



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 11-9-2022

Paperwork returned by _____ (Date) _____

Name of Applicant: Kenstal LLC (land)

Mailing Address: [REDACTED]
[REDACTED]

Phone [REDACTED]

Purpose of Request:
REQUEST TO SUBLEASE BLM/WILDERNESS LEASED EASEMENT- SPRING #1 AND #2 .

Lease negotiable with contingencies - to assure water is available (could be seasonal that water is available). Kenstal would like to sublet until the SSD desires to develop springs #1 & #2, at that time we can dissolve the agreement or, if need re-negotiate. Kenstal will remove existing black pipe and other existing equipment from Canaan Mountain after agreements ends.

NEED TIME FOR SLIDE PRESENTATION

Kendra Webb

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



Bruce C. Jenkins, Managing Partner, CCAL†+
 Carson B. Bagley, Partner+*
 Quinn A. Sperry, Partner+
 Kimball A. Forbes, Partner+*
 Christopher J. Robison, Associate+
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†College of Community Association Lawyers
 +Licensed in Utah
 *Licensed in Nevada

November 2, 2022

Hand delivered

Board of Directors
 Big Plains Water and Sewer 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 is pleased to represent Kenstal, LLC, which owns land in Apple Valley, Utah. The primary owners of Kenstal are three of Merlin Webb’s children, and they own substantial water rights located in the area of the springs on Canaan Mountain, which as you know, are on federal land managed by the Bureau of Land Management (“BLM”). As you may know, in the 1970s, Merlin Webb purchased land next to the BLM land and acquired a lease from the BLM to access the springs. Mr. Webb developed access to a number of the springs and formed the Canaan Springs Water Company.

In 2010, the federal government designated Canaan Mountain as wilderness area, requiring Merlin Webb to enter into a new lease agreement with the BLM. A copy of that lease (*Culinary/Irrigation Water System Lease* (“Lease”)) is enclosed as Attachment 1. Because of the restrictions on access to wilderness area, the Lease limited Mr. Webb’s access to all but five springs (the “Springs”). Specifically, the Lease provides access to the Springs as “spring water collection wells,” identifies them as wells 1–5, and describes the pipeline conveying water from each Spring. Figure 1 of the Lease is a map showing the Springs numbered 1–5, and the locations of the pipes from each Spring.

In 2018, the Big Plains Water and Sewer Special Service District (“District”) purchased the Canaan Springs Water Company, and in 2019, Mr. Webb’s lease was assigned to the District. A copy of the lease assignment is enclosed as Attachment 2.

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

It is our understanding that the District is currently using Springs 3–5 and the corresponding pipeline areas but that the District has never used Springs 1 or 2 or the corresponding pipeline areas for those Springs. Kenstal desires to enter into a sublease with the District to allow Kenstal to access Springs 1 and 2 and the corresponding pipeline areas, including the several thousand feet of two-inch above-ground pipes installed to convey water from Springs 1 and 2.

Kenstal contacted the Realty Specialist at the St. George BLM Field Office about whether the BLM would allow a sublease, and the Realty Specialist's 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>.

Kenstal is specifically proposing to sublease Springs 1 and 2 until the District decides to use the two Springs. Kenstal will pay the District a yearly amount to sublease access to Springs 1 and 2. Accompanying this letter is an Application to Appear Before the Board of Directors at the Board's November 9, 2022 meeting. Kenstal would like to discuss this matter with the Board at that meeting.

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



Kimball A. Forbes
Attorneys for Kenstal, LLC

Attachment 1

**Culinary/Irrigation Water System Lease
March 2010**

**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.

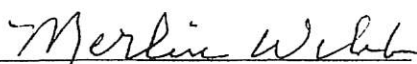
A lease holder who has complied with the provisions thereof, shall upon the filing of a request for renewal, be the preferred user for a new lease provided that the public lands are not needed for another use. Renewal, if granted shall be subject to new terms and conditions in effect at the time of renewal.

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.

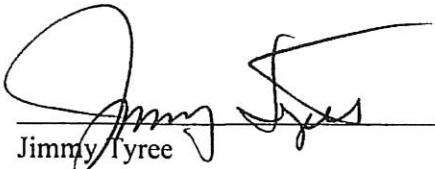
Leases issued for a term of 20 years shall be reviewed for adequacy and appropriate adjustment of the terms and conditions at the end of the twentieth year and at regular intervals thereafter not to exceed 10 years.

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



Jimmy Tyree
St. George Field Office Manager

3-10-10

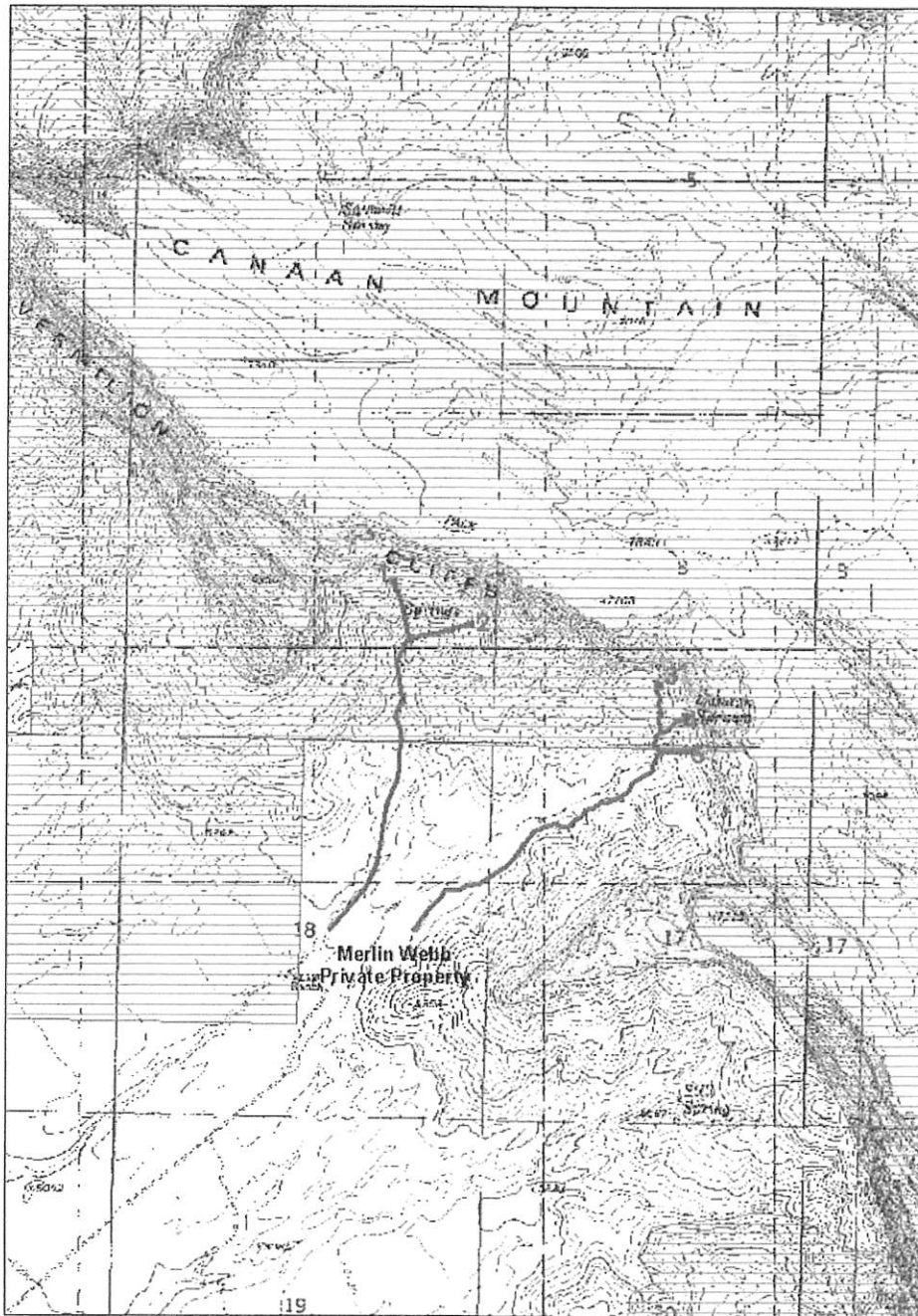
Date

3/11/10

Date

Figure 1

Merlin Webb Canaan Mountain Springs Lease



—■ Springs and Pipelines ▨ Canaan Mtn. Wilderness

Attachment 2

Lease Assignment

July 17, 2019



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, SE¼;
sec. 8, SE¼SW¼;
sec. 17, NW¼NE¼, N½NW¼, SW¼NW¼;
sec. 18, W½NE¼, SE¼NE¼.

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 Shawna 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