

John West

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Brimstone Gulch

Stream Crossing case

## Contested Case: Mr. West is contesting the Orders of the State Forester

- *Stream crossing failing to meet 50 year storm event*
- *Stream crossing failing to meet fish passage requirements*

## Background:

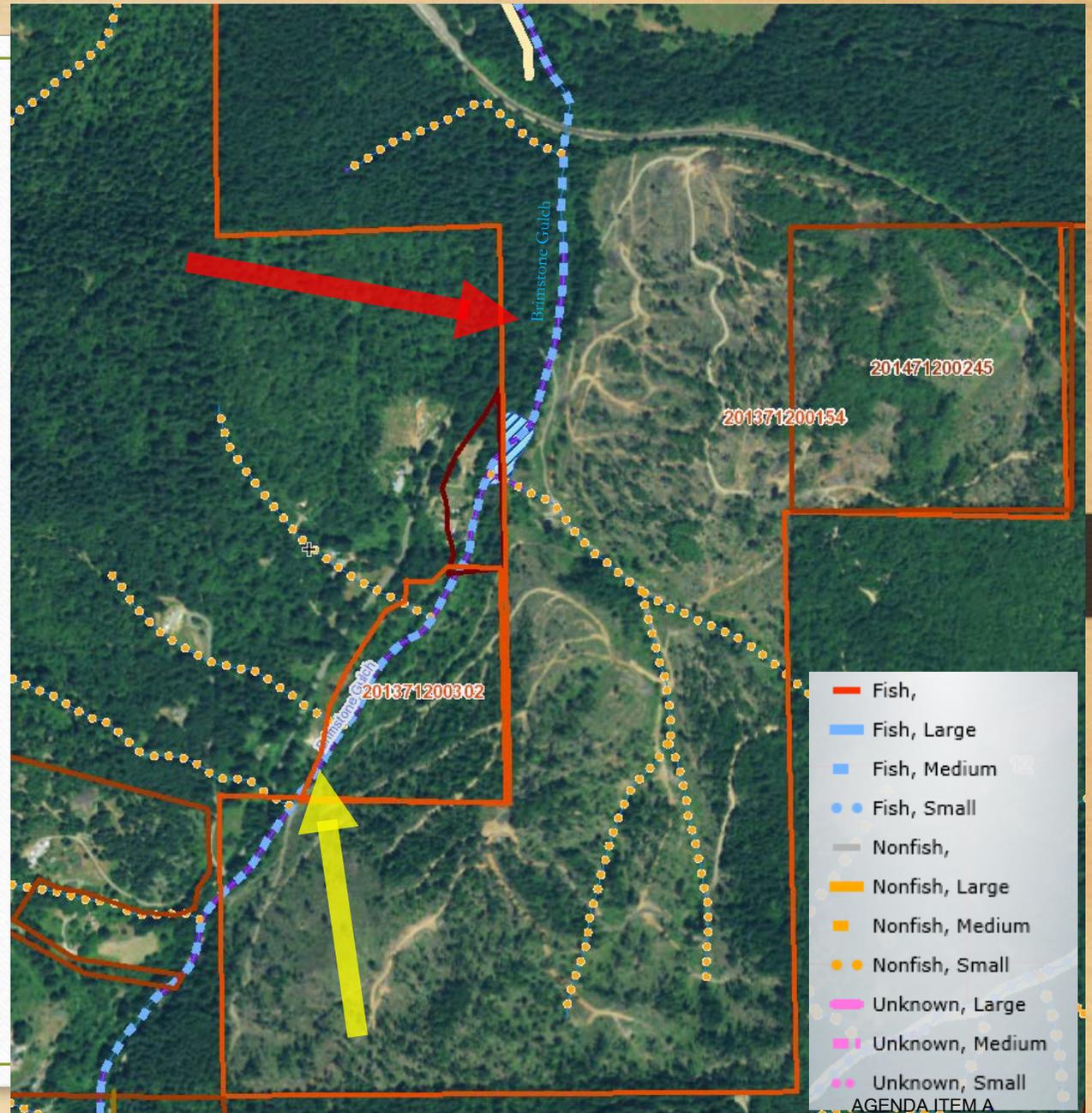
- April 26, 2013 Brimstone Natural Resource Co. (BNR) purchased the property located in Josephine County that is involved with this case.
- John West is the president of BNR and does most of the paperwork for the corporation.
- BNR later conveyed the property to Westlands Contracting, Inc. John West is the president of Westlands.

## Background:

- Brimstone Gulch is a medium Type F (fish-bearing) stream that runs through the property and the stream involved with this crossing.
- An existing logging road with a railroad car bridge crossing Brimstone Gulch was located on the property at the time of purchase by BNR.

# Brimstone Gulch

-  Stream crossing = Culvert/Bridge location
-  Stream crossing = ford location



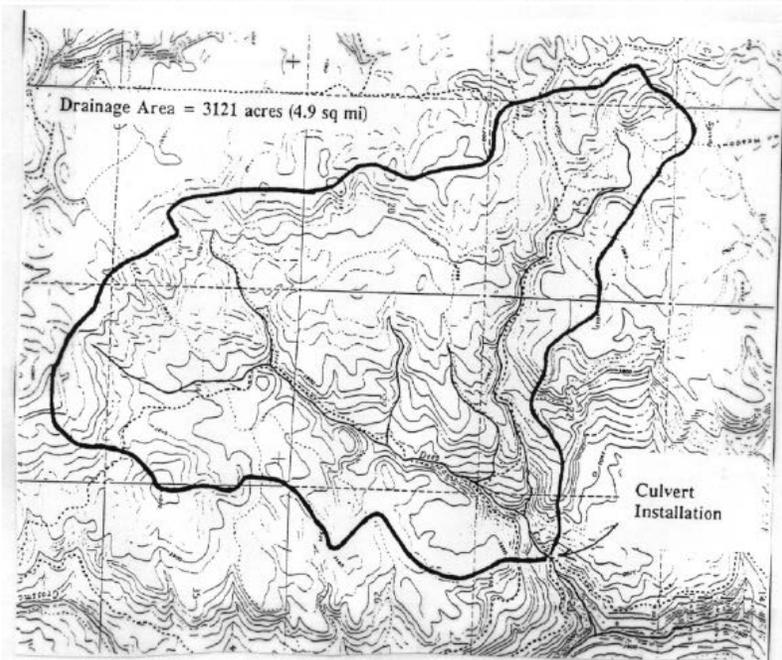


Figure 2. Example of the drainage area outlined upstream of a proposed culvert

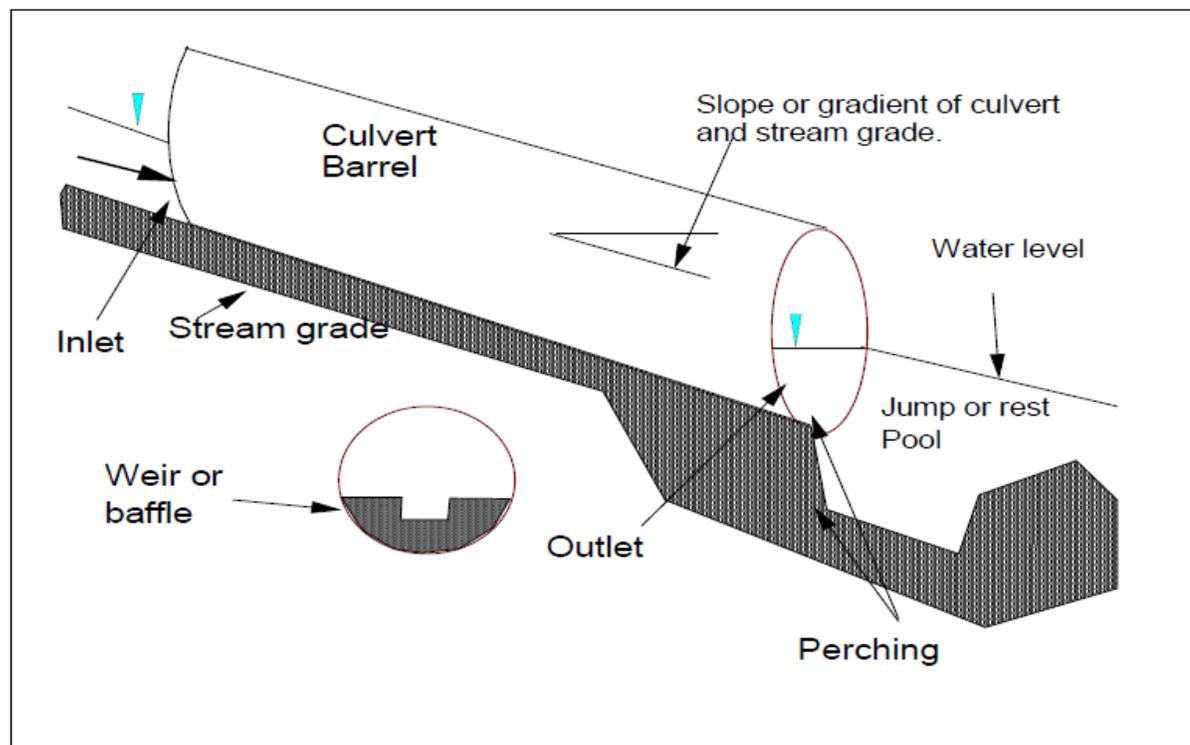


Figure 3. Culvert definition diagram.

Old bridge that was removed and replaced by the culvert.





# Brimstone Gulch

Date: 07/21/2017



## Legend



FERNs Notifications



FACTS Notifications



Township, Range & Section

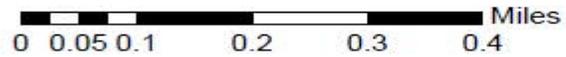
## Streams



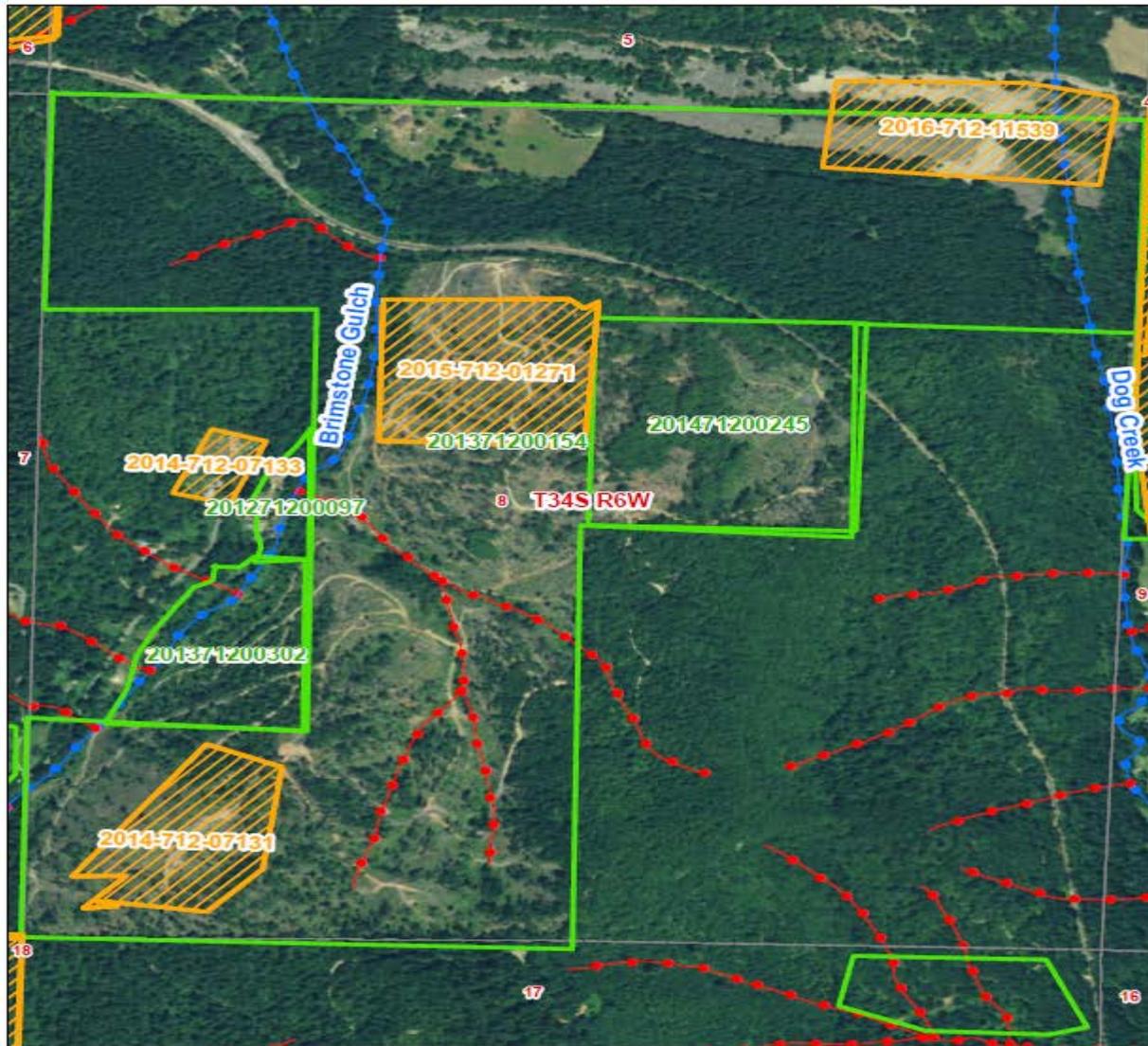
Medium (Fish)



Small (Non-Fish)



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Access road to crossing -  
locked and posted



- September 26, 2016, obtained a signed Inspection Warrant from Josephine County Circuit Court and executed the warrant on September 30, 2016 with ODF, ODFW and a deputy sheriff from Josephine County.
- Data collected during the execution of the warrant:
  - *Photographs of the crossing and area*
  - *Culvert Alignment of culvert with the stream – off by 16 degree resulting in some scouring*
  - *6' round culvert was installed on top of bedrock with no countersinking or other design options*
  - *Drop at the outlet - fish passage concern*
  - *Additional measurements and information collected on various aspects of the crossing and stream*

ODF Stewardship Forester  
Thackery standing in 6'  
diameter culvert in Brimstone  
Gulch.



Looking downstream through  
the 6' diameter by 30' long  
culvert.



Culvert not bedded  
and only incidental  
gravel in the culvert.



Fill material washing  
from behind the  
“Jersey” type road  
barrier used as riprap at  
the culvert inlet.



Culvert outlet perched with  
a 14” deep plunge pool.  
Outflow from pipe  
connected at pool height  
of stream.



Scouring and exposed roots  
downstream of the outlet.

Scoured for 31” up from  
stream bed.



## ● Administrative Law Judge (ALJ) – Conclusion of Law:

- The 2014 crossing replacement over Brimstone Gulch was an “operation” under the FPA
- Mr. West was an “operator” as defined by ORS 527.620(13)
- Mr. West violated the FPA in the following particulars:
  - Failing to notify ODF of the 2014 crossing replacement
  - Failing to provide a written plan to ODF for the crossing replacement
  - Installing a culvert crossing that did not meet FPA requirements for flooding and fish passage
- Mr. West must correct the violations

## Board of Forestry Contested Case – Alternatives for consideration:

Upon review of the ALJ's proposed order and the record in this case, the Board can:

1. Entertain written and/or oral argument if the board determines it is necessary or appropriate to assist the board in the proper disposition of the case. If allowed, oral argument will be limited to matters raised in written exceptions and shall be presented under time limits determined by the board chair: or
2. Remand the matter to the ALJ for further hearing on such issues as the Board specifies and to prepare a revised proposed order as appropriate under OAR 137-003-0655(2); or
3. Enter an amended proposed order or final order that modifies or rejects the recommendations of the ALJ. If the board decides to modify or reject the proposed order, the board must comply with OAR 137-003-0655 and 137-003-0665; or
4. Enter a final order adopting the recommendations (proposed order) of the ALJ.

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- Administrative Law Judge – Proposed Order:
- ODF recommendation - Issue a Final Order that incorporates and modifies the ALJ's proposed order. (see Board of Forestry Agenda item 4 - attachment #2)

*“The proposed order, page 14 is amended to read (delete text with strikethrough and add text with underline):*

*John West has violated the Forest Practices Act in the installation of the culvert crossing over Brimstone Gulch, and must repair or replace the crossing in a manner ~~to be approved by ODF~~ consistent with OAR 629-625-0320(2) and Forest Practices Technical Notes Number 4 & 5 by September 15, 2017. “*

John West

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