

AGRICULTURAL IRRIGATION AND LIVESTOCK WATERING SYSTEM EASEMENT

THIS EASEMENT, is issued this 7th day of February, 1998, by the UNITED STATES OF AMERICA, acting by and through the Forest Service, Department of Agriculture, hereinafter called Grantor, to Sylvia Bruce, an individual, of the State of Arizona, hereinafter called the Holder.

WHEREAS, the Holder has applied for an easement under Section 501 of the Federal Land Policy and Management Act of October 21, 1976, as amended by P.L. 99-545 (90 Stat. 2743; 43 U.S.C. 1761), for agricultural irrigation or livestock watering system facilities located on lands owned by the United States on the Fremont National Forest, in the County of Klamath, State of Oregon.

Wilson Lake Reservoir, Dam and Ditches

T. 38 S., R. 14 E., W.M.

sec. 6, SE1/4SW1/4

sec. 7, NE1/4NW1/4, W1/2NE1/4, N1/2SE1/4 and S1/2SE1/4

sec. 8, S1/2SW1/4 and SW1/4SE1/4

sec. 17, N1/2NE1/4, NW1/4NW1/4, E1/2NW1/4

SW1/4NW1/4, NW1/4SW1/4 and NW1/4SE1/4

sec. 18, E1/2NE1/4

WITNESSETH

WHEREAS, upon acceptance of this easement the Holder relinquishes all right, title, and interest in and to any easement issued for the same lands by the United States by any previous grant or permit.

NOW THEREFORE, the United States does hereby grant, subject to valid existing rights, an easement for occupancy with water conveyance system facilities of lands as shown on the plat contained in Exhibit A, attached hereto and incorporated herein, as provided by the Holder and hereby accepted by the Authorized Officer.

This easement is issued subject to the following terms, provisions, and conditions applicable to the Holder, its permittees, contractors, assignees, and successors in interest.

1. AUTHORIZED USE. This easement authorizes only the right-of-way and water conveyance system facilities as constructed and operated on October 21, 1976, as specified herein.
2. EXTENSIONS or ENLARGEMENTS. This easement does not authorize extensions or enlargements of the water conveyance system.
3. FEES. This easement is issued free of charge.
4. TRANSFERABILITY. This easement is fully transferable provided the water conveyance system facilities are used for agricultural

Certified Correct to Description
Conditions and Consideration

Date 10/18/96

Title Wilson Lake Reservoir, Dam and Ditches

97 FEB 14 AIO:28

irrigation or livestock watering. Holder shall notify Grantor within sixty (60) days of any address change or change in ownership.

5. TENURE. This easement shall continue for as long as the above described lands and water conveyance system facilities are used, operated, and maintained in accordance with the terms and conditions herein described.

6. OPERATION and MAINTENANCE.

a. Holder agrees to operate and maintain the facilities and use the authorized easement in accordance with applicable Federal, State, and local laws, regulations, and standards.

b. Holder shall notify, consult with, and obtain concurrence of the Grantor for operation and maintenance of the authorized facilities.

c. Holder agrees to install and maintain an operable headgate at each diversion structure. Such headgate shall be capable of controlling the amount of water entering the system.

d. Holder will not use fire or herbicides on the authorized right-of-way except as permitted in writing by the Grantor.

7. EMERGENCY REPAIRS.

a. Except for emergency repairs required to protect the environment, property of the United States, or public health and safety, the Holder may not use materials on National Forest System lands outside the easement prior to obtaining written authorization and paying for the materials to be used. Holder's use of material within the easement is limited to maintenance of the water conveyance system facility.

b. If the water conveyance system facilities authorized by this Easement are allowed to deteriorate to the point of threatening persons or property, and the Holder, after notification by the Grantor, refuses to perform the repairs and maintenance required to remove the threat to persons or property, Grantor shall have the right to undertake such repair and maintenance and to assess the Holder for the costs of such repair and maintenance, regardless of whether Grantor had required the Holder to furnish a bond or other security.

8. INDEMNIFICATION. Holder shall indemnify the United States against liability for any and all injury, loss, or damage, including fire suppression costs, that the United States may suffer as a result of claims, demands, losses, or judgements caused by the Holder's use or occupancy under this easement.

9. LIABILITY. Holder is liable for and agrees to repair damage to National Forest System lands caused by Holder's negligence, intentional acts, or of failure to comply with the terms and

conditions of this easement or of any law or regulation applicable to the National Forests.

10. SITE RESTORATION. Holder shall, upon termination of this easement, stabilize the site as required by the Grantor. If Holder does not stabilize the site, the Holder agrees to pay the costs of such stabilization if undertaken by the Grantor.

11. SPECIAL PROVISIONS.

- A. The holder agrees to permit the free and unrestricted access to and upon the premises at all times for all lawful and proper purposes not inconsistent with the intent of the easement or with the reasonable exercise and enjoyment by the holder of the privileges thereof.
- B. Nothing in this easement shall be construed to imply permission to build or maintain any structure not specifically named on the face of this easement it, or approved by the authorized officer in the form of a new easement or easement amendment.
- C. This easement covers use of land only for ditches, a dam and flooding. It is specifically understood that all upland areas including the shoreline touching the National Forest System land and the land above the shoreline and above the normal spillway-crest water level shall remain under the jurisdiction of the Forest Service. The Forest Service reserves the right to use and permit use of the land under easement: Provided, that such use does not interfere with the purpose for which this easement is granted.
- D. Upon revocation of this easement for noncompliance with conditions of this easement, or for other cause, the Forest Service will have the right to and may drain the water from the reservoirs by means of the structural control provided or by other methods.
- E. Dam Safety

1. Definitions. The following definitions apply to this clause:

Qualified Engineer. An engineer authorized to practice engineering in the field of dams in the State where the dam is located, either by professional registration as provided by State law or by reason of employment by the State or Federal Government.

Dam Failure. Catastrophic event characterized by the sudden, rapid, and uncontrolled release of impounded water. It is recognized that there are lesser degrees of failure and that any malfunction or abnormality outside the design assumptions and parameters which adversely affect a dam's primary function of impounding water may also be considered a failure.

Maintenance. Performance of work to keep structures and equipment in intended operation condition; equipment repair and minor structure repair.

Rehabilitation or Modification. Repair of major structure deterioration to restore original condition; alteration of structures to meet current design criteria, improve dam stability, enlarge reservoir capacity, or increase spillway and outlet works capacity; replacement of equipment.

Hazard Potential. The classification of a dam based on the potential for loss of life or property damage in the event of failure of the dam under clear weather breach conditions with normal base inflow and the water surface at the elevation of the uncontrolled spillway crest.

Emergency Action Plan. Formal plan of procedures to prevent or reduce loss of life and property during construction or after completion of a dam if conditions develop in which dam failure is likely. The plan does not include flood plain management for the controlled release of floodwaters for which the project is designed.

Authorized Officer. The Forest Service official delegated authority to issue this authorization in accordance with 36 CFR 251.52. Generally, this authorization will be approved and administered by the Forest Supervisor. As used herein, the term shall include any official acting as the representative of the authorized officer or pursuant to other delegation of authority.

Holder. The individual, partnership, corporation, association, or other legal entity, which is the recipient of this authorization.

2. Dam Classification.

The dam constructed pursuant to this authorization shall be classified according to its height and storage capacity as well as its hazard potential as follows:

Height and Storage Capacity 11 feet and 200 acre feet

Hazard Potential - MODERATE

Classification criteria are contained in FSM 7511, which the Forest Service may amend from time to time.

The provisions of paragraphs 11E-5 and 11E-8 apply only to dams classified as high hazard, or as otherwise may be specifically provided for in this authorization to address special or unique circumstances.

The hazard potential of the dam shall be reassessed at least every ten years by a qualified engineer retained by

the holder, and this information made available to the authorized officer. The Forest Service may change the hazard potential at any time based on changed conditions or new information.

3. Construction, Inspection, Certification, and Project Files

For construction, rehabilitation or improvement, the holder shall provide for inspection by a qualified engineer to ensure adequate control of the work being performed. At a minimum, the qualified engineer shall maintain a daily inspection diary, descriptions of design changes, and records of construction material and foundation tests.

Upon completion of construction, rehabilitation, or improvement, the holder shall forward to the Forest Service a statement from the qualified engineer responsible for inspection certifying that the works were built in accordance with the approved plans and specifications, or approved revisions thereto. No water shall be impounded until approval is given by the authorized officer.

All design notes, as-built plans, and the aforementioned diaries and records shall be maintained in a project file by the holder for the duration of this authorization, and shall be available to the Forest Service or other inspection personnel.

4. Dam Operation and Maintenance Plans

Prior to the storage of water, the holder shall have an approved plan or plans for the operation and maintenance of the dam and appurtenant structures. The plans will, at a minimum, describe operating requirements and procedures to be followed for the operation of the structure; routine or recurring maintenance required; recordkeeping to be performed for operation and maintenance; and individuals responsible for implementing the plans. The holder shall ensure the plans available to the individual responsible for plan implementation and the engineer performing any inspection, are reviewed at least at the time of the operation and maintenance inspection and are amended as conditions or requirements so warrant. No plans or amendments thereto shall be valid until approved by the authorized officer.

5. Dam Emergency Action Plan.

The holder shall, prior to storage of water, prepare an emergency action plan which will include, but not be limited to:

- (1) Actions to be taken upon discovery of an unsafe condition or impending failure situation to prevent or

delay dam failure, and reduce damage or loss of life from subsequent failure;

(2) Procedures for notification of law enforcement, civil preparedness, and Forest Service personnel;

(3) Procedures for notifying persons in immediate danger of losing life or property;

(4) Maps delineating the area which would be inundated in the event of dam failure;

(5) The names of those individuals responsible for activating the plan and carrying out the identified actions.

In preparing the emergency action plan, the holder shall consult and cooperate with appropriate law enforcement and civil preparedness personnel, who may be responsible for implementing all or part of the plan.

6. Inspection and Maintenance of Dams

The holder shall have the dam and appurtenant structures inspected by a qualified engineer to determine the state of operation and maintenance at least every FIVE (5) years. An inspection shall also be made following earthquakes, major storms, or overflow of spillways other than the service spillway. Two copies of the inspection report shall be provided to the authorized officer within 30 days of the date of inspection.

Repairs or operational changes recommended by the inspecting engineer shall be made by the holder within a reasonable period of time following the inspection, but in no event later than one year from the inspection (unless a longer period of repairs is authorized in writing, or a shorter period is required when such repairs are deemed by the authorized officer as immediately required for reasons of public safety). Upon request by the authorized officer, the holder shall provide a plan of action outlining planned time and methods for performing said repairs or operational changes, and notify the authorized officer when actions are completed.

7. Forest Service Inspection of Dams

The holder shall allow inspection of the dam and appurtenant structures at any time by the authorized officer. Any condition adversely affecting or which would adversely affect the operation of the facility; safety of the structure or the public, or surrounding lands and resources shall, upon written notice, be corrected or changed by the holder at the holder's expense.

A copy of the Forest Service inspection report shall be provided to the holder.

An inspection performed by the Forest Service does not relieve the holder of the responsibility of ensuring that inspections are made in accordance with paragraph 11E-6 of this clause.

8. Dam Safety Evaluations.

Beginning in 1997 and at 5-year intervals thereafter, the holder shall have a formal dam safety evaluation performed by a qualified engineer to verify the safety and integrity of the dam and appurtenant structures. The evaluation will include, but is not limited to, a detailed field inspection of the dam and appurtenant structures and a review of all pertinent documents, such as investigation, design, construction, instrumentation, operation, maintenance, and inspection records. The evaluation shall be based on current accepted design criteria and practices. The holder shall provide two copies of the evaluation report to the authorized officer and Regional Engineer. Based on this report, the authorized officer may require the holder to perform additional evaluations pursuant to such standards as the officer may define and may require rehabilitation or modification of the structure within a reasonable time.

9. Right of Action to Abate Emergency Situations

In situations where the authorized officer determines on the available facts that there is danger of a dam failure for any reason, such officer may exercise discretionary authority to enter upon the structure and appurtenances authorized herein and take such actions as are necessary to abate or otherwise prevent a failure. Such actions include, but are not limited to, lowering the level of the impounded waters utilizing existing structures or by artificial breach of the dam. In the event that such actions are taken, the United States shall not indemnify or otherwise be liable to the holder for losses or damages, including losses or damages to the structure or the value of impounded waters. The failure of the Forest Service to exercise any discretion under this provision shall not be a violation of any duty by the United States, and shall not relieve the holder of any and all liability for damages in the event of a dam failure.

10. Liability

The activities authorized by this permit shall be deemed a high risk use and occupancy. Sole responsibility for the safety of the dam and associated facilities and any liability resulting therefrom shall be on the holder and his successors, agents, or assigns. Pursuant to 36 CFR 251.56(d), as such regulation may be amended from time to

time, the holder shall be liable for injury, loss or damage resulting from this authorization regardless of the holder's fault or negligence. Maximum strict liability shall not exceed \$1,000,000.00 except as that amount may be changed in the aforementioned regulations.

In addition to all waivers and limitations on liability of the United States under this authorization, the provisions of 33 U.S.C. 702(c) shall apply to any damages from or by floods or flood waters at any place.


The foregoing notwithstanding, this easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, and assigns.

A. NONEXCLUSIVE USE. The Grantor reserves the right to use or permit others to use the easement area, provided such use does not unreasonably interfere with the rights and privileges hereby authorized.

B. TERMINATION. This easement may be terminated with consent of Holder, or if Holder fails to exercise the rights and privileges authorized for any continuous period of five (5) years or more. This easement expires according to its terms if Holder uses the water conveyance system for any purpose other than agricultural irrigation or livestock watering. Grantor may take action to terminate this easement under 7 CFR 1.130 - 1.151, for noncompliance with applicable statutes and regulations, or the terms and conditions of this easement.

Public reporting burden for this collection of information, if requested, is estimated to average 1 hour per response for annual financial information; average 1 hour per response to prepare or update operation and/or maintenance plan; average 1 hour per response for inspection reports; and an average of 1 hour for each request that may include such things as reports, logs, facility and user information, sublease information, and other similar miscellaneous information requests. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB # 0596-0082), Washington, D.C. 20503.

ACCEPTANCE On this 18 day of November, 1996 I, the undersigned Holder have read, understand, and accept the terms and conditions of this easement.


Sylvia Bruce

IN WITNESS WHEREOF, the Secretary of Agriculture by the Deputy Regional Forester, Pacific Northwest Region, Forest Service, has executed this Easement pursuant to delegations of authority specified in 7 CFR 2.60 and 36 CFR 251.52 on the day and year written above.

UNITED STATES OF AMERICA

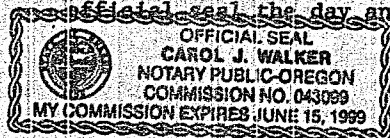
[Signature]
Deputy Regional Forester
Pacific Northwest Region
Forest Service
Department of Agriculture

ACKNOWLEDGMENT

State of Oregon)
)ss.
County of Multnomah)

On the 7th day of February, 1997, before me a Notary Public within and for said State, personally appeared Nancy Graybeal, the same person who executed the within and foregoing instrument, who being by me duly sworn according to law, did say that he/she executed said instrument as Deputy Regional Forester, Pacific Northwest Region, Forest Service, Department of Agriculture, and that said instrument was signed on behalf of the United States of America, for the purpose and consideration herein mentioned and set forth, and I hereby so certify.

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



Carol J. Walker
Notary Public for the State of OR
Residing at Tualatin

EXHIBIT A
SHEET 1 of 4

2720 SPECIAL USE
USDA - FOREST SERVICE
PACIFIC NORTHWEST REGION
FREMONT NATIONAL FOREST

Klamath Co., Oregon
T88S R14E W.M., Sections 6, 7, 8, 17, 18
Agricultural Easement - PL 99-545

SYLVIA BRUCE

Wilson Lake Reservoir Dam & Ditches

ACRES - 63.70

BASES OF BEARING:

Satellite Triangulation

METHOD OF SURVEY:

Hand Held Global Positioning System

SURVEYOR: R. WOODWARD

DATE SURVEYED: 9/93

PLATTED BY: J. ROSETH

DATE PLATTED: 9/15/95

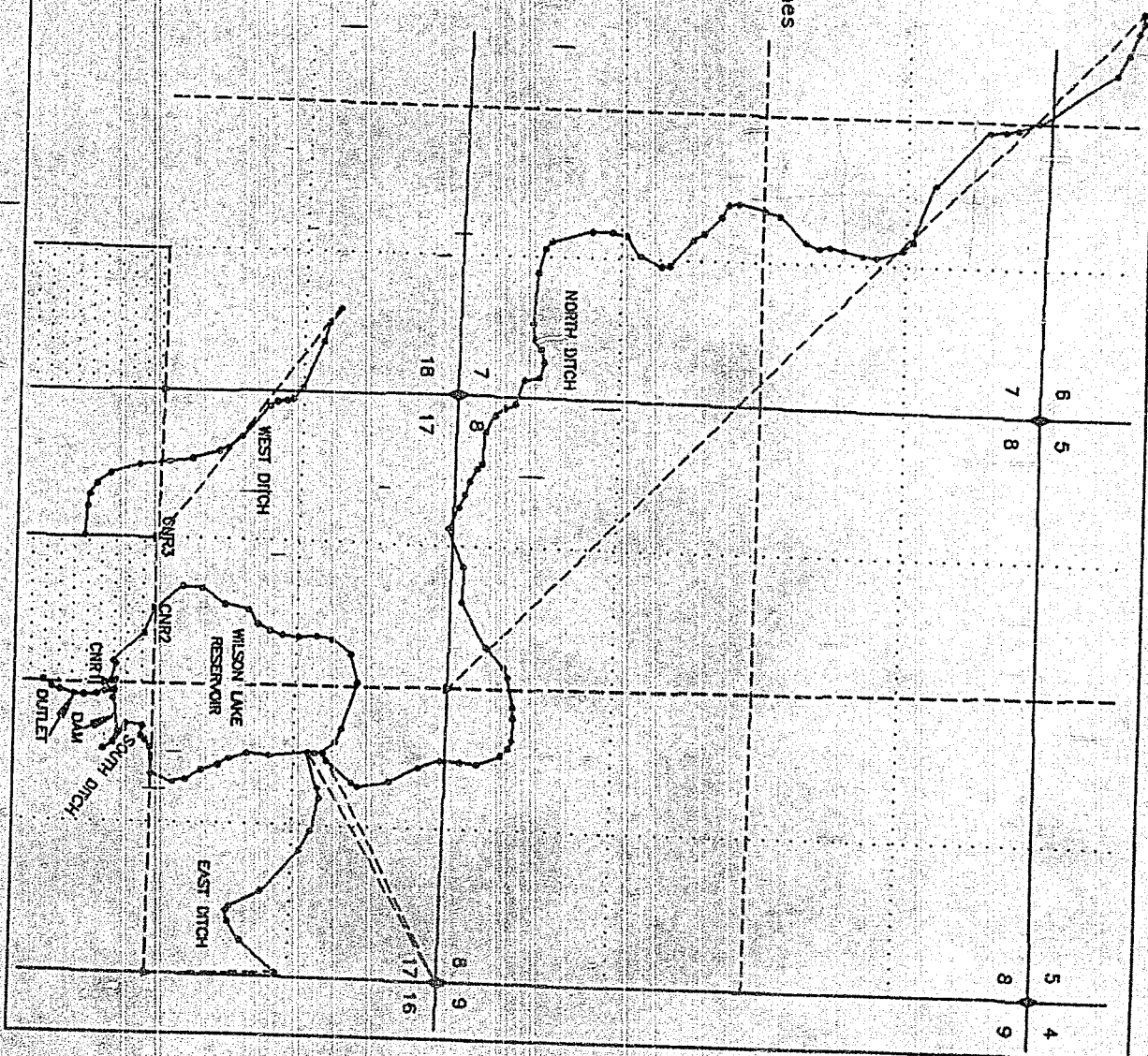
LEGEND

Section Corner
5/4
7/8

1/4 Corner

Survey Point

Private Property



2720 SPECIAL USE
USDA -- FOREST SERVICE
PACIFIC NORTHWEST REGION
FREMONT NATIONAL FOREST

Klamath Co., Oregon
T36S R1E, W.M., Sections 0,7,8,17,18
Agricultural Easement - PL 89-545

SYLVIA BRUCE

Wilson Lake Reservoir Dam & Ditches
ACRES 70

ACRES - 3.2

BASES OF BEARING:

Satellite Triangulation

METHOD OF SURVEY:

Hand Held Global Positioning System

SURVEYOR: R. HODDINARD

DATE SURVEYED: 9/93

PLATTED BY: J. ROSETH

DATE PLATED: 01/15/95

LEGEND

Section Corner 5-4

3/4 Corner

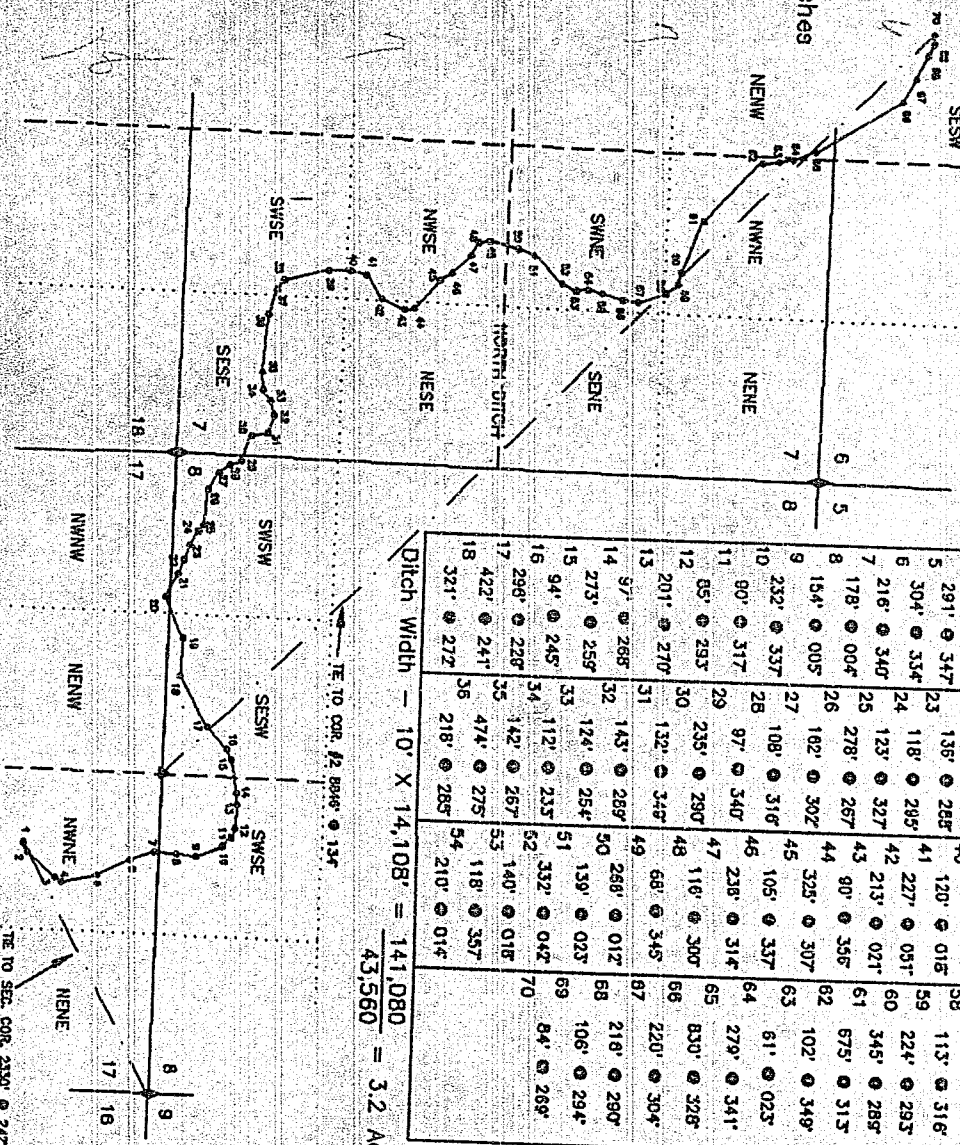
Survey Point

Private Property []

Point Number



Scale in Feet



NORTH DITCH DISTANCE AND AZIMUTH

1	95° ± 058°	19	365° ± 247°	37	39° ± 306°	55	60° ± 029°
2	303° ± 041°	20	221° ± 294°	38	383° ± 346°	56	132° ± 359°
3	63° ± 033°	21	124° ± 280°	39	178° ± 358°	57	263° ± 343°
4	291° ± 347°	22	136° ± 288°	40	120° ± 016°	58	113° ± 316°
5	304° ± 334°	23	118° ± 285°	41	227° ± 051°	59	224° ± 293°
6	216° ± 340°	24	123° ± 327°	42	213° ± 021°	60	345° ± 285°
7	178° ± 004°	25	278° ± 267°	43	80° ± 356°	61	675° ± 313°
8	154° ± 005°	26	162° ± 302°	44	335° ± 307°	62	102° ± 349°
9	232° ± 337°	27	108° ± 316°	45	105° ± 337°	63	61° ± 023°
10	80° ± 317°	28	97° ± 340°	46	238° ± 314°	64	279° ± 341°
11	85° ± 293°	29	235° ± 280°	47	116° ± 300°	65	830° ± 328°
12	201° ± 270°	30	132° ± 348°	48	68° ± 345°	66	220° ± 304°
13	97° ± 268°	31	143° ± 289°	49	266° ± 012°	67	218° ± 280°
14	273° ± 259°	32	124° ± 254°	50	138° ± 023°	68	106° ± 294°
15	94° ± 245°	33	112° ± 233°	51	332° ± 042°	69	84° ± 269°
16	296° ± 228°	34	142° ± 267°	52	140° ± 018°	70	
17	422° ± 241°	35	474° ± 275°	53	118° ± 357°		
18	321° ± 272°	36	218° ± 285°	54	210° ± 014°		

Plotch Width - 10' X 14,108' = $\frac{141,080}{43,560} = 3.2$ Ac

PLOT SCALE 1"=1500'

EXHIBIT A
SHEET 3 of 4

2720 SPECIAL USE
USDA - FOREST SERVICE
PACIFIC NORTHWEST REGION
FREMONT NATIONAL FOREST
Humboldt Co., Oregon
T388 R14E, W14E, Section 9, 7, 8, 17, 18
Agricultural Easement - PL 99-646

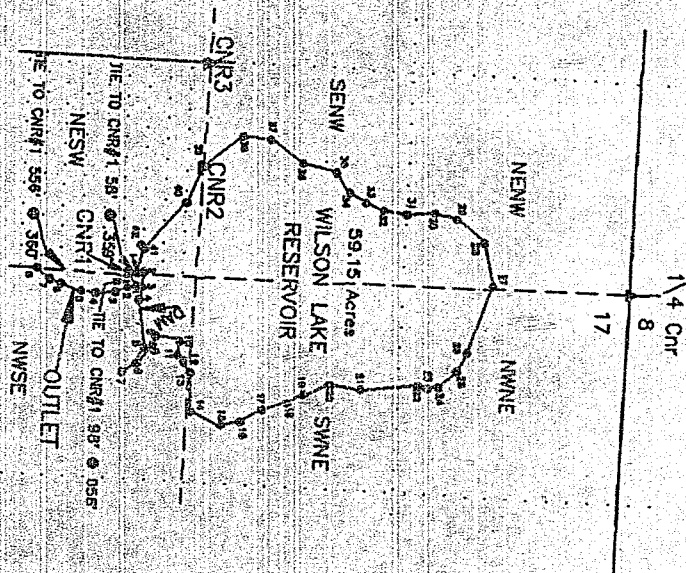
SYLVIA BRUCE

Wilson Lake Reservoir Dam & Ditches
Acres - 59.22

BASES OF BEARING:
Scribble Triangulation
METHOD OF SURVEY:
Hand Held Global Positioning System
SURVEYOR: R. MCDONALD
DATE SURVEYED: 9/03
PLATED BY: J. ROSETH
DATE PLATED: 9/19/05

LEGEND
Section Corner $\frac{5}{4}$
1/4 Corner Δ
Survey Point \bullet
Phone Property \square
Point Number 1

Scale In Feet
100' 400' 800'
0 200' 600' 1000' 2000'

DISTANCE AND AZIMUTH
WILSON LAKE

1	28' @ 345°	15	120' @ 350°	29	133' @ 192°
2	96' @ 102°	16	120' @ 350°	30	133' @ 192°
3	96' @ 102°	17	155' @ 327°	31	169' @ 175°
4	68' @ 032°	18	105' @ 341°	32	147' @ 180°
5	306' @ 081°	19	127' @ 327°	33	120' @ 195°
6	108' @ 120°	20	180' @ 341°	34	120' @ 209°
7	33' @ 145°	21	171' @ 005°	35	145' @ 235°
8	235' @ 315°	22	251' @ 357°	36	207' @ 191°
9	64' @ 288°	23	118' @ 344°	37	264' @ 211°
10	138' @ 015°	24	131' @ 001°	38	161' @ 185°
11	74' @ 085°	25	147' @ 319°	39	310' @ 136°
12	57' @ 045°	26	137' @ 286°	40	236' @ 116°
13	68' @ 005°	27	441' @ 286°	41	372' @ 132°
14	244' @ 084°	28	265' @ 255°	42	15' @ 230°
15	203' @ 021°	29	223' @ 218°		

OUTLET - 5' Wide

1	61' @ 171°	4	89' @ 184°	7	87' @ 215°
2	75' @ 154°	5	129' @ 197°		
3	122' @ 176°	6	89' @ 201°		

PLOT SCALE 1"=1000'

EXHIBIT A
SHEET 4 of 4

2720 SPECIAL USE
USDA - FOREST SERVICE
PACIFIC NORTHWEST REGION
FREMONT NATIONAL FOREST
Klamath Co., Oregon
T38S R14E, W.M., Sections 6, 7, 8, 17, 18
Agricultural Easement - PL 98-545

SYLVIA BRUCE

Wilson Lake Reservoir Dam & Ditches

ACRES - 1.28

BASES OF BEARING:

Satellite Triangulation

METHOD OF SURVEY:

Hand Held Global Positioning System

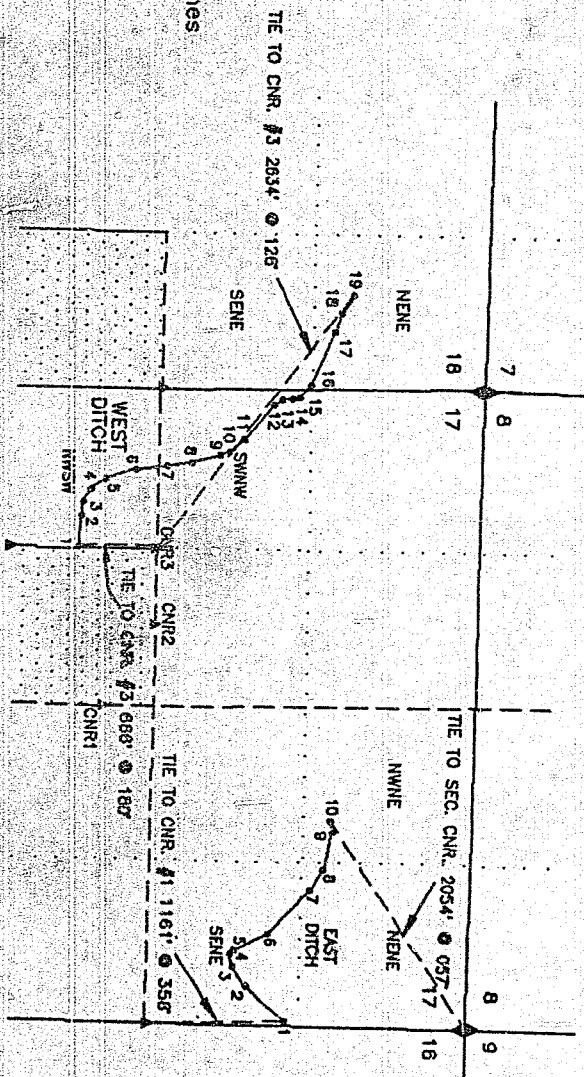
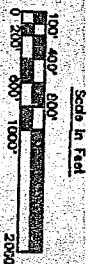
SURVEYOR: R. WOODWARD

DATE SURVEYED: 9/93

PLATTED BY: J. ROSETTI

DATE PLATTED: 9/15/95

LEGEND

Section Corner
5/4
7/81/4 Corner
ASurvey Point
●Private Property
□Point Number
1

DISTANCE AND AZIMUTH

WEST DITCH - 10' Wide

Point	Distance	Azimuth
1	259' @ 273°	167° @ 319°
2	115' @ 275°	369° @ 311°
3	124' @ 302°	79° @ 329°
4	145' @ 324°	63° @ 355°
5	267' @ 340°	55° @ 340°
6	268' @ 352°	138° @ 309°
7	190' @ 353°	463° @ 293°
8	271' @ 342°	176° @ 286°
9	79' @ 338°	171° @ 305°

DISTANCE AND AZIMUTH

EAST DITCH - 10' Wide

Point	Distance	Azimuth
1	431' @ 222°	491° @ 313°
2	189' @ 235°	209° @ 298°
3	105' @ 254°	298° @ 265°
4	43' @ 301°	102° @ 258°
5	317' @ 332°	

10' X 2.185' / 43580 = 0.05 Acres

10' X 3419' / 43560 = 0.78 Acres

PLOT SCALE 1"=1500'

STATE OF OREGON : COUNTY OF KLAMATH: ss.

Filed for record at request of Fremont National Forest the 14th day
of February A.D. 19 97 at 10:28 o'clock A. M., and duly recorded in Vol. M97
of Deeds on Page 4588

FEE \$70.00

Bernetha G. Letsch, County Clerk
by Kathleen Rose