

13-034-0060

ASSIGNMENT AND WATER AGREEMENT

This Assignment and Water Agreement ("Agreement") is entered into by and between Davis and Weber Counties Canal Company ("D&W") a non-profit corporation located in Davis County, Utah and Jane M. Poll, Trustee for the Jane M. Poll Trust ("The Trust").

RETURNED
FEB 12 2014

- A. The Trust is desirous of installing secondary irrigation facilities to receive secondary untreated water under pressure from South Weber Water Improvement District ("SWWID"), to be placed on 8.756 acres of The Trust property north of the former Bambrough Irrigation Company's Ditch located in Davis County, South Weber Utah, as included in "Attachment A", the description and "Attachment B", the map.
- B. In order to receive service for secondary water from the SWWID, The Trust must provide for diversion of 26.268 acre feet of irrigation water (8.756 acres X 3 acre feet of water per acre duty) per year at a point of diversion owned and operated by Weber Basin Water Conservancy District ("District") located on the Weber River.
- C. The District in turn, pursuant to its contract with SWWID dated December 27, 1984 will make available to SWWID 26.268 acre feet of water to be delivered to The Trust in satisfaction of the secondary water requirements for the 8.756 acres of property.
- D. In order to provide the necessary 26.268 acre feet of water for delivery by the District to SWWID, The Trust is willing to relinquish by quit claim deed as included in "Attachment C", all of its contract water rights of assignment and use of their 4.7% share of former Bambrough Irrigation Company Water including any third party claims for use of or holdernesship to The Trust's water to D&W.
- E. In return D&W is willing to make available out of its D&W Corporate shares of Treasury Stock, 4.5 shares of water at 6 acre feet per share or 27 acre feet of water to the District for delivery by SWWID to The Trust.

NOW THEREFORE, the parties agree as follows:

- 1. The parties to this Agreement hereby acknowledge that this Water Assignment Agreement is for exchange of contract water for the volume amounts required to irrigate The Trust's 8.756 acres of property and does not include any necessary monetary transfers.
- 2. The parties hereby acknowledge that any and all contract rights of former Bambrough Irrigation Company water claimed by The Trust is hereby relinquished to D&W by Quit Claim Deed as a result of this agreement, included as "Attachment C".
- 3. D&W in exchange for the assignment of The Trust's former Bambrough Irrigation Company's contract water to D&W will transfer 4.5 shares of D&W Treasury Stock represented as 27 acre feet of water for use by the District to deliver to the SWWID for delivery to The Trust.
- 4. In exchange for the transfer by The Trust of all of its former Bambrough Irrigation Company contract water, no assessments for the current water year 2014 will be levied by D&W against The Trust, District or SWWID.

- 5. This Agreement shall become effective only upon receipt by D&W of a Quit Claim Deed from The Trust for their 4.7% share of former Bambrough Irrigation Company contract water, which is acknowledged herein by the signature of Ivan J. Ray, General Manager of D&W.
- 6. The parties hereby agree that this Agreement is the sole and only agreement between the parties and, as such, supersedes any and all prior written or verbal communications or agreements.

The execution of this agreement by the General Manager was duly authorized by the Board of Directors of D&W

Executed and signed this 10 day of February, 2014

Davis and Weber Counties Canal Company

By Ivan J. Ray

Its MANAGER

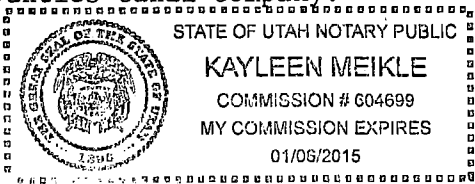
Jane M. Roll, Trustee for the Jane M. Poll Trust

By Jane M. Roll

Its Trustee

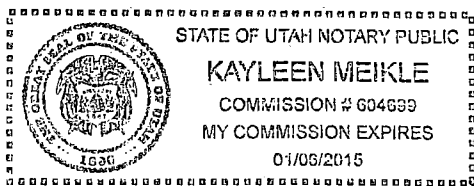
State of Utah
County of Salt Lake

The foregoing instrument was acknowledged before me this 10th day of February, 2014 by Ivan J. Ray as General Manager of Davis and Weber Counties Canal Company.



Kayleen Meikle
Notary Public
Residing at: Davis County
My Commission Expires 1-8-15

The foregoing instrument was acknowledged before me this 10th day of February, 2014 by Jane M. Poll as Trustee of the Jane M. Poll Trust



Kayleen Meikle
Notary Public
Residing at: Davis County
My Commission Expires 1-8-15

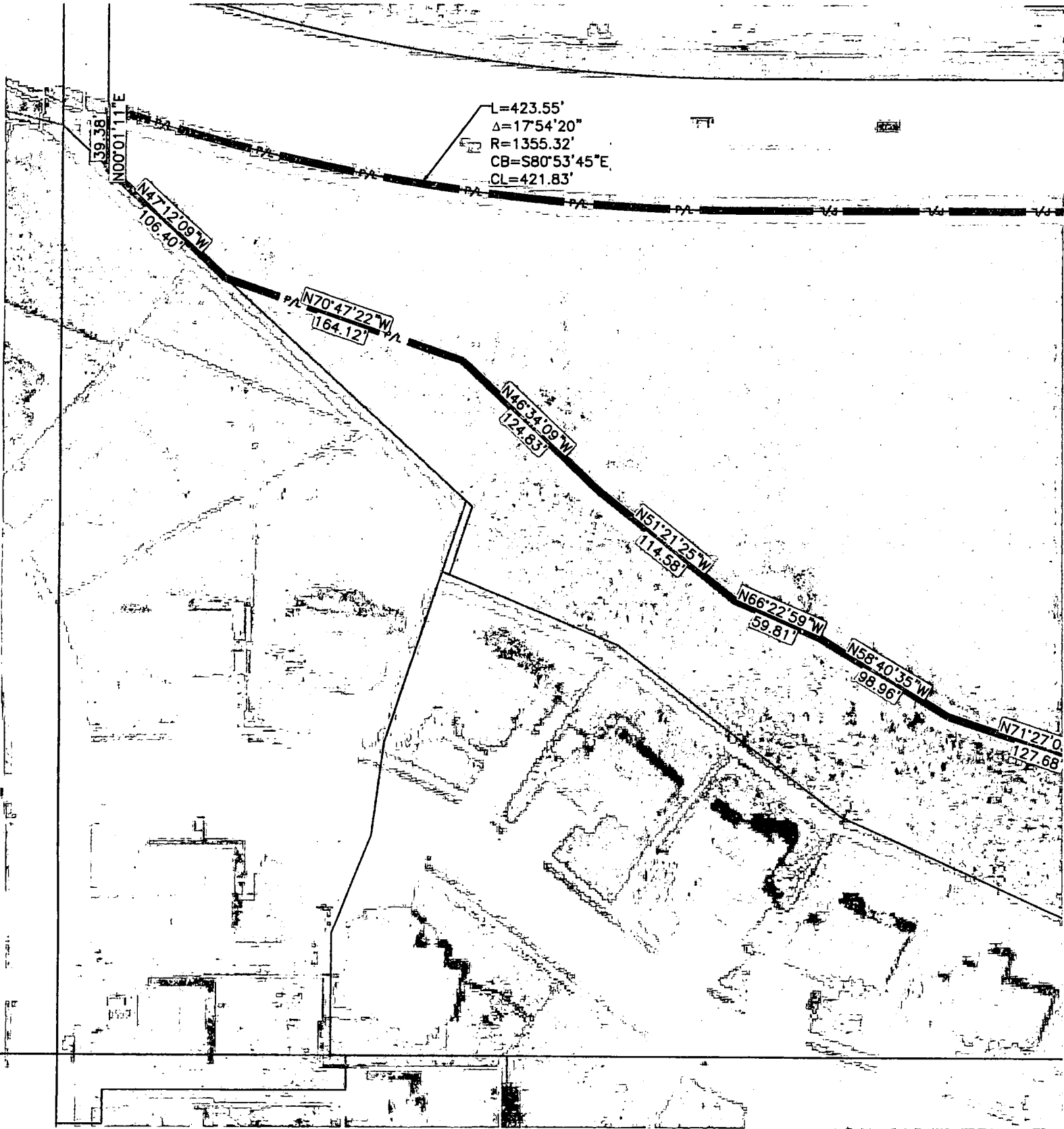
Description of area to be irrigated:

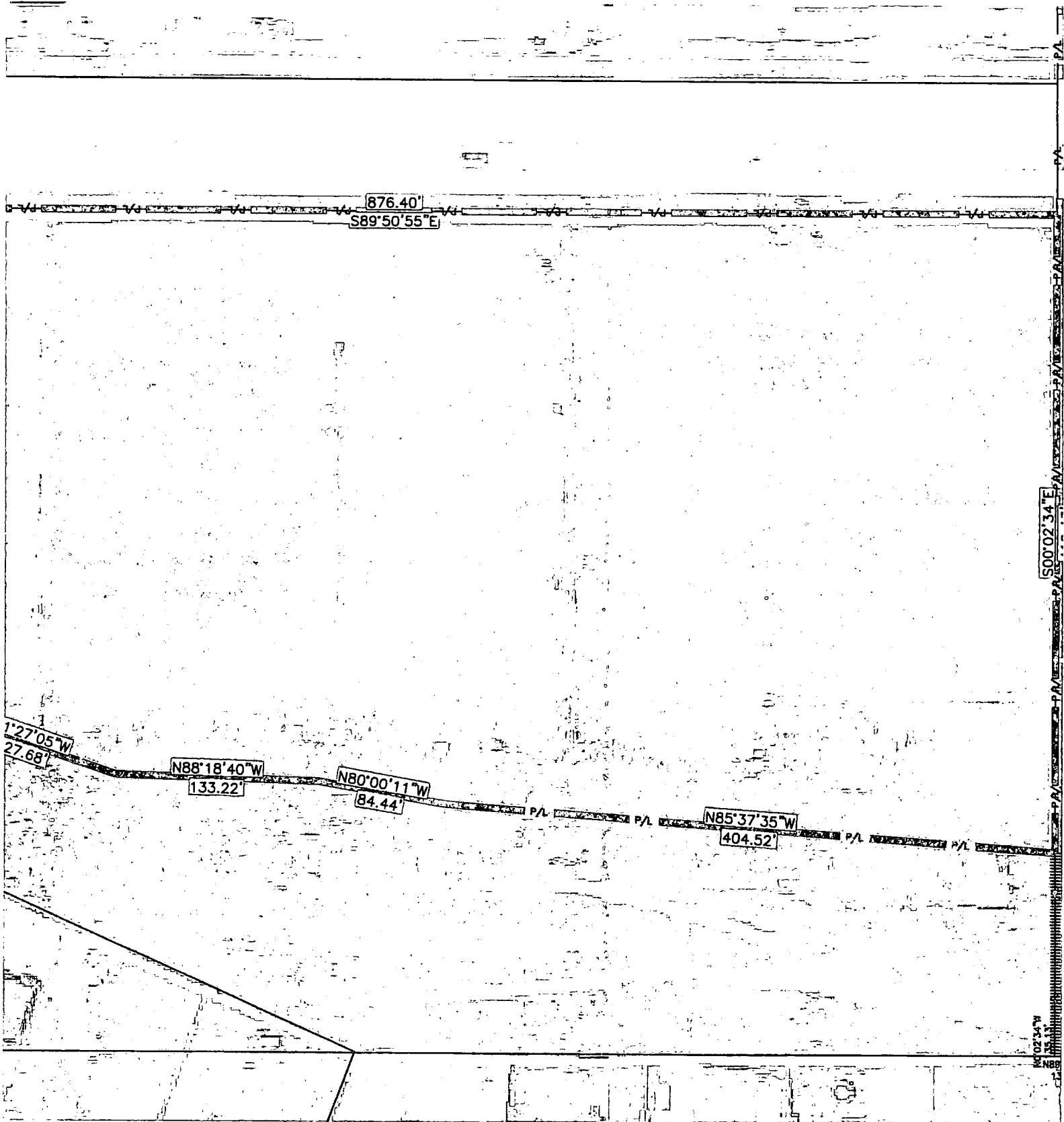
A part of the Northeast Quarter of Section 35, Township 5 North, Range 1 West, Salt Lake Base and Meridian, and being described as follows:

Beginning at a point being N 89°53'29" W 1323.55 feet along the South line of the Northeast Quarter of said Section 35 and N 00°02'34" W 135.13 feet from the East Quarter Corner of said Section 35; thence as follows:

Along the existing ditch the following nine (9) courses: (1) N 85°37'35" W 404.52 feet; (2) N 80°00'11" W 84.44 feet; (3) N 88°18'40" W 133.22 feet; (4) N 71°27'05" W 127.68 feet; (5) N 58°40'35" W 98.96 feet; (6) N 66°22'59" W 59.81 feet; (7) N 51°21'25" W 114.58 feet; (8) N 46°34'09" W 124.83 feet; (9) N 70°47'22" W 164.12 feet to the northeasterly boundary line of Cedar Bluffs Subdivision Phase 2; thence N 47°12'09" W 106.40 feet along said northeasterly boundary line; thence N 00°01'11" E 39.38 feet to the South right of way line of South Weber Drive; thence along said south right of way line of South Weber Drive the following two (2) courses: (1) easterly 423.55 feet along the arc of a 1355.32 foot radius curve to the left, through a central angle of 17°54'20", the chord of which bears S 80°53'45" E 421.83 feet; (2) S 89°50'55" E 876.40 feet; thence S 00°02'34" E 419.43 feet to the point of beginning.

Contains 381,393 square feet or 8.756 acres in area, more or less.





“ATTACHMENT C”

QUIT CLAIM DEED AND ASSIGNMENT

This Quit Claim Deed and Assignment is entered into by and between JANE M. POLL, Trustee for the Jane M. Poll Trust (“Trust” and “Grantor”) and DAVIS & WEBER COUNTIES CANAL COMPANY, a non-profit corporation located in Davis County, Utah (“D&W” and “Grantee”). The Trust and Grantor hereby grants, deeds, quitclaims and assigns any and all interest, either real property or otherwise, including the rights of contract as specified herein below, to D&W and Grantee.

1. (a) Grantor, pursuant to this Quit Claim Deed and Assignment, hereby specifically relinquishes any and all interest the Trust or its predecessors in interest had or has as a former shareholder in the Bambrough Irrigation Company of South Weber or as a former shareholder that certain Agreement entered into between D&W and the Bambrough Irrigation Company of South Weber dated March 26, 1996, a copy of which is attached and incorporated hereto as Exhibit A-1.

(b) Included in this Quit Claim Deed and Assignment is the relinquishment by Grantor to Grantee of any and all interest it may have had or claims to hold pursuant to the above mentioned March 26, 1996 Agreement and any and all water rights or interests as specified in paragraph (a) hereinabove or related thereto or related to the Bambrough Irrigation Company of South Weber for the property now owned by the Trust specified herein as follows:

[PROPERTY DESCRIPTION]

This Quit Claim Deed and Assignment is dated this 10 day of February, 2014.

GRANTOR

GRANTEE

Jane M. Poll Trust

Davis and Weber Counties Canal Company

By

Jane M. Poll

By

Ivan J. Ray

Its Trustee

Its

MANAGER

STATE OF UTAH)

: ss.

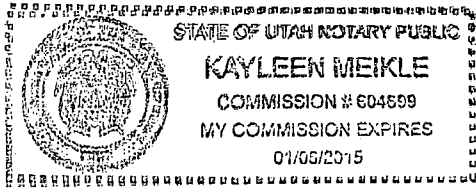
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 10 day of February, 2014, by Ivan J. Ray as General Manager of Davis + Weber Counties Canal Co.

Kayleen Meikle
NOTARY PUBLIC
Residing at: Davis

My Commission Expires:

1-8-15



STATE OF UTAH)

: ss.

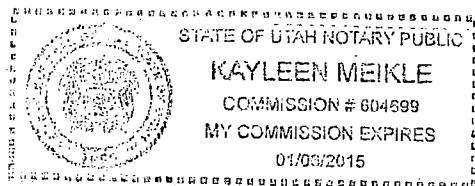
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 10 day of February, 2014, by Jane M. Poll as Trustee of Jane M. Poll Trust.

Kayleen Meikle
NOTARY PUBLIC
Residing at: Davis

My Commission Expires:

1-8-15



AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into this 26 day of MARCH, 1996, by and between the BAMBROUGH IRRIGATION COMPANY OF SOUTH WEBER, UTAH ("Bambrough") and the DAVIS AND WEBER COUNTIES CANAL COMPANY with facilities located in Davis and Weber Counties, Utah ("D & W").

1. Bambrough owns decreed water rights in the Weber River identified as Water Right No. 25(35-8025) and Water Right No. 37(35-8037), as decreed in Plain City Irrigation Company vs. Hooper Irrigation Company, Civil No. 7847, Second Judicial District Court for Weber County, Utah (commonly known as the "Weber River Decree"). The average annual yield during the irrigation season of these two decreed water rights is described as follows:

Water Right No. 25 (35-8025). Priority date of 1856.

5.63 c.f.s. flood = 11.16 a.f./day

4.17 c.f.s. high = 8.25 a.f./day

2.50 c.f.s. low = 4.96 a.f./day

Water Right No. 37 (35-8037). Priority date of 1870.

3.39 c.f.s. flood = 5.70 a.f./day

2.63 c.f.s. high = 5.21 a.f./day

1.58 c.f.s. low = 3.13 a.f./day

In addition, Bambrough Irrigation owns 138 shares in the Weber River Water Users Association, Certificates #37 for 125 shares and #94 for 13 shares, equivalent to 1 acre foot per share, in normal

years, of storage water in Echo Reservoir. Water Right Nos. 25 (35-8025) and 37 (35-8037) and the 138 shares in the Weber River Water Users Association are collectively referred to as the "Water Rights". Bamrough's Water Rights are diverted from the Weber River near the mouth of Weber Canyon, just below the D & W diversion and are conveyed to the property as outlined in Exhibit 1, for irrigation and other purposes.

2. D&W owns water rights which it diverts from the Weber River and conveys in an extensive canal system to deliver water to its shareholders and customers throughout Davis and Weber Counties, Utah.

3. All of Bamrough's shareholders desire to receive delivery of their portion of the water made available from the Water Rights, through the D & W canal system. However, two shareholders, Construction Materials and the Vine Poll Estate, may not be able to physically receive their portion of the water through the D & W canal system. This portion, amounts to 11% of the total Water Rights. D&W will negotiate with Vine Poll Estates and Construction Materials in an effort to deliver this water if possible. Vine Poll Estates and Construction Materials will be required to install any necessary delivery facilities at their own expense.

4. Bamrough will transfer the Water Rights to D&W upon execution of this agreement and D&W agrees to accept said Water Rights subject to the terms hereof. Bamrough will take all necessary corporate actions required by law to allow this transfer.

5. In consideration of Bamrough's transfer of its Water Rights to D&W, D&W will concurrently enter into an agreement with each Bamrough shareholders ~~(except Construction Materials and Vine Poll Estate)~~ ^{R. Hart} in the form of the agreement attached as Exhibit 2 to this agreement

to deliver from its canal to each Bambrough shareholder up to 3 acre feet of irrigation water per acre per year during the irrigation season (April 15 through October 15 or so long as the D&W canal system is operated, whichever is longer) the "Contracted Water" to approximately 200 irrigated acres within Bambrough's boundaries as designated on the map attached to this Agreement as Exhibit 1, as follows:

- a. Bambrough shareholders shall have the first right to use water attributable to the Water Rights during the "flood" period declared by the Weber River Commissioner without charge against the 3 acre feet per acre delivery cap described in this paragraph.
 - b. Measurement of the 3 acre feet per acre shall commence after the Weber River Commissioner designates the end of "flood" water delivery.
 - c. At no time shall the Contracted Water exceed the water made available to D&W by the water rights.
6. The Contracted Water will be transported through nine to ten new siphons installed on the D & W canal system. The shareholders receiving Contracted Water through these new siphons will install, operate and maintain the siphons. D & W will approve the design specifications, placement and inspect the construction of the siphons. Meters will be placed so they can be read by the shareholders and D & W. Each siphon will have a Contracted Water amount (up to 3 A.F. per acre) that will be paid for, in advance, by March 1st of each year (the "Annual Assessment"). If payment for the Contracted Water is not made in full by April 1st, no water will be delivered to that siphon for that water year. Each siphon will have a designated person ("Water Master") to be responsible for operation and payment of annual assessment. The name, address and telephone number of the

Water Master along with the names, addresses and telephone numbers of all shareholders on each siphon will be given to the D&W office by March 1st of each year. D&W will install and maintain meters for each siphon, and the shareholders will reimburse D & W for the purchase price of the meters.

7. There are acreage to which both D&W water and Contracted Water are delivered through the siphons covered by this agreement. Therefore, in order to determine what portion of the acreage is irrigated by D&W water and what portion of the acreage is irrigated by Contracted Water, all water delivered through the siphons will have to be metered. Historically, one half share of D&W water will irrigate one acre of ground. Any acreage in Exhibit 1 receiving water in addition to the D&W water will be charged the assessment for the Contracted Water of three acre feet per acre of acreage not covered by D&W water.

8. At such time as any of the acreage designated to receive Contracted Water on Exhibit 1 is converted to residential use or subdivided into more than one additional dwelling unit, Contracted Water for agricultural use will no longer be made available to said acreage under the terms and conditions of this Agreement. However, D&W at its discretion shall have the option to deliver secondary water to these subdivisions, the terms to be specified in a separate agreement. D&W shall purchase the land owner's portion of the Contracted Water (3 acre feet per acre), should owner desire to sell, at the per acre foot price D&W then is paying for similar water, but in no event for less than \$300 per acre foot. The provisions of this paragraph do not apply to homes now existing within the acreage designated Exhibit 1.

9. The shareholders on the siphons will pay an annual assessment for each acre foot of Contracted Water to cover D & W's operation, maintenance and delivery costs to convey and deliver

the Contracted Water to the above siphons (the "Annual Assessment"). For the 1996 irrigation season, the Annual Assessment is calculated at \$9.00 per acre foot. The Annual Assessment for each acre foot of Contracted Water will include any and all fees paid by D&W in connection with the Water Rights, and may be adjusted each year by D&W to reflect the actual costs of conveyance, delivery, operation and maintenance, but will be limited to annual increases that do not exceed the rate of inflation as indicated by the Gross Domestic Product (GDP) deflator published by the U. S. Department of Commerce.

10. The terms of this agreement will commence April 1, 1996 and will continue until D&W's obligation to deliver the Contracted Water ceases under Paragraph 8 above.

11. Any necessary notifications of this agreement affecting the water delivery shall be given to the designated Water Masters.

12. This Agreement shall be construed in accordance with and governed by the laws of the state of Utah.

13. No rights or duties of the parties to this Agreement may be assigned or delegated other than as described herein without the prior written consent of the other parties.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date first above written.

DAVIS AND WEBER COUNTIES CANAL COMPANY

By *Allen W. Hunt*
President

BAMBROUGH IRRIGATION COMPANY

By *Farrisey Lee Swanton/Pres*
President
Danell Byram Director, Sec.

U

LEGAND

- 1- 3 Acres Mabel Kendall Estate
Melvin Kendall
Alan Condie
- 2- 1 Acre Mike Rendon
- 3- 4 Acres Farrell K. Rose
- 4- ~~12~~¹⁰ Acres Bill Birt
- 5- ~~12~~¹² Acres Verlo Petersen
- 6- 3 Acres Warren Reynolds
- 7- 5 Acres John Carricaburu
- 8- ~~18~~⁽²⁶⁾ Acres Stanley Cook
- 9- 20 Acres ~~EA. So. W. Byram~~
Dean Byram
- 10- 1 Acre Christopher Carter
- 11- 13 Acres Shawn Byram
- 12A+12B- 48 Acres Robert Byram & Sons
- 13- 20 Acres Kap Bros.
Calvin Kap
Keith Kap
Layne Kap
- 14- 26 Acres Dale Poil Estate
~~2~~ ACRES
LYNN COY

~~182~~
194 TOTAL ACRES

Does NOT include the 2 shareholders who cannot physically take delivery NOW Bambrugh wanted to do an insert as highlighted on p. 2
all Bambrugh shareholders have authorized Board to enter into the agreement.

GLOSSARY OF TERMS

- BAMBROUGH:** Bambrough Irrigation Company
South Weber, Utah
Farrell Rose, President
350 East South Weber Drive
South Weber, Utah 84405
Phone: (801) 479-4044
- D & W:** Davis and Weber Counties Canal Company
138 West 1300 North
Sunset, Utah 84015
Phone: (801) 774-6373
- STORAGE WATER:** Bambrough Irrigation Company is owner of record of 138 shares of stock in Weber River Water Users Association as evidenced by Stock Certificates #37 for 125 shares and #94 for 13 shares.
- AGRICULTURAL WATER:** Water used for agricultural (farming purposes exclusively and not for lawns and gardens.
- OTHER WATER:** Water used for lawn and garden and not for agricultural purposes.
- CONTRACTED WATER:** The amount of water the shareholders of Bambrough Irrigation have contracted for from D & W, i.e., three acre feet per acre.
- DELIVERED WATER:** The amount of water actually delivered through the syphons to the users.
- SYPHON SPECS:** Davis and Weber Counties Canal Company will specify the size and type of syphons to be installed and will inspect the installation of same.
- METER SPECS:** Davis and Weber Counties Canal Company will specify the size and type of meter and will install same. Bambrough Irrigation will pay for the actual purchase price of meter.
- ANNUAL ASSESSMENT:** The annual assessment to be paid will be determined by D & W's O&M costs per acre foot and will include the Weber River Water Users Assessment which will be paid by D & W on behalf of Bambrough.
- OTHER PURPOSES:** If a residence is currently located on land designated to be irrigated, that lawn and garden area aground the existing residence will be included in the total area irrigated.