

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

MAR 30 1940
Klamath Falls, Oregon

KLAMATH PROJECT

GRANT OF EASEMENT TO CONSTRUCT AND MAINTAIN
A HIGHWAY OVER LAND WITHDRAWN OR PURCHASED UNDER
THE ACT OF CONGRESS OF JUNE 17, 1902 (32 Stat. 588)

THIS CONTRACT, Made this 22 day of March, 1940,

in pursuance of the act of Congress of June 17, 1902, (32 Stat. 588) and the Reclamation Project Act of 1939 and all acts amendatory thereof or supplementary thereto, commonly known as the Federal Reclamation Law, between the UNITED STATES OF AMERICA, hereinafter styled the United States, represented by the officer executing this contract, and the STATE OF OREGON, acting by and through its Highway Commission pursuant to Chapter 529, 1939 Session Laws of Oregon, hereinafter called the State,

WITNESSETH, That:

2. WHEREAS, the State desires to construct, maintain and operate a State Highway known as the Klamath Falls-Malin Highway, on the right of way of and across the Adams Canal in Lot two (2) of Section three (3), Township forty-one (41) South, Range ten (10) East, Willamette Meridian, also on the right of way of and over the "C" Canal and No. 1 and No. 1-B Drains and the Lost River Diversion Channel in Sections twenty-five (25) and thirty-six (36), Township thirty-nine (39) South, Range nine (9) East, Willamette Meridian, and Sections thirty (30) and thirty-one (31), Township thirty-nine (39) South, Range ten (10) East, Willamette Meridian, Klamath County, Oregon, all being part of the Klamath Project of the United States Bureau of Reclamation, in the locations described as follows:

(Reel correspondence in file C-1 260)

ADAMS CANAL

A parcel of land lying in Government Lot two (2) of Section three (3), Township forty-one (41) South, Range ten (10) East, Willamette Meridian, Klamath County, Oregon; the said parcel being a strip of land one hundred (100) feet in width over and across the 100-foot right of way of the "Adams Canal"; said parcel being more particularly described as follows:

Beginning at the point of intersection of the northwesterly line of the said canal right of way and the relocated center line of the Klamath Falls-Malin Highway at Engineer's center line Station 38+20.5; said point also being 153.4 feet south and 443.4 feet west of the northeast corner of said Section 3; thence north $56^{\circ} 08' 30''$ east along said canal right of way line 50.06 feet; thence south $36^{\circ} 45' 30''$ east parallel to the relocated center line of said highway 100.12 feet; thence south $56^{\circ} 08' 30''$ west along the southeasterly right of way line of said canal a distance of 100.12 feet; thence north $36^{\circ} 45' 30''$ west parallel to said relocated center line a distance of 100.12 feet; thence north $56^{\circ} 08' 30''$ east a distance of 50.06 feet to the point of beginning.

"C" CANAL (Concrete Flume) AND NO. 1 DRAIN

A parcel of land lying in the Southwest quarter (SW 1/4) of the southwest quarter (SW 1/4) of Section 30, Township 39 South, Range 10 East, and in the Southeast quarter (SE 1/4) of the Southeast quarter (SE 1/4) of Section 25, Township 39 South, Range 9 East, W. M., Klamath County, Oregon, the said parcel being described as follows:

Beginning at a point which is the intersection of the relocated center line of the Klamath Falls-Malin Highway at Engineer's Station 388+29.5 and the northwesterly right of way line of the United States Reclamation Service "C" Canal; said point being 993.4 feet north and 10.5 feet east of the southeast corner of Section 25, Township 39 South, Range 9 East, W. M.; thence South $39^{\circ} 45' 30''$ West along said canal line a distance of 81.06 feet; thence South $0^{\circ} 39' 30''$ West parallel to and 50 feet distant westerly from said highway relocated center line a distance of 324.26 feet to the southeasterly right of way line of said canal; thence North $39^{\circ} 45' 30''$ East along said canal line a distance of 81.06 feet to the relocated center line of said highway; thence North $0^{\circ} 39' 30''$ East along said center line 40.54 feet; thence North $39^{\circ} 45' 30''$ East a distance of 81.06 feet; thence North $0^{\circ} 39' 30''$ East parallel to and 50 feet distant easterly from said relocated center line a distance of 243.18 feet to the northwesterly line of said canal; thence South $39^{\circ} 45' 30''$ West a distance of 81.06 feet to the center line of said highway; thence North $0^{\circ} 39' 30''$ East along said center line a distance of 40.54 feet to the point of beginning.

The parcel of land to which this description applies contains 0.65 acre, of which 0.59 acre lies within the existing right of way, and 0.26 acre lies outside of the existing right of way.

LOST RIVER DIVERSION CHANNEL

A parcel of land lying in the Southeast quarter (SE 1/4) of Section 25 and in the Northeast quarter (NE 1/4) of Section 36, Township 39 South, Range 9 East, and in the Southwest quarter (SW 1/4) of Section 30, and in the Northwest quarter (NW 1/4) of Section 31, Township 39 South, Range 10 East, W. M., Klamath County, Oregon, the said parcel being described as follows:

Beginning at a point which is the intersection of the re-located center line of the Klamath Falls-Malin Highway at Engineer's Station 396+51.9 and the north line of the Lost River Diversion Canal right of way; said point being 60 feet north and 1.3 feet east of the southwest corner of said Section 30, Township 39 South, Range 10 East; thence South $0^{\circ} 38' 30''$ West a distance of 40 feet; thence Westerly along the north line of said canal a distance of 50 feet; thence South $0^{\circ} 38' 30''$ West parallel to and 50 feet distant westerly from said highway center line a distance of 300 feet to the southerly line of said canal right of way; thence easterly along said southerly line a distance of 50 feet to the center line of said highway; thence North $0^{\circ} 38' 30''$ East along said center line a distance of 20 feet; thence easterly along the southerly line of said canal a distance of 50 feet; thence North $0^{\circ} 38' 30''$ East parallel to and 50 feet distant from said highway center line a distance of 320 feet to the northerly line of said canal; thence westerly along said northerly line a distance of 50 feet to the point of beginning.

The parcel of land to which this description applies contains 0.71 acre, of which 0.42 acre lies within the existing right of way, and 0.29 acres lies outside of the existing right of way.

NO. 1-B DRAIN

A parcel of land lying in the Northeast quarter (NE 1/4) of Section 36, Township 39 South, Range 9 East, W. M., and in the Northwest quarter (NW 1/4) of Section 31, Township 39 South, Range 10 East, W. M., Klamath County, Oregon, the said parcel being described as follows:

Beginning at a point which is the intersection of the relocated center line of the Klamath Falls-Malin Highway at Engineer's Station 599+71.9, and the southerly line of the Lost River Diversion Canal right of way; said point being 260 feet southerly from the northwest corner of Section 31, Township 39 South, Range 10 East; thence South $0^{\circ} 33' 30''$ West along said highway center line a distance of 168.1 feet; thence North $89^{\circ} 21' 30''$ West a distance of 50 feet; thence South $0^{\circ} 33' 30''$ West parallel to said highway center line a distance of 50 feet; thence South $89^{\circ} 21' 30''$ East a distance of 100 feet; thence North $0^{\circ} 33' 30''$ East parallel to said highway center line a distance of 218.1 feet to the southerly line of said canal; thence westerly along said canal line a distance of 50 feet to the point of beginning.

The parcel of land to which this description applies contains 0.31 acre, of which 0.25 acre lies within the existing right of way, and 0.06 acre lies outside of the existing right of way,

and

3. WHEREAS, in the judgment of the Secretary of the Interior the granting and exercise of the easement described below will not be incompatible with the provisions for which the land or interests in land owned by the United States and described above are being administered, and

4. WHEREAS, the granting of the easement to the State should be subject to suitable restrictions for safe-guarding the interests of the United States in accordance with the purposes for which the land above described was acquired;

5. NOW, THEREFORE, for and in consideration of the mutual agreements and covenants herein contained, the United States does hereby grant unto the State an easement for a period of fifty (50) years from the date hereof, to construct, operate and maintain, a state highway upon the right of way and over and across the Adams Canal, "C" Canal, Lost River Diversion Channel, and No. 1 and No. 1-B drains of the Klamath project, at the locations described above, and upon the terms and conditions set out hereafter.

6. The State shall construct, maintain and operate its said highway at the point of crossing in a good and workmanlike manner and so as not to interfere with the flow of water in said canals and other structures and without injury thereto. Any changes in the said canals or other irrigation structures necessary to be made to effect said crossings shall be made by and at the expense of the State, pursuant to plans and specifications approved by the Chief Engineer of the United States Bureau of Reclamation. The State shall at its own expense construct all bridges or culverts to carry said highway over the above described canals and waterways of the Klamath Project, or construct and install a pipe line, siphon or other conduit under said highway and such structure shall be of such construction, size, material, description, and at such elevation as shall be designated and approved by the Chief Engineer of the United States Bureau of Reclamation. All work under this agreement to be performed by the State at the crossings described herein, shall be performed during the non-irrigation season of each year, and no work shall be performed by the State under this agreement which will interfere with the operation of the said canals and water conduits of the United States during the irrigation season of any year, including 1940, which irrigation season for the purposes hereof is defined to be the period from April 15 to October 15 of any year.

7. Should the United States at any time hereafter find it necessary or desirable to enlarge or relocate said canals or other irrigation structures or change the alignment thereof, the State hereby agrees that the United States may occupy, so far as may be necessary for such purpose, the right of way of the State covered by the easement granted hereby. Any expense incident to such enlargement, relocation or change of alignment and due to the existence on the ground of the state highway and right of way

or other property shall be borne by the State.

8. The plans and specifications for state highway crossings over the above listed irrigation structures, drains, and canals, in their present locations and dimensions or as hereafter constructed or reconstructed, shall be submitted to the Chief Engineer

of the United States Bureau of Reclamation and be approved by him before work is commenced; and all work done shall be in accordance with such approved plans and specifications.

9. The State agrees to operate and maintain its highway at such crossings in a careful manner so as to cause no injury to said canals or other irrigation structures or interference with the operation thereof and will in no case, nor under any circumstances stop, impede or interfere with the flow of water in any of the said canals and waterways of the Klamath project.

10. In case any repairs to any portion of said canals or other irrigation structures within the limits of said crossings as described above are deemed necessary by the United States after the construction of said crossings, whether due to the operation and maintenance of the state highway within said limits or otherwise, the necessary work on the said crossings to be constructed, operated, and maintained by the State, will be promptly made by the State on notice, and in case of failure of the State to make such repairs the United States may do so and the State within sixty (60) days after receipt from the Bureau of Reclamation of itemized bills therefor shall pay to the Bureau of Reclamation the cost of such repairs made by the United States.

11. The State agrees that it will be responsible for any and all damages resulting directly or indirectly to said canals, waterways, or other works or property of the United States from the construction, operation and maintenance of said state highway or for any damage direct or indirect on that account.

12. The State further agrees that the easements granted hereby shall be accepted and held at all times, subject to the rights of the United States, or its assigns, to cross the said highway with canals or water conduits of any kind or with bridges, roadways, transmission and distribution lines for telephone, telegraph and electric or other power or irrigation works, or works for the development of power which may in the future be built by the United States along or across the said highway right of way above described; provided, however, that no pole line, whether telephone, telegraph, power or other pole line shall be constructed across said highway at any place which will have a vertical clearance over the highway of less than twenty feet, and in no event shall such vertical clearance be less than the standards approved by the Public Utilities Commissioner.

+ 13. The State hereby releases the United States from any and all damages which may result from the construction, operation and maintenance along or across the state highway of canals or water conduits of any kind or of bridges, roadways, transmission and distribution lines for telephone, telegraph or electric or other power or irrigation works or works for the development of power which may in the future be built by the United States along or across the said highway.

+ 14. The United States does not assume any liability for injury or damage to any person or property that may arise during or in consequence of

(a) the use, occupancy and enjoyment in accordance with this agreement by the State of the lands, premises and right of way of the United States; or

(b) the construction of, erection of, presence of, maintenance of or failure to properly and safely construct, operate and maintain, use and occupy any or all of the structures and facilities aforesaid or any part thereof.

The State agrees to use, occupy and enjoy the lands, premises and right of way by the United States herein granted and to use and employ and maintain said highway with all reasonable diligence and precaution to avoid damage to or obstruction of the canals or other irrigation structures of the United States or interference in any way with the operation and maintenance of the same.

15. Non-user by the State of the described premises for highway purposes continuing at any time for a period of five (5) years shall, at the option of the United States, work a termination of this agreement and of all rights of the State hereunder and the term hereof shall in any event expire by limitation at the end of fifty (50) years from the date hereof. All rights granted to the State under this agreement are subject to termination if the State fails or refuses to comply with the terms hereof.

16. This agreement shall inure to the benefit of and be binding upon the successors or assigns of the parties hereto.

17. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the State hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

18. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

IN WITNESS WHEREOF, the parties hereto have caused this contract to be executed the day and year first above written.

ATTEST:

Oct 5 1940

UNITED STATES OF AMERICA

By /s/ A.J. Wirtz
Under Secretary of Interior

ATTEST:

W. Searcy Jr
Secretary

STATE OF OREGON

By Henry F Cabell
Chairman of State Highway Commission

By _____
Member, State Highway Commission

APPROVED:

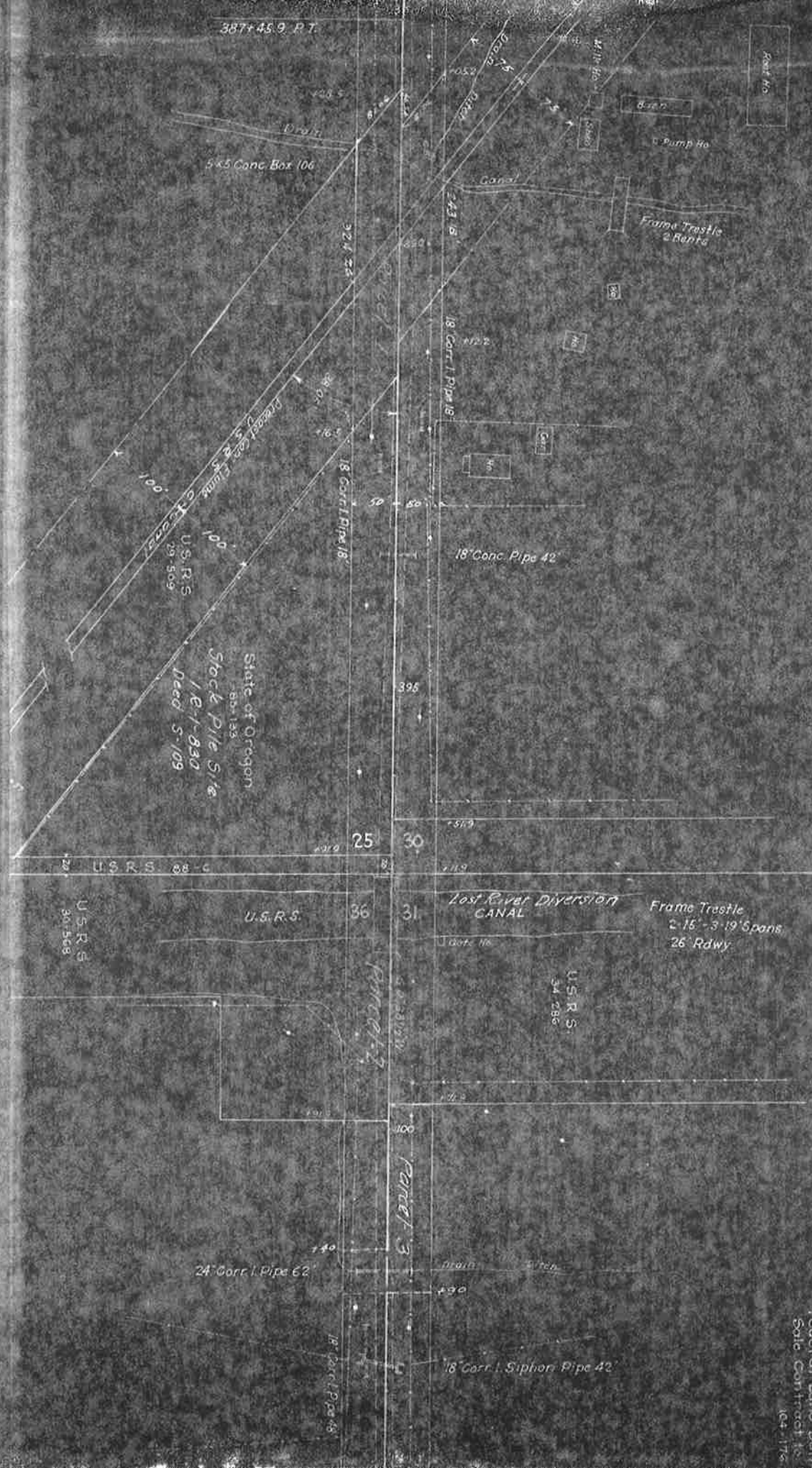
Prosser
State Highway Engineer

By John McLaughlin
Member, State Highway Commission

Approved as to form this 27
day of March, 1940.

J.M. Severs
Attorney, Highway Commission,
State of Oregon

Percy S. Mahal Dixon
53-621



T. 39 S., R. 10 E.
T. 39 S., R. 10 E.

Federal Land Bank
Sale Contract No.
104-176

387+45.9 P.T.

345 Conc Box 106

Frame Trestle
2 Rents

State of Oregon
Stock Pile Site
1 E. 1-830
Deed 5-109

18" Conc. Pipe 42'

Lost River Diversion
CANAL

Frame Trestle
2-15'-3-19' Spans
26' Rdwy

24" Corr. l. Pipe 62'

18" Corr. l. Siphon Pipe 42'