

Contract # 25056

CONTRACT AND LIEN BETWEEN WEBER BASIN WATER CONSERVANCY DISTRICT

AND

Gailey Ranch, LLC

FOR THE SALE AND USE OF UNTREATED WATER

THIS CONTRACT, made this 7, day of February, 2007 between the WEBER BASIN WATER CONSERVANCY DISTRICT, organized under the laws of the State of Utah, herein styled "District", and Gailey Ranch, LLC of Morgan County, Utah herein styled the "Purchaser",

WITNESSETH:

WHEREAS, the Purchaser desires, by means of a well/spring to divert or withdraw underground water for domestic and miscellaneous purposes, which diversion will intercept and withdraw water that will require replacement, and the district has water to sell to the Purchaser to replace the water so intercepted and withdrawn; and

WHEREAS, Purchaser intends to utilize said water upon the following described lands: **SEE ATTACHED "EXHIBIT A"**

and

WHEREAS, this contract and purchaser's obligation to pay for the water as set forth herein shall constitute a lien upon the real property described in Exhibit "A";

NOW, THEREFORE, in consideration of the mutual and dependent promises and covenants herein contained, it is hereby mutually agreed by and between the parties hereto as follows:

Ent 108577 Bk 251 Pg 23
Date: 26-JUL-2007 12:50PM
Fee: \$64.00 Check
Filed By: NPS
BRENDA NELSON, Recorder
MORGAN COUNTY
For: WEBER BASIN WATER CONSERVANCY

1. SALE OF WATER: The District for the price hereinafter specified, hereby sells and agrees to deliver in the manner and at the place hereinafter provided, and the purchaser hereby purchases the right to use in each calendar year untreated District water in amounts of 2500 acre-feet, except the District will not be obligated to deliver water to the Purchaser as herein provided until satisfactory evidence is furnished that the use of this water as replacement water has been approved by the State Engineer of Utah.

2. PLACE OF DELIVERY AND USE: The water covered hereby is sold to the purchaser solely for the replacement of underground water diverted, withdrawn or to be diverted or withdrawn by said well or spring for domestic and miscellaneous use in and upon the following described lands in Morgan County, Utah:

SEE ATTACHED "EXHIBIT A"

and for no other use or purpose. Its use as replacement water shall be subject to such rules and regulations as the State Engineer of Utah may prescribe.

Delivery of such water shall be as directed by the State Engineer or his representative at the outlet works of _____ Reservoir. The District shall have no obligation to provide works or facilities of any type to conduct such water from such point of delivery to its ultimate place of use. The Purchaser shall have no right to hold over or accumulate water from year to year, nor to sell or rent the water.

3. OBLIGATION OF PURCHASER TO PAY FOR WATER: For the purchase of the annual quantity of water which the District holds and will hold for the Purchaser as herein provided, the Purchaser shall pay to the District an annual amount to consist of the total of the following items:

(a) \$243.00 per acre-foot of water purchased, a portion thereof to apply to the extent required on the District's obligation under bonds or other Government-District Contract and the remainder to apply to the District's general operation and maintenance 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 amounts shall be determined each year by the Board of Trustees of the District and any such determination shall be final and conclusive and binding on all parties.

The first annual payment under item (a) above shall be made by the Purchaser to the District concurrently with the execution hereof by Purchaser, and shall be in payment for water available for use of Purchaser in the calendar year in which this contract is approved by the Board of Directors of the District; provided, however, if such approval by the Board of Directors of the District is given on or subsequent to October 1 of the then year, the payment so made by Purchaser shall apply as a credit upon the amount accruing hereunder for the next succeeding calendar year, and no payment shall be required for the remainder of the calendar year in which such initial payment is made. Succeeding annual payments shall be made by the Purchaser to the District on or before January 1 of each year thereafter. Each annual payment shall be made to the District whether or not all or any part of the water is called for or used hereunder.

Purchaser's obligation to pay for the water as described above exists irrespective of whether purchaser actually uses the water.

4. 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 the existing prime interest rate as of January 1 of each year.

5. REMEDIES OF DISTRICT IN CASE OF DEFAULT: The annual amount payable hereunder shall be and constitute a perpetual lien upon the lands herein above described. If the Purchaser shall fail to make any payment due hereunder on or before the due date, the District may refuse the delivery of water, or upon written notice to Purchaser, cancel this contract in its entirety, but either or both of these remedies are not exclusive, and the District may exercise any other remedy given by this contract or by law to enforce collection of any payment due hereunder, and for the foreclosure of the lien hereby created.

6. RELIEF IN EVENT OF DROUGHT AND WATER SHORTAGE: In the event there is a shortage of water caused by drought, inaccuracies in distribution not resulting from negligence, hostile diversion, prior or superior claims or other causes not within the control of the District, no liability shall accrue against the District or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom and the payments to the District provided for herein shall not be reduced because of any such shortage or damage. During periods of water shortage, allocations of treated and untreated water for municipal, domestic and industrial use shall have first priority.

7. CONSTRUCTION, OPERATION AND MAINTENANCE OF PURCHASER'S FACILITIES: The Purchaser shall construct, operate and maintain, without cost to the District, the well or spring and appurtenant facilities necessary to secure and accurately measure its water supply. The metering or other measuring device installed by the Purchaser shall be satisfactory to the State Engineer. The District has no responsibility for

the quality or quantity of water that the Purchaser is able to secure through the operation of its well or spring.

8. BENEFICIAL USE OF WATER: The basis, the measure and the limit of the right of the Purchaser in the use of water shall rest perpetually in the beneficial application thereof, and the Purchaser agrees to put the water purchased by him hereunder to beneficial use in accordance with law.

9. ASSIGNMENT LIMITED - SUCCESSORS AND ASSIGNS OBLIGATED:

The provisions of this contract shall apply to and bind the successors and assigns of the parties hereto.

10. NOTICE: Any notice herein required to be given to the Purchaser shall be sufficiently given if sent by mail addressed to Purchaser at:
1425 Brush Hill Road, Milton, MA 02186, and the District if sent to 2837 East Highway 193, Layton, Utah 84040.

11. OBSERVATION OF FEDERAL AND STATE POLLUTION LAWS: The Purchaser agrees that it will comply fully 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.

12. 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 Weber Basin Water Conservancy District for the use and benefit of the Weber Basin Project.

Weber Basin Project.

IN WITNESS WHEREOF, the parties have caused this contract to be executed and signed the day and year first above written.

PURCHASERS:

Gailey Ranch, L.L.C.

By: Peter Hicks

Address: c/o Hicks Manangement

P.O. Box 87 Readville Station

Boston, MA 02137

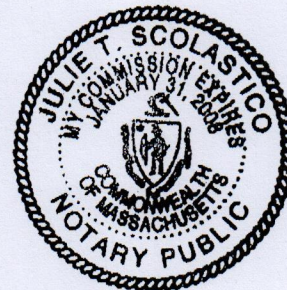
Signature: *Peter Hicks*

STATE OF Massachusetts
COUNTY OF Norfolk) :SS

On the 7th day of February, 2007, personally appeared before me Peter Hicks, the signer of the above instrument, who duly acknowledged to me that he executed the same.

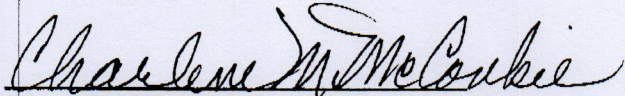
(SEAL)

Julie T. Scolastico
Notary Public

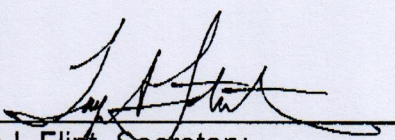


APPROVED DATE: February 23, 2007

WEBER BASIN WATER
CONSERVANCY DISTRICT


Charlene M. McConkie, Chair

ATTEST:


Tage I. Flint, Secretary

(SEAL)



EXHIBIT "A"

Legal Description

IN TOWNSHIP 3 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN:

ALL OF SECTIONS 2, 3, AND 11.

ALSO: THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER, THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 10.

ALSO: THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER, THE EAST ONE-HALF OF THE NORTHEAST QUARTER, AND THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14.

IN TOWNSHIP 4 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN:

BEGINNING AT THE NORTHWEST CORNER OF SECTION 1, RUNNING THENCE EAST 98 RODS; THENCE SOUTH 320 RODS; THENCE WEST 98 RODS; THENCE NORTH 320 RODS TO THE PLACE OF BEGINNING.

ALSO: ALL OF SECTION 2.

ALSO: ALL OF SECTION 3.

ALSO: THE EAST HALF OF THE SOUTHWEST QUARTER, AND THE SOUTHEAST QUARTER OF SECTION 4.

ALSO: ALL OF SECTION 9, LESS THE FOLLOWING DESCRIBED PROPERTY: BEGINNING ON THE SOUTH LINE OF SECTION 9, AFORESAID, AT A POINT WHERE SAID SECTION LINE CROSSES THE TOP OF THE MOUNTAIN; THENCE NORTH ALONG THE TOP OF THE MOUNTAIN TO THE NORTH LINE OF SAID SECTION 9; THENCE WEST TO THE NORTHWEST CORNER OF SAID SECTION; THENCE SOUTH ONE MILE TO SOUTHWEST CORNER OF SAID SECTION; THENCE EAST TO POINT OF BEGINNING.

ALSO: ALL OF SECTION 10.

ALSO: ALL OF SECTION 11.

ALSO: THE SOUTH HALF, AND THE SOUTH HALF OF THE NORTH HALF OF SECTION 12. ALSO BEGINNING AT A POINT 23.50 CHAINS WEST FROM THE NORTHEAST CORNER OF SAID SECTION 12, AND RUNNING THENCE SOUTH 20.00 CHAINS; THENCE WEST 32.50

CHAINS; THENCE NORTH 20.00 CHAINS; THENCE EAST 32.50 CHAINS TO THE POINT OF BEGINNING.

ALSO: ALL OF SECTION 13.

ALSO: THE WEST HALF AND THE SOUTHEAST QUARTER OF SECTION 14.

ALSO: ALL OF SECTION 15.

ALSO: THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 20.

ALSO: THE EAST HALF, AND THE EAST HALF OF THE WEST HALF OF SECTION 22.

ALSO: ALL OF SECTION 23.

ALSO: THE WEST HALF, AND THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 26.

ALSO: ALL OF SECTION 27.

ALSO: THE SOUTHWEST QUARTER, AND THE EAST HALF OF THE NORTHWEST QUARTER OF SECTION 35.

ALSO: THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36.

IN TOWNSHIP 4 NORTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN:

THE NORTHWEST QUARTER OF SECTION 19.

IN TOWNSHIP 5 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN:

BEGINNING AT THE SOUTHEAST CORNER OF SECTION 26, THENCE WEST 80 RODS; THENCE NORTH 30 RODS, MORE OR LESS, TO THE WEBER RIVER; THENCE UP SAID RIVER SOUTH 7500' EAST 20.86 CHAINS; THENCE SOUTH 8 RODS TO THE POINT OF BEGINNING.

ALSO: BEGINNING AT A POINT 11.50 CHAINS EAST FROM THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26; RUNNING THENCE NORTH 5030' WEST 7.39 CHAINS TO THE UNION PACIFIC RAILROAD FENCE; THENCE FOLLOWING SAID FENCE SOUTH 83030' EAST 24.30 CHAINS; THENCE SOUTH

9000' EAST 4.66 CHAINS, MORE OR LESS, TO THE QUARTER, QUARTER LINE; THENCE WEST 24.50 CHAINS TO THE POINT OF BEGINNING.

IN TOWNSHIP 5 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN:

ALSO: THE SOUTH HALF OF THE SOUTHWEST QUARTER, AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 26.

ALSO: THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SECTION 27, EXCEPTING THOSE PORTIONS THEREOF CONDEMNED FOR GATEWAY CANAL IN BOOK "R" OF DEEDS, PAGE 119, AND THAT PORTION THEREOF CONVEYED TO THORNLEY K. SWAN AND J.W. SWAN, BY DEED RECORDED IN BOOK "R" OF DEEDS, PAGE 624.

ALSO: BEGINNING AT THE CENTER OF THE SOUTHEAST QUARTER OF SECTION 27, RUNNING THENCE NORTH 8.00 CHAINS, MORE OR LESS, TO THE RIGHT OF WAY OF THE UNION PACIFIC RAILROAD COMPANY; THENCE WEST 3.50 CHAINS; THENCE SOUTH 7800' WEST ALONG SAID RIGHT-OF-WAY 17 CHAINS, MORE OR LESS, TO THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 27; THENCE SOUTH ON SAID LINE 3 CHAINS, MORE OR LESS, TO THE QUARTER, QUARTER CORNER; THENCE EAST 20 CHAINS TO THE PLACE OF BEGINNING, EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO THORNLEY K. SWAN AND J.W. SWAN BY DEED RECORDED IN BOOK "R" OF DEEDS, PAGE 624.

ALSO: BEGINNING AT THE CENTER OF THE SOUTHEAST QUARTER OF SECTION 27, AND RUNNING THENCE NORTH 8 CHAINS; THENCE RUNNING ALONG THE SOUTH SIDE OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY EASTERLY 11.55 CHAINS; THENCE SOUTH 8 CHAINS TO THE QUARTER, QUARTER SECTION LINE; THENCE WEST 11.55 CHAINS TO THE PLACE OF BEGINNING.

ALSO: THE SOUTH HALF OF THE SOUTHEAST QUARTER, AND THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28.

ALSO: ALL OF SECTION 33.

ALSO: ALL OF THE EAST HALF, AND THE EAST HALF OF THE WEST HALF OF SECTION 34.

ALSO: ALL OF SECTION 35, EXCEPTING THAT PORTION THEREOF CONDEMNED FOR GATEWAY CANAL IN BOOK "R" OF DEEDS, PAGE 119.