



WEBER BASIN WATER CONSERVANCY DISTRICT

2837 EAST HIGHWAY 193 • LAYTON, UTAH • PHONE (801) 771-1677 • SLC (801) 359-4494 • FAX (801) 544-0103

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December 16, 2020

Wade Tolman
560 South 8600 East
Huntsville, UT 84317

Dear Mr. Tolman:

Enclosed for your records, please find a copy of your fully executed replacement water contract with Weber Basin Water Conservancy District.

If you have any questions, please contact our office.

Sincerely,

Kendall R. Searle

FOR Sherrie A. Mobley
Administration Manager

SAM/KS/dh

Enclosure

R-10

11/11/11
Pd Ev-65152

Account No. 72033

Replacement Contract/District 3

**PETITION TO WEBER BASIN WATER CONSERVANCY DISTRICT
FOR THE ALLOTMENT OF WATER**

Wade Tolman (herein "Petitioner") hereby applies to the Weber Basin Water Conservancy District (herein "District") for the allotment of the beneficial use of 4.00 acre-feet of untreated replacement water annually, for irrigation and domestic purposes, on land situated in Weber County, Utah, legally described as follows:

Section 17, Township 6N, Range 2E, Acres 38.23

Tax I.D. No.(s): 21-026-0050

Description of Lands:

PART OF THE NORTHEAST QUARTER, SOUTHEAST QUARTER, SOUTHWESTQUARTER AND NORTHWEST QUARTER OF SECTION 17, TOWNSHIP 6NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, U.S.SURVEY. BEGINNING AT A POINT 30.25 CHAINS WEST OF SOUTHEASTCORNER OF NORTHEAST QUARTER OF SECTION 17, RUNNING THENCENORTH 9.09 CHAINS, THENCE NORTH 86D30' WEST 10.02 CHAINS, THENCE NORTH 8.67 CHAINS, THENCE NORTH 89D WEST 7.35 CHAINS, THENCE SOUTH 28.72 CHAINS, THENCE SOUTH 88D54' EAST 16.6CHAINS, THENCE NORTH 9' WEST 10.88 CHAINS TO BEGINNING

1. APPROVAL BY DISTRICT. In the event that the District grants this petition by executing the Order on Petition, attached hereto, this instrument shall be a contract between the Petitioner and the District (sometimes referred to herein as the "Contract"), which Contract shall be effective on the date upon which the District enters the Order on Petition.

2. OBLIGATION TO PAY. In consideration of such allotment and upon condition that this Petition is granted by the District, Petitioner agrees:

(a) To pay for the right to use the allotted water an amount annually, which amount initially shall be \$1,823.64. A portion of the above payment amount is to be applied to the extent required on the District's obligations under bonds or other government-District contracts or capital expenditures, and is to be fixed from time to time by the District's Board of Trustees. The remainder of the above payment amount is to apply to the District's general operation,

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maintenance, and repair and replacement expenses, and other special expenses and costs incurred in operating, maintaining, repairing and replacing the separate facilities of the District used or required in servicing this Contract, hereinafter referred to as "OM&R". Such fair OM&R amounts shall be estimated each year by the Board of Trustees of the District, and any such determination shall be final and conclusive and binding on all parties. If such estimate is more than the actual cost thereof, an appropriate adjustment will be made in the annual OM&R amount for the year following the year for which the estimate was made.

(b) The amount so fixed shall be paid whether or not the Petitioner actually takes or uses the water allotted.

(c) The first payment of the amounts so fixed shall be a tax lien upon the above-described land and the Petitioner shall be bound by the rules and regulations of the District's Board of Trustees. Nothing contained herein shall be construed to exempt the Petitioner from paying the taxes levied.

(d) Notwithstanding any of the forgoing, the District shall be entitled to change the charging structure of this Contract, including the amounts charged under this Contract, as determined from time to time by the District's Board of Trustees. The District may, in its sole and absolute discretion, change the billing structure outlined herein, including but not limited to changing that billing structure so that the Petitioner is billed based on the amounts of water used ("bill for use"), such that the District may choose to charge by the unit or gallon delivered or used, and may institute tiers that provide for increasing charges for each such unit based on the total use. As outlined in this Contract, Petitioner is obligated to install appropriate metering and measuring devices. Petitioner agrees that any such meter will satisfy all requirements of the District and will properly measure water usage, which measurement may be used by the District in determining any overuse, as outlined below, and in determining the appropriate charge under any bill for use payment structure adopted by the District under this paragraph.

3. PENALTY FOR DELINQUENCY: Every installment or charge required to be paid to the District under this Contract, which shall remain unpaid after its due date, shall bear interest from date of delinquency at a rate of 18% APR.

4. REMEDIES IN CASE OF DEFAULT: If the Petitioner shall fail to make any payment due hereunder on or before the due date, or in the event that the petitioner shall violate any of the terms of this Contract, the District may refuse the delivery of water, or upon written notice to Petitioner, cancel this Contract in its entirety, but either or both of these remedies are not exclusive. The District may exercise any other remedy given by this Contract or by law to enforce collection of any payment due hereunder.

5. USE OF WATER. The use of the water allotted hereby shall be solely for the replacement of underground water diverted, withdrawn or to be diverted or withdrawn by means of a well for irrigation and domestic purposes at a point located on the land hereinabove described, and for no other use or purpose.

6. OVERUSE. The amount of water to which the Petitioner is entitled annually shall not exceed the allotted amount as described above. In the event that Petitioner receives water in excess of the allotted amount in any given year, whether intentionally or unintentionally, the

14. COMPLIANCE WITH LAW. The Petitioner agrees to fully comply with all applicable federal laws, orders and regulations and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts, or other pollutants.

15. INDEMNIFICATION. Petitioner agrees to indemnify, protect, and save and hold the District harmless against and in respect of any and all claims, losses, liabilities, damages, costs, deficiencies or expenses (including attorney's fees) resulting from any claim for any rights under the Contract or from the non-fulfillment of any covenant or agreement on the part of Petitioner under or relating to this instrument, and any and all actions, suits, proceedings, demands, assessments, judgments, costs, legal and accounting fees and other expenses incident to any of the foregoing.

16. NUMBER AND JOINT LIABILITY. In this instrument, the singular number includes the plural and the plural number includes the singular. If this instrument is executed by more than one person, firm, partnership or corporation, the obligations of each such person, firm, partnership or corporation hereunder shall be joint and several.

17. NO THIRD-PARTY BENEFICIARIES. Nothing herein shall be interpreted or construed to confer any right or remedy upon, or any duty, standard of care, liability or inference of liability to or with reference to, any person other than the District and the Petitioner and their respective successors and permitted assigns.

18. GOVERNING LAW; JURISDICTION. This instrument shall be governed by and construed in accordance with the domestic laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Utah. Petitioner submits to the jurisdiction of the Second Judicial District Court of the State of Utah in any action or proceeding arising out of or relating to this instrument and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Petitioner waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety, or other security that might be required of the District with respect thereto.

19. INTERPRETATION. In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this instrument. The paragraph headings contained herein are for purposes of reference only and shall not limit, expand, or otherwise affect the interpretation of any provision hereof. Whenever the context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, any gender shall include the masculine, feminine and neuter gender, and the term "person" shall include any individual, firm, partnership (general or limited), joint venture, corporation, limited liability company, trust, association, or other entity or association or any combination thereof. If any provision of this instrument or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this instrument and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the extent permitted by applicable law.

20. WAIVER. No failure or delay in exercising any right, power or privilege under this instrument, whether intentional or not, shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of a right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

21. SUCCESSION AND ASSIGNMENT. The Contract shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. Petitioner may not assign the Contract or any of its rights, interests, or obligations thereunder without the prior written approval of the District.

22. FURTHER ACTS. The parties hereby agree for themselves, and for their successors and assigns, to execute any instruments and to perform any act which may be necessary or proper to carry out the purposes of the Contract.

23. INCORPORATION OF RECITALS. The recitals set forth in this instrument are incorporated herein by reference and made a part hereof.

24. INTEGRATION. This instrument sets forth the entire understanding of the parties with respect to the subject matter hereof, and all prior negotiations, correspondence, proposals, discussions, understandings, representations, inducements and agreements, whether oral or written and whether made by a party hereto or by any one acting on behalf of a party, shall be deemed to be merged in and superseded by this instrument and shall be of no further force or effect. There are no representations, warranties, or agreements, whether express or implied, or oral or written, with respect to the subject matter hereof, except as set forth herein, and no party has relied upon any representation, promise, assurance, covenant, omission or agreement not included in the terms hereof in making the decision to enter into this instrument. This instrument may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements among or between the parties.

25. AMENDMENTS. This instrument may not be modified, amended or changed by any oral agreement, either express or implied. No amendment, modification or change in this instrument shall be valid or binding unless reduced to writing and signed by both the District and the Petitioner. The provisions of this and the immediately preceding sentence themselves may not be amended or modified, either orally or by conduct, either express or implied, and it is the declared intention of the parties that no provisions of this instrument, including said two sentences, shall be modifiable in any way or manner whatsoever other than through a written document signed by both the District and the Petitioner.

26. EXPENSES OF ENFORCEMENT. In any proceeding to enforce, interpret, rescind or terminate this instrument or in pursuing any remedy provided hereunder or by applicable law, the prevailing party shall be entitled to recover from the other party all costs and expenses, including a reasonable attorney's fee, whether such proceeding or remedy is pursued by filing suit or otherwise, and regardless of whether such costs, fees and/or expenses are incurred in connection with any bankruptcy proceeding. For purposes of hereof, the term "prevailing party" shall include, without limitation, a party who agrees to dismiss an action or proceeding upon the other's payment of the sums allegedly due or performance of the covenants allegedly breached, or who obtains substantially the relief sought. The provisions set forth in this paragraph shall survive the merger of these provisions into any judgment.

27. EFFECTIVE DATE. This Contract shall become effective upon approval hereof by the District, as indicated by its endorsement herein below.

28. REUSE. The reuse of water delivered pursuant to this contract shall not be allowed without permission of the District. The waste, seepage, or return flow from water delivered pursuant to this contract shall belong to the United States or the District for the use and benefit of the District.

29. NOTICE. Any notice herein required to be given to the Petitioner shall be sufficiently given if sent by mail addressed to the Petitioner at the address listed below, or if sent by electronic mail addressed to the Petitioner at the email address listed below, if any such email address is listed, or through public notice, and to the District office if delivered to 2837 East Highway 193, Layton, Utah 84040.

30. AUTHORIZED EXECUTION. The individuals signing below each represent and warrant (i) that they are authorized to execute this instrument for and on behalf of the party for whom they are signing; (ii) that such party shall be bound in all respects hereby; and (iii) that such execution presents no conflict with any other agreement of such party.

31. CONTRACT ASSESSMENTS: This Petition is governed by the provisions of Utah Code Section 17B-2a-1007, titled "Contract Assessments," together with the rules and regulations of the District's board of trustees relating to contract assessments.

SIGN
HERE

SIGN
HERE

Wade Tolman
Petitioners and Owners of Land above-described

Wade Tolman

560 S 8600 E

Huntsville, UT 84317

Address

wadea.tolman@gmail.com

Email Address

(801) 719-7298

Phone Number

STATE OF Utah)
) : ss.
COUNTY OF Davis)

On the 19 day of October, 2020, before me, Jason Hawkes a notary
date month year notary public name
public, personally appeared Wade Tolman, proved on the basis of
name of document signer(s)
satisfactory evidence to be the person(s) whose name(s) (is/are) subscribed to this instrument, and
acknowledged (he/she/they) executed the same.



(SEAL)

Jason Hawkes
NOTARY PUBLIC SIGNATURE

ORDER ON PETITION

DUE NOTICE having been given and hearing had, IT IS ORDERED that the foregoing petition of Wade Tolman be granted and an allotment of 4.00 acre-feet of water is hereby made to the lands therein described, upon the terms, at the rates, and payable in the manner as in said petition set forth.

DATED this 3 day of December, 2020.

WEBER BASIN WATER CONSERVANCY DISTRICT

BY Dee Alan Waldron
Dee Alan Waldron, President

ATTEST:

Tage I. Flint
Tage I. Flint, Secretary

(SEAL)

