

APPLICATION AND AGREEMENT FOR SERVICE
AND ASSESSMENT OF LANDS

SCALA FARMS, INC., a Corporation, hereinafter called Landowner, applies and represents to KLAMATH IRRIGATION DISTRICT, an Oregon Irrigation District, hereinafter called the District and covenants and warrants to and with said District as follows:

1.

Landowner represents, covenants and warrants that it is the sole owner of the following described lands situated within the District and that it has full right and authority to bind and burden the same as hereafter set forth, to wit:

In Twp. 39 S.R. 9 E.W.M. Klamath County, Oregon:

In Section 29:

A total of 11.90 acres in:

That portion of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$) lying West of the United States of America's C-4 lateral and that portion of the Northwest Quarter of the Southwest Quarter (NW $\frac{1}{4}$ SW $\frac{1}{4}$) lying North and West of said C-4 lateral;

and

In Section 30:

A total of 141.38 acres in:

That portion of the South Half Northeast Quarter (S $\frac{1}{2}$ NE $\frac{1}{4}$), Northeast Quarter Southwest Quarter (NE $\frac{1}{4}$ SW $\frac{1}{4}$) and North Half Southeast Quarter (N $\frac{1}{2}$ SE $\frac{1}{4}$) lying Easterly of the East Right of Way line of Highway 97.

2.

Said Lands have for many years received surplus water for agricultural irrigation from the United States of America's Klamath Project pursuant to Rental Water Contracts but have not been entitled to receive such waters by virtue of their being located within the boundaries of the District and have not been subject to the Assessments of the District because said Lands were classified by the United States Bureau of Reclamation as Class 6 nonagricultural lands.

3.

The District has been informed by letter dated September 27, 1985, from Dan M. Fults, Project Manager, Klamath Project, United States Bureau of Reclamation that as a result of the formal announcement of the District's "paid out" status by the Secretary of the Department of the Interior that the District is exempt from the ownership and full cost pricing provisions of the Reclamation Reform Act

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or prior Reclamation Law and that the availability and/or acceptability of classification studies is a moot issue for the District and that the District is exempt from Classification requirements.

4.

Landowner hereby makes application to and requests the District to furnish water to said lands and to levy its assessments upon said lands by virtue of said lands being within the District the same as it does to other agricultural lands within the District.

5.

The District is willing to consent to Landowner's said Application and request only if the Landowner recognizes, ratifies, grants and confirms all of the existing rights, rights of way, servitudes and easements of the District and of the United States of America, which is hereinafter called the United States, affecting Landowner's said property and absolves, waives and releases both the District and the United States from any and all claims or liability for any damages or injuries to person or property which may have heretofore occurred or which may now be occurring in connection with the ownership, operation or maintenance of the Klamath Project and to assume full responsibility for and to indemnify and hold both the District and the United States harmless from any or all matters which may hereafter occur or result from or be attributable to, in whole or in part, directly or indirectly, from that which is herein requested by the Landowners.

6.

The Landowner in consideration of the District approving this Application hereby covenants and agrees on behalf of itself and on behalf of its successors, grantees, transferees and assigns to and with the District for its benefit, and also for the benefit of the United States and for the benefit of each of their respective successors, grantees transferees and assigns as follows:

(a) That it does covenant, agree and confirm as set forth in Paragraph 5, above.

(b) The Landowner does hereby recognize, ratify, grant, and confirm the existence of all existing rights of Klamath Irrigation District or the United States affecting Landowner's said property, including, without limitation by this

recital, all rights of way, easements and servitudes for all irrigation and drainage facilities of the United States or Klamath Irrigation District as now constructed and located upon or affecting Landowner's said property and does agree that Klamath Irrigation District and the United States each now own, have and hold and shall continue to own, have and hold a prescriptive right, right of way, easement and servitude for all percolation, seepage, leakage, overflow, flooding or any failure or lack of drainage which now exists or which at any time heretofore has occurred or resulted from any irrigation or drainage facility now constructed or in existence on or near any part of the Landowner's said premises and does hereby grant a further and additional right, right of way, easement and servitude for any new, additional or aggravated percolation, seepage, leakage overflow or flooding or any failure or lack of drainage which may result or occur from or be attributable in whole or in part to the furnishing of said waters to said lands.

(c) Landowner does hereby give, grant and convey unto Klamath Irrigation District and the United States the right, right of way, easement and servitude to enter upon the Landowner's said property and premises to construct, clean, maintain, repair, replace, change, substitute, remove or improve any irrigation or drainage facility now or hereafter existing on said premises or any part thereof and to remove any silt, soil, spoil or obstructions therefrom and to cut, remove, treat or destroy any moss, algae, vegetation or weeds and to trap, kill or remove any muskrats, squirrels, rodents or other wildlife causing or threatening damage. Provided, however, that it is expressly understood and agreed that Klamath Irrigation District is responsible only for irrigation and drainage facilities owned by the United States of America or Klamath Irrigation District and only to the extent required by its Agreements with the United States and neither the Klamath Irrigation District nor the United States has any responsibility or liability for any irrigation or drainage facility not owned by the United States or Klamath Irrigation District and the Landowner is responsible for the facilities not owned by the United States or the District that serve or exist upon said Landowner's land and the District is not required to provide any new facilities.

(d) Said property shall be subject to all assessments and charges of the District and the United States applicable to irrigated lands within the District now or hereafter made, assessed or levied and all interest and other charges and shall be subject to liens and other provisions for the securing, enforcement and collection of same.

(e) This Agreement and the granting of this Application and the performance of same are subject to all applicable laws, regulations, rules, directives, notices, orders, bylaws and resolutions now or hereafter established by Klamath Irrigation District, the United States or any other governmental body, agency or official having proper jurisdiction or authority and Landowner agrees to observe and comply with the same,

(f) The matters herein set forth shall be covenants running with Landowner's said land each and every part and parcel thereof in perpetuity, forever binding the same for the use and benefit of Klamath Irrigation District and the United States, and their respective successors, grantees, transferees and assigns.

(g) The Landowner covenants and warrants that it is the sole owner of all right, title, estate and interest in the premises and property and has good right to execute the Agreement and to bind said premises and property as therein agreed.

7.

This Application, if approved by the Board of Directors of Klamath Irrigation District, shall take effect as of the fiscal year commencing July 1, 1988 and Landowner shall continue to pay water rental for the period prior to said date and Landowners above described land shall be subject to the assessments and liens of Klamath irrigation on and after said date.

8.

Landowner and said Lands shall be entitled only to water for the number of acres set forth in Paragraph 1 and shall be assessed only for said number of acres.

9.

Said Lands shall be subject to such assessments and liens and all other matters to the same extent as the other lands in Klamath Irrigation District in perpetuity.

10.

An executed copy of this Application and Agreement shall be recorded in Deed Records of Klamath County, Oregon, at Landowner's expense.

11.

Landowner does hereby acknowledge that it has read all of the foregoing Instrument and consents and agrees to each of the terms, conditions and agreements above set forth and does hereby acknowledge receipt of a copy of this Application and Agreement.

This Application and Agreement is executed this 9th day of ~~September~~ ^{NOVEMBER}, 1987 by Scala Farms, Inc. by Order of its Board of Directors.

SCALA FARMS, INC.

By Ida Scala
Its President

and By

Margaret Scala
Its Secretary

STATE OF OREGON)
)ss
County of Klamath)

On this 9th day of ~~September~~ ^{NOVEMBER}, 1987, personally appeared

Ida Scala who being duly sworn did say that he is the President of Scala Farms, Inc. and MARGARET Scala, who being duly sworn did say he is the Secretary of Scala Farms, Inc. and that this Application and Agreement was signed on behalf of said Corporation by authority of its Board of Directors and the acknowledged said Application and Agreement to be the voluntary act and deed of said Corporation.

BEFORE ME:

(SEAL) Cindy E. Cherry
CINDY E. CHERRY
NOTARY PUBLIC-OREGON
My Commission Expires 4/12/91

Cindy E. Cherry
Notary Public for Oregon
My commission expires: 4/12/91

I hereby recommend approval of the foregoing Application and Agreement.

David A. Solomon
Manager, Klamath Irrigation District

The foregoing Application and Agreement having been read and considered by the Board of Directors of Klamath Irrigation District at a Meeting of said Board of Directors and said Board of Directors having found that said Class 6 Lands are in fact agricultural lands as evidenced by the fact that the Landowner and its predecessors have for many years been conducting successful agricultural operations upon said Lands using Rental Water for agricultural purposes, in consideration of all of the Landowner's representations, warranties, covenants, agreements and grants therein set forth, duly moved, seconded and voted that said Application be approved and did order that the Class 6 status and restriction be removed from the acres of land therein specified.

NOW, THEREFORE, Klamath Irrigation District does hereby duly execute this Agreement this 11th day of May, 1988.

KLAMATH IRRIGATION DISTRICT

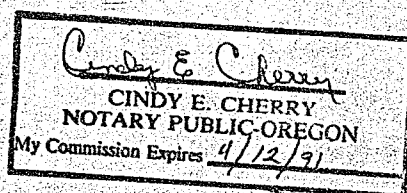
By *Dick Owens*
Its President

By *David A. Solem*
Its Secretary

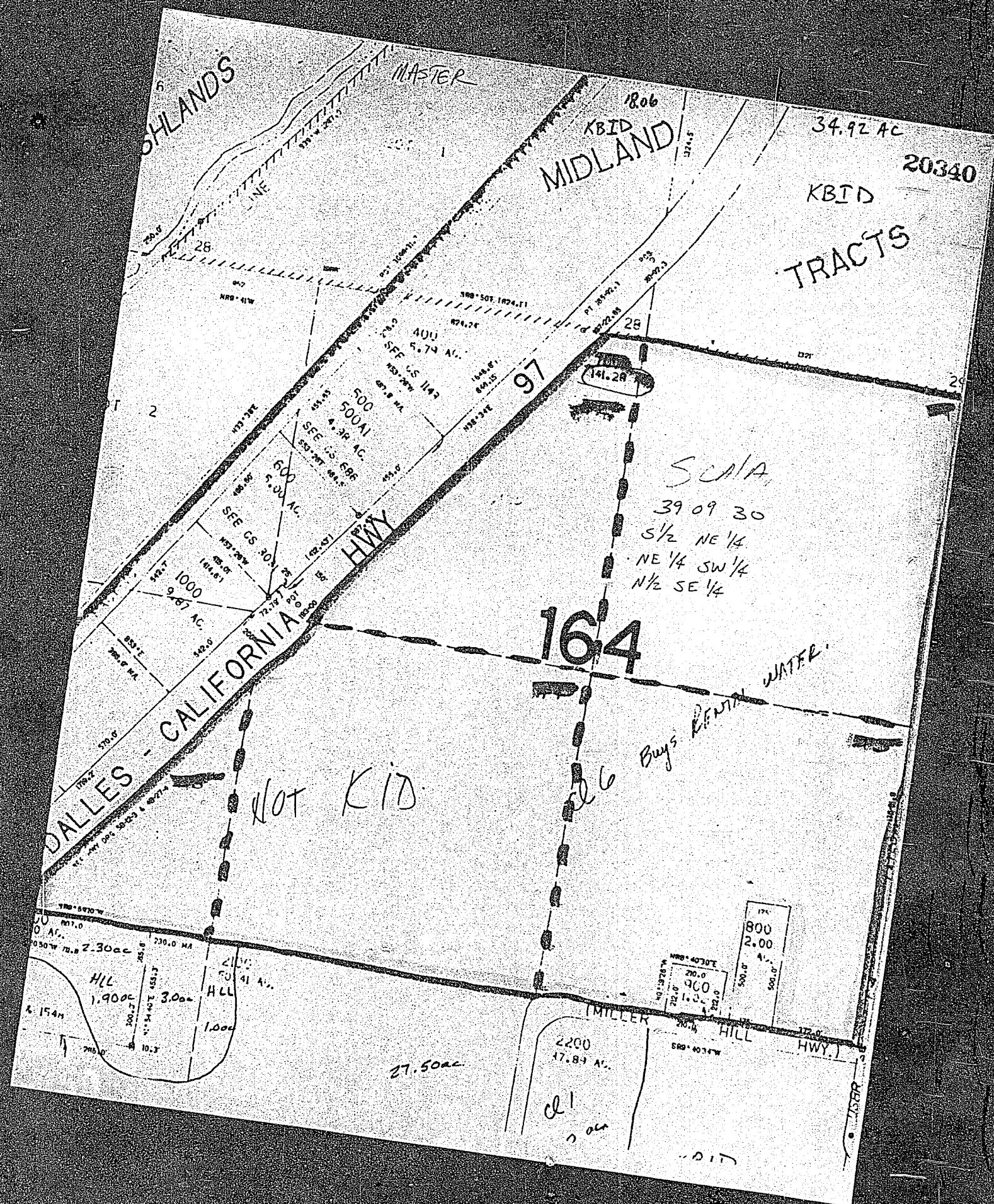
STATE OF OREGON)
) ss
County of Klamath)

On this 11th day of May, 1988, personally appeared Dick Owens and David A. Solem, who, being duly sworn did each say that Dick Owens is the President and David A. Solem is the Secretary of Klamath Irrigation District and that the Seal affixed to this Instrument is the Official Seal of said Klamath Irrigation District and that said Instrument was signed on behalf of Klamath Irrigation District by authority of its Board of Directors and each of them acknowledged said Instrument to be the voluntary act and deed of Klamath Irrigation District. BEFORE ME:

(SEAL)



Cindy E. Cherry
Notary Public for Oregon
My commission expires: 4/12/91

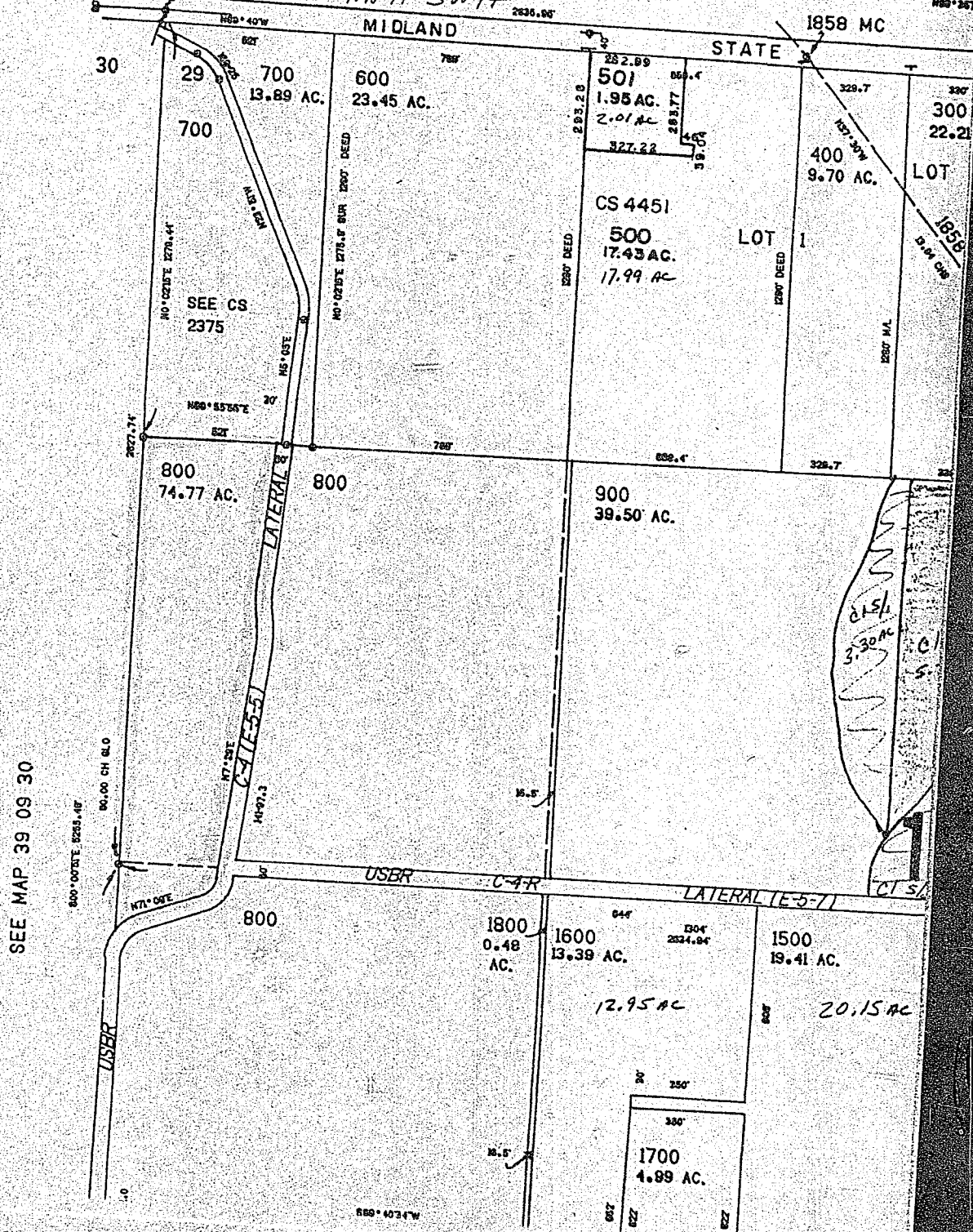


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SW 1/4 NW 1/4
NW 1/4 SW 1/4

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STATE OF OREGON: COUNTY OF KLAMATH: SS.

Filed for record at request of Klamath Irrigation Dist.
of Dec. A.D., 19 88 at 9:50 o'clock A.M., and duly recorded in Vol. M88
of Deeds on Page 20334
FEE \$43.00
Evelyn Biehn, County Clerk
By B. A. Muelken

FEE \$43.00