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Vol. 268 3131

A G R E E M E N T

WHEREAS, the parties herto are tenants in common in certain lands hereinafter particularly described located in Townships 29, 30, and 31, Ranges 8, 9 and 10 EWM, and

WHEREAS, the parties hereto now desire to partition said lands between themselves to the end that each will be the owner in fee simple of particular tracts of land, excepting the real property hereinafter called Rocky Ford and more particularly described as follows:

Township 31 South, Range 10 EWM

Section 1: Lots 3, 4 and 5, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, less 1.14 acres

Section 2: SE $\frac{1}{4}$

which said parties intend to retain and hold as tenants in common, and

WHEREAS, the partitioned parcels conveyed to each of the several parties hereto receive irrigation water from Williamson River, which flows through, over and across said parcel of land known as Rocky Ford, and

WHEREAS, said Rocky Ford property was acquired by the parties hereto and their predecessors in interest for the purpose of removing therefrom a certain dam and reservoir constructed thereon by others to impound the waters of Williamson River, which impoundment caused infiltration and deep percolation of the waters of Williamson River into the adjoining ground to the extent that the flow of said Williamson River was reduced to the point that it was not practical to irrigate the lands of the parties herein described and to be partitioned, and

WHEREAS, the parties hereto and their predecessors in interest did acquire the Rocky Ford property and did take and remove the dam and reservoir therefrom, thereby restoring the Williamson River to its original flow, and

WHEREAS, the parties now desire to prohibit and forever prevent the construction on said Rocky Ford property of any dam, reservoir or impoundment in perpetuity and to create a restrictive

easement upon said Rocky Ford property and servitude running in favor of all of the partitioned lands herein particularly described to the end that none of the parties hereto, their heirs, successors, executors, administrators, assigns, or grantees shall ever be able to construct, build, maintain or create any dam, reservoir or impoundment upon said Rocky Ford land of any kind or nature, and that the servitude and restriction shall be for the benefit of the partitioned land and a covenant that will run with such land;

Therefore it is hereby agreed by and between Oscar Kittredge and Frances Kittredge, husband and wife, hereinafter called First Parties, Viola M. Gouldin, a single woman, and Viola Gouldin and Ray J. Michels, as Trustees under the Last Will and Testament of William Gouldin, deceased, hereinafter called Second Parties, Maude A. Kittredge, a single woman, hereinafter called Third Party, Donovan L. Nicol and Mary Ann Nicol, husband and wife, hereinafter called Fourth Parties, to-wit:

1. That each and all of the parties hereto agree for themselves, their heirs, executors, administrators, assigns and grantees, that they shall not, nor shall any grantee or subsequent owner of the Rocky Ford property hereinbefore described ever construct, maintain or reconstruct any dam, reservoir or impoundment of any kind or nature upon said Rocky Ford lands herein described.

2. That this servitude and easement and restriction hereby created is for the benefit of and shall run with the real property which is partitioned simultaneously herewith and divided amongst the parties by conveyances of even date herewith, said First Parties receiving the following real property, to-wit:

Township 29 South, Range 9 East WM
 Section 36: W $\frac{1}{2}$
 Section 35: E $\frac{1}{2}$ E $\frac{1}{2}$

(Cont)

Township 30 South, Range 9 East WM

Section 1: $W\frac{1}{2}NW\frac{1}{4}$, $W\frac{1}{2}SW\frac{1}{4}$, $SE\frac{1}{4}SW\frac{1}{4}$
 Section 2: $SE\frac{1}{4}SE\frac{1}{4}$
 Section 10: $E\frac{1}{2}NE\frac{1}{4}$, $N\frac{1}{2}SE\frac{1}{4}$
 Section 11: $N\frac{1}{2}$, $N\frac{1}{2}S\frac{1}{2}$
 Section 12: $NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$
 Section 23: All
 Section 24: $W\frac{1}{2}$
 Section 25: $E\frac{1}{2}$, $NW\frac{1}{4}$
 Section 36: $N\frac{1}{2}NE\frac{1}{4}$, $N\frac{1}{2}S\frac{1}{2}NE\frac{1}{4}$

Township 30 South, Range 10 East WM

Section 18: $E\frac{1}{2}SW\frac{1}{4}$
 Section 19: $SE\frac{1}{4}NW\frac{1}{4}$, Lots 2, 3, 4, $E\frac{1}{2}SW\frac{1}{4}$
 Section 29: $S\frac{1}{2}SW\frac{1}{4}$
 Section 30: $NW\frac{1}{4}$, $NE\frac{1}{4}SW\frac{1}{4}$, Lot 3, $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$, $S\frac{1}{2}SE\frac{1}{4}$
 Section 31: $NE\frac{1}{4}$, $NE\frac{1}{4}SE\frac{1}{4}$
 Section 32: $W\frac{1}{2}W\frac{1}{2}NE\frac{1}{4}$, $NW\frac{1}{4}$, $W\frac{1}{2}E\frac{1}{2}W\frac{1}{2}NE\frac{1}{4}$

Said Second Parties receiving the following described real property,
 to-wit:

Township 30 South, Range 10 East WM

Section 8: $S\frac{1}{2}S\frac{1}{2}$
 Section 9: $NE\frac{1}{4}$, $S\frac{1}{2}$
 Section 10: All
 Section 11: $NW\frac{1}{4}$
 Section 16: $W\frac{1}{2}$
 Section 17: All
 Section 18: $E\frac{1}{2}NE\frac{1}{4}$, $SE\frac{1}{4}$
 Section 19: $NE\frac{1}{4}$
 Section 20: $NE\frac{1}{4}$, $E\frac{1}{2}E\frac{1}{2}SE\frac{1}{4}$
 Section 21: $NW\frac{1}{4}$, $NW\frac{1}{4}SW\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}$
 Section 24: $SE\frac{1}{4}$
 Section 25: $NE\frac{1}{4}$, Fraction $NW\frac{1}{4}$ lying east of the Williamson River

Said Third Party receiving the following described real property,
 to-wit:

Township 30 South, Range 9 East WM

Section 10: $S\frac{1}{2}SE\frac{1}{4}$
 Section 11: $S\frac{1}{2}SW\frac{1}{4}$, $SW\frac{1}{4}SE\frac{1}{4}$
 Section 14: $W\frac{1}{2}E\frac{1}{2}$, $W\frac{1}{2}$
 Section 15: $E\frac{1}{2}$, $E\frac{1}{2}W\frac{1}{2}$, $W\frac{1}{2}SW\frac{1}{4}$
 Section 16: $E\frac{1}{2}SE\frac{1}{4}$, $S\frac{1}{2}SW\frac{1}{4}SE\frac{1}{4}$
 Section 21: All
 Section 22: All
 Section 26: $E\frac{1}{2}$, $NW\frac{1}{4}$
 Section 27: $N\frac{1}{2}$
 Section 28: $NE\frac{1}{4}$, $E\frac{1}{2}NW\frac{1}{4}$
 Section 33: $W\frac{1}{2}SW\frac{1}{4}NE\frac{1}{4}$, Lots 1, 2, 3, 4, 5, $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}$

Said Fourth Parties receiving the following described real property,
 to-wit:

Township 30 South, Range 8 East WM

Section 23: $E\frac{1}{2}E\frac{1}{2}$
 Section 26: $S\frac{1}{2}SE\frac{1}{4}$
 Section 27: $E\frac{1}{2}$, $S\frac{1}{2}SW\frac{1}{4}$
 Section 34: $E\frac{1}{2}$
 Section 35: All
 Section 36: $NE\frac{1}{4}$, $S\frac{1}{2}NW\frac{1}{4}$, $N\frac{1}{2}SW\frac{1}{4}$, Lots 1, 2, 3, $NW\frac{1}{4}SE\frac{1}{4}$

(Cont)

Township 31 South, Range 8 East WM
 Section 1: W $\frac{1}{2}$
 Section 2: Lots 3, 4, 5, 6, S $\frac{1}{2}$ NE $\frac{1}{4}$, S $\frac{1}{2}$, S $\frac{1}{2}$ NW $\frac{1}{4}$
 Section 3: Lots 3, 4, S $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$, NE $\frac{1}{4}$, SW $\frac{1}{4}$
 Section 10: N $\frac{1}{2}$
 Section 11: N $\frac{1}{2}$, SW $\frac{1}{4}$
 Section 14: N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{2}$ NW $\frac{1}{4}$, Lot 2

3. It is agreed and understood between the parties hereto that this agreement shall be placed of record and should any of the parties hereto ever transfer, convey, assign or hypothecate their interest in and to said Rocky Ford property, they will make reference to and include in any conveyance or transfer this restrictive servitude and easement hereby created and such servitude and easement shall inure to the benefit of and be binding upon all subsequent owners of the partitioned lands hereinbefore described and shall be construed to be a covenant running in favor of said partitioned lands and a servitude upon said Rocky Ford lands herein described.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals this ~~11th day of April 1969~~ 27th day of November 1967 in five counterparts.

Oscar Kittredge (SEAL)
 Oscar Kittredge
Frances Kittredge (SEAL)
 Frances Kittredge
 First Parties

Viola M. Gouldin (SEAL)
 Viola M. Gouldin, individually
Viola Gouldin (SEAL)
 Viola Gouldin, as Trustee
Ray J. Michels (SEAL)
 Ray J. Michels, as Trustee
 Second Parties

Donovan L. Nicol (SEAL)
 Attorney in Fact
 Maude A. Kittredge, by her Attorney in Fact
 Third Party

Donovan L. Nicol (SEAL)
 Donovan L. Nicol

Mary Ann Nicol (SEAL)
 Mary Ann Nicol
 Fourth Party

25

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STATE OF OREGON

County of Klamath

ss

12th day of April, 1968,
BE IT REMEMBERED that on this ~~12th day of April, 1968~~, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Oscar Kittredge and Frances Kittredge, husband and wife, Viola M. Gouldin, a single woman, Viola Gouldin and Ray J. Michels, as Trustees under the Will of William Gouldin, and Donovan L. Nicol and Mary Ann Nicol, husband and wife, who are known to me to be the identical individuals described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

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

[Signature]
Notary Public for Oregon

My commission expires NOV 15, 1970

STATE OF OREGON

County of Klamath

ss

ON THIS 12th day of April, 1968, before me, the undersigned officer, personally appeared Donovan L. Nicol, who, being duly sworn, did say that he is the attorney-in-fact of Maude A. Kittredge, a single woman, and that he executed the foregoing instrument by authority of and in behalf of said principal; and he acknowledged said instrument to be the act and deed of said principal.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
Notary Public for Oregon

My commission expires NOV 15, 1970

STATE OF OREGON,)
County of Klamath) ss

Filed for record at request of

on this 22 day of April A. D. 1968
at 3:30 o'clock P. and duly
recorded in Vol. 768 of Records
Page 3131

DOROTHY ROGERS, County Clerk

By Louise M. Kauten Deputy

Fee 7.50

26