

Second Contract

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*PD # 3472 Weber Basin Water
8-13-79 2837 E. Hwy 193
Layton 84041*

Exchange Application No. 1618
(Issued by Div. of Water Rights)

CONTRACT BETWEEN WEBER BASIN WATER CONSERVANCY DISTRICT
AND

Dennis K. and Beverly C. Holmes
(Purchasers)

FOR THE SALE AND USE OF UNTREATED WATER

THIS CONTRACT, made this 24th day of July, 1979, between the WEBER BASIN WATER CONSERVANCY DISTRICT, organized under the laws of the State of Utah, herein styled "District", and Dennis K. and Beverly C. Holmes, of Ogden, Utah herein styled the "Purchaser",

WITNESSETH:

WHEREAS, the District made a contract with the United States dated December 12, 1952 (thereafter amended), hereinafter referred to as the Government-District Contract for the repayment of certain costs of the works of Weber Basin Project, hereinafter referred to as the Project, by means of which water is and will be made available for use for irrigation, municipal and miscellaneous purposes, and

WHEREAS, the Purchaser desires, by means of a well/spring to divert or withdraw underground water for domestic and miscellaneous purposes at or near the following locations:

S 2000 ft & E 1300 ft fr the N 1/4 Cor of Sec 30, T7N, R1E, SLB&M.

(above described diversions are not located within municipal boundaries)

which diversion will intercept and withdraw water that will require replacement, and the District has Project water to sell to the Purchaser to replace the water so intercepted and withdrawn.

NOW, THEREFORE, in consideration of the mutual and dependent promises and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

1. SALE OF WATER: The District for the price hereinafter specified, hereby sells and agrees to deliver in the manner and at the place hereinafter provided, and the Purchaser hereby purchases the right to use in each calendar year untreated Project water in amounts of three one acre-feet. except the District will not be obligated to

*13 1/2
acres*

22-025-0033

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deliver water to the Purchaser as herein provided until satisfactory evidence is furnished that the use of this water as replacement water has been approved by the State Engineer of Utah. If for any reason written notice of such approval by the State Engineer is not received by the District from the State Engineer by not later than six months from date of contract, this contract shall in all respects cease and terminate.

2. PLACE OF DELIVERY AND USE: The water covered hereby is sold to the purchaser solely for the replacement of underground water diverted, withdrawn or to be diverted or withdrawn by said well/spring for domestic and miscellaneous use in and upon the following described lands in Weber County, Utah: Commencing at a point 195 feet North, and 1320 feet East of the Southwest corner of the Northeast Quarter of Section 30, Township 7 North, Range 1 East, Salt Lake Base & Meridian; and running thence North 475 feet; thence West 550 feet; thence South 475 feet; thence East 550 feet to the point of beginning. TOGETHER with a right-of-way for ingress and egress to said property; commencing at the above beginning point, and running North 1325 feet more or less to the road; thence Northeast along said road 2 $\frac{1}{2}$ Rods; thence South to a point 2 Rods East of the point of beginning; thence West 2 Rods to point of beginning. and for no other use or purpose. Its use as replacement water shall be subject to such rules and regulations as the State Engineer of Utah may prescribe.

Delivery of such water shall be as directed by the State Engineer or his representative at Pine View Reservoir. The District shall have no obligation to provide works or facilities of any type to conduct such water from such point of delivery to its ultimate place of use. The purchaser shall have no right to hold over or accumulate water from year to year, nor to sell or rent the water.

3. OBLIGATION OF PURCHASER TO PAY FOR WATER: For the purchase of the annual quantity of water which the District holds and will hold for the Purchaser as herein provided, the Purchaser shall pay to the District an annual amount to consist of the total of the following items:

- (a) \$15.00 per acre-foot of water, being a total of \$ ~~45.00~~ ^{15.00} to apply on the District's obligation under the repayment contract No. 14-06-400-33 between the United States and the District, as it has been or may be amended and supplemented. PP
12/26

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(b) An amount not to exceed \$5.00 annually as determined by the District to pay the District's special costs and expenses in administering this allotment.

(c) An amount equal to the assessments imposed by the State Engineer for the distribution of the water replaced hereunder.

(d) A fair proportionate amount of estimated operating and maintenance charges of the District for the then calendar year. Such fair proportionate amount shall be determined each year by the Board of Directors of the District and the determination shall be final and conclusive. If such estimate is more or less than the actual cost thereof, an appropriate adjustment will be made in the annual amount for the year following the year for which the estimate was made.

The first annual payment under items (a), (b), (c) and (d) above shall be made by the Purchaser to the District before the first water is delivered, and shall be in payment for water available for the use as herein provided for that calendar year, and succeeding annual payments shall be made by the Purchaser to the District on or before January 1 of each year thereafter, provided, however, that upon payment in full of that part of the construction obligation of the District apportioned to the development unit applicable to this contract, no further payment under item (a) shall be required. Each annual payment shall be made to the District whether or not all or any part of the water is called for or used hereunder.

4. PENALTY FOR DELINQUENCY: Every installment or charge required to be paid to the District under this contract, which shall remain unpaid after its due date, shall bear interest at the rate of eight percent (8%) per annum from date of delinquency.

5. REMEDIES OF DISTRICT IN CASE OF DEFAULT: The annual amount payable hereunder shall be and constitute a perpetual lien upon the lands hereinabove described. If the Purchaser shall fail to make any payment due hereunder on or before the due date, the District may refuse the delivery of water, or upon written notice to Purchaser, cancel this contract in its entirety, but either or both of these remedies are

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not exclusive, and the District may exercise any other remedy given by this contract or by law to enforce collection of any payment due hereunder, and for the foreclosure of the lien hereby created.

6. RELIEF IN EVENT OF DROUTH AND WATER SHORTAGE: In the event there is a shortage of water caused by drouth, inaccuracies in distribution not resulting from negligence, hostile diversion, prior or superior claims or other causes not within the control of the District, no liability shall accrue against the District or the United States or any of their officers, agents, or employees or either of them for any damage, direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortage, allocations of treated and untreated water for municipal, domestic and industrial use shall have first priority.

7. CONSTRUCTION, OPERATION AND MAINTENANCE OF PURCHASER'S FACILITIES: The purchaser shall construct, operate and maintain, without cost to the District or the United States, the well/~~spring~~ and appurtenant facilities necessary to secure and accurately measure its water supply. The metering or other measuring device installed by the Purchaser shall be satisfactory to the State Engineer. The District has no responsibility for the quantity or quality of water that the Purchaser is able to secure through the operation of its well/~~spring~~.

8. BENEFICIAL USE OF WATER: The basis, the measure and the limit of the right of the Purchaser in the use of water shall rest perpetually in the beneficial application thereof, and the Purchaser agrees to put the water purchased by him hereunder to beneficial use in accordance with law.

9. ASSIGNMENT LIMITED- SUCCESSORS AND ASSIGNS OBLIGATED: The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto.

10. NOTICE: Any notice herein required to be given to the Purchaser shall be sufficiently given if sent by mail addressed to purchaser at: 4868 Chukar Lane, Ogden, Utah 84403 and to the District if sent to 2837 East Highway 193, Layton, Utah 84041.

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11. OBSERVATION OF FEDERAL AND STATE POLLUTION LAWS: The Purchaser agrees that it will comply fully with all applicable Federal Laws, orders and regulations and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants.

IN WITNESS WHEREOF, the parties have caused this contract to be executed and signed the day and year first above written.

Dennis K. Holmes
Beverly C. Holmes
Purchasers

WEBER BASIN WATER CONSERVANCY DISTRICT

Kath A. Jensen
President

ATTEST

Walter M. Morgan
Secretary

(SEAL)

STATE OF ^{VIRGINIA} ~~UTAH~~)
COUNTY OF FAIRFAX) SS

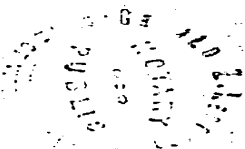
On this 7th day of August, 1979, personally appeared before me DENNIS K and BEVERLY C. HOLMES
(Purchasers)

the signers of the within instrument, who duly acknowledged to me that they executed the same.

Paul E. Sifford Notary Public
Residing at: 5000 GREPLEY BLVD
SPRINGFIELD, VA 22152

My commission expires: Nov 15, 1981

(SEAL)



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RESOLUTION

BE IT AND IT IS HEREBY RESOLVED by the Board of Directors of the Weber Basin Water Conservancy District, that the President and the Secretary of said District be and they are hereby authorized and empowered to execute on behalf of said District replacement water agreements for 1.0 a.f. each with the following named purchasers on the terms and conditions contained in the forms of agreements presented and considered at this meeting.

Delores E. Astill
 Bertagnole Investment Company
 J. W. & Carolyn C. Bloom
 Paul Buehner (#2 trust)
 Paul Buehner
 Otto Buehner & Co. Profit Sharing Trust
 Anita Bushell, William Judd & Arlene M. Judd
 Gene R. & Dana S. Bybee
 Walter Scott & Barbara Jean Croft
 Rulon Crosby
 Michael L. & Mary Ann Dame
 Billy W. & Elaine D. Davis
 Russell B. & Lawana C. Davis
 Jo Ann H. & Michael Ericksen
 James R. Gaddis, etal
 Ronald B. & Pauline H. Giles and Rosmary G. Widdison
 Gary Free & Lou Hall
 Kenneth & Margaret N. Hall
 Hall Investment Co. (Ivan & Dorothy S. Hall)
 Halliday Enterprises (Herbert H. Halliday)
 Robert F. & Camille Harman
 Norman & Faye A. Hawks
 Monty & April Hawks
 Don E. & Shelley Henrichsen
 Hi-Ute Investment Co.
 Dennis K. & Beverly C. Holmes
 David C. & Sharon K. Holmstrom
 Robert Hopcraft
 Hoytsville Pipe Water Co.
 Steve & Pam Jaques
 Boyd L. Jentzsch
 Victor R., RaNae, William R. & Arlene M. Judd
 Rosalie, William R. & Arlene M. Judd
 Margaret Laun
 William R. Lang & W. Parker Earl
 Craig & Kimberly McLachlan
 Dean & Alice Miller
 J. L. & Darla C. Murphy
 Gary B. & Shelly Ann Nelson
 Mrs. George M. Nix
 John & Diane L. Ofstad
 Whitney & June Ann Oldham
 Hans J. P. Olsen
 Glen F. & Jean H. Palmer
 V. Keith & Palma P. Pettey etal
 Marvin L. & Lottie A. Phillips
 Walter Plumb III
 Williston C. & Dione K. Pugh
 Charles & Janet B. Retallick etal
 S. Ivan & Naoma B. Rice
 Jack S. & Marcia G. Savage etal
 Audun & Jeraldine D. Seljaas
 John & Karen Shields

(continued)

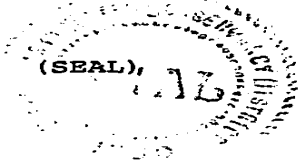
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Roger M. & Coleen C. Smith
 James M. Spriggs
 Mary C. Stark
 Darwin Stillman Estate (Merrill Stillman)
 Summit Water Distribution Company
 Christopher & Patricia S. Thomas
 Verl Poll Enterprise Estate Water Association
 Deveda E. Vernon Family Trust (Deveda E. & R. Don Vernon)
 Danny C. Vernon
 Jeffery S. & Ann Wardell
 Martin L. & Patsy B. Wardle
 John L. & Aileen F. Wadman
 Milton L. Weilenmann
 Loris A., Pearl W., Donald Craig & Valerie Whitear and
 Peterson Pipeline Co.
 George T. & Elizabeth Flinders

CERTIFICATE

I, WAYNE M. WINEGAR, Secretary of the Weber Basin Water Conservancy District, hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Directors of the Weber Basin Water Conservancy District at a regular meeting held October 26, 1979.

Wayne M. Winegar
 Wayne M. Winegar, Secretary



821351

Mo-Free

PLATTED
ENTERED

VERIFIED
 MICROFILMED

RUTH EAMOND OLSEN
WEBER DISTRICT CLERK

DEPUTY *Ruth Eamond Olsen*

OCT 6 1 36 PM '80

FILED AND RECORDED FOR

Weber Basin Water