

Entry No. 140461 Recorded at request of State of Utah
 Date April 23, 1970 at 9:00 A. M. Book 92 Pages 462-470 Fee \$ None
Neil P. Barber Washington County Recorder. By _____ Deputy.

AGREEMENT

This Agreement, entered into this 6th day of January, 1970, in original and three copies, by and between the State of Utah, acting through the BOARD OF WATER RESOURCES, First Party, sometimes referred to herein as the STATE; and the LOWER GUNLOCK RESERVOIR CORPORATION, the BLOOMINGTON IRRIGATION COMPANY now reincorporated as the BLOOMINGTON CANAL COMPANY, the SANTA CLARA SEEP DITCH COMPANY, the ST. GEORGE-CLARA FIELD CANAL COMPANY, and the NEW SANTA CLARA FIELD CANAL COMPANY, all corporations organized and existing under the laws of the State of Utah and all of Washington County, SECOND PARTIES:

W I T N E S S E T H

THAT WHEREAS, the STATE desires to construct a water conservation and development project located on the Santa Clara River in Washington County, Utah in Sections 28, 29, 32, 33, T40S, R17W and Section 5, T41S, R17W, S18&M, consisting of an earthfill dam 115 feet high which will create a reservoir with a capacity of 10,300 acre-feet, to be known as the Gunlock Dam; and

WHEREAS, approximately 2,300 acre-feet of water shall be permanently maintained in said reservoir as a conservation pool for fish culture purposes, and the State Division of Fish and Game has agreed to invest One-Hundred Eighty Thousand Dollars (\$180,000.00) in this project to secure said conservation pool; and

WHEREAS, the SECOND PARTIES have the available manpower and facilities necessary to construct the aforesaid project for the STATE, through a competent contractor acceptable to the STATE, and all of the Parties to this Agreement are ready, willing, and able to enter into contract for such purpose, and for a consideration to be hereinafter provided;

NOW THEREFORE, the Parties hereto enter into the following agreement and make the following assignments:

1. The SECOND PARTIES hereby agree to convey, grant, and warrant to the STATE, title, in fee simple, as required to the real estate upon which the structures are to be constructed; and further agree to convey, grant, and warrant to the STATE, title to such easements and rights-of-way as shall be necessary to enable the STATE to construct, maintain, and operate said project; and further agree to grant and convey to the STATE an easement to use any and all of the SECOND PARTIES' distribution system located in T41S R17W, T42S R17W, T41S R16W, T42S R16W, T42S R15W, T43S R15W, T43S R16W, S18&M.

It is understood by the Parties hereto that the Gunlock Dam and a portion of the reservoir is to be constructed on land owned by the United States of America, and it is agreed that the construction and financial participation by the STATE is conditioned on the STATE'S acquiring the right to construct these facilities on said land.

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2. The SECOND PARTIES hereby agree to convey, assign, and warrant to the STATE all right, title, and interest which they have or may have, to the right to use of water which shall be saved or conveyed through the aforesaid project, and particularly the following rights which were granted by a decree of the Fifth Judicial Court in and for Washington County, State of Utah on November 6, 1922 in the case of St. George Santa Clara Field Canal Company, a corporation, et al, Plaintiffs; vs Newcastle Reclamation Company, a corporation, et al, Defendants, commonly known as the Santa Clara River Decree:

Bloomington Irrigation Company	3.28 c.f.s.
Santa Clara Seep Ditch Company	3.98 c.f.s.
St. George-Clara Field Canal Company	13.33 c.f.s.
New Santa Clara Field Canal Company	8.70 c.f.s.

This conveyance shall also include Change Application Nos. a-5874 and a-5875, which change a portion of the above-described rights from direct flow to storage during the winter months.

The BOARD OF WATER RESOURCES agrees to segregate 15,300 acre-feet from its approved Application No. 11929 on file in the State Engineer's office, and said 15,300 acre-feet of water shall be stored in the proposed Gunlock reservoir. This water right shall become a part of the project and upon full performance by the SECOND PARTIES of terms and conditions of this Agreement, including the payment to the STATE of the funds provided for in Paragraphs 8 and 9 of this Agreement, the STATE agrees to transfer title to the 15,300 acre-feet of water to LOWER GUNLOCK RESERVOIR CORPORATION, its successors or assigns, for and in behalf of the SECOND PARTIES.

It is further understood and agreed that in the event of a default by the SECOND PARTIES under this Agreement the lease of the winter flows covered by Change Application Nos. a-5874 and a-5875 to the LOWER GUNLOCK RESERVOIR CORPORATION as provided for in that certain agreement dated September 6, 1969, between the City of St. George, the Lower Gunlock Reservoir Corporation, the Bloomington Irrigation Company, the Santa Clara Seep Ditch Company, the St. George-Clara Field Canal Company, and the New Santa Clara Field Canal Company, shall not be binding on the STATE OF UTAH and the STATE can dispose of the water rights covered by said Change Applications in any manner it deems necessary to return its investment in this project.

3. The SECOND PARTIES recognize as valid the conveyance of easements and rights-of-way executed by various owners of the benefited land to the STATE, and agree that all performance by the SECOND PARTIES under this contract shall be subservient to, and in recognition of, the aforesaid rights of the STATE in and to the aforesaid easements and rights-of-way.

4. The SECOND PARTIES agree to supply the necessary manpower and facilities, and agree to complete the construction of the aforesaid project for the STATE through a competent contractor approved by the STATE, at a cost in accordance with plans, specifications, and work items, a copy of which is hereby incorporated by reference and made a part hereof. It is understood and agreed that title to the entire project, including the dam, reservoir, and all appurtenant facilities, are vested in the STATE.

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5. The STATE agrees to pay to the SECOND PARTIES, eighteen percent (18%) of the total cost of constructing the project, but in no event shall the amount paid by the STATE exceed One-Hundred Eighty Thousand Dollars (\$180,000.00), and the SECOND PARTIES shall themselves pay for all costs in excess of the amount paid by the STATE. The SECOND PARTIES agree and undertake to construct to completion as designed and specified, the aforesaid project in all events regardless of unforeseen contingencies, and the SECOND PARTIES agree to pay all costs in excess of the aforesaid amount paid by the STATE.

It is understood by the Parties hereto that a portion of the funds to be used in the construction of this project are to be made available from the Four Corners Regional Commission, and it is agreed that the construction and financial participation by the STATE in this project is conditioned on the funds being made available from the Four Corners Regional Commission.

6. It is further agreed that the STATE shall pay ninety percent (90%) of the amount payable by the STATE to the SECOND PARTIES upon the presentation by the SECOND PARTIES to the STATE of a certified statement of the payment requirement which shall be in the nature of a monthly partial estimate of the work completed to date by the SECOND PARTIES on each work item. The ten percent (10%) withheld as above set forth will become due and payable to the SECOND PARTIES with, and as a part of, the final payment to be made by the STATE upon completion of the project, and its inspection and acceptance by an Engineer designated by the STATE.

7. It is further agreed that the SECOND PARTIES shall complete the construction of the project on or before December 1, 1971. It is also agreed that this contract shall not become binding upon the STATE until it has been signed by all persons and agencies required by law, and that the STATE shall not become liable to the SECOND PARTIES until this contract has been completed.

8. The STATE agrees to sell, and the SECOND PARTIES agree to purchase, the land, easements, rights-of-way, water rights, the constructed works, and all appurtenant facilities acquired by the STATE in this Agreement and Assignments at a total purchase price defined to be the combined total of all funds paid by the STATE to the SECOND PARTIES for the construction of the project, but not to exceed One Hundred Eighty Thousand Dollars (\$180,000.00), plus all expense incurred by the STATE for the investigation, engineering, and inspection of the project, and to be determined by the STATE upon the completion of the project. The purchase price shall be payable by the SECOND PARTIES over a period of time not to exceed TEN (10) years, in annual installments of one-tenth (1/10), or more, per year, of the total purchase price as defined above, without interest.

It is the understanding of the Parties hereto that the water to be stored in this project during the term of this Agreement is to be used by the BLOOMINGTON IRRIGATION COMPANY now reincorporated as the BLOOMINGTON CANAL COMPANY, the SANTA CLARA SEEP DITCH COMPANY, the ST. GEORGE-CLARA FIELD CANAL COMPANY, and the NEW SANTA CLARA FIELD CANAL COMPANY; and that said Irrigation companies, by agreement dated September 6, 1969 between themselves and LOWER CUNLOCK RESERVOIR CORPORATION and the City of St. George, have agreed to pay to the LOWER CUNLOCK RESERVOIR CORPORATION a fee of Two Dollars (\$2.00) for each acre foot of water stored and delivered to the irrigation companies, and that the money generated from these fees will be applied to the purchase of this project from the STATE.

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Notwithstanding any limitation placed on the fee to be charged said irrigation companies for the storage of water under said prior agreement of September 6, 1969, it is further agreed and understood that if it becomes necessary, in order to make the annual payments to the STATE provided for in this Agreement, that the STATE may impose an additional Two Dollars (\$2.00) per acre foot on the BLOOMINGTON IRRIGATION COMPANY now reincorporated as the BLOOMINGTON CANAL COMPANY, the SANTA CLARA SEEP DITCH COMPANY, the ST. GEORGE-CIARA FIELD CANAL COMPANY, and the NEW SANTA CLARA FIELD CANAL COMPANY for water stored in said reservoir. The said irrigation companies further agree that the STATE may require said companies to assess all outstanding shares of stock for the full amount of any delinquency which may occur under this Agreement.

9. The first annual installment of one-tenth (1/10), or more, of the total purchase price, as defined above, shall become due and payable on the First day of December, 1972 and a like sum, or more, shall be due and payable on the First day of December of each and every year thereafter until the full purchase price, as defined above, shall have been paid in full; said sums shall be payable at the office of the DIVISION OF WATER RESOURCES and the first monies received by the STATE under the terms of this contract will be applied against the indebtedness incurred by the STATE for investigation, engineering, and inspection until fully paid, and any residue will be applied to funds paid by the STATE for the construction of the project. Delinquent payments shall bear interest at a rate of ten percent (10%) per annum.

10. All payments made by the STATE to the SECOND PARTIES under this Agreement shall be made payable to LOWER GUNLOCK RESERVOIR CORPORATION, and called to

Rudger M. McArthur, Secretary-Treasurer
Lower Gunlock Reservoir Corporation
St. George, Utah 84770

11. During the period of such purchase under this contract, provided the SECOND PARTIES are not delinquent in any manner, the SECOND PARTIES shall have, and are hereby given the right to use, the STATE'S water rights, and all facilities constructed thereunder. The SECOND PARTIES do hereby assume during the life of this Agreement, the full obligation of maintaining the constructed works, and other facilities, and of protecting all water rights from forfeiture.

12. It is agreed by the SECOND PARTIES that they will not incur any mortgages or encumbrances, other than those already acquired by them, on any of their property, real or personal, without first securing the written consent of the STATE. It is further agreed that the SECOND PARTIES will not incur any indebtedness whatsoever for a principal sum in excess of One-Hundred Thousand Dollars (\$100,000.00) without first procuring the written consent of the STATE. The remedies herein provided shall be deemed cumulative, and not exclusive.

13. The SECOND PARTIES hereby warrant the STATE, that the construction of the project will not interfere with existing water rights. If the project herein described shall give rise to a claim, or cause of action to any holder of any water rights because of the interference with such rights by the operation of the aforesaid project, then the SECOND PARTIES hereby agree to indemnify the STATE to the extent of such claim or cause of action.

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14. If any party to the contract violates any of the conditions or covenants made herein, the others may give written notice of such breach or failure, and if the same shall not be cured within ninety (90) days after such notice, the others may declare the contract forfeited and may proceed to its remedies at law for such breach.

15. The SECOND PARTIES hereby agree to assume the full obligation for any claim or liability for any injury or death of persons, or for any property loss or damage that may arise in accomplishing the construction of this project for the STATE, and further, the SECOND PARTIES agree to hold the STATE immune for all such claims for damages, injury, or death of persons during the life of this Agreement.

16. After the SECOND PARTIES shall have paid in full the purchase price as defined above, the STATE shall execute such deeds and bills of sale as will be necessary to revert the same title to the aforesaid property and water rights in the SECOND PARTIES.

17. This Agreement, or any part thereof, or the benefits to be received under this Agreement, may not be the subject of any assignment to any person, firm, or corporation, by the said SECOND PARTIES without first having secured the written consent of the STATE to any such proposed assignment or disposition of this Agreement.

IN WITNESS WHEREOF, the State of Utah, acting through the BOARD OF WATER RESOURCES, Party of the First Part, has caused these presents to be signed by the Chairman and Director of the said BOARD OF WATER RESOURCES by authority of a resolution of said BOARD; and the LOWER CUNLOCK RESERVOIR CORPORATION, the BLOOMINGTON IRRIGATION COMPANY now reincorporated as the BLOOMINGTON CANAL COMPANY, the SANTA CLARA SEEP DITCH COMPANY, the ST. GEORGE-CLARA FIELD CANAL COMPANY, and the NEW SANTA CLARA FIELD CANAL COMPANY, Parties of the Second Part, have caused these presents to be signed and executed on their behalfs by the President and Secretary of each Company by a resolution of its stockholders at meetings duly held for such purpose.

APPROVED: 140461
BOARD OF EXAMINERS -- STATE OF UTAH

[Signature]
Governor

[Signature]
Secretary of State

[Signature]
Attorney General

APPROVED AS TO
AVAILABILITY OF FUNDS:

[Signature]
Budget Officer

1-6-70
Date

APPROVED:

[Signature]
Director of Finance

APPROVED AS TO FORM:

[Signature]
Assistant Attorney General

BOARD OF WATER RESOURCES

[Signature]
Chairman

[Signature]
Director

LOWER GUNLOCK RESERVOIR CORPORATION

[Signature]
President

[Signature]
Secretary

BLOOMINGTON CANAL COMPANY

[Signature]
President

[Signature]
Director

SANTA CLARA SEEP DITCH COMPANY

[Signature]
President

[Signature]
Secretary

ST. GEORGE-CLARA FIELD CANAL COMPANY

[Signature]
President

[Signature]
Secretary

NEW SANTA CLARA FIELD CANAL COMPANY

[Signature]
President

[Signature]
Secretary

STATE OF UTAH)
County of Washington) ss. 140461

On the 5th day of January, 1970,
personally appeared before me Reed Mathis and Rudger H. McArthur, who being
by me duly sworn, did say that they are the President and Secretary, respec-
tively, of the LOWER GUNLOCK RESERVOIR CORPORATION, and that the said instru-
ment was signed in behalf of said corporation by authority of a resolution of
its stockholders, and the said Reed Mathis and Rudger H. McArthur acknowledged
to me that said corporation executed the same.



Bent A. Pigeon
Notary Public

Residing at Beautiful Utah

My Commission expires: 4-14-70

STATE OF UTAH)
County of Washington) ss.

On the 5th day of January, 1970,
personally appeared before me Clark Ivory and Ellis Ivory, who being by me duly
sworn, did say that they are the President and Director, respectively, of the
BIDMINGTON CANAL COMPANY and that the said instrument was signed in behalf of
said corporation by authority of a resolution of its stockholders, and said
Clark Ivory and Ellis Ivory acknowledged to me that said corporation executed
the same.



Bent A. Pigeon
Notary Public

Residing at Beautiful Utah

My Commission expires: 4-14-70

STATE OF UTAH)
County of Washington) ss. 140461

On the 5th day of January, 1970,
personally appeared before me Cecil Blake and H. Val Hafen, who being by me
duly sworn, did say that they are the President and Secretary, respectively,
of the SANTA CLARA SEEP DITCH COMPANY, and that the said instrument was signed
in behalf of said corporation by authority of a resolution of its stockholders,
and said Cecil Blake and H. Val Hafen acknowledged to me that said corporation
executed the same.



Burt H. Hays
Notary Public

Residing at Scenic View

My Commission expires: 4-14-70

STATE OF UTAH)
County of Washington) ss.

On the 5th day of January, 1970,
personally appeared before me Reed Mathis and Schuyler Everett, who being by me
duly sworn, did say that they are the President and Secretary, respectively,
of the ST. GEORGE-CLARA FIELD CANAL COMPANY, and that the said instrument was
signed in behalf of said corporation by authority of a resolution of its stock-
holders, and the said Reed Mathis and Schuyler Everett acknowledged to me that
said corporation executed the same.



Burt H. Hays
Notary Public

Residing at Scenic View

My Commission expires: 4-14-70

STATE OF UTAH)
County of Washington) ss. 140461

On the 5th day of January, 1970,
personally appeared before me Lazelle Stucki and Charles Hafen, who being by me
duly sworn, did say that they are the President and Secretary, respectively,
of the NEW SANTA CLARA FIELD CANAL COMPANY, and that the said instrument was
signed in behalf of said corporation by authority of a resolution of its
stockholders, and the said Lazelle Stucki and Charles Hafen acknowledged to
me that said corporation executed the same.



Bert Mage
Notary Public

Residing at Southful Utah

My Commission expires: 4-14-70