Carson City Agenda Report

Date Submitted: May 21, 2012

Agenda Date Requested: June 7, 2012

Time Requested: Consent

To: Board of Supervisors

From: Public Works Department

Subject Title: For Possible Action: To approve payment and the assignments and change in the point of diversion, place of use, the manner of use and the time of use as approved by Carson City for the purchase of 40.0 acre feet of ground water from Donald M. and Kathleen Schulz, Trustees of the Schulz Living Trust, Martin J. Schulz, Trustee of the LMA Trust and the SMJ Trust, Margaret Schulz Loh, Individually and Martin J. Schulz, Individually for \$320,000, in conformance with the "Water Purchase Agreement By and Between Carson City and Donald M. and Kathleen Schulz, Trustees of the Schulz Living Trust, Martin J. Schulz, Trustee of the LMA Trust and the SMJ Trust, Margaret Schulz Loh, Individually and Martin J. Schulz, Individually", dated October 25, 2005.

Staff Summary: Pursuant to the Water Purchase Agreement between Carson City and Donald M. and Kathleen Schulz, et al, dated October 20, 2005, Carson City Public Works is recommending completing the purchase of the above stated groundwater rights at a cost of \$8,000.00 per acre foot, to increase the City's water right portfolio.

Type of Action Requested:	(check one)		
() Resolution	() Ordinance		
(X) Formal Action/Motion	() Other (Specif	y)	
Does This Action Require A Busir	ness Impact Statement:	() Yes (X) No

Recommended Board Action: I move to accept Public Works Recommendation to approve payment and the assignments and change in the point of diversion, place of use, the manner of use and the time of use as approved by Carson City for the purchase of 40.0 acre feet from Donald M. and Kathleen Schulz, Trustees of the Schulz Living Trust, Martin J. Schulz, Trustee of the LMA Trust and the SMJ Trust, Margaret Schulz Loh, Individually and Martin J. Schulz, Individually.

Explanation for Recommended Board Action: Donald M. and Kathleen Schulz, et al, have executed an agreement with the City to purchase 40.00 acre feet of Carson Valley groundwater rights (Permit #73750) at a price of \$8,000.00 per acre foot, for a total cost of \$320,000.00. See attached Water Agreement.

The completion of the purchase of the 40.0 acre feet of ground water rights will complete the obligations of the city for the agreement approved in 2005.

Applicable Statute, Code, Policy, Rule or Regulation: Water Purchase Agreement By and Between Carson City and Donald M. and Kathleen Schulz, Trustees of the Schulz Living Trust,

Martin J. Schulz, Trustee of the LMA Trust and the SMJ Trust, Margaret Schulz Loh, Individually and Martin J. Schulz, Individually, dated October 20, 2005. Fiscal Impact: \$320,000.00 **Explanation of Impact:** Reduction in budget by \$320,000.00 Funding Source: 2012 Water Bond Alternatives: Provide other direction pursuant to Board Action Supporting Material: Water Purchase Agreement dated October 20, 2005. Prepared By: Thomas Guinn, Utility Manager Date: 🏑 Reviewed By: (Department Head) Date: Date: Date: 5/29/13 (Finance Director) **Board Action Taken:** Motion: Aye/Nay 2)

(Vote Recorded By)

APN None	RECORDED AT THE REQUEST OF
APN	2005 OCT 26 AM IO: 05
APN	FILE NO ALAN GLOVER CARSON CITY RECORDER FEE \$ DEP
	FOR RECORDER'S USE ONLY
TITLE OF DOCUMENT:	Nater Purchase Agreement CONFORMED COPY HAS NOT BEEN COMPARED TO THE ORIGINAL
WHEN RECORDED MAIL TO: Eva Chwaling Gry, Dept.	

WATER PURCHASE AGREEMENT

This Agreement dated this 20 day of 0, 2005, is made by and between Donald M. and Kathleen Schulz, Trustees of the Schulz Living Trust, Martin J. Schulz, Trustee of the LMA Trust and the SMJ Trust, Margaret Schulz Loh, Individually and Martin J. Schulz, Individually (hereinafter "Grantors") and the Consolidated Municipality of Carson (hereinafter "City").

WITNESSETH:

WHEREAS, Grantors have legal ownership of certain vested groundwater rights, evidenced in part by Summaries of Ownership from the State Engineer's Office, which rights can be utilized within the Carson City Water System Service Area; and

WHEREAS, such water rights are free of any liens or encumbrances; and

WHEREAS, Grantors are desirous of selling said water rights to City; and

WHEREAS, City is desirous of purchasing said water rights in order to utilize said water rights in its municipal water system.

NOW, THEREFORE, the parties to this Agreement, in consideration of the provisions herein contained and other good and valuable consideration, do hereby agree as follows:

- 1. The Grantors have fee title to 611 acre feet of vested groundwater, attached as Exhibit A.
- 2. The water rights to be sold are located only within the Carson Valley Water Basin, and not any water from the Eagle Valley Water Basin.
- 3. The City will cooperate and provide assistance to the Grantor in all necessary or useful proceedings through the State Engineer's Office.
- 4. The Grantors shall immediately file the necessary documents with the State of Nevada Division of Water Resources, State Engineer's Office, Department of Conservation (hereinafter "State Engineer"), for the purpose of assigning said water rights to City's name. All fees incident to the expense of assignment shall be borne by Grantors.

- 5. Upon the State Engineer making the assignment of said water rights, Grantors shall prepare and pay for the application and support map filed with the State Engineer seeking to change the point of diversion, the place of use, the manner of use and the time of use of the aforementioned water rights as required by the City and by Chapters 533 and 534 of Nevada Revised Statutes. City shall instruct Grantors as to the precise wells and location of the points of diversion, the subject of the applications to change. All costs incident to filing the applications, preparation of the supporting map and possible administrative hearing and judicial appeals shall be borne by Grantors. Grantors agree to execute the Grantors' necessary documents and, to the extent necessary, meet the requirements of the State Engineer.
- The parties agree that the reasonable value of the 6. water rights which are the subject of this Agreement is \$8,000.00 per acre foot, for the transferred water rights. City agrees to pay Grantors an initial payment of \$500,000 or \$8,000 per acre foot of transferred water, whichever is less, within 30 days of the State Engineer's and Board of Supervisors' final approval of the assignments and change in the point of diversion, the place of use, the manner of use and the time of use as approved by City. If the total amount of transferred water is greater than 62.5 acre feet, the unpaid balance due Grantors shall be paid within 5 years. If the City elects to pay over time, the obligation will be payable solely from City water revenues. The obligation will be subordinate to currently outstanding bonds and future bonds issued on parity with the outstanding bonds secured by water revenues. Interest will be paid at the rate of 6.5% on the unpaid balance every six months. The parties expressly agree the obligation is not a general obligation of the City. The interest on the obligation is not exempt from state or federal taxes. At the time the City elects to pay the balance due in installments, the City's bond counsel will draft a repayment agreement acceptable to the City and Grantors. The City has the option to pay the remaining principal and accrued interest at any time within the five year period without penalty.
 - 7. City shall accept and develop the water at one of its existing wells, future wells or other source of point of diversion, and shall be responsible for the pumping, storing, treating and distribution of the water in its present distribution system. It is expressly understood that the

applications, when granted by the State Engineer or made final through judicial order, shall be conveyed to City.

- 8. In the event the State Engineer denies the applications to assign and change the point of diversion, place of use, manner of use and time of use, and/or his approval is not upheld upon final administrative or judicial appeal to the appropriate Court of Law, then this Water Purchase Agreement shall terminate without further liability on behalf of either party hereto and any money paid by City to Grantors shall be refunded within ten (10) days. If this Agreement is terminated for any reason, all rights and entitlements to the groundwater referred to in Paragraph 1 and assigned to the City pursuant to Paragraph 4 shall revert to the Grantors.
- 9. This Water Purchase Agreement is further conditioned upon approval of all local, state and federal governmental agencies as required by Chapters 278, 533 and 534 of Nevada Revised Statutes and by the Carson City Board of Supervisors.
- 10. The Grantors shall donate one well site (a parcel of ground approximately 20 feet by 30 feet in its final configuration) to the City for the purpose of constructing a municipal well. The location of the well site shall be as mutually agreed to by the parties. If the City elects to construct a new well, it is understood that there will be temporary construction easements (approximately 100 feet by 100 feet) provided to the City for the actual construction of the well.
- 11. This Agreement is the entire agreement between the parties and cannot be modified unless by mutual agreement in writing.
- 12. The provisions of this Agreement shall be interpreted using Nevada and Federal law.

IN WITNESS WHEREOF, the parties hereto have affixed their official signatures the day and year written below and intend to be legally bound thereby.

GRANTORS: Donald M. Schulz, Trustee of Schulz Living Trust, dated June 2, 1980 as Amended DATED: 007 , 12, 2005	CARSON CITY BOARD OF SUPERVISORS Marvin Texeria, Mayor DATED: 10/20 ,, 2005
Sathleen C. Schuf, Drustee Kathleen Schulz, Trustee of Schulz Living Trust, dated June 2, 1980 as Amended DATED: Schole, 12, 2005	Allan Glover, Clerk Recorder Alan DATED: Och , 20, 2005
Marks School Martin J. Schulz, Trustee	Melania Rocketta for Noel S. Waters, NSW
of LMA Trust DATED: oct , 11 , 2005	District Attorney DATED: 10-10-4 2005

Martin J. Schulz Trustee of SMJ Trust

DATED: _____, ___, 2005

Margaret Schulz Loh, of Individually

DATED: <u>October</u>, <u>//</u>, 2005

Martin J. Schulz, J Individually

SCHULZ WATER RIGHTS APPROPRIATED AND VESTED TOGETHER WITH LANDS

Carson Valley Water Rights

Serial <u>Number</u>	Under- Ground Vesting Date	<u>Acres</u>	Duty	A/F Approp. Water <u>Total</u>	Descr	<u>iption</u>	<u>Sec</u>	_ Т,	R.
					•••				
05249 05250 % 05250 %	1876 1883 1883	/13.9 × 3.7 35		44.65° . 11.88 _{\(\sime\)}	SW1/4	NE1/4	5 5 5	14 14 14	20E 20E 20E
05250 🔍	1883	35.6	3.212	114.35			5	14	20E
05251 √	1883	20	3.212	64.24			8	14	20E
√05252 _x	1855	/16.1 3	3.212	51.71~			5	14	20E
05252 V	1855	/ 3.8		12.21	NW1/4	NE1/4	5	14	20E
<0525 6 🔨	1882	/45.	-4.	180.00/	Parce	1s 8 & 9,	Surv	/ey	
-						21, ATT W	rithir	1	
					•	SE1/4			
						Acres	5	14	20E
						Acres in NE1/4	5	14	. 20E
A/F Total	Groundwat	er Right	s	591.46					
Stockwate	ring <i>1864</i>								
Ó5253 へ 05254 05255	1855- 1883 /882		A Stock	17.444			5 5 5	14 14 16	20E 20E 20E
A/F Total	Stockwate	ring		19,94					
A/F Total Storage	Groundwati	er & Stoc	ckwater	611.4 10 Acre	s = 40	A/F			

Paid Check 6367, Proofs Dated March 25, 1991 Receipt Nos. 43881 to 43886 and 493888