

Beaver River Decree Nov 13, 1913 Page 45 Right #97
 AGREEMENT Civil # 625

This Agreement, made by and between MINERSVILLE RESERVOIR & IRRIGATION COMPANY, a corporation of Utah, hereinafter called the grantor, and Beaver County Irrigation Company, a corporation of Utah, hereinafter called the grantee. WITNESSETH: THAT WHEREAS, the grantor is the owner of certain water rights in Beaver River, Beaver County, Utah, together with certain Reservoirs and reservoir rights and lands submerged and to be submerged by such reservoirs, and other property hereinafter mentioned; and, WHEREAS, the grantor and its stockholders desire that the waters of Beaver River be impounded and more efficiently utilized for the purpose of reclaiming arid lands in Beaver County, Utah; and WHEREAS, the grantee desires to acquire from the grantor all of its water rights, reservoir sites and properties herein mentioned, so that it may store and impound the said waters for the purposes above stated, NOW, THEREFORE, in consideration of the premises and of the covenants herein made, it is mutually agreed as follows, to wit: 1. The grantor has granted, bargained, sold, conveyed, transferred, and set over, and does by these presents, grant, bargain, sell, convey, transfer, and set over unto the grantee subject, however, to the conditions hereinafter stipulated, all and singular the following described lands, waters, and water rights, to wit:

(a) All of the grantor's right, title, and interest in and to the waters of the Beaver River, Beaver County, Utah, and particularly those water rights belonging to the grantor as set forth and established in and by that certain decree made and entered by the District Court of the Fifth Judicial District of the State of Utah, in and for Beaver County, in that certain case entitled Minersville Reservoir & Irrigation Company, (A corporation), et al, Plaintiff, vs. Beaver City, (a Municipal Corporation) et al, defendants, which said decree was entered on or about the 8th day of February, A. D. 1913.

(b) That certain dam and reservoir known as the Rocky Ford Dam and Reservoir", situate in Minersville Canyon, Beaver County, Utah, in which the grantor has heretofore stored and impounded waters of Beaver River together with all the grantor's rights to store and impound such water and all its rights - to such impounded waters and particularly all of the grantor's rights to store and impound waters in the said reservoir as established by the said decree.

(c) All of the waters of said Beaver River belonging to the grantor as set forth and established in and by that certain decree in the above entitled Court in the case entitled Minersville Irrigation District and Minersville Reservoir & Irrigation Company, Plaintiff vs. Adamsville Land & Irrigation Company L. D. Joseph et al, Defendants, dated December 3rd, 1895.

(d) All of the rights of the grantor to submerge or flood or cover with water the lands embraced or designed to be embraced within the said Reservoir.

(e) All and singular those certain lands and premises situated in Beaver County, Utah, and particularly described as follows, to wit: COMMENCING at a certain stake at the Northeast corner of the southeast quarter of the northwest quarter of section eleven, township thirty south, range nine west, Salt Lake Meridian, and running thirty-four rods south; thence twenty-eight rods west; thence thirty-four rods north; thence twenty-eight rods east to the place of beginning, containing five acres and one hundred fifty-two rods of ground. The west half of the southeast quarter of Section two and the northwest quarter of the northeast quarter and the northeast quarter of the northwest quarter of section eleven, township thirty south, range nine west, Salt Lake Meridian, containing one hundred sixty acres. The NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ Sec. 7, W $\frac{1}{2}$ of the NW $\frac{1}{4}$ & the SE $\frac{1}{4}$ of the NW $\frac{1}{4}$ Sec. 10, Tp. 30 S, Range 9 W, SLB&M.

(f) All of the easements, rights and privileges of the grantor as created by and set forth in that certain contract wherein John T. Joseph of the Town of Adamsville, Beaver County, Utah, is designated as party of the Second part, which said contract was signed by John T. Joseph and Annie E. Joseph, his wife, under date of the 23rd day of April, 1890, and acknowledged by them under date of April 23, 1890, before F. R. Clayton a Notary Public together with the modification and addition thereto as set forth in that writing embraced thereon under date of October 7, 1890, designated as party of the first part, and Minersville Reservoir And Irrigation, a corporation of Utah

which said contract is signed by John T. Joseph, as party of the first part, and by Solomon Walker and George Byre, directors and sworn to before William Wood, Justice of the Peace in and for Minersville Precinct, Beaver County, Utah, on the 7th day of October, 1890, under which said contract, modification, and addition to the said Minersville Reservoir & Irrigation Company acquired, among other things, the right to submerge lands situated in Beaver County, Utah, and more particularly described as lot three and the southeast quarter of the northwest quarter, and the southwest quarter of the northwest quarter of section one, and the southeast quarter of the northeast quarter of section two, township thirty south, range nine west, Salt Lake Meridian, and known as the homestead claim of John T. Joseph, together with all interest and rights of the grantor in and to all of the lands described and mentioned in said contract and modification and addition thereto.

(g) All the rights of the grantor in and to the waters of the said Beaver River running into or arising in the said River between the said Rockyford Dam and the point of which the grantor now diverts from the Beaver River waters into the canal of the grantor, Minersville Reservoir & Irrigation Company, at which said point of diversion in the said Beaver River the grantor has constructed diverting works for the purpose of diverting the said water from the said Beaver River into its said canal.

2. The grantee hereby covenants that it will construct, ^{operate} ~~separate~~, and maintain a dam and reservoir at or near the said Rockyford Dam of sufficient strength and capacity to impound among other waters, the seven thousand five hundred acre feet of water hereinafter referred to and which is to be, as herein provided, conveyed and delivered to the grantor. The said dam to be constructed in all respects in conformity with all legal requirements and the said reservoir to be of sufficient capacity to hold and impound, among other waters the seven thousand five hundred acre feet so to be delivered to the grantor and the grantee further agrees that it will within a reasonable time proceed to acquire the right to submerge the lands to be covered by the waters in the said reservoir and the grantee further covenants that the work upon the said dam or reservoir shall be commenced within six months from the date hereof ~~and that the work upon the said dam or reservoir shall be commenced within six months from the date hereof~~ and that the work up on the same shall proceed with reasonable diligence, and that the grantee shall commence to deliver the said seven thousand five hundred acre feet of water to the grantor at the place of diversion herein mentioned on or before the first day of April A. D., 1914, unless the construction of the said Dam or Reservoir shall be delayed or interfered with by law, legal proceedings, or act of God, in either of which events the said delivery shall be commenced within a reasonable time after the said last mentioned date.

3. The grantee covenants that it will construct and perpetually maintain and operate the said dam and reservoir and will acquire the legal right to impound in the said reservoir so constructed, among other waters, at least seven thousand five hundred acre feet of water annually and the grantor shall be entitled to an absolute, prior, first preferential right to the use of said seven thousand five hundred acre feet annually of said water so to be impounded in the said reservoir and the grantee further covenants that it will annually deliver from the said water so impounded in the said reservoir at the point in Beaver River at which the grantor now diverts water from Beaver River into its canal at which point of diversion the grantor has constructed and now maintains its diverting works, the said seven thousand five hundred acre feet annually, which water shall be delivered from time to time in such quantities as the grantor may from time to time during each year indicate; such water to be measured to the grantor through a proper weir of measuring device to be constructed in said canal at the intake thereof by the grantee, and the grantee shall construct and continuously maintain, at its own cost and expense, in the said Beaver River suitable works for the diverting of the said water through the said weir or measuring device into said canal.

4. During the non-irrigation season of each year hereafter, which non-irrigation season is hereby defined to be the months of November, December, January, February, and March, the grantor shall be entitled to use so much of the water arising in said Beaver River between said Rockyford Dam and the said diverting works of the grantor as shall be reasonable necessary to supply its stockholders with water for domestic and culinary uses, not exceeding however two cubic feet per second of water, and if during such non-irrigation season, such quantity of water shall not rise

between the two said points then any deficiency shall be made up to the grantor from the waters in the said Rockyford Reservoir, but during the remainder of the said year, which is hereby declared to be the irrigation season, the said waters flowing into or arising in the said River between the said dam and the said point of diversion shall be measured to the grantor as part of the seven thousand five hundred acre feet annually to be delivered to the grantor by the grantee as herein provided.

5. Until such time as the grantee shall, pursuant to the terms hereof, commence the delivering of the said seven thousand five hundred acre feet annually to the grantor, the grantor shall be entitled to use all of the waters of the Beaver River which have herein been conveyed and contracted to the grantee and until such time as the delivery shall commence, the grantee will not prevent the impounding of such waters as have heretofore been impounded by the grantor in the Rockyford Reservoir and until the grantee shall commence the delivery to the grantor of the said seven thousand five hundred acre feet of water, the grantor shall be entitled to use such impounded water and the grantee in constructing its said reservoir and dam shall conduct its operations in such a manner that it will not prevent the grantor from taking such impounded waters from the said reservoir, but after the said grantee shall commence the delivery of the said seven thousand five hundred acre feet at the said point of diversion as hereinbefore provided, the grantee shall not be entitled to any water of the Beaver River, reservoired or otherwise, except the said seven thousand five hundred acre feet herein provided to be annually delivered at the said point of diversion to the grantor by the grantee.

6. The grantee hereby covenants that it will continuously keep unencumbered the said seven thousand five hundred acre feet of water so annually to be delivered by the grantee to the grantor at the said point of diversion and any mortgages, trust deeds, or other conveyances of the grantee's water rights now owned or which hereafter may be acquired in Beaver River, or of its said dam and reservoir, shall be made subject and subordinate to the grantor's right to the use of the said seven thousand five hundred acre feet of water annually as herein set forth and to all of the grantor's rights provided for in this contract.

7. The measurement of the said seven thousand five hundred acre feet of water to be annually delivered by the grantee to the grantor at said point of diversion shall be made by the grantee to the grantor at said point of diversion shall be made by the grantee through and by some standard mechanical measuring device to be supplied and furnished by the grantee at its own expense.

8. It is expressly understood and agreed that the right of grantor to the use annually of seven thousand five hundred acre feet of water, as herein provided, shall not be cumulative and its failure to take and use such quantity of water during any year shall not entitle the grantor to have such unused portion accumulate or be added to the water to be delivered for any other year.

9. The conveyance by the grantor to the grantee of the water rights and property of every kind and nature mentioned in paragraph one and in all subdivisions thereof is on the express condition that the grantee shall commence the delivery to the grantor of the said seven thousand five hundred acre feet at the time herein specified for said delivery to be commenced and in case the grantee shall fail to commence the delivery of the said water at such time then and in that event, all of the said property so conveyed in the said paragraph one and all subdivisions thereof shall revert to and become and remain the absolute property of the grantor.

10. All of the rights of the respective parties hereunder may be transferred or assigned and the covenants of this contract shall run to and be obligatory upon the successors and assigns of the respective parties hereto.

11. It is mutually understood and agreed that in case at any time hereafter the said Rockyford Dam to be constructed by the grantee shall for any reason break or be washed out so that the waters in the said reservoir shall be wasted then and in that event the grantee, its successors and assigns, shall have a reasonable time thereafter in which to reconstruct the said dam and until such time as the same shall be reconstructed the grantor shall be entitled to use all of the waters and water rights herein conveyed to the grantee by the grantor, (and in the event of the breaking of such dam and the wasting of such water, the grantee,) its successors and assigns

shall not be under any responsibility or liability to the grantor or any of its stockholders because of its failure or inability to deliver the said seven thousand five hundred acre feet of water, but such exemption shall only continue for the season or seasons during which such break or breaks shall have occurred.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in duplicate and its corporate name to be signed hereto by their respective Presidents and their respective corporate seals to be affixed hereto and attested by their respective secretaries this 30th day of April, A. D. 1913.

Attest: MINERSVILLE RESERVOIR & IRRIGATION COMPANY

William A. Joseph Secretary By A. J. Louis Seal Its President

Attest: BEAVER COUNTY IRRIGATION COMPANY

H. P. Prout Secretary By Geo. A. Snow Seal Its President

State of Utah, County of Beaver: SS.

On this 30th day of April, 1913, personally appeared before me A. J. Louis, who being duly sworn, did say that he is the President of Minersville Reservoir & Irrigation Company, a corporation of Utah, and that the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors and the said Louis acknowledged to me that said corporation executed the same.

(SEAL) R. W. Dotson Notary Public

State of Utah, County of Salt Lake:SS.

On this 30th day of April, 1913, personally appeared before me George A. Snow, who, being duly sworn, did say that he is the President of Beaver County Irrigation Company, a corporation of Utah, and that the foregoing instrument was signed in behalf of said Corporation by authority of a resolution of its Board of Directors and the said George A. Snow acknowledged to me that said corporation executed the same.

(SEAL) Bertha M. Parker Notary Public

My Commission expires Mar. 27, 1916.

Filed for Record at 3:25 o'clock P. M. July 22, 1913.

Agnes Edwards County Recorder

STATE OF UTAH,)
COUNTY OF BEAVER.) SS.

I, Louis Lessing, the duly elected, qualified and acting Recorder in and for Beaver County, State of Utah, do hereby certify that the within and foregoing is a full, true and correct copy of that certain Agreement between MINERSVILLE RESERVOIR and IRRIGATION COMPANY and BEAVER COUNTY IRRIGATION COMPANY, dated April 30, 1913, recorded July 22, 1913, in Book Miscellaneous Record No. 1, at Page 328 et seq on the records of the County Recorder of Beaver County, State of Utah.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 15th day of June, 1954.

Louis Lessing BEAVER COUNTY RECORDER

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AGREEMENT
Civil #625

THIS AGREEMENT, made and entered into this 19 day of March, A. D. 1919, by and between Minersville Reservoir & Irrigation Company, a corporation of Utah, first party, and Beaver County Irrigation Company, a corporation of Utah, second party, WITNESSETH, that WHEREAS, heretofore under date of April 30th, 1913, the parties hereto entered into that certain contract which is recorded at page 328 et seq of Book of Miscellaneous Records, of the official records of Beaver County, Utah, kept at the office of the County Recorder thereof, relating to the conveyance to second party herein by first party herein of certain rights in and to the use of the Waters of Beaver River in said County, together with certain real properties, impounding rights, easements and other property; and WHEREAS, it is now mutually agreed that certain of the provisions of said recorded contract do not so clearly as may be possible set forth, in respect to the particular matters hereinafter mentioned, the actual intention of the parties thereto at the time same was entered into, and it is now the desire of both said parties to make and duly record in said records an interpretation of said contract of April 30, 1913, as to such particular matters hereinafter mentioned; to the end that said contract shall express beyond doubt the true intention of the parties thereto at the time the same was made, executed and delivered, NOW THEREFORE, in consideration of the premises and for the purposes aforesaid, the parties hereto do hereby mutually acknowledge that at the time of the making, execution and delivery of the recorded contract, in the preambles hereto above mentioned, it was their mutual intention and understanding that said contract should and did provide, and hereby they do interpret said contract to provide, that in conveying water-rights by first party hereto to second party thereto, in and by said contract of April 30, 1913, first party hereto did reserve unto itself from such conveyance; (a) the prior, first a and preferential right to use annually seven thousand five hundred (7500) acre feet of the total annual yield of said water rights, for beneficial irrigation and domestic purposes upon and in connection with the lands or its stockholders, and (b) an additional two cubic feet per second of Water arising in said Beaver River between the Rocky Ford Dam and the diverting works of said first party on said River, to the extent and as provided by said contract; and (c) such a sufficient interest in the lands, easements, impounding rights and other property conveyed as aforesaid, as well as in the reservoir in said contract agreed by second party to be constructed, as to vouchsafe unto itself its use of said reserved rights, to the extent annually of seven thousand five hundred (7500) acre feet, at the time and in the manner in said recorded contract specified. This agreement shall become a part of and be construed with the said recorded contract, but nothing therein contained shall be construed as affecting in any degree any of the provisions of paragraph eight of said original contract; further the parties hereto have heretofore by their acts and practice construed said contract of April 30, 1913, as to the matters herein mentioned, in accordance with the interpretation hereinabove placed upon the same. IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed, in duplicate, by their respective presidents and their respective corporate seals to be affixed hereto, and attested by their respective Secretaries, the day and year first above written.

MINERSVILLE RESERVOIR & IRRIGATION COMPANY

(CORPORATE SEAL)

By Wm. Roberts
President

ATTEST: H. F. Baker
Secretary

BEAVER COUNTY IRRIGATION COMPANY

(CORPORATE SEAL)

By John L. Mess
President

ATTEST: C. D. Penniston
Secretary

STATE OF UTAH)
COUNTY OF BEAVER) ss.

On the 24th day of March A. D. 1919, personally appeared before me

William Roberts, who, being by me duly sworn did say that he is the President of Minersville Reservoir & Irrigation Company, a corporation of Utah, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and the said William Roberts acknowledged to me that said corporation executed the same.

(Notarial Seal)

L. B. Mess
Notary Public

My Commission expires March 26, 1922.

STATE OF UTAH)
County of Beaver) SS.

On the 24th day of March, A. D. 1919, personally appeared before me _____, being by me duly sworn, did say that he is the President of Beaver County Irrigation Company, a corporation of Utah, and that said instrument was signed in behalf of said corporation by authority of a resolution of its Board of Directors, and the said John L. Mess acknowledged to me that said corporation executed the same.

(Notarial Seal)

L. B. Mess
Notary Public

My Commission expires March 26, 1922.

Filed for Record at 2 o'clock P. M. May 16, 1919.

Electa Dorrity

STATE OF UTAH,)
COUNTY OF BEAVER.) SS.

I, Louis Lessing, the duly elected, qualified and acting recorder in and for Beaver County, State of Utah, do hereby certify that the within and foregoing is a full, true and correct copy of that certain Agreement between Minersville Reservoir & Irrigation Company and Beaver County Irrigation Company, dated March 19, 1919, recorded May 16, 1919, in Book Miscellaneous Record # 1, at page 458 on the records of the County Recorder of Beaver County, Utah.

IN WITNESS WHEREOF; I have hereunto set my hand and affixed my official seal this 15th day of June, 1954.

Louis Lessing
BEAVER COUNTY RECORDER

pd Co Recorder #9.10