3

Reinstatement CANCELLED ASSIGNED

Application No. 69433

Permit No. 51626

Certificate No. CANCELLED Reinstatement

Stream Index, Page No. 10 - 13

Name Malheur River Basin Water Users Association

By XX

Address PO Box 237
Drewsey, OR 97904

541-493-2728 Barbara Arnold

Date filed October 28, 1987

Priority

Action suspended until C20

Return to applicant

Date of approval

CONSTRUCTION

Date for beginning AUG 28 1996

Date for completion OCT 1 1998 1996

Extended to 1999, 10-1-20

Date for application of water 10-1-99

Extended to 10-1-20

PROSECUTION OF WORK

Form "A" filed

Form "B" filed

Form "C" filed

FINAL PROOF

Blank mailed

Proof received

Date certificate issued

#1

original file

FEES PAID

Date	Amount	Receipt No.
10-28-87	10,692.00	53623
7-3-91	2147.20	75989
7/26/91	214.20	76824
5-17-2021	200.00	135274
	Cert. Fee	

FEES REFUNDED

Date	Amount	Check No.
M 9-6-95	2,361.40	000428
M 9-20-95	8,970.00	000509

ASSIGNMENTS

Date	To Whom	Address	Volume	Page
8/30/2006	Drewsey Reclamation Cooperative % George Wilber 77 West Adams St. Burns OR 97720			

REMARKS

Map in* D-28-8

A Term 90 cert SEP 05 1996

Reinstatement

7/6/06 CANCELLED in special Order Vol 69 pg 18

8/31/06 Reinstated in special order Vol 69 pg 1083

SP*70900-119

Application No. 69433

Permit No. 51626

Certificate No. _____

Stream Index, Page No. _____

Map in D-38-8

Overabundance file

#2

Name Malheur River

By Basin Water

Address Users Ass.

Date filed _____

Priority _____

Action suspended until AB 97

Return to applicant _____

Date of approval _____

FEES PAID

Date	Amount	Receipt No.
12-29-06	250.00	85774

Cert. Fee _____

FEES REFUNDED

Date	Amount	Check No.

ASSIGNMENTS

Date	To Whom	Address	Volume	Page

CONSTRUCTION

Date for beginning AUG 28 1996

Date for completion OCT 1 1998

Extended to OCT 1 1999

Date for application of water _____

Extended to _____

PROSECUTION OF WORK

Form "A" filed _____

Form "B" filed _____

Form "C" filed _____

FINAL PROOF

Blank mailed _____

Proof received _____

Date Certificate issued _____

REMARKS

A-Form 90 sent SEP 05 1996

2/17/24

**	2134	51.5 @	1/80
	2135	80 @	"
	2151	68	" "
	3526	89	" "
	3721	23	" "
	8121	11 8	" "
*	49682	862.38	" "
		1185.68	
		.60 .0	
		1125.68	

Certificate Totals

* 60 ac transfered off - still in total (T4647

** Cert 2135 not listed in any tables in app folder but 2134 is

From: DBDEV::BROWN 22-SEP-1993 08:16
To: MIZE
CC: BROWN
Subj: MALHEUR RIVER BASINS WATER USER ASSOCIATIONS FILE 69433

Can you provide me with a status report in regards to the above referenced application for permit?

Thanks.

STATE OF OREGON
WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD NE
SALEM, OR 97310
378-3739/378-8130 (FAX)

RECEIPT # 75989

RECEIVED FROM: [illegible]
BY: [illegible]

APPLICATION	69433
PERMIT	
TRANSFER	

CASH: ☐ CHECK: # [illegible] ☐ OTHER: (IDENTIFY) _____ TOTAL REC'D $ 2,147.30

01-00-0	**WRD MISC CASH ACCT**		
842.010	ADJUDICATIONS		$
831.087	PUBLICATIONS/MAPS		$
830.650	PARKING FEES Name/month	_____	$
_____	OTHER: (IDENTIFY)	_____	$
02-00-0	**FEDERAL FUNDS**		
_____	OTHER: (IDENTIFY)	_____	$
03-00-0	**WRD OPERATING ACCT**		
	MISCELLANEOUS:		
840.001	COPY FEES		$
880.109	MISC REVENUE: (IDENTIFY)	_____	$
520.000	OTHER (P-6): (IDENTIFY)	_____	$

		EXAM FEE		RECORD FEE
	WATER RIGHTS:			
842.001	SURFACE WATER	$	842.002	$ 2,147.30
842.003	GROUND WATER	$	842.004	$
842.005	TRANSFER	$	842.006	$
	WELL CONSTRUCTION	EXAM FEE		LICENSE FEE
842.022	WELL DRILL CONSTRUCTOR	$	842.023	$
842.016	WELL DRILL OPERATOR	$	842.019	$
	LANDOWNER'S PERMIT		842.024	$

06-00-0	**WELL CONST START FEE**			
842.013	WELL CONST START FEE	$	CARD #	
	MONITORING WELLS	$	CARD #	
45-00-0	**LOTTERY PROCEEDS**			
864.000	LOTTERY PROCEEDS			$

69001	**SUSPENSE ACTIVITY**	LIC NUMBER	
842.115	POWER LICENSE FEE(FW)		$
842.115	HYDRO LICENSE FEE(FW)		$
832.009	HYDRO EXAM FEE(GF)		$

RECEIPT # 75989 DATED: 7-3-11 BY: [illegible]

Distribution—White Copy-Customer, Yellow Copy-Fiscal, Brown Copy-Fiscal

378-3739

STATE OF OREGON
WATER RESOURCES DEPARTMENT
Mill Creek Office Park • 555 13th. Street N.E.
Salem, Oregon 97310

RECEIVED FROM Malheur River Basin (Water Users Association) Application ☒ Permit ☐ Transfer ☐ 69433

TOTAL REC'D. $ 10,692.00 ☐ CASH ☒ CHECK ☐ MONEY ORDER

By _____

	EXAMINATION FEES:	RECORDING FEES:
Surface Water	$ 200.00	$ 10,492.00
Ground Water	$	$
Transfer	$	$

MISCELLANEOUS FEES:
Copying ☐
Certification ☐
Misc. Recording ☐ $
Protest ☐
Extension of time ☐

ADJUDICATION FEE $

POWER LICENSE FEE $

HYDROELECTRIC LICENSE FEE $

EXAM FEE $

WATER WELL CONSTRUCTOR
Exam Fee ☐ License Fee ☐ $

LANDOWNER'S WATER WELL PERMIT FEE $

ALL OTHER: _____ $

SUSPENSE TOTAL $ 10,692.00

BASIN MAPS $

QUADRANGLE ACCOUNT $

RECEIPT NO.
53623 Dated 10-24-87 By [illegible]

INTERNATIONAL BUSINESS FORMS - EUGENE OREGON 97401 R1998

STATE OF OREGON
WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD NE
SALEM, OR 97310
378-3739/378-8130 (FAX)

RECEIPT # 76824

RECEIVED FROM: [illegible]
BY: [illegible]

CASH: ☐ CHECK: # [illegible] ☐ OTHER: (IDENTIFY) _____

01-00-0	**WRD MISC CASH ACCT**			
842.010	ADJUDICATIONS			$
831.087	PUBLICATIONS/MAPS			$
830.650	PARKING FEES Name/month	_____		$
_____	OTHER: (IDENTIFY)	_____		$
02-00-0	**FEDERAL FUNDS**			
_____	OTHER: (IDENTIFY)	_____		$
03-00-0	**WRD OPERATING ACCT**			
	MISCELLANEOUS:			
840.001	COPY FEES			$
880.109	MISC REVENUE: (IDENTIFY)	_____		$
520.000	OTHER (P-6): (IDENTIFY)	_____		$

		EXAM FEE		RECORD FEE
	WATER RIGHTS:			
842.001	SURFACE WATER	$	842.002	$
842.003	GROUND WATER	$	842.004	$
842.005	TRANSFER	$	842.006	$
	WELL CONSTRUCTION	EXAM FEE		LICENSE FEE
842.022	WELL DRILL CONSTRUCTOR	$	842.023	$
842.016	WELL DRILL OPERATOR	$	842.019	$
	LANDOWNER'S PERMIT		842.024	$

06-00-0	**WELL CONST START FEE**			
842.013	WELL CONST START FEE	$	CARD #	
	MONITORING WELLS	$	CARD #	
45-00-0	**LOTTERY PROCEEDS**			
864.000	LOTTERY PROCEEDS			$

69001	**SUSPENSE ACTIVITY**	LIC NUMBER
842.115	POWER LICENSE FEE(FW)	
842.115	HYDRO LICENSE FEE(FW)	
832.009	HYDRO EXAM FEE(GF)	

RECEIPT # 76824 DATED: 7-21-11 BY: [illegible]

Distribution—White Copy-Customer, Yellow Copy-Fiscal, Brown Copy-Fiscal

3526	2134 (4)	3791	2151	8121	(11219) ~~49682~~
19 0 20 0 27 0 3 0 20 1	0 5 4 1 2 0	23 0	1 0 16 2 13 2 1	2 0 1 0 7 8	7. 2 3 0 4 6 1 1 0 5 5 2 3 4 3 4 6 2 7 8 3 1 4 4 0 0 2 8 4 3 5 0 2 7 2 1 6 2
89 0 ✓	6 5 ✓	23 0 ✓	31 0 ✓	10 8 ✓	266 8

Total 427 1 from Original App

427.1 + 515 3 = 942 4

+427.1 + 282 3 = 709 1

49682 — 11219

37 7
22 0
15 3
1 2
14 8
14 1
0 5
26 0
1 2
28 8
40 0
32 8
29 6
6 0
287 3

287 3 + 228 0 = 515 3 From Combined App.

427 1 + 515 3 = 942 4
- 884 2 # from order
58 2 ?

©1990 Franklin International Institute, Inc. Reorder No. 4002

RECEIVED
JUL 03 1991
WATER RESOURCES DEPT.
SALEM, OREGON

TSP	RNG	SEC	1/4 1/4	ACRES	PRI.	SUP.	CERT.	DIV.PT	TAXLOT
T-19-S	R-33 1/2-E	24	SW of SW	23.0		23.0	7042	#7	1900
			SE of SW	10.0		10.0	"	"	"
		23	SE of SE	10.0		10.0	"		
		25	SW of NE	15.0		15.0	"	"	"
			NE of NW	38.0		38.0	"	"	"
			NW of NW	40.0		40.0	"	"	"
			SW of NW	6.0		6.0	"	"	"
			SE of NW	34.0		34.0	"	"	"
			NE of SW	19.0		19.0	"	"	"
			NE of SE	30.0		30.0	"	"&8	"
			NW of SE	35.0		35.0	"	"	"
			SW of SE	40.0		40.0	"	"	"
			SE of SE	40.0		40.0	"	#8&18	"
		26	NE of NE	14.0		14.0	"	#7	"
		36	NE of NE	39.0		39.0	34143	#18&#19	"
			NW of NE	37.6		37.6	"	"	"
			SW of NE	38.4		38.4	"	"	"
T-25-S	R-35-E	22	NE of SE	0.8		0.8	46044	#20	300
		23	NE of SW	0.3		0.3	"	"	"
			NW of SW	12.4		12.4	"	"	"
			SW of SW	5.0		5.0	"	"	"
			SE of SW	11.8		11.8	"	"	"
		22	SE of NE	6.1		6.1	11219	#16	"
							"	"	"
			SE of SW	1.7		1.7	"	"	"
			NE of SE	25.1		25.1	"	"	"
			NW of SE	20.3		20.3	"	"	"
			SW of SE	22.5		22.5	"	"	"
			SE of SE	1.4		1.4	"	"	"
		26	NE of NE	40.0		40.0	"	"	"
			NW of NE	34.6		34.6	"	"	"
		23	NE of SW	1.8		1.8	"	"	"
			NW of SW	9.0		9.0	"	"	"
			SE of SW	23.2		23.2	"	"	"
			NE of SE	2.0		2.0	"	"	"
			NW of SE	6.0		6.0	"	"	"
			SW of SE	32.3		32.3	"	"	"
			SE of SE	2.0		2.0	"	"	"
			NE of SW	16.0		16.0	6891	"	"
			NW of SW	10.0		10.0	"	"	"
			SW of SE	6.0		6.0	"	"	"
			SE of SE	32.0		32.0	"	"	"
T-20-S	R-35-E	25	NW of NE	37.7		37.7	49682	#16	3800
			NE of NW	22.0		22.0	"	"	"
			NW of NW	15.3		15.3	"	"	"
			NE of NE	40.0		40.0	50450	#16	3700
			SE of NE	20.0		20.0	"	"	"

307.1

TSP	RNG	SEC	1/4 1/4	ACRES	PRI.	SUP.	CERT.	DIV.PT	TAXLOT
T-20-S	R-35-E	25	SE of NE	19.0		19.0	49682	#16	3700
			SW of NE	14.8		14.8	"	"	"
			NE of SE	14.4		14.4	"	"	"
			SE of SE	0.5		0.5	"	"	"
			NE of SE	3.1		3.1	60643	"	"
			SE of SE	0.3		0.3	"	"	"
			SE of NE	12.8		12.8	52032	#21	"
		36	NE of NE	1.2		1.2	"	"	"
T-20-S	R-36-E	30	SE of NW	0.4		0.4	60643	#16	2300
			NE of SW	2.3		2.3	"	"	"
			SW of SW	0.9		0.9	"	"	"
			SE of SW	10.2		10.2	"	"	"
		31	NE of NW	8.9		8.9	"	"	"
			NW of NW	0.9		0.9	"	"	"
		30	SW of SW	4.2		4.2	52032	#21	"
			SW of NW	26.0		26.0	49682	#16	"
			SE of NW	1.2		1.2	"	"	"
			NE of SW	28.8		28.8	"	"	"
			NW of SW	40.0		40.0	"	"	"
			SW of SW	32.0		32.0	"	"	"
			SE of Sw	29.6		29.6	"	"	"
			SW of SE	6.0		6.0	"	"	"
					E	515±			
		31	NE of NW	7.0		7.0	52032	#21	"
			NW of NW	20.0		20.0	"	"	"
			SW of NW	0.1		0.1	"	"	"
			SE of NW	22.6		22.6	"	"	"
			NE of SW	0.8		0.8	"	"	"
		31	SW of SE	6.0		6.0	"	"	2400
			SE of SE	36.8		36.8	"	"	"
		32	SW of SW	12.2		12.2	"	"	"
T-21-S	R-36-E	6	SE of NE	0.8		0.8	"	"	400
		5	Lot 3	7.0		7.0	"	"	"
			Lot 4	17.8		17.8	"	"	"
			NW of SW	0.8		0.8	"	"	"

884± - 515± = 369±

Revised 7/24/91

Mailing List for Proposed Certificate

Copies Mailed
by: KMWF (STAFF)
on: MAR 0 1 2024 (DATE)

Application: S-69433

Permit: S-51626

Certificate:

Permit/Certificate Holder:

DREWSEY RECLAMATION COOPERATIVE
77 W ADAMS ST
BURNS OR 97720

Is the Permit Holder(s) of record currently identified as a landowner of any tax lots involved as confirmed by the County records? **YES NO - WTAER CORP**

Copies of Proposed Certificate to be sent to:

1. Watermaster District #: 10
2. File

Other persons to receive copies: (include map):

1. GARY DEJARNATT, CWRE ✓
2. JOHN SHORT, AGENT ✓

Oregon
Tina Kotek, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
www.oregon.gov/owrd

Date Mailed: MAR 0 1 2024

Reference: Application S-69433 Permit S-51626

PROPOSED

Enclosed is a proposed certificate of water right and map. The map and proposed certificate represent the extent water was used within the terms of the permit based upon Claims of Beneficial Use, prepared by a Certified Water Right Examiner, that either you or a previous permit holder submitted.

The certificate is the final step in the water right process. The Department encourages you to review these proposals. If you do not agree with the proposed certificate, Oregon Administrative Rule 690-330-010 (2) allows the permittee or landowner 60 days from the mailing date of this notice to request the Department to reconsider the contents of the proposed certificate.

If you agree with the proposed certificate, no response to this notice is required. Sometime after comment period, the recorded certificate of water right will be mailed to the permit holder of record.

If your name is not listed on the proposed certificate, and you are the current landowner, and would like to have the final certificate issued in your name, you may apply through the Department to have the permit assigned to you. If you have any questions about the assignment process, please contact Mary Bjork at 503-979-9895.

If you have any questions please contact Codi Holmes at 503-979-3184.

Sincerely,

Dwight French
Administrator
Water Right Services

STATE OF OREGON

COUNTY OF HARNEY

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

DREWSEY RECLAMATION COOPERATIVE
77 W ADAMS ST
BURNS OR 97720

confirms the right to the use of water perfected under the terms of Permit S-51626. The amount of water used to which this right is entitled is limited to the amount used beneficially, and shall not exceed the amount specified, or its equivalent in the case of rotation, measured at the point of diversion from the source. The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-69433

SOURCE OF WATER: MIDDLE FORK MALHEUR RIVER, TRIBUTARY OF SNAKE RIVER

PURPOSE or USE: IRRIGATION OF 683.5 ACRES

MAXIMUM RATE: 8.54 CUBIC FEET PER SECOND

DATE OF PRIORITY: JULY 1, 1991

The point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
20 S	34 E	WM	11	NE SW	50 FEET SOUTH AND 1410 FEET EAST OF W1/4 CORNER, SECTION 11

The amount of water used for irrigation under this right is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 1.5 acre-feet for each acre. The use of water for irrigation under this right is limited to the period of April and May of each year.

Operating measuring devices capable of measuring the rate of appropriation and measuring and recording total volume of water appropriated during the irrigation season shall be maintained and operated at all diversion points identified under this right.

All diversions shall be in compliance with applicable laws maintaining and operating fish screening at any diversion under this right.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484 and ORS 536.075. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 183.484, ORS 536.075 and OAR 137-004-0080, you may petition for judicial review and petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied. In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate within three months after issuance of the certificate.

PROPOSED

PROPOSED

A description of the place of use is as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	User
20 S	35 E	WM	21	NE SE		7.9	O'TOOLE
20 S	35 E	WM	21	NW SE		3.0	O'TOOLE
20 S	35 E	WM	22	SE NE		3.5	MARSHALL
20 S	35 E	WM	22	NW SW		4.6	O'TOOLE
20 S	35 E	WM	22	SE SW		1.7	MARSHALL
20 S	35 E	WM	22	NE SE		17.5	MARSHALL
20 S	35 E	WM	22	NW SE		19.9	MARSHALL
20 S	35 E	WM	22	SW SE		17.8	MARSHALL
20 S	35 E	WM	23	NE SW		1.4	CRONIN
20 S	35 E	WM	23	NE SW		1.8	MARSHALL
20 S	35 E	WM	23	NW SW		8.8	MARSHALL
20 S	35 E	WM	23	SE SW		0.7	CRONIN
20 S	35 E	WM	23	SE SW		16.5	MARSHALL
20 S	35 E	WM	23	NE SE		2.5	VANNOY
20 S	35 E	WM	23	NW SE		1.6	VANNOY
20 S	35 E	WM	23	NW SE		4.4	CRONIN
20 S	35 E	WM	23	SW SE		1.9	CRONIN
20 S	35 E	WM	23	SW SE		31.5	MARSHALL
20 S	35 E	WM	23	SE SE		35.1	MARSHALL
20 S	35 E	WM	24	SW SW		4.2	FRENCH
20 S	35 E	WM	24	SW SW		29.3	JOYCE
20 S	35 E	WM	24	SE SW		27.8	JOYCE
20 S	35 E	WM	24	NE SE		28.4	JOYCE
20 S	35 E	WM	24	SW SE		31.4	JOYCE
20 S	35 E	WM	24	SE SE		40.0	JOYCE
20 S	35 E	WM	25	SW NE		13.3	WILBER
20 S	35 E	WM	25	SE NE		19.0	WILBER
20 S	35 E	WM	25	NE SE		14.4	WILBER
20 S	35 E	WM	25	SE SE		0.5	WILBER
20 S	35 E	WM	26	NE NE		39.7	MARSHALL
20 S	35 E	WM	26	NW NE		22.4	MARSHALL
20 S	36 E	WM	19	NW SW	3	35.0	JOYCE
20 S	36 E	WM	19	SW SW	4	24.6	JOYCE
20 S	36 E	WM	30	NW NW	1	14.3	JOYCE
20 S	36 E	WM	30	SW NW	2	26.0	WILBER
20 S	36 E	WM	30	SE NW		1.2	WILBER
20 S	36 E	WM	30	NE SW		28.8	WILBER
20 S	36 E	WM	30	NW SW	3	40.0	WILBER
20 S	36 E	WM	30	SW SW	4	23.5	WILBER
20 S	36 E	WM	30	SE SW		29.6	WILBER
20 S	36 E	WM	31	NE NW		8.0	WILBER

Failure to comply with any of the provisions of this right may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the right.

This right is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

PROPOSED

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

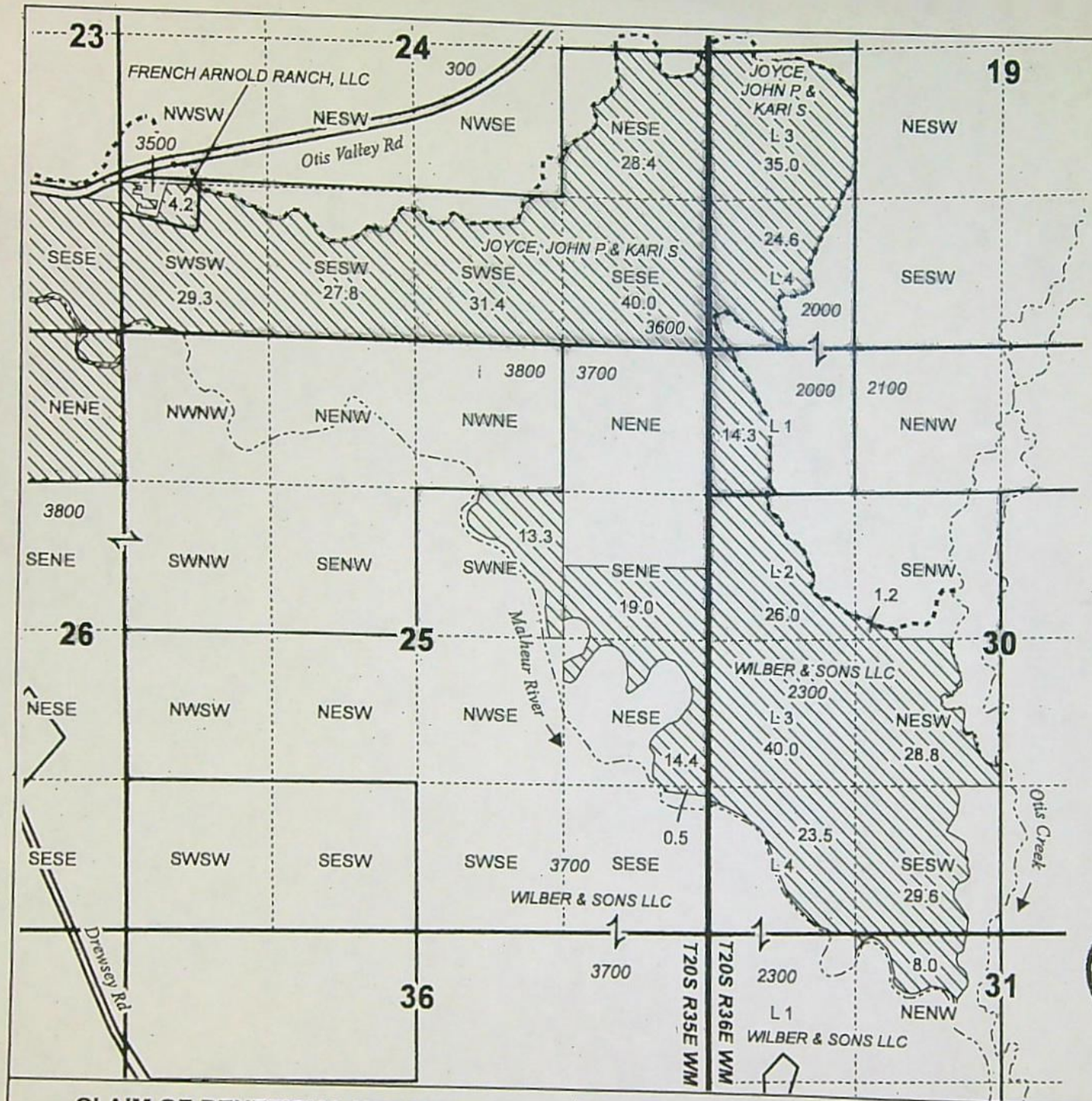
The right to the use of the water for the above purpose is restricted to beneficial use on the place of use described.

PROPOSED

Issued _____.

Dwight French
Water Right Services Division Administrator, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

PROPOSED



T20S R35E & T20S R36E WM
HARNEY COUNTY, OR

0 1,320 Feet

1" = 1,320'

- River/Creek
- Ditch
- POU IR
- Township
- Section
- Quarter Quarter
- Tax Lot

RECEIVED
MAY 17 2021
OWRD

Certified Water Right Examiner
G33
Gary L. DeJarnatt
Nov. 19, 1987
STATE OF OREGON

RENEWAL DATE 12/31/2021

CLAIM OF BENEFICIAL USE MAP
DREWSEY RECLAMATION COMPANY

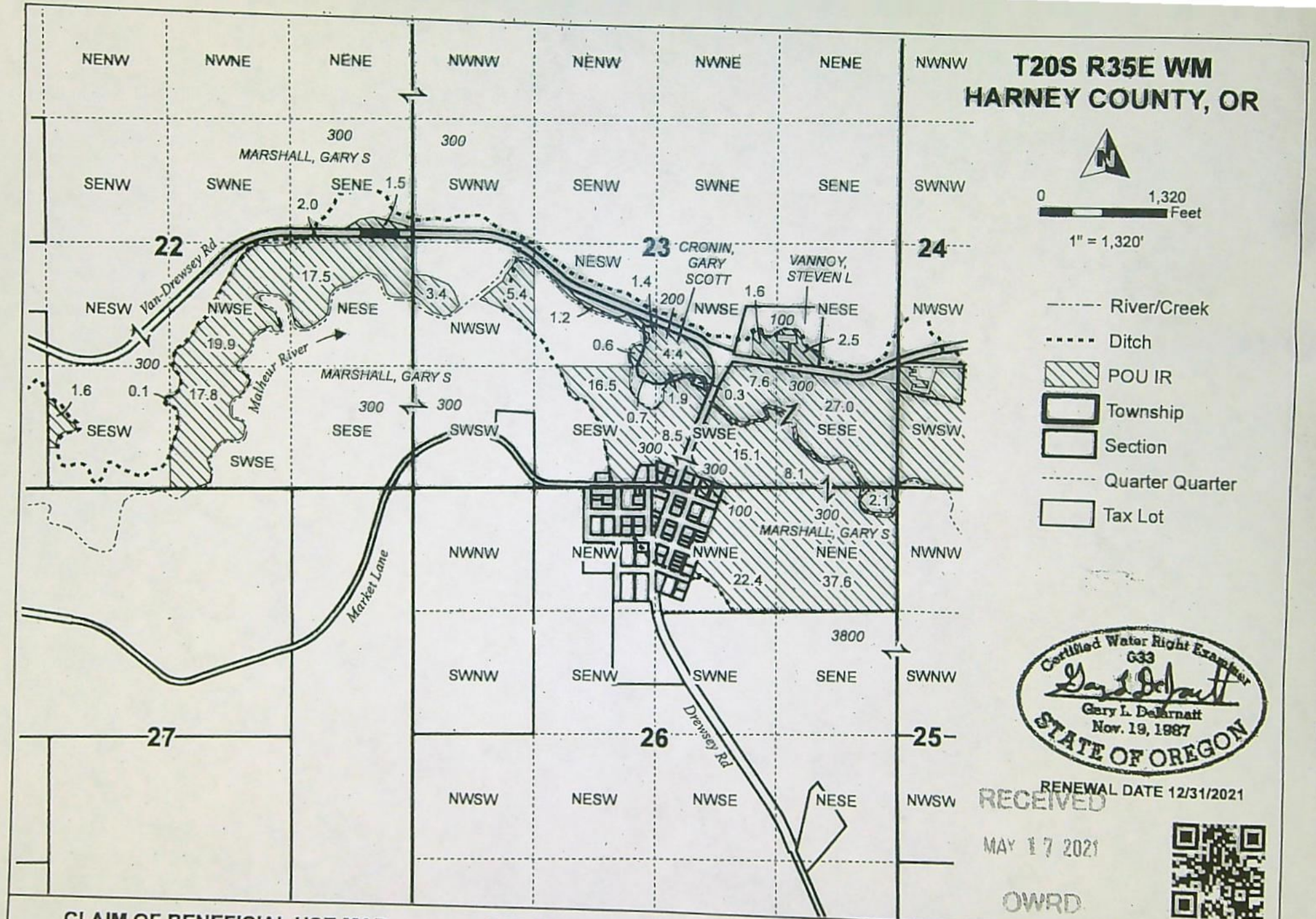
Date: 4/16/2021 Ap S-69433 Permit S-51626

PG 1 OF 4

Project #20092

This map is not intended to provide legal dimensions or locations of property ownership lines.

WATER RIGHT SERVICES, LLC
PO BOX 1830, BEND, OR 97709
WWW.OREGONWATER.US CCB # 197121
johnshort@usa.com 541-389-2837



Certified Water Right Examiner
633
Gary L. DeArnatt
Nov. 19, 1987
STATE OF OREGON

RENEWAL DATE 12/31/2021

RECEIVED
MAY 17 2021
OWRD

CLAIM OF BENEFICIAL USE MAP
DREWSEY RECLAMATION COMPANY

Date: 4/16/2021 Ap S-69433 Permit S-51626

PG 2 OF 4

Project #20092

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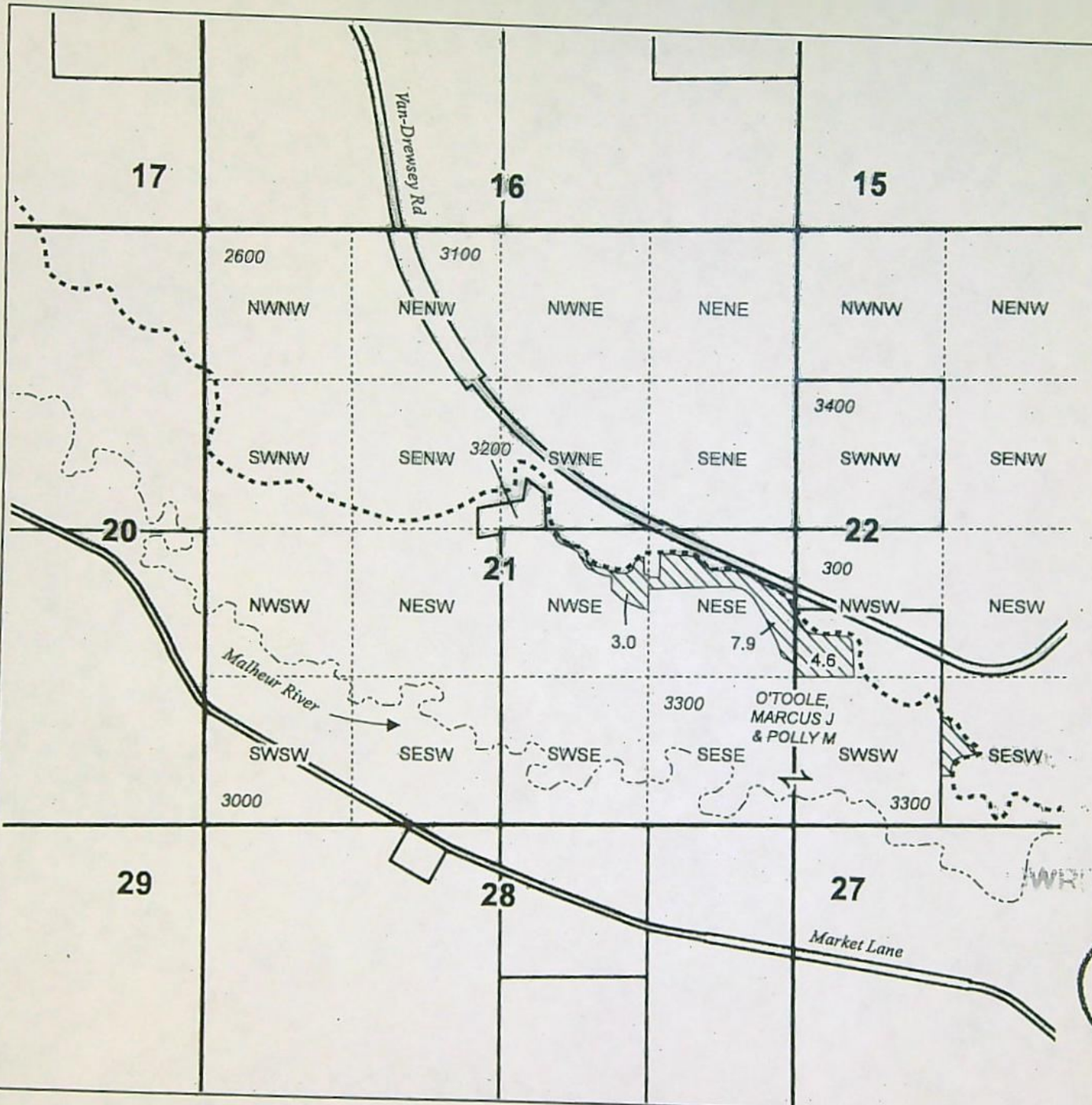
PO BOX 1830, BEND, OR 97709
WWW.OREGONWATER.US CCB # 197121
johnshort@usa.com 541-389-2837



T20S R35E WM
HARNEY COUNTY, OR

0 1,320 Feet

1" = 1,320'

- River/Creek
- Ditch
- POU IR
- Township
- Section
- Quarter Quarter
- Tax Lot

Certified Water Right Examiner
633
Gary L. Delamatt
Nov. 19, 1987
STATE OF OREGON

RENEWAL DATE 12/31/2021

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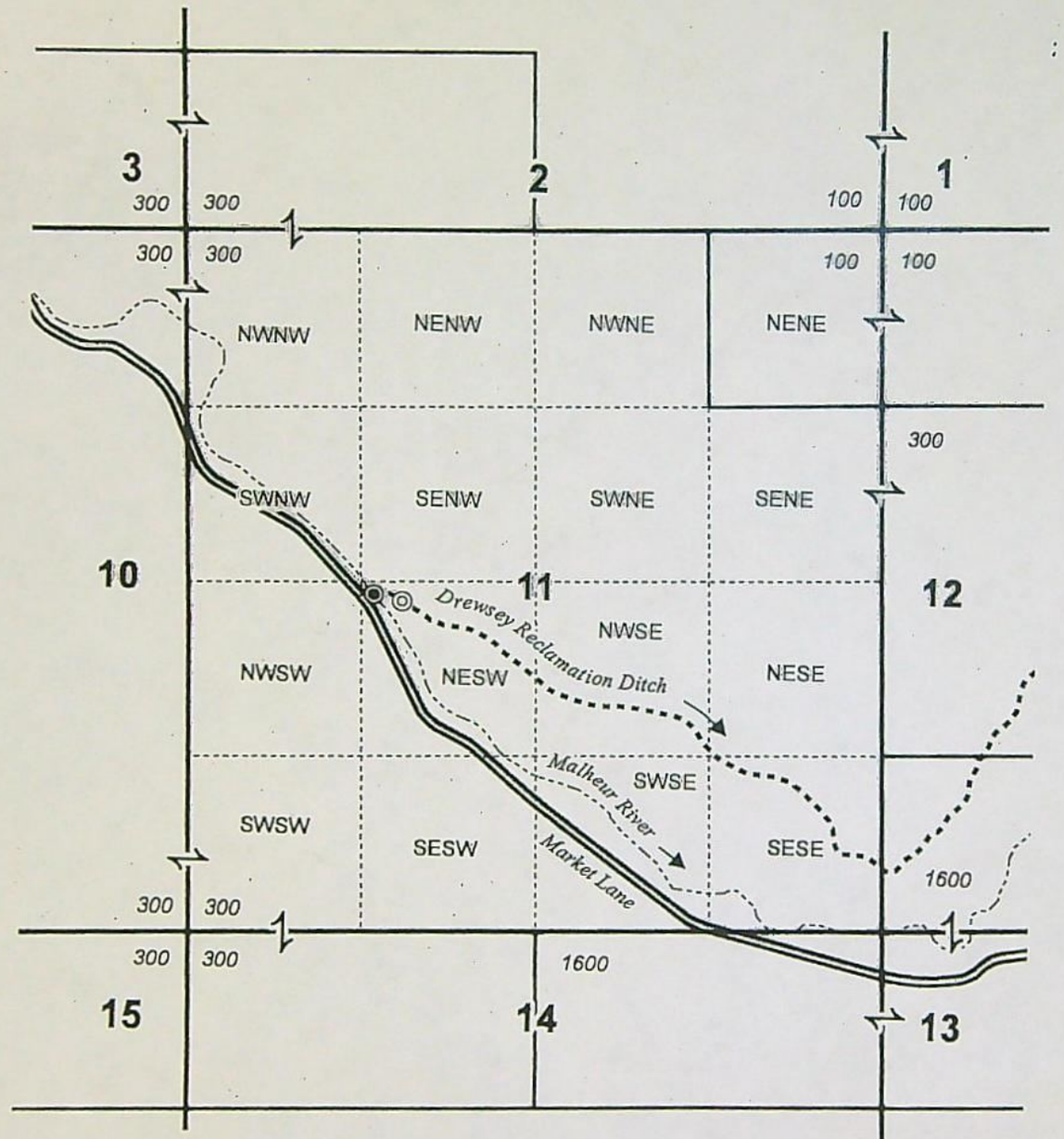

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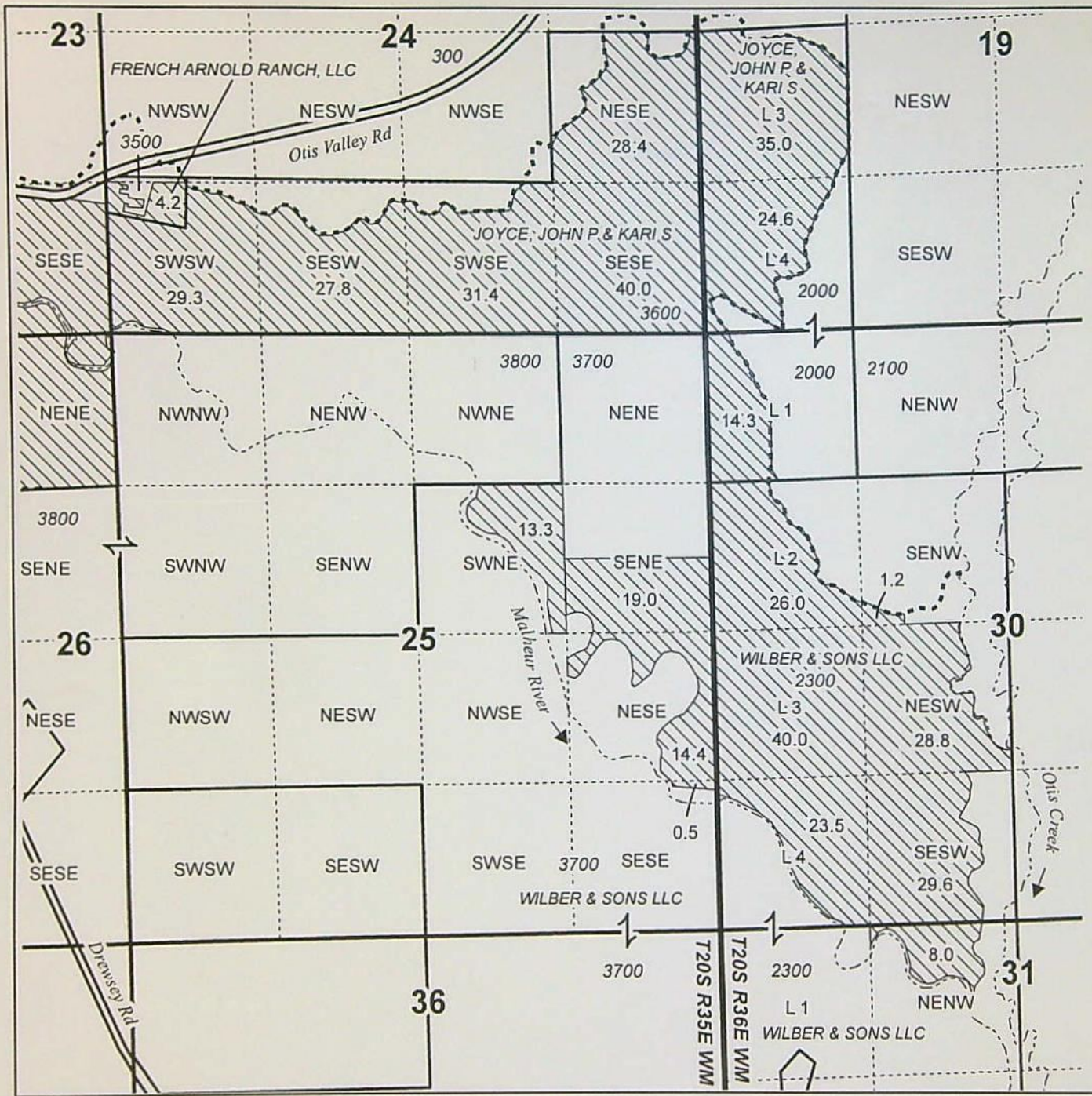

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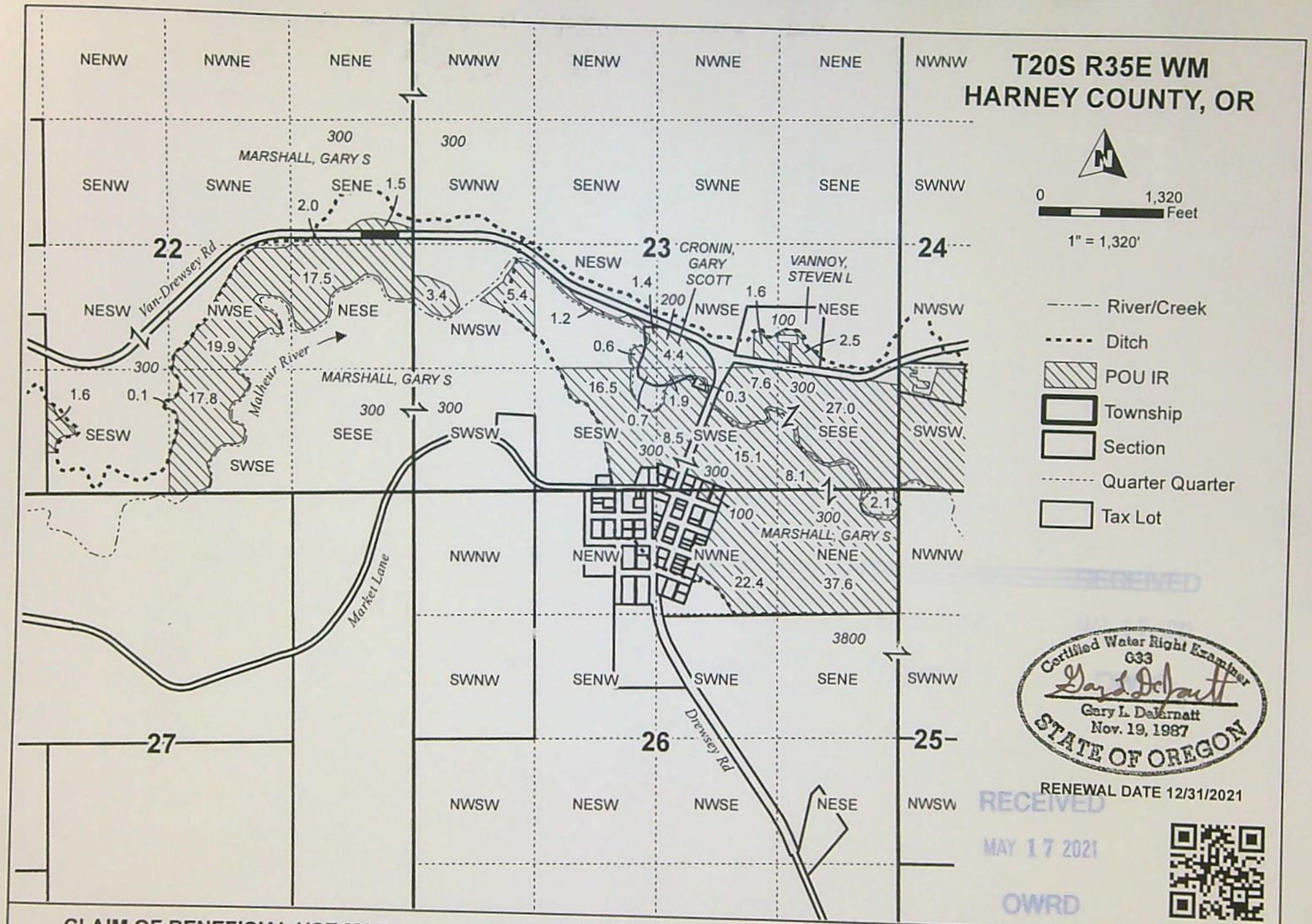

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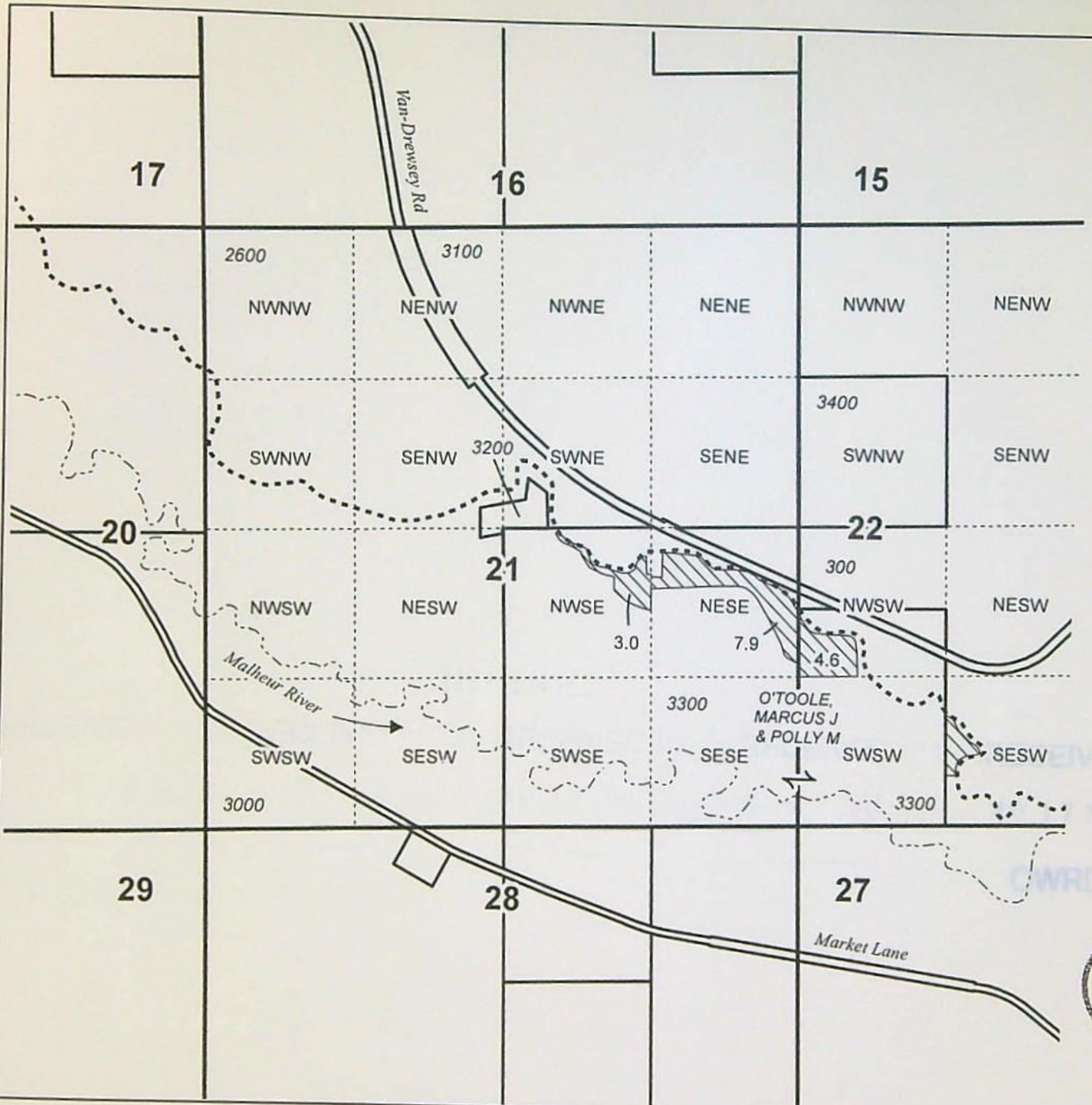

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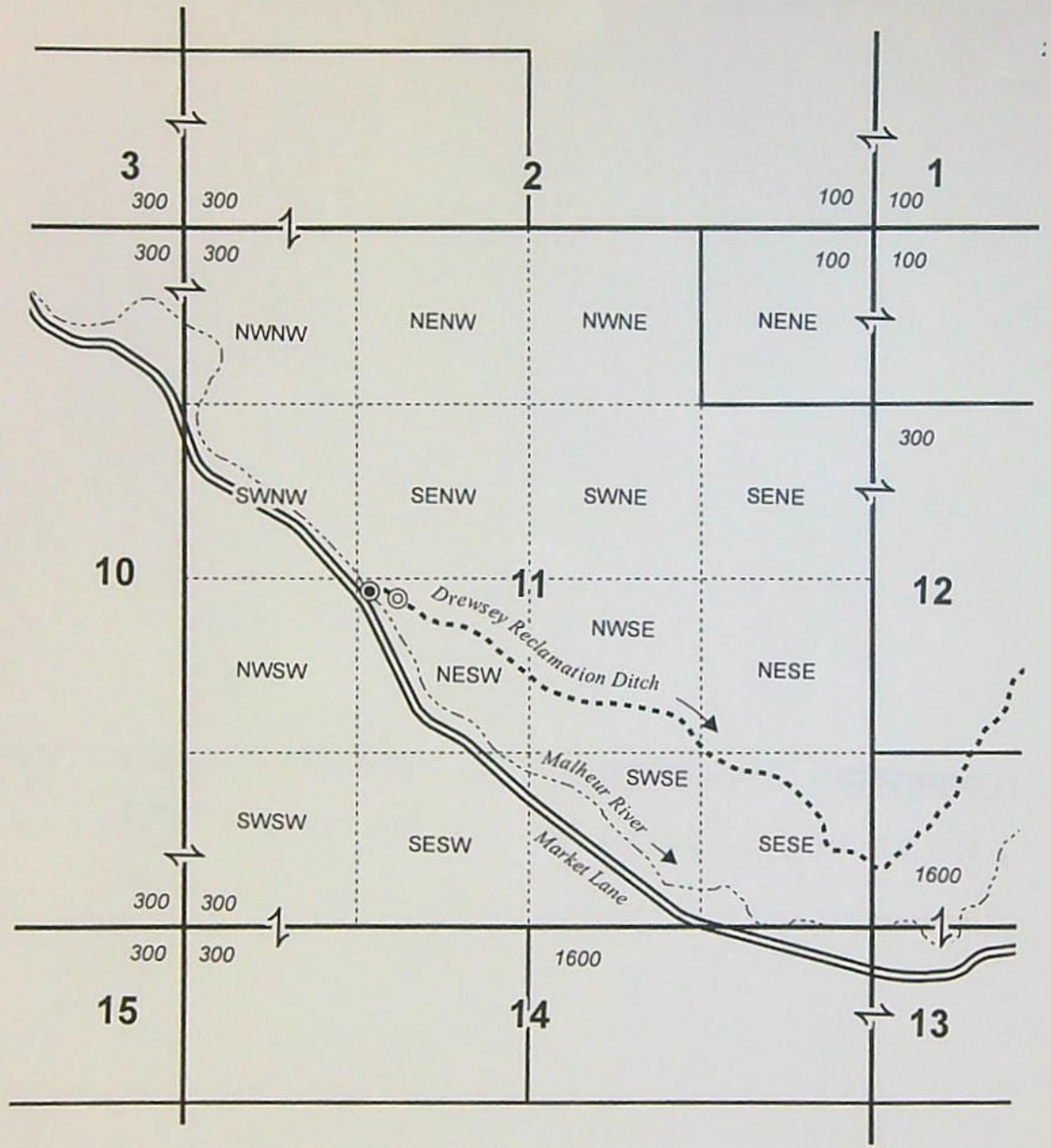

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PERMIT

Prop/redacres/rate

MEMO –Proof to Satisfaction

Application # S69433	Permit #	Permit Amendment (T-FILE)#
WRD Reviewer (CW) holmes	Date Sept 23	
WRD Peer Reviewer (PR) J Skaug	Date Jan 24	
Related Files:		

CW	PR	RESEARCH			
☒	☒	**Organize:** file in chronological Order; Pull following items from paper file:			
		☒ CBU Report/Map	☐ App (Permit) Map	☒ Assignment ☐ n/a 2006	☒ Extension ☐ n/a 10/1/2020
		☐ Fish Screen Doc ☐ n/a	☐ Pump Test ☒ n/a	☐ SWL (paper) n/a	☐ Water Use Charts n/a
		☐ Permit Amendment ☒ n/a			
		Electronic Application Folder:			
☐	☒	☒ Create CBU folder	☒ Create Work Packet folder		
☐	☒	**Scan:** Above documents into "CBU Folder"			
☐	☒	**Save** other docs electronically: save these in the Work Packet folder per naming conventions			
		☒ Permit	☐ Transfer Order ☒ n/a	☒ POU Report (conflict)	☐ Water Use Report ☒ n/a
		☐ SWL (GW) ☒ n/a	☒ OrMap Tax Lot Map	☒ Ownership Report CO-OP/BOS REG	☐ BLM Map
		☐ PT Approve/Deny ☒ n/a	☐ Dam Safety ☒ n/a	☐ Mitigation ☒ n/a	☐ Others
☐	☒	**Search :**			
☐	☒	☒ Interactive Mapper	☒ AOI CO-OP ☐ n/a	☐ Map and TaxLot HARNEY CO.	New Owner & Address:
		Research Comments: CANCEL 7/6/2006 RE-INSTATE 8/31/2006 IRR 721 @ AC 9.01 CFS			

REVIEW OF CLAIM: Comments on Second Page

Required By Permit/Order	Complied Y/N	CONDITIONS	NOTES:
☒ Yes ☐ No ☐ n/a	☐ Y ☐ N	Fish Condition	
☒ Yes ☐ No ☐ n/a	☒ Y ☐ N	Meter/Measuring Device	WM APPROVED
☐ Yes ☒ No ☐ n/a	☐ Y ☐ N	Water Use Reporting	KEEP BUT NOT REPORTING
☐ Yes ☐ No ☐ n/a	☐ Y ☐ N	Pump Test	
☐ Yes ☐ No ☐ n/a	☐ Y ☐ N	SWL (Month)	
☐ Yes ☐ No ☐ n/a	☐ Y ☐ N	Dam Safety	
☐ Yes ☐ No ☐ n/a	☐ Y ☐ N	Well Id	
☐ Yes ☐ No ☐ n/a	☐ Y ☐ N	Other:	
☐ Yes ☐ No ☐ n/a	☐ Y ☐ N	C-date OCT 1 1998 A: 8/28/96 B: 10/1/98	Ext C-date 10.1.2020 claim 4.1.2012 FD. 8/30/2007

REVIEW OF MAP: ☐ Yes ☐ No is a REVISED Map required?

CW	PR		Notes:
☐	☒	Verify POA/POD Location	
☐	☒	Verify POU	
☐	☒	POU clearly identified use type	
☐	☒	DLC/GOV'T LOT	

721 @ 1/80 = 9.0125
683.5 @ 1/80 = 8.54375 LIMIT

RUN CAPACITY CALCULATOR AND SAVE CALCS TO APPLICATION FOLDER:

POD/POA PERMIT	POD/POA CLAIM	PERMITTED RATE	CLAIM RATE	CALCULATED RATE	NOTES:
		9.01 CFS	8.54 CFS		4/1-5/31

Claim #5683.5 | maps 683.5

DETERMINATION:

CW	PR	DOCUMENT	NOTES:
☐	☐	LETTER FOR CLARIFICATION	
☐	☐	DRAFT (PLEASE EXPLAIN)	
☐	☐	PROPOSED	
☐	☐	FINAL	
☐	☐	PROPOSED ORDER TO CANCEL	

FINAL CHECKS: Review your document; BEFORE printing proposed for Support

CW	PR	DID YOU CHECK?	NOTES:
☐	☐	DATA REVIEW	
		☐ POA/POD/DAM TABLES/DESCRIPTIONS	☐ PLACE OF USE TABLES, INCLUDING ACRES FOR GOV'T LOTS/DLC
☐	☐	SPELL CHECKED DOC	
☐		CERT NUMBER ISSUED	CERT #

EXTRAS: BEFORE Printing your Final Certificate

CW	PR	DID YOU CHECK?	NOTES:
☐	☐	DATA REVIEW COMMENTS	
☐	☐	SPELL CHECKED DOC BEFORE FINAL CERTIFICATE PRINTED	

CASEWORKER REVIEW COMMENTS:

PEER REVIEWER COMMENTS:

Drewsey Reclamation Co.
c/o George Wilbur
77 W ADAMS ST
BURNS OR 97720

1/3 POD Developed
683.5/721.2 Ac Developed
8.54 CFS/9.2 CFS @ Y/BOTH

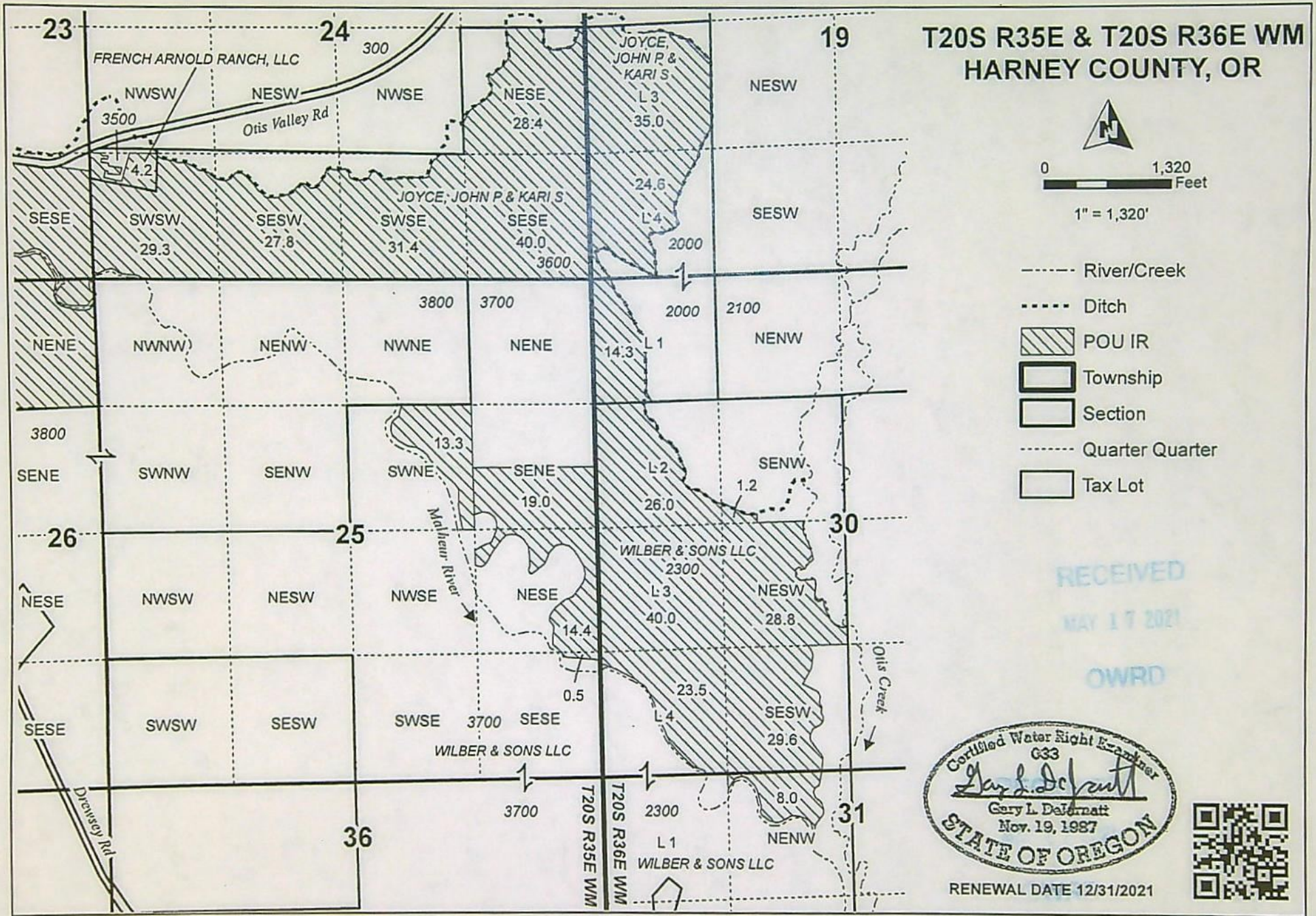
FISH SCREEN NOT IN PLACE BEFORE USE

O'TOOLE FULL

FRENCH (JOYCE) [33.5] -1.1
27.8
31.4
40±

ARNOLD (JOYCE) 28±
35±
[24.6] -2.9
[14.3] -2.3

MARSHAL [3.5] -2.6
4.6
[1.6] -0.1
[17.5] -7.6
[19.9] -0.4
[17.8] -4.7
[Ø] -1.4



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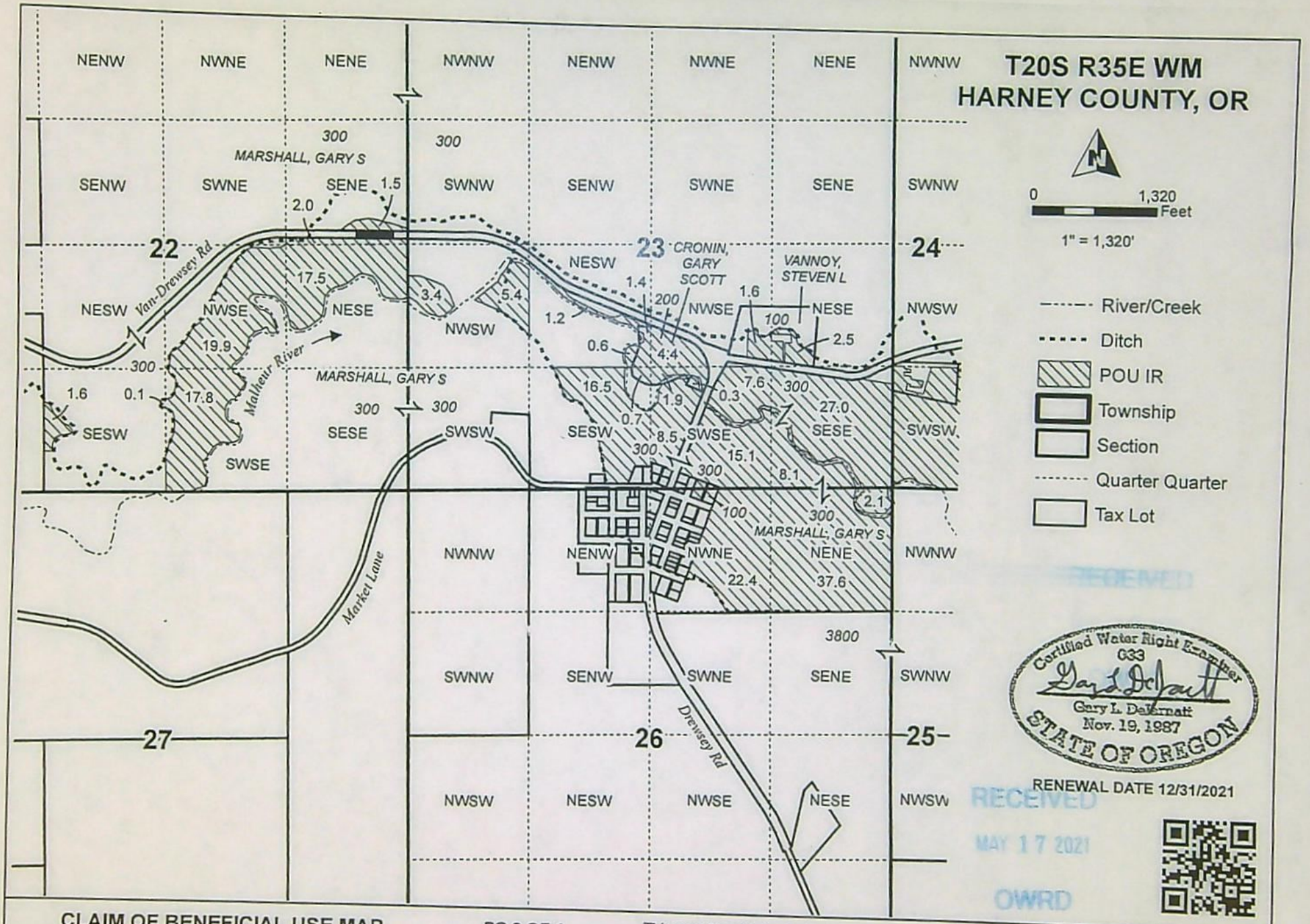

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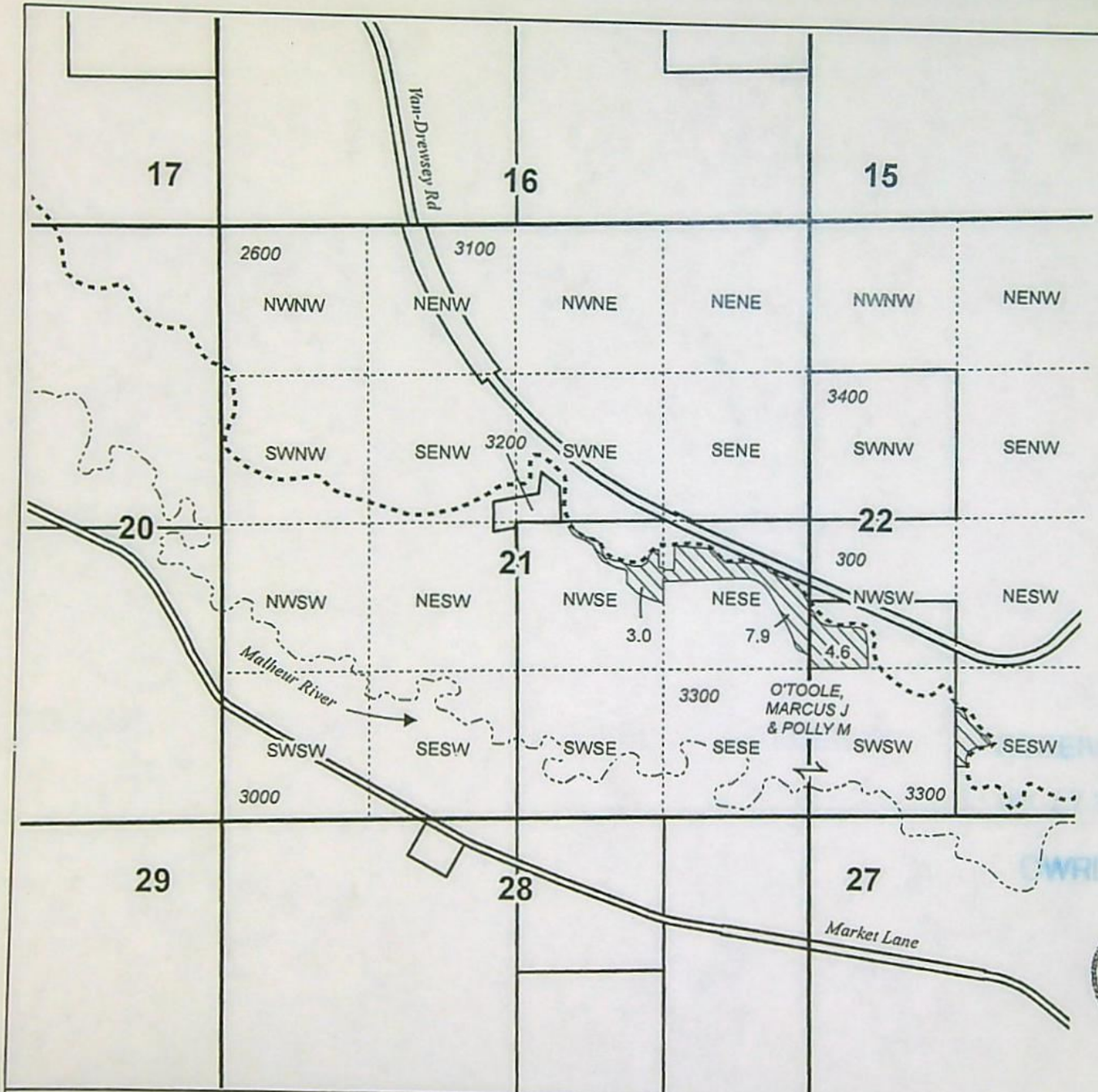

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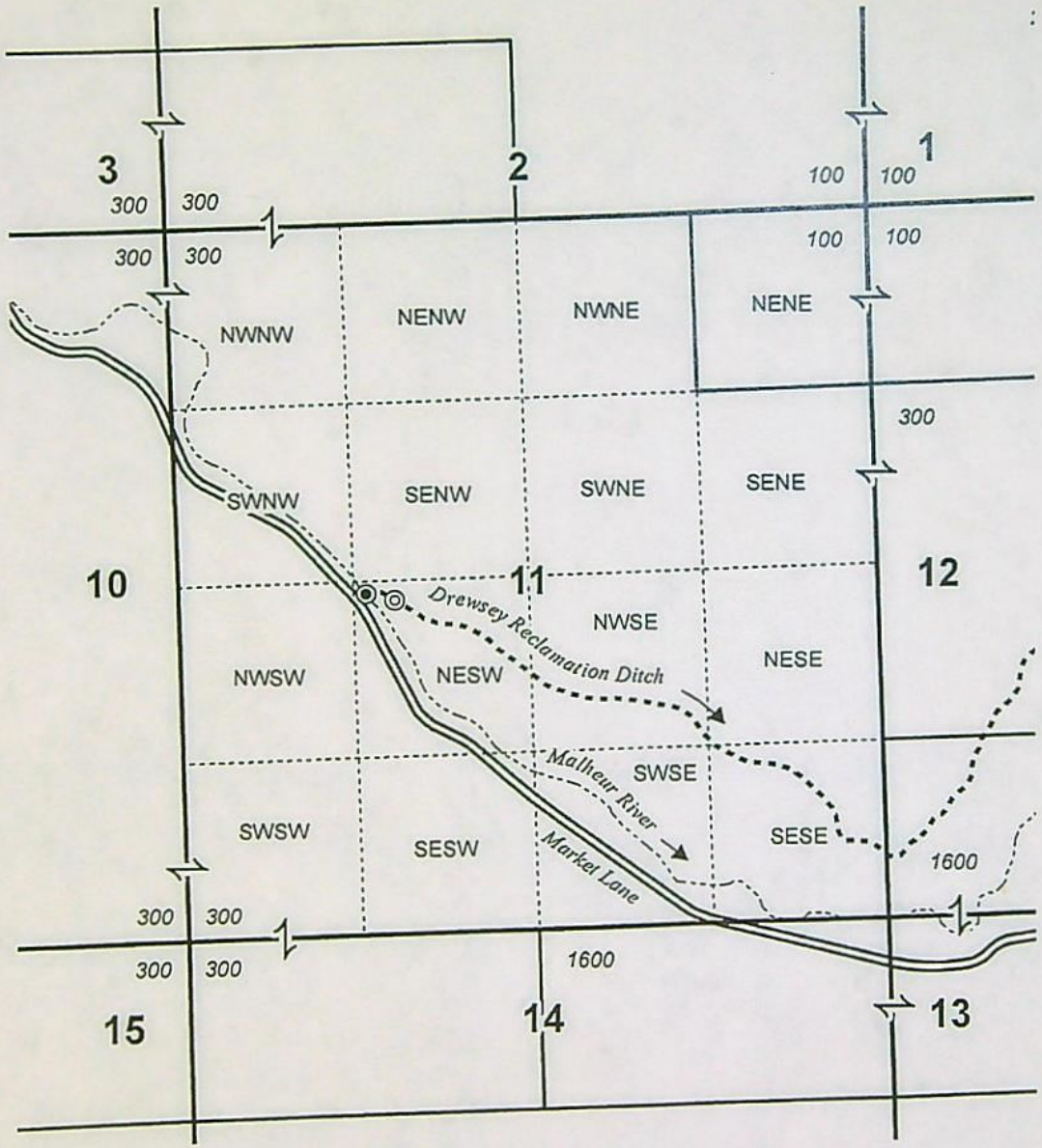

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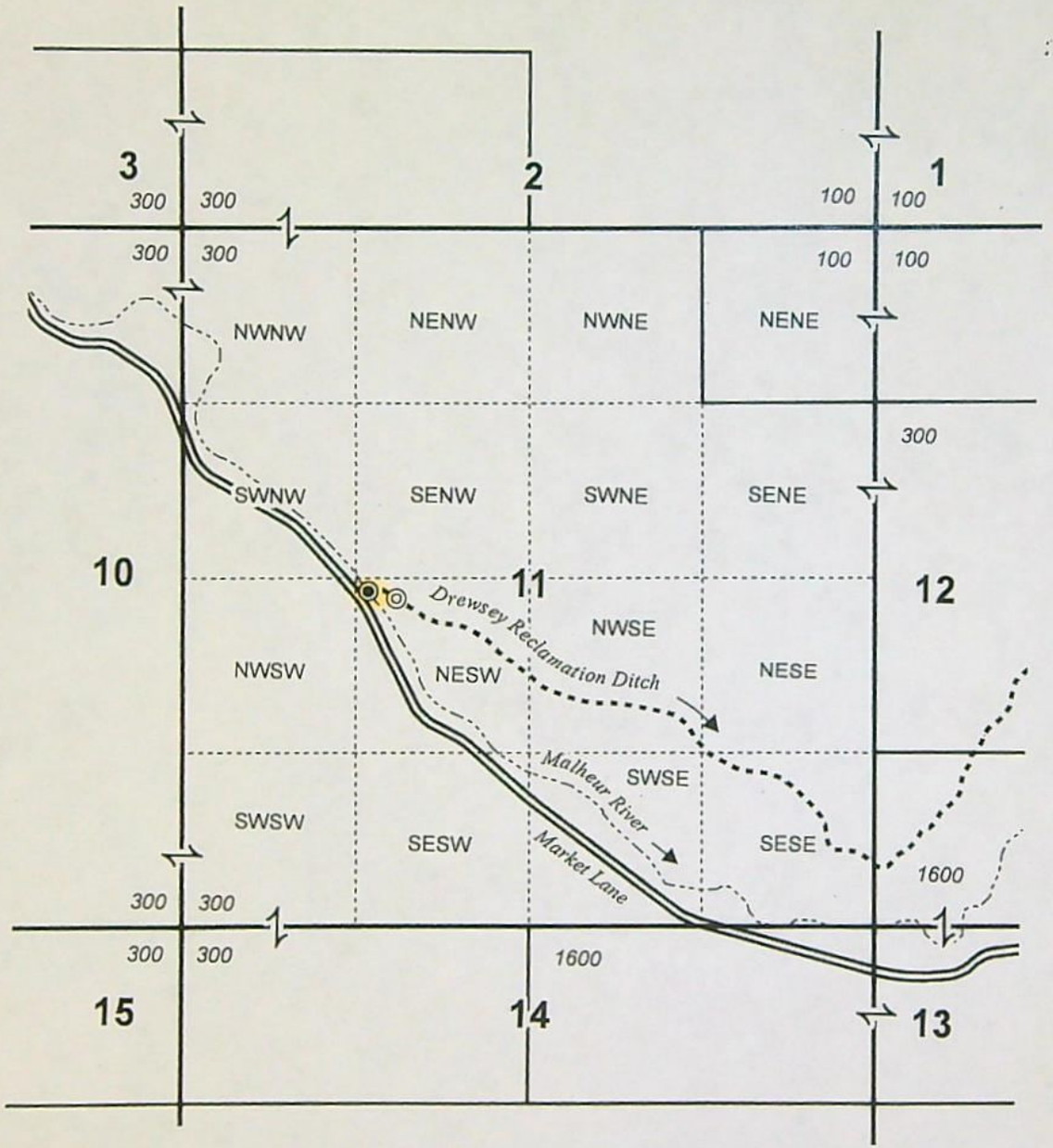

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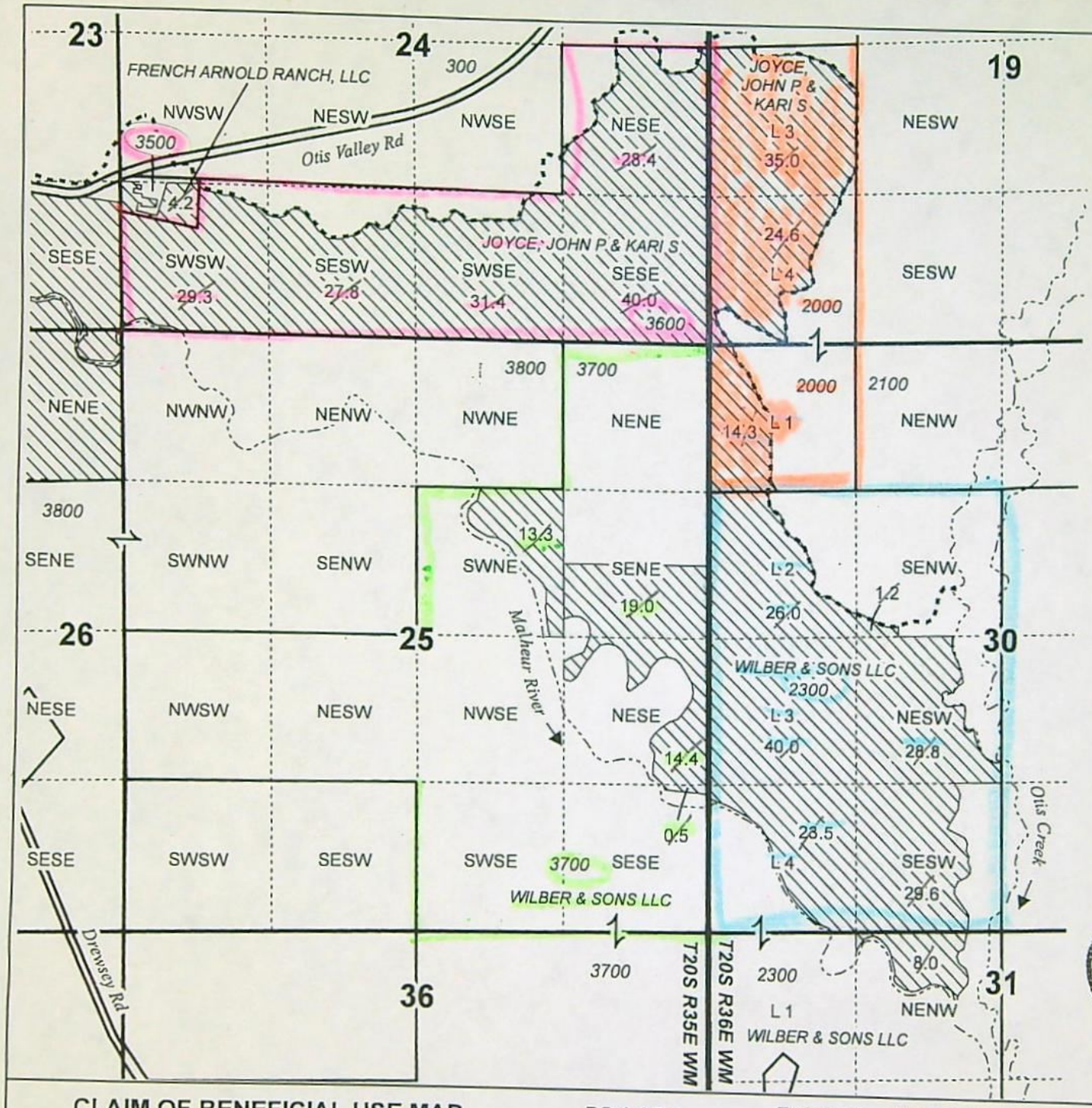

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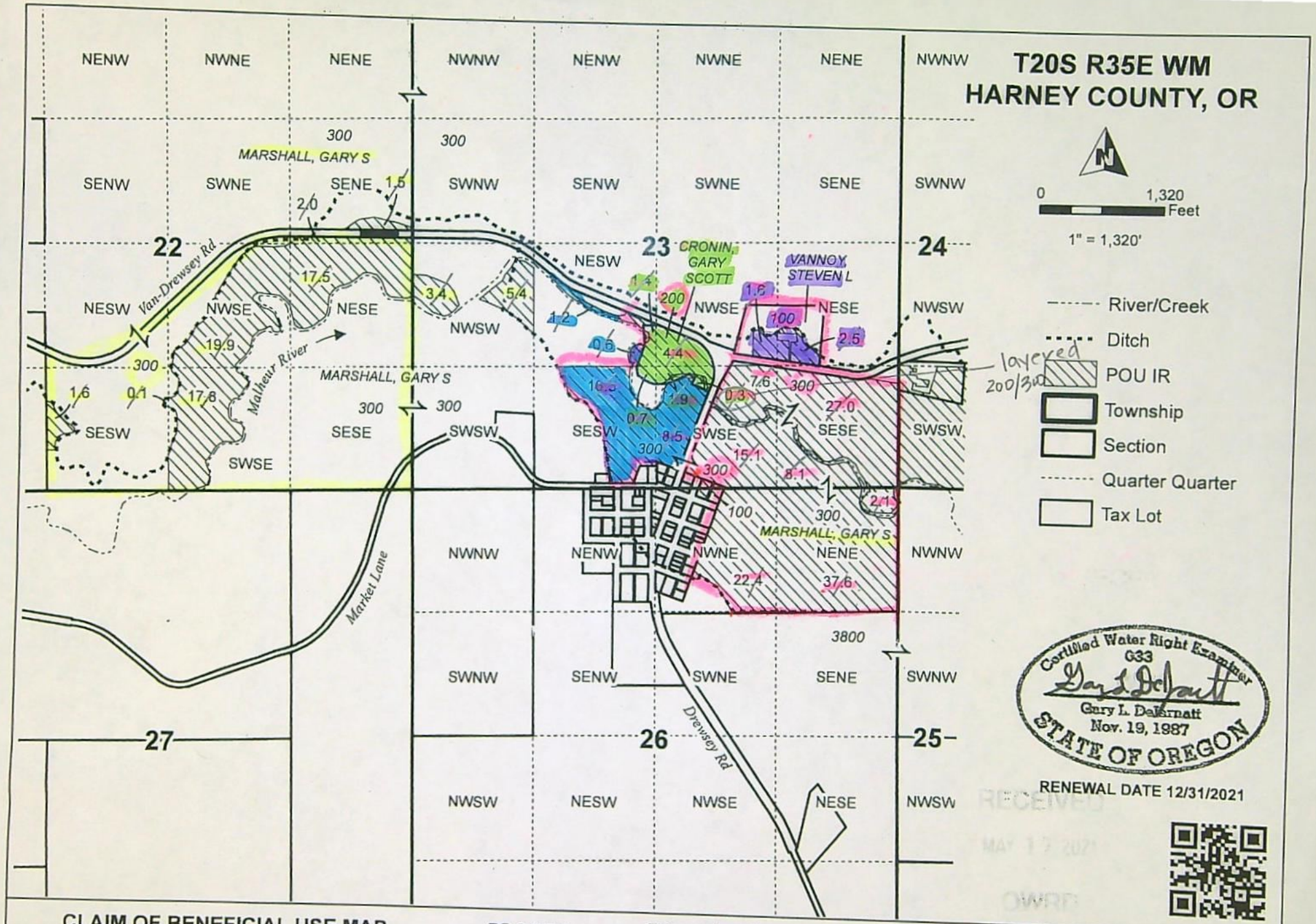

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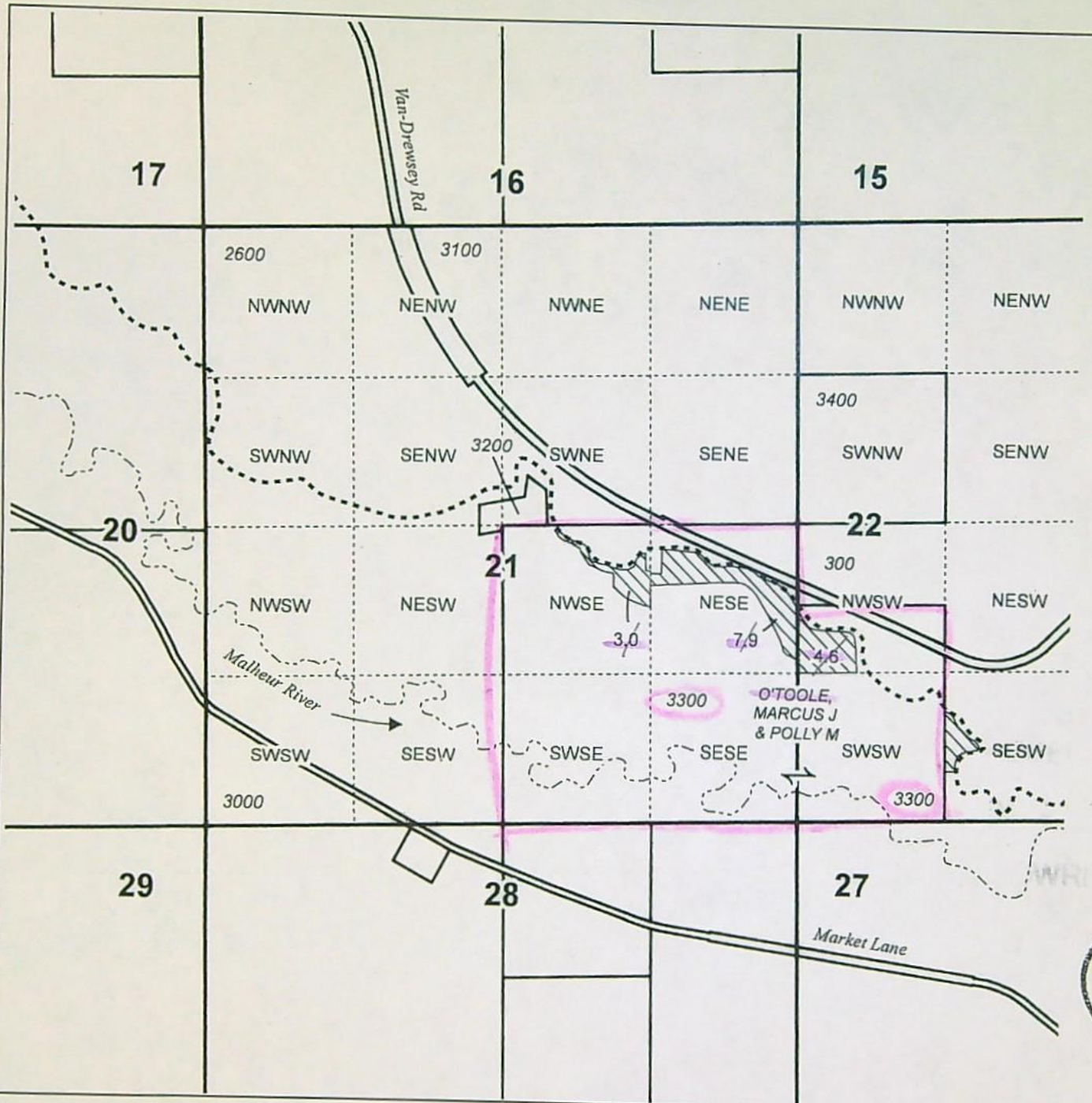

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CLAIM OF BENEFICIAL USE for Surface Water Permits claiming more than 0.1 cfs

OREGON WATER RESOURCES DEPARTMENT
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.oregon.gov/OWRD

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A fee of $200 must accompany this form for permits with priority dates of July 9, 1987, or later.

A separate form shall be completed for each permit.

In cases where a permit has been amended through the permit amendment process, a separate claim for the permit amendment is not required. Incorporate the permit amendment into the claim for the permit.

This form is subject to revision. **Begin each new claim** by checking for a new version of this form at: https://www.oregon.gov/OWRD/Forms/Pages/default.aspx

Go to "Resources for Water Right Examiners (CWRE)" Page
https://www.oregon.gov/OWRD/programs/WaterRights/COBU/Pages/default.aspx
The completion of this form is required by OAR 690-014-0100(1) and 690-014-0110(4).

Please type or print in dark ink. If this form is found to contain errors or omissions, it may be returned to you. **Every item must have a response.** If any requested information does not apply to the claim, insert "NA." **Do not delete or alter any section of this form unless directed by the form.** The Department may require the submittal of additional information from any water user or authorized agent.

"Section 8" of this form is intended to aid in the completion of this form and should not be submitted.

If you have questions regarding the completion of this form, please call 503-986-0900 and ask for the Certificate Section.

The Department has a program that allows it to enter into a voluntary agreement with an applicant for expedited services. Under such an agreement, the applicant pays the cost to hire additional staff that would not otherwise be available. This program means a certificate may be issued in about a month. For more information on this program see
https://www.oregon.gov/OWRD/programs/WaterRights/RA/Pages/default.aspx

SECTION 1

GENERAL INFORMATION

1. File Information:

APPLICATION #	PERMIT #	PERMIT AMENDMENT #
S-69433	S-51626	T-

2. Property Owner (current owner information):

Applicant/Business Name	Phone No.	Additional Contact No.
George Wilber / Drewsey Reclamation Company	541-573-6151	
Address		
77 W. Adams St.		
City	**State**	**Zip**	**E-Mail**
Burns	OR	97720	

If the current property owner is not the permit holder of record, it is recommended that an assignment be filed with the Department. ***Each*** *permit holder of record must sign this form.*

3. Permit or holder of record (this may, or may not, be the current property owner):

Permit Holder of Record		
Same		
Address		
City	**State**	**Zip**

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Additional Permit Holder of Record		
n/a		
Address		
City	**State**	**Zip**

4. Date of Site Inspection:

3-5-2021

5. Person(s) interviewed and description of their association with the project:

Name	Date	Association with the Project
George Wilber	3-5-2021	President of Drewsey Reclamation Company

6. County:

Harney

7. If any property described in the place of use of the permit final order is excluded from this report, identify the owner of record for that property (ORS 537.230(5)):

Owner of Record		
n/a		
Address		
City	**State**	**Zip**

Add additional tables for owners of record as needed

SECTION 2
SIGNATURES

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CWRE Statement, Seal and Signature

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge.

Seal and Signature

Renewal Date: 12-31-2021

CWRE NAME		PHONE NO.	ADDITIONAL CONTACT NO.
Gary L. DeJarnatt	Job #20092		John Short 541-389-2837
ADDRESS			
20735 Double Peaks Drive			
CITY	STATE	ZIP	E-MAIL
Bend	OR	97701	

Permit Holder of Record Signature or Acknowledgement

Each *permit holder of record must sign this form in the space provided below.*

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge. I request that the Department issue a water right certificate.

SIGNATURE	PRINT OR TYPE NAME	TITLE	DATE
George W Wilber	GEORGE W WILBER	SECRETARY	05-11-2021

SECTION 3

CLAIM DESCRIPTION

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1. Point of diversion name or number:

POINT OF DIVERSION (POD) NAME OR NUMBER (CORRESPOND TO MAP)
POD

2. Point of diversion source and tributary:

POD NAME OR NUMBER	SOURCE	TRIBUTARY
POD	Malheur River	Snake River

3. Developed use(s), period of use, and rate for each use:

POD NAME OR NUMBER	USES	IF IRRIGATION, LIST CROP TYPE	SEASON OR MONTHS WHEN WATER WAS USED	ACTUAL RATE OR VOLUME USED (CFS, GPM, OR AF)
POD	IR	Hay, Alfalfa, Pasure	April 1 – May 31	9.01 cfs
Total Quantity of Water Used				8.54 cfs

4. Provide a general narrative description of the distribution works. This description must trace the water system from **each** point of diversion to the place of use:

Water is diverted at the POD into the Drewsey Reclamation Company Ditch where it flows by gravity to laterals and turnouts where it is applied to the Place of Use by flood irrigation.

Reminder: The map associated with this claim must identify the location of the point(s) of diversion, Donation Land Claims (DLC), Government Lots (GLot), and Quarter-Quarters (QQ).

5. Variations:

Was the use developed differently from what was authorized by the permit, or permit amendment final order? If yes, describe below. YES NO

(e.g. *"The permit allowed three points of diversion. The water user only developed one of the points."* or *"The permit allowed 40.0 acres of irrigation. The water user only developed 10.0 acres."*)

The permit authorized three Points of Diversion. The water user only developed one of the points. The water user developed 683.5 acres of the 721.0 permitted irrigation acres.

6. Claim Summary:

POD NAME OR #	MAXIMUM RATE AUTHORIZED	CALCULATED THEORETICAL RATE BASED ON SYSTEM	AMOUNT OF WATER MEASURED	USE	# OF ACRES ALLOWED	# OF ACRES DEVELOPED
POD	9.01	214.5	n/a	IR	721.0	683.5

SECTION 4

SYSTEM DESCRIPTION

Are there multiple PODs? YES **NO**

If *"YES"* you will need to copy and complete a separate Section 4 for each POD.

POD Name or Number this section describes (only needed if there is more than one):

POD

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A. Place of Use

1. Is the right for municipal use? YES **NO**

If "YES" the table below may be deleted.

TWP	RNG	MER	SEC	QQ	GLOT	DLC	USE	IF IRRIGATION, # PRIMARY ACRES	IF IRRIGATION, # SUPPLEMENTAL ACRES
20 S	35 E	WM	21	NESE			IR	7.9	
"	"	"	"	NWSE			"	3.0	
"	"	"	22	SENE			"	3.5	
"	"	"	"	NWSW			"	4.6	
"	"	"	"	SESW			"	1.7	
"	"	"	"	NESE			"	17.5	
"	"	"	"	NWSE			"	19.9	
"	"	"	"	SWSE			"	17.8	
"	"	"	23	NESW			"	3.2	
"	"	"	"	NWSW			"	8.8	
"	"	"	"	SESW			"	17.2	
"	"	"	"	NESE			"	2.5	
"	"	"	"	NWSE			"	6.0	
"	"	"	"	SWSE			"	33.4	
"	"	"	"	SESE			"	35.1	
"	"	"	26	NENE			"	39.7	
"	"	"	"	NWNE			"	22.4	
"	"	"	24	SWSW			"	33.5	
"	"	"	"	SESW			"	27.8	
"	"	"	"	NESE			"	28.4	
"	"	"	"	SWSE			"	31.4	
"	"	"	"	SESE			"	40.0	
"	"	"	25	SWNE			"	13.3	
"	"	"	"	SENE			"	19.0	
"	"	"	"	NESE			"	14.4	
"	"	"	"	SESE			"	0.5	
"	36 E	"	19	NWSW	L3		"	35.0	
"	"	"	"	SWSW	L4		"	24.6	
"	"	"	30	NWNW	L1		"	14.3	
"	"	"	"	SWNW	L2		"	26.0	
"	"	"	"	SENW			"	1.2	
"	"	"	"	NESW			"	28.8	
"	"	"	"	NWSW	L3		"	40.0	
"	"	"	"	SWSW	L4		"	23.5	
"	"	"	"	SESW			"	29.6	
"	"	"	31	NENW			"	8.0	
Total Acres Irrigated								683.5	

Reminder: The map associated with this claim must identify Donation Land Claims (DLC), Government Lots (GLot), Quarter Quarters (QQ), and if for irrigation, the number of acres irrigated within each projected DLC, GLot, and QQ.

B. Diversion and Delivery System Information

Provide the following information concerning the diversion and delivery system. Information provided must describe the equipment used to transport and apply the water from the point of diversion to the place of use.

1. Is a pump used? YES **NO**

If "NO" items 2 through item 6 may be deleted.

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7. Is the distribution system piped? YES **NO**

If "NO" items 8 through item 13 may be deleted.

C. Storage

1. Does the distribution system include in-system storage (e.g. storage tank, bulge in system / reservoir)? YES **NO**

If "NO", item 2 and 3 relating to this section may be deleted.

D. Gravity Flow Pipe

(THE DEPARTMENT TYPICALLY USES THE HAZEN-WILLIAM'S FORMULA FOR A GRAVITY FLOW PIPE SYSTEM)

1. Does the system involve a gravity flow pipe? YES **NO**

If "NO", items 2 through 4 relating to this section may be deleted.

E. Gravity Flow Canal or Ditch

(THE DEPARTMENT TYPICALLY USES MANNING'S FORMULA FOR CANALS AND DITCHES)

1. Is a gravity flow canal or ditch used to convey the water as part of the distribution system? **YES** NO

If "NO", items 2 through 4 relating to this section may be deleted.

2. Complete the table:

CANAL OR DITCH TYPE (MATERIAL)	TOP WIDTH OF CANAL OR DITCH	BOTTOM WIDTH OF CANAL OR DITCH	DEPTH	"N" FACTOR	AMOUNT OF FALL	LENGTH OF CANAL / DITCH	SLOPE	COMPUTED RATE (IN CFS)
Stoney Bed, Weeds on Side	14'	12'	4'	0.03	102'	74500'	.001	214.5 cfs

3. Provide calculations:

See attached OWRD Ditch Capacity Calculations.

4. If an actual measurement was taken, provide the following:

Date of Measurement	Who Made the Measurement	Measurement Method	Measured Quantity of Water (in cfs)
n/a			

Attach measurement notes.

F. Additional notes or comments related to the system:

n/a

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SECTION 5

CONDITIONS

All conditions contained in the permit, permit amendment, or any extension final order shall be addressed. Reports that do not address all performance related conditions will be returned.

1. Time Limits:

Permits and any extension final orders contain any or all of the following dates: the date when the actual construction work was to begin, the date when the construction was to be completed, and the date when the complete application of water to the proposed use was to be completed. These dates may be referred to as ABC dates. Describe how the water user has complied with each of the development timelines established in the permit or permit extension of time:

	Date from Permit	Date Accomplished*	Description of Actions Taken by Water User to Comply with the Time Limits
Issuance Date	8-28-1995		
Begin construction (A)	8-28-1996	8-28-1995	All construction except fish screen & measuring device in place
Complete construction (B)	10-1-2020	4-1-2012	Fish Screen Installed
Complete application of water (C)	10-1-2020	4-1-2012	Complete application of water to Beneficial Use

* Must be within period between permit or any extension final order issuance and the date to completely apply water

2. Is there an extension final order(s)? YES NO

If "NO", items a and b relating to this section may be deleted.

a. Did the Extension Final Order require the submittal of Progress Reports? YES NO

If "NO", item b relating to this section may be deleted.

b. Were the Progress Reports submitted? YES NO

If the reports have not been submitted, attach a copy of the reports if available.

3. Measurement Conditions:

a. Does the permit, permit amendment, or any extension final order require the installation of a meter or approved measuring device? YES NO

If "NO", items b through f relating to this section may be deleted.

Reminder: If a meter or approved measuring device was required, the COBU map must indicate the location of the device in relation to the point of diversion.

b. Has a meter been installed? YES NO

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c. Meter Information

POD Name or #	Manufacturer	Serial #	Condition (working or not)	Current Meter Reading	Date Installed

If a meter has been installed, items d through f relating to this section may be deleted.

d. If a meter has not been installed, has a suitable measuring device been installed and approved by the Department? **YES** NO

e. If "YES", provide a copy of the letter approving the device, if available. If the letter is not available provide the name and title of the Water Resources Department employee approving the measuring device, and the approximate date of the approval:

Name	Title	Approximate Date
n/a		

f. Measurement Device Description

Device Description	Condition (working or not)	Date Installed
Concrete Box with Staff Gauge	Working	2-22-2010

4. Recording and reporting conditions:

a. Is the water user required to report the water use to the Department? YES **NO**

If "NO", item b relating to this section may be deleted.

5. Fish Screening:

a. Are any points of diversion required to be screened to prevent fish from entering the point of diversion? **YES** NO

If "NO", items b through e relating to this section may be deleted.

Reminder: If fish screening devices were required, the COBU map must indicate their location in relation to the point of diversion.

b. Has the fish screening been installed? **YES** NO

c. When was the fish screening installed?

Date	By Whom
4-1-2012	Drewsey Reclamation Company

Reminder: If the permit was issued on or after February 1, 2011, the fish screen is required to be approved by the Oregon Department of Fish and Wildlife regardless of the rate of diversion.

d. If the diversion **involves a pump** *and* the **total** diversion rate of all rights at the point of diversion is less than 225 gpm (0.5 cfs) and the permit was issued prior to February 1, 2011:

- Has the self-certification form previously been submitted to the Department? **NA** YES NO

If not, go to https://www.oregon.gov/OWRD/Forms/Pages/default.aspx complete and attach a copy of the 'ODFW Small Pump Screen Self Certification' form to this claim, and send a copy of it to the Oregon Department of Fish and Wildlife (ODFW).

Reminder: Failure to submit evidence of a timely installed fish screen may result in an unfavorable determination. The ODFW self certification form needs to have been previously submitted or be attached to this form.

e. If the diversion does **not involve a pump** *or* the **total** diversion rate of all rights at the point of diversion is 225 gpm (0.5 cfs) or greater:

- Has the ODFW approval been previously submitted? NA YES **NO**

If not, contact and work with ODFW to ensure compliance. To demonstrate compliance, provide signed documentation from ODFW. A form is available at: https://www.oregon.gov/OWRD/Forms/Pages/default.aspx

Reminder: Failure to submit evidence of a timely installed fish screen may result in an unfavorable determination. In order to receive a favorable approval, the ODFW/WRD "Fish Screen Inspection" form needs to have been previously submitted or be attached to this form.

6. By-pass Devices:

a. Are any points of diversion required to have a by-pass device to prevent fish from entering the point of diversion? YES **NO**

If "NO", items b and c relating to this section may be deleted.

7. Other conditions required by permit, permit amendment final order, or extension final order:

a. Was the water user required to restore the riparian area if it was disturbed? YES **NO**

b. Was a fishway required? YES **NO**

c. Was submittal of a water management and conservation plan required? YES **NO**

d. Other conditions? YES **NO**

If "YES" to any of the above, identify the condition and describe the water user's actions to comply with the condition(s):

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SECTION 6

ATTACHMENTS

Provide a list of any additional documents you are attaching to this report:

ATTACHMENT NAME	DESCRIPTION
Ditch Calcs	OWRD Ditch Capacity calculations
CBU Maps	Claim of Beneficial Use Maps
Measuring Device Letter	Measuring Device Approval Letter from Watermaster
Fish Screen Letter	ODFW Fish Screen Approval Letter

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SECTION 7

CLAIM OF BENEFICIAL USE MAP

The Claim of Beneficial Use Map must be submitted with this claim. Claims submitted without the Claim of Beneficial Use map will be returned. The map shall be submitted on poly film at a scale of 1" = 1320 feet, 1" = 400 feet, or the original full-size scale of the county assessor map for the location.

Provide a general description of the survey method used to prepare the map. Examples of possible methods include, but are not limited to, a traverse survey, GPS, or the use of aerial photos. If the basis of the survey is an aerial photo, provide the source, date, series and the aerial photo identification number.

On-site direct measurement and NAIP Imagery.

Map Checklist

Please be sure that the map you submit includes ALL the items listed below.
(Reminder: Incomplete maps and/or claims may be returned.)

- ☒ Map on polyester film
- ☒ Appropriate scale (1" = 400 feet, 1" = 1320 feet, or the original full-size scale of the county assessor map)
- ☒ Township, Range, Section, Donation Land Claims, and Government Lots
- ☒ If irrigation, number of acres irrigated within each projected Donation Land Claims, Government Lots, Quarter-Quarters
- ☒ Locations of fish screens and/or fish by-pass devices in relationship to point of diversion
- ☒ Locations of meters and/or measuring devices in relationship to point of diversion or appropriation
- ☒ Conveyance structures illustrated (pumps, reservoirs, pipelines, ditches, etc.)
- ☒ Point(s) of diversion or appropriation (illustrated and coordinates)
- ☒ Tax lot boundaries and numbers
- ☒ Source illustrated if surface water
- ☒ Disclaimer ("This map is not intended to provide legal dimensions or locations of property ownership lines")
- ☒ Application and permit number or transfer number
- ☒ North arrow
- ☒ Legend
- ☒ CWRE stamp and signature

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	Ditch Capacity Calcualtor					
	using Manning's Formula					
	Data Entry (fill in underlined blanks)					
Top Width =	14	feet				
Bottom Width =	12	feet				
Depth =	4	feet				
Fall =	102	feet	per	74500	feet of distance	
Grade =	0.001369127	, or	0.1%			
n Factor =	0.03					
	Results calculated					
Area of cross-section =		52	square feet			
Wetted Perimeter =		20.24621	feet			
Hydraulic Radius =		2.568381				
Velocity =		4.125	feet per second			
Calculated Ditch Capacity =		**214.5**	**cubic feet per second**			

Oregon

Kate Brown, Governor

Department of Fish and Wildlife
John Day Fish Screening and Passage
357 Patterson Bridge Rd.
P.O. Box 515
John Day, OR 97845
Voice: 541-575-0561
FAX (541) 575-0868
www.dfw.state.or.us/

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January 22, 2020

Malheur Basin Water Users Association
PO Box 237
Drewsey, OR 97904

Dear Mr. Malheur Basin Water Users Association,

Your fish screen was inspected on 12/2/2013. In reference to water right Permit 51626 this letter confirms that a National Marine Fisheries Service criteria fish screen as approved by ODFW is located on the property near GPS coordinates: 43.843658, -118.501470.

In regards to the inspection of the fish screen located on Malheur River, the following has been determined:

1. The screen located at coordinates 43.843658, -118.501470 is an ODFW shop-built screen.
2. This screen is approved for water use up to 41,298 GPM or 92 CFS.
3. This letter is only certifying the POD located NE ¼ SW ¼, Section 11, Township 20 South, Range 34 East.
4. All screen configurations meet National Marine Fisheries Service criteria at the time of inspection, any changes or modifications to the configurations will not be covered by this certification letter.
5. This screen is located at the water edge; therefore, no by-pass is required.
6. OWRD has approved only certifying the POD the water users have activated, see attached letter.

Please contact me if you have any questions regarding this letter.

Sincerely,

Nathaniel Ashley
Fish Screening and Passage Coordinator

CC: Oregon Water Resources Department

Oster Professional Group CPAs

George Wilber <gwilber@opgcpa.com>

RE: Drewsey Reclamation Cooperative

10 messages

JOHNSON JR * WRD <JR.Johnson@oregon.gov> Tue, Oct 29, 2019 at 9:59 AM
To: George Wilber <gwilber@opgcpa.com>
Cc: SWINDLEHURST Donald S * WRD <Donald.S.Swindlehurst@oregon.gov>

George,

With regard to Permit S 51626 and our conversation this morning, I am responding via this email to confirm that the Drewsey Reclamation Cooperative has met the intent of the permit at this time by installing the concrete box in which we placed a staff gage to create a measurement curve. The curve is not yet fully developed and we (OWRD staff) will continue to work on it. OWRD reserves the right to update and or make changes to the measurement requirements in the future as deemed necessary by the Department, but at this time you have met the permit conditions.

Thank you.

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JR Johnson

Oregon Water Resources

Dist. 10 Watermaster

Burns, OR 97720

541 573 2764

Jr.johnson@oregon.gov

From: George Wilber [mailto:gwilber@opgcpa.com]
Sent: Tuesday, October 29, 2019 8:51 AM
To: JOHNSON JR * WRD
Subject: Drewsey Reclamation Cooperative

JR - The application number is 69433, permit number 51626. Thanks, gww

---

George Wilber <gwilber@opgcpa.com> Wed, Oct 30, 2019 at 5:47 PM
To: Steve Applegate <steve.applegsp@gmail.com>

FYI Steve. I called Mike Jensen from ODFW in John Day but did not reach him and have not heard back. I'll be out of the office until around Nov 20. Thanks gww
[Quoted text hidden]

George Wilber <gwilber@opgcpa.com> Tue, Nov 19, 2019 at 3:40 PM

Oregon
Tina Kotek, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
www.oregon.gov/owrd

August 30, 2023

George Wilber
Drewsey Reclamation Cooperative
77 Adams Street
Burns OR 97720

RE: Certificate Reimbursement Authority Estimate Application for Application S-69433
- Claim of Beneficial Use (Claim) ready for processing by certificate section staff

On September 11, 2023, the Water Resources Department (Department) received a Certificate Reimbursement Authority (RA) Estimate Application (Application) for Application S-69433, along with check #2329 in the amount of $125. As indicated on the Certificate RA Application, a claim of beneficial use (Claim) was previously submitted to the Department on May 17, 2021.

The certificate section staff is currently reviewing the Claim and preparing draft certificate; thus, your request for an expedited review under the Certificate RA Program is not needed.

Please find enclosed the RA Estimate Application and check #2329 in the amount of $125.

Please contact me at kerry.l.kavanagh@water.oregon.gov or 503-979-3208 if you have any questions.

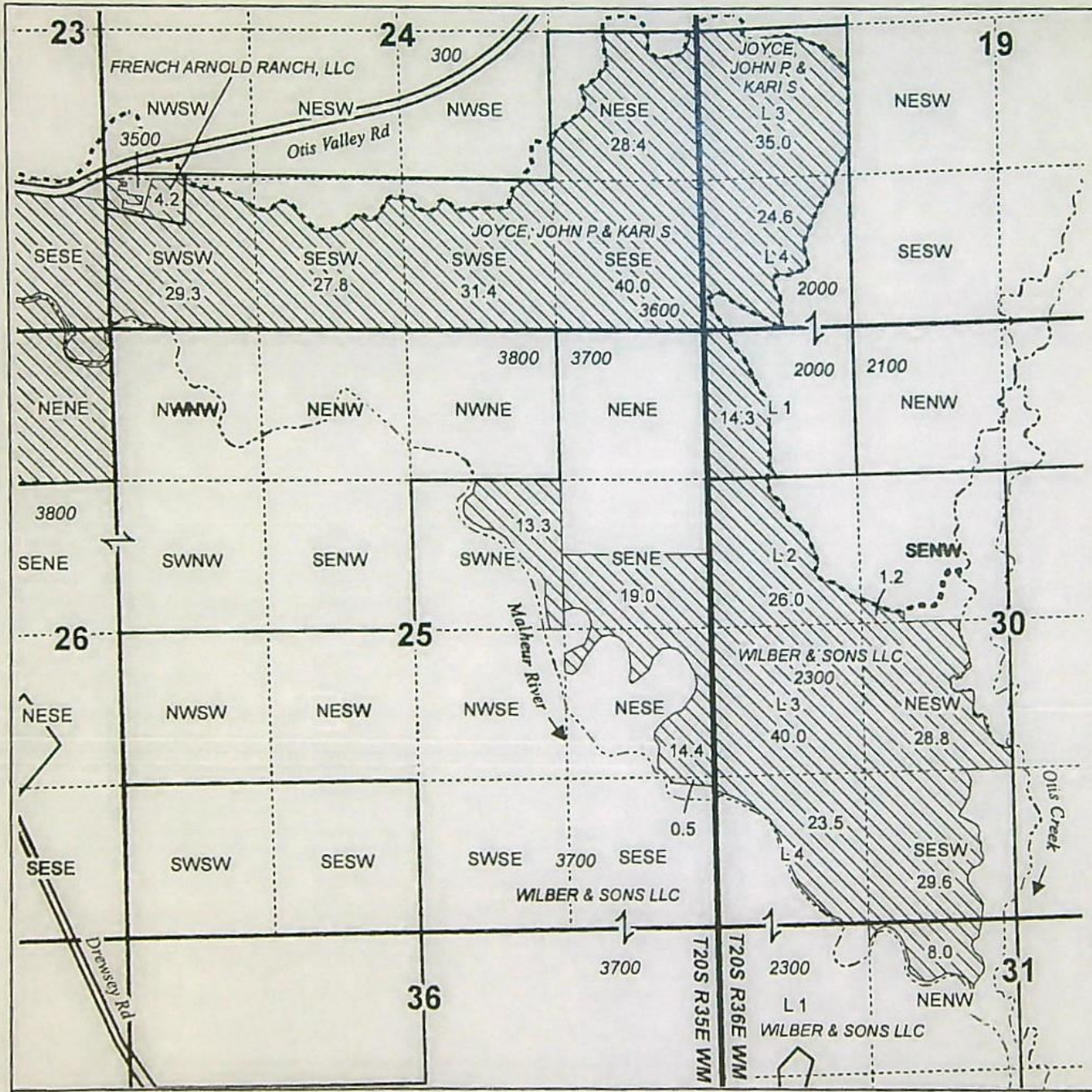
Sincerely,

K Kavanagh

Kerry Kavanagh
Reimbursement Authority, Certificates, Water Right Services Division

cc: File S-69433
Bryce Withers, Water Right Services, LLC, PO Box 1830, Bend OR 97709

Enclosures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FRENCH ARNOLD RANCH, LLC
Otis Valley Rd
JOYCE, JOHN P & KARI S
JOYCE, JOHN P & KARI S
WILBER & SONS LLC
WILBER & SONS LLC
WILBER & SONS LLC
Malheur River
Otis Creek
Drewsey Rd
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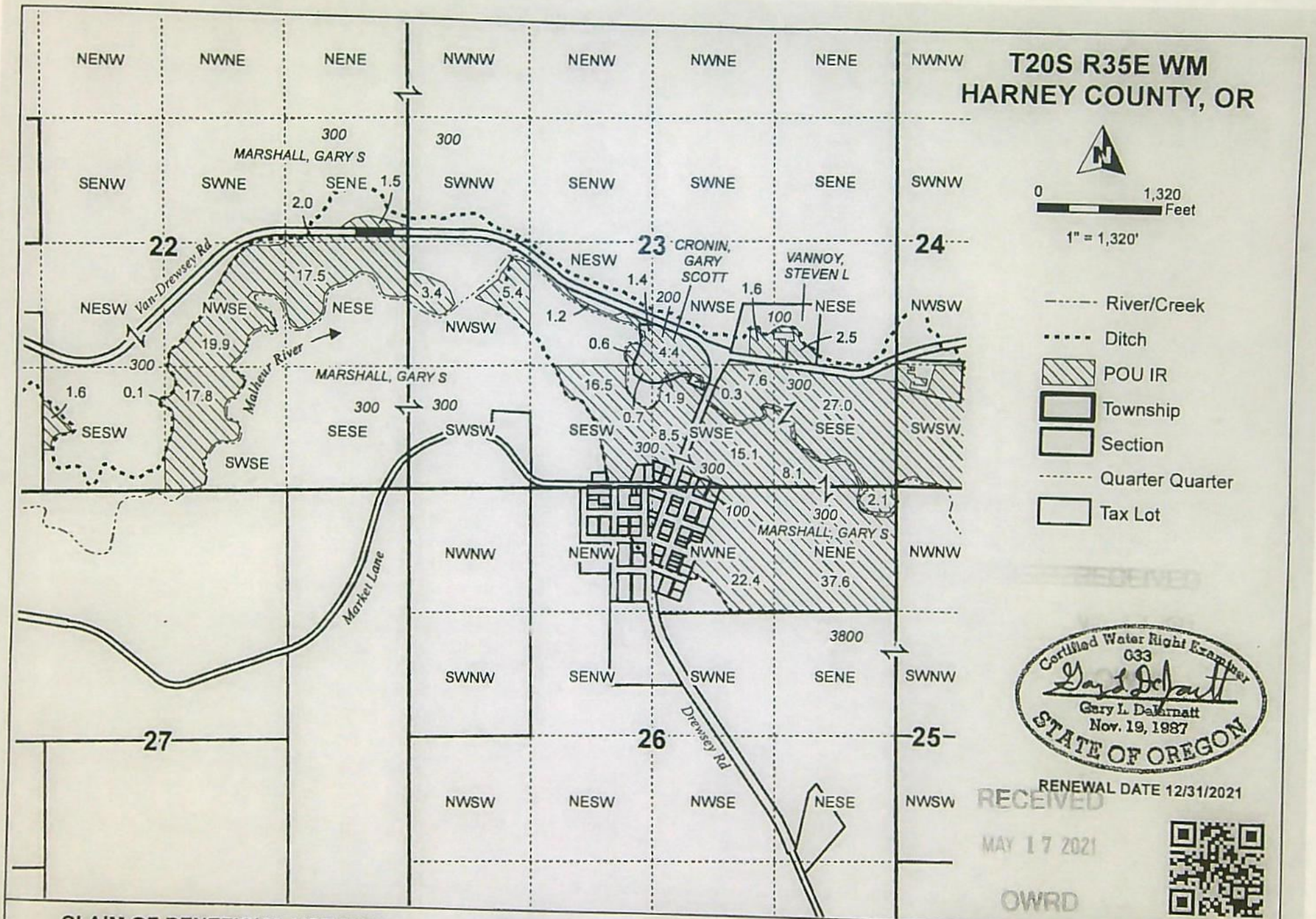

Certified Water Right Examiner
033
Gary L. DeJarnatt
Nov. 19, 1987
STATE OF OREGON

RENEWAL DATE 12/31/2021

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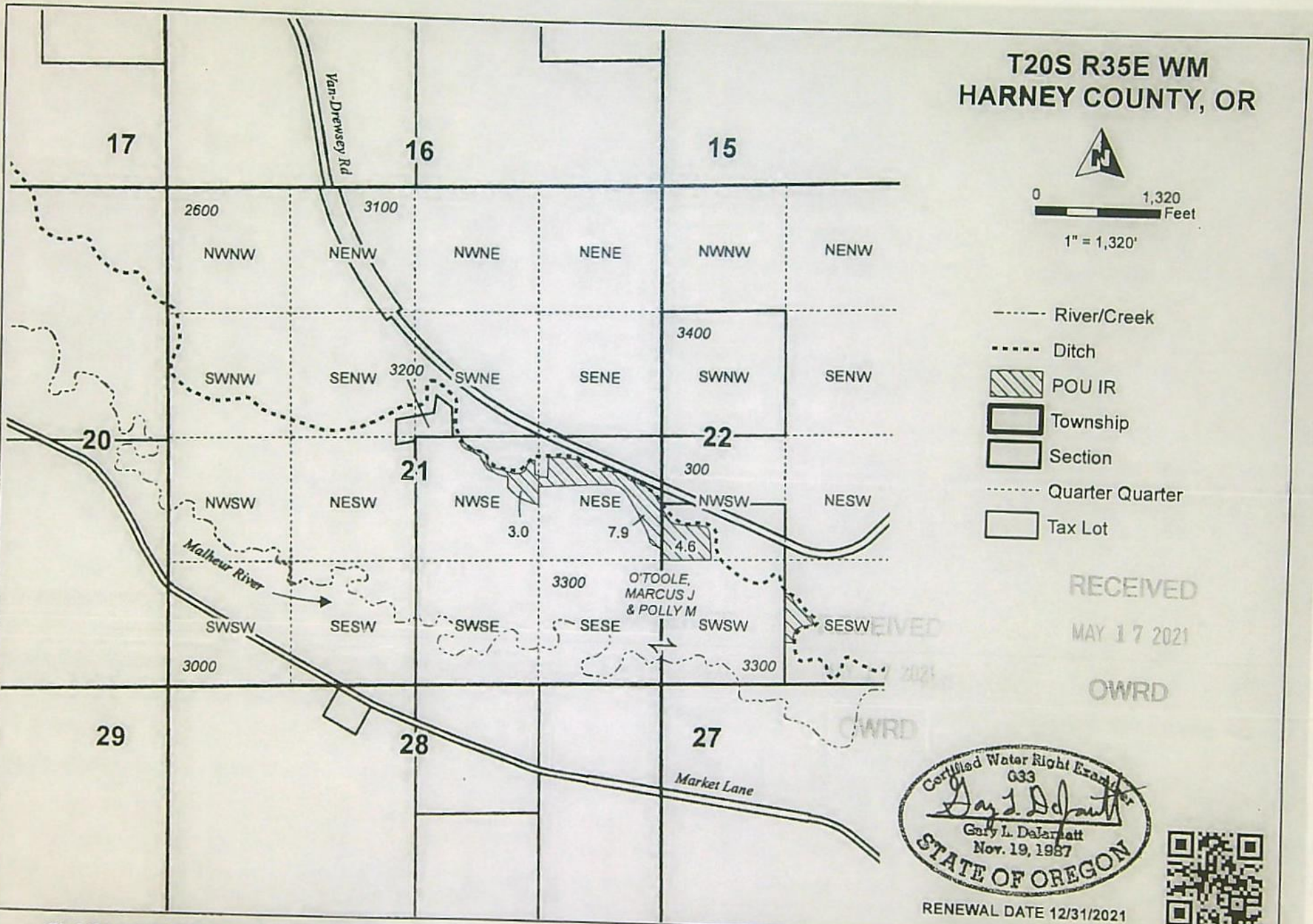
CLAIM OF BENEFICIAL USE MAP
DREWSEY RECLAMATION COMPANY
Date: 4/16/2021 Ap S-69433 Permit S-51626

PG 2 OF 4

Project #20092

This map is not intended to provide legal dimensions or locations of property ownership lines.

WATER RIGHT SERVICES, LLC
PO BOX 1830, BEND, OR 97709
WWW.OREGONWATER.US CCB # 197121
johnshort@usa.com 541-389-2837



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033
Gary L. DeJarnatt
Nov. 19, 1987
STATE OF OREGON

RENEWAL DATE 12/31/2021

CLAIM OF BENEFICIAL USE MAP
DREWSEY RECLAMATION COMPANY

Date: 4/16/2021 Ap S-69433 Permit S-51626

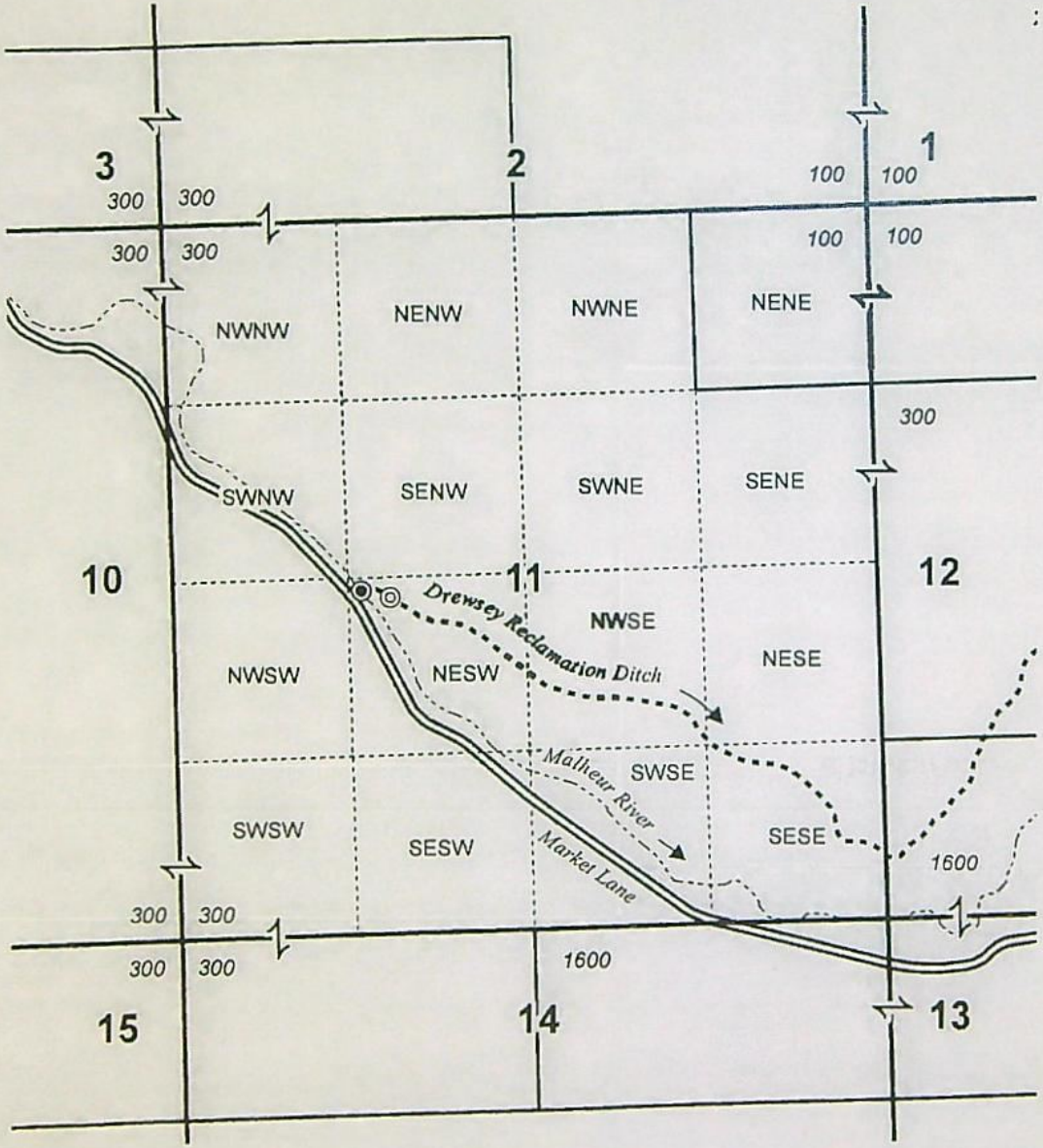
PG 3 OF 4

Project #20092

This map is not intended to provide legal dimensions or locations of property ownership lines.

WATER RIGHT SERVICES, LLC
PO BOX 1830, BEND, OR 97709
WWW.OREGONWATER.US CCB # 197121
johnshort@usa.com 541-389-2837

T20S R34E WM
HARNEY COUNTY, OR



0 1,320 Feet

1" = 1,320'

- POD & Fish Screen
- Measuring Device
- River/Creek
- Ditch
- Section
- Quarter Quarter
- Tax Lot

POD LOCATION:
50' S, 1410' E of W 1/4 Cor Sec 11

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Certified Water Right Examiner
033
Gary L. DeJarnett
Nov. 19, 1987
STATE OF OREGON

RENEWAL DATE 12/31/2021

CLAIM OF BENEFICIAL USE MAP
DREWSEY RECLAMATION COMPANY
Date: 4/16/2021 Ap S-69433 Permit S-51626

PG 4 OF 4

Project #20092

This map is not intended to provide legal dimensions or locations of property ownership lines.

WATER RIGHT SERVICES, LLC
PO BOX 1830, BEND, OR 97709
WWW.OREGONWATER.US CCB # 197121
johnshort@usa.com 541-389-2837

CLAIM OF BENEFICIAL USE for Surface Water Permits claiming more than 0.1 cfs

OREGON WATER RESOURCES DEPARTMENT
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.oregon.gov/OWRD

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A fee of $200 must accompany this form for permits with priority dates of July 9, 1987, or later.

A separate form shall be completed for each permit.

In cases where a permit has been amended through the permit amendment process, a separate claim for the permit amendment is not required. Incorporate the permit amendment into the claim for the permit.

This form is subject to revision. **Begin each new claim** by checking for a new version of this form at:
https://www.oregon.gov/OWRD/Forms/Pages/default.aspx

Go to "Resources for Water Right Examiners (CWRE)" Page
https://www.oregon.gov/OWRD/programs/WaterRights/COBU/Pages/default.aspx
The completion of this form is required by OAR 690-014-0100(1) and 690-014-0110(4).

Please type or print in dark ink. If this form is found to contain errors or omissions, it may be returned to you. **Every item must have a response.** If any requested information does not apply to the claim, insert "NA." **Do not delete or alter any section of this form unless directed by the form.** The Department may require the submittal of additional information from any water user or authorized agent.

"Section 8" of this form is intended to aid in the completion of this form and should not be submitted.

If you have questions regarding the completion of this form, please call 503-986-0900 and ask for the Certificate Section.

The Department has a program that allows it to enter into a voluntary agreement with an applicant for expedited services. Under such an agreement, the applicant pays the cost to hire additional staff that would not otherwise be available. This program means a certificate may be issued in about a month. For more information on this program see
https://www.oregon.gov/OWRD/programs/WaterRights/RA/Pages/default.aspx

SECTION 1

GENERAL INFORMATION

1. **File Information:**

APPLICATION #	PERMIT #	PERMIT AMENDMENT #
S-69433	S-51626	T-

2. Property Owner (current owner information):

APPLICANT/BUSINESS NAME		PHONE NO.	ADDITIONAL CONTACT NO.
George Wilber / Drewsey Reclamation Company		541-573-6151	
ADDRESS 77 W. Adams St.			
CITY Burns	STATE OR	ZIP 97720	E-MAIL

If the current property owner is not the permit holder of record, it is recommended that an assignment be filed with the Department. ***Each*** *permit holder of record must sign this form.*

3. Permit or holder of record (this may, or may not, be the current property owner):

PERMIT HOLDER OF RECORD		
Same		
ADDRESS		
CITY	STATE	ZIP

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ADDITIONAL PERMIT HOLDER OF RECORD		
n/a		
ADDRESS		
CITY	STATE	ZIP

4. Date of Site Inspection:

3-5-2021

5. Person(s) interviewed and description of their association with the project:

NAME	DATE	ASSOCIATION WITH THE PROJECT
George Wilber	3-5-2021	President of Drewsey Reclamation Company

6. County:

Harney

7. If any property described in the place of use of the permit final order is excluded from this report, identify the owner of record for that property (ORS 537.230(5)):

OWNER OF RECORD		
n/a		
ADDRESS		
CITY	STATE	ZIP

Add additional tables for owners of record as needed

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SECTION 2
SIGNATURES

CWRE Statement, Seal and Signature

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge.

Seal and Signature

Renewal Date: 12-31-2021

CWRE NAME		PHONE NO.	ADDITIONAL CONTACT NO.
Garv L. DeJarnatt Job #20092			John Short 541-389-2837
ADDRESS 20735 Double Peaks Drive			
CITY Bend	STATE OR	ZIP 97701	E-MAIL

Permit Holder of Record Signature or Acknowledgement

Each *permit holder of record must sign this form in the space provided below.*

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge. I request that the Department issue a water right certificate.

SIGNATURE	PRINT OR TYPE NAME	TITLE	DATE
George W Wilber	GEORGE W WILBER	SECRETARY	05.11.2021

SECTION 3

CLAIM DESCRIPTION

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1. Point of diversion name or number:

POINT OF DIVERSION (POD) NAME OR NUMBER (CORRESPOND TO MAP)
POD

2. Point of diversion source and tributary:

POD NAME OR NUMBER	SOURCE	TRIBUTARY
POD	Malheur River	Snake River

3. Developed use(s), period of use, and rate for each use:

POD NAME OR NUMBER	USES	IF IRRIGATION, LIST CROP TYPE	SEASON OR MONTHS WHEN WATER WAS USED	ACTUAL RATE OR VOLUME USED (CFS, GPM, OR AF)
POD	IR	Hay, Alfalfa, Pasure	April 1 – May 31	9.01 cfs
Total Quantity of Water Used				8.54 cfs

4. Provide a general narrative description of the distribution works. This description must trace the water system from **each** point of diversion to the place of use:

Water is diverted at the POD into the Drewsey Reclamation Company Ditch where it flows by gravity to laterals and turnouts where it is applied to the Place of Use by flood irrigation.

Reminder: The map associated with this claim must identify the location of the point(s) of diversion, Donation Land Claims (DLC), Government Lots (GLot), and Quarter-Quarters (QQ).

5. Variations:

Was the use developed differently from what was authorized by the permit, or permit amendment final order? If yes, describe below. **YES** NO

(e.g. *"The permit allowed three points of diversion. The water user only developed one of the points."* or *"The permit allowed 40.0 acres of irrigation. The water user only developed 10.0 acres."*)

The permit authorized three Points of Diversion. The water user only developed one of the points. The water user developed 683.5 acres of the 721.0 permitted irrigation acres.

6. Claim Summary:

POD NAME OR #	MAXIMUM RATE AUTHORIZED	CALCULATED THEORETICAL RATE BASED ON SYSTEM	AMOUNT OF WATER MEASURED	USE	# OF ACRES ALLOWED	# OF ACRES DEVELOPED
POD	9.01	214.5	n/a	IR	721.0	683.5

SECTION 4

SYSTEM DESCRIPTION

Are there multiple PODs? YES **NO**

If *"YES"* you will need to copy and complete a separate Section 4 for each POD.

POD Name or Number this section describes (only needed if there is more than one):

POD

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A. Place of Use

1. Is the right for municipal use? YES **NO**

If "YES" the table below may be deleted.

TWP	RNG	MER	SEC	QQ	GLOT	DLC	USE	IF IRRIGATION, # PRIMARY ACRES	IF IRRIGATION, # SUPPLEMENTAL ACRES
20 S	35 E	WM	21	NESE			IR	7.9	
"	"	"	"	NWSE			"	3.0	
"	"	"	22	SENE			"	3.5	
"	"	"	"	NWSW			"	4.6	
"	"	"	"	SESW			"	1.7	
"	"	"	"	NESE			"	17.5	
"	"	"	"	NWSE			"	19.9	
"	"	"	"	SWSE			"	17.8	
"	"	"	23	NESW			"	3.2	
"	"	"	"	NWSW			"	8.8	
"	"	"	"	SESW			"	17.2	
"	"	"	"	NESE			"	2.5	
"	"	"	"	NWSE			"	6.0	
"	"	"	"	SWSE			"	33.4	
"	"	"	"	SESE			"	35.1	
"	"	"	26	NENE			"	39.7	
"	"	"	"	NWNE			"	22.4	
"	"	"	24	SWSW			"	33.5	
"	"	"	"	SESW			"	27.8	
"	"	"	"	NESE			"	28.4	
"	"	"	"	SWSE			"	31.4	
"	"	"	"	SESE			"	40.0	
"	"	"	25	SWNE			"	13.3	
"	"	"	"	SENE			"	19.0	
"	"	"	"	NESE			"	14.4	
"	"	"	"	SESE			"	0.5	
"	36 E	"	19	NWSW	L3		"	35.0	
"	"	"	"	SWSW	L4		"	24.6	
"	"	"	30	NWNW	L1		"	14.3	
"	"	"	"	SWNW	L2		"	26.0	
"	"	"	"	SENW			"	1.2	
"	"	"	"	NESW			"	28.8	
"	"	"	"	NWSW	L3		"	40.0	
"	"	"	"	SWSW	L4		"	23.5	
"	"	"	"	SESW			"	29.6	
"	"	"	31	NENW			"	8.0	
Total Acres Irrigated								683.5	

Reminder: The map associated with this claim must identify Donation Land Claims (DLC), Government Lots (GLot), Quarter Quarters (QQ), and if for irrigation, the number of acres irrigated within each projected DLC, GLot, and QQ.

B. Diversion and Delivery System Information

Provide the following information concerning the diversion and delivery system. Information provided must describe the equipment used to transport and apply the water from the point of diversion to the place of use.

1. Is a pump used? YES **NO**

If "NO" items 2 through item 6 may be deleted.

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7. Is the distribution system piped? YES **NO**

If "NO" items 8 through item 13 may be deleted.

C. Storage

1. Does the distribution system include in-system storage (e.g. storage tank, bulge in system / reservoir)? YES **NO**

If "NO", item 2 and 3 relating to this section may be deleted.

D. Gravity Flow Pipe

(THE DEPARTMENT TYPICALLY USES THE HAZEN-WILLIAM'S FORMULA FOR A GRAVITY FLOW PIPE SYSTEM)

1. Does the system involve a gravity flow pipe? YES **NO**

If "NO", items 2 through 4 relating to this section may be deleted.

E. Gravity Flow Canal or Ditch

(THE DEPARTMENT TYPICALLY USES MANNING'S FORMULA FOR CANALS AND DITCHES)

1. Is a gravity flow canal or ditch used to convey the water as part of the distribution system? **YES** NO

If "NO", items 2 through 4 relating to this section may be deleted.

2. Complete the table:

CANAL OR DITCH TYPE (MATERIAL)	TOP WIDTH OF CANAL OR DITCH	BOTTOM WIDTH OF CANAL OR DITCH	DEPTH	"N" FACTOR	AMOUNT OF FALL	LENGTH OF CANAL / DITCH	SLOPE	COMPUTED RATE (IN CFS)
Stoney Bed, Weeds on Side	14'	12'	4'	0.03	102'	74500'	.001	214.5 cfs

3. Provide calculations:

See attached OWRD Ditch Capacity Calculations.

4. If an actual measurement was taken, provide the following:

Date of Measurement	Who Made the Measurement	Measurement Method	Measured Quantity of Water (in cfs)
n/a			

Attach measurement notes.

F. Additional notes or comments related to the system:

n/a

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SECTION 5

CONDITIONS

All conditions contained in the permit, permit amendment, or any extension final order shall be addressed. Reports that do not address all performance related conditions will be returned.

1. Time Limits:

Permits and any extension final orders contain any or all of the following dates: the date when the actual construction work was to begin, the date when the construction was to be completed, and the date when the complete application of water to the proposed use was to be completed. These dates may be referred to as ABC dates. Describe how the water user has complied with each of the development timelines established in the permit or permit extension of time:

	Date from Permit	Date Accomplished*	Description of Actions Taken by Water User to Comply with the Time Limits
Issuance Date	8-28-1995		
Begin construction (A)	8-28-1996	8-28-1995	All construction except fish screen & measuring device in place
Complete construction (B)	10-1-2020	4-1-2012	Fish Screen Installed
Complete application of water (C)	10-1-2020	4-1-2012	Complete application of water to Beneficial Use

* MUST BE WITHIN PERIOD BETWEEN PERMIT OR ANY EXTENSION FINAL ORDER ISSUANCE AND THE DATE TO COMPLETELY APPLY WATER

2. Is there an extension final order(s)? YES NO

If "NO", items a and b relating to this section may be deleted.

a. Did the Extension Final Order require the submittal of Progress Reports? YES NO

If "NO", item b relating to this section may be deleted.

b. Were the Progress Reports submitted? YES NO

If the reports have not been submitted, attach a copy of the reports if available.

3. Measurement Conditions:

a. Does the permit, permit amendment, or any extension final order require the installation of a meter or approved measuring device? YES NO

If "NO", items b through f relating to this section may be deleted.

Reminder: If a meter or approved measuring device was required, the COBU map must indicate the location of the device in relation to the point of diversion.

b. Has a meter been installed? YES **NO**

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c. Meter Information

POD Name or #	Manufacturer	Serial #	Condition (working or not)	Current Meter Reading	Date Installed

If a meter has been installed, items d through f relating to this section may be deleted.

d. If a meter has not been installed, has a suitable measuring device been installed and approved by the Department? **YES** NO

e. If "YES", provide a copy of the letter approving the device, if available. If the letter is not available provide the name and title of the Water Resources Department employee approving the measuring device, and the approximate date of the approval:

Name	Title	Approximate Date
n/a		

f. Measurement Device Description

Device Description	Condition (working or not)	Date Installed
Concrete Box with Staff Gauge	**Working**	**2-22-2010**

4. Recording and reporting conditions:

a. Is the water user required to report the water use to the Department? YES **NO**

If "NO", item b relating to this section may be deleted.

5. Fish Screening:

a. Are any points of diversion required to be screened to prevent fish from entering the point of diversion? **YES** NO

If "NO", items b through e relating to this section may be deleted.

Reminder: If fish screening devices were required, the COBU map must indicate their location in relation to the point of diversion.

b. Has the fish screening been installed? **YES** NO

c. When was the fish screening installed?

Date	By Whom
4-1-2012	**Drewsey Reclamation Company**

Reminder: If the permit was issued on or after February 1, 2011, the fish screen is required to be approved by the Oregon Department of Fish and Wildlife regardless of the rate of diversion.

d. If the diversion **involves a pump** *and* the **total** diversion rate of all rights at the point of diversion is less than 225 gpm (0.5 cfs) and the permit was issued prior to February 1, 2011:

- Has the self-certification form previously been submitted to the Department? **NA** YES NO

If not, go to https://www.oregon.gov/OWRD/Forms/Pages/default.aspx complete and attach a copy of the 'ODFW Small Pump Screen Self Certification' form to this claim, and send a copy of it to the Oregon Department of Fish and Wildlife (ODFW).

Reminder: Failure to submit evidence of a timely installed fish screen may result in an unfavorable determination. The ODFW self certification form needs to have been previously submitted or be attached to this form.

e. If the diversion does **not involve a pump** *or* the **total** diversion rate of all rights at the point of diversion is 225 gpm (0.5 cfs) or greater:

- Has the ODFW approval been previously submitted? NA YES **NO**

If not, contact and work with ODFW to ensure compliance. To demonstrate compliance, provide signed documentation from ODFW. A form is available at: https://www.oregon.gov/OWRD/Forms/Pages/default.aspx

Reminder: Failure to submit evidence of a timely installed fish screen may result in an unfavorable determination. In order to receive a favorable approval, the ODFW/WRD "Fish Screen Inspection" form needs to have been previously submitted or be attached to this form.

6. By-pass Devices:

a. Are any points of diversion required to have a by-pass device to prevent fish from entering the point of diversion? YES **NO**

If "NO", items b and c relating to this section may be deleted.

7. Other conditions required by permit, permit amendment final order, or extension final order:

a. Was the water user required to restore the riparian area if it was disturbed? YES **NO**

b. Was a fishway required? YES **NO**

c. Was submittal of a water management and conservation plan required? YES **NO**

d. Other conditions? YES **NO**

If "YES" to any of the above, identify the condition and describe the water user's actions to comply with the condition(s):

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SECTION 6

ATTACHMENTS

Provide a list of any additional documents you are attaching to this report:

Attachment Name	Description
Ditch Calcs	OWRD Ditch Capacity calculations
CBU Maps	Claim of Beneficial Use Maps
Measuring Device Letter	Measuring Device Approval Letter from Watermaster
Fish Screen Letter	ODFW Fish Screen Approval Letter

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SECTION 7

CLAIM OF BENEFICIAL USE MAP

The Claim of Beneficial Use Map must be submitted with this claim. Claims submitted without the Claim of Beneficial Use map will be returned. The map shall be submitted on poly film at a scale of 1" = 1320 feet, 1" = 400 feet, or the original full-size scale of the county assessor map for the location.

Provide a general description of the survey method used to prepare the map. Examples of possible methods include, but are not limited to, a traverse survey, GPS, or the use of aerial photos. If the basis of the survey is an aerial photo, provide the source, date, series and the aerial photo identification number.

On-site direct measurement and NAIP Imagery.

Map Checklist

Please be sure that the map you submit includes ALL the items listed below.
(Reminder: Incomplete maps and/or claims may be returned.)

- ☒ Map on polyester film
- ☒ Appropriate scale (1" = 400 feet, 1" = 1320 feet, or the original full-size scale of the county assessor map)
- ☒ Township, Range, Section, Donation Land Claims, and Government Lots
- ☒ If irrigation, number of acres irrigated within each projected Donation Land Claims, Government Lots, Quarter-Quarters
- ☒ Locations of fish screens and/or fish by-pass devices in relationship to point of diversion
- ☒ Locations of meters and/or measuring devices in relationship to point of diversion or appropriation
- ☒ Conveyance structures illustrated (pumps, reservoirs, pipelines, ditches, etc.)
- ☒ Point(s) of diversion or appropriation (illustrated and coordinates)
- ☒ Tax lot boundaries and numbers
- ☒ Source illustrated if surface water
- ☒ Disclaimer ("This map is not intended to provide legal dimensions or locations of property ownership lines")
- ☒ Application and permit number or transfer number
- ☒ North arrow
- ☒ Legend
- ☒ CWRE stamp and signature

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	Ditch Capacity Calcualtor					
	using Manning's Formula					
	Data Entry (fill in underlined blanks)					
Top Width =	14	feet				
Bottom Width =	12	feet				
Depth =	4	feet				
Fall =	102	feet	per	74500	feet of distance	
Grade =	0.001369127	, or	0.1%			
n Factor =	0.03					
	Results calculated					
Area of cross-section =		52	square feet			
Wetted Perimeter =		20.24621	feet			
Hydraulic Radius =		2.568381				
	Velocity =	4.125	feet per second			
Calculated Ditch Capacity =		**214.5**	**cubic feet per second**			

Oregon
Kate Brown, Governor

Department of Fish and Wildlife
John Day Fish Screening and Passage
357 Patterson Bridge Rd.
P.O. Box 515
John Day, OR 97845
Voice: 541-575-0561
FAX (541) 575-0868
www.dfw.state.or.us/

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January 22, 2020

Malheur Basin Water Users Association
PO Box 237
Drewsey, OR 97904

Dear Mr. Malheur Basin Water Users Association,

Your fish screen was inspected on 12/2/2013. In reference to water right Permit 51626 this letter confirms that a National Marine Fisheries Service criteria fish screen as approved by ODFW is located on the property near GPS coordinates: 43.843658, -118.501470.

In regards to the inspection of the fish screen located on Malheur River, the following has been determined:

1. The screen located at coordinates 43.843658, -118.501470 is an ODFW shop-built screen.
2. This screen is approved for water use up to 41,298 GPM or 92 CFS.
3. This letter is only certifying the POD located NE ¼ SW ¼, Section 11, Township 20 South, Range 34 East.
4. All screen configurations meet National Marine Fisheries Service criteria at the time of inspection, any changes or modifications to the configurations will not be covered by this certification letter.
5. This screen is located at the water edge; therefore, no by-pass is required.
6. OWRD has approved only certifying the POD the water users have activated, see attached letter.

Please contact me if you have any questions regarding this letter.

Sincerely,

Nathaniel Ashley
Fish Screening and Passage Coordinator

CC: Oregon Water Resources Department

Oster Professional Group CPAs

George Wilber <gwilber@opgcpa.com>

RE: Drewsey Reclamation Cooperative

10 messages

JOHNSON JR * WRD <JR.Johnson@oregon.gov> Tue, Oct 29, 2019 at 9:59 AM
To: George Wilber <gwilber@opgcpa.com>
Cc: SWINDLEHURST Donald S * WRD <Donald.S.Swindlehurst@oregon.gov>

George,

With regard to Permit S 51626 and our conversation this morning, I am responding via this email to confirm that the Drewsey Reclamation Cooperative has met the intent of the permit at this time by installing the concrete box in which we placed a staff gage to create a measurement curve. The curve is not yet fully developed and we (OWRD staff) will continue to work on it. OWRD reserves the right to update and or make changes to the measurement requirements in the future as deemed necessary by the Department, but at this time you have met the permit conditions.

Thank you.

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JR Johnson

Oregon Water Resources

Dist. 10 Watermaster

Burns, OR 97720

541 573 2764

Jr.johnson@oregon.gov

From: George Wilber [mailto:gwilber@opgcpa.com]
Sent: Tuesday, October 29, 2019 8:51 AM
To: JOHNSON JR * WRD
Subject: Drewsey Reclamation Cooperative

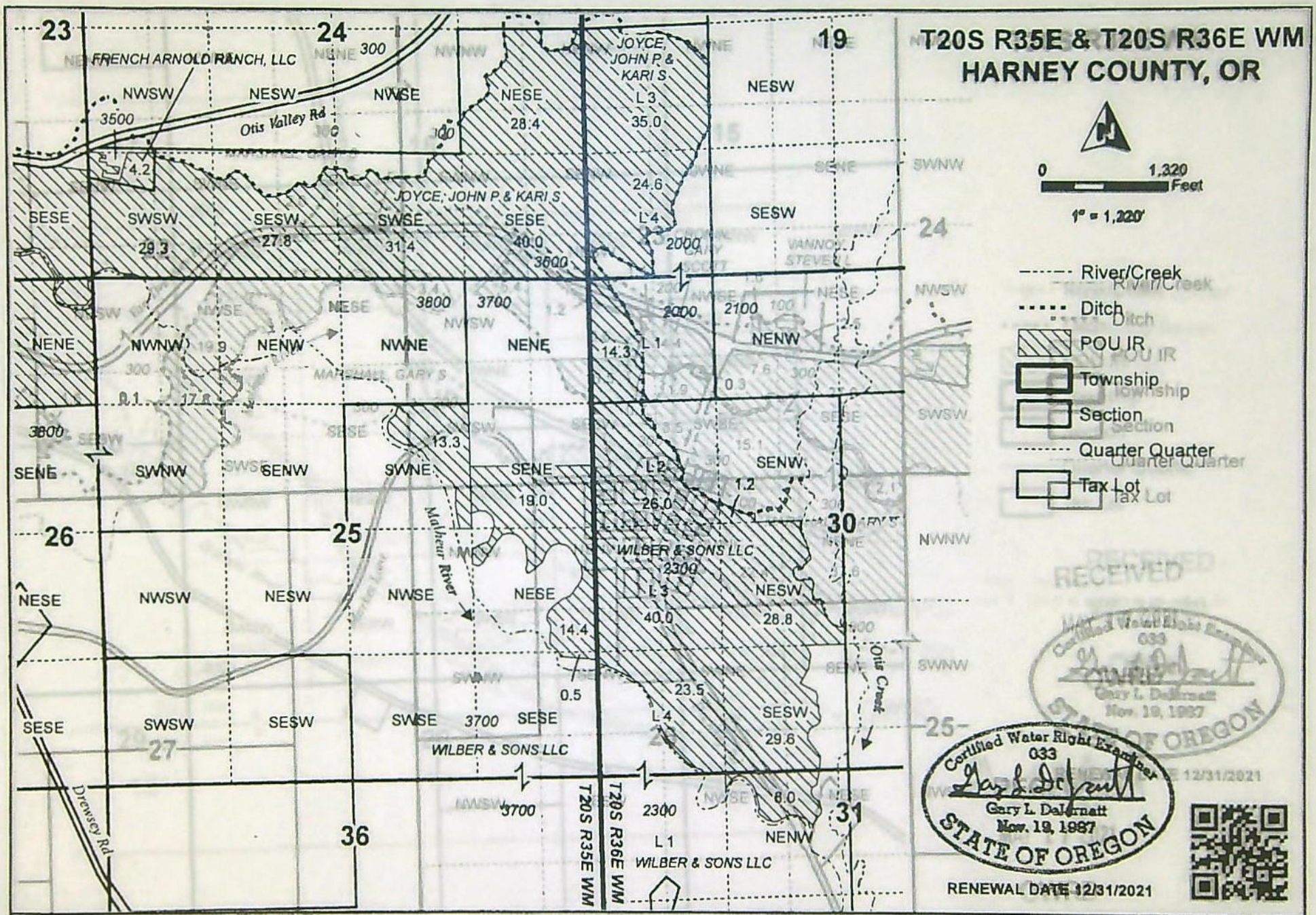
JR - The application number is 69433, permit number 51626. Thanks, gww

---

George Wilber <gwilber@opgcpa.com> Wed, Oct 30, 2019 at 5:47 PM
To: Steve Applegate <steve.applegsp@gmail.com>

FYI Steve. I called Mike Jensen from ODFW in John Day but did not reach him and have not heard back. I'll be out of the office until around Nov 20. Thanks gww
[Quoted text hidden]

George Wilber <gwilber@opgcpa.com> Tue, Nov 19, 2019 at 3:40 PM



CLAIM OF BENEFICIAL USE MAP
DREWSEY RECLAMATION COMPANY

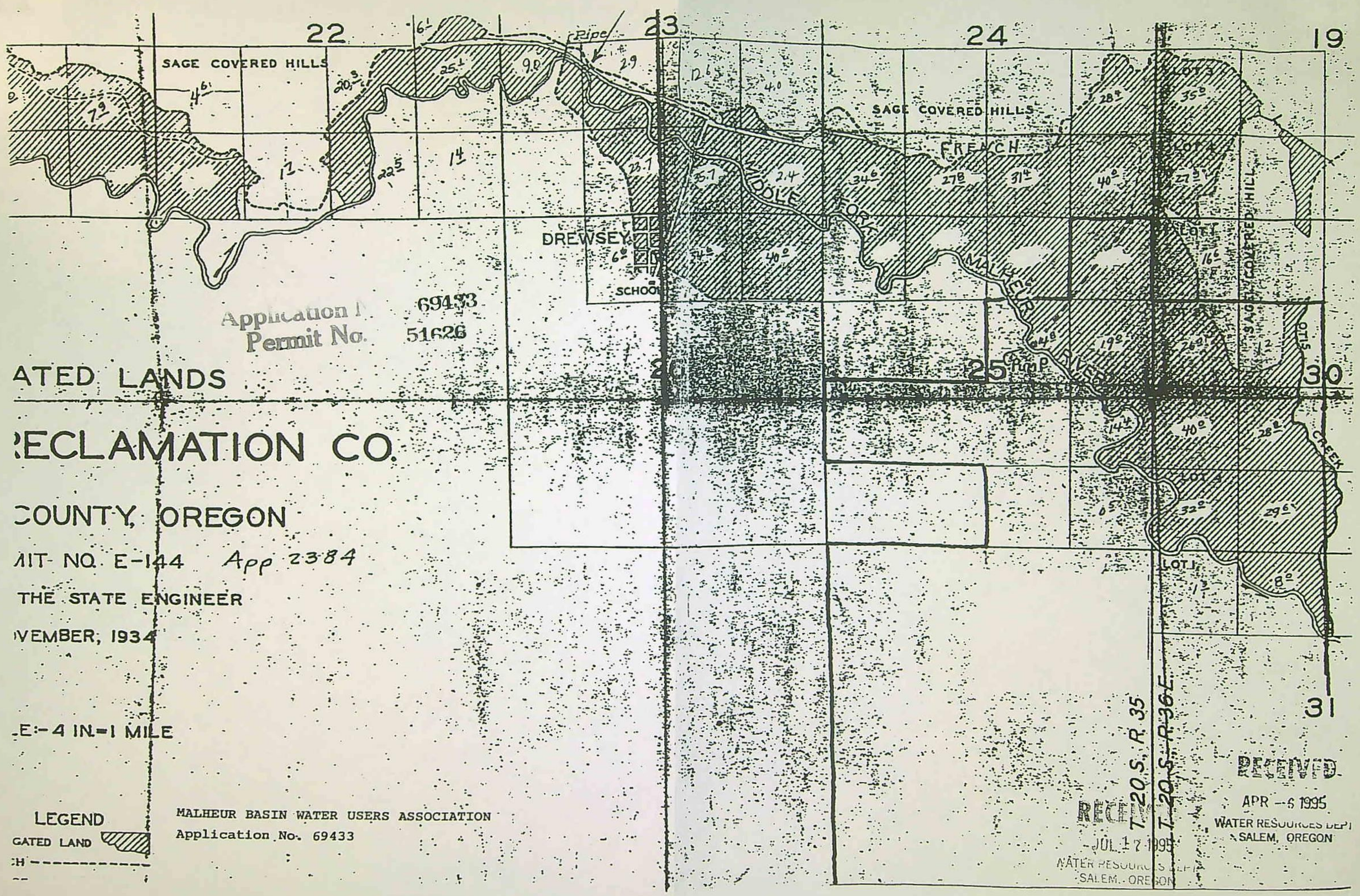
Date: 4/16/2021 Ap S-69433 Permit S-51626

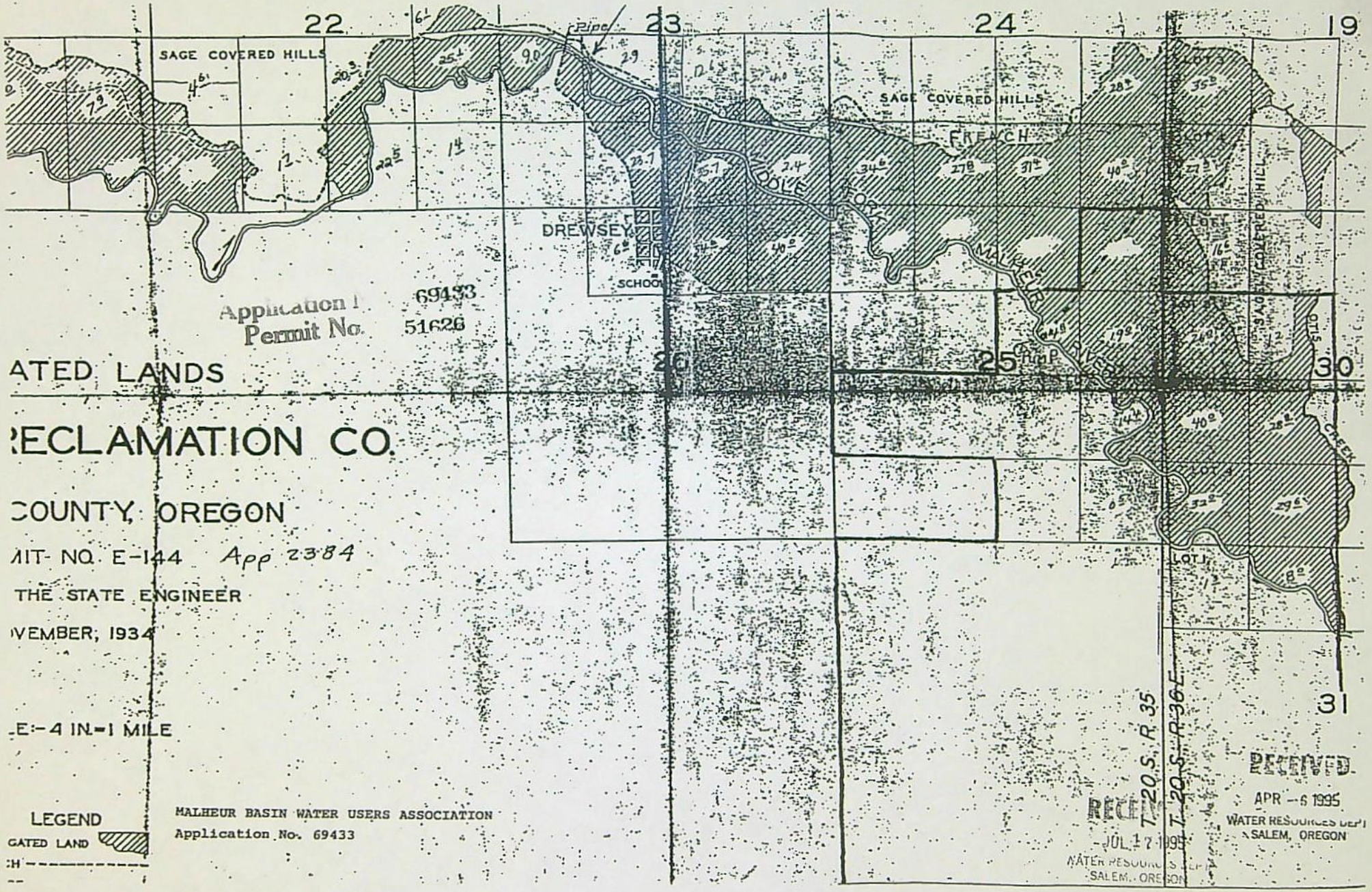
PG 1 OF 4

Project #20092

This map is not intended to provide legal dimensions or locations of property ownership lines.

WATER RIGHT SERVICES, LLC
PO BOX 1830, BEND, OR 97709
WWW.OREGONWATER.US CCB # 197121
johnshort@usa.com 541-389-2837


22
23
24
19
SAGE COVERED HILLS
SAGE COVERED HILLS
FRENCH
MIDDLE FORK MALHEUR RIVER
DREWSEY
SCHOOL
Pipe
SAGE COVERED HILL
CREEK
Application No. 69433
Permit No. 51626
ATED LANDS
RECLAMATION CO.
COUNTY, OREGON
MIT NO. E-144 App 2384
THE STATE ENGINEER
VEMBER, 1934
E:-4 IN-1 MILE
LEGEND
GATED LAND
MALHEUR BASIN WATER USERS ASSOCIATION
Application No. 69433
T. 20 S., R. 35 E.
T. 20 S., R. 36 E.
RECEIVED
APR -6 1995
WATER RESOURCES DEPT
SALEM, OREGON
RECEIVED
JUL 17 1995
WATER RESOURCES DEPT
SALEM, OREGON


22
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SAGE COVERED HILLS
SAGE COVERED HILLS
FRENCH
DREWSEY
SCHOOL
MIDDLE FORK
MALHEUR
Pipe
Application No. 69433
Permit No. 51626
ATED LANDS
ECLAMATION CO.
COUNTY, OREGON
MIT- NO. E-144 App 2384
THE STATE ENGINEER
VEMBER, 1934
E:-4 IN.=1 MILE
LEGEND
GATED LAND
MALHEUR BASIN WATER USERS ASSOCIATION
Application No. 69433
T. 20 S., R. 35 E.
T. 20 S., R. 36 E.
RECEIVED
JUL 17 1995
WATER RESOURCES DEPT
SALEM, OREGON
RECEIVED
APR -6 1995
WATER RESOURCES DEPT
SALEM, OREGON

REIMBURSEMENT AUTHORITY TRANSFER

APPLICATION S-69433 PERMIT 51626

CONTRACT NEVER EXECUTED.

KAVANAGH Kerry L * WRD

From: KAVANAGH Kerry L * WRD
Sent: Tuesday, June 22, 2021 10:40 AM
To: John Short; 'brycewrs@gmail.com'
Cc: KAVANAGH Kerry L * WRD
Subject: Certificate RA Estimate R12791-21 for Drewsey Reclamation Company involving Application S-69433
Attachments: RA estimate request_S-69433.pdf; RA estimate receipt_S-69433.pdf; RA contract_S-69433.pdf

Hello John and Bryce,

Please find the attached estimate and agreement to review the claim of beneficial use. If the proposed agreement is acceptable to you and the water user, please ask George Wilber to return a signed copy to our office along with the payment of the estimated cost to review the claim of beneficial use.

If you have any questions, please send me an email at kerry.l.kavanagh@oregon.gov.

Thank you for working with the Water Resources Department. I am currently teleworking in an effort to maintain services, while encouraging Oregonians to stay home, stay healthy, and save lives by reducing the spread of COVID 19. I have been working in the Salem office once a week.

Thanks,
Kerry

Kerry Kavanagh
Certificate Reimbursement Authority Program Coordinator
Certificate Section, Water Rights Services Division
725 Summer St NE Suite A | Salem OR 97301 | 503.986.0927
kerry.l.kavanagh@oregon.gov | https://www.oregon.gov/OWRD

Integrity | Service | Technical Excellence | Teamwork | Forward-Looking

STATE OF OREGON
WATER RESOURCES DEPARTMENT
725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # 135274 INVOICE # _____

RECEIVED FROM: Drewsey Reclamation Cooperative, Inc.
BY:

APPLICATION	S-69433
PERMIT	
TRANSFER	

CASH: ☐ CHECK:# ☒ 2270 OTHER: (IDENTIFY) ☐ _____ TOTAL REC'D $ 325.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES 47126 R12791-21 $
0413 OTHER (IDENTIFY) Certificate Reimbursement Authority $ 125.00
0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407	COPY & TAPE FEES	$
0410	RESEARCH FEES	$
0408	MISC REVENUE: (IDENTIFY) _____	$
TC162	DEPOSIT LIAB. (IDENTIFY) _____	$
0240	EXTENSION OF TIME	$

WATER RIGHTS:

		EXAM FEE		RECORD FEE
0201	SURFACE WATER	$	0202	$
0203	GROUND WATER	$	0204	$
0205	TRANSFER	$		

WELL CONSTRUCTION

		EXAM FEE		LICENSE FEE
0218	WELL DRILL CONSTRUCTOR	$	0219	$
	LANDOWNER'S PERMIT		0220	$

0200 OTHER (IDENTIFY) COBU Fee $200.00

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	$	CARD #
0210	MONITORING WELLS	$	CARD #
_____	OTHER (IDENTIFY) _____		

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233	POWER LICENSE FEE (FW/WRD)		$
0231	HYDRO LICENSE FEE (FW/WRD)		$
_____	HYDRO APPLICATION		$

_____ TREASURY OTHER / RDX

FUND _____ TITLE _____
OBJ. CODE _____ VENDOR # _____
DESCRIPTION _____ $

RECEIPT: 135274 DATED: 5-17-2021 BY: Mindy Cochran

Distribution – White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal

STATE OF OREGON
WATER RESOURCES DEPARTMENT
725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # 135274 INVOICE # _____

RECEIVED FROM: Drewsey Reclamation Cooperative, Inc.
BY:

APPLICATION	S-69433
PERMIT	
TRANSFER	

CASH: ☐ CHECK:# ☒ 2270 OTHER: (IDENTIFY) ☐ _____ TOTAL REC'D $ 325.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407 COPIES 47126 R12791-21 $
0413 OTHER (IDENTIFY) Certificate Reimbursement Authority $ 125.00
0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407	COPY & TAPE FEES	$
0410	RESEARCH FEES	$
0408	MISC REVENUE: (IDENTIFY) _____	$
TC162	DEPOSIT LIAB. (IDENTIFY) _____	$
0240	EXTENSION OF TIME	$

WATER RIGHTS:

		EXAM FEE		RECORD FEE
0201	SURFACE WATER	$	0202	$
0203	GROUND WATER	$	0204	$
0205	TRANSFER	$		

WELL CONSTRUCTION

		EXAM FEE		LICENSE FEE
0218	WELL DRILL CONSTRUCTOR	$	0219	$
	LANDOWNER'S PERMIT		0220	$

0200 OTHER (IDENTIFY) COBU Fee $200.00

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	$	CARD #
0210	MONITORING WELLS	$	CARD #
_____	OTHER (IDENTIFY) _____		

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233	POWER LICENSE FEE (FW/WRD)		$
0231	HYDRO LICENSE FEE (FW/WRD)		$
_____	HYDRO APPLICATION		$

_____ TREASURY OTHER / RDX

FUND _____ TITLE _____
OBJ. CODE _____ VENDOR # _____
DESCRIPTION _____ $

RECEIPT: 135274 DATED: 5-17-2021 BY: Mindy Cochran

Distribution – White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal

DREWSEY RECLAMATION COOPERATIVE INC.

Oregon Water Resource Department 5/11/2021 2270

325.00

RECEIVED
MAY 17 2021
OWRD

Cash in checking Permit #S-51626 325.00

OREGON WATER RESOURCES DEPARTMENT

CERTIFICATE REIMBURSEMENT AUTHORITY ESTIMATE APPLICATION

RECEIVED
MAY 17 2021
OWRD

ORS 536.055 authorizes the Oregon Water Resources Department to expedite or enhance regulatory processes voluntarily requested under the agreement.

The purpose of this application is to obtain estimates of the cost and time required to process a Certificate Request. ***A separate estimate application is required for each application and/or transfer number. There is a non-refundable application fee of $125.00 per request.***

REQUEST	TYPE	FILE NUMBER	
☒	Certificate Request	Application Number	S-69433
		Permit Number	S-51626
		Transfer Number/Permit Amendment (if applicable)	____

	Applicant Information	Applicant's Representative/Contact
Name:	George Wilber / Drewsey Reclamation Company	Water Right Services, LLC / Bryce Withers
Address:	77 W. Adams St	PO Box 1830
	Burns, OR 97720	Bend, OR 97709
Phone:	____	541-389-2837
Fax:	____	____
E-Mail Address:	____	johnshort@usa.com

I certify that I *(check one)*:

- ☐ have previously filed a Claim of Beneficial Use
- ◉ am attaching the Claim of Beneficial Use with this request and have included the appropriate claim fee.

I understand the following:

- That upon receipt of my non-refundable application fee in the amount of **$ 125.00**, OWRD will, within fourteen (14) days, notify me in writing of the estimates of cost and time frame for the expedited service.
- That this fee covers the reimbursement authority staff to evaluate and provide the estimate for processing of the request.
- That upon receiving the estimate I may agree or decline to enter into a formal contract to pay the estimated cost in advance to initiate the expedited service.
- An incomplete or inaccurate Claim of Beneficial Use may delay the process and increase the cost to process my request.
- Expedited processing does not guarantee a favorable review of my request.
- Send completed Application and payment to:

  Oregon Water Resources Department
  Certificate Reimbursement Authority Program
  725 Summer St. NE, Suite A
  Salem, OR 97301-1271

I certify that I am the *(check one)*:

☐ Applicant ◉ Applicant's Representative ☐ Other *(Please specify)* ____

Name: Bryce M. Withers

Signature: Bryce M. Withers

OWRD USE ONLY: Reimbursement Authority Number: R12 791 -21

RECEIVED
OCT 28 1987
WATER RESOURCES DEPT.
SALEM, OREGON

Form C (690—9-77)

IMPORTANT—This form is a notice to the Water Resources Director that permittee is ready to make final proof to the extent to which the water has actually been applied to the intended use under the terms of the permit. Permittee is cautioned that Certificate of Water Right will be issued based on the extent of the quantity and use as determined by the final proof inspection and survey which will be made in response to the filing of this Form C.

NOTE: In the case of an irrigation permit, this Form C should not be mailed to the Water Resources Department until all of the land described in the permit, which it is intended to irrigate under this permit at any time, has actually been irrigated.

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when all of the water has been applied.

Application No. 69433

NOTICE OF COMPLETE APPLICATION OF WATER TO A BENEFICIAL USE

Malhuer River Basin Water Users Assoc., the holder of Permit No. .....

to appropriate the public waters of the state of Oregon, completely applied the waters to a beneficial use in accordance with the terms of said permit, on the 1st day of April, 1988.

Remarks: All diversions and controls are in place and water has been diverted for many years for the primary rights.

IN WITNESS WHEREOF, I have hereunto set my hand this 17 day of October, 1987.

Malheur Basin Water Users Assn by Kenneth J. Lentz (Signature of Applicant)

Drewsey, Oregon 97904 (Address)

RECEIVED
OCT 28 1987
WATER RESOURCES DEPT.
SALEM, OREGON

Form B (690—9-77)

Application No. 69433

NOTICE OF COMPLETION OF CONSTRUCTION

I, Malhuer River Basin Water Users Assoc., the holder of Permit No. .....

to appropriate the public waters of the state of Oregon, completed the construction of the works described therein on the ..... day of ....., 19.....

Remarks: The controls and diversions have been in operation for many years to supply water to the Primary rights.

If the works have less capacity than described in the permit, or you have definitely abandoned part of the proposed development, you should so state in order that our records may not be unnecessarily encumbered.

IN WITNESS WHEREOF, I have hereunto set my hand this 17 day of October, 1987.

Malheur Basin Water Users Assn by Kenneth J. Lentz (Signature of Applicant)

Drewsey, Oregon 97904 (Address)

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when construction work is completed.

RECEIVED
OCT 28 1987
WATER RESOURCES DEPT.
SALEM, OREGON

Form A (690—9-77)

Application No. 69433

NOTICE OF BEGINNING OF CONSTRUCTION

I, Malhuer River Basin Water Users Assoc., the holder of Permit No. .....

to appropriate the public waters of the state of Oregon, began the actual construction of the works described therein on the 20 day of April, 1987.

Remarks: The Association started getting the data for filing this application for supplemental water. All controls are in and working.

The appropriator must state the manner of beginning of construction, the amount of work completed and the type of equipment acquired for the water system up to the date of this statement, and any additional information which shows a substantial beginning of construction as authorized by your permit.

IN WITNESS WHEREOF, I have hereunto set my hand this 17 day of October, 1987.

Malheur Basin Water Users Assn by Kenneth J. Lentz (Signature of Applicant)

Drewsey Oregon 97904 (Address)

Fill out, detach and mail to the Water Resources Department, Salem, OR 97310, when construction work is begun.

SP•25547.CON

File

Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

March 15, 2017

Drewsey Reclamation Cooperative
George Wilber
77 W. Adams
Burns, OR 97720

REFERENCE: Application S-69433 / Permit S-51626

Dear Permit Holder:

The Water Right Services Division received your written 2016 Progress Report for Permit S-51626. Receipt of the progress report was published on the Department's weekly Public Notice, dated February 14, 2017. The Department did not receive any public comment on the progress report.

After reviewing your Progress Report, the Department determined that diligence toward completion of the project and compliance with the terms and conditions of the permit and extension has been demonstrated.

As per your most recent extension, the date by which water must be applied to full beneficial use within the terms and conditions of your permit is October 1, 2020.

If you have any questions, please feel free to contact me by telephone at (503) 986-0825.

Sincerely,

Corey Courchane
Adjudication & Extension Specialist

Enclosure

cc: Application S-69433
Watermaster District 10 – JR Johnson

Route Slip…..Extension of Time Progress Report

1. Extension Specialist: Progress Report Review

Date Report was Due: 10/1/2016 (= "Deadline Date" for the corresponding ECP work flow record in WRIS)

Date Report Received: 1/18/2017

Report Complete: ☒ YES

☐ NO – Send letter requesting missing information.
☐ letter mailed on: _____

2. Support Staff: Publish on the Department's Public Notice

☒ **315** ☐ **320** OAR Division under which Progress Report was required

☑ Publish on Public Notice Date: 2·14·17

☑ Update workflow in WRIS

- (Fill in Extension Checkpoint 'Completed Date' in appropriate "ECP" work flow record and
- add record for Checkpoint Public Notice ("EPR" or "EP2")

☑ **Return file to** Corey Courchane.

3. Extension Specialist: Prepare Progress Report Confirmation Letter
See progress report procedures.doc (date / mail out after 30 day comment period)

Date Confirmation Letter Needed: 3-15-17

☐ Update Progress Report Worksheet.xls

☐ Send to permit holder + anyone who made comments after 30 day public notice
CC: Watermaster _____

File _____

PUBLIC NOTICE INFORMATION

Permit Holder's Name: Drewsey Reclamation Cooperative Attn: George Wilber

Application: S-69433

Permit: S-51626

County: Harney

Source: Middle Fork Malheur River, tributary to the Snake River

Use: Irrigation of 721.0 acres

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Extension of Time
Diligence Progress Reporting Form
For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Drewsey Reclaimation Cooperative; George Wilbur Application S-69433
Permit S-51626

Report Due no later than October 1, 2011

Diligence Progress Report for 2011

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit S-51626

INSERT DATES	WORK ACCOMPLISHED and FINANCIAL INVESTEMENT SINCE OCTOBER 1, 1999 *List all work done after the last authorized date for complete application of water up to the date of this Diligence Progress Reporting Form*	FINANCIAL INVESTEMENT
02.22.10	COMPLETED INSTALLATION OF DIVERSION,	#227.000
	FISH LADDER & JUVENILE BY PASS, AND	
	HEADGATE FOR MEASURING RATE OF	
	APPROPRIATION	
PRESENT	FABRICATION OF FISH SCREENING DEVICE	#38,000

2. **Compliance with terms and conditions of the permit and/or previous extension.**

INSTALLATION OF FISH SCREENING DEVICE IS PRESENTLY SCHEDULED FOR FALL 2011.

RECEIVED
JUL 13 2011
WATER RESOURCES DEPT
SALEM, OREGON

3. **Total number of acres irrigated to date=** 721.0 *(if applicable)*

4. **Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.**

Maximum rate = 9.01 cfs (cubic feet per second)

Maximum rate = – gpm (gallons per minute)

Acre Feet Stored = – AF

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet – usually only specified on a reservoir water right). ***Do not provide daily, monthly or annual water use totals.***

Signature [signature] Date 07.11.2011

For OWRD use only

Diligence Shown ☐ Yes ☐ No Date Public Noticed: _____

Reviewed by: _____ Date: _____

Oster Professional Group
Certified Public Accountants, LLP
GEORGE W. WILBER
CPA, CR.FA, CFF, CGMA
77 W. Adams
Burns, Oregon 97720
E-mail - gwilber@opgcpa.com
www.opgcpa.com
(541) 573-6151
FAX (541) 573-5605
1-877-229-8706

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Extension of Time
Diligence Progress Reporting Form
For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Drewsey Reclaimation Cooperative; George Wilbur Application S-69433
Permit S-51626

Report Due no later than October 1, 2016

Diligence Progress Report for 2016

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit S-51626

INSERT DATES	WORK ACCOMPLISHED and FINANCIAL INVESTEMENT SINCE OCTOBER 1, 2011 *List all work done after the last authorized date for complete application of water up to the date of this Diligence Progress Reporting Form*	FINANCIAL INVESTEMENT
04.2012	COMPLETED INSTALLATION OF ODFW FISH SCREEN	$ 38,396
09.2013	RECEIVED "PROPOSED" CERTIFICATE OF WATER	
	RIGHT	2777.
04.2015	APPROVED STANCLON MODIFICATION OF ODFW	
	FISH SCREEN	
04.2016	RECEIVED CLARIFICATION FROM WRD AS TO	
	LOCATION OF MEASUREMENT DEVICES AND FISH	525.
	SCREENING CONDITIONS OF THE PERMIT	

2. **Compliance with terms and conditions of the permit and/or previous extension.**

RECEIVED BY OWRD
JAN 18 2017
SALEM, OR

3. **Total number of acres irrigated to date=** 721.0 *(if applicable)*

4. **Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.**

Maximum rate = 9.01 **cfs (cubic feet per second)**

Maximum rate = _____ **gpm (gallons per minute)**

Acre Feet Stored = _____ **AF**

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet – usually only specified on a reservoir water right). ***Do not provide daily, monthly or annual water use totals.***

Signature _____ Date 01.12.2017

For OWRD use only

Diligence Shown ☑ Yes ☐ No Date Public Noticed: _____

Reviewed by: Carey Date: 1-18-17

Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

April 20, 2016

Steven P. Applegate Consulting
3395 Huckleberry Ct S
Salem OR 97302

RE: Application S-69433, Permit S-51626 (Drewsey Reclamation Cooperative)

Dear Steve,

We have received your letter in reference to the Cooperative's permit identified above.

In your letter, you have asked if conditions need to be complied with on points of diversion that the Cooperative is not planning to use, or claim, under this permit. Specifically, you are inquiring about the fish screening and measurement device conditions. Further, you have indicated that the Cooperative only intends to develop one of the three points of diversion authorized under the permit.

The cooperative will only need to demonstrate compliance with the fish screening and measurement device conditions on the one point of diversion that they intend to develop under the permit. If the other two points of diversion are not developed under this permit, the Cooperative will not need to install the devices under this permit. To demonstrate compliance with these two conditions, the Cooperative will need to obtain letters from the Oregon Department of Fish and Wildlife and from the local Watermaster approving both the fish screen and measurement devices installed.

If the Cooperative does not use the two points of diversion under this permit as indicated, the Cooperative is still responsible to comply with any fish screening or measurement device conditions that may be contained in other permits, transfer orders, or certificates which cover these points of diversion.

Please let me know if you have any additional questions.

Sincerely,

Gerry Clark
Program Analyst
Certificate Section

cc: File
Drewsey Reclamation Cooperative

CLARK Gerry E

From: CLARK Gerry E
Sent: Wednesday, April 20, 2016 9:10 AM
To: 'steve.applegsp@gmail.com'
Subject: Drewsey Reclamation Cooperative (Application S-69433, Permit S-51626)
Attachments: scan_20160420_090505.pdf

Steve,

I have attached a copy of the letter responding to your letter dated April 5, 2016. The original is being placed in the mail.

Gerry

Gerry Clark
Water Right Services Division
Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301

Phone: 503-986-0811

File

Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

April 13, 2016

DREWSEY RECLAMATION COOPERATIVE
GEORGE WILBUR
77 W ADAMS ST
BURNS, OR 97720

REFERENCE: Application S-69433 / Permit S-51626

Dear Permit Holder:

On August 30, 2007, the Department issued a Final Order approving an Extension of Time for Permit S-51626. The Final Order contained a condition to submit a progress report to the Department by October 1, 2016.

This letter is being sent to you as a reminder the progress report is due on October 1, 2016.

For your convenience, I have enclosed a **Progress Report Form** for you to fill out and submit. In order to maintain the ability to continue developing water under this permit, you should submit your progress report no later than October 1, 2016.

As per your most recent extension, the date by which water must be applied to full beneficial use within the terms and conditions of your permit is October 1, 2020.

Failure to submit written progress reports will most likely result in any future extensions being denied.

If you have any questions concerning this matter, you may contact me by telephone at (503) 986-0825.

Sincerely,

Corey A Courchane
Extensions
Water Rights Services Division

Enclosure

cc: Application S-69433
Watermaster District 10 – JR Johnson

Steven P. Applegate Consulting
3395 Huckleberry Ct S
Salem, OR 97302
Phone: (503)362-4040
steve.applegsp@gmail.com

Date: April 5, 2016

RECEIVED BY OWRD

APR 08 2016

SALEM, OR

Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271
ATTN: Gerry Clark, Certificates

REFERENCE; Permit 51626

Dear Mr. Clark:

I represent the Drewsey Reclamation Cooperative, Inc. in the matter of the above referenced permit. We have a question/proposal that needs your response prior to our proceeding with the development required under this permit.

The permit includes conditions that require the installation of measuring and fish screening devices on "…all diversions" as identified under the permit. Such devices were to be completed under the supervision of the watermaster on a schedule to be established by the watermaster. We have never received such a schedule. There are three diversions identified in the permit. The main/upper diversion located in the NE1/4SW1/4 of Section 11 now has a diversion structure designed and installed by ODFW, complete with headgates, staff gauges and fish screening. The other two diversions are pumping points in the NE1/4SW1/4 of Section 23 and in the SW1/4NE1/4 of Section 25.

It is to be noted that these pumping points are never used during the season to which the permit is limited, to wit, April and May. The pumps are only utilized in late summer, July-September, when the flows in the Middle Fork fall below those flows necessary to get water into the upper ditches. It seems unlikely that these points could be included in a final certificate for the permit since they have not been used during April or May, and never will be. Further, the Cooperative would be completely willing to eliminate these two diversions from the permit. The official authorizations for the use of these points are included within existing Certificates 89017, 89018 & 89050. There is no purpose, as such, to include them in Permit 51626.

If the screening and measuring requirements apply only to the ultimately authorized diversions under the permit, then removal of any diversions not used under the terms of the permit should eliminate the requirement. Again, we would be willing to agree to eliminate the two pumping points as authorized diversions either at the time of proof under the permit or by way of any other means you would require.

We hope to receive your response to this question as soon as possible. We are otherwise ready to submit a final claim of beneficial use, but for this one issue. If you have any questions of us, feel free to contact me.

Sincerely,

RECEIVED BY OWRD

APR 08 2016

SALEM, OR

Steven P. Applegate

Cc: Drewsey Reclamation Co-op, % George Wilber

Oregon
John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

September 9, 2011

DREWSEY RECLAMATION COOPERATIVE
ATTN: GEORGE WILBUR
77 W ADAMS ST
BURNS, OR 97720

REFERENCE: Application S-69433 / Permit S-51626

Dear Permit Holder:

The Water Right Services Division received your written progress report for Permit S-51626. Receipt of the progress report was published on the Department's weekly Public Notice, dated August 2, 2011. The Department did not receive any public comment on the progress report.

After reviewing your Progress Report, the Department determined that diligence toward completion of the project and compliance with the terms and conditions of the permit and extension has been demonstrated.

Your next written progress report for Permit S-51626 is due no later than **October 1, 2016**. The report must be received by the Department no sooner than 30 days prior to the due date.

For your convenience, I have enclosed your next *Progress Report Form*. Please calendar this October 1, 2016 due date, as no further reminders will be sent.

As per your most recent extension, the date by which water must be applied to full beneficial use within the terms and conditions of your permit is October 1, 2020. ***Failure to submit a written progress report will most likely result in any future extensions being denied.***

If you have any questions, please feel free to contact me by telephone at (503) 986-0812.

Sincerely,

Jerry Gainey
Water Rights Services Division

Enclosure

cc: Application S-69433
Watermaster District 10 – Tony Rutherford

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Extension of Time
Progress Report Form
For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: DREWSEY RECLAMATION COOPERATIVE

Application S-69433
Permit S-51626

Report Due no later than October 1, 2016
DO NOT SUBMIT PRIOR TO 30 DAYS BEFORE DUE DATE

Progress Report Form for 2016

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfection of Permit S-51626. **FAILURE TO SUBMIT THIS REPORT WILL MOST LIKELY RESULT IN ANY FUTURE EXTENSION BEING DENIED.**

INSERT DATES	LIST ALL WORK ACCOMPLISHED and FINANCIAL INVESTMENTS For the period of time between October 1, 2011 and October 1, 2016	FINANCIAL INVESTMENT

2. **Compliance with terms and conditions of the permit and/or previous extension.**

3. **Total number of acres irrigated to date=** _____ *(if applicable)*

4. **Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.**

Maximum rate used to date = _____**cfs (cubic feet per second)**

Maximum rate used to date = _____**gpm (gallons per minute)**

Acre-feet stored to date = _____**AF**

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet). ***Do not provide daily, monthly or annual water volume totals.***

INCOMPLETE REORTS WILL BE RETURNED. AN ANSWER IS REQUIRED IN EACH ITEM. USE N/A FOR ITEM 3 IF THE USE IS NOT IRRIGATION.

Signature_____ **Date**_____

For OWRD use only

Diligence Shown ☐ Yes ☐ No Date Public Noticed: _____

Reviewed by: _____ Date: _____

Route Slip…..Extension of Time Progress Report

1. **Extension Specialist: Progress Report Review**

   Date Report Received: 7/13/2011

   Report Complete: ☒ YES

   ☐ NO – Send letter requesting missing information.
   ☐ letter mailed on: _____

2. **Jonnine: Publish on the Department's Public Notice**

   ☒ **315** ☐ **320** OAR Division under which Progress Report was required

   ☒ Publish on Public Notice Date: 8/2/11

   ☒ Update workflow in WRIS (Fill in Extension Checkpoint 'Completed Date' in appropriate work flow record)

   ☒ Return to Extension Specialist

3. **Extension Specialist: Prepare Progress Report Confirmation Letter**
   See progress report procedures.doc (date / mail out after 30 day comment period)

   Date Confirmation Letter Needed: 9/7/2011

   ☐ Update Progress Report Worksheet.xls

   ☐ Send to permit holder + anyone who made comments after 30 day public notice
   CC: Watermaster _____

   File _____

4. **Return file to ~~cabinet~~** Jerry G

PUBLIC NOTICE INFORMATION

Permit Holder's Name: Drewsey Reclamation Cooperative Attn: George Wilbur

Application: S- 69433

Permit: S- 51626

County: Harney

Source: Middle Fork Malheur River, tributary to the Snake River

Use: irrigation of 721.0 acres

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

January 23, 2008

AMMERITITLE
70 S.W. THIRD AVENUE
ONTARIO, OREGON

REFERENCE: Application G-12204, Permit G-11293 Turner Brangus Ranch
Application G-14177, Permit G-12844 Turner Brangus Ranch
Application S-69433, Permit S-51626 Drewsey Reclamation Cooperative

Dear Amerititle:

The Department has received the Ownership update form you recently submitted. This form is used for perfected rights on which a certificate has been issued. The rights referenced in the form you submitted are not perfected, and therefore an assignment is needed.

The assignment process changes the name and ownership of the unperfected right so that the department knows who will be responsible for the completion of the water right so that a certificate may issued after the terms and conditions of the permit have been met.

Assignment forms are enclosed for your use. Should you have any questions, you may contact the Department at the address above or by telephone at 503-986-0817.

Sincerely,

JERRY SAUTER
Water Rights Program Analyst

S:\groups\wr\Customer Service Group\Assignment needed-masterdoc.doc

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR BASIN WATER USERS ASSOCIATION
P.O. Box 237
DREWSEY, OREGON 97904 503-493-2311

to use the waters of the Middle Fork Malheur River tributary to the Snake River, for irrigation of 721.0 acres.

This permit is issued approving Application 69433. The date of priority is July 1, 1991. The use is limited to not more than 9.01 cubic feet per second, or its equivalent in case of rotation, measured at the point of diversion from the source.

The points of diversion are located as follows:

NE 1/4 SW 1/4, Section 11, Township 20 South, Range 34 East, WM; NE 1/4 SW 1/4, Section 23, and SW 1/4 NE 1/4, Section 25, Township 20 South, Range 35 East, WM.

The amount of water used for irrigation under this right is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 1.5 acre-feet for each acre. The use of water for irrigation under this permit is limited to the period of April and May of each year.

Operating measuring devices capable of measuring the rate of appropriation and measuring and recording total volume of water appropriated during the irrigation season shall be installed at all diversion points identified under this permit. Installation shall be completed under the supervision of the watermaster on a schedule to be established by the watermaster. Measuring devices shall meet the requirements of the Water Resources Department (Department). The Department shall consult with Oregon Department of Fish and Wildlife in establishing requirements for the measuring devices.

All diversions shall be in compliance with applicable laws requiring fish screening prior to any diversion under this permit.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

PAT O'TOOLE

NE 1/4 SE 1/4 7.9 ACRES
NW 1/4 SE 1/4 3.0 ACRES
SECTION 21
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

ROTHA FRENCH

SW 1/4 SW 1/4 34.6 ACRES
SE 1/4 SW 1/4 27.8 ACRES
SW 1/4 SE 1/4 31.4 ACRES
SE 1/4 SE 1/4 40.0 ACRES
SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

KEN ARNOLD

NE 1/4 SE 1/4	28.4 ACRES
SECTION 24	
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM	
NW 1/4 SW 1/4	35.0 ACRES
SW 1/4 SW 1/4	27.5 ACRES
SECTION 19	
NW 1/4 NW 1/4	16.6 ACRES
SECTION 30	
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM	

CONLEY MARSHAL

SE 1/4 NE 1/4	6.1 ACRES
NW 1/4 SW 1/4	4.6 ACRES
SE 1/4 SW 1/4	1.7 ACRES
NE 1/4 SE 1/4	25.1 ACRES
NW 1/4 SE 1/4	20.3 ACRES
SW 1/4 SE 1/4	22.5 ACRES
SE 1/4 SE 1/4	1.4 ACRES
SECTION 22	
NE 1/4 SW 1/4	1.8 ACRES
NW 1/4 SW 1/4	9.0 ACRES
SE 1/4 SW 1/4	23.2 ACRES
NE 1/4 SE 1/4	2.0 ACRES
NW 1/4 SE 1/4	6.0 ACRES
SW 1/4 SE 1/4	32.3 ACRES
SE 1/4 SE 1/4	2.0 ACRES
SECTION 23	
NE 1/4 NE 1/4	40.0 ACRES
NW 1/4 NE 1/4	34.6 ACRES
NE 1/4 NW 1/4	6.6 ACRES
SECTION 26	
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM	

WRIGHT WILBER

SE 1/4 NE 1/4	19.0 ACRES
SW 1/4 NE 1/4	14.8 ACRES
NE 1/4 SE 1/4	14.4 ACRES
SE 1/4 SE 1/4	0.5 ACRE
SECTION 25	
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM	
SW 1/4 NW 1/4	26.0 ACRES
SE 1/4 NW 1/4	1.2 ACRES
NE 1/4 SW 1/4	28.8 ACRES
NW 1/4 SW 1/4	40.0 ACRES
SW 1/4 SW 1/4	32.0 ACRES
SE 1/4 SW 1/4	29.6 ACRES
SECTION 30	
NE 1/4 NW 1/4	8.0 ACRES
NW 1/4 NW 1/4	1.3 ACRES
SECTION 31	
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM	

ELFREDA SWORD

NE 1/4 SE 1/4	2.0 ACRES
NW 1/4 SE 1/4	1.6 ACRES
SE 1/4 SE 1/4	0.4 ACRE
SECTION 23	
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM	

JIM FREEMAN

NE 1/4 SW 1/4	1.1 ACRES
SE 1/4 SW 1/4	0.5 ACRE
NW 1/4 SE 1/4	5.0 ACRES
SW 1/4 SE 1/4	3.4 ACRES

SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Actual construction work shall begin on or before August 28, 1996, and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

This permit is issued pursuant to the Final Order in the matter of protested Application 69433 in the name of Malheur Basin Water Users Association and Instream Water Right Applications 70325 and 70349 through 70352 in the name of the Oregon Department of Fish and Wildlife for use of water from the Middle Fork Malheur River and tributaries, Malheur County, Oregon, recorded in Volume 47, Pages 97 through 120, Special Order Records of the Water Resources Director.

Issued this date August 28, 1995.

Martha O. Pagel

Water Resources Department
Martha O. Pagel
Director

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

January 23, 2008

AMMERITITLE
70 S.W. THIRD AVENUE
ONTARIO, OREGON

REFERENCE: Application G-12204, Permit G-11293 Turner Brangus Ranch
Application G-14177, Permit G-12844 Turner Brangus Ranch
Application S-69433, Permit S-51626 Drewsey Reclamation Cooperative assignment done

Dear Ameritite:

The Department has received the Ownership update form you recently submitted. This form is used for perfected rights on which a certificate has been issued. The rights referenced in the form you submitted are not perfected, and therefore an assignment is needed.

The assignment process changes the name and ownership of the unperfected right so that the department knows who will be responsible for the completion of the water right so that a certificate may issued after the terms and conditions of the permit have been met.

Assignment forms are enclosed for your use. Should you have any questions, you may contact the Department at the address above or by telephone at 503-986-0817.

Sincerely,

JERRY SAUTER
Water Rights Program Analyst

S:\groups\wr\Customer Service Group\Assignment needed-masterdoc.doc

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Certificate of Water Right
Ownership Update

NOTICE TO SELLERS & BUYERS:

By law, all water belongs to the public (ORS 537.110). In almost every instance, a permit **or** water right certificate from the Water Resources Department is needed before using, diverting or storing water (ORS 537.130). However, most domestic wells do not require water rights. A certificate of water right stays with the land. In order to keep track of water right ownership, the Department requests that this form be submitted to the Department.

Water that has been used for a long time in one place or that involves a water structure (like a dam) that already exists is no guarantee that there is a water right which would allow the water use to continue.

If you have any questions about this form or water right requirements, please contact your local watermaster or call the Water Resources Department at 503-986-0900.

Note: Please type or print legibly when filling in the following information. Use additional paper if necessary.

PROPERTY SELLER INFORMATION

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

Applicant(s): Tom and Kathleen B. (First) Turner (Last)

Mailing address: P.O. Box 238

Drewsey (City) Oregon (State) 97904 (Zip)

Phone: 541-493-2755 (Home) (Work) (Other)

PROPERTY BUYER INFORMATION

Applicant(s): JSM Trust (First) John Leonard Moon & Suzanne Gilbert Moon, Trustees (Last)

Mailing address: P. O. Box 221231

Carmel (City) CA (State) 93922 (Zip)

Phone: 831-625-2096 (Home) (Work) (Other)

PROPERTY DESCRIPTION (attach additional pages if necessary):

County: Harney Township: 19 and 20 Range: 36 Section: See attached Deed

Tax lot number(s): 500, 700, and 1700

Attach a copy of your property deed or legal description of the property.

Street address of water right property:

Water Right Information (attach copy of water right permit or certificate & final proof map if available):

Application #: See attached list Permit #: Certificate or page #:

Will all the lands associated with this water right be owned by the buyer? ☑ Yes ☐ No

Name of individual completing this form: Carol DeHaven Skerjanec (Print) Phone: 541-473-3141

Signature: Tom Turner Kathleen B. Turner Date: 11-21-07

Tom Turner
Kathleen B. Turner

Attachment to OWRD Ownership Update
Turner to JSM Trust

Application #	Permit #	Certificate #
	G-11293	
	G-12844	
		6847
		26367
		71846
	51626	

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WATER RESOURCES DEPT
SALEM, OREGON

Work Copy

Attachment to OWRD Ownership Update
Turner to JSM Trust

Application #	Permit #	Certificate #
G-12204 →	G-11293 → no cert.	
G-14177 →	G-12844 → " "	
		6847 → Malheur River
		41941/41176 → 26367
		R 80255 → 71846
69433 →	51626 → no cert.	

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SALEM, OREGON

Court—A-413—500—2-28.

STATE OF OREGON

COUNTY OF MALHEUR

CERTIFICATE OF WATER RIGHT

This is to Certify, *That* ALBERT ALTNOW

of Drewsey , *State of* Oregon *has a right to the use of*

the waters of Warm Spring Creek, a tributary of Malheur River for Tract #1; Cottonwood Creek, a tributary of Malheur River, for Tract #2;
for the purpose of Irrigation and Storage for Tract #1; Irrigation for Tract #2;
and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Malheur *County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume* 8 *, at page* 228 *; that the priority of the right thereby confirmed dates from* July 5, 1883 for Tract #1; March 13, 1885 for Tract #2;

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 3.75 cubic feet per second for Tract #1; and 1½ acre feet per acre in any 30-day period prior to June 1st, 1 acre foot per acre in any 30-day period after June 1st, of each year, or three acre feet per acre during any season diverted at a rate not to exceed one-twentieth of a cubic foot per second per acre, for Tract #2;
A description of the lands irrigated under such right, and to which the water is appurtenant (or, if for other purposes, the place where such water is put to beneficial use), is as follows:

Tract #1: 25 acres in the SW¼NE¼, 20 acres in the SE¼NE¼, 25 acres in the NE¼SW¼, 35 acres in the SE¼SW¼, 20 acres in the NE¼SE¼, 30 acres in the NW¼SE¼, and 5 acres in the SE¼SE¼ of Section 4, T. 20 S. R. 36 E. W. M., being a total of 160 acres.

(NOTE: No water to be taken for storage between May 15th and November 1st of each year. See Finding No. 13.)

Tract #2: 18 acres in the NW¼NW¼, 37 acres in the SW¼NW¼, 20 acres in the SE¼NW¼, 15 acres in the NE¼SW¼, 40 acres in the NW¼SW¼, 35 acres in the SW¼SW¼ of Section 4, T. 20 S. R. 36 E. W. M., being a total of 165 acres.

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WATER RESOURCES DEPT
SALEM OREGON

And said right shall be subject to all other conditions and limitations contained in said decree.
The right to the use of the water for irrigation purposes is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed this 1st *day of* February *, 1927.*

RHEA LUPER
State Engineer.

Recorded in State Record of Water Right Certificates, Volume 7 *, page* 6847 .

STATE OF OREGON

COUNTY OF HARNEY

CERTIFICATE OF WATER RIGHT

This Is to Certify, That JOS. W. ALTNOW of A. H. ALTNOW & SON

of Juntura, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of 2 wells a tributary of for the purpose of primary irrigation of 58.3 acres and supplemental irrigation of 101.7 acres,

under Permit No. U-176 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from February 11, 1946,

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 3.00 cubic feet per second,

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the NW¼ NE¼ & NE¼ NW¼, Section 4, Township 20 South, Range 36 East, W.M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-twentieth of one cubic foot per second per acre, or its equivalent for each each acre irrigated and shall be limited to a diversion of not to exceed 1½ acre feet per acre for each acre irrigated in any 30-day period prior to June 1st, 1 acre foot per acre for each acre irrigated in any 30-day period after June 1st and shall be further limited to a total diversion of not to exceed 3 acre feet per acre for each acre irrigated during any irrigation season,

and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

Primary irrigation
11.4 acres NW¼ NE¼
1.1 acres SW¼ NE¼
32.4 acres NE¼ NW¼
0.8 acres SW¼ NW¼
12.6 acres SE¼ NW¼
Section 4
Township 20 South, Range 36 East, W.M.

Supplemental irrigation
14.4 acres NW¼ NW¼
37.0 acres SW¼ NW¼
20.0 acres SE¼ NW¼
10.3 acres NE¼ SW¼
20.0 acres NW¼ SW¼
Section 4
Township 20 South, Range 36 East, W.M.

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JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed this date. JANUARY 6 1960

LEWIS A. STANLEY
State Engineer

Recorded in State Record of Water Right Certificates, Volume 18, page 26367

STATE OF OREGON
COUNTY OF Malheur

CERTIFICATE OF WATER RIGHT (HB - 2153)

THIS CERTIFICATE ISSUED TO

TOM TURNER
TURNER BRANGUS RANCH

DREWSEY, OR 97904

confirms the right to store the waters of
SIX RESERVOIRS AND STORE THE WATERS OF UNNAMED STREAMS, A SPRING AND RUNOFF, TRIBUTARIES OF MALHEUR RIVER
for LIVESTOCK.

The right to store and use these waters was perfected under Reservoir Application R-80255. The date of priority is January 1, 1993. The amount of water entitled to be stored and used each year under this right is not more than 6.5 ACRE-FEET, BEING
0.8 AF IN RES 1, 0.1 AF IN RES 2, 0.9 AF EACH IN RES 3,4,6 AND
2.9 AF IN RES 5

Located as follows:
NE 1/4 SE 1/4 SECTION 10, TOWNSHIP 20 SOUTH, RANGE 36 EAST WM.
SW 1/4 NW 1/4 SECTION 14, TOWNSHIP 20 SOUTH, RANGE 36 EAST WM.
NW 1/4 SE 1/4 SECTION 15, TOWNSHIP 20 SOUTH, RANGE 36 EAST WM.
NE 1/4 SW 1/4 SECTION 15, TOWNSHIP 20 SOUTH, RANGE 36 EAST WM.
NE 1/4 NE 1/4 SECTION 20, TOWNSHIP 20 SOUTH, RANGE 36 EAST WM.
NE 1/4 SE 1/4 SECTION 12, TOWNSHIP 20 SOUTH, RANGE 36 EAST WM.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, with a minimum diameter of 8", or the provision of other means to evacuate water when determined necessary for public safety or to satisfy prior downstream rights as determined by the Water Resources Director.

The right to store and use the water for the above purpose is restricted to beneficial use at the place of use listed above.

WITNESS the signature of the Water Resources Director, affixed **FEBRUARY 27, 1996.**

Martha O. Pagel

Recorded in State Record of Water Right Certificates numbered 71846

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JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

THIS SPACE RESERVED FOR RECORDER'S USE

20080004

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

AmeriTitle
Part Of The JELD-WEN Family

After recording return to: Ameritite
JSM Trust
P. O. Box 221231
Carmel, CA 93922

Until a change is requested all
tax statements shall be sent to
The following address:

JSM Trust
P. O. Box 221231
Carmel, CA 93922

Escrow No. ONM04941
Title No. 4977

SWD

STATE OF OREGON } ss
County of Harney

I certify that the instrument identified herein was recorded on the 4th day of January, 20 08 at 10:08 o'clock A M. In the County Clerk's Records of Harney County, Oregon.

Maria Iturriaga, County Clerk

By: ..... Deputy

INSTRUMENT NO. 2008 -59
Page 1 of 2 Pages

STATUTORY WARRANTY DEED

Tom Turner and Kathleen B. Turner, as tenants by the entirety, Grantor(s) hereby convey and warrant to **John Leonard Moon III and Suzanne Gilbert Moon, Trustees of the JSM Trust UAD February 4, 1997, as restated in its entirety UAD February 26, 2001,** Grantee(s) the following described real property in the County of **Harney and Malheur** and State of Oregon free of encumbrances except as specifically set forth herein:

Land in Harney County, Oregon, as follows:

In Twp. 19 S., R. 36 E., W.M.:
Sec. 16: All.

In Twp. 20 S., R. 36 E., W.M.:
Sec. 3: W1/2SW1/4.
Sec. 4: Lots 1, 2, 3 and 4, S1/2N1/2, S1/2.
Sec. 9: E1/2E1/2. Sec. 10: All.
Sec. 11: SW1/4NW1/4, NW1/4SW1/4.
Sec. 12: E1/2. Sec. 13: N1/2NE1/4.
Sec. 14: SW1/4NW1/4, W1/2SW1/4.
Sec. 15: All. Sec. 22: N1/2, N1/2S1/2, SE1/4SE1/4.
Sec. 23: W1/2W1/2.

Inst. No. 2008-59
I certify that the within Instrument of writing was received for record on the 4 day of January, 20 08 at 1:58 O'clock P M. FEE 26.-
STATE OF OREGON, County of Malheur
DEBORAH R. DeLONG
County Clerk
By: Sherri Childs Deputy

Acct. #18206	**Map 19S 36E/Lot 700**
Acct. #18163	**Map 20S 36E/Lot 500**
Acct. #18160	**Map 20S 36E/Lot 1700**

Land in Malheur County, Oregon, as follows:
In Twp. 19 S., R. 37 E., W.M.:
Sec. 19: NE1/4NW1/4.
Sec. 20: E1/2SW1/4. Sec. 30: SW1/4SE1/4.

Land in Malheur County, Oregon, as follows:
In Twp. 20 S., R. 37 E., W.M.:
Sec. 6: Government Lot 5.

Reference #9043	**Map 193700/Lot 1000**
Reference #9047	**Map 193700/Lot 1100**
Reference #9057	**Map 193700/Lot 1700**
Reference #9084	**Map 203700/Lot 400**

#26.00

Page 2 - Statutory Warranty Deed – Signature/Notary Page
Escrow No. ONM04941

2008 0004

The above-described property is free of encumbrances except all those items of record, if any, as of the date of this deed and those shown below, if any:

The true and actual consideration for this conveyance is **PURSUANT TO AN IRC 1031 TAX DEFERRED EXCHANGE ON BEHALF OF GRANTOR/GRANTEE.**

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 197.352. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 197.352.

Dated this 21 day of November, 2007

INSTRUMENT NO. 2008 -59
Page 2 of 2 Pages

Tom Turner

Tom Turner

Kathleen B. Turner

Kathleen B. Turner

State of Oregon
County of Harney

This instrument was acknowledged before me on Nov. 21st, 2007 by Tom Turner and Kathleen B. Turner .

Corissa Lea Wright
(Notary Public for Oregon)

My commission expires Feb. 24, 2008

OFFICIAL SEAL
CORISSA LEA WRIGHT
NOTARY PUBLIC-OREGON
COMMISSION NO. 377832
MY COMMISSION EXPIRES FEBRUARY 24, 2008

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR BASIN WATER USERS ASSOCIATION
P.O. Box 237
DREWSEY, OREGON 97904 503-493-2311

to use the waters of the Middle Fork Malheur River tributary to the Snake River, for irrigation of 721.0 acres.

This permit is issued approving Application 69433. The date of priority is July 1, 1991. The use is limited to not more than 9.01 cubic feet per second, or its equivalent in case of rotation, measured at the point of diversion from the source.

The points of diversion are located as follows:

NE 1/4 SW 1/4, Section 11, Township 20 South, Range 34 East, WM; NE 1/4 SW 1/4, Section 23, and SW 1/4 NE 1/4, Section 25, Township 20 South, Range 35 East, WM.

The amount of water used for irrigation under this right is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 1.5 acre-feet for each acre. The use of water for irrigation under this permit is limited to the period of April and May of each year.

Operating measuring devices capable of measuring the rate of appropriation and measuring and recording total volume of water appropriated during the irrigation season shall be installed at all diversion points identified under this permit. Installation shall be completed under the supervision of the watermaster on a schedule to be established by the watermaster. Measuring devices shall meet the requirements of the Water Resources Department (Department). The Department shall consult with Oregon Department of Fish and Wildlife in establishing requirements for the measuring devices.

All diversions shall be in compliance with applicable laws requiring fish screening prior to any diversion under this permit.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

PAT O'TOOLE

NE 1/4 SE 1/4	7.9 ACRES
NW 1/4 SE 1/4	3.0 ACRES

SECTION 21
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM OREGON

ROTHA FRENCH

SW 1/4 SW 1/4	34.6 ACRES
SE 1/4 SW 1/4	27.8 ACRES
SW 1/4 SE 1/4	31.4 ACRES
SE 1/4 SE 1/4	40.0 ACRES

SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

KEN ARNOLD

NE 1/4 SE 1/4 28.4 ACRES
SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

NW 1/4 SW 1/4 35.0 ACRES
SW 1/4 SW 1/4 27.5 ACRES
SECTION 19
NW 1/4 NW 1/4 16.6 ACRES
SECTION 30
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

CONLEY MARSHAL

SE 1/4 NE 1/4 6.1 ACRES
NW 1/4 SW 1/4 4.6 ACRES
SE 1/4 SW 1/4 1.7 ACRES
NE 1/4 SE 1/4 25.1 ACRES
NW 1/4 SE 1/4 20.3 ACRES
SW 1/4 SE 1/4 22.5 ACRES
SE 1/4 SE 1/4 1.4 ACRES
SECTION 22

NE 1/4 SW 1/4 1.8 ACRES
NW 1/4 SW 1/4 9.0 ACRES
SE 1/4 SW 1/4 23.2 ACRES
NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 6.0 ACRES
SW 1/4 SE 1/4 32.3 ACRES
SE 1/4 SE 1/4 2.0 ACRES
SECTION 23

NE 1/4 NE 1/4 40.0 ACRES
NW 1/4 NE 1/4 34.6 ACRES
NE 1/4 NW 1/4 6.6 ACRES
SECTION 26
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

WRIGHT WILBER

SE 1/4 NE 1/4 19.0 ACRES
SW 1/4 NE 1/4 14.8 ACRES
NE 1/4 SE 1/4 14.4 ACRES
SE 1/4 SE 1/4 0.5 ACRE
SECTION 25
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

SW 1/4 NW 1/4 26.0 ACRES
SE 1/4 NW 1/4 1.2 ACRES
NE 1/4 SW 1/4 28.8 ACRES
NW 1/4 SW 1/4 40.0 ACRES
SW 1/4 SW 1/4 32.0 ACRES
SE 1/4 SW 1/4 29.6 ACRES
SECTION 30

NE 1/4 NW 1/4 8.0 ACRES
NW 1/4 NW 1/4 1.3 ACRES
SECTION 31
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

ELFREDA SWORD

NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 1.6 ACRES
SE 1/4 SE 1/4 0.4 ACRE
SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

JIM FREEMAN

NE 1/4 SW 1/4	1.1 ACRES
SE 1/4 SW 1/4	0.5 ACRE
NW 1/4 SE 1/4	5.0 ACRES
SW 1/4 SE 1/4	3.4 ACRES

SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Actual construction work shall begin on or before August 28, 1996, and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

This permit is issued pursuant to the Final Order in the matter of protested Application 69433 in the name of Malheur Basin Water Users Association and Instream Water Right Applications 70325 and 70349 through 70352 in the name of the Oregon Department of Fish and Wildlife for use of water from the Middle Fork Malheur River and tributaries, Malheur County, Oregon, recorded in Volume 47, Pages 97 through 120, Special Order Records of the Water Resources Director.

Issued this date August 28, 1995.

Water Resources Department
Martha O. Pagel
Director

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM OREGON

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

TOM N. TURNER
TURNER BRANGUS RANCH
DREWSEY, OREGON 97904

503-493-2755

to use the waters of ONE WELL in the COTTONWOOD CREEK BASIN for IRRIGATION OF 10.0 ACRES.

This permit is issued approving Application G-12204. The date of priority is AUGUST 20, 1990. The use is limited to not more than 0.125 CUBIC FOOT PER SECOND, or its equivalent in case of rotation, measured at the well.

The well is located as follows:

NW 1/4 NE 1/4, SECTION 4, T 20 S, R 36 E, W.M.; 250 FEET SOUTH AND 2500 FEET WEST FROM NE CORNER, SECTION 4.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under the permit is as follows:

NE 1/4 NE 1/4 0.2 ACRE
NW 1/4 NE 1/4 9.8 ACRES
SECTION 4
TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

The well shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times. When required by the department, the permittee shall install and maintain a weir, meter, or other suitable measuring device, and shall keep a complete record of the amount of ground water withdrawn.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Reinstated
4-16-96
V50 P308

Canceled Sp Cert Vol 50 P 133

Actual construction work shall begin on or before July 15, 1992, and shall be completed on or before October 1, 1993. Complete application of the water shall be made on or before October 1, 1994.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for beneficial use of water without waste. The water user is advised that new regulations may require use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

Issued this date, JULY 15, 1991.

/s/ WILLIAM H. YOUNG

Water Resources Department
William H. Young
Director

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

Reinstated
4-16-96
V50 P208

Canceled Sp.Cr.Vol. 50 P. 133

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

TOM N TURNER
TURNER BRANGUS RANCH (541)493-2755
DREWSEY, OREGON 97904

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: G-14177

SOURCE OF WATER: A WELL IN THE MALHEUR RIVER BASIN

PURPOSE OR USE: IRRIGATION OF 7.3 ACRES

MAXIMUM RATE: 0.09 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: OCTOBER 2, 1995

POINT OF DIVERSION LOCATION: NW 1/4 NE 1/4, SECTION 4, T20S, R36E, W.M.; 375 FEET SOUTH AND 200 FEET EAST FROM THE N 1/4 CORNER OF SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 NE 1/4 3.3 ACRES
NW 1/4 NE 1/4 4.0 ACRES
SECTION 4
TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

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WATER RESOURCES DEPT
SALEM, OREGON

Measurement, recording and reporting conditions:

A. The Director may require the permittee to install a meter or other suitable measuring device as approved by the Director. If the Director notifies the permittee to install a meter or other measuring device, the permittee shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period. Once installed, the permittee shall maintain the meter or

measuring device in good working order and shall allow the watermaster access to the meter or measuring device. The Director may provide an opportunity for the permittee to submit alternative measuring procedures for review and approval.

B. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

STANDARD CONDITIONS

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM OREGON

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction of the well shall begin within one year from permit issuance, and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

Issued October 10, 1996

Martha O. Pagel, Director
Water Resources Department

RECEIVED
JAN 18 2008
WATER RESOURCES DEPT
SALEM, OREGON

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-69433

Final Order
Extension of Time for Permit Number S-51626

Appeal Rights

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Application History

The Department issued Permit S-51626 on August 28, 1995. The permit called for completion of construction by October 1, 1998 and complete application of water to beneficial use by October 1, 1999. On December 29, 2006, Drewsey Reclaimation Cooperative; George Wilbur submitted to the Department an Application for Extension of Time for Permit S-51626. In accordance with OAR 690-315-0050(2), on June 26, 2007, the Department issued a Proposed Final Order proposing to extend the time to complete construction to October 1, 2020 and the time to fully apply water to beneficial use to October 1, 2020. The protest period closed August 10, 2007, in accordance with OAR 690-315-0060(1). No protest was filed.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to the following conditions:

CONDITIONS

1. **Checkpoint Condition**

   The permit holder must submit a completed Diligence Progress Report to the Department by **October 1, in the years 2011 and 2016.** ***A form for each year is enclosed for your use.***

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

Order

The extension of time for Application S-69433, Permit S-51626, therefore, is approved subject to conditions contained herein. The deadline for completing construction is extended to October 1, 2020. The deadline for applying water to full beneficial use is extended to October 1, 2020.

DATED: August 30, 2007

Dwight French, Administrator of
Water Rights and Adjudications
for
Phillip C. Ward, Director

- If you have any questions about statements contained in this document, please contact Kim French at (503) 986-0813.

- If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Extension of Time
Diligence Progress Reporting Form
For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Drewsey Reclaimation Cooperative; George Wilbur Application S-69433
Permit S-51626

Report Due no later than October 1, 2011

Diligence Progress Report for 2011

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit S-51626

INSERT DATES	WORK ACCOMPLISHED and FINANCIAL INVESTEMENT SINCE OCTOBER 1, 1999 *List all work done after the last authorized date for complete application of water up to the date of this Diligence Progress Reporting Form*	FINANCIAL INVESTEMENT

2. Compliance with terms and conditions of the permit and/or previous extension.

3. Total number of acres irrigated to date= _____ *(if applicable)*

4. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.

Maximum rate = _____cfs (cubic feet per second)

Maximum rate = _____gpm (gallons per minute)

Acre Feet Stored = _____AF

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet – usually only specified on a reservoir water right). ***Do not provide daily, monthly or annual water use totals.***

Signature _____ Date _____

For OWRD use only

Diligence Shown ☐ Yes ☐ No Date Public Noticed: _____

Reviewed by: _____ Date: _____

Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Extension of Time
Diligence Progress Reporting Form
For Checkpoints

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT

Permit Holder: Drewsey Reclaimation Cooperative; George Wilbur Application S-69433
Permit S-51626

Report Due no later than October 1, 2016

Diligence Progress Report for 2016

As authorized in ORS 690-315-0050(6), this progress report is required in order to ensure diligence is exercised in the development and perfections of Permit S-51626

INSERT DATES	WORK ACCOMPLISHED and FINANCIAL INVESTEMENT SINCE OCTOBER 1, 2011 *List all work done after the last authorized date for complete application of water up to the date of this Diligence Progress Reporting Form*	FINANCIAL INVESTEMENT

2. Compliance with terms and conditions of the permit and/or previous extension.

3. Total number of acres irrigated to date= _____ *(if applicable)*

4. Provide the maximum rate, or duty if applicable, of water diverted for beneficial use under this permit, if any, made to date.

Maximum rate = _____**cfs (cubic feet per second)**

Maximum rate = _____**gpm (gallons per minute)**

Acre Feet Stored = _____**AF**

Report the rate in the same units of measurement as specified in the permit, being cfs (cubic feet per second), gpm (gallons per minute) or AF (acre-feet – usually only specified on a reservoir water right). ***Do not provide daily, monthly or annual water use totals.***

Signature _____ Date _____

For OWRD use only

Diligence Shown ☐ Yes ☐ No Date Public Noticed: _____

Reviewed by: _____ Date: _____

Mailing List for Extension FO Copies

Note: Include a copy of the "Important Notice" document along with the original copy of the Final Order being sent to the permit holder.

FO Date: August 30, 2007

Copies Mailed

Application S-69433
Permit S-51626

By: CNS
On: 8/30/07

Original mailed to permit holder

Drewsey Reclaimation Cooperative
Attn: George Wilbur
77 W. Adams St.
Burns, OR 97720

Copies sent to:

1. WRD - App. File S-69433/ Permit S-51626
2. WRD - Watermaster District 10, June Miller
3. WRD – ER Regional Manager, Ivan Gall
4. WRD- Ken Stahr
5. Steven P. Applegate, 3395 Huckleberry Ct. S, Salem, OR 97301
6. WRD - Support Staff, Salem...*Permit record update*

Fee paid as specified under ORS 536.050 to receive copy:

7. None

Receiving via e-mail (10 AM day of signature date)

8. None

CASEWORKER: KRF

Oregon Water Resources Department
Water Rights Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time for Permit S-51626, Water Right Application S-69433 in the name of Drewsey Reclaimation Cooperative; George Wilbur	))))	PROPOSED FINAL ORDER

Permit Information

Application File S-69433 Permit S-51626

Basin: 10 – Malheur/ Watermaster District 10
Date of Priority: July 1, 1991

Authorized Use of Water

Source of Water:	Middle Fork of the Malheur River, a Tributary of the Snake River
Purpose of Use:	Irrigation of 721.0 Acres
Maximum Rate:	9.01 Cubic Feet per Second (cfs)

This Extension of Time request is being processed in accordance with Oregon Administrative Rule Chapter 690, Division 315

Please read this Proposed Final Order in its entirety as it contains additional conditions not included in the original permit.

This Proposed Final Order applies only to Permit S-51626, water right Application S-69433.
A copy of Permit S-51626 is enclosed as Attachment 1.

Summary of Proposed Final Order for Extension of Time

The Department proposes to:

- grant an extension of time for complete construction of the water system from October 1, 1998 to October 1, 2020, and
- grant an extension of time to apply water to full beneficial use from October 1, 1999 to October 1, 2020.
- make the extension subject to certain conditions set forth below.

ACRONYM QUICK REFERENCE

Department – Oregon Department of Water Resources
PFO – Proposed Final Order

Units of Measure
cfs – cubic feet per second
gpm – gallons per minute
AF – acre-feet

AUTHORITY

Generally, see ORS 537.230 and OAR Chapter 690 Division 315.

ORS 537.230(1) and (3) provide in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) provides in pertinent part that the Water Resources Director, for good cause shown, may extend the time within which the full amount of the water appropriated shall be applied to a beneficial use. This statute instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefore; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides in pertinent part that the Water Resources Department shall make findings to determine if an extension of time may be approved to complete construction and/or apply water to full beneficial use.

OAR 690-315-0050(6) allows the Department, for extensions exceeding five years, to establish checkpoints to determine if diligence is being exercised in the development and perfection of the water use permit. Intervals between checkpoints will not exceed five year periods.

FINDINGS OF FACT

Background

1. Permit S-51626 was granted to Malheur Basin Water Users Association by the Department on August 28, 1995. On August 30, 2006, the permit was assigned to Drewsey Reclamation Cooperative; George Wilber. The permit authorizes the use of up to 9.01 cfs of water from the Middle Fork of the Malheur River, a tributary of the Snake River for irrigation of 721.0 acres. The permit specified actual construction of the water system was to begin by August 28, 1996, construction of the water system was to be completed by October 1, 1998, and complete application of water was to be made on or before October 1, 1999.

2. The permit holder submitted an "Application for Extension of Time" to the Department on December 29, 2006 requesting the time to complete construction of the water system under the terms of Permit S-51626 be extended from October 1, 1998 to October 1, 2020 and the time to apply water to full beneficial use under the terms of Permit S-51626 be extended from October 1, 1999 to October 1, 2020. This is the first permit extension requested for Permit S-51626.

3. Notification of the Application for Extension of Time for Permit S-51626 was published in the Department's Public Notice dated January 9, 2007. No public comments were received regarding the extension application.

Review Criteria *[OAR 690-315-0040]*

The time limits to complete construction and/or apply water to full beneficial use may be extended if the Department finds that the permit holder has met the requirements set forth under OAR 690-315-0040. This determination shall consider the applicable requirements of ORS 537.230[1], 537.248[2] and/or 539.010(5)[3].

Complete Extension of Time Application *[OAR 690-315-0040(1)(a)]*

4. On December 29, 2006, the Department received a completed Application for Extension of Time and the fee required by ORS 536.050 from the permit holder.

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[1]ORS 537.230 applies to surface water permits only.

[2]ORS 537.248 applies to reservoir permits only.

[3]ORS 539.010(5) applies to surface water and ground water permits.

Start of Construction *[OAR 690-315-0040(1)(b) and 690-315-0040(5)]*

5. Actual construction of the water system began prior to the deadline specified in the permit, being August 28, 1996.

Duration of Extension *[OAR 690-315-0040(1)(c)]*
Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

6. As of December 29, 2006, the remaining work to be completed consists of completing construction of the water system and complete application of water to beneficial use.

7. Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2020, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms of Permit S-51626 is both reasonable and necessary.

Good Cause *[OAR 690-315-0040(1)(d)]*

The Department's determination of good cause shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator *[OAR 690-315-0040(2)(a)]*
The Department's determination of reasonable diligence shall consider the requirements set forth under OAR 690-315-0040(3)(a-d). In accordance with OAR 690-315-0040(3), the Department shall consider, but is not limited to, the following factors when determining whether the applicant has demonstrated reasonable diligence in previous performance under the permit:

Amount of Construction [OAR 690-315-0040(3)(a)]

8. The following construction was completed within the time allowed in the permit or previous extension:

   a. Construction of the water system began prior to the time specified in the permit, being August 28, 1996.

   b. Work was accomplished (specified in the Application for Extension of Time) during the original development time frame under Permit S-51626.

Beneficial Use of Water [OAR 690-315-0040(3)(b)]

9. The following beneficial use was made of the water during the permit or previous extension time limits:

a. Since the issuance of Permit S-51626 on August 28, 1995, the permit holder states that under this permit and other pre-existing rights, they have diverted 20.0 cfs of water from the Middle Fork of the Malheur River for irrigation of 720.0 acres. The pre-existing right under T-4647 has a maximum rate of 10.78 cfs; therefore, the balance of 9.22 cfs is being diverted under Permit S-51626. This amount exceeds the maximum allowed rate of 9.01 cfs.

Compliance with Conditions *[OAR 690-315-0040(3)(c)]*

10. The water right permit holder's conformance with the permit or previous extension conditions.

a. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a operating measuring devices capable of measuring the rate of appropriation and measuring and recording total volume of water appropriated during the irrigation season have been installed, and (2) the record does not show that all diversions were in compliance with applicable laws requiring fish screening prior to any diversion of water.

b. Failure to comply with permit conditions constitutes illegal use of water. In order to legally perfect the use of water under this permit, the permit holder must demonstrate that all conditions of the permit have been satisfied.

Financial Investments *[OAR 690-315-0040(3)(d)]*

11. Financial investments made toward developing the beneficial water use.

a. As of December 29, 2006, the permit holder has invested approximately $50,000, which is 20 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional $200,000 investment is needed for the completion of this project.

Cost to Appropriate and Apply Water to a Beneficial Purpose *[OAR 690-315-0040(2)(b)]*

12. As of December 29, 2006, the permit holder has invested approximately $50,000 which is 20 percent of the total projected cost for complete development of this project. The permit holder anticipates an additional $200,000 investment is needed for the completion of this project.

Good Faith of the Appropriator *[OAR 690-315-0040(2)(c)]*

13. The Department has found good faith of the appropriator under Permit S-51626.

The Market and Present Demands for Water *[OAR 690-315-0040(2)(d-e)]*

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

14. The amount of water available to satisfy other affected water rights and scenic waterway flows; special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d); or the habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife *[OAR 690-315-0040(4)(a-c)]*.

    a. The amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit S-51626; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined at such time that such application for a new water right is submitted. Malheur River is not located within or above any state or federal scenic waterway, however it is located within an area ranked "high" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife. Malheur River is listed by the Department of Environmental Quality as a water quality limited stream.

15. Economic investment in the project to date *[OAR 690-315-0040(4)(d)]*.

    a. As of December 29, 2006, the permit holder has invested approximately $50,000.

16. Other economic interests dependent on completion of the project *[OAR 690-315-0040(4)(e)]*.

    a. None have been identified.

17. Other factors relevant to the determination of the market and present demand for water and power *[OAR 690-315-0040(4)(f)]*.

    a. None have been identified.

18. OAR 690-315-0050(6) requires the Department to place a checkpoint condition on this extension of time to ensure diligence is exercised in the development and perfection of the water use permit. A "Checkpoint Condition" is specified under Item 1 of the "Conditions" section of this PFO to meet this condition.

Fair Return Upon Investment *[OAR 690-315-0040(2)(f)]*

19. Use and income from the permitted water development results in reasonable returns upon the investment made to date.

Other Governmental Requirements *[OAR 690-315-0040(2)(g)]*

20. Delay in the development of this project was not caused by any other governmental requirements.

Unforeseen Events *[OAR 690-315-0040(2)(h)]*

21. Unforeseen events extended the length of time needed to fully develop and perfect Permit S-51626, caused mainly by periodic high spring flood flows that would threaten any structure not specifically designed to withstand them. Also, DRC was unable to finance construction of the required installation. Farming operations in the Drewsey area are financially marginal and do not provide for a large financial outlay as would be required here. DRC has been in annual contact with ODFW and other agencies to seek funding support.

CONCLUSIONS OF LAW

1. The applicant is entitled to apply for an extension of time to complete construction and/or completely apply water to the full beneficial use pursuant to ORS 537.630(1).

2. The applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).

3. The applicant complied with begin actual construction timeline requirements pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).

4. Completion of construction and full application of water to beneficial use can be accomplished by October 1, 2020[4], as required by OAR 690-315-0040(1)(c).

5. The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and

---

[4]Pursuant to ORS 537.230(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use.

reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

6. As required by OAR 690-315-0050(6) and as described in Finding 18 above, the Department has established, as specified in the "Conditions" section of this PFO (Item 1), progress checkpoints in order to ensure future diligence is exercised in the development and perfection of Permit S-51626.

Proposed Order

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

extend the time for complete construction of the water system under Permit S-51626 from October 1, 1998 to October 1, 2020.

extend the time to apply water to beneficial use under Permit S-51626 from October 1, 1999 to October 1, 2020.

Subject to the following conditions:

CONDITIONS

1. **Checkpoint Condition**

The permit holder must submit a completed Diligence Progress Report to the Department by **October 1, in the years 2011 and 2016.** ***A form for each year will be enclosed with your Final Order.***

(a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;

(b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

DATED: June 26, 2007

Dwight French
Administrator
Water Rights & Adjudications Division

If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may protest and request a contested case hearing on the proposed final order. Your request for contested case hearing must be in writing and must be received by the Water Resources Department no later than **August 10, 2007** being 45 days from the date of publication of the proposed final order in the Department's weekly public notice.

2. A written request for contested case hearing shall include:
   a. The name, address and telephone number of the petitioner;
   b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
   c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;
   d. A detailed description of how the final order is in error or deficient and how to correct the alleged error or deficiency;
   e. Any citation of legal authority supporting the petitioner, if known;
   f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
   g. The protest fee required under ORS 536.050, if petitioner is other than the water right permit holder.

3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
   a. Issue a final order on the extension request; or

b. Schedule a contested case hearing if a request for contested case hearing has been submitted, and:

1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or

2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

- If you have any questions about statements contained in this document, please contact Kim French at 503-986-0813.
- If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Mike Reynolds at 503-986-0820.
- If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
- Address any correspondence to : Water Rights and Adjudications Division
  725 Summer St NE, Suite A
  Fax: 503-986-0901 Salem, OR 97301-1266

Mailing List for Extension PFO Copies

PFO Date: June 26, 2007

Copies Mailed

Application S-69433
Permit S-51626

By: 9/5
On: 6/26/07

Original mailed to Applicant:

Drewsey Reclaimation Cooperative
Attn: George Wilbur
77 W. Adams St.
Burns, OR 97720

Copies sent to:

1. WRD - App. File S-69433/ Permit S-51626
2. WRD - Watermaster District 10, June Miller
3. Steven P. Applegate, 3395 Huckleberry Ct. S, Salem, OR 97301

Fee paid as specified under ORS 536.050 to receive copy:

4. None

Receiving via e-mail (10 AM Tuesday of signature date)

5. None

CASEWORKER: KRF

Extension PFO Checklist for

Other than Muni or Quasi-Municipal

Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

Application: S-69433 Permit: S-51626 Permit Amendment? No☑ Yes☐ T-_____

Permit Holder's Name: DREWSEY RECLAMATION COOP; GEORGE WILBUR

Permit Holder's Mailing Address: 77 W. ADAMS ST. BURNS, OR 97720

POD Location: Township 20S Range 34E & 35E Section 11 - NESW, 23 - NESW, 25 - SWNE¼

Drainage Basin: 10 County: HARNEY Watermaster District: 10

Date Permit was issued: 8-28-95 **Priority Date:** 7-1-91 **Date of PN:** 1-9-07

Source: MIDDLE FORK, MALHEUR RIVER, TRIB TO SNAKE RIVER

Use: IRRIGATION OF 721.0 ACRES

"Q": 9.01 CFS

Orig "A" Date: 8-28-96 **Orig "B" Date:** 10-1-98 **Orig "C" Date:** 10-1-99

Extension request received: 12-29-06 **Last Authorized "B" Date:** — **Last Authorized "C" Date:** —

Request Number (...1st 2nd, 3rd): 1ST **Proposed "B" Date:** 10-1-2020 **Proposed C Date:** 10-1-2020

Conditions of Permit:

Condition Met?	Condition Not Met?	Permit Condition
	✓	INSTALL METERS @ ALL PODS
	✓	FISH SCREENS

Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]:

Yes No

☑ ☐ Work was accomplished within the time allowed in the permit or previous extension

☑ ☐ Beneficial use made of the water during the permit or previous extension time limits

- Permit holder has beneficially used 9.02 (cfs/gpm/af) of the total permitted quantity of water on 720 acres

☐ ☑ Water right permit holder conformed with the permit or previous extension conditions; and

☑ ☐ Financial investments were made toward developing the beneficial water use.

- Permit holder has invested approximately _____% of the total estimated cost to complete the project.
- Amount Invested to date: $ 50,000 Estimated Remaining Cost: $ 200,000

Has the applicant pursued perfection of the right in good faith and with reasonable diligence? Yes ☑ No ☐

Application S - 69433 Permit S - 51626 Township 20S Range 34E~~35E~~ Section 11 & 23

Determination of the market and the present demand for water or power to be supplied:

Identify the closest surface water or localized water basin. MALHEUR RIVER & WARM SPRINGS CREEK

Ground Water Permits: Is the POA located…
Surface Water Permits: Is the POD located…

Yes	No	
☐	☑	within or above a state scenic waterway? Source: OWRD "Areas Above State Scenic Waterways" Map
☐	☑	within a stream segment designated as a federal wild and scenic river? Source: www.rivers.gov/wildriverslist.html
☐	☐	within a critical or limited Ground Water Area? Name of area_____
☑	☐	within a sensitive, threatened or endangered species area source: "/gisdata/dev/projects/salmon/div33map.aml"
☑	☐	in a waterbody listed on the DEQ Section 303(d) List of Water Quality Limited Areas? Date added to list_____
☑	☐	within an area ranking low / moderate / high *(circle one)* for stream flow restoration needs Source: OWRD "Streamflow Restoration Needs" Maps (by region)

Based on the written record, can the Department make a finding of "Good Cause" to approve the extension request?

Yes... "Good Cause" can be found. ☑ Approval of Extension Request

No ... "Good Cause" *cannot* be found. ☐ Denial of Extension Request

Conditions to be included in Extension PFO (if applicable)? Yes ☑ No ☐

(NOTE: Check the file record for documentation to add a condition(s) at the extension stage.)

☑ 5-year Progress Report Checkpoints (Years: 2011, 2016)

☐ Other: _____

Footnote regarding Claim of Beneficial Use. Choose the appropriate language below and insert as a footnote in the PFO:

☐ **COBU Requirement - Surface/Ground Water - on or prior to July 9, 1987**

"For permits applied for or received on or before July 9, 1987, upon complete development of the permit, you must notify the Department that the work has been completed and either: (1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or (2) Continue to appropriate water under the water right permit until the Water Resources Department conducts a survey and issues a water right certificate under ORS 537.250 or 537.625."

☑ **COBU Requirement - Surface Water - post July 9, 1987**

"Pursuant to ORS 537.230(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use."

☐ **COBU Requirement - Ground Water - post July 9, 1987**

"Pursuant to ORS 537.630(3), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and the claim of beneficial use."

NOTES:

CC: STEVEN APPLEGATE
3395 HUCKLEBERRY CT S.
SALEM OR 97301

Extension "PFO" Dates
Mailing / Issuance Date: 6/26/17 **Protest Deadline Date:** 8/30/17

Reviewer's Name: [signature] **Date:**_____

Application # _____ Permit # _____

Public Notice Route Slip ... New Application Extension of Time

per Division 315 Rules... (Extensions received on July 1, 2001 or after)

- **WRIG...**

  Money Receipted on: 12/29/06

- **Brook Geffen...**

  ☒ Extension Application is Complete
  (If NOT complete, send certified letter requesting add'l information.)

  ☒ Added to tracking spreadsheet

If Extension Appl complete and $250 fee submitted, route to...

- **Jonnine Skaug...**

  ☐ Publish on Public Notice (initial 30-day comment): Date of notice 1-9-07 (JS)
  Update "cdatewext.DB" Database:

  ☒ In the "PNotice Date" field... Enter the date the Extension Application was published on the Public Notice.

  ☐ In the "Ext Filed" field... Enter the date the Extension Application was received.

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

January 9, 2007

REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Rights Section has received your application for an extension of time for **APPLICATION FILE #** S-69433 (**PERMIT #** S-51626). Your application will be reviewed in the near future. Following the review, you will receive a Proposed Final Order either approving or rejecting the extension of time request. A 45-day protest period begins upon issuance of the Proposed Final Order. After the protest period closes, a Final Order is issued.

If you have questions concerning your extension of time application, please contact Brook Geffen at (503) 986-0808. For general information about the Water Resources Department, you may contact the Water Resources' Customer Service Group at (503) 986-0801 or you may access the Department's Internet home page at: "**www.wrd.state.or.us**".

Place a (✓) in the box if the item is satisfied	**Division 315 - Other Than Muni or Quasi-Muni** **Extension of Time Application - Completeness Checklist** **OAR 690-315-0020**
✓	The appropriate extension of time fee (as specified in ORS 536.050). *[OAR 690-315-0020(3)]* **$100** - applications received prior to October 1, 2003 / **$250** - applications received on or after October 1, 2003
✓	The name and mailing address of the water right permit holder(s); *[OAR 690-315-0020(3)(a)]*
✓	The application number and the permit number for which an extension is requested; *[OAR 690-315-0020(3)(b)]*
✓	If the water right permit holder receives delivery of the subject water right permit from a municipality, municipal corporation, or other special district, the applicant shall provide the name of the entity and evidence that a copy of the application for extension of time has been provided to the entity responsible for delivering the water; *[OAR 690-315-0020(3)(c)]*
✓	Evidence of the actions taken to begin actual construction within the time period in the permit or previous extension: • "Actual construction" means physical work performed towards completion of the water system, which demonstrates both the present good faith of the water right permit holder and the water right permit holder's intention to complete the project with reasonable diligence; • "Actual construction" does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, or surveying. *[OAR 690-315-0020(3)(d)]*
✓	Evidence of progress made toward completion of the water development and application to full beneficial use, which includes but is not limited to: *[OAR 690-315-0020(3)(e)]* • The annual accomplishments toward perfecting the water right under the terms and conditions of the permit, including the dates on which each condition contained in the relevant permit and any previous extension(s) was satisfied or the reason the condition was not satisfied; • The maximum rate of diversion, if any, made to date; and • If for irrigation, a listing by year of the number of acres irrigated each year since permit issuance, the total number of acres irrigated to date under the permit or previous extension, and a copy of the application map showing the acres irrigated.
✓	A description of financial expenditures made toward completion of the water development; *[OAR 690-315-0020(3)(f)]*
✓	An estimate of the cost to complete the water development; *[OAR 690-315-0020(3)(g)]*
✓	A summary of any additional unforeseen events which delayed completion of the water development or application of water to full beneficial use, including other governmental requirements, if any, relating to the project which have significantly delayed completion of construction or perfection of the right; *[OAR 690-315-0020(3)(h)]*
✓	The date by which the water development will be completed and water put to full beneficial use; *[OAR 690-315-0020(3)(i)]*
	A summary of the applicant's plan and schedule to complete construction and/or perfect the water right; *[OAR 690-315-0020(3)(j)]*
✓	Justification of why the requested time is needed to complete the project and/or apply the water to full beneficial use; *[OAR 690-315-0020(3)(k)]*
NA	A description of any undue hardship to the applicant which will result from denial of the extension, and that there are no other reasonable alternatives for meeting water use needs; *[OAR 690-315-0020(3)(l)]* *(NOTE: The permit holder is not asked to answer this specific question when filling out the Extension of Time Application. The Department decided this was a finding that should be determined by staff. In order to make this determination, review the Extension of Time Application and documentation in the file record. Generally, a denied extension of time may result in possible loss of investments made in the project, loss of future property value, and/or loss of future income.*
✓	Any other information the applicant determines is relevant to evaluate the application in accordance with applicable statutes and these rules; *[OAR 690-315-0020(3)(m)]*
✓	Any other information required in the application form that is necessary to evaluate the application in accordance with applicable statutory requirements; and *[OAR 690-315-0020(3)(n)]*
✓	Signature(s) of the water right permit holder(s).

Name of Reviewer: Brook A. Geffen **Date:** 1/3/07

STATE OF OREGON

WATER RESOURCES DEPARTMENT

RECEIPT # 85774

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax)

INVOICE # _____

RECEIVED FROM: Steven Applegate

BY: _____

APPLICATION	t9433
PERMIT	
TRANSFER	

CASH: ☐ CHECK:# ~~☒ 54031~~ OTHER: (IDENTIFY) ☒ Cashiers 54021 check

TOTAL REC'D $ 250.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407	COPIES	$
_____	OTHER: (IDENTIFY) _____	$

0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

MISCELLANEOUS

0407	COPY & TAPE FEES	$
0410	RESEARCH FEES	$
0408	MISC REVENUE: (IDENTIFY) _____	$
TC162	DEPOSIT LIAB. (IDENTIFY) _____	$
0240	EXTENSION OF TIME	$ 250.00

RECEIVED
OVER THE COUNTER

WATER RIGHTS:

		EXAM FEE		RECORD FEE
0201	SURFACE WATER	$	0202	$
0203	GROUND WATER	$	0204	$
0205	TRANSFER	$		

WELL CONSTRUCTION

		EXAM FEE		LICENSE FEE
0218	WELL DRILL CONSTRUCTOR	$	0219	$
	LANDOWNER'S PERMIT		0220	$

_____ OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	$	CARD #	
0210	MONITORING WELLS	$	CARD #	

_____ OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY

		LIC NUMBER	
0233	POWER LICENSE FEE (FW/WRD)		$
0231	HYDRO LICENSE FEE (FW/WRD)		$
_____	HYDRO APPLICATION		$

_____ TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____ $

RECEIPT: 85774 DATED: 12-29-04 BY: _____

Distribution – White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal

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SALEM, OREGON

APPLICATION FOR EXTENSION OF TIME
TO THE WATER RESOURCES DIRECTOR OF OREGON

A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.state.or.us/publication/reports/index.shtml.

I, Drewsey Reclamation Cooperative, % George Wilber, Secretary/Treasurer
NAME

77 West Adams Street | Burns | OR | 97720 | (541)573-6151
ADDRESS | CITY | STATE | ZIP | PHONE

owner of record, or duly authorized agent, of Application No. S-69433, Permit No. S-51626, do hereby request that the time in which to:

☑ complete the construction of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water, which time now expires on October 1, 1998, be extended to October 1, 2020,

and/or the time in which to:

☑ accomplish beneficial use of water to the full extent under the terms of the permit, which time now expires on October 1, 1999, be extended to October 1, 2020.

NOTE: **The extension of time requested should be long enough to finish the project. Should this request be approved, it will be the Department's expectation that you will complete your project within the new time period allowed. Future extensions may not be granted.**

Attached is an instruction sheet to assist you in completing the information on the permit extension application form. Oregon Water Law and Administrative Rules requires this information to be considered by the Water Resources Department when reviewing a permit extension application. All items must be completed or the application will be returned. Please feel free to provide the Department with any additional information that would aid us in making our decision. Please use additional sheets of paper as needed to fully respond to the questions.

After reviewing the application form and the instruction sheet, if you have any questions, you may contact the Department at (503) 986-0900, and request assistance from the Water Rights Division, permit extensions personnel.

CHECK OTHER WRs FOR CFS ALLOWED. CALL OUT CODES.

Last revised: Dec 22, 2003

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1. Did water system construction/well drilling begin within the time specified in the permit [yes/no]?
Yes

2. Has construction of diversion/appropriation works, distribution system, and use of water, if any, been accomplished consistent with the limitations and conditions of this permit [yes/no]?

No

A) Please describe how you have complied with each applicable permit condition (***NOTE:* the instruction sheet for permit extension applications provides some direction as to what is an "applicable" condition at time of permit extension review).**
All conditions of the permit were satisfied within its original terms, except for the requirement for measurement and fishscreening at the diversion.

B) If you have not complied with all applicable conditions, please explain the reasons why and indicate a date certain, in the near future, by which time you will be in compliance with applicable conditions.
The permit was issued, following a protracted contested case, to authorize the continuation of an historically used rate and duty of water (see Special Order Vol.47, pages 97-120). The Drewsey Reclamation Cooperative (DRC) found itself unable to finance construction of the required installation. Farming operations in the Drewsey area are financially marginal and do not provide for a large financial outlay as would be required here. DRC has been in annual contact with ODFW and other agencies to seek funding support.

3. I have accomplished the following described works, purchases and installation of equipment necessary to the use of water under said permit:

A) Within the past year or, if a prior extension was authorized, during the last permit extension period:
The DRC has continued to search for funding sources for the required installation. Contacts with ODFW and other agencies have been made annually, and a grant proposal was prepared by ODFW staff. It was denied due to lack of funding.

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B) Prior to the past year or, if a prior extension was authorized, prior to the last extension period:
As stated, the use has been in place since prior to the issuance of Permit 51626. Compliance with the measurement/screening condition has been attempted at least annually through contacts with fishery agencies, including ODFW and USFWS, and with the local SWCD office. ODFW has designed the installation and has submitted at least two grant proposals in past years, both unsucessful. DRC has worked with staff from the OWEB Fish Screening and Passage program office in John Day.

4. I have accomplished beneficial use of water under the permit to the extent of (amount of water used and acres irrigated):

A) Quantity of Water Used *[in cubic feet per second (cfs) or gallons per minute (gpm) if using surface water or ground water.....and/or..... in acre-feet (af) if using stored water]*:
Use of the additional 1/80th cfs and 1.5 acre-feet increased the allowed diversion (along with pre-existing rights) to a total of over 20 cfs. At least that much has been diverted into the Drewsey Ditch when available.

B) Number of Acres Irrigated *(if an irrigation permit)*:
Approximately 720 acres.

5. Cost of project to date $50,000. Estimated remaining cost to complete the project >$200,000.

6. Please list the reasons why the project was not constructed, and/or water not beneficially used within permit time limits under the appropriate categories below. Please provide supporting information for each reason identified:

A) The project is of a size and scope that the original intent was to phase it in over a period longer than the timeframes allowed in the permit.
The high cost of diversion installation was not anticipated by the DRC. Fishery agencies have been encouraging that support would be available, however, thus far that has not occurred.

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B) Financing and/or cash-flow needs to develop the project precluded completion of the project within authorized timeframes.

As stated above, farming operations are marginal, not providing the unanticipated amount of funds required for meeting the condition.

C) Good faith attempts to comply with permit conditions and/or to acquire permits from other agencies, or otherwise comply with government regulations, delayed completion of the project.

See Item 3B, above. In addition, the DRC has NOT been contacted by the Watermaster to develop the required "schedule" or to assist in the "design" of the structure. We do not know whether the Watermaster has "consulted" with ODFW about this issue. The DRC has attempted at least annually to secure funding support, without success. Our intentions are to be more aggressive toward securing the necessary funding in the future.

D) Acts of God or other unforeseen events delayed full development of the water system and use of water.

the cost of the structure is considerably affected by periodic high spring flood flows which would threaten any structure not specifically designed to withstand them. There is a huge fluxuation between spring and summer flows.

I am the permittee, or have authorization from the permittee, to apply for an extension of time under this permit. I understand that false or misleading statements in this extension application are grounds for the Department to suspend processing of the request and/or reason to deny the extension.

Steven Applegate, AGENT
Signature

December 29, 2006
Date

For an application to be complete, it must be accompanied with the required fee. See the Department's Fee Schedule at or call (503) 986-0900.

MAIL COMPLETED APPLICATION *and* FEE TO:

WATER RIGHT PERMIT EXTENSIONS
WATER RESOURCES DEPARTMENT
725 SUMMER STREET NE, SUITE A
SALEM, OREGON 97301-1271

ATTACHMENTS: 1) 8/22/06 Letter from DRC to OWRD Director

2) ODFW Schematic Drawing of Drewsey Ditch diversion
3) Designation of Agent

17

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Steven P. Applegate Consulting
3395 Huckleberry Court South
Salem, OR 97302
Phone/Fax (503)362-4040

August 22, 2006

Mr. Phil Ward, Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

REFERENCE: Request for Reconsideration - Cancellation of Permit S-51626
Special Order Volume 69, Page 18, July 6, 2006

Dear Director Ward:

I represent the Drewsey Reclamation Cooperative (DRC) in the above referenced matter. We hereby respectfully request your reconsideration of the cancellation of Permit 51626. It so happens that this permit is vital to the continuation of viable farming operations of the members of the DRC.

The original application was filed by the Malheur River Basin Water Users Association (MRBWUA), on behalf of most of the water users in the Middle Fork Basin. As you will note, the original request was much broader, and included many more potential users and uses. Following a long period of negotiations, discussions and a protracted contested case, the permit was issued only for the irrigation of 721 acres and to benefit only some of the users on the Drewsey Ditch, which now is known as the DRC. The permit was never assigned to the DRC, even though the MRBWUA as a whole had no further interest in the permit.

The notices and the eventual order were sent to the MRBWUA at the record address, however, the DRC was not aware that any issue with the permit existed until they happened to discover it on or about July 13, one week after the above referenced order was entered. Obviously, previous notices were also sent to the MRBWUA, but were never passed along to any member of the cooperative that we know of. As soon as the DRC Board discovered that an issue existed, they sought assistance. The permit is clearly of great significance to them.

The contested case firmly established that the additional water authorized in Permit 51626 was available, that it was needed and that the users had the ability to utilize it beneficially. The original rights granted for the lands within the DRC authorized only 1/80th cfs per acre. The additional 1/80th is critical to the continued viability of the family farms within the DRC.

All of the DRC users acquire their water from the Drewsey Ditch, so there is only a single point of diversion. The DRC has had many discussions with representatives from Oregon Department of Fish & Wildlife, US Fish & Wildlife Service and the local Soil & Water Conservation District

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over the past 10 years in attempting to secure planning and funding assistance for the required measuring device and fish screening. At least two different grant proposals have been prepared and submitted to ODFW, at their urging. Both requests failed due to lack of funding. The DRC is continuing to explore ways to accomplish this expensive chore.

The permit required that the Watermaster establish a schedule for installation of the required device and to supervise the installation. To date, the DRC has never been contacted by the Watermaster for that purpose. Had that contact ever happened, we would not be up against this issue now.

The users of the DRC have clearly been using the water authorized in the permit every year since it was issued. They hire a ditch manager every year from March through October to maintain the main headgates as well as to shepherd the water to the users according to their internal rotation agreements.

We thank you for your reconsideration of the cancellation of Permit 51626. If you agree to reinstate the permit, we will immediately file for an assignment of ownership of the permit, as well as a request for extension of the time limits to complete all of the work required by the permit's conditions. We will also submit a list of the current owners of the involved lands, as several of those have changed since 1995.

If there are any questions or if more information is needed, please contact me. Contact information for the DRC is as follows:

Drewsey Reclamation Cooperative
% Mr. George Wilber, Secretary/Treasurer
77 West Adams Street
Burns, OR 97720

Again, we appreciate your consideration of this request and look forward to your response.

Sincerely,

Steven P. Applegate

cc: George Wilber, DRC

2)

ODFW SCHEMATIC

DEC 29 2006
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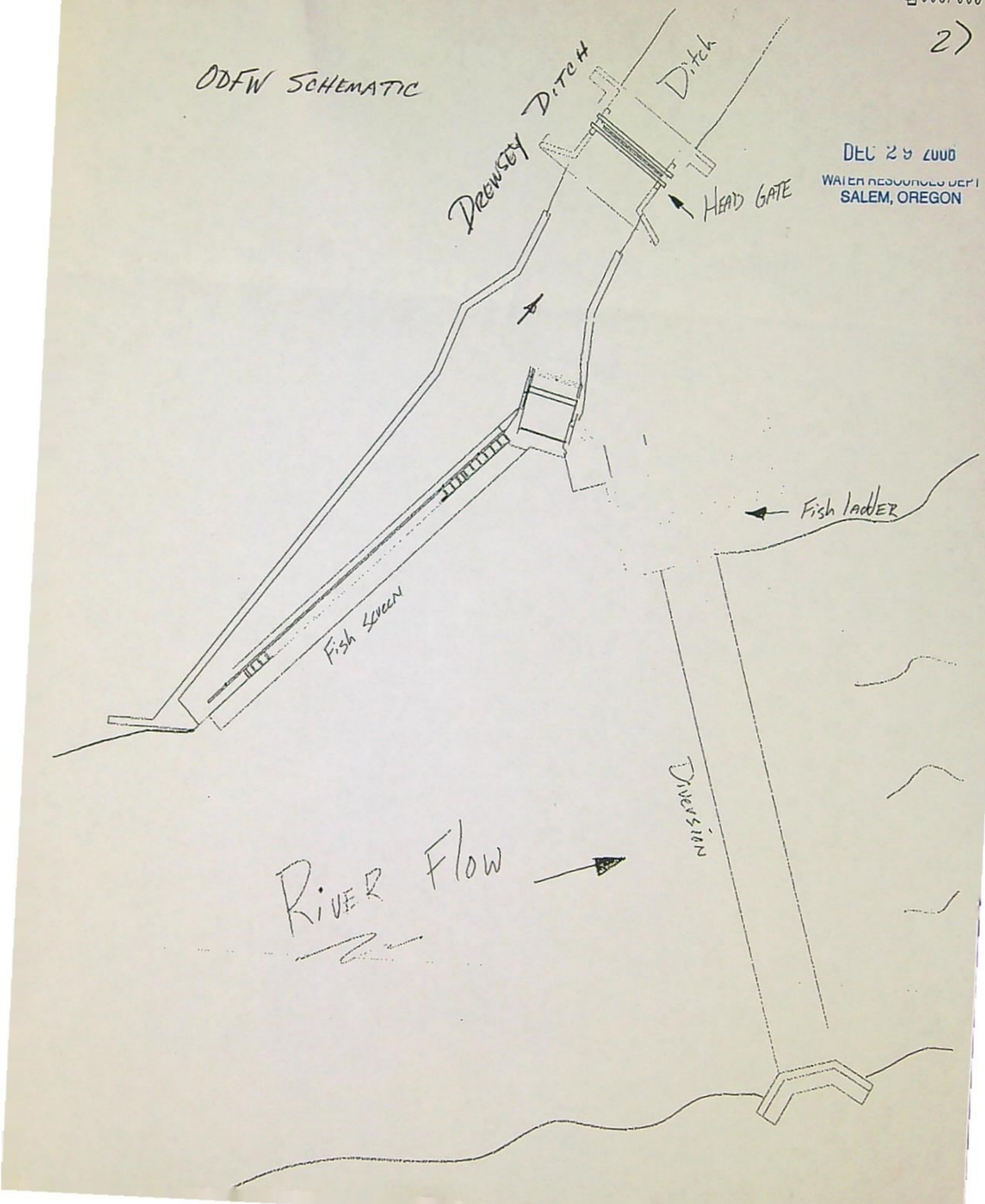
SALEM, OREGON



3)

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Drewsey Reclamation Cooperative

77 West Adams Street
Burns, OR 97720

December 26, 2006

To whom it may concern:

Re: Permit S-51626

For the purposes of an **Application for Extension of Time to the Water Resources Director of Oregon** please be advised that Steven P. Applegate at 3395 Huckleberry Court South, Salem, Oregon, is acting as agent for the Drewsey Reclamation Cooperative.

Sincerely,

George W. Wilber
Secretary/Treasurer

Mary Rohling

From: Mary Rohling
Sent: Monday, June 04, 2007 10:22 AM
To: Babe Hawk; wriserror
Subject: RE: P-51626

Babe,

I've communicated with Water Rights about this; it will be addressed at time of proof. I have copied to file S-69433 your findings.

Mary

Mary F. Rohling
Water Rights Technician
Information Services Division
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271
Ph: (503)986-0865
FAX: (503)986-0902
www.wrd.state.or.us

From: Babe Hawk
Sent: Monday, June 04, 2007 9:42 AM
To: Mary Rohling
Subject: P-51626

Good morning Mary, in doing research on the Drewsey Reclamation I found errors in the ranges on App=69433, under permit 51626.
Page one is correct, on page two under Conley Marshal all his sections are in T20 R35. Farther down is Elfreda Sword she is also in T20R35.
On page three under Jim Freeman, his land is also in T20R35. I was hoping this could be corrected before a certificate was issued.
Thanks again for all your time and help.
Babe

Babe Hawk
Assistant Watermaster
District 10
450 North Buena Vista
Burns, Oregon 97720
541--573-2591

Thanks again for all your time and help.
Babe

Babe Hawk
Assistant Watermaster
District 10
450 North Buena Vista
Burns, Oregon 97720
541--573-2591

Mary F. Rohling
Water Rights Technician
Information Services Division
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301
(503)986-0865
www.wrd.state.or.us

From: Babe Hawk
Sent: Thursday, April 21, 2011 11:24 AM
To: Mary Rohling
Subject: continued Permit S-51626

Mary I'm still lost in T 20S R 36E Sec. 23, Salem is showing me George Wilber for the lands which are under Conley Marshall, George Wilber is not mentioned in this permit . Also Elfreda Sword should be in R 35E, but Salem does not show even for R 36E and ditto for Jim Freeman lands. Sorry about this crazy mix up on the Ranges. I'll be heading out at 1pm for the weekend don't worry this till next week.
THANK YOU THANK YOU, Babe

Permit S-51626
Thu 4/21/2011 10:57 AM
Good morning Mary, not sure if I didn't speak with someone in 2006 - - -but the problem with Permit S-51626, Drewsey Reclamation, is on page 2 under the name Conley Marshal his lands are in T 20S R 35E Sec.s 21,22 & 23 & 26 and the permit shows T 20S R 36E etc. so of course your platcard shows R 36E and does not show any of his lands in R 35E. I know this was just a typo and not sure how involved this gets. I tried to research this and got all confused with the correcting Cert. 49682 and transfer T 4647 which have the same lands. Anyway I seem to be dumping this in your lap and can wait till your big project is over and all other matters cleared up for you. Have a wonderful weekend and Happy Easter. Many Thanks, Babe

Mary Rohling

From: Mary Rohling
Sent: Thursday, April 21, 2011 2:29 PM
To: Babe Hawk
Subject: RE: continued Permit S-51626

Hi Babe,

This error was addressed in 2007 as seen below. I also found an email copy in the file between Gerry Clark and June Miller on this. I will add electronic comments to Wris that will be available for viewing from the proofing report link. If you don't have an existing way to track what's been previously submitted to Wriserror, perhaps you can use the electronic comments to track. Let me know when you get back if you have any questions on that.

In the meanwhile, as previously noted, the identified errors on the permit will be addressed at time of proof.

Enjoy your weekend!
Mary

From: Mary Rohling
To: Babe Hawk; ⊞ **wriserror**
Cc:
Subject: RE: P-51626

Babe,

I've communicated with Water Rights about this; it will be addressed at time of proof. I have copied to file S-69433 your findings.

Mary

Mary F. Rohling
Water Rights Technician
Information Services Division
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271
Ph: (503)986-0865
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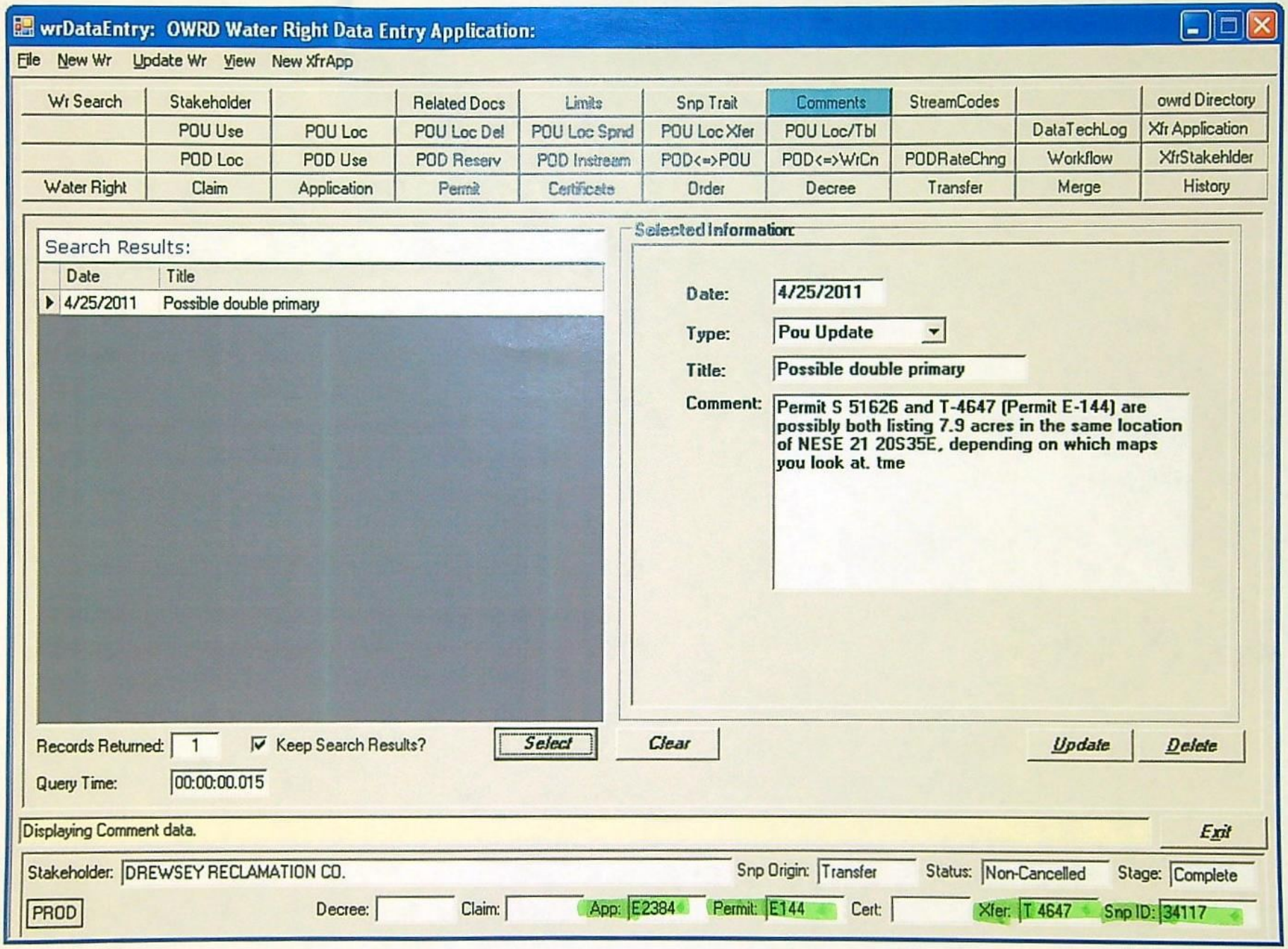
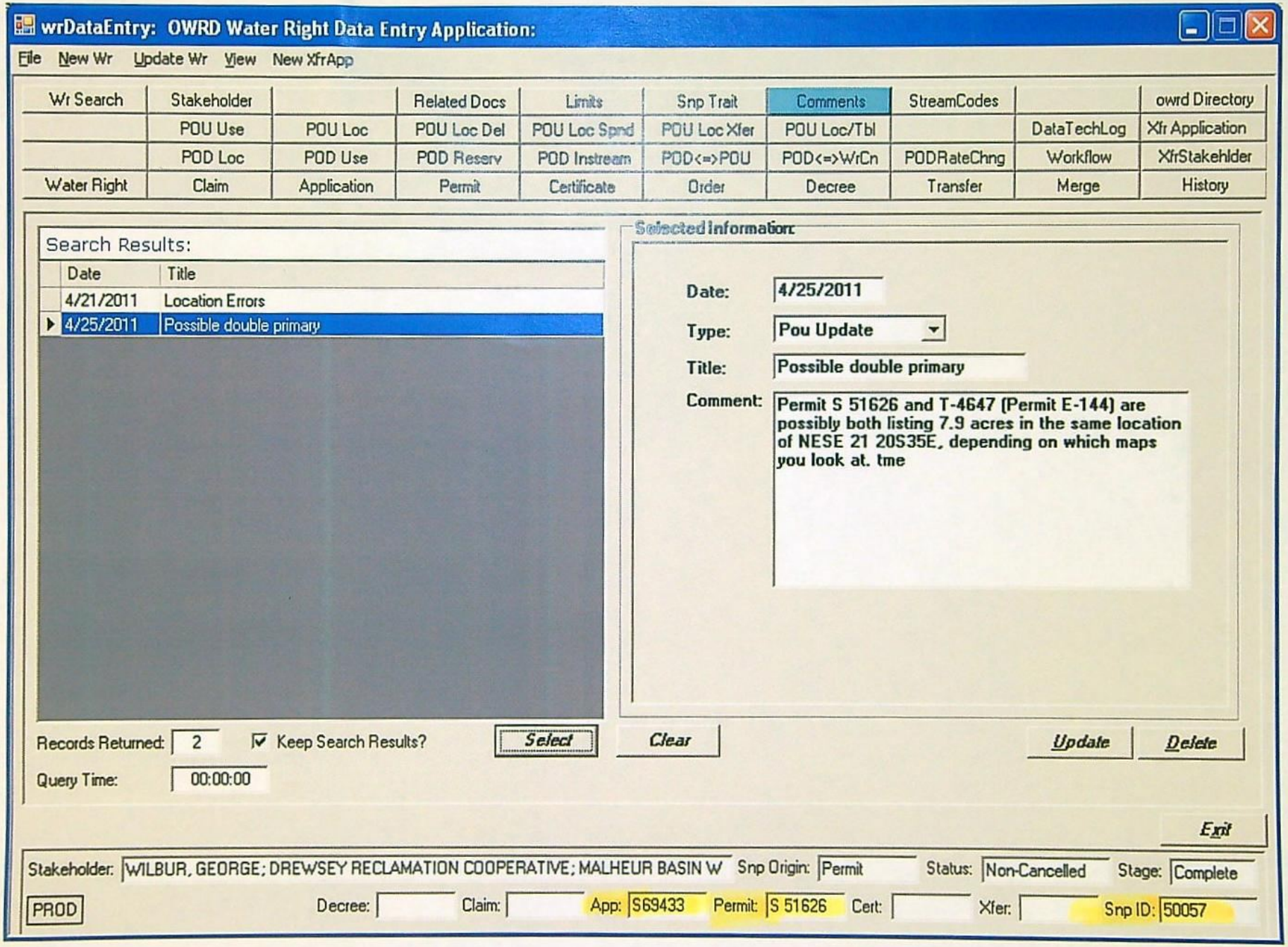
On page three under Jim Freeman, his land is also in T20R35. I was hoping this could be corrected before a certificate was issued.


wrDataEntry: OWRD Water Right Data Entry Application:
File New Wr Update Wr View New XfrApp
Wr Search Stakeholder Related Docs Limits Snp Trait Comments StreamCodes owrd Directory
POU Use POU Loc POU Loc Del POU Loc Spnd POU Loc Xfer POU Loc/Tbl DataTechLog Xfr Application
POD Loc POD Use POD Reserv POD Instream POD<=>POU POD<=>WrCn PODRateChng Workflow XfrStakehlder
Water Right Claim Application Permit Certificate Order Decree Transfer Merge History
Search Results:
Date Title
4/25/2011 Possible double primary
Selected Information:
Date: 4/25/2011
Type: Pou Update
Title: Possible double primary
Comment: Permit S 51626 and T-4647 (Permit E-144) are possibly both listing 7.9 acres in the same location of NESE 21 20S35E, depending on which maps you look at. tme
Records Returned: 1
Keep Search Results?
Select
Clear
Update
Delete
Query Time: 00:00:00.015
Displaying Comment data.
Exit
Stakeholder: DREWSEY RECLAMATION CO.
Snp Origin: Transfer
Status: Non-Cancelled
Stage: Complete
PROD
Decree:
Claim:
App: E2384
Permit: E144
Cert:
Xfer: T 4647
Snp ID: 34117


wrDataEntry: OWRD Water Right Data Entry Application:
File New Wr Update Wr View New XfrApp
Wr Search Stakeholder Related Docs Limits Snp Trait Comments StreamCodes owrd Directory
POU Use POU Loc POU Loc Del POU Loc Spnd POU Loc Xfer POU Loc/Tbl DataTechLog Xfr Application
POD Loc POD Use POD Reserv POD Instream POD<=>POU POD<=>WrCn PODRateChng Workflow XfrStakehlder
Water Right Claim Application Permit Certificate Order Decree Transfer Merge History
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Date Title
4/21/2011 Location Errors
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Selected Information:
Date: 4/25/2011
Type: Pou Update
Title: Possible double primary
Comment: Permit S 51626 and T-4647 (Permit E-144) are possibly both listing 7.9 acres in the same location of NESE 21 20S35E, depending on which maps you look at. tme
Records Returned: 2
Keep Search Results?
Select
Clear
Update
Delete
Query Time: 00:00:00
Exit
Stakeholder: WILBUR, GEORGE; DREWSEY RECLAMATION COOPERATIVE; MALHEUR BASIN W
Snp Origin: Permit
Status: Non-Cancelled
Stage: Complete
PROD
Decree:
Claim:
App: S69433
Permit: S 51626
Cert:
Xfer:
Snp ID: 50057

Certificate Correction File

Gerry Clark

From: Gerry Clark
Sent: Thursday, April 19, 2007 3:49 PM
To: June Miller
Subject: RE: A # 69433 and A # R-80255

June,

Application 69433:
We do not have a process for making corrections to permits. At the time of the Claim of Benficial Use, the CWRE needs identify any variations that occurred from the permit to developed use. In this case, the CWRE should include information concerning the error on the permit in the description of the place of use. I will place a copy of your message in the application file to alert anyone who may look at the file.

Certificate 71846:
We are not currently working on correction certificates. We will review the file in the future and issue a correction certificate if appropriate.We will place your message in the application file and in our correction file.

In the future, when you find potential errors on certificates, it would be a big help if you could mark up a copy of the certificate in questions and include a copy of the Final Proof Survey Map or Claim of Beneficial Use Map.

Thanks for your help.

If you have any additional questions, please feel free to contact me.

Gerry

Gerry Clark
Water Rights Specialist/Certificates
725 Summer St. NE, Ste. A
Salem, OR 97303

Phone: 503-986-0811
Fax: 503-986-0901

http://www.wrd.state.or.us/

From: June Miller
Sent: Thursday, April 19, 2007 9:33 AM
To: Gerry Clark
Subject: A # 69433 and A # R-80255

In A # 69433, permit 516256, a portion of this permit has the wrong range for the legal description for the water rights.
Conley Marshal portion should all be in range 35. Middle Fork water cannot get to these sections in range 36.

Elfreda Sword portion and Jim Freeman's portion should also be range 35.

Portion of these show on the Turner Ranch, which is for sale, and the plat cards are wrong.

Cert 71846, is under a hb 2153 ponds. One of the ponds show on the certificate as being in section 20, this should be section 22 to be in agreement with the map.

June

Gerry Clark

From: Gerry Clark
Sent: Thursday, April 19, 2007 3:49 PM
To: June Miller
Subject: RE: A # 69433 and A # R-80255

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Thanks for your help.

If you have any additional questions, please feel free to contact me.

Gerry

Gerry Clark
Water Rights Specialist/Certificates
725 Summer St. NE, Ste. A
Salem, OR 97303

Phone: 503-986-0811
Fax: 503-986-0901

http://www.wrd.state.or.us/

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To: Gerry Clark
Subject: A # 69433 and A # R-80255

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Elfreda Sword portion and Jim Freeman's portion should also be range 35.

ASSIGNMENT

I, Ken Bentz for Malheur Basin Water Users Association
(NAME)
85644 Van Drewsey Rd. Drewsey OR 97904
(MAILING ADDRESS) (CITY) (STATE) (ZIP)

do hereby assign all my interest in and to water right
Application Number S 69433, Permit Number 51626,
as filed in the office of the Water Resources Director, to:

Drewsey Reclamation Cooperative, c/o George Wilger
(NAME)
77 West Adams St. Burns OR 97720
(MAILING ADDRESS) (CITY) (STATE) (ZIP)

TELEPHONE NUMBER (541) 573-6151

WITNESS my hand this 29th day of August 2006 ~~198~~.

X Kenneth J. Bentz
KEN BENTZ

The completed assignment must be submitted to the Water Resources Director, ~~3850 Portland Road, N.E.~~, Salem, OR 97310, together with a recording fee of ~~$10.~~ ~~$20.00 1st pg. + $5.00 each addt'l page~~

FAX TO c/o JERRY SAUTER
WATER RESOURCES DEPT.
(503) 986-0901

MAIL ORIGINAL W/ SIGNATURE TO:
725 SUMMER ST. NE, SUITE A
SALEM 97310

RECEIVED
SEP 05 2006
WATER RESOURCES DEPT
SALEM, OREGON

STATE OF OREGON

WATER RESOURCES DEPARTMENT

RECEIPT # 83757

725 Summer St. N.E. Ste. A
SALEM, OR 97301-4172
(503) 986-0900 / (503) 986-0904 (fax)

INVOICE # _____

RECEIVED FROM: Steve Applegate

BY: _____

APPLICATION	G1433
PERMIT	
TRANSFER	

CASH: [X] CHECK:# [ ] _____ OTHER: (IDENTIFY) [ ] _____

TOTAL REC'D $ 25.00

1083 TREASURY 4170 WRD MISC CASH ACCT

0407	COPIES		$
_____	OTHER:	(IDENTIFY)	$

RECEIVED
OVER THE COUNTER

0243 I/S Lease _____ 0244 Muni Water Mgmt. Plan _____ 0245 Cons. Water _____

4270 WRD OPERATING ACCT

4611

MISCELLANEOUS

0407	COPY & TAPE FEES		$
0410	RESEARCH FEES		$
0408	MISC REVENUE: (IDENTIFY)	assignment	$ 25.00
TC162	DEPOSIT LIAB. (IDENTIFY)		$
0240	EXTENSION OF TIME		$

WATER RIGHTS:

		EXAM FEE		RECORD FEE
0201	SURFACE WATER	$	0202	$
0203	GROUND WATER	$	0204	$
0205	TRANSFER	$		

WELL CONSTRUCTION

		EXAM FEE		LICENSE FEE
0218	WELL DRILL CONSTRUCTOR	$	0219	$
	LANDOWNER'S PERMIT		0220	$

_____ OTHER (IDENTIFY) _____

0536 TREASURY 0437 WELL CONST. START FEE

0211	WELL CONST START FEE	$	CARD #	
0210	MONITORING WELLS	$	CARD #	

_____ OTHER (IDENTIFY) _____

0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER

0233	POWER LICENSE FEE (FW/WRD)		$
0231	HYDRO LICENSE FEE (FW/WRD)		$
_____	HYDRO APPLICATION		$

____ TREASURY OTHER / RDX

FUND _____ TITLE _____

OBJ. CODE _____ VENDOR # _____

DESCRIPTION _____ $ _____

RECEIPT: 83757 DATED: 3-20-06 BY: DBH

Distribution – White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal

ASSIGNMENT

I, Ken Bentz for Malheur Basin Water Users Association
(NAME)
85644 Van Drewsey Rd. Drewsey OR 97904
(MAILING ADDRESS) (CITY) (STATE) (ZIP)

do hereby assign all my interest in and to water right Application Number 69433, Permit Number 51626, as filed in the office of the Water Resources Director, to:

Drewsey Reclamation Cooperative, c/o George Wilder
(NAME)
77 West Adams St. Burns OR 97720
(MAILING ADDRESS) (CITY) (STATE) (ZIP)

TELEPHONE NUMBER (541) 573-6151

WITNESS my hand this 29th day of August 2006 ~~198~~.

X Kenneth J. Bentz
KEN BENTZ

ASSIGN/GW
8/30/2006

The completed assignment must be submitted to the Water Resources Director, ~~3850 Portland Road, N.E.~~, Salem, OR 97310, together with a recording fee of ~~$20.~~

FAX TO c/o JERRY SAUTER
WATER RESOURCES DEPT.
(503) 986-0901
MAIL ORIGINAL W/ SIGNATURE TO:
725 SUMMER ST. NE, SUITE A
SALEM 97310

This certifies assignment and record change at Oregon Water Resources Department effective 8:00 a.m. on date of receipt at Salem, Oregon.
Fee receipt # 83757
For Director by Jerry Sauter, Program Analyst in Water Rights Division

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1266
503-986-0900
FAX 503-986-0904

August 30, 2006

Steve Applegate
3395 Huckleberry Court S.
Salem, Oregon 97302

Reference: Application S-69433, Permit S-51626

The assignment from Malheur River Basin Water Users Association to Drewsey Reclamation Cooperative, has been recorded in the records of the Water Resources Department.

Our records have been changed accordingly and the original request is enclosed. Receipt number 83757 covering the recording fee of $25.00 has already been given to you.

Sincerely,

Jerry Sauter
Water Rights Program Analyst

Enclosure:

cc: Watermaster 9
Malheur River Basin Water Users Association
Drewsey Reclamation Cooperative
Data Center, OWRD
Water Availability
File

V DASH CATTLE COMPANY

DREWSEY, OREGON 97804

DATE: Aug 29th 2006 TIME: 9:00 AM

FROM: Ken Bentz
Malheur Basin Water Users Association

TO: Jerry Sauter
Oregon Water Resources Dept

FAX NO: _____

REGARDING: _____

OUR FILE NO: _____

NUMBER OF PAGES(including this one): 2

HARD COPY TO FOLLOW: ( ) YES (✓) NO

MESSAGE: _____

THE INFORMATION CONTAINED IN THIS FACSIMILE IS CONFIDENTIAL AND IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN ORIGINAL TO:
V DASH CATTLE CO.
VIA THE U.S. POSTAL SERVICE. THANK YOU

IF YOU DO NOT RECEIVE ALL THE PAGES PLEASE CALL (541) 493-2311

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

IN THE MATTER OF THE)
REINSTATEMENT OF PERMIT S-51626) ORDER

The following Permittee has requested reconsideration of the July 6, 2006, order canceling their permit. The request for reconsideration was submitted within the timeline provided by the order.

PERMITS TO USE SURFACE WATER:

NAME	BASIN #	WM #	FILE #	PERMIT #
Malheur River Basin Water User Association	10	9	S-69433	S-51626

NOW, THEREFORE, it is hereby ORDERED that the permit is reinstated in accordance with the provisions of ORS 537.260.

The Department will take no action to cancel this permit until December 29, 2006, to allow the permittee to come into compliance with the terms and conditions of the permit.

Dated at Salem, Oregon on August 31, 2006.

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager, *for*
Phillip C. Ward, Director

AUG 31 2006
PLACED IN U.S. MAIL
BY OREGON WATER RESOURCES DEPARTMENT

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date, the petition was filed, the petition shall be deemed denied.

RECEIVED
AUG 24 2006
WATER RESOURCES DEPT
SALEM, OREGON

Steven P. Applegate Consulting
3395 Huckleberry Court South
Salem, OR 97302
Phone/Fax (503)362-4040

August 22, 2006

Mr. Phil Ward, Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

REFERENCE: Request for Reconsideration - Cancellation of Permit S-51626
Special Order Volume 69, Page 18, July 6, 2006

Dear Director Ward:

I represent the Drewsey Reclamation Cooperative (DRC) in the above referenced matter. We hereby respectfully request your reconsideration of the cancellation of Permit 51626. It so happens that this permit is vital to the continuation of viable farming operations of the members of the DRC.

The original application was filed by the Malheur River Basin Water Users Association (MRBWUA), on behalf of most of the water users in the Middle Fork Basin. As you will note, the original request was much broader, and included many more potential users and uses. Following a long period of negotiations, discussions and a protracted contested case, the permit was issued only for the irrigation of 721 acres and to benefit only some of the users on the Drewsey Ditch, which now is known as the DRC. The permit was never assigned to the DRC, even though the MRBWUA as a whole had no further interest in the permit.

The notices and the eventual order were sent to the MRBWUA at the record address, however, the DRC was not aware that any issue with the permit existed until they happened to discover it on or about July 13, one week after the above referenced order was entered. Obviously, previous notices were also sent to the MRBWUA, but were never passed along to any member of the cooperative that we know of. As soon as the DRC Board discovered that an issue existed, they sought assistance. The permit is clearly of great significance to them.

The contested case firmly established that the additional water authorized in Permit 51626 was available, that it was needed and that the users had the ability to utilize it beneficially. The original rights granted for the lands within the DRC authorized only $1/80^{th}$ cfs per acre. The additional $1/80^{th}$ is critical to the continued viability of the family farms within the DRC.

All of the DRC users acquire their water from the Drewsey Ditch, so there is only a single point of diversion. The DRC has had many discussions with representatives from Oregon Department of Fish & Wildlife, US Fish & Wildlife Service and the local Soil & Water Conservation District

over the past 10 years in attempting to secure planning and funding assistance for the required measuring device and fish screening. At least two different grant proposals have been prepared and submitted to ODFW, at their urging. Both requests failed due to lack of funding. The DRC is continuing to explore ways to accomplish this expensive chore.

The permit required that the Watermaster establish a schedule for installation of the required device and to supervise the installation. To date, the DRC has never been contacted by the Watermaster for that purpose. Had that contact ever happened, we would not be up against this issue now.

The users of the DRC have clearly been using the water authorized in the permit every year since it was issued. They hire a ditch manager every year from March through October to maintain the main headgates as well as to shepherd the water to the users according to their internal rotation agreements.

We thank you for your reconsideration of the cancellation of Permit 51626. If you agree to reinstate the permit, we will immediately file for an assignment of ownership of the permit, as well as a request for extension of the time limits to complete all of the work required by the permit's conditions. We will also submit a list of the current owners of the involved lands, as several of those have changed since 1995.

If there are any questions or if more information is needed, please contact me. Contact information for the DRC is as follows:

Drewsey Reclamation Cooperative
% Mr. George Wilber, Secretary/Treasurer
77 West Adams Street
Burns, OR 97720

Again, we appreciate your consideration of this request and look forward to your response.

Sincerely,

Steven P. Applegate

cc: George Wilber, DRC

BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

IN THE MATTER OF THE CANCELLATION)
OF CERTAIN PERMIT(S) TO APPROPRIATE) ORDER
WATER UNDER THE PROVISIONS OF ORS)
537.260)

The time within which the appropriations under the following water right permit(s) must have been perfected has expired. The owners of such permit(s) have failed or refused within the period of three months thereafter to submit proof of the completion of such appropriations as required by ORS 537.260. Consequently, notices have been addressed to each of the owners of said permit(s) by certified mail in accordance with the provisions of ORS 537.260 and ORS 174.160. The sixty-day time limit allowed in those notices has elapsed, and the owners of such permit(s) have failed or refused to submit proof of the completion of the appropriations under the terms and conditions of their respective permit(s).

PERMIT(S) TO USE SURFACE WATER:

Name	Basin Number	Watermaster District	Application Number	Permit Number
Malheur River Basin Water User Association	10	9	S-69433	S-51626

Proof of appropriation of water under the terms and conditions of the permit(s) listed has not been made to the satisfaction of the WATER RESOURCES DIRECTOR as required under ORS 537.260. NOW, THEREFORE, it is hereby ORDERED that the permit(s) are canceled in accordance with the provisions of ORS 537.260.

Dated at Salem, Oregon on July 6, 2006.

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager, *for*
Phillip C. Ward, Director

PLACED IN U.S. MAIL JUL -6 2006
BY OREGON WATER RESOURCES DEPARTMENT

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and ORS 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

S-69433 JS 2911 9727
MALHEUR RIVER BASIN WATER USER ASSOCIATION
PO BOX 237
DREWSEY OR 97904

Ken Bentz

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Charles W Dunten ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* Charles W Dunten
C. Date of Delivery 03/06/06

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☑ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? *(Extra Fee)* ☐ Yes

2. Article Number
(Transfer from service label) 7002 2030 0006 2911 9727

PS Form 3811, August 2001 Domestic Return Receipt WR 102595-02-M-1540

Oregon
Theodore R. Kulongoski, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

NOTE: For water rights information and useful forms, please see our web site at
www.oregon.gov/OWRD

February 28, 2006

Certified mail number 2911 9727
Return receipt requested

MALHEUR RIVER BASIN WATER USER ASSOCIATION
PO BOX 237
DREWSEY OR 97904

Reference: Application S-69433, Permit S-51626

Dear Permit Holder:

This letter is in regard to your water use permit as referenced above. Your permit required you to complete the development of your water use by 10/1/1999.

In order for the Department to consider issuance of a certificate of water right, you are required by law to hire a certified water right examiner to prepare and submit a claim of beneficial use that includes a final proof survey map of the development. The map and claim of beneficial use were to have been submitted to our Department within one year of 10/1/1999. A list of certified water right examiners is enclosed for your use.

If you are not finished with the development of your permit, you need to file for an extension of time to complete your development. An extension form is also enclosed with this letter.

In the event that you are no longer using water as allowed by this permit, you should cancel it so that we may clear our records. A cancellation form is enclosed, if you are interested in this option.

If you have not submitted either a Claim of Beneficial Use or a request for an extension of time for your permit within 60 days of the date of this letter (April 29, 2006) the Department may issue a Final Order to cancel your permit without further notice.

Should you have any questions, you may contact me at the address above or by telephone at 503-986-0817.

Sincerely,

Jerry Sauter
Water Rights Program Analyst

Enclosures (3)
cc: File S-69433
OWRD Watermaster District 9

PERMIT STATUS REVIEW BY SWells *DATE* 12/14/05 *FILE #* S-69433

1. Per Dwight French, **do not** send "C" DATE NOTICE PACKET if : update appropriate db

NO Permit is for municipal or quasi-municipal use (per DF, when in doubt about MU/QM, change database code) **or** in Bonanza study area or New River _____

NO Extension pending _____ _____

NO Assignment is pending _____

NO Cancellation has been requested ____ _____

NO Dept. has already sent a **certified** "Form 100" letter (date _____, #_____)

Was **60 days notice** allowed? _____

Was mail deliverable as addressed? _____ date _____

Send cancellation letter _____ _____

no Claim of beneficial use and final proof map (COBU) have been received by Department

Date information received_____ _____

2. IF **NONE** OF THE ABOVE APPLY

YES Send **certified** "C" date notice packet to permit holder.

"C" DATE 10-1-1999 **BASIN NUMBER** 10

CWRE or AGENT none

dk SENDS 60 DAY LETTER. 1/25/2006 J.M.S.

S:\groups\wr\PERMIT C jd\c date checklist.wpd

Oregon
John A. Kitzhaber, M.D., Governor

Water Resources Department
Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

December 7, 1998

in error - dates wrong on front of folder C date is 99

MALHEUR RIVER BASIN WTR USERS ASSN
PO BOX 237
DREWSEY OR 97904

REFERENCE: File 69433

The date for the complete application of water to a beneficial use for your water use Permit 51626 was **October 1, 1998.** To date we have not received notice that your project was completed.

If the project was completed, you should promptly submit the notice of complete application of water. If you were unable to complete the project within the time allowed, you may wish to request an extension of the time limits.

Water Right Certificate
In order to obtain a certificate of water right, you are required by law to hire a certified water right examiner to conduct the final proof survey of the completed use. This must be done within one year after the use is reported as being complete or within one year after the beneficial use date allowed in the permit, whichever occurs first. Accordingly, the map and claim of beneficial use must be received in this office on or before **October 1, 1999.** A list of certified water right examiners is enclosed for your information.

Upon receipt of the map and claim of beneficial use, the information will be reviewed and a brief field inspection may be conducted by a representative of this office. Following that, a proposed certificate of water right will be mailed to you for review.

Extension of Time
If you wish to apply for an extension of time, please fill out the enclosed form. Permit extension rules, adopted by the Water Resources Commission in October 1998, require that the Department consider this information when determining whether or not to approve an extension request. You should request to extend your permit for the amount of time necessary to fully complete your project and put the water to beneficial use. Should the permit extension be approved, it is the Department's expectation that it will be the last extension granted. Copies of the new extension rules will be furnished upon request.

If you are no longer interested in the project, please let us know. We will provide forms for you to authorize the cancellation of the permit.

If you have any questions, please contact me at extension 272, at 503-378-3739, or toll-free 1-800-624-3199.

Sincerely,

DALLAS S. MILLER
Water Rights Specialist

DSM:jh

enclosure

cc: Mitch Lewis, Watermaster

DRAFT

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR RIVER BASIN WATER USERS ASSOCIATION
PO BOX 237 503-493-2728
DREWSEY, OREGON 97904

to use the waters of MIDDLE FORK MALHEUR RIVER, GRIFFIN CREEK, COTTONWOOD CREEK AND OTIS CREEK, tributaries of SNAKE RIVER, for ALKALI ABATEMENT, ~~on 5126.2 acres.~~ 5,125

This Permit is issued approving Application 69433. The date of priority is OCTOBER 27, 1987. The use is limited to not more than 128.0 CUBIC FEET PER SECOND, BEING 102.0 CFS FROM MALHEUR RIVER, 5.0 CFS FROM GRIFFIN CREEK, 18.2 CFS FROM OTIS CREEK AND 2.2 CFS FROM COTTONWOOD CREEK AND 2.2 CFS FROM SPRING CREEK, or its equivalent in case of rotation, measured at the points of diversion from the sources.

The points of diversion are located as follows:

1 SE 1/4 SE 1/4, SECTION 32, T 18 S, R 34 E, W.M.; JOHNSON DITCH - 130 FEET NORTH AND 380 FEET WEST FROM SE CORNER, SECTION 32.

2 NE 1/4 NE 1/4, SECTION 8, T 19 S, R 34 E, W.M.; MOFFETT DITCH - 560 FEET SOUTH AND 710 FEET WEST FROM NE CORNER, SECTION 8.

3 NE 1/4 NE 1/4, SECTION 8, T 19 S, R 34 E, W.M.; DITCH - 2375 FEET SOUTH AND 580 FEET WEST FROM NE CORNER, SECTION 5.

4 NE 1/4 SW 1/4, SECTION 8, T 19 S, R 34 E, W.M.; DITCH - 1490 FEET NORTH AND 2080 FEET EAST FROM SW CORNER, SECTION 8.

5 NW 1/4 NW 1/4, SECTION 17, T 19 S, R 34 E, W.M.; DITCH - 200 FEET SOUTH AND 605 FEET EAST FROM NW CORNER, SECTION 17.

6 NE 1/4 NE 1/4, SECTION 18, T 19 S, R 34 E, W.M.; DITCH - 130 FEET SOUTH AND 360 FEET WEST FROM NE CORNER, SECTION 18.

7 SE 1/4 SW 1/4, SECTION 18, T 19 S, R 34 E, W.M.; MARKS DITCH - 345 FEET NORTH AND 2510 FEET EAST FROM SW CORNER, SECTION 18.

8 SE 1/4 NW 1/4, SECTION 19, T 19 S, R 34 E, W.M.; BAILY DITCH - 1330 FEET SOUTH AND 1650 FEET EAST FROM NW CORNER, SECTION 19.

9 NW 1/4 NW 1/4, SECTION 30, T 19 S, R 34 E, W.M.; FARRENS DITCH - 475 FEET SOUTH AND 130 FEET EAST FROM NW CORNER, SECTION 30.

10 NW 1/4 NE 1/4, SECTION 36, T 19 S, R 33 1/2 E, W.M.; ROBBINS DITCH - 1090 FEET SOUTH AND 2375 FEET WEST FROM NE CORNER, SECTION 36.

11 SW 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; 2440 FEET SOUTH AND 300 FEET EAST FROM NW CORNER, SECTION 5.

12 SE 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; CLARKS SOUTH DITCH - 2245 FEET SOUTH AND 2010 FEET EAST FROM NW CORNER, SECTION 5.

13 NE 1/4 SW 1/4, SECTION 28, T 19 S, R 34 E, W.M.; GRIFFIN CREEK RESERVOIR - 2330 FEET NORTH AND 1750 FEET EAST FROM SW CORNER, SECTION 28.

14 NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; MILLER DITCH - 675 FEET SOUTH AND 940 FEET WEST FROM NE CORNER, SECTION 10.

15 NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; SITZ DITCH - 845 FEET SOUTH AND 610 FEET WEST FROM NE CORNER, SECTION 10.

16 NE 1/4 SW 1/4, SECTION 11, T 20 S, R 34 E, W.M.; DREWSEY DITCH - 2475 FEET NORTH AND 1520 FEET EAST FROM SW CORNER, SECTION 11.

17 NE 1/4 SW 1/4, SECTION 11, T 20 S, R 34 E, W.M.; DREWSEY DITCH (FRENCH PUMPS) - 2970 FEET SOUTSH AND 1440 FEET EAST FROM NW CORNER, SECTION 23.

18 NW 1/4 NW 1/4, SECTION 20, T 20 S, R 36 E, W.M.; WILLIAMS DIVERSION - 825 FEET SOUTH AND 845 FEET EAST FROM NW CORNER, SECTION 20.

19 SE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2520 FEET SOUTH AND 1580 FEET EAST FROM NW CORNER, SECTION 20.

20 NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 1452 FEET EAST FROM NW CORNER, SECTION 8.

21 NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2508 FEET EAST FROM NW CORNER, SECTION 8.

22 NW 1/4 NW 1/4, SECTION 9, T 20 S, R 36 E, W.M.; 760 FEET SOUTH AND 280 FEET EAST FROM NW CORNER, SECTION 9.

(1A var.); ★

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this Permit is as follows:

SW 1/4	NE 1/4	19.0 ACRES
SE 1/4	NE 1/4	20.0 ACRES
NE 1/4	SE 1/4	27.0 ACRES
NW 1/4	SE 1/4	3.0 ACRES
SE 1/4	SE 1/4	0.5 ACRE
	SECTION 13	
SE 1/4	NE 1/4	40.0 ACRES
SE 1/4	NW 1/4	6.0 ACRES
NE 1/4	SW 1/4	15.0 ACRES
NE 1/4	SE 1/4	40.0 ACRES
NW 1/4	SE 1/4	40.0 ACRES
SW 1/4	SE 1/4	40.0 ACRES
SE 1/4	SE 1/4	40.0 ACRES
	SECTION 36	

TOWNSHIP 19 SOUTH, RANGE 33 1/2 EAST, W.M.

NW 1/4	SW 1/4	31.0 ACRES
SW 1/4	SW 1/4	30.0 ACRES
SW 1/4	SE 1/4	23.0 ACRES
	SECTION 7	
SW 1/4	NE 1/4	0.8 ACARE
NE 1/4	SW 1/4	12.3 ACRES
SE 1/4	SW 1/4	0.2 ACRE
NW 1/4	SE 1/4	19.0 ACRES
	SECTION 8	

1A (var.) The water users shall install & maintain in-line flow meters, weirs or other measuring devices, to be approved by & installed under the supervision of the Watermaster for measuring & continuous recording of the quantities of water diverted. Such measuring devices shall be installed & operational prior to ~~May~~ April 1, 1991. at all diversion points

★ The right allowed herein shall be limited to a total diversion of ~~6~~ not to exceed 1.5 acre-feet per acre for each acre supplied, and is further limited to the period from April 1 through June 1 of each year. The use of water allowed herein is subject to a ~~minimum~~ flow of 15 cfs ~~shall be~~ to be maintained in the channel of the Middle Fork Malheur River ~~from~~ past all of the authorized diversion ~~points~~

NE 1/4	NE 1/4	38.0	ACRES
NW 1/4	NE 1/4	38.0	ACRES
SW 1/4	NE 1/4	30.0	ACRES
SE 1/4	NE 1/4	36.0	ACRES
NE 1/4	NW 1/4	9.0	ACRES
NW 1/4	NW 1/4	34.0	ACRES
SW 1/4	NW 1/4	28.0	ACRES
SE 1/4	NW 1/4	37.0	ACRES
NE 1/4	SW 1/4	38.0	ACRES
NW 1/4	SW 1/4	23.0	ACRES
SW 1/4	SW 1/4	27.0	ACRES
SE 1/4	SW 1/4	38.0	ACRES
NE 1/4	SE 1/4	33.0	ACRES
NW 1/4	SE 1/4	38.5	ACRES
SW 1/4	SE 1/4	39.0	ACRES
SE 1/4	SE 1/4	15.0	ACRES
	SECTION 18		
NW 1/4	NE 1/4	35.0	ACRES
SW 1/4	NE 1/4	20.0	ACRES
NE 1/4	NW 1/4	38.0	ACRES
NW 1/4	NW 1/4	23.0	ACRES
SW 1/4	NW 1/4	18.0	ACRES
SE 1/4	NW 1/4	36.0	ACRES
	SECTION 19		
NE 1/4	SW 1/4	28.0	ACRES
NW 1/4	SW 1/4	29.0	ACRES
SW 1/4	SW 1/4	22.0	ACRES
SE 1/4	SW 1/4	25.0	ACRES
	SECTION 20		
NE 1/4	NW 1/4	7.0	ACRES
NW 1/4	NW 1/4	19.0	ACRES
SE 1/4	NW 1/4	1.0	ACRE
SW 1/4	SW 1/4	35.0	ACRES
SE 1/4	SW 1/4	26.6	ACRES
	SECTION 28		
SW 1/4	SW 1/4	10.0	ACRES
SE 1/4	SW 1/4	15.0	ACRES
	SECTION 29		
SW 1/4	NW 1/4	24.0	ACRES
NW 1/4	SW 1/4	23.0	ACRES
SW 1/4	SW 1/4	30.0	ACRES
	SECTION 30		
NE 1/4	NW 1/4	6.0	ACRES
NW 1/4	NW 1/4	40.0	ACRES
SW 1/4	NW 1/4	40.0	ACRES
SE 1/4	NW 1/4	31.0	ACRES
NE 1/4	SW 1/4	40.0	ACRES
NW 1/4	SW 1/4	40.0	ACRES
SW 1/4	SW 1/4	40.0	ACRES
SE 1/4	SW 1/4	40.0	ACRES
NW 1/4	SE 1/4	20.0	ACRES
SW 1/4	SE 1/4	40.0	ACRES
SE 1/4	SE 1/4	20.0	ACRES
	SECTION 31		

NW 1/4	NE 1/4	6.0	ACRES
NE 1/4	NW 1/4	36.0	ACRES
NW 1/4	NW 1/4	8.0	ACRES
SW 1/4	NW 1/4	2.0	ACRES
SE 1/4	NW 1/4	3.0	ACRES

SECTION 32

SW 1/4	NE 1/4	15.6	ACRES
NE 1/4	NW 1/4	30.8	ACRES
SE 1/4	NW 1/4	26.6	ACRES
NE 1/4	SW 1/4	22.9	ACRES
SE 1/4	SW 1/4	7.2	ACRES
NW 1/4	SE 1/4	24.9	ACRES
SW 1/4	SE 1/4	21.0	ACRES

SECTION 33

TOWNSHIP 19 SOUTH, RANGE 34 EAST, W.M.

NE 1/4	NE 1/4	40.0	ACRES
NW 1/4	NE 1/4	22.0	ACRES
SW 1/4	NE 1/4	16.0	ACRES
SE 1/4	NE 1/4	40.0	ACRES
NE 1/4	SE 1/4	40.0	ACRES

SECTION 1

TOWNSHIP 20 SOUTH, RANGE 33 1/2 EAST, W.M.

SW 1/4	NW 1/4	20.0	ACRES
NE 1/4	SW 1/4	5.0	ACRES
NW 1/4	SW 1/4	4.0	ACRES

SECTION 3

NE 1/4	NE 1/4	30.0	ACRES
NW 1/4	NE 1/4	23.4	ACRES
SW 1/4	NE 1/4	22.0	ACRES
SE 1/4	NE 1/4	13.0	ACRES
NE 1/4	SW 1/4	16.0	ACRES
NW 1/4	SW 1/4	14.0	ACRES

SECTION 4

SW 1/4	NE 1/4	17.0	ACRES
SE 1/4	NE 1/4	3.0	ACRES
SW 1/4	NW 1/4	0.8	ACRE
SE 1/4	NW 1/4	3.8	ACRES
NE 1/4	SE 1/4	1.0	ACRE
NW 1/4	SE 1/4	1.4	ACRES

SECTION 5

NW 1/4	NE 1/4	40.0	ACRES
SW 1/4	NE 1/4	40.0	ACRES
NE 1/4	NW 1/4	40.0	ACRES
NW 1/4	NW 1/4	40.0	ACRES
SW 1/4	NW 1/4	15.0	ACRES
SE 1/4	NW 1/4	39.0	ACRES
NE 1/4	SE 1/4	10.0	ACRES

SECTION 6

NE 1/4	SE 1/4	2.5	ACRES
NW 1/4	SE 1/4	3.5	ACRES
SW 1/4	SE 1/4	12.0	ACRES
SE 1/4	SE 1/4	30.0	ACRES

SECTION 11

NE 1/4	NE 1/4	22.0	ACRES
NW 1/4	NE 1/4	20.0	ACRES
SW 1/4	NE 1/4	2.0	ACRES
SE 1/4	NE 1/4	38.0	ACRES
SE 1/4	NW 1/4	3.0	ACRES
NE 1/4	SW 1/4	32.0	ACRES
NW 1/4	SW 1/4	15.1	ACRES
SW 1/4	SW 1/4	16.0	ACRES
SE 1/4	SW 1/4	35.0	ACRES
NE 1/4	SE 1/4	35.0	ACRES
NW 1/4	SE 1/4	15.0	ACRES
SW 1/4	SE 1/4	39.0	ACRES
SE 1/4	SE 1/4	38.0	ACRES
	SECTION 12		
NE 1/4	NE 1/4	17.0	ACRES
NW 1/4	NE 1/4	18.0	ACRES
NW 1/4	NW 1/4	1.0	ACRE
	SECTION 13		

TOWNSHIP 20 SOUTH, RANGE 34 EAST, W.M.

NW 1/4	NE 1/4	14.0	ACRES
SW 1/4	NE 1/4	40.0	ACRES
NE 1/4	NW 1/4	30.0	ACRES
NW 1/4	NW 1/4	30.0	ACRES
NE 1/4	SW 1/4	40.0	ACRES
NW 1/4	SW 1/4	40.0	ACRES
NW 1/4	SE 1/4	34.0	ACRES
SW 1/4	SE 1/4	33.0	ACRES
	SECTION 7		
NE 1/4	SW 1/4	37.0	ACRES
NW 1/4	SW 1/4	30.0	ACRES
SW 1/4	SW 1/4	25.0	ACRES
SE 1/4	SW 1/4	38.0	ACRES
NW 1/4	SE 1/4	5.0	ACRES
SW 1/4	SE 1/4	20.0	ACRES
	SECTION 17		
NE 1/4	NE 1/4	22.0	ACRES
NW 1/4	NE 1/4	20.0	ACRES
SW 1/4	NE 1/4	25.0	ACRES
SE 1/4	NE 1/4	3.0	ACRES
NE 1/4	SE 1/4	30.0	ACRES
NW 1/4	SE 1/4	28.0	ACRES
SE 1/4	SE 1/4	5.0	ACRES
	SECTION 18		
NE 1/4	NE 1/4	17.0	ACRES
NW 1/4	NE 1/4	34.0	ACRES
SW 1/4	NE 1/4	6.0	ACRES
SE 1/4	NE 1/4	28.0	ACRES
NE 1/4	NW 1/4	10.0	ACRES
	SECTION 20		
SW 1/4	NW 1/4	10.0	ACRES
SE 1/4	NW 1/4	3.0	ACRES
NE 1/4	SW 1/4	36.0	ACRES
NW 1/4	SW 1/4	20.0	ACRES
SE 1/4	SW 1/4	12.0	ACRES
NE 1/4	SE 1/4	27.9	ACRES
NW 1/4	SE 1/4	35.0	ACRES
SW 1/4	SE 1/4	25.0	ACRES
SE 1/4	SE 1/4	30.0	ACRES
	SECTION 21		

NW 1/4	SW 1/4	5.6	ACRES
SW 1/4	SW 1/4	35.0	ACRES
	SECTION 22		
NE 1/4	SW 1/4	1.1	ACRES
SE 1/4	SW 1/4	0.5	ACRE
NW 1/4	SE 1/4	5.0	ACRES
SW 1/4	SE 1/4	3.4	ACRES
	SECTION 23		
SW 1/4	SW 1/4	34.6	ACRES
SE 1/4	SW 1/4	27.8	ACRES
NE 1/4	SE 1/4	28.4	ACRES
SW 1/4	SE 1/4	31.4	ACRES
SE 1/4	SE 1/4	40.0	ACRES
	SECTION 24		

TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.

NE 1/4	NW 1/4	40.0	ACRES
SE 1/4	NW 1/4	40.0	ACRES
NE 1/4	SW 1/4	35.0	ACRES
SE 1/4	SW 1/4	37.0	ACRES
NW 1/4	SE 1/4	2.0	ACRES
SW 1/4	SE 1/4	20.0	ACRES
	SECTION 8		
NW 1/4	NE 1/4	25.0	ACRES
SW 1/4	NE 1/4	15.0	ACRES
NE 1/4	NW 1/4	20.0	ACRES
SE 1/4	NW 1/4	20.0	ACRES
NE 1/4	SW 1/4	23.0	ACRES
NW 1/4	SE 1/4	8.0	ACRES
SW 1/4	SE 1/4	4.0	ACRES
	SECTION 17		
NE 1/4	NE 1/4	10.0	ACRES
SE 1/4	NE 1/4	30.0	ACRES
NW 1/4	NW 1/4	16.6	ACRES
NW 1/4	SW 1/4	35.0	ACRES
SW 1/4	SW 1/4	27.5	ACRES
SE 1/4	SW 1/4	3.0	ACRES
NE 1/4	SE 1/4	23.0	ACRES
NW 1/4	SE 1/4	8.0	ACRES
SW 1/4	SE 1/4	30.0	ACRES
	SECTION 19		
NW 1/4	NE 1/4	40.0	ACRES
SW 1/4	NE 1/4	40.0	ACRES
SE 1/4	NE 1/4	10.0	ACRES
NE 1/4	NW 1/4	6.0	ACRES
NE 1/4	SE 1/4	26.0	ACRES
NW 1/4	SE 1/4	35.0	ACRES
SW 1/4	SE 1/4	30.0	ACRES
SE 1/4	SE 1/4	35.0	ACRES
	SECTION 30		
NE 1/4	NE 1/4	40.0	ACRES
NW 1/4	NE 1/4	40.0	ACRES
SW 1/4	NE 1/4	40.0	ACRES
SE 1/4	NE 1/4	12.0	ACRES
NE 1/4	SE 1/4	7.0	ACRES
	SECTION 31		
NW 1/4	NW 1/4	12.5	ACRES
SW 1/4	NW 1/4	25.0	ACRES
NW 1/4	SW 1/4	37.0	ACRES
	SECTION 32		

TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

Actual construction work shall begin on or before , and shall be completed on or before October 1, 1992. Complete application of the water to the use shall be made on or before October 1, 1993.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

Issued this date, .

_____

Water Resources Department
William H. Young
Director

- This project was reviewed and approved by the Water Resources Commission on ——.

- The permittee shall comply with the terms of the stipulated agreement recorded in Volume —, pages — through —, ~~order~~ records of the W.R. Director.

- (5A) (fish screens)

Oregon

WATER
RESOURCES
DEPARTMENT

September 22, 1995

Sam Tucker
Monahan, Grove & Tucker
105 North Main
Milton-Freewater, OR 97862

Reference: File 69433 - Malheur Basin Water Users Association

Dear Mr. Tucker:

I am enclosing Warrant No. 0001863815 in the amount of $2361.40 refunding unearned permit recording fees submitted in support of Application 69433.

Please feel free to contact if you have any questions and I will be happy to address any concerns you may have.

Sincerely,

Steve Brown
Water Rights Program Analyst
Water Right/Adjudication Division

cc: Malheur River Basin Water Users Association

Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

Oregon

WATER
RESOURCES
DEPARTMENT

September 22, 1995

Malheur Basin Water Users Association
P.O. Box 237
Drewsey, OR 97904

Reference: File 69433

Dear Ladies and Gentlemen:

Please find enclosed Warrant No. 0001873811 in the amount of $8970.00 refunding unearned permit recording fees submitted in support of Application 69433.

Please feel free to contact if you have any questions and I will be happy to address any concerns you may have.

Sincerely,

Steve Brown
Water Rights Program Analyst
Water Right/Adjudication Division

enclosure

cc: Mr. Sam Tucker, Esquire

Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

WARRANT REQUEST PAGE 1 OF 1

69000 WATER RESOURCES

ORIGINAL

STATE WARRANT NO. INDICATES CLAIM ALLOWED BY DEPARTMENT OF ADMINISTRATIVE SERVICES

000509

AGENCY VOUCHER NO.

DATE 09-18-95

VENDOR NUMBER A69000

PAYEE AND ADDRESS

AGENCY VOUCHER NO. 000509

MALHEUR RIVER BASIN WATER
USERS ASSOCIATION

AUDITED BY

WATER RESOURCES
158 12TH ST NE
SALEM OR 97310-0210

ACTION CODE		
B	03-00-0	8,970.00
	TOTAL	$8,970.00

PAYMENT OF: INVOICE REFERENCE 053623 8,970.00

NET PAID $8,970.00

MESSAGE: REVENUE REFUND 69433 53623

ACCOUNT CODING: AGY 69000 BCH B74 INV TC 40 TD 950915 REF 053623

DESCRIPTION	PCD	PROJECT	FUND	BI	COST CENTER	ACCOUNT	AMOUNT
MALHEUER RIVER BASIN		062300	427	7	06 23 00 01	899900	8,970.00

Scott 9/22/95

75-098450 REV. 05-92

NOTICE TO VENDOR

REMITTANCE ADVICE

Enclosed is warrant in full payment of claim listed above. Please refer to Voucher Number indicated if you have any question regarding this payment.

FOR STATE AGENCY USE ONLY

This certifies that the materials, services, cash advanced, or expenses covered by this claim have been furnished, rendered or expended on behalf of the State of Oregon. The provision for payment is made by law and appropriation, the obligation or expenditure is authorized by law and the claim otherwise satisfies the requirements as provided by ORS 293.295. This claim has been approved for payment in the above amount.

By

By

WARRANT REQUEST PAGE 1 OF 1

69000 WATER RESOURCES

ORIGINAL

ACTION CODE

B	03-00-0	2,361.40

STATE WARRANT NO. INDICATES CLAIM ALLOWED BY DEPARTMENT OF ADMINISTRATIVE SERVICES

000428

AGENCY VOUCHER NO.

DATE 09-05-95

VENDOR NUMBER A69000

PAYEE AND ADDRESS

AGENCY VOUCHER NO. 000428

MONAHAN, GROVE AND TUCKER

AUDITED BY

WATER RESOURCES
158 12TH ST NE
SALEM OR 97310-0210

TOTAL $2,361.40

PAYMENT OF: INVOICE REFERENCE 075989 2,361.40

NET PAID $2,361.40

MESSAGE: REVENUE REFUND 69433 75989 & 76824

ACCOUNT CODING: AGY 69000 BCH B46 INV TC 40 TD 950905 REF 075989

DESCRIPTION	PCD	PROJECT	FUND	BI	COST CENTER	ACCOUNT	AMOUNT
MONAHAN, GROVE AND T		062300	427	7	06 23 00 01	899900	2,361.40

9/22/95

Z5-098450 REV. 05-92

NOTICE TO VENDOR

REMITTANCE ADVICE

Enclosed is warrant in full payment of claim listed above. Please refer to Voucher Number indicated if you have any question regarding this payment.

FOR STATE AGENCY USE ONLY

This certifies that the materials, services, cash advanced, or expenses covered by this claim have been furnished, rendered or expended on behalf of the State of Oregon. The provision for payment is made by law and appropriation, the obligation or expenditure is authorized by law and the claim otherwise satisfies the requirements as provided by ORS 293.295. This claim has been approved for payment in the above amount.

By

By

please rush thks SB 9/8/95

INTEROFFICE MEMO

TO: FISCAL SECTION DATE: 8/28/95

FROM: _____
Steve Brown, Water Rights Program Analyst

SUBJECT: REQUEST FOR TRANSFER OF FEES OR REFUND CHECK

TRANSFER

Please transfer $_____, Receipt _____
from file _____ to file _____ for:

_____ Examination fee
_____ Recording fee

REFUND

Please refund $ 2361 40 to Monahan, Grove and Tucker

file 69433, receipt's 75989 & 76824 * These funds are

refunded due to:

_____ Application rejected
_____ Application withdrawn
__X__ Excess fees collected for application/ PON
_____ Payments of PON
_____ Protest Filing fees
_____ Other

147.21 $4712 214.20

8970
1 2361 40
11,33 40

fees req'd. for ~~718.8~~ 721 ACRES

exam fee	200	
1st 10 ACRES	100	
709 x 2	1418	
	1718 22	
tendered	10,682 —	(receipt 53623) MBWUA
1	2147 20	(receipt 75989) Monahan...
	214 20	(receipt 76824) Monahan....
	13053 40	
—	2361 40	(refund to Monahan.....)
	10,692 —	
—	1718 22	(read for 69433)
	8970 —	balance to refund

* AND $8970 to Malheur Basin Water Users Association file 69433, receipt 53623.

SEP 11 1995 q 42-00

Oregon

WATER
RESOURCES
DEPARTMENT

July 11, 1995

Sam Tucker
Monahan, Grove & Tucker
105 North Main
Milton-Freewater, OR 97862

Reference: File 69433 - Malheur Basin Water Users Association

Dear Mr. Tucker:

On May 16, 1995, I mailed you a copy of a draft permit and asked you to clarify the locations of the points of diversions for the above referenced application for permit.

Please advise me of the status of my request. If I can be of any assistance in answering the questions or completing the application, feel free to contact me.

Sincerely,

Steve Brown
Water Rights Program Analyst
Water Right/Adjudication Division

cc: Mr. Bill Beal, Watermaster
1345

Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

RECEIVED
APR - 6 1995
WATER RESOURCES DEPT.
SALEM, OREGON

FAX: 503/938-6112
PHONE: 503/938-3377

April 3, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Steve Brown
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

RE: Malheur Basin Water Users Association
File 69433

Dear Mr. Brown:

I am returning the supplemental application 69433 which you mailed to me on January 10, 1995. I am also enclosing a list of the names and addresses of the owners of the property which wish to take advantage of the Final Order modifying their water right from a 1/80th cfs to a 1/40th cfs right. I'm also enclosing a sheet showing the legal description of the properties involved and a map.

As I understand the intent of the final order, some members of the MBWUA had a water right allowing them to only divert 1/80th cfs. The supplemental application included a request to change the diversion rate to 1/40th cfs. The Final Order approved the modification subject to certain restrictions. The people on the attached list wish their water right certificate to be modified and are willing to accept these conditions. There may have been other owners or other acreage initially involved in the request. There are a total of 846 acres shown on the map and included in the description. I understand that the owners and the acreages listed above are the only lands and owners which wish to proceed in modifying their certificates from 1/80th cfs to 1/40th cfs under the terms of the final order.

RECEIVED
APR - 6 1995
WATER RESOURCES DEPT.
SALEM, OREGON

Please contact me if your need further information.

Sincerely yours,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:do
Enclosures

c: Ken and Barbara Arnold
Wright Wilber
Conly Marshall
Rotha French
Harvey Hatt
Patrick O'Toole

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

FAX: 503/938-6112
PHONE: 503/938-3377

RECEIVED
JUL 17 1995
WATER RESOURCES DEPT.
SALEM, OREGON

July 13, 1995

STEVE BROWN
WATER RESOURCES DEPARTMENT
158 12TH ST NE
SALEM OR 97310 0210

RE: File 69433-Malheur Basin Water Users Association

Dear Mr. Brown:

My clients have reviewed your letter of May 16, 1995, and the draft permit. They have some modifications. Enclosed with this letter is a revised map and legal descriptions. Mr. Harvey Hatt has determined that he does not want to be a part of the permit. His acres are eliminated. Some acres of Conly Marshall have been revised downward to eliminate lands which do not presently have the 1/80th cfs restriction. Also, lands of Elfreda Sword and Jim Freeman have been added. I understand that these acres were included in the original permit. The total effect of these modifications is to reduce the number of acres by approximately 125.

Please review the proposed modifications and see if these corrections can take place in the draft permit. Otherwise, the permit is acceptable. Please review this matter and contact me.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker
ST:cl
Enclosure
c: Ken Arnold
P O Box 237
Drewsey, OR 97904

Conly Marshall
Drewsey, OR 97904

Rotha French
P O Box 267
Drewsey, OR 97904

Patrick O'Toole
O'Toole Cattle Co
Drewsey, OR 97904

Harvey Hatt
P O Box 153
Drewsey, OR 97904

George Wilbur
278 West F
Burns, OR 97720

Elfreda Sword
P.O. Box 207
Drewsey, OR 97904

James Freeman
C/O William Freeman
P.O. Box 286
Drewsey, OR 97904

follows:

PAT O'TOOLE

NE 1/4 SE 1/4 7.9 ACRES
NW 1/4 SE 1/4 3.0 ACRES
SECTION 21
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

ROTHA FRENCH

SW 1/4 SW 1/4 34.6 ACRES
SE 1/4 SW 1/4 27.8 ACRES
SW 1/4 SE 1/4 31.4 ACRES
SE 1/4 SE 1/4 40.0 ACRES
SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

RECEIVED
JUL 17 1995
WATER RESOURCES DEPT.
SALEM, OREGON

KEN ARNOLD

NE 1/4 SE 1/4 28.4 ACRES
SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

DRAFT

NW 1/4 SW 1/4 35.0 ACRES
SW 1/4 SW 1/4 27.5 ACRES
SECTION 19
NW 1/4 NW 1/4 16.6 ACRES
SECTION 30
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

CONLEY MARSHAL

SE 1/4 NE 1/4 6.1 ACRES
NW 1/4 SW 1/4 4.6 ACRES
SE 1/4 SW 1/4 1.7 ACRES
NE 1/4 SE 1/4 25.1 ACRES
NW 1/4 SE 1/4 20.3 ACRES
SW 1/4 SE 1/4 22.5 ACRES
SE 1/4 SE 1/4 1.4 ACRES
SECTION 22

NE 1/4 SW 1/4 ~~17.8 ACRES~~ 1.8 ACRES
NW 1/4 SW 1/4 ~~19.0 ACRES~~ 9.0 ACRES
SE 1/4 SW 1/4 23.2 ACRES
NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 6.0 ACRES
SW 1/4 SE 1/4 ~~38.3 ACRES~~ 32.3 ACRES
SE 1/4 SE 1/4 ~~34.0 ACRES~~ 2. ACRES
SECTION 23

REVISE

NE 1/4 NE 1/4 40.0 ACRES
NW 1/4 NE 1/4 34.6 ACRES
NE 1/4 NW 1/4 6.6 ACRES
SECTION 26
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

[redacted]

[redacted]

DELETE

WRIGHT WILBER

SE 1/4 NE 1/4 19.0 ACRES
SW 1/4 NE 1/4 14.8 ACRES
NE 1/4 SE 1/4 14.4 ACRES
SE 1/4 SE 1/4 0.5 ACRE
SECTION 25
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

SW 1/4 NW 1/4 26.0 ACRES
SE 1/4 NW 1/4 1.2 ACRES
NE 1/4 SW 1/4 28.8 ACRES
NW 1/4 SW 1/4 40.0 ACRES
SW 1/4 SW 1/4 32.0 ACRES
SE 1/4 SW 1/4 29.6 ACRES
SECTION 30

NE 1/4 NW 1/4 8.0 ACRES
NW 1/4 NW 1/4 1.3 ACRES
SECTION 31
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Elfreda Sword

NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 1.6 ACRES
SE 1/4 SE 1/4 .4 ACRES
SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

ADD

Jim Freeman

NE 1/4 SW 1/4 1.1 ACRES
SE 1/4 SW 1/4 .5 ACRES
NW 1/4 SE 1/4 5.0 ACRES
SW 1/4 SE 1/4 3.4 ACRES
SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

PAT O'TOOLE

NE 1/4 SE 1/4 7.9 ACRES
NW 1/4 SE 1/4 3.0 ACRES
SECTION 21
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

Approved

Copies

ROTHA FRENCH

SW 1/4 SW 1/4 34.6 ACRES
SE 1/4 SW 1/4 27.8 ACRES
SW 1/4 SE 1/4 31.4 ACRES
SE 1/4 SE 1/4 40.0 ACRES
SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

RECEIVED
JUL 17 1995
WATER RESOURCES DEPT.
SALEM, OREGON

KEN ARNOLD

NE 1/4 SE 1/4 28.4 ACRES
SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

DRAFT

NW 1/4 SW 1/4 35.0 ACRES
SW 1/4 SW 1/4 27.5 ACRES
SECTION 19
NW 1/4 NW 1/4 16.6 ACRES
SECTION 30
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

CONLEY MARSHAL

S 69433
51626

SE 1/4 NE 1/4 6.1 ACRES
NW 1/4 SW 1/4 4.6 ACRES
SE 1/4 SW 1/4 1.7 ACRES
NE 1/4 SE 1/4 25.1 ACRES
NW 1/4 SE 1/4 20.3 ACRES
SW 1/4 SE 1/4 22.5 ACRES
SE 1/4 SE 1/4 1.4 ACRES
SECTION 22

NE 1/4 SW 1/4 ~~17.8 ACRES~~ 1.8 ACRES
NW 1/4 SW 1/4 ~~19.0 ACRES~~ 9.0 ACRES
SE 1/4 SW 1/4 23.2 ACRES
NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 6.0 ACRES
SW 1/4 SE 1/4 ~~38.3 ACRES~~ 32.3 ACRES
SE 1/4 SE 1/4 ~~34.0 ACRES~~ 2.0 ACRES
SECTION 23

REVISE

NE 1/4 NE 1/4 40.0 ACRES
NW 1/4 NE 1/4 34.6 ACRES
NE 1/4 NW 1/4 6.6 ACRES
SECTION 26
TOWNSHIP 20 SOUTH, RANGE ~~36~~ 35 EAST, WM

[redacted]

DELETE

WRIGHT WILBER

SE 1/4 NE 1/4 19.0 ACRES
SW 1/4 NE 1/4 14.8 ACRES
NE 1/4 SE 1/4 14.4 ACRES
SE 1/4 SE 1/4 0.5 ACRE
SECTION 25
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

SW 1/4 NW 1/4 26.0 ACRES
SE 1/4 NW 1/4 1.2 ACRES
NE 1/4 SW 1/4 28.8 ACRES
NW 1/4 SW 1/4 40.0 ACRES
SW 1/4 SW 1/4 32.0 ACRES
SE 1/4 SW 1/4 29.6 ACRES
SECTION 30

NE 1/4 NW 1/4 8.0 ACRES
NW 1/4 NW 1/4 1.3 ACRES
SECTION 31
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Elfreda Sword

NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 1.6 ACRES
SE 1/4 SE 1/4 .4 ACRES
SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

ADD

Jim Freeman

NE 1/4 SW 1/4 1.1 ACRES
SE 1/4 SW 1/4 .5 ACRES
NW 1/4 SE 1/4 5.0 ACRES
SW 1/4 SE 1/4 3.4 ACRES
SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Oregon

WATER
RESOURCES
DEPARTMENT

May 16, 1995

Sam Tucker
Monahan, Grove & Tucker
105 North Main
Milton-Freewater, OR 97862

Reference: File 69433 - Malheur Basin Water Users Association

Dear Mr. Tucker:

The above referenced application was returned to this office on April 10, 1995. The application has retained it's tentative date of priority.

Enclosing is a draft permit for your review. The draft was prepared from the list of acres to be served and the map submitted in support of the application. The total number of acres of land listed in the draft is 845.8 acres. Please confirm the draft properly describes the location of the lands to be served under the permit.

An additional question remains in regards to the location of the point(s) of diversion of water from the Middle Fork Malheur River. The original application described twenty one points. The draft permit describes three points of diversion. Since conditions associated with the diversion points were incorporated in the Final Order of the Contested Case, it is important to illustrate and describe the location of the points of diversion. Please confirm if the diversions described in the draft are correct or if any change in the location of the diversion points is required. The map must also illustrate the points of diversion.

Upon receipt of your concurrence with the draft and clarification of the location of the points of diversions, staff will recommend to the Director to issue a permit in approval of the application.

I appreciate your patience and efforts in completing the application. Please feel free to contact me if you have any questions and I will be happy to address any concerns you may have.

Sincerely,

Steve Brown
Water Rights Program Analyst
Water Right/Adjudication Division

cc: Mr. Bill Beal, Watermaster
1333

Commerce Building
158 12th Street NE
Salem, OR 97310-0210
(503) 378-3739
FAX (503) 378-8130

STATE OF OREGON

COUNTY OF HARNEY

DRAFT

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR BASIN WATER USERS ASSOCIATION
P.O. Box 237
DREWSEY, OREGON 97904 503-493-2311

to use the waters of the Middle Fork Malheur River tributary to the Snake River, for irrigation of 845.8 acres.

This permit is issued approving Application 69433. The date of priority is July 1, 1991. The use is limited to not more than 10.57 cubic feet per second, or its equivalent in case of rotation, measured at the point of diversion from the source.

The points of diversion are located as follows:

NE 1/4 SW 1/4, Section 11, Township 20 South, Range 34 East, WM; NE 1/4 SW 1/4, Section 23, and SW 1/4 NE 1/4, Section 25, Township 20 South, Range 35 East, WM.

The amount of water used for irrigation under this right is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 1.5 acre-feet for each acre. The use of water for irrigation under this permit is limited to the period of April and May of each year.

Operating measuring devices capable of measuring the rate of appropriation and measuring and recording total volume of water appropriated during the irrigation season shall be installed at all diversion points identified under this permit. Installation shall be completed under the supervision of the watermaster on a schedule to be established by the watermaster. Measuring devices shall meet the requirements of the Water Resources Department (Department). The Department shall consult with Oregon Department of Fish and Wildlife in establishing requirements for the measuring devices.

All diversions shall be in compliance with applicable laws requiring fish screening prior to any diversion under this permit.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

PAT O'TOOLE

NE 1/4 SE 1/4	7.9 ACRES
NW 1/4 SE 1/4	3.0 ACRES

SECTION 21
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

ROTHA FRENCH

SW 1/4 SW 1/4	34.6 ACRES
SE 1/4 SW 1/4	27.8 ACRES
SW 1/4 SE 1/4	31.4 ACRES
SE 1/4 SE 1/4	40.0 ACRES

SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

DRAFT

KEN ARNOLD

NE 1/4 SE 1/4 28.4 ACRES
SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

NW 1/4 SW 1/4 35.0 ACRES
SW 1/4 SW 1/4 27.5 ACRES
SECTION 19
NW 1/4 NW 1/4 16.6 ACRES
SECTION 30
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

CONLEY MARSHAL

SE 1/4 NE 1/4 6.1 ACRES
NW 1/4 SW 1/4 4.6 ACRES
SE 1/4 SW 1/4 1.7 ACRES
NE 1/4 SE 1/4 25.1 ACRES
NW 1/4 SE 1/4 20.3 ACRES
SW 1/4 SE 1/4 22.5 ACRES
SE 1/4 SE 1/4 1.4 ACRES
SECTION 22

NE 1/4 SW 1/4 17.8 ACRES
NW 1/4 SW 1/4 19.0 ACRES
SE 1/4 SW 1/4 23.2 ACRES
NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 6.0 ACRES
SW 1/4 SE 1/4 38.3 ACRES
SE 1/4 SE 1/4 34.0 ACRES
SECTION 23

NE 1/4 NE 1/4 40.0 ACRES
NW 1/4 NE 1/4 34.6 ACRES
NE 1/4 NW 1/4 6.6 ACRES
SECTION 26
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

HARVEY HATT

NW 1/4 NE 1/4 37.7 ACRES
NE 1/4 NW 1/4 22.0 ACRES
NW 1/4 NW 1/4 15.3 ACRES
SECTION 25
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

WRIGHT WILBER

SE 1/4 NE 1/4 19.0 ACRES
SW 1/4 NE 1/4 14.8 ACRES
NE 1/4 SE 1/4 14.4 ACRES
SE 1/4 SE 1/4 0.5 ACRE
SECTION 25
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

SW 1/4 NW 1/4 26.0 ACRES
SE 1/4 NW 1/4 1.2 ACRES
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NW 1/4 SW 1/4 40.0 ACRES
SW 1/4 SW 1/4 32.0 ACRES
SE 1/4 SW 1/4 29.6 ACRES
SECTION 30

NE 1/4 NW 1/4 8.0 ACRES
NW 1/4 NW 1/4 1.3 ACRES
SECTION 31
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Actual construction work shall begin on or before May __, 1996, and shall be completed on or before October 1, 1997. Complete application of the water to the use shall be made on or before October 1, 1998.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

This permit is issued pursuant to the Final Order in the matter of protested Application 69433 in the name of Malheur Basin Water Users Association and Instream Water Right Applications 70325 and 70349 through 70352 in the name of the Oregon Department of Fish and Wildlife for use of water from the Middle Fork Malheur River and tributaries, Malheur County, Oregon, recorded in Volume 47, Pages 97 through 120, Special Order Records of the Water Resources Director.

Issued this date May __, 1995.

DRAFT

Water Resources Department
Martha O. Pagel
Director

GATED LANDS

RECLAMATION CO.

COUNTY, OREGON

ERMIT NO. E-144 App 2384

OF THE STATE ENGINEER

NOVEMBER, 1934

CALE:- 4 IN.=1 MILE

LEGEND

IRRIGATED LAND

DITCH

FENCE

MALHEUR BASIN WATER USERS ASSOCIATION

Application No. 69433

22 23 24 19 26 25 30 31

SAGE COVERED HILLS

SAGE COVERED HILLS

FRENCH

DREWSEY

SCHOOL

MIDDLE FORK MALHEUR RIVER

Pump

Pipe

SAGE COVERED HILL

LOT 3

LOT 4

LOT 1

LOT 2

LOT 4

LOT 1

CREEK

T. 20 S., R. 35 E.

T. 20 S., R. 36 E.

RECEIVED

APR -6 1995

WATER RESOURCES DEPT.

SALEM, OREGON

MALHEUR BASIN WATER USERS ASSOCIATION

Application No. 69433

RECEIVED
APR - 6 1995
WATER RESOURCES DEPT.
SALEM, OREGON

NAME	TSP	RNG	SEC.	1/4	ACRES	DIV PT	D-ACRES	D-TOTAL	CERTIFICATE	1/20	1/40	1/60	1/80	TAILOT
PAT O'TOOLE	20-S	35-E	21	[redacted]		16	[redacted]		6891	X				3300
				NE,SE	7.90	16	7.90		11219				X	3300
				[redacted]		16	[redacted]		6891	X				3300
				NW,SE	3.00	16	3.00		11219				X	3300
				[redacted]		16	[redacted]		6891	X				3300
				[redacted]		16	[redacted]							3300
	20-S	35-E	22	[redacted]		16	[redacted]		6897	X				3300
				[redacted]		16	[redacted]		11219				X	3300
				[redacted]		16	[redacted]	[redacted]	6891	X				3300
ROTHA FRENCH	20-S	35-E	24	SW,SW	34.60	16-17	34.60		11219				X	3500
				SE,SW	27.80	16-17	27.80							3500
				SW,SE	31.40	16-17	31.40							3500
				SE,SE	40.00	16-17	40.00	133.8						3500
KEN ARNOLD	20-S	36-E	19	NE,SE	28.4	16-17	28.40		11219				X	3600
				NW,SW	35.0	16-17	35.00							2000
				SW,SW	27.5	16-17	27.50							2000
				NW,NW	16.6	16-17	16.60	107.5	241.3 COMBINED					2000
CONLEY MARSHAL	25-S	35-E	22	[redacted]		20 additional acreage			46044		X			300
	25-S	35-E	23	[redacted]		20								300
				[redacted]		20								300
				[redacted]		20								300
				[redacted]		20								300
	25-S	35-E	22	SE,NE	6.10	16	6.10		11219				X	300
				ne,se	4.60	16	4.60 added beals office							
				SE,SW	1.70	16	1.70							300
				NE,SE	25.10	16	25.10							300
				NW,SE	20.30	16	20.30							300
				SW,SE	22.50	16	22.50							300
				SE,SE	1.40	16	1.40							300
	25-S	35-E	26	NE,NE	40.00	16	40.00							300
				NW,NE	34.60	16	34.60							300
				ne,nw	6.60	16	6.60 added beals office							
	25-S	35-E	23	NE,SW	1.80	16	1.80							300
				NW,SW	9.00	16	9.00							300
				SE,SW	23.20	16	23.20							300
				NE,SE	2.00	16	2.00							300
				NW,SE	6.00	16	6.00							300
				SW,SE	32.30	16	32.30							300
				SE,SE	2.00	16	2.00							300
				NE,SW	16.00	16	16.00		6891				X	300
				NW,SW	10.00	16	10.00							300
				SW,SE	6.00	16	6.00							300
				SE,SE	32.00	16	32.00	303.2						300
HARVEY HATT	20-S	35-E	25	NW,NE	37.70	16	37.70		49682				X	3800
				NE,NW	22.00	16	22.00							3800
				NW,NW	15.30	16	15.30	75						3800
WRIGHT WILBER	20-S	35-E	25	[redacted]		16	[redacted]		50450	??				3700
				[redacted]		16	[redacted]	changed beals office						
				[redacted]		21			52032	X				3700
				SE,NE	19.00	16	19.00		49682	X				3700
				SW,NE	14.80	16	14.80							3700
				NE,SE	14.40	16	14.40							3700
				SE,SE	0.50	16	0.50							3700
				[redacted]		16	[redacted]		60643		X			3700
				[redacted]		16	[redacted]							3700
	20-S	35-E	36	[redacted]		21			52032	X			X	3700
	20-S	36-E	30	[redacted]		16	[redacted]		60643		X			2300
				[redacted]		16	[redacted]							2300
				[redacted]		16	[redacted]							2300
				[redacted]		16	[redacted]							2300
	20-S	36-E	31	[redacted]		16	[redacted]							2300
				[redacted]		16	[redacted]							2300
	20-S	36-E	30	SW,NW	26.00	16	26.00		49682				X	2300
	20-S	36-E	30	SE,NW	1.20	16	1.20							2300
	20-S	36-E	30	NE,SW	28.80	16	28.80							2300
	20-S	36-E	30	NW,SW	40.00	16	40.00							2300
	20-S	36-E	30	SW,SW	32.00	16	32.00							2300
	20-S	36-E	30	SE,SW	29.60	16	29.60							2300
	20-S	36-E	31	ne,nw	8.00	16	8.00 changed beals office							

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

FAX: 503/938-6112
PHONE: 503/938-3377

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SALEM, OREGON

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April 7, 1995

VIA EXPRESS MAIL

STEVEN BROWN
WATER RESOURCES DEPARTMENT
158 12TH ST NE
SALEM OR 97310 0210

RE: Malheur Basin Water Users Association
File 69433

Dear Mr. Brown:

Per your telephone call this afternoon, I am enclosing the original Application No. 69433/Supplemental.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:cl
Enclosure

MBWUA - Supplemental Application

Helen Obie	T 19 S R 33 1/2	Tax Lot 1900
Conly Marshall	T 20 S R 35	300
Harvey Hatt	T 20 S R 35	3800
Wright Wilber	T 20 S R 35	3700
	T 20 S R 36	2300
Patrick Wilber	T 20 S R 36	2400
	T 21 S R 36	400

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		1/80th cfs	1/40th cfs	1/20th cfs
Diversion Point	#7 = 241.0 Acres	= 3.0 cfs	6.0cfs	12.0cfs
Diversion Point	#8 = 75.0 Acres	= .9 cfs	1.8cfs	3.6cfs
Diversion Point	#18 =117.0 Acres	= 1.5 cfs	3.0cfs	6.0cfs
Diversion Point	#19 = 36.0 Acres	= .5 cfs	1.0cfs	2.0cfs
Diversion Point	#20 = 30.3 Acres	= .4 cfs	.8cfs	1.6cfs
Diversion Point	#21 =206.6 Acres	= 2.6 cfs	5.2cfs	10.4cfs
Diversion Point	#16 =502.7 Acres	= 6.3 cfs	12.6cfs	25.2cfs
Total	1208.6 Acres	=15.2 cfs	30.4cfs	60.8cfs

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OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

Helen Opie

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-2

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOT
216	42 1900		19 S.	33½ E.W.M.	2-20

ACCOUNT NUMBER

LOT NO. ____ BLOCK No. ____ ADDITION ____ CITY ____

Indent Each New Course to This Line

LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
See new legal description					
$SE\frac{1}{4}SE\frac{1}{4}$:	Sec. 23				40.
$SW\frac{1}{4}NW\frac{1}{4}$: $N\frac{1}{2}SW\frac{1}{4}$: $SE\frac{1}{4}SW\frac{1}{4}$: $SW\frac{1}{4}SW\frac{1}{4}$:	Sec. 24				200.
$E\frac{1}{2}NE\frac{1}{4}$: $NW\frac{1}{4}$: $N\frac{1}{2}SW\frac{1}{4}$: 2.04 R/W in NE SW: 7.3 R/W in SE NW; (83-590)					514.04
$SW\frac{1}{4}NE\frac{1}{4}$: $SE\frac{1}{4}$: 3.82 R/W in SW NE: (83-590)	Sec. 25				~~520.~~
$NE\frac{1}{4}NE\frac{1}{4}$:	Sec. 26				40.
$S\frac{1}{2}NE\frac{1}{4}$: $SE\frac{1}{4}NW\frac{1}{4}$: $NE\frac{1}{4}SW\frac{1}{4}$: $SE\frac{1}{4}$:	Sec. 32				320.
$N\frac{1}{2}NE\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$: 2.90 R/W in W NE: (83-590)	Sec. 36				117.10 ~~120.~~
				for map	~~911.87~~
Josef A.&Kathryn A. Lillard		2/11/41	39	276	
		8/25/53	57	170	1240.
Und.1/3Int. Josef A. Lillard Jr		2/16/62	71	30	
Less R/w's		2/1/68	83	590	-8.86
					1231.14
Josef A & Georgia Lillard		6/13/68	84	410	
			85	572	
New legal description					
$SE\frac{1}{4}SE\frac{1}{4}$:	Sec. 23				
$SW\frac{1}{4}NW\frac{1}{4}$: $SW\frac{1}{4}$	Sec. 24			per map	911.87
$E\frac{1}{2}NE\frac{1}{4}$: $NW\frac{1}{4}$: $N\frac{1}{2}SW\frac{1}{4}$:		remainder in 2400			
$SW\frac{1}{4}NE\frac{1}{4}$: $SE\frac{1}{4}$:	Sec. 25				
$NE\frac{1}{4}NE\frac{1}{4}$:	Sec. 26				
$N\frac{1}{2}NE\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$:	Sec. 36				

Copy #1

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13-1

Conley Marshall

MAP NO. M245	TAX LOT NO. 3-1 300	SECTION	TOWNSHIP 20 S.	RANGE 35 E.W.M.	AERIAL PHOT
ACCOUNT NUMBER					

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line — LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
Lot 4: $SW\frac{1}{4}NW\frac{1}{4}:W\frac{1}{2}SW\frac{1}{4}$:	Sec. 3 ✓				159.30
Lot 1:$S\frac{1}{2}NE\frac{1}{4}:NE\frac{1}{4}SW\frac{1}{4}:SE\frac{1}{4}$:	Sec. 4 ✓				319.16
$E\frac{1}{2}$:	Sec. 9 ✓				320.
$SW\frac{1}{4}NE\frac{1}{4}:W\frac{1}{2}SE\frac{1}{4}:W\frac{1}{2}$: Less SW'SE; USA	Sec. 10 ✓				~~440.~~ 400.
$NW\frac{1}{4}NE\frac{1}{4}:S\frac{1}{2}SE\frac{1}{4}:W\frac{1}{2}$:	Sec. 15				440.
$E\frac{1}{2}NE\frac{1}{4}:NE\frac{1}{4}SE\frac{1}{4}$:	Sec. 16				120.
$NE\frac{1}{4}:N\frac{1}{2}NW\frac{1}{4}:SE\frac{1}{4}NW\frac{1}{4}:N\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$: $NE\frac{1}{4}SW\frac{1}{4}:E\frac{1}{2}SE\frac{1}{4}SW\frac{1}{4}:N\frac{1}{2}SE\frac{1}{4}:SW\frac{1}{4}SE\frac{1}{4}$: W½SE¼SW¼ from TL 25-2	Sec. 22				~~520.~~ 480.
All:(Sec. 23) Less the following desc. parcels, Beginning at a pt on the West line of the $NW\frac{1}{4}SE\frac{1}{4}$ of said sec. 23, said pt being 393.0 feet N of theSW corn of said $NW\frac{1}{4}SE\frac{1}{4}$: Thence; N88°15'W-142.0 feet; Thence; S 5°00'E-200.0 feet; Thence; S13°00'W-346.0 feet; Thence; S65°30'E on a 14° curve 227.0 feet to a pt on the West line of the $SW\frac{1}{4}SE\frac{1}{4}$ of sec. 23; said pt being 238.0 feet South of the NW corn of said $SW\frac{1}{4}SE\frac{1}{4}$: Thence; N72°30'E on a 14° curve 378.0 feet; Thence; S50°00'E-76.0 feet; Thence; S26°30'W-68.7 feet; Thence; S63°30'E-208.7 feet to the Westerly line of the County Road; Thence; N26°30'E along said westerly line, 447.7 feet to the southerly line of the Co.Rd; Thence; N66°00'W along said southerly line 850.0 feet, more or less, to the West line of the $NW\frac{1}{4}SE\frac{1}{4}$ of said sec. 23; Thence; South, along said west line, 17.0 feet more or less, to the pt of beg (Known as Free an Tr.)						

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Harvey Hatt

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOT
245	37 3500		20 S.	35 E.W.M.	H1 6-11

ACCOUNT NUMBER

LOT NO. | BLOCK No. | ADDITION | CITY

Indent Each New Course to This Line — LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
$NW\frac{1}{4}NE\frac{1}{4}$:$N\frac{1}{2}NW\frac{1}{4}$:$SE\frac{1}{4}NW\frac{1}{4}$:$SW\frac{1}{4}NW\frac{1}{4}$: Sec. 25	12/22/54	59	383	200.
			385	
$E\frac{1}{2}NW\frac{1}{4}$:$S\frac{1}{2}NE\frac{1}{4}$: (Less 4.05 Rd R/W) Sec. 26			387	~~136.~~ 126.95
(Less Deweese) (Less 5.00 Gravel Pits) 9.05				
	Easement	105	201	
Harvey Hatt	4/27/57	63	304	~~336.~~
Less TL 37-1				
Irreg. tr in Sec. 26	2/18/64	74	566	~~5.~~
~~Less 4.05 Rd R/W~~	~~3/9/64~~	~~75~~	~~16~~	~~331~~ ~~4.05~~
				326.95

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OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

Wright Wilber

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
245	3700		20 S.	35 E.W.M.	H1 6-11

ACCOUNT NUMBER

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line

LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
NE¼NE¼:S½NE¼: N½SW¼:SE¼: Sec. 25				360.
All: Less(HW r/w) 13.41 + 3.52	8/24/38	38	235	623.0
Sec. 36	9/19/38	37	160	~~626.59~~
Wright Wilber	11/25/53	57	414	~~986.59~~
Less R.W in Sec. 36	3/3/64	74	618	~~-3.52~~
				983.07
Easement	7/15/80	112	540	-1.40
				981.67

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CODE NO. 13 u-1

Wright Wilber

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOT
269	20-1 2300		20 S.	36 E.W.M.	A1 7-13

ACCOUNT NUMBER

LOT NO. | BLOCK No. | ADDITION | CITY

Indent Each New Course to This Line

LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
$S\frac{1}{2}NW\frac{1}{4}:SW\frac{1}{4}:$ Sec. 30				241.90
$W\frac{1}{2}$:Lying N of HW: Sec. 31				253.45
Wright Wilber	11/25/53	57	414	495.35
Less a parcel in $SE\frac{1}{4}NW\frac{1}{4}$: Sec. 31 TL 20-1-1	12/18/74	97	606	- 2.07
				493.28
3/4/83 Circuit Court Judgment Case #82-1-8127				- 8.02
				485.26
		per map		490.68

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OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

Patrick Wilber OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOT
269	21 -2400		20 S.	-36 E.W.M.	Hl 7-13
ACCOUNT NUMBER					

LOT NO.	BLOCK No.	ADDITION	CITY
			Hl 8-11;

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$SE\frac{1}{4}SE\frac{1}{4}$:				
	$S\frac{1}{2}SW\frac{1}{4}$: Lying S of Central-Ore.Hw:				
	Irreg.Tract in $SE\frac{1}{4}NE\frac{1}{4}SW\frac{1}{4}$:				
	Beg. at SE corn of $NE\frac{1}{4}SW\frac{1}{4}$, thence:				
	W 758 ft to intersection with S boundary of Hw r/w, thence:				
	NE along r/w 820 ft; S 303 ft, to pt of beg.	3/13/53	56	355	
	$W\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$: $SE\frac{1}{4}SW\frac{1}{4}SE\frac{1}{4}$:	4/16/54	58	276	
	Sec. 31				136.65
	$SW\frac{1}{4}SW\frac{1}{4}$: Sec. 32		56	355	39.31
	$SW\frac{1}{4}SE\frac{1}{4}$: Sec. 33		"	"	40.
	Maxine Teal Marshall				215.96
	Patrick Joseph Wilber	10/18/72	93	524	
Easement		10/23/81	115	597	-5.10
					210.86
					Per map 169.67
	remainder in 2600				

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Patrick Wilber — OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON — CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
270	2 400		21 S.	36 E.W.M.	

ACCOUNT NUMBER

LOT NO. ____ BLOCK No. ____ ADDITION ____ CITY ____

Indent Each New Course to This Line — LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
Lot 3:	Sec. 4				17.89
Lots 1-2-3-4: $N\frac{1}{2}S\frac{1}{2}$: $S\frac{1}{2}SW\frac{1}{4}$:	Sec. 5				315.4 ~~315.38~~
All:	Sec. 6				386.18
Lot 1: $E\frac{1}{2}NW\frac{1}{4}$: $NE\frac{1}{4}$: $N\frac{1}{2}SE\frac{1}{4}$:	Sec. 7				357.75
$W\frac{1}{2}$:	Sec. 8				320.
	Maxine Teal Marshall	3/13/53	56	355	1397.20
	Patrick Joseph Wilber	10/18/72	93	524	1397.2 =
Easement		10/23/81	115	597	-.28
					1,396.92
less: N½ SE¼	Sec. 6 To Judy Lynn Wilber 6-7-85 850779 TL 2-1				- 80. -
					1,316.9=
				per map	1,299.1%
		remainder in	2136	200	

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MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

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FAX: 503/938-6112
PHONE: 503/938-3377

April 3, 1995

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Steve Brown
Water Resources Department
158 12th Street NE
Salem, OR 97310-0210

RE: Malheur Basin Water Users Association
File 69433

Dear Mr. Brown:

I am returning the supplemental application 69433 which you mailed to me on January 10, 1995. I am also enclosing a list of the names and addresses of the owners of the property which wish to take advantage of the Final Order modifying their water right from a 1/80th cfs to a 1/40th cfs right. I'm also enclosing a sheet showing the legal description of the properties involved and a map.

As I understand the intent of the final order, some members of the MBWUA had a water right allowing them to only divert 1/80th cfs. The supplemental application included a request to change the diversion rate to 1/40th cfs. The Final Order approved the modification subject to certain restrictions. The people on the attached list wish their water right certificate to be modified and are willing to accept these conditions. There may have been other owners or other acreage initially involved in the request. There are a total of 846 acres shown on the map and included in the description. I understand that the owners and the acreages listed above are the only lands and owners which wish to proceed in modifying their certificates from 1/80th cfs to 1/40th cfs under the terms of the final order.

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SALEM, OREGON

Please contact me if your need further information.

Sincerely yours,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:do
Enclosures

c: Ken and Barbara Arnold
Wright Wilber
Conly Marshall
Rotha French
Harvey Hatt
Patrick O'Toole

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SALEM, OREGON

WATER RESOURCES DEPARTMENT

APPLICATION NO. 69433

Attachment to Supplemental Application

Names and Addresses of Landowners:

Ken & Barbara Arnold
P. O. Box 237
Drewsey, OR 97904

Wright Wilber
Drewsey Field Ranch
Juntura, OR 97911

Conly Marshall
P. O. Box 251
Drewsey, OR 97904

Rotha French
P. O. Box 267
Drewsey, OR 97904

Harvey Hatt
P. O. Box 153
Drewsey, OR 97904

Patrick O'Toole
P. O. Box 124
Drewsey, OR 97904

County Court *for* Harney County

P.O. BOX 699
BURNS, OREGON 97720

FACSIMILE TRANSMITTAL SHEET

TO: Steve Brown
Salem, Or

DATE: 2-25-94

TIME: 10:52

Telephone No: (503) 573-6356

FAX No: (503) 573-8387

FROM: BILL BEAL
Burns Or

Number of pages to follow this sheet: 1

COMMENT: IF This isn't what you want Let me know.
Cert 49682 Superceded 11219 Cert. E 144 Permit

INTEROFFICE MEMO

WATERMASTER DISTRICT # 10
WATER RESOURCES DEPARTMENT
Phone: (503) 573-2591

TO: Steve Brown DATE: February 25,1994

FROM: Bill Beal

SUBJECT: MBWU Association 1/80

Permit #E-144,Cert.#49682
Permit #S-5375,Cert.#12314 2.5 ac
Permit #S-4931,Cert.#3791 23.0 ac
Permit #S-8993,Cert.#8121 11.8 ac
Permit #E-144,Cert.#3526 89.0 ac
Permit Cert.#2134 51.5 ac
Permit Cert.#2151 68.0 ac

I need a copy of certificate #49682 if you would send me a copy I would appreciate it.

DRAFT DRAFT DRAFT DRAFT

October 20, 1993

Ronald S. Yockim
Cegavske, Johnston & Associates, P.C.
PO Box 218
Roseburg, Oregon 97407

Re: Instream water right applications 70349, 70350, 70351, & 70352

Dear Mr. Yockim,

Application 69433 was submitted by the Malheur Basin Water Users Association on October 23, 1987. This application was protested by WaterWatch of Oregon, Oregon Trout and the Oregon Department of Fish and Wildlife.

The referenced instream water right applications were filed on May 11, 1990. The applications were filed to protect streamflows in the Malheur River Basin. In our weekly public notice of water use applications filed, dated May 16, 1990, the Water Resources Department notified the Grant County Planning Director of the instream water right filings. This notice (front page enclosed) is specific in asking that comments address, among other things, local comprehensive land-use plans. It is also specific in stating that comments "must be received within 30 days of the date of this notice". No comments were received from your client within the period allowed.

Protests against the four referenced instream water right applications, and one other, were timely filed by the Malheur Water Users Association. The protests asserted that approval of the instream water rights would cause a change in existing ranching and irrigation practices and reduce the recharge of the water aquifer. The matter was announced for a contested case hearing by Notice of Hearing dated April 22, 1991. Opportunity and manner of petitioning for party status were set out in the Notice. The notice was published in the .....**(I'll find out from Weisha)**. No petition for party status was received from your client within the time allowed or any time prior to the hearing.

A contested case hearing on five instream and the one out-of-stream application was convened in Burns, Oregon, on September 17, 1991. The hearing continued through September 18, 1991, and the record was left open for a period of time to allow further investigation and written testimony by soil scientists.

Following a review of the entire record, a Proposed Order was issued and served on the parties on April 8, 1992. Exceptions to the Proposed Order were timely filed by the Association, ODFW, WaterWatch and Oxbow Ranch. A subcommittee of the Water Resources Commission was appointed to review the exceptions and the record to make recommendations to the full Commission regarding the exceptions and issuance of the Final Order. A final Order was signed by the Chair of the Water Resources Commission on January 27, 1993.

On October 16, 1991, we received your letter containing a Petition for Review and Memorandum of Points and Authorities, filed on behalf of Grant County. This letter pertained to 40 instream water right applications including the four being reviewed in the contested case.

At that point in time, parties had been named, issues had been identified, a hearing had been held on the issues, and the parties were gathering and submitting additional evidence on particular issues. The time for filing comments, protests and petitions for party status had long since expired.

Also, the Water Resources Department was receiving many comments on instream water right applications at the time. In October of 1991, the Department was in the midst of an effort to amend our administrative rules governing the processing of instream water right applications. Except for the five on which a contested case procedure had been initiated in 1990, we were taking no action on pending instream water right applications. Your letter dated October 14, 1991 was not answered until January of 1993. At that time we informed you of our intent to contact you when a natural flow analysis of the streams identified in your correspondence was complete.

Unfortunately, as far as the Commission was concerned, the fate of five instream water applications had already been decided. A final order approving the applications was issued on January 27, 1993. This order has been appealed to the Court of Appeals. No appeal was filed by your client pursuant to ORS 183.480. On motion of ODFW, the Commission lifted the automatic stay on the final Order as related to the issuance of the instream water rights, pursuant to ORS 536.075. While staff was preparing the instream water right certificates, we recognized that we had led you to believe there would be further opportunity for discussion on four of these instream water right applications, when in fact, because of the contested case process, specific parties to a proceeding had been named, issues identified and arguments were already heard. As noted above, Grant County was specifically invited to submit land

use information when the applications were filed. Notice of the contested case hearing was provided to parties which had expressed an interest. At this point I must correct our letter to you dated January 3, 1993. For the four instream water right applications referenced above, there will be no further deliberation.

Sincerely

Martha O. Pagel
Director

MOP/mm

cc: Grant County Court
Weisha Mize
Michael Mattick

[YOCKIM.4]

WATER RESOURCES DEPARTMENT

INTEROFFICE MEMO

October 15, 1993

To: Steve Browm

From: Michael Mattick MM

Subject: other stuff besides technical reiews

From this point on I will not work on anything else besides technical reviews without your consent.

the things I have been doing that are not technical review related are

1. this Malheur Baisn IWR certification thing
2. an IWR issue paper for MOP and Mcteague in preperation for MOP to be on an that cable TV show on the 21st.

I expect that both of these things will come back to me for further modification. I will go through you before I do any further work on them.

file

From: DBDEV::MIZE 22-SEP-1993 08:58
To: DBDEV::BROWN
CC:
Subj: RE: MALHEUR RIVER BASINS WATER USER ASSOCIATIONS FILE 69433

From: DBDEV::BROWN 22-SEP-1993 08:16:10.03
To: MIZE
CC: BROWN
Subj: MALHEUR RIVER BASINS WATER USER ASSOCIATIONS FILE 69433

Can you provide me with a status report in regards to the above referenced application for permit?

Thanks.

The Commission denied the application for alkali abatement. It approved the 5 instream rights. An appeal was filed by Roy Kilpatrick. The Commission lifted the automatic stay of the order which the appeal filing created, and said that the instream permits should be issued. The Department's (respondent in appeal) brief was due in to the court on September 14. I have not yet seen the brief and do not know if John Bagg obtained an extension of time in which to file the Department's brief.

The appellant, Lemley (owner of Oxbow Ranch), through Kilpatrick, is asserting the following: 1) The Commission lacks jurisdiction of the waters of nonnavigable streams to issue instream rights, due to the Desert Lands Act, under which Act Lemley's predecessors obtained the lands now called Oxbow Ranch. Lemley seems to be arguing that Desert Land Act created federal reserved water rights, which he got when he got the land.

2) There is no evidence from which the commission could find the quantity of water appropriate for the ISWR's it authorized. Kilpatrick argues here that Jill Zarnowitz, "when pressed," testified that there was no way that the Oregon method could be found to exist or to ever have existed. A pretty weird argument. 3) Lemley's last argument is that the procedures followed by the commission in preparation of the order denied them due process and violated the department's own rules. He's still focusing on the Water for Life suit about the validity of OTHER water rights, which the commission said wasn't relevant in this suit. He's also saying that the subcommittee of the commission couldn't meet to review the exceptions and make recommendations for the final order.
So, there's your status report.

Oregon

MEMORANDUM

TO: Water Resources Commission

FROM: Martha O. Pagel, Director

SUBJECT: Agenda Item M, April 30, 1993
Water Resources Commission Meeting

WATER
RESOURCES
DEPARTMENT

Consideration of Motion for Denial of Automatic Stay on Appeal of Final Order in the matter of MBWUA application 69433 and five instream applications by ODFW

I. Background

At its January 27, 1993 meeting, the Commission issued a Final Order denying the portion of the Malheur Basin Water Users Association's (MBWUA) application 69433 for alkali abatement, approving that portion of the MBWUA's application for an increase in rate of diversion, and approving five instream water right applications filed by ODFW for the Malheur River and Big and Lake Creeks.

On March 24, 1993, Roy Kilpatrick, attorney for Oxbow Ranch, an intervenor party in the contested case proceeding, filed a petition for judicial review of the Final Order.

Pursuant to ORS 536.075(5), filing of a petition for judicial review of a Final Order of the Commission or Director imposes an automatic stay on enforcement of the Final Order. **However,** ORS 536.075(5) further provides that if the Commission determines that substantial public harm will result if the order is stayed, the Commission may lift the stay. The lifting of the stay must be in writing and state specifically that substantial public harm will result if the stay is not lifted.

ODFW has now filed a motion (Attachment 1) requesting that the Commission lift the automatic stay on the determination that substantial public harm will result if the Final Order is stayed.

II. Evaluation

As grounds for the Commission lifting the stay, ODFW points to the finding in the Final Order that the flow levels requested in ODFW's applications represent the minimum flow requirements for fish life. ODFW further notes that the Final Order finds that given the reported low flows in the Malheur in the late summer, it is necessary to protect sufficient minimum flows to support the fish species present. In addition, the Opinion portion of the Final Order states that approval of the instream water right applications will do much to ensure the presence of flows at levels sufficient to meet the minimum requirements of the fish populations throughout their life cycles.

3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

ODFW last asserts that with the approaching summer, the instream rights approved by the Commission are crucial to the provision of flows sufficient to protect fish, and that it is unlikely the judicial review process will be complete prior to the time regulation of junior users in favor of the instream rights may be required.

While not noted by ODFW, Oxbow Ranch states in its petition for judicial review that it is appealing the Final Order which "allowed various applications of the ODFW for instream water rights to the waters of the Malheur River and its tributaries and denied the application of petitioner (Oxbow Ranch) for water rights on certain tributaries of the Malheur River." Oxbow Ranch's application, in fact, was not involved and was not considered in the contested case proceeding. The Final Order neither approved nor denied Oxbow's applications.

III. Recommendation

The Director and staff recommend that the Commission find that based on the findings and opinion language of the Final Order, substantial public harm would occur if the Final Order were stayed and issue an order lifting the stay. A draft order is attached as Attachment 2.

Attachments: 1) ODFW Request for Stay Denial
2) Draft Order Lifting Stay

Weisha Mize
April 14, 1993
378-8455

ATTACHMENT 1

THEODORE R. KULONGOSKI
ATTORNEY GENERAL

THOMAS A. BALMER
DEPUTY ATTORNEY GENERAL

RECEIVED
APR 7 1993
WATER RESOURCES DEPT
SALEM, OREGON

DEPARTMENT OF JUSTICE
PORTLAND OFFICE
1515 SW 5th Avenue
Suite 410
Portland, Oregon 97201
Telephone: (503) 229-5725
FAX: (503) 229-5120
TDD: (503) 378-5938

April 6, 1993

Weisha Mize
Hearings Officer
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Re: Malheur Basin Water Users Association

Dear Ms. Mize:

Enclosed for filing is the Petition of the Oregon Department of Fish and Wildlife to Deny a Stay of Enforcement of the Final Order.

Sincerely,

Penny H. Harrison

Penny H. Harrison
Assistant Attorney General

PHH:dld/PHH0026.LET
Enclosure
cc: Service List

BEFORE THE WATER RESOURCES COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF PROTESTED APPLICATION 69433 IN THE NAME OF MALHEUR BASIN WATER USERS ASSOCIATION AND INSTREAM WATER RIGHT APPLICATIONS 70325 AND 70349-70352 IN THE NAME OF OREGON DEPARTMENT OF FISH AND WILDLIFE FOR USE OF WATER FROM THE MALHEUR RIVER AND TRIBUTARIES, MALHEUR COUNTY, OREGON	PETITION OF THE OREGON DEPARTMENT OF FISH AND WILDLIFE TO DENY A STAY OF ENFORCEMENT OF THE FINAL ORDER

Pursuant to ORS 536.075(5), the Oregon Department of Fish and Wildlife (ODFW) petitions the Water Resources Commission to deny the stay of the final order in this case during the appeals process because substantial public harm will result if the order is stayed.

The final order in this case approved instream water right applications 70325 and 70349 through 70352 in the name of the Oregon Department of Fish and Wildlife, to be held in trust by the Oregon Water Resources Department. Fact number 32 states that

> The flow levels applied for by ODFW in the instant instream water right applications represent quantities necessary to provide the minimum flow requirements for migration, spawning and juvenile rearing and habitat for the several species identified in those applications.

Ultimate fact number 9 states that

> Given the reported low flows in the Malheur River in the late summer months, protection of sufficient minimum flows to support the several fish species present in the Malheur is necessary.

///

The opinion portion of the order states that

> 1. * * *, stretches of the Malheur River in the Drewsey Valley were virtually without water in the later summer months.
>
> 2. * * * cessation of these unpermitted diversions will result in substantial quantities of water being left instream.
>
> 3. * * *, approval of the instream water right applications will do much to ensure the presence of flows at levels sufficient to meet the minimum requirements of the fish populations throughout their life cycles.

Summer is coming and the instream water rights approved in the final order are crucial to the provision of flows sufficient to protect fish. It is unlikely that an appeal of this order will be resolved before regulation in favor of these instream water rights is necessary. Therefore, a stay of the approval of the instream water rights is extremely likely to result in flows insufficient to meet the minimum requirements of fish populations within the Malheur River. Such harm to the state's fishery resource would be substantial public harm.

DATED this 6th day of April, 1993.

Respectfully submitted,

Penny H. Harrison

PENNY H. HARRISON, OSB 88056
Assistant Attorney General

PHH:dld PHH0036.ple

CERTIFICATE OF SERVICE BY MAIL

I certify that on April 6, 1993, I served the foregoing PETITION OF THE OREGON DEPARTMENT OF FISH AND WILDLIFE TO DENY A STAY OF ENFORCEMENT OF THE FINAL ORDER upon the parties hereto by mailing, regular mail, postage prepaid, a true, exact and full copy thereof to:

Martha Pagel, Director
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Oregon Trout
P.O. Box 19540
Portland, OR 97219

Jill Zarnowitz
Stephanie Burchfield
Department of Fish and Wildlife
2501 SW First Avenue
Portland, OR 97201

Sam Tucker
Attorney for MBWUA
105 North Main
Milton-Freewater, OR 97862

Roy Kilpatrick
Attorney at Law
P.O. Box A
Mt. Vernon, OR 97865

Bill Kloos
Johnson & Kloos
767 Willamette Street, Suite 203
Eugene, OR 97401

Karen A. Russell
WaterWatch of Oregon
921 SW Morrison, Suite 438
Portland, OR 97205

Wright Wilbur
Drewsey Field Ranch
Jantura, OR 97911

Penny H. Harrison

PENNY H. HARRISON OSB No. 88056
Assistant Attorney General

dld PHH0024.ple

DEPARTMENT OF JUSTICE
1515 SW 5TH AVENUE, SUITE 410
PORTLAND, OREGON 97201
PHONE (503) 229-5725

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF PROTESTED APPLICATION 69433 IN THE NAME OF MALHEUR BASIN WATER USERS ASSOCIATION AND INSTREAM WATER RIGHT APPLICATIONS 70325 AND 70349-70352 IN THE NAME OF OREGON DEPARTMENT OF FISH AND WILDLIFE FOR USE OF WATER FROM THE MALHEUR RIVER AND TRIBUTARIES, MALHEUR COUNTY, OREGON	ORDER LIFTING STAY OF FINAL ORDER ON FILING OF PETITION FOR JUDICIAL REVIEW

A Final Order in the above-captioned matter was issued by the Water Resources Commission on January 27, 1993. The Final Order is incorporated herein by reference.

A petition for judicial review was filed by intervenor party Oxbow Ranch on March 24, 1993, in which it is claimed that the Final Order in this matter denied water right applications in the name of Oxbow Ranch.

A petition for lifting of automatic stay was filed by party applicant Oregon Department of Fish and Wildlife on April 6, 1993.

Pursuant to ORS 536.075(5), filing of a petition for judicial review of a Final Order of the Commission or Director imposes an automatic stay on enforcement of the Final Order unless the Commission determines that substantial public harm will result if the order is stayed.

The instream water right applications approved by the Commission in the Final Order in this matter are necessary to insure adequate minimum flows for the several species of fish life in the Malheur River and Big and Lake Creeks. The flow levels requested in ODFW's applications approved by the Commission represent the minimum flow requirements for fish life. The Commission has previously determined that approval of the instream water right applications would do much to ensure the presence of flows at levels sufficient to meet the minimum requirements of the fish populations throughout their life cycles. The Commission determined that approval of the instream right applications was in the public interest.

With the approaching summer, the instream rights approved by the Commission are crucial to the provision of flows sufficient to protect fish. It is unlikely the judicial review process under Oxbow Ranch's petition for judicial review will be complete prior to the time regulation in favor of the instream rights is necessary.

The Commission determines that substantial public harm will result if the automatic stay of this Final Order is not lifted.

The Commission further determines that contrary to the assertion in paragraph 1 of the petition for judicial review, Oxbow Ranch's

application was not involved and was not considered in the above-captioned contested case proceeding. The Final Order neither approved nor denied the application. There would be no irreparable injury to Oxbow Ranch as a result of lifting the automatic stay.

NOW, THEREFORE, pursuant to the provisions of ORS 536.075(5), it is ORDERED that the automatic stay of the Final Order in this matter resulting from the filing of a petition for judicial review is LIFTED.

DATED this of April, 1993.

LORNA STICKEL, Chair
Water Resources Commission

MALHEUR BASIN WATER USERS ASSOCIATION
Flow Permitted From Malheur Certificates

OWNER	CERTIFICATE #	1/20	1/40	1/60	1/80	Year
V-Dash	3526				X	
	2134				X	
	7001	X				
	3791				X	
	6857	X				
	6932	X				
	7050	X				
	27613(6947)	X				1883
	6896	X				
	47708	X				1905
Hoyt & Sons	6960	X				1891
	26409		X			
Don Dryer	6960	X				1884
	6989	X				1887
Glen Ellingson	26679	X				1905
	6989	X				
John Sword	32380	X				
	26678	X				
	26569		X			
Norm Clark	6946	X				1904
	26409		X			
	2151				X	
	6979	X				
	26569		X			
Harvey Cronin	6897	X				
	6930	X				
	8121				X	
Jim Sitz	7012	X				
	6971	X				
Walt Sitz	7012	X				
James Sitz	7012	X				
Chas Miler	6989	X				
Floyd Dunten	6972	X				
Turen Dunten	6930	X				
Byron Dunten	6903	X				
	7012	X				

Lloyd Jordon	6903	X		
Tom Howard	6930	X		
	6998	X		
	6930	X		
Pat O'Toole	6891	X		
	49682(11219)			X
	6897	X		
Jim Freeman	49682(11219)			X
Rotha French	49682(11219)			X
Ken Arnold	49682(11219)			X
Helen Opie	34143		X	
	7042	X		
Conley Marshall	46044		X	
	49682(11219)			X
	6891	X		
Harvey Hatt	49862(11219)			X
Wright Wilber	14673			
	52032	X		
	46178			
	60643			
	49682(11219)			X
	50450	X		
Pat Wilber	52032	X		

1/80th cfs = 3 acre feet in 120 days
1/40th cfs = 3 acre feet in 60 days
1/20th cfs = 3 acre feet in 30 days

WaterWatch
OF OREGON

April 23, 1993

Via Fax and Regular Mail

Weisha Mize
Hearings Officer
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Re: Malheur Basin Water Users Association

Dear Ms. Mize:

Enclosed please find WaterWatch and Oregon Trout's Response in Support of ODFW's Petition to Deny Stay of the Final Order for distribution to the Commission.

Thanks.

Sincerely,

Karen Russell

Karen A. Russell
Legal Affairs Coordinatore

Enclosure
c: Service List

BEFORE THE WATER RESOURCES COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF PROTESTED APPLICATION 69433 IN THE NAME OF MALHEUR BASIN WATER USERS ASSOC. AND INSTREAM WATER RIGHT APPLICATIONS 70325, 70349, 70350, 70351 AND 70352 IN THE NAME OF THE STATE OF OREGON FOR USE OF WATERS FROM THE MALHEUR RIVER AND ITS TRIBUTARIES IN MALHEUR COUNTY, OREGON.	)))))))	WaterWatch and Oregon Trout Response in Support of ODFW's Petition to Deny a Stay of the Final Order

WaterWatch of Oregon and Oregon Trout support the Oregon Department of Fish and Wildlife's (ODFW) request to deny the stay of the final order in this case during the appeals process.

Substantial public harm will result if this order is stayed and the instream water right certificates are not issued. The protection of instream flows needed to support public uses such as these is a high priority for Oregon. OAR 690-410-030(1). Instream water rights protect flows which are critical to the survival of fish populations in the Malheur System (Finding of Fact 32, Ultimate Fact 9, Opinion paragraph 1) including bull trout, a cold water species listed as threatened by ODFW (Finding 27) and smallmouth bass, a warm water game fish (Finding 28). The private interests represented in the contested case will not be harmed by the lifting of the stay. The party that has appealed the Final Order, the Intervenors, has no application at issue in the proceeding. Lifting of the stay will not harm the Intervenors because they have no rights to use water that will be affected by the Order.

The Malheur Basin Water Users Association (MBWUA), the party with the applications at issue in the contested case, did not appeal the Final Order, presumably because they realized the Final Order could not be affectively challenged. The MBWUA

will not be harmed because they too have no right to use water in excess of their existing water rights.

With the Final Order stayed, all the Intervenor and the nonappealing applicants have are pending applications. Pending applications do not entitle these applicants to use water. *See* ORS 537.130 The only harm that is theoretically possible from the lifting of the stay is the harm that may occur from the loss of priority date for the MBWUA. However if the appeal is successful the MBWUA's application will be reinstated with the same priority date.

In conclusion, substantial public harm will result if the stay is not lifted. WaterWatch and Oregon Trout urge the Water Resources Commission to grant ODFW's petition and issue an Order lifting the stay.

Dated this 23rd day of April, 1993.

Bill Kloos MK

Bill Kloos attorney for
WaterWatch of Oregon
Oregon Trout

CERTIFICATE OF MAILING

I hereby certify that on April 23, 1993 a copy of the Response in Support of ODFW's Petition was served on each of the following by first class mail, postage paid, in the United States mail in Portland, Oregon enclosed in a sealed envelope and addressed as follows:

Weisha Mize
Hearings Officer
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

Jim Myron
Oregon Trout
P.O. Box 675
Canby, OR 97013

Jill Zarnowitz
ODFW
2501 SW First Ave.
P.O. Box 59
Portland, OR 97207

Penny Harrison
Dept. of Justice
1515 SW 5th, Suite 410
Portland, OR 97201

Sam Tucker, Attorney
for MBWUA
105 N. Main
Milton-Freewater, OR 97862

Roy Kilpatrick
Kilpatricks, Attorneys
P.O. Box A
Mt. Vernon, OR 97865

Signed this 23rd day of April, 1993.

Karen A. Russell

70349

Oregon

WATER
RESOURCES
DEPARTMENT

February 1, 1993

RE: Final Order of Water Resources Commission on Application 69433 (MBWUA) and ODFW's Instream Applications 70325 and 70349-70352

To the Parties:

Enclosed please find the Commission's Final Order in the above-referenced matter, as approved at the Commission's January 22, 1993 meeting in Salem.

Thank you all for your work in this contested case proceeding.

Sincerely,

Weisha Mize
Hearings Referee

cc: Watermaster, Dist. 10
Regional Manager, E. Region
Application Files

3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

MBWUA App. 69433 & ODFW ISWR App. 70325, 70349-70352 Service List

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Portland, OR 97207

Karen Russell
WaterWatch of Oregon
921 SW Morrison, Suite 438
Portland OR 97205-2723

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF PROTESTED APPLICATION 69433 IN THE NAME OF MALHEUR BASIN WATER USERS ASSOCIATION AND INSTREAM WATER RIGHT APPLICATIONS 70325 AND 70349-70352 IN THE NAME OF OREGON DEPARTMENT OF FISH AND WILDLIFE FOR USE OF WATER FROM THE MALHEUR RIVER AND TRIBUTARIES, MALHEUR COUNTY, OREGON	FINAL ORDER

HISTORY OF PROCEEDING

Application 69433 was originally filed by the Malheur Basin Water Users Association (Association) on October 23, 1987 for use of 102 cubic feet per second (cfs) of water from the Malheur River, 5 cfs from Griffin Creek, 18.2 cfs from Otis Creek, 2.8 cfs from Cottonwood Creek, and 2.2 cfs from Spring Creek, or a total of 130.2 cfs, for supplemental irrigation and alkali abatement on 5,127 acres in sections 13 and 26 located in T19S, R33½E, and sections 7, 31 and 32 located in T20S, R36E, WM, Harney County.

Protests were filed against the Association's application by WaterWatch of Oregon, Oregon Trout and the Oregon Department of Fish and Wildlife (ODFW), asserting that approval of application 69433 would not be in the public interest as there is no alkali problem in the lands to be irrigated and that use as proposed would reduce the pollution abatement capacities of the streams and interfere with the fish and wildlife habitats provided by these sources.

A protest, later withdrawn, was also filed by Wright Wilber against the application.

Applications 70325 and 70349-70352 were filed by ODFW on April 27, 1990, for use of water instream, as described below:

70325: to provide for minimum flows for resident trout and small mouth bass, and other warm-water game fish, for migration, spawning and juvenile rearing, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
30	40	40	40	40	40	30	15	15	15	15	15	cfs

These flows are to be retained instream in the Malheur River between the Highway 20 crossing at river mile 142, within the NE¼ SE¼ Section 31, T20S, R36E, downstream to the upper pool of Warmsprings Reservoir at river mile 131, within the NW¼ Section 11, T22S, R36E, all in Harney County;

S.C.T. 47 p. 97

70349: to provide for optimum flows for migration, spawning and rearing of resident trout, including bull trout, a sensitive species, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
35	50	50	50	50	50	50	35	35	35	35	35	cfs

These flows are to be retained in the Malheur River between Logan Valley at river mile 188, within the SE¼ NW¼ Section 36, T16S, R33E in Grant Co., downstream to the upper Drewsey Valley diversion at river mile 172, within the SE¼ SE¼ Section 5, T19S, R34E, WM in Harney County;

70350: to provide optimum flows for migration, spawning and rearing of resident trout and smallmouth bass, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
40	40	40	40	40	40	30	15	15	15	15	15	cfs

These flows are to be retained in the Malheur River between the upper Drewsey Valley diversion at river mile 172, within the SE¼ SE¼ Section 5, T19S, R34E, downstream to the Hwy. 20 crossing at river mile 140, within the NE¼ SE¼ Section 31, T20S, R36E, WM, all in Harney County;

70351: to provide minimum flows for migration, spawning and rearing of resident and bull trout, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
15	15	15	15	15	15	10	10	10	10/15	15	15	cfs

These flows are to be retained in Lake Creek, tributary to the Malheur River, from the headwaters of Lake Creek within the NW¼ NW¼ Section 18, T16S, R33½E, WM, downstream to the USFS Rd. 16 crossing at river mile 0.5, within the SE¼ SE¼ Section 16, T16S, R33½E, WM, all in Grant County; and

70352: to provide optimum flows for migration, spawning and rearing of resident and bull trout, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
20	20	20	20	20	20	15	15	15	15/20	20	20	cfs

These flows are to be retained in Big Creek, tributary of the Malheur River, from the headwaters of Big Creek within the NW¼ NW¼ of Section 10, T15S, R34E, WM, downstream to the USFS Rd. 16 crossing within the SE¼ SE¼ Section 14, T16S, R33½E, WM, all in Grant County.

Protests against ODFW's applications were filed by the Association, which asserted that approval of the instream water right applications would cause a change in existing ranching and irrigation practices and reduce the recharge of the water aquifer, to the detriment of the public interest.

Sp.Ord. 47 & 98

The matter was announced for hearing by Notice of Hearing dated April 22, 1991. Opportunity and manner of petitioning for party status were set out in the Notice.

Petitions for party status were filed for Duane and Nancy Schneider, trustees and title holders of Oxbow Ranch for the benefit of the children of Rotchy (Rochford) Barker et ux, lessors and operators of Oxbow Ranch, and for Robert and Rosita Stanbro by Roy Kilpatrick, Attorney at Law.

The petitions asserted that the instream water right applications, if granted, would cause harm to petitioners' existing senior rights and pending applications and be contrary to the public interest by eliminating wildlife habitat allegedly created by the irrigation practices of petitioners and others similarly situated. The pending applications had been objected to by ODFW, WaterWatch and Oregon Trout but were not at issue in this proceeding.

Petitioners were admitted as limited parties by Order issued May 21, 1991 for the purpose of offering evidence to demonstrate that the uses proposed by their pending applications were of greater benefit to the public than the proposed instream water rights, as claimed in their petition, and to address the concerns and conditions proposed by existing parties regarding petitioners pending applications. Petitioners were also afforded the opportunity to participate in any further negotiations between the parties.

A Motion to Amend Application 69433 was filed on July 1, 1991. As the Referee lacked authority to allow or prohibit such amendment, the amendment went forward. The hearing was postponed and a revised filing schedule established by Order issued July 5, 1991.

Also on July 1, a motion to dismiss the proceeding and summarily reject application 69433 was filed by WaterWatch. The Association filed a response to the motion. The motion was denied by Order issued August 5, 1991, which Order is incorporated by reference herein.

As amended, application 69433 requests a total of 163.2 cfs from the Malheur River and Griffin, Otis, Cottonwood and Spring creeks for use on 6,454.9 acres, being 1.194 acre feet per acre (af/ac) for alkali abatement, erosion control and fish and wildlife habitat, with a priority date of October 28, 1987, and an increased rate of appropriation from 1/80 to 1/40 for 884.2 acres, being a total of .306 af/ac, with a priority date of July 1, 1991. The request for use for alkali abatement of 33.0 cfs of water on 1,327.9 acres more than was previously requested in the original 1987 application would also have a priority date of July 1, 1991. Motions for postponement were filed by counsel for Oxbow Ranch (Schneider) on September 9 and for the Stanbros on September 11.

Counsel filed a third motion entitled Supplemental Motion to Postpone on September 12. Counsel for Oxbow Ranch and the Stanbros submitted Rule 21 Motions to Dismiss to the Referee at the commencement of the hearing.

Grounds for the motions to postpone were, generally, that there was another action pending between the parties for the same cause in that Oxbow Ranch had, on September 6, 1991, filed a complaint in the United States District Court for the District of Oregon seeking an permanent injunction against the Water Resources Commission, Director and Hearings Referee from holding the contested case hearing and a declaration that the State had no jurisdiction to consider or approve the pending applications, and in addition that there had been a failure to join the United States as a necessary party to the contested case proceeding.

Grounds for the motion to dismiss were that the Director and Commission lacked subject matter jurisdiction over the several water right applications and personal jurisdiction over the Stanbros and Oxbow Ranch, that there was another action pending in federal district court between the parties for the same cause, and that there had been a failure to join a necessary party.

The federal district court complaint asserted several grounds for relief. It was first claimed that the Desert Lands Act, 43 USC 321 *et seq*, prohibited the state from issuing instream water rights on streams which run through lands owned by the United States, and further that the Act prohibited any administration of Oregon waters or enforcement of Oregon water-related statutes for any purpose other than irrigation, mining and manufacturing. It was next claimed that all Oxbow Ranch lands were wetlands and any enforcemnt of the Oregon Instream Water Rights Law would be in direct violation of the Clean Waters Act, 33 USC 401, and the National Environmental Policy Act, 43 USC 4321. It was next claimed that the consideration of these applications in the contested case hearing was either an adjudication of Oxbow Ranch's federally-obtained riparian rights or of the federally-owned waters of a nonnavigable stream running through federal lands, and that the McCarran Amendment, 43 USC 666, required joinder of the United States as a party. Lastly, it was claimed that the upland sandpiper, which nests in the Logan Valley, was an endangered species and that its habitat would be dewatered if the instream water right applications were approved.

The claims raised in the several motions were determined to be without merit. The Desert Lands Act requires patentees to obtain water rights solely from the state. Consideration of the instream applications filed pursuant to ORS 537.336 was in no way an adjudication. Moreover, the Desert Lands Act does not limit the authority of the state to issue water rights for purposes other than irrigation, manufacturing and mining. Neither the National Environmental Policy Act, which is not applicable the actions of the Oregon Water Resources Department and Commission, nor the Clean Water Act prohibit the issuance of water rights, either for

instream or out-of-stream uses. The McCarran Amendment does not require joinder of the United States when there are neither federal rights involved nor an adjudication or administration of federal rights. The upland sandpiper is not an endangered species and approval of these instream water right applications will not result in a dewatering of its habitat. The Motions for Postponement and Dismissal were denied.

The contested case hearing was convened on September 17, 1991 in Burns, Oregon.

Shortly after the commencement of the hearing, counsel for the Stanbros and Schneiders, who were not present, left the hearing and did not participate further. The hearing continued through September 18, 1991. The record was left open for a period of time in order to allow further investigation and written testimony by soil scientists offered as witnesses by WaterWatch and the Association and for submission of post-hearing memoranda by the parties. The Association raised a number of objections in its post-hearing memorandum.

RULING ON ASSOCIATION'S OBJECTIONS

The several objections made by the Association in its post-hearing memorandum regarding adequacy or compliance of ODFW's filings with ODFW's instream water right rules have been addressed herein. Those objections relating to the validity of the Department's instream water right rules, OAR Chapter 690 Divsion 77 are DENIED. The rules were properly adopted by the Commission pursuant to ORS Chapter 183.325 - 183.370 and ORS 536.025 following opportunity for public comment, and are currently being considered for amendment pursuant to those same provisions. These rules are neither unconstitutional nor do they exceed the statutory authority of the Commission and Department. These rules are further the subject of a proceeding in Baker County Circuit Court. The Association may seek a further determination by a court of competent jurisdiction on appeal of the final order issued in this matter.

Following a review of the entire record, a Proposed Order was issued and served on the parties on April 8, 1992. Exceptions to the Proposed Order were timely filed by the Association, ODFW, WaterWatch and Oxbow Ranch. A subcommittee of the Water Resources Commission was appointed to review the exceptions and the record and to make recommendations to the full Commission regarding the exceptions and issuance of the Final Order in this matter.

DETERMINATION ON EXCEPTIONS

The Association, ODFW, WaterWatch and Oxbow Ranch filed a number of exceptions to the proposed order. Based on the review and recommendations of the subcommittee, the Commission concluded that alkali abatement is neither a use separate from irrigation nor a form or subcategory of irrigation but rather a potential side benefit of irrigation, as is recognized in the Malheur River Basin Plan Finding No. 15, which states that "flood irrigation in the Middle Fork Malheur Basin is beneficial in reducing alkalinity in soils and is an appropriate irrigation method." Therefore, the Commission has determined that the alkali abatement portion of Application 69433 should be denied on the following basis:

1. Alkali abatement is not specifically allowed or classified for in the basin program.
2. Irrigation is an allowable use under the Basin Program, but alkali abatement is not presently a form or subset of the classification of irrigation and is not otherwise classified as an allowable use within the basin program.
3. The SCS crop requirements for meadow grass and hay are approximately 2 af/ac and the duty allowed for irrigation in the Malheur Adjudication is 3 af/ac.
4. Even if the Basin Program contained a specific classification for use of the waters of the Malheur River for alkali abatement, there is insufficient information and evidence on either the specific extent and location of alkali-affected soils or the need for additional water for alkali abatement to approve the application at this time.
5. The Association is not foreclosed from reapplying under Division 82 (Acceptance of applications for water uses in addition to classified uses), which application would need to include additional information and facts about alkali and the location of alkali-affected soils within the application's boundaries, or to seek a basin program amendment and submit the additional information in that forum and then reapply for this use, assuming alkali abatement is added as a classified use to the basin program.

As a result of the determination to deny the alkali abatement portion of Application 60433, many of the findings of fact, ultimate facts and conclusions of law, portions of the opinion, the Interim Order and a part of the Proposed Order were modified or deleted from this Final Order. Where changes have been made to reflect the Commission's rejection of the alkali abatement portion of Application 69433, exceptions to those portions of the Proposed Order have been rendered moot and are not addressed here.

> WaterWatch and ODFW asked that Finding of Fact 4 include grazing and poor management practices such as burning riparian areas to ease movement of livestock as contributing factors to streambank erosion.

Testimony at the hearing involved high flows as a cause of streambank erosion. The one reference to burning riparian areas as a management practice appeared to be an assumption on the part of

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the one witness, Jim Myron, who mentioned the burn. He stated that the only thing he was personally aware of as a cause for the eroded condition of the streambank was a stretch of burned river bank and that he thought the burn was a management practice to facilitate livestock movement. There is insufficient evidence in the record to add grazing and management practices to Finding of Fact 4.

> ODFW and WaterWatch excepted to the statement in Finding of Fact 26 that, with regulation, appropriation of either 3 or 4.5 af/ac in April and May would not harm or reduce the pollution abatement capacity or fish habitat of the Malheur River.

The denial of the request for 1.5 af/ac for alkali abatement renders much of this exception moot. Moreover, with a reduction in historical use via measurement and regulation, substantially less water will be diverted than has previously been taken, therefore, overland flows, temperature and pollutants would be reduced rather than increased.

The amount the Association can take under its increase in rate does not increase the duty. The irrigation rights are limited by the terms of the adjudication to 1½ af/ac during any 30-day period prior to June 1 and no more than 1 af/ac in any 30-day period thereafter, up to a total of 3 af/ac.

> ODFW and WaterWatch excepted to Finding of Fact 27, arguing that flows records also show water would not generally be available in July, in addition to shortages on August and September.

The median and average monthly flows between 1927 and 1982, referred to in this Finding of Fact, are based on actual gaged flows which reflect historic appropriations at much higher levels than would be seen if monitoring and regulation are required and appropriations reduced to the allowed duty under existing rights plus 1.5 af in April and May. Despite ODFW's assertion, Ms. Zarnowitz' direct testimony was not uncontroverted. Kent Searles testified that the flow records indicate that water is available during the time period requested by the Association. He stated that he had no knowledge of lack of availability of water for the instream rights on the tributaries but the gaged flows, which measure real flows (water left after all appropriations) show water available for instream water rights on mainstem except for during low flows, usually August and September.

> ODFW asked that Finding of Fact 28 be modified to find that bull trout are found within, rather than upstream from, the Logan Valley.

Jill Zarnowitz testified on cross-examination that bull trout are presently located in the tributaries high up above the Logan Valley, and that since they are sensitive to high water temperatures, their range is restricted to the forested upper reaches of the Malheur River Basin.

William Hosford testified in his written direct: "Bull trout occurred in the mainstem Middle Fork Malheur River as late as the mid-1960's. Recently bull trout have been found in only three tributary streams of the Middle Fork Malheur - Lake Creek, Big Creek and Meadow Fork Big Creek...Bull trout, as well as redband and brook trout, were observed in 1990 by ODFW personnel in irrigation ditches in the Logan Valley area of the Middle Fork Malheur."

On cross-examination, Mr. Hosford stated that "in the last few years they [bull trout] have only been found in tributaries to the middle fork of the Malheur above Logan Valley, which I mentioned in my affidavit [direct testimony by affidavit].

The testimony supports this Finding of Fact. However, it has been modified to more accurately reflect the testimony of ODFW's witnesses.

> ODFW and WaterWatch objected to the statement in Findings of Fact 32 and 34 that ODFW did not appear to have followed its own rules in making the instream requests.

Jill Zarnowitz testified in her direct testimony that "Flow levels were taken from the 1967 Basin Investigations, which were adopted by the Fish and Wildlife Commission as a source of information for ISWR applications. Flow determinations in the Basin Investigations were derived from depth and velocity measurements and adjusted for water availability..... ODFW expects these ISWR applications to be issued by WRD after analysis of naturally available flows." However, further investigation of this issue, in response to the exceptions, indicates that ODFW did not violate its own rules.

OAR 635-400-015(10) requires that "if hydrological estimates or gaging data can be obtained, the instream flow requirements shall be compared against the range of naturally occurring stream flows. Gaging data was considered by ODFW. As no explanation is given of how flows were adjusted for water availability, it could appear from ODFW's direct testimony that such a comparison was not done by ODFW.

The Commission takes administrative notice of the fact that natural flow information is provided by the Water Resources Department and that the Department staff, rather than ODFW, makes the comparison of gaged flows to estimated natural flows. The Referee did not conclude that ODFW would deliberately violate or fail to comply with its own rules, and was unaware of the Department's practice of providing natural flow information and making the comparison of gaged and estimated natural flows. The FWC did adopt the Basin Investigation recommendations as a basis for flows requested in ISWR applications. Kent Searles also testified he did not believe there was sufficient hydrographic [gaging] information available to say what the natural average flow of the stream would be or that would show what the natural flow would be without appropriations.

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Given that it is the Department's practice to provide natural flow information and make this comparison, and given further that the natural average flow information was not available, it now appears that findings #32 and 34 are in error. These two findings have been deleted from the Final Order.

> WaterWatch excepted to Finding of Fact 37 and argued that the actual consumptive use of meadow grass is 22" of water, not 25.65.

Dr. Jarrell stated in his direct testimony that consumptive requirements were 2.2 af/ac/year, or about 26.4". In an exhibit attached to his testimony, the Oregon Engineering Handbook Irrigation Guide, crop requirements were given as 25.65 inches. On cross-examination, he stated that the crop requirements, assuming 2½ tons of pasture grass per acre, were 25.65". In rebuttal, he revises his estimate again to 22". Dr. Vomicil testified that the requirement was 31.2" per year, without taking weather factors into consideration, which would raise the requirement to 37.4" per year. The Soil Conservation Service's Farm Irrigation Rating Index sets it at 25.65 inches. Both experts made estimates based on information from areas other than the specific area with which the Association is concerned. The Referee found the SCS credible and reliable. The Commission agrees with the finding that the consumptive use of meadow grass is 25.65" of water.

> WaterWater requested that the following language be added to Finding of Fact 42: "The 1969 survey and mapping of the soils in basin based on soil sampling representative of soils in basin showed no evidence of a problem."

The survey and mapping were general, not detailed. That work is being done now and will be completed in 1993-94. The 1969 report contained the disclaimer "Much of the soil information reported here is based on tentative information and work in progress. Therefore this report must be treated as a progress report containing information subject to change before the detailed soil survey of the basin is completed." Soil samples and testing done by the SCS on Association lands showed the presence of alkali. The requested addition to this finding is unnecessary and inappropriate.

> WaterWatch, ODFW and the Association objected to the inclusion of the 15 cfs bypass flow in Finding of Fact 57, stating that this condition should only apply to the increase in rate portion of Application 69433.

This Finding and the condition have been eliminated from the Final Order.

> WaterWatch asserted that the Order must contain a finding of consistency with statewide planning goals for the instream water rights under OAR 690-60-030.

The Commission concludes that no such finding was required, primarily because the issue of consistency of the instream water applications with the statewide planning goals or compatibility with the local comprehensive land use plans was not raised in the hearing and no testimony or evidence was given on this point.

However, under the procedures in place at the times of filing, the affected local governments (Harney and Grant Counties) were notified of the filing of both Application 69433 and the instream water right applications 70325 and 70349-70352 and submitted no comments or information regarding the compatibility of these applications with the acknowledged local land use plans. Under the procedures in place at the time these several applications were filed, compatibility may be presumed if no response is received from the affected local government within 30 days of receiving the notice of filing. Therefore, findings of compatibility of the increase in rate portion of Application 69433 and the instream water right applications 70325 and 70349-70352 have been added to this Final Order in Findings of Fact 51 and 52.

> ODFW objects to Ultimate Fact 8, which finds that the presence of habitat and forage for a variety of wildlife and wildfowl species may be enhanced by, but is an incidental, albeit beneficial, result of flood irrigation, asserting that there is no evidence that wildlife is in better condition than it was prior to any irrigation, but the fish are worse off.

Application 69433 included wildlife habitat as one use. This Finding was directed at non-fish wildlife. Based on the testimony in the record, there is no apparent intention to provide such habitat. However, non-fish wildlife utilize the incidentally-created habitat and forage, which would not be as abundant if no irrigation occurred. ODFW Ex. B, the Basin Investigation, states: "The principal water requirement of land mammals and birds of the basin, except waterfowl and certain furbearers, is that needed to promote plant growth for food and shelter.....Extensive irrigation systems supplement the water needs of the pheasant and valley quail in the Malheur River Basin...Game water birds utilize the basin's reservoirs and rivers most during their fall and spring migrations...." The evidence supports this finding without change.

> The Association asked that Ultimate Fact #8, finding that wildlife and habitat benefits are only <u>incidental</u> results of flood irrigation, be eliminated, as the amended application listed alkali abatement, erosion control and fish and wildlife maintenance as requested uses.
>
> The Association further requested a finding that diversion "in excess of 3 af in April and May in addition to helping control alkali, benefit fish and wildlife through providing habitat and forage for wildlife and reducing flows and erosion during times of high water."

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The results of historic illegal diversions and legally allowed uses are two different things. It is not clear in the record that April and May diversions have benefitted fish or fish habitat. Fish clearly do not live on the 6,454.9 acres. There was no testimony, nor, does it appear, any claim made that wildlife benefits, incidental or otherwise, were claimed for the entire 6,454.9 acres. There was never any identification made, despite direction to do so, of how much water was being requested for alkali, how much for fish and wildlife and how much for erosion control. The record does not support a finding that erosion control and fish and wildlife maintenance are deliberate or planned uses, only that they are incidental results of flood irrigation. On the evidence in record, the Referee found that the intended use of the water was not and had never been for fish and wildlife habitat maintenance. Ultimate Fact #8 will not be modified and the requested finding will not be made.

> ODFW asserts that Condition No. 5 on the increase in rate permit should require compliance with all applicable laws requiring fish passage as well as the already-required screening. WaterWatch asserts that fish screening should be required on a date certain prior to April 1, 1993.

Screening is required prior to exercise of the increase in rate right. ODFW made no mention of either screening or fish passage in the conditions it proposed, nor did it provide any citation to the laws regarding fish passage or any explanation of what it means by fish passage and how that differs from by-pass or screening devices. The Commission will not at this time make the change requested.

> The Association excepted to the language of the Proposed Order approving the portion of Application 69433 for an increase in rate of diversion. The Association asserted in its exception that it was not requesting an additional 11 cfs in connection with its increase in rate request, and requested that the order concerning the increase in rate of flow be changed to the following:
>
> IT IS FURTHER ORDERED that the portion of the application 69433 in the name of Malheur Basin Water Users Association be approved for an increased rate of diversion from 1/80 to 1/40 cfs as an additional right from the same source for the same use at the same place of use as are permitted under the existing water rights of the Association members which contain only a 1/80 cfs diversion rate. This increase in rate is approved on 884.2 acres as designated on the amended application of Association.

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The Association argued further that since modification of the rate of diversion does not affect the total amount of water diverted but only affects the timing in which diversion may occur, reference should not be made to an additional 11 cfs, no priority date should be referenced, and since the Association was only trying to correct a mistake on certificates issued between 1909 and 1937, no conditions should be attached.

It was not until July 1, 1991 that the Association amended its application and added the request for an increased rate of diversion. The draft permit offered into evidence as Association's Exhibit 17 contains the following condition: "In addition, this permit is issued approving an additional 1/80th cfs per acre diversion for all lands described in Certificates 3526, 2135, 3791, 2151, 8121 and 49682, this additional diversion rate is for irrigation **and when combined with the original certificate rate,** allows a total diversion rate of 1/40th cfs.....The use of water within this permit is allocated between other existing rights and this right as follows: The rate of flow for all water diverted **shall first be charged against the flow set out in prior rights. To the extent that flow exceeds that permitted under prior rights, additional flow shall be charged to this permit."** (Emphasis added) The Association has previously acknowledged that, on approval of the request, two separate rights would exist. This request is inconsistent with the Association's application.

Citation to OAR 690-11-010(6) does not assist the Association in its request. OAR 690-11-010-(6) reads as follows: "Deficiency of rate right: An <u>additional</u> right allowed from the same source for the same use at the same place of use when an <u>earlier</u> right does not allow a full duty or rate of flow of water" (emphasis added). This must also be read in conjunction with OAR 690-11-060, which provides if the replacement or amendment proposes additions to or increases in the source, <u>quantity</u> or nature of use, the additions or increases shall be assigned a new (tentative) priority date, as of the date the amendment is received by the Department.

Diversion at a rate of 1/80 cfs per acre for irrigation of 884.2 acres allows an instantaneous diversion of a total of 11 cfs. Diversion at a rate of 1/40 cfs per acre for irrigation of 884.2 acres allows an instantaneous diversion of 22 cfs. If water is available, which it normally would be in April and May, exercise of both the old 1/80th rights and the new 1/80th rights would mean a total diversion of 22 cfs for irrigation of these 884.2 acres. Since the rate and duty granted in existing rights cannot be modified, an increase in the rate of appropriation includes an additional amount of water to be diverted.

Approval of a request for an increased rate of diversion for lands with existing certificates can only be done through issuance of a new right for the additional rate, which would have a priority date

as of the date the application was made. A request for increased rate of diversion cannot be satisfied by enlarging or modifying the existing certificates. This clearly has the potential of injuring rights junior to the existing rights. In addition, there is no provision in Oregon water law that would allow this to occur. The Association's proposal for changing the Order to allow an increased rate of diversion under existing rights, rather than an additional right for a diversion of 1/80th to be used on those lands with existing rights allowing diversion of 1/80th, is denied.

> Oxbow Ranch objected to the Referee signing the proposed order, asserting that ORS 536.025(2) requires the Director to sign proposed orders and that the only appealable Final Order is one signed by the Director.

With the exception of rule adoption, ORS 536.025(2) authorizes the Commission to delegate any of its powers, duties or functions to the Director. Pursuant to OAR 690-02-170 [previously OAR 690-01-041] and ORS 183.464, the Referee is authorized to sign proposed orders and, where no exceptions are filed, issue Final Orders. ORS 183.460 and OAR 137-03-060 allow for filing exceptions to proposed orders. ORS 183.470 - .482 and OAR 137-03-070, regarding appeal and judicial review of Final Orders, do not require signature by the Director before a Final Order may be appealed.

> Oxbow Ranch further argued that the Commission cannot draft a Final Order for the Director's signature granting instream water rights to ODFW using the statutes and rules because:
>
> 1. There is no evidence from which the Commission can determine the necessity for any of the rights applied for, their nature or extent, and
> 2. The referee's conclusion that the rights cannot be granted without flexing both [statutes and rules] and considering the effect of denying the applications. (Proposed Order [Opinion], page 14.)
>
> In support of this exception, Oxbow Ranch asserted that the Referee concluded the ODFW had not established the necessity for the amount of instream water required or any amount under existing rules and regulation. ODFW did not comply with its own rules and did not provide any information which the Commission could use to make its own determination of the appropriate amount, therefore the ISWR applications must be denied.

The Commission does not draft a final order for the Director's signature. Exceptions to proposed orders issued after contested case hearings held on applications filed under Divisions 11 or 77 are heard by the Commission, which issues the final order after considering and addressing the exceptions. In practice, after considering the exceptions, the Commission directs staff to prepare a Final Order containing its decisions on those exceptions for signature by the Commission Chair.

Nowhere in the Proposed Order is the conclusion made that ODFW had failed to establish the necessity for the amount of water requested in the instream applications. The Referee found that it did not appear that ODFW had followed its rules to the letter, in that it did not appear that consideration or comparison with naturally-occurring flows was made. This matter has been addressed above in response to exceptions filed by ODFW and WaterWatch on this issue.

Having now review the record, the proposed order, and the exceptions to the proposed order, this Final Order is issued.

FINDINGS OF FACT

1. The Malheur basin has a semiarid climate with hot dry summers and cold winters. Average temperature extremes usually occur in January and July, with average minimum January and average maximum July temperatures in the higher elevation agricultural valleys of 16 and 96 degrees Fahrenheit. Elevations in the Drewsey Valley average between 3,520 and 3,600 feet. Elevation in the Logan Valley area averages 5,000 feet.

2. Annual precipitation in the lower elevations of the Drewsey Valley is 10". Measured average annual precipitation at Drewsey at river mile 146.5 is 11". Measured average annual precipitation in the Logan valley is 30". Precipitation and streamflow levels vary widely with wet and dry years.

3. The Malheur River rises in the Strawberry Range of the Blue Mountains at about 5000' elevation and flows in a southeasterly direction for 190 miles to its confluence with the Snake River. Rivermile (rm) designations begin at 0 at the confluence and end at 190 at the point of origin.

4. Streambank erosion along the Malheur River is a problem in the Drewsey Valley and is exacerbated by high spring flows.

5. A minimum streamflow of 15 cfs as measured at the gauging station below Drewsey was adopted on February 26, 1985 by the Water Policy Review Board (WPRB), predecessor to the Commission, as part of the Malheur-Owyhee Basin Program.

6. Following consideration of a petition by the Association for a stay of enforcement of the minimum streamflow and a subsequent petition for amendment of the Malheur-Owyhee Basin Program, the Commission entered into rulemaking and ultimately rescinded the minimum streamflow and amended the Basin Program on January 7, 1986.

7. As part of its January 7, 1986 action, the Commission adopted a finding that flood irrigation in the Middle Fork Malheur Basin is beneficial in reducing alkalinity in soils and is an appropriate irrigation method.

8. As part of its January 7, 1986 action, the Commission further directed that the Department seek and evaluate water use data forwarded by the water users in the Middle Fork Malheur Basin, and report on its estimates and analysis of the existing diversion rates, the amount and location of return flow, the impact of current irrigation practices on downstream water needs and uses, and the impact and associated cost of conservation measures, no later than January 2, 1988. That result of that investigation and report is the 1987 WRD Malheur River Return Flow Study.

9. The 1987 WRD Malheur River Return Flow Study involved approximately 1/6 of the acreage covered by application 69433 and examined irrigation practices and return flows at the upstream end of the Drewsey Valley between rm 168-171.

10. Median (M) and average (A) monthly flows between 1927 and 1982 as measured at the Drewsey gage 13214000 (rm 142), measured in cfs, are as follows:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
M	93	195	355	563	304	108	19	7	10	36	64	78
A	146	258	427	651	345	135	26	10	12	38	66	104

The median number means that 50% of the time flows are higher than the given number and 50% of the time flows are lower.

11. Based on average monthly gaged flows, total acre feet (af) flowing monthly past the gage at Drewsey are as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8808	15565	25761	39275	20814	8145	1569	603	724	2292	3982	6274

for an annual average of 133,300 af.

12. The reported gaged flows represent the actual amount of water in the river after diversions above the gage and including any amounts returned to the river as return flows.

13. At the maximum allowable rate under existing water rights, 580 cfs, or a total of 39,500 af, can be diverted during the period April-October between the headwaters and Warmsprings Reservoir for irrigation of 13,166 acres at 3 af/ac.

14. The relative rights of appropriation established prior to 1909 in the Malheur Basin, including the area to which these applications are applicable, were determined in the 1919 Malheur adjudication. Some additional rights have been allowed on approval of applications for permits to use water since that time.

15. There is no irrigation season set in the Malheur Adjudication Decree, but there are limitations on the amount of water that may be diverted. Holders of decreed rights may divert up to 1½ af during any 30-day period prior to June 1 and thereafter may not exceed 1 af/ac during any 30-day period, provided that the total quantity diverted during season may not exceed 3 af and the rate not exceed 1/20th of a cfs.

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16. The Malheur Decree further found that in order to successfully irrigate a piece of ground, it is necessary to have a sufficient head of water, and that a flow of 1/80th cfs per acre is inadequate for purposes of irrigating an acre, although it is not necessary to keep a continuous flow of water on each and every acre.

17. Appropriative rights issued after the adjudication maintain the same duty limitations, but rights issued between 1909 and 1937 frequently allowed a diversion rate of only 1/80th.

18. The Malheur Basin Decree contains no mention of alkali or alkaline soils, and no provision for alkali or other soil problem abatement via flood irrigation was requested or granted in the rights and duty allowed.

19. The physical geography of the narrow Logan Valley and Drewsey Valley areas is such that water diverted is rarely, if ever, taken more than one-half mile away from the Malheur River, to which water not consumed by the crop or lost in transmission returns in 3-8 days.

20. The rights in the Drewsey valley have been regulated in the past for rate of appropriation. These diversions have not been regulated for total duty of water due to a lack of measuring devices capable of measuring the total volume of water diverted during the irrigation season.

21. Historical evidence indicates that the irrigators in the Drewsey Valley area of the Malheur basin have, in the early part of the irrigation season (April and May), annually diverted substantial quantities of water over their authorized rights since at least 1939.

22. The Malheur River Return Flow study area appears representative of all Association lands and practices. A total of just under 9 af/ac was diverted and applied to the lands within the study area. Although other diversions were not measured, with the exception of the Drewsey Ditch area, it appears that unpermitted diversions above the authorized 3 acre-feet range in quantity from 2.8 - 5.8 af/ac.

23. Taking the Return Flow Study as representative, a total of between 5.5 and 8.8 af/ac are diverted at 25 diversion points within the Drewsey Valley, distributed through ditches and applied on these lands during the irrigation season, with the majority of the water being applied and saturating the soil or consumed in the early spring (April-May) when flows are high.

24. Assuming past unpermitted diversions throughout the Drewsey Valley area for irrigation of 6,455 acres of 5.5 af/ac above the authorized diversion rate, the total amount of water diverted during the irrigation season would have been 54,867 af. Regulation of all authorized diversions back to a total duty of 3 af/ac would have resulted in an additional 35,502.5 af remaining in the river.

25. Given that historical diversions by the Association have been as much as 9 af/ac and given further that regulation and a limitation on appropriations to a duty of 3 af/ac will result in more water being available instream than has been available since at least 1939, more than adequate flows will be available for both the ODFW instream appropriations and the increase in rate of diversion requested under Application 69433. Diversion of 11 cfs in April and May under the increased rate of appropriation permit issued on Application 69433 as conditioned herein will not harm or reduce the pollution abatement capacity or the fish habitat of the Malheur River.

26. Available flow records show water available for the instream water rights and increase in rate of diversion applications. Gaged flows only show what amount of water is left in the river after legal and extra-legal diversions. There is no evidence in the record showing what the total natural average flow (without diversions) would be.

27. Bull trout, a cold water species listed as threatened by ODFW, were previously found in the Malheur in the reach just above the Return Flow study area as recently as 20 years ago. Bull trout are generally now found only in tributaries upstream from the Logan Valley area, although they were observed in 1990 in irrigation ditches within the Logan Valley, from which it may be inferred that bull trout are also present in tributaries to the Malheur within the Logan Valley as well as upstream from it.

28. The stretch of the Malheur River between the Highway 20 crossing and Warmsprings Reservoir is an important rearing habitat for smallmouth bass, a warm water game fish.

29. Hot springs located approximately half-way through the Drewsey Valley add some limited increment of warm water to the flows during the mid-late summer.

30. With the exception of 81.4 acres, all lands to which Application 69433 is appurtenant are upstream of the Highway 20 crossing.

31. The Fish and Wildlife Commission adopted the Oregon State Game Commission's 1967 Malheur River Basin Investigation as a basis for requesting flow levels in these instream water right applications in OAR 635-400-015(13).

32. The flow levels applied for by ODFW in the instant instream water right applications represent quantities necessary to provide the minimum flow requirements for migration, spawning and juvenile rearing and habitat for the several species identified in those applications.

33. Meadow grass is the predominant crop grown on the Association's lands. No fertilizers, pesticides or other chemicals are required or applied. Unlike alfalfa or grain crops, meadow grass hay does not require tilling or other cultivation of the soil.

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34. Harvesting of the hay is generally done in late June and July and cattle pastured on the cut fields. Continued irrigation after harvest, albeit at a reduced level, provides 15-20% of the annual forage for cattle.

35. The consumptive requirement of meadow hay for water as determined by the Soil Conservation Service (SCS) in its Farm Irrigation Rating Index is approximately 25.65 inches, or just over 2 af/ac.

36. Total crop consumption reported in the Return Flow Study was 3.4 af/ac, with 1.8 af being consumed by the crop and 1.6 af lost to the system.

37. Of the total amount diverted, that which is not consumed by the meadow grass crop or lost to the system returns to the river. In the area involved in the WRD's Return Flow Study, approximately two-thirds of the water diverted returned to the river, thereby becoming available for instream use or for re-diversion downstream, a scenario repeated at each subsequent diversion within the Drewsey Valley.

38. The average efficiency rating for flood irrigation systems is 40%; the maximum efficiency that can be expected is 50%. This means that a distribution system with 50% efficiency loses half the water diverted. Consequently, only half the water diverted reaches and is available for crop consumption. In a system with a 50% efficiency rating, to provide sufficient water to a crop with a 2 af consumption requirement requires diversion of 4 af/ac.

39. Reducing the amount of transmission losses would increase delivery system efficiency. As a result, there could be expected a corresponding reduction in the amount of water needed to be diverted to achieve the same amount of water actually delivered to the fields for consumptive purposes and a corresponding increase in the amount of water left instream.

40. Beyond those tests conducted by the SCS and offered into evidence by the Association, no soil tests were conducted by the parties although the expert witness for WaterWatch testified that the only way to determine if there was a problem, and what type of problem, is to conduct soil tests.

41. Alkaline soils are high in lime. Alkaline soils can be improved and reclaimed by adding sulphur, and should not recur unless the soils are again made too alkaline by application of fertilizers or high pH or salty water, which can lead to accumulation and recurrence of alkalinity in the soil.

42. Alkali soils have an imbalance in the amount of various mineral elements, with sodium being high in comparison to the calcium and magnesium present in the soil. The sodium makes the soil less permeable and must be displaced through the addition of gypsum or sulphur and then flushed.

Ex. O'N. 47 p. 114

43. Water quality tests conducted as part of the WRD return flow study generally showed the concentration of total dissolved solids increasing during the irrigation season, with higher levels at the lower end of the Drewsey Valley. Levels of salt in the river were found to be highest in the early part of the irrigation season.

44. Some portion of the lands held by Association members do have an alkali problem. However, the extent of the problem is unclear. Estimates in testimony describe the amount of Association lands with evidence of an alkali problem as ranging from 5-20% of the land, with the extent and location of the problem areas varying as more or less water is annually available for application.

45. The addition of gypsum to lands affected by alkali is helpful in reducing or eliminating excess alkali in the soil. Tilling the soil is not necessary for the gypsum to be effective.

46. Where alkali-affected soils have been reclaimed by use of soil amendments, the application of 5% more water than is needed by the crop is generally sufficient to prevent a recurrence of the alkali for some time. Given that the consumptive crop requirements for meadow hay for water as determined by the Soil Conservation Service (SCS) in its Farm Irrigation Rating Index is approximately 25.65 inches, or just over 2 af/ac, it appears from the record in this proceeding that the 5% leaching requirement can be satisfied by existing adjudicated rights of 3 af/ac.

47. Leveling where feasible and soil amendments of gypsum or other material, as advised by the SCS following tests, will assist in further reducing alkali to a manageable level and may, in fact, be necessary to maintain the problem at its current level with a reduction of water historically applied and will certainly be necessary to improve crop production.

48. Some of the vegetation on Association lands is wetland-related species. Reduction in the total volume of water applied to these lands will result in a diminishment of these species and a change to species of vegetation associated with drier soil conditions.

49. In order to properly ensure that the total volume of water diverted does not exceed the authorized amount of 3 af/ac and to provide for the necessary regulation and management of the waters of the Malheur river and diversions therefrom, conditions proposed by both ODFW and the Association regarding installation of measuring devices should be made a part of the permit for an increase in rate of diversion issued on application 69433.

50. Limitation to April and May of diversions made under permit issued for an increase in rate of diversion under Application 69433 will ensure that diversions under this new right occur at times when water is available in more than adequate quantities.

51. Approval of the increase in rate portion of Application 69433 is compatible with the Harney County Comprehensive Land Use Plan.

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52. Approval of the instream water right applications 70325 and 70349-70352 is compatible with the Harney County and Grant County Comprehensive Land Use Plans.

ULTIMATE FACTS

1. An undetermined portion of the Association's lands currently evidences problems with alkali, alkalinity or high sodium.

2. Soil tests are necessary to determine the specific location and extent of the alkali problem throughout the Association's lands.

3. Gypsum applied as advised by the SCS to all areas demonstrating an alkali problem will reduce the amount of water required to flush the alkali from the soil and should be done before any issuance of a permit to use water for alkali abatement.

4. Where leveling of alkali-affected areas can be done with a minimum of disturbance to the surrounding area, it should be done.

5. An adequate soil moisture profile is necessary for proper crop utilization of irrigation water and may contribute to the efficiency of the delivery system and method of irrigation.

6. The majority of the Association's delivery system does not approach 50% efficiency and needs to be improved to reduce transmission losses.

7. Measuring devices capable of calculating the total volume of water diverted are necessary for proper management and regulation.

8. The presence of habitat and forage for a variety of wildlife and wildfowl species may be enhanced by, but is an incidental, albeit beneficial, result of flood irrigation.

9. Given the reported low flows in the Malheur River in the late summer months, protection of sufficient minimum flows to support the several fish species present in the Malheur is necessary.

10. Assuming only lawful use, there is sufficient water to satisfy both the requested increase in rate of diversion and instream uses applied for.

CONCLUSIONS OF LAW

1. A right for a new use with a new, junior priority date can be granted where the need for and ability to use the additional water is demonstrated and where flow is available. Such a right does not alter the rate, duty or priority of any appropriation authorized under a decreed right for a different use on the same lands.

2. Basin programs are adopted by the Water Resources Commission through rulemaking and are subject to amendment or modification from time to time through further rulemaking.

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3. The purpose of classifying waters for certain listed uses in basin programs is to allow certain types of uses from a named source of water based on considerations of the amount of flow available, land use, economic, water quality and the public interest. Classification of waters for certain uses at the time a basin program is adopted or amended does not preclude the later addition of other beneficial use classifications to the basin program through further rulemaking.

4. Appropriation and use of water for alkali abatement in the Drewsey Valley area of the Malheur Basin is not presently a use for which the waters of the Malheur River are classified in the Malheur Basin Program.

5. Irrigation is an allowable use under the Basin Program, but alkali abatement is not presently a form or subset of the classification of irrigation and is not otherwise classified as an allowable use within the Basin Program.

6. The alkali abatement portion of Application 69433 cannot be approved in the absence of a classification in the Malheur-Owyhee Basin Program allowing use of the waters of the basin for that purpose.

7. The elements of appropriative water rights include appurtenancy to a specific place of use and are limited further by the amount actually needed for the beneficial use to which the water is applied, regardless of the amount of prior diversion.

8. Where, as here, the location of the area of application is limited or unknown, but is less than the entirety of the acreage held by the appropriator, to issue a water right which would allow unnecessary application of water in quantities in excess of that needed to accomplish the purpose for which the water is appropriated, or to issue a right for a beneficial use on lands which do not require it, would be contrary to law.

9. In addition to the protection of fish and wildlife, the public interest also includes consideration of the economic wellbeing of a part of the state, as well as the avoidance of actions which have the likelihood of increasing nonpoint source pollution and disturbing established and balanced land ecosystems.

10. In the absence of a Basin Program classification allowing use of water for alkali abatement, and without specific information and evidence on the specific location of alkali-affected soils within the Association's lands and need for additional water for alkali abatement, that portion of application 69433 for use of 102 cfs from the Malheur River, 5.0 cfs from Griffin Creek, 18.2 cfs from Otis Creek, 2.8 cfs from Cottonwood Creek and 2.2 cfs from Spring Creek for alkali abatement on 5,127 acres with a priority date of October 28, 1987 and for use of 33.0 cfs of water from the Malheur River for alkali abatement on 1,327.9 acres with a priority date of July 1, 1991 cannot be approved and must be denied.

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11. Approval of that portion of application 69433 for an increased rate of diversion from 1/80 to 1/40 for irrigation of 884.2 acres under existing rights with a priority date of July 1, 1991, as further conditioned below, is in the public interest.

12. Approval of applications 70325 and 70349-70352 is in the public interest.

OPINION

Much testimony at the hearing focused on the Association's historic irrigation practices of taking water in quantities substantially over their authorized amount of 3 acre feet per acre. Quite possibly as a result of these unpermitted diversions, stretches of the Malheur River in the Drewsey Valley were virtually without water in the later summer months. The volumetric extent of the Association's historic unpermitted diversions is unclear, as their diversions currently lack measuring devices capable of recording and providing this information. As a condition of the approval of that portion of Application 69433 for an increase in rate of appropriation, measuring devices are required on all the Association's diversions. It is apparent to all that the cessation of these unpermitted diversions will result in substantial quantities of water being left instream not previously available over the last several decades. While it is expected that flows from now on will be more substantial than in the past, approval of the instream water right applications will do much to ensure the presence of flows at levels sufficient to meet the minimum requirements of the fish populations throughout their life cycles.

Substantial testimony was also taken on the subject of alkali soils and alkali abatement from two types of experts. One type of expert was the PhD holders in the soil science area, Dr. Jarrell and Dr. Vomicil, both of whom testified that soil sample testing was really necessary to know what kind of problem existed, the extent of the problem, and what to do about it, and neither of whom conducted any such tests. The other type were the applicants, who live in the Drewsey Valley and who have first hand knowledge and experience, acquired daily and repeatedly through each irrigation season, of the type of soil problems, plant growth, and management practices which have proven relatively effective over the decades.

Ultimately, while there was agreement on the existence of some sort of soil problem, there was no agreement on the type or extent of the problem. There was also general agreement that application of water in sufficient quantities to flush the offending salts from the soil was effective to some degree or another, but it was clear that the more effective and less water-consumptive method for elimination or control of the soil problem was through the use of gypsum or other appropriate soil amendments. Association members should, when and where necessary, apply gypsum or other appropriate soil amendments and improve the efficiency of the delivery system through reconstruction, conservation and other measures to ensure the efficacy of water use.

There are two barriers to approval of that portion of the Association's application requesting water for alkali abatement. The first is that alkali abatement is not presently a form or subset of the classification of irrigation and is not othersiwe classified as an allowable use in the Malheur-Owyhee Basin Program. The second is that a water right for the beneficial use of alkali abatement cannot legally issue for use on all the Association's lands when it is clear that not all those lands have alkali-affected soils. To allow use of water for alkali abatement on lands not so affected would not be a beneficial use of the water and would constitute waste. In addition, there was insufficient information and evidence in the application on either the specific extent and location of alkali-affected soils or the need for additional water for alkali abatement.

While the portion of Application 69433 must be denied, the Association is not foreclosed from reapplying under Division 82 (Acceptance of applications for water uses in addition to classified uses), which application would need to include additional information and facts about alkali and the location of alkali-affected soils within the application's boundaries, or to seek a basin program amendment and submit the additional information in that forum. If such a classification is added to the basin plan, a new application for this use may be filed at that time.

FINAL ORDER

NOW, THEREFORE, it is ORDERED that applications 70325 and 20349-70352 in the name of Oregon Department of Fish and Wildlife, to be held in trust by the Oregon Water Resources Department, should be APPROVED.

It is FURTHER ORDERED that the portion of application 69433 in the name of Malheur Basin Water Users Association for use of 102 cfs from the Malheur River, 5.0 cfs from Griffin Creek, 18.2 cfs from Otis Creek, 2.8 af from Cottonwood Creek and 2.2 cfs from Spring Creek for alkali abatement on 5,127 acres with a priority date of October 28, 1987 and for use of 33.0 cfs of water from the Malheur River for alkali abatement on 1,327.9 acres be and the same is hereby DENIED.

It is FURTHER ORDERED that that portion of application 69433 in the name of Malheur Basin Water Users Association for appropriation of up to 11.0 cfs from the Malheur River, Griffin Creek, Otis Creek, Cottonwood Creek and Spring Creek for an increased rate of diversion from 1/80 to 1/40 for irrigation of 884.2 acres under existing rights with a priority date of July 1, 1991, be and the same is hereby APPROVED, subject to the following conditions and as may be further conditioned as is deemed appropriate by the Department:

Sp.Ord. 47 p. 119

Use of water under permit issued on application 69433 will be limited to April and May of each year;

All rights subject to the diversion and duty limitations as set out in the Malheur River Decree shall be exercised strictly within those limitations and the use allowed under this permit shall not alter those limitations in any manner;

Operating measuring devices capable of measuring the rate of appropriation and measuring and recording total volume of water appropriated during the irrigation season shall be installed at all primary diversion points identified for the Association's several rights to be served under this permit, being Certificates 3526, 2135, 3791, 2151, 8121 and 49682. Installation shall be completed under the supervision of the watermaster on a schedule to be established by the watermaster. Measuring devices shall meet the requirements of the Department. The Department shall consult with ODFW in establishing requirements for the measuring devices.

All diversions shall be in compliance with applicable laws requiring fish screening prior to any diversion under this permit.

Signed this 27 day of January, 1993.

Placed in the U.S. Mail this 1st day of February, 1993

Lorna Stickel

LORNA STICKEL
Chair
Water Resources Commission

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075.

Final Order on Application 69433 in the name of
Malheur Basin Water Users Association
Final Order on ISWR Applications 70325, 70349,
70350, 70351 and 70352 in the name of ODFW

Oregon

WATER RESOURCES DEPARTMENT

MEMORANDUM

TO: Water Resources Commission

FROM: MBWUA/ODFW Exceptions Subcommittee

SUBJECT: Agenda Item G, January 22, 1993
Water Resources Commission Meeting

Discussion of Subcommittee Recommendations on Exceptions and Request for Approval of Final Order On Application 69433 of the Malheur Basin Water Users Association and ODFW's Instream Water Right Applications 70325 and 70349-70352 on the Malheur River and Big and Lake Creeks

I. Background

Application 69433 was originally filed by the Malheur Basin Water Users Association (MBWUA) on October 23, 1987, for use of a total of 130.2 cubic feet per second (cfs) for supplemental irrigation and alkali abatement on 5,127 acres in Harney County.

Protests were filed against the MBWUA's application by WaterWatch of Oregon, Inc. (WW), Oregon Trout and the Oregon Department of Fish and Wildlife (ODFW). The protests asserted that approval of application 69433 would not be in the public interest as there is no alkali problem in the lands to be irrigated and that use as proposed would reduce the pollution abatement capacities of the streams and interfere with the fish and wildlife habitats provided by these sources.

The application was amended on July 1, 1991. As amended, application 69433 requests a total of 163.2 cfs from the Malheur River and Griffin, Otis, Cottonwood and Spring creeks for use on 6,454.9 acres, being 1.194 acre feet per acre (af/ac) for alkali abatement, erosion control and fish and wildlife habitat, with a priority date of October 28, 1987. The application also requests an increased rate of appropriation from 1/80 to 1/40 for 884.2 acres, being a total of .306 af/ac, with a priority date of July 1, 1991. The request for use for alkali abatement of 33.0 cfs of water on 1,327.9 acres more than was previously requested in the original 1987 application would also carry with it a priority date of July 1, 1991.

Applications 70325 and 70349-70352 were filed by ODFW on April 27, 1990, for use of water instream for fish life in 3 reaches of the Malheur and on Lake and Big Creeks, tributary to the Malheur. These applications are described in detail in the Proposed Order (Attachment 6).

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Protests against ODFW's applications were filed by the MBWUA, which asserted that approval of the instream water right applications would cause a change in existing ranching and irrigation practices and reduce the recharge of the underlying aquifer, to the detriment of the public interest.

Petitions for party status were filed for Duane and Nancy Schneider, trustees and title holders of Oxbow Ranch for the benefit of the children of Rotchy (Rochford) Barker et ux, lessors and operators of Oxbow Ranch, and for Robert and Rosita Stanbro by Roy Kilpatrick, Attorney at Law. The petitions asserted that the instream water right applications, if granted, would cause harm to petitioners' existing senior rights and pending applications and be contrary to the public interest by eliminating wildlife habitat allegedly created by the irrigation practices of petitioners and others similarly situated.

A contested case hearing consolidating consideration of the MBWUA's application and ODFW's five instream water right applications was held on September 17 and 18, 1991, in Burns, Oregon. A Proposed Order on these applications was issued April 8, 1992. Exceptions to the Proposed Order were filed by ODFW (Attachment 2), WaterWatch of Oregon, Inc. (Attachment 3), the MBWUA (Attachment 4) and Oxbow Ranch (Attachment 5). Pursuant to OAR 690-02-170 (previously 690-01-041), the Commission considers the exceptions and issues the Final Order in this matter.

Due to the size of the record and the complexity of the policy issues presented in the exceptions, the Commission at its July 17, 1992, meeting appointed Mike Jewett, Anita Johnson and Jim Howland to a subcommittee to review the record and the exceptions. The subcommittee was directed to return to the full Commission with recommendations for action on the exceptions and these applications and on issuance of the Final Order.

The matter came before the Commission at its November 19, 1992, meeting in Portland. Ken Bentz of the MBWUA indicated that the Association had decided, on a telephone poll of the members, to withdraw its application, in part because it had understood that measuring devices were going to be required on all MBWUA diversions. Staff clarified that the requirement for measuring devices contained in the draft Final Order before the Commission applied only to the diversions which were affected by the approval of the increase in rate of diversion portion of application 69433. The Commission tabled further consideration and action on both the MBWUA's and ODFW's applications until the January, 1993 meeting. In the interim, the Association was to take a formal vote to determine whether or not to withdraw all or part of its application, and the draft final order was to be clarified on the issue of measuring devices.

The Association has now voted unanimously not to withdraw its application. The draft final order has been clarified as directed.

II. Evaluation

The subcommittee met on Thursday, August 27 in Grants Pass. The subcommittee first considered the alkali abatement portion of Application 69433, as it was the subject of the majority of the exceptions. The subcommittee determined that the alkali abatement portion of Application 69433 should be rejected for any of three reasons.

A majority of the subcommittee first found that alkali abatement was not a form or subcategory of irrigation, which is a classified use in the Malheur River Basin Program. Finding No. 15 in the Malheur River Basin Plan supports the determination that alkali abatement is, in fact, a "side effect" of flood irrigation. Finding No. 15 states: "Flood irrigation in the Middle Fork Malheur Basin is beneficial in reducing alkalinity in soils and is an appropriate irrigation method." The minority opinion was that Finding No. 15 should be read as meaning that alkali abatement is a part of irrigation.

Secondly, the subcommittee concluded that alkali abatement is not a use presently allowed in the Malheur Basin Program. Given that alkali abatement is neither irrigation nor a subset of irrigation, the subcommittee determined that in order to approve this application, there must be a specific basin program classification that incorporates alkali abatement.

Thirdly, the subcommittee concluded that even if alkali abatement was a classified and allowed use in the Malheur Basin Program, or even if, applying a broad reading of the term irrigation, alkali abatement could be considered a form or subcategory of irrigation, the application is deficient and cannot be approved. The subcommittee determined that Application 69433 was deficient in that it lacked sufficient information on the extent and location of alkali-affected soils and on the need for additional water for this use above the amount already allowed for irrigation. As such, it must be rejected.

Therefore, the subcommittee's recommendation to the full Commission on this matter is to reject the alkali abatement portion of Application 69433 with the following findings:

1. Alkali abatement is not a form or subset of irrigation for purposes of classification within the basin program, nor is it incorporated in any other specifically allowed or classified uses in the basin program.

2. The SCS crop requirements for meadow grass and hay are approximately 2 acre feet per acre and the duty allowed in the Malheur Adjudication for irrigation is 3 acre feet per acre.

3. Even if the Basin Program contained a specific classification for use of the waters of the Malheur River for alkali abatement, either as a part of irrigation or as a separate use, there is insufficient information and evidence on either the specific extent and location of alkali-affected soils or the need for additional water for alkali abatement to approve the application.

4. The MBWUA is not foreclosed from reapplying under Division 82 (Acceptance of Applications for Water Uses in Addition to Classified Uses), which application would need to include the additional information and facts about alkali, the location of alkali-affected soils within the application's boundaries and the need for additional water for alkali abatement above the adjudicated duty of 3 acre feet per acre. The MBWUA also is not precluded from seeking a basin program amendment and submitting the additional information in that forum, and then reapplying for this use, assuming alkali abatement is added as a classified use to the basin program.

Staff were directed to prepare a draft Final Order for submission to the full Commission consistent with the subcommittee's determinations and recommendations. The Final Order prepared at the subcommittee's direction is Attachment 1.

In preparing the draft Final Order, additional information was added to the History of Proceeding describing the issuance of the Proposed Order, filing of exceptions and appointment of the subcommittee.

A new section entitled "Determination on Exceptions" was added to the draft Final Order. This section first describes the determination and recommendation of the subcommittee to deny the alkali abatement portion of application 69433 and sets out the reasons for that denial. Subsequently, each exception is summarized and indented, followed by the recommended Commission response. The exceptions of ODFW and WW have been addressed together, followed by the exceptions of the MBWUA and Oxbow Ranch.

The Determination on Exceptions also states that as a result of the determination to deny the alkali abatement portion of Application 69433, many of the findings of fact, ultimate facts and conclusions of law, portions of the opinion, the Interim Order and a part of the Proposed Order were modified or deleted from this Final Order. It is noted in the Determination on Exceptions that where changes have been made to reflect the Commission's rejection of the alkali

abatement portion of Application 69433, exceptions to those portions of the Proposed Order have been rendered moot and are not addressed in the Final Order.

As a result of the subcommittee's determinations and recommendations, many of the findings of fact, ultimate facts, conclusions of law, portions of the opinion, the interim order and a part of the Proposed Order to which the parties excepted were modified or deleted from this Final Order. Where changes were made to reflect the Commission's rejection of the alkali abatement portion of Application 69433, exceptions to those portions of the Proposed Order have been rendered moot and are not addressed in the Final Order.

III. Specific Subcommittee Actions on Exceptions

ODFW and WaterWatch asserted that Finding of Fact 4 regarding the effect of high spring flows on streambank erosion should be modified to read that in addition to high spring flows, grazing and land management practices in the basin also exacerbate streambank erosion. The subcommittee concurred that the requested addition was not supported by evidence in the record and the exceptions were denied.

Finding of Fact 28 regarding the location of bull trout was modified to more accurately reflect the testimony of ODFW's witnesses in response to ODFW's exception to this Finding.

On further investigation and review of the record in response to ODFW's and WaterWatch's exceptions on the issue of whether ODFW followed its own rules in submitting its instream right applications, the subcommittee agreed that ODFW did not violate its own rules.

WaterWatch's exception to Finding of Fact 37 (now Finding of Fact 35 in Final Order) regarding the consumptive requirements of meadow grass was not supported by the record and was denied.

WaterWatch asserted that Finding of Fact 42 (now Finding of Fact 40 in Final Order) should be amended. This Finding states that beyond those soil tests conducted by the Soil Conservation Service, no soil tests had been conducted although the expert witness for WaterWatch had said that testing was the only way to determine the presence and type of problem soils. WaterWatch asserted that additional language should be added stating that the 1969 general soil survey and mapping in the basin showed no evidence of alkali soils. The subcommittee concluded that as the survey and mapping were general and contained the disclaimer that much of the report was based on tentative information and was subject to change, and as the SCS soil tests had shown alkali soils on MBWUA's lands, this

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request for additional language in Finding of Fact 42 was not supported by the record and was denied.

WaterWatch asserted that a finding of consistency with statewide planning goals for the instream water rights was required under OAR 690-05-030. The subcommittee concluded that no such finding was required, primarily because the issue of consistency of the instream water applications with either the statewide planning goals or the local comprehensive land use plans was not raised in the hearing and no testimony or evidence was given on this point.

However, it was concluded that under the procedures in place at the times of filing, the affected local governments (Harney and Grant Counties) had been notified of the filing of both Application 69433 and instream water right applications 70325 and 70349-70352 and had submitted no comments or information regarding the compatibility of these applications with the acknowledged local land use plans. Under the procedures in place at the time these several applications were filed, compatibility may be presumed if no response is received from the affected local government within 30 days of receiving the notice of filing. Therefore, the subcommittee recommends that the Commission include a finding of compatibility in the Final Order regarding the increase in rate portion of Application 69433 and instream water right applications 70325 and 70345-70352.

ODFW excepted to Ultimate Fact 8, which finds the presence of habitat and forage for wildlife and wildfowl an incidental, albeit beneficial, result of flood irrigation. The MBWUA also excepted to the finding that these benefits are only incidental, as wildlife maintenance was a use requested in their application. Both exceptions were denied. The record supports leaving Ultimate Fact 8 as it is written.

ODFW excepted to the omission from Condition 5 of a requirement for compliance with applicable laws regarding fish passage. WaterWatch asserted that a date certain should be set for installation of fish screening. The subcommittee determined that there was nothing in the record regarding fish passage and denied ODFW's exception. The subcommittee further noted that this condition already required fish screening before the increase in rate right could be exercised and denied WaterWatch's exception.

The MBWUA excepted to the language of the Proposed Order approving the increase in rate of diversion portion of its application and asked that certain modifications be made. The subcommittee concluded that the requested modifications were inconsistent with the MBWUA's previous requests and representations, and would allow exercise of the right under earlier priorities and in a manner not previously requested or considered by the parties. This exception was denied.

Oxbow Ranch asserted that under ORS 536.025(2), the Director, not the Referee, must sign proposed orders. The subcommittee determined that the Oregon Administrative Procedures Act and the Commission's own rules provide for the Referee to sign proposed orders, that ORS 536.025(2) allows the Commission to delegate any of its powers, with the exception of rulemaking, and that it had so delegated the authority to sign proposed orders. This exception was denied.

Oxbow Ranch excepted to the approval of ODFW's instream right applications on the basis that the Referee had found ODFW had failed to establish the necessity for the amount of water requested. The subcommittee concluded that the record did not support this assertion and denied the exception.

Based on the subcommittee's determination regarding alkali abatement, paragraphs 1-5 of the Opinion in the Proposed Order were deleted. The remainder of the Opinion has been rewritten consistent with the subcommittee's determination.

The Interim Order was deleted and the Final Order denies the alkali abatement portion of Application 69433.

The permit condition requiring installation of measuring devices was retained for those diversions serving lands under the increase in rate of diversion portion of Application 69433.

Other changes to the Proposed Order were made in the Final Order in response to the subcommittee's determinations on the exceptions, and many of the findings and conclusions were deleted, amended or renumbered. Those changes are listed in Attachment 7.

IV. Summation

A combined contested case hearing was held on Application 69433 and instream water right application 70325 and 70349-70352. A Proposed Order was issued and exceptions filed by the parties. A subcommittee of three Commission members was appointed to review the record and exceptions and make recommendations for final Commission action. The subcommittee has completed its review and a Final Order has been prepared at the subcommittee's direction.

V. Recommendation

The subcommittee recommends that the Commission adopt the determinations and recommendations of the subcommittee on the exceptions and issue the Final Order as drafted. The Final Order responds to the exceptions of the parties, rejects the alkali abatement portion of Application 69433, approves the increase in rate portion of Application 69433, and approves the five instream water right applications.

Attachments:

1) Final Order
2) ODFW Exceptions
3) WaterWatch Exceptions
4) MBWUA Exceptions
5) Oxbow Ranch Exceptions
6) Proposed Order
7) Listing of Other Deletions, Modifications and Renumberings

Martha Pagel/Weisha Mize
378-8455
October 30, 1992
January 5, 1993

(503) 473-5124

RECEIVED
JAN 22 1993
WATER RESOURCES DEPT
SALEM, OREGON

January 19, 1993

TO: Water Resources Commission

FROM: Malheur County Court

SUBJECT: Subcommittee recommendations on Request for approval of Final Order on Application 59433 of Malheur Basin Water Users Association and ODFW's Instream Water Right Application 70325 and 70349-70352 on the Malheur River and Big and Lake Creeks

We join with Harney County in their efforts to urge the Commission to make sure that complete information is gathered before any final decisions are made concerning instream water rights in the Malheur Basin.

Agriculture is very important to both of our counties and should have a high priority when decisions are made that will affect the economics of the area.

We request that the Final Order on ADFW's instream water right application 70325 and 73049-70352 be suspended until ways can be found to adequately accommodate application 69433 of the Malheur Basin Water Users Association.

MALHEUR COUNTY COURT

Russell F. Hursh,
County Judge

John J. Bishop,
County Commissioner

R. Thomas Butler,
County Commissioner

cc: Harney County Court

Oregon

WATER
RESOURCES
DEPARTMENT

January 3, 1992

Ronald S. Yockim
Cegavske, Johnston & Associates, P.C.
PO Box 218
Roseburg, Oregon 97407

Re: Instream water right applications 70304, 70306, 70307, 70349 through 70352, 70588, 71454, 71463, 71464, 71467, 71468, 71472.

Dear Mr. Yockim,

This letter is to verify receipt of your requests, on behalf of Grant County to enter into discussions regarding the referenced instream water rights applications. We will contact you when we have completed a natural flow analysis of the remaining streams and are prepared to discuss this information and the other issues raised in your October 14, 1991 correspondence.

Enclosed is a brief discussion on the instream water right program. I hope this is informative.

Sincerely,

Michael J. Mattick

MICHAEL J. MATTICK
Water Rights Specialist

MJM:

cc: Grant County Court

3850 Portland Rd NE
Salem, OR 97310
(503) 378-3739
FAX (503) 378-8130

LAW OFFICES
CEGAVSKE, JOHNSTON & ASSOCIATES, P.C.

WALLACE D. CEGAVSKE
KATHRYN JOHNSTON
RONALD S. YOCKIM

425 S.E. JACKSON STREET
P.O. BOX 218
ROSEBURG, OREGON 97470

Tel. (503) 673-5528
Fax. (503) 672-0977

RECEIVED
OCT 16 1991
WATER RESOURCES DEPT.
SALEM, OREGON

69949
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70304
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70349→70352
70588
70640→70655
71454,55
71463,64
71467,68
71472

October 14, 1991

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

William Young
Director
Water Resources Department
3850 Portland Road, N.E.
SALEM OR 97310

Re: Instream Water Right Applications
Grant County

Dear Mr. Young:

Enclosed please find a Petition for Review and Memorandum of Points and Authorities which are being submitted on behalf of Grant County. These documents are submitted to aid in your public interest determination and to supplement earlier communications from the Grant County Court.

The Grant County Court has a long-standing interest and involvement in managing the water resources within the county. The Court welcomes this opportunity to work with the Department to resolve the various issues raised by the instream water right applications. If you have any questions please don't hesitate to contact me.

Sincerely,

CEGAVSKE, JOHNSTON & ASSOCIATES, P.C.

Ron Yockim

Ronald S. Yockim

RSY:bg
Enclosures

cc: Sen. Gene Timms
Rep. Mike Nelson
Grant County Court
Oregon Department of Fish and Wildlife

BEFORE THE WATER RESOURCES COMMISSION

STATE OF OREGON

IN RE THE INSTREAM WATER RIGHT APPLICATIONS: 70304, 70307, 70306, 70349, 70351, 70352, 71450, 71455, 71464, 71468, 71454, 71467, 71463, 71472, 70588, all situated in Grant County, Oregon	)	
OREGON DEPARTMENT OF FISH AND WILDLIFE, Applicant,	)	PETITION FOR REVIEW
GRANT COUNTY, Petitioner.	)	

I.

Pursuant to OAR 690-77-030, the Grant County Court on behalf of Grant County, Oregon, hereby submits this Request for Review of the Oregon Department of Fish and Wildlife's Instream Water Right Applications No. 70304, (N.F. Malheur River); No. 70307 (Little Crane Creek); No. 70306 (Crane Creek); No. 70349 (M.F. Malheur River); No. 70351 (Lake Creek); No. 70352 (Big Creek); No. 71450, (Bosenberg Creek); No. 71455, (McCoy Creek); No. 71464, (Summit Creek); No. 71468 (Bear Creek); No. 71454 (Little Malheur River); No. 71467 (Bear Creek); No. 71463 (Summit Creek); No. 71472 (Silvies River); No. 70588 (S.F. Beaver Creek); all situated in Grant County, Oregon.

II.

The above instream water right applications should be conditioned to conserve water for a higher public purpose which is expected to provide greater benefits to the public. These higher public purposes should take precedent over the instream water right.

III.

These instream water right applications preclude planned uses which have a reasonable chance of being developed and which provide a greater benefit to the public from the use of the unappropriated water. The issuance of certificates for the above instream water rights may impair or be detrimental to these planned expansions which provide a greater benefit to the public.

IV.

Grant County has adopted as part of the Grant County Comprehensive Plan a special recognition for agricultural areas. The instream water right applications fail to incorporate the Grant County Comprehensive plan findings and are therefore detrimental to the public interest.

V.

The instream water right application is in conflict with the Land and Resource Management Plan for the Malheur National Forest which seeks to encourage livestock movement away from riparian areas through the use of structural and nonstructural improvement.

VII.

The instream water right applications are inconsistent with the Malheur-Owyhee, Malheur Lake, and Deschutes River basin plans.

VIII.

The instream water right applications fail to include provisions for the Oregon Department of Fish and Wildlife to measure the water rights and to monitor flows for the instream water rights.

IX.

The unappropriated waters of these streams could satisfy both instream water uses and additional out of stream uses.

X.

The proposed instream water rights violate OAR 690-11-080(2)(b)(c) prohibiting permits when the unappropriated water is either not available or is not sufficient for the requested use. In this case the Petitioner is requesting water that is in excess of availab

IX.

The Grant County Court will present additional facts and information as requested and will participate in good faith to resolve these issues through mutually agreeable modifications or conditions.

RESPECTFULLY SUBMITTED;

Ronald S. Yockim, OSB 81430
of Attorney for Petitioner

PROOF OF SERVICE

I, Barbara Griffin , on this date served upon the Oregon Department of Fish and Wildlife the above Request for Review, by depositing in the U.S. Mail, postage paid, the same to the applicant at: Oregon Department of Fish and Wildlife
P.O. Box 59
Portland, Oregon 97207

Dated: October 14, 1991

BEFORE THE WATER RESOURCES COMMISSION

STATE OF OREGON

IN RE THE INSTREAM WATER RIGHT APPLICATIONS: 70304, 70307, 70306, 70349, 70351, 70352, 71450, 71455, 71464, 71468, 71454, 71467, 71463, 71472, 70588, all situated in Grant County, Oregon	MEMORANDUM OF POINTS AND AUTHORITIES
OREGON DEPARTMENT OF FISH AND WILDLIFE, Applicant,	
GRANT COUNTY, Petitioner.	

Pursuant to OAR 690-77-030, the Grant County Court has requested review of the following Instream Water Right Applications: No. 70304, (N.F. Malheur River); No. 70307 (Little Crane Creek); No. 70306 (Crane Creek); No. 70349 (M.F. Malheur River); No. 70351 (Lake Creek); No. 70352 (Big Creek); No. 71450, (Bosenberg Creek); No. 71455, (McCoy Creek); No. 71464, (Summit Creek); No. 71468 (Bear Creek); No. 71454 (Little Malheur River); No. 71467 (Bear Creek); No. 71463 (Summit Creek); No. 71472 (Silvies River); No. 70588 (S.F. Beaver Creek); all situated in Grant County, Oregon.

The Petition raises as issues the fact that the instream water right applications do not satisfy the provisions of OAR 690-77-015 and OAR 690-77-03(1); and that the issuance of certificates for these instream water rights may impair or be detrimental to the public interest (OAR 690-77-030(1)(c)).

Under the laws of Oregon relating to generally to the appropriation of water, the Water Resources Commission ("Commission") is to determine whether the instream water right application would impair or be detrimental to the public interest (ORS 537.170(5)). In making this public interest determination the Commission is required to consider, among others, a) conserving the highest use of the water for all purposes, including but not limited to irrigation and game fishing; b) the maximum economic development of the waters involved; c) the amount of waters available for appropriation; d) the prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

This general public interest determination is required for both instream water right and for out of stream appropriations. (ORS 537.170 & 537.343).

The standards to be followed in determining whether the proposed instream water rights are within the public interest are set forth in OAR 690-77-045(2):

"a. The instream water right shall not take away or impair any permitted, certificated, or decreed right to any waters or to the use of any vested waters by altering the availability and timing of water to a user with an earlier priority date;

b. an instream water right shall not preclude planned uses with a reasonable chance of being developed that would provide a greater benefit to the public from the use of the unappropriated water available;

c. The cumulative total of instream water rights shall not exceed the amount needed to support public uses when the unappropriated water available could otherwise satisfy both the public uses and additional out of stream uses;

d. An instream water right may be conditioned or modified to conserve water for a higher public purpose if the other purpose is expected to provide greater benefits to the public; and

e. An instream water right shall not exceed the estimated average natural flow or level if the source is from a natural streamflow or natural lake unless the higher amount is justified under OAR 690-77-05(4)."

In addressing whether the instream water rights are in the public interest, the Grant County Court identified seven issues for consideration: 1) the unappropriated water should be conserved for a higher public purpose; 2) the instream water right would preclude planned uses with a reasonable chance of development; 3) the unappropriated water could satisfy both instream uses and additional out-of-stream uses; 4) the instream water right applications are inconsistent with the Grant County Comprehensive Plan, the Land and Resource Management Plan for the Malheur National Forest, and the basin plans for the Malheur-Owyhee, Malheur Lake, and the Deschutes River basins; 5) that it is in the public interest that the applicant measure and monitor the flows; 6) that the issuance of an instream water right requires a balancing of public interests to accommodate both instream and out of stream uses; and 7) that the instream water rights can not be granted when water is either not available or is not sufficient for the requested use.

ISSUE NO. 1: INSTREAM WATER RIGHTS SHOULD BE CONDITIONED TO CONSERVE WATER FOR HIGHER PUBLIC PURPOSES WHICH ARE EXPECTED TO PROVIDE GREATER BENEFITS TO THE PUBLIC.

In the issuance of an instream water right certificate the Commission must make a public interest determination weighing the

various uses and benefits to which the unappropriated water could be applied (OAR 690-77-045(2)(d)). In determining the public interest the Commission must first assess the future water needs of the basin. Based upon the future needs analysis the Commission can then determine which of the uses are conflicting and determine how to allocate the water to achieve the highest public interest.

As part of the Commission's review, there must be a determination of the highest use of these waters and a prevention of the wasteful, uneconomic or impractical uses of these waters. For example if storage projects are the highest use or would provide the most efficient use, then the instream permit must be conditioned to allow for such uses.

For the subject streams the highest public interest determinations has to some extent already been determined during the basin planning programs, the Land and Resource Management Plan for the Malheur National Forest and the Grant County Planning Process. The instream water right applications must be consistent with these plans.

An example of the conflicts between these various plans and the instream water right application is found on the Middle Fork Malheur River where the Malheur-Owyhee Basin Plan closed the Middle Fork Malheur River and its tributaries to any further appropriations, except domestic and livestock consumption, when the waters are below the minimum stream flows. The instream filing is inconsistent with this determination and if any instream right is certificated it should be condition to except domestic and livestock activities.

In addition the instream water right applications should also be conditioned to conserve water for riparian management programs identified in the Malheur National Forest Land and Resource Management Plan ("LRMP"). The LRMP places a priority on designing and implementing structural and nonstructural improvements designed to encourage livestock movement away from riparian areas. (LRMP p.IV-35). If certificated in their present form the instream water rights would preclude these riparian management programs.

The instream water rights must be consistent with these plans and conditioned to conserve water for these future needs.

ISSUE NO 2. THE INSTREAM WATER RIGHT APPLICATIONS ARE NOT IN THE PUBLIC INTEREST SINCE THEY PRECLUDE PLANNED USES WITH A REASONABLE CHANCE OF BEING DEVELOPED THAT WOULD PROVIDE A GREATER BENEFIT TO THE PUBLIC FROM THE USE OF THE UNAPPROPRIATED WATER.

Under existing Commission policy to maximize the public interest, the instream water rights are to be conditioned in order that they do not preclude planned uses with a reasonable chance of being developed (OAR 690-77-045(2)(b)). This standard should be applied to those planned projects which are currently identified.

The Malheur National Forest has a ten year program to construct structural and non-structural improvements to benefit the riparian areas and fisheries production. These watershed improvement programs and the fish and wildlife habitat improvement projects are itemized in the LRMP (P. A 11-13).

ISSUE NO. 3: THE UNAPPROPRIATED WATER COULD SATISFY BOTH INSTREAM WATER USES AND ADDITIONAL OUT OF STREAM USES.

In determining whether an instream water right is in the public interest, the Commission must inquire whether both the instream use and the use of the water for other purposes (ie. riparian management, stock watering impoundments etc.) can all be satisfied from the unappropriated water (OAR 690-77-045(2)(c).

While it is generally true that out of stream uses are consumptive uses of water, this general principal does not necessarily apply to storage projects (on-site or reservoir), riparian management programs, or flood irrigation on the stream bottomlands. By capturing the high winter flows and releasing them throughout the drier months, the net result is that these out of stream uses can benefit the instream fish values.

In determining whether both the fisheries values and future development can be accommodated, the Commission must consider not only whether it is in the public interest to appropriate the waters in these various water reaches to instream fisheries, but also whether allocating this specific volume of water serves the maximum beneficial use.

Once it is determined that fisheries is in the public interest, the question becomes at what point on the continuum from zero appropriation to the full request does the maximum beneficial use occur. Does the fisheries use require all of the unappropriated water or could other uses be accommodated? This question is particularly germane to the season of use. For example if winter flows can be stored and released at a later date then the instream water right must be balanced with the public benefits to be obtained from storage and release.

It is the Grant County Court's position that all of the uses identified in the Malheur National Forest Land and Resource Management Plan, various basin plans, and the Grant County Comprehensive Land Use Plan can be accommodated with proper management.

ISSUE NO. 4: THE INSTREAM WATER RIGHT APPLICATIONS ARE NOT CONSISTENT WITH THE GRANT COUNTY COMPREHENSIVE PLAN

The instream water right applications have not been the subject of local land use review. The failure to involve the local public is a violation of the provisions of Goal 1 and 2.

The instream water right application is inconsistent with statewide planning goal No. 2, which requires "city, county, state, and federal agencies, and special district plans and actions related to land use shall be consistent with comprehensive plans of cities and county's and regional plans..." This goal requires "coordinated" plans and actions. This coordination did not occur with these instream water right applications.

ISSUE NO. 5: INSTREAM WATER RIGHT CERTIFICATES MUST BE CONDITIONED TO REQUIRE THE APPLICANT TO MEASURE AND MONITOR THE FLOWS

Under the provisions of OAR 690-77-02(5) the instream water right applicant is encouraged to propose:

"(a) A means and location for measuring the instream water right;

(b) The strategy and responsibility for monitoring flows for the instream right; and

(c) Any provisions needed for managing the water right to protect public uses."

Grant County submits that if it is in the public interest to certificate instream water rights on these watercourses then as a practical matter the Applicant should provide a means to monitor, measure, and manage the instream water right throughout the entire reach covered by the instream right.

ISSUE NO 6: ISSUANCE OF AN INSTREAM WATER RIGHT REQUIRES A BALANCING OF PUBLIC INTEREST

The provisions of ORS 537.170 set forth the process under which the Commission is to determine whether a project would impair or be detrimental to the public interest. Among these various

considerations is the issue of whether the proposed use allows for the maximum economic development of the waters involved. (ORS 537.170(5)(b).

Inherent in this determination is a balancing between the water needs of the instream applicant and whether the applicant's use of water will be wasteful or otherwise will not accommodate or allow the maximum economic development of the waters involved. This balancing of needs must be done prior to the issuance of the instream water right.

In its public interest determination the Water Resources Commission must consider reserving the unappropriated water for future economic development. This is of particular importance considering the Legislature in authorizing the three state agencies to request instream water rights also recognized that there must be a process for reserving water for future economic development. (ORS 537.356)

One must assume that it was not the Legislature's intent that there would be a race to file under the first in time-first in right doctrine, with the winner receiving all of the unappropriated water available. The more rational interpretation was that the Commission would consider future economic development when it conducted its public interest determinations. Obviously the Legislature did not expect a "land rush" between competing agencies. Likewise it did not expect one agency to be granted all of the water without a balancing of interest. If it had, it would merely have withdrawn all of the water from appropriation.

The Grant County Court submits that the public interest review should consider the future economic development of this region, particularly as it applies to agricultural development and riparian management. Any instream water right should be conditioned to reserve water for the future development of projects of this nature.

In addition the public interest review must consider the impacts of the instream water right upon the availability of the water for the conservation of the Upland Sandpiper, an endangered species, and other upland birds (ie. Sandhill Crane). Both species use parts of the Middle Fork of the Malheur River and its tributaries as nesting areas. The use of these waters to promote the conservation of these species is in the public interest and must be weighed against the use of these waters for the purposes identified in the instream water applications.

ISSUE NO. 7: ISSUANCE OF A PERMIT WHEN WATER IS NOT AVAILABLE OR INSUFFICIENT FOR THE REQUESTED USE IS IN VIOLATION OF WATER RESOURCES COMMISSION POLICY

Under the provisions of OAR 690-11-80(2)(b)(c), permits can not be issued when the unappropriated water is not available or is not sufficient for the requested use. Before these instream water right applications are issued the Commission must first make a determination whether the unappropriated water is sufficient or available for the requested use. If the water is not available then the Commission must either deny the application or explore ways in which the requested use can be accommodated through other means (ie. structural and non-structural storage).

With respect to the Middle Fork of the Malheur River and its tributaries the basin plan clearly specifies that no water rights can be issued if the minimum stream flows are not being met. The only exceptions to this rule are for domestic and stockwatering purposes. Prior to issuing an instream water right on these streams the Commission must first determine if the minimum stream flows are being met.

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
503/938-3377
FAX
503/938-6112

September 6, 1991

Steve Applegate
Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

RE: Malheur Application No. 69433

Dear Steve:

Enclosed are an original and one copy of four maps in connection with the above application.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk
Enclosures

cc: Kent Searles
Eastern Region Manager
Water Resources Dept.
1995 3rd Street
Baker, OR 97814

Bill Beal
Water Resources Dept.
Harney County Courthouse
Burns, OR 97720

INTEROFFICE MEMO
EASTERN REGION
WATER RESOURCES DEPARTMENT

TO: Steve Applegate, Weisha Mize **DATE:** August 30, 1991

FROM: Kent

SUBJECT: Sam Tucker's Draft Permit

Headgates may not be compatible with fish screens. Our study involves weirs and fish screen structures (not headgates). ODF&W personnel, in their Northeast Region, have told me that efforts to combine headgates and fish screens into one structure have not been successful. I suggest that the page 3 paragraph referring to weirs be amended to also include headgates. Page 12 should be amended by deleting "All new head gates shall be designed and constructed to allow installation of fish screening and...."

Deficiency in rate needs to be reflected in the "use" portion of any eventual permit. All land with an existing flow rate of 1/80th needs to be shown with an asterisk, or separate listing, in the description of the proposed place of use. It would be helpful if the applicant also listed the POD for each deficiency in rate tract.

If the deficiency in rate portion of this draft permit is clarified my concern with the proposed duty language in the third paragraph on page 13 could be solved by delegating "prior" and adding an s to "right" on line 8. I would appreciate it if the duty language was corrected to show it as per acre as I think it is meant.

Sam's letter referred to percentages of each priority. I am not aware that we have issued permits as he is suggesting. The application has now, apparently, been amended to include all irrigated land in the area and the "need" of tieing the priorities to specific tracts of land may be lessened, but problems with eventual land partitions is inevitable.

Copy: Sam Tucker

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
503/938-3377
FAX
503/938-6112

RECEIVED
AUG 30 1991
WATER RESOURCES DEPT.
SALEM, OREGON

August 27, 1991

Steve Applegate
Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

RE: Middle Fork Malheur
Application # 69433

Dear Steve:

Weisha Mize has suggested that I contact you concerning the Middle Fork Malheur application. I am enclosing new maps which identify all of the areas which are subject to the application and amended application.

I am enclosing a draft permit. I have used the format of the earlier draft permit and have included what I believe to be all the necessary flow, duty and diversion information and legal descriptions in order to make this permit consistent with the application and the supplemental application. I note that the acreages shown on the maps are at times inconsistent with the application. I am working with the preparer of the map to straighten out any inconsistencies. Since some errors were found in the application, I am enclosing copies of some pages the applications showing corrections. I am planning on submitting revised maps showing corrections, so please consider these maps as drafts only.

Rather than submitting these documents to the referee at this time, I am first asking that the Department look it over and see if it provides all the necessary information to issue a permit. Please understand, I am not asking you and the Department to endorse or take a position with respect to whether the permit should be issued. This is, of course, up to the referee and the Commission. Rather, I am trying to see if the information I have now provided would be sufficient, from the Department's perspective, to issue a permit if the referee believed that the evidence supported issuance of a permit.

You will note that under the beneficial use descriptions, I have inserted more than one beneficial use. It would be the Association's position that the additional water, taken as a whole, is recognized as serving more than one beneficial use. I can find

nothing in the regulations which would prohibit such a finding. The evidence in our case would support a finding that the additional 1 1/2 acre feet during times of high water provides more than one beneficial use permitted under the basin program.

You will note that I have handled the issue of priority between the original application and the supplemental application by allocating the original and supplement priority dates on a pro rata basis over the entire basin. I understand that this is permissible and may even be preferable from the Department's perspective in terms of allocating the water.

We have requested that lands presently subject to a 1/80th cfs diversion rate for irrigation be allowed to increase to a 1/40th cfs. The referee suggested this may not be possible under our present application. I have went ahead and included a summary showing all existing certificates which are subject to a 1/80th diversion rate for irrigation and have included some language in the draft permit relating to this issue.

Please look this over. I will give you a call and asked for your thoughts concerning whether such a permit could be issued if supported by evidence and whether you believe the Department needs additional information from the Association.

I am also sending a copy to Kent Searles and Bill Beal for their review and comments.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk
Enclosure

cc: Kent Searles
Eastern Region Manager
Water Resources Dept.
1995 3rd Street
Baker, OR 97814

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

TELEPHONE
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FAX
503/938-6112

RECEIVED
JUL 03 1991
WATER RESOURCES DEPT.
SALEM, OREGON

July 1, 1991

Steve Brown
Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

RE: Middle Fork Malheur
Application No. 69433

Dear Mr. Brown:

Enclosed is an amended or supplemental application which we are submitting in connection with the above application. This application increases the number of acres applied for under the original application and makes some other changes. I am also enclosing a check in the amount of $2,417.20 to cover the fee associated with increasing the acres on the original application.

This matter is presently pending in a contested case hearing. We have made a motion to the hearing's referee to allow this amendment. I request that you hold the application and the enclosed fee until such time as the referee determines whether we can file this amended application. If the referee determines that we can not file the amended application, we request a return of the fee. I am also proposing to the referee that if she allows the application, and she requires that the amended application comply with current law, we will then take whatever additional steps, including those required from a water right's examiner, in order to complete the application.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk
Enclosure

			1/80th cfs	1/40th cfs	1/20th cfs
Diversion Point	#7 =	241.0 Acres =	3.0 cfs	6.0 cfs	12.0 cfs
Diversion Point	#8 =	75.0 Acres =	.9 cfs	1.8 cfs	3.6 cfs
Diversion Point	#18 =	117.0 Acres =	1.5 cfs	3.0 cfs	6.0 cfs
Diversion Point	#19 =	36.0 Acres =	.5 cfs	1.0 cfs	2.0 cfs
Diversion Point	#20 =	30.3 Acres =	.4 cfs	.8 cfs	1.6 cfs
Diversion Point	#21 =	150.1 Acres =	1.9 cfs	3.8 cfs	7.6 cfs
Diversion Point	#16 =	666.3 Acres =	8.3 cfs	16.6 cfs	33.2 cfs
	Total	1,315.7 Acres	16.5 cfs	33.0 cfs	66.0 cfs

Revised 7/24/91

RECEIVED
JUL 26 1991
WATER RESOURCES DEPT
SALEM, OREGON

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
503/938-3377
FAX
503/938-6112

July 24, 1991

Steve Brown
Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

RE: Middle Fork Malheur Application # 69433

Dear Mr. Brown:

Malheur Basin Water Users Association submitted an amended application to the Water Resources Department on July 1, 1991. In reviewing and double checking the records, we have some corrections and additions. Enclosed is a revised page "P - 2" and a revised summary. The P - 2 page shows acreage changes with respect to the various tax lots. These changes were made after reviewing Water Resources Department records. The revised summary shows an additional 107.1 acres which are now included in the application. I am enclosing a check in the amount of $214.20 to cover the fee associated with the increase in acreage. I understand this fee is appropriate in event the referee ultimately determines that the beneficial use is related to irrigation.

We request that these two pages be inserted in the amended application at the appropriate points.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk
Enclosures

cc: Party Service List

Application No. 69433 / Supplemental

RECEIVED
JUL 03 1991
WATER RESOURCES DEPT.
SALEM, OREGON

State of Oregon
WATER RESOURCES DEPARTMENT

Application for a Permit to Appropriate Surface Water

Applicant(s) Malhuer Basin Water Users Assn.
(Please print or type - use dark ink)

Mailing Address: _____

Drewsey (*City*) Oregon (*State*) 97904 (*Zip*) 493-2311 (*Daytime Phone No.*)

I (We) make application for a permit to appropriate the following described waters of the State of Oregon:

1. ***SOURCE OF WATER*** *for the proposed use:* Middle Fork of the Malhuer River, *a tributary of* Snake River.

2. ***TOTAL AMOUNT OF WATER*** *to be applied to beneficial use:* 15.2 cfs *cubic feet per second,* ***OR*** _____ *gallons per minute. If water is to be used from more than one source, give the quantity of water from each:* same

3. ***INTENDED USE(s) OF WATER:*** flood irrigation, alkali abatement, erosion control, and ground water replenishment

If for more than one use, give the quantity of water from each source for each use; same

If for ***DOMESTIC*** *use, state the number of households to be supplied;* _____

If for ***MUNICIPAL OR QUASI-MUNICIPAL*** *use, state the present population to be served, and an estimate of the future requirements; (List population projections, water needs, anticipated areas to be provided water.)*

If for ***MINING*** *use, state the nature (gold, silver, etc.) of the mines to be served;* _____

If for ***IRRIGATION,*** *or other land area use, state the TOTAL number of acres to be developed under each use;*

Irrigation 1208.6 Acres

Other (describe) _____

4. ***DESCRIPTION OF WATER DELIVERY SYSTEM:*** *Include dimensions and type of construction of diversion works, length and dimensions of supply ditches or pipelines, size and type of pump and motor. If for irrigation, describe the type of system (i.e., flood, wheel line, hand line, drip, other).*

Flood irrigation through headgates from the river and transfered to the place of use through variousditches and devider ditches. The ditches vary in width and depth from 2' to 6'.

5. ***PROJECT SCHEDULE:*** *(List month and year)*

Proposed date construction work will begin All works are in place

Proposed date construction work will be completed spring of 1992

Proposed date water use will be completed spring of 1992.

NOTE: A map prepared by a Certified Water Right Examiner (CWRE) and a complete legal description of the subject property are required under ORS 537.140 and OAR 690 as a part of your application. The legal description may be copied from your deed, title insurance policy, or land sales contract.

6. *a) In the event any deficiencies are noted involving the application map enclosed herein, please return the map with instructions for correction to (check one):*

_____*Applicant* _____ *CWRE* _____*Other (Identify in REMARKS section)*

b) In the event any deficiencies are noted involving the application, please return the application with instructions for correction to (check one):

_____*Applicant* _____ *CWRE* _____*Other (Identify in REMARKS section)*

7. *Are all lands involved (including the proposed diversion site, place of use, and access for conveying the water) under your ownership?* NO *. If not, list in the REMARKS section below, or on an attached sheet, the names and mailing addresses of the legal owners of all property involved in the proposed development.* See attached

REMARKS: This application is for an additional 1.5 acre foot of water to be used for alkali abatement , errosion control during the spring runoff and to fill the ground water aquifer.

MBWUA also requests the flow on the original application be increased to 1/20th CFS or in alternative, 1/40th CFS.

NOTE: The permit, when issued, is for the beneficial use of water without waste. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible the land use you propose may not be allowed if it is not in keeping with the goals and acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Melhuse Basin Water Users Assn.

by Kenneth J. Burke — 6-25-91

Signature of Applicant — *Date*

Signature of Co-Applicant, if any — *Date*

FOR WATER RESOURCES DEPARTMENT USE ONLY

Dear Applicant:

I certify that I have examined the foregoing application, together with the accompanying information, and am returning it to you for:

correction

In order to retain its tentative priority, this application must be returned with the requested corrections or additions on or before:

April 10 , 1995.

WITNESS my hand this 10th day of January, 1995.

MARTHA O. PAGEL
Water Resources Director

By: _____
STEPHEN C. BROWN
Water Rights Program Analyst

This instrument was first received in the office of the Water Resources Director at _____, Oregon, on the 28th day of October, 1987, at 3:00 o'clock, P. M.

RECEIVED
APR 10 1995
WATER RESOURCES DEPT.
SALEM, OREGON

APPLICATION NO: 69433 PERMIT NO: _____

A:APPFORM 9/89

No. 19597

T. 20S. R. 35E. W.M.

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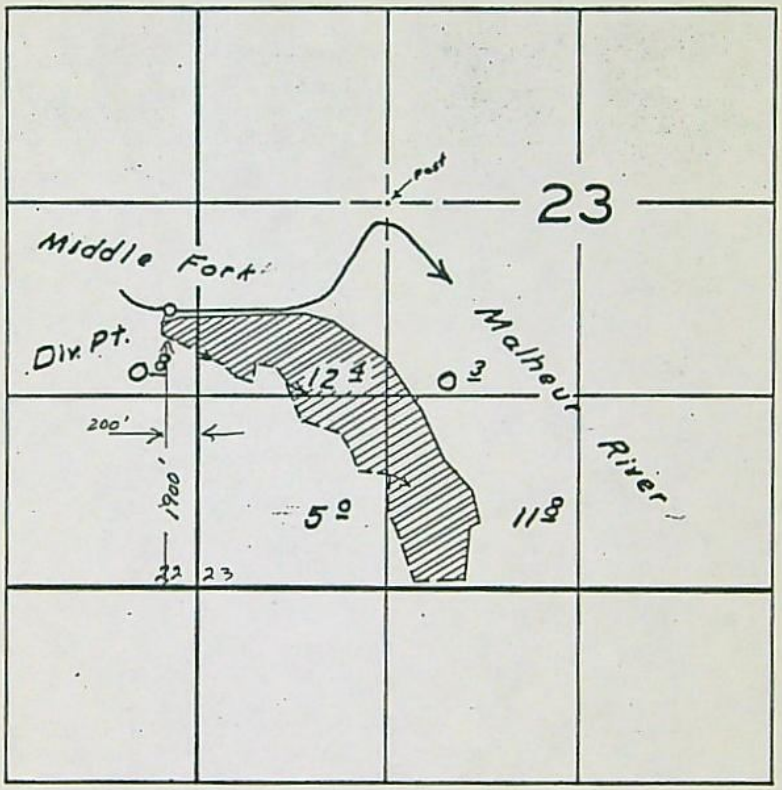
JUL 03 1991
WATER RESOURCES DEPT.
SALEM, OREGON

Conley Marshall
Tax Lot 300



FINAL PROOF SURVEY
UNDER

RECEIVED
APR -10 1995
WATER RESOURCES DEPT.
SALEM, OREGON

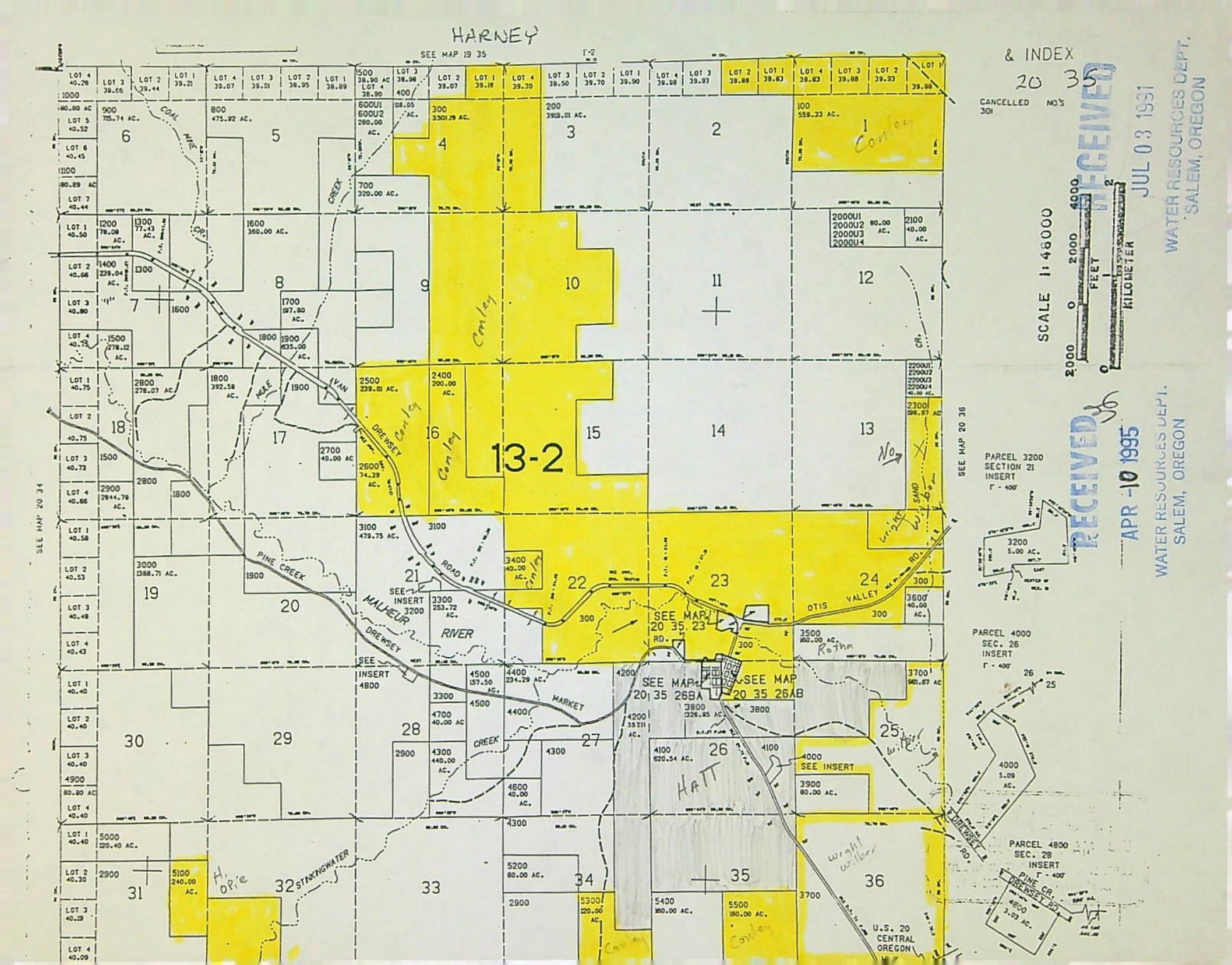
Application No. 24945 Permit No. 19597
IN NAME OF

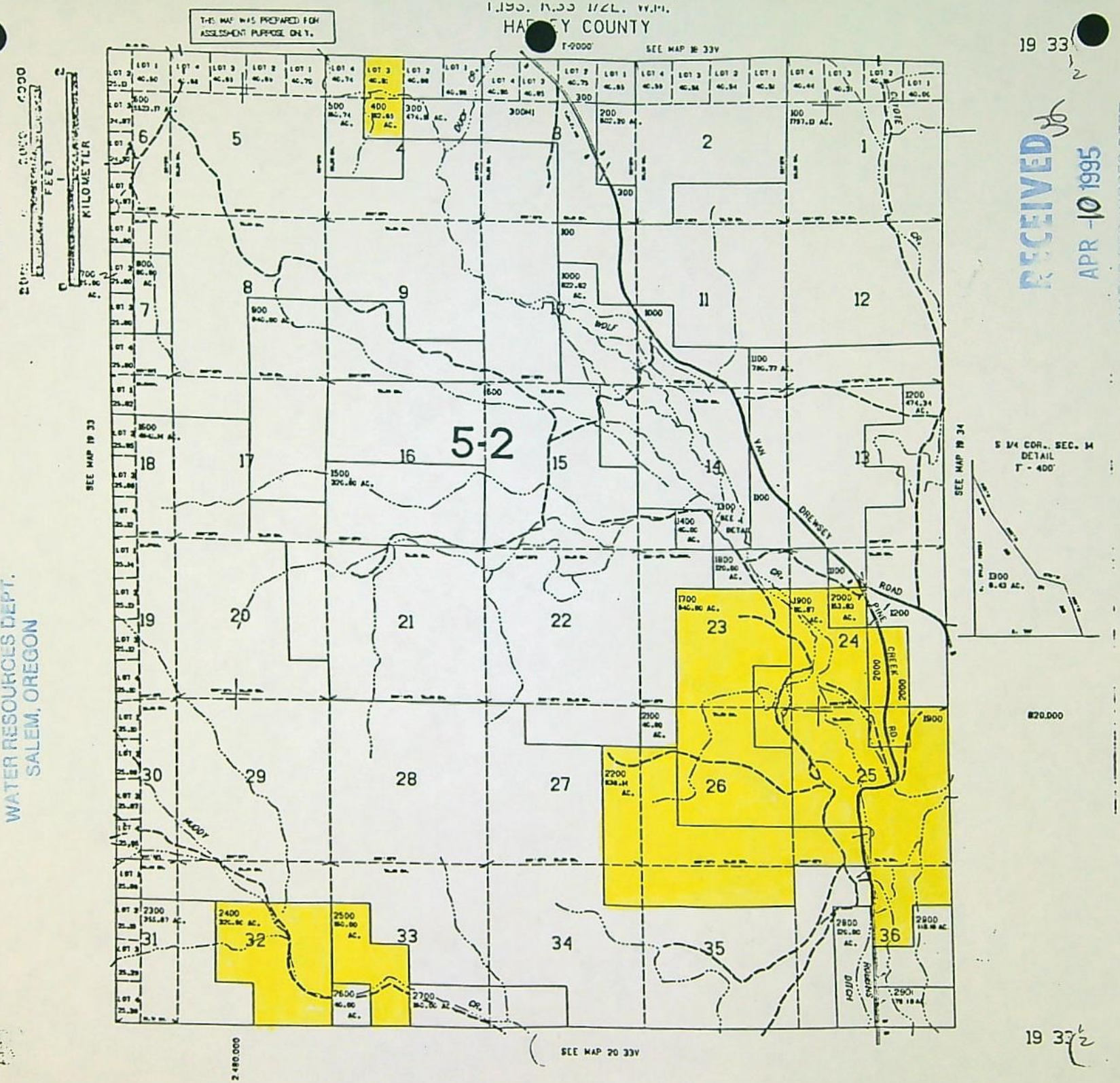
I. M. & Z. Percy Davis

Cert # 46044

Surveyed Aug. 20 1958, by W. N. Perry

1958-L


HARNEY
& INDEX
20 35
CANCELLED NO'S
301
SCALE 1:48000
FEET
KILOMETER
RECEIVED
JUL 03 1991
WATER RESOURCES DEPT.
SALEM, OREGON
RECEIVED
APR -10 1995
WATER RESOURCES DEPT.
SALEM, OREGON
13-2
SEE MAP 19 35
SEE MAP 20 34
SEE MAP 20 36
SEE MAP 20 35 23
SEE MAP 20 35 26BA
SEE MAP 20 35 26AB
SEE INSERT 3200
SEE INSERT 4800
SEE INSERT
PARCEL 3200 SECTION 21 INSERT
PARCEL 4000 SEC. 26 INSERT
PARCEL 4800 SEC. 28 INSERT
COAL MINE CREEK
CR.
DREWSEY
Conley
IVAN
PINE CREEK
ROAD
MALHEUR
RIVER
MARKET
CREEK
OTIS
VALLEY
RD.
HATT
Rothen
wright walker
H. OPie
STARKINGWATER
U.S. 20
CENTRAL
OREGON
PINE CR.
DREWSEY RD.



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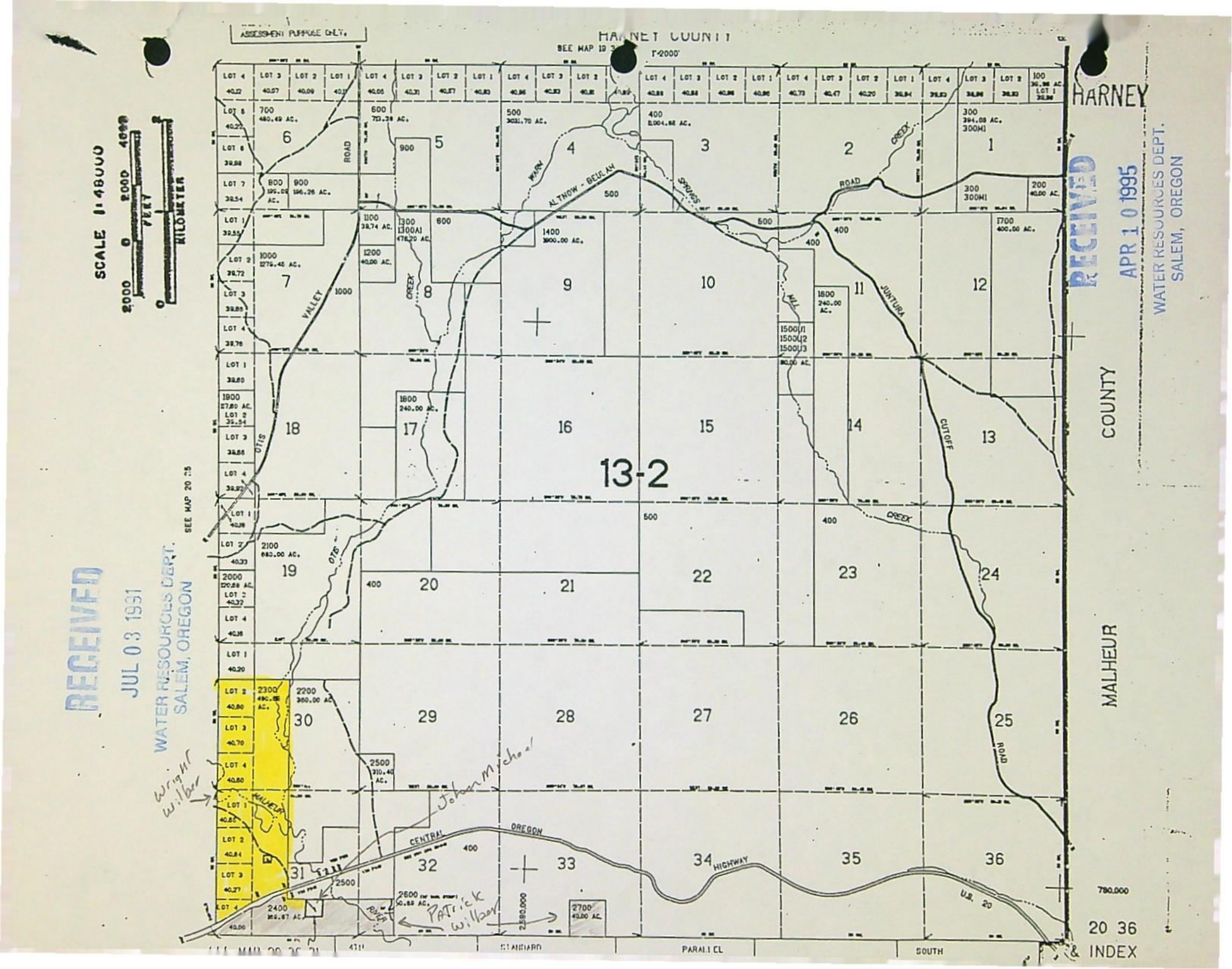
JUL 03 1951
WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED
APR -10 1995
WATER RESOURCES DEPT.
SALEM, OREGON


ASSESSMENT PURPOSE ONLY
HARNEY COUNTY
SEE MAP 19 3
1"=2000'
HARNEY
SCALE 1:48000
2000 0 2000 4000 FEET
KILOMETER
SEE MAP 20 35
13-2
ALTNOW - BEULAH
WARM SPRINGS
ROAD
CREEK
VALLEY
OTIS
JUNIPER
CUTOFF
HILL
ROAD
CENTRAL OREGON HIGHWAY
U.S. 20
RIVER
KALEVA
Wright Wilbur
John Michael
Patrick Wilbur
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JUL 03 1991
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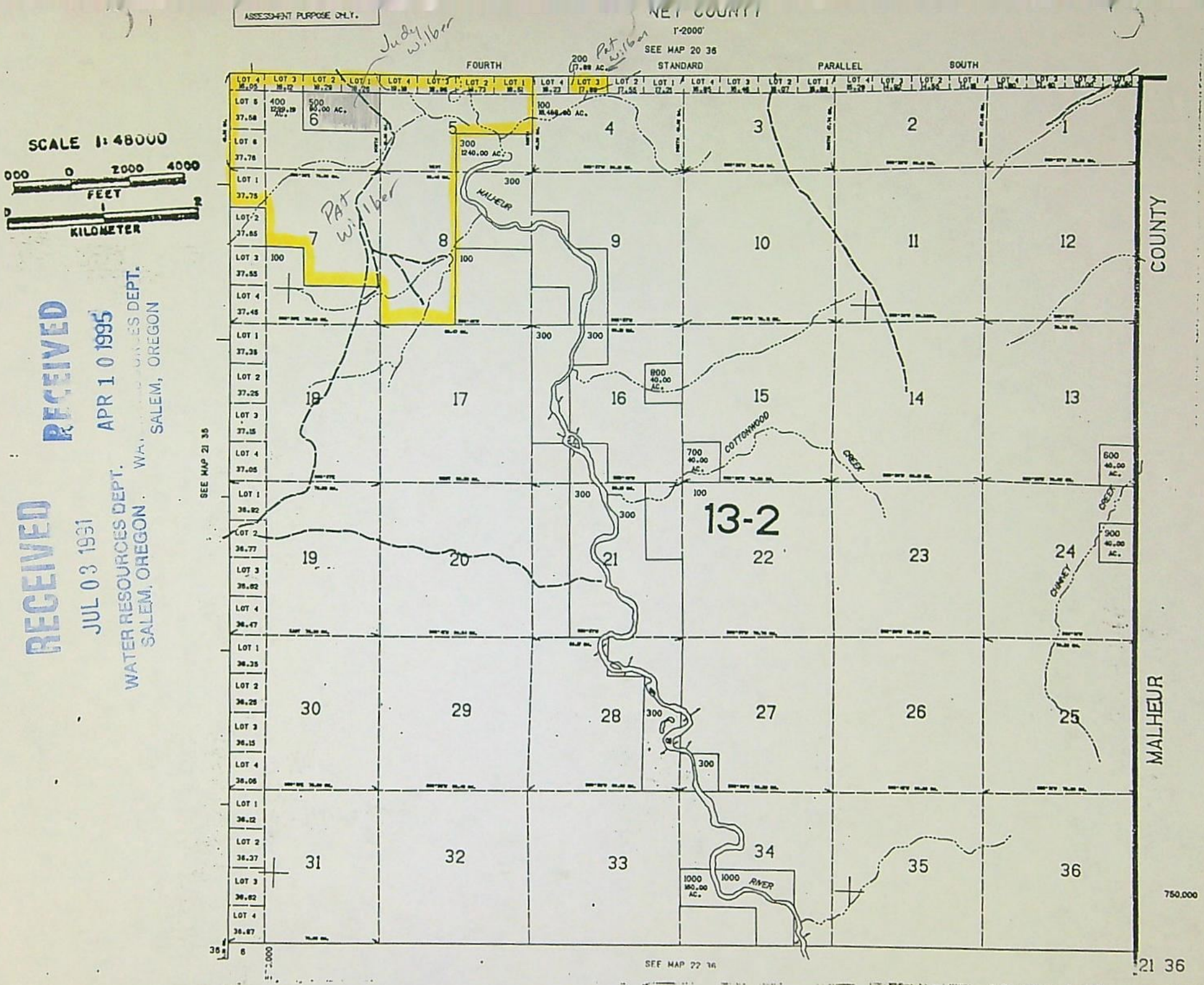
SALEM, OREGON
RECEIVED
APR 10 1995
WATER RESOURCES DEPT.
SALEM, OREGON
COUNTY
MALHEUR
780,000
2,580,000
20 36
& INDEX
STANDARD
PARALLEL
SOUTH



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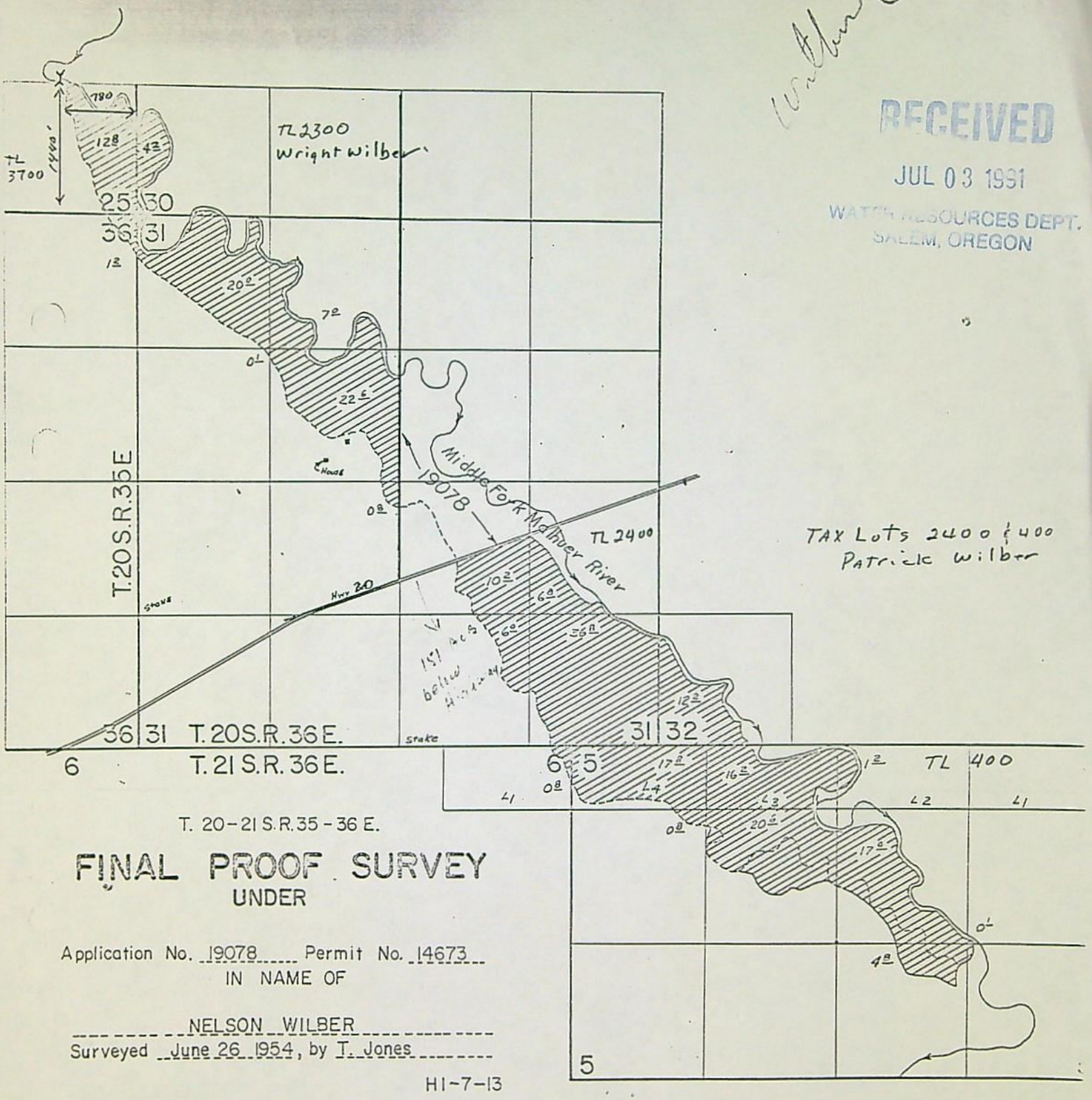
APR 10 1995
WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED
JUL 03 1991
WATER RESOURCES DEPT.
SALEM, OREGON

Permit 14673



TAX Lots 2400 & 400
Patricia Wilber

T. 20-21 S.R.35-36 E.

FINAL PROOF SURVEY
UNDER

Application No. 19078 Permit No. 14673
IN NAME OF

NELSON WILBER
Surveyed June 26 1954, by T. Jones

H1-7-13

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WATER RESOURCES DEPT.
SALEM, OREGON

Cert # 52032

14673

RECEIVED
JUL 03 1991
WATER RESOURCES DEPT.
SALEM, OREGON

TSP	RNG	SEC	1/4 1/4	ACRES	PRI.	SUP.	CERT.	DIV.PT	TAXLOT
T-19--S	R-331/2-E	24	SW of SW	23.0		23.0	7042	#7	1900
			SE of SW	10.0		10.0	"	"	"
		23	SE of SE	10.0		10.0	"		
		25	SW of NE	15.0		15.0	"	"	"
			NE of NW	38.0		38.0	"	"	"
			NW of NW	40.0		40.0	"	"	"
			SW of NW	6.0		6.0	"	"	"
			SE of NW	34.0		34.0	"	"	"
			NE of SW	19.0		19.0	"	"	"
			NE of SE	30.0		30.0	"	"¼	"
			NW of SE	35.0		35.0	"	"	"
			SW of SE	40.0		40.0	"	"	"
			SE of SE	40.0		40.0	"	"8¼18	"
		26	NE of NE	14.0		14.0	"	"7	"
		36	NE of NE	39.0		39.0	34143	#18&#19	"
			NW of NE	37.6		37.6	"	"	"
			SW of NE	38.4		38.4	"	"	"
T-25--S	R-35-E	22	NE of SE	0.8		0.8	46044	#20	300
		23	NE of SW	0.3		0.3	"	"	"
			NW of SW	12.4		12.4	"	"	"
			SW of SW	5.0		5.0	"	"	"
			SE of SW	11.8		11.8	"	"	"
		22	SE of NE	6.1		6.1	11219	#16	"
							"	"	"
			SE of SW	1.7		1.7	"	"	"
			NE of SE	25.1		25.1	"	"	"
			NW of SE	20.3		20.3	"	"	"
			SW of SE	22.5		22.5	"	"	"
			SE of SE	1.4		1.4	"	"	"
		26	NE of NE	40.0		40.0	"	"	"
			NW of NE	34.6		34.6	"	"	"
		23	NE of SW	1.8		1.8	"	"	"
			NW of SW	9.0		9.0	"	"	"
			SE of SW	23.2		23.2	"	"	"
			NE of SE	2.0		2.0	"	"	"
			NW of SE	6.0		6.0	"	"	"
			SW of SE	32.3		32.3	"	"	"
			SE of SE	2.0		2.0	"	"	"
			NE of SW	16.0		16.0	6891	"	"
			NW of SW	10.0		10.0	"	"	"
			SW of SE	6.0		6.0	"	"	"
			SE of SE	32.0		32.0	"	"	"
T-20--S	R-35-E	25	NW of NE	37.7		37.7	49682	#16	3800
			NE of NW	22.0		22.0	"	"	"
			NW of NW	15.3		15.3	"	"	"
			NE of NE	40.0		40.0	50450	#16	3700
			SE of NE	20.0		20.0	"	"	"

P-2 Revised 7/24/91

			SE of NE	19.0	19.0	49682	"	"
			SW of NE	14.8	14.8	"	"	"
			NE of SE	14.4	14.4	"	"	"
			SE of SE	0.5	0.5	"	"	"
			NE of SE	3.1	3.1	60643	"	"
			SE of SE	0.3	0.3	"	"	"
		36	NE of NE	1.2	1.2	52032	#21	"
T-20-S	R-36-E	30	SE of NW	0.4	0.4	60643	#16	2300
			NE of SW	2.3	2.3	"	"	"
			SW of SW	0.9	0.9	"	"	"
			SE of SW	10.2	10.2	"	"	"
		31	NE of NW	8.9	8.9	"	"	"
			NW of NW	0.9	0.9	"	"	"
		30	SW of SW	4.2	4.2	52032	#21	"
		31	NE of NW	7.0	7.0	"	"	"
			NW of NW	20.0	20.0	"	"	"
			SW of NW	0.1	0.1	"	"	"
			SE of NW	22.6	22.6	"	"	"
			NE of SW	0.8	0.8	"	"	"
		31	NE of SE	6.8	6.8	"	"	2400
			NW of SE	10.2	10.2	"	"	"
			SW of SE	6.0	6.0	"	"	"
			SE of SE	36.8	36.8	"	"	"
		32	SW of SW	12.2	12.2	"	"	"
T-21-S	R-36-E	6	SE of NE	0.8	0.8	"	"	400
		5	LOT 2	1.2	1.2	"	"	"
			LOT 3	16.2	16.2	"	"	"
			LOT 4	17.8	17.8	"	"	"
			NE of SW	20.6	20.6	"	"	"
			NW of SW	0.8	0.8	"	"	"
			NE of SE	0.1	0.1	"	"	"
			NW of SE	17.0	17.0	"	"	"
			SW of SE	4.8	4.8	"	"	"

TSP	RNG	SEC	1/4 1/4	ACRES	PRI.	SUP.	CERT.	DIV.PT	TAXLOT
T-20-S	R-35-E	25	SE of NE	19.0		19.0	49682	#16	3700
			SW of NE	14.8		14.8	"	"	"
			NE of SE	14.4		14.4	"	"	"
			SE of SE	0.5		0.5	"	"	"
			NE of SE	3.1		3.1	60643	"	"
			SE of SE	0.3		0.3	"	"	"
			SE of NE	12.8		12.8	52032	#21	"
		36	NE of NE	1.2		1.2	"	"	"
T-20-S	R-36-E	30	SE of NW	0.4		0.4	60643	#16	2300
			NE of SW	2.3		2.3	"	"	"
			SW of SW	0.9		0.9	"	"	"
			SE of SW	10.2		10.2	"	"	"
		31	NE of NW	8.9		8.9	"	"	"
			NW of NW	0.9		0.9	"	"	"
		30	SW of SW	4.2		4.2	52032	#21	"
			SW of NW	26.0		26.0	49682	#16	"
			SE of NW	1.2		1.2	"	"	"
			NE of SW	28.8		28.8	"	"	"
			NW of SW	40.0		40.0	"	"	"
			SW of SW	32.0		32.0	"	"	"
			SE of Sw	29.6		29.6	"	"	"
			SW of SE	6.0		6.0	"	"	"
		31	NE of NW	7.0		7.0	52032	#21	"
			NW of NW	20.0		20.0	"	"	"
			SW of NW	0.1		0.1	"	"	"
			SE of NW	22.6		22.6	"	"	"
			NE of SW	0.8		0.8	"	"	"
		31	SW of SE	6.0		6.0	"	"	2400
			SE of SE	36.8		36.8	"	"	"
		32	SW of SW	12.2		12.2	"	"	"
T-21-S	R-36-E	6	SE of NE	0.8		0.8	"	"	400
		5	Lot 3	7.0		7.0	"	"	"
			Lot 4	17.8		17.8	"	"	"
			NW of SW	0.8		0.8	"	"	"

Revised 7/24/91

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

February 6, 1991

RECEIVED
FEB - 8 1991
WATER RESOURCES DEPT.
SALEM, OREGON

Steve Applegate
Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

RE: Middle Fork Malheur

Dear Steve:

Enclosed is a copy of a letter to Jill Zarnowitz and a revised MOU. Please have the appropriate staff personnel review my proposed language concerning the use of the primary and secondary rights. I believe this language may have been reviewed earlier by the Department. This language had been in the MOU until the December, 1990 draft. I am interested in having the Departments opinion concerning whether this satisfies Bill Young's concern as outlined in his letter of January 22, 1991.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk
Enclosure

cc: Kent Searles
Wendie Mize

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

February 6, 1991

Jill Zarnowitz
Department of Fish and Wildlife
P.O. Box 59
Portland, Oregon

RE: Malheur MOU

Dear Jill:

I have your December 20, 1990 and January 25, 1991 draft of the proposed MOU. Ken Bentz for the Association recently met with Tom Simmons for WaterWatch and I understand they tentatively agreed to some language changes. I believe these changes will not adversely impact the environmental interest but will make this MOU more workable and acceptable to the individual Association members.

I am enclosing a revised draft of the agreement showing the proposed changes. Some explanation may be helpful:

Priority of Right: The MOU creates a potential problem in connection with priority. Bill Young addressed this problem in his letter of January 22, 1991. The proposed MOU of July, 1990, provided as follows:

> The ODF&W shall support Associations request for an additional 1 1/2-acre-feet per season on the Middle Fork Malheur River so long as said right is conditioned to always leaving at least 15 cfs flowing past any Association diversion on the Middle Fork Malheur River from April 1 through June 1 of each year and upon the Association using 1 1/2-acre-feet of primary right held by the Association members prior to June 1 of each year.

Your current MOU provides that the ODF&W shall support the

FOR YOUR INFORMATION ONLY

Association request for "an additional 1 1/2-acre-foot duty between April 1 - June 15 of each year." I believe the result of both is the same. We must use 1 1/2-acre-feet before a date (June 1 or June 15). However, your language puts the junior right in front of the primary right. This problem can be avoided by going back to the July 1990 MOU language. This language recognized that the junior right will be used after all primary rights are satisfied. In order for the Association to use the junior right, 1 1/2-acre-feet of primary right must be used before the agreed date. I request both you and the Department look over this proposed modification to confirm that it is consistent with everyone's intent and would avoid the problems seen by the Department with junior rights being used prior to primary rights.

Termination of Right: Paragraph (1)(f) concerns the termination of the water right. The Association has always expected getting a permanent but conditional right. Your draft language, as written, might be reasonably interpreted to require elimination of flood irrigation practices and installation of overhead irrigation. This could not be accepted by the Association. However, I recognize the need to put in the agreement language which would require efficient flood irrigation practices. If even after the irrigation delivery systems are improved, it takes more than 3-acre-feet to flood irrigation lands and control the alkaline, such additional water up to 4 1/2-acre-feet should be allowed. My proposed change would still clearly require necessary improvements in conversation practices, or the right could be terminated. Furthermore, it clarifies the right would only be terminated on the land of such Association members who are not in compliance with the agreement. I understand Ken Bentz and Tom Simmons have discussed this provision extensively and Tom thinks it would acceptable to WaterWatch. Ken and I would do our best to sell the proposed language to the Association members.

Instream Rights: I have heard some real concerns about the Association requesting a instream water right in excess of 15 cfs during the summer months. All prior conversations I have had with the Association members took place before your most request for substantially more than 15 cfs. I believe the 15 cfs could be sold to the Association members, but I think they may have some serious reservations about some of the amounts requested on your most recent application.

This has been a long process, Jill. You and I have been involved in the whole process for over five years, and in negotiating on this agreement for over two years. I do believe we are quiet close to an agreement. Please review this MOU and contact me.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk

cc: Steve Applegate
Water Resources Dept.
3850 Portland Road N.E.
Salem, OR 97310

FEBRUARY 6, 1991 DRAFT

MEMORANDUM OF UNDERSTANDING

Malheur Basin Water Users' Association,
and
Oregon Department of Fish and Wildlife

Introduction:

This Memorandum of Understanding (MOU) is made by and between the members of the MALHEUR BASIN WATER USERS' ASSOCIATION (Association) or its successor, and the OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW).

The Association consists of ranchers using water from the Middle Fork Malheur River and its tributaries (between river mile 140 and 172) above Warm Springs Reservoir. Members of the Association currently have water rights for a duty of 3-acre-feet. The Association has made application to the Water Resources Department (WRD) for a water right to divert an additional 1 1/2-acre-foot duty of water per acre from the Middle Fork Malheur River. ODFW is interested in protecting instream flows in the Middle Fork Malheur River and has made application to the WRD for an instream water right on said stream.

Agreement:

The signatory members of the Association agree to be bound by reference to the "Association" as it appears in this MOU. Association and ODFW agree to make the following recommendations to the Oregon Water Resources Commission (WRC) concerning the Association's application for an additional water right and ODFW's application for an instream water rights:

(1) The ODFW shall support the Association's request for an additional 1 1/2-acre-foot duty per season [between April 1 - June 1 [15] of each year] from the Middle Fork Malheur River and its tributaries so long as said right is conditioned as follows:

(a) The additional 1 1/2-acre-foot duty water right (application number 69433) shall always leave at least 15 cfs flowing past any Association diversion on the Middle Fork

Malheur River from April 1 through June 1 [15] of each year. This limitation will prevent a drawdown of the river during said times [at any time]. This additional 1 1/2 acre-feet shall not result in an increase over historical use within the legal limits established in existing water rights, in the amount or rate of water removed from the river during the period between June 1 [15] and October 31 of each year.

(b) This right is further conditioned upon the Association members using 1 1/2-acre-feet of the primary right held by the Association members prior to June 1 of each year. If 1 1/2-acre feet of primary right is not used by said date, the Association member will have no right to use this additional right.

[b] (c) The total amount of water diverted shall be measured by the members of the Association who shall install measuring devices at the diversion points for this purpose. Such measuring devices shall be installed and operating or an installation schedule shall be approved by the parties prior to the 1992 irrigation season or prior to April 1, 1992. Measuring devices shall meet requirements of WRD, after consultation with ODFW and the Association, and shall, with reasonable accuracy, allow determination of the rate of flow and calculate the total amount of water diverted during the irrigation season. The parties agree to accept the calculations of total flow from the measuring devices as representing the total water used at any diversion. The WRD shall determine the numbers of measurements needed per month to calculate, with reasonable accuracy, the total water diverted for each water right at the point of diversion.

[c] (d) As of April 1, 1992, the Association shall hire personnel to monitor water use at the Association's members diversions. Hiring and dismissal of the Association's diversion monitoring personnel shall be subject to WRD's approval, WRD shall deputize the Association's diversion monitoring

personnel as an assistant water master to regulate the diversion of water to the rate, duty and priority established on the Association's members water rights. WRD shall have the authority to dismiss said personnel if they fail to adequately enforce Oregon's water laws. The Association shall also require their personnel to regulate all water rights of the Association, including division among water users on individual ditches.

[d] (e) The Association shall develop, within five years of issuance of the additional 1 1/2 acre-foot water use permit, methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. The WRC shall review and consider for approval these conservation practices. During the said five year period, the Association shall also investigate methods to reduce their water demand below 4 1/2-acre-feet per acre per season. At the end of five years, the Association shall present a report to the WRC about water conservation possibilities to reduce the diversions below 4 1/2-acre-feet per acre per irrigation season.

[e] (f) All new Association headgates [and weirs] shall be designed and constructed to allow installation of fish screening and passage facilities.

[f] (g) The additional 1 1/2 acre-feet water use permit (application number 69433) will be reviewed by the Water Resources Department five years from the date of issuance to determine whether the Association members have substantially satisfied the terms and conditions of the permit and this MOU. If WRD determines that any acreage benefited by the permit is not in compliance with the permit, with this MOU, or that the water is no longer being beneficially used then WRD may modify or terminate such portions of the permit as effects the acreage which is not in compliance. If this permit is not terminated, it shall continue to be subject to the conditions of this MOU. [shall expire five years from the date of issuance, unless

otherwise extended by the WRC. The WRC may extend the permit after review of the permit conditions. If this permit is extended it shall include, but not be limited to, the conditions of the Memorandum of Understanding. The WRC must find that the conditions of the MOU have been substantially satisfied and that the permit otherwise complies with the law before extending their permit.] Any permit and any certificate granted to the Association for any of the additional 1 1/2 acre-foot duty shall be conditioned according to this MOU, unless the parties agree to other conditions.

(2) The total amount of water diverted by the Association shall not exceed 4 1/2-acre-feet per acre per irrigation season.

(3) ODFW shall apply for an instream water right of at least 15 cfs on the Middle Fork Malheur. The Association shall support the ODFW instream water right up to 15 cfs.

Oregon Department of Fish and Wildlife

By:_____

Title:_____

Malheur Basin Water Users (all)

_____ _____

_____ _____

_____ _____

_____ _____

WaterWatch
OF OREGON

w/ Young

RECEIVED
FEB 11 1991
WATER RESOURCES DEPT.
SALEM, OREGON

original to Weisha Mize
cc: Karl Scalet
cc: Bill Beal
cc: Bud Bostels
cc: Steve Applegate

February 6, 1991

William Young
Director
Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

Re: Protested Application #69433
Party Status of Wright Wilber
Request for Reconsideration

Dear Mr. Young,

WaterWatch urges you to reconsider your recent rejection of the protest filed by Wright Wilber against Malheur River Water Users Association's water right application #69433. We fully support Wright Wilber's request for and right to party status.

As you know, Mr. Wilber holds a senior water right in the area. It is clearly foreseeable that this senior right holder may be adversely affected or aggrieved by any decision made regarding the issuance of this permit. Thus, in both law and equity Mr. Wilber has an interest in the outcome of this permit application. Given this situation, there is no rational justification for denying this person party status. This denial sets a precedent of draconian scale. If a senior water right protestant does not have standing here, then it would seem that none of the water right holders in this state can gain party status in any water right application. To be consistent, the Department will now be required to deny party status in virtually all proceedings, including instream water right proceedings.

Oregon's laws set up a system whereby persons that may be affected by agency decisions are entitled to a participatory voice during agency proceedings. You have denied Mr. Wilber that voice. It is very possible that Mr. Wilber may appeal the Department's final decision on this application as well as the decision to deny him party status. See ORS 183.480, ORS 183.310. It is clear to us that Mr. Wilber, as existing water right holder, has an interest in the outcome of this permit application. Thus,the decision to deny Mr. Wilber party status will likely to be overturned on appeal. If this occurs, the time and resources expended in negotiations and resolutions by all existing parties will be wasted. Why not get all the players together to come up with a mutually acceptable agreement that will protect the public interest as well as private interests in the Middle Fork of the Malheur?

In summary, your denial of this request constitutes a fatal and unnecessary procedural step that could result in the entire proceeding being overturned on appeal. In addition, the denial sets terrible precedent and may negate all the effort that has gone, or will go, into resolving the issues raised by this application.

We urge you to reconsider Mr. Wilber's protest.

Sincerely,

Audrey Simmons

Audrey Simmons
President

c. Steve Sanders

~~Why~~ ~~Barbara~~

MEMORANDUM

OREGON DEPARTMENT OF FISH AND WILDLIFE

RECEIVED
JAN 30 1991
WATER RESOURCES DEPT.
SALEM, OREGON

DATE: January 25, 1991
TO: Distribution
FROM: Jill Zarnowitz JZ
SUBJECT: Middle Fork Malheur MOU

Attached you will find the latest version of the MOU we have been working on for two years. I have included changes suggested by Oregon Trout, WaterWatch, ODFW's legal counsel, and WRD. I have not heard from any representatives of the Malheur Water Users' Association. I also received comments verbally from George Wilbur, who is a water user on the Drewsey ditch, but is not currently a member of the Association.

Water Resources Department gave us until January 31, 1991 to decide if we have come to an agreement. With the added changes, which are minor, ODFW feels it has reached agreement. We are also willing to continue this process in the formal setting of a contested case hearing.

The Association needs to let us know where they stand.

Thanks for all your time and energy on this project.

jz
Attachment

Distribution: Ken Bentz; Sam Tucker; WaterWatch; Bill Young/Steve Applegate WRD; Kent Searles, WRD; Jim Myron, Oregon Trout; Penny Harrison, DOJ; Ron Bartels/Bill Hosford.

c: MacHugh
Fredd

Need language that says first 1(?)/ 1½/ ¾(?) acre foot used during any 30 day period prior to June 15 would be charged against the duty for existing rights & any additional water used during the same period would be charged against the additional 1½ AF allowance under this new permit.

JANUARY 25, 1991 DRAFT

MEMORANDUM OF UNDERSTANDING

Malheur Basin Water Users' Association,

and

Oregon Department of Fish and Wildlife

Introduction:

This Memorandum of Understanding (MOU) is made by and between the members of the Malheur Basin Water Users' Association (Association) or its successor, and the Oregon Department of Fish and Wildlife (ODFW).

The Association consists of ranchers using water from the Middle Fork Malheur River and its tributaries (between river mile 140 and 172) above Warm Springs Reservoir. Members of the Association currently have water rights for a duty of 3-acre-feet. The Association has made application to the Water Resources Department (WRD) for a water right to divert an additional 1 1/2-acre-foot duty of water per acre from the Middle Fork Malheur River. ODFW is interested in protecting instream flows in the Middle Fork Malheur River and has made application to the WRD for an instream water right on said stream.

Agreement:

The signatory members of the Association agree to be bound by reference to the "Association" as it appears in this MOU.

Association and ODFW agree to make the following recommendations to the Oregon Water Resources Commission (WRC) concerning the Association's application for an additional water right and ODFW's application for an instream water right:

(1) The ODFW shall support the Association's request for an additional 1 1/2-acre-foot duty [per season] between (April 1 - June 15) of each year from the Middle Fork Malheur River and its tributaries so long as said right is conditioned as follows:

(a) The additional 1 1/2 acre-foot duty water right (application number 69433) shall always leave at least 15 cfs flowing past any Association diversion on the Middle Fork Malheur River from April 1 through June 15 of each year. This limitation[s] will prevent a [total dewatering] **drawdown** of the river at any time. This additional 1 1/2 acre-feet shall not result in an increase over historical use**, within the legal limits established in the existing water rights,** in the amount or rate of water removed from the river during the period between June 15 and October 31 of each year.

(b) The total amount of water diverted shall be measured by the members of the Association who shall **install** [installing] measuring devices at the diversion points for this purpose. Such measuring devices shall be installed and operating or an installation schedule

shall be approved by the parties prior to the 1992 irrigation season or prior to April 1, 1992. Measuring devices shall meet requirements of WRD, after consultation with ODFW and the Association, and shall, with reasonable accuracy, allow determination of the rate of flow and calculate the total amount of water diverted during the irrigation season. The parties agree to accept the calculations of total flow from the measuring devices as representing the total water used at any diversion. The WRD shall determine the numbers of measurements needed per month to calculate, with reasonable accuracy, the total water diverted for each water right at the point of diversion.

(c) As of April 1, 1992, the Association shall hire personnel [provide funding to WRD] to monitor water use at the Association's members diversions. Hiring and dismissal of the Association's diversion monitoring personnel shall be subject to WRD's approval. WRD shall deputize the Association's diversion monitoring personnel <u>as an assistant watermaster</u> [use this funding] to regulate the diversion of water to the rate, duty and priority established on the Association's members water rights. <u>WRD shall have the authority to dismiss said personnel if they fail to adequately enforce Oregon's water laws.</u> The

Association [may] **shall** also require their personnel to regulate all water rights of the Association, including division among water users on individual ditches.

(d) The Association shall develop, within five years of issuance of the additional 1 1/2 acre-foot water use permit, methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. The WRC shall review and consider for approval these conservation practices. During the said five year period, the Association shall also investigate methods to reduce their water demand below 4 1/2-acre-feet per acre per season. At the end of five years, the Association shall present a report to the WRC about water conservation possibilities to reduce the diversions below 4 1/2-acre-feet per acre per irrigation season.

(e) All new Association headgates and weirs shall be designed and constructed to allow installation of fish screening and passage facilities [shall be provided at all diversions]. [Diversion screening facilities shall be designed, installed and operated to Oregon Department of Fish and Wildlife specifications.]

(f) The additional 1 1/2 acre-feet water use permit (application number 69433) shall expire five years from the date of issuance, unless otherwise extended by the WRC. The WRC may extend the permit after review of the permit conditions. **Permit extension shall include, but not be limited to, the conditions of this Memorandum of Understanding.** The WRC must find that the conditions of this MOU have been substantially satisfied and that the permit otherwise complies with the law before extending the permit. Any permit and any certificate granted to the Association for any of the additional 1 1/2 acre-foot duty shall be conditioned according to this MOU, unless the parties agree to other conditions.

(2) The total amount of water diverted by the Association shall not exceed 4 1/2-acre-feet per acre per irrigation season.

(3) ODFW shall apply for an instream water right of at least 15 cfs on the Middle Fork Malheur. The Association shall support the ODFW instream water right.

Oregon Department of Fish and Wildlife

By:_____

Title:_____

1 Malheur Basin Water Users (All)

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14 _____

15 _____

16 etc.....

RECEIVED
JAN 28 1991
WATER RESOURCES DEPT.
SALEM, OREGON

Drewsey Field Ranch

Drewsey, Oregon 97904
(503) 493-2620

TO: Jill Zarnowitz
FROM: Wright Wilber FOR: WW
DATE: January 23, 1991
RE: WRD Application #69433

I have reviewed your draft Memorandum of Understanding with the Malheur Basin Water Users Association and feel compelled to provide certain comments thereon. Members of my family and I have 472.7 acres of meadow land with water rights from the Middle Fork Malheur River. We were a members of the Malheur Basin Water Users Association from its formation until it was successful in convincing the Water Resources Commission to set aside a minimum flow on the Middle Fork Malheur. The subsequent effort by the Association to obtain supplemental rights did not appear to be in our interests at the time and we withdrew our membership. We voiced our opposition to this proposal to the local Watermaster in April 1987. Our concern at that time, which remains today, is the lack of an adequate control system over the distribution of water from the river.

While we supported the effort to set aside minimum stream flow, the taking of additional water from the river seemed a wholly inappropriate response. We incorrectly anticipated the Water Resources Department would reach the same conclusion. However, the statute appears to obligate WRD to process the application. Our water rights are senior to many water users on the river and certainly senior to the supplemental rights covered by application #69433. Unfortunately, as we all know, where diversions from the river and the distribution systems are not controlled or controllable, the ruling doctrine is "he who is upstream gets the water first, regardless of priority".

We have protested application #69433 to WRD citing ORS 537.170 which, among other things, requires WRD to consider "all vested and inchoate rights to the waters of this state of to the use of the waters of this state, and the means necessary to protect such rights". An application based on the existing diversion and distribution system on the Malheur River provides WRD nothing close to the means necessary to protect our vested rights. We recognize that a contested case hearing may result from our protest, but would prefer to participate in the process with WRD, ODFW, Malheur Basin Water Users Association, Oregon Trout and Water Watch to negotiate the conditions under which application #69433 will be approved.

In that regard, the following issues are of vital concern to us and critical to our support of application #69433:

- compliance with ORS 540.310 concerning the maintenance of a "substantial headgate at the point where water is diverted which shall be of such construction that it can be locked and kept closed by the watermaster" and that "suitable measuring devices at such points along the ditch as may be necessary to assist the watermaster in determining the amount of water that is to be diverted into the ditch from the stream or, taken from it by the various users".

- formation of a governing board elected from the water users which shall have at least one member from other water interests which may be affected. This board must have authority superior to the private interests of any individual irrigator or ditch owner(s). Charges for water use shall be solely on a per acre basis. This board shall be responsible for ensuring timely implementation of the conditions under which application #69433 is approved.

- the board shall hire personnel to monitor water use at user diversions. Hiring and dismissal of such personnel shall be subject to WRD approval. WRD shall deputize such personnel to regulate the diversion of water to the rate, duty and priority according to established water rights. The board shall require such personnel to regulate all water rights, including division among water users on individual ditches.

- application #69433 shall be amended to include all lands currently possessing a right to divert water from the Malheur River in the Drewsey Valley.

- the governing board shall investigate and work to coordinate with appropriate state and federal agencies the development of upstream storage reservoirs on the Middle Fork Malheur and its major tributaries. Such storage reservoirs will serve to ensure a minimum stream flow, enhance the fishery, create recreation opportunity, and certainly, improve late season irrigation potential.

cc: Ken Bentz, Sam Tucker, Tom Simmons, Jim Myron, Steve Applegate.

1/28/91
cc: Wesley Mize
Kent Seavles

January 22, 1991

Malheur River Water Users Association:
P.O. Box 237
Drewsey, Or. 97904
ATTN: Ken Bentz

Oregon Department of Fish & Wildlife
1201 SW 1st Avenue
Portland Or. 97207
ATTN: Jill Zarnowitz

REFERENCE: File 69433, Malheur River Water Users Association

In my letter of October 22, 1990, I expressed some concerns whether continued efforts at negotiation in this matter would produce an agreement. At a meeting in this office on November 2, 1990, it was decided to allow negotiations to continue until after January 1, 1991, before scheduling the matter for a contested case hearing. This time has passed and, although further meetings were held, I have not been advised that an agreement has been reached.

It appears that the complex issues involved may only be finally resolved in a more formalized setting. I therefore intend to instruct my staff that a contested case hearing be scheduled if an agreement is not received in this office by January 31, 1991. The parties will be contacted by Weisha Mize, our hearings referee, immediately following this date, to determine the future schedule.

The December 20, 1990, memorandum from Jill Zarnowitz posed two legal issue questions to this department. I submit the following responses:

1. Question - "Legally, when can a supplemental water right be used first before an older right if they are both for the same use? Might other junior water rights holders be damaged by this? Is this an expansion of the original right?"

Answer- The department has issued permits for supplemental irrigation, allowing the supplemental right to be exercised first, only when the primary source was a more valuable or less renewable resource. Further requirements have been that no injury to other rights and no expansion of the primary right occur. In the matter in question here, it seems likely that one or more of these concerns would preclude the Commission from concluding that this would be appropriate.

Aside from these concerns, we must be comfortable that the use allowed can be properly regulated. This would require that the watermaster be able to determine the entitlement of all relative rights at any given time.

2. Question - ORS 540.220 addresses a watermaster's right to appoint a deputy. Does the wording in section (1)(c) of the MOU fall within this statutory framework; and are there any union concerns that may not be addressed in this section?

Answer- The Department does not believe the wording in Section 1(c) is troublesome, either from a statutory or from a labor standpoint. The Association would be the employer of the monitoring personnel, and would be solely responsible for any employment or labor issues. We do, however, need the assurance that the individual(s) must be deputized to perform potentially all of the duties of an assistant watermaster, and that they would be dismissed by the Association if they fail to properly or adequately enforce the water laws or specific permit provisions. As such, we suggest the following wording be added to the section:

line 5- "...personnel <u>as an assistant watermaster.</u>"

line 7- "WRD shall have the authority to dismiss said personnel if they fail to adequately enforce Oregon's water laws."

Please contact Steve Applegate or John Borden of my staff if you have any questions on this matter.

Sincerely,

William H. Young
Director

cc: WaterWatch of Oregon
Oregon Trout
Kent Searles

WaterWatch
OF OREGON

RECEIVED
JAN - 3 1991
WATER RESOURCES DEPT.
SALEM, OREGON

Jill Zarnowitz
Department of Fish & Wildlife
P.O. Box 59
Portland, Oregon 97207

Re: Your draft MOU of 20 December 1990

Dear Jill,

The draft accurately reflects subjects discussed and agreed too at the meeting in Bend Oregon on 12 December 1990 between parties to the issue.

WaterWatch concurs with Oregon Trout's comments and recommendations and offers the following additional:

(1) We do not believe that a supplemental water right should be issued for the beneficial use of pre-season irrigation because users in the Malheur Basin have followed this practice in the past. Past irrigation practices among water users in the Malheur Basin should not be used as criteria for anything because there has not been any accountability of water use in the basin. No one knows how much water has been used, when it has been used, and by whom. Until water use which conforms to existing water rights is known, based on accurate measurements and records, we are speculating on folklore.

(2) Given the current conditions of the irrigation deliver systems and past irrigation practices in the Malheur Basin, it is going to require considerable time to determine how much water can be used beneficially in this case. No doubt current water delivery systems installed at the turn of the century could use additional water to compensate for the massive leakage from these systems. This does not mean that this additional water is needed

when more efficient delivery systems are installed and there is accountability of water-use in the basin. This case however, is not unique; similar conditions exist in other basins of this state. We should recognize this condition and deal with it realistically. We are doing this with the Grants Pass Irrigation District already. We are allowing time to transition from past inefficient irrigation practices and systems to new conservation standards. We should do the same for the Malheur Water Users Association.

(3) Whatever we do in this case we must assure that **all** water users in the Malheur Basin receive their full allotment of water in accordance with the priority of their water right before anyone gets additional water. One of the major problems in the Malheur Basin is the law that says "He who is upstream gets the water first regardless of priority." The only way that this situation can be resolved is for the watermaster not only enforce all water rights at the point of diverting water into ditches but also enforce both rate and duty of individual water rights at the point of diverting water from the ditches onto the land.

(4) We believe that it is essential that some formal organization, made up of all the water users in the Middle Fork of the Malheur River, be formed to carry out the terms of this agreement, to enforce existing water rights at the point of diversion into ditches and onto the land, and made legally accountable for water use in the basin.

Recommendations:

(1) Provided the Malheur Water Users Association agrees to all other provisions of the MOU, issue a temporary water right permit for five years on the same basis as the temporary water right permit issued to the Grants Pass Irrigation District. Provided further, that no additional water above that amount of water allowed in existing permits or rights may be taken for any purpose until after the water allowed in all existing water rights is delivered first.

(2) To facilitate accountability of water use in the Malheur Basin for the next few years, move the upper-most gaging station in the Middle Fork of the Malheur River to a point above the upper-most diversion and put recording devices in both gages in the Middle Fork of the Malheur River.

Sincerely,

Tom Simmons

Tom Simmons

cc: Ken Bentz, Tucker, Applegate, Kent Searles, Kloss

ODFW Version
8/20/90

MEMORANDUM OF UNDERSTANDING

Malheur Basin Water Users' Association,

Oregon Department of Fish and Wildlife

and

Oregon Water Resources Department

Introduction:

This Memorandum of Understanding (MOU) is made by and between the MALHEUR BASIN WATER USERS'S ASSOCIATION (Association) or its successor, and the OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW).

The Association consists of ranchers using water from the Middle Fork Malheur River and its tributaries above Warm Springs Reservoir. Members of the Association currently has water rights for 3-acre-feet. The Association has made application to the Water Resources Department (WRD) for a water right to divert an additional 1 1/2-acre-feet of water per acre from the Middle Fork Malheur River. ODFW is interested in protecting instream flows in the Middle Fork Malheur River and [shall make] has made application to the WRD for an instream water right on said stream.

Agreement:

Association and ODFW agree to make the following recommendations to the Oregon Water Resources Commission (WRC) concerning the Association's application for an additional water right and ODFW's application for an instream water right:

(1) The ODFW shall support the Association's request for an additional 1 1/2-acre-feet ~~per season~~ from 4/1 - 6/15 [on] from the Middle Fork Malheur River and its tributaries so long as said right is conditioned as follows:

(a) The additional 1 1/2 acre-feet water right shall always leave at least 15 cfs flowing past any Association diversion [in] on the Middle Fork Malheur River from April 1 through June 15 [1] of each year and upon the Association using 1 1/2 acre feet of the primary water right held by Association's members prior to June 15 [1]. These limitations will prevent a total drawdown of the river at any one time and will have the effect of requiring that at least 1 1/2 acre feet of water be used between April 1 and June 15 of each year in order for the Association to [have] use the additional [supplemental] water right.

(b) [(3)] The total amount of water diverted shall be measured by the members of the Association installing

measuring devices at the diversion points. Such measuring devices shall be installed and operating prior to the 199X irrigation season or prior to April 1, 199X. Measuring devices shall meet requirements of WRD, after consultation with ODFW and the Association, and shall, with reasonable accuracy, allow determination of the rate of flow and total volume of water diverted during the irrigation season. The parties agree that the weir readings shall be accepted as the official record of diversions.

(c) The Association shall hire personnel by 4/1/92 to monitor water use at the Association's members diversions. Hiring shall be subject to WRD's approval WRD shall use this funding to regulate the diversion of water to the rate, duty and priority established on the Association's members water rights. The Assn may also require their personnel to regulate all water rights within The Assn.

(d) [(4)] The Association shall develop, within five years of issuance of the additional 1 1/2 acre-foot water use permit [the signing of this agreement], methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. [These conservation practices shall be approved by WRD] The WRC shall review and consider for approval these conservation practices. During the said five year period, the Association shall also investigate methods to reduce their water diversions below 4 1/2-acre-feet per acre per

or an installation schedule by the parties to this agreement

season. At the end of five years, the Association shall present a report to [WRD] the WRC about water conservation possibilities to reduce the diversions below 4 1/2-acre-feet per acre per irrigation season.
Permit to expire in 5 yrs unless extended by WRC, etc.

(e) [(6)] [The Association agrees to provide fish] Fish screening and passage facilities shall be provided at all diversions. Diversion screening facilities shall be designed, installed and operated to Oregon Department of Fish and Wildlife specifications.

(2) The total amount of water diverted by the Association shall not exceed 4 1/2-acre-feet per acre per irrigation season.

(3) [(5)] ODFW shall apply for an instream water right of 15 cfs on the Middle Fork Malheur. The Association shall support the ODFW instream water right.

Oregon Department of Fish and Wildlife

By:_____

Title:_____

Malheur Basin Water Users (All)

_____ _____

Oregon Trout

Speaking out for Oregon's fish

P.O. Box 19540 • Portland, Oregon 97219 • (503) 244-2292

December 28, 1990

RECEIVED

DEC 31 1990

WATER RESOURCES DEPT.
SALEM, OREGON

Jill Zarnowitz
Department of Fish & Wildlife
P. O. Box 59
Portland, OR 97207

Re: Middle Fork Malheur MOU

Dear Jill:

Oregon Trout has reviewed the 12-20-90 draft of the MOU and we wish to offer the following comments:

Page 2, (1)(a)
The new wording that was added seems to indicate that historic use can continue during the period between June 15 and October 31. Maybe this section could be reworded more clearly once the WRD comes up with an answer to the question of "when can a supplemental water right be used first before an older water right if they are both for the same use?"

Page 2, (1)(b)
In the second sentence the word "install" needs to be added so that it reads "the Association <u>who shall install</u> .."

Page 3, (1)(e)
Was it the intent of the group to remove the last sentence in that paragraph? I do not recall discussing the removal of this passage. Oregon Trout would feel much more comfortable if this sentence were left in.

Other than these few corrections, the document will be acceptable to Oregon Trout assuming that the question of when the supplemental water right can be used is answered to our satisfaction.

Thank you for the opportunity to comment on the current draft of the MOU. Oregon Trout looks forward to its adoption by all of the parties within a reasonable period of time.

Sincerely,

Jim Myron
Regional Director

pc: WaterWatch
Bentz, for Assn.
Tucker
Applegate, WRD

NEIL GOLDSCHMIDT
GOVERNOR

Department of Fish and Wildlife

2501 SW FIRST AVENUE, PO BOX 59, PORTLAND, OREGON 97207 PHONE (503) 229-5400

RECEIVED
DEC 27 1990
WATER RESOURCES DEPT.
SALEM, OREGON

MEMORANDUM

DATE: December 20, 1990

TO: DISTRIBUTION

FROM: JILL ZARNOWITZ, ODFW

SUBJECT: Latest draft Middle Fork Malheur MOU.

On December 12, 1990, the following parties met to attempt to come to agreement on a Memorandum of Understanding (MOU) on two water rights on the Middle Fork Malheur River. Present were ODFW (represented by Jill Zarnowitz, Ron Bartels and Bill Hosford), the Malheur Water Users' Association (Association represented by Ken Bentz, Tom and Eleanor Howard, Betty Sitz), Jim Myron (Oregon Trout), Tom Simmons (WaterWatch) and WRD (represented by Steve Applegate and Kent Searles; Bob Main was also present).

The parties came to agreement on most language in the MOU or revised the language to reach agreement. At question still was language about screening at diversions for exclusion of fish. A temporary permit that expired after five years was also of concern to the Association and would be the topic of discussion at their next meeting.

After the meeting, a revised draft of the MOU was reviewed by the Department of Justice for ODFW. Another clause was added at the attorney's request and is identified as new on page 2, section (2)(a), last sentence. Since the Association claims that they are justifying current or historical use by asking for this additional water right, the ODFW expects that this clause will not be a problem.

Two questions remain to be answered by WRD:

1. Legally, when can a supplemental water right be used first before an older water right if they are both for the same use? Might other junior water rights holders be damaged by this? Is this an expansion of the original right?

2. ORS 540.220 addresses a watermaster's right to appoint a deputy. Does the wording in section (1)(c) of the MOU fall within this statutory framework; and are there any union concerns that may not be addressed in this section?

Please review this draft and give me your comments prior to our deadline with WRD in January.

Thanks for your time and have a happy holiday season!!

jz
Attachment
DISTRIBUTION: Ken Bentz, Sam Tucker, Jim Myron (OR Trout), Tom Simmons (WaterWatch), Penny Harrison (DOJ), Bartels/Hosford (Hines), Steve Applegate (WRD, Salem), Kent Searles (WRD, Baker City)

c: (w/attachment)
MacHugh
Fredd
Mirati
Temple

DECEMBER 20, 1990 DRAFT

MEMORANDUM OF UNDERSTANDING

Malheur Basin Water Users' Association,

and

Oregon Department of Fish and Wildlife

Introduction:

This Memorandum of Understanding (MOU) is made by and between the **members of the** MALHEUR BASIN WATER USERS' ASSOCIATION (Association) **or its successor,** and the OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW).

The Association consists of ranchers using water from the Middle Fork Malheur River and its tributaries **(between river mile 140 and 172)** above Warm Springs Reservoir. Members of the Association currently have water rights for **a duty of** 3-acre-feet. The Association has made application to the Water Resources Department (WRD) for a water right to divert an additional 1 1/2-acre-foot **duty** of water per acre from the Middle Fork Malheur River. ODFW is interested in protecting instream flows in the Middle Fork Malheur River and has made application to the WRD for an instream water right on said stream.

Agreement:

The signatory members of the Association agree to be bound by reference to the "Association" as it appears in this MOU. Association and ODFW agree to make the following recommendations to the Oregon Water Resources Commission (WRC) concerning the Association's application for an additional water right and ODFW's application for an instream water right:

(1) The ODFW shall support the Association's request for an additional 1 1/2-acre-foot **duty** [per season] **between April 1 - June 15 of each year** from the Middle Fork Malheur River and its tributaries so long as said right is conditioned as follows:

(a) The additional 1 1/2 acre-foot **duty** water right **(application number 69433)** shall always leave at least 15 cfs flowing past any Association diversion on the Middle Fork Malheur River from April 1 through June 15 of each year. Th**is** limitation[s] will prevent a total **dewatering** of the river at any time. **(NEW) This additional 1 1/2 acre-feet shall not result in an increase over historical use in the amount or rate of water removed from the river during the period between June 15 and October 31 of each year.**

(b) The total amount of water diverted shall be measured by the members of the Association **who shall** [installing] measuring devices at the diversion points **for this purpose**. Such measuring devices shall be installed and operating or an installation schedule shall be approved by the parties prior to the 199**2** irrigation season or prior to April 1, 199**2**. Measuring devices shall meet requirements of WRD, after consultation with ODFW and the Association, and shall, with reasonable accuracy, allow determination of the rate of flow and calculate the total amount of water diverted during the irrigation season. **The parties agree to accept the calculations of total flow from the measuring devices as representing the total water used at any diversion. The WRD shall determine the numbers of measurements needed per month to calculate, with reasonable accuracy, the total water diverted for each water right at the point of diversion.**

(c) As of April 1, 1992, the Association shall **hire personnel** [provide funding to WRD] to monitor water use at the Association's members diversions. **Hiring and dismissal of the Association's diversion monitoring personnel shall be subject to WRD's approval.** WRD shall **deputize the Association's diversion monitoring personnel** [use this funding] to regulate the diversion of water to the rate, duty and priority established on the Association's members water rights. **The Association may also require their personnel to regulate all water rights of the Association, including division among water users on individual ditches.**

(d) The Association shall develop, within five years of issuance of the additional 1 1/2 acre-foot water use permit, methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. The WRC shall review and consider for approval these conservation practices. During the said five year period, the Association shall also investigate methods to reduce their water demand below 4 1/2-acre-feet per acre per season. At the end of five years, the Association shall present a report to the WRC about water conservation possibilities to reduce the diversions below 4 1/2-acre-feet per acre per irrigation season.

(e) **All new Association headgates and weirs shall be designed and constructed to allow installation of f**ish screening and passage facilities [shall be provided at all diversions]. [Diversion screening facilities shall be designed, installed and operated to Oregon Department of Fish and Wildlife specifications.]

(f) The additional 1 1/2 acre-feet water use permit (application number 69433) shall expire five years from the date of issuance, unless otherwise extended by the WRC. The WRC may extend the permit after review of the permit conditions. The WRC must find that the conditions of this MOU have been substantially satisfied and that the permit otherwise complies with the law before extending the permit. Any permit and any certificate granted to the Association for any of the additional 1 1/2 acre-foot duty shall be conditioned according to this MOU, unless the parties agree to other conditions.

(2) The total amount of water diverted by the Association shall not exceed 4 1/2-acre-feet per acre per irrigation season.

(3) ODFW shall apply for an instream water right of **at least** 15 cfs on the Middle Fork Malheur. The Association shall support the ODFW instream water right.

Oregon Department of Fish and Wildlife

By:_____

Title:_____

Malheur Basin Water Users (All)

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

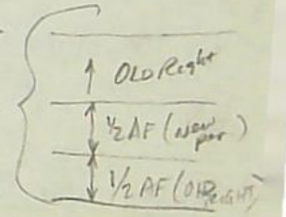
_____ _____

_____ _____

etc.....

Suppl. first is OK if 1) all parties agree & 2) WRD does not foresee potential injury or receive complaints

(1) Irrigation or Suppl. use will not work for distribution
- needs to be described as different use



* - ask OSE what crops needs are — ½ AcFT/mo.
- then any addtl water diverted is applied to the new use

* ask for 16 op. re Strickler letter?

(2) The statute applies only if employed by WRD.
No union or other concerns.
* (Added sentence to section 1(c)

Meeting 12/12/90 (Bend)

Malheur Water Users Assn / ODFW / Oc. Trout / Watchdog

Ken Bentz - Desirable to get accountability for long term plan to reduce water useage.
Explore possibility to form Water District.
Several meetings between locals have been held - agreements reached on several points
Burkee will be visiting their area to consider study -

Jill Z - ODFW revised MOU & sent out - (~~after 9/22~~ 9/20)
① Intro - MOU between MWUA & ODFW. Members have WR for 3AF., want add'l 1½ AF/ac. ODFW has applied for ISWR
② ODFW support MWUA's appl. if conditioned as follows:
A. ~~Add'l~~ 1.5 AcFt shall leave at least 15 cfs 4/1 - 6/15
B.

- Jill will revise the MOU per agreements reached today.
  - draft to attendees within one week
- Ken does not think will have problems - except fish screen costs / expiring WR?

RECEIVED
DEC 27 1990
WATER RESOURCES DEPT.
SALEM, OREGON

M.F. Malheur Water Rights

Meeting Attendance 12/12/90

~~Kat Seale~~	1495 3rd Baker City, 97814	
Bill Hosford	P.O. Box 8 Hines, OR 97738	
Betty Sitz	P.O Bx 206 - Drewsey, Ore. 97904	
Bob Main.	117 NW Lafayette Bend, OR 97701	
Eleanor Howard	Box 246 Drewsey, OR 97904	
Steve Applegate	3850 Portland Rd. NE Salem 97310	(WRD)
Jim Myhan	158 SW 11th Av Canby 97013	
Tom Simmons	35165 Southeast Jane Hillsboro OR 97123	
Nan Howard	Drewsey, OR, 97904	
Ron Bartels	P.O. Box 8 HINES, 97738	ODFW
Ken Bertz	Drewsey, OR 97904	
Jill Zarnowitz	P.O. Box 59 Portland	ODFW

September 7, 1939

Mr. Stanley Mallett, Watermaster
District No. 1
Box 217
Vale, Oregon

Dear Mr. Mallett:

This will acknowledge receipt of your letter of September 2, relative to the court's decree defining the relative rights to the use of the waters of Malheur River and its tributaries, particularly as to the beginning of the irrigation season.

A strict interpretation of the court's decree would be in accordance with Mr. Lytle's interpretation which is also your interpretation. While this interpretation, in case there is surplus water, might be severe and not work to the best interests of the water users, on the other hand the watermaster is obliged to distribute the water in accordance with the court's decree, and in my opinion the court is the only one which has jurisdiction to change the duty of water.

Under the decree, prior to June 1, water can be diverted at the rate of 2 miner's inches and not to exceed 1½ acre-feet in a 30-day period. In case a person diverted 3 acre-feet and there was surplus water, you could not prevent him from doing this but you could charge him for only 1½ acre-feet. This theory is brought out in the case "In Re North Powder River", 75 Ore. 83, 144 Pac. 485, 146 Pac. 475.

As far as the value of posting the notice in connection with the 1-foot limitation is concerned, I do not find anything under our law or in the court's decree pertaining to this matter. This would be a matter within your discretion, and the only purpose would be to notify the water users that you are keeping correct measurements of the quantities of water diverted and used.

Very truly yours,

CHAS. E. STRICKLIN
State Engineer

CES:nfw

11/2/90

✓ w/ Oregon Trout on today's agreement
Visit w/ Wersha re: results

Malheur Water Users Assn. Meeting

Bill Young – Can someone describe what activities are going on/planned, etc.?
Ken Bentz – 1½ yrs ago w/ ODFW; promising negotiations; bogged down; Tom S. contacted me, agreed to stop confronting & build on it; Called meeting of users on Monday – agreed to consider formation of WCD.
Bill Young – Chance all parties could agree now, but new party could say they don't agree; Argument in favor of beginning hrg. process is to limit the parties & potential for folks to later come in;

Ken B. – Called in Genl Stuntz, Attorney. Will talk w/ Burec (Mr. Gregg?) about district formations; concerns about paying for fish screens, measmt devices, at least not sophisticated right away;
Storage is only real long-term solution;

Tom S. – Comfortable w/ what Ken B. is trying to do; district formation is only way; needs breathing room to educate local groups
Jill Z – ODFW's biggest concern is mnst; fish would get the water they need if irrigators were limited to their rights;
Ken B. – Need better approach ~~to~~ from ODFW to the locals – they will get better cooperation
Bill Young – Prepared to be guided by the current parties' wishes.
Jill Z – Greatest risk of late parties is to MWUA
Ken B – Possible late parties might be along the river; not all irrigators are members of MWUA; Couple people in the basin may protest
Bill Y – Expressing Dept's self-interest in getting close to irrigation season w/out better assurance of potential; Set up revisit 2ND week of January.
John B. – how are Waterwatch's request to regulate & the negotiations related.

Tom S. - Want regulation to be in concert w/ agreement.
Bill Y - Two questions are ~~re~~ regulation of ① illegal users ; ② Ratio & duty
Tom S. - Regulation should be progressively stringent over several years;
starting slowly next year.
Steve A. - What involvement does Salem need to have?
Ken B. - Meet with locals, education; parties will get together by
Mid-December;
John B. - Kent Searles will be helpful to their process

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

RECEIVED
NOV - 1 1990
WATER RESOURCES DEPT.
SALEM, OREGON

October 29, 1990

Steve Applegate
Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

RE: Malheur River Water Users Association
File 69433

Dear Steve:

This letter is to follow-up on my telephone call to Jake Szramek in your absence. Prior obligations make it impossible for me to attend any meeting on Friday, November 2, 1990. My presence may not be required. Ken Bentz will be in contact with you concerning his availability in the near future.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk

cc: Ken Bentz
Drewsey, OR 97904

Malheur Basin Water Users Assn.
c/o Sam Tucker, Attorney
105 N. Main
Milton-Freewater, Or. 97862

RE: File 69433

Dear Mr. Tucker:

As agreed at the July 11, 1990 meeting in Drewsey, I am enclosing a copy of a draft permit which I believe captures most of the concepts in the Association's latest draft agreement with ODFW. All parties listed as receiving copies of this letter will also receive a copy of the draft permit. Please note the draft permit does not contain ~~the~~ the acreage description of the place of use. This data has not been closely checked for accuracy, and is not important to the current discussions.

The tentative ~~beneficial~~ use is described as "aleali abatement"; I now believe the Commission would consider that to be beneficial. The Malheur River Basin Program even recognizes the need for this use.

The draft also contains conditions that would:

1) ~~Not~~ Require measuring devices;
2) Limit the use to the period from April 1 to June 15; a maximum of 1.5 acft per acre;
3) ~~Provide for a bypass flow of limit the use under this permit~~ 15 cfs past each diversion;
4) Require ODFW-approved fish screens

At this point, the Draft does not contain a condition requiring conservation. ~~It could~~ The issue of measuring devices & other means of providing adequate monitoring needs further discussion. These and other concepts might be ~~stated~~ in the agreement, which, by reference, would be part of the permit.

As Promised,
I am enclosing copies of permits 50725 (Messer), 50879 (JWC) and 50749 (Hammond) which contain similar conditions to those in this draft.

I would like to set up a meeting w/in 30-60 days to discuss this draft and any remaining issues. If agreement can be reached, the Commission must still review the matter before a permit can be issued. Time is getting short to have necessary measuring devices in place prior to April, 1991. Please contact me to set up a time & place.

Sincerely

Steve Applegate
WR Mgr.

cc: Jill Zarnowitz, ODFW, Portland
Jim Myron, Oregon Trout
Tom Simmons, WaterWatch
Kent Searles, WRD
John Borden, WRD & Weisha Mize, WRD
Ken Bentz, Malheur Water Users Assn.

10/26/90

Steve A.

Sam Tucker called
He will <u>not</u> be able to be at meeting
on Friday November 2, 1990 at 1:30.

Ken Bentz will contact you about
meeting.

JAKE

Conference call during the meeting? - No -
out of area

Oregon Trout

Speaking out for Oregon's fish

P.O. Box 19540 • Portland, Oregon 97219 • (503) 244-2292

PROTEST

RECEIVED
OCT 25 1990
WATER RESOURCES DEPT.
SALEM, OREGON

We, Oregon Trout, Inc.
P. O. Box 19540
Portland, OR 97219 503-2442292

do hereby protest the approval of pending application numbered 69433 in the name(s) of *Malheur River Basin Water Users' Assn. et al* pertaining to the use of water from *Middle Fork Malheur River, Griffin Cr., Cottonwood Cr. & Otis Cr. tributaries of the Snake River*

Our water rights which would be adversely affected by the proposed use of water are: *the public's interest in the fish and wildlife resources and the pollution abatement capacity of the above named river and creeks.*

Our water rights would be adversely affected in the following ways: *This application will adversely affect public uses in the area such as fish and wildlife habitat and water pollution abatement by interfering with these uses.*

Therefore, we request the Water Resources Department Director to: *deny the application.*

We recognize that it may be necessary to present testimony and evidence in an administrative hearing before the Water Resources Department Director, in support of the allegations made in this protest.

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 24th day of October. 1990.

Bill M. Bakke

for Oregon Trout, Inc.

Oregon Trout

Speaking out for Oregon's fish

P.O. Box 19540 • Portland, Oregon 97219 • (503) 244-2292

October 24, 1990

RECEIVED
OCT 25 1990
WATER RESOURCES DEPT.
SALEM, OREGON

Steve Applegate
Water Resources Department
3850 Portland Rd. N. E.
Salem, OR 97310

Re: Malheur River Water Users Assn., file #69433

Dear Steve:

We received a copy of Bill Young's letter of October 22 regarding a meeting of all the parties on November 2. Unfortunately, I will be out of town all next week. You do not have to reschedule the meeting on my account. I believe that Mr. Tucker and the Association have a pretty good idea about what Oregon Trout would like to see in any negotiated settlement. If the water users are willing to consider some substantive changes over time in the way that they do business, we may be able to come to some sort of agreement.

Oregon Trout will look forward to receiving a report of what went on at the meeting.

Sincerely,

Jim Myron

c: Bakke

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3739

October 22, 1990

Sam Tucker
Attorney at Law
105 N. Main
Milton-Freewater, Or. 97862

Jill Zarnowitz
Oregon Dept. of Fish & Wildlife
1201 SW 1st Avenue
Portland, Or. 97207

WaterWatch of Oregon, Inc.
921 SW Morrison, Suite 534
Portland, Or. 97205

Oregon Trout
P.O. Box 19540
Portland, Or. 97219

Ladies and Gentlemen:

RE: Malheur River Water Users Association, File 69433

I have received requests from WaterWatch and from the Water Users Association, through their attorney, Sam Tucker, to postpone the scheduling of a contested case hearing regarding the above referenced matter. The requests indicate recent progress may have been made toward a negotiated settlement, and ask that the hearing not be scheduled until after January 1, 1991.

I continue to have concerns whether continued efforts at negotiation would produce the desired results. I am therefore requesting that a meeting of the parties and my staff be held in this office at 1:30 PM on Friday, November 2, to determine whether there are prospects for further negotiation. Following this meeting, I will decide whether to grant the request to postpone the scheduling of the contested case hearing.

Please contact Steve Applegate of my staff as soon as possible to confirm the time and place for this meeting.

Sincerely,

William H. Young
Director

cc: Steve Applegate, Weisha Mize, Kent Searles, Bill Beal, John Borden
cc: Ken Bentz
cc: Bill Kloos

Steve Applegate

STATE OF OREGON INTEROFFICE MEMO

TO: Bill G., John B., Steve A DATE: 10-11-90

FROM: Becky

SUBJECT: Malheur Water Users - Communication

Ken Bentz called requesting postponement of contested case til next year. Sam Tucker is sending a memo to this effect.

BK

cc Mize

81-125-1379

Becky - please let me know if you're OK with this. Weisha

DRAFT DRAFT DRAFT

378-3066

October 11, 1990

Audrey Simmons
WaterWatch of Oregon, Inc.
921 SW Morrison, Suite 534
Portland, OR 97205

RE: Protest against application 69433

Dear Ms. Simmons:

I am in receipt of your protest against the above application, accompanied by a proof of service and $25.00 filing fee. For the reasons set out below, I am not prepared to formally accept your protest for filing at this time. It will be held without filing for a period of time.

1) The Director has not made a formal decision on this application which would be appealable to the Commission under 690-11-080(2)(e).

2) WaterWatch is currently involved in negotiations with MBWUA, ODFW, and Oregon Trout regarding this application. The MBWUA, as well as the Department, is fully aware of WaterWatch's concerns and position regarding this application. It would be best to allow an opportunity for negotiations to continue as they are. If it is clear that the negotiations will not result in satisfactory resolution, your protest can be accepted and the matter set for contested case at that time.

If you do not find this action acceptable, please feel free to call and discuss the matter further.

Sincerely,

DRAFT

Weisha Mize
Hearings Referee

cc: Sam Tucker
ODFW
Oregon Trout
William H. Young

RECEIVED
OCT 10 1990
WATER RESOURCES DEPT.
SALEM, OREGON

PROOF OF SERVICE

I, Audrey Jackson Simmons, being first duly sworn, depose and say that on the date of October 9, 1990, I did mail a copy of the attatched protest to the applicant by regular mail by placing it in an envelope addressed to:

Sam Tucker, Attorney

105 North Main Street

Milton-Freewater, Oregon 97862

Attorney for:
Malheur River Basin Water Users Association, V Dash Cattle Co., Kenneth J. Bentz, Hoyt & Sons, Pine Creek Ranch, Donald A. Dryer, Glen Ellingson, John Sword, Elfreda Sword, Norman Clark, Eilene Clark, Harvey Cronin, Patsy Cronin, James Switz, Betty Sitz, Turen Dunten, Wilma Dunten, Chas Miler, Norma Miler, Floyd Dunten, Delia Dunten, Byron Dunten, Lloyd Jordon, Eunice Jordon, Thomas C. Howard, Patrick O'Toole, Susan O'Toole, Forrest Freeman, Nellis Freeman, Rotha French, Kenneth Arnold, Barbara Arnold, D.W. Williams, Irene Williams, Chester O. Stallard, Muriel I. Stallard, Terry S. Williams, Nancy A. Williams, and William R. Robertson.

and depositing it in the United States Mail with sufficient postage prepaid thereon.

In Witness Whereof, I have hereunto set my hand this 9 day of October, 1990.

Audrey Jackson Simmons
(signature)

Subscribed and sworn to before me this 9th day of Oct 1990.

(Notarial Seal)

DENISE J. BAUMGARTNER
NOTARY PUBLIC-OREGON
My Commission Expires

Notary Public for Oregon

My commission expires 1-23-94

NOTARY PUBLIC OREGON
My Commission Expires

RECEIVED

OCT 10 1990

WATER RESOURCES DEPT
SALEM, OREGON

PROTEST

I (We), WaterWatch of Oregon, Inc.
name(s)

921 SW Morrison, Suite 534
mailing address

Portland, Oregon 97205, 295-4039
city, state, Zip, telephone

do hereby protest the approval of pending application numbered 69433 in the name(s) of the Malheur River Basin Water User Association and its individual water right holdrs/participants, including, but not limited to, those named on the attatched list. pertaining to use of water from Middle Fork Malheur River, Griffin Creek,
name of river, creek, etc.
Cottonwood Creek and Otis Creek, tributaries of Snake River.

My (Our) water rights which would be adversely affected by the proposed use of water are: the public's interest in the fish and wildlife resources and pollution abatement capacity of the above named rivers & creeks.
(identify by permit or certificate number and priority date)

My (Our) water rights would be adversely affected in the following way(s):

This application will adversely affect public uses in the area such as fish and wildlife habitat and water pollution abatement by interfering with these uses.

Therefore, I (we) request the Water Resources Director to deny the application.
(the action you want the director to take in this matter)

I (We) recognize that it may be necessary to present testimony and evidence in an administrative hearing before the Water Resources Director, in support of the allegations made in this protest.

Proof of service of a copy of this protest on the applicant is attached.

Dated and signed this 9 day of October, 1990.

Audrey Jackson Simmons
signature

Audrey Jackson Simmons

ATTATCHMENT
WaterWatch of Oregon, Inc.
Protest of application
number 69433

V Dash Cattle Co.
Kenneth J. Bentz
Hoyt & Sons
Pine Creek Ranch
Donald A. Dryer
Glen Ellingson
John Sword
Elfreda Sword
Norman Clark
Eilene Clark
Harvey Cronin
Patsy Cronin
James Switz
Betty Sitz
Turen Dunten
Wilma Dunten
Chas Miler
Norma Miler
Floyd Dunten
Delia Dunten
Byron Dunten
Lloyd Jordon
Eunice Jordon
Thomas C. Howard
Patrick O'Toole
Susan O'Toole
Forrest Freeman
Nellis Freeman
Rotha French
Kenneth Arnold
Barbara Arnold
D.W. Williams
Irene Williams
Chester O. Stallard
Muriel I. Stallard
Terry S. Williams
Nancy A. Williams
William R. Robertson

wby Young
BK Kreag
applegate

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

OCT 15 1990
WATER RESOURCES DEPT.
SALEM, OREGON

October 11, 1990

William H. Young, Director
Steve Applegate
Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

RE: Malheur River Basin Water Users Association

Dear Gentlemen:

I understand a representative of the Malheur River Basin Water Users Association and a representative of WaterWatch have by-passed the attorneys and met directly and have made considerable progress toward a possible agreement. I have been asked to notify you that progress is being made, and request that no hearing be scheduled in connection with the above described permit or related issues until after the first of the year. I would request that, at the earliest, any hearing be scheduled after January, 1991. This should allow the parties more time to see if any mutually acceptable solution can be found.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk

cc: Bill Kloos
Attorney at Law
767 Willamette Street, Suite 203
Eugene, OR 97401

Jim Myron
Oregon Trout
P.O. Box 19540
Portland, OR 97219

cc: Jill Zarnowitz
Department of Fish & Wildlife
P.O. Box 59
Portland, OR 97207

INTEROFFICE MEMO October 6, 1990

TO: BILL YOUNG, STEVE APPLEGATE, WEISHA MIZE, KENT SEARLES, BILL BEAL

FROM: JOHN BORDEN

SUBJECT: MALHUER WATER USERS

Steve, please be prepared to reassert your role as negotiations manager/coordinator if we end up postponing the contested case. And for striking a roles/responsibilities agreement with Kent Searles. If we use the recess approach, we may have to make other decisions about who will manage the negotiations.

I realize use of the word "manage" may bring smiles. But we need input to and some control of this process -- e.g. Tom Simmons may have his opinion on the cost and adequacy of his recommended measuring devices, but will they be satisfactory to the watermaster? Will the watermaster want a ditch rider? If so, should he be deputized, etc?

Enclosure: October 3 letter from WaterWatch to Ken Bentz

cc: Bud Bartels

RECEIVED
OCT - 5 1990
WATER RESOURCES DEPT.
SALEM, OREGON

Ken Bentz
Drewsey, Oregon 97904

October 3, 1990

Dear Ken,

I went to the Water Resources Department yesterday and told John Borden-- Bill Young has been out of town -- that I thought that there was a good possibility that we could reach an agreement. They, too, would like to settle the issue by agreement, if possible, but they need to have a request for a delay in the contested case hearing from you. I requested a delay in any contested case hearing until January 1,1991. They agreed to forward a copy of ORS 553 relating to Water Control Districts to you. I will contact both Oregon Trout and ODF&W to ask them to request a delay.

John Borden suggested that it might be more appropriate to begin the contested case hearing as scheduled but then recess the hearing at the parties request after it convenes. I recommend that we avoid this procedure, if possible; this arrangement could make everyone nervous and defensive. We have too much going now to take the chance of misunderstandings developing under the cloud of a contested case in recess. It will be difficult for you to sell this package to the users under the best of conditions; we don't need more uncertainties.

Please tell me when you have requested a delay in the contested case hearing and when I should plan on coming out there again. If you do not request this delay, we must assume that you plan on a contest case hearing, and we will proceed accordingly. We remain confident, however, of making some progess toward getting control of water resource management in Oregon, regardless of how this issue is resolved. Negotiated agreements save you, me, and tax payers dollars and keep control of issues in the hands of the parties most concerned and agreements are likely to produce greater long range results than the court system.

In any case, I remain

Sincerely,

Tom Simmons

Home 493-2311
Jim 493-2456

Ken, the following material is my attempt to get something down in writing for the two of us to discuss. I am ready to come back out to see you, when and if we get a delay in the contested case hearing.

Thoughts and concepts to serve as foundation for an agreement between parties of interest to application for water right permit #69433:

A. Assumptions and considerations: Ken, I included everything that we could discuss. I have no fixations on exactly what the agreement should contain except for a few basics that would protect the fish resource and get control of the waters of the Malheur Basin.

1. All the parties prefer to resolve this issue through negotiations rather than by an administrative contested case hearing.

2. All parties believe that an agreement is likely to be reached through negotiations.

3. More time is required to formulate an agreement and to educate parties to the agreement before it can be finalized. January 1, 1991 is a reasonable deadline to have an agreement.

4. All parties agree that the issue involves a statewide policy decision that will establish precedent.

5. All parties agree that streamflow restoration is in the public interest and should be achieved as soon as possible.

6. All parties agree that past practices of water diversions and applications can and must be improved.

7. Because of the absence of accounting of water use in past irrigation practices, no one knows what water use has been in the past nor what savings can be realized in the future.

8. There must be a strict accounting of water use in the future including the measuring of water use.

9. In achieving water use accountability, the cost should be no more than is necessary to achieve this objective.

10. Existing water rights must be honored in order of priority.

11. A local authority must be established to measure and account

for water, enforce existing water rights in order of priority, and act as an agent for achieving the objective of developing the water resources of the basin. A Water Control District as defined in ORS Chapter 553 is an acceptable organization.

12. All facets of water resource management must be explored: water regulation to eliminate waste, increasing water use efficiency, development of storage -- both surface and underground, watershed enhancement projects, stream riparian projects, and improving land management as necessary to reduce waste and prevent or reduce pollution.

B. Purpose of agreement: Ken, this is a shopping list only; I threw in everything that I could think of so that we could kick them around for possible inclusion in the agreement in paragraph C.

Allow the issuance of a temporary supplemental water right from ---- to ---- for ---- acre feet of water for ---- years for the following purposes:

1. Allow time for applicant to conduct studies and investigations to determine the following facts associated with any alkali problem in the basin:

a. To determine the extent of any alkali problem in the basin, if it exists;

b. To determine whether or not the application of additional water would solve the alkali problem, if it exists;

c. To determine the quantity of water required to solve the alkali problem, if it exists;

d. To determine whether or not there would be water quality problems created by the application of additional water for alkali abatement, if it exists;

e. To determine whether or not there are other means of dealing with the alkali problem, if it exists;

Comment: Ken, I don't like the alkali abatement as a device to justify a supplemental water right. It gets us into the unavoidable box of the water quality problem which may scare hell out of everyone. The use of additional water while in transition from past practices to future more efficient uses of water is much easier to justify, and it will get us to where we are trying to go. It would allow us time to find out how much water users really need in the Malhuer Basin. The precedent for this use has already been used by the Commission in the case of the Grants Pass Irrigation District. We can support this use if the amount is reasonable, and we can agree on a process of arriving at facts

regarding the actual needs of water users.

2. Provide for the creation of a Water Control District for the Malhuer Basin in order to achieve the following objectives:

For applicant to transition from current unregulated irrigation practices into practices that account for water uses and assure maximum beneficial use of the waters of the basin through the following means:

a. Install measuring devices that can be adjusted and locked in all diversions from the river;

b. Install measuring devices that can be adjusted for rate of flow at all diversions from canals;

c. Hire a ditch rider, to be deputized by the watermaster, to regulate all diversions in the basin to assure that existing water rights are served in order of priority and at the rate and duty of water as authorized in water rights;

d. Publish monthly records of water use by each user in the basin;

e. Install recording devices as necessary in order to regulate the use of water to authorized rate and duty of water rights;

f. Enforce existing water rights in order of priority and to rate and duty of water as authorized in individual water rights.

3. Contract or make agreements with federal, state, public, and private organizations to develop the water resources of the basin for all beneficial uses as follows:

a. Request the Bureau of Reclamation and the Water Resources Department to conduct studies and investigations to: 1)determine the inventory of surface and ground waters of the basin, 2)identify suitable surface and subsurface storage sites;

b. Request funds from federal, state, public, and private sources, as necessary, to develop the water resources of the basin;

c. Request technical assistance from federal, state, public, and private sources as necessary to develop the water resources of the basin;

d. Develop plans and programs for the development of the water resources of the basin for approval of the Water Resources Commission;

e. Request technical assistance from federal, state, and private

sources in redesigning existing water delivery systems of the basin in order to reduce waste and pollution in the basin.

4. Develop a Streamflow Restoration Program for approval by the Water Resources Commission along the following lines:

a. First, develop all water resources of the basin (storage of surface and subsurface water) to the maximum extent practicable in order to satisfy existing water rights;

b. Allocate available stored water to out-of-stream (irrigation) uses and allocate available natural flows to instream water rights;

Comment: Ken, if this can be done, I believe that this arrangement would provide a higher probability of all users in the basin receiving water throughout the year and provide a means of controlling pollution from return flows when that beast arrives. It would free-up natural flows for instream water rights.

c. Allocate all water saved through conservation measures to instream water rights;

d. Conduct stream riparian projects to enhance lower water temperature and to maximized fish habitat;

e. Conduct watershed enhancement projects to the maximum extent possible; and

f. Reduce any pollution created by farm practices to minimum practicable levels.

5. Develop a farm practices program to reduce water use and pollution to a minimum practicable level along the following lines:

a. Investigate and implement, to the extent practicable, the most efficient means of delivering and applying water to crops;

b. Investigate and implement, to the extent practicable, land leveling techniques to minimize surface return flows and maximize soil penetration in order to reduce pollution.

C. Conditions of agreement: Ken, I have included only those items that I thought were necessary to achieve our objectives in the short term. Other items in paragraph B should be explored as long term targets, but how much of paragraph B can be sold to the users without driving them away from the whole idea?

1. Applicant agrees to the following:

a. Install head gates and weirs as specified by the Water Resources Department on all unregulated diversions from the Malhuer River by June 1, 1991;

Comment: There appears to be only three diversions from the Malheur River that do not have head gates at the present time.

b. Form a Malheur River Basin Water Control District by May 1, 1991;

c. Hire a ditch rider by May 1, 1991, (to be deputized by the watermaster) to regulate, record, publish, and enforce water use in the basin in accordance with existing water rights and the terms of this agreement;

d. Install water measuring devices by May 1,1991 at each water diversion from the canals in order for the ditch rider to carry out his assignment;

Comment: These devices can be install for less than $100.00 per diversion. However, it should be noted that one user has 18 diversions for one canal which essentially takes all the water in the canal and prevents down-stream users with senior water rights from exercising their water right.

e. Allow for instream flows as requested by ODF&W;

f. When headgates are installed, provide fish screen foundations as specified by the ODF&W for installation of fish screens at some future date;

g. The Malheur Water Control District will assume the obligations of this agreement;

h. Add additional items from paragraph B above as appropriate.

2. WaterWatch, Oregon Trout and ODF&W agree to the following:

a. Withdraw any objection to the issuance of temporary supplemental water right permit #69433 when this agreement is executed.

b. Work with the Malheur Water Control District to achieve the objectives of this agreement.

3. All parties to this agreement agree to the following:

a. Any party can request a contested case hearing from the Water Resources Commission at any time during the course of the agreement on showing that any party to the agreement has not performed in accordance with the terms of the agreement.

b. All parties will report the progress of the agreement to the Water Resources Commission on the date of the first commission meeting following January 1, of each year.

c. Support the construction of environmentally acceptable storage facilities in the Malheur River Basin in order to provide water for irrigation use, to enhance streamflows, and reduce pollution.

4. ODF&W agrees to the following:

5. DEQ agrees to the following:

6. WRD agrees to the following:

a. Relocate existing stream gages and install recorders as necessary to facilitate regulation and enforcement of existing water rights and to determine water use requirements.

INTEROFFICE MEMO October 6, 1990

TO: BILL YOUNG, STEVE APPLEGATE, WEISHA MIZE, KENT SEARLES, BILL BEAL

FROM: JOHN BORDEN

SUBJECT: MALHUER WATER USERS

Steve, please be prepared to reassert your role as negotiations manager/coordinator if we end up postponing the contested case. And for striking a roles/responsibilities agreement with Kent Searles. If we use the recess approach, we may have to make other decisions about who will manage the negotiations.

I realize use of the work "manage" may bring smiles. But we need input to and some control of this process -- e.g. Tom Simmons may have his opinion on the cost and adequacy of his recommended measuring devices, but will they be satisfactory to the watermaster? Will the watermaster want a ditch rider? If so, should he be deputized, etc?

Enclosure: October 3 letter from WaterWatch to Ken Bentz

cc: Bud Bartels

Tom Simmons - 10/1/90

~~Frustrated w/ JB's letter - Meeting w/ JB, WH~~

Mathews WHA - Moved toward central agreement w/ Ken Bentz
- on brink; agreement probable
- Wants extension through Jan 1
- 1. Will form WCD out there; headgates on all div; most devices; hire Asst WM
2. Other parties have agreed to give us something in writing indicating interest in negotiation confirming
3. If no word, schedule ~~re~~ cc hearing. (JB will call Bentz or Tucker in couple days if no word.

* Send Ken Bentz cc to Watershed Laws.

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

HARNEY COUNTY COURTHOUSE, BURNS, OREGON 97720 PHONE 573-2591

September 28,1990

W.H.Young,director
Oregon Water Resources

re. M.F.Malhuer River

In 1983 I found three ranchers and the U.S. Forest Department was diverting water to some of their land that didn,t have a water right.I notified them and gave them application forms and maps for fileing. I found that one rancher Mr Drinkwater was the only one who applied when I checked the instream fileing by the O.D.F.&W this year. I then notified the other two ranchers and the Forest Service and the ranchers filed even though their priority is later than the instream right. There is sufficent water in the spring for their diversion.

I am aware of the excess diversion in the Drewsey valley when the spring runoff is high. When the water starts to drop off all diversions are cut back,usually by the first part of May. Usually by mid June the flow is barely enough to suply all rights in the Drewsey Valley. The extra water diverted for the three to four weeks is usually enough to flush the alkali that raises during the winter and early spring.

The flows we found in the system when we had the July 11 tour from Logan Valley to Drewsey were-Boozenberg Cr.=6c.f.s.,Big Cr.=8c.f.s., Lake Cr.=3c.f.s.,McCoy Cr.=2c.f.s. and Summit Cr.2.5c.f.s. for a total of 21c.f.s. inflow into the system above the Malhuer Ford at river mile 184 where Kent Searles and I estimated 25c.f.s. flowing. We drove to the Van Drewsey road crossing where there was 10c.f.s. flowing (river mile 167.5). We drove to the Drewsey ditch diversion and found 5c.f.s. being diverted and the river was bone dry. The ditch diversion needs 33c.f.s. and only 5c.f.s. was available.

I checked the flows again September 13 and found in Boozenberg1.5 c.f.s.,Big Cr.=1.5c.f.s.,Lake Cr.=½c.f.s.,McCoy Cr.=½c.f.s. and Summit Cr.=1.5c.f.s. total inflow =5.5c.f.s.above the ford where there was about 15c.f.s. The flow at the van Drewsey road was about 3c.f.s. and about 4c.f.s. at the Drewsey Ditch.

In the last eight years all diversions from the Malhuer River within the Drewsey Valley have installed Waterman type head gates but four.The total diversions are 18 and three of them are pumps which are ad diversions to the Drewsey Ditch for users at the lower end of the Drewsey Ditch.

I feel this information is important to you in replying to Mr. Kloos

Tom Simons was in 10/1 + contends there is no alkali to be flushed ever.

Tom Simons et. al. are scheduled to see you on 10/17, 2:30 to 5:00 pm re: proposal for the Malheur.

Chris Wheeler felt these "surplus" flows should not count against duty.

(excess diversion)

William H. Beal
Watermaster Dist 10
Burns,Or 97720

COPY

NEIL GOLDSCHMIDT
GOVERNOR

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(excess diversion)

William H. Beal
Watermaster Dist 10
Burns,Or 97720

CLIENT'S COPY

LAW OFFICES OF
JOHNSON & KLOOS

ALLEN L. JOHNSON
BILL KLOOS
MARY C. SCURLOCK

767 WILLAMETTE STREET, SUITE 203
EUGENE, OREGON 97401

AREA CODE 503
TELEPHONE 687-1004
FAX 687-1021

September 19, 1990

Mr. William Young, Director
Oregon Water Resources Department
3850 Portland Road N.E.
Salem, OR 97310

Re: Middle Fork Malheur Basin; Complaint and Request for Enforcement

Dear Mr. Young:

Please consider this letter a complaint and formal request for enforcement by the Watermaster of the existing water rights in the Middle Fork Malheur basin. This complaint and request is filed on behalf of WaterWatch of Oregon, Inc.

This request is, in essence, a request for your direction to the Watermaster to carry out his nondiscretionary duty under the applicable statutes, notably ORS 540.045, which provided in part:

> "Each watermaster shall:
>
> (1) Regulate the distribution of water among the various users of water from any natural surface or groundwater supply in accordance with the users' existing water rights of record in the office of the Water Resources Director and related court decrees."

The problems in Logan Valley and Drewsey area are now the subject of some inquiry in connection with ODFW's pending application for an instream water right and the Malheur River Basin Users Association's application for a supplemental water right. The nature of the problem is discussed at length in my previous letter to you on the application dated August 27, 1990. A copy of that letter is attached. Aside from the pending application, the situation in the basin is so out of control that enforcement action should be taken. In summary, the problems include:

(1) Many large, existing, longstanding water users are using without the benefit of water rights. These uses come at the expense of existing right holders who do not get their full water rights. The department's regional office in Baker has begun a listing and mapping of these users.

(2) Many, and perhaps most, of the existing right holders in the basin use considerably in excess of the established duty of water -- 3 acre feet. The actual uses in many cases appear to amount to multiples of the established duty. This excessive use again comes at the expense of existing right holders in the lower watershed, for example users of the Drewsey Ditch, who are regularly unable to fulfill their senior

rights for the established duty of water. Such use will also come at the expense of instream water rights.

The enforcement task in the basin may be as difficult as it is overdue. The tools are available to do the job, however. In support of the department's mandatory duty to enforce existing rights, the Legislature has provided extensive powers in ORS 540.010 to 540.440. Authority to require installation of totalizing measuring devices is one example from ORS 540.435(1).

Thank you for your attention to this request.

Sincerely,

Bill Kloos

BK/me
52BKwwa
encl.

RECEIVED
SEP 20 1990
WATER RESOURCES DEPT
SALEM, OREGON

Young
Borden
Kreag
WRC

LAW OFFICES OF
JOHNSON & KLOOS

ALLEN L. JOHNSON
BILL KLOOS
MARY C. SCURLOCK

767 WILLAMETTE STREET, SUITE 203
EUGENE, OREGON 97401

AREA CODE 503
TELEPHONE 687-1004
FAX 687-1021

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Thank you for your attention to this request.

Sincerely,

Bill Kloos

BK/me
52BKwwa
encl.

Applegate why Young Bk Kreag Borden cc: Kent Searles cc: Bill Beal

Oregon Trout

Speaking out for Oregon's fish

P.O. Box 19540 • Portland, Oregon 97219 • (503) 244-2292

September 14, 1990

RECEIVED
SEP 17 1990
WATER RESOURCES DEPT.
SALEM, OREGON

William H. Young, Director
Water Resources Department
3850 Portland Rd. N. E.
Salem, OR 97310

Re: Malheur River Basin Users' Association File #69433

Dear Mr. Young:

Oregon Trout received your letter of September 12 along with the cost estimates for monitoring devices. Thank you very much. This information should be very helpful in this ongoing process.

Oregon Trout also recently received a copy of Sam Tucker's letter of August 28 to Steve Applegate and Jill Zarnowitz. We were disappointed when we read the portions of the letter that discussed measuring devices and fish screens. It was our understanding after the July 11 meeting in Drewsey that the Association had agreed to install and maintain measuring devices that were sophisticated enough to adequately measure flows so that rate and duty would be adhered to. With such devices in place it would be a simple procedure to turn off the supply of water once the rate and duty had been reached in any particular year. Now they are talking about a simple head gate and staff gage. This would create an enforcement burden on the Department of Water Resources that it does not have the resources to assume and would be unacceptable to Oregon Trout. Without measuring devices that will monitor the flow to keep the users within their rate and duty of water, Oregon Trout cannot be a party to any agreement.

Regarding fish screens, this was an issue that we brought up at the July 11 meeting so that it could be discussed with all of the parties present. We also understood that the users were aware of the current state statute that requires the Association to provide fish screening and bypass facilities at their own expense. It seems that they are now looking for some other way to pay for the installation and maintenance of screening devices. This too is unacceptable to Oregon Trout.

Oregon Trout is hopeful that these issues can be resolved, but it may well be that they will not be able to be resolved without holding a contested case hearing.

Sincerely,

Jim Myron
Regional Director

c: Parties

Steve A.

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3739

September 12, 1990

Bill Kloos
Johnson & Kloos
767 Willamette Street, Suite 203
Eugene, OR 97401

Re: Malheur River Basin Users' Association File 69433

Dear Mr. Kloos:

I have received letters from Bill Kloos and Sam Tucker regarding the Malheur River Basin Users' Association permit application. Despite the time invested thus far, there appears to remain a considerable range of views.

I urge you to spend the next few weeks attempting to negotiate a settlement. In an effort to assist, I asked my staff to assemble some cost information for various types of measuring devices. That information is enclosed.

If I do not receive an agreement from all of the groups involved by October 12, 1990, I will schedule a contested case hearing.

Please feel free to contact my staff in Baker or Salem if they may be of assistance.

Sincerely,

Bill

WILLIAM H. YOUNG
Director

Mailing list: Bill Kloos; Sam Tucker; Jim Myron; Jill Zarnowitz; Tom Simmons; Ken Bentz

Enclosure: Costs for Monitoring Devices

cc: Kent Searles
cc: Bill Beal
cc: Becky Kreag/Tom Kline
cc: Weisha Mize

COSTS OF STAGE MONITORING DEVICES

September 12, 1990

Costs of installing a stage monitoring device will vary depending on the need for instrumentation and the selected site itself. A simple one section outside staff gage can be installed for as little as $40. A difficult site may increase the cost of a staff gage station to $100 or more.

If instrumentation is required the cost will vary with the instrument or instruments selected, the enclosure, and size of stilling well chosen. The simplest station configuration would consist of a 24" well with a plywood shelter and a one section outside gage (OG). If a Stevens A-71 continuous recorder were the instrument of choice the approximate cost of the installation would be $3200. Should a supplemental electronic data logger be added the cost would rise to $4300-4500 depending on the brand of logger chosen, ACRO or Leupold & Stevens (L&S). Selecting a station with a stand-alone data logger would cost $1600. The cost difference in the A-71 and stand-alone data logger options is a result of the cost of instrumentation, $2880 for the A-71 vs 1360 for the data logger. Only the ACRO data logger offers a stand-alone configuration at this time.

A class A, walk-in station with plywood house, 8' x 42" well, and 2 sections of OG would raise the above cost to $4300 for the A-71 and $5300-5500 if an electronic logger is attached to the analog recorder. In the stand-alone data logger configuration the cost is $2800.

Costs do not include the control or weir installation which is highly variable due to site specific conditions. This might range from $100 (plywood, sakrete, volunteer labor) to over $1000. Costs do not reflect battery chargers, spare-replacement batteries, or data modules for the data loggers. There should be 1 spare for each 2 or 3 batteries or data modules in service. Battery cost is ≈$30, data modules cost $170, chargers if needed are ≈$40. Also not reflected are the yearly costs of the analog, A-71 systems; strip charts and replacement pens. Chart cost is $17.65 each, and pens are $3.60. Should L&S data loggers be selected and the OWRD be responsible for processing, a L&S data module reader will be required, cost $745, as well as the program to read the L&S modules into the OWRD's Western Hydro record processing software, if it is available at this time. Instrumentation costs are current. Current costs for well material, staff gages, and major parts were obtained. Costs for miscellaneous lumber, plumbing, parts and pieces were estimated. Total costs are therefore approximate and rounded upwards to the nearest $100.

No estimate of man-hours or equipment time needed to install each type of installation is included as this will vary for each site.

TO John B Barry Weisha Applegate

Copy

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

RECEIVED
AUG 31 1990
WATER RESOURCES DEPT.
SALEM, OREGON

August 28, 1990

Steve Applegate
Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

Jill Zarnowitz
Department of Fish & Wildlife
P.O. Box 59
Portland, Oregon 97208

RE: Middle Fork Malheur

Dear Friends:

I have Jill's letter of August 14, 1990, and Steve's draft permit of August 17, 1990. I see the following areas which need to be discussed and explored further:

Beneficial Use: The draft permit indicates the beneficial use to be "alkali abatement." This is not the only beneficial use of the early diversions. Based on the November 1988 WRD return flow study, it appears that there is a 3-to 8-day lag time between the periods of large diversions and return flows. There are 22 diversions on this application. Although the study did not show that the water diverted in April returns in August, it did show that water diverted during May could very well stay in the basin and aid minimum flows in June and July. I suggest the permit indicate the beneficial uses to be "alkali control and the recharging of the ground water reservoir for the benefit of later season return flows." This expanded definition of beneficial use would be consistent with what has been discussed and would not be detrimental to the instream interests. The named beneficial use does not affect the obligations of the water users.

Measuring devices: This issue has become considerably more difficult since our meeting in July. Prior to that time, the Association was under the impression that, for the time being, measuring devices would consist of head gates and staff gauges. As technology

improved, they recognized the possibility that the State would install more accurate measuring devices. During our meeting Jill requested specific information from the Department concerning the type of measuring devices which would be required. We have received the letter from the Watermaster indicating that if ODF&W were expecting state-of-the-art recording devices at the diversions, the cost would be between $3,000 and $5,000 per diversion.

This comes as a shock to the Association members. All prior informal estimates have been in the neighborhood of $500. Based on these cost estimates, we need considerably more information concerning what will be required of us. I am reasonably confident that the members would agree to locked head gates and staff gauges and would assume these costs. Some reasonable estimates of use through the season could be made based on these devices. If ODF&W expects a $3,000-$5,000 device on each diversion at this time with all the cost to be paid by the members, I do not believe that the members would agree. I agree with Jill's comments during our July meeting. We need to be more specific concerning the type of measuring devices that will be required.

During our July meeting, the issue of funding for a person to monitor the flows was also discussed. I have no specific authority from the Association concerning this item. My feedback from individual members has been mixed. Some, especially along the Drewsey ditch, have indicated that if the same person they now hire as a ditch walker could also be in charge of monitoring and recording diversion quantities, this would be acceptable. Others have indicated that they did not feel it was their obligation to hire persons to perform the job of the Watermaster.

Fish Screens: Both the MOU and permit refer to the design, installation and operation of fish screens. This is an appropriate request, and I believe most of the Association agrees. The documents, as written, do not specify who will bear the cost of the installation and maintenance. I understand there will be funding sources available which will pay almost all the costs of installing the fish screens. We should clarify what obligations the Association has with respect to the fish screens.

We would, of course, be glad to meet with you at any mutually acceptable time on this matter. My schedule would accommodate the 30-to-60 day period Steve suggested. At the same time, it appears

that some of these issues will only be able to be resolved once some additional information is available. Please give me your thoughts on these issues.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk

Young Kreag

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

RECEIVED
SEP -4 1990
WATER RESOURCES DEPT.
SALEM, OREGON

August 30, 1990

Gail Achterman
Office of the Governor
254 State Capitol
Salem, Oregon 97310

RE: Malheur Basin Water Users Association

Dear Ms. Achterman:

You have received Bill Kloos' letter of August 27, 1990 written on behalf of WaterWatch. I wanted to immediately let the governor's office know that Malheur Basin Water Users Association does not agree with many of the characterizations and conclusion reached by Mr. Kloos. There are most certainly two sides of this issue.

A brief background might help the governor's office in better understanding the competing water interest in the Middle Fork Malheur. In February, 1985, the Water Resources Commission established a 15cfs minimum flow at a point on the Middle Fork Malheur River just below Drewsey. At the time the Commission did not know that such minimum flow could significantly impact existing agricultural practices on the Middle Fork. In January, 1986, the Water Resources Commission met and rescinded the minimum flow. Enclosed is a photocopy of a partial transcript of the tapes of this meeting. It is for good reason that the Water Resources Commission did not want to significantly impact existing practices. Present practices involve flood irrigating of natural grass meadows. There is no cultivation of the land, and no artificial fertilizer or pesticides are used on the property. If the ranchers are forced into the most "efficient" method of irrigation, this presumably being some form of overhead irrigation, a great deal of additional energy will be used. Furthermore, considering the additional capital cost, it is likely that more intensive farming practices will be implemented requiring use of fertilizers and chemicals. The Water Resources Commission understood that the environmental interests on the Middle Fork Malheur would not be served by forcing a significant change in existing agricultural practices on this particular stretch of the Malheur.

COPY

I remember Lorna Stickel's comments well during the meeting in which the Commission decided to rescinder the minimum flow. She indicated that she would vote for the recession of the minimum flow, but expected the association to make application for an additional water right to cover additional water needed in order to maintain existing practices. She also asked that the WRD make a study of the basin to determine whether more than 3 acre feet per season was being used. This study was completed and showed that, in the test area, substantially more than 4 ½ acre feet per acre per season were being diverted but less than 3 acre feet were being consumed. The Association made application for 4 ½ acre feet, agreeing to implement conservation practices which would reduce substantially the amount of water diverted, but would not force the elimination of flood irrigation from this valley.

The Association has been negotiating with ODF&W for a considerable period of time. At one time I thought we had an agreement between ODF&W and the Association. The agreement would have granted a 4 ½ acre feet water right, required conservation practices and reestablished minimum stream flows in the Middle Fork Malheur. ODF&W wanted WaterWatch's approval of such an agreement. You now have WaterWatch's position.

I do not know the role the governor's office plays in this matter. Since WaterWatch copied you with the information, I believed it was appropriate to make contact. If the governor's office wishes to have any other information from the Malheur Basin Water Users Association concerning the Middle Fork Malheur, please contact me.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk

cc: Bill Kloos
Johnson & Kloos
767 Willamette St., Suite 203
Eugene, OR 97401

cc: William H. Young, Director
Steve Applegate
Water Resources Department
3850 Portland Road N.E
Salem, OR 97310

Jill Zarnowitz
Oregon Fish & Wildlife
P.O. Box 59
Portland, OR 97207

PARTIAL TRANSCRIPT OF TAPE

WPRB MEETING
April 25, 1985

.....

RICHARDS: I tell you that particular minimum streamflow is the most agonizing of all that I have made, speaking for myself, and I tell you I had no idea that there would be an impact on the existing owners of permits, and if there is any way I can alleviate that and make sure that they don't stand in fear of some kind of recrimination for a practice that I think actually assists in supplying water at a later time of the year, I want to do that if...

ACKERMAN: Mr. Chairman, I agree very much with the Chairman's comments, and absolutely don't want to see these folks and their irrigation practices, which also my recollection of the record is that they, everyone conceded that they were beneficial, I don't want to see them adversely affected, and I, Mr. Chairman, (would) appreciate comments from staff or from Larry Thompson, but I'd be willing to move that we reconsider the minimum streamflow that we adopted for the Middle Fork of the Malheur if that is the easiest way to take care of the problem.

...

ACKERMAN: If you want to know what I think would be most expeditious, and I don't know if anybody else agrees with it given the burden on our staff and given your great familiarity with your problem, the problem of your clients, if you could work with Larry, perhaps, to petition for a rulemaking, and in your petition show us how you would revise the minimum streamflow to except out your clients' problem, then it would save our staff and the Department of Justice a great deal of time and yet we could coordinate whatever procedure

was necessary so that what we could do is get it properly back on our agenda.

MAN: I'll second your motion.

ACKERMAN: Well, I don't know if it's a motion--I'm not sure it's the proper procedure.

MAN: Well, that's what we're asking Larry about--is it the proper procedure?

THOMPSON: We can find a procedure, if that's what the board wants to do...

ACKERMAN: My concern, and I take it that the chairman's concern, is that when we voted, I think you correctly characterized the view of most of us, and what you may not have known is that it was a very difficult decision for a number of us on the Middle Fork of the Malheur anyway. And we did not think that we were adversely impacting your clients. And so I, at least I as one board member, and apparently the chairman is another board member, and Lorna, is another board member, is willing to entertain a petition for rulemaking that would take care of your clients' problem.

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

RECEIVED
AUG 31 1990
WATER RESOURCES DEPT.
SALEM, OREGON

August 28, 1990

Steve Applegate
Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

Jill Zarnowitz
Department of Fish & Wildlife
P.O. Box 59
Portland, Oregon 97208

RE: Middle Fork Malheur

Dear Friends:

I have Jill's letter of August 14, 1990, and Steve's draft permit of August 17, 1990. I see the following areas which need to be discussed and explored further:

Beneficial Use: The draft permit indicates the beneficial use to be "alkali abatement." This is not the only beneficial use of the early diversions. Based on the November 1988 WRD return flow study, it appears that there is a 3-to 8-day lag time between the periods of large diversions and return flows. There are 22 diversions on this application. Although the study did not show that the water diverted in April returns in August, it did show that water diverted during May could very well stay in the basin and aid minimum flows in June and July. I suggest the permit indicate the beneficial uses to be "alkali control and the recharging of the ground water reservoir for the benefit of later season return flows." This expanded definition of beneficial use would be consistent with what has been discussed and would not be detrimental to the instream interests. The named beneficial use does not affect the obligations of the water users.

Measuring devices: This issue has become considerably more difficult since our meeting in July. Prior to that time, the Association was under the impression that, for the time being, measuring devices would consist of head gates and staff gauges. As technology

improved, they recognized the possibility that the State would install more accurate measuring devices. During our meeting Jill requested specific information from the Department concerning the type of measuring devices which would be required. We have received the letter from the Watermaster indicating that if ODF&W were expecting state-of-the-art recording devices at the diversions, the cost would be between $3,000 and $5,000 per diversion.

This comes as a shock to the Association members. All prior informal estimates have been in the neighborhood of $500. Based on these cost estimates, we need considerably more information concerning what will be required of us. I am reasonably confident that the members would agree to locked head gates and staff gauges and would assume these costs. Some reasonable estimates of use through the season could be made based on these devices. If ODF&W expects a $3,000-$5,000 device on each diversion at this time with all the cost to be paid by the members, I do not believe that the members would agree. I agree with Jill's comments during our July meeting. We need to be more specific concerning the type of measuring devices that will be required.

During our July meeting, the issue of funding for a person to monitor the flows was also discussed. I have no specific authority from the Association concerning this item. My feedback from individual members has been mixed. Some, especially along the Drewsey ditch, have indicated that if the same person they now hire as a ditch walker could also be in charge of monitoring and recording diversion quantities, this would be acceptable. Others have indicated that they did not feel it was their obligation to hire persons to perform the job of the Watermaster.

Fish Screens: Both the MOU and permit refer to the design, installation and operation of fish screens. This is an appropriate request, and I believe most of the Association agrees. The documents, as written, do not specify who will bear the cost of the installation and maintenance. I understand there will be funding sources available which will pay almost all the costs of installing the fish screens. We should clarify what obligations the Association has with respect to the fish screens.

We would, of course, be glad to meet with you at any mutually acceptable time on this matter. My schedule would accommodate the 30-to-60 day period Steve suggested. At the same time, it appears

that some of these issues will only be able to be resolved once some additional information is available. Please give me your thoughts on these issues.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk

why Young
Bk Kreag
cc ~~Borden~~ W, RC Kline

LAW OFFICES OF
JOHNSON & KLOOS

ALLEN L. JOHNSON
BILL KLOOS
MARY C. SCURLOCK

767 WILLAMETTE STREET, SUITE 203
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August 27, 1990

William H. Young, Director
Water Resources Department
3850 Portland Road N.E.
Salem, OR 97310

RECEIVED
AUG 28 1990
WATER RESOURCES DEPT.
SALEM, OREGON

Re: Malheur River Basin Users' Assn; Permit 69433

Dear Mr. Young:

WaterWatch is in receipt of correspondence from the Water Resources Department addressed to the Malheur River Basin Water Users Association dated August 17, 1990, relating to supplemental water right permit #69433. The correspondence includes a draft permit. With this trial balloon on the table, it is an appropriate time to state the current position of WaterWatch on this matter.

The situation in the Malheur River Basin is similar to that in many other river basins in the State, if perhaps a bit more extreme. Water is used in systems and by practices that are wasteful by both traditional and contemporary standards.

The situation in the Malheur may be fairly summarized as follows. The adjudicated duty for irrigation is three acre feet. Issued or adjudicated water rights are secure at that duty level. The majority of users in the area, however, have in fact been using water at a much more generous duty by flood irrigation methods -- in some cases at more than twice that established duty. Use at these levels, which is wasteful and illegal, has continued for decades and in some cases for more than a century. Some large users in the watershed have been using for decades without the benefit of any permits. Based on WaterWatch's participation in the site visit conducted on July 11, it appears that the Watermaster is quite knowledgeable about these practices. (Based on her comments at the post-site visit discussions in Drewsey, it appears even the wife of the Watermaster is an aggressive defender of the status quo.)

The impact of the illegal and wasteful uses on the instream values in the region is negative and significant. The pending instream right (IWR) application of the ODFW is an attempt to stake a claim for the minimal flows needed to protect instream uses. The water needed to fill these IWRs is not presently in the stream all the time due in large part to the wasteful uses and the uses without permits, both of which are illegal. Dramatic evidence of the scope of the problem was examined during the site visit. For example, the Drewsey Ditch diverted the entire flow of the mainstem Malheur at the diversion point. The river channel at this point was dry, bone dry, with sun-baked rocks and vegetation. Hazards to walking the Malheur riverbed should include mossy rocks, not rattlesnakes. If it is to be effective to protect the sensitive fish species, the IWR cannot be punctuated with dry stretches of riverbed.

At this point, the User's Association is requesting a boost in its water right, from the current 3.0 acre feet to 4.5 acre feet. This is the result, whether it is styled as a new appropriation, a supplemental appropriation, or some kind of hybrid. There are several problems with the pending water right application for 1.5 acre feet which likely are insurmountable.

First, the current proposed nomenclature for this additional 1.5 acre foot right is for alkali abatement. That is the beneficial use the applicants now feel is most plausible. WaterWatch agrees that in some contexts alkali abatement could be found to be a beneficial use of water. Not so in the Malheur. If this application were to come to a contested case hearing, we are confident that the evidence would show there is no alkali problem on the subject properties, much less one that could be effectively treated by the current irrigation methods. It is true that alkali abatement appears in the basin program as a beneficial use. However, this addition was made at the request of the users to justify rescinding the minimum streamflows established in 1984 because the minimum flows would have interfered with the customary and traditional wasteful irrigation practices. Alkali abatement was a fictional beneficial use at the time it was added to the basin program; a hearing on the application will demonstrate the beneficial use cannot be made on the subject land because the problem does not exist.

Second, issuance of the requested permit would ratify waste -- long standing waste that results from the crudest of flood irrigation methods. Any use above the adjudicated duty of water is waste. Malheur River Basin irrigation delivery systems, application systems, and irrigation practices date back to the turn of the century. Except for a hundred years of deterioration, they are largely the same as when the original water rights were granted in the late 1800's. Transmission ditches hemorrhage; structures to control diversions are missing or crude (WaterWatch witnessed the use of a diversion dam made of cow manure); diversions are unscreened; irrigated fields are spotted with wetlands created by irrigation water; there are no mechanisms in place to gauge the quantity of water diverted (diversions are conducted until junior right holders complain); streambeds are dry in some locations, as noted at the Drewsey Ditch diversion noted above. The users have made no appreciable investment in recent times to control and regulate the waters in accordance with established water rights. There is no formal or informal organization in the basin with the authority to effectively control the waters of this basin.

Third, if the requested boost to 4.5 acre feet could be justified, it would not ratify the full scope of the waste in the basin. The current uses and practices consume substantially more than that quantity of water.

Fourth, the longstanding argument that excess irrigation water returns to the river as return flow has been demonstrated by the WRD's 1988 Return Flow Study to be a myth in the project area near Drewsey. The Watermaster suggested during the site visit that, notwithstanding the study results in the project area, there certainly was a good return flow

in the Logan Valley area further to the north. Whether this view might be the basis for another return flow study in the Logan Valley, or merely evidence that myths die hard, there is no basis for boosting water rights beyond the established duty on the theory that some of the water gets back to the stream.

WaterWatch cannot support issuance of a water right that would boost the allowed appropriation above the established duty of water. The need for the additional water results from waste that is long standing and grand in scale. The waste adversely impacts instream uses, including several species of fish in the region whose niche has already been pressed hard enough to bring them under study for threatened and endangered status. (Specifically, the bull trout and red band trout are considered by the ODFW for addition to the State Sensitive Species List this Fall.) Longstanding lack of enforcement of the existing water rights laws has brought this situation about. Approving the requested right would ratify this problem.

WaterWatch is keenly sensitive to the equitable aspects of the current situation in the region. The local economy has grown up around illegal and wasteful use of water. The area is now dependent on the wasteful use. This situation cannot be legalized, but neither can it be changed overnight. In the long run water use in the area must be changed and made more efficient. Even the users appear to recognize this in their negotiations with the parties in connection with the pending permit application.

WaterWatch envisions an approach to settlement that would be structured around three principles:

1. The instream rights requested by the ODFW would be approved by the WRC. This would establish the minimum flows needed for the fishery; actual flows would be realized as uses are made more efficient and diversions are reduced in accordance with this agreement.

2. The Users' Association would agree to a program and timetable for bringing their current uses into compliance with established rights at the established duty of water. This program needs to be specific. Its scope needs to include:

    a. Improvements in control structures, transmission systems, ditch screening, land treatment measures, application methods and gauging.

    b. Provisions for ensuring that water is in fact made available to supply the IWR. A schedule is needed to ensure that as years go by increasing amounts of water are left in the stream to serve the IWR until either the IWR is fully met or the existing diversions have been reduced to the point no greater than the existing rights and duties.

c. A workable method for reporting and enforcement to ensure the program is remaining on track.

d. A timetable for accomplishing the above that is realistic. The timetable needs to recognize that some changes must be made immediately to curb the most severe waste and restore minimal flows to reaches needing the IWRs. It must also recognize that completing the most expensive capital investments will take a number or years.

e. Provisions for bringing into the program other right holders who are not now part of the Users' Association.

3. An enforcement program by the WRD. Lack of enforcement for decades has allowed users to become dependent on waste and increases the trauma of coming into compliance. An enforcement program as part of a settlement should have several components:

a. **Users who have rights and enter the settlement:** The WRD, WaterWatch, ODFW, Oregon Trout and others who are parties to the settlement would forbear seeking enforcement for waste (use above the established duty of three acre feet) provided those users stay with the program. Users who sign onto the settlement but don't stick to the program, are candidates for enforcement. They can expect that the WRD will enforce the water allocation laws as ORS 540.045(1) requires.

b. **Users who do not have water rights:** If these users apply for rights, those rights can only be issued subordinate to the IWR, subject to an availability determination and the existing duty of water, and contingent on a program to ensure efficient use. Existing illegal users who do not apply for rights are candidates for the enforcement program.

c. **Users with rights that do not enter the settlement:** These users need to be identified and made a part of the WRD's enforcement program. Enforcement would be conducted as with users in (a) above that have not followed the program. Along with users who hold not rights, they would be the first targets for enforcement because they have not started the program.

The settlement program outlined above is generalized. It requires details that would have to be worked out with the parties. I believe, however, that it is a reasonable starting point for bringing the uses in the region into compliance with the law and ensuring that instream uses can be protected.

The situation in the Malheur is acute. The water right applied for by the Users' Association cannot be approved in any form. But outright denial of the application will not

resolve the problem in the region. The status quo is not an acceptable situation. Without a settlement for the region, the WRD faces a unprecedented enforcement task in the area. It would be an enforcement program that would tax the agency's resources and disrupt the local economy. As an alternative, the program outlined above would provide an ordered approach to bringing the region into compliance over a period of years, ensure that instream uses are fully protected in the long run, and afford some limited relief to the instream uses in the short run. I hope the WRD, the water users, and the other parties view this proposal in this light. We look forward to discussions with all parties on this approach.

Sincerely,

Bill Kloos

BK/me
cc: Sam Tucker, Water Users' Assoc.
Jim Myron, Oregon Trout
Jill Zarnowitz, ODFW
Gail Achterman, Office of the Governor

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3066

August 17, 1990

Malheur River Basin Water Users Association
c/o Sam Tucker, Attorney
105 North Main Street
Milton-Freewater, Oregon 97862

Mr. Tucker:

REFERENCE: File 69433

As agreed at the July 11, 1990 meeting in Drewsey, I am enclosing a copy of a draft permit which I believe captures most of the concepts in the Associations latest draft agreement with ODFW. All parties listed as receiving copies of this letter will also receive a copy of the draft permit. Please note the draft permit does not contain all of the acreage descriptions of the place of use. Pages three through six are acreage descriptions not included. This data has not been closely checked for accuracy, and is not important to the current discussions.

The tentative use is described as alkali abatement. I now believe the Commission would consider that to be beneficial. The Malheur River Basin Program even recognizes the need for this use.

The draft also contains conditions that would:

1) require measuring devices;
2) limit the use to the period from April 1 to June 1 and a maximum of 1.5 acre feet per acre;
3) provide for a bypass flow of 15 CFS past each diversion; and
4) require ODFW approved fish screens.

At this point, the draft does not contain a condition requiring conservation. The issue of measuring devices and other means of providing adequate monitoring needs further discussion. These and other concerns might be adequately addressed in the agreement, which, by reference, would be part of the permit.

As promised, I am enclosing copies of Permits 50725 (Messer), 50879 (JWC), and 50749 (Hammond), which contain similar conditions to those in this draft.

I would like to set up a meeting within 30 to 60 days to discuss this draft and any remaining issues. If agreement can be reached, the Commission must still review the matter before a permit can be issued. Time is getting short to have necessary measuring devices in place prior to April 1991. Please contact me to set up a time and place.

Sincerely,

for Steve Applegate
Water Rights Manager
Field Operations Division

SPA:lcj
cc: Jill Zarnowitz, ODFW, Portland
Jim Myron, Oregon Trout
Tom Simmons, WaterWatch
Kent Searles, WRD
John Borden, WRD
Weisha Mize, WRD
Ken Bentz, Malheur River Basin Water Users Assn.

DRAFT

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR RIVER BASIN WATER USERS ASSOCIATION
PO BOX 237
DREWSEY, OREGON 97904

503-493-2728

to use the waters of MIDDLE FORK MALHEUR RIVER, GRIFFIN CREEK, COTTONWOOD CREEK AND OTIS CREEK, tributaries of SNAKE RIVER, for ALKALI ABATEMENT ON APPROXIMATELY 5127.0 ACRES.

This Permit is issued approving Application 69433. The date of priority is OCTOBER 28, 1987. The use is limited to not more than 128.0 CUBIC FEET PER SECOND, BEING 102.0 CFS FROM MALHEUR RIVER, 5.0 CFS FROM GRIFFIN CREEK, 18.2 CFS FROM OTIS CREEK AND 2.8 CFS FROM COTTONWOOD CREEK AND 2.2 CFS FROM SPRING CREEK, or its equivalent in case of rotation, measured at the point of diversion from the sources.

The points of diversion are located as follows:

1) SE 1/4 SE 1/4, SECTION 32, T 18 S, R 34 E, W.M.; JOHNSON DITCH - 130 FEET NORTH AND 380 FEET WEST FROM SE CORNER, SECTION 32.

2) NE 1/4 NE 1/4, SECTION 8, T 19 S, R 34 E, W.M.; MOFFETT DITCH - 660 FEET SOUTH AND 710 FEET WEST FROM NE CORNER, SECTION 8.

3) SE 1/4 NE 1/4, SECTION 5, T 19 S, R 34 E, W.M.; DITCH - 2375 FEET SOUTH AND 580 FEET WEST FROM NE CORNER, SECTION 5.

4) NE 1/4 SW 1/4, SECTION 8, T 19 S, R 34 E, W.M.; DITCH - 1490 FEET NORTH AND 2080 FEET EAST FROM SW CORNER, SECTION 8.

5) NW 1/4 NW 1/4, SECTION 17, T 19 S, R 34 E, W.M.; DITCH - 200 FEET SOUTH AND 605 FEET EAST FROM NW CORNER, SECTION 17.

6) NE 1/4 NE 1/4, SECTION 18, T 19 S, R 34 E, W.M.; DITCH - 130 FEET SOUTH AND 360 FEET WEST FROM NE CORNER, SECTION 18.

7) SE 1/4 SW 1/4, SECTION 18, T 19 S, R 34 E, W.M.; MARKS DITCH - 345 FEET NORTH AND 2510 FEET EAST FROM SW CORNER, SECTION 18.

8) SE 1/4 NW 1/4, SECTION 19, T 19 S, R 34 E, W.M.; BAILY DITCH - 1330 FEET SOUTH AND 1650 FEET EAST FROM NW CORNER, SECTION 19.

9) NW 1/4 NW 1/4, SECTION 30, T 19 S, R 34 E, W.M.; FARRENS DITCH - 475 FEET SOUTH AND 130 FEET EAST FROM NW CORNER, SECTION 30.

10) NW 1/4 NE 1/4, SECTION 36, T 19 S, R 33 1/2 E, W.M.; ROBBINS DITCH -1090 FEET SOUTH AND 2375 FEET WEST FROM NE CORNER, SECTION 36.

11) SW 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; 2440 FEET SOUTH AND 306 FEET EAST FROM NW CORNER, SECTION 5.

12) SE 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; CLARKS SOUTH DITCH -2245 FEET SOUTH AND 2012 FEET EAST FROM NW CORNER, SECTION 5.

13) NE 1/4 SW 1/4, SECTION 28, T 19 S, R 34 E, W.M.; GRIFFIN CREEK RESERVOIR - 2330 FEET NORTH AND 1749 FEET EAST FROM SW CORNER, SECTION 28.

14) NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; MILLER DITCH - 675 FEET SOUTH AND 940 FEET WEST FROM NE CORNER, SECTION 10.

DRAFT

15) NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; SITZ DITCH - 845 FEET SOUTH AND 610 FEET WEST FROM NE CORNER, SECTION 10.

16) NE 1/4 SW 1/4, SECTION 11, T 20 S, R 34 E, W.M.; DREWSEY DITCH - 2475 FEET NORTH AND 1520 FEET EAST FROM SW CORNER, SECTION 11.

17) NE 1/4 SW 1/4, SECTION 23, T 20 S, R 35 E, W.M.; DREWSEY DITCH (FRENCH PUMPS) - 2970 FEET SOUTH AND 1440 FEET EAST FROM NW CORNER, SECTION 23.

18) NW 1/4 NW 1/4, SECTION 20, T 20 S, R 36 E, W.M.; WILLIAMS DIVERSION - 825 FEET SOUTH AND 845 FEET EAST FROM NW CORNER, SECTION 20.

19) SE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2520 FEET SOUTH AND 1580 FEET EAST FROM NW CORNER, SECTION 20.

20) NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 1452 FEET EAST FROM NW CORNER, SECTION 8.

21) NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2508 FEET EAST FROM NW CORNER, SECTION 8.

22) NW 1/4 NW 1/4, SECTION 9, T 20 S, R 36 E, W.M.; 760 FEET SOUTH AND 280 FEET EAST FROM NW CORNER, SECTION 9.

The water users shall install and maintain in-line flow meters , weirs or other measuring devices, to be approved by and installed under the supervision of the Watermaster, for measuring and continuous recording of the quantities of water diverted. Such measursing devices shall be installed and operational at all diversion points prior to April 1, 1991.

The right allowed herein shall be limited to a total diversion of not to exceed 1.5 acre-feet per acare for each acre supplied, and is further limited to the period from April 1 through June 1 each year.

The use of water allowed herein is subject to a minimum flow of 15 cubic foot per second to be maintained in the channel of Middle Fork Malheur River past all of the authorized diversion points.
The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this Permit is as follows:

SW 1/4	NE 1/4	19.0 ACRES
SE 1/4	NE 1/4	20.0 ACRES
NE 1/4	SE 1/4	27.0 ACRES
NW 1/4	SE 1/4	3.0 ACRES
SE 1/4	SE 1/4	0.5 ACRE

SECTION 13

SE 1/4	NE 1/4	40.0 ACRES
SE 1/4	NW 1/4	6.0 ACRES
NE 1/4	SW 1/4	15.0 ACRES
NE 1/4	SE 1/4	40.0 ACRES
NW 1/4	SE 1/4	40.0 ACRES
SW 1/4	SE 1/4	40.0 ACRES
SE 1/4	SE 1/4	40.0 ACRES

SECTION 36

TOWNSHIP 19 SOUTH, RANGE 33 1/2 EAST, W.M.

NW 1/4	SW 1/4	31.0 ACRES
SW 1/4	SW 1/4	30.0 ACRES
SW 1/4	SE 1/4	23.0 ACRES

SECTION 7

DRAFT

NE 1/4 NE 1/4 40.0 ACRES
NW 1/4 NE 1/4 40.0 ACRES
SW 1/4 NE 1/4 40.0 ACRES
SE 1/4 NE 1/4 12.0 ACRES
NE 1/4 SE 1/4 7.0 ACRES
SECTION 31

NW 1/4 NW 1/4 12.5 ACRES
SW 1/4 NW 1/4 25.0 ACRES
NW 1/4 SW 1/4 37.0 ACRES
SECTION 32
TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

This project was considered and approved by the Water Resources Commission on

The permittee shall comply with the terms of the stipulated agreement recorded in Volume _____, pages ____ through ____, Miscellaneous Records of the Water Resources Director.

Diversion screening or fish passage facilities shall be designed, installed, and operated to Oregon Department of Fish and Wildlife specifications.

Actual construction work shall begin on or before , and shall be completed on or before October 1, 1992. Complete application of the water to the use shall be made on or before October 1, 1993.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

Issued this date, .

_____
Water Resources Department
William H. Young
Director

DRAFT

SPA

NEIL GOLDSCHMIDT
GOVERNOR

Department of Fish and Wildlife

2501 SW FIRST AVENUE, PO BOX 59, PORTLAND, OREGON 97207 PHONE (503) 229-5400

RECEIVED
AUG 16 1990
WATER RESOURCES DEPT.
SALEM, OREGON

August 14, 1990

Sam Tucker
Monahan, Grove and Tucker
105 North Main
Milton-Freewater, Oregon 97862

RE: Middle Fork Malheur.

Dear Sam,

Thank you and the Malheur Basin Water Users Association for the tour of the Middle Fork Malheur River. I hope the ranches survived the recent fire. The news has not been very exact on where the fire was.

You summarized our concerns fairly well. The entire issue comes down to maintaining water instream to maintain aquatic life. Frankly I was shocked to see the Drewsey diversion taking all the water out of the stream. This had been occurring long enough for grass to be growing in the dry stream channel. I did not recognize the stream channel at first because of the grass. You can't grow fish without water and you can't grow cattle without fodder. That the water returned a half mile down stream did not solve the problem of a half mile of unnaturally dry streambed and no fish or aquatic life in that reach or interchanging between the two, but separate, wet stream channels.

Besides maintaining water for fish, one concern you left out in your list of four concerns, was adequate monitoring of the measuring devices to hold the valley to their rate and duty. This was also not written into the proposed draft MOU attached to your July 23, 1990, letter.

I also heard you agree to more specific language about measuring devices in the MOU. We discussed the Association providing funds to WRD for a person to monitor the usage of water over the season. These are conditions we would like to see in the MOU and on the permit.

I will be working on another draft of the MOU; however, I don't think we can accomplish a final product without seeing what WRD considers acceptable for a draft permit.

Thanks for your time.

Sincerely,

Jill Zarnowitz
Assistant Chief, Water Programs
Habitat Conservation Division

jz
c: MacHugh
Steve Applegate
WaterWatch
Jim Myron, Oregon Trout
Bill Hosford
Ron Bartels
Penny Harrison, DOJ

SPA

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105 NORTH MAIN
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SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

July 23, 1990

RECEIVED
JUL 25 1990
WATER RESOURCES DEPT.
SALEM, OREGON

Steve Applegate
Water Resources Department
3850 Portland Road N.E.
Salem, Oregon 97310

RE: Middle Fork Malheur

Dear Steve:

Thank you for meeting with us on the Middle Fork Malheur on July 11, 1990. Hopefully we have made some progress towards resolving the outstanding issues on the Middle Fork.

Kent/Bill will provide

I understand the Department was going to be providing to Jill Zarnowitz of ODF&W some information concerning potential designs for head gates which would meet the requirements of the purposed agreement. The agreement requires measuring devices be installed which "with reasonable accuracy, allow determination of the rate of flow and amount of water diverted during the irrigation season." It appears to me that something as simple as a locked head gate with a staff gauge could accomplish our purpose. Please provide me with copies of any information you provide to Jill concerning the measurement of water.

I sense from the conversations I had with representatives of Water Watch that it may choose to litigate this issue. It appears that the focus of its challenge to any issued right will be whether the water users can increase the duty from the adjudicated 3 acre feet to 4½ acre feet. I have been told that this has been done a number of times throughout the state. Yet I read some cases that suggest this might not be possible. I would also like copies of some other permits which grant the right to divert water in excess of the adjudicated amount. Hopefully if an agreement can be reached, we can fashion language which would withstand court challenge.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker
ST:hk

MEMORANDUM OF UNDERSTANDING

Malheur Basin Water Users' Association
and
Oregon Department of Fish and Wildlife

INTRODUCTION:

This Memorandum of Understanding (MOU) is made by and between the MALHEUR BASIN WATER USERS'S ASSOCIATION (Association), and OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW).

The Association consists of ranchers using water from the Middle Fork Malheur River and its tributaries above Warm Springs Reservoir. Members of the Association have water rights for 3-acre-feet. The Association has made application to the WRD for a water right to divert an additional 1 1/2-acre-feet of water per acre from the Middle Fork Malheur. [during of the irrigation season.] ODFW is interested in protecting instream flows in the Middle Fork Malheur and shall make application to WRD for an instream water right on said stream.

AGREEMENT:

Association, and ODFW agree to make the following recommendations to Oregon Water Resources Commission (WRC) concerning the Association's application for an additional water right and ODF&W's application for an instream water right:

(1) The ODFW shall support Association's request for an additional 1 1/2-acre-feet per season on the Middle Fork Malheur River so long as said right is conditioned to always leave at least 15 cfs flowing past any Association diversion in the Middle Fork Malheur River from April 1 through June 15 of each year and upon the Association using 1 1/2 acre feet of the primary right held by Associations members prior to June 15 of each year. These limitations will prevent a total drawdown of the river at any one time and will have the effect of requiring that at least 1 1/2 acre feet of water to be used between April 1 and June 15 of each year in order for the Association to have the supplemental right.

(2) The total amount of water diverted by the Association shall not exceed 4 1/2-acre-feet per acre per irrigation season.

(3) The amount of water diverted shall be measured by the members of the Association installing measuring devices at the diversion points. Such measuring devices shall be installed and operating prior to the 1991 irrigation season or prior to April 1, 1991. Measuring devices shall meet requirements of WRD, after consultation with ODFW and the Association, and shall, with reasonable accuracy, allow determination of the rate of flow and amount of water diverted during the irrigation season.

(4) The Association shall develop, within five years of the signing of this agreement, methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. [These methods shall reduce the amount of water diverted to 4 1/2-acre-feet per acre per season.] These conservation practices shall be approved by WRD. During the said five year period, the Association shall also investigate methods to reduce water diversions below 4 1/2-acre-feet per acre. At the end of five years the Association shall present a report to WRD about water conservation possibilities to reduce the diversions below 4 1/2-acre-feet per acre per irrigation season.

(5) ODFW shall apply for an instream water right of 15 cfs from the Highway 20 gauging station near Drewsy to the Warm Springs Reservoir on the Middle Fork Malheur. [This right would have a priority date subsequent to the Association's right.] The Association shall support the ODFW instream water right.

OREGON DEPARTMENT OF FISH & WILDLIFE

Dated:_____ By:_____

Title:_____

MALHEUR BASIN WATER USERS ASSN

V Dash Cattle Co.

By: _____
Kenneth J. Bentz

** Applegate

Oregon Trout

Speaking out for Oregon's fish

P.O. Box 19540 • Portland, Oregon 97219 • (503) 244-2292

June 28, 1990

RECEIVED
JUL - 9 1990
WATER RESOURCES DEPT.
SALEM, OREGON

John Borden
Water Resources Department
3850 Portland Rd. N. E.
Salem, OR 97310

Re: Application #69433
Malheur Basin Water Users Assn.
Proposed MOU

Dear John,

We understand that a meeting has been scheduled for July 11 between the Water Users Association, Oregon Department of Fish and Wildlife, WaterWatch and Oregon Trout to discuss the memorandum of understanding that ODFW and the Association have been working on. I do not see where the Water Resources Department will be represented at this meeting. Am I missing something, or does the Department not plan to have a representative at this meeting? It seems to me that it would be very important for you or one of your staff to be at this meeting to act as a facilitator.

Sincerely,

Jim Myron
Director
Mid-Willamette Region

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3066

June 15, 1990

Jill Zarnowitz
2501 SW First Ave.
Portland, OR 97207

RE: Application 69433, request for extension of time

Dear Ms. Zarnowitz:

Thank you for your letter of June 12, which was received today. Your prompt response is greatly appreciated.

I am more than willing to withhold any further action on this protested application until July 30, in anticipation of your upcoming meeting. Please keep me informed as to the outcome.

Sincerely,

Weisha Mize

Weisha Mize
Hearings Referee

cc: Sam Tucker, MBWUA
Tom Simmons, WaterWatch
Jim Myron, Oregon Trout

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

RECEIVED
JUN 18 1990
WATER RESOURCES DEPT.
SALEM, OREGON

June 13, 1990

Weisha Mize
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

RE: Application 69433
Malheur Basin Water Users Association

Dear Ms. Mize:

I have your letter of June 8, 1990. I am still hopeful that our proposed memorandum of understanding is acceptable to Oregon Department of Fish and Wildlife. This document has gone through numerous drafts, and I understand that the major issues have been resolved. I understand my clients are still willing to enter into the MOU. We are waiting to receive confirmation from Jill at ODF&W that the MOU is acceptable.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk

cc: Jill Zarnowitz
Oregon Dept. of Fish & Wildlife
P.O. Box 59
Portland, OR 97207

Jake Szramek
Water Resources Department
3850 Portland Road NE
Salem, OR 97310

NEIL GOLDSCHMIDT
GOVERNOR

Department of Fish and Wildlife

2501 SW FIRST AVENUE, PO BOX 59, PORTLAND, OREGON 97207 PHONE (503) 229-5400

RECEIVED
JUN 15 1990
WATER RESOURCES DEPT.
SALEM, OREGON

June 12, 1990

Weisha Mize
Hearings Referee
Water Resources Department
3850 Portland Road NE
Salem, Oregon 97310

Subject: Application 69433, Malheur Basin Water Users Association, Proposed MOU

Dear Ms. Mize,

The Malheur Basin Water Users Association has agreed to meet with ODFW, WaterWatch and Oregon Trout on July 11, 1990, to try to resolve some unsettled issues in the MOU. The Department would prefer resolving the issues through the MOU, rather than going to contested case hearing. We request that you extend your deadline to July 30, 1990, to allow us to resolve the issues in the MOU. All parties involved are unable to meet in June.

We understand that, even though ODFW, WaterWatch, Oregon Trout and the Association may come to agreement on the terms of the MOU, there may be other issues involved that require a public interest hearing. For our part, if we come to agreement on the terms of the MOU, we will not require a public interest hearing.

Thank you for your time.

Sincerely,

Jill E. Zarnowitz
Assistant Chief, Water Resources
Habitat Conservation Division

jz
c: Sam Tucker, Association
Tom Simmons, WaterWatch
Jim Myron, Oregon Trout
Jake Szramek, WRD
Nancy MacHugh
Penny Harrison

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3066

June 8, 1990

Jill Zarnowitz
ODFW
PO Box 59
Portland, OR 97207

Sam Tucker
Monahan, Grove & Tucker
105 North Main
Milton-Freewater, OR 97862

RE: Application 69433, Malheur Basin Water Users Association, Proposed MOU

Dear Ms. Zarnowitz and Mr. Tucker:

Application filed 69433 has been forwarded to the Hearings Section for action. I find that the most recent correspondence is a revised draft of the MOU originally proposed in February of last year, sent April 24, 1990 from Mr. Tucker to Ms. Zarnowitz, and requesting a response.

The matter was authorized to go to hearing by the Water Resources Commission 2 years ago. Since that time, there appear to have been some discussions between the parties in an attempt to resolve concerns. Please inform me of your determination on the possible resolution of this matter through acceptance of this MOU, or some version thereof, no later than June 29, 1990. In the event that the parties are incapable of resolving the matter, it will be set for public interest hearing.

Sincerely,

Weisha Mize
Hearings Referee

cc: Jake Szramek, WRD

Malheur Memo/3

MEMORANDUM OF UNDERSTANDING

Malheur Basin Water Users' Association
and
Oregon Department of Fish and Wildlife

INTRODUCTION:

This Memorandum of Understanding (MOU) is made by and between the MALHEUR BASIN WATER USERS'S ASSOCIATION (Association), and OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW).

The Association consists of ranchers using water from the Middle Fork Malheur River and its tributaries above Warm Springs Reservoir. Members of the Association have water rights for 3-acre-feet. The Association has made application to the WRD for a water right to divert an additional 1 1/2-acre-feet of water per acre from the Middle Fork Malheur. ODFW is interested in protecting instream flows in the Middle Fork Malheur and shall make application to WRD for an instream water right on said stream.

AGREEMENT:

Association, and ODFW agree to make the following recommendations to Oregon Water Resources Commission (WRC) concerning the Association's application for an additional water right and ODF&W's application for an instream water right:

(1) The ODFW shall support Association's request for an additional 1 1/2-acre-feet per season on the Middle Fork Malheur River so long as said right is conditioned to always leave at least 15 cfs flowing past any Association diversion in the Middle Fork Malheur River from April 1 through June 15 of each year and upon the Association using 1 1/2 acre feet of the primary right held by Associations members prior to June 15 of each year. These limitations will prevent a total drawdown of the river at any one time and will have the effect of requiring that at least 1 1/2 acre feet of water to be used between April 1 and June 15 of each year in order for the Association to have the supplemental right.

(2) The total amount of water diverted by the Association

shall not exceed 4 1/2-acre-feet per acre per irrigation season.

(3) The amount of water diverted shall be measured by the members of the Association installing measuring devices at the diversion points. Such measuring devices shall be installed and operating prior to the 1991 irrigation season or prior to April 1, 1991. Measuring devices shall meet requirements of WRD, after consultation with ODFW and the Association, and shall, with reasonable accuracy, allow determination of the rate of flow and amount of water diverted during the irrigation season.

(4) The Association shall develop, within five years of the signing of this agreement, methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. These conservation practices shall be approved by WRD. During the said five year period, the Association shall also investigate methods to reduce water diversions below 4 1/2-acre-feet per acre. At the end of five years the Association shall present a report to WRD about water conservation possibilities to reduce the diversions below 4 1/2-acre-feet per acre per irrigation season.

(5) ODFW shall apply for an instream water right of 15 cfs from the Highway 20 gauging station near Drewsy to the Warm Springs Reservoir on the Middle Fork Malheur. The Association shall support the ODFW instream water right.

OREGON DEPARTMENT OF FISH & WILDLIFE

Dated:_____ By:_____

Title:_____

MALHEUR BASIN WATER USERS ASSN

V Dash Cattle Co.

By: _____
Kenneth J. Bentz

Hoyt & Sons

By: _____

Pine Creek Ranch

By: _____
Donald A. Dryer

_____
Glen Ellingson

_____ _____
John Sword Elfreda Sword

_____ _____
Norman Clark Eilene Clark

_____ _____
Harvey Cronin Patsy Cronin

_____ _____
James Sitz Betty Sitz

_____ _____
Turen Dunten Wilma Dunten

_____ _____
Chas Miler Norma Miler

_____ _____
Floyd Dunten Delia Dunten

_____
Byron Dunten

_____ _____
Lloyd Jordon Eunice Jordon

_____
Thomas C. Howard

_____ _____
Patrick O'Toole Susan O'Toole

_____ _____
Forrest Freeman Nellie Freeman

_____
Rotha French

_____ _____
Kenneth Arnold Barbara Arnold

_____ _____
D. W. Williams Irene Williams

AGREEMENT

PARTIES: The parties to this agreement are MALHEUR BASIN WATER USERS ASSOCIATION (Association) and OREGON DEPARTMENT OF FISH AND WILDLIFE (ODF&W).

RECITALS: The Association consists of approximately ranchers using water from the Middle Fork Malheur River above Warm Springs Reservoir. The Association has made application for a water right to divert an additional 1½-acre-feet of water per acre from the Middle Fork Malheur during the irrigation season. ODF&W is interested in the Middle Fork Malheur and the establishment of an instream water right on said stream.

AGREEMENT: Association and ODF&W agree to make the following recommendations to Oregon Water Resources Department and Commission (WRD) concerning the Association's application for additional water right and ODF&W's application for an instream water right:

(1) The ODF&W will support Association's request for an additional 1½-acre-feet/season so long as said right is conditioned to always leave at least 15 cfs flowing past any Association diversion in the Middle Fork Malheur River from April 1 through June 15. This will prevent a total drawdown of the river at any one time.

(2) The total amount of water diverted by the Association will not exceed 4½-acre-feet per acre per irrigation season.

(3) The amount of water diverted shall be measured by the water users installing measuring devices at the diversion points. Measuring devices would meet requirements of WRD and would, with reasonable accuracy, allow determination of the rate of flow and amount of water diverted during the irrigation season.

(4) The water users will develop methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. These methods will reduce present diversions to 4½-acre-feet per acre per season. These conservation practices will be approved by WRD.

(5) ODF&W shall apply for an instream water right of 15 cfs on the Middle Fork Malheur. This right would have a priority date subsequent to the Association's water right. The Association will support the ODF&W right.

(6) The ODF&W and Association request that the WRD develop a hydrological model to determine the exceedence flows that exist currently versus projected flows with the new conditions stated above.

(7) There are opportunities to screen the diversions and enhance the riparian zone along the river and throughout the state.

(8) If ODF&W submits an instream water right, a minimum streamflow hearing will not be necessary.

OREGON DEPARTMENT OF FISH & WILDLIFE

By:_____

MALHEUR BASIN WATER USERS ASSN

By:_____

WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD NE
SALEM, OR. 97310

PHONE 378-3066
DATE: 5/15/1990

The following applications for water-use authorizations (water rights) were filed in the office of the Water Resources Director during the week of MAY/ 4/1990 to MAY/10/1990. By law, all water within the state belongs to the public (ORS 537.110). With very limited exceptions, a permit from this department is required to use, divert or store the surface and ground waters of the state (ORS 537.130). Permits may be issued only for beneficial use without waste. When a water use is developed within the terms of a permit, a certificate of water right is issued.

Persons, agencies or other interested parties are invited to provide comments on the following list of applications. Comments should address whether the proposed use:

1. Would adversely affect existing rights.
2. Is wasteful, uneconomic, impractical, or unreasonable.
3. Would impede orderly economic development of the water for multiple purposes.
4. Is compatible with local comprehensive land-use plans.
5. Would otherwise have a significant adverse effect on the public interest.

Comments on these applications should be directed to the Applications & Permits Section of the Department at the above address, and must be received within 30 days from the date of this notice (within 14 days for Limited License requests).

GROUND WATER

COOS

G 12101 DELMER ROBISON
RT 1 BOX 2066 BANDON, OR 97411
TWO SUMPS AND ONE WELL IN THE CROOKED CREEK BASIN
for IRRIGATION, TEMPERATURE CONTROL AND FLOOD HARVEST
FOR 16.0 ACRES OF CRANBERRIES.
1.0 CUBIC FOOT PER SECOND, BEING 0.4 CFS FROM EACH SUMP AND 0.2 CFS FROM WELL
SW 1/4 NE 1/4 Section 7 T 29 S R 14 W WM.
SW 1/4 NE 1/4 Section 7 T 29 S R 14 W WM.
SW 1/4 NE 1/4 Section 7 T 29 S R 14 W WM.

MONAHAN, GROVE & TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

April 24, 1990

RECEIVED
APR 27 1990
WATER RESOURCES DEPT.
SALEM, OREGON

Jill Zarnowitz
Department of Fish & Wildlife
P.O. Box 59
Portland, OR 97207

RE: Middle Fork Malheur

Dear Jill:

Enclosed is a revised Memorandum of Understanding and a draft showing the corrections. The significant revisions were as follows:

1. I have modified paragraph (1) of the agreement to indicate that the Association must use 1 1/2 acre feet of primary right prior to June 15 of each year. Your earlier draft indicated that we were required to use the supplemental right. We discussed my concerns about whether this would be legally permissible. It appears my proposed language would accomplish the same purpose. As in your proposed agreement, we would be required to use the 1 1/2 acre feet early in the season in order to be entitled to the supplemental right.

2. On paragraphs (4) and (5) I have eliminated the two sentences which apparently were causing some problems or confusion.

Again, Jill, I believe in this particular situation, both of our interests would best be served if the ranchers are allowed to divert more than 3 acre feet rather than either being required to switch over to another form of irrigation or save water rights during times of high water in order to get the necessary water on their crops after haying in July. Please review the proposed agreement and contact me.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:hk
Enclosure

COPY

NEIL GOLDSCHMIDT
GOVERNOR

Department of Fish and Wildlife

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

RECEIVED
FEB 17 1989
WATER RESOURCES DEPT.
SALEM, OREGON

DATE: February 15, 1989

TO: Sam Tucker, Attorney, MBWUA
Ron Bartels, Bill Hosford, Lou Fredd, ODFW
Jake Szramek, WRD

FROM: Jill Zarnowitz, ODFW JZ

SUBJECT: Notes from meeting with Malheur Basin Water Users Organization, ODFW and WRD on supplemental water right and minimum streamflow in the Middle Fork Malheur River above Drewsey.

On February 7, 1989, representatives from the Malheur Basin Water Users Association (water users), Oregon Department of Fish and Wildlife (ODFW) and Water Resources Department (WRD) met to discuss concerns and possibly find a negotiated solution to the needs of the water users and the instream flow needs for fish and wildlife in the Middle Fork Malheur above Drewsey. Representing the water users were Ken Bentz and Tom Howard, ranchers, and Sam Tucker, attorney. Representing ODFW were Jill Zarnowitz, Lou Fredd, Bill Hosford, Mary Hansen and Ron Bartels. Tom Kline, Amin Wahab, Bill Beal and Jake Szramek were representing WRD.

A history of the problem was recounted by Ken Bentz. Discussion ensued about the circumstances of the ranchers, their irrigation practices, the result of conditioning the supplemental water right to ensure the minimum streamflow, how much water the ranchers are using now and conservation techniques that could be employed to enhance the instream flow. It was pointed out that there were three more ranchers above the Drewsey bridge that were not a part of the water users organization.

The above mentioned parties tentatively agreed to the following:

1) The supplemental water right will be conditioned to always leave at least 15 cfs in the Middle Fork Malheur River from April 1 through June 15. This will prevent a total drawdown of the river at any one time.

2) The total amount of water diverted will not exceed the amount legally authorized.

3) The amount of water used shall be measured by the water users installing measuring devices at the diversion points. Preferably these measuring devices will be self-contained and keep a paper record the amount used.

4) The water users will develop methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. These methods will become part of the permit with a timeline for implementing them. This should serve to increase flows in the river during low water periods and use water more efficiently.

5) ODFW shall apply for an instream water right on the Middle Fork Malheur.

6) The WRD will develop a hydrological model to determine the excedence flows that exist currently versus projected flows with the new conditions stated above.

7) There are opportunities to screen the diversions and enhance the riparian zone along the river through fencing.

8) A public hearing should still be held in Drewsey to air any concerns that may exist other than those discussed in this meeting.

9) If ODFW submits an instream water right, a minimum streamflow hearing will not be necessary.

10) Other interested parties should be informed of the results of this meeting. These are (at minimum): Waterwatch, Oregon Trout and Oregon Environmental Council. The water users should inform others that they think may want to be involved.

These are the specific items that were discussed and tentatively agreed upon. Further negotiations may be necessary to refine the agreements.

C: Silovsky
John Borden, WRD
Waterwatch
Oregon Trout
Oregon Environmental Council

NEIL GOLDSCHMIDT
GOVERNOR

Department of Fish and Wildlife

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

DATE: February 15, 1989

TO: Sam Tucker, Attorney, MBWUA
Ron Bartels, Bill Hosford, Lou Fredd, ODFW
Jake Szramek, WRD

FROM: Jill Zarnowitz, ODFW JZ

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The above mentioned parties tentatively agreed to the following:

1) ~~The supplemental water right will be~~ conditioned to always leave at least 15 cfs in the Middle Fork Malheur River from April 1 through June 15. This will prevent a total drawdown of the river at any one time.

2) The total amount of water diverted will not exceed ~~the amount legally authorized.~~

Measuring devices would meet requirements of WRD and would with reasonable accuracy allow calculation of the rate of flow and amount of water diverted during the irrigation season. ODFW would prefer measuring devices that automatically record the amount of water diverted.

3) The amount of water ~~used~~ diverted shall be measured by the water users installing measuring devices at the diversion points. ~~Preferably these measuring devices will be self-contained and keep a paper record the amount used.~~

4) The water users will develop methods to conserve water that passes through their irrigation ditches and onto the irrigated fields. These methods will ~~become part of the permit with a timeline for implementing them. This should serve to increase flows in the river during low water periods and use water more efficiently.~~ These conservation practices will be approved by WRD

reduce present diversions to 4½ acre ft Seasonal.

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ODFW - BSIN request Trout

6) The WRD will develop a hydrological model to determine the excedence flows that exist currently versus projected flows with the new conditions stated above.

7) There are opportunities to screen the diversions and enhance the riparian zone along the river ~~through fencing.~~

~~8) A public hearing should still be held in Drewsey to air any concerns that may exist other than those discussed in this meeting.~~

9) If ODFW submits an instream water right, a minimum streamflow hearing will not be necessary.

10) Other interested parties should be informed of the results of this meeting. These are (at minimum): Waterwatch, Oregon Trout and Oregon Environmental Council. The water users should inform others that they think may want to be involved.

These are the specific items that were discussed and tentatively agreed upon. Further negotiations may be necessary to refine the agreements.

C: Silovsky
John Borden, WRD
Waterwatch
Oregon Trout
Oregon Environmental Council

NEIL GOLDSCHMIDT
GOVERNOR

Department of Fish and Wildlife

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

DATE: February 15, 1989

TO: Sam Tucker, Attorney, MBWUA
Ron Bartels, Bill Hosford, Lou Fredd, ODFW
Jake Szramek, WRD

FROM: Jill Zarnowitz, ODFW JZ

SUBJECT: Notes from meeting with Malheur Basin Water Users Organization, ODFW and WRD on supplemental water right and minimum streamflow in the Middle Fork Malheur River above Drewsey.

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flowing past and association with discussion

The above mentioned parties tentatively agreed to the following:

The ODFW will support association request for an additional 1½ acre feet/season so long as said right is

1) ~~The supplemental water right will be~~ conditioned to always leave at least 15 cfs in the Middle Fork Malheur River from April 1 through June 15. This will prevent a total drawdown of the river at any one time.

2) The total amount of water diverted by the association will not exceed 4½ acre feet/season. ~~the amount legally authorized.~~

MONAHAN, GROVE AND TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

RECEIVED
FEB 13 1989
WATER RESOURCES DEPT.
SALEM, OREGON

February 10, 1989

EXPRESS MAIL

Mr. John Woodroof
Mr. Jake Szramek
Water Resources Department
3850 Portland Road N. E.
Salem, OR 97310

RE: Malheur River Basin Water Users Association
Application #69433

Gentlemen:

Pursuant to your instructions, I am returning the original Application described above.

Kenneth J. Bentz is the president of the Malheur Basin Water Users Association and is signing in his capacity as its president. I understand this explanation is satisfactory for your purposes. If you have any further questions concerning the authority of Ken Bentz, please contact me.

I have included Spring Creek on Item 1 of our application. Spring Creek is included in the application's description and should have been included on Item 1 and Item 4 of the application. Thank you for bringing this to our attention.

You asked for more specific information concerning our intended use of the water. Some explanation of our proposed use and need may help. The Water Resources Department's study conducted on the Middle Fork Malheur indicated that ranchers were diverting substantially more than the 3-acre-feet per acre granted under their decree and water right. The department's study showed that the ranchers were consuming less than 3-acre-feet. We wish to have a water right which grants us the right to divert, during April and May, substantial amounts of water. This diversion will be non-consumptive and is for the purpose of alkaline abatement, charging of ground-water aquifer to aid in later return flows, and to cover reasonable conveyance and seepage losses in the existing system. These uses could be considered beneficial uses

in their own right or could be considered a necessary part of the irrigation process, irrigation being the beneficial use. It would be difficult to quantify the amount diverted for alkaline abatement vs. ground-water recharge vs. reasonable transportation losses. All are related to the flood-irrigation process. The Water Resources Department's study shows that during the period of April and May approximately 1.8-acre-feet per acre were consumed. The amount of water consumed would count against the existing rights held by the association. The additional water right requested would be non-consumptive and for the additional water diverted during said time period.

I hope this explanation is adequate for purpose of clarifying the application. If, in light of this explanation, you believe additional language is required, we request that you give us additional time to provide you with the needed language. We have also reached a tentative agreement with the Oregon Department of Fish and Wildlife whereby it will support this application if certain conditions are met.

I consider the uses described above to beneficial uses consistent with the uses which these waters are classified under the Basin program. The program specifically mentions flood-irrigation as being beneficial to reduce alkalinity in the soil. If you consider our requested uses to not be within the beneficial uses mentioned in the Basin plan, please consider this letter as complying with OAR 690-82-030. The period of use each year would be April and May.

Thank you for your continued help and cooperation in this matter.

Sincerely,

MONAHAN, GROVE & TUCKER

Sam Tucker

ST:lg
Enclosure

cc: Mr. Ken Bentz
Drewsey
OR 97904

Mr. and Mrs. Ken Arnold
P. O. Box 237
Drewsey, OR 97904

Mr. Tom Howard
Drewsey
OR 97904

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3066

February 9, 1989

Sam Tucker
Monahan, Grove and Tucker
Attorneys at Law
105 North Main
Milton-Freewater, OR 97862

REFERENCE: File 69433

Enclosed are the copies of the three maps supporting the Application 69433 filed by the Malheur River Basin Water Users Association. Our Receipt covering the copying fee of $8.50 you submitted is also enclosed.

Sincerely,

WAYNE J. OVERCASH
Water Rights Specialist

Enclosures

WJO

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FEB - 8 1989
WATER RESOURCES DEPT.
SALEM, OREGON

MONAHAN, GROVE AND TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

February 6, 1989

Mr. Wayne Overcash
Water Resources Department
3850 Portland Road N. E.
Salem, OR 97310

RE: Malheur River Basin Water Users Association
File No. 69433

Dear Mr. Overcash:

Enclosed is the $8.50 you requested. Please copy and return to me the Malheur River Basin Water Users Association maps submitted with the application as soon as possible.

Sincerely yours,
MONAHAN, GROVE & TUCKER

Sam Tucker

Sam Tucker

ST:do
Enclosure

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JAN 23 1989
WATER RESOURCES DEPT.
SALEM, OREGON

MONAHAN, GROVE AND TUCKER
ATTORNEYS AT LAW
105 NORTH MAIN
MILTON-FREEWATER, OREGON 97862

J. T. MONAHAN
JOHN U. GROVE
SAM TUCKER

TELEPHONE
AREA CODE 503
938-3377

January 19, 1989

Mr. Jake Szramek
Water Resources Department
3850 Portland Road N. E.
Salem, OR 97310

RE: Malheur Basin Water Users Association

Dear Mr. Szramek:

This letter follows up our recent telephone conversation. Please forward to me copies of the Malheur Basin Water Users Association application for a supplemental water right. I believe this application may be numbered 69433. Also, please forward to me all public documents generated concerning this application since November, 1988. This includes any minutes of commission action, a copy of the location map, any staff reports and staff proposals.

Please also put me on the mailing list so that I will receive copies of all future correspondence and Water Resources documents concerning this application. Thanks in advance for your help.

Sincerely yours,
MONAHAN, GROVE & TUCKER

Sam Tucker

ST:do

Sent staff report - file letter & minutes

APPLICATION 69433

WORK SHEETS.

MALHEUR RIVER WATER USERS

1. OUT OF SEASON IRRIGATION PRIMARY. ALSO APPEAR TO BE Supplemental ~~Primary~~
2. LARGER TOTAL Q THAN ALLOWED
3. STATED PURPOSE CONTRADICTS RETURN FLOW STUDY DONE BY US.

Application No. 69433 Permit No.

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STATE OF OREGON WATER RESOURCES DEPARTMENT

Application for Permit to Appropriate Surface Water

I, Malhuer Piver Basin Water Users Association
(Name of Applicant)

of P.O. [illegible], Drewsey
(Mailing Address) (City)

State of Oregon, 97904 (Zip Code) Phone No. 493-2728 do hereby

make application for a permit to appropriate the following described waters of the State of Oregon:

1. The source of the proposed appropriation is Middle Fork Malhuer River, Griffin Crk, Cottonwood Crk & Ottis Crk. / Spring ck ? / Warm Springs ck ?, a tributary of Snake River

2. The point of diversion is to be located See attached sheet ft. (N. or S.) and ft. (E. or W.)

from the corner of
(Public Land Survey Corner)

(If there is more than one point of diversion, each must be described)

being within the ¼ of the ¼ of

Sec. Tp. (N. or S.) R. (E. or W.), W. M., in the county of Harney

3. Location of area to be irrigated, or place of use if other than irrigation.

Township	Range	Section	List ¼ ¼ of Section	List use and/or number of acres to be irrigated
		See attached sheets		

Sources unclear
1) Item #4 mentions Spring Clk, which is not listed in Item #1
2) P.O.D. #22 appears to show Quad to be Warm Springs Clk. Not mentioned on map.

Form 690-1-0-1-77

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Malhuer River Basin Water Users Association

(2) Point of diversions

M.F. #1 = Johnson Ditch 130' N,380' W from S.E. corner sec. 32,T-18-S,R-34-E being within S.E.,S.E. of sec. 32,T-18-S, R-34-E.

M.F. #2 = Moffett Ditch-560'S,710'W from the N.E. corner sec.8,T-19-S,R-34 E, being within N.E.¼ of N.E.¼ sec. 8,T-19-S,R 34-E.

M.F. #3 = ditch 2375'S,580'W from N.E. corner sec. 5,T-19-S, R-34-E being within ~~N.E.¼~~ of N.E.¼ of sec. ~~8~~ 5,T-19-S,R- 34-E.

M.F. #4 = ditch 1490'N,2080'E from S.W. corner sec.8,T-19-S,R-34-E being within N.E.¼,S.W.¼ sec.8,T-19-S,R-34-E.

M.F. #5 = ditch 200'S 605'E from the N.W. corner sec.17,T-19-S,R-34-E being within N.W¼ofN.W.¼ sec.17,T-19-S,R34-E.

M.F. #6 = ditch 130'S 360'W from N.E.corner sec.18,T-19-S,R-34-E being within N.E.¼ of N.E.¼ sec.18, T-~~34-E~~ 19-S,R-34-E.

M.F. #7 = Marks ditch 345'N 2510'E from S.W. corner sec.18,T-19-S,R-34-E being within S.E.¼ S,W.¼ sec. 18,T-19-S,R-34-E.

M.F. #8 = Baily Ditch 1330'S 1650'E from N.W.corner sec. 19,T-19-S,R-34-E being within S.E¼ N.W.¼ sec.19,T-19-S, R-34-E.

M.F. #9 = Farrens Ditch 475'S 130'E from N.W. corner sec.30,T-19-S,R-34-E being within N.W.¼ N.W.¼ of sec.30 T-19-S, R-34-E.

M.F. #10= Robbins Ditch 1090'S 2375'W from N.E. corner sec.36,T-19-S,R-33½ E, being within N.W.¼ N.E.¼ sec.36,T-19-S, R-33½-E.

M.F. #11= Clarks North Ditch 2440'S 300'E from N.W. corner sec.5, T-20-S, R-34-E being within S.W.¼ N.W.¼ sec.5,T-20-S,R-34-E.

M.F. #12= Clarks South Ditch 2245'S 2010'E from N.W. corner sec.5 T-20-S, R-34-E being within S.E.¼ N.W.¼ sec.5, T-20-S, R34-E.

G.C. #13= Griffin Cr. Reservoir 2330'N 1750'E from S.W.corner sec.28,T-19 S, R-34-E being withinN.E.¼ S.W.¼ sec. 28,T-19-S,R-34-E.

M.F. #14= Miller Ditch 675'S 940'W from N.E. corner sec. 10, T-20-S, R-34-E being within N.E.¼ N.E.¼ sec. 10, T-20-S, R-34-E.

M.F. #15= SitZ ditch 845'S 610'W from N.E. corner sec. 10, T-20-S,R-34-E being within N.E.¼ N.E.¼ sec.10,T-20-S,R-34-E.

M.F. #16= Drewsey Ditch 2475'N 1520'E from S.W. corner sec. 11, T-20-S, R-34-E being within N.E.¼ S.W.¼ sec.11,T-20-S, R-34-E.

M.F. #17= French Pumps (additional diversion) to #16 diversion.2970'S 1440'E from N.W. corner sec. 23,T-20-S, R-35-E being within N.E.¼ S.W.¼ sec. 23,T-20-S,R-35-E.

O.C. #18= Williams Div. 825'S 845'E from N.W. corner Sec.20,T-20-S,R-36-E being within ~~N.W.¼~~ of SEc. 20,T-20-S,R-36-E.

O.C. #19= 2520'S 1580'E from N.W. corner Sec. 8,T-20-S,R-36-E being within SE¼ of NW¼ of sec.8 T-20-S,R-36-E.

MAP WORK O.C. #20= 0'S 1452'E from NW corner sec.8,T-20-S,R-36-E,being within NE¼ of NW¼ sec. 8,T-20-S,R-36-E.

MAP WORK COC #21= 0'S 2508'E from NW corner sec. 8,T-20-S,R-36-E being within NE¼ of the NW¼ sec.8,T-20-S,R-36-E.

WARM SPRINGS CREEK. #22= 760'S,280'E from NW corner sec.9,T-20-S,R-36-E,being within NW¼ NW¼ sec.9,T-20-S,R-36-E.

Application No. 69433
Permit No.

MIDDLE FK = M.F.
GRIFFIN CK = GC
COTTONWOOD CK = COC
OTTIS CK = OC

Application No. 69433

TSP	RNG	SEC.	¼¼	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
20-S	34-E	5	SE NE	3.0	3.0	6946	11	900
AC LISTED ON PAGE 1			SW NW	.8	.8	26409	"	"
			SE NW	3.8	3.8	"	"	"
			NE SE	1.0	1.0	2151	"	600
			NW SE	1.4	1.4	26409	12	900
		4	NE NE	30.0	30.0	6979	"	400
			NW NE	6.4	6.4	26569	13	"
			NW NE	17.0	17.0	6979	12	"
9 AC. ADDITIONAL SHOWN			SW NE	22.0	22.0	"	"	"
8 AC " "			SE NE	13.0	13.0	"	"	"
			NE SW	16.0	16.0	2151	"	"
			NW SW	13.0	13.0	"	"	600
10 AC shown on map			NW SW	1.0	1.0	"	11	"
		3	SW NW	20.0	20.0	6979	12	400
			NE SW	5.0	5.0	"	"	"
			NW SW	4.0	4.0	"	"	"
		11	NE SE	2.5	2.5	6897	14	300
			NW SE	3.5	3.5	6930	16	"
			SW SE	12.0	12.0	"	"	"
			SE SE	13.0	13.0	"	"	"
			SE SE	17.0	17.0	"	14	"
		12	SW NE	2.0	2.0	"	16	"
			SE NW	2.0	2.0	8121	14	"
			SE NW	1.0	1.0	"	16	"
			NW SW	7.8	7.8	"	14	"
			NW SW	7.3	7.3	6930	16	"
			NE SW	2.3	2.3	7012	14	1600
			NE SW	27.7	27.7	"	16	"
			NE SW	2.0	2.0	"	15	"
			SW SW	10.0	10.0	"	16	"
			SW SW	6.0	6.0	"	15	"
			SE SW	5.0	5.0	"	16	"
			SE SW	30.0	30.0	"	15	"
			NW SE	15.0	15.0	"	16	"
			SW SE	39.0	39.0	"	15	"
			SE SE	18.0	18.0	"	"	"
			SE SE	20.0	20.0	"	16	"
		13	NE NE	7.0	7.0	"	15	"
			NW NE	13.0	13.0	"	"	"
			NW NE	1.0	1.0	"	"	"
20-S	35-E	7	NE NE	25.0	25.0	6971	14	900
			SE NE	30.0	30.0	"	"	"
			SW SW	30.0	30.0	"	16	1500
			SW SW	8.0	8.0	"	15	"
			SE SW	30.0	30.0	"	16	"
			SE SW	8.0	8.0	"	15	"
		18	NE NW	15.0	15.0	"	16	900
			NE NW	25.0	25.0	"	15	"
			NW NW	40.0	40.0	"	"	"
			SW NW	15.0	15.0	"	"	"
			SE NW	2.5	2.5	"	"	"
			SE NW	33.5	33.5	"	16	"
			NE SW	8.5	8.5	"	15	"
20-S	34-E	13	NW NE	5.0	5.0	7012	"	1700
			NE NE	10.0	10.0	"	"	1800
20-S	35-E	7	SE NW	26.0	26.0	6989	14	1400
			SE NW	14.0	14.0	"	16	"
			SW NW	35.0	35.0	"	14	"
			SW NW	5.0	5.0	"	16	"

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 Application No. 69433

TSP	RNG	SEC.	44	ACRES	SUI.	Cert.#	Div.Pt.	Tax Lot
20-S	35-E	7	NE SW	40.0	40.0	6989	16	1400
			NW SW	37.0	37.0	"	"	"
			NW SW	3.0	3.0	"	14	"
			NW SE	34.0	34.0	"	16	"
			SW SE	33.0	33.0	"	"	"
20-S	34-E	12	SE NE	38.0	38.0	"	14	1500
			NE SE	7.0	7.0	"	"	"
			NE SE	28.0	28.0	"	16	"
20-S	35-E	7	NW NE	14.0	14.0	6972	14	1300
			SW NE	33.0	33.0	"	"	"
			SW NE	7.0	7.0	"	16	"
			NE NW	30.0	30.0	6930	14	1200
			NW NW	30.0	30.0	"	"	"
20-S	34-E	12	NE NE	22.0	22.0	"	"	"
20-S	35-E	18	NW NE	20.0	20.0	6903	16	2800
			SW NE	25.0	25.0	"	"	"
			SE NE	3.0	3.0	"	"	"
			NE SE	15.0	15.0	"	"	"
			NW SE	28.0	28.0	7012	"	"
			NE SE	15.0	15.0	6903	"	1800
			SE SE	5.0	5.0	"	"	"
		17	NW SW	30.0	30.0	"	"	"
			SW SW	25.0	25.0	"	"	"
			NE SW	37.0	37.0	6930	"	1900
			SE SW	38.0	38.0	"	"	"
			NW SE	5.0	5.0	"	"	"
			SW SE	20.0	20.0	"	"	"
		20	NE NE	17.0	17.0	"	"	"
			NW NE	34.0	34.0	6998	"	"
			SW NE	6.0	6.0	"	"	"
			SE NE	28.0	28.0	"	"	"
			NE NW	10.0	10.0	6930	"	"
		21	SW NW	10.0	10.0	"	"	3100
			SE NW	3.0	3.0	"	"	"
			NE SW	36.0	36.0	"	"	"
			NW SW	20.0	20.0	"	"	"
			SE SW	12.0	12.0	"	"	"
			NE SE	20.0	20.0	6891	"	3300
			NE SE	7.9	7.9	11219	"	"
			NW SE	32.0	32.0	6891	"	"
			NW SE	3.0	3.0	11219	"	"
			SW SE	25.0	25.0	6891	"	"
			SE SE	30.0	30.0	"	"	"
		22	NW SW	1.0	1.0	6897	"	"
			NW SW	4.6	4.6	11219	"	"
			SW SW	35.0	35.0	6891	"	"
		23	NE SW	1.1	1.1	11219	"	200
			SE SW	.5	.5	"	"	"
			NW SE	5.0	5.0	"	"	"
			SW SE	3.4	3.4	"	"	"
		24	SW SW	34.6	34.6	"	16,17	3500
			SE SW	27.8	27.8	"	" "	"
			SW SE	31.4	31.4	"	" "	"
			SE SE	40.0	40.0	"	" "	"
			NE SE	28.4	28.4	"	" "	3600
20-S	36-E	19	NW SW	35.0	35.0	"	" "	2000
			SW SW	27.5	27.5	"	" "	"
			NW NW	16.6	16.6	"	" "	"
		8	NE NW	40.0	40.0	7020 31115	20,21	11

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Tsp	RNG	SEC.	¼¼	ACRES	SUP.	Cert.#	Div. Pt.	Tax Lot
20-S	36-E	8	SE NW	40.0	40.0	7020	20	11
						31115	21	
			NE SW	35.0	35.0	7020	20,19	11
						31115	21	
			SE SW	37.0	37.0	7020	20,19	11
						31115	21	
			NW SE	2.0	2.0	7020	22	11
			SW SE	20.0	20.0	"	22	"
		17	NW NE	25.0	25.0	"	"	"
			NE NW	5.0	5.0	"	"	"
			NE NW	15.0	15.0	"	19	"
			SW NE	15.0	15.0	"	22	16
			SE NW	5.0	5.0	"	"	"
			SE NW	15.0	15.0	"	19	"
			NE SW	3.0	3.0	"	22	"
			NE SW	20.0	20.0	"	19	"
			NW SE	8.0	8.0	"	22	"
			SW SE	4.0	4.0	"	"	"
		19	NE NE	10.0	10.0	7943	18	18
			SE NE	30.0	30.0	"	"	"
			SE SW	3.0	3.0	"	"	"
			NE SE	23.0	23.0	"	"	"
			NW SE	8.0	8.0	"	"	"
			SW SE	30.0	30.0	"	"	"
		30	NW NE	40.0	40.0	"	"	"
			SW NE	40.0	40.0	"	"	"
			SE NE	10.0	10.0	"	"	"
			NE NW	6.0	6.0	"	"	"
			NE SE	26.0	26.0	"	"	"
			NW SE	35.0	35.0	"	"	"
			SW SE	30.0	30.0	"	"	"
			SE SE	35.0	35.0	"	"	"
		31	NE NE	40.0	40.0	6989	"	"
			NW NE	40.0	40.0	"	"	"
			SW NE	40.0	40.0	"	"	"
			SE NE	12.0	12.0	6898	"	19
			NE SE	7.0	7.0	"	"	"
		32	NW NW	12.5	12.5	"	"	"
			SW NW	25.0	25.0	"	"	"
			NW SW	37.0	37.0	"	"	"

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Application No. 69433
Permit No.

Malhuer River Basin Water Users Association- Drewsey, Oregon

V Dash Cattle Co.	T-19-S	R-33½-E	Tax Lot 1200
	19	34	500
			900
			1400
			1500
Hoyt & Sons	19	33½	2800
	20	34	1100
Don Dryer	19	33½	2900
	20	33½	100
	19	34	1600
	20	34	1200
Glen Ellingson	19	34	300
			700
John & Elfreda Sword	19	34	1200
			1300
Norman & Eilene Clark	20	34	400
			600
			900
Harvey & Patsy Cronin	20	34	300
James & Betty Sitz	20	34	1600
	20	35	1500
			900
Walter & Patricia Sitz	20	34	1700
James Jr. & JanyceSitz	20	34	1800
Turen & Wilma Dunten	20	34	1400
	20	35	1200
Chas & Norma Miler	20	34	1500
	20	35	1400
Floyd & Delia Dunten	20	35	1300
Byron Dunten	20	35	2800
Lloyd & Eunice Jordon	20	35	1800
Thomas C. Howard	20	35	1900
			3100
Patrick & Susan O'Toole	20	35	3300
Forrest & Nellie Freeman	20	35	200
Rotha French	20	35	3500
Kenneth & Barbara Arnold	20	35	3600
	20	36	2000
D.J.&Irene Williams	20	36	11
Chester o.& Muriel I Stallard	20	36	16
Terry S.&Nancy A. Williams	20	36	18
William R.& Rozann Robertson	20	36	19

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SALEM, OREGON

Application No. 69483
Permit No.

4. *The amount of water which the applicant intends to apply to beneficial use is* 128.0 CFS @ 1/40th cf

cubic feet per second 102.0 from Malhuer River- 5.0 from Griffin Creek 18.2 from

(If water is to be used from more than one source, give quantity from each)

Ottis Cr, 2.8 from Cottonwood Cr and 2.2 from Spring Cr., ? ? ? warmsprings cr ?

5. *The use to which the water is to be applied is* irrigation of meadows

6. *DESCRIPTION OF WORKS*

Include dimensions and type of construction of diversion dam and headgate, length and dimensions of supply ditch or pipeline, size and type of pump and motor, type of irrigation system to adequately describe the proposed distribution system.

There are numerous types of diversions, Gravel dams, boulder dams, one concrete with boards. Some diversions are into spreader ditches, some are into aditch with headgates to divert to fields and spreader ditches. All irrigation is gravity flow accross the meadows and returns to the river.

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If for domestic use state number of families to be supplied

7. *Construction work will begin on or before* There will be no new construction

8. *Construction work will be completed on or before* The system has been used for years

9. *The water will be completely applied to the proposed use on or before* Spring of 1988

Application No. 69433 *Permit No.*

Remarks: This application is for additional water for Alkali abatement and a means of storing extra water in the soil as a reservoir to help maintain a longer return flow to the river in the late summer. This will keep the water temperture lower and increase the flow for the fish habitat. We are asking for 1½ af from April 1 to June 1.

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Malheur Basin Water Users Assn
Signature of Applicant
by Kenneth J. Beatty

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for

In order to retain its priority, this application must be returned to the Water Resources Director with corrections on or before ....., 19.....

WITNESS my hand this ..... day of ....., 19.....

Water Resources Director

By .....

This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 28th *day of* October, *19* 87, *at* 3 *o'clock* P.M.

Application No. 69433 *Permit No.*

TST	RNG	Sec.	¼	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
19-S	33½-E	13	SW NE	19.0	19.0	3526	2	1200
		9 on map	SE NE	20.0	20.0	"	"	"
			NE SE	27.0	27.0	"	"	"
			NW SE	3.0	3.0	"	"	"
		8 on map	SE SE	0.5	0.5	2134	"	"
19-S	34-E	7	NW SW	20.0	20.0	3526	"	500
			NW SW	11.0	11.0	7001	"	"
			SW SW	30.0	30.0	"	"	"
			SW SE	23.0	23.0	3791	"	"
		18	NW NE	19.0	19.0	6857	"	"
			NW NE	19.0	19.0	"	4	"
			SW NE	25.0	25.0	"	2	"
			SW NE	5.0	5.0	"	4	"
			NE NW	9.0	9.0	"	2	"
			NW NW	34.0	34.0	7001	"	"
			SW NW	28.0	28.0	"	"	"
			SE NW	18.0	18.0	6857	"	"
			SE NW	19.0	19.0	"	6	"
			NE SW	18.0	18.0	"	2	"
			NE SW	20.0	20.0	"	6	"
			NW SW	4.0	4.0	2134	2	"
			NW SW	19.0	19.0	6932	2	"
			SW SW	25.0	25.0	"	"	"
			SW SW	2.0	2.0	2134	"	"
			SE SW	38.0	38.0	6877	"	"
		19	NW NW	12.0	12.0	6857	2	"
			NW NW	11.0	11.0	"	7	"
			SW NW	18.0	18.0	"	7	"
			NW NE	35.0	35.0	7050	5	"
		16 on map	SW NE	20.0	20.0	"	"	900
			NE NW	16.0	16.0	7050	7	"
			NE NW	22.0	22.0	"	5	"
			SE NW	3.0	3.0	"	7	"
		only 30 on map	SE NW	8.0	8.0	"	8	"
			SE NW	25.0	25.0	"	5	"
		30	SW NW	24.0	24.0	27613	9	1500
			NW SW	23.0	23.0	"	"	"
			SW SW	30.0	30.0	"	"	"
		31	NE NW	6.0	6.0	"	"	"
			NW NW	40.0	40.0	"	"	"
			SW NW	40.0	40.0	"	"	"
			SE NW	31.0	31.0	"	"	"
			NE SW	40.0	40.0	"	"	"
			NW SW	40.0	40.0	"	"	"
		29	SW SW	10.0	10.0	6896	1	"
			SE SW	15.0	15.0	"	"	"
		32	NE NW	36.0	36.0	"	"	"
			NW NW	8.0	8.0	47708	"	"
			SW NW	2.0	2.0	"	"	"
			SE NW	3.0	3.0	"	"	"
		none shown on map	NW NE	6.0	6.0	"	"	1400
19-S	33½-E	36	SE NW	6.0	6.0	6960	10	2800
		only 11 ac on map	NE SW	15.0	15.0	"	"	"
20-S	34-E	5	SW NW	.8	.8	26409	9	1100

RECEIVED
OCT 28 1987
WATER RESOURCES DEPT

Application No. 69433
Permit No.

Application No. 69433

TSP	RNG	SEC.	¼ ¼	Acres	Sup.	Cert.#	Div. Pt.	Tax Lot
19-S	33½-E	36	SE NE	40.0	40.0	6980	9	2900
			NE SE	40.0	40.0	"	"	"
			NW SE	10.0	10.0	"	10	"
			NW SE	30.0	30.0	"	9	"
			SW SE	30.0	30.0	"	10	"
			SW SE	10.0	10.0	"	9	"
			SE SE	40.0	40.0	"	9	"
20-S	33½-E	1	NE NE	30.0	30.0	"	9	100
			NE NE	10.0	10.0	"	10	"
			NW NE	22.0	22.0	"	"	"
			SW NE	16.0	16.0	"	"	"
			SE NE	40.0	40.0	"	"	"
			NE SE	10.0	10.0	"	"	"
19-S	34-E	31	SW SW	32.0	32.0	"	"	1600
			SW SW	8.0	8.0	"	9	"
			SE SW	40.0	40.0	"	"	"
			NW SE	20.0	20.0	"	"	"
			SW SE	40.0	40.0	"	"	"
			SE SE	20.0	20.0	"	"	"
20-S	34-E	6	NW NE	26.0	26.0	"	"	1200
			NW NE	14.0	14.0	"	10	"
			SW NE	40.0	40.0	"	"	"
			NE NW	11.0	11.0	"	9	"
			NE NW	29.0	29.0	"	10	"
			NW NW	40.0	40.0	"	"	"
			SW NW	15.0	15.0	"	"	"
			SE NW	39.0	39.0	"	"	"
			NE SE	10.0	10.0	6989	"	"
19-S	34-E	8	SW NE	.8	.8	26679	3	300
			NE SW	4.3	4.3	"	"	"
			NE SW	8.0	8.0	"	"	"
			SE SW	.2	.2	"	"	"
			NW SE	19.0	19.0	"	"	"
		18	NW NE	15.0	15.0	6989	6	"
			NE NE	23.0	23.0	"	5	"
			SE NE	36.0	36.0	"	"	"
			NE SE	33.0	33.0	"	"	"
			NW SE	38.5	38.5	"	"	"
			SW SE	39.0	39.0	"	"	"
			SE SE	15.0	15.0	"	"	"
		20	NE SW	28.0	28.0	32380	1	1200
			NW SW	29.0	29.0	"	"	"
			SW SW	22.0	22.0	"	"	"
			SE SW	25.0	25.0	"	"	"
		28	NE NW	7.0	7.0	"	"	"
			NW NW	19.0	19.0	"	"	"
			SW SW	18.4	18.4	26678	"	1300
			SW SW	16.6	16.6	26569	13	"
			SE NW	1.0	1.0	26678	1	"
			SE SW	26.6	26.6	26569	13	"
		33	NE NW	30.8	30.8	"	"	"
			SE NW	26.6	26.6	"	"	"
			SW NE	15.6	15.6	"	"	"
			NE SW	22.9	22.9	"	"	"
			SE SW	7.2	7.2	"	"	"
			NW SE	24.9	24.9	"	"	"
			SW SE	21.0	21.0	"	"	"
20-S	34-E	5	SW NE	15.0	15.0	6946	12	900
			SW NE	2.0	2.0	26409	11	"

17 Ac shown on map

shown on map

33 5 Ac shown on map

not shown on map

unspecified Ac. shown on map

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OCT 28 1987
WATER RESOURCES DEPT
SALEM, OREGON

Application No. [illegible] Pe[illegible] ATTACHMENT A J2

STATE OF OREGON WATER RESOURCES DEPARTMENT

Application for Permit to Appropriate Surface Water

I, Malhuer River Basin Water Users Association
(Name of Applicant)

of P.O. (Mailing Address), Drewsey (City)

State of Oregon, 97904 (Zip Code) Phone No. 493-2728 do hereby

make application for a permit to appropriate the following described waters of the State of Oregon:

1. The source of the proposed appropriation is Middle Fork Malhuer River, [illegible],
[illegible] Cottonwood Crk. & Cottle Crk., Spring clk (QUAD shows AS WARM SPRINGS CLK), a tributary of Snake River

2. The point of diversion is to be located See attached sheet ft. (N. or S.) and ft. (E. or W.)

from the corner of (Public Land Survey Corner)

(If there is more than one point of diversion, each must be described)

being within the ¼ of the ¼ of

Sec. Tp. (N. or S.) R. (E. or W.), W. M., in the county of Harney

3. Location of area to be irrigated, or place of use if other than irrigation.

Township	Range	Section	List ¼ ¼ of Section	List use and/or number of acres to be irrigated
		See attached sheets		

Form 690-1-0-1-77

4. The amount of water which the applicant intends to apply to beneficial use is 128.0 CFS @ 1/40th of cubic feet per second, or 102.0 from Middle Fk Malhuer River - 5.0 from Griffin Creek 18.2 [illegible]
(If water is to be used from more than one source, give quantity from each)
Ottis [illegible] 2.9 [illegible]

5. The use to which the water is to be applied is irrigation of meadows - DOES NOT AGREE WITH USES STATED IN REMARKS SECTION.

6. DESCRIPTION OF WORKS

Include dimensions and type of construction of diversion dam and headgate, length and dimensions of supply ditch or pipeline, size and type of pump and motor, type of irrigation system to adequately describe the proposed distribution system.

There are numerous types of diversions, Gravel dams, boulder dams, one concrete with boards. Some diversions are into spreader ditches, some are into aditch with headgates to divert to fields and spreader ditches. All irrigation is gravity flow accross the meadows and returns to the river.

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SALEM, OREGON

If for domestic use state number of families to be supplied

7. Construction work will begin on or before There will be no new construction

8. Construction work will be completed on or before The system has been used for years

9. The water will be completely applied to the proposed use on or before Spring of 1988

Application No. [illegible] Permit No.

Remarks: This application is for additional water for Alkali abatement and (a means of storing extra water in the soil as a reservoir to help maintain a longer return flow to the river in the late summer.) This will keep the water temperture lower and increase the flow for the fish habitat. We are asking for 1½ af from April 1 to June 1.

IS THIS TRUE?

WHAT QUANTITY ARE THEY REQUESTING IN ADDITION TO THE 1½ AF PER 30 DAYS BEFORE JUNE 1 ALLOWED UNDER PERMIT

NEED USUAGE STATED PRECISELY.

NEED ACTUAL DATES THIS USE IS TO APPLY TOO.

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Malheur Basin Water Users Assn
Signature of Applicant

by Kenneth J. Bentz

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for

In order to retain its priority, this application must be returned to the Water Resources Director with corrections on or before ....., 19.....

WITNESS my hand this ..... day of....., 19.....

..... Water Resources Director

By .....

This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 28th *day of* October, 19 87, *at* 3 *o'clock* P.M.

Application No..... *Permit No.....*

-1-89 - [ODFW & users]

tours
128 cfs or 1½ AF between April 1 To June 1 -

Continue to divert in excess early in year.

this is left after taken out at gage.

April-May - if water - then divert to capacity & some water is returned.

Capacity

limit - in supp
may cap 128 a moment -
& leave so much in river.

Aug 15 - 15 cfs minflow -
real flows of 5 could be met
Target.

use 8½ want 4½ for sure. - 4½ per year.

* condition → require flow measurement devices

* ditch capacity
Conserve - how

↔ Criteria - for conservation methods as conditions

Objectives ⇒

↔ hydrologic Model – at Dreyer ↔ at Bridge
Diversions
flow estimates

invest in pasture use
condition: 15 cfs. to June 15. never drop below
mostly to appl by ODFW
conservation
total withdrawal is 4 1/2 – & not dewater
stream
+ measuring gauge. – then mtg. with conservation
measures.

need upland burning – Assoc – has 80-90% of valley.

① measuring plan to use up to 4 1/2 AF. & improve flows
② some conservation & riparian enhance – to fence cattle.

3 ponds @ 1500+ acres not in Assoc.

– model – on flows for late season water
Conservation plans.
Screens – statewide screening plans

VICTOR ATIYEH
GOVERNOR

Department of Fish and Wildlife
REGION 5—SOUTHEAST OREGON
BOX 8, HINES, OREGON 97738 PHONE 573-6582

RECEIVED
JAN - 9 1989
WATER RESOURCES DEPT.
SALEM, OREGON

January 5, 1989

Jake Szramek
Water Resources Department
3850 Portland Rd NE
Salem, OR 97310

Re: Malheur River, Drewsey Valley Water Use Meeting

Dear Jake,

As you may know Ken Bentz of the Malheur River Water Users Association and I have been discussing the Department's minimum streamflow request and Association's water right application on the Malheur River near Drewsey. We both feel it would be useful for representatives of ODFW, Water Resources Dept., and the Water Users' Association to meet and discuss these issues and our respective concerns. Therefore we've scheduled a meeting for February 7, 1989 at the Hines City Hall conference room to begin at 9:00 am PST.

We hope you will plan to attend. If you have any questions please contact Ken Bentz at 493-2311 or myself at 573-6582.

Sincerely,

Bill Hosford

Bill Hosford
District Fish Biologist

c Ken Bentz

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310

PHONE
378-3066

December 16, 1988

Malheur River Basin Water Users Association
P.O. Box 237
Drewsey, OR.
97904

REFERENCE; 69433

Your application 69433 has been revieved. Several problems were discovered that need to be addressed before a public interest hearing can be held on your application. There are other deficiencies that would need to be cured before a permit might be issued, if that is the Water Resources Commission's decision after hearing, however, in the interest of time only those problems that prevent a hearing from being held will be addressed in this review.

It is not clear from your application what the intended uses are to be. Item #5 states irrigation of meadows. The remarks section states alkali abatement and soil moisture retention. Item #3 implies supplemental irrigation. Each item of the application must be in agreement with all others to be in proper form. Item #5 is the proper place to list your uses. A separate sheet may be used if it is referenced to item #5.

We will need the exact dates, maximum instantaneous quantity and total quantity of water requested for each type of use.

We will need a quantity of water stated for each intended use and each use must be specifically stated. If you wish to use a quantity of water greater than would normally be alloved, the specific amount must be stated. If you wish to irrigate outside of the normal irrigation season the specific dates and quantities requested must be stated.

Item #1 and Item #4 are not in agreement. Item #4 states that water will be appropriated from Spring Creek. Item #1 does not show Spring Creek as a source of water. Item #1 and Item #4 must be in agreement with each other.

We also request an explanation as to what legal authority the signor of this application has to act on behalf of the Malheur River Basin Water Users Association.

We will schedule a public interest hearing as soon as possible after we receive your amended application.

I am returning your original application for correction and completion. The application has been endorsed so that in order to retain its original date of priority it must be received in this office no later than February 16, 1989.

If I can be of further assistance please don't hesitate to contact me.

Sincerely,

John R. Woodroof

John R. Woodroof
Water Rights Specialist

Enclosures

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3066

MEMORANDUM

TO: Water Resources Commission

FROM: Director

SUBJECT: Agenda Item B, December 9, 1988, Water Resources Commission Meeting

Request for Authorization to Conduct Public Interest Hearing for Application 69433, and to Consider Minimum Streamflow on the Malheur River, Malheur River Basin Water Users Association, Harney County.

Background:

On October 28, 1987, an application was submitted in the name of Malheur River Basin Water Users Association. Application 69433 proposes to appropriate water at 1/40 cfs per acre from the following streams: Middle Fork Malheur River, Griffin Creek, Ottis Creek, Cottonwood Creek and Spring Creek, tributary to the Malheur River. The applied-for uses are for alkali abatement, added storage for soil moisture buildup and early season supplemental irrigation. They propose to use 1 and 1/2 acre-feet of water in the early season and not count it towards the duty of water under existing permits.

Supplemental irrigation as specified in the application is allowed under the provisions of the Malheur River Basin Program. Alkali abatement is not a beneficial use.

The question before the Commission is whether the public interest is served by granting a permit to appropriate water. Administrative Rule 690-11-080 (2) (a) (A) specifies that the director shall make a preliminary determination and submit a recommendation to the Commission regarding the need to make a public interest determination under ORS 537.170 for appropriations which are greater than five cubic feet per second, except from the Columbia River. This application is for about 130 cfs.

Discussion:

The Malheur River Basin Water Users Association filed this application in response to on-going discussions on the minimum streamflow issue. The Water Resources Commission invited the application from the users. They propose to use the existing flood irrigation systems which have been used for years. No new construction will take place.

The WRC has discussed this proposal with the users during both the minimum streamflow hearings in 1985 and during discussions on the draft Malheur River Irrigation Return Flow Study. The Commission acted to rescind the adopted minimum streamflow on January 17, 1986. (Attachments C and D).

Some questions needing to be answered are whether early season use and the proposed other uses should be allowed. The major unanswered question is whether those are beneficial uses of water for an existing permitted system.

The Malheur River Basin Water Users Association wants to legalize the amount of water now used on the land and continue current irrigation practices. The duty in the decree is 3 acre feet per acre. Current practices for all uses appear to be more than the permitted duty. They contend that a minimum streamflow could provide a hardship upon current farming practices. In order to review the application, the WRC needs to resolve the water quantity issues, decide what are appropriate water needs and solve the minimum streamflow question. The applicant's proposed uses, alkaline abatement and soil moisture buildup, need to be identified as beneficial if they are to be authorized. In order to answer all the questions, the Commission has determined that a public interest hearing should be undertaken on the application and in addition, hold a second or joint hearing on the question of establishing the minimum streamflow.

Notice of all new applications was provided to the public on October 30, 1987. The Department of Fish and Wildlife has not commented on the application at this time. However, ODFW commented on another application in the area and is concerned about possible over appropriation of the Middle Fork Malheur River and its tributaries. They want to review the finished Malheur River Irrigation Return Flow Study before submitting comments on the application.

Alternatives:

1. Determine that the proposal as submitted in the application may adversely affect the public interest. In addition, clarify the minimum streamflow issue for the Malheur River. Instruct staff to schedule a public interest hearing to receive testimony on the application and make a record of the proceedings to assist the WRC in its decision of beneficial use. Set up a second or joint hearing to consider establishing a minimum streamflow on the Malheur River.

2. Determine that the public interest is not adversely affected by the proposed use of water; authorize the Director to issue a permit with appropriate conditions.

Director's Recommendation:

The staff recommends Alternative 1, determine that the proposal may adversely affect the public interest and in addition, clarify the minimum streamflow issue; instruct staff to schedule public interest hearings making records of the proceedings to assist the Commission in its decisions on both the application and the establishment of a minimum streamflow on the Malheur River. Staff believes that a commission member must be present at the minimum streamflow hearing because it is a basin program modification.

Attachments:

A) Copy of Application 69433
B) Copy of location map
C) Copy of Staff Report on the Proposed Malheur River Basin Minimum Perennial Streamflow
D) Copy of Staff Proposal and Commission Action on Minimum Streamflow

Jake Szramek
378-3066
November 16, 1988

cc: Malheur River Basin Water Users Association, Applicant
Watermaster District 9
Oregon Department of Fish and Wildlife Field Office

Application No. 69433

ATTACHMENT A

RECEIVED

WATER RESOURCES DEPT. SALEM, OREGON

STATE OF OREGON WATER RESOURCES DEPARTMENT

Application for Permit to Appropriate Surface Water

I, Malhuer Piver Basin Water Users Association
(Name of Applicant)

of P.O. , Drewsey
(Mailing Address) (City)

State of Oregon, 97904 (Zip Code) Phone No. 493-2728 do hereby

make application for a permit to appropriate the following described waters of the State of Oregon:

1. The source of the proposed appropriation is Middle Fork Malhuer River, Griffin Crk, Cottonwood Crk & Ottis Crk., a tributary of Snake River

2. The point of diversion is to be located See attached sheet ft. (N. or S.) and ft. (E or W.)

from the corner of
(Public Land Survey Corner)

(If there is more than one point of diversion, each must be described)

being within the ¼ of the ¼ of

Sec. Tp. (N. or S.) R. (E. or W.), W. M., in the county of Harney

3. Location of area to be irrigated, or place of use if other than irrigation.

Township	Range	Section	List ¼ ¼ of Section	List use and/or number of acres to be irrigated
		See attached sheets		

Form 690-1-0-1-77

4. The amount of water which the applicant intends to apply to beneficial use is 128.0 CFS @ 1/40th cubic feet per second 102.0 from Malhuer River- 5.0 from Griffin Creek 18.2 from Ottis Cr, 2.8 from Cottonwood Cr and 2.2 from Spring Cr.

(If water is to be used from more than one source, give quantity from each)

5. The use to which the water is to be applied is irrigation of meadows

6. DESCRIPTION OF WORKS

Include dimensions and type of construction of diversion dam and headgate, length and dimensions of supply ditch or pipeline, size and type of pump and motor, type of irrigation system to adequately describe the proposed distribution system.

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WATER RESOURCES DEPT
SALEM, OREGON

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8. Construction work will be completed on or before The system has been used for years

9. The water will be completely applied to the proposed use on or before Spring of 1988

Application No. 69433 Permit No.

Remarks: This application is for additional water for Alkali abatement and a means of storing extra water in the soil as a reservoir to help maintain a longer return flow to the river in the late summer. This will keep the water temperture lower and increase the flow for the fish habitat. We are asking for 1½ af from April 1 to June 1.

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Malheur Basin Water Users Assn
Signature of Applicant
by Kenneth J. Beatty

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for

In order to retain its priority, this application must be returned to the Water Resources Director with corrections on or before ....., 19.....

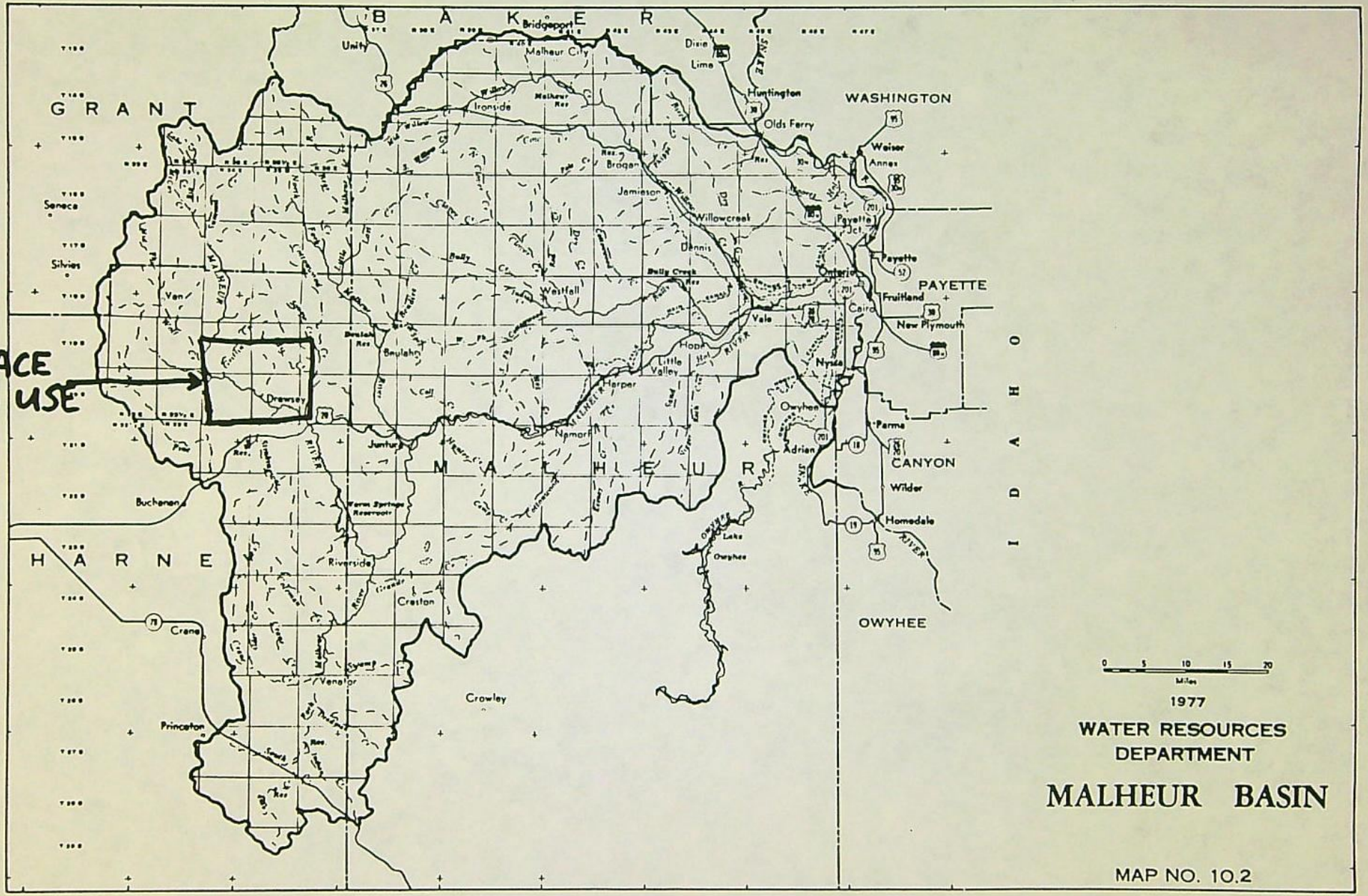
WITNESS my hand this ..... day of....., 19.....

Water Resources Director

By .....

This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 28th *day of* October, *19*87, *at* 3 *o'clock* P.M.

Application No. 69433 *Permit No.*



ATTACHMENT B

ATTACHMENT C

STATE OF OREGON INTEROFFICE MEMO

TO: Water Policy Review Board DATE: December 27, 1984

FROM: Staff

SUBJECT: Proposed Malheur River Basin Minimum Perennial Streamflow

STAFF RECOMMENDATION

The staff recommends adoption of the requested minimum perennial streamflow on the Malheur River. Suggested findings and modifications to the basin program are attached for Board consideration. Suggested exemptions from the minimum flow include domestic and livestock use and storage releases. Copies of comments submitted for the hearing record are also attached.

DISCUSSION

Testimony and written comments submitted as part of the hearing record focused on many issues:

1. Whether it was appropriate to adopt a minimum flow of 15 cfs when the flow is generally less than that during parts of the year.

2. The potential effects of the proposed minimum flow on existing water use patterns.

3. Requirements for additional storage upstream from Drewsey to satisfy irrigation needs, help control spring flooding and provide water for the proposed minimum flow.

4. The need for riparian zone rehabilitation in parts of the watershed which would increase summer flows enough to meet the proposed minimum without storage.

5. The Middle Fork Malheur River provides important smallmouth bass and trout fishing opportunities.

Flows in the Middle Fork Malheur River average over 15 cfs for all months except during August and September. During those months, the stream may become dry immediately downstream from the large diversions near Drewsey. Return flows from irrigation account for much of the late summer flows in the reach under consideration. Flows average about 10 cfs at the gage during August and September which would require fairly little augmentation to meet the desired flow level.

Local ranchers and landowners are generally opposed to the proposed minimum flow. A primary concern is that establishing a minimum flow could change present water use practices. Testimony at the hearing indicated that during high-flow periods, water is diverted at a higher rate than actual rights allow. The soil becomes saturated and releases

Contains Recycled Materials

water as streamflow levels decline. Such practices occur in a number of areas of the state during times of the year when conflicts with other rights are unlikely. Some feared that regulation for a minimum flow could force water users to only divert legal limits.

During the high flow periods, there is generally over 200 cfs in the river upstream from Warm Springs Reservoir. Flows sometime exceed 1,000 cfs in the spring. It is doubtful that flows would drop below 15 cfs outside the irrigation season because of the volume required to fill the 191,000 acre-foot Warm Springs Reservoir. Since the period of excessive use generally coincides with the period of highest runoff, regulation specifically for a minimum flow appears unlikely. Other uses or storage, however, may ultimately necessitate future regulation.

Most testimony indicated that additional upstream storage was needed to better utilize the water resources of the area. Numerous potential storage sites have been identified in the watershed. Low flows during summer could be augmented from storage to provide for irrigation and instream flow needs.

A major obstacle to additional storage is a prior right to winter runoff for storage in Warm Springs Reservoir. Though it hasn't occurred for many years, storage in upstream reservoirs may be restricted if flows are not sufficient to fill Warm Springs. Agreements with Vale Oregon and Warm Springs Irrigation Districts may be necessary for the construction and operation of additional upstream storage. Due to the high rate of return flow, additional irrigation use could likely occur without significantly lowering inflow to Warm Springs. Since most arable lands are presently irrigated, a large expansion in irrigation is not anticipated.

Another way to augment summer flows, cited at the hearing, is to improve the riparian zone vegetation in the watershed. Grazing and other land use practices have degraded many miles of riparian zone along the streams. Testimony suggested that rehabilitating the riparian zone on Middle Fork tributaries could increase summer flows, although no specific studies have been presented to assess or quantify the potential for augmentation. Fish habitat and cover could be improved at the same time. A combination of upstream storage and riparian zone improvements could also be used to increase summer flows. The Harney County Comprehensive Plan has been adopted, enabling land owners to take advantage of tax incentives for certain riparian zone rehabilitation projects.

Much of the testimony supported establishing a 15 cfs minimum flow on the Middle Fork. The importance of the fishery and recreation use of the river was emphasized in the written and oral comments. The reach between Highway 20 and Warm Springs Reservoir supports a significant smallmouth bass fishery. During high runoff years, trout can also be found in that segment. Normally, trout reside in tributaries and the river, upstream from the areas of heaviest diversion.

Several people felt that the general lack of good fishing in the area made the Middle Fork that much more valuable. The smallmouth bass population is self supporting and attainment of the recommended flow level would help insure continued survival.

Alternate flow levels of 2 and 3 cfs were recommended by some local land owners and the Harney Soil and Water Conservation District. It was noted that the Middle Fork has gone dry from time to time in the affected reach. No additional information was provided, however, indicating that a lower flow is more appropriate for the support of aquatic life.

One written comment suggested that a flow level higher than 15 cfs was needed from April to June. Although runoff patterns result in higher flows during much of the year, the existing information does not support the conclusion that higher flows are more appropriate for the support of aquatic life.

CONCLUSION

The hearing record is fairly evenly divided between proponents and opponents of the minimum flow. The stream appears to be fully appropriated during much of the year and opportunities to augment flows during summer to achieve the desired level appear limited. Future irrigation is already limited by land suitability and prior claims to water. Establishing a minimum flow will not affect existing use, but will identify flow levels to benefit aquatic life.

Adoption of the proposed minimum flow could provide a degree of protection for aquatic life on the Middle Fork Malheur River which does not now exist. Storage, riparian zone improvements, or other measures will be necessary to achieve the proposed minimum flows during the late summer months.

5686C

PROPOSED MALHEUR RIVER BASIN PROGRAM MODIFICATIONS

Findings

10. Irrigation use is over 95 percent of the total consumptive use of water and will continue to be the major consumptive use.

11. The physical and economic potential of hydroelectric power development is minor.

12. Fish life is and will continue to be an important nonconsumptive use of water.

13. The Middle Fork River between Highway 20 and Warm Springs Reservoir supports an important small mouth bass fishery.

14. The Malheur River and tributaries upstream from the Highway 20 crossing supports an important resident trout population.

15 Flooding is a serious local problem in the Vale-Ontario and Jordan Valley areas.

16. Erosion is a problem on 18,700 acres of cropland and 694,000 acres of range and pastureland.

17. Pollution of ground and surface water does not appear to be an extremely serious or widespread problem.

18. More efficient use and conservation of water could be obtained from extensive rehabilitation programs on most irrigated land and irrigation distribution facilities.

NOW THEREFORE BE IT RESOLVED that this Board hereby adopts the following program in accordance with ORS 536.300(2) pertaining to the water resources of the Malheur-Owyhee Basins:

A. The maximum economic development of this state, the attainment of the highest and best use of the waters of the Malheur-Owyhee Basins, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be futhered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, and the waters of the Malheur-Owyhee Basins are hereby so classified with the following exceptions:

B. To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws, 1983, no appropriation

of water shall be made or granted by any state agency or public corporation of the state for waters of the Middle Fork Malheur River and tributaries when flows are below the levels specified below. This limitation shall not apply to:

1. Domestic use and livestock consumption.
2. Water legally released from storage.

Attainment of the specified flow levels during some portions of the year will require development of water storage or implementation of other measures to augment flows.

Middle Fork Malheur River - to be maintained from Highway 20 crossing (SE 1/4, Sec. 31, T20S., R36E.) to Warm Springs Reservoir (cfs):

Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
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Priority Date - November 3, 1983.

5686C

Middle Fork Malheur River
Streamflow Analysis
1927 - 1982 (56 years)

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
Average flow at gage 13214000 (cfs)	38	66	104	146	258	427	651	345	135	26	10	12
Requested minimum flow (cfs)	15	15	15	15	15	15	15	15	15	15	15	15
Total water rights upstream from Warm Springs Res. (cfs)	580	-	-	-	-	-	580	580	580	580	580	580
Recommended minimum flows (cfs)	15	15	15	15	15	15	15	15	15	15	15	15
Number of years average flow at gage equalled or exceeded 15 cfs	51	55	55	56	56	56	56	56	54	33	11	21

Annual Yield	133,300 acre-feet
Annual Water Rights	39,500 acre-feet
Minimum Flow	10,860 acre-feet

3409C

PROPOSAL TO RESCIND THE MINIMUM PERENNIAL STREAMFLOW MIDDLE FORK MALHEUR RIVER

Background

The Oregon Departments of Fish and Wildlife and Environmental Quality applied for a minimum perennial streamflow to support aquatic life in the Middle Fork Malheur River in 1983 under a new law. The Water Policy Review Board adopted a minimum perennial streamflow of 15 cubic feet per second (cfs) on Middle Fork Malheur River on February 26, 1985, following a public meeting in Burns in March and a public hearing in Drewsey in September 1984.

After the minimum streamflow was adopted by the Water Policy Review Board, the Malheur Water Users Association petitioned to amend the program to rescind the new minimum streamflow. They stated the Board failed to consider the beneficial impact that excessive use during high water may have on minimum flows and the economic impact minimum flows may have on ranchers. The adoption of the minimum streamflow was originally supported by numerous individuals from the region as well as several local and statewide conservation groups because of the importance of the Malheur River for trout and smallmouth bass fishing. Several supporters stressed the minimum flow would not affect existing rights, and restoration of riparian areas could improve streamflow conditions.

Flows in the Middle Fork Malheur River average over 15 cfs for all months except during August and September. During those months, the stream may become dry immediately downstream from the large diversions near Drewsey. Return flows from irrigation result in the maintenance of a low flow during late summer in the reach under consideration downstream from Drewsey. Flows average about 10 cfs at the gage during August and September. Little flow augmentation would be required to meet the desired flow level.

Local ranchers and landowners are concerned that establishing a minimum flow could change present water-use practices. Testimony at the hearing indicated that during high-flow periods, a large volume of water is diverted to flood irrigate fields. They said flood irrigation saturates the soil and releases water to the stream slowly throughout the summer as streamflow declines. Later in the summer, area ranchers continue to irrigate at a much lower rate in order to produce multiple cuttings of hay. Field flooding occurs when conflicts with other rights or the present minimum flow are unlikely, but ranchers believe they use more than the allotted 3 acre-feet of water per acre during that time. Strict adherence to water right regulation would force them to either reduce early flood irrigation or late season irrigation practices. Ranchers state that the spring flood irrigation provides benefits for late season supplies for both irrigation and instream flow.

Options

The Water Resources Commission must decide whether to retain, modify or rescind the minimum perennial streamflow for the Middle Fork Malheur River or make other amendments to the Malheur-Owyhee Basin water-use program. The major factors to be considered are whether:

- Other water uses are of greater importance than the purpose of the minimum streamflow.

- The minimum flow could be modified to provide a public benefit for support of aquatic life while allowing some important additional future use.

- The classification of the Middle Fork Malheur River should be modified to limit the types of new water uses that would be allowed.

Decision

The Commission will decide on this matter at a future regularly scheduled meeting after considering the hearing record. Written comment will be accepted through November 21, 1985.

Setting a Streamflow vs. Achieving a Minimum Streamflow

A minimum streamflow is a rule regulated similarly to water rights. It cannot affect water use under valid water rights with earlier priority dates. During any periods of a year when streamflow falls below the minimum streamflow level, only water rights with priority dates later than a minimum streamflow can be curtailed.

Achieving minimum streamflow levels in streams that often fall short will only be accomplished if additional steps are taken to increase the low flows. Similar to the issuance of water rights, establishing a minimum streamflow provides no assurance that water will be available at all times. The established minimum flow, however, sets an objective for future resource planning in the basin.

0978D

WATER RESOURCES COMMISSION

WORK SESSION

JANUARY 17, 1986

MINUTES

Commission members present:

Jack Hoffbuhr, Vice-Chairman
Ralf Hakanson
Lorna Stickel
William Cramer
Kess Cannon
William R. Blosser

Staff members present:

Bill Young
Ann Squier
Beverly Hayes
Darrell Learn
Tom Kline
Becky Kreag
Steve Brutscher
Jan Shaw
Don Buell

Commission members absent:

Joe Richards, Chairman

Any reports presented at this meeting are on file in the Office of the Director of the Water Resources Department, 3850 Portland Road, NE, Salem, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

The Commission convened at 3:30 p.m. to discuss administrative rules. The bulk of the discussion centered on hydroelectric rules. After lengthy discussion, staff was instructed to draft rules that would reflect the interpretations developed during this work session. No further action was taken.

Respectfully submitted,

Jan Shaw

JAN SHAW
Commission Assistant

3425C
2585D

F. RECONSIDERATION OF MINIMUM PERENNIAL STREAMFLOW ON THE MALHEUR RIVER

The Malheur Water Users Association, an organization representing ranchers in the Drewsey area, petitioned the Water Resources Commission to rescind the minimum perennial streamflow established on the Middle Fork Malheur River. Reasons cited included failure to consider the beneficial impact that excessive water use during high-flow periods may have on minimum flows and the economic impact minimum flows may have on ranchers.

Bill Cramer, representing the Water Resources Commission, conducted a hearing on November 7, 1985, in Drewsey. At least 35 persons attended the hearing, most being local ranchers. The hearing record produced some new information, but issues remained much the same as when the minimum streamflow was adopted. Proponents of the minimum streamflow urged the WRC to base the decision on the information from the original mininum streamflow record as well as the record of this hearing.

Director's Recommendation

The staff recommended that:

1. The minimum perennial streamflow on the Middle Fork Malheur River not be rescinded.

2. A finding be added to the basin program recognizing the benefits and economic necessity of flood irrigation in the Middle Fork Malheur River.

3. The Department investigate the water use practices in the Middle Fork Malheur River Basin and report to the Commission on or before January 2, 1988.

The report will include estimates and analysis of:

- The existing diversion rates.

- The amount and location of return flow.

- The impact of current irrigation practices on downstream water needs and uses.

- The impact and associated cost of conservation measures.

John Charles, Oregon Environmental Council, spoke in support of the Director's recommendation.

It was MOVED by Lorna Stickel and seconded by Bill Cramer to rescind the minimum flow and to include Recommendation Items 2 and 3 as part of the order with the findings that agricultural uses in this basin are of greater beneficial use than the minimum streamflow. Item 3 in the Director's Recommendation would be amended to include an instruction to staff to "seek and evaluate water use data forwarded by the users."

Kess Cannon voted no; Bill Blosser abstained. The motion passed.

Joe Richards excused himself and left the meeting at this point.

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3066

MEMORANDUM

TO: Water Resources Commission

FROM: Director

SUBJECT: Agenda Item B, December 9, 1988, Water Resources Commission Meeting

Request for Authorization to Conduct Public Interest Hearing for Application 69433, and to Consider Minimum Streamflow on the Malheur River, Malheur River Basin Water Users Association, Harney County.

Background:

On October 28, 1987, an application was submitted in the name of Malheur River Basin Water Users Association. Application 69433 proposes to appropriate water at 1/40 cfs per acre from the following streams: Middle Fork Malheur River, Griffin Creek, Ottis Creek, Cottonwood Creek and Spring Creek, tributary to the Malheur River. The applied-for uses are for alkali abatement, added storage for soil moisture buildup and early season supplemental irrigation. They propose to use 1 and 1/2 acre-feet of water in the early season and not count it towards the duty of water under existing permits.

Supplemental irrigation as specified in the application is allowed under the provisions of the Malheur River Basin Program. Alkali abatement is not a beneficial use.

The question before the Commission is whether the public interest is served by granting a permit to appropriate water. Administrative Rule 690-11-080 (2) (a) (A) specifies that the director shall make a preliminary determination and submit a recommendation to the Commission regarding the need to make a public interest determination under ORS 537.170 for appropriations which are greater than five cubic feet per second, except from the Columbia River. This application is for about 130 cfs.

Discussion:

The Malheur River Basin Water Users Association filed this application in response to on-going discussions on the minimum streamflow issue. The Water Resources Commission invited the application from the users. They propose to use the existing flood irrigation systems which have been used for years. No new construction will take place.

The WRC has discussed this proposal with the users during both the minimum streamflow hearings in 1985 and during discussions on the draft Malheur River Irrigation Return Flow Study. The Commission acted to rescind the adopted minimum streamflow on January 17, 1986. (Attachments C and D).

Some questions needing to be answered are whether early season use and the proposed other uses should be allowed. The major unanswered question is whether those are beneficial uses of water for an existing permitted system.

The Malheur River Basin Water Users Association wants to legalize the amount of water now used on the land and continue current irrigation practices. The duty in the decree is 3 acre feet per acre. Current practices for all uses appear to be more than the permitted duty. They contend that a minimum streamflow could provide a hardship upon current farming practices. In order to review the application, the WRC needs to resolve the water quantity issues, decide what are appropriate water needs and solve the minimum streamflow question. The applicant's proposed uses, alkaline abatement and soil moisture buildup, need to be identified as beneficial if they are to be authorized. In order to answer all the questions, the Commission has determined that a public interest hearing should be undertaken on the application and in addition, hold a second or joint hearing on the question of establishing the minimum streamflow.

Notice of all new applications was provided to the public on October 30, 1987. The Department of Fish and Wildlife has not commented on the application at this time. However, ODFW commented on another application in the area and is concerned about possible over appropriation of the Middle Fork Malheur River and its tributaries. They want to review the finished Malheur River Irrigation Return Flow Study before submitting comments on the application.

Alternatives:

1. Determine that the proposal as submitted in the application may adversely affect the public interest. In addition, clarify the minimum streamflow issue for the Malheur River. Instruct staff to schedule a public interest hearing to receive testimony on the application and make a record of the proceedings to assist the WRC in its decision of beneficial use. Set up a second or joint hearing to consider establishing a minimum streamflow on the Malheur River.

2. Determine that the public interest is not adversely affected by the proposed use of water; authorize the Director to issue a permit with appropriate conditions.

Director's Recommendation:

The staff recommends Alternative 1, determine that the proposal may adversely affect the public interest and in addition, clarify the minimum streamflow issue; instruct staff to schedule public interest hearings making records of the proceedings to assist the Commission in its decisions on both the application and the establishment of a minimum streamflow on the Malheur River. Staff believes that a commission member must be present at the minimum streamflow hearing because it is a basin program modification.

Attachments:

A) Copy of Application 69433
B) Copy of location map
C) Copy of Staff Report on the Proposed Malheur River Basin Minimum Perennial Streamflow
D) Copy of Staff Proposal and Commission Action on Minimum Streamflow

Jake Szramek
378-3066
November 16, 1988

cc: Malheur River Basin Water Users Association, Applicant
Watermaster District 9
Oregon Department of Fish and Wildlife Field Office

Application No. 69433

ATTACHMENT A

RECEIVED
OCT 17 1977
WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON WATER RESOURCES DEPARTMENT

Application for Permit to Appropriate Surface Water

I, Malhuer River Basin Water Users Association
(Name of Applicant)

of P.O. [illegible], Drewsey
(Mailing Address) (City)

State of Oregon, 97904 Phone No. 493-2728
(Zip Code)

do hereby make application for a permit to appropriate the following described waters of the State of Oregon:

1. The source of the proposed appropriation is Middle Fork Malhuer River, Griffin Crk, Cottonwood Crk & Ottis Crk., a tributary of Snake River

2. The point of diversion is to be located See attached sheet ft. (N. or S.) and ft. (E. or W.)

from the corner of
(Public Land Survey Corner)

(If there is more than one point of diversion, each must be described)

being within the ¼ of the ¼ of

Sec. Tp. (N. or S.) R. (E. or W.), W. M., in the county of Harney

3. Location of area to be irrigated, or place of use if other than irrigation.

Township	Range	Section	List ¼ ¼ of Section	List use and/or number of acres to be irrigated
		See attached sheets		

Form 690-1-0-1-77

4. *The amount of water which the applicant intends to apply to beneficial use is* 128.0 CFS @ 1/40th *cubic feet per second* 102.0 from Malhuer River-5.0 from Griffin Creek 18.2 from Ottis Cr,2.8 from Cottonwood Cr and 2.2 from Spring Cr.

(If water is to be used from more than one source, give quantity from each)

5. *The use to which the water is to be applied is* irrigation of meadows

6. *DESCRIPTION OF WORKS*

Include dimensions and type of construction of diversion dam and headgate, length and dimensions of supply ditch or pipeline, size and type of pump and motor, type of irrigation system to adequately describe the proposed distribution system.

There are numerous types of diversions, Gravel dams, boulder dams, one concrete with boards. Some diversions are into spreader ditches, some are into aditch with headgates to divert to fields and spreader ditches. All irrigation is gravity flow accross the meadows and returns to the river.

RECEIVED
OCT 28 1987
WATER RESOURCES DEPT
SALEM, OREGON

If for domestic use state number of families to be supplied

7. *Construction work will begin on or before* There will be no new construction

8. *Construction work will be completed on or before* The system has been used for years

9. *The water will be completely applied to the proposed use on or before* Spring of 1988

Application No. 69433 *Permit No.*

Remarks: This application is for additional water for Alkali abatement and a means of storing extra water in the soil as a reservoir to help maintain a longer return flow to the river in the late summer. This will keep the water temperture lower and increase the flow for the fish habitat. We are asking for 1½ af from April 1 to June 1.

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Malheur Basin Water Users Assn
Signature of Applicant
by Kenneth J. Bentz

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for

In order to retain its priority, this application must be returned to the Water Resources Director with corrections on or before ....., 19.....

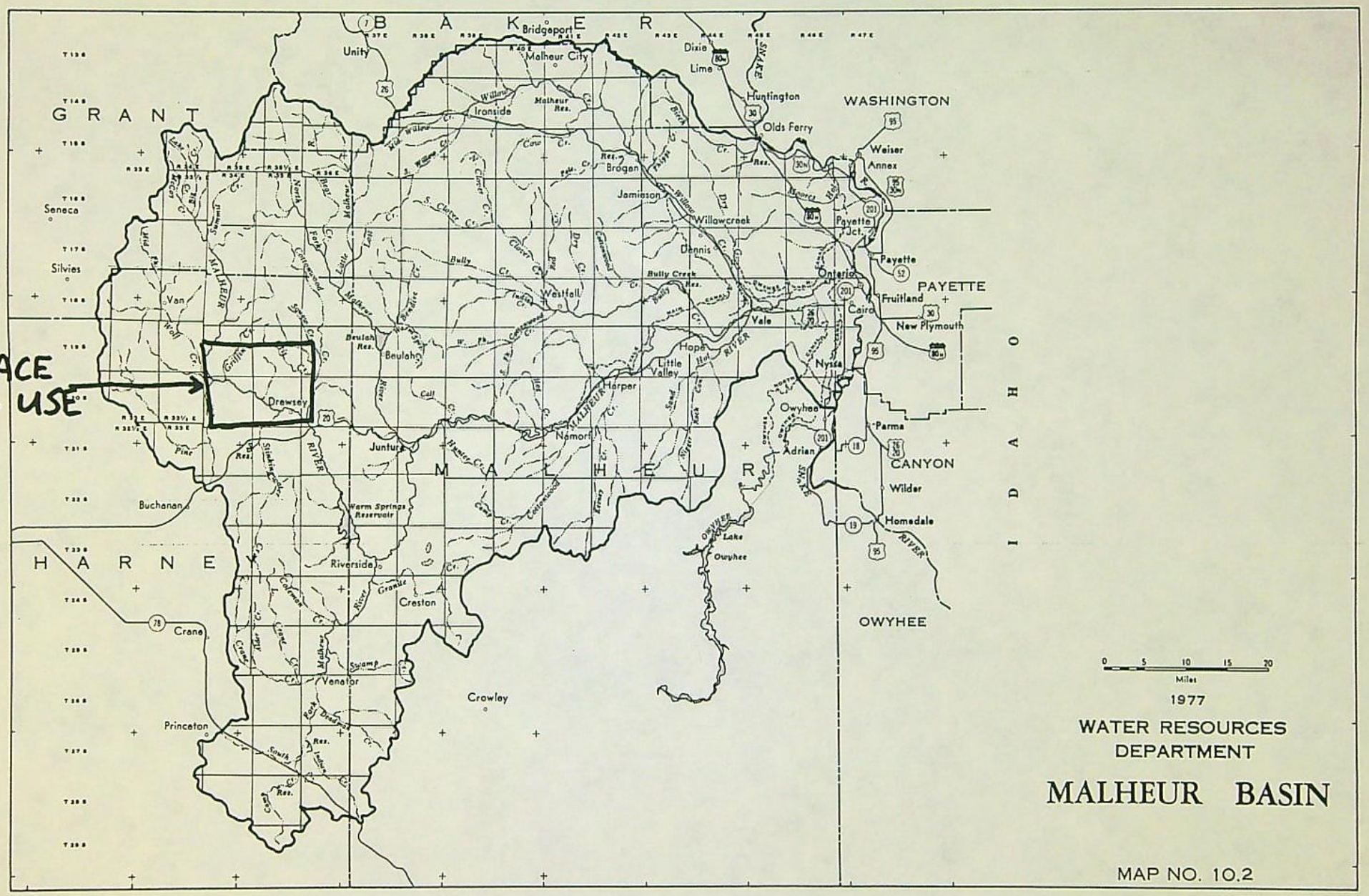
WITNESS my hand this ..... day of ....., 19.....

..... Water Resources Director

By .....

This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 28th *day of* October, *19* 87, *at* 3 *o'clock* PM.

Application No. 69433 *Permit No.*



ATTACHMENT B

ATTACHMENT C

STATE OF OREGON INTEROFFICE MEMO

TO: Water Policy Review Board DATE: December 27, 1984

FROM: Staff

SUBJECT: Proposed Malheur River Basin Minimum Perennial Streamflow

STAFF RECOMMENDATION

The staff recommends adoption of the requested minimum perennial streamflow on the Malheur River. Suggested findings and modifications to the basin program are attached for Board consideration. Suggested exemptions from the minimum flow include domestic and livestock use and storage releases. Copies of comments submitted for the hearing record are also attached.

DISCUSSION

Testimony and written comments submitted as part of the hearing record focused on many issues:

1. Whether it was appropriate to adopt a minimum flow of 15 cfs when the flow is generally less than that during parts of the year.

2. The potential effects of the proposed minimum flow on existing water use patterns.

3. Requirements for additional storage upstream from Drewsey to satisfy irrigation needs, help control spring flooding and provide water for the proposed minimum flow.

4. The need for riparian zone rehabilitation in parts of the watershed which would increase summer flows enough to meet the proposed minimum without storage.

5. The Middle Fork Malheur River provides important smallmouth bass and trout fishing opportunities.

Flows in the Middle Fork Malheur River average over 15 cfs for all months except during August and September. During those months, the stream may become dry immediately downstream from the large diversions near Drewsey. Return flows from irrigation account for much of the late summer flows in the reach under consideration. Flows average about 10 cfs at the gage during August and September which would require fairly little augmentation to meet the desired flow level.

Local ranchers and landowners are generally opposed to the proposed minimum flow. A primary concern is that establishing a minimum flow could change present water use practices. Testimony at the hearing indicated that during high-flow periods, water is diverted at a higher rate than actual rights allow. The soil becomes saturated and releases

Contains Recycled Materials

water as streamflow levels decline. Such practices occur in a number of areas of the state during times of the year when conflicts with other rights are unlikely. Some feared that regulation for a minimum flow could force water users to only divert legal limits.

During the high flow periods, there is generally over 200 cfs in the river upstream from Warm Springs Reservoir. Flows sometime exceed 1,000 cfs in the spring. It is doubtful that flows would drop below 15 cfs outside the irrigation season because of the volume required to fill the 191,000 acre-foot Warm Springs Reservoir. Since the period of excessive use generally coincides with the period of highest runoff, regulation specifically for a minimum flow appears unlikely. Other uses or storage, however, may ultimately necessitate future regulation.

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Adoption of the proposed minimum flow could provide a degree of protection for aquatic life on the Middle Fork Malheur River which does not now exist. Storage, riparian zone improvements, or other measures will be necessary to achieve the proposed minimum flows during the late summer months.

5686C

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16. Erosion is a problem on 18,700 acres of cropland and 694,000 acres of range and pastureland.

17. Pollution of ground and surface water does not appear to be an extremely serious or widespread problem.

18. More efficient use and conservation of water could be obtained from extensive rehabilitation programs on most irrigated land and irrigation distribution facilities.

NOW THEREFORE BE IT RESOLVED that this Board hereby adopts the following program in accordance with ORS 536.300(2) pertaining to the water resources of the Malheur-Owyhee Basins:

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B. To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws, 1983, no appropriation

of water shall be made or granted by any state agency or public corporation of the state for waters of the Middle Fork Malheur River and tributaries when flows are below the levels specified below. This limitation shall not apply to:

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Priority Date - November 3, 1983.

5686C

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Streamflow Analysis
1927 - 1982 (56 years)

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Requested minimum flow (cfs)	15	15	15	15	15	15	15	15	15	15	15	15
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Recommended minimum flows (cfs)	15	15	15	15	15	15	15	15	15	15	15	15
Number of years average flow at gage equalled or exceeded 15 cfs	51	55	55	56	56	56	56	56	54	33	11	21

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Minimum Flow	10,860 acre-feet

3409C

PROPOSAL TO RESCIND THE MINIMUM PERENNIAL STREAMFLOW MIDDLE FORK MALHEUR RIVER

Background

The Oregon Departments of Fish and Wildlife and Environmental Quality applied for a minimum perennial streamflow to support aquatic life in the Middle Fork Malheur River in 1983 under a new law. The Water Policy Review Board adopted a minimum perennial streamflow of 15 cubic feet per second (cfs) on Middle Fork Malheur River on February 26, 1985, following a public meeting in Burns in March and a public hearing in Drewsey in September 1984.

After the minimum streamflow was adopted by the Water Policy Review Board, the Malheur Water Users Association petitioned to amend the program to rescind the new minimum streamflow. They stated the Board failed to consider the beneficial impact that excessive use during high water may have on minimum flows and the economic impact minimum flows may have on ranchers. The adoption of the minimum streamflow was originally supported by numerous individuals from the region as well as several local and statewide conservation groups because of the importance of the Malheur River for trout and smallmouth bass fishing. Several supporters stressed the minimum flow would not affect existing rights, and restoration of riparian areas could improve streamflow conditions.

Flows in the Middle Fork Malheur River average over 15 cfs for all months except during August and September. During those months, the stream may become dry immediately downstream from the large diversions near Drewsey. Return flows from irrigation result in the maintenance of a low flow during late summer in the reach under consideration downstream from Drewsey. Flows average about 10 cfs at the gage during August and September. Little flow augmentation would be required to meet the desired flow level.

Local ranchers and landowners are concerned that establishing a minimum flow could change present water-use practices. Testimony at the hearing indicated that during high-flow periods, a large volume of water is diverted to flood irrigate fields. They said flood irrigation saturates the soil and releases water to the stream slowly throughout the summer as streamflow declines. Later in the summer, area ranchers continue to irrigate at a much lower rate in order to produce multiple cuttings of hay. Field flooding occurs when conflicts with other rights or the present minimum flow are unlikely, but ranchers believe they use more than the allotted 3 acre-feet of water per acre during that time. Strict adherence to water right regulation would force them to either reduce early flood irrigation or late season irrigation practices. Ranchers state that the spring flood irrigation provides benefits for late season supplies for both irrigation and instream flow.

Options

The Water Resources Commission must decide whether to retain, modify or rescind the minimum perennial streamflow for the Middle Fork Malheur River or make other amendments to the Malheur-Owyhee Basin water-use program. The major factors to be considered are whether:

- Other water uses are of greater importance than the purpose of the minimum streamflow.

- The minimum flow could be modified to provide a public benefit for support of aquatic life while allowing some important additional future use.

- The classification of the Middle Fork Malheur River should be modified to limit the types of new water uses that would be allowed.

Decision

The Commission will decide on this matter at a future regularly scheduled meeting after considering the hearing record. Written comment will be accepted through November 21, 1985.

Setting a Streamflow vs. Achieving a Minimum Streamflow

A minimum streamflow is a rule regulated similarly to water rights. It cannot affect water use under valid water rights with earlier priority dates. During any periods of a year when streamflow falls below the minimum streamflow level, only water rights with priority dates later than a minimum streamflow can be curtailed.

Achieving minimum streamflow levels in streams that often fall short will only be accomplished if additional steps are taken to increase the low flows. Similar to the issuance of water rights, establishing a minimum streamflow provides no assurance that water will be available at all times. The established minimum flow, however, sets an objective for future resource planning in the basin.

0978D

WATER RESOURCES COMMISSION

WORK SESSION

JANUARY 17, 1986

MINUTES

Commission members present:

Jack Hoffbuhr, Vice-Chairman
Ralf Hakanson
Lorna Stickel
William Cramer
Kess Cannon
William R. Blosser

Staff members present:

Bill Young
Ann Squier
Beverly Hayes
Darrell Learn
Tom Kline
Becky Kreag
Steve Brutscher
Jan Shaw
Don Buell

Commission members absent:

Joe Richards, Chairman

Any reports presented at this meeting are on file in the Office of the Director of the Water Resources Department, 3850 Portland Road, NE, Salem, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

The Commission convened at 3:30 p.m. to discuss administrative rules. The bulk of the discussion centered on hydroelectric rules. After lengthy discussion, staff was instructed to draft rules that would reflect the interpretations developed during this work session. No further action was taken.

Respectfully submitted,

Jan Shaw

JAN SHAW
Commission Assistant

3425C
2585D

F. RECONSIDERATION OF MINIMUM PERENNIAL STREAMFLOW ON THE MALHEUR RIVER

The Malheur Water Users Association, an organization representing ranchers in the Drewsey area, petitioned the Water Resources Commission to rescind the minimum perennial streamflow established on the Middle Fork Malheur River. Reasons cited included failure to consider the beneficial impact that excessive water use during high-flow periods may have on minimum flows and the economic impact minimum flows may have on ranchers.

Bill Cramer, representing the Water Resources Commission, conducted a hearing on November 7, 1985, in Drewsey. At least 35 persons attended the hearing, most being local ranchers. The hearing record produced some new information, but issues remained much the same as when the minimum streamflow was adopted. Proponents of the minimum streamflow urged the WRC to base the decision on the information from the original mininum streamflow record as well as the record of this hearing.

Director's Recommendation

The staff recommended that:

1. The minimum perennial streamflow on the Middle Fork Malheur River not be rescinded.

2. A finding be added to the basin program recognizing the benefits and economic necessity of flood irrigation in the Middle Fork Malheur River.

3. The Department investigate the water use practices in the Middle Fork Malheur River Basin and report to the Commission on or before January 2, 1988.

The report will include estimates and analysis of:

- The existing diversion rates.

- The amount and location of return flow.

- The impact of current irrigation practices on downstream water needs and uses.

- The impact and associated cost of conservation measures.

John Charles, Oregon Environmental Council, spoke in support of the Director's recommendation.

It was MOVED by Lorna Stickel and seconded by Bill Cramer to rescind the minimum flow and to include Recommendation Items 2 and 3 as part of the order with the findings that agricultural uses in this basin are of greater beneficial use than the minimum streamflow. Item 3 in the Director's Recommendation would be amended to include an instruction to staff to "seek and evaluate water use data forwarded by the users."

Kess Cannon voted no; Bill Blosser abstained. The motion passed.

Joe Richards excused himself and left the meeting at this point.

FILED
COURT OF APPEALS
NOV 23 1988
STATE COURT ADMINISTRATOR
By

IN THE COURT OF APPEALS OF THE STATE OF OREGON

MARGARET E. BENZ and
GEORGE U. BENZ,

Petitioners,

v.

WATER RESOURCES COMMISSION,
WATER RESOURCES DEPARTMENT, and
LEMMIE O. ROCKFORD,

Respondents.

(WRC 65587, R-68108; CA A44699)

Judicial Review from Water Resources Commission.

Argued and submitted June 27, 1988.

William H. Holmes, Portland, argued the cause for petitioners. With him on the briefs was Stoel Rives Boley Jones & Grey, Portland.

Timothy A. Sylwester, Assistant Attorney General, Salem, argued the cause for respondents Water Resources Commission and Water Resources Department. With him on the brief were Dave Frohnmayer, Attorney General, and Virginia L. Linder, Solicitor General, Salem.

John A. Berge, Bend, argued the cause for respondent Lemmie O. Rockford. With him on the brief was Gray, Fancher, Holmes & Hurley, Bend.

Before Buttler, Presiding Judge, and Rossman and Riggs, Judges.

BUTTLER, P.J.

Affirmed.

BUTTLER, P.J.

Petitioners seek review of an order of the Water Resources Commission approving applications for the diversion of water from Kelly Creek, Tandy Creek and an unnamed drainageway in Lake County by respondent Rockford, for irrigation, greenhouse use and soil leaching (Application No. 65587) and the construction of a reservoir to impound water for greenhouse use and field irrigation (Application No. R-68108).[1] We review the Commission's order pursuant to ORS 183.482, for substantial evidence on the whole record and for errors of law. ORS 536.075(3).

Kelly and Tandy Creeks flow westerly, crossing the lands of petitioners and Rockford, and drain naturally into Goose Lake. Petitioners are senior appropriators of water from Tandy Creek. During the irrigation season, which begins on March 15 and ends on September 1 of each year, they divert water for irrigation and stockwatering. Rockford, the applicant, irrigates his land during the irrigation season by pumping groundwater that has a high boron content. The resulting boron build-up has reduced Rockford's alfalfa production by 50 percent and is lethal to the growing of roses, one of Rockford's proposed greenhouse crops. Leaching of the soil by the application of large quantities of uncontaminated water is effective in reducing boron concentrations to levels that will not harm roses.

Rockford's applications sought appropriations from Kelly Creek, when available, and any deficiency to be diverted from Tandy Creek, with any deficiency from Kelly and Tandy Creeks to be diverted from an unnamed drainageway, with any further deficiency to be made up from waters stored in the proposed reservoir. The Commission's order approves the granting of permits for the construction of the reservoir, the diversion from the proposed sources of 5.48 cubic feet per second (cfs) of water for irrigation of 219 acres during the irrigation season, 4.44 cfs for greenhouse irrigation during the irrigation season, and 4.94 cfs for soil leaching and greenhouse use outside of the irrigation season.

Petitioners contend that the granting of the permits was improper for several reasons: (1) Boron leaching, one of Rockford's proposed uses, is not a "beneficial use" for which water may be appropriated; (2) Rockford has the burden of proof and should have, but has not, established that Tandy Creek contains water in excess of petitioners' prior appropriations during the periods when Rockford wants to use water; (3) statements in the Commission's order indicate that the Commission unlawfully permits over-appropriation by granting applications regardless of possible conflicts between water users or the amount of water available, on the theory that the rule of prior appropriations will avoid all conflicts; and (4)

the record shows that Rockford has taken water from Kelly Creek without a permit and that the watermaster cannot regulate Rockford's proposed appropriation, thereby indicating that the appropriation will "inevitably" conflict with petitioner's existing rights.

To constitute a valid appropriation of water, the user must have an intent to apply the water to some beneficial use. In Re Waters of Deschutes River, 134 Or 623, 286 P 563, 294 P 1049 (1930). ORS 540.610 provides that "[b]eneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state." We first address the question whether boron leaching is a beneficial use.

Although "beneficial use" is not defined in the statutes, certain enumerated uses are considered to be beneficial: "[E]xisting and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement * * *." ORS 536.300; see also ORS 537.170(5). Petitioners contend that the regular flushing into the water table of boron accumulated after each irrigation season cannot be characterized as a "beneficial use," at least not without affirmative proof from the applicant that (1) the proposed use is beneficial and (2) that it is not harmful to other appropriators or to the public interest. The record, they contend, is devoid of such evidence.

There is evidence that the application of large amounts of stream water during the nonirrigation season reduces the boron concentration to a level at which the boron becomes unavailable to plants. The record does not show the optimum rate of application or the actual amount of water necessary to leach accumulated boron. The Commission found that the successful leaching of boron from the root zone of the soil will restore the crop productivity of the land, will result in a benefit to Rockford and will also contribute to the maximum economic benefit of the community. Substantial evidence supports those findings, which are sufficient to support the Commission's conclusion that the leaching of boron is a beneficial use.

The Commission's order imposes recording and reporting requirements on Rockford, including the measurement of water applied to the soil and the taking of soil samples, designed to determine whether the application of water was effective in leaching boron, and, if so, the quantity of water necessary for optimum results. It also found that, because boron leaching will require the application of large quantities of water, boron leaching is of less benefit overall than other potential future uses, junior in priority to the subject application, for which water should be conserved. Accordingly, it allowed the appropriation for boron leaching on the condition that it be

"subordinate and inferior to both the storage and direct use of water for other consumptive beneficial uses of water." Petitioner contends that the Commission has thereby relegated the term "beneficial" to a "comparative" standard, when it is intended to be "absolute." Their incorrect assumption is that the Commission made its determination that the leaching of boron is a beneficial use only after it had determined that the water, if not applied to that use, would be wasted. It is clear to us that the Commission decided that the leaching of boron is a beneficial use apart from conflicting uses or other concerns. It could not, however, grant Rockford's permit without going through the process of balancing the proposed use against other beneficial uses, conflicting interests and concerns, see ORS 537.120;[2] ORS 537.160(1);[3] ORS 537.170(5);[4] In Re Waters of Deschutes River, supra, 134 Or at 668; Cantrall v. Sterling Mining Co., 61 Or 516, 122 P 42 (1912), and the conditions it placed on Rockford's use of the water reflect the Commission's recognition of those concerns.

Petitioners contend that, in finding that boron leaching is a beneficial use, without requiring proof from Rockford that it is not a harmful use, the Commission incorrectly applied a "presumption" that the proposed use is beneficial. As we have previously stated, there is substantial evidence to support the Commission's finding that the use is

beneficial. Petitioners' view would effectively require a presumption that a proposed use is harmful unless it is shown not to be. There is no indication that the legislature intended that to be the case. ORS 537.160(1) provides that the Commission "shall approve all applications made in proper form which contemplate the application of water to a beneficial use, unless the proposed use conflicts with existing rights." (Emphasis supplied.) Given that Rockford made a prima facie case for a beneficial use, the burden of coming forward with evidence that boron leaching would be harmful to them or to the public interest is on petitioners. See ORS 183.450(2).[5] They offered no evidence to that effect. In any event, it is apparent that the Commission considered potential harmful effects of the boron leaching, because it found specifically that the proposed appropriation would cause no adverse effect on Goose Lake, and concluded separately that it will not impair or be detrimental to the public interest. That conclusion is supported by the record, as there is no evidence that any harm would be caused by boron leaching.

We turn to petitioners' contention that, in the absence of substantial evidence that there is water in Tandy Creek in excess of prior appropriations, the Commission should have concluded that the proposed appropriation would conflict with existing uses. In fact, the evidence is in conflict as to

the existence of excess water. Petitioner Margaret Benz testified that petitioners historically have used the entire flow from Tandy Creek during the irrigation season to satisfy their existing water rights. Rockford testified that, during the irrigation season, Tandy Creek contains water in excess of petitioners' prior rights. Petitioners impeached Rockford's testimony by showing that his estimate of water flow is based on observations made at a spot below petitioners' diversion point, where the creek contains flow from another creek, and not upstream, near petitioners' diversion point and Rockford's proposed diversion point. The watermaster also testified that there is excess water flowing in Tandy Creek during the irrigation season. On cross-examination, however, he admitted that he had not taken measurements on Tandy Creek.

Petitioners offered evidence that little or no water flows through Tandy Creek outside the irrigation season, because of freezing and a lack of rain. Rockford testified that Tandy Creek contains unappropriated water during the fall and winter.

The Commission found that Kelly and Tandy Creeks carry mostly seasonal snowmelt runoff. It found that there is little or no flow in Tandy Creek during the winter months, and that the flow usually begins with the spring thaw in February or early March and is depleted by mid-June to early July. There

are no established measuring devices on any of the waterways, and flow measurements have not been obtained to establish normal flow. The Commission found:

> "At times, there is water flowing in Kelly Creek in excess of the needs of prior existing rights, although the frequency and amount of such excess water is not established.
>
> "It is possible that water in excess of existing rights flows from Tandy Creek to Goose Lake at times. However, there was testimony that existing rights can consume all water in Tandy Creek."

It also made this "ultimate finding":

> "The record conflicts as to the amount, frequency, and seasonal occurrence of flows in excess of existing rights to water from Tandy Creek, Kelly Creek and the unnamed drainage ways."

The Commission made no finding as to whether there is water flowing in Tandy Creek when the water in Kelly Creek has been depleted. It apparently concluded, however, that whether or not there is regular excess flow in Tandy Creek is not the ultimate question in determining whether the proposed appropriation would conflict with existing rights:

> "[Petitioners] submit that an appropriation 'will "conflict with existing rights" unless the source at issue contains water in excess of prior appropriations.' [Petitioners] argue that the Commission may not approve the Rockford permits absent a showing of available unappropriated water sufficient to support the proposed uses.
>
> "The Commission is charged with securing the maximum beneficial use and control of the state's water resources. ORS 536.220, 536.310, 537.170(5)(b). Because streamflows vary greatly from year to year, disallowing further permits once the

> reliable flow had been appropriated would result in nonuse of the excess water available in years of greater than average water supply. It is the Commission's position that maximum beneficial use of the waters of the state is achieved by issuing a permit to anyone who is willing to attempt appropriation and use of whatever unappropriated water may become available, except where a basin program identifies a need to set aside some amount of unappropriated water for particular future uses." (Emphasis supplied.)

Petitioners contend that the emphasized portion of the Commission's statement shows that the Commission has ignored the requirements of ORS 537.170(5)(d) and (f) that, in reviewing an application, it must consider "the amount of waters available for appropriation for beneficial use" and protect "all vested and inchoate rights to the waters of this state or to the use of the waters of this state." First, the record shows that the Commission did consider those two criteria. The order contains extensive discussion of each of them. Second, as the Commission concluded, under the law of prior appropriations, see, e.g., ORS 537.120, a senior appropriator who applies water to a beneficial use and thereafter continues to do so holds a water right that is superior to any water right obtained by a subsequent junior appropriator. In view of that rule, the Commission did not err in concluding that knowledge of the precise quantity of water available in excess of prior appropriations is not necessary. A junior appropriator's water right cannot be exercised until the senior appropriator's right has been satisfied.

The corollary rule is that a party who has a prior right to a certain quantity of water from a watercourse is entitled to the water only to the extent needed for the use to which it has been appropriated; when not needed or used for that purpose, the next person in priority is entitled to it. Jones v. Warmsprings Irrigation Dist., 162 Or 186, 198, 91 P2d 542 (1939). Petitioners' right of prior appropriation to the water in Tandy Creek is not total and absolute. The Commission's order properly permits diversion by Rockford only to the extent that there is water then available in excess of petitioners' prior appropriation rights.

Although petitioners agree that the Commission's analysis may be correct in the abstract, they contend that, as a practical matter, their rights are threatened. The record shows that, on one occasion, in the non-irrigation season, Rockford appropriated large quantities of water from Kelly Creek while his application for a permit for appropriation was pending, for the purpose of conducting experiments as to the effectiveness of boron leaching. In view of Rockford's documented alleged misconduct, see ORS 537.130, and the finding of the Commission that the watermaster is not equipped to monitor the diversion of water from Tandy Creek, they argue that the application should be denied. Petitioners' concerns are addressed in the Commission's opinion:

> "* * * ORS 540.045 provides, in part: '[E]ach watermaster shall: (1) Regulate the distribution of water among the various users of water from any natural surface or groundwater supply in accordance with the users' existing water rights of record in the office of the Water Resources director. * * * (3) Divide the waters of the natural surface and groundwater sources and other sources of water supply among canals, ditches, pumps, pipelines and reservoirs taking water from the source for beneficial use, by regulating, adjusting and fastening the headgates, valves or other control works at the several points of diversion of surface water or groundwater, according to the users' relative entitlements to water.'
>
> "* * * The water users have the obligation under the law to install and maintain adequate control and measuring devices at their several points of diversion of water from the natural source so that the watermaster can regulate the distribution of the available water."

The Commission did not, as petitioners contend, ignore practical concerns in allowing the Rockford appropriation. Although Tandy Creek presently contains no measuring devices, the Commission did not err in concluding that petitioners' interests will be protected adequately against unlawful appropriation through the implementation of controls and the imposition of conditions on the proposed appropriation, including the construction and installation of recording and measuring devices on petitioners' land at each point of Rockford's diversion on Tandy Creek that is upstream from petitioners' authorized point of diversion.

Affirmed.

FOOTNOTES

1

The applications were consolidated for the purpose of the hearing, resulting in a single order disposing of both.

2

ORS 537.120 provides:

"Subject to existing rights, and except as otherwise provided in ORS chapter 538, all waters within the state may be appropriated for beneficial use, as provided in the Water Rights Act and not otherwise; but nothing contained in the Water Rights Act shall be so construed as to take away or impair the vested right of any person to any water or to the use of any water."

3

ORS 537.160(1) provides:

"Subject to the provisions of subsections (2) and (3) of this section, and of ORS 537.170 to 537.190, the Water Resources Commission shall approve all applications made in proper form which contemplate the application of water to a beneficial use, unless the proposed use conflicts with existing rights."

4

ORS 537.170(5) provides:

"(5) In determining whether the proposed use would impair or be detrimental to the public interest, the Water Resources Commission shall consider:

"(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use,

municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

"(b) The maximum economic development of the waters involved.

"(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

"(d) The amount of waters available for appropriation for beneficial use.

"(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

"(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

"(g) The state water resources policy formulated under ORS 536.300 to 536.350 and 537.505 to 537.525."

5

ORS 183.450(2) provides, in part:

"The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position."

TO: BARRY NORRIS

August 19, 1988

FROM: JOHN BORDEN

SUBJECT: MALHEUR RIVER STUDY

Recall Becky's comments at last AMG that she was sending the Malheur River return flow study staff report to WRC Sept. 9? She has offered a review for Jake and me Wednesday, August 24 at 10:00 a.m. Care to attend?

cc Jake
cc Becky

POD	QUARTER-QUARTER		SEC.	TOWNSHIP	RANGE
#1	SE1/4	SE1/4	32	18S	34E
#2 & #3	NE1/4	NE1/4	8	19S	34E
#4	NE1/4	SW1/4	8	19S	34E
#5	NW1/4	NW1/4	17	19S	34E
#6	NE1/4	NE1/4	18	19S	34E
#7	SE1/4	SW1/4	18	19S	34E
#8	SE1/4	NW1/4	19	19S	34E
#9	NW1/4	NW1/4	30	19S	34E
#13	NE1/4	SW1/4	28	19S	34E
#10	NW1/4	NE1/4	36	19S	33 1/2E
#11	SW1/4	NW1/4	5	20S	34E
#12	SE1/4	NW1/4	5	20S	34E
#14	NE1/4	NE1/4	10	20S	34E
#15	NE1/4	NE1/4	10	20S	34E
#16	NE1/4	SW1/4	11	20S	34E
#17	NE1/4	SW1/4	23	20S	35E
#18	NW1/4	SE1/4	20	20S	36E
#19	SE1/4	NW1/4	8	20S	36E
#20 & #21	NE1/4	NW1/4	8	20S	36E
#22	NW1/4	NW1/4	9	20S	36E

Application No. 69433
Permit No.

WRD WORKSHEET

NEIL GOLDSCHMIDT
GOVERNOR

Department of Fish and Wildlife

506 SW MILL STREET, P.O. BOX 59, PORTLAND, OREGON 97207

June 10, 1988

Department of Water Resources
3850 Portland Road N.E.
Salem, OR 97310

RE: Water Right application #69603, Hoyt and Sons Ranch Properties,
Wolf Creek and Middle Fork Malheur River tributaries, 1.05 cfs
Flood irrigation of 84.5 acres

We are concerned about possible over appropriation of Middle Fork Malheur and tributary waters and recommend subject application be denied pending outcome of your Malheur Irrigation Return Flow Study. Reciding the 15 cfs Middle Fork Malheur minimum flow in November, 1985 following rancher's demands for additional water stimulated the study.

The findings of the study will provide rationale for a decision about further appropriation. Until study results are available, the public interest in instream water conservation is best served by denying additional water right applications.

Thank you for the opportunity to comment.

Sincerely,

Greg Robart

Gregory P. Robart
Staff Biologist
Aquatic Habitats Program
Habitat Conservation Division

gro

Final Report
Please Put this
with the application

NOVEMBER 1988

OREGON WATER RESOURCES DEPARTMENT

SALEM, OREGON

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INTRODUCTION

The Water Resources Department initiated the Malheur River Irrigation Return Flow Project in the winter of 1986. The project was carried out in response to concerns, by water users in the Drewsey area, about adoption of a minimum perennial streamflow on the Middle Fork Malheur River between Highway 20 and Warm Springs Reservoir.

Irrigators in the Drewsey area contended that implementing such a requirement would interfere with traditional methods of irrigated agriculture in the area. They state that traditional flood irrigation methods benefit the river and downstream users throughout the irrigation season, particularly in the summer months when streamflows decline. These benefits arise from the slow return (percolation and seepage) of water from supersaturated fields to the river during low river-flows. Irrigation return flows augment low streamflows, and benefit out-of-stream and instream users of water. According to the irrigators, flood irrigation also recharges ground water and reduces soil alkalinity. It is also believed that no harm may be done to river water quality as a result of flood irrigation.

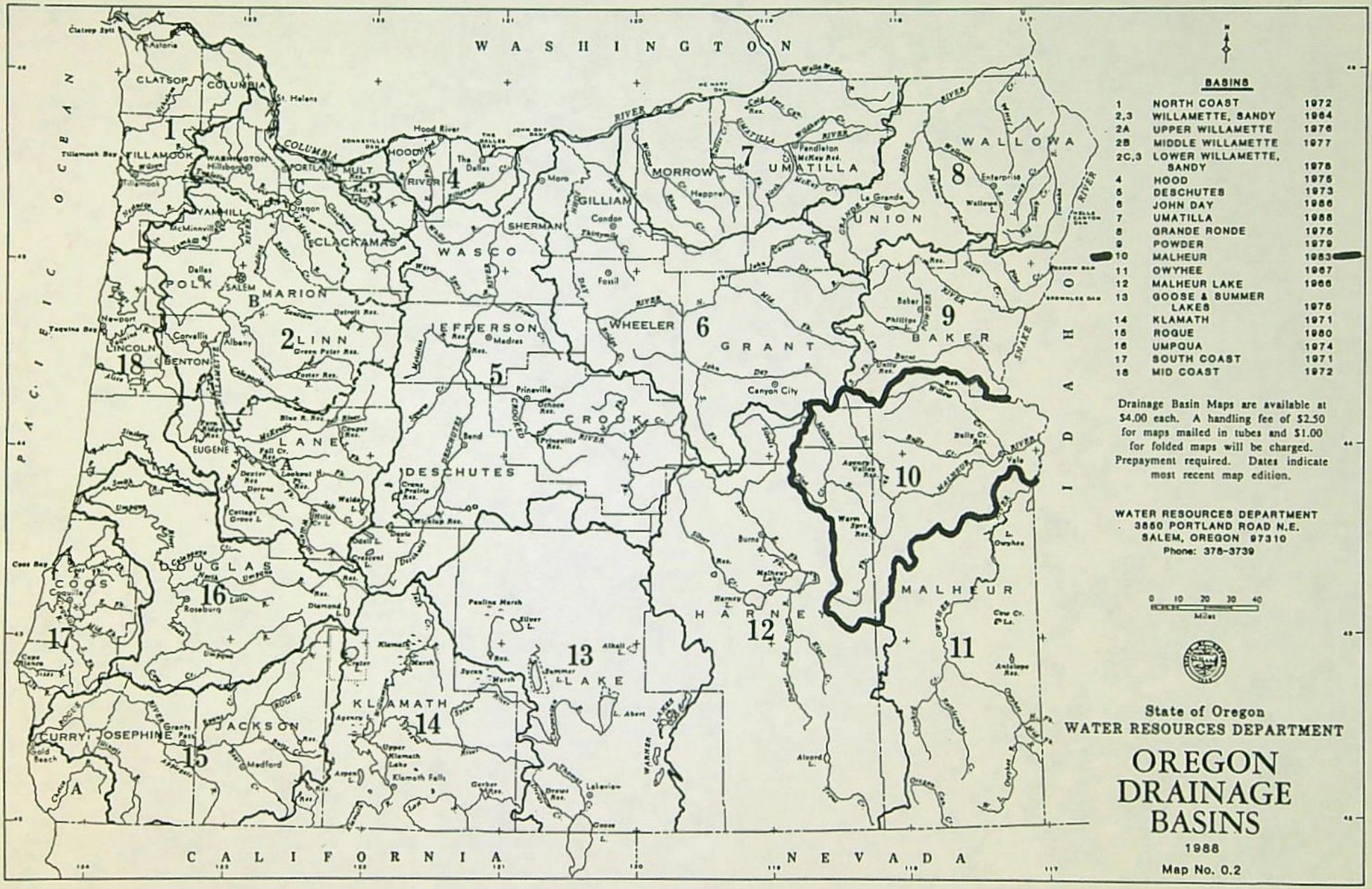
This report analyzes water quantity and quality data to determine potential impacts and trends associated with the use of irrigation water in the Middle Fork Malheur River Basin. The report is based on data for the 1987 irrigation season and deals with the physical aspects of water use only. Other aspects of water use, such as the socioeconomic and institutional aspects are not discussed in this report.

MALHEUR RIVER BASIN DESCRIPTION

The Malheur River Basin is located in southeastern Oregon and drains about 4,000 square miles. The Malheur River originates in the Strawberry Range of the Blue Mountains and flows south. The main stem of the Malheur River flows 190 miles from the point of origin to the confluence of the river with the Snake River (Figures 1 & 2). The major portion of the basin is in Malheur County. However, the river begins in Grant County and the South and North Forks originate in Harney and Baker Counties. Major tributaries of the Malheur River are Bully Creek and Willow Creek in Malheur County.

Physiography:

The Malheur River Basin is part of the Oregon high desert, except for its northwestern portion where topography is rugged and elevation high. The average basin elevation ranges from 3,000 feet to 6,000 feet above sea level. The two elevation extremes are in the Strawberry Range and along the Snake River where elevation is 8,600 feet, and 2,000 feet respectively. The basin



BASINS

1	NORTH COAST	1972
2,3	WILLAMETTE, SANDY	1964
2A	UPPER WILLAMETTE	1976
2B	MIDDLE WILLAMETTE	1977
2C,3	LOWER WILLAMETTE, SANDY	1978
4	HOOD	1975
5	DESCHUTES	1973
6	JOHN DAY	1966
7	UMATILLA	1968
8	GRANDE RONDE	1975
9	POWDER	1979
10	MALHEUR	1983
11	OWYHEE	1967
12	MALHEUR LAKE	1966
13	GOOSE & SUMMER LAKES	1976
14	KLAMATH	1971
15	ROGUE	1980
16	UMPQUA	1974
17	SOUTH COAST	1971
18	MID COAST	1972

Drainage Basin Maps are available at $4.00 each. A handling fee of $2.50 for maps mailed in tubes and $1.00 for folded maps will be charged. Prepayment required. Dates indicate most recent map edition.

WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD N.E.
SALEM, OREGON 97310
Phone: 378-3739

0 10 20 30 40
Miles

State of Oregon
WATER RESOURCES DEPARTMENT

OREGON DRAINAGE BASINS

1988

Map No. 0.2

Figure 1.

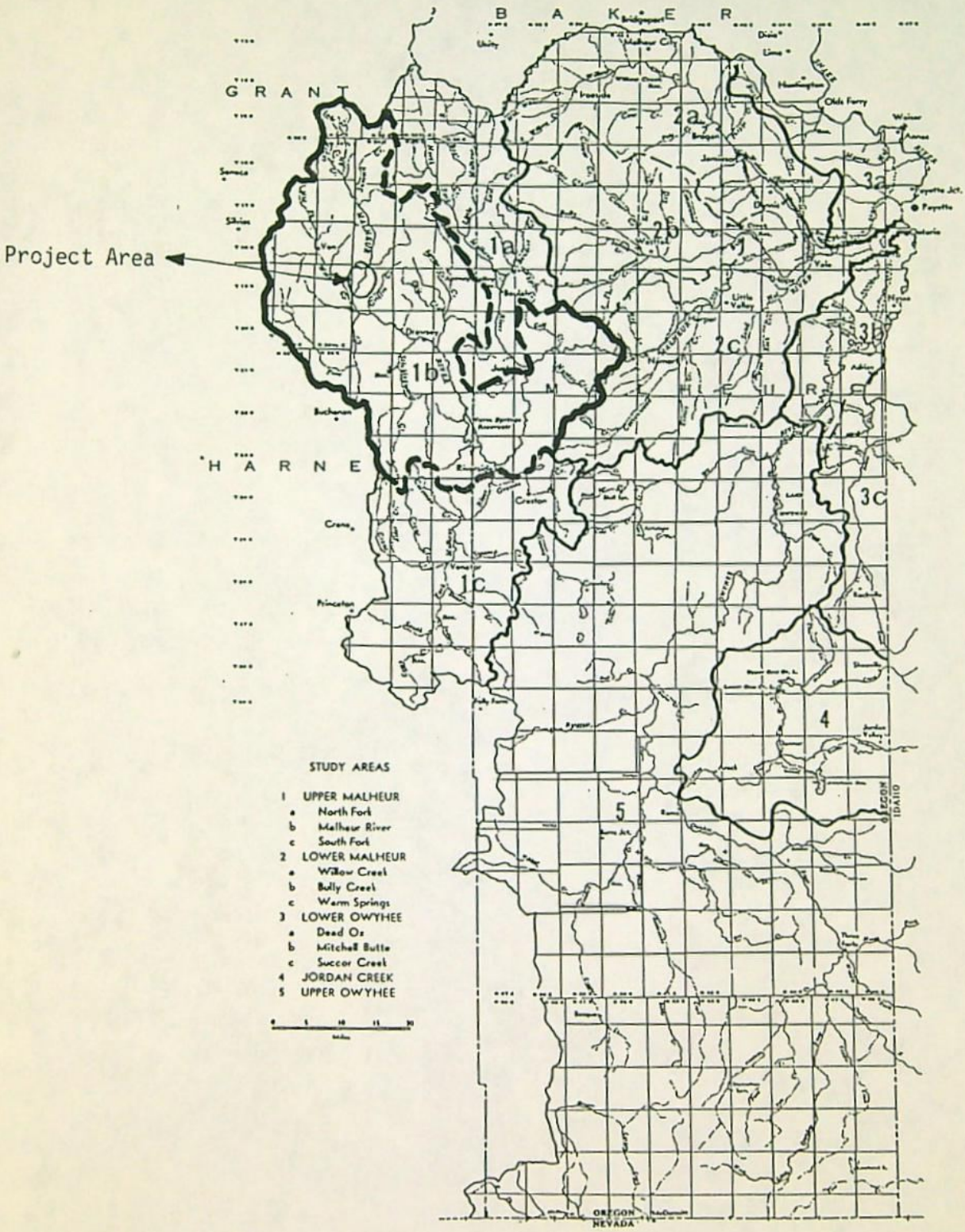


Figure 2. Middle Fork Malheur Basin and Project Area

has a semiarid climate, with hot dry summers and cold winters. Spring and fall are relatively moderate. Annual temperature extremes usually occur in January and July. Average minimum January and average maximum July temperatures in higher elevation agricultural valleys are 16 and 95 degrees F respectively. Elevation has a direct influence on the basin's precipitation, temperature, and growing season.

Annual precipitation varies from as high as 40 inches in the Strawberry Range to as low as 10 inches in lower elevations. Snowmelt provides streamflows in spring and early summer.

The frost free period (growing season based on 32 F), for the basin ranges from 118 to 180 days, but can be as short as 70 days at higher elevations.

WATER SUPPLY, USE AND APPROPRIATION IN THE MIDDLE FORK MALHEUR RIVER SUB-BASIN

Water supply and availability in the basin depend on annual precipitation and stream-flows. Precipitation and streamflows vary widely from wet to dry years and from winter to summer. At Drewsey, the Middle Fork Malheur River can flow as high as 12,000 cfs during its peak flow in the spring. The river can be virtually dry in some summers. Stream-bank erosion and sedimentation are associated with high spring runoff.

MIDDLE FORK MALHEUR RIVER FLOW ANALYSIS 1927-1982 (46 YEARS)
AVERAGE AND MEDIAN MONTHLY FLOW (CFS) AT DREWSEY GAGE 13214000

AVERAGE

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
38	66	104	146	258	427	651	345	135	26	10	12

MEDIAN

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
36	64	78	93	195	355	563	304	108	19	7	10

Based on the above monthly flow rates, the Middle Fork Malheur River yields 133,300 acre-feet of water/year at the Drewsey station.

It is estimated that irrigation makes up 95% of the consumptive water use in the area. Field flooding, during high spring runoff, is the common irrigation method in the Drewsey area. Excessive application frequently takes place early in the irrigation season to reduce soil alkalinity and to build soil moisture for forage crop production. Appendix I includes a discussion of flood irrigation method and its efficiency rate in the project area.

Annual surface water rights, upstream from Warm Spring Reservoir, are 39,500 acre-feet. The above rights permit irrigation of 13,166 acres (3 acre-feet/acre) using a maximum allowable rate of 580 cfs form April to October. There are 25 diversions from the Middle Fork Malheur River above Warm Springs Reservoir of which four are pump diversions. Three of the 25 diversions are above the project area. According to Malheur-Owyhee Basins Report, there is practically no unappropriated surface water during the irrigation season. No storage reservoirs exist on the Middle Fork Malheur River above Drewsey.

Groundwater is not extensively used for irrigation in the Middle Fork Malheur River subbasin. Department records show three wells and one sump that are used for irrigation and industrial uses in the Middle Fork Malheur River subbasin. One sump and one shallow well are only 14 and 18 feet deep and may be tapping surface water. Other wells in the subbasin are used for domestic and livestock purposes, however, well reports were not recorded by the Department prior to 1955. No evidence of a groundwater shortage or depletion have been documented in the area. Natural recharge is probably sufficient to balance current uses of groundwater.

MALHEUR IRRIGATION RETURN FLOW PROJECT

Study Objectives:

The Malheur Irrigation Return Flow Project has three major objectives:

1 - Determining changes in water quantity between points of project inflow and outflow.

2 - Determining the lag time between diversion of water for irrigation and return flows to the river.

3 - Determining changes in water quality between points of project inflow and outflow.

Study Organization:

The Malheur Irrigation Return Flow Project was sponsored and coordinated by the Oregon Water Resources Department. Field surveys were made by the Department's Hydrographic Section. The Department's watermaster provided assistance in recording data and other related information.

The U.S. Bureau of Reclamation provided considerable support to the Water Resources Department in the analysis of water quality. Water samples, collected throughout the irrigation season, were sent to the Bureau of Reclamation Water Quality Analysis Lab in Boise, Idaho. A total of ten samples were taken at each of the

two river gaging stations in the project area throughout the irrigation season.

Further assistance was provided by property owners in the project area and the Harney County Road Department.

Project Location, Size and Land Ownership:

The project site, figure 3, is located in the northwestern portion of the Malheur River Basin on the banks of the Middle Fork Malheur River, approximately ten miles northwest of Drewsey. The project lies between stream-mile 168 (crossing of Van Drewsey Rd.), and stream-mile 171 (Malheur River above Coyote Creek). The site has an area of approximately 916 acres which is almost entirely pasture and irrigated cropland. The river divides the site into two fields, a west field and an east field (Figure 4). The west field is 598 acres in size and the east field is 318 acres. The west field is irrigated by the Moffet and Ellingson ditches and the east field is irrigated by the Bentz ditch. Two other ditches, the Bailey and Lillard ditches, divert water in the project area of which some is applied onto the lower west field and the rest is conveyed to other fields south of the project area. The Bailey and Lillard ditches also function as drainage ditches for the west field. Willows and other riparian vegetation may benefit from some of the water diverted for irrigation purposes in the project area.

The site is located on private land in two ownerships. Both entities own land on both sides of the river in the project area.

Topography And Soils:

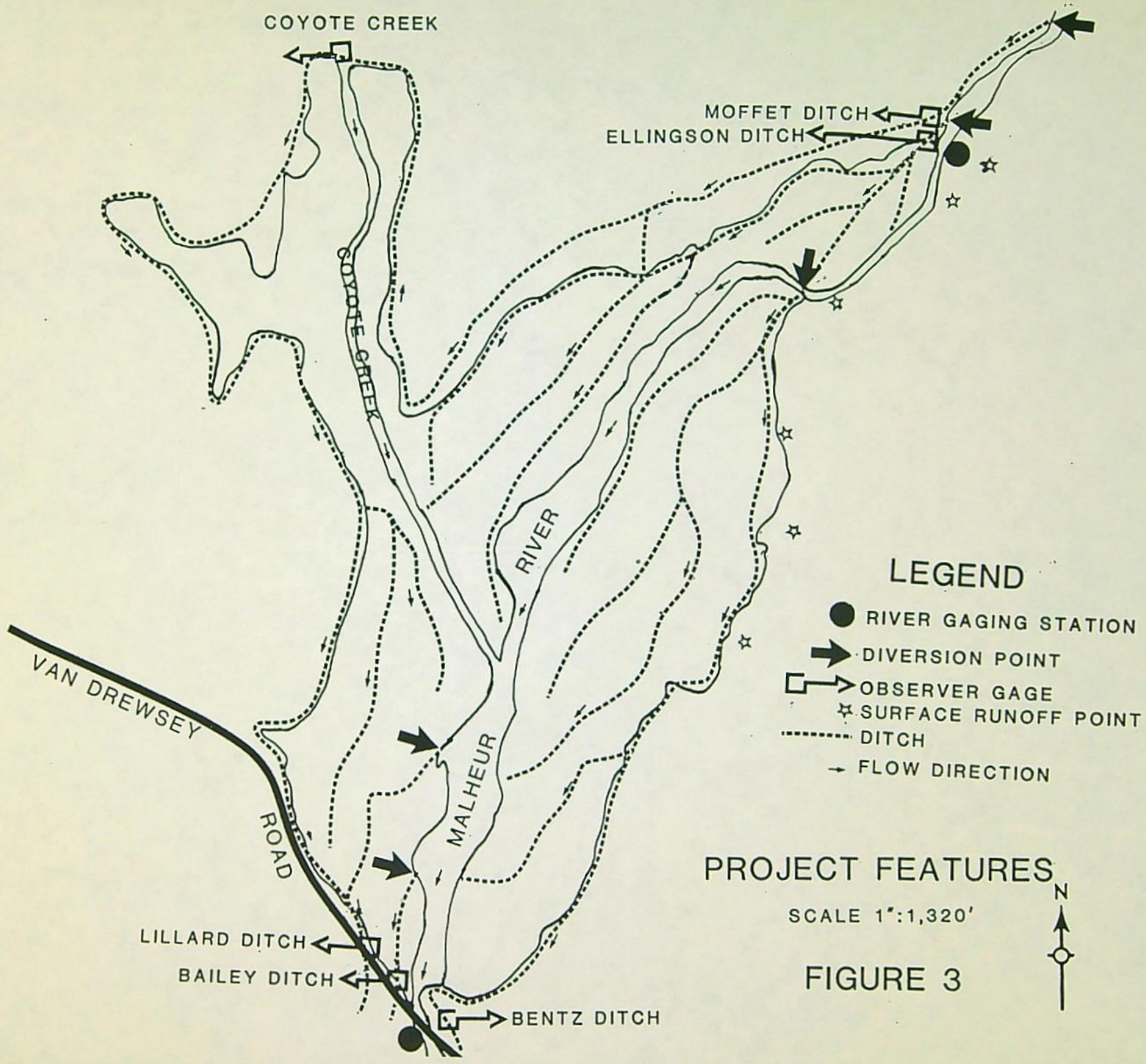
Topography of the project site is comprised mainly of alluvial fans, lying on the floodplain of the Malheur River. The whole project area is surrounded by hills which makes it a well defined site for the purpose of this study.

Soils in the area vary in texture, drainage, slope, structure and depth. Irrigation suitability of the soils, in the project area and immediate vicinity, falls into three categories:

a. Soils along the banks of the Malheur River and Coyote Creek are rated good. These are silty soils and range from well drained to poorly drained. The above soils have slopes ranging from 0 to 3 percent. Most of the water diverted in the project area is applied to this category of soils.

b. Soils east of the river floodplain (the Johnson ditch area), are rated poor. These are loamy soils with shallow depths and 7 to 12 percent slope.

c. Soils west of the river floodplain are rated fair. These are


COYOTE CREEK
MOFFET DITCH
ELLINGSON DITCH
SOUTH COYOTE CREEK
MALHEUR RIVER
VAN DREWSEY ROAD
LILLARD DITCH
BAILEY DITCH
BENTZ DITCH
LEGEND
RIVER GAGING STATION
DIVERSION POINT
OBSERVER GAGE
SURFACE RUNOFF POINT
DITCH
FLOW DIRECTION
PROJECT FEATURES
SCALE 1":1,320'
N
FIGURE 3

SCALE 1":1,320'

FIGURE 4

loamy, moderately deep soils with 7 to 20 percent slopes.

d. Soils above the Moffet ditch (above the upper boundary of the site) are non-irrigable shallow soils with steep slopes. The Moffet ditch passes through a portion of this soil category and might be losing some of its water through seepage.

Site Selection Criteria:

Project site selection was based on the following criteria:

A - A site representing the physiography of the Middle Fork Malheur River Basin

B - A site representing typical flood irrigation practices

C - A site where water inflow and outflow could be well defined

D - A site requiring minimum monitoring personnel and equipment

E - A site where landowner cooperation was available

Project Duration:

The project was initiated in October of 1986. The Water Resources Department personnel installed two gaging stations on the Malheur River on October 1, 1986. Continuous stage recorders were installed at the two stations on February 24, 1987. Data recording and site inspection were done from April 2, 1987, before the start of the irrigation season, through November 3, 1987, after the end of the irrigation season. Irrigation in the area usually starts during the second week of April and ends during the first week of September.

The Department's Hydrographics Section completed preliminary analysis of flow records in December of 1987.

PROJECT MONITORING METHODS

Two points were selected for monitoring river inflow and outflow in the project area. A Stevens A-71 analog recorder was installed at each of the two stations. Malheur River inflow was recorded above Coyote Creek (locally known as the Old Peterson Place), station # 13213400, and its outflow was recorded at station # 13213420 (Van Drewsey Road crossing).

Observer gages were placed on two diversion and three outflow ditches at five locations and on Coyote Creek (Figure 3). The Moffet and Ellingson ditches, and Coyote Creek were gaged for inflow into the project. The Lillard, Bailey, and Bentz ditches were gaged for outflow from the project area. There were also six surface runoff reference points for monitoring any potential

seepage into the project area from the Johnson ditch. Any measurable amount of water from these points was included in the total project inflow. There was practically no water in Coyote Creek or at any of the surface runoff reference points during most of the irrigation season.

DATA RECORDING RESULTS

Daily discharge records were computed for the two gaging stations on the Malheur River for the entire irrigation season. Gage height was measured at the five observer gages on the diversion ditches, Coyote Creek, and the six surface runoff reference points on a weekly basis by the local watermaster and once every three weeks by staff from the Salem office.

Discharge was estimated by the Hydrographic Section for those days when gage height measurements were not taken. Available measurements, field notes, riverflow records and other hydrographic procedures were used as a basis for estimating daily discharge values.

Discharge records were grouped into the following categories:

A - Total Surface Project Inflow - This included the Malheur River above Coyote Creek, and the Moffet and Ellingson ditches. Any measurable flow from the surface runoff reference points was included in total surface project inflow. On hydrographs, Total Surface Project Inflow is referred to as Project Inflow.

B - Total Surface Project Outflow -This included the Malheur River at the crossing of Van Drewsey Road, the Bentz, Bailey and Lillard ditches. On hydrographs, Total Surface Project Outflow is referred to as Project Outflow.

C - Ditch Inflow - The combination of the Moffet and Ellingson ditches.

D - Ditch Outflow - The combination of the Bentz, Lillard, and Bailey ditches.

E - River Inflow (Malheur River above Coyote Creek)

F - River Outflow (Malheur River at the crossing of Van Drewsey Road.

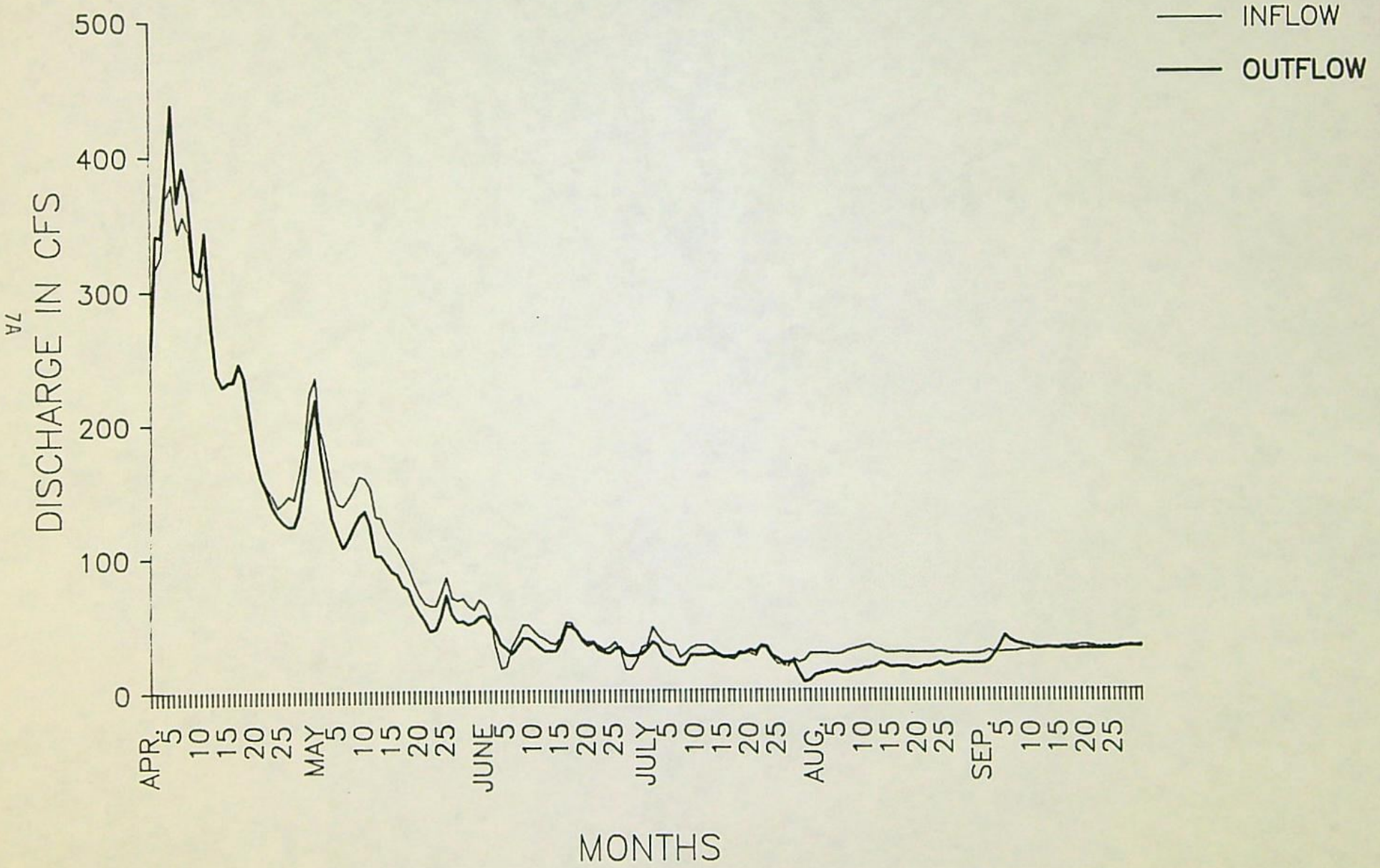
Hydrographs:

Six hydrographs were constructed which illustrate the above categories:

1 - Project Inflow vs Project Outflow - All the water entering the project area vs all the water leaving the project area (Total

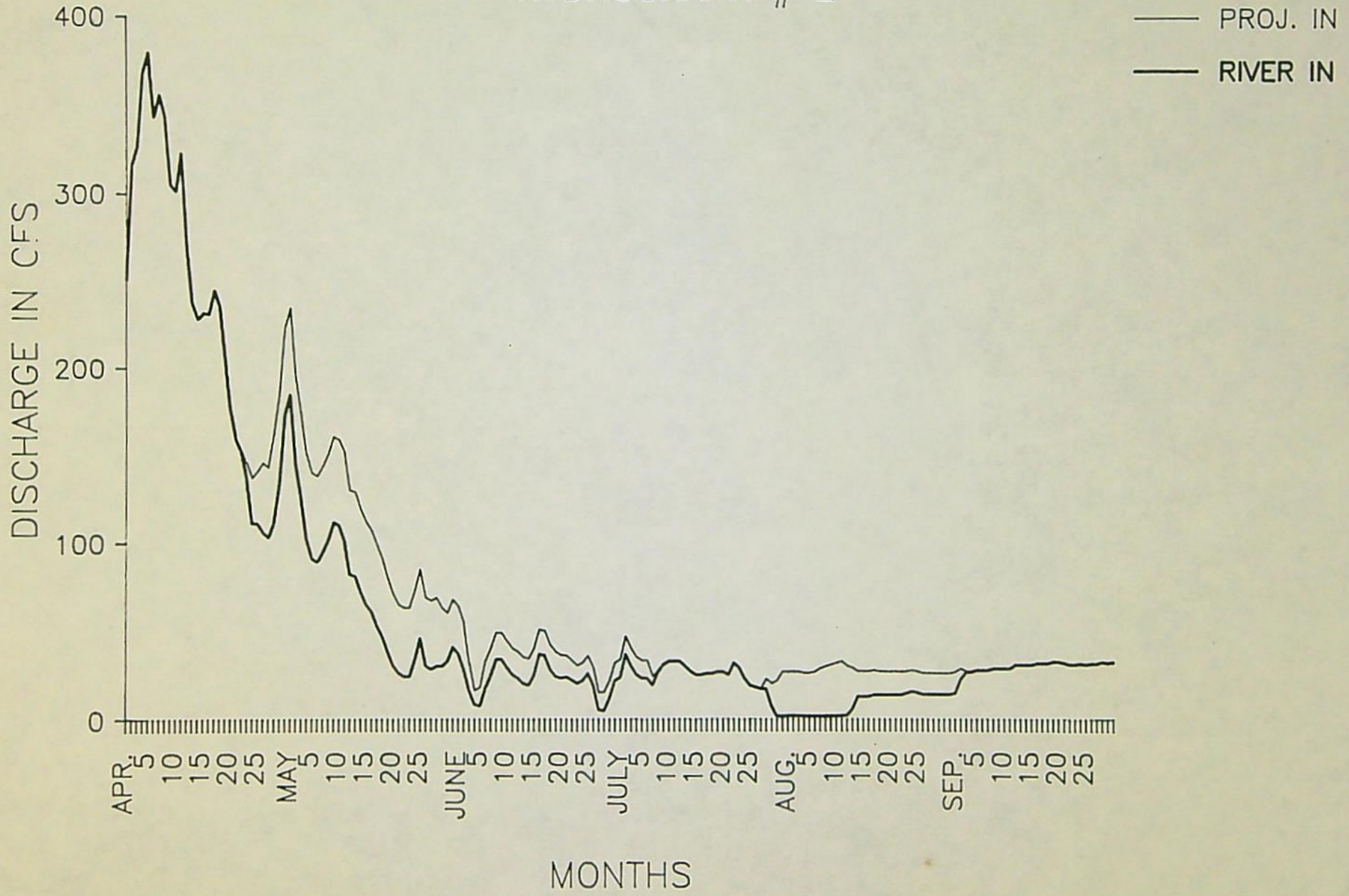
PROJECT INFLOW VS PROJECT OUTFLOW

HYDROGRAPH # 1



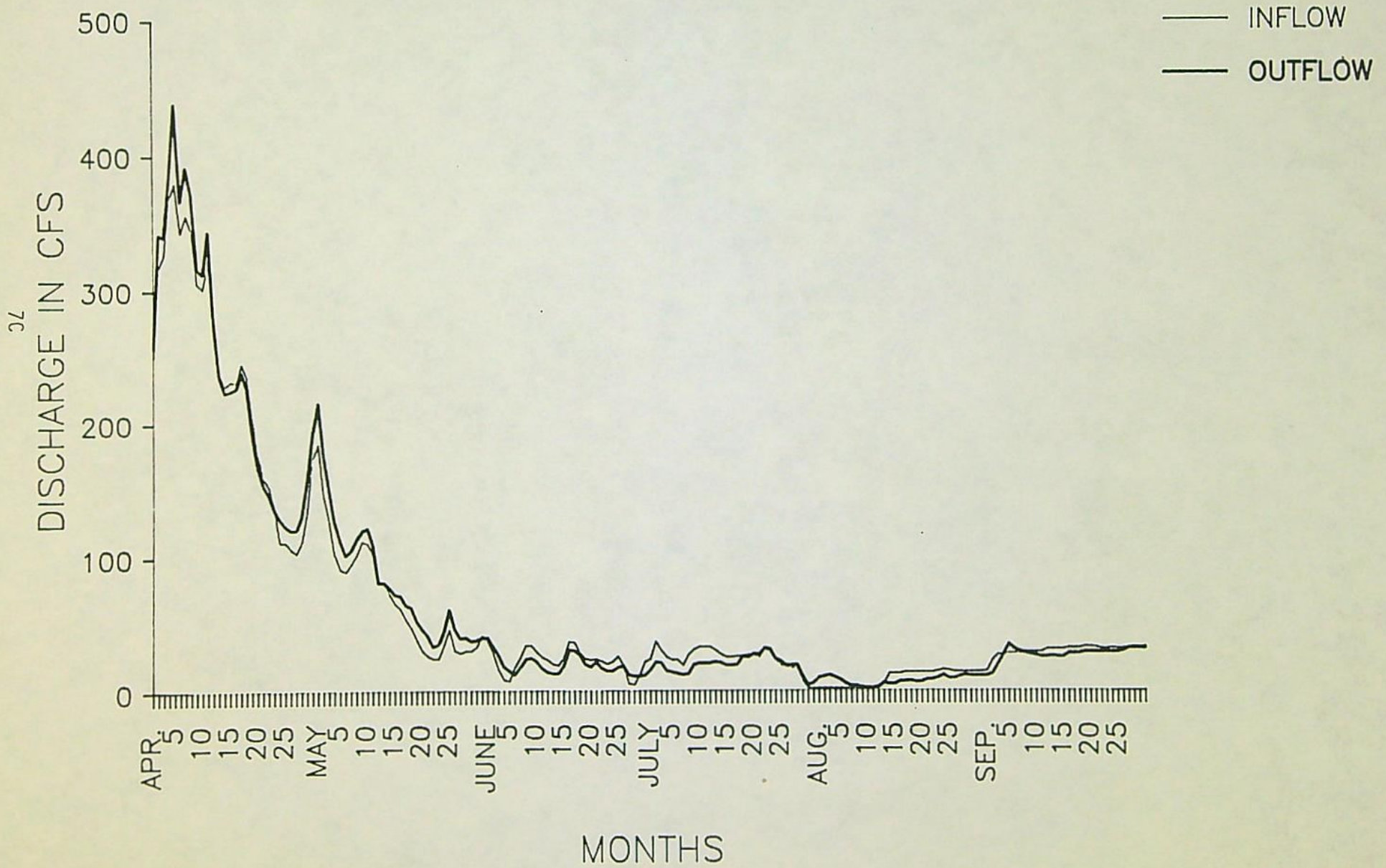
PROJECT INFLOW VS RIVER INFLOW

HYDROGRAPH # 2



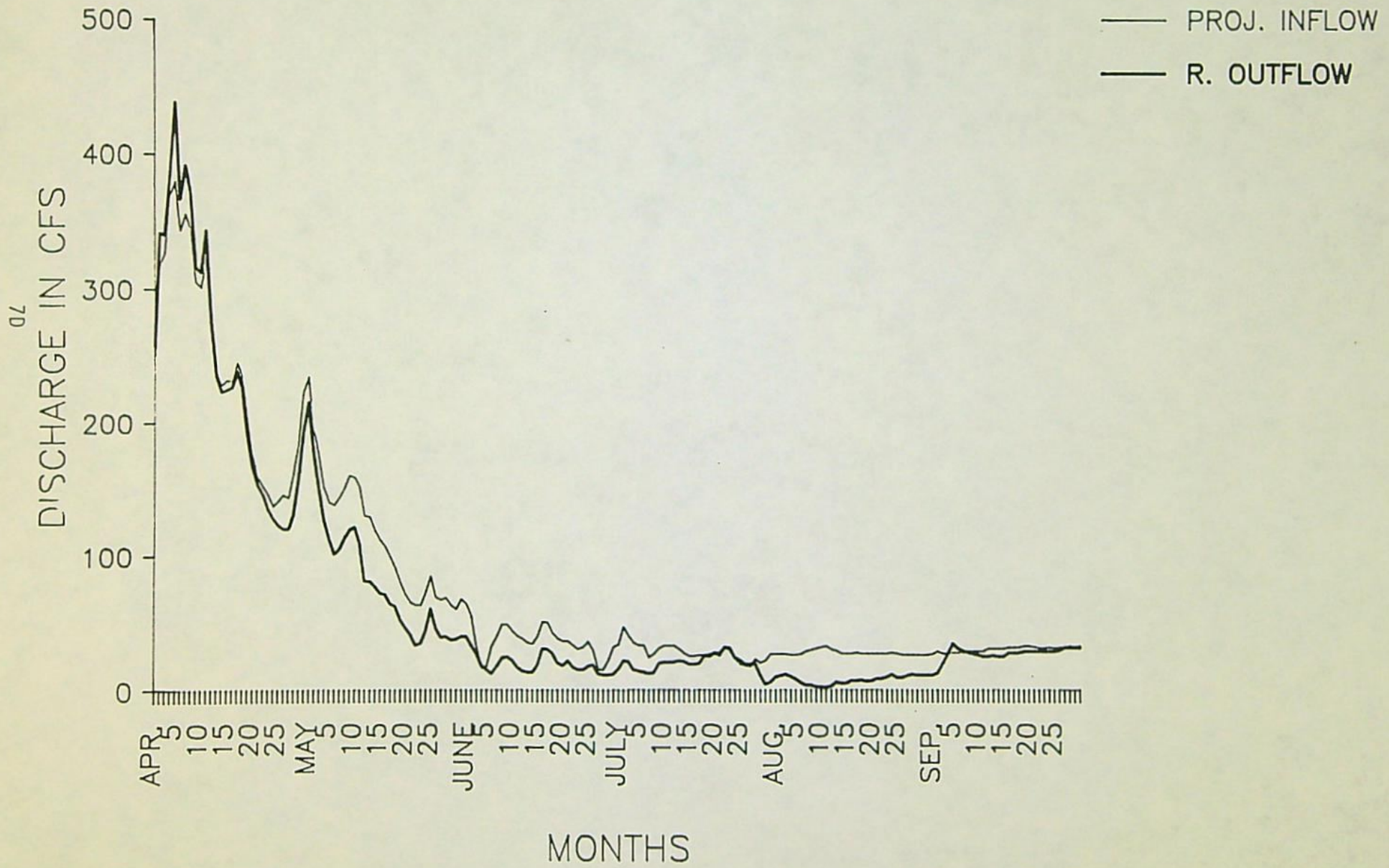
RIVER INFLOW VS RIVER OUTFLOW

HYDROGRAPH # 3



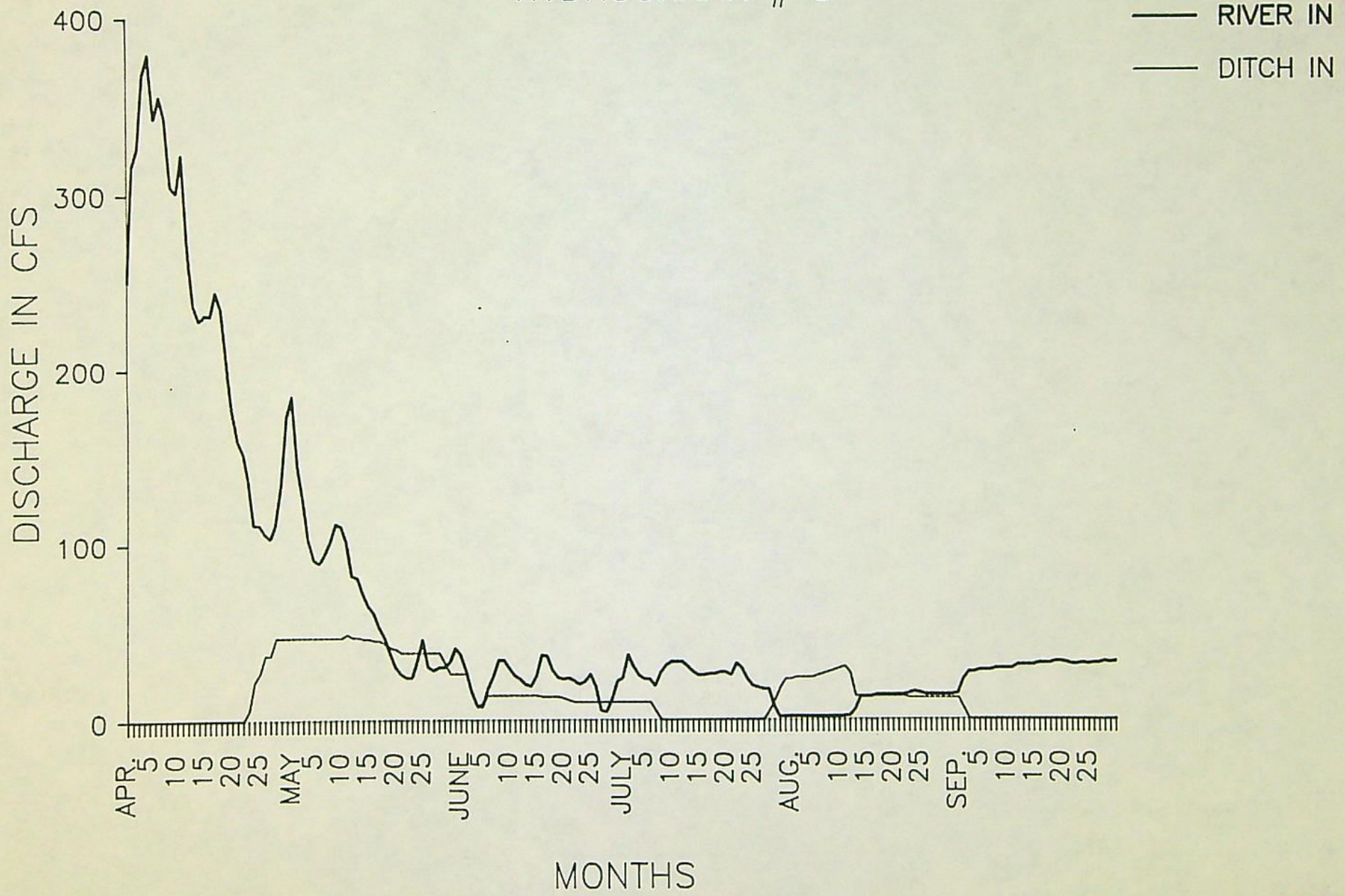
PROJECT INFLOW VS RIVER OUTFLOW

HYDROGRAPH # 4



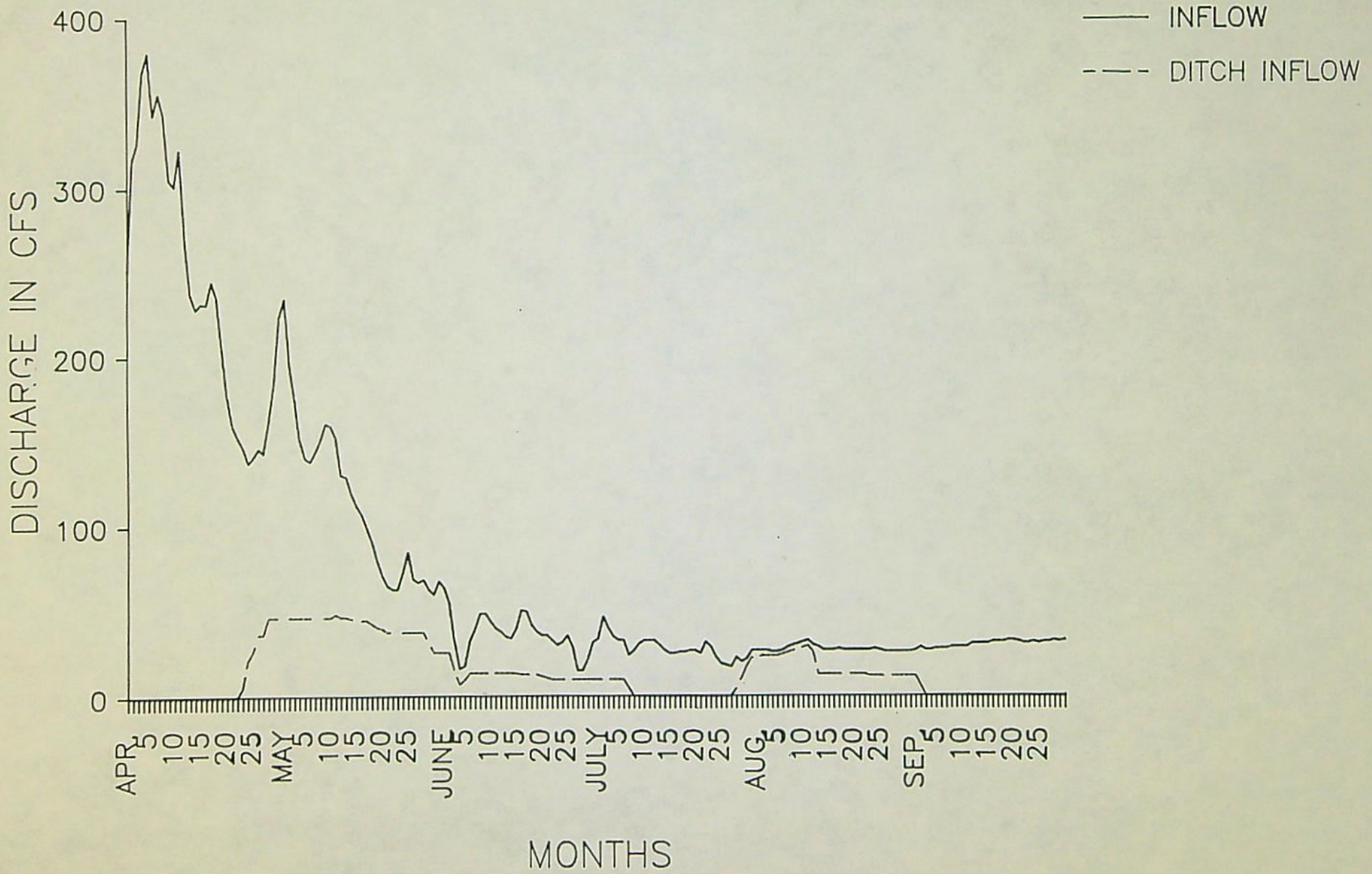
RIVER INFLOW AND DITCH INFLOW

HYDROGRAPH # 5



PROJECT INFLOW VS DITCH INFLOW

HYDROGRAPH # 6



Surface Project Inflow vs Total Surface Project Outflow). This hydrograph illustrates changes occurring in water quantity and potential return flow lag time throughout the irrigation season in the project area. The difference between total inflow and total outflow is considered project area consumption.

2 - Project Inflow vs River Inflow - This hydrograph illustrates the amount of water remaining in the river after diversions into the Moffet and Ellingson ditches. The area between the two lines on the hydrograph indicates the amount of water withdrawn by the Moffet and Ellingson ditches.

3 - River Inflow vs River Outflow (Malheur River Above Coyote Creek and Van Drewsey Rd) - This hydrograph illustrates the amount of water flowing in the river at the two gaging stations. It also indicates any potential water gain or loss by the river in the project area.

4 - Project Inflow vs River Outflow - This hydrograph shows the total amount of water entering the project area and the amount of water remaining in the river after all diversions. The area between the two lines on the hydrograph shows the amount of water that was diverted from the river in the project area and not accounted for at the lower river station.

5 - River Inflow vs Ditch Inflow - This hydrograph indicates the amount of water diverted into the Moffet and Ellingson ditches and the amount of water remaining in the river after the above diversions. It can easily be noted that diversions by the Moffet and Ellingson ditches significantly reduced riverflow.

6 - Project Inflow vs Ditch Inflow - This hydrograph shows the total amount of water entering the project area and the amount diverted into the Moffet and Ellingson ditches. The gap between the two lines graphically portrays the amount of water left in the river after diversions into the Moffet and Ellingson ditches.

Accuracy of Flow Records:

According to USGS standards, records within five percent of true discharge are considered excellent, within ten percent good, within fifteen percent fair, and over fifteen percent poor. Accordingly, records for the two recording stations on the Malheur River were rated excellent and records for the five observer gages on the diversion ditches were rated poor.

An observer gage was installed on Coyote Creek. Estimated discharge at that gage was very small or none after the middle of May, therefore, Coyote Creek was considered to have had insignificant impact on the total project inflow except in the early part of the irrigation season. Coyote Creek was dry during the summer months. No observer gage was installed on the

Johnson ditch because it did not affect the project. The Johnson ditch starts outside the project area and diverts water around it.

A small amount of water was accounted for at the six surface runoff discharge locations on the eastern edge of the project. Estimated discharge from these points was included in total project inflow, however, the contribution was not significant.

The Bailey, Bentz and Lillard ditch discharge was estimated only as outflow. These ditches diverted water onto the lower west field and the entire east field in the project area. The dates these ditches were diverting water and the exact amount of water diverted into these ditches are not known. The Bailey and Lillard ditches may have collected some irrigation return flows. However, the project set-up did not provide the means for differentiating between the diverted amount and any potential irrigation returns in these ditches.

The fact that the project was not monitored on a daily basis may have influenced the results. Additional field notes regarding irrigation practices, weather conditions, flow conditions, ditch operation, and other influencing factors would have enhanced the results. The availability of streamflow data for other years would have provided staff with a better understanding of the river system in the project area.

The accuracy of the findings of this report depends on the precision of the discharge records available. The precision of the inflow and outflow ditch discharge records is particularly important because project area diversion and consumption rates were estimated based on these records. It should be pointed out that the findings of this report are a general indication of the water use practices in the area. The consumption and diversion rates may vary from one location in the subbasin to another. Consumption and diversion rates estimated in the next few paragraphs may not reflect the exact amount of water diverted and consumed in the project area.

Data Evaluation:

Hydrograph # 1 (Total Project Inflow vs Total Project Outflow) was analyzed to determine changes in water quantity as it passed through the project area. Based on the examination of hydrograph # 1, a consumption rate was determined for the project area. Hydrograph # 5 (River Inflow and Ditch Inflow) was analyzed for determining diversion rates and timing of such diversions into the Moffet and Ellingson ditches. This hydrograph also provides visual illustration of the correlation between diversions and riverflow. A summary of net monthly consumption is as follows:

APRIL - Irrigation began in the project area on April 24 when the Moffet and Ellingson ditches were turned on. The two ditches started diverting water at a combined flow rate of 6 cfs on April 21 which reached 47 cfs by the end of the month. From the April 21 until the end of April, inflow exceeded outflow by as little as 1 cfs to as much as 28 cfs towards the end of the month. Net consumption for April 21-30 was 317 acre-feet (average .4 acre-feet/acre).

MAY - Diversions continued into the Moffet and Ellingson ditches at a combined monthly mean flow rate of 42 cfs. Diversion peaked at 49 cfs on May 11. The entire month of May was marked with much larger inflows than outflows. Inflows exceeded outflows by 9 to 31 cfs, with the larger inflows occurring from May 3 until May 17. Net consumption for May was 1,250 acre-feet (average 1.4 acre-feet/acre).

JUNE - Diversions into the Moffet and Ellingson ditches continued during June at a mean flow rate of 13 cfs. In June, inflows were larger than outflow with two exceptions. From June 3-5, outflow exceeded inflow by 12,18, and 13 cfs. During this time the Ellingson ditch was closed and flow in the river increased. Similar conditions occurred from June 26-29. Outflow was higher than inflow for the period by 3-11 cfs. During the above two periods, a much lower than normal amount of water was reaching the project area. Net consumption in June was 97 acre-feet (average .1 acre-feet/acre). Not counting September, June had the lowest monthly consumption of the irrigation season.

JULY - In July, inflow exceeded outflow from the first to the 17th of the month. From July 18 to 27, outflow exceeded inflow by as high as 4 cfs. This increase in outflow resulted from closure of the Ellingson and the Moffet ditches July 8 to 27 due to haying, a reduction in plant moisture needs, the local weather pattern for the month (increased cloudiness and rain), and return flows. July had a net monthly consumption of 297 acre-feet (average .3 acre-fee/acre).

AUGUST - August had the second largest monthly consumption of the season. During the month of August the project area had a net monthly consumption of 699 acre-feet (.8 acre-feet/acre).

The Malheur River flow rate dropped to as low as 1.6 cfs at the station above Coyote Creek on August 6. Similar flows were recorded at the above station from July 30 to August 12. During that same period, July 30 to August 12, the Moffet and Ellingson ditches had a combined mean monthly flow rate of 18 to 30 cfs. Diversions were 23 cfs on August 1, reached a peak of 30 cfs on August 11 and continued at rates of 13 and 12 cfs.

SEPTEMBER - Total inflow exceeded outflow for the first three days of September. On September 4, the conditions reversed and

continued until September 11. From September 12 to 30, inflow again exceeded outflow except on September 13,27 and 29. The irrigation season ended the first week of September. This is reflected in increased project outflows from September 4 until September 11. September net consumption was 10 acre-feet (average 0.01 acre-feet/acre).

SUMMARY - Throughout the irrigation season, total project inflow exceeded total project outflow with the exceptions of four periods when outflow exceeded inflow.

A sudden departure from normal inflow and closing of the Ellingson ditch, caused outflow to exceed inflow from June 3 to 5. The closing of the Moffet ditch May 30 to June 3 may also have influenced the pattern. Below normal water reaching the project area and the Ellingson ditch remaining closed may have caused outflow to surpass inflow June 26-29. Closing of the Ellingson and the Moffet ditches from July 8 to 27, reduction in plant moisture needs due to haying, and rain on July 21 and 22, may have caused outflow to surpass inflow from July 18 to 27. During the first and second week of September (Sept. 4-11), outflow exceeded inflow. This increase in outflow coincided with the end of the irrigation season. At the end of the irrigation season all ditches were closed. The closure of ditches allowed the fields to drain causing large outflows for a few days.

Only during two periods did river outflow surpass total inflow. From July 20 until 27 river outflow exceeded total inflow by an average of 1.4 cfs. It appears that no diversions occurred in the project area during this period due to haying. September 5,6 and 7 river outflow surpassed total inflow by 7, 3 and 1 cfs. This period marks the end of the irrigation season.

Malheur River flow at the upper and lower stations dropped to levels as low as 1.5 cfs and 1.8 cfs respectively on certain days during the summer months. On the same days, water was diverted into the Moffet and Ellingson ditches at rates of 18 cfs and 30 cfs. Hydrograph # 5 portrays diversions into the Moffet and Ellingson ditches and the amount of water left in the river after the two diversions. The highest diversions occurred from the start of irrigation in April until June 2. Diversions continued into the two ditches at a relatively lower rate until July 7. No diversion occurred into the two ditches July 7 to 28. The Moffet and Ellingson ditches were turned-on again on July 28 and continued diverting water until the end of the irrigation season in early September. The hydrograph shows that almost the entire flow of the river was diverted into the two ditches from July 30 to August 11.

Water consumed (depleted) in the project area during the irrigation season was 2,670 acre-feet. This shows a per acre

net consumption of slightly more than 2.9 acre-feet from April 21 until the end of September.

RETURN FLOW LAG TIME ANALYSIS

The irrigators contended that excessive flooding of fields early in the irrigation season enhanced streamflows later in the year. This enhancement was said to occur as soils slowly release stored water into the stream during low summer flows. It is a natural phenomenon that in a hydrologic system some subsurface water will return to streams in that system. However, the amount of water returning to streams varies widely depending on the permeability and porosity of the soil and the underlain geologic formation through which the water travels.

Based on the findings of the project, no significant correlation could be seen between spring flood irrigation and summer streamflows. Major irrigation return flows, resulting from excess spring flooding, seem to have occurred in the form of overland flows before early June. An overland flow is the gravity flow of a surface layer of water over a sloping land area that has reached its moisture holding capacity and is incapable of infiltrating additional water. Overland flows can also occur on lands that may not be fully saturated. This happens when large volumes of water are applied which run over the land surface without having the chance to infiltrate into the ground (like flash flooding).

It is assumed that whenever project outflow exceeded project inflow, it may have resulted partly from irrigation return flows. Those periods followed the closure of some or all diversion ditches by only a few days. In the absence of diversions, inflow and outflow rapidly became equal. Any water returned to the river from fields during ditch closure periods may have caused outflow to surpass inflow. The limited return flows observed during the summer months are most likely to have resulted from summer irrigation and not spring irrigation.

Site Geology and Hydrology Affecting Return Flows:

Due to lack of field data and other site-specific information on the geology and hydrology of the project area, groundwater behavior in the project area is not clearly known. Based on general geo-hydrologic information and the findings of a field visit, a short report on the general hydrology of the project area was prepared by the Department's Geology/Hydrology Section. The findings of the Department's geo-hydrologists are summarized below.

The project area lies within the Juntura basin into which a thick series of Tertiary sediments have been deposited. The project area is underlain by tuffaceous sedimentary rocks of the Juntura

and Drewsey Formations of Bowen and others (1963). Alluvial material of an unknown thickness, deposited by the Middle Fork Malheur River, overlies these older tuffaceous sedimentary rocks. A welded tuff unit and a basalt unit crop out at the southern end of the project area. These units may act as possible impermeable barriers to sub-surface groundwater flow leaving the project area. It is also possible that these units act to channel any local shallow groundwater to the surface before it can leave the project area. Any definite conclusions regarding the above units would require further and detailed investigation.

Many formations are likely to exist as barriers to groundwater flow between the project area and Warm Springs Reservoir. Various north to northwest trending faults have displaced rock units in the area. In additions, volcanic events have disrupted the 'bedrock' in the area, creating discontinuous rock units. Based on the above information, some irrigation return flows may be reaching the river not very far from where irrigation takes place. The amount and return time of such return flows may not be very significant.

Alluvial materials in the project area vary in texture, drainage, slope, structures, permeability, porosity, and depth from one location to another. The depth of the alluvial materials may vary from a few to several hundred feet depending on the location. It is not exactly known how subsurface water behaves within the alluvium. No wells were drilled at the site for soil testing and subsurface water monitoring. The construction of such wells would have provided valuable information on the soils and hydrology of the site.

The available geo-hydrologic information is not sufficient to provide conclusive explanations on subsurface return flows or deep percolation.

Hydrograph Analysis For Return Flow:

Based on the available flow records and information, the following generalizations can be made regarding irrigation return flow lag time:

Hydrograph 1, indicates that large outflows coincided with large inflows and small outflows coincided with small inflows. The above pattern occurred on a monthly and daily basis. During the critical summer months, only in some cases could a lag time of 3-8 days be detected between inflows and outflows.

Total project outflow exceeded total project inflow June 3-5 and June 26-29. While the possibility of some irrigation return flows is not left out, two other factors should be taken into consideration. The first factor is the sharp drop in the volume of water reaching the project area during these periods. The

second factor is the closing of the Moffet ditch in early June and of the Ellingson ditch after June 4. During the two periods, total outflow did not experience as sharp a drop as total inflow. Closure of the two ditches allowed different portions of the west field to drain, preventing total outflow from dropping to levels below that of total inflow.

Total project outflow exceeded total project inflow by a very small margin July 18-27. This could be attributed to high inflows in early July. During the above period, the Ellingson and the Moffet ditches (the two inflow ditches) were shut-off in order to drain fields for haying. Due to haying, crop moisture needs were reduced. The closure of the Moffet and Ellingson ditches and drainage from fields caused outflow to surpass inflow by a small margin.

Irrigation ended during the first week of September. Total outflow suddenly surpassed total inflow September 4-11 as the irrigation season ended. This increase in outflow for a period of seven days is likely to have resulted from surface and subsurface return flows. After September 11 until the end of the month inflows exceeded outflows by 1-3 cfs. This may indicate that no water was gained by the river in the project area.

Another way to determine irrigation return flow lag time would be to analyze the other hydrographs. Hydrograph # 4, Total Project Inflow vs River Outflow, indicates that high river outflows coincided with high project inflows and low river outflows coincided with low project inflows. A lag time pattern is not clearly detectable except July 20-27 and September 5-7. These periods coincide with the closure of all inflow ditches due to haying in late July and the end of the irrigation season during the first week in September.

The study of hydrograph # 4 may be a more realistic approach to understanding irrigation return flows. After the closing of all inflow ditches July 20 to 28, river outflow surpassed total inflow by an average of 1.4 cfs. River outflow started diminishing and approached the total inflow level toward the end of July. At the end of the irrigation season in early September, river outflow surpassed total inflow by 7, 3 and 1 cfs on September 5,6 and 7 respectively. After September 7, project inflow exceeded river outflow until the end of the month.

Hydrograph # 3, River Inflow vs River Outflow, indicates a similar pattern to those of hydrographs # 1 and # 4. During the critical summer months, river inflow was larger than river outflow. Inflow and outflow became almost equal when all diversion ditches were turned off at the end of the irrigation season. This suggests that insignificant or no irrigation return flows may have occurred. River outflow was higher than river inflow for most of April, May and the first five days of June.

This increase could be attributed mainly to overland flows, some irrigation return flows and climatic factors.

In summary, from evaluating water quantity data, hydrologic information, there is no clear indication that excessive water application early in the irrigation season enhances streamflows in the latter part of the season in the project area. The operation of diversion ditches controlled the flow of the Malheur River through the project area. River outflow fluctuated widely throughout the season due to irrigation diversions. High project and river outflows coincided with high project and river inflows, and low outflows coincided with low inflows.

Return flows may have caused outflow to surpass inflow during four periods in the summer months, hydrograph # 1. These periods were June 3-5, June 26-29, July 20-27 and September 4-11. Outflows during these periods slowly surpassed inflows until an outflow peak was reached. The peaks then gradually diminished until inflows and outflows became equal or inflows surpassed outflows. The exceeded amount could partly be attributed to irrigation returns from continued summer irrigation. It should be noted that the above periods coincided with the closing of the Moffet and Ellingson ditches, haying season, cloudiness and precipitation, and the end of the irrigation season.

Hydrograph # 4 shows two periods during which return flows could be detected. These were July 20-27 and September 5-7. Return flows that may have occurred during these periods do not reflect any correlations to early spring flooding. They seem to have resulted from the application of large volumes of water onto fields in June, early July and all of August.

WATER QUALITY DATA

Water samples were taken from the Malheur River at the two gaging stations. These sampling locations were selected to reflect changes in water quality as the water moved through the site.

From April 4 until November 6, a total of ten samples were collected for each sampling site. These samples were analyzed at the Bureau of Reclamation Water Quality Analysis Lab in Boise, Idaho. The samples were tested for various water quality parameters of which some are discussed below.

Accuracy of Water Quality Data:

Water samples were taken in intervals ranging from six days to forty days. Short, even intervals would have shown changes in water quality better as the irrigation season progressed. Other factors that may have affected the results are time-of-day when samples were taken, sampling methods, sample storage and transport, and time between sampling and testing.

WATER QUALITY ANALYSIS

Water samples from the two river gaging stations, Malheur River above Coyote Creek and Malheur River at the crossing of Van Drewsey Road, were analyzed for several water quality parameters. Some of these parameters are discussed in the next paragraphs. Test results were not available for all water quality parameters. See Appendix II for graphs and water quality terminology.

The concentration of total dissolved solids (salts), for both stations gradually increased as the irrigation season progressed. The rate of concentration for the upper station increased from 71 mg/l on April 4, to 124 mg/l on August 4. The lower station showed higher concentrations than the upper station particularly during the first half of the irrigation season. This may indicate the presence of salts in the soils that were dissolved during initial irrigation and flushed into the river . The concentration of dissolved solids for the lower station samples rose from 71 mg/l on April 4, to 128 mg/l on August 4. After the first week of August, the concentration of dissolved solids started to decrease for both stations. The Department of Environmental Quality guide for concentration of dissolved solids in the Malheur River is 750 mg/l. Although the concentration of dissolved solids increased in the Malheur River, it did not surpass the DEQ guide concentration (Figure II-1).

Suspended solids showed a reverse trend. The concentration of suspended solids decreased for both sampling stations from 16 and 20 mg/l on April 4, to 4 and 6 mg/l on July 14. The decrease in the amount of suspended solids can be attributed to reduced riverflows at both stations (Figure II-2).

Like suspended solids, turbidity rate for the two sampling stations dropped as the season progressed and flows declined. Turbidity was 10 Jackson Turbidity Units (JTU) at both stations on April 2. Throughout the sampling season, turbidity measurements did not surpass 10 JTU, which is the recommended criteria by the USDI Nation Technical Advisory Committee for cold water streams (Figure II-3).

An increase was shown in the concentration of total kjeldahl nitrogen for both sampling stations as the irrigation season progressed. The increase was higher for the station at the lower end of the project area where it jumped from .34 mg/l on April 4, to 0.78 mg/l on August 25. The upper station showed an increase of 0.33 on April 4, to 0.44 mg/l on August 4. It is not exactly known where this concentration originated from. No fertilizers were applied to the site that might have increased the nitrogen level in the project area (Figure II-4).

Water samples from the two sampling station had pH values within the range of 7 and 9. The DEQ requires that pH values of the

Malheur River water remain within the 7 to 9 range (Figure II-5).

Water and soil alkalinity is directly related to the amounts of carbonates, bicarbonates, phosphates, and hydroxides. For the purpose of this study, water alkalinity rate was based on the amount of bicarbonates in the water samples from the two gaging stations. The lower station showed higher amounts of bicarbonates than the upper station. High water alkalinity at the lower sampling station may have resulted from alkaline water returning to the stream from the fields. This is particularly evident in the first half of the irrigation season (late April through June). The concentration of bicarbonates gradually increased at both sampling stations as the irrigation season progressed. This in turn raised water alkalinity (Figure II-6).

Water temperatures were higher for the lower station than the upper station for every day the temperature was taken. Water temperatures were 40 and 42 F for the upper and lower stations on April 4, and 61 and 79 F on August 4. Diurnal fluctuation may have influenced water temperatures. According to the DEQ guidelines, no measurable increase shall be allowed when stream temperatures are 68 degrees F or greater. Water temperatures in excess of 68 F in the project area are very likely to have resulted from solar heating on diminishing flows (Figure II-7).

Appendix II contains graphs for four other water quality parameters including conductivity, phosphorus, hardness, and Sodium. These parameters showed a gradual increase as irrigation season progressed. Higher rates were recorded for the lower station (Figures II-8 to II-12).

In summary, except for the concentration of suspended solids and turbidity, all water quality parameters, for which the samples were tested, indicated higher amounts for the latter part of the irrigation season. Recorded amounts were higher for the lower station (Van Drewsey Road crossing), than the upper station throughout the whole season. Increased amounts or rates of water quality parameters (pollutants), in the summer months, seem to have been associated with reduced streamflows in the summer and surface return flows during heavy spring irrigation.

FINDINGS

Based on the analysis of flow records, hydrologic conditions, hydrographs, water quality data, literature review, and field observation, below are some of the findings of the study:

A. There was a net water loss in the project area from April through September. Net consumption for the project area from April 21 through September was 2,670 acre-feet (slightly more than 2.9 acre-feet/acre). The amount does not reflect the actual amount of water diverted onto the site. The Moffet and Ellingson ditches diverted close to 5,276 acre-feet of water from April through September. This water was used to irrigate the 598 acre west field. The above amount indicates a diversion rate of about 8.8 acre-feet/acre. Some of the 5,276 acre-feet water diverted onto the west field may have been consumed by willows along the river and some of it may have been used to irrigate upland areas above the level of normal gravity flow.

Additional water was diverted by the Bailey, Bentz and Lillard ditches. The exact amount of water diverted by the above three ditches is not known. Some of the water diverted by the Bailey and Lillard ditches was applied to the lower west field. The remaining water in the two ditches was conveyed to other fields outside the project area. The entire flow of the Bentz ditch was applied to the east field.

B. River outflow was lower than river inflow for most of the summer months. During August, more water was flowing into the irrigation ditches than was left in the river. For the month, the two inflow ditches (the Moffet and Ellingson) diverted 1,090 acre-feet of water at a mean flow rate of 17.7 cfs, leaving 558 acre-feet in the river. Mean river flow rate for the month, at the upper station, was 9.07 cfs, and 7.71 cfs at the lower station (Van Drewsey Rd crossing).

C. No clear correlation could be observed between early spring flooding of fields and late summer flow augmentation. Any potential irrigation return flows seemed to have occurred before the critical summer months. As the soils reached moisture holding capacity, excess water may have been forced to return to the river as overland flows. Overland flows from the flooded fields are common in the early part of the irrigation season and seem to have been the primary cause of large outflows. Hydrograph analysis suggests that the amount and routing time of any irrigation return flows in the summer months may be very small given the characteristics of the site.

E. During the irrigation season, certain brief periods were marked with outflows that were higher than inflows. These periods lasted between 3 to 8 days. Several factors seem to have been involved of which irrigation return flows of short duration

may be one. The margin by which outflows surpassed inflows during these periods was small (an average of 1.4 cfs) and did not make a significant difference in the river discharge.

F. No fertilizers were used in the project area. However, water quality deteriorated as it passed through the project area and as the irrigation season progressed. The lowest water quality occurred during the summer months. Water quality was lower for the Van Drewsey Road station which was located at the lower end of the project. Several factors may have been involved of which reduction in streamflows is one and perhaps the major one. Another factor that may have contributed to water quality deterioration in the project area is contaminated return flows from fields.

Although water quality deteriorated in the project area, measured water quality parameters in general did not violate the standards set by the DEQ for the Malheur River.

CONCLUSION

The Malheur Irrigation Return Flow Project was carried out on a segment of the Middle Fork Malheur River above Drewsey. The project was planned in order to estimate and analyze changes in water quantity, quality, and the amount and lag time of irrigation return flows. Discharge records for the river and diversion ditches were analyzed and hydrographs constructed in order to determine diversion rates and the amount of water flowing in the river at the two gaging stations.

Discharge records show that more water entered the site in comparison to the amount that left the site during the 1987 irrigation season. Net project area water consumption was 2,670 acre-feet (2.9 acre-feet/acre). The gap between inflow and outflow was much wider during the summer months (particularly in August).

Based on the available hydrologic data, geologic and hydrologic information of the area, a direct correlation between spring flooding of fields and summer return flows could not be seen. It appears that most irrigation return flows occurred in the form of overland flows before the critical summer months. During the summer months, a lag-time of 3-8 days could be seen between large inflows and large outflows during some periods. The fact that outflows were larger than inflows during these periods does not necessarily mean that the additional amount was all the result of irrigation return flows. Ditch closure, local weather pattern, reduced crop moisture needs due to haying and natural seepage into the stream are all influential factors.

Although no fertilizers were applied, water quality data for the two sampling stations in the project area indicate a gradual deterioration in water quality as the irrigation season progressed and streamflows declined. The lower sampling station showed higher amounts of water quality parameters than the upper station. Reduction in river flow rate may be a strong, but not the only factor contributing to low water quality in the summer months. Other land and water use practices, within and outside the project area, may also have contributed to lowering of water quality.

APPENDIX I

CROP WATER REQUIREMENTS IN THE PROJECT AREA:

Consumptive use and net irrigation water requirement data was not available for the project area or for the nearest weather station at Drewsey. Available data for Burns, Oregon was used to estimate crop consumptive use requirements and water application efficiency rate for the project area. Both the project area and Burns are located within the same climatic region, however, the project area is about 300 feet lower than Burns which has an elevation of 4,140 feet.

Meadow hay consumptive use is 21.78 inches of which 16.81 inches is net irrigation water requirement and the remaining 4.97 inches from precipitation. Since 1987 was a very dry year and irrigators could not rely on rainfall, water application efficiency rate will be determined based on total consumptive use requirements. During the 1987 irrigation season, the Moffet and Ellingson ditches diverted 5,276 acre-feet of water onto the 598 acres west field. The total consumptive use requirement for 598 acres is 1,085 acre-feet. Accordingly, calculated application efficiency rate for the west field is about 20%. In theory this means that of the 5,276 acre-feet of water diverted, only 1,085 acre-feet was used by the crop and the remaining water (4,191 acre-feet) was lost to other factors. Willows along the banks of the Malheur Rive may have benefited from some of the water consumed in the project area.

According to the SCS - Farm Irrigation Rating Index, average efficiency rate for uncontrolled flood irrigation (method used at the site) is 40%. Maximum efficiency rate is 50% for the above method. There are several factors that contribute to the lowering of irrigation efficiency rate. The SCS -Farm Irrigation Rating Index, lists the following factors that affect irrigation efficiency rate for surface flood irrigation:

Management Elements:

- Water measurement
- Soil moisture monitoring and scheduling
- Irrigation skill and action level
- Maintenance condition of the system
- Water delivery constraint
- Soil condition

System Elements:

- Water distribution control
- Conveyance Efficiency
- Quality of land leveling and proper length of run

- Reuse of tailwater

Conveyance loss, surface runoff, deep percolation to groundwater, uptake by riparian vegetation such as willows and other losses may account for the 4,191 acre-feet of water that was diverted onto the west field and not used by the crop. The amount of water lost to each of the above factors can not be quantified due to limited data and information. However, some SCS studies have shown that conveyance loss alone can be between 30 to 50% of the water diverted onto a farm.

The 20% west field water application efficiency rate may not apply to the entire project area. Water application efficiency rate for the project area can not be estimated without knowing total diversions onto the fields.

APPENDIX II
WATER QUALITY TERMINOLOGY

ALKALINITY - A measure of the buffering capacity of the water. It is the sum total of components in the water that tend to raise the pH level above 4.5. In this study, measurements are being made on bicarbonates, other commonly occurring materials which increase alkalinity are carbonates, phosphates and hydroxides. Alkalinity is important to water quality because pH has a direct effect on organisms and an indirect effect on the toxicity of certain other pollutants.

CONDUCTIVITY - A measurement of the water's capacity to transmit an electric current. It is related to the total concentration of ionized substances in the water and the temperature of the water. It provides an indirect measurement of the salt present in the water and can also be used to estimate the total dissolved solids content of the water.

HARDNESS - A measure of the metallic ions dissolved in water. In fresh water the principal ions are calcium and magnesium. Iron, strontium and manganese also contribute to hardness when appreciable concentrations are present. Natural sources of hardness are limestone being dissolved by acidic waters, and discharges from operating and abandoned mines. The concentrations of calcium and magnesium are important in determining the exchangeable sodium in the water.

pH - A measure of the hydrogen ion activity in the water. The pH of natural waters is controlled by the various dissolved compounds, salts and gases. The principal system regulating pH, in natural waters, is the carbonate system. pH is an important factor in the chemical and biological systems of natural waters. Changes in pH levels affect the toxicity of many compounds, and have been shown to affect the solubility of metal compounds.

SODIUM - A measure of the sodium present in the water. Sodium is present in most natural waters with levels varying from negligible to appreciable. Soil permeability can be detrimentally affected by a high sodium ratio.

SUSPENDED SOLIDS - A measure of the amount of non-filterable residue present in a volume of water. The primary component is soil particles or sediment.

TOTAL KJELDAHL NITROGEN - A measure of the ammonia and organic nitrogen in the water. (does not include nitrites and nitrate nitrogen.)

TOTAL PHOSPHORUS - A measure of all orthophosphates, condensed phosphates, soluble and insoluble, organic and inorganic form of phosphorus.

TURBIDITY - An expression of the optical property of a water sample which causes light to be scattered and absorbed rather than transmitted in a straight line. Turbidity is caused by the presence of suspended matter; clay, silt, fine organic matter and microscopic organisms.

1127g

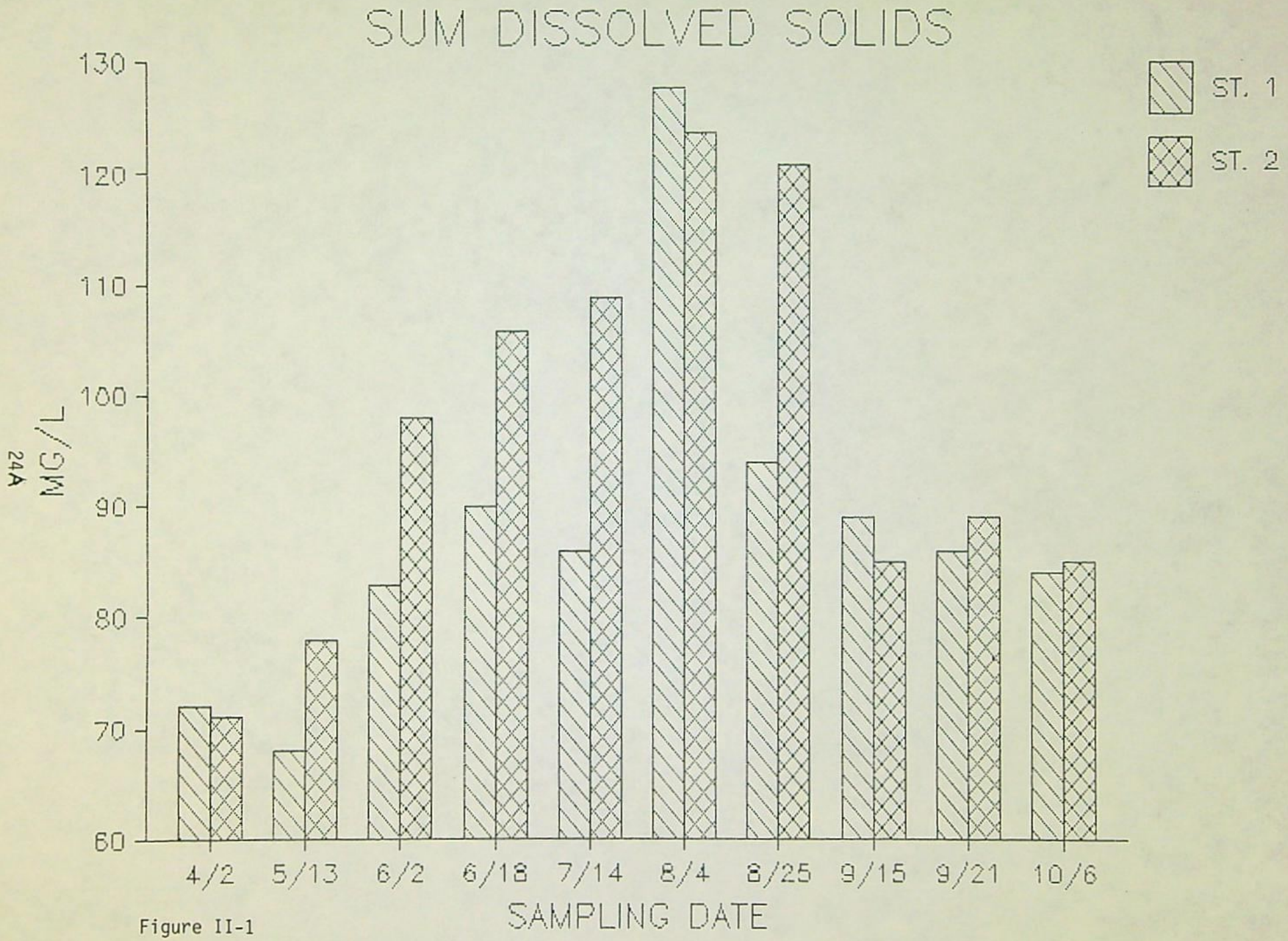

SUM DISSOLVED SOLIDS
ST. 1
ST. 2
MG/L
130
120
110
100
90
80
70
60
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-1

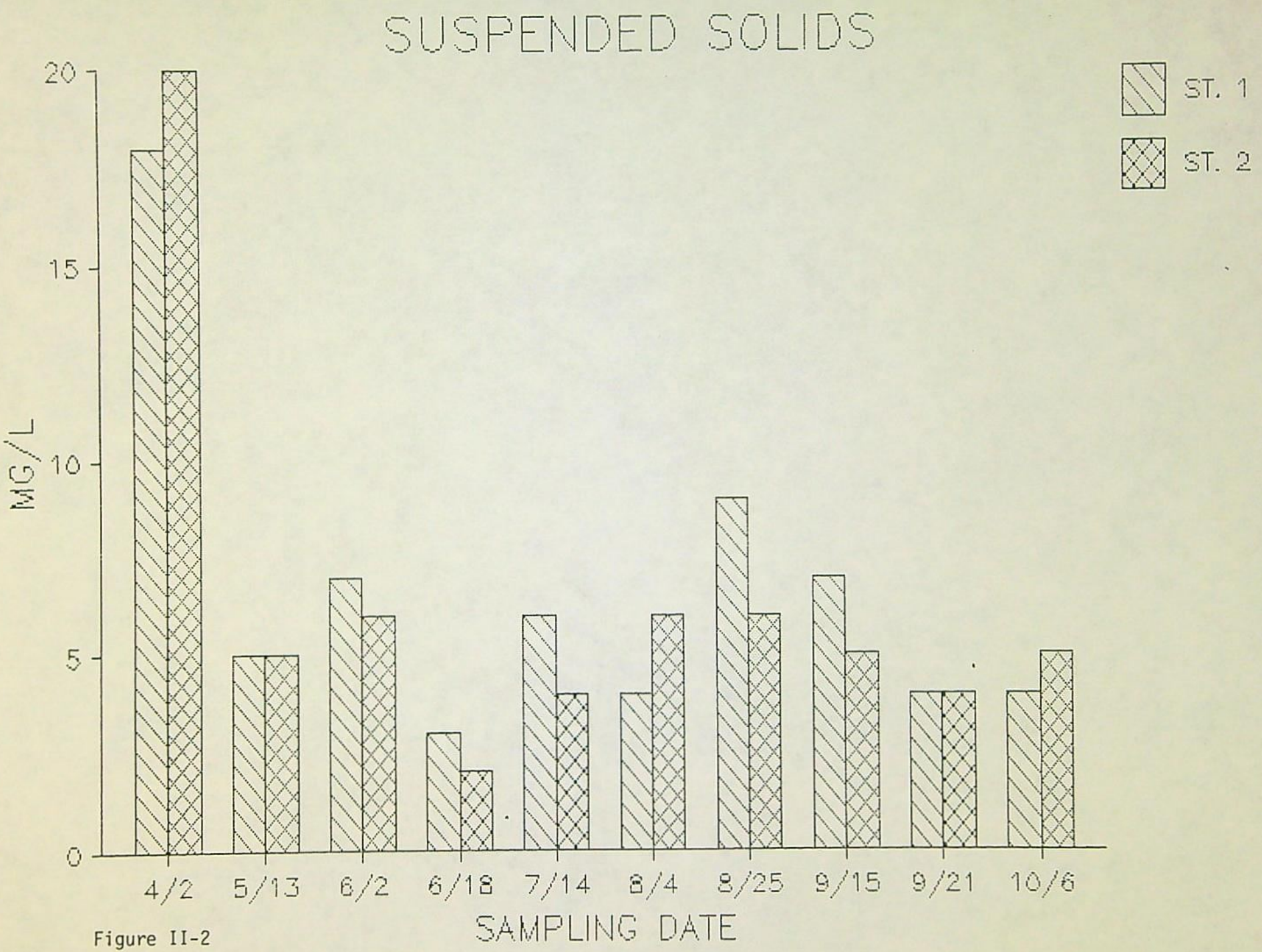

SUSPENDED SOLIDS
ST. 1
ST. 2
MG/L
20
15
10
5
0
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-2

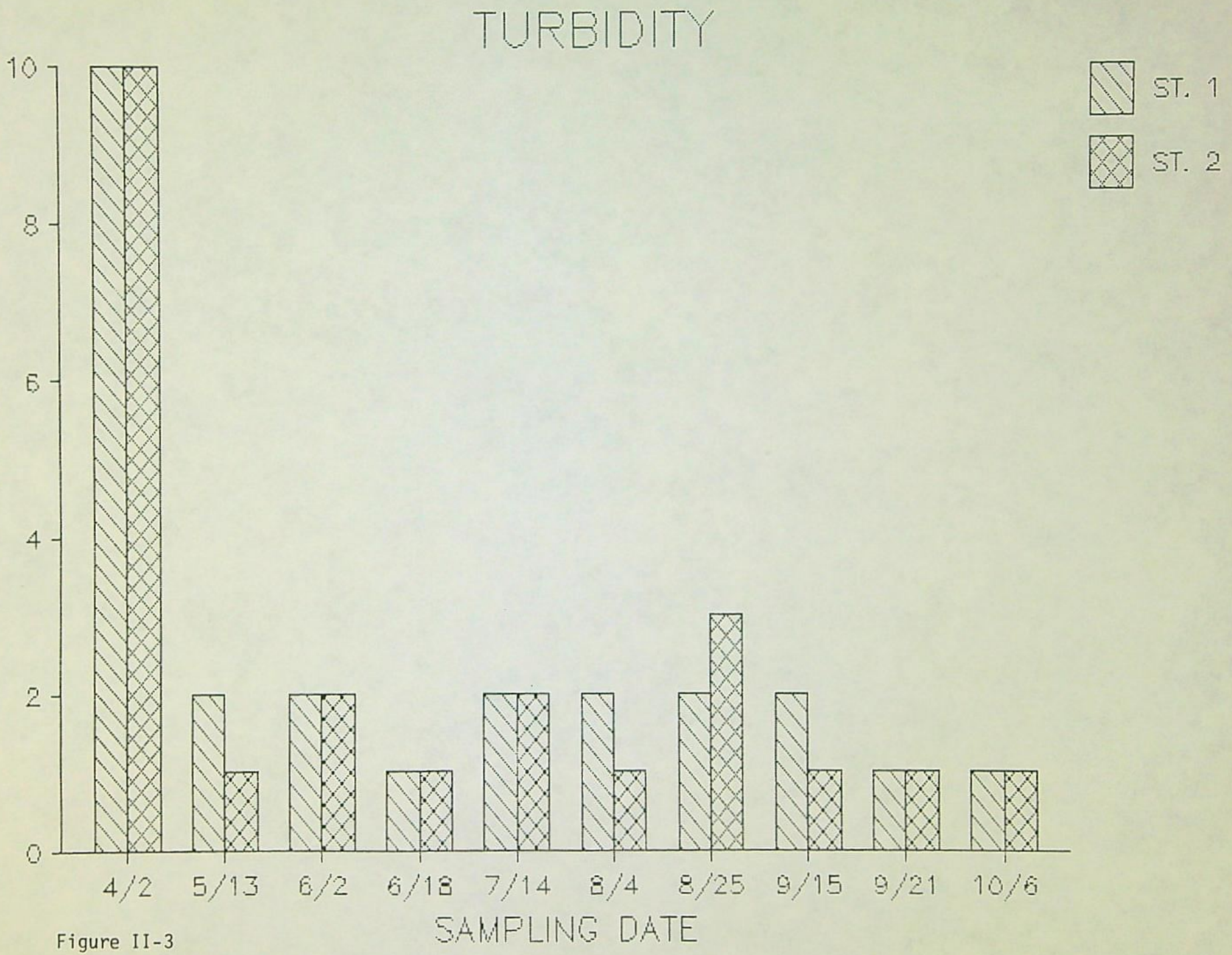

TURBIDITY
ST. 1
ST. 2
JTU
10
8
6
4
2
0
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-3

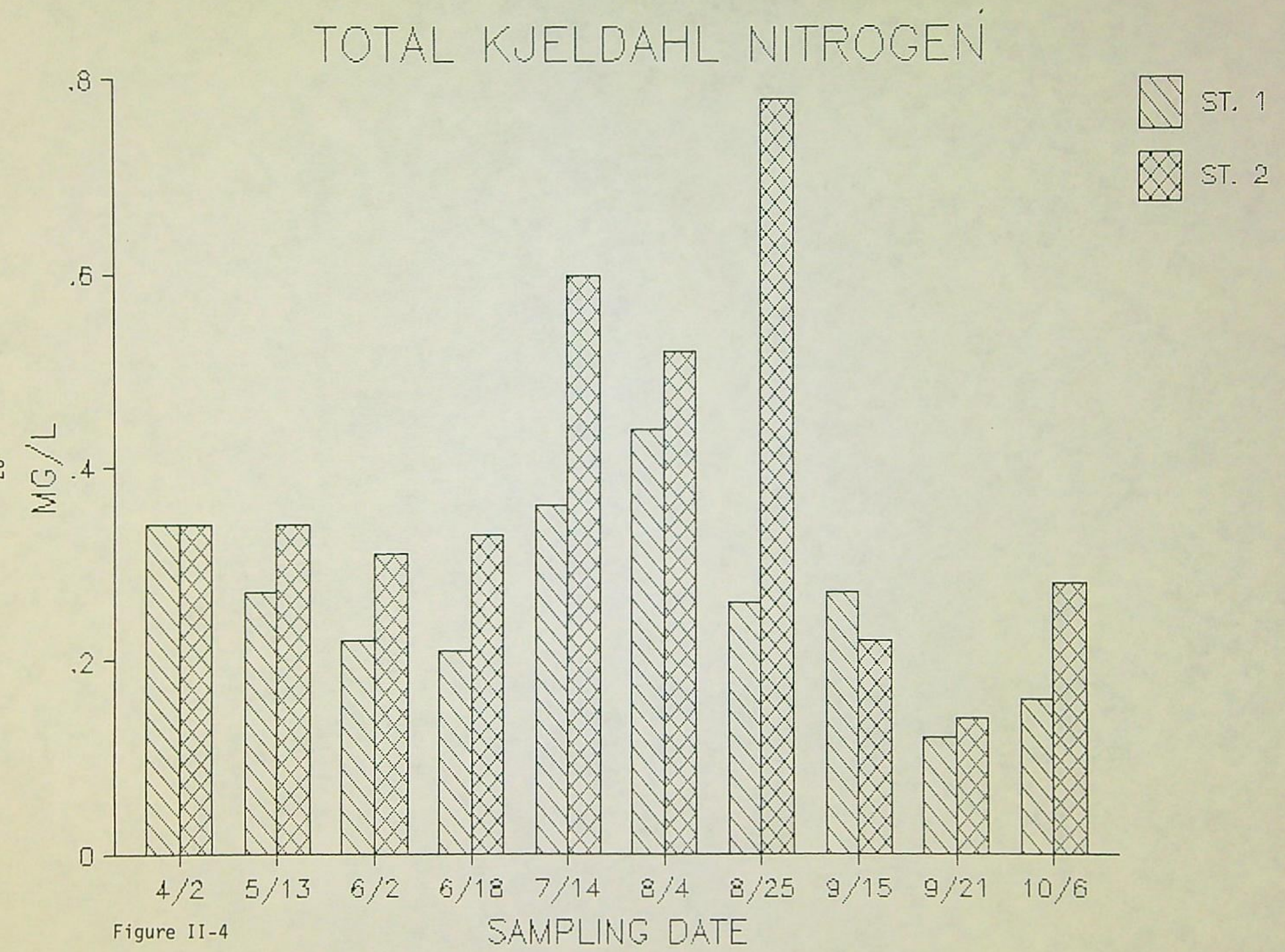

TOTAL KJELDAHL NITROGEN
ST. 1
ST. 2
MG/L
.8
.6
.4
.2
0
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-4

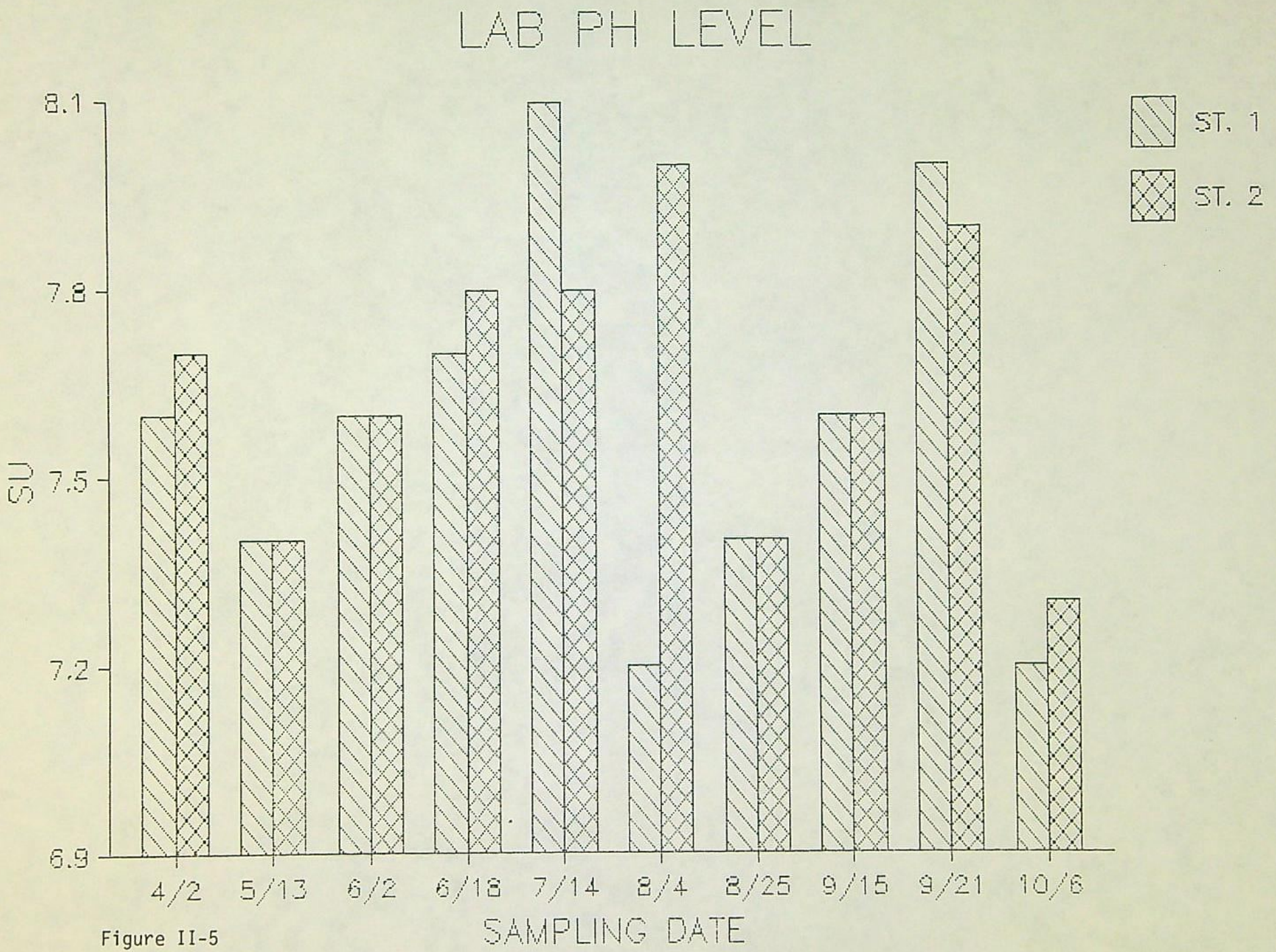

LAB PH LEVEL
8.1
7.8
7.5
7.2
6.9
SU
ST. 1
ST. 2
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-5

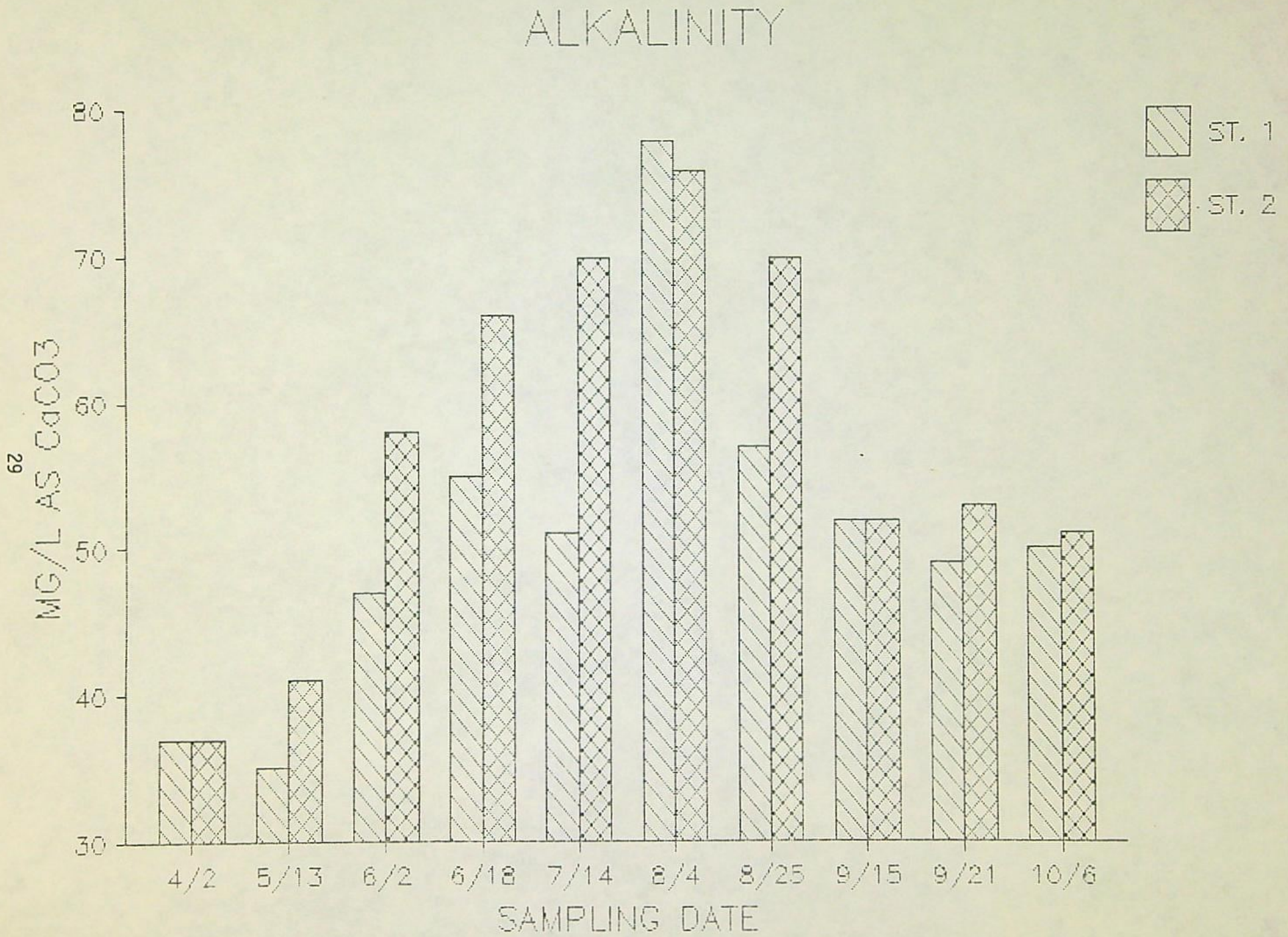

ALKALINITY
ST. 1
ST. 2
MG/L AS CaCO3
80
70
60
50
40
30
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-6

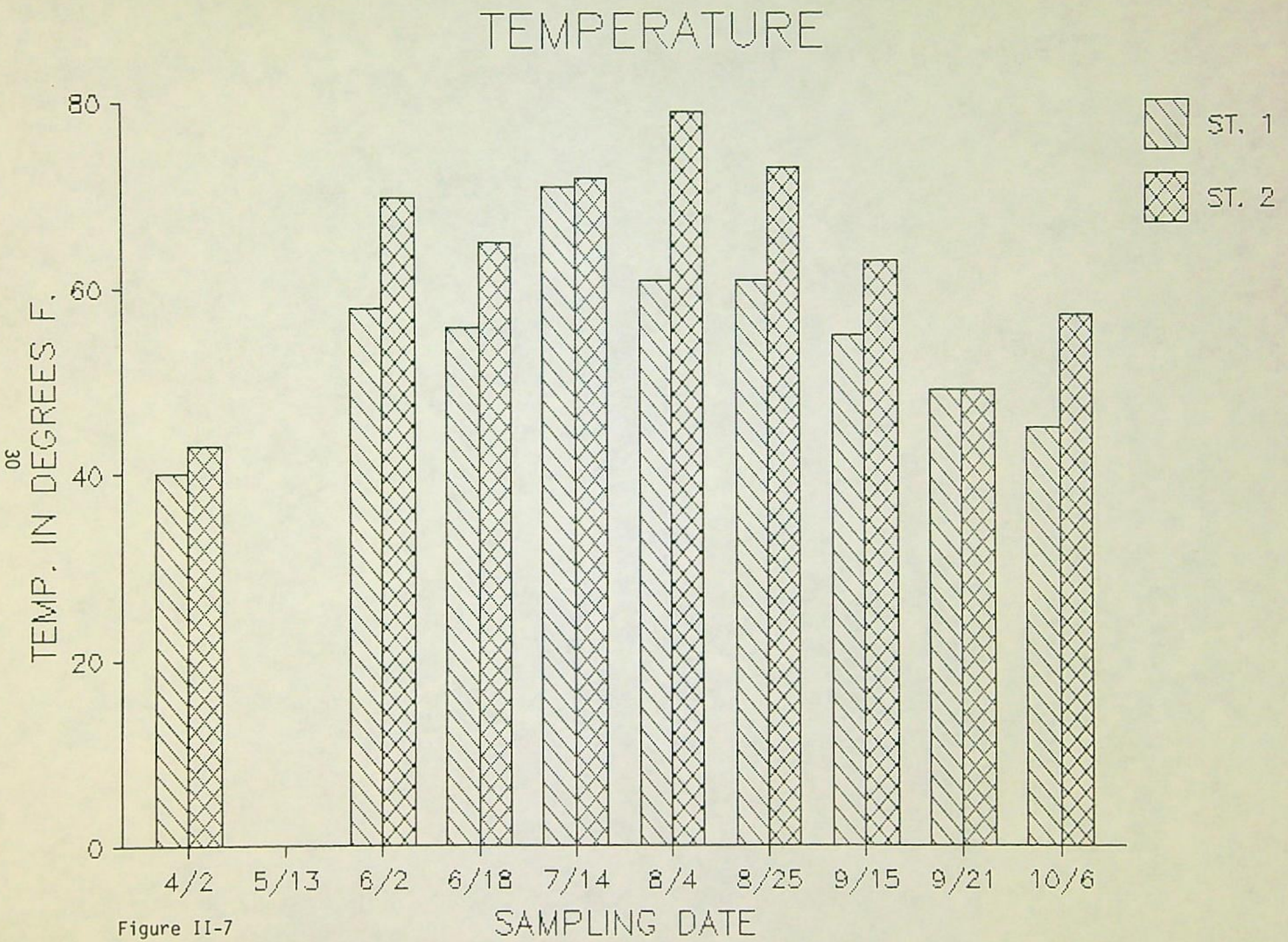

TEMPERATURE
80
60
40
20
0
TEMP. IN DEGREES F.
ST. 1
ST. 2
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-7

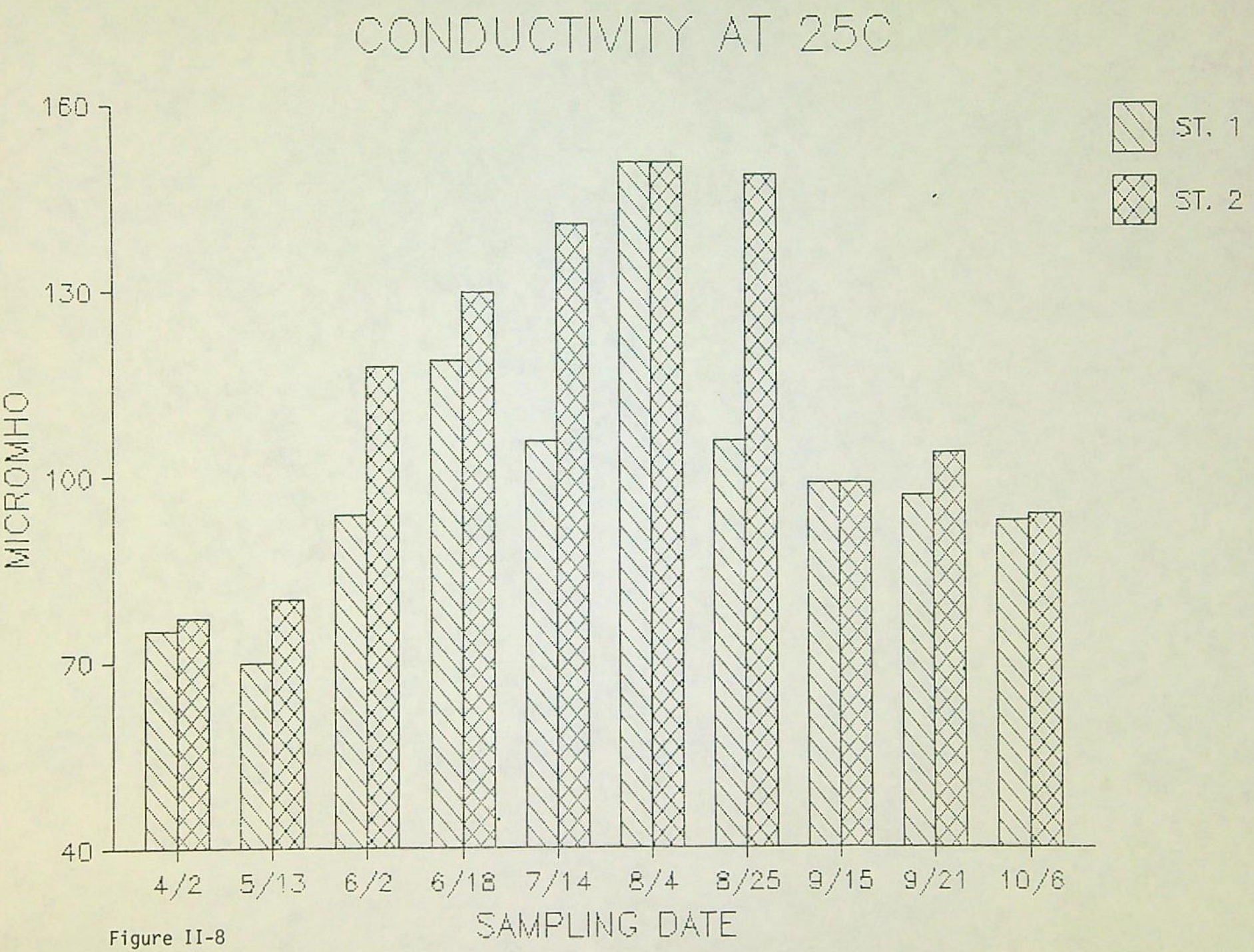

CONDUCTIVITY AT 25C
160
130
100
70
40
MICROMHO
ST. 1
ST. 2
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-8

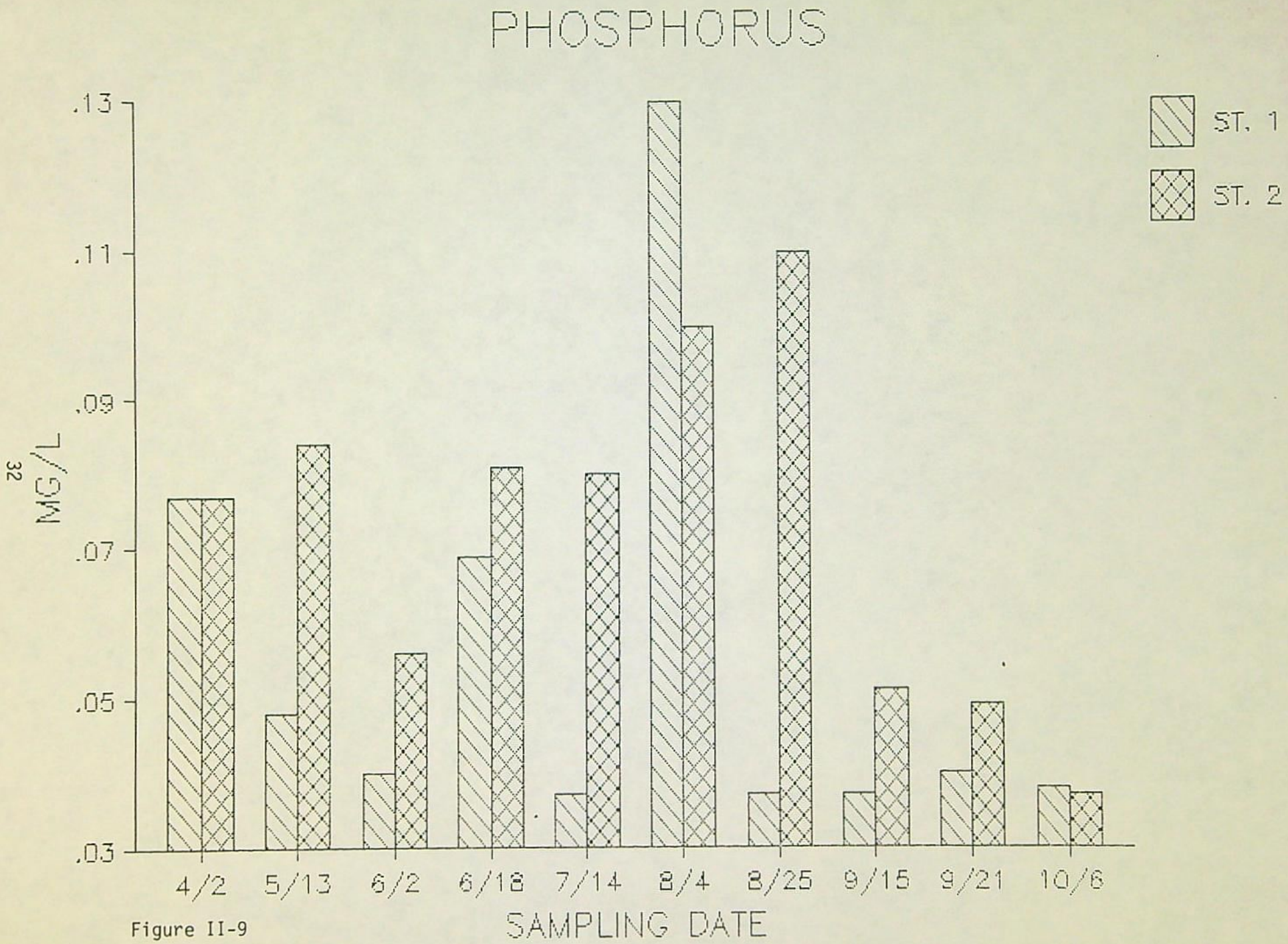

PHOSPHORUS
.13
.11
.09
.07
.05
.03
MG/L
32
ST. 1
ST. 2
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-9

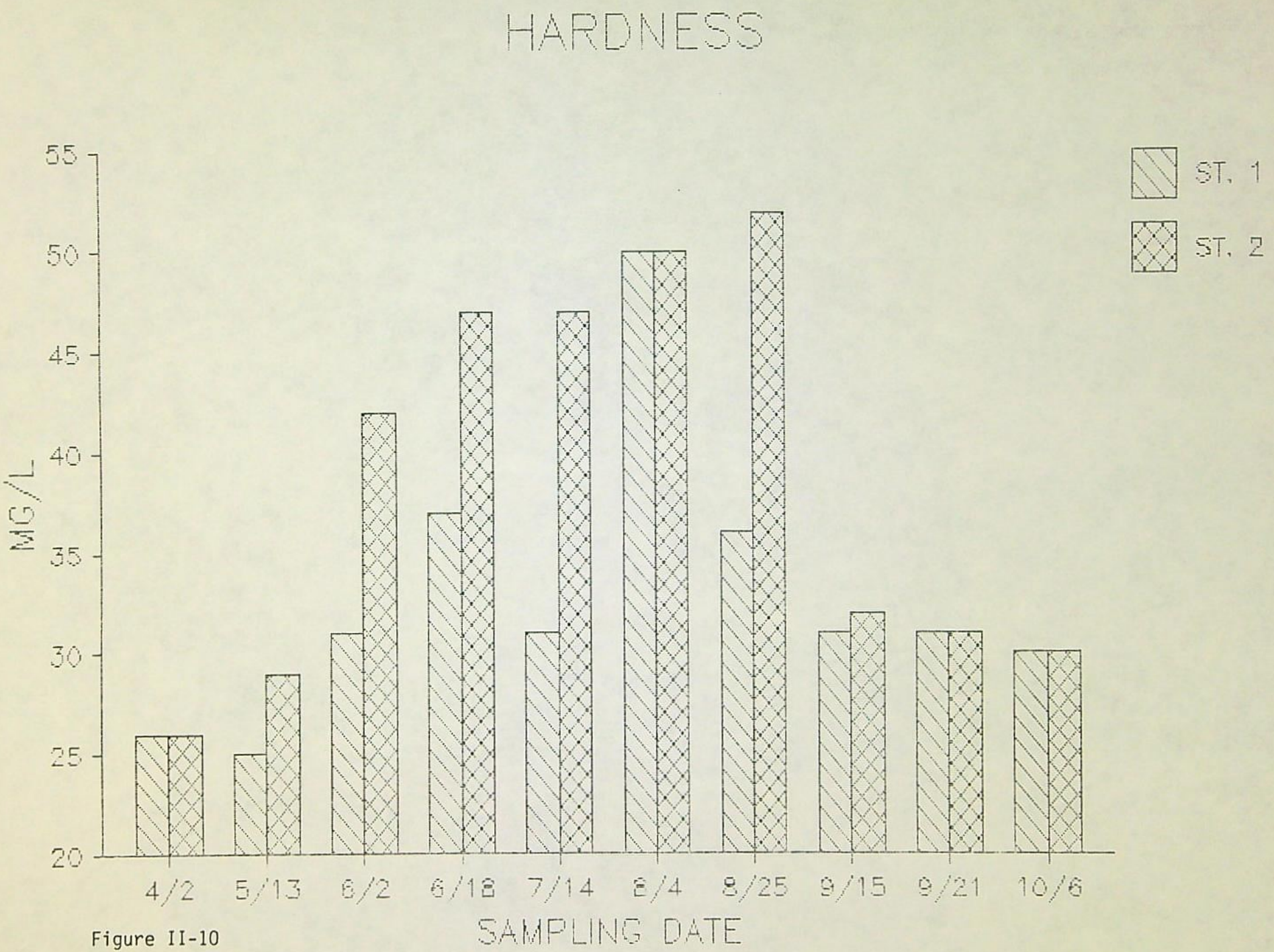

HARDNESS
ST. 1
ST. 2
MG/L
55
50
45
40
35
30
25
20
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-10

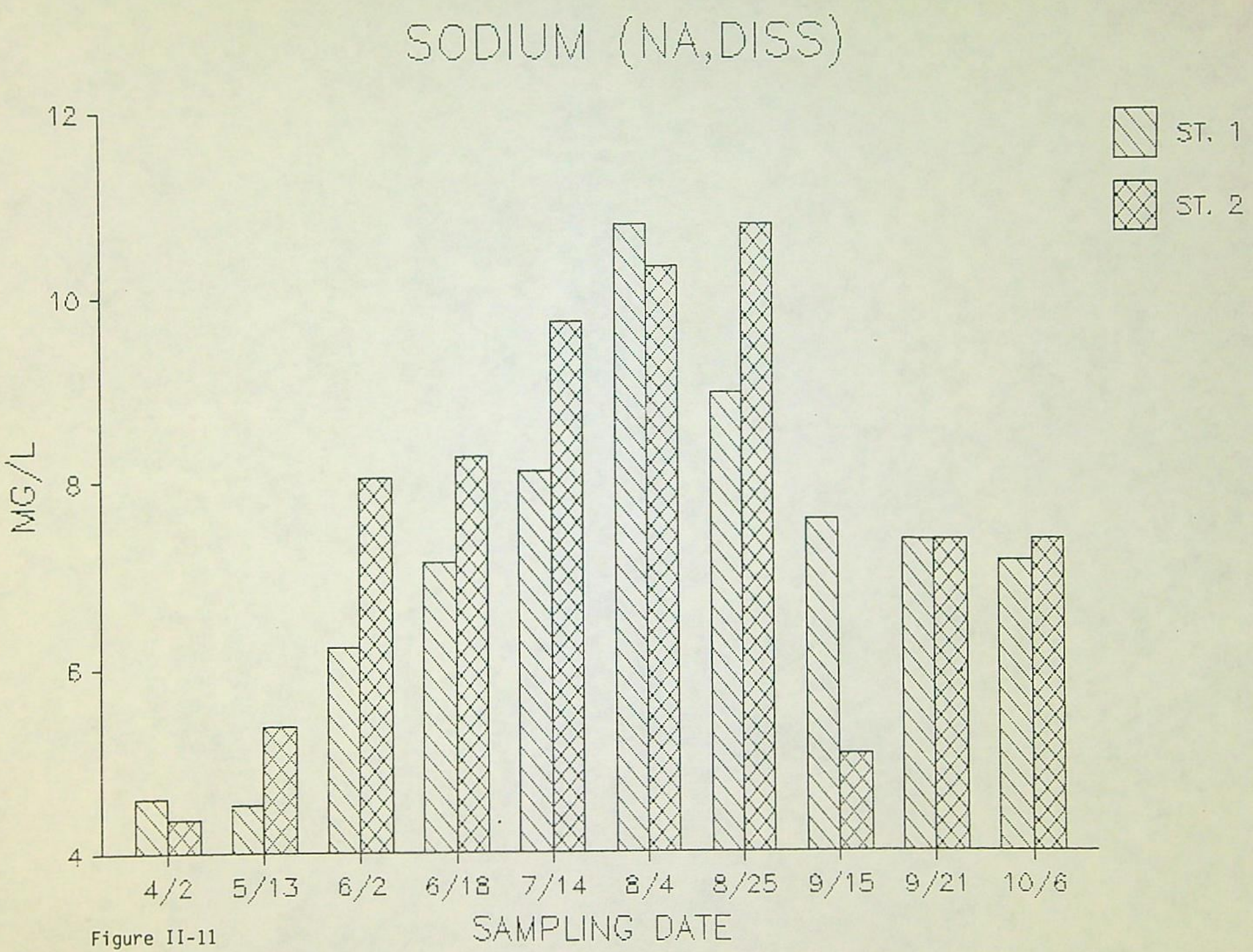

SODIUM (NA,DISS)
ST. 1
ST. 2
12
10
8
6
4
MG/L
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-11

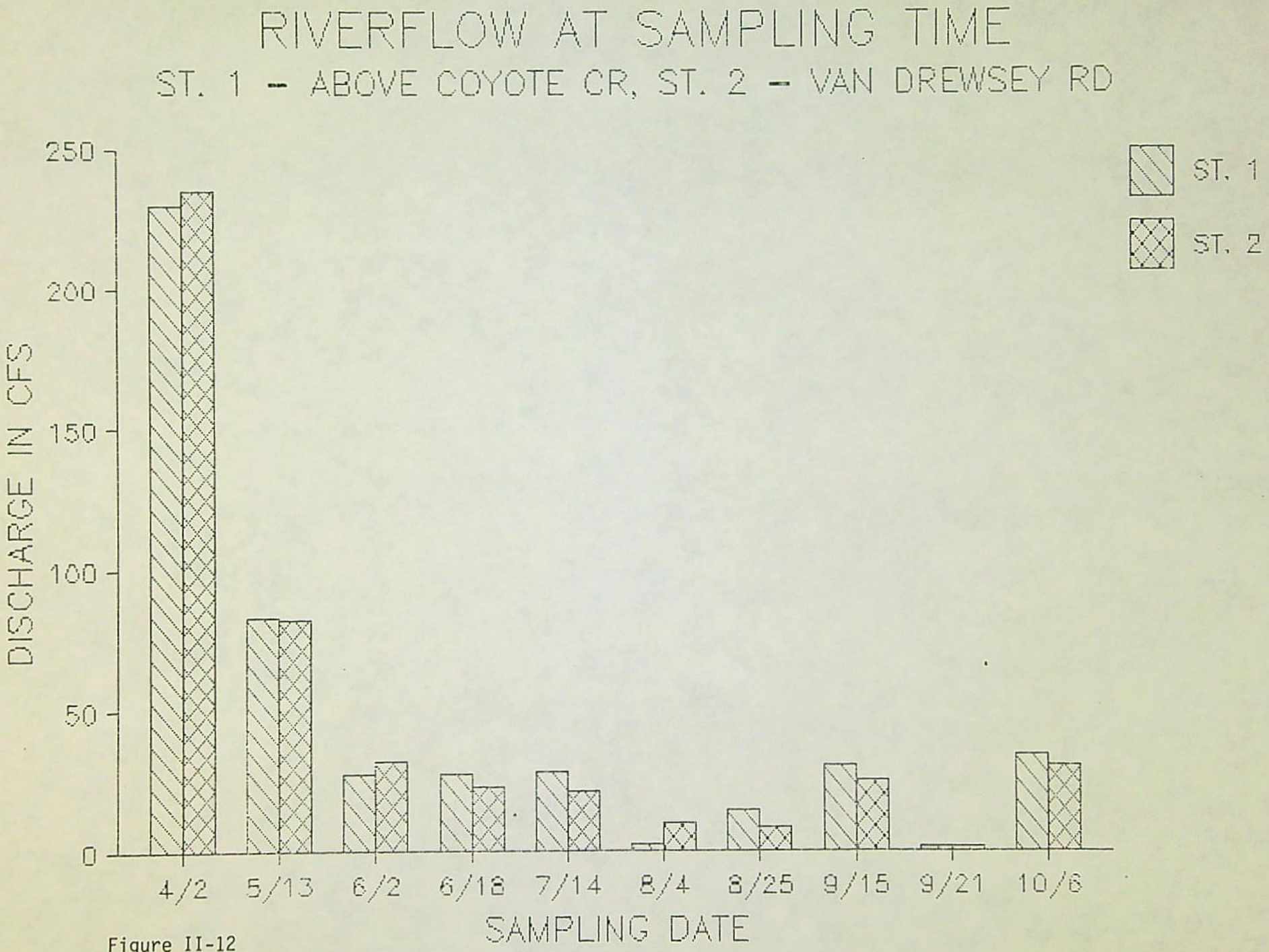

RIVERFLOW AT SAMPLING TIME
ST. 1 - ABOVE COYOTE CR, ST. 2 - VAN DREWSEY RD
ST. 1
ST. 2
DISCHARGE IN CFS
250
200
150
100
50
0
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-12

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3671

MEMORANDUM

TO: Water Resources Commission

FROM: Director J. E. Boucher for Director

SUBJECT: Agenda Item I, September 16, 1988, Water Resources Commission Meeting

Malheur Irrigation Return Flow Study

BACKGROUND

The Water Resources Department initiated the Malheur River Irrigation Return Flow Study in the winter of 1986. The study was intended to investigate water use practices in the Middle Fork Malheur River Basin. In addition, the study was a response to concerns expressed by water users in the Drewsey area. The users did not believe the adoption of a minimum perennial streamflow on the Middle Fork Malheur River would be of a greater benefit than the current uses of water.

Senate Bill 225, passed in 1983, authorized the Oregon Departments of Fish and Wildlife and Environmental Quality to request minimum perennial streamflows to support aquatic life and minimize pollution in streams of the state. In November 1983, under the new law, the Departments applied for a 15 cubic feet per second (cfs) minimum perennial streamflow on the Middle Fork Malheur River. The Water Policy Review Board adopted the 15 cfs minimum perennial streamflow on the Middle Fork Malheur River between Highway 20 near Drewsey and Warm Springs Reservoir on February 26, 1985.

Following the action, the Malheur River Water Users Association, representing irrigators in the area, petitioned the Water Resources Commission to amend the program by rescinding the minimum flow. The water users contended that implementing a minimum streamflow would change present water use practices. They stated that the application of water in excess of the amount allowed by right during high river flows serves as a means of storing more water in the soil. Water stored in the soil returns to the river as subsurface return flows

later in the summer. According to the water users, return flows account for much of the late summer flows in the river.

In January 1986, the Water Resources Department recommended the following three items to the Commission (Attachment 1):

1. The minimum perennial streamflow on the Middle Fork Malheur River not be rescinded.

2. A finding be added to the basin program recognizing the benefits and economic necessity of flood irrigation in the Middle Fork Malheur River.

3. The Department investigate the water use practices in the Middle Fork Malheur Basin and report to the Commission by early 1988.

The Commission agreed with recommendations 2 and 3, but rescinded the minimum flow. The Commission concluded that agricultural uses in the Middle Fork Malheur River Basin are of greater beneficial use than the minimum stream flow. Staff was instructed to investigate current water use practices in the basin and report to the Commission after the completion of such an investigation and the submission of a report. The report would include estimates and analysis of:

- The existing diversion rates.

- The existing consumption rates.

- The impact of diversions on the river.

- The amount and timing of irrigation return flows.

- Changes in water quality as it passed through the site.

- Water application efficiency rate.

Early in 1987, the Department selected a study site that diverted water from the Middle Fork Malheur River. The diverted water was applied to the project site via flood irrigation. Discharge records and water quality data were gathered for the 1987 irrigation season. The findings of the one year study were compiled into a report (Attachment 2).

On October 28, 1987, the Malheur River Basin Water Users Association filed an application for a permit to appropriate water from the Middle Fork Malheur River and some of its tributaries. The amount of water applied for is 128 cfs at 1/40 cfs/acre and will be used for supplemental irrigation of 5,127.0 acres from April 1 to June 1. The application is pending and requires the Commission's review.

DISCUSSION OF THE REPORT

The findings in the report are based on the available data and information. While some general conclusions can be made with confidence, a more detailed investigation would be required to provide specific answers to all the questions posed. Lack of detailed water resources information and complete ditch flow data somewhat limits the scope and findings of this report.

According to discharge records, irrigation started in the project area on April 23 and finished on September 3. The duty of water is 3 acre-feet/acre at the point of diversion during the designated irrigation season. There are 857 acres in the project area. The Middle Fork Malheur River divides the project area into a west and an east field. Two major diversion ditches, called the Moffet and the Ellingson ditches, divert water onto the west field which is 573 acres in size. The Moffet and Ellingson ditches were the only two ditches that were gaged at points of diversion. Three other ditches, the Bailey, Lillard and an unnamed ditch, diverted additional water onto the west field. Since the three ditches were not gaged at the diversion points, it is not known what amount of water was diverted into these ditches. The Bentz ditch is used to irrigate the east field which is 284 acres in size; however, the ditch was not gaged at the diversion point.

The Moffet and Ellingson ditches diverted 5,276 acre-feet of water onto the west field. This amount indicates a diversion of slightly more than 9 acre-feet/acre. Such rate surpasses the 3 acre-feet/acre diversion-point water duty by 6 acre-feet/acre. Early in the irrigation season (April 24-June 2), water was diverted at a combined mean flow rate of about 42 cfs into the Moffet and Ellingson ditches. Mean river flow just below the above diversions was about 70 cfs. While ditch flow remained almost the same, river flow started to drop towards the end of May. Based on the difference between total inflow and total outflow, water consumed in the project area totaled to 2,924 acre-feet (3.42 acre-feet/acre).

According to the findings of this study, no significant correlation could be found between early spring flooding of fields and late summer river flows. Irrigation return flows of magnitude that would significantly enhance summer river flows could not be detected. It appears that a significant amount of the water that was diverted for flooding fields returned to the river via overland flows before early June. Any return flows that may have occurred during the summer months are very likely to have resulted from summer irrigation.

Little information is available on the site's groundwater and soil moisture holding capacity. Therefore, solid answers and explanations can not be provided regarding subsurface water behavior.

According to the SCS Farm Irrigation Rating Index and the Oregon Engineering Handbook - Irrigation Guide, the crop in the project area (natural meadow hay) on the average requires 1.8 acre-feet of water during the growing season. According to the above requirement, the west field water application efficiency rate is estimated to be about 20 percent. Theoretically, this means that 1,040 acre-feet of the 5,276 acre-feet water diverted by the Moffet and Ellingson ditches was consumptively used by the crop. The remaining water (4,236 acre-feet) was lost to other factors such as conveyance, surface runoff, deep percolation, uptake by bank vegetation and direct evaporation. Discharge records and other information suggest that of the 9 acre-feet/acre diverted onto the west field, 1.8 was consumptively used by the crop, 1.6 was unaccounted for and the remaining 5.58 acre-feet returned to the system mostly via overland flows before early June.

During the irrigation season, water quality slightly deteriorated as it passed through the site. Water samples taken at the lower end of the project area showed increased levels for water quality parameters and elevated temperatures. Water quality may have deteriorated mainly because of declining stream flows as the season progressed and perhaps other land and water management practices within and outside the project area. In general, water quality parameters did not violate the DEQ standards for the Malheur River.

SUMMATION AND EVALUATION

The Malheur Irrigation Return Flow Study Report, although limited in scope, has been an important step toward documenting current water use practices in the Middle Fork Malheur River Basin. The study confirms the proposition that existing diversion rates exceed the acre-foot limitation of the water rights. It also provides sufficient information to challenge the claim that early excess flood irrigation contributes significantly to late season flows. Staff concludes that additional detailed water use and hydrological studies are not needed to address the policy issues that were before the Commission. These are the issues of a minimum perennial streamflow on the Middle Fork Malheur River and the appropriation of the 128 cfs additional water requested by the Malheur River Basin Water Users Association.

DIRECTOR'S RECOMMENDATION

The staff recommends that:

1. The Commission approve the report for distribution to interested parties such as the Oregon Departments of Fish and Wildlife and Environmental Quality, the Malheur River Basin Water Users Association, and others.

2. The Commission consider the findings of the study when taking action on the application for supplemental irrigation water as requested by the water users.

3. The Commission readdress the issue of a minimum perennial streamflow on the Middle Fork Malheur River in conjunction with resolving the application.

Attachments: 1) Water Resources Commission meeting minutes - page 8 - January 17, 1986.
2) Malheur River Irrigation Return Flow Study Report.

Amin Wahab:rgs
378-3671
August 18, 1988

1122g

ATTACHMENT 1

WATER RESOURCES COMMISSION

JANUARY 17, 1986

Salem

MINUTES

Commission members present:

Joe Richards, Chairman
Jack Hoffbuhr, Vice-Chairman
Ralf Hakanson
Lorna Stickel
William Cramer
Kess Cannon
William R. Blosser

Staff members present:

Bill Young
Jan Shaw
Ann Squier
Beverly Hayes
Darrell Learn
Tom Kline
Becky Kreag
Marshall Gannett
Bud Bartels
Larry Jebousek
Steve Brutscher

Others:

Richard Glick
Swiss Burnett
Tom Darnell
Tom and Audrey Simmons
Ken Bentz
Tom Howard
Sam Tucker
David Hill
Jack Nichols
Preston and Willia Jannsen
Gilbert Clayton
John Charles
Doug Myers
Mary Gray Holt
Terence Thatcher

The staff reports presented at this meeting, which contain the Director's recommendations mentioned in these minutes, are on file in the Office of the Director of the Water Resources Department, 3850 Portland Road, NE, Salem, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

A. MINUTES OF DECEMBER 2, 1985, WATER RESOURCES COMMISSION MEETING.

It was MOVED by Kess Cannon, seconded by Jack Hoffbuhr, and passed unanimously that the minutes be approved.

F. RECONSIDERATION OF MINIMUM PERENNIAL STREAMFLOW ON THE MALHEUR RIVER

The Malheur Water Users Association, an organization representing ranchers in the Drewsey area, petitioned the Water Resources Commission to rescind the minimum perennial streamflow established on the Middle Fork Malheur River. Reasons cited included failure to consider the beneficial impact that excessive water use during high-flow periods may have on minimum flows and the economic impact minimum flows may have on ranchers.

Bill Cramer, representing the Water Resources Commission, conducted a hearing on November 7, 1985, in Drewsey. At least 35 persons attended the hearing, most being local ranchers. The hearing record produced some new information, but issues remained much the same as when the minimum streamflow was adopted. Proponents of the minimum streamflow urged the WRC to base the decision on the information from the original mininum streamflow record as well as the record of this hearing.

Director's Recommendation

The staff recommended that:

1. The minimum perennial streamflow on the Middle Fork Malheur River not be rescinded.

2. A finding be added to the basin program recognizing the benefits and economic necessity of flood irrigation in the Middle Fork Malheur River.

3. The Department investigate the water use practices in the Middle Fork Malheur River Basin and report to the Commission on or before January 2, 1988.

The report will include estimates and analysis of:

- The existing diversion rates.

- The amount and location of return flow.

- The impact of current irrigation practices on downstream water needs and uses.

- The impact and associated cost of conservation measures.

John Charles, Oregon Environmental Council, spoke in support of the Director's recommendation.

It was MOVED by Lorna Stickel and seconded by Bill Cramer to rescind the minimum flow and to include Recommendation Items 2 and 3 as part of the order with the findings that agricultural uses in this basin are of greater beneficial use than the minimum streamflow. Item 3 in the Director's Recommendation would be amended to include an instruction to staff to "seek and evaluate water use data forwarded by the users."

Kess Cannon voted no; Bill Blosser abstained. The motion passed.

Joe Richards excused himself and left the meeting at this point.

ATTACHMENT 2

MALHEUR IRRIGATION RETURN FLOW STUDY

AUGUST 1988

OREGON WATER RESOURCES DEPARTMENT

SALEM, OREGON

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INTRODUCTION

The Water Resources Department initiated the Malheur River Irrigation Return Flow Project in the winter of 1986. The project was carried out in response to concerns, by water users in the Drewsey area, about adoption of a minimum perennial streamflow on the Middle Fork Malheur River between Highway 20 and Warm Springs Reservoir.

Irrigators in the Drewsey area contended that implementing such a requirement would interfere with traditional methods of irrigated agriculture in the area. They state that traditional flood irrigation methods benefit the river and downstream users throughout the irrigation season, particularly in the summer months when streamflows decline. These benefits arise from the slow return (percolation and seepage) of water from supersaturated fields to the river during low river-flows. Irrigation return flows augment low streamflows, and benefit out-of-stream and instream users of water. According to the irrigators, flood irrigation also helps improve water quality, recharges ground water and reduces soil alkalinity.

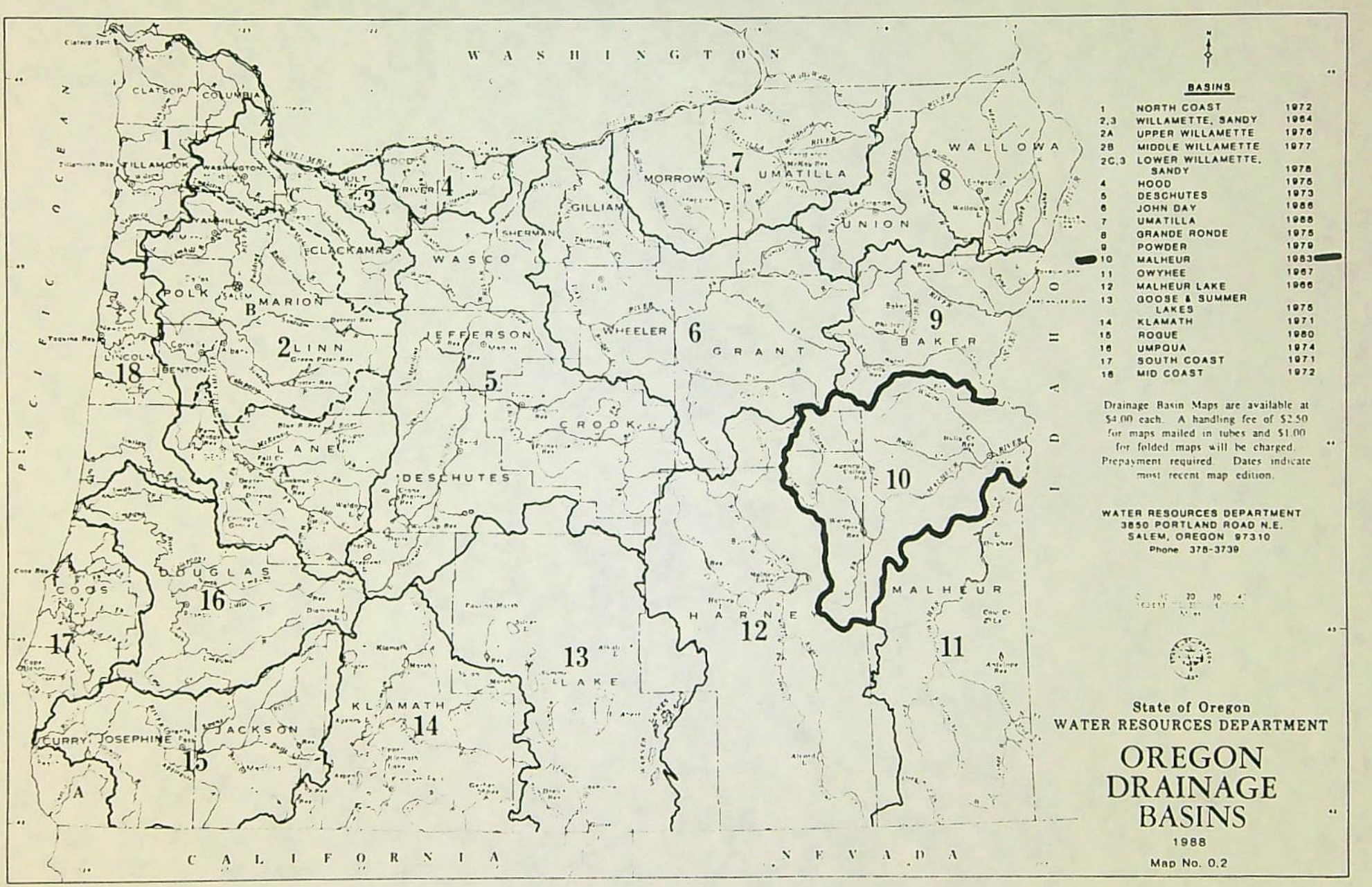
This report analyzes water quantity and quality data to determine potential impacts and trends associated with the use of irrigation water in the Middle Fork Malheur River Basin. The report is based on data for the 1987 irrigation season and deals with the physical aspects of water use only. Other aspects of water use, such as the socioeconomic and institutional aspects are not discussed in this report.

MALHEUR RIVER BASIN DESCRIPTION

The Malheur River Basin is located in southeastern Oregon and drains about 4,000 square miles. The Malheur River originates in the Strawberry Range of the Blue Mountains and flows south. The main stem of the Malheur River flows 190 miles from the point of origin to the confluence of the river with the Snake River (Figures 1 & 2). The major portion of the basin is in Malheur County. However, the river begins in Grant County and the South and North Forks originate in Harney and Baker Counties. Major tributaries of the Malheur River are Bully Creek and Willow Creek in Malheur County.

Physiography:

The Malheur River Basin is part of the Oregon high desert, except for its northwestern portion where topography is rugged and elevation high. The average basin elevation ranges from 3,000 feet to 6,000 feet above sea level. The two elevation extremes are in the Strawberry Range and along the Snake River where elevation is 8,600 feet, and 2,000 feet respectively. The basin


WASHINGTON
PACIFIC OCEAN
IDAHO
CALIFORNIA
NEVADA
CLATSOP
COLUMBIA
TILLAMOOK
WASHINGTON
HOOD RIVER
WASCO
SHERMAN
GILLIAM
MORROW
UMATILLA
WALLOWA
UNION
CLACKAMAS
POLK
MARION
LINN
JEFFERSON
WHEELER
GRANT
BAKER
LINCOLN
BENTON
CROOK
LANE
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BASINS
1 NORTH COAST 1972
2,3 WILLAMETTE, SANDY 1964
2A UPPER WILLAMETTE 1976
2B MIDDLE WILLAMETTE 1977
2C,3 LOWER WILLAMETTE, SANDY 1978
4 HOOD 1976
5 DESCHUTES 1973
6 JOHN DAY 1986
7 UMATILLA 1988
8 GRANDE RONDE 1976
9 POWDER 1979
10 MALHEUR 1983
11 OWYHEE 1967
12 MALHEUR LAKE 1966
13 GOOSE & SUMMER LAKES 1976
14 KLAMATH 1971
15 ROGUE 1980
16 UMPQUA 1974
17 SOUTH COAST 1971
18 MID COAST 1972
Drainage Basin Maps are available at $4.00 each. A handling fee of $2.50 for maps mailed in tubes and $1.00 for folded maps will be charged. Prepayment required. Dates indicate most recent map edition.
WATER RESOURCES DEPARTMENT
3850 PORTLAND ROAD N.E.
SALEM, OREGON 97310
Phone 378-3739
State of Oregon
WATER RESOURCES DEPARTMENT
OREGON DRAINAGE BASINS
1988
Map No. 0.2

Figure 1.

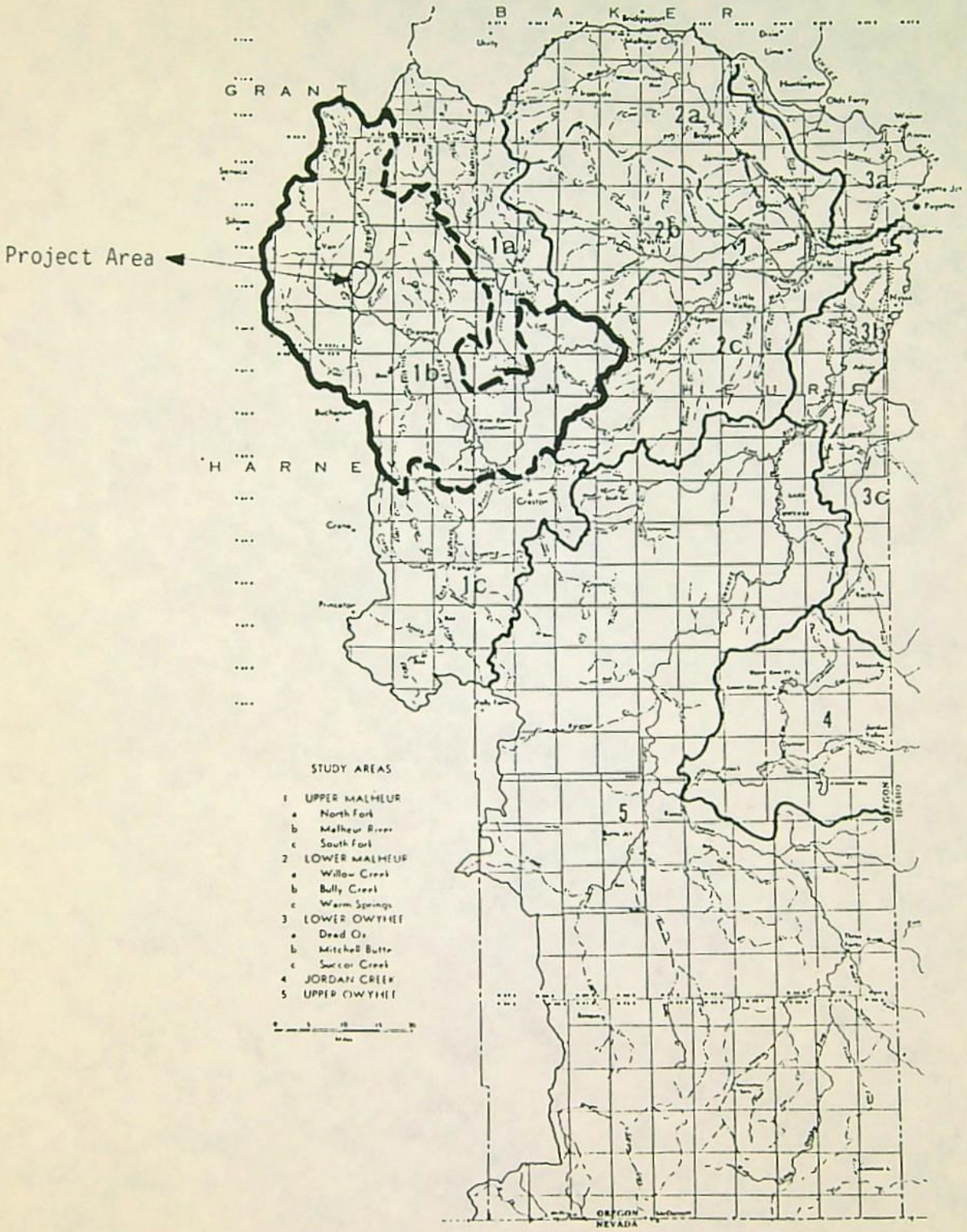


Figure 2. Middle Fork Malheur Basin and Project Area

has a semiarid climate, with hot dry summers and cold winters. Spring and fall are relatively moderate. Annual temperature extremes usually occur in January and July. Average minimum January and average maximum July temperatures in higher elevation agricultural valleys are 16 and 95 degrees F respectively. Elevation has a direct influence on the basin's precipitation, temperature, and growing season.

Annual precipitation varies from as high as 40 inches in the Strawberry Range to as low as 10 inches in lower elevations. Snowmelt provides streamflows in spring and early summer.

The frost free period (growing season based on 32 F), for the basin ranges from 118 to 180 days, but can be as short as 70 days at higher elevations.

WATER SUPPLY, USE AND APPROPRIATION IN THE MIDDLE FORK MALHEUR RIVER SUB-BASIN

Water supply and availability in the basin depend on annual precipitation and stream-flows. Precipitation and streamflows vary widely from wet to dry years and from winter to summer. At Drewsey, the Middle Fork Malheur River can flow as high as 12,000 cfs during its peak flow in the spring. The river can be virtually dry in some summers. Stream-bank erosion and sedimentation are associated with high spring runoff.

MIDDLE FORK MALHEUR RIVER FLOW ANALYSIS 1927 - 1982 AVERAGE FLOW (CFS) AT DREWSEY GAGE 13214000

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
38	66	104	146	258	427	651	345	135	26	10	12

Based on the above monthly flow rates, the Middle Fork Malheur River yields 133,300 acre-feet of water/year at the Drewsey station.

It is estimated that irrigation makes up 95% of the consumptive water use in the area. Field flooding, during high spring runoff, is the common irrigation method in the Drewsey area. Excessive application frequently takes place early in the irrigation season to build soil moisture for forage crop production. Appendix I includes a discussion of flood irrigation method and its efficiency rate in the project area.

Annual surface water rights, upstream from Warm Spring Reservoir, are 39,500 acre-feet. The above rights permit irrigation of 13,166 acres (3 acre-feet/acre) using a maximum allowable rate of 580 cfs form April to October. According to Malheur-Owyhee Basins Report, there is practically no unappropriated surface water during the irrigation season. No storage reservoirs exist on the Middle Fork Malheur River above Drewsey.

Groundwater is not extensively used for irrigation in the Middle Fork Malheur River subbasin. Department records show three wells and one sump that are used for irrigation and industrial uses in the Middle Fork Malheur River subbasin. One sump and one shallow well are only 14 and 18 feet deep and may be tapping surface water. Other wells in the subbasin are used for domestic and livestock purposes, however, well reports were not recorded by the Department prior to 1955. No evidence of a groundwater shortage or depletion have been documented in the area. Natural recharge is probably sufficient to balance current uses of groundwater.

MALHEUR IRRIGATION RETURN FLOW PROJECT

Study Objectives:

The Malheur Irrigation Return Flow Project has three major objectives:

1 - Determining changes in water quantity between points of project inflow and outflow.

2 - Determining the lag time between diversion of water for irrigation and return flows to the river.

3 - Determining changes in water quality between points of project inflow and outflow.

Study Organization:

The Malheur Irrigation Return Flow Project was sponsored and coordinated by the Oregon Water Resources Department. Field surveys were made by the Department's Hydrographic Section. The Department's watermaster provided assistance in recording data and other related information.

The U.S. Bureau of Reclamation provided considerable support to the Water Resources Department in the analysis of water quality. Water samples, collected throughout the irrigation season, were sent to the Bureau of Reclamation Water Quality Analysis Lab in Boise, Idaho. A total of ten samples were taken at each of the two river gaging stations in the project area throughout the irrigation season.

Further assistance was provided by property owners in the project area and the Harney County Road Department.

Project Location, Size and Land Ownership:

The project site, figure 3, is located in the northwestern portion of the Malheur River Basin on the banks of the Middle Fork Malheur River, approximately ten miles northwest of Drewsey.

The project lies between stream-mile 168 (crossing of Van Drewsey Rd.), and stream-mile 171 (Malheur River above Coyote Creek). The site has an area of approximately 857 acres which is almost entirely pasture and irrigated cropland. The river divides the site into two fields, a west field and an east field (Figure 4). The west field is 573 acres in size and the east field is 284 acres. The west field is irrigated by the Moffet and Ellingson ditches and the east field is irrigated by the Bentz ditch. Three other ditches, the Bailey, Lillard and an unnamed ditches, also seem to divert water onto the west field.

The site is located on private land in two ownerships. Most of the west field is owned by Ken Bentz. The entire east field and portions of the west field are owned by Glen Ellingson.

Topography And Soils:

Topography of the project site is comprised mainly of alluvial fans, lying on the floodplain of the Malheur River. The whole project area is surrounded by hills which makes it a well defined site for the purpose of this study.

Soils in the area vary in texture, drainage, slope, structure and depth. Irrigation suitability of the soils, in the project area and immediate vicinity, falls into three categories:

a. Soils along the banks of the Malheur River and Coyote Creek are rated good. These are silty soils and range from well drained to poorly drained. The above soils have slopes ranging from 0 to 3 percent.

b. Soils east of the river floodplain (the Johnson ditch area), are rated poor. These are loamy soils with shallow depths and 7 to 12 percent slope .

c. Soils west of the river floodplain are rated fair. These are loamy, moderately deep soils with 7 to 20 percent slopes.

Site Selection Criteria:

Project site selection was based on the following criteria:

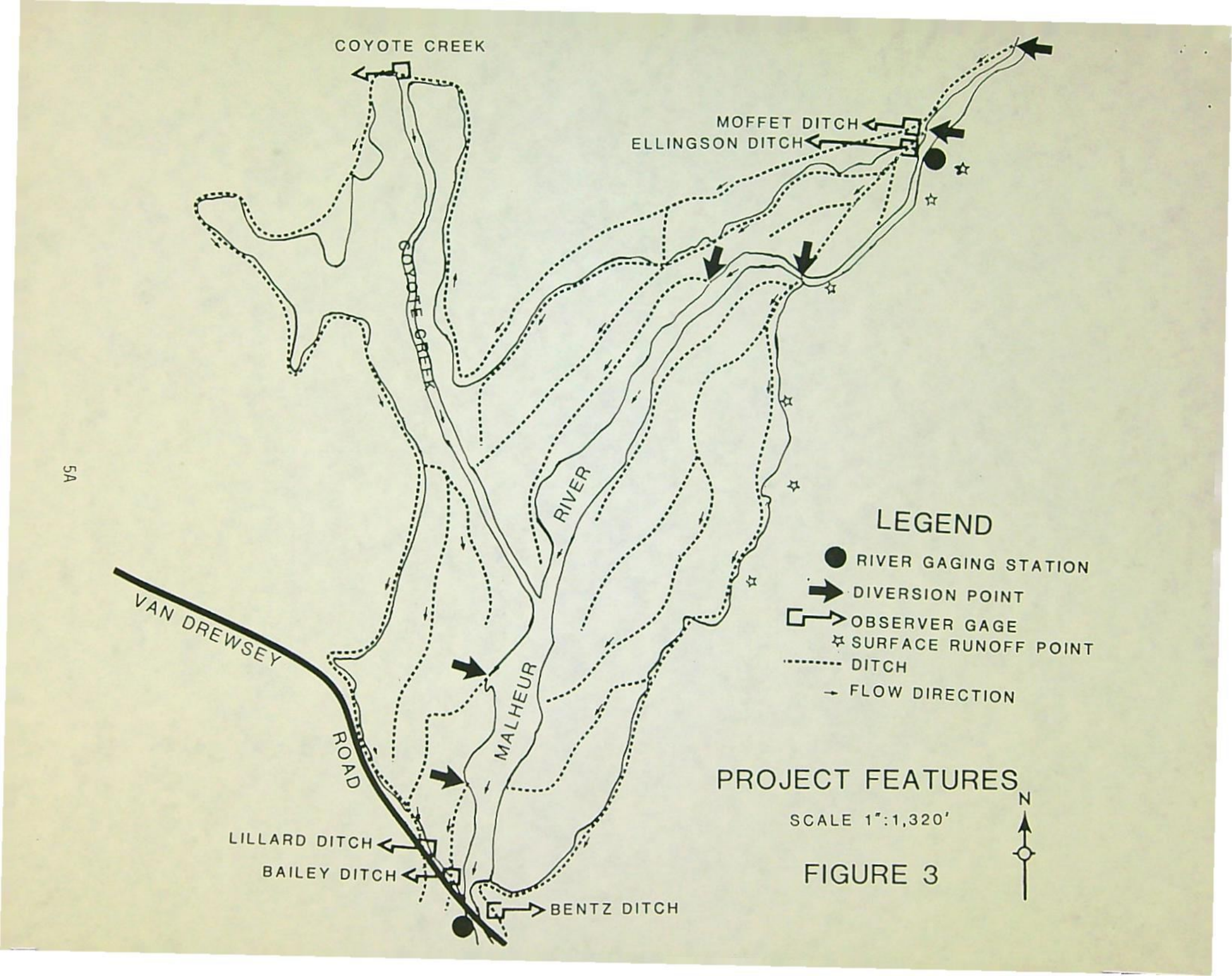
A - A site representing the physiography of the Middle Fork Malheur River Basin

B - A site representing typical flood irrigation practices

C - A site where water inflow and outflow could be well defined

D - A site requiring minimum monitoring personnel and equipment

E - A site where landowner cooperation was available


COYOTE CREEK
MOFFET DITCH
ELLINGSON DITCH
COYOTE CREEK
RIVER
MALHEUR
VAN DREWSEY
ROAD
LILLARD DITCH
BAILEY DITCH
BENTZ DITCH
LEGEND
RIVER GAGING STATION
DIVERSION POINT
OBSERVER GAGE
SURFACE RUNOFF POINT
DITCH
FLOW DIRECTION
PROJECT FEATURES
SCALE 1":1,320'
N
FIGURE 3

COYOTE CREEK
WEST FIELD
MALHEUR RIVER
EAST FIELD
VAN DREWSEY ROAD
SCALE 1":1,320'
N

FIGURE 4

Project Duration:

The project was initiated in October of 1986. The Water Resources Department personnel installed two gaging stations on the Malheur River on October 1, 1986. Continuous stage recorders were installed at the two stations on February 24, 1987. Data recording and site inspection were done from April 2, 1987, before the start of the irrigation season, through November 3, 1987, after the end of the irrigation season. Irrigation in the area usually starts during the second week of April and ends during the first week of September.

The department's Hydrographic Section completed preliminary analysis of flow records in December of 1987.

PROJECT MONITORING METHODS

Two points were selected for monitoring river inflow and outflow in the project area. A Stevens A-71 analog recorder was installed at each of the two stations. Malheur River inflow was recorded above Coyote Creek (locally known as the Old Peterson Place), station # 13213400, and its outflow was recorded at station # 13213420 (Van Drewsey Road crossing).

Observer gages were placed on two diversion and three outflow ditches at five locations and on Coyote Creek (Figure 3). The Moffet and Ellingson ditches, and Coyote Creek were gaged for inflow into the project. The Lillard, Bailey, and Bentz ditches were gaged for outflow from the project. There were also six surface runoff reference points for monitoring any potential seepage into the project area from the Johnson ditch. Any measurable amount of water from these points was included in the total project inflow. There was practically no water in Coyote Creek or at any of the surface runoff reference points during most of the irrigation season.

DATA RECORDING RESULTS

Daily discharge records were computed for the two gaging stations on the Malheur River for the entire irrigation season. Gage height was measured at the five observer gages on the diversion ditches, Coyote Creek, and the six surface runoff reference points on a weekly basis by the local watermaster and once every three weeks by staff from the Salem office.

Discharge was estimated by the Hydrographic Section for those days when gage height measurements were not taken. Available measurements, field notes, riverflow records and other hydrographic procedures were used as a basis for estimating daily discharge values.

Discharge records were grouped into the following categories:

A - Total Surface Project Inflow - This included the Malheur River above Coyote Creek, and the Moffet and Ellingson ditches. Any measurable flow from the surface runoff reference points was included in total surface project inflow. On hydrographs, Total Surface Project Inflow is referred to as Project Inflow.

B - Total Surface Project Outflow -This included the Malheur River at the crossing of Van Drewsey Road, the Bentz, Bailey and Lillard ditches. On hydrographs, Total Surface Project Outflow is referred to as Project Outflow.

C - Ditch Inflow - The combination of the Moffet and Ellingson ditches.

D - Ditch Outflow - The combination of the Bentz, Lillard, and Bailey ditches.

E - River Inflow (Malheur River above Coyote Creek)

F - River Outflow (Malheur River at the crossing of Van Drewsey Road.

Hydrographs:

Six hydrographs were constructed which illustrate the above categories:

1 - Project Inflow vs Project Outflow - All the water entering the project area vs all the water leaving the project area (Total Surface Project Inflow vs Total Surface Project Outflow). This hydrograph illustrates changes occurring in water quantity and potential return flow lag time throughout the irrigation season in the project area. The difference between total inflow and total outflow is considered project area consumption.

2 - Project Inflow vs River Inflow - This hydrograph illustrates the amount of water remaining in the river after diversions into the Moffet and Ellingson ditches. The area between the two lines on the hydrograph indicates the amount of water withdrawn by the Moffet and Ellingson ditches.

3 - River Inflow vs River Outflow (Malheur River Above Coyote Cr. and Van Drewsey Rd) - This hydrograph illustrates the amount of water flowing in the river at the two gaging stations. It also indicates any potential water gain or loss by the river in the project area.

4 - Project Inflow vs River Outflow - This hydrograph shows the total amount of water entering the project area and the amount of water remaining in the river after all diversions. The area between the two lines on the hydrograph shows the amount of water that was diverted from the river in the project area and not

PROJECT INFLOW VS PROJECT OUTFLOW

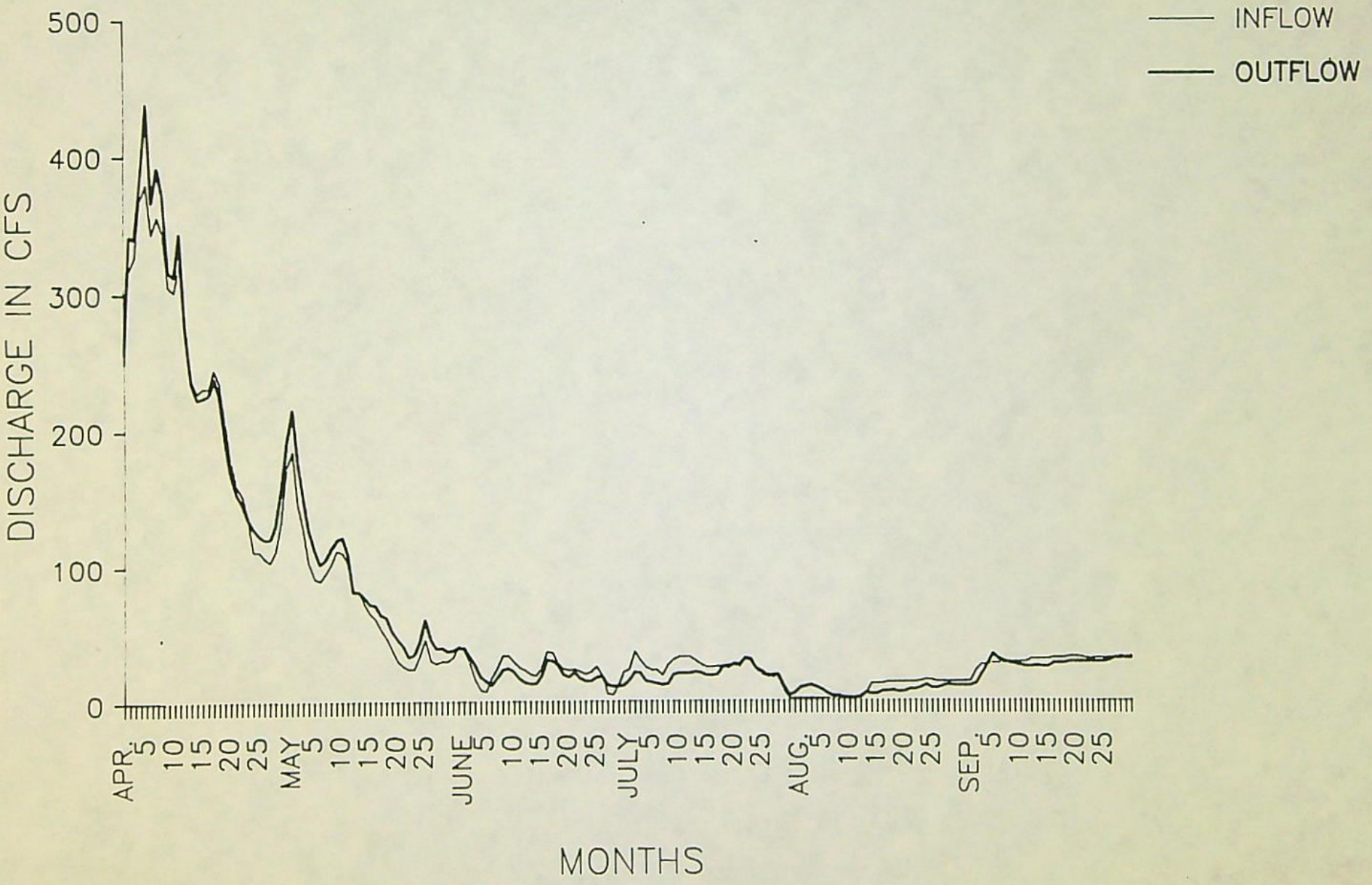
HYDROGRAPH # 1

PROJECT INFLOW VS RIVER INFLOW

HYDROGRAPH # 2

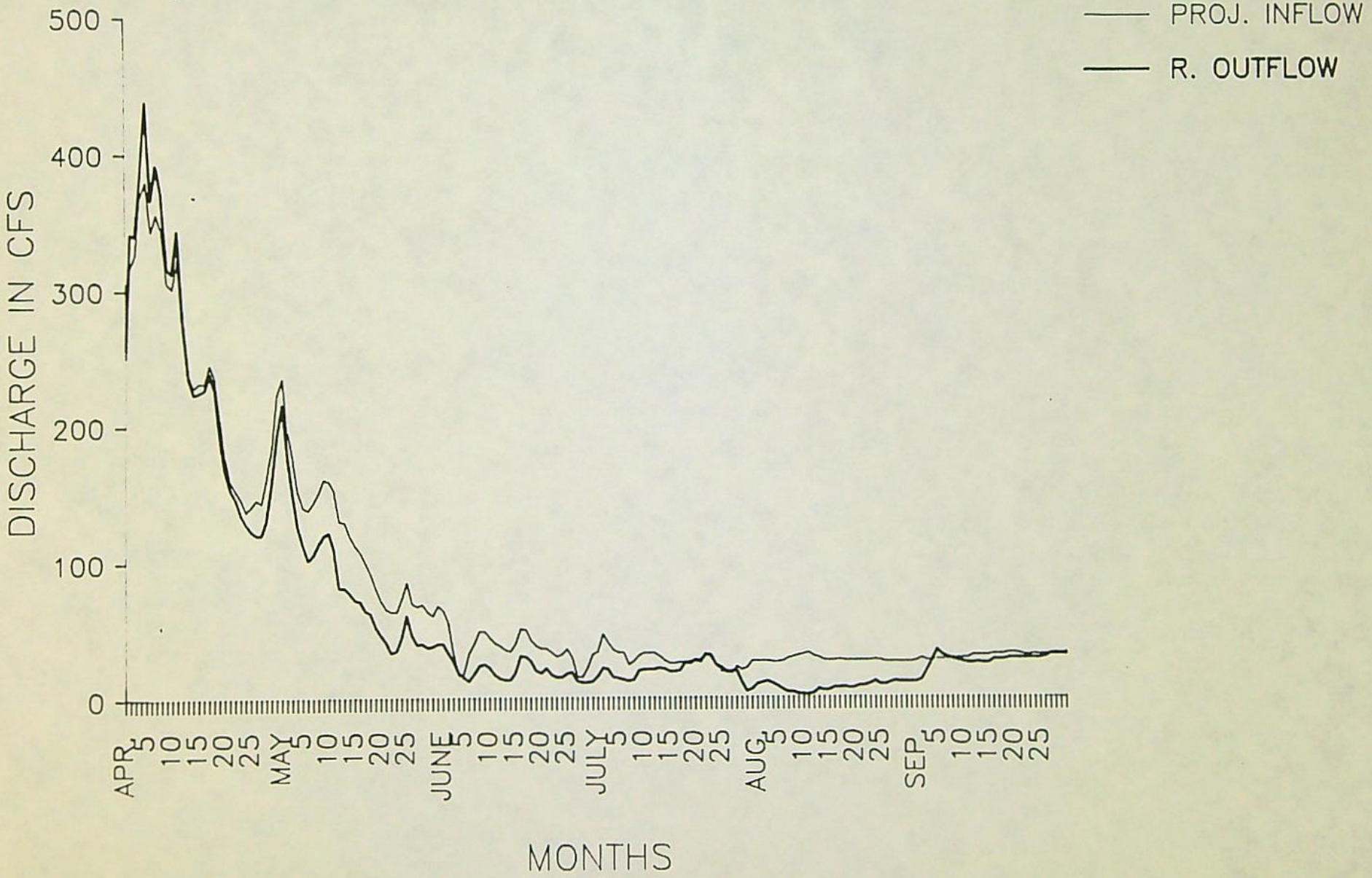
RIVER INFLOW VS RIVER OUTFLOW

HYDROGRAPH # 3



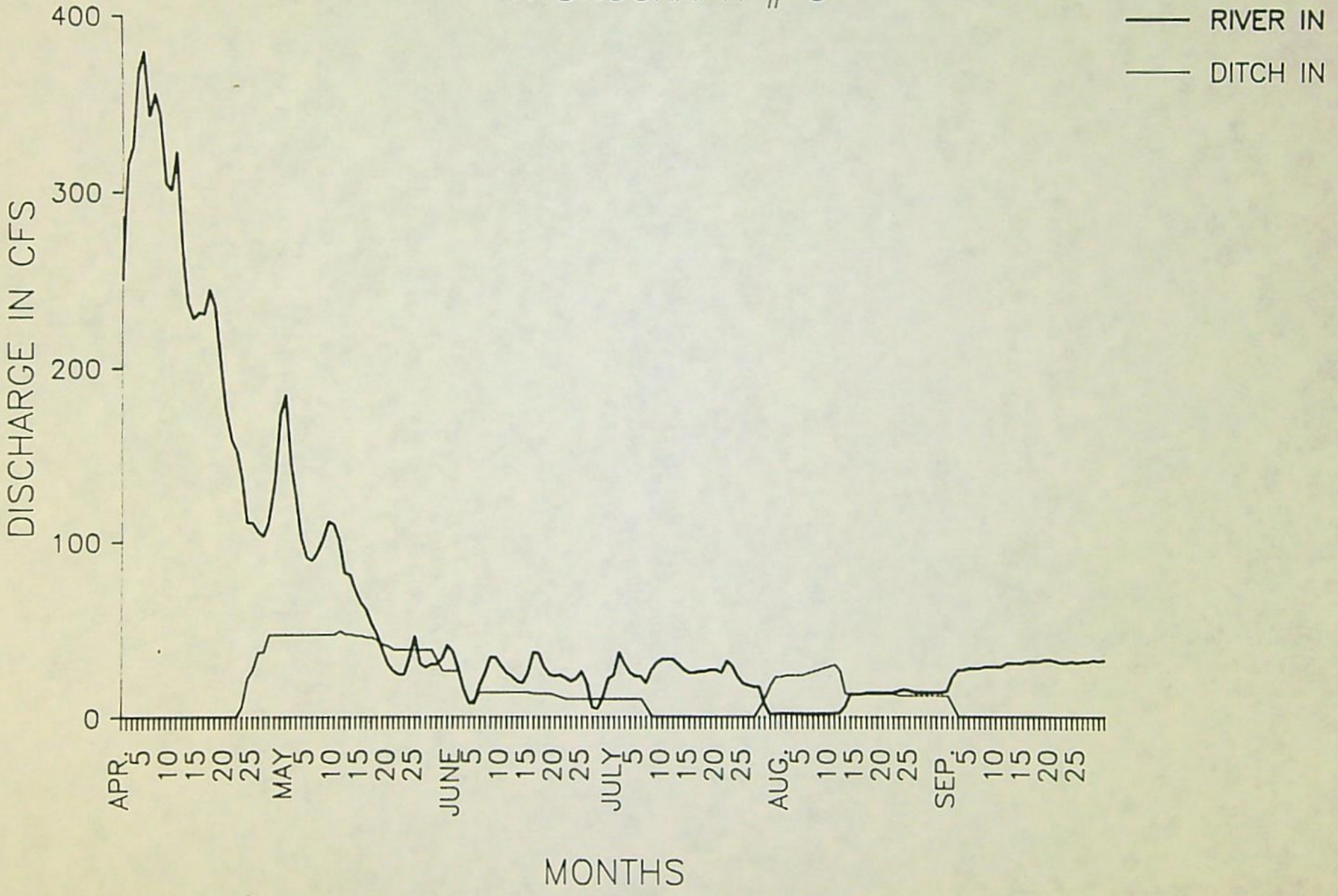
PROJECT INFLOW VS RIVER OUTFLOW

HYDROGRAPH # 4



RIVER INFLOW AND DITCH INFLOW

HYDROGRAPH # 5



accounted for at the lower river station.

5 - River Inflow vs Ditch Inflow - This hydrograph indicates the amount of water diverted into the Moffet and Ellingson ditches and the amount of water remaining in the river after the above diversions. It can easily be noted that diversions by the Moffet and Ellingson ditches significantly reduced riverflow.

Accuracy of Flow Records:

According to USGS standards, records within five percent of true discharge are considered excellent, within ten percent good, within fifteen percent fair, and over fifteen percent poor. Accordingly, records for the two recording stations on the Malheur River were rated excellent and records for the five observer gages on the diversion ditches were rated poor.

An observer gage was installed on Coyote Creek. Estimated discharge at that gage was very small or none after the middle of May, therefore, Coyote Creek was considered to have had insignificant impact on the total project inflow except in the early part of the irrigation season. Coyote Creek was dry during the summer months. No observer gage was installed on the Johnson ditch because it did not affect the project. The Johnson ditch starts outside the project area and diverts water around it.

A small amount of water was accounted for at the six surface runoff discharge locations on the eastern edge of the project. Estimated discharge from these points was included in total project inflow, however, the contribution was not significant.

The Bailey, Bentz and Lillard ditch discharge was estimated only as outflow. These ditches diverted water onto the lower west field and the entire east field in the project area. The dates these ditches were diverting water and the exact amount of water diverted into these ditches are not known. The Bailey and Lillard ditches may have collected some irrigation return flows. However, the project set-up did not provide the means for differentiating between the diverted amount and any potential irrigation returns in these ditches.

The fact that the project was not monitored on a daily basis may have influenced the results. Additional field notes regarding irrigation practices, weather conditions, flow conditions, ditch operation, and other influencing factors would have enhanced the results. The availability of streamflow data for other years would also have added to the accuracy of the project outcome. The Hydrographic Section gives the project flow records an accuracy rating of fair to good. The results; therefore, are adequate for analytical purposes.

Data Evaluation:

Hydrograph # 1 (Total Project Inflow vs Total Project Outflow) was analyzed to determine changes in water quantity as it passed through the project area. Based on the examination of the hydrograph # 1, a consumption rate was determined for the project area. Hydrograph # 5 (River Inflow and Ditch Inflow) was analyzed for determining diversion rates and timing of such diversions into the Moffet and Ellingson ditches. This hydrograph also provides visual illustration of the correlation between diversions and riverflow.

APRIL - Irrigation began in the project area on April 24 when the Moffet and Ellingson ditches were turned on. The two ditches started diverting water at a combined flow rate of 6 cfs on April 21 which reached 47 cfs by the end of the month. From the April 23 until the end of April, inflow exceeded outflow by as little as 1 cfs to as much as 28 cfs towards the end of the month. For the month of April, total inflow exceeded total outflow by 317 acre-feet (average .37 acre-feet/acre).

MAY - Diversions continued into the Moffet and Ellingson ditches at a combined monthly mean flow rate of 42.2 cfs. Diversion peaked at 49 cfs on May 11. The entire month of May was marked with much larger inflows than outflows. Inflows exceeded outflows by 9.0 to 31 cfs, with the larger inflows occurring from May 3 until May 17. For the month, inflow exceeded outflow by 1,250 acre-feet (average 1.46 acre-feet/acre).

JUNE - Diversions into the Moffet and Ellingson ditches continued during June at a mean flow rate of 13 cfs. In June, inflows were larger than outflow with two exceptions. From June 3-5, outflow exceeded inflow by 12,18, and 13 cfs. During this time the Moffet ditch was closed and flow in the river increased. Similar conditions occurred from June 26-29. Outflow was higher than inflow for the period by 3-11 cfs. In this case, the Ellingson ditch was closed. During the above two periods, a much lower than normal amount of water was reaching the project area. For June, total inflow exceeded total outflow by 242 acre-feet (average .28 acre-feet/acre).

JULY - In July, inflow exceeded outflow from the first to the 17th of the month. From July 18 to 27, outflow exceeded inflow by as high as 4.0 cfs. This increase in outflow resulted from closure of the Ellingson and the Moffet ditches July 8 to 27 due to haying, a reduction in plant moisture needs, the local weather pattern for the month (increased cloudiness and rain), and perhaps some irrigation return flows. For the month, total inflow exceeded total outflow by 343 acre-feet (average .40 acre-fee/acre).

AUGUST - August also had larger project inflows in comparison to

project outflows. Inflow exceeded outflow by 681 acre-feet (.80 acre-feet/acre).

The Malheur River flow rate dropped to as low as 1.6 cfs at the station above Coyote Creek on August 6. Similar flows were recorded at the above station from July 30 to August 12. During that same period, July 30 to August 12, the Moffet and Ellingson ditches had a combined mean monthly flow rate of 18 to 30 cfs. Diversions were 23 cfs on August 1, reached a peak of 30 cfs on August 11 and continued at rates of 13 and 12 cfs.

SEPTEMBER - Total inflow exceeded outflow for the first three days of September. On September 4, the conditions reversed and continued until September 11. From September 12 to 30, inflow again exceeded outflow except on September 13,27 and 29. The irrigation season ended the first week of September. This is reflected in increased project outflows from September 4 until September 11. For the month, total inflow exceeded total outflow by 91 acre-feet (average 0.11 acre-feet/acre).

SUMMARY - throughout the irrigation season, total project inflow exceeded total project outflow with the exceptions of four brief periods.

A sudden departure from normal inflow and closing of the Moffet ditch, June 3-5, left more water in the river, contributing to increased outflow in comparison to inflow for that period. Below normal water reaching the project area and closing of the Ellingson ditch, June 26-29 had the same effect. Closing of the Ellingson and the Moffet ditches from July 8 to 27, reduction in plant moisture needs due to haying, and rain on July 21 and 22, may have caused outflow to surpass inflow from July 18 to 27. During the first and second week of September (Sept. 4-11), outflow exceeded inflow. This increase in outflow coincided with the end of the irrigation season. At the end of the irrigation season, all ditches were closed and ponding dams on the river seem to have been removed. Removal of the dams releases all the stored water which causes large outflows for a few days.

Only during two periods did river outflow surpass total inflow. From July 20 until 27 river outflow exceeded total inflow by an average of 1.4 cfs. It appears that no diversions occurred in the project area during this period due to haying. September 5,6 and 7 river outflow surpassed total inflow by 7, 3 and 1 cfs. This period marks the end of the irrigation season.

Malheur River flow at the upper and lower stations dropped to levels as low as 1.5 cfs and 1.8 cfs respectively on certain days during the summer months. On the same days, water was diverted into the Moffet and Ellingson ditches at rates of 18 cfs and 30 cfs. Hydrograph # 5 portrays diversions into the Moffet and Ellingson ditches and the amount of water left in the river after

the two diversions. The highest diversions occurred from the start of irrigation in April until June 2. Diversions continued into the two ditches at a relatively lower rate until July 7. No diversion occurred into the two ditches July 7 to 28. The Moffet and Ellingson ditches were turned-on again on July 28 and continued diverting water until the end of the irrigation season in early September. The hydrograph shows that almost the entire flow of the river was diverted into the two ditches from July 30 to August 11.

Water consumed (depleted) in the project area during the irrigation season was 2,924 acre-feet. This shows a per acre consumption of about 3.42 acre-feet from April 23 until the end of September.

Hydrographs # 1 portrays total inflow and total outflow patterns and hydrograph # 4 portrays total inflow vs river outflow patterns throughout the irrigation season.

RETURN FLOW LAG TIME ANALYSIS

The irrigators' contended that excessive flooding of fields early in the irrigation season enhanced streamflows later in the year. This enhancement was said to occur as soils slowly release stored water into the stream during low summer flows. It is a natural phenomenon that in a hydrologic system some subsurface water will return to streams in that system. However, permeability rate, travel time, distance travelled, and the amount of water returning to streams vary widely from one geologic formation to another.

Based on the findings of the project, no significant correlation could be seen between spring flood irrigation and summer streamflows. Major irrigation return flows seem to have occurred in the form of overland flows before early June. An overland flow is the gravity flow of a surface layer of water over a sloping land area that has reached its moisture holding capacity and is incapable of infiltrating additional water. Overland flows can also occur on lands that may not be fully saturated. This happens when large volumes of water are applied which run over the land surface without having the chance to infiltrate into the ground (like flush flooding).

It is assumed that whenever project outflow exceeded project inflow, it may have resulted partly from irrigation return flows. Those periods followed the closure of some or all diversion ditches by only a few days. In the absence of diversions, inflow and outflow rapidly became equal. Any water returned to the river from fields during ditch closure periods may have caused outflow to surpass inflow. The limited return flows observed during the summer months are most likely to have resulted from summer irrigation and not spring irrigation.

Site Geology and Hydrology Affecting Return Flows:

Due to lack of field data and other site-specific information on the geology and hydrology of the project area, groundwater behavior in the project area is not clearly known. Based on general geo-hydrologic information and the findings of a field visit, a short report on the general hydrology of the project area was prepared by the Department's Geology/Hydrology Section. The findings of the Department's geo-hydrologists are summarized below.

The project area lies within the Juntura basin into which a thick series of Tertiary sediments have been deposited. The project area is underlain by tuffaceous sedimentary rocks of the Juntura and Drewsey Formations of Bowen and others (1963). Alluvial material of an unknown thickness, deposited by the Middle Fork Malheur River, overlies these older tuffaceous sedimentary rocks.

A welded tuff unit and a basalt unit crop out at the southern end of the project area. These units may act as possible impermeable barriers to sub-surface groundwater flow leaving the project area. It is also possible that these units act to channel any local shallow groundwater to the surface before it can leave the project area. Any definite conclusions regarding the above units would require further and detailed investigation.

Many formations are likely to exist as barriers to groundwater flow between the project area and Warm Springs Reservoir. Various north to northwest trending faults have displaced rock units in the area. In additions, volcanic events have disrupted the 'bedrock' in the area, creating discontinuous rock units. Based on the above information, some irrigation return flows may be reaching the river not very far from where irrigation takes place. The amount and return time of such return flows may not be very significant.

Alluvial materials in the project area vary in texture, drainage, slope, structures, permeability, porosity, and depth from one location to another. The depth of the alluvial materials may vary from a few to several hundred feet depending on the location. It is not exactly known how subsurface water behaves within the alluvium. No wells were dug at the site for soil testing and subsurface water monitoring. The construction of such wells would have provided valuable information on the soils and hydrology of the site.

The available geo-hydrologic information is not sufficient to provide conclusive explanations on return flows or deep percolation.

Hydrograph Analysis For Return Flow:

Based on the available flow records and information, the following generalizations can be made regarding irrigation return flow lag time:

Hydrograph 1, indicates that large outflows coincided with large inflows and small outflows coincided with small inflows. The above pattern occurred on a monthly and daily basis. During the critical summer months, only in some cases could a lag time of 3-8 days be detected between inflows and outflows.

Total project outflow exceeded total project inflow June 3-5 and June 26-29. While the possibility of some irrigation return flows is not left out, two other factors should be taken into consideration. The first factor is the sharp drop in the volume of water reaching the project area during these periods. The second factor is the closing of the Moffet ditch in early June and of the Ellingson ditch in late June. During the two periods, total outflow did not experience as sharp a drop as total inflow. Closure of the two ditches allowed different portions of the west field to drain, preventing total outflow from dropping to levels below that of total inflow.

Total project outflow exceeded total project inflow by a very small margin July 18-27. This could be attributed to high inflows in early July. During the above period, the Ellingson and the Moffet ditches (the two inflow ditches) were shut-off in order to drain fields for haying. Due to haying, crop moisture needs were reduced. The closure of the Moffet and Ellingson ditches and drainage from fields caused outflow to surpass inflow by a small margin.

Irrigation ended during the first week of September. Total outflow suddenly surpassed total inflow September 4-11 as the irrigation season ended. This increase in outflow for a period of seven days is very likely to have resulted from the removal of ponding dams on the river. Some of it could be irrigation return flows from heavy August irrigation. After September 11 until the end of the month inflows exceeded outflows by 1-3 cfs.

Another way to determine irrigation return flow lag time would be to analyze the other hydrographs. Hydrograph # 4, Total Project Inflow vs River Outflow, indicates that high river outflows coincided with high project inflows and low river outflows coincided with low project inflows. A lag time pattern is not clearly detectable except July 20-27 and September 5-7. These periods coincide with the closure of all inflow ditches due to haying in late July and the end of the irrigation season during the first week in September.

The study of hydrograph # 4 may be a more realistic approach to

understanding irrigation return flows. After the closing of all inflow ditches July 20 to 28, river outflow surpassed total inflow by an average of 1.4 cfs. River outflow started diminishing and approached the total inflow level toward the end of July. At the end of the irrigation season in early September, river outflow surpassed total inflow by 7, 3 and 1 cfs on September 5,6 and 7 respectively.

Hydrograph # 3, River Inflow vs River Outflow, indicates a similar pattern to those of hydrographs # 1 and # 4. During the critical summer months, river inflow was larger than river outflow. Inflow and outflow became almost equal when all diversion ditches were turned off at the end of the irrigation season. This suggests that insignificant or no irrigation return flows may have occurred. River outflow was higher than river inflow for most of April, May and the first five days of June. This increase could be attributed mainly to overland flows, some irrigation return flows and climatic factors.

In summary, from evaluating water quantity data, hydrologic information, there is no clear indication that excessive water application early in the irrigation season enhances streamflows in the latter part of the season in the project area. The operation of diversion ditches controlled the flow of the Malheur River through the project area. River outflow fluctuated widely throughout the season due to irrigation diversions. High project and river outflows coincided with high project and river inflows, and low outflows coincided with low inflows.

An argument can be made for four brief return flow periods during the summer months, hydrograph # 1. These periods were June 3-5, June 26-29, July 20-27 (very small difference), August 1-10, and September 4-11. During these periods, project outflow exceeded project inflow. Outflows during these periods slowly surpassed inflows until an outflow peak was reached. The peaks then gradually diminished until inflows and outflows became equal or inflows surpassed outflows. The exceeded amount could partly be attributed to irrigation returns from continued summer irrigation. It should be noted that the above periods coincided with the closing of the Moffet and Ellingson ditches, haying season, cloudiness and precipitation, and the end of the irrigation season.

Hydrograph # 4 shows that return flows may have occurred only during two periods. These were July 20-27 and September 5-7. Return flows that may have occurred during these periods do not reflect any correlations to early spring flooding. They seem to have resulted from the application of large volumes of water onto fields in June, early July and all of August.

WATER QUALITY DATA

Water samples were taken from the Malheur River at the two gaging stations. These sampling locations were selected to reflect changes in water quality as the water moved through the project area.

From April 4 until November 6, a total of ten samples were collected for each sampling site. These samples were analyzed at the Bureau of Reclamation Water Quality Analysis Lab in Boise, Idaho. The samples were tested for various water quality parameters of which some are discussed below.

Accuracy of Water Quality Data:

Water samples were taken in intervals ranging from six days to forty days. Short, even intervals would have shown changes in water quality better as the irrigation season progressed. Other factors that may have affected the results are time-of-day when samples were taken, sampling methods, sample storage and transport, and time between sampling and testing.

WATER QUALITY ANALYSIS

Water samples from the two river gaging stations, Malheur River above Coyote Creek and Malheur River at the crossing of Van Drewsey Road, were analyzed for several water quality parameters. Some of these parameters are discussed in the next paragraphs. Test results were not available for all water quality parameters. See Appendix II for graphs and water quality terminology.

The concentration of total dissolved solids (salts), for both stations gradually increased as the irrigation season progressed. The rate of concentration for the upper station increased from 71 mg/l on April 4, to 124 mg/l on August 4. The lower station showed higher concentrations than the upper station for more than ninety percent of the irrigation season. The concentration of dissolved solids for the lower station samples rose from 71 mg/l on April 4, to 128 mg/l on August 4. After the first week of August, the concentration of dissolved solids started to decrease for both stations. The Department of Environmental Quality guide for concentration of dissolved solids in the Malheur River is 750 mg/l. Although the concentration of dissolved solids increased in the Malheur River, it did not surpass the DEQ guide concentration (Figure II-1).

Suspended solids showed a reverse trend. The concentration of suspended solids decreased for both sampling stations from 16 and 20 mg/l on April 4, to 4 and 6 mg/l on July 14. The decrease in the amount of suspended solids can be attributed to reduced riverflows at both stations (Figure II-2).

Like suspended solids, turbidity rate for the two sampling stations dropped as the season progressed and flows declined. Turbidity was 10 Jackson Turbidity Units (JTU) at both stations on April 2. Throughout the sampling season, turbidity measurements did not surpass 10 JTU, which is the recommended criteria by the USDI Nation Technical Advisory Committee for cold water streams (Figure II-3).

An increase was shown in the concentration of total kjeldahl nitrogen for both sampling stations as the irrigation season progressed. The increase was higher for the station at the lower end of the project area where it jumped from .34 mg/l on April 4, to 0.78 mg/l on August 25. The upper station showed an increase of 0.331 on April 4, to 0.44 mg/l on August 4. It is not exactly known where this concentration originated from. No fertilizers were applied to the site that might have increased the nitrogen level in the project area (Figure II-4).

Water samples from the two sampling station had pH values within the range of 7 and 9. The DEQ requires that pH values of the Malheur River water within the 7 to 9 range (Figure II-5).

Water and soil alkalinity is directly related to the amounts of carbonates, bicarbonates, phosphates, and hydroxides. For the purpose of this study, water alkalinity rate was based on the amount of bicarbonates in the water samples from the two gaging stations. The lower station showed higher amounts of bicarbonates than the upper station. The concentration of bicarbonates gradually increased as the irrigation season progressed. This in turn raised water alkalinity (Figure II-6).

Water temperatures were higher for the lower station than the upper station for every day the temperature was taken. Water temperatures were 40 and 42 F for the upper and lower stations on April 4, and 61 and 79 F on August 4. Diurnal fluctuation may have influenced water temperatures. According to the DEQ guidelines, no measurable increase shall be allowed when stream temperatures are 68 degrees F or greater. Water temperatures in excess of 68 F in the project area are very likely to have resulted from solar heating on diminishing flows (Figure II-7).

Appendix II contains graphs for four other water quality parameters including conductivity, phosphorus, hardness, and Sodium. These parameters showed a gradual increase as irrigation season progressed. Higher rates were recorded for the lower station (Figure II-8).

In summary, except for the concentration of suspended solids and turbidity, all water quality parameters, for which the samples were tested, indicated higher amounts for the latter part of the irrigation season. Recorded amounts were higher for the lower station (Van Drewsey Road crossing), than the upper station

throughout the whole season. Increased amounts or rates of water quality parameters (pollutants), in the summer months, seem to have been associated with reduced streamflows.

FINDINGS

Based on the analysis of flow records, hydrologic conditions, hydrographs, water quality data, literature review, and field observation, below are some of the findings of the study:

A. There was a net water loss in the project area from April through September. The difference between total inflow and total outflow, late April through early September, was 2,924 acre-feet. Project area water consumption was 3.42 acre-feet/acre. The amount does not reflect the actual amount of water diverted onto the site. The Moffet and Ellingson ditches diverted close to 5,270 acre-feet of water from April through September. This water was used to irrigate the 573 acre west field. The above amount indicates a diversion rate of slightly more than 9 acre-feet/acre. Additional water was diverted by the Bailey, Bentz, Lillard and an unnamed ditches. The exact amount of water diverted by the above three ditches is not known.

B. River outflow was lower than river inflow for most of the summer months. During August, more water was flowing into the irrigation ditches than was left in the river. For the month, the two inflow ditches (the Moffet and Ellingson) diverted 1,090 acre-feet of water at a mean flow rate of 17.7 cfs, leaving 558 acre-feet in the river. Mean river flow rate for the month, at the upper station, was 9.07 cfs, and 7.71 cfs at the lower station (Van Drewsey Rd crossing).

C. No clear correlation could be observed between early spring flooding of fields and summer flow augmentation. Any potential irrigation return flows seemed to have occurred before the critical summer months. As the soils reached moisture holding capacity, excess water may have been forced to return to the river via overland flow. Overland flows from the flooded fields are common in the early part of the irrigation season and seem to have been the primary cause of large outflows. Hydrograph analysis suggests that the amount and routing time of any irrigation return flows in the summer months may be very small given the characteristics of the site.

E. During the irrigation season, certain brief periods were marked with outflows that were higher than inflows. These periods lasted between 3 to 8 days. Several factors seem to have been involved of which irrigation return flows may be one. The margin by which outflows surpassed inflows during these periods was very small (an average of 1.4 cfs) and did not make a significant difference in the river discharge.

F. Water quality deteriorated as it passed through the project area and as the irrigation season progressed. The lowest water quality occurred during the summer months. Water quality was lower for the Van Drewsey Road station which was located at the lower end of the project. It is not known what exactly caused water quality deterioration. Several factors may have been involved of which reduction in streamflows is one and perhaps the major one. Although water quality deteriorated in the project area, measured water quality parameters in general did not violate the standards set by the DEQ for the Malheur River.

CONCLUSION

The Malheur Irrigation Return Flow Project was carried out on a segment of the Middle Fork Malheur River above Drewsey. The project was planned in order to estimate and analyze changes in water quantity, quality, and the amount and lag time of irrigation return flows. Discharge records for the river and diversion ditches were analyzed and hydrographs constructed in order to determine diversion rates and the amount of water flowing in the river at the two gaging stations.

Water samples were taken from the Malheur River at two locations. One location was where water entered the project area, Malheur River above Coyote Creek, and the other location was where water left the project area, Malheur River at the crossing of Van Drewsey Road. Water samples from the above two locations would indicate any changes in water quality as the water passed through the project area.

Discharge records show that more water entered the site in comparison to the amount that left the site during the 1987 irrigation season. Net project area water loss was 2,924 acre-feet (3.42 acre-feet/acre). The gap between inflow and outflow was much wider during the summer months.

Based on the available hydrologic data, geologic and hydrologic information of the area, a direct correlation between spring flooding of fields and summer return flows could not be seen. It appears that most irrigation return flows occurred in the form of overland flows before the critical summer months. During the summer months, a lag-time of 3-8 days could be seen between large inflows and large outflows during some periods. The fact that outflows were larger than inflows during these periods does not necessarily mean that the additional amount was all the result of irrigation return flows. Ditch closure, local weather pattern, reduced crop moisture needs due to haying, ponding dam removal and natural seepage into the stream are all influential factors.

Water quality data for the two sampling stations in the project area indicate a gradual deterioration in water quality as the irrigation season progressed and streamflows declined. The lower

sampling station showed higher amounts of water quality parameters than the upper station. Reduction in river flow rate may be a strong, but not the only factor contributing to low water quality in the summer months. Other land and water use practices, within and outside the project area, may also have contributed to lowering of water quality.

APPENDIX I

CROP WATER REQUIREMENTS IN THE PROJECT AREA:

Consumptive use and net irrigation water requirement data was not available for the project area or for the nearest weather station at Drewsey. Available data for Burns, Oregon was used to estimate crop consumptive use requirements and water application efficiency rate for the project area. Both the project area and Burns are located within the same climatic region, however, the project area is about 300 feet lower than Burns which has an elevation of 4,140 feet.

Meadow hay consumptive use is 21.78 inches of which 16.81 inches is net irrigation water requirement and the remaining 4.97 inches from precipitation. Since 1987 was a very dry year and irrigators could not rely on rainfall, water application efficiency rate will be determined based on total consumptive use requirements. During the 1987 irrigation season, the Moffet and Ellingson ditches diverted 5,276 acre-feet of water onto the 573 acres west field. The total consumptive use requirement for 573 acres is 1,040 acre-feet. Accordingly, calculated application efficiency rate for the west field is about 20%. In theory this means that of the 5,276 acre-feet of water diverted, only 1,040 acre-feet was used by the crop and the remaining water (4,236 acre-feet) was lost to other factors.

According to the SCS - Farm Irrigation Rating Index, average efficiency rate for uncontrolled flood irrigation (method used at the site) is 40%. Maximum efficiency rate is 50% for the above method. There are several factors that contribute to the lowering of irrigation efficiency rate. The SCS -Farm Irrigation Rating Index, lists the following factors that affect irrigation efficiency rate for surface flood irrigation:

Management Elements:

- Water measurement
- Soil moisture monitoring and scheduling
- Irrigation skill and action level
- Maintenance condition of the system
- Water delivery constraint
- Soil condition

System Elements:

- Water distribution control
- Conveyance Efficiency
- Quality of land leveling and proper length of run
- Reuse of tailwater

Conveyance loss, surface runoff, deep percolation to groundwater, uptake by bank vegetation and other losses may account for the 4,236 acre-feet of water that was diverted onto the west field and not used by the crop. The amount of water lost to each of the above factors can not be quantified due to limited data and information. However, some SCS studies have shown that conveyance loss alone can be between 30 to 50% of the water diverted onto a farm.

The 20% west field water application efficiency rate may not apply to the entire project area. Water application efficiency rate for the project area can not be estimated without knowing total diversions onto the fields.

APPENDIX II
WATER QUALITY TERMINOLOGY

ALKALINITY - A measure of the buffering capacity of the water. It is the sum total of components in the water that tend to raise the pH level above 4.5. In this study, measurements are being made on bicarbonates, other commonly occurring materials which increase alkalinity are carbonates, phosphates and hydroxides. Alkalinity is important to water quality because pH has a direct effect on organisms and an indirect effect on the toxicity of certain other pollutants.

CONDUCTIVITY - A measurement of the water's capacity to transmit an electric current. It is related to the total concentration of ionized substances in the water and the temperature of the water. It provides an indirect measurement of the salt present in the water and can also be used to estimate the total dissolved solids content of the water.

HARDNESS - A measure of the metallic ions dissolved in water. In fresh water the principal ions are calcium and magnesium. Iron, strontium and manganese also contribute to hardness when appreciable concentrations are present. Natural sources of hardness are limestone being dissolved by acidic waters, and discharges from operating and abandoned mines. The concentrations of calcium and magnesium are important in determining the exchangeable sodium in the water.

pH - A measure of the hydrogen ion activity in the water. The pH of natural waters is controlled by the various dissolved compounds, salts and gases. The principal system regulating pH, in natural waters, is the carbonate system. pH is an important factor in the chemical and biological systems of natural waters. Changes in pH levels affect the toxicity of many compounds, and have been shown to affect the solubility of metal compounds.

SODIUM - A measure of the sodium present in the water. Sodium is present in most natural waters with levels varying from negligible to appreciable. Soil permeability can be detrimentally affected by a high sodium ratio.

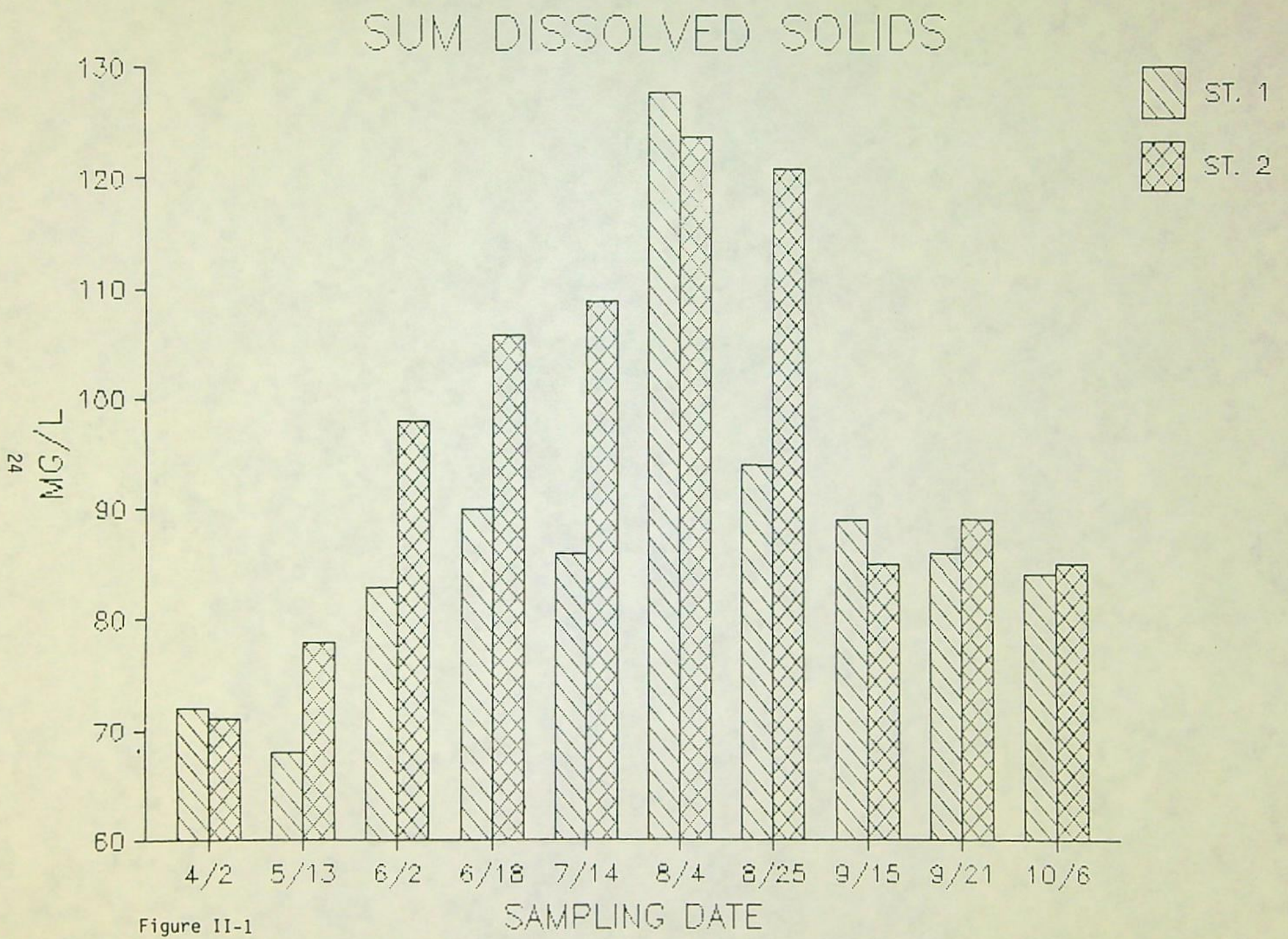
SUSPENDED SOLIDS - A measure of the amount of non-filterable residue present in a volume of water. The primary component is soil particles or sediment.

TOTAL KJELDAHL NITROGEN - A measure of the ammonia and organic nitrogen in the water. (does not include nitrites and nitrate nitrogen.)

TOTAL PHOSPHORUS - A measure of all orthophosphates, condensed phosphates, soluble and insoluble, organic and inorganic form of phosphorus.

TURBIDITY - An expression of the optical property of a water sample which causes light to be scattered and absorbed rather than transmitted in a straight line. Turbidity is caused by the presence of suspended matter; clay, silt, fine organic matter and microscopic organisms.

1127g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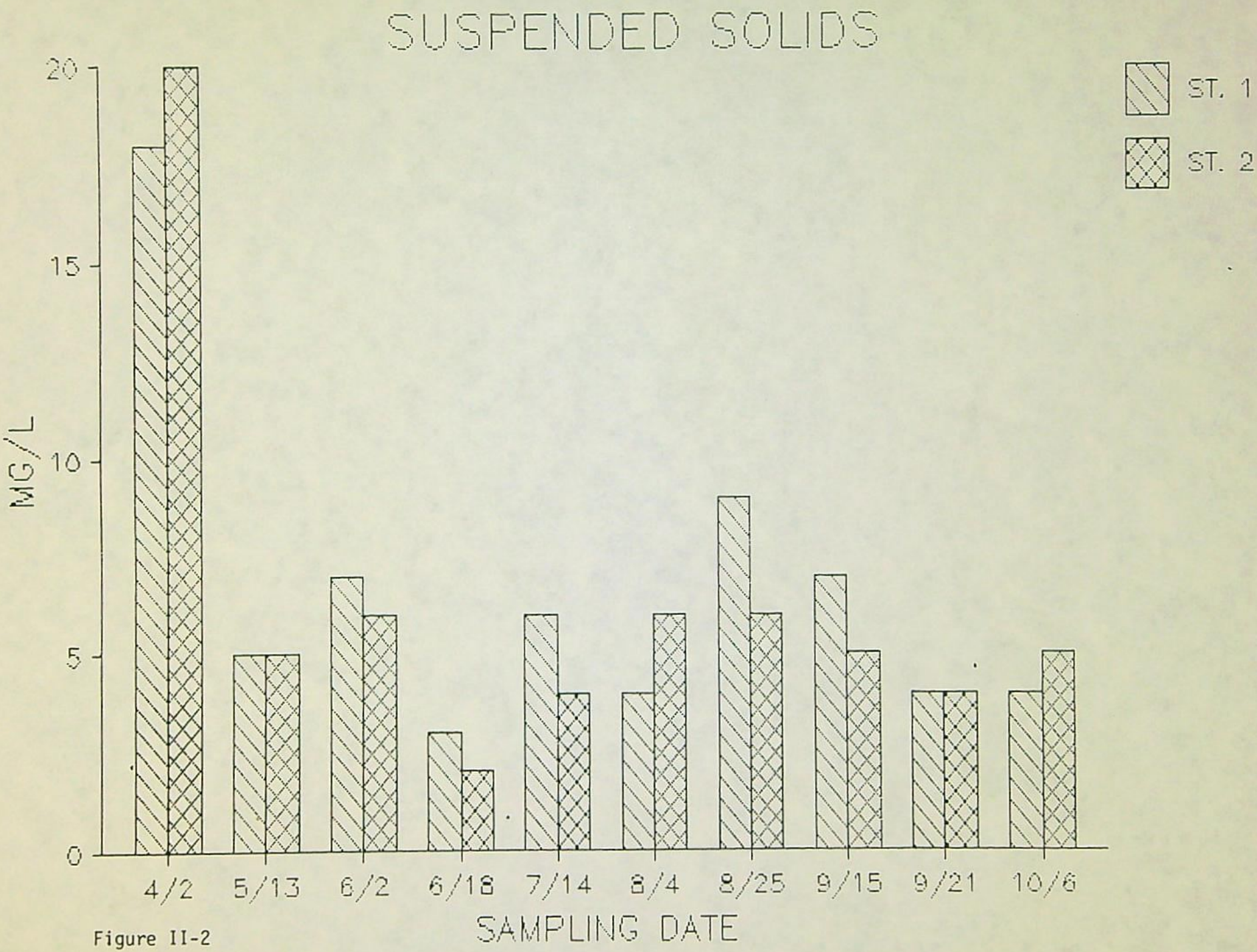
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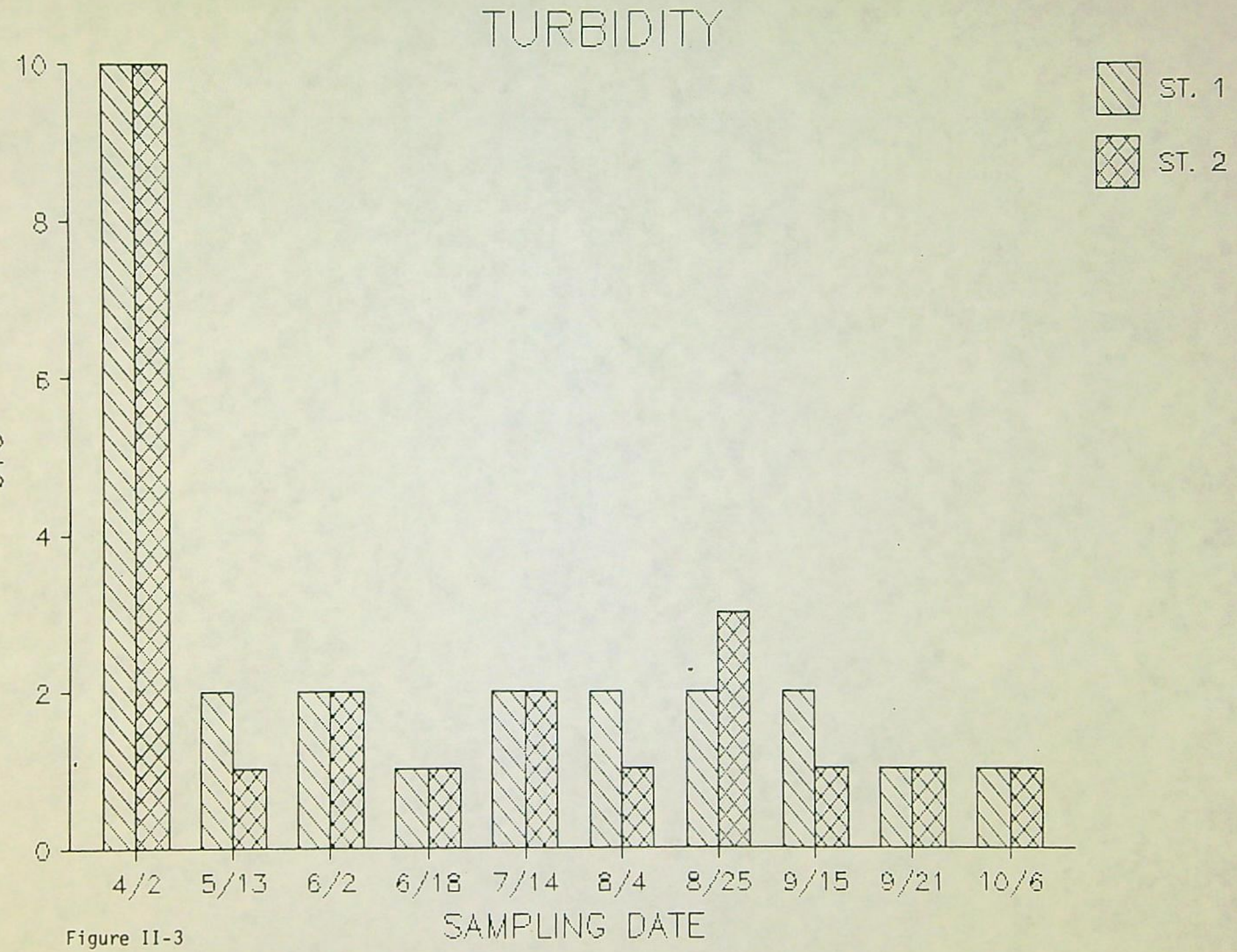
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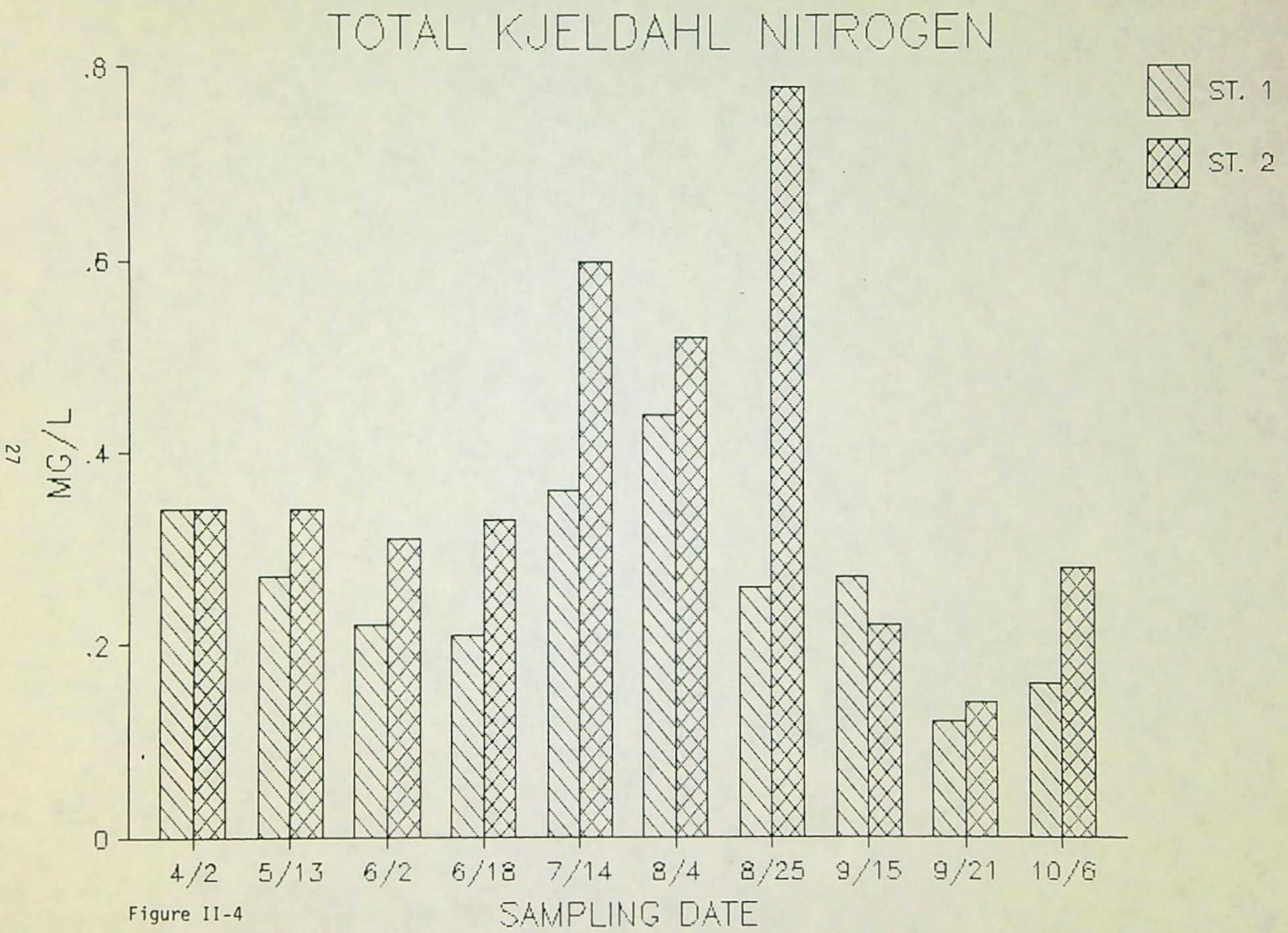
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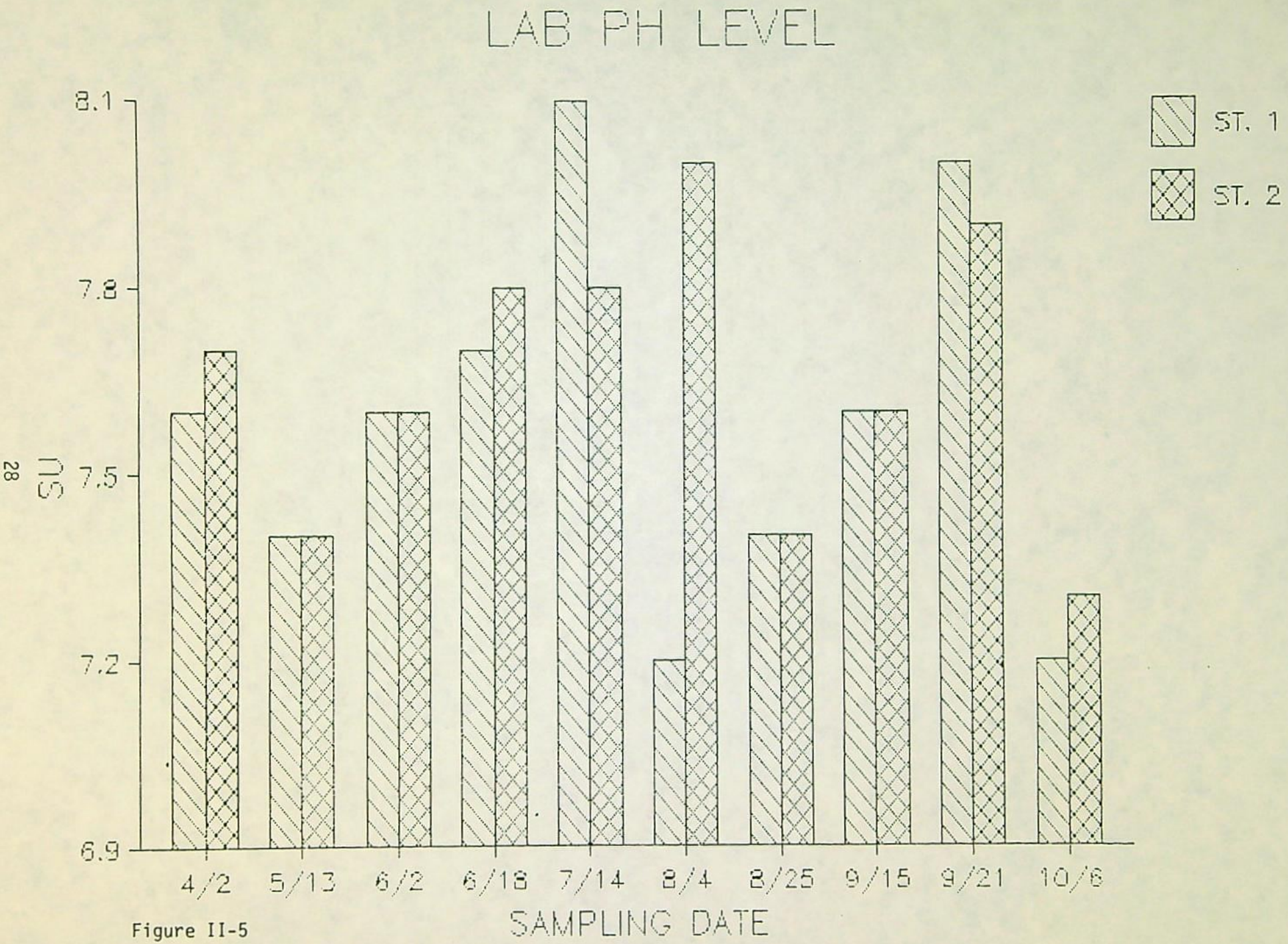
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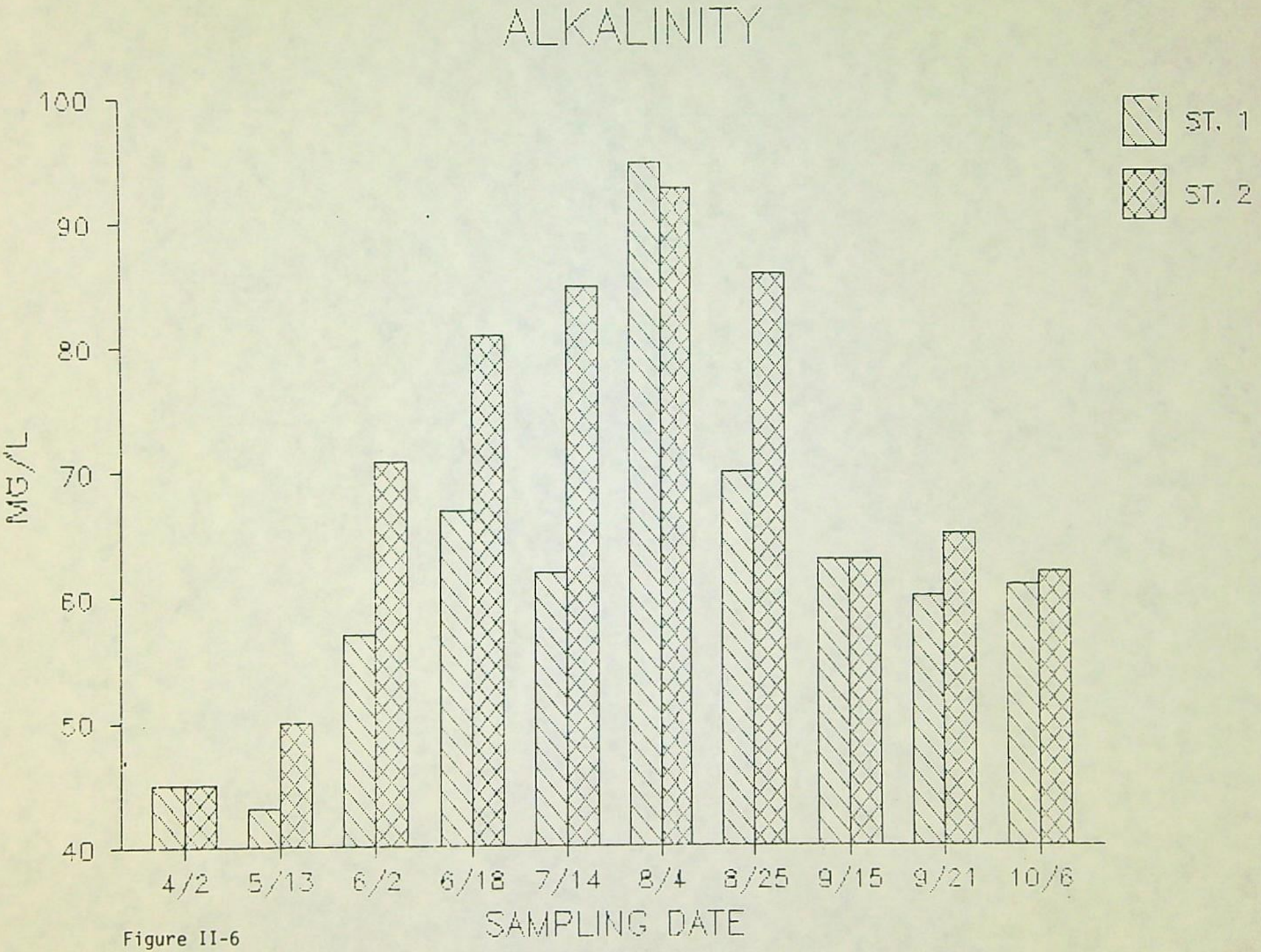
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100
90
80
70
60
50
40
MG/L
ST. 1
ST. 2
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-6

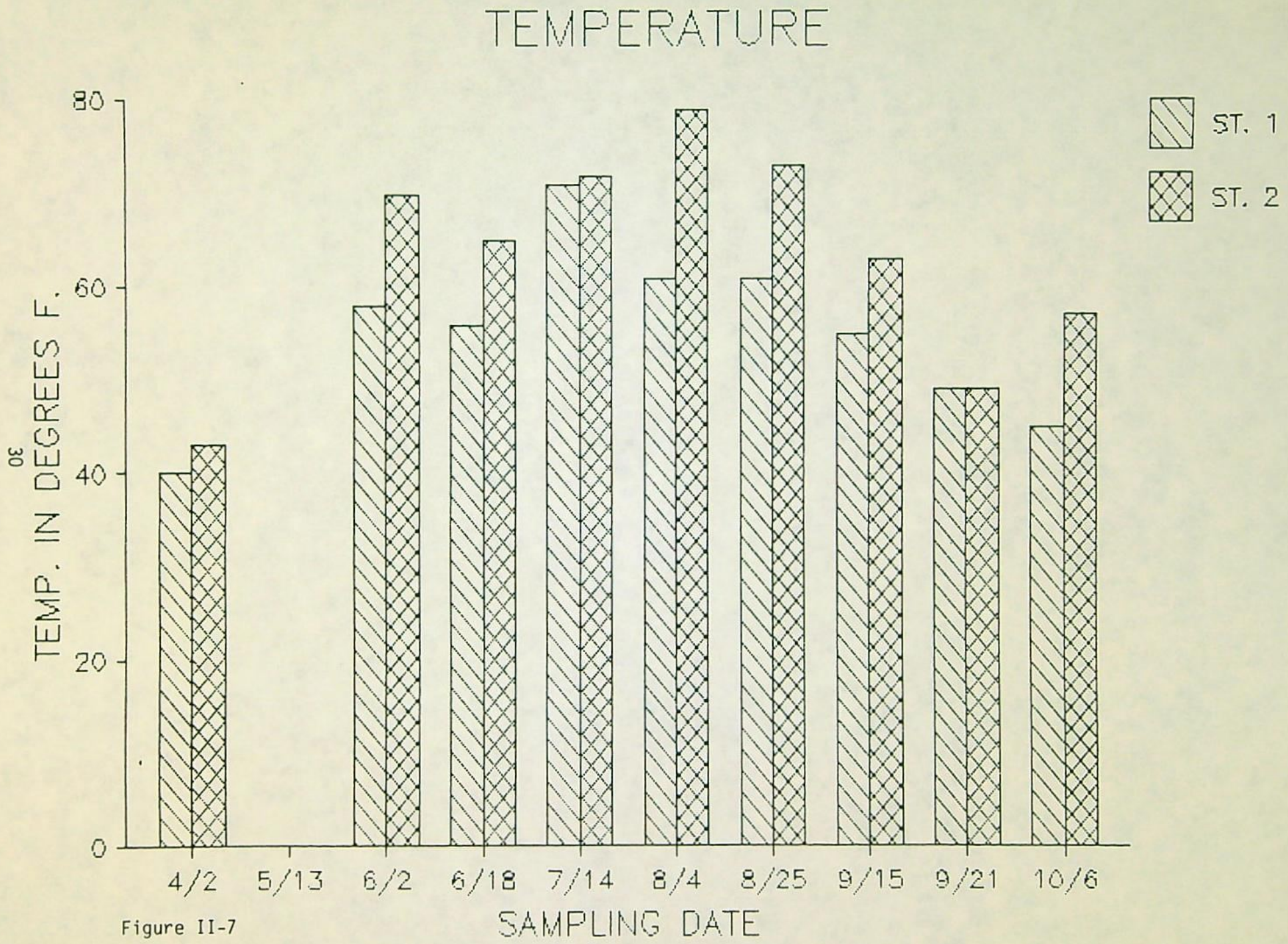
TEMPERATURE
ST. 1
ST. 2
80
60
40
20
0
TEMP. IN DEGREES F.
30
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-7

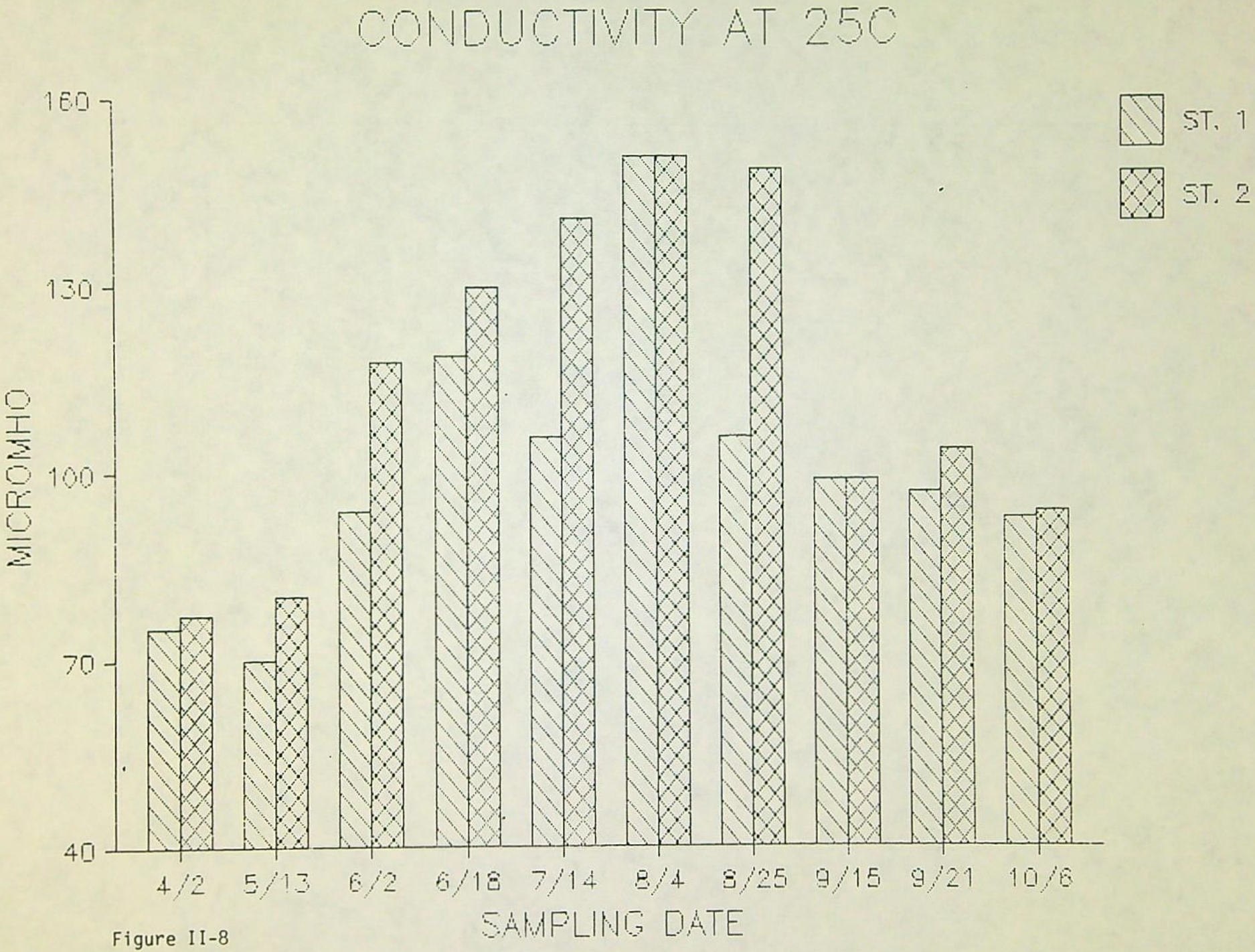
CONDUCTIVITY AT 25C
160
130
100
70
40
MICROMHO
ST. 1
ST. 2
4/2
5/13
6/2
6/16
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-8

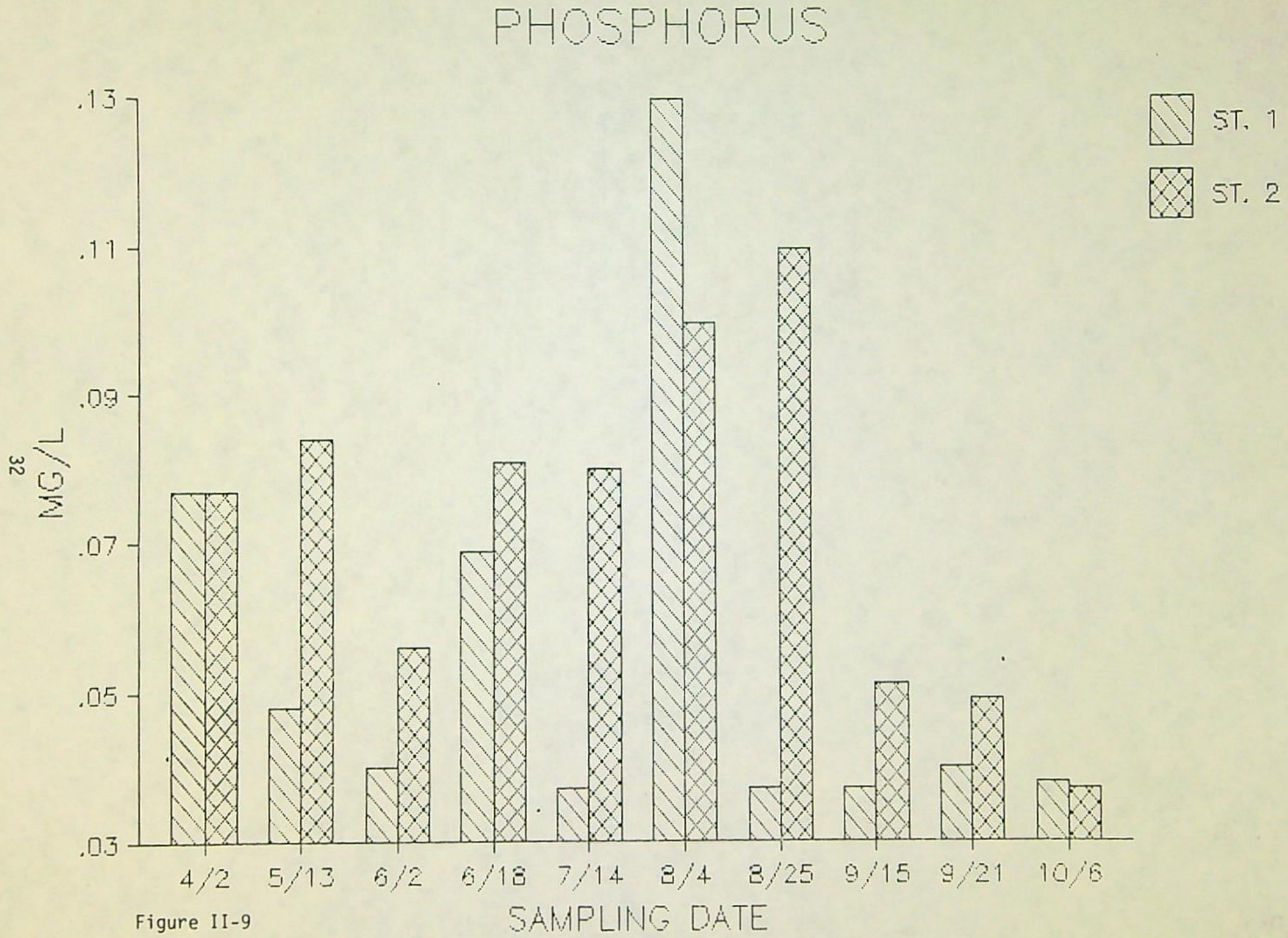
PHOSPHORUS
.13
.11
.09
.07
.05
.03
MG/L
32
ST. 1
ST. 2
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-9

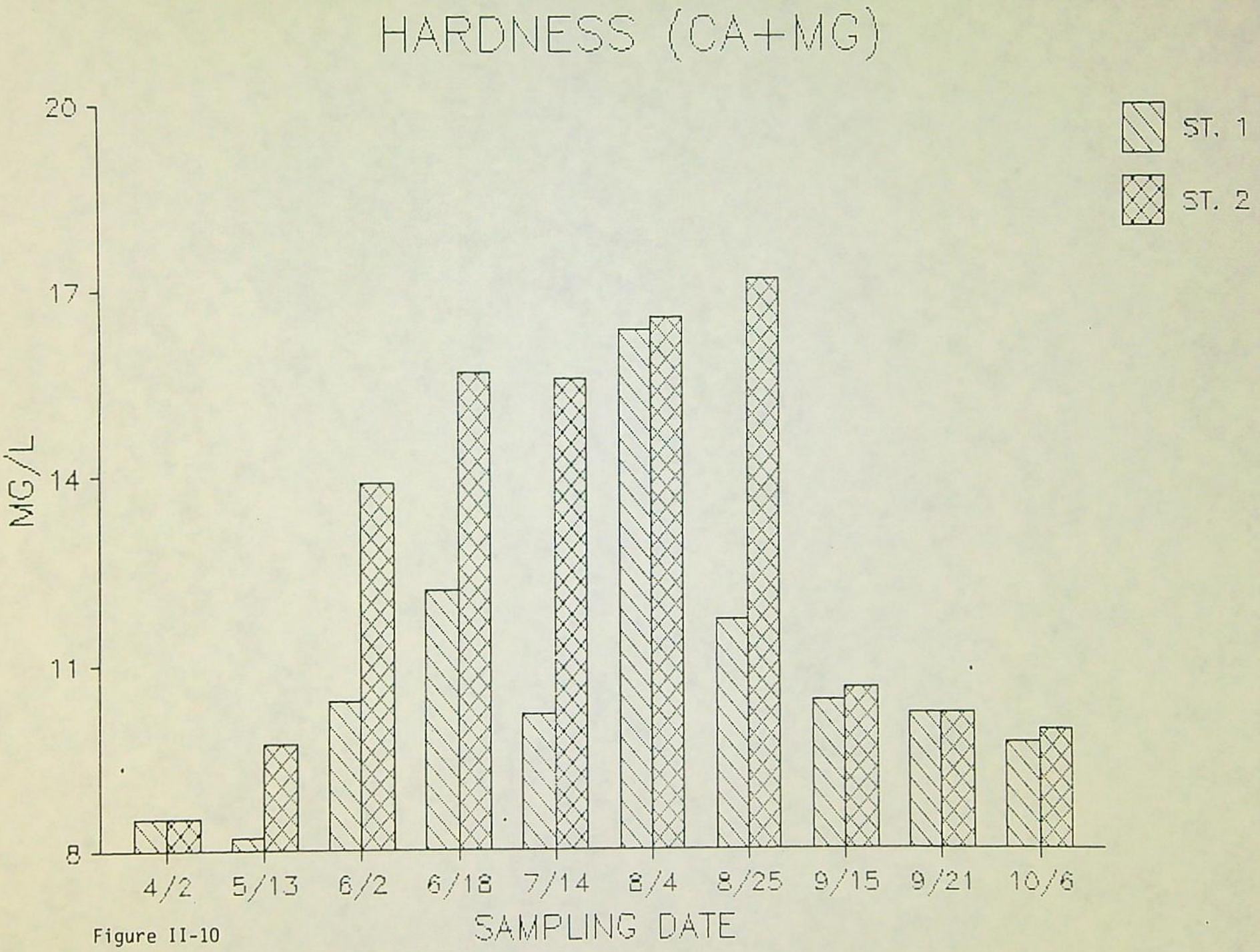
HARDNESS (CA+MG)
ST. 1
ST. 2
20
17
14
11
8
MG/L
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-10

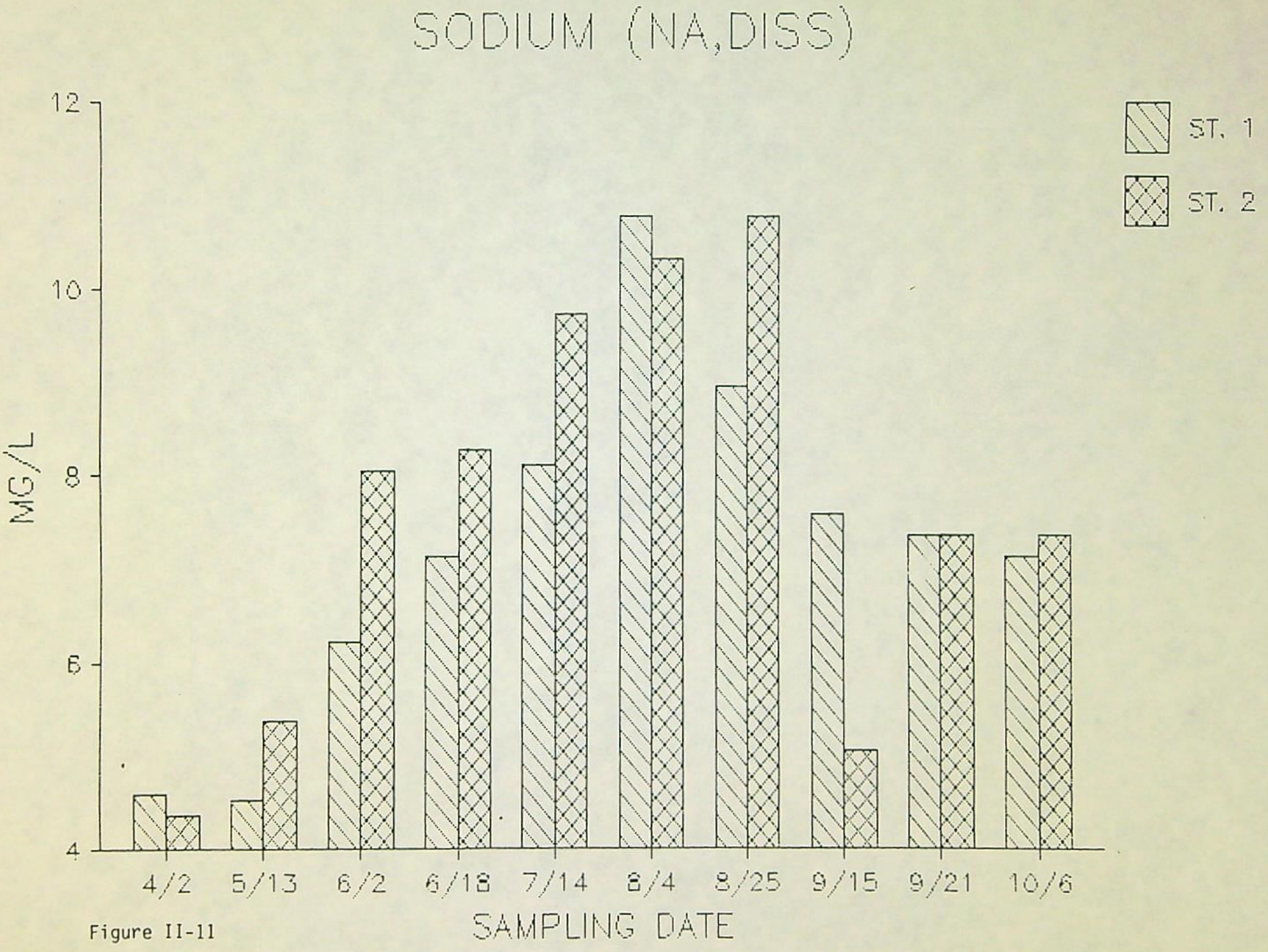
SODIUM (NA,DISS)
ST. 1
ST. 2
MG/L
12
10
8
6
4
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-11

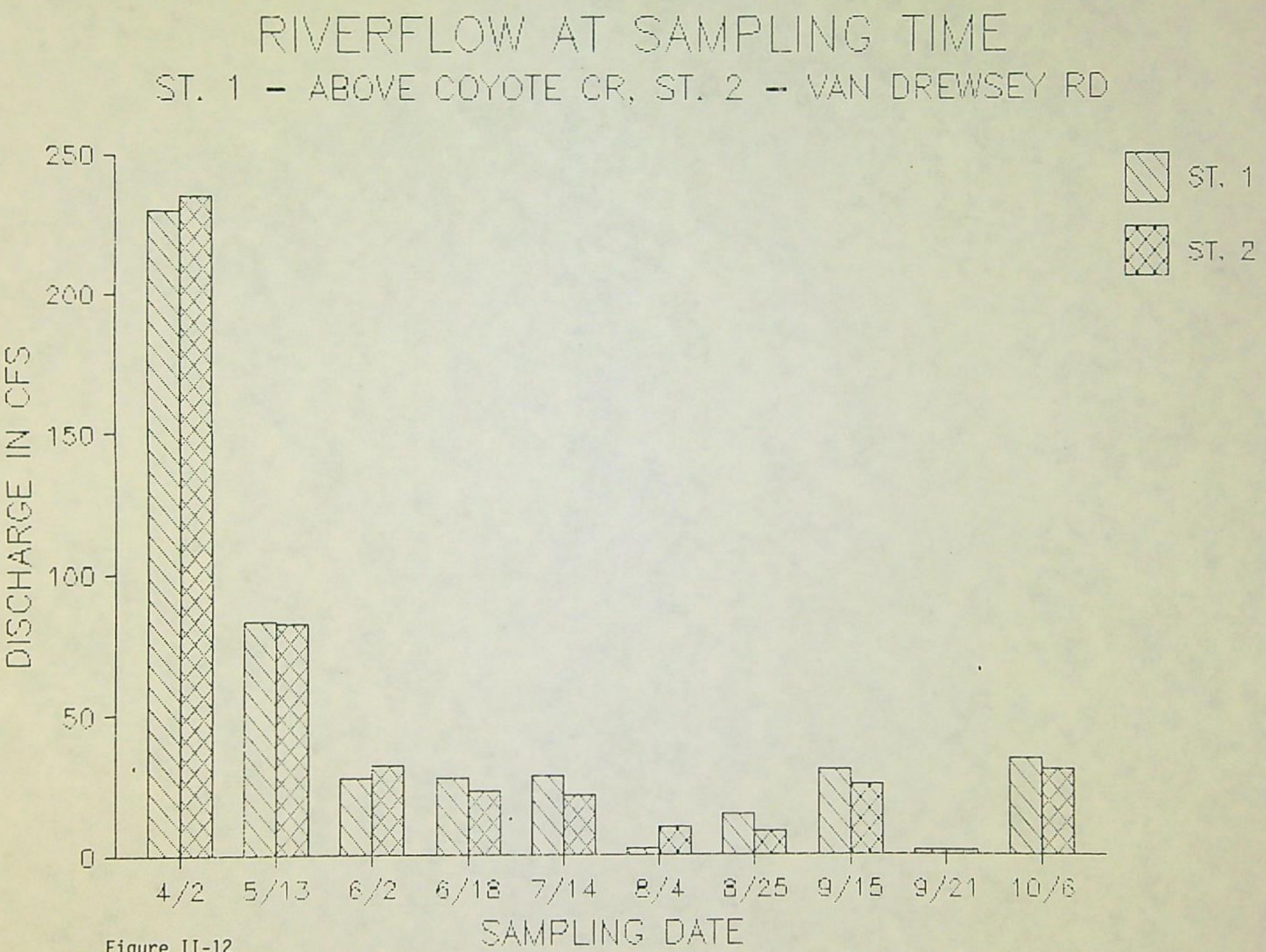
RIVERFLOW AT SAMPLING TIME
ST. 1 - ABOVE COYOTE CR, ST. 2 - VAN DREWSEY RD
ST. 1
ST. 2
DISCHARGE IN CFS
250
200
150
100
50
0
4/2
5/13
6/2
6/18
7/14
8/4
8/25
9/15
9/21
10/6
SAMPLING DATE

Figure II-12

NEIL GOLDSCHMIDT
GOVERNOR

Water Resources Department

3850 PORTLAND ROAD NE, SALEM, OREGON 97310 PHONE 378-3066

November 4, 1987

Malheur River Basin Water Users Association
PO Box 237
Drewsey OR 97904

REFERENCE: File 69433

We received your application on October 28, 1987, for use of water for supplemental irrigation of 5127.0 acres along with the supporting data and fees. Our Receipt 53623 is enclosed. Your application has been filed and assigned number 69433.

Effective July 1, 1987, the law requires the permittee to hire a certified Water Right Examiner to survey the extent of use of water perfected under the terms of a permit. Within one year of application of water to beneficial use or the date to make complete application of water allowed in the permit, the permittee shall submit a map of the survey.

If your application is approved, the project described in the application will be subject to the Water Resources Commission's Basin Program statements, existing minimum flows and demands of prior rights during periods of low water.

Sincerely,

LARRY W. JEBOUSEK
Application/Permit Section
Manager

LWJ:wpc

Enclosure
0003/X
2113E

Application No. 69433 Permit No.

RECEIVED
OCT 28 1987
WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON WATER RESOURCES DEPARTMENT

Application for Permit to Appropriate Surface Water

I, Malhuer River Basin Water Users Association (Name of Applicant)

of P.O. Box 237 (Mailing Address), Drewsey (City)

State of Oregon, 97904 (Zip Code) Phone No. 493-2728 do hereby

make application for a permit to appropriate the following described waters of the State of Oregon:

1. The source of the proposed appropriation is Middle Fork Malhuer River, Griffin Crk, Cottonwood Crk & Ottis Crk. and Spring Creek, a tributary of Snake River

2. The point of diversion is to be located See attached sheet ft. (N. or S.) and ft. (E. or W.)

from the corner of (Public Land Survey Corner)

(If there is more than one point of diversion, each must be described)

being within the ¼ of the ¼ of

Sec. Tp. (N. or S.) R. (E. or W.), W. M., in the county of Harney

3. Location of area to be irrigated, or place of use if other than irrigation.

Township	Range	Section	List ¼ ¼ of Section	List use and/or number of acres to be irrigated
		See attached sheets		

Form 690-1-0-1-77

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR RIVER BASIN WATER USERS ASSOCIATION (503) 493-2728
P.O. BOX 237
DREWSEY, OREGON 97904

to use the waters of MIDDLE FORK MALHEUR RIVER, GRIFFIN CREEK, COTTONWOOD CREEK AND OTIS CREEK, tributaries of SNAKE RIVER, for ALKALI CONTROL, AND FISH AND WILDLIFE MAINTENANCE ON APPROXIMATELY 6,442.7 ACRES.

This permit is issued approving Application 69433. The date of priority is OCTOBER 28, 1987 on 79.6 % of water available under this Permit and July 1, 1991 on 20.4 % of water available under the Permit. These priority dates will be applied evenly to all acres benefited under this permit. The use is limited to not more than 1/40th CUBIC FOOT PER ACRE, this being a total of 163.2 CUBIC FEET PER SECOND, BEING 135 CFS FROM MALHEUR RIVER, 5.0 CFS FROM GRIFFIN CREEK, 18.2 CFS FROM OTIS CREEK, 2.8 CFS FROM COTTONWOOD CREEK AND 2.2 CFS FROM SPRING CREEK, or its equivalent in case of rotation, measured at the point of diversion from the sources.

The point of diversion is located as follows:

1) SE 1/4 SE 1/4, SECTION 32, T 18 S, R 34 E, W.M.; JOHNSON DITCH - 130 FEET NORTH AND 380 FEET WEST FROM SE CORNER, SECTION 32.

2) NE 1/4 NE 1/4, SECTION 8, T 19 S, R 34 E, W.M.; MOFFETT DITCH - 560 FEET SOUTH AND 710 FEET WEST FROM NE CORNER, SECTION 8.

3) SE 1/4 NE 1/4, SECTION 5, T 19 S, R 34 E, W.M.; DITCH - 2375 FEET SOUTH AND 580 FEET WEST FROM NE CORNER, SECTION 5.

4) NE 1/4 SW 1/4, SECTION 8, T 19 S, R 34 E, W.M.; DITCH - 1490 FEET NORTH AND 2080 FEET EAST FROM SW CORNER, SECTION 8.

5) NW 1/4 NW 1/4, SECTION 17, T 19 S, R 34 E, W.M.; DITCH - 200 FEET SOUTH AND 605 FEET EAST FROM NW CORNER, SECTION 17.

6) NE 1/4 NE 1/4, SECTION 18, T 19 S, R 34 E, W.M.; DITCH - 130 FEET SOUTH AND 360 FEET WEST FROM NE CORNER, SECTION 18.

7) SE 1/4 SW 1/4, SECTION 18, T 19 S, R 34 E, W.M.; MARKS DITCH - 345 FEET NORTH AND 2510 FEET EAST FROM SW CORNER, SECTION 18.

8) SE 1/4 NW 1/4, SECTION 19, T 19 S, R 34 E, W.M.; BAILY DITCH - 1330 FEET SOUTH AND 1650 FEET EAST FROM NW CORNER, SECTION 19.

9) NW 1/4 NW 1/4, SECTION 30, T 19 S, R 34 E, W.M.; FARRENS DITCH - 475 FEET SOUTH AND 130 FEET EAST FROM NW CORNER, SECTION 30.

10) NW 1/4 NE 1/4, SECTION 36, T 19 S, R 33 1/2 E, W.M.; ROBBINS DITCH - 1090 FEET SOUTH AND 2375 FEET WEST FROM NE CORNER, SECTION 36.

11) SW 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; CLARKS NORTH DITCH - 2440 FEET SOUTH AND 306 FEET EAST FROM NW CORNER, SECTION 5.

12) SE 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; CLARKS SOUTH DITCH - 2245 FEET SOUTH AND 2010 FEET EAST FROM NW CORNER, SECTION 5.

13) NE 1/4 SW 1/4, SECTION 28, T 19 S, R 34 E, W.M.; GRIFFIN CREEK RESERVOIR - 2330 FEET NORTH AND 1749 FEET EAST FROM SW CORNER, SECTION 28.

14) NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; MILLER DITCH - 675 FEET SOUTH AND 940 FEET WEST FROM NE CORNER, SECTION 10.

15) NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; SITZ DITCH - 845 FEET SOUTH AND 610 FEET WEST FROM NE CORNER, SECTION 10.

16) NE 1/4 SW 1/4, SECTION 11, T 20 S, R 34 E, W.M.; DREWSEY DITCH - 2475 FEET NORTH AND 1520 FEET EAST FROM SW CORNER, SECTION 11.

17) NE 1/4 SW 1/4, SECTION 23, T 20 S, R 35 E, W.M.; DREWSEY DITCH (FRENCH PUMPS) - 2970 FEET SOUTH AND 1440 FEET EAST FROM NW CORNER, SECTION 23.

18) NW 1/4 NW 1/4, SECTION 20, T 20 S, R 36 E, W.M.; WILLIAMS DIVERSION - 825 FEET SOUTH AND 845 FEET EAST FROM NW CORNER, SECTION 20.

19) SE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2520 FEET SOUTH AND 1580 FEET EAST FROM NW CORNER, SECTION 8.

20) NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 1452 FEET EAST FROM NW CORNER, SECTION 8.

21) NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2508 FEET EAST FROM NW CORNER, SECTION 8.

22) NW 1/4 NW 1/4, SECTION 9, T 20 S, R 36 E, W.M.; 760 FEET SOUTH AND 280 FEET EAST FROM NW CORNER, SECTION 9.

23) NE 1/4 SE 1/4, SECTION 25, T 19 S, R 33 1/2 E, W.M.; LILLARD DIVERSION #2 - 1960 FEET NORTH AND 790 FEET WEST FROM SE CORNER, SECTION 25.

24) NE 1/4 NE 1/4, SECTION 36, T 19 S, R 33 1/2 E, W.M.; LILLARD DIVERSION #1 - 10 FEET SOUTH AND 790 FEET WEST FROM NE CORNER, SECTION 36.

25) NE 1/4 SE 1/4, SECTION 22, T 20 S, R 35 E, W.M.; PUMP, 1850 FEET NORTH AND 260 FEET WEST FROM SE CORNER, SECTION 22.

26) NE 1/4 SE 1/4, SECTION 25, T 20 S, R 35 E, W.M.; 1440 FEET NORTH AND 780 FEET WEST FROM SE CORNER, SECTION 25.

The water users shall install and maintain weirs and stall gauges or other measuring devices, to be approved by and installed under the supervision of the Watermaster, for measuring and recording of the quantities of water diverted. Such measuring devices shall be installed and operational at all diversion points under a schedule approved by WRD.

The right allowed herein shall be limited to a total diversion of not to exceed 1.5 acre-feet per acre for each acre supplied, and is further limited to the period from April 1 through June 15 each year.

The use of water allowed herein is subject to a minimum flow of 15 cubic feet per second to be maintained in the channel of Middle Fork Malheur River past all of the authorized diversion points during the period of time when this right is being used. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this Permit is as follows:

SW 1/4	NE 1/4	19.0 ACRES
SE 1/4	NE 1/4	20.0 ACRES
NE 1/4	SE 1/4	27.0 ACRES
NW 1/4	SE 1/4	3.0 ACRES
SE 1/4	SE 1/4	0.5 ACRE

SECTION 13

SE 1/4 SE 1/4	10.0	ACRES
SECTION 23		
SW 1/4 SW 1/4	23.0	ACRES
SE 1/4 SW 1/4	10.0	ACRES
SECTION 24		
SW 1/4 NE 1/4	15.0	ACRES
NE 1/4 NW 1/4	38.0	ACRES
NW 1/4 NW 1/4	40.0	ACRES
SW 1/4 NW 1/4	6.0	ACRES
SE 1/4 NW 1/4	34.0	ACRES
NE 1/4 SW 1/4	19.0	ACRES
NE 1/4 SE 1/4	30.0	ACRES
NW 1/4 SE 1/4	35.0	ACRES
SW 1/4 SE 1/4	40.0	ACRES
SE 1/4 SE 1/4	40.0	ACRES
SECTION 25		
NE 1/4 NE 1/4	14.0	ACRES
SECTION 26		
SE 1/4 NW 1/4	6.0	ACRES
NE 1/4 SW 1/4	15.0	ACRES
SE 1/4 NE 1/4	40.0	ACRES
NE 1/4 SE 1/4	40.0	ACRES
NW 1/4 SE 1/4	40.0	ACRES
SW 1/4 SE 1/4	40.0	ACRES
SE 1/4 SE 1/4	40.0	ACRES
NE 1/4 NE 1/4	39.0	ACRES
NW 1/4 NE 1/4	37.6	ACRES
SW 1/4 NE 1/4	38.4	ACRES
SECTION 36		

TOWNSHIP 19 SOUTH, RANGE 33 1/2 EAST, W.M.

NW 1/4 SW 1/4	20.0	ACRES
NW 1/4 SW 1/4	11.0	ACRES
SW 1/4 SW 1/4	30.0	ACRES
SW 1/4 SE 1/4	23.0	ACRES
SECTION 7		
SW 1/4 NE 1/4	0.8	ACRE
NE 1/4 SW 1/4	12.3	ACRES
SE 1/4 SW 1/4	0.2	ACRE
NW 1/4 SE 1/4	19.0	ACRES
SECTION 8		
NW 1/4 NE 1/4	19.0	ACRES
NW 1/4 NE 1/4	19.0	ACRES
SW 1/4 NE 1/4	30.0	ACRES
NE 1/4 NW 1/4	9.0	ACRES
NW 1/4 NW 1/4	34.0	ACRES
SW 1/4 NW 1/4	28.0	ACRES
SE 1/4 NW 1/4	37.0	ACRES
NE 1/4 SW 1/4	38.0	ACRES
NW 1/4 SW 1/4	23.0	ACRES
SW 1/4 SW 1/4	27.0	ACRES
SE 1/4 SW 1/4	38.0	ACRES
NE 1/4 NE 1/4	38.0	ACRES
SE 1/4 NE 1/4	36.0	ACRES
NE 1/4 SE 1/4	33.0	ACRES
NW 1/4 SE 1/4	38.5	ACRES
SW 1/4 SE 1/4	39.0	ACRES
SE 1/4 SE 1/4	15.0	ACRES
SECTION 18		
NW 1/4 NW 1/4	23.0	ACRES
SW 1/4 NW 1/4	18.0	ACRES
NW 1/4 NE 1/4	35.0	ACRES
SW 1/4 NE 1/4	20.0	ACRES
NE 1/4 NW 1/4	38.0	ACRES
SE 1/4 NW 1/4	11.0	ACRES

SE 1/4	NW 1/4	25.0 ACRES

SECTION 19

NE 1/4	SW 1/4	28.0 ACRES
NW 1/4	SW 1/4	29.0 ACRES
SW 1/4	SW 1/4	22.0 ACRES
SE 1/4	SW 1/4	25.0 ACRES

SECTION 20

NE 1/4	NW 1/4	7.0 ACRES
NW 1/4	NW 1/4	19.0 ACRES
SW 1/4	SW 1/4	18.4 ACRES
SW 1/4	SW 1/4	16.6 ACRES
SE 1/4	NW 1/4	1.0 ACRE
SE 1/4	SW 1/4	26.6 ACRES

SECTION 23

SW 1/4	SW 1/4	10.0 ACRES
SE 1/4	SW 1/4	15.0 ACRES

SECTION 29

SW 1/4	NW 1/4	24.0 ACRES
NW 1/4	SW 1/4	23.0 ACRES
SW 1/4	SW 1/4	30.0 ACRES

SECTION 30

NE 1/4	NW 1/4	6.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	40.0 ACRES
SE 1/4	NW 1/4	31.0 ACRES
NE 1/4	SW 1/4	40.0 ACRES
NW 1/4	SW 1/4	40.0 ACRES
SW 1/4	SW 1/4	40.0 ACRES
SE 1/4	SW 1/4	40.0 ACRES
NW 1/4	SE 1/4	20.0 ACRES
SW 1/4	SE 1/4	40.0 ACRES
SE 1/4	SE 1/4	20.0 ACRES

SECTION 31

NE 1/4	NW 1/4	36.0 ACRES
NW 1/4	NW 1/4	8.0 ACRES
SW 1/4	NW 1/4	2.0 ACRES
SE 1/4	NW 1/4	3.0 ACRES
NW 1/4	NE 1/4	6.0 ACRES

SECTION 32

NE 1/4	NW 1/4	30.3 ACRES
SE 1/4	NW 1/4	26.6 ACRES
SW 1/4	NE 1/4	15.6 ACRES
NE 1/4	SW 1/4	22.9 ACRES
SE 1/4	SW 1/4	7.2 ACRES
NW 1/4	SE 1/4	24.9 ACRES
SW 1/4	SE 1/4	21.0 ACRES

SECTION 33

TOWNSHIP 19 SOUTH, RANGE 34 EAST, W.M.

NE 1/4	NE 1/4	40.0 ACRES
NW 1/4	NE 1/4	22.0 ACRES
SW 1/4	NE 1/4	16.0 ACRES
SE 1/4	NE 1/4	40.0 ACRES
NE 1/4	SE 1/4	10.0 ACRES

SECTION 1

TOWNSHIP 20 SOUTH, RANGE 33 1/2 EAST, W.M.

SW 1/4	NW 1/4	20.0 ACRES
NE 1/4	SW 1/4	5.0 ACRES
NW 1/4	SW 1/4	4.0 ACRES

SECTION 3

NE 1/4	NE 1/4	30.0 ACRES
NW 1/4	NE 1/4	23.4 ACRES

SW 1/4 NE 1/4	22.0	ACRES
SE 1/4 NE 1/4	13.0	ACRES
NE 1/4 SW 1/4	16.0	ACRES
NW 1/4 SW 1/4	14.0	ACRES

SECTION 4

SW 1/4 NW 1/4	0.8	ACRE
SW 1/4 NE 1/4	17.0	ACRES
SE 1/4 NE 1/4	3.0	ACRES
SW 1/4 NW 1/4	0.8	ACRE
SE 1/4 NW 1/4	3.8	ACRES
NE 1/4 SE 1/4	1.0	ACRE
NW 1/4 SE 1/4	1.4	ACRES

SECTION 5

NW 1/4 NE 1/4	40.0	ACRES
SW 1/4 NE 1/4	40.0	ACRES
NE 1/4 NW 1/4	40.0	ACRES
NW 1/4 NW 1/4	40.0	ACRES
SW 1/4 NW 1/4	15.0	ACRES
SE 1/4 NW 1/4	39.0	ACRES
NE 1/4 SE 1/4	10.0	ACRES

SECTION 6

NE 1/4 SE 1/4	2.5	ACRES
NW 1/4 SE 1/4	3.5	ACRES
SW 1/4 SE 1/4	12.0	ACRES
SE 1/4 SE 1/4	30.0	ACRES

SECTION 11

SW 1/4 NE 1/4	2.0	ACRES
SE 1/4 NW 1/4	3.0	ACRES
NW 1/4 SW 1/4	15.1	ACRES
NE 1/4 SW 1/4	32.0	ACRES
SW 1/4 SW 1/4	16.0	ACRES
SE 1/4 SW 1/4	35.0	ACRES
NW 1/4 SE 1/4	15.0	ACRES
SW 1/4 SE 1/4	39.0	ACRES
SE 1/4 SE 1/4	38.0	ACRES
SE 1/4 NE 1/4	38.0	ACRES
NE 1/4 SE 1/4	35.0	ACRES
NE 1/4 NE 1/4	22.0	ACRES

SECTION 12

NE 1/4 NE 1/4	17.0	ACRES
NW 1/4 NE 1/4	13.0	ACRES
NW 1/4 NW 1/4	1.0	ACRE

SECTION 13

TOWNSHIP 20 SOUTH, RANGE 34 EAST, W.M.

NE 1/4 NE 1/4	25.0	ACRES
SE 1/4 NE 1/4	30.0	ACRES
SW 1/4 SW 1/4	38.0	ACRES
SE 1/4 SW 1/4	38.0	ACRES
SE 1/4 NW 1/4	40.0	ACRES
SW 1/4 NW 1/4	40.0	ACRES
NE 1/4 SW 1/4	40.0	ACRES
NW 1/4 SW 1/4	40.0	ACRES
NW 1/4 SE 1/4	34.0	ACRES
SW 1/4 SE 1/4	33.0	ACRES
NW 1/4 NE 1/4	14.0	ACRES
SW 1/4 NE 1/4	33.0	ACRES
SW 1/4 NE 1/4	7.0	ACRES
NE 1/4 NW 1/4	30.0	ACRES
NW 1/4 NW 1/4	30.0	ACRES

SECTION 7

NW 1/4 SW 1/4	30.0	ACRES
SW 1/4 SW 1/4	25.0	ACRES
NE 1/4 SW 1/4	37.0	ACRES
SE 1/4 SW 1/4	38.0	ACRES
NW 1/4 SE 1/4	5.0	ACRES
SW 1/4 SE 1/4	20.0	ACRES

SECTION 17

NE 1/4	NW 1/4	40.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	15.0 ACRES
SE 1/4	NW 1/4	36.0 ACRES
NE 1/4	SW 1/4	8.5 ACRES
NW 1/4	NE 1/4	20.0 ACRES
SW 1/4	NE 1/4	25.0 ACRES
SE 1/4	NE 1/4	3.0 ACRES
NE 1/4	SE 1/4	30.0 ACRES
NW 1/4	SE 1/4	28.0 ACRES
SE 1/4	SE 1/4	5.0 ACRES

SECTION 18

NE 1/4	NE 1/4	17.0 ACRES
NW 1/4	NE 1/4	34.0 ACRES
SW 1/4	NE 1/4	6.0 ACRES
SE 1/4	NE 1/4	28.0 ACRES
NE 1/4	NW 1/4	10.0 ACRES

SECTION 20

SW 1/4	NW 1/4	10.0 ACRES
SE 1/4	NW 1/4	3.0 ACRES
NE 1/4	SW 1/4	36.0 ACRES
NW 1/4	SW 1/4	20.0 ACRES
SE 1/4	SW 1/4	12.0 ACRES
NE 1/4	SE 1/4	27.9 ACRES
NW 1/4	SE 1/4	35.0 ACRES
SW 1/4	SE 1/4	25.0 ACRES
SE 1/4	SE 1/4	30.0 ACRES

SECTION 21

NW 1/4	SW 1/4	5.6 ACRES
SW 1/4	SW 1/4	35.0 ACRES

SECTION 22

NE 1/4	SW 1/4	1.1 ACRES
SE 1/4	SW 1/4	0.5 ACRE
NW 1/4	SE 1/4	5.0 ACRES
SW 1/4	SE 1/4	3.4 ACRES

SECTION 23

SW 1/4	SW 1/4	34.6 ACRES
SE 1/4	SW 1/4	27.8 ACRES
SW 1/4	SE 1/4	31.4 ACRES
SE 1/4	SE 1/4	40.0 ACRES
NE 1/4	SE 1/4	28.4 ACRES

SECTION 24

NW 1/4	NE 1/4	37.7 ACRES
NE 1/4	NW 1/4	22.0 ACRES
NW 1/4	NW 1/4	15.3 ACRES
NE 1/4	NE 1/4	40.0 ACRES
SE 1/4	NE 1/4	39.0 ACRES
SW 1/4	NE 1/4	14.8 ACRES
NE 1/4	SE 1/4	17.5 ACRES
SE 1/4	SE 1/4	13.6 ACRES

SECTION 25

NE 1/4	NE 1/4	1.2 ACRES

SECTION 36

TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.

NE 1/4	NW 1/4	40.0 ACRES
SE 1/4	NW 1/4	40.0 ACRES
NE 1/4	SW 1/4	35.0 ACRES
SE 1/4	SW 1/4	37.0 ACRES
NW 1/4	SE 1/4	2.0 ACRES
SW 1/4	SE 1/4	20.0 ACRES

SECTION 8

NW 1/4 NE 1/4	25.0	ACRES
NE 1/4 NW 1/4	20.0	ACRES
SW 1/4 NE 1/4	15.0	ACRES
SE 1/4 NW 1/4	20.0	ACRES
NE 1/4 SW 1/4	23.0	ACRES
NW 1/4 SE 1/4	8.0	ACRES
SW 1/4 SE 1/4	4.0	ACRES

SECTION 17

NE 1/4 NE 1/4	10.0	ACRES
SE 1/4 NE 1/4	30.0	ACRES
SE 1/4 SW 1/4	3.0	ACRES
NE 1/4 SE 1/4	23.0	ACRES
NW 1/4 SE 1/4	8.0	ACRES
SW 1/4 SE 1/4	30.0	ACRES
NW 1/4 SW 1/4	35.0	ACRES
SW 1/4 SW 1/4	27.5	ACRES
NW 1/4 NW 1/4	16.6	ACRES

SECTION 19

NE 1/4 SE 1/4	0.8	ACRE
SE 1/4 NE 1/4	6.1	ACRES
SE 1/4 SW 1/4	1.7	ACRES
NE 1/4 SE 1/4	25.1	ACRES
NW 1/4 SE 1/4	20.3	ACRES
SE 1/4 SE 1/4	22.5	ACRES
SE 1/4 SE 1/4	1.4	ACRES

SECTION 22

NE 1/4 SW 1/4	0.3	ACRE
NW 1/4 SW 1/4	12.4	ACRES
SW 1/4 SW 1/4	5.0	ACRES
SE 1/4 SW 1/4	11.8	ACRES

SECTION 23

NW 1/4 NE 1/4	40.0	ACRES
SW 1/4 NE 1/4	40.0	ACRES
SE 1/4 NE 1/4	10.0	ACRES
NE 1/4 NW 1/4	6.0	ACRES
NE 1/4 SE 1/4	26.0	ACRES
NW 1/4 SE 1/4	35.0	ACRES
SW 1/4 SE 1/4	30.0	ACRES
SE 1/4 SE 1/4	35.0	ACRES
SE 1/4 NW 1/4	0.4	ACRE
NE 1/4 SW 1/4	31.1	ACRES
SW 1/4 SW 1/4	0.9	ACRE
SE 1/4 SW 1/4	10.2	ACRES
SW 1/4 SW 1/4	36.2	ACRES
SW 1/4 NW 1/4	26.0	ACRES
SE 1/4 NW 1/4	1.2	ACRES
NW 1/4 SW 1/4	40.0	ACRES
SE 1/4 SW 1/4	29.6	ACRES
SW 1/4 SE 1/4	6.0	ACRES

SECTION 30

NE 1/4 NE 1/4	40.0	ACRES
NW 1/4 NE 1/4	40.0	ACRES
SW 1/4 NE 1/4	40.0	ACRES
SE 1/4 NE 1/4	12.0	ACRES
NE 1/4 SE 1/4	7.0	ACRES
NE 1/4 NW 1/4	8.9	ACRES
NW 1/4 NW 1/4	0.9	ACRE
NE 1/4 NW 1/4	7.0	ACRES
NW 1/4 NW 1/4	20.0	ACRES
SW 1/4 NW 1/4	0.1	ACRE
SE 1/4 NW 1/4	22.6	ACRES
NE 1/4 SW 1/4	0.8	ACRE
SW 1/4 SE 1/4	6.0	ACRES
SE 1/4 SE 1/4	36.8	ACRES
NE 1/4 NW 1/4	8.9	ACRES
NW 1/4 NW 1/4	0.9	ACRE

NE 1/4 NW 1/4	7.0 ACRES
NW 1/4 NW 1/4	20.0 ACRES
SW 1/4 NW 1/4	0.1 ACRE
SE 1/4 NW 1/4	22.6 ACRES
NE 1/4 SW 1/4	0.8 ACRE
SW 1/4 SE 1/4	6.0 ACRES
SE 1/4 SE 1/4	36.8 ACRES

SECTION 31

SW 1/4 SW 1/4	12.2 ACRES
NW 1/4 NW 1/4	12.5 ACRES
SW 1/4 NW 1/4	25.0 ACRES
NW 1/4 SW 1/4	37.0 ACRES

SECTION 32

TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

NE 1/4 SE 1/4	0.8 ACRE
SE 1/4 NE 1/4	6.1 ACRES
SE 1/4 SW 1/4	1.7 ACRES
NE 1/4 SE 1/4	25.1 ACRES
NW 1/4 SE 1/4	20.3 ACRES
SW 1/4 SE 1/4	22.5 ACRES
SE 1/4 SE 1/4	1.4 ACRES

SECTION 22

NE 1/4 SW 1/4	0.3 ACRE
NW 1/4 SW 1/4	12.4 ACRES
SW 1/4 SW 1/4	5.0 ACRES
SE 1/4 SW 1/4	11.8 ACRES
NE 1/4 SW 1/4	1.8 ACRES
NW 1/4 SW 1/4	9.0 ACRES
SE 1/4 SW 1/4	23.2 ACRES
NE 1/4 SE 1/4	2.0 ACRES
NW 1/4 SE 1/4	6.0 ACRES
SW 1/4 SE 1/4	38.3 ACRES
SE 1/4 SE 1/4	34.0 ACRES
NE 1/4 SW 1/4	16.0 ACRES
NW 1/4 SW 1/4	10.0 ACRES

SECTION 23

NE 1/4 NE 1/4	40.0 ACRES
NW 1/4 NE 1/4	34.6 ACRES

SECTION 26

TOWNSHIP 25 SOUTH, RANGE 35 EAST, W.M.

LOT 3	7.0 ACRES
LOT 4	17.8 ACRES
NW 1/4 SW 1/4	0.8 ACRE

SECTION 5

SE 1/4 NE 1/4	0.8 ACRE

SECTION 6

TOWNSHIP 21 SOUTH, RANGE 36 EAST, W.M.

This project was considered and approved by the Water Resources Commission on _____.

All new head gates shall be designed and constructed to allow installation of fish screening and all diversions shall comply with applicable laws requiring fish screening. Those benefited by this permit shall hire personnel to monitor water use at the water users' diversion. Hiring and dismissal of the diversion monitoring personnel shall be subject to WRD's approval, WRD shall deputize the diversion monitoring personnel as assistant watermaster(s) to regulate the diversion of water to the rate, duty and priority established on the water rights. WRD shall have the authority to dismiss said personnel if they fail to adequately enforce Oregon's water laws. The personnel hired by the water users shall also require their personnel to regulate all water rights on the lands subject to this permit, including diversion among water users on individual ditches.

Actual construction work shall begin on or before October 1, 1992, and shall be completed on or before October 1, 1993. Complete application of the water to the use shall be made on or before October 1, 1993.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water within this permit is allocated between other existing water rights and this right as follows: The rate of flow for all water diverted during the time period set out in this permit shall first be charged against the flow set out in prior rights. To the extent that flow exceeds that permitted under prior rights, additional flow shall be charged to this permit. The duty for all water diverted during the time period set out in this permit shall be charged against the duty of the prior irrigation right until a total of 1 1/2 acre-feet is charged to said right. To the extent that water diverted during the time period exceeds 1 1/2 acre-feet during said time period, it will be charged to this permit.

[Deficiency In Rate] In addition, this permit is issued approving an additional 1/80th cfs per acre diversion for all lands described in Certificate numbers 3526, 2134, 7691, 2151, 8121 and 49682, this additional diversion rate is for irrigation and when combined with the original certificate rate, allows a total diversion rate of 1/40th cfs for irrigation on the lands subject to said permits.

Issued this date,_____.

_____
Water Resources Department
William H. Young
Director

Application 69433 Water Resources Department PERMIT
Basin Volume District

Application No. 69433 Permit No.

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OCT 28 1987
WATER RESOURCES DEPT.
SALEM, OREGON

STATE OF OREGON WATER RESOURCES DEPARTMENT

Application for Permit to Appropriate Surface Water

I, Malhuer River Basin Water Users Association (Name of Applicant)

of P.O. Box 32 (Mailing Address), Drewsey (City)

State of Oregon, 97904 (Zip Code) Phone No. 493-2728 do hereby

make application for a permit to appropriate the following described waters of the State of Oregon:

1. The source of the proposed appropriation is Middle Fork Malhuer River, Griffin Crk, Cottonwood Crk & Ottis Crk., a tributary of Snake River

2. The point of diversion is to be located See attached sheet ft. (N. or S.) and ft. (E. or W.)

from the corner of (Public Land Survey Corner)

(If there is more than one point of diversion, each must be described)

being within the ¼ of the ¼ of

Sec. Tp. (N. or S.) R. (E. or W.), W. M., in the county of Harney

3. Location of area to be irrigated, or place of use if other than irrigation.

Township	Range	Section	List ¼ ¼ of Section	List use and/or number of acres to be irrigated
		See attached	sheets	

Form 690-1-0-1-77

Malhuer River Basin Water Users Association

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(2) Point of diversions

·#1 =Johnson Ditch 130' N,380' W from S.E. corner sec. 32,T-18-S,R-34-E being within S.E.,S.E. of sec. 32,T-18-S, R-34-E.

·#2 = Moffett Ditch-560'S,710'W from the N.E. corner sec.8,T-19-S,R-34 E, being within N.E.¼ of N.E.¼ sec. 8,T-19-S,R 34-E.

·#3 = ditch 2375'S,580'W from N.E. corner sec. 5,T-19-S, R-34-E being within N.E.¼ of N.E.¼ of sec. 8,T-19-S,R- 34-E.

·#4 = ditch 1490'N,2080'E from S.W. corner sec.8,T-19-S,R-34-E being within N.E.¼,S.W.¼ sec.8,T-19-S,R-34-E.

·#5 = ditch 200'S 605'E from the N.W. corner sec.17,T-19-S,R-34-E being within N.W¼ofN.W.¼ sec.17,T-19-S,R34-E.

·#6 = ditch 130'S 360'W from N.E.corner sec.18,T-19-S,R-34-E being within N.E.¼ of N.E.¼ sec.18, T-34-E,R-34-E.

·#7 = Marks ditch 345'N 2510'E from S.W. corner sec.18,T-19-S,R-34-E being within S.E.¼ S,W.¼ sec. 18,T-19-S,R-34-E.

·#8 = Baily Ditch 1330'S 1650'E from N.W.corner sec. 19,T-19-S,R-34-E being within S.E¼ N.W.¼ sec.19,T-19-S, R-34-E.

·#9 = Farrens Ditch 475'S 130'E from N.W. corner sec.30,T-19-S,R-34-E being within N.W.¼ N.W.¼ of sec.30 T-19-S, R-34-E.

·#10= Robbins Ditch 1090'S 2375'W from N.E. corner sec.36,T-19-S,R-33½ E, being within N.W.¼ N.E.¼ sec.36,T-19-S, R-33½-E.

·#11= Clarks North Ditch 2440'S 300'E from N.W. corner sec.5, T-20-S, R-34-E being within S.W.¼ N.W.¼ sec.5,T-20-S,R-34-E.

·#12= Clarks South Ditch 2245'S 2010'E from N.W. corner sec.5 T-20-S, R-34-E being within S.E.¼ N.W.¼ sec.5, T-20-S, R34-E.

·#13= Griffin Cr. Reservoir 2330'N 1750'E from S.W.corner sec.28,T-19 S, R-34-E being withinN.E.¼ S.W.¼ sec. 28,T-19-S,R-34-E.

·#14= Miller Ditch 675'S 940'W from N.E. corner sec. 10, T-20-S, R-34-E being within N.E.¼ N.E.¼ sec. 10, T-20-S, R-34-E.

·#15= SitZ ditch 845'S 610'W from N.E. corner sec. 10, T-20-S,R-34-E being within N.E.¼ N.E.¼ sec.10,T-20-S,R-34-E.

·#16= Drewsey Ditch 2475'N 1520'E from S.W. corner sec. 11, T-20-S, R-34-E being within N.E.¼ S.W.¼ sec.11,T-20-S, R-34-E.

·#17= French Pumps (additional diversion) to #16 diversion.2970'S 1440'E from N.W. corner sec. 23,T-20-S, R-35-E being within N.E.¼ S.W.¼ sec. 23,T-20-S,R-35-E.

·#18= Williams Div. 825'S 845'E from N.W. corner Sec.20,T-20-S,R-36-E being within N.W.¼ of SEc. 20,T-20-S,R-36-E.

·#19= 2520'S 1580'E from N.W. corner Sec. 8,T-20-S,R-36-E being within SE¼ of NW¼ of sec.8 T-20-S,R-36-E.

·#20= 0'S 1452'E from NW corner sec.8,T-20-S,R-36-E,being within NE¼ of NW¼ sec. 8,T-20-S,R-36-E.

·#21= 0'S 2508'E from NW corner sec. 8,T-20-S,R-36-E being within NE¼ of the NW¼ sec.8,T-20-S,R-36-E.

·#22= 760'S,280'E from NW corner sec.9,T-20-S,R-36-E,beihg within NW¼ NW¼ sec.9,T-20-S,R-36-E.

Application No. 69433
Permit No.

TSP	RNG	Sec.	¼¼	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
19-S	33½-E	13	SW NE	19.0	19.0	3526	2	1200
			SE NE	20.0	20.0	"	"	"
			NE SE	27.0	27.0	"	"	"
			NW SE	3.0	3.0	"	"	"
			SE SE	0.5	0.5	2134	"	"
19-S	34-E	7	NW SW	20.0	20.0	3526	"	500
			NW SW	11.0	11.0	7001	"	"
			SW SW	30.0	30.0	"	"	"
			SW SE	23.0	23.0	3791	"	"
		18	NW NE	19.0	19.0	6857	"	"
			NW NE	19.0	19.0	"	4	"
			SW NE	25.0	25.0	"	2	"
			SW NE	5.0	5.0	"	4	"
			NE NW	9.0	9.0	"	2	"
			NW NW	34.0	34.0	7001	"	"
			SW NW	28.0	28.0	"	"	"
			SE NW	18.0	18.0	6857	"	"
			SE NW	19.0	19.0	"	6	"
			NE SW	18.0	18.0	"	2	"
			NE SW	20.0	20.0	"	6	"
			NW SW	4.0	4.0	2134	2	"
			NW SW	19.0	19.0	6932	2	"
			SW SW	25.0	25.0	"	"	"
			SW SW	2.0	2.0	2134	"	"
			SE SW	38.0	38.0	6877	"	"
		19	NW NW	12.0	12.0	6857	2	"
			NW NW	11.0	11.0	"	7	"
			SW NW	18.0	18.0	"	7	"
			NW NE	35.0	35.0	70450	5	"
			SW NE	20.0	20.0	"	"	900
			NE NW	16.0	16.0	7050	7	"
			NE NW	22.0	22.0	"	5	"
			SE NW	3.0	3.0	"	7	"
			SE NW	8.0	8.0	"	8	"
			SE NW	25.0	25.0	"	5	"
		30	SW NW	24.0	24.0	27613	9	1500
			NW SW	23.0	23.0	"	"	"
			SW SW	30.0	30.0	"	"	"
		31	NE NW	6.0	6.0	"	"	"
			NW NW	40.0	40.0	"	"	"
			SW NW	40.0	40.0	"	"	"
			SE NW	31.0	31.0	"	"	"
			NE SW	40.0	40.0	"	"	"
			NW SW	40.0	40.0	"	"	"
		29	SW SW	10.0	10.0	6896	1	"
			SE SW	15.0	15.0	"	"	"
		32	NE NW	36.0	36.0	"	"	"
			NW NW	8.0	8.0	47708	"	"
			SW NW	2.0	2.0	"	"	"
			SE NW	3.0	3.0	"	"	"
			NW NE	6.0	6.0	"	"	1400
19-S	33½-E	36	SE NW	6.0	6.0	6960	10	2800
			NE SW	15.0	15.0	"	"	"
20-S	34-E	5	SW NW	.8	.8	26409	9	1100

1001.20 1001.30

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Application No. 69433
Permit No.

Application No. 64433

TSP	RNG	SEC.	¼¼	Acres	Sup.	Cert.#	Div. Pt.	Tax Lot
19-S	33½-E	36	SE NE	40.0	40.0	6960	9	2900
			NE SE	40.0	40.0	"	"	"
			NW SE	10.0	10.0	"	10	"
			NW SE	30.0	30.0	"	9	"
			SW SE	30.0	30.0	"	10	"
			SW SE	10.0	10.0	"	9	"
			SE SE	40.0	40.0	"	9	"
20-S	33½-E	1	NE NE	30.0	30.0	"	9	100
			NE NE	10.0	10.0	"	10	"
			NW NE	22.0	22.0	"	"	"
			SW NE	16.0	16.0	"	"	"
			SE NE	40.0	40.0	"	"	"
			NE SE	10.0	10.0	"	"	"
19-S	34-E	31	SW SW	32.0	32.0	"	"	1600
			SW SW	8.0	8.0	"	9	"
			SE SW	40.0	40.0	"	"	"
			NW SE	20.0	20.0	"	"	"
			SW SE	40.0	40.0	"	"	"
			SE SE	20.0	20.0	"	"	"
20-S	34-E	6	NW NE	26.0	26.0	"	"	1200
			NW NE	14.0	14.0	"	10	"
			SW NE	40.0	40.0	"	"	"
			NE NW	11.0	11.0	"	9	"
			NE NW	29.0	29.0	"	10	"
			NW NW	40.0	40.0	"	"	"
			SW NW	15.0	15.0	"	"	"
			SE NW	39.0	39.0	"	"	"
			NE SE	10.0	10.0	6989	"	"
19-S	34-E	8	SW NE	.8	.8	26679	3	300
			NE SW	4.3	4.3	"	"	"
			NE SW	8.0	8.0	"	"	"
			SE SW	.2	.2	"	"	"
			NW SE	19.0	19.0	"	"	"
		18	NE NE	15.0	15.0	6989	6	"
			NE NE	23.0	23.0	"	5	"
			SE NE	36.0	36.0	"	"	"
			NE SE	33.0	33.0	"	"	"
			NW SE	38.5	38.5	"	"	"
			SW SE	39.0	39.0	"	"	"
			SE SE	15.0	15.0	"	"	"
		20	NE SW	28.0	28.0	32380	1	1200
			NW SW	29.0	29.0	"	"	"
			SW SW	22.0	22.0	"	"	"
			SE SW	25.0	25.0	"	"	"
		28	NE NW	7.0	7.0	"	"	"
			NW NW	19.0	19.0	"	"	"
			SW SW	18.4	18.4	26678	"	1300
			SW SW	16.6	16.6	26569	13	"
			SE NW	1.0	1.0	26678	1	"
			SE SW	26.6	26.6	26569	13	"
		33	NE NW	30.8	30.8	"	"	"
			SE NW	26.6	26.6	"	"	"
			SW NE	15.6	15.6	"	"	"
			NE SW	22.9	22.9	"	"	"
			SE SW	7.2	7.2	"	"	"
			NW SE	24.9	24.9	"	"	"
			SW SE	21.0	21.0	"	"	"
20-S	34-E	5	SW NE	15.0	15.0	6946	12	900
			SW NE	2.0	2.0	26409	11	"

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WATER RESOURCES DEPT
SALEM, OREGON

Application No. 67455

TSP	RNG	SEC.	11/44	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
20-S	34-E	5	SE NE	3.0	3.0	6946	11	900
			SW NW	.8	.8	26409	"	"
			SE NW	3.8	3.8	"	"	"
			NE SE	1.0	1.0	2151	"	600
			NW SE	1.4	1.4	26409	12	900
		4	NE NE	30.0	30.0	6979	"	400
			NW NE	6.4	6.4	26569	13	"
			NW NE	17.0	17.0	6979	12	"
			SW NE	22.0	22.0	"	"	"
			SE NE	13.0	13.0	"	"	"
			NE SW	16.0	16.0	2151	"	"
			NW SW	13.0	13.0	"	"	600
			NW SW	1.0	1.0	"	11	"
		3	SW NW	20.0	20.0	6979	12	400
			NE SW	5.0	5.0	"	"	"
			NW SW	4.0	4.0	"	"	"
		11	NE SE	2.5	2.5	6897	14	300
			NW SE	3.5	3.5	6930	16	"
			SW SE	12.0	12.0	"	"	"
			SE SE	13.0	13.0	"	"	"
			SE SE	17.0	17.0	"	14	"
		12	SW NE	2.0	2.0	"	16	"
			SE NW	2.0	2.0	8121	14	"
			SE NW	1.0	1.0	"	16	"
			NW SW	7.8	7.8	"	14	"
			NW SW	7.3	7.3	6930	16	"
			NE SW	2.3	2.3	7012	14	1600
			NE SW	27.7	27.7	"	16	"
			NE SW	2.0	2.0	"	15	"
			SW SW	10.0	10.0	"	16	"
			SW SW	6.0	6.0	"	15	"
			SE SW	5.0	5.0	"	16	"
			SE SW	30.0	30.0	"	15	"
			NW SE	15.0	15.0	"	16	"
			SW SE	39.0	39.0	"	15	"
			SE SE	18.0	18.0	"	"	"
			SE SE	20.0	20.0	"	16	"
		13	NE NE	7.0	7.0	"	15	"
			NW NE	13.0	13.0	"	"	"
			NW NW	1.0	1.0	"	"	"
20-S	35-E	7	NE NE	25.0	25.0	6971	14	900
			SE NE	30.0	30.0	"	"	"
			SW SW	30.0	30.0	"	16	1500
			SW SW	8.0	8.0	"	15	"
			SE SW	30.0	30.0	"	16	"
			SE SW	8.0	8.0	"	15	"
		18	NE NW	15.0	15.0	"	16	900
			NE NW	25.0	25.0	"	15	"
			NW NW	40.0	40.0	"	"	"
			SW NW	15.0	15.0	"	"	"
			SE NW	2.5	2.5	"	"	"
			SE NW	33.5	33.5	"	16	"
			NE SW	8.5	8.5	"	15	"
20-S	34-E	13	NW NE	5.0	5.0	7012	"	1700
			NE NE	10.0	10.0	"	"	1800
20-S	35-E	7	SE NW	26.0	26.0	6989	14	1400
			SE NW	14.0	14.0	"	16	"
			SW NW	35.0	35.0	"	14	"
			SW NW	5.0	5.0	"	16	"

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SALEM, OREGON

Application No. G-1755

TSP	RNG	SEC.	¼¼	ACRES	SUP.	Cert.#	Div.Pt.	Tax Lot
20-S	35-E	7	NE SW	40.0	40.0	6989	16	1400
			NW SW	37.0	37.0	"	"	"
			NW SW	3.0	3.0	"	14	"
			NW SE	34.0	34.0	"	16	"
			SW SE	33.0	33.0	"	"	"
20-S	34-E	12	SE NE	38.0	38.0	"	14	1500
			NE SE	7.0	7.0	"	"	"
			NE SE	28.0	28.0	"	16	"
20-S	35-E	7	NW NE	14.0	14.0	6972	14	1300
			SW NE	33.0	33.0	"	"	"
			SW NE	7.0	7.0	"	16	"
			NE NW	30.0	30.0	6930	14	1200
			NW NW	30.0	30.0	"	"	"
20-S	34-E	12	NE NE	22.0	22.0	"	"	"
20-S	35-E	18	NW NE	20.0	20.0	6903	16	2800
			SW NE	25.0	25.0	"	"	"
			SE NE	3.0	3.0	"	"	"
			NE SE	15.0	15.0	"	"	"
			NW SE	28.0	28.0	7012	"	"
			NE SE	15.0	15.0	6903	"	1800
			SE SE	5.0	5.0	"	"	"
		17	NW SW	30.0	30.0	"	"	"
			SW SW	25.0	25.0	"	"	"
			NE SW	37.0	37.0	6930	"	1900
			SE SW	38.0	38.0	"	"	"
			NW SE	5.0	5.0	"	"	"
			SW SE	20.0	20.0	"	"	"
		20	NE NE	17.0	17.0	"	"	"
			NW NE	34.0	34.0	6998	"	"
			SW NE	6.0	6.0	"	"	"
			SE NE	28.0	28.0	"	"	"
			NE NW	10.0	10.0	6930	"	"
		21	SW NW	10.0	10.0	"	"	3100
			SE NW	3.0	3.0	"	"	"
			NE SW	36.0	36.0	"	"	"
			NW SW	20.0	20.0	"	"	"
			SE SW	12.0	12.0	"	"	"
			NE SE	20.0	20.0	6891	"	3300
			NE SE	7.9	7.9	11219	"	"
			NW SE	32.0	32.0	6891	"	"
			NW SE	3.0	3.0	11219	"	"
			SW SE	25.0	25.0	6891	"	"
			SE SE	30.0	30.0	"	"	"
		22	NW SW	1.0	1.0	6897	"	"
			NW SW	4.6	4.6	11219	"	"
			SW SW	35.0	35.0	6891	"	"
		23	NE SW	1.1	1.1	11219	"	200
			SE SW	.5	.5	"	"	"
			NW SE	5.0	5.0	"	"	"
			SW SE	3.4	3.4	"	"	"
		24	SW SW	34.6	34.6	"	16,17	3500
			SE SW	27.8	27.8	"	" "	"
			SW SE	31.4	31.4	"	" "	"
			SE SE	40.0	40.0	"	" "	"
			NE SE	28.4	28.4	"	" "	3600
20-S	36-E	19	NW SW	35.0	35.0	"	" "	2000
			SW SW	27.5	27.5	"	" "	"
			NW NW	16.6	16.6	"	" "	"
		8	NE NW	40.0	40.0	7020	20,21	11
				(240.8)	1242.8	31115		

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	RNG	SEC.	¼¼	ACRES	SUP.	Cert.#	Div. Pt.	Tax Lot
20-S	36-E	8	SE NW	40.0	40.0	7020	20	11
						31115	21	
			NE SW	35.0	35.0	7020	20,19	11
						31115	21	
			SE SW	37.0	37.0	7020	20,19	11
						31115	21	
			NW SE	2.0	2.0	7020	22	11
			SW SE	20.0	20.0	"	22	"
		17	NW NE	25.0	25.0	"	"	"
			NE NW	5.0	5.0	"	"	"
			NE NW	15.0	15.0	"	19	"
			SW NE	15.0	15.0	"	22	16
			SE NW	5.0	5.0	"	"	"
			SE NW	15.0	15.0	"	19	"
			NE SW	3.0	3.0	"	22	"
			NE SW	20.0	20.0	"	19	"
			NW SE	8.0	8.0	"	22	"
			SW SE	4.0	4.0	"	"	"
		19	NE NE	10.0	10.0	7943	18	18
			SE NE	30.0	30.0	"	"	"
			SE SW	3.0	3.0	"	"	"
			NE SE	23.0	23.0	"	"	"
			NW SE	8.0	8.0	"	"	"
			SW SE	30.0	30.0	"	"	"
		30	NW NE	40.0	40.0	"	"	"
			SW NE	40.0	40.0	"	"	"
			SE NE	10.0	10.0	"	"	"
			NE NW	6.0	6.0	"	"	"
			NE SE	26.0	26.0	"	"	"
			NW SE	35.0	35.0	"	"	"
			SW SE	30.0	30.0	"	"	"
			SE SE	35.0	35.0	"	"	"
		31	NE NE	40.0	40.0	6989	"	"
			NW NE	40.0	40.0	"	"	"
			SW NE	40.0	40.0	"	"	"
			SE NE	12.0	12.0	6898	"	19
			NE SE	7.0	7.0	"	"	"
		32	NW NW	12.5	12.5	"	"	"
			SW NW	25.0	25.0	"	"	"
			NW SW	37.0	37.0	"	"	"
				788.5	788.5			

$2,512.00

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Application No. 69433
Permit No.

Malhuer River Basin Water Users Association- Drewsey, Oregon

V Dash Cattle Co.	T-19-S	R-33½-E	Tax Lot 1200
	19	34	500
			900
			1400
			1500
Hoyt & Sons	19	33½	2800
	20	34	1100
Don Dryer	19	33½	2900
	20	33½	100
	19	34	1600
	20	34	1200
Glen Ellingson	19	34	300
			700
John & Elfreda Sword	19	34	1200
			1300
Norman & Eilene Clark	20	34	400
			600
			900
Harvey & Patsy Cronin	20	34	300
James & Betty Sitz	20	34	1600
	20	35	1500
			900
Walter & Patricia Sitz	20	34	1700
James Jr. & JanyceSitz	20	34	1800
Turen & Wilma Dunten	20	34	1400
	20	35	1200
Chas & Norma Miler	20	34	1500
	20	35	1400
Floyd & Delia Dunten	20	35	1300
Byron Dunten	20	35	2800
Lloyd & Eunice Jordon	20	35	1800
Thomas C. Howard	20	35	1900
			3100
Patrick & Susan O'Toole	20	35	3300
Forrest & Nellie Freeman	20	35	200
Rotha French	20	35	3500
Kenneth & Barbara Arnold	20	35	3600
	20	36	2000
D.W.&Irene Williams	20	36	11
Chester o.& Muriel I Stallard	20	36	16
Terry S.&Nancy A. Williams	20	36	18
William R.& Rozann Robertson	20	36	19

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SALEM, OREGON

Application No. 69483
Permit No.

4. *The amount of water which the applicant intends to apply to beneficial use is* 128.0 CFS @ 1/40th of *cubic feet per second* 102.0 from Malhuer River- 5.0 from Griffin Creek, 18.2 from Ottis Cr, 2.8 from Cottonwood Cr and 2.2 from Spring Cr.

(If water is to be used from more than one source, give quantity from each)

5. *The use to which the water is to be applied is* irrigation of meadows

6. *DESCRIPTION OF WORKS*

Include dimensions and type of construction of diversion dam and headgate, length and dimensions of supply ditch or pipeline, size and type of pump and motor, type of irrigation system to adequately describe the proposed distribution system.

There are numerous types of diversions, Gravel dams, boulder dams, one concrete with boards. Some diversions are into spreader ditches, some are into aditch with headgates to divert to fields and spreader ditches. All irrigation is gravity flow accross the meadows and returns to the river.

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If for domestic use state number of families to be supplied

7. *Construction work will begin on or before* There will be no new construction

8. *Construction work will be completed on or before* The system has been used for years

9. *The water will be completely applied to the proposed use on or before* Spring of 1988

Application No. 69433 *Permit No.*

Remarks: This application is for additional water for Alkali abatement and a means of storing extra water in the soil as a reservoir to help maintain a longer return flow to the river in the late summer. This will keep the water temperture lower and increase the flow for the fish habitat. We are asking for 1½ af. from April 1 to June 1.

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Malheur Basin Water Users Assn
Signature of Applicant
by Kenneth J. Bentz

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for

In order to retain its priority, this application must be returned to the Water Resources Director with corrections on or before ....., 19.....

WITNESS my hand this ..... day of....., 19.....

..... Water Resources Director

By .....

This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 28th *day of* October, *19* 87, *at* 3 *o'clock* P.M.

Application No. 69433 *Permit No.*.....

THESE MINUTES ARE NOT FINAL UNTIL APPROVED BY THE WRC

WATER RESOURCES COMMISSION

JANUARY 17, 1986

Salem

MINUTES

Commission members present:

Joe Richards, Chairman
Jack Hoffbuhr, Vice-Chairman
Ralf Hakanson
Lorna Stickel
William Cramer
Kess Cannon
William R. Blosser

Staff members present:

Bill Young
Jan Shaw
Ann Squier
Beverly Hayes
Darrell Learn
Tom Kline
Becky Kreag
Marshall Gannett
Bud Bartels
Larry Jebousek
Steve Brutscher

Others:

Richard Glick
Swiss Burnett
Tom Darnell
Tom and Audrey Simmons
Ken Bentz
Tom Howard
Sam Tucker
David Hill
Jack Nichols
Preston and Willia Jannsen
Gilbert Clayton
John Charles
Doug Myers
Mary Gray Holt
Terence Thatcher

The staff reports presented at this meeting, which contain the Director's recommendations mentioned in these minutes, are on file in the Office of the Director of the Water Resources Department, 3850 Portland Road, NE, Salem, Oregon. Written information submitted at this meeting is hereby made a part of this record and is on file at the above address.

A. MINUTES OF DECEMBER 2, 1985, WATER RESOURCES COMMISSION MEETING.

It was MOVED by Kess Cannon, seconded by Jack Hoffbuhr, and passed unanimously that the minutes be approved.

F. RECONSIDERATION OF MINIMUM PERENNIAL STREAMFLOW ON THE MALHEUR RIVER

The Malheur Water Users Association, an organization representing ranchers in the Drewsey area, petitioned the Water Resources Commission to rescind the minimum perennial streamflow established on the Middle Fork Malheur River. Reasons cited included failure to consider the beneficial impact that excessive water use during high-flow periods may have on minimum flows and the economic impact minimum flows may have on ranchers.

Bill Cramer, representing the Water Resources Commission, conducted a hearing on November 7, 1985, in Drewsey. At least 35 persons attended the hearing, most being local ranchers. The hearing record produced some new information, but issues remained much the same as when the minimum streamflow was adopted. Proponents of the minimum streamflow urged the WRC to base the decision on the information from the original mininum streamflow record as well as the record of this hearing.

Director's Recommendation

The staff recommended that:

1. The minimum perennial streamflow on the Middle Fork Malheur River not be rescinded.

2. A finding be added to the basin program recognizing the benefits and economic necessity of flood irrigation in the Middle Fork Malheur River.

3. The Department investigate the water use practices in the Middle Fork Malheur River Basin and report to the Commission on or before January 2, 1988.

The report will include estimates and analysis of:

- The existing diversion rates.
- The amount and location of return flow.
- The impact of current irrigation practices on downstream water needs and uses.
- The impact and associated cost of conservation measures.

John Charles, Oregon Environmental Council, spoke in support of the Director's recommendation.

It was MOVED by Lorna Stickel and seconded by Bill Cramer to rescind the minimum flow and to include Recommendation Items 2 and 3 as part of the order with the findings that agricultural uses in this basin are of greater beneficial use than the minimum streamflow. Item 3 in the Director's Recommendation would be amended to include an instruction to staff to "seek and evaluate water use data forwarded by the users."

Kess Cannon voted no; Bill Blosser abstained. The motion passed.

Joe Richards excused himself and left the meeting at this point.

BEFORE THE WATER RESOURCES COMMISSION
OF THE
STATE OF OREGON

In the matter of formulating an integrated, coordinated program for the use and control of the water resources of the Malheur-Owyhee Basins	)))))	Malheur - Owyhee Basins January 17, 1986*

WHEREAS the State Water Resources Board under the authority of ORS 536.300 has undertaken a study of the Malheur-Owyhee Basins as delineated on State Water Resources Board Map 10-11-6;

WHEREAS the Water Resources Commission under the authority of ORS 536.340 may reclassify the water resources of the Malheur-Owyhee Basins;

WHEREAS, this program does not modify, set aside or alter any existing rights to use water or the priority of such use established under existing law;

WHEREAS, results of this study have been published in the State Water Resources Board Report, Malheur-Owyhee Basins;

WHEREAS, in this study consideration was given to means and methods of augmenting, conserving, and classifying such water resources; and to existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, and for pollution abatement as well as other related subjects including drainage, reclamation, flood plains, and reservoir sites; and

WHEREAS, as a result of said study the following findings and conclusions have been reached by this Commission:

1. The in-basins' surface water supply is not adequate in most areas to satisfy the needs.

2. There is practically no unappropriated in-basins surface water during the irrigation season.

3. The ground water resource is appreciable and represents an important potential water source.

4. There are 290,400 acres of potentially irrigable land within the basins which have been identified plus large areas which have been less intensively surveyed.

5. Annual pumping requirements from the Snake River would average 1,454,000 acre-feet to adequately irrigate the presently irrigated and potentially irrigable land.

* Modifies Malheur-Owyhee Basin programs dated February 26, 1985, October 23, 1970 and April 4, 1981.

6. Long-range planning should also provide for using Snake River water on lower elevation irrigated lands.

7. Further knowledge of streamflows is required and would be aided by installing gages at key locations.

8. Domestic, livestock, municipal, industrial, power, mining, recreation, and wildlife uses represent comparatively small quantities of water in existing and contemplated future needs.

9. Industrial use of surface water is mainly for sand and gravel operations.

10. Irrigation use is over 95 percent of the total consumptive use of water and will continue to be the major consumptive use.

11. The physical and economic potential of hydroelectric power development is minor.

12. Fish life is and will continue to be an important nonconsumptive use of water.

13. The Middle Fork Malheur River between Highway 20 and Warm Springs Reservoir supports an important small-mouth bass fishery.

14. The Middle Fork Malheur River and tributaries upstream from the Highway 20 crossing supports an important resident trout population.

15. Flood irrigation in the Middle Fork Malheur Basin is beneficial in reducing alkalinity in soils and is an appropriate irrigation method.

16. Irrigation for existing agriculture is of greater importance than the purposes of the minimum streamflow established February 26, 1985, and the minimum streamflow should be rescinded.

17. Flooding is a serious local problem in the Vale-Ontario and Jordan Valley areas.

18. Erosion is a problem on 18,700 acres of cropland and 694,000 acres of range and pastureland.

19. Pollution of ground and surface water does not appear to be an extremely serious or widespread problem.

20. More efficient use and conservation of water could be obtained from extensive rehabilitation programs on most irrigated land and irrigation distribution facilities.

21. A conflict exists between flood control regulation and the use of water for irrigation, industrial, recreation, and fish life.

22. The mainstem of the South Fork of the Owyhee River from the Oregon - Idaho River border to Three Forks (the confluence of the North, Middle and South Forks Owyhee River) and the mainstem Owyhee River from Crooked Creek (river mile 22) to the mouth of Birch Creek (river mile 76) is designated by statute as a Scenic Waterway.

23. The maximum benefical use of the waters of the Malheur-Owyhee Basins will be for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life purposes.

NOW THEREFORE BE IT RESOLVED that this Board hereby adopts the following program in accordance with ORS 536.300(2) pertaining to the water resources of the Malheur-Owyhee Basins:

A. The maximum economic development of this state, the attainment of the highest and best use of the waters of the Malheur-Owyhee Basins, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be futhered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses, and the waters of the Malheur-Owyhee Basins are hereby so classified with the following exceptions:

1. The maximum economic development of this state, the attainment of the highest and best use of the waters of the mainstem of the South Fork Owyhee River from the Oregon - Idaho border to Three Forks (the confluence of the North, Middle and South Forks Owyhee River), and the main stem Owyhee River from Crooked Creek (river mile 118) to the mouth of Birch Creek (river mile 76), and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, irrigation, industrial, mining, recreation, wildlife, and fish life uses and the aforementioned waters are hereby so classified.

2. The maximum economic development of this state, the attainment of the highest and best use of the waters of the natural lakes of the Malheur-Owyhee Basins, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, irrigation of lawn or noncommercial garden not to exceed one-half acre in area, power development not to exceed 7 1/2 theoretical horsepower, recreation, wildlife, and fish life uses, and the waters of the natural lakes of the Malheur-Owyhee Basins are hereby so classified.

B. To support aquatic life and minimize pollution, in accordance with Section 3, Chapter 796, Oregon Laws, 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Middle Fork Malheur River and tributaries when flows are below the levels specified. This limitation shall not apply to:

1. Domestic use and livestock consumption.
2. Water legally released from storage.

C. The maximum economic development of this state, the attainment of the highest and best use of 1,454,000 acre-feet annually of natural flows of the Snake River, and the attainment of an integrated and coordinated program for the benefit of the state as a whole will be furthered through utilization of the aforementioned waters only for domestic, livestock, municipal, and irrigation uses, and the 1,454,000 acre-feet annually of natural flows of the Snake River are hereby so classified.

D. Rights to use of water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluents or return flows from such uses shall not interfere with other beneficial uses of water.

E. Structures or works for the utilization of the waters in accordance with the aforementioned classifications are also declared to be prejudicial to the public interest unless planned, constructed, and operated in conformity with applicable provisions of ORS 536.310 and any such structures or works are further declared to be prejudicial to the public interest which do not give cognizance to the multiple-purpose concept.

Dated January 17, 1986

WATER RESOURCES COMMISSIONN

William H. Young

William H. Young, Director
WATER RESOURCES DEPARTMENT

4595A
1903D

DRAFT

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR RIVER BASIN WATER USERS ASSOCIATION 503-493-2728
P.O. BOX 237
DREWSEY, OREGON 97904

to use the waters of MIDDLE FORK MALHEUR RIVER, GRIFFIN CREEK, COTTONWOOD CREAK AND OTIS CREEK, tributaries of SNAKE RIVER, for ALKALI CONTROL, FISH AND WILDLIFE MAINTENTANCE ON APPROXIMATELY 6,442.7 ACRES.

This Permit is issued approving Application 69433. The date of priority is OCTOBER 28, 1987 on the 79.6 % of water available under this Permit and July 1, 1991 on 20.4% of water available under the Permit. These priority dates will be applied evenly to all acres benefited under this permit. The use is limited to not more than 1/40th cfs per acre this being a total of 163.2 CUBIC FEET PER SECOND, BEING 135 CFS FROM MALHEUR RIVER, 5.0 CFS FROM GRIFFIN CREEK, 18.2 CFS FROM OTIS CREEK AND 2.8 CFS FROM COTTONWOOD CREEK AND 2.2 CFS FROM SPRING CREEK, or its equivalent in case of rotation, measured at the point of diversion from the sources.

The points of diversion are located as follows:

1) SE 1/4 SE 1/4, SECTION 32, T 18 S, R 34 E, W.M.; JOHNSON DITCH - 130 FEET NORTH AND 380 FEET WEST FROM SE CORNER, SECTION 32.

2) NE 1/4 NE 1/4, SECTION 8, T 19 S, R 34 E, W.M.; MOFFETT DITCH - 560 FEET SOUTH AND 710 FEET WEST FROM NE CORNER, SECTION 8.

3) SE 1/4 NE 1/4, SECTION 5, T 19 S, R 34 E, W.M.; DITCH - 2375 FEET SOUTH AND 580 FEET WEST FROM NE CORNER, SECTION 5.

4) NE 1/4 SW 1/4, SECTION 8, T 19 S, R 34 E, W.M.; DITCH - 1490 FEET NORTH AND 2080 FEET EAST FROM SW CORNER, SECTION 8.

5) NW 1/4 NW 1/4, SECTION 17, T 19 S, R 34 E, W.M.; DITCH - 200 FEET SOUTH AND 605 FEET EAST FROM NW CORNER, SECTION 17.

6) NE 1/4 NE 1/4, SECTION 18, T 19 S, R 34 E, W.M.; DITCH - 130 FEET SOUTH AND 360 FEET WEST FROM NE CORNER, SECTION 18.

7) SE 1/4 SW 1/4, SECTION 18, T 19 S, R 34 E, W.M.; MARKS DITCH - 345 FEET NORTH AND 2510 FEET EAST FROM SW CORNER, SECTION 18.

8) SE 1/4 NW 1/4, SECTION 19, T 19 S, R 34 E, W.M.; BAILY DITCH - 1330 FEET SOUTH AND 1650 FEET EAST FROM NW CORNER, SECTION 19.

9) NW 1/4 NW 1/4, SECTION 30, T 19 S, R 34 E, W.M.; FARRENS DITCH - 475 FEET SOUTH AND 130 FEET EAST FROM NW CORNER, SECTION 30.

10) NW 1/4 NE 1/4, SECTION 36, T 19 S, R 33 1/2 E, W.M.; ROBBINS DITCH - 1090 FEET SOUTH AND 2375 FEET WEST FROM NE CORNER, SECTION 36.

11) SW 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; CLARKS NORTH DITCH - 2440 FEET SOUTH AND 306 FEET EAST FROM NW CORNER, SECTION 5.

12) SE 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; CLARKS SOUTH DITCH - 2245 FEET SOUTH AND 2010 FEET EAST FROM NW CORNER, SECTION 5.

13) NE 1/4 SW 1/4, SECTION 28, T 19 S, R 34 E, W.M.; GRIFFIN CREEK RESERVOIR - 2330 FEET NORTH AND 1749 FEET EAST FROM SW CORNER, SECTION 28.

14) NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; MILLER DITCH - 675 FEET SOUTH AND 940 FEET WEST FROM NE CORNER, SECTION 10.

15) NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; SITZ DITCH - 845 FEET SOUTH AND 610 FEET WEST FROM NE CORNER, SECTION 10.

16) NE 1/4 SW 1/4, SECTION 11, T 20 S,R 34 E, W.M.; DREWSEY DITCH - 2475 FEET NORTH AND 1520 FEET EAST FROM SW CORNER, SECTION 11.

17) NE 1/4 SW 1/4, SECTION 23, T 20 S, R 35 E, W.M.; DREWSEY DITCH (FRENCH PUMPS) - 2970 FEET SOUTH AND 1440 FEET EAST FROM NW CORNER, SECTION 23.

18) NW 1/4 NW 1/4, SECTION 20, T 20 S, R 36 E, W.M.; WILLIAMS DIVERSION - 825 FEET SOUTH AND 845 FEET EAST FROM NW CORNER, SECTION 20.

19) SE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2520 FEET SOUTH AND 1580 FEET EAST FROM NW CORNER, SECTION 8.

20) NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 1452 FEET EAST FROM NW CORNER, SECTION 8.

21) NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2508 FEET EAST FROM NW CORNER, SECTION 8.

22) NW 1/4 NW 1/4, SECTION 9, T 20 S, R 36 E, W.M.; 760 FEET SOUTH AND 280 FEET EAST FROM NW CORNER, SECTION 9.

23) NE 1/4 SE 1/4, SECTION 25, T 19 S, R 33 1/2 E, W.M.; LILLARD DIVERSION #2 - 1960 FEET NORTH AND 790 FEET WEST FROM SE CORNER, SECTION 25.

24) NE 1/4 NE 1/4, SECTION 36, T 19 S, R 33 1/2 E. W.M.; LILLARD DIVERSION #1 - 10 FEET SOUTH AND 790 FEET WEST FROM NE CORNER, SECTION 36.

25) NE 1/4 SE 1/4, SECTION 22, T 20 S, R 35 E, W.M.; PUMP, 1850 FEET NORTH AND 260 FEET WEST FROM SE CORNER, SECTION 22.

26) NE 1/4 SE 1/4, SECTION 25, T 20 S, R 35 E, W.M.; 1440 FEET NORTH AND 780 FEET WEST FROM SE CORNER, SECTION 25.

The water users shall install and maintain weirs and stall gauges or other measuring devices, to be approved by and installed under the supervision of the Watermaster, for measuring and recording of the quantities of water diverted. Such measuring devices shall be installed and operational at all diversion points under a schedule approved by WRD.

The right allowed herein shall be limited to a total diversion of not to exceed 1.5 acre-feet per acre for each acre supplied, and is further limited to the period from April 1 through June 15 each year.

The use of water allowed herein is subject to a minimum flow of 15 cubic foot per second to be maintained in the channel of Middle Fork Malheur River past all of the authorized diversion points during the period of time when this right is being used. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this Permit is as follows:

SW 1/4 NE 1/4	19.0 ACRES
SE 1/4 NE 1/4	20.0 ACRES
NE 1/4 SE 1/4	27.0 ACRES
NW 1/4 SE 1/4	3.0 ACRES
SE 1/4 SE 1/4	0.5 ACRE
SECTION 13	
SE 1/4 NW 1/4	6.0 ACRES
NE 1/4 SW 1/4	15.0 ACRES
SE 1/4 NE 1/4	40.0 ACRES
NE 1/4 SE 1/4	40.0 ACRES
NW 1/4 SE 1/4	40.0 ACRES
SW 1/4 SE 1/4	40.0 ACRES
SE 1/4 SE 1/4	40.0 ACRES
NE 1/4 NE 1/4	39.0 ACRES
NW 1/4 NE 1/4	37.6 ACRES
SW 1/4 NE 1/4	38.4 ACRES
SECTION 36	
SW 1/4 SW 1/4	23.0 ACRES
SE 1/4 SW 1/4	10.0 ACRES
SECTION 24	
SE 1/4 SE 1/4	10.0 ACRES
SECTION 23	

SW 1/4	NE 1/4	15.0 ACRES
NE 1/4	NW 1/4	38.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	6.0 ACRES
SE 1/4	NW 1/4	34.0 ACRES
NE 1/4	SW 1/4	19.0 ACRES
NE 1/4	SE 1/4	30.0 ACRES
NW 1/4	SE 1/4	35.0 ACRES
SW 1/4	SE 1/4	40.0 ACRES
SE 1/4	SE 1/4	40.0 ACRES

SECTION 25

NE 1/4	NE 1/4	14.0 ACRES

SECTION 26

TOWNSHIP 19 SOUTH, RANGE 33 1/2 EAST, W.M.

NW 1/4	SW 1/4	20.0 ACRES
NW 1/4	SW 1/4	11.0 ACRES
SW 1/4	SW 1/4	30.0 ACRES
SW 1/4	SE 1/4	23.0 ACRES

SECTION 7

NW 1/4	NE 1/4	19.0 ACRES
NW 1/4	NE 1/4	19.0 ACRES
SW 1/4	NE 1/4	30.0 ACRES
NE 1/4	NW 1/4	9.0 ACRES
NW 1/4	NW 1/4	34.0 ACRES
SW 1/4	NW 1/4	28.0 ACRES
SE 1/4	NW 1/4	37.0 ACRES
NE 1/4	SW 1/4	38.0 ACRES
NW 1/4	SW 1/4	23.0 ACRES
SW 1/4	SW 1/4	27.0 ACRES
SE 1/4	SW 1/4	38.0 ACRES

SECTION 18

NW 1/4	NW 1/4	23.0 ACRES
SW 1/4	NW 1/4	18.0 ACRES
NW 1/4	NE 1/4	35.0 ACRES
SW 1/4	NE 1/4	20.0 ACRES
NE 1/4	NW 1/4	38.0 ACRES
SE 1/4	NW 1/4	11.0 ACRES
SE 1/4	NW 1/4	25.0 ACRES

SECTION 19

SW 1/4	NW 1/4	24.0 ACRES
NW 1/4	SW 1/4	23.0 ACRES
SW 1/4	SW 1/4	30.0 ACRES

SECTION 30

NE 1/4	NW 1/4	6.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	40.0 ACRES
SE 1/4	NW 1/4	31.0 ACRES

NE 1/4	SW 1/4	40.0 ACRES
NW 1/4	SW 1/4	40.0 ACRES

SECTION 31

SW 1/4	SW 1/4	10.0 ACRES
SE 1/4	SW 1/4	15.0 ACRES

SECTION 29

NE 1/4	NW 1/4	36.0 ACRES
NW 1/4	NW 1/4	8.0 ACRES
SW 1/4	NW 1/4	2.0 ACRES
SE 1/4	NW 1/4	3.0 ACRES
NW 1/4	NE 1/4	6.0 ACRES

SECTION 32

SW 1/4	SW 1/4	40.0 ACRES
SE 1/4	SW 1/4	40.0 ACRES
NW 1/4	SE 1/4	20.0 ACRES
SW 1/4	SE 1/4	40.0 ACRES
SE 1/4	SE 1/4	20.0 ACRES

SECTION 31

SW 1/4	NE 1/4	0.8 ACRES
NE 1/4	SW 1/4	12.3 ACRES
SE 1/4	SW 1/4	0.2 ACRES
NW 1/4	SE 1/4	19.0 ACRES

SECTION 8

NE 1/4	NE 1/4	38.0 ACRES
SE 1/4	NE 1/4	36.0 ACRES
NE 1/4	SE 1/4	33.0 ACRES
NW 1/4	SE 1/4	38.5 ACRES
SW 1/4	SE 1/4	39.0 ACRES
SE 1/4	SE 1/4	15.0 ACRES

SECTION 18

NE 1/4	SW 1/4	28.0 ACRES
NW 1/4	SW 1/4	29.0 ACRES
SW 1/4	SW 1/4	22.0 ACRES
SE 1/4	SW 1/4	25.0 ACRES

SECTION 20

NE 1/4	NW 1/4	7.0 ACRES
NW 1/4	NW 1/4	19.0 ACRES
SW 1/4	SW 1/4	18.4 ACRES
SW 1/4	SW 1/4	16.6 ACRES
SE 1/4	NW 1/4	1.0 ACRES
SE 1/4	SW 1/4	26.6 ACRES

SECTION 23

NE 1/4	NW 1/4	30.3 ACRES
SE 1/4	NW 1/4	26.6 ACRES
SW 1/4	NE 1/4	15.6 ACRES
NE 1/4	SW 1/4	22.9 ACRES

SE 1/4	SW 1/4	7.2 ACRES
NW 1/4	SE 1/4	24.9 ACRES
SW 1/4	SE 1/4	21.0 ACRES

SECTION 33
TOWNSHIP 19 SOUTH, RANGE 34 EAST, W.M.

NE 1/4	NE 1/4	40.0 ACRES
NW 1/4	NE 1/4	22.0 ACRES
SW 1/4	NE 1/4	16.0 ACRES
SE 1/4	NE 1/4	40.0 ACRES
NE 1/4	SE 1/4	10.0 ACRES

SECTION 1
TOWNSHIP 20 SOUTH, RANGE 33 1/2 EAST, W.M.

SW 1/4	NW 1/4	0.8 ACRE

SECTION 5

NW 1/4	NE 1/4	40.0 ACRES
SW 1/4	NE 1/4	40.0 ACRES
NE 1/4	NW 1/4	40.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	15.0 ACRES
SE 1/4	NW 1/4	39.0 ACRES
NE 1/4	SE 1/4	10.0 ACRES

SECTION 6
TOWNSHIP 20 SOUTH, RANGE 34 EAST, W.M.

SW 1/4	NE 1/4	17.0 ACRES
SE 1/4	NE 1/4	3.0 ACRES
SW 1/4	NW 1/4	0.8 ACRE
SE 1/4	NW 1/4	3.8 ACRES
NE 1/4	SE 1/4	1.0 ACRES
NW 1/4	SE 1/4	1.4 ACRES

SECTION 5

NE 1/4	NE 1/4	30.0 ACRES
NW 1/4	NE 1/4	23.4 ACRES
SW 1/4	NE 1/4	22.0 ACRES
SE 1/4	NE 1/4	13.0 ACRES
NE 1/4	SW 1/4	16.0 ACRES
NW 1/4	SW 1/4	14.0 ACRES

SECTION 4

SW 1/4	NW 1/4	20.0 ACRES
NE 1/4	SW 1/4	5.0 ACRES
NW 1/4	SW 1/4	4.0 ACRES

SECTION 3

NE 1/4	SE 1/4	2.5 ACRES
NW 1/4	SE 1/4	3.5 ACRES

SW 1/4	SE 1/4	12.0 ACRES
SE 1/4	SE 1/4	30.0 ACRES

SECTION 11

SW 1/4	NE 1/4	2.0 ACRES
SE 1/4	NW 1/4	3.0 ACRES
NW 1/4	SW 1/4	15.1 ACRES
NE 1/4	SW 1/4	32.0 ACRES
SW 1/4	SW 1/4	16.0 ACRES
SE 1/4	SW 1/4	35.0 ACRES
NW 1/4	SE 1/4	15.0 ACRES
SW 1/4	SE 1/4	39.0 ACRES
SE 1/4	SE 1/4	38.0 ACRES

SECTION 12

NE 1/4	NE 1/4	17.0 ACRES
NW 1/4	NE 1/4	13.0 ACRES
NW 1/4	NW 1/4	1.0 ACRES

SECTION 13

SE 1/4	NE 1/4	38.0 ACRES
NE 1/4	SE 1/4	35.0 ACRES
NE 1/4	NE 1/4	22.0 ACRES

SECTION 12

TOWNSHIP 20 SOUTH, RANGE 34 EAST, W.M.

NE 1/4	NE 1/4	25.0 ACRES
SE 1/4	NE 1/4	30.0 ACRES
SW 1/4	SW 1/4	38.0 ACRES
SE 1/4	SW 1/4	38.0 ACRES

SECTION 7

NE 1/4	NW 1/4	40.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	15.0 ACRES
SE 1/4	NW 1/4	36.0 ACRES
NE 1/4	SW 1/4	8.5 ACRES

SECTION 18

TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.

SE 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	40.0 ACRES
NE 1/4	SW 1/4	40.0 ACRES
NW 1/4	SW 1/4	40.0 ACRES
NW 1/4	SE 1/4	34.0 ACRES
SW 1/4	SE 1/4	33.0 ACRES
NW 1/4	NE 1/4	14.0 ACRES
SW 1/4	NE 1/4	33.0 ACRES
SW 1/4	NE 1/4	7.0 ACRES
NE 1/4	NW 1/4	30.0 ACRES
NW 1/4	NW 1/4	30.0 ACRES

SECTION 7

TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.

NW 1/4	NE 1/4	20.0 ACRES
SW 1/4	NE 1/4	25.0 ACRES
SE 1/4	NE 1/4	3.0 ACRES
NE 1/4	SE 1/4	30.0 ACRES
NW 1/4	SE 1/4	28.0 ACRES
SE 1/4	SE 1/4	5.0 ACRES

SECTION 18

NW 1/4	SW 1/4	30.0 ACRES
SW 1/4	SW 1/4	25.0 ACRES
NE 1/4	SW 1/4	37.0 ACRES
SE 1/4	SW 1/4	38.0 ACRES
NW 1/4	SE 1/4	5.0 ACRES
SW 1/4	SE 1/4	20.0 ACRES

SECTION 17

NE 1/4	NE 1/4	17.0 ACRES
NW 1/4	NE 1/4	34.0 ACRES
SW 1/4	NE 1/4	6.0 ACRES
SE 1/4	NE 1/4	28.0 ACRES
NE 1/4	NW 1/4	10.0 ACRES

SECTION 20

SW 1/4	NW 1/4	10.0 ACRES
SE 1/4	NW 1/4	3.0 ACRES
NE 1/4	SW 1/4	36.0 ACRES
NW 1/4	SW 1/4	20.0 ACRES
SE 1/4	SW 1/4	12.0 ACRES
NE 1/4	SE 1/4	27.9 ACRES
NW 1/4	SE 1/4	35.0 ACRES
SW 1/4	SE 1/4	25.0 ACRES
SE 1/4	SE 1/4	30.0 ACRES

SECTION 21

NW 1/4	SW 1/4	5.6 ACRES
SW 1/4	SW 1/4	35.0 ACRES

SECTION 22

NE 1/4	SW 1/4	1.1 ACRES
SE 1/4	SW 1/4	0.5 ACRE
NW 1/4	SE 1/4	5.0 ACRES
SW 1/4	SE 1/4	3.4 ACRES

SECTION 23

SW 1/4	SW 1/4	34.6 ACRES
SE 1/4	SW 1/4	27.8 ACRES
SW 1/4	SE 1/4	31.4 ACRES
SE 1/4	SE 1/4	40.0 ACRES
NE 1/4	SE 1/4	28.4 ACRES

SECTION 24

NW 1/4	NE 1/4	37.7 ACRES
NE 1/4	NW 1/4	22.0 ACRES
NW 1/4	NW 1/4	15.3 ACRES
NE 1/4	NE 1/4	40.0 ACRES

SE 1/4	NE 1/4	39.0 ACRES
SW 1/4	NE 1/4	14.8 ACRES
NE 1/4	SE 1/4	17.5 ACRES
SE 1/4	SE 1/4	13.6 ACRES

SECTION 25

NE 1/4	NE 1/4	1.2 ACRES

SECTION 36

TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.

NW 1/4	SW 1/4	35.0 ACRES
SW 1/4	SW 1/4	27.5 ACRES
NW 1/4	NW 1/4	16.6 ACRES

SECTION 19

NE 1/4	NW 1/4	40.0 ACRES
SE 1/4	NW 1/4	40.0 ACRES
NE 1/4	SW 1/4	35.0 ACRES
SE 1/4	SW 1/4	37.0 ACRES
NW 1/4	SE 1/4	2.0 ACRES
SW 1/4	SE 1/4	20.0 ACRES

SECTION 8

NW 1/4	NE 1/4	25.0 ACRES
NE 1/4	NW 1/4	20.0 ACRES
SW 1/4	NE 1/4	15.0 ACRES
SE 1/4	NW 1/4	20.0 ACRES
NE 1/4	SW 1/4	23.0 ACRES
NW 1/4	SE 1/4	8.0 ACRES
SW 1/4	SE 1/4	4.0 ACRES

SECTION 17

NE 1/4	NE 1/4	10.0 ACRES
SE 1/4	NE 1/4	30.0 ACRES
SE 1/4	SW 1/4	3.0 ACRES
NE 1/4	SE 1/4	23.0 ACRES
NW 1/4	SE 1/4	8.0 ACRES
SW 1/4	SE 1/4	30.0 ACRES

SECTION 19

NW 1/4	NE 1/4	40.0 ACRES
SW 1/4	NE 1/4	40.0 ACRES
SE 1/4	NE 1/4	10.0 ACRES
NE 1/4	NW 1/4	6.0 ACRES
NE 1/4	SE 1/4	26.0 ACRES
NW 1/4	SE 1/4	35.0 ACRES
SW 1/4	SE 1/4	30.0 ACRES
SE 1/4	SE 1/4	35.0 ACRES

SECTION 30

NE 1/4	NE 1/4	40.0 ACRES
NW 1/4	NE 1/4	40.0 ACRES
SW 1/4	NE 1/4	40.0 ACRES

SE 1/4	NE 1/4	12.0 ACRES
NE 1/4	SE 1/4	7.0 ACRES

SECTION 31

NW 1/4	NW 1/4	12.5 ACRES
SW 1/4	NW 1/4	25.0 ACRES
NW 1/4	SW 1/4	37.0 ACRES

SECTION 32

TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

SE 1/4	NW 1/4	0.4 ACRE
NE 1/4	SW 1/4	31.1 ACRES
SW 1/4	SW 1/4	0.9 ACRE
SE 1/4	SW 1/4	10.2 ACRES
SW 1/4	SW 1/4	36.2 ACRES
SW 1/4	NW 1/4	26.0 ACRES
SE 1/4	NW 1/4	1.2 ACRES
NW 1/4	SW 1/4	40.0 ACRES
SE 1/4	SW 1/4	29.6 ACRES
SW 1/4	SE 1/4	6.0 ACRES

SECTION 30

NE 1/4	NW 1/4	8.9 ACRES
NW 1/4	NW 1/4	0.9 ACRES
NE 1/4	NW 1/4	7.0 ACRES
NW 1/4	NW 1/4	20.0 ACRES
SW 1/4	NW 1/4	0.1 ACRES
SE 1/4	NW 1/4	22.6 ACRES
NE 1/4	SW 1/4	0.8 ACRES
SW 1/4	SE 1/4	6.0 ACRES
SE 1/4	SE 1/4	36.8 ACRES

SECTION 31

SW 1/4	SW 1/4	12.2 ACRES

SECTION 32

TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

NE 1/4	SE 1/4	0.8 ACRE

SECTION 22

NE 1/4	SW 1/4	0.3 ACRE
NW 1/4	SW 1/4	12.4 ACRES
SW 1/4	SW 1/4	5.0 ACRES
SE 1/4	SW 1/4	11.8 ACRES

SECTION 23

SE 1/4	NE 1/4	6.1 ACRES
SE 1/4	SW 1/4	1.7 ACRES
NE 1/4	SE 1/4	25.1 ACRES
NW 1/4	SE 1/4	20.3 ACRES
SW 1/4	SE 1/4	22.5 ACRES
SE 1/4	SE 1/4	1.4 ACRES

SECTION 22

NW 1/4	NW 1/4	12.5 ACRES
SW 1/4	NW 1/4	25.0 ACRES
NW 1/4	SW 1/4	37.0 ACRES

SECTION 32
TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

SE 1/4	NW 1/4	0.4 ACRE
NE 1/4	SW 1/4	31.1 ACRES
SW 1/4	SW 1/4	0.9 ACRE
SE 1/4	SW 1/4	10.2 ACRES
SW 1/4	SW 1/4	36.2 ACRES
SW 1/4	NW 1/4	26.0 ACRES
SE 1/4	NW 1/4	1.2 ACRES
NW 1/4	SW 1/4	40.0 ACRES
SE 1/4	SW 1/4	29.6 ACRES
SW 1/4	SE 1/4	6.0 ACRES

SECTION 30

NE 1/4	NW 1/4	8.9 ACRES
NW 1/4	NW 1/4	0.9 ACRES
NE 1/4	NW 1/4	7.0 ACRES
NW 1/4	NW 1/4	20.0 ACRES
SW 1/4	NW 1/4	0.1 ACRES
SE 1/4	NW 1/4	22.6 ACRES
NE 1/4	SW 1/4	0.8 ACRES
SW 1/4	SE 1/4	6.0 ACRES
SE 1/4	SE 1/4	36.8 ACRES

SECTION 31

SW 1/4	SW 1/4	12.2 ACRES

SECTION 32
TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

NE 1/4	SE 1/4	0.8 ACRE

SECTION 22

NE 1/4	SW 1/4	0.3 ACRE
NW 1/4	SW 1/4	12.4 ACRES
SW 1/4	SW 1/4	5.0 ACRES
SE 1/4	SW 1/4	11.8 ACRES

SECTION 23

SE 1/4	NE 1/4	6.1 ACRES
SE 1/4	SW 1/4	1.7 ACRES
NE 1/4	SE 1/4	25.1 ACRES
NW 1/4	SE 1/4	20.3 ACRES
SW 1/4	SE 1/4	22.5 ACRES
SE 1/4	SE 1/4	1.4 ACRES

SECTION 22

NE 1/4 NE 1/4	40.0 ACRES
NW 1/4 NE 1/4	34.6 ACRES

SECTION 26

NE 1/4 SW 1/4	1.8 ACRES
NW 1/4 SW 1/4	9.0 ACRES
SE 1/4 SW 1/4	23.2 ACRES
NE 1/4 SE 1/4	2.0 ACRES
NW 1/4 SE 1/4	6.0 ACRES
SW 1/4 SE 1/4	38.3 ACRES
SE 1/4 SE 1/4	34.0 ACRES
NE 1/4 SW 1/4	16.0 ACRES
NW 1/4 SW 1/4	10.0 ACRES

SECTION 23

TOWNSHIP 25 SOUTH, RANGE 35 EAST, W.M.

SE 1/4 NE 1/4	0.8 ACRES

SECTION 6

Lot 3	7.0 ACRES
Lot 4	17.8 ACRES
NW 1/4 SW 1/4	0.8 ACRES

SECTION 5

TOWNSHIP 21 SOUTH, RANGE 36 EAST, W.M.

This project was considered and approved by the Water Resources Commission on _____

All new head gates shall be designed and constructed to allow installation of fish screening and all diversions shall comply with applicable laws requiring fish screening. Those benefited by this permit shall hire personnel to monitor water use at the water users' diversions. Hiring and dismissal of the diversion monitoring personnel shall be subject to WRD's approval, WRD shall deputize the diversion monitoring personnel as assistant watermaster(s) to regulate the diversion of water to the rate, duty and priority established on the water rights. WRD shall have the authority to dismiss said personnel if they fail to adequately enforce Oregon's water laws. The personnel hired by the water users shall also require their personnel to regulate all water rights on the lands subject to this permit, including diversion among water users on individual ditches.

Actual construction work shall begin on or before October 1, 1992, and shall be completed on or before October 1, 1993. Complete application of the water to the use shall be made on or before October 1, 1993.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water within this permit is allocated between other existing rights and this right as follows: The rate of flow for all water diverted during the time period set out in this permit shall first be charged against the flow set out in prior rights. To the extent that flow exceeds that permitted under prior rights, additional flow shall be charged to this permit. The duty for all water diverted during the time period set out in this permit shall be charged against the duty of the prior irrigation right until a total of 1 1/2 acre feet is charged to said right. To the extent that water diverted during the time period exceeds 1 1/2 acre feet during said time period, it will be charged to this permit.

[Deficiency In Rate] In addition, this permit is issued approving an additional 1/80th cfs per acre diversion for all lands described in Certificate numbers 3526, 2134, 7691, 2151, 8121 and 49682, this additional diversion rate is for irrigation and when combined with the original certificate rate, allows a total diversion rate of 1/40th cfs for irrigation on the lands subject to said permits.

Issued this date, _____.

_____
Water Resources Department
William H. Young, Director

MBWUA CFS SUMMARY
for
SUPPLEMENTAL APPLICATION

			1/40th cfs
Diversion Point	#7 =	241.0 Acres =	6.0 cfs
Diversion Point	#8 =	75.0 Acres =	1.8 cfs
Diversion Point	#23 =	117.0 Acres =	3.0 cfs
Diversion Point	#24 =	36.0 Acres =	1.0 cfs
Diversion Point	#25 =	30.3 Acres =	.8 cfs
Diversion Point	#26 =	150.1 Acres =	3.8 cfs
Diversion Point	#16 =	666.3 Acres =	16.6 cfs
	Total	1,315.7 Acres	33.0 cfs

MBWUA

POINTS OF DIVERSION SUMMARY

August 26, 1991

Attached is a point of Diversion Summary showing the location and point of diversion numbers for the MBWUA application and supplemental application. The point of diversion numbers on the supplemental application have been modified.

(2) Point of diversions

- #1 =Johnson Ditch 130' N,380' W from S.E. corner sec. 32,T-18-S,R-34-E being within S.E.,S.E. of sec. 32,T-18-S, R-34-E.
- #2 = Moffett Ditch-560'S,710'W from the N.E. corner sec.8,T-19-S,R-34 E, being within N.E.¼ of N.E.¼ sec. 8,T-19-S,R 34-E.
- #3 = ditch 2375'S,580'W from N.E. corner sec. 5,T-19-S, R-34-E being within N.E.¼ of N.E.¼ of sec. 8,T-19-S,R- 34-E.
- #4 = ditch 1490'N,2080'E from S.W. corner sec.8,T-19-S,R-34-E being within N.E.¼,S.W.¼ sec.8,T-19-S,R-34-E.
- #5 = ditch 200'S 605'E from the N.W. corner sec.17,T-19-S,R-34-E being within N.W¼ofN.W.¼ sec.17,T-19-S,R34-E.
- #6 = ditch 130'S 360'W from N.E.corner sec.18,T-19-S,R-34-E being within N.E.¼ of N.E.¼ sec.18, T-34-E,R-34-E.
- #7 = Marks ditch 345'N 2510'E from S.W. corner sec.18,T-19-S,R-34-E being within S.E.¼ S,W.¼ sec. 18,T-19-S,R-34-E.
- #8 = Baily Ditch 1330'S 1650'E from N.W.corner sec. 19,T-19-S,R-34-E being within S.E¼ N.W.¼ sec.19,T-19-S, R-34-E.
- #9 = Farrens Ditch 475'S 130'E from N.W. corner sec.30,T-19-S,R-34-E being within N.W.¼ N.W.¼ of sec.30 T-19-S, R-34-E.
- #10= Robbins Ditch 1090'S 2375'W from N.E. corner sec.36,T-19-S,R-33½ E, being within N.W.¼ N.E.¼ sec.36,T-19-S, R-33½-E.
- #11= Clarks North Ditch 2440'S 300'E from N.W. corner sec.5, T-20-S, R-34-E being within S.W.¼ N.W.¼ sec.5,T-20-S,R-34-E.
- #12= Clarks South Ditch 2245'S 2010'E from N.W. corner sec.5 T-20-S, R-34-E being within S.E.¼ N.W.¼ sec.5, T-20-S, R34-E.
- #13= Griffin Cr. Reservoir 2330'N 1750'E from S.W.corner sec.28,T-19 S, R-34-E being withinN.E.¼ S.W.¼ sec. 28,T-19-S,R-34-E.
- #14= Miller Ditch 675'S 940'W from N.E. corner sec. 10, T-20-S, R-34-E being within N.E.¼ N.E.¼ sec. 10, T-20-S, R-34-E.
- #15= Sitz ditch 845'S 610'W from N.E. corner sec. 10, T-20-S,R-34-E being within N.E.¼ N.E.¼ sec.10,T-20-S,R-34-E.
- #16= Drewsey Ditch 2475'N 1520'E from S.W. corner sec. 11, T-20-S, R-34-E being within N.E.¼ S.W.¼ sec.11,T-20-S, R-34-E.
- #17= French Dumps (additional diversion) to #16 diversion.2970'S 1440'E from N.W. corner sec. 23,T-20-S, R-35-E being within N.E.¼ S.W.¼ sec. 23,T-20-S,R-35-E.
- #18= Williams Div. 825'S 845'E from N.W. corner Sec.20,T-20-S,R-36-E being within N.W.¼ of SEc. 20,T-20-S,R-36-E.
- #19= 2520'S 1580'E from N.W. corner Sec. 8,T-20-S,R-36-E being within SE¼ of NW¼ of sec.8 T-20-S,R-36-E.
- #20= 0'S 1452'E from NW corner sec.8,T-20-S,R-36-E,being within NE¼ of NW¼ sec. 8,T-20-S,R-36-E.
- #21= 0'S 2508'E from NW corner sec. 8,T-20-S,R-36-E being within NE¼ of the NW¼ sec.8,T-20-S,R-36-E.
- #22= 760'S,280'E from NW corner sec.9,T-20-S,R-36-E,being within NW¼ NW¼ sec.9,T-20-S,R-36-E.

MALHEUR RIVER BASIN WATER USERS ASSOCIATION

(2) Point of diversions— ""(PAGE 2)""

#23 =Lillard Diversion #2, 1960' N., 790' W. from S. E. Corner of Sec. 25 T-19-S, R-33 1/2-E. being within N. E. 1/4 of the S. E. 1/4 of Sec. 25, T-19-S, R-33 1/2-E.

#24 =Lillard Diversion #1, 10' S., 790' W. from the N. E. Corner of Sec. 36, T-19-S, R-33 1/2-E being within N. E. 1/4 of the N. E. 1/4 of Sec. 36 T-19-S, R-33 1/2-E.

#25 =Pump, 1850' N., 260' W., form S. E. Corner of Sec. 22, T-20-S, R-35-E, being within the N. E. 1/4 of the S. E. 1/4 of Sec.22 T-20-S, R-35-E.

#26 =1440' N., 780' W. from the S. E. Corner of Sec. 25, T-20-S, R-35-E being within the N. E. 1/4 of the S. E. 1/4 of Sec. 25, T-20-S, R-35-E.

ACREAGE DESCRIPTION SUMMARY

August 26, 1991

Attached is page P-1 from the MBWUA application and page P-1 and P-2 from the MBWUA supplemental application with changes noted.

TST	RNG	Sec.	¼¼	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
19-S	33½-E	13	SW NE	19.0	19.0	3526	2	1200
			SE NE	20.0	20.0	"	"	"
			NE SE	27.0	27.0	"	"	"
			NW SE	3.0	3.0	"	"	"
			SE SE	0.5	0.5	2134	"	500
19-S	34-E	7	NW SW	20.0	20.0	3526	"	"
			NW SW	11.0	11.0	7001	"	"
			SW SW	30.0	30.0	"	"	"
			SW SE	23.0	23.0	3791	"	"
		18	NW NE	19.0	19.0	6857	"	"
			NW NE	19.0	19.0	"	4	"
			SW NE	25.0	25.0	"	2	"
			SW NE	5.0	5.0	"	4	"
			NE NW	9.0	9.0	"	2	"
			NW NW	34.0	34.0	7001	"	"
			SW NW	28.0	28.0	"	"	"
			SE NW	18.0	18.0	6857	"	"
			SE NW	19.0	19.0	"	6	"
			NE SW	18.0	18.0	"	2	"
			NE SW	20.0	20.0	"	6	"
			NW SW	4.0	4.0	2134	2	"
			NW SW	19.0	19.0	6932	2	"
			SW SW	25.0	25.0	"	"	"
			SW SW	2.0	2.0	2134 5	"	"
			SE SW	38.0	38.0	6857	"	"
		19	NW NW	12.0	12.0	6857	2	"
			NW NW	11.0	11.0	"	7	"
			SW NW	18.0	18.0	" 9	7	"
			NW NE	35.0	35.0	7050	5	"
			SW NE	20.0	20.0	"		900
			NE NW	16.0	16.0	7050	7	"
			NE NW	22.0	22.0	"	5	"
			SE NW	3.0	3.0	"	7	"
			SE NW	8.0	8.0	"	8	"
			SE NW	25.0	25.0	"	5	"
		30	SW NW	24.0	24.0	27613	9	1500
			NW SW	23.0	23.0	"	"	"
			SW SW	30.0	30.0	"	"	"
		31	NE NW	6.0	6.0	"	"	"
			NW NW	40.0	40.0	"	"	"
			SW NW	40.0	40.0	"	"	"
			SE NW	31.0	31.0	"	"	"
			NE SW	40.0	40.0	"	"	"
			NW SW	40.0	40.0	"	"	"
		29	SW SW	10.0	10.0	6896	1	"
			SE SW	15.0	15.0	"	"	"
		32	NE NW	36.0	36.0	"	"	"
			NW NW	8.0	8.0	47708	"	"
			SW NW	2.0	2.0	"	"	"
			SE NW	3.0	3.0	"	"	"
			NW NE	6.0	6.0	"	"	1400
19-S	33½-E	36	SE NE	6.0	6.0	6960	10	2800
			NE SW	15.0	15.0	"	"	"
19-S	34-E	5	SW NW	.8	.8	26409	9	1100

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Application No. 69433
Permit No.

EXHIBIT 8
Page 5

TSP	RNG	SEC	1/4 1/4	ACRES	PRI.	SUP.	CERT.	DIV.PT	TAXLOT
T-19-S	R-33 1/2-E	24	SW of SW	23.0		23.0	7042	#7	1900
			SE of SW	10.0		10.0	"	"	"
		23	SE of SE	10.0		10.0	"		
		25	SW of NE	15.0		15.0	"	"	"
			NE of NW	38.0		38.0	"	"	"
			NW of NW	40.0		40.0	"	"	"
			SW of NW	6.0		6.0	"	"	"
			SE of NW	34.0		34.0	"	"	"
			NE of SW	19.0		19.0	"	"	"
			NE of SE	30.0		30.0	"	"#8	"
			NW of SE	35.0		35.0	"	"	"
			SW of SE	40.0		40.0	"	"	"
			SE of SE	40.0		40.0	"	#8 #18 23	"
		26	NE of NE	14.0		14.0	"	#7	"
		36	NE of NE	39.0		39.0	34143	#23 #28 #19 24	"
			NW of NE	37.6		37.6	"	"	"
			SW of NE	38.4		38.4	"	"	"
T-25-S	R-35-E	22	NE of SE	0.8		0.8	46044	#2025	300
		23	NE of SW	0.3		0.3	"	"	"
			NW of SW	12.4		12.4	"	"	"
			SW of SW	5.0		5.0	"	"	"
			SE of SW	11.8		11.8	"	"	"
		22	SE of NE	6.1		6.1	11219	#16	"
							"	"	"
			SE of SW	1.7		1.7	"	"	"
			NE of SE	25.1		25.1	"	"	"
			NW of SE	20.3		20.3	"	"	"
			SW of SE	22.5		22.5	"	"	"
			SE of SE	1.4		1.4	"	"	"
		26	NE of NE	40.0		40.0	"	"	"
			NW of NE	34.6		34.6	"	"	"
		23	NE of SW	1.8		1.8	"	"	"
			NW of SW	9.0		9.0	"	"	"
			SE of SW	23.2		23.2	"	"	"
			NE of SE	2.0		2.0	"	"	"
			NW of SE	6.0		6.0	"	"	"
			SW of SE	32.3		32.3	"	"	"
			SE of SE	2.0		2.0	"	"	"
			NE of SW	16.0		16.0	6891	"	"
			NW of SW	10.0		10.0	"	"	"
			SW of SE	6.0		6.0	"	"	"
			SE of SE	32.0		32.0	"	"	"
T-20-S	R-35-E	25	NW of NE	37.7		37.7	49682	#16	3800
			NE of NW	22.0		22.0	"	"	"
			NW of NW	15.3		15.3	"	"	"
			NE of NE	40.0		40.0	50450	#16	1700
			SE of NE	20.0		20.0	"	"	"

EXHIBIT 9
Page 4

TSP	RNG	SEC	1/4 1/4	ACRES	PRI.	SUP.	CERT.	DIV.PT	TAXLOT
T-20-S	R-35-E	25	SE of NE	19.0		19.0	49682	#16	3700
			SW of NE	14.8		14.8	"	"	"
			NE of SE	14.4		14.4	"	"	"
			SE of SE	0.5		0.5	"	"	"
			NE of SE	3.1		3.1	60643	"	"
			SE of SE	0.3		0.3	"	"	"
			SE of NE	12.8		12.8	52032	#~~21~~26	"
		36	NE of NE	1.2		1.2	"	"	"
T-20-S	R-36-E	30	SE of NW	0.4		0.4	60643	#16	2300
			NE of SW	2.3		2.3	"	"	"
			SW of SW	0.9		0.9	"	"	"
			SE of SW	10.2		10.2	"	"	"
		31	NE of NW	8.9		8.9	"	"	"
			NW of NW	0.9		0.9	"	"	"
		30	SW of SW	4.2		4.2	52032	#~~21~~26	"
			SW of NW	26.0		26.0	49682	#16	"
			SE of NW	1.2		1.2	"	"	"
			NE of SW	28.8		28.8	"	"	"
			NW of SW	40.0		40.0	"	"	"
			SW of SW	32.0		32.0	"	"	"
			SE of Sw	29.6		29.6	"	"	"
			SW of SE	6.0		6.0	"	"	"
		31	NE of NW	7.0		7.0	52032	#~~21~~26	"
			NW of NW	20.0		20.0	"	"	"
			SW of NW	0.1		0.1	"	"	"
			SE of NW	22.6		22.6	"	"	"
			NE of SW	0.8		0.8	"	"	"
		31	SW of SE	6.0		6.0	"	"	2400
			SE of SE	36.8		36.8	"	"	"
		32	SW of SW	12.2		12.2	"	"	"
T-21-S	R-36-E	6	SE of NE	0.8		0.8	"	"	400
		5	Lot 3	7.0		7.0	"	"	"
			Lot 4	17.8		17.8	"	"	"
			NW of SW	0.8		0.8	"	"	"

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF PROTESTED APPLICATION)
69433 IN THE NAME OF MALHEUR BASIN WATER)
USERS ASSOCIATION AND INSTREAM WATER) FINAL ORDER
RIGHT APPLICATIONS 70325 AND 70349-70352)
IN THE NAME OF OREGON DEPARTMENT OF FISH)
AND WILDLIFE FOR USE OF WATER FROM THE)
MALHEUR RIVER AND TRIBUTARIES, MALHEUR)
COUNTY, OREGON)

HISTORY OF PROCEEDING

Application 69433 was originally filed by the Malheur Basin Water Users Association (Association) on October 23, 1987 for use of 102 cubic feet per second (cfs) of water from the Malheur River, 5 cfs from Griffin Creek, 18.2 cfs from Otis Creek, 2.8 cfs from Cottonwood Creek, and 2.2 cfs from Spring Creek, or a total of 130.2 cfs, for supplemental irrigation and alkali abatement on 5,127 acres in sections 13 and 26 located in T19S, R33½E, and sections 7, 31 and 32 located in T20S, R36E, WM, Harney County.

Protests were filed against the Association's application by WaterWatch of Oregon, Oregon Trout and the Oregon Department of Fish and Wildlife (ODFW), asserting that approval of application 69433 would not be in the public interest as there is no alkali problem in the lands to be irrigated and that use as proposed would reduce the pollution abatement capacities of the streams and interfere with the fish and wildlife habitats provided by these sources.

A protest, later withdrawn, was also filed by Wright Wilber against the application.

Applications 70325 and 70349-70352 were filed by ODFW on April 27, 1990, for use of water instream, as described below:

70325: to provide for minimum flows for resident trout and small mouth bass, and other warm-water game fish, for migration, spawning and juvenile rearing, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
30	40	40	40	40	40	30	15	15	15	15	15	cfs

These flows are to be retained instream in the Malheur River between the Highway 20 crossing at river mile 142, within the NE¼ SE¼ Section 31, T20S, R36E, downstream to the upper pool of Warmsprings Reservoir at river mile 131, within the NW¼ Section 11, T22S, R36E, all in Harney County;

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70349: to provide for optimum flows for migration, spawning and rearing of resident trout, including bull trout, a sensitive species, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
35	50	50	50	50	50	50	35	35	35	35	35	cfs

These flows are to be retained in the Malheur River between Logan Valley at river mile 188, within the SE¼ NW¼ Section 36, T16S, R33E in Grant Co., downstream to the upper Drewsey Valley diversion at river mile 172, within the SE¼ SE¼ Section 5, T19S, R34E, WM in Harney County;

70350: to provide optimum flows for migration, spawning and rearing of resident trout and smallmouth bass, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
40	40	40	40	40	40	30	15	15	15	15	15	cfs

These flows are to be retained in the Malheur River between the upper Drewsey Valley diversion at river mile 172, within the SE¼ SE¼ Section 5, T19S, R34E, downstream to the Hwy. 20 crossing at river mile 140, within the NE¼ SE¼ Section 31, T20S, R36E, WM, all in Harney County;

70351: to provide minimum flows for migration, spawning and rearing of resident and bull trout, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
15	15	15	15	15	15	10	10	10	10/15	15	15	cfs

These flows are to be retained in Lake Creek, tributary to the Malheur River, from the headwaters of Lake Creek within the NW¼ NW¼ Section 18, T16S, R33½E, WM, downstream to the USFS Rd. 16 crossing at river mile 0.5, within the SE¼ SE¼ Section 16, T16S, R33½E, WM, all in Grant County; and

70352: to provide optimum flows for migration, spawning and rearing of resident and bull trout, as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
20	20	20	20	20	20	15	15	15	15/20	20	20	cfs

These flows are to be retained in Big Creek, tributary of the Malheur River, from the headwaters of Big Creek within the NW¼ NW¼ of Section 10, T15S, R34E, WM, downstream to the USFS Rd. 16 crossing within the SE¼ SE¼ Section 14, T16S, R33½E, WM, all in Grant County.

Protests against ODFW's applications were filed by the Association, which asserted that approval of the instream water right applications would cause a change in existing ranching and irrigation practices and reduce the recharge of the water aquifer, to the detriment of the public interest.

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The matter was announced for hearing by Notice of Hearing dated April 22, 1991. Opportunity and manner of petitioning for party status were set out in the Notice.

Petitions for party status were filed for Duane and Nancy Schneider, trustees and title holders of Oxbow Ranch for the benefit of the children of Rotchy (Rochford) Barker et ux, lessors and operators of Oxbow Ranch, and for Robert and Rosita Stanbro by Roy Kilpatrick, Attorney at Law.

The petitions asserted that the instream water right applications, if granted, would cause harm to petitioners' existing senior rights and pending applications and be contrary to the public interest by eliminating wildlife habitat allegedly created by the irrigation practices of petitioners and others similarly situated. The pending applications had been objected to by ODFW, WaterWatch and Oregon Trout but were not at issue in this proceeding.

Petitioners were admitted as limited parties by Order issued May 21, 1991 for the purpose of offering evidence to demonstrate that the uses proposed by their pending applications were of greater benefit to the public than the proposed instream water rights, as claimed in their petition, and to address the concerns and conditions proposed by existing parties regarding petitioners pending applications. Petitioners were also afforded the opportunity to participate in any further negotiations between the parties.

A Motion to Amend Application 69433 was filed on July 1, 1991. As the Referee lacked authority to allow or prohibit such amendment, the amendment went forward. The hearing was postponed and a revised filing schedule established by Order issued July 5, 1991.

Also on July 1, a motion to dismiss the proceeding and summarily reject application 69433 was filed by WaterWatch. The Association filed a response to the motion. The motion was denied by Order issued August 5, 1991, which Order is incorporated by reference herein.

As amended, application 69433 requests a total of 163.2 cfs from the Malheur River and Griffin, Otis, Cottonwood and Spring creeks for use on 6,454.9 acres, being 1.194 acre feet per acre (af/ac) for alkali abatement, erosion control and fish and wildlife habitat, with a priority date of October 28, 1987, and an increased rate of appropriation from 1/80 to 1/40 for 884.2 acres, being a total of .306 af/ac, with a priority date of July 1, 1991. The request for use for alkali abatement of 33.0 cfs of water on 1,327.9 acres more than was previously requested in the original 1987 application would also have a priority date of July 1, 1991. Motions for postponement were filed by counsel for Oxbow Ranch (Schneider) on September 9 and for the Stanbros on September 11.

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Counsel filed a third motion entitled Supplemental Motion to Postpone on September 12. Counsel for Oxbow Ranch and the Stanbros submitted Rule 21 Motions to Dismiss to the Referee at the commencement of the hearing.

Grounds for the motions to postpone were, generally, that there was another action pending between the parties for the same cause in that Oxbow Ranch had, on September 6, 1991, filed a complaint in the United States District Court for the District of Oregon seeking an permanent injunction against the Water Resources Commission, Director and Hearings Referee from holding the contested case hearing and a declaration that the State had no jurisdiction to consider or approve the pending applications, and in addition that there had been a failure to join the United States as a necessary party to the contested case proceeding.

Grounds for the motion to dismiss were that the Director and Commission lacked subject matter jurisdiction over the several water right applications and personal jurisdiction over the Stanbros and Oxbow Ranch, that there was another action pending in federal district court between the parties for the same cause, and that there had been a failure to join a necessary party.

The federal district court complaint asserted several grounds for relief. It was first claimed that the Desert Lands Act, 43 USC 321 *et seq*, prohibited the state from issuing instream water rights on streams which run through lands owned by the United States, and further that the Act prohibited any administration of Oregon waters or enforcement of Oregon water-related statutes for any purpose other than irrigation, mining and manufacturing. It was next claimed that all Oxbow Ranch lands were wetlands and any enforcemnt of the Oregon Instream Water Rights Law would be in direct violation of the Clean Waters Act, 33 USC 401, and the National Environmental Policy Act, 43 USC 4321. It was next claimed that the consideration of these applications in the contested case hearing was either an adjudication of Oxbow Ranch's federally-obtained riparian rights or of the federally-owned waters of a nonnavigable stream running through federal lands, and that the McCarran Amendment, 43 USC 666, required joinder of the United States as a party. Lastly, it was claimed that the upland sandpiper, which nests in the Logan Valley, was an endangered species and that its habitat would be dewatered if the instream water right applications were approved.

The claims raised in the several motions were determined to be without merit. The Desert Lands Act requires patentees to obtain water rights solely from the state. Consideration of the instream applications filed pursuant to ORS 537.336 was in no way an adjudication. Moreover, the Desert Lands Act does not limit the authority of the state to issue water rights for purposes other than irrigation, manufacturing and mining. Neither the National Environmental Policy Act, which is not applicable the actions of the Oregon Water Resources Department and Commission, nor the Clean Water Act prohibit the issuance of water rights, either for

instream or out-of-stream uses. The McCarran Amendment does not require joinder of the United States when there are neither federal rights involved nor an adjudication or administration of federal rights. The upland sandpiper is not an endangered species and approval of these instream water right applications will not result in a dewatering of its habitat. The Motions for Postponement and Dismissal were denied.

The contested case hearing was convened on September 17, 1991 in Burns, Oregon.

Shortly after the commencement of the hearing, counsel for the Stanbros and Schneiders, who were not present, left the hearing and did not participate further. The hearing continued through September 18, 1991. The record was left open for a period of time in order to allow further investigation and written testimony by soil scientists offered as witnesses by WaterWatch and the Association and for submission of post-hearing memoranda by the parties. The Association raised a number of objections in its post-hearing memorandum.

RULING ON ASSOCIATION'S OBJECTIONS

The several objections made by the Association in its post-hearing memorandum regarding adequacy or compliance of ODFW's filings with ODFW's instream water right rules have been addressed herein. Those objections relating to the validity of the Department's instream water right rules, OAR Chapter 690 Divsion 77 are DENIED. The rules were properly adopted by the Commission pursuant to ORS Chapter 183.325 - 183.370 and ORS 536.025 following opportunity for public comment, and are currently being considered for amendment pursuant to those same provisions. These rules are neither unconstitutional nor do they exceed the statutory authority of the Commission and Department. These rules are further the subject of a proceeding in Baker County Circuit Court. The Association may seek a further determination by a court of competent jurisdiction on appeal of the final order issued in this matter.

Following a review of the entire record, a Proposed Order was issued and served on the parties on April 8, 1992. Exceptions to the Proposed Order were timely filed by the Association, ODFW, WaterWatch and Oxbow Ranch. A subcommittee of the Water Resources Commission was appointed to review the exceptions and the record and to make recommendations to the full Commission regarding the exceptions and issuance of the Final Order in this matter.

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DETERMINATION ON EXCEPTIONS

The Association, ODFW, WaterWatch and Oxbow Ranch filed a number of exceptions to the proposed order. Based on the review and recommendations of the subcommittee, the Commission concluded that alkali abatement is neither a use separate from irrigation nor a form or subcategory of irrigation but rather a potential side benefit of irrigation, as is recognized in the Malheur River Basin Plan Finding No. 15, which states that "flood irrigation in the Middle Fork Malheur Basin is beneficial in reducing alkalinity in soils and is an appropriate irrigation method." Therefore, the Commission has determined that the alkali abatement portion of Application 69433 should be denied on the following basis:

1. Alkali abatement is not specifically allowed or classified for in the basin program.
2. Irrigation is an allowable use under the Basin Program, but alkali abatement is not presently a form or subset of the classification of irrigation and is not otherwise classified as an allowable use within the basin program.
3. The SCS crop requirements for meadow grass and hay are approximately 2 af/ac and the duty allowed for irrigation in the Malheur Adjudication is 3 af/ac.
4. Even if the Basin Program contained a specific classification for use of the waters of the Malheur River for alkali abatement, there is insufficient information and evidence on either the specific extent and location of alkali-affected soils or the need for additional water for alkali abatement to approve the application at this time.
5. The Association is not foreclosed from reapplying under Division 82 (Acceptance of applications for water uses in addition to classified uses), which application would need to include additional information and facts about alkali and the location of alkali-affected soils within the application's boundaries, or to seek a basin program amendment and submit the additional information in that forum and then reapply for this use, assuming alkali abatement is added as a classified use to the basin program.

As a result of the determination to deny the alkali abatement portion of Application 60433, many of the findings of fact, ultimate facts and conclusions of law, portions of the opinion, the Interim Order and a part of the Proposed Order were modified or deleted from this Final Order. Where changes have been made to reflect the Commission's rejection of the alkali abatement portion of Application 69433, exceptions to those portions of the Proposed Order have been rendered moot and are not addressed here.

> WaterWatch and ODFW asked that Finding of Fact 4 include grazing and poor management practices such as burning riparian areas to ease movement of livestock as contributing factors to streambank erosion.

Testimony at the hearing involved high flows as a cause of streambank erosion. The one reference to burning riparian areas as a management practice appeared to be an assumption on the part of

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the one witness, Jim Myron, who mentioned the burn. He stated that the only thing he was personally aware of as a cause for the eroded condition of the streambank was a stretch of burned river bank and that he thought the burn was a management practice to facilitate livestock movement. There is insufficient evidence in the record to add grazing and management practices to Finding of Fact 4.

> ODFW and WaterWatch excepted to the statement in Finding of Fact 26 that, with regulation, appropriation of either 3 or 4.5 af/ac in April and May would not harm or reduce the pollution abatement capacity or fish habitat of the Malheur River.

The denial of the request for 1.5 af/ac for alkali abatement renders much of this exception moot. Moreover, with a reduction in historical use via measurement and regulation, substantially less water will be diverted than has previously been taken, therefore, overland flows, temperature and pollutants would be reduced rather than increased.

The amount the Association can take under its increase in rate does not increase the duty. The irrigation rights are limited by the terms of the adjudication to 1½ af/ac during any 30-day period prior to June 1 and no more than 1 af/ac in any 30-day period thereafter, up to a total of 3 af/ac.

> ODFW and WaterWatch excepted to Finding of Fact 27, arguing that flows records also show water would not generally be available in July, in addition to shortages on August and September.

The median and average monthly flows between 1927 and 1982, referred to in this Finding of Fact, are based on actual gaged flows which reflect historic appropriations at much higher levels than would be seen if monitoring and regulation are required and appropriations reduced to the allowed duty under existing rights plus 1.5 af in April and May. Despite ODFW's assertion, Ms. Zarnowitz' direct testimony was not uncontroverted. Kent Searles testified that the flow records indicate that water is available during the time period requested by the Association. He stated that he had no knowledge of lack of availability of water for the instream rights on the tributaries but the gaged flows, which measure real flows (water left after all appropriations) show water available for instream water rights on mainstem except for during low flows, usually August and September.

> ODFW asked that Finding of Fact 28 be modified to find that bull trout are found within, rather than upstream from, the Logan Valley.

Jill Zarnowitz testified on cross-examination that bull trout are presently located in the tributaries high up above the Logan Valley, and that since they are sensitive to high water temperatures, their range is restricted to the forested upper reaches of the Malheur River Basin.

William Hosford testified in his written direct: "Bull trout occurred in the mainstem Middle Fork Malheur River as late as the mid-1960's. Recently bull trout have been found in only three tributary streams of the Middle Fork Malheur - Lake Creek, Big Creek and Meadow Fork Big Creek...Bull trout, as well as redband and brook trout, were observed in 1990 by ODFW personnel in irrigation ditches in the Logan Valley area of the Middle Fork Malheur."

On cross-examination, Mr. Hosford stated that "in the last few years they [bull trout] have only been found in tributaries to the middle fork of the Malheur above Logan Valley, which I mentioned in my affidavit [direct testimony by affidavit].

The testimony supports this Finding of Fact. However, it has been modified to more accurately reflect the testimony of ODFW's witnesses.

> ODFW and WaterWatch objected to the statement in Findings of Fact 32 and 34 that ODFW did not appear to have followed its own rules in making the instream requests.

Jill Zarnowitz testified in her direct testimony that "Flow levels were taken from the 1967 Basin Investigations, which were adopted by the Fish and Wildlife Commission as a source of information for ISWR applications. Flow determinations in the Basin Investigations were derived from depth and velocity measurements and adjusted for water availability..... ODFW expects these ISWR applications to be issued by WRD after analysis of naturally available flows." However, further investigation of this issue, in response to the exceptions, indicates that ODFW did not violate its own rules.

OAR 635-400-015(10) requires that "if hydrological estimates or gaging data can be obtained, the instream flow requirements shall be compared against the range of naturally occurring stream flows. Gaging data was considered by ODFW. As no explanation is given of how flows were adjusted for water availability, it could appear from ODFW's direct testimony that such a comparison was not done by ODFW.

The Commission takes administrative notice of the fact that natural flow information is provided by the Water Resources Department and that the Department staff, rather than ODFW, makes the comparison of gaged flows to estimated natural flows. The Referee did not conclude that ODFW would deliberately violate or fail to comply with its own rules, and was unaware of the Department's practice of providing natural flow information and making the comparison of gaged and estimated natural flows. The FWC did adopt the Basin Investigation recommendations as a basis for flows requested in ISWR applications. Kent Searles also testified he did not believe there was sufficient hydrographic [gaging] information available to say what the natural average flow of the stream would be or that would show what the natural flow would be without appropriations.

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Given that it is the Department's practice to provide natural flow information and make this comparison, and given further that the natural average flow information was not available, it now appears that findings #32 and 34 are in error. These two findings have been deleted from the Final Order.

> WaterWatch excepted to Finding of Fact 37 and argued that the actual consumptive use of meadow grass is 22" of water, not 25.65.

Dr. Jarrell stated in his direct testimony that consumptive requirements were 2.2 af/ac/year, or about 26.4". In an exhibit attached to his testimony, the Oregon Engineering Handbook Irrigation Guide, crop requirements were given as 25.65 inches. On cross-examination, he stated that the crop requirements, assuming 2½ tons of pasture grass per acre, were 25.65". In rebuttal, he revises his estimate again to 22". Dr. Vomicil testified that the requirement was 31.2" per year, without taking weather factors into consideration, which would raise the requirement to 37.4" per year. The Soil Conservation Service's Farm Irrigation Rating Index sets it at 25.65 inches. Both experts made estimates based on information from areas other than the specific area with which the Association is concerned. The Referee found the SCS credible and reliable. The Commission agrees with the finding that the consumptive use of meadow grass is 25.65" of water.

> WaterWater requested that the following language be added to Finding of Fact 42: "The 1969 survey and mapping of the soils in basin based on soil sampling representative of soils in basin showed no evidence of a problem."

The survey and mapping were general, not detailed. That work is being done now and will be completed in 1993-94. The 1969 report contained the disclaimer "Much of the soil information reported here is based on tentative information and work in progress. Therefore this report must be treated as a progress report containing information subject to change before the detailed soil survey of the basin is completed." Soil samples and testing done by the SCS on Association lands showed the presence of alkali. The requested addition to this finding is unnecessary and inappropriate.

> WaterWatch, ODFW and the Association objected to the inclusion of the 15 cfs bypass flow in Finding of Fact 57, stating that this condition should only apply to the increase in rate portion of Application 69433.

This Finding and the condition have been eliminated from the Final Order.

> WaterWatch asserted that the Order must contain a finding of consistency with statewide planning goals for the instream water rights under OAR 690-60-030.

The Commission concludes that no such finding was required, primarily because the issue of consistency of the instream water applications with the statewide planning goals or compatibility with the local comprehensive land use plans was not raised in the hearing and no testimony or evidence was given on this point.

However, under the procedures in place at the times of filing, the affected local governments (Harney and Grant Counties) were notified of the filing of both Application 69433 and the instream water right applications 70325 and 70349-70352 and submitted no comments or information regarding the compatibility of these applications with the acknowledged local land use plans. Under the procedures in place at the time these several applications were filed, compatibility may be presumed if no response is received from the affected local government within 30 days of receiving the notice of filing. Therefore, findings of compatibility of the increase in rate portion of Application 69433 and the instream water right applications 70325 and 70349-70352 have been added to this Final Order in Findings of Fact 51 and 52.

> ODFW objects to Ultimate Fact 8, which finds that the presence of habitat and forage for a variety of wildlife and wildfowl species may be enhanced by, but is an incidental, albeit beneficial, result of flood irrigation, asserting that there is no evidence that wildlife is in better condition than it was prior to any irrigation, but the fish are worse off.

Application 69433 included wildlife habitat as one use. This Finding was directed at non-fish wildlife. Based on the testimony in the record, there is no apparent intention to provide such habitat. However, non-fish wildlife utilize the incidentally-created habitat and forage, which would not be as abundant if no irrigation occurred. ODFW Ex. B, the Basin Investigation, states: "The principal water requirement of land mammals and birds of the basin, except waterfowl and certain furbearers, is that needed to promote plant growth for food and shelter.....Extensive irrigation systems supplement the water needs of the pheasant and valley quail in the Malheur River Basin...Game water birds utilize the basin's reservoirs and rivers most during their fall and spring migrations...." The evidence supports this finding without change.

> The Association asked that Ultimate Fact #8, finding that wildlife and habitat benefits are only <u>incidental</u> results of flood irrigation, be eliminated, as the amended application listed alkali abatement, erosion control and fish and wildlife maintenance as requested uses.
>
> The Association further requested a finding that diversion "in excess of 3 af in April and May in addition to helping control alkali, benefit fish and wildlife through providing habitat and forage for wildlife and reducing flows and erosion during times of high water."

The results of historic illegal diversions and legally allowed uses are two different things. It is not clear in the record that April and May diversions have benefitted fish or fish habitat. Fish clearly do not live on the 6,454.9 acres. There was no testimony, nor, does it appear, any claim made that wildlife benefits, incidental or otherwise, were claimed for the entire 6,454.9 acres. There was never any identification made, despite direction to do so, of how much water was being requested for alkali, how much for fish and wildlife and how much for erosion control. The record does not support a finding that erosion control and fish and wildlife maintenance are deliberate or planned uses, only that they are incidental results of flood irrigation. On the evidence in record, the Referee found that the intended use of the water was not and had never been for fish and wildlife habitat maintenance. Ultimate Fact #8 will not be modified and the requested finding will not be made.

> ODFW asserts that Condition No. 5 on the increase in rate permit should require compliance with all applicable laws requiring fish passage as well as the already-required screening. WaterWatch asserts that fish screening should be required on a date certain prior to April 1, 1993.

Screening is required prior to exercise of the increase in rate right. ODFW made no mention of either screening or fish passage in the conditions it proposed, nor did it provide any citation to the laws regarding fish passage or any explanation of what it means by fish passage and how that differs from by-pass or screening devices. The Commission will not at this time make the change requested.

> The Association excepted to the language of the Proposed Order approving the portion of Application 69433 for an increase in rate of diversion. The Association asserted in its exception that it was not requesting an additional 11 cfs in connection with its increase in rate request, and requested that the order concerning the increase in rate of flow be changed to the following:
>
> IT IS FURTHER ORDERED that the portion of the application 69433 in the name of Malheur Basin Water Users Association be approved for an increased rate of diversion from 1/80 to 1/40 cfs as an additional right from the same source for the same use at the same place of use as are permitted under the existing water rights of the Association members which contain only a 1/80 cfs diversion rate. This increase in rate is approved on 884.2 acres as designated on the amended application of Association.

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The Association argued further that since modification of the rate of diversion does not affect the total amount of water diverted but only affects the timing in which diversion may occur, reference should not be made to an additional 11 cfs, no priority date should be referenced, and since the Association was only trying to correct a mistake on certificates issued between 1909 and 1937, no conditions should be attached.

It was not until July 1, 1991 that the Association amended its application and added the request for an increased rate of diversion. The draft permit offered into evidence as Association's Exhibit 17 contains the following condition: "In addition, this permit is issued approving an additional 1/80th cfs per acre diversion for all lands described in Certificates 3526, 2135, 3791, 2151, 8121 and 49682, this additional diversion rate is for irrigation **and when combined with the original certificate rate,** allows a total diversion rate of 1/40th cfs.....The use of water within this permit is allocated between other existing rights and this right as follows: The rate of flow for all water diverted **shall first be charged against the flow set out in prior rights. To the extent that flow exceeds that permitted under prior rights, additional flow shall be charged to this permit."** (Emphasis added) The Association has previously acknowledged that, on approval of the request, two separate rights would exist. This request is inconsistent with the Association's application.

Citation to OAR 690-11-010(6) does not assist the Association in its request. OAR 690-11-010-(6) reads as follows: "Deficiency of rate right: An <u>additional</u> right allowed from the same source for the same use at the same place of use when an <u>earlier</u> right does not allow a full duty or rate of flow of water" (emphasis added). This must also be read in conjunction with OAR 690-11-060, which provides if the replacement or amendment proposes additions to or increases in the source, <u>quantity</u> or nature of use, the additions or increases shall be assigned a new (tentative) priority date, as of the date the amendment is received by the Department.

Diversion at a rate of 1/80 cfs per acre for irrigation of 884.2 acres allows an instantaneous diversion of a total of 11 cfs. Diversion at a rate of 1/40 cfs per acre for irrigation of 884.2 acres allows an instantaneous diversion of 22 cfs. If water is available, which it normally would be in April and May, exercise of both the old 1/80th rights and the new 1/80th rights would mean a total diversion of 22 cfs for irrigation of these 884.2 acres. Since the rate and duty granted in existing rights cannot be modified, an increase in the rate of appropriation includes an additional amount of water to be diverted.

Approval of a request for an increased rate of diversion for lands with existing certificates can only be done through issuance of a new right for the additional rate, which would have a priority date

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as of the date the application was made. A request for increased rate of diversion cannot be satisfied by enlarging or modifying the existing certificates. This clearly has the potential of injuring rights junior to the existing rights. In addition, there is no provision in Oregon water law that would allow this to occur. The Association's proposal for changing the Order to allow an increased rate of diversion under existing rights, rather than an additional right for a diversion of 1/80th to be used on those lands with existing rights allowing diversion of 1/80th, is denied.

> Oxbow Ranch objected to the Referee signing the proposed order, asserting that ORS 536.025(2) requires the Director to sign proposed orders and that the only appealable Final Order is one signed by the Director.

With the exception of rule adoption, ORS 536.025(2) authorizes the Commission to delegate any of its powers, duties or functions to the Director. Pursuant to OAR 690-02-170 [previously OAR 690-01-041] and ORS 183.464, the Referee is authorized to sign proposed orders and, where no exceptions are filed, issue Final Orders. ORS 183.460 and OAR 137-03-060 allow for filing exceptions to proposed orders. ORS 183.470 - .482 and OAR 137-03-070, regarding appeal and judicial review of Final Orders, do not require signature by the Director before a Final Order may be appealed.

> Oxbow Ranch further argued that the Commission cannot draft a Final Order for the Director's signature granting instream water rights to ODFW using the statutes and rules because:
>
> 1. There is no evidence from which the Commission can determine the necessity for any of the rights applied for, their nature or extent, and
> 2. The referee's conclusion that the rights cannot be granted without flexing both [statutes and rules] and considering the effect of denying the applications. (Proposed Order [Opinion], page 14.)
>
> In support of this exception, Oxbow Ranch asserted that the Referee concluded the ODFW had not established the necessity for the amount of instream water required or any amount under existing rules and regulation. ODFW did not comply with its own rules and did not provide any information which the Commission could use to make its own determination of the appropriate amount, therefore the ISWR applications must be denied.

The Commission does not draft a final order for the Director's signature. Exceptions to proposed orders issued after contested case hearings held on applications filed under Divisions 11 or 77 are heard by the Commission, which issues the final order after considering and addressing the exceptions. In practice, after considering the exceptions, the Commission directs staff to prepare a Final Order containing its decisions on those exceptions for signature by the Commission Chair.

Nowhere in the Proposed Order is the conclusion made that ODFW had failed to establish the necessity for the amount of water requested in the instream applications. The Referee found that it did not appear that ODFW had followed its rules to the letter, in that it did not **appear** that consideration or comparison with naturally-occurring flows was made. This matter has been addressed above in response to exceptions filed by ODFW and WaterWatch on this issue.

Having now review the record, the proposed order, and the exceptions to the proposed order, this Final Order is issued.

FINDINGS OF FACT

1. The Malheur basin has a semiarid climate with hot dry summers and cold winters. Average temperature extremes usually occur in January and July, with average minimum January and average maximum July temperatures in the higher elevation agricultural valleys of 16 and 96 degrees Fahrenheit. Elevations in the Drewsey Valley average between 3,520 and 3,600 feet. Elevation in the Logan Valley area averages 5,000 feet.

2. Annual precipitation in the lower elevations of the Drewsey Valley is 10". Measured average annual precipitation at Drewsey at river mile 146.5 is 11". Measured average annual precipitation in the Logan valley is 30". Precipitation and streamflow levels vary widely with wet and dry years.

3. The Malheur River rises in the Strawberry Range of the Blue Mountains at about 5000' elevation and flows in a southeasterly direction for 190 miles to its confluence with the Snake River. Rivermile (rm) designations begin at 0 at the confluence and end at 190 at the point of origin.

4. Streambank erosion along the Malheur River is a problem in the Drewsey Valley and is exacerbated by high spring flows.

5. A minimum streamflow of 15 cfs as measured at the gauging station below Drewsey was adopted on February 26, 1985 by the Water Policy Review Board (WPRB), predecessor to the Commission, as part of the Malheur-Owyhee Basin Program.

6. Following consideration of a petition by the Association for a stay of enforcement of the minimum streamflow and a subsequent petition for amendment of the Malheur-Owyhee Basin Program, the Commission entered into rulemaking and ultimately rescinded the minimum streamflow and amended the Basin Program on January 7, 1986.

7. As part of its January 7, 1986 action, the Commission adopted a finding that flood irrigation in the Middle Fork Malheur Basin is beneficial in reducing alkalinity in soils and is an appropriate irrigation method.

8. As part of its January 7, 1986 action, the Commission further directed that the Department seek and evaluate water use data forwarded by the water users in the Middle Fork Malheur Basin, and report on its estimates and analysis of the existing diversion rates, the amount and location of return flow, the impact of current irrigation practices on downstream water needs and uses, and the impact and associated cost of conservation measures, no later than January 2, 1988. That result of that investigation and report is the 1987 WRD Malheur River Return Flow Study.

9. The 1987 WRD Malheur River Return Flow Study involved approximately 1/6 of the acreage covered by application 69433 and examined irrigation practices and return flows at the upstream end of the Drewsey Valley between rm 168-171.

10. Median (M) and average (A) monthly flows between 1927 and 1982 as measured at the Drewsey gage 13214000 (rm 142), measured in cfs, are as follows:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
M	93	195	355	563	304	108	19	7	10	36	64	78
A	146	258	427	651	345	135	26	10	12	38	66	104

The median number means that 50% of the time flows are higher than the given number and 50% of the time flows are lower.

11. Based on average monthly gaged flows, total acre feet (af) flowing monthly past the gage at Drewsey are as follows:

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
8808	15565	25761	39275	20814	8145	1569	603	724	2292	3982	6274

for an annual average of 133,300 af.

12. The reported gaged flows represent the actual amount of water in the river after diversions above the gage and including any amounts returned to the river as return flows.

13. At the maximum allowable rate under existing water rights, 580 cfs, or a total of 39,500 af, can be diverted during the period April-October between the headwaters and Warmsprings Reservoir for irrigation of 13,166 acres at 3 af/ac.

14. The relative rights of appropriation established prior to 1909 in the Malheur Basin, including the area to which these applications are applicable, were determined in the 1919 Malheur adjudication. Some additional rights have been allowed on approval of applications for permits to use water since that time.

15. There is no irrigation season set in the Malheur Adjudication Decree, but there are limitations on the amount of water that may be diverted. Holders of decreed rights may divert up to 1½ af during any 30-day period prior to June 1 and thereafter may not exceed 1 af/ac during any 30-day period, provided that the total quantity diverted during season may not exceed 3 af and the rate not exceed 1/20th of a cfs.

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16. The Malheur Decree further found that in order to successfully irrigate a piece of ground, it is necessary to have a sufficient head of water, and that a flow of 1/80th cfs per acre is inadequate for purposes of irrigating an acre, although it is not necessary to keep a continuous flow of water on each and every acre.

17. Appropriative rights issued after the adjudication maintain the same duty limitations, but rights issued between 1909 and 1937 frequently allowed a diversion rate of only 1/80th.

18. The Malheur Basin Decree contains no mention of alkali or alkaline soils, and no provision for alkali or other soil problem abatement via flood irrigation was requested or granted in the rights and duty allowed.

19. The physical geography of the narrow Logan Valley and Drewsey Valley areas is such that water diverted is rarely, if ever, taken more than one-half mile away from the Malheur River, to which water not consumed by the crop or lost in transmission returns in 3-8 days.

20. The rights in the Drewsey valley have been regulated in the past for rate of appropriation. These diversions have not been regulated for total duty of water due to a lack of measuring devices capable of measuring the total volume of water diverted during the irrigation season.

21. Historical evidence indicates that the irrigators in the Drewsey Valley area of the Malheur basin have, in the early part of the irrigation season (April and May), annually diverted substantial quantities of water over their authorized rights since at least 1939.

22. The Malheur River Return Flow study area appears representative of all Association lands and practices. A total of just under 9 af/ac was diverted and applied to the lands within the study area. Although other diversions were not measured, with the exception of the Drewsey Ditch area, it appears that unpermitted diversions above the authorized 3 acre-feet range in quantity from 2.8 - 5.8 af/ac.

23. Taking the Return Flow Study as representative, a total of between 5.5 and 8.8 af/ac are diverted at 25 diversion points within the Drewsey Valley, distributed through ditches and applied on these lands during the irrigation season, with the majority of the water being applied and saturating the soil or consumed in the early spring (April-May) when flows are high.

24. Assuming past unpermitted diversions throughout the Drewsey Valley area for irrigation of 6,455 acres of 5.5 af/ac above the authorized diversion rate, the total amount of water diverted during the irrigation season would have been 54,867 af. Regulation of all authorized diversions back to a total duty of 3 af/ac would have resulted in an additional 35,502.5 af remaining in the river.

25. Given that historical diversions by the Association have been as much as 9 af/ac and given further that regulation and a limitation on appropriations to a duty of 3 af/ac will result in more water being available instream than has been available since at least 1939, more than adequate flows will be available for both the ODFW instream appropriations and the increase in rate of diversion requested under Application 69433. Diversion of 11 cfs in April and May under the increased rate of appropriation permit issued on Application 69433 as conditioned herein will not harm or reduce the pollution abatement capacity or the fish habitat of the Malheur River.

26. Available flow records show water available for the instream water rights and increase in rate of diversion applications. Gaged flows only show what amount of water is left in the river after legal and extra-legal diversions. There is no evidence in the record showing what the total natural average flow (without diversions) would be.

27. Bull trout, a cold water species listed as threatened by ODFW, were previously found in the Malheur in the reach just above the Return Flow study area as recently as 20 years ago. Bull trout are generally now found only in tributaries upstream from the Logan Valley area, although they were observed in 1990 in irrigation ditches within the Logan Valley, from which it may be inferred that bull trout are also present in tributaries to the Malheur within the Logan Valley as well as upstream from it.

28. The stretch of the Malheur River between the Highway 20 crossing and Warmsprings Reservoir is an important rearing habitat for smallmouth bass, a warm water game fish.

29. Hot springs located approximately half-way through the Drewsey Valley add some limited increment of warm water to the flows during the mid-late summer.

30. With the exception of 81.4 acres, all lands to which Application 69433 is appurtenant are upstream of the Highway 20 crossing.

31. The Fish and Wildlife Commission adopted the Oregon State Game Commission's 1967 Malheur River Basin Investigation as a basis for requesting flow levels in these instream water right applications in OAR 635-400-015(13).

32. The flow levels applied for by ODFW in the instant instream water right applications represent quantities necessary to provide the minimum flow requirements for migration, spawning and juvenile rearing and habitat for the several species identified in those applications.

33. Meadow grass is the predominant crop grown on the Association's lands. No fertilizers, pesticides or other chemicals are required or applied. Unlike alfalfa or grain crops, meadow grass hay does not require tilling or other cultivation of the soil.

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34. Harvesting of the hay is generally done in late June and July and cattle pastured on the cut fields. Continued irrigation after harvest, albeit at a reduced level, provides 15-20% of the annual forage for cattle.

35. The consumptive requirement of meadow hay for water as determined by the Soil Conservation Service (SCS) in its Farm Irrigation Rating Index is approximately 25.65 inches, or just over 2 af/ac.

36. Total crop consumption reported in the Return Flow Study was 3.4 af/ac, with 1.8 af being consumed by the crop and 1.6 af lost to the system.

37. Of the total amount diverted, that which is not consumed by the meadow grass crop or lost to the system returns to the river. In the area involved in the WRD's Return Flow Study, approximately two-thirds of the water diverted returned to the river, thereby becoming available for instream use or for re-diversion downstream, a scenario repeated at each subsequent diversion within the Drewsey Valley.

38. The average efficiency rating for flood irrigation systems is 40%; the maximum efficiency that can be expected is 50%. This means that a distribution system with 50% efficiency loses half the water diverted. Consequently, only half the water diverted reaches and is available for crop consumption. In a system with a 50% efficiency rating, to provide sufficient water to a crop with a 2 af consumption requirement requires diversion of 4 af/ac.

39. Reducing the amount of transmission losses would increase delivery system efficiency. As a result, there could be expected a corresponding reduction in the amount of water needed to be diverted to achieve the same amount of water actually delivered to the fields for consumptive purposes and a corresponding increase in the amount of water left instream.

40. Beyond those tests conducted by the SCS and offered into evidence by the Association, no soil tests were conducted by the parties although the expert witness for WaterWatch testified that the only way to determine if there was a problem, and what type of problem, is to conduct soil tests.

41. Alkaline soils are high in lime. Alkaline soils can be improved and reclaimed by adding sulphur, and should not recur unless the soils are again made too alkaline by application of fertilizers or high pH or salty water, which can lead to accumulation and recurrence of alkalinity in the soil.

42. Alkali soils have an imbalance in the amount of various mineral elements, with sodium being high in comparison to the calcium and magnesium present in the soil. The sodium makes the soil less permeable and must be displaced through the addition of gypsum or sulphur and then flushed.

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43. Water quality tests conducted as part of the WRD return flow study generally showed the concentration of total dissolved solids increasing during the irrigation season, with higher levels at the lower end of the Drewsey Valley. Levels of salt in the river were found to be highest in the early part of the irrigation season.

44. Some portion of the lands held by Association members do have an alkali problem. However, the extent of the problem is unclear. Estimates in testimony describe the amount of Association lands with evidence of an alkali problem as ranging from 5-20% of the land, with the extent and location of the problem areas varying as more or less water is annually available for application.

45. The addition of gypsum to lands affected by alkali is helpful in reducing or eliminating excess alkali in the soil. Tilling the soil is not necessary for the gypsum to be effective.

46. Where alkali-affected soils have been reclaimed by use of soil amendments, the application of 5% more water than is needed by the crop is generally sufficient to prevent a recurrence of the alkali for some time. Given that the consumptive crop requirements for meadow hay for water as determined by the Soil Conservation Service (SCS) in its Farm Irrigation Rating Index is approximately 25.65 inches, or just over 2 af/ac, it appears from the record in this proceeding that the 5% leaching requirement can be satisfied by existing adjudicated rights of 3 af/ac.

47. Leveling where feasible and soil amendments of gypsum or other material, as advised by the SCS following tests, will assist in further reducing alkali to a manageable level and may, in fact, be necessary to maintain the problem at its current level with a reduction of water historically applied and will certainly be necessary to improve crop production.

48. Some of the vegetation on Association lands is wetland-related species. Reduction in the total volume of water applied to these lands will result in a diminishment of these species and a change to species of vegetation associated with drier soil conditions.

49. In order to properly ensure that the total volume of water diverted does not exceed the authorized amount of 3 af/ac and to provide for the necessary regulation and management of the waters of the Malheur river and diversions therefrom, conditions proposed by both ODFW and the Association regarding installation of measuring devices should be made a part of the permit for an increase in rate of diversion issued on application 69433.

50. Limitation to April and May of diversions made under permit issued for an increase in rate of diversion under Application 69433 will ensure that diversions under this new right occur at times when water is available in more than adequate quantities.

51. Approval of the increase in rate portion of Application 69433 is compatible with the Harney County Comprehensive Land Use Plan.

Sp.Ord.V. 47 P. 115

52. Approval of the instream water right applications 70325 and 70349-70352 is compatible with the Harney County and Grant County Comprehensive Land Use Plans.

ULTIMATE FACTS

1. An undetermined portion of the Association's lands currently evidences problems with alkali, alkalinity or high sodium.

2. Soil tests are necessary to determine the specific location and extent of the alkali problem throughout the Association's lands.

3. Gypsum applied as advised by the SCS to all areas demonstrating an alkali problem will reduce the amount of water required to flush the alkali from the soil and should be done before any issuance of a permit to use water for alkali abatement.

4. Where leveling of alkali-affected areas can be done with a minimum of disturbance to the surrounding area, it should be done.

5. An adequate soil moisture profile is necessary for proper crop utilization of irrigation water and may contribute to the efficiency of the delivery system and method of irrigation.

6. The majority of the Association's delivery system does not approach 50% efficiency and needs to be improved to reduce transmission losses.

7. Measuring devices capable of calculating the total volume of water diverted are necessary for proper management and regulation.

8. The presence of habitat and forage for a variety of wildlife and wildfowl species may be enhanced by, but is an incidental, albeit beneficial, result of flood irrigation.

9. Given the reported low flows in the Malheur River in the late summer months, protection of sufficient minimum flows to support the several fish species present in the Malheur is necessary.

10. Assuming only lawful use, there is sufficient water to satisfy both the requested increase in rate of diversion and instream uses applied for.

CONCLUSIONS OF LAW

1. A right for a new use with a new, junior priority date can be granted where the need for and ability to use the additional water is demonstrated and where flow is available. Such a right does not alter the rate, duty or priority of any appropriation authorized under a decreed right for a different use on the same lands.

2. Basin programs are adopted by the Water Resources Commission through rulemaking and are subject to amendment or modification from time to time through further rulemaking.

O.S.V. 47 P. 116

3. The purpose of classifying waters for certain listed uses in basin programs is to allow certain types of uses from a named source of water based on considerations of the amount of flow available, land use, economic, water quality and the public interest. Classification of waters for certain uses at the time a basin program is adopted or amended does not preclude the later addition of other beneficial use classifications to the basin program through further rulemaking.

4. Appropriation and use of water for alkali abatement in the Drewsey Valley area of the Malheur Basin is not presently a use for which the waters of the Malheur River are classified in the Malheur Basin Program.

5. Irrigation is an allowable use under the Basin Program, but alkali abatement is not presently a form or subset of the classification of irrigation and is not otherwise classified as an allowable use within the Basin Program.

6. The alkali abatement portion of Application 69433 cannot be approved in the absence of a classification in the Malheur-Owyhee Basin Program allowing use of the waters of the basin for that purpose.

7. The elements of appropriative water rights include appurtenancy to a specific place of use and are limited further by the amount actually needed for the beneficial use to which the water is applied, regardless of the amount of prior diversion.

8. Where, as here, the location of the area of application is limited or unknown, but is less than the entirety of the acreage held by the appropriator, to issue a water right which would allow unnecessary application of water in quantities in excess of that needed to accomplish the purpose for which the water is appropriated, or to issue a right for a beneficial use on lands which do not require it, would be contrary to law.

9. In addition to the protection of fish and wildlife, the public interest also includes consideration of the economic wellbeing of a part of the state, as well as the avoidance of actions which have the likelihood of increasing nonpoint source pollution and disturbing established and balanced land ecosystems.

10. In the absence of a Basin Program classification allowing use of water for alkali abatement, and without specific information and evidence on the specific location of alkali-affected soils within the Association's lands and need for additional water for alkali abatement, that portion of application 69433 for use of 102 cfs from the Malheur River, 5.0 cfs from Griffin Creek, 18.2 cfs from Otis Creek, 2.8 cfs from Cottonwood Creek and 2.2 cfs from Spring Creek for alkali abatement on 5,127 acres with a priority date of October 28, 1987 and for use of 33.0 cfs of water from the Malheur River for alkali abatement on 1,327.9 acres with a priority date of July 1, 1991 cannot be approved and must be denied.

Sp.Ord.V. 47 P. 117

11. Approval of that portion of application 69433 for an increased rate of diversion from 1/80 to 1/40 for irrigation of 884.2 acres under existing rights with a priority date of July 1, 1991, as further conditioned below, is in the public interest.

12. Approval of applications 70325 and 70349-70352 is in the public interest.

OPINION

Much testimony at the hearing focused on the Association's historic irrigation practices of taking water in quantities substantially over their authorized amount of 3 acre feet per acre. Quite possibly as a result of these unpermitted diversions, stretches of the Malheur River in the Drewsey Valley were virtually without water in the later summer months. The volumetric extent of the Association's historic unpermitted diversions is unclear, as their diversions currently lack measuring devices capable of recording and providing this information. As a condition of the approval of that portion of Application 69433 for an increase in rate of appropriation, measuring devices are required on all the Association's diversions. It is apparent to all that the cessation of these unpermitted diversions will result in substantial quantities of water being left instream not previously available over the last several decades. While it is expected that flows from now on will be more substantial than in the past, approval of the instream water right applications will do much to ensure the presence of flows at levels sufficient to meet the minimum requirements of the fish populations throughout their life cycles.

Substantial testimony was also taken on the subject of alkali soils and alkali abatement from two types of experts. One type of expert was the PhD holders in the soil science area, Dr. Jarrell and Dr. Vomicil, both of whom testified that soil sample testing was really necessary to know what kind of problem existed, the extent of the problem, and what to do about it, and neither of whom conducted any such tests. The other type were the applicants, who live in the Drewsey Valley and who have first hand knowledge and experience, acquired daily and repeatedly through each irrigation season, of the type of soil problems, plant growth, and management practices which have proven relatively effective over the decades.

Ultimately, while there was agreement on the existence of some sort of soil problem, there was no agreement on the type or extent of the problem. There was also general agreement that application of water in sufficient quantities to flush the offending salts from the soil was effective to some degree or another, but it was clear that the more effective and less water-consumptive method for elimination or control of the soil problem was through the use of gypsum or other appropriate soil amendments. Association members should, when and where necessary, apply gypsum or other appropriate soil amendments and improve the efficiency of the delivery system through reconstruction, conservation and other measures to ensure the efficacy of water use.

There are two barriers to approval of that portion of the Association's application requesting water for alkali abatement. The first is that alkali abatement is not presently a form or subset of the classification of irrigation and is not othersiwe classified as an allowable use in the Malheur-Owyhee Basin Program. The second is that a water right for the beneficial use of alkali abatement cannot legally issue for use on all the Association's lands when it is clear that not all those lands have alkali-affected soils. To allow use of water for alkali abatement on lands not so affected would not be a beneficial use of the water and would constitute waste. In addition, there was insufficient information and evidence in the application on either the specific extent and location of alkali-affected soils or the need for additional water for alkali abatement.

While the portion of Application 69433 must be denied, the Association is not foreclosed from reapplying under Division 82 (Acceptance of applications for water uses in addition to classified uses), which application would need to include additional information and facts about alkali and the location of alkali-affected soils within the application's boundaries, or to seek a basin program amendment and submit the additional information in that forum. If such a classification is added to the basin plan, a new application for this use may be filed at that time.

FINAL ORDER

NOW, THEREFORE, it is **ORDERED** that applications 70325 and 20349-70352 in the name of Oregon Department of Fish and Wildlife, to be held in trust by the Oregon Water Resources Department, should be APPROVED.

It is FURTHER ORDERED that the portion of application 69433 in the name of Malheur Basin Water Users Association for use of 102 cfs from the Malheur River, 5.0 cfs from Griffin Creek, 18.2 cfs from Otis Creek, 2.8 af from Cottonwood Creek and 2.2 cfs from Spring Creek for alkali abatement on 5,127 acres with a priority date of October 28, 1987 and for use of 33.0 cfs of water from the Malheur River for alkali abatement on 1,327.9 acres be and the same is hereby DENIED.

It is FURTHER ORDERED that that portion of application 69433 in the name of Malheur Basin Water Users Association for appropriation of up to 11.0 cfs from the Malheur River, Griffin Creek, Otis Creek, Cottonwood Creek and Spring Creek for an increased rate of diversion from 1/80 to 1/40 for irrigation of 884.2 acres under existing rights with a priority date of July 1, 1991, be and the same is hereby APPROVED, subject to the following conditions and as may be further conditioned as is deemed appropriate by the Department:

Sp.Ct.V. 47 p. 119

Use of water under permit issued on application 69433 will be limited to April and May of each year;

All rights subject to the diversion and duty limitations as set out in the Malheur River Decree shall be exercised strictly within those limitations and the use allowed under this permit shall not alter those limitations in any manner;

Operating measuring devices capable of measuring the rate of appropriation and measuring and recording total volume of water appropriated during the irrigation season shall be installed at all primary diversion points identified for the Association's several rights to be served under this permit, being Certificates 3526, 2135, 3791, 2151, 8121 and 49682. Installation shall be completed under the supervision of the watermaster on a schedule to be established by the watermaster. Measuring devices shall meet the requirements of the Department. The Department shall consult with ODFW in establishing requirements for the measuring devices.

All diversions shall be in compliance with applicable laws requiring fish screening prior to any diversion under this permit.

Signed this 27 day of January, 1993.

Placed in the U.S. Mail this 1st day of February, 1993

Lorna Stickel

LORNA STICKEL
Chair
Water Resources Commission

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing a petition for review within 60 days from the date of service (date of mailing) of this Order. Judicial review is pursuant to the provisions of ORS 536.075.

Final Order on Application 69433 in the name of
Malheur Basin Water Users Association
Final Order on ISWR Applications 70325, 70349,
70350, 70351 and 70352 in the name of ODFW

DRAFT

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR RIVER BASIN WATER USERS ASSOCIATION 503-493-2728
P.O. BOX 237
DREWSEY, OREGON 97904

to use the waters of MIDDLE FORK MALHEUR RIVER, GRIFFIN CREEK, COTTONWOOD CREAK AND OTIS CREEK, tributaries of SNAKE RIVER, for ALKALI CONTROL, FISH AND WILDLIFE MAINTENTANCE ON APPROXIMATELY 6,442.7 ACRES.

This Permit is issued approving Application 69433. The date of priority is OCTOBER 28, 1987 on the 79.6 % of water available under this Permit and July 1, 1991 on 20.4% of water available under the Permit. These priority dates will be applied evenly to all acres benefited under this permit. The use is limited to not more than 1/40th cfs per acre this being a total of 163.2 CUBIC FEET PER SECOND, BEING 135 CFS FROM MALHEUR RIVER, 5.0 CFS FROM GRIFFIN CREEK, 18.2 CFS FROM OTIS CREEK AND 2.8 CFS FROM COTTONWOOD CREEK AND 2.2 CFS FROM SPRING CREEK, or its equivalent in case of rotation, measured at the point of diversion from the sources.

The points of diversion are located as follows:

1) SE 1/4 SE 1/4, SECTION 32, T 18 S, R 34 E, W.M.; JOHNSON DITCH - 130 FEET NORTH AND 380 FEET WEST FROM SE CORNER, SECTION 32.

2) NE 1/4 NE 1/4, SECTION 8, T 19 S, R 34 E, W.M.; MOFFETT DITCH - 560 FEET SOUTH AND 710 FEET WEST FROM NE CORNER, SECTION 8.

3) SE 1/4 NE 1/4, SECTION 5, T 19 S, R 34 E, W.M.; DITCH - 2375 FEET SOUTH AND 580 FEET WEST FROM NE CORNER, SECTION 5.

4) NE 1/4 SW 1/4, SECTION 8, T 19 S, R 34 E, W.M.; DITCH - 1490 FEET NORTH AND 2080 FEET EAST FROM SW CORNER, SECTION 8.

5) NW 1/4 NW 1/4, SECTION 17, T 19 S, R 34 E, W.M.; DITCH - 200 FEET SOUTH AND 605 FEET EAST FROM NW CORNER, SECTION 17.

6) NE 1/4 NE 1/4, SECTION 18, T 19 S, R 34 E, W.M.; DITCH - 130 FEET SOUTH AND 360 FEET WEST FROM NE CORNER, SECTION 18.

7) SE 1/4 SW 1/4, SECTION 18, T 19 S, R 34 E, W.M.; MARKS DITCH - 345 FEET NORTH AND 2510 FEET EAST FROM SW CORNER, SECTION 18.

8) SE 1/4 NW 1/4, SECTION 19, T 19 S, R 34 E, W.M.; BAILY DITCH - 1330 FEET SOUTH AND 1650 FEET EAST FROM NW CORNER, SECTION 19.

9) NW 1/4 NW 1/4, SECTION 30, T 19 S, R 34 E, W.M.; FARRENS DITCH - 475 FEET SOUTH AND 130 FEET EAST FROM NW CORNER, SECTION 30.

10) NW 1/4 NE 1/4, SECTION 36, T 19 S, R 33 1/2 E, W.M.; ROBBINS DITCH - 1090 FEET SOUTH AND 2375 FEET WEST FROM NE CORNER, SECTION 36.

11) SW 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; CLARKS NORTH DITCH - 2440 FEET SOUTH AND 306 FEET EAST FROM NW CORNER, SECTION 5.

12) SE 1/4 NW 1/4, SECTION 5, T 20 S, R 34 E, W.M.; CLARKS SOUTH DITCH - 2245 FEET SOUTH AND 2010 FEET EAST FROM NW CORNER, SECTION 5.

13) NE 1/4 SW 1/4, SECTION 28, T 19 S, R 34 E, W.M.; GRIFFIN CREEK RESERVOIR - 2330 FEET NORTH AND 1749 FEET EAST FROM SW CORNER, SECTION 28.

14) NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; MILLER DITCH - 675 FEET SOUTH AND 940 FEET WEST FROM NE CORNER, SECTION 10.

15) NE 1/4 NE 1/4, SECTION 10, T 20 S, R 34 E, W.M.; SITZ DITCH - 845 FEET SOUTH AND 610 FEET WEST FROM NE CORNER, SECTION 10.

16) NE 1/4 SW 1/4, SECTION 11, T 20 S,R 34 E, W.M.; DREWSEY DITCH - 2475 FEET NORTH AND 1520 FEET EAST FROM SW CORNER, SECTION 11.

17) NE 1/4 SW 1/4, SECTION 23, T 20 S, R 35 E, W.M.; DREWSEY DITCH (FRENCH PUMPS) - 2970 FEET SOUTH AND 1440 FEET EAST FROM NW CORNER, SECTION 23.

18) NW 1/4 NW 1/4, SECTION 20, T 20 S, R 36 E, W.M.; WILLIAMS DIVERSION - 825 FEET SOUTH AND 845 FEET EAST FROM NW CORNER, SECTION 20.

19) SE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2520 FEET SOUTH AND 1580 FEET EAST FROM NW CORNER, SECTION 8.

20) NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 1452 FEET EAST FROM NW CORNER, SECTION 8.

21) NE 1/4 NW 1/4, SECTION 8, T 20 S, R 36 E, W.M.; 2508 FEET EAST FROM NW CORNER, SECTION 8.

22) NW 1/4 NW 1/4, SECTION 9, T 20 S, R 36 E, W.M.; 760 FEET SOUTH AND 280 FEET EAST FROM NW CORNER, SECTION 9.

23) NE 1/4 SE 1/4, SECTION 25, T 19 S, R 33 1/2 E, W.M.; LILLARD DIVERSION #2 - 1960 FEET NORTH AND 790 FEET WEST FROM SE CORNER, SECTION 25.

24) NE 1/4 NE 1/4, SECTION 36, T 19 S, R 33 1/2 E. W.M.; LILLARD DIVERSION #1 - 10 FEET SOUTH AND 790 FEET WEST FROM NE CORNER, SECTION 36.

25) NE 1/4 SE 1/4, SECTION 22, T 20 S, R 35 E, W.M.; PUMP, 1850 FEET NORTH AND 260 FEET WEST FROM SE CORNER, SECTION 22.

26) NE 1/4 SE 1/4, SECTION 25, T 20 S, R 35 E, W.M.; 1440 FEET NORTH AND 780 FEET WEST FROM SE CORNER, SECTION 25.

The water users shall install and maintain weirs and stall gauges or other measuring devices, to be approved by and installed under the supervision of the Watermaster, for measuring and recording of the quantities of water diverted. Such measuring devices shall be installed and operational at all diversion points under a schedule approved by WRD.

The right allowed herein shall be limited to a total diversion of not to exceed 1.5 acre-feet per acre for each acre supplied, and is further limited to the period from April 1 through June 15 each year.

The use of water allowed herein is subject to a minimum flow of 15 cubic foot per second to be maintained in the channel of Middle Fork Malheur River past all of the authorized diversion points during the period of time when this right is being used. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this Permit is as follows:

SW 1/4	NE 1/4	19.0 ACRES
SE 1/4	NE 1/4	20.0 ACRES
NE 1/4	SE 1/4	27.0 ACRES
NW 1/4	SE 1/4	3.0 ACRES
SE 1/4	SE 1/4	0.5 ACRE
	SECTION 13	
SE 1/4	NW 1/4	6.0 ACRES
NE 1/4	SW 1/4	15.0 ACRES
SE 1/4	NE 1/4	40.0 ACRES
NE 1/4	SE 1/4	40.0 ACRES
NW 1/4	SE 1/4	40.0 ACRES
SW 1/4	SE 1/4	40.0 ACRES
SE 1/4	SE 1/4	40.0 ACRES
NE 1/4	NE 1/4	39.0 ACRES
NW 1/4	NE 1/4	37.6 ACRES
SW 1/4	NE 1/4	38.4 ACRES
	SECTION 36	
SW 1/4	SW 1/4	23.0 ACRES
SE 1/4	SW 1/4	10.0 ACRES
	SECTION 24	
SE 1/4	SE 1/4	10.0 ACRES
	SECTION 23	

SW 1/4	NE 1/4	15.0 ACRES
NE 1/4	NW 1/4	38.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	6.0 ACRES
SE 1/4	NW 1/4	34.0 ACRES
NE 1/4	SW 1/4	19.0 ACRES
NE 1/4	SE 1/4	30.0 ACRES
NW 1/4	SE 1/4	35.0 ACRES
SW 1/4	SE 1/4	40.0 ACRES
SE 1/4	SE 1/4	40.0 ACRES

SECTION 25

NE 1/4	NE 1/4	14.0 ACRES

SECTION 26

TOWNSHIP 19 SOUTH, RANGE 33 1/2 EAST, W.M.

NW 1/4	SW 1/4	20.0 ACRES
NW 1/4	SW 1/4	11.0 ACRES
SW 1/4	SW 1/4	30.0 ACRES
SW 1/4	SE 1/4	23.0 ACRES

SECTION 7

NW 1/4	NE 1/4	19.0 ACRES
NW 1/4	NE 1/4	19.0 ACRES
SW 1/4	NE 1/4	30.0 ACRES
NE 1/4	NW 1/4	9.0 ACRES
NW 1/4	NW 1/4	34.0 ACRES
SW 1/4	NW 1/4	28.0 ACRES
SE 1/4	NW 1/4	37.0 ACRES
NE 1/4	SW 1/4	38.0 ACRES
NW 1/4	SW 1/4	23.0 ACRES
SW 1/4	SW 1/4	27.0 ACRES
SE 1/4	SW 1/4	38.0 ACRES

SECTION 18

NW 1/4	NW 1/4	23.0 ACRES
SW 1/4	NW 1/4	18.0 ACRES
NW 1/4	NE 1/4	35.0 ACRES
SW 1/4	NE 1/4	20.0 ACRES
NE 1/4	NW 1/4	38.0 ACRES
SE 1/4	NW 1/4	11.0 ACRES
SE 1/4	NW 1/4	25.0 ACRES

SECTION 19

SW 1/4	NW 1/4	24.0 ACRES
NW 1/4	SW 1/4	23.0 ACRES
SW 1/4	SW 1/4	30.0 ACRES

SECTION 30

NE 1/4	NW 1/4	6.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	40.0 ACRES
SE 1/4	NW 1/4	31.0 ACRES

NE 1/4	SW 1/4	40.0 ACRES
NW 1/4	SW 1/4	40.0 ACRES
	SECTION 31	
SW 1/4	SW 1/4	10.0 ACRES
SE 1/4	SW 1/4	15.0 ACRES
	SECTION 29	
NE 1/4	NW 1/4	36.0 ACRES
NW 1/4	NW 1/4	8.0 ACRES
SW 1/4	NW 1/4	2.0 ACRES
SE 1/4	NW 1/4	3.0 ACRES
NW 1/4	NE 1/4	6.0 ACRES
	SECTION 32	
SW 1/4	SW 1/4	40.0 ACRES
SE 1/4	SW 1/4	40.0 ACRES
NW 1/4	SE 1/4	20.0 ACRES
SW 1/4	SE 1/4	40.0 ACRES
SE 1/4	SE 1/4	20.0 ACRES
	SECTION 31	
SW 1/4	NE 1/4	0.8 ACRES
NE 1/4	SW 1/4	12.3 ACRES
SE 1/4	SW 1/4	0.2 ACRES
NW 1/4	SE 1/4	19.0 ACRES
	SECTION 8	
NE 1/4	NE 1/4	38.0 ACRES
SE 1/4	NE 1/4	36.0 ACRES
NE 1/4	SE 1/4	33.0 ACRES
NW 1/4	SE 1/4	38.5 ACRES
SW 1/4	SE 1/4	39.0 ACRES
SE 1/4	SE 1/4	15.0 ACRES
	SECTION 18	
NE 1/4	SW 1/4	28.0 ACRES
NW 1/4	SW 1/4	29.0 ACRES
SW 1/4	SW 1/4	22.0 ACRES
SE 1/4	SW 1/4	25.0 ACRES
	SECTION 20	
NE 1/4	NW 1/4	7.0 ACRES
NW 1/4	NW 1/4	19.0 ACRES
SW 1/4	SW 1/4	18.4 ACRES
SW 1/4	SW 1/4	16.6 ACRES
SE 1/4	NW 1/4	1.0 ACRES
SE 1/4	SW 1/4	26.6 ACRES
	SECTION 23	
NE 1/4	NW 1/4	30.3 ACRES
SE 1/4	NW 1/4	26.6 ACRES
SW 1/4	NE 1/4	15.6 ACRES
NE 1/4	SW 1/4	22.9 ACRES

SE 1/4	SW 1/4	7.2 ACRES
NW 1/4	SE 1/4	24.9 ACRES
SW 1/4	SE 1/4	21.0 ACRES

SECTION 33
TOWNSHIP 19 SOUTH, RANGE 34 EAST, W.M.

NE 1/4	NE 1/4	40.0 ACRES
NW 1/4	NE 1/4	22.0 ACRES
SW 1/4	NE 1/4	16.0 ACRES
SE 1/4	NE 1/4	40.0 ACRES
NE 1/4	SE 1/4	10.0 ACRES

SECTION 1
TOWNSHIP 20 SOUTH, RANGE 33 1/2 EAST, W.M.

SW 1/4	NW 1/4	0.8 ACRE

SECTION 5

NW 1/4	NE 1/4	40.0 ACRES
SW 1/4	NE 1/4	40.0 ACRES
NE 1/4	NW 1/4	40.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	15.0 ACRES
SE 1/4	NW 1/4	39.0 ACRES
NE 1/4	SE 1/4	10.0 ACRES

SECTION 6
TOWNSHIP 20 SOUTH, RANGE 34 EAST, W.M.

SW 1/4	NE 1/4	17.0 ACRES
SE 1/4	NE 1/4	3.0 ACRES
SW 1/4	NW 1/4	0.8 ACRE
SE 1/4	NW 1/4	3.8 ACRES
NE 1/4	SE 1/4	1.0 ACRES
NW 1/4	SE 1/4	1.4 ACRES

SECTION 5

NE 1/4	NE 1/4	30.0 ACRES
NW 1/4	NE 1/4	23.4 ACRES
SW 1/4	NE 1/4	22.0 ACRES
SE 1/4	NE 1/4	13.0 ACRES
NE 1/4	SW 1/4	16.0 ACRES
NW 1/4	SW 1/4	14.0 ACRES

SECTION 4

SW 1/4	NW 1/4	20.0 ACRES
NE 1/4	SW 1/4	5.0 ACRES
NW 1/4	SW 1/4	4.0 ACRES

SECTION 3

NE 1/4	SE 1/4	2.5 ACRES
NW 1/4	SE 1/4	3.5 ACRES

SW 1/4	SE 1/4	12.0 ACRES
SE 1/4	SE 1/4	30.0 ACRES

SECTION 11

SW 1/4	NE 1/4	2.0 ACRES
SE 1/4	NW 1/4	3.0 ACRES
NW 1/4	SW 1/4	15.1 ACRES
NE 1/4	SW 1/4	32.0 ACRES
SW 1/4	SW 1/4	16.0 ACRES
SE 1/4	SW 1/4	35.0 ACRES
NW 1/4	SE 1/4	15.0 ACRES
SW 1/4	SE 1/4	39.0 ACRES
SE 1/4	SE 1/4	38.0 ACRES

SECTION 12

NE 1/4	NE 1/4	17.0 ACRES
NW 1/4	NE 1/4	13.0 ACRES
NW 1/4	NW 1/4	1.0 ACRES

SECTION 13

SE 1/4	NE 1/4	38.0 ACRES
NE 1/4	SE 1/4	35.0 ACRES
NE 1/4	NE 1/4	22.0 ACRES

SECTION 12

TOWNSHIP 20 SOUTH, RANGE 34 EAST, W.M.

NE 1/4	NE 1/4	25.0 ACRES
SE 1/4	NE 1/4	30.0 ACRES
SW 1/4	SW 1/4	38.0 ACRES
SE 1/4	SW 1/4	38.0 ACRES

SECTION 7

NE 1/4	NW 1/4	40.0 ACRES
NW 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	15.0 ACRES
SE 1/4	NW 1/4	36.0 ACRES
NE 1/4	SW 1/4	8.5 ACRES

SECTION 18

TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.

SE 1/4	NW 1/4	40.0 ACRES
SW 1/4	NW 1/4	40.0 ACRES
NE 1/4	SW 1/4	40.0 ACRES
NW 1/4	SW 1/4	40.0 ACRES
NW 1/4	SE 1/4	34.0 ACRES
SW 1/4	SE 1/4	33.0 ACRES
NW 1/4	NE 1/4	14.0 ACRES
SW 1/4	NE 1/4	33.0 ACRES
SW 1/4	NE 1/4	7.0 ACRES
NE 1/4	NW 1/4	30.0 ACRES
NW 1/4	NW 1/4	30.0 ACRES

SECTION 7

TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.

NW 1/4	NE 1/4	20.0 ACRES
SW 1/4	NE 1/4	25.0 ACRES
SE 1/4	NE 1/4	3.0 ACRES
NE 1/4	SE 1/4	30.0 ACRES
NW 1/4	SE 1/4	28.0 ACRES
SE 1/4	SE 1/4	5.0 ACRES

SECTION 18

NW 1/4	SW 1/4	30.0 ACRES
SW 1/4	SW 1/4	25.0 ACRES
NE 1/4	SW 1/4	37.0 ACRES
SE 1/4	SW 1/4	38.0 ACRES
NW 1/4	SE 1/4	5.0 ACRES
SW 1/4	SE 1/4	20.0 ACRES

SECTION 17

NE 1/4	NE 1/4	17.0 ACRES
NW 1/4	NE 1/4	34.0 ACRES
SW 1/4	NE 1/4	6.0 ACRES
SE 1/4	NE 1/4	28.0 ACRES
NE 1/4	NW 1/4	10.0 ACRES

SECTION 20

SW 1/4	NW 1/4	10.0 ACRES
SE 1/4	NW 1/4	3.0 ACRES
NE 1/4	SW 1/4	36.0 ACRES
NW 1/4	SW 1/4	20.0 ACRES
SE 1/4	SW 1/4	12.0 ACRES
NE 1/4	SE 1/4	27.9 ACRES
NW 1/4	SE 1/4	35.0 ACRES
SW 1/4	SE 1/4	25.0 ACRES
SE 1/4	SE 1/4	30.0 ACRES

SECTION 21

NW 1/4	SW 1/4	5.6 ACRES
SW 1/4	SW 1/4	35.0 ACRES

SECTION 22

NE 1/4	SW 1/4	1.1 ACRES
SE 1/4	SW 1/4	0.5 ACRE
NW 1/4	SE 1/4	5.0 ACRES
SW 1/4	SE 1/4	3.4 ACRES

SECTION 23

SW 1/4	SW 1/4	34.6 ACRES
SE 1/4	SW 1/4	27.8 ACRES
SW 1/4	SE 1/4	31.4 ACRES
SE 1/4	SE 1/4	40.0 ACRES
NE 1/4	SE 1/4	28.4 ACRES

SECTION 24

NW 1/4	NE 1/4	37.7 ACRES
NE 1/4	NW 1/4	22.0 ACRES
NW 1/4	NW 1/4	15.3 ACRES
NE 1/4	NE 1/4	40.0 ACRES

SE 1/4	NE 1/4	39.0 ACRES
SW 1/4	NE 1/4	14.8 ACRES
NE 1/4	SE 1/4	17.5 ACRES
SE 1/4	SE 1/4	13.6 ACRES

SECTION 25

NE 1/4	NE 1/4	1.2 ACRES

SECTION 36

TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.

NW 1/4	SW 1/4	35.0 ACRES
SW 1/4	SW 1/4	27.5 ACRES
NW 1/4	NW 1/4	16.6 ACRES

SECTION 19

NE 1/4	NW 1/4	40.0 ACRES
SE 1/4	NW 1/4	40.0 ACRES
NE 1/4	SW 1/4	35.0 ACRES
SE 1/4	SW 1/4	37.0 ACRES
NW 1/4	SE 1/4	2.0 ACRES
SW 1/4	SE 1/4	20.0 ACRES

SECTION 8

NW 1/4	NE 1/4	25.0 ACRES
NE 1/4	NW 1/4	20.0 ACRES
SW 1/4	NE 1/4	15.0 ACRES
SE 1/4	NW 1/4	20.0 ACRES
NE 1/4	SW 1/4	23.0 ACRES
NW 1/4	SE 1/4	8.0 ACRES
SW 1/4	SE 1/4	4.0 ACRES

SECTION 17

NE 1/4	NE 1/4	10.0 ACRES
SE 1/4	NE 1/4	30.0 ACRES
SE 1/4	SW 1/4	3.0 ACRES
NE 1/4	SE 1/4	23.0 ACRES
NW 1/4	SE 1/4	8.0 ACRES
SW 1/4	SE 1/4	30.0 ACRES

SECTION 19

NW 1/4	NE 1/4	40.0 ACRES
SW 1/4	NE 1/4	40.0 ACRES
SE 1/4	NE 1/4	10.0 ACRES
NE 1/4	NW 1/4	6.0 ACRES
NE 1/4	SE 1/4	26.0 ACRES
NW 1/4	SE 1/4	35.0 ACRES
SW 1/4	SE 1/4	30.0 ACRES
SE 1/4	SE 1/4	35.0 ACRES

SECTION 30

NE 1/4	NE 1/4	40.0 ACRES
NW 1/4	NE 1/4	40.0 ACRES
SW 1/4	NE 1/4	40.0 ACRES

SE 1/4	NE 1/4	12.0 ACRES
NE 1/4	SE 1/4	7.0 ACRES

SECTION 31

NW 1/4	NW 1/4	12.5 ACRES
SW 1/4	NW 1/4	25.0 ACRES
NW 1/4	SW 1/4	37.0 ACRES

SECTION 32

TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

SE 1/4	NW 1/4	0.4 ACRE
NE 1/4	SW 1/4	31.1 ACRES
SW 1/4	SW 1/4	0.9 ACRE
SE 1/4	SW 1/4	10.2 ACRES
SW 1/4	SW 1/4	36.2 ACRES
SW 1/4	NW 1/4	26.0 ACRES
SE 1/4	NW 1/4	1.2 ACRES
NW 1/4	SW 1/4	40.0 ACRES
SE 1/4	SW 1/4	29.6 ACRES
SW 1/4	SE 1/4	6.0 ACRES

SECTION 30

NE 1/4	NW 1/4	8.9 ACRES
NW 1/4	NW 1/4	0.9 ACRES
NE 1/4	NW 1/4	7.0 ACRES
NW 1/4	NW 1/4	20.0 ACRES
SW 1/4	NW 1/4	0.1 ACRES
SE 1/4	NW 1/4	22.6 ACRES
NE 1/4	SW 1/4	0.8 ACRES
SW 1/4	SE 1/4	6.0 ACRES
SE 1/4	SE 1/4	36.8 ACRES

SECTION 31

SW 1/4	SW 1/4	12.2 ACRES

SECTION 32

TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

NE 1/4	SE 1/4	0.8 ACRE

SECTION 22

NE 1/4	SW 1/4	0.3 ACRE
NW 1/4	SW 1/4	12.4 ACRES
SW 1/4	SW 1/4	5.0 ACRES
SE 1/4	SW 1/4	11.8 ACRES

SECTION 23

SE 1/4	NE 1/4	6.1 ACRES
SE 1/4	SW 1/4	1.7 ACRES
NE 1/4	SE 1/4	25.1 ACRES
NW 1/4	SE 1/4	20.3 ACRES
SW 1/4	SE 1/4	22.5 ACRES
SE 1/4	SE 1/4	1.4 ACRES

SECTION 22

NW 1/4	NW 1/4	12.5 ACRES
SW 1/4	NW 1/4	25.0 ACRES
NW 1/4	SW 1/4	37.0 ACRES

SECTION 32
TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

SE 1/4	NW 1/4	0.4 ACRE
NE 1/4	SW 1/4	31.1 ACRES
SW 1/4	SW 1/4	0.9 ACRE
SE 1/4	SW 1/4	10.2 ACRES
SW 1/4	SW 1/4	36.2 ACRES
SW 1/4	NW 1/4	26.0 ACRES
SE 1/4	NW 1/4	1.2 ACRES
NW 1/4	SW 1/4	40.0 ACRES
SE 1/4	SW 1/4	29.6 ACRES
SW 1/4	SE 1/4	6.0 ACRES

SECTION 30

NE 1/4	NW 1/4	8.9 ACRES
NW 1/4	NW 1/4	0.9 ACRES
NE 1/4	NW 1/4	7.0 ACRES
NW 1/4	NW 1/4	20.0 ACRES
SW 1/4	NW 1/4	0.1 ACRES
SE 1/4	NW 1/4	22.6 ACRES
NE 1/4	SW 1/4	0.8 ACRES
SW 1/4	SE 1/4	6.0 ACRES
SE 1/4	SE 1/4	36.8 ACRES

SECTION 31

SW 1/4	SW 1/4	12.2 ACRES

SECTION 32
TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

NE 1/4	SE 1/4	0.8 ACRE

SECTION 22

NE 1/4	SW 1/4	0.3 ACRE
NW 1/4	SW 1/4	12.4 ACRES
SW 1/4	SW 1/4	5.0 ACRES
SE 1/4	SW 1/4	11.8 ACRES

SECTION 23

SE 1/4	NE 1/4	6.1 ACRES
SE 1/4	SW 1/4	1.7 ACRES
NE 1/4	SE 1/4	25.1 ACRES
NW 1/4	SE 1/4	20.3 ACRES
SW 1/4	SE 1/4	22.5 ACRES
SE 1/4	SE 1/4	1.4 ACRES

SECTION 22

NE 1/4 NE 1/4	40.0 ACRES
NW 1/4 NE 1/4	34.6 ACRES
SECTION 26	
NE 1/4 SW 1/4	1.8 ACRES
NW 1/4 SW 1/4	9.0 ACRES
SE 1/4 SW 1/4	23.2 ACRES
NE 1/4 SE 1/4	2.0 ACRES
NW 1/4 SE 1/4	6.0 ACRES
SW 1/4 SE 1/4	38.3 ACRES
SE 1/4 SE 1/4	34.0 ACRES
NE 1/4 SW 1/4	16.0 ACRES
NW 1/4 SW 1/4	10.0 ACRES
SECTION 23	

TOWNSHIP 25 SOUTH, RANGE 35 EAST, W.M.

SE 1/4 NE 1/4	0.8 ACRES
SECTION 6	
Lot 3	7.0 ACRES
Lot 4	17.8 ACRES
NW 1/4 SW 1/4	0.8 ACRES
SECTION 5	

TOWNSHIP 21 SOUTH, RANGE 36 EAST, W.M.

This project was considered and approved by the Water Resources Commission on _____

All new head gates shall be designed and constructed to allow installation of fish screening and all diversions shall comply with applicable laws requiring fish screening. Those benefited by this permit shall hire personnel to monitor water use at the water users' diversions. Hiring and dismissal of the diversion monitoring personnel shall be subject to WRD's approval, WRD shall deputize the diversion monitoring personnel as assistant watermaster(s) to regulate the diversion of water to the rate, duty and priority established on the water rights. WRD shall have the authority to dismiss said personnel if they fail to adequately enforce Oregon's water laws. The personnel hired by the water users shall also require their personnel to regulate all water rights on the lands subject to this permit, including diversion among water users on individual ditches.

Actual construction work shall begin on or before October 1, 1992, and shall be completed on or before October 1, 1993. Complete application of the water to the use shall be made on or before October 1, 1993.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water within this permit is allocated between other existing rights and this right as follows: The rate of flow for all water diverted during the time period set out in this permit shall first be charged against the flow set out in prior rights. To the extent that flow exceeds that permitted under prior rights, additional flow shall be charged to this permit. The duty for all water diverted during the time period set out in this permit shall be charged against the duty of the prior irrigation right until a total of 1 1/2 acre feet is charged to said right. To the extent that water diverted during the time period exceeds 1 1/2 acre feet during said time period, it will be charged to this permit.

[Deficiency In Rate] In addition, this permit is issued approving an additional 1/80th cfs per acre diversion for all lands described in Certificate numbers 3526, 2134, 7691, 2151, 8121 and 49682, this additional diversion rate is for irrigation and when combined with the original certificate rate, allows a total diversion rate of 1/40th cfs for irrigation on the lands subject to said permits.

Issued this date, _____.

_____
Water Resources Department
William H. Young, Director

STATE OF OREGON

WATER DIVISION NO. 2 COUNTY OF HARNEY

CERTIFICATE OF WATER RIGHT

(For rights perfected under original, enlargement or secondary permits)

This is to Certify, *That* H. BRYANT

of Albany , *State of* Oregon 9732 , *has made proof to the satisfaction of the STATE WATER BOARD of Oregon, of a right to the use of the waters of* Western Farm and Cattle Co. Ditch ~~xxxxxxxxxxxx~~ *taken from the* Middle Fork of Malheur River , *for the purpose of* the irrigation of 51.5 acres of land *under Permit No.* 2040 *of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon and duly confirmed by order of the STATE WATER BOARD of Oregon, made and entered of record in the Record of Proceedings of said Board, at Salem, in Volume* 1 , *at page* 301 , *on the* 20th *day of* November, 1918 ; *that the priority of the right hereby confirmed dates from* March 23, 1914 ; *that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed* 0.64 *cubic feet per second* or its equivalent in case of rotation. The use hereunder shall conform to any reasonable rotation system ordered by the proper State Officer. *A description of the lands under such right, and to which the water hereby confirmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use, is as follows:* One-half acre in the Southeast quarter of Southeast quarter of Section Thirteen; 20 acres in the Southwest quarter of Northeast quarter; and 25 acres in the Southeast quarter of Northeast quarter of Section Twenty-four, Township Nineteen South, Range Thirty-three and one-half E. 4 acres in Lot Three and 2 acres in Lot Four of Section Eighteen, Township Nineteen South, Range Thirty-four, All East of Willamette Meridian, in Harney County, Oregon.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

Witness *the seal and signature of the STATE WATER BOARD affixed this* 3rd *day of* February , *1919* .

STATE WATER BOARD

(SEAL OF STATE WATER BOARD)

By PERCY A. CUPPER
State Engineer, President

Attest: R. W. POTTER
Secretary

Recorded in State Record of Water Right Certificates, Volume 3 , *Page* 2134.

STATE OF OREGON

WATER DIVISION NO. 2 COUNTY OF GRANT

CERTIFICATE OF WATER RIGHT

(For rights perfected under original, enlargement or secondary permits)

This is to Certify, *That* HENRY H. TROWBRIDGE

of Izee , *State of* Oregon 97750 , *has made proof to the satisfaction of the STATE WATER BOARD of Oregon, of a right to the use of the waters of* Silvies River , *a tributary of* Malheur Lake , *for the purpose of* the irrigation of 80 acres of land *under* Permit No. 2111 *of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon and duly confirmed by order of the STATE WATER BOARD of Oregon, made and entered of record in the Record of Proceedings of said Board, at Salem, in Volume* 1 , *at page* 301 , *on the* 20th *day of* November, 1918 ; *that the priority of the right hereby confirmed dates from* July 16, 1914 ; *that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed* 1.00 *cubic feet per second.*, or its equivalent in case of rotation. The use hereunder shall conform to any reasonable rotation system ordered by the proper State Officer.

A description of the lands under such right, and to which the water hereby confirmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use, is as follows: 40 acres in the Southeast quarter of Southwest quarter and 40 acres in the Southwest quarter of Southwest quarter of Section Thirty-five, Township Fifteen South, Range Thirty-one East of Willamette Meridian, in Grant County, Oregon.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

Witness *the seal and signature of the STATE WATER BOARD affixed this* 3rd *day of* February , *191* 9.

STATE WATER BOARD

(SEAL OF STATE WATER BOARD)

By PERCY A. CUPPER
State Engineer, President

Attest: R. W. POTTER
Secretary

Recorded in State Record of Water Right Certificates, Volume 3 , *Page* 2135.

STATE OF OREGON

WATER DIVISION NO. 2 COUNTY OF HARNEY

CERTIFICATE OF WATER RIGHT

(For rights perfected under original, enlargement or secondary permits)

This is to Certify, *That* AUGUST MULLER

of Drewsey, *State of* Oregon 97904, *has made proof to the satisfaction of the STATE WATER BOARD of Oregon, of a right to the use of the waters of* Middle Fork of Malheur River, *a tributary of* Malheur River, *for the purpose of* the irrigation of 68 acres of land *under Permit No.* 2613 *of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon and duly confirmed by order of the STATE WATER BOARD of Oregon, made and entered of record in the Record of Proceedings of said Board, at Salem, in Volume* 1, *at page* 301, *on the* 20th *day of* November, 1918; *that the priority of the right hereby confirmed dates from* August 23, 1915; *that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed* 0.85 *cubic feet per second.*, or its equivalent in case of rotation. The use hereunder shall conform to any reasonable rotation system ordered by the proper State Officer.

A description of the lands under such right, and to which the water hereby confirmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use, is as follows: 16 acres in the Northeast quarter of Southwest quarter; 14 acres in the Northwest quarter of Southwest quarter; 20 acres in the Northwest quarter of Southeast quarter; 9 acres in the Southwest quarter of Northeast quarter and 8 acres in the Southeast quarter of Northeast quarter of Section Four and One acre in the Northeast quarter of Southeast quarter of Section Five, Township Twenty South, Range Thirty-four East of Willamette Meridian, in Harney County, Oregon.

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

Witness *the seal and signature of the STATE WATER BOARD affixed this* 3rd *day of* February, *19*19.

STATE WATER BOARD

(SEAL OF STATE WATER BOARD)

By PERCY A. CUPPER
State Engineer, President

Attest: R. W. POTTER
Secretary

Recorded in State Record of Water Right Certificates, Volume 3, *Page* 2151.

Permit—500—7-21.

STATE OF OREGON

COUNTY OF HARNEY

CERTIFICATE OF WATER RIGHT

This is to Certify, *That* F. J. ROBERTSON AND CARL RILEY

of Drewsey, *State of* Oregon 9194, *has made proof to the satisfaction of the STATE WATER BOARD of Oregon, of a right to the use of the waters of* Middle Fork of Malheur River, *a tributary of* Malheur River *for the purpose of* Irrigation *under Permit No.* E. 141 *of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon and duly confirmed by order of the STATE WATER BOARD of Oregon, made and entered of record in the Record of Proceedings of said Board, at Salem, in Volume* 1 *, at page* 421 *, on the* 16th *day of* November, 1921 *; that the priority of the right hereby confirmed dates from* June 3, 1912 *;*

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1.11 *cubic feet per second, or its equivalent in case of rotation. The use hereunder for irrigation shall conform to such reasonable rotation system as may be ordered by the proper state officer.*

A description of the lands under such right, and to which the water hereby confirmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use, is as follows: 20 acres in the Northwest quarter of Southwest quarter of Section Seven, Township Nineteen South, Range Thirty-four: 20 acres in the Southeast quarter of Northeast quarter; 19 acres in the Southwest quarter of Northeast quarter; 3 acres in the Northwest quarter of Southeast quarter and 27 acres in the Northeast quarter of Southeast quarter of Section Thirteen, Township Nineteen South, Range Thirty-three and one-half; all East of Willamette Meridian, in Harney County, Oregon. Being a total of 89 acres.

20
20
19
3
27
89 acres

The right to the use of the water for irrigation purposes is restricted to the lands or place of use herein described.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

WITNESS the seal and signature of the State Water Board, affixed this 16th *day of* November, 1921

STATE WATER BOARD

(Seal of State Water Board)

By PERCY A. CUPPER
State Engineer, President

Attest: R. W. POTTER
Secretary

Recorded in State Record of Water Right Certificates, Volume 4 *, page* 3526

STATE OF OREGON

COUNTY OF HARNEY

CERTIFICATE OF WATER RIGHT

This is to Certify, *That* ARLEY ACTON 97904

of Drewsey, *State of* Oregon, *has made proof to the satisfaction of the STATE WATER BOARD of Oregon, of a right to the use of the waters of* Middle Fork of Malheur River *a tributary of* Snake River *for the purpose of* Irrigation *under Permit No.* 4931 *of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon and duly confirmed by order of the STATE WATER BOARD of Oregon, made and entered of record in the Record of Proceedings of said Board, at Salem, in Volume* 1, *at page* 447, *on the* 15th *day of* November, 1922; *that the priority of the right hereby confirmed dates from* December 22, 1920;

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.29 *cubic feet per second, or its equivalent in case of rotation. The use hereunder for irrigation shall conform to such reasonable rotation system as may be ordered by the proper state officer.*

A description of the lands under such right, and to which the water hereby confirmed is appurtenant, or, if for other purposes, the place where such water is put to beneficial use, is as follows: 23 acres in the Southwest quarter of Southeast quarter of Section Seven Township Nineteen South, Range Thirty-four East of Willamette Meridian, in Harney County, Oregon.

The right to the use of the water for irrigation purposes is restricted to the lands or place of use herein described.

Rights to the use of water for power purposes are limited to a period of forty years from the date of priority of the right, as herein set forth, subject to a preference right of renewal under the laws existing at the date of the expiration of the right for power purposes, as hereby confirmed and limited.

WITNESS the seal and signature of the State Water Board, affixed this 15th *day of* November, *192* 2

STATE WATER BOARD

(Seal of State Water Board)

By PERCY A. CUPPER
State Engineer, President

Attest:
R. W. POTTER
Secretary

Recorded in State Record of Water Right Certificate, Volume 5, *page* 3791.

V80

STATE OF OREGON

COUNTY OF HARNEY

CERTIFICATE OF WATER RIGHT

This is to Certify, *That* Joe Cronin 97904

of Drewsey , *State of* Oregon , *has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of* Middle Fork Malheur River *a tributary of* for the purpose of Irrigation

under Permit No. 8993 *of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from* April 5, 1929;

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.15 cubic foot per second;

The point of diversion is located in the NE¼NE¼ *of Section* 10 , *Township* 20S , *Range* 34E, *W. M. The use hereunder for irrigation shall conform to such reasonable rotation system as may be ordered by the proper state officer.*

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent in case of rotation.

A description of the lands irrigated under the right hereby confirmed, and to which such right is appurtenant (if for irrigation or any other purpose), is as follows: 2 acres in the SW¼NE¼, 2 acres in the SE¼NW¼ and 7.8 acres in the NW¼SW¼, Section 12, Township 20 South, Range 34 East of the Willamette Meridian in Harney County, Oregon.

11.8 acres

The right to the use of the water for any purpose is restricted to the lands or place of use herein described.

After the expiration of fifty years from the date of this certificate or on the expiration of any federal power license issued in connection with this right, and after not less than two years notice in writing to the holder hereof, the State of Oregon, or any municipality thereof, shall have the right to take over the dams, plants and other structures and all appurtenances thereto which have been constructed for the purpose of devoting to beneficial use the water rights specified herein, upon condition that before taking possession the State or municipality shall pay not to exceed the fair value of the property so taken, plus such reasonable damages, if any, to valuable, serviceable and dependable property of the holder of this certificate, not taken over, as may be caused by the severance therefrom of the property taken in accordance with the provisions of section 5728, Oregon Laws.

WITNESS the signature of the State Engineer, affixed this 10th *day of* September , 1929

Rhea Luper

State Engineer.

Recorded in State Record of Water Right Certificates, Volume 8 , *page* 8121 .

✓ OR

STATE OF OREGON

COUNTY OF HARNEY

CERTIFICATE OF WATER RIGHT

This Is to Certify, *That* DREWSEY RECLAMATION COMPANY

of Drewsey *, State of* Oregon 97904 *, has made proof to the satisfaction of the Water Resources Director, of a right to the use of the waters of* Middle Fork of Malheur River

a tributary of Malheur River *for the purpose of* irrigation of 862.38 acres and domestic

under Permit No. E-144 *and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from* June 17, 1912

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 10.78 cubic feet per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the NE¼ SW¼, Section 11, T. 20 S., R. 34 E., W.M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth *of one cubic foot per second per acre,*

and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

7.90 acres NE¼ SE¼
3.00 acres NW¼ SE¼
Section 21

6.10 acres SE¼ NE¼
4.60 acres NW¼ SW¼
1.70 acres SE¼ SW¼
25.14 acres NE¼ SE¼
20.26 acres NW¼ SE¼
22.48 acres SW¼ SE¼
1.40 acres SE¼ SE¼
Section 22

1.80 acres NE¼ SW¼
9.00 acres NW¼ SW¼
23.20 acres SE¼ SW¼
2.00 acres NE¼ SE¼
6.00 acres NW¼ SE¼
32.30 acres SW¼ SE¼
2.00 acres SE¼ SE¼
Section 23

*34.60 acres SW¼ SW¼
*27.80 acres SE¼ SW¼
*28.40 acres NE¼ SE¼
*31.40 acres SW¼ SE¼
*40.00 acres SE¼ SE¼
Section 24

T-4647

40.00 acres NE¼ NE¼ -40- (A)
37.70 acres NW¼ NE¼
14.80 acres SW¼ NE¼
39.00 acres SE¼ NE¼ -20- (A)
22.00 acres NE¼ NW¼
15.30 acres NW¼ NW¼
14.40 acres NE¼ SE¼
0.50 acre SE¼ SE¼
Section 25

40.00 acres NE¼ NE¼
34.60 acres NW¼ NE¼
6.60 acres NE¼ NW¼
Section 26
T. 20 S., R. 35 E., W.M.

* 3.50 acres NE¼ SW¼
*35.00 acres NW¼ SW¼
*27.50 acres SW¼ SW¼
*10.60 acres SE¼ SW¼
Section 19

1.10 acres NE¼ NW¼
*16.60 acres NW¼ NW¼
26.00 acres SW¼ NW¼
1.20 acres SE¼ NW¼
28.80 acres NE¼ SW¼
40.00 acres NW¼ SW¼
32.00 acres SW¼ SW¼
29.60 acres SE¼ SW¼
0.30 acre NW¼ SE¼
4.00 acres SW¼ SE¼
Section 30

0.90 acre NW¼ NE¼
8.00 acres NE¼ NW¼
1.30 acres NW¼ NW¼
Section 31
T. 20 S., R. 36 E., W.M.

NOTE: Pursuant to the provisions of the order dated June 16, 1948 and recorded at page 42, Volume 6, Special Order Record, approving transfer application W-39, the lands identified by an "*" before the acreage listing have an alternate point of diversion located 450 feet South and 1210 feet West from the center of Section 23, being within the NE¼ SW¼ of Section 23, T. 20 S., R. 35 E., W.M.

This certificate describes that portion of the water right confirmed by the prior certificate recorded at page 11219, Volume 10, State Record of Water Right Certificates, NOT canceled by the provisions of an order of the Water Resources Director entered on April 14, 1980.

The issuance of this superseding certificate does not confirm the status of the water right in reference to ORS 540.610.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described., and is subject to the existing minimum flow policies established by the Water Policy Review Board.

WITNESS the signature of the Water Resources Director, affixed this date. October 28, 1980

Deputy Water Resources Director

Recorded in State Record of Water Right Certificates, Volume 43 *, page* 49682

(A) cancel auths in File T-4647)

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Malhuer River Basin Water Users Association

(2) Point of diversions

·#1 =Johnson Ditch 130' N,380' W from S.E. corner sec. 32,T-18-S,R-34-E being within S.E.,S.E. of sec. 32,T-18-S, R-34-E.

·#2 = Moffett Ditch-560'S,710'W from the N.E. corner sec.8,T-19-S,R-34 E, being within N.E.¼ of N.E.¼ sec. 8,T-19-S,R 34-E.

·#3 = ditch 2375'S,580'W from N.E. corner sec. 5,T-19-S, R-34-E being within N.E.¼ of N.E.¼ of sec. 8,T-19-S,R- 34-E.

·#4 = ditch 1490'N,2080'E from S.W. corner sec.8,T-19-S,R-34-E being within N.E.¼,S.W.¼ sec.8,T-19-S,R-34-E.

·#5 = ditch 200'S 605'E from the N.W. corner sec.17,T-19-S,R-34-E being within N.W¼ofN.W.¼ sec.17,T-19-S,R34-E.

·#6 = ditch 130'S 360'W from N.E.corner sec.18,T-19-S,R-34-E being within N.E.¼ of N.E.¼ sec.18, T-34-E, R-34-E.

·#7 = Marks ditch 345'N 2510'E from S.W. corner sec.18,T-19-S,R-34-E being within S.E.¼ S,W.¼ sec. 18,T-19-S,R-34-E.

·#8 = Baily Ditch 1330'S 1650'E from N.W.corner sec. 19,T-19-S,R-34-E being within S.E¼ N.W.¼ sec.19,T-19-S, R-34-E.

·#9 = Farrens Ditch 475'S 130'E from N.W. corner sec.30,T-19-S,R-34-E being within N.W.¼ N.W.¼ of sec.30 T-19-S, R-34-E.

·#10= Robbins Ditch 1090'S 2375'W from N.E. corner sec.36,T-19-S,R-33½ E, being within N.W.¼ N.E.¼ sec.36,T-19-S, R-33½-E.

·#11= Clarks North Ditch 2440'S 300'E from N.W. corner sec.5, T-20-S, R-34-E being within S.W.¼ N.W.¼ sec.5,T-20-S,R-34-E.

·#12= Clarks South Ditch 2245'S 2010'E from N.W. corner sec.5 T-20-S, R-34-E being within S.E.¼ N.W.¼ sec.5, T-20-S, R34-E.

·#13= Griffin Cr. Reservoir 2330'N 1750'E from S.W.corner sec.28,T-19 S, R-34-E being withinN.E.¼ S.W.¼ sec. 28,T-19-S,R-34-E.

·#14= Miller Ditch 675'S 940'W from N.E. corner sec. 10, T-20-S, R-34-E being within N.E.¼ N.E.¼ sec. 10, T-20-S, R-34-E.

·#15= SitZ ditch 845'S 610'W from N.E. corner sec. 10, T-20-S,R-34-E being within N.E.¼ N.E.¼ sec.10,T-20-S,R-34-E.

·#16= Drewsey Ditch 2475'N 1520'E from S.W. corner sec. 11, T-20-S, R-34-E being within N.E.¼ S.W.¼ sec.11,T-20-S, R-34-E.

·#17= French Pumps (additional diversion) to #16 diversion.2970'S 1440'E from N.W. corner sec. 23,T-20-S, R-35-E being within N.E.¼ S.W.¼ sec. 23,T-20-S,R-35-E.

·#18= Williams Div. 825'S 845'E from N.W. corner Sec.20,T-20-S,R-36-E being within N.W.¼ of SEc. 20,T-20-S,R-36-E.

·#19= 2520'S 1580'E from N.W. corner Sec. 8,T-20-S,R-36-E being within SE¼ of NW¼ of sec.8 T-20-S,R-36-E.

·#20= 0'S 1452'E from NW corner sec.8,T-20-S,R-36-E,being within NE¼ of NW¼ sec. 8,T-20-S,R-36-E.

·#21= 0'S 2508'E from NW corner sec. 8,T-20-S,R-36-E being within NE¼ of the NW¼ sec.8,T-20-S,R-36-E.

·#22= 760'S,280'E from NW corner sec.9,T-20-S,R-36-E,beihg within NW¼ NW¼ sec.9,T-20-S,R-36-E.

Application No. 69433
Permit No.

TSP	RNG	Sec.	¼¼	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
19-S	33½-E	13	SW NE	19.0	19.0	3526	2	1200
			SE NE	20.0	20.0	"	"	"
			NE SE	27.0	27.0	"	"	"
			NW SE	3.0	3.0	"	"	"
			SE SE	0.5	0.5	2134	"	"
19-S	34-E	7	NW SW	20.0	20.0	3526	"	500
			NW SW	11.0	11.0	7001	"	"
			SW SW	30.0	30.0	"	"	"
			SW SE	23.0	23.0	3791	"	"
		18	NW NE	19.0	19.0	6857	"	"
			NW NE	19.0	19.0	"	4	"
			SW NE	25.0	25.0	"	2	"
			SW NE	5.0	5.0	"	4	"
			NE NW	9.0	9.0	"	2	"
			NW NW	34.0	34.0	7001	"	"
			SW NW	28.0	28.0	"	"	"
			SE NW	18.0	18.0	6857	"	"
			SE NW	19.0	19.0	"	6	"
			NE SW	18.0	18.0	"	2	"
			NE SW	20.0	20.0	"	6	"
			NW SW	4.0	4.0	2134	2	"
			NW SW	19.0	19.0	6932	2	"
			SW SW	25.0	25.0	"	"	"
			SW SW	2.0	2.0	2134	"	"
			SE SW	38.0	38.0	6877	"	"
		19	NW NW	12.0	12.0	6857	2	"
			NW NW	11.0	11.0	"	7	"
			SW NW	18.0	18.0	"	7	"
			NW NE	35.0	35.0	70450	5	"
			SW NE	20.0	20.0	"	"	900
			NE NW	16.0	16.0	7050	7	"
			NE NW	22.0	22.0	"	5	"
			SE NW	3.0	3.0	"	7	"
			SE NW	8.0	8.0	"	8	"
			SE NW	25.0	25.0	"	5	"
		30	SW NW	24.0	24.0	27613	9	1500
			NW SW	23.0	23.0	"	"	"
			SW SW	30.0	30.0	"	"	"
		31	NE NW	6.0	6.0	"	"	"
			NW NW	40.0	40.0	"	"	"
			SW NW	40.0	40.0	"	"	"
			SE NW	31.0	31.0	"	"	"
			NE SW	40.0	40.0	"	"	"
			NW SW	40.0	40.0	"	"	"
		29	SW SW	10.0	10.0	6896	1	"
			SE SW	15.0	15.0	"	"	"
		32	NE NW	36.0	36.0	"	"	"
			NW NW	8.0	8.0	47708	"	"
			SW NW	2.0	2.0	"	"	"
			SE NW	3.0	3.0	"	"	"
			NW NE	6.0	6.0	"	"	1400
19-S	33½-E	36	SE NW	6.0	6.0	6960	10	2800
			NE SW	15.0	15.0	"	"	"
20-S	34-E	5	SW NW	.8	.8	26409	9	1100

100.30 100.30

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Application No. 69433
Permit No.

Application No. 69433

TSP	RNG	SEC.	¼¼	Acres	Sup.	Cert.#	Div. Pt.	Tax Lot
19-S	33½-E	36	SE NE	40.0	40.0	6960	9	2900
			NE SE	40.0	40.0	"	"	"
			NW SE	10.0	10.0	"	10	"
			NW SE	30.0	30.0	"	9	"
			SW SE	30.0	30.0	"	10	"
			SW SE	10.0	10.0	"	9	"
			SE SE	40.0	40.0	"	9	"
20-S	33½-E	1	NE NE	30.0	30.0	"	9	100
			NE NE	10.0	10.0	"	10	"
			NW NE	22.0	22.0	"	"	"
			SW NE	16.0	16.0	"	"	"
			SE NE	40.0	40.0	"	"	"
			NE SE	10.0	10.0	"	"	"
19-S	34-E	31	SW SW	32.0	32.0	"	"	1600
			SW SW	8.0	8.0	"	9	"
			SE SW	40.0	40.0	"	"	"
			NW SE	20.0	20.0	"	"	"
			SW SE	40.0	40.0	"	"	"
			SE SE	20.0	20.0	"	"	"
20-S	34-E	6	NW NE	26.0	26.0	"	"	1200
			NW NE	14.0	14.0	"	10	"
			SW NE	40.0	40.0	"	"	"
			NE NW	11.0	11.0	"	9	"
			NE NW	29.0	29.0	"	10	"
			NW NW	40.0	40.0	"	"	"
			SW NW	15.0	15.0	"	"	"
			SE NW	39.0	39.0	"	"	"
			NE SE	10.0	10.0	6989	"	"
19-S	34-E	8	SW NE	.8	.8	26679	3	300
			NE SW	4.3	4.3	"	"	"
			NE SW	8.0	8.0	"	"	"
			SE SW	.2	.2	"	"	"
			NW SE	19.0	19.0	"	"	"
		18	NE NE	15.0	15.0	6989	6	"
			NE NE	23.0	23.0	"	5	"
			SE NE	36.0	36.0	"	"	"
			NE SE	33.0	33.0	"	"	"
			NW SE	38.5	38.5	"	"	"
			SW SE	39.0	39.0	"	"	"
			SE SE	15.0	15.0	"	"	"
		20	NE SW	28.0	28.0	32380	1	1200
			NW SW	29.0	29.0	"	"	"
			SW SW	22.0	22.0	"	"	"
			SE SW	25.0	25.0	"	"	"
		28	NE NW	7.0	7.0	"	"	"
			NW NW	19.0	19.0	"	"	"
			SW SW	18.4	18.4	26678	"	1300
			SW SW	16.6	16.6	26569	13	"
			SE NW	1.0	1.0	26678	1	"
			SE SW	26.6	26.6	26569	13	"
		33	NE NW	30.8	30.8	"	"	"
			SE NW	26.6	26.6	"	"	"
			SW NE	15.6	15.6	"	"	"
			NE SW	22.9	22.9	"	"	"
			SE SW	7.2	7.2	"	"	"
			NW SE	24.9	24.9	"	"	"
			SW SE	21.0	21.0	"	"	"
20-S	34-E	5	SW NE	15.0	15.0	6946	12	900
			SW NE	2.0	2.0	26409	11	"

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TSP	RNG	SEC.	11/44	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
20-S	34-E	5	SE NE	3.0	3.0	6946	11	900
			SW NW	.8	.8	26409	"	"
			SE NW	3.8	3.8	"	"	"
			NE SE	1.0	1.0	2151	"	600
			NW SE	1.4	1.4	26409	12	900
		4	NE NE	30.0	30.0	6979	"	400
			NW NE	6.4	6.4	26569	13	"
			NW NE	17.0	17.0	6979	12	"
			SW NE	22.0	22.0	"	"	"
			SE NE	13.0	13.0	"	"	"
			NE SW	16.0	16.0	2151	"	"
			NW SW	13.0	13.0	"	"	600
			NW SW	1.0	1.0	"	11	"
		3	SW NW	20.0	20.0	6979	12	400
			NE SW	5.0	5.0	"	"	"
			NW SW	4.0	4.0	"	"	"
		11	NE SE	2.5	2.5	6897	14	300
			NW SE	3.5	3.5	6930	16	"
			SW SE	12.0	12.0	"	"	"
			SE SE	13.0	13.0	"	"	"
			SE SE	17.0	17.0	"	14	"
		12	SW NE	2.0	2.0	"	16	"
			SE NW	2.0	2.0	8121	14	"
			SE NW	1.0	1.0	"	16	"
			NW SW	7.8	7.8	"	14	"
			NW SW	7.3	7.3	6930	16	"
			NE SW	2.3	2.3	7012	14	1600
			NE SW	27.7	27.7	"	16	"
			NE SW	2.0	2.0	"	15	"
			SW SW	10.0	10.0	"	16	"
			SW SW	6.0	6.0	"	15	"
			SE SW	5.0	5.0	"	16	"
			SE SW	30.0	30.0	"	15	"
			NW SE	15.0	15.0	"	16	"
			SW SE	39.0	39.0	"	15	"
			SE SE	18.0	18.0	"	"	"
			SE SE	20.0	20.0	"	16	"
		13	NE NE	7.0	7.0	"	15	"
			NW NE	13.0	13.0	"	"	"
			NW NW	1.0	1.0	"	"	"
20-S	35-E	7	NE NE	25.0	25.0	6971	14	900
			SE NE	30.0	30.0	"	"	"
			SW SW	30.0	30.0	"	16	1500
			SW SW	8.0	8.0	"	15	"
			SE SW	30.0	30.0	"	16	"
			SE SW	8.0	8.0	"	15	"
		18	NE NW	15.0	15.0	"	16	900
			NE NW	25.0	25.0	"	15	"
			NW NW	40.0	40.0	"	"	"
			SW NW	15.0	15.0	"	"	"
			SE NW	2.5	2.5	"	"	"
			SE NW	33.5	33.5	"	16	"
			NE SW	8.5	8.5	"	15	"
20-S	34-E	13	NW NE	5.0	5.0	7012	"	1700
			NE NE	10.0	10.0	"	"	1800
20-S	35-E	7	SE NW	26.0	26.0	6989	14	1400
			SE NW	14.0	14.0	"	16	"
			SW NW	35.0	35.0	"	14	"
			SW NW	5.0	5.0	"	16	"

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TSP	RNG	SEC.	¼¼	ACRES	SUP.	Cert.#	Div.Pt.	Tax Lot
20-S	35-E	7	NE SW	40.0	40.0	6989	16	1400
			NW SW	37.0	37.0	"	"	"
			NW SW	3.0	3.0	"	14	"
			NW SE	34.0	34.0	"	16	"
			SW SE	33.0	33.0	"	"	"
20-S	34-E	12	SE NE	38.0	38.0	"	14	1500
			NE SE	7.0	7.0	"	"	"
			NE SE	28.0	28.0	"	16	"
20-S	35-E	7	NW NE	14.0	14.0	6972	14	1300
			SW NE	33.0	33.0	"	"	"
			SW NE	7.0	7.0	"	16	"
			NE NW	30.0	30.0	6930	14	1200
			NW NW	30.0	30.0	"	"	"
20-S	34-E	12	NE NE	22.0	22.0	"	"	"
20-S	35-E	18	NW NE	20.0	20.0	6903	16	2800
			SW NE	25.0	25.0	"	"	"
			SE NE	3.0	3.0	"	"	"
			NE SE	15.0	15.0	"	"	"
			NW SE	28.0	28.0	7012	"	"
			NE SE	15.0	15.0	6903	"	1800
			SE SE	5.0	5.0	"	"	"
		17	NW SW	30.0	30.0	"	"	"
			SW SW	25.0	25.0	"	"	"
			NE SW	37.0	37.0	6930	"	1900
			SE SW	38.0	38.0	"	"	"
			NW SE	5.0	5.0	"	"	"
			SW SE	20.0	20.0	"	"	"
		20	NE NE	17.0	17.0	"	"	"
			NW NE	34.0	34.0	6998	"	"
			SW NE	6.0	6.0	"	"	"
			SE NE	28.0	28.0	"	"	"
			NE NW	10.0	10.0	6930	"	"
		21	SW NW	10.0	10.0	"	"	3100
			SE NW	3.0	3.0	"	"	"
			NE SW	36.0	36.0	"	"	"
			NW SW	20.0	20.0	"	"	"
			SE SW	12.0	12.0	"	"	"
			NE SE	20.0	20.0	6891	"	3300
			NE SE	7.9	7.9	11219	"	"
			NW SE	32.0	32.0	6891	"	"
			NW SE	3.0	3.0	11219	"	"
			SW SE	25.0	25.0	6891	"	"
			SE SE	30.0	30.0	"	"	"
		22	NW SW	1.0	1.0	6897	"	"
			NW SW	4.6	4.6	11219	"	"
			SW SW	35.0	35.0	6891	"	"
		23	NE SW	1.1	1.1	11219	"	200
			SE SW	.5	.5	"	"	"
			NW SE	5.0	5.0	"	"	"
			SW SE	3.4	3.4	"	"	"
		24	SW SW	34.6	34.6	"	16,17	3500
			SE SW	27.8	27.8	"	" "	"
			SW SE	31.4	31.4	"	" "	"
			SE SE	40.0	40.0	"	" "	"
			NE SE	28.4	28.4	"	" "	3600
20-S	36-E	19	NW SW	35.0	35.0	"	" "	2000
			SW SW	27.5	27.5	"	" "	"
			NW NW	16.6	16.6	"	" "	"
		8	NE NW	40.0	40.0	7020	20,21	11
					1247.80	1247.80 31115		

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Tsp	RNG	SEC.	¼¼	ACRES	SUP.	Cert.#	Div. Pt.	Tax Lot
20-S	36-E	8	SE NW	40.0	40.0	7020	20	11
						31115	21	
			NE SW	35.0	35.0	7020	20,19	11
						31115	21	
			SE SW	37.0	37.0	7020	20,19	11
						31115	21	
			NW SE	2.0	2.0	7020	22	11
			SW SE	20.0	20.0	"	22	"
		17	NW NE	25.0	25.0	"	"	"
			NE NW	5.0	5.0	"	"	"
			NE NW	15.0	15.0	"	19	"
			SW NE	15.0	15.0	"	22	16
			SE NW	5.0	5.0	"	"	"
			SE NW	15.0	15.0	"	19	"
			NE SW	3.0	3.0	"	22	"
			NE SW	20.0	20.0	"	19	"
			NW SE	8.0	8.0	"	22	"
			SW SE	4.0	4.0	"	"	"
		19	NE NE	10.0	10.0	7943	18	18
			SE NE	30.0	30.0	"	"	"
			SE SW	3.0	3.0	"	"	"
			NE SE	23.0	23.0	"	"	"
			NW SE	8.0	8.0	"	"	"
			SW SE	30.0	30.0	"	"	"
		30	NW NE	40.0	40.0	"	"	"
			SW NE	40.0	40.0	"	"	"
			SE NE	10.0	10.0	"	"	"
			NE NW	6.0	6.0	"	"	"
			NE SE	26.0	26.0	"	"	"
			NW SE	35.0	35.0	"	"	"
			SW SE	30.0	30.0	"	"	"
			SE SE	35.0	35.0	"	"	"
		31	NE NE	40.0	40.0	6989	"	"
			NW NE	40.0	40.0	"	"	"
			SW NE	40.0	40.0	"	"	"
			SE NE	12.0	12.0	6898	"	19
			NE SE	7.0	7.0	"	"	"
		32	NW NW	12.5	12.5	"	"	"
			SW NW	25.0	25.0	"	"	"
			NW SW	37.0	37.0	"	"	"
				788.5	788.5			

TL 5127.00

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Application No. 69433
Permit No.

Malhuer River Basin Water Users Association- Drewsey, Oregon

V Dash Cattle Co.	T-19-S	R-33½-E	Tax Lot 1200
	19	34	500
			900
			1400
			1500
Hoyt & Sons	19	33½	2800
	20	34	1100
Don Dryer	19	33½	2900
	20	33½	100
	19	34	1600
	20	34	1200
Glen Ellingson	19	34	300
			700
John & Elfreda Sword	19	34	1200
			1300
Norman & Eilene Clark	20	34	400
			600
			900
Harvey & Patsy Cronin	20	34	300
James & Betty Sitz	20	34	1600
	20	35	1500
			900
Walter & Patricia Sitz	20	34	1700
James Jr. & JanyceSitz	20	34	1800
Turen & Wilma Dunten	20	34	1400
	20	35	1200
Chas & Norma Miler	20	34	1500
	20	35	1400
Floyd & Delia Dunten	20	35	1300
Byron Dunten	20	35	2800
Lloyd & Eunice Jordon	20	35	1800
Thomas C. Howard	20	35	1900
			3100
Patrick & Susan O'Toole	20	35	3300
Forrest & Nellie Freeman	20	35	200
Rotha French	20	35	3500
Kenneth & Barbara Arnold	20	35	3600
	20	36	2000
D.W.&Irene Williams	20	36	11
Chester o.& Muriel I Stallard	20	36	16
Terry S.&Nancy A. Williams	20	36	18
William R. ~~Iverson~~ Robertson	20	36	19

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Application No. 69483
Permit No.

4. The amount of water which the applicant intends to apply to beneficial use is 128.0 CFS @ 1/40th cf

cubic feet per second 102.0 from Malhuer River- 5.0 from Griffin Creek, 18.2 from
(If water is to be used from more than one source, give quantity from each)
Ottis Cr, 2.8 from Cottonwood Cr and 2.2 from Spring Cr.

5. The use to which the water is to be applied is irrigation of meadows

6. DESCRIPTION OF WORKS

Include dimensions and type of construction of diversion dam and headgate, length and dimensions of supply ditch or pipeline, size and type of pump and motor, type of irrigation system to adequately describe the proposed distribution system.

There are numerous types of diversions, Gravel dams, boulder dams, one concrete with boards. Some diversions are into spreader ditches, some are into aditch with headgates to divert to fields and spreader ditches. All irrigation is gravity flow accross the meadows and returns to the river.

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If for domestic use state number of families to be supplied

7. Construction work will begin on or before There will be no new construction

8. Construction work will be completed on or before The system has been used for years

9. The water will be completely applied to the proposed use on or before Spring of 1988

Application No. 69433 Permit No.

Remarks: This application is for additional water for Alkali abatement and a means of storing extra water in the soil as a reservoir to help maintain a longer return flow to the river in the late summer. This will keep the water temperture lower and increase the flow for the fish habitat. We are asking for 1½ af from April 1 to June 1.

This permit, when issued, is for the beneficial use of water. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan. It is possible that the land use you propose may not be allowed if it is not in keeping with the goals and the acknowledged plan. Your city or county planning agency can advise you about the land-use plan in your area.

Malheur Basin Water Users Assn
Signature of Applicant
by Kenneth J. Bentz

This is to certify that I have examined the foregoing application, together with the accompanying maps and data, and return the same for correction and completion

In order to retain its priority, this application must be returned to the Water Resources Director with corrections on or before February 16, *19*89

WITNESS my hand this 16th *day of* December, *19*88

William H. Young *Water Resources Director*

By John R. Woodroof

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This instrument was first received in the office of the Water Resources Director at Salem, Oregon, on the 28th *day of* October, *19*87, *at* 3 *o'clock* P.M.

Application No. 69433 *Permit No.*

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Malhuer River Basin Water Users Association

(2) Point of diversions

#1 =Johnson Ditch 130' N,380' W from S.E. corner sec. 32,T-18-S,R-34-E being within S.E.,S.E. of sec. 32,T-18-S, R-34-E.

#2 = Moffett Ditch-560'S,710'W from the N.E. corner sec.8,T-19-S,R-34-E, being within N.E.¼ of N.E.¼ sec. 8,T-19-S,R 34-E.

#3 = ditch 2375'S,580'W from N.E. corner sec. 5,T-19-S, R-34-E being within N.E.¼ of N.E.¼ of sec. 8,T-19-S,R- 34-E.

#4 = ditch 1490'N,2080'E from S.W. corner sec.8,T-19-S,R-34-E being within N.E.¼,S.W.¼ sec.8,T-19-S,R-34-E.

#5 = ditch 200'S 605'E from the N.W. corner sec.17,T-19-S,R-34-E being within N.W¼ofN.W.¼ sec.17,T-19-S,R34-E.

#6 = ditch 130'S 360'W from N.E.corner sec.18,T-19-S,R-34-E being within N.E.¼ of N.E.¼ sec.18, T-34-E,R-34-E.

#7 = Marks ditch 345'N 2510'E from S.W. corner sec.18,T-19-S,R-34-E being within S.E.¼ S,W.¼ sec. 18,T-19-S,R-34-E.

#8 = Baily Ditch 1330'S 1650'E from N.W.corner sec. 19,T-19-S,R-34-E being within S.E¼ N.W.¼ sec.19,T-19-S, R-34-E.

#9 = Farrens Ditch 475'S 130'E from N.W. corner sec.30,T-19-S,R-34-E being within N.W.¼ N.W.¼ of sec.30 T-19-S, R-34-E.

#10= Robbins Ditch 1090'S 2375'W from N.E. corner sec.36,T-19-S,R-33½ E, being within N.W.¼ N.E.¼ sec.36,T-19-S, R-33½-E.

#11= Clarks North Ditch 2440'S 300'E from N.W. corner sec.5, T-20-S, R-34-E being within S.W.¼ N.W.¼ sec.5,T-20-S,R-34-E.

#12= Clarks South Ditch 2245'S 2010'E from N.W. corner sec.5 T-20-S, R-34-E being within S.E.¼ N.W.¼ sec.5, T-20-S, R34-E.

#13= Griffin Cr. Reservoir 2330'N 1750'E from S.W.corner sec.28,T-19 S, R-34-E being withinN.E.¼ S.W.¼ sec. 28,T-19-S,R-34-E.

#14= Miller Ditch 675'S 940'W from N.E. corner sec. 10, T-20-S, R-34-E being within N.E.¼ N.E.¼ sec. 10, T-20-S, R-34-E.

#15= SitZ ditch 845'S 610'W from N.E. corner sec. 10, T-20-S,R-34-E being within N.E.¼ N.E.¼ sec.10,T-20-S,R-34-E.

#16= Drewsey Ditch 2475'N 1520'E from S.W. corner sec. 11, T-20-S, R-34-E being within N.E.¼ S.W.¼ sec.11,T-20-S, R-34-E.

#17= French Pumps (additional diversion) to #16 diversion.2970'S 1440'E from N.W. corner sec. 23,T-20-S, R-35-E being within N.E.¼ S.W.¼ sec. 23,T-20-S,R-35-E.

MALHEUR RIVER BASIN WATER USERS ASSOCIATION

(2) Point of diversions-- ""(PAGE 2)""

#18 =Lillard Diversion #2, 1960' N., 790' W. from S. E. Corner of Sec. 25 T-19-S, R-33 1/2-E. being within N. E. 1/4, of the S. E. 1/4 of Sec. 25, T-19-S, R-33 1/2-E.

#19 =Lillard Diversion #1, 10' S., 790' W. from the N. E. Corner of Sec. 36, T-19-S, R-33 1/2-E being within N. E. 1/4 of the N. E. 1/4 of Sec. 36 T-19-S, R-33 1/2-E.

#20 =Pump, 1850' N., 260' W., form S. E. Corner of Sec. 22, T-20-S, R-35-E, being within the N. E. 1/4 of the S. E. 1/4 of Sec.22 T-20-S, R-35-E.

#21 =1440' N., 780' W. from the S. E. Corner of Sec. 25, T-20-S, R-35-E being within the N. E. 1/4 of the S. E. 1/4 of Sec. 25, T-20-S, R-35-E.

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TSP	RNG	Sec.	¼¼	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
19-S	33½-E	13·	SW NE	19.0	19.0	3526	2	1200
			SE NE	20.0	20.0	"	"	"
			NE SE	27.0	27.0	"	"	"
			NW SE	3.0	3.0	"	"	"
			SE SE	0.5	0.5	2134	"	"
19-S	34-E	7·	NW SW	20.0	20.0	3526	"	500
			NW SW	11.0	11.0	7001	"	"
			SW SW	30.0	30.0	"	"	"
			SW SE	23.0	23.0	3791	"	"
		18·	NW NE	19.0	19.0	6857	"	"
			NW NE	19.0	19.0	"	4	"
			SW NE	25.0	25.0	"	2	"
			SW NE	5.0	5.0	"	4	"
			NE NW	9.0	9.0	"	2	"
			NW NW	34.0	34.0	7001	"	"
			SW NW	28.0	28.0	"	"	"
			SE NW	18.0	18.0	6857	"	"
			SE NW	19.0	19.0	"	6	"
			NE SW	18.0	18.0	"	2	"
			NE SW	20.0	20.0	"	6	"
			NW SW	4.0	4.0	2134	2	"
			NW SW	19.0	19.0	6932	2	"
			SW SW	25.0	25.0	"	"	"
			SW SW	2.0	2.0	2134	"	"
			SE SW	38.0	38.0	6877	"	"
		19·	NW NW	12.0	12.0	6857	2	"
			NW NW	11.0	11.0	"	7	"
			SW NW	18.0	18.0	"	7	"
			NW NE	35.0	35.0	70450	5	"
			SW NE	20.0	20.0	"	"	900
			NE NW	16.0	16.0	7050	7	"
			NE NW	22.0	22.0	"	5	"
			SE NW	3.0	3.0	"	7	"
			SE NW	8.0	8.0	"	8	"
			SE NW	25.0	25.0	"	5	"
		30·	SW NW	24.0	24.0	27613	9	1500
			NW SW	23.0	23.0	"	"	"
			SW SW	30.0	30.0	"	"	"
		31·	NE NW	6.0	6.0	"	"	"
			NW NW	40.0	40.0	"	"	"
			SW NW	40.0	40.0	"	"	"
			SE NW	31.0	31.0	"	"	"
			NE SW	40.0	40.0	"	"	"
			NW SW	40.0	40.0	"	"	"
		29·	SW SW	10.0	10.0	6896	1	"
			SE SW	15.0	15.0	"	"	"
		32·	NE NW	36.0	36.0	"	"	"
			NW NW	8.0	8.0	47708	"	"
			SW NW	2.0	2.0	"	"	"
			SE NW	3.0	3.0	"	"	"
19-S	33½-E	36·	NW NE	6.0	6.0	"	"	1400
			SE NW	6.0	6.0	6960	10	2800
			NE SW	15.0	15.0	"	"	"
20-S	34-E	5·	SW NW	.8	.8	26409	9	1100

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Application No. 69433
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Application No. 69433

TSP	RNG	SEC.	¼¼	Acres	Sup.	Cert.#	Div. Pt.	Tax Lot
19-S	33½-E	36	SE NE	40.0	40.0	6960	9	2900
			NE SE	40.0	40.0	"	"	"
			NW SE	10.0	10.0	"	10	"
			NW SE	30.0	30.0	"	9	"
			SW SE	30.0	30.0	"	10	"
			SW SE	10.0	10.0	"	9	"
			SE SE	40.0	40.0	"	9	"
20-S	33½-E	1	NE NE	30.0	30.0	"	9	100
			NE NE	10.0	10.0	"	10	"
			NW NE	22.0	22.0	"	"	"
			SW NE	16.0	16.0	"	"	"
			SE NE	40.0	40.0	"	"	"
			NE SE	10.0	10.0	"	"	"
19-S	34-E	31	SW SW	32.0	32.0	"	"	1600
			SW SW	8.0	8.0	"	9	"
			SE SW	40.0	40.0	"	"	"
			NW SE	20.0	20.0	"	"	"
			SW SE	40.0	40.0	"	"	"
			SE SE	20.0	20.0	"	"	"
20-S	34-E	6	NW NE	26.0	26.0	"	"	1200
			NW NE	14.0	14.0	"	10	"
			SW NE	40.0	40.0	"	"	"
			NE NW	11.0	11.0	"	9	"
			NE NW	29.0	29.0	"	10	"
			NW NW	40.0	40.0	"	"	"
			SW NW	15.0	15.0	"	"	"
			SE NW	39.0	39.0	"	"	"
			NE SE	10.0	10.0	6989	"	"
19-S	34-E	8	SW NE	.8	.8	26679	3	300
			NE SW	4.3	4.3	"	"	"
			NE SW	8.0	8.0	"	"	"
			SE SW	.2	.2	"	"	"
			NW SE	19.0	19.0	"	"	"
		18	NE NE	15.0	15.0	6989	6	"
			NE NE	23.0	23.0	"	5	"
			SE NE	36.0	36.0	"	"	"
			NE SE	33.0	33.0	"	"	"
			NW SE	38.5	38.5	"	"	"
			SW SE	39.0	39.0	"	"	"
			SE SE	15.0	15.0	"	"	"
		20	NE SW	28.0	28.0	32380	1	1200
			NW SW	29.0	29.0	"	"	"
			SW SW	22.0	22.0	"	"	"
			SE SW	25.0	25.0	"	"	"
		28	NE NW	7.0	7.0	"	"	"
			NW NW	19.0	19.0	"	"	"
			SW SW	18.4	18.4	26678	"	1300
			SW SW	16.6	16.6	26569	13	"
			SE NW	1.0	1.0	26678	1	"
			SE SW	26.6	26.6	26569	13	"
		33	NE NW	30.8	30.8	"	"	"
			SE NW	26.6	26.6	"	"	"
			SW NE	15.6	15.6	"	"	"
			NE SW	22.9	22.9	"	"	"
			SE SW	7.2	7.2	"	"	"
			NW SE	24.9	24.9	"	"	"
			SW SE	21.0	21.0	"	"	"
20-S	34-E	5	SW NE	15.0	15.0	6946	12	900
			SW NE	2.0	2.0	26409	11	"

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	RNG	SEC.	11/44	Acres	Sup.	Cert.#	Div.Pt.	Tax Lot
20-S	34-E	5	SE NE	3.0	3.0	6946	11	900
			SW NW	.8	.8	26409	"	"
			SE NW	3.8	3.8	"	"	"
			NE SE	1.0	1.0	2151	"	600
			NW SE	1.4	1.4	26409	12	900
		4	NE NE	30.0	30.0	6979	"	400
			NW NE	6.4	6.4	26569	13	"
			NW NE	17.0	17.0	6979	12	"
			SW NE	22.0	22.0	"	"	"
			SE NE	13.0	13.0	"	"	"
			NE SW	16.0	16.0	2151	"	"
			NW SW	13.0	13.0	"	"	600
			NW SW	1.0	1.0	"	11	"
		3	SW NW	20.0	20.0	6979	12	400
			NE SW	5.0	5.0	"	"	"
			NW SW	4.0	4.0	"	"	"
		11	NE SE	2.5	2.5	6897	14	300
			NW SE	3.5	3.5	6930	16	"
			SW SE	12.0	12.0	"	"	"
			SE SE	13.0	13.0	"	"	"
			SE SE	17.0	17.0	"	14	"
		12	SW NE	2.0	2.0	"	16	"
			SE NW	2.0	2.0	8121	14	"
			SE NW	1.0	1.0	"	16	"
			NW SW	7.8	7.8	"	14	"
			NW SW	7.3	7.3	6930	16	"
			NE SW	2.3	2.3	7012	14	1600
			NE SW	27.7	27.7	"	16	"
			NE SW	2.0	2.0	"	15	"
			SW SW	10.0	10.0	"	16	"
			SW SW	6.0	6.0	"	15	"
			SE SW	5.0	5.0	"	16	"
			SE SW	30.0	30.0	"	15	"
			NW SE	15.0	15.0	"	16	"
			SW SE	39.0	39.0	"	15	"
			SE SE	18.0	18.0	"	"	"
			SE SE	20.0	20.0	"	16	"
		13	NE NE	7.0	7.0	"	15	"
			NW NE	13.0	13.0	"	"	"
			NW NW	1.0	1.0	"	"	"
20-S	35-E	7	NE NE	25.0	25.0	6971	14	900
			SE NE	30.0	30.0	"	"	"
			SW SW	30.0	30.0	"	16	1500
			SW SW	8.0	8.0	"	15	"
			SE SW	30.0	30.0	"	16	"
			SE SW	8.0	8.0	"	15	"
		18	NE NW	15.0	15.0	"	16	900
			NE NW	25.0	25.0	"	15	"
			NW NW	40.0	40.0	"	"	"
			SW NW	15.0	15.0	"	"	"
			SE NW	2.5	2.5	"	"	"
			SE NW	33.5	33.5	"	16	"
			NE SW	8.5	8.5	"	15	"
20-S	34-E	13	NW NE	5.0	5.0	7012	"	1700
			NE NE	10.0	10.0	"	"	1800
20-S	35-E	7	SE NW	26.0	26.0	6989	14	1400
			SE NW	14.0	14.0	"	16	"
			SW NW	35.0	35.0	"	14	"
			SW NW	5.0	5.0	"	16	"

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TWP	RNG	SEC.	¼¼	ACRES	SUP.	Cert.#	Div.Pt.	Tax Lot
20-S	35-E	7	NE SW	40.0	40.0	6989	16	1400
			NW SW	37.0	37.0	"	"	"
			NW SW	3.0	3.0	"	14	"
			NW SE	34.0	34.0	"	16	"
			SW SE	33.0	33.0	"	"	"
20-S	34-E	12	SE NE	38.0	38.0	"	14	1500
			NE SE	7.0	7.0	"	"	"
			NE SE	28.0	28.0	"	16	"
20-S	35-E	7	NW NE	14.0	14.0	6972	14	1300
			SW NE	33.0	33.0	"	"	"
			SW NE	7.0	7.0	"	16	"
			NE NW	30.0	30.0	6930	14	1200
			NW NW	30.0	30.0	"	"	"
20-S	34-E	12	NE NE	22.0	22.0	"	"	"
20-S	35-E	18	NW NE	20.0	20.0	6903	16	2800
			SW NE	25.0	25.0	"	"	"
			SE NE	3.0	3.0	"	"	"
			NE SE	15.0	15.0	"	"	"
			NW SE	28.0	28.0	7012	"	"
			NE SE	15.0	15.0	6903	"	1800
			SE SE	5.0	5.0	"	"	"
		17	NW SW	30.0	30.0	"	"	"
			SW SW	25.0	25.0	"	"	"
			NE SW	37.0	37.0	6930	"	1900
			SE SW	38.0	38.0	"	"	"
			NW SE	5.0	5.0	"	"	"
			SW SE	20.0	20.0	"	"	"
		20	NE NE	17.0	17.0	"	"	"
			NW NE	34.0	34.0	6998	"	"
			SW NE	6.0	6.0	"	"	"
			SE NE	28.0	28.0	"	"	"
			NE NW	10.0	10.0	6930	"	"
		21	SW NW	10.0	10.0	"	"	3100
			SE NW	3.0	3.0	"	"	"
			NE SW	36.0	36.0	"	"	"
			NW SW	20.0	20.0	"	"	"
			SE SW	12.0	12.0	"	"	"
			NE SE	20.0	20.0	6891	"	3300
			NE SE	7.9	7.9	11219	"	"
			NW SE	32.0	32.0	6891	"	"
			NW SE	3.0	3.0	11219	"	"
			SW SE	25.0	25.0	6891	"	"
			SE SE	30.0	30.0	"	"	"
		22	NW SW	1.0	1.0	6897	"	"
			NW SW	4.6	4.6	11219	"	"
			SW SW	35.0	35.0	6891	"	"
		23	NE SW	1.1	1.1	11219	"	200
			SE SW	.5	.5	"	"	"
			NW SE	5.0	5.0	"	"	"
			SW SE	3.4	3.4	"	"	"
		24	SW SW	34.6	34.6	"	16,17	3500
			SE SW	27.8	27.8	"	" "	"
			SW SE	31.4	31.4	"	" "	"
			SE SE	40.0	40.0	"	" "	"
			NE SE	28.4	28.4	"	" "	3600
-S	36-E	19	NW SW	35.0	35.0	"	" "	2000
			SW SW	27.5	27.5	"	" "	"
			NW NW	16.6	16.6	"	" "	"
		2	NE NW	~~30.0~~	40.0	7020	20,21	11
						3111		

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TWP	RNG	SEC.	¼¼	ACRES	SUP.	Cert.#	Div. Pt.	Tax Lot
20-S	36-E	8	SE NW	40.0	40.0	7020	20	11
						31115	21	
			NE SW	35.0	35.0	7020	20,19	11
						31115	21	
			SE SW	37.0	37.0	7020	20,19	11
						31115	21	
			NW SE	2.0	2.0	7020	22	11
			SW SE	20.0	20.0	"	22	"
		17	NW NE	25.0	25.0	"	"	"
			NE NW	5.0	5.0	"	"	"
			NE NW	15.0	15.0	"	19	"
			SW NE	15.0	15.0	"	22	16
			SE NW	5.0	5.0	"	"	"
			SE NW	15.0	15.0	"	19	"
			NE SW	3.0	3.0	"	22	"
			NE SW	20.0	20.0	"	19	"
			NW SE	8.0	8.0	"	22	"
			SW SE	4.0	4.0	"	"	"
		19	NE NE	10.0	10.0	7943	18	18
			SE NE	30.0	30.0	"	"	"
			SE SW	3.0	3.0	"	"	"
			NE SE	23.0	23.0	"	"	"
			NW SE	8.0	8.0	"	"	"
			SW SE	30.0	30.0	"	"	"
		30	NW NE	40.0	40.0	"	"	"
			SW NE	40.0	40.0	"	"	"
			SE NE	10.0	10.0	"	"	"
			NE NW	6.0	6.0	"	"	"
			NE SE	26.0	26.0	"	"	"
			NW SE	35.0	35.0	"	"	"
			SW SE	30.0	30.0	"	"	"
			SE SE	35.0	35.0	"	"	"
		31	NE NE	40.0	40.0	6989	"	"
			NW NE	40.0	40.0	"	"	"
			SW NE	40.0	40.0	"	"	"
			SE NE	12.0	12.0	6898	"	19
			NE SE	7.0	7.0	"	"	"
		32	NW NW	12.5	12.5	"	"	"
			SW NW	25.0	25.0	"	"	"
			NW SW	37.0	37.0	"	"	"

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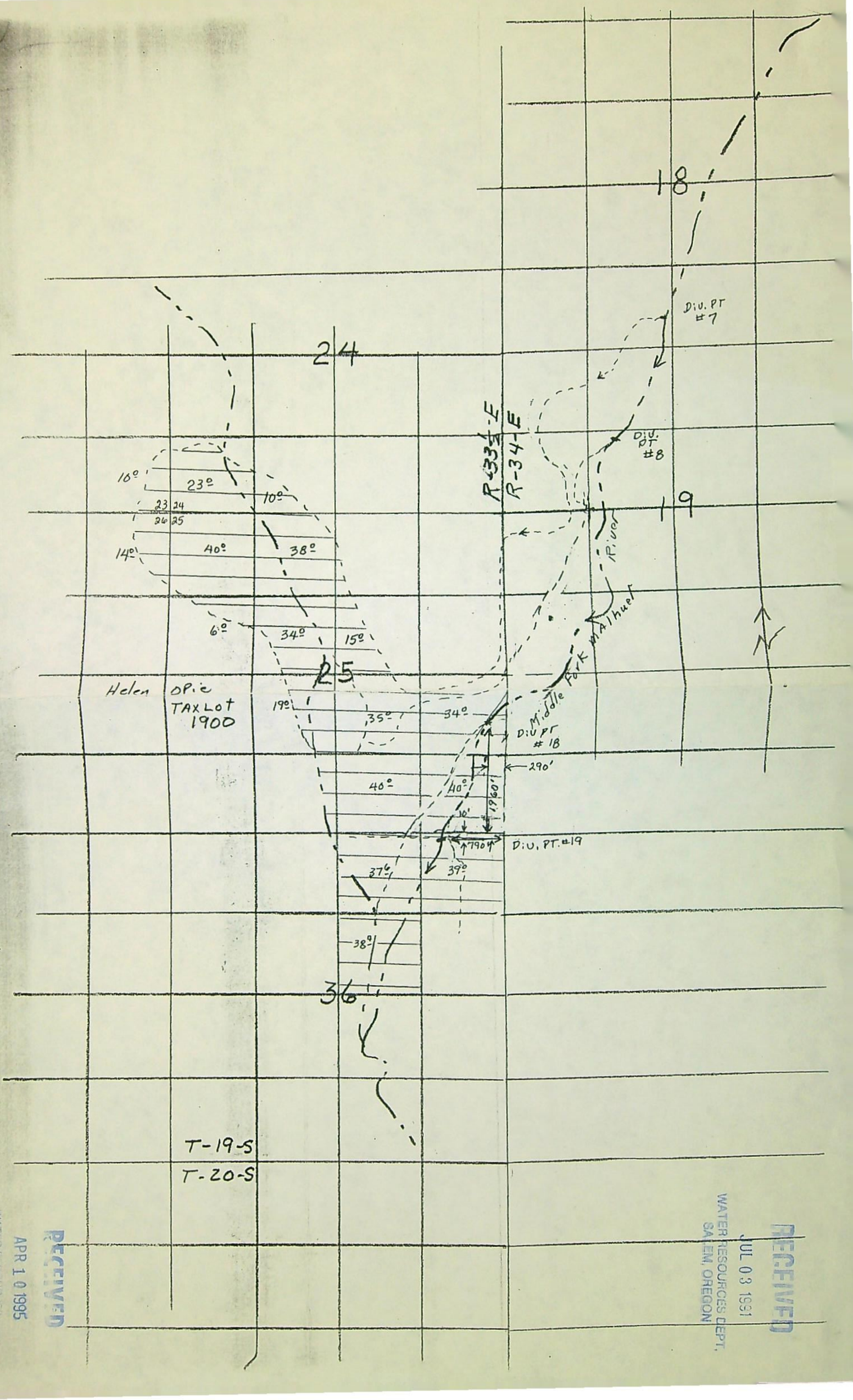
WATER RESOURCES DEPT
SALEM, OREGON

Application No. 69433
Permit No.



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JUL 03 1991
WATER RESOURCES DEPT.
SALEM, OREGON

RECEIVED
APR 10 1995
WATER RESOURCES DEPT.
SALEM, OREGON

Malheur Basin Water Users Association

MAP # 3

TAX Lot 2300

R35-E
R-36-E

26°
0⁴
40°
(28⅝)
(2⅜)
31¼
(32)
(0⅝)
32⅝
(10⅔)
(29⅚) 39⅝
6°
4⅔
25 30
36 31
MATCH Line with MAP #2
(8⅝)
(8°)
16⅝
20°
22⅔
7°
0¹
22⅚
0⅝
M.F. MALHEUR

MATCH Line WITH MAP #2

Scale 8" = 1 mile

NEW Application

New Application

M.F. MALHEUR RIVER

U.S. Hwy 20

TAX LOT 2400

0°

60°

36 ±

12 ±

17 ±

7°

0°

0°

36 31

T-20-S
T-21-S

LOT 1

6 5

LOT 4

31 32

TAX LOT 400

LOT 3

LOT 2

TL-400

TL-500

HOWN
MAPS

ATED LANDS

RECLAMATION CO.

COUNTY, OREGON

MIT NO. E-144 App 2384

THE STATE ENGINEER

OVEMBER, 1934

LE-4 IN-1 MILE

Conley
Marshall
TL 300

Pipe

22 | 23 | 24 | 19

SAGE COVERED HILLS

SAGE COVERED HILLS

DREWSEY

SCHOOL

MIDDLE FORK

MALHEUR

LOTT

SAGE COVERED HILLS

LOT 3

LOT 4

Fresh 1975

Lee Wilson

Harvey HATT TL 3800

26 | 25 | 30

RIVER

WRIGHT
Wilber
TL 3900

U.S.

TL 3700

LOT 1

WRIGHT
Wilber
TL 2300

20 S., R. 35 E. | 20 S., R. 36 E.

RECEIVED
JUL 03 1951
WATER RESOURCES DEPT.
SALEM, OREGON

Permit E-144
Cert 11219
Decree 6891

7-9-75 RH
1889 T = Transfer by Spec. Ord. Vol. 1, Pg. 272. Dated 5-18-26 by Rhea Luper
See Also Spec. Ord. Vol. 1 Pg. 11. (Subject to existing rights on Drews Rec. Ditch)

RECEIVED
APR 10 1995
WATER RESOURCES DEPT
SALEM, OREGON

ATED LANDS

RECLAMATION CO.

COUNTY, OREGON

MIT- NO. E-144 App 2384

THE STATE ENGINEER

VEMBER, 1934

APP. #69433 (PLAT CARD T-20S 35E)

E:-4 IN.=1 MILE

Application No. 69433
Permit No. 51626

LEGEND

GATED LAND

CH

MALHEUR BASIN WATER USERS ASSOCIATION
Application No. 69433

22 23 24 19 26 25 30 31

SAGE COVERED HILLS

DREWSEY

SCHOOL

MIDDLE FORK MALHEUR RIVER

SAGE COVERED HILLS

FRENCH

LOT 3

LOT 4

LOT 1

SAGE COVERED HILL

LOT 5

LOT 2

LOT 4

LOT 1

CREEK

Pump

T. 20 S., R. 35 E.

T. 20 S., R. 36 E.

RECEIVED
APR -6 1995
WATER RESOURCES DEPT
SALEM, OREGON

RECEIVED
JUL 17 1995
WATER RESOURCES DEPT
SALEM, OREGON

ATED LANDS

ECLAMATION CO.

COUNTY, OREGON

MIT NO. E-144 App 2384

THE STATE ENGINEER

VEMBER, 1934

E:-4 IN.=1 MILE

LEGEND

GATED LAND

CH

MALHEUR BASIN WATER USERS ASSOCIATION
Application No. 69433

Application No. 69433
Permit No. 51626

SAGE COVERED HILLS

DREWSEY

SCHOOL

MIDDLE FORK MALHEUR RIVER

FRENCH

SAGE COVERED HILL

OTIS CREEK

Pipe

T. 20 S., R. 35 E.

T. 20 S., R. 36 E.

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SALEM, OREGON

RECEIVED
JUL 17 1995
WATER RESOURCES DEPT
SALEM, OREGON

ATED LANDS

ECLAMATION CO.

COUNTY, OREGON

MIT NO. E-144 App 2384

THE STATE ENGINEER

VEMBER, 1934

E:-4 IN.=1 MILE

LEGEND

GATED LAND

CH ----------

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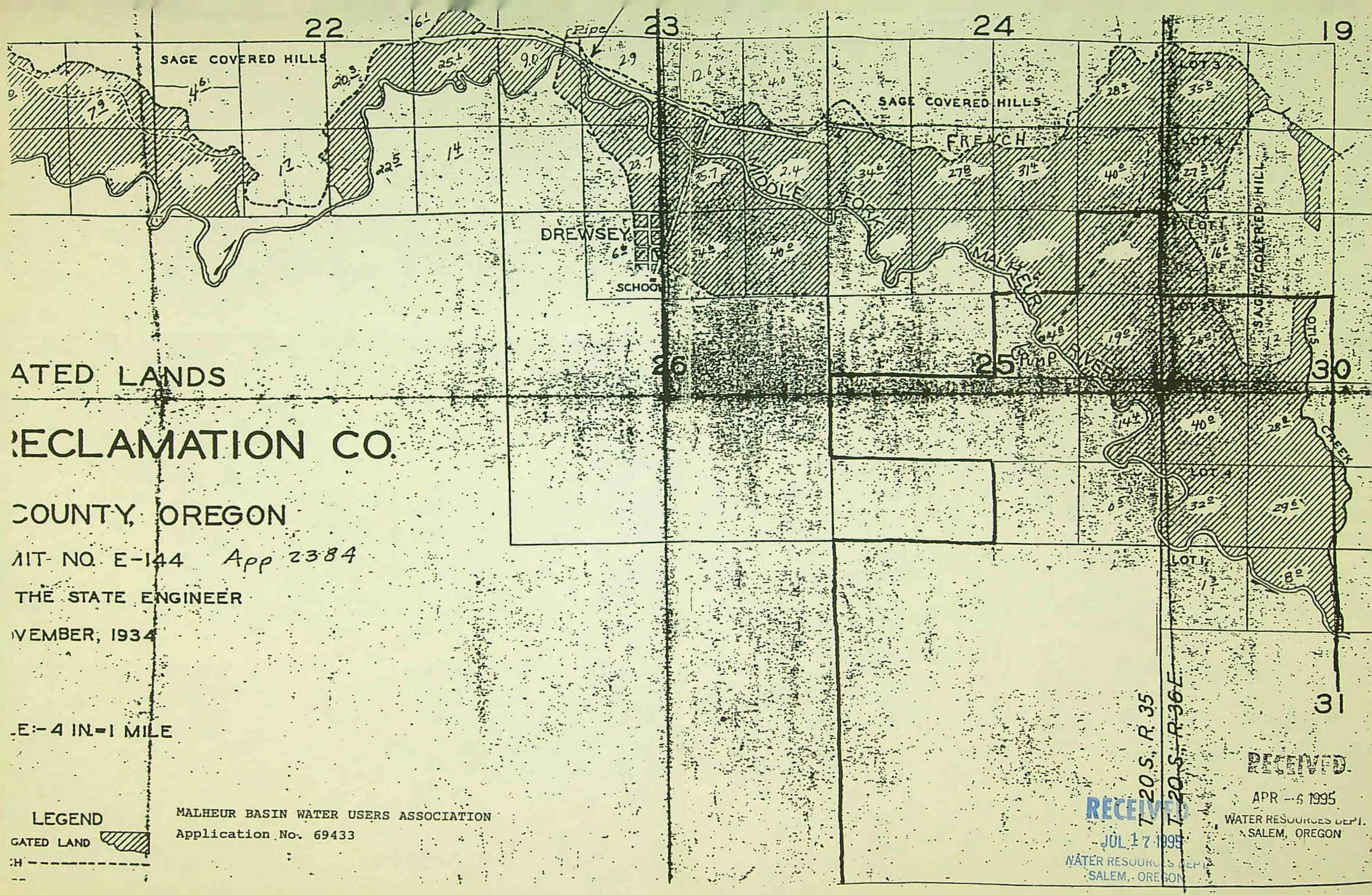
MALHEUR BASIN WATER USERS ASSOCIATION
Application No. 69433



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JUL 17 1995
WATER RESOURCES DEPT.
SALEM, OREGON

Pg.1

0.00 *

19.00 +
20.00 +
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16.60 +
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5.00 +
3.40 +
34.60 +
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31.40 +
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35.00 +
27.50 +
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Pg.5

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12.00 +
7.00 +
12.50 +
25.00 +
37.00 +
788.50 *

0.00 *

Total

1,001.30 +
1,302.40 +
787.00 +
1,247.80 +
788.50 +
5,127.00 *

TOWNSHIP 19 S. RANGE 33½ E. W.M. SECTION 13

NE				NW				SW				SE				Application Number	Permit Number	Certificate Number
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
		19	20									27	3			2347	E141	3526
															05	3542	2040	2134

1.11 cfs 89 acres no total a.f. Middle Fork Malheur River

Mid. Flc. Malheur-Riv 0.64 cfs No a.f.

TOWNSHIP 19 S. RANGE 34 E. W.M. SECTION 18

NE				NW				SW				SE				Application Number	Permit Number	Certificate Number
Lot	Lot	Lot	Lot	Lot	Lot 1	Lot 2	Lot	Lot	Lot 3	Lot 4	Lot	Lot	Lot	Lot	Lot			
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
Acreage in Lot or Legal Subdivision as shown on Government Plat if other than 40 acres				36S 36E				36S 36E										51736
																		50444
38			36									33	38S	39	15			6989
	38	36		9			37	38			38							6857
					34	28										Malheur	River	7001
									4	2						3542	2040	2134
									19	25						Malheur	River	6932
																16413	12220	11808

TOWNSHIP 19 S. RANGE 34 E. W.M. SECTION 7

NE				NW				SW				SE				Application Number	Permit Number	Certificate Number
Lot	Lot	Lot	Lot	Lot	Lot 1	Lot 2	Lot	Lot	Lot 3	Lot 4	Lot	Lot	Lot	Lot	Lot			
NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE			
Acreage in Lot or Legal Subdivision as shown on Government Plat if other than 40 acres				36S 36E				36S 36E										
								20								2347	E141	3526
								11	30							Malheur	River	7001
														23		7344	4931	3791

19 33 V 1200

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5-2

ACCOUNT NUMBER	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
			19 S.	33½ E.W.M.	

BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD			ACRES REMAINING
		Date	Volume	Page	
▼	V-Dash Cattle Co.		73	503	474.34
	NE¼ NE¼: S½ NE¼: NE¼ SE¼: S½ SE¼ sec. 13				
	NE¼: E½ SE¼ sec 24				

Application No. 69433
Permit No.

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SALEM, OREGON

19 34 500

T-19-S R-34-E TL 500

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5-R

MAP NO. 219	TAX LOT NO. 5	SECTION	TOWNSHIP 19 S.	RANGE 34 E.W.M.	AERIAL PHOTO
ACCOUNT NUMBER					
LOT NO.	BLOCK NO.	ADDITION	CITY HI 1-7		

Indent Each New Course to This Line ▼	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
Lots 2-3-4-5-6-7: SE¼NW¼: E½SW¼: SW¼NE¼: W½SE¼:	Sec.6				461.54
Lots 1-2-3-4: E½NW¼: NE¼SW¼: W½NE¼: NW¼SE¼: SE¼SW¼: SW¼SE¼:	SEC.7				466.22
Lots 1-2-3-4-: E½SW¼: SE¼NW¼: SW¼NE¼: NE¼NW¼: NW¼NE¼:	Sec.18				386.19
Lots 1-2: Less r/w 4.20 Ac & 3. Ac.	Sec. 19				65.75
....: NW¼SW¼: S½SW¼:	Sec. 29				120.00
Lots 1-2-3-4: SW¼SE¼: E½SW¼: SE¼NW¼: S½NE¼: N½SE¼: SE¼SE¼:	Sec. 30				505.26
Lots 1-2-3: NE¼: NE¼SW¼: E½NW¼:	Sec. 31				392.20
NW¼:	Sec. 32				160.00
					2557.16
	V Dash Cattle Company	7/16/58	65	200	
		8/2/63	73	499	
		8/2/63	73	503	
		3/29/63	73	43	
				per map	1383.12
	remainder in 19-34-1500				

Application No. 69433
Permit No.

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SALEM, OREGON

19 34 900

T. 19-S R-34-E TL 900

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-2

MAP NO. 219	TAX LOT NO. 13	SECTION	TOWNSHIP 19 S.	RANGE 34 E.W.M.	AERIAL PHOTO H1-1-7
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION	CITY		

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$NE\frac{1}{4}:E\frac{1}{2}NW\frac{1}{4}:$ Sec. 19				
	Easement -	4-27-66	79	579	
	"	4/3/70	88	100	
	Lloyd E.&Ruth W. Campbell	2/16/44	41	54	240
	c/o Elmer Baker				
	Less TL 13-1	6/22/59	66	427	-1.40
					238.60
	Elmer E & Burnice Baker	1/4/67	81	446	
	Memorandum of agreement to: Joe Jr & Georgia Lillard	3/14/78	106	99	
	Lillard assignment to: James W Bentz	2/23/81	114	175	
	Lillard W.D. to James W Bentz	2/23/81	114	176	
	B+S Bentz to V-Dash Cattle Company	12/16/82	117	631	
				per map	238.56

Application No. 69433
Permit No.

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SALEM, OREGON

T-19 34 TL 1500

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5-2

MAP NO.	TAX LOT NO. / ACCOUNT NUMBER	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
			19 S.	34 E.W.M.	

LOT NO. _____ BLOCK No. _____ ADDITION _____ CITY _____

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	DEED RECORD Volume	DEED RECORD Page	ACRES REMAINING
▼	V-Dash Cattle Co. Sec. 29: NW¼ SW¼; S½ SW¼ Sec. 30: S½ NE¼; SE¼ NW¼; Lots 1 thru 4; E½ SW¼; SE¼ Sec. 31: NE¼; E½ NW¼; lots 1 thru 3 NE¼ SW¼ Sec. 32: NW¼				1177.56

Application No. 69433
Permit No.

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WATER RESOURCES DEPT
SALEM, OREGON

19 34 1400

T-19-S R-34-E TL 1400

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
219	22		19 S.	34 E.W.M.	H1-1-7

ACCOUNT NUMBER

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$SW\frac{1}{4}SE\frac{1}{4}$: Sec. 29				40.
	$N\frac{1}{2}NE\frac{1}{4}$: Sec. 32				80.
	$NW\frac{1}{4}NW\frac{1}{4}$: Sec. 33				40.
	Less $E\frac{1}{2}NW\frac{1}{4}NW\frac{1}{4}$: Sec. 33 to TL 18				-20.
	Zelpha Johnson	6/16/37	37	554	140. 140
	Gene S Dripps	9/28/65	78	333	
	Joel C & Elfreda Sword	5/1/67	82	331	
	V Dash Cattle Co.	5/13/70	88	302	
				per map	138.07

Application No. 69433
Permit No.

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OCT 28 1987
WATER RESOURCES DEPT
SALEM, OREGON

19 33V 2800
T-19-S R 33½ TL 2800

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5-R

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
216	1-1		19 S.	33½ E.W.M.	DGW 2-18
ACCOUNT NUMBER					

LOT NO. ____ BLOCK No. ____ ADDITION ____ CITY ____

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
▼	SE¼NW¼: E½SW¼: ~~Less R/W~~ Sec. 36				~~115.~~ 120.
	Re-survey of Road takes R/W OFF the East side (TLH 42 + 50-1)	10/3/61	70	181	
	M. C. Shelley	4/20/59	66	223	
	James F & Rosetta Miller	4/20/59	66	226	
	and	6/16/61	A2	572	
	1/6Int. Gerald W. Miller	1/4/62	70	518	
		5/19/74	96	446	
				453	
	James F Miller & Sons	12/12/77	105	295	
	memo. of Contract: Hoyt & Sons Ranch Properties Ltd.	5-2-86	860	589	

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WATER RESOURCES DEPT
SALEM, OREGON

Application No. 69433
Permit No.

40 ac mr-dsd

20 34 1100

T-20-S R34E TL1100

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-R

MAP NO 220	TAX LOT NO. 12	SECTION	TOWNSHIP 20 S.	RANGE 34 E.W.M.	AERIAL PHOTO H1 1-9
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY	

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	SW¼NW¼: Sec. 5				40.
	Lot 1: SE¼NE¼: Sec. 6				80.70
	James F. and Rosetta Miller &	4/18/38	38	163	
		9/21/49	51	390	120.70
1/6 Int.	Gerald W. Miller	1/4/62	70	518	
		5/19/74	96	446	
				453	
	James F Miller & Sons	12/12/77	105	295	
	Memo. of Cont.: Hoyt & Sons Ranch Prop. Ltd	5-2-86	860	589	

Application No. 69433
Permit No.

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SALEM, OREGON

19 33½ 2900

T-19-S R-33½-E TL 2900

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-R

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
216	50-1		19 S.	33½ E.W.M.	DGW 2-18

ACCOUNT NUMBER

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line ▼

LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
$SE\frac{1}{4}:SE\frac{1}{4}NE\frac{1}{4}$: Sec. 36 Less Co.Rd r/w: A strip of land 80 ft in width on the E of adjoining and parallel to the centerline of said section.	1/2/50	53	130	
Bruno and Dryer				
Donald Dryer	2/24/54 3/10/65	58 77	46 105	200.
			per map	196.36

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20 33V 100

T-20-S R-33½-E TL 100

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-2

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
217	1-1		20 S.	33½ E.W.M.	H1-2-18
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION	CITY		
			9-2		

Indent Each New Course to This Line — LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
3.9.44				
Lots 1 and 2 E½SE¼: Sec. 1 —	1/2/50	53	130	[illegible]
Less Rd r/w:				
Also All that portion of SE¼NE¼ and the SW¼NE¼ lying E of Co.Rd traversing said properties desc.as follows:				[illegible]
A strip of land 80 ft in width ~~being~~ beginning on the centerline of rd 53ft. E of SW 1/16 corn. of SE¼NE¼, of Sec. 1, thence: N 39° 40' W 1600 ft; N 63° 20' W 411 ft. N 10° 10' W 70 ft; to pt on centerline being 40 ft E of centerline, thence; N parallel withe line 1100 ft to S line of Sec. 36., T.19, R.33½ (2 ac.)				213.70 ~~237.70~~
N½N½: Sec. 13 —				160.
NE¼:NW¼SE¼: N½SW¼:SE¼NW¼: Sec. 14 -				320.
N½NE¼:NE¼NW¼: Sec. 36				120.
Bruno, Thaddeus B. and Dryer, Donald A.	1/2/50	53	130	
Easement	10-27-66	81	226.	
Donald A. Dryer	2/24/54	58	46	~~837.70~~
	3/10/65	77	105	813.70 =
			Per map	209.07
remainder in 20 33 - 1400 2100				

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SALEM, OREGON

19 34 1600

T-19-S R-34-E TL 1600

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-2

MAP NO. 219	TAX LOT NO. 24	SECTION	TOWNSHIP 19 S.	RANGE 34 E.W.M.	AERIAL PHOTO DGW 2-18
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION	CITY		

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$NW\frac{1}{4}SE\frac{1}{4}:SE\frac{1}{4}SW\frac{1}{4}:$ Lot 4:$S\frac{1}{2}SE$: Sec. 31	1/2/50	53	130	
	Bruno and Dryer				
	Donald Dryer	2/24/54 3/10/65	58 77	46 105	198.76

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20 34 1200
T-20-S R-34-E TL 1200

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-1

MAP NO. 220	TAX LOT NO. 13	SECTION	TOWNSHIP 20 S.	RANGE 34 E.W.M.	AERIAL PHOTO H1 1-3
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY 1-9;11;H1 2-18	

Indent Each New Course to This Line ▼ LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
$NW\frac{1}{4}SW\frac{1}{4}$:	Sec. 5	1/2/50	53	130	40.
Lots 2-3-4-5-:					
$SE\frac{1}{4}NW\frac{1}{4}$:$SW\frac{1}{4}NE\frac{1}{4}$:$SE\frac{1}{4}$:	Sec. 6	"	"	"	~~398.26~~
Less (3 ac. r/w)	(No Record)				395.26
Lots 1-2-3-4-:					514.72
$E\frac{1}{2}W\frac{1}{2}$:$W\frac{1}{2}E\frac{1}{2}$:$NE\frac{1}{4}NE\frac{1}{4}$: No Record ORW	Sec. 7	"	"	"	~~510.52~~
Lots 1-2-3-4:					274.35
$E\frac{1}{2}SW\frac{1}{4}$:$NE\frac{1}{4}NW\frac{1}{4}$: " "	Sec. 18	"	"	"	~~266.19~~
Lots 1-2-3-4:$E\frac{1}{2}W\frac{1}{2}$: (84.29 acres Sheet)					434.84
$W\frac{1}{2}SE\frac{1}{4}$:$SW\frac{1}{4}NE\frac{1}{4}$:	Sec. 19	"	"	"	~~350.55~~
Lots 1 and 2:					
$E\frac{1}{2}W\frac{1}{2}$:$SW\frac{1}{4}SE\frac{1}{4}$:	Sec. 30	"	"	"	277.70
$SE\frac{1}{4}SW\frac{1}{4}$:$S\frac{1}{2}SE\frac{1}{4}$:					
$W\frac{1}{2}NE\frac{1}{4}$:$E\frac{1}{2}NW\frac{1}{4}$:					
Lot 3:$NE\frac{1}{4}SW\frac{1}{4}$:$N\frac{1}{2}SE\frac{1}{4}$:	Sec. 31	12/22/52	56	101	439.20
$S\frac{1}{2}S\frac{1}{2}$:	Sec. 32	"	"	"	160.
$SW\frac{1}{4}SW\frac{1}{4}$:	Sec. 33	"	"	"	40.
Bruno and Dryer					
Donald Dryer		2/24/54	58	46	2576.07
					~~2479.42~~
		3/10/65	77	105	R/w 4.20
					2483 62
					R/w 8.16
					2491 78
					84.29
					2576.07
			Per map		2548. ··

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19 34 1200

T-19-S R-34-E TL 1200

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5-R

MAP NO. 219	TAX LOT NO. 5-2-1 ACCOUNT NUMBER	SECTION	TOWNSHIP 19 S.	RANGE 34 E.W.M.	AERIAL PHOTO
LOT NO.	BLOCK No.	ADDITION	CITY		

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$SW\frac{1}{4}$: Sec. 20				160.
	$N\frac{1}{2}NW\frac{1}{4}$: Sed. 28				80.
	$N\frac{1}{2}NE\frac{1}{4}$: Sec. 29				80.
					320.
	M. C. Shelley	4/20/59	66	223	
und. ½ Each	Joel C. & Elfreda Sword	4/20/59	66	228	
		6/16/61	A2	572	
		3/15/72	92	409 410	
	John Joel Sword	5/4/78	Probate #		1861
(Joint Tenants)	John Joel Sword (3/4 Int) Elfreda Sword (1/4 Int)	4/21/83	118	473	

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19 34 1300

T-19-5 R-34-E TL 1300

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OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5 u-R

MAP NO. 219	TAX LOT NO. 18	SECTION	TOWNSHIP 19 S.	RANGE 34 E.W.M.	AERIAL PHOTO H2-9
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION	CITY		

Indent Each New Course to This Line — LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
$S\frac{1}{2}SE\frac{1}{4}$: Sec. 21	12/22/47	47	516	80.
$SW\frac{1}{4}SW\frac{1}{4}$: Sec. 22	"	"	"	40.
$W\frac{1}{2}NW\frac{1}{4}$: Sec. 27	"	" 97	631	80.
$N\frac{1}{2}NE\frac{1}{4}$:$SE\frac{1}{4}NE\frac{1}{4}$: $S\frac{1}{2}NW\frac{1}{4}$:$W\frac{1}{2}SW\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$:$NW\frac{1}{4}SE\frac{1}{4}$: $E\frac{1}{2}SW\frac{1}{4}$: Sec. 28	" 7/10/48	" 49	" 220	440.
$E\frac{1}{2}W\frac{1}{2}$:$SW\frac{1}{4}NE\frac{1}{4}$: E ½ NW ¼ NW ¼ (from TL 22) $W\frac{1}{2}SE\frac{1}{4}$: Sec. 33	8/26/48	44	207	~~280~~ 300 ~~280.10~~
Less: (r/w) Beg. at a pt. 260 ft. S of $N\frac{1}{4}$ corner of sec 33, running thence: N 64° W 200ft. to ptc on a 7° curve to left, 364.3 ft. to p.o.t. N 89° 43' W 594.8 ft. (2.1 ac.)	11/9/51	54	242	277.90 ~~278~~.
Easement	4/21/74	96	401	
Und. ½ Each Joel C. and Elfreda Sword	3/15/72	92	409 410	937.90 ~~917.90~~ ~~918~~.
John Joel Sword	5/4/78	Probate # 1861		
(Joint Tenants) JOHN JOEL Sword (3/4 Int) Elfreda Sword (1/4 Int)	4/21/83	118	473	
			per map	928.35

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SALEM, OREGON

20 34 600

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OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5-u2

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
220	8		20 S.	34 E.W.M.	H1;2-11
ACCOUNT NUMBER					

LOT NO.	BLOCK No.	ADDITION	CITY
			1-7

Indent Each New Course to This Line ▼

LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
$NW\frac{1}{4}SW\frac{1}{4}$:				
West 300' of $NE\frac{1}{4}SW\frac{1}{4}$: Sec. 4	6/9/17	Z	387	49.09
Less: (A tract in $NW\frac{1}{4}SW\frac{1}{4}$)				
Beg. at a pt. on rd where the ditch crosses, running E 400 ft. S to intersection of ditch, following in NW dir. to pt of beg.				
2 acres				
Drewsey Grange #738 (2 ac.) when no longer used - reverts to owner	10/25/30	35	66	47.09
$NE\frac{1}{4}SE\frac{1}{4}$: Sec. 5	6/9/17	Z	387	40.
Less (HW r/w)				
(8 ac.) (No record)				32.
Easement to Idaho Power	11/23/73	95	509	
Emma Clark (Muller)				79.09
George C & Margaret A Clark	3/26/65	77	152	
Norman C & Eileen A Clark	8/25/76	101	645	
			per map	80.41

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20 34900

T-20-S R-34-E TL 900

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5-u2

MAP NO. 220	TAX LOT NO. 10	SECTION	TOWNSHIP 20 S.	RANGE 34 E.W.M.	AERIAL PHOTO H1-1-9
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION	CITY		

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	Sec 5				
$SE\frac{1}{4}NW\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$: $NE\frac{1}{4}SW\frac{1}{4}$: $SE\frac{1}{4}SW\frac{1}{4}$: $NW\frac{1}{4}SE\frac{1}{4}$: $S\frac{1}{2}SE\frac{1}{4}$:	Sec. 5				
	George C. and Alice Clark	10/8/51	54	157	280.
$S\frac{1}{2}NW\frac{1}{4}$: $SW\frac{1}{4}SW\frac{1}{4}$;	Sec. 4				120.
$SE\frac{1}{4}NE\frac{1}{4}$:	Sec. 5				40.
	George C & Alice Clark	2/5/59	66	82	440.
		3/26/65	77	152	
Less a parcel in $SE\frac{1}{4}NW\frac{1}{4}$:	TL 10-1 Sec. 4	6/30/75	98	604	- 5.
					435.
	Norman C & Eileen A Clark	8/25/76	101	645	
	Life estate to George C & Alice Clark				
					per map 428.81

Use agreement
to Chevron 11/17/83
BK 120 P14

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CODE NO. 5 u-R

MAP NO. 220	TAX LOT NO. 5-B	SECTION	TOWNSHIP 20 S.	RANGE 34 E.W.M.	AERIAL PHOTO H1 2-11
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY	

Indent Each New Course to This Line ▼	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
$NW\frac{1}{4}SE\frac{1}{4}$:$S\frac{1}{2}NE\frac{1}{4}$: Lots 1-2:E 1020' of $NE\frac{1}{4}SW\frac{1}{4}$:	Sec. 4				232.38
$N\frac{1}{2}SE\frac{1}{4}$:	Sec 16				80.
Joel C. and Elfreda Sword		8/26/48	44	207	312.38
		3/15/72	92	409 410	
Norman C & Eileen A Clark		8/25/76	101	647	
				per map	232.38
		Remainder in 2034	1900		

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19 34 300

T-19-S R-34-E TL 300

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 3-2

MAP NO.	TAX LOT NO. / ACCOUNT NUMBER	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
219	3-2-1		19 S.	34 E.W.M.	

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	Lot 2, 3, 4: S½ NW¼: SW¼	Sec. 4			358.28
	Lot 1, 2: S½ NE¼: SE¼	Sec. 5			318.87
	SE¼ SE¼	Sec. 7			40.00
	NE¼: E½ SE¼: SW¼ SW¼: W½ SE¼: E½ SW¼	Sec. 8			440.00
	N½: SW¼	Sec. 9			480.00
	W½ NW¼	Sec. 10			80.00
	E½: S½ SW¼	Sec. 17			400.00
	E½ NE¼: SE¼	Sec. 18			240.00
					2,357.15

Also:

Begin at the NE cor of Sec. 19, thence W on Sec. line between Secs 18-19 a distance of 953 Ft. to a point of the tract to be conveyed;
thence W. on Sec. line 446 ft.
thence S 1 52' E. 153 Ft;
thence S 44 44' E. 142 ft.
thence N52 43' E 428 ft to the point of begin.
being within the NE¼NE¼ & NE¼NW¼: 1.40

2,358.55

Harold Beaubien	10/17/75	99	360	
Cont. to: Robert Gille	3/16/81	114	363	—
Robert Gille, Notice of Sale. To Glenn E. Ellingson	6/6/83	118	684	
cont. of sale	1/13/84	120	274	
			per map	2 358.64

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19 34 800

T-19-S R-34-E TL 800

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

-OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 5-1

ACCOUNT NUMBER	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
219	3-I		19 S.	34 E.W.M.	

BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	W¼: N½SW¼: Sec. 17				160.
	Ruth E. Riley	5/12/61	Prob. # 1279		
	Howard Riley	2/2/65	76	578	
	Riley Livestock Co				
	Harold Beaubien and Robert L Beaubien	5/9/72	93	20	
	Harold Beaubien	10/17/75	99	350	
	Notice of Sale to: Robert Gille	3/16/81	114	353	
	Notice of Sale to: Glenn E. Ellingson	6/6/83	118	684	

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20 34 300

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OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO. 220	TAX LOT NO. 3	SECTION	TOWNSHIP 20 S.	RANGE 34 E.W.M.	AERIAL PHOTO
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION	CITY		

Indent Each New Course to This Line ▼ LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
$S\frac{1}{2}SW\frac{1}{4}$:	Sec. 2	3/12/41	39	325	80.
$SW\frac{1}{4}NE\frac{1}{4}$: $SE\frac{1}{4}SE\frac{1}{4}$: $NW\frac{1}{4}SE\frac{1}{4}$:	Sec. 3	"	"	"	120.
$SE\frac{1}{4}NE\frac{1}{4}$: $W\frac{1}{2}NE\frac{1}{4}$: $E\frac{1}{2}NW\frac{1}{4}$: $SE\frac{1}{4}$:		6/10/39	38	434	
$NE\frac{1}{4}NE\frac{1}{4}$:		2/8/16	Y	294	
Less: (Rd r/w)	Sec. 10				397.
$NE\frac{1}{4}NW\frac{1}{4}$: $W\frac{1}{2}NE\frac{1}{4}$: $SE\frac{1}{4}NE\frac{1}{4}$: $NE\frac{1}{4}SE\frac{1}{4}$:		3/12/41	39	325	
$W\frac{1}{2}SW\frac{1}{4}$: $SE\frac{1}{4}SW\frac{1}{4}$:		6/10/39	38	434	
$NE\frac{1}{4}SW\frac{1}{4}$: $NW\frac{1}{4}SE\frac{1}{4}$: $S\frac{1}{2}SE\frac{1}{4}$: (all except NE¼ NE¼)		12/11/35	37	77	
$W\frac{1}{2}NW\frac{1}{4}$: $SE\frac{1}{4}NW\frac{1}{4}$:		2/9/16	Y	294	
Less (Rd r/w)	Sec. 11				591.
$NW\frac{1}{4}SW\frac{1}{4}$: $S\frac{1}{2}NW\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$:	Sec. 12	12/11/35	37	77	160.
$N\frac{1}{2}NW\frac{1}{4}$:	Sec. 14	6/10/39	38	434	80.
$N\frac{1}{2}NE\frac{1}{4}$:	Sec. 15	"	"	"	80.
					1508.
Joseph H. Cronin & Emma Cronin		Prob. #1526 10/2/68 3/2/4/60.	67	375	
Harvey & Patsy Cronin		4/11/69	86	38	
				per map	1509.95

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SALEM, OREGON

20 34 1600

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OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO. 220	TAX LOT NO. 20	SECTION	TOWNSHIP 20 S.	RANGE 34 E.W.M.	AERIAL PHOTO
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY	

Indent Each New Course to This Line	LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
$SW\frac{1}{4}SW\frac{1}{4}$: $E\frac{1}{2}SW\frac{1}{4}$: $SE\frac{1}{4}SE\frac{1}{4}$: $W\frac{1}{2}SE\frac{1}{4}$:		Sec. 12	11/19/17 11/12/06	Z K	562 548	240.
$N\frac{1}{2}NE\frac{1}{4}$:			"	"	"	
$N\frac{1}{2}NW\frac{1}{4}$:		Sec. 13	3/29/16	X	594	160.
$N\frac{1}{2}NE\frac{1}{4}$:		Sec. 14	"	"	"	80.
$NE\frac{1}{4}$:		Sec. 35	9/22/36	37	310	160.
$NE\frac{1}{4}NE\frac{1}{4}$:			3/5/26	32	371	
$NW\frac{1}{4}$: $W\frac{1}{2}NE\frac{1}{4}$:		Sec. 36	10/6/21	30	12	280.
	J.L.Sitz(Estate)					920.
	James H & Betty Sitz		2/22/72 2/27/81	94 114	229 199	
LESS: $E\frac{1}{2}NE\frac{1}{4}NW\frac{1}{4}$: $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}$		Sec 13 TL.20-1	5/27/81	114	688	-40.00 880.00
Easement			2/3/82	116	271	
Less: $SE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$		Sec. 13 TL 20-2				-40.00 840.00
						per map 393.53

remainder in 20-34-2500

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20 34 1700

T-20-S R-34-E TL 1700

TWP.	RGE.	SEC.	1/4	1/16	PARCEL NUMBER	TYPE	SPEC. INT. IN REAL PROP.	CODE AREA NUMBER
20	34	13			20-1			13-1

220 MAP NUMBER

20-1 TAX LOT NUMBER

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTY

COUNTY ASSESSOR'S OFFICE

FORMERLY PART OF 20

INDENT EACH NEW COURSE TO THIS POINT	DESCRIPTION AND RECORD OF CHANGE	DATE OF ENTRY ON THIS CARD	DEED RECORD VOL.	DEED RECORD PG.	ACRES REMAINING
	E½NE¼NW¼: W½NW¼NE¼ Sec 13				40.00
	Walter L. & Patricia J. Sitz	5/27/81	114	688	
			per map		38.07

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SALEM, OREGON

OR A & A-C-48 (REV. 12-72)

20 34 1800

T-20-S R-34-E TL 1800

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
220	20-2		20 S.	34 E.W.M.	
ACCOUNT NUMBER					

LOT NO. _____ BLOCK No. _____ ADDITION _____ CITY _____

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
▼	$SE\frac{1}{4}NW\frac{1}{4}NE\frac{1}{4}$, $S\frac{1}{2}NE\frac{1}{4}NE\frac{1}{4}$, $NE\frac{1}{4}NE\frac{1}{4}NE\frac{1}{4}$ Sec. 13	6/1/83	118	661	40.00
	James H. Jr. & Janyce D. Sitz				
				Per map	37.93

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20 34 1400

T-20-S R-34-E TL 1400

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CODE NO. 13 u-1

MAP NO. 220	TAX LOT NO. 18	SECTION 20	TOWNSHIP 34 S.	RANGE ____ E.W.M.	AERIAL PHOTO H1 4-5;
ACCOUNT NUMBER					
LOT NO. ____	BLOCK No. ____	ADDITION ____		CITY ____	

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$NE\frac{1}{4}NE\frac{1}{4}$: Sec. 12				
	Less: (Hw r/w)		54	244	
	Turen J.& Wilma Dunten	4/10/45	42	25	40.
	Real Estate Mortgage: Baker Pro. Credit 8-4-84 Asz p 217			per map	38.62

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20 34 1500

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CODE NO. 13 u-1

MAP NO. 220	TAX LOT NO. 19	SECTION	TOWNSHIP 20 S.	RANGE 34 E.W.M.	AERIAL PHOTO #1 3-5;
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY 4-5;	

Indent Each New Course to This Line ▼	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
$SE\frac{1}{4}NE\frac{1}{4}$: $NE\frac{1}{4}SE\frac{1}{4}$:	Sec. 12				
	Hattie D. Miler	12/22/49	51	721	80.
	(Life int in Est.) then to:	6/4/58	65	87	
	Charles A & Norma L Miler				
(B+L. Deed)	Chas A & Norma L Miler	12/30/69	87	386	
				per map	79.38

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20 35 900

T-20-S R-35-E TL-900

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CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
245	9		20 S.	35 E.W.M.	HI 4-7;
ACCOUNT NUMBER					

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line ▼

LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
$W\frac{1}{2}SW\frac{1}{4}$:	Sec. 5	1/20/37	37	390	80.
Lots 1-2-3: $SE\frac{1}{4}NW\frac{1}{4}$: $S\frac{1}{2}NE\frac{1}{4}$: $E\frac{1}{2}SW\frac{1}{4}$: $SE\frac{1}{4}$:	Sec. 6	"	"	"	478.31
$E\frac{1}{2}NE\frac{1}{4}$:		"	"	"	
$SE\frac{1}{4}SW\frac{1}{4}$: Lot 4:	Sec. 7	11/19/17	Z	562	160.75
$NW\frac{1}{4}SE\frac{1}{4}$: $W\frac{1}{2}NW\frac{1}{4}$: $E\frac{1}{2}SE\frac{1}{4}$:	Sec. 8	1/20/37	37	390	200.
$NW\frac{1}{4}SW\frac{1}{4}$:	Sec. 9	"	"	"	40.
$NE\frac{1}{4}NE\frac{1}{4}$:	Sec. 17	"	"	"	40.
$NW\frac{1}{4}$: $NE\frac{1}{4}SW\frac{1}{4}$: $NW\frac{1}{4}SE\frac{1}{4}$: Less: ($NW\frac{1}{4}SE\frac{1}{4}$:)	Sec. 18		Z	562	201.50
Lot 1: $NE\frac{1}{4}NW\frac{1}{4}$: $NW\frac{1}{4}NE\frac{1}{4}$:	Sec. 31		32	371	120.40
					1320.96
J.L. Sitz (Estate)					
James H & Betty Sitz		2/22/73	94	229	
		2/27/81	114	199	
				per map	715.74
remainder in 20 35				1500	
				1700	
				5000	

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T-20 R-35 TL 1500

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CODE NO. 13-2

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
ACCOUNT NUMBER			20 S.	35 E.W.M.	

LOT NO. _____ BLOCK No. _____ ADDITION _____ CITY _____

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
▼	Sec. 18: lots 1, 2, E½NW¼, NE¼SW¼				
	Sitz, James H. & Betty		114	199	278.12

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20 35 1200

T-20-S R-35-E TL 1200

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CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
245	13		20 S.	35 E.W.M.	HI 4-5:

ACCOUNT NUMBER

LOT NO. _____ BLOCK No. _____ ADDITION _____ CITY _____

Indent Each New Course to This Line — LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
Lot 1: NE¼NW¼: Sec. 7 Turen J.& Wilma M. Dunten	4/10/45	42	25	80.50
Real Est. Mort. A32 P217 Baker Prod. Credit Assn.				per map 78.08

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20 35 1300

T-20-S R-35-E TL 1300

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CODE NO. 13-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
245	12-1		20 S.	35 E.W.M.	
ACCOUNT NUMBER					

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	DEED RECORD Volume	DEED RECORD Page	ACRES REMAINING
▼	W½NE¼: Sec. 7	6/2/61	Prob #	1305	80.
	Floyd T. Dunten				
	Floyd T & Della M Dunten	12/2/81	116	61	
				Per map	77.43

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SALEM, OREGON

20 35 1400

T-20-S R-35-E TL 1400

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OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
245	14		20 S.	35 E.W.M.	H1 4-5;
ACCOUNT NUMBER					

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
▼	Lots 2-3: $SE\frac{1}{4}NW\frac{1}{4}$:$NE\frac{1}{4}SW\frac{1}{4}$:$W\frac{1}{2}SE\frac{1}{4}$: Sec. 7				
	Hattie D. Miler	12/22/49	51	721	241.46
	(Life int in Est.) Then to:	6/4/58	65	87	
	Charles A & Norma L Miler				
	(B + S Deed) Chas A & Norma L Miler	12/30/69	87	386	
				per map	239.04

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SALEM, OREGON

T-20 R-35 TL 1800

OFFICI RECORD OF DESCRIPTIONS OF REAL PROPERTIES

:ICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13-2

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
ACCOUNT NUMBER			20 S.	35 E.W.M.	

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line — LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
▼Jordan, Lloyd D & Eunice		52	72	392.58

SE¼SW¼ Sec. 8
N½NW¼: SW¼NW¼: W½SW¼ Sec. 17
E½SE¼NE¼: E½NE¼SE¼: SE¼SE¼ Sec. 18
NE¼NE¼: — Sec. 19
NW¼NW¼: — Sec. 20

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20 35 2800

T-20-S R-35-E TL 2800

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OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO. 245	TAX LOT NO. 12	SECTION	TOWNSHIP 20 S.	RANGE 35 E.W.M.	AERIAL PHOTO
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION	CITY Hl-1-4;1-5;1-7;		

Indent Each New Course to This Line — LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
$SW\frac{1}{4}NE\frac{1}{4}$: $NW\frac{1}{4}NE\frac{1}{4}$: 7.2.12-1	Sec. 7 Floyd.	9/16/15	X	442	80.
$S\frac{1}{2}SE\frac{1}{4}$:		11/28/05	K	378	
Less: ($SE\frac{1}{4}SE\frac{1}{4}$: TL# 7)		2/8/50	52	72	
$NW\frac{1}{4}SE\frac{1}{4}$:		6/25/28	33	399	
$N\frac{1}{2}NE\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$: $W\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$: $W\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$:					
	Sec. 18				240.
$N\frac{1}{2}NE\frac{1}{4}$:		11/28/05	K	378	
Less: ($NE\frac{1}{4}NE\frac{1}{4}$: TL# 7)		2/8/50	52	72	
	Sec. 19				40.
Margaret Dunten					360.
Less $SW\frac{1}{4}NE\frac{1}{4}$: $NW\frac{1}{4}NE\frac{1}{4}$: Sec. 7 TL 12-1		Prob # 1305			-80.
					280.
Byron E. Dunten		6/2/61	Prob #	1305	
easement		7/19/82	118	247	
					per map 278.07

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T-20 R-35 T 1900

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OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13-2

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
ACCOUNT NUMBER			20 S.	35 E.W.M.	

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	DEED RECORD Volume	DEED RECORD Page	ACRES REMAINING
▼	Sec. 8: SW¼SE¼ 17: SE¼NW¼, E½SW¼, W½E½, SE¼NE¼, SE¼SE¼ 20: E½NW¼, NE¼				635.00
	Howard, Thomas C. & Eleanor ; Howard, Thomas Martin		117 316 117-419 420		

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WATER RESOURCES DEPT
SALEM, OREGON

20 35 3100

T-20-S R-35-E TL 3100

TWP	RGE	SEC	1/4	1/16	TAX LOT NUMBER	TYPE	SPEC. INT. IN REAL PROP	CODE AREA NUMBER
20	35				26-1			13-1

MAP NUMBER M245 ACCOUNT NUMBER TL 26-1

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTY

COUNTY ASSESSOR'S OFFICE

FORMERLY PART OF T.L. NO. 26 & 28-1

INDENT EACH NEW COURSE TO THIS POINT	DESCRIPTION AND RECORD OF CHANGE	DATE OF ENTRY ON THIS CARD	DEED RECORD VOL.	DEED RECORD PG.	ACRES REMAINING
	All that portion of $NE\frac{1}{4}SE\frac{1}{4}$ lying NE of Co. Rd Sec. 20				15.00
	$N\frac{1}{2}$: $SW\frac{1}{4}$: less portion lying SW of Co. Rd in $SW\frac{1}{4}SW\frac{1}{4}$: also less: a portion of $NE\frac{1}{4}SW\frac{1}{4}$, and $SE\frac{1}{4}NW\frac{1}{4}$, and $SW\frac{1}{4}NE\frac{1}{4}$: Sec. 21				459.75
	All that portion of $NE\frac{1}{4}NW\frac{1}{4}$: lying NE of Co. Rd Sec. 28				5.00
					479.75
	Nan Kane % Thomas C Howard Unrecorded				
	Buyer's assign for Collateral security between Howard & Baker Prod. Credit Assn 1/6/84 BK 120 P 226	10/7/83	119	530	

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WATER RESOURCES DEPT
SALEM, OREGON

20 35 3300

T-20-S R-35-E TL 3300

TWP	RGE	SEC	1/4	1/16	TAX LOT NUMBER	TYPE	SPEC. INT. IN REAL PROP	CODE AREA NUMBER
20	35				28-1			13-1

MAP NUMBER M245 ACCOUNT NUMBER TL 28-1

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTY

COUNTY ASSESSOR'S OFFICE

FORMERLY PART OF T.L. NO.

INDENT EACH NEW COURSE TO THIS POINT	DESCRIPTION AND RECORD OF CHANGE		DATE OF ENTRY ON THIS CARD	DEED RECORD VOL.	DEED RECORD PG.	ACRES REMAINING
	$SE\frac{1}{4}$:	Sec. 21				160.00
	$SW\frac{1}{4}SW\frac{1}{4}$: $S\frac{1}{2}NW\frac{1}{4}SW\frac{1}{4}$:	Sec. 22				60.00
	$NW\frac{1}{4}NE\frac{1}{4}$:	Sec. 28				40.00
						260.00
	c/o Patrick & Susan O'Toole					
	Charles Patrick & Susan M O'Toole					
	dba O'Toole Cattle Company		2/1/80	111	429	
			10/7/83	119	530	
				per map		253.72

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DR PT-C-48 (3-70)

20 35 23 200

T-20-S R-35-E TL 200

Sec 23

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO. 245	TAX LOT NO. 30	SECTION	TOWNSHIP 20 S.	RANGE 35 E.W.M.	AERIAL PHOTO Hl 6-9;
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY	

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
▼					
	Irreg.desc.in $SW\frac{1}{4}SE\frac{1}{4}$, Beg.at a pt from which the NW corn of $SW\frac{1}{4}SE\frac{1}{4}$, of sec.23 bears S 83° 15' W 475 ft; which is the pt of beg of said tract and running S 26° 30' W 208.7ft, thence: S 63° 30' E, 208.7 ft; to pt of beg. (should also run, (1 acre known as Needham Tr.) N 64° 7'E,208.7 ft, and N 26° 7' W,208.7 ft)	3/4/54	58	62	
	Irreg.desc.in $NW\frac{1}{4}SE\frac{1}{4}$: Beg.at SW corn of $NW\frac{1}{4}SE\frac{1}{4}$:of sec.23, thence: E 747 ft; N 26° 30' E, 62 ft; N 66° along S boundary of Co.rd.850 ft more or less to pt on W line of $NW\frac{1}{4}SE\frac{1}{4}$, thence S 410 ft to pt of beg.(7.01 acres)	"	"	"	
	Irreg.desc. in$NE\frac{1}{4}SW\frac{1}{4}$: Beg. at the SW corn of $NW\frac{1}{4}SE\frac{1}{4}$, of sec.23,thence: N 393 ft; N 88° 15' W, 142 ft; S 5° E, 200 ft; S 13° W, 196 ft; E 170 ft to pt of beg.(1.29 acres)	3/4/54	58	60	
	Irreg.desc. in $SW\frac{1}{4}SE\frac{1}{4}$: Beg. at SW corn of $NW\frac{1}{4}SE\frac{1}{4}$: of sec.23,thence: S 238 ft; N 72° 30' E,on a 14° curve, 378 ft; S 500° E, 76 ft; N 26° 30' E, 140 ft; S 63° 30' E, 208.7 ft; N 26° 30' E, 177 ft; W 747 ft, to the pt of beg.(2.81 acres)	"	"	"	

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20 35 200

T-20-S R-35-E Sec 23
TL 200

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. _____

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP ____ S.	RANGE ____ E.W.M.	AERIAL PHOTO
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY	

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	Irreg.desc. in $SE\frac{1}{4}SW\frac{1}{4}$: Beg. at SW corn of $NW\frac{1}{4}SE\frac{1}{4}$, of sec.23, thence: W 170 ft; S 13° W, 150 ft; S 65° 30' E, on a 14° curve, 227 ft; N 238 ft, to pt of beg. (.90 acres)	3/4/54	58	60	
	Forrest James & Nellie B. Freeman				13.01
				Per map	8.80

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CODE NO. 13 u-1

MAP NO. 245	TAX LOT NO. 34	SECTION	TOWNSHIP 20 S.	RANGE 35 E.W.M.	AERIAL PHOTO III 6-9;
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY	

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$S\frac{1}{2}S\frac{1}{2}$: Sec. 24				
	Effie L. Williams (% Rotha French)		Probate F	520	160.
	Effie L Williams	1/4/74	95	689	
	Rotha French	11/18/79	111	185	

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T-20 R-35 TL 3600

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CODE NO. 13-2

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
ACCOUNT NUMBER			20 S.	35 E.W.M.	

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD			ACRES REMAINING
		Date	Volume	Page	
▼	Sec. 24: NE¼SE¼				
	Arnold, Barbara & Kenneth % French, Rotha		81	114	40.00

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T. 20 R. 36 TL 2000

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CODE NO. 13-2

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
ACCOUNT NUMBER			20 S.	36 E.W.M.	

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	DEED RECORD Volume	DEED RECORD Page	ACRES REMAINING
▼	Sec. 19: lots 3 & 4 30: lot 1 Arnold, Barbara & Kenneth % French, Rotha Drewsey, OR 97904		Probate	#685	120.68

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CODE NO. 13 u-1

MAP NO. 269	TAX LOT NO. 19	SECTION	TOWNSHIP 20 S.	RANGE 36 E.W.M.	AERIAL PHOTO H1 7-13:
ACCOUNT NUMBER					
LOT NO.	BLOCK No.	ADDITION		CITY	

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$SW\frac{1}{4}SW\frac{1}{4}$: Sec. 29				40.
	$SE\frac{1}{4}NE\frac{1}{4}$:$N\frac{1}{2}SE\frac{1}{4}$: Less(Hw r/w) 6 ac Sec. 31				114.
	$W\frac{1}{2}NW\frac{1}{4}$:$NE\frac{1}{4}NW\frac{1}{4}$: $NW\frac{1}{4}SW\frac{1}{4}$: Less:(Hw r/w) Sec. 32				156.13
	Castolia Drinkwater	11/17/32	35	601	310.13
	Notice of Sale from J W & Carol I Robertson to: William R ~~& E Rozann~~ Robertson owner.	1/13/78	105	464	
	Contract Castolia Drinkwater to: J.W. & Carol Robertson	**7/1/81**	**115**	**139 146**	
	Less parc of land in E½ Sec 31 & W½W½ Sec 32 TL-3-1E	**12/23/81**	**116**	**135**	**-.27**
					309.86
	105-464 (Part of Deed in error, but corrected in Book 115-139-146) corrected	6/28/83	119	110	
	assign. of Cont. (Distribution of Estate assets) To: Jane Brewer.	7-29-86	per map 861	062	310.40

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CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
269	18		20 S.	36 E.W.M.	H1 7-11;
ACCOUNT NUMBER					

LOT NO. _____ BLOCK No. _____ ADDITION _____ CITY _____

Indent Each New Course to This Line ▼ LEGAL DESCRIPTION		DEED RECORD Date	Volume	Page	ACRES REMAINING
		10/5/04	K	138	
$SE\frac{1}{4}NW\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$:		10/21/08	K	360	
$E\frac{1}{2}NE\frac{1}{4}$: $E\frac{1}{2}SW\frac{1}{4}$: $SE\frac{1}{4}$:	Sec. 19	10/22/07	M	109	400.
$NW\frac{1}{4}$:	Sec. 20	10/29/41	39	542	160.
$NE\frac{1}{4}NW\frac{1}{4}$: 11 NE:		2/12/01	J	35	120
$E\frac{1}{2}$: Katt. Lee	Sec. 30		K	138	~~360~~.
		11/8/04	D	194	
$N\frac{1}{2}NE\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$: Lee	Sec. 31	12/4/40	39	221	120
	S.S. Williams(Estate)				1040.
Easement in NW: 20 (42-46)					
	Lee E Williams and D W Williams	1/4/74	95	690	
Less $S\frac{1}{2}NE\frac{1}{4}$: $SE\frac{1}{4}$: Dec. 30					
$N\frac{1}{2}NE\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$: Sec. 31 TL 18-1		8/18/75	99	98	- 360.
		1/31/77	103	36	680.
	D. W. Williams	8/18/75	99	99	
	contr to: Terry S & Nancy A Williams	1/24/77	103	1	
	owner				

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OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
269	16		20 S.	36 E.W.M.	
ACCOUNT NUMBER					

LOT NO.	BLOCK No.	ADDITION	CITY
			Hl 7-9;7-11;

Indent Each New Course to This Line ▼	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
	$SE\frac{1}{4}NW\frac{1}{4}$:$E\frac{1}{2}SW\frac{1}{4}$:$W\frac{1}{2}SE\frac{1}{4}$: $SW\frac{1}{4}NE\frac{1}{4}$: Sec. 17				
	E,N.& Agnes Stallard	11/20/46	44	547	240.
	Life Estate →Agnes Stallard	11/28/60	68	367	
	Chester O & Muriel I Stallard	8/8/66	80	485	

Cert. of Death: Agnes Stallard
11/5/84 840503

James & Betty Sitz

RECEIVED
OCT 28 1987
WATER RESOURCES DEPT
SALEM, OREGON

Application No. 69433
Permit No.

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

OFFICE OF COUNTY ASSESSOR — HARNEY COUNTY, OREGON

CODE NO. 13 u-1

MAP NO.	TAX LOT NO.	SECTION	TOWNSHIP	RANGE	AERIAL PHOTO
269	11		20 S.	36 E.W.M.	H1 7-9;
ACCOUNT NUMBER					

LOT NO.	BLOCK No.	ADDITION	CITY

Indent Each New Course to This Line	LEGAL DESCRIPTION	DEED RECORD Date	Volume	Page	ACRES REMAINING
▼					
$E\frac{1}{2}W\frac{1}{2}$:$W\frac{1}{2}SE\frac{1}{4}$:$W\frac{1}{2}SW\frac{1}{4}$:	Sec. 8				320.
$NE\frac{1}{4}NW\frac{1}{4}$:$W\frac{1}{2}NW\frac{1}{4}$: $NW\frac{1}{4}NE\frac{1}{4}$:	Sec. 17				160.
	D.W.& Irene Williams	2/2/42	39	635	480.
				per map	478.20
		1-9-87	870	021	

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OCT 28 1987
WATER RESOURCES DEPT
SALEM, OREGON

Application No. 69433
Permit No.

Russ or Laura

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

MALHEUR BASIN WATER USERS ASSOCIATION
P.O. Box 237
DREWSEY, OREGON 97904 503-493-2311

to use the waters of the Middle Fork Malheur River tributary to the Snake River, for irrigation of 721.0 acres.

This permit is issued approving Application 69433. The date of priority is July 1, 1991. The use is limited to not more than 9.01 cubic feet per second, or its equivalent in case of rotation, measured at the point of diversion from the source.

The points of diversion are located as follows:

NE 1/4 SW 1/4, Section 11, Township 20 South, Range 34 East, WM; NE 1/4 SW 1/4, Section 23, and SW 1/4 NE 1/4, Section 25, Township 20 South, Range 35 East, WM.

The amount of water used for irrigation under this right is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 1.5 acre-feet for each acre. The use of water for irrigation under this permit is limited to the period of April and May of each year.

Operating measuring devices capable of measuring the rate of appropriation and measuring and recording total volume of water appropriated during the irrigation season shall be installed at all diversion points identified under this permit. Installation shall be completed under the supervision of the watermaster on a schedule to be established by the watermaster. Measuring devices shall meet the requirements of the Water Resources Department (Department). The Department shall consult with Oregon Department of Fish and Wildlife in establishing requirements for the measuring devices.

All diversions shall be in compliance with applicable laws requiring fish screening prior to any diversion under this permit.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

A description of the proposed place of use under this permit is as follows:

PAT O'TOOLE

NE 1/4 SE 1/4	7.9 ACRES
NW 1/4 SE 1/4	3.0 ACRES

SECTION 21
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

ROTHA FRENCH

SW 1/4 SW 1/4	34.6 ACRES
SE 1/4 SW 1/4	27.8 ACRES
SW 1/4 SE 1/4	31.4 ACRES
SE 1/4 SE 1/4	40.0 ACRES

SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

KEN ARNOLD

NE 1/4 SE 1/4 28.4 ACRES
SECTION 24
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

NW 1/4 SW 1/4 35.0 ACRES
SW 1/4 SW 1/4 27.5 ACRES
SECTION 19
NW 1/4 NW 1/4 16.6 ACRES
SECTION 30
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

CONLEY MARSHAL

SE 1/4 NE 1/4 6.1 ACRES
NW 1/4 SW 1/4 4.6 ACRES
SE 1/4 SW 1/4 1.7 ACRES
NE 1/4 SE 1/4 25.1 ACRES
NW 1/4 SE 1/4 20.3 ACRES
SW 1/4 SE 1/4 22.5 ACRES
SE 1/4 SE 1/4 1.4 ACRES
SECTION 22

NE 1/4 SW 1/4 1.8 ACRES
NW 1/4 SW 1/4 9.0 ACRES
SE 1/4 SW 1/4 23.2 ACRES
NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 6.0 ACRES
SW 1/4 SE 1/4 32.3 ACRES
SE 1/4 SE 1/4 2.0 ACRES
SECTION 23

NE 1/4 NE 1/4 40.0 ACRES
NW 1/4 NE 1/4 34.6 ACRES
NE 1/4 NW 1/4 6.6 ACRES
SECTION 26
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Map shows acres in 20S 35E ✓

WRIGHT WILBER

SE 1/4 NE 1/4 19.0 ACRES
SW 1/4 NE 1/4 14.8 ACRES
NE 1/4 SE 1/4 14.4 ACRES
SE 1/4 SE 1/4 0.5 ACRE
SECTION 25
TOWNSHIP 20 SOUTH, RANGE 35 EAST, WM

SW 1/4 NW 1/4 26.0 ACRES
SE 1/4 NW 1/4 1.2 ACRES
NE 1/4 SW 1/4 28.8 ACRES
NW 1/4 SW 1/4 40.0 ACRES
SW 1/4 SW 1/4 32.0 ACRES
SE 1/4 SW 1/4 29.6 ACRES
SECTION 30

NE 1/4 NW 1/4 8.0 ACRES ✓
NW 1/4 NW 1/4 1.3 ACRES
SECTION 31
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

ELFREDA SWORD

NE 1/4 SE 1/4 2.0 ACRES
NW 1/4 SE 1/4 1.6 ACRES
SE 1/4 SE 1/4 0.4 ACRE
SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Can't locate these acres on a map

JIM FREEMAN

NE 1/4 SW 1/4	1.1 ACRES
SE 1/4 SW 1/4	0.5 ACRE
NW 1/4 SE 1/4	5.0 ACRES
SW 1/4 SE 1/4	3.4 ACRES

SECTION 23
TOWNSHIP 20 SOUTH, RANGE 36 EAST, WM

Maps shows acres in 20S 35E

Actual construction work shall begin on or before August 28, 1996, and shall be completed on or before October 1, 1998. Complete application of the water to the use shall be made on or before October 1, 1999.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

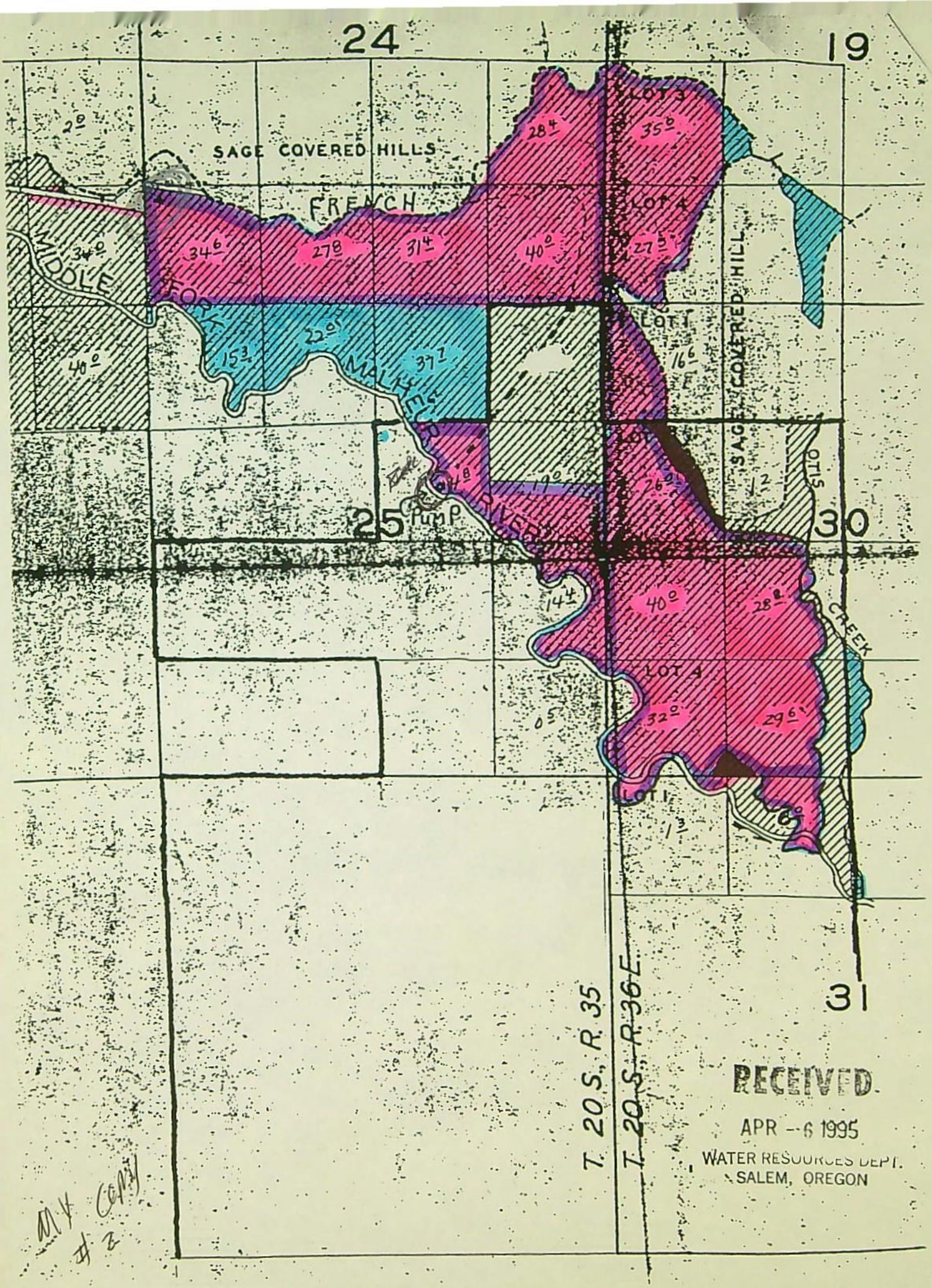
The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

This permit is issued pursuant to the Final Order in the matter of protested Application 69433 in the name of Malheur Basin Water Users Association and Instream Water Right Applications 70325 and 70349 through 70352 in the name of the Oregon Department of Fish and Wildlife for use of water from the Middle Fork Malheur River and tributaries, Malheur County, Oregon, recorded in Volume 47, Pages 97 through 120, Special Order Records of the Water Resources Director.

Issued this date August 28, 1995.

Martha O. Pagel

Water Resources Department
Martha O. Pagel
Director



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APR -6 1995
WATER RESOURCES DEPT.
SALEM, OREGON

IGATED LANDS

RECLAMATION CO.

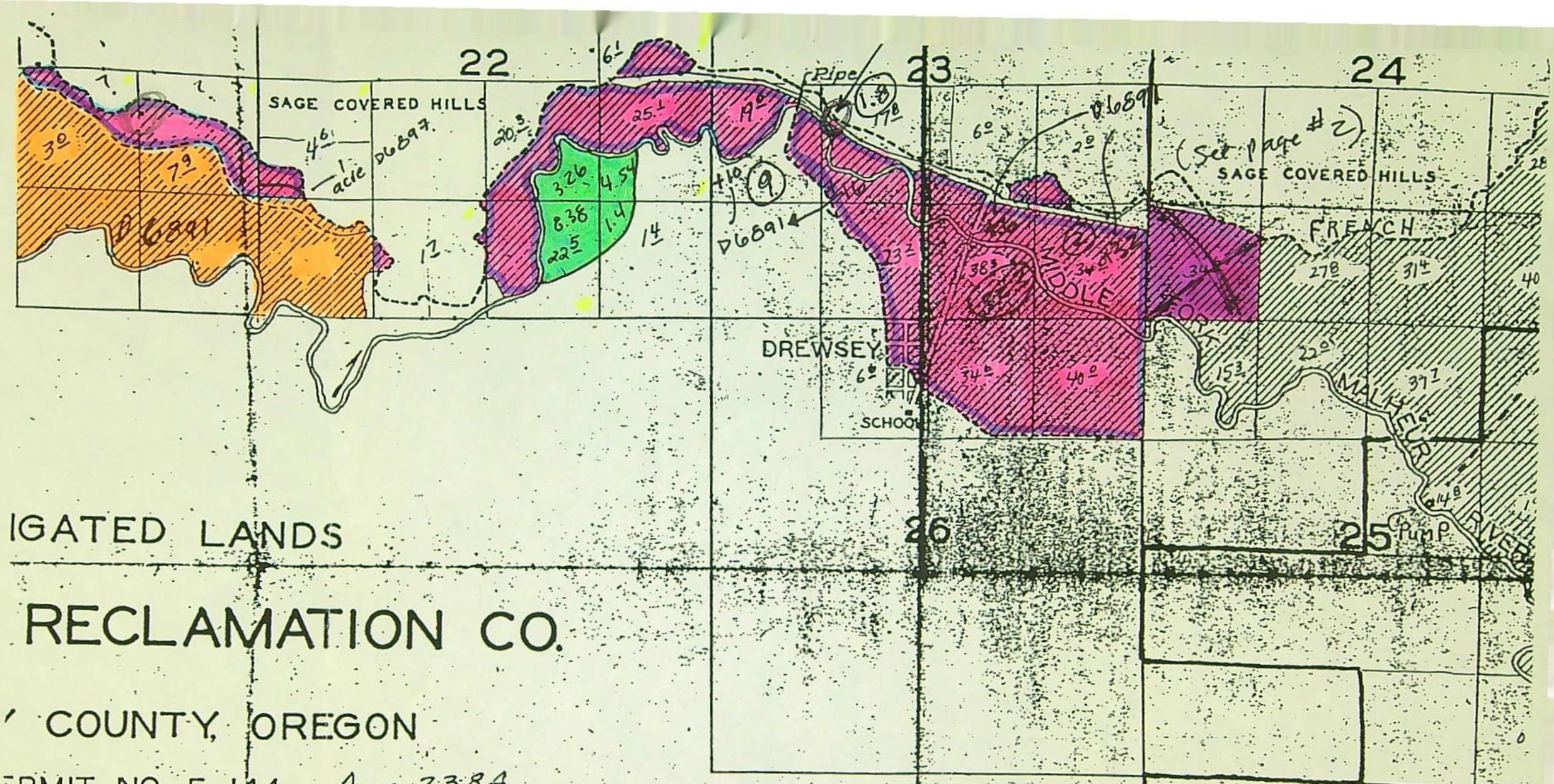
' COUNTY, OREGON

ERMIT NO. E-144 App 2384

OF THE STATE ENGINEER

NOVEMBER, 1934

my copy #1



T-20-S
R-36-E

R-35-E
R-36-E

8" = 1 MILE

C = Cottonwood Cr

SP = Spring Cr
OT = Ottis Cr

Application No. 69433
Permit No.

RECEIVED

County Disposal Site

County Road

Ottis Cr

Cottonwood Cr

D.V. pt #20

D.V. pt #21

D.V. pt

2505'

2520'

580'

280'

40' C

Tax Lot 1

40° OT C

35° C

37° C

Taylor & South Ditch

Stalmad Ditch

2 SP

20° SP

Dirt Road

15° OT

25 SP

5° SP

5° SP

Tax Lot 16

Taylor & South Ditch

15° OT

Swamp

15 SP

20° OT

Swamp

8° SP

8 SP

Hill

4 SP

Dirt Road

Ottis Cr

345'

825'

D.V. pt #21

10°

30°

Tax Lot 18

Stewart Williams Ditch

7°

8°

16°

13°

17°

Dirt Road

Duncan Ditch

3°

6°

40°

40°

10°

Terry Williams

35°

26°

30°

35°

40°

40°

12°

Tax Lot 19

12°

25°

Mason

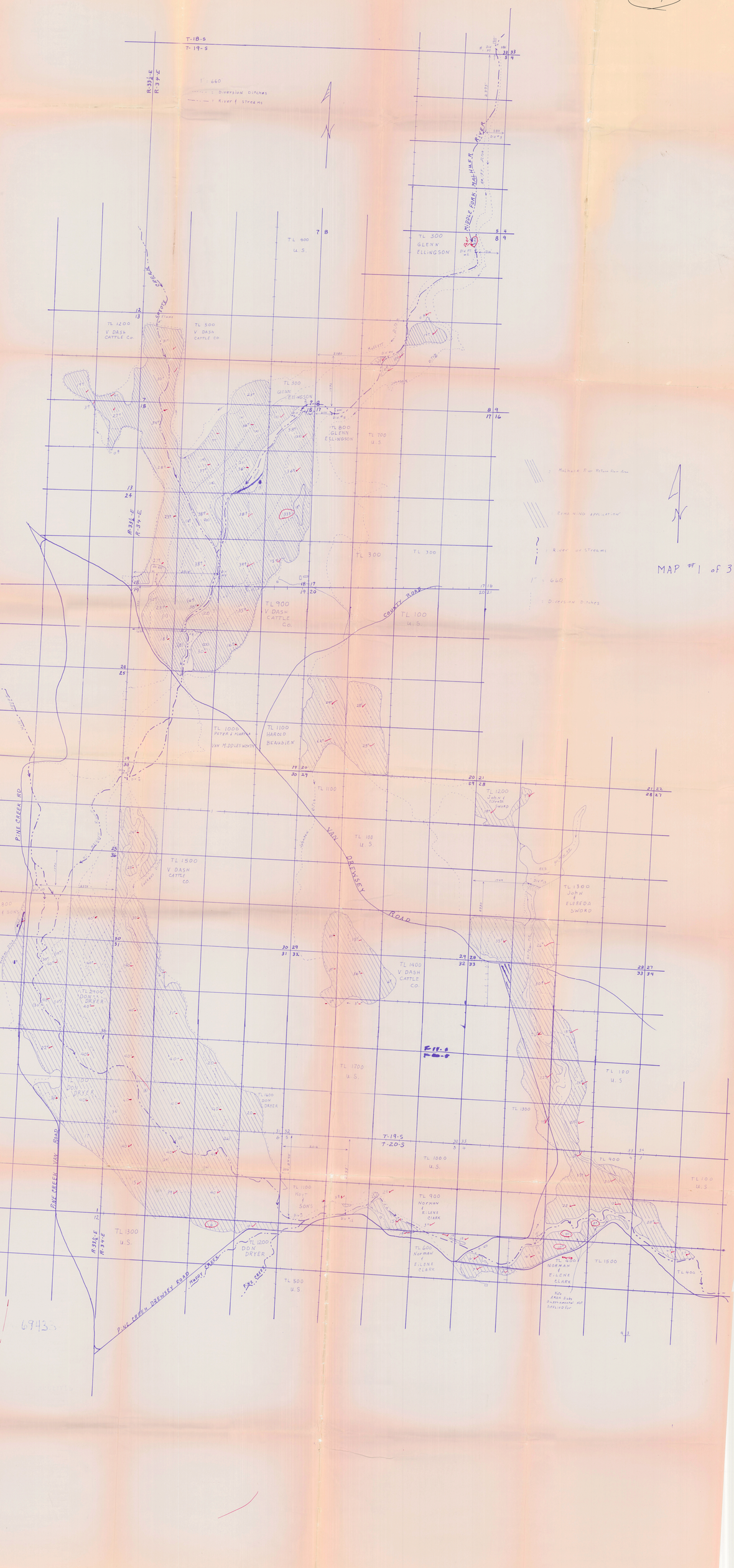
7°

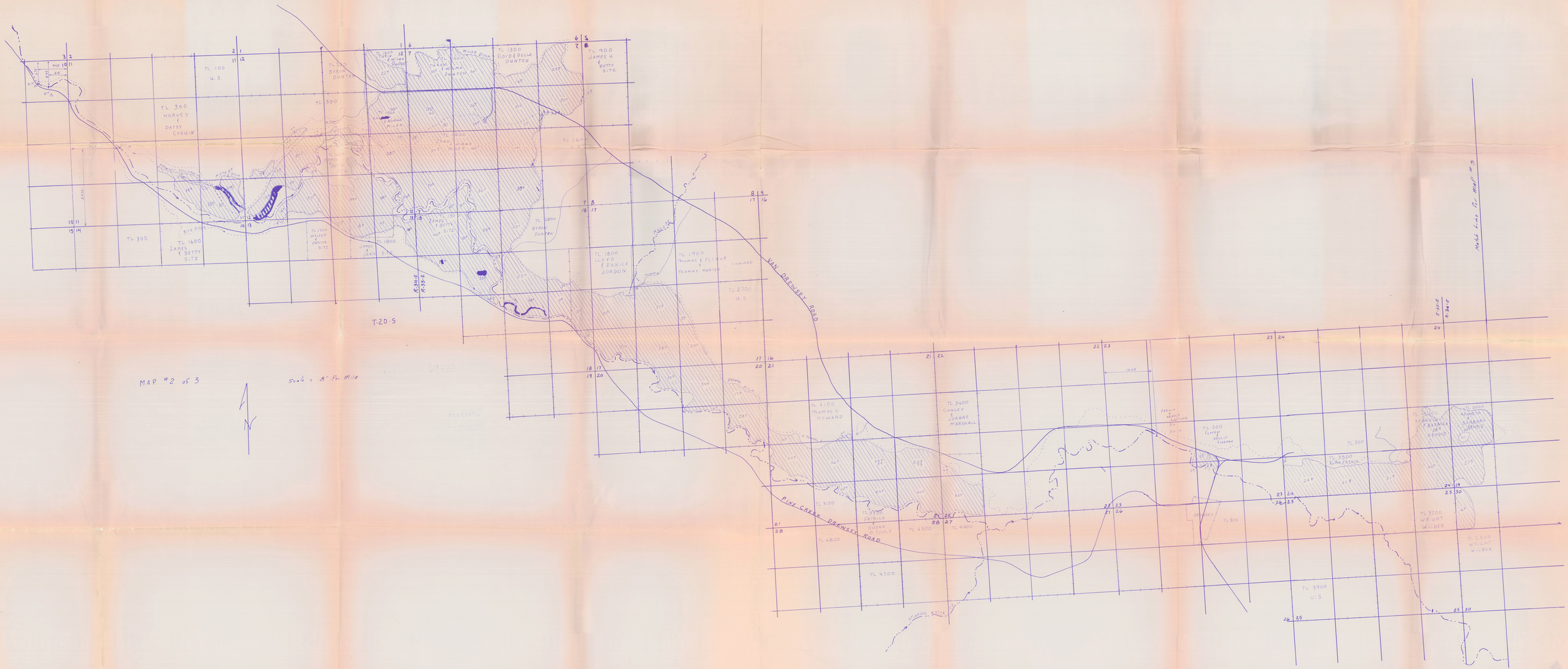
37°

US Hwy 20

Malheur Basin
H2O Users Assn.
69433

#1


T-18-S
T-19-S
R33½-E
R34-E
1" = 660
: Diversion Ditches
: River & Streams
MIDDLE FORK MALHEUR RIVER
TL 400 U.S.
TL 300 GLENN ELLINGSON
TL 1200 V DASH CATTLE Co.
TL 500 V DASH CATTLE CO.
TL 800 GLENN ELLINGSON
TL 700 U.S.
: Malheur River Return flow area
: Remaining Application
: River or Streams
1" = 660
: Diversion Ditches
MAP #1 of 3
TL 900 V DASH CATTLE Co.
TL 100 U.S.
COUNTY ROAD
TL 1000 PETER F HARRIS (VAN M. DOLLES WORTH)
TL 1100 HAROLD BEAUDIEN
TL 1200 John W & ELFREDA SWORD
PINE CREEK RD.
VAN DREMSEY ROAD
TL 1500 V DASH CATTLE CO.
TL 1300 John W & ELFREDA SWORD
TL 1400 V DASH CATTLE CO
TL 2900 DON'S DRYER
TL 1700 U.S.
T-19-S
T-20-S
TL 1000 DON DRYER
TL 1400 DON DRYER
TL 1100 HOYT & SONS
TL 900 NORMAN & ELENE CLARK
TL 1200 DON DRYER
TL 1300 U.S.
TL 500 U.S.
PINE CREEK
PINE CREEK VAN DREMSEY ROAD
TL 600 Norman & ELENE CLARK
TL 1500
TL 400
TL 100 U.S.
TL 1300
TL 400
TL 100 U.S.
TL 400 NORMAN & ELENE CLARK
TL 1500
TL 400
TL 100 U.S.
TL 100 U.S.
TL 400
TL 100 U.S.
TL 1300


TL 300
HARVEY & PATSY CRONIN
TL 100
U.S.
TL 200
BYRON DUNTEN
TL 1300
FLOYD & DELLA DUNTEN
TL 900
JAMES H. & BETTY SITZ
TL 1600
JAMES & BETTY SITZ
TL 1700
WALTER & PATRITA SITZ
TL 1800
LOYD & EUNICE JORDON
TL 1900
THOMAS & ELSNOR & THOMAS MARTIN
TL 2700
U.S.
TL 3100
THOMAS C. HOWARD
TL 3400
CONLEY & JOANNE MARSHALL
TL 3500
TL 3700
WRIGHT WILDER
TL 3900
U.S.
TL 4500
TL 4400
TL 4800
TL 4700
TL 200
TL 300
VAN DREWSEY ROAD
PINE CREEK-DREWSEY ROAD
T-20-S
R3WE
R2WE
MAP #2 of 3
Scale = 8" Per Mile
Match Line for Map #3