

780. EL PASO, CITY OF FRANKLIN CANAL (664)

0023-0068-0001 - 00  
0069-0002

QCD

1230

M. G. GRANDE

ACQUISITION OF LEADS

EL PASO, CITY OF

1230

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

430  
Chief Counsel  
RIO GRANDE

El Paso, Texas, December 15, 1939

MEMORANDUM for Superintendent, El Paso, Texas

(District Counsel)

Subject: Franklin Canal right of way - Quitclaim deed from  
City of El Paso - Rio Grande project.

1. There are attached hereto a copy in triplicate of letter dated November 10, 1939, from Mr. Frank B. Clayton, City Attorney, and the original and three copies of quitclaim deed dated November 9, 1939, from the City of El Paso to the United States together with the original certified copy and three additional copies of ordinance enacted by the City Council on November 9, 1939, all relating to the above named subject.

2. It is recommended that in accordance with the Acting Under Secretary's approval dated December 11, 1939, the conveyance be accepted and that to complete the record your acceptance be noted below, after which the quitclaim deed (but not the certified copy of ordinance) should be recorded, and the deed thereafter handled as other donation deeds.

- - -  
R. J. S. Devries

El Paso, Texas, December \_\_, 1939.

The above described quitclaim deed is hereby accepted on behalf of the United States and the original thereof shall now be recorded in the El Paso County records.

*W. R. Flock*  
Superintendent.

El Paso, Texas. April 21, 1944

The above quitclaim deed has been recorded and the original thereof together with the original certified copy of the ordinance passed by the City Council are hereby transmitted to Washington for filing.

L. R. Flock  
Superintendent

Enclosure: Orig. Quitclaim Deed

Orig. Certified copy of ordinance

cc- Commissioner with copies of enclosures

cc - Denver with copies of enclosures cc- DC - with copies of enclosures

APR 25 '44 49588

State of Texas )  
County of El Paso )  
City of El Paso )

*THIS WILL BE RECORDED IN  
THE RECORDS OF CITY HALL*

I, W. R. Collins, City Clerk of the City of El Paso, Texas,  
do hereby certify that the foregoing is a true and correct copy of the proceedings of the City Council of the City of El Paso under date of November 9, 1939, recorded in Minute Book Z-2, Page\_\_\_\_, relative to the adoption of an ordinance conveying unto the United States of America all the right, title and interest of the City of El Paso in and to the right-of-way occupied by the Franklin Canal in the City of El Paso.

WITNESS MY HAND and seal of the City of El Paso, Texas, this 9th day of November, A. D. 1939.

/s/ W. R. Collins

City Clerk in and for the City of El Paso,  
Texas

(SEAL)

Council Chambers, City Hall, El Paso,  
Texas, Thursday, November 9, 1939.

At a meeting of the City Council on the above day and date, Mayor Anderson present and presiding, the following members answered roll-call:- Aldermen Travis, Walthall, Duke and Morgan; absent, none.

The City Clerk read an ordinance entitled "An ordinance amending an ordinance entitled 'An ordinance conveying unto the United States of America all the right, title and interest of the City of El Paso in and to the right-of-way occupied by the Franklin Canal over, along and across all streets, alleys and other public lands of the City of El Paso, with certain reservations and providing for a reverter when the said right-of-way is no longer used for canal purposes, and declaring an emergency,' by inserting therein the clause 'contingent, however, upon appropriations being made therefor by Congress' and declaring an emergency."

Motion made, seconded and carried that said ordinance be adopted. Whereupon the Mayor ordered that the vote be taken on the passage and adoption of the ordinance, which when so taken resulted as follows:- Ayes, Aldermen Travis, Walthall, Duke and Morgan; Nays, none; absent, none. Thereupon the Mayor declared that the majority vote of the members of the City Council having been cast in favor thereof, the same be and hereby is adopted as an emergency measure, said ordinance being in words and figures as follows:

AN ORDINANCE AMENDING AN ORDINANCE ENTITLED "AN ORDINANCE CONVEYING UNTO THE UNITED STATES OF AMERICA ALL THE RIGHT, TITLE AND INTEREST OF THE CITY OF EL PASO IN AND TO THE RIGHT-OF-WAY OCCUPIED BY THE FRANKLIN CANAL OVER, ALONG AND ACROSS ALL STREETS, ALLEYS AND OTHER PUBLIC LANDS OF THE CITY OF EL PASO, WITH CERTAIN RESERVATIONS AND PROVIDING FOR A REVERTER WHEN THE SAID RIGHT-OF-WAY IS NO LONGER USED FOR CANAL PURPOSES, AND DECLARING AN EMERGENCY," BY INSERTING THEREIN THE CLAUSE "CONTINGENT, HOWEVER, UPON APPROPRIATIONS BEING MADE THEREFOR BY CONGRESS," AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO, TEXAS:

Section 1. That Section 1 of that certain ordinance entitled "an ordinance conveying unto the United States of America all the right, title and interest of the City of El Paso in and to the right-of-way occupied by the Franklin Canal over, along and across all streets, alleys and other public lands of the City of El Paso, with certain reservations and providing for a reverter when the said right-of-way is no longer used for canal purposes, and declaring an emergency," passed and approved the 5th day of September, 1939, be and the same is hereby amended so as to hereafter read as follows:

"Section 1. In consideration of the very great benefits conferred upon the City and County of El Paso and all of the residents thereof by the maintenance and operation of the Rio Grande Reclamation Project, furnishing water for the irrigation of land in the City and County of El Paso, and the further consideration that the maintenance and operation of what is known as the Franklin Irrigation Canal is indispensable to the carriage and distribution of said waters for irrigation purposes, and in accordance with that certain Act of the 45th Legislature of Texas, Chapter 77, (1937), the City of El Paso does hereby convey, transfer, quit-claim, relinquish and confirm unto the United States of America all of the right, title and interest of the City of El Paso in and to the right-of-way occupied by the said Franklin Canal and the appurtenances thereto, through the City of El Paso and in the present location thereof, over, along and across all streets, alleys and other public lands of the City of El Paso, continuing and con-

fixing the use of said right-of-way as hereinafter described.

Said right-of-way is described in words and figures as follows, to-wit: All parts of streets, alleys and intersections, or any other lands owned by the City of El Paso, within the limits of the following described right-of-way: Beginning at the headgates of said Franklin Canal as constructed in 1914 and enlarged in 1921 by the Bureau of Reclamation; thence to and across the Riverside Drive or Levee Road over land acquired by the United States for the headworks of said canal; thence following along the north or east bank of the Rio Grande over right-of-way acquired by the El Paso Irrigation Company from H. B. Stevens et al. to a point 3,610 feet below the headgates measured on the center line of the canal, being the end of the concrete lined section, 25 feet on each side of the center line of said canal; thence continuing along the north or east bank of the Rio Grande over said acquired right-of-way to Eighth Street 40 feet on each side of the center line of said canal, together with all wasteway or sluiceway channels leading from the canal into the river; thence along Eighth Street to and into property known as the Cotton Estate, a concrete lined section 13 feet on each side of the center line of said canal; thence turning and continuing northeasterly through said Cotton Estate to the intersection of Williams and East San Antonio Streets 50 feet on each side of the center line of said canal; thence along East San Antonio Street over right-of-way acquired by the El Paso Irrigation Company from the Bassett Addition to Piedras Street 35 feet on each side of the center line of said canal; thence continuing along East San Antonio Street and turning into an alley between Rivera Street and East San Antonio Street to Stevens Street over right-of-way acquired by the El Paso Irrigation Company from the East El Paso Addition 35 feet on each side of the center line of said canal; thence continuing along said alley and turning into Boone Avenue 35 feet on each side of the center line of said canal; thence south along Boone Avenue a distance of approximately 900 feet, and 40 feet on each side of the center line of said canal; thence turning easterly through Washington Park

over right-of-way acquired by the El Paso Irrigation Company from J. B. Leahy, and extending on to the city limits, being 40 feet on each side of the center line of said canal; provided, however, there is reserved to the City of El Paso the right to use as a part of the City street system of said city, all bridges heretofore constructed by the Bureau of Reclamation of the United States at the points on said canal where the same is intersected by the following described streets, alleys or other crossings: S. Santa Fe St., S. El Paso St., S. Oregon St., S. Mesa Ave., S. Stanton St., S. Kansas St., S. Campbell St., S. Florence St., S. Ochoa St., S. Virginia St., S. St. Vrain St., Hills St., Tays St., Park St., Fourth St., First St., Laurel St., Eucalyptus St., Willow St. Foot Bridge, S. Piedras St., S. Raynor St., S. Estrella St., S. Grama St., S. Stevens St., Hammett Boulevard, Boone Ave., Evergreen St. (In Washington Park), Washington Park East Road, Tobin Place, Alley East of Hadlock Place, Francis St., and Verde Ave.; provided, however, and this ordinance and the conveyance to be made hereunder are subject to the condition that the United States shall be obligated to maintain the said bridges at the said described crossings, contingent, however, upon appropriations being made therefor by congress; and there is further reserved to the City of El Paso the right to construct and maintain, at its own cost and expense, such additional bridges and other structures across said canal other than those hereinabove designated as it may deem necessary; provided further that if at any time in the future, the Secretary of the Interior of the United States of America or other duly authorized officer of the United States shall decide that the said right-of-way or any part thereof is no longer needed for the operation of said canal or for irrigation purposes, then and in that event, whatever rights or title the City of El Paso has conveyed hereunder to the United States as to such part thereof shall thereupon revert to the said City of El Paso, and the obligation of the United States under the conditions hereof to maintain any bridge or bridges situated on such part thereof so reverting to the City shall thereupon terminate, but any such reverter shall leave unaffected



whatever right, title or interest the United States may have or acquire in or to the premises described herein other than by virtue of this ordinance or the conveyance executed in pursuance hereof. Should the El Paso County Water Improvement District No. 1 request the execution of a conveyance to the United States in accordance with the terms hereof, the Mayor and City Clerk are hereby authorized to execute and attest the same."

Section 2. The fact that it is immediately necessary to commence work on fencing the right-of-way of the Franklin Canal as a measure of public safety and that this work is awaiting the vesting of title in the United States of America to the right-of-way aforesaid, creates a great public emergency justifying the suspension of the rule laid down in Section 53 of the Charter of the City of El Paso providing that no ordinance shall be finally adopted until it has been read in regular meeting of the City Council at two regular meetings, and by unanimous vote of the Aldermen present and with the consent of the Mayor, as in this section provided, said rule is suspended and this ordinance shall take effect immediately upon its passage and approval.

PASSED AND APPROVED this 9th day of November, A. D. 1939.

J. E. Anderson  
Mayor.

Attest:

W. R. Collins  
City Clerk.

(SEAL)

CERTIFICATE OF RECORD  
The State of Texas )  
County of El Paso )

I, P. D. Lowry, County Clerk in and for said County, do hereby certify that the foregoing instrument of writing with its certificate of authentication, was filed for record in my office, on the 20 day of Feb. A. D. 1940, at 4:15 o'clock P. M., and duly recorded the 23 day of Feb. A. D. 1940, at 8:26 o'clock A. M. in the Deed Records of said County, in volume 660 on page 399.

Witness my hand and the seal of the County Court of said county at office in El Paso, Texas, the day and the year last above written.

P. D. Lowry, County Clerk

(SEAL)

(SEAL)

By Mrs. J. W. Morrow, Deputy

El Paso County, Texas.

Notary Public in and for

G. B. Dwyer

COMPARED 9371 INDEXED  
QCD El Paso, City of Texas

& CLERK UNDER THE HAND AND SEAL OF OFFICE' THIS 24th DAY OF  
UNITED STATES OF AMERICA

and comparison therein expressed and in the certificate therein stated.  
FILED FOR RECORD

Feb. 20, 1940  
at 4:15 o'clock P. M.

and recorded to me that the same was the act of the said City of El Paso' &  
Feb. 23, 1940

at 8:26 o'clock A. M.  
P. D. Lowry, County Clerk

By W. T. Duncan, Deputy

11/9/39 660/399  
to me that the same was the act of the said City of El Paso' &

Notary Public in and for El Paso County, Texas.

COMMISSION EXPIRES

SEPTEMBER 1, 1941

(SEAL)

CLERK

M. H. COLLINS

WITNESSES:

SEAL

By J. P. Anderson

Notary Public in and for

El Paso, City of Texas

to be recorded and expressed by the Mayor and attested by the Clerk

I, CLERK UNDER THE HAND AND SEAL OF OFFICE' THIS 24th DAY OF FEBRUARY 1940  
and comparison therein expressed and in the certificate therein stated.

the same was the act of the said City of El Paso' &

the United States may have or acquire in or to said hereinabove described premises other than by virtue of this conveyance.

IN WITNESS WHEREOF the said City of El Paso has caused these presents to be executed and subscribed by its Mayor and attested by its Clerk this 9th day of November, A. D. 1939.

THE CITY OF EL PASO

By J. E. Anderson  
Mayor.

Attest:

W. R. Collins  
City Clerk.

(SEAL)

THE STATE OF TEXAS )  
COUNTY OF EL PASO )

BEFORE ME, a Notary Public in and for El Paso County, Texas,

on this day personally appeared J. E. Anderson, Mayor of the City of El Paso, a municipal corporation, known to me to be the person and whose name is subscribed to the foregoing instrument, and acknowledged to me that the same was the Act of the said City of El Paso, a municipal corporation, and that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND and seal of office, this 9th day of

November, A. D. 1939.  
CORRECTION 2317 INDEXED

G. R. Daniels

Notary Public in and for  
El Paso County, Texas.

By J. E. Anderson Mayor

By W. R. Collins City Clerk

at office in El Paso, Texas, the day and the year first above written.  
Witness my hand and the seal of the County Clerk of said County of El Paso in the deed records of said County in volume 220 on page 228.  
and recorded the 22 day of Nov. A. D. 1939 at 9:30 o'clock  
on the 30 day of Nov. A. D. 1939 at 4:12 o'clock P. M. and  
the certificate of authentication was filed for record in my office.  
County of El Paso, Texas that the foregoing instrument of writing with  
I, B. D. Tomlin, County Clerk in and for said

County of El Paso )  
The State of Texas )  
CERTIFICATE OF RECORD

430.-  
RIO GRANDE

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
WASHINGTON

November 22, 1939

The Secretary

of the Interior.

Sir:

In connection with the construction of the Rio Grande project, the United States acquired by purchase from the El Paso Irrigation Company all of its property rights, privileges and franchises, including the Franklin Canal which passes through the City of El Paso, Texas.

Some of its canal site was acquired by purchase, some by eminent domain and some of it was occupied by virtue of a franchise granted to the Company by the City of El Paso in 1889 for a period of 50 years, which expired July 6, 1939.

A portion of the right of way controlled by the City of El Paso was fenced as a means for the protection of life and property. The fencing has been largely destroyed and the City has grown to include a considerable section of the project canal, which is not fenced. As a result a number of persons have been drowned. In an effort to prevent further fatalities a request was made for an allotment of \$56,000 for the purpose of adequately fencing the right of way of the Franklin Canal to protect life and property, the allocation to be a grant for public benefit; construction to be undertaken after that part of the right of way owned by the City of El Paso has been conveyed to the United States. On July 13, 1939 the First Assistant Secretary and Budget Officer advised this office as follows:

"In accordance with the provisions of the National Industrial Recovery Act of 1933, an allotment of \$56,000 (F.P. No. 57) has been made to the Department of the Interior, Bureau of Reclamation, for fencing the right-of-way of the Franklin Canal in the City of El Paso, Texas."

In accordance with the understanding as to title on which the grant and allotment was made, the City Council,

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File 490.01

on September 5, 1939, passed an ordinance authorizing the execution of a quitclaim deed, subject to certain maintenance obligations. These maintenance obligations relate to certain bridges which the United States was obligated to maintain pursuant to the terms of the franchise recently expired. The City insists that the present conveyance shall revive the former obligation, and in fact, the City first sought to increase the scope of the obligation. It has, however, now receded from the latter position.

The expense incident to this obligation is one to be borne by the El Paso County Water Improvement District under its repayment contracts, and that District has approved the acceptance of the conveyance which is subject to this obligation. Since the ordinance of September 5, 1939 was passed, we have been advised that the City Council has passed an amendatory ordinance authorizing the insertion of a "Contingent upon Appropriations" clause in the deed to the United States, in accordance with a request made by the Bureau.

The deed authorized to be executed is only a quitclaim deed. But it is doubtful that the City Council has authority to authorize execution of a deed with title covenants. And in any event, this case is considered to be one where, considering all the circumstances, a quitclaim deed should be accepted as an exception to the requirements of Departmental Order No. 1385, dated May 26, 1939.

The Bureau's District Counsel advises, after a study of title, that the title based on the proposed deed will be adequate.

Accordingly, I recommend that, subject to insertion of the "Contingent upon Appropriations" clause and a reference to the amendatory city ordinance above mentioned, the project superintendent be authorized to accept the attached deed on behalf of the United States.

Respectfully,

(Sgd.) H. W. Bashore  
Acting Commissioner.

Enclosure 2201582

Approved: Dec. 11, 1939  
(Sgd) W. C. Mendenhall  
Acting Under Secretary.

QUIT-CLAIM DEED

THE STATE OF TEXAS )  
COUNTY OF EL PASO )

KNOW ALL MEN BY THESE PRESENTS: THAT

The City of El Paso, a municipal corporation duly organized and existing under the laws of the State of Texas and situated within the County of El Paso and State of Texas, for and in consideration of the benefits derived and to be derived by the said City and all of the residents thereof by the operation and maintenance by the United States of America and its successors and assigns of the Franklin Canal of the Rio Grande Reclamation Project and pursuant to the provisions of that certain act of the 45th Legislature of Texas, Chapter 77, (1937) and ordinance of said City duly enacted and approved on the 9th day of November, 1939, does by these presents Bargain, Sell, Release and Forever Quit-Claim and confirm unto the said United States of America, pursuant to the Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof and supplementary thereto, its successors and assigns, all its right, title and interest in and to that tract or parcel of land lying in the County of El Paso, and State of Texas, described as follows, to-wit:

All parts of streets, alleys and intersections, or any other lands owned by the City of El Paso, within the limits of the following described right-of-way: Beginning at the headgates of said Franklin Canal as constructed in 1914 and enlarged in 1921 by the Bureau of Reclamation; thence to and across the Riverside Drive or Levee Road over land acquired by the United States for the headworks of said canal; thence following along the north or east bank of the Rio Grande over right-of-way acquired by the El Paso Irrigation Company from H. B. Stevens et al. to a point 3,610 feet below the headgates measured on the center line of the canal, being the end of the concrete lined section, 25 feet on each side of the center line of said canal; thence continuing along the north or east bank of the Rio Grande over said acquired right-of-way to Eighth Street 40 feet on each side of the center line of said canal, together with all westway or sluiceway channels leading from the canal into the river; thence along Eighth Street to and into property known as the Cotton Estate, a concrete lined section 13 feet on each side of the center line of said canal; thence turning and continuing northeasterly through said Cotton Estate to the intersection of Williams and East San Antonio Streets 50 feet on each side of the center line of said canal; thence along East San Antonio Street over right-of-way acquired by the El Paso Irrigation Company from the Bassett Addition to Piedras Street 35 feet on each side of the center line of said canal; thence continuing along East San Antonio Street and turning

Correct as to Engr. Date 9.0.0.



into an alley between Rivera Street and East San Antonio Street to Stevens Street over right-of-way acquired by the El Paso Irrigation Company from the East El Paso Addition 33 feet on each side of the center line of said canal; thence continuing along said alley and turning into Boone Avenue 33 feet on each side of the center line of said canal; thence south along Boone Avenue a distance of approximately 500 feet, and 40 feet on each side of the center line of said canal; thence turning easterly through Washington Park over right-of-way acquired by the El Paso Irrigation Company from J. B. Kelly, and extending on to the city limits, being 40 feet on each side of the center line of said canal; reserving to the said City of El Paso the right to use as a part of the City street system of said city all bridges heretofore constructed by the Bureau of Reclamation of the United States at the points on said canal where the same is intersected by the following described streets, alleys or other crossings: S. Santa Fe St., N. El Paso St., S. Oregon St., S. New Ave., E. Stanton St., S. Kansas St., S. Campbell St., S. Florence St., S. Cochrane St., S. Virginia St., S. St. Vrain St., Hill St., 1st St., Park St., Fourth St., First St., Laurel St., Eucalyptus St., Willow St., Foot Bridge, S. Meade St., S. Taylor St., S. Carolina St., S. Gram St., J. Stevens St., Mammoth Boulevard, Boone Ave., Evergreen St. (in Washington Park), Washington Park East Road, 15th Place, Alley West of Madison Place, Francis St., and Verde Ave.; provided, however, and this conveyance is subject to the condition that the United States shall be obligated to maintain the said bridges at the said described crossings contingent, however, upon appropriations being made therefor by Congress; and there is further reserved to the said City of El Paso the right to construct and maintain at its own cost and expense such additional bridges and other structures across said canal other than those heretofore designated as it may deem necessary.

TO HAVE AND TO HOLD all its right, title, interest, estate and claim in and to the said premises, together with all and singular, the rights, privileges and appurtenances to the same in any manner belonging unto the said United States of America, its successors and assigns, forever, provided, however, that if at any time in the future, the Secretary of the Interior of the United States of America or other duly authorized officer of the United States shall decide that said right-of-way or any part thereof is no longer needed for the operation of said canal or for irrigation purposes, then and in that event whatever right or title the City of El Paso has by these presents conveyed to the United States as to such part thereof shall thereupon revert to the said City of El Paso and the obligation of the United States under the conditions of this conveyance to maintain any bridge or bridges situated on such part thereof as reverting to the City of El Paso shall thereupon terminate, but any such reverter shall leave unaffected whatever right, title or interest