

IMPLEMENTATION AGREEMENT
AMONG
THE DEPARTMENT OF THE INTERIOR
UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION
AND
CENTRAL UTAH WATER CONSERVANCY DISTRICT

TO IMPLEMENT CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE
SPANISH FORK CANYON PIPELINE
AND
SPANISH FORK – PROVO RESERVOIR CANAL PIPELINE
OF THE UTAH LAKE DRAINAGE BASIN WATER DELIVERY SYSTEM
CENTRAL UTAH PROJECT

This Implementation Agreement is made this 15th day of March, 2005, pursuant to Sections 202(a)(1), 202(c) and 302(a) of the Central Utah Project Completion Act (Titles II through VI of Public Law 102-575, 106 Stat. 4605, October 30, 1992), as amended, hereinafter called the "CUPCA", among the UNITED STATES DEPARTMENT OF THE INTERIOR, hereinafter called "Department"; the UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION, a Federal commission established by Title III, Section 301 of CUPCA, hereinafter called "Mitigation Commission"; and the CENTRAL UTAH WATER CONSERVANCY DISTRICT, a non-Federal water conservancy district organized and existing as a political subdivision under the laws of the State of Utah, hereinafter called "District".

WITNESSETH, THAT;

WHEREAS, the Department, through the Bureau of Reclamation, has constructed certain features of the Central Utah Project" CUP", a Federal reclamation project; and

WHEREAS, CUPCA amends the Act of April 11, 1956 (PL 84-485, 70 Stat. 105), to authorize orderly completion of the CUP, a participating project of the Colorado River Storage Project (CRSP), by authorizing an increase in the appropriations ceiling for the project, authorizing certain water conservation and fish, wildlife and recreation mitigation projects, and by providing for the construction of certain project features for delivery of municipal and irrigation water to specified areas within the CUP service area; and

WHEREAS, Title II of CUPCA authorizes the appropriation of additional funds to complete the CUP; provides for cost-sharing of project capital costs; allows the District to construct certain project features; requires the District to comply with environmental laws; and

WHEREAS, pursuant to Title III, the Mitigation Commission was established to coordinate the implementation of the mitigation and conservation provisions of CUPCA among the Federal and State fish, wildlife, and recreation agencies; and

WHEREAS, CUPCA authorizes: (1) the District under Section 202(a)(1) of CUPCA to construct the Utah Lake Drainage Basin Water Delivery System; (2) the Secretary under Section 202(c) of CUPCA to utilize unexpended budget to complete project facilities; (3) the Mitigation Commission to administer the mitigation and conservation funds in accordance with Section 302(a) of CUPCA to acquire water for flows in the lower Provo River; and

WHEREAS, since 1994, the Department, District and Mitigation Commission have endeavored to acquire water and water rights in satisfaction of Section 302(a) and to date, only approximately 3,300 acre-feet have been acquired from willing sellers; and further recognizing the increasing cost and decreasing availability of water rights on the willing seller market to achieve these objectives, the District, Mitigation Commission and Department incorporated this objective into the planning for the Utah Lake Drainage Basin Water Delivery System ("ULS"); and

WHEREAS, implementation of the Spanish Fork Canyon-Provo Reservoir Canal Alternative is described in the 2004 Supplement to the 1988 Definite Plan Report, hereinafter called the 2004 DPR; Utah Lake Drainage Basin Water Delivery System, Final Environmental Impact Statement, hereinafter

called the ULS FEIS, filed with the Environmental Protection Agency on _____; and Records of Decision issued on _____ and _____, RODS; and

WHEREAS, the Spanish Fork Canyon–Provo Reservoir Canal Alternative would include the following features: 1) Sixth Water Power Facility and Transmission Line, 2) Upper Diamond Fork Power Facility and Underground Transmission Cable, 3) Spanish Fork Canyon Pipeline, 4) Spanish Fork–Santaquin Pipeline, 5) Santaquin–Mona Reservoir Pipeline, 6) Mapleton–Springville Lateral Pipeline, and 7) Spanish Fork–Provo Reservoir Canal Pipeline, and other appurtenant facilities; and

WHEREAS, these features would deliver ULS Municipal and Industrial (“M&I”) secondary water to southern Utah County cities, deliver water to Hobble Creek to provide June sucker spawning flows, and supplemental flow during other times of the year, deliver water for supplemental instream flow in the lower Provo River, deliver M&I raw water to the Provo Reservoir Canal and the Jordan Aqueduct for conveyance to water treatment plants in Salt Lake County, and provide water to generate electric power at 2 hydropower plants; and

WHEREAS, the Spanish Fork–Provo Reservoir Canal Pipeline would have a turnout for discharging instream flow water to the lower Provo River and would deliver, on average 16,000 acre-feet annually to the lower Provo River for instream flow purposes; which amount of water, delivered according to patterns described in the 2004 Draft DPR, the ULS FEIS, and RODS, would result in a minimum of 75 cfs being maintained in the lower Provo River on average; except that flows would average 74 cfs in January from Murdock Diversion to Interstate 15; and would average 69 cfs in February, 61 cfs in August and 62 cfs in September from Interstate 15 to Utah Lake; and

WHEREAS, the 16,000 acre-feet is part of the supply required to be delivered to Utah Lake in order to accomplish the Jordanelle Exchange, and there may be some years during which less than 16,000 acre-feet may be brought through the pipe because it is not needed in Utah Lake to make the Jordanelle Exchange, and in those years, instream flows in the lower Provo River may be less than the 75 cfs

minimum target, and it is due to those occurrences that the monthly average values less than 75 cfs are described; and

WHEREAS, the parties hereto desire to perform their respective responsibilities and obligations, as defined herein, to implement construction, operation and maintenance of the Spanish Fork Canyon Pipeline, hereinafter called the SFC Pipeline, and the Spanish Fork – Provo Reservoir Canal Pipeline, hereinafter called the SFPR Pipeline, together hereinafter called the Project.

NOW THEREFORE, the parties agree as follows:

CONTRACTUAL OBLIGATIONS OF THE PARTIES

I. (a) The Agreement is made and implemented in accordance with the 2004 DPR, ULS FEIS, and ROD. , and the contracts and Agreements identified in Article 1 herein.

(b) The contracts and Agreements described in subparagraph (b) below, must be executed before the District can begin construction of the Project. This list is not all inclusive. In order to construct the project, there is a number of other required steps: The finalizing of other contracts and agreements with third parties; the filing of the ULS FEIS; the issuance of the RODS by the Secretary of the Department and by the Mitigation Commission; and, obtaining the necessary licenses and permits. Unless the following contracts and agreements are executed, this Implementation Agreement will be considered null and void, and construction, as defined in the two agreements dated August 11, 1993 between the Department and the District, will not begin.

(c) The necessary contracts and agreements are:

(1) Contract No. 04-WC-40-180, between the Department and District, under the program guidelines authorized by the Drainage and Minor Construction Act (D&MC) (Act of June 13, 1956, 70 Stat. 274; 43 U.S.C. 505), whereby the Department provides Federal funding for all capital costs of the SFC Pipeline allocated to Sections 202(a)(1) and 202(c) of CUPCA.

(2) Contract No. 04-WC-40-200, between the Department and District, under the program guidelines authorized by the D&MC Act, whereby the Department provides Federal funding for all capital costs of the SFPR Pipeline allocated to Sections 202(a)(1) and 202(c) of CUPCA.

(3) Agreement No. 04-FC-UT-1170, between the Mitigation Commission and the District whereby the Mitigation Commission provides Federal funding for all capital costs allocated to Section 8 costs, as authorized by Sections 202(c) and 302(a) of CUPCA for the SFC and SFPR Pipelines for the purpose of conveying an average of 16,000 acre-feet annually to the lower Provo River to assist in meeting the minimum flow objectives authorized in section 303(c)(4) of CUPCA.

(4) Petitions of the Jordan Valley Water Conservancy District, Contract No. 04-WC-40-140, Metropolitan Water District of Salt Lake and Sandy, Contract No. 04-WC-40-150, and South Utah Valley Municipal Water Association, Contract No. 04-WC-40-160 for a total of 60,000 acre-feet of CUP Bonneville Unit municipal and industrial water.

(5) Repayment Contract No. 04-WC-40-120, between the United States and the District for 60,000 acre-feet of CUP Bonneville Unit municipal and industrial water.

CONSTRUCTION OF THE PROJECT

II. The District will design and construct the facilities for the Project in accordance with the 2004 DPR, ULS FEIS, RODS, and the contracts and agreements identified in Article 1 herein. The Department and Mitigation Commission will provide the Federal share of the funding, and the District will provide the local share of the funding for construction of the Project facilities.

ALLOCATION OF COSTS AND FUNDING

III. The Department, Mitigation Commission, and the District intend to fund the construction of the SFC and SFPR Pipelines utilizing several authorized funding sources: first, the ULS Section 5 funding authorized under Sections 202 (a) (1) and 202 (c) of CUPCA; second, the ULS Section 8 funding authorized under Section 202 (c) and Title III of CUPCA; and third, funding authorized under Sections 207 and 202(c) of CUPCA. All construction costs and the allocation of those costs cited herein are estimates based on the 2004 DPR. Both the cost estimates and allocations are subject to change based on any additional interim and the final allocations of project costs. As a result, in the tables below the dollar values in the columns and rows may not total due to rounding.

(a). SFC Pipeline. Based upon the proportion of flows in the SFC Pipeline represented by 8,831 acre-feet of irrigation flows (based upon the cost allocation in the 2004 DPR), Section 207 will be used to fund 7.42 percent of the total cost of the pipeline. Based upon the proportion of flows in the SFC Pipeline represented by 16,000 acre-feet of instream flow water for delivery to the lower Provo River (based upon the cost allocation in the 2004 DPR), Section 8 funds will be used to fund 10.52 percent of the total cost of the pipeline. The remainder of the estimated SFC Pipeline costs will be funded under Section 5. Based upon costs as estimated in the Draft 2004 DPR (indexed to October 2004), which are subject to change, the respective percentages and amount of contributions based upon authorized funding source for the

construction of the SFC Pipeline are as follows:

SFC Pipeline

	ULS Section 5		Title III Section 8		Section 207		Total	
	(\$)	(%)	(\$)	(%)	(\$)	(%)	(\$)	(%)
Federal Share (Dept)	\$44,157,857	74.10%	\$0	0%	\$3,502,479	65.00%	\$47,660,728	65.63%
Federal Share (URMCC)	\$0	0%	\$7,639,660	100.00%	\$0	0%	\$7,639,660	10.52%
Local Cost Share (District)	\$15,434,393	25.90%	\$0	0%	\$1,885,950	35.00%	\$17,319,951	23.85%
Total (\$):	\$59,592,250	100.00%	\$7,639,660	100.00%	\$5,388,429	100.00%	\$72,620,339	100.00%

(b). SFPR Pipeline. Based upon the proportion of flows in the SFPR Pipeline represented by 16,000 acre-feet of instream flow water for delivery to the lower Provo River (based upon the cost allocation in the 2004 DPR), Section 8 funds will be used to fund 18.33 percent of the total cost of the pipeline. The remainder of the estimated SFC Pipeline costs will be funded under Section 5. Based upon costs as estimated in the Draft 2004 DPR (indexed to October 2004), which are subject to change, the respective percentages and amount of contributions based upon authorized funding source for the construction of the SFC Pipeline are as follows:

SFPR Pipeline

	ULS Section 5		Title III Section 8		Section 207		Total	
	(\$)	(%)	(\$)	(%)	(\$)	(%)	(\$)	(%)
Federal Share (Dept)	\$80,081,724	70.09%	\$0	0%	\$0	65.00%	\$80,081,724	57.24%
Federal Share (URMCC)	\$0	0%	\$25,644,619	100.00%	\$0	0%	\$25,644,619	18.33%
Local Cost Share (District)	\$34,178,835	29.91%	\$0	0%	\$0	35.00%	\$34,178,835	24.43%
Total (\$):	\$114,260,559	100.00%	\$25,644,619	100.00%	\$0	100.00%	\$139,905,178	100.00%

(c) The following contracts and agreement will be executed between the appropriate parties hereto pertaining to the allocation of costs and funding of the Project:

(1) SFC PIPELINE CONTRACT BETWEEN THE DEPARTMENT AND THE DISTRICT; see Article 1(b)(1) above. This contract is pursuant to Sections 202(a)(1) and 202(c) of CUPCA and will provide for Federal funding by the Department of up to an estimated 65.63 percent or approximately \$47,660,728 (indexed by Reclamation engineering cost indices) to the District for the construction of the SFC Pipeline. The non-Federal share of at least an estimated 23.85 percent or approximately \$17,319,951 of the costs will be the responsibility of the District.

(2) SFPR PIPELINE CONTRACT BETWEEN THE DEPARTMENT AND THE DISTRICT; see Article 1(b)(2) above. This contract is pursuant to Sections 202(a)(1) and 202(c) of CUPCA and will provide for Federal funding by the Department of up to an estimated 57.24 percent or approximately \$80,081,724 (indexed) to the District for the construction of the SFC Pipeline. The non-Federal share of at least 24.43 percent or approximately \$34,178,835 of the costs will be the responsibility of the District.

(3) AGREEMENT BETWEEN THE MITIGATION COMMISSION AND THE DISTRICT; see Article 1(b)(3) above. This agreement is pursuant to Sections 202(c) and 302(a) of CUPCA and will provide for Federal funding of the Section 8 planning and construction costs by the Mitigation Commission for: 1) up to an estimated 10.52 percent or approximately \$7,639,660 (indexed), for the SFC Pipeline; and 2) up to an estimated 18.33 percent or approximately \$25,644,619 (indexed), for the SFPR Pipeline.

OPERATION AND MAINTENANCE

IV. (a) Pursuant to contracts with the United States, the District will care for, operate, and maintain the Project at the District's expense.

(b) Upon completion of each independent feature of the Project, the District, Department, and Mitigation Commission shall formally transfer, by letter notification, operation and maintenance responsibilities for that feature to the District. The District will operate and maintain the Project facilities in conformance with the design criteria, standard operating procedures, and all manufacturers' and suppliers' instructions and specifications.

OPERATION, MAINTENANCE AND REPLACEMENT COSTS

V. (a) The allocation of the annual operation, maintenance and replacement costs for the Project will vary from year to year and shall be based on actual annual costs of operation, maintenance and replacement including O&M reserves, and actual use of these facilities, and are shared according to the following estimated percentage allocation (as estimated in the Draft 2004 DPR, which are subject to change):

<u>SFC Pipeline</u>	<u>Percent</u>
Mitigation Commission – Section 8 Fish and Wildlife	13.06%
Department – Section 5 Fish and Wildlife	17.93%
<u>District</u>	<u>69.01%</u>
Total	100.00%

<u>SFPR Pipeline</u>	<u>Percent</u>
Mitigation Commission – Section 8 Fish and Wildlife	25.80%
Department – Section 5 Fish and Wildlife	10.66%
<u>District</u>	<u>63.54%</u>
Total	100.00%

(b) The Department agrees to reimburse the District its proportionate share of these costs and expenses as shown in Article V(a), and pursuant to Repayment Contract No. 4-06-400-4286 and 04-WC-40-120 and will consider these costs to be non-reimbursable Project costs.

(c) The Mitigation Commission agrees to compensate the District for its proportionate share of the operation, maintenance and replacement costs and expenses as shown in Article V(a). Prior to completion of construction of the Project, the Mitigation Commission and District shall execute an agreement regarding the payment of such compensation, which may provide for payment in one or several installments of the estimated capitalized value of the expected stream of the Mitigation Commission's share of O&M expenditures over the expected life of the project facilities.

TITLE TO FACILITIES AND REAL PROPERTY

VI. Title to all facilities, real property, easements, rights-of way, and other such property interest acquired pursuant to this Implementation Agreement with Section 202(a)(1), 202(c) or Section 302(a) Federal or non-Federal funds shall be acquired in the name of the United States and shall remain vested in the United States Department of the Interior unless otherwise provided by law. Acquisition shall be conducted in accordance with the Uniform Relocation Assistance and Real Property and Acquisition Policy Act of 1970 (42 U.S.C. 4601), as amended, as well as the Department of Justice Title Standards.

BOOKS, RECORDS, AND REPORTS

VII. The District shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Implementation Agreement, including financial transactions, water supply data, Project operation, maintenance and replacement logs, and Project land and right-of-way use Memorandum Of Understandings; land ownership, land-leasing and water use data. Subject to applicable Federal laws and regulations, each party to this Implementation Agreement shall have the right

during office hours to examine and make copies of the other party's books and records relating to matters covered by this Implementation Agreement.

NOTICES

VIII. Any notice to be sent pursuant to this Implementation Agreement shall be mailed by first class mail or sent by electronic transmission to the address noted below:

DEPARTMENT OF THE INTERIOR
Central Utah Project Completion Act Office
302 East 1860 South
Provo UT 84606-7317

UTAH RECLAMATION MITIGATION AND
CONSERVATION COMMISSION
102 West 500 South, Suite 315
Salt Lake City, Utah 84101

CENTRAL UTAH WATER CONSERVANCY DISTRICT
355 West University Parkway
Orem UT 84058-7303

CONTINGENT UPON APPROPRIATIONS

IX. The obligations of the Department and Mitigation Commission are contingent upon appropriation and reservation of funds being made therefore.

OFFICIALS NOT TO BENEFIT

X. No member of or delegate to Congress, resident commissioner, or official of the District shall benefit from this Implementation Agreement other than as a water user or landowner in the same manner as other water users or landowners.

BINDING OF SUCCESSORS AND ASSIGNS

XI. This Implementation Agreement shall be binding upon and inure to the benefits of the successors and assigns of the parties hereto.

PRIOR CONTRACTS

XII. The agreements of the parties contained herein do not supercede, amend, or affect the rights or obligations under Repayment Contracts No. 14-06-400-4286, dated December 28, 1965, as amended and supplemented, and 04-WC-40-120 between the United States and the District.

IN WITNESS WHEREOF, the parties have executed this Implementation Agreement as of the day and year set forth above.

DEPARTMENT OF THE INTERIOR

APPROVED

By Ronald Johnston
Ronald Johnston
Program Director

Christy Blair
Regional Solicitor

UTAH RECLAMATION MITIGATION
AND CONSERVATION COMMISSION

By Jody L. Williams
Jody L. Williams
Chair

CENTRAL UTAH WATER CONSERVANCY DISTRICT

ATTEST

By Don A. Christiansen
Don A. Christiansen
General Manger

Betty Sersland
Betty Sersland
Assistant to the General Manager

9-10-12