Minutes of a regular Santaquin City Council meeting held Wednesday, March 17, 1982, at City Hall. Mayor Sandra Armstrong presided at the meeting and the following Councilmen were present: Sherman Jones, Newell Checketts, Dan Olson and Grant Pay, who entered the meeting at 8:28 P.M.. Walter Callaway was absent because of work committments. The public and governing body were notified of the meeting as required by law. City Treasurer Ramona Rosenlund recorded the minutes and City Recorder Sam Sellers transcribed them.

The following citizens were present: Mrs. Inez Stock, Mike Olson, George Finch, Mr. and Mrs. Frank Tuckett and Clint Cornwell.

Mayor Armstrong called the meeting to order at 7:13 P.M. She also offerred the invocation and led the pledge of allegience.

Prior minutes. The minutes of March 3, 1982, were reviewed by the Council. Councilman Jones recommended that the section dealing with the water rates and fees be changed to read: "Councilman Jones introduced the resolution and stated that the only changes would be the amount charged for overage to $.40 per 1,000 gallons and to add $100.00.....". He also asked that section i read: "Any request for a seperate water connection for a packing shed inside and/or outside the City limits shall be considered as a new water hookup and limited to a standard 3/4" hookup... Other packing sheds may use water supplied from the residential hookup."
Councilman Olson asked that the County Commissioners reply as the wear and tear provision be placed in the minutes, therefore the following shall be added to the end of this section: "The Commissioners replied that they could not do this unless all agreements in the County were ammended." He also asked that no. 8 of Council Business have "and Elfawn" striken as Mr. Elfawn Wall was not tried the same night.
Councilman Olson moved that the minutes be accepted as corrected and Councilman Checketts seconded. The motion passed unanimously.

County Fire Agreement. Councilman Olson indicated that he had reviewed the agreement with Jim Peterson, the Fire Chief, and felt the agreement was as good as the City could get. He said that they would work with other cities to get a wear and tear provision in the future. Councilman Olson moved that the City accept the Fire Agreement with Utah County. Councilman Checketts seconded the motion and it passed unanimously.

George Finch - Business License. Councilman Checketts said that he and Councilman Callaway had met with Mr. Finch and there seemed to be discreptancies in the past as to what Mr. Finch should do. Mayor Armstrong asked Mr. Finch what he thought about a proposed fence and he said he did not like it.
Mayor Armstrong asked if Mr. Finch had ever agreed on putting up a fence in the past and he said that the past Councils had agreed that he did not have to have a fence.
Councilman Jones said that past Councils had asked Mr. Finch to put up a fence in the past, but apparently allowed him to have his license without enforcing the fence issue.
Mr. Finch said that the Council held his license up in the past while

they issued Kesters, Tischners and Cream 'O Weber, which he felt was not fair. Mr. Finch said that when he first moved to Santaquin and moved his cars in, there was a fence on the property which was full of weeds and wild rose bushes. He further alledged that Santaquin City's crew tore the fence, weeds and roses down and exposed the cars to public view without his permission. When asked by the Council why, he said he did not know.
Mr. Finch did admit that the fence was not a solid fence, but a pasture type fence.
Mr. Finch stated that there are a lot of things which have been said in Council meetings which are not in the minutes.
Mayor Armstrong said that it was their understanding that the minutes showed that Mr. Finch had been asked in the past to put up a fence and this is what the Council is again asking him to do. Mr. Finch said that the Council decided to give him the license and he did not put up a fence and never heard of it again until just recently. Mayor Armstrong said that this did not make it right and the feeling is now to have the fence put up.
Councilman Jones asked Mr. Finch if he would cooperate with the City or if he would fight putting up a fence. Mr. Finch said that he is in no position to give the City problems, but it would interupt his operation by shorting him ground (even though he admitted he does not have the right to place the vehicles on City property and will keep them off) and putting more work into getting to his cars. The Council said that it appears Mr. Finch has too many cars for his property and he admitted that he does. Mr. Finch said that the fence will cut one-third of his storage out and cause him to do twice the work as in the past.
Councilman Jones asked Mr. Finch how long he was planning on having the junk there and Mr. Finch said that he would have it there just as long as it takes for him to find a job he can make a living at or draw old age pension.
Councilman Jones asked Mr. Finch how long it will take him to put up a fence as this is what he will have to do. Mr. Finch asked what type of fence. Councilman Jones said that it would have to be a solid fence, either chain link with stays or a wood fence. Mayor Armstrong said it would need to go clear around. Mr. Finch asked why and she and Councilman Jones said that he needed to enclose his business.
Councilman Jones said that the City would allow Mr. Finch to think about this if he needs to. Mr. Finch said he would like to consider this.
When asked, Mr. Finch said that he doubted his neighbors would be able to help him on the fence.
Mr. Finch said that he could not give a definate time as to when he could have a fence up, as there will be problems with moving machinery, trees and bushes.
Councilman Pay, who entered the meeting during the conversation, stated that the frontages are what the City is most concerned with at the present and getting the cars off the City property.
Mayor Armstrong asked if Mr. Finch is suggesting he cannot conduct business if the fence is placed on the North side and he said he could, but it would be difficult.
Mayor Armstrong asked if they should ask Mr. Finch to fence the West and North sides first. Mr. Finch said that he is definately not going

to fence the West side as this is his garden and house side. Councilman Checketts said that this would only go in front of where the cars are.
Councilman Jones said that maybe the City should not issue the license if Mr. Finch is not going to cooperate with the City. Mr. Finch said that he would start as soon as he can. Councilman Jones said that Mr. Finch may start and then refuse to complete the fence, but the license could still be revoked.
Mr. Finch said that he would begin working on the fence but could not give a definate time when he could get it finished.
Councilmen Jones and Olson felt that Mr. Finch should be given a chance to put the fence up and they shouldn't choke off a person's business.
Councilman Checketts said that he and Councilman Callaway were asked by the Mayor to look at the situation and make a recommendation and he felt the whole property should be fenced as it is in a residential area, but this would cause a hardship on Mr. Finch.
Councilman Checketts moved that the Council table the final decision until they can take a look at Mr. Finch's place and then a final decision will be made on the 7th of April, 1982. Councilman Jones seconded the motion and it passed unanimously.

Resolution No. 1982-5 (Consolidation of checking account). Mrs. Rosenlund gave some background as in the past the City had one checking account for each fund and the auditor, three years ago, suggested the consolidation, but this had never been done by resolution. She further stated that all revenues go into a saving account and when a check is written the money is transferred from the savings to the checking. The Council reviewed the resolution. Councilman Jones moved that the City pass this resolution and Councilman Pay seconded. The motion passed unanimously by those in attendance.

Resolution No. 1982-7 (Budget Revision). The Council reviewed this resolution. Councilman Jones stated that this is the first time the budget has been revised this year. Councilman Checketts moved that this resolution be adopted by the City and Councilman Jones seconded. The motion passed unanimously by those in attendance.

Resolution No. 1982-6 (Revenue Sharing). The Council reviewed this resolution. Mrs. Rosenlund pointed out that this is to expend 1981-1982 moneys. Councilman Jones moved that the City pass this resolution and Councilman Pay seconded. The motion passed unanimously by those present.

Agreement with M.A.G. - Senior Citizen. Mr. Frank Tuckett was present in the meeting. Mr. Tuckett and Councilman Checketts said that they had not had a chance to read the agreement. Mr. Tuckett said that there has been a lot of confusion in the past as to what Mountainlands wants. Mrs. Rosenlund said that the City never sees the checks and they want the City to be responsible for the checks. Councilman Checketts said that Mr. Chandler of MAG said he would get a clarification on this and get back to him but has not. He said that he would check with Mr. Chandler.

Mr. Tuckett asked if the City had ever heard anything about the awning which had fallen down. He also asked that the awning, when it is replaced, go out to the edge of the asphalt so it will not drip onto the cement.

Council Business.

1. Planning and Zoning replacement. Councilman Olson moved that Mr. Jim Corry be appointed on the Planning and Zoning Commission. Councilman Checketts seconded the motion and it passed unanimously.

3. Business Licenses. The following licenses were reviewed by the City Council:
Wayne Smith - Business for "Perkin's Palace" ($25.00); 2 pool tables for one year ($50.00); 1 juke box for six months ($30.00); 1 pin ball machine for six months ($30.00); and a beer license for the first and second quarters of 1982 ($120.00).
Robert Hales - Business license for "This is the Place Real Estate" ($15.00).
Edwin Westover - Business license for "Steel Buildings Outlet" ($25.00).
Lynn Crook - Business license for "D. Lynn Crook Insurance Agency" ($25.00).
Greg Fowkes - Business license for "Distinctive Decorating" ($15.00).
David Smith - Business license for "Summitt Creek Kennels" ($15.00).
David Smith - Business license for "Smith Bros. Cabinet and Mill" ($15.00).
Tischner Ford - ($75.00).
Pat Openshaw - Business license for "Patricia's Coiffures" ($15.00).
Jeff Jarvis - Business license for "Intermountain Janitorial & Window Cleaning Services" ($15.00).

The Council felt they should hold up on the Kennel license for Mr. Smith until the City could determine whether he could have this kennel in the zone he lives. Councilman Checketts moved that the kennel license not be given and Councilman Olson seconded. The motion passed unanimously.
It was determined that Mr. Jarvis' business is in the Westover Subdivision and the protective covenants will not allow a business. Mrs. Rosenlund said that she is not sure as to who is to enforce the covenants. She stated that Mr. Jarvis had gone to the Westovers and they had said he could have it there. The license will come under the Home Occupation part of the Zoning Ordinance. The covenants say that only residences may be built in the Subdivision. Councilman Olson said that Mr. Jarvis is in a trailer which is not allowed and Mrs. Rosenlund stated that that trailer went into the Subdivision after the covenants and should never been allowed. She said that it went in as a temporary situation and has never been moved out.
Mayor Armstrong said that this is another problem which the City has to straighten out which has been caused by former administrations. Councilman Jones asked who is supposed to enforce the covenants, the City or Westovers? Councilman Checketts moved that the City table the request until more information can be determined.
Councilman Jones asked if a business can be run out of a home being

used for a residence. Mrs. Rosenlund read from the covenants which stated that the properties can only be used for residential purposes. Councilman Olson said that the City should be the one enforcing the covenants and that Mr. Westover should not be telling people they can have a business in their homes. Councilman Jones read the covenants and said he felt Mr. Westover should be enforcing the covenants. Councilman Olson was asked to approach Mr. Westover and ask him how he can allow people to apply for a business license when the covenants state they cannot acquire one.
Councilman Jones moved that the City issue all the licenses except the kennel license for David Smith and the cleaning license for Jeff Jarvis. Councilman Checketts seconded the motion and it passed unanimously.

4. Post Office specs. Councilman Olson said that these specs were almost completed.

5. Mountain Fuel requests for hooking up homes. Mrs. Rosenlund outlined the problems and stated that it might perhaps be better and smoother if Mr. Sellers sign the requests for hook ups and other work. Councilman Checketts moved that Mr. Sellers be allowed to sign the requests for services from Mountain Fuel Supply and Councilman Jones seconded. The motion passed unanimously.

Sherman Jones. Councilman Jones brought out a letter from Mr. Robert Fillerup and asked if the letter could be made a part of the minutes. The letter spells out the history of the Genola water problem and also gives some suggestions on what the City should do. Councilman Jones moved that the letter be made a part of the minutes and Councilman Olson seconded. The motion passed unanimously.

Councilman Jones also said that he has an agreement with Summitt Creek on the flood control canal by the Alexander Subdivision and now needs the City's approval. Councilman Jones moved that the City accept the agreement with Summitt Creek. Councilman Checketts seconded the motion and it passed with Councilmen Checketts, Pay and Jones voting in favor and Councilman Olson abstaining.
Councilman Jones said that the residents have agreed to pay a certain amount of dollars per foot as well.

Newell Checketts. Councilman Checketts recommended the Council meet with Mr. Finch on Saturday, March 20, 1982.

Clint Cornwell. Mr. Cornwell reported that the landfill site had been pushed this day and that it had taken two hours. He also stated that some hot ashes which had been picked up by the truck had started another fire which started after the truck was unloaded.

Dan Olson. Councilman Olson reported on the Terrel Wall trial. He wanted the results made a part of a public document in case it ever comes up again. Councilman Olson said that the jury did find Mr. Wall guilty of violating the water (No. 158) and zoning (No. 152) ordinances.
Councilman Olson reported that he had not been able to get with Mr.

Hans Jacobsen on his fence as yet.
Councilman Olson asked if the City was going to do anything on the Gammell request. Councilman Jones moved that the City should not go along with Dr. Gammell on the zone change in Pole Canyon and Councilman Olson seconded. The motion passed unanimously.
Councilman Olson said that, in a conversation with the Fire Chief, the subject of a matching fund from the Forest Service came up. In prior years, the City had received $750.00 and they did not get this last year. Councilman Olson said that Mr. Peterson had said this was recorded somewhere.

Mayor Armstrong said that the budgets need to be in by the first of April, 1982.

Current Bills. The Council reviewed the following bills:
Computer Resources - $1.50.
Bradshaw Auto Parts - $9.45.
Intermountain Farmers - $7.28.
Mountain Fuel - $671.88.
Mountainlands - $197.05.
Utah County Auditor - $39.10.
Utah Power & Light - $2583.82.
Whitmore - $197.11.
Howard, Lewis & Peterson - $209.50.
Earl Andrews - $60.00.
Imperial Bank - $893.39.
Pearson Tire - $15.42.
Municipal Clerks - $30.00.
Lewis & Guymon - $50.00.
Total $4,965.50

Councilman Jones moved that the City pay its bills and Councilman Pay seconded. The motion passed unanimously.

Councilman Jones moved that the meeting stand adjourned and Councilman Olson seconded. The motion passed unanimously at 9:35 P.M.

Passed this 7 day of April, 1982.

Sandra Armstrong
Mayor

Attest: Sam Sellers
Sam Sellers
City Recorder

ROBERT C. FILLERUP
ATTORNEY AT LAW
1325 SOUTH 800 EAST, SUITE 305
OREM, UTAH 84057

Phone 226-0992 RECEIVED MAR 8 1982

March 5, 1982

Mr. Sherman Jones
Santaquin City Councilman
68 East Main Street
Santaquin, Utah 84655

Re: Genola Water Contract

Dear Sherm:

As per your request, the purpose of this letter is to provide you with a legal opinion respecting the continued validity of certain provisions of the Santaquin-Genola water contract, dated August 18, 1936. Specifically, you requested that I analyze the provision of that contract that requires Genola to pay $30.00 annually to Santaquin for the maintenance and upkeep of the Santaquin water system.

To comply with your request, I was required to do extensive historical and legal research. Specifically, I studied the minutes of Santaquin City Council meetings for 8 months preceding the date the contract was executed and for over a year thereafter. I obtained and carefully reviewed all of the pertinent documents contained in the two litigation files maintained by the Utah County Clerk. Those documents, of course, were generated during the course of the original breach of contract litigation between Genola and Santaquin, as well as the subsequent contempt proceedings brought against Santaquin City officials for refusing to abide by the terms of the original decree. I have also reviewed a transcript of the contempt trial. Finally, I have carefully studied the Utah Supreme Court's three opinions relating to the Santaquin-Genola dispute and the Utah Constitutional provision dealing with the transfer of water rights by a municipality. See, Genola Town v. Santaquin City, 96 Utah 88, 80 P.2d 930 (1938) rehearing denied, 96 Utah 104, 85 P.2d 790 (1938); Genola Town v. Santaquin City, 110 P.2d 372 (1941); Utah Constitution, Article XI, Section VI.

No doubt you are acquainted with the general background of the negotiations which culminated in the execution of the August 18, 1936 contract. A brief review of the contract,

however, might be helpful. Prior to the date the contract was executed, the trustees of Genola determined that, in order to provide the residents of the town with sufficient culinary water for their needs, it was necessary to purchase water from Summit Creek Irrigation and Canal Company and construct an adequate water system to meet those needs. Genola obtained federal assistance and sold bonds to obtain the revenues necessary to accomplish the task. About the time Genola officials began negotiating with the irrigation company for the purchase of .28 second foot of culinary water from Summit Creek, Santaquin City officials approached Genola's town council with a proposal which became the subject matter of the August 18, 1936 contract.

The substance of the proposal was that if Genola would pay Santaquin City $2,500.00 cash, transfer to Santaquin the 60 shares of irrigation company stock Genola owned, and agree to pay an annual maintenance fee, Santaquin would deliver, in perpetuity, 100 gallons per minute of water to a point in the northwest part of the city. At that point, Genola would be allowed to connect a line to further transfer the water to Genola town limits. Both Genola and Santaquin passed appropriate resolutions authorizing their respective officials to execute the contract.

After the contract was executed, however, the citizens of Santaquin, many of whom owned stock in the irrigation company, pressured city officials to rescind the agreement. Apparently the irrigation company at that time was unable to deliver sufficient irrigation water for the needs of its shareholders, and those shareholders who were Santaquin City residents perceived that the agreement between Santaquin and Genola would further tax the water resources available to them. Santaquin officials acceded to the pressure and attempted to rescind the contract. Genola, which had expended approximately $45,000.00 in designing and constructing its water system in accordance with the Santaquin contract, tendered the amounts owing under the agreement, together with the irrigation company shares. Upon Santaquin's refusal to accept the same and connect the Genola system, Genola brought suit.

Santaquin lost the litigation in both the district court and ultimately in the Utah Supreme Court. The Supreme Court specifically held that the terms of the agreement between Genola and Santaquin were unambiguous and provided that Santaquin had an absolute duty, unconditional upon the happening of any event, to deliver 100 gallons of water per minute at the appropriate connecting point in northwest Santaquin. Irrespective of whether Santaquin was capable of meeting the culinary water needs of its own residents, nevertheless, it had a duty to deliver the amounts required by the contract.

The Supreme Court also held that the agreement between Genola and Santaquin did not violate the Utah constitutional provision respecting the transfer of water rights by a municipality. That provision, of course, prohibits the sale by a municipality of any of its water system, sources of water supply, or water rights, except that it may exchange such water rights for rights of equal value to be devoted to public use. The Supreme Court specifically held that the exchange of Santaquin's 100 gallons per minute of culinary water for 60 shares of irrigation company stock, together with the additional monetary amounts, constituted an equal exchange within the meaning of the constitutional provision.

With the foregoing background in mind, it is important that you understand some basic principles of contract law. The touchstone of contractual interpretation is the intention of the parties. In other words, if a question arises as to the meaning of a contractual provision, a court will generally attempt to determine what the intentions of the parties to the contract were at the time the same was drafted and executed. The intention of the parties may be ascertained by the language they used in the agreement itself, together with other facts and circumstances surrounding the negotiation and drafting process. If neither the contractual language itself, nor the circumstances known to have existed at the time the contract was negotiated, are helpful in determining the meaning thereof, a court will examine past dealings between the parties to the contract or a general trade practice in an effort to under-

stand what the parties must have intended. When none of these approaches is helpful in determining what the parties meant by the contractual language they employed, a court may attempt to read the contract in light of what it thinks is a reasonable interpretation.

The provision of the August 18, 1936 agreement you requested I analyze provides:

> It is further understood and agreed between the parties hereto that the town of Genola will pay to the city of Santaquin annually the sum of $30.00 for the maintenance and upkeep of the said Santaquin water system.

The language of the contract appears to state that Genola's only obligation to Santaquin is to pay $30.00 for maintenance of the system. There is no provision in the agreement which limits the obligations of the parties to a stated time period. The Utah Supreme Court, in fact, interpreted the agreement as requiring Santaquin City to perpetually deliver the required amount of water to Genola. Whether that means therefore, the obligation to pay $30.00 is also perpetual was not discussed.

In addition there is no provision in the contract which specifically provides for future increased costs. In other words, Genola would argue that the language of the contract appears to permit Genola to escape paying its fair share of the costs of maintaining the system to the extent such costs exceed $30.00 annually.

Finally, the language of the contract is not particularly specific with respect to whether the $30.00 was for maintenance and upkeep of the entire Santaquin water system, or simply the line from the headhouse to the Genola connecting point. As a result, it is difficult to determine exactly which part of the system the annual obligation was designed to maintain. In short, looking at only the language of the contract itself, it appears to require Genola to pay Santaquin only $30.00 annually for the maintenance of some part of the system.

The facts and circumstances surrounding the negotiation of the contract are largely unknown at present. Many of the persons who participated in the contractual negotiations are no longer living. In addition, I cannot find a transcript of the trial of the original breach of contract litigation. Therefore, I do not have detailed evidence of what the parties intended at the time the contract was negotiated. My general impression is, however, that the parties were so concerned about the constitutionality of the transaction that they did not focus their attention adequately on the maintenance and upkeep provision of the agreement. The $30.00 figure appears to be based upon the costs of maintaining the system at the time the agreement was executed. It is clear that such figure bears absolutely no relationship to the actual costs of maintaining the system today. Since the contract was negotiated during the Depression when inflation was at a standstill, I would wager that the cities, in their wildest dreams, could not have imagined that the costs would rise to todays level.

There are really no trade practices in the area of water exchanges between municipalities, and the course of dealing between Genola and Santaquin prior to the execution of the contract is not helpful with respect to interpreting the language of the instrument itself. Therefore, with respect to matters of interpretation, Santaquin is probably bound by the language of the agreement itself as a court might read it in light of what constitutes a reasonable interpretation.

One reasonable interpretation of the contractual language is that Genola's only obligation to Santaquin respecting maintenance and repair is to tender $30.00 annually in perpetuity. I believe that such an interpretation would result in substantial hardship to Santaquin City. The costs of maintaining Santaquin's water system have obviously risen since 1936. To allow Genola to pay less than its fair share of those costs not only works a hardship on Santaquin, but allows Genola to receive a windfall at Santaquin's expense. The law should not and does not countenance unjust enrichment.

A more reasonable interpretation of the agreement is that Genola should be required to pay its fair share of the maintenance and upkeep of that part of the Santaquin system which is necessary to deliver Genola's 100 gallons per minute to the connection. In other words, Genola should not be required to pay for maintenance and upkeep of collateral lines in the system or of any other aspect thereof which is not necessary to provide the required amount of water at the connection. In short, if Santaquin were to bring a declaratory judgment action requesting that the court interpret the parties' contract in light of present circumstances, the interpretation referred to immediately above would be the more persuasive and, therefore, the interpretation the court would be more likely to adopt.

There are at least two other possible grounds upon which a court might relieve Santaquin of its obligation to accept a mere $30.00 from Genola. First, if a party's performance of a contractual obligation has become impossible by virtue of unforeseen circumstances over which he has no control, a court may relieve the party of the obligation in question. A persuasive argument could be made that it is impossible for Santaquin, in light of modern economic conditions, to continue to deliver the required amount of water to Genola for a maintenance fee of a mere $30.00 annually. In other words, if the actual amount of Genola's fair proportional share of the maintenance costs is substantially greater than $30.00, it is, in essence, impossible for Santaquin to continue to perform its obligation to deliver water to Genola in the required amount. The court, therefore, should either relieve Santaquin of its obligation to deliver water or should require Genola to pay its fair share of the actual costs of maintaining the system.

Finally, a weaker argument could be made that if Genola is allowed to continue to pay only $30.00 for maintenance of the system, the exchange of water rights originally contemplated in 1936 is no longer an "equal" exchange and therefore violates the Utah Constitution. The Supreme Court, in its original opinion in 1938 held that the $30.00 annual maintenance fee was part and parcel of the original exchange. In other words, the Court could well have concluded that absent the $30.00 annual fee, the exchange was

not "equal" and therefore, unconstitutional. If, at present, Genola's proportional share of the actual costs of maintaining the system substantially exceeds $30.00, and Genola is allowed to continue to pay only $30.00, then the exchange contemplated in 1936 is no longer equal within the meaning of the Utah Constitution. If the exchange is not equal, of course, then the agreement is unconstitutional and hence void.

It should be noted that reference has been made in correspondence between Genola and Santaquin to an agreement allegedly arrived at in 1977. Specifically, in a letter to Santaquin, dated January 6, 1982, the Mayor of Genola refers to an agreement which provides that Genola "should help on a year-to-year basis." The agreement also allegedly provides that Genola should pay "one-ninth of the costs" of maintaining the Santaquin system. I have not seen nor had an opportunity to review any such agreement. My impression from reviewing Genola's January 6, 1982 letter is that the agreement was simply an oral understanding reached during the course of a council meeting. To the extent a written, authorized agreement was negotiated by the parties in 1977, the above analysis is incomplete.

Based upon the foregoing, I have the following recommendations. I would suggest that the councils of Genola and Santaquin, together with their respective lawyers, meet for the purpose of discussing a solution to the problem short of litigation. Specifically, some effort should be made to reach a new agreement respecting maintenance and upkeep of the Santaquin water system. Any such new agreement, of course, should specifically provide that any provisions of the 1936 contract which are contrary to the new agreement are superseded. The new agreement should provide a realistic formula by which Genola's fair and proportional share of the costs of maintaining the Santaquin system could be easily computed. Such formula, of course, should make provision for inflation and general increased costs associated with the system in the future. The new agreement should also require Genola to contribute some amounts annually to a fund, the purpose of which would be to replace in the future obsolete water lines. The specific formula, together with the precise terms of any such new agreement, of course, would have to be the subject of negotiations between the parties.

In the event that Genola is unwilling to conduct such negotiations in good faith and assuming the parties entered into no enforceable agreement in 1977, Santaquin should seriously consider instituting litigation against Genola along the lines I have outlined above. The purpose of such litigation, of course, would be to obtain a court determination that Genola should be required to bear its fair, proportional share of the actual costs incurred in maintaining the Santaquin system.

I have one further recommendation. It would be helpful if the council scheduled some time at a future meeting to allow me to further discuss with it the issues and analysis presented in this letter. If you have any questions, please feel free to call.

Sincerely,

FILLERUP & HOLM

Robert C. Fillerup

RCF/mp