

OREGON STATE HIGHWAY DIVISION

FILE: ROW 18-4

INTER-OFFICE CORRESPONDENCE

December 30, 1976

Salem, OR 97310

#18

FROM: Phil G. Preston *Phil Preston*
Utility Special Studies Engr.

SUBJECT: Bureau of Reclamation-State
Crossing Agreement
Klamath Project
Klamath County
Miscellaneous C&A 5943
U.S. Contract No. 14-06-200-8449

TO: C. W. Head, Manager
Commission Services

B U I L D I N G

Attached is a fully executed copy of subject Agreement setting up basic guidelines for the crossing of each other's facilities on the Klamath Project in Klamath County.

By a copy of this letter photocopies of the Agreement are being distributed as indicated below:

Jack Sollis
J. F. Hagemann
C. M. Williams
John L. Gunter - (under separate cover)
John Holcomb

PGP:jr
Attach.

[Handwritten signatures and stamps]
RTE RECEIVED
RUE JAN 4 1977 RDE
RSO REGION 4 RBE
ASSIGNED _____

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

U.S. Contract No.
14-06-200-8449A

Klamath Project, Oregon

AGREEMENT WITH STATE OF OREGON AS TO CROSSINGS

THIS CONTRACT, made this 20th day of December, 1976, pursuant to the Act of June 17, 1902, (32 Stat. 388) and all acts amendatory thereof or supplementary thereto, including without limitation by this enumeration the Act of August 4, 1939, (53 Stat. 1187), referred to hereinafter as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, hereinafter styled the United States, represented by the Contracting Officer executing this contract, his duly appointed successor or his duly authorized representative, hereinafter styled the Contracting Officer, and the STATE OF OREGON, a body politic and corporate, hereinafter styled the State, acting by and through its Department of Transportation;

WITNESSETH, THAT:

2. WHEREAS, the United States is engaged in the operation and construction under the Federal Reclamation Laws, within the State of Oregon, of the Klamath Project, hereinafter called the project, and the works of the project include and may include a network of waterways and water conduits, or telephone, and electrical transmission lines, and other power and irrigation works, for which the United States has acquired or will acquire lands in fee simple or rights-of-way of various kinds or for

which it claims rights-of-way under Oregon Revised Statute 541.240, the Act of Congress of August 30, 1890, (26 Stat. 391) or other Acts of Congress; and

3. WHEREAS, the State now has a network of highways adjacent to and within the project area and may from time to time relocate or add to these highways, and for these highways it now owns or may hereafter acquire lands in fee simple or rights-of-way of various kinds; and

4. WHEREAS, the activities of each party in and adjacent to the project area will require the construction and operation and maintenance of mutual crossing facilities and the parties wish to avoid the burden of negotiating separate contracts for every such crossing.

NOW, THEREFORE, in consideration of the grants and agreements herein contained, the parties hereto grant and agree as follows:

DEFINITIONS

5. Wherever used in this contract:

The term "waterway" shall mean any land owned in fee or any right of way, excluding "reserved ways" designated by the United States as a site for any waterway and shall also mean any pipeline, drain, canal, lateral, ditch, wasteway, siphon, or other waterway or water conduit, and any road required in connection with the construction or operation of such facilities, built or to be built as part of the project works.

The term "transmission line" shall mean any land owned in fee or any right of way, excluding "reserved ways" designated by the United States as a site for any transmission line. It shall also mean any

telephone or electrical transmission line or other power works, and any road required in connection with the construction or operation of such works, built or to be built as a part of the project works.

The term "reserved way" shall mean any right of way reserved to the United States under Oregon Revised Statutes 541.240, the Act of August 30, 1890, (26 Stat. 391), or other Acts of Congress and which has been or is to be designated for use in the construction and operation and maintenance of project works as permitted by law.

The term "highway" shall mean any land owned in fee or any right of way owned by the State and shall also mean any highway and appurtenant works built or to be built in connection with the highway system of the State.

The term "project" shall mean the Klamath Project, Oregon.

RIGHTS-OF-WAY GRANTED TO THE STATE

6. The United States hereby grants to the State, subject to the provisions of this contract, perpetual rights to construct, reconstruct, operate and maintain highways upon or across any project waterway transmission line and reserved way. The rights in each instance shall take effect from the date of the approval of the State's application made under the provisions of Article 8. In any instance where the grant herein made is with respect to land in which the United States has only a right-of-way or easement, the State shall obtain any additional grants or consents from the owners of such other interests in the land as may be necessary to permit full use of the land by the State for highway purposes.

RIGHTS-OF-WAY GRANTED TO THE UNITED STATES

7. The State hereby grants to the United States, subject to the provisions of this contract, perpetual rights to construct, reconstruct, operate and maintain waterway and transmission lines upon or across any highway and hereby ratifies and confirms the reservation under and by virtue of the Act of August 30, 1890, (26 Stat. 391) or other Acts of Congress and Oregon Revised Statutes 541.240, of the reserved way across, along, or under highways on land subject to such reserved way. The rights in each instance shall take effect from the date of the approval of the application of the United States, made under the provisions of Article 8. In any instance where the grant herein made is with respect to land in which the State has only a right-of-way or easement, the United States shall obtain any additional grants or consents from the owners of such interest in the land as may be necessary to permit full use of the land by the United States for its purposes.

NOTICE OF EXERCISE OF RIGHTS-OF-WAY

8. The party desiring to exercise the rights granted under Articles 6 and 7 shall notify the other party in writing prior to the beginning of construction. Such notice shall be given immediately before the rights are to be utilized by the construction of a crossing, and, in the case of the United States, the notice shall be given to the Contracting Officer, and in the case of the State, to the Department of Transportation, or its duly authorized representative. The notice shall be accompanied by a location map showing the proposed crossing and by plans

for the facilities proposed to be constructed. The party receiving the notice shall promptly initiate action on approval or disapproval of the proposed crossing, indicating in the latter instance the reasons therefor. The State shall not refuse approval of reasonable plans submitted by the United States if such plans provide for a class of construction equal or superior to the standard of construction used by the State itself for similar purposes; and the United States shall not refuse approval of reasonable plans submitted by the State, if such plans provide for a class of construction equal or superior to the standard of construction used by the United States for similar purposes. Approval of the plans shall be made by execution and dating of the location map; approval of the United States shall be given by the Contracting Officer; approval of the State shall be given by the State Highway Engineer, or his duly authorized representative.

COST OF CROSSING INITIATED BY STATE

9. (a) Where a right for the State to cross a project waterway, transmission line, or a reserved way has been approved under the provisions of Article 8, the State shall, at its sole expense, construct and install whatever crossing facilities are required and do whatever work is necessary to effect the crossing in accordance with the plans approved under Article 8.

(b) Where a right for the State to cross a project waterway, transmission line, or reserved way has been approved under the provisions of Article 8, the State, when building its highway at the place of crossing, will (1) provide, at the request of the United States, if the

latter has funds available to pay therefor, crossing facilities necessary to accommodate the waterway or transmission lines to be built later by the United States, or (2) construct, at the request of the United States, if practicable, its highway in a manner that will enable the United States, within a reasonable time after the completion thereof, to construct the crossing facilities necessary to accommodate its waterway or transmission line without added undue expense or inconvenience on account thereof. The added cost to the State of providing facilities under (1) and (2) of this Subarticle shall be borne by the United States. In determining these costs there shall be included all costs of materials and labor directly chargeable to the crossing facilities as approved under Subarticle (c) hereof and in addition an amount equal to fifteen percent (15%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the facilities in any case under (1) and (2) of this Subarticle, the State shall submit to the United States an itemized bill of the added cost required to be paid by the United States hereunder. Payment of such cost shall be made promptly after the presentation of such bill.

(c) Whatever crossing facilities are required to be constructed by the State for the United States under this Article shall be constructed in accordance with plans and specifications therefor approved by the United States, and shall be subject to the approval of the Contracting Officer.

COST OF CROSSINGS INITIATED BY UNITED STATES

10. (a) Where a right for the United States to cross a highway has been approved under the provisions of Article 8, the United States

shall, at its sole expense, construct and install whatever crossing facilities are required and do whatever work is necessary to effect the crossing in accordance with the plans approved under Article 8.

(b) Where a right for the United States to cross a highway has been approved under the provisions of Article 8, the United States, when building its waterway or transmission lines at the place of crossing, shall (1) provide, at the request of the State, if the latter has funds available to pay therefor, crossing facilities necessary to accommodate the highway to be built later by the State, or (2) construct, at the request of the State, if practicable, its waterway or transmission lines in a manner that will enable the State, within a reasonable time after the completion thereof, to construct the crossing facilities necessary to accommodate its highway works without added undue expense or inconvenience on account thereof. The added cost to the United States of providing facilities under (1) and (2) of this Subarticle shall be borne by the State. In determining these costs, there shall be included all costs of materials and labor directly chargeable to the crossing facility and in addition an amount equal to fifteen percent (15%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the facilities in any case under (1) and (2) of this Subarticle, the United States shall submit to the State an itemized bill of the added cost required to be paid by the State.. Payment of such cost shall be made promptly after the presentation of such bill.

(c) Whatever crossing facilities are required to be constructed by the United States for the State under this Article shall be constructed in accordance with plans and specifications therefor approved by the State.

CONSTRUCTING CROSSINGS BY THE UNITED STATES

11. The United States, in constructing and reconstructing crossings under a grant pursuant to the provisions of Article 7, shall do so as follows:

(a) Such construction work shall be conducted in a proper and workmanlike manner;

(b) Such crossings shall be constructed by the boring or jacking method on the interstate highway and on the other highways where feasible, in order to avoid disturbance of the pavement structure or interruption to the flow of traffic. Unless specifically authorized, no excavation shall be made or obstacle placed within the limits of the state highway in such a manner as to interfere with travel over said road.

On primary and secondary state highways, such construction work shall be conducted so that the highway works will be closed to traffic for as brief a period as possible. Upon request of the State, a suitable detour shall be constructed, at the sole cost and expense of the United States, around or over such construction so that traffic may pass freely at all times, and such detour shall be maintained by the United States at its sole cost and expense.

(c) The material removed from the highway shall be replaced or renewed so that, upon completion of the crossing, the highway and highway works will be in as good condition as they were prior to such construction work by the United States.

CONSTRUCTING CROSSINGS BY THE STATE

12. The State, in constructing or reconstructing a crossing pursuant to a grant under Article 6, shall conduct its work as follows:

(a) Such construction shall be conducted in a proper and workmanlike manner.

(b) The State shall not in any case or circumstance stop, impede, or interfere with the flow of water in any waterway, and in the event that the State constructs any structure authorized pursuant to the provisions of Article 6, the State shall provide such adequate temporary ditch, siphon, pipe or other facility as directed and approved by the Contracting Officer, for the purpose of conveying the water flowing in the waterway along the regular course without waste or loss of water or pressure during the time of the construction of said structure.

(c) The material removed from the project waterway shall be replaced or renewed so that, upon completion of the crossing the project waterway will be in as good condition as it was prior to the construction work by the State.

CHANGES IN OR ABANDONMENT OF STATE STRUCTURES

13. All grants by the United States, pursuant to Article 6, are subject to the condition that in the event the Contracting Officer determines that by reason of a change in a project waterway, it is necessary that the structure or structures installed by or for the State pursuant to such grant or consent be changed, reconstructed, or added to, the State, after it has been given an opportunity to discuss the matter with the United States, shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by said Contracting Officer. Also, in the event the State abandons any of its highways over a project waterway, the State shall, at its sole cost and expense, remove the structure or structures constructed by or for it, or do whatever is required by the Contracting Officer to restore the project waterway to its condition prior to the construction of such structure or structures by or for the State; Provided, however, That any abandonment of a highway which is required by State law to be turned over to a county or municipality shall be exempt from the provisions hereof and the United States will thereafter deal directly with the county or municipality with respect to such abandoned highway.

CHANGES IN OR ABANDONMENT OF UNITED STATES STRUCTURES

14. All grants by the State, pursuant to Article 7, are subject to the condition that in the event the State determines that by reason of a

change in a highway it is necessary that the structure or structures installed by or for the United States pursuant to such grant or consent be changed, reconstructed, or added to, the United States, after it has been given an opportunity to discuss the matter with the State, shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by the State. Also in the event the United States abandons any of its waterways or transmission lines upon or across any highway, the United States shall, at its sole cost and expense, remove the structure or structures constructed by or for it or do whatever is required by the State to restore the highway to its condition prior to the construction of such structure or structures by or for the United States.

TITLE TO AND MAINTENANCE OF CROSSING FACILITIES

15. (a) Promptly upon the completion of any crossing facilities constructed under the terms of this contract, the party doing the construction shall give written notice to the other party, which notice shall announce the completion of the work and indicate, according to the nature and purpose thereof, which portion or portions of the facilities shall be deemed to comprise a part of the highway and which portion or portions shall be deemed a part of the waterway or transmission line. The party receiving the notice shall indicate promptly its acceptance of the title to the facilities as set out in the notice or its objections

to the notice. Such notices shall be issued and accepted on behalf of the United States by the Contracting Officer and on behalf of the State by the Department of Transportation or its duly authorized representative.

(b) The United States and the State shall replace their respective structures at their own expense with new structures approved by the other party from time to time as the necessity arises, and make such repairs as may be necessary to protect the waterway, transmission lines or highway from damage or interference from said structures. It shall be the duty of the United States and of the State in this regard to maintain their respective structures in such a manner as to be deemed safe and in repair, consistent with customary management practices.

(c) All work done by the United States or the State in maintaining or replacing their respective structures shall be done in a good workmanlike manner.

(d) In the event the United States or the State shall fail, refuse, or neglect to maintain their respective structures, as in this Article provided, the other party may, after ninety (90) days' written notice, replace, reconstruct, repair or change any of said structures, forming a part of the waterway, transmission line, or highway, in such manner as it shall determine, and the party whose structures have been replaced, reconstructed, repaired or changed, shall reimburse the other party for the entire cost and expense thereof, within ninety (90) days after submission of a written statement or statements showing in detail

the items of expense included in the cost of the same. The party who has to pay the cost may, at its sole cost and expense, make whatever audits are necessary to verify the correctness of such statement or statements.

UNITED STATES DOES NOT ASSUME LIABILITY

16. The United States does not, by reason of this contract, or by reason of any grants made pursuant to Article 6, assume any liability for injury or damage to any person or property incident to or arising during and in consequence of (a) the use, occupancy, and enjoyment by the State, pursuant to this contract, of any project waterway, transmission way or reserved way; or (b) the operation and maintenance of any highway across any project waterway, transmission line or reserved way, pursuant to Article 6.

STATE DOES NOT ASSUME LIABILITY

17. The State does not, by reason of this contract, or by reason of any grants made pursuant to Article 7, assume any liability for injury or damage to any person or property incident to or arising during and in consequence of (a) the use, occupancy, and enjoyment by the United States, pursuant to this contract, of any highway, or (b) the operation and maintenance of any waterway or transmission lines across any highway pursuant to Article 7.

RIGHT TO ENTER ON OTHER'S RIGHT-OF-WAY

18. The United States and the State, and their respective officers, agents, contractors and employees, shall at any and all times have the right to enter upon the rights-of-way of the other, granted as provided herein, for the purpose of doing anything necessary in connection with the construction, replacing, repairing or maintenance of any portion or part of their respective waterway, transmission lines, or highway, including all structures and crossings which may be built in pursuance of the provisions of this contract; provided, however, that except in cases of emergency, each entry upon the highway right-of-way shall be from outside the access control lines and shall not be from the main traveled way of the highway. .

REQUIREMENTS TO BE OBSERVED ON WORK FOR UNITED STATES

19. If the State performs any work as contemplated by Subarticle 9(b) of this contract on structures constituting a part of the waterway or transmission lines of the United States, it will observe the requirement as to labor based upon 40 U.S.C. 327-333; as to domestic preference of materials based upon 41 U.S.C. 10a-d; as to nonuse of convict labor based on 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973; and as to equal employment opportunities based upon Executive Order No. 11246 of September 24, 1965.

CONTINGENT ON APPROPRIATIONS

20. The liability of the United States and of the State under this agreement shall be contingent on the necessary appropriations and reservation of funds being made therefor.

OFFICIALS NOT TO BENEFIT

21. No Member of or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.


COVENANT AGAINST CONTINGENT FEES

22. The State warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the State for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

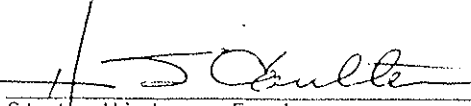
IN WITNESS WHEREOF, the parties have hereto signed their names the day and year first above written.

The Oregon Transportation Commission, by a duly adopted delegation order, authorized its chairman, or in the event of his unavailability its Vice Chairman, to act in its behalf in approving contracts and agreements. Approval was given for this contract on Nov. 17, 1976 by CHAIRMAN JACKSON, which approval is on file in the Commission records. Also by a delegation order the State Highway Engineer has authority to sign approved contracts and thereby executes this contract on behalf of the Commission.

Approved as to form:


Assistant Attorney General
and Counsel

STATE OF OREGON, by and through its
Department of Transportation,
Highway Division

By 
State Highway Engineer
H. S. Coulter

THE UNITED STATES OF AMERICA

By 
Regional Director, Mid-Pacific Region
Bureau of Reclamation

STATE OF OREGON, County of Marion

Nov 30, 1976. Personally appeared H. S. Coulter, who being sworn, stated that he is State Highway Engineer for the State of Oregon, Department of Transportation, Highway Division, and this document was voluntarily signed on behalf of the State of Oregon, by authority delegated to him. Before me:

Cecil H. Head
Notary Public for Oregon

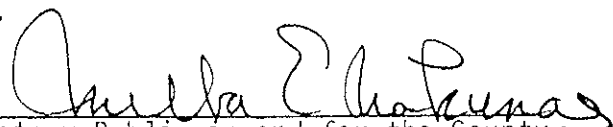
My Commission expires 11/5/78

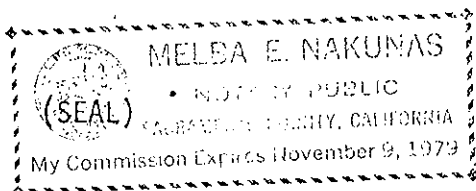
STATE OF CALIFORNIA)
) ss.
County of Sacramento)

On this 20 day of December, 1976, before
me, Melba E. Nakunas, a Notary Public in and for
the County and State aforesaid, personally appeared

B. E. MARTIN Regional Director of the United States
Bureau of Reclamation, Mid-Pacific Region, known to me to be the
person whose name is subscribed to the within instrument, and acknow-
ledged that he executed the same on behalf of the United States.

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


Notary Public in and for the County
of Sacramento, State of California



KLAMATH IRRIGATION DISTRICT

HEADQUARTERS OFFICE

6640 K. I. D. LANE -- (503) 882-6661

KLAMATH FALLS, OREGON 97601

June 8, 1976

U. S. Bureau of Reclamation
Mr. T. J. Rosten, Project Manager
P. O. Box R
Klamath Falls, Oregon 97601

Re: Master Crossing Agreement

Dear Mr. Rosten:

At the regular meeting of the Board of Directors of this District on June 4, the following Resolution was unanimously adopted:

"WHEREAS, the Board of Directors of the Klamath Irrigation District has studied the contract between the Oregon Department of Transportation, Highway Division and the United States Bureau of Reclamation, and

"WHEREAS, the terms of this contract do not conflict with the best interests of the Klamath Irrigation District,

"NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Klamath Irrigation District does hereby agree with the terms of said contract and recommend that this contract be signed by Bureau of Reclamation and Oregon Department of Transportation, Highway Division.

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I, Anna G. Booth, Secretary, Board of Directors of the Klamath Irrigation District, hereby certify this to be a true and correct copy of the Resolution adopted by the Board of Directors on June 4, 1976.

Anna G. Booth

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KLAMATH FALLS, OREGON

Resolution No. 4637.

WHEREAS, the L.V.I.D. Board of Directors has studied the contract between the Oregon Department of Transportation, Highway Division and the United States Bureau of Reclamation, and

WHEREAS, the terms of this contract do not conflict with the best interests of the Langell Valley Irrigation District,

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the Langell Valley Irrigation District does hereby agree with the terms of said contract and recommend that this contract be signed by Bureau of Reclamation and Oregon Department of Transportation, Highway Division.

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I, Albert George Keady, Secretary, Board of Directors of Langell Valley Irrigation District, hereby certify this to be a true and correct copy of Resolution No. 4637, adopted by the Board of Directors on 26 May 1976.

U. S. DEPT. OF RECLAMATION
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KLAMATH FALLS, OREGON