

11425

Water Resources Department

Vol. 90 Page 3112X 2/16/90
CONTRACT OF SALEDATED: January 19, 1990BETWEEN: The State of Oregon, by and through the Director of the Water Resources
Department, SELLERAND: Samuel Henzel and Thurston Henzel20201 Highway 97 SouthKlamath Falls, OR 97603-9805 BUYER(S)

On the terms and conditions set forth below, Seller agrees to sell and Buyer agrees to buy the following described real property (the "property"):

SEE ATTACHED EXHIBIT "A"

Excepting and reserving to itself, its successors, and assigns, all minerals, as defined in ORS 273.775(1), and all geothermal resources defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinfusing, storing, drilling, for, and removing such materials and geothermal resources; provided, however, that the rights hereby reserved to use the surface for any of the above activities shall be subordinate to that use of the surface of the premises deeded herein, or any part thereof, being made by the owner thereof on the date the State of Oregon leases its reserved mineral or geothermal resources; in the event such use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from the state's lessee to the extent of the diminution in value of the rights of the owner's interest.

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SUBJECT TO THE FOLLOWING EXCEPTIONS:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records; unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other facts which a correct survey would disclose.
5. Rights of the public in and to any portion of the herein described premises lying within the limits of any roads or highways.
6. Location of power and telephone lines and public roads.
7. As disclosed by the assessment and tax roll, the premises herein have been specially assessed for farm use. If the land becomes disqualified for this special assessment under the statutes, an additional tax, plus interest and penalty, will be levied for the number of years in which this special assessment was in effect for the land.
8. No liability is assumed if a financing statement is filed in the office of the County Clerk covering growing crops or fixtures, wherein the land is described other than by metes and bounds, the rectangular survey system or by recorded lot and block.
9. The assessment roll and the tax roll disclose that the within described premises were specially assessed as farm land. Taxes for the year 1989-90 and possibly prior years have been deferred pursuant to ORS 308.370 to 308.403. These, plus earned interest are due and payable when said reason for the deferment no longer exists.
10. Liens and assessments of Klamath Project and Klamath Irrigation District, and regulations, contracts, easements, water and irrigation rights in connection therewith.
11. Any unpaid charges or assessments of Klamath Irrigation District.
12. Rights of the Federal Government, the State of Oregon, and the general public in any portion of the herein described premises lying below the high waterline of Lost River.
13. Waiver of Riparian Rights, including the terms and provisions thereof, from A. F. Bunnell, to the United States of America, dated August 3, 1905, recorded September 16, 1905, Volume 18 page 356, Deed Records of Klamath County, Oregon.

14. Subject to recording a Sheriff's Deed to vestee herein.

TAX STATEMENT - Until a change is requested, all tax statements shall be sent

to: Water Resources Department
Water Development Loan Program
3850 Portland Road N.E.
Salem, OR 97302

SECTION 1. PURCHASE PRICE; PAYMENT

1.1 TOTAL PURCHASE PRICE. Buyer agrees to pay Seller the sum of \$30,000.00 as the total purchase price for the property.

1.2 PAYMENT OF TOTAL PURCHASE PRICE. The total purchase price shall be paid as follows:

BUYER TO PROVIDE EASEMENT FOR INGRESS AND EGRESS TO SECURITY AS THEIR DOWN PAYMENT, SAID EASEMENT TO BE VALUED AT \$5,000.00. The \$5,000.00 value is to be credited against the \$30,000.00 balance at closing.

The balance due on the Contract of \$25,000.00 shall be paid in payments of \$3,314.00, each including interest, beginning on the 1st of March, 1991, and like payments on the 1st day of March each year thereafter until paid.

1.3 TERM OF CONTRACT. The final payment is due March 1, 2005.

1.4 INTEREST RATE. The annual interest rate during the term of this Contract is Ten and 00/100 percent (10.0%) per annum.

1.5 PRE-PAYMENTS. Buyer may prepay all or any portion of the balance due on the Contract at any time subject to a prepayment penalty based on the original amount financed. If the Contract is paid off in the first (1st) through fifth (5th) year of the Contract, the penalty will be ten percent (10.00%) of the original amount financed. If paid off in the sixth (6th) through tenth (10th) years, the penalty will be five percent (5.00%) of the original amount financed. In any year thereafter, the penalty will be ten percent (10.00%) of the outstanding balance with a minimum of \$100.00.

1.6 PLACE OF PAYMENTS. All payments to Seller shall be made to the Water Resources Department, 3850 Portland Road N.E., Salem, OR 97310, unless Seller gives written notice to Buyer to make payments at some other place.

1.7 BARGAIN AND SALE DEED. Upon payment of the total purchase price for the property as provided for by this Contract and performances by Buyer of all other terms, conditions, and provisions of the Contract, Seller shall deliver to Buyer a Bargain and Sale Deed.

1.8 TITLE INSURANCE. In lieu of title insurance the state will hold buyer harmless from any matters relating to the condition of title of subject property prior to date the contract is signed.

1.9 NO DISPUTE. Notwithstanding any dispute between the Seller and the Buyer, the Buyer shall make all payments provided in Subsections 1.2 and 1.6 hereof when due and shall not withhold any such loan payments pending final resolution of such disputes.

SECTION 2. POSSESSION; MAINTENANCE

2.1 POSSESSION. Buyer shall be entitled to possession of the property from and after the date of this Contract. It is understood, and agreed, however, that Buyer will permit Seller and its agents to enter the property at reasonable times, to inspect the property.

2.2 MAINTENANCE. Buyer shall keep all buildings, other improvements personal property irrigation equipment, and landscape now existing, or which shall be placed on the property, in good condition and repair. Buyer shall not permit any waste or removal of the improvements, nor make any substantial improvements or alterations without the prior written consent of Seller. Buyer shall not permit the cutting or removal of any trees, nor removal of any sand and gravel, without prior written consent of Seller. Consent shall not be unreasonably withheld.

2.3 COMPLIANCE WITH LAWS. Buyer shall promptly comply with all laws, ordinances, regulations, directions, rules, and other requirements of all governmental authorities applicable to the use or occupancy of the property. In this compliance, Buyer shall promptly make all required repairs, alterations, and additions. Buyer may contest in good faith any such requirements and withhold compliance during any proceeding, including appropriate appeals, so long as Seller's interest in the property is not jeopardized.

SECTION 3. PROPERTY TAXES

The property taxes are to be paid by November 15th of each year by the Buyer. In the event the Buyer fails to pay the property taxes when due, it will be the option of the Seller to pay said taxes and charge a rate of 10% on the amount of taxes paid until reimbursed to the Seller. Failure to pay the property taxes when due may constitute a default on the Contract.

SECTION 4. INSURANCE

4.1 PROPERTY INSURANCE. Buyer shall get and keep policies of liability in the amount of \$300,000.00. Insurance shall be made with loss payable to Seller and Buyer, as their respective interests may appear. Buyer shall require all independent contractors working on the land to have liability insurance in the amount of \$300,000.00.

Buyer shall get and keep policies of personal property insurance on the irrigation equipment purchased naming Seller as loss payee in the amount of the actual cash value of the equipment.

In the event of loss, Buyer shall give immediate notice to Seller. Seller may make proof of loss if Buyer fails to do so within fifteen (15) days of the loss. If Buyer fails to keep insurance in force, Seller may obtain insurance, and add the cost to the balance due on the Contract. The insurance cost shall be payable to Seller on demand.

4.2 APPLICATION OF PROCEEDS. All proceeds of any insurance on the property shall be held by Seller. If Buyer chooses to restore the property, Buyer shall repair or replace the damaged or destroyed portion of the property in a manner satisfactory to Seller. Upon satisfactory proof of restoration, Seller shall pay or reimburse Buyer from the insurance proceeds for the reasonable cost of repair or restoration. If Buyer chooses not to restore the property, Seller shall keep a sufficient amount of the proceeds to pay all amounts due under this Contract, and shall pay the balance of the insurance proceeds to Buyer. Any proceeds which have not been paid out within 180 days after their receipt, and which Buyer has not committed to the repair or restoration of the property, shall be used to pay first accrued interest and then the principal balance due on the Contract. Such payment, however, shall not be credited to nor in lieu of regular annual payments.

SECTION 5. MINERAL RIGHTS

The Seller reserves to itself, its successors, and assigns, all minerals, as defined in ORS 273.775(1), and all geothermal resources defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinfusing, storing, drilling, for, and removing such materials and geothermal resources; provided, however, that the rights hereby reserved to use the surface for any of the above activities shall be subordinate to that use of the surface of the premises deeded herein, or any part thereof, being made by the owner thereof on the date the State of Oregon leases its reserved mineral or geothermal resources; in the event such use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from the state's lessee to the extent of the diminution in value of the rights of the owner's interest.

SECTION 6. EMINENT DOMAIN

If a condemning authority takes all or any portion of the property, Buyer and Seller shall share in the condemnation proceeds in proportion to the values of their respective interests in the property. Sale of the property in lieu of condemnation shall be treated as a taking of the property. Such payment, however, shall not be credited to nor in lieu of regular annual payments.

SECTION 7. SECURITY AGREEMENT

7.1 This instrument shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to any personal property included within the description of the property. Upon request of Seller, Buyer shall execute any necessary financing statements in the form required by the Uniform Commercial Code and shall file the statements at Buyer's expense. Without further authorization from Buyer, Seller may at any time file copies of the Contract as financing statements. Upon default under the terms of this Contract, Buyer shall, within three (3) days of receipt of written demand from Seller, assemble the personal property and make it available to Seller.

7.2 Personal property included and covered by this Contract are detailed on the attached Security Agreement.

SECTION 8. DEFAULT

8.1 EVENTS OF DEFAULT. Time is of the essence on this Contract. A default shall occur under any of the following circumstances:

- (a) Failure of Buyer to make any payment when payment is due or within fifteen (15) days thereafter. No notice of default and no opportunity to cure shall be required if during any twelve (12) month period Seller has already sent three (3) notices to Buyer concerning non-payment or late payment under this Contract.
- (b) Failure of Buyer to perform any other obligation in this Contract in addition to payment. Buyer must perform obligation within thirty (30) days after receiving Notice of Default from Seller. Such Notice shall specify the nature of the default.

8.2 REMEDIES OF DEFAULT. In the event of a default, Seller may take any one or more of the following steps:

- (a) Declare the entire balance due on the Contract, including interest, immediately due and payable.
- (b) Foreclose this Contract by suit in equity.
- (c) Specifically enforce the terms of this Contract by suit in equity.
- (d) Exercise the rights and remedies of a secured party as provided by the Uniform Commercial Code. Seller may exercise these rights and remedies with respect to any part of the property which constitutes personal property in which Seller has a security interest.
- (e) Impose a late charge if the payment is not postmarked or received within 15 days after the scheduled due date. The late charge will be \$15.00 or 5.00% of the payment past due, whichever is greater. The late charge will be based on the original payment amount regardless of any partial payments that may have been made before or during the 15 day grace period. Unless the full payment is postmarked or received before the end of the 15 day grace period, the late charge will be assessed. The maximum late charge will be \$500.00.
- (f) Declare this Contract to be void thirty (30) or more days after Seller gives written notice to Buyer of Seller's intention to do so, unless the performance then due under this Contract is tendered or accomplished prior to the time stated. At the end of the thirty (30) days, all of Buyer's rights under this Contract shall cease without further act by Seller. Seller shall then be entitled to immediate possession of the property. All payments previously made to Seller by Buyer may be kept by Seller as reasonable rental of the property up to the time of default.
- (g) Appoint a receiver. Seller shall be entitled to the appointment of a receiver as a matter of right. It does not matter whether or not the apparent value of the property exceeds the amount of the balance due on the Contract. Any receiver appointed may serve without bond. Employment by Seller shall not disqualify a person from serving as a receiver. Upon taking possession of all or any part of the property, the receiver may:

- (i) Use, operate, manage, control, and conduct business on the property and make necessary expenditures for all maintenance and improvements that in the receiver's judgement are proper.
- (ii) Collect all rents, revenues, income, issues, and profits from the property and apply such sums to the necessary expenses of use, operation, and management.
- (h) Elect to collect all rents, revenues, income, issues, and profits (the "Income") from the property, whether due now or later. Prior to default, Buyer may operate and manage the property and collect the Income from the property. In the event of default and at any time hereafter, Seller may revoke Buyer's right to collect the Income from the property. Seller may collect the income either through itself or a receiver. Seller may notify any tenant or other user to make payments of rents or use fees directly to Seller. If the income is collected by Seller, then Buyer irrevocably designates Seller as Buyer's attorney-in-fact and gives Seller permission to endorse rent or fee checks in Buyer's name. Buyer also gives Seller permission to negotiate and collect such rents or fees. Payments by tenants or other users to Seller in response to Seller's demand shall satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Seller shall apply the Income first to the expenses of renting or collection and the balance (if any) to payment of sums due from Buyer to Seller under this Contract.

8.3. REMEDIES NONEXCLUSIVE. The remedies provided above shall not exclude any other remedies provided by law. They are in addition to any other such remedies.

SECTION 9. SELLER'S RIGHT TO CURE

If Buyer fails to perform any obligation required of it under this Contract, Seller may, without notice, take any steps necessary to remedy such failure. Buyer shall reimburse Seller for all amounts expended in so doing on demand. Such action by Seller shall not constitute a waiver of the default or any other right or remedy which Seller may have on account of Buyer's default.

SECTION 10. WAIVER

Failure of either party at any time to require performance of any provision of this Contract shall not limit the party's right to enforce the provision. If a party waives a breach of any provision of this Contract, the waiver applies only to that specific breach. It does not apply to the provision itself.

SECTION 11. INDEMNIFICATION

Buyer shall forever defend, indemnify, and hold Seller harmless from any claim, loss, or liability arising out of or in any way connected with Buyer's possession or use of the property; Buyer's conduct with respect to the property, or any condition of the property. In the event of any litigation or proceeding brought

against Seller and arising out of or in any way connected with any of the above events or claims, against which Buyer agrees to defend Seller, Buyer shall, upon notice from Seller, vigorously resist and defend such actions or proceedings through legal counsel reasonably satisfactory to Seller.

SECTION 12. SUCCESSOR INTERESTS

This Contract shall be binding upon and for the benefit of the parties, their successors, and assigns. But no interest of Buyer shall be assigned, subcontracted, or otherwise transferred, voluntarily or involuntarily, without the prior written consent of Seller. Consent by Seller to one transfer shall not constitute consent to other transfers or waiver of this section. Consent shall not be unreasonably withheld.

As a condition to such consent, Seller may increase the interest rate under this Contract to a new rate established by the Director, Water Resources Department, not to exceed State Usury Limits. Any attempted assignment in violation of this provision shall be void and of no effect with respect to Seller. Buyer hereby waives notice of and consent to any and all extensions and modifications of this Contract granted by Seller. Any other person at any time obligated for the performance of the terms of this Contract also hereby waives such notice and consent. Any such extensions or modifications will not in any way release, discharge, or otherwise affect the liability of any person at any time obligated under this Contract.

SECTION 13. TRANSFER FEE

If any interest of the Buyer under this Contract is assigned, subcontracted, or otherwise transferred, a fee to cover administrative costs will be immediately due and payable to Seller. The amount of the fee shall be \$300.00.

SECTION 14. NOTICE

Any notice under this Contract shall be in writing and shall be effective when actually delivered in person or ten (10) days after being deposited in the U.S. mail, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

SECTION 15. COSTS AND ATTORNEY FEES

Events may occur that would cause Seller or Buyer to take some action, judicial or otherwise, to enforce or interpret terms of this Contract. Should such actions be taken, the prevailing party shall be entitled to recover from the other party all expenses reasonably incurred in taking such action. Such expenses shall include, but are not limited to the following costs:

- * Cost of searching records,
- * Cost of title reports,
- * Cost of surveyors' reports,
- * Cost of foreclosure reports,
- * Cost of attorney fees,

whether incurred in a suit or action, in an appeal from a judgment or decree therein, or in connection with nonjudicial action.

SECTION 16. SURVIVAL OF COVENANTS

Any covenants, the full performance of which is not required prior to the closing or final payment of the purchase price, shall survive the closing and the final payment of the purchase price. Such covenants shall be fully enforceable thereafter in accordance with their terms.

SECTION 17. GOVERNING LAW; SEVERABILITY

This Contract shall be governed by the laws of the State of Oregon. In the event that any provision or clause of this Contract conflicts with applicable law, such conflict shall not affect any other provision and, to this end, the provisions of this Contract are severable.

SECTION 18. REPRESENTATIONS, CONDITION OF PROPERTY

Buyer accepts the land and all other aspects of the property sold under this Contract in its present condition, AS IS. Present condition includes physical condition of property and latent defects, without any representations or warranties, expressed or implied, unless they are expressly set forth in this Contract or are in writing signed by Seller. Buyer agrees that Buyer has ascertained, from sources other than Seller, the applicable zoning, building, housing, and other regulatory ordinances and laws. Buyer also agrees to accept the property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the property. Buyer agrees that Seller has made no representations with respect to such laws or ordinances. Buyer further agrees that Seller has made no representations with respect to area included within the legal description as set forth on page 1 of this Contract.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

This document is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the property. The document supersedes and replaces all prior or existing written and oral agreements (including any sale or earnest money agreement) between the parties or their representatives relating to the property.

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

BUYER(S):

Samuel Henzel
Thurston K. Henzel

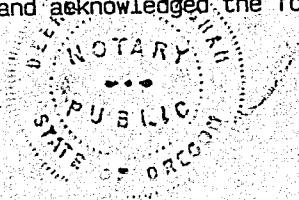
STATE OF OREGON)

County of Klamath)

ss.

February 9, 19 90

Personally appeared the above-named Samuel Henzel and Thurston K. Henzel
 and acknowledged the foregoing Contract to be his (their) voluntary act and deed.



Before me:

Debra B. Buehler
 Notary Public for Oregon
 My Commission Expires: 12-19-92

SELLER:

Director of Water Resources Department

By William H. Young
 Director
 Title

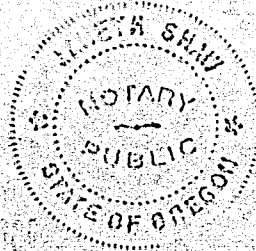
STATE OF OREGON)

County of Marion)

ss.

January 19, 19 90

Personally appeared the above-named William H. Young
 and, being first duly sworn, did say that he (she) is duly authorized to sign the
 foregoing Contract on behalf of the Water Resources Department by authority of its
 Director.



Before me:

Janeth Shaw
 Notary Public for Oregon
 My Commission Expires: 1-29-90

3122

CONTRACT OF SALE

For County Recording Information Only

AFTER RECORDING RETURN TO:

Water Resources Department
Water Development Loan Program
3850 Portland Road N.E.
Salem, OR 97310

1/11/90
0893V

Contract No.: 1990-800177

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EXHIBIT "A"

All that real property situated in the County of Klamath, State of Oregon, more particularly described as follows:

Parcel 1:

A tract of land situated in the S 1/2 of Section 21, Township 40 South, Range 10 East, W.M., Klamath County, Oregon, more particularly described as follows:

Beginning at a point from which the E 1/4 corner of said Section 21 bears N68°00'43"E 4124.07 feet; thence South 105 feet to the Southeast corner of a tract of land described as Parcel 1 in Volume M76-4925, as recorded in the Klamath County Deed Records; thence East 1692 feet, more or less, to the Westerly line of Lost River; thence Northwesterly, along said Westerly line to a point which bears East of the point of beginning; thence West to the point of beginning.

Parcel 2:

A tract of land situated in the S 1/2 of Section 21, Township 40 South, Range 10 East, W.M., Klamath County, Oregon, more particularly described as follows:

Beginning at a point from which the E 1/4 corner of said Section 21 bears N68°00'43"E 4124.07 feet; thence North 107.36 feet; thence West 100 feet; thence South 212.36 feet; thence East 69.28 feet to the centerline of an irrigation ditch; thence along the following courses and distances of the said centerline: S52°05'36"E 88.07 feet, S46°56'52"E 324.75 feet, S88°23'49"E 425.37 feet, N79°52'31"E 19.91 feet, S74°15'24"E 346.81 feet, S66°51'57"E 93.41 feet, S88°01'46"E 413.75 feet, N77°03'52"E 29.04 feet, S87°58'24"E 393.05 feet, and N50°01'E 59 feet, more or less, to the Westerly line of said Lost River; thence Northwesterly, along the said Westerly line of Lost River to a point which bears East from the point of beginning; thence West to the point of beginning.

Personal Property:

- 3 - 1/4 mile Wade wheel lines Model 70 - 4", Serial Nos. 11636, 11766, 12126
- 1 - 1/4 mile wheel line, Serial No. 1261

Located in Section 21, T. 40 S., R. 10 E., W.M., Klamath County, Oregon.

1/11/90
0893V

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Klamath County Title Co.
of Feb. A.D., 19 90 at 9:22 o'clock AM., and duly recorded in Vol. M90
of Deeds on Page 3112

FEE \$83.00

Evelyn Biehn County Clerk
By Shirley Muckensler