

File 42505  
86189

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF UMATILLA

STATE OF OREGON, by and through its State Highway )  
Commission, composed of Glenn L. Jackson, Fred W. )  
Hill and Thaddeus B. Bruno, )  
Plaintiff, )  
vs. )  
CATHERINE ANN DeWAAL, a minor over the age of 14 )  
years, and JOHN DOE, wife and husband, if married; )  
and JANET THOMPSON DeWAAL, )  
Defendants. )

Case No. L9887  
FINAL JUDGMENT

The above entitled cause came on regularly for trial on Monday,  
August 31, 1970, before the Honorable William W. Wells, Judge of the above  
entitled court; plaintiff appearing by and through John R. McCulloch, Jr.,  
of its attorneys; and the defendants Catherine Ann DeWaal, by her guardians  
William E. DeWaal and Janet Thompson DeWaal, and Janet Thompson DeWaal,  
appearing by and through George Corey their attorneys; and

It appearing to the Court and the Court now finds that the real  
property and interests therein described in paragraph IV, together with the  
rights of access described in paragraph V of the plaintiff's complaint on file  
herein are necessary for public use; and

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

It appearing that the only issue to be tried in this proceeding was  
the just compensation to be awarded to the defendants for the appropriation of  
the real property and interests therein, together with the rights of access,  
as prayed for in the complaint on file herein; and

A jury having been called, examined, duly empaneled and sworn; the  
parties having made their opening statements; a view of the proposed acquisition  
having been held in the manner provided by law; the parties having adduced evi-  
dence in support of their contentions; arguments of the respective parties having  
been made to the jury, the jury having been regularly instructed in the law and

1 having retired for deliberations did, on the 1st day of September, 1970,  
2 return its verdict, which verdict, omitting the title of the court and cause, is  
3 in the words and figures as follows:

4 "We, the Jury, duly empaneled to try the above  
5 entitled cause do find the just compensation to be awarded  
6 to the defendants, is in the sum of \$14,000.

7 "DATED this 1st day of September, 1970.

8 /s/ Rodney H. Santo  
9 FOREMAN"

10 and which said verdict was regularly filed by the clerk of said court; and

11 It appearing to the Court and the Court now finds that the amount of  
12 the verdict of the jury exceeded plaintiff's tender to defendants prior to the  
13 filing of the complaint herein, and that defendants are, therefore, entitled to a  
14 reasonable sum as their attorneys' fees herein; the Court now finds that the sum  
15 of \$\_\_\_\_\_ is a reasonable sum to be allowed defendants for attorneys' fees;  
16 and

17 It appearing to the Court from the records and files herein that on  
18 April 13, 1970, plaintiff, pursuant to ORS 366.392 and ORS 366.393, deposited  
19 into court the sum of \$3,600 for the use of the defendants pending adjudication  
20 of the within action; and

21 It appearing to the Court and the Court now finds, based upon the  
22 stipulation of the parties, that the plaintiff took possession of the property  
23 being acquired herein on April 17, 1970; and

24 It appearing to the Court and the Court now finds that the defendants  
25 are entitled to interest at six percent per annum from April 17, 1970, until  
26 paid, upon the amount by which said verdict exceeds the amount of said deposit  
27 into court, to wit: the sum of \$10,400; and

28 It further appearing that plaintiff has deposited with the clerk of  
29 this court the balance of the amount of the verdict over and above the \$3,600  
30 heretofore deposited, to wit: the sum of \$10,400, together with interest as  
31 aforesaid, and that plaintiff is now entitled to judgment, appropriating the  
32 real property and interests therein hereinafter described, to the State of  
33 Oregon, by and through its State Highway Commission, in fee simple, free and  
34 clear of all liens and encumbrances except as hereinafter set forth; now, therefore,

1 IT IS HEREBY ADJUDGED by this Court as follows:

2 I.

3 That the real property hereinafter described be, and the same hereby  
4 is, appropriated for public purposes; and title to said property, together  
5 with all rights and easements therein, be, and the same hereby is, vested in  
6 the State of Oregon, by and through its State Highway Commission, in fee  
7 simple, free and clear of all liens and encumbrances except as hereinafter  
8 set forth. Said real property so appropriated is described as follows:

9 Parcel No. 1:

10 A parcel of land lying in the East half Southwest quarter  
11 (E $\frac{1}{2}$ SW $\frac{1}{4}$ ) and in the Southwest quarter Southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ )  
12 of Section 22, Township 2 North, Range 33 East, Willamette Merid-  
13 ian, Umatilla County, Oregon; the said parcel being that portion  
14 of said subdivisions included in a strip of land variable in  
width, lying on each side of the center line of the Westbound  
lane of the Old Oregon Trail Highway as said highway has been  
relocated, which center line is described as follows:

15 Beginning at Engineer's center line Station "WB" 440+00,  
16 said station being 4665.11 feet North and 4707.33 feet West of the  
17 East quarter corner of Section 27, Township 2 North, Range 33 East,  
18 Willamette Meridian; thence South 48° 28' 22" East 7000 feet to  
19 Engineer's center line Station "WB" 510+00.

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

<u>Station</u>	<u>to</u>	<u>Station</u>	<u>Width on Northeasterly</u> <u>Side of Center Line</u>	<u>Width on Southwesterly</u> <u>Side of Center Line</u>
"WB"445+00		"WB"470+50	160	205
"WB"470+50		"WB"474+30	160 taper to 320	205
"WB"474+30		"WB"474+80	320 taper to 155	205

22 EXCEPT therefrom that property described in that deed to the  
23 State of Oregon, by and through its State Highway Commission, re-  
24 corded in Book 224, Page 1 of Umatilla County Record of Deeds.

25 Bearings are based upon the Oregon Co-ordinate System,  
26 North Zone.

27 The parcel of land to which this description applies con-  
28 tains 3.3 acres, more or less, outside of the existing right of  
29 way.

30 Parcel No. 2:

31 A parcel of land lying in the Southeast quarter Northeast  
32 quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ) of Section 27, Township 2 North, Range 33 East,  
33 Willamette Meridian, Umatilla County, Oregon; the said parcel being  
34 that portion of said Southeast quarter Northeast quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$ )  
included in a strip of land 425 feet in width, 160 feet on the  
Northeasterly side and 265 feet on the Southwesterly side of the  
center line of the Westbound lane of the Old Oregon Trail Highway  
as said highway has been relocated, which center line is described  
in Parcel 1.

EXCEPT therefrom that property described in that deed to the State of Oregon, by and through its State Highway Commission, recorded in Book 224, Page 1 of Umatilla County Record of Deeds.

The parcel of land to which this description applies contains 5.6 acres, more or less.

Parcel No. 3:

A parcel of land lying in the Southwest quarter Southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) of Section 16, Township 2 North, Range 33 East, Willamette Meridian, Umatilla County, Oregon; the said parcel being that portion of said Southwest quarter Southeast quarter (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ) included in a strip of land variable in width, lying on the northeasterly side of the center line of the Westbound lane of the Old Oregon Trail Highway as said highway has been relocated, which center line is described as follows:

Beginning at Engineer's center line Station "WB" 349+08.35, said station being 2340.70 feet South and 7364.60 feet East of the North quarter corner of Section 18, Township 2 North, Range 33 East, Willamette Meridian; thence South 48° 28' 22" East 5091.65 feet to Engineer's center line Station "WB" 400+00.

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

Station	to	Station	Width on Northeasterly Side of Center Line
"WB"390+00		"WB"392+00	160
"WB"392+00		"WB"394+00	160 taper to 200
"WB"394+00		"WB"397+00	100

Bearings are based upon the Oregon Co-ordinate System, North Zone.

The parcel of land to which this description applies contains 0.1 acre, more or less, outside of the existing right of way.

Parcel No. 4:

A parcel of land lying in the Southeast quarter (SE $\frac{1}{4}$ ) of Section 16, Township 2 North, Range 33 East, Willamette Meridian, Umatilla County, Oregon; the said parcel being that portion of the Southerly 30 feet of said Southeast quarter (SE $\frac{1}{4}$ ) lying Easterly of Parcel 3.

The parcel of land to which this description applies contains 1.7 acres, more or less, outside of the existing right of way.

II.

That there shall be no rights of access of any nature between the right of way of the relocated Old Oregon Trail Highway 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

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By BOB BURNER, DDBT (Relator 5(4))

1 is situated in Umatilla County, Oregon and, including the real property  
2 described in paragraph I hereof, is described as follows:

3 "The Southeast Quarter of the Northeast Quarter, the  
4 Southwest Quarter of the Southeast Quarter, the East Half of  
5 the Southeast Quarter and the North Half of the Northeast  
6 Quarter, less the Northeast Quarter of the Northeast Quarter,  
7 lying East of the County Road, all in Section 16, Township 2  
8 North, Range 33, E.W.M., Umatilla County, Oregon;

9 "Excepting therefrom that portion of the above described  
10 property as conveyed to the State of Oregon by and through its  
11 State Highway Commission, by Warranty Deed dated January 20,  
12 1960, filed January 27, 1960, and recorded in Book 257, Page  
13 256, of the Deed Records;

14 "The Northeast Quarter of the Northwest Quarter, the East  
15 Half of the Southwest Quarter and the Southeast Quarter of  
16 Section 22; and the Southeast Quarter of the Northeast Quarter,  
17 the Northeast Quarter of the Southeast Quarter, the West Half  
18 of the Southwest Quarter and the South Half of the Southeast  
19 Quarter of Section 27, Township 2 North, Range 33, E.W.M.,  
20 Umatilla County, Oregon;

21 "Excepting therefrom that portion of the above described  
22 property as conveyed to the State of Oregon by and through its  
23 State Highway Commission by Warranty Deed dated March 2, 1955,  
24 filed March 11, 1955, and recorded in Book 224, Page 1 of the  
25 Deed Records;

26 "Also, the South Half of the Southwest Quarter, the South-  
27 east Quarter of the Southeast Quarter and the Southwest Quarter  
28 of the Southeast Quarter of Section 23; the East Half of the  
29 Northeast Quarter of Section 34; and the West Half of the North-  
30 west Quarter of Section 35; all being in Township 2 North, Range  
31 33, E.W.M., Umatilla County, Oregon."

32 EXCEPT:

33 The above described real property is subject to the limita-  
34 tions of access as set forth in that certain deed dated March 2,  
35 1955, and recorded March 11, 1955, in Book 224, Page 1 of the  
Deed Records of Umatilla County, Oregon, wherein J. R. Thompson,  
also known as James R. Thompson, and Mae Thompson, husband and  
wife, were the grantors, and the State of Oregon, by and through  
its State Highway Commission, was the grantee. The said limita-  
tions of access are more particularly described as follows, to wit:

"As a part of the consideration hereinabove stated, there is  
also bargained, sold, conveyed and relinquished to the Grantee  
all existing, future, or potential common law or statutory ease-  
ments of access between the right of way of the public way identi-  
fied as the relocated Old Oregon Trail Highway and all of the  
Grantors' remaining real property consisting of all parcels  
contiguous one to another, whether acquired by separate convey-  
ances or otherwise, all of which parcels either adjoin the real  
property conveyed by this instrument, or are connected thereto  
by other parcels owned by Grantors.

"There shall be reserved unto the grantors, their heirs and  
assigns, for service of the said remaining land, the following:

1 "The right to establish, maintain and use a crossing for  
2 farm purposes only, of a width not to exceed 75 feet, at Highway  
3 Engineer's center line Station 460+00 and at Highway Engineer's  
4 center line Station 497+00; provided, however, that upon the  
5 alienation of either of the portions of the property severed by  
6 the said relocated Old Oregon Trail Highway, resulting in the  
7 severed portions of said property being owned by different per-  
8 sons, these rights of crossing shall be forfeited and shall  
9 cease, and if the grantors, their heirs and assigns, shall commit,  
10 suffer or permit any use of the said crossings for any purpose  
11 other than as a passageway from one side of the said highway to  
12 the other for farm purposes, then and in that event the rights  
13 hereby reserved to the grantors will be automatically forfeited,  
14 and the grantee shall have the power to close the said crossings  
15 for all purposes.

16 "The construction of a frontage road shall not defeat the  
17 rights of crossing herein reserved.

18 "It is expressly intended that these covenants, burdens and  
19 restrictions shall run with the land and shall forever bind  
20 the grantors, their heirs and assigns."

21 Provided, however, that there shall be reserved unto the defendants, their heirs  
22 and assigns, for service of the said remaining land, the following:

23 Rights of access to a frontage road to be constructed  
24 by the State Highway Commission, at its sole cost, on the  
25 Northeasterly side of the said Old Oregon Trail Highway.  
26 Said frontage road to extend Northwesterly to the Mission  
27 Road Interchange for connections with the Old Oregon Trail  
28 Highway.

29 Rights of access to a frontage road to be constructed  
30 by the State Highway Commission, at its sole cost, on the  
31 Southwesterly side of the said Old Oregon Trail Highway.  
32 Said frontage road to extend Southeasterly from County Road  
33 No. 884 approximately opposite Highway Engineer's center  
34 line Station 470+00. Said County Road No. 884 extends  
35 Westerly to Mission South Road which connects via the Mis-  
sion Road Interchange with the Old Oregon Trail Highway.

### 36 III.

37 That the real property described in paragraph I hereof is encumbered by  
38 and plaintiff will take said real property subject to the interests of others  
39 than the within named defendants in the following encumbrances:

40 Easement created by instrument, including the terms and  
41 provisions thereof, dated May 11, 1951, recorded May 24,  
42 1951, in Deed Book 197 at Page 168, in favor of United  
43 States of America, for electrical distribution facilities.

44 Easement created by instrument, including the terms and  
45 provisions thereof, dated December 14, 1967, recorded  
46 December 20, 1967, in Deed Book 292 at Page 152, in favor  
47 of United States of America, for electrical distribution  
48 facilities.

IV.

That the defendants shall recover of and from the plaintiff the sum of \$ 3,250.00 as and for attorney fees, together with their costs and disbursements incurred herein taxed in the amount of \$ \_\_\_\_\_.

Dated this 2nd day of October, 1970.

/s/ William W. Wells  
Circuit Judge