

When recorded, mail to:
U. S. Bureau of Reclamation
Real Estate Division (MP-2500)
2300 Cottage Way
Sacramento, CA. 95825

67944

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
KLAMATH PROJECT, OREGON-CALIFORNIA
LOWER KLAMATH LAKE DIVISION

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Klamath Straits Drain Enlargement
Unit No. K-7
3:6:9

Contract No. 9-07-20-L1081

CONTRACT AND GRANT OF EASEMENT

THIS CONTRACT, made this 4 day of April, 1979, in pursuance of Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, between THE UNITED STATES OF AMERICA, hereinafter styled the United States, acting through such officer as is authorized therefor by the Secretary of the Interior, and

TULE SMOKE HUNTING CLUB, INC., an Oregon non-profit corporation
hereinafter styled the Grantor:

WITNESSETH the following grant and the following mutual covenants by and between the parties:

1. Grantor hereby grants to the United States, its successors and assigns, the permanent right, privilege and easement to enter upon and use TRACT ONE (1.58 acres, more or less) and TRACT TWO (5.84 acres, more or less) described on Exhibit "A" attached hereto, by this reference made a part hereof, and designated "Unit No. K-7 Revised 2-21-79", Sheets 1, 2 and 3, for the purpose of constructing, reconstructing, operating, repairing and maintaining the Ady Inlet Channel.
2. Grantor hereby grants to the United States, its successors and assigns, the permanent right, privilege and easement to enter upon and use TRACT THREE (0.32 acre, more or less) described on said Exhibit "A" attached hereto, by this reference made a part hereof, for the purpose of constructing, reconstructing, operating, repairing and maintaining a drainage channel with appurtenant berms, embankments, inlets, electric and communication cables and roads.
3. The grants of permanent easement herein described in above Articles 1 and 2 are subject to existing rights-of-way, of record or in use, for roads, railroads, telegraph, telephone and electrical transmission lines, canals, laterals, ditches flumes, siphons and pipelines, on, over and across said premises; and subject to estates, interests and rights in and to coal, oil, gas and any and all other minerals, reserved to or outstanding in third parties.
4. Grantor hereby also grants to the United States, its successors and assigns, the temporary right, privilege and easement until Nov. 1, 1988, to enter upon and use TRACT FOUR (8.29 acres, more or less) described on said Exhibit "A" attached hereto, for the purpose of placing waste earth material from construction of the Ady Inlet Channel. Waste earth material shall be placed on top of and around the perimeter of the existing islands so as to heighten and enlarge the existing islands. The top of the islands shall be heightened to no more than 3-feet above normal water surface. The island enlargement shall not narrow existing adjacent waterways to less than 40 feet wide. Island sideslopes shall be approximately 2:1. The top 1-foot of earth material placed on the top and sides of the islands shall be suitable for vegetation. Placement of waste earth material shall be completed by Jan. 31, 1981 or sooner as determined by the United States' construction schedule for the Ady Inlet Channel; at the end of the placement period islands shall be as described. From the conclusion of the placement period to the end of the easement period the islands shall be maintained in accordance with nesting islands maintenance requirements described in Item 5 of this agreement.
5. Grantor hereby also grants to the United States, its successors and assigns, the temporary right, privilege and easement until Nov. 1, 1988, to enter upon and use TRACT FIVE (8.39 acres, more or less) described on said Exhibit "A" attached hereto, for the purpose of placing waste earth material from construction of the Ady Inlet Channel. Said waste earth material shall be formed into nesting islands covered with earth material suitable for vegetation, and seeded in accordance with an existing agreement between the Tule Smoke Hunting Club and the United States. Each nesting island shall be approximately 120 feet long by 40 feet wide with side slopes approximately 2 to 1. Top of each island shall be approximately 5 feet

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above normal water surface; a water barrier shall be excavated 18 inches below normal water surface and 30 feet wide between islands. Nesting islands shall be completed by Jan. 31, 1981, or sooner as determined by the United States' construction schedule for the Ady Inlet Channel. At the end of construction, nesting islands shall be as designed.

From the conclusion of construction until the end of said easement period, the United States shall maintain the nesting islands. Maintenance shall be performed for the purpose of minimizing surface erosion until a mature vegetative cover develops. The United States will not be responsible for maintaining island dimensions where natural settlement occurs.

Unless otherwise agreed to, a cooperative island inspection shall be conducted each September by the Bureau of Reclamation and Grantor. The inspection team shall include technical advisors from the Oregon Fish and Game Commission and other advisors selected by either party. The inspection team shall examine the nesting islands for development of vegetative cover and shall determine appropriate treatment and treatment time for areas where vegetation is not developing satisfactorily. The United States shall perform the prescribed treatment at the indicated time so as to allow an adequate weathering period before the next annual inspection. The final cooperative island inspection shall be held in September 1985. All responsibility for islands which have developed a mature vegetative cover shall revert to the Grantor. Mature vegetative cover is defined as plant cover of predominantly 3 years or older and with a plant density similar to that found on stabilized ditch banks in the area. This vegetation shall cover no less than 90 percent of each island; the 10 percent unvegetated area may include scattered areas of bare earth each being less than 5 feet across and include a one-foot-wide (or less) band of bare earth around the toe of each island such as caused by beach water action. Those islands on which mature vegetation has not developed shall continue in the United States' maintenance status with yearly inspections and treatment continuing until treatment is successful. Provided, that at the end of the easement period, November 1, 1988, the United States shall have no further interest in any of the nesting islands.

6. Grantor hereby also grants to the United States, its successors and assigns, the temporary right, privilege and easement until May 1, 1981, to enter upon and use TRACT SIX (0.47 acre, more or less) described on said Exhibit "A" attached hereto, for the purpose of placing waste earth material and storing of construction materials and/or machinery during construction and reconstruction of the drainage channel. Said tract shall be restored, as nearly as practicable, to the condition existing prior to its use by the United States. At the end of said easement period, the United States shall have no further interest in or obligation to maintain said TRACT SIX.

7. The grants of temporary easement herein described in above Articles 4, 5 and 6 are subject to existing rights-of-way, of record or in use, for roads, railroads, telegraph, telephone and electrical transmission lines, canals, laterals, ditches, flumes, siphons and pipelines, on, over and across said premises; and subject to estates, interests and rights in and to coal, oil, gas and any and all other minerals reserved to or outstanding in third parties.

8. As a complete consideration for the above grants of easement, the United States shall pay to Grantor the sum of THREE THOUSAND ONE HUNDRED THIRTY-FIVE AND NO/100 DOLLARS (\$3,135.00); and such additional sum, if any, as may result from the provisions of Article 9 hereof.

9. If that portion of the land herein described as TRACTS ONE, TWO, THREE, FOUR, FIVE and SIX, that is now planted to crops is not required by the United States prior to the time of harvest of said crops, Grantor shall have the right to cultivate, harvest and take said crops at Grantor's expense and risk. If said land is required by the United States prior to the time of harvest of said crops, then the United States shall pay to Grantor in addition to the sum provided in Article 8 hereof and as full compensation for said crops, an amount of money to be determined on the basis of an appraisal of the value of said crops to be made by the United States. Provided that if it is possible to secure a salvage value by harvesting the crops prior to full maturity and a harvesting under those circumstances is accomplished, the proceeds from such a harvesting will be deducted from any amount otherwise due the Grantor hereunder.

10. The United States shall construct within TRACTS ONE, TWO, FOUR and FIVE between August 1 and January 31, only, each year, in accordance with existing agreements between the United States and the State of Oregon Fish and Game Department, and the United States and Tule Smoke Hunting Club.

11. This contract shall become effective to bind the United States to purchase said property immediately on its execution by the Contracting Officer acting under the authority of the Secretary of the Interior, and shall inure to the benefit of and be binding on the heirs, executors, administrators and assigns of the Grantor and the assigns of the United States.

12. The expenditure of any money by the United States or the performance of any work by the United States hereunder shall be contingent upon appropriations of money by Congress or appropriate allotments of funds being made. Liability of the United States under this contract shall continue, however, subject only to the appropriate laws and statutes of the United States.

13. The Grantor shall procure, with assistance from the United States, and have recorded all assurances of title and affidavits which the Grantor may be advised by the United States are necessary and proper to show in the Grantor complete fee simple unencumbered title to said property subject only to the interests, liens or encumbrances expressly provided. Abstracts or certificates of title or title insurance will be procured by the United States at its expense unless otherwise provided in this contract. The expense of recording this contract shall be borne by the United States.

The United States, if billed, may pay direct to the billing party or may reimburse the Grantor in an amount deemed by the United States to be fair and reasonable for the following expenses incurred by the Grantor:

- a. Recording fees, transfer taxes and similar expenses incidental to conveying the real property described herein to the United States.
- b. Penalty costs for prepayment of any pre-existing recorded mortgage entered into in good faith encumbering said real property; and
- c. The pro rata portion of real property taxes paid which are allocable to a period subsequent to the date of vesting title in the United States, or the effective date of possession of such real property by the United States, whichever is earlier.

The Grantor agrees to furnish the United States evidence that these items of expense have been billed to and paid by him, and further agrees that the United States alone shall determine the fairness and reasonableness of the expenses to be paid.

14. In the event that liens or encumbrances, other than those expressly provided herein, do exist, the United States may, at its option, remove any and all such outstanding liens and encumbrances by reserving from the purchase price herein set forth the necessary amount, and may discharge the same with the money so reserved, but this provision shall not be construed to authorize the incurrence of any lien or encumbrance against this contract, nor as an assumption of any lien or encumbrance by the United States.

15. Notwithstanding provisions of Section 301, Subsections 4 and 5, Title III of the Uniform Relocations Assistance and Real Properties Acquisition Act of 1970 (P.L. 91-646), Grantor agrees that after execution of this contract by the United States, the proper officers and agents of the United States shall at all times have unrestricted access to said property for the purpose of surveying and of exercising the above granted rights, free of any claim for damage or compensation on the part of the Grantor, except as otherwise excepted or provided for in this contract, or under the appropriate laws and statutes of the United States.

16. It is understood and agreed that if the Secretary of the Interior determines that the title should be acquired by the United States by judicial procedure, either to procure a safe title or to obtain title more quickly or for any other reason, then the compensation to be claimed by the Grantor and the award to be made for said lands in said proceedings shall be the compensation hereinbefore provided.

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17. Grantor warrants that no person or agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Grantor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to require the Grantor to pay, in addition to the contract price or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

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 have caused this contract to be executed the date hereinabove written.

THE UNITED STATES OF AMERICA

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY
James M. Bonds, Jr.
OFFICE OF REGIONAL SOLICITOR
DEPARTMENT OF THE INTERIOR

By *Thurston*
Regional Real Estate Officer
Bureau of Reclamation

TULE SMOKE HUNTING CLUB, INC., an Oregon non-profit corporation

By *John C. Miller, Sec.*

By *John C. Miller, President*

Karen K. Coffman
Witness

~~No corporate seal~~
~~for Tule Smoke Hunting~~
~~Club, Inc.~~ T.S.H.