Northern Pacific Railway Company. Engineering Department Records.

Version 3
August 20, 2018

N. P. 1757
6-24

OFFICE OF

FILE NO. 8731-E-1

SUBJECT:

Columbia Basin Project

Agreements Covering Canal Crossings

to Dec 31st 1949

File 11203 Bacon - Bridge 114 W. C. Bed
" 11391 Agco Siphon MP 124+3767
" 11649 Wheeler Rocky Coulee Wasteway
" 11718 Barrett Jct - Wasteway Bridge MP 32+3844

8731-E-1

Instrument Room

Closed

CB-1301

" 11720 Atwood Spur - Bridges MP 36+445 and 37+3759 - 35+5325

" 11913 Barham Weber Creek Syphon MP 4+2210 Ridgecrest Branch

" 11951 Wheeler (Mitchell Spur) Pipeline under Bridge No 1444 (Loca No 42)

8731

E-1

St. Paul, Minnesota
December 9, 1949

Mr. J. T. Derrig:

Your letter of November 21st in regard to Bureau of Reclamation plans covering three proposed undercrossings of our Washington-Central Line between Adrian and Connell.

I am returning prints as follows:

Bridge over East Low Canal Sta. 1811+00, our M. P. 35+5321. This is represented by Sheet 222-D-14283. On this drawing there is indicated in red our desire that the riprapping be extended about 11' further on each side of the bridge than shown on the plan. It is true that the slope of the canal is shown as $1\frac{1}{2}$ - 1, but on the basis that such slope beyond the limit of the riprap shown on the Bureau's drawing will slough under water action to a flatter slope, we believe it desirable for protection of our embankment that the riprap be extended as indicated in red.

I have also approved Bureau Sheet 222-D-14280 for bridge proposed over East Low Canal, their Sta. 1635+50, our M. P. 37+3759. On this drawing we are asking for extension of the riprap a distance of about 12' beyond that shown on the drawing on the acute corner of each abutment. This for reason given above for Drawing 14283.

I am also returning approved with certain corrections Bureau drawing for the Weber Wasteway, our M. P. 32+3844.

I have approved Plans 222-D-14290 and 14291 as noted.

On Drawing 14290 we are asking for extension of the riprap an additional distance of 10' as shown in red.

On Drawing 14291 several changes are desired in the reinforcing steel and a slight increase in the length of the parapet wall of the abutments in order to obtain a 20' shoulder.

Drawing 14292 is approved.

Enc.
BB:1

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COLUMBIA RIVER DISTRICT — COLUMBIA BASIN PROJECT
IRRIGATION DIVISION
EPHRATA, WASHINGTON

December 9, 1949

Mr. J. T. Derrig, Asst. Chief Engineer
Northern Pacific Railway Company
181 King Street Station
Seattle 4, Washington

My dear Mr. Derrig:

Designs of the lateral crossings of the Connell Northern Branch of the Northern Pacific Railway in Area E-1 have been completed along the lines tentatively agreed to in previous correspondence. Under separate cover are transmitted drawings showing the locations and details of these crossings and appurtenant structures as follows:

222-D-14538 - General Map. (In duplicate)
222-D-14569 - Concrete Pipe Railroad Crossings--
Diameter 24" to 60". (In duplicate)
222-D-14576 - Concrete Transitions
222-D-14577 - Check and Pipe Inlet
222-D-14584 - Division Boxes with Pipe Inlet
222-P- 8147 - Railroad and Highway X-ing,
EL6.9H - Station 105+65.07
222-P- 8148 - Railroad X-ing, EL16 - Station 132+54.2 R.
222-P- 8149 - Railroad X-ing, EL16B - Station 132+08.25
222-P- 8150 - Railroad X-ing, EL16C - Station 37+23.60
222-P- 8151 - Railroad X-ing, EL18 - Station 110+96.34

Drawing 222-D-14569 is submitted in duplicate with a certificate of approval. If you approve the crossing designs, will you please sign one copy of this drawing and return for our files. The rest of the drawings you may keep. The last crossing listed on Drawing 222-D-14569, for Lateral EL18NW, is on the Moses Lake Airbase railroad and can be ignored by you. The Class "D" pipe referred to on the individual crossing profile drawings is standard strength reinforced concrete culvert pipe.

Bids will be opened December 14, 1949, for construction of the laterals. Prior to beginning construction of these crossings

St. Paul, Minnesota
December 8, 1949

Mr. Bernard Blum:

Referring to your notation on Mr. Derrig's letter of November 21st to you regarding U. S. Reclamation Bureau canal crossings at Basset Junction, Atwood Spur and Wheeler, Washington.

We have checked over the plans which Mr. Derrig has sent us and I am returning them to you for your signature. I have stamped approved as noted for your signature Sheet 222-D-14283 for bridge over East Low Canal Sta. 1811+00, our M. P. 35+5321. On this drawing we have indicated in red that the ripraping should be extended about 11' further on each side of the bridge than shown on the plan. This distance was established on the basis of carrying out the riprap a sufficient length at the bottom of the canal to give us a 1 3/4 - 1 slope up to the parapet abutment.

I have also stamped approved as noted for your signature Sheet 222-D-14280 for bridge over East Low Canal at Sta. 1635+50.38, our M. P. 37+3759. On this drawing we have also called for the extension of the riprap a distance of about 12' beyond that shown on their drawing on the acute side of each abutment. The extension is to obtain the 1 3/4 - 1 slope similar to that of the other bridge.

Mr. Derrig calls your attention to the fact that the plans for the Weber Wasteway, Sta. 117+06, East Low Canal, Sta. 1951+00, our M. P. 32+3844, has not yet been approved. He states that the Bureau wishes to riprap the banks of the canal lining on 1½ - 1 slope in preference to changing the canal side slope 1 3/4 - 1 as you had previously requested. These plans were submitted to me by Mr. Derrig on October 4th for checking. They consist of Drawings 222-D-14290, 222-D-14291, 222-D-14292 and 222-P-7315.

We have stamped approved as noted for your signature Drawings 222-D-14290 and 222-D-14291.

On Drawing 222-D-14290 we have requested that they extend the riprap an additional distance of 10' as shown in red in order to obtain a 1 3/4 - 1 slope from the abutment.

On Drawing 222-D-14291 we have made several changes in the reinforcing steel as shown in red. We have also requested a slight increase in the length of the parapet wall of the abutments in order to obtain a 20' shoulder.

Drawing 222-D-14292 is stamped approved for your signature.

Letters and file returned.

C. E. Ebberg

Enc.
CEE:1

Mr. Bernard Blum:

Referring to your a station on Mr. Borell's letter of November 6, to you regarding U. S. Reclamation Bureau canal crossing at Dassel, Minnesota, Minnesota and Highway, Minnesota.

We have checked over your plans which Mr. Borell has sent us and I am returning them to you for your information. I have attached approved as noted for your signature Sheet 22-P-1/2B2 for bridge over Fort Ion Canal Sta. 1+11+70, our 2+[illegible]. On this drawing we have indicated in red that the structure should be extended along 11 further on each side of the bridge than shown on the plan. This difference was established on the basis of carrying out the strong a sufficient 1 on the bottom of the canal to give us a 1 3/4 - 1 slope up to the present abutment.

I have also approved and noted as noted for your signature Sheet 222-P-1/2C0 for bridge over Fort Ion Canal at 1 a. 1+70+70, our 2. P. 37+37+70. On this drawing we have also noted for the extension of the riprap a distance of about 1 1 beyond that shown on this drawing on the south side of each abutment. The extension is to obtain the 1 3/4 - 1 slope similar to that of the other bridge.

Mr. Borell calls your attention to the fact that the plans for the Fort Tuesday, Sta. 1+46, Fort Ion Canal, Sta. 1+21+70, our 2. P. 32+38+1, has not yet been approved. He states that Duncan wishes to start the bridge of the canal during on 1 1 - 1 slope in preference to changing the canal side slope 1 3/4 - 1. He has not formally requested. These plans were [illegible] to us for [illegible] on October 4th for checking. They consists of drawings 222-P-1/2C0, 222-P-1/2C1, 222-P-1/2C2 and 222-P-1/2C3.

We have stamped approved as noted the plans, structure drawings 222-P-1/2C0 and 222-P-1/2C1.

On drawing 222-P-1/2C0 we have requested that they extend the riprap an additional distance of 10' as shown in red in order to obtain a 1 3/4 - 1 slope for the structure.

On drawing 222-P-1/2C1 we have made several changes in the reinforcing steel as shown in red. We have also requested a slight increase in the length of the curbs wall of the abutments in order to obtain a 20' abutment.

Drawing 222-P-1/2C2 is returned marked for your signature.

Letters are returned.

[illegible]

Mr Elsberg
Pls check
11/30 B.

Seattle, Washington
November 21, 1949

Mr. Bernard Blum:

Bassett Jct. - Weber wasteway, MP 32+3844,
U.S. Stat. 11706 - File: 511-3
Atwood Spur - East Low Canal, MP 35+5321,
U.S. Stat. 1811+00 - File: 719-1
Wheeler - East Low Canal, MP 37+3759, U.S. Stat.
1635+50 - File: 637-4

Please see your letter of October 25 regarding the plans which you had previously approved for the U. S. Reclamation Bureau Service East Low Canal crossings at our MP 35+5321, U. S. Station 1811+00 near Atwood Spur and East Low Canal crossing at MP 37+3759, U. S. Station 1639+50 near Wheeler, and calling attention to the fact that the U. S. had only provided for the embankment supporting the track on the slope of 1½ to 1.

You also called attention to the fact in that letter that there still remained for approval the U. S. plans for the Weber Wasteway at our MP 32+3844, U. S. Station 117+06, near Bassett Junction; the U. S. plans for this particular location also calling for a 1½ to 1 slope.

I wrote Mr. Banks, District Engineer of the U. S. Department of Interior Bureau of Reclamation, calling his attention to this fact and asking that they correct their plans to show a 1-3/4 to 1 slope.

I am attaching three copies of Mr. Parker's letter of November 17, together with three prints each of the Department's drawings Nos. 222-D-14280 and 222-D-14283, from which you will note he advises due to the fact that the specifications for the construction and the purchase of the structural steel for the bridges are ready for issuance, that the redesigning of the bridges for the 1-3/4 to 1 slope would cause undesirable delays and, therefore, the 1½ to 1 canal slopes have been retained but that the drawings have been revised to protect such slopes at the bridge sites with an 18" layer of dumped riprap placed on a 6" layer of gravel and extending 20' in each direction from the track center line. These drawings refer to the two East Low Canal crossings at our MP 35+5321 and 37+3759.

You will note in the last paragraph of Mr. Parker's letter regarding the Weber Wasteway crossing at MP 32+3844, calling attention to the fact that we havenot yet approved the plans for this particular crossing, that it is also proposed to riprap the 1½ to 1 slopes above the canal lining for a width of 20' each side of the center line of the bridge and that this had been done in preference to changing the canal side slopes to 1-3/4 to 1.

If the program as now outlined by the Department of Interior is satisfactory to you, will you please sign and return two sets of the attached prints in order that I may return them to the Department as requested in their letter, also advise if the setup as outlined at MP 32+3844 is satisfactory to you.

Assistant Chief Engineer

ANB:dl
Encs.

cc HMT
EMT

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia River District - Columbia Basin Project
IRRIGATION DIVISION
EPHRATA, WASHINGTON

November 17, 1949

Mr. J. T. Derrig, Assistant Chief Engineer
Northern Pacific Railroad Company
181 King Street Station
Seattle 4, Washington

COPY

Dear Mr. Derrig:

Please refer to your letter of October 27, 1949, and other previous correspondence concerning the location and design of railroad bridge s for the Connell North Branch crossing our East Low Canal at Stations 1635+50.38 and 1811+00.

As the specifications for the construction and the purchase of the structural steel for the bridges are ready for issuance, the redesigning of the bridges for the 1-3/4:1 slopes will cause undesirable delays. Therefore, the 1½:1 canal slopes have been retained but the drawings have been revised to protect such slopes at the bridge sites with an 18-inch layer of dumped riprap placed on a 6-inch layer of gravel and extending 20 feet in each direction from the track center line.

Enclosed herewith are six prints each of Drawing Nos. 222-D-14280 and 222-D-14283, showing the aforementioned revisions circled in pencil.

It will be appreciated if you will review these revisions and as an indication of your approval sign and return two prints of each drawing to this office.

Regarding the bridge over the Weber Wasteway at our Station 117+06, your M. P. 32+3844, on the Connell North Branch which has not yet been approved, it is proposed to riprap the 1½:1 side slopes above the canal lining for a width of 20 feet each side of the center line of the bridge. This has been done in preference to changing the canal side slopes to 1-3/4:1 slope and it is hoped this revision will meet with your approval.

Sincerely yours,

Enclosures 12

H. A. Parker
Supervising Engineer

TELEGRAM

N.P. RY. ST. PAUL
TELEGRAPH OFFICE

1949 OCT 27 PM 4 55

NP67CF EB SEATTLE 27 212P

BERNARD BLUM STP

YOUR LETTER OF THE 25TH ABOUT PROVIDING 1 3/4 SLOPE FOR PROPOSED

WASTEWAY MP 32 PLUS 3844 NEAR BASSETT JUNCTION DO YOU CONSIDER

ANY OTHER REVISISIONS NECESSARY ON THESE PLANS OUTSIDE OF PROVIDING FOR THE 1 3/4 SLOPE FOR THE ENBANKMENT IF SO ADVISE IF AS THIS WILL

EXPEDITE COMPLETION OF PLANS I HAVE REQUESTED MR BANKS TO REVISE PLANS

BRIDGES AT MP 35 PLUS 5321 AND 37PLUS 3759 WHEELER TO PROVIDE

1 3/4 SLOPE WILL ADVISE FURTHER WHEN I HAVE HIS REPLY

Plans handed C E E 11/30

D-37

This were taken on trip 11/4/49
Returned from Leave 11/9

J T DERRIG.

~~11718~~

Saint Paul, October 25, 1949

A i r m a i l

MR. J. T. DERRIG:

On October 6 I approved plans of the Reclamation Service for openings under our CONNELL NORTHERN line at station 1811 + 00 (our MP 35 + 5321) and at station 1635 + 50 (our MP 37 + 3759).

I was just leaving town and signed the drawings without detailed examination, being in a hurry to leave. My attention is now drawn to the fact that the slopes of not only the embankment behind the abutments but even the slopes of the excavation for the waterway are shown as 1½:1; and apparently there is no paving to be provided for these slopes.

Last May I approved the Rocky Coulee wasteway at statio 139 + 81 but the waterway slopes were shown paved. On one of the drawings the test boring showed that the waterway will be excavated out of compacted soil, but I cannot imagine that theslope will remain stable at a slope of 1½:1.

I also note that the slope of the embankment supporting the track is likewise indicated to be 1½:1. As you know, we are now showing such slopes at 1 3/4:1 which is none too flat, especially at a bridge end.

There still remains for our approval a bridge at station 1951 + 00 (our MP 32 + 3844) and their plan shows slopes under water as well as embankment for our track at 1½:1 with no paving or lining shown for the waterway.

Before I return the latter plan I wish you would take up with the Bureau and call their attention to this matter and see if they will not revise the slopes and what they are figuring on for maintaining the slope of their waterways where they are shown as 1½:1. I realize that this is a rather embarrassing situation, in view of having approved the plans as submitted. I have just talked to Mr. Ekberg; and he had overlooked it and his checker made no reference to these slopes.

The above stationing is that of the canal, and not of the Railway.

bb/s
x

St. Paul, Minnesota
October 24, 1949

Mr. Bernard Blum:

Referring to Mr. Moore's letter of October 10th to Mr. Thames with copy to you regarding wasteway bridges on Washington-Central Branch, formerly Connell Northern. This letter refers to the approval of the following three bridges:

Bridge at M. P. 35+5321 near Atwood Spur, Washington over East Low Canal. This bridge consists of three 37' wide beam spans on masonry, total length of bridge is 115' 11". This bridge is further identified by the U.S.B.R. Sta. 1811+00 and N. P. Sta. 1323+20. Plans were approved October 6, 1949.

quote

Bridge at M. P. 37+3759 near Wheeler, Washington over East Low Canal. This bridge consists of four 37' wide beam spans 147' 10" long on masonry. This bridge is further identified by the U. S.B.R. Sta. 1635+50.38, equals N. P. Sta. 1228+36. This plan was approved October 6, 1949.

Bridge at M. P. 32+3844 near Bassett Junction over Weber Wasteway of East Low Canal. This bridge consists of two 16' I-beam approach spans and one 49' wide beam span on masonry. It is located at Sta. U.S.B.R. 1951+00, N. P. Sta. 1491+51. These plans are now being checked.

You will note from the above that only two bridges have been checked and approved by you on October 6, 1949. They are the bridges at M. P. 35+5321 and M. P. 37+3759, Washington-Central Branch.

File and letter returned.

C. E. Ehlers

Enc.
CEE:l

Mr. Fern, Chief
October 24, 1949

Mr. Forrest Evans:

Referring to Mr. Jensen's letter of October 5th to Mr. Thomas which may be of some regarding waterway crossings on Washington-Oregon Canal, Columbia Basin Project. This letter refers to the approval of the following three bridges:

Bridge at M. P. 15+[illegible] near Quincy, Washington over Main Low Canal. This bridge is a replica of Arrow 3W which has been spanned on March 5, Bond Length of bridge is 140' 11". This bridge is similar to that built by the U.S.B.R. See Jackson and M. P. 22+[illegible]. Plans were approved October 6, 1949.

Bridge at M. P. 27+[illegible] near Dalmar, Washington over Main Low Canal. This bridge consists of Arrow 3W which has been repeated for long span. This bridge is identical to the [illegible] M. P. [illegible] equals M. P. [illegible]. This plan was approved October 6, 1949.

Bridge at M. P. 38+[illegible] near Pasco, Washington over Low Waste Way of Main Low Canal. This bridge consists of two 15' 1"-span on crest spans and one 15' wide beam span on barrel. It is located at Sta. [illegible]. 1941+00, M. P. [illegible]. These plans are now being checked.

You will see from the above that only two bridges have been checked and approved by you in October 6, 1949. They are the bridges at M. P. [illegible] and M. P. 37+[illegible], Washington-Oregon Branch.

File and letter returned.

Enc.
GEE:L

Saint Paul, October 20, 1949

MR. J. T. DERRIG:

Your letter of the 17th to Mr. Tremaine, copy to various officers, about preparing RFAs for waterways constructed by the Bureau of Reclamation on the CONNELL NORTHERN for the Columbia Basin project:

It is true that when we met last week at Garrison you brought up this matter and I said to you that it was desirable to have such AFEs.

I have just reviewed the subject with several of our people and apparently it is not necessary to have AFEs for such construction where the work is borne entirely by the Government; and therefore we cannot capitalize same.

In any event there is no necessity for Mr. Tremaine to prepare RFA data. That is a waste of time, for certainly no authority is required for an AFE for a project that is already done.

This matter was discussed the past year and you have copy of our letter of August 15 advising of the approval of three government projects for waterways on the Connell Northern so that we would all have a record of what was being done.

In view of the present campaign to reduce paper work we will refrain at the present time from submitting AFEs for such projects. We should however have the physical property change report showing the stationing, and type of structure, after the work is done so that our profiles and station plats can be brought up to date.

cc-Mr. P. G. Ramswick

tb/s

Copy given to W H Gahn 10/31/50

8731.E1

COPY

Saint Paul, October 20, 1949.

MR. J. T. DERRIG:

Your letter of the 17th to Mr. Tremaine, copy to various officers, about preparing RFAs for waterways constructed by the Bureau of Reclamation on the CONNELL NORTHERN for the Columbia Basin project.

It is true that when we met last week at Garrison you brought up this matter and I said to you that it was desirable to have such AFEs.

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In any event there is no necessity for Mr. Tremaine to prepare RFA data. That is a waste of time, for certainly no authority is required for an AFE for a project that is already done.

The matter was discussed the past year and you have copy of our letter of August 15 advising of the approval of three government projects for waterways on the Connell Northern so that we would all have a record of what was being done.

In view of the present campaign to reduce paper work we will refrain at the present time from submitting AFEs for such projects. We should however have the physical property change report showing the stationing, and type of structure, after the work is done so that our profiles and station plats can be brought up to date.

cc: Mr. P. G. Ramswick

bb/s

/s/ BERNARD BLUM

Seattle, October 18,1949.

Mr. J. E. Thames,
Industrial Agent,
St. Paul, Minnesota.

Columbia Basin Project.

You have copy of Mr. Derrig's letter of October 17 1949 to Mr. Tremaine about the following wasteway bridges:

Bridge at MP 35 plus 5321 near Atwood Spur.
Bridge at MP 37 plus 3759 near Wheeler.
Bridge at MP 32 plus 84 near Bassett Junction.

For your files and information I attach copy of my letter of June 6, 1949 to Mr. Gottschald and copy of his reply of June 9,1949.

I assume that Mr. Blum will advise the interested departments as to the approval of government plans for each project in the same manner he did on August 15, 1949.

(Signed) J. T. Moore

Industrial Agent.

JT M-L

enc.

cc: Mr. B. Blum,
Mr. J. T. Derrig.

copy

St. Paul, Minnesota
June 9, 1949.

Mr. J. T. Moore, Industrial Agent,
Seattle, Washington.

Replying to your letter of June 6 about agreement of March 29,1949, between the United States Government and this Company granting us the right to construct, reconstruct, operate and maintain railroad works upon or across any Columbia Basin Project waterway, transmission way, and reserved way, and to the United States perpetual rights to construct, reconstruct, operate and maintain waterway works and transmission lines upon or across any railroad line within the project:

While we have been designated as custodian of the above document and have furnished copies to interested departments, its terms place upon the Chief Engineer the responsibility for approval of any proposed action by the Government, and he would doubtless act for the Company in any notice to the Government of proposed action on our part.

Under the circumstances, it would seem to us that such notice as is necessary to interested departments of the Railway Company, either as to action by the Government or on our part might properly be given by the Chief Engineer with a copy to this office for filing with the original agreement. In our opinion, the plans for the facilities to be constructed need not necessarily be placed with the signed copy of the general agreement in our possession.

(sgd) A.M. Gottschald
Secretary.

g/n

cc: Mr. Bernard Blum
Mr. J. F. Alsip.

copy

Seattle, Washington,
June 6, 1949.

Mr. A. M. Gottschald,
Secretary,
St. Paul, Minnesota.

Docket No. 20277-Agreement dated March 29,1949, between the United States of America and the Northern Pacific Railway Company, covering crossing of canals, water conduits and communication lines in the Columbia Basin project by present and future tracks of the Railway Company:

Section 9 of this agreement reads as follows:

"9. (a) The party desiring to exercise the rights granted under articles 7 and 8 shall notify the other party in writing prior to the beginning of construction. Such notice shall be given only immediately before the rights are to be utilized by the construction of a crossing. The notice shall be accompanied by a plat showing the proposed crossing and by plans for the facilities proposed to be constructed. The party receiving the notice shall promptly approve or disapprove the proposed crossing, indicating in the latter instance the reasons therefor. The Company will not refuse approval of reasonable plans submitted by the United States if such plans provide for a class of permanent construction, other than wood, equal or superior to the standard of construction then currently used by the Company itself for similar purposes; and the United States will not refuse approval of reasonable plans submitted by the Company, 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 plat; approval of the United States shall be given by the Regional Director, Region 1, Bureau of Reclamation; approval of the Company shall be given by its Chief Engineer.

(b) In case of the United States, the notice shall be given to the contracting officer, and in the case of the Company, the notice shall be given to the Chief Engineer, whose office is in St. Paul 1, Minnesota."

It has been suggested that this office advise our interested officers of the exercise of these rights by the Government. Since this section provides that approval of the plans of the U. S. shall be given by the Railway Company's Chief Engineer it would seem to me that this approval would constitute a part of this agreement and should be filed in your office and

that you would then wish to advise those to whom you had sent copy of Docket No. 20277 that plans for certain structures had been approved by Mr. Blum and that the construction and maintenance of these structures would be governed by the terms of this agreement.

I would be pleased if you will advise me that the procedure above suggested is agreeable to you.

J. T. Moore

Industrial Agent.

JTM/dn

Copy: Mr. B. Blum
Mr. J. T. Derrig
Mr. J. F. Alsip.

Seattle, Washington
October 17, 1949

Mr. H. M. Tremaine:

Columbia Basin Project

In connection with new wasteways placed by the Government under our trackage on the Connell Northern Branch in connection with the Columbia Basin Project we have covered the opening at MP 114 with AFE 710-48. File 11203

The siphon placed by the Government at MP 124+3767, according to our records has not been covered by an AFE. For the purpose of correcting our records I think it advisable that such papers be prepared and I will thank you to submit an estimate and sketch to the Superintendent for originating an AFE for record purposes. File 11391

In this connection the wasteway bridge, Mitchell Spur has not been covered by formal improvement papers and wish that you would also submit sketch and estimate to the Superintendent for preparation of said improvement papers to cover this project, for record purposes.

The Reclamation Department has also submitted detail plans for wasteway bridges at the following locations:

Bridge at MP 35+5321 near Atwood Spur. File 11720
Bridge at MP 37+3759 near Wheeler. " 11649
Bridge at MP 32+84 near Bassett Junction. " 11718

In order that our records may be kept up to date in connection with new bridge openings for this project, please arrange to submit RFA data to Superintendent Dorfler for originating an RFA for these 3 bridge openings. In submitting the RFA data please indicate the percentage of completed work, if any.

The above bridges are to be constructed and paid for by the Government under blanket agreement dated March 29, 1949. However, to keep our records up to date Mr. Blum has agreed that an RFA should be submitted for each of the projects.

No

See reply 10/20/49

I am forwarding a copy of this letter to Messrs. Moore and Thames as our right of way department will undoubtedly wish to furnish a memorandum easement covering the right of way requirements at each location.

J. T. DERRIG
Assistant Chief Engineer

JTD/m
cc BB
JFA
JTM
JET
CED
FAM

St. Paul, August 15, 1949.

Mr. W. W. Judson
Mr. J. F. Alsip
Mr. R. S. Macfarlane
Mr. F. W. Stetekluh 3
Mr. J. V. McGuire
Mr. J. E. Thames
Mr. J. T. Moore

Mr. E. A. McCrary
Mr. F. O. Kersten
Mr. C. E. Dorfler 3
Mr. F. L. Steinbright 2
Mr. J. T. Derrig
Mr. H. M. Tremaine
Mr. R. E. Keck

Referring to Secretary A. M. Gottschald's letter dated May 27, 1949, transmitting copy of Docket No.-20277 Agreement dated March 29, 1949, covering crossing of canals, water conduits, and communication lines on the Columbia Basin Project by present and future tracks of the Railway Company:

For exercise of rights by Government to construct waterway crossings, Section 9 of agreement requires submission by Government of notice and plans to Railway Company Chief Engineer for approval.

In order that everyone concerned may be kept advised as to installation of Government waterway crossings in railway roadbed, Mr. Gottschald, Secretary, has suggested that this office issue notice as to approval of Government plans for each project. The construction and maintenance of such structures is covered by the above agreement.

To date Government plans have been approved for the following projects:

Bridge 114 at 2 miles east of Bacon, Washington Central Branch, covered by AFE 710-48, work completed. New Bridge 173.7' long, constructed by government over Main Canal, consists of four steel deck girder beam spans, each about 42 ft. long, on concrete piers and abutments; replaced pile and timber trestle.

MP 124+3767 Dry Coulee Siphon No.-1 of the West Canal: 25 ft. inside diameter, reinforced concrete siphon, at MP 124 + 3800 near Adco, Washington Central Branch, construction completed 1947-48.

Br #143 Government plans approved July 19, 1949, for bridge over Rocky Coulee Wasteway, of East Low Canal, Ry. Sta. 950+31 = MP. 42+5164 near Wheeler, Washington Central Branch (formerly Connell Northern Branch) Bridge to consist of 63 ft. thru plate steel girder span on concrete abutments.

BERNARD BLUM,

Chief Engineer.

CC--Mr. A. M. Gottschald

File

St. Paul, Minn.
Aug. 15th, 1949.

Messrs W. W. Judson
J. F. Alsip
R. S. Macfarlane
F. W. Stetekluh 3
J. V. McGuire
J. E. Thames
J. T. Moore
E. A. McCrary
F. O. Kersten
C. E. Dorfler 3
F. L. Steinbright 2
J. T. Derrig
H. M. Tremaine
R. E. Keck:

Referring to Secretary A. M. Gottschald's letter dated May 27, 1949, transmitting copy of Docket No. 20277 Agreement dated March 29, 1949, covering crossing of canals, water conduits, and communication lines on the Columbia Basin project by present and future tracks of the Railway Company:

For exercise of rights by Government to construct waterway crossings, Section 9 of agreement requires submission by Government of notice and plans to Railway Company Chief Engineer for approval.

In order that everone concerned may be kept advised as to installation of Government waterway crossings in railway roadbed, Mr. Gottschald, Secretary, has suggested that this office issue notice as to approval of Government plans for each project. The construction and maintenance of such structures is covered by the above agreement.

To date Government plans have been approved for the following projects:

Bridge 114 at 2 miles east of Bacon, Washington Central Branch, covered by AFE 710-48, work completed. New Bridge 173.7' long, constructed by government over Main Canal, consists of four steel deck girder beam spans, each about 42 ft. long, on concrete piers and abutments; replaced pile and timber trestle.

Dry Coulee Siphon No. 1 of the West Canal: 25 ft. inside diameter, reinforced concrete siphon, at MP. 124+3800 near Adco, Washington Central Branch, construction completed 1947-48.

Government plans approved July 19, 1949, for bridge over Rocky Coulee Wasteway, of East Low Canal, Ry. Sta. 950+31=MP. 42+5164 near Wheeler, Washington Central Branch (formerly Connell Northern Branch) Bridge to consist of 63 ft. thru plate steel girder span on concrete abutments.

BERNARD BLUM,
Chief Engineer.

cc-Mr. A. M. Gottschald
bc-Mr. C. E. Ekberg
bc-Mr. T. W. Dennis

8731 E.

Saint Paul, Minnesota
June 9, 1949

Mr. J. T. Moore, Industrial Agent
Seattle, Washington

Replying to your letter of June 6 about agreement of March 29, 1949, between the United States Government and this Company granting us the right to construct, reconstruct, operate and maintain railroad works upon or across any Columbia Basin Project waterway, transmission way, and reserved way, and to the United States perpetual rights to construct, reconstruct, operate and maintain waterway works and transmission lines upon or across any railroad line within the project:

While we have been designated as custodian of the above document and have furnished copies to interested departments, its terms place upon the Chief Engineer the responsibility for approval of any proposed action by the Government, and he would doubtless act for the Company in any notice to the Government of proposed action on our part.

Under the circumstances, it would seem to us that such notice as is necessary to interested departments of the Railway Company, either as to action by the Government or on our part might properly be given by the Chief Engineer with a copy to this office for filing with the original agreement. In our opinion, the plans for the facilities to be constructed need not necessarily be placed with the signed copy of the general agreement in our possession.

(Signed) A. M. Gottschald

Secretary

g/n

cc: Mr. Bernard Blum
Mr. J. F. Alsip

Seattle, Washington
June 6, 1949

Mr. A.M. Gottschald
Secretary
St. Paul, Minnesota

C.E
C-3687

Docket No. 20277-Agreement dated March 29, 1949, between the United States of America and the Northern Pacific Railway Company, covering crossing of canals, water conduits and communication lines in the Columbia Basin project by present and future tracks of the Railway Company:

Section 9 of this agreement reads as follows:

"9. (a) The party desiring to exercise the rights granted under articles 7 and 8 shall notify the other party in writing prior to the beginning of construction. Such notice shall be given only immediately before the rights are to be utilized by the construction of a crossing. The notice shall be accompanied by a plat showing the proposed crossing and by plans for the facilities proposed to be constructed. The party receiving the notice shall promptly approve or disapprove the proposed crossing, indicating in the latter instance the reasons therefor. The Company will not refuse approval of reasonable plans submitted by the United States if such plans provide for a class of permanent construction, other than wood, equal or superior to the standard of construction then currently used by the Company itself for similar purposes; and the United States will not refuse approval of reasonable plans submitted by the Company, 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 plat; approval of the United States shall be given by the Regional Director, Region 1, Bureau of Reclamation; approval of the Company shall be given by its Chief Engineer.

(b) In case of the United States, the notice shall be given to the contracting officer, and in the case of the Company, the notice shall be given to the Chief Engineer, whose office is in St. Paul 1, Minnesota."

It has been suggested that this office advise our interested officers of the exercise of these rights by the

Government. Since this section provides that approval of the plans of the U.S. shall be given by the Railway Company's Chief Engineer it would seem to me that this approval would constitute a part of this agreement and should be filed in your office and that you would then wish to advise those to whom you had sent a copy of Docket No. 20277 that plans for certain structures had been approved by Mr. Blum and that the construction and maintenance of these structures would be governed by the terms of this agreement.

I would be pleased if you will advise me that the procedure above suggested is agreeable to you.

J.T. Moore
Industrial Agent

JTM/dn

Copy: Mr. B. Blum
Mr. J.T. Derrig
Mr. J.F. Alsip

87318

3682

Docket No. 20277
Saint Paul, Minnesota
May 27, 1949

Mr. W. W. Judson, Vice President
Mr. J. F. Alsip, General Manager, Seattle
Mr. Robert S. Macfarlane, Executive Vice President, Seattle
Mr. F. W. Stetskluh, Comptroller (3)
Mr. J. V. McGuire, District Accountant, Tacoma
Mr. J. E. Thames, Industrial Agent,
Mr. J. T. Moore, Industrial Agent, Seattle
Mr. E. A. McCrary, Tax Commissioner
Mr. F. C. Kersten, Western Tax Commissioner, Seattle
Mr. C. E. Dorfler, Superintendent, Spokane (3)
Mr. F. L. Steinbright, Superintendent of Telegraph (2)
Mr. Bernard Blum, Chief Engineer (2)
Mr. J. T. Darrig, Assistant Chief Engineer, Seattle
Mr. H. M. Tremaine, District Engineer, Spokane
Mr. R. E. Keck, General Claim Agent

Attached hereto is copy of agreement dated March 29, 1949, between United States of America and Northern Pacific Railway Company, covering crossing of canals, water conduits, and communication lines on the Columbia Basin project by present and future tracks of the Railway Company.

Distribution of this agreement is limited to the list shown above. It must not be copied and distributed to other departments or subordinate officers without approval of the Secretary.

Kindly acknowledge receipt on the enclosed form.

A. M. GOTTSCHALD
Secretary

bmn
atts.

I74r-974

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

Docket # 20277

AGREEMENT WITH NORTHERN PACIFIC RAILWAY COMPANY AS TO CROSSINGS

Index

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

AGREEMENT WITH NORTHERN PACIFIC RAILWAY COMPANY
AS TO CROSSINGS

THIS CONTRACT, made this 29th day of March, 1949, 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 Reclamation Project Act of 1939 (53 Stat. 1187) and the Columbia Basin Project Act (57 Stat. 14), and the pertinent portion of section 2 of the Act of August 30, 1935 (49 Stat. 1028, 1039), referred to hereinafter as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, herein styled the United States, represented by the Contracting Officer executing this contract, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation, hereinafter styled the Company,

WITNESSETH, THAT:

2. WHEREAS, the United States is engaged in the construction, under the Federal Reclamation Laws, within the State of Washington, of the Columbia Basin Project, hereinafter called the project; and

3. WHEREAS, the works of the project include and will include a network of waterways and water conduits, of telephone and telegraph transmission lines, and lines for transmission of electrical or other power, 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 Sec. 7412 of Rem. Rev. Stat. of Washington, the Act of Congress of August 30, 1890 (26 Stat. 391) or other Acts of Congress; and

4. WHEREAS, the Company now owns a network of railroad lines adjacent to and within the project area and may from time to time relocate or add to these lines, and for these lines it now owns or may hereafter acquire lands in fee simple or rights of way of various kinds; and

5. 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

6. Wherever used in this contract:

The term "waterway works" shall mean any canal, ditch, lateral, sublateral, drain, spillway, wasteway, siphon, pipe line, or other waterway or water conduit, including riprap or other protection therein, and any road required in connection with the construction or operation of such works, built or to be built as part of the project works.

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

The term "project waterway" shall mean any land owned in fee or any right of way, excluding "reserved ways", designated by the United States as the site for any waterway works.

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

The term "reserved way" shall mean any right of way which is in fact and in law reserved to the United States under Sec. 7412, Rem. Rev. Stat., 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 "railroad line" shall mean any land owned in fee or any right of way owned by the Company and used or designated by it as the site for its railroad lines built or to be built by it.

The term "railroad works" shall mean any railroad line and appurtenant works built or to be built in connection with the railroad system of the Company.

The term "project" shall mean the Columbia Basin Project as described in the Secretary's report of January 31, 1945 (H. Doc. No. 172, 79th Cong., 1st Sess.), or as it may be revised from time to time.

RIGHT OF WAY GRANTED TO THE COMPANY

7. The United States hereby grants to the Company, subject to the provisions of this contract, rights to construct, reconstruct, operate and maintain railroad works upon or across any project waterway, transmission way, and reserved way. The rights in each instance shall take effect from the date of the approval of the Company's application made under the provisions of article 9 hereof and shall extend for a period of fifty (50) years from that date, subject to renewals of the term as provided in article 16 hereof. 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 Company will 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 Company for railroad purposes.

RIGHT OF WAY GRANTED TO THE UNITED STATES

Construction of USBR facilities

8. The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights to construct, reconstruct, operate and maintain waterway works and transmission lines upon or across any railroad line within the project. The right in each instance shall take effect from the date of the approval of the application by the United States, made under the provisions of article 9 hereof. In any instance where the grant herein made is with respect to land in which the Company has only a right of way or easement, the United States will obtain any additional grants or consents from the owners of such interests 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

9. (a) The party desiring to exercise the rights granted under articles 7 and 8 shall notify the other party in writing prior to the beginning of construction. Such notice shall be given only immediately before the rights are to be utilized by the construction of a crossing. The notice shall be accompanied by a plat showing the proposed crossing and by plans for the facilities proposed to be constructed. The party receiving the notice shall promptly approve or disapprove the proposed crossing, indicating in the latter instance the reasons therefor. The Company will not refuse approval of reasonable plans submitted by the United States if such plans provide for a class of permanent

construction, other than wood, equal or superior to the standard of construction then currently used by the Company itself for similar purposes; and the United States will not refuse approval of reasonable plans submitted by the Company, 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 plat; approval of the United States shall be given by the Regional Director, Region 1, Bureau of Reclamation; approval of the Company shall be given by its Chief Engineer.

(b) In case of the United States, the notice shall be given to the contracting officer, and in the case of the Company, the notice shall be given to the Chief Engineer, whose office is in St. Paul 1, Minnesota.

COST OF CROSSINGS INITIATED BY COMPANY

10. (a) Where a right for the Company to cross a project waterway, transmission way, or a reserved way has been approved under the provisions of article 9 hereof, and at the time of that approval, waterway works or transmission lines at the point of crossing are in existence, or are being built by Government forces or are under contract to be built for the United States, the Company 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 9 hereof.

(b) Where a right for the Company to cross a project waterway, transmission way, or reserved way has been approved under the provisions of article 9 hereof and at the time of that approval no waterway works or transmission lines are in existence at the point of crossing or are being built or are under contract to be built, the Company, when building its railroad works 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 works or transmission lines to be built later by the United States, or (2) construct at the request of the United States, if practicable, its railroad works 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 works or transmission lines without added undue expense or inconvenience on account thereof. The added cost to the Company of providing facilities under (1) and (2) of this subarticle will 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 ten per cent (10%) 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 Company shall submit to the United States an itemized bill of the added cost required to be paid by the United States hereunder.

(c) Whatever crossing facilities are required to be constructed by the Company 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

11. (a) Where a right for the United States to cross a railroad line, including lines occupying lands over which the United States owns a reserved way, has been approved under the provisions of article 9 hereof, and at the time of that approval railroad works are in existence or are being built by Company

forces or are under contract to be built for the Company, 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 9 hereof.

(b) Where a right for the United States to cross a railroad line has been approved under the provisions of article 9 hereof, and at the time of that approval no railroad works are in existence at the place of crossing or are being built or under contract to be built, the United States, when building its waterway works or transmission lines at the place of crossing, will (1) provide, at the request of the Company, crossing facilities necessary to accommodate the railroad works to be built later by the Company, or (2) construct, at the request of the Company, if practicable, its waterway works or transmission lines in such a manner that will enable the Company, within a reasonable time after the completion thereof to construct the crossing facilities necessary to accommodate its railroad 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 will be borne by the Company. 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 ten per cent (10%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the crossing facilities in any case under (1) and (2) of this subarticle, the United States shall submit to the Company an itemized bill of the added cost required to be paid by the Company. Payment of such cost shall be made promptly after the presentation of such bill.

Provisions for future Ry facilities

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

MANNER OF CONSTRUCTING CROSSINGS BY UNITED STATES

12. The United States, in constructing or reconstructing crossings under a grant pursuant to the provisions of article 8 of this contract, shall do as follows:

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

(b) Such construction work shall be conducted so that the Company railroad works will be closed to traffic for as brief a period as possible with the United States paying the cost of any Company flagmen which, in the judgment of the Company, may be necessary. Upon request of the Company, 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 railroad line shall be replaced or renewed so that, upon completion of the crossing, the railroad line and railroad works will be in as good condition as they were prior to such construction work by the United States.

MANNER OF CONSTRUCTING CROSSINGS BY COMPANY

13. The Company, in constructing or reconstructing a crossing pursuant to a grant under article 7 of this contract, shall conduct its work as follows:

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

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any waterway works, and in the event that the Company constructs any structure authorized pursuant to the provisions of

article 7 of this contract during an irrigation season, which for the purpose of this contract shall be from the fifteenth (15th) day of March to the fifteenth (15th) day of October of each year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the contracting officer, for the purpose of conveying the water flowing in the waterway works along the regular course without waste or loss 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 and waterway works will be in as good condition as they were prior to the construction work by the Company.

CHANGES IN COMPANY STRUCTURES

14. All grants by the United States, pursuant to article 7 of this contract, 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 the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company, 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 officer. Also, in the event the Company abandons any of its railroad works over a project waterway, the Company 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 Company.

CHANGES IN UNITED STATES STRUCTURES

15. All grants by the Company, pursuant to article 8 of this contract, are subject to the condition that in the event the Company determines that by reason of a change in a railroad line it is necessary that the structure or structures installed by 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 Company, shall at its sole cost and expense make such changes, reconstruction, or addition as shall be designated and approved by the Company. Also, in the event the United States abandons any of its waterway works or transmission lines upon or across any railroad line, 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 Chief Engineer to restore the railroad line to its condition prior to the construction of such structure or structures by or for the United States.

CONTINUATION OF THE PERIOD OF GRANT OF RIGHT OF WAY AND EASEMENT

16. (a) Any rights granted to the Company for the period of fifty (50) years pursuant to the provisions of article 7 of this contract shall automatically be renewed at the end of said period for such maximum period of time as may then be permitted under the laws of the United States, unless affirmative action is taken by the United States prior thereto refusing to renew the same.

(b) If the period of such rights granted to the Company pursuant to article 7 expire without the rights being continued or renewed, the Company shall, at its sole cost and expense, remove the structure or structures constructed by the Company, or do whatever is required by the contracting officer to restore the project waterway, transmission way, or reserved way to its condition prior to the construction of such structure by the Company.

TITLE TO AND MAINTENANCE OF CROSSING FACILITIES

17. (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 railroad works and which portion or portions shall be deemd a part of the waterway works or transmission line. In this connection, all bridges, trestles, embankments and fills supporting railroad tracks, all track structures, railroad signals and telephone and telegraph facilities installed for the benefit of the Company shall be deemed to comprise a part of the railroad works of the Company, and all canals, ditches, laterals, sublaterals, drains, spillways, wasteways, siphons, culverts, or other waterway or water conduits, including riprap or other protection therein, and all telephone and telegraph transmission lines and all electrical or other power transmission lines installed for the benefit of the United States shall be deemed to comprise a part of the waterway works or transmission lines of the United States. 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 Regional Director, Region 1, Bureau of Reclamation, and on behalf of the Company by its Chief Engineer.

(b) The United States and the Company shall replace their respective structures with new structures approved by the other party from time to time as the necessity arises, and shall make such repairs as may be necessary to protect waterway works, transmission lines or railroad works from damage or interference from said structures. It shall be the duty of the United States

and of the Company 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 Company in maintaining or replacing their respective structures shall be done in a good workmanlike manner.

(d) In the event the United States or the Company 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 works, transmission line, or railroad works, 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.

RIGHT TO ENTER ON OTHER'S RIGHT OF WAY

18. The United States and the Company, 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 works, transmission lines, or railroad works, including all structures and crossings which may be built in pursuance of the provisions of this contract.

CONTRACTORS OF UNITED STATES TO FURNISH INSURANCE

19. The United States agrees that in every contract which it shall let for the construction of any waterway works or transmission line upon or across any railroad line it shall provide that the contractor shall assume all liability for and protect, indemnify and save harmless the Company from and against any and all loss, cost, suit, damage or expense on account of personal injury to or death of any and all persons whomsoever, and damage to property to whomsoever belonging, in any manner growing out of the performance of such contract, and shall furnish to the Company before the commencement of any work of construction a policy of insurance written in an insurance company satisfactory to the Company, in form and amount to be approved by the Company, insuring the liability so assumed by the contractor.

AUTHORIZED REPRESENTATIVE OF THE UNITED STATES

20. Wherever the Contracting Officer is referred to herein it is intended to include his successor or duly authorized representative, and for all purposes of this contract, except where another officer is specifically designated, the officer in charge of the Columbia Basin Project is designated the representative of the Contracting Officer.

CONDITIONS OF LABOR

21. (a) No laborer or mechanic doing any part of the work contemplated by this contract on structures constituting a part of the waterway works or transmission lines of the United States, in the employ of the Company or any subcontractor contracting for any part of said work contemplated, shall be required or permitted to work for more than eight hours in any one calendar day

upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the Company or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars ($5.00) shall be imposed upon the Company for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government; PROVIDED, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, title 40, sections 321, 324, 325, 325A and 326, relating to hours of labor and compensation for overtime.

(b) The Company shall not employ any person undergoing sentence of imprisonment at hard labor.

CONTINGENT ON APPROPRIATIONS

22. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriations for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the Company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

DISCRIMINATION AGAINST EMPLOYEES OR APPLICANTS FOR EMPLOYMENT PROHIBITED

23. The Company in constructing any facility constituting a part of the waterway works or transmission lines of the United States, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all subcontracts: PROVIDED, HOWEVER, That this clause does not refer to, extend to or cover the business or activities of the Company which are not related to or involved in the performance of this contract.

DOMESTIC PREFERENCES

24. In the performance of the work covered by this contract on any facility constituting a part of the waterway works or transmission lines of the United States the Company, subcontractors, material men or suppliers shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. The foregoing provision shall not apply to such articles, materials, or supplies of the class or kind to be used or such articles, materials, or supplies from which they are manufactured, as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be excepted by the head of the Department under the proviso of title III, section 3, of the Act of March 3, 1933, 47 Stat. 1520 (U. S. Code, title 41, sec. 10b).

OFFICIALS NOT TO BENEFIT

25. 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.

SUCCESSORS AND ASSIGNS BOUND

26. The provisions of this contract shall be binding upon and inure to the successors and assigns of the parties hereto.

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

THE UNITED STATES OF AMERICA

By /s/ R. J. Newell
Regional Director, Region 1,
Bureau of Reclamation

NORTHERN PACIFIC RAILWAY COMPANY

By /s/ C. E. Denney
President

ATTEST:

(Signed) A. M. Gottschald
Secretary

- - -

STATE OF IDAHO)
: ss.
County of Ada)

On this 27th day of April, 1949, personally appeared before me R. J. Newell, to me known to be the official of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

/s/ W. L. Vernon
Notary Public in and for the
State of Idaho
Residing at Boise
My commission expires 1/24/53

(SEAL)

- - -

STATE OF MINNESOTA)
: ss.
County of Ramsey)

On this 29th day of March, 1949, before me personally appeared C. E. Denney, to me known to be the ____ President of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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

/s/ C. B. Theits
Notary Public in and for the
State of Minnesota
Residing at St. Paul, Minn

(SEAL)

My commission expires Jan. 24, 1951

8731

St. Paul, May 19, 1949.

Mr. W. W. Judson:

Your letter of March 31st enclosing executed agreement with the Federal Government dated March 29, 1949, covering the crossing of canals, water conduits and communication lines on the Columbia Basin project by present and future tracks of the Railway Company:

This agreement has now been executed on the part of the Government and I am returning the Northern Pacific copy of the agreement to you as requested.

BERNARD BLUM

Chief Engineer

TRG:S
attch.

cc: A. M. Gottschald: You verbally requested that you be furnished with thirty additional copies of this agreement for distribution. These additional copies are attached.

B.B.

Copy

Seattle, Washington
May 16, 1949

29-5-1

Mr. Bernard Blum:

U. S. Columbia River Basin Projects -
Agreement with U. S. covering various
water openings

Your letter of April 1, your file 8731-E, with which you returned copy of agreement with the U. S. in connection with the above-mentioned subject:

This agreement has now been executed on the part of the U. S., and I am returning the Northern Pacific's executed copy of this agreement which is dated March 29, 1949.

In your letter of April 1 you stated that Mr. Gottschald desired 30 copies of this agreement for distribution purposes, and I am sending, in addition to the executed copy, 30 extra copies.

I am forwarding this data to you under separate cover by Register No. 36770.

We have not retained a copy of this for our files, assuming that the proper distribution will be made by Mr. Gottschald.

J T Deming Jr
Assistant Chief Engineer

ANB:dl

St. Paul, Minnesota
April 1, 1949

File: 8731-E

Mr. J. T. Derrig:

With reference to your letter of March 17 regarding agreement with the United States in connection with the Columbia River Basin project -- Various Water Openings:

The agreement that you submitted in duplicate has been executed by Mr. Denney, and both copies are returned for your further handling for execution by the United States.

When the agreement has been fully executed, will you please request that the N. P. Ry. copy be returned to me?

Mr. Gottschald requests that he be furnished with 30 additional copies of the agreement. You will please request this number and send them to me for furnishing to Mr. Gottschald.

BERNARD BLUM

JEH/jwm
attach.

St. Paul, Minn., March 31, 1949.

Mr. Bernard Blum:

Your letter of March 28, File 8331-E, enclosing in duplicate proposed contract with the Federal Government covering the crossing of canals, water conduits and communication lines on the Columbia Basin project by present and future tracks of the Railway Company.

Both copies of the agreement have been executed and are returned herewith for similar action on the part of the Federal Government. When the agreement is fully executed, pleasesee that the Northern Pacificcopy is returned to this office for filing.

W W Judson

3 copies

St. Paul, Minnesota
March 28, 1949

File: 8731-E

Mr. W. W. Judson:

Please refer to your letter of November 30, 1948, in which you advised that it was permissible to inform the Government that the draft of contract between the Railway Company and the United States covering crossing of canels, water conduits, etc., as well as communication and power lines on the Columbia Basin project by present and future tracks of the Northern Pacific, was satisfactory.

The agreement has now been submitted for execution on the part of the Railway Company, and attached find, in duplicate, originals of the blanket crossing agreement between the United States and the Railway Company.

The agreement has been initialed by the west end officers and is in satisfactory form according to Mr. Krengel who also has initialed the agreement. I have indicated approval by initialing same, and recommend that the agreement be executed on the part of the Railway Company.

JEH/jwm
attach.

BERNARD BLUM

St. Paul, Minn., March 24, 1949

Subject: (2540)

Mr. Bernard Blum:

The agreement with the United States, submitted with your letter of March 24, appears to be in satisfactory form. The instrument has been initialed and it is returned together with the attached correspondence.

A. B. Kengel

Attorney.

K:a
Encs.

8731E

St. Paul, Minnesota
March 24, 1949

Mr. H. B. Krengel:

Attached find blanket crossing agreement between the United States and the Railway Company which may be encountered in connection with the Columbia Basin project in the State of Washington.

This agreement is now submitted for execution by the Railway Company as you will note from the correspondence attached.

The draft of the agreement submitted to you for approval was initialed by you and returned with your letter of November 10, 1948. I informed Mr. Derrig on December 2, 1948 that the draft was satisfactory to the Railway Company.

If the agreement which is now submitted for execution is satisfactory as to form, will you please initial and return together with the correspondence attached?

BERNARD BLUM

JEH/jwm
attach.

Seattle, Washington
March 17, 1949

29-5-1

Mr. Bernard Blum:

Agreement with the U. S. in connection with Columbia River Basin Project - various water openings

I am attaching a copy of Mr. Boggs' letter to me of March 8 regarding proposed blanket agreement between the U. S. and the Railway Company covering water openings under our track in connection with their Columbia River Basin Project.

I think you are quite familiar with this subject, and Mr. Boggs' letter is self-explanatory. I have initialed the proposed agreement. It has also been initialed by Mr. Alsip, and I am attaching both copies and if you consider it satisfactory, will you please have it executed on the part of the Railway Company and return both copies to me for further handling with Mr. Boggs.

You will note Mr. Boggs has inquired as to the number of copies of this agreement that the Railway Company will require. I presume we will wish about 25 copies. Will you please also advise as to this question.

J T Deny B

Assistant Chief Engineer

ANB:dl
Encs.

C
O
P
Y

Seattle, Washington
March 8, 1949

29-5-1

Mr. J. T. Derrig:

RE: Columbia River Basin Project

Enclosed are duplicate originals of the proposed blanket crossing agreement between the United States and the Railway Company. This contract is in the form which Mr. Blum advised you on December 2, 1948, was satisfactory to the Railway Company.

Mr. R. B. Williams, Acting District Manager for the Bureau of Reclamation at Coulee Dam, in transmitting these copies, states that the agreement in this form has now been approved by the Secretary of the Interior and that the Regional Director has been authorized to execute the same on behalf of the United States. I am asked to have the proper officer of the Northern Pacific execute the agreement in duplicate and, after that has been done, to return the two originals for execution by the Regional Director. One duplicate original will then be returned to the Railway Company with as many conformed copies as we may require.

I suggest that with return of the attached copies, after they have been executed by the Railway Company, you advise how many copies the Railway Company will need.

I have initialed the Railway Company's copy.

s/ HAROLD G. BOGGS

Saint Paul, December 2, 1948

MR. J. T. DERRIG:

Your letter of November 2 transmitting one copy of proposed agreement with the Bureau of Reclamation covering crossings of the lines of railway of the Northern Pacific by waterways, power lines, and communication lines of the COLUMBIA BASIN PROJECT:

The draft of contract which you sent me, initialed by the Western District officers is satisfactory to the Northern Pacific; and Mr. Lemargie should be so advised, to the end that he may progress the approval with Washington and the contract duly executed.

cc-Mr. J. F. Alsip
Mr. H. G. Boggs

bb/s

St. Paul, Minn., November 30, 1948

Mr. Bernard Blum:

Referring to your letter of November 12 about the agreement to cover the crossing of canals, water conduits, etc., as well as communication and power lines on the Columbia Basin Project by present and future tracks of the Northern Pacific:

You may inform the Government that the draft of contract which was sent with your letter is satisfactory to the Northern Pacific Railway Company.

Saint Paul, November 12, 1948

MR. W. W. JUDSON:

For over two years our West End officers have been working with the attorneys of the U S Bureau of Reclamation on an agreement to cover the crossing of canals, water conduits, etc. as well as communication and power lines on the COLUMBIA BASIN PROJECT by present and future tracks of the Northern Pacific.

During this period I have conferred with Mr. daPonte on the various drafts submitted and discussed the various revisions with Mr. Derrig and Western Counsel on my various visits to Seattle.

The agreement has finally been whipped into shape where it is satisfactory to our law office and draft has been prepared, and initialed by Mr. Boggs of the office of Western Counsel, and by Messrs. Derrig, Burgess, Alsip, and Krengel of the St. Paul office. I believe that this draft is satisfactory and I have initialed it.

Attached to the draft is a copy of Mr. Boggs' letter of September 29 to attorney Lemargie of the Bureau, with copy of Mr. Lemargie's letter of October 14 to Mr. Boggs, and copy of Mr. Boggs' letter of October 15 to Mr. Derrig.

Your attention is called to the request of the Government that the contract be not executed for the Railway Company until approved by Washington. But one copy of the draft has been submitted to us so that it can receive Railway approval before the several copies are finally executed. I assume that as soon as the Washington office of the Bureau approves the draft we will be notifed, and supplied with the originals.

bb/s
x
att.

St. Paul, Minn., November 10, 1948

Subject: Proposed agreement between the Northern Pacific Railway Company and the United States Government. Columbia Basin Project. (2540)

Mr. Bernard Blum:

The form of the agreement with the United States Government covering crossings which may be encountered in connection with the Columbia Basin project in the State of Washington is satisfactory. I have initialed the contract and return it to you together with the attached correspondence.

L. B. Kruegel

Attorney

K:a
Encs.

St. Paul, Minnesota
November 9, 1948

File: 8731-E

Mr. L. B. daPonte:

Agreement has been drafted by the U. S. Bureau of Reclamation covering crossings with the Northern Pacific Railway as may be encountered in connection with the Columbia Basin project, State of Washington.

For your information I am transmitting correspondence received by Mr. Derrig from Mr. Boggs together with Mr. Derrig's letter of November 2.

Mr. Paul Lemargie, Chief of the Legal Division for the Bureau of Reclamation, advises that the agreement should not be executed by either party until it has been approved by their Washington office. All that is desired now by the Bureau of Reclamation is advice from us whether the agreement is in satisfactory form. You will note that Messrs. Boggs, Derrig, Burgess and Alsip have initialed the agreement indicating their approval.

If you approve as to form, will you please initial the agreement and return together with the attached correspondence?

JEH/jwm
attach.

BERNARD BLUM

Seattle, Wash.
Nov. 2, 1948

29-5-1

Columbia River Basin Project

Mr. Bernard Blum:

In further reference to my letter of October 25th to Mr. Alsip, copy to you, in respect to proposed agreement with the Reclamation Service covering placing of water openings, etc., Columbia Basin Project.

The original draft of this agreement is attached hereto from which you will note that it has been initialed by West End officers.

For your information there is attached copy of Mr. Boggs' letter of September 29th to the Regional Counsel together with his reply of October 14th and Mr. Boggs' letter of October 15th transmitting the above document to me.

Your particular attention is called to the fact that the Government have requested that this document should not be executed by the Railway Co.'s officers until it is passed upon by the Washington officers of the Reclamation Service. The attached document is submitted on the basis of it being a final draft. The Reclamation Dept. desire to know if the document will be satisfactory to the Ry. Co. It is my recommendation that the document be accepted as now submitted.

J. T. Dunning
Assistant Chief Engineer

JTD:c

Seattle, Washington
October 25, 1948

29-5-1

Mr. J. F. Alsip:

Columbia River Basin Project

I am attaching hereto draft of agreement as proposed between the Northern Pacific Railway Company and the United States Government covering respective responsibility of the Government and the Railway Company for the placing of water openings in connection with development of Columbia Basin Project. If this agreement meets with your approval, I will thank you to kindly initial the attached document and return to this office for further handling.

You will note Mr. Boggs' letter of October 15, copy attached, in which he states it is not desired that the Railway Company execute this agreement until it has been approved by the Washington officers of the government. It is desired, however, to have the document as now submitted reviewed and incorporate our final criticism and suggestions before executing the agreement.

For your further information, in connection with the approval of this document, there is attached hereto copy of the government's letter of October 14, suggesting that Article #22 be revised as indicated. It is my recommention that we accept the agreement as now submitted, and I have indicated my approval by initialing the attached document.

For your files I am attaching hereto one print copy of the draft of the agreement.

J. T. DERRIG

Asst. Chief Engineer

JTD:dl
Encs.

cc BB - I am attaching hereto print of the proposed agreement above referred to. You may wish to have this reviewed in your office pending receipt of the original copy. J.T.D.

29-5-1

COPY

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Coulee Dam, Wash.

October 14, 1948

Mr. Harold G. Boggs, Attorney,
Northern Pacific Railway Company,
909 Smith Tower,
Seattle 4, Washington

Re: Columbia Basin Project

Dear Mr. Boggs:

Enclosed are the original and three copies of a draft of proposed blanket crossing agreement (C.D.O. Draft 10-12-48), revised in accordance with the suggestions in your letter of September 29, 1948.

However, our Regional Office has recently requested, before your Company approves the proposed blanket crossing agreement, that we secure information from you as to whether there is any objection to substituting for Article 22 the following contingent on appropriation clause, to-wit:

> "The expenditure of any money or the performance of any work by the United States herein provided for, which may require appropriations of money by Congress or the allotment of federal funds, shall be contingent on such appropriations or allotments being made. The failure of Congress to appropriate funds, or the failure of any allotment of funds, shall not, however, relieve the Company from any obligations theretofore accrued under this contract, nor give the Company the right to terminate this contract as to any of its executory features. No liability shall accrue against the United States in case such funds are not so appropriated or allotted."

If there are no objections, the contingent on appropriation clause quoted above should be substituted for the one now appearing in Article 22 of the enclosed draft. On the other hand, if the suggested substitute contingent on appropriation clause is objectionable, it is my recommendation that you go ahead and submit the proposed agreement to your Company for approval as drafted.

The proposed agreement should not be executed by either party until it has been approved by our Washington Offices. We will submit it to them after you have advised us that it is satisfactory to your Company. As the Secretary of the Interior

approved our proposed blanket crossing agreement with the Great Northern Railway Company on September 22, 1948, I do not anticipate that we will have any trouble getting this agreement approved.

Sincerely yours,

Paul Lemargie
Chief, Legal Division.

CHIEF ENGINEER
8731-E

C.L.O. Draft
10-12-46

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

AGREEMENT WITH NORTHERN PACIFIC RAILWAY COMPANY AS TO CROSSINGS

Index

C.D.O. Draft
10-12-48

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

AGREEMENT WITH NORTHERN PACIFIC RAILWAY COMPANY
AS TO CROSSINGS

THIS CONTRACT, made this ____ day of _____, 19____, 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 Reclamation Project Act of 1939 (53 Stat. 1187) and the Columbia Basin Project Act (57 Stat. 14), and the pertinent portion of section 2 of the Act of August 30, 1935 (49 Stat. 1028, 1039), referred to hereinafter as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, herein sytled the United States, represented by the Contracting Officer executing this contract, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation, hereinafter styled the Company,

WITNESSETH, THAT:

2. WHEREAS, the United States is engaged in the construction, under the Federal Reclamation Laws, within the State of Washington, of the Columbia Basin Project, hereinafter called the project; and

3. WHEREAS, the works of the project include and will include a network of waterways and water conduits, of telephone and telegraph transmission lines, and lines for transmission of electrical or other power, 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 Sec. 7412 of Rem. Rev. Stat. of Washington, the Act of Congress of August 30, 1890 (26 Stat. 391) or other Acts of Congress; and

4. WHEREAS, the Company now owns a network of railroad lines adjacent to and within the project area and may from time to time relocate or add to these lines, and for these lines it now owns or may hereafter acquire lands in fee simple or rights of way of various kinds; and

5. 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

6. Wherever used in this contract:

The term "waterway works" shall mean any canal, ditch, lateral, sublateral, drain, spillway, wasteway, siphon, pipe line, or other waterway or water conduit, including riprap or other protection therein, and any road required in connection with the construction or operation of such works, built or to be built as part of the project works.

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

The term "project waterway" shall mean any land owned in fee or any right of way, excluding "reserved ways" designated by the United States as the site for any waterway works.

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

The term "reserved way" shall mean any right of way which is in fact and in law reserved to the United States under Sec. 7412, Rem. Rev. Stat., 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 "railroad line" shall mean any land owned in fee or any right of way owned by the Company and used or designated by it as the site for its railroad lines built or to be built by it.

The term "railroad works" shall mean any railroad line and appurtenant works built or to be built in connection with the railroad system of the Company.

The term "project" shall mean the Columbia Basin Project as described in the Secretary's report of January 31, 1945 (H. Doc. No. 172, 79th Cong., 1st Sess.), or as it may be revised from time to time.

RIGHT OF WAY GRANTED TO THE COMPANY

7. The United States hereby grants to the Company, subject to the provisions of this contract, rights to construct, reconstruct, operate and maintain railroad works upon or across any project waterway, transmission way, and reserved way. The rights in each instance shall take effect from the date of the approval of the Company's application made under the provisions of article 9 hereof and shall extend for a period of fifty (50) years from that date, subject to renewals of the term as provided in article 16 hereof. 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 Company will 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 Company for railroad purposes.

RIGHT OF WAY GRANTED TO THE UNITED STATES

8. The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights to construct, reconstruct, operate and maintain waterway works and transmission lines upon or across any railroad line within the project. The right in each instance shall take effect from the date of the approval of the application by the United States, made under the provisions of article 9 hereof. In any instance where the grant herein made is with respect to land in which the Company has only a right of way or easement, the United States will obtain any additional grants or consents from the owners of such interests 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

9. (a) The party desiring to exercise the rights granted under articles 7 and 8 shall notify the other party in writing prior to the beginning of construction. Such notice shall be given only immediately before the rights are to be utilized by the construction of a crossing. The notice shall be accompanied by a plat showing the proposed crossing and by plans for the facilities proposed to be constructed. The party receiving the notice shall promptly approve or disapprove the proposed crossing, indicating in the latter instance the reasons therefor. The Company will not refuse approval of reasonable plans submitted by the United States if such plans provide for a class of permanent

construction, other than wood, equal or superior to the standard of construction then currently used by the Company itself for similar purposes; and the United States will not refuse approval of reasonable plans submitted by the Company, 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 plat; approval of the United States shall be given by the Regional Director, Region 1, Bureau of Reclamation; approval of the Company shall be given by its Chief Engineer.

(b) In case of the United States, the notice shall be given to the contracting officer, and in the case of the Company, the notice shall be given to the Chief Engineer, whose office is in St. Paul 1, Minnesota.

COST OF CROSSINGS INITIATED BY COMPANY

10. (a) Where a right for the Company to cross a project waterway, transmission way, or a reserved way has been approved under the provisions of article 9 hereof, and at the time of that approval, waterway works or transmission lines at the point of crossing are in existence, or are being built by Government forces or are under contract to be built for the United States, the Company 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 9 hereof.

(b) Where a right for the Company to cross a project waterway, transmission way, or reserved way has been approved under the provisions of article 9 hereof and at the time of that approval no waterway works or transmission lines are in existence at the point of crossing or are being built or are under contract to be built, the Company, when building its railroad works 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 works or transmission lines to be built later by the United States, or (2) construct at the request of the United States, if practicable, its railroad works 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 works or transmission lines without added undue expense or inconvenience on account thereof. The added cost to the Company of providing facilities under (1) and (2) of this subarticle will 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 ten per cent (10%) 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 Company shall submit to the United States an itemized bill of the added cost required to be paid by the United States hereunder.

(c) Whatever crossing facilities are required to be constructed by the Company 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

11. (a) Where a right for the United States to cross a railroad line, including lines occupying lands over which the United States owns a reserved way, has been approved under the provisions of article 9 hereof, and at the time of that approval railroad works are in existence or are being built by Company

forces or are under contract to be built for the Company, 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 9 hereof.

(b) Where a right for the United States to cross a railroad line has been approved under the provisions of article 9 hereof, and at the time of that approval no railroad works are in existence at the place of crossing or are being built or under contract to be built, the United States, when building its waterway works or transmission lines at the place of crossing, will (1) provide, at the request of the Company, crossing facilities necessary to accommodate the railroad works to be built later by the Company, or (2) construct, at the request of the Company, if practicable, its waterway works or transmission lines in such a manner that will enable the Company, within a reasonable time after the completion thereof to construct the crossing facilities necessary to accommodate its railroad 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 will be borne by the Company. 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 ten per cent (10%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the crossing facilities in any case under (1) and (2) of this subarticle, the United States shall submit to the Company an itemized bill of the added cost required to be paid by the Company. 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 Company under this article shall be constructed in accordance with plans and specifications therefor approved by the Company.

MANNER OF CONSTRUCTING CROSSINGS BY UNITED STATES

12. The United States, in constructing or reconstructing crossings under a grant pursuant to the provisions of article 8 of this contract, shall do as follows:

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

(b) Such construction work shall be conducted so that the Company railroad works will be closed to traffic for as brief a period as possible with the United States paying the cost of any Company flagmen which, in the judgment of the Company, may be necessary. Upon request of the Company, 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 railroad line shall be replaced or renewed so that, upon completion of the crossing, the railroad line and railroad works will be in as good condition as they were prior to such construction work by the United States.

MANNER OF CONSTRUCTING CROSSINGS BY COMPANY

13. The Company, in constructing or reconstructing a crossing pursuant to a grant under article 7 of this contract, shall conduct its work as follows:

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

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any waterway works, and in the event that the Company constructs any structure authorized pursuant to the provisions of

article 7 of this contract during an irrigation season, which for the purpose of this contract shall be from the fifteenth (15th) day of March to the fifteenth (15th) day of October of each year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the contracting officer, for the purpose of conveying the water flowing in the waterway works along the regular course without waste or loss 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 and waterway works will be in as good condition as they were prior to the construction work by the Company.

CHANGES IN COMPANY STRUCTURES

14. All grants by the United States, pursuant to article 7 of this contract, 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 the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company, 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 officer. Also, in the event the Company abandons any of its railroad works over a project waterway, the Company 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 Company.

CHANGES IN UNITED STATES STRUCTURES

15. All grants by the Company, pursuant to article 8 of this contract, are subject to the condition that in the event the Company determines that by reason of a change in a railroad line it is necessary that the structure or structures installed by 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 Company, shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by the Company. Also, in the event the United States abandons any of its waterway works or transmission lines upon or across any railroad line, 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 Chief Engineer to restore the railroad line to its condition prior to the construction of such structure or structures by or for the United States.

CONTINUATION OF THE PERIOD OF GRANT OF RIGHT OF WAY AND EASEMENT

16. (a) Any rights granted to the Company for the period of fifty (50) years pursuant to the provisions of article 7 of this contract shall automatically be renewed at the end of said period for such maximum period of time as may then be permitted under the laws of the United States, unless affirmative action is taken by the United States prior thereto refusing to renew the same.

(b) If the period of such rights granted to the Company pursuant to article 7 expire without the rights being continued or renewed, the Company shall, at its sole cost and expense, remove the structure or structures constructed by the Company, or do whatever is required by the contracting officer to restore the project waterway, transmission way, or reserved way to its condition prior to the construction of such structure by the Company.

TITLE TO AND MAINTENANCE OF CROSSING FACILITIES

17. (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 railroad works and which portion or portions shall be deemed a part of the waterway works or transmission line. In this connection, all bridges, trestles, embankments and fills supporting railroad tracks, all track structures, railroad signals and telephone and telegraph facilities installed for the benefit of the Company shall be deemed to comprise a part of the railroad works of the Company, and all canals, ditches, laterals, sublaterals, drains, spillways, wasteways, siphons, culverts, or other waterway or water conduits, including riprap or other protection therein, and all telephone and telegraph transmission lines and all electrical or other power transmission lines installed for the benefit of the United States shall be deemed to comprise a part of the waterway works or transmission lines of the United States. 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 Regional Director, Region 3, Bureau of Reclamation, and on behalf of the Company by its Chief Engineer.

(b) The United States and the Company shall replace their respective structures with new structures approved by the other party from time to time as the necessity arises, and shall make such repairs as may be necessary to protect waterway works, transmission lines or railroad works from damage or interference from said structures. It shall be the duty of the United States

and of the Company 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 Company in maintaining or replacing their respective structures shall be done in a good workmanlike manner.

(d) In the event the United States or the Company 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 works, transmission line, or railroad works, 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.

RIGHT TO ENTER ON OTHER'S RIGHT OF WAY

18. The United States and the Company, 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

works, transmission lines, or railroad works, including all structures and crossings which may be built in pursuance of the provisions of this contract.

CONTRACTORS OF UNITED STATES TO FURNISH INSURANCE

19. The United States agrees that in every contract which it shall let for the construction of any waterway works or transmission line upon or across any railroad line it shall provide that the contractor shall assume all liability for and protect, indemnify and save harmless the Company from and against any and all loss, cost, suit, damage or expense on account of personal injury to or death of any and all persons whomsoever, and damage to property to whomsoever belonging, in any manner growing out of the performance of such contract, and shall furnish to the Company before the commencement of any work of construction a policy of insurance written in an insurance company satisfactory to the Company, in form and amount to be approved by the Company, insuring the liability so assumed by the contractor.

AUTHORIZED REPRESENTATIVE OF THE UNITED STATES

20. Wherever the Contracting Officer is referred to herein it is intended to include his successor or duly authorized representative, and for all purposes of this contract, except where another officer is specifically designated, the officer in charge of the Columbia Basin Project is designated the representative of the Contracting Officer.

CONDITIONS OF LABOR

21. (a) No laborer or mechanic doing any part of the work contemplated by this contract on structures constituting a part of the waterway works or transmission lines of the United States, in the employ of the Company or any

subcontractor contracting for any part of said work contemplated, shall be required or permitted to work for more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the Company or any subcontractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars ($5.00) shall be imposed upon the Company for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government; PROVIDED, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, title 40, sections 321, 324, 325, 325A and 326, relating to hours of labor and compensation for overtime.

(b) The Company shall not employ any person undergoing sentence of imprisonment at hard labor.

CONTINGENT OF APPROPRIATIONS

22. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriations for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not

made, the Company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

DISCRIMINATION AGAINST EMPLOYEES OR APPLICANTS FOR EMPLOYMENT PROHIBITED

23. The Company in constructing any facility constituting a part of the waterway works or transmission lines of the United States, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all subcontracts: PROVIDED, HOWEVER, That this clause does not refer to, extend to or cover the business or activities of the Company which are not related to or involved in the performance of this contract.

DOMESTIC PREFERENCES

24. In the performance of the work covered by this contract on any facility constituting a part of the waterway works or transmission lines of the United States the Company, subcontractors, material men or suppliers shall use only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States. The foregoing provision shall not apply to such articles, materials, or supplies of the class or kind to be used or such articles, materials, or supplies from which they are manufactured, as are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or to such articles, materials, or supplies as may be excepted by the head of the Department under the proviso of title III, section 3, of the Act of

March 3, 1933, 47 Stat. 1520 (U. S. Code, title 41, sec. 10b).

OFFICIALS NOT TO BENEFIT

25. 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 therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

SUCCESSORS AND ASSIGNS BOUND

26. The provisions of this contract shall be binding upon and inure to the successors and assigns of the parties hereto.

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

THE UNITED STATES OF AMERICA

By _____

NORTHERN PACIFIC RAILWAY COMPANY

By _____

ATTEST:

_____
_____Secretary

- - - - -

STATE OF)
: ss.
County of)

On this _____ day of _____, 194___, personally appeared before me _____, to me known to be the official of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

_____
Notary Public in and for the
State of
Residing at
(SEAL) My commission expires

- - - - -

STATE OF MINNESOTA)
: ss.
County of)

On this _____ day of _____, 194___, before me personally appeared _____, to me known to be the _____ President of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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

_____
Notary Public in and for the
State of Minnesota
Residing at _____
(SEAL) My commission expires

- - - - -

CARBON COPY

At Helena, November 4, 1947

MR. J. T. DERRIG:

Your letter of October 13 transmitting copy of Mr. Boggs' letter to the lawyers of the Reclamation Service about the blanket form of agreement proposed by the Government to cover waterway openings, etc. in the COLUMBIA BASIN:

It seems to me that this matter now is shaping itself up along lines that ought to be satisfactory to us.

After reading Mr. Boggs' letter and comparing it with the agreement draft, I have no further suggestions to offer.

B

cc- Mr. J. F. Alsip

bb/s

H

3

Saint Paul, October 20, 1947

MR. J. E. THAMES:

I am returning herewith signed affidavit regarding location of gravity water pipeline at COULEE CITY.

bb/s

att.

J.T.D.
O.K

Seattle, Washington
October 13, 1947

29-5-1

Mr. B. Blum:

Coulee, Wash. - Columbia Basin Project

For your information I am attaching hereto copy of Mr. Boggs' letter to the Reclamation Dept. in reference to modification of proposed agreement covering waterway openings, Columbia Basin Project. The principal construction provisions in this agreement and modifications thereof are as follows:

substructure

Para. #3 provides for the government to maintain the superstructure of bridges

Para. #5 provides for insurance cost

Para. #6 provides for the Railway Co. to do emergency work as may be considered necessary in its judgment for the operations of its trains and the payment thereof by the government.

Para. #5, Page #5, of Mr. Boggs' letter is a suggestion for permitting the Railway Co. to do the work with its own forces under its own labor rules and regulations, inasmuch as the so-called Bacon-Davis Act, from a practical standpoint, precludes the handling of emergency work.

If you have any suggestions in respect to Mr. Boggs' letter, copy attached, I would like to have your comments in advance of our coming meeting for drafting of the file document.

J T Deming
Asst. Chief Engineer

JTD:dl
Enc.

cc JFA

29-5-1

October 8, 1947

Mr. Paul LeMargie
Assistant Regional Counsel
Bureau of Reclamation
Coulee Dam, Washington

Dear Mr. LeMargie: RE: Columbia Basin Project.

Referring to yours of August 8th regarding the proposed blanket crossing agreement:

At the time that your letter was received I was about to write you, but since your letter disposes of some of the points we have been considering I referred it to the interested officers of the Company. I am now able to give you the following comments, (in accordance with your suggestion these comments are directed to the Regional Office draft), in the light of our discussions and your letter of August 8th.

1. You state you have authority to eliminate Article 8(b), but you inquire whether the Railway Company is still of the opinion that the Government does not have a reserved right of way over any portion of the company's existing lines. The elimination of Article 8(b) goes far towards resolving our difficulty. I am authorized to say that there may be points where the Government might construct facilities across the Company's right of way where the Government may have a reserved right under the Act of 1890, but we are not in any position to agree that at any particular point the Government has such a right. Apparently it is your thought to retain the third full paragraph on page 3, defining the term "reserved way". We have no objection to the retention of this paragraph, provided there is inserted after "right of way" the words "which is in fact and in law".

2. We accept your proposal regarding renewal of easements granted to the Company at the expiration of 50 years, if that is as far as you are authorized to go.

3. I am glad that you are able to eliminate the provision that the Secretary of the Interior be the final arbiter of disputed points. As to Article 17(a), we have been thinking about it in another connection. It is our thought that the agreement should be as definite as possible as to what facilities or portions thereof each party will own and be obligated to maintain. This is not clear in the agreement as drafted. In general, it seems to us that all embankments and fills supporting railroad tracks, all track structures, railroad signals and telephone and telegraph facilities installed for the benefit of the Company should be owned and maintained by it, and that all canals, ditches, laterals, sublaterals, drains, spillways, wasteways, siphons, culverts, or other waterway or water conduits, and all telephone and telegraph transmission lines and all electrical or other power transmission lines installed for the benefit of the United States, should be owned by the Government and maintained by it. It seems to us this division should obtain regardless of which party granted the easement or stood the cost of construction. There are some facilities, however, about which there may be room for discussion. For example, it seems to us that the substructure of bridges should be maintained by the Government and superstructure by the Railway Company. We realize that some of the bridges will be of a more or less permanent nature, so that the distinction may not be material. In others, however, this distinction may be of some importance, and it seems to us that it should be made, at least where the Government is to have an easement over the Railway Company's line. The substructure in such cases would of course include riprap or other protection provided for the railway bridges made necessary by construction and maintenance of the Government's waterways. We are not in a position to make any concrete suggestion for insertion in the contract, but raise the point at this time with the thought that you may be considering the matter and possibly we could, at another meeting, agree upon the form of this article of the contract, which of course is extremely important to both parties. We also suggest that where the structures or facilities of one party are damaged

or destroyed from any cause attributable to the existence, construction, reconstruction, maintenance or operation of the structures or facilities of the other party, such other party will repair or replace such structures.

4. We agree that your amendment of Article 10(b) will satisfactorily cover the question of availability of funds in the ordinary case.

5. We suggest the following indemnity and insurance clause to cover where the Government lets a contract for work on railroad property:

> "The United States agrees that in every contract which it shall let for the construction of any waterway works or transmission line upon or across any railroad line it shall provide that the contractor shall assume all liability for and protect, indemnify and save harmless the Company from and against any and all loss, cost, suit, damage or expense on account of personal injury to or death of any and all persons whomsoever, and damage to property to whomsoever belonging, in any manner growing out of the performance of such contract, and shall furnish to the Company before the commencement of any work of construction a policy of insurance written in an insurance company satisfactory to the Company, in form and amount to be approved by the Company, insuring the liability so assumed by the contractor."

6. To cover the point we had in mind in connection with Paragraph (c) on page 2 of your letter, we suggest the following:

> "Anything in this agreement to the contrary notwithstanding, the Company shall have the right, without notice to the Government, to do such work as in its judgment is necessary, whether upon its own or the Government's structures or facilities, in

order to prevent interruption of railway operations or damage to or destruction of the Company's property, and also to repair or replace any and all structures or facilities whatsoever in order to insure the safe and efficient operation of the Company's railway. The Government agrees promptly to reimburse the Company, upon rendition of bill therefor, for any cost incurred by the Company in all such cases where the responsibility for the condition so remedied by the Company is that of the Government under the terms of this agreement."

7. Perhaps the word "crossing" is not broad enough, but we have been unable to think of any satisfactory language which would do as a substitute and still cover every situation. Perhaps it would be just as well to leave the contract as it is in this respect and, if situations arise which are not contemplated by the agreement, they can be covered by special agreement.

8. I believe the language suggested above, regarding maintenance and replacement, when that is made necessary by a cause attributable to the construction, etc., of the other party's facilities, covers what you have in mind in Paragraph (e) on the second page of your letter.

We have the following additional comments and suggestions on the Regional Office draft:

1. The definition of "project" on page 3 is new. Will you please advise its purpose. I have not examined the description in the Secretary's report. However, it seems that to permit revisions from time to time to control the definition makes the definition entirely too broad.

2. At the end of the first sentence of Article 8(a), we suggest the addition of the words "within the project".

3. In Article 11(a), in the second line, after the word "line" insert "including lines occupying lands over which

the United States owns a reserved way." We make this suggestion to make it certain that this paragraph applies in any case where the Government actually owns a reserved way.

4. In Paragraph (b) of Article 12, we should like to have inserted in the fourth line after the word "which" the words "in the judgment of the Company".

5. So far as any work the Railway Company will do with its own forces for the United States is concerned, we will want to do it, in fact will be compelled to do it, under our own labor rules and regulations. This brings up the question of the Bacon-Davis Act, (40 U.S.C.A. Supp. 276a), providing for predetermination by the Secretary of Labor of wage rates to be paid under contract for the construction of public works. I have seen some contracts which recite that the terms of the Bacon-Davis Act will not apply where the Railway Company's employes are subject to the provisions of the Railway Labor Act. Have you considered whether or not the Bacon-Davis Act controls? If so, I believe we would at least like to provide that, so far as any work done by the Railway Company for the Government is concerned, it will be done under the Company's rules and regulations, in so far as the employes involved are subject to the Railway Labor Act.

Yours very truly,

KGB/sm

bcc: J. P. Derrig

Harold G. Boggs

8731-E.

Seattle, Wash.
Sept. 8, 1947

29-5-1

Grand Coulee Basin Project - Water Openings

Mr. H. G. Boggs:

For your information I am attaching hereto copy of Mr. Blum's letter of August 31st referring to my letter to you of August 26th.

Mr. Blum's reference to the siphons does not exactly cover what I had in mind.

First, it was my thought that some future officer of the Government might insist on constructing bridge openings on some laterals which normally could be taken care of by pipe or concrete box openings and place the burden of maintaining the bridge on the Ry. Co.

Second, in respect to siphons. It is of course possible to put a siphon under a bridge opening at much less expense than providing a siphon without the bridge opening; in other words, it might be cheaper for the Government to insist on the small bridge opening and and then put in independent siphons under the bridge opening.

I do not think that there will be many openings of this type but nevertheless the question should, I think be definitely settled in the proposed agreement.

I will be pleased to accompany you to Grand Coulee to go over the final agreement with the Government. I do not think we will have any difficulty in convincing the Government engineers or their Law Department that these items of work should be clarified in the proposed agreement.

J. T. DERRIG
Assistant Chief Engineer

JTD:c
cc BB

8731 E

Saint Paul, August 31, 1947

MR. J. T. DERRIG:

Your letter of the 27th with reference to water openings in the Grand Coulee Basin irrigation scheme:

With respect to your third paragraph in letter of the 26th to Mr. Boggs: you state that you fear the Government might designate substitution of a 1-span bridge in lieu of a culvert or siphon. It would of course be possible for them to do so in the case of a culvert, but I do not see how they can do so in the case of a siphon. The only reason for introducing the siphon is that the grade of the irrigation ditch is too high to pass through an open bridge.

Of course there are no objections to a meeting with government officers, to see if you can prevail on them to accept the obligation of constructing and maintaining bridge abutments and piers.

The attitude of other railroads might have some bearing on this question. If the Milwaukee and Great Northern are willing to accept a government dictum, it would be difficult if not impossible for them to accede to your suggestion.

bb/s

Seattle, Wash.
Aug. 27, 1947

29-5-1

Grand Coulee Basin Project - Water Openings

Mr. Bernard Blum:

I am attaching hereto copy of my letter of August 26th in respect to proposed document covering maintenance of water openings, Columbia Basin Project.

It is thought we should make a further endeavor to try and get the Government to assume the cost of the sub-structure of these bridges. I am afraid at some future time the Government officials may decide to build short span bridge structures over laterals and take advantage of the maintenance responsibility for such openings.

I would like to have your views in respect to the expression indicated in my letter attached to Mr. Boggs.

Assistant Chief Engineer

JTD:c

Seattle, Wash.
Aug. 26, 1947

29-5-1

Grand Coulee Basin Project - Water Openings

Mr. H. G. Boggs:

Your letter of August 16th in respect to completion of proposed agreement with the Bureau of Reclamation covering proposed bridges and siphons for the main canal and lateral water openings for the minor ditches of the Basin Project.

I think the paragraph you have outlined in your letter of August 11th will in general cover the situation so far as the original construction is concerned. You indicate that it would be desireable to agree on the division of ownership at the time of acceptance of the completed project. It is anticipated that all siphons and culverts carrying lateral ditches and distribution units will be owned and maintained by the Government. Mr. Blum's reference as to the maintenance of the bridge structure referred to Bridge 114 only, although he states that we would be justified in assuming the maintenance on other bridges of a similar character particularly where we have a present bridge opening.

It is impossible at this time to say how many bridge openings there will be on this total project. It is possible there will be a number of laterals for a one span bridge that might be cheaper construction than to provide a siphon. What I have in mind in accepting the obligation of the bridge structure is the Government officials at some future time might designate, wherever possible to do so, the construction of a one span bridge in lieu of the culvert or siphon, leaving the maintenance of the structure with the Railway Co. as the owner of the bridge.

It would be advisable, if consistent, to have the Government accept the maintenance of the sub-structure for all bridges; in other words, if the Government accepts the maintenance of the sub-structure that would automatically take care of the riprap or any washout that might occur due to the presence of the canal in the water opening. It does not seem as though the Government could object to the maintenance of the sub-structure as they indicated the construction is permanent. It would not be too great of an obligation on the Railway Co. to accept the maintenance of the super-structure of the bridge including the maintenance of the steel, painting, etc., and the maintenance of the ties as part of the track structure.

If it is your opinion that we should make a definite decision on the ownership of the structure and assume the maintenance along the lines of ownership, then I think we should make an endeavor to confine the cost of maintaining the super-structure of the bridge only. As near as I can tell, there will be some 10 or 12 bridges on the main canal but we may have up to 50 or more short bridges for carrying laterals. There should not be much maintenance on these short bridges; on the other hand, in case of a washout we would not have much protection unless we are sure the Government would take care of the sub-structure or the concrete foundation.

I think we should also incorporate some kind of a clause to give the Railway Co. the right to maintain the traffic on its track at all times and do emergency repair work with its own forces and under its own labor rules and regulations in accordance with its usual practice and including a clause to permit the payment for that emergency work when proper bill is submitted to the Government.

In respect to acceptance of the structure by the Railway Co. to be incorporated in Page 2 of your letter. I suggest that the Chief Engineer be designated as the Railway Co. official accepting the completed structure; likewise, detail plans for the structure should be approved by the Chief Engineer.

You will probably wish to revise the proposed document along the modifications outlined in Mr. Lemargie's letter of August 8th which is a substantial concession over the original document.

Possibly I am going to far in asking that the Government assume the obligation for the concrete sub-structure of the various bridges but I do not think that request is out of line when you take into consideration the burden placed on the Railway Co. - the maintenance of the steel super-structure, ties and track structure for the various bridges - the number of which are unknown at this time. If you think it advisable that I write Mr. Banks and get a formal expression from him as to the Govt.'s attitude in accepting the maintenance of the sub-structure of these various bridge openings with the understanding that the Railway Co. will assume the obligation for the super-structure, steel, ties and track structure on the bridges, I will be pleased to do so on your further advice.

Personally I am of the opinion that we will get further by having another meeting with Mr. Lemargie, Mr. Banks and representatives at Coulee and complete the agreement after that discussion.

J. T. DERRIG

JTD:G

Assistant Chief Engineer

Saint Paul, July 21, 1947

MR. J. T. DERRIG:

Your letter of the 1st in regard to Grand Coulee Basin Project openings under our track:

I believe that our discussion and conference with Mr. Boggs is sufficient reply at this time.

It was understood that you and Mr. Boggs would confer with the Bureau representatives to cover the points made in Mr. Boggs' letter of June 17 to Mr. Paul LeMargie.

We agreed that you would endeavor to have the Government be responsible for maintenance of bridges made necessary account damage caused by the Government's waterways: in other words,

The Railway to assume normal maintenance only required on permanent bridges;
Siphons to be included under the classification of culverts for which the Government will assume the maintenance responsibility;
Canals or water courses passing under bridges constructed to carry railway tracks, to embrace riprap protection that may be required to safeguard piers and abutments of the railway bridge.

I stated that in my opinion the Company can afford to assume the normal maintenance obligation on permanent bridges supporting its track.

bb/s
x

cc-Mr. H. G. Boggs

Form R.W.101

RIGHT OF WAY CHANGE MEMORANDUM

-8731-C

Memo No. 135 Deed No. 321-B Washington Central Branch Plat No. 119 L-2

C. F. No. 20312 A.F.E.No. 19

State Washington County Grant

St. Paul, Minn. July 9 19 47 Division Idaho

Improv. Sketch

License from U.S.A. covering possible future extension to Railway Company's tail track in Section 33-25N-28E, W. M.

By license (W-12437) dated May 27, 1947, the United States of America, Bureau of Reclamation, granted the Northern Pacific Railway Company the right to construct and maintain a possible future extension of its tail track through a strip of land 100 ft. wide and 185 ft. long in the SE¼SE¼ of Section 33, Township 25 North, Range 28 East, W. M., for a term of fifty years.

Copy attached.

License was recorded on June 27, 1947 in Volume 76 of Deeds on page 62, records of Grant County, Wash., and given Auditor's No. 129763.

Note - Messrs. Colby, Tremaine, Derrig, Kersten, Burgess and Alsip have been furnished copies of this ordinance by Mr. V. E. Williams.

RECORD MADE IN DRAFTING ROOM ST. PAUL

STA. PLAT ..... TRACK PROFILE ✓

R/W. MAP ✓ COND. PROFILE .....

RAIL PLAT ..... R. & B. CHART .....

TRK. RECORD ..... BLDG. RECORD .....

BY J. R. M. DATE Sept. 8, 1947

Copies to:- Chief Engineer, St. Paul

J. E. THAMES,
Industrial Agent

W-12437

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

COLUMBIA BASIN PROJECT, WASHINGTON

License to Construct and Maintain a Tailtrack for Railroad Purposes

THIS INDENTURE, Made this 27th day of May, 1947, under and pursuant to the Act of June 17, 1902 (32 Stat. 388), the Act of August 30, 1935 (49 Stat. 1039), the Act of August 4, 1939 (53 Stat. 1187), and the Act of March 10, 1943, (57 Stat. 14) and acts amendatory thereof or supplemental thereto,

WITNESSETH, THAT:

WHEREAS, the United States has acquired in connection with the development and construction of the Columbia Basin Project, Washington the following described property

> A tract of land containing 42/100 (0.42) of an acre, more or less, lying and being in the Southeast quarter of the Southeast quarter (SE¼SE¼) of Section thirty-three (33), Township twenty-five (25) North, Range twenty-eight (28) East, Willamette Meridian, Grant County, Washington,

shown as the shaded portion of Exhibit A which is attached hereto and by this reference made a part hereof, and

WHEREAS, the Northern Pacific Railway Company, a corporation of the State of Wisconsin desires a license for the construction and maintenance of an extension of its tailtrack over the lands described in the preceding recital,

NOW, THEREFORE, the United States of America, acting by the Commissioner of the Bureau of Reclamation for the Secretary of the Interior, for and in consideration of the sum of One Dollar ($1.00), receipt of which is hereby acknowledged, does hereby grant to the Northern Pacific Railway Company, its

successors and assigns, a license to construct and maintain an extension of its tailtrack over the lands previously described herein and as shown by the shaded portion of Exhibit A.

This license shall continue to be in force for a period of fifty (50) years from the date hereof and the Northern Pacific Railway Company, its successors and assigns, may on or before ninety days prior to the expiration of the license make written application to the United States for a renewal of the license for such period of time as may then be permitted under the laws of the United States.

IN WITNESS WHEREOF I have signed this instrument this 27th day of May, 1947.

UNITED STATES OF AMERICA

By The Secretary of the Interior

/s/ Kenneth Markwell
Assistant Commissioner
Pursuant to Section 1(e) of Departmental Order 2018, dated December 22, 1944 (10 F.R. 259), Act of December 19, 1941, (55 Stat. 842)

- - - - -

WASHINGTON, D. C.) ss.

On this 27th day of May, 1947, personally appeared before me Kenneth Markwell, to me known to be the official of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

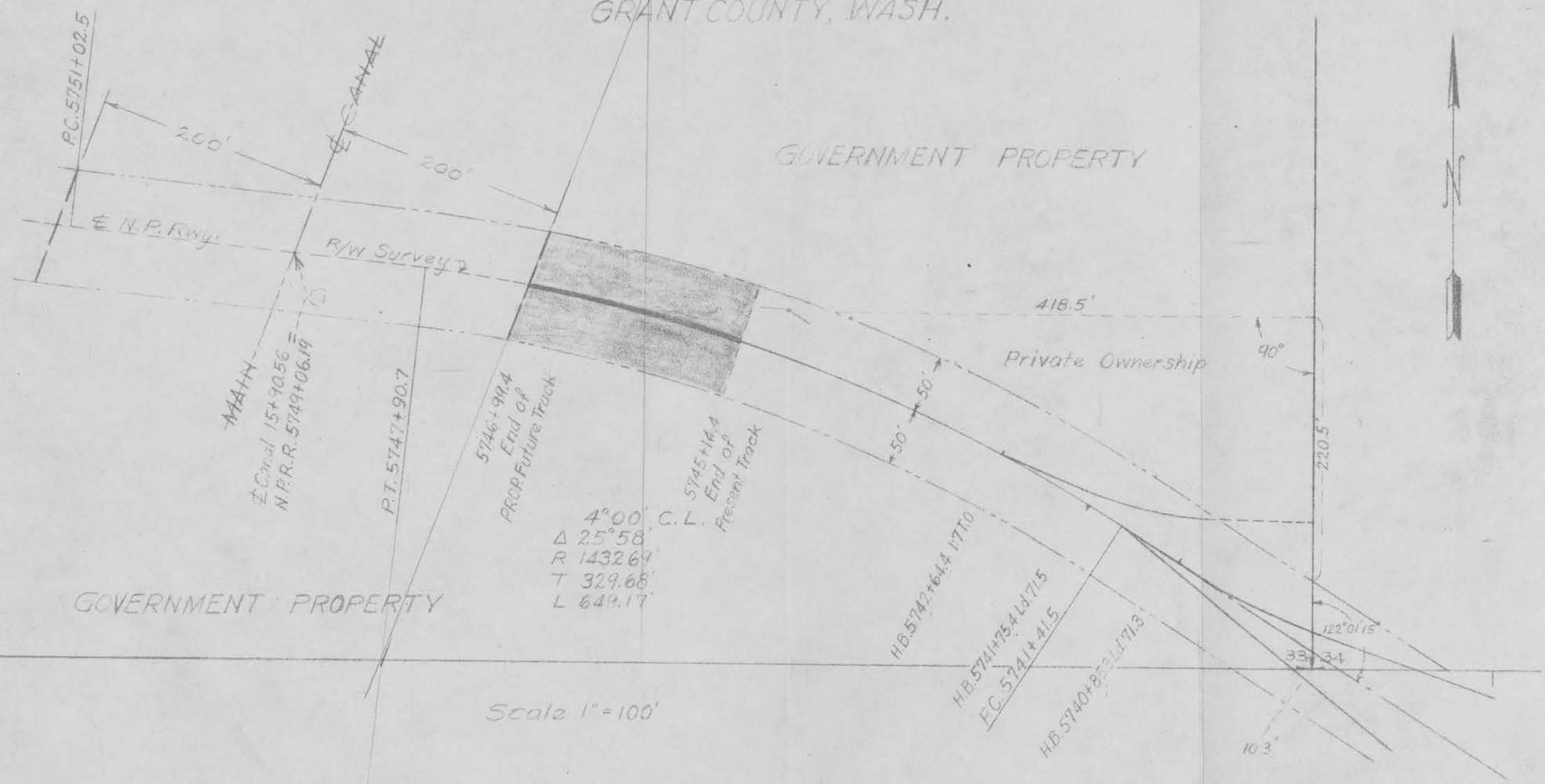
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

/s/ Fred W. Gilbert
Notary Public in and for the
District of Columbia
My commission expires March 21, 1951.

(SEAL)

RECORDED JUNE 27, 1947 IN VOLUME 76 OF DEEDS ON PAGES 62
RECORDS OF GRANT COUNTY, WASHINGTON. AUDITOR'S NO. 129763.

PORTION OF SE¼SE¼ SEC. 33 T. 25 N. R. 28 E. W. M.
GRANT COUNTY, WASH.



Scale 1" = 100'

Note:-
The area shown as shaded contains 0.42 of an acre and represents Government property involved in license to N.P. Rwy. Company.

EXHIBIT "A"

DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
COLUMBIA BASIN PROJECT - WASHINGTON
GRAND COULEE EQUALIZING RESERVOIR
LICENSE TO N.P. RWY. COMPANY

DRAWN A.G.W. RECOMMENDED
CHECKED T.M. APPROVED

L_2	COULEE DAM, WN. 1-22-47	222 P 4771

Seattle, Wash.
July 1, 1947

29-5-1

Car 4, Seattle

Grand Coulee Basin Project - Water Openings

Mr. Bernard Blum:

In reference to our discussion in respect to proposed agreement with the Government covering various water openings under Northern Pacific tracks, Columbia Basin Project, and with particular reference to your letter of June 6th.

Your attention is directed to the fact that the agreement as prepared by the Government refers to water openings and bridge projects other than Bridge 114 and the siphon at MP 124+3800, both of which are under construction at this time.

In my letter of May 22nd I listed major bridge and siphon openings for the main water way channel, insofar as it is feasible to designate the exact location at this time. In addition to these major openings there will be many lateral water openings, some of which may required bridge construction and not definitely located at this time.

In order to permit you to further review the engineering phase of this agreement and with particular reference to Paragraph 17 of the proposed agreement which referes to the ownership and maintenance clause, I am attaching hereto the following data which you may wish to further review while you are on the west end - Copy of revised draft of agreement dated Boise, May 12, 1947, Copy of my letter of May 22, 1947, copy of your reply of June 6th and copy of Mr. Boggs' letter to Mr. LeMargie, Govt. attorney, dated June 17, 1947. Your particular attention is called to first paragraph, page 4, of Mr. Boggs' letter in respect to the ownership and maintenance of the bridge structures. You will note the proposed agreement by the Govt. provides that the ownership of the facility shall be determined upon completion of the construction and also requires that an officer of the Railway Co. be designated to accept the ownership on behalf of the company and it is my understanding that the maintenance of the structure follows the ownership under the proposed agreement.

I think some provision should be made in the agreement that any extra-ordinary maintenance of the bridge structure that may be caused by the action of the canal waters passing thru the bridge opening should be assumed by the Govt. at its sole cost and expense.

I am again refering this matter to you as it is my understanding

from our conversation that the ruling as contained in your letter of June 6th was applicable to Bridge 114 only; whereas, I understand the document as proposed, copy of which has heretofore been forwarded you, refers to various bridge openings that may be constructed without particular reference to Bridge 114.

It is desired to have this agreement completed with as little delay as possible and I suggest that we discuss this matter further with Mr. Boggs before informing the Government in respect to the maintenance clause on these water openings.

J. T. Dempsey
Assistant Chief Engineer

JTD:c

June 17, 1947

Mr. Paul LeMargie
Assistant Regional Counsel
Bureau of Reclamation
Coulee Dam, Washington

Dear Mr. LeMargie:

Referring to our discussion on May 14th as to the form of the proposed contract for rights of way in connection with the Columbia Basin Project.

We are now in a position to concede that at some points where the Government might construct facilities across railroad right of way the Government may have a reserved right of way under the Act of 1890, but we are not in a position to agree that at any particular point the Government has such right.

We have gone over the draft submitted by your Boise office in the light of our discussion at the dam and have the following suggestions with respect to it, not only in order to accommodate the views of the parties on the question of reserved right of way but upon all other questions discussed at our conference and upon one or two other points:

1. On page 3, in the definition of the term "reserved way", insert in the first line after the words "right of way" the words "which is in fact and in law". It seems to us that, if this amendment is made to the definition, we will avoid any need for any concession or confirmation on the part of the company and at the same time, from the company's standpoint, will avoid the need to deny that the Government has any such rights.

7. I believe you agreed to recommend the elimination of the last sentence of Article 9 (a), which makes the Secretary of the Interior the final arbiter on disagreements with respect to plans.

8. We think that Paragraph (c) of Article 10 and Paragraph (c) of Article 11 are unnecessary, since the plans will be approved by both parties under the terms of Article 9 (a), but if it is felt that these paragraphs should remain we believe that the plans and specifications should be approved by both parties in each case.

9. In Article 11 (a), in the second line, after the word "line" insert "including lines occupying lands over which the United States owns a reserved way." We make this suggestion to make it certain that this paragraph applies in any case where the Government actually owns a reserved way.

10. Articles 12 and 13: In line with the thought expressed above that perhaps the word "crossing" is insufficient, perhaps the matter could be handled by substituting for the word "crossings", in the first line of Article 12, the words "waterway works and transmission lines", and for the word " crossing" in the first line of Article 13 the words "any railroad works".

11. In Paragraph (b) of Article 12, we should like to have inserted in the fourth line after the word "which" the words "in the judgment of the Company".

12. Article 17 (a) provides for notice to be given upon completion of a facility as to which portion or portions shall comprise a part of the railroad works and which portion or portions be deemed a part of the waterway works or transmission line. As the maintenance and replacement obligations follow ownership, it would seem that this clause

might be more specific, that is, could not the parties now agree upon what type of structures and what portions thereof would be owned by each? I presume, for example, that all siphons and culverts would be owned by the United States where the United States crosses the company's line. A different question is presented in the case of a bridge necessitated by the construction of a waterway opening. For example, at Bridge 114 there will be replacement of a relatively small bridge by a much larger permanent bridge. As I understand it, a great deal more riprap will be required on the new bridge than was the case for the old. If this riprap will require substantial maintenance and replacement from time to time, it would seem that the cost should be borne by the Government, but without any clear agreement on ownership this matter is left somewhat up in the air. Perhaps the engineers can discuss the matter and agree upon how ownership and maintenance obligations should fall in the majority of types of structures that are contemplated.

13. I understand you are giving consideration to some clause which will modify the provision with respect to payments to be made by the United States being contingent upon appropriations. It does seem to me that the company should not be asked to release the United States from all liability due to the failure of Congress to make the appropriation.

14. In connection with a proposed contract with another agency of the Government, the Bacon-Davis Act,(40 U.S.C. Supp. 276a), with respect to predetermination by the Secretary of Labor of wage rates to be paid laborers and mechanics under contracts for the construction of public works was considered. While the company will probably not be doing a great deal of work for the Government, it may do some such work. This will present a considerable problem in so far as the company does it with its own forces. This for the reason that the company is bound by its own labor schedules under the Railway Labor Act. I have seen some contracts which recite that the terms of the Bacon-Davis Act will not apply where the railway company's employes are subject to the provisions of the Railway Labor Act. Have you had occasion to consider this?

15. In line with the agreement reached at our conference, I give you the following suggestion for an indemnity and insurance clause to cover where the Government lets a contract for the work on railroad property:

> "The United States agrees that in every contract which it shall let for the construction of any waterway works or transmission line upon or across any railroad line it shall provide that the contractor shall assume all liability for and protect, indemnify and save harmless the Company from and against any and all loss, cost, suit, damage or expense on account of personal injury to or death of any and all persons whomsoever, and damage to property to whomsoever belonging, in any manner growing out of the performance of such contract, and shall furnish to the Company before the commencement of any work of construction a policy of insurance written in an insurance company satisfactory to the Company, in form and amount to be approved by the Company, insuring the liability so assumed by the contractor."

Yours very truly,

HGB/em

Harold G. Boggs

cc: J. F. Derrig

29-5-1

Saint Paul, June 6, 1947

MR. J. T. DERRIG:

Your letter of May 27 about proposed contract with the Reclamation Service covering crossings of our lines by their waterways, communication lines, etc., and future railway crossings of their lines:

After reading the letters of Messrs. Macfarlane and Boggs I gain the impression that they are making considerable headway with the Reclamation Bureau attorneys.

In reply to Mr. Macfarlane's letter to Mr. daPonty of May 20, General Counsel wrote Mr. Macfarlane as follows:

"Referring further to your letter of May 20:

I attach copy of Mr. Hughes' letter to me dated May 27.

I think we have said about all that can be said concerning the form of contract, and you may go ahead and complete it. You can use your own judgment as to the terms of it in the light of our correspondence, except I am sure you will feel as we do, that we should not admit the Government has rights over all of the lands under the 1890 Act, although we could admit that perhaps there are some tracts which would be subject to a right of way".

With respect to your remarks about maintenance of openings, etc.: the only crossing that I recall that I have recommended is bridge 114. For that crossing I definitely recommend that we assume the maintenance of the bridge structure. I do not see how we could afford to take any other view, keeping in mind that we had the obligation of maintaining a wooden structure before, and they are replacing that with a first class permanent structure.

I agree with you that the Railway should not assume the obligation of the Government's waterway that will pass under this bridge and I would think that the riprap protection is part of the waterway or main canal. I would compare this situation with a highway undercrossing wherein the Highway Department assumes the maintenance of the roadway and the Railway assumes

the maintenance of the structure supporting its track.

With respect to the siphon at BACON: I do not recall the question of maintenance coming up with respect to that structure but assume of course that the Government will bear all maintenance costs of the siphon across our right of way. After the siphon is constructed there should be no problem of track maintenance, assuming of course that the siphon is properly maintained.

I might add that where the Railway has bridges I can see no reason why we cannot afford to continue their maintenance.

bb/s
x

Seattle, Wash.
May 22, 1947

Grand Coulee Basin - Water openings

Mr. H. G. Boggs:

In reference to our recent discussion in Mr. Banks' office in respect to the proposed blanket agreement covering water openings under Northern Pacific tracks, Grand Coulee Basin Project.

In accordance with our discussion I touched up the negative of the Govt. map, scale 3 miles to the inch, showing the location of the major canal crossings. There are a total of seven major bridge crossings and five siphon crossings. Only two are definitely located. They are at the location of our Bridge 114 and the siphon at MP 124+3800, both on the Adrian Branch. I am listing below MP location of both the bridge and siphon crossings as scaled from the Govt. map:

	Bridge	Siphon
Adrian Branch		
MP 114+4280 (Reconstruction)	X	
MP 124+3800 New opening		25' opening
Connell Branch		
MP 42+1300 (new)	X	
MP 37+3700 "	X	
MP 36+800 "	X	
MP 26+1600 "	X	
MP 20+4700 "	X	
Shrag Branch		
MP 4+3200		X
MP 7+3200		X
Main Line		
MP 95+1000 near Cunningham (new)	X	
MP 101+800 near Hatton (new)		X
MP 128+3700 near Eltopia (new)		X

In other words, these locations, except the bridge and siphon location on the Adrian Branch, are approximate only but I think sufficiently correct as

to stationing to permit Mr. Williams to advise you in respect to the right-of-way obligation for these openings.

There is also attached two prints of the Govt. map, above referred to, on which I have shown in pencil the approximate location of these bridge and siphon crossings.

J. T. DERRIG

Assistant Chief Engineer

JTD:c

cc JFA
BB
VEM

2. The definition of a "project" on page 3 is new. We have not examined the description in the Secretary's report and would like to reserve comment on this.

3. Articles 7 and 16, relating to the term of easements granted to the company, present a problem not easy of practical solution, in view of the mandatory requirements of the statute. We should like consideration to be given to the proposal advanced when we discussed the matter that, if the law is changed so as to make such easements permissible for a longer term, the easements here contemplated shall likewise be automatically extended. I believe you were doubtful that one Secretary could bind his successor, but even so it would be desirable to have such provision in to show the intention of the officers in charge at the time of the execution of the contract. In any event, Paragraph (b(of Article 16 is rather drastic in requiring the removal of facilities by the company when the cause therefor might be the result of arbitrary action, or action which, in equity, should not cast the expense upon the company. We suggest consideration be given to some modification of this paragraph.

4. In the interest of clarification, add to the first sentence of Article 8 (a) the words "within the project".

5. Strike Paragraph (b) of Article 8. As stated at our conference, it will not be possible to procure company approval for the inclusion of this paragraph. We appreciate the problem you have on account of your regulations, but we trust that you will be able to procure an exception.

6. In Article 9 (a) reference is made to "crossing". It occurs to us that there may be longitudinal occupancies in some instances, and it may be that this article and the agreement as a whole should be reviewed with the thought in mind of covering in general language all types of occupancy by either party.

COPY FIC

Region 1
P. O. Box 937 - Boise, Idaho
May 12, 1947

Air Mail

To: District Manager, Coulee Dam, Washington

From: Regional Director

Subject: Blanket crossing agreements involving railroads and state highways--Columbia Basin Project.

1. Reference is made to your letter of March 24, 1947, on the above subject, and to the note attached to your letter of May 1, 1947, to the Assistant Chief Engineer of the Northern Pacific Railway Company requesting our comments on your draft of the crossing agreement with the Northern Pacific Railway Company prior to your meeting with the officials of that Company, which is to be held on May 14.

2. The Regional Counsel has, in the short time available to him, reviewed the proposed draft of contract with the Northern Pacific Railway Company. To assist you, he has prepared a new draft designated "R. O. Draft 5-12-47", incorporating his suggestions. The redraft is enclosed in triplicate.

3. The major changes in the redraft are as follows:

(a) The first seven articles of your draft were revised with two purposes in mind: (1) a formal one to include the definitions in the substantive portions of the contract; and (2) to restate the definitions so that a distinction is apparent between physical works on the land and rights of ownership in the land. This latter purpose seemed to us to be required because article 8 of your draft, using the definitions as appearing in your draft, seemed to overlap the provisions of subarticles (a) and (b).

(b) Articles 8, 9 and 13 of your draft were restated into articles 7 and 8 of our draft, using the new definitions.

(c) Article 10 of your draft was rephrased into article 9 of our draft to provide for: (1) a plat establishing the boundaries of the crossing; (2) crossing notices to be restricted to those immediately prior to construction; and (3) a specific officer to approve the crossing. As to this latter point, we had in mind that it might be desirable to name the Chief Engineer of the Bureau.

(d) We have restated the articles relating to the payment for crossings (articles 10 and 11 of our draft, formerly articles 11 and 12 of your draft). In so doing we had in mind covering more explicitly the situations where payment would be required for the construction of additional crossing facilities to accommodate the works to be constructed later by the other party. With respect to payments to be made by the United States, a more thorough study of the legal and fiscal problems involved may necessitate the addition of a general article covering all payments to be made by the United States under the contract. We suggest that you consider this point further.

(e) No substantial changes were made in articles 16 and 17 of your draft, although we have some hesitancy as to whether the language is properly expressive of the purposes intended. It is not clear to us but what it would be possible under these articles for either party to require the other to make substantial expenditures at the option of the party requesting the change. We suggest that you delete the words "or for any other reason" from these articles, or make the phrase more definite to cover what situation you had in mind.

(f) No substantial change was made in article 18 of your draft (article 16 of our draft), although attention is directed to the fact that, as redrafted, the term of easement begins with the date of the approval of the crossing plat.

(g) Article 19 of your draft has been expanded by a new subarticle to provide for a method of determining what portion of each structure is to belong to parties to the agreement. Here, again, we had in mind naming the Chief Engineer as the Bureau officer. In order to avoid carrying the phrase "officer in charge of the Columbia Basin Project" through the contract, provision was made to have this taken care of at one point (article 22 of our draft).

(h) Article 22 of your draft (article 20 of our draft) has been rephrased to utilize the definitions as redrafted. This article, although included in the new draft, may present a legal point that requires further consideration. Similar articles in other relocation contracts have been objected to by the Washington office on the ground that there is no authority in the Secretary to impose upon the United States by contract the requirement to use due care. I suggest that the article be deleted from the contract if the Railway Company has no objection.

4. I hope that with these brief comments the reasons for the major changes in the C.D.O. 3/24/47 draft are apparent to you. Our redraft is a hurried one and can stand considerable polishing. As, for example, no consideration was given to the arrangement of the articles. In your negotiations with the Company, do not hesitate to make required editorial changes.

(sgd.) R. J. Newell

Fort Proposed Draft Revised

R. O. Draft 5-12-47

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

AGREEMENT AS TO CROSSINGS

THIS CONTRACT, Made this day of 1947, 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 Reclamation Project Act of 1939 (53 Stat. 1187) and the Columbia Basin Project Act (57 Stat. 14), and the pertinent portion of section 2 of the Act of August 30, 1935 (49 Stat. 1028, 1039), referred to hereinafter as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, herein styled the United States, represented by the contracting officer executing this contract, and the ,
a corporation, hereinafter styled the Company,

WITNESSETH, That:

2. WHEREAS, the United States is engaged in the construction, under the Federal Reclamation Laws, within the State of Washington, of the Columbia Basin Project, hereinafter called the project; and

3. WHEREAS, the works of the project include and will include a network of waterways and water conduits, of telephone, telegraph transmission lines, and lines for transmission of electrical or other power, 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 Sec. 7412 of Rem. Rev. Stat. of Washington, the Act of Congress of August 30, 1890 (26 Stat. 291) or other Acts of Congress; and

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

5. 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

6. Wherever used in this contract:

The term "waterway works" shall mean any canal, ditch, lateral, sublateral, drain, spillway, wasteway, siphon, pipe line, or other waterway or water conduit, and any road required in connection with the construction or operation of such works, built or to be built as part of the project works.

The term "transmission line" shall mean any telephone or telegraph transmission line or any electrical or other power transmission

line, and any road required in connection with the construction or operation of such works, built or to be built as part of the project works.

The term "project waterway" shall mean any land owned in fee or any right-of-way, excluding "reserved ways" designated by the United States as the site for any waterway works.

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

The term "reserved way" shall mean any right-of-way which is in fact and in law reserved to the United States under Sec. 7412, Rem. Rev. Stat., 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 "railroad line" shall mean any land owned in fee or any right-of-way owned by the Company and used or designated by it as the site for its railroad lines built or to be built by it.

The term "railroad works" shall mean any railroad line and appurtenant works built or to be built in connection with the railroad system of the Company.

The term "project" shall mean the Columbia Basin Project as described in the Secretary's report of January 31, 1945 (H. Doc. No. 172, 79th Cong., 1st Sess.), or as it may be revised from time to time.

Right-of-way Granted to the Company

7. The United States hereby grants to the Company, subject to the provisions of this contract, rights to construct, reconstruct, operate and maintain railroad works upon or across any project waterway, transmission way, and reserved way. The rights in each instance shall take effect from the date of the approval of the Company's application made under the provisions of article 9 hereof and shall extend for a period of fifty (50) years from that date, subject to renewals of the term as provided in article 16 hereof. 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 Company will 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 Company for railroad purposes.

Right-of-Way Granted to the United States

8. (a) The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights to construct, reconstruct, operate and maintain waterway works and transmission lines upon or across any railroad line within the project. The rights in each instance shall take effect from the date of the approval of the application by the United States, made under the provisions of article 9 hereof. In any instance where the grant herein made is with respect to land in which the Company has only a right-of-way or easement, the United States will obtain any additional grants or consents from the owners of such interests in the land as may be necessary to permit full use of the land by the United States for its purposes.

(b) The Company hereby ratifies and confirms the reservations, under and by virtue of the Act of Congress approved August 30, 1890 (26 Stat. 391), under and by virtue of any other act of Congress, and under and by virtue of Sec. 7h12, supra, to the United States of the rights-of-way upon or across railroad works located on lands subject to reserved ways.

strike

Notice of Exercise of Right-of-Way

modify to include longitudinal or other types of occupancy

9. (a) The party desiring to exercise the rights granted under articles 7 and 8 shall notify the other party in writing prior to the beginning of construction. Such notice shall be given only immediately before the rights are to be utilized by the construction of a crossing. The notice shall be accompanied by a plat showing the proposed crossing and by plans for the facilities proposed to be constructed. The party receiving the notice promptly shall approve or disapprove the proposed crossing, indicating in the latter instance the reasons therefor. The Company will 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 Company itself for similar purposes; and the United States will not refuse approval of reasonable plans submitted by the Company, 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 plat; approval of the United States shall be given by _____; approval of the Company shall be given by _____.

eliminate

If disapproved by these officials, the plans shall be referred to the Secretary of the Interior, who shall make a final determination of the points in disagreement.

(b) In case of the United States, the notice shall be given to the contracting office, and in the case of the Company, the notice shall be given to _____, whose office is in _____, _____.

Cost of Crossing Initiated by Company

10. (a) Where a right for the Company to cross a project waterway, transmission way, or a reserved way has been approved under the provisions of article 9 hereof, andat the time of that approval, waterway works or transmission lines at the point of crossing are in existence, or are being built by government forces or are under contract to be built for the United States, the Company 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 9 hereof.

(b) Where a right for the Company to cross a project waterway, transmission way, or reserved way has been approved under the provisions of article 9 hereof and at the time of that approval no waterway works or transmission lines are in existence at the point of crossing or are being built or are under contract to be built, the Company, when building its railroad works at the place of crossing,

will provide, at the request of the United States, crossing facilities necessary to accommodate the waterway works or transmission lines to be built later by the United States. The added cost to the Company of providing such crossing facilities will 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 ten per cent (10%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the crossing facilities in any case under this subarticle, the Company shall submit to the United States an itemized bill of the added cost required to be paid by the United States hereunder. Subject to the provisions of article 24, 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 Company 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.

unnecessary or if left in to be approved by both parties

Cost of Crossings Initiated by United States

11. (a) Where a right for the United States to cross a railroad line, including lines occupying lands over which the U.S. owns a vested way, has been approved under the provisions of article 9 hereof, and at the time of that approval railroad works are in existence or are

being built by Company forces or are under contract to be built for the Company, 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 9 hereof.

(b) Where a right for the United States to cross a railroad line has been approved under the provisions of article 9 hereof, and at the time of that approval no railroad works are in existence at the place ofcrossing or are being built or under contract to be built, the United States, when building its waterway works or transmission lines at the place of crossing, will provide, at the request of the Company, crossing facilities necessary to accommodate the railroad works to be built later by the Company. The added cost to the United States of providing such crossing facilities will be borne by the Company. 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 ten per cent (10%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the crossing facilities in any case under this subarticle, the United States shall submit to the Company an itemized bill of the added cost required to be paid by the Company. Payment of such cost shall be made promptly after the presentation of such bill.

unnecessary or if left in to be approved by both parties

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

Manner of Constructing Crossings by United States

12. The United States, in constructing or reconstructing crossings waterway works and transmission lines under a grant pursuant to the provisions of article 6 of this contract, shall do so as follows:

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

(b) Such construction work shall be conducted so that the Company railroad line will be closed to traffic for as brief a period as possible with the United States paying the cost of any Company flagmen which in the judgement of the Company may be necessary. Upon request of the Company, 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 railroad line shall be replaced or renewed so that, upon completion of the crossing, the Company railroad line will be in as good condition as it was prior to such construction work by the United States.

Manner of Constructing Crossings by Company

13. The Company, in constructing or reconstructing a crossing any railroad works pursuant to a grant under article 7 of this contract, shall conduct its work as follows:

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

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any project waterway, and in the event that the Company constructs any structure

authorized pursuant to the provisions of article 8 of this contract during an irrigation season, which for the purpose of this contract shall be from the fifteenth (15th) day of March to the fifteenth (15th) day of October of each year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the contracting officer, for the purpose of conveying the water flowing in the project waterway along the regular course without waste or loss 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 Company.

Changes in Company Structures

14. All grants by the United States, pursuant to article 7 of this contract, are subject to the condition that in the event the contracting officer determines that by reason of a change in a project waterway, or for any other reason, it is necessary that the structure or structures installed by the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by said officer.

Changes in United States Structures

15. All grants by the Company, pursuant to article 8 of this contract, are subject to the condition that in the event the Company

determines that by reason of a change in a railroad line, or for any other reason it is necessary that the structure or structures installed by the United States pursuant to such grant or consent be changed, reconstructed, or added to, the United States shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by the Company.

Continuation of the Period of Grant of Right-of-Way and Easement

16. (a) In connection with any rights granted to the Company for the period of fifty (50) years pursuant to the provisions of article 7 of this contract, or continued as herein provided, the Company may, on or before ninety (90) days before the date of the expiration of the period of any such rights, make written request of the Secretary of the Interior that the rights be continued for an additional fifty (50) year period, or such period as is then permitted by the Federal Reclamation Laws or other acts of Congress. Unless, on or before such expiration date, the Secretary of the Interior shallhave notified the Company in writing that the Company's request is denied, such rights shall be continued for an additional fifty (50) year period, or such period as is then permitted by the Federal Reclamation Laws or other acts of Congress.

(b) If the period of such rights granted to the Company pursuant to article 7 expire without the rights being continued or renewed, the Company shall, at its sole cost and expense, remove the structure or structures constructed by the Company, or do whatever is required by the contracting officer to restore the project waterway,

transmission way, or reserved way to its condition prior to the construction of such structure by the Company.

Title to and Maintenance of Crossing Facilities

17. (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 which portion or portions of the facilities shall be deemed to comprise a part of the railroad works and which portion or portions shall be deemed a part of the waterway works 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 _____ and on behalf of the Company by _____. If these officials are unable to agree, the proposed announcement and the objections thereto shall be submitted to the Secretary of the Interior, who shall make a final determination of the matters in controversy.

(b) The United States and the Company shall replace their respective structures with new structures approved by the other party from time to time as the necessity arises, and to make such repairs as may be necessary to protect waterway works, transmission lines or railroad works from damage or interference from said structures. It shall be the duty of the United States and of the Company 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 Company in maintaining or replacing their respective structures shall be done in a good workmanlike manner.

(d) In the event the United States or the Company 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 works, transmission line, or railroad works, 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. The obligation of the United States with respect to this subarticle are subject to the provisions of article 24 hereof.

Company to Indemnify the United States

18. The Company shall reimburse the United States for, and indemnify and save the United States harmless against any and all loss, damage or injury of whatsoever nature, direct or indirect, incurred by or arising out of, or growing out of, any and all injuries or damages of

whatsoever nature or kind to the property of the United States or the property of third persons, done or suffered by reason of the construction, reconstruction, operation and maintenance of any Company railroad crossings or structures of the Company under a grant from the United States pursuant to this contract, or by reason of the existence of such structure, notwithstanding the approval, supervision or sanction of any officer or employee of the United States as to the construction, plan or design of the same, and said indemnification shall extend to and include any losses suffered by reason of interference with or interruption of the transmission of electrical current.

Right to Enter on Other's Right-of-Way

19. The United States and the Company, and their respective officers, agents, contractors and employees, shall at any and all times, subject to the provisions of article 18 of this contract, 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 works, transmission lines, or railroad works, including all structures and crossings which may be built in pursuance of the provisions of this contract.

Duty to Use Care

20. The United States and the Company, in using, occupying and enjoying the rights across and along the facilities of the other, granted pursuant to this contract, shall use all reasonable diligence and precaution to avoid damage to or obstruction of such facilities or with the use for which they were intended.

Company Does Not Assume Liability

21. The Company does not, by reason of this contract, or by reason of any grants made pursuant to article 8 of this contract, assume any liability for injury or damage to any person or property incident to or arising during and inconsequence of (a) the use, occupancy, and enjoyment by the United States, pursuant to this contract, of any railroad line or (b) the operation and maintenance of any waterway work or transmission line across any road line pursuant to article 8 of this contract.

Authorized Representative of the United States

22. Wherever the contracting officer is referred to herein, it is intended to include his successor or duly authorized representative, and for all purposes of this contract, except where another officer is specifically designated, the officer in charge of the Columbia Basin Project is designated the representative of the contracting officer.

Conditions of Labor

23.

(Balance of draft unchanged except for renumbering of articles)

Saint Paul, June 6, 1947

MR. J. T. DERRIG:

Your letter of May 27 about proposed contract with the Reclamation Service covering crossings of our lines by their waterways, communication lines, etc., and future railway crossings of their lines:

After reading the letters of Messrs. Macfarlane and Boggs I gain the impression that they are making considerable headway with the Reclamation Bureau attorneys.

In reply to Mr. Macfarlane's letter to Mr. duPont of May 20, General Counsel wrote Mr. Macfarlane as follows:

"Referring further to your letter of May 20:

I attach copy of Mr. Hughes' letter to me dated May 27.

I think we have said about all that can be said concerning the form of contract, and you may go ahead and complete it. You can use your own judgment as to the terms of it in the light of our correspondence, except I am sure you will feel as we do, that we should not admit the Government has rights over all of the lands under the 1890 Act, although we could admit that perhaps there are some tracts which would be subject to a right of way".

With respect to your remarks about maintenance of openings, etc.: the only crossing that I recall that I have recommended is bridge 114. For that crossing I definitely recommend that we assume the maintenance of the bridge structure. I do not see how we could afford to take any other view, keeping in mind that we had the obligation of maintaining a wooden structure before, and they are replacing that with a first class permanent structure.

I agree with you that the Railway should not assume the obligation of the Government's waterway that will pass under this bridge and I would think that the riprap protection is part of the waterway or main canal. I would compare this situation with a highway undercrossing wherein the Highway Department assumes the maintenance of the roadway and the Railway assumes

the maintenance of the structure supporting its track.

With respect to the siphon at BACON: I do not recall the question of maintenance coming up with respect to that structure but assume of course that the Government will bear all maintenance costs of the siphon across our right of way. After the siphon is constructed there should be no problem of track maintenance, assuming of course that the siphon is properly maintained.

I might add that where the Railway has bridges I can see no reason why we cannot afford to continue their maintenance.

bb/s
x

Copy

St. Paul, Minn., May 28, 1947.

Subject: Proposed form of contract for construction of Grand Coulee irrigation works by the Government (2561-27)

Mr. R. S. Macfarlane
Western Counsel
Seattle, Washington

Dear Sir:

Referring further to your letter of May 20:

I attach copy of Mr. Hughes' letter to me dated May 27.

quote

I think we have said about all that can be said concerning the form of contract, and you may go ahead and complete it. You can use your own judgment as to the terms of it in the light of our correspondence, except I am sure you will feel as we do, that we should not admit the Government has rights over all of the lands under the 1890 Act, although we could admit that perhaps there are some tracts which would be subject to a right of way.

Yours truly,

L B DAPONTE

General Counsel

daP:b

Enclosure

cc-Mr. J. M. Hughes

L.P., Ha.P.

For Discussion

For Bridge 114 - Ry. maintain Bridge Structure only
U.S. maintain canal waterway and appurtenant protection
works.
Bacon Syphon - Govt obligation for Mtce.

Where we now have Bridges + U.S. rebuilds in permanent form we can afford to assume Mtce.

How about eliminate last sentence P 17(a)

O.K. Boggs + Macfalones mtns.

Discuss daPonte

Seattle, Wn.
May 27, 1947

29-5-1

Grand Coulee Basin Project - Water Openings

Mr. Bernard Blum:

In further reference to my letter of May 22nd listing location of proposed major water openings, Coulee Basin Project.

I am now attaching copy of Mr. ~~Boggs'~~ MacFarland's letter of May 20th to Mr. daPonte in reference to proposed agreement now under consideration and with particular reference to the Act. of 1890 or Section 7412, Rem. Rev. Stat.,

I told Mr. Boggs that I felt we should go slow towards assuming any maintenance cost what-so-ever for not only the major bridge and siphon openings but for that matter, any other water openings that may be required such as might be classified as laterals. I do not think the Govt. is donating anything to the Northern Pacific in constructing the permanent bridge if it is a requirement of the Railway Co. to assume the maintenance of the entire structure. The cost of maintaining any of these structures might be a very expensive proposition. We do not have any detail plans for the other bridges or siphons other than the bridge at MP 114+ and the siphon at MP 124+3800. The siphon, as you know, is on a grade and there is a possibility of having maintenance expense. At Bridge 114 the riprap section may be expensive if any difficulties are encountered in the main canal and it would seem that the Govt. should maintain that portion of the ravine section and structure used by the Govt.

In the event it is the intention or instructions to assume the maintenance for any portion of the bridge or siphon openings for perpetuity, I suggest that some provision for limited time or cancellation clause be included in the document. I suggest we give further consideration towards the advisability of assuming any maintenance expense on any water opening - bridge, siphon or pipe.

For your information I am also attaching duplicate print copies of the so-called Boise draft of revised agreement and also duplicate copies of Mr. Newell's letter of May 12th to Dist. Manager, Coulee Dam, referring to the agreement under consideration.

I assume that you will discuss the revised agreement and also the question raised by Mr. Boggs in his letter of May 20th to Mr. daPonte with our General Counsel at St. Paul and advise me further as to steps we should take in concluding the agreement.

Assistant Chief Engineer

JTD:c

Seattle, Washington
May 20, 1947

Mr. L. B. daPonte
General Counsel
St. Paul, Minn.

Dear Sir:

RE: Proposed form of contract for construction of Grand Coulee irrigation works by the Government. (2561-27)

The proposed contract with the United States, relating to easements for construction of government irrigation works across the company's right of way, was discussed with Reclamation Bureau officers at the dam on May 14th, and I enclose a copy of Mr. Boggs' memorandum giving the results. Copies of the memorandum are being sent to Mr. Derrig, who will I presume forward to Mr. Blum for review and his comments.

In line with your view that the railway company should not be placed in a position of in any manner recognizing any rights of the government under the Act of 1890 or Section 7412, Rem. Rev. Stat., we insisted upon the elimination of Section 9 (c), and also submitted for consideration a recital under which the company specifically denied any such rights, and an additional section in the body of the contract which provided that nothing in the agreement would be deemed or construed as an admission or concession by the company that any of its lands or rights of way are in any wise subject to the rights reserved to the United States under these acts. It developed that the inclusion of the provision under which the company would ratify and confirm the reserved rights of the government is mandatory upon the local Reclamation Bureau officers by virtue of the Reclamation Service Manual. However, Mr. LeMargie, counsel for the Reclamation Service, said that the State of Washington had also strenuously objected to the inclusion under its contract of this provision, and he would see what could be done toward eliminating it. We pointed out, of course, that if the government has any rights under these acts they need no further affirmance by the railway company, and the only reason that the Reclamation officers could give for this clause, aside from the fact that they are

compelled to include it under the regulations, was that it serves as a consideration for the agreement by the government to bear the cost of construction and maintenance at points where it has a valid reservation. They conceded that their position in this respect was weak, but were, on the other hand, quite certain that they could not secure approval of a contract in which the railway company would specifically deny that the government had any reserved rights as to railway company lands.

Finally, the government's right of way engineer called attention to the fact that a proposed main crossing of our line by the East Low Canal will be made in the NW¼ of the NW¼ of Section 26-19-29, that the NW¼ of this section was patented to Christian L. Nelson on October 31, 1907, and that our right of way across this quarter was acquired by right of way deed from Nelson to the Connell Northern Railway Company, dated August 4, 1909. He inquired whether it was the railway company's position that this quarter section was not subject to a prior reservation for canals and ditches under the Act of 1890. He was informed that so far the only specific locations which had been considered by the railway company were those at bridge 114 and the siphon a few miles to the south, but that we would submit the question with respect to the even-numbered section described above with the view to determining whether the railway company could concede that, in some instances at least, the government might have a valid reservation over railway company right of way.

I presume the company's position with respect to odd sections within the place limits is that, the grant being one in praesenti, title vested as of the date of the grant and the patent is merely a muniment of title, and that therefore the Act of 1890 could not in any way disturb rights already vested. I understand also that, as to lands within the indemnity limits, there is a ruling by the Secretary of the Interior to the effect that, if the selection was made prior to the date of the Act of 1890, the land is not subject to reservation for canals and ditches even though the patent issued subsequent to the date of the act.

It does seem, however, that at least as to the even-numbered sections patented to third persons subsequent to the Act of 1890, the railway company's right of way is subject to prior right of the government under the Act of 1890. If, of course, we are on good ground in saying that at no point are we subject to the act, there would not be any point in making this agreement with the government for the reason that at all places where the railway company's line was crossed it would be the obligation of the government to bear the entire expense. Railway companies have in the past recognized the rights of the government under this act. For example, the Oregon Trunk did so in a contract made in 1945, and I believe the Great Northern likewise recognized the government's reservation in the case of an irrigation ditch across their Klamath Falls extension. Aside from our peculiar situation due to the Land Grant Act, it seems to me that we can agree that, in some instances at least, the United States may have prior rights in the crossings proposed in the Columbia Basin Project. Of course, ultimately there will be many culverts constructed, probably two or three to the mile, and inevitably some of these will be situated in even-numbered sections, and I rather imagine that many of these sections were patented after 1890. If you agree that probably some of our right of way to be occupied is subject to the government's reservation, it would seem that the question becomes one merely of wording in the contract.

I think that if, in the Boise draft referred to in the attached memorandum, we obtain the elimination of Section 8 (b) and on page 3 change the definition of "reserved way" to mean "any right of way which is in fact and in law reserved to the United States under Section 7412, etc.", the railway company will not in any way be prejudiced by permitting the balance of the agreement to stand in so far as references of reserved rights of way are concerned.

As this question is the chief obstacle to reaching an agreement, I would appreciate receiving your opinion.

Yours very truly,

enc.

Robert S. Macfarlane

Seattle, May 20, 1947

MEMORANDUM
of discussion May 14, 1947, at Grand Coulee Dam of proposed contract for exchange of waterway and railroad easements.

Mr. Derrig and I represented the company, and the government was represented by its Assistant Regional Counsel, Mr. LeMargie, Mr. Williams, who is Mr. Bank's assistant, and Mr. Thorlakson, the government's right of way engineer.

The principal difficulty encountered was with reference to how the positions of the parties with respect to the Act of 1890 were to be reconciled in the contract. The subject was fully and freely discussed, but it was not possible to reach any agreement. Consequently, we will take the matter up further with Mr. daPonte with the view to adjusting our differences, and the local reclamation officers will likewise do the same with their superiors.

The Boise office had submitted a redraft, which the government officers at the dam had not yet had a chance to review, so that the discussion was confined to the draft heretofore submitted to the railway company. Each point raised in Mr. daPonte's letter to Mr. Blum of April 22d was covered, together with several other points, and our differences were in the main resolved as well as might be expected.

Since our return to Seattle, I have gone over the Boise redraft and find that the changes made are principally of form. As Mr. Derrig will no doubt forward a copy of the redraft to Mr. Blum for study and it will serve as the basis for future discussion with the reclamation people, the following comments, based upon the discussion at the dam, will be directed to the provisions of the Boise redraft.

1. Mr. daPonte's point No. 4: Mr. LeMargie is willing to recommend that the contract include a provision which will require the government's contractor to indemnify the railway company, and to furnish a suitable policy of insurance covering the liability so assumed.

2. With reference to Mr. daPonte's point No. 5, in which he objects to providing that the Secretary of the Interior have the final voice in approving plans: To overcome this objection the government officers are willing to recommend omission of the last sentence of Section 9 (a) of the Boise redraft, thus leaving any dispute for settlement by the courts. As arbitration is generally unsatisfactory, this seemed to be the simplest and best solution from the standpoint of the railway company.

3. Mr. daPonte's point No. 6: The objectionable matter is contained in Section 10 (b). Equally objectionable is Section 26 of the former draft, which will be included in the contract, although it is not set forth in the Boise redraft. That section requires the company to release the United States from all liability due to the failure of congress to make an appropriation. The government officers pointed out that these provisions are mandatory, as no doubt they are, under Section 665, Title 31, U.S.C.A., which provides that no executive department may involve the government in any contract for the future payment of money in excess of appropriations for a fiscal year unless the contract or obligation is authorized by law. Mr. Williams also pointed out that merely to insert a provision that appropriation must be available before the company can be required to proceed would not be adequate to protect the railway company, since the funds would not be particularly ear-marked and might be expended any way. Mr. Slattery of the Great Northern, to whom an identical form of agreement had been submitted, suggested to the government that the matter of appropriations might be handled by a clause reading somewhat as follows: "The exercise by the United States of any rights hereunder shall likewise be contingent upon the availability of appropriations to satisfy obligations undertaken by the United States in this agreement in connection with the exercise of such rights." The government officers had not yet fully considered this suggestion, but it is a fact that they are handicapped by the statutory requirements. I presume that we may have to be satisfied to let the contract stand the way it is in this regard and take our chance on the probability that congress would ultimately authorize an appropriation for work undertaken in good faith under the contract.

4. Mr. daPonte's point No. 7: This matter is contained in sections 10 (c) and 11 (c). So much of these clauses as relates to approval seems to be unnecessary in view of the fact that plans will already have been approved under Section 9 (a). The reclamation officers agreed that this was so. All that these sections need provide is that the facilities shall be constructed in accordance with plans theretofore approved, as provided in Section 9 (a).

5. Mr. daPonte's point No. 8: No comment is required for the reason that crossings over reserved rights of way in the Boise redraft are not distinguished from crossings made pursuant to grant. (See Section 11 of the Boise redraft.) However, to make absolutely certain that it is the intent that the United States shall stand the cost of crossings over its so-called "reserved way", I suggest that there be inserted in the second line of Section 11 (a), after the word "line", the following: "including lines occupying land over which the United States owns a reserved way."

6. Mr. daPonte's point No. 9: The government officers have no objection to an amendment as requested. This can be accomplished by making the first line of Section 12 of the Boise redraft read as follows: "The United States, in constructing or reconstructing waterway works and transmission lines, etc.", and by making the first line of Section 13 read "The Company, in constructing or reconstructing any railroad works, etc." Perhaps these sections should be expanded to include maintenance and operation as well as construction and reconstruction.

7. Mr. daPonte's point No. 10. The easements to the company are limited to 50 years under the mandatory provisions of the Reclamation Project Act of 1939, 53 Stat. 1187, 1196, 1197. Mr. LeMargie stated that a bill had been prepared by the Reclamation Service under which the Secretary of the Interior would be authorized to grant easements for a longer period than 50 years, but he did not know just what the provisions of the bill were or what its prospects are. It seems that the Reclamation Service is at present more interested in other legislation more vital to it. I suggested that our contract could provide that the easements granted by this contract for 50 years,

should have the benefit of any amendment, but Mr. LeMargie was doubtful whether the Secretary of the Interior could make a commitment for his successor. Of course, the simplest way out would be for the act itself to extend its benefits to existing easements of shorter term, but I do not know of anything we can do with respect to the form of any such legislation.

8. Mr. daPonte's point No. 11: The provisions with regard to labor are required under Sections 324 and 325(a) of Title 40 U.S.C.A. They will be harmless to the company. In the first place, they are confined to work done which constitutes a part of the government's structures, so that the section will be limited in its application. Furthermore, the work could be confined to an 8-hour day if time and a half is not paid for work over 8 hours, but I imagine most laborers and mechanics will receive time and a half for over 8 hours work for some time to come.

It is noted that Section 17 (a) of the Boise redraft, with reference to title to the facilities, is new, and this brings to the fore the question raised by Mr. Derrig as to the obligation for maintenance. He points out, for example, that at bridge 114 there will be a very substantially greater amount of rip-rap required than is the case for the existing bridge, and that this maintenance may prove costly. It seemed to us that it might be well to agree now, so far as possible, upon the ownership of the various structures or parts thereof. As we understand it, the government contemplates approximately a dozen main openings, which will be either replacement of existing bridges, construction of new bridges, the installation of siphons, concrete boxes, and in addition there will be many smaller openings such as culverts. There would seem to be no question but that the government should own and maintain culverts, siphons, and anything in the nature of a water conduit, but there may be some question when it comes to bridges as to how far the railway company's obligation should extend, and perhaps this matter should be clarified in this agreement, since it is perpetual.

Harold G. Boggs

COPY FIC

Region 1
P. O. Box 937 - Boise, Idaho
May 12, 1947

Air Mail

To: District Manager, Coulee Dam, Washington

From: Regional Director

Subject: Blanket crossing agreements involving railroads and state highways--Columbia Basin Project.

1. Reference is made to your letter of March 24, 1947, on the above subject, and to the note attached to your letter of May 1, 1947, to the Assistant Chief Engineer of the Northern Pacific Railway Company requesting our comments on your draft of the crossing agreement with the Northern Pacific Railway Company prior to your meeting with the officials of that Company, which is to be held on May 14.

2. The Regional Counsel has, in the short time available to him, reviewed the proposed draft of contract with the Northern Pacific Railway Company. To assist you, he was prepared a new draft designated "R. O. Draft 5-12-47", incorporating his suggestions. The redraft is enclosed in triplicate.

3. The major changes in the redraft are as follows:

(a) The first seven articles of your draft were revised with two purposes in mind: (1) a formal one to include the definitions in the substantive portions of the contract; and (2) to restate the definitions so that a distinction is apparent between physical works on the land and rights of ownership in the land. This latter purpose seemed to us to be required because article 8 of your draft, using the definitions as appearing in your draft, seemed to overlap the provisions of subarticles (a) and (b).

(b) Articles 8, 9 and 13 of your draft were restated into articles 7 and 8 of our draft, using the new definitions.

(c) Article 10 of your draft was rephrased into article 9 of our draft to provide for: (1) a plat establishing the boundaries of the crossing; (2) crossing notices to be restricted to those immediately prior to construction; and (3) a specific officer to approve the crossing. As to this latter point, we had in mind that it might be desirable to name the Chief Engineer of the Bureau.

(d) We have restated the articles relating to the payment for crossings (articles 10 and 11 of our draft, formerly articles 11 and 12 of your draft). In so doing we had in mind covering more explicitly the situations where payment would be required for the construction of additional crossing facilities to accommodate the works to be constructed later by the other party. With respect to payments to be made by the United States, a more thorough study of the legal and fiscal problems involved may necessitate the addition of a general article covering all payments to be made by the United States under the contract. We suggest that you consider this point further.

(e) No substantial changes were made in articles 16 and 17 of your draft, although we have some hesitancy as to whether the language is properly expressive of the purposes intended. It is not clear to us but what it would be possible under these articles for either party to require the other to make substantial expenditures at the option of the party requesting the change. We suggest that you delete the words "or for any other reason" from these articles, or make the phrase more definite to cover what situation you had in mind.

(f) No substantial change was made in article 18 of your draft (article 16 of our draft), although attention is directed to the fact that, as redrafted, the term of easement begins with the date of the approval of the crossing plat.

(g) Article 19 of your draft has been expanded by a new subarticle to provide for a method of determining what portion of each structure is to belong to parties to the agreement. Here, again, we had in mind naming the Chief Engineer as the Bureau officer. In order to avoid carrying the phrase "officer in charge of the Columbia Basin Project" through the contract, provision was made to have this taken care of at one point (article 22 of our draft).

(h) Article 22 of your draft (article 20 of our draft) has been rephrased to utilize the definitions as redrafted. This article, although included in the new draft, may present a legal point that requires further consideration. Similar articles in other relocation contracts have been objected to by the Washington office on the ground that there is no authority in the Secretary to impose upon the United States by contract the requirement to use due care. I suggest that the article be deleted from the contract if the Railway Company has no objection.

4. I hope that with these brief comments the reasons for the major changes in the C.D.O. 3/24/47 draft are apparent to you. Our redraft is a hurried one and can stand considerable polishing. As, for example, no consideration was given to the arrangement of the articles. In your negotiations with the Company, do not hesitate to make required editorial changes.

(sgd.) R. J. Newell

Fort Proposed Draft Revised R. O. Draft 5-12-47

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

AGREEMENT AS TO CROSSINGS

THIS CONTRACT, Made this day of 1947, 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 Reclamation Project Act of 1939 (53 Stat. 1187) and the Columbia Basin Project Act (57 Stat. 14), and the pertinent portion of section 2 of the Act of August 30, 1935 (49 Stat. 1028, 1039), referred to hereinafter as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, herein styled the United States, represented by the contracting officer executing this contract, and the ,
a corporation, hereinafter styled the Company,

WITNESSETH, That:

2. WHEREAS, the United States is engaged in the construction, under the Federal Reclamation Laws, within the State of Washington, of the Columbia Basin Project, hereinafter called the project; and

3. WHEREAS, the works of the project include and will include a network of waterways and water conduits, of telephone, telegraph transmission lines, and lines for transmission of electrical or other power, 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 Sec. 7412 of Rem. Rev. Stat. of Washington, the Act of Congress of August 30, 1890 (26 Stat. 291) or other Acts of Congress; and

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

5. 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

6. Wherever used in this contract:

The term "waterway works" shall mean any canal, ditch, lateral, sublateral, drain, spillway, wasteway, siphon, pipe line, or other waterway or water conduit, and any road required in connection with the construction or operation of such works, built or to be built as part of the project works.

The term "transmission line" shall mean any telephone or telegraph transmission line or any electrical or other power transmission

line, and any road required in connection with the construction or operation of such works, built or to be built as part of the project works.

The term "project waterway" shall mean any land owned in fee or any right-of-way, excluding "reserved ways" designated by the United States as the site for any waterway works.

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

The term "reserved way" shall mean any right-of-way reserved to the United States under Sec. 7412, Rem. Rev. Stat., 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 "railroad line" shall mean any land owned in fee or any right-of-way owned by the Company and used or designated by it as the site for its railroad lines built or to be built by it.

The term "railroad works" shall mean any railroad line and appurtenant works built or to be built in connection with the railroad system of the Company.

The term "project" shall mean the Columbia Basin Project as described in the Secretary's report of January 31, 1945 (H. Doc. No. 172, 79th Cong., 1st Sess.), or as it may be revised from time to time.

Right-of-way Granted to the Company

7. The United States hereby grants to the Company, subject to the provisions of this contract, rights to construct, reconstruct, operate and maintain railroad works upon or across any project waterway, transmission way, and reserved way. The rights in each instance shall take effect from the date of the approval of the Company's application made under the provisions of article 9 hereof and shall extend for a period of fifty (50) years from that date, subject to renewals of the term as provided in article 16 hereof. 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 Company will 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 Company for railroad purposes.

Right-of-Way Granted to the United States

8. (a) The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights to construct, reconstruct, operate and maintain waterway works and transmission lines upon or across any railroad line. The rights in each instance shall take effect from the date of the approval of the application by the United States, made under the provisions of article 9 hereof. In any instance where the grant herein made is with respect to land in which the Company has only a right-of-way or easement, the United States will obtain any additional grants or consents from the owners of such interests in the land as may be necessary to permit full use of the land by the United States for its purposes.

(b) The Company hereby ratifies and confirms the reservations, under and by virtue of the Act of Congress approved August 30, 1890 (26 Stat. 391), under and by virtue of any other act of Congress, and under and by virtue of Sec. 7h12, supra, to the United States of the rights-of-way upon or across railroad works located on lands subject to reserved ways.

Notice of Exercise of Right-of-Way

9. (a) The party desiring to exercise the rights granted under articles 7 and 8 shall notify the other party in writing prior to the beginning of construction. Such notice shall be given only immediately before the rights are to be utilized by the construction of a crossing. The notice shall be accompanied by a plat showing the proposed crossing and by plans for the facilities proposed to be constructed. The party receiving the notice promptly shall approve or disapprove the proposed crossing, indicating in the latter instance the reasons therefor. The Company will 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 Company itself for similar purposes; and the United States will not refuse approval of reasonable plans submitted by the Company, 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 plat; approval of the United States shall be given by _____; approval of the Company shall be given by _____.

If disapproved by these officials, the plans shall be referred to the Secretary of the Interior, who shall make a final determination of the points in disagreement.

(b) In case of the United States, the notice shall be given to the contracting office, and in the case of the Company, the notice shall be given to _____, whose office is in _____, _____.

Cost of Crossing Initiated by Company

10. (a) Where a right for the Company to cross a project waterway, transmission way, or a reserved way has been approved under the provisions of article 9 hereof, and at the time of that approval, waterway works or transmission lines at the point of crossing are in existence, or are being built by government forces or are under contract to be built for the United States, the Company 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 9 hereof.

(b) Where a right for the Company to cross a project waterway, transmission way, or reserved way has been approved under the provisions of article 9 hereof and at the time of that approval no waterway works or transmission lines are in existence at the point of crossing or are being built or are under contract to be built, the Company, when building its railroad works at the place of crossing,

will provide, at the request of the United States, crossing facilities necessary to accommodate the waterway works or transmission lines to be built later by the United States. The added cost to the Company of providing such crossing facilities will 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 ten per cent (10%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the crossing facilities in any case under this subarticle, the Company shall submit to the United States an itemized bill of the added cost required to be paid by the United States hereunder. Subject to the provisions of article 24, 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 Company 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

11. (a) Where a right for the United States to cross a railroad line has been approved under the provisions of article 9 hereof, and at the time of that approval railroad works are in existence or are

being built by Company forces or are under contract to be built for the Company, 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 9 hereof.

(b) Where a right for the United States to cross a railroad line has been approved under the provisions of article 9 hereof, and at the time of that approval no railroad works are in existence at the place of crossing or are being built or under contract to be built, the United States, when building its waterway works or transmission lines at the place of crossing, will provide, at the request of the Company, crossing facilities necessary to accommodate the railroad works to be built later by the Company. The added cost to the United States of providing such crossing facilities will be borne by the Company. 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 ten per cent (10%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the crossing facilities in any case under this subarticle, the United States shall submit to the Company an itemized bill of the added cost required to be paid by the Company. 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 Company under this article shall be constructed in accordance with plans and specifications therefor approved by the Company.

Manner of Constructing Crossings by United States

12. The United States, in constructing or reconstructing crossings under a grant pursuant to the provisions of article 6 of this contract, shall do so as follows:

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

(b) Such construction work shall be conducted so that the Company railroad line will be closed to traffic for as brief a period as possible with the United States paying the cost of any Company flagmen which may be necessary. Upon request of the Company, 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 railroad line shall be replaced or renewed so that, upon completion of the crossing, the Company railroad line will be in as good condition as it was prior to such construction work by the United States.

Manner of Constructing Crossings by Company

13. The Company, in constructing or reconstructing a crossing pursuant to a grant under article 7 of this contract, shall conduct its work as follows:

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

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any project waterway, and in the event that the Company constructs any structure

authorized pursuant to the provisions of article 8 of this contract during an irrigation season, which for the purpose of this contract shall be from the fifteenth (15th) day of March to the fifteenth (15th) day of October ofeach year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the contracting officer, for the purpose of conveying the water flowing in the project waterway along the regular course without waste or loss 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 Company.

Changes in Company Structures

14. All grants by the United States, pursuant to article 7 of this contract, are subject to the condition that in the event the contracting officer determines that by reason of a change in a project waterway, or for any other reason, it is necessary that the structure or structures installed by the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by said officer.

Changes in United States Structures

15. All grants by the Company, pursuant to article 8 of this contract, are subject to the condition that in the event the Company

determines that by reason of a change in a railroad line, or for any other reason it is necessary that the structure or structures installed by the United States pursuant to such grant or consent be changed, reconstructed, or added to, the United States shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by the Company.

Continuation of the Period of Grant of Right-of-Way and Easement

16. (a) In connection with any rights granted to the Company for the period of fifty (50) years pursuant to the provisions of article 7 of this contract, or continued as herein provided, the Company may, on or before ninety (90) days before the date of the expiration of the period of any such rights, make written request of the Secretary of the Interior that the rights be continued for an additional fifty (50) year period, or such period as is then permitted by the Federal Reclamation Laws or other acts of Congress. Unless, on or before such expiration date, the Secretary of the Interior shallhave notified the Company in writing that the Company's request is denied, such rights shall be continued for an additional fifty (50) year period, or such period as is then permitted by the Federal Reclamation Laws or other acts of Congress.

(b) If the period of such rights granted to the Company pursuant to article 7 expire without the rights being continued or renewed, the Company shall, at its sole cost and expense, remove the structure or structures constructed by the Company, or do whatever is required by the contracting officer to restore the project waterway,

transmission way, or reserved way to its condition prior to the construction of such structure by the Company.

Title to and Maintenance of Crossing Facilities

17. (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 which portion or portions of the facilities shall be deemed to comprise a part of the railroad works and which portion or portions shall be deemed a part of the waterway works 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 _____ and on behalf of the Company by _____. If these officials are unable to agree, the proposed announcement and the objections thereto shall be submitted to the Secretary of the Interior, who shall make a final determination of the matters in controversy.

(b) The United States and the Company shall replace their respective structures with new structures approved by the other party from time to time as the necessity arises, and to make such repairs as may be necessary to protect waterway works, transmission lines or railroad works from damage or interference from said structures. It shall be the duty of the United States and of the Company 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 Company in maintaining or replacing their respective structures shall be done in a good workmanlike manner.

(d) In the event the United States or the Company 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 works, transmission line, or railroad works, 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. The obligation of the United States with respect to this subarticle are subject to the provisions of article 24 hereof.

Company to Indemnify the United States

18. The Company shall reimburse the United States for, and indemnify and save the United States harmless against any and all loss, damage or injury of whatsoever nature, direct or indirect, incurred by or arising out of, or growing out of, any and all injuries or damages of

whatsoever nature or kind to the property of the United States or the property of third persons, done or suffered by reason of the construction, reconstruction, operation and maintenance of any Company railroad crossings or structures of the Company under a grant from the United States pursuant to this contract, or by reason of the existence of such structure, notwithstanding the approval, supervision or sanction of any officer or employee of the United States as to the construction, plan or design of the same, and said indemnification shall extend to and include any losses suffered by reason of interference with or interruption of the transmission of electrical current.

Right to Enter on Other's Right-of-Way

19. The United States and the Company, and their respective officers, agents, contractors and employees, shall at any and all times, subject to the provisions of article 18 of this contract, 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 works, transmission lines, or railroad works, including all structures and crossings which may be built in pursuance of the provisions of this contract.

Duty to Use Care

20. The United States and the Company, in using, occupying and enjoying the rights across and along the facilities of the other, granted pursuant to this contract, shall use all reasonable diligence and precaution to avoid damage to or obstruction of such facilities or with the use for which they were intended.

Company Does Not Assume Liability

21. The Company does not, by reason of this contract, or by reason of any grants made pursuant to article 8 of this contract, assume any liability for injury or damage to any person or property incident to or arising during and inconsequence of (a) the use, occupancy, and enjoyment by the United States, pursuant to this contract, of any railroad line or (b) the operation and maintenance of any waterway work or transmission line across any road line pursuant to article 8 of this contract.

Authorized Representative of the United States

22. Wherever the contracting officer is referred to herein, it is intended to include his successor or duly authorized representative, and for all purposes of this contract, except where another officer is specifically designated, the officer in charge of the Columbia Basin Project is designated the representative of the contracting officer.

Conditions of Labor

23.

(Balance of draft unchanged except for renumbering of articles)

COPY FIC

Region 1
P. O. Box 937 - Boise, Idaho
May 12, 1947

Air Mail

To: District Manager, Coulee Dam, Washington

From: Regional Director

Subject: Blanket crossing agreements involving railroads and state highways--Columbia Basin Project.

1. Reference is made to your letter of March 24, 1947, on the above subject, and to the note attached to your letter of May 1, 1947, to the Assistant Chief Engineer of the Northern Pacific Railway Company requesting our comments on your draft of the crossing agreement with the Northern Pacific Railway Company prior to your meeting with the officials of that Company, which is to be held on May 14.

2. The Regional Counsel has, in the short time available to him, reviewed the proposed draft of contract with the Northern Pacific Railway Company. To assist you, he was prepared a new draft designated "R. O. Draft 5-12-47", incorporating his suggestions. The redraft is enclosed in triplicate.

3. The major changes in the redraft are as follows:

(a) The first seven articles of your draft were revised with two purposes in mind: (1) a formal one to include the definitions in the substantive portions of the contract; and (2) to restate the definitions so that a distinction is apparent between physical works on the land and rights of ownership in the land. This latter purpose seemed to us to be required because article 8 of your draft, using the definitions as appearing in your draft, seemed to overlap the provisions of subarticles (a) and (b).

(b) Articles 8, 9 and 13 of your draft were restated into articles 7 and 8 of our draft, using the new definitions.

(c) Article 10 of your draft was rephrased into article 9 of our draft to provide for: (1) a plat establishing the boundaries of the crossing; (2) crossing notices to be restricted to those immediately prior to construction; and (3) a specific officer to approve the crossing. As to this latter point, we had in mind that it might be desirable to name the Chief Engineer of the Bureau.

(d) We have restated the articles relating to the payment for crossings (articles 10 and 11 of our draft, formerly articles 11 and 12 of your draft). In so doing we had in mind covering more explicitly the situations where payment would be required for the construction of additional crossing facilities to accommodate the works to be constructed later by the other party. With respect to payments to be made by the United States, a more thorough study of the legal and fiscal problems involved may necessitate the addition of a general article covering all payments to be made by the United States under the contract. We suggest that you consider this point further.

(e) No substantial changes were made in articles 16 and 17 of your draft, although we have some hesitancy as to whether the language is properly expressive of the purposes intended. It is not clear to us but what it would be possible under these articles for either party to require the other to make substantial expenditures at the option of the party requesting the change. We suggest that you delete the words "or for any other reason" from these articles, or make the phrase more definite to cover what situation you had in mind.

(f) No substantial change was made in article 18 of your draft (article 16 of our draft), although attention is directed to the fact that, as redrafted, the term of easement begins with the date of the approval of the crossing plat.

(g) Article 19 of your draft has been expanded by a new subarticle to provide for a method of determining what portion of each structure is to belong to parties to the agreement. Here, again, we had in mind naming the Chief Engineer as the Bureau officer. In order to avoid carrying the phrase "officer in charge of the Columbia Basin Project" through the contract, provision was made to have this taken care of at one point (article 22 of our draft).

(h) Article 22 of your draft (article 20 of our draft) has been rephrased to utilize the definitions as redrafted. This article, although included in the new draft, may present a legal point that requires further consideration. Similar articles in other relocation contracts have been objected to by the Washington office on the ground that there is no authority in the Secretary to impose upon the United States by contract the requirement to use due care. I suggest that the article be deleted from the contract if the Railway Company has no objection.

4. I hope that with these brief comments the reasons for the major changes in the C.D.O. 3/24/47 draft are apparent to you. Our redraft is a hurried one and can stand considerable polishing. As, for example, no consideration was given to the arrangement of the articles. In your negotiations with the Company, do not hesitate to make required editorial changes.

(sgd.) R. J. Newell

Gov't Proposed Draft Revised

R. O. Draft 5-12-47

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

AGREEMENT AS TO CROSSINGS

THIS CONTRACT, Made this day of 1947, 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 Reclamation Project Act of 1939 (53 Stat. 1187) and the Columbia Basin Project Act (57 Stat. 14), and the pertinent portion of section 2 of the Act of August 30, 1935 (49 Stat. 1028, 1039), referred to hereinafter as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, herein styled the United States, represented by the contracting officer executing this contract, and the ,
a corporation, hereinafter styled the Company,

WITNESSETH, That:

2. WHEREAS, the United States is engaged in the construction, under the Federal Reclamation Laws, within the State of Washington, of the Columbia Basin Project, hereinafter called the project; and

3. WHEREAS, the works of the project include and will include a network of waterways and water conduits, of telephone, telegraph transmission lines, and lines for transmission of electrical or other power, 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 Sec. 7412 of Rem. Rev. Stat. of Washington, the Act of Congress of August 30, 1890 (26 Stat. 291) or other Acts of Congress; and

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

5. 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

6. Wherever used in this contract:

The term "waterway works" shall mean any canal, ditch, lateral, sublateral, drain, spillway, wasteway, siphon, pipe line, or other waterway or water conduit, and any road required in connection with the construction or operation of such works, built or to be built as part of the project works.

The term "transmission line" shall mean any telephone or telegraph transmission line or any electrical or other power transmission

line, and any road required in connection with the construction or operation of such works, built or to be built as part of the project works.

The term "project waterway" shall mean any land owned in fee or any right-of-way, excluding "reserved ways" designated by the United States as the site for any waterway works.

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

The term "reserved way" shall mean any right-of-way reserved to the United States under Sec. 7412, Rem. Rev. Stat., 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 "railroad line" shall mean any land owned in fee or any right-of-way owned by the Company and used or designated by it as the site for its railroad lines built or to be built by it.

The term "railroad works" shall mean any railroad line and appurtenant works built or to be built in connection with the railroad system of the Company.

The term "project" shall mean the Columbia Basin Project as described in the Secretary's report of January 31, 1945 (H. Doc. No. 172, 79th Cong., 1st Sess.), or as it may be revised from time to time.

Right-of-way Granted to the Company

7. The United States hereby grants to the Company, subject to the provisions of this contract, rights to construct, reconstruct, operate and maintain railroad works upon or across any project waterway, transmission way, and reserved way. The rights in each instance shall take effect from the date of the approval of the Company's application made under the provisions of article 9 hereof and shall extend for a period of fifty (50) years from that date, subject to renewals of the term as provided in article 16 hereof. 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 Company will 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 Company for railroad purposes.

Right-of-Way Granted to the United States

8. (a) The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights to construct, reconstruct, operate and maintain waterway works and transmission lines upon or across any railroad line. The rights in each instance shall take effect from the date of the approval of the application by the United States, made under the provisions of article 9 hereof. In any instance where the grant herein made is with respect to land in which the Company has only a right-of-way or easement, the United States will obtain any additional grants or consents from the owners of such interests in the land as may be necessary to permit full use of the land by the United States for its purposes.

(b) The Company hereby ratifies and confirms the reservations, under and by virtue of the Act of Congress approved August 30, 1890 (26 Stat. 391), under and by virtue of any other act of Congress, and under and by virtue of Sec. 7h12, supra, to the United States of the rights-of-way upon or across railroad works located on lands subject to reserved ways.

Notice of Exercise of Right-of-Way

9. (a) The party desiring to exercise the rights granted under articles 7 and 8 shall notify the other party in writing prior to the beginning of construction. Such notice shall be given only immediately before the rights are to be utilized by the construction of a crossing. The notice shall be accompanied by a plat showing the proposed crossing and by plans for the facilities proposed to be constructed. The party receiving the notice promptly shall approve or disapprove the proposed crossing, indicating in the latter instance the reasons therefor. The Company will 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 Company itself for similar purposes; and the United States will not refuse approval of reasonable plans submitted by the Company, 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 plat; approval of the United States shall be given by _____; approval of the Company shall be given by _____.

If disapproved by these officials, the plans shall be referred to the Secretary of the Interior, who shall make a final determination of the points in disagreement.

(b) In case of the United States, the notice shall be given to the contracting office, and in the case of the Company, the notice shall be given to _____, whose office is in _____, _____.

Cost of Crossing Initiated by Company

10. (a) Where a right for the Company to cross a project waterway, transmission way, or a reserved way has been approved under the provisions of article 9 hereof, and at the time of that approval, waterway works or transmission lines at the point of crossing are in existence, or are being built by government forces or are under contract to be built for the United States, the Company 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 9 hereof.

(b) Where a right for the Company to cross a project waterway, transmission way, or reserved way has been approved under the provisions of article 9 hereof and at the time of that approval no waterway works or transmission lines are in existence at the point of crossing or are being built or are under contract to be built, the Company, when building its railroad works at the place of crossing,

will provide, at the request of the United States, crossing facilities necessary to accommodate the waterway works or transmission lines to be built later by the United States. The added cost to the Company of providing such crossing facilities will 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 ten per cent (10%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the crossing facilities in any case under this subarticle, the Company shall submit to the United States an itemized bill of the added cost required to be paid by the United States hereunder. Subject to the provisions of article 24, 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 Company 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

11. (a) Where a right for the United States to cross a railroad line has been approved under the provisions of article 9 hereof, and at the time of that approval railroad works are in existence or are

being built by Company forces or are under contract to be built for the Company, 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 9 hereof.

(b) Where a right for the United States to cross a railroad line has been approved under the provisions of article 9 hereof, and at the time of that approval no railroad works are in existence at the place of crossing or are being built or under contract to be built, the United States, when building its waterway works or transmission lines at the place of crossing, will provide, at the request of the Company, crossing facilities necessary to accommodate the railroad works to be built later by the Company. The added cost to the United States of providing such crossing facilities will be borne by the Company. 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 ten per cent (10%) of said costs to cover supervision, engineering and general overhead. Promptly on the completion of the crossing facilities in any case under this subarticle, the United States shall submit to the Company an itemized bill of the added cost required to be paid by the Company. 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 Company under this article shall be constructed in accordance with plans and specifications therefor approved by the Company.

Manner of Constructing Crossings by United States

12. The United States, in constructing or reconstructing crossings under a grant pursuant to the provisions of article 6 of this contract, shall do so as follows:

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

(b) Such construction work shall be conducted so that the Company railroad line will be closed to traffic for as brief a period as possible with the United States paying the cost of any Company flagmen which may be necessary. Upon request of the Company, 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 railroad line shall be replaced or renewed so that, upon completion of the crossing, the Company railroad line will be in as good condition as it was prior to such construction work by the United States.

Manner of Constructing Crossings by Company

13. The Company, in constructing or reconstructing a crossing pursuant to a grant under article 7 of this contract, shall conduct its work as follows:

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

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any project waterway, and in the event that the Company constructs any structure

authorized pursuant to the provisions of article 8 of this contract during an irrigation season, which for the purpose of this contract shall be from the fifteenth (15th) day of March to the fifteenth (15th) day of October of each year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the contracting officer, for the purpose of conveying the water flowing in the project waterway along the regular course without waste or loss 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 Company.

Changes in Company Structures

14. All grants by the United States, pursuant to article 7 of this contract, are subject to the condition that in the event the contracting officer determines that by reason of a change in a project waterway, or for any other reason, it is necessary that the structure or structures installed by the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by said officer.

Changes in United States Structures

15. All grants by the Company, pursuant to article 8 of this contract, are subject to the condition that in the event the Company

determines that by reason of a change in a railroad line, or for any other reason it is necessary that the structure or structures installed by the United States pursuant to such grant or consent be changed, reconstructed, or added to, the United States shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by the Company.

Continuation of the Period of Grant of Right-of-Way and Easement

16. (a) In connection with any rights granted to the Company for the period of fifty (50) years pursuant to the provisions of article 7 of this contract, or continued as herein provided, the Company may, on or before ninety (90) days before the date of the expiration of the period of any such rights, make written request of the Secretary of the Interior that the rights be continued for an additional fifty (50) year period, or such period as is then permitted by the Federal Reclamation Laws or other acts of Congress. Unless, on or before such expiration date, the Secretary of the Interior shallhave notified the Company in writing that the Company's request is denied, such rights shall be continued for an additional fifty (50) year period, or such period as is then permitted by the Federal Reclamation Laws or other acts of Congress.

(b) If the period of such rights granted to the Company pursuant to article 7 expire without the rights being continued or renewed, the Company shall, at its sole cost and expense, remove the structure or structures constructed by the Company, or do whatever is required by the contracting officer to restore the project waterway,

transmission way, or reserved way to its condition prior to the construction of such structure by the Company.

Title to and Maintenance of Crossing Facilities

17. (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 which portion or portions of the facilities shall be deemed to comprise a part of the railroad works and which portion or portions shall be deemed a part of the waterway works 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 _____ and on behalf of the Company by _____. If these officials are unable to agree, the proposed announcement and the objections thereto shall be submitted to the Secretary of the Interior, who shall make a final determination of the matters in controversy.

(b) The United States and the Company shall replace their respective structures with new structures approved by the other party from time to time as the necessity arises, and to make such repairs as may be necessary to protect waterway works, transmission lines or railroad works from damage or interference from said structures. It shall be the duty of the United States and of the Company 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 Company in maintaining or replacing their respective structures shall be done in a good workmanlike manner.

(d) In the event the United States or the Company 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 works, transmission line, or railroad works, 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. The obligation of the United States with respect to this subarticle are subject to the provisions of article 24 hereof.

Company to Indemnify the United States

18. The Company shall reimburse the United States for, and indemnify and save the United States harmless against any and all loss, damage or injury of whatsoever nature, direct or indirect, incurred by or arising out of, or growing out of, any and all injuries or damages of

whatsoever nature or kind to the property of the United States or the property of third persons, done or suffered by reason of the construction, reconstruction, operation and maintenance of any Company railroad crossings or structures of the Company under a grant from the United States pursuant to this contract, or by reason of the existence of such structure, notwithstanding the approval, supervision or sanction of any officer or employee of the United States as to the construction, plan or design of the same, and said indemnification shall extend to and include any losses suffered by reason of interference with or interruption of the transmission of electrical current.

Right to Enter on Other's Right-of-Way

19. The United States and the Company, and their respective officers, agents, contractors and employees, shall at any and all times, subject to the provisions of article 18 of this contract, 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 works, transmission lines, or railroad works, including all structures and crossings which may be built in pursuance of the provisions of this contract.

Duty to Use Care

20. The United States and the Company, in using, occupying and enjoying the rights across and along the facilities of the other, granted pursuant to this contract, shall use all reasonable diligence and precaution to avoid damage to or obstruction of such facilities or with the use for which they were intended.

Company Does Not Assume Liability

21. The Company does not, by reason of this contract, or by reason of any grants made pursuant to article 8 of this contract, assume any liability for injury or damage to any person or property incident to or arising during and inconsequence of (a) the use, occupancy, and enjoyment by the United States, pursuant to this contract, of any railroad line or (b) the operation and maintenance of any waterway work or transmission line across any road line pursuant to article 8 of this contract.

Authorized Representative of the United States

22. Wherever the contracting officer is referred to herein, it is intended to include his successor or duly authorized representative, and for all purposes of this contract, except where another officer is specifically designated, the officer in charge of the Columbia Basin Project is designated the representative of the contracting officer.

Conditions of Labor

23.

(Balance of draft unchanged except for renumbering of articles)

Seattle, Wn.
May 24, 1947

29-5-1

Columbia Basin Project - Construction Status

Mr. Bernard Blum:

I am attaching herewith duplicate copies of statement prepared by the Reclamation Service showing status of contract work as of Nov. 15, 1946.

Mr. Parker, Construction Engineer at Ephrata, states that the information shown on this sketch reports the status of contracts awarded as of this date but does not show the location of the railroads on this tracing or the main canal at Bridge 114 or the siphon at MP 124+3800, as the map is to small to permit showing this data without obliterating the information shown on the tracing.

I suggest that this print be attached to the map, scale 3 miles to the inch, which I forwarded you with my letter of the 22nd, and the combined information will give you the status of work as of this date.

J. T. Dearing
Assistant Chief Engineer

JTD:c

cc RSM
JFA
VEW
HMT

COLUMBIA BASIN IRRIGATION PROJECT REFERENCE MAP

SHOWING CONSTRUCTION STATUS AS OF NOV 15, 1946

FEEDER CANAL

1.6 miles long. Capacity, 16,000 second-feet. Will carry Columbia River water from Grand Coulee Dam Pumping Plant discharge pipes to the 27-mile equalizing reservoir in the Grand Coulee. Seasonal work--under construction by Government forces.

GRAND COULEE DAM PUMPING PLANT

Designed for 12 centrifugal pumps, each of 1,600 second-feet capacity and each driven by a 65,000-horsepower electric motor. Initial installation will be 6 pumps, capable of providing sufficient water for 600,000 acres. Pumps being built by Pelton Water Wheel Co. and Byron Jackson Co., San Francisco, under $1,062,975 contract. Contract for two motors, at total of $854,522, granted General Electric Co., Denver. Contract for 4 other motors, at total of $1,620,026, granted Westinghouse Electric Corp., Denver.

NORTHERN SECTION OF MAIN CANAL

First 2,400 feet included in South Dam contract. Excavation for remaining 7.7 miles begun recently by J. A. Terteling and Sons, Boise, under contract for $1,548,060 contract. Bacon Siphon and Tunnel are part of this section of Main Canal, but are being built under separate contract. Main Canal capacity, 13,200 second-feet--sufficient for serving 1,000,000 acres. E.J. Niemen, resident engineer for Bureau of Reclamation.

SOUTHERN SECTION OF MAIN CANAL

Extends 6½ miles from site of Long Lake Dam to division works for West Canal and East Low Canal, about 5 miles east of Soap Lake. Excavation 50 per cent completed by Morrison-Knudsen Co. of Seattle under a $619,000 contract. M-K job covers excavation only. Resident Engineer for Bureau of Reclamation, Philip M. Noble.

WEST CANAL

80 miles long. 5,100 second-foot capacity for serving 281,000 acres. Excavation for first 5½ miles begun recently by Utah Construction Co. of San Francisco, and Winston Brothers Co. of Los Angeles under a $2,871,796 contract. Two siphons 24½ feet in diameter--the largest in the Pacific Northwest--are included in the contract. F.S. Arnold, resident engineer for Bureau of Reclamation

ADRIAN AGGREGATES

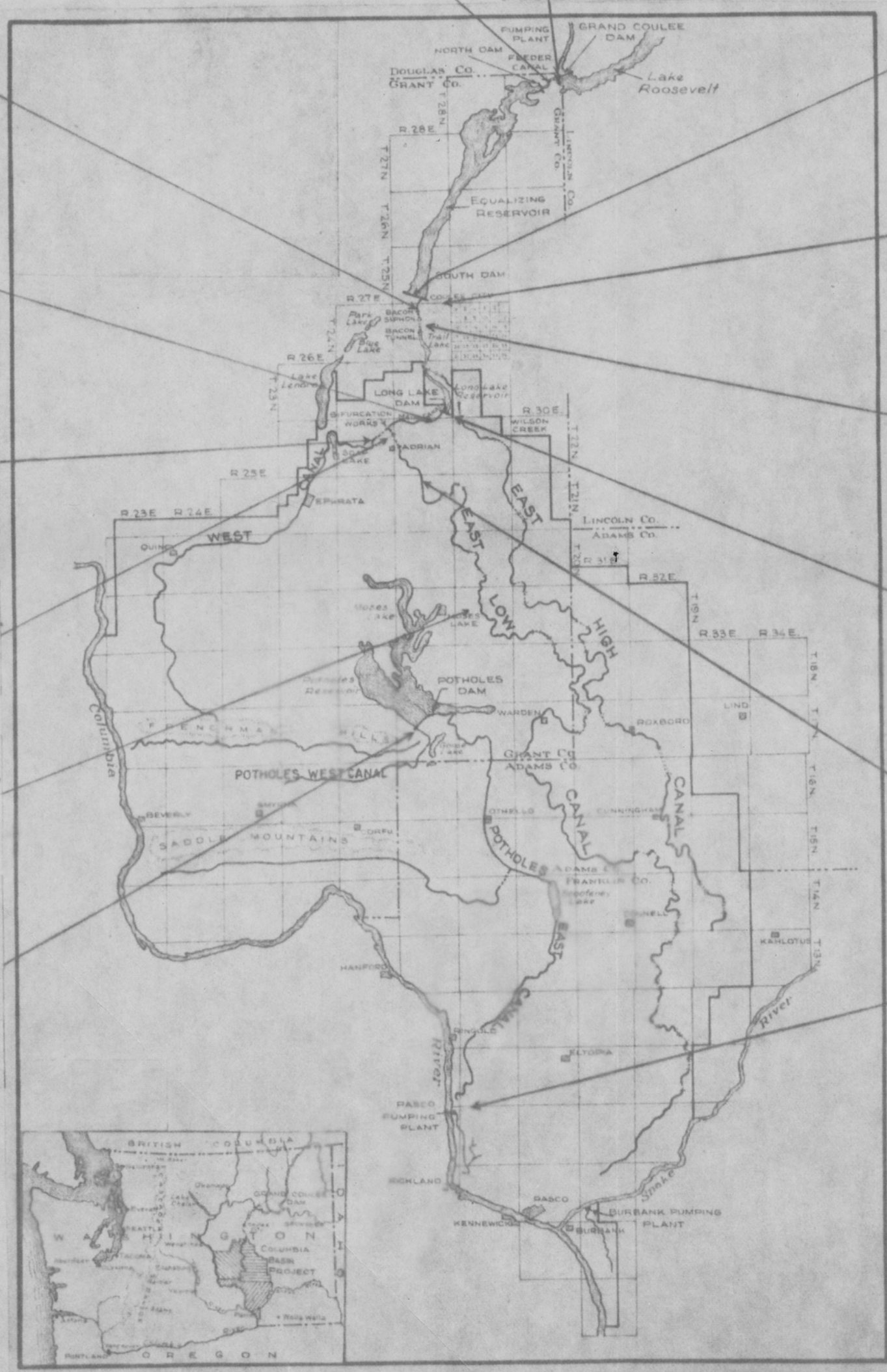
H.F. Green & Co., Spokane, is stockpiling 170,000 cubic yards of sand and 295,000 cubic yards of coarse aggregates near Adrian under a $373,612 contract for preparing concrete aggregates for irrigation structures in the Stratford-Adrian-Soap Lake area.

PREDEVELOPMENT FARM

Water supply well for 80-acre demonstration farm near Moses Lake being drilled by Hosack & Son, Nampa, Idaho. Farm will be developed jointly by Bureau of Reclamation, Washington State College, and the Bureau of Plant Industry.

POTHOLES DAM

Fourth longest dam in the United States. This earth and rock fill dam will extend about 3½ miles across ancient river channels near center of project, creating a 47-square mile reservoir to impound run-off water from northern part of project for irrigating 270,000 acres in southern part. Maximum height, 200 feet. Volume, 9,190,000 cubic yards--nearly as great as that of Grand Coulee Dam, world's biggest concrete structure. $9,359,011 contract just awarded C.F. Lytle Construction Co., Sioux City, Iowa; Green Construction Co., Des Moines, Iowa; and Amis Construction Co., Oklahoma City. Louis B. Ackerman, Res. Eng. for USBR.



SOUTH DAM

10,000 feet long, 450 feet wide at base, 65 feet high from lowest bedrock. Earth and rock fill construction. Excavation to bedrock practically completed by Contractors Roy L. Bair and James Crick & Sons of Spokane. Amount of contract, $2,771,887. H. P. O'Donnell, resident engineer at Coulee City for Bureau of Reclamation.

ODAIR AGGREGATES

J.G. Shotwell, Albuquerque, New Mexico, is stockpiling aggregates at Odair pit under a $172,000 contract. Materials will be used for concrete cut-off wall in the South Dam, and for concrete in other irrigation structures in the Coulee City area.

BACON SIPHON AND TUNNEL

Part of Main Canal. Tunnel nearly 2 miles long and 23 feet in diameter, and concrete siphon 1,000 feet long and 23 feet in diameter, to be constructed by T. E. Connolly, Inc., San Francisco, under a $3,494,420 contract. Access roads built and overburden being excavated at south portal of tunnel. E. J. Niemen, resident engineer for Bureau of Reclamation.

LONG LAKE DAM

1,900 feet long, with maximum height of 111 feet This earth and rock fill dam will save 5½ miles of costly construction for Main Canal. $1,770,592 contract just awarded J. A Terteling & Sons, Boise. Philip M. Noble, resident engineer for Bureau.

EAST LOW CANAL

130 miles long. Designed to serve 252,000 acres. $3,977,136 contract for construction of first 12.3-mile section from end of Main Canal, 2½ miles north of Adrian, Grant County, just awarded Utah Construction Co. of San Francisco and Winston Bros. of Los Angeles. Contract also covers three siphons, each 20 feet in diameter, and with a total length of 6,600 feet. W.W. Brenner, resident engineer for Bureau of Reclamation.

PASCO PUMPING PLANT AND LATERAL SYSTEM

5,397 acres scheduled to receive project's first irrigation water in 1947-48. Work well under way. pumping plant being built by James Construction Co., Seattle, under $188,537 contract; 23 miles of laterals and wasteways by J. A. Terteling & Sons, Boise, under $714,223 contract. Charles W. Seeholzer, resident engineer at Pasco for the Bureau of Reclamation.

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION
Division of Information
Coulee Dam, Wn.

St. Paul, Minn., May 24, 1947.

Subject: Proposed form of contract for construction of Grand Coulee irrigation works by the Government. (2561027)

Mr. J. M. Hughes:

I am sending you our file relating to the above subject, and Mr. Macfarlane's letter to me of May 20, for your comment.

It may be that the Government has a right of way over some lands acquired from third persons. We do not have any information that enables us to answer that question. Even though this is so, perhaps it would be all right in that view of the matter to agree to go along with Macfarlane's suggestion as to wording of the contract in that particular.

You will note the statement in the last paragraph on page 2 that title to the odd sections vested at date of the grant. As to that, of course the title did not vest until date of definite location, under the Nielson decision, which I believe is the case that so held. Macfarlane is correct, however, in assuming that the patent is only a muniment of title, which I believe was held in the case of Desert Salt Company v. Tarpey. Louie might cite Macfarlane any of the decisions he thinks might be of interest on these questions.

On the general question as to admitting the Government's title under the Act of 1890, of course I would be very reluctant to do that because we cannot anticipate what might be the consequences. If the Government is required by law to insist on such a provision, the conclusion is that the law ought to be changed, rather than that the other party should admit that the Government has rights which it does not have.

Of course we have such an important interest in this matter that we can afford to waive

a good deal in order to bring about the completion of the reclamation works.

Please return these papers with your answer.

L B DAPONTE

General Counsel

daP:b

Enclosures

cc-Mr. R. S. Macfarlane

Mr. Bernard Blum

Saint Paul, May 23, 1947

MR. J. M. HUGHES:

Your letter of the 9th, transmitting copy of TWO permits prepared by the Bureau of Reclamation for execution - one for the Walla Walla area and the other in Granite County, within the limits of the south Columbia Basin Project:

We have no contemplated branch line construction in townships -

15N R 23 E
15N R 24 E
13N R 24 E
14N R 25 E
14N R 26 E
15N R 25 E
15N R 26 E

With respect to townships -

23N R 27 E
23N R 28 E near Bacon: these are contiguous to our operated line and it might well be that we would want to build some service or loading tracks after the Irrigation Project gets under way, but I do not see that we could definitely project such trackage at this time.

With respect to the three sections in townships 8N R 31 E and 9N R 31 E: we have no plans for railroad expansion in two of these sections which are now run through by the Union Pacific. We are planning a relocation of our Walla Walla branch between Ainsworth Jct. and Wallula, but moving the line 1 to 1½ miles easterly; but the projected line does not touch these three sections.

With respect to the several sections in townships 17, 18, 19, and 20 N, all in Range 28 E, in the Moses Lake area: there has been some discussion about possible construction of a spur off of our line in the vicinity of Wheeler. This was suggested in connection with the present Moses Lake irrigation project, but I believe it was considered that we could not get a certificate of convenience and necessity in view of the area already being served by the Milwaukee. It is entirely possible that we may want to run some spurs from our Connell Northern line, but we do not have

any definite plans for such an expansion.

bb/s
x

87316

Mr. Blum:

In connection with attached please see my letter May 22, 1947 to Mr. H. G. Boggs, copy to you along with one print of the Government map referred to.

J. T. Derrig-g 5-23-47

PAS
Please file negative
via note reference
Bernard Blum 5/26

PKG.
Map filed, -
#760-18.
PAS
Jm.

Mr Ekberg

note & return
5/26 N.B.

noted CEE
5/27

Seattle, Wash.
May 22, 1947

Grand Coulee Basin - Water openings

Mr. H. G. Boggs:

In reference to our recent discussion in Mr. Banks' office in respect to the proposed blanket agreement covering water openings under Northern Pacific tracks, Grand Coulee Basin Project.

In accordance with our discussion I touched up the negative of the Govt. map, scale 3 miles to the inch, showing the location of the major canal crossings. There are a total of seven major bridge crossings and five siphon crossings. Only two are definitely located. They are at the location of our Bridge 114 and the siphon at MP 124+3800, both on the Adrian Branch. I am listing below MP location of both the bridge and siphon crossings as scaled from the Govt. map:

	Bridge	Siphon
Adrian Branch		
MP 114+4280 (Reconstruction)	X	
MP 124+3800 New opening		25' opening
Connell Branch		
MP 42+1300 (new)	X	
MP 37+3700 "	X	
MP 36+800 "	X	
MP 26+1600 "	X	
MP 20+4700 "	X	
Shrag Branch		
MP 4+3200		X
MP 7+3200		X
Main Line		
MP 95+1000 near Cunningham (new)	X	
MP 101+800 near Hatton (new)		X
MP 128+3700 near Eltopia (new)		X

In other words, these locations, except the bridge and siphon location on the Adrian Branch, are approximate only but I think sufficiently correct as

St. Paul, May 19, 1947

Mr. Bernard Blum:

The attached letter from Mr. Hughes of May 9 relative to the crossing of the Reclamation Bureau's irrigation facilities on railway company property:

Mr. Hughes attached to his letter T&M permits covering various lands. (The "T&M" stands for Timber and Miscellaneous, and is an index used by the Land Department for their various permits of this character.)

Attached find a portion of the print of the section map in this area on which has been shown in yellow the land involved in the T&M permits. As far as any track changes or new construction are concerned, about the only ones that I see that could be involved would be in the Wheeler, Gloyd and Moses Lake area, of which there is correspondence. File 10774

You mentioned the possible extension from Schrag, east to Ritzville. On the Columbia Basin irrigation project map attached to the Wheeler file (10774) the irrigation area extends east of Schrag, approximately 5 miles, and should the extension be made it would no doubt cross some of the irrigation system. This area is not in the first irrigation district area and it will no doubt be some time before work is done in this area.

Without any more definite information than we have at the present time, it is difficult to state what provisions should be made in these various permits to cover railroad line extensions or spurs.

J E Haring

JEH/jwm
attach.

St. Paul, Minn., May 9, 1947

Mr. Bernard Blum
Chief Engineer

Referring to your letter of April 25, I attach hereto copies of two proposed T&M permits prepared by the U. S. Bureau of Reclamation for execution by the Northern Pacific Railway Company and the United States--one covering property in Walla Walla County, and the other in Grant County within the limits of the South Columbia Basin Irrigation District.

These permits grant the right to enter the parcels described for the purpose of constructing, operating and maintaining pipelines, canals or laterals, to be followed by formally executed easements upon the completion of the irrigation works.

With the return of the papers, will you please advise if the Northern Pacific has any plans for extension of its railroad lines or spurs affecting any of the parcels described. If so, matters will have to be re-negotiated with the Reclamation Bureau to protect the Railway Company in its crossing of these irrigation facilities.

J. M. Hughes

Land Commissioner

JMH:AC

Att.

Septa Copy

T & M PERMIT NO. _____

NORTHERN PACIFIC RAILWAY COMPANY

THIS INDENTURE, made this _____ day of _____, 1947, between the Northern Pacific Railway Company, a Wisconsin corporation, its successors and assigns, hereinafter referred to as the Grantor, and the UNITED STATES OF AMERICA, its successors and assigns, hereinafter reffered to as the Grantee, WITNESSETH:

1. WHEREAS, the Grantor owns the following described lands situate in Walla Walla County, Washington, to-wit:

(a) The following lands included in the South Columbia Basin Irrigation District -

T. 8 N., R. 31 E., W. M.

Sec. 15 - All of E½NW¼, E½W½NW¼, NE¼SW¼, E½SE¼SW¼, SE¼, all of Tracts 8 and 25 (sometimes known as the NW¼NW¼NW¼ and SW¼SW¼NW¼ respectively) of recorded plat of Pasco Power and Water Company's Irrigated Lands and those portions of Tracts 9 and 24 (sometimes known as the SW¼NW¼NW¼ and NW¼SW¼NW¼ respectively) of recorded plat of Pasco Power and Water Company's Irrigated Lands lying and being east of the canal; excepting from the above described property, all right of way of the Oregon Washington Railroad and Navigation Company's railroad.

Sec. 27 - NE¼, E½SE¼ and E½W½SE¼ excepting therefrom all right of way of the Oregon Washington Railroad and Navigation Company's railroad.

(b) The following lands included within the exterior boundaries of the South Columbia Basin Irrigation District but excluded therefrom -

T. 8 N., R. 31 E., W. M.

Sec. 15 - NE¼

T. 9 N., R. 31 E., W. M.

Sec. 29 - Lots 1, 2, 3 and 4, and the S½ excepting therefrom 28.50 acres of Pasco Power and Water Company's canal right of way.

subject, however, to an easement in the public for any public road heretofore laid out or established or now existing over and across any part of the premises; subject also to all existing easements, leases and permits heretofore granted by the Railway Company upon, over or across said premises, whether recorded or unrecorded; and

Reserving unto the Railway Company the right to grant additional easements, leases and permits to others to the extent the same shall not unduly interfere with the rights hereby granted; and

2. WHEREAS, the Grantee, acting in pursuance of the Act of Congress of June 17, 1902 (32 Stat. 388), the Act of Congress of August 30, 1935 (49 Stat. 1039), the Act of Congress of August 4, 1939 (53 Stat. 1197), the Act of Congress of March 10, 1943 (57 Stat. 14), and acts amendatory thereof or supplementary thereto, is constructing a canal and lateral system for the irrigation of lands in the Columbia Basin Project, Washington, which includes the lands above described; and

3. WHEREAS, definite descriptions of the rights of way needed by the Grantee for such construction can not be prepared at this time;

4. NOW, THEREFORE, for and in consideration of the sum of one dollar ($1) paid by the Grantee to the Grantor and the construction by the Grantee of irrigation works in the vicinity of the lands above described and the express covenants herein contained, all of which are hereby agreed to be sufficient consideration to support this permit, the Grantor grants to the Grantee the right to enter upon and construct, operate and maintain pipe lines, canals or laterals, including the banks thereof, and to dump waste materials in connection therewith upon the lands described above, together with the right of ingress and egress thereto, subject, however, to the following conditions:

(1) Upon the completion of all said canals, laterals, or pipe lines, so that the rights of way therefor can be determined and definitely described, the Grantor will deliver to the Grantee perpetual easements in form satisfactory to the Secretary of the Interior for the same rights granted hereby for said canals, laterals or pipe lines and describing the same by metes and bounds or center line description (with plat attached) for a consideration of one dollar ($1).

(2) Upon the acceptance and recording by the Grantee of such specific easements the Grantor will furnish a release or releases of said rights of way from any outstanding mortgage or mortgages which may be a lien on the same.

(3) When deeds and releases have been furnished, accepted and recorded for all rights of way for said canals, laterals and pipe lines to be constructed initially for the Columbia Basin Project on the above described lands, the provisions hereof shall be of no further force or effect, and the lands above described will be considered as released from any further obligation hereunder.

IN WITNESS WHEREOF, the Grantor has caused these presents to be sealed with its corporate seal and signed by its _____ the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,

By_____

(CORPORATE SEAL)

Attest:_____

- -

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

On this _____ day of _____, 1947, before me personally appeared _____, to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

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

_____
Notary Public in and for the
State of Minnesota.
residing at

(SEAL)

My commission expires:

to stationing to permit Mr. Williams to advise you in respect to the right-of-way obligation for these openings.

There is also attached two prints of the Govt. map, above referred to, on which I have shown in pencil the approximate MP location of these bridge and siphon crossings.

J. T. DERRIG

Assistant Chief Engineer

JTD:c

cc JFA
BB ✓ One print and negative attached.
VEW

Forwarded under Separate Cover date
Filed in Drafting Room


FEEDER CANAL -(Under Construction)
COLUMBIA RIVER
GRAND COULEE DAM AND PUMPING PLANT -(Primary Pumping Plant under Construction)
FRANKLIN D ROOSEVELT LAKE
NORTH DAM
T 28 N
R 29 E
R 30 E
Steamboat Rock
GRAND COULEE RESERVOIR
W.S. EL. 1570
To Cheney
HARTLINE
(Contract Awarded) Under Construction - SOUTH DAM
Coulee City
BACON SIPHON
BACON TUNNEL
(Contracts Awarded) -Under Construction
TRAIL LAKE
W.S. EL. 1507
NATURAL CHANNEL
Prop'd BRIDGE No. 114
POWER DROP
165'
LONG LAKE
W.S. EL. 1335
LONG LAKE DAM
(Contract Awarded)
SIPHON M.P. 124+3380
MAIN CANAL
(Under Construction)
BIFURCATION WORKS
DOUGLAS CO.
GRANT CO.
Bids opened-Award Pending -1st Section (Dry Coulee Siphons "A" & "B", & Soap Lake Siphon.) -Under Construction-
Soap Lake
Adrian
Grant
Orchards
Strafford
Wilson Creek
Marlin
To St. Paul
Round Lake
EAST
(Bids Invited for 1st Section)
End of Work-Contracted Winston-Utah Co.
NORTHERN CANAL
EPHRATA
COULEE MORAINE
HILLS
BEEZLEY
QUINCY LATERAL
GREAT
Winchester
Quincy
Trinidad
To Seattle
WEST
CRAB CREEK CHANNEL
NORTHERN PACIFIC
LOW
HIGH
(Gloyd)
ROCKY COULEE WASTEWAY
Moses Lake
Prop'd BRIDGE M.P. 42+1300
Wheeler
Prop'd BRIDGE M.P. 37+3700
CANAL
Prop'd SIPHONS
Prop'd BRIDGE M.P. 36+800
C.M. & ST.P.
Ruff
Schrag
LINCOLN CO.
ADAMS CO.
GRANT CO.
QUINCY
WINCHESTER
BASSETT JCT.
POTHOLES RESERVOIR
W.S. EL. 1052
WASTEWAY
POTHOLES DAM
(Bids Received) - Contracts Awarded
DAM
Prop'd BRIDGE M.P. 26+1600
Warden
West Warden
Lind
Roxborn
LIND
To Spokane
To St. Paul
BASIN
COLUMBIA
FRENCHMAN HILLS
ROYAL
SLOPE
POTHOLES WEST CANAL
Goose Lake
POTHOLES
Prop'd BRIDGE M.P. 20+4700
Providence
Beatrice
Prop'd BRIDGE M.P. 95+1000
Cunningham
Hatton
Prop'd Siphon M.P. 101+800
LOW CANAL
ADAMS CO.
FRANKLIN CO.
Emery
Connell
Washtucna Coulee
Kahlotus
To Seattle
Beverly
Smyrna
Corfu
Taunton
Othello
Bruce
SADDLE MOUNTAINS
PARADISE
EAST
WAHLUKE SLOPE
GRANT CO.
West Rapids
Coyote Rapids
White Bluffs
Hanford
FERRY
Cactus
Mesa
RIVER
Ringold
Prop'd SIPHON M.P. 128+3700
Eltopia
Sagemoor
PASCO PUMPING PLANT
Contract Awarded in Part-(Water furnished for 6,000 acres in 1947)
177' LIFT
Glade
Richland
PASCO
BURBANK PUMPING PLANT
Kennewick
Burbank
Two Rivers
To Seattle
To Yakima
SNAKE RIVER
UNION PACIFIC
T. 9 N.
R. 34 E.
3RD. STANDARD PARALLEL
4TH. STANDARD PARALLEL
5TH. STANDARD PARALLEL
SCALE OF MILES
LOCATION MAP
Bellingham
Okanogan
GRAND COULEE DAM
Everett
SEATTLE
SPOKANE
Davenport
Wenatchee
Adrian
Moclips
Tacoma
OLYMPIA
Ellensburg
Yakima
Chehalis
Connell
Pasco
Walla Walla
Vancouver
PORTLAND
PACIFIC OCEAN
EXPLANATION
CANAL LOCATIONS
TUNNEL LOCATIONS
SIPHON LOCATIONS
IRRIGABLE LAND
N.P. RY.
OFFICE OF ASS'T CHIEF ENG'R-SEATTLE, WASH.
Aug. 1946 Revised: 5-21-47
UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
COLUMBIA BASIN PROJECT-WASHINGTON
IRRIGATION SYSTEM
DRAWN A.P.M.
TRACED C.J.R.
CHECKED
SUBMITTED
RECOMMENDED
APPROVED
DENVER, COLORADO JUNE 10, 1943
222-D-8623

Extra Copy

T & M PERMIT NO. _____

NORTHERN PACIFIC RAILWAY COMPANY

THIS INDENTURE, made this _____ day of _____, 1947, between the Northern Pacific Railway Company, a Wisconsin corporation, its successors and assigns, hereinafter referred to as the Grantor, and the UNITED STATES OF AMERICA, its successors and assigns, hereinafter referred to as the Grantee, WITNESSETH:

1. WHEREAS, the Grantor owns the following described lands situate in Grant County, Washington, to-wit:

(a) The following land included in the South Columbia Basin Irrigation District -

T. 13 N., R. 24 E., W. M.
Sec. 1 - N½ and Lots 6, 5, 8 and 7
Sec. 3 - S½
Sec. 9 - N½N½, Lots 2, 1, 4 and 3

T. 13 N., R. 25 E., W. M.
Sec. 1 - Lots 1, 2, 3, 4 and 5
Sec. 3 - Lot 1, excepting therefrom 2 acres in the northeast corner thereof, described as follows:
Beginning at the northeast corner of Lot 1, thence running west a distance of 295.16 feet; thence south 295.16 feet; thence east 295.16 feet; thence north 295.16 feet to the point of beginning,
and all of Lots 2, 5, 3 and 4.
Sec. 5 - Lot 1

T. 14 N., R. 25 E., W. M.
Sec. 23 - All
Sec. 25 - All
Sec. 27 - All
Sec. 33 - N½, SW¼, N½SE¼, N½ of Lot 1, and N½NE¼SE¼
Sec. 35 - All

T. 14 N., R. 26 E., W. M.
Sec. 3 - A strip of land over and across the S½S½, said strip of land being 50 feet wide, 25 feet on the right and 25 feet on the left of the following described center line:
Commencing at the southwest corner of said Section 3 and running thence north along the west line of said Section 3 for a distance of 699.5 feet to the point of beginning; thence north 77°03' east 100 feet; thence south 83°17' east 1010 feet; thence north 64°58' east 580 feet; thence north 85°15' east 220 feet; thence south 80°00' east 370 feet; thence north 85°35' east 560 feet; thence south 56° 05' east 100 feet; thence north 88°17' east 570 feet; thence south 82°50' east 800 feet; thence south 75°44' east 700 feet; thence south 69°04' east 420 feet; thence south 88°27' east 100 feet; to a point on the east line

T. 14 N., R. 26 E., W. M.

Sec. 3 (continued)

of said Section 3, which point lies 342.6 feet north of the southeast corner thereof.

Sec. 5 - A strip of land over and across the S½S½, said strip of land being 50 feet wide, 25 feet on the right and 25 feet on the left of the following described center line:

Commencing at the south quarter section corner of said Section 5 and running thence west along the south line of said Section 5 for a distance of 2157.4 feet to the point of beginning; thence north 55°31' east 145 feet; thence south 89°55' east 170 feet; thence north 44°10' east 110 feet; thence north 15°44' east 170 feet; thence north 45°09' east 270 feet; thence south 83°59' east 210 feet; thence north 70°00' east 700 feet; thence south 77°02' east 1070 feet; thence north 59°38' east 190 feet; thence north 72°21' east 400 feet; thence south 89°19' east 580 feet; thence north 59°36' east 350 feet; thence south 80°21' east 530 feet; thence north 80°42' east 292 feet; to a point on the east line of said Section 5, which point lies 775.5 feet north of the southeast corner thereof.

Sec. 7 - A strip of land over and across the N½N½, said strip of land being 50 feet wide, 25 feet on the right and 25 feet on the left of the following described center line:

Commencing at the southeast corner of said Section 7 and running thence west along the south line of said Section 7 for a distance of 535.7 feet to the point of beginning; thence north 50°41' west 54.7 feet; thence north 71°37' west 230 feet; thence north 15°56' west 150 feet; thence north 22°22' east 140 feet; thence north 26°36' west 380 feet; thence north 47°32' east 330 feet; thence north 34°11' east 170 feet; thence north 03°51' west 380 feet; thence north 09°00' east 450 feet; thence north 54°43' east 520 feet; thence north 8°18' east 730 feet; thence north 10°15' east 1200 feet; thence north 15°41' west 180 feet; thence north 29°10' east 340 feet; to a point on the east line of said Section 7, which point lies 745 feet south of the northeast corner thereof.

Sec. 9 - All

Sec. 15 - N½NW¼, SW¼NW¼, lots 2 and 4 and the west 20 acres of Lot 1

Sec. 17 - All

Sec. 19 - All

Sec. 21 - Lots 1 and 2, NW¼, Lot 3, NW¼SW¼, and Lot 6

Sec. 29 - N½NW¼, Lots 2, 1, NW¼, Lot 4, NW¼SW¼, Lots 5, 6 and 3.

T. 14 N., R. 27 E., W. M.

Sec. 7 - Lots 4, 3, 2 and 1

T. 15 N., R. 24 E., W. M.

Sec. 21 - S½SW¼

Sec. 23 - S½S½

(b) The following lands included within the exterior boundaries of the South Columbia Basin Irrigation District but excluded therefrom -

T. 15 N., R. 23 E., W. M.

Sec. 13 - All

T. 18 N., R. 24 E., W. M.
Sec. 13 - All
Sec. 15 - All
Sec. 17 - All
Sec. 21 - NW¼, N½SW¼ and E½
Sec. 23 - N½ and N½S½

T. 15 N., R. 25 E., W. M.
Sec. 17 - All

T. 15 N., R. 26 E., W. M.
Sec. 13 - All

T. 14 N., R. 27 E., W. M.
Sec. 17 - Lot 1

(c) The following lands included in the Quincy-Columbia Basin Irrigation District -

T. 20 N., R. 28 E., W. M.
Sec. 35 - W½E½ and W½, subject to a perpetual easement granted to the United States of America on the premises to construct, reconstruct, operate and maintain a stream flow gaging station, together with the necessary towers, anchors, cables, guys and appurtenances, and any other works or structures, whatsoever that may be required in connection with the investigation and determination of the regimen of Crab Creek, together with the right to perform any channel stabilization work required in connection therewith on the following described lands:

Beginning at a point on the north line of the northeast quarter (NE¼) of Section thirty-five (35), Township twenty (20) North, Range twenty-eight (28) East, Willamette Meridian, which point bears south 89°33'10" east a distance of 109.6 feet from the north quarter section corner of said section 35; thence South 89°33'10" east a distance of 308.4 feet; thence South 7°47'30" East a distance of 677.0 feet; thence South 86°28'50" West a distance of 350.2 feet; thence North 4°10'10" West a distance of 696.6 feet to the point of beginning, containing five and nineteen hundredths (5.19) acres, more or less,

together with the right of ingress and egress to the above described property over and across the lands of the grantor in the N½NW¼ and W½NW¼NE¼ of the section and the right to use the private road right of way extending from the Moppel-Stratford Highway in the northwest quarter of northwest quarter (NW¼ of NW¼) of said Section 35.

T. 22 N., R. 26 E., W. M.
Sec. 13 - West 1320 feet of Lot 3 and all of W½SW¼

T. 23 N., R. 27 E., W. M.
Sec. 27 - All

T. 23 N., R. 28 E., W. M.
Sec. 9 - N½NE¼, SW¼NE¼, W½ and W½SE¼, except a strip or strips of land of the width of 100 feet, or so much of such strips as may be within the NE¼NW¼, SW¼NE¼ and S½NW¼ in Section 9, Township 23 North, Range 28 East, Willamette Meridian, and lying

T. 23 N., R. 28 E., W. M.
Sec. 9 - (continued)
between two lines paralleling and distant 50 feet on each side from the center line of main track of the railroad of the Northern Pacific Railway Company as now constructed and operated over and across said premises and those adjoining, said center line being particularly described as follows:
Beginning at a point on the north line of said Section 9 distant 264 feet westerly from the northeast corner of said Section 9; thence southwesterly on the continuation of a tangent, which forms a southwesterly angle of 59°59' with said section line, 1680.3 feet to a point of Searles Spiral; thence southwesterly on said spiral curve to the right 165 feet to point of compound curve, said spiral curve having five 33 feet chords subtending an angle of 2°30'; thence southwesterly on a curve to the right, having a radius of 1910.08 feet subtending an angle of 55°00', a distance of 1833.3 feet to point of compound curve; thence westerly on a Searles Spiral curve to the right 165 feet to point of tangent, said spiral curve having five 33 feet chords subtending an angle of 2°30'; thence westerly on a tangent to said curve 2385.2 feet, more or less, to a point on the west line of said Section 9 distant 2438 feet southerly from the northwest corner of said Section 9, said tangent forming a southeasterly angle of 88°19' with said west section line; the right of way herein described contains 15.19 acres, more or less.

(d) The following lands included within the exterior boundaries of the Quincy-Columbia Basin Irrigation District but excluded therefrom -

T. 22 N., R. 26 E., W. M.
Sec. 13 - Lots 2, 4, 5 and Lot 3 excepting therefrom the west 1320 feet thereof.

T. 23 N., R. 28 E., W. M.
Sec. 9 - SE¼NE¼ excepting therefrom the right of way of the Northern Pacific Railway.

(e) The following lands included in the East Columbia Basin Irrigation District -

T. 18 N., R. 28 E., W. M.
Sec. 23 - S½SW¼, NE¼SE¼ and S½SE¼
Sec. 27 - NE¼, S½NW¼ and S½

T. 19 N., R. 28 E., W. M.
Sec. 1 - NE¼, W½, N½SE¼ and SE¼SE¼
Sec. 13 - NW¼, SW¼ and W½SE¼
Sec. 34 - Lot 4

T. 20 N., R. 28 E., W. M.
Sec. 13 - All, except a strip of land of the width of 100 feet or so much of such strip as may be within the W½NW¼, N½SW¼, SE¼SW¼ and lying between two lines paralleling and distant 50 feet on each side from the center line of main track of the railroad of the Northern Pacific Railway Company as now constructed and operated over and across said premises and those adjoining.
Also excepting an additional strip of land of the width of 50 feet as may be within the SW¼NW¼ and N½SW¼ of said Section 13 and lying between two lines paralleling and distant respectively 50 feet and 100 feet southwesterly from said center line and extending between two lines drawn at right angles to said center line from points therein distant respectively 2100 feet and 3600 feet southeasterly measured along said center line

T. 20 N., R. 28 E., W. M.

Sec. 13 - (continued)

from the west line of said Section 13.

Also excepting an additional strip of land of the width of 50 feet as may be within the N½SW¼ of said Section 13 and lying between two lines paralleling and distant respectively 50 feet and 100 feet northeasterly from said center line and extending between two lines drawn at right angles to said center line from points therein distant respectively 3200 feet and 4400 feet southeasterly measured along said center line from the west line of said Section 13.

Also excepting an additional strip of land of the width of 100 feet as may be within the SE¼SW¼ of said Section 13 and lying between two lines paralleling and distant respectively 50 feet and 150 feet northeasterly from said center line and extending between the south line of said Section 13 and a line drawn at right angles to said center line from a point therein distant 4400 feet southeasterly measured along said center line from the west line of said Section 13, said center line hereinbefore referred to being particularly described as follows:

Beginning at a point on the west line of said Section 13 distant 535 feet, more or less, southerly from the northwest corner thereof; thence southeasterly on a tangent forming a southeasterly angle of 25°56' with said west section line 5171.5 feet, to a point on the south line of said Section 13 distant 424 feet, more or less, westerly from the south quarter section corner thereof, said tangent forms a northwesterly angle of 65°27' with said south section line.

The right of way herein described contains 17.46 acres, more or less.

Sec. 25 - All, except a strip of land of the width of 100 feet or so much of such strip as may be within the NE¼NE¼ and lying between two lines paralleling and distant 50 feet on each side from the center line of main track of the Railroad of the Northern Pacific Railway Company as now constructed and operated over and across said premises and those adjoining, said center line being particularly described as follows:

Beginning at a point on the north line of said Section 25 distant 469 feet, more or less, westerly from the northeast corner thereof; thence southeasterly on the continuation of a tangent forming a southeasterly angle of 63°22' with said north section line 1081.5 feet to a point on the east line of said Section 25 distant 968 feet, more or less, southerly from the northeast corner thereof, said tangent forms a southeasterly angle of 25°34' with said east section line.

The right of way herein described contains 2.60 acres, more or less.

Sec. 35 - E½E½

(f) The following lands included within the exterior boundaries of the East Columbia Basin Irrigation District but excluded therefrom -

T. 18 N., R. 28 E., W. M.

Sec. 23 - N½, N½SW¼ and NW¼SE¼

Sec. 27 - N½NW¼

subject, however, to an easement in the public for any public road heretofore laid out or established or now existing over and across any part of the premises; subject also to all existing easements, leases and permits heretofore granted by the Railway Company upon, over or across said premises, whether recorded or unrecorded; and

Reserving unto the Railway Company the right to grant additional easements, leases and permits to others to the extent the same shall not unduly interfere with the rights hereby granted; and

2. WHEREAS, the Grantee, acting in pursuance of the Act of Congress of June 17, 1902 (32 Stat. 388), the Act of Congress of August 30, 1935 (49 Stat. 1039), the Act of Congress of August 4, 1939 (53 Stat. 1187), the Act of Congress of March 10, 1943 (57 Stat. 14), and acts amendatory thereof or supplementary thereto, is constructing a canal and lateral system for the irrigation of lands in the Columbia Basin Project, Washington, which includes the lands above described; and

3. WHEREAS, definite descriptions of the rights of way needed by the Grantee for such construction can not be prepared at this time;

4. NOW, THEREFORE, for and in consideration of the sum of one dollar ($1) paid by the Grantee to the Grantor and the construction by the Grantee of irrigation works in the vicinity of the lands above described and the express covenants herein contained, all of which are hereby agreed to be sufficient consideration to support this permit, the Grantor grants to the Grantee the right to enter upon and construct, operate and maintain pipe lines, canals or laterals, including the banks thereof, and to dump waste materials in connection therewith upon the lands described above, together with the right of ingress and egress thereto, subject, however, to the following conditions:

(1) Upon the completion of all said canals, laterals, or pipe lines, so that the rights of way therefor can be determined and definitely described, the Grantor will deliver to the Grantee perpetual easements in form satisfactory to the Secretary of the Interior for the same rights granted hereby for said canals, laterals or pipe lines and describing the same by metes and bounds or center line description (with plat attached) for a consideration of one dollar ($1).

(2) Upon the acceptance and recording by the Grantee of such specific easements the Grantor will furnish a release or releases of said rights of way from any outstanding mortgage or mortgages which may be a lien on the same.

(3) When deeds and releases have been furnished, accepted and recorded for all rights of way for said canals, laterals and pipe lines to be constructed initially for the Columbia Basin Project on the above described lands, the provisions hereof shall be of no further force or effect, and the lands above described will be considered as released from any further obligation hereunder.

IN WITNESS WHEREOF, the Grantor has caused these presents to be sealed with its corporate seal and signed by its _____ the day and year first above written.

NORTHERN PACIFIC RAILWAY COMPANY,

(CORPORATE SEAL) By_____

Attest:_____

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

On this _____ day of _____, 1947, before me personally appeared _____, to me known to be the _____ of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

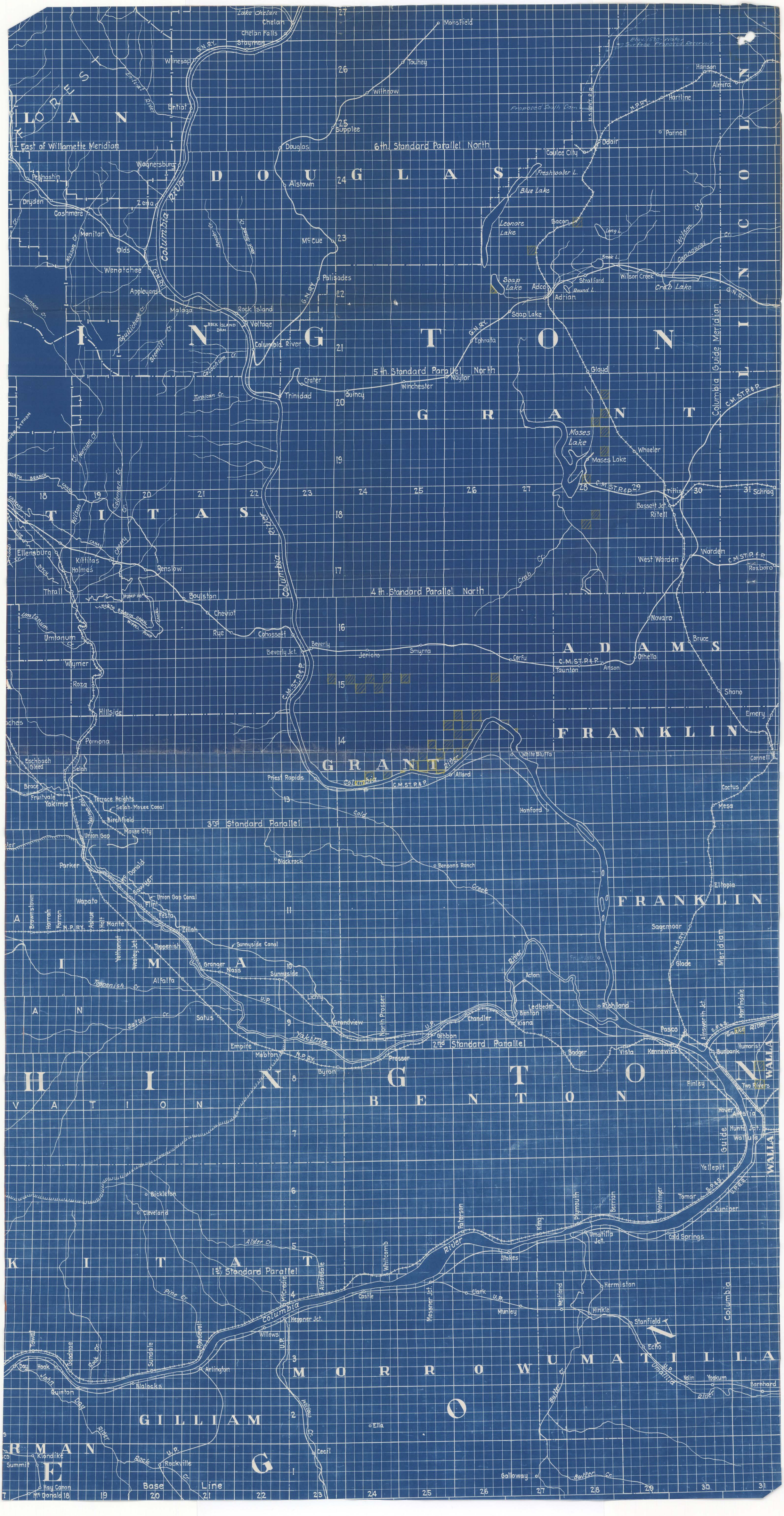
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

_____
Notary Public in and for the
State of

(SEAL)

residing at

My commission expires:


LOAN
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6th. Standard Parallel North
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2nd Standard Parallel
1st Standard Parallel
East of Willamette Meridian
Columbia Guide Meridian
Base Line
Lake Chelan
Chelan
Chelan Falls
Stehman
Winesap
Entiat
Wenatchee
Appleyard
Malaga
Rock Island
Rock Island Dam
Wagnersburg
Peshastin
Dryden
Cashmere
Monitor
Olds
Zena
Alstown
Douglas
Supplee
Wilhrow
Touhey
Mansfield
McCue
Palisades
Coulee City
Freshwater L.
Blue Lake
Leanore Lake
Bacon
Odair
Parnell
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Almira
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Soap Lake
Adca
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Stratford
Wilson Creek
Creek Lake
Ephrata
Naylor
Winchester
Quincy
Trinidad
Crater
Columbia River
Glaud
Moses Lake
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Schrag
Bassett Jct.
Ritell
Warden
West Warden
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Blackrock
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Toppenish
Sunnyside Canal
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Tapteneish Cr.
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Ledbeder
Richland
Pasco
Kennewick
Vista
Badger
Burbank
Humorist
Finley
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Wallula
Yellepit
Tamar
Juniper
Cold Springs
Umatilla Jct.
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Hermiston
Hinkle
Stanfield
Echo
Nolin
Yoakum
Barnhard
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Messner Jct.
Hesperus Jct.
Willows
Arlington
Blalocks
Quinton
Bickleton
Cleveland
Klondike
Rockville
Ella
Cecil
Galloway
Ray Canon
McDonald
Columbia River
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Kennewick
Pasco
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Cecil
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Yellepit
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Galloway
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McDonald

Seattle, Washington
April 29, 1947

29-5-1

Columbia Basin - Water openings

Mr. H. G. Boggs:

I now have Mr. Blum's letter of April 23rd requesting that we complete negotiations for proposed easement for water openings, Columbia Basin irrigation project, along the lines outlined in Mr. daPonte's letter of April 22nd.

I presume it will be necessary to await a reply of my letter of April 24th as to the date Mr. Banks and his attorney will be in a position to review this proposed document with us. I will advise you as soon as I hear from Mr. Banks.

In respect to paragraph #10 of Mr. daPonte's letter of the 22nd as to the variation of the period of time in that the Northern Pacific's period of time is specified as 50 years and the Government's being a perpetuity. It would seem that Mr. Banks and the Govt.'s attorney should agree that the period of time should coincide for both parties and possibly this can be accomplished by suggesting a clause to cover the renewal of the easement, say, at the end of a 50 year period.

In respect to Mr. Blum's suggestion that we assume the obligation of Bridge 114 in that the structure will be rebuilt as a permanent bridge. The abutments and particularly the slopes within the water area of the irrigation channel is protected by riprap and I would think it proper that the Reclamation Dept. maintain the concrete abutments and riprap slopes of the irrigation channel as the Railway Co. has no control over the flow of water thru this opening or other such openings the Reclamation Dept. may construct. I think that they should be satisfied with the Railway Co. assuming the obligation of maintaining its track structure and the steel bridge resting on the concrete abutments.

I suggest, therefore, that you give consideration to a clause along these lines for inclusion in the final document as pertaining to Bridge 114 or other similar structures.

It is, of course, understood that the entire maintenance for the siphon under the NP track at MP 124+3800 is to be assumed by the Govt. for the entire term of easement.

J. T. DERRIG
Assistant Chief Engineer

JTD:p
cc JFA BB VEW

Saint Paul, April 25, 1947

MR. J. M. HUGHES:

Your letter of the 24th about easements across land grant property for the COLUMBIA BASIN project:

At this time we do not anticipate any new construction; but it is quite conceivable that new spurs may be advisable as the irrigation project develops.

There has been more or less loose talk about the possible necessity of connecting the end of the Schrag branch with the main line at Ritzville, over the proposed cut-off Ritzville-Ellensburg which as you know was projected a number of years ago. The reason for such a connection is to expedite traffic from the Basin project, and avoid hauling first to Connell or around the Washington Central line to Cheney.

cc-Mr. L. B. duPonte
Mr. R. S. Macfarlane
Mr. J. T. Derrig
Mr. P. D. Edgell

tb/s

St. Paul, Minn., April 24, 1947

L.C. 17953-1

Mr. Bernard Blum
Chief Engineer

Pursuant to Mr. daPonte's letter to me of April 22, relative to easements across Land Grant property in the Columbia Basin Project required for canals, rights of way and laterals, we will proceed to handle these matters as they arise without incorporating any provisions or restrictions with respect to future crossings of these waterways by Northern Pacific Railway lines.

However, should there be a projected or surveyed railroad line to which our attention is called by the Engineering Department prior to the receipt of application on behalf of the United States for canal or lateral right of way easements across certain specified tracts, we will endeavor to protect for the railroad right of way, but we will probably not be able to do so against the threat of condemnation proceedings. Will you please, therefore, make a note to the effect that the Engineering Department will notify the Land Department in due time of its requirements in this respect.

J. M. Hughes

JMH:AC

Land Commissioner

cc--Mr. L. B. daPonte
Mr. R. S. Macfarlane
Mr. J. T. Derrig
Mr. P. D. Edgell

St. Paul, Minn., April 24, 1947

L.C. 17953-1

Mr. P. D. Edgell
Western Land Agent
Seattle, Washington

Attached is a copy of Mr. daPonte's letter to me of April 22, and a copy of my letter of this date to Mr. Blum relating to easements for main and lateral canal rights of way in the Columbia Basin Project with respect to blanket provision protecting for future railroad crossings.

Will you please make the necessary notations on your record so that when applications for canal rights of way are received, the matter may be checked with the Engineering Department in order that proper protection may be afforded for the railroad right of way at necessary crossings for projected or surveyed railroad lines. If there are any such projected crossings, negotiations should be undertaken with the U. S. Bureau of Reclamation to cover the matter adequately for our protection if it is possible to do so.

(Signed) J. M. HUGHES
Land Commissioner

JMH:AC

Att.

cc-Mr. Bernard Blum
Mr. L. B. daPonte
Mr. R. S. Macfarlane
Mr. J. T. Derrig

8731-E

Seattle, Wash.
April 24, 1947

29-5-1

Columbia Basin - Water openings

Mr. J. F. Alsip:

For your information I am attaching herewith copy of my letter this date to Mr. F. A. Banks in reference to the completion of agreement covering the construction of water openings for irrigation ditch, Columbia Basin Project.

J. T. DERRIG

Assistant Chief Engineer

JTD:p

cc RSM
BB
VEW
PDE
DSC
HMT

Copy of my letter this date to Mr. Banks attached.

April 24, 1947

29-5-1

Mr. F. A. Banks
District Engineer
U.S. Department of Interior
Bureau of Reclamation
Coulee Dam, Washington

Attention: Mr. R. B. Williams

Columbia Basin - Water openings

Gentlemen:

Your letter of March 24th submitting revised form of blanket agreement for proposed water openings under Northern Pacific tracks, Columbia Basin irrigation district and with particular reference to proposed reconstruction of Bridge #114 and the placing of siphon under Northern Pacific tracks at MP 124+3800.

This matter was necessarily referred to our St. Paul office and Mr. Bernard Blum, Chief Engineer, now advises as follows:

"The Northern Pacific will enter into a contract in general conformity with draft submitted with your letter above referred to but will wish to discuss modifications of some provisions. Also, our Counsel advise that they can find no support for claim that U.S. has an easement under the Act of 1890 or under Section 7412 of Washington Statutes over any lands on which our railroad is constructed subject to this discussion and pending completion of formal contract it will be satisfactory for you to proceed at this time with the construction of Bridge #114 and also the siphon at MP 124+3800 at the expense of the U.S. as provided in the proposed contract."

I am forwarding this letter in order to avoid any possible misunderstanding in respect to permitting your contractor to proceed with the work on Northern Pacific right-of-way and wish to assure you that the Northern Pacific is endeavoring to cooperate with you and thru you with the Reclamation Department in avoiding any possible delay to the progress of this work thru your department or your contractor.

It is my desire to complete this agreement in final form with as little delay as possible and I will thank you to advise what date it will be satisfactory for Mr. H. G. Boggs and I to review this agreement with you and your attorney at Coulee City.

Yours very truly,

J. T. DERRIG
ASSISTANT CHIEF ENGINEER

JTD:p

Saint Paul, April 23, 1947

MR. J. T. DERRIG:

Your letter of March 25 to Mr. Alsig, and your letter of April 4 to me, regarding form of agreement proposed by the Reclamation Service to cover crossings of railroad lines by the Grand Coulee Dam project and crossings that may be made by railroad lines of the canalways hereafter:

I referred the Government draft to general counsel, and discussed it on two occasions with Messrs. duPonte and Countryman, and am attaching two copies of Mr. duPonte's letter to me of the 22nd, copy of which went to Mr. Boggs.

Mr. duPonte's letter is clear, and I wish that you and Mr. Boggs would negotiate further with Mr. Banks along the lines of Mr. duPonte's suggestions.

Both Mr. duPonte and Mr. Countryman were firm in their opinion that the Act of August 30, 1890, referred to several times in the Government draft, has no weight whatsoever on our right of way. At the beginning of our conference Mr. duPonte stated that he thought the Government draft was entirely too drastic but after we had discussed the various features it was agreed that heretofore the Reclamation Service had not been unduly severe in its interpretation of previous contracts and we need not anticipate that it would be unreasonable in the present instance.

It is also pointed out that the railroads have everything to gain in carrying out the Columbia Basin project, and we do not want to appear to be in any way opposing its completion.

I told Mr. duPonte that I had previously stated to you that it was my opinion that we could well afford to take over the obligation of maintenance of permanent bridge 114 in view of the benefits we would obtain in substituting a permanent bridge for a worn-out wooden trestle; and in this he agreed.

You will note in Mr. duPonte's letter that while he has given his opinion in the various numbered paragraphs as to our rights, he concludes by saying that we should not refuse to enter into a contract with the Government.

Will you see what you can work out along these lines. Do not overlook Mr. duPonte's paragraph 10, about the term of the easements.

I wired you last night to notify Mr. Banks that it was all right for them to proceed with the construction of bridge 114 at Government expense. We do not in any way want to interfere with their construction plans.

Will you let me hear from you when you have had opportunity to go into this question further.

cc-Mr. Robert S. Macfarlane
Mr. J. F. Alsip
Mr. H. G. Boggs
x

tb/s

att.

N. P. 1386 / 12-24

TELEGRAM—BE BRIEF

TIME FILED 8 7 3 18 M.

St Paul, April 23, 1947 J T Derrig - Seattle

D-382 Yes same situation applies to siphon at MP 124 plus. B-233

B. Blum

TELEGRAM

TELEGRAM

N.P. RY ST. PAUL
TELEGRAPH OFFICE

NP90CFC SEATTLE 23 228 PM

1947 APR 23 PM 4 37

BERNARD BLUM RTP

B-223 IN REFERENCE TO ADVISING RECLAMATION DEPT APPROVAL FOR CONSTRUCTING BRIDOE 114 PENDING COMPLETION OF AGREEMENT ASSUME THIS SAME CONDITION APPLIES TO CONSTRUCTION OF SIPHON MP 124 PLUS 3800 PLEASE CONFIRM AS THE GOVERNMENT WISH TO START WORK ON BOTH PROJECTS

D-382

J T DERRIG.

St. Paul, Minn., April 22, 1947.

Subject: Proposed form of contract for construction of Grand Coulee irrigation works by the Government. (2561-27)

Mr. Bernard Blum:

I have talked to Scandrett about the proposed form of contract for construction of the Grand Coulee irrigation works by the Government.

I attach copy of wire for you to send to Mr. Banks, in line with my talk with Mr. Scandrett.

Regarding points for further discussion with Mr. Banks, I suggest the following:

1. I agree with Mr. Boggs in his letter to Derrig of April 1, that section 9(c) is unnecessary. I am also quite sure that the Government has no easement under the Act of 1890, or the State Statute 7412. That is a feature of the contract to which I particularly take exception. Not only in 9(c) is it assumed that the Government has this right, but the same assumption is made in a number of other places, and I think that we should say to Mr. Banks that we disagree with the Government's claim in that regard, and are not willing to sign any contract or document by which we would appear to concur, or under which it might be claimed that we had concurred in and agreed to the Government's position in that particular. All such provisions of the contract should be eliminated.

2. I do not attach particular importance to paragraph 2 of Mr. Boggs' letter. I think it is proper that the Northern Pacific should pay the cost of construction of any bridges for any new lines it may hereafter construct over the Government canals. Certainly, we cannot in a condemnation suit impose such a requirement on the Government. If we have granted easements over other lands and in other connections that do not give corresponding protection to the Northern Pacific, that is another matter.

Those easements should be negotiated on their own merits and not mixed up with our present contract.

3. I do not attach any particular importance to paragraph 3 of Mr. Boggs' letter. I understand, and I think it is proper that after the Government has built a permanent structure that it should and will be owned by the Northern Pacific, and that the Northern Pacific should pay the cost of its maintenance, and if it ever has to be renewed, that we should renew it at our own cost. Of course, if changes in the bridge after it has been constructed are required by some other work that the Government may wish to do, it would have to pay the cost of making the bridge conform to its requirements, and the contract so provides.

4. I think it would be all right to provide that the Government require the contractor to give an indemnity bond, but I do not attach much practical importance to that. It isn't like a main line which might be interrupted by contractors blasting or doing work in the vicinity or on the right of way, of which, of course, we have had a good deal, and in which case a bond has been and should always be required. It might be, however, that the Government would have no objection to including such a clause, and if so, that it be included.

5. Referring to paragraph 10(a) providing for approval of plans for construction of Government works, it seems to me that the Northern Pacific should have the deciding voice, and that it is not fair to leave the final decision to the Secretary of the Interior. Perhaps you will consider that that objection is more theoretical than practical as our experience with the Reclamation Service has been pretty satisfactory in these matters and I do not believe the Government would insist on doing anything to which we seriously objected. However, that is a matter you may discuss with Mr. Banks. This comment also applies to paragraph 13.

6. Paragraph 11(a) provides for cost of a crossing over project waterways, and that if the crossing is over a right of way held or withdrawn or required by the United States for a specific project, the Company will provide the appropriate crossing facilities at the request of the United States, but the United States will reimburse the Northern Pacific. I suggest that this provision be conditioned that the Company will provide the crossing if there has been an appropriation made out of which the cost can be paid. In other words, we do not want to be in the position of having to build the crossing and not be reimbursed.

7. You will note by paragraph 11(b) that the structures shall be approved by the officer of the Bureau of Reclamation. There is no provision for submitting the plans to the Company, as is contained in paragraph 10(a). The same comment applies to paragraph 12(b). This apparent conflict should be straightened out.

8. Paragraph 12 providing for cost of crossing the Company lines, is satisfactory. I note that 12(a) provides for crossing in general under rights granted by the Northern Pacific, and 12(c) seems to cover a crossing made pursuant to the reserved right under the Act of August 30, 1890. I do not see that that will do any harm as we do not think there will be any such case, but it seems immaterial what the fact is. We are granting them a right of way in any event under 12(a). Perhaps we need take no exception to 12(c) on that ground.

9. Paragraph 13 and 14. Paragraph 14 governs manner of constructing crossings. As the contract gives the Government the right to construct works longitudinally on the right of way, it would seem these two paragraphs should cover any and all work, whether crossings or other work that the Government does.

10. I do not know why the Government has limited its easements to 50 years and ours are perpetual. You might inquire into that feature and if

there is any reason why the Government's easements should not be for any less time than ours, it ought to so provide; nor do I like paragraph (b) of 18 which provides that on expiration of the easement we have to remove our structures unless we get a renewal.

11. I do not like paragraph 23 providing labor conditions. I do not see that it is any business of the Government to provide how the Northern Pacific pays its employees. This may, however, be of no practical importance as I am not aware of any work the Northern Pacific will be doing for the United States, or if we do any work for the United States we will be reimbursed. In either event perhaps we will not be injured by this provision, but I suggest that it be looked into.

I do not mean to say that I would insist on all of these changes or refuse to sign the contract if they were not made. My principal objection is to that feature of the contract in which the Government wants us to agree to its unfounded assumption that it has any rights under the Act of 1890, or State Statute 7412. I think we ought to be insistent that that feature be eliminated, or that the contract be so worded that the Northern Pacific will not be required to make any admission. I do not have, of course, any objection to the Government claiming such a right, providing we are not required to tacitly admit it.

I am returning your files herewith.

L. B. du Pont.
General Counsel

daP:b
Enclosures

cc-Mr. B. W. Scandrett
Mr. J. M. Hughes
Mr. Harold Boggs

The following is a tentative draft of wire to Mr. Banks.

The Northern Pacific will enter into a contract in general conformity with the draft submitted but we wish to discuss modification of some of its provisions. Also our Counsel advise that they can find no support for claim that United States has an easement under the Act of eighteen ninety or under Section seven four one two of Washington Statutes over any lands on which our railroad is constructed. Subject to this discussion and pending completion of the formal contract it would be all right for you to proceed at this time with construction of Bridge one fourteen at expense of United States as provided by the proposed contract.

St. Paul, Minn., April22, 1947.

Subject: Proposed form of contract for construction of Grand Coulee irrigation works by the Government. (2561-27)

Mr. J. M. Hughes:

Referring to your letter of April 17 to Mr. Blum about reserving railroad rights of way in easements or permits granted to the Bureau of Reclamation.

As you will see from my letter to Blum of today, I do not think this question should be mixed up with the matter of our contract for the canals in the Columbia Basin project. You may handle these other matters in such way as you think proper. I think I should add though, that you will recall that Mr. Bunn many years ago ruled that these blanket rights of way retained in our deeds are of no value whatsoever. It may be too, that the blanket right of way reserved by the Government in its contract for its canals is no more valid than our reservation of rights of way for railroads contained in our deeds. I have not, however, referred to that feature in my letter to Blum.

L B DAPONTE

General Counsel

daP:b

cc-Mr. Bernard Blum

Mr. Harold Boggs

N. P. 1386 12-24

TELEGRAM—BE BRIEF

TIME FILED 8731 E M.

St Paul, April 22, 1947 J T Derrig - Seattle

Will write you tomorrow about proposed contract with Bureau of Reclamation covering Columbia Basin project construction but in mean time you may send the following telegram to Banks:

"Northern Pacific will enter into a contract in general conformity with draft submitted but will wish to discuss modifications of some provisions. Also our counsel advise that they can find no support for claim that U S has an easement under the Act of 1890 or under section seven four twelve of Washington statutes over any lands on which our railroad is constructed. Subject to this discussion and pending completion of formal contract it would be all right for you to proceed at this time with construction of bridge 114 at expense of U S as provided in proposed contract."

B-223

B. Blum

St. Paul, Minn., April 17, 1947

Mr. Bernard Blum:

Referring to Mr. Derrig's letter to you of April 4, to which is attached a letter from Mr. Boggs to him, relating to crossings of railroad rights of way and tracks by Columbia Basin Project facilities.

For your information, I attach a copy of a letter from Western Land Agent Edgell dated April 8, from which you will notice that the Coulee Dam Office of the U. S. Bureau of Reclamation has submitted drafts of proposed permits covering rights to construct, operate and maintain pipelines, canals, laterals, etc. across our lands in Grant and Walla Walla Counties.

With special reference to the suggestions made by Messrs. Derrig and Boggs that the agreement which Mr. Derrig has under consideration with the Bureau be amended to provide that where the Land Department has granted easements for canals, laterals, etc., such easements be made subject to the rights of the Railway Company at some subsequent time to cross the canal facilities by its railroad, the cost of the crossing to be borne by the United States. After considering this suggestion with Land Attorney Schwarm in the light of our arrangements with the Secretary of the Interior respecting our lands in the Columbia Basin Project, it does not appear to us that this suggestion can be carried out as a practical matter for the following reasons:

1. The Railway Company has entered into an agreement with the Secretary of the Interior designated as a Recordable Contract, affecting all the Company's irrigable lands in this project whereunder the Secretary has an option to acquire any or all such lands at the Government appraised price. While it is not likely that this option will be exercised inasmuch as the Department has agreed to allow the Railway Company ample time within which to dispose of these lands at the Government appraisals through negotiations with its own customers, the contract provision nevertheless remains as stated, and the Secretary would be empowered even if such a provision was not set out to acquire such rights of way as were necessary for canal facilities as were required by condemnation.

2. The Company has for a long time followed the policy of granting canal rights of way under Government projects free of cost to the United States. Were it not for the provisions of the Recordable Contract, the Company might impose certain reservations respecting future railroad crossings that it was able to negotiate with the Secretary inasmuch as none of the lands in the Project are subject to the Act of August 30, 1890, with the exception of one small parcel described as Lot 4 of Section 34-19N-28E which was acquired subsequent to the passage of that Act. However, so far as the lands affected by these canal facilities are covered by the Recordable Contract and there is no reference therein to future railroad rights of way, it appears to us obvious that we cannot now insert a railroad right of way reservation in any easements that we may grant for canal facilities across lands covered by that contract.

3. There probably are other railway lands in the Columbia Basin Project which are not susceptible to irrigation and which, therefore, are omitted from the Recordable Contract but which may be occupied by canal facilities at some future time in order that the canals or laterals may be laid from one portion of the Project to another portion that are separated by non-irrigable areas. As above stated, the Company's policy will be to grant the necessary easements without charge, and it would be feasible to reserve a railroad right of way for crossings of such facilities from a legal standpoint. From a practical standpoint, however, it appears infeasible because it is not at all likely that the Secretary of the Interior would feel himself empowered to accept an easement containing such a blanket railroad right of way reservation for some possible railroad construction not contemplated at the time and perhaps never to be constructed affecting the parcels in question. Certainly the Secretary would have no authority to bind his successor or the United States to the payment by the U. S. of the cost of such railroad crossing unless some Act of Congress not now on the statute books would be enacted to cover such a situation. The Company would not care to be placed in a position where it might be charged with obstructing the development of irrigable areas of this Project because it could not come to a satisfactory arrangement respecting some future railroad crossing of proposed canal facilities located on a parcel of non-irrigable land.

In our judgment, the suggestions cannot be carried out.

J M Hughes

Land Commissioner

JMH:AC

cc--Mr. R. S. Macfarlane

Mr. J. T. Derrig

Mr. P. D. Edgell

Seattle, Washington, April 8th, 1947

Mr. J. M. Hughes,
Land Commissioner,
St. Paul, Minnesota

S.S. 571

You are undoubtedly aware of a proposed form of agreement between the United States and our Operating Depatment covering crossings of railroad rights of way and tracks by the Columbia Basin Project facilities, and crossings of the latter facilities by railroad lines that may be constructed in the future.

In this connection I am enclosing copies of letter dated April 1st from Mr. H. G. Boggs to Mr. J. T. Derrig, and of letter dated April 4th from Mr. Derrig to Mr. B. Blum.

In Paragraph 2 of Mr. Boggs' letter he refers to easements granted the United States by the Land Department covering the right to construct canals, etc., across land owned by our Company in fee and suggests that in similar future easements over Land Department lands a reservation be inserted providing for the right of our Company to construct railroad lines over Government canals and other facilities on our land, and that the cost of any such construction over Project facilities be borne by the Government; also, that the agreement under consideration by the Operating Department contain a provision protecting the Company against such costs.

We have received from Mr. F. A. Banks' office drafts of proposed permits covering our lands in Grant and Walla Walla Counties which are similar in form to T&M Permit No. 3272 for lands in Franklin County granting to the United States the right to construct, operate and maintain pipe lines, canals, laterals, etc. We are checking the drafts as to the descriptions therein.

I am submitting Mr. Boggs' suggestions for your consideration in connection with Land Department permits now pending on lands in Grant and Walla Counties.

(Signed) P. D. Edgell
Western Land Agent

RGL-k
2 encs.

cc: Mr. Macfarlane

Saint Paul, April 16,1947

MR. J. T. DERRIG:

In connection with my letter of April 14 to Mr. daPonte Mr. Hughes has in reply sent me copy of Land Attorney Schwarm's memorandum of January 18, two copies of which are attached.

I do not know if Mr. Boggs has seen this memorandum - which has reference to Land Department holdings.

I am also attaching copies of Mr. Thames' letter of January 27 to Mr. Boggs.

Have you heard from Mr. Boggs relative to the last paragraph of Mr. Thames' letter of January 27?

I am also attaching two copies of Mr. Hughes' letter of April 15 to Mr. Schwarm.

bb/s

att. memo
JET-HGB
JHB-LLS

St. Paul, Minn., April 15, 1947

Mr. Schwarm:

The attached letter from Mr. Edgell dated April 8, bears on the subject which I discussed with you yesterday, relative to the rights of the United States under the Act of August 30, 1890. Also see copy of Mr. Blum's letter to Mr. daPonte dated April 14.

I am not sure that the Land Department is in a position to proceed with respect to easements to the United States for facilities in connection with the Columbia Basin project as suggested by Messrs. Boggs and Derrig as a practical matter. As this project develops, there are going to be a large number of easements of this nature covering main canals, laterals, roadways, etc., affecting Land Grant property. So long as these lands lie within the place limits, the Act of 1890 has no bearing and the Company is in a position to impose such restrictions on its easements as it may be able to negotiate with the Bureau of Reclamation.

However, no one can say now, or probably at the time that these easements are requested, to what extent further railroad construction may take place, and I would imagine the Bureau would object very seriously to some blanket reservations in our easements that would protect against some further railroad extension.

Please give this matter consideration and if you think it can be accomplished, develop a general provision that will cover the ground. You will remember that it is our general policy to grant these easements to the United States without charge.

(Signed) J. M. HUGHES
Land Commissioner

JMH:AC

Att.

cc--Mr. Bernard Blum

St. Paul, Minn., April 14, 1947.

Mr. L. B. daPonte:

I am transmitting to you herewith one print copy of the Bureau of Reclamation's revised draft of agreement to cover crossings of railroad rights of way and tracks by waterways, power lines, etc., including such crossings of those facilities belonging to the Columbia Basin Project as may be desired by railroad lines due to construction of new tracks in the future.

Mr. Derrig, Mr. Boggs and I believe Mr. Williams have conferred with Engineer Frank Banks of the Bureau of Reclamation and their attorney, and the attached draft is a revision of a blanket agreement form previously submitted, but which imposed obligations on the railroad which did not seem to us to be equitable. Mr. Boggs has passed on this form which is termed "CDO 3-24-47", and I am attaching copy of his letter dated April 1 to Mr. Derrig giving his views of the draft and making two or three suggestions.

For your additional consideration I am attaching copy of Mr. Derrig's letter to me dated April 4 transmitting these papers. In addition is a letter dated March 24, 1947 to Mr. Derrig from Mr. F. A. Banks, but written by Mr. R. V. Williams of the Bureau.

The Bureau representatives have brought into discussion the U. S. reservation of lands in this area which they refer to as Section 7412, Remington's Revised Statutes, pursuant to the Act of Congress of August 30, 1890 (26 Stat. 391). As I understand it they claim that under that act the government has prior rights and the railroads could be compelled to bear all the cost of the crossings such as bridges over canals, ditches, etc., but in a spirit of fairness they have prepared the attached draft imposing on the U. S. the obligation to bear the cost of crossing of existing railroad lines and in general the railroads bear the cost of the crossing of waterways after same are constructed or laid out in case the railroads desire to lay new lines. I assume this would not apply to property included in our land grant.

In the correspondence reference is made to proceeding with the construction of new Bridge 114 under our present track between Odair and Adrian. We now have a timber bridge, and the government has prepared detailed plans for steel bridge on concrete abutments, which plan we have approved, and they desire to start immediate construction. They offer to bear the cost of that bridge.

I do not think we should impose any obstacle to the proceeding with the construction of that new bridge as it is over the main canal of the Columbia Basin irrigation scheme. We could not stop them if we wanted to, to proceeding with the project, but I wish you would let me know if you agree if it is proper to wire them that they may proceed, which they might take as a general approval of the blanket form of agreement.

When this whole matter came up first and the government submitted blanket form of agreement, some of us were of the opinion that each crossing should be covered by a separate instrument, but the government then took the position that if that were done they would have to invoke the provisions of the Congressional Act of 1890 and that would throw all the burden on the Railroad Company whereas under this blanket form of agreement they are willing to treat the entire situation in a more liberal manner. If they are correct in their contention with respect to the act, then I believe that it would be to our interest to go along with this blanket form.

In view of the Bureau's desire to proceed with early construction now that spring is at hand, I would be glad to have your comments or approval. I am sending copy of this letter to Mr. Hughes as I understand the Land Department has been granting easements to the Bureau for canals, etc., on Land Department property.

Mr. Boggs has raised objection to Section 9(c), and it seems to me that his point is well taken.

I might also call your attention that Bridge 114 above referred to is a permanent structure replacing a wood structure, but of course the Railway Company will greatly benefit as we now have the obligation to maintain the wooden bridge at a greater expense than for a permanent bridge. Mr. Boggs refers to that item in his paragraph No. 3 on page 2.

Another thing I call to your attention is Item 4 of page 3 of Mr. Boggs' letter to Mr. Derrig wherein he suggests the government require contractor to indemnify the company against interference and damage as well as furnishing insurance. It seems to me that in previous cases it has been ruled that we cannot get the government to indemnify the railroads and I think that is what Mr. Derrig has in mind when he comments on paragraph 4 of Mr. Boggs' letter.

I would like to have your detailed comments or changes in the provisions that should be made. Beyond Mr. Boggs' comments I have no particular objections to the draft assuming that the Congressional Act referred to is binding.

BB/gtg
enc.
cc - Mr. J. M. Hughes
Mr. J. E. Thames
Mr. J. T. Derrig

BERNARD BLUM

Ala Ponte

c.c. J.M. Hughes

see notes alongside.

St. Paul, Minnesota

April 9, 1947.

Mr. Bernard Blum:

Before you pass on the proposed blanket agreement with the Government covering waterway openings, Grand Coulee Basin project, I suggest that the proposed agreement be submitted together with a copy of Mr. Boggs' letter of April 1 to our Land Attorney and to the Law Department for review.

JEH/jwm

J E Hovring

10

Seattle, Washington
April 4, 1947

Mr. B. Blum:

Columbia Basin - Water openings

In my letter of March 28 to Mr. Alsip, forwarding copies of proposed revised blanket agreement with the government covering various water openings, Grand Coulee Basin Project, duplicate copies of which letter and agreement were forwarded to you for approval and handling with our St. Paul Law Dept:

I am how attaching duplicate copies of letter from Mr. Boggs, giving his comments in respect to this revised agreement. I have reviewed the draft and have also discussed the revised draft with Mr. Boggs, and the question as raised in his letter of April 1 are not in accordance with my views. ?

In our discussion of the proposed indemnity clause, I think it quite unnecessary to provide the indemnity clause for every item of work the government will handle on this project. It is my suggestion, therefore, that paragraph #4, page #3, covering the indemnity clause in Mr. Boggs' letter, be amplified to read substantially as follows:

"When considered necessary by the Railway Company, the government, through its contractor, will arrange to furnish its standard Public Liability and Property Damage Insurance for the protection of the company as may be required and in the amount mutually agreed upon between the parties hereto."

The completion of this agreement has been outstanding for some time, and I will thank you to let me have your comments or further instructions in respect to the completion of the agreement. It is my opinion that it is to our best interest to complete the negotiations for this agreement along the lines of the tentative draft without unnecessary delay.

You will note that Mr. Boggs, in paragraph #2 of his letter, refers to easements heretofore granted to the government on Land Dept. property. I think the possibility of constructing additional railroads under our own ownership is to some extent remote or, in other words, the cost of providing bridges for drainage at these water openings will

probably be a small item in comparison with the cost of taking care of the openings under our existing tracks. It, of course, would be desirable to have the protection suggested in paragraph #2 of Mr. Boggs' letter, but I do not think we should jeopardize the proposed arrangement of the government taking care of the expense in connection with the water openings for the existing tracks. In other words, I suggest that the Land Dept., in submitting the next lease, make an endeavor to have the rights for future track protected in the easement or at least endeavor to have the government agree to that arrangement without prejudice to the proposed easement whereby the government incurs all of the construction expense in connection with water openings under the existing tracks.

It is my recommendation that any easement issued in connection with water openings under the present track or future tracks definitely indicate that the maintenance of the water opening will be assumed by and at the expense of the government. The draft of easement as submitted should be clarified in that respect.

? ¶ 3 of Boggs letter

I will thank you to review the attached draft promptly and let me have further instructions in respect to concluding the final agreement covering water openings on the Columbia Basin Project. It is, of course, understood that final draft of agreement, when completed, will be resubmitted for further review and approval.

J. T. Deming

Asst. Chief Engineer

JTD:dl
Enc.

cc RSM
JFA
HMT
DSC
VEW

See 47 R.D. 160
230 U.S. 1

Seattle, Washington
April 4, 1947

Mr. B. Blum:

Columbia Basin - Water openings

In my letter of March 28 to Mr. Alsip, forwarding copies of proposed revised blanket agreement with the government covering various water openings, Grand Coulee Basin Project, duplicate copies of which letter and agreement were forwarded to you for approval and handling with our St. Paul Law Dept:

I am how attaching duplicate copies of letter from Mr. Boggs, giving his comments in respect to this revised agreement. I have reviewed the draft and have also discussed the revised draft with Mr. Boggs, and the question as raised in his letter of April 1 are not in accordance with my views.

In our discussion of the proposed indemnity clause, I think it quite unnecessary to provide the indemnity clause for every item of work the government will handle on this project. It is my suggestion, therefore, that paragraph #4, page #3, covering the indemnity clause in Mr. Boggs' letter, be amplified to read substantially as follows:

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Gallock no objection to an indemnity - L. Alsip

probably be a small item in comparison with the cost of taking care of the openings under our existing tracks. It, of course, would be desirable to have the protection suggested in paragraph #2 of Mr. Boggs' letter, but I do not think we should jeopardize the proposed arrangement of the government taking care of the expense in connection with the water openings for the existing tracks. In other words, I suggest that the Land Dept., in submitting the next lease, make an endeavor to have the rights for future track protected in the easement or at least endeavor to have the government agree to that arrangement without prejudice to the proposed easement whereby the government incurs all of the construction expense in connection with water openings under the existing tracks.

It is my recommendation that any easement issued in connection with water openings under the present track or future tracks definitely indicate that the maintenance of the water opening will be assumed by and at the expense of the government. The draft of easement as submitted should be clarified in that respect.

I will thank you to review the attached draft promptly and let me have further instructions in respect to concluding the final agreement covering water openings on the Columbia Basin Project. It is, of course, understood that final draft of agreement, when completed, will be resubmitted for further review and approval.

J. T. DERRIG
Asst. Chief Engineer

JTD:dl
Enc.

cc RSM
JFA
HMT
DSC
VEW

Seattle, Washington
April 1, 1947

Mr. J. F. Derrig:

Referring to Mr. Banks' letter to you of March 24th, copy to me, in which he submits a new draft of an agreement with the United States to cover crossings of railroad rights of way and tracks by the Columbia Basin Project facilities and crossings of the latter facilities by railroad lines that may be constructed in the future.

This draft appears in the main to be satisfactory both from the standpoint of form and of equity. However, I give you the following comments and suggestions:

1. Section 9 (c) seems to be unnecessary. If the government at any particular point has a valid reservation by virtue of the Act of August 30, 1890, or Section 7412, Rem. Rev. Stat., there is no need for any action on the part of the company by way of ratification or confirmation which will add anything to the government's rights. I suggest this provision be stricken as it might in some way be construed as an admission by the company and it will, as stated, add nothing to the rights of the government.

2. By Section 8 the United States grants the railroad rights of way for crossings of lands owned in fee by the United States and also those where the title of the United States is an easement only. In connection with crossings of easements, it occurs to me that we might be subjecting ourselves to some expense that should not be ours. As you know, through the Land Department, the company has agreed to grant the United States easements for project facilities over lands owned in fee by the company. I believe that the company has already granted a number of these easements for specific locations and no doubt, as the project develops and the laterals are constructed, many more will be granted. While I understand there is no railroad line presently in contemplation for any particular location, it might well be that at some time in the future lines would be constructed over lands

now owned by the company in fee over which the company had granted the government an easement. As the contract is now written, the company would find itself in the position of having to pay for the cost of constructing its railroad line across the government's facilities where the only rights the government has were granted to it by the company without charge. It may be that in future easements granted to the government over Land Department lands a reservation should be made of the right to construct railroad lines thereover, with the provision that the cost of any such construction over project facilities shall be borne by the government and likewise that, in the agreement presently under consideration, there should be a provision protecting the company against cost in such situations.

3. Section 12 provides that the United States and the company will replace and maintain their respective structures. The intent of the language used is not clear. For example, Bridge 114 would under the terms of this agreement be reconstructed at the expense of the government and I presume that title to the bridge, as reconstructed, will be in the company. If such is the case, it would seem that under the terms of the proposed agreement as now drafted it would be the obligation of the company to maintain and reconstruct the bridge. Possibly it would be fair, in a case where the company already has a bridge which is replaced at the expense of the government, that the company should stand some maintenance expense, but it would hardly seem that, if by virtue of some plan of the government it became desirable to reconstruct the bridge again, the company should stand the expense. It seems to me that the most equitable provision would be that, in all cases where it is the obligation of the company or the government under the terms of this agreement to stand the expense of construction, maintenance and reconstruction costs should be borne by the same party, irrespective of ownership. That is, the test for determining which party shall bear construction costs by virtue of a crossing is which party has the prior right, and there is no reason why the same test should not be applied in determining upon which party maintenance and reconstruction costs should fall.

4. It probably would be well to have some clause in this agreement under which the government would agree that, in any contract it lets for the construction of project facilities, it will require the contractor to protect railroad operations and facilities against interference and damage, indemnify the company against such interference and damage and furnish evidence of insurance coverage sufficient in the judgment of the company in amount and form to insure the liability assumed by the contractor. The form of such a clause can be worked out I think very readily.

I presume that when you have had the benefit of Mr. Blum's comments on the proposed agreement the matter will be further discussed with the government officers handling.

HUB/em

cc: P. D. Edgell

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
COULEE DAM, WASHINGTON

March 24, 1947

Mr. J. T. Derrig, Asst. Chief Engineer,
Northern Pacific Railway Company,
181 King Street,
Seattle 4, Washington.

Re: Blanket Crossing Agreement with
Northern Pacific Railway Company.

Dear Mr. Derrig:

On September 6, 1946, you will recall, you and Mr. Boggs called at this office to discuss the draft of blanket crossing agreement which had been previously furnished you. At that meeting, it was stated that it would be desirable, from the point of view of the Railway Company, to have separate agreements prepared covering main canal crossings.

Subsequently, representatives from this office met with Messrs. Edgell and Boggs in Spokane, and a further brief discussion was had concerning the blanket crossing agreements. It was suggested then that we would submit what we considered a more equitable form of blanket crossing agreement after we had an opportunity to discuss certain provisions thereof with representatives of our Regional Office. The latter has now been accomplished and, on the basis thereof, we are enclosing another draft of blanket crossing agreement, identified as CDC Draft 3-24-47. With a copy of this letter to Mr. Boggs, we are sending him a copy of the draft of agreement, direct.

Our contractor is now ready to begin work at your Bridge 114 and, while we realize that the delay in entering into an agreement has been due to our inability to furnish a satisfactory draft before this, we would appreciate authorization from you to proceed with the work in advance of the execution of an agreement covering the work. As we explained to Mr. Boggs, unless a blanket crossing agreement is entered into, it is likely that the major portion of the expense of the crossing will have to be paid by your Company, for the crossing is subject to the Act of August 30, 1890 (26 Stat. 391). On the other hand, you will note that the blanket crossing agreement provides that the party crossing the facilities of the other will

stand the entire expense of the crossing. In this case then, under the agreement, this expense would fall to the United States. In other words, through the medium of the blanket crossing agreement, there is some consideration passing to the United States in return for which we propose to make certain concessions even though we have prior and superior rights pursuant to the Act of August 30, 1890 (26 Stat. 391). It should be understood, however, that the blanket crossing agreement or any other agreement covering the crossing at Bridge 114 will require the approval of our administrative offices.

We would appreciate advice from you concerning the form of agreement enclosed, as soon as possible. In order that the work might not be delayed, we would appreciate receiving authorization from you to proceed with the work in advance of the time any agreement is consummated covering the work and the expense incident thereto.

Sincerely yours,

F. A. Banks,
District Manager.

Enclosure (1)

CC-Mr. Harold G. Bogges, Attorney,
Northern Pacific Railway Co.,
909 Smith Tower,
Seattle 4, Washington.
(w/c encl.)

For and in the absence of the District Manager
R. E. Williams
Assistant Chief of Staff

C.B.O. 3/24/47

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

AGREEMENT AS TO CROSSINGS

THIS CONTRACT, Made this _____ day of _____, 1947, 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 Reclamation Project Act of 1939 (53 Stat. 1187) and the Columbia Basin Project Act (57 Stat. 14), and the pertinent portion of section 2 of the Act of August 30, 1935 (49 Stat. 1028, 1039), between the UNITED STATES OF AMERICA, herein styled the United States, represented by the contracting officer executing this contract, and the _____, a corporation, hereinafter styled the Company.

WITNESSETH, That:

EXPLANATORY RECITALS

2. WHEREAS, the United States is engaged in the construction within the State of Washington of the Columbia Basin Project; and

3. WHEREAS, the project works of the Columbia Basin Project, in addition to other works, include and will include canals, ditches, laterals, sublaterals, drains, spillways, wasteways, siphons, pipelines, and other waterways or water conduits, including land and easements therefor, all or any of which, whether already constructed or to be constructed in the future, are hereafter referred to as "project waterways" and "project waterway"; and said project works include telephone and telegraph transmission lines and lines for the transmission of electricity or other power, all or any of which whether already constructed or

to be constructed in the future, are hereafter referred to as "pole lines" and "pole line"; and

4. WHEREAS, the Company has many railroad rights of way which the United States may be required to occupy or cross with its project waterways, and the Company has constructed railroad lines and, from time to time, may construct and reconstruct railroad lines, some of which may occupy or cross the rights of way for project waterways and pole lines of the United States, some of which are now being built and some of which are to be constructed hereafter; and all or any of such railroad lines, including land and easements therefor, whether already constructed or to be constructed in the future are hereinafter referred to as "railroad lines" and "railroad line"; and

5. WHEREAS, the parties to this contract wish to avoid the burden of executing a separate contract for each such crossing on the Columbia Basin Project; and

6. WHEREAS, the United States claims rights of way for project waterways, constructed or to be constructed, certain of which rights of way are reserved to the United States pursuant to Section 7412, Remington's Revised Statutes, pursuant to the Act of Congress of August 30, 1890 (26 Stat. 391), and pursuant to other Acts of Congress and certain of which rights of way have been acquired or will be acquired by purchase or condemnation, all of which rights of way, hereafter referred to as "waterway easements", are easements for project waterways; and also certain rights of way for telephone and transmission lines are reserved to the United States pursuant to Section 7412, supra, which are hereafter referred to as "pole line easements"; and

7. WHEREAS, the United States also has constructed or will construct project waterways and pole lines upon lands owned by the United States in fee;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby agreed by and between the parties hereto as follows:

RIGHTS OF WAY GRANTED TO THE COMPANY

8. (a) The United States hereby grants to the Company, subject to the provisions of this contract, rights of way and easements, which shall be for the period of fifty (50) years from the date of this contract, subject to the provisions of Article 18 hereof, to construct, reconstruct, operate and maintain railroad lines upon or across project waterways and across and under pole lines and upon and across rights of way withdrawn or acquired for such specific and definitely planned future facilities of the Columbia Basin Project, in all cases where said crossings are upon lands held by the United States in fee title.

(b) The United States, subject to the provisions of this contract, hereby consents to the construction, reconstruction, operation and maintenance by the Company of railroad lines upon or across project waterways, where such project waterways are upon waterway easements, and across and under pole lines, where such lines are upon pole line easements, as said waterway easements and pole line easements are defined in Article 6 of this contract, and upon and across easements held, withdrawn or acquired for such specific and definitely planned future facilities of the Columbia Basin Project, and the United States agrees that such construction, reconstruction, operation and maintenance are not in conflict with the said waterway easements and pole line easements of the United States. The Company will obtain any grants that may be necessary for railroad purposes from the owner of the underlying fee.

3

RIGHTS OF WAY GRANTED TO THE UNITED STATES

9. (a) The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights ~~of way and easements~~ to construct, reconstruct, operate and maintain project waterways and pole lines upon and across Company railroad lines and upon and across rights of way held by the Company for such specific and definitely planned future facilities of the Columbia Basin Project, in all cases where the same are upon or across lands held by the Company in fee title;

(b) The Company, subject to the provisions of this contract, hereby consents to the construction, reconstruction, operation and maintenance by the United States, of project waterways and pole lines upon and across Company railroad lines, where the same are upon or across easements for said railroad lines and upon and across easements held by the Company for such specific and definitely planned future facilities of the Columbia Basin Project, and the Company agrees that such construction, reconstruction, operation and maintenance are not in conflict with the easements of the Company. The United States will obtain any grants that may be necessary for the same from the owner of the underlying fee.

(c) The Company hereby ratifies and confirms the reservations, under and by virtue of the Act of Congress approved August 30, 1890 (26 Stat. 391), under and by virtue of any other Act of Congress, and under and by virtue of Section 7412, supra, to the United States of the rights of way upon or across Company railroad lines located on lands subject to such reserved rights of way.

NOTICE OF EXERCISE OF RIGHTS OF WAY

10. (a) The rights of way and easements and consents to cross, which the United States grants or gives the Company, as provided in Article 8 hereof, and the rights of way and easements and consents which the Company grants to the

United States, as provided in Article 9 hereof, are subject to the condition that before beginning construction the party desiring to exercise the same shall notify the other party in writing, describing the place where the works are to be constructed and shall provide the other party with the plans for the facilities proposed to be constructed. The plans shall be reviewed promptly and said party shall notify in writing the party giving the notice that such crossing is approved or disapproved, indicating in the latter instance the reasons therefor; PROVIDED, That the Company officials will 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 Company itself for similar purposes; and the officials of the United States will not refuse approval of reasonable plans submitted by the Company, 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. If disapproved by an official of the Company or Bureau of Reclamation, the plans shall be referred to the Secretary of the Interior who shall make a final determination of the points in disagreement.

(b) In case of the United States said notice shall be given to the officer of the Bureau of Reclamation in charge of the project affected, and in the case of the Company said notice shall be given to _____, whose office is in _____, _____.

COST OF CROSSING PROJECT WATERWAYS BY COMPANY RAILROAD LINES

11. (a) Where the Company crosses a project waterway, or merely the land or easement therefor, or under a pole line, pursuant to a grant, or consent under Article 8 of this contract, with a Company railroad line and such project waterway

or pole line is in existence at the time of such crossing, or construction work has actually been started thereon, or a contract has been let for the construction thereof, the Company at its sole cost and expense, shall construct and install such culvert, pipeline, siphon or other conduit over or under such Company railroad crossing, or such railroad bridge, over the project waterway, or land or easement therefor, as shall be required, and the Company shall reconstruct said pole line, if required, at its sole cost and expense; PROVIDED, HOWEVER, That where such a crossing is made upon or across a right of way held, withdrawn or acquired by the United States for a specific and definitely planned future project waterway or pole line, the Company will, at the request of the United States, provide the appropriate crossing facility, but the added expense thereof shall be borne by the latter.

(b) Said structure or structures shall be of the kind, construction, size, material, description, and at the elevation as shall be designated and approved by the officer of the Bureau of Reclamation in charge of the project affected.

COST OF CROSSING COMPANY RAILROAD LINES
BY PROJECT WATERWAYS

12. (a) Where the United States crosses or occupies portions of a Company railroad line, or merely the land or easement therefor, with a project waterway or pole line pursuant to a grant under Article 9 of this contract, and the Company railroad line is in existence at the time of such crossing, or construction work has actually been started thereon, or a contract has been let for the construction thereof, the United States, at its sole cost and expense, shall construct and install such culvert, pipeline, siphon or other conduit over or under such Company railroad crossing, or land or easement therefor, or shall construct at its sole cost and expense, such Company railroad bridge over the

project waterway as shall be required to meet the construction standards of the existing or contemplated railroad line; PROVIDED, HOWEVER, That where such a crossing is made upon or across a right of way held by the Company for a specific and definitely planned future railroad line, the United States will, at the request of the Company, provide the appropriate crossing facility, but the added expense thereof shall be borne by the latter.

(b) Said structure or structures shall be of the kind, construction, size, material, description, and at the elevation as shall be designated and approved by the Company.

(c) Where the United States, after the date hereof, crosses or occupies a Company railroad right of way with a project waterway (pursuant to a reserved right of way under the Act of Congress of August 30, 1890 (26 Stat. 391), under any other Act of Congress, or under Section 7412, supra,) and the Company railroad line is in existence at the time of such crossing, or construction work has actually been started thereon, or a contract has been let for the construction thereof, the United States, acting through the Bureau of Reclamation, shall give written notice to the Company describing the place where the reserved right of way is to be utilized and shall provide the Company with the Bureau's plans for the facilities proposed to be built. The United States acting through the Bureau of Reclamation will consult with the Company with respect to such plans, but approval by the Company will not be requisite to the exercise of the Federal Government's rights. The United States shall then proceed to construct and install the works proposed at such location. For and in consideration of the easements granted by the Company in the next paragraph hereof, the United States will assume all of the cost of such crossings or occupancies.

EASEMENTS GRANTED UNITED STATES TO CROSS RAILROAD LINES WITH TRANSMISSION LINES, ETC.

13. For and in consideration of the assumption by the United States of all of such expense, the Company hereby grants to the United States, its successors and assigns, easements to construct, reconstruct, operate and maintain along and across any Company railroad line at any point on the Columbia Basin Project where the United States does not have a reserved right of way, roads, power works, or works for the development of power which may in the future be built by the United States in connection with the Columbia Basin Project; PROVIDED, HOWEVER, That the plans for any such facilities required to be built along or across the Company railroad lines shall be submitted to the Company, and if disapproved by the Company, said plans shall be submitted for approval or disapproval to the Secretary of the Interior whose decision will be conclusive. If the Company holds less than the fee title, it consents to such encroachment by the United States only so far as the Company has a right to do so. The United States will obtain any grant that may be necessary from the owner of the underlying fee.

MANNER OF CONSTRUCTING CROSSING BY UNITED STATES

14. The United States agrees that in constructing or reconstructing crossings for project waterways under a grant pursuant to the provisions of Article 9 of this contract:

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

(b) Such construction work shall be conducted so that the Company railroad line will be closed to traffic for as brief a period as possible with the United States paying the cost of any Company flagmen which may be necessary. Upon request of the Company, 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 railroad line shall be replaced or renewed so that, upon completion of the crossing, the Company railroad line will be in as good condition as it was prior to such construction work by the United States.

MANNER OF CONSTRUCTING CROSSINGS BY COMPANY

15. The Company agrees that in constructing or reconstructing a crossing over project waterways, or under pole lines, pursuant to a grant or consent under Article 8 of this contract:

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

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any project waterway, and in the event that the Company constructs any structure authorized pursuant to the provisions of Article 8 of this contract during an irrigation season, which for the purpose of this contract shall be from the fifteenth (15th) day of March to the fifteenth (15th) day of October of each year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the officer of the Bureau of Reclamation in charge of the Columbia Basin Project, for the purpose of conveying the water flowing in the project waterway along the regular course without waste or loss 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 Company.

CHANGES IN COMPANY STRUCTURES

16. All grants or consents of the United States, pursuant to Article 8 of this contract, are subject to the condition that in the event the officer of the Bureau of Reclamation in charge of the Columbia Basin Project determines that by reason of a change in a project waterway, or for any other reason, it is necessary that the structure or structures installed by the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by said officer of the Bureau of Reclamation in charge of the Columbia Basin Project.

CHANGES IN UNITED STATES STRUCTURES

17. All grants or consents of the Company, pursuant to Article 9 of this contract, are subject to the condition that in the event the Company determines that by reason of a change in a railroad line, or for any other reason it is necessary that the structure or structures installed by the United States pursuant to such grant or consent be changed, reconstructed, or added to, the United States shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by the Company.

CONTINUATION OF THE PERIOD OF GRANT OF RIGHT OF WAY AND EASEMENT

18. (a) In connection with any rights of way and easements granted to the Company for the period of fifty (50) years pursuant to the provisions of Article 8 of this contract, or continued as herein provided, the Company may on or before ninety (90) days before the date of the expiration of the period of any such right of way and easement make written request of the Secretary of the Interior

that the right of way or easement be continued for an additional fifty (50) year period, or such period as is permitted by the Federal Reclamation Laws or other Acts of Congress. Unless, on or before such expiration date, the Secretary of the Interior shall have notified the Company in writing that the Company's request is denied, such right of way and easement shall be continued for an additional fifty (50) year period, or such period as is permitted by the Federal Reclamation Laws or other Acts of Congress.

(b) The Company agrees that if the period of such right of way and easement granted to the Company pursuant to Article 8 expires without the right of way or easement being continued or renewed, the Company will, at its sole cost and expense, remove the structure or structures constructed by the Company, or do whatever is required by the officer of the Bureau of Reclamation in charge of the Columbia Basin Project to restore such project waterway or pole line to its condition prior to the construction of such structure by the Company.

MAINTENANCE OF CROSSING STRUCTURES

19. (a) The United States and the Company agree to replace their respective structures with new structures approved by the other party from time to time as the necessity arises, and to make such repairs as may be necessary to protect said project waterways, pole lines or railroad lines from damage or interference from said structures. It shall be the duty of the United States and of the Company in this regard to maintain their respective structures in such a manner as to be deemed safe and consistent with satisfactory management.

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

(c) In the event the United States or the Company 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 project waterway, pole line, or Company railroad line, in such manner as it shall determine, and the party whose structures have been replaced, reconstructed, repaired or changed, agrees to 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. That 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.

COMPANY TO INDEMNIFY THE UNITED STATES

20. The Company shall reimburse the United States for, and indemnify and save the United States harmless against any and all loss, damage or injury of whatsoever nature, direct or indirect, incurred by or arising out of, or growing out of, any and all injuries or damages of whatsoever nature or kind to the property of the United States or the property of third persons, done or suffered by reason of the construction, reconstruction, operation and maintenance of any Company railroad crossings or structures of the Company under a grant or consent from the United States pursuant to this contract, or by reason of the existence of such structure, notwithstanding the approval, supervision or sanction of any officer or employee of the United States as to the construction, plan or design of the same, and said indemnification shall extend to and include any losses suffered by reason of interference with or interruption of the transmission of electrical current.

RIGHT TO ENTER ON OTHER'S RIGHT OF WAY

21. The United States and the Company, and their respective officers, agents,

contractors and employees, shall at any and all times, subject to the provisions of Article 22 of this contract, have the right to enter upon the rights of way of the other, granted or consented to heretofore and 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 project waterway, pole line, or Company railroad systems, including all structures and crossings which may be built in pursuance of the provisions of this contract.

DUTY TO USE CARE

22. The United States and the Company, in using, occupying and enjoying the rights of way and easements for project waterways, pole lines, Company railroads, and other structures across and along the facilities of the other, granted pursuant to this contract, shall use all reasonable diligence and precaution to avoid damage to or obstruction of such facilities or with the use for which they were intended.

COMPANY DOES NOT ASSUME LIABILITY

23. The Company does not, by reason of this contract, or by reason of any grants made pursuant to Articles 9 and 13 of this contract, 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 the right of way of any Company railroad line or (b) the operation and maintenance of a project waterway across any Company railroad line, pursuant to Article 9 of this contract, or other project works, pursuant to Article 13 of this contract.

AUTHORIZED REPRESENTATIVE OF THE UNITED STATES

24. Wherever the Secretary of the Interior is referred to herein it is intended to include his successor or duly authorized representative.

CONDITIONS OF LABOR

25. (a) No laborer or mechanic doing any part of the work contemplated by this contract on structures constituting a part of the project waterways or pole lines of the United States, in the employ of the Company or any sub-contractor contracting for any part of said work contemplated, shall be required or permitted to work for more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the Company or any sub-contractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars ($5.00) shall be imposed upon the Company for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government; PROVIDED, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, 1934 ed., title 40, sections 321, 324, 325, and 326, relating to hours of labor, as in part modified by the provisions of section 303 of the Act of September 9, 1940 (54 Stat. 884), relating to compensation for overtime.

(b) The Company shall not employ any person undergoing sentence of imprisonment at hard labor.

CONTINGENT ON APPROPRIATIONS

26. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the Company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

DISCRIMINATION AGAINST EMPLOYEES OR APPLICANTS FOR EMPLOYMENT PROHIBITED

27. The Company in constructing any facility constituting a part of the project waterways or pole lines of the United States, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all sub-contracts; PROVIDED, HOWEVER, That this clause does not refer to, extend to or cover the business or activities of the Company which are not related to or involved in the performance of this contract.

OFFICIALS NOT TO BENEFIT

28. 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 therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

SUCCESSORS AND ASSIGNS BOUND

29. The provisions of this contract shall be binding upon and inure to the successors and assigns of the parties hereto.

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

UNITED STATES OF AMERICA

By_____

_____

By_____
_____ President

ATTEST:

_____
_____ Secretary

- - - - - -

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 1947, personally appeared before me, _____, to me known to be the official of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

_____
Notary Public in and for the
State of _____
Residing at _____

(SEAL)

My commission expires _____

STATE OF _____)
: ss
COUNTY OF _____)

On this _____ day of _____, 1947, before me personally appeared _____, to me known to be the _____ President of the corporation that executed the within and foregoing instrument. He acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute said instrument and that the seal affixed is the seal of the corporation.

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

_____
Notary Public in and for the
State of _____
Residing at _____

(SEAL)

My commission expires _____

St. Paul, Minnesota
April 7, 1947.

Mr. Bernard Blum:

The attached letter to Mr. Alsip from Mr. Derrig, dated March 28, 1947, relative to rebuilding Bridge 114 for U. S. Reclamation Service:

The Government's Contractor is ready to start work at Bridge 114 and you will note Mr. Derrig recommends the Contractor be allowed to proceed and that the expense be assumed by the Government.

Copy of proposed agreement is attached identified as C.D.O. 3/24/47. Mr. Banks brings out that a blanket crossing is preferable to individual crossing agreements as the blanket crossing agreement will permit the expense to be borne by the U. S. where the project facilities cross the railway but where an individual crossing agreement is entered into it is very likely the cost would have to be borne by the Railway Company.

Before passing on the agreement, I believe that the opinion of our Land Attorneys and also that of our Law Department should be obtained.

J E Hoving

JEH/jwm
attach.

Seattle, Wash.
March 28, 1947

188-8-15

Bacon - Bridge #114, rebuilding for
U. S. Reclamation Service

Mr. J. F. Alsip:

I am attaching hereto duplicate copies of Mr. Banks' letter of March 24th submitting revised form of blanket agreement for proposed Reclamation Dept.'s water openings, Grand Coulee Dam Project, and with particular reference to Bridge #114, Adrian Branch.

You will note Mr. Banks is requesting authority to permit the contractor to proceed with the work at Bridge #114 and I concur in his recommendations that we authorize the Govt. to proceed with this work with the understanding that the expenses incurred will be assumed by the Govt. and the work handled in accordance with detail plans and specifications heretofore approved by the Railway Co. The contractor is ready to start work on this project immediately and it is, of course, desired to permit the work to start pending the completion of the agreement.

I recommend we advise Mr. Banks that there are no objections on the part of the Railway Co. for the Govt. or its contractor to start this work, assuming that the work will be without expense to the Railway Co. and it being understood the agreement will be completed in due time on the basis above outlined.

I am sending duplicate copies of Mr. Banks' letter together with draft of the proposed agreement to Mr. Blum in order that our executive officers at St. Paul may have an opportunity to pass upon Mr. Banks request pending submission and completion of the formal agreement.

You will observe from the attached letter that copy of Mr. Banks' letter together with copy of the revised agreement has been submitted to Mr. Macfarlane and I presume he will authorize the construction work to proceed if the revised agreement as submitted is satisfactory.

JTD:p
cc RSM BB VEW

J. T. DERRIG
Assistant Chief Engineer

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
COULEE DAM, WASHINGTON

March 24, 1947

Mr. J. T. Derrig, Asst. Chief Engineer,
Northern Pacific Railway Company,
181 King Street,
Seattle 4, Washington.

Re: Blanket Crossing Agreement with
Northern Pacific Railway Company.

Dear Mr. Derrig:

On September 6, 1946, you will recall, you and Mr. Boggs called at this office to discuss the draft of blanket crossing agreement which had been previously furnished you. At that meeting, it was stated that it would be desirable, from the point of view of the Railway Company, to have separate agreements prepared covering main canal crossings.

Subsequently, representatives from this office met with Messrs. Edgell and Boggs in Spokane, and a further brief discussion was had concerning the blanket crossing agreements. It was suggested then that we would submit what we considered a more equitable form of blanket crossing agreement after we had an opportunity to discuss certain provisions thereof with representatives of our Regional Office. The latter has now been accomplished and, on the basis thereof, we are enclosing another draft of blanket crossing agreement, identified as CDC Draft 3-24-47. With a copy of this letter to Mr. Boggs, we are sending him a copy of the draft of agreement, direct.

Our contractor is now ready to begin work at your Bridge #114 and, while we realize that the delay in entering into an agreement has been due to our inability to furnish a satisfactory draft before this, we would appreciate authorization from you to proceed with the work in advance of the execution of an agreement covering the work. As we explained to Mr. Boggs, unless a blanket crossing agreement is entered into, it is likely that the major portion of the expense of the crossing will have to be paid by your Company, for the crossing is subject to the Act of August 30, 1890 (26 Stat. 391). On the other hand, you will note that the blanket crossing agreement provides that the party crossing the facilities of the other will

stand the entire expense of the crossing. In this case then, under the agreement, this expense would fall to the United States. In other words, through the medium of the blanket crossing agreement, there is some consideration passing to the United States in return for which we propose to make certain concessions even though we have prior and superior rights pursuant to the Act of August 30, 1890 (26 Stat. 391). It should be understood, however, that the blanket crossing agreement or any other agreement covering the crossing at Bridge 114 will require the approval of our administrative offices.

We would appreciate advice from you concerning the form of agreement enclosed, as soon as possible. In order that the work might not be delayed, we would appreciate receiving authorization from you to proceed with the work in advance of the time any agreement is consummated covering the work and the expense incident thereto.

Sincerely yours,

F. A. Banks,
District Manager.

Enclosure (1)

CC-Mr. Harold G. Boggs, Attorney,
Northern Pacific Railway Co.,
909 Smith Tower,
Seattle 4, Washington.
(w/c encl.)

For the District Manager
R. P. Williams
Assistant District Manager

C.D.O. 3/24/47

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

AGREEMENT AS TO CROSSINGS

THIS CONTRACT, Made this _____ day of _____, 1947, 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 Reclamation Project Act of 1939 (53 Stat. 1187) and the Columbia Basin Project Act (57 Stat. 14), and the pertinent portion of section 2 of the Act of August 30, 1935 (49 Stat. 1028, 1039), between the UNITED STATES OF AMERICA, herein styled the United States, represented by the contracting officer executing this contract, and the _____, a corporation, hereinafter styled the Company.

WITNESSETH, That:

EXPLANATORY RECITALS

2. WHEREAS, the United States is engaged in the construction within the State of Washington of the Columbia Basin Project; and

3. WHEREAS, the project works of the Columbia Basin Project, in addition to other works, include and will include canals, ditches, laterals, sublaterals, drains, spillways, wasteways, siphons, pipelines, and other waterways or water conduits, including land and easements therefor, all or any of which, whether already constructed or to be constructed in the future, are hereafter referred to as "project waterways" and "project waterway"; and said project works include telephone and telegraph transmission lines and lines for the transmission of electricity or other power, all or any of which whether already constructed or

to be constructed in the future, are hereafter referred to as "pole lines" and "pole line"; and

4. WHEREAS, the Company has many railroad rights of way which the United States may be required to occupy or cross with its project waterways, and the Company has constructed railroad lines and, from time to time, may construct and reconstruct railroad lines, some of which may occupy or cross the rights of way for project waterways and pole lines of the United States, some of which are now being built and some of which are to be constructed hereafter; and all or any of such railroad lines, including land and easements therefor, whether already constructed or to be constructed in the future are hereinafter referred to as "railroad lines" and "railroad line"; and

5. WHEREAS, the parties to this contract wish to avoid the burden of executing a separate contract for each such crossing on the Columbia Basin Project; and

6. WHEREAS, the United States claims rights of way for project waterways, constructed or to be constructed, certain of which rights of way are reserved to the United States pursuant to Section 7412, Remington's Revised Statutes, pursuant to the Act of Congress of August 30, 1890 (26 Stat. 391), and pursuant to other Acts of Congress and certain of which rights of way have been acquired or will be acquired by purchase or condemnation, all of which rights of way, hereafter referred to as "waterway easements", are easements for project waterways; and also certain rights of way for telephone and transmission lines are reserved to the United States pursuant to Section 7412, supra, which are hereafter referred to as "pole line easements"; and

7. WHEREAS, the United States also has constructed or will construct project waterways and pole lines upon lands owned by the United States in fee;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby agreed by and between the parties hereto as follows:

RIGHTS OF WAY GRANTED TO THE COMPANY

5. (a) The United States hereby grants to the Company, subject to the provisions of this contract, rights of way and easements, which shall be for the period of fifty (50) years from the date of this contract, subject to the provisions of Article 18 hereof, to construct, reconstruct, operate and maintain railroad lines upon or across project waterways and across and under pole lines and upon and across rights of way withdrawn or acquired for such specific and definitely planned future facilities of the Columbia Basin Project, in all cases where said crossings are upon lands held by the United States in fee title.

(b) The United States, subject to the provisions of this contract, hereby consents to the construction, reconstruction, operation and maintenance by the Company of railroad lines upon or across project waterways, where such project waterways are upon waterway easements, and across and under pole lines, where such lines are upon pole line easements, as said waterway easements and pole line easements are defined in Article 6 of this contract, and upon and across easements held, withdrawn or acquired for such specific and definitely planned future facilities of the Columbia Basin Project, and the United States agrees that such construction, reconstruction, operation and maintenance are not in conflict with the said waterway easements and pole line easements of the United States. The Company will obtain any grants that may be necessary for railroad purposes from the owner of the underlying fee.

RIGHTS OF WAY GRANTED TO THE UNITED STATES

9. (a) The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights of way and easements to construct, reconstruct, operate and maintain project waterways and pole lines upon and across Company railroad lines and upon and across rights of way held by the Company for such specific and definitely planned future facilities of the Columbia Basin Project, in all cases where the same are upon or across lands held by the Company in fee title;

(b) The Company, subject to the provisions of this contract, hereby consents to the construction, reconstruction, operation and maintenance by the United States, of project waterways and pole lines upon and across Company railroad lines, where the same are upon or across easements for said railroad lines and upon and across easements held by the Company for such specific and definitely planned future facilities of the Columbia Basin Project, and the Company agrees that such construction, reconstruction, operation and maintenance are not in conflict with the easements of the Company. The United States will obtain any grants that may be necessary for the same from the owner of the underlying fee.

(c) The Company hereby ratifies and confirms the reservations, under and by virtue of the Act of Congress approved August 30, 1890 (26 Stat. 391), under and by virtue of any other Act of Congress, and under and by virtue of Section 7412, supra, to the United States of the rights of way upon or across Company railroad lines located on lands subject to such reserved rights of way.

NOTICE OF EXERCISE OF RIGHTS OF WAY

10. (a) The rights of way and easements and consents to cross, which the United States grants or gives the Company, as provided in Article 8 hereof, and the rights of way and easements and consents which the Company grants to the

United States, as provided in Article 9 hereof, are subject to the condition that before beginning construction the party desiring to exercise the same shall notify the other party in writing, describing the place where the works are to be constructed and shall provide the other party with the plans for the facilities proposed to be constructed. The plans shall be reviewed promptly and said party shall notify in writing the party giving the notice that such crossing is approved or disapproved, indicating in the latter instance the reasons therefor; PROVIDED, That the Company officials will 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 Company itself for similar purposes; and the officials of the United States will not refuse approval of reasonable plans submitted by the Company, 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. If disapproved by an official of the Company or Bureau of Reclamation, the plans shall be referred to the Secretary of the Interior who shall make a final determination of the points in disagreement.

(b) In case of the United States said notice shall be given to the officer of the Bureau of Reclamation in charge of the project affected, and in the case of the Company said notice shall be given to _____, whose office is in _____, _____.

COST OF CROSSING PROJECT WATERWAYS BY COMPANY RAILROAD LINES

11. (a) Where the Company crosses a project waterway, or merely the land or easement therefor, or under a pole line, pursuant to a grant, or consent under Article 8 of this contract, with a Company railroad line and such project waterway

or pole line is in existence at the time of such crossing, or construction work has actually been started thereon, or a contract has been let for the construction thereof, the Company at its sole cost and expense, shall construct and install such culvert, pipeline, siphon or other conduit over or under such Company railroad crossing, or such railroad bridge, over the project waterway, or land or easement therefor, as shall be required, and the Company shall reconstruct said pole line, if required, at its sole cost and expense; PROVIDED, HOWEVER, That where such a crossing is made upon or across a right of way held, withdrawn or acquired by the United States for a specific and definitely planned future project waterway or pole line, the Company will, at the request of the United States, provide the appropriate crossing facility, but the added expense thereof shall be borne by the latter.

(b) Said structure or structures shall be of the kind, construction, size, material, description, and at the elevation as shall be designated and approved by the officer of the Bureau of Reclamation in charge of the project affected.

COST OF CROSSING COMPANY RAILROAD LINES
BY PROJECT WATERWAYS

12. (a) Where the United States crosses or occupies portions of a Company railroad line, or merely the land or easement therefor, with a project waterway or pole line pursuant to a grant under Article 9 of this contract, and the Company railroad line is in existence at the time of such crossing, or construction work has actually been started thereon, or a contract has been let for the construction thereof, the United States, at its sole cost and expense, shall construct and install such culvert, pipeline, siphon or other conduit over or under such Company railroad crossing, or land or easement therefor, or shall construct at its sole cost and expense, such Company railroad bridge over the

project waterway as shall be required to meet the construction standards of the existing or contemplated railroad line; PROVIDED, HOWEVER, That where such a crossing is made upon or across a right of way held by the Company for a specific and definitely planned future railroad line, the United States will, at the request of the Company, provide the appropriate crossing facility, but the added expense thereof shall be borne by the latter.

(b) Said structure or structures shall be of the kind, construction, size, material, description, and at the elevation as shall be designated and approved by the Company.

(c) Where the United States, after the date hereof, crosses or occupies a Company railroad right of way with a project waterway pursuant to a reserved right of way under the Act of Congress of August 30, 1890 (26 Stat. 391), under any other Act of Congress, or under Section 7412, supra, and the Company railroad line is in existence at the time of such crossing, or construction work has actually been started thereon, or a contract has been let for the construction thereof, the United States, acting through the Bureau of Reclamation, shall give written notice to the Company describing the place where the reserved right of way is to be utilized and shall provide the Company with the Bureau's plans for the facilities proposed to be built. The United States acting through the Bureau of Reclamation will consult with the Company with respect to such plans, but approval by the Company will not be requisite to the exercise of the Federal Government's rights. The United States shall then proceed to construct and install the works proposed at such location. For and in consideration of the easements granted by the Company in the next paragraph hereof, the United States will assume all of the cost of such crossings or occupancies.

EASEMENTS GRANTED UNITED STATES TO CROSS RAILROAD LINES WITH TRANSMISSION LINES, ETC.

13. For and in consideration of the assumption by the United States of all of such expense, the Company hereby grants to the United States, its successors and assigns, easements to construct, reconstruct, operate and maintain along and across any Company railroad line at any point on the Columbia Basin Project where the United States does not have a reserved right of way, roads, power works, or works for the development of power which may in the future be built by the United States in connection with the Columbia Basin Project; PROVIDED, HOWEVER, That the plans for any such facilities required to be built along or across the Company railroad lines shall be submitted to the Company, and if disapproved by the Company, said plans shall be submitted for approval or disapproval to the Secretary of the Interior whose decision will be conclusive. If the Company holds less than the fee title, it consents to such encroachment by the United States only so far as the Company has a right to do so. The United States will obtain any grant that may be necessary from the owner of the underlying fee.

MANNER OF CONSTRUCTING CROSSING BY UNITED STATES

14. The United States agrees that in constructing or reconstructing crossings for project waterways under a grant pursuant to the provisions of Article 9 of this contract:

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

(b) Such construction work shall be conducted so that the Company railroad line will be closed to traffic for as brief a period as possible with the United States paying the cost of any Company flagman which may be necessary. Upon request of the Company, a suitable detour shall be constructed, at the sole cost

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 railroad line shall be replaced or renewed so that, upon completion of the crossing, the Company railroad line will be in as good condition as it was prior to such construction work by the United States.

MANNER OF CONSTRUCTING CROSSINGS BY COMPANY

15. The Company agrees that in constructing or reconstructing a crossing over project waterways, or under pole lines, pursuant to a grant or consent under Article 8 of this contract:

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

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any project waterway, and in the event that the Company constructs any structure authorized pursuant to the provisions of Article 8 of this contract during an irrigation season, which for the purpose of this contract shall be from the fifteenth (15th) day of March to the fifteenth (15th) day of October of each year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the officer of the Bureau of Reclamation in charge of the Columbia Basin Project, for the purpose of conveying the water flowing in the project waterway along the regular course without waste or loss 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 Company.

CHANGES IN COMPANY STRUCTURES

16. All grants or consents of the United States, pursuant to Article 8 of this contract, are subject to the condition that in the event the officer of the Bureau of Reclamation in charge of the Columbia Basin Project determines that by reason of a change in a project waterway, or for any other reason, it is necessary that the structure or structures installed by the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by said officer of the Bureau of Reclamation in charge of the Columbia Basin Project.

CHANGES IN UNITED STATES STRUCTURES

17. All grants or consents of the Company, pursuant to Article 9 of this contract, are subject to the condition that in the event the Company determines that by reason of a change in a railroad line, or for any other reason it is necessary that the structure or structures installed by the United States pursuant to such grant or consent be changed, reconstructed, or added to, the United States shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by the Company.

CONTINUATION OF THE PERIOD OF GRANT OF RIGHT OF WAY AND EASEMENT

18. (a) In connection with any rights of way and easements granted to the Company for the period of fifty (50) years pursuant to the provisions of Article 8 of this contract, or continued as herein provided, the Company may on or before ninety (90) days before the date of the expiration of the period of any such right of way and easement make written request of the Secretary of the Interior

that the right of way or easement be continued for an additional fifty (50) year period, or such period as is permitted by the Federal Reclamation Laws or other Acts of Congress. Unless, on or before such expiration date, the Secretary of the Interior shall have notified the Company in writing that the Company's request is denied, such right of way and easement shall be continued for an additional fifty (50) year period, or such period as is permitted by the Federal Reclamation Laws or other Acts of Congress.

(b) The Company agrees that if the period of such right of way and easement granted to the Company pursuant to Article 8 expires without the right of way or easement being continued or renewed, the Company will, at its sole cost and expense, remove the structure or structures constructed by the Company, or do whatever is required by the officer of the Bureau of Reclamation in charge of the Columbia Basin Project to restore such project waterway or pole line to its condition prior to the construction of such structure by the Company.

MAINTENANCE OF CROSSING STRUCTURES

19. (a) The United States and the Company agree to replace their respective structures with new structures approved by the other party from time to time as the necessity arises, and to make such repairs as may be necessary to protect said project waterways, pole lines or railroad lines from damage or interference from said structures. It shall be the duty of the United States and of the Company in this regard to maintain their respective structures in such a manner as to be deemed safe and consistent with satisfactory management.

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

(c) In the event the United States or the Company 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 project waterway, pole line, or Company railroad line, in such manner as it shall determine, and the party whose structures have been replaced, reconstructed, repaired or changed, agrees to 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. That 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.

COMPANY TO INDEMNIFY THE UNITED STATES

20. The Company shall reimburse the United States for, and indemnify and save the United States harmless against any and all loss, damage or injury of whatsoever nature, direct or indirect, incurred by or arising out of, or growing out of, any and all injuries or damages of whatsoever nature or kind to the property of the United States or the property of third persons, done or suffered by reason of the construction, reconstruction, operation and maintenance of any Company railroad crossings or structures of the Company under a grant or consent from the United States pursuant to this contract, or by reason of the existence of such structure, notwithstanding the approval, supervision or sanction of any officer or employee of the United States as to the construction, plan or design of the same, and said indemnification shall extend to and include any losses suffered by reason of interference with or interruption of the transmission of electrical current.

RIGHT TO ENTER ON OTHER'S RIGHT OF WAY

21. The United States and the Company, and their respective officers, agents,

contractors and employees, shall at any and all times, subject to the provisions of Article 22 of this contract, have the right to enter upon the rights of way of the other, granted or consented to heretofore and 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 project waterway, pole line, or Company railroad systems, including all structures and crossings which may be built in pursuance of the provisions of this contract.

DUTY TO USE CARE

22. The United States and the Company, in using, occupying and enjoying the rights of way and easements for project waterways, pole lines, Company railroads, and other structures across and along the facilities of the other, granted pursuant to this contract, shall use all reasonable diligence and precaution to avoid damage to or obstruction of such facilities or with the use for which they were intended.

COMPANY DOES NOT ASSUME LIABILITY

23. The Company does not, by reason of this contract, or by reason of any grants made pursuant to Articles 9 and 13 of this contract, 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 the right of way of any Company railroad line or (b) the operation and maintenance of a project waterway across any Company railroad line, pursuant to Article 9 of this contract, or other project works, pursuant to Article 13 of this contract.

AUTHORIZED REPRESENTATIVE OF THE UNITED STATES

24. Wherever the Secretary of the Interior is referred to herein it is intended to include his successor or duly authorized representative.

CONDITIONS OF LABOR

29. (a) No laborer or mechanic doing any part of the work contemplated by this contract on structures constituting a part of the project waterways or pole lines of the United States, in the employ of the Company or any sub-contractor contracting for any part of said work contemplated, shall be required or permitted to work for more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the Company or any sub-contractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars ($5.00) shall be imposed upon the Company for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government; PROVIDED, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, 1934 ed., title 40, sections 321, 324, 325, and 326, relating to hours of labor, as in part modified by the provisions of section 303 of the Act of September 9, 1940 (54 Stat. 884), relating to compensation for overtime.

(b) The Company shall not employ any person undergoing sentence of imprisonment at hard labor.

CONTINGENT ON APPROPRIATIONS

26. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the Company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

DISCRIMINATION AGAINST EMPLOYEES OR APPLICANTS FOR EMPLOYMENT PROHIBITED

27. The Company in constructing any facility constituting a part of the project waterways or pole lines of the United States, shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all sub-contracts; PROVIDED, HOWEVER, That this clause does not refer to, extend to or cover the business or activities of the Company which are not related to or involved in the performance of this contract.

OFFICIALS NOT TO BENEFIT

28. 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 therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

SUCCESSORS AND ASSIGNS BOUND

29. The provisions of this contract shall be binding upon and inure to the successors and assigns of the parties hereto.

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

UNITED STATES OF AMERICA

By_____

_____

By_____
_____ President

ATTEST:

_____
_____ Secretary

- - - - - -

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 1947, personally appeared before me, _____, to me known to be the official of the United States of America that executed the within and foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said United States, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

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

_____
Notary Public in and for the
State of _____
Residing at _____

(SEAL)

My commission expires _____

STATE OF _____)
; ss
COUNTY OF _____)

On this _____ day of _____, 1947, before me personally appeared _____, to me known to be the _____ President of the corporation that executed the within and foregoing instrument. He acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute said instrument and that the seal affixed is the seal of the corporation.

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

_____
Notary Public in and for the
State of _____
Residing at _____

(SEAL)

My commission expires _____

COPY

St. Paul, Minnesota
January 27, 1947

Mr. H. G. Boggs
Attorney
Seattle, Washington

Please refer to my letter of December 16 last to Mr. Williams, copy to you, regarding right of way data in connection with crossing of main canal and syphon of the Columbia Basin Irrigation System.

Mr. Blum has copy of proposed agreement between the Government and the Railway Company and of your letter of November 29 to Mr. Derrig and his reply of December 2, and has verbally requested this department to advise him as to obligation of the Railway Company to share in the expense of construction of Bridge #114 as detailed in proposed agreement.

Inasmuch as right of way crossing the W½ SW ¼ Section 3-23N-28E, extends across lands originally patented to the Railway Company (Land Dept.) we requested Mr. Schwarm, Land Attorney, to check statements made in the agreement regarding this land. Attached is copy of memorandum prepared by him dated January 18, 1947. Please note his reference to paragraph 6 of the contract regarding statement that the Railway Company has secured a right of way across portions of Section 12 under Act of March 3, 1875. My letter of December 16 details right of way in Section 12 as acquired from Elam V. Jenks.

In view of your handling this matter and checking title to the right of way, would appreciate your advising me regarding Mr. Blum's request either by letter direct to him, copy to me, or by letter to me.

/s/ J. E. THAMES

AJT hb

Industrial Agent

cc: Mr. B. Blum
Mr. V. E. Williams

Mr. Blum: Your copies of agreement and letters returned herewith.
J.E.T.

COPY

St. Paul, Minnesota
January 27, 1947

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Attorney
Seattle, Washington

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Talked with JEH - 1/27/47 Have for development
ML

MEMORANDUM

In the contract between the United States of America and the NORTHERN PACIFIC RAILWAY COMPANY for canal crossings covering lands in the W½SW¼ of Section 3 and the E½SE¼ of Section 4-23N-28E, Grant County, Washington, it is stated:

> "4. WHEREAS, the right of way across the west half of the said Southwest quarter (W½SW¼) of said Section three (3) was reserved to the United States by the Act of August 30, 1890, 26 Stat. 391, although the reservation was inadvertently omitted from the patents issued to the Company in 1895."

The W½SW¼ of Section 3-23N-28E was selected by the Northern Pacific Railroad Company in its North Yakima, Washington, First Indemnity Selection List No. 10, filed in the North Yakima Local Land Office on October 25, 1887 and approved by the Register and Receiver on that date. The tract was patented to the Northern Pacific Railroad Company on April 22, 1895.

The Act of August 30, 1890 requires:

> "that in all patents for lands hereafter taken up under any of the land laws of the United States or on entries or claims validated by this act, west of the one hundredth meridian, it shall be expressed that there is reserved from the lands in said patent described a right of way thereon for ditches or canals constructed by the authority of the United States."

It was held by First Assistant Secretary Adams on April 19, 1912 (42 L.D. 396) that

> "The reservation required to be inserted in patents for public lands west of the one hundredth meridian is not required to be inserted in patents issued for lands to which the grant or right of a railroad company attached prior to the date of said act. It should be inserted in all patents for lands covered by indemnity selections made by railroad companies . . . . . in all cases where such indemnity or other selections are approved subsequent to August 30, 1890."

In the case of Southern Pacific Railroad Company vs Lane (46 app. D. C. 74; 46 L.D. 407) decided February 6, 1917, it was held (syllabus)

> "Under the proviso of the Act of Congress of August 30, 1890 (26 Stat. at L. 391, Chap. 837) requiring that all patents for lands thereafter taken up under any of the land laws of the United States should contain a reservation from the lands granted a right of way for ditches or canals constructed by the authority

of the United States, it was the duty of the Land Department of the Government, in issuing a patent to the Southern Pacific Railroad Company for indemnity lands under the act of July 27, 1866, which lands were selected by that company after the passage of the Act of 1890, to insert in the patent a reservation from the lands thereby granted of such a right of way." (italics supplied)

It has been the practice of the Interior Department since about 1912 to insert in all patents to the Northern Pacific Railway Company for indemnity lands selected subsequent to the Act of August 30, 1890, a reservation for a right of way for ditches or canals constructed by the authority of the United States, and to omit such a reservation where the indemnity lands were selected prior to the date of that act.

The language inserted in the contract above referred to is erroneous and should be stricken from the instrument.

As to whether or not the Act of August 30, 1890 would apply to the E½SE¼ of Section 4-23N-28E would depend upon the date of the initiation of the entry upon which the patent of February 16, 1916 was based. This information can be obtained from the Acting Manager of the Bureau of Land Management, District Land Office, Spokane (8), Washington. However, as the patent was issued twenty-six years after the Act of August 30, 1890, it could naturally be assumed that the entry was made subsequent to the Act of 1890 and would therefore be subject to the provisions of that act as to a reservation for ditches and canals.

As to the payment of damages in a case where the right of way reservation is applicable, I have not been able to find a case on this subject. In certain instructions reported in 47 L.D. page 160, it is stated,

"Under the above principles it is clear that the United States under the reservation of the right of way contained in the Act of August 30, 1890, has the right to use such portion of the tract, entered as is necessary for the construction, operation and maintenance of the lateral. The United States is not liable for damages resulting to land 'because it did what it had a right to do'." (Jackson vs United States 230 U. S. 1). This is in harmony with Secretary Fisher's instructions of November 9, 1912, as to certain homestead entrymen in the Grand Valley Project, in which he said:

"I am of the opinion that I would not be justified in authorizing the expenditure of any public money for land damages to these entrymen resulting from the construction of such a canal. But it does not seem to be the intent of the statute to confiscate the actual value of improvements on lands subject to such a reserved right of way. In determining the value of the improvements consideration should be given to their actual cost and to the cost of replacing

them with others of equal value, but no element of land damages should be included in the computation."

Under paragraph 6 of the contract it is stated that the Company has secured a right of way across the S½NW¼ of Section 12-23N-28E under the Act of March 3, 1875. Although no mention is made of the application of the Act of August 30, 1890 to this tract, attention is called to the case of Minidoka & S. W. R. Co. vs Weymouth (113 Pac. 455) in which it was held (syllabus)

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LLS/r

/s/ L. L. SCHWARM

Land Attorney.

Jan. 18, 1947

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LLS/r

/s/ L. L. SCHWARM

Land Attorney.

Jan. 18, 1947

December 26, 1946

501-3

U. S. Department of Interior
Bureau of Reclamation
Coulee Dam, Washington

Attention: Mr. F. A. Banks
Supervising Engineer

Columbia River Basin Project - Siphon under track

Dear Mr. Banks:

Our Mr. Boggs advises me that the Reclamation Department has not as yet completed your proposed easement for handling of irrigation water openings under Northern Pacific tracks and with particular reference to our Bridge #114, Adrian Branch and the proposed siphon at our MP 124+3767.

I will thank you to advise status of these papers and if Mr. Boggs or I may be of any assistance in the completion of the negotiations with these papers. We shall be pleased to cooperate with you in the drafting of the final document.

Yours truly,

J. T. DERRIG

ASSISTANT CHIEF ENGINEER

JTD:p

cc FRB
BB
HGB

Seattle, Wash.
Dec. 2, 1946

501-3

JGH

Columbia River Basin Project - Siphon under track

Mr. H. G. Boggs:

In reference to your letter of November 29th forwarding me advance copy of form of agreement submitted by the Bureau of Reclamation for proposed siphon crossing, MP 124+3767.

It is my understanding you and the Law Department representative of the Bureau of Reclamation were to agree on a form of easement and agreement that would be satisfactory to both parties. I agree with you that we should cooperate with the Reclamation Department in every way possible for the handling of this work, with the understanding that the Northern Pacific's interest will be fully protected.

We have received tentative plans for the proposed siphon and have agreed with the Government that the most practical way to handle the placing of the siphon is to provide a shoo-fly. We have not, however, received the detail plans for the siphon as these have not been completed. The Government have promised these detail plans shortly for our checking and approval.

It is my suggestion that a form of agreement be worked up for both the siphon crossing at MP 124+3767 and reconstruction of our Bridge #114 with as little delay as possible and I will thank you to advise if there is anything we can do from an engineering standpoint in expediting these papers.

I have not as yet had an opportunity to review the form of agreement submitted with your letter of November 29th, but I will arrange to do so and let you have my comments from an engineering standpoint shortly.

J. T. DERRIG

Assistant Chief Engineer

JTD:p
cc FRB
BB
HMT

2 copies of Mr. Boggs' letter together with 2 copies of the tentative form of agreement submitted by the Recl. Dept. attached.

Seattle, Washington
November 29, 1946

Mr. J. T. Derrig:

On November 26th Mr. Edgell and I met Mr. LeMargie and Mr. Torkelson at Spokane in connection with a Land Department matter and, at the close of the discussion, Mr. LeMargie brought up the question of the form of contract to be entered into covering the construction of the main canal crossing of our right of way in Sections 3 and 4, Township 23 North, Range 28 East, and also of the siphon in Section 12, Township 22 North, Range 27 East. Mr. LeMargie stated that they have been investigating the source of the title to our right of way and, while they have not reached a definite conclusion, they are tenatively of the opinion that the Government has prior rights at these points, and they may request that the cost of the crossings, to the extent they are occasioned by the construction of the Government's facilities, be borne by the Railway Company. He also said that, so far as their title investigation has gone, the Government has prior rights at the proposed location of the East Low Canal crossing.

Pending final determination of the Government's position with respect to division of cost of these crossings, he handed me a draft of a proposed agreement to cover, which I enclose to you herewith. I have not yet had a chance to study it, but pass it on to you for your information. In the meantime, I will develop through Mr. Williams the source of our title at the main canal crossing and the west canal siphon crossing.

Mr. LeMargie also said that the Bureau has prepared another form of blanket agreement to cover exchange of rights of way and division of cost of crossings. He agreed that our criticism of the agreement heretofore submitted, which you and I discussed with him, was quite one-sided in favor of the Government, but he thought that we might find it to our advantage to consider the new form he has provided. I told him that we would be glad to consider any draft which he might submit. I think it would be well for us to do so, if it appears that, on account of the prior rights of the Government at the crossings now

proposed, the Railway Company is likely to be compelled to bear the major portion of the cost. When Mr. LeMargie submits his proposed draft, I will send you a copy with my comments.

HGB/em
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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

Contract between the United States of America and
The Northern Pacific Railway Company for
Canal Crossings

INDEX

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

Contract between the United States of America and
The Northern Pacific Railway Company for
Canal Crossings

1. THIS AGREEMENT, made this _____ day of _____, 1946, pursuant to the Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto, particularly the Act of August 30, 1935, 49 Stat. 1039 and the Act of August 4, 1939, 53 Stat. 1187, all of which acts are commonly known and referred to as the Reclamation Laws, between the UNITED STATES OF AMERICA, its successors and assigns, hereinafter styled the United States, represented by the Contracting Officer executing this contract, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation of the State of Wisconsin, hereinafter styled the Company,

WITNESSETH, THAT:

2. WHEREAS, in its construction of the Columbia Basin Project the United States is planning to construct as a part of the irrigation system thereof, a main canal, hereinafter styled the Main Canal, which crosses over the West half of the Southwest quarter (W½SW¼) of Section three (3) and the East half of the Southeast quarter (E½SE¼) of Section four (4), Township twenty-three (23) North, Range twenty-eight (28) East, Willamette Meridian, Grant County, Washington; and

3. WHEREAS, the right of way for the canal over and across the said East half of the Southeast quarter (E½SE¼) of Section four (4) was reserved to the United States in the patent from the United States to _____

dated [illegible] and recorded [illegible] said reservation being in accordance with the authority contained in the Act of August 30, 1890, 26 Stat. 391; and

4. WHEREAS, the right of way across the West half of the said Southwest quarter (W½SW¼) of said Section three (3) was reserved to the United States by the Act of August 30, 1890, 26 Stat. 391, although the reservation was inadvertently omitted from the patents issued to the Company in 1895; and

5. WHEREAS, as part of the irrigation system of the Columbia Basin Project the United States is planning to construct in the western portion thereof, a canal, hereinafter styled the West Canal, which crosses over the South half of the Northwest quarter (S½NW¼) of Section twelve (12), Township twenty-two (22) North, Range twenty-seven (27) East, Willamette Meridian, Grant County, Washington; and

6. WHEREAS, the United States owns the said South half of the Northwest quarter (S½NW¼) of Section twelve (12) but the Company has secured a right of way under the Act of March 3, 1875, 18 Stat. 482; and

Wrong

7. WHEREAS, the Company owns, operates and maintains a railroad over and across the West half of the Southwest quarter (W½SW¼) of Section three (3) and the East half of the Southeast quarter (E½SE¼) of Section four (4), Township twenty-three (23) North, Range twenty-eight (28) East, Willamette Meridian, Grant County, Washington; and the South half of the Northwest quarter (S½NW¼) of Section twelve (12), Township twenty-two (22) North, Range twenty-seven (27) East, Willamette Meridian, Grant County, Washington; and

NOW, THEREFORE, in consideration of the mutual and dependent stipulations herein contained, it is agreed as follows:

GRANT OF EASEMENT

8. The Company does hereby grant to the United States a permanent easement for the construction, reconstruction, maintenance and operation of the Main Canal and the West Canal upon and across the Company's right of way and beneath its tracks, on the tracts of land described in Articles 2 and 5 and, except as to those tracts described in Article 5, confirms the reservation under the said Act of August 30, 1890, and specifically with regard to the West half of the Southwest quarter (W½SW¼) of Section three (3) of Township twenty-three (23) North and Range twenty-eight (28) East.

CONSTRUCTION PLAN

9. The manner of constructing the Main Canal across the Company's right of way is shown on Bureau of Reclamation Plan No. _____, dated _____, attached hereto and made a part hereof and designated as Exhibit A. The manner of constructing the West Canal across the Company's right of way is shown on Bureau of Reclamation Plan No._____ _____, dated _____, attached hereto and made a part hereof and designated as Exhibit B. No change shall be made in said plans without the written approval of the Chief Engineer of the Bureau of Reclamation and the Chief Engineer of the Company.

REPLACEMENT OF ROADBED

10. After the construction of said canals across the Company's right of way, the United States will replace the roadbed in such a manner that, as nearly as possible, it will be in the same condition as before construction of the canals, and shall remove from said right of way, to the satisfaction of the Company, all construction materials.

CONSTRUCTION OF BRIDGE

11. The United States agrees to replace the timber trestle located at Station 469+37.8 on the Main Canal with a new steel bridge, estimated to cost $70,050, and to be constructed in the manner shown on Bureau of Reclamation Plan No. _____, dated _____, attached hereto and made a part hereof and designated Exhibit C. The cost of said bridge is to be divided between the United States and the Company in the manner hereinafter provided.

DIVISION OF COSTS

12. The cost and expense of constructing the Main Canal and West Canal crossings, including the excavation work therefor, all costs and expenses incident thereto, and the cost of the bridge, shall be divided between the parties hereto, as follows:

(a) The United States will assume and pay an amount equal to the estimated cost of constructing the Main Canal across the Company's right of way had the railroad not been constructed thereon. The United States will pay all costs of the West Canal crossing including a sum for right of way in the amount of $ _____, and $_____ for damages to the railroad as a result of the proposed construction, which amounts are hereby determined by the parties to be reasonable.

(b) The Company will pay all of the extra cost and expense of constructing the Main Canal by reason of the presence of the railroad and all of the cost of the bridge.

(c) Upon completion of the works the United States will furnish to the Company, its successors and assigns, a statement representing the difference between the actual cost to the United States of the construction of the Main Canal crossing and the bridge thereover, and the estimated cost of the construction had the railroad not been located thereon.

(d) The Company may, at its own expense, make whatever audits are necessary to verify the correctness of the above statement.

(e) Within 60 days after a correct statement has been received by the Company, it shall pay to the United States, after subtracting the sums mentioned in subsection (a) of this article, the amount shown as due by said statement.

(f) Should the parties hereto be unable to agree as to the payment that should be made in settling up this agreement, the matter shall be submitted to the Secretary of the Interior, and his determination of the facts shall be final and conclusive.

MAINTENANCE OF COMPLETED WORKS

13. Upon completion of the construction of the canals across the Company's right of way and the bridge thereover by the United States, the Company shall thereafter maintain perpetually, at its own cost and expense, all such portions of the completed works as form a part of its system, and the United States shall maintain, at its own cost and expense, all such portions of the completed works as form a part of the Columbia Basin Project. The Company agrees to replace any structure forming part of its system, if such should prove necessary, with new structures approved by the Chief Engineer of the United States Bureau of Reclamation. During such construction the Company agrees to take such steps and make such repairs as may be necessary to protect the property of the United States from damage or interference by said construction. In the event the Company shall fail or refuse or neglect to maintain said structures as in this article provided, the United States may, at any and all times, replace, reconstruct, repair or change any of said structures forming a part of the railroad system, in such manner as the Chief Engineer of the United States Bureau of Reclamation shall determine, and the Company agrees to pay and reimburse the United States for the entire cost of such replacements, reconstructions, repairs or changes within sixty (60) days after submission to the Company of written statement or statements showing in detail the items of expense included in the cost of such work. The Company may, at its sole cost and expense, make whatever audits are necessary to verify the correctness of such statements.

All such work shall be performed by the Company during the period from October 1 of any year to April 1 of the following year. No such work shall be performed during the irrigation season of any year without the written permission of the Regional Director of Region Number One of the United States Bureau of Reclamation.

OFFICERS OF THE UNITED STATES PERMITTED TO GO ON RIGHT OF WAY OF THE COMPANY

14. The United States, its officers, agents, contractors and employees shall at any and all times have the right, as granted or consented to herein, to enter upon the right of way of the Company for the purpose of doing anything necessary, in the opinion of the officer of the United States Bureau of Reclamation in charge of the Columbia Basin Project, in connection with the construction, replacement, repair or maintenance of any portion or part of its irrigation system, including all structures and crossings that may be built in pursuance of the provisions of this contract.

LIABILITY FOR INJURY OR DAMAGE

15. The Company does not assume any liability for injury or damage to any person or property incident to or that may arise during and in consequence of:

(a) The use, occupancy and enjoyment in accordance with this agreement by the United States of the land, premises and right of way of the said Company, or

(b) The construction of, erection of, presence of, maintenance of, or failure to construct properly and safely, operate, maintain and use said canals or any part thereof, and the United States agrees to use, occupy and enjoy the land, premises and right of way of the said Company herein granted and to use, employ and maintain said canals with all reasonable diligence and precaution to avoid damage to or obstruction of the track or tracks of the Company, or interference in any manner with the operation of trains, cars or locomotives thereon or thereover.

SUCCESSORS AND ASSIGNS BOUND

16. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, including the successors and assigns of the United States in control of the Columbia Basin Project, or the parties thereafter affected by this contract. After the transfer of the control from the United States, the United States shall no longer be liable under this contract, but after such transfer the party or parties to whom control of said project or of the portion thereof affected by this contract, shall have been so transferred, shall be bound by the terms and provisions thereof which are binding upon the United States. The United States shall advise the Company of any assignment made of this agreement.

OFFICIALS NOT TO BENEFIT

17. 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.

CONTINGENT UPON APPROPRIATIONS

18. Where the operations of this agreement extend beyond the current fiscal year, the agreement is made contingent upon Congress making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this agreement is not made, the Company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

COVENANT AGAINST CONTINGENT FEE

19. The Company warrants that the Company has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul the contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to any commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Company for the purpose of securing business with others than the United States.

NON-DISCRIMINATION

20. In the performance of any work contemplated by this contract, there shall be no discrimination against any employee or applicant for employment because of race, creed, color or national origin, and an identical provision shall be included in all subcontracts, provided, however, that this clause does not refer to, extend to or cover the business or activities of the Company which are not related to or involved in the performance of this contract.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

UNITED STATES OF AMERICA

By_____
Commissioner
Bureau of Reclamation

NORTHERN PACIFIC RAILWAY COMPANY

(SEAL)

Attest:

By_____
_____ President

_____
_____ Secretary

DISTRICT OF COLUMBIA) ss.

I, _____, a Notary Public in and for the District of Columbia do hereby certify that _____, who is personally known to me to be the Commissioner of Reclamation, Department of the Interior of the United States of America, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as the free and voluntary act of the United States of America, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 1946.

(SEAL)

_____
Notary Public in and for the
District of Columbia

My commission expires _____

- - - - - -

STATE OF MINNESOTA)
: ss.
COUNTY OF RAMSEY)

On this _____ day of _____, 1946, before me personally appeared _____, to me known to be the _____ President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

(SEAL)

_____
Notary Public in and for the
State of Minnesota
Residing at _____

My commission expires _____

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

Contract between the United States of America and
The Northern Pacific Railway Company for
Canal Crossings

INDEX

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Columbia Basin Project, Washington

Contract between the United States of America and
The Northern Pacific Railway Company for
Canal Crossings

1. THIS AGREEMENT, made this _____ day of _____, 1946, pursuant to the Act of June 17, 1902, 32 Stat. 388, and acts amendatory thereof and supplementary thereto, particularly the Act of August 30, 1935, 49 Stat. 1039 and the Act of August 4, 1939, 53 Stat. 1187, all of which acts are commonly known and referred to as the Reclamation Laws, between the UNITED STATES OF AMERICA, its successors and assigns, hereinafter styled the United States, represented by the Contracting Officer executing this contract, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation of the State of Wisconsin, hereinafter styled the Company,

WITNESSETH, THAT:

2. WHEREAS, in its construction of the Columbia Basin Project the United States is planning to construct as a part of the irrigation system thereof, a main canal, hereinafter styled the Main Canal, which crosses over the West half of the Southwest quarter (W½SW¼) of Section three (3) and the East half of the Southeast quarter (E½SE¼) of Section four (4), Township twenty-three (23) North, Range twenty-eight (28) East, Willamette Meridian, Grant County, Washington; and

3. WHEREAS, the right of way for the canal over and across the said East half of the Southeast quarter (E½SE¼) of Section four (4) was reserved to the United States in the patent from the United States to _____

dated [illegible] and recorded [illegible]

said reservation being in accordance with the authority contained in the Act of August 30, 1890, 26 Stat. 391; and

4. WHEREAS, the right of way across the West half of the said Southwest quarter (W½SW¼) of said Section three (3) was reserved to the United States by the Act of August 30, 1890, 26 Stat. 391, although the reservation was inadvertently omitted from the patents issued to the Company in 1895; and

5. WHEREAS, as part of the irrigation system of the Columbia Basin Project the United States is planning to construct in the western portion thereof, a canal, hereinafter styled the West Canal, which crosses over the South half of the Northwest quarter (S½NW¼) of Section twelve (12), Township twenty-two (22) North, Range twenty-seven (27) East, Willamette Meridian, Grant County, Washington; and

6. WHEREAS, the United States owns the said South half of the Northwest quarter (S½NW¼) of Section twelve (12) but the Company has secured a right of way under the Act of March 3, 1875, 18 Stat. 482; and

7. WHEREAS, the Company owns, operates and maintains a railroad over and across the West half of the Southwest quarter (W½SW¼) of Section three (3) and the East half of the Southeast quarter (E½SE½) of Section four (4), Township twenty-three (23) North, Range twenty-eight (28) East, Willamette Meridian, Grant County, Washington; and the South half of the Northwest quarter (S½NW¼) of Section twelve (12), Township twenty-two (22) North, Range twenty-seven (27) East, Willamette Meridian, Grant County, Washington; and

NOW, THEREFORE, in consideration of the mutual and dependent stipulations herein contained, it is agreed as follows:

GRANT OF EASEMENT

8. The Company does hereby grant to the United States a permanent easement for the construction, reconstruction, maintenance and operation of the Main Canal and the West Canal upon and across the Company's right of way and beneath its tracks, on the tracts of land described in Articles 2 and 5 and, except as to those tracts described in Article 5, confirms the reservation under the said Act of August 30, 1890, and specifically with regard to the West half of the Southwest quarter (W½SW¼) of Section three (3) of Township twenty-three (23) North and Range twenty-eight (28) East.

CONSTRUCTION PLAN

9. The manner of constructing the Main Canal across the Company's right of way is shown on Bureau of Reclamation Plan No. _____, dated _____, attached hereto and made a part hereof and designated as Exhibit A. The manner of constructing the West Canal across the Company's right of way is shown on Bureau of Reclamation Plan No. _____, dated _____, attached hereto and made a part hereof and designated as Exhibit B. No change shall be made in said plans without the written approval of the Chief Engineer of the Bureau of Reclamation and the Chief Engineer of the Company.

REPLACEMENT OF ROADBED

10. After the construction of said canals across the Company's right of way, the United States will replace the roadbed in such a manner that, as nearly as possible, it will be in the same condition as before construction of the canals, and shall remove from said right of way, to the satisfaction of the Company, all construction materials.

CONSTRUCTION OF BRIDGE

11. The United States agrees to replace the timber trestle located at Station 469437.8 on the Main Canal with a new steel bridge, estimated to cost $70,000, and to be constructed in the manner shown on Bureau of Reclamation Plan No. _____, dated _____, attached hereto and made a part hereof and designated Exhibit C. The cost of said bridge is to be divided between the United States and the Company in the manner hereinafter provided.

DIVISION OF COSTS

12. The cost and expense of constructing the Main Canal and West Canal crossings, including the excavation work therefor, all costs and expenses incident thereto, and the cost of the bridge, shall be divided between the parties hereto, as follows:

(a) The United States will assume and pay an amount equal to the estimated cost of constructing the Main Canal across the Company's right of way had the railroad not been constructed thereon. The United States will pay all costs of the West Canal crossing including a sum for right of way in the amount of $ _____, and $_____ for damages to the railroad as a result of the proposed construction, which amounts are hereby determined by the parties to be reasonable.

(b) The Company will pay all of the extra cost and expense of constructing the Main Canal by reason of the presence of the railroad and all of the cost of the bridge.

(c) Upon completion of the works the United States will furnish to the Company, its successors and assigns, a statement representing the difference between the actual cost to the United States of the construction of the Main Canal crossing and the bridge thereover, and the estimated cost of the construction had the railroad not been located thereon.

(d) The Company may, at its own expense, make whatever audits are necessary to verify the correctness of the above statement.

(e) Within 60 days after a correct statement has been received by the Company, it shall pay to the United States, after subtracting the sums mentioned in subsection (a) of this article, the amount shown as due by said statement.

(f) Should the parties hereto be unable to agree as to the payment that should be made in settling up this agreement, the matter shall be submitted to the Secretary of the Interior, and his determination of the facts shall be final and conclusive.

MAINTENANCE OF COMPLETED WORKS

13. Upon completion of the construction of the canals across the Company's right of way and the bridge thereover by the United States, the Company shall thereafter maintain perpetually, at its own cost and expense, all such portions of the completed works as form a part of its system, and the United States shall maintain, at its own cost and expense, all such portions of the completed works as form a part of the Columbia Basin Project. The Company agrees to replace any structure forming part of its system, if such should prove necessary, with new structures approved by the Chief Engineer of the United States Bureau of Reclamation. During such construction the Company agrees to take such steps and make such repairs as may be necessary to protect the property of the United States from damage or interference by said construction. In the event the Company shall fail or refuse or neglect to maintain said structures as in this article provided, the United States may, at any and all times, replace, reconstruct, repair or change any of said structures forming a part of the railroad system, in such manner as the Chief Engineer of the United States Bureau of Reclamation shall determine, and the Company agrees to pay and reimburse the United States for the entire cost of such replacements, reconstructions, repairs or changes within sixty (60) days after submission to the Company of written statement or statements showing in detail the items of expense included in the cost of such work. The Company may, at its sole cost and expense, make whatever audits are necessary to verify the correctness of such statements.

All such work shall be performed by the Company during the period from October 1 of any year to April 1 of the following year. No such work shall be performed during the irrigation season of any year without the written permission of the Regional Director of Region Number One of the United States Bureau of Reclamation.

OFFICERS OF THE UNITED STATES PERMITTED TO GO ON RIGHT OF WAY OF THE COMPANY

14. The United States, its officers, agents, contractors and employees shall at any and all times have the right, as granted or consented to herein, to enter upon the right of way of the Company for the purpose of doing anything necessary, in the opinion of the officer of the United States Bureau of Reclamation in charge of the Columbia Basin Project, in connection with the construction, replacement, repair or maintenance of any portion or part of its irrigation system, including all structures and crossings that may be built in pursuance of the provisions of this contract.

LIABILITY FOR INJURY OR DAMAGE

15. The Company does not assume any liability for injury or damage to any person or property incident to or that may arise during and in consequence of:

(a) The use, occupancy and enjoyment in accordance with this agreement by the United States of the land, premises and right of way of the said Company, or

(b) The construction of, erection of, presence of, maintenance of, or failure to construct properly and safely, operate, maintain and use said canals or any part thereof, and the United States agrees to use, occupy and enjoy the land, premises and right of way of the said Company herein granted and to use, employ and maintain said canals with all reasonable diligence and precaution to avoid damage to or obstruction of the track or tracks of the Company, or interference in any manner with the operation of trains, cars or locomotives thereon or thereover.

SUCCESSORS AND ASSIGNS BOUND

16. This agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, including the successors and assigns of the United States in control of the Columbia Basin Project, or the parties thereafter affected by this contract. After the transfer of the control from the United States, the United States shall no longer be liable under this contract, but after such transfer the party or parties to whom control of said project or of the portion thereof affected by this contract, shall have been so transferred, shall be bound by the terms and provisions thereof which are binding upon the United States. The United States shall advise the Company of any assignment made of this agreement.

OFFICIALS NOT TO BENEFIT

17. 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.

CONTINGENT UPON APPROPRIATIONS

18. Where the operations of this agreement extend beyond the current fiscal year, the agreement is made contingent upon Congress making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this agreement is not made, the Company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

COVENANT AGAINST CONTINGENT FEE

19. The Company warrants that the Company has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage or contingent fee. Breach of this warranty shall give the United States the right to annul the contract, or in its discretion, to deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to any commissions payable by contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Company for the purpose of securing business with others than the United States.

NON-DISCRIMINATION

20. In the performance of any work contemplated by this contract, there shall be no discrimination against any employee or applicant for employment because of race, creed, color or national origin, and an identical provision shall be included in all subcontracts, provided, however, that this clause does not refer to, extend to or cover the business or activities of the Company which are not related to or involved in the performance of this contract.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be duly executed the day and year first above written.

UNITED STATES OF AMERICA

By_____
Commissioner
Bureau of Reclamation

NORTHERN PACIFIC RAILWAY COMPANY

(SEAL)

Attest:

By_____
_____ President

_____
_____ Secretary

DISTRICT OF COLUMBIA) ss.

I, _____, a Notary Public in and for the District of Columbia do hereby certify that _____, who is personally known to me to be the Commissioner of Reclamation, Department of the Interior of the United States of America, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing instrument as the free and voluntary act of the United States of America, for the uses and purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 1946.

(SEAL)

_____
Notary Public in and for the
District of Columbia

My commission expires _____

- - - - - -

STATE OF MINNESOTA)
: ss.
COUNTY OF RAMSEY)

On this _____ day of _____, 1946, before me personally appeared _____, to me known to be the _____ President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

(SEAL)

_____
Notary Public in and for the
State of Minnesota
Residing at _____

My commission expires _____

(11203)

Saint Paul, September 17,1946

MR. J. T. DERRIG:

With respect to agreement with the Reclamation Service covering irrigation crossings on the COLUMBIA BASIN project:

I am glad to learn from your letter of the 12th to Mr. Banks that it was agreed that a contract would be drawn to cover the construction of bridge 114 and the siphon crossing at MP 124' + 3800 - both between Odair and Adrian.

On receipt of the Bureau's draft of general contract to cover all railway and irrigation crossings I submitted a draft to the Vice President for his views as to policy matters involved, and suggested that it was not desirable from our standpoint and recommended that each such crossing should be handled on its merits.

The Vice President replied that he agreed with my conclusion that it is undesirable, at least at this time, for the Railway to undertake to commit itself to general principles covering government crossings. As time goes on and the practice more fully develops, it may be practicable to do so.

Mr. Stevens passed the papers on to General Counsel who has given the opinion that the Northern Pacific should not make this arrangement but that each crossing should be considered on its merits and agreements made to cover.

cc-Mr. F. M. Bartles
Mr. H. G. Boggs

bb/s

St. Paul, Minn., Sept. 14, 1946.

Mr. Bernard Blum:

Your letter of September 7 forwarding tentative draft of a proposed general contract between the Reclamation Service and the Northern Pacific covering all crossings of Northern Pacific facilities by irrigation works of the Bureau in the State of Washington:

I agree with your conclusion that it is undesirable, at least at this time, for the Railway Company to undertake to commit itself to general principles to govern all crossings. As time goes on and the practice more fully develops, it may be practicable and possible to do so but for the present it would appear to me desirable to handle each crossing on its merits as it comes up as has heretofore been our general practice.

Attached for your information is copy of Mr. daPonte's comments dated September 12.

COPY

St. Paul, Minn., Sept. 12, 1946.

Subject: Contract between Reclamation Service and Northern Pacific Railway co.
(2561-27)

Mr. H. E. Stevens:

I have your letter of the 10th with memorandum referred to concerning contract submitted by the Reclamation Service to cover all crossings of our tracks which may be required by the Reclamation Service from time to time.

It is my opinion that the Northern Pacific should not make this arrangement, but that each crossing should be considered on its own merits and agreement made to cover.

Neither do I see any reason for such a general arrangement.

In any event, there will have to be negotiations and discussions in connection with plan submitted for approval.

We have heretofore had no difficulty in making satisfactory arrangement with the Government covering crossings by irrigation works.

I return your documents.

(Signed) L. B. daPonte
General Counsel

Enclosure

September 12, 1946

U. S. Department of Interior
Bureau of Reclamation
Coulee Dam, Washington

Attention: Mr. F. A. Banks

Columbia Basin Project

Gentlemen:

In reference to our recent conference with my Mr. Boggs and with your Messrs. Williams, LeMargie and Torkelson in respect to blanket agreement or easement for irrigation canal, power line crossings, etc. over Northern Pacific right-of-way in the State of Washington.

At this conference it was my understanding that your Mr. LeMargie will write a redraft of this agreement to cover the immediate crossings of the right-of-way now under contract, namely, at our Bridge #114 and the siphon crossing at MP 124+3800. It is my understanding contractor has started excavation work on the right-of-way of the approaches to the siphon crossing, MP 124+3800, and I assume that you will arrange to expedite the draft of agreement at this location as well as Bridge #114.

I have requested our General Manager to instruct his Supt. to permit the contractor to encroach on the right-of-way for the purpose of excavating the approach to the siphon at MP 124+3800 with the understanding that the roadbed and track would not be disturbed until detail plans are approved and method of handling agreed upon by representative parties.

It will be necessary to send the detail plans for the siphon to our Chief Engineer for approval and anything you can do towards expediting the furnishing of the completed plans for this project will be appreciated.

Very truly yours,

J. T. DERRIG
ASSISTANT CHIEF ENGINEER

JTD:p
cc RSM FRB BB VEW HMT DSC

Seattle, Wash.
Sept. 12, 1946

Columbia Basin Project

Mr. Bernard Blum:

In further reference to blanket agreement submitted by the Bureau of Reclamation covering proposed canal and irrigation crossings, power lines, etc., within the State of Washington.

Mr. H. G. Boggs, of our Law Dept., and myself had a conference with Reclamation officials on Sept. 6 at Coulee Dam and I am attaching hereto copy of Mr. Boggs' memo of Sept. 11.

You will note that it was agreed that the Bureau of Reclamation would submit a revised agreement or easement to cover the immediate crossings under contract, namely, Bridge #114 and the siphon at MP 124+3800 on the Adrian Branch. It is anticipated that Mr. Banks will submit draft of this revised easement or agreement within the immediate future. In this connection plans for the bridge structure proper at Bridge #114 have been approved by you. Details of handling the work have not as yet been completed as this will a function of the contractors operation.

In respect to the siphon at MP 124+3800. The detail plans for the siphon under the Northern Pacific roadbed has not as yet been completed. Mr. Banks will furnish these plans just as soon as possible. Contractor has started work on the approach ditches for the siphon at MP 124+3800 and I have requested Mr. Bartles to instruct Supt. to permit him to encroach on the right-of-way up to the roadbed section pending the submission of the agreement by the Bureau of Reclamation. It being understood that no work will be done within the neat roadbed section until the agreement or easement is completed.

I have requested Mr. Tremaine to keep in touch with Mr. Parker, Project Engineer, and also contact the contractor's representative and ascertain their method of handling the work at Bridge #114.

It is understood that it is necessary to await the Govt.s final detail plans for the siphon under the track before any decision can be reached by the contractor as to handling that part of the work at the siphon crossing.

J. T. Dennis
Assistant Chief Engineer

JTD:p
cc RSM FRB VEW HMT DSC

Sept. 16, 1948

Johnson's Bridge Project

Dear Mr. Lyon:

In further reference to Jackson's request submitted by the Commission's resolution for the proposed canal and fire station on Mr. Lyon's land, etc., within the limits of Washington.

Mr. G. H. Lyon, of the Canal Co., and Jackson had a conference with the Commission officials on Sept. 9th. Mr. Lyon and Jackson submitted herewith copy of Lyon's proposal for the canal.

Mr. Lyon made it a strong point that the Commission or Jackson would pay all overhead expenses or consent to cross the highway in crossing their property, namely, Bridge Hill and the adjacent 17 [illegible] on the Indian Lands. It is anticipated that Jackson will submit draft of this proposed agreement or arrangement with the Commission in future. The main consideration for the building structure, a rumor of Bridge Hill has been circulated by you. Detailing of the following the work have not yet been completed on this Hill a further action of the contractors may exist.

In regard to the [illegible] at [illegible]. The [illegible] plans for the station under the Hudson [illegible] a conduit line not as yet been so placed. [illegible] which [illegible] these plans just as soon as possible. Consequently has absolutely work on the [illegible] station for the station at [illegible] and I have [illegible] Jackson to [illegible] station. In connection to crossing on the right-of-way up to the [illegible] pending the submission of the agreement by the Department of Conservation. In being understood that no work will be done within the next to [illegible] station until the [illegible] or agreement is completed.

Have no [illegible] Jackson to keep in touch with [illegible] Mr. Lyon, and also [illegible] the contractor's representative and [illegible] method of handling the work at Bridge Hill.

In my [illegible] that it is necessary to [illegible] the [illegible] for the station under the [illegible] before any decision can be reached by the management so to [illegible] work at the [illegible] station crossing.

[illegible]

Seattle, Sept. 11, 19

MEMO of conference with Reclamation Service officers at Coulee Dam, Sept. 6, 1946

Present for the Reclamation Service were:

Mr. Williams, Asst. Supervising Engineer
Mr. LeMargie, Asst. Regional Counsel
Mr. Torkelson, Right of Way Engineer

For the Railway Company: Mr. Derrig and myself.

Through Mr. Lindgren, of our Land Department, Mr. LeMargie had submitted a draft of a contract providing for blanket grants of right of way from one party to the other and the purpose of the meeting was to discuss this draft. We inquired whether a similar document had been submitted to the Milwaukee and Great Northern, and the reply was in the negative. We then called attention to the fact that the agreement covered the entire State of Washington, and stated that from both the standpoint of the Government and the Railroad it would seem desirable to restrict it at least to the Columbia Basin Project, particularly in view of the fact that there was no termination clause at all in the agreement. Futhermore, we pointed out that there would be so many matters to agree upon for the various facilities to be installed by the Government, the location of none of which were now known, that it would be difficult for us to see how any advantage would accrue to either party from this type of agreement. Mr. Torkelson said that the advantage lay in the fact that, if the Government obtained the necessary right of way by this document, time would be saved because other details could be worked out locally.

We then stated that apparently the only benefit to the Railway Company from this type of agreement would be in the Government's assuming all of the cost of crossings on lands which might be subject to the Act of 1890, and that, as the Government would not know for some time where its facilitie would be located, it would be impossible for the Railway Company to make any intelligent estimate of benefit that it might receive through this assumption of liability by the Government. Mr. Derrig then suggested that perhaps it would be just as well to deal only with Bridge 114 and the siphon at approximately MP 124 for which facility contracts have actually been let. Mr. Williams was agreeable, and the matter was left with the understanding that Mr. LeMargie would

prepare a draft of an agreement, or agreements, to cover these two situations. We did say that when it came to the construction of laterals we could see that it would be very inconvenient to obtain execution of a large number of separate agreements dealing with only one or a few laterals, and we suggested that when it is known that the construction of laterals will begin on any considerable scale perhaps some blanket agreement could be worked out.

We did not discuss the proposed blanket agreement in any great detail, but Mr. Derrig pointed out that the provision for flagging would have to be changed so as to make it clear that flagging would be under the control of the Railway Company. Mr. Williams then got out the specifications on the two jobs above referred to and read Sections 30, 31 and 32, which deal with the obligations of the contractor in connection with construction across the railroad's line. We suggested that the contract between the Railway Company and the Government should contain an agreement by the Government that it would require its contractor to perform along the line of these sections. In addition, we suggested that the contract provide that the contractor should carry public liability and property damage insurance in amounts satisfactory to the Railway Company, and also insurance to protect the contingent liability of the Railway Company.

I have not made any investigation to determine whether any of the lands which may be involved in government crossings are subject to the Act of 1890. I do not believe the Railway Company's records will give the necessary information, except where we may have acquired patents to the odd sections within our land grant limits prior to 1890. I believe Bridge 114 and the siphon at MP 124 are beyond the limits of our grant, but the very fact that apparently the Government is going to assume the entire cost at these two locations is good evidence that the land at these points is not subject to the Act of 1890.

Harold G. Boggs

Seattle, Washington
September 10, 1946

Mr. H. M. Tremaine:

Columbia River Basin Project

For your information at this time, I am attaching hereto copy of my letter of this date to Mr. Boggs in reference to preparation of easement covering crossings in the irrigation canal laterals, Grand Coulee Dam Project.

The government's attorney agreed to redraft the document originally submitted, to cover only the two immediate projects; namely, the reconstruction of Bridge #114 and the syphon to be located approximately at MP 124-3/4. Mr. Banks advised that he will arrange to furnish us detailed plans of the syphon location as soon as the final location is determined. When these prints are received I will forward them to you for field check before forwarding to St. Paul for final check by the Bridge Engineer and approval by the Chief Engineer.

Mr. Banks indicated there has been some restrictions placed on the contract work due to curtailment of the appropriation, and I also understand that some objections have been raised by the local community in respect to the government's plan of diverting water through the Soap Creek area. These objections may in some way effect the final location of the syphon at MP 124-3/4.

I suggest that you arrange to keep in touch with Mr. Parker, who has been assigned as Project Engineer for the construction work along the Adrian Branch, and keep me informed as to any new locations that may develop for canal crossings on this branch. In this connection, have you had any inquiry locally from the Terteling Company or the Winston-Utah Company as to their proposed method of handling the work at the location of Bridge #114 and the syphon crossing at MP 124-3/4. If not, I suggest that you arrange to call the local superintendent of the two contracting companies and, if possible, ascertain their program for carrying out these construction projects. It is my understanding that all costs in connection with the construction of these projects is to be assumed by the government or its contractor.

It is anticipated that the government's revised draft of the easements will be submitted shortly.

J. T. DERRIG
Asst. Chief Engineer

JTD:dl
Enc.

cc (BB FRB DSC) - Copy of my letter to Mr. Boggs attached.

Seattle, Washington
September 10, 1946

Mr. H. G. Boggs:

Columbia River Basin Project

I am attaching hereto copy of government specifications No. 1236, Bureau of Reclamation, covering earthwork, tunnel, concrete lining and structures, government station 24+00 to 430+00, Main Canal, Columbia Basin Project.

I am also attaching two additional copies of the specifications, referring to reconstruction of Northern Pacific Bridge #114, which will be required in connection with this project. I have detailed plans of the proposed bridge which have been approved by our Bridge Engineer and also the Chief Engineer of the Railway Company. In submitting the plans, it is my understanding that the government, through its contractor, intends to assume the entire cost of the reconstruction of said Bridge #114.

It is my understanding that the government will submit a revised draft of easement to cover both the reconstruction of Bridge #114 and the construction of a syphon under the tracks in the vicinity of MP 124-3/4 on the Adrian Branch. I have not as yet received the detailed plans for the syphon location, and I am advised that the exact location for the syphon has not as yet been fully determined by the Bureau of Reclamation; therefore, it is apparent that the crossing of the main canal and reconstruction of Bridge #114 will be the first items under consideration with their present program.

There is also attached two additional copies of the government specifications, referring to the construction of the syphon. If additional copies of this portion of the specifications are desired, I can arrange to furnish same on your further request, as I have a backed-up copy of the specifications above referred to for both the syphon and bridge location.

There is also attached an envelope containing a pamphlet and photographs handed us by Mr. Banks when at Coulee. These prints are furnished you for your personal information.

I will thank you for a copy of your report covering your understanding of the preparation of the proposed easement and its requirements based on your discussion with the Bureau of Reclamation's attorney when we were at Coulee Dam on September 6.

J. T. DERRIG
Asst. Chief Engineer

JTD:dl
Encs.

Saint Paul, September 7, 1946

MR. H. E. STEVENS:

I received from Mr. Derrig a draft of form of general contract submitted by the Reclamation Service to cover all crossings of railway facilities by Irrigation works of the Bureau in the State of Washington.

At first glance it would seem to me somewhat undesirable to commit ourselves so drastically for future crossings.

Apparently this matter has been under consideration with the Western District officers for some time, and I attach copy of a memorandum from Mr. H. D. Boggs to Mr. Macfarlane, dated June 20. As I read it, my impressions are along the same lines as those expressed by Mr. Boggs.

Mr. Tremaine thinks the draft is all in favor of the Government, and he objects to a number of the clauses; although it has been customary to accept some of the measures on account of the limitations which a Government officer is under in committing the Government.

I have now obtained additional copy of the Government draft, which I am transmitting to you herewith, having in mind that the policy of the Railway Co. should be established, relative to entering into such a general agreement.

Mr. Derrig now tells me that Mr. Boggs (who has been giving the matter some study) and he are planning on conferring with Mr. Banks at Coulee, yesterday the 6th, to determine the changes that the Reclamation Bureau would agree upon. If it is decided to enter into such an agreement I think that some of the clauses as now drawn should be modified.

The form as drawn grants easements over its right of way to the Government for crossings, subject to approval by the company of plans in each instance. Likewise the Government grants to the Company a blanket right of way over its fee lands, and easements for construction of railroad lines. I do not like that and see no necessity for trying to cover it all in such general terms. The plans for crossings by either party must be agreed upon, and it would not be any burden to provide individual easements to meet each set of circumstances.

Furthermore it is proposed that the Government grant the Railway easements for fifty years with renewal for another fifty years if approved by the Secretary of the Interior, whereas the Railway form calls for the Government to grant perpetual easements.

Another item is that under Sec. XIX the Railway is to bear the expense of maintaining all structures in connect on with Government crossings of our tracks where such structures become a part of the railroad. I think that each case should be considered on its merits.

There are other points in the draft, but I now simply call to attention one or two of the more important items.

bb/s

att.
x

11203

Seattle, Wn.
Sept. 3, 1946

Columbia River Basin Project

Mr. Bernard Blum:

Your letter of August 24 in regard to proposed blanket agreement with the Reclamation Service covering irrigation crossings, Grand Coulee Dam.

It is, of course, understood that no commitments in respect to this easement will be made until the document is approved by our executives. It seems necessary, however, to simpilfy and iron out the draft of agreement as submitted by the Bureau of Reclamation and Mr. Boggs of our Law Dept. is giving this document study and it is our intention to confer with Mr. Banks or his right-of-way representative at Coulee on Sept. 6. Following that conference we will be in a position to report on what changes, if any, the Reclamation Dept. is agreeable to.

For your information Mr. Williams of the Bureau of Reclamation indicates that the reconstruction of Bridge 114 could be handled under this blanket agreement. Personally, I had in mind that we would prepare a separate agreement for Bridge 114 as this will be the first crossing to be constructed.

Mr. Banks, over the telephone, advised me that he wanted to simpilfy the agreement as much as possible and I do not anticipate that we will have any difficulty in writing up a satisfactory document that will be satisfactory to both parties.

In compliance with your request of the 24th, I am attaching hereto duplicate print copies of the draft of the blanket agreement as submitted by the Reclamation Department.

Assistant Chief Engineer

JTD:p

cc HGB

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

THIS CONTRACT, Made this _____ day of _____, 1946, pursuant to the Act of Congress approved August 30, 1935 (49 Stat. 1039) and pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, commonly known and referred to as the Federal Reclamation Law, between the UNITED STATES OF AMERICA, herein styled the United States, represented by the contracting officer executing this contract, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation (hereinafter styled the Company).

WITNESSETH, That:

Explanatory Recitals

2. WHEREAS, the United States is engaged in the construction of or has constructed within the State of Washington many Federal reclamation projects, including the Yakima Project, Okanogan Project and Columbia Basin Project, and may hereafter build and construct other Federal reclamation projects and Federal Water Conservation and Utilization Projects not now under construction or contemplated; and

3. WHEREAS, the project works of the Reclamation projects, in addition to other works, include and will include canals, ditches, laterals, sublaterals, drains, spillways, wasteways, siphons, pipelines, and other waterways or water conduits, including land and easements therefor, all or any of which, whether already constructed or to be constructed in the future, are hereafter referred to as "project waterways" and "project waterway"; and said project works include telephone and telegraph transmission lines and lines for the transmission of electricity or other power, all or any of which whether already constructed or to be constructed in the future, are hereafter referred to as "pole lines" and "pole line", and

4. WHEREAS, the Company has many railroad rights of way which the United States may be required to occupy or cross with its project waterways, and the

Company has constructed railroad lines and, from time to time, intends to construct and reconstruct railroad lines, many of which of necessity must occupy or cross the rights of way for project waterways and pole lines of the United States, some of which are already built and some of which are to be constructed hereafter; and all or any of such railroad lines, including land and easements therefor, whether already constructed or to be constructed in the future are hereinafter referred to as "railroad lines" and "railroad line"; and

5. WHEREAS, the parties to this contract wish to avoid the burden of executing a separate contract for each such crossing; and

6. WHEREAS, the United States claims rights of way for project waterways, constructed or to be constructed, certain of which rights of way are reserved to the United States pursuant to Section 7412, Rem. Rev. Stat., pursuant to the Act of Congress of August 30, 1890 (26 Stat. 391), and pursuant to other Acts of Congress and certain of which rights of way have been acquired or will be acquired by purchase or condemnation, all of which rights of way, hereafter referred to as "waterway easements", are easements for project waterways; and also certain rights of way for telephone and transmission lines are reserved to the United States pursuant to Section 7412 Rem. Rev. Stat., which are hereafter referred to as "pole line easements"; and

7. WHEREAS, the United States also has constructed or will construct project waterways and pole lines upon lands owned by the United States in fee;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby agreed by and between the parties hereto as follows:

Rights of Way Granted to the Company

8. The United States hereby grants to the Company, subject to the provisions of this contract, rights of way and easements, which shall be for the period of

fifty (50) years from the date of this contract, subject to the provisions of Article 18 hereof, to construct, reconstruct, operate and maintain railroad lines upon or across project waterways and across and under pole lines in all cases where said crossings are upon lands held by the United States in fee title.

Consent to Crossing of Project Waterways

9. The United States, subject to the provisions of this contract, hereby consents to the construction, reconstruction, operation and maintenance by the Company of railroad lines upon or across project waterways, where such project waterways are upon waterway easements, and across and under pole lines, where such lines are upon pole line easements, as said waterway easements and pole line easements are defined in Article 6 of this contract, and the United States agrees that such construction, reconstruction, operation and maintenance, are not in conflict with the said waterway easements and pole line easements of the United States. The Company will obtain the necessary grants for railroad purposes from the owner of the underlying fee.

Rights of Way Granted to the United States

10 (a). The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights of way and easements to construct, reconstruct, operate and maintain project waterways and pole lines upon and across Company railroad lines, in all cases where the same are upon or across lands held by the Company in fee title:

(b). The Company, subject to the provisions of this contract, hereby consents to the construction, reconstruction, operation and maintenance by the United States, of project waterways and pole lines upon and across Company railroad lines, where the same are upon or across easements for said railroad lines, and the Company agrees that such construction, reconstruction, operation and maintenance, are not in conflict with the easements of the Company. The United States will obtain the necessary grants for the same from the owner of the underlying fee.

(c). The Company hereby ratifies and confirms the reservations, under and by virtue of the Act of Congress approved August 30, 1890 (26 Stat. 371, 391) under and by virtue of any other act of Congress, and under and by virtue of Section 7412, Rem. Rev. Stat., to the United States of the rights of way upon or across Company railroad lines located on lands subject to such reserved rights of way.

Notice of Exercise of Rights of Way

11 (a). The rights of way and easements and consents to cross, which the United States grants or gives the Company, as provided in Articles 8 and 9 hereof, and the rights of way and easements and consents which the Company grants to the United States, as provided in Article 10 hereof, are subject to the condition that before beginning construction the party desiring to exercise the same shall notify the other party in writing, describing the place where the works are to be constructed and shall provide the other party with the plans for the facilities proposed to be constructed. The plans shall be reviewed promptly and said party shall notify in writing the party giving the notice that such crossing is approved or disapproved, indicating in the latter instance the reasons therefor; Provided, That the Company officials will 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 Company itself for similar purposes; and the officials of the United States will not refuse approval of reasonable plans submitted by the Company, 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. If disapproved by an official of the Company or Bureau of Reclamation, the plans shall be referred to the Secretary of the Interior who shall make a final determination of the points in disagreement.

(b). In case of the United States said notice shall be given to the officer of the Bureau of Reclamation in charge of the project affected, and in the case

of the Company said notice shall be given to _____, whose office is in Seattle, Washington.

Cost of Crossing Project Waterways by Company Railroad Lines

12 (a). Where the Company crosses a project waterway, or merely the land or easement therefor, or under a pole line, pursuant to a grant, or consent under Articles 8 and 9 of this contract, with a Company railroad line and such project waterway or pole line is in existence at the time of such crossing, or is definitely located although not yet built, but planned for construction within one year from the time of such crossing, the Company at its sole cost and expense, shall construct and install such culvert, pipeline, siphon or other conduit over or under such Company railroad crossing, or such railroad bridge, over the project waterway, or land or easement therefor, as shall be required, and the Company shall reconstruct said pole line, if required, at its sole cost and expense.

(b). Said structure or structures shall be of the kind, construction, size, material, description, and at the elevation as shall be designated and approved by the officer of the Bureau of Reclamation in charge of the project affected.

Cost of Crossing Company Railroad Lines by Project Waterways

13 (a). Where the United States crosses or occupies portions of a Company railroad line, or merely the land or easement therefore, with a project waterway or pole line pursuant to a grant under Article 10 of this contract, and the Company railroad line is in existence at the time of such crossing, or is definitely located although not yet built, but planned for construction within one year from the time of such crossing, the United States, at its sole cost and expense, shall construct and install such culvert, pipeline, siphon or other conduit over or under such Company railroad crossing, or land or easement therefore, or shall con- at its sole cost and expense, such Company railroad bridge, over the project waterway as shall be required to meet the construction standards of the existing or contemplated railroad line.

(b). Where the United States, after the date hereof, crosses or occupies a Company railroad right of way with a project waterway pursuant to a reserved right of way under the Act of Congress of August 30, 1890 (26 Stat. 391), under any other Act of Congress or under Section 7412, Rem. Rev. Stat., and the Company railroad line is in existence at such time, the United States, acting through the Bureau of Reclamation, shall give written notice to the Company describing the place where the reserved right of way is to be utilized and shall provide the Company with the Bureau's plans for the facilities proposed to be built. The United States acting through the Bureau of Reclamation, will consult with the Company with respect to such plans, but approval by the Company will not be requisite to the exercise of the Federal Government's rights. The United States shall then proceed to construct and install the works proposed at such location. For and in consideration of the easements granted by the Company in the next paragraph hereof, the United States will assume all of the cost of such crossings or occupancies.

Easements Granted United States to Cross Railroad Lines with Transmission Lines, etc.

14. For and in consideration of the assumption by the United States of all of such expense, the Company hereby grants to the United States, its successors and assigns, easements to construct, reconstruct, operate and maintain along and across any Company railroad line at any point in Washington where the United States does not have a reserved right of way, roads, railroads, power works, or works for the development of power which may in the future be built by the United States in connection with any Federal reclamation or Water Conservation and Utilization project in Washington; Provided, however, that the plans for any such facilities required to be built along or across the Company railroad lines shall be submitted to the Company, and if disapproved by the Company, said plans shall be submitted for approval or disapproval to the Secretary of the Interior whose decision will be conclusive. If the Company holds less than the fee title, it consents to such enroachment by the United States only insofar as the Company has a right to do so. The

United States will obtain a grant from the owner of the underlying fee.

Manner of Constructing Crossing by United States

15. The United States agrees that in constructing or reconstructing crossings for project waterways under a grant pursuant to the provisions of Article 10 of this contract:

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

(b) Such construction work shall be conducted so that the Company railroad line will be closed to traffic for as brief a period as possible with the United States furnishing any flagmen which may be necessary;

(c) Upon request of the Company 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;

(d) The material, removed from the railroad line shall be replaced or renewed so that, upon completion of the crossing, the Company railroad line will be in as good condition as it was prior to such construction work by the United States.

Manner of Constructing Crossings by Company

16. The Company agrees that in constructing or reconstructing a crossing over project waterways, or under pole lines, pursuant to a grant or consent under Articles 8 or 9 of this contract:

(a) The Company shall in no case construct its Company railroad lines upon or across any project waterways or under any pole line or on the right of way thereof, nor in any manner interfere with the same, until the officer of the Bureau of Reclamation in charge of the project affected shall have approved any pole line reconstruction proposed, and shall have approved and designated the

structure or structures by which such crossing is to be effected, or the structures by which water in such project waterway shall be carried under Company railroad lines;

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any project waterway, and in the event that the Company constructs any structure authorized pursuant to the provisions of Articles 8 or 9 of this contract during an irrigation season, which for the purpose of this contract shall be from the 15th day of March to the 15th day of October of each year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the officer of the Bureau of Reclamation in charge of the project affected, for the purpose of conveying the water flowing in the project waterway along the regular course without waste or loss during the time of the construction of said structure.

Changes in Company Structures

17. All grants or consents of the United States, pursuant to Articles 8 or 9 of this contract, are subject to the condition, that in the event the officer of the Bureau of Reclamation in charge of the project affected determines that by reason of a change in a project waterway, or for any other reason, it is necessary that the structure or structures installed by the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by said officer of the Bureau of Reclamation in charge of the project affected.

Continuation of the Period of Grant of Right of Way and Easement

18 (a). In connection with any rights of way and easements granted to the Company for the period of fifty (50) years pursuant to the provisions of Article

8 of this contract, or continued as herein provided, the Company may on or before ninety (90) days before the date of the expiration of the period of any such right of way and easement make written request of the Secretary of the Interior that the right of way or easement be continued for an additional fifty (50) year period, or such period as is permitted by the Federal Reclamation Laws or other Acts of Congress. Unless, on or before such expiration date, the Secretary of the Interior shall have notified the Company in writing that the Company's request is denied, such right of way and easement shall be continued for an additional fifty (50) year period, or such period as is permitted by the Federal Reclamation Laws or other acts of Congress.

(b) The Company agrees that if the period of such right of way and easement granted to the Company pursuant to Article 8 expires without the right of way or easement being continued or renewed, the Company will, at its sole cost and expense, remove the struture or structures constructed by the Company, or do whatever is required by the officer of the Bureau of Reclamation in charge of the project affected to restore such project waterway or pole line, to its condition prior to the construction of such structure by the Company.

Maintenance of Crossing Structures

19 (a). Upon completion of construction work by the Company or by the United States, as the case may be, of any structure or structures in connection with the crossing of Company railroad lines by project waterways or the crossing of project waterways by Company railroad lines, the Company thereafter shall maintain, at its own cost and expense, all such structures which form a part of the Company railroad lines. The United States will maintain all such structures as form a part of a project system. The Company agrees to replace its structures with new structures, approved by the officer of the United States in charge of the project affected from time to time as the necessity arises, and to make such repairs as may be necessary to protect said project waterways from any damage or

interference from said structure. It shall be the duty of the Company in this regard to maintain its structures in such a manner as to be deemed safe and consistent with satisfactory management.

(b) All work done by the Company in maintaining or replacing said structures shall be done in a good and workmanlike manner. In the maintenance of said structures the Company shall not take any sand, gravel, or other material from the project waterways or rights of way or lands of the United States, without permission of the officer of the Bureau of Reclamation in charge of the project affected.

(c) In the event that the Company shall fail, refuse, or neglect to maintain said structures, as in this article provided, the United States may at any and all times replace, reconstruct, repair or change any of said structures, forming a part of the Company railroad line, in such manner as the officer of the United States in charge of the project affected shall determine, and the Company agrees to pay and reimburse the United States for the entire cost and expense of such replacements, reconstruction, repairs or changes, within ninety (90) days after submission to the Company of a written statement or statements, showing in detail the items of expense included in the cost of such replacements, reconstructions, repairs or changes for which payment is to be made by the Company as herein provided. The Company may, at its sole cost and expense, make whatever audits are necessary to verify the correctness of such statements.

Company to Indemnify the United States

20. The Company shall reimburse the United States for, and indemnify and save the United States harmless against any and all loss, damage or injury of whatsoever nature, direct or indirect, incurred by or arising out of, or growing out of, any and all injuries or damages of whatsoever nature or kind to the property of the United States or the property of third persons, done or suffered by reason of the construction, reconstruction, operation and maintenance of any

Company railroad crossings or structures of the Company under a grant or consent from the United States pursuant to this contract, or by reason of the existence of such structure, notwithstanding the approval, supervision or sanction of any officer or employee of the United States as to the construction, plan or design of the same, and said indemnification shall extend to and include any losses suffered by reason of interference with or interruption of the transmission of electrical current.

Right of United States to Enter Upon Company Right of Way

21. The United States, its officers, agents, contractors and employees shall at any and all times, subject to the provisions of Article 22 of this contract, have the right to enter upon the rights of way of the Company, granted or consented to heretofore and as provided in Articles 8 and 9 hereof, for the purpose of doing anything necessary, in the opinion of the officer of the Bureau of Reclamation in charge of the project affected, in connection with the construction, replacing, repairing or maintenance of any portion or part of its irrigation system, including all structures and crossings which may be built in pursuance of the provisions of this contract.

United States to Use Care

22. The United States, in using, occupying and enjoying the rights of way and easements for project waterways and other structures across and along Company railroad lines granted pursuant to this contract, shall use all reasonable diligence and precaution to avoid damage to or obstruction of such Company railroad lines and to avoid interference in any manner with traffic on said Company railroad lines.

Company Does Not Assume Liability

23. The Company does not, by reason of this contract, or by reason of any grants made pursuant to Articles 10 and 14 of this contract, 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 the right of way of any Company railroad line or (b) the operation and maintenance of a project waterway across any Company railroad line, pursuant to Article 10 of this contract, or other project works, pursuant to Article 14 of this contract.

Authorized Representative of the United States

24. Wherever the Secretary of the Interior is referred to herein it is intended to include his successor or duly authorized representative.

Conditions of Labor

25 (a). No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Company or any sub-contractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the Company or any sub-contractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars shall be imposed upon the Company for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government; Provided, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, 1934 ed., title 40, sections 321, 324, 325, and 326, relating to hours of labor, as in part modified by the

provisions of section 303 of the act of September 9, 1940, (54 Stat. 884), relating to compensation for overtime.

(b). The Company shall not employ any person undergoing sentence of imprisonment at hard labor.

Contingent on Appropriations

26. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the Company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

Discrimination Against Employees or Applicants for Employment Prohibited

27. The Company shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all sub-contracts: Provided however, that this clause does not refer to, extend to or cover the business or activities of the Company which are not related to or involved in the performance of this contract.

Officials Not to Benefit

28. 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 therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Successors and Assigns Bound

29. The provisions of this contract shall be binding upon and inure to the successors and assigns of the parties hereto.

Officials of Water Users' Organizations to Pass on Company Plans If Project Being Operated and Maintained by Them

30. If the project affected, although owned by the United States, is being operated and maintained by any organization or group of water users and not by the United States, it shall be required that before the construction of any crossing by the Company, the official of such organization or group who is in charge of said operation and maintenance, shall give the permission, opinion or approval of the plans of the Company in addition to the permission, opinion or approval of the official of the Bureau of Reclamation in charge of the project affected, whenever it is provided herein that such permission, opinion or approval shall be given by the official of the Bureau of Reclamation in charge of the project affected.

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

UNITED STATES OF AMERICA,

By _____

NORTHERN PACIFIC RAILWAY COMPANY

By _____

_____ President

Attest:

_____

_____ Secretary

- - - -

STATE OF)
: ss.
County of)

On this ___ day of _____, 1946, before me personally appeared _____, to me known to be the _____ President of the Northern Pacific Railway Company, the corporation that executed the within and foregoing instrument, He acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute said instrument and that the seal affixed is the seal of the corporation.

In Witness Whereof I set my hand and affix my official seal the day and year first above written.

(SEAL)

My commission expires

_____
Notary Public in and for the State of
Residing at

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

THIS CONTRACT, Made this _____ day of _____, 1946, pursuant to the Act of Congress approved August 30, 1935 (49 Stat. 1039) and pursuant to the Act of Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, commonly known and referred to as the Federal Reclamation Law, between the UNITED STATES OF AMERICA, herein styled the United States, represented by the contracting officer executing this contract, and the NORTHERN PACIFIC RAILWAY COMPANY, a corporation (hereinafter styled the Company).

WITNESSETH, That:

Explanatory Recitals

2. WHEREAS, the United States is engaged in the construction of or has constructed within the State of Washington many Federal reclamation projects, including the Yakima Project, Okanogan Project and Columbia Basin Project, and may hereafter build and construct other Federal reclamation projects and Federal Water Conservation and Utilization Projects not now under construction or contemplated; and

3. WHEREAS, the project works of the Reclamation projects, in addition to other works, include and will include canals, ditches, laterals, sublaterals, drains, spillways, wasteways, siphons, pipelines, and other waterways or water conduits, including land and easements therefor, all or any of which, whether already constructed or to be constructed in the future, are hereafter referred to as "project waterways" and "project waterway"; and said project works include telephone and telegraph transmission lines and lines for the transmission of electricity or other power, all or any of which whether already constructed or to be constructed in the future, are hereafter referred to as "pole lines" and "pole line", and

4. WHEREAS, the Company has many railroad rights of way which the United States may be required to occupy or cross with its project waterways, and the

Company has constructed railroad lines and, from time to time, intends to construct and reconstruct railroad lines, many of which of necessity must occupy or cross the rights of way for project waterways and pole lines of the United States, some of which are already built and some of which are to be constructed hereafter; and all or any of such railroad lines, including land and easements therefor, whether already constructed or to be constructed in the future are hereinafter referred to as "railroad lines" and "railroad line"; and

5. WHEREAS, the parties to this contract wish to avoid the burden of executing a separate contract for each such crossing; and

6. WHEREAS, the United States claims rights of way for project waterways, constructed or to be constructed, certain of which rights of way are reserved to the United States pursuant to Section 7412, Rem. Rev. Stat., pursuant to the Act of Congress of August 30, 1890 (26 Stat. 391), and pursuant to other Acts of Congress and certain of which rights of way have been acquired or will be acquired by purchase or condemnation, all of which rights of way, hereafter referred to as "waterway easements", are easements for project waterways; and also certain rights of way for telephone and transmission lines are reserved to the United States pursuant to Section 7412 Rem. Rev. Stat., which are hereafter referred to as "pole line easements"; and

7. WHEREAS, the United States also has constructed or will construct project waterways and pole lines upon lands owned by the United States in fee;

NOW, THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is hereby agreed by and between the parties hereto as follows:

Rights of Way Granted to the Company

8. The United States hereby grants to the Company, subject to the provisions of this contract, rights of way and easements, which shall be for the period of

ty (50) years from the date of this contract, subject to the provisions of Article 18 hereof, to construct, reconstruct, operate and maintain railroad lines upon or across project waterways and across and under pole lines in all cases where said crossings are upon lands held by the United States in fee title.

Consent to Crossing of Project Waterways

9. The United States, subject to the provisions of this contract, hereby consents to the construction, reconstruction, operation and maintenance by the Company of railroad lines upon or across project waterways, where such project waterways are upon waterway easements, and across and under pole lines, where such lines are upon pole line easements, as said waterway easements and pole line easements are defined in Article 6 of this contract, and the United States agrees that such construction, reconstruction, operation and maintenance, are not in conflict with the said waterway easements and pole line easements of the United States. The Company will obtain the necessary grants for railroad purposes from the owner of the underlying fee.

Rights of Way Granted to the United States

10 (a). The Company hereby grants to the United States, subject to the provisions of this contract, perpetual rights of way and easements to construct, reconstruct, operate and maintain project waterways and pole lines upon and across Company railroad lines, in all cases where the same are upon or across lands held by the Company in fee title:

(b). The Company, subject to the provisions of this contract, hereby consents to the construction, reconstruction, operation and maintenance by the United States, of project waterways and pole lines upon and across Company railroad lines, where the same are upon or across easements for said railroad lines, and the Company agrees that such construction, reconstruction, operation and maintenance, are not in conflict with the easements of the Company. The United States will obtain the necessary grants for the same from the owner of the underlying fee.

(c). The Company hereby ratifies and confirms the reservations, under and by virtue of the Act of Congress approved August 30, 1890 (26 Stat. 371, 391) under and by virtue of any other act of Congress, and under and by virtue of Section 7412, Rem. Rev. Stat., to the United States of the rights of way upon or across Company railroad lines located on lands subject to such reserved rights of way.

Notice of Exercise of Rights of Way

11 (a). The rights of way and easements and consents to cross, which the United States grants or gives the Company, as provided in Articles 8 and 9 hereof, and the rights of way and easements and consents which the Company grants to the United States, as provided in Article 10 hereof, are subject to the condition that before beginning construction the party desiring to exercise the same shall notify the other party in writing, describing the place where the works are to be constructed and shall provide the other party with the plans for the facilities proposed to be constructed. The plans shall be reviewed promptly and said party shall notify in writing the party giving the notice that such crossing is approved or disapproved, indicating in the latter instance the reasons therefor; Provided, That the Company officials will 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 Company itself for similar purposes; and the officials of the United States will not refuse approval of reasonable plans submitted by the Company, 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. If disapproved by an official of the Company or Bureau of Reclamation, the plans shall be referred to the Secretary of the Interior who shall make a final determination of the points in disagreement.

(b). In case of the United States said notice shall be given to the officer of the Bureau of Reclamation in charge of the project affected, and in the case

the Company said notice shall be given to _____, whose office is in Seattle, Washington.

Cost of Crossing Project Waterways by Company Railroad Lines

12 (a). Where the Company crosses a project waterway, or merely the land or easement therefor, or under a pole line, pursuant to a grant, or consent under Articles 8 and 9 of this contract, with a Company railroad line and such project waterway or pole line is in existence at the time of such crossing, or is definitely located although not yet built, but planned for construction within one year from the time of such crossing, the Company at its sole cost and expense, shall construct and install such culvert, pipeline, siphon or other conduit over or under such Company railroad crossing, or such railroad bridge, over the project waterway, or land or easement therefor, as shall be required, and the Company shall reconstruct said pole line, if required, at its sole cost and expense.

(b). Said structure or structures shall be of the kind, construction, size, material, description, and at the elevation as shall be designated and approved by the officer of the Bureau of Reclamation in charge of the project affected.

Cost of Crossing Company Railroad Lines by Project Waterways

13 (a). Where the United States crosses or occupies portions of a Company railroad line, or merely the land or easement therefore, with a project waterway or pole line pursuant to a grant under Article 10 of this contract, and the Company railroad line is in existence at the time of such crossing, or is definitely located although not yet built, but planned for construction within one year from the time of such crossing, the United States, at its sole cost and expense, shall construct and install such culvert, pipeline, siphon or other conduit over or under such Company railroad crossing, or land or easement therefore, or shall con- at its sole cost and expense, such Company railroad bridge, over the project waterway as shall be required to meet the construction standards of the existing or contemplated railroad line.

(b). Where the United States, after the date hereof, crosses or occupies a Company railroad right of way with a project waterway pursuant to a reserved right of way under the Act of Congress of August 30, 1890 (26 Stat. 391), under any other Act of Congress or under Section 7412, Rem. Rev. Stat., and the Company railroad line is in existence at such time, the United States, acting through the Bureau of Reclamation, shall give written notice to the Company describing the place where the reserved right of way is to be utilized and shall provide the Company with the Bureau's plans for the facilities proposed to be built. The United States acting through the Bureau of Reclamation, will consult with the Company with respect to such plans, but approval by the Company will not be requisite to the exercise of the Federal Government's rights. The United States shall then proceed to construct and install the works proposed at such location. For and in consideration of the easements granted by the Company in the next paragraph hereof, the United States will assume all of the cost of such crossings or occupancies.

Easements Granted United States to Cross Railroad Lines with Transmission Lines, etc.

14. For and in consideration of the assumption by the United States of all of such expense, the Company hereby grants to the United States, its successors and assigns, easements to construct, reconstruct, operate and maintain along and across any Company railroad line at any point in Washington where the United States does not have a reserved right of way, roads, railroads, power works, or works for the development of power which may in the future be built by the United States in connection with any Federal reclamation or Water Conservation and Utilization project in Washington; Provided, however, that the plans for any such facilities required to be built along or across the Company railroad lines shall be submitted to the Company, and if disapproved by the Company, said plans shall be submitted for approval or disapproval to the Secretary of the Interior whose decision will be conclusive. If the Company holds less than the fee title, it consents to such enroachment by the United States only insofar as the Company has a right to do so. The

United States will obtain a grant from the owner of the underlying fee.

Manner of Constructing Crossing by United States

15. The United States agrees that in constructing or reconstructing crossings for project waterways under a grant pursuant to the provisions of Article 10 of this contract:

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

(b) Such construction work shall be conducted so that the Company railroad line will be closed to traffic for as brief a period as possible with the United States furnishing any flagmen which may be necessary;

(c) Upon request of the Company 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;

(d) The material, removed from the railroad line shall be replaced or renewed so that, upon completion of the crossing, the Company railroad line will be in as good condition as it was prior to such construction work by the United States.

Manner of Constructing Crossings by Company

16. The Company agrees that in constructing or reconstructing a crossing over project waterways, or under pole lines, pursuant to a grant or consent under Articles 8 or 9 of this contract:

(a) The Company shall in no case construct its Company railroad lines upon or across any project waterways or under any pole line or on the right of way thereof, nor in any manner interfere with the same, until the officer of the Bureau of Reclamation in charge of the project affected shall have approved any pole line reconstruction proposed, and shall have approved and designated the

structure or structures by which such crossing is to be effected, or the structures by which water in such project waterway shall be carried under Company railroad lines;

(b) The Company shall in no case, or in any circumstances stop, impede, or interfere with the flow of water in any project waterway, and in the event that the Company constructs any structure authorized pursuant to the provisions of Articles 8 or 9 of this contract during an irrigation season, which for the purpose of this contract shall be from the 15th day of March to the 15th day of October of each year, or the construction of the structure is carried into an irrigation season, the Company shall provide such temporary ditch, siphon, or other structure as directed and as approved by the officer of the Bureau of Reclamation in charge of the project affected, for the purpose of conveying the water flowing in the project waterway along the regular course without waste or loss during the time of the construction of said structure.

Changes in Company Structures

17. All grants or consents of the United States, pursuant to Articles 8 or 9 of this contract, are subject to the condition, that in the event the officer of the Bureau of Reclamation in charge of the project affected determines that by reason of a change in a project waterway, or for any other reason, it is necessary that the structure or structures installed by the Company pursuant to such grant or consent be changed, reconstructed, or added to, the Company shall at its sole cost and expense make such change, reconstruction, or addition as shall be designated and approved by said officer of the Bureau of Reclamation in charge of the project affected.

Continuation of the Period of Grant of Right of Way and Easement

18 (a). In connection with any rights of way and easements granted to the Company for the period of fifty (50) years pursuant to the provisions of Article

8 of this contract, or continued as herein provided, the Company may on or before ninety (90) days before the date of the expiration of the period of any such right of way and easement make written request of the Secretary of the Interior that the right of way or easement be continued for an additional fifty (50) year period, or such period as is permitted by the Federal Reclamation Laws or other Acts of Congress. Unless, on or before such expiration date, the Secretary of the Interior shall have notified the Company in writing that the Company's request is denied, such right of way and easement shall be continued for an additional fifty (50) year period, or such period as is permitted by the Federal Reclamation Laws or other acts of Congress.

(b) The Company agrees that if the period of such right of way and easement granted to the Company pursuant to Article 8 expires without the right of way or easement being continued or renewed, the Company will, at its sole cost and expense, remove the struture or structures constructed by the Company, or do whatever is required by the officer of the Bureau of Reclamation in charge of the project affected to restore such project waterway or pole line, to its condition prior to the construction of such structure by the Company.

Maintenance of Crossing Structures

12 (a). Upon completion of construction work by the Company or by the United States, as the case may be, of any structure or structures in connection with the crossing of Company railroad lines by project waterways or the crossing of project waterways by Company railroad lines, the Company thereafter shall maintain, at its own cost and expense, all such structures which form a part of the Company railroad lines. The United States will maintain all such structures as form a part of a project system. The Company agrees to replace its structures with new structures, approved by the officer of the United States in charge of the project affected from time to time as the necessity arises, and to make such repairs as may be necessary to protect said project waterways from any damage or

interference from said structure. It shall be the duty of the Company in this regard to maintain its structures in such a manner as to be deemed safe and consistent with satisfactory management.

(b) All work done by the Company in maintaining or replacing said structures shall be done in a good and workmanlike manner. In the maintenance of said structures the Company shall not take any sand, gravel, or other material from the project waterways or rights of way or lands of the United States, without permission of the officer of the Bureau of Reclamation in charge of the project affected.

(c) In the event that the Company shall fail, refuse, or neglect to maintain said structures, as in this article provided, the United States may at any and all times replace, reconstruct, repair or change any of said structures, forming a part of the Company railroad line, in such manner as the officer of the United States in charge of the project affected shall determine, and the Company agrees to pay and reimburse the United States for the entire cost and expense of such replacements, reconstruction, repairs or changes, within ninety (90) days after submission to the Company of a written statement or statements, showing in detail the items of expense included in the cost of such replacements, reconstructions, repairs or changes for which payment is to be made by the Company as herein provided. The Company may, at its sole cost and expense, make whatever audits are necessary to verify the correctness of such statements.

Company to Indemnify the United States

20. The Company shall reimburse the United States for, and indemnify and save the United States harmless against any and all loss, damage or injury of whatsoever nature, direct or indirect, incurred by or arising out of, or growing out of, any and all injuries or damages of whatsoever nature or kind to the property of the United States or the property of third persons, done or suffered by reason of the construction, reconstruction, operation and maintenance of any

Company railroad crossings or structures of the Company under a grant or consent from the United States pursuant to this contract, or by reason of the existence of such structure, notwithstanding the approval, supervision or sanction of any officer or employee of the United States as to the construction, plan or design of the same, and said indemnification shall extend to and include any losses suffered by reason of interference with or interruption of the transmission of electrical current.

Right of United States to Enter Upon Company Right of Way

21. The United States, its officers, agents, contractors and employees shall at any and all times, subject to the provisions of Article 22 of this contract, have the right to enter upon the rights of way of the Company, granted or consented to heretofore and as provided in Articles 8 and 9 hereof, for the purpose of doing anything necessary, in the opinion of the officer of the Bureau of Reclamation in charge of the project affected, in connection with the construction, replacing, repairing or maintenance of any portion or part of its irrigation system, including all structures and crossings which may be built in pursuance of the provisions of this contract.

United States to Use Care

22. The United States, in using, occupying and enjoying the rights of way and easements for project waterways and other structures across and along Company railroad lines granted pursuant to this contract, shall use all reasonable diligence and precaution to avoid damage to or obstruction of such Company railroad lines and to avoid interference in any manner with traffic on said Company railroad lines.

Company Does Not Assume Liability

23. The Company does not, by reason of this contract, or by reason of any grants made pursuant to Articles 10 and 14 of this contract, 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 the right of way of any Company railroad line or (b) the operation and maintenance of a project waterway across any Company railroad line, pursuant to Article 13 of this contract, or other project works, pursuant to Article 14 of this contract.

Authorized Representative of the United States

24. Wherever the Secretary of the Interior is referred to herein it is intended to include his successor or duly authorized representative.

Conditions of Labor

25 (a). No laborer or mechanic doing any part of the work contemplated by this contract, in the employ of the Company or any sub-contractor contracting for any part of said work contemplated, shall be required or permitted to work more than eight hours in any one calendar day upon such work at the site thereof, except upon the condition that compensation is paid to such laborer or mechanic in accordance with the provisions of this article. The wages of every laborer and mechanic employed by the Company or any sub-contractor engaged in the performance of this contract shall be computed on a basic day rate of eight hours per day and work in excess of eight hours per day is permitted only upon the condition that every such laborer and mechanic shall be compensated for all hours worked in excess of eight hours per day at not less than one and one-half times the basic rate of pay. For each violation of the requirements of this article a penalty of five dollars shall be imposed upon the Company for each laborer or mechanic for every calendar day in which such employee is required or permitted to labor more than eight hours upon said work without receiving compensation computed in accordance with this article, and all penalties thus imposed shall be withheld for the use and benefit of the Government; Provided, That this stipulation shall be subject in all respects to the exceptions and provisions of U. S. Code, 1934 ed., title 40, sections 321, 324, 325, and 326, relating to hours of labor, as in part modified by the

provisions of section 303 of the act of September 9, 1940, (54 Stat. 884), relating to compensation for overtime.

(b). The Company shall not employ any person undergoing sentence of imprisonment at hard labor.

Contingent on Appropriations

26. Where the operations of this contract extend beyond the current fiscal year, the contract is made contingent upon Congress making the necessary appropriation for expenditures hereunder after such current year shall have expired. In case such appropriation as may be necessary to carry out this contract is not made, the Company hereby releases the United States from all liability due to the failure of Congress to make such appropriation.

Discrimination Against Employees or Applicants for Employment Prohibited

27. The Company shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall require an identical provision to be included in all sub-contracts: Provided however, that this clause does not refer to, extend to or cover the business or activities of the Company which are not related to or involved in the performance of this contract.

Officials Not to Benefit

28. 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 therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

Successors and Assigns Bound

29. The provisions of this contract shall be binding upon and inure to the successors and assigns of the parties hereto.

Officials of Water Users' Organizations to Pass on Company Plans If Project Being Operated and Maintained by Them

30. If the project affected, although owned by the United States, is being operated and maintained by any organization or group of water users and not by the United States, it shall be required that before the construction of any crossing by the Company, the official of such organization or group who is in charge of said operation and maintenance, shall give the permission, opinion or approval of the plans of the Company in addition to the permission, opinion or approval of the official of the Bureau of Reclamation in charge of the project affected, whenever it is provided herein that such permission, opinion or approval shall be given by the official of the Bureau of Reclamation in charge of the project affected.

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

UNITED STATES OF AMERICA,

By _____

NORTHERN PACIFIC RAILWAY COMPANY

By _____

_____ President

Attest:

_____

_____ Secretary

- - - -

STATE OF)
: ss.
County of)

On this ___ day of _____, 1946, before me personally appeared _____, to me known to be the _____ President of the Northern Pacific Railway Company, the corporation that executed the within and foregoing instrument, He acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned; and on oath stated that he was authorized to execute said instrument and that the seal affixed is the seal of the corporation.

In Witness Whereof I set my hand and affix my official seal the day and year first above written.

(SEAL)

My commission expires

_____
Notary Public in and for the State of
Residing at

Train 1, August 24, 1946

MR. H. E. STEVENS:

I received from Mr. Derrig a draft of form of general contract submitted by the Reclamation Service to cover all crossings of railway facilities by irrigation works of the Bureau in the State of Washington.

At first glance it would seem to me somewhat undesirable to commit ourselves so drastically for future crossings.

Apparently this has been under consideration with the Western District officers for some time and I attach copy of a memorandum from Mr. H. D. Boggs to Mr. Macfarlane, dated June 20. As I read it, my impressions are along the same lines expressed by Mr. Boggs.

Mr. Tremaine thinks the draft is all in favor of the Government, and objects to a number of the clauses; although it has been customary to accept some of the measures on account of the limitations which a government officer has in committing the Government.

Before going into detail with the Reclamation representatives as to the exact form such an agreement should take, it is my thought that the policy of the Company should first be established concerning entry into such a general agreement. I am therefore sending it to you for your information and for such preliminary action as you deem proper.

If it is decided to enter into such an agreement I think that some of the clauses as written should be modified.

bb/s
x
att.

Train 1, August 24, 1946

MR. J. T. DERRIG:

Your letter of the 20th to Mr. Bartles, transmitting copy of Bureau of Reclamation draft of general contract to cover crossings of railway and Reclamation canals and power lines in the State of Washington; also copy of Mr. Tremaine's comments.

I likewise feel that there is danger in entering into such an agreement, when we cannot tell what special cases may come up in which such a general agreement might embarrass us. I feel about it as does Mr. Boggs in his memorandum of June 20 to Mr. Macfarlane.

Some of the points to which Mr. Tremaine objects I think are possibly not as serious as he thinks.

I do not think that you should come to any understanding with Mr. Banks until our Management has had opportunity to pass on the questions of policy involved in entering such a contract.

Will you let me have two more prints of the draft.

cc-Mr. R. S. Macfarlane
Mr. F. R. Bartles
x

DD/S

Seat
Aug.

Columbia Basin Project

Mr. F. R. Bartles:

I am attaching hereto Mr. Macfarlane's file with Mr. Boggs' memorandum of June 20 in reference to preparation of blanket easement for proposed irrigation crossings, Northern Pacific tracks, Columbia Basin Project which includes draft of easement submitted to the Land Department by the Reclamation Service.

I had Mr. Tremaine review the attached document and I am attaching to the file print copy of his letter of July 11 referring to certain objections which are along the lines of Mr. Boggs' memorandum of June 20. As cited in Mr. Tremaine's letter and Mr. Boggs' memorandum the easement as proposed is not satisfactory in all respects to the Ry. Co. and yesterday I suggested to Mr. Macfarlane that Mr. Boggs together with representative of the Engineering Department, Right of Way Department or Land Department or both call upon Mr. Banks or his designated representative and try and iron out the objections which the Ry. Co. have to the blanket document as submitted by the Government.

It is my understanding that the proposed blanket easement covers not only our existing operating right-of-way but also inclu Northern Pacific land ownership. Off-hand it is my thought that i would be preferable to have two separate documents prepared - that is, have one document for Northern Pacific land ownership and a separate document for our operating right-of-way ownership.

Our immediate concern in respect to an easement will be reconstruction of Bridge #114, the plans of which are being compl by the Government, and the placing of a siphon under our track at Station 993 near Adco, MP 124-3/4 on the Adrian Branch.

Tentative plans for Bridge 114 have been submitted to Blum for approval and some minor changes in the plans have been quested by Mr. Blum. I anticipate the revised plans from Mr. B within the next few days. It is my understanding the entire cos of constructing Bridge 114 is to be assumed by the Government.

No reference is made in Mr. Banks' letter as to who wi

assume the cost of maintaining the structure. Mr. Blum has indicated that since the Government is reconstructing the bridge and has made no mention of the maintenance that it may not be advisable to raise the question of maintenance. This is something we can discuss with Mr. Banks. I wired Mr. Banks yesterday that I would like to meet him together with Mr. Boggs and a representative of our Right-of-Way Department or Land Department or both, at Grade Coulee Dam, Thursday, to discuss this proposed blanket easement.

It is my thought that if the Government would be satisfied with the blanket easement for their requirements for Northern Pacific land ownership that it might be preferable to prepare separate easements for the irrigation ditch crossings on our operating right-of-way and handle each of these items by separate document, assuring the Government at this time that we will cooperate with them and their successor upon completion of the plans for each of the crossings.

I am forwarding copy of this letter to Mr. Williams together with print of profile showing the proposed location for the construction of Bridge 114 together with the siphon near Adco, in which he may furnish Mr. Boggs description and rights of our of-way at these locations.

I would thank you, therefore, to review the attached file and return it to Mr. Macfarlane as soon as possible in order that maybe available for Mr. Boggs Thursday.

For your file I am attaching hereto print copy of the blanket easement as submitted by the Government.

J. T. DERRIG

Assistant Chief Engineer

JTD:p

For yor files at this time I am attaching hereto copy of the blanket easement as submitted by the Government together with copy of Mr. Tremaine's report of July 11 and Mr. Boggs memorandum of June 20.

JTD