

# ORDINANCE RECORD

MAR 1 1 2002

ORDINANCE NUMBER 6069  
OF THE  
CITY OF BENKELMAN, NEBRASKA

AN ORDINANCE OF THE CITY OF BENKELMAN, NEBRASKA, PROHIBITING DRILLING PRIVATE WATER WELLS IN THE CITY OF BENKELMAN, NEBRASKA, AND REGULATING AND PROVIDING FOR THE REGISTRATION, INSPECTION AND CLOSURE OF EXISTING PRIVATE WELLS.

TO PROVIDE FOR THE REPEAL OF CONFLICTING ORDINANCES OR SECTIONS; TO PROVIDE FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENKELMAN, NEBRASKA:

Section 1: That Section 3, Article 1, Section 3-128, of the Municipal Code of Benkelman, Nebraska, be added to read as follows:

3-128 MUNICIPAL WATER DEPARTMENT; PRIVATE WELLS. It shall be unlawful for any person to drill or develop a private water well in the City limits of the City of Benkelman, Nebraska. All private water wells in the City of Benkelman must be registered with the City Clerk and must be made available to the City Superintendent for inspection at any reasonable time. Any private water well found to be contaminating, or at risk of contaminating, the municipal water system or supply may be ordered to be plugged by the City Council. The owner of the well shall plug the well at his or her expense. Any private water well which ceases to be used shall be plugged by the owner. Any person violating this section shall, in addition to paying all damage caused to the municipal water system and supply, pay a fine of \$250.00 per day for each day that this section is violated.

Section 2. That any other ordinance or section passed and approved prior to the passage, approval, and publication or posting of this ordinance and in conflict with its provisions, is hereby repealed.

Section 3. This ordinance shall take effect and be in full force from and after its passage, approval, and publication or posting as required by law.

Passed and approved this 18<sup>th</sup> day of January, 1999.

(SEAL)



Rose Marie [Signature]  
City Clerk

Dallas [Signature]  
Mayor

Readings Waived: January 18, 1999

First Reading: January 18, 1999

Second Reading: \_\_\_\_\_

Third Reading: \_\_\_\_\_

Dundy County  
Filed for Record  
October 25 19 96  
at 1:21 o'clock P. M.  
and recorded in Book 29  
of Misc. A Page 548

Numerical  
Recorded *chg. #31.00*  
Paged  
Indexed

CASH LEASE FOR WELL FIELD

By [Signature] County Clerk  
Deputy

THIS AGREEMENT, made and entered into on the 23<sup>rd</sup> day of September, 1996, by and between Benkelman Cattle Co., Inc., a Nebraska Corporation, hereinafter referred to as LESSOR, and City of Benkelman, Nebraska, a municipal corporation, hereinafter referred to as LESSEE.

IT IS AGREED by the LESSOR and LESSEE that in consideration of acts to be performed, money to be paid and promises to be kept, the value and sufficiency of which as consideration is hereby acknowledged, LESSOR agrees to lease to LESSEE and LESSEE agrees to lease from LESSOR the following described real property, upon terms and conditions as follows:

I

REAL ESTATE DESCRIPTION

1.1 The real estate which is subject to this Agreement is described as follows:

That property in the NE $\frac{1}{4}$  of Section 20 and NW $\frac{1}{4}$  of Section 21, all in Township 1 North, Range 37, West of the 6th P.M. in Dundy County, Nebraska, which is within a one thousand foot radius of a water well to be drilled approximately 520 feet South and 411 feet East of the NW Corner of said Section 21. A second water well may be drilled approximately 151 feet South and 72 feet West of the NE Corner of said Section 20, according to the terms of this lease, and if so this lease shall also include property within one thousand feet of that well.

II

TERM OF LEASE

2.1 This Lease shall commence on November 1, 1996, and shall continue without interruption until the last day of October, 2036, at which time this Lease shall automatically terminate without further notice by either party. The lease may be renewed pursuant to Paragraph 6.1 hereinafter and may be terminated as provided in Paragraph 2.2 hereinafter.

2.2 In the event the water wells installed by LESSEE on the property stop producing suitable quality water in sufficient quantities to provide an economically feasible water supply, LESSEE shall have the right to terminate this Lease.

### III

#### CASH RENT PROVISIONS

3.1 LESSEE shall use the property covered by this Lease as a municipal water well field and as rent therefor shall pay LESSOR Six Thousand Dollars (\$6,000.00) per year for the first twenty years of this lease and Ten Dollars (\$10.00) per year for the second twenty years of this lease, to be paid on or before November 22nd of each year for the following year.

3.2 As additional rent payment, LESSEE shall, at their expense, install water piping to the entrance of LESSOR'S two existing houses in the NE $\frac{1}{4}$  of Section 20, Township 1 North, Range 37 and supply water, free of charge, to said houses during the term of this Lease.

3.3 As additional rent payment, LESSEE shall, at their expense, provide LESSOR with a new livestock water well to replace the two livestock wells being abandoned under this Lease.

### IV

#### LESSEE'S RIGHTS AND RESPONSIBILITIES

4.1 LESSEE shall have the right to drill municipal water wells on the property and use the property as a municipal water well field to supply water to the City of Benkelman. LESSEE intends to locate one water well on the property but may install a second well at no additional rent cost if the first well becomes inadequate for the LESSEE'S water requirements or if the second well can be constructed at substantial cost savings at the time of constructing the first well.

4.2 LESSEE shall at their expense, construct a well house at the location of each well on the property and shall have the right to use the 50 foot by 50 foot area surrounding the well house to inspect, repair and maintain the well and well house. The well house, pump, engine and other well equipment shall remain the property of LESSEE.

4.3 LESSEE shall have the right to use a 200 foot by 200 foot area around each well site to construct the wells and LESSEE shall pay LESSOR therefor the sum of \$100 as cash rent for use of such property during construction of the well. The full

\$100 shall be paid upon commencement of the well construction. LESSOR shall restore the surface of such property to its pre-construction condition.

4.4 LESSEE shall use the leasehold property in a reasonable manner and shall not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so.

4.5 LESSEE shall not sell, assign, or in any manner transfer or encumber this Lease, nor shall the demised premises or any part thereof be sublet, without the prior consent of LESSOR in writing.

4.6 LESSEE shall be responsible for his operations on the premises and shall also be responsible for insuring the equipment of the LESSEE.

4.7 LESSEE shall not conduct any unlawful operations on the property nor perform any acts on the property in violation of environmental or other laws.

V

LESSOR'S RIGHTS AND RESPONSIBILITIES

5.1 LESSOR shall have the right to use the surface of the property for crop production and as a farmstead site but their use shall be restricted as follows:

a) No well (except one owned by the City of Benkelman) shall be located within 1000 feet of the municipal wells;

b) No sewage lagoon shall be located within 1000 feet of the municipal wells;

c) No absorption field or disposal field for waste shall be located within 500 feet of the municipal wells;

d) No dump shall be located within 500 feet of the wells;

e) No feedlot, feedlot runoff, pasture, or corral shall be located within 500 feet of the wells;

of the municipal wells;

j) No sewer connection or sewer manhole shall be located within 100 feet of the wells;

k) No sewage line shall be located within 50 feet of the wells;

l) No nitrogen fertilizer or atrazine chemical shall be applied within 300 feet of the well without the consent of LESSEE.

m) No operations shall be conducted and no facilities shall be located on the land which violate laws or regulations governing municipal well fields in Nebraska.

5.2 LESSOR shall abandon the two stockwells and the old irrigation well located in the leased area.

5.3 LESSOR shall not interfere with LESSEE'S proper and normal use of the leasehold property, provided the same is being used in accordance with the terms and conditions of this Lease, and LESSOR shall be responsible for all damage caused to LESSEE'S wells and related structures by LESSOR'S negligent or intentional act.

5.4 LESSOR shall be responsible for payment of all taxes on the leasehold property.

5.5 LESSOR shall have the right to assign this Lease upon sale or transfer of the property.

5.6 LESSOR retains the rights to all mineral interests and minerals in, on or under the leasehold property but shall not exercise such mineral rights in any way that interferes with LESSEE'S use of the premises as a field for municipal water.

VI

#### TERMINATION

6.1 This Lease shall terminate automatically on the last day of October, 2036, without further notice from either party, except LESSEE shall have the option of extending this Lease

with annual five year intervals at a per year price not to

6.2 The LESSEE agrees that at the expiration of the lease they will yield possession of the premises to the LESSOR without further notice and that the premises will be in as good order and condition as when entered by LESSEE, ordinary wear and tear and usages under this lease excepted. LESSEE may remove all of their fixtures and equipment from the premises at the expiration of the lease, which shall be done without damage to the premises, or may sell or convey such improvements to LESSOR, as determined appropriate by LESSEE.

THIS AGREEMENT and all the terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS LEASE  
THIS 23<sup>rd</sup> DAY OF September, 1996.

CITY OF BENKELMAN, NEBRASKA

BY: Dallas Chartier  
Mayor

ATTEST:

Rose Marie Whiteley  
City Clerk

(SEAL)



Benkelman Cattle Company, Inc.  
A Nebraska Corporation

BY: Robert P. Jones  
Robert P. Jones, President

ATTEST:

Maribel Jones

City of Benkelman, Nebraska.



*Richard M. Glidden*  
Notary Public

STATE OF NEBRASKA            )  
  ) SS  
COUNTY OF DUNDY            )

The foregoing instrument was acknowledged before me on September 23, 1996, by Robert P. Jones, President of Benkelman Cattle Company Inc., a Nebraska Corporation, on behalf of the Corporation.



*Deborah K. League*  
Notary Public

AMENDMENT TO AMENDED CASH  
LEASE FOR WELL FIELD

THIS AGREEMENT, made and entered into on the 27<sup>th</sup> day of August, 1997, by and between Benkelman Cattle Co., Inc., A Nebraska Corporation, hereinafter referred to as LESSOR, and City of Benkelman, Nebraska, a municipal corporation, hereinafter referred to as LESSEE.

WHEREAS, test drilling at the intended site of the second water well described in the Amended Cash Lease For Well Field dated April 21, 1997 did not reveal a sufficient quantity of water; and

WHEREAS, LESSEE desires to drill a second water well and LESSOR agrees to allow LESSEE to drill such well under the terms of the Amended Cash lease For Well Field dated April 21, 1997 between the parties hereto; and

WHEREAS a sufficient quantity of water has been discovered at a new location;

NOW THEREFORE LESSOR and LESSEE agree that the last sentence of Paragraph 1.1 of the Amended Cash Lease For Well Field dated April 21, 1997 be amended to read as follows:

"A second water well may be drilled approximately 154.5 feet South and 77.7 feet East of the NW Corner of said Section 21; according to the terms of this lease, and this lease shall also include property within one thousand feet of that well."

All other terms of said Amended Cash Lease For Well Field shall remain in effect. This Amendment shall be effective November 1, 1996 upon commencement of the original Lease.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS LEASE THIS 27<sup>th</sup> day of August, 1997.

CITY OF BENKELMAN, NEBRASKA

BY: Dallas Porter  
Mayor

ATTEST:

Rose Marie D. Hilley  
City Clerk

(SEAL)





Benkelman Cattle Company, Inc.  
A Nebraska Corporation

BY: Robert P. Jones  
Robert P. Jones, President

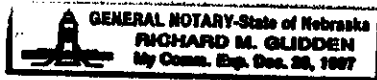
ATTEST:

Marilyn Jones  
Marilyn Jones, Secretary

(SEAL)

STATE OF NEBRASKA )  
                                  ) SS  
COUNTY OF DUNDY    )

The foregoing instrument was acknowledged before me on August 18, 1997, by Dallas Chartier, Mayor of the City of Benkelman, Nebraska, a municipal corporation, on behalf of said City of Benkelman, Nebraska.



Richard M. Glidden  
Notary Public

STATE OF NEBRASKA )  
                                  ) SS  
COUNTY OF DUNDY    )

The foregoing instrument was acknowledged before me on August 27, 1997, by Robert P. Jones, President of Benkelman Cattle Company, Inc., a Nebraska Corporation, on behalf of the Corporation.



Deborah K. League  
Notary Public

state of Nebraska, ss  
Dundy County

Filed for Record  
August 29, 19 97  
at 3:33 o'clock P. M  
and recorded in Book 30  
of Misc. Page 269

Number: ---  
Record: ---  
Paged: ---  
Index: ---  
          100  
          chg

Tony Lutz  
County Clerk  
By: Deborah League  
Deputy



AMENDMENT TO  
RIGHT-OF-WAY EASEMENT

WHEREAS the parties entered a Right-Of-Way Easement dated September 23, 1996; and

WHEREAS it is necessary to relocate one of the intended water wells for which the Easement was granted;

NOW THEREFORE GRANTOR and GRANTEE agree that Paragraph 2) A) of the Right-Of-Way Easement dated September 23, 1996 between the parties be amended to read as follows:

"A) Referring to the NW corner of Section 21, Township 1 North, Range 37 West, thence southerly along the section line a distance of 154.5 feet to the Point of Beginning; thence east perpendicular to the west section line a distance of 52.7 feet to the Point of Termination."

Grantor hereby grants Grantee a permanent easement 15 feet in width and a temporary easement 50 feet in width either side of the above described centerline, according to the terms of said Right-Of-Way Easement. All other terms of said Right-Of-Way Easement shall remain in effect. This Amendment shall be effective as of September 23, 1996.

Benkelman Cattle Company, Inc.  
A Nebraska Corporation, Grantor

BY: Robert P. Jones  
Robert P. Jones, President

ATTEST:

Marilyn Jones  
Marilyn Jones Secretary

(SEAL)

CITY OF BENKELMAN, NEBRASKA,  
Grantee

BY: Dallas Jordan  
Mayor

ATTEST:

Rose Marie Whiteley  
City Clerk

(SEAL)



Numerical ✓  
Recorded ✓  
Paged ✓ 10 chg  
Indexed ✓

State of Nebraska } ss  
Dundy County }  
Filed for Record  
August 29 19 97  
at 3:42 o'clock P. 30 M  
and recorded in Book  
of Misc. Page 271  
Tony Lutz  
County Clerk  
3y Bredyn Lutz  
Deputy

STATE OF NEBRASKA            )  
  ) SS  
COUNTY OF DUNDY            )

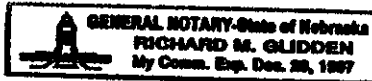
The foregoing instrument was acknowledged before me on August 27, 1997, by Robert P. Jones, President of Benkelman Cattle Company, Inc., a Nebraska Corporation, on behalf of the Corporation.



Deborah K. League  
Notary Public

STATE OF NEBRASKA            )  
  ) SS  
COUNTY OF DUNDY            )

The foregoing instrument was acknowledged before me on August 18, 1997, by Dallas Chartier, Mayor of the City of Benkelman, Nebraska, a municipal corporation, on behalf of said City of Benkelman, Nebraska.



Richard M. Glidden  
Notary Public

Dundy County  
Filed for Record  
May 16, 19 97  
at 11:05 o'clock A. M  
and recorded in Book 30  
of Misc. Page 161  
By \_\_\_\_\_  
County Clerk  
Deputy

Numerical  
Recorded  
Paged  
Indexed  
Chg.  
#31.00

AMENDED  
CASH LEASE FOR WELL FIELD

THIS AGREEMENT, made and entered into on the 21<sup>st</sup> day of April, 1997, by and between Benkelman Cattle Co., Inc., a Nebraska Corporation, hereinafter referred to as LESSOR, and City of Benkelman, Nebraska, a municipal corporation, hereinafter referred to as LESSEE.

The parties agree that paragraphs 4.1, 4.2 and 4.5 of their lease dated September 23, 1996 may be amended by this Agreement, without further consideration, to comply with the requirements of United States Department of Agriculture Rural Development, and that this amended lease shall replace the lease dated September 23, 1996.

IT IS AGREED by the LESSOR and LESSEE that in consideration of acts to be performed, money to be paid and promises to be kept, the value and sufficiency of which as consideration is hereby acknowledged, LESSOR agrees to lease to LESSEE and LESSEE agrees to lease from LESSOR the following described real property, upon terms and conditions as follows:

I

REAL ESTATE DESCRIPTION

1.1 The real estate which is subject to this Agreement is described as follows:

That property in the NE $\frac{1}{4}$  of Section 20 and NW $\frac{1}{4}$  of Section 21, all in Township 1 North, Range 37, West of the 6th P.M. in Dundy County, Nebraska, which is within a one thousand foot radius of a water well to be drilled approximately 520 feet South and 411 feet East of the NW Corner of said Section 21. A second water well may be drilled approximately 151 feet South and 72 feet West of the NE Corner of said Section 20, according to the terms of this lease, and if so this lease shall also include property within one thousand feet of that well.

II

TERM OF LEASE

2.1 This Lease shall commence on November 1, 1996, and shall continue without interruption until the last day of October, 2036, at which time this Lease shall automatically terminate without further notice by either party. The lease may

be renewed pursuant to Paragraph 6.1 hereinafter and may be terminated as provided in Paragraph 2.2 hereinafter.

2.2 In the event the water wells installed by LESSEE on the property stop producing suitable quality water in sufficient quantities to provide an economically feasible water supply, LESSEE shall have the right to terminate this Lease.

### III

#### CASH RENT PROVISIONS

3.1 LESSEE shall use the property covered by this Lease as a municipal water well field and as rent therefor shall pay LESSOR Six Thousand Dollars (\$6,000.00) per year for the first twenty years of this lease and Ten Dollars (\$10.00) per year for the second twenty years of this lease, to be paid on or before November 22nd of each year for the following year.

3.2 As additional rent payment, LESSEE shall, at their expense, install water piping to the entrance of LESSOR'S two existing houses in the NE $\frac{1}{4}$  of Section 20, Township 1 North, Range 37 and supply water, free of charge, to said houses during the term of this Lease.

3.3 As additional rent payment, LESSEE shall, at their expense, provide LESSOR with a new livestock water well to replace the two livestock wells being abandoned under this Lease.

### IV

#### LESSEE'S RIGHTS AND RESPONSIBILITIES

4.1 LESSEE shall have the right to drill municipal water wells on the property and use the property as a municipal water well field to supply water to the City of Benkelman. LESSEE intends to locate one water well on the property but may install a second well at no additional rent cost if the first well becomes inadequate for the LESSEE'S water requirements or if the second well can be constructed at substantial cost savings at the time of constructing the first well. LESSEE shall not be restricted in the amount of water which may be produced from the wells which are developed under this Lease.

4.2 LESSEE shall at their expense, construct a well

house at the location of each well on the property and shall have the right to use the 50 foot by 50 foot area surrounding the well house to inspect, repair and maintain the well and well house. The well house, pump, engine and other well equipment shall remain the property of LESSEE. LESSEE shall have unlimited access to the well site but shall reimburse LESSOR for actual damages to growing crops.

4.3 LESSEE shall have the right to use a 200 foot by 200 foot area around each well site to construct the wells and LESSEE shall pay LESSOR therefor the sum of \$100 as cash rent for use of such property during construction of the well. The full \$100 shall be paid upon commencement of the well construction. LESSOR shall restore the surface of such property to its pre-construction condition.

4.4 LESSEE shall use the leasehold property in a reasonable manner and shall not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or knowingly permit any person to do so.

4.5 LESSEE shall have the right to transfer, assign, and sublet this lease without prior consent of the LESSOR so long as the municipal water well field is used to supply water to the City of Benkelman.

4.6 LESSEE shall be responsible for his operations on the premises and shall also be responsible for insuring the equipment of the LESSEE.

4.7 LESSEE shall not conduct any unlawful operations on the property nor perform any acts on the property in violation of environmental or other laws.

V

LESSOR'S RIGHTS AND RESPONSIBILITIES

5.1 LESSOR shall have the right to use the surface of the property for crop production and as a farmstead site but their use shall be restricted as follows:

- a) No well (except one owned by the City of Benkelman) shall be located within 1000 feet of the municipal wells;
- b) No sewage lagoon shall be located within 1000 feet of the municipal wells;

- c) No absorption field or disposal field for waste shall be located within 500 feet of the municipal wells;
- d) No dump shall be located within 500 feet of the wells;
- e) No feedlot, feedlot runoff, pasture, or corral shall be located within 500 feet of the wells;
- f) No chemical or petroleum product storage facilities (including grain bins) shall be located within 500 feet of the wells;
- g) No pit toilet or septic tank shall be located within 500 feet of the wells;
- h) No sanitary landfill or sewer treatment plant shall be located within 500 feet of the wells;
- i) No sewage wet well shall be located within 500 feet of the municipal wells;
- j) No sewer connection or sewer manhole shall be located within 100 feet of the wells;
- k) No sewage line shall be located within 50 feet of the wells;
- l) No nitrogen fertilizer or atrazine chemical shall be applied within 300 feet of the well without the consent of LESSEE.
- m) No operations shall be conducted and no facilities shall be located on the land which violate laws or regulations governing municipal well fields in Nebraska.

5.2 LESSOR shall abandon the two stockwells and the old irrigation well located in the leased area.

5.3 LESSOR shall not interfere with LESSEE'S proper and normal use of the leasehold property, provided the same is being used in accordance with the terms and conditions of this Lease, and LESSOR shall be responsible for all damage caused to LESSEE'S wells and related structures by LESSOR'S negligent or intentional act.

5.4 LESSOR shall be responsible for payment of all taxes on the leasehold property.

5.5 LESSOR shall have the right to assign this Lease upon sale or transfer of the property.

5.6 LESSOR retains the rights to all mineral interests and minerals in, on or under the leasehold property but shall not exercise such mineral rights in any way that interferes with LESSEE'S use of the premises as a field for municipal water.

VI

TERMINATION

6.1 This Lease shall terminate automatically on the last day of October, 2036, without further notice from either party, except LESSEE shall have the option of extending this Lease for additional five year intervals at a per year price not to exceed ten per cent of one-half of the value of the land included in the lease. LESSEE shall notify LESSOR of the exercise of this option at least 30 days prior to termination of the Lease. In no event shall the LESSEE have the right to extend the lease for more than 20 years beyond the original term of the lease without re-negotiation of the lease terms.

6.2 The LESSEE agrees that at the expiration of the lease they will yield possession of the premises to the LESSOR without further notice and that the premises will be in as good order and condition as when entered by LESSEE, ordinary wear and tear and usages under this lease excepted. LESSEE may remove all of their fixtures and equipment from the premises at the expiration of the lease, which shall be done without damage to the premises, or may sell or convey such improvements to LESSOR, as determined appropriate by LESSEE.

THIS AGREEMENT and all the terms and conditions contained herein shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED THIS LEASE  
THIS 21<sup>st</sup> DAY OF April, 1997.

CITY OF BENKELMAN, NEBRASKA

BY: Dallas Fortin  
Mayor

ATTEST:

Rose Marie Whiteley  
City Clerk

(SEAL)





Benkelman Cattle Company, Inc.  
A Nebraska Corporation

BY: Robert P. Jones  
Robert P. Jones, President

ATTEST:

Marilyn Jones  
Marilyn Jones, Secretary

(SEAL)

STATE OF NEBRASKA            )  
  ) SS  
COUNTY OF DUNDY            )

The foregoing instrument was acknowledged before me on April 21, 1997, by Dallas Chartier, Mayor of the City of Benkelman, Nebraska, a municipal corporation, on behalf of said City of Benkelman, Nebraska.



Richard M. Glidden  
Notary Public

STATE OF NEBRASKA            )  
  ) SS  
COUNTY OF DUNDY            )

The foregoing instrument was acknowledged before me on May 1, 1997, by Robert P. Jones, President of Benkelman Cattle Company Inc., a Nebraska Corporation, on behalf of the Corporation.



Richard M. Glidden  
Notary Public