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Fee - None  
*Alice J. McKinney*  
Alice J. McKinney  
Grand County Recorder

A G R E E M E N T

THIS AGREEMENT made and entered into this 5<sup>th</sup> day of JUNE, 1978, by and between MOAB IRRIGATION COMPANY, a corporation, hereinafter referred to as "Company", and the GRAND COUNTY WATER CONSERVANCY DISTRICT, a body corporate and politic of the State of Utah, hereinafter referred to as "Conservancy District", and the GRAND COUNTY SPECIAL SERVICE WATER DISTRICT, hereinafter referred to as "Service District";

W I T N E S S E T H :

WHEREAS, the Conservancy District and the Service District desire to undertake the constuuction of a dam and reservoir on a tributary of Pack Creek to store water for irrigation, municipal, and other beneficial uses, and a tunnel for the transmountain diversion of some of the waters of Mill Creek into said reservoir; said project has been commonly referred to as the Mill Creek Development Project; hereinafter referred to as the "project"; and,

KEN'S LAKE

WHEREAS, the Company has adequate water during most of the normal years for irrigation purposes by its stockholders but does not have adequate water for its needs in abnormal years when drought conditions prevail, and it desires to have a project constructed and to have the waters impounded by the project, and desires and intends to obtain a more reliable supply of water for irrigation purposes from said project water; and,

WHEREAS, the Company desires to cooperate with the Conservancy District in any way possible for the storage of excess water and the conservation of said water for the purpose of irrigation, municipal or industrial usage, but reserves its rights not to jeopardize in any way its decreed water rights;

to said project, except as modified by this Agreement; and,

WHEREAS, the Company has the following water rights:

<u>NATURE OF WATER RIGHT</u>	<u>DATE</u>	<u>SOURCE</u>	<u>DESCRIPTION OF QUANTITY</u>
Decree 170 & 170a as supplemented	8/10/1910	Mill Creek	19.33 cfs
Change application a-8258	approved 2/26/1976	Mill Creek	19.33 cfs

and,

WHEREAS, the Conservancy District has or will acquire the following pending water rights:

Well Application 42139 for 8 cfs from 5 wells. ← NOT IN DATABASE  
Application 40698, surplus water from Mill Creek.  
(Presently in the name of the Utah Board of Water Resources)

and,

WHEREAS, there are other users of water from Mill Creek, some of whom are above the proposed dam and diversion site, and therefore, their water rights cannot be adversely affected by the construction of the project, and others are downstream from the dam and it is anticipated that at least some of the downstream users will participate in the project through having part of their water rights stored during high water and receiving in exchange therefor, an allocation of water from project wells during low water, and that those with water rights who do not participate can have their water rights filled through bypassing part of the natural flow; and,

WHEREAS, it is mutually acknowledged that in order to finance the project, the Conservancy District and Service District must have good title to the right to divert and impound water to the intended capacity of the reservoir, which will require the assignment of some of the irrigation company rights to the Conservancy District, and the approval of the Conservancy District's applications. It is also acknowledged that the

Conservancy District and the Service District intend to secure financing from the Division of Water Resources of the State of Utah, and if the project is funded, in whole or in part, in that manner, it will be necessary that the rights be transferred to the State of Utah as security for such financing, and that the parties hereto agree to such transfer and repurchase subject to this Agreement in accordance with the policies and procedures of the Board of Water Resources; on the condition that when said indebtedness to the State of Utah has been repaid, said water rights will be returned to the Company, subject to the right to utilize Mill Creek water granted to the Conservancy District by this Agreement, and

WHEREAS, the parties, by this Agreement, desire to provide for the transfer of water rights to the Conservancy District and the State of Utah to help secure the financing for said project, and further agree to support the approval of applications for the project, to the end that the Conservancy District will be able to secure financing for said project; the parties also desire to provide for a permanent commitment of irrigation water to the Company from the project, so that the stockholders of the Company will have an improved irrigation water supply, and it is mutually acknowledged that such permanent commitment is the major consideration for the Company agreeing to allow its water rights to be used as part of the security for the financing of the project, and agreeing to support the perfection of water rights in the name of the Conservancy District, and in entering into this Agreement, all as is provided for herein.

NOW, THEREFORE, in consideration of the covenants, agreements, and obligations herein provided for, IT IS MUTUALLY AGREED, as follows:

1. The parties will mutually cooperate with each other to cause all pending applications to be approved, and will further

cooperate in causing the approval of any and all other applications which may become necessary to fulfill the purposes of the project.

2. During the irrigation season, the Company shall have the right to call for and have delivered by the Conservancy District at the points described below, irrigation water in the amounts and from the sources set forth below. The points of delivery where the water is to be delivered are located as follows:

- Needs Updated to*
1. Ditch No. 1: At the old sandgate west of Mill Creek Bridge
  2. Ditch No. 2: At the head below the sandgate
  3. Ditch No. 3: Walnut Lane
  4. Ditch No. 4: Near the Phillips "66" service station at intersection of Highway 160 and 5th West.
  5. Ditch No. 5: At the head, probably where the "Lance" ditch divides the stream with the "Emma Walker" ditch.
  6. These points of delivery are general and the Company and the Water Conservancy District will work out the specific points for measurement of the water to be delivered by the District to the Company.

If the flow of Mill Creek does not produce the amounts set forth below, the Conservancy District shall operate and maintain wells and shall pump water from its wells or from the Colorado River, or both, into the stream or Company ditches at such points of delivery set forth above in sufficient volume so as to produce the desired quantity each month, up to the limits set forth below. Said wells and any pumping facilities on the Colorado River shall be of sufficient number and size to collectively produce, and shall be operated at such times, as is necessary to supply the Company's needs. The Conservancy District shall not be obligated to pump said wells and/or from the Colorado River, at a rate exceeding eight (8) cfs collectively, and the Company shall not have the right to call for water from all sources, including the Mill Creek at a rate higher than 13.5 cfs, except

for surplus water as provided herein. The Company agrees to pay the District \$2.00 per acre-foot for all water delivered to the Company from the District's wells, or other sources which require pumping.

The Company shall notify the District at least on a monthly basis and more frequently as necessary as to when, how much, and which of the above listed points it desires the water delivered.

The quality of water to be furnished by the District to the Company from wells or the Colorado River shall be of such quality,..... as to be suitable for the irrigation of crops, including orchards, commonly grown in the Moab area. Conservancy District agrees to be liable for any damage or loss resulting from loss of water quality. Any disputes as to water quality or damage shall be submitted to the Utah State University for arbitration.

Water delivered to the Company, whether from the natural flow of Mill Creek or from the Conservancy District's wells, or other pumping facilities, shall be measured at the particular point of delivery. Meters or other suitable measuring devices acceptable to both parties shall be supplied, installed, operated and maintained by the Conservancy District. The Company agrees to grant the Conservancy District all necessary easements in their ditches, canals or other property, which are necessary for the installation, operation and maintenance of all water measurement facilities.

Upon written notice to the District, the Company may change the points of delivery of water described above, or add new points of delivery; however, the Company shall be required, in addition to the amounts set forth herein, to pay any additional costs of delivering the water to such new points of delivery,

including administration and debt service costs. Any additional costs shall be computed on the basis of facilities and services directly related to the delivery of Company water at the new delivery points. Under no circumstances shall the Conservancy District be required to pump water from any wells in order to deliver water to any new or additional delivery points. However, ..... the Conservancy District, at its option, may supply water from storage or from its wells and charge the Company for the actual costs of delivering said water to the new points of delivery.

3. The Company shall be entitled to receive from all sources combined a total of 4,600 acre-foot of water annually, during the irrigation season. The water may be delivered from the natural flow of Mill Creek, or from the Conservancy District well, or Colorado River or other sources, or any combination thereof, at the sole option of the Conservancy District as to the source.

In delivering the 4,600 acre-feet to the Company, the Conservancy District shall not be obligated to deliver any amount of acre-feet in excess, except as hereinafter set forth, of the following by month:

	<u>MAR.</u>	<u>APR.</u>	<u>MAY</u>	<u>JUNE</u>	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>OCT.</u>	<u>NOV.</u>
AF:	150	325	600	775	778	778	600	400	194
cfs:	2.44	5.46	9.76	13.02	12.65	12.65	10.08	6.54	3.26

Water not delivered in any month may be applied to

any other month in the same year, except that Company shall not call for more than 778 acre-feet in any one month. (12.65) (31 days)

GCWCD shares owned save in Lake.

It is expressly understood and agreed that any amounts of water, either by month or by year, which the Conservancy District is obligated to deliver to the Company shall be reduced by virtue of any stock ownership of the District in the Company.

HAS THIS OCCURRED AS OF 2008?

$$\left( \frac{4600 \text{ AF}}{204 \text{ DAYS}} \right) \left( \frac{\text{cfs} \cdot \text{day}}{1.98343 \text{ AF}} \right) = 11.37 \text{ cfs during the season}$$

The Company shall not be entitled to carry over any amount of unused water in one year to the following year. If, in any one year, the Conservancy District determines that it has surplus water available, it may deliver such water, at its sole option to the Company at no charge. During the high water runoff periods, any surplus water in Mill Creek not usable by either the Conservancy District or the Service District, may be used by the Company, or other appropriators in accordance with their respective rights thereto. Such surplus water will not be charged against the yearly or monthly totals set forth above. However, during such times as such surplus water is being diverted, the daily metering of non-surplus water being delivered shall be computed as the average acre-foot diversion per day over the particular month as per the above schedule. All parties will cooperate to see that as little water as possible from Mill Creek flows out of the drainage without being beneficially used.

The Conservancy District shall not be liable for any loss or damage suffered due to failure to deliver water at any time when such failure occurs without fault or negligence on the part of the District, such as acts of God, insurrection, riot, labor disputes, labor or material shortages, fires, explosions, floods, weather conditions or other causes of a similar nature which wholly or partially prevents the performance by the District under the provisions of this Agreement, provided the flow of the creek is released for the use of the Company.

4. The Conservancy District insofar as the Company is concerned shall have the perpetual right to divert all quantities of water in Mill Creek, over and above those amounts being delivered to the Company as provided herein, through the proposed

Sheley Tunnel into Spanish Valley and to impound and utilize such water in connection with the reservoir to be constructed there. During the non-irrigation season, which is from December 1 to March 1 of each year, the Conservancy District shall supply to the Company, free of charge, through the natural flow of Mill Creek, sufficient water for livestock watering and culinary use by the stockholders of the Company and others who may be entitled thereto. The District agrees to pay the Moab Irrigation Company \$2.00 for each acre foot of water diverted by the District from Mill Creek up to 19.33 cfs, including any water diverted through said Sheley Tunnel, by virtue of any stock ownership in the Company by the Conservancy District. Any amounts owing from the District to the Company for water diverted from Mill Creek may be off-set against any amounts owing the District from the Company for delivery of water from District wells, or pumped from the Colorado River.

5. The District agrees to assume and pay for that portion of the indebtedness now owing by the Company to the State of Utah, acting by and through the Board of Water Resources, under the agreements of March 13 and October 7, 1964, which is not being paid by either Grand County or the City of Moab, which amount is \$7,111.37.

6. The Conservancy District may, insofar as the Company is concerned, perpetually divert, store, and utilize all of the remaining water yielded by Mill Creek throughout the entire year so long as the amounts set forth herein are being delivered to the Company. In consideration for the amounts of water herein guaranteed to the Company, by the Conservancy District, the Company shall convey all of its rights, title and interest in and to the water of the main fork of Mill Creek, and will

execute and deliver to the Conservancy District all appropriate instruments of conveyance. Provided, however, that such rights will be reconveyed to the Company when the indebtedness to the State of Utah has been repaid, subject to the obligations created 2518  
by this Agreement. The Company shall retain all ownership of its right, title and interest in and to the use of the waters of the North Fork of Mill Creek. Provided, further, that all waters from the North Fork of Mill Creek diverted by the Company shall be counted as water delivered by the Conservancy District and shall be charged against the Company's yearly and monthly amounts as set forth in Paragraph 3 above.

The Company shall notify the Conservancy District as to its needs for water up to the amount set forth in Paragraph 3 above, and in the event that the Company does not call for the full amount of water allocated for the irrigation season, such water not called for may be stored or otherwise utilized by the Conservancy District for project purposes. Failure by the Company to call for its full amount of water in any one year shall neither reduce nor increase the Company's rights in future years.

The Conservancy District hereby agrees to arrange for financing and to drill the proposed wells and construct other project facilities.

7. The Company agrees to assign to the Conservancy District, by appropriate instrument of transfer, all of its interest in Change Application No. a-8258(05 area) approved by the State Engineer on February 26, 1976, insofar as it pertains to the Sheley Tunnel Diversion point and the storage rights; however, the Company retains unto itself that portion of the rights under the aforementioned Change Application No. a-8258 (05 area) insofar as it relates to the waters of the North Fork

of Mill Creek. In this respect, the parties hereto agree that said Change Application a-8258(05 area) approved by the State Engineer on February 26, 1976, covers the Company's rights to 19.33 cfs of water. Said water of North Fork of Mill Creek aforementioned, shall remain and continue to be the sole and separate property; insofar as the ownership thereof is concerned, of the Company herein, subject to the method of use contained in this Agreement.

8. In the event the project has not been financed and is not under construction by 1982, this Agreement shall terminate and the parties shall be returned, as between each other, to the positions they held prior to the signing of this Agreement.

9. The Company, by entering into this Agreement, shall not be deemed to be a partner of either the Conservancy District or the Service District, or to be engaged in any activities by way of a joint venture, partnership or otherwise. Nor shall the Company be deemed to have agreed to pay any obligation owed by any of the other parties to this Agreement.

10. It is mutually acknowledged that it is the intent hereby to perpetually furnish to the Company the water which will accrue from its rights and the rights of the Conservancy District to the extent provided for in Paragraphs 2 and 3 hereof, and that water shall be furnished free of charge except as herein provided. The remaining water over and above those amounts guaranteed to the Company or belonging to other appropriators will be guaranteed in perpetuity to the Conservancy District for project use. In order to secure financing from the State of Utah, it is mutually acknowledged that it will be necessary for the water rights under which project water will be stored, be owned by Conservancy District,

and then for the Conservancy District to convey the same to the State of Utah, with a contract of repurchase, and the Conservancy District will be required from its water allocations, water sales, Moab City revenues, taxes and possible grants to meet the annual payments required under the Contract with the State. It is further understood that the State of Utah will hold title to the water until the portion of the Project financed by the State has been fully repaid, at which time it is expressly understood and agreed that the Conservancy District will convey full title to said water rights back to the Company, subject to the conditions and obligations created by this Agreement. Such reconveyance to the Company shall have no effect on the Conservancy District's rights to utilize the water of Mill Creek, so long as the amounts of water set forth are being delivered to the Company as provided herein.

11. In its selling of water for irrigation purposes, the Conservancy District agrees to give preference in the sale of any available irrigation water developed by the project, to the stockholders of the Company. This preference shall only apply to irrigation water available for sale, and shall not apply to municipal or industrial water.

12. The Conservancy District does not by entering into this Agreement, intend to contract away any of its powers granted by statute, to adopt reasonable and lawful rules, regulations, connection fees and rate schedules.

13. If, after reasonable efforts and expenditures of funds, the Conservancy District is unable to develop wells or other sources sufficient to meet its obligations under this

Agreement, this Agreement shall terminate, and the parties shall be free to renegotiate the terms hereof.

14. The parties hereto agree that the annual payment to be made by the Conservancy District to the Company for the water diverted from Mill Creek for Conservancy District use and the amount to be paid by the Company to the Conservancy District shall be the sum of \$2.00 per acre foot. Such payments will be made on a calendar year basis and payable January 15 of each year of the term of this Agreement, said payments will be made by the Company and the Conservancy District herein, as the case may be, for the water delivered as hereinabove stated.

15. The first irrigation season after the construction of the Conservancy District's "Mill Creek Development Project" shall be considered as the base period herein, and during that period the Conservancy District and the Company will pay each other in the manner hereinbefore set forth for the amount of water delivered to each other, in the manner hereinbefore set forth. Thereafter, the Conservancy District and the Company, on the anniversary date every five (5) years after the completion of said project shall reestablish the price per acre foot that the parties hereto, Company and Conservancy District deliver to each other. However, the price per acre-foot for water delivered by and to the respective parties shall always be equal. Said price, per acre foot, shall be the aforementioned base price per acre foot multiplied by the proportionate percentage increase or decrease, if any, in the Consumer's Price Index (All Items Index) (hereinafter referred to as CPI) issued by the Department of Commerce of the United States of America. All payments to be made herein shall be made to the respective

parties hereto, District and Company, at their respective Moab, Grand County, Utah, offices, either personally or by mail.

16. This Agreement shall be binding on the successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date heretofore stated.

MOAB IRRIGATION COMPANY, a Utah Corporation,

ATTEST:

Margie M. Meyer  
Secretary

By Alfred O. Elmer  
President

GRAND COUNTY WATER CONSERVANCY DISTRICT  
a body politic and corporate,

ATTEST:

E.L. Schumacher  
Secretary

By [Signature]  
Title President

GRAND COUNTY SPECIAL SERVICE WATER DISTRICT, a body politic and corporate,

ATTEST:

E.L. Schumacher  
Secretary

By [Signature]  
Title President

STATE OF UTAH )  
County of Grand ) : ss.

On this 5th day of May, A. D., 1978,  
personally appeared before me Robert Oliver,  
who, being by me duly sworn did say that he is the President  
of the NOAB IRRIGATION COMPANY, a Utah Corporation, and that  
the above and foregoing instrument was signed in behalf of said  
Corporation by authority of its stockholders at a meeting there-  
of held April 6, 1978, and said Robert Oliver  
acknowledged to me that said Corporation executed the same.

IN WITNESS WHEREOF I have hereunto attached my hand  
and seal, the day and year last above written.

Betty Bowen  
NOTARY PUBLIC  
Residing at Moab Utah

My Commission Expires:  
August 5, 1979

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STATE OF UTAH )  
County of Grand ) : ss.

On this 5th day of May, A. D., 1978,  
personally appeared before me K. F. McLaughlin,  
who being by me duly sworn did say that he is the President  
of GRAND COUNTY WATER CONSERVANCY DISTRICT, a body politic and  
corporate, and that said instrument was signed in behalf of  
said Corporation by authority of a resolution of its Board of  
Directors, and said K. F. McLaughlin, acknowledged  
to me that the said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto attached my hand  
and seal the day and year last above written.

Betty Bowen  
NOTARY PUBLIC  
Residing at Moab Utah

My Commission Expires:  
August 5, 1979

STATE OF UTAH )

County of Grand ) : ss.

On this 5<sup>th</sup> day of June, A. D., 1978,  
personally appeared before me K. E. McDougald  
who being by me duly sworn did say that he is the President  
of GRAND COUNTY SPECIAL SERVICE WATER DISTRICT, a body politic and  
corporate, and that said instrument was signed in behalf of said  
corporation by authority of a resolution of its Board of Directors,  
and said K. E. McDougald acknowledged to me  
that the said Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto attached my hand  
and seal the day and year last above written.

Little Lumen  
NOTARY PUBLIC

Residing at Moab, Utah

My Commission Expires:  
August 5, 1979