



NIBLEY CITY
CITY COUNCIL MEETING AGENDA
Thursday, October 15, 2015 - 6:30 p.m.

Nibley City Hall
455 West 3200 South
Nibley, Utah 84321

Opening Ceremonies
Call to Order
Roll Call

1. Approval of Minutes and Agenda
2. Presentation by Utah State University Regarding Results of the 2014 Household Water Use Study
3. Approval of a Franchise Agreement with Comcast
4. Council Reports Regarding the 2015 Utah League of Cities and Towns Annual Conference
5. Approval of Agreements Related to Water Rights for New Drinking Water Well
6. Approval of a Contract to Construct a New Drinking Water Well on 640 West
7. Discussion and Consideration of Resolution 15-08: A RESOLUTION OF THE NIBLEY CITY COUNCIL ADOPTING THE 2015 PRE-DISASTER MITIGATION PLAN: BEAR RIVER REGION (Second Reading)
8. Discussion and Consideration of Resolution 15-09: A RESOLUTION OF THE NIBLEY CITY COUNCIL REQUESTING THE RECERTIFICATION OF THE NIBLEY CITY JUSTICE COURT (Second Reading)
9. Discussion and Consideration of Resolution 15-10: A RESOLUTION OF THE NIBLEY CITY COUNCIL APPOINTING POLL WORKERS FOR THE 2015 GENERAL ELECTION (First Reading)
10. Council and Staff Reports

Adjourn Meeting

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, REASONABLE ACCOMMODATIONS FOR INDIVIDUALS WITH DISABILITIES WILL BE PROVIDED UPON REQUEST. FOR ASSISTANCE, PLEASE CALL 752-0431 A MINIMUM OF 24 HOURS BEFORE THE MEETING.



Nibley City Council Agenda Report for October 15, 2015

Agenda Item #:2

Description	Presentation by Utah State University Regarding Results of the 2014 Household Water Use Study
Department	City Council
Presenter	Melissa Haeffner, PhD of Utah State University
Sponsor	n/a
Applicant	n/a
Background	<p>The 2014 innovative Urban Transitions and Aridregion Hydro-sustainability (iUTAH) Household Survey was completed by over 2,400 households in 23 neighborhoods across 12 cities and 3 counties (including residents in Nibley). The researchers have been working to analyze the results and generate summary reports that can help local communities see how their residents use and feel about water in their area.</p> <p>Detailed Full Reports and Highlights Reports for each study area are available at: http://data.iutahepscor.org/mdf/Data/household_survey/</p> <p>The detailed report for Nibley is at: http://data.iutahepscor.org/mdf/reports/Nibley_Highlights_FINAL.pdf</p> <p>A map of the neighborhoods where the study was conducted in Cache County can be seen by following this link. http://iutahepscor.org/hhsurvey/Cache_overview_map.pdf</p> <p>Researchers will present their findings to the City Council and answer any questions the Council might have.</p>
Recommendation	Receive the presentation and ask questions of the researchers.
Financial Impact	Study results may inform the City of better practices for future management of the municipal water system.
Reviewed By	City Manager

Agenda Item #3

Description	Approval of a Franchise Agreement with Comcast
Department	City Council
Presenter	City Manager
Sponsor	n/a
Applicant	n/a
Background	<p>State and federal laws authorize cities to charge franchise fees. Franchise agreements with Cable TV providers are governed by the federal Cable Act.</p> <p>Franchises are the right to use the public right-of-way for private businesses. Franchises are granted to private utility companies to use roads and easements to provide services to residents.</p> <p>This agreement only applies to the provision of video services and does not address telecom or internet services that might be provided by Comcast. Those services are taxed separately.</p> <p>This agreement was originally entered into in 1980 and has been renewed three times since then but expired this summer. Under the Cable Act, it continues on a month to month basis while we review and approve a new agreement. The term of this agreement would be 15 years.</p> <p>The agreement has been reviewed twice by the city attorney and his suggested changes have been made.</p> <p>The agreement includes the following key provisions:</p> <ul style="list-style-type: none"> • A non-exclusive right to construct, operate and maintain cable in the public ways within the city. • Comcast must restore disturbed property after construction. • Comcast must relocate their lines if we need them moved for our other utilities. • Comcast may trim trees or bushes in the right-of-way if necessary to access or maintain their system but must replace trees and shrubs damaged as a result of construction or maintenance. • Basic cable service will be provided to all public buildings in the City without charge, including City, school or public safety buildings. • Comcast will pay the city 3% of annual gross revenue from customers in Nibley. • The City may review or audit the books and records of Comcast. • Comcast must maintain insurance and indemnify the City.
Recommendation	The staff recommendation is that the Council approve the agreement.
Financial Impact	Funds received through franchise fees may be used for any purpose and are posted as revenue into the City's general fund. The current year budget projects that cable franchise fee revenue will be \$18,500.
Reviewed By	City Manager, City Attorney

Agenda Item #4

Description	Council Reports Regarding the 2015 Utah League of Cities and Towns Annual Conference
Department	City Council
Presenter	Mayor and Council
Sponsor	n/a
Applicant	n/a
Background	The Mayor and four members of the City Council attended the 2015 Utah League of Cities and Towns Annual Conference on September 16, 17 and 18 and attended multiple workshops related to city governance. The Council will discuss information from the conference.
Recommendation	Discuss information gained at conference
Financial Impact	n/a
Reviewed By	Mayor, City Manager

Agenda Item #5

Description	Approval of Agreements Related to Water Rights for New Drinking Water Well
Department	Public Works – Water Department
Presenter	City Manager, Public Works Director and Contract Engineer
Sponsor	n/a
Applicant	n/a
Background	<p>The current water system master plan was adopted by the City Council in 2012. After its adoption, the City began the process of certifying the water rights necessary to drill a new well, which was planned as the highest priority project in the master plan.</p> <p>The process to receive approval of the water rights to drill the well is near completion. That process requires an application to the State Engineer showing that the City possesses sufficient water rights to withdraw water from a new well. That application was filed with the State Engineer, as a joint application with Cache County, and was subsequently protested by Pacificorp and the Bear River Water Users Association. A hearing was held with the State Engineer and those protesting and the State Engineer directed the parties to discuss the issue and attempt to reach an agreement amongst ourselves. Proposed agreements were drafted which, if approved by the parties, would result in the protesting parties withdrawing their protest.</p> <p>The first agreement is between the City and County and the two protestants. That agreement says that the City and County will enter into a mitigation agreement with College Irrigation Company and that the protestants will then withdraw their protests.</p> <p>College Irrigation Company is a party to this action because the water rights being proposed to be used for the well are water rights that were previously used by that company to irrigate agricultural operations in the City. The areas previously irrigated by the Company have since been developed into residential housing areas and the water shares associated with those lands were given to the City to convert to culinary use. The primary reason why the protestants are protesting the transfer is because they want assurances that the water will no longer be used for irrigation purposes once it starts getting pumped out of our new well.</p> <p>The second agreement is the mitigation agreement to be signed by College Irrigation Company and the City and County. That agreement lays out a series of potential mitigations options that could be taken by the City and Irrigation Company to ensure there is not a double use of the water. The mitigation agreement does not of itself create new burdens on the City for mitigation, but instead assures that if those mitigations are ordered by the State Engineer, the City will implement them.</p> <p>Those mitigations include the following requirements for the Irrigation</p>

	<p>Company:</p> <ul style="list-style-type: none"> • College Irrigation Company agrees that the water associated with the shares now owned by the City may be used by the City for the well. • The Company will ensure that: <ul style="list-style-type: none"> ○ This water will only be used by the City and not by the Irrigation Company. ○ The acreage previously irrigated by these shares, and any other land, won't be irrigated by the company again with these shares. • The Company will agree with the final order of the State Engineer. <p>The mitigations include the following requirements for the City and County:</p> <ul style="list-style-type: none"> • We will comply with the final order of the State Engineer. <p>Suggested mitigations included in the mitigation agreement that the State Engineer may implement include the following:</p> <ul style="list-style-type: none"> • Applicants, in cooperation with the Company, shall install, operate, maintain, and regularly monitor measurement devices as required by the State Engineer, so as to provide an ongoing accurate record of the quantity of water diverted by the Company into its irrigation system. The measurement data generated shall be used in verifying that the water required for Mitigation Use is not diverted or otherwise delivered by the Company for irrigation of the historically irrigated lands or any other lands, and/or for any use or purpose other than Mitigation Use pursuant to the terms and conditions of this Agreement. • The Applicants shall provide a report of the water measurements as required by the State Engineer, which report shall be available for review by the Downstream Right Holders, on an annual basis. • These will only become mitigation requirements if required by the State Engineer in his final order. <p>The mitigation agreements were drafted by the City, the City's Engineer, and County and the County's Water Engineer and legal staff. The City engaged the services of an attorney with a Salt Lake City-based firm who specializes in Utah water law and is familiar with the Cache Valley Groundwater Management Plan. That attorney has provided an opinion to the City that the Mitigation Agreement does not create any new burdens on the City that would not already be anticipated by an order of the State Engineer.</p>
Recommendation	The staff recommendation is that the Council authorize the Mayor to sign the agreement.
Financial Impact	If the measuring requirements proposed in the agreement are ordered by the State Engineer, there will be a cost to the City to construct and

	maintain those structures. That cost has not yet been determined but is expected to be in the thousands of dollars. Sufficient funds exist in the water department budget to cover those expenses if ordered.
Reviewed By	Mayor, City Manager, Contract City Attorney, Public Works Director, Contract City Engineer, County Attorney, County Water Engineer

Agenda Item #6

Description	Approval of a Contract to Construct a New Drinking Water Well on 640 West
Department	Public Works – Water Department
Presenter	Public Works Director and Contract Engineer
Sponsor	n/a
Applicant	n/a
Background	<p>The current water system master plan was adopted by the City Council in 2012. A new well was planned as the highest priority project in that master plan and the City has been working to secure the water rights for that project. While negotiations for the water right are proceeding, the State Engineer has expressed his confidence that he will approve the water right for the well and has issued approval to begin drilling.</p> <p>The Public Works Department has been working with the city's engineers to plan the construction of a new drinking water well. On February 5, 2015, the Department gave a presentation to the Council about the latest status of that project and proposed locating the well on property owned by the City on 640 West, which was approved by the Council.</p> <p>The contract engineer, Lance Andersen with Cache Landmark Engineering, began working on this project for the City when his firm was serving as the City Engineer. The firm prepared a contract for drilling the well, as well as a set of construction drawings to drill the new well. Two alternates were proposed in the plan. One is a 16 inch casing (the actual hole in the ground), and the other is a 20 inch casing. The contract and plans were reviewed by our City Engineer and Nibley City Staff.</p> <p>The estimated cost for the entire project is \$1.4 million. This includes drilling the well, installing a pump and other equipment, construction of a building to house the pump and equipment and construction of distribution lines to connect the new well to the City's distribution system. The estimated cost to drill the well, is approximately half of the total cost of the project. The Nibley City Purchasing Policy states that, "services exceeding \$25,000 shall be opened to competitive bidding and the award made by the Council." However, it also states that, "Inclusion of a specific item or service in an adopted budget shall be considered as approved by the council." The overall well project was approved by the Council in the annual budget, however the individual components of the project were not specifically broken down in the budget. In addition, because this component of the project has such a high cost, staff elected to bring the award to the Council for approval.</p> <p>The purchasing policy requires that Public Works projects be open to the public for bidding and advertised twice in the local paper or appropriate trade journal. In addition it states that at least three potential bidders be contacted and made aware of the project. The</p>

	<p>project was advertised in the Herald Journal on September 22, and on the 29th. Contract and plans were available to bidders on the 22nd of September. A non-mandatory, pre-bid meeting was held on September 24th for any interested parties. A total of nine companies expressed interest in the project and were on the plan holders list, including: Boart Longyear, Layne Christensen, Hydro Resources, National EWP, Gardner Bros, Breman Well Services, Last Drop Drilling, Anzaline Well Services and Zimmerman Well Services. Most of these companies were made aware of the project months before the project went to bid and several of them attended the pre-bid meeting.</p> <p>Despite the number of interested parties, the City only received two bids. Those bids were opened and read aloud in a public meeting on October 7th. One bid was received from Hydro Resources, who attended the bid opening, and one was received from Boart Longyear.</p> <p>Boart Longyear came in as the low bidder for the 16 inch casing at \$579,208.00. Hydro Resources came in low on the 20 inch casing at \$677,470.00. Both companies presented time frames that fit well with the City's schedule, and if awarded could begin drilling by mid-November.</p> <p>The original plan was to drill a 16-inch casing, however the City wanted to check the cost of a 20-inch casing in order to evaluate the cost-effectiveness of potentially drilling a larger well. The cost for drilling a 20-inch casing is approximately \$100,000 more than what was budgeted for the project.</p> <p>The engineers and Public Works Director are still analyzing the two options, and will provide the council with further information and a recommendation on which alternative is best for Nibley at council meeting.</p>
Recommendation	Award the contract to the lowest responsive bidder.
Financial Impact	See background above
Reviewed By	Mayor, City Manager, Public Works Director, City Engineers

Agenda Item #7

Description	Discussion and Consideration of Resolution 15-08: A RESOLUTION OF THE NIBLEY CITY COUNCIL ADOPTING THE 2015 PRE-DISASTER MITIGATION PLAN: BEAR RIVER REGION (Second Reading)
Department	City Council
Presenter	City Manager
Sponsor	n/a
Applicant	n/a
Background	<p>The Bear River Association of Governments recently prepared and adopted a tri-county Pre-Disaster Mitigation Plan. Nibley City staff participated in the development of that plan. The purposes of the plan are:</p> <ul style="list-style-type: none">• To identify natural hazards for all 42 jurisdictions in Box Elder, Cache, and Rich Counties, understand vulnerabilities to those hazards, and craft solutions that reduce threats to life and property.• Support better decision making and minimize risk.• Utilize existing and planned resources to mitigate effects from natural hazards.• Help local communities and counties comply with the Hazard mitigation Act of 2000 including eligibility for certain federal pre and post-disaster funds. <p>In order for Nibley City to be eligible for those disaster funds, the City must first adopt this plan.</p> <p>The 425-page plan can be viewed at this link:</p> <p>http://brag.utah.gov/pre-disaster-mitigation-plan-draft-2015/</p>
Recommendation	The staff recommendation is that the Council adopt the plan.
Financial Impact	Failure to adopt the plan would make the City ineligible for certain federal disaster funds.
Reviewed By	City Manager

Agenda Item #8

Description	Discussion and Consideration of Resolution 15-09: A RESOLUTION OF THE NIBLEY CITY COUNCIL REQUESTING THE RECERTIFICATION OF THE NIBLEY CITY JUSTICE COURT (Second Reading)
Department	Justice Court
Presenter	City Manager
Sponsor	n/a
Applicant	n/a
Background	<p>The City is required to have the Justice Court recertified every four years. This resolution requests that the State Justice Courts Standards Committee and the Utah Judicial Council review our court and consider it for recertification.</p> <p>As part of the process, the city is required to provide three items to the state, including this resolution, an opinion letter from our city attorney, and an affidavit from our judge. Our attorney has provided his opinion letter for the council's reference.</p>
Recommendation	The staff recommendation is that the Council adopt the resolution.
Financial Impact	
Reviewed By	Mayor, City Manager, City Attorney, Justice Court Judge, Court Staff

Agenda Item #9

Description	Discussion and Consideration of Resolution 15-10: A RESOLUTION OF THE NIBLEY CITY COUNCIL APPOINTING POLL WORKERS FOR THE 2015 GENERAL ELECTION (First Reading)
Department	Recorder's Office
Presenter	City Manager/Recorder
Sponsor	n/a
Applicant	n/a
Background	<p>The City will hold an election on November 3 to elect Council Members to three positions. The City is required to appoint poll workers for the election. This resolution would appoint those poll workers and establish their rate of pay.</p> <p>Because there will not be another Council meeting before the election, it is requested that the Council waive the second reading.</p>
Recommendation	The staff recommendation is that the Council waive the second reading and adopt the resolution.
Financial Impact	Most of the poll workers are existing City employees and would have been paid for the day's work anyway, therefore the increased cost will be minimal, in the hundreds of dollars. The budget for the election is \$4,000.
Reviewed By	City Manager/Recorder

Utah's Water Future

Results of 2014 iUTAH Household Survey



What is iUTAH?

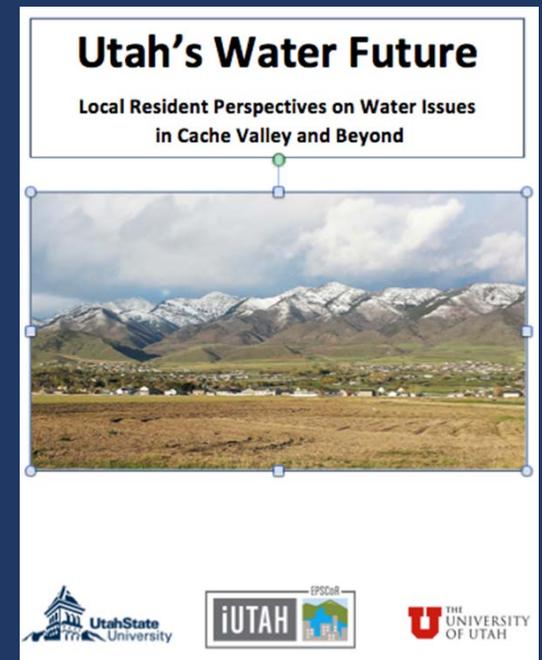


- National Science Foundation award to Utah
- GOAL: Improve science for water management
- Utah State = lead university (but collaborating with all Utah universities)
- One component → social science research
 - Surveys
 - Interviews
 - Policy analysis



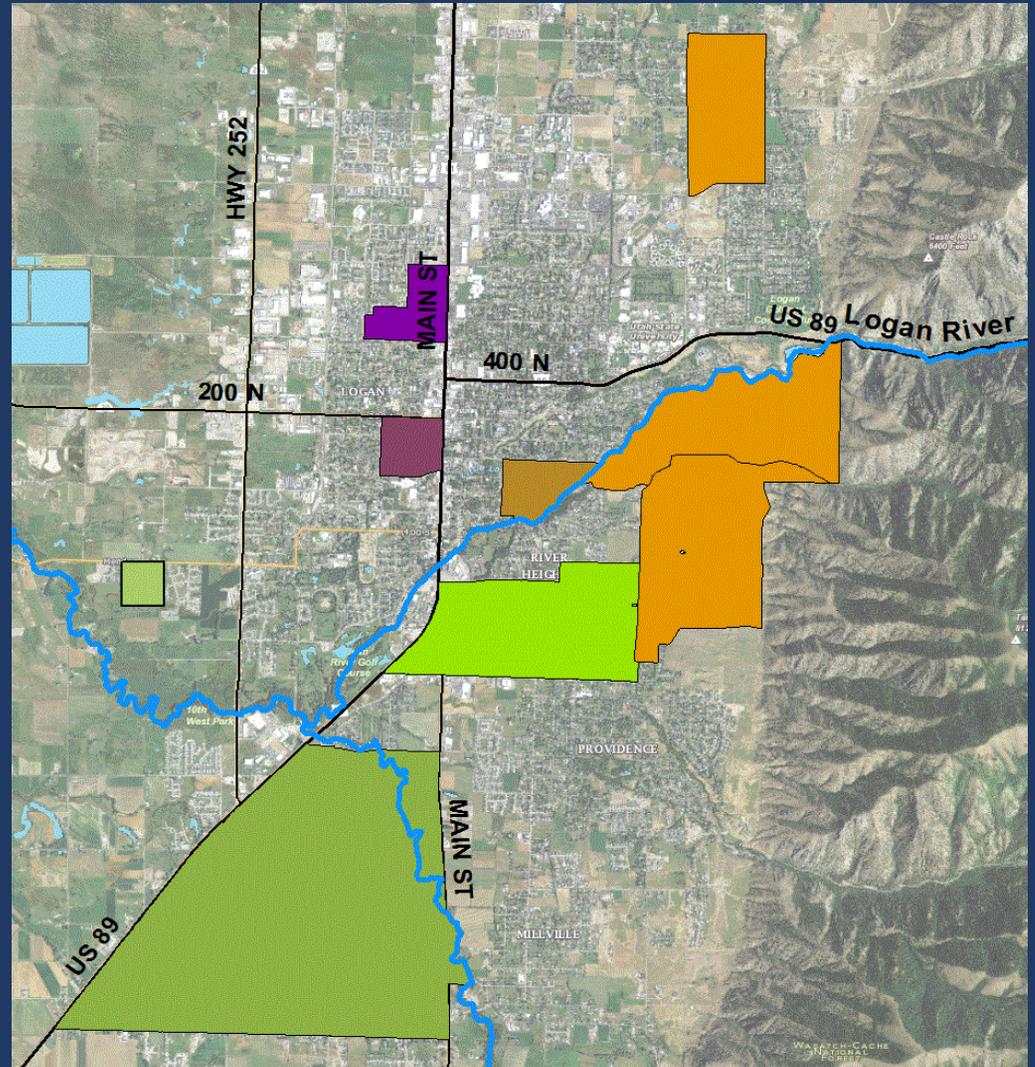
2014 Household Survey

- Data collected from over 2,400 households in 23 neighborhoods
 - Represent different 'types' of urban areas
 - 62% response rate overall
- Detailed survey included questions on:
 - Household water use and decision-making
 - Lawn watering & outdoor landscaping
 - Wells, water rights & secondary water
 - Perceptions of water in the Valley
 - Local water experiences & policy preferences
 - Perspectives on Utah state water policies



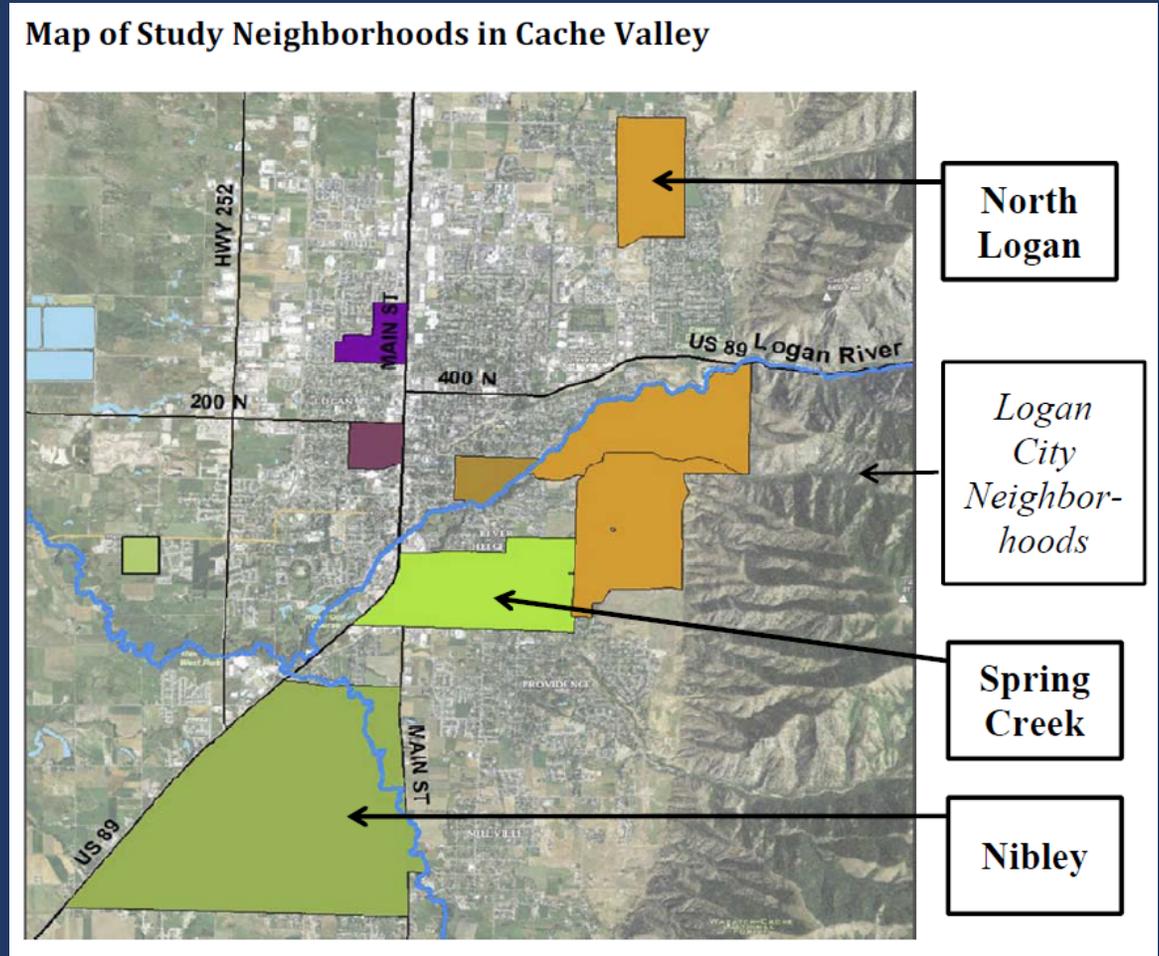
Cache County Neighborhoods

- 3 Non-Logan neighborhoods
 - Nibley (116 respondents; 69% response rate)
 - North Logan (138, 79%)
 - Spring Creek (123; 74%)
- 5 Logan City neighborhoods
 - Downtown (110, 71%)
 - Bridger (128, 74%)
 - Island (124, 74%)
 - Cliffside (122, 71%)
 - Green Meadows (43, 68%)



Representativeness

- Good representation of neighborhood adults
- Main differences:
 - Over-represent adults over 65
 - Under-represent adults under 35
- Representative of Nibley City overall

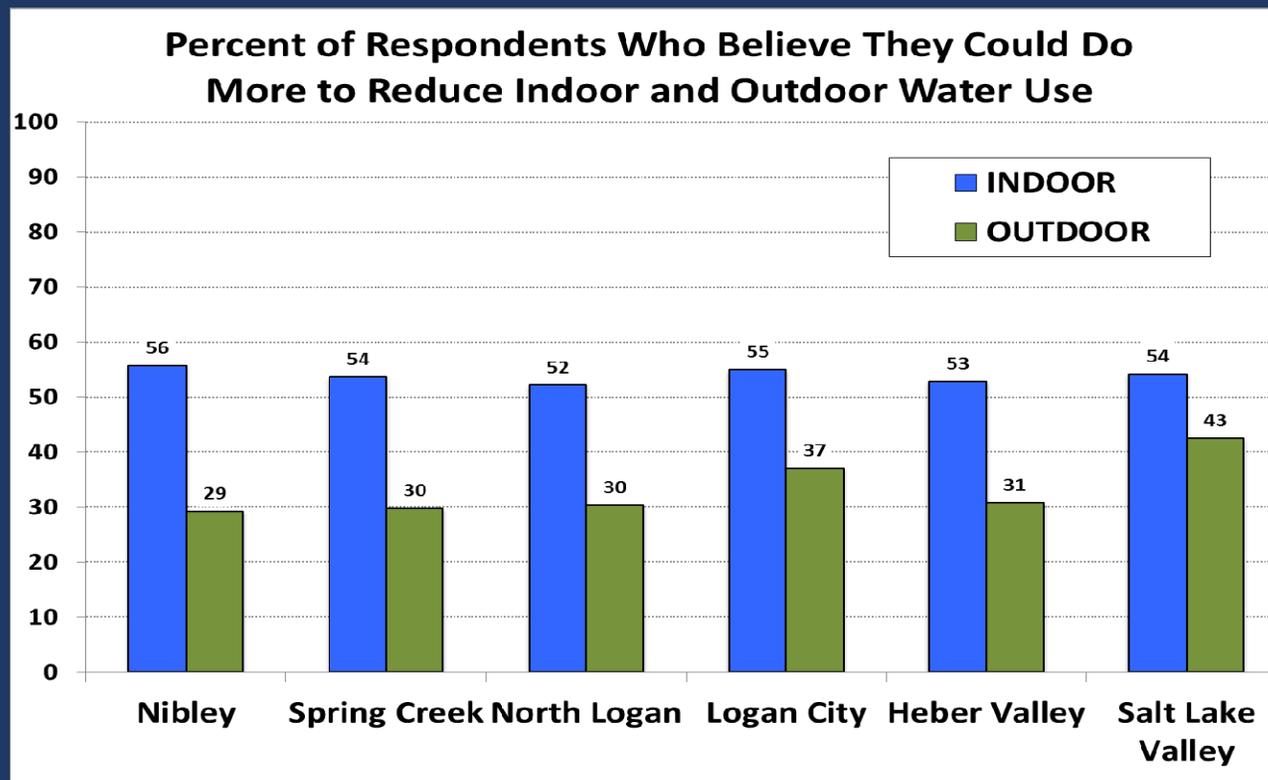


FINDINGS (highlights)

- **People know how much they spend on water, not how much they use**
 - *Over half (73%) familiar with cost, only 24% familiar with volume*
- **Lawns generally watered by residents (99%)**
- **Few say they water during the day (2%)**
- **Watering decisions shaped by**
 - *Weather conditions (85%)*
 - *Aesthetics (76%); Conservation (71%)*
 - *Convenience (55-70%)*

FINDINGS (highlights)

- Only 14% say they have decreased indoor or outdoor water use in last 5 years
- Majorities think they can do more

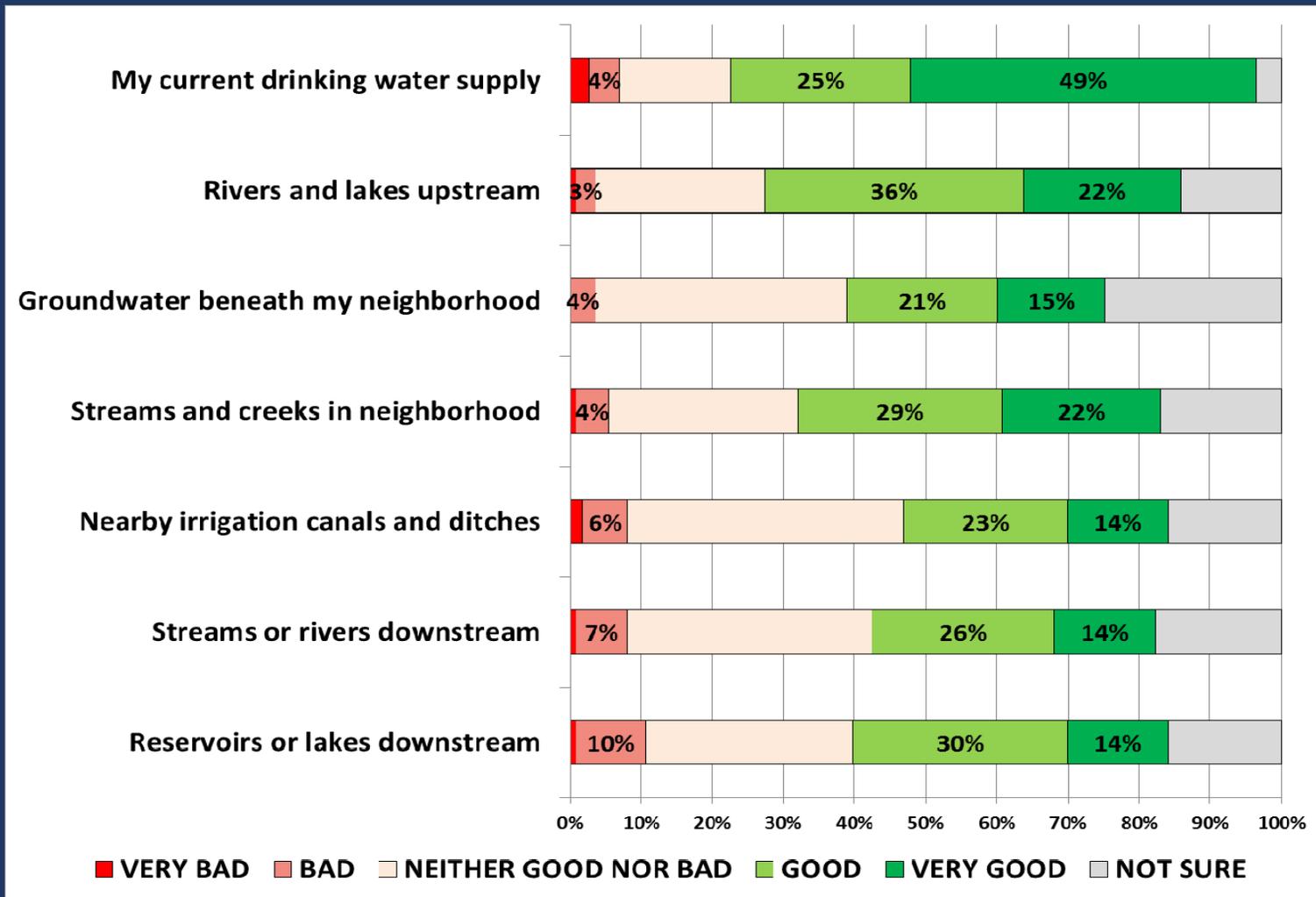


FINDINGS (highlights)

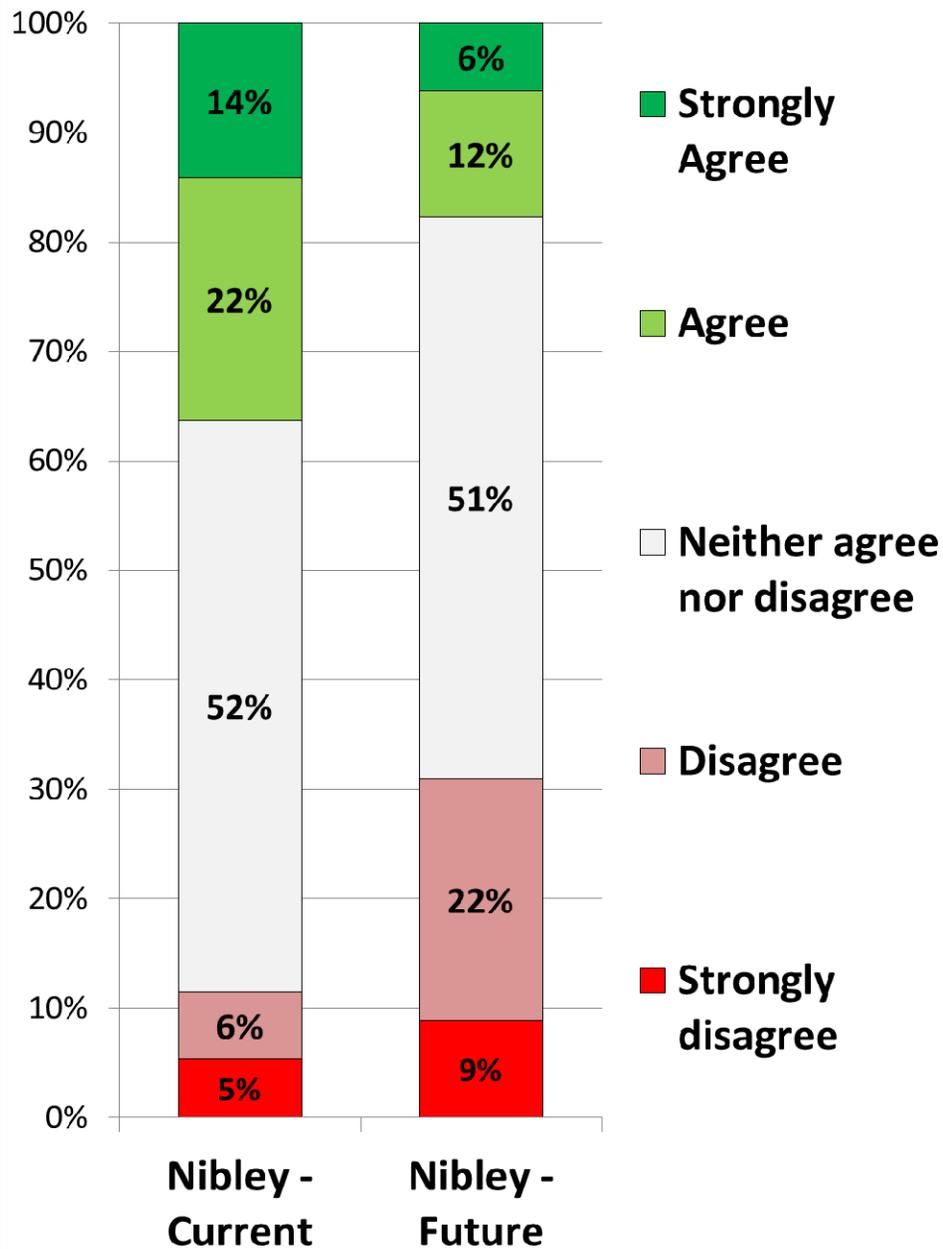
- People more likely to conserve if
 - *It ensures future supply for their home (73%)*
 - *It reduces water bills (67%)*
 - *It ensures future supply for farms (62%)*
 - *It improves fish & wildlife habitat (57%)*
- People least likely to conserve if savings used to increase development (23%)

FINDINGS (highlights)

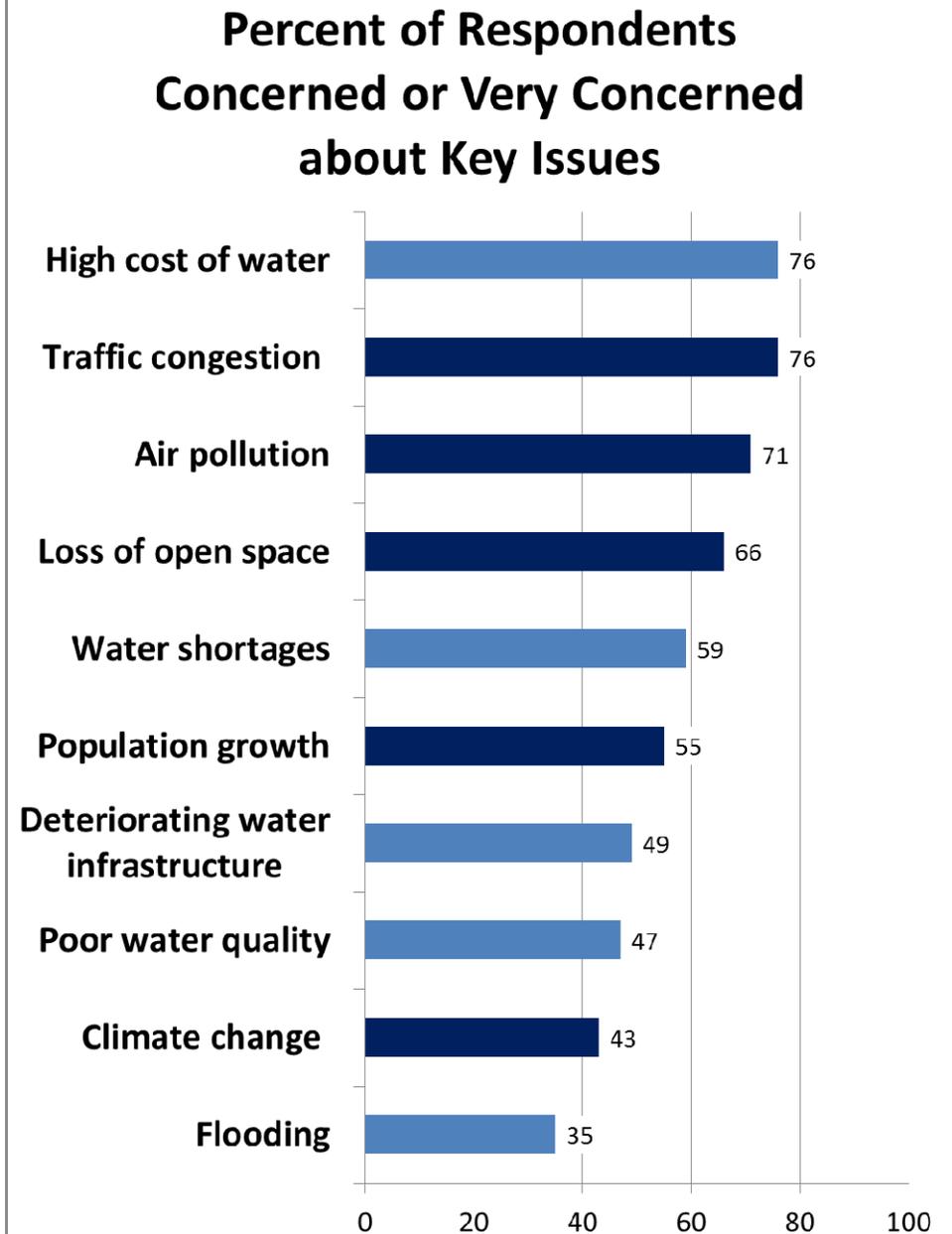
- Local Water Quality generally seen as good



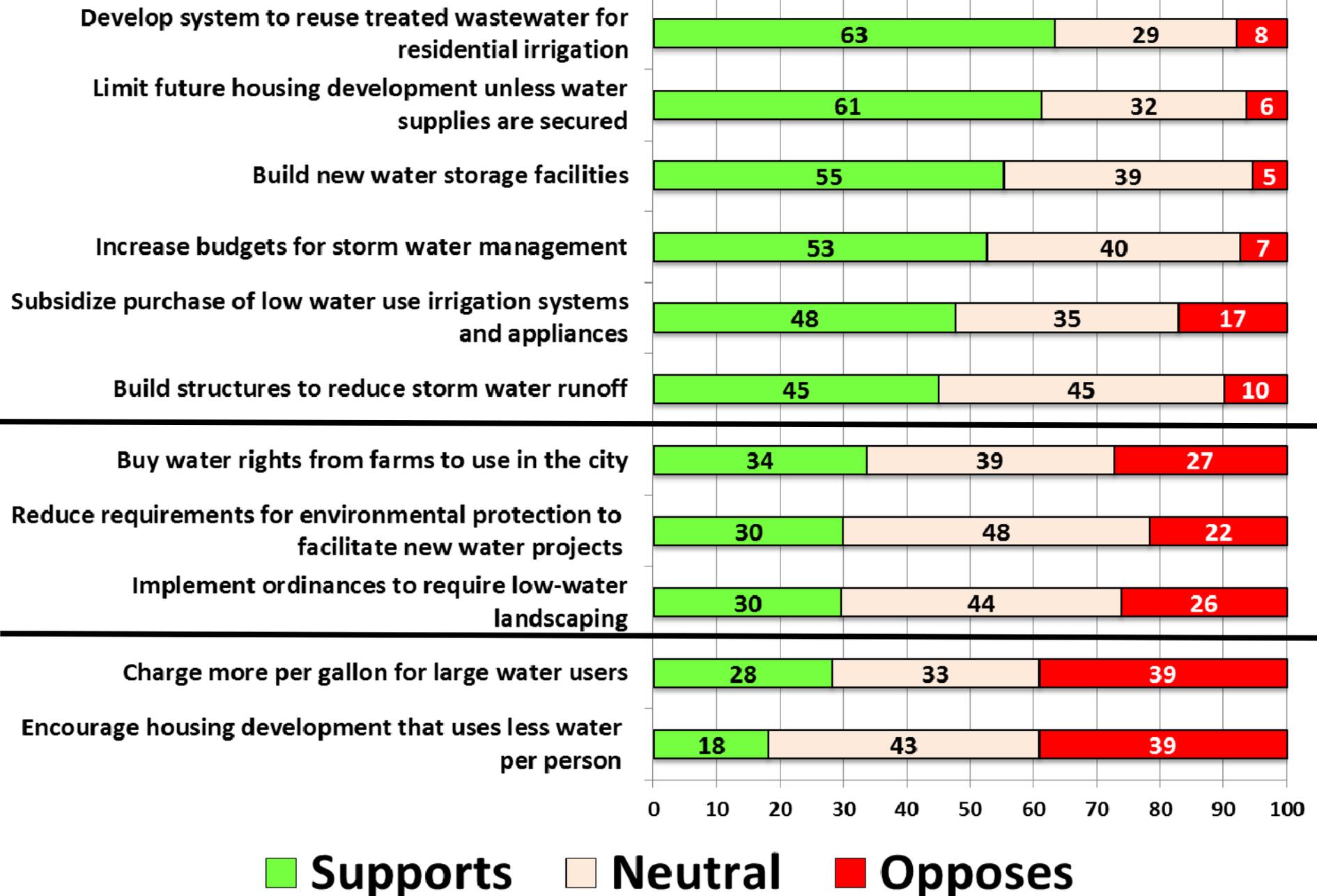
Current supply seen as adequate Future supply inadequate



Non-water issues bigger Concern than water issues

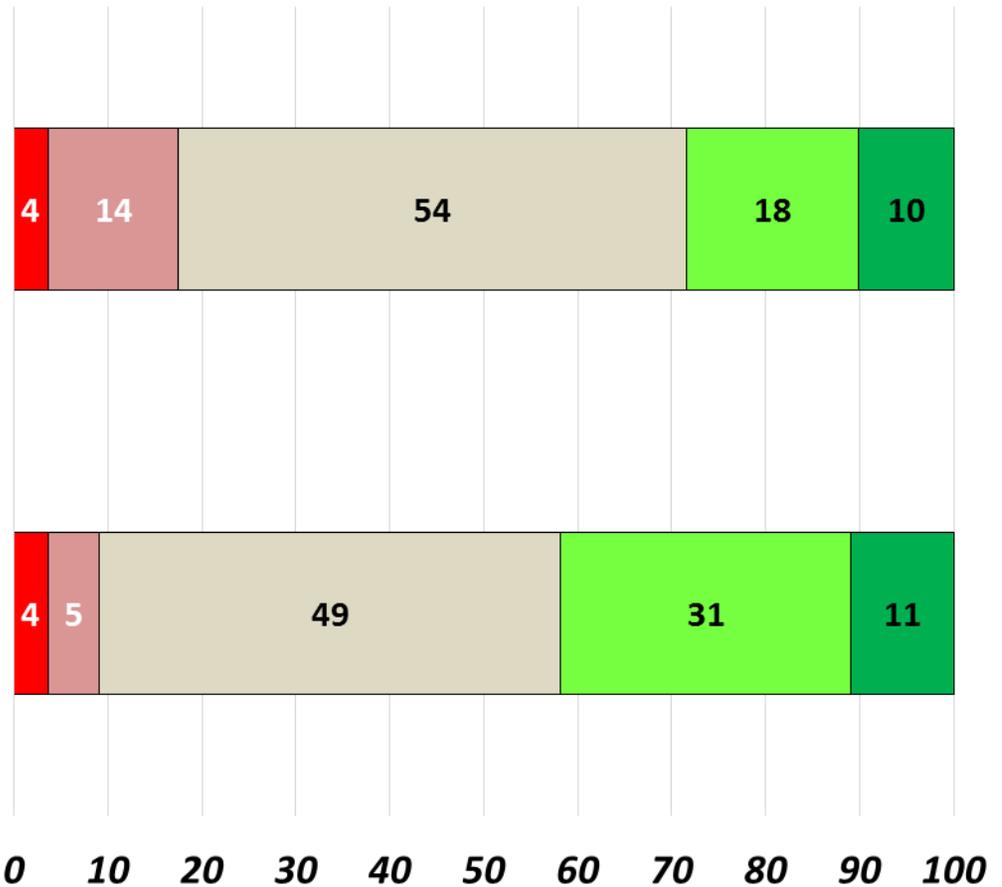


LOCAL POLICY PREFERENCES

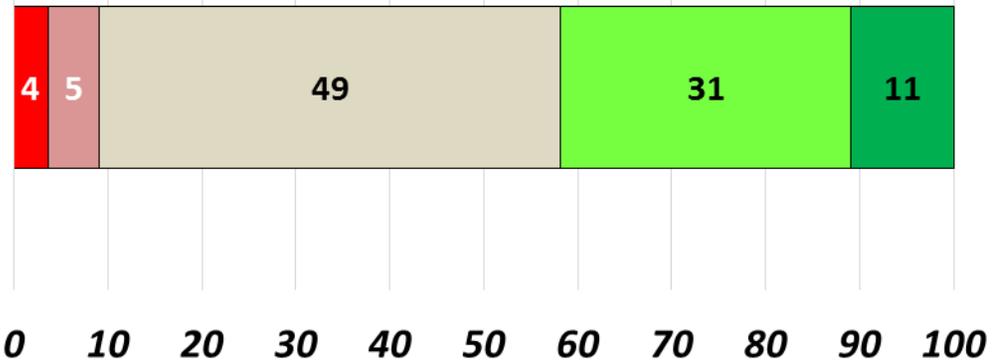


NIBLEY CITY SPECIFIC POLICY OPTIONS

Use city funds to retrofit secondary water systems in existing neighborhoods

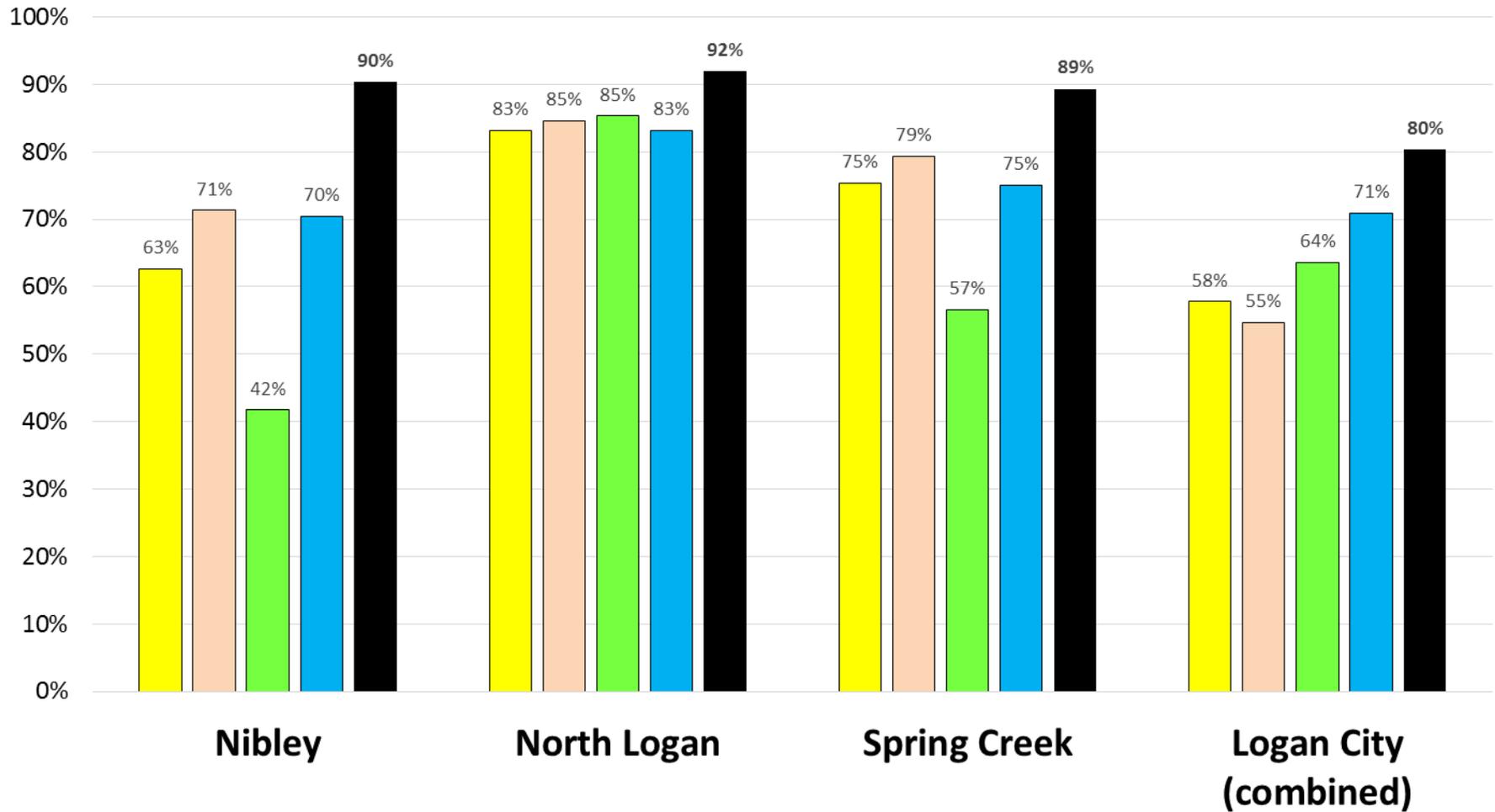


Require new housing development to install secondary irrigation water



- Strongly oppose
- Oppose
- Neither Oppose nor Support
- Support
- Strongly Support

Satisfaction with Various Aspects of Neighborhood



■ Appearance of homes and yards

■ Number of shade trees

■ Overall quality of life

■ Opportunities to interact with neighbors

■ Quality of parks and common spaces

QUESTIONS?

FULL REPORTS:

www.iutahepscor.org/hhsurvey

Doug Jackson-Smith

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435-797-0582

Utah's Water Future

Local Perspectives on Water Issues

Highlights from the 2014 iUTAH Household Survey

NIBLEY CITY HIGHLIGHTS

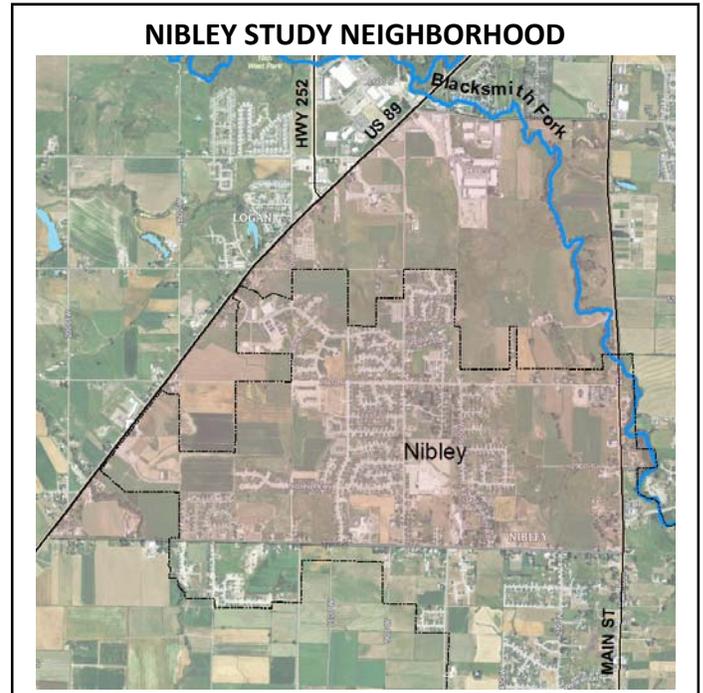


Background:

In July, 2014, researchers from Utah State University and the University of Utah conducted a survey about water issues of residents in one neighborhood in Nibley City (the area north of 3200 South in pink on map to the right).

We received responses from 69% of the Nibley households selected to participate (116 total respondents).

Characteristics of survey respondents were quite similar to the city as a whole based on Census information, with the survey somewhat under-representing those in the 18-35 age group and those with household incomes over \$75,000.



Household Water & Lawns

People know how much they spend, but not how much they use

- Most residents (73%) reported a high degree of familiarity with how much they spend on water each month, but far fewer (24%) were familiar with the volume of water they use

Lawns watered by household residents

- Nibley respondents overwhelmingly indicated that they water their own lawns (99%).

Few water during the day

- Most residents (98%) report watering their lawn mainly in the morning, evening, or at night.

Weather plays a key factor in watering decisions...

- Nearly all of households (85%) said they try to adjust their lawn watering behaviors to the weather

...but property value, time, and conservation are also considerations.

- Three quarters indicated they water to try to prevent brown spots on their lawn (76%) and to maintain property value (76%).
- Majorities said conserving water (71%), keeping a regular schedule (70%), and minimizing time spent watering (55%) were important considerations.
- Only 21% indicated they consider keeping neighbors happy in their watering decisions.

Dr. Douglas Jackson-Smith, Dr. Courtney Flint, Andrea Armstrong and Taya Carothers, Utah State University. For more information, contact Dr. Douglas Jackson-Smith at 435-797-0582 or doug.jackson-smith@usu.edu

Water Conservation

Many residents think that they can do more to conserve water...

- Over half (56%) of Nibley respondents felt they could do more to reduce their indoor water use, while
- Just under one-third (29%) thought they could do more to reduce outdoor water use.
- A significant group (37%) was interested in installing a more efficient irrigation system, and a quarter (24%) were interested in using more low water-use plants.

...but only a small percentage report have actually decreased their water use

- A minority of Nibley respondents reported that they decreased either indoor (13%) or outdoor (14%) water use over the last five years.

People most willing to conserve if it:

- Ensures future supply for their home (73%),
- Reduces their water bills (67%),
- Ensures future supply for farms (62%), and
- Improves fish & wildlife habitat (57%)

People least willing to conserve if savings are used to increase development in this area (23%).



Secondary Water Systems

Few respondents in this study area said they have access to secondary water.

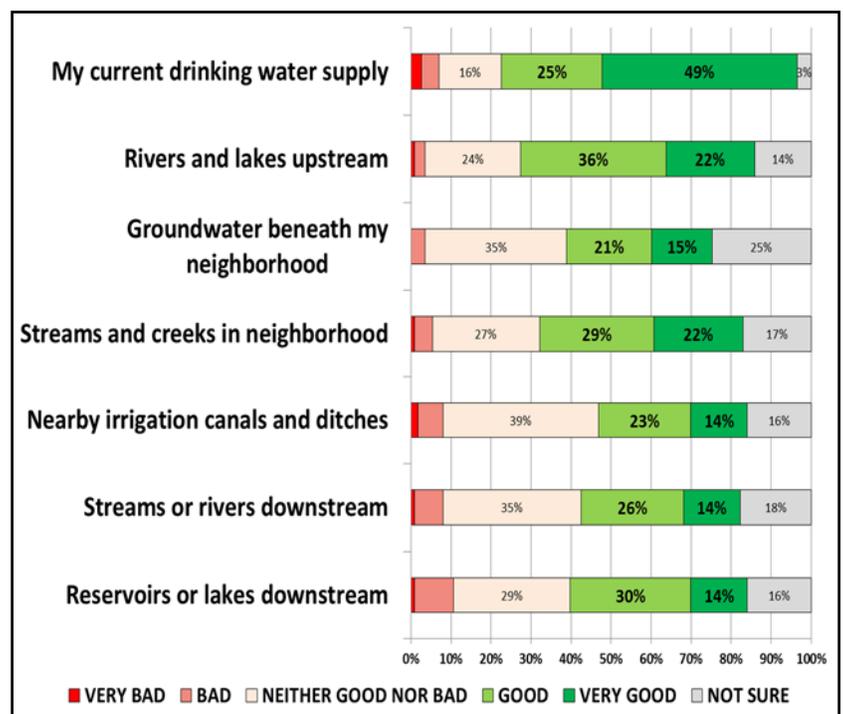
When asked if they support city efforts to develop secondary systems:

- About 2 in 5 (42%) supported a policy to require new housing to install secondary irrigation systems—while 9% were opposed to this approach.
- Less than a third (28%) supported efforts to retrofit secondary water into existing neighborhoods, compared to 17% who opposed this policy.

Water Quality

Local water quality is generally seen as good.

- Three-quarters (74%) of Nibley respondents said their drinking water quality was “good” or “very good”, while just 7% rated it as “bad” or “very bad”
- Over half rated water in rivers and lakes upstream (58%) and streams and creeks in their neighborhood (51%) as “good”, while under half (37-44%) indicated they felt downstream waters or irrigation water were of “good” quality
- Waters most often rated as “bad” quality (by just 8-11%) were downstream rivers and reservoirs



Concerns about Water and Other Issues

Not many residents believed current water supplies are adequate.

- Only 36% thought there is enough water to meet current needs in this city.

There was more concern about future water supplies.

- Only 18% were confident in Nibley's future supply, and 31% of Nibley respondents were concerned about the city's future water supply.

Farm water use was not a big concern.

- While 44% of respondents believed that residential lawns use too much water,
- Only 7% felt that agriculture was currently using too much water.

Water related issues take a back seat to growth concerns, except for cost.

- Traffic congestion and the high cost of water were of greatest concern (both cited by 76%) of residents, followed by air pollution (71%) and loss of open space (66%) (see chart).
- Water shortages (59%) and population growth (55%) were a concern by over half of respondents, while
- Just under half were concerned about deteriorating water infrastructure (49%) or poor water quality (47%).
- Climate change (43%) and flooding (35%) were of lesser concern.

How Should Nibley Respond to Short-Term Shortages?

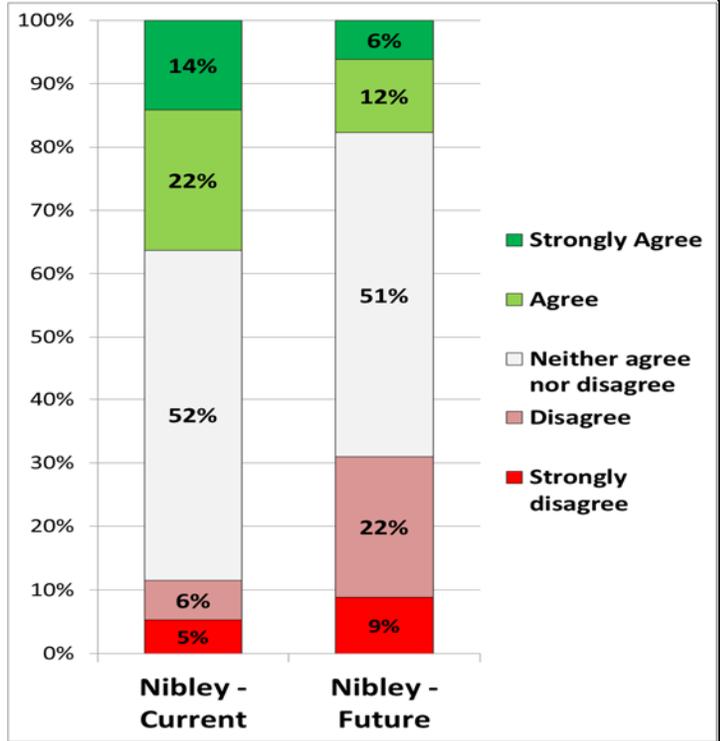
Voluntary approaches most popular

- Nibley respondents indicated a very high level of support for educational efforts (85%) and voluntary water restrictions (81%).

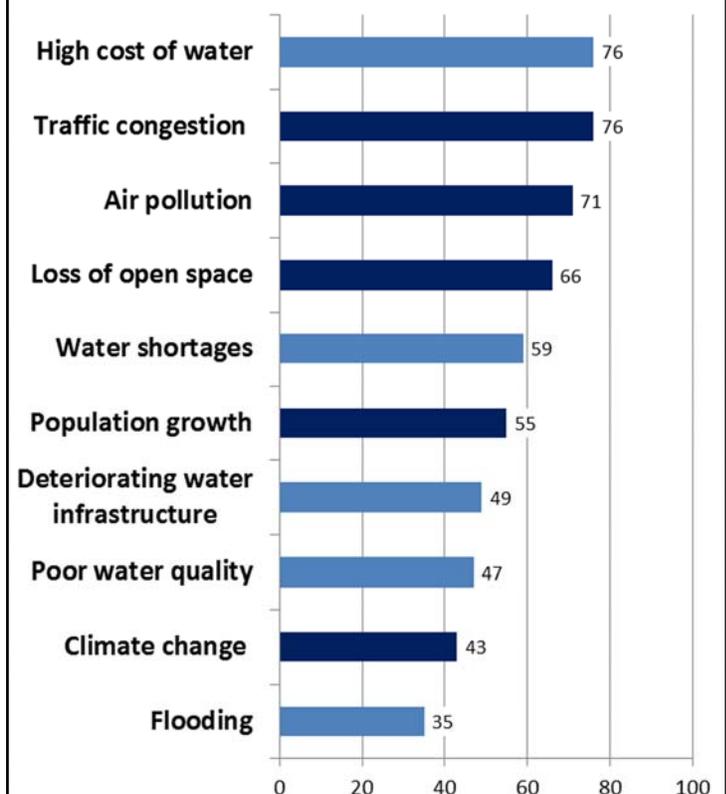
Majority support mandatory limits

- Most respondents supported watering restrictions in parks, golf courses, and public properties (75%) or mandatory restrictions on watering lawns (66%)

There is enough water to meet the needs of all the people and businesses in Nibley City



Percent of Respondents Concerned or Very Concerned about Key Issues



Support for Long Term Nibley City Water Policy

Most supported having development pay for itself

The most popular policies were

- Reusing treated wastewater for residential irrigation (63% support), and
- Limiting future housing development unless water supplies are secured (61%).

A majority supported building storage and managing storm-water

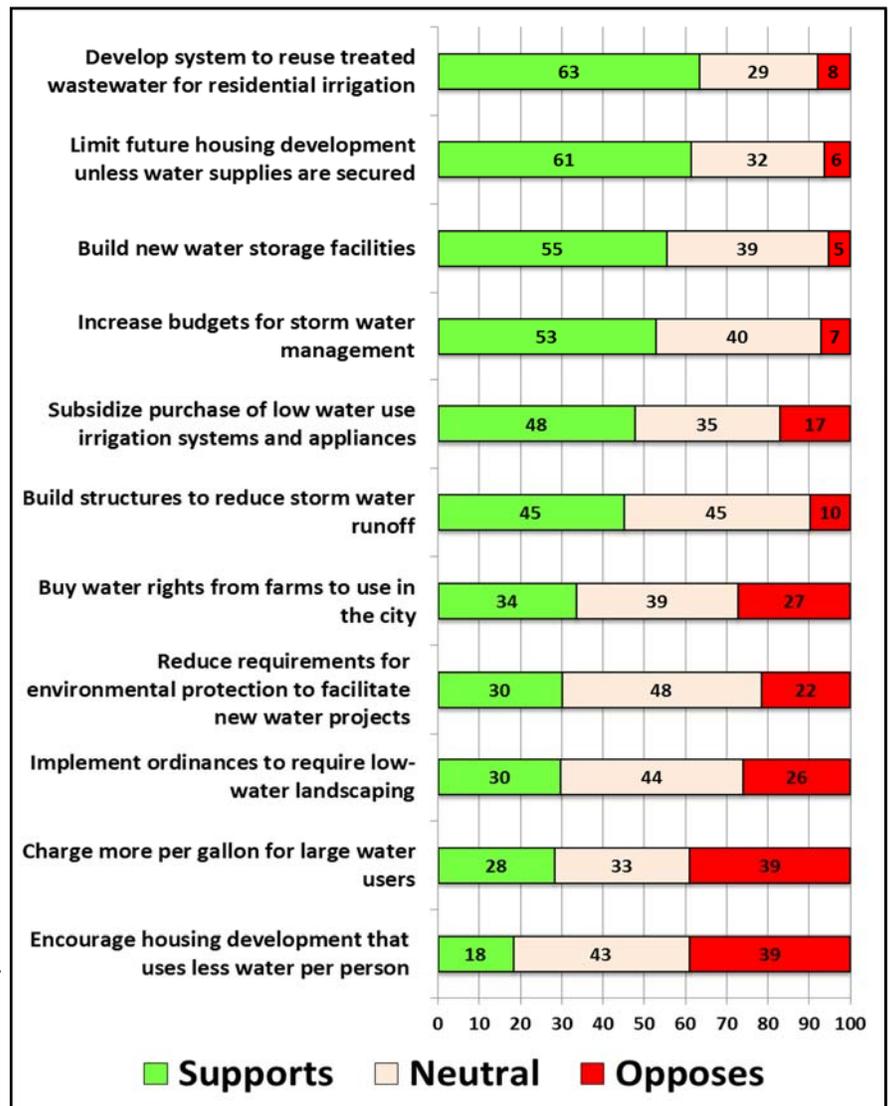
- Over half supported local funding to build new water storage (55%) and increasing budgets for city stormwater management (53%)

There was modest support for incentivizing conservation

- Roughly half (48%) supported subsidizing the purchase of low water use irrigation systems and appliances

There was less support for city policies to

- Buy water rights from farms for urban uses (34%),
- Implement ordinances to require low-water landscaping (30%),
- Reduce requirements for environmental protection to facilitate new water projects (30%),
- Charge more per gallon for large water users (28%), or
- Encourage housing types that use less water per person (18%)



Support for State Water Goals & Policies

Residents said state should ensure supply while protecting water quality and agriculture

- Nearly all supported state goals of ensuring a supply of drinking water (96%) and protecting water quality (91%)
- Strong majorities support ensuring water supplies for agriculture (83%) and protecting wetlands and wildlife habitat (64%)
- There is moderate support for a state goal of saving taxpayer money (55%)

There is support for wide range of state policies

- The highest support was for the use of state funds to replace aging city water infrastructure (59%) and building new reservoirs or storage (59%)
- Nearly half supported investments in new water conservation research (50%), allowing people with water rights to sell water saved from conservation (49%) and using state funds to pay for efficiency improvements in agricultural irrigation (48%)
- Few support transfer of water from farms to urban uses (24%)

If you would like more information about the survey results, full reports are posted on our website:

www.iutahepscor.org/hhsurvey

AGREEMENT

Requiring Execution of a Mitigation Agreement by and among Nibley City, Cache County and College Irrigation Company

THIS AGREEMENT (“Agreement”), is made and executed effective as of this ___ day of _____, 2015 (the “Effective Date”), by and among NIBLEY CITY, a Utah municipal corporation (the “City”), CACHE COUNTY CORPORATION, a county of the State of Utah (the “County”), PACIFICORP, an Oregon corporation (“PacifiCorp”), and BEAR RIVER WATER USERS ASSOCIATION, a Utah nonprofit corporation, (the “Association”).

PacifiCorp and the Association are referred to herein collectively as the “Protestants.” The City, the County, PacifiCorp and the Association are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The City and the County are co-applicants in the filing of that certain Application to Appropriate Water, Water Right No. 25-11236, A78054a (the “Application”), which proposes to divert 1,201.0 acre-feet of water from four groundwater wells for municipal use within the City and other public uses as described in the Application. The Application represents a segregated portion of unapproved Application to Appropriate No. A78054 filed in 2008 by the County, which seeks to appropriate a total of 13031.4 ac-ft of water. PacifiCorp and the Association have timely filed protests against the Application.

B. The filing of the Application and the diversion and use of water thereunder is governed by the State Engineer’s Cache Valley Groundwater Management Plan (“Groundwater Management Plan”), which, among other things, requires, as a condition to the approval of any new application to appropriate water in Cache Valley, water replacement and/or other adequate compensation to mitigate against any impairment to the rights of downstream water right holders, including the Protestants, and it is acknowledged that the City, County and Protestants are governed and bound by the terms and conditions of the Groundwater Management Plan in connection with this Application.

C. Under the water replacement plan filed in support of the Application (the “Mitigation Plan”), the City and County have proposed and agreed that the 270 acres of land which have historically been irrigated with the water to which the City is entitled under its 265.0 shares of stock in College Irrigation Company (the “Company”), will not be irrigated, and the water historically used to irrigate said lands will not be diverted and/or otherwise delivered by the Company to any shareholder or other person for any use or purpose, but that such water will be left to freely run to mitigate any impairment to the downstream rights of the Protestants and other water right holders which would otherwise arise out of the City’s diversion and use of groundwater as proposed under the Application without such mitigation (said use being referred to herein as “Mitigation Use”).

D. The purpose and intent of this Agreement is to require the City and County to enter into a written agreement by and among them and the Company setting forth the terms and conditions pursuant to which the Company’s water supply shall be administered, released and monitored for Mitigation Use so as to effectively achieve and enforce the water replacement and compensation required under the Groundwater

Management Plan, as proposed by the City and County in their Mitigation Plan.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **EXECUTION OF A MITIGATION AGREEMENT.** The City and County shall enter into the agreement attached hereto as EXHIBIT "A" and incorporated by reference herein (the "Mitigation Agreement"), with the Company, which sets forth the terms, covenants and conditions pursuant to which water under the water rights of the Company shall be utilized for Mitigation Use in connection with the Application. The City and County agree that the fully executed Mitigation Agreement shall be filed with the Division of Water Rights and officially submitted as an integral supplement to the Application, along with a submittal letter, which shall include the Protestants conditionally withdrawing their protests ("Submittal Letter"), in which the City and County expressly request, consent and agree that compliance with the Mitigation Agreement be incorporated as an express condition to any approval of the Application by the State Engineer.

2. **CONSIDERATION.** In consideration of the City and County entering into and carrying out the Mitigation Agreement with the Company, the Protestants agree, upon receiving from the City and County copies of the executed Mitigation Agreement and Submittal Letter, to execute and submit the Mitigation Agreement and Submittal Letter to the State Engineer agreeing to withdraw their Protest against the Application subject to the State Engineer's approval order requiring compliance with the terms of the executed Mitigation Agreement as an express condition to approval of the Application. If compliance with the terms of the Mitigation Agreement is not made a condition to the State Engineer's approval of the Application, then:

(a) the protests of the Protestants shall remain in effect for the purpose of giving Protestants standing to seek administrative and judicial review of the State Engineer's decision, and

(b) the Mitigation Agreement shall nevertheless remain in full force and effect as between the parties thereto and be and remain enforceable by these Parties.

3. **JURY WAIVER.** To the fullest extent permitted by law, each of the Parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this Agreement. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

4. **WARRANTY OF AUTHORITY.** The City and County, respectively, hereby represent that each has the full right, power and authority to enter into this Agreement and to perform all acts and obligations required of it hereunder.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first

above written.

NIBLEY CITY

By: _____
Its:

ATTEST:

City Recorder

CACHE COUNTY

By: _____
Its:

ATTEST:

County Clerk

PACIFICORP

By: _____
Its:

BEAR RIVER WATER USERS ASSOCIATION

By: _____
Its:

**EXHIBIT “A”
MITIGATION AGREEMENT**

**FRANCHISE AGREEMENT BETWEEN NIBLEY CITY, UTAH AND COMCAST OF
INDIANA/KENTUCKY/UTAH INC.**

2015

This Franchise Agreement (“Franchise”) is between Nibley City, hereinafter referred to as the “Franchising Authority” and Comcast of Indiana/Kentucky/Utah Inc., hereinafter referred to as the “Grantee”.

The Franchising Authority hereby acknowledges that the Grantee has substantially complied with the material terms of the current Franchise under applicable law, and that the financial, legal, and technical ability of the Grantee is reasonably sufficient to provide services, facilities, and equipment necessary to meet the future cable-related needs of the community, and having afforded the public adequate notice and opportunity for comment, desires to enter into this Franchise with the Grantee for the construction and operation of a cable system on the terms set forth herein.

SECTION 1

Definition of Terms

1.1 Terms. For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- A. “Affiliate” when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person.
- B. “Basic Cable” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
- C. “Cable Act” means Title VI of the Communications Act of 1934, as amended.
- D. “Cable Services” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
- E. “Cable System” shall mean the Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.

F. “FCC” means Federal Communications Commission or successor governmental entity thereto.

G. “Franchise” means the initial authorization, or renewal thereof, issued by the Franchising Authority, whether such authorization is designated as a franchise, agreement, permit, license, resolution, contract, certificate, ordinance or otherwise, which authorizes the construction and operation of the Cable System within the Franchise Area.

H. “Franchising Authority” means Nibley City, within the State of Utah, or the lawful successor, transferee, or assignee thereof.

I. “Grantee” means Comcast of Indiana/Kentucky/Utah, Inc., or the lawful successor, transferee, or assignee thereof.

J “Gross Revenue” means any and all revenue in whatever form, from any source, directly received by the Grantee or Affiliate of the Grantee, according to generally accepted accounting principles consistently applied, that would constitute a Cable Operator of the Cable System under the Cable Act, derived from the operation of the Cable System to provide Cable Services in any manner that requires use of the Public Ways in the Service Area. Gross Revenues include, but are not limited to, basic, expanded basic, and pay service revenues, revenues from installation, rental of converters, the applicable percentage of the sale of local and regional advertising time, and any leased access revenues.

Gross Revenues do not include (i) revenue from sources excluded by law; (ii) revenue derived by Grantee from services provided to its Affiliates; (iii) late payment fees; (iv) charges other than those described above that are aggregated or bundled with amounts billed to Cable Service Subscribers such as charges for Broadband or Telephone services; (v) fees or taxes which are imposed directly on any Subscriber by any governmental unit or agency, and which are collected by the Grantee on behalf of a governmental unit or agency including the FCC User Fee; (vi) revenue which cannot be collected by the Grantee and are identified as bad debt, provided, that if revenue previously representing bad debt is collected, this revenue shall then at time of collection be included in Gross Revenues for the collection period; (vii) refundable deposits, investment income, programming launch support payments, or advertising sales commissions; and (viii) Internet services to the extent that such service is not considered to be a Cable Service as defined by law.

K. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity but not the Franchising Authority.

L. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Franchising Authority and the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the

Cable System. Public Way shall also mean any easement now or hereafter held by the Franchising Authority within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle the Franchising Authority and the Grantee to the use thereof for the purposes of installing and operating the Grantee's Cable System over wires, cables, conductors, ducts, vaults, manholes, amplifiers, appliances, attachments, and other property as may be ordinarily necessary and pertinent to the Cable System.

M. "Service Area" means the present municipal boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.

N. "Standard Installation" is defined as 125 feet from the nearest tap to the Subscriber's terminal.

O. "Subscriber" means a Person who lawfully receives Cable Service of the Cable System with the Grantee's express permission.

SECTION 2

Grant of Franchise

2.1 Grant. The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System.

2.2 Other Ordinances. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control, provided however that the Grantee agrees that it is subject to the lawful exercise of the police power of the Franchising Authority.

Each and every term, provision or condition herein is subject to the provisions of State law, federal law, and County ordinances and regulations enacted pursuant thereto. Notwithstanding the foregoing, the Franchising Authority may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

2.3 Competitive Equity.

(A) Overview.

The Grantee and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to residents of the Franchising Authority; and changes in the scope and application of the traditional regulatory framework governing the provision of video series are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the public rights-of-way can compete on a competitively neutral and nondiscriminatory basis; encourage the provision of new and advanced services to the residents; promote local communications infrastructure investments and economic opportunities in the Franchising Authority; and provide flexibility in the event of subsequent changes in the law, the Grantee and the Franchising Authority have agreed to the provisions in this Section, and they should be interpreted and applied with such purposes in mind. Furthermore, if the Franchising Authority authorizes or permits a competitor to Grantee to operate within the Franchise Area, it shall do so on condition that such competitor or entity indemnify and hold harmless the Grantee for and against all costs and expenses incurred in strengthening poles, replacing poles, rearranging attachments, placing underground facilities, conducting inspections and generally in creating infrastructure improvements for the other entity.

(B) New Video Service Provider

Notwithstanding any other provision in this Agreement or any other provision of law, if any Video Service Provider (“VSP”) (i) enters into any agreement with the Franchising Authority to provide video services to subscribers in the Franchising Authority, or (ii) otherwise begins to provide video services to subscribers in the Franchising Authority (with or without entering into an agreement with the Franchising Authority), the Franchising Authority, upon written request of the Grantee, shall permit the Grantee to construct and operate its Cable System and to provide video services to subscribers in the Franchising Authority under the same agreement and/or under the same terms and conditions as apply to the new VSP. The Grantee and the Franchising Authority shall enter into an agreement or other appropriate authorization (if necessary) containing the same terms and conditions as are applicable to the VSP within sixty (60) days after the Grantee submits a written request to the Franchising Authority.

(C) No Written Agreement between Franchising Authority and Third Party VSP

If there is no written agreement or other authorization between the new VSP and the Franchising Authority, the Grantee and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization (if necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Grantee and other VSP’s, taking into account the terms and conditions under which other VSP’s are allowed to provide video services to subscribers within the boundaries of the Franchising Authority.

(D) Effect of this Section on the Overall Agreement

Any agreement, authorization, right or determination to provide video services to subscribers in the Franchising Authority under any provision under this Section 2.3 shall supersede this Agreement, and the Grantee, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

(E) VSP Defined

The term “Video Service Provider” or “VSP” shall mean any entity using the public rights-of-way to provide multiple video programming services to subscribers, for purchase at no cost, regardless of the transmission method, facilities, or technology used. A VSP shall include but is not limited to any entity that provides cable services, multichannel multipoint distribution services, broadcast satellite services, satellite-delivered services, wireless services, and Internet Protocol based services.

2.4 Term. The Franchise granted hereunder shall be for an initial term of Fifteen (15) years commencing on the effective date of the Franchise as set forth in subsection 8.6, unless otherwise lawfully terminated in accordance with the terms of this Franchise.

SECTION 3

Standards of Service

3.1 Conditions of Occupancy. The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.

3.2 Restoration of Public Ways. If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way at Grantee's expense to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.

3.3 Relocation for the Franchising Authority. Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall at its own expense protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines or other municipal utility infrastructure, or any other type of public structures or improvements which are not used to compete with the Grantee's services. Grantee shall not be required to pay

for the relocation of Cable System facilities, and may require advance payment for costs and expense, to the extent such removal or relocation is requested solely for aesthetic purposes, in cases where the original location of the facilities was approved by Franchising Authority through the permitting process

In the event of an emergency, the Franchising Authority shall notify the Grantee, who shall immediately respond to the emergency. Should the Grantee be unable to respond in a timely manner, the Franchising Authority shall take such action as is necessary to meet the emergency at the expense of Grantee, if such action by the Franchising Authority would otherwise have been at Grantee's expense.:-

The Grantee shall in all cases have the right of abandonment of its property. If public funds are available to any person using such street, easement, or right-of-way for the purpose of defraying the cost of any of the foregoing, then the Franchising Authority shall make application for such funds on behalf of the Grantee.

3.4 Relocation for a Third Party. The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.

3.5 Trimming of Trees and Shrubbery. The Grantee shall have the authority to trim trees or other natural growth in the public way in order to access and maintain the Cable System and shall reasonably replace all trees and shrubs damaged as a result of any construction and/or maintenance of its system undertaken by Grantee.

3.6 Safety Requirements. Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code. The Cable System shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area.

3.7 Aerial and Underground Construction. Prior to construction, in each case, all applicable permits shall be applied for and granted and all fees shall be paid.

In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground, provided that such underground locations are actually capable of accommodating the Grantee's cable and other equipment without technical degradation of the Cable System's signal quality.

In any region(s) of the Franchise Area where the transmission of distribution facilities of the respective public or municipal utilities are both aerial and underground, the Grantee shall have the discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aurally or underground. Nothing contained in this Section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances such as customer taps, line extenders, system passive devices, amplifiers, power supplies, pedestals or other related equipment.

3.8 Access to Open Trenches. The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench.

3.9 Required Extensions of the Cable System. Nothing in this Agreement requires Grantee to build to all areas of the Franchise Authority. Grantee retains the discretion to determine the scope, location, and timing of the design and construction of its network, as well as the windows during which residential Subscribers may enroll for services, so long as such decisions are consistent with this Section. Grantee, at its sole discretion, may determine separately defined geographic areas within the Franchise Area where its System will be deployed, services will be offered, or facilities will be upgraded.

3.10 Subscriber Charges for Extensions of the Cable System. The Grantee may, at Grantee's discretion, extend the Cable System to Subscriber(s) in the Service Area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, in the event Grantee decides to extend the Cable System, the Grantee will contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of unserved residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 15. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a *pro rata* basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any non-Standard Installation charges to extend the Cable System from the tap to the residence.

3.11 Cable Service to Public Buildings. The Grantee, upon request, shall provide without charge, a Standard Installation and one outlet of Basic Cable to those administrative buildings owned and occupied by the Franchising Authority, fire station(s), police station(s), and K-12 public school(s) that are passed by its Cable System. The Cable Service provided shall not be distributed beyond the originally installed outlet without authorization from the Grantee. The Cable Service provided shall not be used for commercial purposes, and such outlets shall not be located in areas open to the public. The Franchising Authority shall take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in any loss or damage to the Cable System. The Franchising Authority shall hold the Grantee harmless from any and all liability or claims arising out of the provision and use of Cable Service required by

this subsection. The Grantee shall not be required to provide an outlet to such buildings where a non-Standard Installation is required, unless the Franchising Authority or building owner/occupant agrees to pay the incremental cost of any necessary Cable System extension and/or non-Standard Installation. If additional outlets of Basic Cable are provided to such buildings, the building owner/occupant shall pay the usual installation and service fees associated therewith.

3.12 Technical Standards. The Grantee is responsible for ensuring that the Cable System is designed, installed and operated in a manner that fully complies with FCC rules in Subpart K of Part 76 of Chapter I of Title 47 of the Code of Federal Regulations as revised or amended from time to time. As provided in these rules, the Franchising Authority shall have, upon request, the right to obtain a copy of tests and records required in accordance with appropriate rules but has no authority, pursuant to federal law, to enforce compliance with such standards.

3.13 Emergency Use.

A. In accordance with and at the time required by the provisions of FCC Regulations Part 11, Subpart D, Section 11.51, and as other provisions which may from time to time be amended, the Grantee shall install, if it has not already done so, and maintain an Emergency Alert System (EAS) for use in transmitting Emergency Act Notifications (EAN) and Emergency Act Terminations (EAT) in local and state-wide situations as may be designated to be an emergency by the Local Primary (LP), the State Primary (SP) and/or the State Emergency Operations Center (SEOC), as those authorities are identified and defined within FCC Regulations, Section 11.18.

B. The Franchising Authority shall permit only appropriately trained and authorized persons to operate the EAS equipment and take reasonable precautions to prevent any use of the Grantee's Cable System in any manner that results in inappropriate use, or any loss or damage to the Cable System. Except to the extent expressly prohibited by law, the Franchising Authority agrees to hold the Grantee, its employees, officers and assigns harmless from any claims arising out of the emergency use of its facilities by the Franchising Authority, including, but not limited to, reasonable attorneys' fees and costs.

3.14 Reimbursement of Costs. If funds are available to any Person using the Public Way for the purpose of defraying the cost of any act contemplated in this Agreement, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

3.15 Customer Service Standards. The Franchising Authority hereby adopts the customer service standards set forth in Part 76, § 76.309 of the FCC's rules and regulations, as amended. The Grantee shall comply in all respects with the customer service requirements established by the FCC.

3.16 Fees and Charges to Customers All rates, fees, charges, deposits and associated terms and conditions to be imposed by the Grantee or any affiliated Person for any Cable Service as of the Effective Date shall be in accordance with applicable FCC's rate regulations. Before

any new or modified rate, fee, or charge is imposed, the Grantee shall follow the applicable FCC notice requirements and rules and notify affected Customers, which notice may be by any means permitted under applicable law.

3.17 Customer Bills and Privacy Customer bills shall be designed in such a way as to present the information contained therein clearly and comprehensibly to Customers, and in a way that (A) is not misleading and (B) does not omit material information. Notwithstanding anything to the contrary in Section 3.15 above, the Grantee may, in its sole discretion, consolidate costs on Customer bills as may otherwise be permitted by Section 622(C) of the Cable Act (47 U.S.C. 542(c)). The Grantee shall also comply with all applicable federal and state privacy laws, including Section 631 of the Cable Act and regulations adopted pursuant thereto.

SECTION 4

Regulation by the Franchising Authority

4.1 Franchise Fee.

A. The Grantee shall pay to the Franchising Authority a franchise fee equal to three percent (3 %) of annual Gross Revenue (as defined in subsection 1.1 of this Franchise) received by the Grantee from operation of the Cable System to provide Cable Service in the Franchise Area; provided however, that Grantee shall not be compelled to pay any higher percentage of franchise fees than any other video service provider providing service in the Franchise Area. In accordance with the Cable Act, the twelve (12) month period applicable under the Franchise for the computation of the franchise fee shall be a calendar year. Payments shall be made by Grantee to the Franchising Authority on a quarterly basis, within sixty (60) days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of the Grantee showing the basis for the computation.

B. **Limitation on Franchise Fee Actions.** The period of limitation for recovery of any franchise fee payable hereunder shall be three (3) years from the date on which payment by the Grantee is due.

4.2 Rates and Charges. The Franchising Authority may regulate rates for the provision of Basic Cable and equipment as expressly permitted by federal or state law.

4.3 Renewal of Franchise.

A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee's Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act.

B. In addition to the procedures set forth in said Section 626(a), the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee

under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal under Section 626(b) of the Cable Act and complete renewal of the Franchise prior to expiration of its term.

C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment, the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express provisions of Section 626 of the Cable Act.

4.4 Conditions of Sale. If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 Transfer of Franchise. The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the Franchising Authority, such consent not to be unreasonably withheld. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness. Within thirty (30) days of receiving a request for transfer, the Franchising Authority shall notify the Grantee in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. If the Franchising Authority has not taken action on the Grantee's request for transfer within one hundred twenty (120) days after receiving such request, consent by the Franchising Authority shall be deemed given.

SECTION 5

Oversight and Regulation by Franchising Authority

5.1 Books and Records The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee, may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the Section of the Franchise which is under review, so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

5.2 Franchise Fees Subject to Audit.

5.2.1. Upon reasonable prior written notice, during normal business hours at Grantee's principal business office, the Franchising Authority shall have the right to inspect the Grantee's financial records used to calculate the Franchising Authority's franchise fees; provided, however, that any such inspection shall take place within two (2) years from the date the Franchising Authority receives such payment, after which period any such payment shall be considered final.

5.2.2. Upon the completion of any such audit by the Franchising Authority, the Franchising Authority shall provide to the Grantee a final report setting forth the Franchising Authority's findings in detail, including any and all substantiating documentation. In the event of an alleged underpayment, the Grantee shall have thirty (30) days from the receipt of the report to provide the Franchising Authority with a written response agreeing to or refuting the results of the audit, including any substantiating documentation. Based on these reports and responses, the parties shall agree upon a "Finally Settled Amount." For purposes of this Section, the term "Finally Settled Amount(s)" shall mean the agreed upon underpayment, if any, to the Franchising Authority by the Grantee as a result of any such audit. If the parties cannot agree on a "Final Settlement Amount," the parties shall submit the dispute to a mutually agreed upon mediator within sixty (60) days of reaching an impasse. In the event an agreement is not reached at mediation, either party may bring an action to have the disputed amount determined by a court of law.

5.2.3. Any “Finally Settled Amount(s)” due to the Franchising Authority as a result of such audit shall be paid to the Franchising Authority by the Grantee within thirty (30) days from the date the parties agree upon the “Finally Settled Amount.” Once the parties agree upon a Finally Settled Amount and such amount is paid by the Grantee, the Franchising Authority shall have no further rights to audit or challenge the payment for that period. The Franchising Authority shall bear the expense of its audit of the Grantee’s books and records.

SECTION 6

Insurance and Indemnification

6.1 Insurance Requirements. The Grantee shall maintain in full force and effect, at its own cost and expense, during the term of the Franchise, Commercial General Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage. The Franchising Authority shall be designated as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon commencement of this Franchise Agreement, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.

6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its elected officials, officers, employees, agents and volunteers from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System and which arise out of the Grantee’s acts or omissions pursuant to or related to this Franchise Agreement and to pay all costs, including reasonable attorney’s fees incurred by the Franchising Authority in defense of such claims, provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority to the extent of any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

6.3 Bonds and Other Surety Except as expressly provided herein, the Grantee shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Franchise or continuing its existence. The Franchising Authority acknowledges that the legal, financial, and technical qualifications of the Grantee are sufficient for compliance with the terms of the Franchise and the enforcement thereof. The Grantee and the Franchising Authority recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for services. In order to minimize such costs, the Franchising Authority agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefore. The Franchising Authority agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$10,000, conditioned upon the substantial performance of the material

terms, covenants, and conditions of the Franchise. Initially, no bond or other surety will be required. In the event that a bond or other surety is required in the future, the Franchising Authority agrees to give the Grantee at least 60 days prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in Grantee's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Franchise or afford compliance therewith.

SECTION 7

Enforcement and Termination of Franchise

7.1 Notice of Violation. In the event that the Franchising Authority believes that the Grantee has not complied with the terms of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of the alleged noncompliance.

7.2 The Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 Enforcement. Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in default of any provision of the Franchise, the Franchising Authority may:

- A. Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or seek other equitable relief; or
- C. In the case of a substantial default of a material provision of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 Revocation. Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, the Franchising Authority shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Franchise shall be revoked. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority *de novo*. Such appeal to the appropriate court must be taken within sixty (60) days of the issuance of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

SECTION 8

Miscellaneous Provisions

8.1 Actions of Parties. In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.2 Entire Agreement. This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority. Amendments to this Franchise shall be mutually agreed to in writing by the parties.

8.3 Notice. Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, or c) within five (5) business days after having been posted in the regular mail.

The notices or responses to the Franchising Authority shall be addressed as follows:

Nibley City
Attn: Mayor
455 W. 3200 S.
Nibley, Utah 84321

The notices or responses to the Grantee shall be addressed as follows:

Comcast Cable Communications
Attn: Government Affairs
9602 South 300 West
Sandy UT 84070

with a copy to:

Comcast Corporation
Legal Department
1701 John F Kennedy Blvd.
Philadelphia PA 19103

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

8.4 Descriptive Headings. The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.

8.5 Severability. If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection,

sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.

8.6 Effective Date. The effective date of this Franchise is the 15th day of October, 2015 pursuant to the provisions of applicable law. This Franchise shall expire on the 15th day of October of 2030 unless extended by the mutual agreement of the parties.

IN WITNESS WHEREOF, the City has entered into this Franchise Agreement on the date first considered above.

Nibley City

Signature: _____
Shaun Dustin, Mayor

ATTEST:

David Zook
City Manager

Accepted this ____ day of _____, 2015, subject to applicable federal, state and local law

Comcast of Indiana/Kentucky/Utah, Inc.

Signature: _____

By: _____

Title: _____

MITIGATION AGREEMENT

Pertaining to Application to Appropriate No. 25-111236 (A78054a) Filed by Nibley City and Cache County

THIS MITIGATION AGREEMENT (“Agreement”), is made and executed effective as of this ____ day of _____, 2015 (the “Effective Date”), by and among NIBLEY CITY, a Utah municipal corporation (the “City”), CACHE COUNTY CORPORATION, a county of the State of Utah (the “County”), and COLLEGE IRRIGATION COMPANY, a Utah nonprofit corporation (the “Company”). The City, the County and the Company are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The City and the County are co-applicants (“Applicants”) in the filing of that certain Application to Appropriate Water, Water Right No. 25-11236, A78054a (the “Application”), which proposes to divert 1201.0 ac-ft of water from four groundwater wells for municipal use within the City and other public uses as described in the Application. The Application represents a segregated portion of unapproved Application to Appropriate No. A78054 filed in 2008 by the County, which seeks to appropriate a total of 13,031.4 ac-ft of water.

B. The Parties hereby acknowledge that under the Interim Cache Valley Groundwater Management Plan published by the Utah Division of Water Rights (“Groundwater Management Plan”), the State Engineer has determined that there is a one-to-one ratio in terms of impact to the Bear River and its tributaries from surface waters for every acre-foot of groundwater diverted in Cache Valley.

C. The Parties further acknowledge that the filing of the Application and the diversion and use of water thereunder is governed by the Groundwater Management Plan, which, among other things, requires, as a condition to the approval of any new application to appropriate water in Cache Valley, that water replacement and/or other adequate compensation be made to mitigate against any impairment to the prior rights of all prior appropriators including those which are downstream water right holders (“Downstream Right Holders”), that will occur as a result of depletions resulting from the City’s diversion and use of water as proposed under the Application. For purposes of this Agreement, “Downstream Right Holders” shall be defined to mean the Bear River Water Users Association, and PacifiCorp.

D. The City owns 265.0 shares of stock in the Company. Copies of the certificates representing the City shares of Company stock are part of the application referenced above and incorporated by reference herein (the “City Stock”).

E. Under the mitigation plan filed in support of the Application attached thereto as Exhibit B (the “Mitigation Plan”), the County and the City have proposed that the water to which the City is entitled under the City Stock will not be diverted and/or otherwise delivered by the Company to any shareholder or other person for any use or purpose. Such water will not be beneficially used by the Company or any shareholder, but will be left to freely run downstream or remain in the aquifer as compensation to the Downstream Right Holders (“Mitigation Use”). This compensation water shall replace the groundwater depletions arising out of the City’s diversion and use of water under the Application.

F. Under the Mitigation Plan, the County and the City have identified and mapped lands historically irrigated under the City Stock. The maps identifying said land are a part of the application referenced above and are incorporated herein by reference. It is acknowledged by the Parties that in a normal water year, the quantity of water allocated to the City under its 265 City Shares is sufficient for the irrigation of the 270 acres referenced in the Application. For purposes of providing and accounting for water for Mitigation Use as required under the Application, the Parties desire to establish that the lands historically irrigated under the City Stock, shall no longer be irrigated by Company irrigation water, and the total number of Company irrigated acres in any given year must be permanently reduced by 270 acres.

G. The purpose and intent of this Agreement is to set forth the terms and conditions pursuant to which the Company's water supply shall be administered, released and monitored for Mitigation Use so as to effectively achieve the water replacement and compensation required herein.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. USE OF COMPANY WATER FOR MITIGATION PURPOSES. The Company hereby agrees that water under the City Stock may be utilized for Mitigation Use in connection with the diversion and use of water by the City under the Application, subject to the following:

(a) The Company hereby expressly represents, acknowledges and agrees that the use of water under the water rights of the Company has been duly authorized by the Company's board of directors for Mitigation Use.

(b) The Company represents that the City Stock is in good standing with the Company, and title to the City Stock is held by the City according to the Company's books and records.

(c) The Company hereby represents that the City's right to the use of water under its shares has not been lost due to abandonment or forfeiture for non-use.

(d) The City hereby expressly acknowledges, represents, covenants and agrees that the water to which it is entitled under the City Stock shall be perpetually and irrevocably dedicated to providing a water supply for Mitigation Use in conformance with the terms and provisions of this Agreement so long as water is diverted and used by the City under authority of the Application and/or any change application filed on the Application, as well as under any water users claim, certificate of beneficial use, proposed determination, decree or other document or order authorizing and/or perfecting the City's use of water applied for under the Application.

(e) The Company shall promulgate and/or otherwise amend its bylaws, rules, regulations and/or policies (providing a bylaw provision substantially similar to the provision set forth in EXHIBIT "A", and effectively enforce the same, so as to put into place measures to ensure that:

(1) The water to which the City is entitled under its City Stock is dedicated solely to Mitigation Use as described herein;

(2) The water supply under the City Stock to be dedicated by the Company for Mitigation Use will not be authorized to be diverted by and/or delivered to any other shareholder in the Company or other person for any other use or purpose other than Mitigation Use to support the Mitigation Plan submitted in conjunction with the Application.

(3) The 270 acres historically irrigated by water under the City Stock will be identified, legally described and mapped in the Company's records, and be taken and remain out of irrigation.

(f) The Company agrees that neither the historically irrigated land nor any other land shall be authorized to be irrigated with the water to which the City is entitled under the City Stock.

(g) The Applicants shall comply with all applicable requirements and conditions imposed by the State Engineer's Order approving the Application as the same may apply to the use of Company water under the City Stock for Mitigation Use in connection with the Application, which may include the following:

(1) The Applicants, in cooperation with the Company, shall install, operate, maintain, and regularly monitor measurement devices as required by the State Engineer, so as to provide an ongoing accurate record of the quantity of water diverted by the Company into its irrigation system. The measurement data generated shall be used in verifying that the water required for Mitigation Use is not diverted or otherwise delivered by the Company for irrigation of the historically irrigated lands or any other lands, and/or for any use or purpose other than Mitigation Use pursuant to the terms and conditions of this Agreement.

(2) The Applicants shall provide a report of the water measurements as required by the State Engineer, which report shall be available for review by the Downstream Right Holders, on an annual basis.

2. COMPANY AUTHORITY. The Company hereby represents that it has the full right, power and authority to enter into this Agreement and to perform all acts and obligations required of it hereunder.

3. CONDITION TO APPROVAL OF THE APPLICATION. The Parties hereby acknowledge and agree that compliance with the terms and provisions of this Agreement may be imposed by the State Engineer as a condition to approval of any order or memorandum decision of the State Engineer issued in connection with Application.

4. DEFAULT. In the event of a failure by the City, the County or the Company to observe and perform any of the terms and provisions of this Agreement, a Downstream Right Holder may provide written notice of such failure to the City, County and Company. If said failure is not cured within fifteen (15) days after such written notice, the failure shall be deemed to constitute a default and breach of this Agreement; however, in event the default is such that it cannot be cured within said fifteen day period, there shall be no event of default if the defaulting Party shall commence to cure the default within the fifteen day period and proceeds thereafter to cure the default with all possible diligence, and the default is cured within a reasonable period. In the event the default is not cured as provided herein, the

Downstream Right Holders shall have any and all remedies available to them at law or in equity.

5. **NOTICES.** Any and all notices, demands, or other communications required or desired to be given hereunder by any Party shall be in writing and shall be validly given or made to another Party if served either personally or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice, demand or other communication be served personally, service shall be conclusively deemed at the time of such personal service. If such notice, demand or other communication be served by mail, such notice shall be conclusively deemed given two business days after the deposit thereof in the United States mail addressed to the Party to whom such notice, demand or other communication is to be given as hereinafter set forth:

To the City:

Nibley City Corporation
455 West 3200 South
Nibley, UT 84321
Attn: City Manager

To the County:

Cache County
199 North Main Street
Logan, UT 84321
Attn: County Executive

To the Company:

College Irrigation Company
2352 South Hwy 89-91
Logan, UT 84321
Attn: President

Any Party hereto may change its address for the purpose of receiving notices, demands and other communications as herein provided by a written notice given in the manner aforesaid to the other Parties.

6. MISCELLANEOUS PROVISIONS.

(a) Further Assurances. Each of the Parties hereto shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the Parties hereto.

(b) Modification and Amendment. This Agreement, and all rights, covenants and restrictions set forth herein, may not be terminated, extended, modified or amended without the consent of all of the Parties, and any such termination, extension, modification or amendment shall be effective only upon a written document effecting the same, duly executed and acknowledged by all of the Parties.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and to their respective successors-in-interest and assigns.

(d) Third-Party Beneficiaries. It is hereby acknowledged and agreed that this Agreement has been entered into by the Parties directly and primarily for the benefit of the Downstream Right Holders, and that the purpose and intent of the Mitigation Plan provided for herein is for the protection of the rights of Downstream Right Holders from impairment arising out of the diversion and use of water by the City and County under the Application. As such, the Parties hereby acknowledge and agree that all Downstream Right Holders are third-party beneficiaries under this Agreement.

(e) Integration. This Agreement constitutes the entire understanding and agreement of the Parties and any and all prior agreements, understandings or representations relating to the matters addressed herein are hereby terminated and canceled in their entirety and are of no force and effect.

(f) Waiver. The waiver by any Party of a breach of any provision of this Agreement shall not be deemed a continuing waiver of any subsequent breach whether of the same or another provision hereof.

(g) Construction. This Agreement is the result of negotiations between the Parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

(h) Applicable Law and Severability. This Agreement shall, in all respects, be governed by the laws of the State of Utah. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation, the latter shall prevail and the provision of this document which is affected shall be curtailed and limited to the extent necessary to bring it within the requirements of the law.

(i) Incorporation of Recitals. The Recitals hereto are incorporated into and made a part of this Agreement.

(j) Warranty of Authority. The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

NIBLEY CITY

By: _____
Its:

CACHE COUNTY

By: _____
Its:

COLLEGE IRRIGATION COMPANY

By: _____
Its:

EXHIBIT “A”

BYLAW PROVISION AUTHORIZING MITIGATION USE

The Company bylaw provision authorizing mitigation use shall be substantially similar to the following:

A shareholder of the Company is authorized, subject to and in conformance with the provisions of this Section, to dedicate Company shares (“Mitigation Shares”), for the purpose of implementing a plan approved by the State Engineer to mitigate impairment of an existing right (“Mitigation Plan”), as provided for in Section 73-3-8(6)(b)(iii), Utah Code Ann. 2015, in connection with a new application to appropriate water or a permanent or temporary change application (“Application”), filed with the State Engineer by such the shareholder (“Mitigation-Use Shareholder”). As a condition to said dedication:

(1) The Company and the Mitigation-Use Shareholder shall be required to enter into a written mitigation agreement (“Mitigation Agreement”), setting forth the terms and conditions of such use and the procedure by which such use shall be implemented and maintained by the Company and the Mitigation-Use Shareholder. The Mitigation Agreement shall be incorporated into the Mitigation Plan to be submitted by the Mitigation-Use Shareholder to the State Engineer in connection with the Application, and shall provide, among other things: (i) that the water which would otherwise be delivered by the Company under the Mitigation Shares shall be dedicated solely to mitigation use and will not be beneficially used by the Company or any other shareholder, but will be left to freely run downstream or remain in the aquifer to mitigate downstream impairment, and (ii) that the acreage historically irrigated by the water under said shares be identified, legally described, mapped in the Company records and be taken and remain out of irrigation so long as the Mitigation Shares remain dedicated for mitigation purposes.

(2) The Mitigation-Use Shareholder shall be authorized and obligated to construct and install such measuring devices within the Company system as shall be required by the State Engineer in connection with an order approving the Application to which the Mitigation Plan applies. All such measuring devices shall be constructed and installed pursuant to Company plans and specifications and under the Company’s direct supervision. It shall be the sole responsibility of the Mitigation-Use Shareholder to thereafter operate, maintain, repair and monitor any such measuring devices and provide such reports as shall be required by the State Engineer. All costs and expenses incurred in the construction, installation, operation, maintenance, repair, and monitoring of any such measuring devices and for any reports related to the same, shall be borne solely by the Mitigation-Use Shareholder.

(3) Any and all other costs and expenses incurred by the Company in connection with the Mitigation Agreement and Mitigation Plan of the Mitigation-Use Shareholder, and any activity, requirement of other obligation of the Company arising in connection therewith, shall be reimbursed by the Mitigation-Use Shareholder to the Company as billed by the Company. In the event the Mitigation-Use Shareholder shall fail to pay the same as and when due, the Company shall be authorized to rescind the Mitigation Agreement and so notify the State Engineer.

RESOLUTION 15-08

A RESOLUTION OF THE NIBLEY CITY COUNCIL ADOPTING THE 2015 PRE-DISASTER MITIGATION PLAN: BEAR RIVER REGION

WHEREAS, the Nibley City Council recognizes the threat that natural hazards pose to people and property within Nibley City; and

WHEREAS, Nibley City has participated in the creation of a multi-hazard mitigation plan, hereby known as the 2015 PRE-DISASTER MITIGATION PLAN: BEAR RIVER REGION in accordance with the Disaster Mitigation Act of 2000; and

WHEREAS, the 2015 PRE-DISASTER MITIGATION PLAN: BEAR RIVER REGION identifies mitigation goals and actions to reduce or eliminate long-term risks to people and property in Nibley City from the impacts of future hazards and disasters; and

WHEREAS, adoption by the Nibley City Council demonstrates their commitment to hazard mitigation and achieving the goals outlined in the 2015 PRE-DISASTER MITIGATION PLAN: BEAR RIVER REGION.

NOW, THEREFORE, BE IT RESOLVED BY THE NIBLEY CITY COUNCIL THAT:

The Nibley City Council hereby adopts the 2015 PRE-DISASTER MITIGATION PLAN: BEAR RIVER REGION.

This resolution shall be effective on the date it is adopted.

APPROVED AND ADOPTED by the Nibley City Council this _____ day of _____, 2015.

ATTEST

Shaun Dustin, Mayor

David Zook, City Recorder

RESOLUTION 15-09

A RESOLUTION OF THE NIBLEY CITY COUNCIL REQUESTING THE RECERTIFICATION OF THE NIBLEY CITY JUSTICE COURT

WHEREAS, the provisions of U.C.A. 78A-7-103 require that Justice Courts be recertified at the end of each four-year term; and

WHEREAS, the term of the present Court shall expire on the 31st day of October, 2015; and

WHEREAS, the members of the Nibley City Council have received an opinion letter from Bruce Jorgensen, Nibley City Attorney, which sets forth the requirements for the operation of a Justice Court and feasibility of continuing to maintain the same; and

WHEREAS, the members of the Nibley City Council have determined that it is in the best interests of Nibley City to continue to provide for a Justice Court;

NOW, THEREFORE, BE IT RESOLVED, the Nibley City Council hereby requests recertification of the Nibley City Justice Court by the Justice Courts Standards Committee and the Utah Judicial Council.

BE IT FURTHER RESOLVED that the Nibley City Council of Nibley City hereby affirm their willingness to continue to meet all requirements set forth by the Judicial Council for continued operation of the Nibley City Justice Court for the next four-year term of court, except as to any requirements waived by the Utah Judicial Council.

This resolution shall be effective on the date it is adopted.

APPROVED AND ADOPTED by the Nibley City Council this _____ day of _____, 2015.

ATTEST

Shaun Dustin, Mayor

David Zook, City Recorder

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

August 22, 2015

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

Mayor Shaun Dustin
Nibley City Hall
455 W. 3200 S
Nibley, UT 84321

Dear Mayor Dustin,

State statute requires that municipal justice courts be recertified by the Utah Judicial Council every four years, and the certification for your municipal justice court expires this coming February. Enclosed please find a recertification packet that includes an application for certification. Copies of this packet are also being sent to your justice court judge and city attorney. A copy is available for review on the courts' web site as well at: <http://www.utcourts.gov/courts/just/resources.html>. In order to be recertified, a municipality must submit a resolution adopted by your municipal legislative body that requests recertification and agrees to continue to comply with the operational standards for the term of recertification, an opinion letter from the city attorney, and a completed and signed affidavit submitted by the municipal justice court judge. All three items are described in more detail in the application for recertification.

All three components of the recertification application are due at the Administrative Office of the Courts by October 30, 2015. The completed packet should be mailed to: Justice Court Standards Committee, Attention: Richard Schwermer, Administrative Office of the Courts, P. O. Box 140241, Salt Lake City, UT 84114-0241.

Thank you for your continued commitment to a quality local judiciary, and please call me if you have any questions about this recertification process.

Sincerely,



Richard H. Schwermer
Assistant State Court Administrator

nm

Enclosure

cc: Municipal Justice Court Judge
City Attorney

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

OLSON & HOGGAN, P.C.

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September 15, 2015

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Mayor Shaun Dustin
David Zook, City Manager
City of Nibley
455 West 3200 South
Nibley, UT 84321

**Re: *Opinion Letter Regarding Recertification of Nibley City Justice Court
Our File No. N-6512.N (N-8438)***

Dear Mayor Dustin and David:

I have reviewed the requirements for the recertification of the Nibley City Justice Court. State law requires a written opinion from the City Attorney advising you of the requirements for the recertification of the Justice Court and of the feasibility of maintaining the Court. This opinion letter is to be submitted with a Court Certification Affidavit completed and signed by the Judge, a copy of a duly passed Resolution of the City Council, requesting the recertification of the Court and affirming the City is willing to meet all requirements for the operation of the Court during the period of certification, and a copy of the City's Court Security Plan, to the Justice Court Standards Committee of the Administrative Office of the Courts by October 30, 2015, in order to properly apply for the recertification of the Court.

The Utah Judicial Council, pursuant to state statute, has set forth the operational standards and the minimum requirements for a justice court. It is my understanding that copies of the statutory operational standards, minimum courtroom/office standards, and the Judicial Council's minimum operational standards/requirements for your court have been sent directly to the City and given to the Judge, so I won't send another set of copies, unless you request them. Please note that these are the minimum requirements and it may be necessary for the Court to exceed these minimum requirements depending on the caseload and the requirements from the state once they have reviewed your application.

In reviewing the operational standards and requirements, it is my opinion that the City of Nibley meets, or can take steps to meet, all requirements concerning the judge, clerks and facilities.

Mayor Shaun Dustin
David Zook, City Manager
City of Nibley
September 15, 2015
Page 2

Also, the City meets, or will meet as required, all requirements concerning prosecution, indigent defense, legal resources, law enforcement, bailiff, jury/witness fees, education and reporting.

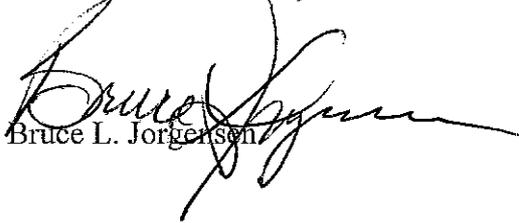
Based upon my review of the operational standards and minimum requirements, upon my discussions with appropriate City officials, and upon my knowledge of the operation of your Justice Court, together with the fact that the Court has been operating for many years now and Judge Cook is well-trained as a Municipal Justice Court Judge, it is my opinion that it is feasible for Nibley to maintain its Justice Court. I anticipate that the services rendered will continue to be professional and that the Justice Court will continue to provide satisfactory services to Nibley.

Judge Cook and his staff have done a good job in operating the Court. It is my opinion that the Nibley City Justice Court can be maintained and that the City should file for recertification with the State Court Administrator's Office, if the City Council determines to do so.

If I can be of further assistance concerning the recertification process, do not hesitate to contact me.

Very truly yours,

OLSON & HOGGAN, P.C.



Bruce L. Jorgensen

BLJ/jhb

cc: Mayor Ed Buist
251 West 300 South
Mendon, Utah 84325

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RESOLUTION 15-10

**A RESOLUTION ESTABLISHING THE POLLING PLACE, APPOINTING POLL WORKERS
AND SETTING THE RATE OF PAY FOR THEIR SERVICE**

BE IT RESOLVED BY THE NIBLEY CITY COUNCIL THAT:

1. The polling place for 2015 Municipal General Elections shall be Nibley City Hall, located at 455 West 3200 South in Nibley.
2. The following persons are appointed as poll workers for the November 3, 2015 Municipal General Election:

Lisa Ward
Nancee Jabbs
Diane Marvin
Cheryl Bodily
Shari Phippen
Stephen Nelson
Jean McPhie

2. Poll workers shall be paid \$ 10.00 per hour.
3. Attendance at training meetings shall be compensated at a rate of \$10.00 per hour or portion thereof.

This resolution shall be effective on the date it is adopted.

APPROVED AND ADOPTED by the Nibley City Council this _____ day of _____, 2015.

ATTEST

Shaun Dustin, Mayor

David Zook, City Recorder