

NO. 12952 7A 3439
 RECORDED AT REQUEST OF
Utah Div. of Water Resources
 DATE *Jan 29 1975* TIME *8:48 am*
 BOOK *108* OF REC. PAGE *867* FEE *none*
 AGREEMENT RECORDER OF MILLARD COUNTY, UTAH
Salmy Mast

This Agreement entered into this 20 day of NOVEMBER, 1974, by and between the State of Utah, acting through the BOARD OF WATER RESOURCES, First Party, sometimes referred to herein as the STATE; and the CENTRAL UTAH WATER COMPANY, a corporation, organized under the laws of the State of Utah, Second Party, sometimes referred to herein as the WATER COMPANY:

W I T N E S S E T H

THAT, WHEREAS, the STATE desires to promote a water conservation project consisting of the construction of a massive concrete diversion dam structure with appurtenant gates and facilities across the Sevier River in Section 28, T14S, R3W, SLB&M, in Juab County, Utah; and

WHEREAS, it is the desire of the WATER COMPANY to enter into a contract with the STATE for a consideration to be hereinafter provided, and to use the water developed by the aforesaid project; and

WHEREAS, the WATER COMPANY has the available manpower and facilities necessary to construct the aforesaid project, and is ready, willing, and able to enter into a contract for such purpose;

NOW, THEREFORE, the Parties hereto enter into this Agreement and make the following Assignments:

1. The WATER COMPANY hereby agrees to convey, grant, and warrant to the STATE, title in fee simple, as required, to the real estate upon which the structures are to be constructed; and further agrees to convey, grant, and warrant to the STATE, title to such easements and rights-of-way as shall be necessary to enable the STATE to construct, maintain, and operate said project; and further agrees to grant and convey to the STATE an easement to use any and all of the WATER COMPANY'S distribution system located in Sections 28, 32, and 33, T14S, R3W, SLB&M, Juab County, Utah; Sections 5 and 6, T15S, R3W, SLB&M; Sections 1, 11, 12, 14, 15, 16, 17, 18, 19, 20, 29, and 32, T15S, R4W, SLB&M; Sections 5, 7, 8, 18, and 19, T16S, R4W, SLB&M; Sections 24, 25, 26, and 35, T16S, R5W, SLB&M; Sections 2, 10, 11, 15, 21, 22, 28, and 33, T17S, R5W, SLB&M; Sections 4, 9, 10, 15, 22, 26, 27, and 35, T18S, R5W, SLB&M; Sections 2, 11, 12, 13, and 24, T19S, R5W, SLB&M; Sections 19, 30, and 31, T19S, R4W, SLB&M; Sections 6, 7, and 18, T20S, R4W, SLB&M; Sections 13, 24, 25, 34, 35, and 36, T20S, R5W, SLB&M; Sections 3, 9, 10, and 16, T21S, R5W, SLB&M, all in Millard County, Utah.

2. The WATER COMPANY hereby agrees to convey, grant, and warrant to the STATE all right, title, and interest, which it has or may have, to the right to use the water which shall be developed or conveyed through the use of the aforesaid project and particularly all of the water from the Sevier River which was decreed to the Central Utah Water Company, in the Fifth Judicial District Court of the State of Utah in and for Millard County, in Case No. 843, Richlands Irrigation Company, Plaintiff, vs. West View Irrigation Company, et al, Defendants, dated November 30, 1936, commonly known as the Cox Decree, LeRoy H. Cox, Judge, as set forth on pages 190 to 198 inclusive, and page 202, a copy of which is attached and by reference made a part hereof.

A summary of the direct flow water rights is as follows:

3.3 c.f.s.	Class AA
18.7 c.f.s.	Class A
12.5 c.f.s.	Class C
5.8 c.f.s.	Class E
4.3 c.f.s.	Class F

Period of use March 1 - October 1. Also, 1,000 acre-feet from the Lower Mohlen (Blue Springs) during the irrigation season.

A summary of the storage rights is as follows:

Five Percent (5%) of the first 104,000 acre-feet of storage accumulating to Sevier Bridge Reservoir.

Fifty-Seven Percent (57%) of all new water accumulating to Sevier Bridge Reservoir above the 104,000 acre-feet storage, to fill the Sevier Bridge Reservoir to the 80 foot contour. Application No. 4562, Certificate No. 2372 on file in the State Engineers Office,

Thirty-Five and Four-Tenths Percent (35.4%) of any additional water in excess of the full Sevier Bridge Reservoir accruing from April 1 to October 1.

All of the water up to 3,000 acre-feet deducted from the exchange users rights for allowing the exchange users to place their water on call whenever the total new storage supply as between Piute and Sevier Bridge Reservoirs is 129,280 acre-feet or less. When the total storage supply is more than 129,280 acre-feet, Central Utah Water Company receives 35.3% of the water deducted from the exchange users rights.

The right to store any and all of the water accruing to the Central Utah Water Company whenever it is physically possible to do so without holdover privileges of any unused credits.

In the event Sevier Bridge Reservoir becomes full during the non-irrigation season, all holdover waters are declared common and the waters are divided to the owners of the Sevier Bridge Reservoir as their ownership is to the total.

All the surplus waters arising below Sevier Bridge Reservoir from October 1 to April 1, which can be used as direct flow diversion or storage in the Fool Creek Reservoir, Under Application No. 1367-a, Certificate No. 2391.

The right to exchange Fool Creek Reservoir water delivered to the Sevier River for equal quantity to be diverted at the Central Utah Water Company diversion dam.

3. The WATER COMPANY recognizes as valid the conveyance of easements and rights-of-way executed by various owners of land to the STATE, and agrees that all performance by the WATER COMPANY under this contract shall be subservient to, and in recognition of, the aforesaid rights of the STATE in and to the aforesaid easements and rights-of-way.

4. The WATER COMPANY agrees to supply the necessary manpower and facilities and agrees to complete the construction of the aforesaid project at a cost in accordance with plans, specifications, and work items, a copy of which is hereby incorporated by reference and made a part hereof.

5. The STATE agrees to pay the WATER COMPANY Sixty-Three Percent (63%) of the total cost of constructing the project, but in no event shall the amount paid by the STATE exceed Eighty-Eight Thousand Dollars (\$88,000.00); and the WATER COMPANY shall itself pay all costs in excess of the amount paid by the STATE. The WATER COMPANY agrees and undertakes to construct to completion as designed and specified the aforesaid project in all events, regardless of unforeseen contingencies, and agrees to pay all costs in excess of the aforesaid amount paid by the STATE.

6. It is further agreed that the STATE shall pay Ninety Percent (90%) of the amount payable by the STATE to the WATER COMPANY upon the presentation by the WATER COMPANY to the STATE of a certified statement of the payment requirement, which shall be in the nature of a monthly partial estimate of the work completed to date by the WATER COMPANY on each work item. The Ten Percent (10%) withheld as above set forth will become due and payable to the WATER COMPANY with, and as a part of, the final payment to be made by the STATE upon completion of the project, and its inspection and acceptance by an engineer designated by the STATE.

7. It is further agreed that the WATER COMPANY shall complete the construction of the project on or before December 1, 1975 and that title to the entire project, including all appurtenant facilities and water rights, shall immediately vest in the STATE. It is also agreed that this contract shall not become binding upon the STATE until it has been signed by all persons and agencies required by law, and that the STATE shall not become liable to the WATER COMPANY for any commitments made by the WATER COMPANY until this contract has been completed.

8. The STATE agrees to sell, and the WATER COMPANY agrees to purchase the land, easements, rights-of-way, water rights, the constructed works, and all appurtenant facilities acquired by the STATE in this Agreement and Assignments, at a total purchase price defined to be the combined total of all funds paid by the STATE to the WATER COMPANY for the construction of the project, but not to exceed Eighty-Eight Thousand Dollars (\$88,000.00), plus all expenses incurred by the STATE for investigation, engineering, and inspection of the project, and to be determined by the STATE upon completion of the project. The purchase price shall be payable over a period of time in annual installments of Twelve Thousand Dollars (\$12,000.00), or more, each year, without interest.

9. The First annual installment of Twelve Thousand Dollars (\$12,000.00) or more, of the total purchase price as defined above, shall become due and payable on the First day of December, 1976; and a like sum, or more, shall become due and payable on the First day of December of each and every year hereafter until the full purchase price, as defined above, shall have been paid in full. Said sums shall be payable at the office of the DIVISION OF WATER RESOURCES, and the first monies received by the STATE under the terms of this contract will be applied to repay the monies advanced by the STATE for investigation, engineering, and inspection until fully paid; and any residue will be applied to funds paid by the STATE for the construction of the project. Delinquent payments shall bear interest at a rate of Ten Percent (10%) per annum.

10. All payments made by the STATE to the WATER COMPANY under this Agreement shall be made payable to CENTRAL UTAH WATER COMPANY; and mailed to Grant Nielson, President, Leamington, Utah, 84638, or such persons as may hereinafter be designated by the WATER COMPANY.

11. During the period of such purchase under this contract, provided the WATER COMPANY is not delinquent in any manner, the WATER COMPANY shall have and is hereby given the right to use the STATE's water rights, and all facilities constructed thereunder. During the life of this Agreement, the WATER COMPANY agrees to assume, at the WATER COMPANY's expense, the full and complete obligation of maintaining the constructed works, and other facilities, and of protecting all water rights from forfeiture.

12. In order to secure the payment of the aforesaid purchase price, it is hereby expressly agreed that the STATE may require the WATER COMPANY to assess all outstanding shares of their stock for the full amount of any delinquencies in the aforesaid purchase installments. It is further agreed by the WATER COMPANY that it will not incur any mortgages or encumbrances, other than those already acquired by it, on any of its property, real or personal, without first securing the written consent of the STATE. It is further agreed that the WATER COMPANY will not incur any indebtedness whatsoever for a principal sum in excess of Fifteen Thousand Dollars (\$15,000.00) without first procuring the written consent of the STATE. The remedies herein provided shall be deemed cumulative, and not exclusive.

13. The WATER COMPANY hereby warrants the STATE that the construction of the project will not interfere with existing water rights. If the project herein described shall give rise to a claim, or cause of action to any holder of any water rights because of the interference with such right by the operation of the aforesaid project, then the WATER COMPANY hereby agrees to indemnify the STATE to the extent of such claim or cause of action.

14. If either party to the contract violates any of the conditions or covenants made herein, the other may give written notice of such breach or failure, and if the same shall not be cured within Ninety (90) days after such notice, the other may declare the contract forfeited and may proceed to its remedies at law for such breach.

15. The WATER COMPANY hereby agrees to assume the full obligation for any claim or liability for any injury or death of persons, or for any property loss of damage that may arise from the construction and operation of this project for the STATE; and further, the WATER COMPANY agrees to hold the STATE immune for all such claims for damages, injury, or death of persons during the life of this Agreement.

16. After the WATER COMPANY shall have paid in full the purchase price as defined above, the STATE shall execute such deeds and bills of sale as will be necessary to revest the same title to the aforesaid property and water rights in the WATER COMPANY.

17. This Agreement, or any part thereof, or the benefits to be received under this Agreement, may not be the subject of any assignment to any person, firm or corporation, by the said WATER COMPANY, without first having secured the written consent of the STATE to any such proposed assignment or disposition of this Agreement.

IN WITNESS WHEREOF, the State of Utah, acting through the BOARD OF WATER RESOURCES, Party of the First Part, has caused these presents to be signed by the Chairman and Director of the said BOARD OF WATER RESOURCES by authority of a resolution of said Board; and the CENTRAL UTAH WATER COMPANY, Party of the Second Part, has caused these presents to be signed and executed on its behalf by Grant Nielson, its President, and Earl Greathouse, its Secretary, by a resolution of its stockholders at a meeting held FEBRUARY 4, 1974.

APPROVED:
BOARD OF EXAMINERS--STATE OF UTAH

Gene Hampt
Governor

Secretary of State
[Signature]
Attorney General

APPROVED
AS TO AVAILABILITY OF FUNDS:

[Signature]
Budget Officer

APPROVED:

Kenneth J. Hansen
Director of Finance

BOARD OF WATER RESOURCES

Walter Allen
Chairman

David F. Lawrence
Director

CENTRAL UTAH WATER COMPANY

Grant S. Nielson
President

Earl Greathouse
Secretary

DWG
Date
APPROVED AS TO FORM:
[Signature]
Assistant Attorney General

RECORDERS NOTE: No Seal

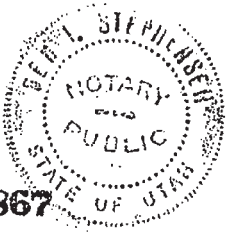
STATE OF UTAH :
County of Millard : ss.

On the 20th day of November, 1974, personally appeared before me Grant Nielson and Earl Greathouse who being by me duly sworn, did say that they are the President and Secretary, respectively, of the CENTRAL UTAH WATER COMPANY and that the said instrument was signed in behalf of said corporation by authority of a resolution of its stockholders, and said Grant Nielson and Earl Greathouse acknowledged to me that said corporation executed the same.

Bert J. Stephenson
Notary Public

Residing at: Lyndal Utah

My Commission Expires: NOV 25 1975



APPROVED
BOARD OF EXAMINERS
Harold R. Hinton
NOV 26 1974 CLERK