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ARVILLA E. WARREN
RECORDER, SAN JUAN COUNTY
A G R E E M E N T

This Agreement entered into this 1st day of October, 1965, in original and four copies, by and between the State of Utah, acting through the UTAH WATER AND POWER BOARD, First Party, sometimes referred to herein as the STATE, and the BLANDING IRRIGATION COMPANY, a corporation organized under the laws of the State of Utah, Second Party, sometimes referred to as the WATER COMPANY.

W I T N E S S E T H

THAT WHEREAS, the State and Water Company did enter into an agreement on the 15th day of April, 1948, which provided for the construction of a water diversion tunnel located in the Manti-LaSal National Forest in San Juan County, Utah, to make available to the Water Company water from Indian Creek Basin; and

WHEREAS, pursuant to the before mentioned contract the Water Company agreed to construct the aforesaid water diversion tunnel, which has been completed and title to the project is vested in the State; and

WHEREAS, a Special Use Permit dated April 9, 1948, has been issued by A. R. Taylor, Acting Forest Supervisor of the United States Department of Agriculture, Forest Service, to the State granting permission to construct the water diversion tunnel; and

WHEREAS, the State and Water Company did enter into an agreement on the 5th day of June, 1962, which provided for the construction of an earth-fill dam and storage reservoir and other appurtenant facilities, being an off stream dam from Dry Wash, to complete a useful operating project, referred to as Dry Wash No. 2 Reservoir Dam. The intersection of the axis of dam with center line of streambed being situated in San Juan County, at a point N. 1083 feet and W. 299 feet from NW corner Section 6, T35S, R22E, SLB&M, which reservoir at full stage will have a capacity of 184.6 acre-feet of water and will inundate 15 acres of land situated within the SE1/4 Section 31, T34S, R22E, SLB&M: and

WHEREAS, pursuant to the before mentioned agreement dated the 5th day of June, 1962, the Water Company agreed to construct the aforesaid dam, which has been completed and title to the project is vested in the State; and

WHEREAS, a Special Use Permit under File Code No. 2710, dated the 10th day of June, 1963, has been issued by the Regional Forester, Floyd Iverson, of the United States Department of Agriculture, Forest Service, to the State granting permission to construct the dam on the forest; and

WHEREAS, the Water Company by virtue of that certain agreements with the State dated the 15th day of April, 1948 and 5th day of June, 1962, did assign, warrant and transfer to the State certain easements and water rights, described as follows, to-wit:

ABSTRACTED

"An easement to use the irrigation distribution system of the Blanding Irrigation Company, including those canals, wiers, laterals, and other irrigation facilities which form part of the Blanding Irrigation system, lying in Section 16, 21, 28, 33, 34, T35S, R22E, SLB&M; and Sections 3, 10, 15, 22, 27, 34, T36S, R22E, SLB&M;

and also Sections 2, 11, 12, 13, 24, 25, 26, and 35, T36S, R22E, SLB&M; and Sections 18, 19, T36S, R23E, SLB&M;

and also in Sections 2, 3, 4, 9, 10, 11, T37S, R22E, SLB&M.

"Applications to Appropriate Water in the State of Utah Nos. 19114 and 19121 on file in the office of the Utah State Engineer"; and

WHEREAS, the STATE desires to promote a water conservation project consisting of constructing 1.8 miles of diversion canal and appurtenant works to bring water from the southwest fork of Indian Creek to the portal of Blanding Tunnel; and

WHEREAS, Special Use Permit under File Code No. FPC 2710, dated September 20, 1965, has been issued by Robert B. Terrill, Forest Supervisor, of the United States Department of Agriculture, Forest Service, to the State granting permission to construct, maintain and operate the said diversion canal on the forest; 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 the following 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; and
2. The Water Company hereby agrees to convey, assign and quitclaim to the State all right, title and interest which it has or may have, to the right to use of water which shall be saved or conveyed through the use of the aforesaid project, and particularly Application to Appropriate Water in Utah, No. 33817 on file in the Office of the Utah State Engineer.

The Water Company further agrees that the State shall retain title to Application No. 19114 and Application No. 19121, on file in the Office of the State Engineer, which have been previously conveyed to the State by the Water Company, until the Water Company has repurchased this entire project from the State.
3. The Water Company recognizes as valid the conveyance of easements and right-of-way executed by various owners of the benefited 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 easement 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 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.
5. The State agrees to pay to the Water Company seventy-five (75) percent of the total cost of constructing the project, but in no event shall the amount paid by the State exceed \$15,000.00, and the Water Company shall itself pay for all costs in excess of the amount paid by the State. The Water Company agrees and undertakes to construct to completion as designed and specified, the aforesaid project in all events regardless of unforeseen contingencies, and agrees to pay all costs in excess of the aforesaid 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 requirement 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.

7. It is further agreed that the Water Company shall complete the construction of the project on or before December 1, 1966, and that title to the entire project, including all appurtenant facilities and water rights shall immediately vest in the State. 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 Water Company for any commitments made by the Water Company until this contract has been completed.

8. 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 \$15,000.00, 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, and payable over a period of time not to exceed fifteen (15) years, in annual installments of one fifteenth (1/15), or more per year, of the total purchase price as defined above, without interest.

9. The first annual installment of one-fifteenth (1/15), or more, of the total purchase price, as defined above, shall become due and payable on the First day of December, 1967, and a like sum, or more, to 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 Utah Water and Power Board, 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 six percent (6%) per annum.

10. The Water Company hereby orders and directs that all payments made under this agreement shall be made payable to the Blanding Irrigation Company, and mailed to Harold J. Lyman, Secretary, Box 628, Blanding, Utah.

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. The Water Company does hereby assume during the life of this agreement, the full obligation of maintaining the construction works, and other facilities, and of protecting all water rights from forfeiture.

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 their 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 mortgage 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. It is further agreed that the Water Company will not incur any indebtedness whatsoever for a principal sum in excess of \$20,000.00, without first procuring the written consent of the State. The remedies herein provided shall be deemed cumulative, and not exclusive.

13. The Water Company, hereby warrants to 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.

After the Water Company shall have paid in full, the purchase price as defined above, the State shall, with the approval of the Utah State Senate, 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, as are vested in the State.

14. 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.

15. The Water Company hereby agrees 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 Water Company agrees to hold the State immune for all such claims for damages, injury, or death of persons during the life of this agreement.

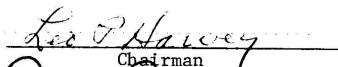
16. That this agreement, or any part thereof, or the benefits to be received under this agreement, may not be the subject, of an assignment to any other person, firm or corporation, by the said Water Company without having first secured the written consent of the State to any such proposed assignment or disposition of this agreement.

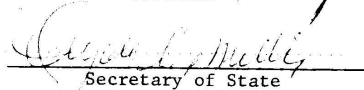
IN WITNESS WHEREOF, the State of Utah, acting through the Utah Water and Power Board, Party of the First Part, has caused these presents to be signed by the Chairman and Executive Director of the said Utah Water and Power Board, by authority of a resolution of said Board at a meeting held August 16, 1965; and the Blanding Irrigation Company, Party of the Second Part, has caused these presents to be signed and executed on its behalf by L. Ashton Harris, its President, and Harold J. Lyman, its Secretary, by a resolution of its Board of Directors at a meeting held April 16, 1965.

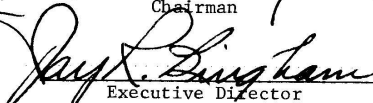
UTAH WATER AND POWER BOARD

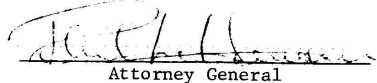
APPROVED:
BOARD OF EXAMINERS - STATE OF UTAH


Governor

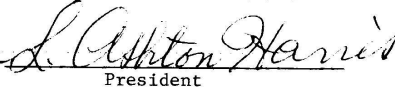

Chairman


Secretary of State



Executive Director

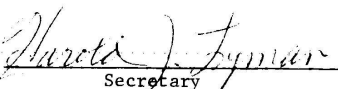

Attorney General

BLANDING IRRIGATION COMPANY


President

APPROVED
AS TO AVAILABILITY OF FUNDS:


Budget Officer

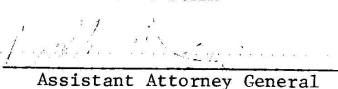

Secretary

Date

APPROVED:



Director of Finance

APPROVED AS TO FORM:

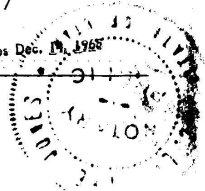

Assistant Attorney General

STATE OF UTAH X
 :
 : ss.
County of San Juan X

On the 4th day of October, 1965, personally appeared before me L. Ashton Harris and Harold J. Lyman, who being by me duly sworn, did say that they are the President and Secretary, respectively, of the Blanding Irrigation Company, and that the said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said L. Ashton Harris and Harold J. Lyman acknowledged to me that said corporation executed the same.


NOTARY PUBLIC

Residing at: Blanding, Utah

My Commission Expires: My Commission Expires Dec. 14, 1968


CERTIFICATION AND ACKNOWLEDGMENT

STATE OF UTAH X
 : ss
County of San Juan X

Comes now Harold J. Lyman, who being first duly sworn upon oath desposes and says: That he is the duly qualified secretary of the Blanding Irrigation Company, a corporation organized under the laws of the State of Utah; that on the 16th day of April, 1965, a meeting of the stockholders of the aforesaid corporation was held at Blanding, Utah, which meeting was held in the manner required by law and after due notice had been given to the aforesaid stockholders in the manner prescribed by law; that at such meeting 51 percent of the shares of stock in this corporation were represented; that such percentage of stock was legally sufficient to authorize the said stockholders to transact the business for which the aforesaid meeting was held; and that at said meeting the following resolution was made, seconded and passed by 51 percent of all the outstanding stock of the Blanding Irrigation Company.

RESOLUTION

IT IS HEREBY RESOLVED that L. Ashton Harris, President, and Harold J. Lyman, Secretary, acting on behalf of the Blanding Irrigation Company, are hereby authorized to enter into a contract with the State of Utah, acting through the Utah Water and Power Board, for the construction of an irrigation project consisting of 6,300 feet of earth canal from the West Fork of Indian Creek to the North Portal of the existing Blanding Tunnel in San Juan County.

FURTHER, that the total estimated cost of completing the project will be \$ 20,000.00, of which amount the Utah Water and Power Board will pay 75 percent of the cost of construction but not to exceed \$15,000.00 and all additional costs to complete the project will be paid by the Blanding Irrigation Company, and

FURTHER, that this corporation shall assign to the Utah Water and Power Board its properties, easements and water rights, appurtenant to said project on condition that the same, with the approval of the Utah State Senate, be reconveyed to this corporation upon the payment of the purchase price thereof, such purchase price to be the combined total of all money paid by the Utah Water and Power Board for the construction of the project, but not to exceed \$ 15,000.00 , plus all expense incurred by the Utah Water and Power Board for investigation, engineering and inspection in its accomplishment of project, and

FURTHER, that this corporation shall have full use of such properties and water rights during the life of this contract, provided this corporation is not delinquent in any of its obligations under the contract. We further authorize the Board of Directors of this corporation to assess all the outstanding corporate stock for any payments which may become delinquent under the terms of the aforesaid contract.

Harold J. Lyman
Secretary

STATE OF UTAH : :
County of : : ss
 : :

On this 20th day of September, 1965, appeared before me Harold J. Lyman, who is personally known to me to be the Secretary of the Blanding Irrigation Company, and who did acknowledge to me under oath that he executed the aforesaid document entitled "Certification and Acknowledgment", on behalf of said corporation.

[Signature]
NOTARY PUBLIC

Residing at: Blanding, Utah

My Commission Expires: _____ My Commission Expires Dec. 31, 1965



Entry No. <u>U-5525</u>
Recorded <u>11-24-65</u> At <u>10:39</u> A.M. Book <u>376</u> Page _____
FEE PAID
ARVILLA E. WARREN Recorder, San Juan County, Utah
\$ <u>No Fee</u> By <u>Arvilla E. Warren</u> Deputy

Return to -
Utah Water & Power Board 576
435 State Capitol Bldg.
Salt Lake City Utah 84114
attn: Jay R. Bingham