

125-110-187
C.C.-6

DEPARTMENT OF THE INTERIOR
UNITED STATES INDIAN IRRIGATION SERVICE
Fort Hall Project.

THIS AGREEMENT made and entered into this seventh
day of June, 1929, by and between the United States
of America, acting in this behalf by C. A. Engle,
Supervising Engineer thereunto duly authorized, party of
the first part, and the Smith-Maxwell Ditch Company, a
corporation of Bingham County, State of Idaho, party of
the second part,

WITNESSETH:

THAT WHEREAS, the party of the first part is the
owner of an irrigation canal known as the Idaho ex-
cession Canal constructed for the purpose of con-
veying six hundred (600) second-feet of water from the
Snake River to the Blackfoot River for redistribution there-
from and use upon its Fort Hall irrigation project, with
priority date of December 14, 1891, fixed by decree by
the Sixth Judicial Court, State of Idaho, in the case
Reahburg Irrigation Company et al. vs. Teton Irrigation
Canal Company et al; and

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WHEREAS, the stockholders of the party of the second part have a water right under the same decree for seventeen and eight-tenths (17.8) second-feet from the said Snake River with a priority of February 21, 1890, which right has been dedicated for the irrigation of approximately seven hundred ninety-one (791) acres in Sections twenty-one (21), twenty-two (22), twenty-four (24), twenty-seven (27) and twenty-eight (28), Township three (3) South, Range thirty-four (34) East, Boise Meridian, Idaho; and

WHEREAS, the party of the second part finds it difficult and expensive to divert its Snake River water directly to the said land, and accordingly is desirous of securing a right to convey said water through the Idaho or Reservation Canal, thence through the Blackfoot River to a diversion point on the North bank of the Blackfoot River, from which the East quarter corner of Section twenty-two (22), Township Three (3) South, Range thirty-four (34) East, Boise Meridian, Idaho, bears North $80^{\circ} 29'$, East 2735 feet;

NOW THEREFORE, for and in consideration of the sum of Two Thousand Four Hundred and no one-hundredths (\$2400.00) Dollars, to be paid as hereinafter provided, the party of the first part does hereby agree to grant

unto the party of the second part its successors and assigns a carrying capacity for the conveyance of seven-teen and eight-tenths (17.8) cubic feet of water per second in the said Idaho Canal from the Snake River to the Blackfoot River.

The party of the second part agrees to pay the consideration of Two Thousand Four Hundred and no one-hundredths (\$2400.00) Dollars in twenty (20) equal annual installments, the first of which shall be due and payable upon execution of this agreement and the second and each succeeding installment shall be due and payable on or before the 1st day of April of each year thereafter until the total sum of Two Thousand Four Hundred and no one-hundredths (\$2400.00) Dollars shall have been paid. The party of the second part further agrees to pay interest on all deferred installments at the rate of six per cent (6%) per annum, annually on the 1st day of April of each year; provided, however, that all installments, together with all interest due thereon, may be paid at any time within the twenty (20) year period. All payments due hereunder shall be made to the Special Disbursing Agent, United States Indian Irrigation Service, Blackfoot, Idaho.

or to such other person as may be designated therefor by the Secretary of the Interior.

It is hereby further mutually understood and agreed that no title shall pass until final payment is made, and that default in payment of any annual installment or of the interest when due may, in the discretion of the Secretary of the Interior, render this agreement null and void and work a forfeiture to the United States of America of all amounts paid hereunder.

The party of the first part undertakes to divert and carry for and on behalf of the party of the second part, which party hereby expressly authorizes the said party of the first part to so divert and carry its water, the above described quantity of water through the Idaho or Reservation Canal to the Blackfoot River at such time or times and only when water is available from the Snake River for the said Fort Hall project under said priority order of December 14, 1891, hereinbefore mentioned, and when such diversion for the Fort Hall project is permitted in accordance with the State laws of Idaho as enforced by the Snake River Watermaster, District No. 36. It is further agreed that the party of the first part does not undertake

or assume any responsibility for the delivery of water for the party of the second part beyond the point at which it enters the Blackfoot River channel from the Idaho or Reservation Canal, the delivery of water from that point to the diversion dam of the party of the second part being under the regulation and control of the Blackfoot River Watermaster, District No. 34, who will regulate and determine the amount of water to be diverted allowing for reasonable transmission losses.

It is expressly understood and agreed that the party of the first part shall not be liable for any payment of damages or refund of money paid hereunder because of any failure to carry water in said canal occasioned by hostile diversion, unusual drought, interruption of service made by necessary repairs, damages caused by floods or other acts of God, unlawful acts, unavoidable accidents, unforeseen exigency and valid prior rights of other parties.

The diversion of water herein provided for and the use of carrying capacity shall be only during the irrigation season, which for the purpose of this agreement shall be between the 1st day of April and the 15th day of October of each year.

It is further expressly understood and agreed that the party of the first part its successors and assigns shall at all times have exclusive control of the canal, and the party of the second part shall not in any manner at any time interfere with or assume the management of said canal or of any water flowing therein or of any of the structures belonging to and built by the party of the first part for regulation and measurement or control thereof; and the party of the first part is hereby further expressly released from any and all obligations in any manner whatsoever arising in connection with this agreement for the things to be done or omitted in relation thereto, not specifically provided for herein.

The party of the second part further agrees to pay on or before April 1st of each year hereafter, to the Special Disbursing Agent, United States Indian Irrigation Service, Blackfoot, Idaho, or to such other person as the Secretary of the Interior may designate, its proportionate share of operation and maintenance of the said Idaho or Reservation Canal, including the cost of control and diverting the water flow therein, any and all improvements

or betterments thereof, the diversion works therefor, any of the structures on or along the same and any new or additional ditch or structures built for the diversion, control or distribution of water into, by, or from said canal, including any structures in the Blackfoot River. In the event payment of any such expense is not made on or before the due date the party of the first part may stop and prohibit the flow of water belonging to or to be carried for the party of the second part until such payment with interest at six per cent (6%) for the period of delinquency shall have been made.

In determining the proportionate share of the annual operation and maintenance charge to be paid by the party of the second part, it is agreed that the share shall be in the ratio of the number of second-feet to which the party of the second part is entitled to the entire carrying capacity of the canal, or as seventeen and eight-tenths (17.8) second-feet in to seven hundred and fifty (750) second-feet, the total capacity.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that the party of the first part shall be obligated to carry the water for the party of the second part only at such times as

there may be a surplus of capacity in the Idaho Canal, and said party of the first part shall not be bound to divert, carry or deliver the said seventeen and eight-tenths (17.8) second-feet or any part thereof except when the Snake River is sufficiently high to permit the diversion of water in exercise of the right of the party of the first part; nor shall the party of the first part be bound or obligated to place obstructions in the river or to remove gravel bars or other deposits from the diversion works or canals in order to provide the necessary capacity for carrying the said seventeen and eight-tenths (17.8) second-feet of water or to do any other work except such as may be necessary for the conveyance of its own water.

The party of the second part agrees that it will bear its proportionate share of the losses in transmission through the Idaho Canal and the Blackfoot River, which is now estimated to be about twenty per cent (20%), and also to pay its proportionate share each year of the cost of the Blackfoot River water distribution and Watermaster, District No. 34 expenses under such terms and conditions as may be determined by the Watermaster.

It is understood and agreed that when the rights of the party of the first part as of priority date December 14, 1891, shall have become exhausted, cut off or rendered unavailable, then and in that event the said party of the first part does not undertake or assume any responsibility for the delivery of the seventeen and eight-tenths (17.8) second-feet of water for the party of the second part until such water rights of the party of the first part are again restored.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESSES:

W. E. Blomgren
Blackfoot, Idaho
Edward W. Dory
Blackfoot, Idaho

UNITED STATES OF AMERICA

By C. J. Engle
Supervising Engineer.

SMITH-BARNHILL DITCH COMPANY

By Edgar Fieldsted
Authorized Agent.

ATTEST:

Ernest C. Colborn
Secretary.

Approved:

R. M. Dixon
Assistant Secretary of the Interior.

STATE OF IDAHO,)
 :
County of Bingham.)

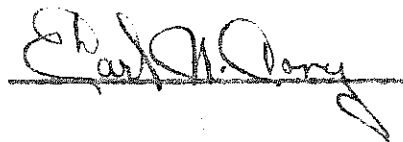
C E R T I F I C A T E

I, the undersigned, hereby certify that the following are true and correct copies of motion and resolution appearing in the minutes of the meeting of the Board of Directors of the Smith-Maxwell Ditch Company, a corporation, held at 3 o'clock P. M. on the 20th day of May, 1929:

"Upon motion duly made and carried Edgar Fjeldsted was elected President of the Board, Everett E. Colborn Secretary and B. D. Hanson, Treasurer. Thereupon the President and Secretary assumed their respective offices."

"BE IT RESOLVED: That the President and Secretary of this corporation be and they are hereby authorized to enter into a contract with the United States of America by and through C. A. Eagle, Supervising Engineer thereunto duly authorized for a right of way in the Idaho Reservation Canal for the conduct of 17.8 feet of water from the point of diversion in said canal in Snake River to the point where it dumps into the Blackfoot River for the sum of \$2,400.00, payable in twenty equal installments, the first installment to be paid at the time of execution and delivery of the contract and the remainder thereof on the 1st day of April of each year thereafter, together with six per cent interest on deferred payments and that the stock of said corporation be assessed each year for a sufficient amount in addition to all other expenses to pay said installments and the interest thereon."

I further certify that said Edgar Fjeldsted as president and said Everett E. Colborn as secretary of said corporation executed the hereunto annexed instrument for and on behalf of said corporation.



Subscribed and sworn to before me this 3rd day of July, 1929.


Notary Public for State of Idaho
Residence: Blackfoot, Idaho