

3623400

RIGHT-OF-WAY AND EASEMENT AGREEMENT

No Fee

Wayne Harbert

REC'D SEP 13 1981

Clyde & Jeff

NOV 16 3 16 AM '81

KATHLEEN J. JENSEN
RECORDER
SALT LAKE COUNTY
UTAH

SCC 84101

700 Am Savings Bldg

THIS AGREEMENT, made and entered into this 13 day of March, 1981 by and between KENNECOTT CORPORATION, a corporation of the State of New York and authorized to do business in the State of Utah, hereinafter referred to as "Kennecott", and the SALT LAKE COUNTY WATER CONSERVANCY DISTRICT, a body politic of Salt Lake County, State of Utah, hereinafter referred to as "District",

WITNESSETH:

WHEREAS, District desires to construct and thereafter maintain a buried culinary water pipeline (hereinafter called "pipeline") on Kennecott's property situated in Salt Lake County, State of Utah, for the purpose of providing culinary water service to residents within its service area, and

WHEREAS, said proposed culinary water pipeline will bisect the Bingham Creek channel, hereinafter referred to as Bingham Creek, and

WHEREAS, Kennecott is willing to provide District a right-of-way and easement for such purpose on the following terms and conditions,

NOW, THEREFORE, it is agreed by and between the parties hereto as follows, to-wit:

1. Kennecott hereby grants District, its successors and assigns, a right-of-way and easement, 20 feet in width, lying 10 feet on each side of the hereinafter described center

line, for the purposes hereafter stated, through, across and under the premises situated in Salt Lake County, State of Utah, to-wit:

Parcel No. 1 Beginning at a point on the East line of Kennecott's land, said point being South 89°57'00" East 1323.47 feet, more or less and South 0°02'34" East 15.0 feet from the northwest corner of Section 17, Township 3 South, Range 1 West, Salt Lake Base and Meridian; thence running North 89°57'00" West 1323.47 feet, more or less, to a point on the section line common to Sections 17 and 18; thence continuing in said Section 18, North 89°54'30" West 5214.35 feet, more or less to the section line common to Section 18 of Range 1 West and Section 13 of Range 2 West; thence continuing in said Section 13, North 89°58'21" West 2699.98 feet, more or less; thence North 89°58'45" West 2699.98 feet, more or less, to a point on the West line of Kennecott's land, said easement area containing 5.481 acres, more or less.

Parcel No. 2 Beginning at a point on the East line of Kennecott's land, said point being North 89°51'09" West 1890.0 feet, more or less; and South 15.0 feet from the northeast corner of Section 14, Township 3 South, Range 2 West, Salt Lake Base and Meridian; thence running North 89°51'09" West 1548.0 feet, more or less, to a point on the West line of Kennecott's land, said point also being on the easterly line of the Denver and Rio Grande Western Railroad land, said easement area containing 0.711 acres, more or less.

Said right-of-way and easement shall be used by District solely for the purpose of constructing, reconstructing, operating, repairing, replacing, and maintaining said pipeline for providing culinary water service to residents within District's service area and for no other purpose. District shall have the right of reasonable ingress and egress to and from said right-of-way to maintain, operate, repair, inspect, protect, remove and replace the same. During temporary periods District may use such portion of Kennecott's property hereinabove described,

BOOK 5313 PAGE 335

along and adjacent to said right-of-way as may be reasonably necessary in connection with the construction, maintenance, repair, removal or replacement of said pipeline. Kennecott shall have the right to use said premises for any purpose, except that Kennecott shall not construct permanent structures or improvements within the easement area other than the existing Bingham Creek Channel and/or a bridge or roadway, providing that all of these uses shall not interfere with the District's pipeline, nor obstruct or hinder the District's access to the easement area or any other right granted to District hereunder.

2. As consideration for Kennecott's providing said right-of-way and easement, District agrees to pay Kennecott the sum of Thirty Five Thousand Two Hundred Ninety-Four Dollars (\$35,294.00) which amount is to be paid upon the execution of this agreement.

3. Said pipeline, where it crosses underneath Bingham Creek shall be suitably protected and of sufficient depth to avoid damage from erosion or Kennecott's equipment operation in cleaning and maintenance work. Plans and specifications as relating to said crossing of Kennecott's property must be approved by Kennecott prior to commencement of construction on said right-of-way.

4. District shall obtain all necessary permits and licenses from public authorities for the installation of said pipeline and bear the entire cost and expense in connection with the construction, installation, maintenance, repair or renewal of said pipeline.

5. Nonuse of said pipeline for the purpose for which it was originally constructed, continuing at any time for a period of one year, shall constitute an abandonment thereof by District and of the right-of-way and easement herein made and in case of such an abandonment or the breach by District of any of the conditions, agreements and covenants herein contained, Kennecott shall have the right to terminate this agreement at any time by giving thirty (30) days notice in writing to District of its intention to terminate the same and at the expiration of said thirty (30) days notice, the Right-of-Way and Easement herein provided shall terminate and be at an end and District shall be without recourse or redress of any character against Kennecott by reason thereof; but nothing herein shall be construed as a limitation of the District's power to exercise its power of eminent domain in accordance with law to reacquire this easement by condemnation should it choose to do so.

6. Kennecott excepts and reserves a perpetual easement, right and privilege on the part of itself, its successors, lessees, licensees and assigns, at any and all times hereafter, to discharge over and upon each and every portion of said lands, any and all gases, dust, dirt, fumes, particulates, liquids and other substances and matter which may be released, given, thrown or blown off, flow or seep, emitted or discharged in the course of, by, or through the existence, or operations, of any and all of the smelting plants, reduction works, mines, mills, refineries, power plants, manufactories, tailing deposits and other works or factories which are now or which may hereafter at any time be lawfully established or operated by Kenne-

cott or by its successors, grantees, lessees, licensees or assigns, or any of them, within Salt Lake or Tooele Counties, State of Utah.

7. District agrees to indemnify and save Kennecott harmless against any and all loss and expense, including attorneys' fees and other legal expenses, by reason of liability imposed or claimed to be imposed by law upon Kennecott for damage because of bodily injuries, including death, at any time resulting therefrom, or on account of damage to property, sustained by any person or persons, arising out of or in any manner connected with, or growing out of or predicated upon the construction, maintenance, operation, existence or use of said right-of-way and such adjacent portions of Kennecott's property as District shall utilize from time to time, whether or not such bodily injuries, death, or damage to property arise or are claimed to have arisen in whole or in part out of the negligence or any other grounds of legal liability, including violation of any duty imposed by a statute or ordinance or regulation, on the part of District, its agents and employees.

8. Kennecott expressly reserves the right to construct, operate and maintain roads, canals, ditches, culverts, pipelines or other drainage works, and any other facilities desired by Kennecott upon, along, under or across said premises, provided only that such shall be constructed, operated and maintained by Kennecott so as not to interfere with the use thereof by District. District agrees to repair or replace at its sole cost and expense, any property or facilities of Kennecott damaged or injured by the acts or omissions of District,

its employees, servants or agents in the construction, maintenance, operation, existence or use of said right-of-way and such adjacent portions of Kennecott's property as District shall utilize from time to time.

9. It is hereby understood that any parties securing this grant on behalf of District are without authority to make any representations, covenants or agreements not herein expressed.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their respective officers on the date first written above.

KENNECOTT CORPORATION

By *J. J. John* *88*
Its Vice President

SALT LAKE COUNTY
WATER CONSERVANCY DISTRICT

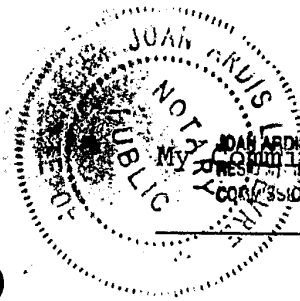
By *Hugh C. Brumby*
Its Vice President

APPROVED
Utah Dept. of Division
Engineering
M. Southard

BOOK 5313
PAGE 339

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 13th day of March, 1981, personally appeared before me G. F. Joklik who being by me duly sworn did say that he is the Vice President of KENNECOTT CORPORATION, and that the foregoing instrument was signed in behalf of said corporation and said G. F. Joklik duly acknowledged to me that said corporation executed the same.



Joan Ardis Lefevre
NOTARY PUBLIC
Residing at Midvale, Utah

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 4th day of March, 1981, personally appeared before me Hugh C. Bringhurst, who being duly sworn, did say that he is the Vice President of the Salt Lake County Water Conservancy a body politic, and that the foregoing instrument was signed on behalf of said Salt Lake County Water Conservancy by authority of a resolution duly adopted by its governing body, and said Hugh C. Bringhurst acknowledged to me that said District duly executed the same.

JAMES W. CARPINE
NOTARY PUBLIC
My Commission Expires
December 14, 1983

James W. Carpine
NOTARY PUBLIC
Residing at West Jordan