

tract encumbrance record No. 20 and other files relating to the purchase of this property for your further action in the premises.

Respectfully,

HERBERT S. DUFFY,
Attorney General

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APPROVAL—WARRANTY DEED, CONTRACT ENCUMBRANCE RECORD, ETC. EXECUTED BY THE NORTHERN OHIO GUARANTEE TITLE COMPANY OF AKRON, OHIO—GEORGE M. McEWEN.

COLUMBUS, OHIO, March 24, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval certificate of title No. 56,997, executed by The Northern Ohio Guarantee Title Company of Akron, Ohio, a warranty deed, contract encumbrance record No. 17 and other files relating to the proposed purchase of a tract of land in Green Township, Summit County, Ohio, which you are acquiring for and in the name of the State of Ohio as a part of Nimisila Creek Basin Reservoir Project.

This tract of land, which is owned of record by one George M. McEwen, is described in the certificate of title and in the warranty deed tendered by said George M. McEwen as follows:

Being all of Lot Number Five (5) in C. C. McCue's Little Farms Allotment in the West Half of the Northwest quarter of Section 19, Green Township, as surveyed by S. G. Swigart and Son, and recorded in Plat Book 36, page 7, Summit County Records, together with all the hereditaments and appurtenances thereof, but subject to all legal highways. Excepting and reserving from the above described land a certain right of The Canton, Massillon and Akron Railroad Company extending through said property, as recorded in Volume 273, Page 613 of Summit County Records of Deeds.

Upon examination of the certificate of title above referred to, which certificate is certified by said title company as of March 2, 1937, I find that said George M. McEwen is the owner of record of the above

described tract of land and that he owns and holds the same by fee simple title free and clear of all liens and encumbrances except those hereinafter noted as exceptions to the title in and by which he owns and holds this tract of land.

In the description of Lot No. 5 in C. C. McCue's Little Farms Allotment, as the same is set out in the certificate of title and in the deed above referred to, there is excepted and reserved therefrom "a certain right of The Canton, Massillon and Akron Railroad Company extending through said property." From the certificate of title it appears that the tract of land now included in Lot No. 5 in C. C. McCue's Little Farms Allotment above described was formerly owned by Charles A. Smith as a part of a larger tract of eighty-two acres, more or less, then owned by him; and that on August 14, 1901, he, together with his wife, Matilda Smith, executed a warranty deed in and by which he granted and conveyed to The Canton, Massillon and Akron Railroad Company by apparent fee simple title a strip of land sixty feet wide extending in a northerly and southerly direction through said eighty-two-acre tract of land through the smaller tract which is now Lot No. 5 in C. C. McCue's Little Farms Allotment. By information which comes to me otherwise than from this certificate of title, I am advised that this sixty-foot strip of land which has been excepted from the tract above described is now owned and held by The East Ohio Gas Company and that arrangements are to be made whereby the state is to acquire the interest of The East Ohio Gas Company in this strip of land extending as it does now throughout the whole length of the C. C. McCue's Little Farms Allotment.

Exceptions which I have noted to the title of George M. McEwen in and to the above described tract of land are as follows:

1. On March 16, 1907, Charles A. Smith, then the owner of the above described and other lands included within what is now the C. C. McCue's Little Farms Allotment, executed an instrument in deed form in and by which he conveyed to one Charles E. Wise an easement for the erection of a telephone line, together with the necessary poles, wires and other equipment, which was to be erected along the highway on the westerly line of the grantor's premises and along the easterly side of said highway. I am not advised by the certificate of title or otherwise as to what, if anything, was done by said Charles E. Wise or by his successors in interest under this easement with respect to the construction of a telephone line or otherwise. You or your engineers and agents in charge of the construction of this project are doubtless advised of this easement and of any telephone line construction pursuant to the same.

2. On November 13, 1908, said C. A. Smith, being the owner of the eighty-two-acre tract of land above referred to, executed an instru-

ment in and by which he conveyed to The Tide Water Pipe Company, Limited, a right of way for the construction and maintenance of pipe lines and of a telegraph line over and through said lands. There is nothing in the certificate of title to indicate how the particular tract of land here in question and above described is affected by this easement or by any pipe line or telegraph line which may have been constructed pursuant to the same. With respect to this matter as with respect to that above noted, you and your designated engineers and agents in charge of this project are doubtless advised as to the situation in connection with the easement here referred to.

3. On August 16, 1928, C. Clifton McCue, who then owned the eighty or eighty-two-acre tract of land formerly owned by C. A. Smith and above referred to, executed an oil and gas lease to The East Ohio Gas Company in and by which there was granted to said company the right to the oil and gas in said eighty-acre tract of land for a term of five years and so much longer as oil or gas or their constituents might be found in and upon said premises. There is nothing in the certificate of title or in any of the other files submitted to me which indicates what, if any, developments for oil or gas have been made upon the above described tract of land which was and is included within the larger tract of land covered by this lease. And in this situation I am not advised as to whether or not this lease is now in effect.

4. On November 19, 1930, George M. McEwen, who then apparently had an interest in this and another tract of land in C. C. McCue's Little Farms Allotment, executed an instrument in and by which he granted to The East Ohio Gas Company the right to lay, maintain and operate a pipe line for the transportation of gas on, over and through lands then owned by him in said allotment. With respect to this matter, as with respect to the other matters above noted, I am not advised by the certificate of title or other files submitted to me as to what, if anything, has been done by The East Ohio Gas Company with respect to the construction and maintenance of the pipe line provided for in this easement. The same is here noted as an apparent exception to McEwen's title to this property which he afterwards acquired by deed from the executrix of the estate of C. C. McCue.

5. It appears from the certificate of title that on March 29, 1932, before this property was conveyed to George M. McEwen, The Real Estate Mortgage Company of Akron, Ohio, recovered a judgment against Augusta M. McCue who had theretofore obtained title to this property by the last will and testament of her husband, C. Clifton McCue, in the sum of \$971.88, plus interest and costs, and that execution was issued upon this judgment upon the property here in question and upon other property then owned by said Augusta M. McCue in C. C. McCue's Little

Farms Allotment. This judgment and execution is, of course, a lien upon this property.

6. Some time prior to March 28, 1934, prior to the time when the property here in question was conveyed to George M. McEwen, Brown-Graves Company obtained a judgment in the Municipal Court of Cleveland, Ohio, against Augusta McCue in and for the sum of \$368.00, together with costs in the amount of \$4.50. On March 28, 1934, execution was levied by the Sheriff of Summit County upon the above described and other lands owned by Augusta M. McCue in this allotment and this execution so levied is a lien upon this property to the extent of the amount of money still remaining due and unpaid upon the judgment. On December 31, 1934, one Louis A. Burks of Akron, Ohio, recovered a judgment against George M. McEwen in the sum of \$175.00, together with interest and costs, and on January 2, 1935, an execution was issued to the Sheriff of Summit County which was apparently returned by the Sheriff without levy. George M. McEwen did not at this time own the legal title to this property and the only interest that he had in the property was an equitable interest represented by the amount of money which he had paid upon his land contract. It is not clear from the certificate of title that any lien was obtained by this judgment creditor upon McEwen's equitable interest in this property. Moreover, it appears from the certificate of title that on August 2, 1935, a marginal entry was made on the docket of this case (Case No. 109275 Summit County Common Pleas) in the following words: "Received of the defendant the full amount of the within judgment including witness." It does not appear from the certificate of title, however, where this entry is set out, that the same was signed by the judgment creditor, the plaintiff in said action, or by his attorney. Although, as above indicated, it is not clear that this judgment or the execution issued thereon is a lien upon this property, it is suggested that this matter be investigated by your representatives at Akron before the transaction for the purchase of this property is closed.

7. It appears from the certificate of title that delinquent assessments for the improvement of the South Main Street Road, amounting to the sum of \$224.08, are a lien upon the above described tract of land. It further appears in this connection that assessments for the first half and for the second half of the year 1935, amounting in each instance to the sum of \$10.41, together with penalty in the sum of \$1.04, are delinquent and are a lien upon the property. It further appears that the assessments for the year 1936 are unpaid. It may be further stated with respect to this matter that the assessments levied against this tract of land for the improvement of South Main Street were twenty in number and amounting as to each assessment in the sum of \$10.41, the first

assessment installment being due and payable December 20, 1936. From the statement here made, it may be doubted whether any of these assessment installments have been paid and the total amount of the assessment less any installments thereof that have been paid, together with the penalties thereon, are a lien upon the property.

8. The following statement appears in the certificate of title with respect to the taxes upon this property:

“Taxes of former years amounting to \$49.20, ‘Certified Delinquent’ 1935 are a lien.

Penalties, cost of advertising and certification, and interest are to be added to the above taxes.

Taxes for the first half of 1935 amounting to \$5.04, are delinquent; penalty 50 cents.

Taxes for the last half of 1935 amounting to \$5.04, are delinquent; penalty 50 cents.

Taxes for 1936 are a lien.”

Upon examination of the warranty deed tendered to the State of Ohio by George M. McEwan, I find that said deed has been properly executed and acknowledged by said grantor and by Alice M. McEwen, his wife. I further find that the form of this deed is such that the same is legally sufficient to convey the above described property to the State of Ohio by fee simple title free and clear of the inchoate dower interest of Alice M. McEwen in this property with a covenant of warranty therein that the property is conveyed to the State of Ohio free and clear of all encumbrances whatsoever.

Contract encumbrance record No. 17, which has been submitted to me, has been properly executed as the certificate required by Section 2288-1, General Code, and the same shows a sufficient balance, otherwise unencumbered, in the appropriated account to the credit of your department to pay the purchase price of this property in the sum of \$2900.00.

It likewise appears from other files submitted that the purchase of this property has been approved by the Controlling Board and that the money necessary to pay the purchase price of this and other property acquired and to be acquired in connection with the Nimisila Creek Basin Reservoir Project has been approved by said Board.

Subject to the exceptions above noted with respect to the title of George M. McEwen in and to the above described tract of land, his title is approved. Needless to say, however, you and your representatives in charge should see that the various liens and encumbrances upon this tract of land, all of which have been noted above, should be paid off and

discharged and released of record before the purchase of this property is concluded by the issuance and delivery of the State Auditor's warrant covering the purchase price of the property. The warranty deed tendered by George M. McEwen is hereby approved as is likewise the contract encumbrance record above referred to, both of which, together with the certificate of title and other files submitted to me, are herewith returned.

Respectfully,

HERBERT S. DUFFY,

Attorney General

325.

APPROVAL—LEASE OF RESERVOIR LANDS AT INDIAN LAKE, OHIO.

COLUMBUS, OHIO, March 25, 1937.

HON. L. WOODDELL, *Conservation Commissioner, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval two reservoir land leases in triplicate, granting and demising to the lessees therein named parcels of reservoir lands at Indian Lake, Logan County, Ohio.

The leases here referred to are for a stated term of fifteen years and provide for an annual rental of six per centum upon the appraised value of the parcel of land covered by the lease. Designated with respect to the names of the lessees, the locations of the parcels covered by the leases and the valuations therein stated, these leases are:

Lessee	Location of Property	Valuation
Jennie B. Coffelt	Lot No. 38, SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 36, T. 6 S, R. 8 E., Washington Township, Logan County, Ohio.	\$666.67
Irvil C. Brentlinger	Lot No. 65, NE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Sec. 36, T. 6 S, R 8 E., Washington Township, Logan County, Ohio.	1250.00

that the same has been properly executed by you as Conservation Commissioner, acting on behalf of the State of Ohio, and by the respective