

1073780

DOCUMENTS

WEBER BASIN WATER CONSERVANCY DISTRICT
DEPT. *Pat Hunter*

MAR 27 3 20 PM '89 *17.00*

SEARCHED
SERIALIZED

INDEXED
 VERIFIED
 MICROFILMED

FILED AND RECEIVED
V. Jay Wadman

ASSIGNMENT OF INTEREST IN WATER RIGHT CONTRACT
AND WATER WELLS

WHEREAS, Weber Basin Water Conservancy District, designated as "District", and Pineview Heights, Inc., a Utah corporation, designated as "Purchaser" entered into a certain contract for the sale and use of untreated water by said Purchaser, and

WHEREAS, said Purchaser's rights have been transferred to John U. Webber, and said water rights are to be utilized under exchange application number 369 filed with the State Engineer of the State of Utah and application number 27608 with the U. S. Bureau of Reclamation granting the right to exchange 150 acre feet of water obtainable by said application 27608 and contract with Weber Basin Water Conservancy District from four ten inch wells one hundred to five hundred feet deep in Section 23, Township 6 North, Range 1 East, S.L.B. & M. to be used for domestic purposes of 650 families, stock watering of 100 horses, and from April 1 to October 31 for irrigation of 20 acres. The diversion of said water to be on an escalation basis, beginning with 15 acre feet during 1971 and increasing by 15 acre feet each year thereafter until the full 150 acre feet is being diverted in 1980.

WHEREAS, John U. Webber as the owner of the premises to be served by the above-described water rights has sold and assigned unto V. Jay Wadman an undivided one-half interest in said property, together with all water rights as presently owned by said John U. Webber applicable to said real property,

NOW, THEREFORE, for and in consideration of the premises recited above, and other valuable considerations, receipt of which is hereby acknowledged, the undersigned John U. Webber, as Assignor does hereby sell and assign to V. Jay Wadman, as Assignee, an undivided one-half interest in all right, title and interest of said Assignor in said contract between Weber Basin Water Conservancy District and Pineview Heights, Inc., a Utah corporation, dated July 27, 1971 as assigned from said corporation to John U. Webber for the purchase of untreated water from said district by the withdrawal thereof by means of four wells, the locations of which are specifically described on page 1 of said contract dated July 27, 1971, a copy of which is attached hereto as Exhibit "A" and made a part hereof by this reference, excepting therefrom the certain well and water rights as utilized by said John U. Webber on Lot Number 13 and the certain water rights to be utilized by V. Jay Wadman on Lot Number 6 as shown on the attached Exhibit "B" hereto.

It is the intent of this Assignment to sell and assign to the Assignee, V. Jay Wadman, an undivided one-half interest to be held in common with John U. Webber in exchange application number 369 (area 35) as filed with the State Engineer of the State of Utah and an undivided one-half interest in application number 27608, U. S. Bureau of Reclamation, excepting only therefrom the proration proportion of water rights applicable to said lots 13 and 6 as shown on Exhibit "B". This Assignment is subject to the limitations as provided for in paragraph 10 of the contract, Exhibit "A", dated July 27, 1971, requiring approval of the Secretary of Interior. Said Assignment is further subject to all of the terms and provisions of said contract, Exhibit "A", and all terms and provisions of exchange application number 369 (area 35) in the office of the State Engineer of the State of Utah. The undersigned Assignor agrees that it will execute and deliver to

BOOK 1557 PAGE 2264

Assignee, V. Jay Wadman, any and all necessary documents, conveyances, well permits, and/or water deeds as may be necessary to consummate the transfer of the undivided one-half interest in the water rights described herein as owned by John U. Webber to said V. Jay Wadman, subject only to the exception as to any such water rights previously conveyed by said John U. Webber prior to this date as stated in this instrument.

IN WITNESS WHEREOF, Assignor has executed this Assignment this 21 day of September, 1978 at Ogden, Utah.

John U. Webber
Assignor

Signed in the presence of

Carol K. King

STATE OF UTAH)
) ss.
County of Weber)

On this 21st day of September, 1978, personally appeared before me JOHN U. WEBBER, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.

Carol K. King
NOTARY PUBLIC
Residing at Ogden, Utah.

My Commission Expires:

4-17-81

BOOK 1557 PAGE 2265

CONTRACT BETWEEN WEBER BASIN WATER CONSERVANCY DISTRICT
AND

PINEVIEW HEIGHTS, INC., a Utah Corporation

FOR THE SALE AND USE OF UNTREATED WATER

* * * * *

THIS CONTRACT made this 27th day of July, 19 71, between
WEBER BASIN WATER CONSERVANCY DISTRICT, organized under the laws of the State
of Utah, herein styled "District", and PINEVIEW HEIGHTS, INC., a Utah Corporation
of Ogden, Utah, herein styled the "Purchaser",

WITNESSETH:

WHEREAS, the District made a contract with the United States, dated
December 12, 1952 (thereafter amended) hereinafter referred to as the Govern-
ment-District contract for the repayment of certain costs of the works of
Weber Basin Project, hereinafter referred to as the Project, by means of which
water is and will be made available for use for irrigation, domestic and miscel-
laneous purposes, and

WHEREAS, the Purchaser desires, by means of // wells and/or other
diversionary devices, to divert and withdraw underground and other water
(herein sometimes referred to as "replaced water") for domestic and miscellaneous
purposes at or near the following location:

1. 2740 E. & 2740 S. of NW cor, Sec 23, T6N, R1E, SLB&M
2. 1850 ft. E and 100 ft S of NW cor Sec 23, T6N, R1E, SLB&M
3. 500 ft E 2200 ft S of NW cor Sec 23, T6N, R1E, SLB&M
4. 1600 ft E 1850 ft N SW cor Sec 23, T6N, R1E, SLB&M

which diversion will intercept and withdraw water that will require replace-
ment, under the direction of the State Engineer of Utah, and the District has
Project water to sell to the Purchaser to replace the water so intercepted and
withdrawn.

NOW, THEREFORE, in consideration of the mutual and dependent promises and
covenants herein contained, it is hereby mutually agreed by and between the
parties hereto as follows:

1. SALE OF WATER: The District for the price hereinafter specified,
hereby sells and agrees to deliver in the manner and at the place hereinafter

(L)

BOOK 1557 PAGE 2266

PLT

provided, and the Purchaser hereby purchases the right to use in each calendar year untreated Project Water in amounts of:

1 acre-foot in 1971
11 acre-feet in 1974 (an additional 10 a.f.)
31 acre-feet in 1978 (an additional 20 a.f.)
61 acre-feet in 1982 (an additional 30 a.f.)
101 acre-feet in 1986 (an additional 40 a.f.)
150 acre-feet in 1990 (an additional 49 a.f.)
and 150 acre-feet annually thereafter

except the District will not be obligated to deliver water to the Purchaser as herein provided until satisfactory evidence is furnished that the use of this water as replacement water has been approved by the State Engineer of Utah. If for any reason written notice of such approval by the State Engineer is not received by the District from the State Engineer by not later than October 31, 1971, this contract shall in all respects cease and terminate.

2. PLACE OF DELIVERY AND USE: The Project Water covered hereby is sold to the Purchaser for the replacement of water diverted, withdrawn or to be diverted or withdrawn by said Purchaser for domestic and miscellaneous use in and upon the following described lands in WEBER County, Utah:

(DESCRIPTION ATTACHED)

Its use as replacement water shall be subject to such rules and regulations as the State Engineer of Utah may prescribe.

Delivery of such Project water shall be as directed by the State Engineer

20-035-0016 to 0018, 0036, 0023, 0029, 0043, 0053-
 0012 to 0015, 0030, 0020, 0039, 0025,
 0008, 0009, 0031, 0038, 0055, 0040, 0037,
 0042, 0033, 0005, 0022, 0052, 0044, 0028-
 0019, 0045, 0032, 0027, 0041, 0034, 0026,
 0035, 0051, 0011, 0010, 0048, 0050,
 0046

2(a)
 JOHN U. WEBBER
 Replacement Agreement

Part of Section 23, T6N, R1E, SLB&M., U.S. Survey: Beginning at the South
 east corner of said Section 23; and running thence S 89°20' W along the Section
 line 2719.5 feet; thence N 0°40' W 500.0 feet; thence S 89°20' W 167.84 feet;
 thence N 16°02' E 588.35 feet to the South line of County Road; thence along
 the arc of a 333 foot radius curve to the right 64.22 feet whose long chord
 bears S 80°07' W 64.12 feet; thence N 87°45' W 128.00 feet; thence along the
 arc of a 267 foot radius curve to the left 241.16 feet whose long chord bears
 S 66°37'30" W 230.94 feet; thence S 41°00' W 195.00 feet; thence along the arc
 of a 333 foot radius curve to the right 229.57 feet whose long chord bears
 S 60°45' W 225.05 feet; thence S 80°30' W 266.0 feet; thence along the arc of
 a 433 foot radius curve to the right 177.60 feet; thence N 76° W 152.0 feet;
 thence along the arc of a 333 foot radius curve to the right 152 feet; thence
 N 39° W 128 feet; thence along the arc of a 267 foot radius curve to the left
 242.32 feet; thence S 89° W 80.0 feet; thence along the arc of a 283 foot
 radius curve to the right 405.02 feet; thence N 9° W 147 feet; thence along
 the arc of a 72 foot radius curve to the left 247.56 feet. All the above 14
 courses being on the South line of County Road; thence S 26°00' E 452 feet
 along the East line of County Road to U.S.A. property; thence S 78°30' W 287
 feet; thence N 47°39'59" W 64.90 feet to the West line of said Section 23;
 thence North 4387.8 feet to the Northwest corner of Section 23; thence East
 along Section line 3600.0 feet; thence South 2640 feet ± to the South line of
 the NE¼, Section 23; thence East 1680 feet; thence South 2640 feet to the P.O.B.
 Excepting 24.27 acres in County Road. Contains approximately 656 acres, subject
 to verification by field survey (copied from description prepared by Great Basin
 Engineering & Surveying, Inc., 3505 Grant Avenue, Ogden, Utah, dated August 20, 1969

BOOK 1557 PAGE 2268

or his representative at Pinview Reservoir. The District shall have no obligation to provide works or facilities of any type to conduct such Project Water from such point of delivery to its ultimate place of use. The Purchaser shall have no right to hold over or accumulate Project Water from year to year, nor to sell or rent the Project Water.

3. OBLIGATION OF PURCHASER TO PAY FOR PROJECT WATER: For the purchase of the annual quantity of Project Water, which the District holds and will hold for the Purchaser as herein provided, the Purchaser shall pay to the District the initial sum of \$225.00 upon the execution hereof, and thereafter the Purchaser shall pay the District an annual amount to consist of the total of the following items:

- (a) \$ 15.00 per acre-foot of water purchased as described in Paragraph 1 hereof, to apply on the District's obligation under the repayment contract No. 14-06-400-33 between the United States and the District, and as it has been or may be amended and supplemented.
- (b) An amount not to exceed \$5.00 annually as determined by the District to pay the District's special costs and expenses in administering this allotment.
- (c) An amount equal to the assessments imposed by the State Engineer for the distribution of the water replaced hereunder.
- (d) A fair proportionate amount of estimated operating and maintenance charges of the District for the then calendar year. Such fair proportionate amount shall be determined each year by the Board of Directors of the District and the determination shall be final and conclusive. If such estimate is more or less than the actual cost thereof, an appropriate adjustment will be made in the annual amount for the year following the year for which the estimate was made.
- (e) Two (2c) cents per acre-foot for each acre-foot of water sold as provided in Paragraph 1 hereof and which is not as of January 1 of each year then subject to delivery during such year in accordance with the delivery schedule set out in said Paragraph 1.

The first annual payment under items (a), (b), (c), (d) and (e) above shall be made by the Purchaser to the District upon demand by the District and

before the first water is delivered and shall be in payment for water available for the use of Purchaser as herein provided for calendar year 1971, and succeeding annual payments shall be made by the Purchaser to the District on or before January 1 of each year thereafter commencing January 1, 1972, provided, however, that upon payment in full of that part of the construction obligation of the District apportioned to the development unit applicable to this contract, no further payments under item (a) shall be required. Each annual payment shall be made to the District whether or not all or any part of the water is called for or used hereunder.

4. PENALTY FOR DELINQUENCY: Every installment or charge required to be paid to District under this contract, which shall remain unpaid after its due date, shall bear interest at the rate of six percent (6%) per annum from the date of delinquency.

5. REMEDIES OF DISTRICT IN CASE OF DEFAULT: The annual amount payable hereunder shall be and constitute a perpetual lien upon the lands hereinabove described. If the Purchaser shall fail to make any payment due hereunder on or before the due date, the District may refuse the delivery of water, but this remedy is not exclusive, and the District may exercise any other remedy given by this contract or by law to enforce collection of any payment due hereunder, and for the foreclosure of the lien hereby created.

6. RELIEF IN EVENT OF DROUTH AND WATER SHORTAGE: In the event there is a shortage of water caused by drouth, inaccuracies in the distribution not resulting from negligence, hostile diversion, prior or superior claims or other causes not within the control of the District, no liability shall accrue against the District or the United States or any of their officers, agents or employees or either of them for any damage, direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortage, allocations of treated and untreated water for municipal, domestic and industrial use shall have first priority.

7. CONSTRUCTION, OPERATION AND MAINTENANCE OF PURCHASER'S FACILITIES: The Purchaser shall construct, operate and maintain without cost to District or the United States, the wells and facilities necessary to secure and accurately

measure its water supply. The metering or other measuring devices installed by Purchaser shall be satisfactory to the State Engineer. The District has no responsibility for the quantity or quality of water that the Purchaser is able to secure through the operation of its wells and other facilities.

8. BENEFICIAL USE OF WATER: The basis, the measure and the limit of the right of the Purchaser in the use of water shall rest perpetually in the beneficial application thereof, and the Purchaser agrees to put the water purchased by it hereunder to beneficial use in accordance with law.

9. OBSERVATION OF FEDERAL AND STATE POLLUTION LAWS: The Purchaser agrees that it will comply fully with all applicable Federal laws, orders and regulations, and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants.

10. ASSIGNMENTS LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED: The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto, but as long as payments are required under Article 3(a) above neither this contract nor any assignment or transfer of this contract nor any part thereof or interest therein shall be valid until approved by the Secretary of the Interior.

11. ACCELERATION OF DELIVERY SCHEDULE: In the event the District at any time prior to January 1, 1990, receives a bona fide offer to purchase water which in its judgment it cannot supply except by invading that portion of the water covered hereby which is allocated to deliveries to commence in the future years, the District may notify the Purchaser hereunder in writing that it proposes to terminate and cancel this contract as to a portion or all of the water so allocated to deliveries scheduled to commence in then future years, and thereupon the Purchaser shall,

- (a) Within a period of one month after receipt of such notice elect in writing delivered to the District to accelerate the delivery and payment schedules set out in paragraphs 1 and 3 hereof to encompass for immediate delivery and full payment the portion of the water referred to in the District's notice to

77

Purchaser, or

- (b) Be deemed to have acquiesced in and consented to the termination and cancellation as set out in the District's notice to the Purchaser.

Additionally, the Purchaser may of its own volition accelerate deliveries on a permanent basis by giving the District written notice of its intention so to do not later than three months prior to January 1 of the year in which the accelerated deliveries are to commence; provided, however, that not more than 150.0 acre-feet may be so accelerated in any one calendar year except with the District's written consent thereto.

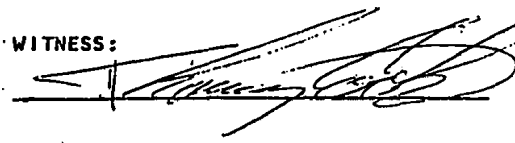
12. NOTICE: Any notice herein required to be given to the Purchaser shall be sufficiently given if sent by registered mail addressed to the Purchaser at: 2604 Madison Ave., Ogden, Utah and to the District if sent to 2837 E. Highway 193, Layton, Utah 84041.


13. This agreement shall not be effective until approved by the Secretary of the Interior, or his duly authorized representative. This agreement may be amended by the parties hereto and such amendments shall be effective upon approval of the Secretary of the Interior or his duly authorized representative.

IN WITNESS WHEREOF, the parties have caused this contract to be executed and signed the day and year first above written.

BOOK 1557 PAGE 2272

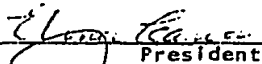
WITNESS:



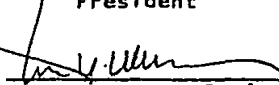
PIEVIEW HEIGHTS, INC., a Utah Corporation
 BY: , PRES
 Purchaser

ATTEST:


 Secretary

WEBER BASIN WATER CONSERVANCY DISTRICT
 BY: 
 President

APPROVED:


 Landowner

 Authorized Representative of the
 Secretary of Interior

JCP Per 10/12

77

