

WATER RIGHT LEASE AGREEMENT

THIS WATER RIGHT LEASE AGREEMENT (the “Agreement”) is made and entered into by and between Bear River Water Conservancy District, a water conservancy district organized under the laws of the State of Utah (the “District”) and Steve Elliot, an individual (“Elliot”).

RECITALS

- A. Elliot is in need of water for stock watering use in the Whites Valley area of Box Elder County, Utah, and has requested that the District lease him water for this purpose.
- B. District is the owner of water rights in the Bothwell Pocket area for municipal, irrigation, domestic, and stock watering purposes.
- C. District is willing to lease a portion of its water rights to Elliot and Elliot is willing to lease a portion of the District’s water rights pursuant to the terms and conditions set forth herein.

AGREEMENT

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. The Leased Water.

Subject to the terms and provisions of this Agreement, the District agrees to lease a portion of the District’s Water Right No. 29-1592 to provide up to eight acre feet annually to Elliot for stockwatering purposes (the “Leased Water”), subject to any reductions imposed by the State Engineer in his approval of the temporary change application that will be required under this Agreement.

2. Lease Term

- a. District agrees to lease the Leased Water to Elliot (the “Lessee”) commencing as of the date the State Engineer approves the District’s first temporary change application required for the use of the Leased Water and expiring ten years thereafter (the “Lease Term”).
- b. The Leased Water shall be available to Elliot for use in quantities not to exceed eight-acre feet each year (the “Annual Water Allocation”).

3. Lease Rate and Payment.

- a. Elliot agrees to pay the District’s current wholesale rate of \$493.32 annually for eight-acre feet for the Leased Water without regard to the actual use of water by Elliot. The District shall bill Elliot annually for the Annual Water Allocation and payment shall be made in full prior to Elliott may use the Leased Water. Payment shall be made within 30 days following the final approval of the temporary change application each year during the Lease Term.
- b. Elliot shall monitor his water usage using a meter installed at the Elliot Well located at (N 84 feet E 2160 feet from W4 corner, Sec 28 T 13N R 4W SLBM). If Elliot fails to adequately monitor his water use and accidentally or intentionally uses all or part of the Annual Water Allocation prior to making the corresponding Annual Water Allocation payment, the District may terminate the Agreement. Elliot will read the meter monthly documenting the water use and submit a year-end water use report to the District before January 15 of the following year.

4. Temporary Change Application.

- a. District and Elliot shall cooperate in the preparation, filing and securing of the approval of annual temporary change applications to permit Elliot to use the Leased Water for the Lease Term.
- b. If at any time during the evaluation of the temporary change application by the State Engineer's office, the State Engineer initiates an evaluation of the Leased Water that is unsatisfactory to either the District or Elliot, the parties shall jointly consult with the State Engineer. If these matters cannot be resolved to their joint satisfaction, either party in its sole discretion, may terminate this Agreement and withdraw any change application and neither party shall have any further obligation pursuant to this Agreement.
- c. If the State Engineer issues a decision rejecting the temporary change application or approves it with conditions unacceptable to the parties, either party in its sole discretion may elect to withdraw the change application and terminate this Agreement.
- d. Elliot shall pay all costs and expenses including attorneys' and engineering fees incurred in connection with the preparation and filing of the temporary change applications or in any administrative proceeding involving the approval of the temporary change applications. District shall bear any costs and expenses, including attorneys' fees that it may incur relating to this Agreement, administration of the lease, and the change application.

e. The parties understand that the Leased Water shall automatically revert to the District at the end of the Lease Term concurrent with the expiration of the applicable change application.

5. Elliot Water Facilities.

a. The parties agree that the Leased Water will be diverted from a well to be drilled by Elliot located in: N 84 feet E 2160 feet from W4 corner, Sec 28 T 13N R 4W SLBM (the “Elliot Well”).

b. It is understood and agreed that Elliot shall be responsible for the installation and maintenance of all facilities necessary to divert and use the Leased Water, including drilling the Elliot Well, installation of the pump, backflow preventer, motor and related diversion facilities to obtain the Leased Water, including the installation of a totalizing meter to measure the quantity of Leased Water diverted.

6. No Third Party Beneficiaries.

This Agreement is not intended to be a third party beneficiary contract for the benefit of any third parties, and no such persons shall have any cause of action against the District for any failure by the District to make water available as provided in this Agreement, or for any breach or default by the District hereunder. In addition, no third parties shall have any rights hereunder that would in any way restrict the right of the District and Elliot to modify or renew this Agreement as provided herein at any time or in any manner.

7. Indemnity.

Elliot shall be responsible for payment of all liabilities that may arise in connection with the leased water made available by the District under this Agreement. Elliot agrees to indemnify,

defend, and hold harmless the District and its officers, directors, and employees from any and all claims, losses, damages, liabilities, settlement costs, penalties, interest, charges, costs, expenses, and attorney fees as a result of any litigation, investigation, action, or proceeding of any nature based on, arising from, or related to Elliot's use of the Leased Water made available by the District under this Agreement.

8. Notices. Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when hand delivered, sent by certified or registered United States mail to the respective address of District or Elliot as set forth below:

If sent to District:

Bear River Water Conservancy District
Attn: General Manager
102 Forest Street
Brigham City, UT 84302

If sent to Elliot:

Steve Elliot
10610 North 10800 West
Thatcher, Utah, 84337

9. Effective Date of Agreement. This Agreement shall be effective when executed by the parties.

10. Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the state of Utah.

11. Entire Agreement. This Agreement shall constitute the entire agreement between the parties and supersedes any prior understanding, representation, or agreement of the parties regarding the subject matter hereof.

12. Modification of Agreement. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.

13. No Waiver. No delay or failure by either party to exercise any right under this Agreement, and no partial or single exercise of that right, shall constitute waiver of that or any other right, unless expressly provided herein. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty, and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

14. Rights and Remedies. The parties shall have all rights and remedies provided under Utah law for a breach or threatened breach of this Agreement, these rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy.

15. Necessary Acts and Cooperation. The parties hereby agree to do any act or thing and to execute any and all instruments required by this Agreement and which are necessary and proper to make effective the provisions of this Agreement.

16. Authorization. Each individual executing this Agreement does thereby represent and warrant to each other so signing that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth where he or she signs.

17. Assignment. Lessee may not assign any interest contained herein, voluntarily or involuntarily, without the prior written consent of Lessor. Lessee may not sublease any portion of this Lease.

18. **Execution of Agreement.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may be delivered by facsimile or in electronic file format.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below to be effective as of the _____ day of _____, 2011.

**BEAR RIVER WATER CONSERVANCY
DISTRICT:**

By: _____
Print Name: _____
Title: _____
Date: _____

STEVE ELLIOT:

By: _____
Print Name: _____
Date: _____