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NOV 28 1912

Franklin Canal.

Abstract of Title.
Canal System.
Rio Grande Project.

The Secretary of the Interior.

Sir:

November 26, 1912, the Acting Director of the Reclamation Service transmitted for reexamination extended abstract and transfer papers in connection with acquisition by the United States of the Franklin Canal.

This abstract was examined and subject of my opinions of February 10 and October 28, 1912, in the latter of which I found:

While this title is not entirely satisfactory, the canal has existed so long and the probability of good title by prescription is so great, that in discretion of the Secretary of the Interior title may be accepted upon the canal company giving bond in sufficient amount to protect the United States, conditioned that the Franklin Irrigation Company and its surety will protect and defend the United States against assertions of right to interfere with the right of way to any part of the property it conveys to the United States, and to reimburse to the United States any expense which it may incur in defense of its possession and title, and such proportionate part of the sum that may be necessary to pay or incur to acquire undisputed sovereignty over the Channel.

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Nov. 16, 1912.

and John S. Swerfield, beneficiaries and owners of the bonds, to
the Franklin Irrigation Company, which is also shown on pages
Mr. P. W. Dent,
Examiner, U. S. Reclamation Service,
El Paso, Texas.

Dear Sir:- Water Users Association to the United States of
America, and filed on this, the 15th day of November, 1912. The
copy of the record is I herewith hand you the following data, in full
compliance, as I understand it, with your request in writing
as to what should be furnished in order to show a perfect title
in the Franklin Irrigation Company to the properties which were
transferred by said Franklin Irrigation Company to the United
States. (a) Abstract of deed duly executed by the Franklin
Irrigation Company to the United States of America, dated the 15th
day of October, 1912, filed for record on the 15th day of November,
1912, and recorded in Volume No. 203, pages 445 et seq. of the
Deed Records. I herewith return to you the additional or supplemental
abstract to original abstract No 13,443, and which original
abstract is in the possession of the officials of the United
States, as the payment of all county and state taxes on the
properties conveyed by the deed of Franklin Irrigation Company
to the United States of America. SECOND.

I herewith hand you a second additional or supplemental
abstract, of the El Paso Title Company, in compliance with your
request in reference thereto, containing, conveyed by the deed
from the Franklin Irrigation Company to the United States of
America:

- (a) Certified proceedings of a special meeting of the
stockholders of the Franklin Irrigation Company;
- (b) Certified proceedings of a special meeting of the
Board of Directors of the Franklin Irrigation Company, dated
in said certificate, and that there are no other liens of any
character what;
- (c) Certificates of J. A. Escobedo, clerk of the Dis-
trict Court of El Paso County, Texas, and Park W. Pitman, Clerk of
of the County Court of El Paso County, Texas, in reference to
judgment rendered in favor of the El Paso Street Railway Com-
pany, against the El Paso Irrigation Company;
- (d) Similar certificates of said Clerks in reference
to judgment rendered in favor of the Santa Fe Street Railway
Company against the El Paso Irrigation Company;

You will note that G. O. Corbin and J. J. Early have
joined as principal parties in the judgments. In this connection, I refer you to Articles Nos.
3283 (old Art. 3153) to 3290 (old Art. 3160) of the Revised
Statutes of the State of Texas, also to Articles Nos. 2326-a
and 3360 (old Art. 3210), and to the case of McKinnon vs
McGown et al., 29 S. W. (Tex. Ct. Civ. App) 696. Neither can a
suit be filed on the judgment nor a scire facias proceedings
instituted, if ten years has elapsed since the issuance of
execution, executed pursuant to the contracts above referred
to, providing (f) Additional data showing complete execution and
record of Release from C H Murdock, Trustee, and M W Stanton

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and John Summerfield, beneficiaries and owners of the bonds, to the Franklin Irrigation Company, which is also shown on pages 43 to 46 of the said Abstract herewith returned;

(g) Abstract of Release and Discharge executed by the El Paso Valley Water Users Association to the United States of America, and filed on this, the 16th day of November, 1912. The page of the record is not furnished for the reason that this instrument has not been recorded, tho' it was duly acknowledged and filed on this date, as shown by said second supplemental or additional abstract;

(h) Abstract of deed duly executed by the Franklin Irrigation Company to the United States of America, dated the 14th day of October, 1912, filed for record on the 13th day of November, 1912, and recorded in Volume No. 203, pages 455 et seq of the Deed Records of El Paso County, Texas;

(i) Certificate of the Tax Collector of El Paso County, Texas, showing the payment of all county and State taxes on the properties conveyed by the deed of Franklin Irrigation Company to the United States of America.

(j) Certificate of the Assessor and Collector of Taxes of the City of El Paso, Texas, showing the payment of all taxes to the said City of El Paso, on the properties conveyed by the deed from the Franklin Irrigation Company to the United States of America;

(k) Abstracters' Certificate, absolute in form, showing that there are no judgments or liens of any character, as appears of record in the Minutes of the different Courts mentioned in said certificate, and that there are no other liens of any character whatever, against the properties so conveyed, as shown by the records above mentioned.

(l) Abstracters' Certificate, showing a clear title of record, and which certificate is absolute in form.

THIRD. Terms very brief.

You will note that C. O. Coffin and J. J. Mundy have joined as principals in the bond heretofore executed by the Franklin Irrigation Company, binding themselves as such principals, and joined by other parties as sureties. This bond was executed pursuant to a contract releasing the lease and option and sub-lease and option, and which said contract is in the possession of the officials of the United States Government. This bond, in legal effect, provides that Coffin and Mundy assume all of the covenants in said deed from the Franklin Irrigation Company to the United States, and was executed pursuant to the contract above referred to, providing for the execution of other assurances of title.

At that time drafts of instruments for consummating the transaction were submitted, and I recommended:

Before the transaction is closed, the lien of the Murdock trust deed should be released and the bonds canceled and surrendered; all taxes should be paid and discharged; the lease and option to Coffin and Mundy, and the sublease and option to El Paso Valley Water Users Association, should be canceled and released; and the two judgments mentioned should be discharged and satisfied of record, or the abstract be made to show by certificate of the proper officer that no execution was issued thereon within one year. The stockholders and board of directors of Franklin Irrigation Company should also authorize or ratify the execution and delivery of the \$60,000 bond.

All these requirements have been complied with. The abstract has been extended to November 16, 1912, showing the deed of conveyance has been executed and is now recorded. This form of deed has heretofore, on October 28, 1912, been approved by the Secretary, as also was the form of bond guaranteeing the title, and also the sufficiency of the sureties.

I am, therefore, of opinion that the Franklin Irrigation Company has complied with all of the conditions required of it for assurance of title of the property it has conveyed to the United States, and that the same should be accepted and payment of purchase price made.

Very respectfully,

Charles C. Cook
Assistant Attorney General

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no 7

OCT 28 1912

Franklin Canal.

Abstract of Title.
Canal system.
Rio Grand Project.

The Secretary of the Interior.

Sir:

October 5, 1912, Morris Bien, of the Reclamation Service, transmitted abstract of title of Franklin Canal system, El Paso County, Texas, extending from the Rio Grande River above and through El Paso southeasterly, slightly over thirty-one and one-fifth miles (164,666 feet), to Fabens, which system the United States purchased in Rio Grande Project under the Reclamation Act.

This abstract, incomplete, was examined by me and returned, with mention of defect and insufficiencies, February 10, 1912. The canal system was constructed by El Paso Irrigation Company, incorporated July 17, 1889, under the laws of Texas. The incorporators appropriated 333 second feet of water of the Rio Grande, which they deeded to the corporation. It is shown by affidavit of J. J. Mundy, one of the patron water users from the canal, it was constructed during 1888 and 1890, and has been operated from 1890 on the right of way

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as it now exists from the lower intake head-gate in the city of El Paso to the terminal at Fabens by the company, its successor, the Franklin Irrigation Company, and its lessees.

The El Paso Irrigation Company, March 14, 1890, mortgaged its property from the old intake to Fabens to the State Trust Company of New York, to secure \$50,000 of bonds, with eight per cent interest, payable in thirty years. The mortgage was defaulted, and February 20, 1892, Thomas Worthington, of Cheshire, England, sued in the United States Circuit Court, Texas, Western District, to foreclose. He sued as owner of the bonds. The trustee was not joined as defendant, but, April 18, 1895, was admitted to be defendant, appeared, and answered. The same day the El Paso Irrigation Company answered, admitting its default, but for lack of knowledge denied that Worthington was legal holder of the bonds. Before that time, August 1, 1892, Annie L. Etheridge and husband filed a petition of intervention as owners of \$12,000 of capital stock of defendant company. October 26, 1895, the system was ordered sold by a special master, and was sold to Worthington for payment of his debt, sale was confirmed, and deed made to him April 11, 1898. June 16, 1898, Worthington deeded the canal system to Franklin Irrigation Company, which has not deeded, but, November 1, 1898, made trust deed to C.H. Murdock to secure payment of \$50,000

of bonds, with six per cent interest, due in twenty years, release of which is in escrow, to be delivered if purchase by the United States be consummated.

March 19, 1909, the Franklin Irrigation Company leased its properties to C. O. Coffin and J. J. Mundy to May 6, 1915, upon a rent of \$1000, payable yearly in advance with obligation of the lessees to maintain the property in efficient repair, and with authority to sub-lease to El Paso Water Users Association. By the same instrument the lessor granted to lessees option within any year for which they had paid the annual rent to purchase the property at a price fixed. If compliance were made with such conditions, the Franklin Irrigation Company agreed to convey to Coffin and Mundy all its property.

March 24, 1909, Coffin and Mundy sub-let to the same term of expiration, on like conditions and like option, to the El Paso Water Users Association to purchase at the price of \$120,000.

September 16, 1911, the directors of the Franklin Irrigation Company authorized the president of the company to contract for sale of the property directly to the United States at the price of \$120,000, which the stockholders ratified November 21, 1911, by unanimous vote of all the

the stock, and this direct sale was consented to by unanimous vote by directors of the El Paso Water Users Association, September 19, 1911, saving to Corbin and Mandy the excess of consideration over that they were to pay to the Franklin Irrigation Company.

The right of way is divided into sections. The first section, about 612 feet, is from the new head-gate above the old Mexican dam, across a tract known as the "Hart Homestead." It lies near the river, and right of way was obtained by proceedings of eminent domain against Juan S. Hart and others. Thence the right of way follows along the Rio Grande to the old head-gate at about 2000 feet from the intake. The local examiner of the Reclamation Service states that this is built below high water mark of the Rio Grande in its channel, separated from the river by a dike, and therefore rests on land of the State of Texas, part of the river bed. From the old head-gate along the river bank to 8th street and easterly along 8th street to Station 13124, right of way was granted by the city of El Paso, September 16, 1889, for the period of fifty years, expiring July 6, 1939. This part of the franchise was conditioned that work should be completed through the city within six months, and that the company should not discriminate against the inhabitants of El Paso in use of water.

The examiner notes that this part of the right of way from the old head gate to the old Santa Fe well, about five hundred feet, is adversely claimed by Charles A. Kinkel, administrator of the estate of H. M. Mundy, deceased, one of Mundy's heirs. Some of Kinkel's houses are located on the fifty feet right of way covered by franchise from the city of El Paso. Kinkel is a lawyer, and contends that the canal was constructed on property then belonging to his estate upon an oral license, and that the canal company is merely tenant at will. The examiner states that Kinkel is willing to quitclaim the land actually occupied by the canal as now constructed, but will resist any attempt to take or use any additional land. The abstract furnishes no basis for opinion as to the validity of Kinkel's claim.

Next southeasterly for a distance of 1250 feet to San Francisco street produced, similar claims are made by H. B. Stevens, D. Storms, and Manuel Barela. These claimants have no buildings on the right of way, though their buildings are immediately adjacent and fences extend to the water line of the canal. The abstract gives no data for foundation of opinion as to the validity of these claims. H. B. Stevens has quitclaimed his interest.

At 7137 feet from the intake the canal enters what

is known as the Chamizal and continues therein to the intersection of 8th and Utah streets, at 97000 feet from the intake. From that point the right of way follows 8th street, outside the Chamizal, until it reaches the east side of Virginia street, 11,700 feet from the intake. At 17,835 feet it leaves the Chamizal. The total length of the two sections in the Chamizal is 8,698 feet. The Chamizal is a tract sovereignty over which is in dispute between the United States and the Republic of Mexico. There thus arises an international question about which I can express no opinion.

While the controversy between Mexico and the United States pend, all rights asserted will be held by the Government of the United States in statu quo, without disturbance of present possession. As the city of El Paso is in part built upon the Chamizal, it is highly probable the United States will in some manner obtain undisputed sovereignty over the Chamizal.

Right of way for remainder of the canal rests in part upon deeds and municipal ordinance and proceedings of eminent domain. The abstract does not extend back from such grants of record, but these grants constitute color of title. It would render this opinion unnecessarily long did I undertake to indicate in detail the parts of right of way resting on matters of record. Examination of the map

prepared by engineers of the Reclamation Service shows that grant by matter of record or color of title covers in the aggregate, exclusive of the Chamizal, 73,427 linear feet of the canal, or 44.6 per cent; within the Chamizal 5.3 per cent. Right of way by prescription only, resting on no color of title, is 50.1 per cent.

Of this last item, 28,933 feet of the right of way is constructed on land conveyed, before construction of the canal, by deeds to the Texas and Pacific Railroad Company for right of way. This railroad was never constructed and none of the land used by the railroad company.

As to taxes the abstract, August 16, 1911, shows city tax for that year unpaid, in amount not stated. State and county tax for 1897, supplemented on 1899 rolls, \$20.10, is unpaid, with notation "not assessed for 1898, 1904, 1907, 1909, and 1910, will be supplemented on 1911 tax rolls for years not assessed." The supplemental abstract shows that the county court, El Paso County, made an order July 30, 1912, that for years 1891 to 1907, both inclusive, the valuation was ordered reduced from \$25,000 to \$2,000, "for each and every of the years aforesaid," directing the collector of taxes, "on payment of taxes for such years, to issue receipts in full." As the rate of tax is not given,

the amount of unpaid taxes for past years can not be determined from the abstract.

As to judgments, the abstract shows one of May 1, 1895, recovered by El Paso Street Railway Company, \$2200, costs \$7.45; May 2, 1895, Santa Fe Street Railway Company, \$961.62, costs \$7.45. For aught that the abstract shows these judgments are liens on the property.

While this title is not entirely satisfactory, the canal has existed so long and the probability of good title by prescription is so great, that in discretion of the Secretary of the Interior title may be accepted upon the canal company giving bond in sufficient amount to protect the United States, conditioned that the Franklin Irrigation Company and its surety will protect and defend the United States against assertions of right to interfere with the right of way to any part of the property it conveys to the United States, and to reimburse to the United States any expense which it may incur in defense of its possession and title, and such proportionate part of the sum that may be necessary to pay or incur to acquire undisputed sovereignty over the Canal.

A proposed deed from the Franklin Irrigation Company has been submitted by the Reclamation Service, which is

found to be in proper form, and which defines the width of the property granted. The proposed grantor and the said Mundy and Coffin have also executed and submitted a proposed bond with sureties in the sum of \$50,000, also in proper form. Before the transaction is closed, the lien of the Murdock trust deed should be released and the bonds canceled and surrendered; all taxes should be paid and discharged; the lease and option to Coffin and Mundy, and the sublease and option to El Paso Valley Water Users Association, should be canceled and released; and the two judgments mentioned should be discharged and satisfied of record, or the abstract be made to show by certificate of the proper officer that no execution was issued thereon within one year. The stockholders and board of directors of El Paso Irrigation Company should also authorize or ratify the execution and delivery of the \$50,000 bond.

Very respectfully,

Assistant Attorney-General.

Schedule:

Abstract of title, original,
closed August 23, 1911, 121 pages.
Supplemental abstract, closed
August 5, 1912, 46 pages.
Five maps and sundry accompany-
ing papers.

Should be Franklin Irrigation Co. (2)