conduct additional research.

Due to ~~several~~ ^{of land management} uncertainties regarding this matter, our recommendation is that the Solicitor's Office ~~should ask the Bureau's State Office to provide some basic information from their files that might quickly clarify some of our questions.~~ ^{certain} Examples include dates of patents; recognition of travel routes; evidence of rights-of-ways; and historical maps, photos or documents of travel routes in the trailing area. ~~Also at sometime in the future, we will also need to review the County records when the timing is appropriate. We don't want to alert the County early on.~~ ^{after the research is complete, we may also need to conduct research as to the meaning of "construction of highways."}

If you have further questions, please call Bob Hiller at 503-231-6201.

TO: Elaine Zelinski, State Director
Bureau of Land Management

From: *Barbara Scott - Bauer, Attorney*
Office of the Solicitor, Pacific Northwest Region
Portland, Oregon

DRAFT

Subject: RS 2477 Claim

[Signature]
Dear Elaine:

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge without permission. He has not to date articulated the basis for his ^{asserted} historic right under ^{an} RS 2477 right-of-way, ^{or other} claim ~~or assertion~~.

we have received no --
we are not aware of a
While at this point ~~there is no~~ formal RS 2477 claim ~~the~~, we would like to resolve *we are requesting your assistance*
this issue if possible between the Refuge staff and the neighbor. To do that ~~we~~ we would like you to
provide copies of the following information for the land in question (shown on the attached map,
Exhibit 4, and generally located as described below):

1. Copies of the following state grants and patents underlying the trailing route:

T31S,R321/2E, WM.,

Section 16, SG, 2/14/1859

OR 6773, Deed to US, 7/5/1949

Section 21, SG 8, 3/10/1890

SG 16, 9/13/1890

IL 6, 3/26/1891

Patent 772, 10/4/1890

Section 28, Patent 772, 10/4/1890

SG 28, 9/10/1892

Patent 426, 6/4/1890

Patent 7, 12/5/1884

Section 32, Patent 453, 1/11/1889

Patent 404, 1/11/1889

Section 33, Patent 7, 12/5/1884

Patent 1066, 4/16/1890

2. Copies of the GLO survey notes for T31S,R321/2E, WM.

3. Any evidence that the Bureau may have that the State of Oregon has recognized a
public highway along some or all portions of the trailing route.

4. Any evidence of ^{an} established legal right(s) of-way along the trailing route.
5. The existence of any maps, photos or documents of the trailing route area that might be pertinent in resolving this possible RS 2477 claim.

Please provide me with any information that you might find on these issues. For additional information, the contact in Realty is Bob Hiller, Realty Specialist, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager at Malheur Refuge, at 541-493-2612. *I may be reached at 231-2139.*

Thank you for your help in resolving this matter.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE 11th Avenue
Portland, Oregon 97232-4181

INTER-OFFICE TRANSMITTAL



IN REPLY REFER TO:

<input type="checkbox"/> DIRECTOR, _____
<input type="checkbox"/> DENVER FINANCE CENTER, _____
<input type="checkbox"/> REGIONAL DIRECTOR, _____
<input checked="" type="checkbox"/> PROJECT LEADER, <u>Malheur NWR, Attn: Forest.</u>
<input type="checkbox"/> OTHER, _____

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

FROM <u>Bob Hume</u>	OFFICE <u>NEW-RE</u>	DATE <u>6/2/97</u>
----------------------	----------------------	--------------------

SUBJECT

Here's a disk with the RS2477 letter in it. also a copy of a letter size map of the situation. We have copies in the larger format.

Bob

TO: Elaine Zelinski, State Director
Bureau of Land Management

From: Office of the Solicitor, Pacific Northwest Region
Portland, Oregon

Subject: RS 2477 Claim

Dear Elaine:

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge although he has not articulated the basis under an RS 2477 right-of-way.

While at this point there is no formal RS 2477 claim, we would like to resolve this issue if possible between Refuge staff and the neighbor. To do that we ask that you ask your staff to

provide copies of the following information for the land in question on the attached map:

1. Copies of the dates of the patents of the parcels of land along the trailing route. (Bob & Scott to provide legals)
2. Any evidence that the State has recognized a public highway along some or all portions of the trailing route.
3. Any evidence of established legal rights-of-way along the trailing route.
3. The existence of any maps, photos or documents of the trailing route area that might be pertinent in resolving this informal RS 2477 claim.

Please provide me with any information that you might find on these issues. For additional information, the contact in Realty is Scott Wise, Branch Chief of Acquisition, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager at Malheur Refuge, at 541-493-2612.

Thank you for your help in resolving this matter.

To: Barbara Scott-Brier
Office of the Solicitor, Pacific Northwest Region

From: Chief, Division of Realty
Portland, Oregon

Subject: Potential RS 2477 Claim by Hammond Ranches Inc.

You asked for an opinion as to whether Hammond Ranches may have a valid RS 2477 claim to move livestock (cattle) across Refuge lands. The current owner has been moving cattle over this route. The Fish and Wildlife Service (Service) has asserted that the Ranch does not have a right to use Refuge land except under Refuge Special Use Permit. The Ranch says it is their right to use the route based on historic use without articulating any specific basis such as RS 2477. The route is shown on the attached Fish and Wildlife Service map (Exhibit 1).

To end this dispute we need to resolve the potential RS 2477 claim.

As a lead-in to answering your questions, we offer an abbreviated history of RS 2477. Revised Statute 2477 is an 1866 Act (Federal law) "granting" highway rights-of-way over federal public lands stated in deceptively simple language:

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

This grant was originally found in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act, later codified as Revised Statute (R.S.) 2477 and later recodified in 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq, the so-called "Organic Act" of the Bureau of Land Management (the Bureau). Because of the repeal, we are only concerned about "claims" of grants of right-of-ways "perfected" after July 26, 1866 and before October 21, 1976, or until the land underlying a claimed RS 2477 was reserved from the public domain or was deeded out of Federal ownership, whichever was earlier.

RS 2477 has been the subject of inconsistent state statutes and court decisions, and a handful of inconsistent federal court decisions, during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them.

For a long time not much was made of or done with this provision of law. In fact it did not elicit much reaction until after its repeal in 1976. The large public lands set-asides of the 1970's

and later, particularly Wilderness Act withdrawals, caused the law to move to the forefront. The states began citing this provision in asserting their claims for highways in existence or to be built. They, in many cases, were counting on RS 2477 claims to block pending wilderness designations. Furthermore, states, counties and individuals have found this law to be prospectively useful for gaining free access across federal lands.

The legislative history is silent as to the meaning of Section 8 of the 1866 Act.

In summary, between 1866 when the law was passed and 1976 when it was repealed, no changes were made to the Act, and the only understanding of it came from inconsistent case law. States, counties, and others wanting to apply the law asserted it as a basis for rights-of-way across federal land. There were no regulations or specific guidance for application. Thus, on October 7, 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as "Departmental Policy on Section 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as 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)" (Exhibit 2).

The Bureau was tasked with processing RS 2477 claims and determining their validity.

provide information on why there is a compelling and immediate need for such a determination.

2. **Withdrawals and Reservations.** The agency involved (the Service) will consult the public land records of the Bureau of Land Management to determine the status of land over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable at the time that the highway was allegedly constructed and remained unavailable through October 21, 1976, the Service would recommend the Secretary deny the claim.

3. **Construction.** The Service will examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.

4. **Highway.** The Service will evaluate whether the alleged right-of-way constitutes a highway, that is, a thoroughfare used prior to October 21, 1976 by the public for passage of vehicles carrying people or goods from place to place.

5. **Role of State Law.** The Service will apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.

6. **Secretary's Determination.** The Service will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations.

This new (Babbitt) policy is significantly different from prior (Hodel) policy in that the affected agency and not the Bureau

makes the recommendation for the Secretary's final approval.

In researching land status I looked at the following maps of the route in question: Bureau Master Title Plats and Historical Indexes, a USGS quad of the area, a Fish and Wildlife Service Land Status Map, and a "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon dated 11/27, 1908; and, the "Executive Orders" file, which contains the history of the Refuge so far as reservations, withdrawals and transfers are concerned. I was looking for "unreserved public land" on which a highway existed between 1866 and 1976. I was looking for public, constructed routes, which are the same as the route that the Ranch is now using.

Withdrawals and Reservations

I found grants to the State of Oregon (State Grants) of certain lands along the trailing route. The earliest State grant, near the north end of the route was dated 1859, though most occurred in the 1880's and early 1890's. See map (Exhibit 4).

I also found (XX number of) 1880's and 1890's Homestead Patents that deed the land out of Federal ownership. I found that Malheur National Wildlife Refuge was first set-aside or reserved in the area by Executive Order 7106, on July 16, 1935, "Establishing The Malheur Migratory Bird Refuge, Oregon." There are a series of windows between 1866 and 1884 (the earliest recorded Patent); and later (from other Patents and State Grants)

for an RS 2477 claim.

The earliest break in ownership from withdrawals or reservations was in 1859... Bob, please provide summary language in reference to the map that you create.

Construction of Highways

I did not find evidence of construction of a public highway for passage of vehicles carrying people or goods. The "French-Glenn Map" shows a "wagon road" that roughly corresponds to the route the Ranch is using. Few portions of this route qualify as constructed road, and one of those places, a crossing over Bridge Creek was constructed in the early 1990's. I did not look at Patents for a right-of-way reservation. Bob, any comment here?

In conclusion, I found there were a number of narrow windows between 1866 and 1884, during which there was unreserved Federal public land along the entire route and thus available for an RS 2477 assertion. Although I have found no evidence of such, if use in moving livestock equals "construction of highways" cited in Secretary Babbitt's January 22, 1997 memorandum, if the use was at the proper time, and if the route is accepted as a public highway, then predecessors of the Ranch and the Ranch could assert the route under RS 2477. Thus, a key question is whether the State acknowledged the entire route as a public highway during any of the windows. If even a portion were not so

acknowledged the claim would not be valid.

Although an RS 2477 assertion may be possible, we have not found a record to support such a claim. However, due to several uncertainties regarding this matter, my recommendation is that the Service ask the Bureau's State Office to provide some basic information from their files that might quickly clarify some of our questions. Examples include dates of patents; recognition of travel routes; evidence of rights-of-ways; and historical maps, photos or documents of travel routes in the trailing area. I would be pleased to work with you in drafting such a request.

If you have further questions, please call me or Bob Hiller at 503-231-6201.

4/20/97 Version

TO: Elaine Zelinski, State Director
Bureau of Land Management

From: ^{SOL} Regional Director, Pacific Region
Fish and Wildlife Service

Subject: RS 2477 Claim

Dear Elaine:

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge although he has not articulated the basis under an RS 2477 right-of-way.

While at this point there is no formal RS 2477 claim, we would like to resolve this issue if possible between Refuge staff and the neighbor. To do that we ask that you ask your staff to ^{provide copies of} research the following for the land in question on the attached map:

/

Copies copies of the
1. ~~The respective dates of the patents of the parcels of~~
land along the trailing route. *list legals (Bob Scott)*

Patent does this
2. ~~The respective dates that land along this trailing~~
route were first reserved from public domain.

OK
3. Any evidence that the State has recognized a public
highway along some or all portions of the trailing route.

OK
4. *Any evidence of*
~~The existence of any~~ established legal rights-of-way
along the trailing route.

OK
5. The existence of any maps, photos or documents of the *trailing route*
area that might be pertinent in resolving this informal RS
2477 claim.

Please provide our ~~Realty Office~~ ^{*me*} and ~~Refuge Manager~~ with any
information that you might find on these issues. The contact in
Realty is Scott Wise, Branch Chief of Acquisition, 503-231-6201,
or you may contact Forrest Cameron, Refuge Manager at Malheur
Refuge, at 541-493-2612.

Thank you for your help in resolving this matter.

~~Thank you for your help in resolving this matter.~~

Bob & Scott out all next week & don't see the next week.

4/20/07 Version

Conf Call notes in red.
single space the final

I do Elain memo
& next draft
E-mail both Bob & Scott.

To: Barbara Scott-Brier

Office of the Solicitor, Pacific Northwest Region

From: Chief, Division of Realty

Subject: Potential RS 2477 Claim by Hammond Ranches Inc.

You asked for an opinion as to whether Hammond Ranches may have a valid RS 2477 claim to move livestock (cattle) across Refuge lands. The current owner has been moving cattle over this route. The Fish and Wildlife Service ^(Service) has asserted that the Ranch does not have a right to use Refuge land except under Refuge Special Use Permit. The Ranch says it is their right to use the route based on historic use without articulating any specific basis such as RS 2477. The route is shown on the attached Fish and Wildlife Service map (Exhibit 1). — Hammond map (colored)

To end this dispute we need to resolve the potential RS 2477 claim.

As a lead-in to answering your questions, we offer an abbreviated history of RS 2477. Revised Statute 2477 is an 1866 Act (Federal law) "granting" highway rights-of-way over federal public lands stated in deceptively simple language: ^{no underlin}

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

granted."

This grant was originally found in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act, later codified as Revised Statute (R.S.) 2477 and later recodified in 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq, the so-called "Organic Act" of the Bureau of Land Management (the Bureau). Because of the repeal, we are only concerned about "claims" of grants of right-of-ways "perfected" after July 26, 1866 and before October 21, 1976, or until the land underlying a claimed RS 2477 was reserved from the public domain or was deeded out of Federal ownership, whichever was earlier.

RS 2477 has been the subject of inconsistent state statutes and court decisions, and a handful of inconsistent federal court decisions, during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them.

For a long time not much was made of or done with this provision of law. In fact it didn't elicit much reaction until after its repeal in 1976, and the large public lands set-asides of the 1970's and later, particularly Wilderness Act withdrawals, and ~~other withdrawals occurred.~~ *caused the law to move to the forefront.* *Took* The states found this provision, and asserted their claims for highways in existence or to be built.

The states, in many cases, were counting on RS 2477 claims to block pending wilderness designations. Furthermore, States, counties and individuals have found this law to be prospectively useful for gaining free access across federal lands.

The legislative history is silent as to the meaning of Section 8 of the 1866 Act.

In summary, between 1866 when the law was passed and 1976, when it was repealed, no changes were made to the Act, and the only understanding of it came from inconsistent case law. States, counties, and others wanting to apply the law asserted it as a basis for rights-of-way across federal land. There were no regulations or specific guidance for application. Thus, on October 7, 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as "Departmental Policy on Section 1988, Secretary of the Interior Hodel issued "Secretarial Guidance" as 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)" (Exhibit 2).

No bold

The Bureau was tasked with processing RS 2477 claims and determining their validity.

In 1992, Congress, after hearing from constituents and agencies about the problems of determining these rights, ordered the Bureau to research the issues, *the Bureau was to* canvas the public and other

They were
federal agencies, and publish proposed regulations, to create a
process by which these claims of valid existing rights could be
identified and evaluated, and to establish standards against
which to measure the claims. The Bureau released its report on
June 1, 1993, but due to the controversy associated with the

~~no~~ report, there are no regulations to date.
The report created such
have been finalized

the Service's
Oregon
In July 1994, in response to my inquiry, the Bureau's State
Office stated that RS 2477 assertions are still allowed, but
their processing was put on nationwide hold pending the issuance
of final rules. The policy was revoked by Secretary Babbitt's
January 22, 1997 guidance memorandum (Exhibit 3), which
established a revised policy for carrying out any determinations
the Department might be called upon to make regarding RS 2477.
The Secretary also reaffirmed his previous instructions to the
Bureau to defer any processing of RS 2477 assertions except in
cases where there is a demonstrated, compelling and immediate
need to make such determinations.

Secretary Babbitt's January 1997 memorandum explains the
following six provisions:

- Bold
1. Claims. The entity wishing the Department to make a
determination must file written information to be considered
and must provide information on why there is a compelling
and immediate need for such a determination.
 2. Withdrawals and Reservations. The agency involved will
consult the public land records of the Bureau to determine
- requesting
whether RS 2477 applies
The Service is the
of Land Management

the status of land over which the claimed right-of-way passes. *Quote the last sentence here. or add in most of us.*

Bold 3. Construction. *Service will* The agency ~~shall~~ examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.

4. Highway. The *Service* agency will evaluate whether the alleged right-of-way constitutes a highway, *that is* ~~is~~ a thoroughfare used prior to October 21, 1976 by the public for passage of vehicles carrying people or goods *from place to place.*

5. Role of State Law. The agency *will* ~~shall~~ apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.

6. Secretary's Determination. The agency will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations. *that is*

insert
This policy is signif. different from prior BLM policy, ~~that is~~ the affected agency
that BLM makes the recommendations to the Secs final approval.

In researching land status I looked at the following maps of the route in question: Bureau Master Title Plats and Historical Indexes, a USGS quad of the area, a Fish and Wildlife Service Land Status Map, and a "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon dated 11/27, 1908; *space.* and, the "Executive Orders" file, which contains the history of the Refuge so far as reservations, withdrawals and transfers are concerned. I was looking for "unreserved public land" on which a highway existed between 1866 and 1976. I was looking for public, constructed routes, which are the same as the route that the

Ranch is now using.

Withdrawals & reservations at NE end of route
I found grants to the State of Oregon (State Grants) ~~as far back~~ *of certain lands along the trading route*
~~as 1859~~ *was 1859* (the earliest State grant), though most occurred in the
1880's and early 1890's.

(Bob, we need to know the legal description of any prior to 1866:
Do any of them occur on the travel route???)

X number of
I also found 1880's and 1890's Homestead Patents that deed the
land out of Federal ownership. I found that Malheur National
Wildlife Refuge was first set-aside or reserved in the area by
Executive Order 7106, on July 16, 1935, "Establishing The Malheur
Migratory Bird Refuge, Oregon." There are a series of windows
between 1866 and 1884 (the earliest recorded Patent); and later
(from other Patents and State Grants) for an RS 2477 claim.

will attach a map
Paralel paragraph - The earliest break was 1859 -
(filler to provide language here)
(Bob, we want you to identify specifically those windows.)

Construction of Highways
I did not find evidence of construction of a public highway for
passage of vehicles carrying people or goods. The "French-Glenn
Map" shows a "wagon road" that roughly corresponds to the route
the Ranch is using. Few portions of this route qualify as
constructed road, and one of those places, a crossing over Bridge
Creek was constructed in the early 1990's. I did not look at
Patents for a right-of-way reservation.

In conclusion, I found there were a number of narrow windows

C

see map
(~~please name and give legal description for each window~~) between 1866 and 1884, during which there was unreserved Federal public land along the entire route and thus available for an RS 2477 assertion. Although I have found no evidence of such, if use in moving livestock equals "construction of highways" cited in Secretary Babbitt's January 22, 1997 memorandum, if the use was at the proper time, and if the route is accepted as a public highway, then predecessors of the Ranch and the Ranch could assert the route under RS 2477. Thus, a key question is whether the State acknowledged the entire route as a public highway during any of the windows. If even a portion were not so acknowledged the claim would not be valid.

*me
2 words
to conform
SL Hutton*
Although an RS 2477 assertion may be possible, we have not found a record to support such a claim. However, due to several uncertainties regarding this matter, my recommendation is that the Service ask the Bureau's State Office to provide some basic information from their files that could provide information that might quickly clarify some of our questions concerning dates of patents reserves; existence of rights-of-ways; historical maps, photos or documents of travel routes; and existence of State recognition of a highway along the travel route. I would be pleased to work with you in drafting such a request.

If you have further questions, please call me or Bob Hiller at 503-231-6201.

Bob Muller - Realty

***** - JOURNAL - ***** DATE APR-15-1997 ***** TIME 11:47 *****

DATE/TIME = APR-15 11:44
JOURNAL NO. = 11
COMM.RESULT = OK
PAGES = 04
DURATION = 00:02'35
MODE = XMT
STATION NAME =
TELEPHONE NO. = T 15032312166
RECEIVED ID = 503 231 2166
RESOLUTION = STANDARD

HIGHLAND STA 503 5732574

503 573 2574- *****

MEMO

TO: Refuge Files
FROM: Dave Stanbrough
SUBJECT: Hammond Cattle Trailing

June 9, 1997

Background: The Refuge received notice that the Hammonds would be trailing 150 cattle through the Refuge on Monday May 26th. A Special Use Permit was prepared and mailed to the Hammonds Ranch for signature. On the 26th, Manager Forrest Cameron and myself monitored the area from 8:00 am until 2:00 pm but did not see any trailing activity during that time. We checked the Bridge Crk pasture and saw that the East gate which the cattle would go through was still open. No tracks were present. We then departed in travel for a workshop on Corvallis, OR. That evening (26th) I called Randy Bilbeise at P-Ranch and gave him the background and ask him to monitor the trail route for activity. We wanted to document and confirm the trail drive, time and number of cattle. He said he would keep checking the route during the day on Tuesday the 27th.

Follow-up: On Wednesday May 28th I returned to the office. Randy was on annual leave, but Andy Renc advised that Randy said he had not seen any cattle trailing activity on the route during Tuesday. Andy said Randy reported heavy rains at P-Ranch Tuesday evening. [I later talked to Randy and he had checked the East gate of the Bridge Crk. pasture at 1:00 pm and found the gate closed (Forrest and I had found and left gate open the day before). He did not see any cattle tracks. He went through the gate and counted 23 cattle grazing up high and East of the Refuge boundary.] Andy and I drove to Bridge Creek afternoon that Wednesday. We observed approx 20 cattle grazing on the hill East of the pasture but did not see any tracks going through the gate. We suspected the heavy rains washed away the tracks. We back trailed the route through the North gate of the pasture and found a fresh soda can in the trail. We found recent cattle tracks on the West side of the trail that rain had not washed away. Fresh breaks on some brush was also found. The amount of tracks and brush disturbance appeared consistant with approximately 20 head of cattle coming through on the trail instead of the 150 expected.

Given the observations made on Monday the 26th by Forrest and myself, Randy's observations at 1:00 pm on the 27th and the time of heavy rains, I suspect that the cattle were trailed between 2 pm on the 26th and 1 pm on the 27th.





United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region
500 N. E. Multnomah Street, Suite 607
Portland, Oregon 97232



JUN 30 1997

MEMORANDUM

TO: Elaine Zielinski, State Director
Bureau of Land Management

FROM: Barbara Scott-Brier, Attorney
Pacific Northwest Region

Barbara Scott-Brier

SUBJECT: RS 2477 Claim

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge although he has not articulated the basis under an RS 2477 right-of-way or other claim.

While at this point there is no formal RS 2477 claim, we would like to resolve this issue if possible between Refuge staff and the neighbor. To do that we are asking your assistance. We would like you to provide copies of the following information for the land in question (please see the attached map) and generally located as described below:

1. Copies of the following documents underlying the trailing route:
 - T31S, R32½E, WM.,
 - Section 16, SG, 2/14/1859
 - OR 6773, Deed to US, 7/5/1949
 - Section 21, SG 8, 3/10/1890
 - SG 16, 9/13/1890
 - IL 6, 3/26/1891
 - Patent 772, 10/4/1890
 - Section 28, Patent 772, 10/4/1890
 - SG 28, 9/10/1892
 - Patent 426, 6/4/1890
 - Patent 7, 12/5/1884









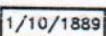
Section 32,	Patent 453, 1/11/1889
	Patent 404, 1/11/1889
Section 33,	Patent 7, 12/5/1884
	Patent 1066, 4/16/1890

2. Copies of the GLO survey notes for T31S, R32½E, WM.
3. Any evidence that the Bureau may have that the State of Oregon has recognized a public highway along some or all portions of the trailing route.
4. Any evidence of an established legal right-of-way along a portion or all of the trailing route.
5. Any maps, photos, or documents of the trailing route area that might be pertinent in resolving this possible RS 2477 claim.

Please provide me with any information that you might find on these issues. For additional information, the contact person in Fish and Wildlife Service Realty Branch is Scott Wise, Chief of Acquisition, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager, Malheur National Wildlife Refuge, 541-493-2612.

Thank you for your help in resolving this matter. Please call me at 231-2139 if you have any questions or wish to discuss these matters.

LEGEND

-  REFUGE BOUNDARY
-  REFUGE PROPERTY
-  BLM PROPERTY
-  HAMMOND RANCHES PROPERTY
-  ORIGINAL HAMMOND PROPERTY
-  HAMMOND/BLM LAND EXCHANGE, 9/22/89
-  DOCUMENTED HISTORICAL WAGON ROAD
-  *** HAMMOND CATTLE TRAILING ROUTE
-  DATE INDICATES WHEN TRACT LEFT FEDERAL OWNERSHIP OR WAS WITHDRAWN FOR REFUGE PURPOSES

MALHEUR NATIONAL WILDLIFE REFUGE

Blitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON

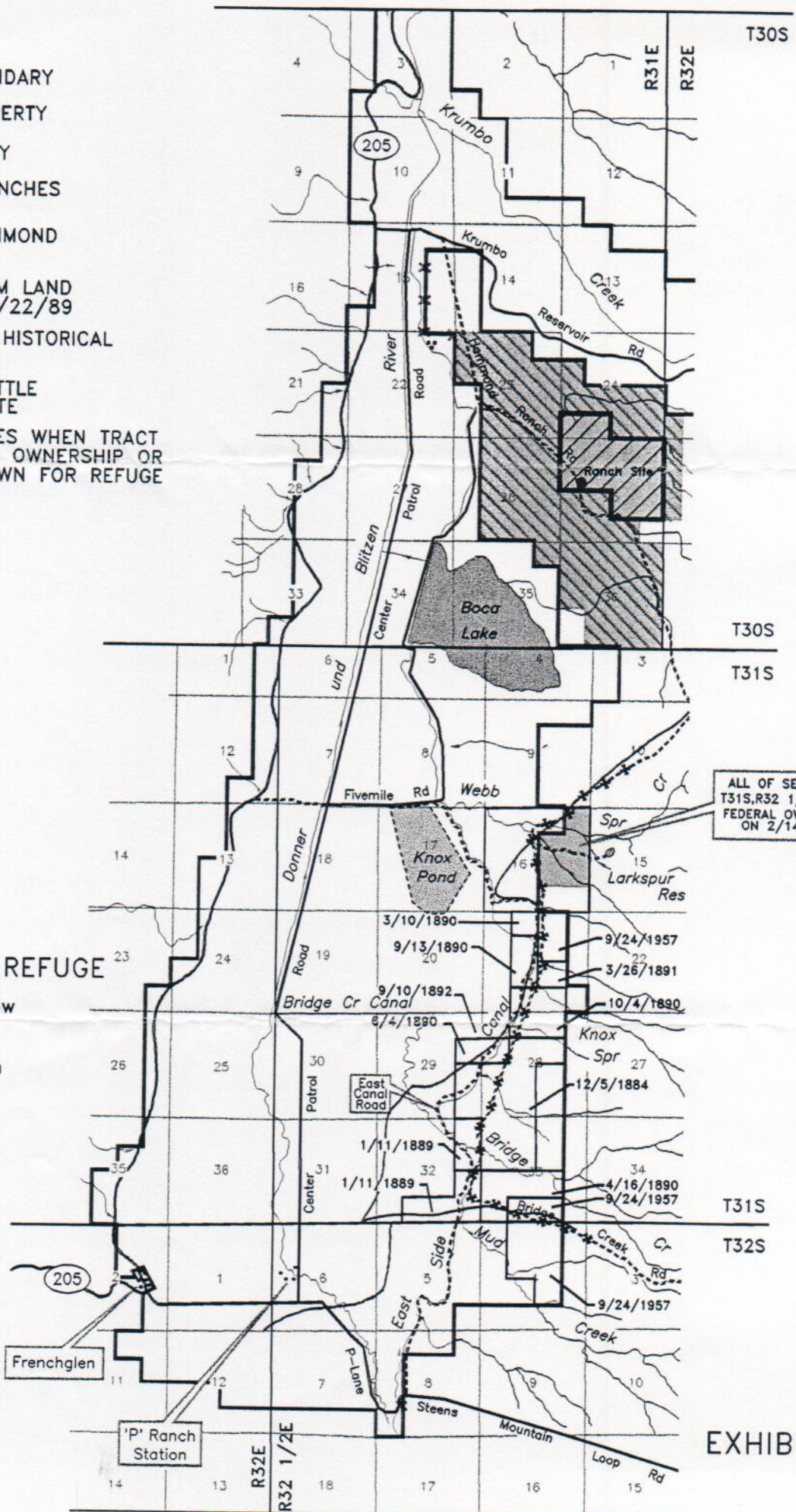
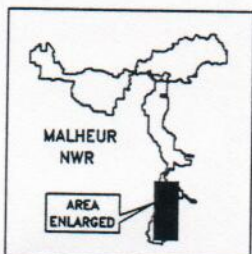


EXHIBIT #4

MEMO

TO: Refuge Files
FROM: Dave Stanbrough
SUBJECT: Hammond Cattle Trailing

June 9, 1997

Background: The Refuge received notice that the Hammonds would be trailing 150 cattle through the Refuge on Monday May 26th. A Special Use Permit was prepared and mailed to the Hammonds Ranch for signature. On the 26th, Manager Forrest Cameron and myself monitored the area from 8:00 am until 2:00 pm but did not see any trailing activity during that time. We checked the Bridge Crk pasture and saw that the East gate which the cattle would go through was still open. No tracks were present. We then departed in travel for a workshop on Corvallis, OR. That evening (26th) I called Randy Bilbeise at P-Ranch and gave him the background and ask him to monitor the trail route for activity. We wanted to document and confirm the trail drive, time and number of cattle. He said he would keep checking the route during the day on Tuesday the 27th.

Follow-up: On Wednesday May 28th I returned to the office. Randy was on annual leave, but Andy Renc advised that Randy said he had not seen any cattle trailing activity on the route during Tuesday. Andy said Randy reported heavy rains at P-Ranch Tuesday evening. [I later talked to Randy and he had checked the East gate of the Bridge Crk. pasture at 1:00 pm and found the gate closed (Forrest and I had found and left gate open the day before). He did not see any cattle tracks. He went through the gate and counted 23 cattle grazing up high and East of the Refuge boundary.] Andy and I drove to Bridge Creek afternoon that Wednesday. We observed approx 20 cattle grazing on the hill East of the pasture but did not see any tracks going through the gate. We suspected the heavy rains washed away the tracks. We back trailed the route through the North gate of the pasture and found a fresh soda can in the trail. We found recent cattle tracks on the West side of the trail that rain had not washed away. Fresh breaks on some brush was also found. The amount of tracks and brush disturbance appeared consistant with approximately 20 head of cattle coming through on the trail instead of the 150 expected.

Given the observations made on Monday the 26th by Forrest and myself, Randy's observations at 1:00 pm on the 27th and the time of heavy rains, I suspect that the cattle were trailed between 2 pm on the 26th and 1 pm on the 27th.



Lotus cc:Mail For: Forrest Cameron

Author: BARBARA SCOTT-BRIER at ~DOI/SOL_PN
Date: 6/30/97 7:15 PM
Priority: Urgent
Subject: hammond

----- Message Contents -----

Forrest, I did quite a bit more editing to get this doc organized and internally consistent. (Se attached draft). Pelase review, revise, and e-mail to Realty as soon as you're happy with this. If they tinker with it please get one more draft for us to review.

The memo went to Elaine today!

I'll be back July 8 -- in an emergency I'll be at my Mom's, Agnes Scott, in the evenigs (916-722-3883), Tues at SAC SOL, Wed at SAC DOJ.

thx! HAPPY 4TH!!!□sb



Region 1
FISH AND WILDLIFE SERVICE
INTER-OFFICE TRANSMITTAL

<input type="checkbox"/> DIRECTOR, _____	<input type="checkbox"/> REGULAR MAIL
<input type="checkbox"/> DENVER FINANCE CENTER, _____	<input type="checkbox"/> AIR MAIL
<input type="checkbox"/> REGIONAL DIRECTOR, _____	<input type="checkbox"/> ACTION
<input checked="" type="checkbox"/> PROJECT LEADER, <i>MAITEURNAUR: FORREST</i>	<input checked="" type="checkbox"/> INFORMATION
<input type="checkbox"/> OTHER, <i>PNW, REGIONAL SOLICITOR: BARBARA</i>	
FROM <i>BOB HUEB</i>	OFFICE <i>NRW-REALTY</i>
DATE <i>6/16/97</i>	

SUBJECT *RS 2477 - HAMMOND - ET.*

GREETINGS EARTHLINGS!

*Here's copies of the maps. What do
you think?*

"New"

*OK to me. I called BSB on Th 6/26 & said
to go ahead w/ letter to BLM. She called back 6/29/97 (Sun)
& said she'd get letter Friday Monday, 6/30 & FAX to me for final approval.
I have sent out to BLM. *[Signature]**

LEGEND

- REFUGE BOUNDARY
- REFUGE PROPERTY
- BLM PROPERTY
- HAMMOND RANCHES PROPERTY
- ORIGINAL HAMMOND PROPERTY
- HAMMOND/BLM LAND EXCHANGE, 9/22/89
- DOCUMENTED HISTORICAL WAGON ROAD
- HAMMOND CATTLE TRAILING ROUTE

MALHEUR NATIONAL WILDLIFE REFUGE

Blitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON

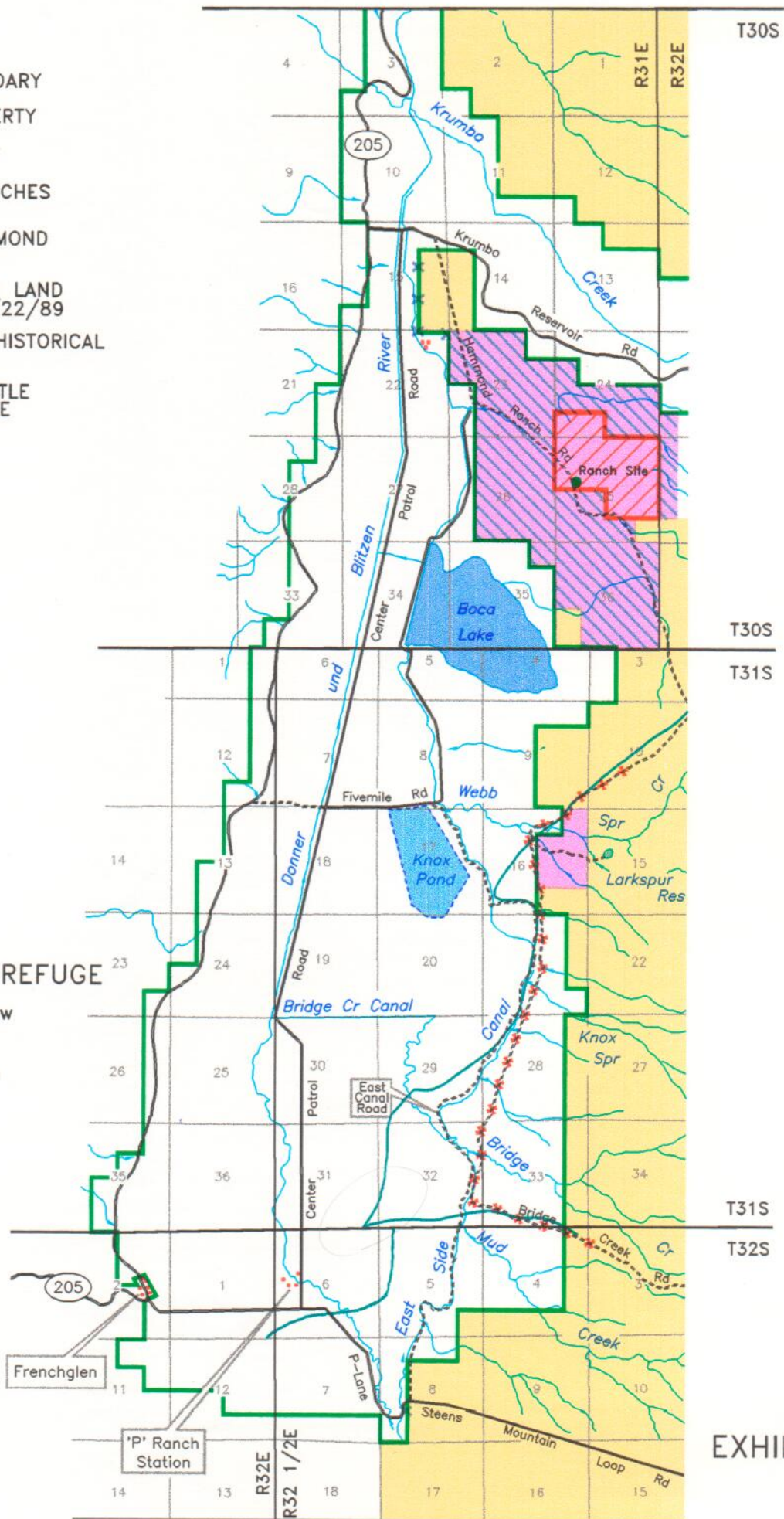
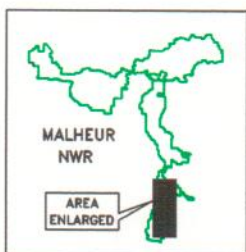


EXHIBIT #1

LEGEND

- REFUGE BOUNDARY
- REFUGE PROPERTY
- BLM PROPERTY
- HAMMOND RANCHES PROPERTY
- ORIGINAL HAMMOND PROPERTY
- HAMMOND/BLM LAND EXCHANGE, 9/22/89
- DOCUMENTED HISTORICAL WAGON ROAD
- *** 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

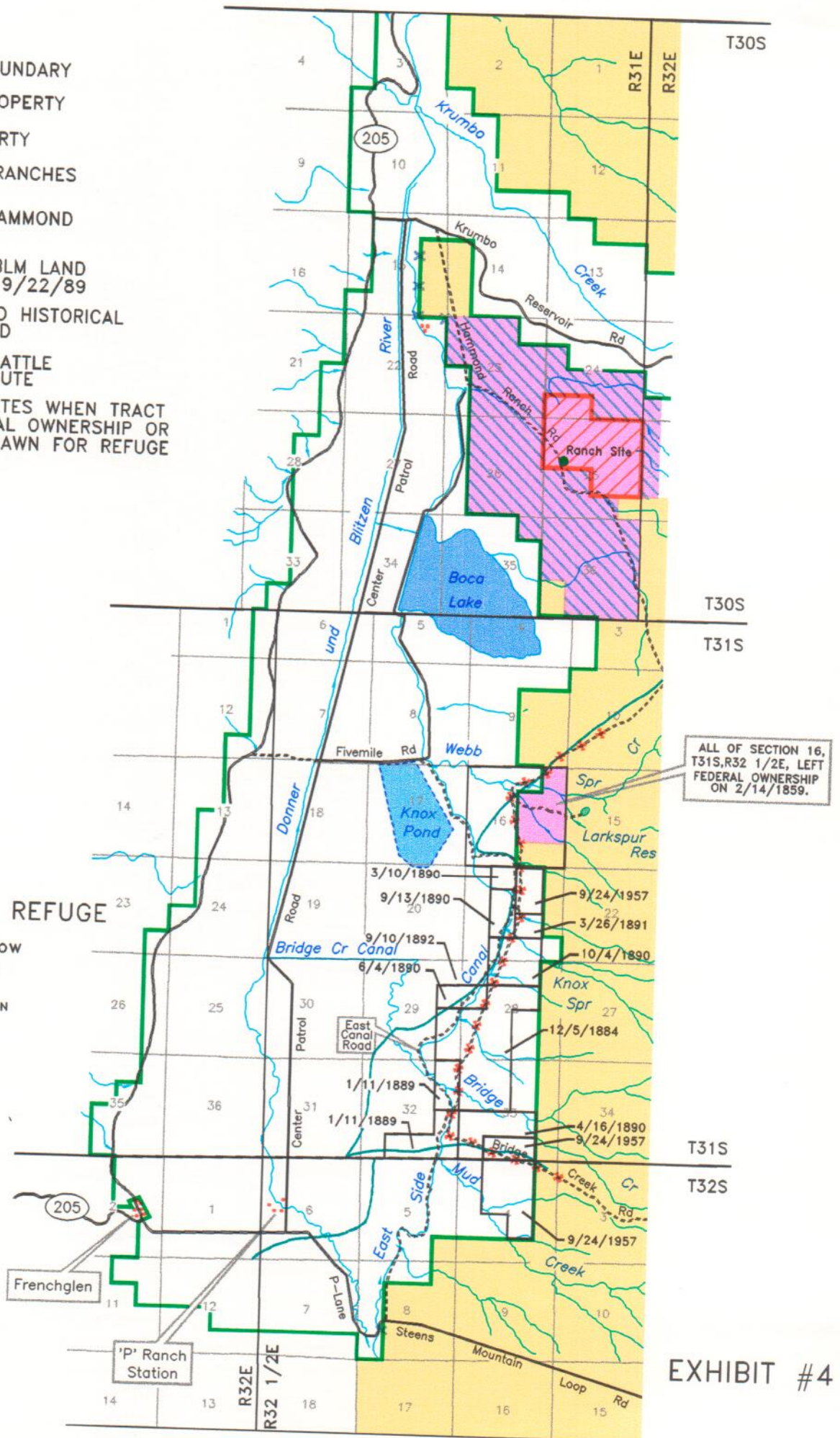
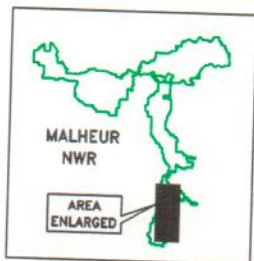


EXHIBIT #4

DRAFT - #4
prepared 6/30/97
by db/vw

MEMORANDUM

TO: Office of the Regional Solicitor
Pacific Northwest Region (Portland)

FROM: Chief, Division of Realty
Fish and Wildlife Service (Portland)

SUBJECT: Potential Revised Statute (RS) 2477 Claim by Hammond Ranches, Inc.

Issue:

You asked for a review to assist in determining whether Hammond Ranches (Ranch) may have a valid RS 2477 claim of a right-of-way for moving livestock (cattle) across Malheur National Wildlife Refuge land. The trailing route is shown on Fish and Wildlife (Service) map Exhibit 1. The Service has asserted that the Ranch does not have a right to use Refuge land without a Refuge Special Use Permit (SUP). The Ranch contends that it is their historic right to use the route. However, to date it has not asserted the right of used based on RS 2477.

Abbreviated History of Revised Statute (RS) 2477:

Revised Statute 2477 is an 1866 federal act granting highway rights-of-way over federal public lands stated in deceptively simple language:

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

This grant was originally found in law in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act; the act was subsequently codified as Revised Statute (R.S.) 2477 and was later recodified in 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act of October 21, 1976, Public Law 94-576, 90 Stat. 2743 U.S.C. 1701, et seq., the so-called "Organic Act" of the Bureau of Land Management (the Bureau). Because of the repeal,

at issue are RS 2477 claims of grants of rights-of-way perfected after July 26, 1866, and before October 21, 1976. In this matter we are interested in claims between July 26, 1866 and the date on which the underlying federal public domain land was set-aside (federal land withdrawals and reservations) for some federal purpose, or was deeded (granted or transferred) out of federal ownership.

Revised Statute 2477 has been the subject of inconsistent state statutes and court decisions and a handful of inconsistent federal court decisions during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them.

For a long time not much was done with this provision of law. In fact it did not elicit much reaction until after its repeal in 1976. The large public lands set-asides of the 1970's and later Wilderness Act withdrawals, caused the law to move to the forefront. States began asserting claims based on this provision for existing highways or those proposed to be built on federal lands. Furthermore, states, counties and individuals appear to find this law to be prospectively useful in blocking wilderness designations and for gaining free access across federal lands.

The legislative history is silent as to the meaning of Section 8 of the 1866 Act. There were no regulations or specific guidance for its application until 1988. On October 7, 1988, Secretary of the Interior Hodel issued Secretarial Guidance as "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)" (Exhibit 2). The Bureau was tasked with processing RS 2477 claims and determining their validity.

In 1992, Congress, after hearing from constituents and agencies about the problems of determining RS 2477 claims, ordered the Bureau to research the issues, canvas the public and other federal agencies, and publish proposed regulations to create a process by which they claims could be identified and evaluated. The Bureau was to establish standards against which the claims were to be decided. They released their report on June 1, 1993, and it created such controversy that no regulations have been finalized to date.

Secretary Hodel's policy was revoked by the Secretary Babbitt's January 22, 1997, memorandum (Exhibit 3) which established a revised policy for carrying out any determinations the Department might be called upon to make regarding RS 2477. The Secretary also reaffirmed his previous instructions to the Bureau to defer processing of RS 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations.

Secretary of Interior Babbitt's RS 2477 Memorandum:

Secretary Babbitt's January 1997 memorandum provides the following six provisions:

- 1. Claims.** The entity requesting the Department to make a determination as to whether an RS 2477 right-of-way exists must file written information to be considered and must provide information on why there is a compelling and immediate need for such a determination.
- 2. Withdrawals and Reservations.** The agency involved (the Service) will consult the public land records of the Bureau of Land Management to determine the status of land over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable at the time that the highway allegedly constructed and remained unavailable through October 21, 1976, the Service will recommend the Secretary deny the claim.
- 3. Construction.** The Service will examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.
- 4. Highway.** The Service will evaluate whether the alleged right-of-way constitutes a highway, that is, a thoroughfare used prior to October 21, 1976 by the public for passage of vehicles carrying people or goods from place to place.
- 5. Role of State Law.** The Service will apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.
- 6. Secretary's determination.** The Service will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations.

This new policy is significantly different from prior policy. An important point is that the affected agency, not the Bureau of Land Management, makes the recommendation for the Secretary's approval.

Fish and Wildlife Service, Region 1 Realty Preliminary Actions

Land Grants, Transfers, Withdrawals and Reservations

The enactment of RS 2477 on July 26, 1866, is the basis for a claim of a ^{an} RS 2477 right-of-way. We have examined the various land grants, transfers, withdrawals and reservations starting in 1859, and ending in the 1890's. The enclosed map, Exhibit 4, shows the respective dates when the federal lands along the trailing route became unavailable for a RS 2477 claim because of a land grant, transfer, withdrawal or reservation. (The date inside the land status box on the map is when the land left

federal ownership or was withdrawn for Refuge purposes.) There are a series of windows during which an RS 2477 right of way might be claimed for portions of the route. **More particularly**, we found the following: 1) land grants were made to the State of Oregon (State Grants) for lands that the present trailing route crosses. The earliest State grant, near the north end of the route, is dated 1859. This grant is the earliest gap in the trailing route. Since these lands were not public lands in 1866 when RS 2477 was enacted, presumably the lands in this grant would never have been available for a RS 2477 claim. The gap bisects the trail making it unusable as a continuous route. Other State Grants occurred in the 1880's and early 1890's;

2) Homestead Patents were granted in the 1880's and 1890's. Homestead Patents transferred lands out of federal ownership; and 3) Malheur National Wildlife Refuge was first set-aside or reserved in the area of the trail by Executive Order 7106, on July 16, 1935, "Establishing the Malheur Migratory Bird Refuge, Oregon."

Maps, Plats, and Written Documents

We researched the land status underlying the trailing route by studying the following maps and plats: Bureau of Land Management Master Title Plats, Historical Indexes, and Government Land Office (GLO) plat, a U.S. Geological Survey quadrangle map of the area, a Fish and Wildlife Service Land Status Map, and the "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon, dated 11/27/1908. We also looked at the Executive Orders file, which contains the history of the Refuge so far as federal land reservations, withdrawals, and transfers are concerned. We were looking for unreserved public land on which a highway may have existed between 1866 and 1976.

The GLO 11/31/1878 plat shows a "Wagon Road" traversing the plat from NE to SW. This road appears to correspond in part to the trailing route the Ranch is using.

Obvious exceptions are in

§§ 16, 29, 32 and 33. The GLO survey, on which the 1878 plat is based, was conducted in late 1877. It is likely that the road was in existence before the survey, although we do not know when it was constructed. We would need to look at the survey notes and records. The 1908 "French-Glenn Map" shows a "Wagon Road" that roughly corresponds to the route the Ranch is using [IS THIS MAP PERTINENT IN LIGHT OF THE LATE DATE? ALSO, IF THERE ANY INCONSISTENCES BETWEEN THIS MAP AND THE PRESENT ROUTE, PLEASE NOTE].

Construction of a Highway

We have examined [DESCRIBE HERE WHAT'S PERTINENT THAT YOU'VE LOOKED AT]. We have not found evidence of construction of a public highway for passage of vehicles carrying people or goods. Few portions of this route qualify as constructed road, and one of those places, a crossing over Bridge Creek was constructed in the early 1990's. We have not yet looked at federal patents, state grants, or indemnity lists for a right-of-way reservation.

Fish and Wildlife Service, Region 1 Realty Preliminary Findings and

Recommendations

At this time we have not found evidence supporting an RS 2477 claim; however, as noted below, we recommend conducting additional research. Our present research indicates that the trailing route was actually broken in 1859 when the first State Grant of public lands occurred along the route. Except for the 1859 State Grant, we have found narrow windows for an RS 2477 claim between 1866 and 1884, where there were unreserved federal public lands along some of the trailing route. Assuming the trailing route was not broken, there would need to be evidence of construction of a public highway. We could not confirm any documentary evidence of construction of a public highway between 1866 and 1976. (There is a bulldozer cut on the north slope of Webb Spring Canyon along the route of the 1878 wagon road. There is also a bulldozer cut along the current trailing route in the Southern portion of Section 16.)

We have identified several additional lines of inquiry for the future. This office needs to review the survey notes and records for the map of the 1878 wagon road, and the federal patents, state grants, and indemnity lists. This office also should research whether the County or State has ever acknowledged the entire route, or a portion thereof, as a public highway. Other issues that may require the services of both our offices are: the effect on a RS 2477 claim if only a portion of the trailing route was acknowledged as a public highway; whether the use of the trailing route for moving livestock equals "construction of highways;" and whether a RS 2477 claim may be made for trailing route that has moved, i.e., the "wagon road" described on the 1878 map does not coincide in large part with the current trailing route.

In order to obtain certain information that this office needs to review, we request your assistance. Specifically, we recommend that your office ask the Bureau of Land Management to provide basic information from their files, particularly regarding: dates of patents; State recognition, if any, of travel routes; any evidence of rights-of-ways; and historical maps, photographs, or other documents of travel routes in the trailing area.

We may also need to review County records in the future. (The Survey Branch has suggested that in the future we may need to review County and Road Commissioner's Journals, as well as reports from Road Supervisors, the County Road Master, and the County Surveyor. Records from Harney County and its predecessor, to determine the history of the "Wagon Road," such as petitions to open a road corresponding to the trailing route, and monies spent on construction and/or maintenance for such road).

Thank you for your assistance in this matter. If you have further questions, please call Bob Hiller at 503-231-6201.

S:\.....bsb/hammond/rs2477dr.5



United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region
500 N. E. Multnomah Street, Suite 607
Portland, Oregon 97232
(503) 231-2139

TRANSMISSION NOTICE: This facsimile transmission is intended only for the address(es) shown below. It may contain information that is privileged, confidential, or otherwise protected from disclosure. If the reader of this message is not an addressee or agent of the addressee, you are hereby notified that you have received this document in error. Any review, dissemination, copying, or use of this transmission or its contents is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original to us by mail at the address shown above.

TELEFAX MEMORANDUM

TO:

Forest Cameron

FROM:

Barbara Scott-Brier, Attorney-Adviser
Pacific Northwest Region

SUBJECT:

*Please read & return
comments ASAP*

DATE/TIME:

Thank!

Number of pages including this transmittal sheet:

3

DRAFT

To: Barbara Scott-Brier
Office of the Solicitor, Pacific Northwest Region

From: Chief, Division of Realty
Portland, Oregon

Subject: Potential Revised Statute (RS) 2477 Claim by Hammond Ranches, Inc.

Issue:

You asked for a review to assist in determining whether Hammond Ranches (Ranch) may have a valid RS 2477 claim of a right-of-way for moving livestock (cattle) across Malheur National Wildlife Refuge land. The trailing route is shown on Fish and Wildlife Service (Service) map Exhibit 1. The Service has asserted that the Ranch does not have a right to use Refuge land without a Refuge Special Use Permit (SUP). The Ranch contends that it is their historic right to use the route. However, to date it has not asserted the right of use based on RS 2477.

Abbreviated History of Revised Statute (RS) 2477:

Revised Statute 2477 is an 1866 federal act granting highway rights-of-way over federal public lands stated in deceptively simple language:

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

This grant was originally found in law in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act; the act was subsequently codified as Revised Statute (R.S.) 2477 and was later recodified in 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act of October 21, 1976, Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq, the so-called "Organic Act" of the Bureau of Land Management (the Bureau). Because of the repeal, at issue are RS 2477 claims of grants of rights-of-way perfected after July 26, 1866, and before October 21, 1976. In this matter we are interested in claims between July 26, 1866 and the date on which the underlying federal public domain land was set-aside (federal land withdrawals and reservations) for some federal purpose, or was deeded (granted or transferred) out of federal ownership.

Revised Statute 2477 has been the subject of inconsistent state statutes and court decisions and a handful of inconsistent federal court decisions during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them.

For a long time not much was done with this provision of law. In fact it did not elicit much reaction until after its repeal in 1976. The large public lands set-asides of the 1970's and

later Wilderness Act withdrawals, caused the law to move to the forefront. States began asserting claims based on this provision for existing highways or those proposed to be built on federal lands. Furthermore, states, counties and individuals appear to find this law to be prospectively useful in blocking wilderness designations and for gaining free access across federal lands.

The legislative history is silent as to the meaning of Section 8 of the 1866 Act. There were no regulations or specific guidance for its application until 1988. On October 7, 1988, Secretary of the Interior Hodel issued Secretarial Guidance as "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)" (Exhibit 2). The Bureau was tasked with processing RS 2477 claims and determining their validity.

In 1992, Congress, after hearing from constituents and agencies about the problems of determining RS 2477 claims, ordered the Bureau to research the issues, canvas the public and other federal agencies, and publish proposed regulations to create a process by which these claims could be identified and evaluated. The Bureau was to establish standards against which the claims were to be decided. They released their report on June 1, 1993, and it created such controversy that no regulations have been finalized to date.

Secretary Hodel's policy was revoked by Secretary Babbitt's January 22, 1997, memorandum (Exhibit 3) which established a revised policy for carrying out any

determinations the Department might be called upon to make regarding RS 2477. The Secretary also reaffirmed his previous instructions to the Bureau to defer processing of RS 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations.

Secretary of Interior Babbitt's RS 2477 Memorandum:

Secretary Babbitt's January 1997 memorandum provides the following six provisions:

1. **Claims.** The entity requesting the Department to make a determination as to whether an RS 2477 right-of-way exists must file written information to be considered and must provide information on why there is a compelling and immediate need for such a determination.
2. **Withdrawals and Reservations.** The agency involved (the Service) will consult the public land records of the Bureau of Land Management to determine the status of land over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable at the time that the highway was allegedly constructed and remained unavailable through October 21, 1976, the Service will recommend the Secretary deny the claim.
3. **Construction.** The Service will examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.
4. **Highway.** The Service will evaluate whether the alleged right-of-way constitutes a highway, that is, a thoroughfare used prior to October 21, 1976 by the public for

passage of vehicles carrying people or goods from place to place.

5. Role of State Law. The Service will apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.

6. Secretary's Determination. The Service will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations.

This new policy is significantly different from prior policy. An important point is that the affected agency, not the Bureau of Land Management, makes the recommendation for the Secretary's approval.

Fish and Wildlife Service, Region 1 Realty Actions and Findings:

Land Grants, Transfers, Withdrawals and Reservations

The RS 2477 enactment date of July 26, 1866, and the various land grants, transfers, withdrawals and reservations starting in 1859, and ending in the 1890's, create a series of windows during which an RS 2477 right could be claimed. The map, Exhibit 4, shows the respective dates when the federal lands along the route became unavailable for an RS 2477 claim because of a land grant, transfer, withdrawal or reservation. (The date inside the land status box on the map is when the land left federal ownership or was withdrawn for Refuge purposes.) We found the following: 1) land grants were made to the State of Oregon (State Grants) that the present trailing route crosses. The earliest State Grant, near the north end of the route, is dated 1859. This grant is the earliest gap in the trailing route. The lands in this grant would never have been available for an RS 2477 claim. The

gap bisects the trail making it unusable as a continuous route. Other State Grants occurred in the 1880's and early 1890's; 2) Homestead Patents were granted in the 1880's and 1890's. Homestead Patents transferred lands out of federal ownership; 3) Malheur National Wildlife Refuge was first set-aside or reserved in the area of the trail by Executive Order 7106, on July 16, 1935, "Establishing The Malheur Migratory Bird Refuge, Oregon."

(I ASSUME YOU FOUND NO SPECIFIC GRANT OF A PUBLIC HIGHWAY OR RIGHT OF WAY)

Maps, Plats, and Written Documents

We researched the land status underlying the trailing route by studying the following maps and plats: Bureau of Land Management Master Title Plats, Historical Indexes, and Government Land Office (GLO) plats, a U.S. Geological Survey quadrangle map of the area, a Fish and Wildlife Service Land Status Map, and the "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon dated 11/27/1908. We also looked at the Executive Orders file, which contains the history of the Refuge so far as federal land reservations, withdrawals, and transfers are concerned. We were looking for unreserved public land on which a highway may have existed between 1866 and 1976. The (1877 ???)

GLO plat shows a "wagon road" traversing the plat from NE to SW. This road mostly corresponds (In What Ways? Where doesn't it correspond? Be specific.) to the trailing route the Ranch is using. The GLO survey was conducted in late 1877. It is likely that the road had been in existence before the survey, although we do not know when it was constructed. We will need to look at the survey notes and records once we receive copies

Page of

~~This road appears to have to some access~~

6

from the Bureau. The 1908 "French-Glenn Map" shows a "wagon road" that roughly corresponds to the route the Ranch is using.

Construction of Highways

We did not find evidence of construction of a public highway for passage of vehicles carrying people or goods. Few portions of this route qualify as constructed road, and one of those places, a crossing over Bridge Creek was constructed in the early 1990's. We did not look at Patents for a right-of-way reservation. (WHY NOT? WHEN ARE YOU GOING TO DO SO) The Survey Branch suggested we review County and Road Commissioner's Journals, as well as reports from Road Supervisors, the County Road Master, and the County Surveyor. Records from Harney County and its predecessor, (COOS COUNTY ?), should be investigated to look for petitions to open a road corresponding to the trailing route, and monies spent on construction and/or maintenance for such road. (WE WILL NEED TO REVIEW ALL SOURCES, MAYBE MLH STAFF)

Conclusion and Recommendations:

We found narrow windows for an RS 2477 claim between 1866 and 1884, where there were unreserved federal public lands along the trailing route. However, the route was actually broken in 1859 when the first State Grant of public lands occurred along the route. We also could confirm no evidence of construction between 1866 and 1976.(A MAJOR CUT IS EXISTING ON THE NORTH SLOPE OF WEBB SPRING CANYON) If use of the

trailing route for moving livestock equals "construction of highways" then(**I HAVE CONCERN ABOUT WHAT IS SAID NEXT IN THIS SENTENCE**) Thus, a key question may be whether the County or State has ever acknowledged the entire route as a public highway. If even a small portion of the route was not acknowledged as a public highway, then in our view the claim would not be valid over the entire route. At this time we have not found evidence supporting an RS 2477 claim; however as noted above we need to conduct additional research.

Due to uncertainties regarding this matter, our recommendation is that the Solicitor's Office ask the Bureau of Land Management to provide some basic information from their files, particularly: certain dates of patents; recognition of travel routes; evidence of rights-of-ways; and historical maps, photos or documents of travel routes in the trailing area. We will also need to review the County records. After the research is complete, we may also need to conduct research as to the meaning of "construction of highways".

If you have further questions, please call Bob Hiller at 503-231-6201.

TO: Elaine Zelinski, State Director
Bureau of Land Management

From: Barbara Scott-Brier, Attorney
Office of the Solicitor, Pacific Northwest Region

Subject: RS 2477 Claim

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge without permission. To date he has not articulated the basis for his asserted historic right under an RS 2477 right-of-way or other claim.

While at this point we have received no formal RS 2477 claim, we would like to resolve this issue if possible between the Refuge staff and the neighbor. To do that we are requesting your assistance. We would like you to provide copies of the following information for the land in question (See the attached map, Exhibit 4) and generally located as described below:

1. Copies of the following state grants and patents underlying the trailing route:

T31S,R321/2E, WM.,

Section 16, SG, 2/14/1859

OR 6773, Deed to US, 7/5/1949

Section 21, SG 8, 3/10/1890

SG 16, 9/13/1890

IL 6, 3/26/1891

Patent 772, 10/4/1890

Section 28, Patent 772, 10/4/1890

SG 28, 9/10/1892

Patent 426, 6/4/1890

Patent 7, 12/5/1884

Section 32, Patent 453, 1/11/1889

Patent 404, 1/11/1889

Page of

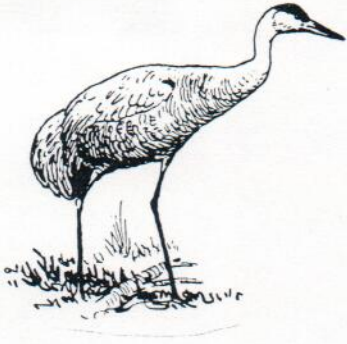
Section 33, Patent 7, 12/5/1884

Patent 1066, 4/16/1890

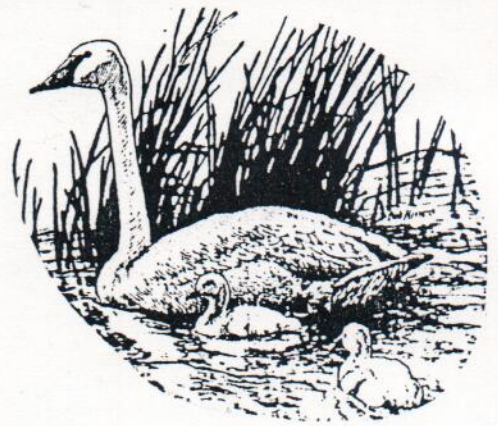
2. Copies of the GLO survey notes for T31S,R321/2E, WM.
3. Any evidence that the Bureau may have that the State of Oregon has recognized
a public highway along some or all portions of the trailing route.
4. Any evidence of an established legal right-of-way along the trailing route.
5. The existence of any maps, photos or documents of the trailing route area that might be pertinent in resolving this possible RS 2477 claim.

Please provide me with any information that you might find on these issues. For additional information, the contact in Realty is Bob Hiller, Realty Specialist, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager at Malheur Refuge, at 541-493-2612. I may be reached at 231-2139.

Thank you for your help in resolving this matter.



U.S. FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
HC 72, Box 245
Princeton, Oregon 97721
(503) 493-2612
Fax Number (503) 493-2405



Facsimile Transmittal Cover Sheet

TO: Barbara Scott-Brier

DATE: 6/30/97

TIME: 12:00 noon

FAX PHONE NUMBER: 503-231-2166

☐ Deliver on Regular Mail Run
☐ Call to have picked up
Phone Number: _____

104

FROM: Forrest Cameron

SUBJECT: Comments, your Draft Letter of this morning.

Number of Pages (including Transmittal Sheet): _____

COMMENTS:

I only had one suggestion, final page. It looks fine otherwise!

Please send cc's to me, Wise + Thomson when final.

Forrest Cameron



DRAFT 6/30/97 10:40 am

MEMORANDUM

TO: Elaine Zielinski, State Director
Bureau of Land Management

FROM: Barbara Scott-Brier, Attorney
Pacific Northwest Region

SUBJECT: RS 2477 Claim

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge although he has not articulated the basis under an RS 2477 right-of-way or other claim.

While at this point there is no formal RS 2477 claim, we would like to resolve this issue if possible between Refuge staff and the neighbor. To do that we are asking your assistance. We would like you to provide copies of the following information for the land in question (please see the attached map) and generally located as described below:

1. Copies of the following documents underlying the trailing route:
 - T31S, R32½E, WM.,
 - Section 16, SG, 2/14/1859
OR 6773, Deed to US, 7/5/1949
 - Section 21, SG 8, 3/10/1890
SG 16, 9/13/1890
IL 6, 3/26/1891
Patent 772, 10/4/1890
 - Section 28, Patent 772, 10/4/1890
SG 28, 9/10/1892
Patent 426, 6/4/1890
Patent 7, 12/5/1884

2

Section 32,	Patent 453, 1/11/1889
	Patent 404, 1/11/1889
Section 33,	Patent 7, 12/5/1884
	Patent 1066, 4/16/1890

2. Copies of the GLO survey notes for T31S, R32½E, WM.
3. Any evidence that the Bureau may have that the State of Oregon has recognized a public highway along some or all portions of the trailing route.
4. Any evidence of an established legal right-of-way along a portion or all of the trailing route.
5. Any maps, photos, or documents of the trailing route area that might be pertinent in resolving this possible RS 2477 claim.

Please provide me with any information that you might find on these issues. For additional information, the contact person in Fish and Wildlife Service Realty is Scott Wise, Branch Chief of Acquisition, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager, Malheur National Wildlife Refuge, 541-493-2612.

Thank you for your help in resolving this matter. Please call me at 231-2139 if you have any questions or wish to discuss these matters.



s:\pa\wp\bsb\hammond\zclinski



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Northwest Region
500 N. E. Multnomah Street, Suite 607
Portland, Oregon 97232

JUN 30 1997

SD'S OEC ROUTING

(7-1-97 PM)
OR910-SD
OR910-Staff
OR910.1-ASD
OR912-PA
OR914-LE
OR915-M&B
OR930-RES
OR950-MS
OR951-RMT
ALL DISTRICTS
W. DISTRICTS
E. DISTRICTS

X= Original
C=Copy or F=Fax

MEMORANDUM

TO: Elaine Zielinski, State Director
Bureau of Land Management

FROM: Barbara Scott-Brier, Attorney
Pacific Northwest Region

Barbara Scott-Brier

SUBJECT: RS 2477 Claim

The Fish and Wildlife Service staff at Malheur National Wildlife Refuge in southeastern Oregon is working to better regulate uses on and through Refuge land. In doing so we have asked neighboring ranchers, many of whom are moving cattle between their ranch land and a BLM allotment, to trail cattle through the Refuge under conditions of a Refuge Special Use Permit.

In one instance on the east side of the Blitzen Valley a rancher has said that he thinks he has an historic right to move his cattle through the Refuge although he has not articulated the basis under an RS 2477 right-of-way or other claim.

While at this point there is no formal RS 2477 claim, we would like to resolve this issue if possible between Refuge staff and the neighbor. To do that we are asking your assistance. We would like you to provide copies of the following information for the land in question (please see the attached map) and generally located as described below:

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 - OR 6773, Deed to US, 7/5/1949
 - Section 21, SG 8, 3/10/1890
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 - IL 6, 3/26/1891
 - Patent 772, 10/4/1890
 - Section 28, Patent 772, 10/4/1890
 - SG 28, 9/10/1892
 - Patent 426, 6/4/1890
 - Patent 7, 12/5/1884

Section 32, Patent 453, 1/11/1889
Patent 404, 1/11/1889
Section 33, Patent 7, 12/5/1884
Patent 1066, 4/16/1890

2. Copies of the GLO survey notes for T31S, R32½E, WM.
3. Any evidence that the Bureau may have that the State of Oregon has recognized a public highway along some or all portions of the trailing route.
4. Any evidence of an established legal right-of-way along a portion or all of the trailing route.
5. Any maps, photos, or documents of the trailing route area that might be pertinent in resolving this possible RS 2477 claim.

Please provide me with any information that you might find on these issues. For additional information, the contact person in Fish and Wildlife Service Realty Branch is Scott Wise, Chief of Acquisition, 503-231-6201, or you may contact Forrest Cameron, Refuge Manager, Malheur National Wildlife Refuge, 541-493-2612.

Thank you for your help in resolving this matter. Please call me at 231-2139 if you have any questions or wish to discuss these matters.

s:\pn\wp\bsb\hammond\zelinski

LEGEND

- REFUGE BOUNDARY
- REFUGE PROPERTY
- BLM PROPERTY
- HAMMOND RANCHES PROPERTY
- ORIGINAL HAMMOND PROPERTY
- HAMMOND/BLM LAND EXCHANGE, 9/22/89
- DOCUMENTED HISTORICAL WAGON ROAD
- 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

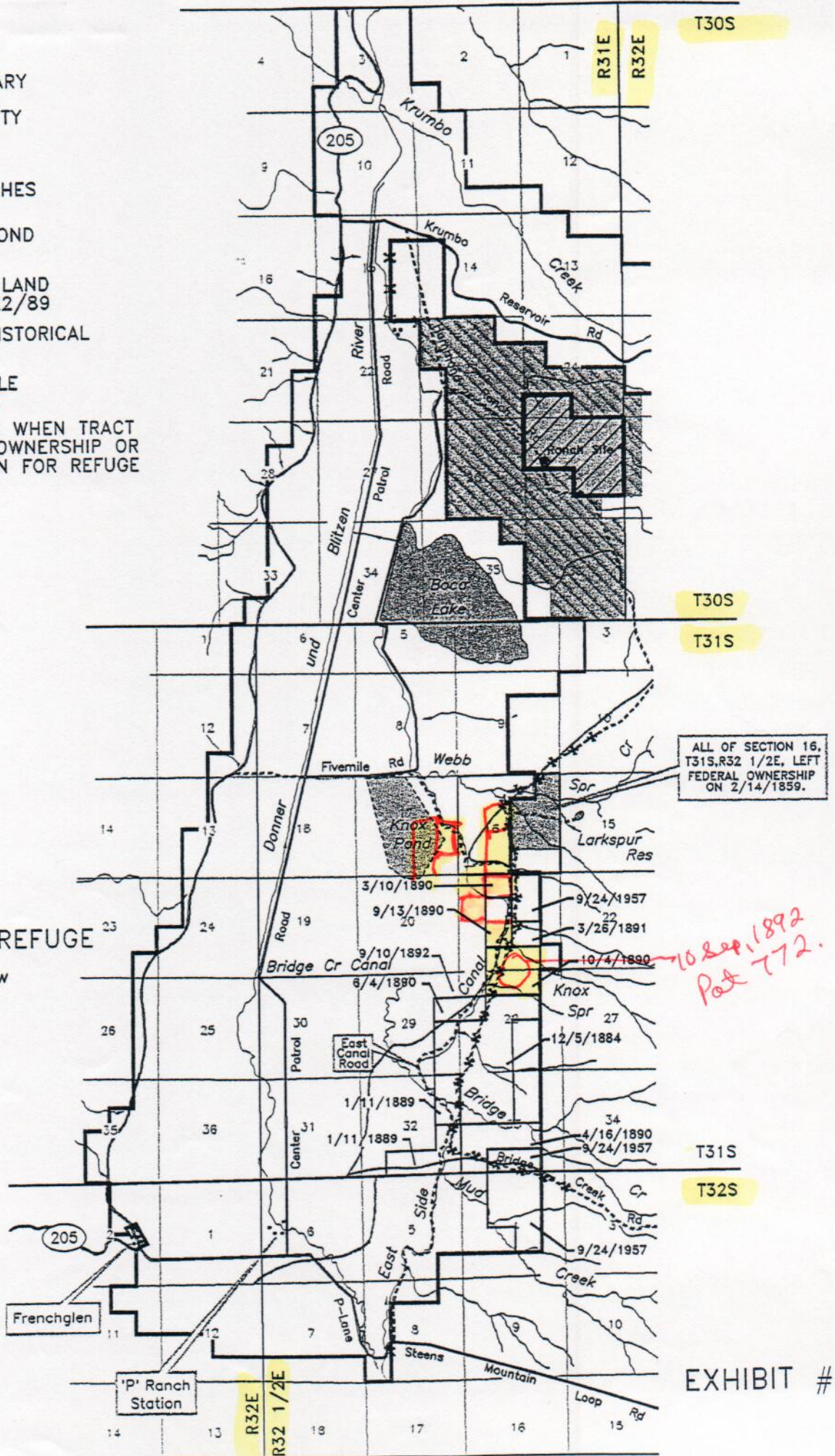
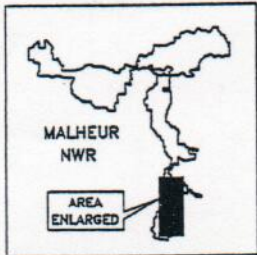


EXHIBIT #4

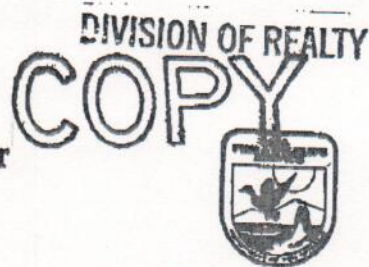


United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE 11th Avenue
Portland, Oregon 97232-4181

INTER-OFFICE TRANSMITTAL



IN REPLY REFER TO:

<input type="checkbox"/> DIRECTOR, _____	<input type="checkbox"/> REGULAR MAIL
<input type="checkbox"/> DENVER FINANCE CENTER, _____	<input type="checkbox"/> AIR MAIL
<input type="checkbox"/> REGIONAL DIRECTOR, _____	<input type="checkbox"/> ACTION
<input type="checkbox"/> PROJECT LEADER, _____	<input checked="" type="checkbox"/> INFORMATION
<input checked="" type="checkbox"/> OTHER, <u>PNW REGIONAL SOLICITOR: BARBARA SCOTT-BRIER</u>	
FROM <u>BDB HULLER</u> <u>REALTY SPECIALIST</u>	OFFICE <u>ARW-RE</u> <u>X6201</u>
SUBJECT <u>Hammond RS 2477 Paper</u>	DATE <u>7/11/97</u>

Here's ANOTHER (LAST?) DRAFT (AS) AND DISK. FORMATS
IS W.P. ALSO ATTACHED IS THE MAP, EXH 1.
WE ARE SHOWING ADDITIONAL TRAIL INFO. IF
They're OKAY - we'll put them on Exh 4
which shows the LAND STATUS OF THE
WITHDRAWALS/OUT GRANTINGS.

Rebecca J.

CC: FOREST CAMERON by FAX 7/14/97
541-493-2405

DIVISION OF REALTY

DRAFT - #4 ~~DRAFT~~
prepared 6/30/97 ~~7/10/97~~
by db/vw ~~Revised by Hammond~~

DRAFT

MEMORANDUM

TO: Office of the Regional Solicitor
Pacific Northwest Region (Portland)

FROM: Chief, Division of Realty
Fish and Wildlife Service (Portland)

SUBJECT: Potential Revised Statute (RS) 2477 Claim by Hammond
Ranches, Inc.

ISSUE:

+ You asked for a review to assist in determining whether Hammond Ranches (Ranch) may have a valid RS 2477 claim of a right-of-way for moving livestock (cattle) across Malheur National Wildlife Refuge land. The trailing route is shown on Fish and Wildlife (Service) map ~~Exhibit~~. The Service has asserted that the Ranch does not have a right to use Refuge land without a Refuge Special Use Permit (SUP). The Ranch contends that it is their historic right to use the route. However, to date it has not asserted the right of use based on RS 2477.

ABBREVIATED HISTORY OF REVISED STATUTE (RS) 2477:

Revised Statute 2477 is ~~an~~ 1866 federal act granting highway rights-of-way over federal public lands stated in deceptively simple language:

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

This grant was originally found in law in Chapter 262, Section 8 of the Act of July 26, 1866 (14 Stat. 353), a mining law act; the act was subsequently codified as Revised Statute (R.S.) 2477 and was later recodified in 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act of October 21, 1976, Public Law 94-576,

90 Stat. 2743 U.S.C. 1701, ~~et seq.~~, the so-called "Organic Act" of the Bureau of Land Management (the Bureau). Because of the repeal, at issue are RS 2477 claims of grants of rights-of-way perfected after July 26, 1866, and before October 21, 1976. In this matter we are interested in claims between July 26, 1866 and the date on which the underlying federal public domain land was set-aside (federal land withdrawals and reservations) for some federal purpose, or was deeded (granted or transferred) out of federal ownership.

Revised Statute 2477 has been the subject of inconsistent state statutes and court decisions and a handful of inconsistent federal court decisions during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them.

For a long time not much was done with this provision of law. In fact it did not elicit much reaction until after its repeal in 1976. The large public lands set-asides of the 1970's and later Wilderness Act withdrawals, caused the law to move to the forefront. States began asserting claims based on this provision for existing highways or those proposed to be built on federal lands. Furthermore, states, counties and individuals appear to find this law to be prospectively useful in blocking wilderness designations and for gaining free access across federal lands.

The legislative history is silent as to the meaning of Section 8 of the 1866 Act. There were no regulations or specific guidance for its application until 1988. On October 7, 1988, Secretary of the Interior Hodel issued Secretarial Guidance as "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)" (~~Exhibit 2~~). The Bureau was tasked with processing RS 2477 claims and determining their validity.

In 1992, Congress, after hearing from constituents and agencies about the problems of determining RS 2477 claims, ordered the Bureau to research the issues, canvas the public and other federal agencies, and publish proposed regulations to create a process by which they claims could be identified and evaluated. The Bureau was to establish standards against which the claims were to be decided. They released their report on June 1, 1993,

and it created such controversy that no regulations have been finalized to date.

f Secretary Hodel's policy was revoked by the Secretary Babbitt's January 22, 1997, memorandum (~~Excluded~~) which established a revised policy for carrying out any determinations the Department might be called upon to make regarding RS 2477. The Secretary also reaffirmed his previous instructions to the Bureau to defer processing of RS 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations.

SECRETARY OF INTERIOR BABBITT'S RS 2477 MEMORANDUM:

Secretary Babbitt's January 1997 memorandum provides the following six provisions:

1. **Claims.** The entity requesting the Department to make a determination as to whether an RS 2477 right-of-way exists must file written information to be considered and must provide information on why there is a compelling and immediate need for such a determination.

2. **Withdrawals and Reservations.** The agency involved (the Service) will consult the public land records of the Bureau of Land Management to determine the status of land over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable at the time that the highway ~~was~~ allegedly constructed and remained unavailable through October 21, 1976, the Service will recommend the Secretary deny the claim.

3. **Construction.** The Service will examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.

4. **Highway.** The Service will evaluate whether the alleged right-of-way constitutes a highway, that is, a thoroughfare used prior to October 21, 1976 by the public for passage of vehicles carrying people or goods from place to place.

5. **Role of State Law.** The Service will apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.

6. **Secretary's determination.** The Service will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations.

This new policy is significantly different from prior policy. An important point is that the affected agency, not the Bureau of Land Management, makes the recommendation for the Secretary's approval.

FISH AND WILDLIFE SERVICE, REGION 1 REALTY PRELIMINARY ACTIONS**Land Grants, Transfers, Withdrawals and Reservations**

The enactment of RS 2477 on July 26, 1866, is the basis for a claim of a RS 2477 right-of-way. We have examined the various land grants, transfers, withdrawals and reservations starting in 1859, and ending in the 1890's. The enclosed map, ~~Exhibit A~~, shows the respective dates when the federal lands along the trailing route became unavailable for a RS 2477 claim because of a land grant, transfer, withdrawal or reservation. (The date inside the land status box on the map is when the land left federal ownership or was withdrawn for Refuge purposes.) There is a series of windows during which an RS 2477 right of way might be claimed for portions of the route. More particularly, we found the following: 1) land grants were made to the State of Oregon (State Grants) for lands that the present trailing route crosses. The earliest State grant, near the north end of the route, is dated 1859. This grant is the earliest gap in the trailing route. Since these lands were not public lands in 1866 when RS 2477 was enacted, presumably the lands in this grant would never have been available for a RS 2477 claim. The gap bisects the trail making it unusable as a continuous route. Other State Grants occurred in the 1880's and early 1890's; 2) Homestead Patents were granted in the 1880's and 1890's. Homestead Patents transferred lands out of federal ownership; and 3) Malheur National Wildlife Refuge was first set-aside or reserved in the area of the trail by Executive Order 7106, on July 16, 1935, "Establishing the Malheur Migratory Bird Refuge, Oregon."

Maps, Plats, and Written Documents

We researched the land status underlying the trailing route by studying the following maps and plats: Bureau of Land Management Master Title Plats, Historical Indexes, and Government Land Office (GLO) plats, a U.S. Geological Survey quadrangle map of the area, a Fish and Wildlife Service Land Status Map, and the "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon, dated 11/27/1908. We also looked at the Executive Orders file, which contains the history of the Refuge so far as federal land reservations, withdrawals, and transfers are concerned. We were

looking for unreserved public land on which a highway may have existed between 1866 and 1976.

X The 11/31/1878 GLO 11/31/1878 plat shows a "Wagon Road" traversing the plat from NE to SW. This road appears to correspond in part to the trailing route the Ranch is using. Obvious exceptions are in Sections 15, 16, 29, 32 and 33 T. 31S., R. 32E./2E. The GLO survey, on which the 1878 plat is based, was conducted in late 1877. It is likely that the road was in existence before the survey, although we do not know when it was constructed. We would need to look at the survey notes and records. The 1908 "French-Glenn Map" shows a "Wagon Road" that roughly corresponds to the route the Ranch is using [IS THIS MAP PERTINENT IN LIGHT OF THE LATE DATE? Yes. It provides another "view" of the "picture" of the trail/routings. We added this road to the maps. ALSO, IF THERE ANY INCONSISTENCES BETWEEN THIS MAP AND THE PRESENT ROUTE, PLEASE NOTE. There are inconsistencies. See the next (last) sentences of this paragraph]. The "Wagon Road" and the Hammond route differ significantly in Sections 16, 21, 28, 32, T. 31S., R. 32E./2E. However, I would say that in general they are much the same route, that is they trend or lie in a NE-SW diagonal orientation. The discrepancies are likely accounted for by geology, hydrology, and when the surveyor or map maker "saw" the routes and recorded them in survey notes or in drawings.

Construction of a Highway

OK The Division of Realty has We have examined [DESCRIBE HERE WHAT'S PERTINENT THAT YOU'VE LOOKED AT] maps, Bureau of Land Management (BLM) Master Title and GLO plats, (BLM) historical indexes, Executive and Public Land Orders, and Realty case files for "highway construction" information. We have not found evidence of construction of a public highway for passage of vehicles carrying people or goods. Few portions of this route qualify as constructed road, and one of those places, a crossing over Bridge Creek was constructed in the early 1990's. We have not yet looked at federal patents, state grants, or indemnity lists for a right-of-way reservation.

FISH AND WILDLIFE SERVICE, REGION 1 REALTY PRELIMINARY FINDINGS AND
RECOMMENDATIONS

At this time we have not found evidence supporting an RS 2477 claim; however, as noted below, we recommend conducting additional research. Our present research indicates that the trailing route was actually broken in 1859 when the first State Grant of public lands occurred along the route. Except for the 1859 State Grant, we have found narrow windows for an RS 2477 claim between 1866 and 1884, where there were unreserved federal public lands along some of the trailing route. Assuming the trailing route was not broken, there would need to be evidence of construction of a public highway. We could not confirm any documentary evidence of construction of a public highway between 1866 and 1976. (There is a bulldozer cut on the north slope of Webb Spring Canyon along the route of the 1878 wagon road. There is also a bulldozer cut along the current trailing route in the southern portion of Section 16 ~~16-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100~~.)

We have identified several additional lines of inquiry for the future. This office needs to review the survey notes and records for the map of the 1878 wagon road, and the federal patents, state grants, and indemnity lists. This office also should research whether the County or State has ever acknowledged the entire route, or a portion thereof, as a public highway. Other issues that may require the services of both our offices are: the effect on a RS 2477 claim if only a portion of the trailing route was acknowledged as a public highway; whether the use of the trailing route for moving livestock equals "construction of highways;" and whether a RS 2477 claim may be made for trailing route that has moved, i.e., the "wagon road" described on the 1878 map does not coincide in large part with the current trailing route.










In order to obtain certain information that this office needs to review, we request your assistance. Specifically, we recommend that your office ask the Bureau of Land Management to provide basic information from their files, particularly regarding: dates of patents; State recognition, if any, of travel routes; any evidence of rights-of-ways; and historical maps, photographs, or other documents of travel routes in the trailing area.

ok
We may also need to review County records in the future. (The Survey Branch ~~has suggested that in the future~~ we may need to review County and Road Commissioner's Journals, as well as reports from Road Supervisors, the County Road Master, and the County Surveyor. Records from Harney County and its predecessor, to determine the history of the "Wagon Road," such as petitions to open a road corresponding to the trailing route, and monies spent on construction and/or maintenance for such road).

Thank you for your assistance in this matter. If you have further questions, please call Bob Hiller at 503-231-6201.

S:\.....bab/hammond/rs2477dr.5

LEGEND

-  REFUGE BOUNDARY
-  REFUGE PROPERTY
-  BLM PROPERTY
-  HAMMOND RANCHES PROPERTY
-  ORIGINAL HAMMOND PROPERTY
-  HAMMOND/BLM LAND EXCHANGE, 9/22/89
-  *** HAMMOND CATTLE TRAILING ROUTE
-  DOCUMENTED HISTORICAL WAGON ROAD (GLO PLATS)
-  DOCUMENTED WAGON ROAD FRENCH-GLENN LIVE STOCK CO. (11-27-08)

MALHEUR
NATIONAL WILDLIFE REFUGEBlitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON

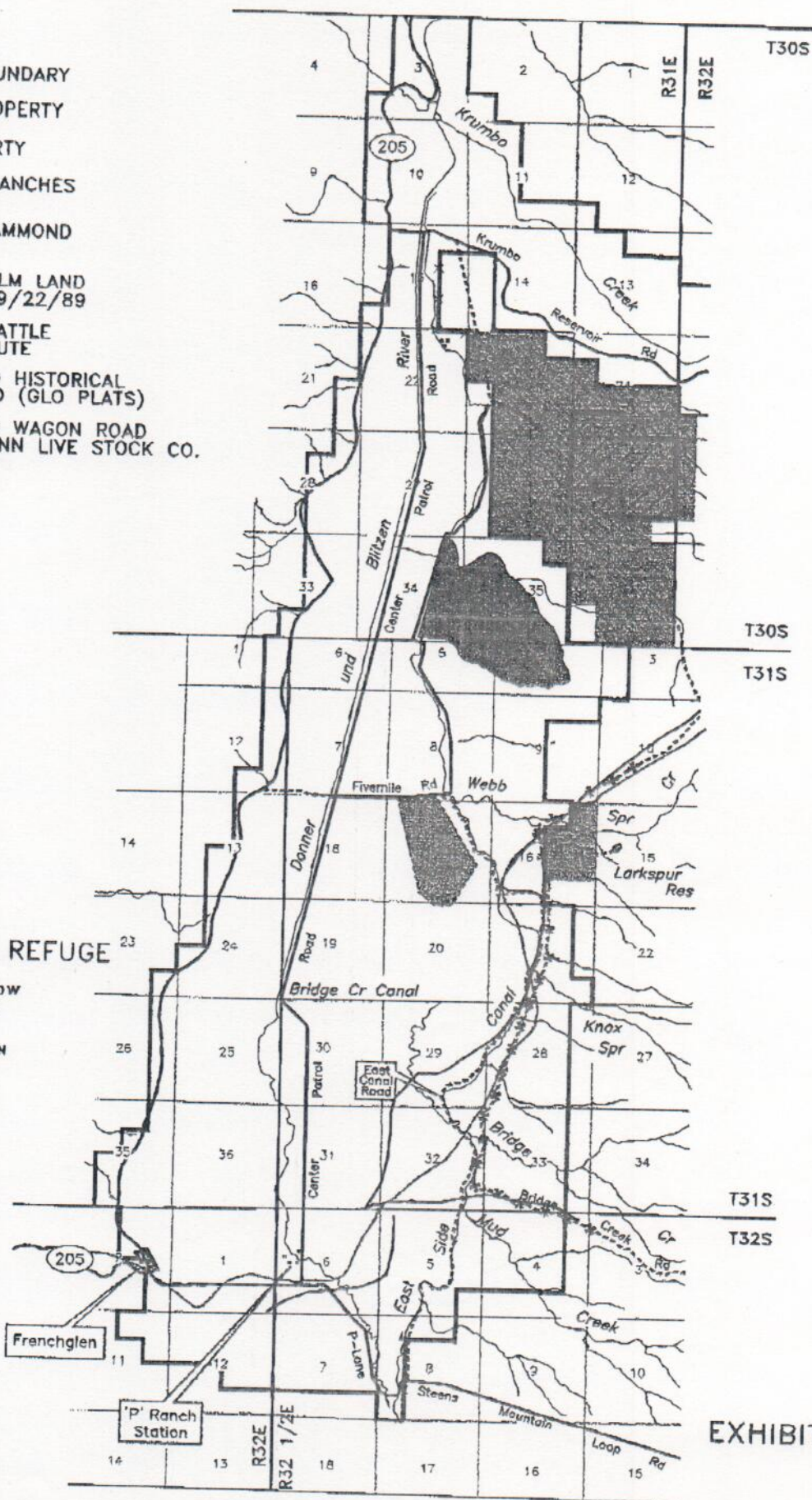
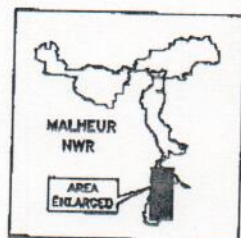


EXHIBIT #1

Lotus cc:Mail For: Forrest Cameron

Author: Robert Hiller at 1PO~RLTY
Date: 7/25/97 2:22 PM
Priority: Normal
Subject: Re[3]: hammond

----- Message Contents -----

Barbara:

I had the memo finalized. Only added heading info., "In Reply Refer To;" and a file designation. I expect you'll have the memo early next week. The memo will have letter size maps with it, I'll bring over the large map sheets once the memo goes out. Later.

----- Reply Separator -----

Subject: Re[2]: hammond
Author: BARBARA SCOTT-BRIER at ~DOI/SOL_PN
Date: 7/24/97 4:33 PM

Bob and Forrest, here's the final draft, I hope. There were a few internal inconsistencies (with this many authors and revisions what a surprise!) Please review and then ...

Bob, please print and sign -- unless you or Forrest have additional changes -- in which case please send them out for final review. Thanks to everyone for your persistence with this! As you should've already seen, I sent the memo to BLM a while ago.

Thanks, and have a good day, Barbara



United States Department of the Interior

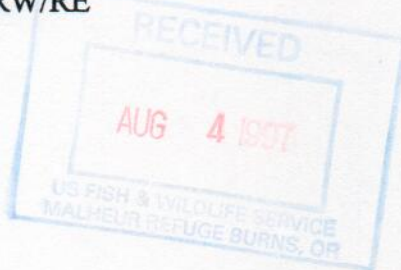
FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue
Portland, Oregon 97232-4181

IN REPLY REFER TO:

FWS/ARW/RE

JUL 30 1997



LA-Oregon
Malheur NWR
Outgrants (RS 2477)
Hammond Ranches (2477)

To: Barbara Scott-Brier, Attorney-Adviser
Office of the Solicitor, Pacific Northwest Region

From: Chief, Division of Realty
Portland, Oregon (ARW-RE)

Subject: Potential Revised Statute (RS) 2477 Claim by Hammond Ranches, Inc.

Issue:

You asked for a review to assist in determining whether Hammond Ranches (Ranch) may have a valid RS 2477 claim of a right-of-way for moving livestock (cattle) across Malheur National Wildlife Refuge land. The existing trailing route is shown on Fish and Wildlife Service (Service) map Exhibit 1. The Service has asserted that the Ranch does not have a right to use Refuge land without a Refuge Special Use Permit. The Ranch contends that it is their historic right to use the route, although it has not asserted a right of use based on RS 2477.

Abbreviated History of Revised Statute (RS) 2477:

Revised Statute 2477 is an 1866 Federal statute granting highway rights-of-way over federal public lands and is stated in deceptively simple language:

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

This grant was originally found in Chapter 262, Section 8 of the Act of July 26, 1866, (14 Stat. 353), a mining law act; the act was subsequently codified as RS 2477 and was later recodified in 1938 as 43 U.S.C. 932. The statute was repealed by Section 706(a) of the Federal Land Policy and Management Act of October 21, 1976, Public Law 94-576, 90 Stat. 2743, 43 U.S.C. 1701, et seq, the so-called "Organic Act" of the Bureau of Land Management (the Bureau). Because of the repeal, at issue are RS 2477 claims of grants of rights-of-way perfected after July 26, 1866, and before October 21, 1976. In this matter we are interested in claims between July 26, 1866, and the date on which the underlying federal public domain land was set-aside (federal land

withdrawals and reservations) for some federal purpose, or was deeded (granted or transferred) out of federal ownership.

Revised Statute 2477 has been the subject of inconsistent state statutes, state court decisions, and federal court decisions during its 110-year existence. Almost all of the reported state court decisions involved competing rights of third parties. The United States was not a party to them.

For a long time not much was done with this provision of law. In fact it did not elicit much reaction until after its repeal in 1976. The large public lands set-asides of the 1970's and later Wilderness Act withdrawals, caused the law to move to the forefront. States began asserting claims based on this provision for existing highways or those proposed to be built on federal lands. Furthermore, states, counties, and individuals appear to find this law to be prospectively useful in blocking wilderness designations and for gaining free access across federal lands.

The legislative history is silent as to the meaning of Section 8 of the 1866 Act. There were no regulations or specific guidance for its application until 1988. On October 7, 1988, Secretary of the Interior Hodel issued Secretarial Guidance as "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)" (Exhibit 2). The Bureau was tasked with processing RS 2477 claims and determining their validity.

In 1992, Congress, after hearing from constituents and agencies about the problems of determining RS 2477 claims, ordered the Bureau to research the issues, canvas the public and other federal agencies, and publish proposed regulations to create a process by which these claims could be identified and evaluated. The Bureau was to establish standards against which the claims were to be decided. The Bureau's report, released on June 1, 1993, created such controversy that no regulations have been finalized to date.

Secretary Hodel's policy was revoked by Secretary Babbitt's January 22, 1997, memorandum (Exhibit 3), which established a revised policy for carrying out any determinations the Department might be called upon to make regarding RS 2477. The Secretary also reaffirmed his previous instructions to the Bureau to defer processing of RS 2477 assertions except in cases where there is a demonstrated, compelling, and immediate need to make such determinations.

Secretary of Interior Babbitt's RS 2477 Memorandum:

Secretary Babbitt's January 1997, memorandum provides the following six provisions:

1. Claims. The entity requesting the Department to make a determination as to whether an RS 2477 right-of-way exists must file written information to be considered and must provide information on why there is a compelling and immediate need for such a determination.

2. Withdrawals and Reservations. The agency involved (in this case, the Service) will consult the public land records of the Bureau of Land Management to determine the status of land over which the claimed right-of-way passes. If such lands were withdrawn, reserved, or otherwise unavailable at the time that the highway was allegedly constructed and remained unavailable through October 21, 1976, the Service will recommend the Secretary deny the claim.
3. Construction. The Service will examine all available documents and maps and perform an on-site examination to determine whether construction occurred prior to the repeal of RS 2477 on October 21, 1976.
4. Highway. The Service will evaluate whether the alleged right-of-way constitutes a highway, that is, a thoroughfare used prior to October 21, 1976, by the public for passage of vehicles carrying people or goods from place to place.
5. Role of State Law. The Service will apply state law in effect on October 21, 1976, to the extent it is consistent with federal law.
6. Secretary's Determination. The Service will make recommendations on the above issues and the Secretary will approve or disapprove those recommendations.

This new policy is significantly different from prior policy. An important point is that the affected agency, not the Bureau of Land Management, makes the recommendation for the Secretary's approval.

Fish and Wildlife Service, Region 1 Realty Actions and Findings:

Land Grants, Transfers, Withdrawals and Reservations

The RS 2477 enactment date of July 26, 1866, and the various land grants, transfers, withdrawals and reservations through 1935, create a window during which an RS 2477 right could be claimed. The map, Exhibit 4, shows the respective dates when the federal lands along the route became unavailable for an RS 2477 claim because of a land grant, transfer, withdrawal, or reservation. (The date inside the land status box on the map is when the land left federal ownership or was withdrawn for Refuge purposes.)

We found the following:

- 1) Land grants were made to the State of Oregon (State Grants) that the present trailing route crosses. The earliest State Grant, near the north end of the route, is dated 1859. The lands in this grant would never have been available for an RS 2477 claim since the land grant predates passage of RS 2477 (1866). This land grant is the earliest gap in the trailing route. The gap bisects the trail making it unusable as a continuous route. Other

State Grants occurred in the 1880's and early 1890's;

2) Homestead Patents were granted in the 1880's and 1890's. Homestead Patents transferred lands out of federal ownership;

3) Malheur National Wildlife Refuge was first set-aside or reserved in the area of the trail on July 16, 1935, by Executive Order 7106, "Establishing The Malheur Migratory Bird Refuge, Oregon."

Maps, Plats, and Written Documents

We researched the land status underlying the trailing route by studying the following maps and plats: Bureau of Land Management Master Title Plats, Historical Indexes, and Government Land Office (GLO) plats, including an 1877 plat; a U.S. Geological Survey quadrangle map of the area; a Fish and Wildlife Service Land Status Map; and the "Map of French-Glenn Live Stock Co. Property, Harney Co., Oregon dated November 27, 1908. We also looked at the Executive Orders file, which contains the history of federal land reservations, withdrawals, and transfers concerning the refuge. We looked for unreserved public land on which a public highway existed or may have existed between 1866 and 1976.

We found the following. The 1877 plat shows a "wagon road" traversing the plat from NE to SW. This road corresponds in part to the trailing route the Ranch is using. The GLO survey was conducted in late 1877. It is likely that the road was in existence before the survey, although we do not know when. The 1908 "French-Glenn Map" shows a "wagon road" that corresponds in part to the route the Ranch is using.

We recommend reviewing the survey notes and records to determine whether there is any evidence as to when the wagon road was built.

Construction of Highways

We did not find evidence of construction of a public highway for passage of vehicles carrying people or goods. Few portions of the trailing route qualify as constructed road; and one of those places, a crossing over Bridge Creek, was constructed in the early 1990's.

We recommend looking at the Patents to determine whether there were any right-of-way reservation(s) in them. The Survey Branch suggested we review County and Road Commissioner's Journals, and reports from Road Supervisors, the County Road Master, and the County Surveyor. We recommend investigating records from Harney County and its predecessor to determine whether there were any petitions to open a road corresponding to the trailing route, and whether any monies were spent on construction and/or maintenance for such a road.

Analysis:

The trailing route was actually broken as a continuous route in 1859 when the first State Grant of public lands occurred along the route. Assuming for argument's sake that the 1859 grant did not break the route, there were unreserved federal public lands along the trailing route between 1866 and 1884.

We found no evidence of construction between 1866 and 1976, although we found mention of a "wagon road."

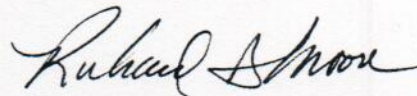
A key question may be whether the County or State ever acknowledged prior to 1976 the entire route as a public highway. Another question is whether if there were a public highway, was it on the "wagon road" or the current trailing route. If the former, could there be a public highway on the trailing route since it deviates from the "wagon road."

Conclusion and Recommendations

In conclusion, at this time we have not found evidence supporting an RS 2477 claim. If even a small portion of the route was not a public highway, then in our view the claim would not be valid over the entire route.

However, as noted above, we recommend conducting additional research due to some uncertainties regarding this matter. First, we recommend that your office ask the Bureau of Land Management to provide some basic information from their files, particularly: dates of patents; any recognition of travel routes; any evidence of right(s)-of-way; and historical maps, photos or documents of travel routes in the trailing area. We recommend that we then review those documents as well as possibly County records. After the above research is complete, we may also need to research the certain issues such as the meaning of "construction of highways".

Thank you for your assistance in this matter. If you have further questions, please call Bob Hiller at 503-231-6201.



DOCUMENTED WAGON ROAD
FRENCH-GLENN LIVE STOCK CO.
(11-27-08)

HARNEY COUNTY, OREGON

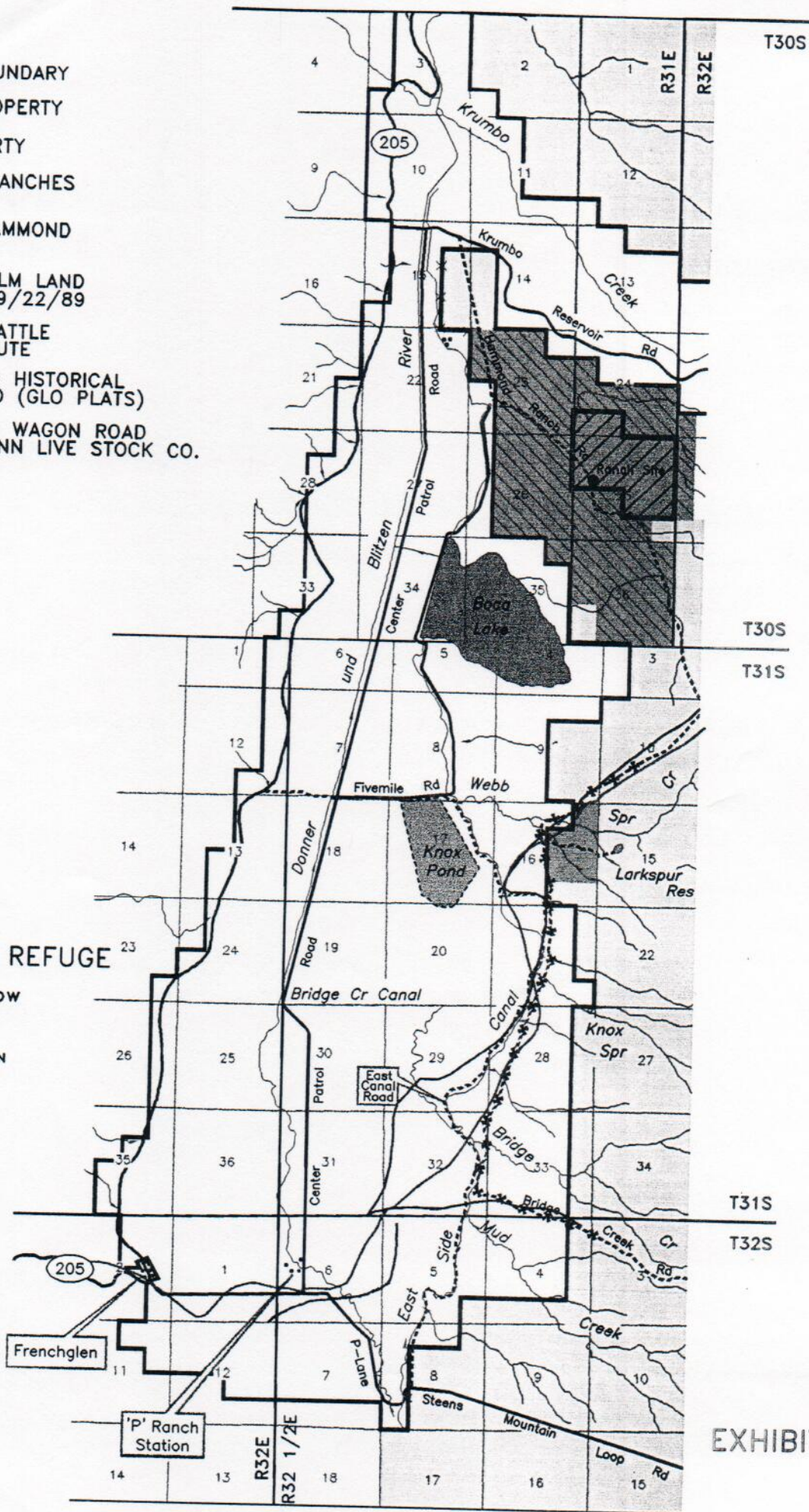
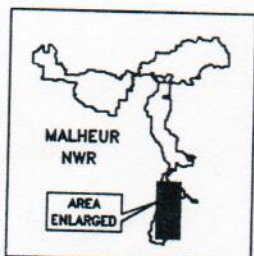


EXHIBIT #1

Lotus cc:Mail For: Forrest Cameron

Author: BARBARA SCOTT-BRIER at ~DOI/SOL_PN
Date: 7/30/97 9:58 AM
Priority: Normal
Subject: Re[5]: hammond

----- Message Contents -----

Barbara/Bob/Scott,

I've been out until today. I read the "final" letter as Barbara prepared it and have no concerns. Bob, thanks for the timely final review and not waiting for me to get back.

Please send me a file copy of the signed letter. Thanks.

In our local newspaper last week, I saw that The Hammonds participated in a national Fly-In to Washington D.C. to bring issues to Congressional members. Two issues highlighted in the article were 1) the evil ESA and 2) RS 2477 which the delegation met with Stevens (AK) about. Wonder why they did that.

Y'all have a good day now. Hear?

Forrest

Thanks, Forrest. Would you send me a copy of the news article? thx -
BSB

Reply Separator

Subject: Re[3]: hammond
Author: Robert Hiller at 1PO~RLTY
Date: 7/25/97 2:22 PM

Barbara:

I had the memo finalized. Only added heading info., "In Reply Refer To;" and a file designation. I expect you'll have the memo early next week. The memo will have letter size maps with it, I'll bring over the large map sheets once the memo goes out. Later.

Reply Separator

Subject: Re[2]: hammond
Author: BARBARA SCOTT-BRIER at ~DOI/SOL_PN
Date: 7/24/97 4:33 PM

Bob and Forrest, here's the final draft, I hope. There were a few internal inconsistencies (with this many authors and revisions what a surprise!) Please review and then
...

Bob, please print and sign -- unless you or Forrest have additional changes -- in which case please send them out for final review. Thanks to everyone for your persistence with this! As you should've already seen, I sent the memo to BLM a while ago.

Thanks, and have a good day, Barbara

File

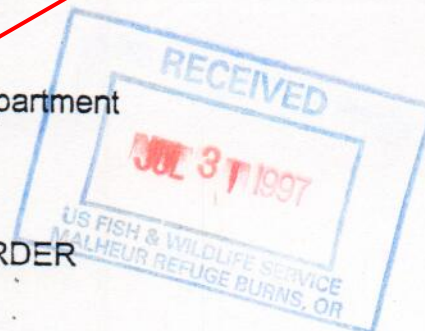
STATE OF OREGON
WATER RESOURCES DEPARTMENT
WATER RIGHTS DIVISION

Certified True Copy

Before the Director of the Water Resources Department

In The Matter Of
Application No. R-69366
Submitted by U.S. BUREAU OF
LAND MANAGEMENT

PROTEST OF
PROPOSED FINAL ORDER



HAMMOND RANCHES, INC., pursuant to ORS 537.153(6) protests the Proposed Final Order in the above entitled matter and alleges as follows:

1. Name, address and telephone number of the protestant:

HAMMOND RANCHES, INC.
HC 72, Box 26
Diamond, OR 97722

2. The protestant's interest in the proposed final order:

Protestant claims to be the proper party to whom the proposed permit should be issued. On September 22, 1989, the Bureau of Land Management (BLM), the original applicant in this matter, conveyed to Protestant certain land near the Bird Waterhole, which is the subject of this application, "with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging". Access to and use of the Bird Waterhole was thereby conveyed to Protestant. On about December 12, 1994, the Water Resources Department was advised of the transfer of this application to Protestant.

3. Description of how action proposed in the proposed final order would impair or be detrimental to protestant's interest:

By granting the proposed permit to the U.S. Fish and Wildlife Service, the Protestant may be denied by the permit holder all access and rights to the waters of the Bird Waterhole for livestock watering purposes, one of the proposed permitted uses. This will significantly adversely affect Protestant's livestock operations on Protestant's lands adjacent to the land on which the Bird Waterhole sits. Protestant's lands are the lands which the original applicant BLM intended to benefit from the livestock water permit.

4. Description of how the proposed final order is in error or deficient and how to correct the error or deficiency:

The proposed final order is in error in naming the U.S. Fish and Wildlife Service as the permittee. The error may be corrected by naming Protestant and the permittee.

5. Legal authority supporting protest, if any:

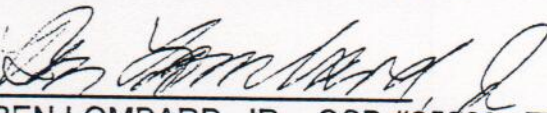
A copy of the Summary Judgment issued by Judge Yraguen of the Circuit Court of the State of Oregon for Harney County is attached.

Notice of the proposed final order was published in the Department's Public Notice bulletin of June 10, 1997 advising that protests must be filed by July 25, 1997.

DATED: July 24, 1997.

Respectfully submitted,

LOMBARD, KNUDSEN & HOLTEY

BY: 
BEN LOMBARD, JR., OSB #65069
of Attorneys for Protestant

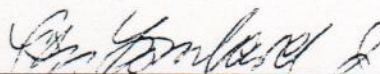
CERTIFICATE OF MAILING

I hereby certify that I served the foregoing:

PROTEST OF PROPOSED FINAL ORDER

on: US FISH AND WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232-4181

on July 24, 1997, by mailing to said party a correct copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to said party at their regular office address, as noted above, and deposited in the post office at Ashland, Oregon, on said day.



BEN LOMBARD, JR., OSB #65069
Attorney for Protestant

CERTIFICATE OF MAILING



U.S. FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
HC 72, Box 245
Princeton, Oregon 97721
(541) 493-2612
Fax Number (541) 493-2405



Facsimile Transmittal Cover Sheet

91

TO: *Barbara Scott Brier*

DATE: *8/4/97*

TIME: *8:05*

FAX PHONE NUMBER: *503/231-2166*

☐ Deliver on Regular Mail Run

☐ Call to have picked up

Phone Number: _____

FROM:

Forrest Cameron

SUBJECT:

Hammond's

Number of Pages (including Transmittal Sheet): *3*

COMMENTS:

Barb,
Let me know if this
doesn't go through.

Diana

(541) 493-2612



Hammonds fly in for freedom meet

By JASON ECK
THE TIMES-HERALD

Susan and Dwight Hammond of Diamond met with U.S. Congressmen for the seventh annual Alliance for America Fly-in for Freedom June 7-11.

The Hammonds joined 60 other Oregonians who spent four days in Washington D.C. to visit with legislators, their aides, and mutual natural resource users throughout the U.S.

Between 300-400 property rights advocates, timber workers, ranchers, farmers, fisherman, recreationists, and other grassroots activists participated in the conference.

The following are some highlights of the Hammonds trip:

- Things that prevent natural resource users from doing business and the lack of logging in the West and the devastation it has brought to local communities was a top priority for the Oregon group.

The group made their con-

cerns known that a change to the Endangered Species Act is a necessary first step.

"It was encouraging to hear that not everyone was thinking that the ESA was working and that a majority of American's wanted changes," Susan Hammond said.

The Hammonds came away encouraged something would be done soon to change the ESA to help the problems.

- Another issue the Oregon group had concerns about regarded public rights-of-way to and across federal land.

Senator Ted Stevens of Alaska recently introduced an amendment incorporated into the Emergency Supplemental Appropriations Act regarding an 1866 statute that grants rights-of-way to and across federal land. Such rights-of-way were granted to state or local governments who hold them for the public at large.

Continued on Page 13

Page 13, THE TIMES-HERALD, Burns, Oregon

Hammonds: Fly in

Continued from Page 3

The amendment was vetoed by President Clinton.

The group of natural resource users in Washington D.C. for the Fly-in were concerned for the access of all users, including recreationists, and others, Hammond said.

Secretary of the Interior Bruce Babbitt has attempted to remove the right of access set aside within the Federal Land Management Act 1976, which governs all Federal lands.

"This situation is significant and greatly affects the people of Harney County," Hammond said. "Such rights are vital to the infrastructure of many Western states and counties."

- The continuing trend toward individual agencies developing their own law enforcement departments not in cooperation with the local sheriff's department was another hot topic. The concern the Hammonds and others have is that participants are not answerable to the people, Hammond

said.

- The Oregon group listened to Indian people distressed and concerned about what they believe to be "America's Disastrous Indian Policies", what they claim is America's model of destruction of the tribes and their heritage.

The sovereign states and sovereign tribes and their relationship to the U.S. Constitution was considered very threatening to mixed heritage or non-tribe members, Hammond said. The Indians asked for an end to Federal discrimination on reservations.

The entire group lobbied against the American Heritage Rivers Initiative and a protest march was held.

"The lack of detail in this presidential initiative and its potential affect on private property and private water rights could be very detrimental and seems to be just another layer of federal bureaucracy," Hammond said.

Teachers come with computer



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Oregon State Office
P.O. Box 2965
Portland, Oregon 97208

IN REPLY REFER TO:

2800 (OR-958.1)

AUG 18 1997



Memorandum

To: Barbara Scott-Brier, Attorney
Office of the Solicitor, Pacific Northwest Region
Portland, Oregon

From: State Director, Oregon/Washington

Subject: R.S. 2477 Claim

This is in response to your memorandum dated June 30, 1997, in which you request copies of documents and information pertaining to the Blitzen Valley, the Malheur National Wildlife Refuge, and the need to move cattle through the Refuge by neighboring ranchers on a "trailing route." The requested information is supplied using the same numbers as on your initial request, a copy of which is attached.

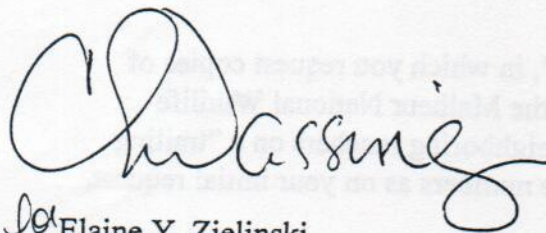
- Question 1 - Request for patents, etc.: The documents requested for sections 16, 21, 28, 32 and 33, T. 31 S., R. 32½ E., W.M. are attached. In the review of these documents, there are no reservations for a specific road right-of-way. The Deed from the State of Oregon to the United States, serial number OR-6773, recognizes "existing public roads."
- Question 2 - Request for GLO survey notes: The field notes of the subdivisional line survey completed in December 1877, and the plat, approved January 31, 1878, are attached. The Notes and the plat reference a wagon road within sections 16, 21, 28, and 32 and runs in a north/southwesterly direction. Reference to the road in the notes and on the plat have been highlighted. The wagon road runs in a similar direction as the "trailing route" shown on your Exhibit #4.
- Question 3 - Evidence of a recognized public highway for the State of Oregon: Research of our automated and historical records **do not show evidence** of a request or application filed for or by the State of Oregon requesting acknowledgment of a public highway under the authority of R.S. 2477 in Harney County.

- Question 4 - Evidence of any established legal right-of-way: The only documented right-of-way is an easement acquired by the Bureau of Land Management (BLM), Burns District for access to Steens Mountain and is located in section 16. This easement is highlighted on the attached Master Title Plat.
- Question 5 - Any maps, photos, or documents of the "trailing route": We have included copies of the area made from our "Steens Mtn." 1:100,000-scale topographic map, 1991 Edition. Based on the map symbols, a "road or street" is notated in the same sections and seems to follow the "trailing route."

We apologize for the delay in responding to your request but hope this provides you with the necessary information in order to resolve the potential claim. We must inform you however, that the BLM has been instructed by the Secretary of the Interior to defer any processing of R.S. 2477 assertions until final rules are in effect. Unfortunately, we do not expect the completion of these rules in the very near future.

If we can be of further assistance, please call Pam Chappel at 952-6170.

Sincerely,



Elaine Y. Zielinski
State Director

Attachments (as stated above)

cc:
DM, Burns
OR-933

ATTACHMENT LIST

- (1) • Original Request, dated June 30, 1997 (3pgs)
- (2) •
 - State Grant, Act of 2/14/1859 (11 Stat. 383) (2pgs)
 - Deed to the U.S., dated 7/5/1949, Serial No. OR-6773 (2pgs)
 - State Grant No. 8, dated 3/10/1890 (4pgs)
 - State Grant, Patent No. 16, dated 9/13/1890 (8pgs)
 - Indemnity List No. 6, dated 3/26/1891 (28pgs)
 - Patent No. 772, dated 10/4/1890 (1pg)
 - State Grant No. 28, dated 9/10/1892 (3pgs)
 - Patent No. 426, dated 6/4/1890 (1pg)
 - Patent No. 7, dated 12/5/1884 (1pg)
 - Patent No. 453, dated 1/11/1889 (1pg)
 - Patent No. 404, dated 1/11/1889 (1pg)
 - Patent No. 1066, dated 4/16/1890 (1pg)
- (3) •
 - Field Notes of GLO Survey (15pgs)
 - Survey Plat, approved 1/31/1878 (1)
- (4) • Master Title Plat, current to 4/25/1997
- (5) •
 - Enlarged copy of subject area from
BLM's "Steens Mtn." 1:100,000 scale topographic map, 1991 Edition
 - Steens Mtn. Map (referenced above)

and deemed to be, for all purposes affecting the jurisdiction of the United States, or of any department of the government thereof, the true line of boundary between said Commonwealth of Massachusetts and the State of Rhode Island and Providence Plantations.

APPROVED, February 9, 1859.

CHAP. XXXIII.—*An Act for the Admission of Oregon into the Union.*

Feb. 14, 1859.

Whereas the people of Oregon have framed, ratified, and adopted a constitution of State government which is republican in form, and in conformity with the Constitution of the United States, and have applied for admission into the Union on an equal footing with the other States :
Therefore—

Preamble.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Oregon be, and she is hereby, received into the Union on an equal footing with the other States in all respects whatever, with the following boundaries: In order that the boundaries of the State may be known and established, it is hereby ordained and declared that the State of Oregon shall be bounded as follows, to wit: Beginning one marine league at sea due west from the point where the forty-second parallel of north latitude intersects the same; thence northerly, at the same distance from the line of the coast, lying west and opposite the State, including all islands within the jurisdiction of the United States, to a point due west and opposite the middle of the north ship channel of the Columbia River; thence easterly, to and up the middle channel of said river, and, where it is divided by islands, up the middle of the widest channel thereof, to a point near Fort Walla-Walla, where the forty-sixth parallel of north latitude crosses said river; thence east, on said parallel, to the middle of the main channel of the Shoshones or Snake River; thence up the middle of the main channel of said river, to the mouth of the Owyhee River; thence due south, to the parallel of latitude forty-two degrees north; thence west, along said parallel, to the place of beginning, including jurisdiction in civil and criminal cases upon the Columbia River and Snake River, concurrently with States and Territories of which those rivers form a boundary in common with this State.

Oregon admitted.

Boundaries.

SEC. 2. *And be it further enacted,* That the said State of Oregon shall have concurrent jurisdiction on the Columbia and all other rivers and waters bordering on the said State of Oregon so far as the same shall form a common boundary to said State, and any other State or States now or hereafter to be formed or bounded by the same; and said rivers and waters, and all the navigable waters of said State, shall be common highways and forever free, as well as to the inhabitants of said State as to all other citizens of the United States, without any tax, duty, impost, or toll therefor.

Concurrent jurisdiction on the Columbia and other rivers and waters forming a common boundary, &c.

Navigable rivers, &c., to be common highways.

SEC. 3. *And be it further enacted,* That, until the next census and apportionment of representatives, the State of Oregon shall be entitled to one representative in the Congress of the United States.

Entitled to one representative in Congress.

SEC. 4. *And be it further enacted,* That the following propositions be, and the same are hereby, offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to wit: First, That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools. Second, That seventy-two sections of land shall be set apart and reserved for the use and support of a State university, to be selected by the governor of said State, subject to the approval of the Commissioner of the General Land-Office, and to be appropriated and applied in such

Proposition to be submitted to popular vote.

School lands.

State university lands.

manner as the legislature of said State may prescribe for the purpose aforesaid, but for no other purpose. Third. That ten entire sections of land, to be selected by the governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof. Fourth. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the governor thereof within one year after the admission of said State, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: *Provided*, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall by this article be granted to said State. Fifth. That five per centum of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State, for the purpose of making public roads and internal improvements, as the legislature shall direct: *Provided*, That the foregoing propositions, hereinbefore offered, are on the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that in no case shall non-resident proprietors be taxed higher than residents. Sixth. And that the said State shall never tax the lands or the property of the United States in said State: *Provided, however*, That in case any of the lands herein granted to the State of Oregon have heretofore been confirmed to the Territory of Oregon for the purposes specified in this act, the amount so confirmed shall be deducted from the quantity specified in this act.

SEC. 5. And be it further enacted, That, until Congress shall otherwise direct, the residue of the Territory of Oregon shall be, and is hereby, incorporated into, and made a part of the Territory of Washington.

APPROVED, February 14, 1859.

Feb. 18, 1859.

CHAP. XXXV.—*An Act for the Relief of the Mobile and Ohio Railroad Company.*

Preamble.

1850, ch. 61, § 7.
vol. ix. p. 467.Transfers by
the States of Ala-
bama and Missis-
sippi confirmed.Time for com-
pleting the road
extended to Sept.
20, 1865.

Proviso.

Proviso.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whereas the State of Mississippi, by its act approved on the twenty-eighth of January, eighteen hundred and fifty-two, and the State of Alabama, by its act approved on the first of December, eighteen hundred and fifty-one, did transfer to the Mobile and Ohio Railroad Company the lands which were granted to said States under the provisions of the act of Congress approved the twentieth September, eighteen hundred and fifty, to aid in the construction of a railroad from Mobile to the mouth of the Ohio River, the said transfers of said lands so made by said States, respectively, to said company, are hereby recognized, ratified, and confirmed, and the title to all bona fide purchasers of said company are also hereby confirmed; and that the time limited by said original act of Congress for the completion of said railroad is hereby extended, and the said company is allowed further time till the twentieth of September, in the year eighteen hundred and sixty-five, to complete the same, anything in said act to the contrary notwithstanding: *Provided, nevertheless*, That the said Mobile and Ohio Railroad Company be subjected to, and shall comply with all the conditions, restrictions, and limitations contained in the act of Congress above referred to, approved the twentieth September, eighteen hundred and fifty; *And provided*, That

77641

STATE OF OREGON

In Consideration of an agreement by the United States, signed on behalf of the Secretary of the Interior, by the Acting Director of the Fish and Wildlife Service on July 2, 1947, to convey to the grantor herein 1640 acres, more or less, situate in Harney County, Oregon, subject to certain reservations hereinafter stated, as authorized under Sections 302 and 304 of the Act of Congress approved June 15, 1935 (49 Stat. 381), the conveyance of which to the State is hereby acknowledged, the State of Oregon, acting through the State Land Board, by its authorized representatives Hon. Governor Douglas McKay, Land Commissioner of Oregon, and E. T. Pierce, Clerk of the State Land Board of Oregon, hereby does grant, bargain, sell and convey unto the UNITED STATES OF AMERICA, and its assigns, of Washington, D. C., the real property situated in the County of Harney, State of Oregon, described as follows:

Township Twenty-six (26) South, Range Twenty-eight (28) East, Willamette Meridian: In section sixteen (16), North half ($N\frac{1}{2}$), Northwest quarter Southwest quarter ($NW\frac{1}{4}SW\frac{1}{4}$), South half Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$), Northeast quarter Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$), and South half Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$); and in section thirty-six (36), Southwest quarter Northwest quarter ($SW\frac{1}{4}NW\frac{1}{4}$).

Township Twenty-six (26) South, Range Twenty-nine (29) East, Willamette Meridian: All of fractional section thirty-six (36).

Township Twenty-seven (27) South, Range Twenty-nine and one-half (29 $\frac{1}{2}$) East, Willamette Meridian: In section thirty-six (36), Southeast quarter Northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$), Northeast quarter Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$), and Southwest quarter Southeast quarter ($SW\frac{1}{4}SE\frac{1}{4}$).

Township Twenty-nine (29) South, Range Thirty-two (32) East, Willamette Meridian: In section sixteen (16), East half Northeast quarter ($E\frac{1}{2}NE\frac{1}{4}$).

Township Thirty (30) South, Range Thirty-one (31), East, Willamette Meridian: In section thirty-five (35), Southwest quarter Northeast quarter ($SW\frac{1}{4}NE\frac{1}{4}$), and Northeast quarter Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$).

Township Thirty-one (31) South, Range Thirty-two and one-half (32 $\frac{1}{2}$) East, Willamette Meridian: In section sixteen (16), Southeast quarter Northwest quarter ($SE\frac{1}{4}NW\frac{1}{4}$), and East half Southwest quarter ($E\frac{1}{2}SW\frac{1}{4}$).

Subject, however, to such rights of way for ditches, canals and reservoir sites for irrigation purposes as may have been reserved by the United States or otherwise, and also subject to existing public roads and public utility easements.

77641

STATE OF OREGON

In Consideration of an agreement by the United States, signed on behalf of the Secretary of the Interior, by the Acting Director of the Fish and Wildlife Service on July 2, 1947, to convey to the grantor herein 1640 acres, more or less, situate in Harney County, Oregon, subject to certain reservations hereinafter stated, as authorized under Sections 302 and 304 of the Act of Congress approved June 15, 1935 (49 Stat. 381), the conveyance of which to the State is hereby acknowledged, the State of Oregon, acting through the State Land Board, by its authorized representatives Hon. Governor Douglas McKay, Land Commissioner of Oregon, and E. T. Pierce, Clerk of the State Land Board of Oregon, hereby does grant, bargain, sell and convey unto the UNITED STATES OF AMERICA, and its assigns, of Washington, D. C., the real property situated in the County of Harney, State of Oregon, described as follows:

Township Twent-six (26) South, Range Twenty-eight (28) East, Willamette Meridian: In section sixteen (16), North half ($N\frac{1}{2}$), Northwest quarter Southwest quarter ($NW\frac{1}{4}SW\frac{1}{4}$), South half Southwest quarter ($S\frac{1}{2}SW\frac{1}{4}$), Northeast quarter Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$), and South half Southeast quarter ($S\frac{1}{2}SE\frac{1}{4}$); and in section thirty-six (36), Southwest quarter Northwest quarter ($SW\frac{1}{4}NW\frac{1}{4}$).

Township Twenty-six (26) South, Range Twenty-nine (29) East, Willamette Meridian: All of fractional section thirty-six (36).

Township Twenty-seven (27) South, Range Twenty-nine and one-half (29 $\frac{1}{2}$) East, Willamette Meridian: In section thirty-six (36), Southeast quarter Northeast quarter ($SE\frac{1}{4}NE\frac{1}{4}$), Northeast quarter Southeast quarter ($NE\frac{1}{4}SE\frac{1}{4}$), and Southwest quarter Southeast quarter ($SW\frac{1}{4}SE\frac{1}{4}$).

Township Twenty-nine (29) South, Range Thirty-two (32) East, Willamette Meridian: In section sixteen (16), East half Northeast quarter ($E\frac{1}{2}NE\frac{1}{4}$).

Township Thirty (30) South, Range Thirty-one (31), East, Willamette Meridian: In section thirty-five (35), Southwest quarter Northeast quarter ($SW\frac{1}{4}NE\frac{1}{4}$), and Northeast quarter Northwest quarter ($NE\frac{1}{4}NW\frac{1}{4}$).

Township Thirty-one (31) South, Range Thirty-two and one-half (32 $\frac{1}{2}$) East, Willamette Meridian: In section sixteen (16), Southeast quarter Northwest quarter ($SE\frac{1}{4}NW\frac{1}{4}$), and East half Southwest quarter ($E\frac{1}{2}SW\frac{1}{4}$).

Subject, however, to such rights of way for ditches, canals and reservoir sites for irrigation purposes as may have been reserved by the United States or otherwise, and also subject to existing public roads and public utility easements.

All uranium, thorium, and all other materials determined pursuant to section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761) to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by this instrument are hereby reserved for the use of the State of Oregon, together with the right of the State of Oregon through its authorized agents or representatives at any time to enter upon the land and prospect for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby.

TO HAVE AND TO HOLD the same unto the United States of America and its assigns forever, with all appurtenances thereunto belonging.

WITNESS the seal of the State Land Board, affixed this _____

27th day of January, 1949.

STATE LAND BOARD,

By (Sgd) Douglas McKay

Governor

State of Oregon
SEAL
Land Department

Attest:

(Sgd) E. T. Pierce

Clerk of the State Land Board

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

I certify that the within instrument of writing was received for record on the 15 day of April A.D. 1949 at 2:20 o'clock P.M. and recorded in Book 50 at page 479 of Deed Records of said County.

WM. M. CARROLL, Clerk
By Curtis Smith, Deputy

Indexed

to 8.

The United States of America,
To all to whom these presents shall come, Greeting

Whereas, by the act of Congress approved September 20, 1850, entitled "An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits," and the act of Congress approved March 12, 1869, entitled "An Act to extend the provisions of 'An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits' to Minnesota and Oregon and for other purposes," it is provided that all the Swamp and Overflowed Lands, made unfit thereby for cultivation, within the State of Oregon, which remained unsold at the passage of said act of March 12, 1869, with the exceptions therein named, shall be granted to said State.

And whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as Swamp and Overflowed Lands, accruing to the said State under the act aforesaid, situate in the District of Lands and just to sale at Lakeview, Oregon, to wit:

Willamette Meridian.

Township 30, South of Range 31, East

The northwest quarter of the north-east-quarter of section twenty-four, containing Forty acres.

Township 31, South of Range 32, East

The south-east quarter of the south-east-quarter of section twelve; the east half of section thirteen; the north-west quarter, the east half of the north-west quarter, the north-east quarter of the south-west quarter and the south-west quarter of the south-west quarter of section twenty-four; the north-east quarter of the north-west quarter, the west half of the north-west quarter and the west half of the south-west quarter of section twenty-five; the lot numbered one, two, three and four of section twenty-six; and the lot numbered one, two, three and four and the west half of the south-east quarter of section twenty-five, containing in all One thousand two hundred and fifty acres and fifteen hundredths of an acre.

Township 32, South of Range 32, East

The lot numbered one and two and the north-east quarter of the north-east-quarter of section twenty-six, containing in all One hundred and sixteen acres and thirty-four

30S 31E

NWNE 2

31S 32E

SESE 12

E 1/2 13

NE 1/4 & E 1/2

NE 1/4 SW 1/4

SW 1/4 SW 1/4

of sec 24

NE NW 1/4

W 1/2 NW 1/4

W 1/2 SW 1/4

sec 25

lots 1, 2, 3, 4

of sec 26

lots 1, 2, 3, 4

W 1/2 SE 1/4 of

sec 25

hundredths of an acre.

Township 35, South of Range 32, East.

The south east quarter of the north west quarter, the south west quarter of the north east quarter, the north east quarter of the south west quarter and the north west quarter of the south east quarter of section twenty seven, containing in all One hundred and fifty acres.

Feb 31 48
Sect 5

XXXX Township 31, South of Range 33 1/2, East.

The lots numbered three and four of section five, the north east quarter of the south west quarter and the south west quarter of the south east quarter of section six; the west half of the south west quarter of section eight; the west half of the south east quarter and the south east quarter of the south east quarter of section sixteen; the lot numbered four of section eighteen and the north east quarter of the north west quarter and the south west quarter of the north west quarter of section twenty one, containing in all Three hundred and ninety nine acres and fifty eight hundredths of an acre.

Township 36, South of Range 33, East.

The lot numbered four of section twenty two, and the lots numbered one, two, three, four and five of section twenty three, containing in all One hundred and eleven acres, and eighty five hundredths of an acre.

Township 34, South of Range 34, East.

The east half the east half of the north west quarter, and the south west quarter of section twelve, all of sections thirteen and fourteen, the south half of the south east quarter of section twenty one; the north east quarter of the north east quarter, the south half of the north east quarter and the south west quarter of section twenty two, and the north west quarter of the north east quarter, the south half of the north east quarter, the south east quarter of the south west quarter and the north half of the south east quarter of section twenty eight; containing in all Two thousand; four hundred and forty acres.

Township 33, South of Range 35, East.

The south west quarter of the north east quarter, the lots numbered one and two, the south east quarter of the north west quarter, the east half of the south west quarter, the lots numbered three and four and the west half of the south east quarter of section thirty; the south half of the north east quarter, the lots numbered one and two, the south east quarter of the north west

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quarter, the east half of the south-west quarter, the lots numbered three and four, and the south-east quarter of section thirty-one, and the south-west quarter of the north-west quarter, the south-west quarter, the west half of the south-east quarter and the south-east quarter of the south-east quarter of section thirty-two, containing in all, One thousand two hundred and quarter acres and thirty-six hundredths of an acre.

Township 34, South of Range 35, East

The lot numbered four, the south-west quarter of the north-west quarter and the west half of the south-west quarter of section four, the lot numbered one and two, the north half of the north-east quarter, the lot numbered three, the south-east quarter of the north-west quarter, the east half of the south-west quarter and the south-east quarter of section six, the east half of the north-east quarter, the east half of the south-west quarter, the lot numbered three and four, and the south-east quarter of section seven, the west half of the north-west quarter and the south-east quarter of the north-west quarter of section seventeen and the north half of the north-east quarter, the south-east quarter of the north-east quarter, the north-east quarter, of the north-west quarter, the lot numbered four, the south-east quarter of the south-west quarter and the south-west quarter of section eighteen, containing in all, One thousand five hundred and fifty-six acres and ninety-three hundredths of an acre.

Township 30, South of Range 43, East

The south-west quarter of the south-west quarter of section twenty-six, containing, Forty acres and containing in the aggregate, seven thousand, three hundred and forty-three acres and thirty-three hundredths of an acre according to the official Plat of Survey of the said Lands returned to the General Land Office, by the Surveyor General, And for which the Governor of the said State of Oregon did on the third day of October, one thousand, eight hundred and eighty-one, request a patent to be issued to the said State, and assigned in the aforesaid Act.

Now therefore, Know all that the United States of America in consideration of the premises and in conformity with the Acts of Congress aforesaid, have given and granted and by these presents do give and grant unto the said State of Oregon in fee simple, subject to the disposal of the legislative body of the State of land above described.

quarter, the east half of the south-west quarter, the lot numbered three and four, and the south-east quarter of section thirty-one, and the south-west quarter of the north-west quarter, the south-west quarter, the west half of the south-east quarter and the south-east quarter of the south-east quarter of section thirty-two, containing in all, One thousand, two hundred and ninety-seven and thirty-six hundredths of an acre.

Township 34, South of Range 35, East.

The lot numbered five, the south-west quarter of the north-west quarter and the west half of the south-west quarter of section four, the lot numbered one and two, the north half of the north-east quarter, the lot numbered three, the south-east quarter of the north-west quarter, the east half of the south-west quarter and the south-east quarter of section six, the east half of the north-east quarter, the east half of the south-west quarter, the lot numbered three and four and the south-east quarter of section seven, the west half of the north-west quarter and the south-east quarter of the north-west quarter of section seventeen and the north half of the north-east quarter, the south-east quarter of the north-east quarter, the north-east quarter of the north-west quarter, the lot numbered five, the south-east quarter of the south-west quarter and the south-east quarter of section eighteen, containing in all, One thousand, five hundred and fifty-six acres and ninety-three hundredths of an acre.

Township 30, South of Range 42, East.

The south-west quarter of the south-west quarter of section twenty-six, containing forty acres and containing in the aggregate, seven thousand, three hundred and forty-three acres and thirty-three hundredths of an acre according to the official Plat of Survey of the said Lands returned to the General Land Office, by the Surveyor General, and for which the Governor of the said State of Oregon did on the third day of October, one thousand, eight hundred and eighty-one, request a patent to be issued to the said State, as required in the aforesaid Act.

Now Therefore, Know Ye, That the United States of America in consideration of the premises and in conformity with the Acts of Congress aforesaid, have given and granted and by these presents do give and grant unto the said State of Oregon, in fee simple, subject to the disposal of the Legislature through the Acts of Land above described.

To have and to hold the same, together with all the right, privilege, immunities and appurtenances thereto belonging, unto the said State of Oregon, its heirs, assigns and to its assigns forever.

In testimony whereof I, Benjamin Harrison, President of the United States of America, have caused these Letters to be made Patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington, the
 tenth day of March in the Year of Our Lord
 one thousand eight hundred and ninety
 and of the Independence of the United
 States the one hundred and fourteenth
 By the President Benjamin Harrison.

By M. M. McLean, Secretary

J. M. Townsend, Recorder of the General Land Office.

10 March, 1890



The United States of America

To all to whom these presents shall come greeting.

Whereas, by the act of Congress approved September 22, 1850, entitled "An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits" and the act of Congress approved March 12, 1860, entitled "An Act to extend the provisions of 'An Act to enable the State of Arkansas and other States to reclaim the Swamp Lands within their limits' to Minnesota and Oregon and for other purposes", it is provided that all the "Swamp and Overflowed Lands" made unfit thereby for cultivation within the State of Oregon which remained unsold at the passage of said act of March 12, 1860, with the exceptions therein named, shall be granted to said State.

And whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "Swamp and Overflowed Lands" inuring to the said State under the act aforesaid, situate in the District of Lands subject to sale at Lakeview, Oregon, to wit:

Willamette Meridian.

Township 39, South of Range 8, East.

The Lot numbered four and the south east quarter of the north east quarter of section twenty-six, and the Lots numbered eight and nine of section thirty-five, containing one hundred and nineteen acres and ninety hundredths of an acre.

Township 40, South of Range 8, East.

The Lot numbered ten, and the south west quarter of the north east quarter of section eight, the Lots numbered four and five of section fifteen, and the north half of the north west quarter and the north west quarter of the north east quarter of section twenty-two, containing two hundred and nineteen acres and ninety-seven hundredths of an acre.

Township 37, South of Range 9, East.

The Lots numbered five and six and the

south east quarter of the southwest quarter of section
 214, the Lots numbered one, two, three and four
 the east half of the north west quarter, the west half
 of the south east quarter and the east half of the
 south west quarter of section seven and the Lots
 numbered one, two, and three, and the north east
 quarter of the north west quarter of section eight
 teen, containing in all Seven hundred and twenty
 six acres and fifteen hundredths of an acre.

Township 38, South of Range 9, East

The Lot numbered eleven of section thirty
 two, containing eleven acres and fifteen hundredths
 of an acre.

Township 39, South of Range 9, East

The east half of the north west quarter of
 section four containing eighty acres.

Township 37, South of Range 10, East

The east half of the north east quarter of sec-
 tion twenty-two, the south half of the south east
 quarter, the west half of the south west quarter
 and the south east quarter of the south west
 quarter of section twenty-three, the south west
 quarter of the north west quarter, the east half of
 the south west quarter and the north west quarter
 of the south west quarter of section twenty-four.
 All of section twenty-six, the east half of sec-
 tion twenty-seven, the north east quarter of the
 north east quarter of section thirty-four and the
 north half of the north east quarter and the north
 half of the north west quarter of section thirty-
 five, containing one thousand, six hundred and
 six acres.

Township 39, South of Range 11, East

The Lots numbered three and four, the
 south half of the north east quarter, the
 south half of the north west quarter, the south
 east quarter and the north east quarter of the south
 west quarter of section two and the north east
 quarter of section eleven, containing five hun-
 dred and ninety seven acres and six hundredths
 of an acre.

Township 27, South of Range 11, East

The south west quarter of the south east quarter and the north east quarter of the south west quarter of section thirteen, the north east quarter, the north half of the south east quarter, and the south east quarter of the south east quarter of section twenty-two, the south half of the north west quarter and the south west quarter of section twenty-three, all of section twenty-five, the north half of the north east quarter, the south east quarter of the north east quarter, the north west quarter, the south half of the south east quarter and the north west quarter of the south west quarter of section twenty-six, the south west quarter of the north west quarter of section thirty-three, and the south half of the south west quarter of section thirty-five, containing one thousand, nine hundred and sixty acres.

Township 28, South of Range 14, East.

The Lots numbered five, six, nine, ten, eleven, twelve and thirteen and the south half of the north west quarter of section one, the Lots numbered five, six, eight, nine, ten, thirteen, fourteen and fifteen and the south west quarter of the north west quarter of section two, the Lot numbered one and the south west quarter of the south west quarter of section three, the Lots numbered two, three and four and the south east quarter of the north west quarter of section four, the Lots numbered one and two, the south half of the north east quarter, the south half of the north west quarter, the south east quarter, the north east quarter of the south west quarter and the south west quarter of the south west quarter of section five, the south east quarter of the north east quarter of section six, the north east quarter, and the east half of the north west quarter of section eight, the north half of the north east quarter and the north half of the north west quarter of section eleven, the south east quarter of the south west quarter of section fifteen and the north west quarter of the north west quarter of section nine containing

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One thousand eight hundred and sixty acres and
sixty-two hundredths of an acre.

Township 31 South of Range 14 East

The west half of the south west quarter of
section twenty-seven, the north west quarter of
the north half of the north east quarter and the
south half of section twenty-eight all of section
twenty-nine, the north east quarter, the south east
quarter of the north west quarter, the south east
quarter and the east half of the south west quar-
ter of section thirty, the east half of the north
west quarter, the east half of the south west quar-
ter and the east half of section thirty-one all of
section thirty-two, all of section thirty-three
and the north west quarter, the west half of the
south west quarter and the south east quarter
of the south west quarter of section thirty-four,
containing Three thousand seven hundred
and sixty acres.

Township 32 South of Range 14 East

The Lots numbered three and four the north
west quarter of the north west quarter and the north
west quarter of the south west quarter of section
three, all of section four, all of section five, all
of section six, all of section seven, all of section
eight, the north west quarter of the north east
quarter, the west half of the north west quarter and
the north west quarter of the south west quarter
of section nine, the west half of the north east
quarter, the north half of the north west quarter,
the north west quarter of the south east quarter,
the east half of the south west quarter and the
south west quarter of the south west quarter of
section seventeen, all of section eighteen, the
Lots numbered one, two, three and four the
north east quarter, the north east quarter of
the north west quarter, the south east quar-
ter of the north west quarter, the north half of the
south east quarter and the east half of the
south west quarter of section nineteen and the
west half of the north quarter and the north west

quarter of the south west quarter of section twenty, containing five thousand one hundred and ninety-two acres and twenty five hundredths of an acre.

Township 37, South of Range 14, East.

The south half of the south west quarter of section thirteen, the north half of the south east quarter, the south east quarter of the south east quarter and the south west quarter of the north east quarter of section fourteen, containing three hundred and forty acres.

Township 39, South of Range 14, East.

The west half of the south west quarter of section five, the lot numbered one of section six, the south east quarter, the north east quarter of the north east quarter, the south west quarter of the north east quarter and the north east quarter of the south west quarter of section seven, and the south west quarter of the south east quarter and the south west quarter of section eight, containing six hundred acres.

Township 28, South of Range 15, East.

The west half of the south east quarter and the east half of the south west quarter of section five, the lots numbered two and three and the east half of the south west quarter of section six, the east half of section seven, the lots numbered one, two, three and four, the west half of the north east quarter, the east half of the north west quarter, the south east quarter, and the east half of the south west quarter of section eight, the west half of the south west quarter of section nine, the south west quarter of the south west quarter of section fifteen, the lots numbered three, four, five, six, seven and ten, the south east quarter of the north east quarter, the north east quarter of the south east quarter and the north west quarter of the south west quarter of section seventeen, the north west quarter of the south east quarter of section eighteen, the lots numbered six, eight and nine and the south east quarter of the north east quarter of section twenty-one, the lots numbered one, two, three, four and five.

and the north east quarter of the north west quarter of section twenty-two and the Lot numbered one of section twenty-three, containing in all Two hundred and ninety two acres and fifty six hundredths of an acre.

Township 28, South of Range 16 East.

The Lots numbered three and four of section nineteen, the Lots numbered one and two of section twenty-nine, the Lots numbered one two, three and four and the north west quarter of the north east quarter of section thirty, the south east quarter of the north east quarter of section thirty, and the Lot numbered one of section thirty-two, containing in all Three hundred and eighty-five acres and ninety-eight hundredths of an acre.

Township 30, South of Range 17 East.

The south east quarter of the north east quarter, the east half of the south west quarter and the west half of the south east quarter of section nineteen, containing in all Two hundred and

Township 38, South of Range 17 East.

The south east quarter of the south east quarter of section eighteen, the south west quarter of the south east quarter and the north east quarter of the south west quarter of section twenty and the west half of the south east quarter and the west half of section twenty-eight, containing in all Five hundred and twenty acres.

Township 40, South of Range 19 East.

The Lot numbered three of section twelve, containing eighteen acres and fifty hundredths of an acre.

Township 36, South of Range 24 East.

The Lots numbered one and two of section twenty-six, containing twenty-four acres and sixty hundredths of an acre.

Township 36, South of Range 25 East.

The Lots numbered one, two, three and four and the south east quarter of the south east quarter of section six, the west half of the south west quarter

and the west half of the south west quarter of section eight and the Lots numbered one, two, three and four of section eighteen, containing in all Three hundred and forty six acres and thirty hundredths of an acre.

Township 30. South of Range 31, East.

The south east quarter of the north west quarter and the east half of the south west quarter of section fifteen and the north west quarter of the north east quarter and the south west quarter of the south east quarter of section thirty-three, containing in all Two hundred acres

Township 31, South of Range 32 1/2, East.

The north west quarter of the south west quarter of section five, the Lots numbered one, two, three, four, five and six, the north west quarter of the south east quarter and the south east quarter of the south west quarter of section six, the Lot numbered four, the east half of the north west quarter, the east half of the south west quarter and the east half of section seven, the east half of the north west quarter and the east half of the south west quarter of section eight, ~~the west half of section seventeen~~, the east half, the east half of the north west quarter and the east half of the south west quarter of section eighteen, the west half of the north east quarter, the north east quarter of the north west quarter, and the west half of the south east quarter of section nineteen, the north east quarter of the north east quarter, the north east quarter of the north west quarter and the and the south half of the south west quarter of section twenty, the north west quarter of the north west quarter, the south east quarter of the north west quarter and the north east quarter of the south west quarter of section twenty-one, the west half of the north west quarter of section twenty-nine, the Lots numbered one, two, three and four, and the east half of the north west quarter of section thirty, and the north east quarter of the south west quarter of section thirty-two, containing in all, Two thousand

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four hundred and ninety-five acres and forty one hundredths of an acre, and containing in the aggregate, Twenty-three thousand, and fifty-one acres and four hundredths of an acre, according to the official Plan of Survey of the said Lands returned to the General Land Office by the Surveyor General, and for which the Governor of the said State of Oregon did on the twenty-third day of August, one thousand eight hundred and ninety, request a patent to be issued to the said State as required in the above said Act.

Now, I therefore know ye, That the United States of America, in consideration of the premises and in conformity with the Acts of Congress aforesaid have given and granted, and by these presents do give and grant unto the said State of Oregon in fee simple subject to the disposal of the Legislature thereof the tract of land above described.

To have and To Hold the same together with all the rights, privileges, immunities and appurtenances thereto belonging unto the said State of Oregon in fee simple, and to its assigns forever.

In testimony whereof, I, Benjamin Harrison, President of the United States of America, have caused these Letters to be made Patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the thirtieth day of September in the Year of our Lord one thousand eight hundred and ninety and of the Independence of the United States the one hundred and fiftieth.

By the President Benjamin Harrison

By M. W. Keam, Secretary

Records of the General Land Office
ad interim

J. R. Donnell

13 Sept, 1898

Seal

LIST No. OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale in certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

Department of the Interior,
General Land Office,

July 18th 1888.

It is hereby certified that the tracts described in the foregoing list are embraced in the original list now on file in this office of lands selected by the State of Oregon, in the Sakerew Land district, as indemnity for deficiencies in the townships named, which indemnity school selections are authorized by the above cited Acts of Congress of February 14th and 26th 1859, but are more especially authorized by the Act approved March 3rd 1885, entitled an Act providing for allotment of lands in severalty to the Indians residing upon the Umatilla Reservation in the State of Oregon and granting patents therefor and for other purposes. (25 Stat. 342.)

It is further certified that the said tracts have been examined and compared with the township plat and tract books of this office and that the school sections in lieu of which the selections herein described were made are shown to be within the Umatilla Indian Reservation as now set apart and established, and that the lands herein described are shown to be subject to selection, free from conflicts, and non-mineral in character, the latter fact being established by affidavits filed under existing instructions from this office.

It is therefore recommended that the said list, embracing in the aggregate 15,388.55 acres, which have been selected upon the basis of 15,399.55 acres, each to the State as above shown, be approved, subject to any valid interfering rights which may have existed at the date of selection, the State to be credited with the difference of 11.00 acres between the amount selected herein and the basis thereof in future lists.

D. H. Davis
Commissioner

Department of the Interior,
Aug 4, 1888.

The foregoing list of Sakerew, Oregon, indemnity school selections, embracing an aggregate area of 15,388.55 acres, which have been selected upon the basis of 15,399.55 acres, is hereby approved subject to any valid interfering rights which may have existed at the date of selection, the State to be credited with the difference of 11.00 acres between the amount selected herein and the basis thereof in future lists.

Secretary

Index
Sakerew
General
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Office
Approved
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Oct 57

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lands subject to sale at
school lands to which such
holders upon Sixteenth and

of the Interior,
Land Office,
July 18th 1888.
embraced in the
of Oregon, in the
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of February 14th
March 3rd 1885, entitled
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in lieu of
the United States
in herein described
in character, the
from this office
aggregated 15,388.75
to the State as
may have existed
between

Excellency,
inasmuch as
J. H.

the Interior,
4, 1888.
embracing an
area of 15,399.55
may have existed
between

Secretary

13-70

School No. 6.

of
Indemnity school land selections made by the State of Oregon, in the
Schenck land district under the provisions of the acts of Congress approved
January 7, 1852, and February 14th and 26th 1859, embracing tracts of an aggre-
gate area of 59,946.04 acres.

Approved March 26, 1891 (39,194)

Copies sent to the Governor and R.R. April 17, 1891.

Receipt acknowledge by the Governor April 18th 21 by the R.R. April 25, 1891. m. m. 34
at 57.285.

Filed
May 1891
m. m. 34

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(4-3007)

LIST No. 6 OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale certain townships and fractional townships where the full amount of school lands to which such

Lake
townships
July 14/18
Thirty-six

REMARKS AS TO CLAIM OF DEFICIENCY

PORTIONS OF SECTIONS 16 AND 36 LOST TO THE STATE

SEC

TOWNSHIP

RANGE

AREA OF TRACTS

ACRES

DATE

IN FULL

Alameda Indian Reservation Deficiency in

✓ 36 30 8 1/2 32000

62

Surf

✓ 16 36 11 1/2 16000

NE

NE

✓ 16 36 11 1/2 32000

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✓ 36 29 8 1/2 8000

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✓ 16 36 11 1/2 8000

SW

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✓ 16 36 11 1/2 8000

SW

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✓ 16 34 7 1/2 8000

SW

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✓ 16 32 8 1/2 8100

SE

NE

✓ 16 31 9 1/2 16000

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Deficit in W of SE

✓ 16 31 9 1/2 14406

SE

Surf

✓ 36 31 9 1/2 16000

SE

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✓ 36 31 10 1/2 16000

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✓ 36 31 10 1/2 4000

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✓ 36 31 10 1/2 4000

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of lands subject to B.M.
of school lands to which
settlers upon Sixteenth

SCHOOL SELECTIONS,

Lakeview, Oregon

which have been selected for the support of schools in townships are entitled have not been granted in place, and which selections are provided for in the act of 1889, as amended, on act for the admission of Oregon into the Union, and the Thirty-sixth sections, who settled before the surveys of the Public Lands, to pre-empt their settlements."

MEASURE AREA OF TRACTS	DESCRIPTION OF TRACTS SELECTED TO SUPPLY THE DEFICIENCY IN SCHOOL LANDS	SEC	TOWNSHIP	MEASURE AREA OF TRACTS	NO. OF LIST	DATE OF SELECTION
8 ⁰⁰ 1220.00	E ¹	35	32	34 ¹ 320.00	23	Oct 16, 1888
11 ⁰⁰ 1600.00	NE ¹	34	35	32 ¹ 160.00	24	Oct 17, 1888
11 ⁰⁰ 320.00	SW ¹	32	35	32 ¹ 320.00		
8 ⁰⁰ 80.00	W ¹ of SW ¹	11	27	31 ¹ 80.00		
11 ⁰⁰ 80.00	SW ¹ of SE ¹	32	35	32 ¹ 80.00		
11 ⁰⁰ 80.00	W ¹ of NW ¹	32	35	32 ¹ 80.00		
8 ⁰⁰ 80.00	SW ¹ of NE ¹	12	34	31 ¹ 80.00		
8 ⁰⁰ 80.00	E ¹ of NE ¹	14	30	31 ¹ 80.00		
9 ⁰⁰ 1600.00	S ¹ of SW ¹ and S ¹ of SE ¹	34	26	31 ¹ 160.00	25	Oct 18, 1888
9 ⁰⁰ 4406	Lot 3 and 4	35	26	31 ¹ 4406		
9 ⁰⁰ 1600.00	SE ¹	5	28	31 ¹ 1600.00		
10 ⁰⁰ 1600.00	NW ¹	2	29	31 ¹ 1600.00		
10 ⁰⁰ 400.00	NE ¹ of SE ¹	27	29	33 ¹ 400.00		
10 ⁰⁰ 400.00	SW ¹ of SE ¹	27	29	33 ¹ 400.00		
10 ⁰⁰ 400.00	NW ¹ of NE ¹	34	29	33 ¹ 400.00		
10 ⁰⁰ 400.00	SE ¹ of NW ¹	34	29	33 ¹ 400.00		
9 ⁰⁰ 4406	Lot 3	3	30	31 ¹ 4005		
9 ⁰⁰ 400.00	SW ¹ of SW ¹	3	30	31 ¹ 400.00		
9 ⁰⁰ 800.00	Lot 1 and 2	2	30	32 ¹ 800.00		
9 ⁰⁰ 400.00	NW ¹ of NW ¹	27	30	32 ¹ 400.00		
9 ⁰⁰ 400.00	SE ¹ of SW ¹	29	30	32 ¹ 400.00		
9 ⁰⁰ 400.00	SE ¹ of SE ¹	28	30	32 ¹ 400.00		
9 ⁰⁰ 400.00	NE ¹ of NW ¹	32	30	32 ¹ 400.00		
9 ⁰⁰ 400.00	SW ¹ of NE ¹	35	31	32 ¹ 400.00		
9 ⁰⁰ 1600.00	E ¹ of SW ¹ and NW ¹ of NW ¹	25	31	32 ¹ 1600.00		
9 ⁰⁰ 800.00	W ¹ of NE ¹	17	31	32 ¹ 800.00		
9 ⁰⁰ 400.00	NE ¹ of SE ¹	17	31	32 ¹ 400.00		
12 ⁰⁰ 1036	Lot 1 and 2	1	31	32 ¹ 1036		
12 ⁰⁰ 1200.00	NE ¹ of SE ¹ and SE ¹ of SE ¹	1	31	32 ¹ 1200.00		
12 ⁰⁰ 400.00	NW ¹ of NW ¹	13	31	32 ¹ 400.00		
12 ⁰⁰ 400.00	NW ¹ of SE ¹	21	31	32 ¹ 400.00		
12 ⁰⁰ 400.00	NW ¹ of SE ¹	29	31	32 ¹ 400.00		
12 ⁰⁰ 400.00	NE ¹ of NE ¹	12	31	32 ¹ 400.00		
12 ⁰⁰ 400.00	SW ¹ of SW ¹	25	31	32 ¹ 400.00		
12 ⁰⁰ 400.00	SW ¹ of NE ¹	2	32	32 ¹ 400.00		
12 ⁰⁰ 400.00	NE ¹ of SE ¹	2	32	32 ¹ 400.00		
12 ⁰⁰ 400.00	NW ¹ of NE ¹	11	32	32 ¹ 400.00		
12 ⁰⁰ 400.00	SE ¹ of NE ¹	11	32	32 ¹ 400.00		
12 ⁰⁰ 800.00	N ¹ of NW ¹	12	32	32 ¹ 800.00		
309450	Amount carried forward			309450		

X

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale in certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

townships adjacent
Thirty-sixth section

REMARKS AS TO NAME OF DEFENDENT.		PORTIONS OF SECTIONS 16 AND 36 LOST TO THE STATE.		REA.	THWIST.	RAIL.	BLA. OF REAT.
		Amount brought forward.					309460
Amount before Assessment	SE ¹ of SE ¹	✓ 36	32-12-				4000
Feb. 17 1870	W ¹	✓ 36	32-12-				132000
	E ¹ of NE ¹	✓ 16	33-7-				8000
	W ¹ of NE ¹	✓ 16	33-7-				4000
	SW ¹ of NE ¹	✓ 16	33-7-				4000
	W ¹ of SE ¹	✓ 16	33-7-				4000
	E ¹ of SE ¹	✓ 16	33-7-				8000
	NE ¹ of SE ¹	✓ 16	33-7-				4000
	N ¹ of NE ¹ & SE ¹ of NE ¹	✓ 16	33-10-				12000
	SE ¹	✓ 16	33-10-				16000
	SW ¹ of NE ¹	✓ 16	33-10-				4000
	W ¹	✓ 16	33-10-				32000
	W ¹ of NE ¹ & W ¹ of SE ¹	✓ 16	36-12-				16000
	Deficit in E ¹	✓ 36	36-13-				31290
	NE ¹	✓ 16	36-13-				16000
	SE ¹	✓ 16	36-13-				16000
	W ¹	✓ 36	29-7-				16000
	SW ¹	✓ 36	29-7-				16000
	Deficit in NE ¹	✓ 36	29-7-				15967
	SW ¹	✓ 16	30-8-				16000
	W ¹	✓ 36	29-8-				32000
	NE ¹	✓ 36	29-8-				16000
	W ¹ of NW ¹	✓ 16	30-8-				8000
	SE ¹ of SE ¹	✓ 16	31-9-				4000
	W ¹ of SW ¹	✓ 16	31-10-				4000
	N ¹ of NW ¹	✓ 36	33-10-				8000
	E ¹ of NW ¹	✓ 36	33-10-				8000
	SW ¹	✓ 36	33-10-				16000
	W ¹	✓ 16	33-12-				32000
	NE ¹ & NE ¹ of SE ¹	✓ 36	35-10-				19944
	W ¹ of SE ¹	✓ 36	35-10-				4000
	SE ¹ of SE ¹	✓ 36	35-10-				4000
	SW ¹ of SE ¹	✓ 36	35-10-				4000
	W ¹	✓ 16	33-13-				16000
	N ¹ of NE ¹ & SW ¹ of NE ¹	✓ 16	34-7-				12000
	SE ¹ of NE ¹	✓ 16	34-7-				4000
	Deficit in E ¹ of NE ¹	✓ 16	35-11-				7928
	W ¹ of NE ¹	✓ 16	35-11-				4000
	N ¹ of SE ¹ & SW ¹ of SE ¹	✓ 16	35-11-				12000
	SE ¹ of SE ¹	✓ 16	35-11-				4000
	NE ¹ & W ¹ of SE ¹	✓ 36	34-9-				24000
		Amount carried forward.					832589

lands subject to sale
ool lands to which suc
ers upon Sixteenth

SCHOOL SELECTIONS

which have been selected for the support of schools in
townships not entitled have not been granted in place, and which selections are provided for in the act of
Thirty-sixth sections, who settled before the surveys of the Public Lands, to pre-empt their settlements.

AREA OF TRACTS	DESCRIPTION OF TRACTS SELECTED TO SUPPLEMENT DEFICIENCY IN SCHOOL LANDS	SEC.	TOWNSHIP	RANGE	AREA OF TRACTS IN ACRES	DATE OF SELECTION
309460	Amount brought forward				309460	
4000	W. of SW 4	9	32	32	4000	25 Oct 1888 16-123
132000	Lot 3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40	1	32	32	32000	"
8400	E. of NE 4	13	32	32	8000	"
4000	SW 4 of NE 4	10	32	32	4000	"
4000	NE 4 of SW 4	10	32	32	4000	"
4000	SW 4 of SW 4	10	32	32	4000	"
8000	W. of SE 4	6	32	32	8000	"
4000	NE 4 of NE 4	20	32	32	4000	"
12000	NE 4 of SE 4	21	34	32	12000	"
16000	SW 4	32	34	32	16000	"
4000	SE 4 of SW 4	31	34	32	4000	"
32000	N. of SE 4	28	34	32	32000	"
16000	E. of NE 4	21	35	32	16000	"
31290	Lot 1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40	33	35	32	31290	"
16000	SW 4	24	35	32	16000	"
16000	SW 4	8	35	32	16000	"
16000	SW 4	25	34	31	16000	"
16000	SE 4	25	34	31	16000	"
15767	Lot 3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40	6	25	32	15767	"
16000	E. of NE 4	17	31	35	16000	"
32000	Lot 33-34-35-36-37-38-39-40	3	31	35	32000	"
16000	SW 4	3	31	35	16000	"
8000	W. of SW 4	10	31	35	8000	"
4000	NE 4 of SW 4	10	31	35	4000	"
4000	SE 4 of SW 4	10	31	35	4000	"
8000	Lot 36-37-38-39-40	2	31	35	8000	"
8000	W. of SW 4	2	31	35	8000	"
16000	E. of SE 4	14	32	34	16000	"
12000	SW 4	26	32	34	32000	"
19944	Lot 1-2-3-4-5-6-7-8-9-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40	1	19	31	19944	"
4000	SW 4 of SW 4	12	19	31	4000	"
4000	NE 4 of NE 4	13	19	31	4000	"
4000	SW 4 of SE 4	18	19	32	4000	"
16000	E. of NE 4	14	19	31	16000	"
12000	SW 4 of SE 4	14	19	31	12000	"
4000	SE 4 of SE 4	15	19	31	4000	"
7928	Lot 4	18	19	32	7928	"
8000	SW 4 of NE 4	35	19	35	8000	"
12000	NE 4 of SW 4	35	19	35	12000	"
4000	NE 4 of SW 4	14	19	34	4000	"
24000	SW 4 of NE 4	6	20	42	24000	"
832584	Amount carried forward				832584	

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(4-3041)

LIST No. 6

OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale of certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

townships
Thirty-sixth

REMARKS AS TO CAUSE OF DEFICIENCY:

PORTIONS OF SECTION 16 AND 36 LOST TO THE STATE

SEC.

TOWNSHIP

RANGE

AREA OF TRACTS

CHECKED TO SHEET III

Amount brought forward 8325 89		
Remains Indian Reservation E. of SE ⁴	36 34 9 1/2 1 80 00	S. of
Feb. 1st 1870 NW ⁴ of NW ⁴	16 35 7 1/2 1 40 00	SE ⁴
NW ⁴ of NW ⁴ S. of NW ⁴	16 35 7 1/2 1 120 00	E. of
Deficit in NW ⁴ of NW ⁴	16 35 10 1/2 39 63	Lat
Deficit in NW ⁴ of NW ⁴	16 35 10 1/2 4 96 1/2	
SW ⁴ of NW ⁴	16 35 10 1/2 1 40 00	Lat
NW ⁴ of SE ⁴	16 35 10 1/2 1 40 00	SW ⁴
SE ⁴ of SE ⁴	16 35 10 1/2 1 40 00	NW ⁴
W. of SE ⁴	16 35 10 1/2 1 80 00	E. of
SE ⁴ of SE ⁴	36 33 7 1/2 1 40 00	SE ⁴
Deficit in NW ⁴	36 33 7 1/2 1 155 64	Lat
NW ⁴ of SE ⁴	36 33 7 1/2 1 40 00	NW ⁴
NW ⁴ of NW ⁴	16 36 13 1/2 1 40 00	SW ⁴
NW ⁴ of NW ⁴	36 36 11 1/2 1 80 00	S. of
SE ⁴ of NW ⁴	36 35 13 1/2 1 40 00	SE ⁴
Part of E ²	16 34 9 1/2 1 83 24	Lat
Part of E ²	16 34 9 1/2 1 105 73	"
S. of SE ⁴	36 36 12 1/2 1 80 00	Lat
SW ⁴ of NW ⁴	36 36 12 1/2 1 40 00	S. of
NW ⁴ of SE ⁴	36 36 12 1/2 1 80 00	SW ⁴
SE ⁴ of NW ⁴	36 33 13 1/2 1 40 00	NW ⁴ of
Deficit in NW ⁴	36 35 7 1/2 1 3 37	SE ⁴ of
NW ⁴ of NW ⁴	36 33 13 1/2 1 80 00	Lat
NW ⁴ of NW ⁴	16 36 10 1/2 1 40 00	W. of
NW ⁴ of NW ⁴	36 36 10 1/2 1 39 76	NW ⁴
NW ⁴ of NW ⁴	36 36 11 1/2 1 40 00	Lat
S. of NW ⁴	36 36 11 1/2 1 80 00	NW ⁴
NW ⁴ of NW ⁴	36 36 11 1/2 1 40 00	SW ⁴ of
NW ⁴ of NW ⁴	16 29 8 1/2 1 80 00	SE ⁴ of
NW ⁴ of NW ⁴	16 29 8 1/2 1 160 00	E. of
NW ⁴ of NW ⁴	16 29 8 1/2 1 120 00	SE ⁴ of
NW ⁴ of NW ⁴	16 29 8 1/2 1 80 00	NW ⁴ of
NW ⁴ of NW ⁴	16 29 9 1/2 1 40 00	SE ⁴ of
NW ⁴ of NW ⁴	16 29 9 1/2 1 40 00	SE ⁴ of
SE ⁴ of NW ⁴	36 35 9 1/2 1 80 00	SE ⁴ of
SW ⁴ of NW ⁴	36 35 9 1/2 1 40 00	SE ⁴ of
SE ⁴ of NW ⁴	16 34 10 1/2 1 20 00	SW ⁴ of
NW ⁴ of NW ⁴	16 34 12 1/2 1 40 00	SE ⁴ of
NW ⁴ of NW ⁴	16 34 12 1/2 1 120 00	NW ⁴ of
NW ⁴ of NW ⁴	16 29 8 1/2 1 120 00	SE ⁴ of
NW ⁴ of NW ⁴	16 29 9 1/2 1 40 00	NW ⁴ of

SCHOOL SELECTIONS

which have been selected for the support of schools in
townships are entitled have not been granted in place, and which selections are provided for in the act of
Third, sixth sections, who settled before the survey of the Public Lands, to present their settlements.

DESCRIPTION OF TRACTS SELECTED
TO SUPPLY THE DEFICIENCY IN SCHOOL LANDS.

ACRES. TOWNSHIP. RANGE. AREA OF TRACTS. NO. OF LOTS. DATE OF SELECTION.

Amount brought forward 832589

1/2 of SE 1/4	32	21	38	8000	25	Oct. 18, 1878
1/2 of SE 1/4	31	23	35	4000	"	"
E of NE 1/4 & NE of SE 1/4	23	22	36	12000	"	"
Lot 2	1	23	36	3963	"	"
Lot 1	6	23	37	4496	"	"
SW of NE 1/4	6	23	37	4000	"	"
SW of SE 1/4	6	23	37	4000	"	"
E of NW 1/4	7	23	37	8000	"	"
SE of SE 1/4	35	33	37	4000	"	"
Lot 1 & 2 & 3 & 4 & 5 & 6 & 7 & 8 & 9 & 10 & 11 & 12 & 13 & 14 & 15 & 16 & 17 & 18 & 19 & 20 & 21 & 22 & 23 & 24 & 25 & 26 & 27 & 28 & 29 & 30 & 31 & 32 & 33 & 34 & 35 & 36 & 37 & 38 & 39 & 40 & 41 & 42 & 43 & 44 & 45 & 46 & 47 & 48 & 49 & 50 & 51 & 52 & 53 & 54 & 55 & 56 & 57 & 58 & 59 & 60 & 61 & 62 & 63 & 64 & 65 & 66 & 67 & 68 & 69 & 70 & 71 & 72 & 73 & 74 & 75 & 76 & 77 & 78 & 79 & 80 & 81 & 82 & 83 & 84 & 85 & 86 & 87 & 88 & 89 & 90 & 91 & 92 & 93 & 94 & 95 & 96 & 97 & 98 & 99 & 100	21	33	32	15564	"	"
SW of SE 1/4	1	34	31	4000	"	"
SW of NW 1/4	17	34	9	4000	"	"
SW of SE 1/4	34	38	6	8000	"	"
SE of SE 1/4	22	39	11	4000	"	"
Lot 1 & 2	1	15				
Lot 1-2-3-4	25	33	19	8324	"	"
Lot 1-2-3-4	1	34	19	10573	"	"
SW of NW 1/4	10	35	19	8000	"	"
SW of NW 1/4	1	35	19	4000	"	"
NE of SE 1/4 & SW of SE 1/4	17	35	19	8000	"	"
SE of SE 1/4	17	35	19	4000	"	"
Lot 1	33	34	20	397	"	"
SW of NW 1/4	29	32	36	8000	"	"
SW of SE 1/4	32	19	36	4000	"	"
Lot 2	1	20	33	3976	"	"
SW of SE 1/4	17	35	22	4000	"	"
SW of SE 1/4 & SE of SW 1/4	26	35	22	8000	"	"
SE of SE 1/4	12	36	22	4000	"	"
E of SE 1/4	8	37	23	8000	"	"
E of SE 1/4 - SW of SE 1/4 & SE of SW 1/4	30	37	23	16000	"	"
SE of NW 1/4 - SW of NE 1/4 & NW of SE 1/4	28	29	36	12000	"	"
SE of SE 1/4 & NW of NW 1/4	15	28	14	8000	"	"
NE of SE 1/4	11	29	16	4000	"	"
SE of SE 1/4	6	26	18	4000	"	"
SE of NW 1/4 & NW of SW 1/4	16	21	37	8000	"	"
SE of SE 1/4	17	21	37	4000	"	"
SW of NW 1/4	26	21	37	4000	"	"
SE of SE 1/4	31	21	37	4000	"	"
NW of SE 1/4	10	19	33	4000	"	"
SE of SE 1/4 & NW of NW 1/4 & NE of NW 1/4	22	19	33	12000	"	"
NW of SE 1/4 & SE of SE 1/4	8	14	33	8000	"	"
NW of SE 1/4	7	26	48	4000	"	"

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LIST No. 6 OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to Sub- certain townships and fractional townships where the full amount of school lands to which such Congress approved, February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

townships are Thirty-sixth sec

SECTIONAL DESCRIPTION	PORTIONS OF SECTIONS IN AND IN LOST TO THE STATE	ACRES	TOWNSHIP	RANGE	SUB-TRACT	DESCRIPTION TO SUPPLY THE DEF
Amount brought forward		1096822				Amount
NE ¹ / ₄ of NE ¹ / ₄		36 31 9			4000	NE ¹ / ₄ of NE
Feb 17 1870						
Deficit in S ¹ / ₄ of SW ¹ / ₄	✓ 16 31 10	7432				Lat 1 a
SE ¹ / ₄ of SW ¹ / ₄	✓ 36 33 13	4000				NE ¹ / ₄ of
SW ¹ / ₄ of SW ¹ / ₄	✓ 36 33 13	4000				SW ¹ / ₄ of
NE ¹ / ₄ of NE ¹ / ₄	✓ 16 33 12	4000				SW ¹ / ₄ of
W ¹ / ₄ of NW ¹ / ₄	✓ 36 31 10	8000				W ¹ / ₄ of
NE ¹ / ₄ of NW ¹ / ₄	✓ 36 31 10	4000				NE ¹ / ₄ of
SE ¹ / ₄ of NW ¹ / ₄	✓ 36 31 10	4000				SE ¹ / ₄ of
E ¹ / ₄ of SW ¹ / ₄	✓ 36 31 10	8000				W ¹ / ₄ of
W ¹ / ₄ of SW ¹ / ₄	✓ 36 31 10	8000				SE ¹ / ₄ of
NE ¹ / ₄ of NE ¹ / ₄	✓ 16 32 9	4000				W ¹ / ₄ of
W ¹ / ₄ of NE ¹ / ₄	✓ 16 32 9	4000				SE ¹ / ₄ of
NE ¹ / ₄ of SE ¹ / ₄	✓ 16 32 9	4000				W ¹ / ₄ of
SW ¹ / ₄ of SE ¹ / ₄	✓ 16 32 9	4000				SE ¹ / ₄ of
SW ¹ / ₄ of SE ¹ / ₄	✓ 16 32 9	4000				W ¹ / ₄ of
NE ¹ / ₄ of SE ¹ / ₄	✓ 36 32 9	16000				SE ¹ / ₄ of
SE ¹ / ₄ of SE ¹ / ₄	✓ 36 32 9	16000				W ¹ / ₄ of
NE ¹ / ₄ of NW ¹ / ₄	✓ 36 32 9	4000				SE ¹ / ₄ of
SE ¹ / ₄ of NW ¹ / ₄	✓ 36 32 9	4000				W ¹ / ₄ of
E ¹ / ₄ of SW ¹ / ₄	✓ 36 32 9	8000				SE ¹ / ₄ of
SW ¹ / ₄ of SW ¹ / ₄	✓ 36 32 9	3929				W ¹ / ₄ of
NW ¹ / ₄ of SW ¹ / ₄	✓ 36 32 9	4000				SE ¹ / ₄ of
SW ¹ / ₄ of SW ¹ / ₄	✓ 36 32 9	4000				W ¹ / ₄ of
Deficit in NE ¹ / ₄ of NE ¹ / ₄	✓ 16 32 10	3770				SE ¹ / ₄ of
NW ¹ / ₄ of NE ¹ / ₄	✓ 16 32 10	4000				W ¹ / ₄ of
Deficit in S ¹ / ₄ of NE ¹ / ₄	✓ 16 32 10	7136				SE ¹ / ₄ of
NE ¹ / ₄ of SE ¹ / ₄	✓ 16 32 10	4000				W ¹ / ₄ of
NW ¹ / ₄ of SE ¹ / ₄	✓ 16 32 10	4000				SE ¹ / ₄ of
SE ¹ / ₄ of SE ¹ / ₄	✓ 16 32 10	4000				W ¹ / ₄ of
Amount Carried forward		1270089				Amount

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(4-801)

LIST No. 6 OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale in certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

township
Thirty-

REMARKS AS TO CAUSE OF DEFICIENCY

PORTIONS OF SECTION 16 AND 36, TO THE STATE

SEC.

TOWNSHIP RANGE TOWNSHIP

TO SUPPLY

Amount brought forward		1270089
Blanchard Indian Reservation	E of Twp. 2 N 6 of Sec 16	16 32 10 1120 00
Feb 14 1870	SE of Sec 16	16 32 10 4000
	Twp. 4 Twp	16 32 10 4000
	Deficit in Sec of Twp	16 32 10 3434
	Twp of Sec	16 32 10 4000
	SW of Sec	16 32 10 4000
	Twp. 4 Twp	16 32 12 4000
	E of Twp	16 32 12 8000
	E of Sec	16 32 12 8000
	SW of Twp & W of Sec	16 32 12 112000
	E	16 32 13 132000
	W	16 32 13 32000
	Twp. 4 N 6	36 32 13 8080
	SE	36 32 13 116000
	S of N 6	36 32 13 8000
	Twp	36 32 13 116000
	SE of Sec	36 32 13 4000
	N of Sec	36 32 13 8000
	SW of Sec	36 32 13 4000
	E of N 6	36 33 7 8000
	W of N 6 & Twp of SE	36 33 7 112000
	E of SE	36 33 7 8000
	SW of SE	36 33 7 4000
	N 6 of Twp	36 33 7 4000
	Deficit in N 6 of N 6	16 32 12 10
	W of Twp & N 6 of Twp	36 33 7 112000
	SW	36 33 7 16000
	Twp	16 33 7 16000
	SW	16 33 7 16000
	N 6 N of SE & SW of SE	16 33 9 112000
	SE of SE	16 33 9 4000
	Twp	16 33 9 16000
	N of Sec	16 33 9 8000
	S of Sec	16 33 9 8000
	Twp	36 33 9 16000
	Deficit in N 6 of N 6	16 32 12 60
	N of Sec & SW of Sec	36 33 9 112000
	N of Sec & SW of Sec	36 36 12 11960
	Deficit in W	16 36 12 29195
	Twp	16 35 13 16000
	SW	16 35 13 16000
	Deficit in E	36 35 13 112308

Amount claimed forward 1735056

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SCHOOL SELECTIONS,

which have been selected for the support of schools in townships, are entitled have not been granted in place, and which selections are provided for in the act of thirty-sixth sections, who settled before the surveys of the Public Lands, to pre-empt their settlements.

DESCRIPTION OF TRACTS SELECTED TO SUPPORT THE TEACHERS IN SCHOOL LANDS	SEC.	TOWNSHIP	RANGE	AREA OF TRACTS	NO. OF LOTS	DATE OF SELECTION
Amount brought forward	12900	89				
E of NE ¹ & NE ¹ of SE ¹	12	31	32	120 00	26	Oct 23, 1888
W of NE ¹	21	31	32	40 00	"	"
NE ¹ of SE ¹	21	31	32	40 00	"	"
Lot 4	22	31	32	34 34	"	"
SW of SE ¹	22	31	32	40 00	"	"
SW of NE ¹	27	31	31	40 00	"	"
SW of SW ¹	5	31	32	40 00	"	"
E of SE ¹	6	31	32	80 00	"	"
W of NW ¹	8	31	32	80 00	"	"
SE of SW ¹ & E of SE ¹	26	31	32	120 00	"	"
SW	17	32	32	32 00	"	"
W	29	32	32	32 00	"	"
N of NE ¹	19	32	32	80 00	"	"
N of N	20	32	32	160 00	"	"
E of SE ¹	20	32	32	80 00	"	"
E of E	30	32	32	160 00	"	"
NE of NE ¹	31	32	32	40 00	"	"
N of NW ¹	32	32	32	80 00	"	"
SE of NW ¹	17	32	32	40 00	"	"
SE of SW ¹ & SW of SE ¹	8	32	32	80 00	"	"
W of SE ¹ & SE of SE ¹	29	32	32	120 00	"	"
E of NW ¹	20	32	32	80 00	"	"
SW of NW ¹	33	32	32	40 00	"	"
Lot 1	1	32	32	40 00	"	"
SE of NE ¹ & E of SE ¹	1	32	32	120 00	"	"
E of E	12	32	32	160 00	"	"
NE	26	33	31	160 00	"	"
SW of NE ¹ & E of SE ¹	25	33	31	160 00	"	"
NE of NE ¹ & SE of SE ¹	11	34	31	280 00	"	"
SW of NE ¹	20	32	32	40 00	"	"
E of NW ¹ & W of SW ¹	12	34	31	160 00	"	"
W of NW ¹	13	34	31	80 00	"	"
W of NE ¹	14	34	31	80 00	"	"
Lot 2-3 & 4	31	34	32	160 60	"	"
E of NW ¹ & NE of SW ¹	21	34	32	120 00	"	"
Lot 1 & 4 NW of NW ¹	3	35	32	119 60	"	"
Lot 2-3 SW of NW ¹	28	35	32	291 90	"	"
E of W	30	35	32	160 00	"	"
E of W	31	35	32	160 00	"	"
Lot 2-3 & 4	30	35	32	123 05	"	"
Amount carried forward	17350	56				

NA

NA

LIST No. 6 OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale in certain townships and fractional townships where the full amount of school lands in which such Congress approved February 20, 1839, entitled, "An Act to authorize settlers upon Sixteenth and

REMARKS AS TO CAUSE OF DEFECTION.	PORTIONS OF SECTIONS IN AIL IN LIMIT TO THE STATE.	SEC.	TOWNSHIP.	RANGE.	AREA OF TRACT.
Amount brought forward 17350.56					
Remainder Section Reservation Deficit in E		36	35	13	164.28
W. of NE ¹ S. of NE ¹ SE ¹		16	33	12	1280.00
W. of NE ¹		36	33	12	800.00
E. of NE ¹		36	33	12	800.00
SE ¹		36	33	12	1600.00
W. of NW ¹		36	34	7	400.00
W. of NW ¹		36	34	7	400.00
Deficit in NW ¹ of NW ¹		36	34	7	38.03
SE ¹ of NW ¹		36	34	7	400.00
Deficit in NW ¹ of NW ¹		36	34	7	148.55
W. of NW ¹		36	33	10	400.00
Deficit in NW ¹ of NW ¹		16	34	7	37.90
W. of NW ¹		16	34	7	400.00
SE ¹ of NW ¹		16	35	10	400.00
NW ¹ of NW ¹		16	35	7	400.00
SE ¹ of NW ¹		16	35	7	400.00
NW ¹ of NW ¹		16	35	7	800.00
NW ¹ of NW ¹ SE ¹ of NW ¹		16	34	7	1200.00
W. of NW ¹		16	30	8	400.00
NW ¹ of NW ¹		16	30	8	400.00
NW ¹ of NW ¹		16	29	9	800.00
SE ¹ of NW ¹ NW ¹ of NW ¹		16	29	9	1200.00
SE ¹ of NW ¹		16	29	9	800.00
W. of NW ¹		16	29	9	400.00
SE ¹ of NW ¹		16	35	7	400.00
NW ¹ of NW ¹		16	29	8	400.00
NW ¹ of NW ¹		16	34	12	400.00
NW ¹ of NW ¹ SE ¹ of NW ¹		16	34	12	2800.00
NW ¹ of NW ¹		36	33	10	800.00
Deficit in NW ¹		36	35	7	117.1
SE ¹ of NW ¹		36	33	10	800.00
NW ¹ of NW ¹ SE ¹ of NW ¹		36	33	10	1200.00
NW ¹ of NW ¹		16	35	13	400.00
SE ¹ of NW ¹		16	35	13	400.00
SE ¹ of NW ¹ W. of NW ¹		16	35	13	200.00
NW ¹ of NW ¹ E. of NW ¹		16	31	9	1240.00
W. of NW ¹		16	34	9	800.00
NW ¹ of NW ¹		16	31	10	400.00
E. of NW ¹		36	32	10	800.00
W. of NW ¹ NW ¹ of NW ¹		36	32	10	1200.00
Amount carried forward					20780.49

SCHOOL SELECTIONS

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townships are entered have not been granted in place, and which selections are provided for in the act of Thirty-sixth sections, who settled before the survey of the Public Lands, to pre-empt their settlements.

DESCRIPTION OF TRACTS SELECTED TO SUPPLY THE DEFICIENCY IN SCHOOL LANDS.

TOWNSHIP RANGE AREA OF TRACTS NO. OF ACRES DATE OF SELECTION

Amount brought forward 17350.55				
Lot 1-2-3 and 4	31	37 1/2	32	164.28
SE 1/4 NE 1/4 NW 1/4 NE 1/4 SE 1/4	26	32	34	28000
E 1/4 NW 1/4	23	32	34	8000
W 1/4 NW 1/4	23	32	34	8000
NE 1/4 NE 1/4 NW 1/4 NW 1/4	26	32	34	16000
SW 1/4 NW 1/4	14	20	36	4000
SW 1/4 NW 1/4	14	20	36	4000
Lot 5	6	20	37	38.03
NE 1/4 NE 1/4	12	20	41	4000
Lot 1-2 NE 1/4 NE 1/4	6	20	42	144.55
NE 1/4 NE 1/4	5	23	35	4000
Lot 1	6	23	35	37.90
SW 1/4 NE 1/4	6	23	35	4000
NE 1/4 NW 1/4	25	22	35	4000
NE 1/4 NW 1/4	29	22	35	4000
SW 1/4 NW 1/4	29	22	35	4000
NW 1/4 NE 1/4 NE 1/4 NW 1/4	33	22	35	8000
NE 1/4 NE 1/4 NW 1/4 NE 1/4	35	22	37	12000
NE 1/4 NW 1/4	19	23	35	4000
NW 1/4 NE 1/4	30	23	35	4000
NE 1/4 NE 1/4	25	29	35	8000
NE 1/4 NW 1/4 NW 1/4 NE 1/4	26	39	36	12000
NE 1/4 NE 1/4	27	39	36	8000
SW 1/4 NW 1/4	28	39	36	4000
NE 1/4 NE 1/4	24	21	36	4000
NE 1/4 NE 1/4	7	20	34	4000
NE 1/4 NW 1/4	11	19	35	4000
NE 1/4 NE 1/4 NW 1/4 NW 1/4	12	19	35	2800
Lot 1 NE 1/4 NE 1/4	1	21	38	81.17
E 1/4 NE 1/4	12	21	38	8000
E 1/4 NE 1/4 NE 1/4 NE 1/4	13	21	38	12000
NE 1/4 NE 1/4	15	21	38	4000
SW 1/4 NW 1/4	14	21	38	4000
NW 1/4 NW 1/4 NE 1/4 NW 1/4	23	21	38	20000
NE 1/4 NE 1/4 NE 1/4	9	24	31	24000
NE 1/4 NE 1/4	28	24	31	8000
NE 1/4 NE 1/4	29	28	31	4000
NE 1/4 NE 1/4	24	31	32	8000
NE 1/4 NE 1/4 NW 1/4 NE 1/4	24	31	32	12000
Amount Carried Forward				20780.49

NA

LIST No. 6 OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale of certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

REMARKS AS TO CLAIM OF INDEMNITY	PORTIONS OF SECTION 16 AND 36 LOW, TO THE STATE	TA	TOWNSHIP	RANGE	AREA OF TRACT
<i>Alameda Indian Reservation</i>					
<i>Feb. 14, 1870</i>					
	Amount brought forward	2078049			
	NE ¹ of SE ¹	36 32 10 1/2 40 00			
	S ¹ of SE ¹	36 32 10 1/2 80 00			
	W ¹	36 33 7 1/2 19 92			
	E ¹	36 33 9 1/2 1320 00			
	NE ¹ of SE ¹ and SE ¹ of NE ¹	36 34 10 1/2 120 00			
	SW ¹ of NE ¹	36 34 7 1/2 40 00			
	E ¹ of NW ¹	16 36 13 1/2 80 00			
	W ¹ of NW ¹	16 36 13 1/2 80 00			
	E ¹	16 34 10 1/2 1320 00			
	NE ¹ of NW ¹	36 35 13 1/2 40 00			
	Deficit in NE ¹ of NW ¹	36 34 7 1/2 1 00			
	W ¹ of NW ¹ and SE ¹ of NW ¹	36 35 13 1/2 115 89			
	NW ¹ of SW ¹	36 35 13 1/2 40 00			
	SW ¹ of SW ¹	36 35 13 1/2 40 00			
	NE ¹ of NE ¹	16 30 8 1/2 40 00			
	W ¹ of NE ¹ and SE ¹ of NE ¹	16 30 8 1/2 120 00			
	NW ¹	36 33 12 1/2 160 00			
	NE ¹ of SW ¹	36 33 12 1/2 40 00			
	NW ¹ of SW ¹	36 33 12 1/2 40 00			
	S ¹ of SW ¹	36 33 12 1/2 80 00			
	Deficit in NE ¹ of NE ¹ and SE ¹ of NE ¹	16 33 13 1/2 113 44			
	SW ¹ of NE ¹ and NW ¹ of SE ¹	16 33 13 1/2 80 00			
	S ¹ of SE ¹ and NE ¹ of SE ¹	16 33 13 1/2 100 00			
	SW ¹	16 33 13 1/2 160 00			
	Deficit in NE ¹ of NE ¹ and SE ¹ of NE ¹	16 33 13 1/2 1 48			
	SW ¹ and E ¹ of NW ¹	36 34 13 1/2 240 00			
	Deficit in NE ¹ of NE ¹ and SE ¹ of NE ¹	16 33 13 1/2 1 62			
	SW ¹ of NW ¹	36 34 13 1/2 40 00			
	NE ¹	36 34 13 1/2 160 00			
	NE ¹ of SE ¹	36 34 13 1/2 40 00			
	NW ¹ of SE ¹	36 34 13 1/2 40 00			
	Deficit in NW ¹	36 36 12 1/2 1 43 1			
	Deficit in SE ¹	36 29 7 1/2 158 49			
	W ¹ of NW ¹	16 34 9 1/2 80 00			
	Deficit in E ¹ of NW ¹ and NE ¹ of SW ¹	16 34 9 1/2 114 89			
	W ¹ of SW ¹ and SE ¹ of SW ¹	16 34 9 1/2 120 00			
	W ¹ of NE ¹ and SE ¹ of NE ¹	36 31 9 1/2 120 00			
	NW ¹ of NE ¹ of SW ¹	16 31 10 1/2 200 00			
	NE ¹ of NE ¹	36 34 7 1/2 40 00			
	SE ¹ of NE ¹	36 34 7 1/2 40 00			
	NW ¹ of NE ¹	36 34 7 1/2 40 00			
	E ¹ of SE ¹	36 34 7 1/2 80 00			
	Amount Carried forward	2504158			

SCHOOL SELECTIONS.

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which have been selected for the support of schools in townships are entitled have not been granted in place, and which selections are provided for in the act of Thirty-sixth sections, who settled before the surveys of the Public Lands, to pre-empt their settlements."

DESCRIPTION OF TRACTS SELECTED TO SUPPLY THE DEFICIENCY IN SCHOOL LANDS.

SEC. TOWNSHIP RANGE AREA OF TRACTS NO. OF ACRES DATE OF SELECTION

Amount brought forward

Sec 34	31 st	32 nd	2078049	27	Oct 23, 1888	32-120
Sec 35	31 st	32 nd	8000	"	"	"
Lot 1-2 Sec 36 th E. Sec 36 th	20	34 th 31 st	31992	"	"	"
Sec 31	34 th	32 nd	32000	"	"	"
Sec 33	34 th	32 nd	12000	"	"	"
Sec 34	34 th	32 nd	4000	"	"	"
Sec 8	35 th	32 nd	8000	"	"	"
Sec 29	35 th	32 nd	8000	"	"	"
Sec 31	35 th	32 nd	32000	"	"	"
Lot 1	20	35 th 32 nd	4400	"	"	"
Lot 1-5 Sec 36 th E. Sec 36 th	19	35 th 32 nd	11589	"	"	"
Sec 12	40 th	31 st	4000	"	"	"
Sec 7	40 th	31 st	4000	"	"	"
Sec 15	30 th	33 rd	4000	"	"	"
Sec 14	30 th	33 rd	12000	"	"	"
Sec 24	33 rd	34 th	16000	"	"	"
Sec 27	34 th	34 th	4000	"	"	"
Sec 28	34 th	34 th	4000	"	"	"
Sec 28	34 th	34 th	8000	"	"	"
Lot 1-4 Sec 36 th E. Sec 36 th	19	33 rd 35 th	11344	"	"	"
Sec 30	33 rd	35 th	8000	"	"	"
Sec 31	33 rd	35 th	12000	"	"	"
Lot 1-3 Sec 36 th E. Sec 36 th	3	34 th 34 th	16148	"	"	"
Lot 1 Sec 36 th E. Sec 36 th	4	34 th 34 th	24162	"	"	"
Sec 9	34 th	34 th	4000	"	"	"
Sec 9	34 th	34 th	16000	"	"	"
Sec 22	34 th	34 th	4000	"	"	"
Sec 17	34 th	35 th	4000	"	"	"
Lot 1-5 Sec 36 th E. Sec 36 th	6	34 th 35 th	11731	"	"	"
Lot 1-2 Sec 36 th E. Sec 36 th	7	34 th 35 th	11849	"	"	"
Sec 7	34 th	35 th	8000	"	"	"
Lot 1-2 Sec 36 th E. Sec 36 th	18	34 th 35 th	11489	"	"	"
Sec 18	34 th	35 th	12000	"	"	"
Sec 32	33 rd	35 th	12000	"	"	"
Sec 32	33 rd	35 th	20000	"	"	"
Sec 30	19 th	37 th	4000	"	"	"
Sec 32	19 th	37 th	4000	"	"	"
Sec 33	19 th	37 th	4000	"	"	"
Sec 12	20 th	35 th	8000	"	"	"

Amount carried forward 2504153

LIST No. 6 OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale in certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

REMARKS AS TO CAUSE OF DEFICIENCY.

PORTIONS OF SECTIONS 16 AND 36 BELONG TO THE STATE

SEC. TOWNSHIP RANGE AND OF TRACTS

	Amount brought forward	25041 53
Klamath Indian Reservation	NE 1/4 of SE 1/4	36 34 7 1/2 140 00
Feb 17 1870	E 1/2 of SE 1/4	16 35 7 1/2 80 00
	W 1/2 of SE 1/4	16 35 7 1/2 80 00
	NE 1/4 of SE 1/4	36 35 7 1/2 40 00
	SE 1/4 of SE 1/4	36 35 7 1/2 40 00
	W 1/2 of SE 1/4	36 35 7 1/2 80 00
	SW 1/4 of SE 1/4	36 36 10 1/2 40 00
	E 1/2 of SE 1/4	36 36 10 1/2 80 00
	E 1/2 of SE 1/4	36 36 10 1/2 80 00
	SW 1/4 of SE 1/4	36 36 10 1/2 40 00
	NE 1/4	16 29 10 1/2 160 00
	SE 1/4	16 29 10 1/2 160 00
	W 1/2	36 35 10 1/2 320 00
	Defect in E 1/2	16 35 12 1/2 315 26
	SW 1/4	16 35 12 1/2 160 00
	SW 1/4 of SE 1/4 E 1/2 of SE 1/4	16 35 12 1/2 120 00
	Defect in E 1/2	36 35 12 1/2 316 64
	NE 1/4 of SE 1/4	16 30 7 1/2 40 00
	W 1/2 of SE 1/4	16 30 7 1/2 80 00
	SE 1/4 of SE 1/4	16 30 7 1/2 40 00
	Part of NE 1/4 of SE 1/4	16 30 7 1/2 33 25
	SW 1/4 of SE 1/4	16 30 7 1/2 40 00
	SE 1/4 of SE 1/4	16 30 7 1/2 40 00
	NE 1/4 of NE 1/4	16 30 7 1/2 40 00
	SE 1/4 of NE 1/4	16 30 7 1/2 160 00
	Part of NE 1/4 of NE 1/4	16 30 7 1/2 26 04
	W 1/2 of NE 1/4	16 30 7 1/2 80 00
	Part of SE 1/4 of NE 1/4	16 30 7 1/2 13 93
	SW 1/4 of NE 1/4 of SE 1/4	16 30 7 1/2 5 92
	NE 1/4	36 30 7 1/2 160 00
	Part of E 1/2	36 36 13 1/2 6 03
	SW 1/4	36 30 7 1/2 160 00
	SW 1/4 of SE 1/4	36 30 7 1/2 40 00
	NE 1/4 of SE 1/4	36 30 7 1/2 40 00
	SE 1/4 of SE 1/4	36 30 7 1/2 40 00
	SW 1/4 of SE 1/4	36 30 7 1/2 40 00
	W 1/2	16 32 7 1/2 320 00
	W 1/2 of NE 1/4 and SE 1/4 of NE 1/4	16 32 7 1/2 120 00
	Part of NE 1/4 of SE 1/4	16 32 7 1/2 9 00
	SE 1/4 of SE 1/4	16 35 11 1/2 40 00
	SW 1/4 of SE 1/4 and W 1/2 of SE 1/4	16 35 11 1/2 120 00
	SW 1/4 of SE 1/4	16 35 11 1/2 80 00
	SW 1/4 of SE 1/4	36 36 10 1/2 39 72
		25041 53

SCHOOL SELECTIONS,

which have been selected for the support of schools in
 Thirty-sixth sections, who settled before the surveys of the Public Lands, to pre-empt their settlements.

DESCRIPTION OF TRACTS SELECTED
 TO SUPPLY THE DEFICIENCY IN SCHOOL LAND

SEC. TOWNSHIP RANGE AREA OF TRACTS NO. OF LOTS DATE OF SELECTION

Amount brought forward

NE 1/4 of NE 1/4	13	20	35	4000	27	Oct 23, 1888
E 1/4 of NW 1/4	1	22	36	8000		
SW 1/4 of NW 1/4 and NW 1/4 of SW 1/4	2	22	36	8000		
SW 1/4 of NE 1/4	25	22	36	4000		
SW 1/4 of SE 1/4	31	22	37	4000		
W 1/4 of NW 1/4	12	23	35	8000		
NE 1/4 of SW 1/4	24	19	33	4000		
NE 1/4 of SW 1/4 and SW 1/4 of SE 1/4	32	19	33	8000		
SW 1/4 of SE 1/4 and NE 1/4 of SW 1/4	4	20	32	8000		
NE 1/4 of SW 1/4	13	21	33	4000		
SW 1/4 of NE 1/4 and NW 1/4 of SW 1/4	14	21	33	16000		
SW 1/4 of NE 1/4 and NE 1/4 of SW 1/4	15	21	33	16000		
E 1/4 of NW 1/4	19	27	31	32000		
SW 1/4 of NE 1/4 and E 1/4 of NW 1/4	19	27	31	31526		
W 1/4 of E 1/4	30	27	31	16000		
W 1/4 of NE 1/4 and SW 1/4 of NE 1/4	31	27	31	12000		
SW 1/4 of NE 1/4 and E 1/4 of NW 1/4	30	27	31	31664		
SE 1/4 of NW 1/4	20	41	19	4000		
E 1/4 of SE 1/4	7	41	19	8000		
NE 1/4 of SW 1/4	8	41	19	4000		
SW 1/4 of NE 1/4	8	41	19	3325		
NE 1/4 of NE 1/4	14	41	18	4000		
NE 1/4 of NE 1/4	15	41	18	4000		
SW 1/4 of SE 1/4	27	40	16	4000		

Total 23 36 of NW 1/4 SW 1/4 23 41 16 18607

W 1/4 of NW 1/4 and Lot 3 20 41 19 9485

SW 1/4 of NE 1/4 and Lot 5 and 6	19	41	18	16603		
NE 1/4 of NE 1/4 and NW 1/4 of NE 1/4	27	40	16	16000		
SE 1/4 of SE 1/4	14	41	16	4000		
SW 1/4 of SW 1/4	13	41	16	4000		
NE 1/4 of NW 1/4	24	41	16	4000		
NE 1/4 of NE 1/4	23	47	16	4000		
E 1/4 of NW 1/4	18	41	19	32000		
E 1/4 of NW 1/4 and NE 1/4 of SW 1/4	12	39	20	12000		
SW 1/4 of NE 1/4 and NW 1/4 of NE 1/4	29	12	3	716		
NE 1/4 of NW 1/4	28	21	37	4000		
NE 1/4 of NE 1/4 and NE 1/4 of NW 1/4	24	21	37	12000		
NE 1/4 of NW 1/4 and NW 1/4 of SW 1/4	2	22	37	8000		
SW 1/4 of NE 1/4	3	20	32	2972		
Total				200000		

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(4-300)

LIST No. 6 OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale at certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

REMARKS AS TO CAUSE OF DEFICIENCY. PORTIONS OF SECTIONS 16 AND 36 LOST TO THE STATE. SEC. TOWNSHIP RANGE AREA OF TRACTS

	Amount brought forward	29007 35
Remainder Indemnity	Tract of Mt	16 34 10 1 4000
Feb. 17, 1890	N.E. of Mt	16 34 10 1 4000
	Sw. of Swt	36 32 7 1 4000
	E. of N.E.	16 32 7 1 8000
	N.E. of Mt	16 34 12 1 4000
	N. of Mt and Sw. of Mt	16 34 12 1 12000
	Sw. of N.E.	16 34 10 1 8000
	N.E. of Swt	16 36 13 1 4000
	Sw. of N.E.	16 34 10 1 4000
	Mt	16 34 13 1 159 55
	N. of Swt	16 34 13 1 8000
	E. of Swt	16 34 13 1 8000
	E. of N.E.	16 29 11 1 8000
	N.E. of N.E.	16 29 11 1 4000
	Mt of N.E.	16 29 11 1 4000
	N.E. of N.E.	16 29 11 1 4000
	E. of N.E.	16 29 11 1 8000
	N. of Mt and N.E. of Mt	16 29 11 1 12000
	E. of Swt	16 29 11 1 8000
	N. of Swt and Sw. of Mt	16 29 11 1 12000
	N. of Mt	16 29 10 1 8000
	Sw. of Mt	16 29 10 1 4000
	N.E. of Mt and N. of Swt	16 29 10 1 12000
	N.E. of Swt	16 29 10 1 4000
	Sw. of Swt	16 29 10 1 4000
	N. of Mt and N.E. of Mt	36 35 11 1 12000
	E. of Swt	36 35 11 1 8000
	N. of Swt and Sw. of Mt	36 35 11 1 12000
	N. of Swt and N.E. of Swt	16 35 7 1 12000
	E. of N.E.	36 36 11 1 8000
	W. of N.E.	36 36 11 1 8000
	N.E. of Mt	16 35 11 1 4000
	Mt of Mt	16 35 11 1 4000
	E. of Mt and Mt of Mt	36 35 7 1 119 83
	Sw. of Mt	36 35 7 1 4000
	N. of Swt and Sw. of Swt	36 35 7 1 12000
	Deficit in N.E. of Swt	36 35 7 1 37 25
	N.E. of N.E.	36 35 7 1 4000
	N.E. of N.E.	36 35 7 1 4000
	Sw. of N.E.	36 35 7 1 4000
	N.E. of N.E.	36 35 7 1 4000
	Amount carried forward	31923 98

SCHOOL SELECTIONS.

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which have been selected for the support of schools in townships are entitled have not been granted in place, and which selections are provided for in the act of Thirty-sixth sections, who settled before the surveys of the Public Lands, to pre-empt their settlements.

DESCRIPTION OF TRACTS SELECTED TO SUPPLY THE DEFICIENCY IN SCHOOL LANDS

ACRE

TOWNSHIP

RANGE

AREA OF TRACTS

NO. OF LIST

DATE OF SELECTION

Amount brought forward

2900735

SW of NW	9	28	14	4000	27	Oct 23, 1888
NE of NE	17	28	14	4000	"	"
SE of SW	13	29	13	4000	"	"
E of NE	20	30	14	8000	"	"
SE of SE	15	19	37	4000	"	"
NE of NE and NE of SE	17	19	37	12000	"	"
NE of NW	21	19	37	8000	"	"
NE of NW	23	19	37	4000	"	"
SW of NE	26	19	37	4000	"	"
Lot 1-2 and E of NW	18	41	19	15955	"	"
SW of SW	17	41	18	8000	"	"
SW of NE	20	41	18	8000	"	"
NE of SE	9	19	33	8000	"	"
SW of NW	10	19	33	4000	"	"
NE of NW	15	19	33	4000	"	"
NE of NE	9	20	32	4000	"	"
SW of NW and NW of SW	10	20	32	8000	"	"
SW of NE and E of SE	8	20	37	12000	"	"
NE of NW and NW of NE	20	20	37	8000	"	"
NE of NW and NE of SW	21	20	37	12000	"	"
E of NE	32	20	37	8000	"	"
SW of SW	3	21	37	4000	"	"
NE of NE and NE of NW	4	21	37	12000	"	"
NE of SE	5	21	37	4000	"	"
NE of NE	35	21	37	4000	"	"
SW of NE and SE of NW	8	21	37	12000	"	"
W of NW	9	21	37	8000	"	"
NE of NW and S of NE	10	21	37	12000	"	"
NE of NW and E of NW	18	21	37	12000	"	"
E of SW	27	21	37	8000	"	"
W of SE	34	21	37	8000	"	"
NE of SE	20	21	37	4000	"	"
NE of NE	29	21	37	4000	"	"

Lot 1-2 and NW of NW

1

23

35

11983

28

Oct 24, 1888

NW of NE

7

23

35

4000

"

"

NE of NW and E of SW

7

23

35

12000

"

"

Lot 1-2

14

23

35

3725

"

"

NE of SE

7

23

36

4000

"

"

NE of SW

14

23

36

4000

"

"

NE of NW

20

23

36

4000

"

"

SW of SW

29

23

36

4000

"

"

Amount carried forward

3192398

SCHOOL SELECTIONS

which have been selected for the support of schools in
 townships are entitled have not been granted in place, and which selections are provided for in the act of
 March 1st 1888, who settled before the surveys of the Public Lands, to pre-empt their settlements.

SECTION OF TRACTS SELECTED
 TO SETTLE THE DEFICIENCY IN SCHOOL LANDS.

SEC. TOWNSHIP RANGE AREA OF TRACTS OF LIST. DATE OF SELECTION

brought forward					392398	
W. 1/4 of NE 1/4	29	23	36	4000	28	Oct 24, 1888
NE 1/4 of NE 1/4	31	23	36	4000		
SW 1/4 of SW 1/4	61	23	36	4000		
NE 1/4 of NE 1/4	15	23	36	4000		
W. 1/4 of NE 1/4 of NE 1/4	15	23	36	12000		
SW 1/4 of SW 1/4	21	23	36	4000		
SW 1/4 of SW 1/4	28	23	36	4000		
NE 1/4 of NE 1/4	29	23	36	4000		
NE 1/4 of SW 1/4	4	23	35	4000		
NE 1/4 of NE 1/4 of NE 1/4	5	24	35	8000		
W. 1/4 of SW 1/4 of SW 1/4	9	24	35	12000		
SW 1/4 of SW 1/4	5	24	36	4000		
NE 1/4 of NE 1/4	23	19	32	4000		
SW 1/4 of SW 1/4	24	19	32	4000		
NE 1/4 of NE 1/4	24	19	32	8000		
NE 1/4 of SW 1/4	33	19	32	4000		
W. 1/4 of NE 1/4 of NE 1/4	34	19	32	12000		
W. 1/4 of NE 1/4 of W. 1/4 of NE 1/4	10	19	33	12000		
SW 1/4 of NE 1/4	15	19	33	4000		
NE 1/4 of NE 1/4	33	19	33	4000		
SW 1/4 of SW 1/4	34	19	33	4000		
NE 1/4 of SW 1/4 of NE 1/4 of NE 1/4	10	20	32	16000		
SW 1/4 of SW 1/4 of NE 1/4 of SW 1/4	34	20	32	8000		
NE 1/4 of SW 1/4 of NE 1/4 of NE 1/4	34	20	32	8000		
SW 1/4 of NE 1/4 of NE 1/4 of NE 1/4	34	19	32	8000		
SW 1/4 of SW 1/4	35	19	32	4000		
NE 1/4 of NE 1/4	19	19	33	3934		
NE 1/4 of NE 1/4	19	19	33	8000		
SW 1/4 of SW 1/4	4	20	33	4000		
NE 1/4 of NE 1/4	4	20	33	4028		
NE 1/4 of SW 1/4	20	41	15	4000		
NE 1/4 of NE 1/4	20	41	15	5751		
NE 1/4 of NE 1/4	20	41	15	29041		
NE 1/4 of NE 1/4 of SW 1/4 of SW 1/4	9	41	17	16000		
NE 1/4 of NE 1/4	24	41	16	11129		
NE 1/4 of NE 1/4	19	41	18	4000		
NE 1/4 of NE 1/4 of NE 1/4 of SW 1/4	33	21	37	12000		
NE 1/4 of NE 1/4	25	22	36	22000		
brought forward					3466581	

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(42-800)

LIST No. 6 OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject to sale in certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

REMARKS AS TO CAUSE OF DEFICIENCY	PORTIONS OF SECTIONS 16 AND 36 LOST TO THE STATE	SEC.	TOWNSHIP	RANGE	AREA OF TRACTS
Amount brought forward					
Blount Indian Reservation					34665 87
Feb 14, 1890	SW 1/4 NE 1/4	36	34	9	160 00
	SW 1/4 NE 1/4	36	35	7	40 00
	SW 1/4 NE 1/4	36	35	9	39 85
	Defect in E	36	35	13	31 64
	Defect in W	16	36	12	28 05
	Defect in NW 1/4	16	31	9	17 94
	NE 1/4 of SW 1/4	36	35	13	31 64
	Defect in W 1/4 of SE 1/4	16	31	9	55
	E 1/4 of SE 1/4	36	36	10	80 00
	SW 1/4 NE 1/4	36	36	10	80 00
	SW 1/4 of SE 1/4	36	36	12	39 53
	Defect in W	36	35	12	518 52
	SW 1/4 of SE 1/4	16	34	7	40 00
	SW 1/4 of NE 1/4	36	35	11	40 00
	SE 1/4 of NE 1/4	36	36	12	40 00
	Defect in E	36	35	7 1/2	3 90
	E 1/4 of NW 1/4	16	36	8	80 00
	NE 1/4 of NE 1/4	36	36	12	80 00
	SW 1/4 of NW 1/4	36	34	13	40 00
	Defect in E	36	35	7 1/2	4 40
	SE 1/4 of SW 1/4	36	36	12	40 00
	Defect in W	36	35	7 1/2	2 96
	W 1/4 of SW 1/4	16	36	13	80 00
	SW 1/4 of SE 1/4	36	34	13	80 00
	SE 1/4 of SW 1/4	36	33	9	40 00
	NE 1/4 of NE 1/4	36	35	11	120 00
	Defect in E	36	35	7 1/2	2 94
	SW 1/4 of SE 1/4	36	29	8	40 00
Defect in E of NE 1/4					
	NE 1/4 of SW 1/4	16	31	10	54 14
	SW 1/4 of SW 1/4	16	34	10	80 00
	SW 1/4 of SW 1/4	16	35	12	40 00
	SW 1/4 of SW 1/4	36	34	10	40 00
	NE 1/4 of SE 1/4	36	34	10	40 00
	SW 1/4 of SE 1/4	36	34	13	40 00
	SW 1/4 of SE 1/4	36	34	13	40 00
	SE 1/4 of SE 1/4	16	34	13	40 00
	SE 1/4 of SE 1/4	36	34	13	40 00
	Defect in NE 1/4 of NE 1/4	16	34	13	35 44
	NE 1/4 of SW 1/4	16	29	7	120 00
Amount Carried forward					8629 70

SCHOOL SELECTIONS,

which have been selected for the support of schools in
 townships are entitled have not been granted in place, and which selections are provided for in the act of
 Thirty-sixth sections, who settled before the surveys of the Public Lands, to pre-empt their settlements."

DESCRIPTION OF TRACTS SELECTED
 TO SUPPLY THE DEFICIENCY IN SCHOOL LANDS.

SEC. TOWNSHIP RANGE AREA OF TRACTS NO. OF LIST DATE OF SELECTION

Amount brought forward			346581		
SW ¹ / ₄ of NE ¹ / ₄ of SE ¹ / ₄ of SW ¹ / ₄ of SE ¹ / ₄	4	22 ⁵ / ₈ 37 ⁵ / ₈	16000	28	Oct 24 1889
SE ¹ / ₄ of NW ¹ / ₄	1	22 ⁵ / ₈ 37 ⁵ / ₈	4000	"	"
Lot 2	1	22 ⁵ / ₈ 37 ⁵ / ₈	3985	"	"
Lot 2 1/2, 3	3	22 ⁵ / ₈ 37 ⁵ / ₈	7763	"	"
Lot 1	18	21 ⁵ / ₈ 34 ⁵ / ₈	4855	"	"
SW ¹ / ₄ of NW ¹ / ₄	20	19 ⁵ / ₈ 33 ⁵ / ₈	8000	"	"
SW ¹ / ₄ of NW ¹ / ₄ & SE ¹ / ₄ of NW ¹ / ₄	29	19 ⁵ / ₈ 33 ⁵ / ₈	8000	"	"
Lot 2	31	19 ⁵ / ₈ 33 ⁵ / ₈	3953	"	"
Lot 1-2-3-4 & E ¹ / ₄ of NW ¹ / ₄	24	24 ⁵ / ₈ 31 ⁵ / ₈	31852	"	"
SW ¹ / ₄ of NW ¹ / ₄	2	20 ⁵ / ₈ 33 ⁵ / ₈	4000	"	"
SW ¹ / ₄ of NW ¹ / ₄	4	20 ⁵ / ₈ 33 ⁵ / ₈	4000	"	"
Lot 2	5	20 ⁵ / ₈ 33 ⁵ / ₈	4390	"	"
SE ¹ / ₄ of NW ¹ / ₄ & NE ¹ / ₄ of NW ¹ / ₄	5	20 ⁵ / ₈ 33 ⁵ / ₈	8000	"	"
SW ¹ / ₄ of SE ¹ / ₄ & SE ¹ / ₄ of SE ¹ / ₄	5	20 ⁵ / ₈ 33 ⁵ / ₈	8000	"	"
Lot 4	5	20 ⁵ / ₈ 33 ⁵ / ₈	4440	"	"
Lot 1	6	20 ⁵ / ₈ 33 ⁵ / ₈	4396	"	"
NE ¹ / ₄ of NW ¹ / ₄ & NW ¹ / ₄ of NE ¹ / ₄	9	20 ⁵ / ₈ 33 ⁵ / ₈	8000	"	"
E ¹ / ₄ of NE ¹ / ₄	9	20 ⁵ / ₈ 33 ⁵ / ₈	8000	"	"
SW ¹ / ₄ of NW ¹ / ₄	15	21 ⁵ / ₈ 33 ⁵ / ₈	4000	"	"
Lot 1-5 of NE ¹ / ₄ & E ¹ / ₄ of SE ¹ / ₄	4	20 ⁵ / ₈ 33 ⁵ / ₈	2194	"	"
NW ¹ / ₄ of NE ¹ / ₄	20	35 ⁵ / ₈ 19 ⁵ / ₈	4000	"	"
Lot 8 & 9	17	33 ⁵ / ₈ 19 ⁵ / ₈	3574	"	"
Lot 2	18	33 ⁵ / ₈ 19 ⁵ / ₈	1900	"	"
Lot 6	19	33 ⁵ / ₈ 19 ⁵ / ₈	240	"	"
NW ¹ / ₄ of SE ¹ / ₄	12	39 ⁵ / ₈ 20 ⁵ / ₈	8000	"	"
SW ¹ / ₄ of SE ¹ / ₄	15	38 ⁵ / ₈ 14 ⁵ / ₈	4000	"	"
NW ¹ / ₄ of NE ¹ / ₄	26	33 ⁵ / ₈ 14 ⁵ / ₈	4000	"	"
SW ¹ / ₄ of NW ¹ / ₄	11	33 ⁵ / ₈ 14 ⁵ / ₈	4000	"	"
SE ¹ / ₄ of NW ¹ / ₄	19	33 ⁵ / ₈ 14 ⁵ / ₈	4000	"	"
SE ¹ / ₄ of SE ¹ / ₄	15	32 ⁵ / ₈ 15 ⁵ / ₈	4000	"	"
SW ¹ / ₄ of SE ¹ / ₄	29	31 ⁵ / ₈ 15 ⁵ / ₈	4000	"	"
SW ¹ / ₄ of NW ¹ / ₄	26	32 ⁵ / ₈ 14 ⁵ / ₈	4000	"	"
Lot 3	24	34 ⁵ / ₈ 19 ⁵ / ₈	3547	"	"
NE ¹ / ₄ of NW ¹ / ₄ & SW ¹ / ₄ of NE ¹ / ₄	24	34 ⁵ / ₈ 34 ⁵ / ₈	12000	29	Jan 23 1889
Amount carried forward			3692970		

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LIST No. 6

OF INDEMNITY

EXHIBITING the tracts of Public Lands situated in the district of lands subject for sale at certain townships and fractional townships where the full amount of school lands to which such Congress approved February 26, 1859, entitled, "An Act to authorize settlers upon Sixteenth and

REMARKS AS TO CAUSE OF DEFICIENCY	PORTIONS OF NOTHING IS AND IS DUE TO THIS STATE	AREA	TOWNSHIP	RANGE	WILLS OF TRACTS
Amount brought forward		36 919 70			
Klamath Indian Reservation Trust of NW 1/4	✓ 16 29 7 E	40 00			
Set Feb 24 1870 Trust of NW 1/4	✓ 36 32 9 E	40 00			
Trust of NE 1/4	✓ 16 35 13 E	40 00			
Defect in NW 1/4 of NE 1/4	✓ 16 35 10 E	35 41 1			
" " " " " "	✓ 16 35 12 E	4 54			
" " " " " "	✓ 16 32 12 E	25 91 1			
" " " " " "	✓ 36 34 7 E	11 09			
NE 1/4 of SE 1/4	✓ 36 34 8 E	40 00			
SE 1/4 of SE 1/4	✓ 36 34 8 E	40 00			
SW 1/4 of SE 1/4	✓ 36 34 8 E	40 00			
Malheur Lake Defect in Trk Tr	✓ 25 32 1/2 E	80 00			
" " " " " "	✓ 25 32 1/2 E	40 00			
" " " " " "	✓ 25 32 1/2 E	40 00			
" " " " " "	✓ 25 32 1/2 E	80 00			
" " " " " "	✓ 25 32 1/2 E	80 00			
Klamath Reservation Trust of NW 1/4	✓ 36 36 10 E	40 00			
" " " " " "	✓ 36 34 9 E	40 00			
" " " " " "	✓ 16 29 8 E	40 00			
Malheur Lake Defect in NW 1/4 of NE 1/4	✓ 16 21 38 E	40 00			
Klamath Reservation Defect in NW 1/4 of NE 1/4	✓ 36 34 11 E	25 83			
" " " " " "	✓ 36 34 11 E	40 00			
" " " " " "	✓ 36 34 11 E	40 00			
" " " " " "	✓ 36 34 11 E	160 00			
" " " " " "	✓ 36 34 11 E	40 00			
" " " " " "	✓ 16 34 12 E	40 00			
" " " " " "	✓ 16 34 12 E	40 00			
" " " " " "	✓ 36 31 13 E	40 00			
" " " " " "	✓ 36 31 13 E	80 00			
" " " " " "	✓ 16 34 12 E	120 00			
" " " " " "	✓ 36 34 11 E	60			
" " " " " "	✓ 16 34 12 E	160 00			
" " " " " "	✓ 16 34 12 E	160 00			
" " " " " "	✓ 16 34 12 E	80 00			
Amount Carried forward		38 756 13			

SCHOOL SELECTIONS,

which have been selected for the support of schools in townships are entitled have not been granted in place, and which selections are provided for in the act of March 31st sections, who settled before the surveys of the Public Lands, to pre-empt their settlements.

DESCRIPTION OF TRACTS SELECTED TO REPAIR THE DEFICIENCY IN SCHOOL LANDS.

SECT. TOWNSHIP RANGE AREA OF TRACTS. NO OF LOTS. DATE OF SELECTION

Amount brought forward					36929.70	
SE ¹ of SW ⁴	22	19	32	4000	29	Jan. 23. 1889
SW ¹ of SW ⁴	12	19	32	4000		" " "
SW ¹ of NW ⁴	13	19	32	4000		" " "
SE ¹ of NE ⁴	14	19	32	4000		" " "
SW ¹ of NE ⁴	26	19	32	4000		" " "
SW ¹ of NE ⁴	13	21	32	4000	30	Feb. 19. 1889
NE ¹ of NE ⁴	26	21	32	4000		" " "
SE ¹ of SW ⁴	3	21	32	4000		" " "
W ¹ of NW ⁴	12	21	31	8000	31	July 13. 1889
NW ¹ of SE ⁴	8	32	32	4000		" " "
NE ¹ of NE ⁴	8	31	32	4000		" " "
E ² of NW ⁴	21	28	33	8000		" " "
W ¹ of NE ⁴	21	28	33	8000		" " "
SW ¹ of SW ⁴	34	21	36	4000	34	Aug. 3. 1889
NE ¹ of SW ⁴	34	21	36	4000		" " "
SW ¹ of SE ⁴	34	21	36	4000		" " "
SE ¹ of SE ⁴	21	20	32	4000	35	Aug. 28. 1889
Lot 1 and 2	11	31	16	20.83	36	May 19. 1892
NW ¹ of SE ⁴	17	33	19	4000		" " "
NE ¹ of SW ⁴	30	28	15	4000		" " "
SW ¹ of SW ⁴	29	39	36			" " "
SE ¹ of NE ⁴	20					" " "
E ² of SE ⁴	30	39	36	16000		" " "
SE ¹ of SW ⁴	1	40	20	4000		" " "
NW ¹ of SE ⁴	30	32	23	4000		" " "
SW ¹ of SE ⁴	13	38	18	4000		" " "
NW ¹ of SE ⁴	18	38	19	4000		" " "
W ² of NW ⁴	13	38	18	8000		" " "
NE ¹ of NE ⁴	34	30	16	8000		" " "
Lot 1	26	30	6	4000		" " "
W ¹ of NE ⁴ and E ² of NW ⁴	20	32	20	16000		" " "
SE ¹ of NE ⁴ and NE ¹ of SW ⁴	12	32	18	16000		" " "
SE ¹ of NE ⁴ and SW ¹ of SE ⁴	22	32	18	8000		" " "
Amount carried over				38756.13		

SCHOOL SELECTIONS.

which have been selected for the support of schools in
 townships are entitled have not been granted in place, and which selections are provided for in the act of
 their sections, who settled before the surveys of the Public Lands, to pre-empt their settlements.

DESCRIPTION OF TRACTS RELIANT
 TO SETTLE THE DEFICIENCY IN SCHOOL LANDS

SEC. TOWNSHIP RANGE & AREA OF TRACTS NO. OF LOTS DATE OF SELECTION

Amount brought forward 2875.613

E of NE ⁴ Lot 4	21	41 ⁵	18 ⁵			
SE of NW ⁴	6	41 ⁵	17 ⁵			
Lot 3 Sec 4	22	40 ⁵	17 ⁵	269 63	36	May 19, 1890
Lot 1-2 Sec 3	24	40 ⁵	17 ⁵			
SW of NE ⁴	8	40 ⁵	17 ⁵			
SW of NW ⁴ Lot 1	23	41 ⁵	18 ⁵	80 28		
SW of NW ⁴	26	33 ⁵	18 ⁵	40 00	37	July 28, 1890
SW of NE ⁴ SE of NW ⁴	22	31 ⁵	16 ⁵	160 00		
SW of NW ⁴	15					
SW of NE ⁴	33	29 ⁵	17 ⁵	40 00		
SE of NE ⁴	23	33 ⁵	14 ⁵	40 00		
NE ⁴ of NE ⁴	25					
SE of SE ⁴	24	31 ⁵	14 ⁵	80 00		
SW of NE ⁴	34	30 ⁵	17 ⁵	40 00		
NE of NW ⁴	33					
NE of NE ⁴	32	30 ⁵	14 ⁵	32 00		
E of NE ⁴ NW of SE ⁴	29					
SW of NE ⁴	30	28 ⁵	15 ⁵	40 00		
NE of SE ⁴	33	27 ⁵	14 ⁵	40 00		
NE of NE ⁴	33	27 ⁵	14 ⁵	40 00		
Total Amount				39946.544		

General Land Office,
 Washington, D.C., March 23, 1891.

The tracts described in the foregoing list have
 been carefully examined and are found to be
 free from conflicts and to pertain to the State
 of Oregon for the purposes indicated.

J. B. Barnes,
 Examiner of Claims.

THE UNITED STATES OF AMERICA

To all to whom these Presents shall come, Greeting

CERTIFICATE

1892

Whereas John Knox of Grant County, Oregon

has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Baker, Oregon, whereby it appears that full payment has been made by the said John Knox

according to the provisions of the Act of Congress of the 24th of April, 1880, entitled "An Act making further provision for the sale of the Public Lands" and the acts supplemental thereto, for the North West quarter of the North East quarter and the North East quarter of the North West quarter of Section Twenty-eight and the South West quarter of the South East quarter and the South East quarter of the North West quarter of Section Twenty-eight and one half East of the Main Meridian in Oregon containing one hundred and thirty Acres.

according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said John Knox.

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the provisions of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said John Knox

and to his heirs, the said Tract, above described, To have and to hold, the same together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereto belonging, unto the said John Knox.

and to his heirs and assigns forever, subject to any vested and unvested water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditch and canal and in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and decrees, courts, and also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In testimony whereof, I, Benjamin Harrison, President of the United States of America, have caused these letters to be signed by me, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the City of Washington, the 10th day of April, 1892, in the year of our Lord one thousand eight hundred and ninety-two, and of the Independence of the United States the one hundred and sixteenth.

By the President: *Benjamin Harrison*
John Knox Secretary
John Knox Recorder of the General Land Office

NW 1/4 NE 1/4
 NE 1/4 NW 1/4
 Sect 28
 SE 1/4 SW 1/4
 SW 1/4 SE 1/4
 Sect 21
 T35, R32 1/2

XX
 Important One

Date 7
 10 Sep 1892

[L.S.]

belonging unto the said State of Oregon, in fee simple and to the assigns forever.

In testimony whereof, I, Benjamin Harrison, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the
tenth day of September in the year of our
Lord one thousand eight hundred and
ninety two and of the Independence of the
United States the one hundred and
twentieth.



By the President Benjamin Harrison

By C. Macfarland, Act. Secretary

D. P. Roberts,

Recorder of the General Land Office

Sept, 1892

No. 28.

The United States of America,
 To all to whom these presents shall come, Greeting,
 Whereas, by the act of Congress approved September 28, 1850, entitled
 "An Act to enable the State of Arkansas and other States to claim
 the 'Swamp Lands' within their limits," and the act of Congress
 approved March 13, 1860, entitled "An Act to extend the provisions
 of the Act to enable the State of Arkansas and other States to
 claim the 'Swamp Lands' within their limits," to Kansas and
 Oregon, and for other purposes, it is provided that all the "Swamp
 and Overflowed Lands," made unfit thereby for cultivation within
 the State of Oregon, which remained unsold at the passage of
 said act of March 13, 1860, with the exceptions therein named,
 shall be granted to said State:

And whereas, in pursuance of instructions from the General
 Land Office of the United States, the several tracts or parcels of
 land hereinafter described have been selected as "Swamp and
 Overflowed Lands," lying within the said State under the act of
 said, situate in the District of Lands subject to sale at Salem,
 Oregon, to wit:

Willamette Meridian.

Township forty (40) South of Range eight (8) East.

The lots numbered ten, eleven and twelve of section five and
 the north-west quarter of the south-east quarter and the lot
 numbered eight and eleven of section eight containing in all
 one hundred and forty-one acres and sixty hundredths of
 an acre.

Township twenty seven (27) South of Range fourteen (14) East.

The east half of the north-east quarter, the north-west quarter
 of the south-east quarter and the south half of the south-west
 quarter of section thirty-five, containing in all two hundred acres.

Township twenty-eight (28) South of Range fourteen (14) East.

The lots numbered three, four, seven and eight the east half
 of the south-east quarter, the south-west quarter of the south-east
 quarter and the south-east quarter of the south-west quarter of
 section one; the south-east quarter, and the south-east quarter of the
 south-west quarter of section three, and the north-west quarter of
 the south-west quarter and the east half of the south-west quarter
 of section fifteen, containing in all five hundred and twenty acres.

Township twenty-eight (28) South of Range fifteen (15) East.

The lots numbered six and seven of section ten, the east half

No. 28.

The United States of America,

To all to whom these presents shall come, Greeting,

Whereas, by the act of Congress approved September 28, 1850, entitled "An Act to enable the State of Arkansas and other States to claim the 'Swamp Lands' within their limits," and the act of Congress approved March 13, 1860, entitled "An Act to extend the provisions of the Act to enable the State of Arkansas and other States to claim the 'Swamp Lands' within their limits to Kansas and Oregon, and for other purposes," it is provided that all the "Swamp and Overflowed Lands," made useful chiefly for cultivation within the State of Oregon, which remained unsold at the passage of said act of March 13, 1860, with the exceptions therein named, shall be granted to said State.

And whereas, in pursuance of instructions from the General Land Office of the United States, the several tracts or parcels of land hereinafter described have been selected as "Swamp and Overflowed Lands," lying within the said State under the act above said, situate in the District of Lands subject to sale at Salem, Oregon, to wit:

Willamette Meridian.

Township forty (40) South of Range eight (8) East.

The lots numbered ten, eleven and twelve of section five and the north-west quarter of the south-east quarter and the lot numbered eight and eleven of section eight containing in all one hundred and forty-one acres and sixty hundredths of an acre.

Township twenty-seven (27) South of Range fourteen (14) East.

The east half of the north-east quarter, the north-east quarter of the south-east quarter and the south half of the south-west quarter of section thirty-five, containing in all two hundred acres.

Township twenty-eight (28) South of Range fourteen (14) East.

The lots numbered three, four, seven and eight, the east half of the south-east quarter, the south-west quarter of the south-east quarter and the south-east quarter of the south-west quarter of section one; the south-east quarter, and the south-east quarter of the south-west quarter of section three, and the north-west quarter of the south-west quarter and the west half of the south-west quarter of section fifteen, containing in all five hundred and thirty acres.

Township twenty-eight (28) South of Range fifteen (15) East.

The lots numbered six and seven of section one, the east half

THE UNITED STATES OF AMERICA

To all to whom these Presents shall come, Greeting

CERTIFICATE

Colleges

Whereas Henry Raphael Duguid of Grant County

being deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Phoenix, Arizona, whereby it appears that full payment has been made by the said Joseph Raphael Reguerra.

of Congress of the 23rd of April 1820 entitled "An Act making further provision for the sale of the Public Lands, and the said supplemental thereto for the South West quarter of the North West quarter of a section twenty eight and the North East quarter of the North East quarter of a section twenty nine on Township thirty one north of Range thirty two and one half East of the fourth Meridian in Oregon" contains a right, according to the provisions of the

According to the Official Plan of the Survey of the said Lands, returned to the General Land Office by the Survey General, which said Tract, has been purchased by the said Sheriff, Randolph Dugrove.

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Henry Capitol Square

and to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Bartholomew Dignore.

and to the heirs and assigns forever, subject to any valid and assumed water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and canals in connection with such water rights as may be recognized and acknowledged by the local customs, laws, and usages of the country, and also subject to the right of the proprietors of a vein or lode to extend and remove his use therefrom, shall be deemed to penetrate or interfere with the premises hereby granted, as provided by law.

In testimony whereof

Given under my hand, at the City of Washington, the 14th 1871

day of 1862, on the year of our Lord one thousand eight hundred and sixty two, and of the Independence of the United States the one hundred and fortieth.

By the President: *Samuel J. Tilden*

[Handwritten signature]

J. H. Townsend

Recorder of the General Land Office

The United States of America,

Do hereby certify To all to whom these presents shall come, Greening:

CERTIFICATE

No.

Whereas James T. Kealey of Grant County Oregon

has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at *Enterprise Oregon* whereby it appears that full payment has been made by the said *James T. Kealey*

according to the provisions of the Act of Congress of the 22nd of April, 1820, entitled "An Act making further provision for the sale of the Public Lands," in and to the said certificate, including that which is for the north west quarter of section twenty three and the east half of the south east quarter of section twenty four and the south west quarter of the north east quarter of section twenty four in township thirty one north of range thirty two and one half east of Willamette Meridian in Oregon containing four hundred and eighty acres.

according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the *Inspector General*, which said Tract has been purchased by the said *James T. Kealey*

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said *James T. Kealey*

and to his heirs, the said Tract above described: To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereto belonging, unto the said *James T. Kealey*

and to his heirs and assigns forever, subject to the usual and reserved water rights for mining, agricultural, manufacturing, or other purposes, and rights to such continuous use in connection with such water rights as may be recognized and acknowledged by the local customs and usages of towns, and also subject to the right of the proprietor of a dam or levee to capture and remove therefrom, should the same be found to penetrate or enter the premises hereby granted, as provided by law.

In testimony whereof, *Chester A. Arthur* President of the United States of America, have caused these letters to be made Patent, and the of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington the 9th day of *December* in the year of our thousand eight hundred and *forty* -

BY THE PRESIDENT, *Chester A. Arthur*
By *A. H. Keen*
L. H. Chase Recorder of the General Land

L.S.

CERT No. 1

to be at the State Land Office of the Secretary of the Interior

records of the

and to the

and to the

The United States of America,

To all to whom these presents shall come, Greeting:

CERTIFICATE

Frank Ward of Grant County Oregon

Whereas, in the General Land Office of the United States, a Certificate of the Register of the Land Office of Oregon, Oregon, whereby it appears that full payment has been made by the said *Frank Ward*

according to the provisions of the Act of the 12th of April, 1820, entitled "An Act making further provision for the sale of the Public Lands, and for the sale of the public lands in the East half of the North West quarter of Section thirty-two, in Township thirty-one North, Range thirty-two East of Willamette Meridian, by the said *Frank Ward* containing eighty acres.

according to the Official Plot of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said *Frank Ward*.

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said *Frank Ward*

and to his heirs, the said Tract above described. To have and to hold the same unto the said *Frank Ward*

and to his heirs and assigns forever, subject unto and in connection with such water rights as may be recognized and acknowledged by the local custom and decisions of courts, and also subject to the right of the proprietor of a vein or lode to extract and use therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law.

In testimony whereof, *Woodward* President
United States of America, has caused these letters to be signed Patent, and so of the General Land Office to be hereunto signed.

LS

Given under my hand and the seal of the United States of America, this 12th day of June, 1885.
John M. Jones
Register of the General Land Office

The United States of America,

To all to whom these presents shall come, Greeting:

CERTIFICATE

No. 404

Whereas Henry Welch of Grant County, Oregon

has deposited in the General Land Office of the United States a Certificate of the Register of the Land Office at Lakeview, Oregon, which it appears that full payment has been made by the said Henry Welch

according to the provisions of the Act of Congress of the 28th of April, 1880, entitled "An Act making further provision for the sale of the Public Lands," for the East half of the South-west quarter, the South-west quarter of the South-east quarter and the South-east quarter of the South-west quarter of Section thirty-two in Township thirty-one South of Range thirty-two and one-half East of Willamette Meridian in Oregon, containing one hundred and sixty acres

according to the Official Plat of the Survey of the said Lands, returned to the General Land Office by the Surveyor General, which said Tract has been purchased by the said Henry Welch

Now know ye, That the United States of America, in consideration of the premises, and in conformity with the several Acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant unto the said Henry Welch

and to his heirs, the said Tract above described. To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereto belonging, unto the said Henry Welch

and to his heirs and assigns forever, subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and subject to the same interests and in connection with such water rights as may be recognized and acknowledged by the local custom and usages of said lands, and also subject to the right of the proprietor of a vein or lode to extract and remove therefrom, should the same be found to penetrate or intersect the premises hereby granted, as provided by law

In testimony whereof, J. Grover Cleveland, President of the United States of America, has caused these letters to be made Patent, and the of the General Land Office to be hereunto affixed

Given under my hand, at the City of Washington, the 22nd day of January, in the year of our Lord one thousand eight hundred and eighty-two, and of the Independence of the United States the 56th

BY THE PRESIDENT

J. Grover Cleveland
John W. Foster
Recorder of the General Land Office

L.S.

259 ^{Exclusions}
 Subdivisions of Township No. 22 South, Range 22 1/2
 East Willamette Meridian, Oregon.

- 40.00 Drove cleared stable and raised
 mound of earth with pits &c
 as per instructions for 1/4 Sec. Cor.
 66.70 Mud Creek 8 ft. wide runs NW.
 69.50 Loose bottom levers NW & S.E.
 80.00 Set basal-stone 14x10x6 and
 dug pits as per instructions
 for corner to Secs. 4 & 5 +40
 sand level bottom: Soil 1st note

East-

On True Line on N. Boundary of Sec. 4
 Va. 17°30' East-

- 40.00 Set sand stone 14x10x6 and
 dug pits as per instructions
 for 1/4 Sec. Cor. +80
 68.00 Wagon road below N 70°W & S 10°E.
 80.00 Set basal-stone 13x8x6 and
 dug pits as per instructions
 for corner to Secs. 3 & 4 +100
 sand slopes to West: Soil 2nd note.

39

Extensions of Township No. 32 South, Range 32 East
East Willamette Meridian, Oregon.

- wide runs N.W.
- 27.60 Fence line N.W. & S.E.
- 31.85 Slough of Dunderland-Blitzen
River 10 lbs. wide runs N.W.
- 36.95 Drove corner stake and raised
mound of earth with pits &c
as per instructions for $\frac{1}{4}$ Sec. Cor.
- 69.75 Wagon road line N. & S.
- 71.50 Day bed of slough course North
- 72.35 Day bed of slough course N.W.
- 76.95 Drove corner stake and raised
mound of earth with pits &c as
per instructions for corner to
Secs. 5- & 6
- Drove line stake 2 ft long 2 in square
in East-pit
- Level level bottom Soil 1st note

East -

On Line between N. Boundary of Sec. 5 -
N. 18° 15' East

317

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

Section 31. T. 31 S. R. 32 E. where
Set sand stone 15x14x4 and
dug pits as per instructions for
Closing corner to Secs. 2 & 3
Land rolling: Soil 2nd note
December 8th 1877

North

Set Secs. 33 & 34

15:00	Run 19° 43' East -	
32.50	Revised course N.W.	- 80
	Descent hill bears NE & SW.	+ 50
39.75	Foot of hill bears NE & SW	- 150
40.00	Set basalt stone 18x12x10 and dug pits as per instructions for 1/4 Sec. Cor.	
40.40	Bridge back 25 chs. wide along SW	
48.00	Top of ridge bears NE & SW.	+ 150
80.00	Set basalt stone 16x10x8 and dug pits as per instructions for corner to Secs. 27, 28, 33 & 34 Land rolling: Soil 2 nd note	

Subdivisions of Township No. 31. South, Range 32½
East-Willamette Meridian, Oregon.

North

Bet. Secs. 32 & 33

Va. 17° 30' East -

13.20 Wagon road bears E. & W.

46.00 Set basalt stone 12x10x8 for
½ Sec. Cor. -30

47.00 Enter bottom bears NW. & S.E. -40

54.70 Bridge creek 20 chs. wide runs NW

69.50 Leave bottom bears NW. & S.E.

80.00 Set sand stone 20x12x8 and
dig pits as per instructions
for corner to Secs. 28, 29, 32 & 33 +60
Second Bottom level: Soil quad
" Upland rolling soil 2nd hole

East -

On Random line Bet. Secs. 28 & 33

40.00 Set temporary ½ Sec. Cor.

80.90 Enter N. & S. line 40 chs. south
of the corner.

On true line

S 87° 41' W.

40.00 Set basalt stone 18x10x8 and
dig pits as per instructions
for ½ Sec. Cor. -60

Subdivisions of Township No. 32 South, Range 32 East
East Willamette Meridian, Oregon

326

26

North

80.90 The corner
land rolling with slope to NW
Sick 2nd note -60

Between 28 + 29
N. 18.30' East -

34.00 Enter bottom bears N. 6.5 S. W. -60

40.00 Drove churned stake and raised
mound of earth with pits &c
as per instructions for the Bear Cor.
from this cor. back better bears S. 45.2 W.

46.00 Outer bottom subject to overflow
bears N. 6.5 S. W.

49.30 Wagon road bears N. 6.5 S. W.

80.00 Set small stone 18 x 9 x 7 and dug
pits as per instructions for corner
to Secs. 20, 21, 28 + 29
Said 134.00 chn. full Sick 2nd note
Remained level bottom did 1st note
to North 46.00 chn. subject to
occasional overflow.

Subdivisions of Township No. 31 South, Range 32E
East-Willamette Meridian, Oregon

326

26

North

80.90 The Corner -60
Land rolling with slope to NW
Soil 2nd rate.

Bees - Secs 28 + 29
16. 18.30 East -

34.00 Enter bottom beam N 6.5 S W -60

40.00 Drive churned stake and raised
mound of earth with pits &c
as per instructions for the Sec. Cor.
from this an. Rock. Bette beam S 45° W

46.00 Outer bottom subject to overflow
beams N 6.5 + S W

49.30 Wagon road beams N 6.5 + S W

80.00 Set brass stone 18 x 9 x 7 and dug
pits as per instructions for corner
to Secs 20, 21, 28 + 29
Land 34.00 Chas. Soil 2nd rate
Remainder level bottom Soil 1st rate
To North 46.00 Chas. subject to
occasional overflow.

Subdivisions of Township No. 31 South Range 32
East Willamette Meridian, Oregon.

around the corner back to the
as per instructions for the Sec. Cor.
442.00 Enter marsh down N.E. & S.W.
80.90 Drove corner stake, and raised
mound of earth with pick &c
as per instructions for corner
to Secs. 16, 17, 20 & 21
Drove Fir stake 2 ft. long 2 in
square in S.E. part
Leaved level bottom: Soil 1st note
The S.E. subject to overflow the
N.E. marsh by, and subject to
overflow

East
On Hudson line bet Secs 16 & 4
40.00 Set temporary in Sec. Cor
80.70 Enter - N.W. & S.E. line 23 the
South of the corner
389.50 W. On line same
37.70 Enter bottom subject to overflow

Subdivisions of Township No. 37 South Range 32
East Willamette Meridian, Oregon.

around & back to Sec. 16
as per instructions in Sec. 16
442.00 Enter marsh down N.E. & S.W.
80.00 Drove corner stake, and raised
mound of earth with pick &c
as per instructions for corner
to Secs. 16, 17, 20 & 21
Drove 2 ft. stake 2 ft. long 2 in
square in S.E. apt
Leaved level bottom: Soil 1 1/2 rods
the S.E. subject to overflow the
N.E. marshy, and subject to
overflow

East

On Hardon line bet Sec 16 & 17
40.00 Set temporary in Sec. 16
80.70 Entered N.W. & S.W. line 23. the
south of the corner

389.32 W.

On Line 23

37.70

Enter bottom subject to overflow

Subdivisions of Township No. 31 South Range 32 E
East Willamette Meridian, Oregon.

330

78.00 Dry bed of Creek Course N.W.

80.00 Set sand stone 14 x 12 x 4 and dug
pits as per instructions for
corner to Sec. 8, 9, 16 & 17

Second level bottom: Soil good
The S.E. subject to overflow,
and swampy

East -

On Road on line bet Sec. 9 & 16

40.00 Set temporary to Sec. 9

80.78 Intersection - N & S line 11 South
of the corner

889°55' W

On Line line

15.18 Way on road bears North & S.W.

20.25 Top of hill bears N.E. & S.W.

+60

40.39 Set sand stone 18 x 12 x 9 and
dug pits as per instructions
for Sec. 9

69.25 Descend hill bears N.W. & S.

73.75 Foot of hill bears N.W. & S.E.

-80

Subdivisions of Township No. 31 South Range 22 E
East-Willamette Meridian, Oregon.

330

78.00 Dry bed of Creek across NW

80.00 Set sand stone 14 x 12 x 4 and dug
pits as per instructions for
corner to Sec. 8, 9, 16 & 17

Sound level bottom: Soil good

The site subject to over flow,
and swampy

East -

On Road on line bet Sec. 8 & 16

40.00 Set temporary $\frac{1}{4}$ Sec. cor.

80.78 Interv. - NW & S line 11 South
of the corner

S 89° 33' W

On Line Line

13.18 Wagon road bears North & S, W

20.73 Foot of hill bears N.E. & S.W.

+ 60

40.39 Set sand stone 18 x 12 x 9 and
dug pits as per instructions
for $\frac{1}{4}$ Sec. cor.

69.25 Descend hill bears N.W. & S.

73.73 Foot of hill bears N.W. & S.E.

- 80

335

Subdivisions of Township No. 26 South Range 32 $\frac{1}{2}$
East Willamette Meridian, Oregon.

West -

On True line

We

10.50 Ridge bears N. & S. + 60

15.00 Foot of hill Easter bottom bears
N.W. & S.E. + 100

17.00 Easter bottom subject to occasional
overflow bears N.W. & S.E.

N 85

40.00 Set sand stone 19 x 11 x 9 and dug
springs as per instructions for
section corner.

41.30 Bridge Creek 30 lbs wide runs N.W.

65.00 Lower bottom subject to overflow bears
N.W. & S.E.

70.00 Wagon road bears N. & S.

77.75 Easter bottom subject to overflow
bears N.E. & S.W.

80.00 The corner.

Land East 1500 chs. hill & soil 2nd rate

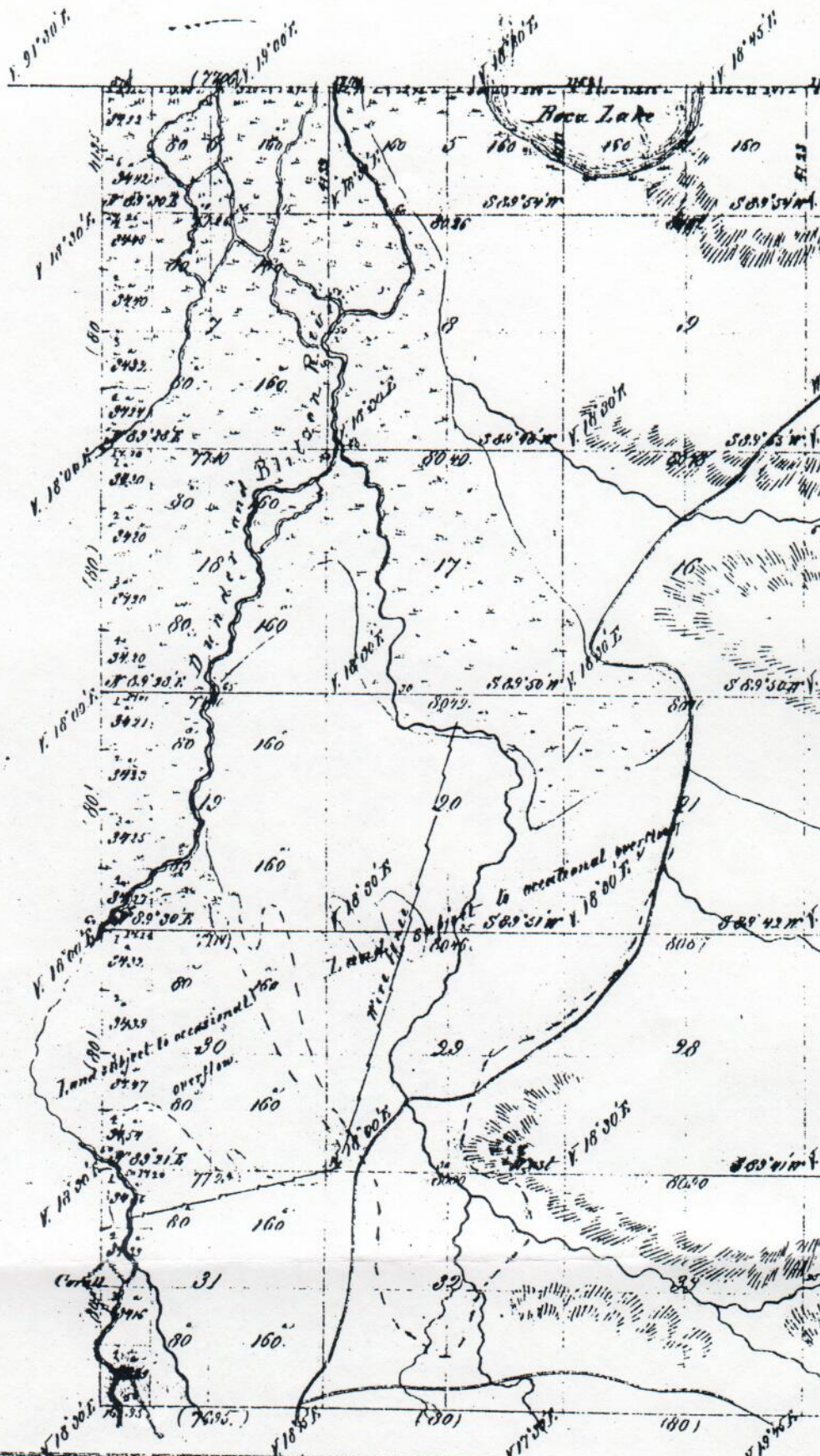
Remains level bottom and 1st rate

Middle part subject to occasional

overflow in the spring months

4141

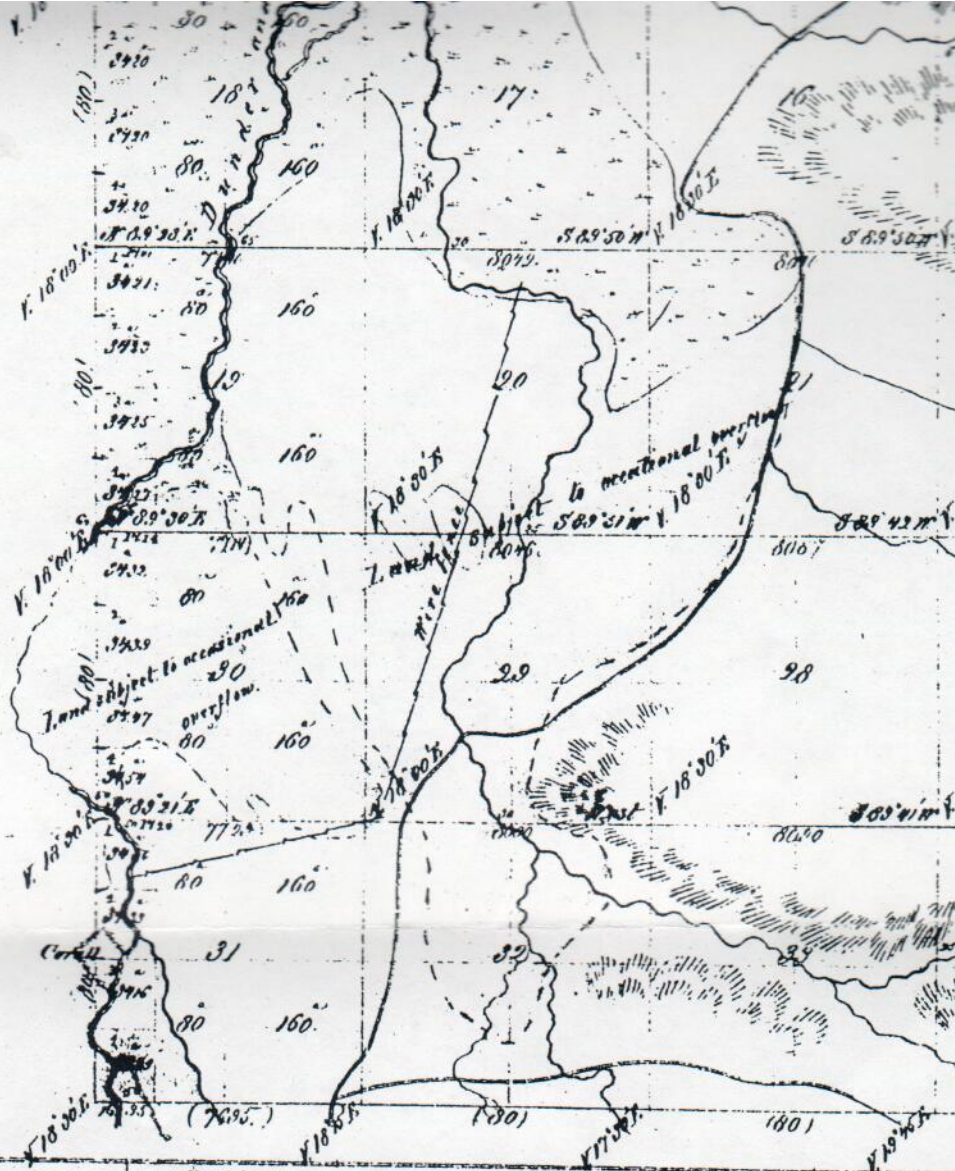
Area	
Sections	Acre.
1	340.40
2	339.44
3	334.48
4	310.16
5	330.80
6	331.43
7	617.44
8	640.00
9	640.00
10	640.00
11	640.00
12	640.00
13	640.00
14	640.00
15	640.00
16	640.00
17	640.00
18	616.80
19	616.98
20	640.00
21	640.00
22	640.00
23	640.00
24	640.00
25	640.00
26	640.00
27	640.00
28	640.00
29	640.00
30	617.72
31	616.98
32	640.00
33	640.00
34	640.00
35	640.00
36	640.00
Total 21080.63	



Lines.	Contractor.	Contract.	Amount Surveyed.
--------	-------------	-----------	------------------

2 55344
 3 53448
 4 51016
 5 53080
 6 52145
 7 61744
 8 64000
 9 64000
 10 64000
 11 64000
 12 64000
 13 64000
 14 64000
 15 64000
 16 64000
 17 64000
 18 61680
 19 61696
 20 64000
 21 64000
 22 64000
 23 64000
 24 64000
 25 64000
 26 64000
 27 64000
 28 64000
 29 64000
 30 61772
 31 61698
 32 64000
 33 64000
 34 64000
 35 64000
 36 64000

Total 2108063

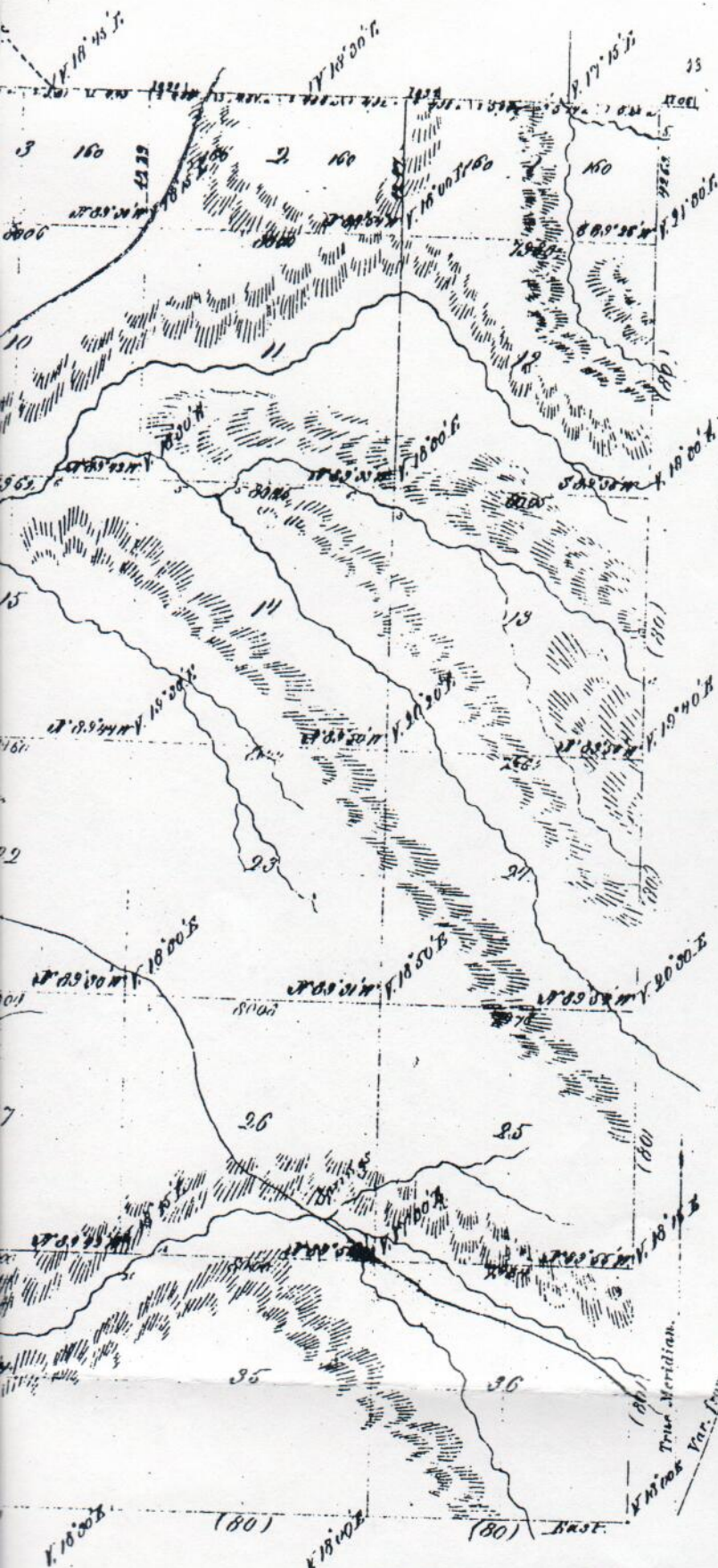


Lines.	Contractor.	Contract.		Amount Surveyed.			Commenced.	Completed.
		No.	Date.	Miles.	Chains.	Links.		
Subdivisions	John W. Meldrum	275	Oct 18 th 1877	58.	35.	59	December 7 th 1877	December 18 th

Willamette Meridian, Oregon.

Deposited to the Credit of the United States by
A. H. Robie, Oct. 15th, 1874, for Field Work 18000 for Office Work 2400

Walter Smith	186.00	20.00
Henry Wilham	180.00	20.00
Joe Holstad	180.00	20.00
Geo. Johnson	165.00	20.00
Isaac Lovell, Nov 20th	155.00	20.00
Totals	1025.00	100.00



General Description.

In the Eastern part of this Township, the land is rolling, with general slope toward the S.W.; the ground is somewhat stony; the soil generally good 2^d rate.

There is an abundance of good bunch grass on all the uplands of the Township.

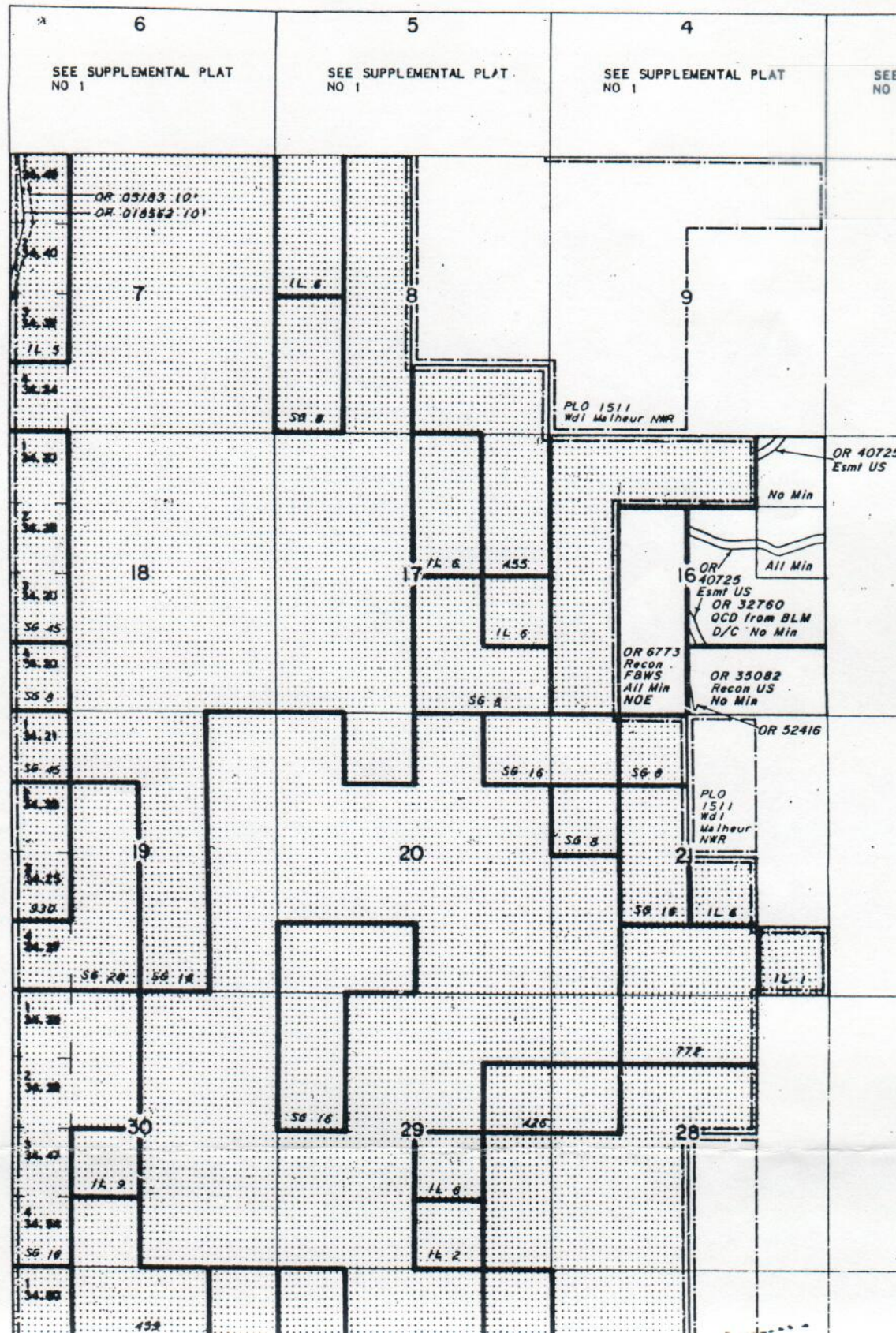
In the S.W. part on Muddy and Klutzen River and on Bridge and Mud Creeks are some good bottom lands of 1st rate quality of soil, the greater part of which in Sec. 18, 20, 21, 23, 30 are swampy or subject to occasional overflow in the Spring months.

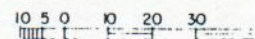
In Sec. 5, 6, 7, 8, 17, 18 and 19 is a large swamp bordering on Muddy and Klutzen River, which runs easterly through the Western part of the Township.

Scale 40 Chains to an inch.

The above Map of the subdivisional lines of Township No. 31 South Range No. 32 East Willamette Meridian, Oregon, is strictly conformable to the original field notes of the survey thereof on file in this Office which

HARNEY COUN
BURNS



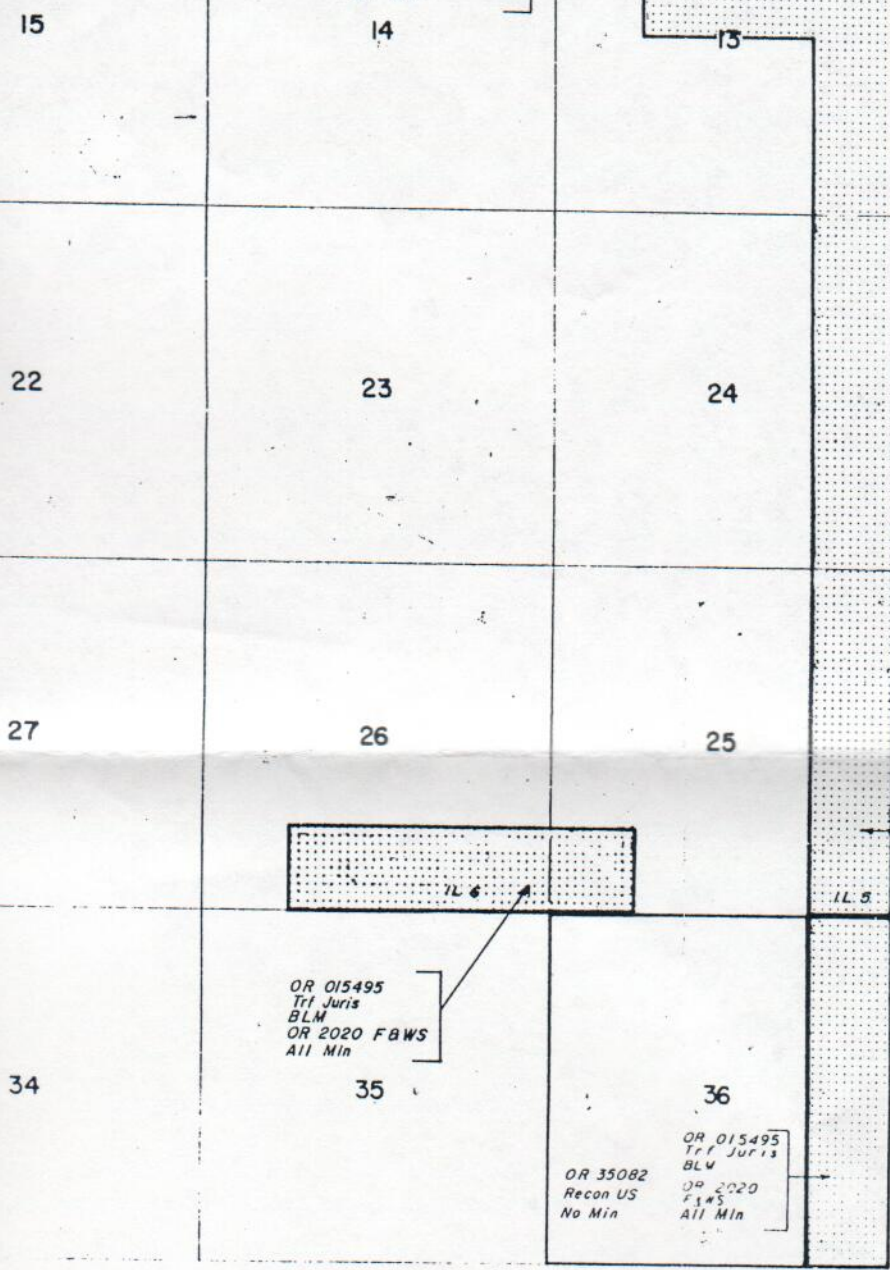


BLM. WSA 12/30/1982 Segr from Min Lse A
Secs 22, 25 thru 28, 33, 34, 35

7L 5
All
Min

PLO 2416
Wd1 Walthour NWR
OR 015495
Trf Juris
BLM
OR 2020
F&WS
All Min

BLM WSA 12/30/1982 Segr from Min Lse B P
Secs 22, 25 thru 28, 33, 34, 35

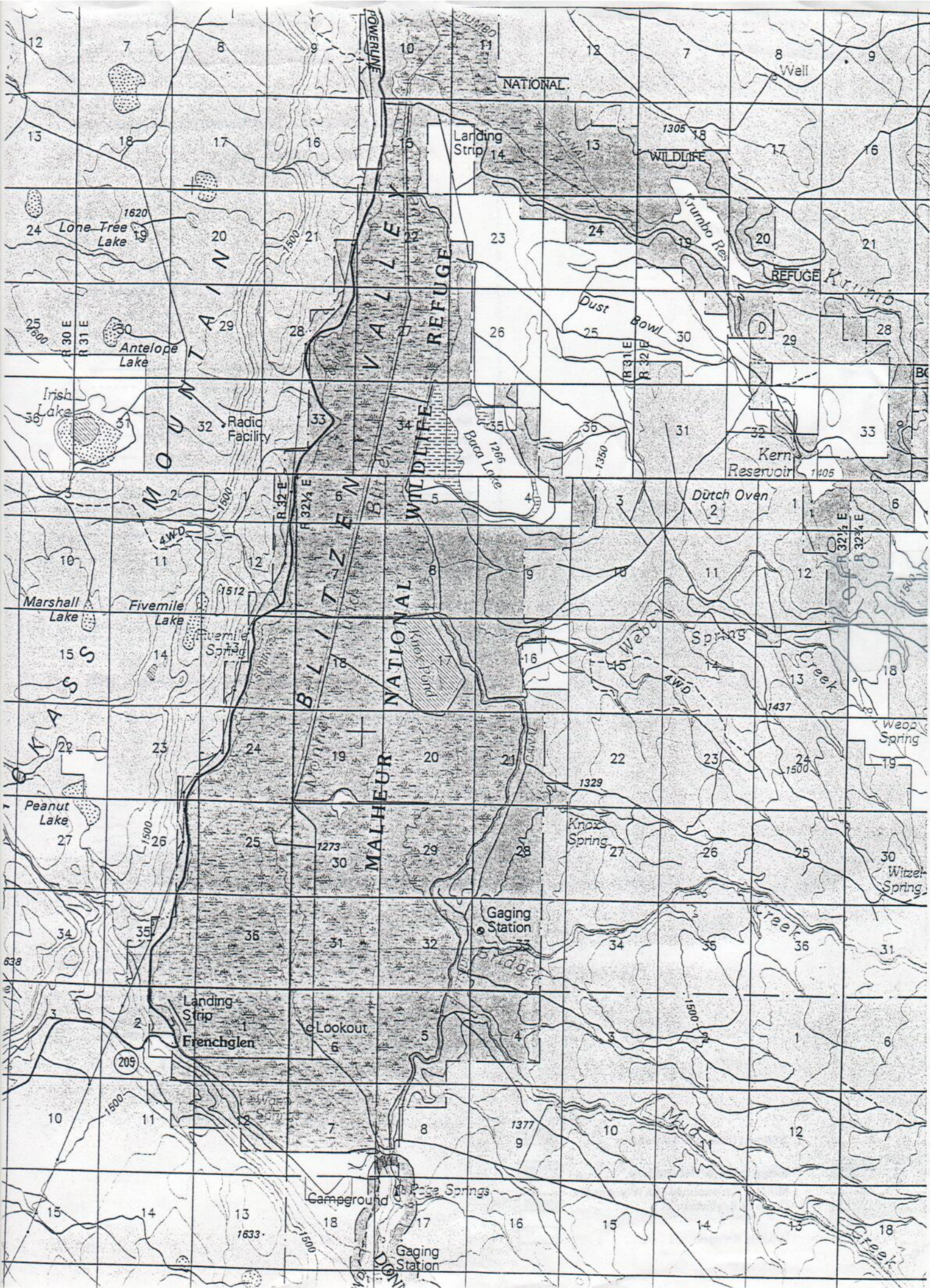


WARNING STATEMENT

This plat is the Bureau's Record of Title, and should be used only as a graphic display of the township survey data. Records hereon do not reflect title changes which may have been effected by lateral movements of rivers or other bodies of water. Refer to the cadastral surveys for official survey information

USGS

CURRENT TO	BY
APR 25 1997	



To convert feet to meters
multiply by 0.3048

at center of map
Diagram is approximate

7 Avoid Lake
8 Louse Canyon

FOR SALE BY U. S. GEOLOGICAL SURVEY, DENVER, COLORADO 80225

and
BLM STATE OFFICE
PORTLAND, OR 97208

Topographic Map Symbols

Primary highway, hard surface	
Secondary highway, hard surface	
Light duty road, principal street, hard or improved surface	
Other road or street; trail	
Route marker: Interstate; U. S.; State	
Railroad: standard gage; narrow gage	
Bridge; overpass; underpass	
Tunnel: road; railroad	
Built up area; locality; elevation	
Airport; landing field; landing strip	
National boundary	
State boundary	
County boundary	
National or State reservation boundary	
Land grant boundary	
U. S. public lands survey: range, township; section	
Range, township; section line: protracted	
Power transmission line; pipeline	
Dam; dam with lock	
Cemetery; building	
Windmill; water well; spring	
Mine shaft; adit or cave; mine, quarry; gravel pit	
Campground; picnic area; U. S. location monument	
Ruins; cliff dwelling	
Distorted surface: strip mine, lava; sand	
Contours: index; intermediate; supplementary	
Bathymetric contours: index; intermediate	
Stream, lake: perennial; intermittent	
Rapids, large and small; falls, large and small	
Area to be submerged; marsh, swamp	
Land subject to controlled inundation	

NOTE TO MAP USERS

The surface and minerals management status overprints are published as general planning and management tools. Some of the lands, surface and mineral rights, may have been shown as patented lands due to the lack of information available to BLM with respect to the nature of acquisition. Tracts less than 40 acres are usually omitted because of the map scale. Access through private lands may be restricted. The official land records in the respective offices of the Bureau of Land Management or other responsible Federal agencies should be checked for up-to-date status on any specific tract of land. Inadequacies in the BLM maps should be reported to the respective Bureau of Land Management offices from which the maps were obtained.

.....		National Parks and Monuments	
2C Lands)		Indian Lands or Reservations	
2).		Military Reservations and Withdrawals	
.....		Corps of Engineers	
.....		Wildlife Refuges	



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Northwest Region
500 N. E. Multnomah Street, Suite 607
Portland, Oregon 97232

September 9, 1997

Robert Thomson
Assistant U.S. Attorney
Office of the U.S. Attorney
U.S. Department of Justice
Room 227
310 W. 6th Street
Medford, OR 97507

Re: Malheur National Wildlife Refuge Trailing Routes

Dear Mr. Thomson:

Enclosed are copies of recent correspondence and documents regarding the trailing route on the Malheur National Wildlife Refuge, specifically: 6/30/97 memorandum to State Director, Bureau of Land Management, from Barbara Scott-Brier; 7/30/97 memorandum to Barbara Scott-Brier from the Fish and Wildlife Service; and 8/18/97 memorandum to Barbara Scott-Brier from the Bureau of Land Management.

Please call me at (503) 2139 if you have any questions or wish to discuss these matters.

Sincerely,

Barbara Scott-Brier
Attorney
Pacific Northwest Region

cc: (w/o enclosure)

Forrest Cameron, Malheur National Wildlife Refuge

bsb\fws\thomson

LEGEND

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

1/10/1889

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

MALHEUR NATIONAL WILDLIFE REFUGE

Blitzen Valley Below
Krumbo Creek

HARNEY COUNTY, OREGON

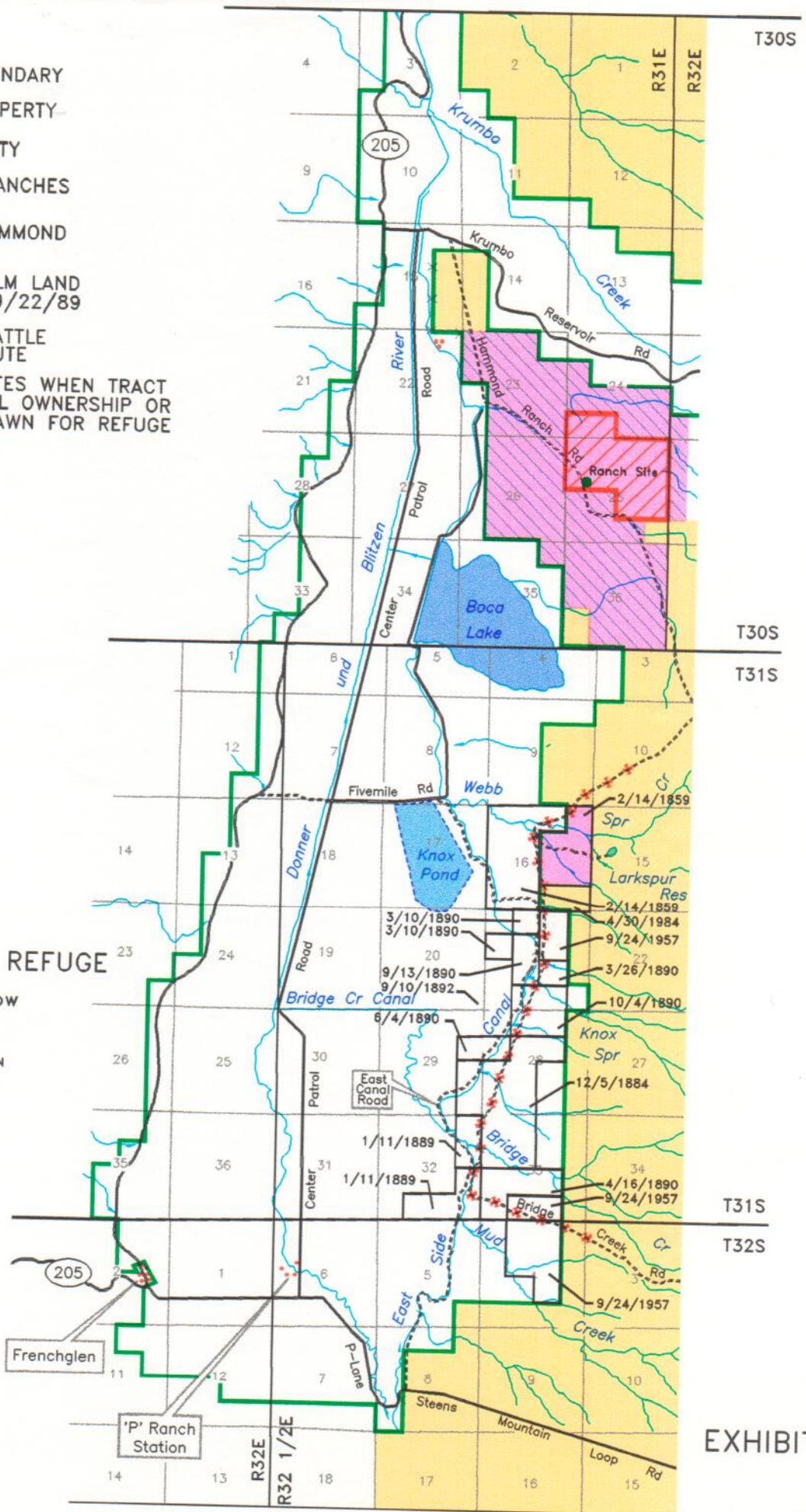
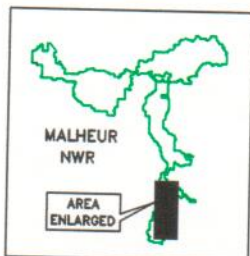


EXHIBIT #1

10/3/97

RS-2477 meeting
Realty Conf Room 1

Bob H - Get w/ Bill Drummond & maps.

Did we get all we asked for? - Bob -

Map

- ① Geog Features - GPS the old trail on ground
- ② Map land status - Resolve discrepancies - BLM vs FWS
T-31 S R 32 1/2 E
T-32 S R 32 1/2 E
Add in any status new to us.
- ③ advise us if we need to go search county records.

Time : By December - Geographic & land status
We could help - Carly Rod, - w/ GPS.

Get big maps. From Core after final version.

**HAMMOND RANCHES, INC.
HC 72, BOX 26
DIAMOND, OREGON 97722**

February 25, 1998

Oregon State Police
Hwy. 20 W.
Hines, Oregon 97738

Attention: Sargent Duane Larson

Re: Private/Public property; hunting violations law enforcement.
Personal conversation between Sgt. Larson and Steven Hammond 2/24/98.

I enjoyed visiting with you concerning the above mentioned problems and I am glad you seem as concerned as myself in maintaining a working relationship between private landowners and the Oregon State Police. I am also glad that you extended the invitation to take responsibility for the serving of a citation bearing my signature as to the witness of a violation. If in the future, you would prefer dealing with violations in a different manner, I would appreciate communication to that effect. At this time, this seems to be the only effective means of documenting incidents in rural communities.

Concerning the acts of violations, that were concluded on January 17, 1998, we appreciate your officer, Rod Spannaus' promptness of response. However, it seems some misunderstanding between myself and Mr. Spannaus has developed since our initial conversation over this issue. It was our understanding that it didn't matter where these individuals were hunting, but if they weren't welcome on our private land, they were in violation of Oregon State Law by hunting on the refuge in this area. There was a lengthy discussion as to the process of dealing with these violations. It was our understanding that Mr. Spannaus would investigate and cite the individuals involved. Several weeks passed before I felt the investigation started. Mr. Spannaus said that he hadn't been able to contact all of the parties involved but that he had contacted the United States Fish and Wildlife Service and that they wished to not pursue any violations concerning this incident. At this time, Mr. Spannaus said that he was not going to issue any further citations. This was not acceptable to us in light of the citations already issued on our behalf. I believe Mr. Spannaus was premature in making these decisions because he expressed that he still had not spoken with the parties involved to assess a feeling for the blatancy in these violations. I asked if this was the only time that Mr. Spannaus had been asked to not issue a citation concerning the refuge. He said it was. He stated that he shared the same feelings as Malheur National Refuge Manager, Forrest Cameron, in that a fence needed to be constructed merely to denote an ownership boundary.

Since the initial commitment to not issue citations, there has been lengthy evidence surface. I contacted Malheur National Wildlife Refuge Assistant Manager, Dave

Sambro and he stated that some of the individuals involved had contacted him at home concerning the "hunting" area. Later, that evening, the person had come to his home with a map, clearly depicting the refuge boundary. Not being familiar with the area, Mr. Sambro told me he told this person that he didn't know if the boundary was designated on the ground accurately, but that this area was not a public hunting area on the refuge.

In addition to the above information, I have acquired a copy of the refuge regulations that document the regulations for the area, and they further support my concerns with Mr. Spannaus' decision not to issue citations. The latest U.S. Bureau of Land Management map "*THE BURNS DISTRICT SOUTH HALF*" also clearly depicts the area quite vividly as to land ownership. In acquiring the map, there are numerous brochures that identify proper stewardship and ethics that are customary in the public use of private and public land. These are also supportive of my opinion.

Other conversations that I have had concerning this incident have been with: U.S. District Attorney, Robert Thompson; Harney County District Attorney, Tim COLLAHAN; Harney County Circuit Court Judge, Maryanne Robinson; Oregon State Police Area Manager, Kim Raney; USFWS employees, Randy Billbasy and Dave Sambro; Harney County Sheriff, Greg Peterson, and Captain Lindsey Ball, Director, OSP Fish and Game Division.

I have stated to Mr. Spannaus and the above mentioned individuals, my opinion that Mr. Spannaus has made the wrong decision in not issuing citations concerning these incidents. Also, future discussion may be redundant unless Mr. Spannaus brings forth new evidence to support his decision, or he has reason to reconsider.

In the future, if Mr. Spannaus wanted to contact me, I would look forward to seeking to reestablish a working relationship between himself and our ranching operation. It has been and remains of utmost concern that this incident is not fully documented.

Thank you, again, for your attention to this matter.

Sincerely,



Steven Hammond
Hammond Ranches, Inc.
(541) 493-2652

**HAMMOND RANCHES, INC.
H C 72, BOX 26
DIAMOND, OREGON 97722**

May 5, 1998

RECEIVED

MAY 12 1998

Malheur NWR
Princeton, OR

RECEIVED

MAY 21 1998

Malheur NWR
Princeton, OR

Mr. Dick Munoz, ARW, ID/Or/Wa.
U.S. Fish and Wildlife Service
911 NE 11th Avenue
Portland, Oregon 97232

Malheur National Wildlife Refuge - hunting regulations/violations

Dear Mr. Munoz:

This letter is to draw conclusion to the documentation of violations occurring on January 17, 1998 on Malheur National Wildlife Refuge and adjoining private property.

At the request of Hammond Ranches, Inc., two of the violators involved were cited and appeared before circuit court Judge Maryanne Robertson in Burns, Oregon, March 9, 1998, for "trespass on enclosed lands of another".

Within the testimony that lead up to dismissal of these citations was the following: Gene Luttmann and John Davis had thoroughly researched area maps; talked to refuge personnel, Randy Bilbeisi and Dave Sambrough, assistant manager; and, had previously been notified by myself as to the regulations of hunting in this area and our private property. Randy Bilbeisi, refuge employee, had observed, spoken with and provided transportation to these individuals and associates in the possession of Fire Arms and illegally taken game. Gene Luttmann stated that he had telephoned Dave Sambrough; and, later that evening went to his residence to verify refuge boundaries and hunting regulations. I testified that I had previously contacted these hunters and made them aware of regulations, as I understood them, and, had advised them that for further information, they should contact a refuge employee.

Additional conversations with myself included: Mr. Bilbeisi told me he had contacted refuge manager Forest Cameron concerning this issue. It is unclear to me what decision was arrived at concerning that conversation. Following the original confrontation, I was the next person to observe hunting on private land and USFWS property. I had been contacted by Phil Turrel, via phone, that he and other parties intended to hunt this area the following morning. The following morning I observed Mr. Turrel, John Davis and Gene Luttmann hunting on refuge property. John Davis and Gene Luttmann were also hunting on private property. I approached them, made them aware that they were on private property and that I had previously told them that they were on private property and made comment that I was notifying the Oregon State Police concerning this issue. They removed themselves from private property and continued hunting on USFWS property.

When Oregon State Police officer Rod Spannaus arrived, the next day, I voiced my concerns of at least 9 individuals that had been hunting on the refuge in a closed hunting area. He wholeheartedly shared my concerns and stated at that time, that there needed to be citations issued for hunting on the refuge.

In the weeks to follow, several conversations took place between myself and U.S.

Attorney, Robert Thompson, Dave Sambrough, Randy Bilbeisi and the Oregon State Police. Mr. Sambrough seemed familiar with the circumstances that led to my concerns and stated to me that Mr. Luttman had telephoned him and later that evening came to his residence to verify refuge regulations. Mr. Sambro stated that he had informed Mr. Luttman that this area was not a public hunting area. I asked him why the refuge was not pursuing these individuals. I still remain confused as to Mr. Sambrough's reasoning. My conversation with Mr. Thompson was informational. He stated to me that he would, and did contact Forest Cameron and that Mr. Cameron would hopefully be contacting me to resolve this issue. Mr. Cameron has never contacted me.

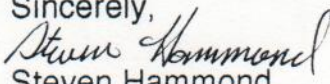
OSP officer, Rod Spannaus attempted to pursue citations in this case through the USFWS via refuge manager, Forrest Cameron; and, Mr. Spannaus said he was told by Mr. Cameron that he didn't want the individuals in this case to be pursued for hunting on the refuge in a closed area. I asked Mr. Spannaus if, in any of his years as an Oregon State Policeman dealing with the USFWS; had he ever been asked not to pursue an individual for a crime that occurred on public property. He stated he had not.

I have researched all available public documentation and regulations concerning this area, and have found no discrepancies in the refuge or State regulations. The area is clearly identified and depicted as a "no hunting" area. Access and firearms at this time of year are also restricted. It also seems clear to me that, if these same individuals would have been observed in this situation; and, stated they were accessing private property through the refuge, they would have been cited by refuge personnel. The published regulations and law enforcement actions of the USFWS personnel are not consistent.

In past experiences that we have had in dealing with the USFWS, under the management of Forest Cameron, it may be redundant to request documentation of this incident from refuge personnel. It seems ironic that through the OSP documentation that I have pursued, an investigation into Rod Spannaus's ability to perform his duties has occurred. Though I feel Mr. Spannaus neglected his duties as a public officer, I can understand the politicizing of his efforts to perform his duty and have sympathy with the OSP's situation.

Through contact with US District Attorney, Harney County District Attorney, Harney County Sheriff and Oregon State Police; it has become evident to me that there is no memo of agreement or supporting documentation that designates law enforcement or jurisdiction by any local law enforcement on behalf of Oregon state fish & wildlife, on public property, managed by the USFWS.

For clarification; enclosed is a copy of the letter that I originally wrote to OSP.
Thank you.

Sincerely,

Steven Hammond
Hammond Ranches, Inc.

CC: U.S. Atty. Robert Thompson
Captain Lindsay Ball
Sargent Duane Larson
Forrest Cameron
Sheriff Greg Peterson


HAMMOND RANCHES, INC.
HC72 - Box 26
DIAMOND, OR 97722

Mr. Forest Clemens, Mgr.
Museum Natural History
Princeton, Or. 97721



Handwritten signature

Author: David Stanbrough at lpo~main
Date: 5/12/98 10:39 AM
Priority: Normal
TO: Dick Munoz at lpo~RO1
Subject: Hammond Letter

----- Message Contents -----

Dick,
We have received a copy of a letter Steve Hammond has sent to you. I will prepare a draft response for your review and signature. In the meantime if you want clarification on the issue please give me a call.

Dave

*5/12
Dick called back and I
briefed him. [Signature]*

ARW-ID/OR/WA

Mr. Steve Hammond
Hammond Ranches, Inc.
HC 72, Box 26
Diamond, Oregon 97722

Name	Date
Hammond File	
Important	
Voros	6/19/98
Mumoy	6/1
	Ten 6/17

Dear Mr. Hammond:

Thank you for your letter dated May 5, 1998, advising me of the reported trespass and hunting incidents that occurred on your property in January 1998 near your boundary with Malheur National Wildlife Refuge. I have consulted with managers Forrest Cameron and Dave Stanbrough for information to address your concerns.

The Oregon State authorities have "concurrent" jurisdiction for enforcement of State laws on Malheur National Wildlife Refuge. The type of jurisdictional status, "proprietary," "concurrent," or "exclusive (Federal)," is usually determined by the type of refuge land acquisition, easement, overlay, fee purchase, or withdrawal and when the acquisition occurred, before or after Statehood. The majority of National Wildlife Refuges are concurrent jurisdictions.

In the case you present in your letter, Oregon State has the authority to determine the evidence, probable cause and merits of the case, and to make the decision whether to pursue prosecution under State law in State court. Refuge officials do not have the authority to request the State not pursue its enforcement responsibilities and I have been assured that this has not happened in the case you present. For violations of Federal regulations, Refuge law enforcement has the responsibility for case management and decision-making authority whether to pursue prosecution in Federal court. In this case, Refuge law enforcement authorities were not satisfied that all the legal aspects were present or the case elements strong enough to successfully prosecute it in Federal court. This decision appears to be supported by the ultimate dismissal of State charges you reference in your letter.

It appears to me that the trespass problems on the Refuge and your private property stem from an undelineated boundary between the properties. This is complicated by the existence of an old Refuge fence with boundary postings that are inset from the actual legal property boundaries. This situation exists at several locations on Malheur NWR and the Refuge staff is working towards correcting all of these boundary discrepancies. In view of your concerns, I have asked the Refuge to give the highest priority considerations for boundary fencing and posting to the Krumbo area.

OPTIONAL FORM 99 (7-90)

FAX TRANSMITTAL

of pages = 2

To DAVE S.	From PAM R
Dept./Agency	Phone #
Fax #	Fax #

NSN 7540-01-317-7368

5099-101

GENERAL SERVICES ADMINISTRATION

Thank you for contacting me on this issue. If you have further questions on Refuge law enforcement, please contact Refuge Officer Pete Revak or Deputy Manager Dave Stanbrough. If you wish to discuss boundary discrepancies, Refuge Manager Forrest Cameron or Deputy Manager Stanbrough can be reached at 541-493-2612.

Sincerely,

Dick Munoz
Assistant Refuge Supervisor

C:\upwin\dick\hunters.wpd



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Burns District Office
HC 74-12533 Hwy 20 West
Hines, Oregon 97738
or020mb@or.blm.gov

IN REPLY REFER TO:

4100(026)

COPY FOR YOUR
INFORMATION

JUL - 6 1999

Dwight Hammond
Hammond Ranches, Inc.
HC 72, Box 26
Diamond, Oregon 97722

Dear Mr. Hammond:

This letter is in response to your request on June 9, 1999, regarding trailing livestock across the Bridge Creek Canyon enclosure area.

During a field tour with Dave Ward, Rangeland Management Specialist, you requested to trail cattle across Bridge Creek from the Hammond Allotment to the Mud Creek Allotment in the vicinity of T. 31 S., R. 32½ E., Sec. 26, SE ¼, W.M. This site is located in the Bridge Creek Wilderness Study Area (WSA) (OR-2-87). The proposed crossing site is within an area of Bridge Creek Canyon that has been fenced off from livestock use. The purpose of the fence is to improve riparian habitat conditions for wildlife, including the redband trout, a candidate for listing under the Endangered Species Act.

You proposed to erect a temporary fence of portable panels on the north side of the canyon and overnight your herd of 450 cattle, mostly cows with calves. The overnight use you proposed would be on an approximately one-half mile stretch of riparian habitat bounded on the creek bottom by an impassable rockslide on the downstream end and the existing fence crossing on the upstream end.

The proposed use of this portion of Bridge Creek Canyon would not be consistent with 43 CFR 4180 - "Fundamentals of Rangelands Health and Standards and Guidelines for Grazing Administration." It is also in violation of H-8550-1 "Interim Management Policy for Lands Under Wilderness Review," Chapter III-D-2-a "Changes in Grazing" and Chapter III-D-2-b "Prevention of Unnecessary or Undue Degradation." Subsequent instruction memorandums also reiterate the need to manage WSAs in a manner which does not create new surface disturbances. It is for these reasons that your request is being denied.

During the tour of the proposed crossing site, Mr. Ward suggested trailing your livestock across the Malheur National Wildlife Refuge (MNWR) as has been the practice in the past. You stated that the MNWR Manager wanted you to apply for a trailing permit some 2 months ago. However, you had refused to apply because you feel it is your right to cross the MNWR without a permit in order to access your private land and Bureau of Land Management (BLM) land on which you are licensed to graze livestock.

Mark Sherbourne spoke with Anne Sittauer of the MNWR after being briefed on the situation. Ms. Sittauer indicated that the MNWR is still prepared to grant permission to Hammond Ranches, Inc., to conduct their trailing operation through the MNWR. Dave Ward relayed this information to Stephen Hammond during a telephone conversation on June 10, 1999.

We hope that Hammond Ranches, Inc., and the MNWR can work out an agreement that is acceptable to both parties.

If you have any further questions, please call me at (541) 573-4400.

Sincerely,

A handwritten signature in black ink, appearing to read "Miles R. Brown", with a stylized flourish at the end.

Miles R. Brown
Andrews Resource Area Field Manager

cc: Malheur National Wildlife Refuge

Malheur National Wildlife Refuge
HC 72 Box 245
Princeton, Oregon 97721
(541) 493-2612

Memorandum



To: Dave Stanbrough
From: Anne Sittauer
Subject: Hammond's Trailing issue

I received a call from Mark Sherbourne with the BLM concerning Hammond's trailing cattle. Mark asked me what the status was of Hammond's trailing across the Refuge. I told Mark that Dave Stanbrough and Kevin Sittauer had a meeting with Steve H. a month or two ago and that the refuge wanted to negotiate some kind of agreement with Hammond's for trailing across the Refuge. I informed Mark that no one from the refuge had ever told Hammond's that they could not trail across the refuge only that they had to do it with a permit or signed agreement of some kind under conditions set by the refuge.

Mark informed me that Dave Ward had a meeting with Dwight Hammond and Hammond said that the refuge would not give them a permit or allow them to trail so they had to find another means of crossing over to the next allotment. This information is third hand so Mark was not certain of what exactly was said. Mark said the trailing area selected by Hammond crossed through a Wilderness Study Area and a riparian enclosure, so the BLM could not allow them to trail there. Mark was making sure that there was another option left for Hammond's. I informed him that we are willing to negotiate a written agreement with Hammond's.

Steve Hammond called the refuge within an hour or two of my conversation with Mark Sherbourne.

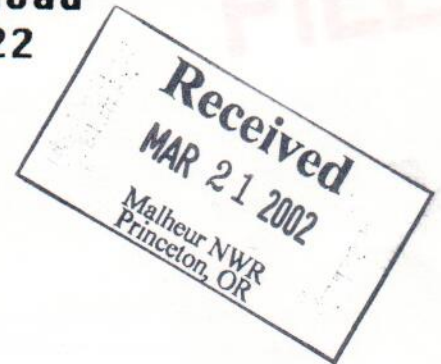
I called Steve back and Steve said that he knew that I had a conversation with the BLM recently and he hoped that I understood what was going on. I explained to Steve my interpretation of the conversation that I had with Mark Sherbourne. Which is detailed in the first paragraph. Steve agreed with that interpretation except that he thought that Dave Stanbrough told him that the refuge would stop the Hammond's from trailing through the refuge. I told Steve I did not have the understanding that anyone from the refuge would or ever had told them they could not trail through the refuge. Steve said that he was glad that he I had that impression. Steve said that he was expecting to see documentation of the last meeting and I said that I never saw any.

Steve asked what he supposed to do this year for trailing across the refuge. I said that I thought

he had trailed his cattle in April and that he would be doing it again in October. He said that he had not trailed in April but that he did expect to trail in October and sometime between now and then. I asked Steve when he planned on trailing and he said the end of this week. I said, "So, I will consider this as official notice that you are trailing". He said, "Yes". He asked if he could tell me now that he would be trailing several times this summer. I said, "No, other permittees like Larry Otley gives us 24 hour notice and that applied to the Hammond's also". He said, "Ok". Steve said that he hoped I understood that he was not going to agree to sign anything and that the last meeting that he had with Dave S. and Kevin was to educate them on the issue and the Hammond perspective of the issue. Steve said that he would like to revisit this issue again. I said that would be a good idea. I also said that both Kevin and Dave felt positive about the last meeting. Steve said that he felt positive about the meeting when he left but when he didn't hear anything from Dave or Kevin for two months he was not pleased. Steve said that he would like to broaden communications and I said that I thought that was a good idea.

**Hammond Ranches, Inc.
46851 Hammond Ranch Road
Diamond, Oregon 97722**

March 18, 2002



U. S. Department of the Interior
Malheur National Wildlife Refuge
Sod House
Princeton, Oregon 97721

RE: Bridge Creek crossing

Dear Mr. Stanbrough,

I am writing this letter in regards to the Bridge Creek crossing that was recently removed and destroyed, by refuge personnel; and, hoping to, again, try and understand your management objectives, and to reiterate our concerns.

When you took over the management of Malheur Refuge, I asked to meet with you especially to clarify this particular area of concern; and, to make sure you understood the access needs of Hammond Ranches, Inc. as adjoining private property owners and BLM permittees.

At the meeting we had at the Apple Peddler in Burns, Kevin Sittauer and yourself, likewise, detailed your concerns as to the needs of wildlife and yourselves, in the management of the refuge.

Our current critical concern is the recent removal of the culvert in the crossing, making it increasingly harder for us to move our livestock through the area.

I expressed in our original meeting that we had cost shared in the installation of the Bridge Creek crossing; and, it was beneficial to the movement of our livestock, also benefiting the then management objectives of the refuge. This was to minimize the impact of livestock on the area and shorten the time spent crossing refuge property. We also discussed additional ways to minimize our impact on your management objectives; the need to maintain the fence leading up to the crossing.

Since that meeting, you or your staff have not communicated your changing management objectives regarding Hammond Ranches business.

This letter is to again encourage communication, to hopefully minimize conflict.

You need to remove the fence leading up to the Bridge Creek. Ultimately, removing the culvert necessary for the crossing has me questioning your intentions, understanding that you know this will inhibit our ability to enter our BLM permit and access private property, along with increase our time and impact on the refuge in traversing this critical access.

Hammond Ranches management has always advocated treating the land, wildlife, and it's livestock in a humane and husbandry like manner. Your recent actions make that increasingly harder.

I invite your communication.

Sincerely,

Steven Hammond

Steven Hammond
Hammond Ranches, Inc.

HAMMOND RANCHES, INC.

HC72 - Box 26
DIAMOND, OR 97722

U.S. Department of the Interior
Malheur National Wildlife Refuge
Tool House
Humboldt, Oregon 97721





United States Department of the Interior

FILE

FISH AND WILDLIFE SERVICE
Malheur National Wildlife Refuge
36391 Sodhouse Lane
Princeton, OR 97721
(541) 493-2612

March 25, 2002

Mr. Steve Hammond
Hammond Ranches, Inc.
46851 Hammond Ranches Road
Diamond, Oregon 97722

Dear Mr. Hammond;

I am responding to your March 18th, 2002 letter concerning removal of the Bridge Creek culvert pipe crossing.

As you may be aware, the Refuge is engaged in extensive work projects involving fish passage and screening. This includes Bridge Creek and Mud Creek as well as the Blitzen River. We are also having to deal with passage issues where pipes have been installed that pose barriers to fish passage and this includes constrictions which increase velocity flows that impede passage.

I believe it was last year that an Oregon State University fisheries group led by Dr. Hiram Lee set up an outdoor lab on Bridge Creek near the crossing to study redband trout. My recollection is that it was the research group that pointed out either current or potential passage problems at the crossing during certain flow rates, therefore, the pipe crossing was removed for biological reasons.

I have no information regarding any cost share projects with Hammond Ranches nor does any cooperative agreement exist that would be necessary to provide for any cost share project. It has been a practice here that a permittee may bear part or all of expenses like this but those expenses are then credited on the final haying or grazing bill. The final result is that the government bears the total project cost one way or another and as such would be sole government property. I am not aware of any provisions that would permit the co-ownership of any property on a Refuge.

The Refuge purpose, goals and objectives have not changed nor does the Refuge have any motive or management objective concerning Hammond Ranches business. I do recall our meeting and discussion concerning cattle trailing and fences. I don't recall exactly which fence or fences may be at issue. It seems to me that there was an East/West fence that did not appear to have any functional purpose any longer. Never-the-less, in connection with our discussion, I drafted up a Memorandum of Understanding concerning fences and cattle crossing and started discussions with our Regional Attorney. She had some reservations about the MOU but then water issues at both Klamath NWR and Malheur NWR have taken priority and no further discussions have taken place.

Since then, there as been some passing discussions with BLM about a cooperative agreement between the bureaus that would address terms and conditions for cattle trailing where such trailing is mutually linked. This would include cattle crossing the Refuge heading to BLM or cattle crossing BLM heading to the Refuge. This would eliminate any need for special permits or memorandums of understanding with individual permittees.

As far as impacts of removing the pipe on your cattle trailing operations , I have personally inspected the crossing at least twice after cattle have passed. The majority of cattle tracks clearly cross Bridge Creek both up stream and down stream from the pipe crossing, with very few crossing over the pipe. The creek crossing bottom is hard and the water is shallow and the Refuge staff has no difficulty and crossing it in a pickup truck.

Lastly, it is not our policy, or intent, to deny or impede cattle trailing to adjacent BLM allotments. It is also not our policy to suffer trespass or resource damage on the Refuge while accommodating the transit use. If I get the point and undertone of your letter correctly , you appear to be saying that the Refuge has caused a problem which will increase the difficulty in your cattle trailing operations, which in turn will take longer to cross cattle at Bridge Creek, which in turn will cause more environmental damage to that area and since the Refuge took the action, we are to blame.

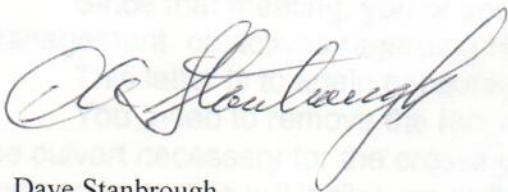
I respectfully differ in opinion with you that our action causes the need for any significant delay in crossing by cattle, horses or vehicles thus increasing adverse impacts on the environment.

Our decision options were limited and fish passage solutions are expensive. It would not be cost effective to construct a passage structure on Bridge Creek for the limited use of the crossing, thus our decision to make it a low water crossing.

I believe the operative word here is "reasonableness" and I am more than reasonable in dealing with people and situations. Cattle trailing may go fast one year and slow the next year depending on a lot of variables that might affect cows, cowboys, horses or vehicles, not just whether a pipe crossing was removed or not.

We will continue to monitor all cattle trailing operations and will continue to be reasonable in our dealings with adjacent ranch operations with due consideration given to any particular situations that may arise from one year to the next.

Sincerely,



Dave Stanbrough
Refuge Manager



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Burns District Office
HC 74-12533 Hwy 20 West
Hines, Oregon 97738
or020mb@or.blm.gov

IN REPLY REFER TO:

RECEIVED

2800(026)

APR 3 2000

Malheur NWR
Princeton, OR

2

MAR 30 2000

Dwight and Susie Hammond
Hammond Ranches
HC 72, Box 26
Diamond, Oregon 97722

Dear Mr. and Mrs. Hammond:

In response to your phone conversation with Mark Sherbourne on March 23, 2000, your anticipated use of the Steens Loop Road to service your private land gravel operation in Section 27, T.32 S., R.32 $\frac{3}{4}$ E., is considered casual use and will not require a specific use authorization. This finding is based upon your potential need to haul up to ten loads (approximately 100 cubic yards) of material per week from your gravel source utilizing Bureau of Land Management (BLM) roads. If your hauling activity becomes greater than casual use, we will work with you in establishing the best method of authorizing use of our roads. This casual use finding also assumes that road conditions will be such that damage to the roads will not occur. If maintenance of the BLM portion of the secondary road in Section 27 is necessary for safe access to your gravel source, please notify this office in advance so we can properly oversee the maintenance activity. You will also be responsible for repairing damage to our roads that may inadvertently result from your operation.

You should also contact the Malheur National Wildlife Refuge to discuss use of their portion of the Steens Mountain Loop Road.

Sincerely,

Miles R. Brown
Andrews Resource Area Field Manager

cc: Chad Karges, Malheur National Wildlife Refuge



ESTABLISHED 1909

United States Department of the Interior

FISH AND WILDLIFE SERVICE

911 NE. 11th Avenue
Portland, Oregon 97232-4181

JAN 12 2004

Mr. Steven Hammond
Hammond Ranches, Inc.
46851 Hammond Ranch Rd.
Diamond, Oregon 97722

Dear Mr. Hammond:

I apologize for taking so long to get back to you in response to your letter dated September 22, 2003. It is gratifying to read you appreciated our January meeting when we asked for community input in selecting a new manager for Malheur National Wildlife Refuge (Refuge). After meeting with a number of community members and with Refuge staff during that trip, we realized there was considerable common ground between what local residents and Refuge employees desired. One of the overwhelming responses was to have a manager that could work with the community and open doors of communication. This goal is similar to what helped create the voluntary work-exchange program, "Walk a Mile in My Boots", that you referred to in your letter. The Fish and Wildlife Service has built strong partnerships all over the nation with many more to come. Partnerships have occurred in Harney County, with more underway. It is unfortunate that, in your view, the situation between Hammond Ranches and the Refuge is unbearable.


It is my understanding that on October 10, 2003, Refuge Manager Donna Stovall met with you, your family, and Harney County Court Judge Steve Grasty to discuss your cattle trailing activities across Refuge lands going between Hammond Ranches and permitted Bureau of Land Management (BLM) grazing lands. During the meeting, she delivered a letter dated September 30, 2003, of which I received a copy. Her letter identified an incident where a herd of Hammond cattle was seen unattended along Bridge Creek causing damage along the riparian area, and her requirement to ensure that all public activities occurring on Refuge lands, including trailing, be compatible with the primary purpose(s) for which the Refuge was established. She also made a commitment to verify that the boundary fence separating the Refuge from your BLM allotment meets standard specifications.

Mr. Steven Hammond

2

I encourage continued communication with Refuge Manager Donna Stovall to find a compromise that will adequately provide you with access across Refuge lands while meeting the objectives of the Refuge. It is in the best interest of all parties involved to find a workable solution to resolve this enduring contention.

Sincerely,



Regional Chief,

National Wildlife Refuge System

cc: Project Leader Donna Stovall, Malheur NWR
Judge Steve Gasty, Harney County Court
Congressman Greg Walden