

Contract No. 0-07-20-15347

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Klamath Project

EASEMENT FOR ENCROACHMENT  
A CANAL

THIS INSTRUMENT, made this 16 day of OCTOBER, 1990, in accordance with the Act of Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof and 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 Department of the Interior, Bureau of Reclamation, hereinafter called the "United States", represented by the officer executing this instrument on its behalf, and IRENE TALTON, hereinafter called "Grantee."

RECITALS

The United States has constructed and the Klamath Irrigation District is operating, as a feature of the Klamath Project, the A Canal in Klamath County, Oregon; and

In 1949 the Grantee inadvertently constructed a portion of a garage and a retaining wall on a portion of the A Canal Right-of-Way; and

The United States has, at this time, no objection to such use and has determined that the grant of such an easement will not be incompatible with the purpose for which said parcel was acquired and is being administered, nor will the easement interfere with the operation of the A Canal.

EASEMENT

In consideration of the premises and subject to the terms and conditions hereinafter set forth, the parties hereto agree:

1. The United States hereby grants to Grantees, without warranty of title, a nonexclusive right, privilege, and easement to occupy a portion of the A Canal Right-of-Way with a garage and retaining wall located on a portion of United States acquired land described as follows:

A parcel of land in the Southwest-quarter Southeast-quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section Twenty-nine (29), Township Thirty-eight (38) South, Range Nine (9) East, Willamette Meridian, County of Klamath, State of Oregon, containing an area of 440 square feet acres, more or less, described as follows:

Beginning at a point on the Northerly Right-of-Way of the A Canal which is distant 75.0 feet measured perpendicular to the centerline station 68+72 of the A Canal, thence South 60° 58' 28" East 33.50 feet to the true point of beginning being the Northwest edge of the garage foundation; thence along the foundation line of the garage South 38° 37' 02" West 7.3 feet, thence South 51° 22' 58" East 20.5 feet, thence North 38° 37' 02" East 7.2 feet, thence South 51° 22' 58" East 38.9 feet, thence North 28° 10' 33" East 9.9 feet to the Northerly Right-of-Way of the A Canal, thence along the Right-of-Way of the A Canal North 60° 58' 28" West 58.40 feet to the true point of beginning. Said parcel is shown on "Exhibit A", enclosed herewith and made a part hereof.

2. Upon execution of this instrument Grantee shall pay to the United States a fee of \$450.00 (Four Hundred and Fifty Dollars), said sum reflects Fair Market Value for the easement area. In addition, the Grantee will reimburse the United States for all administrative costs.

3. Grantee 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 of any nature whatsoever and by whomsoever made arising out of Grantees' activities under this easement.

4. The waiver of a breach of any of the provisions hereof shall not be deemed to be a waiver of a subsequent breach of the same provision or of any other provision hereof.

5. This easement is granted for and limited to the specific purposes set forth in Article 1 hereof, and the issuance of this instrument shall not constitute nor be construed as a surrender of subordination to Grantee of the jurisdiction or supervision of the United States in the land herein described.

6. The terms and provisions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of the Grantee.

7. If Grantee ceases to use the easement for the garage and retaining wall for a period of 5 years, such easement shall terminate and the Grantee may be required, at the discretion of the United States, to restore the land to its original condition. Said restoration shall be at the expense of the Grantee.

8. No hazardous or toxic substances, such as fuels, lubricants, paints, pesticides, or other substances designated by law may be stored on this property. If any of these substances must be used, prior written approval of the United States is required. Substances must be transported onto and off the premises in clearly labeled, properly sealed containers and handled safely in compliance with existing laws and regulations to prevent any contamination of the soil, air or water of the land of the United States.

9. All construction, reconstruction, or maintenance work shall conform to normal acceptable engineering standards, be in accordance with all applicable Federal, State, and local laws, rules, and regulations, and shall be done in such manner as to not interfere with those rights and privileges of the United States, together with the responsibility for any damage to United States facilities and/or loss of use as a result of damages to the facilities.

10. Failure of the Grantee to comply with any of the conditions and requirements of this easement shall warrant termination of the easement.

11. The Grantee warrants that no person or agency has been employed or retained to solicit or secure this conveyance 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 Grantee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this conveyance without liability or in its discretion to require Grantee to pay full amount of such commission, percentage, brokerage or contingent fee to the United States.

12. No member of or delegate to Congress or resident Commissioner shall be admitted to any share or part of this conveyance or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this conveyance if given to a corporation or company for its general benefit.

13. There is reserved from the rights herein granted, the prior rights of the United States acting through the Bureau of Reclamation, Department of the Interior, to construct, operate, and maintain public works now or hereafter authorized by the Congress without liability for severance or other damage to the grantee's work; provided, however, that if such reserved rights are not identified in at least general terms in this easement and exercised for works authorized by the Congress within 10 years following the date of this easement, they will not be exercised unless the grantee, or grantee's successor in interest is notified of the need, and grants an extension or waiver. If no extension or waiver is granted, the Government will compensate, or institute mitigation measures for any resultant damages to works placed on

said lands pursuant to the rights herein granted. Compensation shall be in the amount of the cost for reconstruction of grantee's works to accommodate the exercise of the Government's reserved rights. As alternatives to such compensation, the United States, at its option and at its own expense, may mitigate the damages by reconstructing the grantee's works to accommodate the Government facilities, or may provide other adequate mitigation measures for any damage to the grantee's property or right. The decision to compensate or mitigate is that of the appropriate Regional Director.

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

~~THE UNITED STATES OF AMERICA~~

~~By James Dalton~~  
~~DIRECTOR~~  
~~Klamath Falls, Oregon~~

WITNESSES:

KLAMATH IRRIGATION DISTRICT

By James Dalton  
 Title Manager

By James Dalton  
 James Dalton  
 310 Mountain View Boulevard  
 Klamath Falls, Oregon 97601

THE UNITED STATES OF AMERICA

Mark R. Ragsdale  
 Project Manager  
 Klamath Falls, Oregon

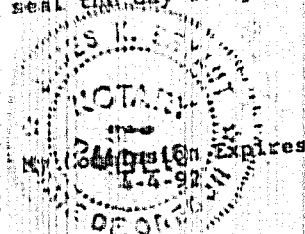
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## ACKNOWLEDGEMENT

STATE OF OREGON )  
COUNTY OF KLAMATH) ss.

On this 16th day of October, 1990, before me, James K. Bryant, a Notary Public in and for the County and State aforesaid, personally appeared Irene Dalton and Kirk C. Rodgers, personally known to me to be the persons whose names are subscribed to this instrument, and acknowledged that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



*James K. Bryant*  
James K. Bryant, Notary Public

STATE OF OREGON: COUNTY OF KLAMATH: st.

Filed for record at request of Irene Dalton the 16th day  
of Oct. A.D. 19 90 at 3:47 o'clock PM., and duly recorded in Vol. M90  
of Page 20929  
Evelyn Biehn County Clerk  
By Douglas Muelendare

FEE \$28.00

Return: Irene Dalton  
P.O. Box 1508  
Klamath Falls, Or., 97601