



SPECIAL WORK MEETING - BIG PLAINS WATER SPECIAL SERVICE DISTRICT

**BOARD OF DIRECTORS, REGULAR MEETING
1777 N Meadowlark Dr, Apple Valley
Thursday, February 16, 2023 at 9:00 AM**

AGENDA

Notice is given that a meeting of the Water District of the Town of Apple Valley will be held on **Thursday, February 16, 2023**, commencing at **9:00 AM** or shortly thereafter at **1777 N Meadowlark Dr, Apple Valley**.

Chairman | Andy McGinnis

Board Members | Frank Lindhardt | Harrold Merritt | Ross Gregerson | Jarry Zaharias |

Pursuant to the Executive Order issued by Governor Gary Herbert on March 18, 2020 regarding Electronic Public Meetings, 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/86321740752>

if the meeting requests a password use 1234

To call into meeting, dial (253) 215 8782 and use Meeting ID 863 2174 0752

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

DECLARATION OF CONFLICTS OF INTEREST

DISCUSSION

- [1.](#) Discussion of request to sublease BLM/Wilderness leased agreement - Spring#1 and #2. Applicant: Kenstal LLC.

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.

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

APPLICATION TO APPEAR BEFORE THE BOARD OF DIRECTORS

Date of board meeting for this agenda item to appear February 8th

Paperwork returned by _____ (Date) _____

Name of Applicant: Kenstal LLC

Mailing Address: 2221 E, Weldon Ave

Phoenix, AZ 85016

Phone: 602-206-9522

Purpose of Request:

Request to Sub-Lease #1 & #2 Easements.

BLM Lease Assignment UTU-87702

Kendra Webb 01-31-2023
 Applicant Signature

Note: Final approval of this application is subject to all necessary paperwork being submitted no later than 1:00 p.m. on Wednesday, one week prior to the regularly scheduled meeting. All visual material must be submitted in a format viewable by public attending the meeting, as well as an email in PDF format for reproduction to meet notice requirements.

_____/_____
 Chairman of the Board of Directors Date

_____/_____
 SSD Administration Date



**JENKINS BAGLEY
SPERRY**
ATTORNEYS PLLC

DAVID C. JENKINS, Managing Partner, CCAL†+
Carson B. Bagley, Partner+*
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†College of Community Association Lawyers
+Licensed in Utah
*Licensed in Nevada

January 31, 2023

Hand delivered

Board of Directors
Big Plains Water Special Service District
1777 N Meadowlark Dr
Apple Valley, Utah 84737

Re: Request to Sublease Canaan Springs 1 and 2 under BLM Lease

Dear Board of Directors:

Our law firm represents Kenstal, LLC. This letter is being submitted with Kenstal's application to appear before the Board of Directors at the Board's meeting on February 8, 2023. Kenstal's manager, Kendra Webb, and I will be attending the meeting.

Kenstal owns hundreds of acres in Apple Valley, Utah. Its primary owners/members are three of the four children of the late Merlin Webb, and all of their inherited water rights are in the springs on Canaan Mountain. As you know, the springs are located on federal lands managed by the Bureau of Land Management ("BLM").

In the 1970s, Merlin Webb purchased land nearby, acquired water rights in the springs, and obtained a lease from the BLM to access the springs. Over the following decades, he developed the springs and installed pipelines to provide water to land he had developed and land he planned to develop. He eventually created the Canaan Springs Water Company ("Water Company") to distribute culinary water sourced from the springs.

In 2010, the federal government designated Canaan Mountain as wilderness area. Because of the heightened restrictions on federal wilderness area, Mr. Webb was required to enter into a new lease with the BLM.¹ The lease limited access to five springs out of the original seven ("Springs") and to the pipelines that Mr. Webb had installed to convey water from each Spring. The locations

¹ A copy of the lease, titled *Culinary/Water System Lease*, is enclosed.

St George Office
285 W. Tabernacle, Suite 301
St George, UT 84770
Tel: 435.656.8200
Fax: 435.656.8201

Salt Lake Office
4141 S. Highland Dr., Suite 225
Salt Lake City, UT 84124
Tel: 801.613.2025

Richfield Office, By appointment

of the Springs and pipelines are shown in Figure 1 of the lease.

Mr. Webb passed away in 2015, leaving his four children (Kirk Webb, Kendra Webb, Kristal Markham, and Kelland Webb) water rights in the Springs, the Water Company, and land in Apple Valley. Kendra, Kristal, and Kelland transferred the land they inherited to Kenstal, which they formed for that purpose, and they are Kenstal's majority members/owners. The water rights in the Springs they inherited, they own jointly in their own names.

In 2018, the four Webb children negotiated an agreement with the Big Plains Water and Sewer Special Service District ("District") for the District to purchase the Water Company, but not the children's water rights in the springs. With the purchase, Kirk (executor of estate) signed a consent to assign his father's BLM lease to access the Springs to the District, and the BLM approved the assignment.² But it was intended that in connection with the purchase, the District would make appropriate arrangements so the Webb children could use their water from the Springs. Such arrangements were made between the District and Kirk, securing his water usage from the Springs. Despite the District's assurances, no such arrangements were made with the other Webb children, leaving them without usage of their water in the Springs and thus unable to use that water for Kenstal's land.

The purchase agreement was signed almost five years ago, and since then, Kendra has repeatedly tried to make arrangements with the District for a way to use the water in the Springs where all their water rights are diverted from---water the Webb family has owned for decades. But to no avail. And the ever-changing dynamics between the District and Apple Valley and its frequent administration changes have made things extremely difficult.

Kenstal respectfully proposes that the District enter into a written sublease with Kenstal. It is Kenstal's understanding that the District has never used Springs 1 or 2. Kenstal thus proposes subleasing from the District, under the BLM lease, access to those Springs until the District decides to use them. Kenstal would use and maintain the existing equipment and pipelines (installed by Merlin Webb) to convey water from the Springs to Kenstal's land in Apple Valley for irrigation and livestock watering. (Kenstal's land is well outside 1,000 feet from the District's service area). Kenstal will pay the District yearly rent and will assume the District's responsibilities under the BLM lease as to Springs 1 and 2.

The BLM will almost certainly approve the sublease. Kendra contacted the Realty Specialist at the St. George BLM Field Office, who responded that she was not aware of anything in the Code of Federal Regulations that prohibited subleasing. See <https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-B/part-2920>.

While Kenstal has recently drilled a well on its land, it is uncertain how much water the well

² The *Assignor Consent* and the BLM's decision approving the assignment are enclosed.

Big Plains Water and Sewer SSD
January 31, 2023
Page 3

may produce. Regardless, the quality of the water from the Springs will surpass any water from the well.

Kenstal would like to discuss this proposal with the Board at its meeting on February 8, 2023. Thank you for your time and consideration of this matter. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,
JENKINS BAGLEY SPERRY, PLLC

A handwritten signature in dark ink, appearing to read 'Kim Forbes', written in a cursive style.

Kimball A. Forbes
Attorneys for Kenstal, LLC

**UNITED STATES
DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT**

**MERLIN WEBB
CULINARY/ IRRIGATION WATER SYSTEM LEASE**

SECTION 1 – BASIC AGREEMENT

The United States of America, acting through the authorized officer, Bureau of Land Management, hereby leases to Merlin Webb, 3659 E. Canaan Ranch Road, Apple Valley, Utah 84737, called the lessee, the following described public land for 20 years from and after March 10, 2010, to be used by the lessee for the following:

- 5 spring water collection wells, 50 ft. X 50 ft. = .057 acres each
- 2 inch above ground irrigation pipeline conveying water from well #1, 980 ft. X 15 ft. = .33 acres
- 2 inch above ground irrigation pipeline conveying water from well #2, 1060 ft. X 15 ft. = .36 acres
- 2 inch above ground irrigation pipeline conveying water from wells #1 and 2, 4530 ft. X 15 ft. = 1.56 acres
- 12 inch buried culinary water pipeline conveying water from well #3, 1340 ft. X 15 ft. = .46 acres
- 12 inch buried culinary water pipeline conveying water from well #4, 1345 ft. X 15 ft. = .46 acres
- 12 inch buried culinary water pipeline conveying water from well #5, 420 ft. X 15 ft. = .14 acres
- 12 inch buried culinary water pipeline conveying water from wells #3,4,5, 4565 ft. X 15 ft. = 1.57 acres

The leased area contains approximately 5.16 acres and is located as follows:

Salt Lake Meridian

T. 43 S., R. 10 W.,

sec. 7, SE $\frac{1}{4}$;

sec. 8, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

sec. 17, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;

sec. 18, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

This lease is issued under the authority of Sections 302, 303, and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1733, and 1740) and is subject to the terms and conditions and rental payments as set forth in 43 CFR 2920.

SECTION 2 – RENT

Holders of a land use authorization shall pay annually, in advance, a rental as determined by the authorized officer. The rental shall be based upon the fair market value of the rights authorized in the land use authorization.

The rental fees required by this section are payable when due, and a late charge of 1 percent per month of the unpaid amount or \$15 per month, whichever is greater, shall be assessed if subsequent billings are required. Failure to pay the rental fee in a timely manner is cause for termination of the land use authorization.

SECTION 3 – RESTRICTIONS ON USE

The lessee agrees:

Reclaim surface disturbance at well #3. No re-contouring of the terrain would be allowed. Seeding the disturbed area with native species would be required. Seed would be spread on the disturbed area, including the portion of road within the designated wilderness and would be performed with a hand held spreader. The seed would then be hand raked into the soil. Seeding would take place in both the spring and fall. BLM staff will monitor the reclamation and determine if future seeding is necessary. The following seed mix will be used in reclamation:

Seed Mix

Species	Pounds per Acre
Sandsage (<i>Artemisia filifolia</i>)	¼
Four winge Saltbush (<i>Atriplex canescens</i>)	2
Sideoats grama (<i>Bouteloua curtipendula</i>)	1
Western wheatgrass (<i>Pascopyrum smithii</i>)	1
Muttongrass (<i>Poa fendleriana</i>)	½
Indian ricegrass (<i>Achnatherum hymedoides</i>)	1
Desert needlegrass (<i>Achnatherum speciosum</i>)	1
Sand dropseed (<i>Sporobolus cryptandrus</i>)	¼
Lewis flax (<i>Linum lewisii</i>)	1
Galleta (<i>Hilaria jamesii</i>)	1

Future maintenance of the springs and pipelines in wilderness would be described as follows:

Regularly Scheduled Maintenance

1. Maintenance activities that require no motorized access do not need prior authorization.
2. Maintenance activities that require motorized access require notification of the BLM Lands and Realty staff a minimum of two weeks in advance of the proposed work. Telephone notification is acceptable and the following information should be provided:
 - a. Date that maintenance would take place.

- b. Type of maintenance to be performed.
- c. Motor vehicles that would be used for access
- d. Tools that would be used
- e. Motorized access should be the minimum necessary. Example: a full-size vehicle should not be used if the maintenance can be accomplished using an ATV.

Emergency Maintenance

An emergency is defined as a disruption of the water delivery system that requires immediate repair. Prior authorization is not required in an emergency situation, but BLM Lands and Realty staff should be notified as soon as practical after emergency operations have commenced. Even in an emergency, the proponent should use the minimum number of motorized/mechanized tools and vehicles to accomplish the repairs.

All spring sites would be limited to a 50 ft. X 50 ft. area. The 50 ft. X 50 ft. area is the minimum area required by the State of Utah Division of Drinking Water for water protection. All disturbed areas outside of the 50 ft. X 50 ft. areas would be reclaimed and seeded. Disturbance associated with future maintenance of the spring and pipelines outside of wilderness will be kept to a minimum and confined to the right-of-way area. All disturbed areas will be reclaimed and seeded to BLM's specifications.

Observe all Federal, State, county and other laws, regulations, and ordinances which are applicable to the land use authorization.

To comply with all applicable regulations contained in Title 43 CFR, Part 2920.

To use the public lands only for the purposes specified in the lease.

Shall cease construction and maintenance activities and immediately notify the authorized officer if cultural and/or paleontological resources, including human remains are discovered. Work would not resume on that portion of the project until appropriate legal and regulatory compliance has been completed by BLM.

SECTION 4 – RESERVATIONS BY THE UNITED STATES

All rights on public lands under lease not expressly granted are retained and may be exercised by the United States. The United States reserves the right to use the public lands or to authorize the use of the public lands by the general public in any way compatible or consistent with the authorized land use. Authorized representatives of the Department of the Interior, or other Federal agencies and State and local law enforcement personnel shall at all times have the right

to enter the premises on official business. Holders shall not close or otherwise obstruct the use of roads or trails commonly in public use.

The right to inspect the leased land at any time to ensure compliance with the terms and conditions of the lease.

SECTION 5 – LEGAL RESPONSIBILITY OF THE TENANT

The lessee agrees:

To indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et seq. or the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.) on the lease (unless the release or threatened release is wholly unrelated to the lease holder's activity on the lease. This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.

Lease holders and all owners of any interest in, and all affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay the United States the full value for all injuries or damage to public lands or agents or servants, or by a contractor, its employees, agents or servants except holders shall be held to standards of strict liability where the Secretary of the Interior determines that the activities taking place on the area covered by the land use authorization present a foreseeable hazard or risk of danger to public lands or other property of the United States. Strict liability shall not be applied where such damages or injuries result from acts of war or negligence of the United States.

Lease holders and all owners of any interest in, and affiliates or subsidiaries of any holder of a land use authorization issued under these regulations shall pay third parties the full value of all injuries or damage to life, person or property caused by the holder, its employees, agents or servants or by a contractor, its employees, agents, or servants.

Lease holders shall indemnify or hold harmless the United States against any liability for damages to life, person or property arising from the authorized occupancy or use of the public lands under the land use authorization.

SECTION 6 – CANCELLATION BY THE UNITED STATES

This lease may be canceled by noncompliance with applicable law, regulations or terms and conditions of the land use authorization; failure of the holder to use the land use authorization for

the purpose for which it was authorized (failure to construct or nonuse for any continuous 2-year period shall constitute a presumption of abandonment and termination); mutual agreement that the land use authorization should be terminated; and/or nonpayment of rent for 2 consecutive months, following notice of payment due.

Upon termination, cancellation, or expiration of this lease, the lessee will be allowed 60 days to remove improvements from the land, or to make other disposition thereof. Upon his failure to do so, the improvements will become the property of the United States.

SECTION 7 – GENERAL PROVISIONS

This lease is issued subject to valid existing rights. These rights include but are not limited to, valid mining claims, rights-of-way grants, land use permits, and grazing leases or licenses.

No member of, or delegate to, the Congress, or Resident Commissioner, after his election or appointment, and either before or after he is qualified, and during his continuance in office, and no officer, agent, or employee of the Department of the Interior, except as otherwise provided in 43 CFR Part 7, shall be admitted to any share or part of this lease, or derive any benefit that may arise there from, and the provisions of Title 18, U.S.C., Sections 431-433 relating to contracts, enter into and form a part of this lease, so far as they may be applicable.

This lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

This lease shall take full force and effect upon signing by both lessee and the authorized officer and shall remain in effect until expiration or it is otherwise cancelled as provided for in the above stipulations.

The holder agrees and consents to not discriminate against any employee or applicant for employment because of race, creed, color, sex, or national origin, and all contracts and subcontracts shall include a provision to this effect.

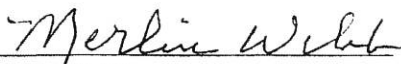
A lease holder who has complied with the provisions thereof, shall upon the filing of a request for renewal, be the preferred user for a new lease provided that the public lands are not needed for another use. Renewal, if granted shall be subject to new terms and conditions in effect at the time of renewal.

The holder agrees and consents to comply with all State and Federal laws applicable to the authorized use, and such additional State and Federal laws, along with regulations implementing them, that may be enacted or promulgated during the terms of the permit or lease.

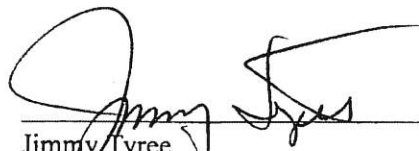
Leases issued for a term of 20 years shall be reviewed for adequacy and appropriate adjustment of the terms and conditions at the end of the twentieth year and at regular intervals thereafter not to exceed 10 years.

The lease does not authorize the location of additional facilities in wilderness nor does it authorize any modification to the water system. If additional facilities are needed, such proposals will be evaluated at the time and amendments to the lease considered.

IN WITNESS WHEREOF, The undersigned agrees to the above terms and conditions of this lease

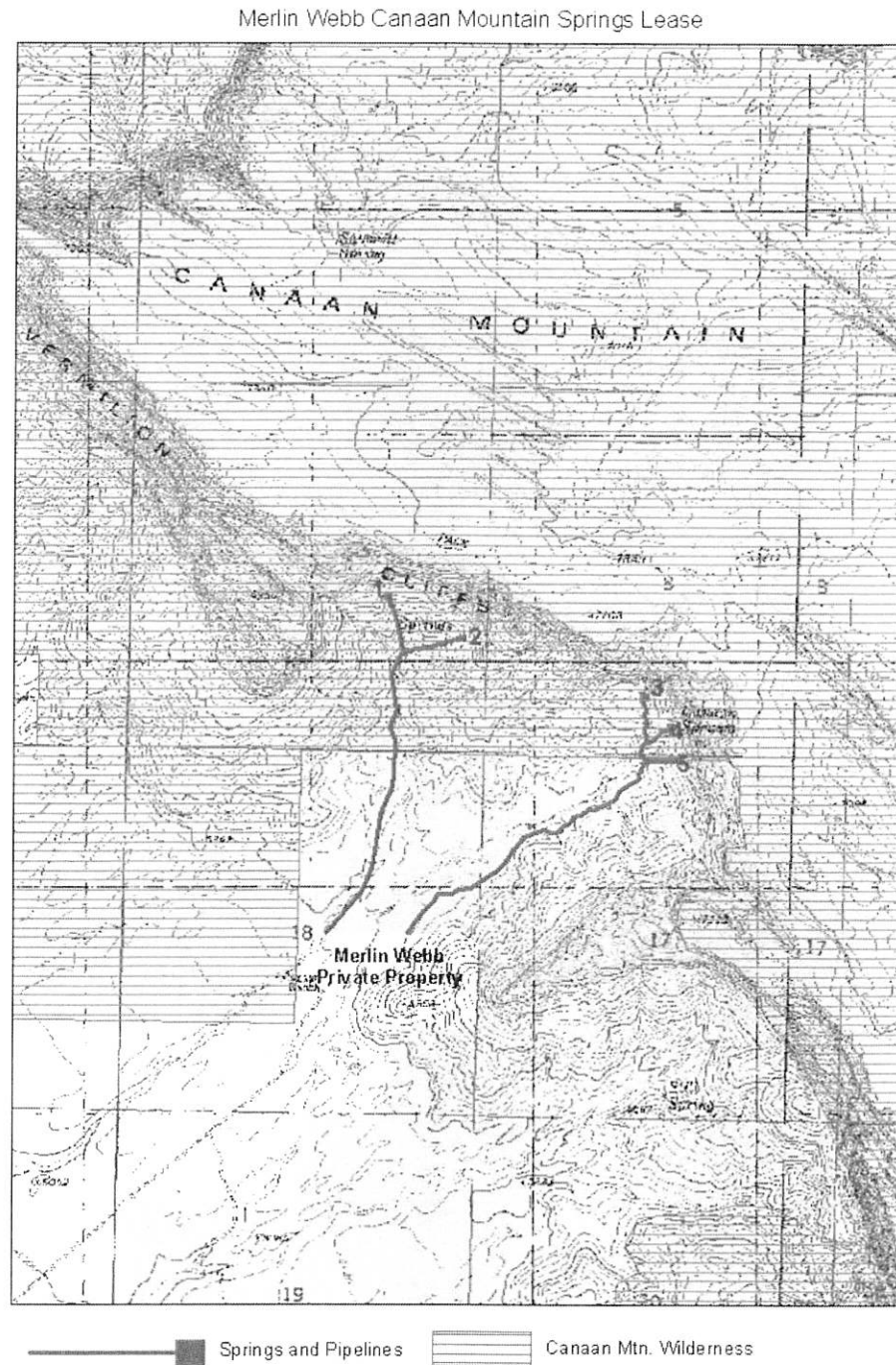

Merlin Webb
Canaan Springs Water Company

3-10-10
Date


Jimmy Tyree
St. George Field Office Manager

3/11/10
Date

Figure 1



BLM Casefile UTU-87702

Sec. 302 Lease

Assignor ConsentBUREAU OF LAND MANAGEMENT
ST. GEORGE FIELD OFFICE
JUL 01 2019

Merlin Webb-Canaan Springs Water Company does hereby consent to assign to
Big Plains Water & Sewer SSD, all undivided right, title, and
interest in and to lease number UTU-87702, if
approved by the United States Department of Interior, Bureau of Land Management.

Merlin Webb
Signature of Assignor

6/25/19
Date

Assignee Agreement

Big Plains Water & Sewer SSD does hereby make application for approval of
the above assignment of lease number UTU-87702. This application is made
pursuant to the regulations in 43 CFR 2920.

Big Plains Water & Sewer SSD, the undersigned applicant, agrees to comply
with and be bound by all terms, conditions and stipulations of the lease.

[Signature]
Signature of Assignee

6-25-19
Date



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
 Color Country District – St. George Field Office
 345 East Riverside Drive
 St. George, UT 84790
www.blm.gov/office/st-george-field-office



IN REPLY REFER TO:
 LLUTC03000
 2920
 UTU-87702

July 17, 2019

CERTIFIED MAIL 7007 2560 0000 8450 2790
 RETURN RECEIPT REQUESTED

Decision

Big Plains Water and Sewer SSD	:	Lease Assignment
Attn: Harold Merritt, Chairman	:	Serial No. UTU-87702
688 N. Paradise Ln, Bldg A	:	
Apple Valley, UT 84737	:	

Assignment Approved

On December 13, 2018, an application was received to assign lease no. UTU-87702 (for Canaan Springs water facilities) to the Big Plains Water and Sewer Special Development District (SSD) (current billee for the lease). The lease holder, Dr. Merlin Webb, provided written concurrence to fully assign the lease. Big Plains Water and Sewer Special Development District agrees to be bound by the terms and conditions of lease no. UTU-87702. Therefore, lease no. UTU-87702 is transferred from Mr. Webb to the SSD. The lease affects the following described public land:

Salt Lake Meridian, Utah

T. 43 S., R. 10 W.,

sec. 7, SE $\frac{1}{4}$;

sec. 8, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

sec. 17, NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$;

sec. 18, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (request) pursuant to regulations 43 CFR 2801.10 or 2881.10 for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and

petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. Standards for Obtaining a Stay Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have any questions regarding your application or the fees connected with it, please contact Shawwna Dao at (435) 688-3326 or by email at sdao@blm.gov.

Sincerely,



Keith Rigtrup
Field Office Manager

Enclosure: Lease no. UTU-87702

CC: Kirk Webb