

no fee #1

3-9

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ARVILLA E. WARREN
RECORDER, SAN JUAN COUNTY
BY

AGREEMENT

This agreement entered into this 15th day of April,
1948, in duplicate, by and between the State of Utah, acting through the Utah
Water and Power Board, First Party, and Blanding Irrigation Company, a corpora-
tion organized under the laws of the State of Utah, Second Party,

WITNESSETH:

THAT WHEREAS, the First Party desires to promote a water conservation
project consisting in the construction, in its own name, of a water diversion
tunnel in San Juan County, Utah, to make available to the inhabitants of the
town of Blanding, and other persons, sources of water which are not now being
put to beneficial use, which tunnel is to be constructed in accordance with
the Specifications, Work Items, and Plans, copies of which are attached hereto,
and are hereby incorporated by reference and made a part of this contract, and

WHEREAS, the Second Party is now the owner of all rights to the use
of the water which will flow through the aforesaid diversion tunnel, by virtue
of Water Application No. ¹⁹¹⁴ ~~12929~~ previously filed with the office of the State
Engineer for the State of Utah, and

WHEREAS, the Second Party does herein assign to the First Party all
of said water rights in consideration for the construction of the aforesaid
diversion tunnel, and

WHEREAS, the Second Party has previously obtained all the easements
and rights of way upon and through the real property wherein the said tunnel
is to be constructed, necessary to construct, maintain and operate the same,
and does herein convey to the First Party all such rights of way and easements,
and

WHEREAS, the Second Party has heretofore commenced the construction
of the aforesaid diversion tunnel, and has dug approximately 1900 feet thereof
out of a total of 5300 feet, and does now desire to turn the entire project
over to the First Party for completion, and is willing to recognize the First
Party as the owner thereof, and

g.
g.d.

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	Recorder, San Juan County, Utah
No Fee By	Arvilla E. Warren Deputy

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WHEREAS, the Second Party has the available manpower, facilities, and equipment to construct the said tunnel, and is ready and willing to enter into a contract to accomplish such purpose, and

WHEREAS, the First Party desires to have said tunnel constructed by the Second Party, and

WHEREAS, it is the desire of both parties that the interest in the said project acquired by the First Party, including its rights in the diversion tunnel and in the water developed in and flowing through the same, be sold by the First Party to the Second Party under the terms herein set forth, and

WHEREAS, it is the intent of the parties that the State of Utah be amply and properly secured for the purchase price of said tunnel and water rights to be sold to the Second Party;

NOW THEREFORE, the parties hereto enter into the following agreements, and make the following assignments and mortgage:

1. Second Party hereby conveys, assigns and warrants to the First Party a perpetual easement and right of way on and through the property upon which and through which the aforesaid tunnel is to be constructed, which easement and right of way shall be of such a nature as shall enable the First Party to construct, maintain and operate said tunnel in accordance with the aforesaid Specifications, Work Items, and Plans. Said tunnel shall be located in Secs. 4 and 9, T34S., R22E., SLB&M., San Juan County, State of Utah.

2. Second Party hereby conveys and assigns to the First Party all right, title, and interest which it has to the use of all the water which shall flow through the aforesaid tunnel, including such water as shall be diverted from the Southeast Fork of Indian Creek, and such water as shall be made available through tunnel seepage, and the Second Party more particularly assigns to the First Party all right which it has to any water by virtue of filing No. ¹⁹¹¹⁴~~12929~~ in the office of the State Engineer of the State of Utah. Second Party also grants and conveys to First Party an easement to use any and all of the former's facilities in the Blanding Irrigation Company distribution system, for

the purpose of putting the aforesaid water to beneficial use.

3. The Second Party agrees to supply the necessary manpower and facilities, and agrees to complete the construction of the aforesaid project at cost in accordance with the aforesaid Specifications, Work Items and Plans. The First Party agrees to pay to the Second Party for completing the said project, the cost thereof, not to exceed \$75,000; provided, however, that the First Party shall not pay more than 90% of the aforesaid total cost of said project until the said project shall have been completed to the satisfaction of a properly designated agent of the First Party; and provided further, that the Second Party shall complete the project in all events, and shall complete it before December 1, 1949. It is agreed that title to the entire diversion tunnel, either constructed or to be constructed under this contract, shall be vested in the First Party.

4. The First Party agrees to sell and the Second Party agrees to purchase the water rights, the easements and rights of way, and the diversion tunnel acquired by the First Party in this agreement, at a total purchase price of \$75,000, payable at the rate of \$3,000.00 per year, without interest, the first installment of \$3,000.00, or more, to be due and payable on the first day of December, 1949, and a like sum of \$3,000, or more, to be payable on the first day of December in each and every year thereafter until the full purchase price of \$75,000 shall have been paid; provided however, that if the cost of constructing the aforesaid project should be less than \$75,000, as provided in paragraph 3 hereof, then the purchase price thereof, and the annual payments made thereon, as provided in this paragraph, shall be proportionately reduced to the extent that the cost of construction shall be less than \$75,000. Said sums shall be payable at the office of the State Treasurer of the State of Utah. All delinquent payments shall bear 6% interest.

5. The Second Party hereby mortgages to the First Party the following described property to secure the prompt payment of the above obligation of \$75,000, to-wit:

ABSTRACTED

All right, title and interest which the Second Party has in those canals, weirs, laterals and other irrigation facilities which form part of the Blanding Irrigation Company irrigation system, which canals, weirs, laterals and facilities are located in Secs. 34, 27, 22, 15, and 10 of T36S., R22E., and also in Secs. 34, 33, 28, 21, and 16, T35S., R22E., SLB&M., San Juan County, State of Utah.

After the Second Party shall have paid the purchase price in full as herein provided, the First Party shall release the mortgage as herein provided, and shall execute such deeds and bills of sale as shall be necessary to vest title to the aforesaid project and water rights in the Second Party.

6. During the period of said purchase under said contract, the Second Party shall have and is hereby given the right to use all of the water rights described herein and all the facilities of the First Party constructed hereunder, and the Second Party does hereby assume, during the above period of time, the full obligation of maintaining said tunnel, and of protecting said water rights from forfeiture.

7. If either party to this 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 days after such notice the other may declare the contract forfeited and proceed to its remedies at law for such breach.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this day and year first above mentioned.

APPROVED AS TO AVAILABILITY OF FUNDS

FINANCE COMMISSION
Wm. H. Healey
Chairman
Milton Taylor
Commissioner

APPROVED:
BOARD OF EXAMINERS OF STATE OF UTAH:

Hubert B. Maw
Governor
Heber R. Harrison, Jr.
Secretary of State
G. A. Giles
Attorney General

UTAH WATER AND POWER BOARD
By [Signature]
Chairman
[Signature]
Executive Secretary
[Signature]
Acting on behalf of Blanding Irrigation Company

LEGALITY & FORM APPROVED
[Signature]
SP. ASST. ATTORNEY GENERAL