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WATER RIGHTS
SALT LAKE

BOX ELDER COUNTY
STATE OF UTAH

RECORDED

Nov. 6, 1958

TIME

2:45 PM

BOOK

120 page 474

MARGARET R. EVANS, RECORDER BY

Lance D. Jensen
Deputy

No Fee

AGREEMENT

THIS AGREEMENT made and entered into by and between BRIGHAM CITY, a municipal corporation of the State of Utah, hereinafter referred to as the first party, and BOX ELDER CREEK WATER USERS ASSOCIATION and PERRY IRRIGATION COMPANY, hereinafter referred to as parties of the second part:

WITNESSETH:

THAT WHEREAS first party is at the present time the owner of the following waters which have been used for culinary or irrigation purposes as follows to-wit: Birch Spring and the drainage from Rasmussen Field commonly known as South Fork, with a filing covering one and a half second feet, which stream varies in quantity but is producing at this time one second foot; one third of Upper Maple Springs consisting of one and a half second feet; one and eighteen hundredths second feet from the Peter C. Jensen spring in Mantua and in addition, first party has 2500 acre feet from the Pine View Dam which is commonly known as the Weber-Box Elder Conservation District water; which 2500 acre feet when computed on the normal 180 day irrigation season, represents seven second feet of water continuous flow, which in all make a total of 10.68 second feet of water available for use at the present time from all sources. It being considered that said amount is not constant, but will vary according to weather conditions, more or less from time to time.

AND WHEREAS the Box Elder Creek Water Users Association is the owner of 14/16ths of the water flowing into Box Elder Creek from all sources from what is commonly known as the Mantua Drainage Area and the Perry Irrigation Company is the owner of 2/16ths interest thereof, which water is used for irrigation purposes during each and every year by said second parties and most of said waters arise at sources which could be used for culinary purposes if properly developed and handled for said purpose.

AND WHEREAS there is available annually, certain run-off waters out of South

Fork and other sources in the Mantua Drainage area which, if controlled and placed in a reservoir within Mantua Town and stored, could be exchanged for the spring water of second parties and used for irrigation and the springs within Mantua that contribute to Box Elder Creek could then be diverted to culinary purposes for the use and benefit of first party.

AND WHEREAS to carry out said program at least two (2) years time will be necessary for the purpose of making surveys, measurements, dikes, ditches, flumes, canals, reservoirs and certain development work.

AND WHEREAS it further appears that at the present time that to proceed on said program it will be necessary for first party to take title to the water belonging to the parties of the second part and agree by this contract to exchange use of its water and to use no more of second parties water than the portion of water now owned by first party to-wit: 10.68 second feet or the exact amount that said sources or other sources hereafter acquired might produce according to the season, and to deliver to second parties an exchange of first party's water and to make any and every other arrangement that might be necessary or needful to protect second parties in their present irrigation rights while said program is carried out on a water storage basis.

NOW, THEREFORE for and in consideration of the mutual promises, covenants and conditions to be performed and kept by each with the other, each agrees with the other as follows:

1. That the second parties shall, by warranty deed, convey to first party each and all of their water rights above referred to. Said conveyance to be conditioned upon and subject to all of the conditions herein set out. It being understood and agreed that title shall fail, insofar as said conveyances are concerned, if first party shall not, or is unable to, carry out the terms and conditions herein set out and that in that event, the title to said waters shall revert to second parties and first party hereby agrees to make the necessary conveyances to carry out said reconversion.
2. The first party shall have the right, during the period of reservoir construction, or at any other time, to develop any and all of the sources of water in Mantua Valley which are now used and claimed by second parties, or any other sources of supply

that might be discovered in the course of said construction, and shall have the right in its own name to file on said developed sources or new found sources for the purpose of appropriating the same, and said amounts so developed and appropriated shall be added to all other sources of supply that first party now owns and each agree that first party may choose from any of said sources just which waters it might wish to put into its culinary system and shall deliver to second parties an amount equal to the amount of water diverted for culinary purposes from any source belonging to second parties. Each further agreeing that any quantities of water, over and above that diverted by first party for culinary purposes, which first party owns at the present time, or might own after further development work or discovery of other sources of supply and appropriated with the exception of storage water and not needed to supply first party, shall and is hereby leased to second parties for the sum of one (\$1.00) dollar per year until all of said development work, construction, and building of reservoirs etc., has been completed.

3. That first party shall make available to the second parties, during said period of construction, all Pine View Water consisting of 2500 acre feet and shall, at second parties request from time to time, ask and request early waters during any irrigation season from said source in Pine View, if the irrigation season of said year shall come early and make early irrigation necessary.

4. Each agree that One Hundred and Eighty (180) days of each year has been considered as the irrigation season, but that said season will vary from year to year according to the drouth or rainfall within said year. Said irrigation season shall be determined and considered according to actual conditions existing within each season as to the length of time thereof.

5. Each further agree that if and when a reservoir is constructed by first party in the Mantua Valley, that first party may continually thereafter exchange with second parties, water from said sources for further culinary needs that might arise as Brigham City grows and develops, to the end that first party may use and enjoy sources of supply that are fit for culinary purposes and in exchange therefor furnish reservoir water in lieu thereof.

6. It is the intention of this instrument that first party by taking title to said water, shall at all times protect and secure to the second parties, a supply of water equal to that which they had prior to any taking by first party to the end that no individual stockholder of second parties shall be injured or curtailed in his irrigation season or supply thereof, on account of said taking. It being understood and agreed however, that any waters that first party might have remaining after securing to second parties a supply of water equal to that had and owned by them at the time of the execution of this agreement, shall be waters belonging entirely to first party to dispose of, lease or rent the rights thereto as it, in its judgment, might determine to be to its best interests from time to time.

7. The weirs or automatic recorders shall be installed by first party so that measurements can be recorded for any season of the year, at the proper sources or locations, as may be mutually agreed upon and records kept and maintained by first party, which shall be open for inspection of all parties at all time.

8. This agreement shall be binding upon the successors and assigns of both parties hereto.

IN WITNESS WHEREOF the parties have caused this instrument to be signed as follows: That first party has caused this instrument to be executed by its Mayor and attested by its City Recorder by authority of a resolution on this 23rd day of October A. D., 1958, and the Box Elder Creek Water Users Association has caused this instrument to be signed by its President and attested by its Secretary pursuant to a resolution of its Board of Directors this 31st day of October A. D., 1958, and the Perry Irrigation Company has caused this instrument to be signed by its President and Attested by its Secretary pursuant to a resolution of its Board of Directors this 21st day of October A. D., 1958.

ATTEST:

Fannie J. Christensen
City Recorder

BRIGHAM CITY, a municipal corporation
of the State of Utah

BY Ruel M. Eskelsen
Mayor
First Party

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BOX ELDER CREEK WATER USERS
ASSOCIATION

ATTEST:

W.L. Barker
Secretary

BY Leo Hansen
President

PERRY IRRIGATION COMPANY

ATTEST:

M.A. Peters
Secretary

BY Rulon Hirsch
President
Second Parties