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WASATCH CO RECORDER-ELIZABETH M PARCELL
2000 JUL 13 11:41 AM FEE \$1.00 BY MNC
REQUEST: WASATCH COUNTY SPECIAL SERVICE

November 12, 1999
M&ICONTRACT4.wpd

When Recorded Return To:
Purchaser at the following Address:
Bar X Mutual Water Co.
P.O. Box 424
Kamas, Utah 84036

AGREEMENT FOR SALE OF UNTREATED MUNICIPAL AND INDUSTRIAL WATER FOR REPLACEMENT PURPOSES

THIS AGREEMENT is made this 7th day of July, ~~1999~~ by and between the WASATCH COUNTY SPECIAL SERVICE AREA No. 1, hereinafter referred to as ("WCSSA #1"), a political subdivision of the State of Utah, and BAR X MUTUAL WATER COMPANY, A UTAH CORPORATION hereinafter referred to as ("Purchaser").

WITNESSETH:

WHEREAS, Purchaser is a mutual water company providing culinary and domestic water to its shareholders from springs located in Wasatch County, State of Utah and,

WHEREAS, Purchaser's service area is located within the Provo River Basin which Basin's waters are fully appropriated so that Purchaser's diversions will intercept water that is already appropriated for use by others, and unless Purchaser has other water which it can use to replace to the river basin for the water it will divert, Purchaser will interfere with other water rights; and,

WHEREAS, WCSSA #1 has been duly organized in accordance with the provisions of title 17A, Chapter 2, Section 401, 403 and 412, U. C. A., and has the statutory authority to sell water by written agreement; and,

WHEREAS, WCSSA #1 has determined that it has Central Utah Project Municipal and Industrial Water or other water rights ("M&I Water") available which it can sell to Purchaser for replacement purposes, and WCSSA #1 desires to sell the same to Purchaser upon the terms and conditions and at the price set forth herein.

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

1. **Purchase of Water:** Purchaser hereby agrees to purchase and WCSSA #1 hereby agrees to sell Twenty (20) acre feet of untreated M&I Water to be delivered annually in the manner and at the place hereinafter provided. This water is to be used by Purchaser for the sole purpose of replacing to the river system the same quantity of water diverted by Purchaser from the basin.
2. **Purchase Price:** Purchaser shall pay to WCSSA #1 the sum of Two Hundred Fifty Dollars (\$250) per acre foot, per year or any portion thereof, for the water to be delivered under this agreement, regardless of whether the Purchaser uses any of the M&I water

during the year. The purchase price has been determined by WCSSA #1 and reflects the district's costs of supplying this raw untreated M&I water as a replacement supply to Purchaser, including expenses of operation and maintenance of its facilities to make this water available to Purchaser for replacement purposes. WCSSA #1 hereby expressly reserves the right, upon notice to Purchaser, to unilaterally adjust the price of the water as necessary to cover any increase in its costs of supplying this water, including any increase in its expenses of operation and maintenance; provided, however, that any such increase will be uniformly applied to all similarly situated contracts between WCSSA #1 and other M&I Water purchasers.

3. **Terms of Payment:** Payments are based on a contract year of November 1 to October 31, of the following calendar year, and the first year's payment shall be due and payable upon execution of this agreement. Each subsequent annual payment shall be paid in advance and in full on or before November 1 of each contract year during the life of this agreement. WCSSA #1 will bill Purchaser for each subsequent annual payment approximately 45 days before each annual payment becomes due. Each annual payment shall be made in advance without regard to whether or not the water is actually called for or used by Purchaser during the contract year.
4. **Interest:** Any annual payment or the payment of any charge or assessment due hereunder, which remains delinquent thirty (30) days after the due date stated herein, shall accrue interest from and after the due date at the rate of one and one-half percent (1½%) per month, until the outstanding balance and all accrued interest has been paid in full.
5. **Other Charges:** Purchaser shall also pay any assessments levied by the State Engineer of the State of Utah for administration and distribution of water covered by this agreement.
6. **Security for Collection of Charges:** WCSSA #1 shall impose and collect and Purchaser shall pay any and all such fees and charges lawfully imposed by WCSSA #1. Purchaser shall either provide WCSSA #1 as security for its performance of this Agreement, (i) a mortgage on the M&I Water purchased hereunder, water system facilities and all appurtenances thereto, or (ii) a cash deposit upon execution of this Agreement, in addition to the required contract payment, in an amount equal to one year's contract payment, which security deposit shall be held by WCSSA #1 in an interest bearing trust account and used only to satisfied any uncured default of Purchaser. At WCSSA #1's sole discretion, Purchaser may be allowed to pay the security deposit in two equal installment payments, with the first payment being due upon execution, and the second installment payment being due within 180 days of the date of execution. If any time WCSSA #1 is required to draw on the security deposit to cure a default, Purchaser shall restore the balance of the security deposit to an amount equal to one year's payment within 30 days of WCSSA #1's recourse to the security deposit. Failure to so restore the account balance will be cause for termination of this Agreement. All interest will accrue to the benefit of the Purchaser and the accrued interest shall be used annually by WCSSA #1 to partially offset the annual contract payment required of Purchaser. In addition to

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foreclosing the mortgage or drawing on the security deposit to cure Purchaser's default, WCSSA #1 may exercise any and all lawful rights and remedies, including, but not limited to:

- a. the certification of any delinquent fees and charges to the county treasurer and assessor whereupon such delinquent fees and charges will become a lien against the delinquent premises on a parity with and collected at the same time and in the same manner as general county taxes, as authorized by Section 17A-2-416 U. C. A.;
 - b. The withholding the delivery of M&I Water to Purchaser; and,
 - c. Terminating this Agreement if Purchaser fails to cure any delinquency in the payment of any annual payments or other charges to WCSSA #1.
7. **Term of the Agreement:** The term of this agreement shall commence upon the approval of this agreement by the board of WCSSA #1 and shall continue thereafter in perpetuity unless the agreement is terminated as provided for herein or upon Purchaser's uncured default in the payment of the charges and assessments reserved herein.
8. **Delivery of Water:** WCSSA #1 shall make the water covered hereby available in Jordanelle Reservoir for replacement purposes. Purchaser shall be solely responsible for the filing of an Exchange Application with the State Engineer and obtaining the State Engineer's approval to divert water from its sources. The Exchange Application should specify that the water available for replacement shall be released from Jordanelle Reservoir. The water shall be released from storage and delivered into the Provo River as directed by the State Engineer, subject to the terms and conditions of this agreement. Purchaser shall run the risk that water can be withdrawn from Purchaser's desired point of diversion and that the water so diverted can be used at Purchaser's desired place of use without interfering with the vested water rights of others. It is mutually understood and agreed that WCSSA #1 has no obligation to deliver water for replacement purposes to any point other than the outlet works of Jordanelle Reservoir. It is further agreed that WCSSA #1's obligation to deliver water for replacement purposes is expressly contingent upon the occurrence of all of the following:
- a. State Engineer approval within one year of the date of this agreement of an exchange application to be filed by Purchaser in accordance with §73-3-20 U. C. A., authorizing Purchaser to withdraw and divert water from its sources of supply in exchange for the water to be made available by the WCSSA #1 and released to the Provo River in replacement for the water so diverted by Purchaser from its sources of supply. This date may be extended by the parties upon demonstration by Purchaser that the exchange application has been filed but that the State Engineer has not yet acted on the application, or that the State Engineer's Memorandum Decision on the application has been appealed.

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- b. Purchaser shall construct the necessary facilities to beneficially use the water within three years of the date of State Engineer approval of Purchaser's exchange application.
 - c. The failure of Purchaser to perform the above conditions within the time provided for herein shall cause this agreement to automatically terminate and Purchaser shall forfeit all rights hereunder.
9. **Place of Use:** Purchaser shall use water for domestic and other miscellaneous purposes appurtenant to and normally associated with the use of the land for residential dwelling purposes upon the following lands located within the Central Utah Water Conservancy District, and within Wasatch County, State of Utah and more particularly described as in **Exhibit A**, which is attached hereto and incorporated herein by this reference.
10. **Point of Diversion:** Purchaser intends to divert and withdraw water from springs for domestic and miscellaneous use at or near the following location(s) in Wasatch County, State of Utah, and more particularly described in **Exhibit B**, which is attached hereto and incorporated herein by this reference.
11. **Drought Conditions:** During times of drought or other natural or man made shortages reasonably beyond the control of WCSSA #1, WCSSA #1 may curtail or cease the delivery of water for replacement purpose into the Provo River until such time as the shortage conditions have been alleviated. During such times, and upon notice by WCSSA #1, Purchaser shall curtail or cease the withdrawal of the purchased water from purchaser's sources to insure that Purchaser withdraws no more water from the Purchaser's points of diversion than WCSSA #1 has available for replacement purposes in Jordanelle Reservoir. All purchasers holding agreements with WCSSA #1 shall acquire an equal right of priority with each other, and shall share equitably and proportionately in all shortages while the same persists. WCSSA #1 shall incur no liability to Purchaser for any damages or other losses directly or indirectly resulting from or arising out of any such water shortage and the necessity of Purchaser to curtail Purchaser's use of water from its water sources, under this contract.
12. **Water Pollution:** Purchaser shall comply with all federal, state and local laws, rules, regulation and ordinances regarding the discharge of any pollutant or the storage of and regulated substance where it may enter the nature waters of the United States or the State of Utah. Additionally, Purchaser agrees that Purchaser shall not allow the water to be used hereunder to be wasted under any circumstances.
13. **Assignment:** This agreement and the water represented thereby are freely assignable to any subsequent owner or user of the property described in paragraph 9 hereof, or to subsequent owners or users of the stock in Bar X Mutual Water Company. This

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agreement and the water represented thereby can be assigned in whole or in part to any other individual or entity for use upon other lands within those portions of Wasatch County, Utah that are within the boundaries of the Central Utah Water Conservancy District, and to be withdrawn from other points of diversion upon obtaining required State Engineer approval of any such transfer of use; provided that the assignment or transfer of this agreement and the water represented thereby, or any part thereof, shall not be valid until the same has been approved in writing by WCSSA #1, and any and all delinquencies under this agreement have been cured. The assignee of this agreement or any portion thereof, must meet the conditions precedent to water deliveries set forth in paragraph 8 hereof. The time limits provided for therein there shall begin to run against the assignee upon the date the assignment has been approved by the WCSSA #1 governing board. Assignee's failure to perform these conditions precedent within the time limits imposed shall cause this agreement and the assignment to automatically terminate and the assignee shall forfeit all rights hereunder.

14. **Water Quality:** Purchase acknowledges that WCSSA #1 is making available to Purchaser only raw, untreated water for replacement purposes. WCSSA #1 makes no warranties or representations that this water can be used for any purpose other than replacement of water withdrawn from Purchaser's approved points of diversion.
15. **Default:** Time is hereby declared to be of the essence. The failure of Purchaser to pay the annual payments and other charge and assessment reserved herein when the same shall be due, or within (30) thirty days thereafter, shall constitute a major default of this agreement. If Purchaser fails to cure this default within thirty (30) days of the receipt of written notice of the same by WCSSA #1, this agreement shall terminate without further notice or action by WCSSA #1, and Purchaser shall forfeit all rights hereunder. Thereafter, WCSSA #1 shall have no further obligation to release water into the Provo River for replacement purposes for the benefit of Purchaser. Purchaser shall have no further obligation to make annual payments to WCSSA #1 from or after the date of termination, but nothing herein shall be construed as a release of Purchaser's obligations to pay to WCSSA #1 the past due and accrued payments, charges and assessments, and any interest which may have accrued against the amounts in accordance with paragraphs 2 and 5 hereof.
16. **Compliance with Laws, Rules and Regulations:** Purchaser acknowledges that this agreement and any amendments thereto are subject to the terms and provision of the Water Conservancy Act, Title 17A, Chapter 2, Section 1401, and the County Service Area Act, Title 17A, Chapter 2, Section 401, and the *Petition of the Wasatch County Special Service Area No. 1 for the Allotment of Water for Municipal and Industrial Use*, dated September 16, 1996, for the purchase and sale of project Municipal and Industrial Water to WCSSA #1. Additionally, purchaser agrees to abide by the lawfully adopted rules and regulation of the Central Utah Water Conservancy District and any applicable rules of the WCSSA #1, regarding the sale of M&I water for use on lands outside the political boundaries of the WCSSA #1, as the same are now established and as they may

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be amended from time to time in the future.

- 17. **Notice:** Any notice required herein shall be sent postage prepaid to the parties at the addresses set forth herein:

Purchaser
 Bar X Mutual Water Co.
 P.O. Box 424
 Kamas, Utah 84036

WCSSA #1
 Wasatch County Special Service Area No. 1
 2210 South Highway 40, Suite B
 Heber City, Utah 84032

- 18. **Costs and Attorney's Fees:** In the event either party defaults in the performance of the terms and conditions of this agreement, the defaulting party hereby agrees to pay all costs incurred by the other party in enforcing this agreement, including reasonable attorney's fees, regardless of whether enforcement is pursued through litigation or otherwise.
- 19. **Binding Effect:** The foregoing constitutes the full and complete agreement by and between these parties, and shall be binding upon the parties hereof and their heirs, successors, administrators and assigns.

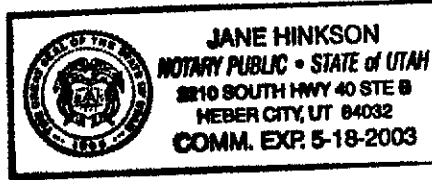
IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first set forth above.

WASATCH COUNTY SPECIAL
 SERVICE AREA No. 1, a political
 subdivision of the State of Utah

PURCHASER
 BAR X MUTUAL WATER COMPANY, a
 Utah Non-Profit Corporation

By: Claude R. Hicken
 Its: Manager

By: [Signature]
 Its: CEO



State of Utah)
) ss:
County of Wasatch

The foregoing instrument was acknowledged before me this 7th day of July, 1999, by Claude Hicker and _____ the Manager and _____ of the Wasatch County Special Service Area # 1.

Jane Hinkson
Notary Public

SEAL

State of Utah)
) ss:
County of Wasatch)

The foregoing instrument was acknowledged before me this 17th day of Nov, 1999, by DAVID E. SLAUGHTER the Purchaser named therein.

Nancy H. Gibson
Notary Public

SEAL

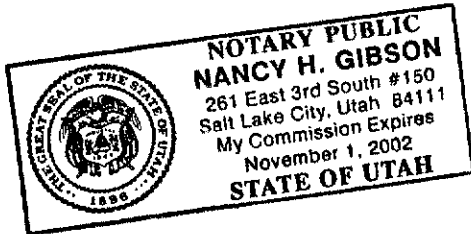


EXHIBIT A

PROPERTIES POTENTIALLY SERVED BY BAR X MUTUAL WATER COMPANY

Diamond Bar X Ranch Subdivision No. 3, as it appears of record in the office of the Wasatch County Recorder, Wasatch County, Utah;

Diamond Bar X Ranch Subdivision No. 6 as it appears of record in the office of the Wasatch County Recorder, Wasatch County, Utah:

Wasatch County Tax Parcel #967 (Rawlins parcel)

Little South Fork area, in NW1/4 Section 22, T.3 S, R.7E, S1B&M, Wasatch County, Utah:

Wasatch County tax parcel =1007 (WABS, Inc. parcel)
Wasatch County tax parcel =1012 (Fueiner parcel)
Wasatch County tax parcel =1013 (Fueiner parcel)
Wasatch County tax parcel =1011 (Phyllis Gardiner Trust parcel)
Wasatch County tax parcel =1016 (Dan S. Gardiner Jr. Parcel)
Wasatch County tax parcel =1009 (Phyllis Gardiner Trust parcel)
Wasatch County tax parcel =1008 (Keith Kirkham parcel)
Wasatch County tax parcel =1014 (Phyllis Gardiner Trust parcel)
Wasatch County tax parcel =1006-1 (Phyllis Gardiner Trust parcel)
Wasatch County tax parcel =1005-2 (Phyllis Gardiner Trust parcel)

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EXHIBIT B

POINTS OF DIVERSION FOR BAR X MUTUAL WATER COMPANY

1. Pine Spring, located at a point S 988 ft and E 216 feet from the NW corner of Section 22, T 3S, R 7 E, SLB&M, Wasatch County, Utah; and
2. Bar X Mutual Spring, located at a point N 1850 ft E 0 feet from the SE corner of Section 15, T 3S, R 7 E, SLB&M, Wasatch County, Utah.

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