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FILED
 FEB 27 1979
Claw Nullet
of Cannonville Nullet

IN THE FIFTH JUDICIAL DISTRICT COURT OF IRON COUNTY

STATE OF UTAH

	Recorded at	Willard R. Bishop
	Request of	
	Date	May 23-79 9A M
	File No.	IR. 250
	Page	789-96
TOWN OF BRIANHEAD, a municipal corporation of the State of Utah,	by	<i>Willard R. Bishop</i> Iron County Records
Plaintiff,	Deputy	
vs.	Indy'd	
BRIANHEAD WATER ASSOCIATION, INC., a Utah non-profit corporation, and JOHN DOES I through X,	Abet'd	
Defendants.	Proof	

JUDGMENT 208951

Civil No. 8057

The above-entitled matter came regularly before the Court for hearing on 27 February 1979, pursuant to a certain Stipulation for Judgment executed by the Plaintiff, TOWN OF BRIANHEAD, and by Defendant BRIANHEAD WATER ASSOCIATION, INC., through their respective counsel of record, Mr. Willard R. Bishop, and Mr. H. Bruce Cox. The Court having reviewed the Stipulation for Judgment, and having determined that Defendant BRIANHEAD WATER ASSOCIATION, INC., takes nothing by its Answer heretofore filed and waives all defenses therein asserted, no longer opposing the relief sought by Plaintiff in its Complaint, and the Court being fully advised in the premises as to fact and law, and the relief sought by Plaintiff being deemed proper pursuant to U.C.A. 78-34-6 (1953, as amended) and pursuant to the Stipulation for Judgment and Utah law generally, and good cause appearing:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

I. Plaintiff TOWN OF BRIANHEAD, a municipal corporation of the State of Utah, should be, and it hereby is, granted judgment condemning for its use, those special use permits, perpetual easements, leasehold interests, and other items described in the attached "Schedule of Property", which is

incorporated by this reference. Further, Plaintiff is granted judgment of condemnation for its use, all assets of Defendant BRIANHEAD WATER ASSOCIATION, INC., other than as set forth in the attached "Schedule of Property", of whatsoever nature, excluding only cash and receivables.

2. Defendant BRIANHEAD WATER ASSOCIATION, INC., shall deliver to Plaintiff TOWN OF BRIANHEAD, only such cash and receivables as may be deemed proper by the officers and directors of BRIANHEAD WATER ASSOCIATION, INC., it being the intent of said Defendant to pay certain of its liabilities, wind up its affairs, and enter into voluntary dissolution in the near future. It is contemplated that in such dissolution, after provision for expenses of dissolution is made, that present members of Defendant BRIANHEAD WATER ASSOCIATION, INC., will be paid up to a maximum of \$1.00 per share, in full extinguishment and cancellation of such members' shares in Defendant corporation and of any rights such members may have in the water system. Any balance remaining thereafter shall be paid to Plaintiff. Any cash paid to Plaintiff by Defendant shall not be used for current operating expenses of Plaintiff's water system, but shall be set aside and used only for capital improvements of the water system owned by Plaintiff.

3. Any assets held by Defendant BRIANHEAD WATER ASSOCIATION, INC., upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution of said corporation, shall be returned, transferred or conveyed in accordance with such requirements except as such may properly pass to Plaintiff TOWN OF BRIANHEAD by reason of these proceedings. In the event that Defendant corporation erroneously conveys or delivers any such property over to Plaintiff, then upon satisfactory proof, Plaintiff shall return the same to the original transferor thereof, or successor in interest.

4. Any assets held by Defendant BRIANHEAD WATER ASSOCIATION, INC., subject to limitation permitting their use only for non-profit purposes specified under Utah law pertaining to non-profit corporations, but not held upon a condition requiring

return, transfer, or conveyance by reason of the dissolution of Defendant corporation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of BRIANHEAD WATER ASSOCIATION, INC., to the extent that said assets are not property transferable to Plaintiff TOWN OF BRIANHEAD and/or not accepted by said Plaintiff. In the event that Defendant corporation erroneously conveys or delivers any such property or assets over to Plaintiff, then, upon satisfactory proof, such shall be transferred to a properly qualified recipient.

5. In the event that other assets are discovered following the entry of this Judgment, or in the event that the items described in the attached "Schedule of Property" are later discovered to be differently described, Defendant BRIANHEAD WATER ASSOCIATION shall cooperate reasonably with Plaintiff in accomplishing transfer of the same to Plaintiff, and shall execute such instruments as are necessary to accomplish such transfer, without warranties as to ownership or status of title.

6. Plaintiff shall completely assume and indemnify and hold Defendant and its present and former officers and representatives harmless from all liabilities of Defendant, both contractual or arising from any tort, whether actual or presently just contingent, both matured and those due in the future. This assumption of liabilities by Plaintiff is intended to be all inclusive, provided that to the extent allowed by law, that Plaintiff will also succeed to any offsets or other defenses that Defendant could properly assert. The liabilities assumed by Plaintiff shall include but not be limited to:

A. Both asserted and non-asserted tort claims including any which may hereafter arise from any claim of defective design or construction or from trespass of continuing trespass of waterlines, etc. over private property without permission or easement.

B. All contractual claims and obligation including quasi-contractual or implied contractual terms and conditions such as obligations which might be implied or be asserted to verbally exist to provide

water connections and/or service as compensation or consideration for a private property owner allowing the water system to cross his property. The present officers and directors of Defendant represent that they were not officers and directors when much of the water system was installed, but that they believe that there are some unresolved issues wherein property owners may claim the right to receive water service on their property and/or to receive one or more free connection fees in return for granting easements or otherwise allowing a portion of the water system to pass through their property. There is no intent to establish or strengthen a claim of any third party by this provision, and no third party beneficiaries are intended other than the present and future customers of the respective water systems of Plaintiff and Defendant. This provision for assumption of possible water service and/or connection obligations by Plaintiff shall not be construed to prohibit Plaintiff from discharging the obligation by judicial process such as by instituting condemnation action for any property crossed by the water system for which no easement has been obtained, or from raising any legal defense.

C. Any obligation to provide water service in the future because of prepayments to Defendant or other credits granted by Defendant in favor of certain water customers.

7. TOWN OF BRIANHEAD shall continue to serve all customers now being provided culinary water service by BRIANHEAD WATER ASSOCIATION, INC., and shall provide such service to said customers upon an equal basis as culinary water service to residents of TOWN OF BRIANHEAD, and at an equal cost to that charged residents of TOWN OF BRIANHEAD, it being the intent of this order that present customers of BRIANHEAD WATER ASSOCIATION, INC., be treated as though they were residents of the TOWN OF BRIANHEAD in all matters relating to culinary water service. Plaintiff TOWN OF BRIANHEAD shall have the right to raise rates and/or charges for culinary water connection fees and/or culinary water service, but shall not charge present customers of BRIANHEAD WATER ASSOCIATION, INC., a greater amount for culinary water services or connection fees than it charges residents of the TOWN OF BRIANHEAD.

8. Plaintiff shall pay to Defendant BRIANHEAD WATER ASSOCIATION, INC., the sum of \$1.00, in full and complete monetary compensation for the damages suffered by this condemnation, it being recognized that the same will afford substantial benefits to Defendant corporation and its members.

9. To the extent that it has not already done so, Plaintiff TOWN OF BRIANHEAD shall establish a municipal water system

waiting list, with resulting priority for service, as follows:

A. TOWN OF BRIANHEAD will send out by simultaneous mailing an application form to all persons or entities listed on the current waiting lists, at the addresses listed thereon.

B. A downpayment of \$1,000.00 per connection desired, will be required of those desiring to apply for service who wish to be placed on the waiting list.

C. Applications will be honored on a "first come first served" basis, in the chronological order in which such applications and downpayments are received by TOWN OF BRIANHEAD.

D. Monies received by Plaintiff in connection with such applications shall be set aside and designated for costs of connecting that applicant to the water system or for return (without interest) to the applicant if no connection permit is ever issued, or upon demand for refund by the applicant if demanded in writing by the applicant before the permit is issued.

E. Permits to connect to the water system controlled by TOWN OF BRIANHEAD shall be issued as available, and in the order established by the waiting list to be created, at the price and in accordance with the ordinances and regulations established by TOWN OF BRIANHEAD except such price shall not discriminate against present members of BRIANHEAD WATER ASSOCIATION, INC., who are not residents of the TOWN OF BRIANHEAD.

F. In the event that an individual is issued a permit to connect to the water system, that connection must be made and used within twelve months of issuance of the permit. If it is not used, that individual's name shall be removed from the waiting list, his priority forfeited, and downpayment is to be refunded without interest.

G. The purpose of establishing the foregoing system is to reconcile the relative priorities of the applicants for culinary water service as they are now listed on the lists maintained by TOWN OF BRIANHEAD and by BRIANHEAD WATER ASSOCIATION.

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DATED: 27 February 1979.

J. McLean Burns
J. McLEAN BURNS, District Judge

APPROVED:

Willard R. Bishop
WILLARD R. BISHOP
Attorney for Plaintiff

ASHWORTH & COX
PROFESSIONAL CORPORATION

H. Bruce Cox
H. BRUCE COX
Attorney for Defendant

BRIANHEAD WATER ASSOCIATION, INC.

CERTIFICATE OF SERVICE

SERVED the within and foregoing document upon the Defendants above-named by mailing a full true, and correct copy of said document to Mr. H. Bruce Cox, Ashworth & Cox, 228 South 4th Street, Las Vegas, Nevada 89101; first class postage fully prepaid this 27th day of February 1979.

Linda S. [Signature]

STATE OF UTAH

County of Iron

I, Clair Hulet, County Clerk and ex-officio Clerk of the Fifth Judicial District Court in and for Iron County, hereby certify that the foregoing is a full true and correct copy of the original JUDGMENT, Civil No. 8057,

now on file and recorded in my office.

Witness my hand and the seal of my said office in Parsons, Iron County, Utah this 18th day of MAY, 19 79

Clair Hulet
Clerk of District Court
Iron County, Utah
J. Carver Hulet
Deputy Clerk

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EXHIBIT "B"

SCHEDULE OF PROPERTY

1. Special Use Permit, covering the following described land in Iron County, Utah, as follows:

A strip of land twenty (20') feet wide, ten (10') feet on each side of centerline, and two (2) sites; one 100 feet x 100 feet and one 100 feet x 50 feet, described as beginning at a point South 3950.0 feet and East 1320.0 feet from the Northwest corner of Section 11, Township 36 South, Range 9 West, Salt Lake Base and Meridian; thence S. 73°05'E., 108.5 feet; thence S. 58°05'E., 638.5 feet; thence S. 71°05'E., 171.5 feet; thence S. 61°30'E., 155.0 feet; (storage tank area) thence S. 100.0 feet; thence W. 150.0 feet; thence N. 100.0 feet; thence E. 150.0 feet; (pipeline alignment continued) thence N. 66°30'E., 320.0 feet; thence N. 90°00' E., 570.0 feet; thence S. 60°00' E., 161.0 feet; thence S. 28°00'E., 211.0 feet; (spring collection area) thence N. 90°00'E., 75 feet; thence S. 00°00'E., 100.0 feet; thence N. 90°00'W., 100.0 feet; thence N. 00°00' W., 100.00 feet; thence N. 90°00'E., 25.0 feet; all located in the S½SE¼ and E½SW¼, Section 11, Township 36 South Range 9 West, Salt Lake Base and Meridian, Iron County, Utah. FOR THE PURPOSE construction and installation of a water collection system (including protective fencing), 2,500 feet of buried water transmission line and a 300,000 gallon, above-ground water storage tank.

2. Perpetual easements in the nature of rights-of-way, for the purposes of erecting, constructing, installing and thereafter using, operating, inspecting, repairing, maintaining, replacing and removing water lines and related facilities over, across and through certain lands located in Iron County, Utah, the centerlines of which are described as follows:

A. Beginning at a point East 285 feet and North 350 feet from the section corner common to Sections 2, 3, 10 & 11, Township 36 South, Range 9 West, Salt Lake Base and Meridian; and running thence South 46° 30' West 470 feet, thence South 54° East 10 feet; thence South 46° 30' West 810 feet; thence South 21° 30' West 210 feet; thence South 16° 10' East 340 feet; thence South 26° East 165 feet; thence North 67° East 100 feet; thence South 24° 30' East 320 feet; thence South 4° 10' West 210 feet; thence East 155 feet; thence South 1° West 845 feet; thence South 82° 30' East 90 feet; thence South 38° 30' 15" East 1655 feet; thence South 72° 27' 15" East 55.394 feet; thence South 54° 55' 15" East 128.80 feet; thence South 57° 47' 15" East 501.68 feet; thence South 67° 18' 15" East 278.77 feet the said point being East 2230 feet and South 4445 feet from the point of beginning.

B. Beginning at a point East 1000 feet and North 1125 feet from the section corner common to Sections 2, 3, 10 & 11, Township 36 South, Range 9 West, Salt Lake Base and Meridian; and running thence North 80° East 45 feet; thence North 33° East 1000 feet; thence North 27° 30' East 200 feet; thence North 21° 30' East 200 feet; thence North 17° 15' East 120 feet said point being East 1790 feet and North 2460 feet from the point of beginning.

C. Beginning at a point East 1790 feet and North 2460 feet from the section corner common to Sections 2, 3, 10 & 11, Township 36 South, Range 9 West, Salt Lake Base and Meridian and running thence South 87° 30' East 610 feet; thence North 1430 feet said point being East 2400 feet and North 3850 feet from the point of beginning. Also beginning at a point East 2400 feet and North 3430 feet from said section corner mentioned above and running thence West 180 feet; thence North 36° West 800 feet; thence North 305 feet.

3. All water collection, transmission, drainage, and overflow lines; a 300,000 gallon redwood water storage tank; and all other facilities used in the collection, storage, transmission, drainage, and overflow of water along the easements and licenses described in 1 and 2, above, and including billing and payment records and all other paraphernal necessary and convenient to the proper function and management of the existing BRIANHEAD WATER ASSOCIATION water system.

4. The leasehold interest of BRIANHEAD WATER ASSOCIATION, INC., in a certain Lease Agreement dated 1 September 1971, between Parowan Reservoir and Irrigation Company, Inc., a Utah corporation, as "Lessor", and BRIANHEAD WATER ASSOCIATION, INC., as "Lessee", covering the lease of three hundred (300) acre feet of water for domestic, recreation, and stock watering purposes, for a period of ninety-nine (99) years.