



BIG PLAINS WATER SPECIAL SERVICE DISTRICT MEETING

BOARD OF DIRECTORS, REGULAR MEETING

1777 N Meadowlark Dr, Apple Valley

Wednesday, November 08, 2023 at 6:00 PM

AGENDA

Notice is given that a meeting of the Water District of the Town of Apple Valley will be held on **Wednesday, November 08, 2023**, commencing at **6:00 PM** or shortly thereafter at **1777 N Meadowlark Dr, Apple Valley**.

Chairman | Barratt Nielson

Board Members | Frank Lindhardt | Harold Merritt | Ross Gregerson | Andy McGinnis |

Please be advised that the meeting will be held electronically and broadcast via Zoom. Persons allowed to comment during the meeting may do so via Zoom. Login to the meeting by visiting:

<https://us02web.zoom.us/j/88667363731>

if the meeting requests a password use 1234

To call into meeting, dial (253) 215 8782 and use Meeting ID 886 6736 3731

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

DECLARATION OF CONFLICTS OF INTEREST

DISCUSSION AND POSSIBLE ACTION

- [1.](#) Water Bank Setup Workshop.
- [2.](#) Consider Approval of Amending the Policy and Procedures Manual, Resolution-BPW-R-2023-13.
- [3.](#) Consider Approval of the District Employee Handbook Update, Resolution-BPW-R-2023-14.

APPROVAL OF MINUTES

- [4.](#) Minutes: September 21, 2023.
- [5.](#) Minutes: September 22, 2023.
- [6.](#) Minutes: October 11, 2023.

REQUEST FOR A CLOSED SESSION: IF NECESSARY

ADJOURNMENT

CERTIFICATE OF POSTING: I, Jenna Vizcardo, as duly appointed Recorder for the Town of Apple Valley, hereby certify that this Agenda was posted at the Apple Valley Town Hall, the Utah Public Meeting Notice website <http://pmn.utah.gov>, and the Town Website www.applevalleyut.gov.

THE PUBLIC IS INVITED TO PARTICIPATE IN ALL COMMUNITY EVENTS AND MEETINGS

In compliance with the Americans with Disabilities Act, individuals needing special accommodations (including auxiliary communicative aids and services) during this meeting should notify the Town at 435-877-1190 at least three business days in advance.



CONTRACT WATER BANK APPLICATION

Utah Board of Water Resources

(FOR OFFICE USE ONLY)

Rev.6/14/23

Item 1.

Application Number:

Date Received:

Date Complete:

Date Noticed:

Date Approved:

INTRODUCTION:

This form is for eligible entities to apply to establish a Contract Water Bank under Utah Code Title 73 Chapter 31 ("the Act").

The Act promotes the development of market tools favorable to and controlled by local water users. Under the Act, qualifying leasing arrangements can be approved as a Water Bank. Approved Water Banks are granted statutory powers designed to facilitate efficient transfers of water among interested local users. Participation in a Water Bank is voluntary. The Utah Board of Water Resources shall review all Water Bank Applications for completeness and approve complete applications. For a water right to be used within an approved Water Bank, it must be approved through a separate Change Application process overseen by the Utah Division of Water Rights. Once approved, Water Banks operate as independent entities with annual reporting requirements to the Board of Water Resources.

Pursuant to Utah Code Ann. § 73-31-106 the Board of Water Resources delegates authority to the Division of Water Resources staff to perform a completeness review of this application.

APPLICATION INSTRUCTIONS:

To apply, please:

- (1) Complete this Contract Water Bank Application form
- (2) Attach a water bank service area map, attorney's review letter, conditionally approved water bank contract, and other supporting information
- (3) Sign and date the application
- (4) Email (preferred) or mail the completed application to:

Shalaine DeBernardi, Assistant Director
Utah Division of Water Resources
PO Box 146201
Salt Lake City, UT 84114

shalainedebernardi@utah.gov
801-652-1668

CONTACT INFORMATION:

Water Bank Applicant		Federal Tax ID Number	
Big Plains Water Special Service District			
Type of Public Entity			
Special Service District			
Name of Water Bank			
Official Business Address		City	State
1777 N. Meadowlark Dr.		Apple Valley	Utah
		Zip Code	84737
Primary Contact (First & Last Name), Title/Position		Phone	Email Address
Barratt Nielson, Board Chair, BPWSSD		435-877-1190	bnielson@applevalley.ut.gov
Address		City	State
1777 N. Meadowlark Dr.		Apple Valley	Utah
		Zip Code	84737
Secondary Contact (First & Last Name), Title/Position		Phone	Email Address
		435-877-1190	
Address		City	State
1777 N. Meadowlark Dr.		Apple Valley	Utah
		Zip Code	84737
Attorney (First & Last Name), Firm (can represent any party to Contract Water Bank)		Phone	Email Address
Ben Ruesch, Ruesch & Reeve PLLC		435-635-7737	ben@rrlegal.com
Address		City	State
86 N 3400 West		Hurricane	Utah
		Zip Code	84737

PROJECT INFORMATION:

County(ies) Where Water Bank is Located: Washington County		Type of Water Bank (ground or surface water): groundwater
Proposed Annual Start Date of Contract Water Bank:	Proposed Annual End Date of Contract Water Bank:	Estimated Years of Operation:
List of Parties to Water Bank Contract: Big Plains Water Special Service District Bitterwater Enterprises LLC		Links to Minutes Where Applicant Discussed Water Bank Contract a Regular Meeting and Link to Meeting where Applicant Provided Conditional Approval of Water Bank Contract:
Narrative Description of the Contract Water Bank Service Area (map to be attached):		Anticipated Water Rights and Volume: 81-4685 30 ACFT 81-4131 24 ACFT
CONTRACT SUMMARY: A narrative description of the leasing arrangement and other key terms agreed to by the parties in the Water Bank contract. (Contract to be attached).		
A description of how the Contract Water Bank's governing body will be structured. The Contract Water Board		
A description for how water leases are to be administered.		

Terms governing how the parties are going to monitor and account for water leased through the Contract Water Bank.

Provisions addressing annual Board of Water Resources Reporting.

Criteria for Participation of Non-Public Entities (if any).

Procedures for Termination, Dissolution, or Revocation of the Contract Water Bank, including how the Contract Water Bank will return banked water rights and any money owed water right owners.

Where the public may locate information on when the Water Bank Contract will be on the Applicant's Agenda for a public hearing.

ACKNOWLEDGEMENT AND SIGNATURE:

By signing and submitting this application, you acknowledge that you:

- (1) Are authorized to apply to be a Contract Water Bank on behalf of the Applicant.
- (2) Are a qualified applicant.
- (3) Request approval of this Contract Water Bank application subject to the required completeness review.

Name of Authorized Agent

Signature of Authorized Agent

Date

APPROVED AS TO FORM AND COMPLETENESS (to be completed by an attorney for one of the parties to the Contract Water Bank)

Attorney Name

Attorney Signature

Date

Party to Water Bank Contract Represented by Attorney

TO BE COMPLETED BY THE MEMBER OF THE BOARD OF WATER RESOURCES ASSIGNED TO AREA:

I have reviewed this application and forward it to staff of the Division of Water Resources to conduct a completeness review and to prepare a contract water bank report.

Comments (if any):

Board Member Name

Board Member Signature

Date

FOR OFFICE USE ONLY

Board Meeting Date: _____

- ☐ Approved
- ☐ Denied



Statewide Water Marketing Strategy Project

Exploring the development of market tools favorable to local water users by piloting the Utah Water Banking Act. The Act promotes water leasing arrangements that are locally controlled, temporary in nature, and always voluntary.

Water Marketing Foundational Questions

Purpose

This document presents key foundational questions for the development of water marketing. Its purpose is to guide potential water marketing participants in the early stages of setting up a water bank so that lease arrangements and the water bank application and change application can proceed efficiently. Foundational considerations are presented as questions and organized sequentially with the key water marketing milestones identified.



Milestone 1 People



Before any water marketing activities can commence, interested parties must identify and assemble the right people. It is critically important that key individuals join the discussion early in the process. This initial stage of exploring water marketing can be time intensive.

1 Why are you here?

- There are several reasons to explore water marketing, including:
 - You need more water.
 - You want money for water you own.
 - You want to test the water banking concept.
 - You want to keep water rights in good standing.

2 Is there a team invested in exploring water marketing?

- Are the right people in the room to make decisions?
- Who are the right people?
 - Local water rights owners whose water may be leased
 - Local water right users who want to lease water
 - People in decisions making positions about water
 - People who are going to have input on how water is moved
- Examples of individuals to engage:
 - Regional State Engineer
 - Local Water Users Association Leadership
 - Local irrigation Company Board members/President
 - Entities interested in leasing water (NGOs; farmers; etc.)
 - Division of Water Resources personnel



3 Do you need professional assistance to establish a water market?

- Examples of outside expertise that may assist setting up a water market include:
 - Attorneys
 - Engineers
 - Water policy experts
 - Other consultants (economists; individuals with experience building local water markets)

4 Is the team invested?

- Creating a local water market or completing a water marketing transaction can take substantial time.
- Are you able to meet critical deadlines?
- Is there funding available to support external consultants and attorneys?
- Are there funding sources (grants, loans) to secure outside funding for the project?

5 What other interested parties should be engaged?

- Are there individuals or groups in the community who will want to be kept apprised or informed of your water marketing activities? Examples include:
 - Other water users
 - Potential protestants to Change Applications
 - Concerned community members

Team Exercise

- Create a long-list of potential interested parties and potential participants
- Create a list of other water users in the market area



Milestone 2 Markets



An important step in setting up a water market is to evaluate water demands available and water supplies so that potential lessors and lessees can be matched. For a water market to work well, local water resources and water rights should be well understood.

6 Is there a local demand for water? Is “there a there”?

- Are there water users in the area who want water but do not have it?
- When do they want that water?
- How much water do they want?
- What do they want the water for?

7 Are water supplies available?

- Is there available water currently available to meet that demand?
- What type of supply is available? Examples include:
 - Surface water
 - Groundwater (note: a groundwater management plan or other groundwater studies may be available to inform the availability of groundwater)
 - Storage rights
 - Non-consumptive water rights
 - Other
- Are there water users who do not want to use their water?
- Are there irrigation company water rights not able to be fully used due to development/urbanization of the ditch service area?
- Is there a municipality with surplus water it is not using?
- Are there industrial user(s) (e.g. power plants) with water they are not using?
- Is “saved-water” (i.e reduced depletions or reduced diversions) available?



8 Can available water supplies be used to meet demands?

- Are the water supplies available when water users need it?
- If not, when do shortages occur? Are all water users dry at the same time?
- How often and over what term is additional water needed?
- For irrigators, is supplemental water needed to provide full-season irrigation? Is water needed for later season irrigation?

Supply / Demand Exercise

- List five transactions that you think would work in your area.

Milestone 3 Logistics



For a water market to work, it must be physically and legally possible to move water from lessors to lessees. The conveyance system and water right regime should be well understood.

9 Conveyance: Can available water get to where it is wanted?

- Do diversion, conveyance, and distribution structures exist to move water the way you want?
 - Are interested water users connected by an irrigation company system?
 - Is there a natural stream or river that can deliver the water?
 - Is there a municipal/district system available to use as a means of leased water?
- Do canals and pipes have capacity to handle additional water?
- Can wells and surface water work together?
- Is there a storage facility in the area that can be used to store and release available water?



10 Distribution: Can leased water be distributed to end users?

- Is there an existing State Engineer distribution system in the area where you want to lease water?
 - If not, are the interested parties willing to conduct additional studies to demonstrate the water can be distributed?
- Can the transferred water be physically measured?
 - Are there proper meters and monitoring equipment to measure the water to ensure users get the water they are leasing?
- Is the reach/gain loss understood in area?
 - Will water naturally get to where it is intended?
 - What conveyances losses are expected?

11 From a water rights perspective, can you legally move the water the way you want to move water?

- What is the priority date of the potentially leased water and will that priority date yield the water desired?
- Are there intervening diversions between the source of supply and the end user?
 - Are intervening diversions senior to the leased water?

12 Are there governance or legal limitations that would prohibit movement or condition leasing of water?

- Examples of state and local limitations could include:
 - Existing water right approval conditions
 - State regulations
 - Irrigation company, municipal, or water district charter, bylaws, or regulations
- Examples of Federal restrictions could include:
 - Warren Act Federal Reservoir Storage limitations
 - Federal project restrictions (appurtenances)
 - Reclamation Reform Act requirements (agricultural v. municipal designations)

Team Exercise

- Look at a map and mark canals, stream, and pipelines that might be used to deliver water between lessors and lessees



Milestone 4 Transactions



There are many methods to transfer water; water banks are but one example. The structure of a water market should be tailored to meet the specific objectives of the local market participants.

13 Are potential lessees well known or are they undefined?

- For known lessees, potential transactions include:
 - Direct leases
 - Contract water banks
 - Exchanges (swap of supply)
- For undefined lessees, potential transactions include:
 - Auctions
 - Reverse auctions
 - Bulletin boards
 - Rental pools
 - Statutory water banks

14 How often is the water needed and over what lease duration?

- Is the lease needed during specific periods of the year?
For example:
 - Late season
 - Split season
 - Year-round
- Is the lease frequency hydrologically dependent? For example:
 - Late season leases to irrigation
 - Leases for highwater events
- What duration is the lease needed - annual or multi-year?



15 What are expected lease prices?

- What prices do users expect?
 - Are there comparable markets in the state with known pricing?

16 How will lease prices be set?

- There are several options for setting lease prices:
- Lessors determine price:
 - Fixed price
- Is there an active water lease market with known pricing already in place?
 - Receive bids from prospective lessors
 - Propose asking price then negotiate
 - Lessees determine price
 - Fixed price
 - Propose bid price then negotiate
 - Price is agreed to be agreed
 - Price setting mechanism is formulaic and non-negotiable
 - Some combination of the above

17 How will lease negotiations take place?

- Who determines what price is acceptable?
 - All lessees or lessors must agree
 - Bid/ask determined between individuals
- Who participates in negotiations?
- At what point in the approval process will lease prices be set?
- What is the annual process for adjusting lease prices?



Milestone 5 Approvals



Many water market transactions require local, state, and/or federal approval. Requirements for approval will vary depending on market structure.

18 Would moving water impair other water users or water rights?

- What other water users or water rights could potentially be impacted by the leases?
 - Surface water users
 - Groundwater users
 - Non-consumptive users
- How might moving the leasable water cause impairment? For example, if the lease would cause:
 - A reduction in yield to senior water rights holders
 - A potential expansion of use of the leased water
 - A reduction in groundwater levels that impact other well users
- Would the leases conflict with any existing water right approval conditions?
- Do impairment concerns impact the amount of water available to lease?

19 What can be done to mitigate potential impairment, actual or perceived?

- Is an agreement with potentially impaired parties possible? Such agreements could:
 - Provide limitations on quantity, timing, or duration of leases
 - Subordinate leases to other uses
 - Compensate potentially impaired parties
- What outreach to other water users should be taken to address concerns before a water market is established?



20. For approval of contract water banks, the following questions must be resolved:

- What is the service area of the bank?
 - A contract water bank can be a groundwater bank or a surface water bank, but not both.
 - A map of the service area is required for approval of the bank. Groundwater users
- Who will be the water bank applicant?
 - The bank applicant must be public entity
- Who are contracted water bank participants?
 - A mutually executed contract among the water bank applicant, borrowers, and depositors must be developed and submitted to the Board of Water Resources for approval
- How will the governing body that administers the contract water bank be organized?
 - What is the structure of the governing body's board of directors?
 - Who will serve on the board and will the board members be elected or appointed?
 - What are the voting procedures of the board?
- What will be the procedures governing water transactions in the statutory water bank?
 - How will transactions be reviewed, accepted or rejected, and managed?
 - What are the criteria for participation in the bank?
 - How will prices be determined (see Question 16)?
 - How will potential depositors and borrowers be notified whether their requests have been approved or denied?
 - What will be the deadlines for water bank participants to deposit or borrow water from the bank?
- How will the public be notified when the application is submitted and considered a public meeting of the public entity?



- What process will the water bank follow if the water bank is terminated, dissolved, or has its permission to operate revoked by the Board of Water Resources, and what will be the process to return banked water rights to depositors?
- How will depositors work with the water bank to file a joint change application to deposit water rights to the bank?

21 For approval of statutory water banks, the following questions must be resolved:

- What is the service area of the bank?
 - A statutory water bank can be a groundwater bank or a surface water bank, but not both.
 - A map of the service area is required for approval of the bank.
- Who are the possible bank participants in the service area?
- Who will be the water bank applicant?
 - The bank applicant must be a record holder of a perfected water right (one that is listed in a decree, a certificate of appropriation, or a proposed determination or court order issued in a general adjudication) or valid diligence claim that is encompassed within the proposed service area of the bank.
 - An applicant cannot be the Federal Government.
- Who will be the legal entity that administers the bank?
 - The legal entity must be “recognized under Utah law.”
 - Examples include non-profit corporations, cooperative associations, or an interlocal entity.
- How will the legal entity that administers the statutory water bank be organized?
 - How will the governing board of the legal entity be structured, who can serve on the board, and will the board members be elected or appointed?
 - If the legal entity already exists, are its existing governing documents and policies sufficient to meet the requirements for a statutory water bank?
 - Legal and regulatory analysis may be required to identify the legal entity that can best meet local needs.



- How will the legal entity that administers the statutory water bank be funded? Notes:
 - What are the costs of operating the water bank?
 - What are the procedures for funding administrative costs, including change application reviews, staff time, materials, and legal and regulatory analysis.
 - How will payments by water bank users be determined?
- What will be the procedures governing water transactions in the statutory water bank?
 - How will transactions be reviewed, accepted or rejected, and managed?
 - What information must be provided by water users seeking a transaction through the water bank?
 - How will potential depositors and borrowers be notified whether their requests have been approved or denied?
 - Will there be an appeals process for denied deposits, and if so, what will be the appeal process?
 - What conditions will the water bank place on potential deposits before the water can be used?
 - What will be the deadlines for water bank participants to deposit or borrow water from the bank?
 - What will be the deadlines and public notice provisions for review and approval of deposits and withdrawals?
- What procedures will the statutory water bank have regarding complaint resolution, termination, and state coordination?
 - What process will the water bank take to resolve potential complaints by other water users regarding administration of the water bank?
 - What process will the water bank follow if the water bank is terminated, dissolved, or has its permission to operate revoked by the Board of Water Resources, and what will be the process to return banked water rights to depositors?
- How will depositors work with the water bank to file a joint change application to deposit water rights to the bank?



22 Are federal approvals required to establish the water market?

- Is the transacted water provided by a federal project or otherwise subject to any federal authorization or restrictions?
- What is the federal agency with oversight authority?
- What is the process for seeking federal approval?

23 Are internal governance approvals to establish the water market?

- Governance approvals for contract and statutory water banks are described above.
- For other types of water market, what agreements are needed among the market participants?
- Do there need to be any new or adjustments to existing internal governance documents to set up and operate the water market?

24. What water right administration and reporting is required for the water market?

- What water right accounting information is needed to operate the water market?
- How will water transactions be reported to the State Engineer?
- Who will collect transaction records and any measurements required?

More information can be found at utahwaterbank.org.



Effective 5/12/2020

Part 3 Contract Water Banks

73-31-301 Approval of contract water bank.

- (1) The board shall approve an application to create a contract water bank that satisfies this part.
- (2) As a condition of approval, a contract water bank is subject to this chapter.

Enacted by Chapter 342, 2020 General Session

73-31-302 Contract water bank application.

- (1) A public entity may seek to have a contract for water use approved as a contract water bank under this chapter by submitting an application to the board that meets the following criteria:
 - (a) the name of the contract water bank;
 - (b) the mailing address for the contract water bank;
 - (c) the proposed service area map for the contract water bank;
 - (d) a description of how the contract water bank's governing body will be structured and operate;
 - (e) a description for how water delivery requests and loaned water rights are to be administered;
 - (f) criteria for the participation, if any, of non-public entities;
 - (g) includes a copy of the contract, provided that a public entity may redact any information that is private, controlled, protected, or otherwise restricted under Title 63G, Chapter 2, Government Records Access and Management Act;
 - (h) information regarding how the public can learn when the submittal of an application or contract that is the basis of the contract water bank is on the agenda of a public meeting of the public entity under Title 52, Chapter 4, Open and Public Meetings Act;
 - (i) whether the contract water bank will accept deposits of surface water rights or groundwater rights, provided that a contract water bank may not accept deposits of both surface water rights and groundwater rights; and
 - (j) the process the contract water bank will follow if the contract water bank terminates, dissolves, or the board revokes the contract water bank's approval to operate pursuant to this chapter, including how the contract water bank will return banked water rights to depositors and how the contract water bank will return any amounts owing to depositors.
- (2) The board may prepare a form or online application for an applicant to use in submitting an application to the board under this part.

Enacted by Chapter 342, 2020 General Session

73-31-303 Action by board on contract water bank application.

- (1) Upon receipt of an application for a proposed contract water bank, the board shall record the day on which the board receives the application.
- (2) The board shall:
 - (a) examine the application to determine whether changes are required for the board to process the application in accordance with this part;
 - (b) review the application to determine whether it meets the objectives of a water bank described in Section 73-31-103;
 - (c) consider the application complete if the application satisfies this part; and

- (d) notify the applicant of any additional information or changes needed to process the application.
- (3) Within 30 days of the date the board determines that an application is complete, the board shall post notice of the application in accordance with Section 73-31-103.
- (4) The notice required by Subsection (3), shall state:
 - (a) that an application to approve a contract water bank has been filed with the board; and
 - (b) where a person may review the application.

Enacted by Chapter 342, 2020 General Session

73-31-304 Review of contract water bank application.

- (1) After complying with Section 73-31-303, the board shall approve an application for a contract water bank if the application satisfies Section 73-31-302, which is to be liberally interpreted by the board to facilitate the objectives described in Section 73-31-104.
- (2) In approving an application, the board shall:
 - (a) issue an order approving the contract water bank; and
 - (b) publish a summary of the information submitted by the public entity under Subsection 73-31-302(1) on the water banking website.
- (3) If the board denies an application, the board shall issue a written explanation to the applicant that sets forth the reason for the denial, provided that the board's decision regarding an application does not create a right of appeal under Title 63G, Chapter 4, Administrative Procedures Act.
- (4) A contract water bank may review public comments and comments from the board before a final decision is made by the board. If the contract water bank desires to make changes to the contract water bank's application, the contract water bank may notify the board in writing before the board takes action on the application that the contract water bank will submit a revised application following the same process that governs the filing of an original application.

Enacted by Chapter 342, 2020 General Session

73-31-305 Amending application.

- (1) After the board approves a contract water bank's application under this part, the contract water bank may seek to amend the contract water bank's application by filing a description of the proposed amendment with the board. The board shall follow the procedures of Sections 73-31-303 and 73-31-304 to approve an amendment to a contract water bank's application.
- (2) An amendment approved by the board becomes effective on the first day of the next reporting year.

Enacted by Chapter 342, 2020 General Session

SECTION 1: **AMENDMENT** “1.05.000 Rates, Charges, And Fees” of the Apple Valley Water & Sewer District is hereby *amended* as follows:

AMENDMENT

1.05.000 Rates, Charges, And Fees

- A. All rates, charges, and fees presently existing and hereafter established, shall be set and changed from time to time by the Board of Trustees. Rates, charges, and fees shall be reasonably related, to the extent possible, to the cost of providing the service for which they are assessed. A schedule of current fees and charges in effect is set forth in Appendix A.
- B. All Administrative, Engineering and Legal services performed by or through the District shall be reimbursable by the owner of the property at actual cost. This shall include all pre-administrative, pre-engineering and pre-legal services performed prior to any applications to the Town or the District.

BIG PLAINS WATER SPECIAL SERVICE DISTRICT

RESOLUTION NO. BPW-R-2023-13

A RESOLUTION AMENDING SECTION 1.05.000 OF THE POLICY AND PROCEDURES MANUAL

WHEREAS, the Big Plains Water Special Service District ("District") has adopted a policy and procedures manual; and

WHEREAS, the District Board deems it necessary and appropriate that such Policy and Procedures Manual be amended due to the clarify fees as an overall statement for administrative, engineering and legal services; and

WHEREAS, the District deems it necessary to amend section 1.05.000 of the Policy and Procedures manual, and;

WHEREAS, at a meeting of the District, duly called, noticed and held on the 8th day of November 2023, and upon motion duly made and seconded:

NOW, THEREFORE, IT IS HEREBY RESOLVED by the District that the Policy and Procedures Manual is hereby amended to reflect the changes attached hereto.

PASSED this 8th day of November 2023.

BIG PLAINS WATER SPECIAL SERVICE DISTRICT

Chairman Barratt Nielson

ATTEST:

Recorder, Jenna Vizcardo

	AYE	NAY	ABSENT	ABSTAIN
Chairman Barratt Nielson	_____	_____	_____	_____
Board Member Frank Lindhardt	_____	_____	_____	_____
Board Member Harold Merritt	_____	_____	_____	_____
Board Member Ross Gregerson	_____	_____	_____	_____
Board Member Andy McGinnis	_____	_____	_____	_____

SECTION 1: AMENDMENT “Paid Benefits” of the Apple Valley Water & Sewer District is hereby *amended* as follows:

AMENDMENT

Paid Benefits

PAID BENEFITS (This may be changed at any time at the discretion of the District.)

- A. Medical Health/Dental/Vision Insurance: It is the policy of the District to provide medical health, dental and vision insurance for full-time employees. The rate paid by the District is 100% of the employee portion plus 50% of the family portion. The employee is responsible for 50% of the family portion.
- B. Life insurance: A basic life insurance policy is provided free of charge for each full-time employee, their spouse and children. The employee may voluntarily elect to increase coverage at the expense of the employee.
- C. HSA: It is the policy of the District to provide for HSA benefits. The calculation for each paycheck shall be 50% of the deductible whether it is single or double/family allocated over 26 pay periods. The Employee may contribute up to the maximum prescribed by law.
- D. State and Federal Unemployment: All employees are covered by the benefits of State and Federal Unemployment.
- E. RETIREMENT BENEFITS. The Town fully funds an employee pension plan through the Utah Retirement System (URS) for certain classes of employees as follows:
 - 1. ELIGIBLE:
 - a. Regular full-time employee. Eligibility begins after probationary period.
 - b. URS Tier 1 Employees: Based on the monthly pay established annually by the URS, currently \$1,148.
 - c. URS Tier 2 Appointed Officers are Part-Time Ineligible
 - d. URS Tier 2 Elected Officers are Part-Time Ineligible.
- F. Additional Volunteer Benefits.
 - 1. As a nominal fee reimbursement, all board members shall not be charged the base water fee during their time of service to the District.

BIG PLAINS WATER SPECIAL SERVICE DISTRICT

RESOLUTION NO. BPW-R-2023-14

A RESOLUTION AMENDING THE DISTRICT EMPLOYEE HANDBOOK MANUAL

WHEREAS, the Big Plains Water Special Service District ("District") has adopted an employee handbook policy manual; and

WHEREAS, the common practice of not charging board members the water base fee has not been formally documented; and

WHEREAS, the District Board deems it necessary and appropriate that such Policy Manual be amended; and

WHEREAS, the District deems it necessary to amend the Introduction section and Travel Policy section manual, and;

WHEREAS, at a meeting of the District, duly called, noticed and held on the 8th day of November 2023, and upon motion duly made and seconded:

NOW, THEREFORE, IT IS HEREBY RESOLVED by the District that the District Employee Handbook Manual is hereby amended to reflect the changes attached hereto.

PASSED this 8th day of November 2023.

BIG PLAINS WATER SPECIAL SERVICE DISTRICT

Chairman Barratt Nielson

ATTEST:

Jenna Vizcardo, Recorder

	AYE	NAY	ABSENT	ABSTAIN
Chairman Barratt Nielson	_____	_____	_____	_____
Board Member Frank Lindhardt	_____	_____	_____	_____
Board Member Harold Merritt	_____	_____	_____	_____
Board Member Ross Gregerson	_____	_____	_____	_____
Board Member Andy McGinnis	_____	_____	_____	_____



**EMERGENCY BIG PLAINS WATER SPECIAL SERVICE
DISTRICT MEETING
BOARD OF DIRECTORS, REGULAR MEETING
1777 N Meadowlark Dr, Apple Valley
Thursday, September 21, 2023 at 9:30 AM**

MINUTES

Chairman | Barratt Nielson

Board Members | Frank Lindhardt | Harold Merritt | Ross Gregerson | Andy McGinnis |

CALL TO ORDER- Due to the nature of the emergency, oversight that the meeting was not called to order by Chairman Nielson.

ROLL CALL

PRESENT

Chairman Barratt Nielson

Board Member Frank Lindhardt

Board Member Harold Merritt

Board Member Ross Gregerson

ABSENT

Board Member Andy McGinnis

DISCUSSION AND ACTION

1. Discuss emergency water situation.

On Wednesday evening (September 20th) the Board had the Town of Apple Valley send out an email to everyone on the Cedar Point System alerting them that the million-gallon tank was empty.

The Board discussed amongst, if there was a connection from Board Member Lindhardt's private well to a fire hydrant on the Cedar Point system. They discussed if the State approved, then this could be an option to fill the empty tank. Board Member Merritt received a phone call, returned to the meeting, and informed the Board that there is a company that could transport potable water, 10,000 gallons a day at a \$1.00 per gallon. It was decided that this option was not viable as well as not cost effective.

The Board discussed getting the word out to the community to turn their hot water heaters off. Also turn the power and gas off.

Board Member Lindhardt commented, how do we stop any more drilling period, we need to talk to the State.

The Board discussed setting up non-potable water trucks for residents. Also, people can get 5-gallon buckets with lids so they can use the non-potable water to flush their toilets. If any elderly need help, we can be there to help. RV's can fill up their water at the Town Office. The Board discussed sending out an email to the community.

Board Member Gregerson commented that he is calling the State to find the authorized drillers in the area recently, to potentially see if their drilling caused an issue within our aquifer. Also, if there is a drill rig or activity that anyone has seen please report. The Board discussed looking into recent seismic activity.



EMERGENCY BIG PLAINS WATER SPECIAL SERVICE DISTRICT MEETING

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Board Member Merritt discussed we need a Board census, the best wells we have are in Apple Valley Proper (Ranches), we need to run a pipeline from here to Cedar Point. He continued; we already have an easement along the highway. We could connect at Paradise Lane, there is a main 12-inch line, running from that point, hook on there and tie into Cedar Point line and charge the entire system. Chairman Nielson commented that is over 23,000 feet to do the proper tie-ins. It was discussed that this was this should be the urgent project and in the recently adopted Culinary Water Master Plan the price to do this project was calculated.

Chairman Nielson commented to have Board Member Lindhardt reach out to the to the Washington County Water Conservancy District for assistance. Board Member Lindhardt asked resident, Michael Farrar to reach out to Home Depot and purchase the buckets with lids, or get them donated.

The Board scheduled a meeting for tomorrow (September 22nd) at 9am.

ADJOURNMENT

MOTION: Board Member Lindhardt motioned to adjourn the meeting.

SECOND: The motion was seconded by Chairman Gregerson.

VOTE: Chairman Nielson called for a vote:

Board Member Gregerson - Aye

Board Member Lindhardt- Aye

Chairman Nielson - Aye

The vote was unanimous and the motion carried.

Date Approved: _____

Approved BY: _____
Chairman | Barratt Nielson

Attest BY: _____
Recorder | Jenna Vizcardo



EMERGENCY BIG PLAINS WATER SPECIAL SERVICE DISTRICT MEETING

BOARD OF DIRECTORS, REGULAR MEETING
1777 N Meadowlark Dr, Apple Valley
Friday, September 22, 2023 at 9:00 AM

MINUTES

Chairman | Barratt Nielson

Board Members | Frank Lindhardt | Harold Merritt | Ross Gregerson | Andy McGinnis |

CALL TO ORDER- Chairman Nielson called the meeting to order at 9:00 a.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT

Chairman Barratt Nielson

Board Member Frank Lindhardt

Board Member Harold Merritt

Board Member Ross Gregerson

ABSENT

Board Member Andy McGinnis

Other Staff/Attorney/Consultants Present

District Attorney Ben Ruesch

Deputy Clerk Michelle Kinney

DECLARATION OF CONFLICTS OF INTEREST

None declared.

DISCUSSION AND POSSIBLE ACTION

1. Discuss emergency water situation.

Chairman Nielson updated on items that transpired from yesterday. He continued, there is a boil order in effect on the Cedar Point system, for all water coming through your tap. There is a black tank at the Cedar Point roundabout that is non-potable water and must be boiled. There is also potable water and bottled water. The Canaan Springs water yesterday was dropping but with investigation a valve that feeds the ponds had been closed and has now been reopened. This system is now fine.

Board Member Gregerson commented and gave a rundown of the Cedar Point system. He continued; Southwest Pump came out with a sounder device to assess the wells. The New Cooke well is not producing much water. We are not sure what is happening but are getting about ten gallons a minute out of it right now. The Jessop well has a bad pump. It is running but not pumping. The Farrar's picked up the replacement pump sent from Salt Lake. Well 59 has a new pump in place but was shut down a year ago with radium issues. The radium testing for this should be back in about 2 weeks. The sand filter was removed but had a lot of debris. The filter had been dropping debris into the well. They have cleaned the well and are doing testing to get this well approved and providing water. They will work on sounder readings today as well.



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MINUTES

Board Member Lindhardt commented we have received help from many different people and entities. The Washington County Water Conservancy District was called right away and came out to help us. Southwest Pumps stayed with us all day and helped with the research.

Chairman Nielson commented if anyone from the public need assistance during this time to please reach out. He continued; we are trying to avoid hooking private wells into the system because it is not approved by the State. The water reserve requirements for the fire department will be reached with non-usage at 24 hours. After that we would hope it could sustain that amount and usage if people conserve. Asked people to please conserve.

Question by Joan Dineen, How was the valve on spring turned off.

Board Member Nielson commented they are working on a fence around the area and it is protected in a vault currently.

Board Member Merritt mentioned the news stories, Apple Valley Proper (Ranches and Gooseberry) is operating fine. Canaan Springs is operating fine. Cedar Point system is the only system that is having issues.

Question by Joan Dineen, Do the pumps burn up if they operate on dry ground.

The Board answered yes that could happen.

Question by Stewart Riding, Is there anything that can be done to expedite the radium test. Is there any option to use water trucks to fill the tank.

Board Member Gregerson commented there is no way to expedite the radium test.

Question by Peter Smith, Who is monitoring the chlorination. Does Apple Valley have staff monitoring these systems every day.

The Board answered that none of the systems are chlorinated and yes staff is monitoring daily.

Question by Joan Dineen, The status on the Rock well.

The Board answered that this well is waiting for State approval.

Board Member Merritt commented that once the tank reaches a certain level there is no ability for us to recover.

ADJOURNMENT

MOTION: Board Member Gregerson motioned to adjourn the meeting.

SECOND: The motion was seconded by Board Member Lindhardt.

VOTE: Chairman Nielson called for a vote:

Board Member Merritt - Aye

Board Member Gregerson - Aye



**EMERGENCY BIG PLAINS WATER SPECIAL SERVICE
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1777 N Meadowlark Dr, Apple Valley
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Board Member Lindhardt- Aye
Chairman Nielson - Aye

The vote was unanimous and the motion carried.

The meeting was adjourned at 9:27 a.m.

Date Approved: _____

Approved BY: _____
Chairman | Barratt Nielson

Attest BY: _____
Recorder | Jenna Vizcardo



BIG PLAINS WATER SPECIAL SERVICE DISTRICT MEETING

BOARD OF DIRECTORS, REGULAR MEETING

1777 N Meadowlark Dr, Apple Valley

Wednesday, October 11, 2023 at 6:00 PM

MINUTES

Chairman | Barratt Nielson

Board Members | Frank Lindhardt | Harold Merritt | Ross Gregerson | Andy McGinnis |

CALL TO ORDER- Chairman Nielson called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

PRAYER- Prayer offered by resident Britta Nielson.

ROLL CALL

PRESENT

Chairman Barratt Nielson

Board Member Frank Lindhardt

Board Member Harold Merritt

Board Member Ross Gregerson

ABSENT

Board Member Andy McGinnis

DECLARATION OF CONFLICTS OF INTEREST

None declared.

WATER OPERATOR REPORT

Chairman Nielson excused the Water Operator Trevor due to being out of town.

DISCUSSION AND POSSIBLE ACTION

1. Discussion on adding a water level monitoring system to the million-gallon tank.

Board Member Gregerson discussed a manual tank level that has been installed on the million-gallon tank in Cedar Point. As the Board we agreed on an electronic monitoring level system running on solar. This gives the backup that would be confirmed with the manual reading, as well as level redundancy. Discussion only.

2. Order from the State Engineer.

District Attorney Ben Ruesch commented agenda item is referencing the change application that was approved by the Order of State Engineer in the Cinder Knoll area. He continued; the District had protested the change application. On the last page or second to last page of the order, you will see that while the State Engineer's office did approve the change application, they opposed several conditions on the approval. One of the biggest concerns the District had was that the change application reported to convert the water to municipal water rights but it listed a private entity for municipal water that did not exist. The State Engineer did recognize that and the conditions were imposed, including that if they do want to prove up on that water, they must submit proof through a public water supplier which would be the District. He wanted to make sure the Board was aware and he commented the applicant could under that change application could try to create a separate public water supplier for that area. He



BIG PLAINS WATER SPECIAL SERVICE DISTRICT MEETING

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confirmed for now it looks like they want to work with the District, as that is what their attorney said at the change application hearing.

Board Member Merritt asked the district attorney on item 6 of their conditions regarding that they will be responsible to monitor the wells and to guarantee the static levels are maintained and any allocation of this water for the project would have to be monitored by them. He continued, who would be deciding whether they can allocate X number of acre feet of water being appointed diversion of their choosing and recommendation. The attorney responded that he does not have all the details but does remember different points of diversion. He does not know what the process is going to be or the timeline for that project but obviously they will have to work with the Town on all the approvals. Board Member Merritt commented he would like to clarify who oversees making the decisions and further discussion may be needed. District attorney Ben Ruesch commented that he thinks some of that will happen through the approval process with the Town. Chairman Nielson commented on the multiple diversion points. The district attorney commented to the best of his knowledge, that Trunorth is not a public water supply company. He continued, the biggest reason to be on the agenda to make sure the Board is aware of all the issues surrounding the change application and can be monitored accordingly. He does not know of any approval for a new public water supply company. The Board is concerned with another public water supplier within the District's boundary. Board Member Lindhardt asked if another water supplier could be approved in our district. The attorney commented that was brought up as part of the protest. Board Member Gregerson along with Board Member Merritt discussed being involved with monitoring and what is going on with the water in our District. District Attorney Ben Ruesch commented he believes the district could file for judicial review if they do not like the Order of the State Engineer. He continued; he does not feel the District should do that based on the representations made by the developers' attorney at the change application hearing. It does not seem like they have the intention to create this private water company. He thinks the Town can control to a certain extent; with whatever development they propose. Board Member Lindhardt asked the attorney if we leave the order if this implies directly or indirectly that they have the right to have their own water company in our district. He continued, if that is the case, we need to find out what we can do to appeal this. The Board discussed amending the change application with the applicant. District Attorney Ben Ruesch commented based on my research that he will have to double check; I do not think you can have two public water suppliers in the same service area and will verify that information. He continued, on that order there are other conditions imposed, he asked if the Board had any other questions about those. No other questions from the Board. He will get back to and communicate with Chairman Nielson on the Order of the State Engineer.

MOTION: Board Member Merritt motioned that we table the Engineers report we just discussed, until the information we need is available and then we put it on the agenda again.

SECOND: The motion was seconded by Board Member Lindhardt.

VOTE: Chairman Nielson called for a vote:

Board Member Merritt - Aye

Board Member Gregerson - Aye



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Board Member Lindhardt- Aye

Chairman Nielson - Aye

The vote was unanimous and the motion carried.

3. Consider Approval of Knollwood RV agreement.

Chairman Nielson commented that 4-acre feet of water of municipal water was deeded to the District. The water rights agreement was calculated by Sunrise Engineering and approved by our District Attorney. The agreement was pulled up on the screen for the public and presented to the Board.

MOTION: Board Member Lindhardt motioned that we approve the Water Rights Agreement between Knollwood85 LLC and the Water District as presented with the change on page number two, Table 2.03, that it changed to read behind the gallons per day will write, "averaged over one billing period."

SECOND: The motion was seconded by Board Member Merritt.

VOTE: Chairman Nielson called for a vote:

Board Member Merritt - Aye

Board Member Gregerson - Aye

Board Member Lindhardt- Aye

Chairman Nielson - Aye

The vote was unanimous and the motion carried.

4. Consider Approval of Trade of SSD F-250 and Town F-450 Trucks.

Board Member Lindhardt asked if we got the information requested. It was confirmed that the utility bed cannot be swamped. The SSD F-250 4-wheel drive is necessary for the location of wells, especially in weather conditions. The Board is not in favor of the trade.

MOTION: Board Member Merritt motioned that we leave things as they are as far as the trucks are concerned.

SECOND: The motion was seconded by Board Member Lindhardt.

VOTE: Chairman Nielson called for a vote:

Board Member Merritt - Aye

Board Member Gregerson - Aye



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Board Member Lindhardt- Aye

Chairman Nielson - Aye

The vote was unanimous and the motion carried.

5. Consider Approval of Amending the Employee Handbook, Resolution-BPW-R-2023-12.

Board Member Gregerson commented this is specific about who can use the truck and it didn't mention Water Board Members. The Board discussed adding to the motion that Board Members are also authorized to operate vehicles.

MOTION: Board Member Lindhardt motioned that we approve the proposed changes to the Employee Handbook, Resolution-BPW-R-2023-12, with the addition of "Board Members are also authorized to drive the vehicles."

SECOND: The motion was seconded by Board Member Gregerson.

VOTE: Chairman Nielson called for a Roll Call vote:

Board Member Merritt - Aye

Board Member Gregerson - Aye

Board Member Lindhardt- Aye

Chairman Nielson - Aye

The vote was unanimous and the motion carried.

6. Consider Approval of Cedar Point Water System Users Get-Together.

Chairman Nielson discussed with Town Administrator Jauna McGinnis on a local get together for the Cedar Point water system users. A get together pancake breakfast was discussed to show the community we as the Board are there for the community. We are setting a date today, Saturday, November 18th at 9am at the Cedar Point Roundabout. This will be put on by the Board and the Board will be responsible for the details. Discussion only.

APPROVAL OF MINUTES

7. Minutes: September 13, 2023.

Chairman Nielson commented on one typo "swamp" should be "swap".



BIG PLAINS WATER SPECIAL SERVICE DISTRICT MEETING

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MOTION: Board Member Gregerson motioned that we approve the minutes of September 13, 2023 Big Plains Water Special Service District.

SECOND: The motion was seconded by Board Member Merritt.

VOTE: Chairman Nielson called for a vote:

Board Member Merritt - Aye
 Board Member Gregerson - Aye
 Board Member Lindhardt- Aye
 Chairman Nielson - Aye

The vote was unanimous and the motion carried.

CONSENT AGENDA

8. Disbursement Listing for September 2023.
9. Budget Report for Fiscal Year 2023 through September 2023.
10. September 2023 Water Usage Comparison.

The Board discussed solar for the wells and working with grants. Board Member Gregerson to check into the cost of solar panels.

MOTION: Board Member Lindhardt motioned that we approve the three items that are on the consent calendar, Disbursement Listing for September 2023, Budget Report for Fiscal Year 2023 through September 2023, and September 2023 Water Usage Comparison.

SECOND: The motion was seconded by Board Member Gregerson.

VOTE: Chairman Nielson called for a vote:

Board Member Merritt - Aye
 Board Member Gregerson - Aye
 Board Member Lindhardt- Aye
 Chairman Nielson - Aye

The vote was unanimous and the motion carried.

Chairman Nielson updated and discussed a statement from the district because people were having real estate issues with the Cedar Point water crisis. He continued, the attorney and himself completed the letter and it has been sent out. He read it aloud.



BIG PLAINS WATER SPECIAL SERVICE DISTRICT MEETING

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(Attachment A)

"October 11, 2023

After consulting with our legal counsel, we feel it necessary to revise our previous letter/statement as to the status of the Cedar Point system. This letter replaces the one sent out previously.

We stated that the system is back to the way it was prior to the Cedar Point system having multiple failures on or around Sept 18, 2023.

While that statement is true, we are still not at the level of production that is required for this system. Refer to the Master Plan (Impact Fee Study) that was completed in July and presented in our August meeting for the exact details. The Cedar Point system needs to produce 140 gpm to sustain the normal usage as well as proper fire protection for that area. We were at about 85 gpm prior to Sept 18th when the wells stopped producing for various reasons, of which we are still trying to determine the cause and what that means moving forward. We are currently producing about 45 gpm. One of the wells is producing at 100% what it was before but the other one is producing about 15% what it was previously as it is not recharging at the same rate as before.

The water table seems to have dropped significantly, the amount we are still trying to determine by gathering data from all the companies that have serviced the wells over the last several years. We have ordered some diagnostic equipment to make our jobs easier to perform our own in-house data verifications and gathering so that we will be able to see the trends and help us plan better for the future as we continue to work on upgrading our sources.

We are still working on getting the other well back online, waiting for the proper test results to come back to meet the State's requirements before turning it back into service. We are also in the process of getting the approvals and protections in place to get our new well up and running. All of this takes time waiting for test results and paperwork to be completed, reviewed, and approved.

We advise all people to conduct their own due diligence regarding your property rights. To the maximum extent permitted by applicable law, in no event shall the district or its personnel be liable for any consequential, incidental, direct, indirect, special, punitive, or other damages of any kind whatsoever, arising out of or in any way related to the use of the information provided in this letter. Whether based on contract, tort, negligence, strict liability or otherwise. Even if the district or any personnel has been advised of the possibility of such damages. This exclusion of damages shall be effective even if any remedy fails in its essential purpose.

Thank you. Respectfully, Barratt Nielson Chairman Big Plains Water Special Service District"

Board Member Lindhardt commented he has spoken with the manager, Zach Renstrom from the Washington County Water Conservancy District (WCWCD) about the issues with the aquifer being lower. He continued, they offered and have received board permission from the WCWCD to do more studies



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in Apple Valley. He can spend up to \$100,000 on geological studies. Our biggest problem is we simply don't have the money to do all the things that we should and can do.

REQUEST FOR A CLOSED SESSION

No request.

ADJOURNMENT

MOTION: Board Member Merritt motioned to adjourn the meeting.

SECOND: The motion was seconded by Board Member Gregerson.

VOTE: Chairman Nielson called for a vote:

Board Member Merritt - Aye

Board Member Gregerson - Aye

Board Member Lindhardt- Aye

Chairman Nielson - Aye

The vote was unanimous and the motion carried.

The meeting was adjourned at 7:01 p.m.

Date Approved: _____

Approved BY: _____
Chairman | Barratt Nielson

Attest BY: _____
Recorder | Jenna Vizcardo



Big Plains Water Special Service District
1777 N. Meadowlark Dr, Apple Valley, Utah 84737
Phone: 435-877-1190 Fax: 435-877-1192
www.applevalleyut.gov

Chairman Barratt Nielson
Board Member Frank Lindhardt
Board Member Harold Merritt
Board Member Ross Gregerson
Board Member Andy McGinnis

Item 6.

October 11, 2023

After consulting with our legal counsel, we feel it necessary to revise our previous letter/statement as to the status of the Cedar Point system. This letter replaces the one sent out previously.

We stated that the system is back to the way it was prior to the Cedar Point system having multiple failures on or around Sept 18, 2023.

While that statement is true, we are still not at the level of production that is required for this system. Refer to the Master Plan (Impact Fee Study) that was completed in July and presented in our August meeting for the exact details. The Cedar Point system needs to produce 140 gpm to sustain the normal usage as well as proper fire protection for that area. We were at about 85 gpm prior to Sept 18th when the wells stopped producing for various reasons, of which we are still trying to determine the cause and what that means moving forward. We are currently producing about 45 gpm. One of the wells is producing at 100% what it was before but the other one is producing about 15% what it was previously as it is not recharging at the same rate as before.

The water table seems to have dropped significantly, the amount we are still trying to determine by gathering data from all the companies that have serviced the wells over the last several years. We have ordered some diagnostic equipment to make our jobs easier to perform our own in-house data verifications and gathering so that we will be able to see the trends and help us plan better for the future as we continue to work on upgrading our sources.

We are still working on getting the other well back online, waiting for the proper test results to come back to meet the State's requirements before turning it back into service. We are also in the process of getting the approvals and protections in place to get our new well up and running. All of this takes time waiting for test results and paperwork to be completed, reviewed, and approved.

We advise all people to conduct their own due diligence regarding your property rights. To the maximum extent permitted by applicable law, in no event shall the district or its personnel be liable for any consequential, incidental, direct, indirect, special, punitive, or other damages of any kind whatsoever, arising out of or in any way related to the use of the information provided in this letter. Whether based on contract, tort, negligence, strict liability or otherwise. Even if the district or any personnel has been advised of the possibility of such damages. This exclusion of damages shall be effective even if any remedy fails in its essential purpose.

Thank you.

Respectfully,

BARRATT NIELSON (Oct 11, 2023 16:40 MDT)
Barratt Nielson
Chairman
Big Plains Water Special Service District



CONTRACT WATER BANK APPLICATION

Utah Board of Water Resources

(FOR OFFICE USE ONLY) Rev.11/15/21

Application Number:	RW001
Date Received:	12/15/2021
Date Complete:	12/17/2021
Date Noticed:	12/22/2021
Date Approved:	1/27/2022

INTRODUCTION:

This form is for eligible entities to apply to establish a Contract Water Bank under Utah Code Title 73 Chapter 31 ("the Act").

The Act promotes the development of market tools favorable to and controlled by local water users. Under the Act, qualifying leasing arrangements can be approved as a Water Bank. Approved Water Banks are granted statutory powers designed to facilitate efficient transfers of water among interested local users. Participation in a Water Bank is voluntary. The Utah Board of Water Resources shall review all Water Bank Applications for completeness and approve complete applications. For a water right to be used within an approved Water Bank, it must be approved through a separate Change Application process overseen by the Utah Division of Water Rights. Once approved, Water Banks operate as independent entities with annual reporting requirements to the Board of Water Resources.

Pursuant to Utah Code Ann. § 73-31-106 the Board of Water Resources delegates authority to the Division of Water Resources staff to perform a completeness review of this application.

APPLICATION INSTRUCTIONS:

To apply, please:

- 1 Complete this Contract Water Bank Application form
- 2 Attach a water bank service area map, attorney's review letter, conditionally approved water bank contract, and other supporting information
- 3 Sign and date the application
- 4 Email (preferred) or mail the completed application to:

Shalaine DeBernardi, Project Funding Manager
Utah Division of Water Resources
PO Box 146201
Salt Lake City, UT 84114

shalainedebernardi@utah.gov
801-652-1668

CONTACT INFORMATION:

Water Bank Applicant Price River Watershed Conservation District		Federal Tax ID Number 87-0440233	
Type of Public Entity A Utah Conservation District			
Name of Water Bank Carbon Canal Company Water Bank			
Official Business Address PO Box 1114	City Castle Dale	State Utah	Zip Code 84513
Primary Contact (First & Last Name), Title/Position William Butcher, Chair	Phone (435) 820-3809	Email Address wrbutcher@gmail.com	
Address 4320 East 8900 South	City Price	State Utah	Zip Code 84501
Secondary Contact (First & Last Name), Title/Position Ryan Jones, Resource Coordinator	Phone (435)899-1048	Email Address ryanj@utah.gov	
Address PO Box 1114	City Castle Dale	State Utah	Zip Code 84513
Attorney (First & Last Name), Firm (can represent any party to Contract Water Bank) Nathan Bracken, Smith Hartvigsen, PLLC	Phone (801) 413-1600	Email Address nbracken@water.law	
Address 257 E 200 S #500	City Salt Lake City	State Utah	Zip Code 84111

PROJECT INFORMATION:		
County(ies) Where Water Bank is Located: Carbon County and Emery County		Type of Water Bank (ground or surface water): Surface
Proposed Annual Start Date of Contract Water Bank: "Irrigation Season" defined as beginning on the date that irrigation water becomes available for the season at the CCC diversion.	Proposed Annual End Date of Contract Water Bank: "Irrigation Season" defined as ending on the date that water ceases to be available for the season at the CCC diversion.	Estimated Years of Operation: Spring 2022 through 12/31/2030 or sooner terminated
List of Parties to Water Bank Contract: Price River Watershed Conservation District, a Utah Conservation District (District) Carbon Canal Company, a Utah nonprofit mutual benefit corporation (CCC) The Nature Conservancy a District of Columbia nonprofit corporation (TNC) Trout Unlimited, a Michigan nonprofit corporation (TU) State of Utah, Department of Natural Resources, Division of Wildlife Resources (Wildlife)		Links to Minutes Where Applicant Discussed Water Bank Contract a Regular Meeting and Link to Meeting where Applicant Provided Conditional Approval of Water Bank Contract: 10/20/2021 - https://www.utah.gov/pmn/sitemap/notice/708559.html 9/8/2021 - https://www.utah.gov/pmn/sitemap/notice/700247.html
Narrative Description of the Contract Water Bank Service Area (map to be attached): The Contract Water Bank Service area begins at the Point of Diversion for CCC's water rights from the Price River into the CCC canal system. The full Water Bank Service areas includes CCC's water delivery area, Olsen Reservoir, Marsing Wash, and along the Lower Price River to Woodside gage.		Anticipated Water Rights and Volume: CCC will file a change application to deposit Water Rights Nos. 91-3, 91-5090, and 91-5099, or other Company water rights as selected in consultation with the State Engineer, into the bank, which collectively represent 31,516 acre-feet. The State Engineer's approval of those applications, however, will determine how much water the bank can potentially lease under these water rights and may also impose other conditions. Additionally, under the contract, shareholders in the Company must voluntarily elect to make the portion of the water rights represented by their shares available for lease each year. As a result, the amount of water will vary from year to year and will likely be considerably less than the total amount of water represented by the water rights. In no event, however, can the volume of water placed into the bank or leased in a given year exceed the total amount of water represented by the water rights.
CONTRACT SUMMARY: A narrative description of the leasing arrangement and other key terms agreed to by the parties in the Water Bank contract. (Contract to be attached).		
A description of how the Contract Water Bank's governing body will be structured. <u>Paragraph 13. Water Bank Administration:</u> The Water Bank shall be administered by a five-member committee made up of one appointee from each of the Parties to this Agreement ("Committee"). The Water Bank shall engage CCC to act as the manager of the Water Bank and CCC will designate an employee to perform all acts required of the "Manager" of the Water Bank. The Water Bank will pay CCC for its management duties each year from the proceeds of the Water Bank pursuant to Paragraph 15. The Committee shall oversee the deposits and withdrawals from the Water Bank and assist the Manager in meeting the Water Bank's reporting requirements. The Committee shall oversee and approve the financial records of the Water Bank. The Committee will not have management authority over the District or CCC or its system. <u>Paragraph 15. Operating Costs:</u> Discusses the means by which the Parties will collect and pay for any operating costs with the Bank.		
A description for how water leases are to be administered. The following paragraphs of the water bank contract govern the administration of water leases: <u>Paragraph 3. Depositing Water into Water Bank,</u> <u>Paragraph 4. Lease Price</u> <u>Paragraph 5. Lease</u> <u>Paragraph 6. Unleased Deposited Shares.</u> <u>Paragraph 8 Payment to Depositors.</u> <u>General Process:</u> - By December 1 of each year the Manager will send an "Interest Statement" form to CCC Shareholders asking Shareholders to identify how many shares they wish to Deposit into the Bank, the acres they wish to fallow, and they may include a lease price the Shareholder will accept (submitting an Interest Statement does not obligate the Shareholder to participate) - By January 1 the Manager will prepare a summary of the Interest Statements - By January 15 the Leasing Entities will determine the "Annual Lease Price" and the Manager will inform the Shareholders of the Annual Lease Price - By February 1 those Shareholders interested in leasing Shares at the Annual Lease Price must submit a "Deposit Form" to the Manager		

- CCC will review and approve the Deposit Form by endorsing the form, once endorsed the subject Shares are considered to be "Deposited" into the Bank and are available to be leased by the Leasing Entities, if desired
- By February 15 the Manager will provide the Leasing Entities a notice identifying the Deposited Shares available for lease for the calendar year
- By March 1 the Leasing Entities will provide to CCC the number of shares they each will lease through the Water Bank ("Annual Lease Shares") and the proposed delivery point for the Annual Lease Shares. CCC and the Leasing Entity that leases the Annual Lease Shares will execute a lease form for the Annual Lease Shares. CCC shall only deliver the Annual Lease Shares to points of diversion that can be served by CCC's current water delivery system and the Leasing Entities may only receive water at delivery points within CCC's current water delivery system. The Leasing Entities recognize that CCC adjusts the amount of the water its members receive under their shares throughout each Irrigation Season based on water availability.
- If, at the beginning of the Irrigation Season, the Leasing Entities have not leased a Depositor's Deposited shares, those shares will not be considered Deposited and the Depositor may use the water as that Depositor otherwise would. The Manager will notify the Depositor that their Deposited shares were not leased.
- By December 10 each Depositor will receive the Annual Lease Price paid for their deposited water, if leased, minus their Percentage of the Operating Costs

Terms governing how the parties are going to monitor and account for water leased through the Contract Water Bank.

Paragraph 11. Annual Water Delivery Schedule. The Leasing Entities will provide CCC with a desired delivery schedule for the Annual Lease Water on or before March 15 of each calendar year. The delivery schedule must be provided by the Leasing Entities at least 10 days prior to any desired deliveries of Annual Lease Water. CCC shall endeavor to fulfill the desired delivery schedule subject to regulatory limits and capacity constraints and shall respond to the desired delivery schedule within 10 days with any proposed modifications. CCC shall not have any obligations to guarantee the delivery of the Annual Lease Water outside of the CCC water delivery system, in a manner consistent with the Change Applications as approved; CCC's only obligation will be to divert the Annual Lease Water based on its water rights into the CCC system, in a manner consistent with the Change Applications as approved.

Paragraph 16. Delivery Area: CCC shall only be obligated to deliver the Annual Lease Water to places of use that can be served by CCC current water delivery system. The Leasing Entity shall be responsible for all costs associated with the Annual Lease Water after and downstream of the point of delivery.

Provisions addressing annual Board of Water Resources Reporting.

Paragraph 9. Verification of Farm Activities & Accounting: Pursuant to Utah Code 73-31-501(4), the Manager will compile the required annual water use accounting. The Committee will meet in November of each year to review the Manager's report.

Paragraph 14. Annual Water Bank Reporting: The Manager will prepare the annual water bank report required by Utah Code 73-31-401. The Parties all agree to cooperate with the Manager to provide the necessary information to prepare the annual reports.

Criteria for Participation of Non-Public Entities (if any).

The Carbon Canal Company Water Bank Contract is limited to the participating Parties and has contractually extended participation to Non-Public Entities pursuant to the terms of the Contract.

Paragraph 3(G). Only the Leasing Entities may lease water from the Water Bank (TNC, TU, and Wildlife).

Paragraph 18. No Assignment. The rights and obligations of the Parties may not be assigned or transferred without the prior written approval of each Party hereto, and any attempt to provide for assignment or transfer without that prior written approval shall be void and of no legal effect.

Procedures for Termination, Dissolution, or Revocation of the Contract Water Bank, including how the Contract Water Bank will return banked water rights and any money owed water right owners.

Paragraph 17. Termination: CCC or District may elect to terminate this Agreement with 60 days-notice to the other Parties. However, all incurred and unfulfilled obligations of the Parties will survive termination. The non-terminating Parties may agree in writing to release the terminating party and continue under this Agreement. The Leasing Entities may also elect to withdraw from this Agreement with 60 days-notice to the other Parties, provided that the withdrawing Leasing Entity's withdrawal shall be effective on the date it fulfills its obligations under this Agreement and under any outstanding leases to which it is a party that are current on the day it gives its 60-day notice. This Agreement will automatically terminate without further action of the Parties if all of the Leasing Entities withdraw from the Agreement.

Where the public may locate information on when the Water Bank Contract will be on the Applicant's Agenda for a public hearing.

The Applicant is the Price River Watershed Conservation District. Public notices for PRCWD meeting can be found at <https://www.utah.gov/pmn/sitemap/publicbody/3093.html>

The Applicant has a regularly set meeting on January 12, 2022, to collect public comment on the conditionally approved Water Bank Contract. If the Applicant determines public comment merits amending the conditionally approved Water Bank Contract it will send an amended copy to the Board of Water Resources. If the Applicant determines that public comment does not merit amending the Water Bank Contract it will promptly alert the Board of Water Resources that it has completed all of the criteria of Utah Code Ann § 73-31-302 and will request this Contract Water Bank Application be approved.

ACKNOWLEDGEMENT AND SIGNATURE:

By signing and submitting this application, you acknowledge that you:

- (1) Are authorized to apply to be a Contract Water Bank on behalf of the Applicant.
- (2) Are a qualified applicant.
- (3) Request approval of this Contract Water Bank application subject to the required completeness review.

WILLIAM BUTCHER
Name of Authorized Agent

William Butcher
Signature of Authorized Agent

12-14-2021
Date

APPROVED AS TO FORM AND COMPLETENESS (to be completed by an attorney for one of the parties to the Contract Water Bank)

Nathan Bracken
Attorney Name

Nathan S. Bracken
Attorney Signature

December 14, 2021
Date

The Nature Conservancy
Party to Water Bank Contract Represented by Attorney

TO BE COMPLETED BY THE MEMBER OF THE BOARD OF WATER RESOURCES ASSIGNED TO AREA:

I have reviewed this application and forward it to staff of the Division of Water Resources to conduct a completeness review and to prepare a contract water bank report.

Comments (if any):

Norman L. Johnson
Board Member Name

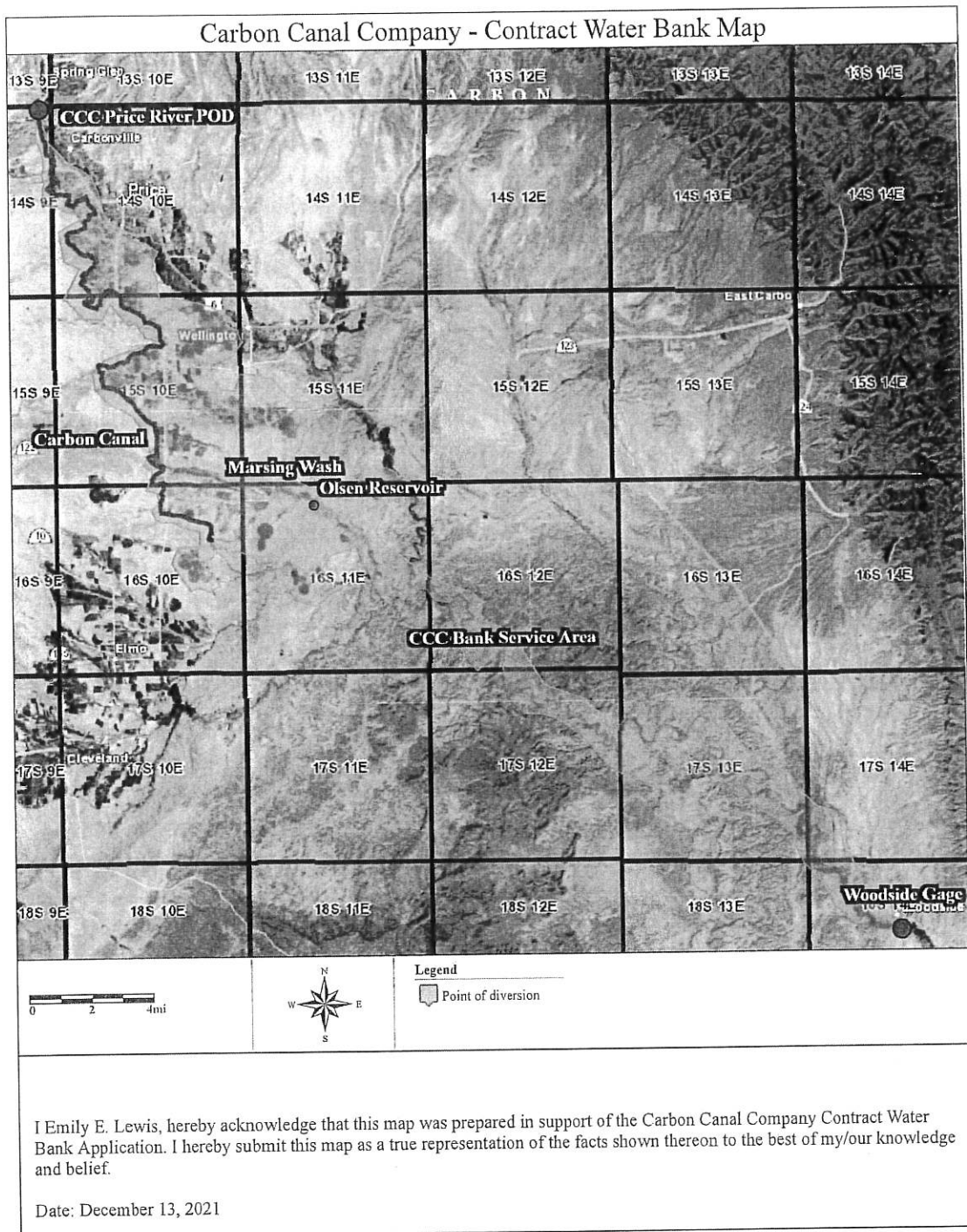
Norman L. Johnson
Board Member Signature

12/16/2021
Date

FOR OFFICE USE ONLY

Board Meeting Date: 1/27/2022

- ☒ Approved
☐ Denied



CONTRACT AGREEMENT
CARBON CANAL COMPANY WATER BANK

This Agreement for a Carbon Canal Company Water Bank ("**Agreement**") is made and entered into effective as of December ____, 2021 ("**Effective Date**"), by and between Price River Watershed Conservation District, a political subdivision of the State ("**District**"), Carbon Canal Company, a Utah nonprofit mutual benefit corporation ("**CCC**"), The Nature Conservancy, a District of Columbia nonprofit corporation ("**TNC**"), Trout Unlimited, a Michigan nonprofit corporation ("**TU**"), and the State of Utah, Department of Natural Resources, Division of Wildlife Resources ("**Wildlife**") collectively referred to herein as the "**Parties**". TU, TNC, and Wildlife may also be referred to herein collectively as "**Leasing Entities**" or individually as a "**Leasing Entity**." District, CCC, and the Leasing Entities may also be referred to as Parties or individually as a Party.

RECITALS

- A. The Parties wish to enter into this Agreement to establish a contract water bank ("**Water Bank**") as provided for under Utah Code 73-31-101 et seq. ("**Act**") so that CCC may take advantage of the benefits of a Water Bank, including protection of its water rights from forfeiture, and the Leasing Entities may utilize the water for environmental purposes.
- B. This Agreement is intended to define the Parties' commitments, rights, and obligations in establishing the Water Bank.
- C. The Parties intend that this Agreement be submitted as part of a contract water bank application to the Utah Board of Water Resources. The District is a public entity and will be the applicant to the Utah Board of Water Resources under section 73-31-302 of the Utah Code.
- D. The Parties acknowledge that approval by the Utah State Engineer of an Application for Permanent Change of Water for all or a portion of CCC's existing water rights allowing the water rights to be used for banking purposes ("**Change Application**") are required to implement the Water Bank.
- E. Herein, "**Irrigation Season**" is defined as beginning on the date that irrigation water from the CCC becomes available for the season at the CCC diversion and ending on the date that water ceases to be available for the season at the CCC diversion.

AGREEMENT

Now, therefore, incorporating the foregoing recitals herein, the Parties agree to the following terms and conditions:

1. **Water Bank Approval Required.** Performance under this Agreement is contingent upon approval of the Water Bank by the Utah Board of Water Resources ("**Board**") of an application submitted pursuant to Utah Code 73-31-301, et seq. If the Board denies the application under Utah

Code 73-31-304(3), this Agreement will immediately terminate without further action by the Parties. The application to the Board for the Water Bank will be in a form approved in advance in writing by the Parties and must: (1) allow water rights held by CCC ("**Water Rights**") to be included in a water right change application for use in the Water Bank; (2) allow shareholders of CCC to request that all or a portion of their CCC shares be Deposited (defined in ¶3.E.) into and leased from the Water Bank by submitting an Interest Form and a Deposit Form, both as defined below; and (3) include all purposes allowed under the Act. Leases of the water from the Water Bank under this Agreement will not be allowed until the Water Bank has been approved by the Board. Any filing fees charged by the Board for processing the application will be paid by TNC and TU.

2. **Change Application Approval Required.** CCC and will prepare and file the Change Application with the Utah Division of Water Rights (DWRi), after consulting with the Leasing Entities. CCC shall have complete discretion in prosecuting its Change Application and is not obligated to respond to protests, engage experts, or seek judicial review of an adverse decision from the Utah State Engineer on the Change Application. If after the filing of protest to the Change Applications, CCC has reason to believe that the State Engineer is likely to issue an order adverse to CCC's water rights, CCC may withdraw the Change Application but must provide the other Parties written notice of their intent to withdraw the Change Application. CCC makes no guarantee as to any approval of the Change Application. Approval of the Change Application on terms satisfactory to CCC is a condition precedent to any obligation of the Parties herein contemplated. If the State Engineer denies the Change Application or approves the Change Application in a form that is unacceptable to CCC and CCC elect in its sole discretion not to file a request for reconsideration or to appeal the decision, this Agreement will automatically terminate on the date the State Engineer's decision becomes final and unappealable without further action by the Parties. TNC and/or TU will reimburse CCC for the Change Application filing fee. CCC may elect, in its discretion, to file additional change applications but TNC and TU will only be responsible for paying the filing fee for change application agreed to by TNC and TU in advance of filing. CCC is solely responsible for the costs of prosecuting the Change Application as described in this paragraph. CCC is a nonprofit organization of limited means, serving all of its shareholders, many of whom may not elect to participate in the Water Bank. Therefore, CCC will determine in its sole discretion the resources it will devote to prosecuting its respective Change Application to secure a final non-appealable decision from the State Engineer.

3. **Depositing Water Into the Water Bank.**

A. The term "Depositor" shall mean any CCC shareholder who Deposits (defined in ¶3.E.) all or a portion of their CCC shares for leasing by the Water Bank.

B. If a CCC shareholder deposits (defined in ¶3.E.) that shareholder's shares into the Water Bank and those shares are leased from the Water Bank, the shareholder agrees to not apply any irrigation water from their CCC entitlement to lands that would otherwise be entitled to receive the Deposited (defined in ¶3.E.) CCC water. These fallowed lands are referred to herein as "**Participating Lands**." Nothing in this Agreement shall be interpreted as affecting in any way the water rights or shares that shareholders may own, including but not limited to shares in the Price River Water Users Association.

C. On or before December 1 of each year, the Manager, as defined below, will solicit an interest statement from the CCC allowing each shareholder to state their interest in participating in the bank ("**Interest Statement**"). The Interest Statement must be submitted on a form provided by the Water Bank and will require the interested shareholders to identify the number of CCC shares they may wish to Deposit (defined in ¶3.E.) into the Water Bank, the acreage that the shareholder will fallow, and may include the lease price the shareholder(s) suggest. Providing an Interest Statement does not obligate a shareholder to Deposit (defined in ¶3.E.) the shares identified in Interest Statement and is no guarantee that the shares will be leased from the Water Bank. as described in paragraph 4 herein.

D. After the lease price for the year is determined as set forth in paragraph 4 herein, the Manager will notify the shareholders who submitted an Interest Statement of the annual lease price.

E. Shareholders who wish to participate at the Annual Lease Price, defined below, must complete a deposit form provided by the bank ("**Deposit Form**") and submit it to the Manager on or before February 1. The Deposit Form shall confirm the number of CCC shares the shareholder wishes to Deposit (defined in this ¶3.E.) into the Water Bank, shall identify the Participating Lands, and shall require the shareholder to agree to fallow the Participating Lands and to be bound by the terms of this Agreement. The shareholder must submit a Deposit Form to CCC. No shares will be considered Deposited (defined in this ¶3.E.) into the Water Bank without approval of CCC; approval will be evidenced by CCC's endorsement of the Deposit Form, depending on the shares associated with the acreage to be fallowed. In determining whether to endorse a Deposit Form CCC, may evaluate whether the lease of the shares identified in the Deposit Form is allowed pursuant to their respective Articles, Bylaws and rules and regulations, that the lease of the shares identified in the Deposit Form will not harm other shareholders of the Company, and that the water can be delivered to the Leasing Entities through its conveyance system. Once CCC endorses the Deposit Form, the shares designated in the Deposit Form will be considered Deposited into the Bank ("**Deposited**") and available to the Bank to lease to the Leasing Entities. The Leasing Entities shall not have any responsibility or liability for decisions made by CCC regarding the rights of their shareholders to lease water through the Bank.

F. Depositing shares is not a guarantee that the shares will be leased from the Water Bank. If there are more Deposited shares in the Water Bank than the Leasing Entities wish to lease in any given year the Manager, under supervision of the Committee, as defined below, will hold a blind draw to determine which Depositor's Deposited shares will be leased. If there is less Deposited Water than the Leasing Entities wish to lease, the Leasing Entities will split the Deposited Water equally, unless the Leasing Entities agree otherwise.

G. Only the Leasing Entities may lease water from the Water Bank.

H. The dates specified in this paragraph 3 and subsequent paragraphs 4 and 5 may be modified by mutual agreement of the Parties.

4. **Lease Price.** By January 1 of each year the Manager will prepare a summary of the Interest Statements showing the acreage and price information identified on the Interest Statements and provide

the summary to the Leasing Entities. Using the available information, the Leasing Entities shall determine the annual lease price that they are willing to pay for that Irrigation Season for each leased share ("**Annual Lease Price**"). The Leasing Entities shall inform the Manager of the Annual Lease Price on or before January 15 of each year. The Annual Lease Price shall be uniform for all leases from the Water Bank for that Irrigation Season.

5. **Lease.** By February 15th of each year, the Manager will provide to the Leasing Entities a notice identifying the Deposited shares available from the Water Bank for that calendar year, including the associated endorsed Deposit Forms, and a map showing the then current points of diversion served by CCC. By March 1 of each year, the Leasing Entities will provide to CCC the number of shares they each will lease through the Water Bank ("**Annual Lease Shares**") and the proposed delivery point for the Annual Lease Shares. The Manager will provide the Leasing Entities with written invoices showing the amounts owing (total number of leased shares multiplied by the Annual Lease Price), and the Leasing Entities will tender payment to District pursuant to the written invoices. CCC and the Leasing Entity that leases the Annual Lease Shares will execute a lease form for the Annual Lease Shares. CCC shall only deliver the Annual Lease Shares to points of diversion that can be served by CCC's current water delivery system and the Leasing Entities may only receive water at delivery points within CCC's current water delivery system. The Leasing Entities recognize that CCC adjusts the amount of the water its members receive under their shares throughout each Irrigation Season based on water availability. The Annual Lease Shares shall be subject to the same adjustment by the CCC Board as if the underlying shares were being called for on the Participating Lands. The Annual Lease Shares will entitle the Leasing Entity to the amount of water the Annual Lease Shares would have received in that Irrigation Season. The District does not own the Water Rights, own water delivery infrastructure used under this Agreement, make water deliveries to the Leasing Entities, or receive water deliveries from CCC under this Agreement.

6. **Unleased Deposited Shares.** If, at the beginning of the Irrigation Season, the Leasing Entities have not leased a Depositor's Deposited shares, those shares will not be considered Deposited and the Depositor may use the water as that Depositor otherwise would. The Manager will notify the Depositor that their Deposited shares were not leased.

7. **Maximum Annual Lease Quantity.** The amount of water used under the Annual Lease Shares shall not exceed the diversion and depletion limitations set forth in any order approving the Change Applications.

8. **Payment to Depositors.** Each Depositor will receive the Annual Lease Price paid for their Deposited shares, if leased, minus their Percentage of the Operating Costs as described in Paragraph 15. Payment to each Depositor whose Deposited shares were leased will be no later than December 10. The Committee (defined in ¶13) will maintain a ledger for the Bank Operating Account (defined in ¶15(A)) and direct the District regarding deposits and disbursements from the account, including payments to Depositors.

9. **Verification of Farm Activities & Accounting.** Pursuant to Utah Code 73-31-501(4), the Manager will compile the required annual water use accounting. The Committee will meet in

November of each year to review the Manager's report.

10. Ability to Maintain Original Use. The Parties agree that each year that this Agreement is in effect CCC shareholders have sole discretion whether to Deposit their shares. Neither the Water Bank nor the Change Applications will affect the CCC shareholders' right to use their water for currently authorized uses.

11. Annual Water Delivery Schedule. The Leasing Entities will provide CCC with a desired delivery schedule for the Annual Lease Water on or before March 15 of each calendar year. The delivery schedule must be provided by the Leasing Entities at least 10 days prior to any desired deliveries of Annual Lease Water. CCC shall endeavor to fulfill the desired delivery schedule subject to regulatory limits and capacity constraints and shall respond to the desired delivery schedule within 10 days with any proposed modifications. CCC shall not have any obligations to guarantee the delivery of the Annual Lease Water outside of the CCC water delivery system, in a manner consistent with the Change Applications as approved; CCC's only obligation will be to divert the Annual Lease Water based on its water rights into the CCC system, in a manner consistent with the Change Applications as approved.

12. Term. The term of this Agreement shall be from the Effective Date until the earlier of December 31, 2030, the period for which the Change Applications are approved, or the date it is terminated as set forth herein.

13. Water Bank Administration. The Water Bank shall be administered by a five-member committee made up of one appointee from each of the Parties to this Agreement ("**Committee**"). The Water Bank shall engage CCC to act as the manager of the Water Bank and CCC will designate an employee to perform all acts required of the "**Manager**" of the Water Bank. The Water Bank will pay CCC for its management duties each year from the proceeds of the Water Bank pursuant to Paragraph 15. The Committee shall oversee the deposits and withdrawals from the Water Bank and assist the Manager in meeting the Water Bank's reporting requirements. The Committee shall oversee and approve the financial records of the Water Bank. The Committee will not have management authority over the District or CCC or its system.

14. Annual Water Bank Reporting. The Manager will prepare the annual water bank report required by Utah Code 73-31-401. The Parties all agree to cooperate with the Manager to provide the necessary information to prepare the annual reports.

15. Operating Costs.

A. The Committee shall collect and deposit, in coordination with the District, a percentage of the Annual Lease Price for each lease of Deposited shares (the "**Percentage**") into a separate District account (the "**Operating Account**"). The Committee shall maintain a ledger that accounts for the Percentage and direct the District regarding deposits and disbursements related to the Percentage and lease payments to Depositors. The Percentage shall be used to pay for the costs of operating the Water Bank, producing the annual reporting described in Paragraph 14, or meeting any of the Act's

requirements (collectively, the “**Operating Costs**”).

B. Ninety-five percent (95%) of the Percentage funds deposited into the account will go to the Manager (defined in ¶13). The remaining five percent (5%) will go to the District.

C. From the date the State Engineer favorably approves the Change Applications under Paragraph 2 the Percentage shall be 10%.

16. Delivery Area. CCC shall only be obligated to deliver the Annual Lease Water to places of use that can be served by CCC current water delivery system. The Leasing Entity shall be responsible for all costs associated with the Annual Lease Water after and downstream of the point of delivery.

17. Termination. CCC or District may elect to terminate this Agreement with 60 days-notice to the other Parties. However, all incurred and unfulfilled obligations of the Parties will survive termination. The non-terminating Parties may agree in writing to release the terminating party and continue under this Agreement. The Leasing Entities may also elect to withdraw from this Agreement with 60 days-notice to the other Parties, provided that the withdrawing Leasing Entity’s withdrawal shall be effective on the date it fulfills its obligations under this Agreement and under any outstanding leases to which it is a party that are current on the day it gives its 60-day notice. This Agreement will automatically terminate without further action of the Parties if all of the Leasing Entities withdraw from the Agreement.

18. No Assignment. The rights and obligations of the Parties may not be assigned or transferred without the prior written approval of each Party hereto, and any attempt to provide for assignment or transfer without that prior written approval shall be void and of no legal effect.

19. Approvals. In addition to approval of the Water Bank by the Board and approval of the Change Application, the Parties recognize that the delivery of water under this Agreement may be subject to other approvals by various agencies. The Parties agree to reasonably cooperate to secure such any additional approvals necessary for implementation of this Agreement, but the Parties are not obligated to incur expense for the same.

20. Force Majeure. All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, drought, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties, including events that prevent CCC from releasing and delivery water through its system. Upon cessation of the force majeure condition, the obligation shall remain enforceable. In no event shall any liability accrue against a Party, its officers, agents, or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. When a Party’s performance is prevented by a cause identified herein, the affected party shall provide written notice to the other Parties as soon as reasonably practical of the force majeure condition. Such notice shall identify the cause of the prevention of performance and the estimated length that such prevention of performance will likely remain in place. Promptly after the prevention of performance is removed or ceases, the affected party shall provide written notice to the other parties that states that

the prevention of performance has been removed or ceased and performance of the Agreement has been renewed.

21. Notices. All notices and other communications under this Agreement shall be in writing. Notices shall be deemed as duly received on the date of service, if served personally on the Party to whom notice is to be given. Notices shall also be deemed as duly received five (5) days from the date said notice is mailed to the Party to whom notice is to be given, either by first class mail, registered or certified, postage prepaid or by express delivery with handling prepaid, and properly addressed as stated below. Email notification will be deemed acceptable if consented to by all the Parties.

If to Price River Watershed Conservation District:
540 W. Price River Drive
Price, Utah 84501
Attn: Chair

If to the Carbon Canal Company:
Carbon Canal Company
Attn: President
23 S. Carbon Ave, Room #10
PO Box 779
Price, UT 84501
(435) 637-3424
carboncanal@emerytelcom.net

If to The Nature Conservancy:
Susan Bellagamba, Canyonlands Regional Manager
Moab Project Office
P.O. Box 1329
820 West Kane Creek Blvd.
Moab, Utah 84532
(435) 259-7607
sbellagamba@tnc.org

If to Trout Unlimited
Trout Unlimited c/o
Jordan Nielson
1104 S River Ridge Ln
Spanish Fork, UT 84660
801-850-1221
jordan.nielson@tu.org

If to Division of Wildlife Resources
Makeda Hanson
Habitat Manager

Division of Wildlife Resource, Southeastern Regional Office
319 N. Carbonville Rd., Suite A,
Price, UT 84501
makedatrujillo@utah.gov
(435) 613-3700

- 22. Conflict Resolution.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah. Any dispute or claim relating to this Agreement will first be submitted to the other Parties that are involved in the dispute or claim ("**Involved Parties**") in reasonably detailed written form with any supporting documentation. If the Involved Parties do not satisfactorily resolve the dispute or claim, it will be submitted to non-binding mediation, with a qualified mediator selected by the Involved Parties, with each Involved Party sharing the cost of that non-binding mediation. If the Involved Parties cannot agree on a mediator, one may be appointed by a court of competent jurisdiction. After and only if these processes are first followed and the dispute or claim remains unresolved, an Involved Party may bring an action in the Seventh Judicial District Court of the State of Utah In and For Carbon County. Under no circumstances shall any Involved Party be liable for any consequential damages. Each Involved Party shall be responsible for their own costs and attorney's fees.
- 23. Binding Effect.** All of the covenants, conditions, and provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and approved assigns.
- 24. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings or oral or written agreements between the Parties respecting the within subject matter. This Agreement may not be modified or amended except by the express written agreement of the parties.
- 25. No Third-Party Beneficiary.** This Agreement is exclusively for the benefit of and governs only the Parties hereto. The only Parties entitled to enforce the terms of this Agreement are listed herein as the Parties. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.
- 26. No Waiver.** Forbearance in enforcing any right or remedy under this Agreement shall not be deemed a waiver nor shall it be the basis for an inference that any party hereto has waived any provision hereof or that a party has waived any right hereunder.
- 27. Warranty of Authority.** Each individual executing this Agreement on behalf of an entity represents and warrants that they have been duly authorized by such entity to execute this Agreement on behalf of and for such entity.
- 28. Governmental Immunity.** District and Wildlife are governmental entities subject to the Governmental Immunity Act (the "**Immunity Act**"), Utah Code § 63G-7-101, et seq. Except as may be provided in § 63G-7-301(1) of the Immunity Act (i.e., waiver as to their contractual obligations

Agreement), neither District nor Wildlife waive any other rights, defenses or limitations available under the Immunity Act.

29. Counterparts. This Agreement may be executed in any number of counterparts, but all such counterparts shall be deemed but one original Agreement for all intents and purposes.

In witness whereof, the Parties hereto have caused this Agreement to be executed the day and year first above written.

PRICE RIVER WATERSHED CONSERVATION DISTRICT

 12-14-2021
William Butcher, Chair (Date)

CARBON CANAL COMPANY

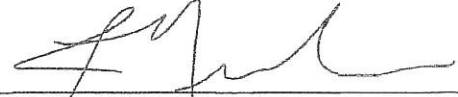
Kevin Cotner, President (Date)

THE NATURE CONSERVANCY



Susan Bellagamba, Canyonlands Regional Director Dec. 14, 2021
(Date)

TROUT UNLIMITED

 12/14/2021
Jordan Nielson, Price River Project Manager (Date)

UTAH DIVISION OF WILDLIFE

Name: (Date)
Title:

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PRICE RIVER WATERSHED CONSERVATION DISTRICT

William Butcher, Chair (Date)

CARBON CANAL COMPANY

Kevin Cotner, President 12/14/2021
(Date)

THE NATURE CONSERVANCY

Susan Bellagamba
Dec. 14, 2021
Susan Bellagamba, Canyonlands Regional Director (Date)

TROUT UNLIMITED

Jordan Nielson, Price River Project Manager (Date)

UTAH DIVISION OF WILDLIFE

Name: (Date)
Title:

on behalf of and for such entity.

28. Governmental Immunity. District and Wildlife are governmental entities subject to the Governmental Immunity Act (the “**Immunity Act**”), Utah Code § 63G-7-101, et seq. Except as may be provided in § 63G-7-301(1) of the Immunity Act (i.e., waiver as to their contractual obligations under this Agreement), neither District nor Wildlife waive any other rights, defenses or limitations available under the Immunity Act.

29. Counterparts. This Agreement may be executed in any number of counterparts, but all such counterparts shall be deemed but one original Agreement for all intents and purposes.

In witness whereof, the Parties hereto have caused this Agreement to be executed the day and year first above written.

PRICE RIVER WATERSHED CONSERVATION DISTRICT

William Butcher, Chair (Date)

CARBON CANAL COMPANY

Kevin Cotner, President (Date)

THE NATURE CONSERVANCY

Susan Bellagamba, Canyonlands Regional Director (Date)

TROUT UNLIMITED

Jordan Nielson, Price River Project Manager (Date)

UTAH DIVISION OF WILDLIFE

Robin Goodman 12/16/2021
Robin Goodman (Dec 16, 2021 13:44 MST)

Robin Goodman, Assistant Director (Date)