

30

BROOKS, J. S., et. ux., Emma J.

WARRANTY DEED

ANTHONY DRAIN #11B

0023-0060-0016-02

780

THIS INDENTURE, Made this Ninth day of April in the year of our Lord one thousand nine hundred and twenty between J. S. Brooks and Emma J. Brooks, his wife, of Anthony, Dona Ana County, New Mexico

of the first part and the United States of America, pursuant to the Act of Congress of June 17, 1902 (32 Stat. 388)

of the second part WITNESSETH, That the said party ies of the first part, for and in consideration of the sum of Five hundred and one and 00/100 (\$501.00) Dollars,

lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby confessed and acknowledged, have granted, bargained, sold, remised, conveyed, released and confirmed, and by these presents do grant, bargain, sell, remise, convey, release and confirm unto the said party of the second part its successors and assigns forever, all the following described lot or parcel of land or real estate, situate, lying, and being in

Dona Ana County, State of New Mexico, to-wit:

A tract of land in the East half of the northeast quarter (E $\frac{1}{2}$ NE $\frac{1}{4}$ ) Section Twenty-eight (28), and the Southeast quarter of the Southeast quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$ ) Section Twenty-one (21), Township Twenty-six (26) South, Range Three (3) East, New Mexico Principal Meridian, and more particularly described as follows: Beginning at the point of intersection of the west and south boundaries of right of way of county roads, said point being the northeast corner of land of Grantor and from which point the southeast corner of said Section 21 bears South 63°18' East, one thousand one hundred three & four tenths (1103.4) feet; thence along said west boundary of right of way of county road South 8°37' East, two thousand sixty-seven & two tenths (2067.2) feet to a point on the north boundary of right of way of county road, said point being the southeast corner of land of Grantor; thence along said boundary South 78°30' West, one hundred one & six tenths (101.6) feet; thence North 8°24' West, one thousand three hundred fifty-seven & three tenths (1357.3) feet; thence North 12°12' West, seven hundred eight & five tenths (708.5) feet to south boundary of right of way of county road; thence along said boundary North 78°08' East, one hundred forty-one (141.0) feet to point of beginning; said tract of land containing five and one hundredths (5.01) acres, more or less, said land being a portion of the land designated as Tract No. 1 and Tract No. 2, as stated in that certain deed from Simon P. Miller and Nellie P. Miller, husband and wife to the Grantor herein and recorded in Deed Book No. 30 page 1048, Jan 20, 1908, records of Dona Ana County, New Mexico.

Correct as to Engineering Data - V.V.V.

together with all and singular, the lands, tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever, of the said party ies of the first part, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances unto the said part <sup>y</sup> of the second part ~~its successors~~ and assigns forever. And the said part <sup>ies</sup> of the first part, for ~~themselves their~~ heirs, executors and administrators do covenant and agree, to and with the said part <sup>y</sup> of the second part ~~its~~ assigns, that at the time of the ensembling and delivery of these presents ~~they are~~ well seized of the premises above conveyed, as of a good, sure, perfect and indefeasible estate of inheritance, in law, in fee simple, and ha ~~ve~~ good right, full power, and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments and incumbrances of what kind and nature soever; and the above bargained premises in the quiet and peaceable possessions of the part <sup>y</sup> of the second part <sup>ies</sup> heirs and assigns, against all and every person lawfully claiming or to claim, the whole or any part thereof, the said part <sup>ies</sup> of the first part shall and will warrant and forever defend.

IN WITNESS WHEREOF the said part <sup>ies</sup> of the first part ha ~~ve~~ hereunto set ~~their~~ hands and seal <sup>s</sup> the day and year above written.

Signed, Sealed and Delivered in the Presence of J. S. Brooks (L. S.)  
Emma J. Brooks (L. S.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(L. S.)  
(L. S.)

STATE OF NEW MEXICO, }  
County of Otero } ss.

On this 9th day of April 1920 before me personally appeared J.S. Brooks and his wife Emma J. Brooks

to me known to be the person <sup>s</sup> described in and who executed the foregoing instrument, and acknowledged that ~~they~~ executed the same as ~~their~~ free act and deed

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Lee R. York  
Notary Public

My commission expires  
Dec. 20, 1920.

No. 33973

WARRANTY DEED.

TO

STATE OF NEW MEXICO }  
County of Dona Ana } ss.

I hereby certify that this instrument was filed for record on the 30 day of April A. D. 1920 at 9:00 o'clock A.M. and duly recorded in Book 60 Page 260 of the records of Deeds of said County.

J. F. Neaves  
Probate Clerk and Ex-Officio Recorder.

Deputy:

ELLIS BROS. PRINTING CO., EL PASO

El Paso, Texas, June 16, 1920.

From District Counsel

To Chief Counsel, Washington.

Subject: Opinion on title to 5.01 acres of land acquired from J. S. Brooks et ux. under contract to sell dated May 6, 1919 - Rio Grande project.

1. This land purchase has been the subject of an opinion by Assistant District Counsel Fly and one by the Chief Counsel, the latter being dated March 25, 1920, and authorizing settlement of the transaction upon execution of warranty deed running to the United States, provided there is no change in the condition of the title and that the taxes on the property are paid up to date.

2. Warranty deed has been executed and the abstract brought down to date. This discloses no new entries requiring comment, except a deed running from J. S. Brooks et ux., the Government vendors, to J. E. Pool, there being a recital in the deed to the effect that it is subject to the agreement to sell between the grantors and the United States. Pool mortgaged back to Brooks to secure notes given in payment, the mortgage containing a similar recital as to our agreement for right of way. (Pp. 26-27.) These transactions will not prejudice the interest of the United States, as they occurred subsequent to the agreement with the Government, and the date of its recordation. The abstractor has failed to include the agreement to sell, but, as noted by the county clerk's certificate indorsed on this instrument, it was duly recorded under date of October 4, 1919. I do not think it is necessary to delay settlement further by insisting upon this correction, which would have to be accomplished by sending the abstract to the town of Las Cruces and awaiting some time for its return.

3. With reference to taxes: The certificate at page 9 of abstract No. 173 shows that all taxes were paid up to and including 1907. The certificate at page 21 shows that taxes for the years 1908 to 1918, inclusive, were paid, and the certificate at page 30 shows that taxes for the year 1919 were paid, and also that at the date when the latter certificate was rendered (which was June 7, 1920, the date of the abstractor's certificate found at p. 31), the tax roll for the year 1920 had not been completed. Warranty deed running to the United States is dated April

9, 1920, or prior to the date when taxes for this year were still not assessed. This deed was recorded as of a date also prior to such non-assessment. As to taxes not assessed at the date of the warranty deed conveying title to the United States, reference is had to decision by the Secretary of the Interior dated April 25, 1910 (D-11475), which is a letter to the Director of the Reclamation Service, holding that as to the United States, which is a party exempt from taxation by State authority, "if property is acquired while the proceedings are in fieri by one exempt from taxation, the taxing proceeding is arrested and a tax, though subsequently levied, is not a lien effectual against the title."

4. It is my opinion that good title, unincumbered, vested in the United States by the execution of the warranty deed dated April 9, 1920, and that payment may be made to the grantors, J. S. Brooks et ux.

P W DENT

**Incls.**

Orig. agreement to sell dated May 6, 1919.  
Warranty deed, with 1 copy and 2 blueprints.  
Possessory certificate.  
Abstracts of title under 2 covers.  
Opinion by Asst. Dist. Counsel March 5, 1920.  
Opinion by Chief Counsel March 25, 1920.  
Extra copy above opinion June 16, 1920.

Copy to Chief Engineer, Denver.

El Paso, Texas,  
April 15, 1920.

Southwestern Abstract and Title Co.

Las Cruces, N. Mex.

Dear Sir:

Transmitted herewith to be brought down to date is your abstract No. 173 with supplement No. 4938. This will include warranty deed dated April 9, 1920, running from J. S. Brooks and wife to the United States which we are today sending for record.

Please do not include the new tax statement unless the 1919 roll is completed.

Very truly yours,

P. W. Dent

District Counsel.

Encl.

CHE-1

El Paso, Texas,  
April 15, 1920.

County Clerk, Dona Ana County,  
Las Cruces, N. Mex.

Dear Sir:

Transmitted herewith for official record is  
warranty deed dated April 9, 1920 running from J. S. Brooks  
and wife to the United States.

Very truly yours,

P. W. Dent

District Counsel.

TFF-f

El Paso, Tex.  
March 29, 1920.

From Asst. District Counsel T. F. Fly

To Chief Counsel, Washington, D. C.

Subject: Land acquisition. Title to land offered the United States by J. S. Brooks and wife being a part of the Refugio Colony Grant, Dona Ana County, New Mexico - Rio Grande Project.

1. This office is in receipt of opinion of the Acting Chief Counsel dated March 25, 1920, regarding the above subject.

2. Your attention is respectfully directed to my memorandum dated March 4, subject - Title to land to be purchased from Jose Maria Provencio and wife in the Socorro Grant, El Paso County, Texas - Rio Grande Project and especially to paragraph 2 of said memorandum. This letter is merely a suggestion that in preparing opinions that they be sent this office in duplicate, owing to the fact that as in this case it is necessary for our stenographic department to make copies for our files and it is our understanding that duplicate copies of all opinions are to be furnished as contemplated by paragraph 8 page 253 of the Manual.

- - -

T. F. Fly

CC - C. of C.  
P. M. El Paso.



Mar. 25, 1920.

From Acting Chief Counsel

To District Counsel, El Paso, Texas.

Subject: Land acquisition. Title to land offered the United States by J. S. Brooks and wife being a part of the Refugio Colony Grant, Dona Ana County, New Mexico - Rio Grande Project.

1. I have considered the Assistant District Counsel's opinion of the above title as set out in his letter of March 5, 1920, I find this land is offered under contract of May 6, 1919, and that the title is shown by two abstracts made by Isidoro Armijo, Probate Clerk and ex-officio Recorder, Dona Ana County; and abstract No. 173 and supplement 4938 by the Southwestern Abstract and Title Company. The many irregularities and apparent defects in this title are disclosed here and there in the abstract; but, upon the whole, this title is about as satisfactory as many of those which we find it necessary to accept and covering land now being acquired for the Rio Grande Project.

2. Notice of the lien in favor of the Elephant Butte Water Users' Association as disclosed by the abstract being in the interest of the United States will be disregarded.

3. It is observed that the several mortgages disclosed by the abstract are shown as released. It will be much appreciated and greatly facilitate the work of this office if the counsel examining the abstract will make a check with a pencil on the page disclosing a lien or incumbrances showing where the release is set out.

4. Therefore, deed in the form proposed may be executed, recorded and the abstract No. 173 continued to show the state of the title to that recordation; whereupon, should there be no other change in the condition of the title shown in your opinion, you may close the transaction in the usual way, first paying the taxes for the year 1919 or later taxes should any be due at the time the transaction is closed, which may be regarded as a lien against the land now being acquired.

Ottomar Hamele

Enclosures: Original Contract of May 6, 1919/

TFF-f

El Paso, Tex.  
March 21, 1920.

U. S. Land Office,  
Santa Fe, N. Mex.

Gentlemen:

Kindly send us a map or plat of the Refugio Colony Grant, in New Mexico. This land is located in Township 26 South, Range 3 East, N. M. P. M. Dona Ana County. It is my impression that your office has a copy of this plat as confirmed by the United States Court of Private Land Claims, Santa Fe, July term 1901, patent issued to the corporation of Refugio June 6, 1906. We desire to use this plat in connection with examination of certain abstracts for land which this Department is acquiring for right of way purposes. If your office has a good negative of this plat, we would appreciate the loan of the same so that we could have some prints made of the same for our field offices. If this cannot be accomplished, kindly send a copy as soon as possible.

Yours very truly,

U. S. Reclamation Service

By T. F. Fly  
Asst. District Counsel.

DEPARTMENT OF THE INTERIOR

OFFICE OF U. S. SURVEYOR GENERAL

Santa Fe, N.M., March 6, 1920.

Mr. F. F. Fly, Asst. District Counsel,  
U. S. Reclamation Service,  
El Paso, Tex.

Dear Sir:

Your letter to the U. S. Land Office at Santa Fe, New Mexico, in which you request a map or plat of the Refugio Colony Grant has been referred by that office to me for answer.

The map of this Grant is on file in this office but I have no copies of the map nor any tracing by means of which blue prints could be made. This grant plat shows only the exterior boundary lines of the grant. Owing to the state of work in this office it would not be practicable to make a tracing at this time. There is a photographer in Santa Fe by the name of Donati, who has at various times photographed certain of the plats on file in this office for parties desiring copies. I believe that his charges at the time of making the copies referred to ran from about \$1.50 to \$3.00 for the first proof, the latter amount being for enlarged plats of township size about 19x24 inches. Other proofs are furnished at a much smaller price than the first proof.

Respectfully, *Lucius Dills*  
U.S. Surveyor General.

NLK:VJW

TFF:MBF

El Paso, Tex.  
March 5, 1920.

From Asst. District Counsel T. F. Fly  
To Chief Counsel, Washington, D. C.  
Subject: Opinion on title to land to be purchased from  
J. S. Brooks and Emma J. Brooks, husband and wife  
in the Refugio Colony Grant, Dona Ana County,  
New Mexico - Rio Grande Project, New Mexico - Texas.

1. Contract for the purchase of 5.01 acres in the E1/4 Sec. 25 and E1/4 Sec. 21, T. 26 S., R. 3 E., S.M. S. M. Dona Ana County, New Mexico and more particularly described in the contract dated May 6, 1919. The reason the contract is not included in the abstract (No. 173 of Southwestern Abstract and Title Company) is due to the fact that said abstract was ordered and furnished by Vendor before contract was returned from Washington to this office for recordation and it was not deemed advisable to have abstract extended until vendor executed deed.

2. The original grant of this land under abstract was made under a decree of the Mexican Government promulgated by Jose Joaquin de Herrera, President of the Republic of Mexico dated August 19, 1848 and Regulations of the State of Chihuahua, issued in pursuance of said Decree May 22, 1851, to the Refugio Colony. This Grant was confirmed in the United States Court of Private Land Claims, Santa Fe, New Mexico, July Term, 1901. United States issued patent in pursuance of said Decree to the Corporation of Refugio, June 6, 1906. (See page 7, 8 and 12 of abstract No. 173.)

3. There can be no doubt as to the authenticity of the Arrijo abstract, as Mr. Arrijo was Probate Clerk and Ex Officio County Recorder of Dona Ana, New Mexico, and in such capacity was the sole custodian of the Dona Ana County records, and for years was the only one who furnished abstracts for lands situated in Dona Ana County, New Mexico. In fact, it is the custom to accept such abstracts for certain counties within New Mexico at the present time, there being no regular abstractors in many of the counties. District Counsel Dent says, his experience has been that such abstracts are reliable and that he, as well as your office, have examined abstracts of similar character and that the same were passed as being sufficient.

4. The first cloud on the title is shown by entry No. 2 of the Armijo abstract. This defect is that the marital relations of Phoebus Freudenthal are not shown. However, this defect is later removed by the affidavit of B. F. Michaelson, (see p. 14, Abstract No. 173) which states that he was well acquainted with Phoebus Freudenthal, that the said Phoebus Freudenthal was not married at the time he executed the deed (entry No. 2) in question.

5. There is no showing in the Armijo abstract, how the title to the property (entry No. 3) was acquired by Julius Freudenthal and Emma Freudenthal, his wife. But this is later explained by the affidavit abstracted at page 13 of abstract No. 173. Under the New Mexico statutes when one dies intestate and leaves no issue or wife, then the whole of his estate shall go to his parents (see Section 1845 New Mexico Statutes (1915) Act of Feb. 26, 1889). From the above referred to affidavits, it is seen that the above parties were the father and mother of Louis B. Freudenthal.

6. It is my opinion that the execution of the deed (Entry No. 10, Armijo abstract) by Luis Freudenthal, Morris Freudenthal and Minnie Freudenthal, his wife, while there is no showing as to their interests, yet this does not cause any cloud upon the title and would quitclaim any interest they might have had, although not disclosed by the record.

7. Notice of a lien in favor of the Elephant Butte Water Users' Association is disclosed by the abstract, but in view of the announced policy of the Association, not to insist upon the payment of the dues which may be a lien upon lands to be used by the United States for Reclamation purposes, this lien may be waived. (See in this connection paragraph 8, D. C. Peery's opinion, May 14, 1919, Lafayette Clapp purchase, O. & M. Camp Site, Hatch, New Mexico.

8. The abstract discloses several mortgages, abstracted at page 3, 5, 18 and 19 (Abstract No. 173) but these are all later released as being fully paid and satisfied. See pages 15, 16, 17 and 20 for releases.

9. It is my opinion that the abstracts are sufficiently identified at the close of each one by the abstractors certificate, certifying that everything of record affecting title is given and setting forth the hour and date when abstract last closed.

10. There is a discrepancy in reference to page numbers on page 10 of abstract No. 173, but I am of the opinion that this is a clerical error and therefore will call this to the abstractors attention and have him correct the same when we have the abstract extended.

11. When the abstract is extended, we will have the contract referred to in paragraph 1 of this opinion, together with warranty deed included in abstract No. 173, also see that taxes are paid to date and if possible have the abstractor make specific reference as to the close of the different abstracts and have them bound under one cover.

12. It is my opinion that good and sufficient title vests in the Government Vendor, free from incumbrance of any character with the exception of taxes for 1919. If your office concurs in this opinion kindly return all papers and we will have abstract extended, after securing the execution and recordation of warranty deed.

Encls.

3 Abstracts  
Original Contract.  
Affidavit.  
Form of Proposed Warranty Deed.

El Paso, Texas, August 25, 1919.

County Clerk for Dona Ana County,

Las Cruces, N. Mex.

Dear Sir:

Transmitted herewith for official record is contract dated May 6, 1919, between J. S. Brooks and wife and the United States.

Very truly yours,

C F HARVEY CFH

Asst. District Counsel.

Incl.

DEPARTMENT OF THE INTERIOR  
UNITED STATES RECLAMATION SERVICE

OFFICE OF  
DISTRICT COUNSEL

El Paso, Texas,  
August 11, 1919.

Mr. J. S. Brooks,  
Anthony, N. M.

Dear Sir:-

There has been great delay in securing Judge Eylar's signature to the appraisal board report which accompanies the papers connected with the land purchase for Anthony Drain, and it was only this morning that the appraisal report was returned signed. We are today forwarding the contract for approval, and in the meantime wish to communicate with you in regard to the abstract of title.

We have your note to the effect that you will let us hear from you as soon as the abstract is complete, and by this way take it that you are going to order the abstract yourself, or have already done so. We believe that this land lies in what is known as Tract 2 of the Refugio Colony Grant and also, we are under the impression that we have examined other titles in this tract or grant. This being the case, we may be able to save considerable money for you on the abstract by reason of the fact that it would not be necessary to again cover the foundation of title in the grant when getting up the abstract. Of course, if you have placed the order and the abstract people have already done work upon the abstract, it is probably too late to help matters, otherwise, advise us and we will see what can be done.

Very truly yours,

*C. Harvey*  
Asst. District Counsel.

*Abstract is under way, but not completed.  
As promised completed abstract this week.  
J. S. Brooks*



DEPARTMENT OF THE INTERIOR  
UNITED STATES RECLAMATION SERVICE

El Paso, Texas ~~MAY 16 1919~~ AUG 11 1919, 19

Project Manager to the Director and Chief Engineer (through Chief of Construction).

Subject: Forwarding contract for approval.

Agreement dated **May 6, 1919.** **Rio Grande** Project

Executed on behalf of U. S. by **L.M. Lawson, Project Manager**

With **J.S. Brooks and Emma J. Brooks, husband and wife**

Estimated amount involved, \$ **501.00** Authority No. or clearing acct. **6-FF**

~~Accompanied by bond and two copies.~~  
(Strike out if no bond transmitted.)

Purpose:  
(See instructions on back.)

**Purchase of right of way for Anthony Drain**

Inclosures listed on reverse. (See Par. 5.)

Advise Chief of Construction, Denver, Colo., and Project Manager

at **El Paso, Texas** and **District Counsel** ✓  
at **El Paso, Texas.** ✓ of the approval of the above

Encls: **Orig. & 3 copies contract**  
**Orig. & 1 copy Cert. of recommendation**  
**Orig. & 1 copy Report on land agreement**  
**Orig. & 1 copy Report Board of Appraisal**  
**two blueprints** *Cert. of delay*  
**L.M. Lawson**  
*Project Manager.*

Denver, Colo., **August 14, 1919.**

It is recommended that the above-described contract be approved.

Inclosures:  
**Orig. & 5 copies of form letter,**  
**contract,**  
**appraisal report dated 8/9/19,**  
**certificate of necessity dated 5/6/19,**  
**report on land agreement, 1 blueprint, 1107-L46p.**  
**F. E. Weymouth**  
*Chief of Construction.*

Washington, D. C., **AUG 20 1919**

Contract (and bond, if any,) was approved by  
**MORRIS BIEN,**  
on **AUG 19 1919** *Assistant to the Director*

**AUG 18 '19 1712**

AND FURTHER APPROPRIATE ACTION

El Paso, Texas,  
August 5, 1919.

Judge A.S. Eyear,  
Las Cruces, New Mexico.

Dear Sir:-

We understand that Mr. Hoadley sent you for signature the appraisal reports on D. Saenz property and J. S. Brooks property. We have contracts of these parties which were both made the early part of last May and we are still holding them awaiting the appraisal reports. We fear that these have been lost and, therefore, have written up new reports and have had Mr. Hoadley sign on behalf of the Service. These reports are enclosed, herewith, and we earnestly request that you give them your immediate attention and return them just as soon as possible. You will appreciate that we have to make certificates embodying a special showing to our Department when the contracts are delayed in this manner, and it is often the case of the land owners themselves becoming very insistent in their demands when payment to them happens to be held up for any reason.

Trusting that you will be able to attend to these matters at once, we are,

Very truly yours,

C. F. Harvey,

Asst. District Counsel.

POSSESSORY CERTIFICATE

Rio Grande project,  
El Paso, Texas, May 14, 1919.

I, Geo. W. Hoadley, Field Assistant, United States Reclamation Service, certify that I have personally examined the land sought to be acquired by the United States from J. S. Brooks, in E $\frac{1}{2}$  NE $\frac{1}{4}$  Sec. 28, and the SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 21, township 26 south, range 3 east, U.S.R.S. Survey, County of Dona Ana, State of New Mexico, for the Rio Grande project, and that the said proposed vendor was in actual, sole, and exclusion possession of the land, claiming to be the owner thereof and no person claiming a right in such land adverse to the vendor is in possession of any part of it.

Geo. W. Hoadley

Field Assistant.

## REPORT ON LAND AGREEMENT

### DEPARTMENT OF THE INTERIOR UNITED STATES RECLAMATION SERVICE

INFORMATION relating to agreement made May 6th, 1919, with

J.S. Brooks and Emma J. Brooks, husband and wife

for the purchase of land required for Anthony Drain

purposes, Rio Grande Project, Dona Ana

County, New Mexico.

1. State description and approximate area of land to be conveyed. 5.01 acres in E $\frac{1}{2}$  NW $\frac{1}{4}$  Sec. 28, & SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 21, T. 26 S., R. 3 E., N.M.P.M.

2. State nature, number, and date of entry by which it was acquired under public land laws, also date of final certificate and patent, if such have been issued.

Not founded on United States Patent. *Mexican Grant*

3. State names of the owners, post-office addresses, and county and State of residence. Give names of wives and husbands; if unmarried, widow, or widower, so state.

J. S. Brooks, Anthony, New Mexico.

Emma J. Brooks, (wife) Anthony, New Mexico.

4. State who is in possession of the premises to be conveyed, or of any part thereof, and if a tenant, give his name and post-office address. If the land is held under a lease, state the general terms of the lease, and the date when the tenant is to give up possession.

Owners in possession - no leases

5. Also state whether land is subject to right of way by virtue of contract with water users' association or other agreement.

Land is not subject to right of way.

certificate should accompany the voucher in lieu of the deed or relinquishment, which will be retained in the local land office. Where less than a legal subdivision is to be acquired, which can not be described in the ordinary way (by quarters and halves), the method outlined under (b) and (e), paragraph 38, page 236 of the Manual should be followed.

8. In the public-land States improvements by entrymen are generally regarded as personal property, subject to taxation, and before paying for land to be acquired by relinquishment the certificate of the officer having charge of the tax records in the county should be obtained showing the condition of the property in respect to levy and payment of taxes for the years since the entry.

9. This Form (7-281) may be used as far as it is applicable in making a report of negotiations not concluded, all necessary additional information being given under heading No. 9, when for any reason it is advisable that the matter be further considered by the Project Manager before final agreement. In this case it should be noted conspicuously on the first page and in the brief on back that it is a report of pending negotiations.

10. An agreement of sale may be made with any person owning the land in his own right, or with a trustee under a power in a deed, or with a person holding a power of attorney from the owner authorizing him to do so, or with an executor under a power in a will. A certified copy of the evidence of authority must accompany the papers.

11. The husband and wife must join in the agreement except where the local laws or the conditions under which the property is held do not require it. It is better, however, to obtain in every case the signatures of both husband and wife. The agreement must state whether the vendor is married or single, widow or widower.

12. An administrator or an executor without a power to sell in the will has no authority to make a contract for the sale or conveyance of land or of a right of way thereon. In case of the death of the owner without a will, the real estate descends to the heirs; if he dies leaving a will, the real estate goes to the devisees, subject in both cases to the payment of debts of the decedent. The heirs or devisees must all join in the agreement.

13. Neither the guardian of a minor nor the guardian of an insane person has a right to contract to sell or convey the real estate of his ward without special authority from the proper court.

14. Before negotiations for the purchase of any tract are begun, it is important to learn whether the land has been offered for sale, and at what time and price; also what price the present owner paid for the land.

15. Special conditions and limitations may be added, when necessary, to the printed forms of contracts in reference to possession of premises, growing of crops, etc., pending final conveyance, but these conditions should be avoided as far as possible, and the time limit of the contract should be fixed with reference to these matters. Ample time should be given in the contract for the preparation of an abstract of title and for consideration of the same by the officials at Washington, D. C. In this connection, see also Manual, par. 12, page 227.

16. For a general discussion of this subject see pages 96 to 100 of Water-Supply Paper No. 93.

7-281

**REPORT ON LAND AGREEMENT.**

For ..... purposes.

..... project.

Sec. ...., T ..... , R ..... M.

Belonging to .....

County of .....

State of .....

Submitted by .....

Date ..... 191.....

6. State how much of the land is under cultivation, to what kinds of crops, with area of each crop cultivated, and how much is not cultivated, but is capable of being brought under cultivation, as well as the general character of such land; also the condition and kind of improvements, if any. Give a detailed estimate of the value of all important improvements of the land, such as buildings; also the amounts and values of the several classes of land.

Land is all in cultivation

7. If any portion of the land is irrigated, state what water rights go with the land and how much of the cultivated and how much of the uncultivated land is capable of irrigation.

Land is all subject to irrigation under Rio Grande Project

8. State the selling price of similar land in the vicinity.

\$125.00 to \$175.00 per acre

9. State fully any other matters relative to the land or to the purchase that may be of interest to the Government, especially concerning possible injury or benefit to other portions of this tract.

Drain will be of general benefit to community

The above is a correct statement of the information procured.

Dated May 12, 1919

(Signature) Geo. W. Hoadley

(Title) Field Assistant,  
In Charge of Negotiations.

Approved:

L.M. Lawson

Project Manager.

## INSTRUCTIONS.

The proper procedure in making purchases of lands under the Reclamation Act, in pursuance of the various rulings made by the Department of the Interior and the Department of Justice, is substantially as stated below, though, in some cases, deviations may be necessary in certain details. These instructions do not relate to withdrawn public lands to which there is a claim by reason of a settlement or entry made prior to withdrawal; in such cases the agreements for purchases of improvements should be entered into on Form 7-523. See Manual, 1913 edition, pages 233-237.

1. As soon as possible after it has been ascertained that the property will be required, the Project Manager should forward to the Director of the Reclamation Service the following papers:

(a) Form 7-276 or 7-277, contract of sale, or memorandum of terms of proposed purchase, together with two copies of the same, one for the Returns Office and the other for the Director. When the land is donated, use Form 7-277.

(b) Affidavit of disinterestedness.

(c) This Form (7-281), report on land agreement.

(d) Certificate that the land is necessary for the purposes authorized by the Reclamation Act and that the consideration agreed upon is reasonable, together with his recommendation that the agreement be approved. This certificate should also contain other valuable information relative to the transaction not given in Form 7-281.

(e) If the tract is described by metes and bounds, this report should be accompanied by a small sketch, with the boundry lines platted, showing all courses and distances and all references to public-land corners. (See Manual, Title, *Lands, Acquisition of*, pars. 11 and 23, pp. 227 and 231.)

2. When the agreement has been approved, the original will be returned to the Project Manager, who will immediately notify the vendor thereof and call upon him, if pursuant to said agreement, to furnish an abstract of title, which shall later be extended to include any instruments subsequently recorded in connection therewith, and also the record of the conveyance made in pursuance of said agreement, also to procure and have recorded, where proper for record, all assurances of title and affidavits which may be necessary and proper to show clear, unincumbered title in him. This will fix the date from which time may be counted in favor of the United States for extension of the option as provided in the agreement, in case it be found necessary to do so. If the abstract contains a large number of entries it should be indexed, and if the title to a canal system is involved the abstract should be accompanied by maps showing said system and the lands affected thereby. The abstract, certificates, maps, contract, possessory certificate, and form of deed which it is proposed to execute, referred to in next paragraph, should be submitted to the local district counsel. For form of possessory certificate see also par. 20, of the Title, *Lands, Acquisition of*, in the Manual.

3. The ordinary form of warranty deed, or its equivalent, in general use will be acceptable to the Department, only one material change being required, viz, the insertion of the italicized words in the clause to the following effect usually found in such deeds: "For and in consideration of \* \* \* dollars to him in hand paid in pursuance of the provisions of the act of June 17, 1902 (32 Stat., 388), by the said party of the second part," etc. The grantee or second party must be the United States, and the words "heirs, executors, administrators, successors," etc., when referring to the second party, should be stricken out, and the sentence should read "the party of the second part and its assigns." One copy of the proposed form of deed should be retained by the Project Manager, to be executed by the vendor after the title has been found acceptable. A quitclaim deed will be acceptable in case title in fee is not vested in the vendor.

4. When forwarding the title papers to the local district counsel the engineer should request that, if apparently in satisfactory form and sufficient, they be forwarded to the district counsel in charge of titles, with his opinion thereon, otherwise that they be returned, pointing out the defects and indicating how they may be remedied.

5. The district counsel in charge of titles will render an opinion upon the title, and thereupon all the papers will be returned to the local district counsel for action in pursuance of the findings of the opinion. After the title has been found satisfactory, the deed should be executed and recorded and the abstract extended to cover record of same, and also to cover payment of taxes, etc., found to be liens against the estate. Payment may then be made to the grantor, provided no further defects are revealed by the extension of the abstract. The voucher covering payment should be accompanied by the contract, abstract of title, deed, and official copy of opinion. In case the title is found to be imperfect, the papers will be returned for the necessary corrections, and the abstract should then be brought up to date and again submitted through the local district counsel as above for reexamination.

6. In the case of a desert-land entry, when the approval has been given of the purchase of the possessory rights of an entryman, the certificate of the recorder of land titles in the county where the land is situated should be obtained, showing that he has searched the records of his office, and stating whether any instrument of conveyance, assignment, or mortgage of the right obtained by the entry referred to there appears.

7. In the case of land covered by a homestead or desert-land entry where an entire legal subdivision is involved a relinquishment to the United States is sufficient, and a certificate should be obtained from the register and receiver of the local land office showing that the entry was valid and subsisting at the time of the relinquishment, and that it had been relinquished and canceled on the records of the land office. This

Project Manager

Approved May 27, 1910, by the Secretary of the Interior.

Form 7-276 12-11

THIS AGREEMENT, made May 6th

nineteen hundred and nineteen, between J. S. Brooks

and Emma J. Brooks, his wife, of Anthony

County, Dona Ana, N. Mex., for them, their heirs, legal representatives, and assigns, hereinafter styled the vendor, and The United States of America and its assigns by

- - - L.M. LAWSON, Project Manager - - - United States Reclamation Service, thereunto duly authorized by the Secretary of the Interior, pursuant to the act of June 17, 1902 (32 Stat., 388),

WITNESSETH:

1. The vendor in consideration of the benefits to be hereafter derived from the construction of irrigation works through, upon, or in the vicinity of the lands hereinafter described, of the promises and covenants of the United States herein contained, and of the payment to the vendor by the United States of the sum of one (\$1.00) dollar, the receipt whereof is hereby acknowledged, does hereby agree, upon the terms and conditions hereinafter stipulated, to sell and by good and sufficient deed to convey to the United States of America the following-described real estate and property situated in

the county of Dona Ana State of New Mexico to wit:

A tract of land in the East half of the northeast quarter (NE 1/4) Section Twenty-eight (28), and the Southeast quarter of the Southeast quarter (SE 1/4 SE 1/4) Section Twenty-one (21), Township Twenty-six (26) South, Range Three (3) East, New Mexico Principal Meridian, and more particularly described as follows: Beginning at the point of intersection of the west and south boundaries of right of way of county roads, said point being the northeast corner of land of Vendor herein and from which point the southeast corner of said Section 21 bears South 63°18' East, one thousand one hundred three & four tenths (1103.4) feet; thence along said west boundary of right of way of county road South 8°37' East, two thousand sixty-seven & two tenths (2067.2) feet to a point on the north boundary of right of way of county road, said point being the southeast corner of land of Vendor herein; thence along said boundary South 78°30' West, one hundred one & six tenths (101.6) feet; thence North 8°24' West, one thousand three hundred fifty-seven & three tenths (1357.3) feet; thence North 12°12' West, seven hundred eight & five tenths (708.5) feet to south boundary of right of way of county road; thence along said boundary North 78°08' East, one hundred forty-one (141.0) feet to point of beginning; said tract of land containing five and one hundredths (5.01) acres, more or less.

Correct as to Engineering Data S. M. A.



2. In consideration of the premises the vendor further agrees upon receipt of notice that this agreement has been approved by the Comptroller or Director of the Reclamation Service to furnish promptly, at his own expense, an abstract of title which shall later be extended to include any instruments subsequently recorded in connection herewith and also the record of the conveyance made pursuant to this agreement: *Provided*, That if the vendor fails or refuses to furnish proper abstract of title within sixty days after notice that this agreement has been approved, or if within such period written request be made by the vendor, such abstract may be procured by the United States at the expense of the vendor and the cost thereof deducted from the purchase price.

3. The vendor further agrees to procure and have recorded at his own cost all assurances of title and affidavits which he may be advised by the proper Government officials are necessary and proper to show complete title in fee simple unincumbered, and the time spent in procuring, recording and transmitting the same to the officer acting on behalf of the United States (and in furnishing or securing abstract of title) shall be added to the time limit of this agreement.

4. And for the same consideration the vendor agrees to execute and deliver, upon demand of the proper officer of the United States at any time within the continuance of this agreement, a good and sufficient deed of warranty conveying to the United States good title to said premises free of lien or incumbrance.

5. In consideration whereof, the United States agrees that it will purchase said property on the terms herein expressed, and upon execution and delivery of such deed and the signing of the usual Government vouchers therefor, and their further approval by the proper Government officials, it will cause to be paid to the vendor as full purchase price and full payment for all damages for entry upon the above-described land and the construction, operation and maintenance of reclamation works under

said act, the sum of  
-----  
- Five hundred one and 00/100 (\$501.00) -----  
-----  
-----dollars, by U. S. Treasury warrant or disbursing officer's check.

6. Liens or incumbrances existing against said premises may, at the option of the United States, be removed at the time of conveyance by reserving the amount necessary from the purchase price and discharging the same with the money so reserved, but this provision shall not be construed to authorize the incurrence of any lien or incumbrance as against this agreement, nor as an assumption of the same by the United States.

7. It is agreed that the vendor may retain possession of said premises until **May 6, 1919** notwithstanding earlier delivery of the deed as **May 6, 1919**

herein provided, and may harvest and retain the crops thereon until \_\_\_\_\_; except that the proper officers and agents of the United States may at all times have unrestricted access to survey for and construct reclamation works, telephone and electrical transmission lines, and other structures and appliances incident to said reclamation works, pursuant to said act of Congress, free of any claim for damage or compensation on the part of the vendor.

8. This agreement shall become effective to bind the United States to purchase said premises immediately upon its approval as above specified, and shall terminate by limitation at the expiration of **twenty-four** months from its date, unless extended as above provided, and shall inure to the benefit of and be binding upon the heirs and assigns of the vendor, and also the assigns of the United States.

9. No Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment or either before or after he has qualified and during his continuance in office, and no officer, agent or employee of the Government, shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company, as provided in Section 116 of the Act of Congress approved March 4, 1909 (35 Stat., 1109).

The vendor expressly warrant that ~~they~~ <sup>he</sup> ~~has~~ <sup>has</sup> employed no third person to solicit or obtain this contract in ~~their~~ <sup>his</sup> behalf, or to cause or to procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement; and that ~~they~~ <sup>he</sup> ~~has~~ <sup>has</sup> not paid, or promised or agreed to pay, to any third person, in consideration of such procurement, or in compensation for services in connection therewith, any brokerage, commission, or percentage upon the amount receivable by ~~them~~ <sup>him</sup> hereunder; and that ~~they~~ <sup>he</sup> ~~has~~ <sup>has</sup> not, in estimating the contract price demanded by ~~them~~ <sup>him</sup>, included any sum by reason of any such brokerage, commission, or percentage; and that all moneys payable to ~~them~~ <sup>him</sup> hereunder are free from obligation to any other person for ~~services~~ <sup>services</sup> rendered, or supposed to have been rendered, in the procurement of this contract. ~~They~~ <sup>He</sup> further agree that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the United States, and that the United States may retain to its own use from any sums due or to become due thereunder an amount equal to any brokerage, commission, or percentage so paid or agreed to be paid. Provided, however, it is understood that this covenant does not apply to the selling of goods thru a bona fide commercial representative employed by the vendors in the regular course of their business in dealing with customers other than the Government and whose compensation is paid, in whole or in part, by commissions on sales made, nor to the selling of goods thru established commercial or selling agents or agencies regularly engaged in selling such goods.

Signed, sealed, and delivered said instrument of writing as ~~their~~ <sup>his</sup> free and voluntary act, for the use and purposes therein set forth.

I further certify that I and every one of us ~~are~~ <sup>is</sup> ~~competent~~ <sup>competent</sup> to execute the same.

Witness my hand and seal of office at the City of Washington, this ~~10th~~ <sup>10th</sup> day of ~~February~~ <sup>February</sup>, 1914.

Approved: \_\_\_\_\_  
 Secretary

IN WITNESS WHEREOF, the parties to this agreement have hereunto set their hands the day and year first above written.

Witnesses :

J. S. Brooks

of.....

Emma J. Brooks

Vendor.

of.....

L.M. LAWSON

For and on behalf of the United States.

of.....

STATE OF New Mexico  
COUNTY OF Dona Ana } ss :

notary public

I, C.A. Thompson

a J.S. Brooks & Emma J.

in and for said county, in the State aforesaid, do hereby certify that Brooks, his wife

who are personally known to me to be the person s whose name s are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that

they

signed, sealed, and delivered said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

I further certify that I did examine the said

Emma J. Brooks

separate and apart from her husband, and explained to her the contents of the foregoing instrument, and upon that examination she declared that she did voluntarily sign, seal, and acknowledge the same without any coercion or compulsion, and do not wish to retract the same.

Given under my hand and official seal, this 6th day of May, 1919

C.A. Thompson.

[SEAL.]

My commission expires May 10, 1921. Notary Public in and for Dona Ana County, New Mexico.

Approved \_\_\_\_\_, 191\_\_\_\_\_

SECRET

... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...

SECRET

Project Director

...  
...

CERTIFICATE AS TO DELAY

This is to certify that contract with J.S. Brooks and Emma J. Brooks, dated May 6, 1919, was held in this office and not forwarded at an earlier date for the reason that the appraisal report was not sooner signed and returned by the member of the appraisal board acting for the irrigation district, and this in spite of repeated attempts which were made to secure earlier action upon the appraisal report.

L. M. Lawson,  
Project Manager.

El Paso, Texas,  
1919.

CERTIFICATE

We, the undersigned, members of the board designated to fix the value of the land agreed to be conveyed by J.S. Brooks and Emma J. Brooks to the United States of America as right of way for the Anthony Drain, Rio Grande Project, as shown in contract dated May 6, 1919, find that the fair and reasonable value of said land is \$501.00.

(sgd.) Albert J. Cylar  
Representative Elephant Butte  
Irrigation District.

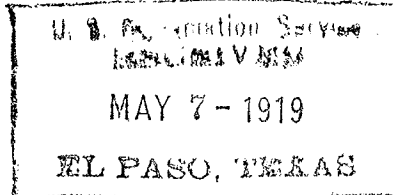
(sgd.) Geo. W. Hoodley  
Representative United States  
Reclamation Service.

El Paso, Texas,  
Aug 9, 1919.

Address all communications to  
Project Manager,  
U. S. Reclamation Service,  
El Paso, Texas.

DEPARTMENT OF THE INTERIOR  
UNITED STATES RECLAMATION SERVICE

El Paso, Texas, April 29, 1919.



Mr. J. S. Brooks,

Anthony, N. M.

Dear Sir:

Enclosed for your signature an agreement to sell for the 5.01 acres required for the construction of the Anthony Drain where same goes through your land in the E.  $\frac{1}{2}$  NE $\frac{1}{4}$ , Section 28, and the SE  $\frac{1}{4}$  SE $\frac{1}{4}$ , Section 21, Township 26 South, Range 3 East, N.M.P.M.

Please have your wife sign also, and have the signatures acknowledged before a notary public.

Very truly yours,

U. S. RECLAMATION SERVICE

By *W. N. Hill*

Acting Project Manager.

*Will let you hear from me  
when the abstract is complete*

*J. S. Brooks*

1. MAILING address of each party J. S. Brooks  
Anthony, Jr.,
2. List of improvements (state, as by itemized bill, how total consideration was fixed):  
\$ 501<sup>00</sup> - cultivated
3. Interest held by each party joined in contract, other than owner or wife of owner, as "Joint ownership," "Lessee," or "Lienor," and if lienor, state such facts as may be gathered from owner as to date, amount, and quality of encumbrance:  
\_\_\_\_\_  
\_\_\_\_\_
4. Survey number of tract (if not embodied in land description):  
\_\_\_\_\_. If no survey number is available, state item in tax records: Item (under whose name assessed and line number in assessment book): \_\_\_\_\_; Acreage \_\_\_\_\_; Assessed at \$ \_\_\_\_\_; Other available information: \_\_\_\_\_
5. Grantor agrees Service may order title guaranty and make deduction therefor.  
Grantor will order title guaranty.  
Grantor agrees that Service may order abstract of title and make deduction therefor,  
\* Grantor will order abstract of title. *see letter attached*  
Grantor states that taxes are paid to date.  
Grantor will pay taxes now unpaid.  
Grantor wishes Service to pay taxes and make deduction therefor, and will furnish this office with bill of unpaid taxes at once.  
Grantor states that land is now encumbered (as per item No. 3), and will at once take steps to remove the encumbrance.  
Grantor states that land is now encumbered (as per item No. 3), and wishes Service to pay off encumbrance and make proper deduction therefor. (In case this is to be done Grantor will have to consult personally with the lienor).
6. Cost of structures to be built by Service. None



J. MARQUEZ

N78°08'E 141.0'  
Sta. 196+50

S63°18'E 1103.4'  
to S.E. Cor. Sec. 21.

191+57.9  
N 89°59'W  
21 22  
28 27

P.I. 189+40.0

N 8°24'W 1533.3  
COUNTY ROAD

J.S. BROOKS  
501A  
CO. PLAT 1787

W.D. 4-9-20  
Rec'd BK 60 Pg 260

Sta. 175+84.2  
S78°30'W 1016'  
COUNTY ROAD

S56°49'E 136.4'  
Sta. 174+56.7

Iron Pipe

Q.C.D. 8-18-19  
Rec'd BK 59 Pg 151  
W.H. + L.C. Nesbitt  
Margaret Cobb.

J.S. BROOKS  
501A  
CO. PLAT 1803

170+59.0  
R=50.87

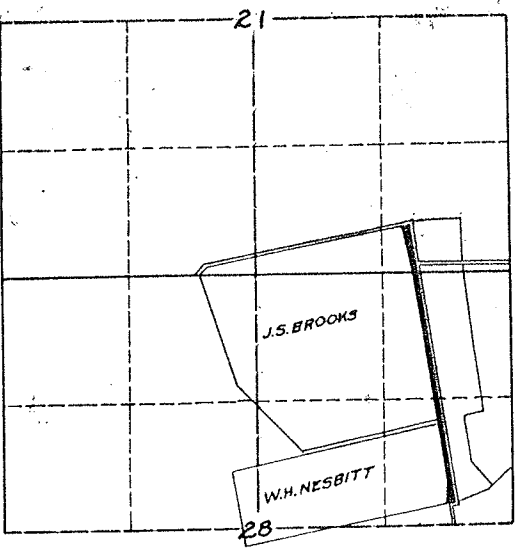
168+48.8  
N 12°41'E 151.7'

Iron Pipe

N13°04'E 242.91'  
to N.E. Cor. Sec. 28.

Sta. 167+32.7  
N 75°19'E  
Iron Pipe

LUCILE FERLET



LOCATION PLAT  
SEC. 21 & 28, T26S R3E, N.M.P.M.  
REFUGIO COLONY GRANT TRACT 2



Scale 1"=500'

Note:  
Curve lengths based  
on 100' chord lengths.

|                                   |                       |
|-----------------------------------|-----------------------|
| DEPARTMENT OF THE INTERIOR        |                       |
| UNITED STATES RECLAMATION SERVICE |                       |
| RIOGRANDE PROJECT, N.M.-TEX.      |                       |
| MESILLA VALLEY DRAINAGE           |                       |
| ANTHONY DRAIN RIGHT OF WAY        |                       |
| DRAWN: R.A.D.                     | FIELD WORK:           |
| CHECKED: A.O.D.                   | APPROVED:             |
| 1107L102                          | EL PASO, TEX. MAR. 19 |