

**ESTES  
SURVEYS<sub>LLC</sub>**SURVEYS  
CONSULTING**LAND & WATER RIGHTS**

Bruce A. Estes, PLS, CWRE

60382 Arnold Mkt. Rd.  
Bend, OR 97702  
(541) 382-7391  
FAX 382-7391~~PO Box 17510~~  
Salem, OR 97305-7519  
(503) 585-7593  
FAX 585-7593

February 8, 2008

Bob Rice, Water Right Transfer Specialist  
Water Resources Department  
725 Summer St. NE, Suite A  
Salem, OR 97301-1271

Dear Bob:

Re: T-10358

I was surprised when I talked to you last week that the Whitehorse Ranch transfer 10358 had been put on hold pending an Adjutant General opinion. Please refer to Special Order volume 52, pages 610 - 612 wherein a very similar transfer was approved under T-7158. Since T-7158 was approved ORS 540.530 was amended, however the amendment is not involved in this transfer. Transfer 10358 complies with ORS 540.520 and 540.530.

I reviewed the file on February 4 and noted that it still identifies the reservoirs as being in channel. Mr Herman decided after we filed to turn the dams up the east side of the channel. Thus at a very large expense he has avoided involving the channel. We hereby request the application be amended to delete the additional points of diversion. Both reservoirs are not only below the fish screen, but are also off channel. Enclosed you will find an amended map.

Mr. Herman previously requested expedited processing, but the WRD on October 22, 2007 refunded his money because the Department stated that this transfer would be handled in house. The only reasonable interpretation of that letter is that the contractor schedule would be followed by Department staff. No one informed us that a major delay was being pursued by the Department until you told me on the phone January 28. The decision by the WRD to delay this transfer for an AG decision has caused an extreme hardship for the ranch. It was expected that with expedited processing the reservoirs could be utilized this season. Whitehorse Ranch made a substantial investment in reservoir construction based on reliance of statute, Department rules, timelines and previous transfer orders.

Mr. Herman is expending a lot of time and effort to make this ranch more productive. He has installed many thousands of feet of buried pipeline and 9 more pivots since the purchase. He plans on more pivots. These reservoirs play a major role in the improvements to the ranch to increase efficiency and are necessary to support the expense in the infrastructure. He also intends to maintain approximately 25 acre feet of dead storage in each reservoir for fish and wildlife.

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FEB 12 2008

WATER RESOURCES DEPT  
SALEM, OREGON

Please study the packet Mr. Herman sent which is now in the T-10358 folder. You will see that Whitehorse Creek ends at the fish screen and diversion point. Numerous studies and agencies (including the Water Resources Commission) determined that there were no fish in the channel below this diversion. The reach above the fish screen to the mouth of Little Whitehorse Creek was determined to be a very marginal fish habitat. Please also note that the adjudication survey shows Whitehorse Creek ending at the diversion dam with only ditches to the north where the irrigation right to be transferred and the reservoirs are located

The fact is that the creek ends at the fish screen and all the water coming from Whitehorse Creek dries up on the ranch and effects no one else. Since the transfer into the reservoir does not involve the creek and no other water users are involved this transfer, granting the transfer cannot injure any water right and should be considered benign. Because this transfer is off channel below the end of the creek, and there are no fish issues, we respectfully request you now consider this not part of the concerns involved in the AG issue and proceed with the determination to issue an order.

If you have any questions just call.

Sincerely,

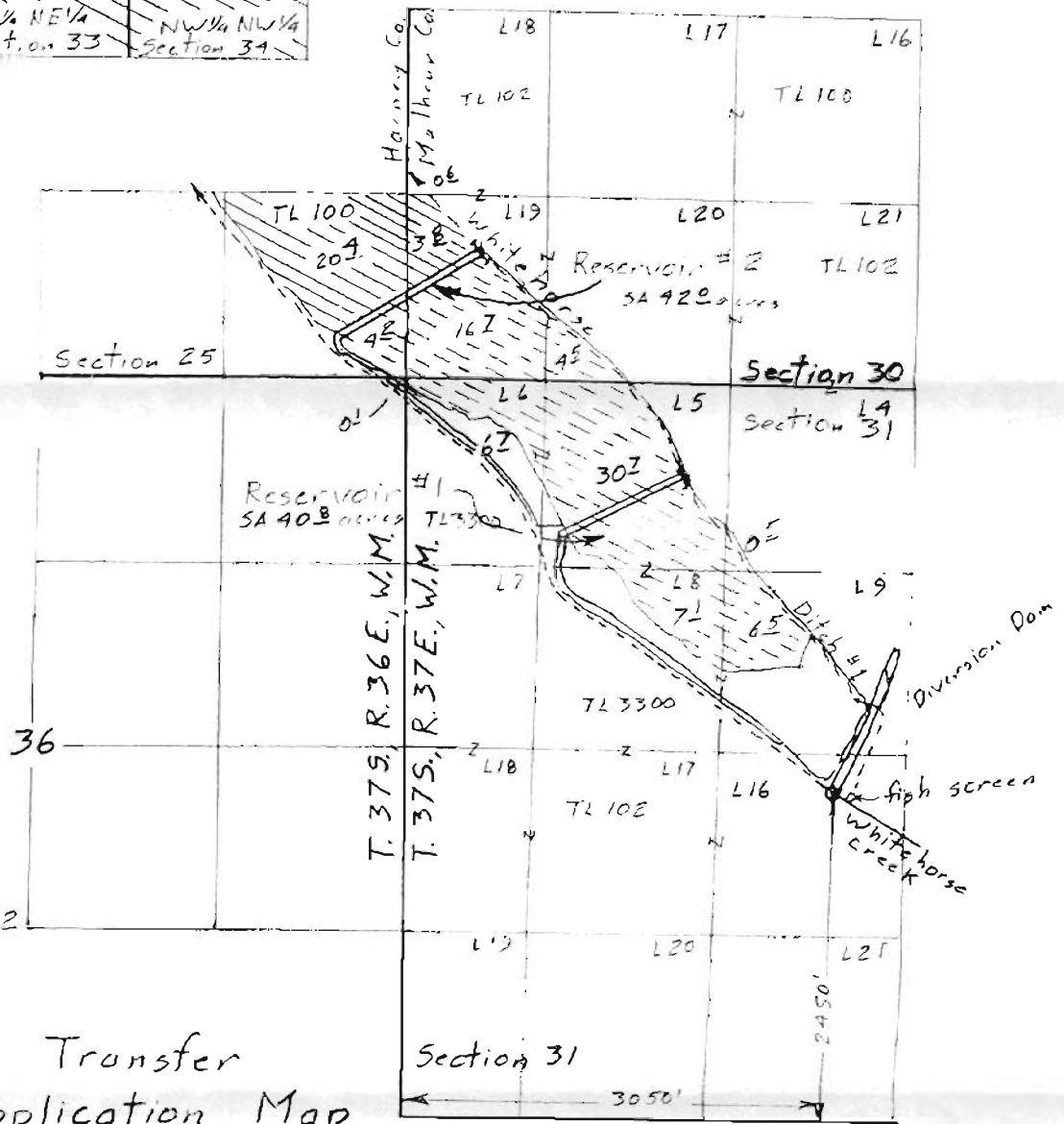
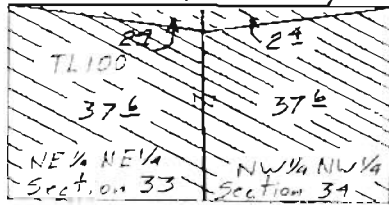


Bruce A. Estes, PLS, CWRE

Cc David Herman, Owner, Whitehorse Ranch LLC  
Phil Ward, Director, Water Resources Department

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T.36S, R.36E, W.M.



Scale 1" = 1320'  
(4" = 1 mile)

From Irrigation  
81.8 acres

To reservoirs #1 & #2

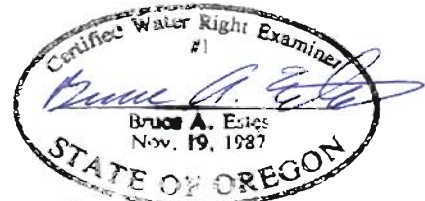
# Transfer Application Map for Whitehorse Ranch

T-10358

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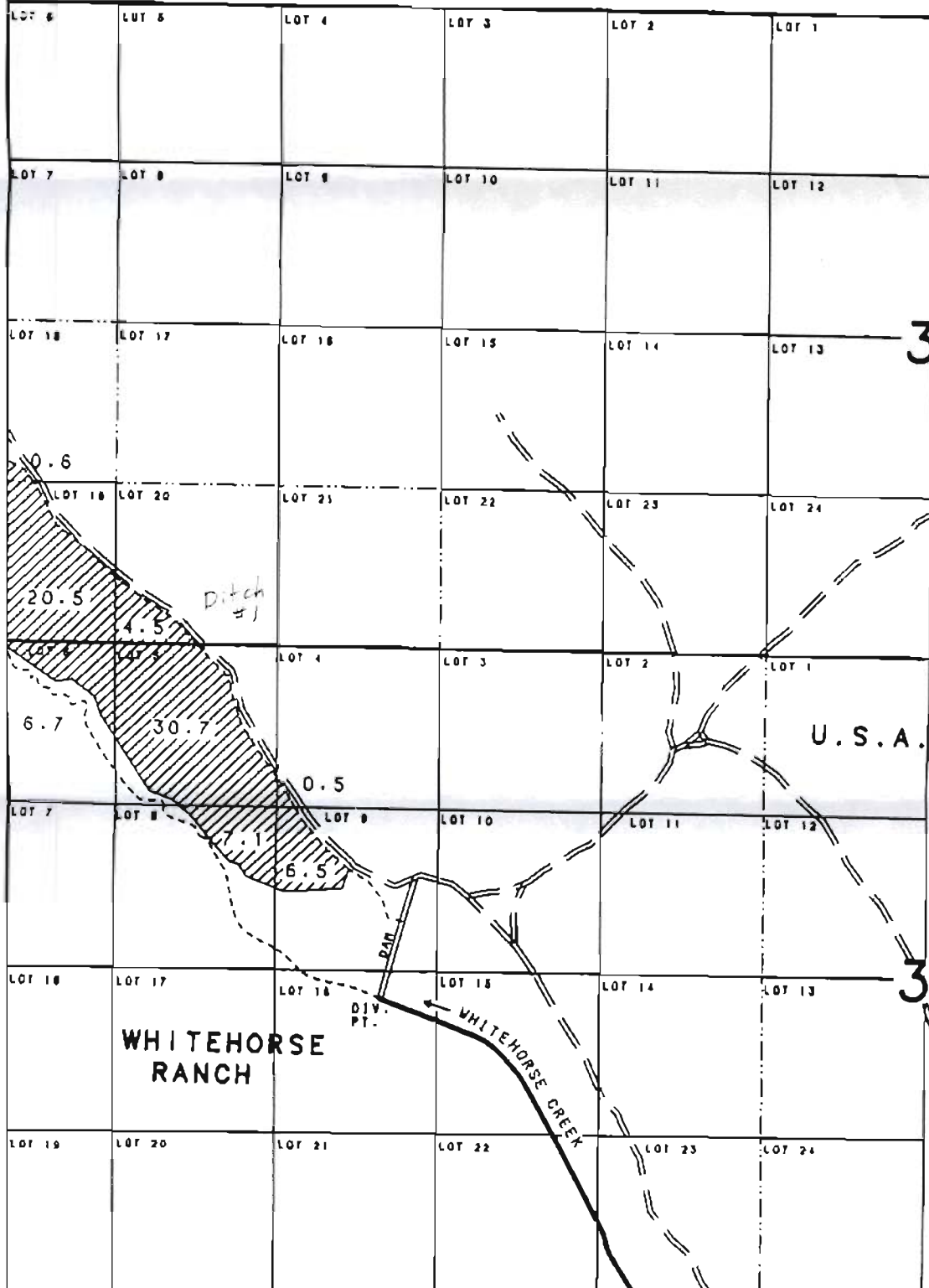


Renewal Dec 31, 2009

This map is for the purpose of locating a water right only and has no intent to provide legal dimensions or the location of property lines.

**ESTES SURVEYS, LLC**  
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Amended Feb 7, 2008



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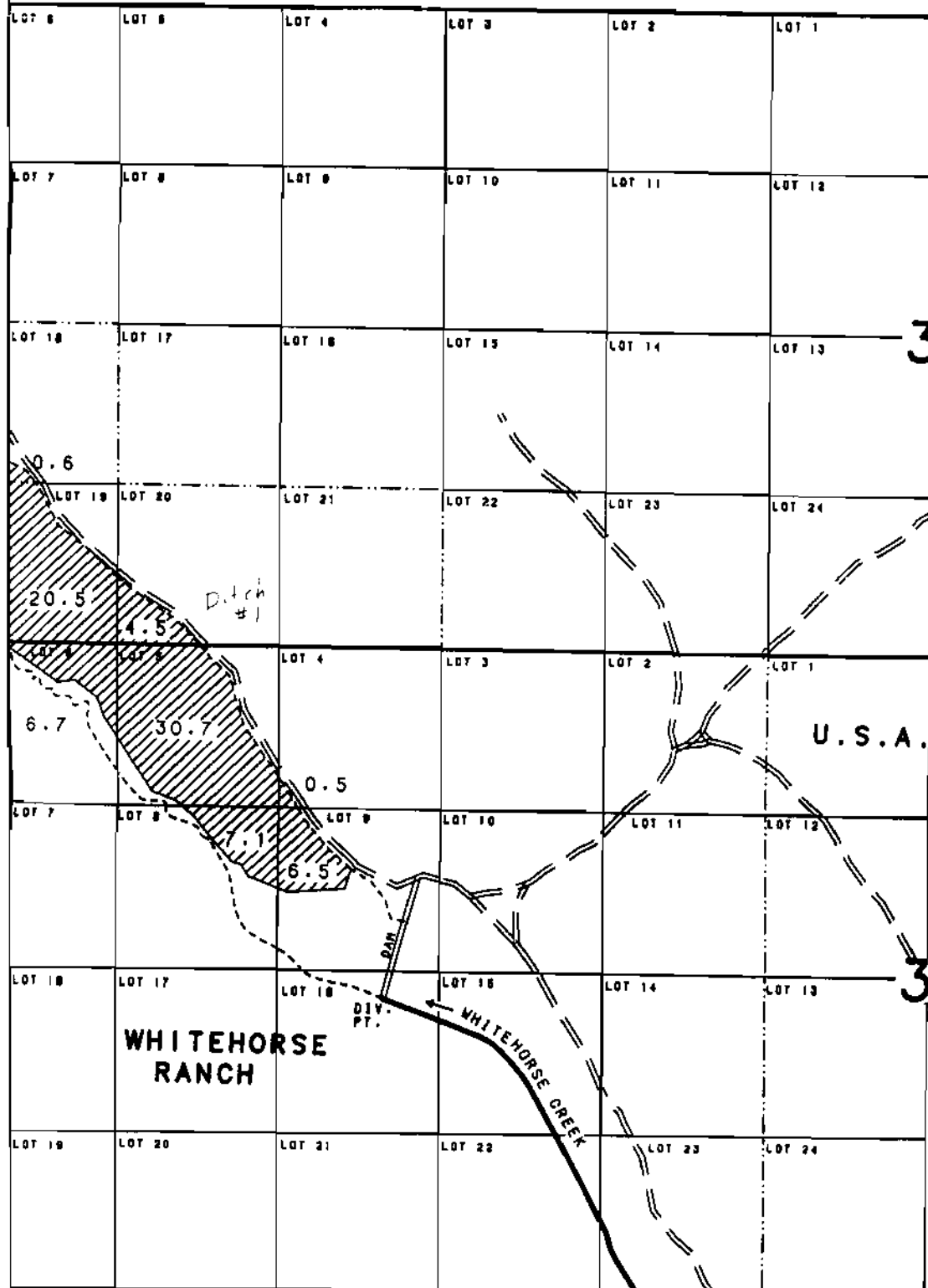


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