

THIS INDENTURE, made this 13th day of May, 1949 by and between PAUL MOSS and TOMMYE MOSS, his wife, of the County of Ector, State of Texas, first parties, and EL PASO & SOUTHWESTERN RAILROAD COMPANY, a corporation of the State of Arizona, second party;

WITNESSETH:

1. That first parties, for and in consideration of the performance by second party of the covenants hereinafter set forth, do, by these presents, give, grant, and convey unto said second party, its successors and assigns, a right of way easement, with warranty covenants, for that certain six inch water pipe line and appurtenances, now constructed through, over and upon those certain tracts and parcels of land of the first parties, situate, lying and being in the County of Otero, State of New Mexico, described as follows:

A strip of land twenty (20) feet wide, extending ten (10) feet to the right, and ten (10) feet to the left of a located center line, described and identified as follows:

BEGINNING at the northeast corner of Section 21, Township 19 South, Range 12 East, New Mexico Principal Meridian, thence North 89°51'02" West 2153.5 feet along the north line of said Section 21 to the point of beginning of the property to be described, said point of beginning being engineering station 21407.3 on pipe line as constructed; thence South 35°40' West a distance of 1064.65 feet to engineering station 10442.65; thence South 13°16' West a distance of 689.45 feet to engineering station 3453.3; thence on a curve to the right, the radius of which is 226.024 feet a distance of 336.2 feet to engineering station 0417.0 to connection with the now existing pipe line located on the right of way for the open ditch as described in certain deed now recorded in Book 32 of Deeds, page 607, Otero County Records. All the above pipe line right of way being located in the NE- $\frac{1}{4}$ of the NW- $\frac{1}{4}$ and the NW- $\frac{1}{4}$ of the NE- $\frac{1}{4}$ of said Section 21.

Also granting unto second party, its successors or assigns, the right to enter upon the above described land and to lay down, construct, reconstruct, maintain and operate such water pipe line and appurtenances or replacements or substitutes therefor; to increase the size, capacity or number of pipe lines thereon; and to abandon the same should second party, its successors or assigns, determine so to do

2. The right of way easement herein granted shall cease and determine upon abandonment or non-use of the pipe lines now constructed or which may hereafter be constructed, for a period of one year, as a conduit for water, but such period of non-use shall not be deemed applicable to the period or periods of time when no water is available, from natural or other causes; and second party may at any time within six months after such abandonment enter upon the described premises and remove the pipe line or lines and appurtenances therefrom.

3. In consideration of the grant of said pipe line right of way, said second party, or its assigns, by the acceptance of this deed, hereby covenants that it, its lessee or assigns, will, subject to the conditions hereinafter set forth, furnish to first parties from an outlet plug now inserted or that may hereafter be inserted in said pipe line as now constructed or that may hereafter be constructed upon the described right of way, such quantity of water as will water the livestock of said parties, not to exceed one hundred (100) head in the aggregate at any time; it being understood that the quantity of water to which first parties are entitled to hereunder shall be limited to the amount actually used in watering said one hundred (100) head, if such number be watered; and if fewer than one hundred (100) head are watered, any unused water less than the maximum for watering one hundred (100) head shall not be cumulative but shall be limited to the quantity actually used. First parties covenant and agree that they will exercise all due and proper care to prevent needless waste or escape of said waters while said livestock is being watered and at all other times.

4. It is further covenanted and agreed that the obligation of second party to deliver such quantity of water to first parties hereunder is contingent upon the availability of such quantity of water in said pipe line or lines; nor shall second party be obligated to supply same when its supply of water fails at source, nor when prevented from so doing by freezing, breakage of pipes or appurtenances, or from other accidental or unforeseeable causes; nor does second party warrant the quality of the water delivered and to be delivered hereunder, for livestock drinking purposes, or for human consumption.

5. This indenture shall inure to the benefit of and be binding upon the heirs, administrators, executors and successors of first parties; and upon the lessees, successors and assigns of second party.

IN WITNESS WHEREOF the parties of the first part have executed these presents the day and year first above written.

Paul Moss

Tommye A. Moss

69-1-69

THE STATE OF TEXAS)
)
COUNTY OF ECTOR)

On this the 13th day of May, 1949, before me personally appeared Paul Moss and Mary Moss, his wife, each known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that they executed the same as their free act and deed.

Alex O. Silvy ALEX. OSILVY
Notary Public in and for
Ector County, Texas

(Notarial Seal Imprint)
My Commission Expires:
June 1, 1949

The foregoing instrument was filed for record in this office on the 13 day of September 1949 at 1:00 o'clock P. M.

HELEN SHIELDS, County Clerk

By *Louis Reed* Deputy