

77750

LP No. 85-1
Contract No. 5-07-20-L3078
A.P.G. Company

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Klamath Project

Vol. 1187 Page 13974

License to Utilize Reclamation Land
A-Canal Algae Plant
A.P.G. Company

'87 AUG 4 PM 4 24

THIS LICENSE, made this 19th day of July, 1985, in pursuance of the Act of June 17, 1902 (32 Stat. 388) and acts amendatory thereof, all such acts being commonly known and referred to as the Federal Reclamation Laws, by THE UNITED STATES OF AMERICA, acting by and through its Bureau of Reclamation, Department of the Interior, herein-after referred to as the "United States" represented by the duly authorized officer executing this License, and A.P.G. Co., a corporation duly organized under the laws of the State of Oregon, hereinafter referred to as "A.P.G.".

WITNESSETH, THAT:

WHEREAS, the United States has acquired land for the construction of the A-Canal:

WHEREAS, A.P.G. proposes to construct on this right-of-way an algae harvesting and processing facility; and,

WHEREAS, the United States has no objection to such use of the land and the use is, at this time, compatible with the purpose for which the land is being administered by the United States.

NOW, THEREFORE, in consideration of the premises, and subject to the terms and conditions herein set forth, the United States does

CH 113

13975

hereby grant a license to A.P.G. for the purpose of operating and maintaining an algae harvesting complex, including floating barges, small buildings, anchors for the barges, and appurtenant facilities, on a parcel of land located near the headworks of the A-Canal in the Southwest quarter of the Northeast quarter (SW $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Thirty (30), Township Thirty-eight (38) South, Range Nine (9) East, Willamette Meridian, also shown on Exhibit "A"; and containing an area of approximately .27 acre, more or less.

1. Period of License.--The License to utilize the right-of-way described shall be for the period from January 1, 1985, to December 31, 1994, inclusive, unless sooner terminated or extended as hereinafter provided.

2. Extension of License period.--A.P.G. has an option to extend the License period as defined in the preceding article, for one successive period of ten (10) years, if A.P.G. shall at the time of the exercise of the option have paid all previous rentals due and if such option is exercised in the following manner and by the observance of the following conditions:

(a) Such option must be exercised not later than October 31, 1994.

(b) Such option must be exercised by payment in advance to the United States of the rental for the first twelve (12) months of the period for which the term is by exercise of such option to be extended, accompanied by a notice that A.P.G. desires to exercise such option.

3. Termination of License.--

(a) This License shall terminate and all rights of A.P.G. hereunder shall cease and A.P.G. shall quietly and peaceably deliver possession of the licensed area to the United States.

(1) At the expiration of the term as provided in Article 1;

(2) Upon failure to make rental payment within thirty (30) days of written notice of default in payment to the United States of any installment of rental charges as provided in Article 2 and Article 4.

(3) Upon failure of A.P.G. to correct a default within ninety (90) days of written notice of the default of any of the conditions of this License unless time to correct is extended by the Klamath Project Manager.

(4) Upon written notice that the United States requires the land for construction of project facilities, notice shall be given one (1) year in advance of said need.

(5) Immediately upon violation of Article 15.

(b) Upon termination of this License, all structures and all accessories constructed or placed on or below the surface of the land covered by this License by A.P.G. shall be removed by A.P.G. within ninety (90) days after the termination and the premises shall be restored to their original condition as nearly as possible, as determined by the Project Manager, all at the sole cost and expense of A.P.G. In the event that A.P.G. shall fail to remove all of said facilities within

the time set forth herein, title thereto shall without further action vest in the United States whereupon it may at its discretion remove such structures and restore the land at the expense of A.P.G. The performance bond required by Article 5 shall be used by the United States to cover costs associated with the removal of structures and the restoration of the land in the event that A.P.G. fails to remove the structures or restore the land.

4. Rental Charges.--A.P.G. shall pay to the United States rental charges for said premises in the sum of \$2,500.00 at the time of execution of this License for the period ending December 31, 1985, and the sum of \$2,500.00 annually on or before December 31st each year thereafter during the term of this License as described in Article 1; PROVIDED, however, if the License is still in force after December 31, 1989, the rental fees shall be adjusted in accordance with the Consumer Price Index for all urban consumers (C.P.I.) published by the Bureau of Labor Statistics or a comparable index. The basic C.P.I. during September 1984 was 314.5 (1957-1959 = 100). If the Consumer Price Index during September 1989 and other succeeding adjustments, is 10 points higher or lower than the September 1984 base, the annual rental will be adjusted accordingly, upward or downward, and rounded to the nearest dollar. Thus $(* \div 314.5) \times \$2,500.00 = \text{rental charge}$. Such adjustments will be made during corresponding 5-year intervals during the term of this License.

* C.P.I. during June 1989, June 1994, June 1999, if License is still in force.

5. Performance Bond--Throughout the term of this License, A.P.G. shall provide the United States with a "Performance Bond" in the amount of \$2,000.00. Said bond shall provide that it will not be cancelled without 30 days prior written notice mailed to the Klamath Project Office. Further, said bond shall specifically cover activities accomplished by the United States under Article 3(b).

6. Approval of Drawings and Construction and Operation Activities--

a. All construction, reconstruction, operation, and maintenance of facilities shall be done in accordance with good engineering standards and in keeping with plans approved in advance by the Klamath Project Manager and shall be constructed, operated, and maintained in such a manner as not to interfere with the operation of the A-Canal including the headworks. Said plans for all construction activities shall be submitted to the Klamath Project Manager at least 60 days before construction is to take place. In addition, all construction methods and timetables must be approved in advance.

(1) A.P.G. shall reimburse the United States and/or Klamath Irrigation District for all inspection costs associated with construction activities.

(2) A.P.G. is responsible for obtaining and complying with all local, county, state and federal permits dealing with construction and operation activities.

7. Transfer of License--This License may not be transferred without the express written permission of the Klamath Project Manager. However, A.P.G. may contract with an independent contractor of its selection to construct, reconstruct, operate, and maintain the

facilities contemplated by this license. If a subcontract is made by A.P.G. pursuant to this paragraph, A.P.G. shall remain primarily responsible to District and the United States.

8. Water Use.--

a. It is expressly understood that no right to the use of water is granted by this License nor is any capacity to be guaranteed in the A-Canal intake channel for use by A.P.G. Anytime that the United States or Klamath Irrigation District declares that an emergency condition exists, water flow into the A-Canal may be stopped immediately without warning to A.P.G.

b. No flow restriction in the A-Canal intake channel will be allowed as a result of A.P.G.'s algae harvesting in the channel that would prohibit the capacity of the A-Canal to deliver downstream flow requirements. Such determination shall be made by Klamath Irrigation District or the United States. If it becomes necessary for A.P.G. to remove or modify all, or any part of, its algae harvesting facility from the area covered by this license, such removal in and by itself shall not constitute a termination of this license and APG may, thereafter, continue to develop and design A.P.G.'s algae harvesting facilities which will comply with all of the terms, covenants, conditions, and provisions contained in this license.

c. A.P.G. is to reimburse Klamath Irrigation District for operation and maintenance expenses which increase as a result of the algae harvesting facility.

9. Water Quality--No dumping of waste materials or chemicals into the A-Canal or Upper Klamath Lake will be allowed. Water returned to the canal after algae removal will be unaltered, with the exception of the algae removal, as far as water quality is concerned.

10. Change of Facilities--If in the future it becomes necessary to enlarge, modify or otherwise change the A-Canal intake channel headgate structure and/or the A-Canal itself, it will be the responsibility of A.P.G. to modify its facilities to accommodate any new structures or flow patterns. In the event that the A-Canal must be reconstructed or modified, no guarantees will be given A.P.G. that facilities will be available after modification for A.P.G.'s use.

11. Plant Operation--The algae harvesting facility will be operated in such a manner as to not interfere with the operation of the A-Canal system.

12. Safety and Health--A.P.G. shall comply with all safety and health regulations in effect or adopted by the county, state, and federal governments during the construction and operating stages of the algae harvesting facilities.

13. Damage to Facilities--If the Klamath Irrigation District or the United States determines that A.P.G.'s activities have damaged facilities, structures, or other property of the Klamath Irrigation District or the United States as a result of or incident to the rights herein given, notice shall be given to A.P.G. to repair the damage at A.P.G.'s expense. A.P.G. shall have up to 90 days to correct the damage to the satisfaction of the Klamath Irrigation District and the United States. However, if the United States and Klamath Irrigation District

determine that the damage has created or may create an emergency situation, A.P.G. may be directed to correct the damage immediately. If A.P.G. fails to do so, the United States or Klamath Irrigation District, at their option, may correct the damage and A.P.G. agrees to reimburse the party making the correction for all expenses incurred in connection therewith. During the initial startup of the facilities, A.P.G. will coordinate all activities closely with the United States and Klamath Irrigation District to minimize potential conflicts, possible interruptions in irrigation service, and possible damage to the A-Canal.

14. Nondiscrimination Clause.--In connection with the performance of work under this License, A.P.G. agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. A.P.G. agrees to post hereafter in conspicuous places, available for employees and applicants for employment, policies to be provided by the United States setting forth the provision of the nondiscrimination clause. A.P.G. further agrees to insert the foregoing provisions in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials. Further, A.P.G. agrees to be bound by all laws applicable to equal opportunity employment.

15. Hold Harmless.---

(a) A.P.G. hereby agrees to indemnify and hold harmless the United States, its agents and employees, and Klamath Irrigation District, 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 A.P.G.'s activities under this License.

(b) Throughout the term of this License, A.P.G. shall maintain in affect minimum policies of comprehensive public liability insurance and "Broad Form" property damage providing limits of not less than \$100,000 each person, \$300,000 each occurrence for bodily injury, and \$500,000 for property damage. Said policies shall include Klamath Irrigation District and the United States as additional insured, but only with respect to the possession, maintenance, and use of the licensed area. Said policies shall provide that they will not be cancelled or reduced in coverage without 30 days prior written notice mailed to Klamath Irrigation District and to the United States. A.P.G. will furnish Klamath Irrigation District and the United States with certificates evidencing said policies and all endorsements or changes thereof.

16. Covenant Against Contingent Fees.---A.P.G. warrants that no person or agency has been employed or retained to solicit or secure this License 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 A.P.G. for the purposes of securing business. For breach of violation of this

13983

warranty, the United States shall have the right to annul this License without liability or in its discretion to require A.P.G. to pay full amount of such commission, percentage, brokerage, or contingent fee to the United States.

17. Officials not to Benefit.--No member of or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this License or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this License if made with a corporation or company for its general benefit.

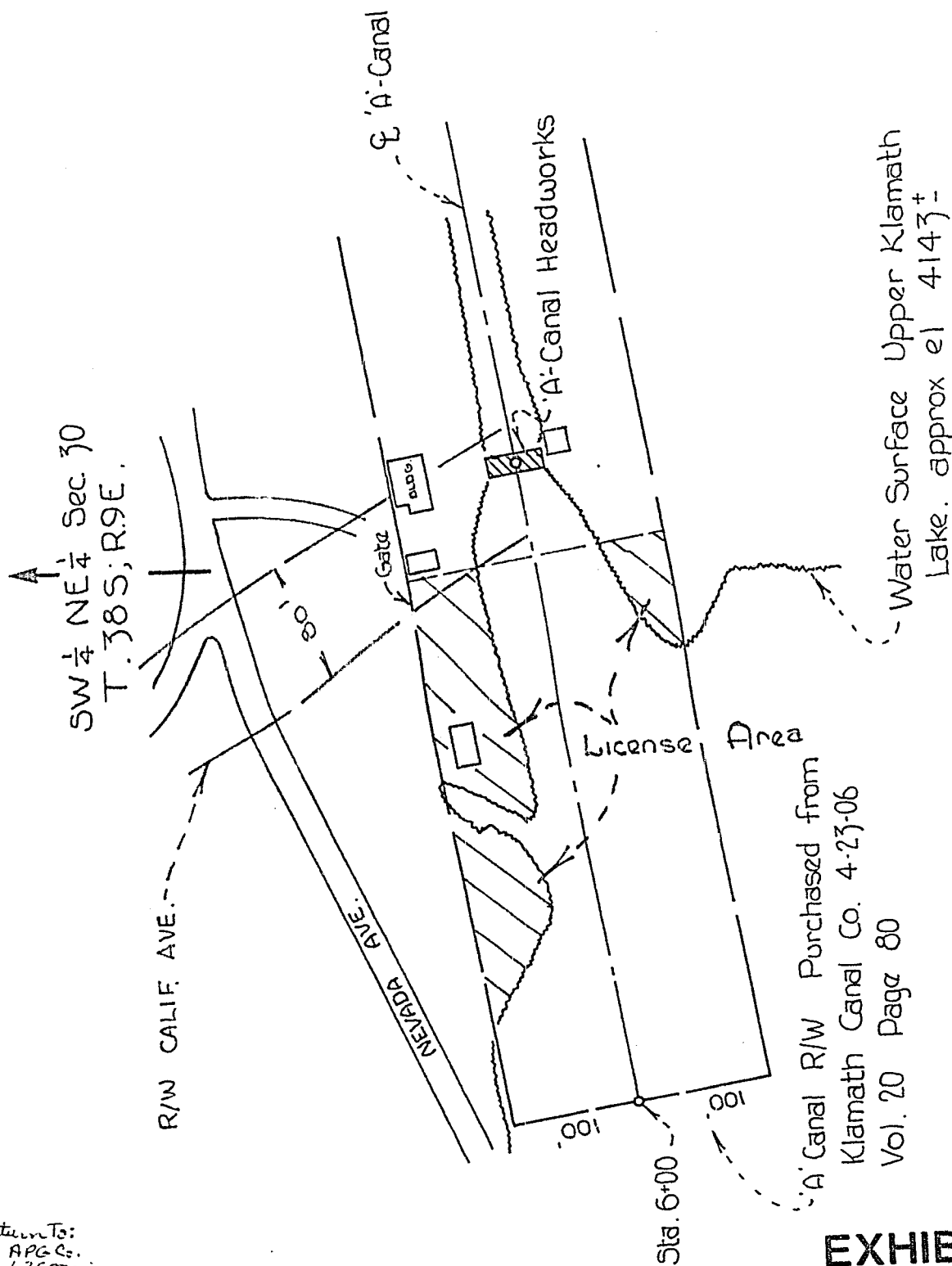
18. This license supersedes and takes the place of that license granted to A.P.G. on September 4, 1984, numbered 4-07-20-L3001.

Dan M. Fultz
Project Manager, Klamath Project

Accepts: Sydney K. Giacomini
President, A.P.G. Company

APPROVED: Dave A. Selman
Manager, Klamath Irrigation District

13984



A-Canal R/W Purchased from
Klamath Canal Co. 4-23-06
Vol. 20 Page 80

EXHIBIT A

Return To:
APG Co.
635 Main
Klamath Falls, O. 97601

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ the _____ 4th day
of August A.D., 19 87 at 4:24 o'clock P M., and duly recorded in Vol. M87
of _____ Deeds on Page 13974.

FEE \$45.00

Evelyn Biehn, County Clerk
By Pat Smith