

File No.22355.

Central Pacific Company, )  
 Southern Pacific Company, )  
 to ) Agreement.  
 STATE OF NEVADA. )

THIS AGREEMENT, made and entered into this 22nd day of December, 1937, by and between CENTRAL PACIFIC RAILWAY COMPANY, a corporation, first party, SOUTHERN PACIFIC COMPANY, a corporation, second party, (said first and second parties hereinafter collectively called "Railroad"), and STATE OF NEVADA, acting by and through its Department of Highways, third party, (hereinafter called "State"),

## WITNESSETH THAT:

For and in consideration of the mutual covenants and the stipulations herein contained, the parties hereto undertake and agree as follows, to-wit:

1. Railroad hereby grants to State, subject to the conditions and limitations hereinafter contained, the right to construct, maintain and use a highway over and across its right of way, and over and across its tracks and appurtenances now or hereafter existing thereon, by means of an over head crossing upon and across that certain piece or parcel of land situate, lying and being in the West Half of the Southwest Quarter of Section 26, Township 33 North, Range 48 East, Mount Diablo Base and Meridian, County of Eureka, State of Nevada, more particularly described as follows, to-wit:

Beginning at a point in the southerly line of the right of way of the Central Pacific Railway Company distant 200.00 feet southerly measured radially from the center line of main track of said Railway Company at Engineer Station 1130+95.83, and also distant North 15°48' East, 1344.03 feet from the Southwest Corner of said Section 26; thence along the southerly line of said right of way on a curve to the left, whose back tangent bears South 81°28'40" West and whose radius is 4383.75 feet, a distance of 232.81 feet to a point; thence along a curve to the left, whose back tangent bears North 56°34'20" East and whose radius is 2900.00 feet, a distance of 276.13 feet to a point; thence North 51°07' East a distance of 703.13 feet to a point in the northerly line of said right of way; thence along the northerly line of said right of way on a curve to the right, whose back tangent bears South 88°14'35" East and whose radius is 7939.45 feet, a distance of 300.47 feet to a point; thence South 51°07' West a distance of 835.38 feet to a point in the southerly line of said right of way; thence along the southerly line of said right of way on a curve to the left, whose back tangent bears South 83°59'31" West and whose radius is 4383.75 feet, a distance of 192.36 feet to the point of beginning, containing an area of 4.13 acres, more or less, as shown tinted in red coloring on Salt Lake Division Drawing B-684, Sheet No.3, hereto attached and made a part hereof.

2. State shall, at its sole cost and expense, furnish all labor, materials, tools and implements and perform all work of constructing said overhead crossing; also all work of removing from Railroad's property the existing overhead reinforced concrete bridge crossing constructed under that certain lease between Southern Pacific Company, Central Pacific Railway Company and the State of Nevada, dated September 14, 1923.

3. It is understood and agreed that State may perform the work of constructing said overhead crossing, and removing said existing concrete bridge, with its own forces or may let said work by contract.

4. Railroad shall make all requisite alterations and changes in location of any signal, telephone, telegraph or other wire lines or facilities upon its right of way to provide the necessary clearance for said overhead crossing, save and except as hereafter provided in Section 6 hereof, shall make any essential tract changes and shall perform all other items of work necessary for the maintenance of railroad traffic.

All work to be done by Railroad shall be done on a force account basis, and all expenses incurred by Railroad shall be paid to Railroad, as hereinafter provided.

5. Railroad will furnish, on a force account basis, such inspectors, watchmen or flagmen as it may deem necessary to safeguard property and the movement of engines, trains and cars, and to supervise the prosecution of that portion of the work within the limits of its right of way, which work shall be done at such times and in such manner as not to interfere with the operations of Railroad, and all expenses incurred in connection therewith by Railroad shall be paid to Railroad by State upon rendition of bills thereof.

6. It is hereby recognized that certain facilities of The Western Union Telegraph Company on and along the right of way of Railroad may be disturbed by reason of the work to be performed by, or for the account of State; therefore, it is understood and agreed that Railroad and The Western Union Telegraph Company, or either of them, may make the necessary changes in said facilities, and State agrees, as part of the consideration for this grant, promptly upon receipt of bills therefor, to reimburse Railroad and/or The Western Union Telegraph Company for any and all cost and expenses to which Railroad and/or The Western Union Telegraph Company may be put on account of any change in, or relocation of, any facilities of The Western Union Telegraph Company resulting directly from the work herein contemplated.

7. All expenses incurred by Railroad in connection with said overhead crossing, and removal of said existing concrete bridge, shall be the amounts actually expended or incurred by Railroad in connection with labor, materials, supplies, tools or equipment used, furnished or expended in performance of work to be done in fulfillment of its obligations hereunder.

In determining the total expense of the work to the Railroad, the following charges shall be included and added to the actual costs of labor, material and supplies:

(a) Actual cost of Workmen's Compensation, Public and Federal Liability Insurance.

(b) Actual handling charges in loading and unloading materials and supplies taken from Railroad's store, and on materials and supplies obtained locally.

(c) Except on materials and supplies hauled by work train, freight charges will be added at commercial rates (as published and in effect) for haul over foreign line railways, and freight charges at five (5) mills per ton mile for haul over lines operated by Railroad on all materials and supplies delivered by Railroad at the job. On materials and supplies hauled by work train, actual charges will be added for work train labor, fuel and supplies.

(d) Cost of small tools used by Railroad, comprising the difference between the appraised value set up when delivered at the job and appraised value at the close of the job, as approved by State.

(e) Charges for equipment, including work trains, used on the project, consisting of the actual operating costs, including only such running repairs as are occasioned by service on the project and those incident to delivery and return of equipment to and from the project. Depreciation or general overhead charges on railroad equipment will not be included.

(f) Sales Tax on materials and supplies which are subject to such tax.

(g) All other proper and necessary expenses incidental to the work performed by Railroad and not specifically mentioned herein.

Provided, however, it is expressly agreed and understood by the parties hereto that any and all expenses incurred by said Railroad or said The Western Union Telegraph Company, for which a statement is rendered to State, and which State hereby obligates itself to pay, shall be subject to the provisions of Works Program General Memorandum No. 6, of August 15, 1935, and amendments thereto, issued by Thos. H. MacDonald, Chief of the Bureau of Public Roads, and no items shall be included therein except such as are authorized by said memorandum, and the total re-

imbursement by the State to said Railroad or said The Western Union Telegraph Company shall not exceed the amount approved by the Bureau of Public Roads.

8. At the close of each month during the progress of construction, Railroad shall render to State a statement of all expenditures incurred by Railroad in connection with the building of said overhead crossing, and removal of said existing concrete bridge, and within thirty (30) days thereafter State agrees to pay to Railroad the entire cost of such expenditures.

9. All work contemplated by this agreement shall be done in a good and workmanlike manner to the satisfaction of Railroad.

10. The books, papers, records and accounts of Railroad, so far as they relate to items of expense for labor and material, or are in any way connected with the work herein contemplated, shall at all reasonable times be open to inspection by the agents and representatives of State and of said Bureau of Public Roads.

11. Said overhead crossing upon and across said right of way shall be constructed in accordance with plans to be submitted to and approved by Railroad before any work is commenced by State.

12. The entire expense of maintaining, repairing and renewing said overhead crossing in good and first-class condition, for safe and convenient use of the public, shall be borne by State.

13. In the event any of the work herein contemplated to be done upon or adjacent to the right of way and property of Railroad, including the removal of said existing concrete bridge, shall be let to contractors by State, such contractors shall be satisfactory to Railroad as to their responsibility and experience in performing work of the nature herein called for across the property and over the tracks of Railroad, and no such work shall be begun until such contractors shall have first entered into a written agreement with Railroad substantially in the form of contract hereto attached and marked Exhibit "A", and drafted in conformity with the requirements of Works Program General Memorandum No. 32.

State shall furnish to Railroad a copy of each policy covering Protective Public Liability Insurance and Proective Property Damage Liability Insurance, conforming to the requirements of Works Program General Memorandum No. 32, and which contractor is required to furnish in behalf of Railroad.

14. When said overhead crossing is completed and opened to traffic, State, at its own cost and expense, shall immediately close and cause to be abandoned for highway purposes and for any public use whatsoever, except for railroad purposes, those portions of the parcels of land described in those certain leases between Southern Pacific Company, Central Pacific Railway Company and State of Nevada, dated September 14, 1923, and December 14, 1925, which lie outside of the area containing 4.13 acres, more or less, above described, as shown tinted in yellow coloring on said Salt Lake Division Drawing B-684.

15. Should said highway referred to in Section 1 of this agreement be abandoned at any time, or should the same not be used for the purposes herein designated for one (1) year continuously, Railroad shall have the right to resume and retake exclusive possession of its said right of way and/or remove said overhead crossing at the expense of State, and all of the rights herein granted by Railroad to State shall forthwith cease and determined.

16. This grant is subject and subordinate to the prior and continuing right and obligation of first and second parties and their successors to use and maintain their entire railroad right of way and property in performance of their public duty as common carriers, and is also subject to the right and power of first and second parties and their successors in interest or ownership of the said railroad right of way and property to use the said land above described,

or any and all part thereof, for all purposes which are consistent with the enjoyment of the easement for highway purposes herein granted to State.

17. State shall not grant or consent to any franchise, right, privilege or easement upon, across, over or under Railroad's right of way, which might, in any manner, interfere with the operation or maintenance of Railroad's property.

18. State shall record this agreement in the office of the Recorder of Eureka County, Nevada.

19. This instrument is subject to all valid and existing contracts, leases, liens, claims of title or encumbrances which may affect the said property, herein described, and the word GRANT as used herein shall not be construed as a covenant against the existence of any thereof.

20. This agreement shall inure to the benefit of and be binding upon the successors and assigns of Railroad and upon the assigns of State.

IN WITNESS WHEREOF, the parties hereby have caused this agreement to be executed in triplicate by their officers thereunto duly authorized and their corporate seals to be hereunto affixed, as of the day and year first herein written.

(Corporate Seal)

CENTRAL PACIFIC RAILWAY COMPANY,

By Roy G. Hillebrand  
Vice President  
Attest D.P. Ewing  
Ass't. Secretary.

(Corporate Seal)

SOUTHERN PACIFIC COMPANY,  
By J.H. Dyer  
Vice President.  
Attest Roy G. Hillebrand  
Ass't. Secretary.

(GREAT SEAL OF STATE)

STATE OF NEVADA, acting by and through its Department of Highways.  
By Richard Kirman  
Chairman, Board of Directors of the Department of Highways.

Form Approved:

Contract Attorney.

By Robert A. Allen  
State Highway Engineer.

Approved as to form by General Solicitor June 15, 1937.

NOTARIAL ACKNOWLEDGMENT  
SOUTHERN PACIFIC COMPANY  
CENTRAL PACIFIC RAILWAY COMPANY

STATE OF CALIFORNIA, )  
CITY AND COUNTY OF SAN FRANCISCO. ) SS.

On this 8th day of January, 1938, before me, FRANK HARVEY, a Notary Public in and for said City and County of San Francisco, State of California, personally appeared J.H. DYER known to me to be the Vice President of SOUTHERN PACIFIC COMPANY, one of the corporations that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of Southern Pacific Company, and he acknowledged to me that such corporation executed the same; and personally appeared ROY G. HILLEBRAND, known to me to be the Vice President of CENTRAL PACIFIC RAILWAY COMPANY, one of the corporations that executed the within instrument, and known to me to be the person who executed the within instrument on behalf of Central Pacific Railway Company, and he acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office, in the said City and County of San Francisco, State of California, on the day and year in this certificate first above written.

(Notarial Seal)

Frank Harvey  
Notary Public in and for the City and County of San Francisco, State of California.

STATE OF NEVADA, )  
 ) ss.  
 COUNTY OF ORMSBY.)

On this 22 day of December, 1937, personally appeared before me, E.W. Harris, a Notary Public in and for the County of Ormsby, State of Nevada, Richard Kirman, known to me to be the Chairman of the Board of Directors of the Department of Highways, of the State of Nevada, and Robert A. Allen, known to me to be the State Highway Engineer of the Department of Highways of the State of Nevada, that executed the foregoing instrument, and upon oath did depose that they are the officers of said Department of Highways of the State of Nevada as above designated; that they are acquainted with the seal of said Department of Highways of the State of Nevada and that the seal affixed to said instrument is the seal of said Department of Highways of the State of Nevada; that the signatures to said instrument were made by the officers of said Department of Highways of the State of Nevada as indicated after said signatures; and that the said Department of Highways of the State of Nevada executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the County of Ormsby, State of Nevada, the day and year in this certificate first above written.

(Notarial Seal)

E. W. Harris  
 Notary Public in and for the County of  
 Ormsby, State of Nevada.

E X H I B I T A

AGREEMENT, made this \_\_\_ day of \_\_\_\_\_, 193\_\_\_, between SOUTHERN PACIFIC COMPANY, a corporation, first party, hereinafter called "Railroad", and \_\_\_\_\_, second party, hereinafter called "Contractor",

WHEREAS, Railroad and the State of Nevada, acting by and through its Department of Highways, hereinafter called "State", have entered into a certain agreement dated \_\_\_\_\_, 193\_\_\_, which provided that the State shall undertake the construction of a highway over and across the right of way and crossing the tracks and appurtenances of Railroad in the County of Eureka, State of Nevada, and said agreement provides that the State shall cause its contractor or contractors to enter into an agreement with Railroad substantially in the form of a certain draft attached to said agreement dated \_\_\_\_\_, 193\_\_\_; and

WHEREAS, on the \_\_\_ day of \_\_\_\_\_, 193\_\_\_, said State entered into a contract with Contractor for the construction of an overhead crossing, which contract provides that said Contractor shall enter into an agreement with said Railroad;

NOW, THEREFORE, it is understood and agreed as follows:

Contractor, in advance of performing any work under said contract between the State and Contractor, shall, with respect to the operations he or any of his subcontractors perform, furnish for and in behalf of Railroad regular Protective Public Liability insurance and regular Protective Property Damage Liability insurance conforming to the requirements of Works Program General Memorandum No.32, signed by the Chief of the Bureau of Public Roads and dated January 27, 1937; said regular Protective Public Liability insurance providing for a limit of not less than One Hundred Thousand (100,000) Dollars for all damages arising out of bodily injuries to or death of one person, and subject to that limit for each person, a total limit of Two Hundred Thousand (200,000) Dollars for all damages arising out of bodily injuries to or deaths of two or more persons in any one accident, and said regular Protective Property Damage Liability insurance providing for a limit of not less than Twenty-five Thousand (25,000) Dollars for all damages arising out of injury to or destruction of property in any one accident, and, subject to that limit per accident, a total (or aggregate) limit of Fifty Thousand (50,000) Dollars for all damages arising out of injury to or destruction of property during the policy period.

That the Contractor shall furnish evidence to the State by certificate of insurance or certified copies of the policies (which shall be subject to the approval of the Railroad) that, with respect to the operations he or any of his subcontractors perform, he has provided for and in behalf of Railroad policies in the amounts required as aforesaid.

That the insurance hereinabove specified shall be carried by Contractor until all work required to be performed under the terms of said contract between State and Contractor is satisfactorily completed, as evidenced by the formal acceptance by State.

That Contractor shall comply with the rules and regulations of Railroad or the instructions of its representatives in relation to the proper manner of protecting the tracks and property of Railroad and the traffic moving on such tracks, as well as the wires, signals and other property of Railroad, its tenants or licenses at and in the vicinity of the work during the period of construction. Contractor, subject to the supervision and control of Railroad's Chief Engineer, or other designated officer, shall perform Contractor's work in such manner and at such times as that said work shall not endanger or interfere with the safe operations of the tracks and property of Railroad and the traffic moving on such tracks, as well as wires, signals and other property of Railroad, its tenants or licenses at or in the vicinity of the work.

Contractor further agrees that upon completion of the work covered by said contract between said State and said Contractor, he will promptly remove from the premises of said Railroad all of his tools, implements and other materials, whether brought upon said work himself, or any subcontractor, employe or agent of himself, or any subcontractor.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement in duplicate as of the day and year first herein written.

SOUTHERN PACIFIC COMPANY,  
By \_\_\_\_\_

Attest \_\_\_\_\_  
Assistant Secretary

\_\_\_\_\_  
Contractor.

APPROVAL OF AGREEMENT

A meeting of the Board of Directors of the Department of Highways, state of Nevada, was held in the Executive Chamber of the State Capitol Building in Carson City, at 10:00 a.m. on December 22, 1937.

At this meeting an agreement between the Central Pacific Company, a corporation, first party, Southern Pacific Company, a corporation, second party, and the State of Nevada, acting by and thru its Department of Highways, third party, granting to the State the right to construct, maintain, and use an overpass, subject to certain limitations, over and across the Railroad right-of-way and tracks in Eureka County, Nevada near Shoshone, was presented to the Board by the State Highway Engineer.

A motion to approve this agreement and authorizing its execution by the Chairman of the Board of Directors, for and on behalf of the Department of Highways, State of Nevada, was duly made, seconded, and passed unanimously.

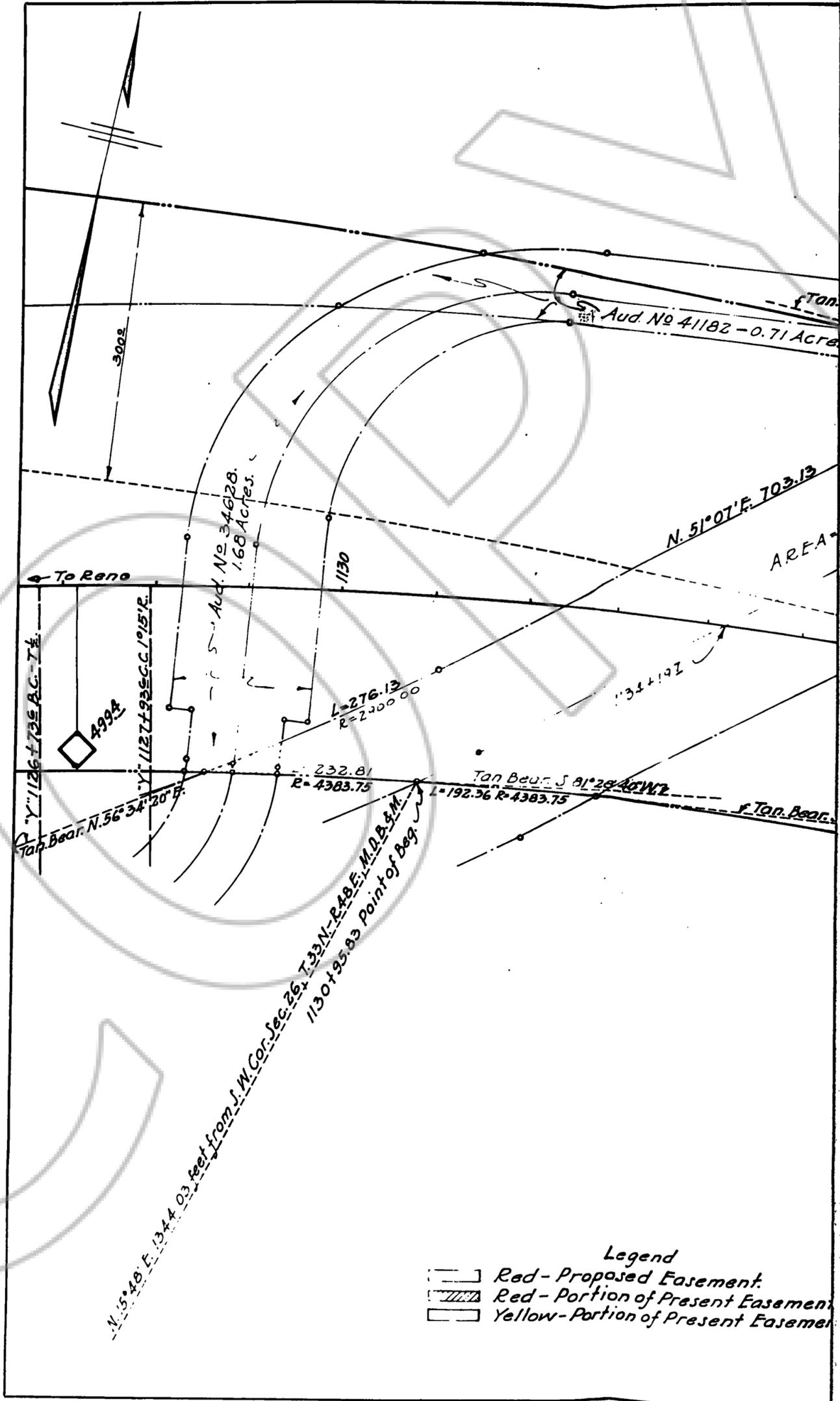
I hereby certify that the above is a full, true, and correct statement of the proceedings had at the meeting of the Board of Directors of the Department of Highways of the State of Nevada at a meeting held December 22, 1937.

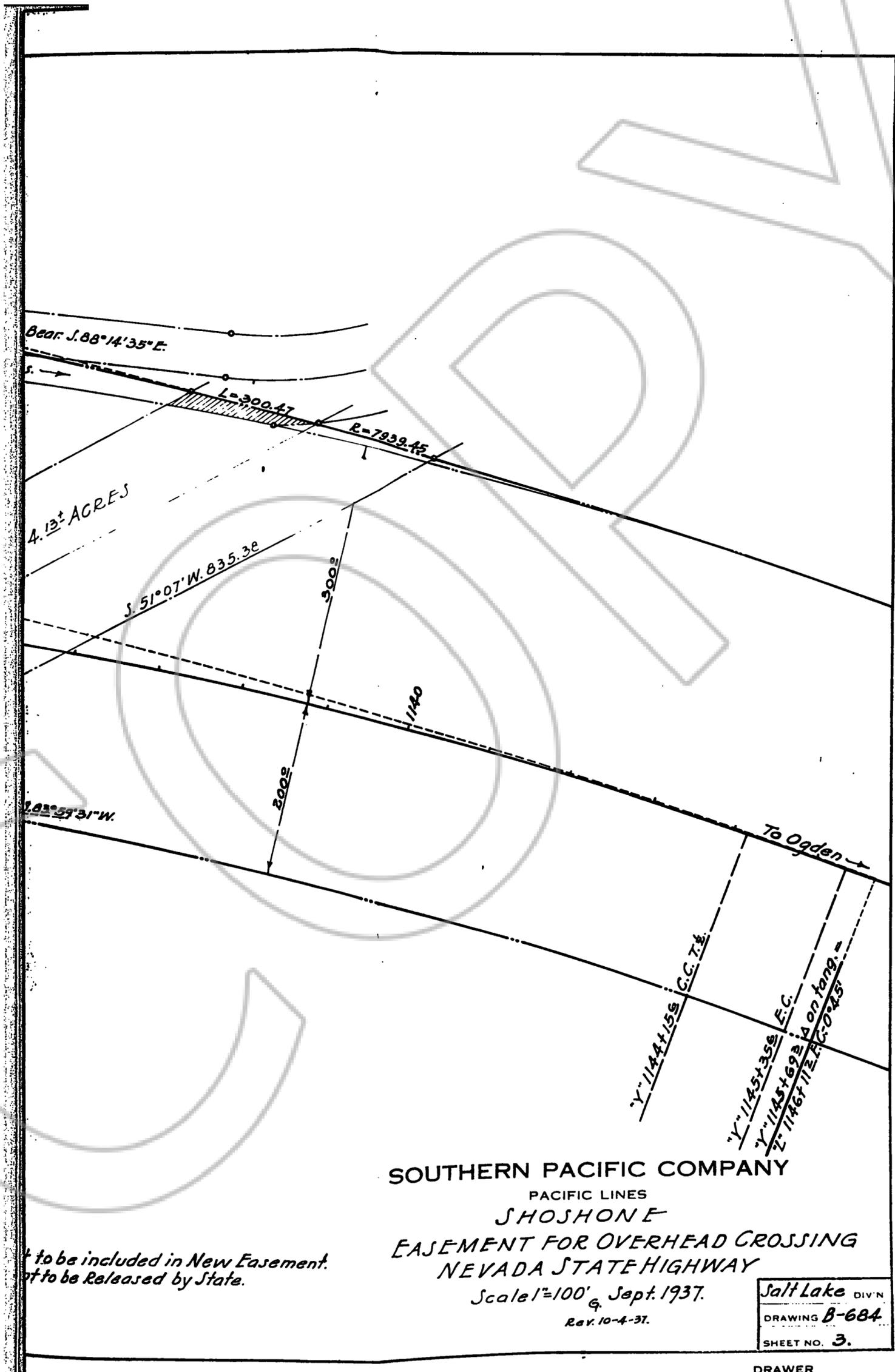
(Notarial Seal)

E. W. Harris  
Secretary of the Board and Notary Public  
in and for County of Ormsby, State of Nevada.

Recorded at the request of Robert A. Allen Jan. 31, A.D. 1938 At 30 minutes past 3 P.M.

Peter Merialdo--Recorder.





to be included in New Easement.  
to be Released by State.

**SOUTHERN PACIFIC COMPANY**  
 PACIFIC LINES  
 SHOSHONE  
 EASEMENT FOR OVERHEAD CROSSING  
 NEVADA STATE HIGHWAY

Scale 1"=100' & Sept. 1937.  
Rev. 10-4-37.

Salt Lake	DIV N
DRAWING	B-684
SHEET NO.	3.

DRAWER