

905-11-02.210

BOOK 72 PAGE 234
Cost Share Easement
Deed No. 33827

83554

EASEMENT

THIS EASEMENT, dated this 14th day of October, 1976,
from BURLINGTON NORTHERN INC. a corporation of the State of Delaware,
hereinafter called "Grantor," to the United States of America, hereinafter
called "Grantee,"

WITNESSETH:

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Grantor, for and in consideration of the grant of reciprocal rights-of-way and the sum of One Dollar (\$1.00) received by Grantor, does hereby grant to Grantee and its assigns, subject to existing easements and valid rights, a perpetual easement for a road along and across a strip of land, hereinafter defined as the "premises," over and across the following described lands in the County of Skamania, State of Washington:

Muddy Pine Road N822, beginning at its junction with Upper Hoo Hoo Road No. N866 in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 29, Township 8 North, Range 6 East, W.M., crossing lands of the Grantor in the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 29, Township 8 North, Range 6 East, W.M., and ending at the East line of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 29, Township 8 North, Range 6 East, W.M.

The word "premises" when used herein means said strip of land, whether or not there is an existing road located thereon. Except where it is defined more specifically, the word "road" shall mean roads now existing or hereafter constructed on the premises or any segment of such roads.

The location of said premises is shown approximately on Exhibit A attached hereto.

Said premises shall be 33' on each side of the centerline with such additional width as required for accommodation and protection of cuts and fills. If the road is located substantially as described herein, the centerline of said road as constructed is hereby deemed accepted by Grantor and Grantee as the true centerline of the premises granted. If any subsequent survey of the road shows that any portion of the road, although located substantially as described, crosses lands of the Grantor not described herein, the easement shall be amended to include the additional lands traversed; if any lands described herein are not traversed by the road as constructed, the easement traversing the same shall be terminated in the manner hereinafter provided.

The acquiring Agency is the Forest Service, Department of Agriculture.

This grant is made subject to the following terms, provisions, and conditions applicable to Grantor, permittees, contractors, and assigns:

- A. Except as hereinafter limited, Grantee shall have the right to use the road on the premises without cost for all purposes deemed necessary or desirable by Grantee in connection with the protection,



administration, management, and utilization of Grantee's lands or resources, now or hereafter owned or controlled, subject to such traffic-control regulations and rules as Grantee may reasonably impose upon or require of other users of the road. Grantee shall have the right to construct, reconstruct, and maintain roads within the premises.

Grantee alone may extend rights and privileges for use of the premises to other Government Departments and Agencies, States, and local subdivisions thereof, and to other users including members of the public except users of lands or resources owned or controlled by Grantor or its successors: Provided, That such additional use also shall be controlled by Grantee so it will not unreasonably interfere with use of the road by Grantor or cause the Grantor to bear a share of the cost of maintenance greater than Grantor's use bears to all use of the road.

- B. Grantee shall have the right to cut timber upon the premises to the extent necessary for constructing, reconstructing, and maintaining the road. Timber so cut shall, unless otherwise agreed to, be cut into logs of lengths specified by the timber owner and decked along the road for disposal by the owner of such timber.
- C. Grantor shall have the right to charge and to enforce collections from purchasers of timber or other materials when removed from Grantee's lands over the road at such rate per unit of material hauled, or at such higher rate as may be approved by the Regional Forester, as set forth in Lewis River Road Right-of-Way Construction and Use Agreement dated May 23, 1974, until such time as the amounts paid by such means or by credits received from Grantee shall total the amount set forth in said agreement. Timber or other materials hauled by Grantor from lands of the Grantee shall be regarded as though hauled by someone else.
- D. The costs of road maintenance shall be allocated on the basis of respective uses of the road.

During the periods when either party uses the road or Grantee permits use of the road by others for hauling of timber or other materials, the party so using or permitting such use will perform or cause to be performed, or contribute or cause to be contributed that share of maintenance occasioned by such use of the road.

On any road maintained by Grantor, Grantor shall have the right to charge purchasers of National Forest timber and other commercial haulers, or to recover from available deposits held by Grantee for such purchasers or haulers, reasonable maintenance charges based on the ratio that said hauling bears to the total hauling on such road. Grantee shall prohibit noncommercial use unless provision is made by Grantee or by the noncommercial users to bear proportionate maintenance costs.

This easement is granted subject to the following reservations by Grantor, for itself, its permittees, contractors, assigns, and successors in interest:

1. The right to use the road for all purposes deemed necessary or desirable by Grantor in connection with the protection, administration, management, and utilization of Grantor's lands or resources, now or hereafter owned or controlled, subject to the limitations herein contained, and subject to such traffic-control regulations and rules as Grantee may reasonably impose upon or require of other users of the road without reducing the rights hereby reserved: Provided, however, That any timber or other materials hauled by the Grantor from lands now owned by third parties in the Agreement area as shown on Exhibit B attached hereto shall be treated as though hauled by someone else and: Provided further, That the right to use the road for the purpose of operating and moving specialized logging vehicles and other equipment shall not be restricted, except as follows:

Use of vehicles of a weight not to exceed 160,000 pounds and equipped with bunks not to exceed 11 feet 4 inches in width is permissible until March 31, 2000. After sale date, the Grantor's right to use the road shall be subject to compliance with legal dimensions and weights of motor vehicles imposed by State law on comparable public roads or highways. In any event, gross weights of equipment or vehicles shall not exceed the capacity of bridges and other structures, and cleared equipment shall not be used on paved roads.

2. The right to cross and recross the premises and road at any place by any reasonable means and for any purpose in such manner as will not interfere unreasonably with use of the road.
3. The right to all timber now or hereafter growing on the premises, subject to Grantee's right to cut such timber as hereinbefore provided.
4. The right to require any user of the road for commercial or heavy hauling purposes to post security guaranteeing performance of such user's obligations with respect to maintenance of the road and with respect to payment of any charges hereinbefore stated as payable to Grantor for use of the road: Provided, the amount of such security shall be limited to the amount reasonably necessary to secure such payment, as approved by the Regional Forester.
5. The right to require any user of the road for commercial hauling to procure, to maintain, and to furnish satisfactory evidence of liability insurance in a form generally acceptable in the trade and customary in this area, insuring said party against liability arising out of its operation on the premises with limits of \$100,000.00 for injury or death on one person, \$300,000.00 for injury or death to two or more persons, and \$100,000.00 for damage to property: Provided, it is customary in the industry in this locality to require liability insurance at the time commercial users are allowed to use the road.

Provided, That so long as the Lewis River Road Right-of-Way Construction and Use Agreement dated May 23, 1974 remains in full force and affect, the terms and conditions thereof shall govern all aspects of use of the premises, including, but not limited to, construction, reconstruction, and maintenance of the road and the allocation and payment of costs thereof.

If for a period of five (5) years the Grantee shall cease to use, or preserve for prospective future use, the road, or any segment thereof, for the purposes granted, or if at any time the Regional Forester determines that the road, or any segment thereof, is no longer needed for the purposes granted, the easement traversed thereby shall terminate. In the event of such nonuse or of such determination by the Regional Forester, the Regional Forester shall furnish to the Grantor, its successors, or assigns a statement in recordable form evidencing termination.

IN WITNESS WHEREOF, Grantor has caused this instrument to be executed by its duly authorized officers and its corporate seal to be hereunto affixed on the day and year first above-written.

BOON JON NORTHERN INC.

By

Title

President Resources Division

Attest:



Asst. Secretary

STATE OF Minnesota)
COUNTY OF Lincoln) ss

On this 14th day of October, 1976, before me personally appeared C. R. Binger, to me known to be the President Resources Division of Burlington Northern Inc., the corporation which 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 official seal the day and year above-written.



J. W. Thayer
J. W. THAYER
NOTARY PUBLIC - MINNESOTA
My Commission Expires Oct. 17, 1978

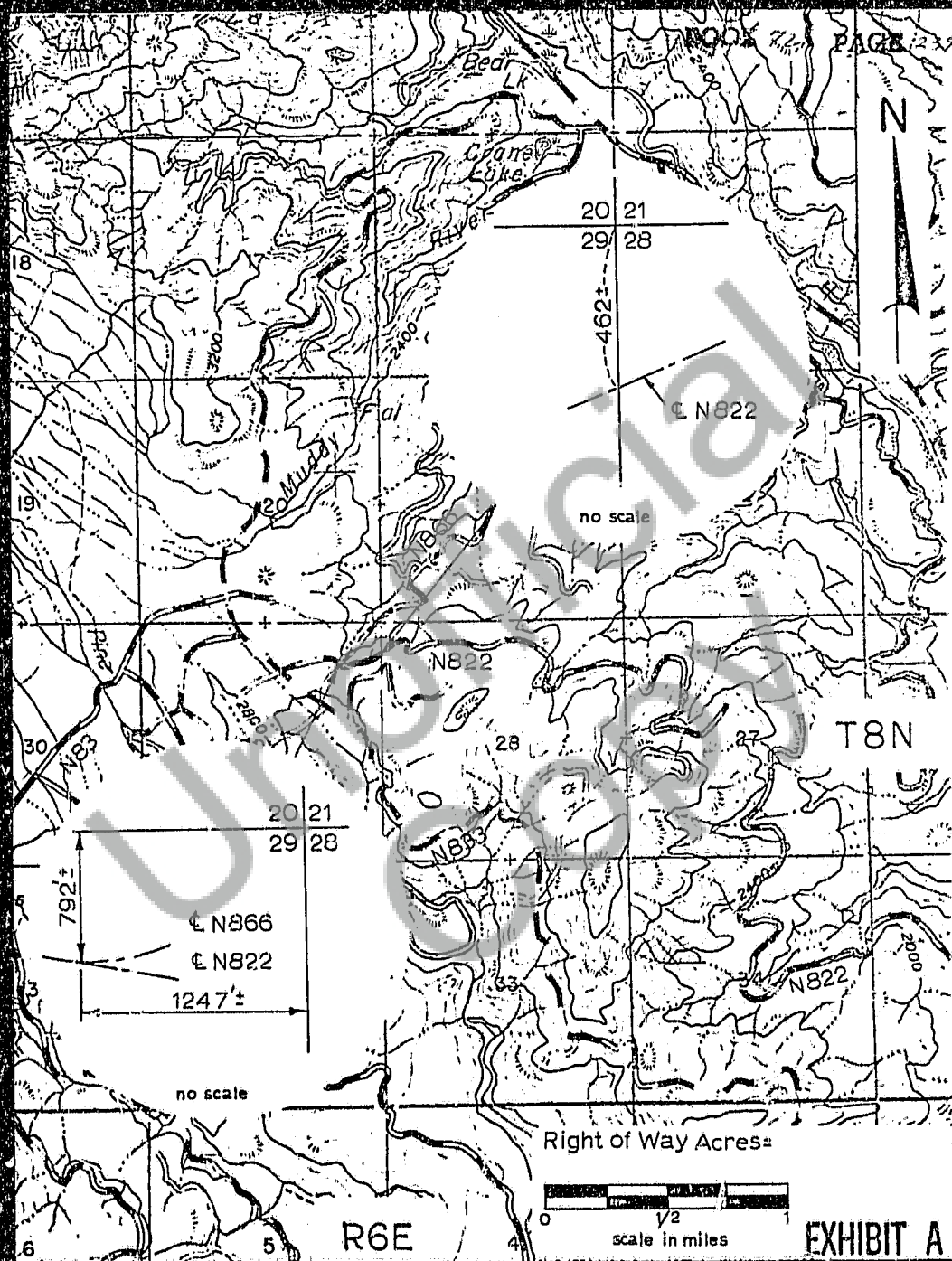


EXHIBIT A