10-21-1983

Board of County Comm'rs v. Denver Bd. of Water Comm'rs

SUPREME COURT, STATE OF COLORADO

Case No. 83SA252

Appeal From the District Court, City and County of Denver
Case No. C-51288, Courtroom 19

BRIEF OF AN AMICUS CURIAE

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE; BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS; BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON,

Plaintiffs-Appellants,

vs.

THE DENVER BOARD OF WATER COMMISSIONERS, CITY AND COUNTY OF DENVER, STATE OF COLORADO, a municipal corporation; WILLIAM H. McNICHOLS, Mayor; and THE DENVER PLANNING BOARD,

Defendants-Appellees,

RESPECTFULLY SUBMITTED this 21st day of October, 1983.

PATRICK E KOWALESKI (9598)
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By John Dingess

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STATEMENT OF ISSUES:

1. The declaration of the Denver Water Board as a public utility subject to the Public Utility Commission effects the City of Aurora in its ability to annex. The City of Aurora as a supplier would be reluctant to furnish water to an area the City is not ready to annex under the fear of being declared subject to the Public Utility Commission and therefore by definition the collateral demands of all the public.

2. The distribution of water in this state is currently regulated and controlled from the original appropriation to final delivery. Unlike other utility services which may hold a monoply in a given area and therefore regulated by the Public Utility Commission, the Denver Water Board and similarly situated water distributors are subject to: 1) the Water Right Determination and Administration Act of 1969 (Section 37-92-101 et. seq., C.R.S., 2) Intergovernmental Relationships Act, (29-1-201 et. seq. C.R.S.), 3) various metropolitan user compacts, and 4) the common law of contracts. Consequently, there is no need for Public Utility Commission regulation.

STATEMENT OF CASE:

This is an action originally brought a decade ago by the Counties of Adams, Arapahoe, and Jefferson [hereinafter "Counties"] seeking to establish control of water service provided by the Denver Board of Water Commissioners [hereinafter "Denver"] to users outside the municipal boundaries through Public Utility Commission control and regulation

On November 5, 1982 Judge Ela of the District Court for the City and County of Denver decreed that Denver has become a public utility subject to Public Utility Commission regulation. The Court also concluded that only Denver had the ability and capacity to serve the metropolitan area.

Aurora, having an interest in this decision, filed a petition to file a brief of amicus curiae on October 6, 1983. Although this Court has not, as of this date, granted or denied Aurora's Petition, Aurora respectfully submits this brief.

ARGUMENT:

Introduction

Aurora is located to the east of Denver within the Denver metropolitan area.

> The City [has] and [does] exercise with regard to City-owned utilities, including water and water rights and acquisition thereof and bonded endebtedness in connection therewith, all the authority and powers now provided by the Constitution and Statutes of the State of Colorado, including those statutes hereinafter established by act of the General Assembly. In addition, the City [does] have the power to exchange water rights owned by it for water rights owned by other persons, municipalities or quasi-municipal corporations. The City [does] have the power to contract with such aforementioned persons or entities for the purpose of forming consolidated water or sewer districts or furnishing municipal services, provided any agreements or contracts arising therefrom would clearly benefit the inhabitants of the City. Aurora Charter Sec. 12-1.

When the County Commissioners of Arapahoe, Adams and Jefferson County filed the present suit against the Denver Water Board, the City of Aurora had a population of approximately 75,000. Today it has a population of approximately 200,000, and a water system necessary to serve its ever increasing population.

To accommodate this growth the City has exercised its power to construct water facilities and enter into agreements with other cities, such as Colorado Springs, in the acquisition and financing of an adequate water supply. These agreements are pursuant to powers granted by the Colorado Legislature. Sec. 31-35-402, C.R.S.

31-35-402. Powers.(1) In addition to the powers which it may now have, any municipality, without any election of the qualified electors thereof, has power under this part 4:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend water facilities or sewerage facilities or both, wholly within or wholly without the municipality or partially within and partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain water facilities or sewerage facilities or both for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the municipality, but no water service or sewerage service or combination of them shall be furnished in any other municipality unless the approval of such other municipality is obtained as to the territory in which the service is to be rendered; . . .

(h) To enter into and perform contracts and agreements with other municipalities for or concerning the planning, construction, lease, or other acquisition and the financing of water facilities or sewerage facilities or both and the maintenance and operation thereof. Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their governing bodies deem proper for the supervision and general management of the water facilities or sewerage facilities or both and for the operation thereof and may prescribe its powers and duties and fix the compensation of the members thereof;...(emphasis added).

Other powers legislatively granted to a municipality include: the right to enter into operating agreements, contracts, or arrangements with customers; the right to collect rates, fees, tolls and charges; the right to accept loans and grants from the United States; and the right to issue revenue bonds and pledge payment thereof. (See Appendix p. 12.)

The history of Aurora's exercise of this power is over 25 years old. On June 14, 1957 Leslie A. Gifford, Aurora City Attorney, wrote a letter to the Board of Water Commissioners outlining a plan to develop an independent water system to serve the needs of the City of Aurora. (See attached Exhibit "A"). At this time the City was purchasing water from the Denver Water Board. In September 1982, the Utilities Department, under the directive of Charles A. Wemlinger, published The Development of Aurora's Water Supply. That publication concluded

> While Aurora has faced water problems in the past, the future appears bright. Over the past three decades dependable water supply has been developed to meet the needs of a rapidly growing City. ...The water system has been designed to protect the Citizens of Aurora in every reasonable way against the effects of drought.

In 1967 the Homestake Water Project, Phase I was completed, allowing the City to cease purchasing water from the Denver Water Board. The Development of Aurora's Water Supply, Utilities Department, City of Aurora, September, 1982.

Aurora has entered into several agreements with other municipalities in the acquisition and leasing of water. Among these was a lease to the City of Pueblo of a portion of its Homestake water. Also the City of Colorado Springs and Aurora have mutually developed the Homestake I and II projects. (See Exhibits "B" and "C")

Although the City of Aurora services very few water taps outside the municipal boundaries, it has the potential to supply additional customers. This coupled with the fact there is an ever increasing population and expansion, it is quite conceivable that the City would be willing to supply water to an adjacent or neighboring area prior to annexation. There is extensive potential to the east of Aurora for development. Even though willing to contract to supply surplus water, the City may not be ready to provide all municipal services to such areas. In other cases, the City may be willing to sell surplus water for agricultural purposes to areas requiring no municipal services.

Assuming the decision of the lower court in this case is affirmed, if Aurora consented to provide water to an area without annexing, the water department would be subject to regulation by The Public Utilities Commission (PUC) and the general public would have an enforceable right to demand similar service. Such extra territorial demands for service are very plausible since to the east of Aurora there is no public water supplier. Most of the area is provided water through private wells and a developer could argue that as a public utility the City is bound to serve all the public indiscriminately. Matthews v. Tri-County Water Conservancy District, 613 P2d 889 (Colo., 1980).

The City of Aurora therefore disputes the District Court's conclusion the Denver Water Board or any utility which happens to supply water outside the municipal boundaries has the ability and/or capacity to serve the defined metropolitan area. Board of Commissioners of the County of Arapahoe, et. al v. The Denver Board of Water Commissioners, No. C-51288 [District Court, City & County of Denver, Nov. 5, 1982].

Issues

1. THE COMBINATION OF THE DECISION OF THE DENVER DISTRICT COURT AND THE POUNDSTONE AMENDMENT WILL LIMIT DEVELOPMENT OF AREAS OUTSIDE AURORA'S MUNICIPAL BOUNDARIES.

This history of the growth and development of the City of Aurora elucidates Aurora's opposition to the case before this Court. The City's population increase necessitates a continued development of an adequate water system. Due to its location the City has potential to service areas it is not ready to annex. Yet under the decision of the District Court in this matter this could subject the Aurora Water Department to extensive demands of the public as mandated by the definition of public utility.

Besides a lack of capacity and/or desire to provide extensive extra territorial service, the Poundstone Amendment to the

Article II of the Colorado Constitution has limited the ability of municipalities to annex land.

> ARTICLE II
>
> Section 30. Right to vote or petition on annexation - enclaves.
>
> (1) No unincorporated area may be annexed to a municipality unless one of the following conditions first has been met:
>
> (a) The question of annexation has been submitted to the vote of the landowners and the registered electors in the area proposed to be annexed, and the majority of such persons voting on the question have voted for the annexation; or
>
> (b) The annexing municipality has received a petition for the annexation of such area signed by persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area excluding public streets, and alleys and any land owned by the annexing municipality; or
>
> (c) The area is entirely surrounded by or is solely owned by the annexing municipality
>
> (2) The provisions of this section shall not apply to annexations to the city and county of Denver, to the extent that such annexations are governed by other provisions of the Constitution.
>
> (3) The general assembly may provide by law for procedures necessary to implement this section. This section shall take effect upon completion of the canvass of votes taken thereon.

This Amendment was adopted by the People of Colorado and became effective upon proclamation of the Governor on December 19, 1980. The Amendment in conjunction with the District Court's decision will definitely limit growth in areas not within a

municipal boundary. A municipality, such as Aurora, would not supply water without first annexing for fear of being subject to regulation by the Public Utilities Commission. Moreover, the Amendment subjects annexation of other than enclaves to passage of a vote of at least 50% of the registered electors or the filing of a petition signed by persons compromising more than fifty percent of the landowners and owning more than 50% of the area. In the practical sense this can become a "catch 22". Many areas cannot be developed without zoning. County zoning commission requires a water supply before rezoning. But municipalities, like Aurora, would hesitate to commit water to an area that will not be annexed so as to avoid PUC regulation.

2. DOES THE DENVER WATER BOARD, OR A SIMILAR WATER SYSTEM, NEED REGULATION?

What is the purpose of PUC regulation and does a municipal water system which serves outside its corporate boundaries need such regulation? The whole theory upon which the structure of the public utility commission is based is that of a regulated monopoly. Denver & R.G.W.R.R. v. Public Utilities Commission, 142 Colo. 400, 351 P2d 278 (1960). First of all, due to the other water systems in the area, Denver Water Board is not a monopoly; and secondly, the appropriation and distribution of

water in this state is already regulated through the Water Courts, the Intergovernmental Relationships Act, intercity compacts, the common law of contracts interpretting the water distribution contracts, and various statutes regulating the sale of water to outside customers.

2a. DENVER WATER BOARD IS NOT A MONOPOLY.

Concerning the first point, as Exhibit "D" illustrates, Denver is not the only water supplier in the metropolitan area. Cities such as Aurora, Thornton and Englewood are also suppliers. According to a study completed by the Colorado Municipal League in May of 1983, 103 municipalities service water customers outside their respective municipal boundaries. Colorado Municipal League, Municipal Services and User Charges in Colorado, 1983 edition, p 48. As is easily seen Denver is not only not a monopoly but is also not unique in servicing areas outside their municipal boundaries.

In Robinson v. City of Boulder, 190 Colo. 357, 547 P2d 228 (1976), this Court held Boulder to be a monopoly subject to PUC regulation. Water suppliers in the Denver metropolitan area are not in the same situation as the developer of Gunbarrel Hill (a development northeast of Boulder) whose "staking out" of a

service area was the subject of that action. As the Justice Day pointed out in making a distinction between Robinson v. City of Boulder, supra, and City of Englewood v. Denver, 123 Colo. 290, 299 P2d 667 (1951),

> Boulder relies on City of Englewood, supra, to support its position that it is not operating as a public utility within the area in question; that reliance is misplaced. The determination that Denver did not operate as a public utility in supplying Englewood with water was premised on an entirely different factual background. Denver's supplying Englewood users was wholly incidental to the operation of its water system which was established for the purpose of supplying Denver inhabitants. Denver did not "stake out" a territory in Englewood and seek to become the sole supplier of water in the territory. Hereby agreements with other suppliers to the effect that the latter would not service the Gunbarrel area and by opposing other methods or sources of supply, Boulder has secured a monopoly over area water and sewer utilities.

Basically the definition of public utility has not changed since announced in the Englewood case.

> Public utility defined ...-The term 'public utility' when used in this chapter, includes every ... water corporation, person or municipality operating for the purpose of supplying the public for domestic, mechanical or public uses....City of Englewood v. City and County of Denver, supra at 672, citing Sec. 3, Chapter 137, 135 C.S.A. (Sec. 40-1-103, C.R.S.)

Similarly in holding that a water conservancy district is not a public utility because it engages in rate fixing for the sale, leasing or disposition of its water, this Court has asserted:

"More significant is the extent to which the business or enterprise is impressed with the public interest and the extent to which it holds itself out as serving, or ready to serve, all the public indiscriminately. Matthews v. Tri-County Water Conservancy District. 613 P2d 889, 892-893 (Colo, 1980).

The Denver Water Commission is not a monopoly. Not only are several suppliers, such as Aurora, developing there own system within metropolitan area, the Water Board as correctly determined in City of Englewood v. City and County of Denver, supra, does not hold itself out to serve the public indiscriminately. Equally neither do developing water systems such as Aurora.

2b. THE ALLOCATION AND DISTRIBUTION OF WATER IS ALREADY CURRENTLY REGULATED AND CONTROLLED BY OTHER BRANCHES OF GOVERNMENT AND STATUATORY AND COMMON LAW.

As to the second point, the appropriation and sale of water is currently regulated by well established methods including the Water Courts, metropolitan agreements and compacts, the Intergovernmental Relationships Act specific statutes regulating charges, and the common law of contracts interpretting the actual distribution contracts.

The Water Courts in conjunction with the State engineer have jurisdiction over water rights determinations and administration. This includes appropriation, abandonment, and ancillary matters. Oliver v. District Court, 190 Colo. 524, 549 P2d 770 (1976). This is in the process of being further expanded by new legislation in almost every session of the Colorado General Assembly.

Once the water is appropriated the distribution of that water continues to be regulated. This occurs not only by continued supervision or potential further adjudication in Water Court, but also by statutes, contracts, and agreements.

Due to the nature of the metropolitan area, there are several municipal or quasi-municipal entities which contract for Denver's water supply. The Intergovernmental Relationship Act permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments. Sec. 29-1-201 et seq. Governments include counties, city and county, cities, towns, and water districts among others. By statute these political subdivision can cooperate either by contracting with each other separately or through forming a separate governmental entity known as a water authority to develop water resources, systems

and facilities in whole or in part for the benefit of the inhabitants of such contracting parties or others. Sec. 29-1-203 and Sec. 29-1-204.2 C.R.S. (See Appendix p. 2)

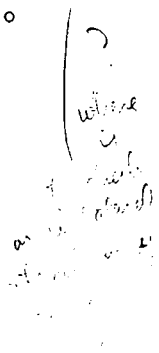
The City and County of Denver by and through its Board of Water Commissioners have seen fit to enter such agreements. Among these agreements is the Metropolitan Water Development Agreement and Platte River Storage Project Participation Agreement, both of which Aurora is a party.

Besides the self-interest inherent in the process of contract negotiations in compacts and water distribution, the sale of water outside municipal boundaries is also regulated by statutes, Sec. 31-35-402, C.R.S. (cited above) grants to a municipality the power to service areas outside the municipality, but limiting that power so as not to interfere in the affairs of another municipality without that City's approval. Municipalities are empowered by statute to supply water to consumers outside the municipality and collect charges as imposed by ordinance Sec. 31-15-708, C.R.S.

> 1) The governing body of each municipality has the power: ...
>
> d) To supply water from its water system to consumers outside the municipal limits of the municipality and to collect such charges upon such conditions and limitations as said municipality may impose by ordinance.

As stated above, 103 municipalities service customers outside their boundaries. According to the study by the Colorado Municipal League, sixty-five percent (65%) of these municipalities charge a higher rate for tap fees and ninety-four (94%) of those reporting charge a higher rate for water. The reason for these higher charges are: 1) water service to residents of the municipality tends to increase the municipality's tax base, whereas service to non-residents does not; 2) the purchase and/or expansion of a municipal water utility system frequently requires passage of a bond issue, placing additional burdens on municipal residents that are not imposed on nonresidents; and 3) because of outside users, municipalities may incur a design and expansion expense which otherwise would not be necessary. Municipal Services and User Charges in Colorado, supra at p. 48 and 50.

Therefore, the distribution and sale of water is regulated from the appropriation stage through the actual supplying of water to outside customers. Each stage has its checks and balances ensuring the Denver Water Board, or similarly situated water suppliers, do not overstep their authority or act in an overbearing manner.



In Aurora service outside the municipal limits is approved by the city council. The council designates rates for supplying of water at a rate not less than one and one-half (1 1/2) times the in-city rate. Aurora Code Sec. 39-85. Since in-city rates are established in a fair manner so as to provide funds for internal water supply expenses, the increased charge above that base rate for extraterritorial service is justified by the reasons cited in the Municipal Services and User Charges in Colorado, supra. (See also Appendix p. 15). Under the Aurora Code the disposition of the fees is for all intents and purposes limited to water service.

Sec. 39-86. Disposition of fees.

> All water fees and fees collected for water services as shall be paid pursuant to the authority of this article shall be segregated, credited and deposited in [the] water fund [of] the utilities department and shall be used to provide an adequate fund for the replacement of depreciated or obsolescent property: For the extension, improvement, enlargement and betterment of such water system and in furtherance thereof, to pay the principal and interest on all bonds of the city payable for the extension, improvement, enlargement and betterment of said utility and all such other purposes as council may direct.

Summation

The decision of the District Court for the City and County of Denver has impact far beyond the Denver Board of Water Commissioners. One hundred three (103) municipalities service customers outside their municipal boundaries. The City of Aurora as a growing area has definite potential to service customers outside the municipal boundary, but may not have the desire or

ability to annex such areas. This is especially true in light of the limitations upon annexing imposed by the Poundstone Amendment.

Moreover, given the potential for growth in areas adjacent to Aurora, should the City be forced to provide extra territorial service upon demand, the likely result would be requests far in excess of system capacity. This in turn could lead to the collapse of this City's water supply sustem and a concomitant degradation of public health and safety, adversly affecting the citizens of this community.

Not only is the impact greater than intended, some of the conclusions of the District Court are not accurate in that there are other suppliers of water who are developing their ability and capacity to serve portions of the metropolitan area. Therefore, Denver does not have a monopoly.

Furthermore, there is no need of further regulation. An unsatisfied citizen or utility has recourse at any stage of water appropriation and distribution. An elaborate system of statuatory and common law has developed to protect the rights of all. To add to this system PUC regulation, would be an unnecessary burden to both municipalities and the PUC alike, and would likely result in the economic waste of tax dollars.

CONCLUSIONS:

The decision of District Court for the City and County of Denver should be overturned for the following reasons:

1. The impact of the decision affects cities, such as Aurora, in determining service to areas outside municipal boundaries which may be premature or ineligible for annexation. If Aurora decided in the affirmative, they would become subject to the Public Utilities Commission and the corresponding responsibility to serve the public indiscriminately upon demand.

2. The Denver Board of Water Commissioners is not a monopoly within the metropolitan area. Cities such as Aurora have developed their own water system. In any event, the appropriation and distribution of water is currently regulated by an elaborate system of statuatory and common law. There is no need of Public Utility Commission supervision.

A P P E N D I X

Colorado Constitution - Statutes and Ordinances

Article XIV Section 18 - Intergovernmental Relationships

1. (a) Any other provisions of this constitution to the contrary notwithstanding:

(b) The general assembly may provide by statute for the terms and conditions under which one or more service authorities may succeed to the rights, properties, and other assets and assume the obligations of any other political subdivision included partially or entirely within such authority, incident to the powers vested in, and the functions, services, and facilities authorized to be provided by the service authority, whether vested and authorized at the time of the formation of the service authority or subsequent thereto; and,

(c) The general assembly may provide by statute for the terms and conditions under which a county, home rule county, city and county, home rule city or town, statutory city or town, or quasi-municipal corporation, or any combination thereof may succeed to the rights, properties, and other assets and assume the obligations of any quasi-municipal corporation located partially or entirely within its boundaries.

(d) The general assembly may provide by statute procedures whereby any county, home rule county, city and county, home rule city or town, statutory city or town, or service authority may establish special taxing districts.

2. (a) Nothing in this constitution shall be construed to prohibit the state or any of its political subdivisions from cooperating or contracting with one another or with the government of the United States to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt.

(b) Nothing in this constitution shall be construed to prohibit the authorization by statute of a separate governmental entity as an instrument to be used through voluntary participation by cooperating or contracting political subdivisions.

(c) Nothing in this constitution shall be construed to prohibit any political subdivision of the state from contracting

with private persons, associations, or corporations for the provision of any legally authorized functions, services, or facilities within or without its boundaries.

(d) Nothing in this constitution shall be construed to prohibit the general assembly from providing by statute for state imposed and collected taxes to be shared with and distributed to political subdivisions of the state except that this provision shall not in any way limit the powers of home rule cities and towns.

Adopted November 3, 1970 - Effective January 1, 1972. (See Laws 1969, p. 1249.)

STATUTES

Intergovernmental Relationships

29-1-201. Legislative declaration. The purpose of this part 2 is to implement the provisions of section 18(2)(a) and (2)(b) of article XIV of the state constitution, adopted at the 1970 general election, and the amendment to section 2 of article XI of the state constitution, adopted at the 1974 general election, by permitting and encouraging governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments, and to this end this part 2 shall be liberally construed.

29-1-202. Definitions. As used in this part 2, unless the context otherwise requires:

1. "Government" means any political subdivision of the state, any agency or department of the state government or of the United States, and any political subdivision of an adjoining state.

2. "Political subdivision" means a county, city and county, city, town, service authority, school district, local improvement district, law enforcement authority, water, sanitation, fire protection, metropolitan, irrigation, drainage, or other special district, or any other kind of municipal, quasi-municipal, or public corporation organized pursuant to law.

29-1-203. Government may cooperate or contract - contents.

1. Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the

sharing of costs, the imposition of taxes, or the incurring of debt, only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve.

2. Any such contract shall set forth fully the purposes, powers, rights, obligations, and the responsibilities, financial and otherwise, of the contracting parties.

3. Where other provisions of law provide requirements for special types of intergovernmental contracting or cooperation, those special provisions shall control.

4. Any such contract may provide for the joint exercise of the function, service, or facility, including the establishment of a separate legal entity to do so.

29-1-204. Establishment of separate governmental entity.

1. Any combination of cities and towns of this state which are authorized to own and operate electric systems may, by contract with each other or with cities and towns of any adjoining state, establish a separate governmental entity, to be known as a power authority, to be used by such contracting municipalities to effect the development of electric energy resources or production and transmission of electric energy in whole or in part for the benefit of the inhabitants of such contracting municipalities.

2. Any contract establishing such separate governmental entity shall specify:

(a) The name and purpose of such entity and the functions or services to be provided by such entity;

(b) The establishment and organization of a governing body of the entity, which shall be a board of directors in which all legislative power of the entity is vested, including:

I) The number of directors, their manner of appointment, their terms of office, their compensation if any, and the procedure for filling vacancies on the board;

II) The officers of the entity, the manner of their selection, and their duties;

III) The voting requirements for action by the board; except that, unless specifically provided otherwise, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board;

IV) The duties of the board which shall include the obligation to comply with the provisions of parts 1, 5, and 6 of this article;

(c) Provisions for the disposition, division, or distribution of any property or assets of the entity;

(d) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that such contract may not be rescinded or terminated so long as the entity has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations.

3. The general powers of such entity shall include the following powers:

(a) To develop electric energy resources and produce or transmit electric energy in whole or in part for the benefit of the inhabitants of the contracting municipalities;

(b) To make and enter into contracts, including, without limitation, contracts with cities and towns in any adjoining state, irrespective of whether such cities and towns are parties to the contract establishing the separate governmental entity;

n (c) To employ agents and employees;

(d) To acquire, construct, manage, maintain, or operate electric energy facilities, works, or improvements or any interest therein;

(e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service;

(f) To condemn property for public use, if such property is not owned by any public utility and devoted to such public use pursuant to state authority;

(g) To incur debts, liabilities, or obligations;

(h) To sue and be sued in its own name;

(i) To have and use a corporate seal;

(j) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the entity;

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purposes;

(l) To exercise any other powers which are essential to the provision of functions, services, or facilities by the entity and which are specified in the contract;

(m) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation.

(n) To deposit moneys of the power authority not then needed in the conduct of the power authority affairs in any depository authorized in section 24-75-603, C.R.S. 1973. For the purpose of making such deposits, the board of directors may appoint, by written resolution, one or more persons to act as custodians of the moneys of the power authority. Such persons shall give surety bonds in such amounts and form and for such purposes as the board requires.

4. The separate governmental entity established by such contracting municipalities shall be a political subdivision and a public corporation of the state, separate from the parties to the contract, and shall be a validly created and existing political subdivision and public corporation of the state, irrespective of whether a contracting municipality, including a city or town of an adjoining state, withdraws (whether voluntarily, by operation of law, or otherwise) from such entity subsequent to its creation under circumstances not resulting in the rescission or termination of the contract establishing such entity pursuant to its terms. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of articles 10.5 and 47 of title 11, C.R.S. 1973, shall apply to moneys of the entity.

5. The bonds, notes, and other obligations of such separate governmental entity shall not be the debts, liabilities, or obligations of the contracting municipalities.

6. The contracting municipalities may provide in the contract for payment to the separate governmental entity of funds from proprietary revenues for services rendered by the entity, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the entity.

7. (a) To carry out the purposes for which the separate governmental entity was established, the entity is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived or to be derived from the function, service, or facility or the combined functions, services, or facilities of the entity or from any other available funds of the entity. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S. 1973, relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and except that said bonds, notes, and other obligations may be sold at public or private sale. Bonds, notes, or other obligations issued under this subsection (7) shall not constitute an indebtedness of the entity or the cooperating or contracting municipalities within the meaning of any constitutional or statutory limitation or other provision. Each bond, note, or other obligation issued under this subsection (7) shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the entity pledged for the payment thereof and that said bond, note, or other obligation does not constitute a debt of the entity or the cooperating or contracting municipalities within the meaning of any constitutional or statutory limitations or provisions. Notwithstanding anything in this section to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the board of the entity. Notwithstanding anything in this section to the contrary, in the case of short-term notes or other obligations maturing not later than one year from the date of issuance thereof, the board of the entity may authorize officials of the entity to fix principal amounts, maturity dates, interest rates, and purchase prices of any particular issue of such short-term notes or obligations, subject to such limitations as to maximum term, maximum principal amount outstanding, and maximum net effective interest rates as the board shall prescribe by resolution. Such action may be taken by the board of the entity only at a public meeting preceded by adequate notice, and the action of the board shall be properly recorded on the permanent records of the board.

(b) The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the board of the entity to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the entity. The bonds, notes, and other obligations of the entity and the income therefrom shall be exempt from taxation, except inheritance, estate, and transfer taxes.

8. A separate governmental entity established by contracting municipalities shall, if the contract so provides, be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting municipalities to provide the same function, service, or facility, and such separate governmental entity shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contracts to which such other entity is a party.

9. The authority granted pursuant to this section shall in no manner limit the powers of governments to enter into intergovernmental cooperation or contracts or to establish separate legal entities pursuant to the provisions of section 29-1-203 or any other applicable law or otherwise to carry out their powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns by section 2 of article XI of the state constitution. Nothing in this part 2 constitutes a legislative declaration of preference for electric systems owned by separate governmental entities over electric systems owned by other or different entities.

10. For the purposes of subsection (1), paragraph (b) of subsection (3) and subsection (4) of this section, "cities and towns of any adjoining state" means any city or town located in any state sharing a common border with the state of Colorado which owns an electric system and which is located not more than fifteen miles from the common border of the state of Colorado and such adjoining state.

Source: (4) and (10) amended, L.77, p. 286, Sections 54, 55; (3)(n) added, L.79, p. 1616, Section 11; (1) and (7)(a) amended, L.82, pp. 453, 455, Sections 1, 1.

29-1-204.2. Establishment of separate governmental entity to develop water resources, systems, and facilities.

1. Any combination of municipalities, special districts, or other political subdivisions of this state which are authorized to own and operate water systems or facilities may establish, by contract with each other, a separate governmental entity, to be known as a water authority, to be used by such contacting parties to effect the development of water resources, systems, or facilities in whole or in part for the benefit of the inhabitants of such contracting parties or others at the discretion of the board of directors of the water authority.

2. Any contract establishing such separate governmental entity shall specify:

(a) The name and purpose of such entity and the functions or services to be provided by such entity;

(b) The establishment and organization of a governing body of the entity, which shall be a board of directors in which all legislative power of the entity is vested, including:

(I) The number of directors, their manner of appointment, their terms of office, their compensation, if any, and the procedure for filling vacancies on the board;

(II) The officers of the entity, the manner of their selection, and their duties;

(III) The voting requirements for action by the board; except that, unless specifically provided otherwise, a majority of directors shall constitute a quorum, and a majority of the quorum shall be necessary for any action taken by the board;

(IV) The duties of the board, which shall include the obligation to comply with the provisions of parts 1, 5, and 6 of this article;

(c) Provisions for the disposition, division, or distribution of any property or assets of the entity;

(d) The term of the contract, which may be continued for a definite term or until rescinded or terminated, and the method, if any, by which it may be rescinded or terminated; except that such contract may not be rescinded or terminated so long as the entity has bonds, notes, or other obligations outstanding, unless

provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations;

(e) The conditions or requirements to be fulfilled for adding or deleting parties to the contract in the future or for providing water services to others outside the boundaries of the contracting parties.

3. The general powers of such entity shall include the following powers:

(a) To develop water resources, systems, or facilities in whole or in part for the benefit of the inhabitants of the contracting parties or others, at the discretion of the board of directors, subject to fulfilling any conditions or requirements set forth in the contract establishing the entity;

(b) To make and enter into contracts;

(c) To employ agents and employees;

(d) To acquire, construct, manage, maintain, or operate water systems, facilities, works, or improvements or any interest therein;

(e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property utilized only for the purposes of water treatment, distribution, and waste water disposal;

(f) To condemn property for use as rights-of-way only if such property is not owned by any public utility and devoted to such public use pursuant to state authority;

(g) To incur debts, liabilities, or obligations;

(h) To sue and be sued in its own name;

(i) To have and use a corporate seal;

(j) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the entity;

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purpose;

(l) To exercise any other powers which are essential to the provision of functions, services, or facilities by the entity and which are specified in the contract;

(m) To do and perform any acts and things authorized by this section under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(n) To permit other municipalities, special districts, or political subdivisions of this state which are authorized to supply water to enter the contract at the discretion of the board of directors, subject to fulfilling any and all conditions or requirements of the contract establishing the entity; except that rates need not be uniform between the authority and the contacting parties;

(o) To provide for the rehabilitation of any surfaces adversely affected by the construction of water pipelines, facilities, or systems through the rehabilitation of plant cover, soil stability, and other measures appropriate to the subsequent beneficial use of such lands;

(p) To justly indemnify property owners or others affected for any losses or damages incurred, including reasonable attorney fees, or that may subsequently be caused by or which result from actions of such corporations.

4. The separate governmental entity established by such contracting parties shall be a political subdivision and a public corporation of the state, separate from the parties to the contract. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of articles 10.5 and 47 of title 11, C.R.S. 1973, shall apply to moneys of the entity.

5. The bonds, notes, and other obligations of a water authority formed under the provisions of this section shall not be the debts, liabilities, or obligations of the original contracting parties or parties which may enter the establishing contract in the future.

6. The contracting parties may provide in the contract for payment to the separate governmental entity of funds from proprietary revenues for services rendered by the entity, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the entity.

7. (a) To carry out the purposes for which the separate governmental entity was established, the entity is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived from the function, service, system, or facility or the combined functions, services, systems, or facilities of the entity or from any other available funds of the entity. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and, as nearly as may be practicable, shall be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S. 1973, relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and except that said bonds, notes, and other obligations may be sold at public or private sale. Bonds, notes, or other obligations issued under this subsection (7) shall not constitute an indebtedness of the entity or the cooperating or contracting parties within the meaning of any constitutional or statutory limitations or other provision. Each bond, note, or other obligation issued under this subsection (7) shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the entity pledged for the payment thereof and that said bond, note, or other obligation does not constitute a debt of the entity or the cooperating or contracting parties within the meaning of any constitutional or statutory limitation or provision. Notwithstanding anything in this section to the contary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the board of directors of the entity.

(b) The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the board of directors of the entity to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the entity. The bonds, notes, and other obligations of the entity and the income therefrom shall be exempt from taxation by this state, except inheritance, estate, and transfer taxes.

8. A separate governmental entity established by contract, if the contract so provides, shall be the successor to any nonprofit corporation, agency, or other entity theretofore organized by the contracting parties to provide the same function, service, system, or facility, and such separate governmental entity shall be entitled to all rights and privileges and shall assume all obligations and liabilities of such other entity under existing contacts to which such other entity is a party.

9. The authority granted pursuant to this section shall in no manner limit the powers of governments to enter into intergovernmental cooperation or contracts or to establish separate legal entities pursuant to the provisions of section 29-1-203 or any other applicable law or otherwise to carry out their powers under applicable statutory or charter provisions, nor shall such authority limit the powers reserved to cities and towns by section 2 of article XI of the state constitution. Nothing in this part 2 constitutes a legislative declaration of preference for water systems or facilities owned by separate governmental entities over water systems owned by other or different entities.

29-1-205. List of contracts. On or before February 1 of each year, each political subdivision shall file with the division of local government an updated informational list of all contracts in effect with other political subdivisions. Said list shall contain the names of the contracting political subdivisions, the nature of the contract, and the expiration date thereof. Within ten days after the execution of a contract establishing a separate governmental entity pursuant to section 29-1-204, or an amendment or a modification thereof, a copy of such contract, amendment, or modification shall be filed with the division of local government. Failure to make any filing under this section shall not invalidate any contract referred to in this section.

31-35-402. Powers. (1) In addition to the powers which it may now have, any municipality, without any election of the qualified electors thereof, has power under this part 4:

(a) To acquire by gift, purchase, lease, or exercise of the right of eminent domain, to construct, to reconstruct, to improve, to better, and to extend water facilities or sewerage facilities or both, wholly within or wholly without the municipality or partially within and partially without the municipality, and to acquire by gift, purchase, or the exercise of the right of eminent domain lands, easements, and rights in land in connection therewith;

(b) To operate and maintain water facilities or sewerage facilities or both for its own use and for the use of public and private consumers and users within and without the territorial boundaries of the municipality, but no water service or sewerage service or combination of them shall be furnished in any other municipality unless the approval of such other municipality is obtained as to the territory in which the service is to be rendered;

(c) To accept loans or grants or both from the United States under any federal law in force to aid in financing the cost of engineering, architectural, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other action preliminary to the construction of water facilities or sewerage facilities or both;

(d) To accept loans or grants or both from the United States under any federal law in force for the construction of necessary water facilities or sewerage facilities or both;

(e) To enter into joint operating agreements, contracts, or arrangements with consumers concerning water facilities or sewerage facilities or both, whether acquired or constructed by the municipality or consumer, and to accept grants and contributions from consumers for the construction of water facilities or sewerage facilities or both. When determined by its governing body to be in the public interest and necessary for the protection of the public health, any municipality is authorized to enter into and perform contracts, whether long-term or short-term but in no event exceeding fifty years, with any consumer for the provision and operation by the municipality of sewerage facilities to abate or reduce the pollution of waters caused by discharges of wastes by a consumer and the payment periodically by the consumer to the municipality of amounts at least sufficient, in the determination of such governing body, to compensate the municipality for the cost of providing, including payment of principal and interest charges, if any, and of operating and maintaining the sewerage facilities serving such consumer.

(f) To prescribe, revise, and collect in advance or otherwise, from any consumer or any owner or occupant of any real property connected therewith or receiving service therefrom, rates, fees, tolls, and charges or any combination thereof for the services furnished by, or the direct or indirect connection with, or the use of, or any commodity

from such water facilities or sewerage facilities or both, including, without limiting the generality of the foregoing, minimum charges, charges for the availability of service, tap fees, disconnection fees, reconnection fees, and reasonable penalities for any delinquencies, including but not necessarily limited to interest on delinquencies from any date due at a rate of not exceeding one percent per month or fraction thereof, reasonable attorneys' fees and other costs of collection without any modification, supervision, or regulation of any such rates, fees, tolls, or charges by any board, agency bureau, commission, or official other than the governing body collecting them; and in anticipation of the collection of the revenues of such water facilities or sewerage facilities, or joint system, to issue revenue bonds to finance in whole or in part the cost of acquisition, construction, reconstruction, improvement, betterment, or extension of the water facilities or sewerage facilities, or both; and to issue temporary bonds until permanent bonds and any coupons appertaining thereto have been printed and exchanged for the temporary bonds;

(g) To pledge to the punctual payment of said bonds and interest thereon all or any part of the revenues of the water facilities or sewerage facilities or both, including the revenues of improvements, betterments, or extensions thereto thereafter constructed or acquired, as well as the revenues of existing water facilities or sewerage facilities or both;

(h) To enter into and perform contracts and agreements with the other municipalities for or concerning the planning, construction, lease, or other acquisition and the financing of water facilities or sewerage facilities or both and the maintenance and operation thereof. Any such municipalities so contracting with each other may also provide in any contract or agreement for a board, commission, or such other body as their governing bodies deem proper for the supervision and general management of the water facilities or sewerage facilities or both and for the operation thereof and may prescribe its powers and duties and fix the compensation of the members thereof.

(i) To make all contracts, execute all instruments, and do all things necessary or convenient in the exercise of the powers granted in this section, or in the performance of its covenants or duties, or in order to secure the payment of its bonds if no encumbrance, mortgage, or other pledge of property, excluding any pledged revenues, of the municipality is created thereby, and if no property, other than money, of

the municipality is liable to be forfeited or taken in payment of said bonds, and if no debt on the credit of the municipality is thereby incurred in any manner for any purpose; and

(j) To issue water or sewer or joint water and sewer refunding revenue bonds to refund, pay, or discharge all or any part of its outstanding water or sewer or joint water and sewer, revenue bonds issued under this part 4 or under any other law, including any interest thereon in arrears or about to become due, or for the purpose of reducing interest costs or effecting other economies or of modifying or eliminating restrictive contractual limitations appertaining to the issuance of additional bonds or to any municipal water facilities or sewerage facilities, or both, as provided in section 31-35-412.

ORDINANCES:

Aurora Code:

Sec. 39-85. Water rates. The following minimum monthly rates and charges are fixed and established for water served by the water division of the utilities department:

(a) (1) Single-family residential, multifamily residential, commercial and governmental:

Meter Size (inches)	Monthly Service Charge Inside City Effective January 1, 1983
5/8	$2.20
3/4	2.20
1	3.70
1-1/4	6.70
1-1/2	9.70
2	18.70
3	50.20
4	101.30
6	278.40
8	578.70

(2) Rates:

a. The rate for each customer class:

User	Water Rate for Each 1,000 Gallons Used
Single-family residential	$1.13
Multifamily residential	1.08
Commercial	1.12
Governmental	1.34

b. Where water service is made to more than one type of customer the higher rate shall be charged for all water use.

(b) Definitions. [For the purpose of this section, the following words and phrases shall have the meanings ascribed to them:]

Family dwelling unit is defined as a dwelling unit designed for permanent occupancy by family units which include kitchens and bathroom facilities.

Single-family or multifamily residential users shall be defined as all single-family and multiple family buildings where residential customers receive metered water service and which structures contain family dwelling units.

(c) Private fire protection service:

Fire Line Tap Size (inches)	Monthly Service Charge Inside City
2	$ 1.45
3	3.06
4	5.39
6	12.21
8	21.80
10	33.86
12	48.83

(d) Outside city. The council shall have the sole and exclusive authority to contract to supply water outside the city limits and to determine and classify all uses therefor. Whenever a contract is made to furnish water

outside of the city limits that does not contain an agreement to annex said lands at the time that they may become eligible for annexation, then in that event, the city council shall establish a rate for supplying of water, which rate shall be not less than one and one-half (1-1/2) times the in-city rate. Should a contract to furnish water outside city limits contain a provision to annex said lands at the time they become eligible for annexation without further petitions, then in that event the water rate for water so supplied shall be the same as those rates established for water service inside city limits.

(e) Other water charges: There shall be charged against each and every water bill for the services shown below, the amounts as follows:

For water shut-off and turn-on due to delinquency in payment beyond forty-five (45) days after billing date	$20.00
For water shut-off or turn-on by customer request	$10.00
For short check charge	$ 7.50
Final reading by customer request	$10.00
Trip charge for other services by customer request	$10.00

(f) Construction water: The following minimum monthly charges are established for water service furnished for construction purposes:

For water service through service connection, payable at time building permit is obtained	$11.30
For water service through fire hydrant, payable at time permit for hydrant use is obtained	$30.25

Hydrant permit fee minimum allows for up to a maximum use of twenty thousand (20,000 gallons shall be charged at the rate of one dollar and thirteen cents ($1.13) per one thousand (1,000) gallons.

(g) Public fire protection service. An annual fee of one hundred twenty-five dollars ($125.00) per public fire hydrant in place as of January first of each year shall be paid to the utilities department by the fire department responsible for fire protection service in the area where such fire hydrants exist.

CERTIFICATE OF MAILING

I hereby certify that I have this 21st day of October A.D., 1983 deposited in the U. S. mail with sufficient postage affixed thereto, two (2) true and correct copies of the foregoing Brief of an Amicus Curiae addressed to:

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"EXHIBIT A"

City of Aurora

Municipal Building
AURORA, COLO.

Office of CITY ATTORNEY

JUNE 14, 1957

THE BOARD OF WATER COMMISSIONERS
CITY AND COUNTY OF DENVER
DENVER, COLORADO

GENTLEMEN:

THIS LETTER HAS BEEN MIMEOGRAPHED IN ORDER THAT SUFFICIENT COPIES COULD BE MADE AVAILABLE FOR EACH BOARD MEMBER AND EACH COUNCILMAN OF THE CITY OF AURORA TO HAVE A COPY. THE PURPOSE OF THIS LETTER I TO OUTLINE BRIEFLY AURORA'S CURRENT AND LONG TERM WATER POLICY, AND TO REVIEW BRIEFLY NEGOTIATIONS HAD BETWEEN AURORA AND YOUR BOARD RELATING TO COOPERATIVE ACTION IN FIELDS WHERE THE MUTUAL INTEREST OF EACH CITY WOULD BE BENEFITED THEREBY.

THE AURORA CITY COUNCIL HAD BEEN AWARE FOR MANY YEARS OF THE NEED FOR AN INDEPENDENT WATER SYSTEM WHEN, IN 1954 IT TOOK ACTION TOWARD ACHIEVING THIS OBJECTIVE. CONSULTING ENGINEERS WERE RETAINED AND DIRECTED TO MAKE THOROUGH GROUND AND SURFACE WATER STUDIES WITH THE VIEW TO DEVELOPING A MUNICIPAL WATER SYSTEM ADEQUATE FOR EXISTING AND FUTURE WATER NEEDS OF THE CITY. IN ADDITION, EXPLORATORY DRILLING OPERATIONS WERE CARRIED ON IN THE VICINITY OF THE CITY IN AN ATTEMPT TO LOCATE UNDERGROUND SOURCES WHICH COULD BE ECONOMICALLY DEVELOPED FOR A MUNICIPAL WATER SUPPLY. THE RESULTS OF THE GROUND AND SURFACE WATER STUDIES WERE ANYTHING BUT ENCOURAGING WHEN RECEIVED IN THE SPRING OF 1955.

SUBSEQUENTLY, A MEETING WAS SCHEDULED WITH YOUR BOARD TO DISCUSS AURORA'S WATER NEEDS. THIS MEETING WAS HELD IN AURORA ON AUGUST 29, 1955 AND A COMPLETE DISCUSSION HAD CONCERNING AURORA'S WATER PROBLEMS. SPECIFICALLY YOUR BOARD WAS REQUESTED TO CONSIDER THE POSSIBILITY OF A LONG TERM CONTRACT FOR THE SUPPLY OF WATER TO THE CITY OF AURORA. THE BOARD WAS ALSO INFORMED OF AURORA'S CURRENT WATER NEEDS EXISTING IN THE AREA BEYOND THE BLUE LINE. SO FAR AS IS KNOWN, NO ACTION WAS TAKEN BY YOUR BOARD IN CONNECTION WITH AURORA'S REQUEST FOR A STABLE LONG TERM CONTRACT FOR THE SUPPLY OF WATER NOR FOR THE SERVICE OF THE AREA BEYOND THE BLUE LINE.

WITH THE KNOWLEDGE THAT A LONG TERM CONTRACT FOR THE SUPPLY OF WATER BY THE DENVER WATER BOARD WAS NOT OBTAINABLE, AURORA EMBARKED UPON THE ONLY COURSE REMAINING - THE DEVELOPMENT OF AN INDEPENDENT WATER SYSTEM. AS A RESULT OF ENGINEERING STUDIES AND EXPLORATORY DRILLING OPERATIONS FOR UNDERGROUND WATER THE CITY, IN 1955, ACQUIRED ONE HUNDRED TWENTY ACRES OF LAND IN THE CHERRY CREEK AREA SOME TWELVE MILES SOUTHEAST OF THE CITY, AND FLOATED A BOND ISSUE FOR $1,700,000.00 TO FINANCE THE PROJECT. THE CHERRY CREEK PROJECT WAS COMPLETED IN AUGUST OF 1956 AND APPROXIMATELY ONE THOUSAN

WATER USERS WITHIN THE CITY ARE NOW BEING SUPPLIED FROM THIS SOURCE. THE ESTIMATED TOTAL CAPACITY OF THIS SOURCE ON A SHORT TERM BASIS IS THREE THOUSAND WATER TAPS. DURING THE PERIOD OF CONSTRUCTION OF THE CHERRY CREEK PROJECT, THE CITY ENTERED INTO NEGOTIATIONS FOR THE PURCHASE OF CERTAIN IRRIGATION WATER RIGHTS ON THE SOUTH PLATTE RIVER, AND IN NOVEMBER OF 1956 ACQUIRED SEVENTY SHARES OF STOCK IN THE LAST CHANCE DITCH AND EIGHT SHARES OF STOCK IN THE NEVADA DITCH. SIMULTANEOUSLY, WITH THESE NEGOTIATIONS, THE CITY, ON MAY 14, 1956, ENTERED INTO A CONTRACT WITH JOHN P. ELLIOTT AND BOETTCHER & COMPANY PROVIDING FOR THE PARTICIPATION BY AURORA IN THE HOMESTAKE PROJECT WITH THE RIGHT TO RECEIVE UP TO TWENTY-FIVE THOUSAND ACRE FEET OF WATER ANNUALLY.

THESE THREE PROJECTS OR PHASES CONSTITUTE WHAT IS NOW REFERRED TO AS AURORA'S "LONG RANGE WATER DEVELOPMENT PROGRAM", AND EACH PHASE IS INTEGRATED PHYSICALLY, CHRONOLOGICALLY AND FINANCIALLY TO FIT THE GROWING NEEDS OF THE CITY. THE PROGRAM WAS CONCEIVED AND AMPLIFIED DURING 1955 AND 1956 AND RECEIVED FORMAL ACKNOWLEDGEMENT BY RESOLUTION OF CITY COUNCIL ADOPTED AT A REGULAR MEETING HELD NOVEMBER 5, 1956. THIS RESOLUTION RECITED THE ACQUISITION, FINANCING, CONSTRUCTION AND COMPLETION OF THE CHERRY CREEK PROJECT; THE ACQUISITION, PARTIAL FINANCING AND PLANNING OF THE SOUTH PLATTE PROJECT; AND AUTHORIZED THE COMPLETION OF THE HOMESTAKE PROJECT, AND THE PARTICIPATION IN WATER ADJUDICATION PROCEEDINGS THEN IN PROGRESS IN THE EAGLE DISTRICT COURT.

THE CITY OF AURORA IS THEREFORE COMMITTED TO THE ACQUISITION OF AN INDEPENDENT MUNICIPAL WATER SYSTEM PLANNED AND DESIGNED TO SERVE THE NEEDS OF THE CITY IN THE FORESEEABLE FUTURE. TWO BOND ISSUES HAVE BEEN FLOATED TO FINANCE CONSTRUCTION AND DEVELOPMENT OF THE INITIAL PHASES OF THE LONG RANGE PROGRAM. IN SEPTEMBER OF 1956, THE PLANS AND SPECIFICATIONS FOR CONSTRUCTION OF DIVERSION AND TREATMENT FACILITIES ON THE SOUTH PLATTE RIVER NEAR THE KASSLER FILTER PLANT HAD BEEN COMPLETED AND BIDS CALLED FOR. SHORTLY AFTER BIDS HAD BEEN CALLED FOR, AURORA OFFICIALS LEARNED THAT DENVER WAS PLANNING THE CONSTRUCTION OF SIMILAR FACILITIES IN THE KASSLER AREA. IN THE HOPE OF BENEFITING BOTH CITIES, AURORA PROPOSED A MEETING TO CONSIDER THE POSSIBILITY AND DESIRABILITY OF COOPERATIVE ACTION IN PLANNING AND CONSTRUCTING DIVERSION AND TREATMENT FACILITIES IN THIS AREA.

SUCH A MEETING WAS HELD ON OCTOBER 1, 1956 AT THE DENVER WATER BOARD OFFICE IN DENVER WITH MESSRS. MILLAR, MOSELY AND SAUNDERS PRESENT FOR DENVER AND MESSRS. GIFFORD, KUIPER AND SANDQUIST PRESENT FOR AURORA. THE INITIAL MEETING WAS PRIMARILY EXPLORATORY BUT SUBSEQUENT MEETINGS EXTENDED FAR BEYOND THE TIME ANTICIPATED BY AURORA OFFICIALS, WITH THE RESULT THAT AURORA'S TIMETABLE HAS BEEN DELAYED NEARLY ONE ENTIRE YEAR. FOR THE MOST PART THE SAME OFFICIALS AND REPRESENTATIVES FOR BOTH CITIES ATTENDED ALL MEETINGS DESCRIBED BELOW, AND ALL MEETINGS WERE CALLED AT THE REQUEST OF AURORA OFFICIALS.

OCTOBER 1, 1956

AURORA REPRESENTATIVES PROPOSED JOINT CONSTRUCTION OF A RAMPART RANGE TUNNEL CONDUIT AND FILTRATION PLANT WHEREIN BOTH CITIES WOULD PARTICIPATE IF SUCH CONSTRUCTION PROVED FEASIBLE FROM AN ENGINEERING STANDPOINT AND IF CONSTRUCTION

TIME COULD BE COORDINATED TO SUIT THE NEEDS OF BOTH CITIES. MR. KUIPER WAS REQUESTED TO MAKE AVAILABLE TO MR. MOSELY THE SURVEYS, LOCATIONS AND PLANS PREPARED BY AURORA'S CONSULTING ENGINEER AND IT WAS DECIDED THAT IT WOULD BE MUTUALLY ADVANTAGEOUS TO THOROUGHLY EXPLORE THE POSSIBILITIES OF PARTICIPATION BY THE TWO CITIES IN THE CONSTRUCTION OF ANY ONE OR MORE OF THE FOLLOWING FACILITIES - DIVERSION DAM - TUNNEL - FILTRATION PLANT - CONDUIT. IT WAS AGREED THAT ANOTHER MEETING SHOULD BE HELD WITHIN THE WEEK AT WHICH TIME MR. MOSELY WOULD HAVE AVAILABLE SPECIFIC RECOMMENDATIONS FOR JOINT PARTICIPATION.

OCTOBER 8, 1956

IN DISCUSSING THE POSSIBILITY OF PARTICIPATION IN DIVERSION AND TREATMENT FACILITIES ON THE SOUTH PLATTE, IT SOON DEVELOPED THAT ADDITIONAL ENGINEERING STUDIES WOULD HAVE TO BE MADE TO ARRIVE AT COSTS. MR. MOSELY ADVISED THAT DENVER EXPECTED TO COMMENCE CONSTRUCTION ON THE TUNNEL AND FILTRATION PLANT IN 1957, AND TO HAVE THE TUNNEL AND FIRST UNIT OF THE FILTRATION PLANT COMPLETED BY 1958. AURORA OFFICIALS POINTED OUT THAT THIS WOULD DELAY AURORA'S TIME TABLE APPROXIMATELY ONE YEAR, BUT THAT IF STANDBY WATER COULD BE MADE AVAILABLE, IT WOULD BE TO THE MUTUAL ADVANTAGE OF THECITIES TO PARTICIPATE IN THE PROJECT. IT WAS DEFINITELY AGREED THAT A FURTHER INVESTIGATION APPEARED DESIRABLE, AND THAT EACH GROUP OF ADMINISTRATIVE OFFICIALS WOULD KEEP THEIR RESPECTIVE BOARDS ADVISED OF THE PROGRESS OF NEGOTIATIONS.

NOVEMBER 7, 1956

AURORA REPRESENTATIVES STATED AURORA'S POSITION IN CONNECTION WITH PARTICIPATION IN THE CONSTRUCTION OF SOUTH PLATTE DIVERSION AND TREATMENT FACILITIES AS FOLLOWS:

1. THAT IT HAD BEEN DETERMINED THAT IT WAS FEASIBLE FOR AURORA TO PARTICIPATE WITH DENVER IN THE DIVERSION DAM, RAMPART RANGE TUNNEL, FILTRATION PLANT AND AT LEAST A PORTION OF THE RIGHT OF WAY NECESSARY FOR THE CONSTRUCTION OF CONDUIT FROM THE FILTRATION PLANT TO RESPECTIVE RESERVOIRS OF THE TWO CITIES.

2. THAT AURORA WOULD LIKE TO EXPLORE THE POSSIBILITIES OF ARRIVING AT A FIRM BASIS FOR PARTICIPATION IN THE PROJECT, INCLUDING COSTS AND APPROXIMATE TIME OF COMPLETION.

3. THAT AURORA WOULD LIKE TO EXPLORE THE BASIS FOR MANAGEMENT, CONTROL AND OPERATION OF SUCH JOINT FACILITIES AND THE FURTHER MATTER OF OWNERSHIP.

4. THAT AURORA WAS READY TO DISCUSS THE BASIS FOR CHANGE IN POINT OF DIVERSION PROCEEDING FOR RESPECTIVE IRRIGATION WATERS OWNED BY THE TWO CITIES AND ENGLEWOOD.

5. That inasmuch as Denver did not plan the Construction of its diversion and treatment facilities on the South Platte at as early a date as did Aurora, that Aurora was willing to lease its Last Chance Waters to Denver in return for a stand-by agreement whereby Denver would agree to furnish up to three thousand taps to Aurora if needed (it being understood that Aurora would thereupon commence immediate use and utilization of its Cherry Creek Water).

Joint construction of the entire project was discussed at considerable length and it was decided that participation by Aurora in the Diversion Dam and Tunnel Project would be on the basis of cost allocated in proportion to the respective ultimate use planned by each city, and Aurora's proposed use was stated to be thirty million gallons daily. The cost of the filtration plant should be allocated on the basis of current actual use. As to the right of way and/or conduit, it was agreed that in the event the two cities share a common conduit that the expense of both conduit and right of way would be proportionate on the basis of ultimate use. If separate conduits are used then division of costs of acquisition of right of way to be on the basis of amount of land required by each. The matter of title and ownership was referred to the attorneys.

At this meeting Denver advised that the tunnel was primarily required for diversion of Blue River Water and that the Blue River Project was not due for completion until 1962. There was a definite possibility that the date would be advanced however, depending on the recommendations to be embodied in the Tipton Report due in December. Denver advised that the tunnel site had not yet been acquired but that the site is now in the process of being surveyed and plans and specifications being drawn. The site for the diversion dam facilities and filtration plant has been acquired. Each group agreed to refer the progress and negotiations to their respective boards for preliminary approval and approval of further negotiations. Denver representatives agreed to notify Aurora as soon as the Tipton Report was received so that an additional meeting could be held.

February 20, 1957

This meeting was attended by Messrs. Saunders and Gifford only and resulted in the presentation of a written "Draft of proposal for joint construction and use of South Platte Diversion and Treatment Facilities" by Mr. Gifford. This draft of proposal actually contained three separate proposals as follows: (1) A proposal for participation in the construction of diversion and treatment facilities on the South Platte; (2) Proposal for cooperation in the change of diversion points on the South Platte; (3) A proposal for the leasing of Aurora's Last Chance water in return for a standby agreement by Denver. Mr. Saunders indicated that the Tipton Report had not as yet been received and no decision made as to when Denver's South

Platte Diversion and Treatment Facilities would be constructed. He stated that he would submit copies of the proposal to other members of the staff and have an answer within a week.

March 8, 1957

A telephone conference was had between Messrs. Gifford, Mosely and Saunders concerning the written proposal submitted February 20th by Mr. Gifford. Messrs. Mosely and Saunders stated substantially, as follows:

1. Latest plans indicate that at least one full year should be devoted to proper designing of the Filter Plant Facilities, alone. Mr. Mosely stated that the project is a tremendous one and will require considerable detailed planning in advance of actual construction;

2. That contracts for construction would probably not be let until late 1958;

3. That construction will not be completed until late 1961;

4. That the entire construction program of facilities on the South Platte will be timed to completion by January of 1962 to accomodate Blue River water, scheduled for delivery in Denver on or about that date.

5. Both officials indicated interest in a plan whereby Denver would give a standby agreement to Aurora and make use of Aurora's Last Chance water.

March 22, 1957

Mr. Saunders stated unequivocally that Denver could not commit itself as to when, if ever, Diversion and Treatment Facilities would be constructed by Denver on the South Platte (in effect rejecting Aurora's first proposal). Mr. Saunders made such statement in fairness to Aurora's plans and timetable. Denver representatives indicated that there was a possibility of working out a standby agreement as proposed on February 20, 1956 (and in earlier conferences) and felt that some answer could be obtained from the Board prior to May.

April to June 8, 1957

During this period several phone calls were made between Mr. Gifford and Mr. Saunders to determine whether any decision had been made by the Denver Water Board on a standby agreement. On May 29th, Mr. Saunders advised that the proposal had been submitted to the Board and thoroughly considered by it at it's meeting of May 28th and that a decision would be reached at it's next meeting to be held June 4th. On June 5th Mr. Saunders

ADVISED THAT THE BOARD HAD REJECTED AURORA'S PROPOSAL.

JUNE 8, 1957

MR. SAUNDERS STATED THAT THE BOARD IN REJECTING AURORA'S PROPOSAL DID NOT MEAN TO CLOSE THE DOOR ON THE POSSIBILITY OF FUTURE NEGOTIATIONS AND COOPERATIVE ACTION. A PROPOSAL THAT DENVER DIVERT AURORA'S LAST CHANCE WATER, TREAT IT AND DELIVER IT TO AURORA FOR A STATED FEE (TO OBVIATE OBJECTIONS TO EXTENSION OF BLUE LINE) WAS BRIEFLY DISCUSSED AND DROPPED AFTER MR. SAUNDERS MADE CLEAR THE FACT THAT THE BOARD WAS NOT INTERESTED IN ANY TEMPORARY ARRANGEMENT. MR. MILLAR POINTED OUT THAT THE BOARD FELT THAT IF AURORA WOULD JUST MARK TIME FOR A FEW YEARS THAT DENVER WOULD BE IN A POSITION TO SUPPLY THE CITY WITH AN ADEQUATE WATER SUPPLY.

MESSRS. GIFFORD AND SANDQUIST THEN POINTED OUT THAT AURORA HAD LOST APPROXIMATELY TEN MONTHS IN ATTEMPTING TO ARRIVE AT A CONCRETE PROPOSAL FOR COOPERATIVE ACTION IN THE CONSTRUCTION OF DIVERSION AND TREATMENT FACILITIES ON THE SOUTH PLATTE AND THAT IN VIEW OF THE FACT THAT ALL PROPOSALS HAD BEEN REJECTED THAT AURORA WAS READY TO PROCEED ALONE. MR. KUIPER THEN POINTED OUT THAT OUR ENGINEERS HAD DEVELOPED SOME THIRTEEN PROPOSALS FOR THE CONSTRUCTION OF THE NECESSARY FACILITIES AND THAT WE WOULD LIKE AN INDICATION FROM DENVER AS TO THE PARTICULAR PLAN THAT WOULD BEST SUIT ITS FUTURE NEEDS FOR SIMILIAR FACILITIES IN THE AREA. MR. SANDQUIST ADVISED THAT OUR ENGINEERS ESTIMATE THE SAVINGS THROUGH JOINT USE OF SINGLE FACILITIES TO BE APPROXIMATELY THREE QUARTERS OF A MILLION DOLLARS TO DENVER ALONE AND A SIMILAR AMOUNT TO AURORA. DENVER REPRESENTATIVES ADVISED THAT THEY FELT THAT A POLICY MATTER WAS INVOLVED AND THAT THE MATTER SHOULD BE PRESENTED DIRECTLY TO THE BOARD. IT WAS THEREUPON AGREED THAT AURORA WOULD PRESENT ITS PROPOSAL IN WRITING OR IN PERSON DIRECTLY TO THE BOARD AT THE NEXT REGULAR MEETING TO BE HELD JUNE 18, 1957.

A REVIEW OF THE FOREGOING CONFERENCES AND MEETINGS MAKES ABUNDANTLY CLEAR THAT AURORA ENGAGED IN GOOD FAITH TO COOPERATE WITH THE BOARD OF WATER COMMISSIONERS IN THOSE AREAS WHEREIN COOPERATION WOULD BENEFIT BOTH PARTIES. IT NOW APPEARS - SOME TEN MONTHS LATER - THAT IT IS NOT PRESENTLY FEASIBLE FOR COOPERATIVE ACTION IN THE CONSTRUCTION OF DIVERSION AND TREATMENT FACILITIES IN THE KASSLER AREA ON THE SOUTH PLATTE. IT IS THEREFORE IMPERATIVE THAT AURORA PROCEED AT ONCE WITH THE CONSTRUCTION OF DIVERSION AND TREATMENT FACILITIES AND THE CONSTRUCTION OF CONDUIT FROM THE SOUTH PLATTE AS IT WAS PREPARED TO DO LAST SEPTEMBER.

AFTER A CONSIDERATION OF THE THIRTEEN ALTERNATIVE PLANS DEVELOPED BY OUR ENGINEERS A PLAN HAS BEEN SELECTED WHICH IS ADEQUATE AND SUITABLE FOR OUR PURPOSES AND WHICH APPEARS TO OUR ENGINEERS (ON THE BASIS OF SUCH INFORMATION AS IS NOW AVAILABLE ON DENVER PLANS) TO BE USABLE BY DENVER. IN THE INTERESTS OF SOUND PLANNING AND SUBSEQUENT FINANCIAL SAVINGS TO BOTH CITIES, WE HAVE ATTEMPTED TO SELECT A PLAN WHICH COULD BE USED BY DENVER IF AT SOME LATER DATE IT SHOULD REACH A FINAL DECISION ON THE CONSTRUCTION OF DIVERSION AND TREATMENT FACILITIES IN THE KASSLER AREA. WE EXPECT TO PROCEED WITH THE CONSTRUCTION OF THESE FACILITIES AS SOON AS BIDS CAN BE CALLED FOR (NOW IN PROCESS) AND CONTRACTS LET.

Details of the proposed plan will be made available to the Board and its staff, in addition to oral presentation by Aurora's Director of Public Works. If such final plan appears to have any serious defect which would prevent joint use by Aurora and Denver - or any other objection, it would be appreciated if such matter was brought to the attention of our officials. It is entirely likely that in the construction of the facilities described in such plan that Aurora will require right-of-way easements from Denver. If any objection exists to the grant of such right-of-ways as will be required for the construction of such facilities, it is requested that such matter be brought to the attention of Aurora officials at once.

In conclusion, Aurora expects to commence construction of all facilities (except intake on South Platte and conduit for tunnel and Rampart Range tunnel) in the very near future and bids have been called for. In accordance with our announced and demonstrated action over the past several months, Aurora expects to cooperate with Denver to every possible extent to the end that both cities will benefit.

Leslie A. Gifford
City Attorney

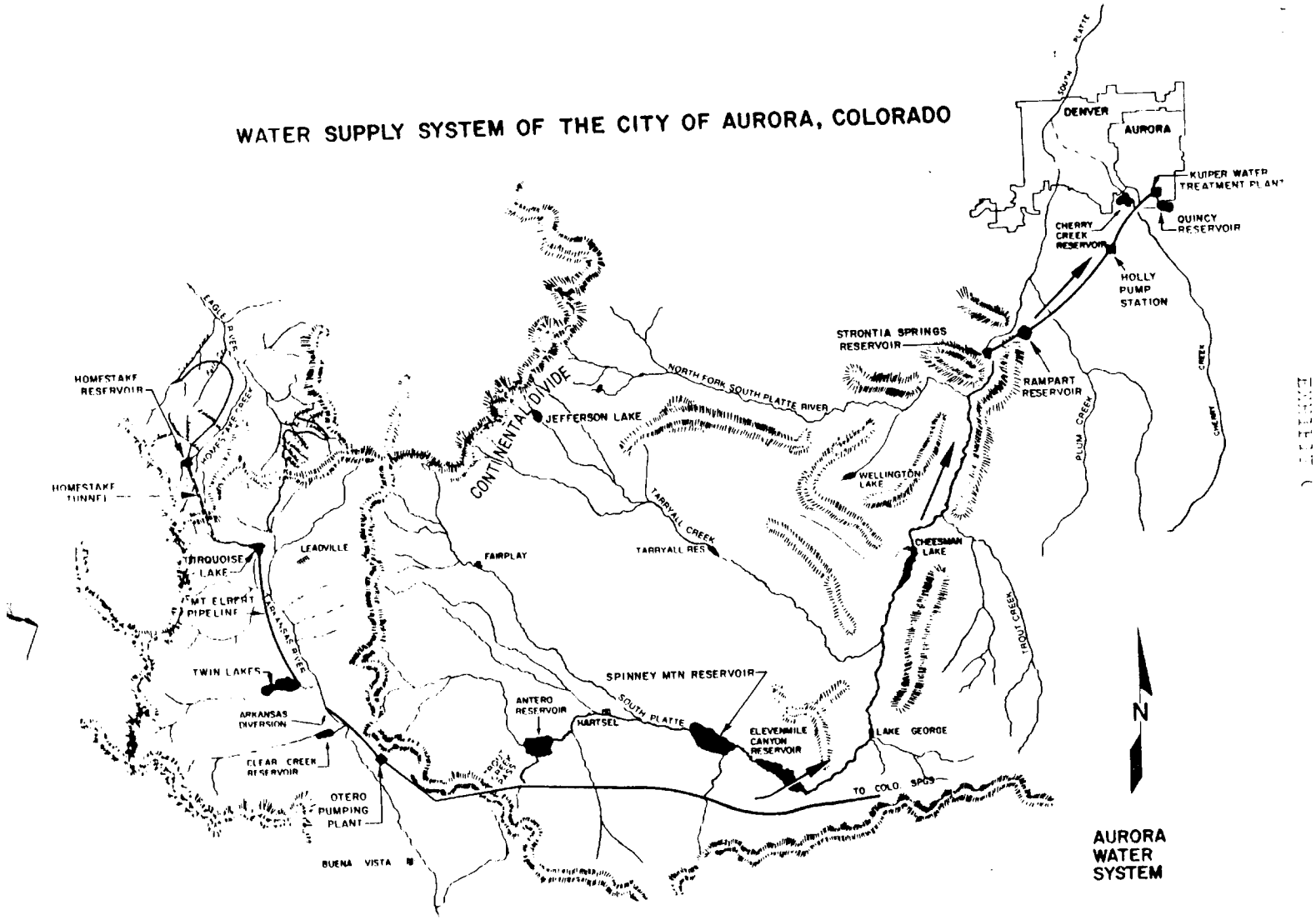
TABLE 2

Aurora Water Rights

Name	Average Annual Yield (Acre-Feet)[1]
Homestake Phase I	14,300
Homestake Phase II	10,400
South Park Rights	22,500
Last Chance Ditch	3,880
Twin Lakes	2,630
Jefferson Lake	1,030
Cherry Creek Wells	2,200
Total	56,940

1. Yield at source before transportation and storage losses.

WATER SUPPLY SYSTEM OF THE CITY OF AURORA, COLORADO



TOTALLY OR PARTIALLY OWNED BY AURORA

EXHIBIT D

copy of Exhibit 39