



## STAFF REPORT

**Report To:** Board of Supervisors **Meeting Date:** July 2, 2020

**Staff Contact:** Darren Schulz, Public Works Director

**Agenda Title:** For Possible Action: Discussion and possible action regarding, and authorization for the Mayor to sign, a five-year Mud Lake Reservoir Water Lease Agreement between Carson City and the Carson Water Subconservancy District permitting Carson City to use up to 526.25 acre feet of water per year for a cost of \$114.00 per acre-foot for the first year, with an increase in price per foot for each subsequent water delivery season equal to the percentage change in the Consumer Price Index for All Urban Consumers - All Items, as published by the Bureau of Labor Statistics. (Darren Schulz, dschulz@carson.org)

**Staff Summary:** On May 20, 2020, the Carson Water Subconservancy District Board of Directors approved the Mud Lake Reservoir Water Lease Agreement. Approving this Agreement will provide Carson City with up to 526.25 acre-feet (489.41 acre-feet after water transportation losses) of additional surface water annually, to be used during the water delivery season (October 1 to March 31) for the next five years. It has been the past practice of Carson City to lease these water rights as part of our conjunctive use management plan.

**Agenda Action:** Formal Action / Motion **Time Requested:** Consent

---

### **Proposed Motion**

I move to authorize the Mayor to sign the agreement.

### **Board's Strategic Goal**

Sustainable Infrastructure

### **Previous Action**

On September 15, 2015, the Board of Supervisors approved the last 5-year agreement.

### **Background/Issues & Analysis**

In order to provide additional surface water rights for the conjunctive use program, a lease of Carson River storage rights has been negotiated with the Carson Water Subconservancy District (CWSD). The City, per the Alpine decree, cannot pull from the river during the months of October through March. However, these rights will have been stored within the Mud Lake Reservoir during the irrigation season, which allows for their use during the winter months, under conditions which will be stipulated by the State Water Engineer and Federal Water Master.

The leasing of these water rights will help rest ground water sources over the winter, thereby indirectly assisting the recharging of ground water supplies. The Mud Lake Reservoir water rights will be sold to Carson City at \$114.00 per acre-foot for this water delivery season. For future water delivery seasons, the rate shall be determined by and equal to the percentage change in the Consumer Price Index (CPI) for All Urban Consumers

added to the base cost of \$114.00 per acre-foot. The City will only pay for what is delivered as metered at the City's infiltration wells.

**Applicable Statute, Code, Policy, Rule or Regulation**

N/A

**Financial Information**

**Is there a fiscal impact?** Yes

**If yes, account name/number:** Water Fund 5203502-500454 Water Purchase

**Is it currently budgeted?** Yes

**Explanation of Fiscal Impact:** Up to \$55,793 for fiscal year 20/21. Future years will be incrementally increased by the CPI.

**Alternatives**

Do not approve Agreement and provide alternate direction to staff.

**Attachments:**

[Mud Lake Water Lease Agreement CWSD Signed.pdf](#)

**Board Action Taken:**

Motion: \_\_\_\_\_

1) \_\_\_\_\_

2) \_\_\_\_\_

Aye/Nay

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Vote Recorded By)



# WATER LEASE AGREEMENT

## Mud Lake

This Water Lease Agreement is entered into between the CARSON WATER SUBCONSERVANCY DISTRICT, a political subdivision of the State of Nevada, by and through its duly constituted Board of Directors (hereinafter "CWSD") and CARSON CITY, a political subdivision of the State of Nevada, by and through its duly constituted Board of Supervisors (hereinafter "CITY").

### WITNESSETH:

WHEREAS, CWSD holds title to 526.25-acre feet of water rights, including storage rights in Mud Lake Reservoir.

WHEREAS, CITY desires to lease CWSD water for the next five (5) years for use within the boundaries of CITY for municipal purposes; and

WHEREAS, CWSD has made or will make any necessary application(s) to the State Engineer for permission to use CWSD water rights for the purposes contemplated under this Agreement.

THEREFORE, in consideration of the mutual undertakings and for other good and valuable consideration, the parties agree and contract as follows:

1. Terms of Agreement/Cost of Water

The term of this Agreement shall commence on the date both parties have executed the Agreement and shall continue through September 30, 2025. CITY agrees to lease and use up to but not to exceed 526.25 acre feet of CWSD water, less 7 percent loss imposed by the State Engineer, for a maximum of 489.41 acre feet, subject to the requirements of Nevada water law, during the five year term.

CITY shall use the water during this term in accordance with the terms of the Final Decree in the case entitled *United States v. Alpine Land & Reservoir Company*, Civil No. D-183 BRT, United States District Court, District of Nevada (hereinafter "Alpine Decree").

If CITY does not intend to utilize all the Mud Lake water in any given year, CITY shall notify CWSD before the beginning of the next irrigation season, whereupon CWSD may lease the remaining unused water to another entity.

As used in this Agreement, the term "water delivery season" means the period beginning

October 1 and ending March 31 of the following year. For the water delivery season beginning October 1, 2020, the CITY shall pay CWSD \$114.00 per acre foot for water used as metered at CITY's point of re-diversion. For each water delivery season thereafter, CITY agrees to increase the price per foot of water paid to CWSD each year. The rate of increase shall be determined by and be equal to the percentage change in the Consumer Price Index for All Urban Consumers (CPI) - All Items (1982-1984 = 100), as published by the Bureau of Labor Statistics, Washington, D.C., commencing with the index for the twelve month period ending September 30, 2020, as the baseline and using the annual percentage change above the baseline each year thereafter. Such an increase will be applicable every year.

The calculation of the water used by City shall not include any loss of water determined by the State Engineer or the Federal Water Master, due to conveyance from Mud Lake Reservoir or any other CWSD storage facilities to CITY's point of re-diversion. Unless otherwise agreed to by both parties, CITY shall pay CWSD by June 15 of each year for CITY's metered usage during the previous water delivery season.

2. Costs of Diversion and Delivery of Water

CWSD shall bear the costs of delivery of the water to CITY's point of re-diversion, including the costs of any required approvals by the State Engineer, operation and maintenance of upstream storage facilities, and payment of water fees to the Federal Water Master. CITY shall bear the costs associated with pumping the water from the Carson River, measuring devices, pipelines, and other transporting devices. CWSD and CITY agree to coordinate the delivery of water.

3. Different Source of Water

CWSD in its sole discretion may deliver a like amount of water from a source or sources other than Mud Lake Reservoir so long as the timing of the water delivery is mutually acceptable.

4. Treatment

CITY shall be responsible for the treatment of all water for municipal purposes, including water leased from CWSD, to applicable local, state, and federal standards.

5. Relief from Performance

In the event that the State of Nevada or a court of competent jurisdiction prevents the delivery of the surface water that is the subject of this Agreement to CITY's point of

re-diversion, or if the Federal Water Master prevents the use of the subject water, CWSD and CITY are relieved from performance under this Agreement unless CWSD and CITY make a different agreement in writing.

6. Required Approval

This Agreement will not become effective unless approved by appropriate official action of the Board of Supervisors of CITY and the Board of Directors of CWSD.

7. Authority to Sign

The Parties represent and warrant that the person executing this Agreement on behalf of each respective Party has full power and authority to enter into this Agreement and that the Parties are authorized by law to perform the services set forth in this Agreement.

8. Recordation

When fully executed, CITY shall record this Agreement with the Clerk-Recorder of Carson City, Nevada and with the Douglas County Recorder.

9. Limited Liability

CITY and CWSD do not waive and intends to assert any and all available Nevada Revised Statutes (NRS) Chapter 41 liability limitations in all cases. The contract liability of both Parties will not be subject to punitive or liquidated damages.

10. Indemnification

To the extent permitted by law, including, but not limited to, the provisions of NRS Chapter 41, each Party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other Party from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorney's fees and costs, arising out of any alleged negligent or willful acts or omissions of the indemnifying Party, its officers, employees and agents. CITY further agrees to indemnify and hold CWSD harmless for any claims or actions including damages, costs and attorney's fees concerning the use of this water by CITY as specified in this Agreement.

11. Successors and Assigns

This Agreement shall bind all successors in interest and assigns of CWSD and CITY.

12. Preamble; Recitals

The preamble and recitals are hereby made a part of this Agreement.

13. Continuing Appropriation

Pursuant to NRS 244.320, the Board of Supervisors of CITY has no authority to bind CITY to a contract beyond the terms of the Supervisors in office at the time of the contract approval. If a future Board of Supervisors of CITY does not appropriate money for this Agreement, CITY is no longer bound by this Agreement.

14. Notices

All notices or other communications required or permitted to be given under this Agreement must be in writing and shall be deemed to have been duly given if delivered personally by hand, or mailed by first class U.S. Mail, postage prepaid on the date posted, to the other Party at the following address:

CARSON WATER  
SUBCONSERVANCY DISTRICT  
Attn.: Edwin James  
General Manager  
777 E. William St., #110A  
Carson City, NV 89701  
775/887-7450

CARSON CITY  
  
Attn.: Darren Schulz  
Public Works Director  
3505 Butti Way  
Carson City, NV 89701  
775/887-2355 x-7391

15. Severability

If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement will be construed as if the provision did not exist, the provisions will not be construed to render any other provision or provisions of this Agreement unenforceable, and the remaining terms of this Agreement will continue in full force and effect.

16. Public Records

Under NRS 239.010, CITY and CWSD information or documents may be open to public inspecting and copying. The Parties will have the duty to disclose unless a particular record is made confidential by law or a common law balancing of interests.

17. Separate Entities; Independent Contractor

The Parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Nothing contained in this Agreement may be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one Party whatsoever with respect to the indebtedness, liabilities, and obligations of the other Party. Each Party is and continues to be separate and distinct from the other Party, and each Party shall have the sole right to supervise, manage,

operate, control, and direct performance of the details incident to its duties under this Agreement. The Parties' respective employees, agents, attorneys, principals, or representatives shall not be considered employees, agents, attorneys, principals, or representatives of the other Party.

18. Governing Law and Jurisdiction

This Agreement and the rights and obligations of the Parties hereto shall be governed by and construed according to the laws of the State of Nevada. The Parties consent to the jurisdiction of the First Judicial District Court of the State of Nevada in and for Carson City for enforcement of this Agreement.

19. Breach

The failure of either Party to perform any obligation of this Agreement within 30 days after being given written notice by the non-breaching Party of the failure to perform shall be deemed a breach. Except as otherwise provided for by law or this Agreement, the rights and remedies of the Parties are not exclusive and are in addition to any other rights and remedies provided by law or equity, including, without limitation, actual damages. In any action brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to its attorney's fees and costs, whether such a result was achieved by settlement, alternative dispute resolution or litigation. The Parties agree that, in the event a lawsuit is filed and a Party is awarded attorney's fees under this Agreement or by the court, for any reason, the rate applied to recoverable attorney's fees shall not exceed the rate of \$125 per hour.

20. Waiver

No waiver of any right or remedy shall be effective unless in writing. A waiver of any right or a party's failure to insist on strict compliance with the terms of this Agreement shall not operate as a waiver of any other right or remedy.

21. No Third-Party Beneficiary

It is specifically agreed between the Parties that none of the provisions this Agreement create in the public or any member thereof a third-party beneficiary, or grant anyone not a Party to this Agreement any right to maintain a suit for personal injuries or property damage under the terms or provisions of this Agreement.

22. Entire Agreement; Modification

This Agreement constitutes the entire Agreement of the Parties and as such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions,

and other agreements that may have been made in connection with the subject matter herein. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. No modification or amendment to this Agreement shall be binding upon the Parties unless the same is in writing and signed by the Parties hereto.

23. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original but all of which, taken together, shall constitute one and the same Agreement.

24. Force Majeure

Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to strikes, failure of public transportation, civil or military authority, acts of public enemy, accidents, fires, explosions, or acts of God, including, without limitation, earthquakes, floods, winds or storms. In such an event the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of the Agreement after the intervening cause ceases.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CARSON WATER  
SUBCONSERVANCY DISTRICT

CARSON CITY

  
\_\_\_\_\_  
CARL ERQUIAGA, Chairman

\_\_\_\_\_  
ROBERT L. CROWELL, Mayor

Dated: 5/20/20

Dated: \_\_\_\_\_

ATTEST:

ATTEST:

By:   
\_\_\_\_\_  
CATRINA SCHAMBRA, Secretary to the Board

By: \_\_\_\_\_  
AUBREY ROWLATT, Clerk-Recorder

Dated: 5/20/20

Dated: \_\_\_\_\_