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Oct. 11, 1943

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
SCOFIELD PROJECT - UTAH

Contract between the United States, Carbon Water Conservancy District,
and Price River Water Conservation District,
Relating to the Scofield Project

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
SCOFIELD PROJECT - UTAH

Contract between the Carbon Water Conservancy District,
the Price River Water Conservation District,
and the United States

THIS CONTRACT. Made this 11th day of October, 1943, pursuant to the Act of August 11, 1939 (53 Stat., 1418), and acts amendatory thereof and supplementary thereto, herein referred to as the Water Conservation and Utilization Projects Act (W.G.U. Act), between THE UNITED STATES OF AMERICA, (herein styled the United States) acting by and through the Secretary of the Interior (herein styled the Secretary), the CARBON WATER CONSERVANCY DISTRICT (herein styled the Conservancy District), a water conservancy district organized and existing under the laws of the State of Utah, with its principal place of business at Price, Utah, and the PRICE RIVER WATER CONSERVATION DISTRICT (herein styled the Irrigation District), a public corporation organized and existing under the laws of the State of Utah, with its principal place of business at Price, Utah:

WITNESSETH, THAT:

2. WHEREAS, the Irrigation District caused to be constructed that certain dam in Carbon County, Utah, commonly known as Scofield Dam; and

3. WHEREAS, said Scofield Dam is in an unsafe and dangerous condition; and

4. WHEREAS, for the stabilization, conservation and utilization of the water supply of the Price River and its tributaries and the protection of life and property, it is necessary that said dam be reconstructed; end

5. WHEREAS, the Scofield Federal Water Conservation and Utilization Project (herein styled the project), has been authorized for construction under the W.C.U. Act; and

6. WHEREAS, the Conservancy District proposes to enter into a contract with the United States (herein referred to as the repayment contract), for the reconstruction of the Scofield Dam and the repayment of the reimbursable cost thereof by said Conservancy District to the United States; end

7. WHEREAS, it is to the interest of the Irrigation District to have said dam reconstructed, and said District desires the United States to reconstruct said Dam;

8. NOW, THEREFORE, in consideration of the mutual and dependent stipulations herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

now is Price River Water Users Assn

WORKS PROPOSED TO BE CONSTRUCTED BY THE UNITED STATES

9. The United States proposes to construct, in accordance with the terms of a repayment contract to be entered into between the United States and the Conservancy District, a dam and storage reservoir, herein referred to as Scofield Dam and Reservoir, of approximately 73,000 acre-feet capacity (approximately 65,000 acre-feet active capacity and approximately 8,000 acre-feet inactive capacity), and works incidental thereto. The tentative location of the dam site is in Section 10, Township 12 South, Range 7 East, Salt Lake Base and Meridian. The project works designated herein are only tentatively determined upon and may be changed in location, or works may be eliminated or added to the foregoing, and the decision by the Secretary on any such changes, eliminations or additions shall be conclusive. All the works above described, together with the lands and rights-of-way therefor and including works changed in location, or those added thereto or substituted therefor as provided above, are collectively herein referred to as the "project works."

CONDITIONS PRECEDENT TO ACTUAL CONSTRUCTION

10. The United States shall be under no obligation to commence or, having commenced, to continue the construction of the project works until:

(a) This contract shall have been duly executed by all parties thereto;

(b) The Secretary has found that right-of-ways or other interests in land deemed to be necessary for the construction and operation of the project works have been secured or sufficient progress made in their procurement to indicate the probability that they can be secured, with titles and at prices satisfactory to the Secretary;

(c) The Secretary has found -

(i) That water rights deemed sufficient for the purposes of the project have been secured, on terms satisfactory to him, or, to the extent necessary for the project, have been initiated and in his judgment can be perfected in conformity with the laws of the State of Utah and applicable interstate agreements and in a manner satisfactory to the Secretary;

(ii) That such water rights can be utilized for the purposes of the project in conformity with the laws of the State of Utah and any applicable interstate agreements and in a manner satisfactory to the Secretary; and

(d) An agreement has been entered into between the United States and the Utah Fish and Game Department for participation in the project, as to the inactive capacity of Scofield Reservoir, if the Secretary determines

that such an agreement is required as a condition to undertaking or continuing construction.

REPAYMENT OF REIMBURSABLE CONSTRUCTION COSTS TO UNITED STATES

11. Provision for the repayment of the reimbursable construction costs of the project works will be made in the repayment contract between the United States and the Conservancy District; and the Irrigation District by this contract does not obligate itself to pay any part of the cost of constructing the project works.

PROJECT WATER SUPPLY AND RESERVOIR OPERATION - GOOSEBERRY PLAN

12. (a) The United States proposes, as the principal feature of the diversion plan (herein called the Gooseberry Plan), to build storage and diversion works on the Price River system at a point or points above the confluence of Cabin Hollow Creek and Gooseberry Creek. When these works (herein called the works of the Gooseberry plan) have been constructed and put into operation, the relative rights of the United States and the Irrigation District to the waters of Price River shall be as hereinafter stated in this article.

(b) As used in this article the term "Price River" means the Price River and its tributaries; the term "active capacity" means the capacity of Scofield Reservoir above the lip of the intake trash-rack structure; the term "Heiner Station" means the U.S.G.S. gaging station designated as "Price River near Heiner, Utah."

(c) The Irrigation District shall have the right to the full Use of the active capacity. The reservoir shall be operated to the end that, within the limits of the water supply, there will be available in Price River at the Heiner Station enough water to permit the diversion, when required, of the amount needed to satisfy the existing rights below the Heiner Station but not in excess of the amount of water that can be beneficially used; Provided, that no stored water shall be released during periods that the beneficial use requirements for existing rights below Heiner Station can be met with water from other sources available at the points of diversion; and Provided, Further, that no more water shall be passed through Scofield Reservoir, when storage capacity is available therein, than is necessary to meet beneficial use requirements for existing rights below the Heiner Station.

(d) Subject to the conditions precedent stated in subsection (a) of Article 13, the United States or its successors or assigns shall have the right to store and divert in any year for use within or without the Price River water shed all of the waters arising in the Price River system at or above the confluence of Cabin Hollow Creek and Gooseberry Creek located in or near Section 31, Township 12 South, Range 6 East, Salt Lake Base and Meridian; Provided, That until Scofield Reservoir first fills to capacity or until October 1 of the fifth year following that in which the United States first stores or diverts water by means

of works of the Gooseberry plan, whichever is the earlier, the Irrigation District shall have a right superior to that of the United States annually to impound in Scofield Reservoir 30,000 acre feet of water, exclusive of water held over from prior seasons. The Irrigation District agrees that during the period of time that such superior right is operative that releases of water from Scofield Reservoir shall be made in accordance with the provisions of sub-section (c) of this article, shall not exceed 30,000 acre feet in any year and shall be so made that the aggregate of water usable during the period of April 16 through September 30 of each year, below Heiner Station, to satisfy all of existing rights below said station, shall not exceed 46,000 acre feet. In any calendar year that such superior right is operative, the United States may withhold water in the works of the Gooseberry plan in advance of the satisfaction of the superior right, but shall release to the Irrigation District, upon call, any water stored adversely to such superior right, less such amount as has been passed through Scofield Reservoir in that year in excess of the diversion requirements of the existing rights on Price River below the Heiner Station.

(e) The Irrigation District agrees that, in the event existing rights to the use of the waters of the Price River are adversely affected by the exercise of rights as defined in sub-section (d) of this article by the United States or its successors or assigns, there shall be released from water available in the active capacity of Scofield Reservoir sufficient water to offset such adverse affect, the releases to be in such quantities and at such times as may be determined by the officer or agency charged by Law with the responsibility for the regulation and distribution of the waters of the Price River System. Any such releases, as between the parties to this contract, shall be without diminution of the rights of the United States or successors or assigns under said sub-section (d) or otherwise under this contract, and without cost to the United States or its successors or assigns.

CONDITIONS PRECEDENT TO EFFECTIVENESS OF PLANS - STATUS OF WATER FILINGS

13. (a) The rights of the United States under Article 12 are dependent on the satisfaction of these conditions precedent:

(i) The completion of Scofield Dam and Reservoir to a point as determined by the Secretary, that there is usable active capacity of approximately 65,000 acre feet;

(ii) The making of contractual arrangements between the United States and the Conservancy District reducing the construction charge obligation of the latter to the United States to \$100,000; and

(iii) The principal works of the Gooseberry plan having been completed and made ready for operation.

Written notice as to the time when these conditions have been satisfied shall be given to the Irrigation District by the Secretary ^{Now Price River Water Users Assoc.}

(b) The Irrigation District's rights to the use of the waters of Price River and its tributaries, either by way of direct diversion or storage, are agreed to be, as of the date of this contract, only those based on the following applications on file in the office of the State Engineer of Utah:

Application No.	Claimed Date of Priority	Nature and amount of Claimed Right
1035 (Cert. 2046)	Aug. 30, 1906	12,020 ac. ft.
8989a	Oct. 11, 1937	7,000 ac. ft.
9594	Sept. 12, 1924	90,000 ac. ft.
13334	Feb. 13, 1940	50 sec. ft.

The Irrigation District agrees to assign its Application 9594 to the United States within 60 days after notice from the Secretary to the effect that Scofield Dam and Reservoir has been completed to the point that there is an active storage capacity available for use of approximately 65,000 acre feet; that its rights under Applications 1035 - Certificate No. 2046, 8989a, and 33334, are hereby subordinated to the rights of the United States as defined and agreed to in Article 12 hereof, and to whatever permits for the diversion or storage of water that have been or may be procured by the United States within the limits of its rights under this contract; and that all its rights under this contract are subject to the provisions of Section 13 of the Boulder Canyon Project Act (45 Stat. 1057).

It is further agreed that the Irrigation District's applications 1035 - Certificate No. 2046, 8989a, and 33334 shall be used subject to the conditions and limitations that are provided in this contract and not otherwise.

Prior to the giving of the notice by the Secretary provided for in this sub-section (b), the Irrigation District may continue to use its rights in and to the waters of Price River without regard to the limitations of this contract.

A copy of this contract shall be filed in the office of the State Engineer of Utah and, as between the Irrigation District and the United States, shall be the basis, the measure, and the limit of the Irrigation District's rights under Applications 1035 - Certificate No. 2046, 8989a, and 13334.

USE OF INACTIVE CAPACITY IN SCOFIELD RESERVOIR

14. The United States reserves the right to make any use of the inactive capacity of Scofield Reservoir (being the capacity below the lip of the intake trashrack structure), which is not inconsistent with the rights of the Irrigation District under this contract, including the right to contract with the Utah Fish and Game Department for the use thereof on terms and conditions satisfactory to the Secretary

RECREATIONAL USES

15. The United States, acting through the Secretary, shall have the right to establish and maintain bird reserves and wild life refuges on the land acquired in connection with Scofield Dam and Reservoir, and to use or permit the use of said land or said reservoir for fishing, recreational, or other incidental purposes, where practicable, without substantial interference with the use of the water supply.

The public will be permitted to fish in Scofield Reservoir, without charge of any kind by the Conservancy District or by the Irrigation District, upon compliance with the laws of the State of Utah and regulations established by the State Fish and Game Commission of Utah,

Any revenues realized from such uses shall be the property of the United States,

OPERATION AND MAINTENANCE OF SCOFIELD RESERVOIR AND PAYMENT OF CHARGESTHEREFOR

16. (a) Provision will be made in the repayment contract for the operation and maintenance of the project works by the United States, so long as is deemed necessary by the Secretary, for the transfer and re-transfer to the Conservancy District for operation and maintenance when this is deemed desirable by the Secretary, and for the resumption and taking over from the Conservancy District for operation and maintenance of all or any part of the project works when this is deemed desirable by the Secretary,

(b) It is agreed that in the event the United States, its officers or employees, resume or take over the operation and maintenance of the works of the project, or any part thereof, as provided in the repayment contract, neither the United States, its officers, nor employees shall be liable for any damages resulting directly or indirectly from such resumption or taking over; and the Conservancy District and the Irrigation District each agrees to hold the United States, its officers and employees, harmless from any and all claims of damage.

(c) Provisions in the repayment contract for payment of operation and maintenance costs to the United States during periods it is operating any of the project works shall be in substantially the following terms:

"On or before June 1 of the year in which the Secretary gives notice that the first installment of the reimbursable construction costs is to come due from the Conservancy District under the repayment contract and on or before each June 1 thereafter, the Secretary will make an estimate and give to the Conservancy District a notice of such estimate, herein called the 'operation and maintenance charge notice', of the cost for the ensuing calendar year of operating and maintaining that part of the project works which is to be operated and maintained by the United States in the ensuing year. The Conservancy District shall pay to the United States the amount specified in any such operation and maintenance charge notice on or before December 1 of the calendar year in which said notice is given. When-

ever, in the opinion of the Secretary, funds so advanced will be inadequate properly to operate and maintain the project works - to the end of any calendar year, he may give a supplemental operation and maintenance charge notice, stating therein the amount of additional advances required; and the Conservancy District shall pay to the United States the amount thereof on or before the date specified in such supplemental operation and maintenance charge notice. If funds advanced by the Conservancy District under this article exceed the actual cost of such operation and maintenance for the calendar year for which advanced, the excess will be credited on the amount otherwise becoming due on December 1 of the next ensuing year."

The Conservancy District shall provide the Irrigation District promptly with a copy of each "operation and maintenance charge notice" and each supplemental notice furnished to it under the terms of the repayment contract. The Irrigation District shall, on or before November 25 of the calendar year in which the aforementioned operation and maintenance charge notice is given, pay to the Conservancy District an amount equal to the amount specified in said notice. Similarly, the Irrigation District shall pay to the Conservancy District, five days in advance of the due date, adequate sums of money to cover the charges specified in the aforementioned supplementary operation and maintenance charge notice.

(d) Should the project works be turned over to the Conservancy District for operation and maintenance pursuant to the terms of the repayment contract, the Irrigation District agrees to pay to the Conservancy District the costs the latter incurs in such operation and maintenance. The Conservancy District, during operation and maintenance by it, shall give operation and maintenance charge notices to the Irrigation District on the dates to be provided in the repayment contract for the giving of such notices by the Secretary to the Conservancy District and the Irrigation District shall pay to the Conservancy District in accordance with those notices.

(e) The Irrigation District shall also pay to the Conservancy District on February 15th of each year all costs and expenses of operation and maintenance that have accrued during the calendar year ending on the preceding December 31 but which have not been included in other billings provided for in this article. Notice of the amount due under this subsection will be given to the Irrigation District 30 days in advance of this due date.

(f) It is agreed: that water stored in Scofield Reservoir shall not be released if the Conservancy District is in default of advance payment of operation and maintenance charges to the United States, or in arrears for more than twelve months in the payment of an installment of the reimbursable construction costs under the terms of the repayment contract, or the Irrigation District is in default of advance payment of operation and maintenance charges to the Conservancy District as herein

provided; and that the Irrigation District shall refuse to deliver water from storage to or for any land or party while either said land or party is in arrears in the payment to it of any tolls or other charges levied or established by it to meet its payments of operation and maintenance costs pursuant to this contract, or is more than twelve months in arrears in the payment to the Conservancy District of any levy or other charge established to meet any installment of reimbursable construction costs under the repayment contract, . . .

(g) Operation and maintenance charges to be paid by the Conservancy District shall not be reduced or diminished by reason of the use of Scofield Reservoir under the Gooseberry plan, as provided in Article 12 hereof, nor by reason of the use of the capacity of said reservoir as provided in Articles 14 or 15 hereof.

RECORD OF DIVERSIONS TO BE SUPPLIED

17. The Irrigation District shall record all diversions of water made below Heiner Station during the period April 16, through September 30, of each year, and shall furnish a statement of such diversions to the United States or the Conservancy District, whichever is operating the project works as provided in Article 16 hereof, on the 20th day of each month covering diversions made during the preceding month.

DISPOSAL OF LAND AT NOT TO EXCEED APPRAISED VALUES

18. No water shall be delivered through and by means of the project works, to or for any land within the boundaries of the Irrigation District transferred or disposed of on or subsequent to June 24, 1943, and within three years from the date water becomes available therefor from the project works, unless and until it has been shown to the satisfaction of the Secretary or his duly authorized representative that the Land has been transferred or disposed of at a price not exceeding the appraised value thereof and the improvements % hereon at the time of transfer or disposal, or contract for such transfer or disposal, whichever is earlier. The Secretary will make such appraisals, excluding any increment attributable to the construction of the project works, but appraisals may be revised by the Secretary from time to time, at the request of any owner, to reflect changes in value attributable to other reasons. Copies of all appraisals, and revisions, shall be filed in the principal office of the Irrigation District,

Upon proof of fraudulent representation as to the true consideration received in any such transfer or disposal, the Secretary may cancel the right of the Land involved to receive water from, through or by means of the project works; Provided, that nothing herein shall be construed to create an authority to interfere with the delivery of water under prior rights.

The Irrigation District shall take all measures that may be necessary to enforce observance of the provisions of this article and of Article 19 hereof, and shall on or before December 31 of each calendar year, commencing December 31 of the year in which this contract is executed and until

and including the third year from the date water first becomes available from the project works, make a complete report setting forth its investigation and information of all transfers or disposals of lands in the Irrigation District and of the consideration therefor,

LIMIT OF IRRIGABLE LANDS IN SINGLE OWNERSHIP

19. Pursuant to the provisions of the W C U. Act, the Secretary has established the size of a farm unit of irrigable land within the boundaries of the Irrigation District which may be entitled to receive water from the project works at not to exceed 160 irrigable acres. No water shall be delivered to lands within the boundaries of the Irrigation District through or by means of the project works to or for more than the farm unit area of 160 acres of irrigable land owned by a single landowner: Provided, that the provisions of this article and of Article 18 hereof shall not apply with respect to the United States or any agency or instrumentality thereof, corporate or otherwise: Provided, further, That so long as the United States is engaged in the present war the limitations of this article shall not be operative as to any land holding which at the date of this contract comprises an acreage of irrigable land in excess of the maximum established herein for any farm unit.

IRRIGATION DISTRICT TO CONVEY - UNITED STATES TO BE HELD HARMLESS

20. (a) The Irrigation District shall convey to the United States all its rights, title and interest in and to the lands now owned by the District in connection with the operation and maintenance of the exist— Scofield Dam and Reservoir, subject to the right of the Irrigation District to continue to operate and maintain, to the extent permitted by law and under regulations of the State Engineer of Utah, the existing dam and reservoir until the condition precedent stated in Article 13(a)(i) has been satisfied and notice thereof given to the Irrigation District. The right of the Irrigation District so to operate and maintain, however, shall be subject to the right of the United States to direct such changes and limitations on Use by the District, taking into consideration so far as possible the need of the irrigators below as, in the judgment of the Chief Engineer of the Bureau of Reclamation, are required to permit construction on the new dam and related works to proceed with reasonable safety and economy.

(b) The United States does not hereby agree to assume, nor by the conveyance to it under this article shall it be deemed to have assumed, any of the obligations of the Irrigation District which the latter has in connection with ownership of the rights agreed to be conveyed or with its operation and maintenance of the existing dam and reservoir. All such obligations are hereby reserved to and retained by the Irrigation District, and it agrees to save and hold the United States harmless from any and all damages under valid claims of liability under such obligations. None of the rights of the United States with respect to the waters of the Price River and its tributaries, as defined and agreed to in this contract, shall be impaired or affected in any manner if the full use of the Scofield Reservoir cannot be made by reason of any covenant, condition or provision

affecting the rights the Irrigation District conveys to the United States under this article.

COMPUTATION OF COSTS

21. The determination of what costs are properly chargeable hereunder and whether properly chargeable as a part of the construction cost under the repayment contract or a part of the cost of operation and maintenance to be paid to the United States and the amount thereof shall be made conclusively by the Secretary.

TITLE TO REMAIN IN UNITED STATES

22. The United States shall retain title to the project works until Congress otherwise provides.

SECRETARY ARBITER OF 'DISPUTES INVOLVING QUESTIONS OF FACT

23. In the event of disputes between the parties hereto arising out of this contract involving questions of fact and insofar as provisions hereof require a determination of facts to be made, the Secretary is hereby designated as the arbiter of such questions and is the one required to make such determination of fact, and his decisions thereon shall be conclusive and binding upon the parties hereto-

RULES AND REGULATIONS

24. The Secretary reserves the right so far as the purport thereof may be consistent with the provisions of this contract, to make reasonable rules and regulations and to add to or modify them as may be deemed proper and necessary to carry out the true intent and meaning of the law and of this contract, and the Irrigation District and Conservancy District agree to be bound by such rules and regulations as may be made pursuant to this article.

RIGHT OF UNITED STATES TO TERMINATE CONTRACT

25. The United States shall have the right to terminate this contract upon sixty days written notice to the parties hereto, if the repayment contract proposed to be entered into between the Conservancy District and the United States has not been entered into and is not adjudged and decreed a legal, valid and binding contract by a court of competent jurisdiction within five months from the date hereof.

ASSURANCES RELATING TO VALIDITY OF CONTRACT

26. The Board of Directors of the Irrigation District shall commence and prosecute to final judgment proceedings in a court of competent jurisdiction under Title 100, Chapter 9, Sections 48-52, both inclusive, determining the validity and legality of this contract and the terms thereof

insofar as the Irrigation District is concerned and approving and confirming all the proceedings for the authoriwtion of this contract.

The District shall furnish the United States for its files a certified copy of such proceedings.

If in the opinion of the Secretary satisfactory judgments and decrees are not promptly secured by the Board of Directors of the Irrigation District as herein provided the Secretary may terminate this contract in which event the United States shall be under no obligation to proceed under this contract or the repayment contract between the Conservancy District and the United States,

REPRESENTATIVES OF THE SECRETARY

27. Where this contract requires action by the Secretary, such action except as to that provided for in Articles 23 and 24 hereof may be taken for and on behalf of the Secretary by his representatives duly authorized in writing by the Secretary.

OFFICIALS NOT TO BENEFIT

28. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefits that may arise herefrom but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

CONTRACT NOT ASSIGNABLE WITHOUT CONSENT

29. No voluntary transfer or assignment of this contract shall be made without the written approval of the Secretary. In the event, however, of a valid transfer or assignment, the successor or assignee shall be subject to all the provisions and conditions of this contract to the same extent as though such successor or assignee were the original contractor hereunder.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first above written.
day and year first above written.

THE UNITED STATES OF AMERICA

By Michael W. Straus
First Assistant Secretary of the Interior

J. Bracken Lee
Secretary (Seal)

By Ray Walters
President

PRICE RIVER WATER CONSERVATION DISTRICT
RIVER WATER CONSERVATION D.

ATTEST:

Carlyle Face,
Secretary (Seal)

By
President

DISTRICT OF COLUMBIA) ss.

I, Jesse W. Myer, a Notary Public in and for the District of Columbia, do hereby certify that Michael W. Straus who is personally known to me to be the First Assistant Secretary of the Department of the Interior, United States of America, appeared before me this day in person and acknowledged that he signed, sealed and delivered the foregoing written instrument as the free and voluntary act of the United States of America, for the uses and purposes therein set forth.

Given under my hand and official seal, this 30th day of March, 1944.

Jesse W. Myer
Notary Public in and for the
District of Columbia.

(Seal)

My Commission Expires May 31, 1948.

STATE OF UTAH)
COUNTY OF CARBON) ss

On the 6th day of April, 1944, personally appeared before me, Ray Walters, who being duly sworn by me, did say that he is the President of the Carbon Water Conservancy District, a water conservancy district, and that said instrument was signed in behalf of said District by authority of a Resolution of its Board of Directors dated October 11, 1943, and said Ray Walters acknowledged to me that said District executed the same.

(Seal)

Marjorie McIntire
Notary Public, Residing at Price,

My Commission Expires August 2, 1946. County of Carbon, State of Utah.

STATE OF UTAH)
COUNTY OF CARBON) ss

On the 6th day of April, 1944, personally appeared before me, Wilber Burnham, who being duly sworn by me, did say that on October 11, 1943, he was President of the Price River Water Conservation District, a public corporation, and that said instrument was signed in behalf of said District by authority of a Resolution of its Board of Directors dated October 11, 1943, and said Wilber Burnham acknowledged to me that said District executed the same.

(Seal)

Marjorie McIntire
Notary Public, Residing at Price,

My Commission Expires August 2, 1946. County of Carbon, State of Utah.