

Recorded at request of *Div. of Water Resources* Fee Paid *\$75.00*
Date **FEB 26 1981** at *1:00 PM* CAROL DEAN PAGE Recorder Davis County
By *Grace K. Henderson* Deputy Book *258* Page *665*

81-5187

AGREEMENT

Sec. 1-4, 9-12, 15 & 16-47-12

586768

This Agreement entered into this 16 day of Dec, 1980,
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 HAIGHTS CREEK
IRRIGATION COMPANY, a corporation, organized under the Laws of the State of Utah,
Second Party, sometimes referred to herein as the WATER COMPANY:

W I T N E S S E T H

THAT WHEREAS, the Utah Legislature has authorized the BOARD OF WATER
RESOURCES, under Title 73-10, Utah Code Annotated, to enter into contracts for
the construction of water conservation projects, which in the opinion of the
Board, will best conserve and utilize the water resources of the State of Utah;
and

WHEREAS, the STATE desires to promote a water conservation project
consisting of enlargement of an existing earth embankment reservoir from 13
acre feet to 30 acre feet, and enlargement of existing diversion works to the
reservoir located approximately one (1) mile east of Kaysville, Davis County,
Utah; and

WHEREAS, it is the desire of the WATER COMPANY to enter into a contract
with the STATE, for a consideration to be hereinafter provided, and to use the
water developed by the aforesaid project, and as the WATER COMPANY has the
available manpower and facilities necessary to construct the aforesaid project,
and is ready, willing, and able to enter into a contract for such purpose;

NOW THEREFORE, the Parties hereto enter into this Agreement and make the
following Assignments:

1. The WATER COMPANY hereby agrees 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 agrees 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 agrees to grant and convey to the STATE an easement to use any and
all of the WATER COMPANY'S facilities in Sections 1, 2, 3, 4, 9, 10, 11, 12,
15, and 16, T3N, R1W, and Sections 34, 35, and 36, T4N, R1W, SLB&M.

2. The WATER COMPANY hereby agrees to convey, assign, and warrant to
the STATE, all right, title, and interest which it has or may have, to the
right to the use of the water which shall be developed or conveyed through the
use of the aforesaid project, and particularly the Diligence Right to the
waters of Hights Creek, Claim No. 3670 (31-4632) with a priority of June 1873
for 18 cfs, 2667 acre-feet.

Div. of Water Resources
Int. Sec. Engineer King
231 6.400 ac. 820
8411

☐ Abstracted
☐ Indexed
☐ Entered
☐ Printed
☐ Compared

3. The WATER COMPANY recognizes as valid the conveyance of easements and rights-of-way executed by various owners of the land to the STATE, and agrees that all performance by the WATER COMPANY 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 WATER COMPANY agrees to supply the necessary manpower and facilities and agrees to complete the construction of the aforesaid project regardless of unforeseen contingencies, in accordance with plans, specifications, and work items, a copy of which is hereby incorporated by reference and made a part hereof.

5. The STATE agrees to pay to the WATER COMPANY Seventy-Five Percent (75%) of the total cost of constructing the project, but in no event shall the amount paid by the STATE exceed One Hundred Seventy-Seven Thousand Dollars (\$177,000.00) and the WATER COMPANY agrees to pay all costs in excess of the amount paid by the STATE.

6. It is further agreed that the STATE shall pay Ninety Percent (90%) of the amount payable by the STATE to the WATER COMPANY upon the presentation by the WATER COMPANY to the STATE of a certified statement of the payment required which shall be in the nature of a partial estimate of the work completed to date by the WATER COMPANY on each work item. The Ten Percent (10%) withheld as above set forth will become due and payable to the WATER COMPANY 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. The Ten Percent (10%) withheld may, at the discretion of the Director of the Board of Water Resources, be paid upon completion and acceptance of separate phases or increments of the project.

7. All payments made by the STATE to the WATER COMPANY under this Agreement shall be made payable to HIGHTS CREEK IRRIGATION COMPANY, and mailed to J. Cleon Christensen, Secretary, 66 North Mountain Road, Kaysville, Utah 84037, or such person as may hereafter be designated by the WATER COMPANY. The WATER COMPANY shall, during the construction period under this Agreement, establish in a bank of its choice, a special checking account under the name of the project, and all monies used from any source for payment of obligations toward the construction work shall be deposited in this special account and dispersed by check to meet the obligations of the project construction. All items of labor and equipment shall be fully accounted for, and a final report rendered to the Utah BOARD OF WATER RESOURCES as part of the final acceptance and approval by the STATE.

8. It is further agreed that the WATER COMPANY shall complete the construction of the project on or before June 1, 1981, and that title to the entire project, including all appurtenant facilities and water rights shall immediately vest in the STATE.

9. The STATE agrees to sell, and the WATER COMPANY agrees 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 WATER COMPANY for the construction of the project, but not to exceed One Hundred Seventy-Seven Thousand Dollars (\$177,000.00) plus all expense incurred by the STATE for the investigation, engineering, and inspection of the project, and to be determined by the STATE upon completion of the project.

10. The purchase price shall be payable over a period of time not to exceed Twelve (12) years, in annual installments of one-twelfth (1/12) or more, of the total purchase price, as defined above, without interest. The first annual installment of one-twelfth (1/12) or more, of the total purchase price, as defined above, shall become due and payable on the First Day of December 1981, 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 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 Eighteen Percent (18%) per annum.

11. During the period of such purchase under this contract, provided the WATER COMPANY is not delinquent in any manner, the WATER COMPANY shall have and is hereby given the right to use the STATE'S water rights, and all facilities constructed thereunder. During the life of this Agreement, the WATER COMPANY agrees to assume, at the WATER COMPANY'S expense, the full and complete obligation of maintaining the constructed works, and other facilities, and of protecting all water rights, easements, and rights-of-way from forfeiture, including the payment of any fees or assessments for said water rights, easements or rights-of-way.

12. In order to secure the payment of the aforesaid purchase price, it is hereby expressly agreed that the STATE may require the WATER COMPANY to assess all outstanding shares of its stock for the full amount of any delinquencies in the aforesaid purchase installments. It is further agreed by the WATER COMPANY that it will not incur any mortgages or encumbrances, other than those already acquired by it, on any of its property, real or personal, without first securing the written consent of the STATE.

13. The WATER COMPANY hereby warrants 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 WATER COMPANY hereby agrees to indemnify the STATE to the extent of such claim or cause of action.

14. In constructing or causing the project under this Agreement to be constructed, the WATER COMPANY shall comply with the provisions of the Utah Anti-Discrimination Act of 1965 and hereby agrees as follows:

(a) The WATER COMPANY will not discriminate against any employee or applicant for employment because of race, color, sex, religion, ancestry, or national origin.

(b) In all solicitations or advertisements for employees, the WATER COMPANY will state that all qualified applicants will receive consideration without regard to race, color, sex, religion, ancestry, or national origin.

(c) The WATER COMPANY will send to each labor union or workers' representative notices to be provided, stating the WATER COMPANY'S responsibilities under the statute.

(d) The WATER COMPANY will furnish such information and reports as requested by the Anti-Discrimination Division for the purpose of determining compliance with the statute.

(e) Failure of the WATER COMPANY to comply with the statute, the rules and regulations promulgated thereunder and this non-discrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part.

(f) The WATER COMPANY will include the provisions of Items a - e in every subcontract or purchase order (unless exempted under the statute or rules and regulations) so that such provisions will be binding upon such subcontractor or vendor.

15. If either party to the 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 (90) days after such notice, the other may declare the contract forfeited and may proceed to its remedies at law for such breach.

16. The WATER COMPANY hereby agrees to assume the full obligation for any claims or liability for any injury or death of persons, or for any property loss or damage that may arise from the construction or from the operation of this project for the STATE; and further, the WATER COMPANY agrees to hold the STATE immune for all such claims for damages, injury, or death of persons, animals, or property during the life of this Agreement.

17. After the WATER COMPANY 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 revest the same title to the aforesaid property and water rights in the WATER COMPANY.

18. 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 WATER COMPANY, without first having secured the written consent of the STATE to any such proposed assignment or disposition of this Agreement.

19. This Agreement shall not become binding upon the STATE until it has been signed by all persons and agencies required by law, and the STATE shall not become liable to the WATER COMPANY for any commitments made by the WATER COMPANY until this Agreement has been fully executed.

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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 HAIGHTS CREEK IRRIGATION COMPANY, Party of the Second Part, has caused these presents to be signed and executed on its behalf by Ben Orlo Brough, its President, and J. Cleon Christensen, its Secretary, by a resolution of its stockholders at a meeting held 19 January, 1980.

APPROVED:

DEPARTMENT OF NATURAL RESOURCES

Gordon E. Hammond
Executive Director

BOARD OF WATER RESOURCES

Philip S. Knight
Chairman

APPROVED:

DEPARTMENT OF FINANCE

Will H. Williams
Director of Finance

Samuel Laurence
Director

HAIGHTS CREEK IRRIGATION COMPANY

APPROVED

AS TO AVAILABILITY OF FUNDS:

Ben Orlo H. Brough
President

[Signature]
Budget Officer Date

J. Cleon Christensen
Secretary

APPROVED AS TO FORM:

[Signature]
Assistant Attorney General

STATE OF UTAH

X

:

ss.

County of Davis

X

670

On the 16th day of Dec, 1980, personally appeared before me Ben Orlo Brough and J. Cleon Christensen, who being by me duly sworn, did say that they are the President and Secretary, respectively, of the HAIGHTS CREEK IRRIGATION COMPANY, and that the said instrument was signed in behalf of said corporation by authority of a resolution of its stockholders, and said Ben Orlo Brough and J. Cleon Christensen acknowledged to me that said corporation executed the same.

James H. Brough
Notary Public

Residing at: Kayville, Utah

My Commission Expires: 2/5/83

2/5/83