

5-5578

1 Robert Y. Thornton
 2 Attorney General of the State of Oregon
 3 George E. Rohde
 4 Assistant Attorney General and Chief Counsel,
 Oregon State Highway Commission
 5 Ted E. Barbera
 6 Assistant Attorney General
 7 State Highway Building
 8 Salem, Oregon 97310
 Telephone: 364-2171, Ext. 320
 9 Attorneys for Plaintiff State of Oregon (State Highway Commission)

11
 12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE DISTRICT OF OREGON

14 STATE OF OREGON, by and through its State)
 15 Highway Commission, composed of Glenn L.)
 16 Jackson, David B. Simpson and Fred W. Hill,)
 17 Plaintiff,)

18 vs.)

19 16.11 acres of land, more or less, located)
 in Southwest Quarter (SW¼) of Section 7,)
 20 Township 2 North, Range 33 East, Willamette)
 Meridian, Umatilla County, Oregon, and The)
 21 United States of America, as Trustee; Henry)
 George and Jane Doe George, husband and wife,)
 22 if married; Jack George and Atlene Looney)
 George, husband and wife; Isabell George)
 23 Colwash and Philip Colwash, wife and husband;)
 Mabel George Shike and James Shike, wife and)
 24 husband; Evelyn George Smartlowit and Samuel)
 Smartlowit, wife and husband; Sanders George)
 25 and Marie George, husband and wife, Vivian)
 George, a minor; Susan Billy George and John)
 26 Doe, wife and husband, if married; Emery)
 Gentry; Levi George and Josephine W. George,)
 27 husband and wife; Buster George and Alyaue)
 George, husband and wife; Victor George and)
 28 Mabel George, husband and wife; Juanita George)
 Miller and Joseph P. Miller, wife and husband;)
 29 Mavis George Kindness and John Doe, wife and)
 husband, if married; Leroy W. George, a minor;)
 30 Randy George, a minor; Lizzie S. George and)
 John Doe, wife and husband, if married;)
 31 National Advertising Company,)

32 Defendants.)

Civil No. 67-465

JUDGMENT

33
 34
 35

1 This matter coming on before the Court upon stipulation of the parties,
2 plaintiff acting by and through G. E. Rohde of its attorneys; the defendants The
3 United States of America, as Trustee, Henry George and Jane Doe George, husband
4 and wife, if married; Jack George and Atlene Looney George, husband and wife;
5 Isabell George Colwash and Philip Colwash, wife and husband; Mabel George Shike
6 and James Shike, wife and husband; Evelyn George Smartlowit and Samuel Smartlowit,
7 wife and husband; Sanders George and Marie George, husband and wife; Vivian George,
8 a minor; Susan Billy George and John Doe, wife and husband, if married; Levi George
9 and Josephine W. George, husband and wife; Buster George and Alyane George, husband
10 and wife; Victor George and Mabel George, husband and wife; Juanita George Miller
11 and Joseph P. Miller, wife and husband; Mavis George Kindness and John Doe, wife
12 and husband, if married; Leroy W. George, a minor; Randy George, a minor; and
13 Lissie S. George and John Doe, wife and husband, if married, acting by and through
14 Sidney I. Lezak, their attorney, as follows:

15 It appearing to the Court from the records and files herein that a
16 judgment of default has heretofore been entered against the defendants Emery
17 Gentry and National Advertising Company; and

18 It appearing to the Court and the Court now finds that the real property
19 described in paragraph VIII and the rights of access set forth in paragraph XI of
20 plaintiff's complaint, and sought to be condemned and appropriated herein, are
21 necessary for a public purpose and that prior to the commencement of this action
22 plaintiff by resolution so declared; and

23 It appearing to the Court and the Court now finds that the plaintiff,
24 prior to the commencement of this action and pursuant to its resolution, attempted
25 to acquire said real property and rights of access by agreement and purchase, but
26 was unable to do so; and

27 It appearing to the Court and the Court now finds, based on the files
28 and records herein and the stipulation of the parties, that the just compensation
29 to be awarded to the defendants for the appropriation of the real property herein-
30 after described and the rights of access hereinafter set forth, is the sum of
31 \$5,250.00; and

32 It further appearing that plaintiff has heretofore deposited with the
33 Clerk of this Court the sum of \$4,850.00, and has now deposited an additional
34

35 JUDGMENT - page 2

1 \$400.00, for a total deposit of \$5,250.00, which is the amount found by the Court
 2 to be just compensation. The plaintiff is now entitled to judgment in accordance
 3 therewith, appropriating the real property and interests therein, hereinafter
 4 described, to the State of Oregon, by and through its State Highway Commission,
 5 in fee simple, free and clear of all encumbrances; now, therefore,

6 IT IS HEREBY ADJUDGED by this Court as follows:

7 I.

8 That the stipulation for entry of judgment herein be confirmed and that
 9 the real property hereinafter described be, and the same hereby is, appropriated
 10 for public purposes; and title to said property, together with all rights and
 11 easements therein, be, and the same hereby is, vested in the State of Oregon, by
 12 and through its State Highway Commission, in fee simple, free and clear of all
 13 liens and encumbrances. Said real property so appropriated is described as
 14 follows:

15 PARCEL NO. 1:

16 A parcel of land lying in the SW $\frac{1}{4}$ of Section 7, Township 2
 17 North, Range 33 East, W.M., Umatilla County, Oregon; the said
 18 parcel being that portion of said SW $\frac{1}{4}$ lying Southwesterly of
 19 that property conveyed to the State of Oregon, by and through
 20 its State Highway Commission, recorded in Book 241, Page 443 of
 Umatilla County Deed Records and included in a strip of land
 variable in width, lying on the Northerly side of the center
 line of the Old Oregon Trail Highway as said highway has been
 relocated, which center line is described as follows:

21 Beginning at Engineer's center line Station 1510+00, said
 22 Station being 414.2 feet North and 428.89 feet West of the
 Southwest corner of said Section 7; thence South 77° 12' 20"
 23 East, 3,500 feet to Engineer's Station 1545.00. Said center
 24 line crosses the West and South lines of said SW $\frac{1}{4}$ approximately
 at Stations 1514+30 and 1527+80 respectively.

25 The widths in feet of the strip of land above referred to
 are as follows:

<u>Station</u>	<u>to</u>	<u>Station</u>	<u>Width on Northerly Side of</u> <u>Center Line</u>
1510+00		1526+00	170
1526+00		1530+00	170 taper to 210
1530+00		1533+50	210
1533+50		1540+00	To Southwesterly line of said State of Oregon property

31 ALSO that portion of said SW $\frac{1}{4}$ lying Southerly of said center
 32 line.

33 (Bearings used herein are based upon the Oregon Co-ordinate
 System, North Zone.)

34 The parcel of land to which this description applies contains
 14.2 acres, more or less.

35 JUDGMENT - page 3

1 PARCEL NO. 2:

2 A parcel of land lying in the SW $\frac{1}{4}$ of Section 7, Township 2
3 North, Range 33 East, W. M., Umatilla County, Oregon; the said
4 parcel being that portion of said SW $\frac{1}{4}$ lying Northeasterly of
5 State of Oregon properly referred to in Parcel No. 1 and in-
6 cluded in a strip of land variable in width lying on each side
7 of the center line of a frontage road, which center line is de-
8 scribed as follows:

9 Beginning at Engineer's center line Station "FR" 3+55,
10 said Station being 818.22 feet North and 737.46 feet West of
11 the South quarter corner of said Section 7; thence North 41°
12 11' 30" East, 41.3 feet; thence on a 100 foot radius curve
13 right (the long chord of which bears North 85° 50' 45" East)
14 155.87 feet; thence South 49° 30' East, 724.83 feet; thence
15 on a spiral curve left (the long chord of which bears South
16 54° 09' 51" East) 400 feet to Engineer's Station "FR" 16+77.0.

17 The widths in feet of the strip of land above referred to
18 are as follows:

19 Station	20 to	21 Station	22 <u>Width on North-</u> <u>easterly Side of</u> <u>Center Line</u>	23 <u>Width on South-</u> <u>westerly Side of</u> <u>Center Line</u>
24 "FR" 3+55		25 "FR" 5+00	26 100	27 100
28 "FR" 5+00		29 "FR" 10+00	30 100 in a straight	31 100
32 "FR" 10+00		33 "FR" 16+77	34 line to 40	35 100
			40	100

(Bearings used herein are based upon the Oregon Co-ordinate System, North Zone.)

The parcel of land to which this description applies contains 1.9 acres, more or less.

II.

That there shall be no rights of access of any nature between the real property described as Parcel No. 1 in paragraph I hereof and all of the real property of the defendants remaining after the appropriation of the real property described in paragraph I hereof, which said remaining real property is situated in Umatilla County, Oregon, and including the real property described in paragraph I hereof is described as follows:

Southwest Quarter (SW $\frac{1}{4}$) of Section 7, Township 2 North, Range 33 East, W. M., Umatilla County, Oregon.

There is excepted from the above described tract of land that certain parcel of real property, which said real property is subject to the limitations of access as set forth in that certain deed dated November 16th, 1953, and recorded April 12, 1957, in Book 241, page 443, of the Deed Records of Umatilla County, Oregon, wherein Jennie George Willie, a widow, was the grantor, and the State of Oregon, by and through its State Highway Commission, was the grantee. The said real property and limitations of access are more particularly described as follows, to wit:

1 "A parcel of land lying in the Southwest quarter (SW $\frac{1}{4}$)
 2 of Section 7, Township 2 North, Range 33 East, W. M.,
 3 Umatilla County, Oregon. The said parcel being that portion
 4 of said Southwest quarter (SW $\frac{1}{4}$) included in a strip of land
 5 variable in width, lying on each side of the center line of
 6 the Old Oregon Trail Highway as said highway has been re-
 7 located, which center line is described as follows:

8 "Beginning at Engineer's center line Station 102+00, said
 9 Station being 139 feet West and 160 feet North of the Southeast
 10 corner of the Northeast quarter (NE $\frac{1}{4}$) of Section 12, Township
 11 2 North, Range 32 East, W. M.; thence South 48° 48' 20" East
 12 3107.3 feet; thence on a 375 foot spiral curve left (the long
 13 chord of which bears South 49° 44' 36" East); thence on a
 14 3819.72 foot radius curve left (the long chord of which bears
 15 South 63° 00' 20" East) 1518.22 feet; thence on a 375 foot
 16 spiral curve left (the long chord of which bears South 76° 16'
 17 East) to Engineer's Station 155+75.52. Said center line
 18 crossing the West and East lines of said Southwest quarter
 19 (SW $\frac{1}{4}$) approximately at Stations 103+85 and 136+78, respectively.

20 "The widths in feet of the strip of land above referred
 21 to are as follows:

Station	to Station	Width on Northerly side of center line	Width on Southerly side of center line
102+00	118+00	100 feet	150 feet
118+00	120+00	150 feet	150 feet
120+00	155+75.52	100 feet	150 feet

22 "(Bearings used herein are based upon the Oregon Co-ordinate
 23 System, North Zone.)

24 "The parcel of land to which this description applies contains
 25 19.12 acres.

26 "As a part of the consideration hereinabove stated,
 27 there also is bargained, sold, conveyed and relinquished to
 28 the Grantee all existing, future, or potential common law
 29 or statutory easements of access between the right of way of
 30 the public way identified as the relocated Old Oregon Trail
 31 Highway, and all of the contiguous remaining real property of
 32 the Grantor whether acquired by separate conveyances or other-
 33 wise, of which the real property covered by this instrument
 34 is a part, where said remaining real property abuts on the
 35 North and South sides of the said public way.

36 "Reserving the right to establish, maintain, and use a
 37 crossing for farm purposes only, of a width of 75 feet from
 38 Highway Engineer's Station 116+00 on the North side to
 39 Station 118+00 on the South side, and from Station 122+75
 40 on the North side to Station 124+75 on the South side;
 41 provided, however, that upon the alienation of either of
 42 the portions of the property severed by the present grant,
 43 this right of crossing shall be forfeited and shall cease.
 44 If the Grantor, or anyone holding under her, shall commit,
 45 suffer or permit any use of said crossing for any purpose
 46 other than a passageway from one side of the highway to the
 47 other for farm purposes, the right hereby reserved will be
 48 automatically forfeited, and the Grantee shall have the right
 49 to close and barricade said crossing for all purposes. The
 50 construction of a frontage road shall not defeat the right
 51 of crossing herein reserved.

1 "Reserving the right of access from said abutting
2 property to said highway of a width of 25 feet at each of
3 the following places and for the following purposes only:

Hwy. Engr's Sta.	Side of Hwy.	Purpose
116+00	North	Private residential use, and production and transportation to market of farm products of Grantor's remaining land, only.
118+00	South	
122+75	North	Grantor's remaining land, only.
124+75	South	

4
5
6 "The reserved rights of access from the said abutting property
7 shall not be used for any purpose not hereinabove stated. If the
8 Grantor, or anyone holding under her, shall commit, suffer, or
9 permit any violation of the uses herein stated, the rights hereby
reserved at any particular location where a violation may occur,
will automatically be forfeited, and the Grantee shall have the
right to close and barricade such place of access for all purposes.

10 "Grantee has the right to build at any future time a frontage
11 road within the boundaries of any present or hereinafter acquired
12 right of way; thereupon, all rights of access to and from the
13 highway and the land directly abutting on said frontage road shall
14 cease, but the Grantor, her heirs and assigns, shall have access
to the frontage road at such places as will afford reasonable and
safe connections. Said frontage road shall be connected to the
main highway or to other public ways only at such places as the
Grantee may select.

15 "It is expressly intended that these covenants, burdens and
16 restrictions shall run with the land and shall forever bind the
Grantor, her heirs and assigns."

17 Provided, however, that there shall be no restriction of access to the real prop-
18 erty described as Parcel No. 2 in paragraph 4 hereof.

19 III.

20 That none of the parties shall recover interest, attorney fees or their
21 costs and disbursements incurred herein.

22 Dated this 3rd day of August, 1968.

23
24
25 John F. Kilbray
JUDGE

26
27 Presented by:

28
29 _____
30 TED E. BARBERA
31 Assistant Attorney General
104 State Highway Building
Salem, Oregon 97310

32
33
34
35 JUDGMENT - page 6