

'03 MAY 2 PM 12:20

After recording, Return to:

**METROPOLITAN LIFE  
AGRICULTURAL INVESTMENTS  
WESTERN REGIONAL OFFICE  
7411 N. CEDAR AVE., SUITE 101  
FRESNO, CA 93720**

State of Oregon, County of Klamath  
Recorded 05/02/2003 12:20 p m.  
Vol M03 Pg 29155-65  
Linda Smith, County Clerk  
Fee \$ 7.00 # of Pgs 11

101194  
(Above Space for Recorder's Use Only)

## **AMENDMENT TO LINE OF CREDIT MORTGAGE**

**This Amendment to Line of Credit Mortgage, made effective January 1, 2003, by and between M & B CATTLE COMPANY, a California general partnership, whose address is P.O. Box 97, San Ramon, CA 94583, hereinafter collectively called "Mortgagor;" and METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation, whose address is One Madison Avenue, New York, New York, 10010, hereinafter called "Lender."**

### **Witnesseth:**

A. By document entitled "Line of Credit Mortgage," dated May 12, 1998, Mortgagor and Lender did enter into a Line of Credit Mortgage, Security Agreement, Assignment of Leases, and Fixture Filing, encumbering certain real property in Klamath County, State of Oregon, recorded with the county recorder of said County on May 15, 1998, in M-98 on page 16644, which Line of Credit Mortgage is by this reference incorporated herein as though set forth in full and which shall hereinafter be referred to as "the Original Mortgage."

B. The Original Mortgage secured, among other things, the obligations of Mortgagor under that certain Dual-Tranche Adjustable Rate Promissory Note, dated May 15, 1998, in the original principal balance of Twenty Million Dollars (\$20,000,000.00)(the "Existing Note"). By its terms, the Existing Note, the Original Mortgage, and additional loan advances made by Lender to Mortgagor are secured by the Original Mortgage when specifically referenced as being so secured.

C. Pursuant to the terms and conditions of that certain Loan Modification Agreement and Escrow Instructions, dated January 1, 2003, which by this reference is incorporated herein as though set forth in full (the "Loan Modification Agreement"), Mortgagor and Lender have agreed to cancel the Existing Note and to substitute therefor a promissory note, dated January 1, 2003, in the principal amount of Twenty Million Two Hundred Thousand Dollars (\$20,200,000.00) (the "Substituted Note"). The additional principal obligations of the Substituted Note which are in excess of the original principal obligations of the Existing Note are specifically referenced as an additional loan to be secured by the Original Mortgage.

D. The parties to the Original Mortgage desire to amend said document to reflect that the obligation secured by the Original Mortgage is, among other things, to be the obligations represented by the Substituted Note in place of the obligations represented by the Existing Note.

NOW THEREFORE, in consideration of the matters set forth in the foregoing recitals, and in consideration of the premises, Mortgagor and Lender do hereby amend the Original Mortgage as follows:

1. Paragraph B. ONE of the Original Mortgage is hereby amended to read as follows:

ONE: Payment of the indebtedness evidenced by a promissory note (and any renewals or extensions or modifications thereof) dated January 1, 2003, executed by HERBERT B. ELWORTHY and JEAN R. ELWORTHY, husband and wife; HENRY M. BETTENCOURT, a married man dealing with his sole and separate property; M & B CATTLE COMPANY, a California general partnership; ELWORTHY & SON, a California general partnership; ROBERT B. ELWORTHY, a married man dealing with his sole and separate property; BERT R. ELWORTHY and SHEILA R. ELWORTHY, husband and wife; MARK R. ELWORTHY, a married man dealing with his sole and separate property; ROJO & AZUL RANCHO, INC., a California corporation; H & L Cattle Company, a California general partnership (collectively "Maker"), payable to the order of Lender, in the principal sum of **Twenty Million Two Hundred Thousand Dollars (\$20,200,000.00)**, with interest as provided therein, payable in installments, all due and payable on January 1, 2018.

2. Paragraph C (15), entitled "Restrictions on Transfer of Secured Property," is hereby amended to read as follows:

15. Partial Reconveyance; Restrictions on Transfer of Secured Property.

On condition that no default in the Secured Obligations then exists, upon a sale or transfer of a portion, but not all, of the Secured Property, prior to the time the Secured Obligations have been paid and performed in full, Lender shall cause a partial cancellation of this Mortgage to be made, executed, and delivered for the portion of the Secured Property so sold. Further such sale shall not cause an acceleration of the Secured Obligations, and shall not require a principal prepayment of the Secured Obligations, so long as the loan-to-value ratio, as solely determined by Lender, is acceptable. Any prepayment of principal made in connection with such sale or transfer shall be permitted and shall be subject to a Prepayment Fee, if any, as set forth in the promissory note which is referred to in Paragraph B ONE hereinabove. Mortgagor shall pay Lender a fee of One Thousand Dollars (\$1,000.00) for each request of Lender for a partial reconveyance.

Other than the foregoing provision relating to partial terminations, in the event that, prior to the time the Secured Obligations have been paid and performed in full, the Secured Property or any portion thereof or any interest therein is: (1) sold, conveyed, alienated, exchanged, gifted, assigned or otherwise transferred, whether directly or indirectly and whether voluntarily or involuntarily, (2) pledged, hypothecated, or encumbered (except as otherwise expressly permitted under the Loan Agreement) or (3) becomes subject to any grant of option or other agreement to do any of the foregoing (any such event or agreement to do any such act will be referred to as a "Transfer"), including any Water Transfer, as defined below, then in any and all such events the entire Secured Obligations shall, at the option of Lender, become immediately due and payable. The restrictions on transfer of the Secured Property set forth in the preceding sentence shall not apply to the Rents, Issues and Profits already produced at the time of the transfer or agreement to transfer, if at such time no event has occurred which would give Lender the right to begin collecting Rents, Issues and Profits hereunder, but said restrictions shall apply to any transfer or agreement to transfer future Rents, Issues and Profits.

As used herein a "Water Transfer" shall include any of the events described above as constituting a Transfer, as applied to any Water Rights, and shall include violation of any of the following covenants, which shall burden and run with the Land during the existence of this Mortgage: (a)

Mortgager shall not vote in favor of, consent to, or otherwise approve any proposal by which a water district, company, agency or other supplier of water to the Land may transfer to any other property or person, water that otherwise could be available to the Land; (b) Mortgager shall timely pay all charges, assessments, and fees of any water district, company, agency or other supplier of water that may be charged or assessed with respect to the Land, including amounts charged without regard to whether any water was supplied during the billing period; and (c) Mortgagor shall not cause or permit any of the Land that is currently receiving, or is eligible to receive, water from sources subject to the Reclamation Projects Authorization and Adjustment Act of 1992, the Reclamation Reform Act of 1982, the Omnibus Adjustment Act of 1926, the Reclamation Act of 1902 (82 Stat. 388), any laws amending or supplementing any of such Acts, or any regulations promulgated under such laws and Acts (collectively, "Reclamation Laws") to be characterized as "excess land" or otherwise ineligible to receive irrigation water from any such source or cause or permit any of the Land that currently receives "non-full cost rate" irrigation water (within the meaning of 42 C.F.R. Section 426.4(v), or any successor law or regulation) to lose its eligibility for such special rate.

A sale, assignment, or transfer in any manner whatsoever of ten percent (10%) or more of the partnership interests of M & B Cattle Company, a California general partnership, shall be equivalent to a sale or conveyance of the Secured Property in excess of the amounts permitted for a partial termination as set forth hereinabove, and in such event, Lender shall have the option to accelerate the Secured Obligations, declare the entire loan balance due, and enforce collection of the same, including foreclosure of this Mortgage."

3. Except as specifically amended above, the Original Mortgage is hereby ratified and affirmed in each and every particular.

IN WITNESS WHEREOF, Mortgagor and Lender have executed this Amendment to Line of Credit Mortgage as of the dates indicated opposite their respective signatures, all to be effective as of January 1, 2003.

M & B Cattle Company,  
a California general partnership

Dated: April 30, 2003

By: Mark R. Elworthy  
Mark R. Elworthy

Dated: April 30, 2003

By: Bert R. Elworthy  
Bert R. Elworthy

Dated: April 23, 2003

METROPOLITAN LIFE INSURANCE  
COMPANY, a New York corporation


By: Daniel Deakill

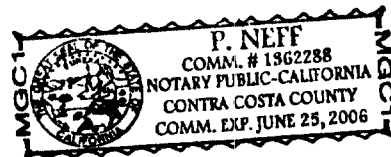
Title: Assistant Vice-President

STATE OF CALIFORNIA )  
COUNTY OF CONTRA COSTA ) ss.

On April 30 2003, before me, P. Neff, a Notary Public in and for the State of California, personally appeared MARK R. ELWORTHY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.


  
Notary Public

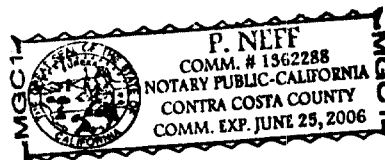


STATE OF CALIFORNIA )  
COUNTY OF CONTRA COSTA ) ss.

On April 30, 2003, before me, P. Neff, a Notary Public in and for the State of California, personally appeared BERT R. ELWORTHY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

  
Notary Public



29161

STATE OF KANSAS

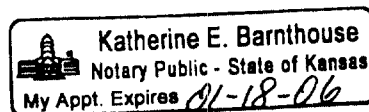
COUNTY OF JOHNSON

)  
) ss.  
) .

On April 23, 2003, before me, Katherine E. Barnthouse, a Notary Public in and for the State of Kansas, personally appeared Daniel A. O'Neill, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Katherine E. Barnthouse  
Notary Public



## EXHIBIT "A"

## PARCEL 1:

In Township 40 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon:

Section 19 : That portion of the W  $\frac{1}{2}$  lying Southerly and Westerly of the Klamath Straits as presently located and constructed.

ALSO EXCEPTING any portion lying within the Klamath Straits Drain Enlargement Unit No. K-5 as described in Book M76, page 4636, Deed records, dated December 2, 1975, recorded April 2, 1976, more particularly described as follows: A strip or parcel of land in said Section 19, Township 40 South, Range 9 East of the Willamette Meridian, in the County of Klamath, State of Oregon. Said parcel having a uniform width of 50.0 feet, where measurable at right angles, and lying Northeasterly of, adjacent to, and parallel with the arc of a curve as said arc is described in Parcel 1 of Book M76, page 4636, Deed records.

Section 30 : W  $\frac{1}{2}$

Section 31 : W  $\frac{1}{2}$

SAVING AND EXCEPTING that portion lying in Township Road

## PARCEL 2:

That portion of the SW  $\frac{1}{4}$  of Section 33, Township 40 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, included within the land described in Deed dated August 31, 1908 from H. F. Chapman, et al, to California Northeastern Railway Company, recorded January 11, 1909 in Deed Book 25, page 398, as conveyed to Tulana Farms in Deed Volume M66 at page 5794, all deed records of Klamath County, Oregon.

AND

That portion of the N  $\frac{1}{2}$  of Section 4, Township 41 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, included within the land described in deed dated May 10, 1907, from F. H. Downing et al., to California Northeastern Railway Company, recorded June 7, 1907 in Deed Book 22, page 549 and in Deed dated December 19, 1907 from D. E. Gordon et ux., to California Northeastern Railway Company, recorded January 30, 1908 in Deed Book 23 page 497, as conveyed to Tulana Farms by Deed Volume M66 at page 5794, all records of Klamath County, Oregon.

## PARCEL 3:

In Township 41 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon:

Section 1 : The W  $\frac{1}{2}$

Section 2 : All

Section 3 : All that portion of Government Lots 8 and 9, the S  $\frac{1}{2}$  NE  $\frac{1}{4}$  and the SE  $\frac{1}{4}$  lying East of the centerline of the West Canal



Section 10 : The NE  $\frac{1}{4}$  NE  $\frac{1}{4}$

Section 11 : All, EXCEPT the SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  ALSO EXCEPTING THEREFROM a tract of land situated in the SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  and in the NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 11, Township 41 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, and being more particularly described as follows:

Beginning at the Northwest corner of said SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ; thence North  $89^{\circ}45'04''$  East on the North line of said SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , 299.60 feet to the Centerline of the West Canal; thence Southerly on said Centerline the following courses and distances: South  $33^{\circ}21'28''$  East, 234.94 feet; South  $27^{\circ}13'17''$  East, 1192.99 feet; South  $07^{\circ}47'40''$  East, 1391.51 feet to a point on the South Line of said NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ; thence South  $89^{\circ}43'36''$  West on said south line, 1163.23 feet to the Southwest Corner of said NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ; thence North on the West Line of said NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ , 1320.00 feet to the Northwest Corner of said NW  $\frac{1}{4}$  SW  $\frac{1}{4}$ ; thence North on the West Line of said SW  $\frac{1}{4}$  W $\frac{1}{4}$ , 1320.00 feet to the point of beginning.

Section 12 : The W  $\frac{1}{2}$

Section 13 : The N  $\frac{1}{2}$  NW  $\frac{1}{4}$  and Lots 3 and 4

Section 14 : The N  $\frac{1}{2}$  NE  $\frac{1}{4}$ , the NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  and Lots 1, 2, 3 and 4

PARCEL 4:

In Township 40 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon:

Sections 23 and 24: All those portions of Section 23 and 24 lying Easterly of Highway No. 97 and Southerly of the centerline of Klamath Straits as presently located and constructed.

SAVING AND EXCEPTING THE FOLLOWING: The following property conveyed to United States of America in Volume M76 at page 4718, Deed records of Klamath County, Oregon. A strip or parcel of land in said Section 23, Township 40 South, Range 8 East of the Willamette Meridian, said County and State, and described as follows:

Beginning at said Point "D", said point being the most Westerly point of the hereinabove described Parcel 1: thence from said point of beginning North  $89^{\circ}02'$  West 142.2 feet; thence North  $71^{\circ}43'$  West 1226.7 feet to a point in the Easterly right of way boundary of the U.S. Highway No. 97, said point being South  $69^{\circ}53'$  East 2942.6 feet from the Northwest corner of Section 23; thence along said right of way boundary North  $18^{\circ}17'$  East 10.0 feet; thence leaving said boundary South  $72^{\circ}06'$  East 900.1 feet; thence South  $36^{\circ}56'$  East 162.1 feet; thence South  $68^{\circ}03'$  East 330.0 feet to the point of beginning.

Section 25 : All, EXCEPT the SE  $\frac{1}{4}$  NW  $\frac{1}{4}$

Section 26 : All East of the Railroad, EXCEPTING THEREFROM a piece or parcel of land lying in a strip 100.0 feet in width immediately adjacent on the Southeasterly side of the original canal right of way of the Klamath Drainage District over and across the SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 23, and the NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  and the Fractional NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  of Section 26, Township 40 South, Range 8 East of the Willamette Meridian, more or less, and more particularly described as follows: Beginning at the point in the line marking the Northerly boundary of the SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 23, Township 40 South, Range 8 East of the Willamette Meridian, where a line parallel with and 310.0 feet distant at right angles Southeasterly from the centerline of the Southern Pacific Railroad as the same is now located and constructed intersect the same and from which point the Section corner common to Sections 22, 23, 26 and 27, Township 40 South, Range 8 East of the Willamette Meridian, bears South  $54^{\circ}37'$  West, 2308.1 feet distant and running thence South  $16^{\circ}57' \frac{1}{2}$  West along a line parallel with and 310.0 feet distant at right angles Southeasterly from said center line of the Southern Pacific Railroad and which said parallel line is the Southeasterly boundary of the right of way of the Klamath Drainage District's South Canal, 2593.5 feet, more or less, to a point in the Northerly boundary of the right of way of the said South Canal of the Klamath Drainage District, which is a line parallel with and 100.0 feet distant at right angles Northeasterly from the centerline of the said canal as the same is now located and running thence South  $75^{\circ}34' \frac{1}{2}$  East along last mentioned boundary line 100.1 feet, more or less, to its intersection with a line which is parallel with and 410.0 feet distant at right angles Southeasterly from the said centerline of the Southern Pacific Railroad, and running thence North  $16^{\circ}57' \frac{1}{2}$  East, along said last mentioned parallel line, 2620.0 feet, more or less, to its intersection with the Northerly boundary of the SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  of Section 23, Township 40 South, Range 8 East of the Willamette Meridian; thence South  $89^{\circ}48' \frac{1}{2}$  West, along last mentioned boundary line, 104.7 feet, more or less, to the said point of beginning.

Section 27 : That part of the SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  lying East of the Easterly right of way line of the Klamath Falls-Dorris State Highway, U.S. Highway 97

EXCEPTING THEREFROM that tract of land conveyed to Klamath County, Oregon by Deed Volume 174, page 121, Deed records of Klamath County, Oregon, as follows:

A piece or parcel of land situated in the NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ; the S  $\frac{1}{2}$  NW  $\frac{1}{4}$ ; and the N  $\frac{1}{2}$  SW  $\frac{1}{4}$  of Section 26; and the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of Section 27, all in Township 40 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, and more particularly described as follows:

Beginning at the point of intersection of the Easterly boundary of the right of way of the Dalles-California Highway, as same is now located and constructed, with the Southerly boundary of the right of way of the Ady Canal of the Klamath Drainage District as now located and constructed, from which the Section corner common to Sections 22, 23, 26 and 27 of the above Township and Range bears North  $36^{\circ}30' \frac{1}{2}$  West 1630.7 feet distant and running thence South  $75^{\circ}34' \frac{1}{2}$  East along the said Southerly boundary of the right of way of the Ady Canal 652.3 feet; thence South  $0^{\circ}07'$  West 2479.2 feet, more or less, to a point in the Southerly boundary of the N  $\frac{1}{2}$  SW  $\frac{1}{4}$  of the said Section 26; thence leaving the boundary of the right of way of the said Ady Canal, South  $89^{\circ}50'$  West along the said Southerly boundaries of the N  $\frac{1}{2}$  SW  $\frac{1}{4}$  of the said Section 26, and the NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  of the said Section 27, 2147.0 feet, more or less, to an intersection with the said Easterly boundary of the right of way of the Dalles-California Highway; thence North  $32^{\circ}21' \frac{1}{2}$  East, following said right of way line, 2097.0 feet; thence following a  $1^{\circ}38' \frac{1}{2}$  circular curve to the left, 937.8 feet; thence North  $16^{\circ}57' \frac{1}{2}$  East 23.5 feet, more or less, to the said point of beginning.

Section 33 : The W  $\frac{1}{2}$  SE  $\frac{1}{4}$  SE  $\frac{1}{4}$

Section 34 : Lot 5, LESS the West 400 feet thereof. ALSO Lots 6, 7, 8, 9, 10, 11, 12, 13 and 14

Section 35 : All

Section 36 : All

In Township 41 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon:

Section 3 : All, EXCEPTING FROM Lot 1 that portion lying West of the Central Pacific Railroad right of way and ALSO EXCEPTING THEREFROM that portion lying Easterly of the centerline of the West Canal.

Section 4 : The N  $\frac{1}{2}$  NE  $\frac{1}{4}$ ; the SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  and Lot 1,

AND EXCEPTING a piece or parcel of land situate in Government Lot 1 of Section 3, in Government Lot 1 and the E  $\frac{1}{2}$  NE  $\frac{1}{4}$  of Section 4, all in Township 41 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, and described as follows:

That portion of said Lot 1 of Section 3 and said Lot 1 and said E  $\frac{1}{2}$  NE  $\frac{1}{4}$  Section 4 bounded Easterly by the Westerly line of Oregon State Highway U.S. 97, bounded Southerly by the Easterly prolongation of the southerly line of the 0.701 acre parcel of land described as Parcel 2 in Deed dated December 26, 1963 from Winston H. Patterson, et ux., to Southern Pacific Company recorded December 27, 1963 in Volume 350 of Deeds, page 146, records of said County (said prolongation being the Southerly line of Lot 1 of said Section 4 and bearing South 80°00' East), bounded Northerly by the Southwesterly line of the County Road leading from said Oregon State Highway U.S. 97 to Keno, Oregon, and bounded Westerly by the following described line: Beginning at the point of intersection of the East line of the W  $\frac{1}{2}$  SE  $\frac{1}{4}$  of said Section 4 with the southerly line of Lot 2 of said Section 4, said point being the Southeasterly corner of said 0.701 acre parcel of land described as Parcel 2 in said deed and is distant South 17°55'06" West 4267.65 feet from the Northeast corner of said Section 4; thence North along said East line, being also the West line of said Lot 1 of Section 4, a distance of 320.83 feet to a point; thence Northeasterly along a curve to the left having a radius of 5679.60 feet and central angle of 10°50'35" (tangent to said curve at last mentioned point bears North 31°47'35" East) an arc distance of 1074.85 feet; thence North 20°37' East 99.56 feet; thence North 20°27' East 2359.20 feet; thence North 22°08'15" East 75.75 feet to a point; thence Northeasterly along a curve to the right having a radius of 3869.75 feet and central angle of 8°40'19" (tangent to said curve at last mentioned point is last described course) an arc distance of 450.62 feet to a point in the North line of said Section 3, distant thereon North 89°29'30" East 245.33 feet from the Northwest corner of said Section 3; thence continuing Northeasterly along the continuation of said curve to the right having a radius of 3869.75 feet, an arc distance of 111.65 feet to the Northerly terminus of the line being herein described.

AND EXCEPTING that portion of Government Lot 1 of Section 3, Township 41 South, Range 8 East of the Willamette Meridian, Klamath County, Oregon, included within a strip of land 100.0 feet in width, lying contiguous to and easterly of the line particularly described in the above described Parcel 1.

AND EXCEPTING THEREFROM that portion thereof lying Southerly of the Northerly line of County Road leading from Oregon State Highway U.S. 97 to Keno, Oregon.

AND ALSO EXCEPTING THEREFROM that portion of the above described 100.00 foot wide strip of land lying Northwesterly of the Southeasterly line of land of the Southern Pacific Company.

AND ALSO EXCEPT that portion conveyed to Klamath County, by Deed recorded October 23, 1933 in Volume 101, page 553, Deed records of Klamath County, Oregon.

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