

214651

State of Colorado)
County of San Miguel) ss

Filed for record: November 30, 1979. Time: 2:30 P.M. and du
recorded in Book 383 Page 867. Gay Capps-Recorder
by *Jatharine Gull* Deputy

ORDINANCE NO. 77-1
(Also known as Ordinance #2)

An ordinance authorizing the Town of Ophir, State of Colorado, to execute a certain agreement with Donald M. Koll and Dorothy B. Koll to provide for the purchase and repair of a Water Distribution facility.

WHEREAS, the Town of Ophir, Colorado is desirous of purchasing and improving its water distribution facilities so that to provide a better quality and a more reliable water service to the inhabitants of the Town of Ophir, Colorado; and

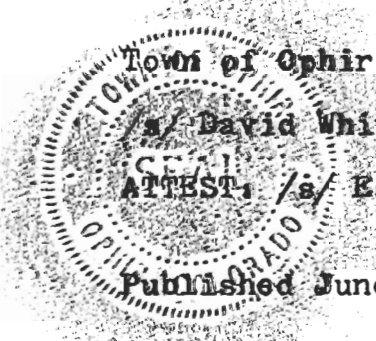
WHEREAS, the Board of Trustees of the Town of Ophir, Colorado, have negotiated an Agreement with Donald M. Koll and Dorothy B. Koll for the purchase of a water system installed by them.

NOW THEREFORE be it ordained by the Board of Trustees of the Town of Ophir, Colorado:

Section 1: The Mayor, David Whitney is hereby authorized to execute and the Town Clerk, Esther Whitney, is hereby authorized to attest to that a certain Agreement dated May 31, 1977, a copy of which is available for public inspection at the Whitney residence between the hours of 2:00 p.m. and 5:00 p.m. Monday through Friday in Ophir, Colorado. The Mayor is also authorized to execute and the Town Clerk is also authorized to attest to any documents necessary or proper to the effect of the provisions of that Agreement.

Section 2. An emergency is hereby declared and the purchase of such water system is necessary to preserve and protect the health and welfare of the residents of the Town of Ophir, Colorado. Accordingly, this Ordinance shall be effective 5 days after publication

INTRODUCED, READ, ADOPTED AND ORDERED PUBLISHED THIS 31 DAY OF MAY, 1977 by the Board of Trustees, Town of Ophir, Colorado.



Town of Ophir
/s/ David Whitney, Mayor

ATTEST: /s/ Esther Whitney, Town Clerk

Published June 30, 1977 in the Telluride Times

214652

N.C.

A G R E E M E N T

THIS AGREEMENT made and entered into this _____ day of May, 1977, between DONALD M. KOLL and DOROTHY B. KOLL, Husband and Wife, of 1901 Dove Street, Newport Beach, California 92660, hereinafter collectively referred to as "Owner", and THE BOARD OF TRUSTEES OF THE TOWN OF OPHIR, a body politic, of the Town of Ophir located in the County of San Miguel and State of Colorado, hereinafter referred to as "Town", WITNESSETH:

WHEREAS, Owner has recently installed a water distribution system to serve a portion of the property located in the Town; and

WHEREAS, Town has a water distribution system which has historically been used for the distribution of water to inhabitants of the Town, but such system is old, dilapidated, substandard and inadequate for the purposes of providing adequate water for domestic and fire protection; and

WHEREAS, Town has connected the system installed by Owner to the main line of Town which said main line provides water to Town and Town is satisfied that the distribution system installed by Owner has held adequate pressure for more than six months;

WHEREAS, Owner has filed Case No. W-2917 in the Water Division No. 4 of the District Court in and for the State of Colorado which is located in Montrose, Colorado, seeking a decree of water on Waterfall Creek for domestic purposes as therein more specifically set forth;

WHEREAS, Owner desires to convey to Town .25 c.f.s. plus an option on another .25 c.f.s. of his rights in the above described filing in Water Division No. 4 if that much or more water is adjudicated in his name without making any warranties whatsoever concerning said filing or the possible or probable result of the Water Court converting other water owned by Donald M. Koll, if any, to domestic use from its current adjudicated use;

WHEREAS, Town desires to purchase and Owner desires to convey the water distribution system installed by him within the Town of Ophir, Colorado, and a portion of his water rights, as hereinafter set forth, if any be adjudicated in his name, on the terms and conditions hereinafter set forth, but not otherwise.

NOW, THEREFORE, in consideration of the mutual promises, conditions and covenants and in further consideration of the mutual benefits to flow

between the parties Town and Owner agree as follows:

1. Owner agrees to convey to Town the water distribution system constructed by Owner in the Town of Ophir, Colorado by special Warranty Deed.
 2. Owner agrees to convey to Town one-quarter (1/4) of a cubic foot per second of water providing such water is adjudicated from Case No. W-2917 in Water Division No. 4 of the District Court and further providing that Owner is permitted to change the use of water which he may now own either in that case or another which he may file and which may have been adjudicated prior to this date which said change in use shall be to domestic use. Owner also gives to Town an option to obtain an additional $\frac{1}{4}$ feet c.f.s. of water from Owner within ten (10) years if Town grows to a population whereby applying sound engineering principles additional water is required.
 3. Owner agrees to convey any easements and rights of way which he has previously obtained for the water distribution system.
 4. Owner does not make any representations as to the quality of materials or workmanship concerning the installation, construction or any other aspect of the water distribution system being conveyed.
 5. Owner agrees to immediately release to Town the amount of Two Thousand Three Hundred Sixty-four and 13/100 Dollars (\$2,364.13) which said amount is reimbursement to Town for recent work on the main water line.
 6. Town agrees to purchase the water distribution system hereinabove referred to for the amount of Sixty-five Thousand Dollars (\$65,000.00) which said amount shall be paid to Owner with interest on the unpaid balance at five percent (5%) per annum in installments as follows:
 - a. Sixty percent (60%) of all tap fees which said amount shall be paid to Owner within forty-five (45) days of receipt by Town.
 - b. In addition, Town agrees to pay Owner the difference between the amount paid by Town to Owner as the percentage of the tap fees payable in accordance with Subparagraph a. above and an amount that would be necessary to pay the interest and reduce the principal by One Thousand Dollars (\$1000.00) during each year. Such minimum payment shall not be due until three (3) years after the execution of this Agreement, but shall be due each year thereafter on June 1 of each calendar year which said June 1 payment shall be for the preceding calendar year. And Town shall pay any remaining unpaid balance of such Promissory Note by June 1, 1987 plus interest payable.
- All monies received by Owner shall be credited first to interest

and then to principal. Town agrees to pass and adopt appropriate regulations and ordinances to provide for the collection of a minimum water tap fee of at least Five Hundred Dollars (\$500.00) and minimum monthly water rents of not less than Eleven Dollars (~~\$11.00~~ ^{\$5.00 c/m. RDU}) per month per tap for all persons or entities who hereinafter tap onto the Town of Ophir water system as well as appropriate water rents. The monthly water fee shall also be payable by current water users. Town agrees to provide that the payment of such sums as set forth in this Paragraph 6 shall be secured by a provision in the ordinance which makes the payment of such sums a lien upon the land of the user. Tap fees shall be paid in full in advance to Town.

7. The Promissory Note, Real Estate Mortgage and an appropriate ordinance shall provide that the revenues from the water system, to include but not limited to the tap fees, etc. . . ., shall be pledged to Owner to extinguish the interest and the principal of the indebtedness hereinabove referred to until the indebtedness and the interest thereon shall be paid in full.

8. Owner understands that Town has initiated Civil Action No. 2497 in the District Court in and for the County of San Miguel and State of Colorado which said quiet title suit is captioned Town of Ophir v. Edward Paulson, et al., and which said quiet title suit pertains to hundreds of lots owned by the Town of Ophir and claimed by the Defendants in the quiet title suit. Upon the successful completion of that quiet title suit Town agrees to sell Lots 16 through 22 in Block S and Lots 13 through 15 in Block P Town of Ophir, County of San Miguel, State of Colorado and the proceeds of such sale shall be paid to Owner to reduce last payments due on such note thereby reducing the encumbrance on the water system hereinabove set forth. Owner is specifically relying upon the sale of such land by making improvements or agreeing to make improvements upon the main water line connecting onto the distribution system within Town which said improvements will cost approximately Twenty Thousand Dollars (\$20,000.00) and are included within the Sixty-five Thousand Dollar (\$65,000.00) purchase price hereinabove set forth.

9. Town agrees to diligently pursue the quiet title suit hereinabove referred to and Town further agrees in the event of a settlement of such suit to include the lots referred to in Paragraph #8 hereinabove as lots to be received by Town.

10. Town also agrees to diligently pursue federal and state

financing and/or grants that may be available to assist in financing or refinancing the water system hereinabove referred to.

11. Owner agrees within thirty (30) days of the passage of an ordinance making this Agreement effective to release for sale six (6) sets of two (2) lots each for sale to contractors as an exception to Department of Housing and Urban Development, Office of Interstate Land Sales Registration regulations with the condition that the purchasers thereof commence building thereon not later than July 31, 1977.

12. Town guarantees that the improvements to the water main line will be completed in a good workmanlike manner with the Twenty Thousand Dollar (\$20,000.00) amount paid by Owner for such improvements no later than October 31, 1977, and Town agrees to maintain such system in a good workmanlike manner

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

*approved By The Board
of Trustees of the Town
of Ophir Colorado.*

OWNER:

Donald M. Koll, Husband

Dorothy B. Koll, Wife

TOWN:

THE BOARD OF TRUSTEES OF THE TOWN OF
OPHIR, a body politic

By *C. David Whitney*
Mayor

- * Donna Faulkner - in favor
- George Faulkner - in favor
- Calvin Faulkner - in favor
- Dorothy B. Koll - opposed
- Blaine Cooper - in favor
- Paul M. ... - in favor



Richard M. Whitney
Town Clerk

*approved
Richard M. Whitney*