



CONTRACT WATER BANK APPLICATION
Utah Board of Water Resources

(FOR OFFICE USE ONLY) Rev.11/15/21

Application Number:	RW001
Date Received:	12/15/2021
Date Complete:	12/17/2021
Date Noticed:	12/22/2021
Date Approved:	1/27/2022

INTRODUCTION:

This form is for eligible entities to apply to establish a Contract Water Bank under Utah Code Title 73 Chapter 31 ("the Act").

The Act promotes the development of market tools favorable to and controlled by local water users. Under the Act, qualifying leasing arrangements can be approved as a Water Bank. Approved Water Banks are granted statutory powers designed to facilitate efficient transfers of water among interested local users. Participation in a Water Bank is voluntary. The Utah Board of Water Resources shall review all Water Bank Applications for completeness and approve complete applications. For a water right to be used within an approved Water Bank, it must be approved through a separate Change Application process overseen by the Utah Division of Water Rights. Once approved, Water Banks operate as independent entities with annual reporting requirements to the Board of Water Resources.

Pursuant to Utah Code Ann. § 73-31-106 the Board of Water Resources delegates authority to the Division of Water Resources staff to perform a completeness review of this application.

APPLICATION INSTRUCTIONS:

To apply, please:

- 1 Complete this Contract Water Bank Application form
- 2 Attach a water bank service area map, attorney's review letter, conditionally approved water bank contract, and other supporting information
- 3 Sign and date the application
- 4 Email (preferred) or mail the completed application to:

Shalaine DeBernardi, Project Funding Manager
Utah Division of Water Resources
PO Box 146201
Salt Lake City, UT 84114

shalainedebernardi@utah.gov
801-652-1668

CONTACT INFORMATION:

Water Bank Applicant Price River Watershed Conservation District		Federal Tax ID Number 87-0440233	
Type of Public Entity A Utah Conservation District			
Name of Water Bank Carbon Canal Company Water Bank			
Official Business Address PO Box 1114	City Castle Dale	State Utah	Zip Code 84513
Primary Contact (First & Last Name), Title/Position William Butcher, Chair	Phone (435) 820-3809	Email Address wrbutcher@gmail.com	
Address 4320 East 8900 South	City Price	State Utah	Zip Code 84501
Secondary Contact (First & Last Name), Title/Position Ryan Jones, Resource Coordinator	Phone (435)899-1048	Email Address ryanj@utah.gov	
Address PO Box 1114	City Castle Dale	State Utah	Zip Code 84513
Attorney (First & Last Name), Firm (can represent any party to Contract Water Bank) Nathan Bracken, Smith Hartvigsen, PLLC	Phone (801) 413-1600	Email Address nbracken@water.law	
Address 257 E 200 S #500	City Salt Lake City	State Utah	Zip Code 84111

PROJECT INFORMATION:		
County(ies) Where Water Bank is Located: Carbon County and Emery County		Type of Water Bank (ground or surface water): Surface
Proposed Annual Start Date of Contract Water Bank: "Irrigation Season" defined as beginning on the date that irrigation water becomes available for the season at the CCC diversion.	Proposed Annual End Date of Contract Water Bank: "Irrigation Season" defined as ending on the date that water ceases to be available for the season at the CCC diversion.	Estimated Years of Operation: Spring 2022 through 12/31/2030 or sooner terminated
List of Parties to Water Bank Contract: Price River Watershed Conservation District, a Utah Conservation District (District) Carbon Canal Company, a Utah nonprofit mutual benefit corporation (CCC) The Nature Conservancy a District of Columbia nonprofit corporation (TNC) Trout Unlimited, a Michigan nonprofit corporation (TU) State of Utah, Department of Natural Resources, Division of Wildlife Resources (Wildlife)		Links to Minutes Where Applicant Discussed Water Bank Contract a Regular Meeting and Link to Meeting where Applicant Provided Conditional Approval of Water Bank Contract: 10/20/2021 - https://www.utah.gov/pmn/sitemap/notice/708559.html 9/8/2021 - https://www.utah.gov/pmn/sitemap/notice/700247.html
Narrative Description of the Contract Water Bank Service Area (map to be attached): The Contract Water Bank Service area begins at the Point of Diversion for CCC's water rights from the Price River into the CCC canal system. The full Water Bank Service areas includes CCC's water delivery area, Olsen Reservoir, Marsing Wash, and along the Lower Price River to Woodside gage.		Anticipated Water Rights and Volume: CCC will file a change application to deposit Water Rights Nos. 91-3, 91-5090, and 91-5099, or other Company water rights as selected in consultation with the State Engineer, into the bank, which collectively represent 31,516 acre-feet. The State Engineer's approval of those applications, however, will determine how much water the bank can potentially lease under these water rights and may also impose other conditions. Additionally, under the contract, shareholders in the Company must voluntarily elect to make the portion of the water rights represented by their shares available for lease each year. As a result, the amount of water will vary from year to year and will likely be considerably less than the total amount of water represented by the water rights. In no event, however, can the volume of water placed into the bank or leased in a given year exceed the total amount of water represented by the water rights.
CONTRACT SUMMARY: A narrative description of the leasing arrangement and other key terms agreed to by the parties in the Water Bank contract. (Contract to be attached).		
A description of how the Contract Water Bank's governing body will be structured.		
<u>Paragraph 13. Water Bank Administration:</u> The Water Bank shall be administered by a five-member committee made up of one appointee from each of the Parties to this Agreement ("Committee"). The Water Bank shall engage CCC to act as the manager of the Water Bank and CCC will designate an employee to perform all acts required of the "Manager" of the Water Bank. The Water Bank will pay CCC for its management duties each year from the proceeds of the Water Bank pursuant to Paragraph 15. The Committee shall oversee the deposits and withdrawals from the Water Bank and assist the Manager in meeting the Water Bank's reporting requirements. The Committee shall oversee and approve the financial records of the Water Bank. The Committee will not have management authority over the District or CCC or its system.		
<u>Paragraph 15. Operating Costs:</u> Discusses the means by which the Parties will collect and pay for any operating costs with the Bank.		
A description for how water leases are to be administered.		
The following paragraphs of the water bank contract govern the administration of water leases: <u>Paragraph 3. Depositing Water into Water Bank.</u> <u>Paragraph 4. Lease Price</u> <u>Paragraph 5. Lease</u> <u>Paragraph 6. Unleased Deposited Shares.</u> <u>Paragraph 8 Payment to Depositors.</u>		
<u>General Process:</u>		
<ul style="list-style-type: none"> - By December 1 of each year the Manager will send an "Interest Statement" form to CCC Shareholders asking Shareholders to identify how many shares they wish to Deposit into the Bank, the acres they wish to fallow, and they may include a lease price the Shareholder will accept (submitting an Interest Statement does not obligate the Shareholder to participate) - By January 1 the Manager will prepare a summary of the Interest Statements - By January 15 the Leasing Entities will determine the "Annual Lease Price" and the Manager will inform the Shareholders of the Annual Lease Price - By February 1 those Shareholders interested in leasing Shares at the Annual Lease Price must submit a "Deposit Form" to the Manager 		

- CCC will review and approve the Deposit Form by endorsing the form, once endorsed the subject Shares are considered to be "Deposited" into the Bank and are available to be leased by the Leasing Entities, if desired
- By February 15 the Manager will provide the Leasing Entities a notice identifying the Deposited Shares available for lease for the calendar year
- By March 1 the Leasing Entities will provide to CCC the number of shares they each will lease through the Water Bank ("Annual Lease Shares") and the proposed delivery point for the Annual Lease Shares. CCC and the Leasing Entity that leases the Annual Lease Shares will execute a lease form for the Annual Lease Shares. CCC shall only deliver the Annual Lease Shares to points of diversion that can be served by CCC's current water delivery system and the Leasing Entities may only receive water at delivery points within CCC's current water delivery system. The Leasing Entities recognize that CCC adjusts the amount of the water its members receive under their shares throughout each Irrigation Season based on water availability.
- If, at the beginning of the Irrigation Season, the Leasing Entities have not leased a Depositor's Deposited shares, those shares will not be considered Deposited and the Depositor may use the water as that Depositor otherwise would. The Manager will notify the Depositor that their Deposited shares were not leased.
- By December 10 each Depositor will receive the Annual Lease Price paid for their deposited water, if leased, minus their Percentage of the Operating Costs

Terms governing how the parties are going to monitor and account for water leased through the Contract Water Bank.

Paragraph 11. Annual Water Delivery Schedule. The Leasing Entities will provide CCC with a desired delivery schedule for the Annual Lease Water on or before March 15 of each calendar year. The delivery schedule must be provided by the Leasing Entities at least 10 days prior to any desired deliveries of Annual Lease Water. CCC shall endeavor to fulfill the desired delivery schedule subject to regulatory limits and capacity constraints and shall respond to the desired delivery schedule within 10 days with any proposed modifications. CCC shall not have any obligations to guarantee the delivery of the Annual Lease Water outside of the CCC water delivery system, in a manner consistent with the Change Applications as approved; CCC's only obligation will be to divert the Annual Lease Water based on its water rights into the CCC system, in a manner consistent with the Change Applications as approved.

Paragraph 16. Delivery Area: CCC shall only be obligated to deliver the Annual Lease Water to places of use that can be served by CCC current water delivery system. The Leasing Entity shall be responsible for all costs associated with the Annual Lease Water after and downstream of the point of delivery.

Provisions addressing annual Board of Water Resources Reporting.

Paragraph 9. Verification of Farm Activities & Accounting: Pursuant to Utah Code 73-31-501(4), the Manager will compile the required annual water use accounting. The Committee will meet in November of each year to review the Manager's report.

Paragraph 14. Annual Water Bank Reporting: The Manager will prepare the annual water bank report required by Utah Code 73-31-401. The Parties all agree to cooperate with the Manager to provide the necessary information to prepare the annual reports.

Criteria for Participation of Non-Public Entities (if any).

The Carbon Canal Company Water Bank Contract is limited to the participating Parties and has contractually extended participation to Non-Public Entities pursuant to the terms of the Contract.

Paragraph 3(G). Only the Leasing Entities may lease water from the Water Bank (TNC, TU, and Wildlife).

Paragraph 18. No Assignment. The rights and obligations of the Parties may not be assigned or transferred without the prior written approval of each Party hereto, and any attempt to provide for assignment or transfer without that prior written approval shall be void and of no legal effect.

Procedures for Termination, Dissolution, or Revocation of the Contract Water Bank, including how the Contract Water Bank will return banked water rights and any money owed water right owners.

Paragraph 17. Termination: CCC or District may elect to terminate this Agreement with 60 days-notice to the other Parties. However, all incurred and unfulfilled obligations of the Parties will survive termination. The non-terminating Parties may agree in writing to release the terminating party and continue under this Agreement. The Leasing Entities may also elect to withdraw from this Agreement with 60 days-notice to the other Parties, provided that the withdrawing Leasing Entity's withdrawal shall be effective on the date it fulfills its obligations under this Agreement and under any outstanding leases to which it is a party that are current on the day it gives its 60-day notice. This Agreement will automatically terminate without further action of the Parties if all of the Leasing Entities withdraw from the Agreement.

Where the public may locate information on when the Water Bank Contract will be on the Applicant's Agenda for a public hearing.

The Applicant is the Price River Watershed Conservation District. Public notices for PRCWD meeting can be found at <https://www.utah.gov/pmn/sitemap/publicbody/3093.html>

The Applicant has a regularly set meeting on January 12, 2022, to collect public comment on the conditionally approved Water Bank Contract. If the Applicant determines public comment merits amending the conditionally approved Water Bank Contract it will send an amended copy to the Board of Water Resources. If the Applicant determines that public comment does not merit amending the Water Bank Contract it will promptly alert the Board of Water Resources that it has completed all of the criteria of Utah Code Ann § 73-31-302 and will request this Contract Water Bank Application be approved.

ACKNOWLEDGEMENT AND SIGNATURE:

By signing and submitting this application, you acknowledge that you:

- (1) Are authorized to apply to be a Contract Water Bank on behalf of the Applicant.
- (2) Are a qualified applicant.
- (3) Request approval of this Contract Water Bank application subject to the required completeness review.

WILLIAM BUTCHER
Name of Authorized Agent

William Butcher
Signature of Authorized Agent

12-14-2021
Date

APPROVED AS TO FORM AND COMPLETENESS (to be completed by an attorney for one of the parties to the Contract Water Bank)

Nathan Bracken
Attorney Name

Nathan S. Bracken
Attorney Signature

December 14, 2021
Date

The Nature Conservancy
Party to Water Bank Contract Represented by Attorney

TO BE COMPLETED BY THE MEMBER OF THE BOARD OF WATER RESOURCES ASSIGNED TO AREA:

I have reviewed this application and forward it to staff of the Division of Water Resources to conduct a completeness review and to prepare a contract water bank report.

Comments (if any):

Norman L. Johnson
Board Member Name

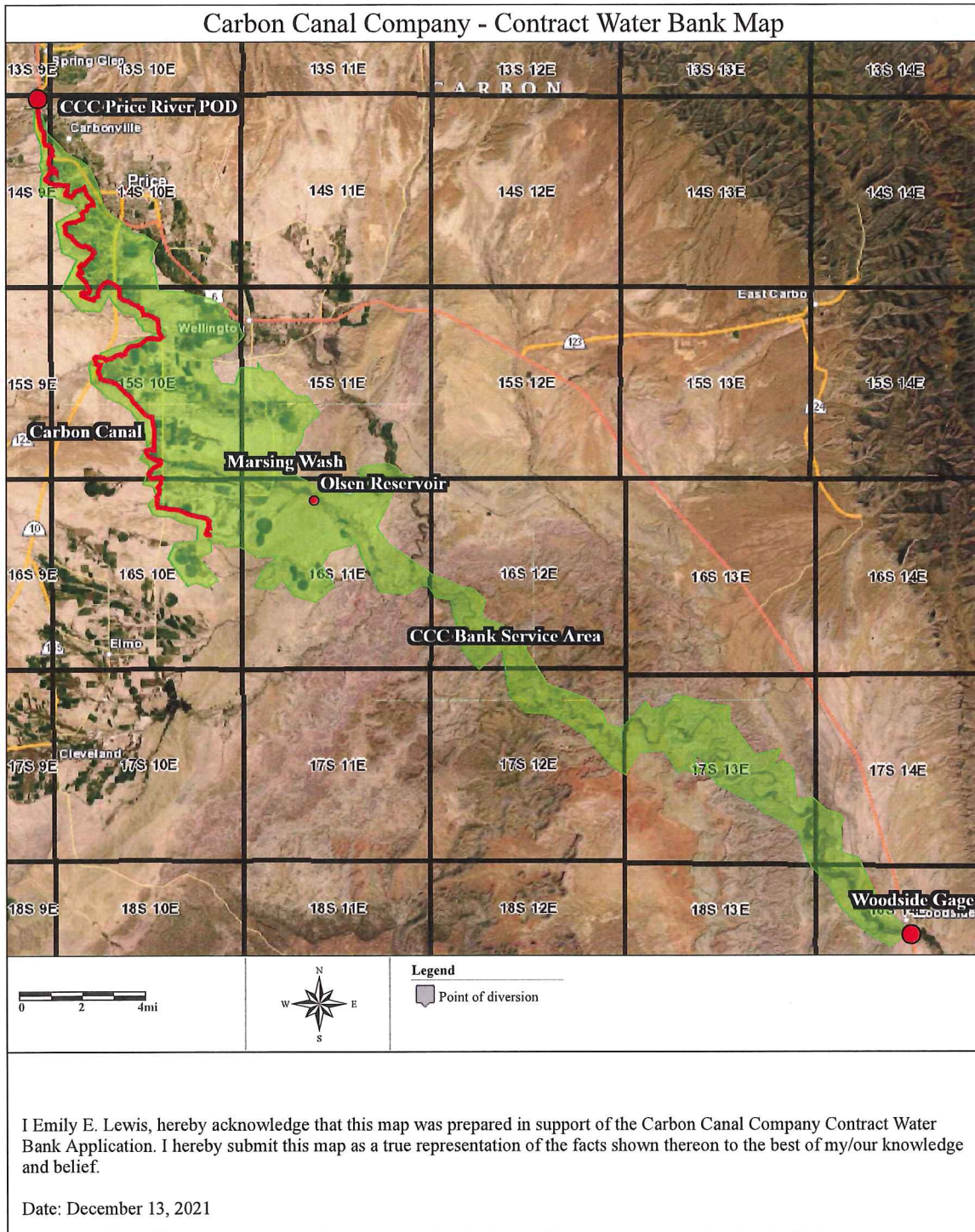
Norman L. Johnson
Board Member Signature

12/16/2021
Date

FOR OFFICE USE ONLY

Board Meeting Date: 1/27/2022

- Approved
- Denied



CONTRACT AGREEMENT
CARBON CANAL COMPANY WATER BANK

This Agreement for a Carbon Canal Company Water Bank (“**Agreement**”) is made and entered into effective as of December ____, 2021 (“**Effective Date**”), by and between Price River Watershed Conservation District, a political subdivision of the State (“**District**”), Carbon Canal Company, a Utah nonprofit mutual benefit corporation (“**CCC**”), The Nature Conservancy, a District of Columbia nonprofit corporation (“**TNC**”), Trout Unlimited, a Michigan nonprofit corporation (“**TU**”), and the State of Utah, Department of Natural Resources, Division of Wildlife Resources (“**Wildlife**”) collectively referred to herein as the “**Parties**”. TU, TNC, and Wildlife may also be referred to herein collectively as “**Leasing Entities**” or individually as a “**Leasing Entity**.” District, CCC, and the Leasing Entities may also be referred to as Parties or individually as a Party.

RECITALS

- A. The Parties wish to enter into this Agreement to establish a contract water bank (“**Water Bank**”) as provided for under Utah Code 73-31-101 et seq. (“**Act**”) so that CCC may take advantage of the benefits of a Water Bank, including protection of its water rights from forfeiture, and the Leasing Entities may utilize the water for environmental purposes.
- B. This Agreement is intended to define the Parties’ commitments, rights, and obligations in establishing the Water Bank.
- C. The Parties intend that this Agreement be submitted as part of a contract water bank application to the Utah Board of Water Resources. The District is a public entity and will be the applicant to the Utah Board of Water Resources under section 73-31-302 of the Utah Code.
- D. The Parties acknowledge that approval by the Utah State Engineer of an Application for Permanent Change of Water for all or a portion of CCC’s existing water rights allowing the water rights to be used for banking purposes (“**Change Application**”) are required to implement the Water Bank.
- E. Herein, “**Irrigation Season**” is defined as beginning on the date that irrigation water from the CCC becomes available for the season at the CCC diversion and ending on the date that water ceases to be available for the season at the CCC diversion.

AGREEMENT

Now, therefore, incorporating the foregoing recitals herein, the Parties agree to the following terms and conditions:

1. **Water Bank Approval Required.** Performance under this Agreement is contingent upon approval of the Water Bank by the Utah Board of Water Resources (“**Board**”) of an application submitted pursuant to Utah Code 73-31-301, et seq. If the Board denies the application under Utah

Code 73-31-304(3), this Agreement will immediately terminate without further action by the Parties. The application to the Board for the Water Bank will be in a form approved in advance in writing by the Parties and must: (1) allow water rights held by CCC (“**Water Rights**”) to be included in a water right change application for use in the Water Bank; (2) allow shareholders of CCC to request that all or a portion of their CCC shares be Deposited (defined in ¶3.E.) into and leased from the Water Bank by submitting an Interest Form and a Deposit Form, both as defined below; and (3) include all purposes allowed under the Act. Leases of the water from the Water Bank under this Agreement will not be allowed until the Water Bank has been approved by the Board. Any filing fees charged by the Board for processing the application will be paid by TNC and TU.

2. Change Application Approval Required. CCC and will prepare and file the Change Application with the Utah Division of Water Rights (DWRi), after consulting with the Leasing Entities. CCC shall have complete discretion in prosecuting its Change Application and is not obligated to respond to protests, engage experts, or seek judicial review of an adverse decision from the Utah State Engineer on the Change Application. If after the filing of protest to the Change Applications, CCC has reason to believe that the State Engineer is likely to issue an order adverse to CCC’s water rights, CCC may withdraw the Change Application but must provide the other Parties written notice of their intent to withdraw the Change Application. CCC makes no guarantee as to any approval of the Change Application. Approval of the Change Application on terms satisfactory to CCC is a condition precedent to any obligation of the Parties herein contemplated. If the State Engineer denies the Change Application or approves the Change Application in a form that is unacceptable to CCC and CCC elect in its sole discretion not to file a request for reconsideration or to appeal the decision, this Agreement will automatically terminate on the date the State Engineer’s decision becomes final and unappealable without further action by the Parties. TNC and/or TU will reimburse CCC for the Change Application filing fee. CCC may elect, in its discretion, to file additional change applications but TNC and TU will only be responsible for paying the filing fee for change application agreed to by TNC and TU in advance of filing. CCC is solely responsible for the costs of prosecuting the Change Application as described in this paragraph. CCC is a nonprofit organization of limited means, serving all of its shareholders, many of whom may not elect to participate in the Water Bank. Therefore, CCC will determine in its sole discretion the resources it will devote to prosecuting its respective Change Application to secure a final non-appealable decision from the State Engineer.

3. Depositing Water Into the Water Bank.

A. The term “Depositor” shall mean any CCC shareholder who Deposits (defined in ¶3.E.) all or a portion of their CCC shares for leasing by the Water Bank.

B. If a CCC shareholder deposits (defined in ¶3.E.) that shareholder’s shares into the Water Bank and those shares are leased from the Water Bank, the shareholder agrees to not apply any irrigation water from their CCC entitlement to lands that would otherwise be entitled to receive the Deposited (defined in ¶3.E.) CCC water. These fallowed lands are referred to herein as “**Participating Lands.**” Nothing in this Agreement shall be interpreted as affecting in any way the water rights or shares that shareholders may own, including but not limited to shares in the Price River Water Users Association.

C. On or before December 1 of each year, the Manager, as defined below, will solicit an interest statement from the CCC allowing each shareholder to state their interest in participating in the bank (“**Interest Statement**”). The Interest Statement must be submitted on a form provided by the Water Bank and will require the interested shareholders to identify the number of CCC shares they may wish to Deposit (defined in ¶3.E.) into the Water Bank, the acreage that the shareholder will fallow, and may include the lease price the shareholder(s) suggest. Providing an Interest Statement does not obligate a shareholder to Deposit (defined in ¶3.E.) the shares identified in Interest Statement and is no guarantee that the shares will be leased from the Water Bank. as described in paragraph 4 herein.

D. After the lease price for the year is determined as set forth in paragraph 4 herein, the Manager will notify the shareholders who submitted an Interest Statement of the annual lease price.

E. Shareholders who wish to participate at the Annual Lease Price, defined below, must complete a deposit form provided by the bank (“**Deposit Form**”) and submit it to the Manager on or before February 1. The Deposit Form shall confirm the number of CCC shares the shareholder wishes to Deposit (defined in this ¶3.E.) into the Water Bank, shall identify the Participating Lands, and shall require the shareholder to agree to fallow the Participating Lands and to be bound by the terms of this Agreement. The shareholder must submit a Deposit Form to CCC. No shares will be considered Deposited (defined in this ¶3.E.) into the Water Bank without approval of CCC; approval will be evidenced by CCC’s endorsement of the Deposit Form, depending on the shares associated with the acreage to be fallowed. In determining whether to endorse a Deposit Form CCC, may evaluate whether the lease of the shares identified in the Deposit Form is allowed pursuant to their respective Articles, Bylaws and rules and regulations, that the lease of the shares identified in the Deposit Form will not harm other shareholders of the Company, and that the water can be delivered to the Leasing Entities through its conveyance system. Once CCC endorses the Deposit Form, the shares designated in the Deposit Form will be considered Deposited into the Bank (“**Deposited**”) and available to the Bank to lease to the Leasing Entities. The Leasing Entities shall not have any responsibility or liability for decisions made by CCC regarding the rights of their shareholders to lease water through the Bank.

F. Depositing shares is not a guarantee that the shares will be leased from the Water Bank. If there are more Deposited shares in the Water Bank than the Leasing Entities wish to lease in any given year the Manager, under supervision of the Committee, as defined below, will hold a blind draw to determine which Depositor’s Deposited shares will be leased. If there is less Deposited Water than the Leasing Entities wish to lease, the Leasing Entities will split the Deposited Water equally, unless the Leasing Entities agree otherwise.

G. Only the Leasing Entities may lease water from the Water Bank.

H. The dates specified in this paragraph 3 and subsequent paragraphs 4 and 5 may be modified by mutual agreement of the Parties.

4. **Lease Price.** By January 1 of each year the Manager will prepare a summary of the Interest Statements showing the acreage and price information identified on the Interest Statements and provide

the summary to the Leasing Entities. Using the available information, the Leasing Entities shall determine the annual lease price that they are willing to pay for that Irrigation Season for each leased share (“**Annual Lease Price**”). The Leasing Entities shall inform the Manager of the Annual Lease Price on or before January 15 of each year. The Annual Lease Price shall be uniform for all leases from the Water Bank for that Irrigation Season.

5. Lease. By February 15th of each year, the Manager will provide to the Leasing Entities a notice identifying the Deposited shares available from the Water Bank for that calendar year, including the associated endorsed Deposit Forms, and a map showing the then current points of diversion served by CCC. By March 1 of each year, the Leasing Entities will provide to CCC the number of shares they each will lease through the Water Bank (“**Annual Lease Shares**”) and the proposed delivery point for the Annual Lease Shares. The Manager will provide the Leasing Entities with written invoices showing the amounts owing (total number of leased shares multiplied by the Annual Lease Price), and the Leasing Entities will tender payment to District pursuant to the written invoices. CCC and the Leasing Entity that leases the Annual Lease Shares will execute a lease form for the Annual Lease Shares. CCC shall only deliver the Annual Lease Shares to points of diversion that can be served by CCC’s current water delivery system and the Leasing Entities may only receive water at delivery points within CCC’s current water delivery system. The Leasing Entities recognize that CCC adjusts the amount of the water its members receive under their shares throughout each Irrigation Season based on water availability. The Annual Lease Shares shall be subject to the same adjustment by the CCC Board as if the underlying shares were being called for on the Participating Lands. The Annual Lease Shares will entitle the Leasing Entity to the amount of water the Annual Lease Shares would have received in that Irrigation Season. The District does not own the Water Rights, own water delivery infrastructure used under this Agreement, make water deliveries to the Leasing Entities, or receive water deliveries from CCC under this Agreement.

6. Unleased Deposited Shares. If, at the beginning of the Irrigation Season, the Leasing Entities have not leased a Depositor’s Deposited shares, those shares will not be considered Deposited and the Depositor may use the water as that Depositor otherwise would. The Manager will notify the Depositor that their Deposited shares were not leased.

7. Maximum Annual Lease Quantity. The amount of water used under the Annual Lease Shares shall not exceed the diversion and depletion limitations set forth in any order approving the Change Applications.

8. Payment to Depositors. Each Depositor will receive the Annual Lease Price paid for their Deposited shares, if leased, minus their Percentage of the Operating Costs as described in Paragraph 15. Payment to each Depositor whose Deposited shares were leased will be no later than December 10. The Committee (defined in ¶13) will maintain a ledger for the Bank Operating Account (defined in ¶15(A)) and direct the District regarding deposits and disbursements from the account, including payments to Depositors.

9. Verification of Farm Activities & Accounting. Pursuant to Utah Code 73-31-501(4), the Manager will compile the required annual water use accounting. The Committee will meet in

November of each year to review the Manager's report.

10. Ability to Maintain Original Use. The Parties agree that each year that this Agreement is in effect CCC shareholders have sole discretion whether to Deposit their shares. Neither the Water Bank nor the Change Applications will affect the CCC shareholders' right to use their water for currently authorized uses.

11. Annual Water Delivery Schedule. The Leasing Entities will provide CCC with a desired delivery schedule for the Annual Lease Water on or before March 15 of each calendar year. The delivery schedule must be provided by the Leasing Entities at least 10 days prior to any desired deliveries of Annual Lease Water. CCC shall endeavor to fulfill the desired delivery schedule subject to regulatory limits and capacity constraints and shall respond to the desired delivery schedule within 10 days with any proposed modifications. CCC shall not have any obligations to guarantee the delivery of the Annual Lease Water outside of the CCC water delivery system, in a manner consistent with the Change Applications as approved; CCC's only obligation will be to divert the Annual Lease Water based on its water rights into the CCC system, in a manner consistent with the Change Applications as approved.

12. Term. The term of this Agreement shall be from the Effective Date until the earlier of December 31, 2030, the period for which the Change Applications are approved, or the date it is terminated as set forth herein.

13. Water Bank Administration. The Water Bank shall be administered by a five-member committee made up of one appointee from each of the Parties to this Agreement ("**Committee**"). The Water Bank shall engage CCC to act as the manager of the Water Bank and CCC will designate an employee to perform all acts required of the "**Manager**" of the Water Bank. The Water Bank will pay CCC for its management duties each year from the proceeds of the Water Bank pursuant to Paragraph 15. The Committee shall oversee the deposits and withdrawals from the Water Bank and assist the Manager in meeting the Water Bank's reporting requirements. The Committee shall oversee and approve the financial records of the Water Bank. The Committee will not have management authority over the District or CCC or its system.

14. Annual Water Bank Reporting. The Manager will prepare the annual water bank report required by Utah Code 73-31-401. The Parties all agree to cooperate with the Manager to provide the necessary information to prepare the annual reports.

15. Operating Costs.

A. The Committee shall collect and deposit, in coordination with the District, a percentage of the Annual Lease Price for each lease of Deposited shares (the "**Percentage**") into a separate District account (the "**Operating Account**"). The Committee shall maintain a ledger that accounts for the Percentage and direct the District regarding deposits and disbursements related to the Percentage and lease payments to Depositors. The Percentage shall be used to pay for the costs of operating the Water Bank, producing the annual reporting described in Paragraph 14, or meeting any of the Act's

requirements (collectively, the “**Operating Costs**”).

B. Ninety-five percent (95%) of the Percentage funds deposited into the account will go to the Manager (defined in ¶13). The remaining five percent (5%) will go to the District.

C. From the date the State Engineer favorably approves the Change Applications under Paragraph 2 the Percentage shall be 10%.

16. Delivery Area. CCC shall only be obligated to deliver the Annual Lease Water to places of use that can be served by CCC current water delivery system. The Leasing Entity shall be responsible for all costs associated with the Annual Lease Water after and downstream of the point of delivery.

17. Termination. CCC or District may elect to terminate this Agreement with 60 days-notice to the other Parties. However, all incurred and unfulfilled obligations of the Parties will survive termination. The non-terminating Parties may agree in writing to release the terminating party and continue under this Agreement. The Leasing Entities may also elect to withdraw from this Agreement with 60 days-notice to the other Parties, provided that the withdrawing Leasing Entity’s withdrawal shall be effective on the date it fulfills its obligations under this Agreement and under any outstanding leases to which it is a party that are current on the day it gives its 60-day notice. This Agreement will automatically terminate without further action of the Parties if all of the Leasing Entities withdraw from the Agreement.

18. No Assignment. The rights and obligations of the Parties may not be assigned or transferred without the prior written approval of each Party hereto, and any attempt to provide for assignment or transfer without that prior written approval shall be void and of no legal effect.

19. Approvals. In addition to approval of the Water Bank by the Board and approval of the Change Application, the Parties recognize that the delivery of water under this Agreement may be subject to other approvals by various agencies. The Parties agree to reasonably cooperate to secure such any additional approvals necessary for implementation of this Agreement, but the Parties are not obligated to incur expense for the same.

20. Force Majeure. All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, by earthquakes, fires, tornadoes, facility failures, floods, drought, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties, including events that prevent CCC from releasing and delivery water through its system. Upon cessation of the force majeure condition, the obligation shall remain enforceable. In no event shall any liability accrue against a Party, its officers, agents, or employees, for any damage arising out of or connected with a suspension of performance pursuant to this section. When a Party’s performance is prevented by a cause identified herein, the affected party shall provide written notice to the other Parties as soon as reasonably practical of the force majeure condition. Such notice shall identify the cause of the prevention of performance and the estimated length that such prevention of performance will likely remain in place. Promptly after the prevention of performance is removed or ceases, the affected party shall provide written notice to the other parties that states that

the prevention of performance has been removed or ceased and performance of the Agreement has been renewed.

21. Notices. All notices and other communications under this Agreement shall be in writing. Notices shall be deemed as duly received on the date of service, if served personally on the Party to whom notice is to be given. Notices shall also be deemed as duly received five (5) days from the date said notice is mailed to the Party to whom notice is to be given, either by first class mail, registered or certified, postage prepaid or by express delivery with handling prepaid, and properly addressed as stated below. Email notification will be deemed acceptable if consented to by all the Parties.

If to Price River Watershed Conservation District:
540 W. Price River Drive
Price, Utah 84501
Attn: Chair

If to the Carbon Canal Company:
Carbon Canal Company
Attn: President
23 S. Carbon Ave, Room #10
PO Box 779
Price, UT 84501
(435) 637-3424
carboncanal@emerytelcom.net

If to The Nature Conservancy:
Susan Bellagamba, Canyonlands Regional Manager
Moab Project Office
P.O. Box 1329
820 West Kane Creek Blvd.
Moab, Utah 84532
(435) 259-7607
sbellagamba@tnc.org

If to Trout Unlimited
Trout Unlimited c/o
Jordan Nielson
1104 S River Ridge Ln
Spanish Fork, UT 84660
801-850-1221
jordan.nielson@tu.org

If to Division of Wildlife Resources
Makeda Hanson
Habitat Manager

Division of Wildlife Resource, Southeastern Regional Office
319 N. Carbonville Rd., Suite A,
Price, UT 84501
makedatrujillo@utah.gov
(435) 613-3700

22. Conflict Resolution. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Utah. Any dispute or claim relating to this Agreement will first be submitted to the other Parties that are involved in the dispute or claim (“**Involved Parties**”) in reasonably detailed written form with any supporting documentation. If the Involved Parties do not satisfactorily resolve the dispute or claim, it will be submitted to non-binding mediation, with a qualified mediator selected by the Involved Parties, with each Involved Party sharing the cost of that non-binding mediation. If the Involved Parties cannot agree on a mediator, one may be appointed by a court of competent jurisdiction. After and only if these processes are first followed and the dispute or claim remains unresolved, an Involved Party may bring an action in the Seventh Judicial District Court of the State of Utah In and For Carbon County. Under no circumstances shall any Involved Party be liable for any consequential damages. Each Involved Party shall be responsible for their own costs and attorney’s fees.

23. Binding Effect. All of the covenants, conditions, and provisions of this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and approved assigns.

24. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understandings or oral or written agreements between the Parties respecting the within subject matter. This Agreement may not be modified or amended except by the express written agreement of the parties.

25. No Third-Party Beneficiary. This Agreement is exclusively for the benefit of and governs only the Parties hereto. The only Parties entitled to enforce the terms of this Agreement are listed herein as the Parties. Nothing in this Agreement gives, or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly, or otherwise, to third persons.

26. No Waiver. Forbearance in enforcing any right or remedy under this Agreement shall not be deemed a waiver nor shall it be the basis for an inference that any party hereto has waived any provision hereof or that a party has waived any right hereunder.

27. Warranty of Authority. Each individual executing this Agreement on behalf of an entity represents and warrants that they have been duly authorized by such entity to execute this Agreement on behalf of and for such entity.


28. Governmental Immunity. District and Wildlife are governmental entities subject to the Governmental Immunity Act (the “**Immunity Act**”), Utah Code § 63G-7-101, et seq. Except as may be provided in § 63G-7-301(1) of the Immunity Act (i.e., waiver as to their contractual obligations

Agreement), neither District nor Wildlife waive any other rights, defenses or limitations available under the Immunity Act.

29. Counterparts. This Agreement may be executed in any number of counterparts, but all such counterparts shall be deemed but one original Agreement for all intents and purposes.

In witness whereof, the Parties hereto have caused this Agreement to be executed the day and year first above written.

PRICE RIVER WATERSHED CONSERVATION DISTRICT




William Butcher, Chair (Date) 12-14-2021

CARBON CANAL COMPANY

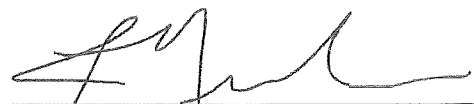
Kevin Cotner, President (Date)

THE NATURE CONSERVANCY



Susan Bellagamba, Canyonlands Regional Director (Date) Dec. 14, 2021

TROUT UNLIMITED



Jordan Nielson, Price River Project Manager (Date) 12/14/2021

UTAH DIVISION OF WILDLIFE

Name: (Date)
Title:

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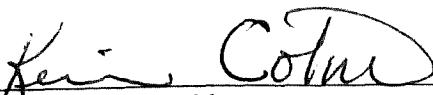
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 _____ 12, 14, 2021
Kevin Cotner, President (Date)

THE NATURE CONSERVANCY



Susan Bellagamba, Canyonlands Regional Director Dec. 14, 2021
(Date)

TROUT UNLIMITED

Jordan Nielson, Price River Project Manager (Date)

UTAH DIVISION OF WILDLIFE

Name: (Date)
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PRICE RIVER WATERSHED CONSERVATION DISTRICT

William Butcher, Chair (Date)

CARBON CANAL COMPANY

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Susan Bellagamba, Canyonlands Regional Director (Date)

TROUT UNLIMITED

Jordan Nielson, Price River Project Manager (Date)

UTAH DIVISION OF WILDLIFE

Robin Goodman 12/16/2021
Robin Goodman [Dec 16, 2021 13:44 MST]

Robin Goodman, Assistant Director (Date)