

MAPLETON-SPRINGVILLE PIPELINE  
Cooperative Agreement No. WS-04-160

**COOPERATIVE AGREEMENT**  
**BETWEEN THE**  
**UNITED STATES DEPARTMENT OF THE INTERIOR**  
**and the**  
**CENTRAL UTAH WATER CONSERVANCY DISTRICT**

I. Authority

This Cooperative Agreement, hereinafter called the Agreement, made March 15, 2005, between the United States Department of the Interior, ("Department"), and the Central Utah Water Conservancy District, ("CUWCD"), and individually or collectively known as the Party or Parties, is entered into pursuant to the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. §6305), the Economy Act (31 U.S.C. §1535), and the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575). This agreement shall also be in accordance with and subject to the Compliance and Cost Sharing Agreements between the Department and CUWCD dated August 11, 1993.

II. Background

The Central Utah Project Completion Act, ("CUPCA"), is contained within Titles II through VI of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575). Its purpose is to provide for the orderly completion of the Central Utah Project ("CUP"), a participating project of the 1956 Colorado River Storage Project ("CRSP"). CUPCA does this by authorizing an increase in the appropriations ceiling for CUP, for which Section 207 specifically addresses Water Management Improvement Conservation Measures, including activities described by this Agreement.

CUWCD has prepared and submitted a Water Management Improvement Plan "Plan"), dated December 1994 and has supplemented the Plan every three years in accordance with Section 207(b) of CUPCA. The Plan defines the Water Conservation Credit Program as the process for identification, implementation and assessment of water conservation measures.

CUWCD has calculated a water conservation goal ("Goal") in accordance with Section 207(b)(1)(A) of CUPCA, which Goal has been established in the 2004 supplement to the Plan as 62,100 acre-feet of conservation annually. Section 207(b)(3) of CUPCA requires CUWCD to implement and maintain, consistent with State law, conservation measures placed in the Water Conservation Credit Program active inventory to the maximum practical extent necessary to achieve 50% of the revised Goal by the year 2016 and 100% of the revised Goal by the year 2019.

Section 207(g) of CUPCA provides for surcharge payments by CUWCD if the Water Management Improvement Plan has not been developed and implemented to achieve the Goal identified above; the amount of the surcharge shall be five percent of CUWCD's annual Bonneville Unit repayment obligation to the Secretary for the first year of substantial noncompliance, ten percent for the second year of substantial noncompliance and fifteen percent for the third and any succeeding year of substantial noncompliance. Section 211 of CUPCA also provides for repayment of additional project costs if CUWCD is in substantial noncompliance with Section 207 of CUPCA.

CUWCD intends to rely on conservation measures evaluated and implemented, in accordance with the Water Conservation Credit Program, by individuals and entities, including CUWCD, which will require third party contracts between CUWCD as the funding agency and each individual implementing agency.

In consideration of the substantial penalties for noncompliance with the provisions of Section 207 of CUPCA and the limited Credit Program Federal funding provided to CUWCD for implementation of conservation measures, all third party contracts for receipt of Section 207 of CUPCA Federal funding shall include provisions for repayment of the Federal funds to CUWCD in the event of the default or change of the measure resulting in decreased conservation. However, if CUWCD is unable to obtain such third party contribution, this shall not relieve CUWCD from the operation of Section 207(g) of CUPCA sanctions, if applied.

### III. Project

The existing Mapleton–Springville Lateral, would be replaced with a pipeline throughout most of its length. This new pipeline would become a Bonneville Unit facility that would result in conserved water. The pipeline would be funded under the Utah Lake Drainage Basin Water Delivery System (“ULS”), Sections 202(a)(1), 202(c), and 207 of CUPCA programs. The pipeline would be constructed from the connection with the Spanish Fork Canyon Pipeline and extend north to Hobble Creek, which flows through Mapleton and Springville before discharging to Provo Bay on Utah Lake.

The steel pipeline would range in size from 48- to 30-inches diameter for about 5.7 miles, with a design capacity ranging from 125 to 36 cfs. The first 4.7 miles of pipeline would be buried in the existing Mapleton–Springville Lateral. The 48-inch pipeline would extend 4.7 miles from Spanish Fork Canyon Pipeline to the existing Maple Creek discharge into the canal at 400 North in Mapleton. The last mile of the existing canal would be retained to convey the Maple Creek and June sucker flows to Hobble Creek. The remaining one mile of pipeline would be successively reduced to 36- and 30-inches diameter and constructed parallel to the retained canal to convey water to the Hobble Creek siphon.

There would be 11 turnouts located along the pipeline sized to match existing canal turnouts, 2 with 14 cfs capacity and the remaining 9 turnouts each with 7 cfs capacity. The new pipeline turnouts would be located at the existing headgate turnouts from the canal. The pipeline would have about 16 air release valves, about 4 vacuum relief valves and about 4 drain valves and pipes located along its alignment. Valves would be located in concrete vaults along the pipeline alignment

As part of the Water Conservation Credit Program, CUWCD will turn over 4,000 acre-feet of water annually, on average, in perpetuity, to the Secretary of Interior, for instream flows in accordance with Section 207 (b)(4) of CUPCA. The conserved water will be made available by CUWCD to the Secretary in perpetuity beginning in April of the first year after completion of the Mapleton-Springville Pipeline. Conserved Central Utah Project water will be made available to the Secretary in Strawberry Reservoir. It shall be the Secretary's sole responsibility to regulate the conserved water out of Strawberry Reservoir for instream flow purposes.

#### IV. Purpose

In accordance with Contract Nos. WS-04-150 and 04-WC-40-250, which are also required to fully implement the Mapleton-Springville Lateral, this agreement provides for an estimated \$4,916,248 (Indexed in accordance with Bureau of Reclamation engineering indices) of Federal funds to assist in implementation of the Mapleton-Springville Pipeline project. These funds are subject to the successful acceptance and approval of the Mapleton-Springville Pipeline project as a water conservation measure through the Water Conservation Credit Program.

V. Term of Agreement

This Agreement shall become effective when signed by both Parties and shall remain in force through the life of the project(s), unless terminated or extended by either party. CUWCD will be responsible for monitoring the proper operation of the conservation measure for the life of the project(s) as defined in Article VI(B).

VI. Specific Obligations of the Parties

A. Department

The Department shall make funds available to CUWCD up to a maximum estimated \$4,916,248 (indexed) of Federal funds to assist in implementation of the Mapleton-Springville Pipeline project. These funds are subject to the successful acceptance and approval of the Mapleton-Springville Pipeline project as a water conservation measure through the Water Conservation Credit Program. The Department shall review and approve the Credit Program Annual Report submitted by CUWCD for conformance with the planned objectives as stated in the feasibility study. The Department reserves the right to inspect and review, at its discretion and upon reasonable notice, any and all aspects of the work performed with funds provided under this Agreement.

B. CUWCD

CUWCD shall be responsible for monitoring the proper operation of the conservation measure for the life of the Project as defined in the feasibility study. CUWCD shall verify whether the Project is providing water savings as defined in the Project feasibility study.

CUWCD shall provide a Credit Program Annual Report or Plan Supplement to the Department by January 1 of each year specifying the water savings of the Project and enabling the Department to assess whether CUWCD is in compliance with Section 207 of CUPCA. This is necessary because: (1) Section 207(g)(1) states "...if the Secretary...determines that the plan referred to in subsection (b) has not been developed and implemented or the studies referred to in subsections (c) and (d) have not been completed or transmitted as provided for in this section, the District shall pay a surcharge for each year of substantial noncompliance as determined by the Secretary"; and (2) Section 211 states: "If at any time the Secretary finds that such program [Section 207] is in substantial noncompliance... the Secretary shall, within six months of such finding and after public notice, take action to initiate repayment of all such reimbursable costs."

CUWCD shall not perform or cause to be performed any modification, construction, or replacement of any feature in implementation of this Agreement unless such action is in compliance with NEPA and other Federal fish, wildlife, recreation, and environmental laws and regulations and such proposed course of action has been approved by the Department, where such approval is necessary.

The United States shall not be held responsible for, and shall be indemnified and held harmless by CUWCD with respect to, damages or third-party claims resulting from the design, modification, construction, operation, maintenance, and replacement by CUWCD or any third party contractor of any feature in implementation of this Agreement.

The United States shall not be a party to or obligated in any manner by contracts entered into between CUWCD and other parties. CUWCD is solely responsible, without recourse to the United States, for settlement and satisfaction of all contractual and administrative issues and claims arising from or relating to third-party contractors, suppliers, or materialmen. CUWCD shall include this paragraph, or its functional equivalent, in all third-party contracts of any kind and such language shall appear in all related subcontracts.

VII. Saved Water Crediting Option

Under the provisions of Section 207(b)(4) of CUPCA, CUWCD has the option of offering CUP water conserved through adopted measures to the Secretary for use as instream flows. In turn, the Secretary shall reduce the annual contractual repayment obligation of CUWCD equal to the CUP rate for delivered water, including operation and maintenance expenses, for water saved and provided for use as instream flows.

VIII. Project Officers

The officers representing the parties for this Agreement are:

A. Department

Mr. Reed R. Murray, Deputy Program Director

U.S. Department of the Interior

Central Utah Project Completion Act Office

302 East 1860 South

Provo UT 84606-7317

(801) 379-1237 FAX (801) 379-1209

B. CUWCD

Mr. D. Heath Clark, P.E., Acting WCCP Project Manager

Central Utah Water Conservancy District

355 West University Parkway

Orem UT 84058

(801) 226-7144 FAX (801) 226-7150

IX. Allocation of Costs and Funding

This Agreement is made subject to the availability of funds. If Congress does not provide the funding identified in Article VI(a) herein, this Agreement may, at the option of CUWCD, be terminated and considered to be completed without prejudice to CUWCD or liability to the Secretary, or may be continued utilizing only non-Section 207(e)(2) funds. If CUWCD completes the work identified in this contract utilizing only non-Section 207(e)(2) funds, the Secretary agrees to reimburse CUWCD when Congress makes funds available. The CUWCD further releases the Secretary from any and all liability for damages for breach of contract as a result of Congress' failure to appropriate funds. The following percentages are estimated in the Draft 2004 DPR and may be changed when the final water supply and cost allocation is made.

A. Section 207 Federal Funds. The Federal funds provided under Section 207(e)(2) of CUPCA for the Mapleton-Springville Pipeline shall not exceed an estimated \$4,916,248 (indexed).

B. Sections 202(a)(1), and 202(C) Federal Funds. The Federal funds provided under Sections 202(a)(1) and 202(C) of CUPCA for the Mapleton-Springville Pipeline shall not exceed an estimated \$18,006,316 (indexed) as provided in Contract Co. 04-WC-40-250. The total Federal share described in Articles IX(A) and IX(B) shall not exceed 81.35 percent of the total Project cost. If the total cost of the Mapleton-Springville Pipeline exceeds an estimated \$28,179,804 (indexed), then all costs greater than that amount will be paid by CUWCD unless otherwise provided by law.

C. Non-Federal Cost Share. The non-Federal share of the costs shall be paid by CUWCD concurrently with the Sections 202(a)(1), 202(C), and 207 of CUPCA Federal cost share. The payment of non-Federal cost share will be based on the ratio of 18.65 percent non-Federal cost share and 81.35 percent Federal cost share. The non-Federal cost share to be paid by CUWCD will be an estimated \$5,255,533 (indexed).

X. Amendments and Revisions

Amendments and/or revisions to this Agreement may be proposed by either Party and shall become effective when reduced to a written instrument executed by both Parties. CUWCD assumes the risk that it will not receive Federal funding, as set forth in Sections VI.A. and IX. hereof, for performing work beyond the scope of this Agreement unless this Agreement shall have been properly amended to reflect the addition of such work.

#### XI. Termination

This Agreement may be terminated by either Party upon sixty (60) day's written notice to the other. The two parties may agree upon the termination conditions, including the effective date, and in case of a partial termination, the portion to be terminated. The District shall not incur new obligations for the terminated portion of the contract after termination is reached, and shall cancel as many outstanding obligations as possible. The Secretary will allow full credit to the District for the non-cancelable obligations that were properly incurred prior to the effective date of termination.

#### XII. Default

Either party shall be considered to be in default if (1) it has substantially failed to perform under the terms of this Agreement through no fault of the other party; and (2) after sixty (60) days written notice from the other party of such substantial failure to perform, it has not commenced to cure the failure and diligently completed the cure thereafter. In the event of default, either party shall be entitled to pursue any other remedies available to it under this Agreement, at law or in equity.

#### XIII. General Provisions

The "Administrative and Audit Requirements and Cost Principles for Assistance Programs" (43 CFR 12) are incorporated herein by reference.

No Member of or Delegate to Congress shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

#### XIV. Resolving Disagreements

The Parties agree to work harmoniously to achieve the objectives of the Project. Should a disagreement arise between the Parties, the Parties will resolve it according to the following procedures:

A. The Parties shall attempt first to resolve the disagreement through informal discussion among the subordinate staff.

B. If the disagreement cannot be resolved through informal discussion, each Party shall document the nature of the disagreement and bring it to the attention of the respective Project Officer identified in Section VIII, above.

C. After reviewing the facts of the disagreement, the Project Officers will arrange a formal meeting. The Parties will collectively decide on any varied approaches which might be used to resolve the disagreement. The Parties shall be responsible for their individual expenses related to any approach utilized to resolve the disagreement.

D. Ultimately, if all other attempts at resolving the disagreement fail, a decision will be made by the Department's Program Director, whose decision shall be final and conclusive, subject only to Department and judicial review as provided by law.

Any post award issue will be open for resolution in accordance with the above procedures, with the exception of continuation of the Agreement (since either Party may terminate the Agreement with the specified notice), or other matters specifically addressed by the Agreement itself.

XV. Property Ownership, Disposition, and Management

Inasmuch as the conservation measure under this Agreement will be implemented on Federal property, title to all real property, easements, rights-of-way, and other such property interests shall be acquired in the name of the United States. Acquisition shall be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies for Federally Assisted Programs Act of 1970 (42 U.S.C. 4601), as amended, as well as the Department of Justice Title Standards. Title shall remain in the United States unless otherwise provided by law. Nothing in this contract shall be interpreted to transfer title to any facility, feature, or property that is currently vested in the United States to the District, or any other party.

XVI. Contingent Upon Appropriation

The liability of the Department under this Agreement is contingent upon appropriation and reservation of funds being made therefore.

XVII. Office of Management and Budget (OMB) Circulars

The following OMB Circulars are incorporated herein by reference:

- A. A-87, "Cost Principles for State and Local Governments."
- B. A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."
- C. A-128, "Audit Requirements for State and Local Governments."

SIGNATURES

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by an authorized official on the day and year set forth opposite each signature below.

CENTRAL UTAH WATER CONSERVANCY DISTRICT

By: Don A. Christiansen Date: 9/13/04

Don A. Christiansen  
General Manager

WSD  
9-16-04

Attest:

By: Betty B. Sersland

Betty Sersland, Assistant to the General Manager

U.S. DEPARTMENT OF THE INTERIOR

By: Ronald Johnston

Ronald Johnston  
Program Director, CUPCA Office

Date: \_\_\_\_\_

Approved:

By: Christopher B. Rice  
for Regional Solicitor