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Made July 14, 1954

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California Klamath River Commission

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AGREEMENT

9/8/17 This Agreement, Made and entered into this 8th day of September 1917, by and between the Klamath Drainage District, acting in this behalf by its Board of Supervisors, the duly elected and acting members of which Board are M. Motschenbacher, W. S. Slough and A. A. Mehaffy, first party and the Van Brimmer Ditch Company, a corporation organized and existing under the laws of the State of Oregon, Second party,

U.S. Contract
close
gates
adv
500CFs
WITNESSETH, Whereas the aforesaid first party proposes to reclaim all of the lands included within the boundaries of the said drainage district, and to that end is about to enter into contract with the United States for the closing of the gates in Klamath Strait which passes through the embankment of the California Northeastern Railroad, and for the furnishing to the second party a quantity of irrigation water to the amount of fifty (50) second feet from the canals of the Klamath Project of the U. S. Reclamation Service for the irrigation of the lands now watered by the said second party.

Now Therefore, in consideration of the premises, and of the covenants herein contained to be kept and performed, it is mutually covenanted and agreed between the parties as follows:

1. The second party hereby agrees to waive any and all claims for damages to the first party and to the United States arising or that may hereafter arise by reason of the closing of the aforesaid gates in said Klamath Strait and causing the shutting off of the inflow into Lower Klamath Lake from Klamath River and resulting in

the changing of the elevation of the water level of said Lower Klamath Lake, and the destruction or partial destruction of the present source of water supply of said second party from said Lower Klamath Lake for the irrigation of the lands now included in the system of said second party.

2. The second party also agrees to accept in lieu of the *water* *exchange* water now obtained from said Lower Klamath Lake for the irrigation of its lands, from the United States a sufficient quantity of water from the canals of the Klamath Project of the United States Reclamation Service, not exceeding fifty (50) second feet of water for the irrigation of its lands.

3. The second party also hereby agrees to pay to the first party on the 15th day of November of each and every year for five years beginning Nov. 15, 1918, and ending Nov. 15, 1922, the sum of five hundred Dollars (\$500.00), or twenty-five hundred dollars in all on account of the increased benefits derived and to be derived by second party through the change of the course of water supply for the lands irrigable from the works of said second party. *change* *course*

4. For and in consideration of the foregoing, the first party hereby agrees to enter into contract with the United States for the furnishing to the second party of the aforesaid fifty (50) second feet of water for the purposes named above without cost and expense to said second party except as above provided, it being understood that delivery of the aforesaid fifty (50) second feet of water is to be made to second party at a point where the canal known as "south Branch Canal" of the said Klamath Project intersects

the canal known as the "North Lateral" of the system of the second party herein, said point of intersection being near the northwest corner of the northeast quarter of Section 3 in Township 41 South, Range 10 East W.M., Klamath County Oregon, it being further understood that one proper turnout on each side of said "South Branch" canal at the said point of intersection of delivery of water shall be constructed which shall be and remain the property of the United States, its successors and assigns, and shall be subject to operation and control exclusively by the said United States.

5. It is understood and agreed between the parties hereto that for the purposes of this agreement that the irrigation season of the second party shall be considered as extending from May first, to October fifteenth of each and every year, inclusive, during the life of this agreement; provided that at the option of the United States water may be delivered to second party as early as April fifteenth in any year upon request made to the United States by an authorized representative of second party.

6. It is hereby agreed between the parties hereto that upon the consummation of plans between first party and the United States for the delivery of water to second party as aforesaid, first party and the United States shall have full power and authority to regulate the flow of the water through the said Klamath Strait free from any claim or claims for damages on the party of the second part.

In Witness Whereof the parties hereto have caused this instrument to be signed and sealed the day and year first above written.

KLAMATH DRAINAGE DISTRICT

By M. Motschenbacher,
A. A. Mehaffey
W. S. Slough
Board of Supervisors,
First Party.

(seal)

VAN BRIMMER DITCH COMPANY,

By M. L. Moore
G. W. Offield, Secretary,
Second Party.

(seal)

WITNESSES:

T. A. Barrows
C. E. Cox

State of Oregon,
County of Klamath, ss.

On this 14th day of November 1917, before me appeared M. L. Moore to me personally known, who being duly sworn did say that he is the president of the Van Brimmer Ditch Company, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said M. L. Moore acknowledged said instrument to be the free act of said corporation.

In testimony Whereof, I have hereunto set my hand and affixed my official seal this day and year first above written.

E. M. Bubb, Notary Public for Oregon

(seal)

My commission expires Jan. 14, 1921.

Record of minutes of a Special Meeting of the Stockholders of Van Brimmer Ditch Company, held by order of the Board of Directors, Merrill, Oregon at one o'clock P. M. May 20, 1916.

A Roll Call of stock holders was taken and it was found that three thousand eight hundred and sixty-five (3865) shares of stock were present; The meeting was therefore found competent to transact

business. The proposition of contracting with the U. S. Reclamation Service and the Klamath Drainage District for a water right from the U.S.R.S. for the land under the Van Brimmer Ditch, and authorizing the Van Brimmer Ditch Company Directors to pay the annual sum of eight hundred Dollars (\$800.00) toward the maintenance of said water right and to waive the rights of said company in the waters of Lower Klamath Lake was discussed and put to vote. There were cast in favor of the proposition two thousand one hundred and seventy-nine (2179) votes, and one thousand four hundred and eighty-seven (1487) votes against the proposition.

There being nothing further before the meeting the same adjourned.

G. W. Offield, Secty.
E. M. Hammond, Pres.

I hereby certify that the above is a full and true copy of the minutes of a meeting held at the time and place above set forth.

G. W. Offield,
Secty. of the Van Brimmer
Ditch Company.

Filed February 24th 1923, at 2-40 P. M.
and recorded in Vol. 4 page 234 of Miscellaneous
Records of Klamath County Oregon.

C. R. DeLap, County Clerk
By Vivian Harris, Deputy.

THIS AGREEMENT, made and entered into this 30th day of November, 1917, in pursuance of the Act of Congress of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, between the UNITED STATES OF AMERICA, hereinafter styled the United States, acting in this behalf by J. B. Bond, Project Manager, U. S. Reclamation Service, thereunto duly authorized, and the Klamath Drainage District, a public corporation duly organized and existing under the laws of the State of Oregon, with its principal place of business at Klamath Falls, Oregon, hereinafter styled the District,

WITNESSETH: That

WHEREAS the District proposes to reclaim by a process of drainage, evaporation and irrigation all of the lands within said district consisting of approximately 27,000 acres and being part of the marsh or swamp lands lying within or adjacent to what is generally known as Lower Klamath Lake in Klamath County, Oregon, and Siskiyou County, California, east of the right of way of the California Northeastern Railway as it crosses said marsh or swamp lands, including a total area of approximately 54,000 acres; and

WHEREAS said Lower Klamath Lake is at certain seasons of the year fed with water from the Klamath River through a certain water way or channel known and herein designated as Klamath Strait, which passes under said railroad and through its embankment by means of an opening or culvert, which said opening or culvert has been so constructed as to permit the placing of gates therein for the purpose of controlling the flow of water through the same; and

WHEREAS, the method of reclamation proposed by said District contemplates the closing of the gates in said Klamath Strait so as

27000
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LKL

54000 ac

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*change
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to exclude or control the further flow of water from the Klamath River into said Lower Klamath Lake and thereby to facilitate the reclamation of the lands mentioned; and

*Van
Brimmer
right
substitution
source*
WHEREAS there are certain owners of marsh or swamp lands within or bordering on said Lower Klamath Lake who claim or may claim to have certain rights in or to the waters of said lake either as riparian owners or as appropriators of water therefrom, and particularly the Van Brimmer Ditch Company, which has or claims to have a vested water right in said lake of fifty (50) second feet, which is now, and for many years has been, according to said Company's claim, used for the irrigation of lands under its irrigation system, which rights may be affected by the lowering of the water level of said lake by the closing of the gates in said Klamath Strait, and all of which possible rights or claims must be taken into consideration in connection with the proposal to close the gates aforesaid; and

WHEREAS it is economically practicable to supply the said Van Brimmer Ditch Company the quantity of water necessary for the proper irrigation of the lands under and irrigable through its system from the Government's irrigation system known as the Klamath Project in lieu of the supply heretofore had and used by said Company from Lower Klamath Lake by adapting the distribution system of the Klamath Project to such a plan; and

WHEREAS the United States has heretofore expended sums of money, aggregating \$253,225.00, in making investigations as to the practicability and desirability of reclaiming said marsh or swamp

lands and in the building of irrigation works for the storage,
diversion, development and drainage of waters lying, being and
flowing in and about said Klamath Project looking toward such
reclamation and to the closing of Klamath Strait in connection
therewith, and the United States has not been reimbursed for said
expenditures or any part thereof; and

3 inches

WHEREAS the district, in furtherance of its purpose to accom-
plish the reclamation of its lands, as aforesaid, desires the United
States to close or operate the gates in said Klamath Strait so as
to prevent or regulate the further flow of the waters of the Klamath
River on to said lands or into Lower Klamath Lake;

*reverse
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flow
to
city*

NOW, THEREFORE, in consideration of the premises and of the
promises and covenants herein contained to be kept and performed,
it is mutually covenanted and agreed between the parties hereto as
follows:

1. The District agrees to deliver to the United States,
simultaneously with the execution of this contract, duly executed
waivers, in form satisfactory to the United States, from all ripar-
ian owners of lands in Oregon bordering on said Lower Klamath Lake,
waiving claim or claims for any and all damages resulting or that
may result, or be claimed to have resulted, to said lands, or to
their owners, their heirs or assigns, by reason of said gates in
Klamath Strait being closed. Waivers similar in purpose and form
shall also be secured by the District from the said Van Brimmer
Ditch Company and delivered to the United States as hereinabove
provided, together with a similar waiver executed by and on behalf
of the District, all of which said waivers shall be recorded by and

*waiver
damages
owners*

*also
Van
Brimmer*

Klamath
Siskiyou

at the expense of the District within the County in which the respective lands lie.

2. It is understood and agreed that should the reclamation of said district lands in the manner herein contemplated prove impracticable or be not accomplished in reasonable compliance with the provisions hereof or interfere with the proper reclamation or use of public lands and it should be deemed by the United States necessary or desirable for the purpose of reclaiming or best utilizing the public lands within said marsh or swamp land area, as contemplated by the Oregon Act of January 20, 1905 (General Laws of Oregon, 1905, p. 63), and the California Act of February 3, 1905 (California Statutes, 1905 p. 4), to flood or overflow the same and to that end to open or regulate the gates in said Klamath Strait, the District will release and hereby does release and waive any and all claim for damages against the United States resulting, or that may be claimed to have resulted, to district lands by reason of their being returned on account of the opening of said gates to their normal condition as of the date hereof, or otherwise, it being the intention that the District shall protect and save harmless the United States against claims of any kind which may arise from owners of or claimants to district lands on account of the execution of this agreement.

ceding
act

restore
normal

3. The District covenants, promises and agrees to pay to the United States, through the proper officer thereof duly designated to receive such payment, simultaneously with the execution of this contract, the sum of Twenty-three Thousand Five Hundred Dollars (\$23,500.00) in cash, to cover the cost incurred or that may be incurred by the United States in adapting the distribution system

of the Klamath Project for the delivery of a water supply of fifty (50) second feet each season to the Van Brimmer Ditch Company in lieu of its present water right in that quantity in Lower Klamath Lake.

4. It is understood and agreed that the fifty (50) second feet of water to be furnished the Van Brimmer Ditch Company from the Klamath Project as hereinabove provided for shall be delivered by the United States to the Van Brimmer Ditch Company at the point where the canal known as the "South Branch Canal" of the Klamath Project intersects the canal known as the "North Lateral" of the system of the Van Brimmer Ditch Company, said point of intersection being near the northwest corner of the NE $\frac{1}{4}$ of Sec. 3, T. 41 S., R. 10 E., W.M., and that the United States will construct and install one turn-out on each side of said "South Branch Canal" at said point of intersection for delivery of water to said Company, said turn-outs to be and remain the property of the United States, its successors and assigns, and subject to operation and control exclusively by them.

5. It is further understood and agreed that for the purposes of this agreement the irrigation season during which water shall be furnished to the Van Brimmer Ditch Company as herein provided for shall be considered as extending from May first to October fifteenth, inclusive, of each year; provided that at the option of the United States water may be delivered to said company as early as April fifteenth in any year, upon written request to the United States by the duly authorized representative of the Company.

6. The District covenants, promises and agrees to assume and pay, and to that end hereby binds itself, its lands and property of every character, that proportion of the total expenditures heretofore made or to be made by or on behalf of the United States in connection with the proposed reclamation of Lower Klamath Lake marsh or swamp lands, including the \$23,500 named in paragraph 3 hereof and an additional sum of \$30,000 (being an agreed capitalization of the annual charges for the operation and maintenance of the canals and structures necessary for the delivery of the above mentioned fifty (50) second feet of water to the Van Brimmer Ditch Company), herein agreed to be \$283,225, that the total acreage of private or patented land included in said District, estimated as 20,000 acres, bears to the total acreage of said marsh or swamp lands within or marginal to Lower Klamath Lake, estimated at 54,000 acres, being 20/54 of \$283,225, or the sum of \$104,898.15 which said sum shall be paid to the United States, its successors or assigns, as follows:

"\$23,500.00	on the execution of this contract
2,777.78	on December 1, 1918
2,777.78	" " " 1919
2,777.78	" " " 1920
2,777.78	" " " 1921
4,633.03	" " " 1922
6,565.10	" " " 1927
6,565.10	" " " 1928
6,565.10	" " " 1929
6,565.10	" " " 1930
6,565.10	" " " 1931
6,565.10	" " " 1932
6,565.10	" " " 1933
6,565.10	" " " 1934
6,565.10	" " " 1935
6,565.10	" " " 1936"

The District also agrees to pay interest at the rate of eight per cent (8%) per annum from the due date until paid on any and all

payments accruing under the terms hereof and not paid when due. If it is ultimately determined that the total area of private or patented lands within the District exceed 20,000 acres, as estimated at the date hereof, then the District agrees to pay upon such excess area at the same rate per acre as is hereby fixed for said 20,000 acres, such payment to be made with final annual installment hereunder.

7. The United States covenants and agrees that upon the delivery to it by the District of the waivers against claims for damages as hereinabove provided and the payment by the District of the sum of Twenty-three Thousand Five Hundred Dollars (\$23,500), and upon the execution and approval of this contract the United States will cause the gates in said Klamath Strait to be closed and to be kept closed, except as herein otherwise provided, during the continuance of this contract, barring acts of God and unavoidable accidents beyond the control of the United States; provided that the material and labor necessary for the closing thereof shall be provided by and at the expense of said District, the same to be installed under the direction of the Project Manager; provided further that the United States shall have and retain the right to open said gates at the times and in the manner prescribed and contemplated by paragraph 2 hereof free from claim or claims for damages by reason thereof; and provided further that should it at any time become advisable or necessary in the judgment of the District to convey water through said gates in connection with the reclamation of its lands the control of said gates shall in such case be under regulations prescribed by the United States.

8. It is further understood and agreed that the absolute and complete control of said gates in Klamath Strait shall be and remain in the United States until full and complete payment to the United States has been made of the said sum of \$283,225, with any accrued interest, whereupon control thereof may be surrendered by the United States upon such terms and conditions as may be mutually agreed upon by the United States and the occupants and owners of a majority of said 54,000 acres as herein designated.

9. It is further understood and agreed that the United States shall not be obligated to construct any portion of the system required for the irrigation or drainage of said, or any, marsh or swamp lands, nor to operate or maintain such works, nor to expend any further sums toward the reclamation of said marsh or swamp lands, nor does the United States assume any responsibility for the success of their reclamation.

10. This contract shall be binding on the parties hereto only upon the approval hereof by the Director of the United States Reclamation Service.

11. No interest in this agreement shall be transferred by the District to any other party without the written consent of the United States, and any such transfer shall cause annulment of the contract so far as the United States is concerned; all rights of action, however, for breach of this contract are reserved to the United States, as provided by section 3737, Revised Statutes of the United States.

12. No Member of or Delegate to Congress, or Resident Commis-

sioner after his election or appointment, or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Government, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in section 116 of the act of Congress approved March 4, 1909 (35 Stat. L. 1109).

13. IN WITNESS WHEREOF this instrument has been executed on behalf of the Klamath Drainage District by its duly elected, qualified and acting President and Secretary, respectively, thereunto duly authorized by resolution of its board of Supervisors dated November 13th, 1917, a certified copy of which is hereto attached, and on behalf of the UNITED STATES OF AMERICA by its duly authorized officer the day and year first above written.

Signed, sealed and delivered
in the presence of us as
witnesses:

E. V. Hillius
C. C. Hogue

UNITED STATES OF AMERICA

BY J. B. Bond

E. V. Hillius
C. C. Hogue

KLAMATH DRAINAGE DISTRICT

By M. Motschenbacher
President

By A. A. McHaffey
Secretary

CORPORATE SEAL

State of Oregon)
County of Klamath) ss.

THIS CERTIFIES that on this 30th day of November, 1917, before me, the undersigned, C. C. Hogue, a Notary Public in and for said County and State, personally appeared the within named M. Motschenbacher and A. A. Mehaffey, President and Secretary, respectively, of the within named Klamath Drainage District, a corporation, and they being known to me to be such officers and the identical persons described in and who executed the within instrument for and on behalf of the said corporation, and said corporation being known to me to be the identical corporation for and on whose behalf the said instrument was executed, and said M. Motschenbacher and A. A. Mehaffey did then and there acknowledge to me that they did as such officers as in this certificate described execute the said instrument as and for the act and deed of said corporation in whose name and behalf they executed said instrument, and affixed thereto the corporate seal of said corporation, under authority in them vested by the Board of Supervisors of said corporation.

WITNESS my hand and Notarial seal the day and year last aforesaid.

C. C. Hogue
Notary Public for Oregon.

My commission expires April 22, 1921.

(Seal).

Klamath Falls, Oregon,
November 30th 1917

State of Oregon)
County of Klamath) ss
The Klamath Drainage District)

I, A. A. Mehaffey of the Board of Supervisors of the Klamath Drainage District, Klamath County, Oregon, do hereby certify that the following is a true copy of a resolution adopted by the Board of Supervisors of the Klamath Drainage District, and is of record in the minutes of a meeting of said Board of Supervisors, held at the office of said Klamath Drainage District in the City of Klamath Falls, Oregon, on the 10th day of November 1917:

"BE IT RESOLVED by the Board of Supervisors of the Klamath Drainage District of Klamath County, Oregon, that the President and Secretary of the Board of Supervisors of the Klamath Drainage District be, and they are hereby authorized and directed to execute a waiver waiving all claims for damages against the United States of America, its successors and assigns, that may have been or may hereafter be caused to the Klamath Drainage District either directly or indirectly by the closing, or subsequent closing, of the flood gates in Klamath Strait, as it passes through the railroad embankment forming the dike across Lower Klamath Lake marsh lands in Township 40 South, Range 8 East, W.M. Oregon."

A. A. Mehaffey
Secretary of the Board of
Supervisors of the Klamath
Drainage District.

(Corporate Seal)

17

Klamath Falls, Oregon, November 30th 1917.

STATE OF OREGON)
) SS
COUNTY OF KLAMATH)

I, A. A. Mehaffey, Secretary of the board of Supervisors of the Klamath Drainage District, Klamath County, Oregon, do hereby certify that the following is a true copy of a resolution adopted by the Board of Supervisors of said Klamath Drainage District, and it is of record in the minutes of a meeting of said board of Supervisors, held at the office of said Klamath Drainage District in the City of Klamath Falls, Oregon, on the 13th day of November 1917.

"WHEREAS, the owners of the lands within the boundaries of the Klamath Drainage District, of Klamath County, Oregon, at an election held upon the 31st day of October 1917 unanimously approved and authorized the creation of an indebtedness amounting to the sum of \$115,387.96 for the purpose of carrying out the "plan of reclamation" heretofore adopted by the Board of Supervisors, and approved by the County Court of Klamath County, Oregon, and

WHEREAS, the "plan of reclamation" provides in part for "daming the flow from Klamath River into the Strait",

NOW, THEREFORE, be it resolved, that the Board of Supervisors of the Klamath Drainage District do hereby authorize and instruct the President and Secretary of said board to execute a contract with the United States of America for "daming the flow from Klamath River into the Strait" by closing the openings in the head gate structure in the California-Northeastern (now S.P.) railroad embankment where it crosses the said Strait at Ady, Oregon. A draft of said contract was submitted by the United States and adopted by said board of Supervisors and made a part of the minutes of a meeting held by said Board on the 25th day of July 1917."

A. A. Mehaffey
Secretary of the Board of
Supervisors of the Klamath
Drainage District.

(Corporate Seal)

Klamath Falls, Oregon, November 30th,
1917

STATE OF OREGON)
) SS
COUNTY OF KLAMATH)

I, A. A. Mehaffey, Secretary of the board of Supervisors of the Klamath Drainage District, do hereby certify that the following is a true copy of the action of the Board of Supervisors of the Klamath Drainage District relative to the levy of a tax to cover the amount named in a contract between the said District and the United States of America, said levy being in accordance with the provisions of Chapter 186, General Laws of Oregon, 1917, all of which appears in the minutes of a meeting of said board of Supervisors held on the 20th day of September 1917.

"The matter of the levying of sufficient tax of the necessary portion of benefits on all the lands in the District to which benefits have been assessed, now coming before the Board, and it appearing to this Board that the sum of \$104,898.15 will be required as payment to the Government of the United States of America for the closing of the gates under the railroad embankment leading into Klamath Straits, and that an additional amount for emergencies under the provisions of Section 17 of Chapter 340 of the General Laws of Oregon for 1915, the aggregate of which amounts to approximately \$115,387.96, the following resolution was adopted.

BE IT RESOLVED by the Board of Supervisors of the Klamath Drainage District, of Klamath County, Oregon, that a tax of \$5.77 per acre be and the same is hereby assessed against the lands within the boundaries of the Klamath Drainage District to which benefits have been assessed under the decree of the County Court of the State of Oregon, for Klamath County, modifying and amending the report of the Commissioners heretofore appointed to assess such benefits, the said levy being necessary to pay the costs of the completion of the proposed works and improvements as shown in said "plan of reclamation" heretofore adopted and approved by the County Court of the State of Oregon for Klamath County, and in carrying out the objects of said District. The foregoing tax to be apportioned to and levied upon each tract of land in said District in proportion to the benefits assessed, and the Secretary of the board be and he is hereby directed to at once prepare a list of all taxes levied and enter same in a book which shall be endorsed and named a Drainage Tax record of Klamath Drainage District", said book to be properly signed and certified to and the seal of the District to be attached to same in accordance with the provisions of Sec. 17 Chapter 340 of the General Laws of Oregon for 1915".

(Corporate Seal)

A. A. Mehaffey
Secretary of the Board of Supervisors
of the Klamath Drainage District,
Klamath County, Oregon.

Klamath Falls, Oregon, November 30th 1917

STATE OF OREGON)
) ss
COUNTY OF KLAMATH)

I, A. A. Mehaffey, Secretary of the Board of Supervisors of the Klamath Drainage District, of Klamath County, Oregon, do hereby certify that the following is a true copy of a motion duly adopted by the board of Supervisors of the Klamath Drainage District, and is of record in the minutes of a meeting of said board of Supervisors, held at the office of said Klamath Drainage District in the City of Klamath Falls, Oregon, on the 25th day of July 1917. Also, the action of the said board relative to the plan of reclamation adopted, said action being taken at the meeting aforesaid.

"After consideration of the methods of reclamation recommended in the Engineers report, the Board by motion regularly made, seconded and unanimously carried, adopted recommendation No. 2, to-wit, By daming the flow from Klamath River into the Strait and allowing the water in the Lake to evaporate."

"On motion duly made, seconded and carried, the board accepted an agreement presented by the United States in which for a consideration of \$104,898.15 to be paid by the Klamath Drainage District, the United States agrees to dam the flow of water from the Klamath River into the Klamath Strait as recommended in the District Engineers report, the said agreement is hereto attached and made a part of these minutes."

A. A. Mehaffey
Secretary of the Board of Supervisors of the Klamath Drainage District.

(Corporate Seal)

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE
KLAMATH PROJECT, OREGON

Form of proposed contract between the United States and the Klamath
Drainage District, approved by the Department
of the Interior, August 9, 1921.

THIS AGREEMENT made and entered into this 24th day of August, A.D. 1921, in pursuance of the Act of Congress of June 17, 1902 (32 Stat., 388) known as the Reclamation Act, and acts amendatory thereof or supplementary thereto, and in particular Section 2 of the Act of Congress approved February 21, 1911 (36 Stat., 925) known as the Warren Act, by and between the United States of America, acting in this behalf by E. C. Finney, First Assistant Secretary, hereinafter styled the "United States", and the Klamath Drainage District, a public corporation organized and existing under the laws of the State of Oregon, with its principal place of business in Klamath County, Oregon, and its office at Klamath Falls, Oregon, hereinafter styled the "District",

WITNESSETH:

2. WHEREAS the United States and the District entered into a contract dated the 30th day of November, A.D. 1917, under and by the terms of which the United States has kept closed the gates in the channel connecting the Klamath River and Lower Klamath Lake, and known as the Klamath Straits, in Klamath County, Oregon, which has resulted in uncovering certain lands in Lower Klamath Lake, and

3. WHEREAS such uncovered area includes lands in the State of Oregon, which lands are within the boundaries of the Klamath Drainage District, and also lands in the State of California, and

4. WHEREAS the District desires to secure from the United States a water right for the lands of said District,

NOW THEREFORE, for and consideration of the mutual and dependent covenants herein contained, it is hereby agreed as follows:

5. The United States shall deliver to the District during the irrigation season each year at the strait opening in the railroad embankment on the northern boundary of the District, a sufficient quantity of water for the irrigation of the irrigable lands of the District, not exceeding 27500 acres. The United States shall not be liable for failure to supply water under this contract caused by hostile diversion, drought, interruption of service made necessary by repairs, damages caused by floods, unlawful acts or unavoidable accidents.

6. The United States shall install at its own expense permanent iron gates at the place of delivery for the control of water through the strait opening in said railroad embankment.

7. Beneficial use shall be the basis and limit of all right acquired by the District hereunder. The water herein specified to be delivered shall be supplied solely to District lands within the limits of the District as now organized and shall be used solely for irrigation and purposes incidental thereto.

8. The District agrees:

(a) To pay to the United States the sum of Fifty Thousand Dollars (\$50,000) in ten annual installments of Five Thousand Dollars

((\$5,000) each, the first of such installments to be due and payable December 31 of the year first following the year when water is first used for irrigation of the District lands, as determined by the Project Manager of the U. S. Reclamation project, but in any event not later than December 31, 1928.

(b) The sum to be paid by the District under Article 8 (a) hereof is conditional upon the storage works at the outlet of Upper Klamath Lake being constructed by the California-Oregon Power Company under the provisions of a certain contract between the United States and said Company dated February 24, 1917. Should such storage works be constructed otherwise than under the provisions of said contract, the quantity of water to which the District shall be entitled under this contract shall be such proportion of the storage capacity provided by such works as Fifty Thousand Dollars bears to the total expenditure by the United States in utilizing Upper Klamath Lake as a storage reservoir. The right to the use of available additional water, in such event, may be acquired by the District at a rate to be fixed by the Secretary of the Interior.

(c) To pay to the United States, as an operation and maintenance charge, on the 31st day of December each year, first following the year when water is first used for irrigation of the District lands, as determined by the Project Manager of the U. S. Reclamation Project, its proper proportion of the cost of regulating the water level of Upper Klamath Lake and any cost incurred by the United States in delivering to the District any water as provided by this contract, including such amount for overhead charges as may

be fixed by the Secretary of the Interior, the determination of the Secretary of the Interior of such amounts to be conclusive.

(c) To so construct its main irrigation canals that they may be utilized for the irrigation of the uncovered lands of Lower Klamath Lake in California, and the District hereby grants to the United States the right to enlarge and extend said main canals of the District, and to convey water through such channels for the irrigation of said lands in California; provided however, that no part of the cost of such enlargement shall be borne by the District, and that the lands in California utilizing such canals shall bear their proportionate cost of the construction of said canals, prior to such enlargement, in so far as the canals so built by the District are utilized for such California lands, and their proportionate part of the cost of operating and maintaining said canals. The California lands shall also bear all cost of extending or rebuilding bridges over said canals in the District made necessary by the enlargement of such canals for the benefit of California lands.

9. The terms of this contract shall inure to the benefit of and be binding upon the successors in interest and assigns of either party hereto.

10. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment or either before or after he has qualified and during his continuance in office, and no officer, agent, or employee of the Government, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement

is made for the general benefit of such incorporation or company, as provided in section 116 of the act of Congress approved March 4, 1909 (35 Stat., L. 1109).

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

THE UNITED STATES OF AMERICA

By E. C. Finney

First Assistant Secretary

(Corporate seal) Signed Oct. 25, 1921.

KLAMATH DRAINAGE DISTRICT

By M. Motschenbacher, President

By C. R. DeLap, Secretary.

State of Oregon,

County of Klamath, ss

This certifies that on this 26th day of August 1921, before me the undersigned, a Notary Public in and for said State and county personally appeared M. Motschenbacher President, and C. R. DeLap Secretary respectively of the Klamath Drainage District a corporation, each known to me to be the identical person described in and who executed the within and foregoing instrument, and acknowledged to me that they executed the same freely and voluntarily for the use and purposes therein stated as President and Secretary thereof. And the said C. R. DeLap acknowledged to me that the seal affixed to said instrument is the seal of said corporation, and that he was authorized to affix the same thereto by resolution adopted by the Board of Supervisors held at their office on August 24th 1921.

In attestation thereof, witness my hand and notarial seal this the day and year first in this my certificate above written.

Mildred Thrasher

Notary Public for Oregon.

My commission expires Nov. 14, 1924.

(Notarial Seal)

I, C. R. DeLap, Secretary of the Board of Supervisors of the Klamath Drainage District, Klamath County, Oregon, do hereby certify that the following is a true and correct copy of a resolution adopted by the Board of Supervisors of the said Klamath Drainage District and is of record in the minutes of a meeting of the Board of Supervisors, held at the office of the District at Klamath Falls, Oregon, on the 24th day of August, 1921:

"Be It Resolved by the Board of Supervisors of the Klamath Drainage District of Klamath County, Oregon, that the President and Secretary of the Board of Supervisors of the Klamath Drainage District be, and they are hereby authorized, empowered and directed to sign a certain contract of even date wherein and whereby the United States agrees to furnish to the said Klamath Drainage District a water right for its said lands located within Klamath County, Oregon."

(Sgd.) C. R. DeLap
Secretary of the Board of
Supervisors of the Klamath
Drainage District.

(Corporate Seal)

State of Oregon,

County of Klamath, ss.

This certifies that on this 26th day of August 1921, before me personally appeared C. R. DeLap, known to me to be the identical person who signed the above and foregoing resolution, also known to me to be the Secretary of the Klamath Drainage District, and acknowledged to me that he executed the same freely and voluntarily for the uses and purposes therein expressed.

Witness my hand and official seal this the day and year above written in this my certificate.

(Sgd.) Mildred Thrasher
Notary Public for Oregon.
My commission expires Nov. 14, 1924.

(Notarial Seal)