

DEAN F. Hill

Returned @ Counter

2009-005809

Klamath County, Oregon



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04/28/2009 10:19:20 AM

Fee: \$41.00

EASEMENT AGREEMENT

THIS AGREEMENT is made this 25 day of March, 2009, by and between SUNNYSIDE IRRIGATION DISTRICT (herein referred to as "SID") and the Estate of Walter Fotheringham (herein referred to as "Fotheringham").

RECITALS

A. SID is an Oregon Irrigation District that operates under Oregon Revised Statutes, Chapter 545.

B. Fotheringham, through its Co-Personal Representatives, owns land within the boundaries of SID, which is legally described on the attached Exhibit A, incorporated by reference, and is herein referred to as the "Fotheringham Property."

C. The Fotheringham Property is intersected by an easement for the main canal for water delivery by SID, which is herein referred to as the "Canal."

D. Fotheringham desires to install a circle pivot and related infrastructure for irrigation of the Fotheringham Property, and in order to accomplish full-circle irrigation with the pivot, Fotheringham will need to construct separate culvert crossings (herein, the "Crossings") for the paths of all the pivot towers to traverse the Canal.

E. Fotheringham intends to use the pivot to irrigate both lands within the boundaries of SID and contiguous lands outside said boundaries with combined water sources from a privately owned well and SID; and the parties estimate that approximately one-half of the land irrigated by the pivot is within the boundaries of SID.

TERMS, COVENANTS, AND CONDITIONS

NOW THEREFORE, in and for consideration of \$1.00, the receipt of which is hereby acknowledged, and in consideration of the the terms, covenants, and conditions contained herein, the parties agree as follows:

1. SID grants to Fotheringham the right of ingress and egress of and to the pivot towers at each "Crossing," which are further described below:

a. The Crossing shall not be used for vehicular traffic or for traversing the Canal by any equipment other than the pivot towers.

b. The number of Crossings shall not exceed the number of towers of the circle pivot multiplied by two.

b. 2 Each Crossing from Furthest end of center of pivot will have a culvert crossing which will not exceed 50 ft' of Ditch length. JF GAP. P.M. JB

c. The physical dimensions of each Crossing shall not exceed twelve feet of the Canal's length.

d. The Crossings shall not impede or hinder the free flow of water through the Canal.

2. SID further grants to Fotheringham the right to place a segment of underground mainline beneath the Canal in order to deliver water to the pivot, which underground Crossing must be buried at least thirty-six inches below the base of the Canal.

3. Fotheringham shall be fully responsible for completion of the construction of the Crossings in a workmanlike manner during the irrigation off-season (October through April of each year), and said work must be completed prior to the start of the irrigation season in 2012.

4. Fotheringham shall maintain the Crossings in a workmanlike condition, and shall perform repairs as necessary.

5. Fotheringham shall hold harmless and indemnify SID against any and all claims for liability or damages to persons or property that arise from the construction, including crop loss by any patron of SID that is served by the Canal, that arise from and are directly and proximately caused by the construction, operation, maintenance, and use of the Crossings by itself, its agents, employees, lessees, guests, licensees, and invitees, and by any third party who is not an employee of SID. Fotheringham assumes any risk associated with crossing the Canal with the pivot towers, and in no event shall SID be liable for the failure of any Crossing.

6. Fotheringham shall install meters for water measurement on both the pumping station at its private well and at its pumping station from the Canal; and shall provide data from these meters to SID upon reasonable request. Fotheringham shall not obtain more than half of the water supply for irrigation through the pivot from the SID canal.

7. The easements and covenants created by this agreement are perpetual and are appurtenant to the Fotheringham Property and the Canal owned by SID, and run with these lands, binding heirs, successors, personal representatives, and assigns; however, SID reserves to itself the right to modify any terms of the easements contained in Section 1 in accordance with any modification of the Canal system, such as full or partial enclosure, ditch-lining with artificial material, enlargement or reduction in size, or any similar change.

8. If suit or action is instituted to enforce any of the provisions of this agreement, the party prevailing therein shall be entitled to recover from the other such sum as the court may adjudge reasonable for attorney's fees and costs. This agreement was prepared by legal counsel for SID. Fotheringham has been advised to obtain legal counsel or other advice prior to signing this agreement and has had opportunity to do so. This agreement

shall not be interpreted for or against either party by reason of such representation and preparation of this agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the date first above written.

Sunnyside Irrigation District:

Estate of Walter Fotheringham:

Charlie Kerr, Pat Patterson
President

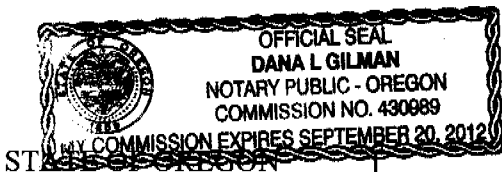
Jeff Fotheringham
Co-Personal Representative

Dean Hill
Dean Hill,
Secretary/Treasurer

Gwyn Anglin
Co-Personal Representative

STATE OF OREGON]
] ss.
County of Klamath]

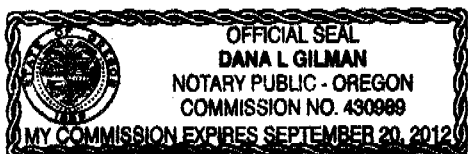
Personally appeared before me the above named Pat Patterson ^{D.A.H.} ~~CHARLIE KERR~~, on the 21 day of April, 2009, and acknowledged the above instrument to be his voluntary act and deed.



STATE OF OREGON]
] ss.
County of Klamath]

Dana L. Gilman
Notary Public for Oregon
My Commission expires:

Personally appeared before me the above named DEAN HILL, on the 21 day of April, 2009, and acknowledged the above instrument to be his voluntary act and deed.



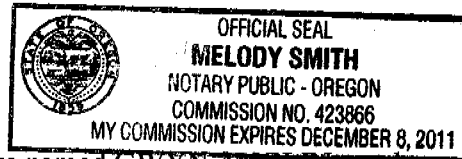
Dana L. Gilman
Notary Public for Oregon
My Commission expires:

STATE OF OREGON]
] ss.
County of Klamath]

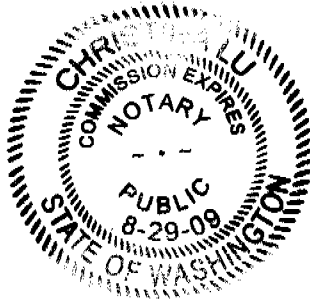
Personally appeared before me the above named JEFF FOTHERINGHAM, on the
27 day of APRIL, 2009, and acknowledged the above instrument to be his
voluntary act and deed on behalf of such estate.

Melody Smith
Notary Public for Oregon
My Commission expires: 12-8-2011

STATE OF WASHINGTON]
] ss.
County of WA]



Personally appeared before me the above named GWYN ANGLIN, on the
day of 25th, March, 2009, and acknowledged the above instrument to be her
voluntary act and deed on behalf of such estate.



[Signature]
Notary Public for ~~Oregon~~ WA
My Commission expires: 8-29-09

“EXHIBIT A”

Land located in Klamath County, State of Oregon, more particularly described as follows:

Section 9 of Township 41 South, Range 10 East of the Willamette Meridian:

E $\frac{1}{2}$ of SE $\frac{1}{4}$;

SE $\frac{1}{4}$ of NE $\frac{1}{4}$.

Section 10 of Township 41 South, Range 10 East of the Willamette Meridian:

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

S $\frac{1}{2}$ of S $\frac{1}{2}$ of SW $\frac{1}{4}$ of NW $\frac{1}{4}$;

S $\frac{1}{2}$ of SE $\frac{1}{4}$ of NW $\frac{1}{4}$.