

3628015

Underground waste  
water drain line  
Garfield, Utah (MP 768.03)

L.D. No. 25191

Audit No. \_\_\_\_\_

THIS AGREEMENT, made and entered into as of the 1st day of September, 1981, by and between LOS ANGELES & SALT LAKE RAILROAD COMPANY and its lessee, UNION PACIFIC RAILROAD COMPANY, corporations of the State of Utah (hereinafter collectively the Licensor), and KENNECOTT CORPORATION, a corporation of the State of New York (Kennecott Minerals Company Division) (hereinafter the Licensee), WITNESSETH:

NOW THEREFORE, it is mutually agreed by and between the parties hereto as follows:

1. Upon the execution and delivery of this Agreement, the Licensee shall pay to the Licensor the sum of One hundred dollars (\$100.00) to cover the cost of preparation hereof. In consideration of the sum of One hundred fifty dollars (\$150.00) to be paid by the Licensee to the Licensor upon the execution and delivery of this Agreement and in further consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee, subject to the terms and conditions herein stated, the right to construct and thereafter, during the term hereof, to maintain and operate the underground waste water pipe line (hereinafter the Pipe Line) across the property and under the track of the Licensor in the location shown by yellow line, and in conformity with the dimensions and specifications indicated, on the print dated September 22, 1981, marked Exhibit A, hereto attached.
2. The grant herein made is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B hereto attached and by this reference incorporated herein.
3. This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.
4. Effective as of September 1, 1981, there shall be, and hereby is, terminated that certain agreement dated June 7, 1955, between the parties hereto, identified in the records of the Licensor as L.D. No. 16206, Audit No. A-76624, covering the construction, maintenance and operation of a water pipe line at Garfield, Salt Lake County, Utah; PROVIDED, however, that such termination shall not affect any of the rights

BOOK 5318  
PAGE 1145

UNIVERSITY MICROFILMS INTERNATIONAL

or obligations of the parties to said agreement which may have accrued, or liabilities, accrued or otherwise, which may have arisen prior to such termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the date first herein written.

Witness:

LOS ANGELES & SALT LAKE RAILROAD COMPANY  
UNION PACIFIC RAILROAD COMPANY

[Signature]

By [Signature] General Manager

XXXXXX  
Witness:

KENNECOTT CORPORATION (Kennecott  
Minerals Company Division)  
UTAH COPPER DIVISION

[Signature]  
XXXXXXXXXX

By [Signature] Its General Manager ~~XXXXXXXXXX~~

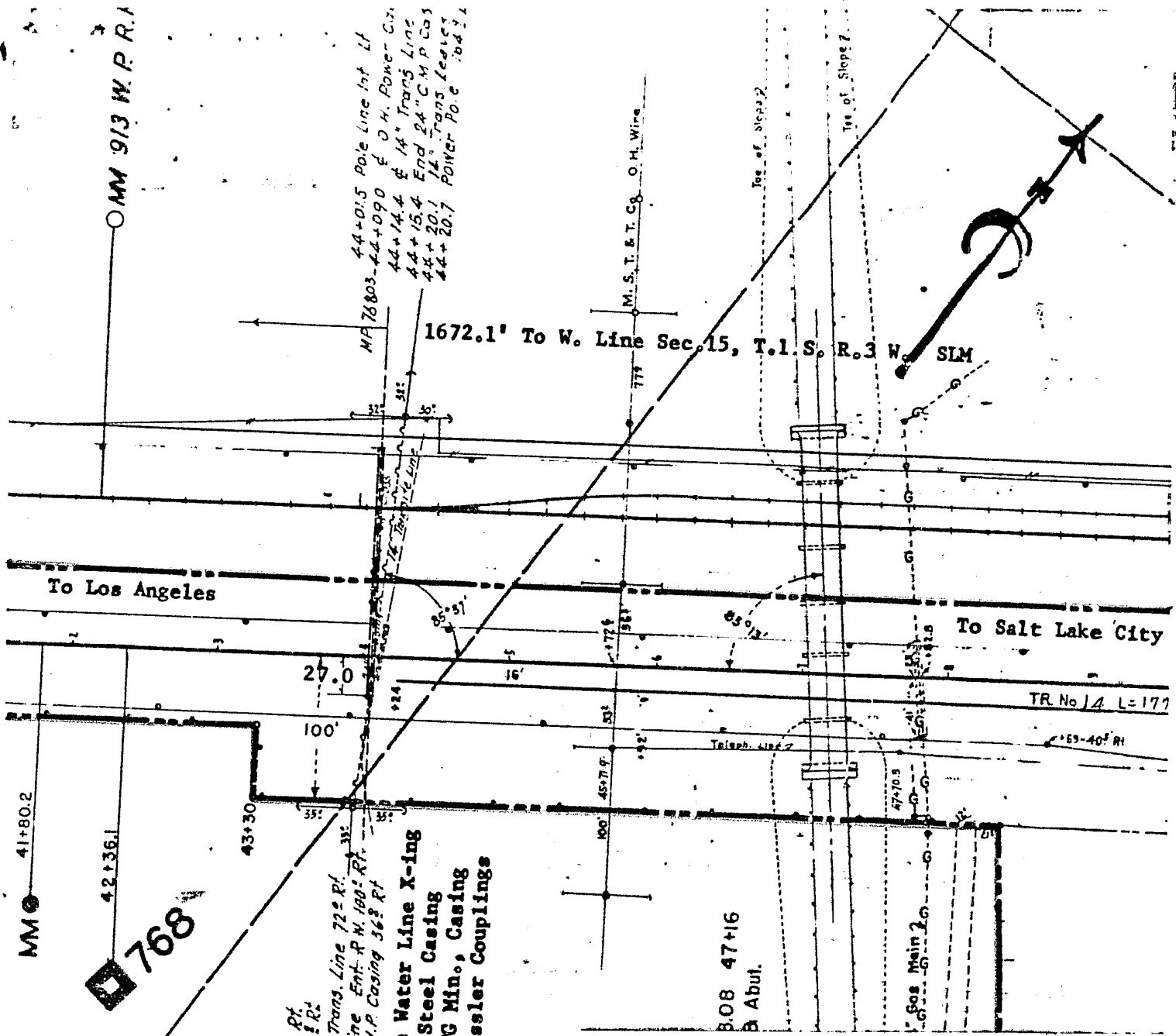
BOOK 5318 PAGE 1146

KATIE J. JONSON  
REGISTERED  
SALT LAKE COUNTY  
UTAH

2007  
DEC 2 11 54 AM '81

Union Pacific Railroad Co  
REGD  
\$  
Regulation Dept  
Salt Lake City

406 West First St  
SLC, UT 84101



MA 76803-44+09.0 End of D.H. Power Co.  
 44+14.4 End 14" Trans Line  
 44+15.4 End 24" C.M.P. Cas  
 44+20.1 End 14" Trans Lead  
 44+20.7 POWER Pole 1047.1

43+99.4 Pole line Int. Pt.  
 Power Pole 1031.2  
 44+08.7 Angle in 14" Trans. Line 72° Rt.  
 44+09.5 14" Trans. Line Ent. R.W. 100' Rt.  
 44+11.3 End 24" C.M.P. Casing 363 Rt  
 44+06.2 S. U.G. 36" Waste Water Line X-ing  
 In 5/8"x42"x170" Steel Casing  
 4.5' BBR, 3.0' RING Min., Casing  
 Ends Sealed w/Dressler Couplings

Exhibit "A"

LOS ANGELES & SALT LAKE RAILROAD CO.  
 and Union Pacific Railroad Company  
 Main Line  
 M.P. 768.03  
 Garfield, Utah

To accompany agreement with KENNE-  
 COTT CORPORATION covering an under-  
 ground water line crossing.

Scale: 1" = 100'

Office of District Real Estate Dir.  
 Salt Lake City, Utah 9-22-81.

\* L E G E N D \*

Underground Crossing shown...Yellow  
 Railroad R/W shown.....Red

Drawing No. A-3983-L

BOOK 5318 PAGE 1147

S.L.R.

N.

A

EXHIBIT B

The foregoing grant is subject and subordinate to the prior and continuing right and obligation of the Licensor to use and maintain its entire property in the performance of its public duty as a common carrier, and is also subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication or other wire lines, pipe lines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Licensor's property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

The Pipe Line shall be constructed, operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in strict conformity with Union Pacific Railroad Co. Common Standard Specification 1029 adopted November 1949, as subsequently amended, except as may be modified and approved by the Licensor's Chief Engineer. In the event such Specification conflicts in any respect with the requirements of any federal, state or municipal law or regulation, such requirements shall govern on all points of conflict, but in all other respects the Specification shall apply.

All work performed on property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipe Line shall be done under the supervision and to the satisfaction of the Licensor.

Prior to the commencement of any work in connection with the construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipe Line where it passes underneath the roadbed and track or tracks of the Licensor, the Licensee shall submit to the Licensor plans setting out the method and manner of handling the work, including the shoring and cribbing, if any, required to protect the Licensor's operations, and shall not proceed with the work until such plans have been approved by the Chief Engineer of the Licensor and then only under the supervision of the Chief Engineer or his authorized representative. The Licensor shall have the right, if it so elects, to provide such support as it may deem necessary for the safety of its track or tracks during the time of construction, maintenance, repair, renewal, modification, relocation, reconstruction or removal of the Pipe Line, and, in the event the Licensor provides such support, the Licensee shall pay to the Licensor, within fifteen (15) days after bills shall have been rendered therefor, all expense incurred by the Licensor in connection therewith, which expense shall include all assignable costs plus ten percent (10%) to cover elements of expense not capable of exact ascertainment.

The Licensee shall keep and maintain the soil over the Pipe Line thoroughly compacted and the grade even with the adjacent surface of the ground.

Section 3. NOTICE OF COMMENCEMENT OF WORK.

The Licensee shall notify the Licensor at least forty-eight (48) hours in advance of the commencement of any work upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipe Line. All such work shall be prosecuted diligently to completion.

Section 4. LICENSEE TO BEAR ENTIRE EXPENSE.

The Licensee shall bear the entire cost and expense incurred in connection with the construction, maintenance, repair and renewal and any and all modification, revision, relocation, removal or reconstruction of the Pipe Line, including any and all expense which may be incurred by the Licensor in connection therewith for supervision or inspection, or otherwise.

Section 5. RELOCATION OR REMOVAL OF PIPE LINE.

The license herein granted is subject to the needs and requirements of the Licensor in the operation of its railroad and in the improvement and use of its property, and the Licensee shall, at the sole expense of the Licensee, move all or any portion of the Pipe Line to such new location or (unless the Pipe Line extends entirely across the property of the Licensor) remove the Pipe Line from such property, as the Licensor may designate, whenever, in the furtherance of its needs and requirements, the Licensor shall find such action necessary or desirable.

All the terms, conditions and stipulations herein expressed with reference to the Pipe Line on property of the Licensor in the location hereinbefore described shall, so far as the Pipe Line remains on the property, apply to the Pipe Line as modified, changed or relocated within the contemplation of this section.

**Section 6. NO INTERFERENCE WITH LICENSOR'S OPERATION.**

The Pipe Line and all parts thereof within and outside of the limits of the property of the Licensor shall be constructed and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Licensor, and nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof.

**Section 7. CLAIMS AND LIENS FOR LABOR AND MATERIAL; TAXES.**

The Licensee shall fully pay for all materials joined or affixed to and labor performed upon property of the Licensor in connection with the construction, maintenance, repair, renewal, modification or reconstruction of the Pipe Line, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee. The Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

The Licensee shall promptly pay or discharge all taxes, charges and assessments levied upon, in respect to, or on account of the Pipe Line, to prevent the same from becoming a charge or lien upon property of the Licensor, and so that the taxes, charges and assessments levied upon or in respect to such property shall not be increased because of the location, construction or maintenance of the Pipe Line or any improvement, appliance or fixture connected therewith placed upon such property, or on account of the Licensee's interest therein. Where such tax, charge or assessment may not be separately made or assessed to the Licensee but shall be included in the assessment of the property of the Licensor, then the Licensee shall pay to the Licensor an equitable proportion of such taxes determined by the value of the Licensee's property upon property of the Licensor as compared with the entire value of such property.

**Section 8. RESTORATION OF LICENSOR'S PROPERTY.**

In the event the Licensee shall take down any fence of the Licensor or in any manner move or disturb any of the other property of the Licensor in connection with the construction, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipe Line, then and in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Licensor, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such injury, death, damage, loss or destruction grows out of or arises from the taking down of any fence or the moving or disturbance of any other property of the Licensor.

**Section 9. LIABILITY.**

The Licensee shall indemnify and hold harmless the Licensor and other companies which use the property of the Licensor, their officers, agents and employees, against and from any and all liability, loss, damage, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from injury to or death of persons whomsoever, or against and from damage to or loss or destruction of property whatsoever (including damage to the roadbed, tracks, equipment or other property of the Licensor and such other companies or property in their care or custody), when such injury, death, loss, destruction or damage is due to or arises from the bursting of or leaks in the Pipe Line, or in any other way whatsoever is due to, or arises because of, the existence of the Pipe Line or the construction, operation, maintenance, repair, renewal, modification, reconstruction, relocation or removal of the Pipe Line or any part thereof, or to the contents therein or therefrom (except when caused directly and solely by the negligence of the Licensor and such other companies, their officers, agents or employees). The Licensee does hereby release the Licensor and such other companies, their officers, agents and employees, from all liability for damages on account of injury to the Pipe Line from any cause whatsoever.

**Section 10. TERMINATION ON NONUSER OR DEFAULT.**

If the Licensee does not use the right herein granted or the Pipe Line for one (1) year, or if the Licensee continues in default in the performance of any covenant or agreement herein contained for a period of thirty (30) days after written notice from the Licensor to the Licensee specifying such default, the Licensor may, at its option, forthwith terminate this Agreement. Notice of default and notice of termination may be served upon the Licensee by mailing to the last known address of the Licensee.

**Section 11. REMOVAL OF PIPE LINE UPON TERMINATION OF AGREEMENT.**

Within ninety (90) days after the termination of this Agreement howsoever, the Licensee shall, at Licensee's sole expense, remove the Pipe Line from those portions of the property not occupied by the roadbed and track or tracks of the Licensor and shall restore, to the satisfaction of the Licensor, such portions of such property to as good condition as they were in at the time of the construction of the Pipe Line. If the Licensee fails to do the foregoing, the Licensor may do such work of removal and restoration at the cost and expense of the Licensee. The Licensor may, at its option, upon such termination, at the entire cost and expense of the Licensee, remove the portions of the Pipe Line located underneath its roadbed and track or tracks and restore such roadbed to as good condition as it was in at the time of the construction of the Pipe Line, or it may permit the Licensee to do such work of removal and restoration under the supervision of the Licensor. In the event of the removal by the Licensor of the property of the Licensee and of the restoration of the roadbed and property as herein provided, the Licensor shall in no manner be liable to the Licensee for any damage sustained by the Licensee for or on account thereof, and such removal and restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that the Licensor may have against the Licensee.

**Section 12. WAIVER OF BREACH.**

The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Licensor to avail itself of any subsequent breach thereof.

**Section 13. AGREEMENT NOT TO BE ASSIGNED.**

The Licensee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this Agreement.

**Section 14. SUCCESSORS AND ASSIGNS.**

Subject to the provisions of Section 13 hereof, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

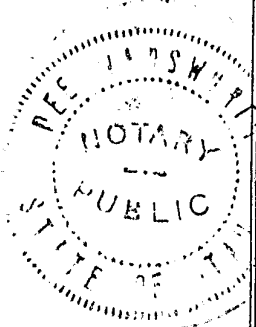
BOOK 5318  
PAGE 1150

(GM-C)

STATE OF Utah )  
COUNTY OF Salt Lake ) SS.

On the 19<sup>th</sup> day of November, 1981,  
before me, a Notary Public, personally appeared \_\_\_\_\_  
R. E. Irion to me personally known to be the  
General Manager of Los Angeles & Salt Lake Railroad Company  
and UNION PACIFIC RAILROAD COMPANY, who being duly sworn  
did say that the foregoing instrument was signed, sealed  
and executed in behalf of said corporations by authority  
duly conferred by their By-Laws, and acknowledged to me  
said instrument to be the free act and deed of said cor-  
porations.

IN WITNESS WHEREOF, I have hereunto set my hand  
and affixed my official seal the day and year first in  
this, my certificate, written.



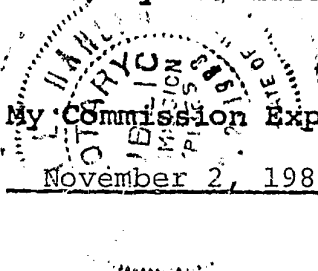
My Commission Expires: Dec Wadsworth  
Notary Public,  
Jan 9, 1983 Residing at Magna Utah

STATE OF Utah )  
COUNTY OF Salt Lake ) : SS.

On the 4th day of November, 1981, be-  
fore me, a Notary Public, personally appeared \_\_\_\_\_  
W. H. Jensen to me personally known to be the  
General Manager of Kennecott Minerals Company,  
Utah Copper Division, who being duly sworn did say  
that the ~~seal affixed to the~~ foregoing instrument ~~is the~~  
~~corporate seal of said corporation, and that said instru-~~  
~~ment~~ was signed, ~~sealed~~ and executed in behalf of said  
corporation ~~by authority duly conferred by its laws~~  
and acknowledged to me said instrument to be the free  
act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand  
and affixed my official seal the day and year first in  
this, my certificate, written.

Keith S. Hansen  
Notary Public,  
My Commission Expires: Residing at Salt Lake County  
November 2, 1983



BOOK 5318 PAGE 1151