

Re: Change Applications a28548 and a28545

July 13, 2011

Sandy Irrigation Company Hearing Exhibit 2

*1952 Agreement, with amendments (1976 and 1982): Sandy Irrigation Company
and Sandy City*

**HEARING SUBMITTAL TO
DIVISION OF WATER RIGHTS**

Right No.: a 28548 + a 28545

Date: 7/13/2011

Submitter: Protestant
Sandy Irr Company Div: 3 Wright

7A pages

1A/7 JS

A G R E E M E N T

THIS AGREEMENT, made and entered into this 18th day of July, 1952, by and between Sandy City Corporation by Noal C. Bateman, its Mayor, party of the First Part and Sandy Irrigation Co., a corporation, by J. E. Thornblad, its President, part of the Second Part,

WITNESSETH: That

Whereas, Sandy Irrigation Co. is the Owner of certain water rights in Little Cottonwood Creek amounting to more than 1.0 sec. ft. of its continuous natural flow during the entire year, and

Whereas, said company is an irrigation company, and uses its water primarily for irrigation, and that for said purpose its water is most valuable to its stockholders during the months of July, August, and September of each year, and,

Whereas, said company wishes to exchange 1.0 sec. ft. of said continuous natural flow of Little Cottonwood water which aggregates 724 ac. ft. annually, for 724 ac. ft. of water to be delivered into its ditch at a point near its head during the months of July, August and September of each year, and

Whereas, the Metropolitan Water District of Salt Lake City has water stored in Deer Creek Reservoir which will be conducted through the District's conduit from Provo Canyon, and which water is available to Sandy Irrigation Co. by lease arrangement, and,

Whereas, Sandy City is desirous of obtaining 1.0 sec. ft. of the continuous natural flow of Little Cottonwood Creek,

NOW THEREFORE, it is mutually agreed that Sandy Irrigation Co. will lease to Sandy City 1.0 sec. ft. of continuous flow of Little Cottonwood water as long as it can procure from the Metropolitan water District of Salt Lake City, 724 acre ft. of water from the conduit of the said Metropolitan Water District. Said water to be delivered into the Sandy Ditch near the head thereof during the months of July, August, and September of each year. Sandy City agrees to pay to the Sandy Irrigation Co. full amount of the cost of the 724 acre ft. as charged by the Metropolitan Water District (now \$5.00 per acre ft.) plus all expense of delivering the same into said Sandy Ditch, and said 1.0 sec. ft. of Little Cottonwood Water is to be delivered by Sandy Irrigation Co. into the pipeline of Sandy City at the Sandy Tank on the bank of the Sandy Ditch in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Sec. 2, Township 3 South, Range 1 East, S.L.B. & M.

BE IT HEREBY FURTHER MUTUALLY AGREED:

That this exchange shall become effective as soon as the water from Deer Creek is turned into Second Party's ditch under an agreement with the Metropolitan Water District guaranteeing that 724 ac. ft. of said Deer Creek water will be delivered into said ditch during the months of July, August and September, and Second Party will be diligent in negotiating with the Metropolitan Water District in securing said agreement.

That, if for any reason the Deer Creek water fails to be delivered to Second Parties Ditch the Party of the First part agrees that Second Party may upon 24 hours notice to First Party repossess itself of its 1.0 sec. ft. water in Little Cottonwood Creek as before this agreement. In the event the amount of water owned by the Second Party should fall below the 1.0 sec. ft.; then 724 acre ft. shall be reduced proportionately.

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Be it also mutually agreed that this agreement shall remain in full force and effect every year in the future as long as Deer Creek Water, or any other water is made available in the manner herein specified and placed in Sandy Irrigation Company's ditch at no expense to the Second Part.

This agreement was made to replace an agreement signed by above mentioned parties November 28, 1945.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals the day and year herein before set forth.

ATTEST:

Beatrice Lindell City Recorder

ATTEST:

A. E. Van Dam Secretary

SANDY CITY CORPORATION
by

Moall C. Bateaux Mayor

SANDY IRRIGATION COMPANY
by

J. P. Handley President

3A/7 JB

AMENDMENT TO AGREEMENT

This amendment is entered into this 10th day of March 1976

by and between Sandy City Corporation and Sandy Irrigation Company, parties of the first and second part respectively, and pertains to that certain contract, annexed hereto and entered into the 18th day of July 1952 between the parties and consisting of two pages.

The said parties hereby agree and stipulate that the said contract shall be and is hereby amended in the 2nd, 4th, 6th, 7th and 9th full paragraphs thereof by changing and amending each and every reference in the said paragraphs now appearing as "1.0 sec. ft." to read and be "2.0 sec. ft."

The parties agree that the following paragraph shall be added to the contract and shall be in force and effect between the parties:

In the event that during the winter months or off irrigation season, the party of the second part is unable to obtain the water from the Metropolitan District the party of the first part will nonetheless be entitled to the 2 sec. ft. spoken of herein.

The intent of the parties is only to increase the amount of water leased to Sandy City under the terms of the agreement from 1.0 sec. ft. to 2.0 sec. ft.

In witness whereof the parties hereto have executed this agreement on the day and year first above set forth.

ATTEST:

Arthur D. Hunter
ARTHUR D. HUNTER, CITY RECORDER

SANDY CITY CORPORATION

BY D. C. Bluth
D. C. BLUTH, MAYOR

ATTEST:

Dale Baker
DALE BAKER, SECRETARY

SANDY IRRIGATION COMPANY

By Kenneth A. Pearson
KENNETH A. PEARSON, PRESIDENT

4A/7 JS

AGREEMENT

THIS AGREEMENT entered into on the 2nd day of June, 1982, by and between Sandy City, a municipal corporation of the State of Utah, hereinafter referred to as "CITY" and Sandy Irrigation Company, a corporation, hereinafter referred to as "COMPANY".

WITNESSETH:

1. That the CITY and the COMPANY have previous agreements relating to the exchange of water, those agreements being dated July 18, 1952 and March 10, 1976; and

2. That it has always been the intention of the parties that equal amounts of water would be exchanged as a result of those agreements; and

3. That the agreement of March 10, 1976, mistakenly omitted changes which would have made clear the desire of the parties to provide for equal exchanges of water; and

4. That this agreement is written for the purpose of making clear the intent of the 1952 and 1976 agreements.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants and promises herein contained, the parties agree as follows:

1. That this agreement is based upon and reaffirms the understanding set forth in the original contract of July 18, 1952, and serves to clarify the amendments to that agreement as signed on March 10, 1976.

2. That each reference in the 1952 agreement indicating "1.0 second feet" is hereby changed to and shall read "2.0 second feet". This reference and change relates to the materials

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contained in the second, fourth, sixth, seventh and ninth full paragraphs of the 1952 agreement.

3. That each reference in the 1952 agreement indicating "724 acre feet" is hereby changed to and shall read "1448 acre feet". This reference is contained and shall be changed in the fourth, seventh, eighth and ninth full paragraphs of the 1952 agreement.

4. The CITY shall provide up to 1448 acre feet of water to the COMPANY, either through actual water transfer or by cash payment for water secured by the COMPANY from another source, but the CITY shall be obligated each year only for the actual water used by the COMPANY up to the total amount of 1448 acre feet.

5. This agreement is also to clarify the meaning of paragraph four of the amended agreement signed March 10, 1976. In the event the COMPANY is unable to obtain the water from the Metropolitan District, then the 2.0 second feet shall be turned back into the Sandy ditch during the irrigation season, nonetheless the CITY shall be entitled to the COMPANY'S share of the Creek during the winter months or during the off irrigation season.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the day and year first above set forth.

SANDY CITY CORPORATION

By Lawrence P. Smith
Lawrence P. Smith, Mayor

ATTEST:

Dianne H. Butterfield
Dianne H. Butterfield
Deputy City Recorder

SANDY IRRIGATION COMPANY

By Kenneth A. Pearson
Kenneth A. Pearson, President

ATTEST:

Dale Baker
Dale Baker
Secretary

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AS