



WATER-RIGHT DOCKET

Acadia National Park

Docket No: 10

NEWPORT POND (THE BOWL).

State Water Rights Documentation

06-22-1896: indenture; 1896

C O P Y

Vol. 302, Page 511.

Indenture.

Grantor widow.

Dated June 22, 1896#

Recorded June 26, 1896.

Eliza L. Homans,
first part

-to-

BeeHive Mountain Aqueduct
Company, second part

WITNESSETH that whereas the party of the second part may hereafter desire in the use of certain water rights in the Pond called Newport Pond, also called the Bowl at Eden in the County of Hancock and State of Maine, granted to it by the party of the first part by a certain other indenture bearing date May 24, A.D. 1894 to raise the level of said Pond by a dam or dams in order to increase the quantity and improve the quality of the water supply from said Pond the party of the first part doth hereby in consideration of one dollar and other good and valuable considerations to her paid by the party of the second part the receipt whereof is hereby acknowledged grant to the party of the second part the right to raise and maintain the level as aforesaid and to build and maintain any such dam or dams as may be necessary or convenient therefor subject to the covenants provisos and restrictions in said other indenture contained.

C O P Y

Vol. 302, Page 514.

Indenture. Dower not released (Deed
Recites grantor widow)

Dated May 24, 1894

Recorded June 26, 1896.

Eliza Lee Homans
1st. part

-to- Beehive Mountain Aqueduct Co.
2nd. part.

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WITNESSETH:- That in consideration of one dollar and divers other good and valuable considerations this day paid by the said corporation to the said Eliza Lee Homans the receipt whereof is hereby acknowledged the said Eliza Lee Homans for herself her heirs and assigns covenants grants and agrees with and to the said Beehive Mountain Aqueduct Company its successors and assigns forever that the said Beehive Mountain Aqueduct Company and its successors and assigns forever may at any and all times hereafter take water from the Pond situate on Newport Mountain in the Town of Eden and State of Maine in the close of the said Eliza Lee Homans called Newport Pond also called the Bowl and convey the same by aqueduct, pipes or any other means from the said pond across the said close to the highway being the highway known as the Schooner Head Road following the direction of the pipe as now laid to the said road; thence from the point where the pipe strikes the highway along beside the said highway in any direction in which the said Aqueduct Company shall see fit to the boundaries of the said close upon the highway; the said close comprising among other premises devised to said Eliza Lee

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Homans by Charles D. Homans as appears by his last will and testament on record in the Hancock County Probate Office whereof probate was granted March term 1887 premises deeded to the said Eliza Lee Homans by George H. Homans and premises inherited from George H. Homans.

And the said Eliza Lee Homans further grants, covenants and agrees with and to the said Aqueduct Company its successors and assigns forever that it and they shall have the sole and exclusive right to take the water from the said pond that it may erect and maintain any such head houses or other buildings upon a strip of land extending not more than ten feet upon either side of the right of way herein granted as shall be necessary or convenient to the economical drawing off of the said water; that it and they may clean out and dig any mud earth or stone from the bed of the said pond and do any other thing which it shall appear necessary or advisable to do to preserve or improve the quality or quantity of the said water; that the officers, servants and agents of the said Company its successors or assigns may enter upon the said close to view the said aqueducts, pipes or other means of conducting the water to repair or amend the same and may at such times as it or they sees fit alter in any manner the level of the said pipes aqueducts or other means of conducting water and may sink them below the level of the ground to secure a safe and regular flow of water, may at any time

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change the size, style or calibre of said aqueduct pipes or other means of conducting water; and that it and they may take, carry away sell and dispose of any mud, earth or stone which it or they may excavate from the said pond in order to pay the expense of such excavation provided however that any surplus arising from such sale after the expense of excavation and removal shall have been provided for shall be paid over to the said Eliza Lee Homans her heirs or assigns owners of the close from which the said mud, earth or stone shall have been taken and that no such mud, earth or stone shall without the consent of the owners of the close be left on said close.

And the said Eliza Lee Homans for herself her heirs executors and administrators hereby covenants and agrees with the said Beehive Mountain Aqueduct Company its successors and assigns forever that the said corporation their successors and assigns forever shall well and truly hold the premises forever free from the claims of all persons claiming the same by from or under the said Eliza Lee Homans, George H. Homans, Charles D. Homans or John Homans 2nd.

C O P Y

THIS INDENTURE MADE THIS eleventh day of July in the year of our Lord one thousand nine hundred and thirty between the Hancock County Trustees of Public Reservations a corporation duly organized under the laws of the State of Maine, and located in Bar Harbor, Hancock County, Maine, grantor, party of the first part, and the Secretary of the Interior, for and in behalf of the United States of America, grantee, party of the second part.

WITNESSETH:

THAT WHEREAS, by Act of Congress entitled, "An Act to establish the Lafayette National Park in the State of Maine", approved February 26, one thousand nine hundred and nineteen, as amended by Act of Congress approved January, one thousand nine hundred and twenty-nine, the Secretary of the Interior is authorized, in his discretion, to accept in behalf of the United States such property on Mount Desert Island, in said Hancock County, including lands, easements, buildings, and moneys, as may be donated for the extension or improvement of said Park, and

WHEREAS the said property hereinafter described, consisting of lands and easements is all held in private ownership by the Hancock County Trustees of Public Reservations, a corporation duly organized under the general law of the State of Maine, said Corporation having been confirmed and ratified by special act of the Legislature of the State of Maine, being Chapter 369 of the Private and Special Acts of the Legislature of Maine, for the year 1903, and

WHEREAS said Trustees of Public Reservations, through its members have unanimously voted to donate said property to the United States of America.

NOW THEREFORE, the said party of the first part, for and in consideration of the facts above recited, and of the sum of one dollar to it paid by the United States of America, the receipt of which is hereby acknowledged, does hereby GIVE, GRANT, BARGAIN, SELL AND CONVEY to the United States of America, all and singular, the following described land, together with the easements appurtenant thereto, situated on Mount Desert Island, Hancock County, Maine, bounded and described as follows, to wit:

* * * * *

The above conveyance is made expressly subject to the rights of the Beehive Mountain Aqueduct Company, its successors and assigns, to take water from the pond on Newport Mountain and convey the same across said property by aqueducts, pipes or other means, together with other rights in connection therewith granted said Beehive Mountain Aqueduct Company by Eliza L. Romans by deed recorded in said Registry of Deeds Book 302, Pages 511 and 514.

* * * * *

HANCOCK COUNTY TRUSTEES OF PUBLIC
RESERVATIONS

BY /s/ Luere B. Deasy
President.

STATE OF MAINE

Hancock, ss.

July 11 1930.

Personally appeared the above named Luere B. Deasy and acknowledged the above instrument to be his free act and deed and the free act and deed of the said Corporation.

Before me,

(SEAL)

/s/ Albert H. Lynam
Notary Public.

Other Supporting Information

NR *cf*
In reply refer to:
D5039 ACAD-C

OCT 16 1952

Memorandum

To: Regional Director, Region One

From: Director

Subject: Beehive Mountain Aqueduct Company, Acadia National Park

Your memorandum of September 16 indicates that you are now exploring the possibility of taking water from a drilled well at Great Head at Acadia, which, if tests prove satisfactory, will obviate having to provide a new pipe line to the Bowl for water supply at Thunder Hole, Sand Beach, and the ranger quarters on the former Satterlee property.

This proposal has the further advantage, if it proves feasible, of improving our bargaining position with the Beehive Mountain Aqueduct Company, which apparently has taken the position that it has the right to the exclusion of everyone, even the United States, owner of the fee, to take waters of the Bowl for water supply. This point was covered in Mr. Sanders' memorandum of August 29, and subsequent research by the Chief Counsel's staff affirms our opinion that it would be legally justifiable for the United States to lay and operate a separate water-supply line from the Bowl to its Park facilities.

However, even if the drilled well is developed as the source of water supply, or if a separate water-supply line is laid, the Park land would still be encumbered by the Aqueduct Company's easement. Moreover, if we were to utilize the Bowl for water supply, we would run the risk of litigation, in view of the position taken by the Company, which could conceivably fall into unfriendly hands. Also, the possibility always exists that the fact that an adequate water supply exists could induce summer cottage development in the area privately-owned near the Bowl. For these reasons, it is felt desirable to extinguish the Aqueduct Company's easement if possible. This can be done by either of the following methods:

1. By negotiating a reconveyance or release, by purchase or by donation, to the United States of the rights conveyed to the Company by the Romans deeds of May 24, 1894, and June 22, 1894. The rights would thereby be extinguished by merger of the easement and the fee. This method is considered more desirable than the second, below.
2. By negotiating the purchase by the United States of the remaining outstanding shares (believed to be 31) of the Aqueduct Company. Although the purchase of corporate stock by a Government agency has been approved in the past by the Comptroller General (see unpublished decision of the Comptroller General of December 5, 1938, A-99421), the Chief Counsel's Office is of the opinion that the facts in the Aqueduct case may not bring it within the general boundaries of cases where such stock acquisition is permissible. Past cases of stock acquisition have been those in which membership by the United States in water supply and ditch companies was necessary in order to obtain water supply for a particular Government function, that is, actual operation, rather than to accomplish merely a desirable legal objective. Further, should the stock be acquired, it would be necessary to conduct a corporate meeting for the purpose of voting a reconveyance of the easement to the United States, and, after execution of the reconveyance, to dissolve the corporation. The procedure would be unnecessarily cumbersome and expensive, and should not be employed unless the first method is out of the question.

It is, as you know, the hope and plan of this Service to acquire where possible all privately owned water rights, as well as private land, in all national parks and monuments. Water rights funds may be used for this purpose. In view of the present inoperable status of the Company's equipment, and, if the Great Head well proves satisfactory, of the Company's loss of its only water user, the value of the Company's easement and of its stock will be seriously affected.

There is a third possibility which may be later explored, if neither of the above methods of extinguishing the easement prove feasible. That is, the easement may be considered abandoned for non-use. In such case, probably action in court under State law would be necessary to quiet title.

Since Assistant Regional Director Zimmer's memorandum of September 16 points to the difficulty of the Service using the Bowl

as a source of water supply, we concur in the suggestion that a pumping test be made at the well at Great Head. If a well in this location is feasible, we believe that it will facilitate the extinguishment of the easement as suggested herein.

(SGD) Conrad L. Wirth
Director

In duplicate

Copy to: Mr. Vint
Mr. Richey
Mr. Dunn
Mr. Price

EBLewis:mrbr:rd

Chief of Lands

Aug. 14, 1952

Chief, Water Resources Branch

Memorandum of July 18 from Mr. O'Neil concerning Beehive Mountain Aqueduct Co., Acadai, and my Draft of Reply, Dated July 25

Subject memorandum reached my desk about July 24, and was discussed generally with Messrs. Sanders and Harrison, who explained nature of pondage rights in Maine, and referred me to file concerning related bequest of stock by Mrs. Satterlee. I drafted subject reply on basis of said discussions, and further investigation of correspondence, maps, and other records, with the idea that it reflected my ideas, part of those of Chief Counsel's office; and was in form for easiest editing and expansion, if necessary, by Chief Counsel.

You report that Mr. Price questions routing of incoming, and my initiative. I do not care who assumes basic credit for reply, provided such reply reflects the interest of Water Resources Branch, in eliminating all possible alien, or encumbering water rights and interests in the Park. The most significant point seems to be that past considerations of the pending acquisition of the Satterlee water interests have not been referred to me even for information purposes.

A. van V. Dunn
Chief, Water Resources Branch

AvanVDunn: sh

Docket Information

Number of Documents in Docket 10
Documents Dated from 5/24/1894 to 10/16/1952
Docket Compiled: 6/13/2016