

EASEMENT EXCHANGE

THIS AGREEMENT, made and entered into as of the 7th day of November, 1990, by and between OREGON, CALIFORNIA AND EASTERN RAILWAY COMPANY, an Oregon corporation, hereinafter called "OC&E"; LOWELL N. JONES COMPANY, an Oregon corporation, hereinafter called "LNJ Co."; and LOWELL N. JONES and HARMONY JONES, also known as Harmony Hawkins Jones, husband and wife, hereinafter called "JONES," WITNESSETH:

## I.

A. OC&E, for and in consideration of the grants hereinafter received by it, hereby grants and conveys to LNJ Co. a perpetual, nonexclusive easement and right of way, fifty (50) feet in width, for a road and railroad crossing over and across a portion of the:

SE $\frac{1}{4}$ SE $\frac{1}{4}$ 

Section 15-39S-10E, W.M.

Klamath County, Oregon; said easement and right of way being located approximately as shown in orange on the attached Exhibit A.

Subject as to said lands to all matters of public record.

B. OC&E, for and in consideration of the grants hereinafter received by it, hereby grants and conveys to LNJ Co. a perpetual, nonexclusive easement and right of way, twenty-five (25) feet in width, for a road over and across portions of the:

NE $\frac{1}{4}$ NE $\frac{1}{4}$ : S $\frac{1}{2}$ NE $\frac{1}{4}$ : N $\frac{1}{2}$ SW $\frac{1}{4}$ : SW $\frac{1}{4}$ SW $\frac{1}{4}$  Section 14-39S-10E, W.M.  
E $\frac{1}{2}$ SE $\frac{1}{4}$  Section 15-39S-10E, W.M.

Klamath County, Oregon; said easement and right of way being located approximately as shown in yellow on the attached Exhibit A.

Subject as to said lands to all matters of public record.

C. OC&E, for and in consideration of the grants hereinafter received by it, hereby grants and conveys to LNJ Co., a perpetual, nonexclusive easement and right of way, thirty-five

(35) feet in width, for a road over and across a portion of the:

SW $\frac{1}{4}$ NE $\frac{1}{4}$ : SE $\frac{1}{4}$ NW $\frac{1}{4}$ : NE $\frac{1}{4}$ SW $\frac{1}{4}$

Section 14-39S-10E, W.M.

Klamath County, Oregon; said easement and right of way being located approximately as shown in brown on the attached Exhibit A.

Subject to said lands to all matters of public record.

D. JONES, for and in consideration of benefits received by them, hereby grant and convey to OC&E and LNJ Co. a perpetual, nonexclusive easement and right of way, fifty (50) feet in width, plus such additional widths as are necessary for cuts and fills, for a road over and across a portion of the:

SW $\frac{1}{4}$ SE $\frac{1}{4}$

Section 15-39S-10E, W.M.

Klamath County, Oregon; said easement and right of way being located approximately as shown in pink on the attached Exhibit A.

Subject as to said lands to all matters of public record.

E. LNJ Co., for and in consideration of the grants hereinbefore received by it, hereby grants and conveys to OC&E a perpetual, nonexclusive easement and right of way, seventy-five (75) feet in width, plus such additional widths as are necessary for cuts and fills, for a road over and across portions of:

NE $\frac{1}{4}$ NE $\frac{1}{4}$ : S $\frac{1}{2}$ NE $\frac{1}{4}$ : N $\frac{1}{2}$ SW $\frac{1}{4}$   
SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 14-39S-10E, W.M.  
Section 15-39S-10E, W.M.

Klamath County, Oregon; said easement and right of way being located approximately as shown in green on the attached Exhibit A.

Subject as to said lands to all matters of public record.

F. LNJ Co., for and in consideration of the grants hereinbefore received by it, hereby grants and conveys to OC&E a perpetual easement to construct, reconstruct, use and maintain spur tracks over and across portions of:

NE $\frac{1}{4}$ : N $\frac{1}{2}$ SW $\frac{1}{4}$   
SE $\frac{1}{4}$ SE $\frac{1}{4}$

Section 14-39S-10E, W.M.  
Section 15-39S-10E, W.M.

Klamath County, Oregon, to provide rail service to adjacent lands; provided, however, that OC&E shall use the most direct and reasonable route in locating any such spur track(s).

Subject as to said lands to all matters of public record.

G. LNJ Co., for and in consideration of the grants hereinbefore received by it, hereby grants and conveys to OC&E the exclusive right to develop, mine and remove rock and gravel from the gravel pit located in a portion of the:

NW $\frac{1}{4}$ SW $\frac{1}{4}$

Section 14-39S-10E, W.M.

Klamath County, Oregon; said gravel pit being located approximately as shown on the attached Exhibit A. It is understood and agreed that any such rock and gravel removed by OC&E shall be free of charge and no royalties whatsoever shall be due LNJ Co. therefor.

## II.

IT IS HEREBY AGREED by and between the parties hereto that the rights hereinabove granted shall be subject to the following terms and conditions:

1. Purpose - The easements hereinabove conveyed in IA., IB., IC., ID. and IE. are for the purposes of construction, reconstruction, use and maintenance of a road for the purpose of industrial development and use of the adjacent lands now owned by each of the parties hereto. The easement hereinabove conveyed in IF. is for the purposes of construction, reconstruction, use and maintenance of spur track(s) for the purpose of providing rail service to adjacent lands.

2. Road Crossing - Each party reserves for itself, its heirs, successors and assigns, the right at all times, to cross and recross, at any place on grade or otherwise, said rights of way and to use the road on said rights of way in a manner that will not unreasonably interfere with the rights granted the others hereunder.

3. Maintenance - The cost of road maintenance and resurfacing shall be allocated on the basis of respective uses of said road. When any party uses said road, or a portion thereof, that party shall perform or cause to be performed, or contribute or cause to be contributed, that share of the maintenance and resurfacing occasioned by such use as hereinafter provided.

During periods when a road or a portion thereof is being used solely by one party, such party shall maintain that portion of said road so used to the standards existing at the time use commenced. During periods when more than one party is using said road, or a portion thereof, each party's share of maintenance and resurfacing shall be pro rata in proportion to its use thereof.

It is agreed that the parties will prepare and execute a detailed maintenance agreement for the accomplishment of equitable sharing of maintenance costs at the time of or prior to commencement of road construction.

For the purposes of this Agreement, maintenance is defined as the work normally necessary to preserve and keep the roadway, road structure and road facilities as nearly as possible in their present condition or as hereafter improved.

4. Road Damage - Each party using any portion of said road shall repair or cause to be repaired at its sole cost and expense that damage to said road occasioned by it which is in excess of that which it would cause through normal and prudent usage of said road. Should inordinate damage to said road occur which is not caused by an authorized user of said road, the parties hereto shall meet to agree on the cost of replacement, the party to undertake the replacement, and the share of replacement cost to be borne by each user of said road.

5. Road Construction - The initial developer of the road, or any segment thereof, shall bear all expenses of such road development including, but not limited to, road construction, installation of crossing signals, safety devices and signs, fence construction and necessary changes to irrigation facilities, unless prior written agreement is reached regarding the sharing of such road development costs.

6. Minimum Specifications - The road, or any segment thereof, shall be constructed to minimum standards and specifications approved in writing by OC&E.

7. Road Improvement - Unless the parties hereto agree in writing to share the cost of improvements to said road in advance of such improvements being made, said improvements shall be solely for the account of the improver.

8. Exercise of Rights - Each party may permit its employees, guests, invitees, contractors, lessees, purchasers of valuable materials, and their agents, hereinafter individually referred to as "Permittee" and collectively referred to as "Permittees," to exercise the rights granted to it herein.

9. Indemnification - Each party shall indemnify and hold harmless the others against all claims or liabilities asserted by third parties resulting directly or indirectly from the indemnifying party's acts or omissions hereunder whether negligent or otherwise.

10. Protection of Geothermal Test Well - LNJ Co. and OC&E agree to protect LNJ Co.'s existing geothermal test well located in the SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 15-39S-10E, W.M. during road construction and maintenance activities; provided, however, should any additional or extraordinary operational costs be incurred through said protection measures, such costs shall be borne solely by LNJ Co.

11. Geothermal Energy Easements - The parties hereto agree that the transfer of geothermal energy via hot water conduits may be necessary with the industrial development and use of the adjacent lands now owned by each of the parties hereto. At such time as such development is activated, geothermal energy easements will be drafted with appropriate provisions that will protect the respective parties' interests and investments.

12. Heirs, Successors and Assigns - The terms and conditions hereof shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

13. Termination of Previous Agreements - This Easement Exchange shall terminate and supersede that certain Easement Exchange dated November 8, 1984, as recorded in the Records of Klamath County, Oregon, in Volume M85 of Deeds, Page 9214, as amended by Amendment to Easement Exchange dated May 20, 1985, as recorded in said Records of Klamath County in Volume M85 of Deeds, Page 9229, and as further amended by unrecorded Supplemental Agreement dated November 14, 1989.

23215

IN WITNESS WHEREOF, the parties hereto have executed this instrument, as of the day and year first above written.

LOWELL N. JONES COMPANY

OREGON, CALIFORNIA AND EASTERN  
RAILWAY COMPANY

By: Lowell N. Jones.  
Title: Pres.

By: Kerry Miller for D. Williams  
Title: President

Attest: Harmony Jones  
Title: Secretary-Treas

Attest: D. A. Peterson  
Title: Assistant Secretary

Lowell N. Jones.  
LOWELL N. JONES

Harmony Jones  
HARMONY JONES

STATE OF OREGON                    )  
  ) ss.  
COUNTY OF KLAMATH            )

On this 14th day of November, 1990, before me personally appeared D. C. Williams and D. A. Peterson, to me known to be the President and Assistant Secretary, respectively, of OREGON, CALIFORNIA AND EASTERN RAILWAY COMPANY, the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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

Catherine H. H. H.  
Notary Public in and for the State of Oregon.  
My Commission expires: 4/4/92

23216

STATE OF OREGON )  
COUNTY OF Klamath ) ss.

On this 7th day of November  
October 18, 1990, before me  
personally appeared LOWELL N. JONES and HARMONY HAWKINS JONES, to  
me known to be the President and  
Secretary - Treasurer, respectively, of LOWELL N. JONES COMPANY,  
the corporation that executed the within and foregoing  
instrument, and acknowledged said instrument to be the free and  
voluntary act and deed of said corporation, for the uses and  
purposes therein mentioned, and on oath stated that they were  
authorized to execute said instrument and that the seal affixed  
is the corporate seal of said corporation.

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

Debra Buckham  
Notary Public in and for the State of  
Oregon.  
My Commission expires: 12-19-92

STATE OF OREGON )  
COUNTY OF Klamath ) ss.

On this 7th day of November  
October 18, 1990, before me  
personally appeared LOWELL N. JONES and HARMONY JONES, husband  
and wife, to me known to be the individuals described in, and who  
executed the above and foregoing instrument and acknowledged that  
they signed the same as their free and voluntary act and deed,  
for the uses and purposes therein mentioned.

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

Debra Buckham  
Notary Public in and for the State of  
Oregon.  
My Commission expires: 12-19-92



23217



P.O. Box 9  
Klamath Falls, Oregon 97601  
Tel (503) 884 2241

DATE: November 5, 1990

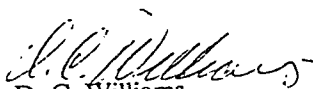
FROM: D. C. Williams

SUBJECT: DELEGATION OF AUTHORITY

TO: D. J. Young - Hot Springs  
Otto Leuschel - WWC 2U2  
Bob Loucks  
Martin Lugus  
Dennis McClure  
Kerry Miller  
Dave Peterson  
Dave Wilson  
Phil Hays  
Jerry Howe

I will be on vacation November 8th through November 23rd, 1990.

During my absence Kerry Miller will be delegated to act in my behalf.

  
D. C. Williams  
me

cc: Chuck Smith  
Donn Jensen

Return: Lowell Jones  
P.O. Box 1866  
Klamath Falls, Or. 97601



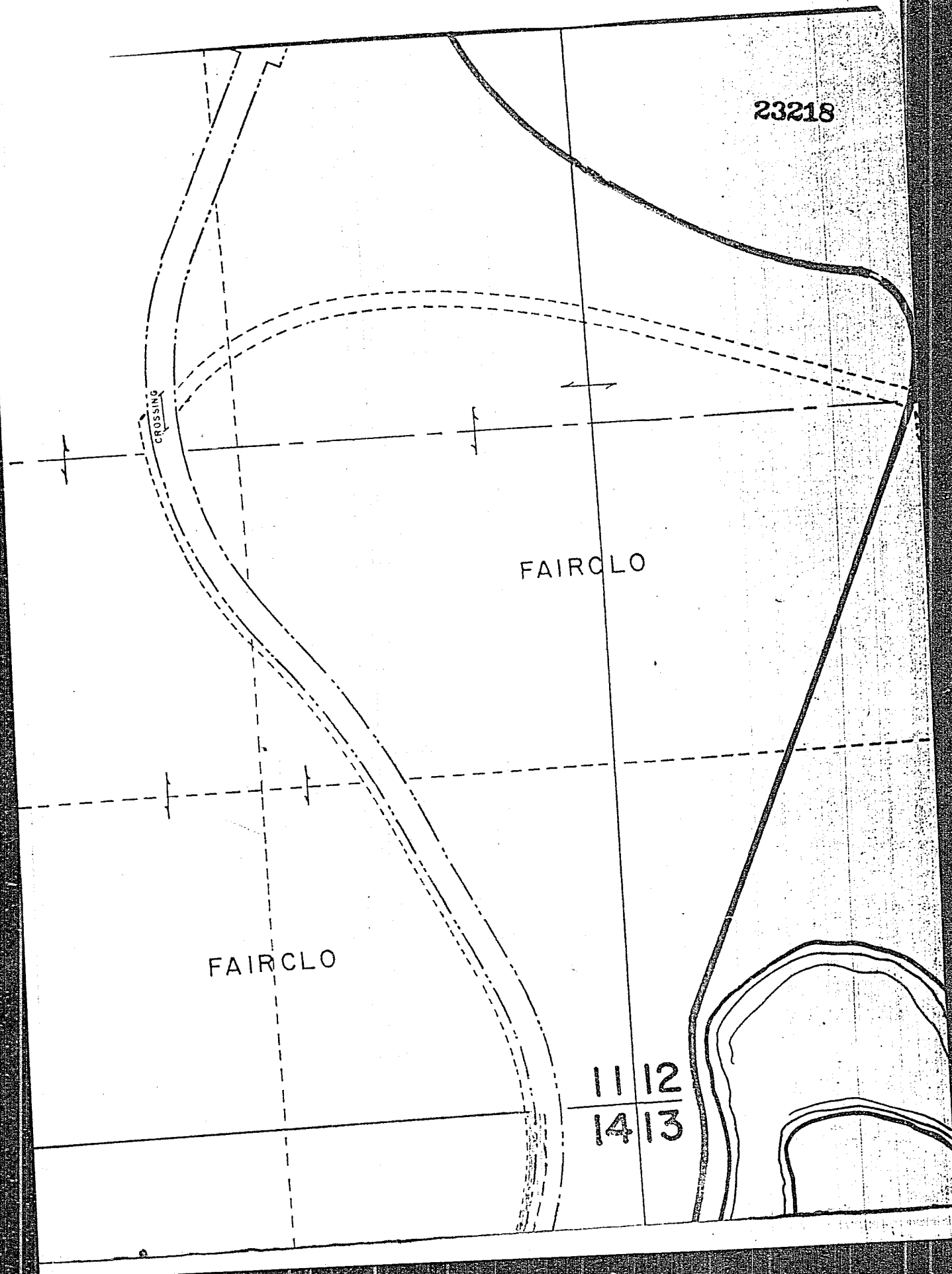
23218

FAIRCLO

FAIRCLO

11 12  
14 13

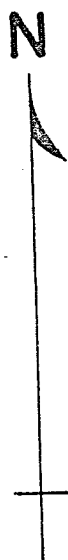
CROSSING



T. 39

23219

10	11
15	14



SCALE: 1" = 400'

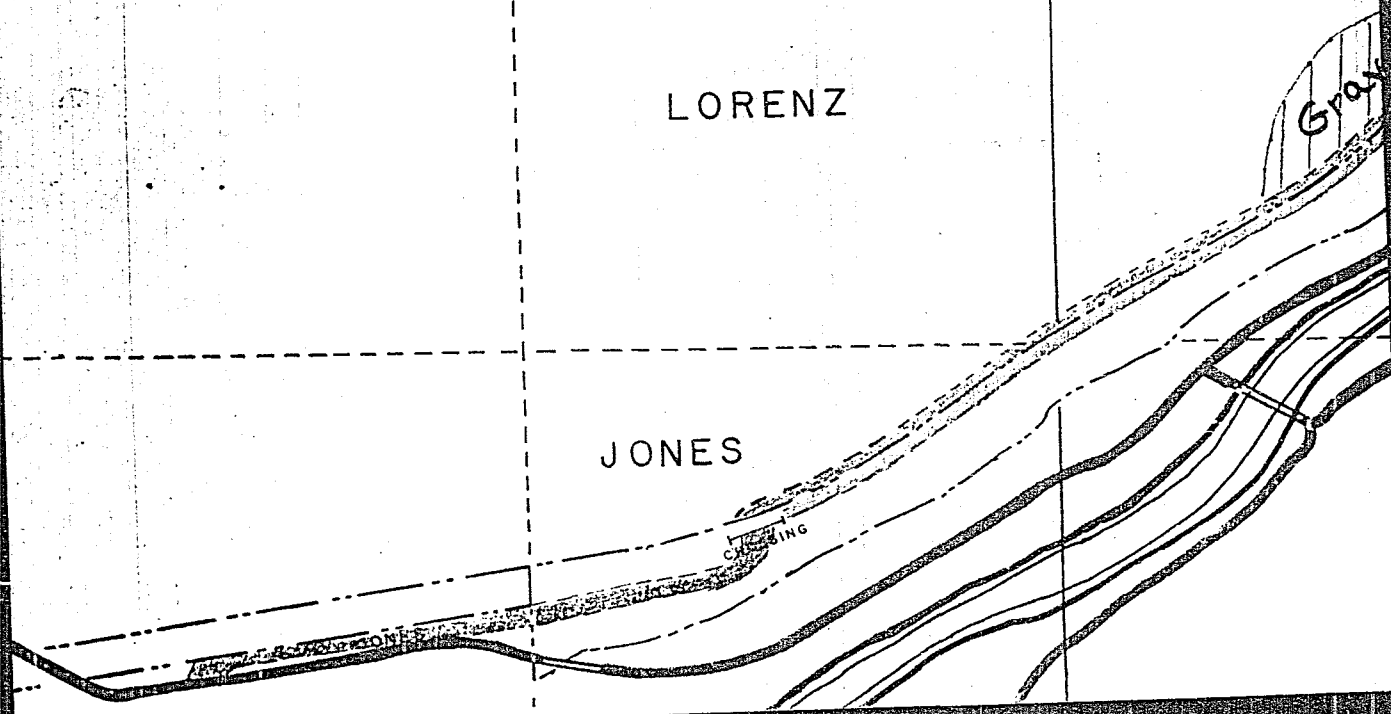
JONES

LORENZ

JONES

CHICKEN

Grass



T. 39 S., R. 10 E.

23220

FAIRCLO

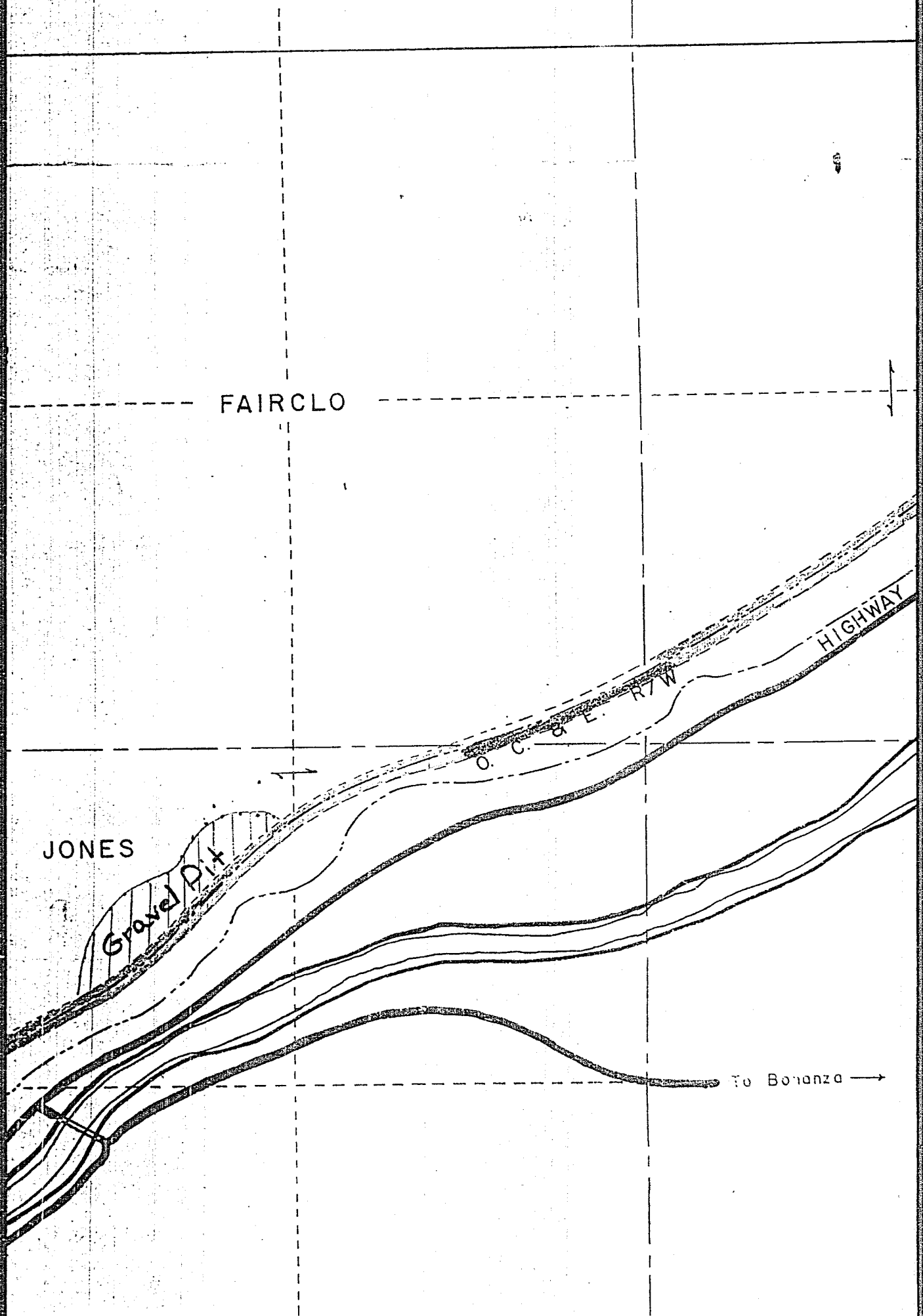
JONES

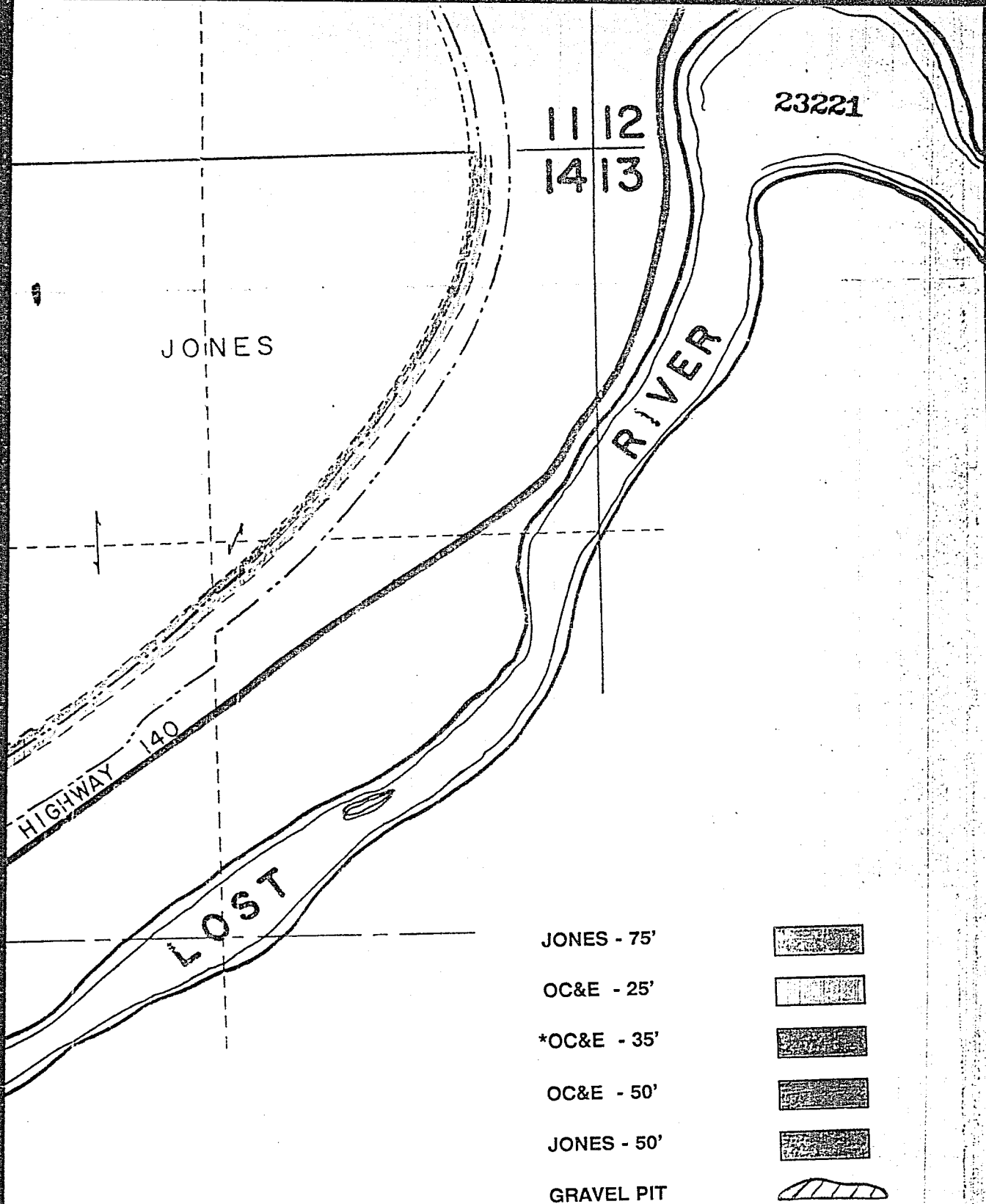
Gravel Pit

O. C. & E. R/W

HIGHWAY

To Bonanza →





VICINITY MAP  
O.C. & E. R/W  
THROUGH "THE GAP"

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Lowell Jones the 20th day  
of Nov. A.D., 19 90 at 11:39 o'clock A M., and duly recorded in Vol. M90,  
of Deeds on Page 23210.

FEE \$63.00

Evelyn Biehn County Clerk

By Pauline M. Mendenhall