

Miscellaneous Record No. T5, San Juan County, Utah

B-5060

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT IN AND FOR SAN JUAN COUNTY, STATE OF UTAH

J. ERNEST ADAMS,

PLAINTIFF,

vs.

THE FEDERAL LAND BANK OF BERKELEY, a corporation, GUY R. HURST AND HAZEL H. HURST, his wife, and MARIAH L. WHEELER HUFFMAN, who was formerly known and being one and the same person as MARIAH L. WHEELER, FIRST DOE, SECOND DOE AND THIRD DOE.

DEFENDANTS.

NOTICE OF LIS PENDENS

NOTICE IS HEREBY GIVEN:

That J. Ernest Adams the plaintiff above names has commenced an action against the above named defendants, and each of them in the District court of the Seventh Judicial District in and for San Juan County, State of Utah, and that said action is now pending; that the object of said action is to quiet title to that certain real estate situated in San Juan County, State of Utah described as follows, to-wit:

Parcel 1- The S2NW1/4 and the N2SW1/4 of Section 28, Township 37 South, Range 22 East of the S.L.M..

Parcel 2- E2SW1/4 and the SW1/4SW1/4 of Section 21 and the NE1/4NW1/4 of Section 28, Township 37 south, Range 22 East of the Salt Lake Meridian, and

Parcel 3- The E2NW1/4 and the W1/2NE1/4 of Section 21, Township 37 south, Range 22 East of the Salt Lake Meridian.

Dated this 1st day of April, A. D. 1948.

Donald T. Adams Attorney for the Plaintiff.

Recorded May 1, 1948 at 9:10 A.M. in Book T-5 of the Misc. records page 24.

Margaret Christensen RECORDER. Abs - 21-216-18 21-230-44

B-5073

***** AGREEMENT *****

THIS AGREEMENT ENTERED in to this 15th day of April 1948, in duplicate, by and between the State of Utah, acting through the Utah Water and Power Board, first Party, and Blanding Irrigation Company, a corporation organized under the laws of the State of Utah, Second Party,

WITNESSETH:

THAT WHEREAS, the First Party desires to promote a water conservation project consisting in the construction in its own name, of a water diversion tunnel in San Juan County, Utah, to make available to the inhabitants of the town of Blanding, and other persons, sources of water which are not now being put to beneficial use, which tunnel is to be constructed in accordance with the Specifications, Work Items, and Plans, copies of which are attached hereto, and are hereby incorporated by reference and made a part of this contract, and WHEREAS, the Second Party is now the owner of all rights to the use of the Water Application No. 12929 previously filed with the office of the State Engineer for the State of Utah, and WHEREAS, the Second Party does herein assign to the First Party all of said water rights in consideration for the construction of the aforesaid diversion tunnel, and WHEREAS, the Second Party has previously obtained all the easements and rights of way upon and through the real property wherein the said tunnel is to be constructed, necessary to the construct, maintain and operate the same, and does herein convey to the First Party all such rights of way and easements, and WHEREAS, the Second Party has heretofore commenced the construction of the aforesaid diversion tunnel, and has dug approximately 1900 feet thereof out of a total of 5300 feet, and does now desire to turn the entire project over to the First Party for completion, and is willing to recognize the First Party as the owner thereof, and WHEREAS, the Second Party has the available manpower, facilities, and equipment to construct the said tunnel, and is ready and willing to enter into a contract to accomplish such purpose, and WHEREAS, the First Party desires to have said tunnel constructed by the Second Party, and WHEREAS, it is the desire of both parties that the interest in the said project acquired by the First Party, including its rights in the diversion tunnel and in the water developed in the flowing through the same, be sold by the First Party to the Second Party under the terms herein set forth, and WHEREAS, it is the intent of the parties that the State of Utah be amply and properly secured for the purchase price of said tunnel and water rights to be sold to the Second Party;

NOW THEREFORE, the parties hereto enter into the following agreements, and make the following assignments and mortgage:

- 1. Second Party hereby conveys, assigns and warrants to the First Party a perpetual easement and right of way on and through the property upon which and through which the aforesaid tunnel is to be constructed, which easement and right of way shall be of such a nature as shall enable the First Party to construct, maintain and operate said tunnel in accordance with the aforesaid Specification, Work Items, and Plans. Said tunnel shall be located in Secs. 4 and 9, T. 34 S., R. 22 E., SLB&M. San Juan County, State of Utah;
2. Second Party hereby conveys and assigns to the First Party all right, title, and interest which it has to the use of all the water which shall flow through the aforesaid tunnel, including such water as shall be diverted from the Southeast Fork of Indian Creek, and such water as shall be made available through tunnel see page, and the Second Party more a particularly assigns to the First Party all right which it has to any water by virtue of filing No. 12929 in the office of the State Engineer of the State of Utah. Second Party also grants and conveys to First Party an easement to use any and all of the former's facilities in the Blanding Irrigation Company distribution system, for the purpose of putting the aforesaid water to beneficial use.
3. The Second Party agrees to supply the necessary manpower and facilities, and agrees to complete the construction of the aforesaid project at cost in accordance with the aforesaid specifications, Work Items and Plans. The First Party agrees to pay the the Second Party for completing the said project, the cost thereof, not to exceed \$75,000; provided, however, that the First Party shall not pay more than 90% of the aforesaid total cost of said project until the said project shall have been completed to the satisfaction of a properly designated agent

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of the First Party; and provided further, that the Second Party shall complete the project in all events, and shall complete it before December 1, 1949. It is agreed that title to the entire diversion tunnel, either constructed or to be constructed under this contract, shall be vested in the First Party.

4. The First Party agrees to sell and the Second Party agrees to purchase the water rights, the easements and rights of way, and the diversion tunnel acquired by the First Party in this agreement, at a total purchase price of \$75,000, payable at the rate of \$3,000.00 per year, without interest, the first installment of \$3,000.00, or more, to be due and payable on the first day of December, 1949, and a like sum of \$3,000.00 or more, to be payable on the first day of December in each and every year thereafter until the full purchase price of \$75,000 shall have been paid; provided however, that if the cost of constructing the aforesaid project should be less than \$75,000, as provided in paragraph 3 hereof, then the purchase price thereof, and the annual payments made thereon, as provided in this paragraph, shall be proportionately reduced to the extent that the cost of construction shall be less than \$75,000. Said sums shall be payable at the office of the State Treasurer of the State of Utah. All delinquent payments shall bear 6% interest.

5. The Second Party hereby mortgages to the First Party the following described property to secure the prompt payment of the above obligation of \$75,000, to-wit:

All right, title and interest which the Second Party has in these canals, weirs, laterals and other irrigation facilities which form part of the Blanding Irrigation Company irrigation system, which canals, weirs, laterals and facilities are located in Secs. 34, 27, 22, 15 and 10 of T. 36S., R22E., and also in Secs. 34, 33, 28, 21 and 16, T35S., R22E., SLB&M, San Juan County, State of Utah.

After the Second Party shall have paid the purchase price in full as herein provided, the First Party shall release the mortgage as herein provided and shall execute such deeds and bills of sale as shall be necessary to vest title to the aforesaid project and water rights in the Second Party.

6. During the period of said purchase under said contract, the Second Party shall have and is hereby given the right to use all of the water rights described herein and all the facilities of the First Party constructed hereunder and the Second Party does hereby assume, during the above period if time, the full obligation of maintaining said tunnel, and of protecting said water rights from forfeiture.

7. If either party to this 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 days after such notice the other may declare the contract forfeited and proceed to its remedies at law for such breach.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this day and year first above mentioned.

APPROVED AS TO AVAILABILITY OF FUNDS
FINANCE COMMISSION.

UTAH WATER AND POWER BOARD
BY:

CHAIRMAN

Vice Chairman

COMMISSIONER

EXECUTIVE SECRETARY

APPROVED:
BOARD OF EXAMINERS OF STATE OF UTAH

B. FRANK REDD
Acting on behalf of Blanding
Irrigation Company

GOVERNOR

LEGALITY & FORM APPROVED

DAVID S. KING

Sp. Assistant
Attorney Gen.

Recorded May 6, 1948, at 10:00 A.M. in Book T-5 of Misc. Page 24.

Ab- B-208-4-27 B-100-24
B-218-44
B-42-1-24 B-102-2-13
U-246-9-33

Margaret Christensen RECORDER.

B-5074

CERTIFICATION AND ACKNOWLEDGEMENT

COUNTY OF SAN JUAN)
STATE OF UTAH) ss

Comes now B. Frank Redd, who being first duly sworn upon oath, deposes and says: That he is the duly qualified secretary for the Blanding Irrigation Company, a corporation organized under the laws of the State of Utah; that on the 25th day of February, 1948, a meeting of the Board of Directors was duly called and held at Blanding San Juan County, Utah; that at said meeting six directors were present, which number constitutes a majority thereof and a quorum and that they were authorized to do business; that at such meeting the following resolution was unanimously passed by the aforesaid Board of Directors:

RESOLUTION

WHEREAS, this Board of Directors has considered the advisability of entering into the contract hereinafter referred to and is convinced that the welfare of the corporation will be materially benefited by entering into the same;

NOW THEREFORE, be it resolved by the Board of Directors of the Blanding Irrigation Company that B. Frank Redd, the Secretary of the Blanding Irrigation Company is hereby authorized and empowered to sign, on behalf of the said company, a contract with the Utah Water and Power Board, which contract shall provide that the Utah Water and Power Board shall undertake the completion of the Blanding Tunnel Project, which project was commenced by this corporation several years ago; and was thereafter abandoned, and which project will make available to the shareholders in this corporation, and to other persons, a large quantity of water which is now unavailable to them; and that the Utah Water and Power Board shall take title to the said project and to the rights to all the water which shall flow through the said tunnel; and that the said company shall have a right to use the said tunnel and the water made available thereby; and that it shall have the right to purchase the said tunnel and the said water rights from the Utah Water and Power Board for a stipulated consideration; and that the said company shall mortgage to the Utah Water and Power Board to secure the prompt payment of the purchase price thereof, its entire irrigation system located in Sec. 34, 27, 22, 15, and 10, T.36S., R22E., and also in the Secs. 34, 33, 28, 21 and 16, T35S., R22E., SLB&M., San Juan County, State of Utah.

(CORPORATE SEAL)

B. Frank Redd
Secretary

On the 2nd day of March, 1948, appeared before me B. Frank Redd who was personally known to me, and who did acknowledge to me under oath that he executed the aforesaid document entitled "Certification and Acknowledgment."