

ORDINANCE NO. 12-04

ROLL CALL

VOTING	YES	NO
MAYOR DALE R. BARNEY <i>(votes only in case of tie)</i>		
MATTHEW D. BARBER <i>Councilmember</i>	X	
PAUL M. CHRISTENSEN <i>Councilmember</i>	ABSENT	
EVERETT KELEPOLO <i>Councilmember</i>	X	
SETH V. SORENSEN <i>Councilmember</i>	X	
CHRIS C. WADSWORTH <i>Councilmember</i>	X	

I MOVE this ordinance be adopted: Councilmember Kelepolo
I SECOND the foregoing motion: Councilmember Wadsworth

ORDINANCE 12-04

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A PETITION TO THE CENTRAL UTAH WATER CONSERVANCY DISTRICT FOR ALLOTMENT OF WATER FOR MUNICIPAL AND INDUSTRIAL USE

WHEREAS, Spanish Fork City is a member of the South Utah Valley Municipal Water Association (Association), and desires to petition the Central Utah Water Conservancy District (District), individually and collectively through the Association, for an allotment of water for municipal and industrial use to provide a needed water supply for the inhabitants of the City, and in accordance with Utah Code Annotated §17A-2-1414 of the Utah Water Conservancy District Act, as amended; and

WHEREAS, Spanish Fork City has determined that it is necessary, desirable, and in the best

interest of the City to authorize the execution and delivery of the petition by the City and the Association and the taking of other necessary actions in connection therewith; and

WHEREAS, the future growth of the City, with its attendant water demand, leaves water from the Central Utah Water Conservancy District as the only realistic source to obtain needed water;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

I.

The execution, delivery, and filing of the petition.

The petition, in substantially the form attached hereto, is hereby authorized and approved. The Mayor is hereby authorized, empowered, and directed to execute and deliver the petition on behalf of the City to the District. The City Recorder is hereby authorized, empowered, and directed to countersign and affix the corporate seal of the City to the petition and to attest such seal, the execution thereof, to constitute conclusive evidence of such approval. Promptly upon its execution, the petition shall be on file in the official records of the City.

II.

Directive to Association.

The City representative to the Association is hereby authorized, empowered, and directed to vote in favor of the petition at the Association Board Meeting in order for the Association to also execute and deliver the petition, on behalf of the Association, to the District, and to take such other measures as to make such action valid and binding on the Association.

III.

Miscellaneous: effective date.

- A. All previous acts and ordinance in conflict with this ordinance or any part thereof are hereby repealed to the extent of such conflict.
- B. In case any provision in this ordinance shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.
- C. This ordinance shall not become a part of the Spanish Fork City Municipal Code.
- D. This ordinance shall take effect immediately upon its adoption and publication.

DATED this 7th day of September, 2004



 DALE R. BARNEY, Mayor

ATTEST:



 KENT R. CLARK, City Recorder

F:\ORDBOOK\ORD\2002\Ord12-04



STATE OF UTAH)
 :SS.
 COUNTY OF UTAH)

I, the undersigned, do hereby certify that I am the duly qualified and acting City Recorder of Spanish Fork City. I further certify, according to the records of Spanish Fork City in my official position and upon my own knowledge and belief, that:

- 1. Spanish Fork City (City) is a duly organized and existing municipality under the

provision of the State of Utah; the legislative powers of the City are by law vested in a Governing Body composed of six members (Governing Body); and neither the corporate existence of the City, nor the titles of the members of the Governing Body or the officers of the City are being contested;

2. The Governing Body met in regular public session on September 7, 2004, (the "Meeting"), to consider and act upon the items listed on the Notice of Public Meeting attached as EXHIBIT A hereto (the "Notice"), which included, among other things, consideration of the Ordinance attached hereto (the "Ordinance");
3. The meeting was held at the regular meeting place of the Governing Body within the boundaries of the City, as set forth in the Notice of Annual Meetings Schedule for 2004 which had been posed and provided in accordance with Utah Code Annotated Section 52-4-6(1), (1953, as amended);
4. In accordance with the requirements of Utah Code Annotated Section 52-4-6(2), (1953, as amended), not less than 24 hours' public notice of the agenda, date, time and place of the Meeting was given by the posting of the Notice at the principal office of the Governing Body and by providing a copy of the Notice to a newspaper of general circulation within the geographic jurisdiction of the City or to a local media correspondent;
5. A quorum of the Governing Body was present and acting throughout the Meeting; during the Meeting, the Ordinance was introduced in written form and, pursuant to motion duly made and seconded, was adopted and approved by a vote of at least a majority of the members of the Governing Body present and voting at the Meeting;

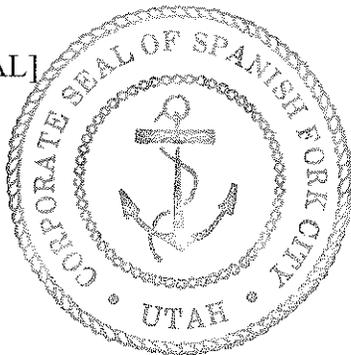
6. The Ordinance was signed by the Mayor and was sealed and the seal attested by the undersigned as City Recorder, and the Ordinance, its exhibits, and the minutes of the Meeting are recorded in the official records of the City;
7. The Petition has been approved by an attorney duly authorized by the city as being in proper form and compatible with the laws of the State of Utah; and a true, correct and complete copy of the Petition has been filed in the office records of the City in compliance with law; and,
8. All conditions, acts and things required by law to exist, to have happened and to be performed by the City preliminary to and in connection with to execution and delivery of the Petition exist, have happened and have been performed.

IN WITNESS WHEREOF, I have subscribed my official signature and impressed or imprinted hereon the official seal of the city this 7th day of September, 2004.



KENT R, CLARK, City Recorder

[SEAL]



**PETITION
OF SOUTH UTAH VALLEY MUNICIPAL WATER ASSOCIATION
TO THE CENTRAL UTAH WATER CONSERVANCY DISTRICT
FOR THE ALLOTMENT OF WATER FOR
MUNICIPAL AND INDUSTRIAL USE**

THIS PETITION (“Petition”), is made this _____ day of _____
2004, pursuant to Utah Code Annotated §17A-2-1414 and Federal Reclamation Law, Act of June
17, 1902, as amended and supplemented, among the CENTRAL UTAH WATER
CONSERVANCY DISTRICT, a water conservancy district organized and existing under the
laws of the State of Utah, with its principal place of business at Orem, Utah (“CUWCD”); the
SOUTH UTAH VALLEY MUNICIPAL WATER ASSOCIATION, (“SUVMWA”) an
organization created under authority of The Interlocal Cooperation Act, Utah Code Ann. §11-13-
1 *et. seq.*, comprised of several cities in south Utah County, all of which are political
subdivisions of the State of Utah, with SUVMWA’s principal place of business in Spanish Fork,
Utah. The municipalities involved in SUVMWA are Springville, Mapleton, Spanish Fork,
Salem, Woodland Hills, Elk Ridge, Payson, Santaquin, Genola and Goshen, (referred to as
“Member Municipalities.”), with each of the Member Municipalities signing this Petition as a
confirming party; and, the UNITED STATES OF AMERICA, (“United States”) acting through the
Secretary of the Department of Interior (“Secretary”) or the Secretary’s duly authorized
representative.

WITNESSETH:

WHEREAS, the United States of America, acting through the Bureau of Reclamation, has constructed many features of the Bonneville Unit (“Project”), as a part of the Central Utah Project (Initial Phase), a participating project of the Colorado River Storage Project; and

WHEREAS, the United States of America, acting through the Secretary, and CUWCD are constructing the remaining features of the Project for the purpose of supplying water for irrigation, municipal, domestic, industrial, and other purposes to CUWCD for use by its petitioners and contract holders; and

WHEREAS, the United States, acting through the Bureau of Reclamation, and CUWCD entered into Repayment Contract No. 14-06-400-4286, dated December 28, 1965, as supplemented and amended, and particularly the supplement of November 26, 1985 (collectively, the “1965 Repayment Contract”); and

WHEREAS, the United States and CUWCD have investigated, planned, and propose to construct the Utah Lake Drainage Basin Water Delivery System of the Bonneville Unit of the Central Utah Project (“ULS”) for the storage, diversion, and distribution of waters of the Colorado River and the Bonneville Basin drainage areas for municipal and industrial (“M&I”) and other Project purposes, and have complied with the National Environmental Policy Act of 1969 (“NEPA”) in regards to same; and

WHEREAS, the United States desires to make available to CUWCD the remaining Project M&I water supply developed by the ULS of approximately 60,000 acre-feet, (“ULS Project Water”); and

WHEREAS, said ULS Project Water is available to CUWCD from the United States under Repayment Contract No. 04-WC-40-120 (“ULS Repayment Contract”), entered into between CUWCD and the United States for this water supply; and

WHEREAS, pursuant to the ULS Repayment Contract, CUWCD has the right to market and allot the ULS Project Water and to use Bonneville Unit features (“Project Works”), which include ULS features, to deliver ULS Project Water for use by CUWCD's petitioners and contract holders; and

WHEREAS, SUVMWA has authority to petition CUWCD for ULS Project Water to provide water for M&I secondary use; and

WHEREAS, it is the purpose of this Petition for CUWCD to market and allot a portion of the ULS Project Water to SUVMWA on the terms and conditions herein provided; and

WHEREAS, Section 1.2.1.2.5 of the Utah Lake Drainage Basin Water Delivery System Final Environmental Impact Statement imposes the following requirements for contracts executed with CUWCD relating to the ULS:

“... the repayment contracts and water petitions listed in Tables 1-35 and 1-37 will include provisions requiring the water users to: 1) comply with the State of Utah’s water conservation goals consisting of a 12.5 percent reduction in per capita water use by 2020 and a 25 percent reduction in per capita water use by 2050, using 2000 water use as a comparison basis; 2) annual reporting of actual per capita water use; and 3) appropriate penalties if the conservation goals are not met”; and

WHEREAS it is the intent of the Parties to implement this requirement through the ULS Repayment Contract and this Petition with the understanding that this conservation obligation applies to all M&I water developed by the Bonneville Unit of the Central Utah Project, including the ULS Project Water utilized for secondary municipal irrigation use.

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

1. Petition for ULS Project Water:

(a) SUVMWA hereby petitions CUWCD for a perpetual annual allotment of 30,000 acre feet of ULS Project Water, which water supply is made available in accordance with the Utah Lake Drainage Basin Water Delivery System Final Environmental Impact Statement (“ULS FEIS”) and the 2004 Supplement to the 1988 Definite Plan Report for the Bonneville Unit, Central Utah Project (“2004 DPR”). As provided herein, SUVMWA shall have the perpetual right to beneficially use the same.

(b) SUVMWA also petitions for a perpetual allocation of any remaining supplies of ULS Project Water that are not otherwise covered by other petitions, or that may become available for petition in the future, in accordance with the same terms and conditions set forth in this Petition.

(c) ULS Project Water will be made available to CUWCD after receipt of one or more block notices (“Block Notice(s)”) from the United States as provided for in the ULS Repayment Contract. Upon CUWCD’s receipt of a Block Notice(s), the ULS Project Water provided under that Block Notice(s) will be made available to SUVMWA by CUWCD through one or more CUWCD allotment notices (“Allotment Notice(s)”), which Allotment Notice(s) shall be issued to SUVMWA beginning in the year ULS Project Water is first made available to CUWCD.

(d) CUWCD will not allot ULS Project Water in South Utah County to any other similarly situated municipality or political subdivision on terms more advantageous than provided under this Petition.

2. Terms of Payments

SUVMWA agrees to pay CUWCD annually for the following separate costs in the manner and at the rates hereinafter provided, in conformance with the following:

(a) ULS Project Water Development Costs

(1) Under terms of the ULS Repayment Contract, CUWCD has acquired the right to use and market the ULS Project Water developed by construction of the ULS. CUWCD is required to pay the United States all Project costs allocated to the ULS M&I water supply (including interest during construction) less the non-Federal cost share and pre-authorization investigation costs, whether such water is used or not, over a 50-year repayment period as provided for in the ULS Repayment Contract. The repayment period for water provided under each Block Notice(s) will begin when the Project Works necessary to deliver that block of ULS Project Water have been constructed and the United States has issued the Block Notice(s) to CUWCD. When CUWCD receives the Block Notice(s) from the United States, CUWCD will issue SUVMWA an Allotment Notice(s), and SUVMWA will be required to begin paying CUWCD for that portion of the ULS Project Water provided under the Block Notice(s) and allotted herein. SUVMWA's payment obligation to CUWCD for each block of ULS Project Water will include interest charged at the same rate the United States charges CUWCD (3.222 percent) and will provide for a 50-year repayment period. Except to the extent the annual payment is deferred as provided by paragraph 2(a)(3) of this Petition, SUVMWA shall make its annual payment to CUWCD each year, regardless of whether ULS Project Water is used or not by SUVMWA and/or its Member Municipalities.

(2) The repayment obligation for each block of ULS Project Water, including interest, will be specified in each Block Notice(s). It will also be specified in each corresponding Allotment Notice(s).

(3) CUWCD and its petitioners have the right under the ULS Repayment Contract to request a deferment of up to ten (10) years from the United States under the authority

of the Water Supply Act of 1958 (72 Stat. 320; 43 U.S.C. §390b) (“Water Supply Act”) of all or a portion of its repayment obligation to the United States as covered in a Block Notice(s) as described herein. No less than six months prior to the date when water will first be available under the initial Block Notice(s) or, under any subsequent Block Notice(s), SUVMWA may request in writing a deferment from the United States under the Water Supply Act, as authorized by the ULS Repayment Contract. The United States agrees that such deferment will be granted, provided that the terms and conditions of the Water Supply Act have been met. This means that should SUVMWA desire to begin taking and paying for all or part of its ULS Project Water up to ten years after the date the block of ULS Project Water is first available, it will not be entitled to receive and/or use the deferred amount of water nor will it be required to pay for the deferred amount of water during the deferment period. No interest on the repayment for the deferred amount of water will accrue during the deferment period; however, at the end of the authorized deferral period, the annual payment for the ULS Project Water will be higher since SUVMWA will be required to pay for the deferred amount of water over a shorter amortization period.

(4) The repayment amount described herein is estimated to be \$293.32 per acre-foot per year based on estimated construction and interest during construction costs. All construction costs and the allocation of those costs, cited herein, are estimates based on the Draft 2004 DPR. The cost estimates and cost allocation are subject to change based on actual construction costs and interim and final allocations of project costs. The amount reflecting actual construction costs available as of the date the Block Notice(s) is issued will be specified in the Block Notice(s) and in the Allotment Notice(s). SUVMWA will pay to CUWCD initially an amount equal to 66 percent (66%) of CUWCD’s repayment obligation to the United States for the allotted ULS Project Water, which includes principal and interest. CUWCD will initially pay

thirty-four percent (34%) of said repayment obligation through its Ad Valorem tax revenues and miscellaneous revenues for the ULS Project Water allotted herein. CUWCD reserves the right to modify or eliminate this subsidy at anytime, upon giving SUVMWA at least one-year's prior written notice. Any decrease in the percentage amount paid by CUWCD towards said repayment obligation, will result in an offsetting increase in the percentage of CUWCD'S repayment obligation to be paid by SUVMWA.

(5) As set forth in the ULS Repayment Contract, each Block Notice(s) will be re-examined periodically by the United States, at intervals no longer than five (5) years after water is first made available, to determine whether during the preceding period changes have occurred to justify the amendment of the Block Notice(s), and if so, the United States shall amend the Block Notice(s) and payment schedules to reflect such changes. CUWCD thus reserves the right to amend any Allotment Notice(s) to conform to any amended Block Notice(s). For example, a change in the allocation of ULS Project Water development costs may result in an amended Block Notice(s) being issued to CUWCD that changes CUWCD's repayment obligation to the United States. CUWCD would then issue an amended Allotment Notice(s) to SUVMWA to reflect the changes to the repayment obligation that are applicable to SUVMWA. Each Allotment Notice(s) and any amendments thereto issued pursuant to this Petition shall become a part of this Petition.

(6) Pursuant to section 210 of the Central Utah Project Completion Act, Titles II through VI of the Act of October 30, 1992 (Public Law 102-575), as amended by the Acts of October 2, 1996, and December 19, 2002 ("CUPCA"), the United States allows CUWCD to prepay all or a portion of its repayment obligations under the ULS Repayment Contract. Any pre-payment that CUWCD may choose to make to the United States will not change SUVMWA's payment

obligation to CUWCD under this Petition, which payments must be made on an annual basis throughout the repayment period. CUWCD agrees to consider in good faith any request received from SUVMWA to allow SUVMWA to prepay all or some portion of its payment obligation to CUWCD.

(a) SUVMWA and the United States understand that CUWCD may wish to issue bonds to facilitate such prepayment, the interest on which is excluded from gross income from federal income tax purposes with respect to the ULS Project Water, and that the use of and control over the ULS Project Water may be relevant to determining whether such bonds can be issued. SUVMWA and the United States agree to provide information and otherwise reasonably cooperate, to the extent practicable, with CUWCD in connection with any such bond issue.

(b) Subject to rights reserved to the United States in Repayment Contract No. Contract No. 04-WC-40-120 (“Repayment Contract”) between CUWCD and the United States, and applicable federal law and regulation, the United States agrees that upon the repayment or prepayment of CUWCD’s repayment obligations under a Block Notice issued under the terms of the Repayment Contract, the contractual rights of the United States under this petition shall terminate, except the rights of the United States to enforce compliance with the water conservation requirements of Paragraph 8 of this Petition.

(7) Payments required herein from SUVMWA for ULS Project Water shall be paid by SUVMWA to CUWCD annually during the repayment period specified in the Allotment Notice(s). Each payment must be made within 30 days of the date of billing. Such payment shall be made on all ULS Project Water under Allotment Notice(s) regardless of whether all or any portion of the ULS Project Water allotted from CUWCD is used by SUVMWA.

(b) Operation, Maintenance and Replacement (“OM&R”) Costs of Project Works.

(1) CUWCD shall operate, maintain, and replace the Project Works. CUWCD will convey and deliver the ULS Project Water allotted herein to SUVMWA in accordance with the ULS FEIS, the 2004 DPR and this Petition. SUVMWA shall pay its fair and equitable share of annual OM&R costs as determined by CUWCD, following an opportunity for review and comment by SUVMWA, in a manner approved the CUWCD’s Board of Trustees that will make a fair and reasonable allocation of costs among all similarly situated Petitioners. OM&R costs are computed based on Project Water under allotment.

(2) The OM&R costs for ULS Project Water shall be computed annually based on a water year from November 1 through October 31. These costs shall be billed to SUVMWA, and SUVMWA shall pay to CUWCD the amount so billed within 30 days from the date the billing from CUWCD is received by SUVMWA. The OM&R payments provided for herein shall be paid regardless of whether all or any portion of the ULS Project Water is used by SUVMWA.

(3) In the event SUVMWA disputes the amount of billed OM&R costs, SUVMWA shall promptly pay any undisputed amount. The disputed amount shall be retained by SUVMWA. The issue regarding payment of the amount in dispute shall be referred to the United States for decision, which decision shall be binding on SUVMWA and CUWCD. Any remaining amount finally determined by the United States to be due shall be paid to CUWCD by SUVMWA within 30 days of receipt of written notice of such final determination.

(c) Payments to OM&R Reserve Fund Accounts.

(1) The 1965 Repayment Contract requires CUWCD to maintain a replacement reserve fund account and an emergency reserve fund account for operation,

maintenance and replacement (“OM&R”) of Project Works, and CUWCD requires the maintenance of a CUWCD OM&R reserve fund account. SUVMWA shall pay to CUWCD a pro-rata share, based on SUVMWA’s relative percentage hereunder of the total quantity of ULS Project Water under the Block Notice(s), of CUWCD’s obligation to maintain said fund accounts as may reasonably be modified in rate or amount by action of CUWCD’s Board of Trustees.

(2) The amount specified shall be billed to SUVMWA at the same time and in the same manner as the annual OM&R assessment. SUVMWA shall pay to CUWCD the amount so billed within 30 days from the date the billing from CUWCD is received by SUVMWA. The OM&R reserve fund account payments provided for herein shall be paid regardless of whether all or any portion of the ULS Project Water is used by SUVMWA.

(3) In the event SUVMWA disputes the amount of billed reserve costs, SUVMWA shall promptly pay any undisputed amount. The disputed amount shall be retained by SUVMWA. The issue regarding payment of the amount in dispute shall be referred to the United States for decision, which decision shall be binding on SUVMWA and CUWCD. Any remaining amount finally determined by the United States to be due shall be paid by SUVMWA to CUWCD within 30 days of receipt of written notice of such final determination.

(d) Obligations Not Considered Debt.

It is intended that the financial obligations of SUVMWA in Paragraphs 2(a), (b), and (c), hereof, shall not constitute or give rise to a general obligation or debt of SUVMWA or its Member Municipalities, nor shall it constitute or give rise to a loan of its or their credit within the meaning of any constitutional or statutory limitation, nor constitute or give rise to a charge against SUVMWA or any of its Member Municipalities’ general credit or taxing powers.

Accordingly, amounts due and payable hereunder shall be payable from its water system revenues or from its other legally available funds by SUVMWA.

(e) Cost Reference Point

As a cost reference point, it is estimated for a 50 year repayment period that SUVMWA will be required to pay an annual cost per acre-foot of ULS Project Water (under paragraph 2 herein) based on the estimates contained in the 2004 DPR using 2002 dollars as follows:

(1)	66% of ULS Project Water Development Costs ¹ :	\$193.59
(2)	OM&R Costs	\$ 7.21
(3)	Payments to OM&R Reserve Funds	<u>\$ 1.20</u>
Total estimated initial cost per acre-foot of Project		
Water - sum of (1), (2), and (3)		\$202.00

3. Delivery of ULS Project Water by CUWCD

(a) ULS Project Water allotted herein is to be made available to SUVMWA from Strawberry Reservoir at delivery points located at various turnouts along the ULS pipelines. All deliveries will be measured through measuring devices located at Project Works.

(b) SUVMWA shall bear a proportionate share of all ULS Project Water conveyance losses based upon its percentage share of the total quantity of water delivered from said measurement point at Strawberry Reservoir to the secondary points of delivery to SUVMWA. The location of the turnouts to SUVMWA shall be mutually agreed upon by the parties, and shall be consistent with the ULS FEIS and the 2004 DPR, or as otherwise agreed to subject to appropriate NEPA compliance.

¹ CUWCD will initially pay the remaining 34% or \$99.76 of the Project Water Development repayment cost of \$293.59 per acre foot.

(c) CUWCD shall provide proper measuring devices at each point of delivery to SUVMWA from the Project Works. SUVMWA shall provide any other proper measuring devices within its distribution system.

(d) No liability shall accrue against CUWCD, or the United States, or any of their officers, agents or employees, for any damages, direct or indirect, sustained by SUVMWA and/or persons acting by, through or under SUVMWA in the event of shortages of ULS Project Water, or CUWCD's inability to deliver ULS Project Water to SUVMWA, not resulting from CUWCD's negligence, or shortages caused by drought, hostile diversion, prior or superior claims, or other similar causes not within the control of CUWCD.

4. Perpetual Nature of Delivery.

The ULS Project Water allotment is made in perpetuity from the time it is committed to SUVMWA under Allotment Notice(s) pursuant to the Block Notice(s).

5. Use and Delivery of ULS Project Water by SUVMWA

(a) SUVMWA and its Member Municipalities shall use the ULS Project Water available to SUVMWA under Allotment Notice(s) only as secondary M&I water for municipal irrigation use in accordance with the ULS FEIS and the 2004 DPR unless otherwise agreed to by the United States and CUWCD. Any such new agreement for use of the ULS Project Water may require additional NEPA compliance.

(b) Subject to the approval of CUWCD and the United States, ULS Project Water may be utilized by SUVMWA by change application or exchange application under Utah law filed by the United States or by SUVMWA upon receipt of prior written consent of the United States and CUWCD. Any such consent may require additional NEPA compliance.

(c) It shall be SUVMWA's responsibility to provide the works and make the necessary arrangements, including any carriage agreements, or approval of any change or exchange applications from the Division of Water Rights, to convey SUVMWA's ULS Project Water from the points of delivery as described herein to places of delivery to SUVMWA's customers. SUVMWA shall construct, operate, maintain and replace, without cost to CUWCD or the United States, any works or facilities used for exchange, storage facilities and water distribution systems and their appurtenant facilities necessary to convey or exchange the ULS Project Water from the points of delivery to the place or places of use for secondary municipal irrigation.

6. Return Flows

It is estimated that approximately 9,660 acre feet of water will flow to Utah Lake as direct return flows from secondary M&I use within the Member Municipalities of SUVMWA. To the extent possible, maintenance of historic inflows to Utah Lake is important to Bonneville Unit operations to protect the ability of the CUWCD to exchange water to Jordanelle Reservoir. Accordingly, return flows to Utah Lake from use of ULS Project Water under this Petition will only be available for recapture and recycling by SUVMWA and/or its Member Municipalities with the express written consent of the CUWCD and the United States. The return flows generally will be reused for Bonneville Unit purposes in Utah Lake to maintain Utah Lake levels and to help satisfy prior water rights as required to allow the exchange of water to Jordanelle Reservoir. The parties acknowledge that the United States, pursuant to the ULS Repayment Contract, has reserved for Project Purposes all of the waste, seepage, and return flow water derived from ULS Project Water delivered pursuant to this Petition.

7. Sales of ULS Project Water Restricted

SUVMWA shall not market or deliver the ULS Project Water allotted herein or any part thereof, outside of the boundaries of SUVMWA's service area, unless approved by CUWCD and the United States. Any such approval may require additional NEPA compliance.

8. Compliance with Water Conservation Requirements

(a) SUVMWA will comply with the State's water conservation goals of reducing per capita water use within SUVMWA's service area by 12.5 percent by the year 2020, and by 25 percent by the year 2050 ("Conservation Goals").

(b) Commencing in the year 2005 and continuing thereafter until 2050, SUVMWA agrees to report annually to CUWCD its average annual per capita water use within SUVMWA's service area. The Annual Report shall be submitted to CUWCD on or before May 1 of each year to enable CUWCD to file its Annual Report with the Director, Utah Division of Water Resources and the Secretary's authorized representative(s) on or before June 1 of each year. Using the per capita water use data from the year 2000 as the base year for comparison, SUVMWA's Annual Report will include updated graphs showing average per capita water use throughout its service area. Each graph will include a plotted line ("Target Line") showing the required annual conservation savings necessary to achieve the goal of 12.5 percent reduction by 2020 and 25 percent reduction by 2050, actual yearly per capita use data points, and a linear regression of those data points ("Actual Progress Line"). The annual data points for the Actual Progress Line will begin in 2000 and extend annually one year at a time as data becomes available through 2050. The regression line is intended to compensate for year to year variations in climatic and economic conditions that affect per capita water use. The Annual Report shall be prepared in a format that is acceptable to the Secretary and shall be available for public review. SUVMWA

will certify in its Annual Report to CUWCD the extent to which it has made annual progress towards achieving the required Conservation Goals.

(c) The Annual Report shall identify SUVMWA's annual progress towards meeting the Conservation Goals and by what amount.

(d) In the event SUVMWA fails to annually certify or cannot annually certify to the CUWCD in its Annual Report that it has made the required annual progress towards meeting the Conservation Goals, then CUWCD shall implement the following corrective measures:

(1) Before the end of the year following any year in which SUVMWA did not or could not certify that the required annual progress has been made towards meeting the Conservation Goals, CUWCD shall surcharge SUVMWA for substantial non-compliance with the annual per capita water use reduction.

(2) The surcharge for the first year of substantial non-compliance shall be five percent (5%) of the SUVMWA's annual repayment obligation for all Project Water then available to SUVMWA under Allotment Notices, less any Project Water that has been turned back by SUVMWA to CUWCD and the Secretary under §207 of CUPCA.

(3) The surcharge for the second consecutive year of substantial non-compliance shall be ten percent (10%) of SUVMWA's annual repayment obligation for all Project Water then available to SUVMWA under Allotment Notices, less any Project Water that has been turned back by SUVMWA to CUWCD and the Secretary under §207 of CUPCA.

(4) The surcharge for the third consecutive year of substantial non-compliance, and any subsequent consecutive years of substantial non-compliance, shall be fifteen percent (15%) of SUVMWA's annual repayment obligation for all Project Water then available

to SUVMWA under CUWCD Allotment Notices, less any Project Water that has been turned back by SUVMWA to CUWCD and the Secretary under §207 of CUPCA.

(5) If CUWCD determines that compliance has been accomplished by SUVMWA within 12 months of the determination of substantial non-compliance, CUWCD shall refund 100 percent (100%) of the collected surcharge, unless the collected surcharge has been expended on water conservation projects as provided in paragraphs (f) and (g) hereof.

(6) The right to impose this surcharge is hereby expressly reserved by CUWCD in this Petition for ULS Water, and SUVMWA hereby agrees that any surcharge so levied by CUWCD shall be paid in addition to the annual repayment obligation of the petitioner as set forth in the individual Allotment Notice(s). The surcharge shall be due and payable at the same time and manner as Petitioner's annual repayment contract payment is due.

(e) For purposes of this Agreement, a determination of annual progress will be made by CUWCD by comparing the Actual Progress Line to the Target Line. The first year of comparison will be 2005. Thereafter, the comparison will be made each year through the year 2050. Annual progress will be certified by CUWCD when the end of the Actual Progress Line for the year of comparison is at or below the Target Line. CUWCD will determine that substantial non-compliance has occurred in a year in which the end of the Actual Progress Line for the year of comparison is above the Target Line. Penalties for substantial non-compliance are described in Paragraph 10(d) above.

(f) The collected surcharge from SUVMWA will be deposited into a segregated interest-bearing account (Conservation Account) that will be maintained and managed by CUWCD. Surcharges collected and deposited to the Conservation Account, together with accrued interest thereon, will be used by CUWCD to help fund water conservation projects

developed under Section 207 of CUPCA by SUVMWA within its service area to substantially comply with the annual reduction of per capita water use.

(g) Water conservation projects to be developed under Section 207 of CUPCA aimed at reducing the per capita water use within SUVMWA's service area may include, but are not hereby limited to, construction of new water-saving delivery and storage facilities; payment of incentives for removal of traditional lawns and groundcover and their replacement with water-wise landscaping; development of staged, conservation-incentive billing; funding of education programs, etc.

(1) Determinations on the particular programs to be funded from the Conservation Account and the manner in which such account is administered shall be made by CUWCD's Board of Trustees ("Trustees") and the Secretary's authorized representative(s).

(2) The decision of the Trustees shall be subject to the approval of the Secretary prior to disbursement of any funds from the Conservation Account. Any funds not disbursed in any single year shall be carried over in the Conservation Account for use in subsequent years.

(3) In any event, all funds in the Conservation Account must be disbursed by the end of 2055. At that time, the Conservation Account shall be discontinued and the Trustees shall no longer have responsibility for the administration thereof.

9. Section 207 Water Conservation Contracts

Pursuant to Section 207(b)(4) of CUPCA, all ULS Project Water saved through the implementation of a conservation measure approved by the United States may be retained by SUVMWA for its own use or disposition. SUVMWA may, in its sole discretion, make available to CUWCD water equivalent to the water saved, which CUWCD may make available to the

United States, to be used for instream flows in addition to the stream flow requirements established by Section 303 of CUPCA. If such saved ULS Project Water is made available to the United States, the United States shall reduce the annual contractual repayment obligation of CUWCD for any such ULS Project Water equal to the ULS Project Water repayment obligation for delivered water, including operation and maintenance expenses, for water saved for instream flows. CUWCD shall credit or rebate to SUVMWA its proportionate share of CUWCD's repayment savings for reductions in deliveries of ULS Project Water as a result of this provision.

10. Water Sales Contracts

SUVMWA shall allocate the ULS Project Water to those individual Member Municipalities that comprise SUVMWA who desire to use of ULS Project Water on such terms and conditions as SUVMWA and its Member Municipalities agree upon. In allocating the ULS Project Water, SUVMWA may provide for the reallocation of ULS Project Water among the various Member Municipalities in the event one such member requires more or less water than it initially allocated to it. Each Member Municipality, as a condition to the CUWCD's acceptance of this Petition, has adopted the ordinance attached hereto authorizing each Member Municipality to sign this Petition to secure its performance under the Water Sales Contracts to SUVMWA and SUVMWA's obligations to the CUWCD under this Petition. The Member Municipalities may apportion the obligation created by this Petition among them in the same proportion as the quantity of ULS Project Water allocated to them by SUVMWA. If the amount of ULS Project Water allocated is adjusted among the Member Municipalities, as provided herein, the proportionate share of the obligation to be paid by each Member Municipality through SUVMWA shall be similarly adjusted among them. Copies of all allocation agreements shall be kept on file with the CUWCD and SUVMWA.

11. Quantity of Water Delivered

(a) Subject to CUWCD's operating criteria, ULS Project Water shall be released from Strawberry Reservoir; provided, however, that any ULS Project Water remaining in storage at midnight on October 31 of each year shall revert to CUWCD.

(b) In the event of shortage, deliveries of the ULS Project Water allotted hereunder shall be reduced in proportion to the total ULS Project Water supply available for M&I use, as determined by CUWCD. Payments to CUWCD provided herein shall not be reduced because of any such shortage.

(c) It is acknowledged that the sale and delivery of ULS Project Water is subject to the terms and conditions of the Agreement of February 27, 1980, by and among the United States, the State of Utah, and CUWCD relating to the maintenance of minimum stream flows at locations within the Duchesne and Strawberry River drainages and the September 13, 1990, Amendment to Agreement (both collectively referred to herein as the "Instream Flow Agreement"). The Instream Flow Agreement provides that in the event of shortages, the shortages will be shared on a pro-rata basis between the water committed for instream flows and that portion of the ULS Project Water committed for transmountain diversion for irrigation use. Water for M&I uses shall have a higher priority than either irrigation water or minimum stream flow water; provided, however, that this priority shall not apply to Bonneville Unit irrigation water developed by the Project converted to M&I use as authorized in the 1965 Repayment Contract.

12. Collection of Fees and Charges

SUVMWA will levy and collect all necessary fees, charges, and assessments from its member municipalities in sufficient amounts to pay to CUWCD all separate costs required by Paragraph 2 herein ("Petition Payments"). SUVMWA shall pay to CUWCD the full amount of the Petition Payments regardless of whether SUVMWA collects the full amount of its annual fees, charges, and assessments from its Member Municipalities.

13. Refusal of Water in Case of Default

No ULS Project Water shall be delivered to SUVMWA if it is in arrears for more than 30 days in the payment to CUWCD of any payment required by this Petition. Deliveries shall resume upon payment in full of any such arrearage and any interest and penalties imposed by this Petition. Funds received to cure this arrearage shall be first applied by CUWCD to payment of accrued interest, then to payment of any penalties, and then towards the reduction of principal.

14. Modification of Petition

(a) If SUVMWA determines that the quantity of ULS Project Water petitioned for is in excess of SUVMWA's needs and that other water users within CUWCD have a need for this ULS Project Water, CUWCD, with the approval of SUVMWA and the United States, may modify this Petition by reducing the total number of acre-feet of ULS Project Water allotted to SUVMWA and by making a corresponding reduction in SUVMWA's payment obligations.

(b) If SUVMWA notifies CUWCD that it no longer has a need for any of the ULS Project Water, CUWCD, in its sole discretion, may terminate this Petition, which termination is subject to the approval of the United States. In the event of termination, SUVMWA shall be relieved of any future obligation under this Petition, but termination shall not relieve SUVMWA of its obligation to pay CUWCD any past due charges under paragraph 2 of this Petition.

(c) If CUWCD cannot locate another petitioner acceptable to CUWCD for this ULS Project Water, or if the United States will not consent to the termination of this Petition, this Petition shall remain in full force and effect.

15. Delinquency Charges

Every payment required under this Petition which shall remain unpaid after it shall have become due and payable shall be subject to interest in the amount of one percent (1%) of the delinquent amount per month from the date of delinquency until such time as the delinquent amount and all accrued interest has been paid in full; provided, however, that no interest shall be charged to or paid by SUVMWA unless such delinquency continues for more than thirty (30) days.

16. Petition Subject to the ULS Repayment Contract

This Petition is expressly made subject to the terms and conditions of the ULS Repayment Contract, Contract No. 04-WC-40-120, between CUWCD and the United States.

17. Equal Employment Opportunity

As required by the ULS Repayment Contract, during the performance of this contract, SUVMWA agrees as follows:

(a) SUVMWA will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. SUVMWA will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, disability, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. SUVMWA

agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the United States setting forth the provisions of this nondiscrimination clause.

(b) SUVMWA will, in all solicitations or advertisements for employees placed by or on behalf of SUVMWA; state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

(c) SUVMWA will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the United States, advising the labor union or workers' representative of SUVMWA's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) SUVMWA will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) SUVMWA will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of SUVMWA's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and SUVMWA may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order

11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

18. Compliance with Laws

SUVMWA shall, within its legal authority, comply fully with all applicable federal laws, orders and regulations, and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of streams, reservoirs, ground water, or water courses with respect to thermal pollution or the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, mineral salts or other pollutants. SUVMWA shall similarly comply with all applicable federal laws, orders and regulations, and the laws of the State of Utah, all as administered by appropriate authorities, concerning the pollution of air with respect to radioactive materials or other pollutants.

19. Rule Making Authority

SUVMWA and CUWCD reserve the right to adopt rules and regulations, and to exercise their full statutory powers, including specifically the right to amend their rates, rules and their regulations in the future, and the right to exercise their statutory powers, as they now exist or are amended or enacted in the future, and it is expressly agreed that SUVMWA and CUWCD, by signing this Petition, have not surrendered any of their rights in this regard.

20. Subject To Construction of Facilities and Appropriation of Funds

This Petition is subject to the United States and CUWCD constructing facilities essential for the delivery of water committed hereby and to water being available under the Bonneville Unit water rights. The expenditure of any money, or the performance of any work by the United States and or CUWCD, which may require appropriations of money by Congress, or the

allotment of funds, shall be contingent upon such appropriations or allotments being made. The failure of Congress to so appropriate funds, or the absence of any allotment of funds, shall not relieve SUVMWA or its Member Municipalities from any obligations under Allotment Notice(s) given under this Petition for ULS Project Water already being delivered, and no liability shall accrue to the United States or CUWCD in case such funds are not appropriated or allotted and ULS Project Water is not delivered.

21. Water Conservancy Act of Utah

This Petition shall be subject to the Water Conservancy Act of Utah, Title 17A, Chapter 2, Section 1401 *et seq.* Utah Code Annotated, as it may be amended from time to time; the rules and regulations of the Board of Trustees of CUWCD as adopted from time to time; and, the ULS Repayment Contract and the 1965 Repayment Contract as amended and supplemented; provided that such amendments, rules, regulations and contracts shall not impair SUVMWA's rights, duties and obligations under this Petition.

22. Federal Law

This Petition is subject to all applicable Federal laws, particularly the Federal Reclamation Law, Act of June 17, 1902, (32 Stat. 388), and acts amendatory thereof and supplementary thereto.

23. Termination of Petition

CUWCD may terminate this Petition by written notice to SUVMWA if SUVMWA is in arrears more than 12 months in any payments owed to CUWCD under Paragraph 2 of this Petition. Notwithstanding the foregoing, neither CUWCD nor SUVMWA shall have the right to terminate this Petition without the express approval of the United States, which approval shall not be unreasonably withheld.

24. Assignment Limited - Successors and Assigns Obligated

The provisions of this Petition shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Petition by SUVMWA, or any part or interest therein, shall be valid until approved in writing by CUWCD and the United States.

25. Notices

Any notice, demand, or request authorized or required by this contract shall be deemed to have been given to the United States when mailed, postage prepaid, or delivered to the Program Director, Central Utah Project Completion Act Office, Department of Interior, 302 East 1860 South, Provo, Utah 84606; to CUWCD when mailed, postage prepaid, or delivered to the General Manager, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058; and to SUVMWA when mailed, postage prepaid, or delivered to the Chairman, South Utah Valley Municipal Water Association, P.O. Box 412, Spanish Fork, Utah 84660. The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

26. Officials Not to Benefit

No Member of or Delegate to the Congress, Resident Commissioner, or official of CUWCD and/or SUVMWA shall benefit from this contract other than as a water user or landowner in the same manner as other water users or landowners.

IN WITNESS WHEREOF, the parties hereto have signed their names the day and year first written above.

**CENTRAL UTAH WATER
CONSERVANCY DISTRICT**

By: _____
President, Board of Trustees

ATTEST:

Secretary

**UNITED STATES OF AMERICA
DEPARTMENT OF INTERIOR**

By: _____
Ronald Johnston, Program Director

APPROVED:

Office of the Regional Solicitor
Christopher B. Rich, Esq.

SOUTH UTAH VALLEY MUNICIPAL WATER ASSOCIATION

By: _____

Attest: _____
[name]
By: [name]

Its:

President

Its: Recording Secretary

Elk Ridge Town

SEAL

Attest: City Recorder

[name]
Mayor

Genola Town

SEAL

Attest: City Recorder

[name]
Mayor

Goshen Town

SEAL

Attest: City Recorder

[name]
Mayor

Mapleton City

SEAL

Attest: City Recorder

[name]
Mayor

Payson City

SEAL

Attest: City Recorder

[name]
Mayor

Salem City

SEAL

Attest: City Recorder

[name]
Mayor

Santaquin City

SEAL

Attest: City Recorder

[name]
Mayor

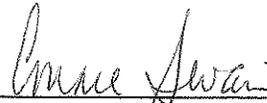
Spanish Fork City

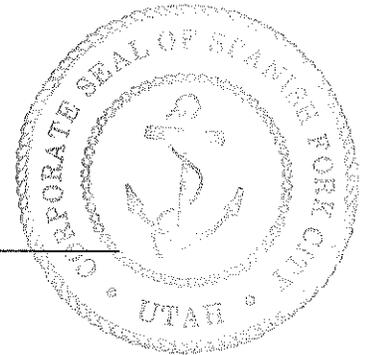
SEAL

^{Deputy}
Attest: City Recorder



[name]
Mayor





Springville City

SEAL

Attest: City Recorder

[name]
Mayor

Woodland Hills Town

SEAL

Attest: City Recorder

[name]
Mayor

Proof of Publication

I **Steve Hardman** being first duly sworn according to law, disposes and says that he is the General Manager of **THE SPANISH FORK PRESS**, a weekly newspaper printed and published at Spanish Fork, Utah County, Utah and of general circulation therein; that the Notice, a copy of which is hereto attached, was printed and published in said paper

Spanish Fork City Council as follows:

The execution, delivery, and filing of the petition.

The petition, in substantially the form attached hereto, is hereby authorized and approved. The Mayor is hereby authorized, empowered, and directed to execute and deliver the petition on behalf of the City to the District. The City Recorder is hereby authorized, empowered, and directed to countersign and affix the corporate seal of the City to the petition and to attest such seal, the execution thereof, to constitute conclusive evidence of such approval. Promptly upon its execution, the petition shall be on file in the official records of the City.

Directive to Association.

The City representative to the Association is hereby authorized, empowered, and directed to vote in favor of the petition at the Association Board Meeting in order for the Association to also execute and deliver the petition, on behalf of the Association, to the District, and to take such other measures as to make such action valid and binding on the Association.

Miscellaneous: effective date.

A All previous acts and ordinance in conflict with this ordinance or any part thereof are hereby repealed to the extent of such conflict.

B In case any provision in this ordinance shall be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way

This ordinance shall not become a part of the Spanish Fork City Municipal Code.

D This ordinance shall take effect immediately upon its adoption and publication.

A complete copy of the ordinance, certificate, and petition are available for inspection at the Spanish Fork City Office, 40 South Main, Spanish Fork.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH, this 7th day of September, 2004.

Published in the Spanish Fork Press on September 16, 2004.

for consecutive 1 weeks,

the first publication on the 16 day

of September 2004

And the last on the 16 day

of September 2004

STP



16th day of September 2004

cancel

ORDINANCE 12-04, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A PETITION TO THE CENTRAL UTAH WATER CONSERVANCY DISTRICT FOR ALLOTMENT OF WATER FOR MUNICIPAL AND INDUSTRIAL USE