

FEDERAL LAND BANK OF BERKELEY
IRRIGATION SYSTEM OPERATING AGREEMENT

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Index Don G. Yates

FLBA of PROVO

Loan 206925

For Bank Use

THIS AGREEMENT, made this 29 day of December, 1973, between all the users of that certain irrigation system situated in the County of Juab, State of Utah, and more particularly described in paragraph 9 of this agreement,

WITNESSETH:

That to more specifically determine the rights of the parties hereto, it is mutually agreed as follows:

(1) This agreement shall not become effective until signed and acknowledged by all the owners of said irrigation system, but when so signed and acknowledged shall become effective as of the date hereinabove specified.

(2) Said system is owned in common by the parties hereto in the proportionate interests specified on the respective signature pages hereto attached, and said parties are entitled to have delivered from and through said system to the lands described on the respective signature pages, for domestic, livestock, irrigation, or other lawful uses thereon, such proportionate quantities of water now or hereafter developed by said system as the interest of each party bears to the total of the interests of all the parties hereto.

(3) Said system shall not be or become a public utility, and except as hereinafter provided in paragraph 5, shall be operated only for the delivery of water for the uses above specified on the lands of the parties hereto; the respective interests and rights in said system are hereby made appurtenant to the hereinafter described lands of the parties hereto, and shall not be separated therefrom, in whole or in part, without the consent in writing of the owner of the land affected, and the holder or holders of any liens or encumbrances thereon, except tax liens. When a part only of the tract of land described on any signature page hereto is transferred, such part of the rights and obligations herein specified shall pass with such transfer as the number of acres transferred bears to the total acres in the whole tract, unless the instrument of conveyance otherwise specifies. The part of the tract so transferred shall, however, be subject to liens and encumbrances now existing or hereafter existing at the date of such transfer.

(4) Each party hereby agrees to pay such proportionate part of the cost of constructing, altering, improving, repairing, maintaining, operating, and supervising said system as his interest in the system bears to the total interests; provided, however, that any party may elect not to take his proportionate quantity of water for any period, in which event that party's proportionate quantity shall be distributed to the remaining parties in the proportion that their respective interests in the system bear to the total interests of the parties taking water, and the actual costs of operating the system during that period shall be prorated in like manner among such remaining parties, unless the party electing not to take his proportionate quantity shall assign his right to another party, in which event the party to which the right is assigned shall pay the proportionate part of the actual costs of operating the system during that period of the party making the assignment. Payments shall be made monthly for each month's expense on or before the 10th day of the next succeeding month, unless a different date of payment is agreed upon by the parties owning the majority interest. Payments shall be made to the manager of the system. No party shall be entitled to delivery of water when delinquent in such payments, and any party hereto may pay the amount due from any other party delinquent in such payment, and the party for whom such payment is made hereby

ENTRY NO.	<u>134648</u>
RECORDED	<u>Jan 2, 1974</u> AT <u>2:50 PM</u> BOOK <u>237</u> PAGE <u>328</u>
REQUEST OF	<u>K. J. Sperry</u>
FREE PAID	LUGILEK II 1973 Juab County Recorder
	By <u>Barbara Swales</u> Deputy

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agrees to repay on demand the amount thereof to the party making such payment, together with interest at _____ percent per annum from the date of such payment; provided, however, that if the holder of any lien on the land of any party shall have filed with the manager appointed under this agreement a written request for notice of delinquencies of such landowner, delivery of water shall not be withheld because of delinquencies of such landowner, nor shall any action be commenced by any party paying the delinquent amount due from such landowner, until fifteen days after written notice of the amount of such delinquency and the period covered thereby is mailed to such lienholder.

(5) Water may be delivered for use upon lands owned by persons who are not parties to this agreement only upon the following conditions:

(a) When water is available from the system in excess of the reasonable needs of the parties to the agreement, or when needed by such persons not parties hereto during an emergency shortage, or when such person is a neighboring landowner to whom no other water supply for irrigation or domestic purposes is equally available; and

(b) When such delivery is made pursuant to a written contract consented to in writing by all parties hereto, and limiting such delivery to one irrigation season at rates specified in said contract.

(6) Each party hereby grants and confirms to each other party hereto such rights of way across any of the lands hereinafter described as may be necessary to enable each party to convey to his respective lands his proportionate share of water from said system, or any system that may be constructed to replace the present system, together with the right of ingress and egress for the purpose of operating and maintaining the pipeline, ditch, or other conduit now or hereafter installed. The costs of installing, operating, and maintaining conduits and rights of way used solely for the delivery of water to the lands of only one party shall be paid solely by such party. Like costs for conduits and rights of way used for the delivery of water to the lands of two or more parties shall be paid by said parties in the proportion that the acreage so irrigated bears to the total acreage irrigated through said conduits. Conduits crossing lands not irrigated from such conduits shall be maintained and kept in repair entirely by the owners of the lands served by such conduits. Such payments shall be made and may be enforced in the manner provided in paragraph 4.

(7) A manager of the system shall be elected annually by vote of the parties owning the majority interest, and shall serve in such capacity for a period of one year, or until his successor is elected. A meeting for the election of the first manager shall be held within thirty days after the effective date of this agreement, and the term of the manager first elected shall begin as of the date of this agreement. Regular annual meetings for the election of a manager shall be held beginning one year from the effective date of this agreement, and the manager so elected shall hold office for the year commencing on such date. It shall be the duty of the manager to keep all minutes, books, accounts, papers, and records in connection with the system; to supervise the operation, maintenance, repair, and improvement of the system; to apportion the costs thereof and to notify the parties in writing of the charges payable by them respectively; and to regulate the distribution of water among the various users. The manager shall receive such reasonable compensation as shall be agreed upon by the parties owning the majority interest. The parties agree that when deemed necessary for the economical use of the water, rotation of use may be required by the manager. A manager may be removed from office prior to the expiration of his term and a successor elected for the unexpired portion by vote of the parties owning the majority interest. In the event there are not more than two parties to this agreement, the provisions of this paragraph shall not be operative.

(8) All questions arising in connection with the use of the system which are not herein provided for, shall be decided by vote of the parties owning the majority interest. A meeting of the parties may be called at any time by written notice signed by the manager, or by at least two parties, and delivered

personally to each party or mailed to each party at least twenty-four hours before the time of the meeting, unless all the parties are present and agree to a meeting without notice. At each meeting, parties owning the majority interest shall constitute a quorum, and at each meeting the manager shall preside.

(9) In addition to the conduits and rights of way hereinabove mentioned, said irrigation system consists of the following:

- (a) Type of pumping plant or diversion works: 16 inch diameter well casing; well depth 311 feet
Application 26380-53-8
- (b) Source of water supply: Underground water described in
- (c) Type of water right (riparian, appropriative, or underground):
Underground
- (d) Said pumping plant or diversion works is located upon that certain parcel of land situated in the County of Juab, State of Utah, containing _____ acres, and more particularly described as follows:

A 30 foot square exactly surrounding the point of diversion which is 5955.00 feet West and 60.63 feet South from the Northeast corner of Section 21, Township 11 South, Range 1 East, SLB&M.

(10) Said system described in paragraph 9 may be replaced in whole or in part, or moved in whole or in part to any other location on any of the lands of any of the parties hereto with the written consent of the parties owning the majority interest and of the owner of the land to which the same is moved. No such replacement or change in location shall change the rights and liabilities of the parties hereto, which shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors in interest, or assigns of the parties hereto.

IN WITNESS WHEREOF, the owners of interest in said system have hereunto signed their names and specified their interests as follows:

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PARTY NO. 1 ALGER E. SUTHERLAND and ZELLA A. SUTHERLAND, husband and wife, joint tenants.

- (a) Proportionate interest: 33-1/3 percent.
(b) Land for which water shall be delivered is that certain parcel or parcels of land situated in the County of Juab, State of Utah, consisting of 78.5 acres, and more particularly described as follows:

Com. 27 rods N of the SE corner of the SE 1/4 of Sec. 18, T 11 S, R 1 E, SLB&M; th W 80 rods, N 26 rods, E 80 rods, S 26 rods to beginning. Cont: 13 acres

Com. at the SE corner of the SE 1/4 of Sec. 18, T 11 S, R 1 E, SLB&M; th N 27 rods, W 80 rods, S 27 rods, E 80 rods to beginning. Cont. 13-1/2 acres

Com. 1 rod N of SE corner of SW 1/4 of Sec. 17, T 11 S, R 1 E, SLB&M, thence W 160 rods, N 26 ords, E 160 rods, S 26 rods to beginning. Cont, 26 acres

Com. 27 rods N of SE corner of SW 1/4 of Sec. 17, T 11 S, R 1 E, SLB&M, th W 160 rods, N 26 rods, E 160 rods, S 26 rods to beginning. Cont. 26 acres

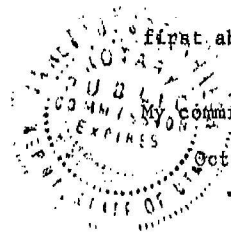
Date 28 December 1973

Handwritten signatures of Alger E. Sutherland (Owner) and Zella A. Sutherland (Spouse)

STATE OF UTAH)
County of Juab) ss.

On this 28th day of December, in the year 1973, before me, Janet B. Greenhalgh, a notary public in and for said County and State, personally appeared Alger E. Sutherland and Zella A. Sutherland, known to me to be the person s whose name are subscribed to the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.



My commission expires: October 2, 1977

Handwritten signature of Janet B. Greenhalgh, Notary Public in and for said County and State.

Residence: Nephi, Utah

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PARTY NO. 2 DON G. YATES and ELIZABETH S. YATES, husband and wife, joint tenants.

- (a) Proportionate interest: 33-1/3 percent.
- (b) Land for which water shall be delivered is that certain parcel or parcels of land situated in the County of Juab, State of Utah, consisting of 102.855 acres, and more particularly described as follows:

Described on Schedule "A" attached hereto.

Date 28 December 1973

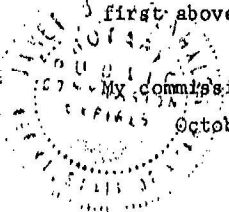
Don G. Yates
Don G. Yates (Owner)

Elizabeth S. Yates
Elizabeth S. Yates (Spouse)

STATE OF UTAH)
County of Juab) ss.

On this 28th day of December, in the year 19 73, before me, Janet B. Greenhalgh, a notary public in and for said County and State, personally appeared Don G. Yates and Elizabeth S. Yates, known to me to be the person s whose name are subscribed to the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate first above written.



My commission expires:
October 2, 1977

Janet B. Greenhalgh
Notary Public in and for said County and State.

Residence: Nephi, Utah

SCHEDULE "A"

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Beg. 10 rods S of NE corner of SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec. 19, T 11 S, R 1 E, SLB&M, thence S 22 rods, 10-3/4 ft, thence W 18 rods, more or less to railroad, thence N along railroad 23 rods, more or less to point due W of beg., thence E to beginning. Cont. 2.6 acres

Beg. 24 rods, 14 feet, N of SE cor. of NE $\frac{1}{4}$ of Sec. 19, T 11 S, R 1 E, SLB&M, thence N 22 rods 8.25 feet, thence W 18 rods, more or less to E side of LA&SL railroad track, thence S along SD railroad, 23 rods, more or less, to a point due W of beginning, thence E 18 rods, more or less to beginning. Cont. 2.075 acres

Beg. at NE corner of Sec. 19, T 11 S, R 1 E, SLB&M, S 70 rods W 15 rods, more or less to LA&SL railroad track, thence N'ly along said railroad track 70 rods, more or less, to N line of Sec. 19, thence E to NE corner of said section 19, the place of beginning. Cont. 4.41 acres

Beg. 108 feet W and 50 feet S of a point in the present fence line of the W boundary of State Highway which is 1630 feet S of the N line of Sec. 20, T 11 S, R 1 E, SLB&M, thence W 287.6 feet, thence S 9°28' W 181.24 feet to a point 112 rods, 10.75 feet, S of the N line of said Sec. 20, thence E 316.97 feet to a point due S of the place of beginning, thence N 178.75 feet to beginning. Cont. 1.24 acres

Beg. 34 rods 14 feet N of SW corner of NW $\frac{1}{4}$ of Sec. 20, T 11 S, R 1 E, SLB&M, N 12-1/2 rods, E 147.891 rods, S 9°28' W 12-1/2 rods, more or less, to a point due E of beginning W 145 rods, more or less to beginning. Cont. 11.6 acres

Also: Beg. 24 rods, 1r feet, N of W corner of NW $\frac{1}{4}$ of Sec. 20, T 11 S, R 1 E, SLB&M, thence E 136 rods, thence S 24 rods, 14 feet, thence E 4 rods, thence N 9°28' E 34 rods, 14 feet, more or less to a point 34 rods, 14 feet N of S boundary line of 1/4 section, thence W 1er rods, more or less, to section line, thence S 10 rods to beginning. Cont. 10 acres, more or less, making a total of 21.6 acres

Beg. at NW corner of Sec 20, T 11 S, R 1 E, SLB&M, th E 80 rods, S 40 rods, W 80 rods; N 40 rods to beginning. Cont. 20 acres Also: N $\frac{1}{2}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 20, T 11 S, R 1 E, SLB&M. Cont. 20 acres. Total 40 acres.

Beg. 100 rods, S of NW corner of Sec. 20, T 11 S, R 1 E, SLB&M, thence E 150 rods, S 9°28' W 12 rods, 10-3/4 feet or more to a point 112 rods 10-3/4 feet S of N boundary of said section, thence W 147.891 rods, more or less to said section line, N 12 rods 10-3/4 feet to beginning. Also beg. 90 rods S of NW corner of Sec. 20, T 11 S, R 1 E, SLB&M, thence E 151-2/3 rods, S 9°28' W 10 rods, more or less to a point 100 rods, S of N boundary line of said Section, W 150 rods, N 10 rods to beginning. Except the following: Beg. at a point in the present fence line on W boundary of State Highway, 1630 feet S of N boundary of Sec. 20, T 11 S, R 1 E, SLB&M, thence W 108 feet, S 50 feet, W 287.6 feet, S 9°28" W 185 feet, more or less to a point 112 rods 10.75 feet S of N boundary of said Sec. 20, thence E 555 feet more or less to point 56 feet of present fence line on E boundary of State Highway thence N 9°28' E parallel with said highway 235 feet, more or less to a point due E of beginning, thence W 150 feet, more or less to point of beginning. Cont. 2.67 acres. Total acres 19.33 acres

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PARTY NO. 3. PAUL W. NEILSEN and EDNA A. NEILSEN, husband wife, and CALVIN E. NEILSEN and SARAH C. NEILSEN, husband and wife, as joint tenants.

(a) Proportionate interest; 33-1/3 percent.

(b) Land for which water shall be delivered is that certain parcel or parcels of land situate in the County of Juab, State of Utah, consisting of 109.6 acres, and more particularly described as follows:

 Beg. at a point 1.33 chains S from quarter section corner between Sections 19 & 20, T 11 S, R 1 E, SLB&M, thence E 1.42 chains, S 0.693 chains, thence E 34.10 chains to county road, thence SW'ly along county road 72 rods, 3 links, more or less, to S line of N 1/2 of SW 1/4, thence W 62 rods, more or less, to point 48 rods, 20 links S and E 1° S 61 rods, 5 links S 30 rods, 15 links, more or less to S line of N 1/2 of SW 1/4 of said section, thence N 30 rods, 15 links, thence W 1° N 61 rods, 5 links to section line, N 89°00' W 26 rods, 7 links to E side of SPLA&SL railroad right of way, thence S 4° W along E side of said right of way 31 rods, 20 links, W 150.2 feet, N 13°16' W 321.1 feet, N 1° E 809.9 feet, thence N 21°41' W 70 feet E 683.5 feet to beginning. Cont. 62 acres, more or less

 Beg. at a point 1.33 chains S from quarter section corner between Sections 19 & 20, T 11 S, R 1 E, SLB&M, thence W 683.5 feet N 21°41' W 143 feet, W 58.7 feet, more or less, thence N 11°26' W 229 feet, N 36°9' W 300 feet N 7°50' W 371.4 feet, N 491 feet E, 720 feet, more or less to E side of SPLA&SL railroad right of way S 20° W along E side of said right of way 55 rods 2 links, E 18 rods, to section line, thence E 186. rods, S 24 rods, 14 feet, E 2 rods to county road, thence SW'ly along county road 8 rods, 7 links W 34.10 chains N 0.693 chains W 1.42 chains to beginning. Cont. 52 acres, more or less. Less 4.4 acres for railroad right of way.

DATED: 28 December 1973

Paul W. Neilsen
Paul W. Neilsen

Edna A. Neilsen
Edna A. Neilsen

Calvin E. Neilsen
Calvin E. Neilsen

Sarah C. Neilsen
Sarah C. Neilsen

STATE OF UTAH)
) ss.
County of Juab)

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On this 28th day of December, in the year 1973, before me,
Janet B. Greenhalgh a notary public in and for said County and
State, personally appeared PAUL W. NEILSEN and EDNA A. NEILSEN, husband and
wife, and CALVIN E. NEILSEN and SARAH C. NEILSEN, husband and wife, known to
me to be the persons whose names are subscribed to the within instrument, and
acknowledged to me that they executed the same freely and voluntarily for the
uses and purposes therein mentioned.

WITNESS my hand and official seal the day and year in this certificate
first above written.

Janet B. Greenhalgh
Notary Public in and for said County
and State
Residence: Nephi, Utah
Commission Expires: October 2, 1977