

Contract No. O-KLA-2018-002

**2018-008179**

Klamath County, Oregon



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07/10/2018 10:12:36 AM

Fee: \$112.00

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
AND  
MICHAEL AND JUDITH RADWICK AND/OR  
JENNIFER CLARK (Power of Attorney)

KLAMATH PROJECT  
AGREEMENT AND CONSENT TO USE and/or CROSS A RECLAMATION EASEMENT  
NUSS LAKE LATERAL/ F-1 LATERAL

1. THIS AGREEMENT AND CONSENT, hereinafter referred to as "Agreement," is entered into and given this 27th day of June, 2018, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the "Federal Reclamation Laws," and pursuant to the regulations found at 43 CFR 429, between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," or "Grantor," represented by the officer executing this Agreement, their duly appointed successor or authorized representative, and AARON AND/OR JENNIFER CLARK, hereinafter referred to as "Grantee,"

2. WITNESS IT THAT:

(a) WHEREAS, the United States acquired an easement for, and has constructed a lateral called the Nuss Lake Lateral, also referred to as the F-1 Lateral, managed under contract by the Klamath Irrigation District as a part of the Klamath Project; and

(b) WHEREAS, the Grantee owns private property, called Klamath County Tax Lot No. R-3910-02900-01200-000 ; and

(c) WHEREAS, a crossing of the F-1 Lateral was constructed on the subject Grantee's private property to allow vehicle and pedestrian access to a parcel of Grantee's

Jennifer Clark  
Returned at Counter

property, situated within the Northeast of the Southeast  $\frac{1}{4}$  and the Southeast of the Southeast  $\frac{1}{4}$  of Section 29, Township 39 South, Range 10 East, Willamette Meridian, Klamath County, Oregon; and

(d) WHEREAS, the Grantee has requested the consent of the United States to continued use and maintenance of this crossing; and

(e) The United States has consulted with the Klamath Irrigation District, and having no objections to such use of the easement at this time, that requested use being compatible with the purpose for which the lands were acquired and are being administered by the United States:

3. IT IS AGREED:

The United States hereby consents to use of the F-1 Lateral easement by the Grantee to enter upon, re-construct, operate, and maintain, as is appropriate, a reinforced crossing over the existing lateral consistent with and limited to the current crossing structure as of the date of this Agreement, at the location generally depicted in Exhibit "A," which is attached hereto and made a part hereof, subject to the following terms and conditions.

(a) Conditions:

(1) The Grantee accepts full responsibility and all liability arising involving use and maintenance of the crossing, whether direct or indirect, including any damage to the lateral or surrounding lands. The crossing shall be maintained in a safe and workmanlike manner. The crossing or its use shall not constrict, limit, impede, divert, or interfere with the operation of the lateral by Reclamation or its agents.

(2) The Grantee will obtain written permission from the Grantor prior to any relocation, re-construction, enlargement, or alteration of the crossing. This includes, but is not limited to, fencing, vegetation plantings, etc.

(3) The Grantor may require the presence of a Reclamation inspector during any new construction within the easement, at the expense of the Grantee.

43                   (4)     The United States and the Klamath Irrigation District will not  
44 maintain or replace the crossing under any circumstances under this Agreement.

45                   (5)     If the Lateral becomes clogged at the crossing, due to the  
46 presence of Grantee's crossing, requiring cleaning and repair of the Lateral by the United States  
47 or the Klamath Irrigation District, any such work shall be reimbursed by the Grantee.

48                   (6)     The use of the crossing shall be limited to private use by the  
49 Grantee, its agents, assigns, and contractors. The crossing shall not be used for any public  
50 ingress or egress under this Agreement.

51                   (b)     This Agreement may be revoked upon 30 days written notice to the  
52 Grantee, including the removal of the crossing, if

53                   (1)     the Grantee's use interferes with or endangers the construction,  
54 operation, security, or maintenance of the Lateral, or

55                   (2)     the United States disposes of its interest in said land, or

56                   (3)     the Grantee fails to comply with any of the terms and conditions  
57 herein, and such failure continues for longer than thirty (30) days after written notice from the  
58 United States reasonably identifying such failure and the approved curative action. If such  
59 corrective action reasonably takes more than 30 days to complete, Grantee shall not be  
60 deemed to be in breach of this Agreement so long as Grantee promptly undertakes curative  
61 action approved by the United States within 30-days after obtaining such approval and diligently  
62 pursues the same to completion; Provided: The United States may take or require Grantee to  
63 take immediate and positive measures if the failure requires immediate correction due to  
64 emergency situations such as unexpected high water flows, erosion, or any threat to public  
65 health and safety or Klamath Project works, or

66                   (4)     it is determined necessary by the United States to protect the  
67 public health and safety, the interests of the United States in time of war or national emergency,  
68 or the efficient operation of the Klamath Project.

(c) This Agreement does not constitute a conveyance of any land or interest in land, and shall not be construed as to limit, relinquish, abridge, or impair enjoyment of the existing easement rights held by the United States.

(d) In the event the Grantee is not the underlying fee owner of the land encumbered by the United States easement, it shall be incumbent on the Grantee to secure permission of the fee owner(s) for approval to enter upon, cross, or use the land, including the United States easement.

(e) Construction, reconstruction, operation, and maintenance of the crossing shall conform to normal accepted engineering standards and to all applicable Federal, State, and local laws, rules, regulations, codes, and in such a manner as to not interfere with any rights and privileges of the United States, including ingress and egress. The Grantee accepts full responsibility for any damage to the United States facility resulting from presence or use of the crossing, whether direct or indirect to the extent caused by Grantee.


(f) The Grantee hereby agrees to hold harmless and indemnify the United States, its employees, agents, and assigns from any loss or damage and from any liability on account of personal injury, property damage, or claims for personal injury or death arising out the Grantee's activities under this Agreement.

(g) The provisions of this Agreement shall apply to and bind the successors and assigns of the United States and the Grantee.

IN WITNESS WHEREOF, this Agreement is given as of the date and year first-above written.

THE UNITED STATES OF AMERICA

By:

  
Jeff Nettleton, Area Manager  
Klamath Basin Area Office  
Bureau of Reclamation

GRANTEE:

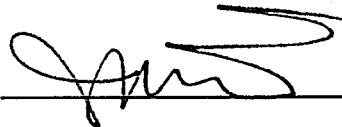
MICHAEL AND JUDITH RADWICK

AND/OR JENNIFER CLARK (Power of Attorney)

Date:

26 Jun 18

By:



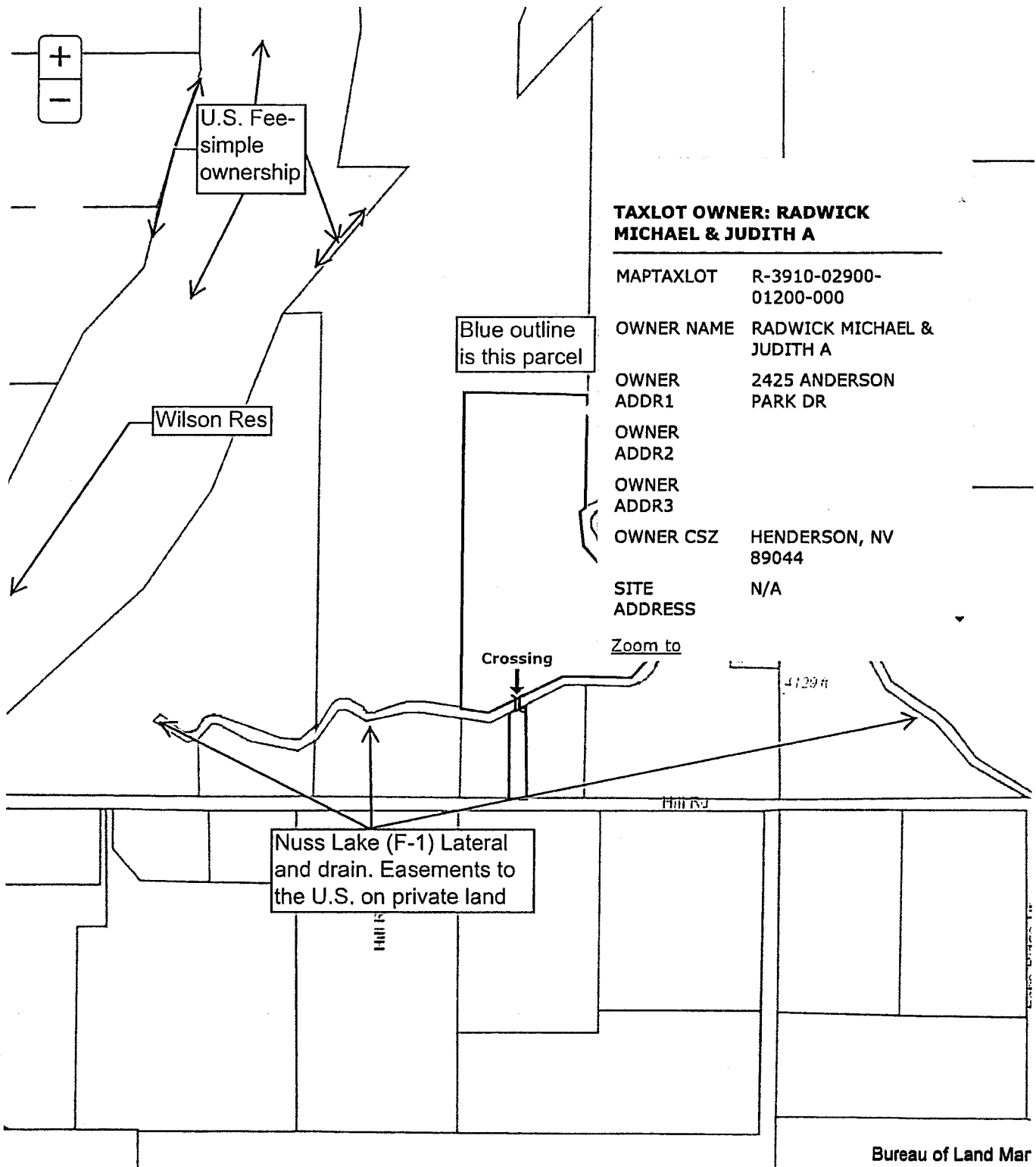
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6/20/2018

## EXHIBIT A



# Klamath County Taxlot Finder



ACKNOWLEDGMENT

STATE OF Oregon )

) ss.

COUNTY OF Klamath )

On this 26 day of June, in the year 2018, before me,

Megan Tidball, A Notary Public in and for said County and State,  
personally appeared

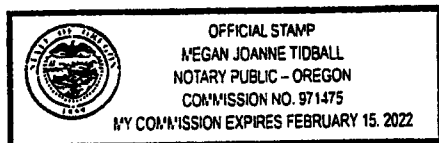
Name Jennifer Clanc

Title \_\_\_\_\_

known to me to be the person described in the foregoing instrument, and acknowledged to me  
that he/she executed the same on behalf of

Name of Company \_\_\_\_\_

in the capacity therein stated and for the purpose therein contained.



[Signature]  
Notary Public in and for said County and State

My Commission Expires: Feb 15 2022