

65316

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Contract No. 9-07-20-L0957

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Klamath Project

GRANT OF EASEMENT

THIS INDENTURE, made as of this 27th day of March, 19 79, in accordance with the Act of Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, all such acts being commonly known and referred to as the Federal Reclamation Laws, by and between THE UNITED STATES OF AMERICA, acting by and through its Bureau of Reclamation, Department of the Interior, hereinafter styled the "United States," represented by the officer executing this instrument on its behalf, hereinafter referred to as the "Contracting Officer," and the HORSEFLY IRRIGATION DISTRICT, hereinafter referred to as the "District," a public agency of the State of Oregon.

WITNESSETH, THAT:

WHEREAS, the United States has withdrawn certain lands for the operation of its Klamath Project; and

WHEREAS, the District has requested the United States grant to it an easement for the reconstruction, operation and maintenance of a diversion dam located on and across a portion of said land; and

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WHEREAS, the United States has determined the District's request is not incompatible with the purpose for which the land was withdrawn and is being administered by the United States.

NOW, THEREFORE, in consideration of the premises and subject to the terms and conditions hereinafter set forth, the United States hereby grants to District without warranty of title, a permanent easement for and consents to District entering upon, reconstructing, operating and maintaining a diversion dam on and across that portion of United States land located in Section 19, Township 39 South, Range 11 East, W.M., Klamath County, Oregon, as described in Exhibit "A" attached hereto and made a part hereof, and graphically shown on Exhibit "B", attached hereto and made a part hereof.

1. This grant of easement is subject to existing right-of-way in favor of the public and third parties for highways, railroads, telephone, telegraph and electrical transmission lines and canals, laterals, ditches, flumes, siphons and pipelines on, over and across said land.

2. In connection with the operation and maintenance of said diversion dam, District may permanently or intermittently, and without notice, flood, seep, overflow and impound water on said land to an elevation of 4107.5 feet (USBR datum).

3. The District hereby agrees to indemnify and hold harmless the United States, its agents and employees, from any loss or damage and from any liability on account of personal injury, death, or property damage, or claims for personal injury, death, or property damage of any nature whatsoever and by whomsoever made arising out of the District's activities under this easement.

4. The attached statement marked Exhibit "C" entitled Reclamation Land-Use Stipulation, is by reference incorporated herein and made a part hereof.

5. The attached stipulation marked Exhibit "D" entitled Environmental Requirements, is by reference incorporated herein and made a part hereof.

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

THE UNITED STATES OF AMERICA

By
Acting

M. A. Catlin
Regional Director
Mid-Pacific Region
Bureau of Reclamation

Attest:

HORSEFLY IRRIGATION DISTRICT

By

Reginald E. Thomas
Secretary

By

Gerald Harcelor
President

LEGAL DESCRIPTION

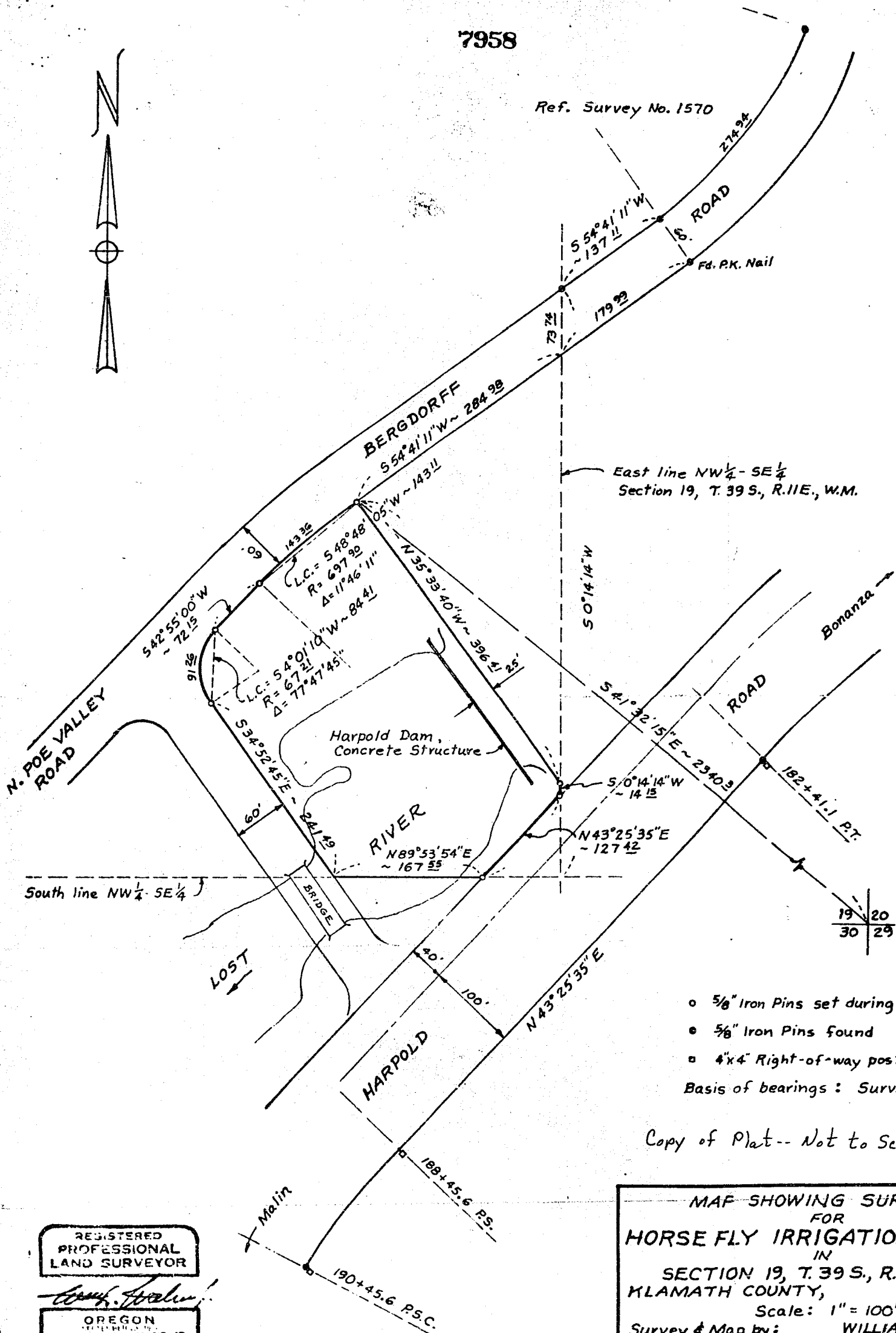
A parcel of land in the northwest quarter of the southeast quarter of Section Nineteen (19), Township Thirty-nine (39) South, Range Eleven (11) East, Willamette Meridian, County of Klamath, State of Oregon, containing an area of 2.37 acres, more or less, and described as follows:

Beginning at a point in the southeasterly right-of-way line of Bergdorff Road, a county road, as the same is presently located and constructed, distant North $41^{\circ} 32' 15''$ West 2,340.3 feet from the southeast corner of said Section 19; thence leaving said southeasterly line South $35^{\circ} 33' 40''$ East 396.41 feet to a point in the easterly line of the northwest quarter of the southeast quarter of said Section 19; thence along said easterly line South $00^{\circ} 14' 14''$ West 14.15 feet to a point in the northwesterly right-of-way line of Harpold Road, a county road (from Malin to Bonanza), as same is presently located and constructed; thence along said northwesterly line South $43^{\circ} 25' 35''$ West 127.42 feet to a point in the southerly line of the northwest quarter of the southeast quarter of said Section 19; thence along said southerly line South $89^{\circ} 53' 54''$ West 167.55 feet to a point in the north-easterly right-of-way line of the county road crossing Lost River as said road is presently located and constructed; thence along said northeasterly line North $34^{\circ} 52' 45''$ West 241.49 feet; thence along the arc of a tangent curve to the right, concave easterly, having a radius of 67.21 feet, through a center angle of $77^{\circ} 47' 45''$, for an arc distance of 91.26 feet to a point in the southeasterly right-of-way line of said Bergdorff Road; thence along said southeasterly line North $42^{\circ} 55' 00''$ East 72.15 feet; thence continuing along said southeasterly line and along the arc of a tangent curve to the right, concave southeasterly, having a radius of 697.90 feet, through a central angle of $11^{\circ} 46' 11''$, for an arc distance of 143.36 feet to the point of beginning.

Checked as to Engineering data

W. J. A. Gray 2-12-79

7958



- 5/8" Iron Pins set during this survey
 - 5/8" Iron Pins found
 - 4"x4" Right-of-way posts found.
- Basis of bearings : Survey No. 1570

Copy of Plat-- Not to Scale

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Wm. L. Wales Jr.

OREGON
WILLIAM L. WALES JR.
1375

MAP SHOWING SURVEY
FOR
HORSE FLY IRRIGATION DISTRICT
IN
SECTION 19, T. 39 S., R. 11 E., W.M.
KLAMATH COUNTY, OREGON

Scale: 1" = 100'

Survey & Map by: WILLIAM L. WALES
& Associates
Consulting Engineers
Klamath Falls, Oregon

January, 1979

RECLAMATION LAND-USE STIPULATION

The United States has granted this easement for special use as a(n) right-of-way for a diversion dam.

The United States retains the right of full possession and use of the lands located in the easement, while it remains in effect, to the extent that the United States does not interfere with the right of special use granted to the holder of this easement.

As part of the United States continuing noninterfering possession and use of the easement, the United States will not be liable for any minor damage or wear to the easement, or to the easement holder's personal property which can normally be expected because of reasonable uses which the United States may carry out on the easement.

If the United States damages or causes unreasonable wear to the easement lands, or the easement holder's personal property used on the easement, the United States will repair or replace the damage at its own expense.

The United States reserves the right to terminate this easement, or part of it, when easement lands are needed for the construction, operation and maintenance of structures and works needed for the Klamath Project.

Some examples of structures and works include lands, wasteways, laterals, ditches, roadways, electrical transmission lines, dams, dikes, reservoirs, pipelines, telephone and telegraph lines, communication structures, substations, switchyards and powerplants, but there may be others.

Notwithstanding the preceding paragraph, as an alternative to terminating the easement, the United States will, in all appropriate situations, use its best efforts to cooperate with the easement holder in order to adopt modified construction or use plans which will not interfere with and result in the termination of the easement. If the United States construction or use costs are increased because of these modifications, the easement holder agrees to pay the reasonable increased costs. However, the easement holder may reduce or eliminate the United States increased costs by agreeing to appropriate modifications of the easement.

Should a difference of opinion arise between the United States and the easement holder regarding the rights which the United States has reserved by this stipulation, then both parties agree that the Secretary of the Interior shall act as arbitrator and his decision will be final and binding on all parties.

ENVIRONMENTAL REQUIREMENTS

1. District shall plan, construct, operate, maintain, and manage all structures and facilities on the premises herein described so as to minimize adverse environmental consequences. In so doing, careful consideration will be given to alleviating potential harmful effects on, but not limited to, landscape, soils, water, air, mineral, timber, or population or other animate resources.

Prior to any artificial modification of the environment on the said premises, District will submit a draft detailed statement of environmental impact to the Regional Director, Mid-Pacific Region, Bureau of Reclamation, and such other reports as may now or hereafter be required. Such detailed statement shall state clearly and concisely, but not be limited to, (1) the environmental impact of the proposed action, (2) any adverse environmental effects that cannot be avoided, (3) alternatives to the proposed action, (4) the relationship between local short-term uses hereunder and the maintenance, and (5) any irreversible and irretrievable commitment of resources involved hereunder.

No such artificial modification of the environment shall be undertaken without prior approval of the Bureau of Reclamation in writing.

2. District shall correct or modify any pollution of soil, air, or water and deterioration of living or inanimate resources caused by or resulting from exercise of the privileges granted herein in accordance with rules, regulations, and directives of the Secretary of the Interior, including but not limited to aesthetic qualities of the environment, and in compliance with all Federal laws. Increased cost will not justify noncompliance with environmental quality controls required by the United States.

3. District shall comply fully with all applicable Federal laws, orders, and regulations and the laws of the State of Oregon, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants, and concerning the pollution of the air with respect to radioactive materials or other pollutants.

4. In the use of pesticides on the land covered by this contract, the District shall comply with all provisions of Federal and State pesticide laws and any amendments thereto.

District is specifically prohibited from using on said land any and all pesticides named on the "Prohibited List" attached hereto and any amendment thereto. Further, in the use of all pesticides on lands owned by the United States, the District shall submit plans for such use annually and shall obtain prior written approval of the Contracting Officer for the United States before implementing said plans.

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POLICY ON PESTICIDES

Prohibited List

Aldrin
Amitrol
Arsenical Compounds (inorganic)
Azodrin
Bidrin
DDT
DDD (TDE)
2,4,5-T
Dieldrin
Endrin
Heptachlor
Lindane
Mercurial Compounds
Strobane
Thallium Sulfate
Toxaphene

STATE OF OREGON, }
County of Klamath)
Filed for record at request of

Klamath Irrigation District
on this 11th day of April A.D. 19 79
at 11:57 o'clock A M, and duly
recorded in Vol. M79 of Deeds
age 7954

Wm D. MILNE, County Clerk
By Bernice H. Heloch Deputy
Fee \$30.00

Board of Directors
Klamath Irrigation District
P.O. Box 167
Bonanza, OR 97623

(Rev. 8/1/78)