

9 KNOX, J. F.

WARRANTY DEED

131 MESA DRAIN

002-3-66 ~~77~~ 77-00 ~~37~~ 37-091-(37) TEXAS

THE STATE OF TEXAS, }
COUNTY OF EL PASO. }

KNOW ALL MEN BY THESE PRESENTS:

That I, J. F. KNOX, a married man

of the County of El Paso, State of Texas, in consideration of the sum of **Five Hundred one & 00/100 (\$501.00)** DOLLARS,

to me in hand paid by the United States of America, in pursuance of the Act of June 17, 1902 (32 Stat., 388), and acts amendatory thereof or supplementary thereto the receipt of which is hereby acknowledged have Granted, Sold and Conveyed, and by these presents do Grant, Sell and Convey unto the said the United States of America

all that certain tract or parcel of land, lying in the County of El Paso and State of Texas and more particularly described as follows, to-wit: A tract of land situated approximately 1 1/2 miles Northeast of the town of Ysleta, Texas, and in the Northwest quarter of the northwest quarter NW 1/4 NW 20 Section twenty-five (25) and the Northeast quarter of the northeast quarter (NE 1/4 NE 1/4) section twenty-six (26) Township thirty-one (31) South Range six (6) East, U.S. Reclamation Service survey being also in the Ysleta Twpn Grant and more particularly described as follows: Beginning at the most northerly corner of the tract of land herein described which is a point on the property line between the grantor herein and L. M. McCrummen, from which point the Northeast corner of said section twenty-six (26) bears North 23° 19' 38" East 174.35 feet; thence South 34° 08' East 828.9 feet to a point on the property line between the grantor's herein and A. Dominguez, from which point the Northwest corner of said section twenty-five (25) bears North 25° 05' West 934.3 feet; thence along the said last named property line South 43° 45' West 122.7 feet to a point from which the Northwest corner of said section twenty-five (25) bears North 18° 24' 47" West 985.3 feet. Thence North 34° 08' West 784.9 feet to point on property line between the Grantor's herein and L. M. McCrummen. Thence North 25° 42' East along said property line 138.8 feet to the point of beginning; said tract of land containing two and twenty-two hundredths (2.22) acres more or less, the said described land not being homestead property

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging, unto the said the

United States of America, its successors or assigns forever; and I do hereby bind myself, my heirs, executors and administrators, to Warrant and forever Defend, all and singular, the said premises unto the said the

United States of America its successors or heirs and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS my hand at El Paso, Texas this 17th day of November, A. D. 19 20.

J F KNOX

Witnesses at Request of Grantor

U.S. documentary revenue stamp
\$1 affixed and cancelled.

THE STATE OF TEXAS

A. M. GALT

THE STATE OF TEXAS

COUNTY OF EL PASO.

BEFORE ME,

W N Carl

A Notary Public

in and for El Paso County, Texas, on this day

personally appeared

J. P. Knox,

J. P. KNOX

known to me to be the person whose name is

subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this

17th

day of

November

A. D., 19

20

(SEAL)

My com. exp. June 1, 1921.

Notary Public, El Paso County,
Texas.

THE STATE OF TEXAS.

COUNTY OF EL PASO.

Before me,

in and for

El Paso County, Texas, on this day personally appeared

wife of

known to me to be the person whose name is subscribed

to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same by me fully explained to her, she, the said

acknowledged such instru-

ment to be her act and deed, and declared that she had willingly signed the same for the purposes and consid-
eration therein expressed, and that she did not wish to retract it.

Given under my hand and seal of office, this

day of

A. D. 19

THE STATE OF TEXAS.

COUNTY OF EL PASO.

I

W D Greet

Clerk of the County,

Court of said County, do hereby certify that the above instrument of writing, dated on the

17th

day of November

A. D. 19

20

with its certificate of authentication, was filed for record in my

office this

19th

day of

November

A. D. 19

20

at 8:30

o'clock A

M

and duly recorded the

24th

day of

November

A. D. 19

20

at 12:00

o'clock P

M

in the records of said County, in Volume 341 on Pages 123.

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

(SEAL)

W D Greet

Clerk County Court, El Paso County, Texas.

By

Florence C Rock

Deputy.

TO

WARRANTY DEED

Single and Wife's Separate Acknowledgment

Filed for record

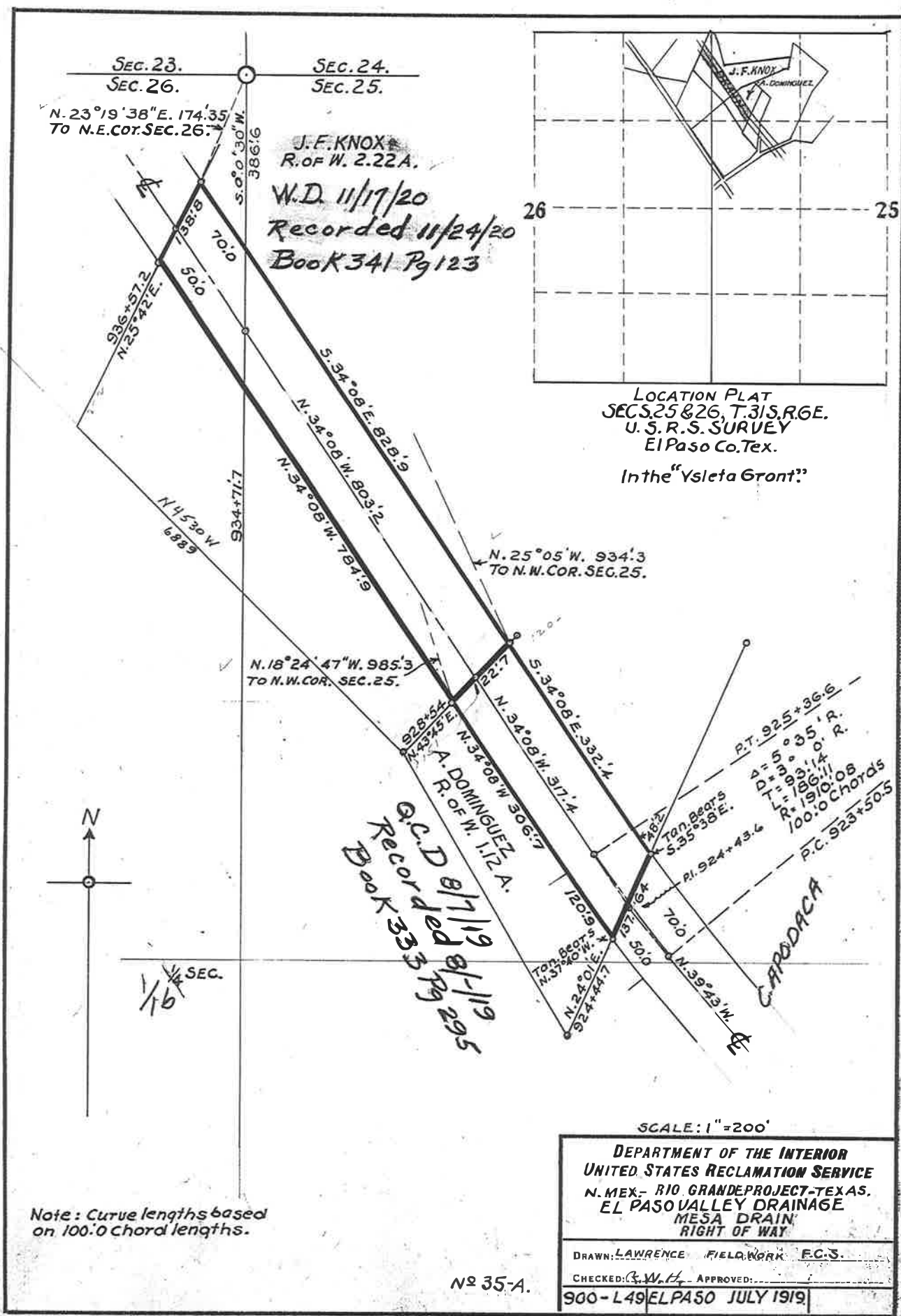
19

at o'clock M.

Clerk
County Court, El Paso County, Texas.

By Deputy.

ELLIS BROS. PRINTING CO., EL PASO

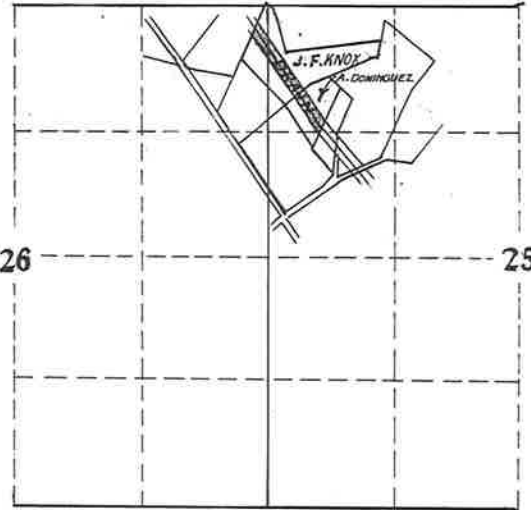


SEC. 23. SEC. 24.
SEC. 26. SEC. 25.

N. 23°19'38"E. 174.35'
TO N.E. COR. SEC. 26.

J.F. KNOX
R.O.F.W. 2.22 A.

W.D. 11/17/20
Recorded 11/24/20
Book 341 Pg 123



LOCATION PLAT
SECS. 25 & 26, T. 31 S., R. 6 E.
U.S. S. SURVEY
El Paso Co., Tex.
In the "Ysleta Grant"



1/16 SEC.

Note: Curve lengths based
on 100.0 Chord lengths.

SCALE: 1" = 200'

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE
N. MEX. - RIO GRANDE PROJECT - TEXAS,
EL PASO VALLEY DRAINAGE
MESA DRAIN
RIGHT OF WAY
DRAWN: LAWRENCE FIELDWORK F.C.S.
CHECKED: R.W.H. APPROVED: _____
900-L49/EL PASO JULY 1919

Nº 35-A.

REPORT ON LAND AGREEMENT

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

INFORMATION relating to agreement made **August 2,** 19 **20** with

J. F. Knox, a married man,
for the purchase of land required for **El Paso Valley mesa drain**
purposes, **Rio Grande** Project, **El Paso**
County, **Texas.**

1. State description and *approximate area* of land to be conveyed. **2.22 acres in NW $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 25 and NE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 26, T. 31 S., R. 6 E., Reclamation Service survey, El Paso County, Texas.**

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.

This land lies in the Ysleta (Mexican) Grant, and title is not founded upon U. S. public-land patent. No United States public lands in State of Texas.

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. F. Knox, married; wife, Bessie Knox; P.O. address, Caples Building, El Paso, Texas. Land is not homestead property.

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, or if some arrangement has been made with the tenant in case his interest in the land desired for acquisition will be affected.

Owners; no renters.

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

Land is subject to right of way by reason of stock-subscription contract with water users' association (District); right of way not being invoked.

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.*

No crop at present on land; all has been cultivated. No buildings.

Price named in contract derived as follows:

2.22 acres of land actually taken for our right of way.	
at \$100 per acre,	\$222.00
Allowance in lieu of bridge, (see below for estimate of cost of the bridge)	279.00
	<u>\$501.00</u>

The drain cuts off approximately $3\frac{1}{2}$ acres of landowner's holding, thereby necessitating bridge, which is properly included in estimate of damages, and which, if not so allowed, would have to be built by the Service.

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.

All irrigable; all irrigated. Water rights such as are usual in El Paso Valley under Rio Grande project.

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

\$125 to \$175 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.

Mesa drain of general benefit to community, but of peculiar damage to J. F. Knox, in that it cuts off a small portion of his holding, thereby rendering the whole of less value. See above.
Cost of bridge is derived as follows:

Round piling - 96 lin.ft at \$ 30	\$28.80
Lumber - 2.42 MBM at \$60	145.20
Concrete, $2\frac{1}{2}$ c.y. at \$12	30.00
Hauling	75.00
	<u>\$279.00</u>

Dated El Paso, Texas,
August 2, 1920.

(Signature) GEO W HOADLEY

(Title) Field Assistant.

In Charge of Negotiations.

Approved:

L M LAWSON

Project Manager.

10. The Vendor expressly warrants that he has employed no third person to solicit or obtain this contract in his behalf, or to cause or procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement; and that he has 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 him hereunder; and that he has not, in estimating the contract price demanded by him, included any sum by reason of any such brokerage, commission, or percentage; and that all moneys payable to him hereunder are free from obligation to any other person for services rendered, or supposed to have been rendered, in the procurement of this contract. He further agrees 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 through a bona fide commercial representative employed by the Vendor in the regular course of his 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 through established commercial or selling agents or agencies regularly engaged in selling such goods.

DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

Rio Grande Project, El Paso, Texas. AUG 20 1920
(Place) (Date)

Project Manager to Chief of Construction, thru District Counsel.

Subject: Forwarding for approval contract dated August 2, 1920.

With J. F. Knox

Estimated amount involved, \$ 501.00 Authority No. 6-5

Accompanied by bond and 2 copies of Clearing Acct.

(Insert "Yes" or "No" bond).

No bond.

Purpose:

Purchase of 2.22 acres of land for Mesa Drain.

Said land is not homestead property.

Advise Project Manager at

El Paso, Texas.
(Post office and State)

District Counsel at

El Paso, Texas.
(Post office and State)

and

execution

of the approval of the above, using extra copy hereof.

Inclosures listed on the reverse

NOTE: Before submitting contract see that the instructions on reverse hereof have been FULLY complied with. See also par. 16, Page 205, Vol. 1 of Manual.

L. M. LAWSON

(Signature)

Denver, Colo.

The above described contract and bond, if any, approved August 27, 1920.

by R. F. Walter

on August 26, 1920.

Acting Chief of Construction.

Orig. contract returned herewith to P.M. for recording and further appropriate action.

ENCLOSURE

Denver, Colo.

Chief of Construction to Director:

It is recommended that the above described contract be executed

approved and bond if any approved.

Inclosures:

ORIGINAL CONTRACT TO BE
RETURNED TO PROJECT OFFICE FOR RECOMENDATION AND FURTHER PROPER ACTION.

(Signature)

executed

Washington, D. C.

Contract approved and bond, if any, approved by

on

Approved May 27, 1910, by the
Secretary of the Interior.DEPARTMENT OF THE INTERIOR
UNITED STATES RECLAMATION SERVICE

THIS AGREEMENT, made this 2nd day of August
nineteen hundred and twenty, between J. V. Knox married man
~~xxxx~~ and ~~xxxx~~ his wife, of El Paso, El Paso
County, Texas, for him and his heirs, legal represen-
tatives, and assigns, hereinafter styled the Vendor, and The United States of America and its assigns by
L. M. Lowman, Project Manager of the 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 dollar (\$1.00), 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 El Paso State of Texas.

A tract of land situated approximately 1 1/2 miles Northeast of the town of Ysleta, Texas, and in the Northwest quarter of the northwest quarter NW 1/4 NW 1/4 Section twenty-five (25) and the Northeast quarter of the Northeast quarter (NE 1/4 NE 1/4) Section twenty-six (26) Township thirty-one (31) South Range Six (6) East, U. S. Reclamation Service survey being also in the Ysleta Town Grant and more particularly described as follows: Beginning at the most northerly corner of the tract of land herein described which is a point on the property line between the Vendor and L. M. McCrummen, from which point the Northeast corner of said Section twenty-six (26) bears North 23° 19' 38" East 174.35 feet; thence South 34° 08' East 828.9 feet to a point on the property line between the Vendor and A. Dominguez, from which point the Northwest corner of said Section twenty-five (25) bears North 25° 05' East 934.3 feet; thence along the said last named property line South 43° 45' East 122.7 feet to a point from which the Northwest corner of said Section twenty-five (25) bears North 18° 24' 47" West 985.3 feet. Thence North 34° 08' West 784.9 feet to a point on property line between the Vendor and L. M. McCrummen. Thence North 25° 42' East along said property line 138.8 feet to the point of beginning; said tract of land containing two and twenty-two hundredths (2.22) acres more or less the said described land not being homestead property.

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

Witnesses:

_____ J. F. KNOX
of _____

of _____ Vendor.

of _____ The United States of America,
By L. M. LAWSON

Project Manager U. S. R. S.
of _____

STATE OF Texas }
COUNTY OF El Paso } ss:

I, Geo. W. Hoadley, a Notary Public
in and for said county, in the State aforesaid, do hereby certify that J. F. Knox
who is personally known to me to be the person whose name is subscribed
to the foregoing instrument, appeared before me this day in person and acknowledged that

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

~~I further certify that I did examine the said~~
separate and apart from husband, and explained to the contents of the
foregoing instrument, and upon that examination declare that 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 2nd day of August, 1920

[SEAL.]

Geo. W. Hoadley
Notary Public

My commission expires June 1st 1921.

Approved this day of , 191

Comptroller, U. S. R. S.

El Paso, Texas, November 18, 1920.

County Clerk for El Paso County,

El Paso, Texas.

Dear Sir:

Transmitted herewith for official record is warranty deed dated November 17, 1920, running from J. F. Knox to the United States.

Very truly yours,

P W DENT

District Counsel.

incl.

El Paso, Texas, November 18, 1920.

Pioneer Abstract and Guarantee Title Company,

El Paso, Texas.

Gentlemen:

Transmitted herewith is abstract No. 19798, relating to J. P. Knox land in Yaleta. Please bring this down to date, including warranty deed dated November 17, 1920, running from this party to the United States. Mr. Knox has intimated that he would pay his 1920 taxes, and if this has been done, please show such payment on tax statement.

Very truly yours,

P W DENT

District Counsel.

incl.

El Paso, Texas, November 15, 1920.

Mr. J. F. Knox,
301 Caples Building,
El Paso, Texas.

Dear Mr. Knox:

Our Department has approved title to the land to be conveyed for El Paso Valley mesa drain, and warranty deed is inclosed herewith, to be executed and returned to this office. We will attend to recording and make payment therefor, but it is necessary to call upon you for documentary revenue stamp for \$1.

When deed is through the county clerk's office and abstract brought down to date, we will put the papers in line for vouchering and payment.

Taxes for 1920 should be paid, and we leave this matter to you that payment thereof may be made in time to have same appear in tax statement when abstract is brought down to date.

Very truly yours.

F W DENT

District Counsel.

incl.

Chief Counsel,

District Counsel, El Paso, Texas.

Acquisition of land - Opinion of title to 2.22 acres of land to be acquired under contract dated August 2, 1920, with J. F. Knox and wife in the price of \$501. (El Paso Valley Mesa Drain - Rio Grande Project.

1. I have considered your letter of October 29, in reference to the above title abstract No. 19798 by the Pioneer Abstract and Guarantee Title Company and related papers,

2. As noted by you the land now under consideration was at one time a part of a Mexican grant founded upon which a number of titles have come down to separate tracts of land now owned by the United States. In such cases the titles have been passed. In 1888 the Mayor of the town of Yuleta conveyed land which included the land now under consideration, to Theodor Olguin by metes and bounds. You identify this land as being a part of the land thus conveyed. This corporation deed will be accepted as the basis of this title, largely due to the length of time since it was made and to the fact that among the papers appears an affidavit of possession apparently under this conveyance.

3. As disclosed by entry 5 of the abstract, the Theodoro (Theororg in the body of the deed) Olguin, wife and others on March 5, 1888 conveyed to Milton Gonzales. You are of opinion that the difference in the spelling of Olguin's given name may be disregarded as well as the fact that other parties joined with him without it appearing of record why they do so. Due to the age of this conveyance your view of this matter will be accepted.

4. As disclosed by entry 6, Milton Gonzales, who took as Milton Gonzales, and wife, conveyed this land to Morris Loewenstein on March 5, 1888. For the same reason, you are authorized to disregard this difference in spelling of the first name.

5. Entry No. 70 discloses a judgment against the then owner of this land dated February 6, 1889. It appears that execution issued but was not levied upon this land mainly for want of an indemnity bond which the sheriff required and that the matter has since rested. You are of opinion that Article 3717, (Tex. Civ. Stats., 1914), places this judgment in the statute of limitations and that it may therefore, be disregarded because it has never been renewed. We accept your view of this.

6. Entry 8 discloses a deed of trust which appears to be satisfactorily released by the heirs of the beneficiary who died.

7. September 1, 1888, entry 10, Loewenstein and wife conveyed to Dart trustees for J. B. Watkins. November 22, 1890 Loewenstein and wife conveyed the fee simple of this land to Watkins, entry 12. There is nothing to indicate that the title held in trust by Dart was ever re-conveyed to Watkins, or that the trust was ever released. If Watkins were yet the beneficiary at the date of the fee simple deed, good title probably vested, automatically releasing the trust, but if the trust or the notes for which it was given were assigned before the maturity then the trust by reason of the fee simple conveyance to Watkins was not thus discharged. However, as the matter is now several years old it may be disregarded.

8. Entry 13 discloses conveyance from Watkins to W. E. Wilkin under date of August 25, 1893. August 1, 1893 (entry 14), Wilkin and wife conveyed this land by trust deed. June 26, 1899, Wilkin and wife conveyed this land to the beneficiaries under the last mentioned trust (entry 15), reciting as one consideration the cancellation of the outstanding trust.

9. Pages 28 to 35 inclusive, disclose certain proceedings in reference to the will of Arant de Peyster Chance deceased, who was one of the beneficiaries in the last mentioned trust. These court proceedings are not as satisfactory as would be preferred if there were a larger amount involved, but for this case will be accepted.

10. Entry 19 discloses a conveyance by special warranty by the Chance heirs to J. H. Gray on June 19, 1908, retaining a vendor's lien for unpaid purchase money. The party recited in this deed as the payee subsequently released, pages 37-42. There is a mention in the abstract in this connection of a trust by Gray to Wood which is not of record. However, you are of opinion that the release is sufficient. The release by Harding to Gray disclosed on page 41, entry 20, is just a little bit unsatisfactory, but will be disregarded for the purposes of this transaction. Entry 22, page 44, discloses a conveyance of one-third interest by Gray in this land to Brinck. The abstract discloses certain executions against Brinck, but you are of opinion that they may be disregarded because the interest in this land was acquired by him more than ten years subsequent to the last execution. (Article 3717 of the Tex. Statutes). We concur with you. Brinck conveyed to Ballard Coldwell, entry 25.

11. It appears from entry 26, that J. H. Gray had a wife Olga and that the property under consideration was community property, entry 26, disclosed that the wife died leaving her interest in the community property to her husband. The will was probated and certain suits entered against the husband which terminated without leaving any adverse interest against the land now being acquired by the United States, entry 28, et seq.

12. J. H. Gray conveyed his two-thirds interest in this land to J. F. Knox, entry 29, and Coldwell and wife conveyed to the same party, page 66. In his conveyance Gray retained a vendor's lien to secure purchase money evidenced by note which matured September 22, 1915. As you point out the abstract discloses no release of this lien but you are of opinion

that it is barred under Article 5694 of the Texas Statutes, the four year period having expired. You suggest however, that since J. H. Gray is yet living, that it will be wise to secure a release and with this view we concur.

13. Pages 70 and 71 disclose a suit for the purpose of quieting title to this land and determining certain boundary questions brought by Thomas F. Harwood, et al vs. J. W. Lowry et al.. You point out that as stated by the abstract the papers in this cause have been lost and that there is nothing to show certainly who all the defendants were. The record discloses that the suit was dismissed for lack of prosecution; but since the Government vendor has been in quiet, open, adverse and notorious possession of the land now sought since September 22, 1914, this suit will be disregarded. (Article 5679 of Tex. Statutes and note and citations and Articles 5674 and 5679 and notes page 3775). It is noted that not until April 12, 1920 did Knox acquire the other one-third interest in this land from Coldwell. Your observation upon the question of possible boundary conflicts and adverse possession based upon notes on Article 5674, page 3778 of the Statutes are noted and are satisfactory, particularly in view of the fact that Mr. Knox makes affidavit of his adverse holding for a period of five years.

14. Pages 72-78 of the abstract disclose transactions in reference to the El Paso Water Users Association which are not adverse to the United States and will be disregarded.

15. It is also noted that the quit claim-deed disclosed on page 79 from the El Paso County Commissioner to the United States was obtained to perfect titles where deeds running from Mexican grants to the original settlers are defective, lost or have never been recorded. We concur with you that in this case it is not necessary to rely upon this deed.

16. It appears from page 82 of the abstract that in 1692 a grant apparently issued and has been recently filed for record by Elisabeth Hendrix, which possibly might be adverse to the title now offered to the United States were it not for the exceeding great length of time between its issuing and its recordation. It will therefore be disregarded.

17. It appears that taxes for 1920 were payable Oct. 1, and must be paid before this transaction is closed. It also appears that there were no assessments for taxes against this land for the years 1889 to 1906. Under the ruling of the Secretary dated April 25, 1910, this matter may be disregarded since it will be impossible after the land is acquired by the United States for assessment to be made so as to make it a lien against the land.

18. Therefore, we concur with you that as above suggested the title to the land now offered to the United States is a reasonably satisfactory title and except for the taxes, is unencumbered. Deed therefor in the form proposed may be executed and recorded and the abstract brought down to include that recordation. Thereupon should no further change in the condition of the title be disclosed, the transaction may be closed in the usual way. The disbursing officer will file with his voucher the papers required by the Reclamation Manual.

Enclosures:

O'Hamele
sgd.
Abstract of title No. 19798 by Pioneer Abstract
and Guarantee Title Company.
Original of District Counsel's opinion of Oct. 29, 1920,
Extra copy of this opinion,
Possessory certificate,
Affidavit,
Original contract dated August 2, 1920,
Blue print,
Form of proposed deed.

CC- C.E.
P.M., El Paso, Tex.

AFFIDAVIT

STATE OF TEXAS)
COUNTY OF EL PASO)

Before me, the undersigned authority, this day personally came and appeared J. F. Knox, to me well known, and who, after being by me duly sworn, did depose and say:

That he is over twenty-one years of age; that his postoffice address is El Paso, Texas; that he is the same party who executed a contract with the United States of America dated August 2, 1920, agreeing to convey to the United States a certain right of way containing 2.22 acres of land, more or less, in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Section 25, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 26, Township 31 South, Range 6 East, U. S. Reclamation Service survey, El Paso County, Texas, and in said contract more fully described, and, except as to Ballard Coldwell, who formerly held a one-third interest in said described land, he, affiant, prior to and including the date of said contract with the United States, for a period of five years, held actual, peaceable, adverse, continuous, exclusive, and hostile possession of the tract of land of which the said described right of way agreed to be conveyed to the United States is a part, claiming under title, ~~cultivating~~, using, and enjoying the said entire tract, and paying all taxes thereon each and every year during said period of possession, and having the said entire tract of land during all of said period of time under fence and thereby segregated from all adjoining lands.

(Seal) (sgd.) J. F. Knox
Subscribed and sworn to before me this 15 day of Sept, A.D. 1920.

My com. Exp. June 1st 1921 (sgd.) W. W. Carl
Notary Public in and for El Paso County Texas.

STATE OF TEXAS)
COUNTY OF EL PASO)

Before me, the undersigned authority, this day personally came and appeared A. Schildknecht, to me well known, and who, after being by me first duly sworn, did depose and say:

That he is over twenty-one years of age; that his postoffice address is El Paso, Texas; and that for a long period of time, to-wit five years, he has resided in the neighborhood of a certain tract of land containing 13 acres more or less described in the foregoing affidavit, held by J. F. Knox, and has during all of said period of time been familiar with the possession and use of the said land by the said J. F. Knox, and that he, affiant, has read the foregoing affidavit and that the matters and things therein stated are true to his knowledge.

(Seal) (sgd.) A. Schildknecht
Subscribed to and sworn before me this 22nd day of Oct, A.D. 1920.
My com. exp. June 1st, 1921. (sgd.) Benahel Flores
Notary Public in and for El Paso County Texas.

El Paso, Texas, OCT 29 1920

From District Counsel

To Chief Counsel, Washington, D. C.

Subject: Opinion on Title to 2.22 Acres of land to be acquired under contract dated August 2, 1920, with J. F. Knox et ux. (El Paso Valley Mesa Drain) - Rio Grande project.

1. This title is founded upon corporation deed dated January 7, 1888, running from the town of Isleta to Teodor Olguin. This land was originally comprised in a Mexican grant and a number of titles running therefrom have been examined in this office and found good and it is not deemed necessary to look behind the corporation deed. The tract of land granted by this deed is shown on the plat in the abstract at page 3 and the courses and distances given in the written description of the deed corresponding substantially to this plat and with the land as at present held by the proposed Government vendor as shown by key map on the blueprint describing the drain right of way. It appears from the corporation deed that the grantee named therein was the son and heir of Felipe Olguin, the latter party evidently being the one who made the necessary settlement and improvements to perfect a claim to the land under the Mexican laws vesting power in the officials of the grant to convey title.

2. Under date of March 5, 1888, the corporation grantee, together with his wife and with Jesus Rodela and wife, conveyed the same land to Milton Gonzales. The interest held by the Rodelas does not appear from the record. In this conveyance the corporation grantee's given name is signed Teodoro and is acknowledged as Teodoro in both instances different from the spelling in the corporation deed. On account of the age of the deed no further inquiry need be made as to these matters. On the same date Milton Gonzales et ux. conveyed to Moritz Lowenstein. The variation in spelling of the given name of the grantor may be disregarded for the same reasons above stated with reference to the Olguin conveyances. The tract is, in the Lowenstein deed, stated to contain 13 acres more or less.

3. The abstract of judgment dated Feb. 6, 1889, found at page 10, may be disregarded for the reason that no sale ever took place under the execution, in the State of Texas a judgment becoming dormant after a lapse of ten years between the issuance of executions. No execution was obtained since the one issued March 20, 1889, (Art. 3717 Tex. Civ. Stats., 1914).

4. Moritz Lowenstein et ux. executed a deed of trust dated September 1, 1888, running to J. B. Watkins, trustee for James Platt, beneficiary, to secure the payment of a bond for \$1,000. Subsequently the beneficiary died and his wife Ann, his daughter Adelaide Lowe, and William Birchall and Henry Hampson were appointed his executors. The latter named party does not, by the abstract,

appear in the body of the will, but he was by the court so appointed. The bond had been lost and recitals to this effect appear in the release dated May 21, 1894, signed by these four parties. (pp. 13-14)

5. Lowenstein granted the same property to M. J. Dart, trustee for J. B. Watkins, beneficiary, under date of September 1, 1888, subject to the Platt trustee deed above referred to. Sale was had under the Dart trust deed and the property was acquired by the said J. B. Watkins under date of June 24, 1891. Lowenstein, joined by his wife, also conveyed to Watkins by warranty deed dated Nov. 21, 1890, and thus while Watkins as trustee for Platt never reconveyed the legal title to Lowenstein, we find both legal and beneficial interest vested in Watkins (pp. 18-21).

6. Watkins conveyed to W. A. Wilkin by warranty deed dated August 25, 1893, and Wilkin and his wife had by deed of trust dated August 1, 1893, conveyed to Watkins as trustee for A. de P. Chance and Maria Chance, beneficiaries, under date of June 26, 1899. The same grantors conveyed by quitclaim deed to the said A. de P. Chance, the consideration for this conveyance being the cancellation of the indebtedness intended to be secured by the deed of trust. A. de P. Chance, otherwise designated as Arent de Peyster Chance, died and his will was duly proved in the Divorce and Admiralty Division of the English High Court of Justice and a certified copy thereof established and probated in the county court of Brazoria County, Texas (pp. 28-35). By the will all real estate not otherwise disposed of (which undoubtedly included holdings in America) was bequeathed in trust to Arent de Peyster Chance, Alexander Maccomb Chance, and Reginald Tuffley Harding, the property to be converted into money and the proceeds to be disposed of by the trustees according to certain named provisions of the devise. Maria Chance, wife of the testator, was also appointed an executrix (p. 30). These parties conveyed 81 acres, including the 13-acre tract, to J. H. Gray by special warranty deed dated June 19, 1908, and vendor's lien was retained to secure three notes payable to the order of Reginald Tuffley Harding, who subsequently released the vendor's lien without being joined in this release by the other trustees named in the will (pp. 37-42). The notes were payable to the order of the releasor, and it appears from the recitals in the release that the payee was the legal as well as the beneficial holder. A. G. Wood, trustee, also signed this release, the recitals therein being to the effect that Gray executed a deed of trust to Wood which was not recorded. I think that the release is a sufficient showing that the notes have been paid, and, while the recitals in the release to the effect that the payee is the legal as well as the beneficial owner comes only from Harding and not from the other trustees named in the will, we may accept the record and leave the privies to the Chance estate to look to the trustee personally and not to the land for the proper application of the funds that came into his hands.

7. Gray conveyed an undivided one-third interest in the 81-acre tract to P. F. Brinck under date of August 15, 1908 (p. 44). Suit had been brought against P. F. Brinck and execution obtained in favor of Benjamin Adler et al., the execution being issued April 27, 1886. The abstract makes a note to the effect that no other execution is found (pp. 45-46). As this real estate was acquired by Brinck more than ten years subsequent to the last execution it is not affected by the judgment. (Art. 3717.) Brinck conveyed to Ballard

Coldwell his undivided one-third interest to a portion of the 81-acre tract that included the 13 acres originally patented to Teodoro Olguin (p.47).

8. Mrs. Olga Gray, wife of the said J. H. Gray, who was P. F. Brinck's grantor as hereinbefore noted, departed this life December 21, 1913, and devised to her said husband certain community property including her interest in the two-thirds interest that J. H. Gray had never parted with, and the testatrix appointed her husband as executor (p. 48). A suit was brought against Gray wherein it was alleged that he had handled some or all of the real estate and other property of the testator in a manner prejudicial to the plaintiffs' rights, and the result of the suit was an account approved by the Court, the approval taking the form of a judgment and the finding as to the land in which the United States is now interested being "that the testatrix devised her community half interest. . . to her husband" (p.60). The account goes generally to transactions concerning other lands and no charge is fixed against the Government right of way by reason of these proceedings (pp. 62-61).

9. J. H. Gray conveyed his two-thirds interest to J. F. Knox, the proposed Government grantor, and Ballard Coldwell et ux. conveyed the remaining one-third interest to Knox (pp. 62-66). The Gray conveyance retained vendor's lien to secure one note due one year after date of the conveyance, which sets the date of maturity as September 22, 1915. No release of this vendor's lien appears in the abstract, but the Texas statute bars action under vendor's lien if suit is not brought within four years from maturity of the indebtedness (Art. 5694 Tex. Civ. Stats. 1914). J. H. Gray is still living, and it would probably be wise to secure release.

10. At pages 70 and 71 appears abstract of a suit brought to quiet title, and a statement of boundary conflicts. The statement as to boundary conflicts concerns the 13-acre tract, but the suit to quiet title is doubtful upon this point. The suit was instituted September 9, 1888, and after numerous continuances was dismissed by an order of the court dated November 16, 1914. As stated in the abstract, the papers in this case are not in the Clerk's office, and a personal investigation of the records leaves us with no better success in ascertaining the names of the defendants than the abstracters appear to have had. We learn that the order of dismissal recites that the cause was dismissed for lack of prosecution. The Government vendor acquired title to the two-thirds interest in the property by deed dated September 22, 1914, and immediately went into possession of the land and has ever since held exclusive and peaceable possession, which possession has run for a term of more than five years. If we are to regard the abstract of this trespass to try title and the note as to a possible conflict of boundary lines as knowledge of a possible adverse claim, title will be perfected by this possession. In this State possession is a good defense against trespass to try title, either where the defendant has not sold the property before the beginning of the suit, or whether or not he sold it after the suit was brought. (Note under Art. 5679 citing Texas and N.O.R. Co. v. Texas Tram and Lumber Co. 50 C.A. 182, 110 S.W. 140.) Under five years possession numerous cases have established that in trespass to try title, the five year statute is sufficient to support a judgment for defendant.

(Arts. 5674 and 5679 and Notes p. 3775.) However, Mr. Knox did not acquire the remaining one-third interest by deed running from Ballard Coldwell until April 12, 1920. As to this feature of the title, while the possession under deed conveying an undivided interest does not run adversely to other cotenants, a conveyance by one of several cotenants will support a limitation against parties not cotenants or holding as privies thereunder, ~~and~~ (see Notes under Art. 5674 p. 3775 citing Myers v. Carl 27 S.W. 1920, 7 C.A. 423 and Noble v. Hill 27 S.W. 758, 8 C.A. 171.) In fact, as Mr. Knox is claiming under a regular "chain of title", it is probable that three years possession would be a good defense to a possible suit (Art. 5672) to support the matter of possession. Mr. Knox has executed an affidavit which has been corroborated by a second party who is familiar with his holding, and the affidavit was originally drawn to cover the matter of cultivation and fencing, although we note that these features have been struck out by the affiant. The affidavit states a period of five years as it was desired to make such period as long as possible and under the five year statute (Art 5674) the wording is "adverse possession thereof, cultivating, using, or enjoying", the land. Mr. Knox states that some cultivation of the land was accomplished although he would not be certain that there was an endeavor to raise a crop on the entire 13 acres. From this fact and from the wording of the statute, we believe that the word "cultivating" was eliminated by affiant merely through an over-nice view of the facts, and that it might properly have been left in the affidavit. As to the matter of fencing, it appears from Mr. Knox' statements made to me that the land has been actually under fence running around at least three sides of the tract, and that where a fence did not exist there was a canal bank dividing the holding, whereon it was, for physical reasons, impossible or inconvenient to maintain a fence, and that on the other side of the canal a fence had been erected and maintained by a adjoining owner and that the adjoining owner had never asserted any claims to land overlapping the line established by the fence erected. Further in regard to the matter of fencing, the statute as to three years possession (Art. 5672) is silent on this question, and as stated above, while the affidavit states a five years possession, the statutory rights are fulfilled without any mention of the fence.

11. Pages 72 - 79 relate to matters between United States and El Paso Water Users' Association and the regulations in regard to issuance of final water rights certificates, none of which matters will prejudice title to lands acquired for the Reclamation Service canals. The quitclaim deed abstracted at page 79 running from the El Paso County Commissioners to the United States was obtained to perfect titles where deeds running from Mexican grants to the original settlers were defective, lost, or never recorded. In this case we do not have to rely upon this deed. The statement at page 82 relates to a grant dated 1892 that had been filed by Elizabeth Hendrix. This matter is generally regarded as one that will never seriously effect the existing titles in this community which are of long standing and founded upon other and better established grants. Tax statement is found at page 83, which shows that all taxes have been paid up to and including the year 1919. Taxes for the year 1920 are now assessed and will be payable on October 1. These will have to be paid before the United States can accept title. The tax statement shows that no assessments are made for the years 1889 to 1906. As to these years, the Secretary of the Interior has held in decision dated April 25, 1910 (D-11479), that upon the acquisition of property by the United States the taxing power of the State is arrested and that where assessments are not perfected prior to such acquisition of title, the United States,

which is a party exempt from State taxation, takes title clear of any lien that might otherwise attach by reason of unpaid taxes.

12. It is my opinion that good title, unincumbered, will vest in the United States upon execution of a warranty deed in proper form by J. F. Knox and the form of deed proposed is enclosed herewith. Mr. Knox is engaged in the real estate business in the City of El Paso and the land is not homestead property, and therefore it will not be necessary that his wife join in the deed.

13. If you concur in this opinion, kindly so advise, and steps necessary to close the transaction will be taken.

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P. F. DENT

incls.

Abstract of title.

Orig. agreement to sell.

Proposed form war. deed, with
1 blueprint.

Possessory certificate.

Vendor's affidavit as to possession.

Extra copy above opinion.

Copy to C.D.

El Paso, Texas,
Sept. 14, 1920.

301 Mr. J. P. Knox,
Caples Building,
El Paso, Texas.

Dear Sir:

We have just received abstract of title to the tract of land, a portion of which you have agreed to convey to the United States for right of way for the Mesa Drain. The abstract contains a reference to an old suit to try title which was brought some years ago by Thomas F. Harwood, and also a statement that there is a conflict of boundary between your land and Duggan Survey No. 12. The suit was dismissed for want of prosecution, and as the papers in the suit have been taken out of the office of the Clerk of the District Court, we are unable to inform ourselves who the defendants were, or if the suit concerns your land at all. However, the abstractors note as to boundary conflicts is made in connection with this suit and in view of these facts, we think it best to obtain an affidavit as to your possession of the land. This affidavit is enclosed herewith and we request that you execute it and have some party who is familiar with your holding, to corroborate same. Upon the return of the affidavits in due form, we will render an opinion to our Department in Washington, which we trust will receive favorable action. Upon a proper showing as to your exclusive possession we believe the title will be found to be good.

When Mr. Gray granted you the two-thirds interest, a vendor's lien was retained which has never been released of record. If a release is in existence it would be a good plan to have it recorded. However, the limitation, which is four years, has run against any action which could be taken upon the vendor's lien.

The taxes for 1920 will be payable October 1, and as the assessment is now effective the taxes will have to be paid before the Government will accept the deed. We mention this matter in advance, in order that it may have attention.

Trusting you will find no trouble in executing
affidavits as to possession, we are

Very truly yours,

P W DEET

District Counsel.

El Paso, Texas, August 30, 1920.

Pioneer Abstract and Guarantee Title Company,

El Paso, Texas.

Gentlemen:

Please supply an abstract for 2.22 acres of land held by J. F. Knox in NW $\frac{1}{4}$ of NW $\frac{1}{4}$ sec. 25 and NE $\frac{1}{4}$ of NE $\frac{1}{4}$ sec. 26, T. 31 S., R. 6 E., in Ysleta town grant. Include tax certificate and such plats as may be necessary for discussion of the title. Blueprint is attached showing this land and description of the land is also contained in a contract to sell, dated August 2, 1920, made with J. F. Knox, which is to-day being sent for record.

We contemplate an examination of title in this office and completion of the purchase without title certificate.

Very truly yours,

P W DENT

District Counsel.

incl.

El Paso, Texas, August 30, 1920.

County Clerk for El Paso County,

El Paso, Texas.

Dear Sir:

Transmitted herewith for official record is contract dated August 2, 1920, between J. F. Knox and the United States.

Very truly yours,

W. W. DEET

District Counsel.

incl.

Mass drain.

POSSESSORY CERTIFICATE.

Rio Grande Project,
El Paso, Texas, August 2, 1920.

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. F. Knox, in the Northwest quarter of the Northwest quarter (NW $\frac{1}{4}$ NW $\frac{1}{4}$) Section 25, and the Northeast quarter of the Northeast quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) Section 26 Township 31 South, Range 16 East, U. S. Reclamation Service survey being also in the Ysleta Town Grant, County of El Paso, State of Texas, for the Rio Grande project, and that the said proposed Vendor was in actual, sole, and exclusive 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.

THIS IS TO CERTIFY With reference to land purchase under contract with J. P. Knox et ux. dated August 2, 1920, that upon examination of abstract of title brought down to date, including warranty deed running from the said J. P. Knox to the United States, dated November 17, 1920, I find no new entries in the abstract adverse to the title acquired by the United States; that personal examination of the county tax records has been made, which shows that the taxes for the year 1920 have been paid; and that good title, unincumbered, now vests in the United States.

El Paso, Texas,
November 29, 1920.

P W DENT

District Counsel.

The papers accompanying
this certificate are as
follows:

- Orig. contract.
- Abstract of title and supplement.
- Possessory certificate and 1 copy.
- Warranty deed and 1 copy, 2 blue-prints.
- Affidavit and 1 copy.
- Ex. copy above certificate.

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- Affidavit and 1 copy.
- Ex. copy above certificate.

APPRAISAL REPORT.

We the undersigned, members of the board designated to fix the amount of payment to be made to J. F. Knox for land agreed to be conveyed to the United States as right of way for El Paso Valley Mesa Drain, Rio Grande project, as shown in contract with said party dated August 2, 1920, find that the fair and reasonable payment to be made in this case is \$501.00.

El Paso, Texas,
August 2, 1920.

(sgd.) Roland Harwell
Representative El Paso County
Water Improvement District No. 1.

(sgd.) Geo. W. Hoodley
Representative U. S. Reclamation
Service.

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El Paso, Texas,
August 2, 1920.

(sgd.) Roland Harwell
Representative El Paso County
Water Improvement District No. 1.

(sgd.) Geo W. Hoodley
Representative U. S. Reclamation
Service.

CERTIFICATE.

I HEREBY CERTIFY That the land described in the agreement dated August 2, 1920, with J. F. Knox, is required for purposes authorized by the Act of June 17, 1902 (32 Stat., 388), namely, as right of way for the Mesa Drain, a part of the Rio Grande Project; that the consideration to be paid thereunder \$501.00, is reasonable and the lowest that could be obtained; and I recommend that the contract be approved.

El Paso, Texas.

August 2, 1920.

Project Manager.