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April 15, 2013

Oregon State Senate
Environment and Natural Resource Committee
Oregon State Capitol
900 Court St. NE
Salem, OR 97301

RE: SB 401 - Section 2 (30)
Testimony of John B. Lamborn in Opposition
Attorney for Tim and Jeanette Hueckman / Russell, Muffett and Brenda Ricco

Dear Committee Members:

I am John B. Lamborn. I am an attorney licensed by the Oregon State Bar to practice in all the courts of this state. OSB 951389. I am here today on behalf of Tim and Jeanette Hueckman and Russell, Muffett and Brenda Ricco. My clients are cattlemen landowners whose properties lie in the proposed "North Fork Burnt River Scenic Waterway" as set forth in SB 401 Section 2(30). The Hueckman family has been in ownership since the late 1930's. The Ricco family has been in ownership since 1959. My clients oppose the inclusion of Section 2 (30) in this Bill.

A map marked as Ex.1 is attached hereto shows the land holdings of the two families with Hueckman marked in yellow and Ricco marked in blue. The red dashed line marks the 1/4 mile "scenic easement" proposed by SB 401 Section 2 (30) and defined by ORS 390.805(1). The vast majority of my clients' holdings are found within the confines of this 1/4 mile easement which would be imposed on their private property if SB 401 were passed including Section 2(30).

ORS 390.815 sets forth the policy for the establishment of Oregon's Scenic Waterway statute. This section says:

The people of Oregon find that many of the free-flowing rivers of Oregon and Waldo Lake and lands adjacent to such lake and rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archaeological, and outdoor recreation values of present and future benefit to the public. The people of Oregon also find that the policy of permitting construction of dams and other impoundment facilities at appropriate sections of the rivers of Oregon and Waldo Lake needs to be complemented by a policy that would preserve Waldo Lake and selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of the lake and such rivers and fulfill other conservation purposes. It is therefore the policy of Oregon to preserve for the benefit of the public Waldo Lake and selected parts of the state's free-flowing rivers. For these purposes there is established an Oregon Scenic Waterways System to be composed of areas designated in accordance with ORS 390.805 to 390.925 and any

subsequent Acts. [1971 c.1 §1; 1983 c.334 §2]

ORS 390.835 declares the “highest and best use” of waters to be:

(1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses.

The proposed “North Fork Burnt River Scenic Waterway” does not fit within the definition of “highest and best use” as set forth above for the following reasons:

1. This waterway is not a “free-flowing” river. Recently I spoke with Jerry Franke, the Burnt River Irrigation District Manager. Mr. Franke has held this position for the last 21 years. He tells me the Burnt River runs with only a 60 day Spring stream flow, and when it does run a diversion above Unity Reservoir satisfies the pre-existing water rights of approximately 1300 acres of irrigated land and no appreciable water runs into the Unity Reservoir. He states that at the height of the irrigation season he takes approximately 20 cubic feet per second of water from the North Fork of the Burnt River. This water runs through POD 29905 as recorded by the OWRD. There are three other points of diversion above 29905, but no appreciable water is appropriated from them. After mid-July, this “river” runs at a mere trickle.

2. There are no other points of diversion managed by the District above the four diversion points that are so managed. This means that water rights owners such as my clients take water from the stream according to their priority during the irrigation season. Their land within the 1/4 mile zone is irrigated meadow ground which benefits not just my clients’ livestock, but wildlife as well.

3. The Burnt River offers little “recreational” opportunity for Oregonians. The headwaters start around Greenhorn, Oregon. It is not navigable by boat and there are no anadromous fish in this waterway. The Burnt River flows from the area around Greenhorn into Unity Reservoir which exists by virtue of a dam in the South East section of the reservoir. As the crow flies, the Burnt River is less than 25 miles long. Every four or five years Unity reservoir is completely emptied. The only fish in this body of water are stocked trout and they do not travel upstream. Fly fishing is unheard of on this flow which only runs for approximately 60 days during the Spring melt.

4. No endangered fish species call the Burnt River home. No salmon or steelhead species migrate here. There are no hatcheries on this flow.

5. SB 401 Section 2 (30) would not otherwise enhance wildlife in the area. The waters flow seasonally, as they have for generations. Including the Burnt River in this bill

would not restrict any of the water rights previously granted to people like my clients, so there would be no essential change which would benefit wildlife in the area. Irrigation of the land within the 1/4 mile zone benefits wildlife as well as livestock.

Federal legislation already provides significant water quality protection to the North Fork of the Burnt River. For example, the Clean Water Act 33 U.S.C. § 1251 et seq and other federal law provide significant protection to the waters of the United States, including the piece at issue in SB 401 Section 2 (30). For example, in recent litigation in the United States District Court of Oregon, the United States Forest Service *lost* at summary judgment in the case of Hells Canyon Preservation Council et al v. Haines, USFS et al case number CV 05-1057 PK and a number of proposed dredge mining permits were struck down by Magistrate Papak.

Indeed, it appears that the main potential thrust of this legislation is aimed at slowing down dredge mining in various waterways around the state. My clients are not miners, but are landowners who do not feel it is necessary to be required to apply to the State Parks and Recreation Department for permission to make whatever they may deem to be the highest and best use of their private property.

Just as the folks at Oregon Wild say,

Oregon's waters are an important part of what makes our state a special place to live, work and raise a family.

Pristine watersheds are vital for fish, wildlife and humans. Salmon, trout and steelhead need cool, clear streams and rivers for spawning, wildlife depends on our wetlands, rivers and lakes for vital habitat and sources of food, while people in communities across the state depend on forest watersheds for pure drinking water.

My clients agree with this position which is why they oppose SB 401 Section 2 (30). The North Fork of the Burnt River is not a salmon, trout or steelhead habitat. Adding an additional bureaucratic layer to the management of this piece of water is simply not justified by the facts involved with this seasonal stream and may impact their ability to live, work and raise their families.

Very truly yours,


JOHN B. LAMBORN

Rivers and Clean Water

From the thrilling whitewater of rivers like the Rogue and Clackamas to the serene beauty of the Klamath Basin wetlands, Oregon's waters are an important part of what makes our state a special place to live, work and raise a family.



Pristine watersheds are vital for fish, wildlife and humans. Salmon, trout and steelhead need cool, clear streams and rivers for spawning, wildlife depends on our wetlands, rivers and lakes for vital habitat and sources of food, while people in communities across the state depend on forest watersheds for pure drinking water.

Oregon Wild has worked for more than 30 years to protect our state's Oregon's rivers, lakes and wetlands from dam building, reckless logging and runaway development. From our winning campaign to protect

Portland's drinking water from logging to our current work to restore balance to the Klamath Basin, Oregon Wild is the leading voice for common-sense conservation of our waters and the fish and wildlife that call them home.

Explore our online gallery of Oregon river photos.

Click on the links below to find out more about our important work:

- Restoring Balance to the Klamath Basin
- Mining Reform: Saving the Siskiyou
- Protecting Portland's Clean Drinking Water
- Protecting the Wild Molalla River
- Elk Creek Dam – Wasting Money and Killing Salmon
- Forests: Keeping Our Water Clean

McKenzie River photo by Joel Zak.

Senate Bill Would Expand Protections for Oregon's Rivers

By Rachael McDonald

KLCC

February 20, 2013



A bill introduced in the legislature by Senator Alan Bates of southern Oregon would expand protections for the state's rivers. It has the support of environmentalists and recreationalists.

Senate Bill 401 expands the number of rivers and bodies of water protected as State Scenic Waterways. It would protect segments of the Rogue, Illinois, South Umpqua, Grand Ronde, Sandy, Molalla and other rivers.

Frank Armendariz is owner operator of River Trail Outfitters in Eugene. He says the legislation would protect water quality for salmon. It's also good for business.

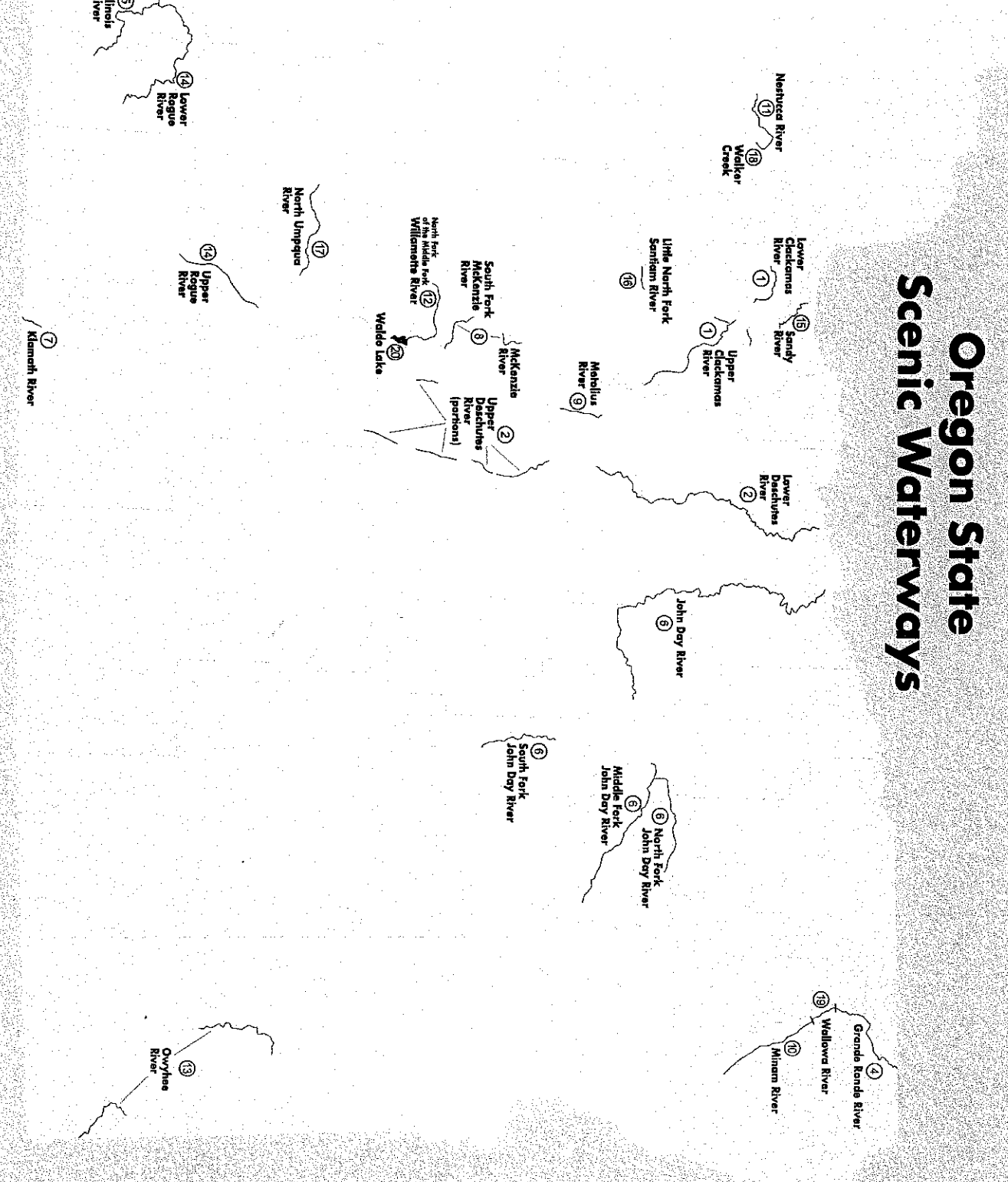
Armendariz: "The recreational river industry is about a 3 billion dollar industry here in Oregon."

The bill would prohibit Suction Dredge Mining on State Scenic Waterways. That practice involves gas powered vacuums that suck up riverbed sand and gravel in search of gold. California placed a moratorium on the practice in 2010 - pushing it north to rivers in southern Oregon.

Read the original story

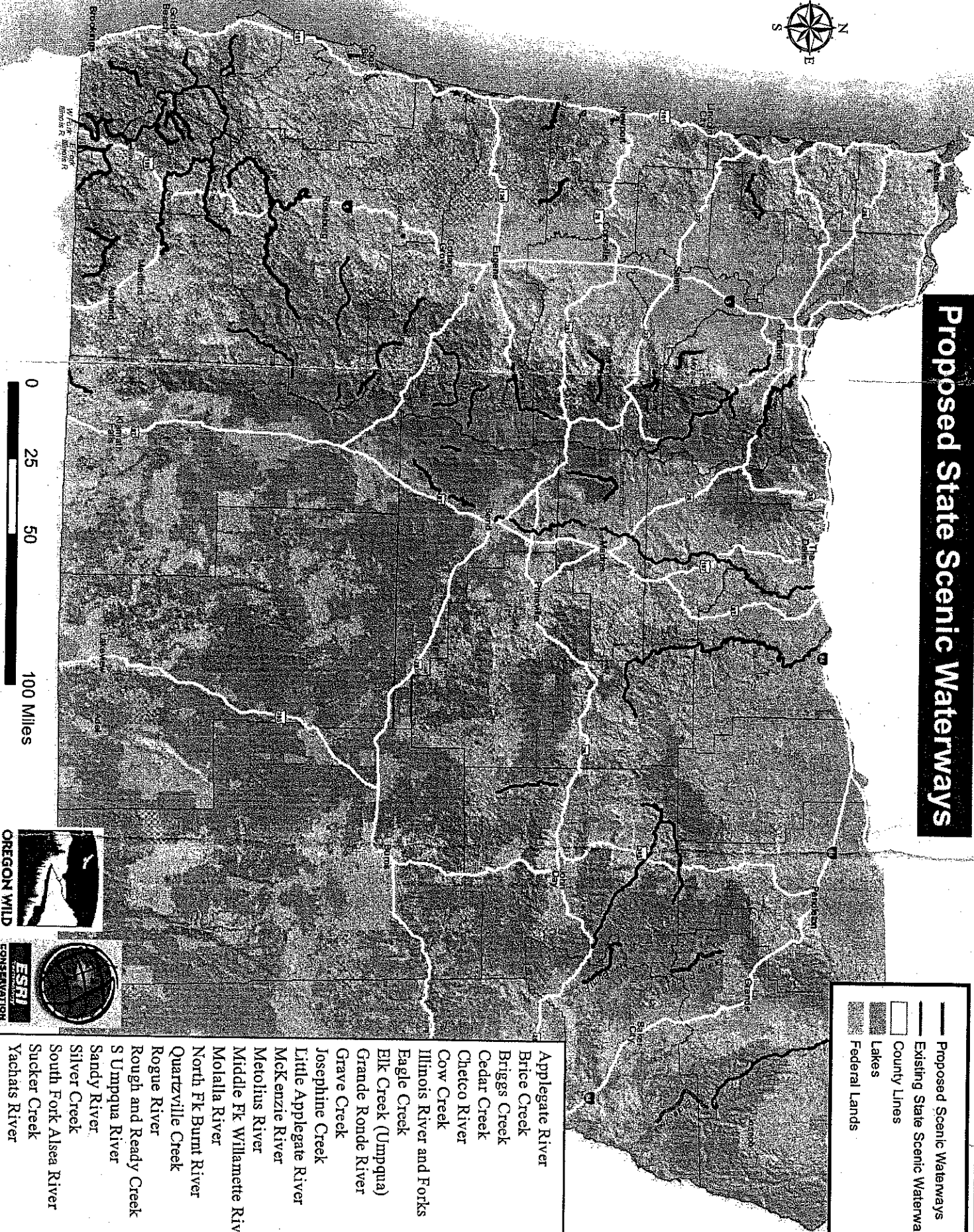
Oregon State Scenic Waterways

1. **Clackamas River**
 - North Fork (12 miles)
 - South Fork (4 miles)
 - Main stem from Ollie Lake Scenic Area to North Reservoir (54 miles)
 - River Mill Dam to Conner (12 miles)
2. **Deschutes River**
 - Upper Deschutes: various segments from Little Lava Lake (headwaters) to Lake Billy Chinook (99 miles)
 - Lower Deschutes: Palom Dam to Columbia River (100 miles)
3. **Elk River**
 - North Fork (5 miles)
 - South Fork (5 miles)
 - Main stem from confluence of North and South Forks to Elk River Fish Hatchery (11 miles)
4. **Grand Ronde River**
 - Confluence with Willamette River to Washington border (42 miles)
5. **Illinois River**
 - Deer Creek to Rogue River (46 miles)
6. **John Day River**
 - North Fork from North Fork John Day Wilderness boundary to River Mile 20.2 above Monument (35 miles)
 - South Fork from PostPacking Road crossing to Murderers' Creek Wildlife Area above Dayville (29 miles)
 - Middle Fork from Crawford Bridge crossing to confluence with North Fork (71 miles)
 - Main stem from Parich Creek to Tumwater Falls (160 miles)
7. **Klamath River**
 - John Boyle Dam powerhouse to California border
8. **McKenzie River**
 - South Fork from Three Sisters Wilderness boundary to main stem, excluding Cougar Reservoir (21 miles)
 - Main stem to Forestier National Forest Service Compound (16 miles)
9. **Melolius River**
 - Melolius Springs to Cordell Creek (14 miles)
10. **Minnam River**
 - Minnam Lake to Willamette River (45 miles)
11. **Nestucca River**
 - Main stem from McGillem Dam to Blaine (23 miles)
12. **North Fork of Middle Fork of Willamette River**
 - Waldo Lake to River Mile 1.5 near Waldif (45 miles)
13. **Owyhee River**
 - Crooked Creek to Birch Creek of this boundary of Rogue River National Forest
 - Idaho border to Three Forks (25 miles)
14. **Rogue River**
 - Upper Rogue: Crater Lake National Park to River Mile 172.8
 - Lower Rogue: Applegate River to Lobster Creek (98 miles)
15. **Sandy River**
 - Bull Run River to Stark Street Bridge (12 miles)
16. **North Santiam River**
 - Little North Fork: Battle Ax Creek to River Mile 16.7 at Willamette National Forest boundary (7 miles)
17. **North Umpqua River**
 - Mt. Thielsen Wilderness boundary to Lenox Reservoir (6 miles)
 - Scott Springs Dam powerhouse to Rock Creek (34 miles)
18. **Walker Creek**
 - Source to confluence with Nestucca River (3 miles)
19. **Willamette River**
 - Confluence with Minnam to confluence with Grande Ronde (10 miles)
20. **Waldo Lake**
 - 6,672 acres, 13 miles north of Oregon Highway 58



* National Wild and Scenic Rivers

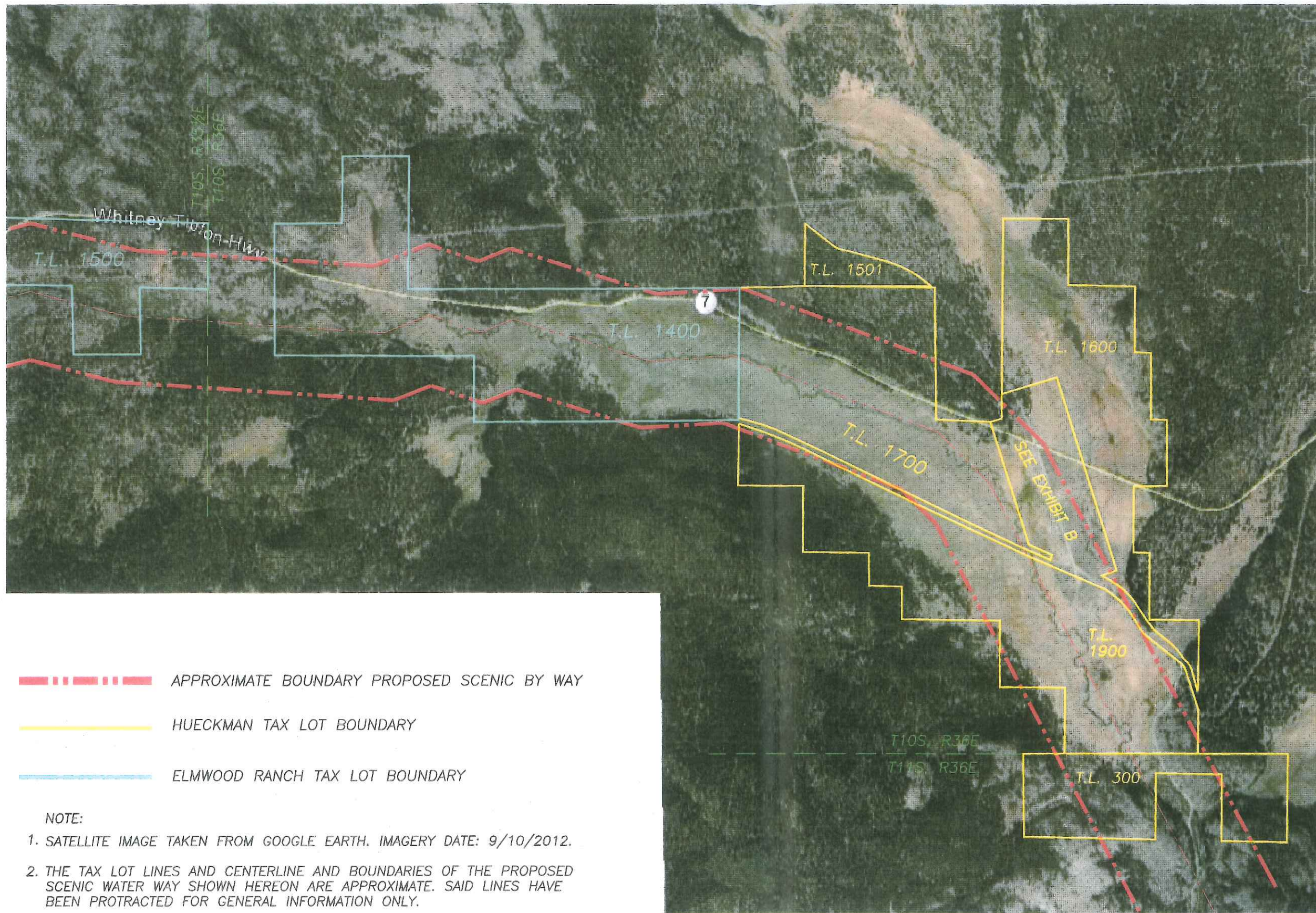
Proposed State Scenic Waterways






- Proposed Scenic Waterways
- Existing State Scenic Waterways
- County Lines
- Lakes
- Federal Lands





- Applegate River
- Brice Creek
- Briggs Creek
- Cedar Creek
- Chetco River
- Cow Creek
- Illinois River and Forks
- Eagle Creek
- Elk Creek (Umpqua)
- Grande Ronde River
- Grave Creek
- Josephine Creek
- Little Applegate River
- McKenzie River
- Melolius River
- Middle Fk Willamette River
- Molalla River
- North Fk Burnt River
- Quartzville Creek
- Rogue River
- Rough and Ready Creek
- S Umpqua River
- Sandy River
- Silver Creek
- South Fork Alsea River
- Sucker Creek
- Yachats River



-  APPROXIMATE BOUNDARY PROPOSED SCENIC BY WAY
-  HUECKMAN TAX LOT BOUNDARY
-  ELMWOOD RANCH TAX LOT BOUNDARY

NOTE:

1. SATELLITE IMAGE TAKEN FROM GOOGLE EARTH. IMAGERY DATE: 9/10/2012.
2. THE TAX LOT LINES AND CENTERLINE AND BOUNDARIES OF THE PROPOSED SCENIC WATER WAY SHOWN HEREON ARE APPROXIMATE. SAID LINES HAVE BEEN PROTRACTED FOR GENERAL INFORMATION ONLY.
3. THE TOTAL LENGTH OF THE N. FORK BURNT RIVER IS 25 MILES. THE LENGTH OF THE BURNT RIVER SHOWN HEREON IS APPROXIMATELY 5 MILES.
4. NO SURVEY WAS PERFORMED FOR THIS MAPPING PROCESS.

-  HUECKMAN LAND UNDER SCENIC WATER WAY: 750 AC.±
-  ELMWOOD RANCH LAND UNDER SCENIC WATER WAY: 570 AC.±

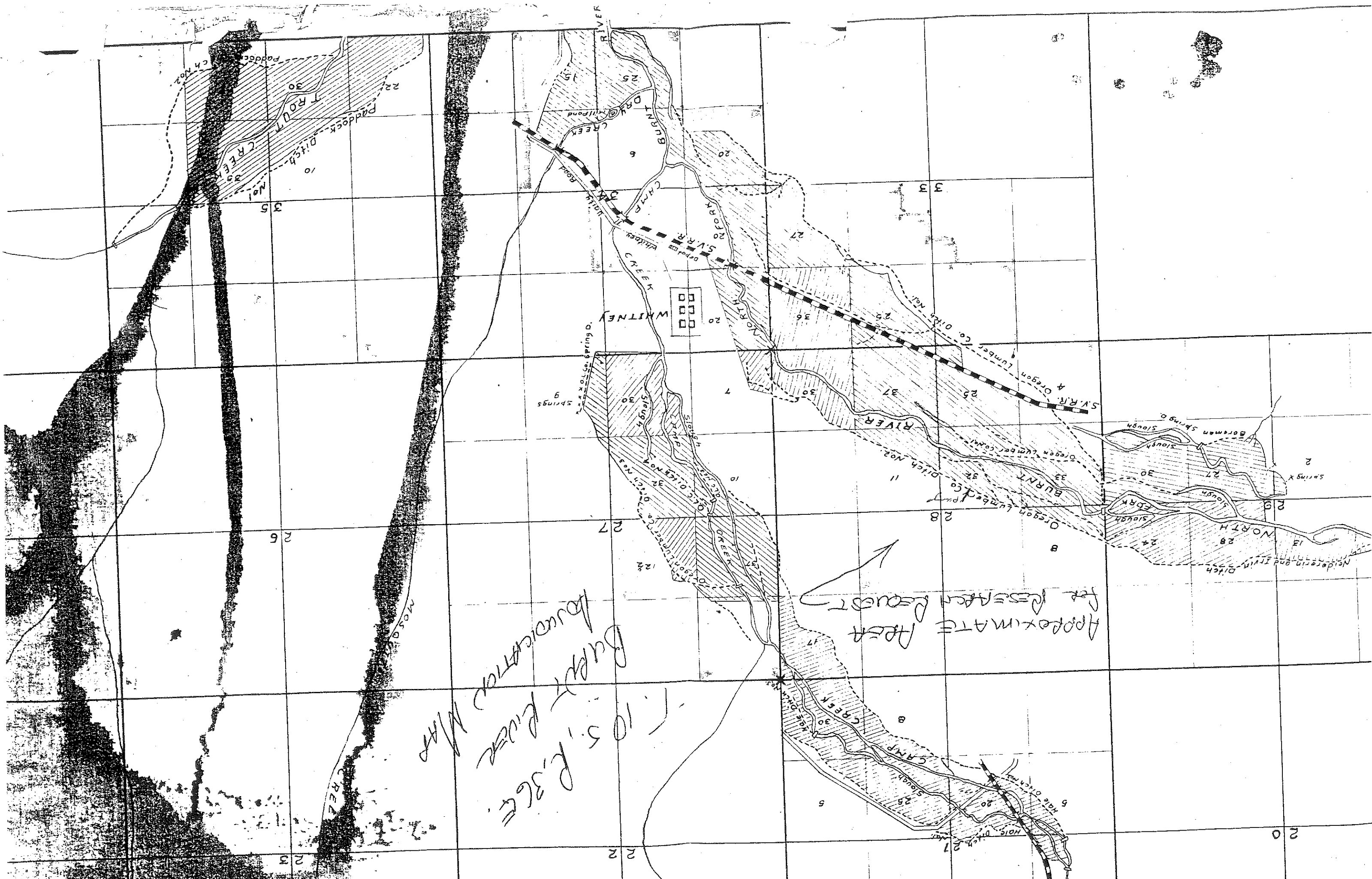


REGISTERED
PROFESSIONAL
LAND SURVEYOR

Michael C. Springer

OREGON
JULY 9, 2002
MICHAEL C. SPRINGER
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EXPIRES: 6/30/2014

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APRIL 11, 2013



105, R. 36E
 Burnt River
 Bourcational Map

APPROXIMATE AREA
 for RESEARCH POINT