PUBLIC DOMAIN WITHDRAWN FROM MINERAL ENTRY IN
WALLOWA-WHITMAN NATIONAL FOREST:
A CASE STUDY

by

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ABSTRACT. Since the passage of the mining and mineral leasing laws, a considerable amount of the public domain has been excluded from mineral exploration and development. It has been estimated that as much as fifty-three and sixty-four percent of the public lands have been withdrawn from the jurisdiction of the mining and mineral leasing laws respectively. The authority to withdraw lands from appropriation under the public land laws was originally vested in Congress by the Constitution. Authority has been vested in the President and certain governmental departments by Congressional delegations.

Withdrawals of land from mineral entry in the Wallowa-Whitman National Forest, an area of past and present mineral development, take four major forms: power site withdrawals; reclamation project withdrawals; administrative and public service withdrawals; and Congressional withdrawals. A total of 22.6 and 21.8 percent of the public domain within the Forest has been withdrawn from the jurisdiction of the mining and mineral leasing laws respectively. Withdrawals by Congressional action alone have excluded over twenty-one percent of the Forest from mineral entry. Withdrawals for power sites, reclamation projects and administrative and public service areas represent a very small proportion of the total land withdrawn from mineral entry.
INTRODUCTION

Disposal of minerals on public domain is provided for under two basic laws. The Mining Law of 1872 applies to all minerals except oil, gas, coal, phosphate, sodium, oil shale, sulfur, potash and certain hydrocarbons and nonmetalics. Minerals not covered by the Mining Law of 1872 are covered under the Mineral Leasing Act of 1920. (These two laws, as amended, will hereafter be referred to as the mining laws and the mineral leasing laws).

Nearly one-third of the total land area of the United States is comprised of public domain and originally came under the jurisdiction of the mining and mineral leasing laws. Land that the United States has purchased from private parties or states is not considered public domain but is open to mineral leasing under the Acquired Lands Act of 1947.

Since the passage of the mining and mineral leasing laws, a considerable amount of public domain has been withdrawn from mineral exploration and development. Bennethum and Lee estimated that approximately fifty-three percent of the public land has been closed to mining and nearly sixty-four percent closed to mineral leasing (see Table 1).¹ The Public Land Law Review Commission, in a survey seven years earlier, showed almost sixteen percent of the public domain restricted from mining and over fourteen percent from mineral leasing.² Even when the Alaska Native Claims Settlement Act of 1971 (ANSCA) is excluded,³ an increase in withdrawals over the seven year period is apparent.

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³ The Alaska Native Claims Settlement Act withdrew over 249 million acres of land from mineral entry in Alaska. Because this withdrawal alone amounts to approximately seventy percent of the entire public domain of the conterminous United States, its inclusion in an account of withdrawn land for the fifty states gives a distorted representation for lands within the 48 contiguous states.
Table 1.--Comparison of Lands Withdrawn from Mineral Entry for the United States:
1967 and 1974

<table>
<thead>
<tr>
<th>Description</th>
<th>1967 (1000 acres)</th>
<th>1974 (1000 acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public domain originally subject to the mining and mineral leasing laws</td>
<td>708.6</td>
<td></td>
</tr>
<tr>
<td>Public domain closed from operation of the:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mining laws</td>
<td>111.6 (15.0%)</td>
<td></td>
</tr>
<tr>
<td>Leasing laws</td>
<td>103.8 (14.6%)</td>
<td></td>
</tr>
<tr>
<td>Bennethum and Lees' Estimates for 1974</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public land(^a) originally subject to the:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mining laws</td>
<td>742.3</td>
<td></td>
</tr>
<tr>
<td>Leasing laws</td>
<td>824.2</td>
<td></td>
</tr>
<tr>
<td>Public land(^b) closed from operation of the:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mining laws</td>
<td>395.0 (53.2%)</td>
<td></td>
</tr>
<tr>
<td>(ANCSA(^b) excluded)</td>
<td>145.4 (19.6%)</td>
<td></td>
</tr>
<tr>
<td>Leasing laws</td>
<td>526.5 (63.9%)</td>
<td></td>
</tr>
<tr>
<td>(ANCSA(^b) excluded)</td>
<td>279.9 (33.6%)</td>
<td></td>
</tr>
</tbody>
</table>

\(^a\) Includes public domain, acquired lands, and lands reserved for mining and/or mineral leasing.
\(^b\) Alaska Native Claims Settlement Act of 1971. This Act withdrew over 249 million acres of land from mineral entry in Alaska.

The purpose of this paper is to identify and describe, in the form of a case study, lands withdrawn from mineral entry in the Wallowa-Whitman National Forest. The Forest was the scene of intensive mining activity in the late 1800's and early 1900's after gold was first discovered in the area in 1861. Some of the minerals that can be found in the Wallowa-Whitman today are gold, silver, copper, limestone, marble, tungsten, antimony, and molybdenum.\(^4\)

Specifically this paper will describe the trends of the different forms of withdrawals found in the Forest by presenting a chronological and cumulative account for each form of withdrawal. A total chronological and

\(^4\) Information concerning minerals in the Wallowa-Whitman National Forest was supplied by R. Penrose, USFS Headquarters, Baker, Oregon, August 1976.
cumulative account will be given for the period 1945 to 1975.

METHODOLOGY

Locations of lands withdrawn or reserved from mineral entry were taken from the Wallowa-Whitman Land Status Records at the Regional Office of the U. S. Forest Service (USFS) in Portland, Oregon, and at the Forest Headquarters in Baker, Oregon. The USFS land status record books consist of a status and encumbrance map for each township within the Forest, a status map tabular record for the township, and a use restriction map and tabular record. The use restriction map shows the location of lands withdrawn from mineral entry and the tabular record describes the form of the withdrawal. The page number of the Federal Register where the legal description of the withdrawal is published is usually shown.

Whenever possible the Federal Register was consulted to obtain an accurate description of the acreage and nature of the withdrawal. In many cases land may be withdrawn from only the mining laws whereas disposition of the minerals may continue to be permitted under the mineral leasing laws. The Federal Register indicates what restrictions are placed on the land as well as why the land is withdrawn and what agency or governmental department is requesting the withdrawal. (See Appendix A for examples of withdrawal notices published in the Federal Register).

In a few cases overlaps occur when land is withdrawn under one authority and, at a later date, is withdrawn under another authority. Usually the same restrictions to mineral entry apply. Every attempt has been made to take overlaps into account when describing acreages withdrawn.

A Master Title Plat for each township containing public land is kept by the Bureau of Land Management at its Portland, Oregon, office. The Master Title Plat shows withdrawals, rights-of-way, classifications and other
reservations and actions. These plats were used to establish locations of pipeline, road and railroad rights-of-way.

The Federal Register has listed practically every withdrawal and restoration since the 1940's. Prior to that time withdrawals were not always entered in the Federal Register. The Federal Register came into being in 1936, so records of withdrawals before 1936 are kept with the Bureau of Land Management and with the various agencies requesting the withdrawals. May 1976 is the last month withdrawals were studied in this paper.

The authority for withdrawing land differs depending on the form of withdrawal and the purpose for which the land is withdrawn. Only those authorities for withdrawals found in the Wallowa-Whitman National Forest are discussed in this paper. In most cases the U. S. Statute or Executive Order granting authority has been included in the Appendix.

Tables describing the account of withdrawals are presented in two parts. The first half of the table gives an account of lands withdrawn for the particular purpose indicated in the title. The second half of the table gives an account of land withdrawn from either the mining laws, mineral leasing laws, or both the mining and mineral leasing laws. Overlaps are taken into account in the second half of the table only in order to present an accurate picture of the magnitude of each form of withdrawal in the first half of the table, and an accurate account of how much land was actually withdrawn from mineral entry and the nature of the withdrawal in the second half.

THE STUDY AREA

The Wallowa and the Whitman National Forests were joined administratively on July 1, 1954. The Wallowa Forest was originally established in
1905 and the Whitman in 1908. The Wallowa-Whitman contains eight Ranger Districts, with the Headquarters located at Baker, Oregon. The Forest is located entirely within Oregon and encompasses parts of six counties: Baker, Grant, Malheur, Umatilla, Union, and Wallowa.

Although joined administratively the two forests were not contiguous. The Wallowa-Whitman is divided into two separate land areas (see Figure 1).

Although joined administratively the two forests were not contiguous. The Wallowa-Whitman is divided into two separate land areas (see Figure 1).

THE STUDY AREA

Figure 1.

The north half contains the old Wallowa and parts of the old Whitman Forests. The south half includes the balance of the Whitman. Over the years since the two forests were originally established in 1905 and 1908 boundary lines have changed. For purposes of this study, the boundary lines in effect shown on the USDA Forest Service Recreation Map, revised in 1970, were used for delimiting the boundary of the study area. All withdrawals of public domain within these boundary lines were accounted for, even if at the time

of withdrawal they were not part of the Wallowa or Whitman in name.

The Wallowa-Whitman National Forest covers an area of nearly 2.5 million acres (1.0 million hectares) of which 2,233,285 acres (903,810 hectares) are public domain. Acquired and donated lands amount to 14,389 acres (5,823 hectares), with the balance in private ownership. For purposes of this paper, only public domain lands within the boundaries of the Forest will be studied. Acquired and donated lands are not subject to the mining laws, and private land within the National Forests is, of course, not subject to any of the public land laws.

FORMS OF WITHDRAWAL

Four principal forms of mineral withdrawal are found within Wallowa-Whitman National Forest:

1) Power site withdrawals, which can be further divided into power site reserves, power site classifications, and Federal Power Commission projects;
2) reclamation withdrawals;
3) administrative and public service withdrawals, which can be further divided into administrative sites and recreation sites;
4) Congressional withdrawals.

Uncertainty exists as to the withdrawal status of certain highway, road, railroad, and pipeline rights-of-way. Because of the questionable nature of these rights-of-way, acreages will be accounted for in the way of a footnote rather than totaled along with the four major forms of known withdrawals.

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6 Acreage statistics for Wallowa-Whitman National Forest are based on information obtained from K. Huff, Lands and Minerals Division, USFS Region Six, Portland, Oregon, July 1976.

7 During the research phase of this study the author was unable to find conclusive documentation to confirm the withdrawal status of these rights-of-way.
located within the National Forest.

Power Site Withdrawals

Power site withdrawals are the result of a need to protect lands which may be valuable for purposes of power development. By withdrawing the lands for power purposes, these potentially valuable areas will be available for development in the future. In this respect, withdrawals are used as a tool for protecting the natural resource from uses which may damage or destroy those qualities of the resource which make it valuable for power purposes.  

Three kinds of power site withdrawals exist in the Wallowa-Whitman National Forest: power site reserves, power site classifications, and Federal Power Commission projects. Power site reserves were the first power site withdrawals established in the Forest. The earliest was reserved in 1910. Power site classifications are similar to power site reserves, the only difference being the authority used to effect the withdrawal. Power site reserves were open to mining of metalliferous minerals only until 1955 when lands withdrawn for power sites were opened to mineral entry. Power site classifications were withdrawn from both mining and leasing until 1955. The first power site classification reserved in the Wallowa-Whitman was established in 1924. Land contained within the boundaries of a Federal Power Commission project is withdrawn from the jurisdiction of both the mining and mineral leasing laws effective the date that a private party or firm files an application with the FPC for a preliminary permit or license.


9 PSR 170 was established December 30, 1910.

10 Authorities for withdrawing lands are discussed in the ensuing subsections.

11 Act of August 11, 1955, Ch. 797, 69 STAT. 681.

12 PSC 78 was established June 18, 1924.
to develop an area for power purposes. The first FPC project was established in the Forest in 1922.

Power Site Reserves (PSR)

One power site reserve, PSR 170, is found within the Forest. PSR 170 was established by Executive Order in 1910 and later modified in 1963. Another power site reserve, PSR 591, believed to be established in 1917, was revoked in 1966. Acreages withdrawn for power site reserves are shown in Table 2.

### Table 2: Account of Power Site Reserve Withdrawals

<table>
<thead>
<tr>
<th>Year</th>
<th>Withdrawn</th>
<th>Revoked</th>
<th>Cumulative withdrawn</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910</td>
<td>160&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
<td>160</td>
</tr>
<tr>
<td>1917</td>
<td>40&lt;sup&gt;b&lt;/sup&gt;</td>
<td></td>
<td>200</td>
</tr>
<tr>
<td>1963</td>
<td></td>
<td>40&lt;sup&gt;c&lt;/sup&gt;</td>
<td>160</td>
</tr>
<tr>
<td>1966</td>
<td></td>
<td>40&lt;sup&gt;d&lt;/sup&gt;</td>
<td>120</td>
</tr>
</tbody>
</table>

As of May 1976, 120 acres were withdrawn as power site reserve lands.

### Acreage withdrawn from mineral entry

<table>
<thead>
<tr>
<th>Year</th>
<th>Closed to: Mining</th>
<th>Leasing</th>
<th>Opened to: Mining</th>
<th>Leasing</th>
<th>Cumulative withdrawn: Mining</th>
<th>Leasing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1910</td>
<td>160&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td>160</td>
<td></td>
</tr>
<tr>
<td>1917</td>
<td>40&lt;sup&gt;b&lt;/sup&gt;</td>
<td></td>
<td></td>
<td></td>
<td>200</td>
<td></td>
</tr>
<tr>
<td>1955</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>200&lt;sup&gt;e&lt;/sup&gt;</td>
<td>0</td>
</tr>
</tbody>
</table>

As of May 1976, no land was withdrawn from mineral entry.

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14 FPC 308 was established May 19, 1922.


16 PLO 3923, F. R. Doc. 66-1369, Federal Register, Vol. 31 (1966), p. 2547. The date the reserve was established is not stated in the revocation and is estimated based on known dates of establishment of other reserves.
Authority for the withdrawal of lands for power site reserves is the Act of June 25, 1910, known as the Pickett Act (Appendix B). Lands classified as power site reserves under the authority of the Pickett Act have been closed only to mineral leasing because the Act did not restrict "... minerals other than coal, oil, gas, and phosphates." The Pickett Act was amended in 1912 to permit exploration and purchase for all but non-metalliferous minerals (Appendix C). The Act of August 11, 1955 (Appendix D) opened public lands "... withdrawn or reserved for power development or power sites ... to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources ..." The Act does not apply, however, to projects under license or permit issued under the Federal Power Act. Projects under license or permit are discussed under Federal Power Commission Projects below.

**Power Site Classifications (PSC)**

Eight power site classifications have been designated within the National Forest: PSC's 78, 191, 248, 263, 282, 348, 380, and 421. An account of the acreages is shown in Table 3. Authority for withdrawing lands for power site classifications are the Pickett Act and Executive Order No. 10355 of May 26, 1952 (Appendix E). Under E. O. 10355 the President delegated the withdrawal powers vested in him to the Secretary of the Interior. The Public Land Law Review Commission (PLLRC) states: "it has been held that under E. O. 10355 the Secretary not only may exercise the President's Pickett Act authority but also may permanently

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17 Act of June 25, 1910, Ch. 421, 36 STAT. 847.
18 Act of August 24, 1912, Ch. 369, 37 STAT. 497.
19 Act of August 11, 1955, Ch. 797, 69 STAT. 681.
20 E. O. No. 10355, 3 CFR, 1949-1953 Comp.
### Table 3.--Account of Power Site Classification Withdrawals

<table>
<thead>
<tr>
<th>Year</th>
<th>Acreage withdrawn as Power Site Classificationa</th>
<th>Cumulative withdrawn</th>
</tr>
</thead>
<tbody>
<tr>
<td>1924</td>
<td>3,081</td>
<td>3,081</td>
</tr>
<tr>
<td>1927</td>
<td>183</td>
<td>3,264</td>
</tr>
<tr>
<td>1930</td>
<td>2,112</td>
<td>5,376</td>
</tr>
<tr>
<td>1932</td>
<td>7,410</td>
<td>12,786</td>
</tr>
<tr>
<td>1934</td>
<td>160</td>
<td>12,946</td>
</tr>
<tr>
<td>1944</td>
<td>560</td>
<td>13,506</td>
</tr>
<tr>
<td>1947</td>
<td>2,922</td>
<td>16,428</td>
</tr>
<tr>
<td>1951</td>
<td>1,292</td>
<td>17,720</td>
</tr>
<tr>
<td>1963</td>
<td>600b</td>
<td>17,120</td>
</tr>
</tbody>
</table>

As of May 1976, 17,120 acres were withdrawn as power site classification lands.

### Acreage withdrawn from mineral entrya

<table>
<thead>
<tr>
<th>Year</th>
<th>Mining</th>
<th>Leasing</th>
<th>Mining</th>
<th>Leasing</th>
<th>Cumulative withdrawn:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1924</td>
<td>3,081</td>
<td>3,081</td>
<td>3,081</td>
<td>3,081</td>
<td></td>
</tr>
<tr>
<td>1927</td>
<td>183</td>
<td>183</td>
<td>3,264</td>
<td>3,264</td>
<td></td>
</tr>
<tr>
<td>1930</td>
<td>2,112</td>
<td>2,112</td>
<td>5,376</td>
<td>5,376</td>
<td></td>
</tr>
<tr>
<td>1932</td>
<td>7,410</td>
<td>7,410</td>
<td>12,786</td>
<td>12,786</td>
<td></td>
</tr>
<tr>
<td>1934</td>
<td>160</td>
<td>160</td>
<td>12,946</td>
<td>12,946</td>
<td></td>
</tr>
<tr>
<td>1944</td>
<td>560</td>
<td>560</td>
<td>13,506</td>
<td>13,506</td>
<td></td>
</tr>
<tr>
<td>1947</td>
<td>2,922</td>
<td>2,922</td>
<td>16,428</td>
<td>16,428</td>
<td></td>
</tr>
<tr>
<td>1951</td>
<td>1,292</td>
<td>1,292</td>
<td>17,720</td>
<td>17,720</td>
<td></td>
</tr>
<tr>
<td>1952</td>
<td>(3,365)c</td>
<td></td>
<td>14,355</td>
<td>17,720</td>
<td></td>
</tr>
<tr>
<td>1955</td>
<td>13,007d</td>
<td>16,372d</td>
<td>1,348</td>
<td>1,348</td>
<td></td>
</tr>
</tbody>
</table>

As of May 1976, 1,348 acres were no longer subject to the mining and mineral leasing laws.

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a Based on data taken from USFS Land Status Records: Wallowa-Whitman National Forest except where otherwise indicated.
b Based on data contained in PLO 2923, F. R. Doc. 63-1666.
c Hells Canyon Reclamation Project, established February 12, 1952, (F. R. Doc. 52-2136) closed 3,365 acres of land from mining which overlapped with land previously withdrawn for power site classification. The overlap is subtracted in order to avoid double counting.
d The Act of August 11, 1955 (69 STAT. 682) opened power site classifications to mineral entry except those power site classification lands which were within the boundaries of a Federal Power Commission Project. Approximately 1,348 acres of power site classification land was located within the boundaries of FPC 1971 (Lower Hells Canyon Dam) and therefore was not opened to mineral entry.


withdraw lands from all forms of appropriation under the public land laws via the President's inherent (or implied) authority." 21

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21 PLLRC, op. cit., footnote 2, p. 360. The "implied authority of the Executive stems from a Supreme Court decision (United States v. Midwest Oil Co.) which upheld the President's authority to withdraw approximately three million acres (1.2 million hectares) of land in California from location under the placer mining laws. The Midwest decision did not attempt to trace the withdrawal practice to its roots. Instead, the Court based its decision "... on the factor that the practice of withdrawal without statutory authorization was exercised over a long period of time, was known to Congress, and Congress' 'acquiescence [in the context of taking no affirmative action to repudiate the power] operated . . . as an implied grant of power . . . ' to withdraw." (PLLRC, op. cit., footnote 2, p. 83)
The United States Geological Survey (USGS) is authorized to withdraw lands for PSC's under the authority of the Act of March 3, 1879 (the Organic Act), which "... has been held to have the same effect of withdrawing these lands under Section 24 of the Federal Power Act." Under Section 24, withdrawals are "... reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress." Since 1958, when this authority was revoked, the withdrawal of land by power site classification has been initiated by the Director of the USGS for approval by the Secretary of the Interior.

Before power site classifications were opened to entry by the Act of August 11, 1955, PSC lands were opened to mineral entry by the Secretary of the Interior if it was determined by the FPC that the value of the lands would not "... be injured or destroyed for purposes of power development by location, entry, or selection under the public land laws ..." PSC lands within FPC projects, however, do not come under the jurisdiction of the 1955 Act and are closed to mineral entry. Such lands may be opened if

22 PLLRC, op. cit., footnote 2, p. 360.
25 F. F. Lawrence, op. cit., footnote 8, p. 6.
the FPC decides the value of the lands will not be "injured or destroyed" by permitting mineral entry. PSC lands opened to mineral entry are posted in the Federal Register.

**Federal Power Commission Projects (FPC)**

Since the passage of the Federal Power Act eight projects have been under preliminary permit or license within the Wallowa-Whitman National Forest: FPC's 308, 378, 1320, 1971, 1985, 1986, 2243, and 2273. FPC projects are withdrawn from mineral entry subject to Section 24 of the Federal Power Act (Appendix G). Section 24 provides for the automatic withdrawal of any proposed power project from the date of filing an application with the Federal Power Commission for a preliminary permit or license. There is no stipulation that withdrawn lands must come under development before the lands are excluded from the jurisdiction of the mining and mineral leasing laws. The withdrawal is effective the date the application is filed.\(^27\) However, any lands within a FPC project transmission line right-of-way are open to mineral entry pursuant to a FPC decision made April 17, 1922, when it was decided that lands reserved or classified as power sites for transmission line purposes only "... will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, subject to the reservation of Section 24 of the Federal Water Power Act."\(^28\) Therefore, acreages of transmission line rights-of-way within FPC projects in the study area are open to entry and are not included in Table 4 as being "withdrawn from mineral entry".

Currently only three projects are under license with the FPC, the others have been revoked. Withdrawal status of the lands is presented in Table 4.

\(^{27}\) Federal Power Act, op. cit., footnote 13, Sec. 24.  
### Table 4---Account of Federal Power Commission Project Withdrawals

<table>
<thead>
<tr>
<th>Year</th>
<th>Withdrawn</th>
<th>Revoked</th>
<th>Cumulative withdrawn</th>
</tr>
</thead>
<tbody>
<tr>
<td>1922</td>
<td>239&lt;sup&gt;b&lt;/sup&gt;</td>
<td>239&lt;sup&gt;b&lt;/sup&gt;</td>
<td>239&lt;sup&gt;b&lt;/sup&gt;</td>
</tr>
<tr>
<td>1923</td>
<td>17&lt;sup&gt;c&lt;/sup&gt;</td>
<td>256</td>
<td>256</td>
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<tr>
<td>1928</td>
<td>15&lt;sup&gt;d&lt;/sup&gt;</td>
<td>257</td>
<td>257</td>
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<td>1935</td>
<td>15&lt;sup&gt;d&lt;/sup&gt;</td>
<td>272</td>
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<td>1942</td>
<td>1,348&lt;sup&gt;f&lt;/sup&gt;</td>
<td>1,405&lt;sup&gt;f&lt;/sup&gt;</td>
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<td>1948</td>
<td>239&lt;sup&gt;b&lt;/sup&gt;</td>
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<td>263</td>
</tr>
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<td>1958</td>
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<td>12,792</td>
</tr>
<tr>
<td>1959</td>
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<td>12,591</td>
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<td>940&lt;sup&gt;k&lt;/sup&gt;</td>
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<td>13,531</td>
</tr>
<tr>
<td>1967</td>
<td>971</td>
<td>1,837</td>
<td>1,837</td>
</tr>
<tr>
<td>1969</td>
<td>17&lt;sup&gt;n&lt;/sup&gt;</td>
<td>1,820</td>
<td>1,820</td>
</tr>
<tr>
<td>1971</td>
<td>17&lt;sup&gt;n&lt;/sup&gt;</td>
<td>1,803</td>
<td>1,803</td>
</tr>
</tbody>
</table>

As of May 1976, 1,803 acres of land were withdrawn for licensed FPC projects.

### Acreage withdrawn from mineral entry

<table>
<thead>
<tr>
<th>Year</th>
<th>Closed to: Mining</th>
<th>Closed to: Leasing</th>
<th>Opened to: Mining</th>
<th>Opened to: Leasing</th>
<th>Cumulative withdrawn Mining</th>
<th>Cumulative withdrawn Leasing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1922</td>
<td>239&lt;sup&gt;b&lt;/sup&gt;</td>
<td>239&lt;sup&gt;b&lt;/sup&gt;</td>
<td>239&lt;sup&gt;b&lt;/sup&gt;</td>
<td>239&lt;sup&gt;b&lt;/sup&gt;</td>
<td>239</td>
<td>239</td>
</tr>
<tr>
<td>1928</td>
<td>1&lt;sup&gt;b&lt;/sup&gt;</td>
<td>1&lt;sup&gt;b&lt;/sup&gt;</td>
<td>240</td>
<td>240</td>
<td>240</td>
<td>240</td>
</tr>
<tr>
<td>1947</td>
<td>---&lt;sup&gt;q&lt;/sup&gt;</td>
<td>---&lt;sup&gt;q&lt;/sup&gt;</td>
<td>240</td>
<td>240</td>
<td>240</td>
<td>240</td>
</tr>
<tr>
<td>1948</td>
<td>23&lt;sup&gt;e&lt;/sup&gt;</td>
<td>23&lt;sup&gt;e&lt;/sup&gt;</td>
<td>263</td>
<td>263</td>
<td>263</td>
<td>263</td>
</tr>
<tr>
<td>1958</td>
<td>11,046&lt;sup&gt;g&lt;/sup&gt;</td>
<td>11,046&lt;sup&gt;g&lt;/sup&gt;</td>
<td>11,309</td>
<td>11,309</td>
<td>11,309</td>
<td>11,309</td>
</tr>
<tr>
<td>1959</td>
<td>745&lt;sup&gt;s&lt;/sup&gt;</td>
<td>745&lt;sup&gt;s&lt;/sup&gt;</td>
<td>11,080</td>
<td>11,080</td>
<td>11,080</td>
<td>11,080</td>
</tr>
<tr>
<td>1960</td>
<td>17&lt;sup&gt;o&lt;/sup&gt;</td>
<td>17&lt;sup&gt;o&lt;/sup&gt;</td>
<td>11,825</td>
<td>11,825</td>
<td>11,825</td>
<td>11,825</td>
</tr>
<tr>
<td>1971</td>
<td>17&lt;sup&gt;o&lt;/sup&gt;</td>
<td>17&lt;sup&gt;o&lt;/sup&gt;</td>
<td>11,808</td>
<td>11,808</td>
<td>11,808</td>
<td>11,808</td>
</tr>
</tbody>
</table>

As of May 1976, 11,808 acres were withdrawn from mineral entry.<sup>t</sup>

---

<sup>a</sup> Refers to the revocation or amendment of license.

<sup>b</sup> Based on information contained in FPC 308, F. R. Doc. 59-5180.

<sup>c</sup> Based on information contained in FPC 376, F. R. Doc. 60-13514.

<sup>d</sup> Based on data contained in USFS Land Status Records: Wallowa-Whitman National Forest. (FPC 1320).

<sup>e</sup> License for FPC 1320 revoked as of January 1, 1942. Opinions and Decisions of the Federal Power Commission, 1941.


<sup>i</sup> FPC 1971, F. R. Doc. 59-7272.

<sup>j</sup> FPC 308, F. R. Doc. 59-5180.


<sup>l</sup> FPC 1971, F. R. Doc. 67-7906.


<sup>n</sup> FPC 376, F. R. Doc. 60-13514.

<sup>o</sup> FPC 1985, F. R. Doc. 70-1526.

<sup>p</sup> Because land within FPC project transmission line rights-of-way were opened to mineral entry on April 17, 1922 [(Second Annual Report of the Federal Power Comm. (1922) p. 128) acreages for transmission line rights-of-way have been excluded.

<sup>q</sup> Land for FPC 1971, Lower Hells Canyon Dam, (1,348 acres) was previously withdrawn under power site classification and is accounted for in Table 3.

<sup>r</sup> Application for FPC 2243, High Mountain Sheep Project, was filed March 31, 1968.

<sup>s</sup> Application for FPC 2273, Nez Perce Project, was filed March 15, 1960.

<sup>t</sup> Overlap with the Hells Canyon National Recreation Area established December 31, 1975, equals 11,791 acres. This overlap has been taken into account in Table 8 by subtracting previously withdrawn land from the Hells Canyon NRA withdrawal.

FPC 308, 1971, and 1986. FPC Projects 308, 1971 and 1986 are the only projects currently under license and producing electrical power within the Forest.29 Lands within the projects' boundaries are withdrawn from both the mining and mineral leasing laws in accordance with Section 24 of the Federal Power Act. Acreages of transmission line right-of-way within FPC 1971 are open to entry however.

FPC 378, 1320, and 1985. Lands within FPC 378 and 1985 have been restored to entry subsequent to revocation of license.30 FPC 1320, a transmission line, was never withdrawn from either the mining or mineral leasing laws pursuant to the FPC decision of April 17, 1922.31

FPC 2243 and 2273. On March 31, 1958 and March 15, 1960 the Pacific Northwest Power Company (FPC 2243) and Washington Public Power Supply System (FPC 2273) respectively filed applications to build hydroelectric power plants on the Snake River in Hells Canyon. A license was eventually issued to Pacific Northwest Power Company on February 5, 1964.32 The license was revoked in 1967 as the result of the pressure placed on the FPC by certain interest groups and members of Congress to keep the middle stretch of the Snake River in a free flowing state. The area is now within the Hells Canyon National Recreation Area established December 31, 1975.33

Lands within FPC 2243 (High Mountain Sheep Project) and FPC 2273

(Nez Perce Project) have been withdrawn from mineral entry since 1958 and 1960 respectively, when applications were first filed with the FPC. The dam project proposed in FPC 2273 was similar to FPC 2243 but was planned to be constructed a few miles further downstream. Because the FPC decided the High Mountain Sheep Project was the best alternative, the Nez Perce Project was not licensed.34 In computing the acreage of withdrawn lands, only that area which was not overlapping with the High Mountain Sheep Project was computed for the Nez Perce. Acreages for both projects are presented in Table 4.

Reclamation Withdrawals

Reclamation withdrawals are accomplished in order to reserve lands which are valuable for irrigation purposes. All four of the reclamation projects found within Wallowa-Whitman National Forest are withdrawn pursuant to the authority delegated to the Bureau of Reclamation by Department of the Interior Order No. 2238 (Appendix F) of August 16, 1946.35 Congress authorized the Department of the Interior to effect reclamation withdrawals and revoke orders of withdrawal under Section 3 of the Act of June 17, 1902 (the Reclamation Act). Section 3 of the Reclamation Act (Appendix H) vests authority in the Secretary of the Interior to withdraw from public entry land required for any irrigation works considered under the provisions of the Act. Lands, which in the Secretary's judgement are not required for the purposes described in the Act, are restored to public entry.36

Two classes of withdrawals are authorized under the Reclamation Act, first form and second form withdrawals. First form withdrawals are lands

34 Opinions and Decisions of the FPC, op. cit., footnote 32, p. 248.
36 Act of June 17, 1902, Ch. 1093, 32 STAT. 388.
which may be needed for the actual construction and maintenance of the irrigation works. Second form withdrawals are lands which are not supposed to be needed in construction and maintenance, but which might be irrigated from such works. 37

First form withdrawals cannot be entered, selected, or located in any way unless so stipulated on "approved forms". Mineral leasing is authorized on reclamation lands under the Mineral Leasing Act subject to the following conditions: "Where the lands have been withdrawn for reclamation purposes the offeror or applicant will be required to consent to the inclusion of a stipulation on the approved forms." 38

All four projects within the National Forest are first form withdrawals and are closed to the mining laws. They are not, however, closed to the mineral leasing laws. An account of the withdrawals is given in Table 5.

**Administrative and Public Service Withdrawals**

Administrative and public service withdrawals are initiated by the USFS for purposes of reserving "... lands which are needed for public purposes from appropriation and entry under applicable public land laws." 39

Because the Secretary of Agriculture has never been given the authority to withdraw lands, withdrawals are made by the Secretary of the Interior under Executive Order Nos. 9337 and 10355 (Appendix E) with the Secretary of Agriculture's consent. Under E. O. Nos. 9337 and 10355 the President delegated his full authority to effect withdrawals to the Secretary of the Interior. Under these Executive Orders withdrawals from mineral entry have been made "... relying on an asserted implied power of the Executive to

Table 5.--Account of Reclamation Project Withdrawals

<table>
<thead>
<tr>
<th>Year</th>
<th>Acreage withdrawn as Reclamation Project</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Withdrawn</td>
</tr>
<tr>
<td>1947</td>
<td>8,210</td>
</tr>
<tr>
<td>1952</td>
<td>27,735</td>
</tr>
<tr>
<td>1956</td>
<td>3,877</td>
</tr>
<tr>
<td>1959</td>
<td>26,403</td>
</tr>
<tr>
<td>1962</td>
<td>960</td>
</tr>
<tr>
<td>1965</td>
<td>8,019</td>
</tr>
</tbody>
</table>

As of May 1976, 8,019 acres were withdrawn as reclamation project land.

<table>
<thead>
<tr>
<th>Year</th>
<th>Acreage withdrawn from mineral entry</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Closed to:</td>
</tr>
<tr>
<td></td>
<td>Mining</td>
</tr>
<tr>
<td></td>
<td>Mining</td>
</tr>
<tr>
<td>1947</td>
<td>8,210</td>
</tr>
<tr>
<td>1952</td>
<td>27,735</td>
</tr>
<tr>
<td>1956</td>
<td>6,360</td>
</tr>
<tr>
<td>1959</td>
<td>3,877</td>
</tr>
<tr>
<td>1962</td>
<td>26,403</td>
</tr>
<tr>
<td>1965</td>
<td>960</td>
</tr>
</tbody>
</table>

As of May 1976, 8,019 acres were closed to mining, however, no acreage was closed to mineral leasing.

Source: Compiled from data contained in Reclamation Withdrawal Orders published in the Federal Register.

withdraw lands from the operation of the mining laws.\textsuperscript{40}

Several types of administrative and public service withdrawals exist within Wallowa-Whitman National Forest. The withdrawals can be categorized under two groups: administrative sites, which include USFS guard stations, lookout stations, and ranger stations; and recreation sites which include USFS campgrounds, dam, reservoir and recreation areas, and river and roadside zones. Miscellaneous withdrawals include a USDA experimental seed orchard and a U. S. Air Force radar area. The USFS land status records list "Rock Creek Reservoir and Ditch" as being restricted to mineral entry by a

\textsuperscript{40} PLLRC, op. cit., footnote 2, p. 288. For an explanation of the Executive's "implied power" see footnote 21.
Department of the Interior easement (The Dalles 025009) dated August 8, 1908. It is doubtful, however, whether the acreage described in the easement is actually withdrawn from the mining laws as the easement was granted before the Secretary had the authority to withdraw lands from mineral entry.

**Administrative Sites**

Prior to E.O. 9337 of April 24, 1943, lands established as administrative sites were not withdrawn from the mining laws. Many of the administrative sites were established by order of the Secretary of the Interior during the period 1906 to 1909. Some were established by order of the Regional Forester during the period 1912 to 1916. Lands established as administrative sites during these periods are not withdrawn from appropriation under the mining laws. Lands established as administrative sites after the Secretary was granted the power to withdraw lands from mineral entry by E.O. 9337 are withdrawn from the mining laws however. An account of administrative withdrawals is given in Table 6.

**Recreation Sites**

All of the recreation sites in the Forest were withdrawn subsequent to the issue of E.O. 10355 and are excluded from mineral entry by that authority. None of the recreation sites, however, are withdrawn from the jurisdiction of the mineral leasing laws. Acreages withdrawn from the mining laws are presented in Table 7.

---

41 USFS Land Status Records: Wallowa-Whitman National Forest, Township Plat, T. 8 S., R. 37 E.
Table 6.--Account of U. S. Forest Service Administrative Site Withdrawals

<table>
<thead>
<tr>
<th>Year</th>
<th>Withdrawn</th>
<th>Revoked</th>
<th>Cumulative withdrawn</th>
</tr>
</thead>
<tbody>
<tr>
<td>1901-1910</td>
<td>2,502</td>
<td></td>
<td>2,502</td>
</tr>
<tr>
<td>1911-1920</td>
<td>641</td>
<td></td>
<td>3,143</td>
</tr>
<tr>
<td>1921-1930</td>
<td>0</td>
<td></td>
<td>3,143</td>
</tr>
<tr>
<td>1931-1940</td>
<td>0</td>
<td></td>
<td>3,303</td>
</tr>
<tr>
<td>1941-1950</td>
<td>0</td>
<td></td>
<td>3,303</td>
</tr>
<tr>
<td>1951-1960</td>
<td>452&lt;sup&gt;c&lt;/sup&gt;&lt;sup&gt;d&lt;/sup&gt;&lt;sup&gt;e&lt;/sup&gt;</td>
<td>1,283&lt;sup&gt;h&lt;/sup&gt;</td>
<td>3,755</td>
</tr>
<tr>
<td>1961-1970</td>
<td>281&lt;sup&gt;f&lt;/sup&gt;&lt;sup&gt;g&lt;/sup&gt;</td>
<td></td>
<td>2,723</td>
</tr>
</tbody>
</table>

As of May 1976, 2,753 acres were withdrawn as administrative site lands.

<table>
<thead>
<tr>
<th>Year</th>
<th>Mining</th>
<th>Leasing</th>
<th>Mining</th>
<th>Leasing</th>
<th>Mining</th>
<th>Leasing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1954</td>
<td>160&lt;sup&gt;c&lt;/sup&gt;</td>
<td></td>
<td>160</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1955</td>
<td>172&lt;sup&gt;d&lt;/sup&gt;</td>
<td></td>
<td>332</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1958</td>
<td>120&lt;sup&gt;e&lt;/sup&gt;</td>
<td></td>
<td>452</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1966</td>
<td>70&lt;sup&gt;f&lt;/sup&gt;</td>
<td></td>
<td>522</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>181&lt;sup&gt;g&lt;/sup&gt;</td>
<td></td>
<td>703</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As of May 1976, 703 acres were closed to mining, however, no acreage was closed to mineral leasing.

---

<sup>a</sup> Acreages taken from USFS land status records except where otherwise indicated.
<sup>b</sup> E. O. 9337 of April 24, 1943 and E. O. 10355 of May 26, 1952 authorized the Department of Interior to withdraw lands from mineral entry. Previous to 1943, no land was withdrawn from mineral entry.
<sup>c</sup> PLO 990, F. R. Doc. 54-6334
<sup>d</sup> PLO 1112, F. R. Doc. 55-2902
<sup>e</sup> PLO 1586, F. R. Doc. 58-1227
<sup>f</sup> PLO 4107, F. R. Doc. 66-11899
<sup>g</sup> PLO 4557, F. R. Doc. 68-14156
<sup>h</sup> PLO 3126, F. R. Doc. 63-7370

Source: Compiled from data contained in U. S. Forest Service Land Status Records: Wallowa-Whitman National Forest; and Public Land Orders published in the Federal Register.
<table>
<thead>
<tr>
<th>Year</th>
<th>Withdrawn</th>
<th>Revoked</th>
<th>Cumulative withdrawn</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951-1955</td>
<td>1,425</td>
<td></td>
<td>1,425</td>
</tr>
<tr>
<td>1956-1960</td>
<td>5,082</td>
<td>6,507</td>
<td>6,507</td>
</tr>
<tr>
<td>1961-1965</td>
<td>3,676</td>
<td>10,183</td>
<td>10,183</td>
</tr>
<tr>
<td>1966-1970</td>
<td>632</td>
<td>10,815</td>
<td>10,815</td>
</tr>
<tr>
<td>1971-1975</td>
<td>1,385</td>
<td>12,200</td>
<td>12,200</td>
</tr>
</tbody>
</table>

As of May 1976, 12,200 acres were withdrawn as USFS Recreation Site lands.

<table>
<thead>
<tr>
<th>Year</th>
<th>Mining</th>
<th>Leasing</th>
<th>Mining</th>
<th>Leasing</th>
<th>Mining</th>
<th>Leasing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1951</td>
<td>80b</td>
<td></td>
<td>30</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1954</td>
<td>645c</td>
<td></td>
<td>725</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1955</td>
<td>702d</td>
<td></td>
<td>1,427</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1959</td>
<td>5,080e</td>
<td></td>
<td>6,507</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1963</td>
<td>3,356f</td>
<td></td>
<td>9,853</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1965</td>
<td>320g</td>
<td></td>
<td>10,183</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1967</td>
<td>70h</td>
<td></td>
<td>10,253</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1968</td>
<td>115i</td>
<td></td>
<td>10,368</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1969</td>
<td>290j</td>
<td></td>
<td>10,658</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1970</td>
<td>157k</td>
<td></td>
<td>10,815</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>1971</td>
<td>1,001l</td>
<td></td>
<td>11,816</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1973</td>
<td>384m</td>
<td></td>
<td>12,200</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As of May 1976, 12,200 acres were closed to mining, however, no acreage was closed to mineral leasing.

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a Acreages taken from Public Land Orders published in the Federal Register.
b PLO 725, F. R. Doc. 51-6018.
c PLO 990, F. R. Doc. 54-6334.
d PLO 1112 & 1144, F. R. Doc. 55-2902 & 3736.
e PLO 1867, F. R. Doc. 59-4640.
f PLO 2974, 3071 & 3230, F. R. Doc. 63-3584, 5075 & 9879.
g PLO 3713 & 3554, F. R. Doc. 65-7303 & 11362.
h PLO 4145, F. R. Doc. 67-235.
i PLO 4557, F. R. Doc. 68-14166.
j PLO 4692, F. R. Doc. 69-11815.
k PLO 4820, F. R. Doc. 70-5647.
l PLO 5075 & 5277, F. R. Doc. 71-1402 & 8576.
m PLO 5362, F. R. Doc. 73-15650.

Source: Compiled from data contained in Public Land Orders published in the Federal Register.
Congressional Withdrawals

Congress is vested with broad powers over the public lands under the Constitution of the United States. Article IV, Section 3, Clause 2 of the Constitution states: "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting Territory or other Property belonging to the United States ..." The authorities to withdraw lands previously mentioned in this paper (except for the "implied" power of the Executive)\(^\text{42}\) were originally authorized by Congressional delegation of the power granted in the Constitution.

Three areas within the Wallowa-Whitman National Forest were established by Congressional action:

1) The Wilderness Act of September 3, 1964 established the Eagle Cap Wilderness as part of the National Wilderness Preservation System (the Eagle Cap Wilderness was originally established by the Secretary of Agriculture on October 7, 1940);
2) the Act of December 31, 1975 created the Hells Canyon National Recreation Area in Oregon and Idaho;
3) the Act of March 14, 1914 established the water supply for the city of Baker, Oregon.\(^\text{43}\)

Eagle Cap Wilderness Area

The Eagle Cap Wilderness Area will not be withdrawn from mining or mineral leasing until 1984 in accordance with the Wilderness Act:\(^\text{44}\)

Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this Act as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

\(^{42}\) See footnote 21.
\(^{43}\) Act of September 3, 1964, 78 STAT. 890; Act of December 31, 1975; 89 STAT. 1117; Act of March 14, 1914, Ch. 39, 38 STAT. 308.
\(^{44}\) Act of September 3, 1964, 78 STAT. 890.
Limitations have been set on the size of excavations that can be made and there are controls placed on the use of mechanized equipment. It is necessary to obtain a prospecting permit where the limitations will be exceeded or when mechanized equipment is used.45 An account of the acreage that will be withdrawn from mineral entry in 1984 is included in the account of Congressional withdrawals presented in Table 8.

Hells Canyon National Recreation Area (NRA)

The Hells Canyon National Recreation Area was established December 31, 1975 and encompasses a total area of 662,000 acres (268,000 hectares), of which approximately 516,020 (208,833 hectares) are within the

<table>
<thead>
<tr>
<th>Year</th>
<th>Withdrawn</th>
<th>Revoked</th>
<th>Cumulative withdrawn</th>
</tr>
</thead>
<tbody>
<tr>
<td>1914</td>
<td>160(^a)</td>
<td></td>
<td>160</td>
</tr>
<tr>
<td>1964</td>
<td>219,324(^b)</td>
<td></td>
<td>219,484</td>
</tr>
<tr>
<td>1975</td>
<td>487,320(^c)</td>
<td></td>
<td>706,804</td>
</tr>
</tbody>
</table>

As of May 1976, 706,804 acres were withdrawn by Congressional action.

<table>
<thead>
<tr>
<th>Year</th>
<th>Mining</th>
<th>Leasing</th>
<th>Cumulative withdrawn:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1914</td>
<td>160(^a)</td>
<td>160(^a)</td>
<td>160</td>
</tr>
<tr>
<td>1975</td>
<td>469,594(^d)</td>
<td>474,181(^e)</td>
<td>469,754</td>
</tr>
<tr>
<td>1984</td>
<td>(219,324(^f))</td>
<td>(219,324(^b))</td>
<td>(589,038)</td>
</tr>
</tbody>
</table>

As of May 1976, 469,754 acres and 474,341 acres were no longer subject to the mining and mineral leasing laws respectively.

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Wallowa-Whitman National Forest. The Federal Register will not publish detailed boundary descriptions for the NRA until June 30, 1977. A map was obtained, however, from the Wallowa-Whitman Headquarters in Baker, Oregon, and acreages were estimated based on the boundaries shown.46

Authority to close the entire NRA from both mining and mineral leasing is contained in Section 11 of the Act:47

Notwithstanding the provisions of Section 4(d)(2) of the Wilderness Act and subject to valid existing rights, all Federal lands located in the recreation area are hereby withdrawn from all forms of location, entry, and patent under the mining laws of the United States, and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

Acreages withdrawn from the mining and mineral leasing laws are shown in Table 8. Acreages of overlaps have been subtracted, as well as acreages of non-public land contained within the NRA.

**City of Baker Water Supply**

On March 14, 1914 Congress passed an Act which serves to protect the water supply of Baker, Oregon (Appendix I). The area of approximately 160 acres (65 hectares) is designated a municipal water-supply reserve and is ". . . reserved from all forms of location or entry."48 Watersheds under agreements with the Department of Agriculture, however, are not closed to mineral entry.49

**Rights-of-Way**

The status of lands within highway, railroad and pipeline rights-of-way, and those for transmission lines not under the jurisdiction of the Federal Power Commission, was not established in this paper. Rights-of-way

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46 Acreages were estimated by planimeter using USFS map "Hells Canyon National Recreation Area," (no date).
47 Act of December 31, 1975, 89 STAT. 1117, Sec. 11.
48 Act of March 14, 1914, 38 STAT. 308, Sec. 1.
of USFS roads are filed with the Department of the Interior for appropriation. Some doubt exists, however, whether USFS road rights-of-way appropriated by the Forest Service are legally closed to mineral entry. 50

Total acreage of lands within highway, USFS road, railroad, and pipeline rights-of-way amounts to 32.1 thousand acres (13.0 thousand hectares). (For amplification of each of the above rights-of-way see Appendix J).

**Potential Withdrawals**

For purposes of this paper, "potential withdrawals" refers to lands which have been listed in the Federal Register as being proposed for withdrawal and reservation. Once listed in the Federal Register, interested parties may submit comments or objections in writing to the Department of the Interior. The Secretary of the Interior then decides whether or not the lands will be withdrawn as requested. His determination is then published in the Federal Register either as a revocation of the proposed withdrawal or as a public land order withdrawing the land. An example of a proposed withdrawal is presented in Appendix K.

As of May 1976, 5040 acres (2040 hectares) are proposed for withdrawal in the Wallowa-Whitman. The Department of Agriculture, on behalf of the USFS, filed an application April 24, 1975 with the Department of the Interior requesting the land be withdrawn from the mining laws, but not the mineral leasing laws, for the "North Fork John Day Streamside--Elkhorn Drive Roadside Zone," a recreation area and roadside management zone. 51

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50 Appropriation by the USFS is described in Appendix J.
SUMMARY

A total chronological and cumulative account of lands withdrawn from mineral entry in Wallowa-Whitman National Forest is presented in Table 9. A graphic display of the data is shown in Figure 2.

During the period 1945 to 1974, before the Hells Canyon National Recreation Area was established, acreage of land withdrawn from the jurisdiction of the mining laws varied from a low of nearly fourteen thousand acres (5.7 thousand hectares) in 1945 to a high of 53.7 thousand acres (21.7 thousand hectares) in 1975.

<table>
<thead>
<tr>
<th>Year</th>
<th>Acreage Withdrawn from:</th>
<th>Cumulative Acreage Withdrawn:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mining</td>
<td>Leasing</td>
</tr>
<tr>
<td>1945</td>
<td>13,906</td>
<td>14,106</td>
</tr>
<tr>
<td>1946</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>1947</td>
<td>11,132</td>
<td>2,922</td>
</tr>
<tr>
<td>1948</td>
<td>23</td>
<td>23</td>
</tr>
<tr>
<td>1949</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>1950</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>1951</td>
<td>1,372</td>
<td>1,292</td>
</tr>
<tr>
<td>1952</td>
<td>24,370</td>
<td>-0-</td>
</tr>
<tr>
<td>1953</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>1954</td>
<td>805</td>
<td>-0-</td>
</tr>
<tr>
<td>1955</td>
<td>-12,133</td>
<td>-16,572</td>
</tr>
<tr>
<td>1956</td>
<td>-6,360</td>
<td>-0-</td>
</tr>
<tr>
<td>1957</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>1958</td>
<td>11,166</td>
<td>11,166</td>
</tr>
<tr>
<td>1959</td>
<td>8,728</td>
<td>-229</td>
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<tr>
<td>1960</td>
<td>745</td>
<td>745</td>
</tr>
<tr>
<td>1961</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>1962</td>
<td>-26,403</td>
<td>-0-</td>
</tr>
<tr>
<td>1963</td>
<td>3,356</td>
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<td>1964</td>
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<td>1966</td>
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</tr>
<tr>
<td>1967</td>
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<td>-0-</td>
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<tr>
<td>1968</td>
<td>296</td>
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<td>1969</td>
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<td>-0-</td>
</tr>
<tr>
<td>1970</td>
<td>157</td>
<td>-0-</td>
</tr>
<tr>
<td>1971</td>
<td>984</td>
<td>-17</td>
</tr>
<tr>
<td>1972</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>1973</td>
<td>384</td>
<td>-0-</td>
</tr>
<tr>
<td>1974</td>
<td>-0-</td>
<td>-0-</td>
</tr>
<tr>
<td>1975</td>
<td>469,594</td>
<td>474,181</td>
</tr>
</tbody>
</table>

a Minus figures refer to the opening of lands to entry.
b Includes withdrawals made previous to 1945.
Source: Compiled from Tables 2-8.
ACCOUNT OF WITHDRAWALS DURING THE PERIOD 1945 TO 1975

Figure 2.

thousand hectares) in 1961. After 1961 when over 26 thousand acres (10.5 thousand hectares) were opened to mining, there was a gradual increase in withdrawals from 27.3 to 34.2 thousand acres (11.0 to 13.8 thousand hectares). A very similar trend can be seen for lands withdrawn from the jurisdiction of the mineral leasing laws, the difference being the magnitude of the withdrawals. Since 1947, more acreage has been open to mineral leasing than to mining. During the period 1955 to 1957 only 1.7 thousand acres (0.7 thousand hectares) were withdrawn from the leasing laws compared
to over 33.1 thousand acres (13.4 thousand hectares) withdrawn from mining. From 1945 to 1974 there was a net increase of 20.3 thousand acres (8.2 thousand hectares) withdrawn from mining and a net decrease of 800 acres (324 hectares) withdrawn from mineral leasing.

Comparing the cumulative total of withdrawals in 1974 with the total public domain in the Forest, 1.5 and 0.6 percent of the public domain in the National Forest was closed to mining and mineral leasing respectively. This represents a very small amount of acreage when compared with the single Congressional withdrawal of the Hells Canyon NRA. In this one withdrawal over twenty-one percent of the Forest was closed to both mining and mineral leasing.

A summary of the lands withdrawn from mineral entry in the Forest as of May 1976 is presented in Table 10. All four forms of withdrawal exclude mining, but only power site withdrawals and Congressional withdrawals found within the Wallowa-Whitman restrict mineral leasing. A total of 22.6 percent

<table>
<thead>
<tr>
<th>Public domain originally subject to the mining and mineral leasing laws</th>
<th>Acres</th>
<th>(% of Total)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2,233,285</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Public domain no longer subject to the: |
|---|---|---|
| Mining laws | |
| Forms of withdrawal: | Acres | (% of Total) |
| Power sites | 13,156 | (0.6) |
| Reclamation projects | 8,019 | (0.4) |
| Administrative and public service areas | 12,903 | (0.6) |
| Congressional actions | 469,754 | (21.0) |
| Total | 503,832 | (22.6) |

| Leasing laws |
|---|---|---|
| Forms of withdrawal: | Acres | (% of Total) |
| Power sites | 13,156 | (0.6) |
| Congressional actions | 474,341 | (21.2) |
| Total | 487,497 | (21.8) |

Source: Compiled based on data previously presented.
of the Forest is closed to mining and 21.8 percent to mineral leasing.  

When potential withdrawals and the future withdrawal of Eagle Cap Wilderness Area is included, 32.6 percent and 31.6 percent of the Wallowa-Whitman will be withdrawn from mining and mineral leasing respectively. (These figures do not include acreages within the various kinds of rights-of-way discussed earlier).  

The figures for the Wallowa-Whitman shown in Table 10 are similar to Bennethum and Lees' figures for the United States ("ANCSA excluded") found in Table 1. The reason for the large acreage closed to mineral entry in the Wallowa-Whitman National Forest is the establishment of one withdrawal, the Hells Canyon National Recreation Area. Withdrawals for reclamation projects, power sites and USFS administrative and public service areas represent a relatively insignificant share of the total land withdrawn from mineral entry.  

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52 In the Wallowa-Whitman lands withdrawn from mineral leasing are also closed to mining. As of May 1976, there are no lands restricted to mineral leasing only.

53 Acreages discussed under the section entitled "Rights-of-Way" total 32.1 thousand acres (13.0 thousand hectares), or approximately 1.4 percent of the total public domain in the Forest.

54 See footnote 3.
Examples of Withdrawal Notices Published in the Federal Register

APPENDIX A

FEDERAL REGISTER VOL. 40, NO. 29—TUESDAY, FEBRUARY 11, 1975

NEW MEXICO...

Withdrawal for National Forest Recreation Area and Administrative Site

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4631), it is ordered as follows:
1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

CABRILLO NATIONAL FOREST

NEW MEXICO PRINCIPAL MERIDIAN

Transpaso Recreation Area

T. 21 N., R. 12 E., Sec. 10, lots 5 and 14, unsurveyed portion of S½SW¼SW¼; Sec. 21, lots 1, NE¼ of lot 2, W½NW¼NE¼, unsurveyed portions of N½NE¼NW¼, NE¼NW¼NW¼.

Canon Administrative Site

T. 22 N., R. 12 E., Sec. 15, W½W¼ of lot 5, and W½W¼ SW¼SW¼; Sec. 16, lots 5, 7, and 8.

The areas described aggregate 224.70 acres in Taos and Rio Arriba Counties.

Jack O. Horton, Assistant Secretary of the Interior.

FEBRUARY 5, 1975.

[FR Doc.75-3754 Filed 2-10-75; 8:45 am]

NEW MEXICO...

Withdrawal for National Forest Recreation Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4631), it is ordered as follows:
1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from appropriation under the mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws, in aid of programs of the Department of Agriculture:

PHILIP II NATIONAL FOREST

NEW MEXICO PRINCIPAL MERIDIAN

Assisted Forest Recreation Area

T. 24 N., R. 9 E., Sec. 18, W½W¼ of lot 3, and W½W¼ SW¼SW¼.

The areas described aggregate 33 acres in Torrance and Rio Arriba Counties.

Jack O. Horton, Assistant Secretary of the Interior.

FEBRUARY 5, 1975.

[FR Doc.75-3754 Filed 2-10-75; 8:45 am]

OREGON...

Withdrawal and Reservation of Land for Sprague Orchard Clone Storage Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4631), it is ordered as follows:
1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws, for an administrative site and administrative building.

WILLAMETTE MERIDIAN

T. 36 S., R. 6 W., Sec. 3, SW¼.

The area described contains 160 acres in Josephine County.

Jack O. Horton, Assistant Secretary of the Interior.

FEBRUARY 5, 1975.

[FR Doc.75-2390 Filed 2-10-75; 8:45 am]

NEVADA...

Withdrawal of Land for Addition to the Alkali Lake Wildlife Management Area

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4631), it is ordered as follows:
1. Subject to valid existing rights, the following described public land, which is under the jurisdiction of the Secretary of the Interior, is hereby withdrawn from all forms of appropriation under the public land laws, including the mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws or from disposal of materials under the Act of July 31, 1947, as amended, 30 U.S.C. 601, 602 (1970), as an addition to the Alkali Lake Wildlife Management Area:

MOUNT DIABLO MERIDIAN

T. 12 N., R. 23 E., Sec. 3, SW¼SW¼.

The area described contains 40 acres in Lyon County.

The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws, provided that such use or disposal will not be inconsistent with the purposes for which the land is withdrawn.

Jack O. Horton, Assistant Secretary of the Interior.

FEBRUARY 5, 1975.

[FR Doc.75-3754 Filed 2-10-75; 8:45 am]

CALIFORNIA...

Withdrawal for National Forest Administrative Site

By virtue of the authority vested in the President and pursuant to Executive Order No. 10355 of May 26, 1952 (17 FR 4631), it is ordered as follows:
1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from all forms of appropriation under the mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws, for an administrative site of the Department of Agriculture:

SAN BERNARDINO NATIONAL FOREST

T. 3 N., R. 7 W., Sec. 13, SE¼SW¼, SW¼NW¼, SE¼SW¼, NW¼SW¼, SE¼SW¼, W½W¼SW¼, W½W¼SW¼, W½W¼SW¼, W½W¼SW¼.

The area described aggregates 50 acres in San Bernardino County.
APPENDIX B

Act of June 25, 1910 (36 STAT. 487)

CHAP. 421.—An Act To authorize the President of the United States to make withdrawals of public lands in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may, at any time in his discretion, temporarily withdraw from settlement, location, sale, or entry any of the public lands of the United States including the District of Alaska and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress.

Sec. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States, so far as the same apply to minerals other than coal, oil, gas, and phosphates: Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands, and who, at such date, is in diligent prosecution of work leading to discovery of oil or gas, shall not be affected or impaired by such order, so long as such occupant or claimant shall continue in diligent prosecution of said work: And provided further, That this Act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to the passage of this Act: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement, was made; And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created within the limits of the States of Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress.

Sec. 3. That the Secretary of the Interior shall report all such withdrawals to Congress at the beginning of its next regular session after the date of the withdrawals.

Approved, June 25, 1910.
APPENDIX C

Act of August 24, 1912 (37 STAT. 497)

CHAP. 369.—An Act To amend section two of an Act to authorize the President of the United States to make withdrawals of public lands in certain cases, approved June twenty-fifth, nineteen hundred and ten.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two of the Act of Congress approved June twenty-fifth, nineteen hundred and ten (Thirty-sixth Statutes at Large, page eight hundred and forty-seven), be, and the same hereby is, amended to read as follows:

"Sec. 2. That all lands withdrawn under the provisions of this Act shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals; Provided, That the rights of any person who, at the date of any order of withdrawal heretofore or hereafter made, is a bona fide occupant or claimant of oil or gas bearing lands and who, at such date, is in the diligent prosecution of work leading to the discovery of oil or gas, shall not be affected or impaired by such order so long as such occupant or claimant shall continue in diligent prosecution of said work: Provided further, That this Act shall not be construed as a recognition, abridgment, or enlargement of any asserted rights or claims initiated upon any oil or gas bearing lands after any withdrawal of such lands made prior to June twenty-fifth, nineteen hundred and ten: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this Act all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry heretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entryman or settler shall continue to comply with the law under which the entry or settlement was made: And provided further, That hereafter no forest reserve shall be created, nor shall any additions be made to one heretofore created, within the limits of the States of California, Oregon, Washington, Idaho, Montana, Colorado, or Wyoming, except by Act of Congress."

Approved, August 24, 1912.
APPENDIX D

Act of August 11, 1955 (69 STAT. 681)

Public Law 359

CHAPTER 797

AN ACT

August 11, 1955

To permit the mining, development, and utilization of the mineral resources of all public lands withdrawn or reserved for power development, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Mining Claims Rights Restoration Act of 1955”.

Sec. 2. All public lands belonging to the United States heretofore, now or hereafter withdrawn or reserved for power development or power sites shall be open to entry for location and patent of mining claims and for mining, development, beneficiation, removal, and utilization of the mineral resources of such lands under applicable Federal statutes: Provided, That all power rights to such lands shall be retained by the United States: Provided further, That locations made under this Act within the revested Oregon and California Railroad and reconveyed Coos Bay Wagon grant lands shall also be subject to the provisions of the Act of April 8, 1948, Public Law 477 (Eightieth Congress, second session): And provided further, That nothing contained herein shall be construed to open for the purposes described in this section any lands (1) which are included in any project operating or being constructed under a license or permit issued under the Federal Power Act or other Act of Congress, or (2) which are under examination and survey by a prospective licensee of the Federal Power Commission, if such prospective licensee holds an uncanceled preliminary permit issued under the Federal Power Act authorizing him to conduct such examination and survey with respect to such lands and such permit has not been renewed in the case of such prospective licensee more than once.

(b) The locator of a placer claim under this Act, however, shall conduct no mining operations for a period of sixty days after the filing of a notice of location pursuant to section 4 of this Act. If the Secretary of the Interior, within sixty days from the filing of the notice of location, notifies the locator by registered mail of the Secretary’s intention to hold a public hearing to determine whether placer mining operations would substantially interfere with other uses of the land included within the placer claim, mining operations on that claim shall be further suspended until the Secretary has held the hearing and has issued an appropriate order. The order issued by the Secretary of the Interior shall provide for one of the following: (1) a complete prohibition of placer mining; (2) a permission to engage in placer mining upon the condition that the locator shall, following placer operations, restore the surface of the claim to the condition in which it was immediately prior to those operations; or (3) a general permission to engage in placer mining. No order by the Secretary with respect to such operations shall be valid unless a certified copy is filed in the same State or county office in which the locator’s notice of location has been filed in compliance with the United States mining laws.

The Secretary shall establish such rules and regulations as he deems desirable concerning bonds and deposits with respect to the restoration of lands to their condition prior to placer mining operations. Moneys received from any bond or deposit shall be used for the restoration of the surface of the claim involved, and any money received in excess of the amount needed for the restoration of the surface of that claim shall be refunded.
(c) Nothing in this Act shall affect the validity of withdrawals or reservations for purposes other than power development.

Sec. 3. Prospecting and exploration for and the development and utilization of mineral resources authorized in this Act shall be entered into or continued at the financial risk of the individual party or parties undertaking such work: Provided, That the United States, its permittees and licensees shall not be responsible or held liable or incur any liability for the damage, destruction, or loss of any mining claim, mill site, facility installed or erected, income, or other property or investments resulting from the actual use of such lands or portions thereof for power development at any time where such power development is made by or under the authority of the United States, except where such damage, destruction, or loss results from the negligence of the United States, its permittees and licensees.

Sec. 4. The owner of any unpatented mining claim located on land described in section 2 of this Act shall file for record in the United States district land office of the land district in which the claim is situated (1) within one year after the effective date of this Act, as to any or all locations heretofore made, or within sixty days of location as to locations hereafter made, a copy of the notice of location of the claim: (2) within sixty days after the expiration of any annual assessment year, a statement as to the assessment work done or improvements made during the previous assessment year.

Sec. 5. Nothing in this Act contained shall be construed to limit or restrict the rights of the owner or owners of any valid mining claim located prior to the date of withdrawal or reservation: Provided, That nothing in this Act shall be construed to limit or restrict the rights of the owner or owners of any mining claim who are diligently working to make a discovery of valuable minerals at the time any future withdrawal or reservation for power development is made.

Sec. 6. Notwithstanding any other provisions of this Act, all mining claims and mill sites or mineral rights located under the terms of this Act or otherwise contained on the public lands as described in section 2 shall be used only for the purposes specified in section 2 and no facility or activity shall be erected or conducted thereon for other purposes.

Approved August 11, 1955.
APPENDIX E
Executive Order Nos. 9337 and 10355
[3 CFR, 1938-1943; 1949-1953 Comps.]

EXECUTIVE ORDER 9337

AUTHORIZING THE SECRETARY OF THE INTERIOR TO WITHDRAW AND RESERVE LANDS OF THE PUBLIC DOMAIN AND OTHER LANDS OWNED OR CONTROLLED BY THE UNITED STATES

By virtue of the authority vested in me by the act of June 25, 1910, ch. 421, 36 Stat. 847, and as President of the United States, it is ordered as follows:

Section 1. The Secretary of the Interior is hereby authorized to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States to the same extent that such lands might be withdrawn or reserved by the President, and also, to the same extent, to modify or revoke withdrawals or reservations of such lands: Provided, That all orders of the Secretary of the Interior issued under the authority of this order shall have the prior approval of the Director of the Bureau of the Budget and the Attorney General, as now required with respect to proposed Executive orders by Executive Order No. 7398 of February 18, 1938, and shall be submitted to the Division of the Federal Register for filing and publication: Provided, further, That no such order which affects lands under the administrative jurisdiction of any executive department or agency of the Government, other than the Department of the Interior, shall be issued by the Secretary of the Interior without the prior approval or concurrence of the head of the department or agency concerned.

Section 2. This order supersedes Executive Order No. 9146 of April 24, 1942, entitled "Authorizing the Secretary of the Interior to Withdraw and Reserve Public Lands".

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
April 24, 1943.

EXECUTIVE ORDER 10355

DELEGATING TO THE SECRETARY OF THE INTERIOR THE AUTHORITY OF THE PRESIDENT TO WITHDRAW OR RESERVE LANDS OF THE UNITED STATES FOR PUBLIC PURPOSES

By virtue of the authority vested in me by section 301 of title 3 of the United States Code (section 10 of Public Law 248, 82d Congress), and as President of the United States, it is ordered as follows:

Section 1. (a) Subject to the provisions of subsections (b), (c), and (d) of this section, I hereby delegate to the Secretary of the Interior the authority vested in the President by section 1 of the act of June 25, 1910, ch. 421, 36 Stat. 847 (43 U. S. C. 141), and the authority otherwise vested in him to withdraw or reserve lands of the public domain and other lands owned or controlled by the United States in the continental United States or Alaska for public purposes, including the authority to modify or revoke withdrawals and reservations of such lands heretofore or hereafter made. (b) All orders issued by the Secretary of the Interior under the authority of this order shall be designated as public land orders and shall be submitted to the Division of the Federal Register, General Services Administration, for filing and for publication in the Federal Register. (c) No order affecting land under the administrative jurisdiction of any executive department or agency of the Government other than the Department of the Interior shall be issued by the Secretary of the Interior under the authority of this order without the prior approval or concurrence, so far as the order affects such land, of the head of the department or agency concerned, or of such officer of the department or agency concerned as the head thereof may designate for such purpose: Provided, that such officer is required to be appointed by the President by and with the advice and consent of the Senate. (d) Any disagreement between two or more executive departments or agencies with respect to any proposed withdrawal or reservation shall be referred to the Director of the Bureau of the Budget for consideration and adjustment. The Director may, in his discretion, submit the matter to the President for his determination.

Sec. 2. The Secretary of the Interior is authorized to issue such rules and regulations, and to prescribe such procedures, as he may from time to time deem necessary or desirable for the exercise of the authority delegated to him by this order.

Sec. 3. The Secretary of the Interior is authorized to delegate the authority delegated to him by this order to one or more of the following-designated officers: the Under Secretary of the Interior and the Assistant Secretaries of the Interior.

Sec. 4. This order supersedes Executive Order No. 9337 of April 24, 1943, entitled "Authorizing the Secretary of the Interior To Withdraw and Reserve Lands of the Public Domain and Other Lands Owned or Controlled by the United States".

HARRY S. TRUMAN

THE WHITE HOUSE,
May 26, 1952.
APPENDIX F

Department of the Interior Order Nos. 2238 and 2333

[11 FR 9080; 12 FR 4025]

TITLE 4—PUBLIC LANDS: INTERIOR
Subtitle A—Office of the Secretary of the Interior
[Order 2238]

PART 4—DELEGATIONS OF AUTHORITY
BUREAU OF LAND MANAGEMENT, BUREAU OF RECLAMATION, GEOLOGICAL SURVEY AND NATIONAL PARK SERVICE

AUGUST 16, 1946.

SUBPART E—BUREAU OF RECLAMATION

§ 4.610 Functions relating to reclamation withdrawals. The Commissioner of Reclamation, with the concurrence of the Director of the Bureau of Land Management, may withdraw lands and revoke orders of withdrawal under section 3 of the act of June 17, 1902 (32 Stat. 388). Prior to issuance and in accordance with existing practice, such orders of withdrawal shall be cleared by the Bureau of Reclamation with all agencies of the Department which the records indicate may be interested, and no such order of withdrawal shall be issued if objected to by any agency of the Department. If such an objection is raised, the matter shall be submitted to the Department. Orders of revocation shall include the provisions required by section 4 of the act of September 27, 1944 (58 Stat. 748; 43 U.S.C., Sup., 282). (R.S. 181, 53 Stat. 842; 5 U.S.C. 22, 16 U.S.C., Sup., 5502-11)

Oscar L. Chapman,
Acting Secretary of the Interior.

JUNE 10, 1947.

[FR Doc. 47-5549; Filed, June 20, 1947; 8:48 a.m.]
APPENDIX G

Section 24 of the Federal Water Power Act
[Act of June 10, 1920 (41 STAT. 1075)]
and
The Amendment of 1935
[Act of August 26, 1935 (49 STAT. 846)]

The Original Section 24

Sec. 24. That any lands of the United States included in any proposed project under the provisions of this Act shall from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the commission shall determine that the value of any lands of the United States so applied for, or heretofore or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public-land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the commission, for the purposes of this Act, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Act, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the commission: Provided, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites or in connection with water-power development or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained.
The Amendment of 1935

Sec. 211. Section 24 of the Federal Water Power Act, as amended, is amended to read as follows:

"Sec. 21. Any lands of the United States included in any proposed project under the provisions of this Part shall, from the date of filing of application therefor be reserved from entry, location, or other disposal under the laws of the United States until otherwise directed by the Commission or by Congress. Notice that such application has been made, together with the date of filing thereof and a description of the lands of the United States affected thereby, shall be filed in the local land office for the district in which such lands are located. Whenever the Commission shall determine that the value of any lands of the United States so applied for, or hereafter reserved or classified as power sites, will not be injured or destroyed for the purposes of power development by location, entry, or selection under the public land laws, the Secretary of the Interior, upon notice of such determination, shall declare such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands: and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Act, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: Provided, That locations, entries, selections, or filings hereafter made for lands reserved as water-power sites, or in connection with water-power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained."
APPENDIX H

Section 3 of the Reclamation Act

[Act of June 17, 1902 (32 STAT. 388)]

Sec. 3. That the Secretary of the Interior shall, before giving the public notice provided for in section four of this Act, withdraw from public entry the lands required for any irrigation works contemplated under the provisions of this Act, and shall restore to public entry any of the lands so withdrawn when, in his judgment, such lands are not required for the purposes of this Act; and the Secretary of the Interior is hereby authorized, at or immediately prior to the time of beginning the surveys for any contemplated irrigation works, to withdraw from entry, except under the homestead laws, any public lands believed to be susceptible of irrigation from said works: Provided, That all lands entered and entries made under the homestead laws within areas so withdrawn during such withdrawal shall be subject to all the provisions, limitations, charges, terms, and conditions of this Act; that said surveys shall be prosecuted diligently to completion, and upon the completion thereof, and of the necessary maps, plans, and estimates of cost, the Secretary of the Interior shall determine whether or not said project is practicable and advisable, and if determined to be impracticable or unadvisable he shall thereupon restore said lands to entry; that public lands which it is proposed to irrigate by means of any contemplated works shall be subject to entry only under the provisions of the homestead laws in tracts of not less than forty nor more than one hundred and sixty acres, and shall be subject to the limitations, charges, terms, and conditions herein provided: Provided, That the commutation provisions of the homestead laws shall not apply to entries made under this Act.
CHAP. 39.—An Act For the protection of the water supply of the city of Baker, a municipal corporation of the State of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the public lands within the Whitman National Forest situated in the county of Baker, State of Oregon, hereinafter described, are hereby reserved from all forms of location or entry and set aside as a municipal water-supply reserve for the benefit of the city of Baker, a municipal corporation of the State of Oregon, to wit: South half of northeast quarter and north half of southeast quarter section four, township nine south, range thirty-eight east of the Willamette meridian: Provided, That if the said city of Baker shall at any time cease to use said land for said purpose, then, and in that event, the rights hereby granted to said city shall cease and the unrestricted title to said land shall revert to and vest in the United States.

SEC. 2. That to accomplish the purpose of this Act as defined in section one hereof, said city of Baker shall have the right, subject to approval by the Secretary of Agriculture, to the use of any and all parts of the land above described for the storage and conveying of water and the construction and maintenance thereon of reservoirs, pipes, pipe lines, mains, conduits, and other like or any improvements or means for the storage, diversion, or transmission of water.

SEC. 3. That this Act shall be subject to the vested rights of any municipality, person, or persons in or to the above-described premises or any part thereof or the water thereof.

SEC. 4. That the right to alter, amend, or repeal this Act is hereby expressly reserved.

Approved, March 14, 1914.
APPENDIX J

HIGHWAY RIGHTS-OF-WAY

Nine federal-aid highways are found within the boundaries of the Wallowa-Whitman National Forest. The highways are shown in Table 1 by both Oregon highway number and route number. Acreages were estimated using an approximation for right-of-way width supplied by the Location Design Engineer of the Oregon Highway Division who specializes in highways passing through National Forest lands. These are approximations and should not be taken as indicating true acreages.

In the study of withdrawals prepared by the Public Land Law Review Commission no mention is made with regard to lands in highway rights-of-way, except for these.

1 W. Hackleman, Location Design Engineer, Highway Division, Department of Transportation, Salem, Oregon, July 1976. The approximations used were: Interstate = 300 ft (91 m); Primary highway = 200 ft (61 m); Secondary highway = 100 ft (30 m).
nor is any mention made in the Code of Federal Regulations (43 C. F. R. 2800--Roads and Highways) as to the width of right-of-way or whether or not the right-of-way, once granted, is to be withdrawn from mineral entry. For some highways, widths of right-of-way may not even be established. A researcher for the Oregon Highway Division who specializes in researching rights-of-way disclosed that in some cases documentation for widths of highway rights-of-way do not exist. In such cases, the right-of-way is determined based on the width Oregon law prescribed at the time the road or highway became part of the Oregon Highway System.  

FOREST SERVICE ROAD RIGHTS-OF-WAY

Forest Service roads within the boundaries of the study area total 2529 miles (4046 km). The rights-of-way are appropriated by the Forest Service under the directions of a land decision (44 L. D. 513) issued by the Secretary of the Interior on January 13, 1946 which reads as follows:

Where "roads, trails, bridges, fire lanes, telephone lines, cabins, fences, and other improvements necessary for the proper and economical administration, protection, and development of the national forests," have been actually constructed and are being maintained upon public lands of the United States under the provisions of the act of March 4, 1915, or survey has been made and the area needed for such improvements definitely fixed and the construction thereof has been provided for and will be immediately undertaken, and the lands are thereafter disposed of under any of the public land laws, the final certificate and patent should except such portion thereof as it is so devoted to public purposes.

Title 5400--Landownership Adjustments of the Forest Service Manual (included at the back of this Appendix) states: "Recordation under 44 L. D. 513 is an effective method of protecting rights-of-way from

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2 I. Hammer, Researcher, Highway Division, Department of Transportation, Salem, Oregon, July 1976.
mineral claim filing provided the establishment of the P-line of the road or other improvement predates the location and filing of mining claims. "5

However, a Bureau of Land Management (BLM) report, entitled "Evaluation of BLM application of the principles of 44 L. D. 513," evaluates 44 L. D. 513 as follows:6

Rights secured by appropriation are not clear to government personnel. There is uncertainty as to the width of rights-of-way or ground that can and should be appropriated. There is uncertainty of the rights of mining claimants and other land users to use land appropriated by improvements.

The question of whether or not the lands are open to mineral entry is unclear. One BLM employee explained that it would probably be necessary to obtain a court ruling to determine if a particular road appropriated under 44 L. D. 513 was open to mineral entry, and that each road would have to be taken on a case by case basis.7

The Acting Rights-of-Way Specialist for the Wallowa-Whitman National Forest estimated that approximately fifty percent of the 2529 miles (4046 km) of road constructed has been filed for appropriation under 44 L. D. 513. Paperwork will be submitted for the remaining fifty percent in due course in the future.8 Based on right-of-way width of 100 feet (30 meters),9 15,326 acres (6202 hectares) have been appropriated by the Forest Service. Including the roads yet to be filed, a total of 30,652 acres (12,405 hectares) will be appropriated.

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6 This report was submitted to the Director of the BLM under the cover of a memo (signed by A. D. Craft) from the State Director, Oregon, March 29, 1973.
7 S. Vessella, Supervisory Record Specialist, Branch of Records and Data Management, BLM, July 1976.
8 B. Wolfe, op. cit., footnote 3.
9 Title 5400 of the Forest Service Manual stipulates that "the right-of-way width to be recorded on National Forest Lands will not be less than 100 feet in width for roads or recreation trails." (USFS, op. cit., footnote 5, p. 5461.65--2). No rights-of-way for recreation trails have been appropriated by the USFS in the Wallowa-Whitman. (B. Wolfe, op. cit., footnote 3).
RAILROAD RIGHTS-OF-WAY

The Union Pacific Railroad runs through approximately seven miles of the Wallowa-Whitman National Forest. The right-of-way was approved in 1881 and is 200 feet (61 meters) wide. Acreage of land within the right-of-way is approximately 167 acres (66 hectares).10

The Code of Federal Regulations (43 C. F. R. 2840--Railroads, Station Grounds, Wagon Roads) states that "when a right-of-way is located within a National Forest the applicant must enter into such stipulations and execute such bond as the Forest Service may require for the protection of such National Forests." The nature of the lands with respect to mineral entry and disposition, however, is not defined.

PIPELINE RIGHTS-OF-WAY

Two pipelines are found in the Forest: the Chevron Pipeline (originally the Salt Lake Pipeline) and the Pacific Northwest Pipeline (originally the El Paso Natural Gas Pipeline). The rights-of-way were approved in 1950 and 1958 respectively.11 Acreages are estimated to be 47 acres for each pipeline right-of-way. Evidence to suggest that the rights-of-way are closed to mineral entry was not found.

Filing with BLM Under 44 L. D. 513

[Title 5400--Landownership Adjustments, Forest Service Manual]

5461.65 - Filing With Bureau of Land Management Under 44 L. D. 513. On most Forests there are areas heavily blanketed with mining claims. Action under Section 5 of the Act of July 23, 1955, does not thoroughly resolve the right-of-way situation. Some claims will ultimately be patented. Government rights-of-way should be filed with the Bureau of Land Management in order to obtain consideration at the time patents are applied for. In these mineralized areas, filing one traverse for the entire road is the most efficient method of recordation under the provisions of 44 L. D. 513. All system roads, and all important recreation trails, on public domain status lands should be filed by all Forest Supervisors except the Deschutes, Fremont, Malheur, Ochoco, Siuslaw, and Winema. The named Forest Supervisors should make filings within such mineralized areas, share-cost agreement areas, power withdrawals, and reclamation withdrawals as they have. Priorities for making these applications will be established in the manner designated below:

Priority One--New Construction. Location of all new roads and trails planned for construction and roads and trails recently constructed or under construction across National Forest lands open to entry under the general mining laws will be filed. This will include permanent system roads, whether or not operator or contract constructed. It is essential that roads built across National Forest land under cooperative agreements be noted under procedures of 44 L. D. 513 in order to protect the investment of the cooperators.

Priority Two: Existing roads and trails in areas of intense current mineral activity, in areas known to be highly mineralized, in share-cost areas (FSM 5467), or in power and reclamation withdrawals.

Priority Three: Existing roads in areas having a history of "nuisance" location of mining claims.

Priority Four: All other existing roads and recreation trails. For new roads or proposed projects, the filing of the application should coincide with the establishment of the P-line. Establishing the P-line is accepted as the date the Forest Service appropriates the strip of land for road rights-of-way.

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Forest Supervisor shall make application in triplicate, for recordation of appropriation of National Forest roads under 44 L.D. 513, to the BLM Office in Portland for Oregon and Washington, and to Sacramento for California. Application under 44 L.D. 513 will include Memorandum Application, form R6-5460-28, and Map.

A separate memorandum application form R6-5460-28 and map will be required for each road.

The usual right-of-way width to be recorded on National Forest lands will not be less than 100 feet in width for roads or recreation trails.

Map base must be an official map such as a Forest Service planimetric map, road plan and profile sheet, timber sale map if it meets accuracy standards, transportation plan map, etc., with a scale of 2 inches = 1 mile. Map base must be suitable for reproduction by ordinary office photocopy methods. Plat should indicate right-of-way width.

The map or plat to be attached to form R6-5460-28 will include the following:

1. A statement as to official name of map base and date of printing.

2. Road name and number.

3. Roads Crossing Surveyed Lands. Each 40-acre subdivision or Government lot crossed by the road outlined by a broken or dashed line. These subdivisions or lots will be shown as established on the GLO plats. The legal description of the subdivisions crossed by the road need not be entered on the map. Government lots, however, should be identified.

4. Roads Crossing Unsurveyed Lands. Where unsurveyed lands have been protracted by township, range, section and subdivision or lot, treat same as above for surveyed lands.

Where unsurveyed lands have been protracted by township, range and section but have not been further divided into subdivisions or lots, describe the lands as follows:

   e.g. T. 27 N., R. 13 E., W.M., section 6, metes and bounds.

It is not necessary to describe the metes and bounds description. The BLM will plot or determine the location of road or trail by reference to the map attached to the application.

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*-5.* Each termini of the road to be recorded will be tied to a section corner in surveyed country. In unsurveyed country, termini will be tied to survey monuments, creek fork junctions, or other topographic features that can be used to re-establish the survey. Where existing roads are shown on planimetric or other official maps, the distance and bearing from the termini to the section corner can be measured directly from the map. For roads not shown on planimetric or other official maps, photogrametric processes can be used to determine the road termini tie to section corners.

Termini ties will be shown on the map by drawing an arrow from the road termini to the section corner, or other survey monument. Enter on the map, adjacent to, and parallel with the arrow, the distance in feet and bearing from the termini to the tie point.

*-*6.* A legend identifying the following items with reproducible symbols:

- National Forest land.
- Private or other ownership land.
- Road segment to be recorded across National Forest land.
- The lots or 40-acre subdivisions crossed.

Requesting recordation under 44 L.D. 513 is an effective method of protecting rights-of-way from mineral claim filing provided the establishment of the P-line of the road or other improvement predates the location and filing of mining claims. A P-line is considered established when the final route selected for the right-of-way is marked by flags tied to trees and brush near the line and an occasional stake is set.

It is axiomatic in mining law that the owner of a mining claim on the public domain acquires no right to the surface of the land until he makes a discovery (30 USC, 158 Ed., Paragraph 23, Cole V. Ralph, 1919, 252 US 286 40S Ct 321, 64 L. Ed. 567). The basic rule is that until the claim owner makes a discovery he has no more than a right to continue exploration. It is therefore important to retain a file of all information that will help to document the date the road was established and the lack of a valid discovery on any claims conflicting with our road.

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**APPENDIX K**

**Proposed Withdrawal and Reservation of Land**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**OREGON**

**Proposed Withdrawal and Reservation of Lands**

APRIL 24, 1975.

The Department of Agriculture, on behalf of the U.S. Forest Service, has filed application, OR 11156, for withdrawal of 330 acres from the forest domain described below, from all forms of appropriation under the public land laws including the mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, subject to valid existing rights.

The applicant desires the land for a recreational area and roadside management zone.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing no later than May 30, 1975, to the undersigned officer of the Bureau of Land Management, Department of the Interior, P.O. Box 2965 (729 NE. Oregon Street), Portland, Oregon 97208.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant’s needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant’s, to eliminate lands needed for purposes more essential than the applicant’s, and to reach agreement on the concurrent management of the lands and their resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination by the Secretary on the application will be published in the Federal Register. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place which will be announced.

The lands involved in the application are:

**UMATILLA NATIONAL FOREST**

**Williamette Meridian**

**North Fork John Day Bridge Campground Addition**

| T.7S., R.35½ E. | Sec. 34, W¼ NW¼. |
| T.7S., R.35½ E. | **North Fork John Day Streamside-Elkhorn Drive Residential Zone (Combined Area)** |
| T.7S., R.35½ E. | **UMATILLA NATIONAL FOREST** |
| T.7S., R.35½ E. | A strip of land 500 feet wide north of the centerline of Elkhorn Drive and 330 feet south of the centerline of the North Fork John Day River through the following subdivisions: |
| T.7S., R.35½ E. | Sec. 34, NE¼ NW¼. |
| T.7S., R.35½ E. | **Whitman National Forest** |
| T.7S., R.35½ E. | **Proposed Withdrawal** |
| T.7S., R.35½ E. | **T.8S., R.35½ E.** |
| T.7S., R.35½ E. | **North Fork John Day Streamside Zone** |
| T.7S., R.35½ E. | A strip of land 330 feet wide on both sides of the centerline of the North Fork John Day River through the following subdivisions: |
| T.7S., R.35½ E. | **UMATILLA NATIONAL FOREST** |
| T.7S., R.35½ E. | **North Fork John Day Streamside Zone** |
| T.7S., R.35½ E. | **UMATILLA NATIONAL FOREST** |
| T.7S., R.35½ E. | **Whitman National Forest** |

**FEDERAL REGISTER, VOL. 40, NO. 87 MONDAY, MAY 5, 1975**

**Harold A. Berends, Chief, Branch of Lands and Minerals Operations.**

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