10-20-1983

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

IN THE SUPREME COURT

STATE OF COLORADO

Case No. 83-SA-252

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE; THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS; THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF JEFFERSON; JESSE FERGE and KATHLEEN FERGE, Plaintiffs-Appellees, vs. THE DENVER BOARD OF WATER COMMISSIONERS; THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, a municipal corporation; WILLIAM H. McNICHOLS, Mayor; and THE DENVER PLANNING BOARD, Defendants Appellees.	Appeal from the District Court in and for the City and County of Denver, State of Colorado Case No. C-51288 Honorable William M. Ela Judge

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AMICUS CURIAE BRIEF OF SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT, ARAPAHOE, JEFFERSON AND DOUGLAS COUNTIES, COLORADO; PLATTE CANYON WATER AND SANITATION DISTRICT, ARAPAHOE AND JEFFERSON COUNTIES, COLORADO; WILLOWS WATER DISTRICT, ARAPAHOE COUNTY, COLORADO; LAKEHURST WATER AND SANITATION DISTRICT, JEFFERSON AND DENVER COUNTIES, COLORADO; CHERRYRIDGE WATER AND SANITATION DISTRICT, ARAPAHOE COUNTY, COLORADO; SOUTHWEST SUBURBAN DENVER WATER DISTRICT, JEFFERSON COUNTY, COLORADO

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DATED: October 20, 1983

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URGING REVERSAL AND DISMISSAL
OF THE DECISION OF THE
HONORABLE WILLIAM M. ELA

I.

AUTHORITY TO FILE BRIEF

This Court entered an Order, pursuant to a Motion previously filed, authorizing and granting permission to the Amici above named to file an Amicus Curiae Brief pursuant to Rule 29 of the Colorado Appellate Rules.

By way of background, this Honorable Court is informed that the Southwest Metropolitan Water and Sanitation District, the Platte Canyon Water and Sanitation District and the Willows Water District, did attempt to intervene claiming to be indispensable parties at the Trial Court level upon becoming aware of the Order of the Trial Court, dated February 26, 1982, which set forth the tenor of the Court's opinion and decision, dated November 5, 1982.

The Trial Court denied the application for intervention of the above named Districts and that said Decision was appealed to this Honorable Court in a timely manner and thereafter jurisdiction was transferred to the Colorado Court of Appeals on May 16, 1983, where the said case is at issue and oral argument pending.

II.

THE AMICI

The within Amici are all Special Districts organized pursuant to 1973 C.R.S. 32-1-101, et seq. (Special District Act) and which entities provide water and/or sanitary sewage services beyond the geographical boundaries of the City and County of Denver.

All of the said Districts are contractees with the Denver Board of Water Commissioners, the Defendant and Appellant herein, and the following brief statistical data is submitted for background, to-wit:

District	1983 Assessed Valuation	Date Organized	Date of Water Board Contract	Estimated Persons Served
Platte Canyon Water and Sanitation District	$76,000,000	5/29/59	1968	24,000
Southwest Metropolitan Water and Sanitation District	$78,000,000	4/29/61	1961	26,000
Willows Water District	$70,000,000	1/8/74	1981	18,000
Lakehurst Water and Sanitation District	$60,000,000	9/8/62	1963	15,000
Cherryridge Water and Sanitation District	$ 1,473,000	11/16/62	1962	250
Southwest Suburban Denver Water District	$21,000,000	9/10/81	1981	7,000
	$306,473,000			90,250

The said Districts encompass over 16,580 acres of land in Arapahoe, Jefferson and Douglas Counties, Colorado, and provide water and sewer utility service in an area encompassing approximately 25 square miles.

The Amici have a combined public debt evidenced by general obligation bonds of approximately $20,000,000.

Additionally, the said Amici and other special districts have entered into subsequent agreements with the Denver Board of Water Commissioners relating to a systems-wide Environmental Impact Statement encompassing the cost of approximately $7,000,000, and further, most of said Districts with other districts and municipalities have negotiated a contract with the Denver Board of Water Commissioners for the construction of east slope and west slope water storage facilities at an estimated cost in excess of $340,000,000.

With the exception of the Southwest Suburban Denver Water District, all of the said Districts above named have sanitary sewage contracts with separate municipalities providing service beyond said municipalities into the Special Districts. The said Sanitation Districts have contracted with the Denver Wastewater Division of the City and County of Denver and with the appropriate agencies of the Cities of Littleton and Englewood for the providing of transmission and treatment of sanitary sewage collected within the said Dictricts.

III.

TRIAL COURT'S DECISION

The Trial Court has ruled that water sales or leases by the Denver Board of Water Commissioners beyond the confines of the City and County of Denver and within the Counties of Adams, Jefferson and Arapahoe, are subject to the jurisdiction and regulation of the Public Utilities Commission (Page 45 of the Court's Decision, dated November 5, 1982).

The Trial Court's Decision and Order has substituted the Public Utilities Commission of the State of Colorado for the Denver Board of Water Commissioners in all existing distributor contracts.

> "The frailties of distributor's rights represented by the discretion placed in the Board will not be expanded by substituting the Public Utilities Commission for the Board." (Page 4 of the Order of the Trial Court, dated February 26, 1982)

The Amici Curiae respectfully submit to this Court that the said decision of the Trial Court is legally unenforceable, contrary to law and adversely affects the Amici, and all others similarly situated, in that it permits parties plaintiff who have no water or sewer facilities and do not have contracts with the Denver Board of Water Commissioners to obtain a judgment which nullifies long existing contracts between the Amici and the Denver Board of Water Commissioners and upon which

contracts the Districts have caused to be issued general obligation bonds and the Districts' ability to repay said bonds is seriously affected by the said decision.

Further, the decision of the Trial Court ignores Constitutional provisions relating to local governments (special districts) and definitive special district statutory provisions all of which when reviewed in proper perspective reflect that the Trial Court was not adequately advised and rendered an erroneous and illegal decision.

IV.

SUMMARY OF LEGAL ISSUES

1. Lack of Standing and Parties Plaintiff Not Proper Parties. The Plaintiffs herein have no standing to be claimants in the within action.

The Plaintiffs do not have any contractual relationship with the Defendant, the Denver Board of Water Commissioners. It is observed that the Plaintiffs do not provide water service within the Counties of Arapahoe, Jefferson and Adams in the State of Colorado, and do not have any water transmission, storage or treatment facilities, and yet they have undertaken legal action which has resulted in a decision seriously impairing the rights of other public entities defined in long standing contracts and the investment of millions of dollars of public funds.

It is vigorously urged that the Plaintiffs have no legally protected interest encompassed by statutory or constitutional provisions which have allegedly been violated. (Dodge v. Department of Social Services, 600 P.2d 70, (1979) and Schlarb v. North Suburban Sanitation District, 144 Colo. 590, 357 P.2d 647 (1960))

2. The Decision Substantially Alters or Voids Contracts Without Having Indispensable Parties to Said Litigation Before the Court. The Trial Court's decision altered terms of contracts between the Denver Board of Water Commissioners and the Amici without naming or permitting the said contractees to be parties.

The Trial Court failed to consider the real parties' interest and the logic and purpose of Rules 19 and 24 of the Colorado Rules of Civil Procedure.

The Amici herein, and others similarly situated, are contractees with the Denver Board of Water Commissioners and the alteration or voiding of said distributor contracts by the Trial Court makes them indispensable parties to the within litigation. (Kleinschmidt v. Kleinschmidt Laboratories, Inc., 89f. Supp. 869 (1950))

The contracts between the Denver Board of Water Commissioners and the Amici designate the Water Board as a supplier and the Districts as distributors. The Districts in reliance upon said contracts have incurred public debt and built both

water and sewer facilities. The decision of the Trial Court to the contrary, makes the Denver Board of Water Commissioners a distributor of water to the general public upon demand and a competitor to the Districts, and did so without permitting the real parties in interest to become parties. Pursuant to contract, the Denver Board of Water Commissioners is a supplier and not a distributor!

3. Decision Violates Colorado Constitution, Article V, Section 35. The Trial Court's decision mandating Public Utilities Commission jurisdiction and regulation of the Amici is contrary to the prohibition contained in Article V, Section 35 of the Colorado Constitution which in part is as follows:

> "Delegation of Power. The general assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever."

4. Decision Ignores Definitive Special District Statutes. The Trial Court's decision mandating Public Utilities Commission regulation of all water sold or leased by the Denver Board of Water Commissioners beyond the territorial boundaries of the City and County of Denver ingores and fails to recognize the statutes controlling the special districts.

The statutes of the State of Colorado pertaining to

special districts negative any interference or control by the Public Utilities Commission.

1973 C.R.S. 32-1-1001:

"COMMON POWERS. (1) For and on behalf of the special district, the board has the following powers: (Emphasis added)
(d) To enter into contracts and agreements affecting the affairs of the special district ..... including contracts with the United States and any of its agencies or instrumentalities;
(h) To have the management, control and supervision of all the business and affairs of the special district as defined in this article and all construction, installation, operation and maintenance of special district improvements; (Emphasis added)
(j) To fix and from time to time to increase or decrease fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the special district ..... (Emphasis added)
(k) To furnish services and facilities without the boundaries of the special district and to establish fees, rates, tolls, penalties or charges for such services and facilities; (Note that nowhere in this statute is any mention made of being subjected to regulations or rate-making regulations of the Public Utilities Commission)
(n) To adopt and exercise all rights and powers necessary or incidental to or implied from the specific powers granted to special districts by this article. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this article." (Emphasis added)

1973 C.R.S. 32-1-1006:

"SANITATION, WATER AND SANITATION, OR WATER DISTRICTS - ADDITIONAL POWERS - SPECIAL PROVISIONS. (1) In addition to the powers specified in section 32-1-1001, the board of

any sanitation, water and sanitation, or water district has the following powers for and on behalf of such district; (emphasis added)
(d) To assess reasonable penalties for delinquency in the payment of rates, fees, tolls or charges or for any violations of the rules and regulations of the special district, together with interest on delinquencies, from any date due at not more than one percent per month or fraction thereof, and to shut off or discontinue water or sanitation service for such delinquencies and delinquencies in the payment of taxes or for any violation of the rules and regulations of the special district, and to provide for the connection with and the disconnection from the facilities of such district;
(e) To acquire water rights and construct and operate lines and facilities within and without the district;
(f) To have and exercise the power of eminent domain and dominent eminent domain...;
(g) To fix and from time to time to increase or decrease tap fees." (Emphasis added)

5. Trial Court's Decision Ignores Intergovernmental Relationship Authority. The Trial Court's decision destroys the constitutional provision and the statute authorizing and approving intergovernmental relationship as defined in 1973 C.R.S. 29-1-201 and 203 which in pertinent part are as follows, to-wit:

"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; and

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."

6. Voter Approved Public Debt Repayment Jeopardized. Public debt repayment is threatened by the decision of the Trial Court which forces regulation of special districts contrary to the Constitution and the statutes so made and provided. The public debt issued by the Amici, pursuant to constitution and statutory authority, is based upon the concept that the enabling legislation is irrepealable until the public debt has been retired. The Colorado Constitution at Article XI, Section 6(1) so provides that no debt may be incurred except by a legislative measure which shall be irrepealable until the indebtedness therein provided shall have been fully paid or discharged. The Trial Court's decision ignores the law and the Constitution. It is indeed judicial legislation.

V.

THE ARGUMENT

1. Lack of Standing. Counsel will not belabor the fact that the decision of the Trial Court fails to overcome the fact that the parties plaintiff herein are in a non justiciable position.

This Court has held in Dodge v. The Department of Social Services, 600 P2d. 70 (1979) that one must meet the standard of having an alleged economic injury and that a party must establish that the said alleged injury was to a legal right protected by statutory or constitutional provision.

The parties plaintiff are not contractees with the Denver Board of Water Commissioners, neither own nor operate any water transmission, storage or distribution facilities.

The Amici herein and those similarly situated, are the distributors of water within the various special districts pursuant to statutory authorization, have contracts with Denver and were not parties to the within action.

The Amici find it difficult to understand that the parties plaintiff with no standing, convinced the Trial Court to enter an Order which so adversely affects the very existence of the Special Districts, ignores the constitution and existing statutes governing special districts and fails to acknowledge prior pronouncements of this Court. (Schlarb v. North Suburban Sanitation District, 144 Colo. 590, 357 P.2d 647 (1960))

(See Pages 18 and 19)

2. Decision Alters Terms of Existing Contracts. It is an acknowledged principle of law that when a suit is brought to modify or to rescind a contract, all parties to the contract are indispensable. (Kleinschmidt v. Kleinschmidt Laboratories, Inc., 89 F. Supp. 869 (1950))

It appears the Trial Court did not understand the provisions of the contracts between the Amici herein and the Denver Board of Water Commissioners. The same provides for obligations and commitments and limitations on all the parties.

In a summary manner, the distributor's contract contains provisions that relate to current water rates, future rate changes, the rules and regulations that govern the operation of each District's system, engineering design and construction standards and emergency rationing procedures which would apply in the event of water shortage. The judgment of the Trial Court abolishes the agreements established under the distributor's contracts and substitutes in its place, the rules and regulations of the regulatory authority of the Public Utilities Commission. The rules of the game, so to speak, have been changed and the Public Utilities Commission would be substituted in place of the Denver Board of Water Commissioners. All of this has been accomplished by a fiat of the Court without the Amici herein, and other districts similarly situated, having an opportunity to be heard on the subject matter.

Under the distributor's contracts, the Districts have a right to have the Denver Board of Water Commissioners determine the rate which will apply for the use of water. In addition, the distributor's contracts contain a restriction on Denver's ability to change the price for the use of water in the future. The restriction is related to the cost charged to Denver residents. Paragraph 2 of each distributor's contract contains in part the following, to-wit:

> "2(a). The Board may modify the schedule of charges for use of water hereunder from time to time in its discretion:.....
> (3) The new charges will not be disproportionately greater for water use outside Denver than for water use inside Denver.
> (b). The charges under this and other like contracts shall not be deemed to be disproportionately greater to outside users under the reference in subparagraph 2(a)(3), if the rate of return (expressed as a percentage) from all the Board's potable water sales outside Denver shall be no more than six (6) percentage points greater than the rate of return from all the Board's potable water sales in Denver ....." (Page 4, Distributor's Contract, Exhibit #1)

The Districts have a contractual right to have Denver determine the engineering standards for the construction of District facilities and the Districts have a contractual commitment that those standards shall not be more stringent than the standards imposed on Denver residents. Paragraph 8 of the Distributor's Contract is as follows, to-wit:

> "8. ..... All design, installation, operation and maintenance of distributor's facilities

> must be in accordance with the then current Engineering Standards of the Board, as the same may exist from time to time .... Engineering Standards for distribution facilities outside of Denver shall not be required to be higher than those in force for distribution facilities inside Denver..." (Page 6 and 7, Distributor's Contract, Exhibit #1)

Denver has agreed that its operating rules and regulations applicable to the Districts will be no different than those imposed upon the residents inside Denver. Paragraph 11 of the Distributor's Contract reads in part:

> "11. All the general rules and regulations placed in force by the Board from time to time shall be as fully enforceable in the Distributor's Service Area as inside Denver." (Page 7, Distributor's Contract, Exhibit #1)

The Public Utilities Commission is not so restricted. Nothing would prevent the Public Utilities Commission, if it dealt with the Districts, from subjecting the Districts to engineering standards, rules and regulations or prices and charges different from those prescribed in the Distributor's Contracts.

The significance of the contractually created regulatory system, which relates to both parties to the contract, established under the Distributor's Contracts is appreciated more after looking briefly at the nature of the contracting parties, and the impact that the Trial Court's judgment would have upon them. The distributor Districts are governmental entities that

have the power to tax and issue bonds. Their distribution facilities have by in large been constructed and maintained through public funds. Thus, the distributor's residents have chosen, in some instances, by special bond elections to sell general obligation bonds to construct and maintain water transportation and distribution facilities and to repay debt by property tax assessments, tap fees and service charges.

The Denver Board of Water Commissioners has not directly supplied the general public outside Denver, The Trial Court's judgment, by definition, places an obligation on Denver to begin directly supplying the extra-territorial public. In other words, Denver will be forced to become an extra-territorial distributor and this will necessitate Denver constructing and maintaining additional transmission and distribution facilities outside of Denver. The Public Utilities Commission has no authority to levy taxes and so the cost of constructing and maintaining these additional facilities will have to be recouped through increased water rates passed on to all extra-territorial users, pursuant to the Public Utilities Commission's rate regulatory authority.

Thus, the method of allocating the construction and maintenance costs for water distribution facilities is inevitably going to be different if Denver is subject to Public Utilities Commission's regulations. Ths Districts' residents, through their elected Board of Directors, have chosen one way of allocating the cost of construction and maintaining facilities and the Trial Court, without giving the Districts an opportunity to be heard, has chosen another method.

The Distributor's Contract gives each District the contractual right to distribute Denver water within the District's system. Paragraph 10 of the Distributor's Contract provides as follows, to-wit:

> "10. The Board agrees to use every reasonable means to furnish a continuous supply of water from the Denver Water System at the point or points of connection between its facilities and those of the Distributor so as to enable the distributor to furnish an adequate supply of water to all users within the Distributor's Service Area." (Emphasis added) (Page 7, Distributor's Contract, Exhibit #1)

In most cases, but not all, the contract service area is coterminus with the District's boundaries.

The judgment of the Trial Court adversely affects each Districts' distributor status because it changes the relationship between the parties. Under the Distributor's Contract, Denver delivered water and the distributor distributed it to its inhabitants. Classifying Denver as a regulated public utility impresses upon it the obligation to directly serve the public, i.e., to become a distributor. Denver's obligation to serve is no longer to the Districts, but rather to the public in general. Denver, in essence, has become a competitor instead of a supplier.

A regulated public utility must serve all the members of the public, who require service, to the extent of the utility's capacity. 1973 C.R.S. 40-1-103(1) defines a regulated public utility as:

> "(1) The term "public utility", when used in Articles 1 through 7 of this Title, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, person or municipality operating for the purpose of supplying the public for domestic, mechanical, or public uses and every corporation, or person declared by law to be affected with a public interest, and each of the preceding is hereby declared to be a public utility and to be subject to the jurisdiction, control, and regulation of the commission and to the provisions of articles 1 to 7 of this title." (Emphasis added)

As this Court stated in Public Utilities Commission of the State of Colorado v. Colorado Interstate Gas, 142 Colo. 361, 351 P2d. 241 (1961) at Page 377:

> "The nature of the service must be such that all members of the public have an enforceable right to demand it."

Thus, the judgment of the Trial Court imposes upon Denver an obligation to directly serve the public and correspondingly, the individual members of the public have the right to demand that Denver serve them. "John Q. Public" who happens to own a large tract of undeveloped property adjacent to a street with a Denver water line in it, now has the right to go directly to Denver and demand service, thus depriving the Districts of tap fee revenues and possibly resulting in a duplication of service. In addition, Denver's new obligation to directly serve the public may have a significant effect upon each

District's ability to expand. No one will want to subject his property to taxation and regulation by a District when he can obtain water service directly from Denver without having to be included in a special district.

The judgment of the Trial Court also directly challenges the Districts' distributor status. As a regulated public utility, Denver's obligation extends directly to the public and not to the Districts. Under the Trial Court's decision, the Districts no longer have the right contractually to be a distributor and it is questionable whether the Public Utilities Commission will look to the Districts as distributors. The Public Utilities Commission has very broad and extensive regulatory powers, but those powers do not extend to the regulation of water and sanitation districts. In Schlarb v. North Suburban Sanitation District, 144 Colo. 590, 357 P.2d 647 (1960), the Court stated at Page 592:

> "It is here contended that sanitation districts are public utilities. Public Utilities Commission, et al. v. Colorado Interstate Gas Company, 142 Colo. 361, 351 P.2d 241, involved the question of what constitutes a public utility. No good purpose would be served in reiterating the principles enunciated in that case. Suffice it to say that a sanitation district does not fall within the definition of a public utility. (Emphasis added)

The Amici respectfully submit that the contracts between said Districts and the Denver Board of Water Commissioners are not subject to review by the Court for any other inquiry other

than to determine whether the terms of the contracts are being performed. At least non-contracting parties are not afforded the privilege of this inquiry.

In support of the foregoing, a reference is made to Schlarb v. North Suburban Sanitation District, 144 Colo. 590, 357 P.2d 647 (1960), wherein Mr. Justice Knauss at Page 592 of 144 Colo. 590, stated unequivocally as follows, to-wit:

> "(1) A sanitation district, like other districts, such as soil erosion, water, fire and recreation, are quasi-municipal corporations, created by legislative enactment, having for their purpose the mutual benefit of the land owners thereof. City of Aurora v. Sanitation District, 112 Colo. 406, 149 P.2d 662. Such corporation has no obligation or duty to furnish service to owners of land outside the district. The relationship between plaintiff and defendant was purely contractual. Such being the case the reasonableness of the conditions or terms of inclusion within the area so as to reap the benefits of the sanitation services is not subject to review by the courts. The courts may only determine whether the district complied with the terms of the contract. Englewood v. Denver, 123 Colo. 290, 229 P.2d 667; Ft. Collins v. Park View, 139 Colo. 119, 336 P.2d 716."

3. Public Utilities Commission Mandate is Contrary to Article V, Section 35 of the Colorado Constitution. The Public Utilities Commission not only has the power but the duty to regulate. If the Public Utilities Commission delivers water into the Districts' systems, it can only be on the condition that the District subjects itself to the rules, control and regulations of the Public Utilities Commission, and, the

Public Utilities Commission will have to regulate the District pursuant to its statutory directives. This obviously would involve an unreasonable and unconstitutional interference with the powers of local government as set forth in Article V, Section 35 of the Colorado Constitution quoted above.

This Court, in Lamar v. Town of Wiley, 80 Colo. 18 (1926) ruled that the Public Utilities Commission is "a special commission" as the term is used in Article V, Section 35 of the Colorado Constitution which expressly and directly forbids control of municipally owned utility rates by a Public Utilities Commission. Dalby v. The City of Longmont, 81 Colo. 271, 256 P. 310 (1927) and City of Loveland v. Public Utilities Commission, 195 Colo. 298, 580 P.2d 381 (1978).

The logic of the constitutional provision which is to preserve the autonomy of local government would be rendered useless and totally frustrated by the decision of the Trial Court.

4. Trial Court's Decision is Contrary to the Statutes Relating to Special Districts. The statutes pertaining to the powers and authority of special districts as set forth above, categorically and unequivocally negative any interference or control by the Public Utilities Commission.

Special districts being a local form of government, regulate, pursuant to statute, the matter of service, service fees and rates in regard to the local and particular requirement and the cost involved in providing the service. This local form of

government is unique and was intended for preservation by the constitution and the statutes. One should keep in mind that the Directors of special districts are inhabitants of or property owners within the special district, and they make the rules, regulations and set the taxes for themselves and for others within the District.

A meager knowledge of special districts and the functions that they perform brings into focus the utter confusion which would result from any attempt to regulate the same, their tap fees, services fees and operations by the Public Utilities Commission.

This Court's attention is directed to the oft used word "has", in regard to special district powers and observe that no where therein is there any dimunition or condition in regard to the exercise of these powers. Districts operating within the statutes and constitution are local governments not to be regulated or controlled or impaired by any regulatory or supervisory commission.

Considering the fact that these Special Districts provide many utility services, namely water and sewer service, in the metropolitan area, encompassing some 200 square miles beyond the city limits of the City of Denver, is a silent attestation that operating within the framework of the constitution and the statutes, their useful life and purpose should not be diminished by judicial legislative fiat.

5. Decision Destroys and Seriously Impairs the Effectiveness of Intergovernmental Contracts and Relationships. 1973 C.R.S. 29-1-201 and 203, quoted above, sets forth the accepted norm for intergovernmental relationships intended to encourage cooperation and resulting efficient and effective use of governmental powers and responsibilities.

Currently, some fifty municipalities and special districts have entered into contracts with the Denver Board of Water Commissioners for the conducting of a $7,000,000 Environmental Impact Study relating to the Denver Board of Water Commissioners' system and its service to the urban community. Additionally, the same communities have negotiated a contract which is currently in the process of execution, relating to the construction of massive water facilities on the South Platte River, estimated at $300,000,000, and in the Colorado River Water Shed on the western slope, valued at $40,000,000, all with the singular purpose of providing a continuity of water availability to meet the demands of this community.

The decision of this Court categorically and unequivocally challenges the effectiveness of this legislative enactment and destroys or at least impairs the opportunity for implementation because of the scepter of possible public utilities regulation and interference.

The issue before the Trial Court related to water contracts executed by the Denver Board of Water Commissioners, but

this Court should be advised that many special districts and municipalities have entered into intergovernmental contracts not only for water service but for sanitary sewer service, involving millions of dollars of public debt for the purpose of construction of sanitary sewage treatment facilities for the use and participation by many public entities. It is doubtful that the originating municipality would enter into such undertakings providing for these services in the public interest and for the preservation of the public health if such an exercise leads to ultimate regulation by the Public Utilities Commission.

It is the express desire of governmental agencies, state, federal and local, that regionalization of water and sewer facilities is desirable in order to prevent the proliferation of treatment and related service facilities by smaller, less efficient operations which result in massive costs to the users.

It is doubtful that the Trial Court in making the decision in this case, comprehended or was even aware that the contracts between these Amici and the Denver Board of Water Commissioners are those that were envisaged by the constitution provision and the statutes above quoted.

Unless the decision of the Trial Court is reversed, pending efforts at modernizing facilities for the public health relating to water and sanitary sewage services will be substantially impaired contrary to executed contracts, the statutes so made and provided, and the expressed will of the electorate evidenced at special bond elections.

6. Public Debt Repayment Impaired. The public debt issued by the Amici herein and others similarly situated, pursuant to the Constitution of this State and the statutory authority thereby provided, is threatened by the decision of the Trial Court contrary to Article XI, Section 6(1) of the Colorado Constitution, which provides that enabling legislation pertaining to local government debt shall be irrepealable until the debt is paid. The Trial Court in its decision has substantially changed the terms and conditions of existing contracts and reliance upon which public debt has been incurred, and creates a circumstance which substantially impairs the ability of the Districts to timely retire the said public debt.

The Amici herein have issued general obligation bonds to defray the cost of construction of water and sewer facilities in reliance, in part, upon the contract with the Denver Board of Water Commissioners for a commitment relating to the providing of continuous water service. The decision of the Trial Court herein which makes water service beyond the City and County of Denver subject to the Public Utilities Commission's regulations in effect makes water available, "upon demand", for those seeking the service without becoming a part of a distributing entity which has heretofore expended public monies and contracted a public debt to provide for the services.

Additionally, feasibility of the future issuance of public debt will always be in doubt and interest rates will so

reflect, if a decision of a Trial Court is permitted to stand which totally circumvents the entire organizational mechanism upon which local governments are organized and function under prevailing statutes, and public debt incurred and orderly, timely and viable repayment accomplished.

The Amici herein respectfully suggest that the decision of the Trial Court, based upon the foregoing, can be classified as "judicial legislation" which impairs public debt repayment and the public health, safety and welfare.

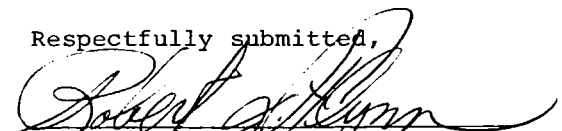
VI.

CONCLUSION

The decision, challenged herein, revised or voided public contracts absent indispensable parties, and contrary to accepted legal pronouncements; threaten the public health, safety and welfare; ignored the mandates of the Constitution of this sovereign State; rendered useless controlling and enabling legislation, and attempted to overrule prior decisions of this Court and cast a shadow on repayment of public debt and the ability to economically incur the same in the future.

Accordingly, the within Amici urge, pray and petition, for the reasons above stated and argued, that this Court enter an Order reversing the decision of the Trial Court and dismissing the within cause of action.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby certify that I have this 20th day of October, 1983, deposited in the U.S. mail with postage prepaid, a true and correct copy of the foregoing Amicus Curiae Brief, addressed to the following:

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Barbara Maxwell

Format Date:
Prior Contract No.:
Date of Prior Contract:
Private Pipe Nos.: X24956
Contract No.: Read & Bill No. 233

DISTRIBUTOR'S CONTRACT

THIS AGREEMENT, made and entered into as of the 30th day of DECEMBER, 1981, by and between the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS, hereinafter sometimes called "Board", and WILLOWS WATER DISTRICT, hereinafter sometimes called "Distributor",

W I T N E S S E T H:

THIS CONTRACT IS MADE UNDER AND SUBJECT TO THE FOLLOWING CONDITIONS:

A. This contract is made under and conformable to the Operating Rules of the Board as amended from time to time, and to the provisions of the Charter of the City and County of Denver which control the operation of the Denver Municipal Water System consisting of Sections C4.14 to C4.35 of 1960 Compilation, adopted by the General City Election of May, 1959, and effective on and after May 28, 1959. Insofar as applicable, said Operating Rules and Charter provisions are incorporated herein and made a part hereof and shall supersede any apparently conflicting provision otherwise contained in this contract.

B. This contract involves the use of water outside the territorial limits of the City and County of Denver from the water works system and plant owned by Denver and controlled by the Board, hereinafter referred to as "Denver Water System", under authority of the Charter of the City and County of Denver which provides, among other things, that, "The Board shall have power to lease water and water rights for use outside the territorial limits of the City and County of Denver, but such leases shall provide for limitation of delivery of water to whatever extent may be necessary to enable the Board to provide an adequate supply of water to the people of Denver. . ." As used in this contract "Inside Denver" refers to the area constituting the City and County of Denver as it may exist at

any given time, and "Outside Denver" refers to the total area not located inside the City and County of Denver which is furnished potable water from the Denver Water System at any given time.

C. The extent to which limitation of water delivery outside Denver may be necessary to enable the Board to provide adequately for users inside Denver is a fact to be determined by the Board in the exercise of its reasonable discretion from time to time as the occasion may require. The current determination by the Board on this subject, which will not be changed without good reasons, is as follows: "The welfare of Denver and its inhabitants requires a stable water supply not only for them but also that part of the adjacent metropolitan area dependent on Denver for a water supply. While it is the purpose of Denver to maintain a water supply adequate to meet the needs of the metropolitan area dependent upon Denver for water supply, there are many elements which make it uncertain whether the supply can always be adequate for all, and therefore in times of shortage, water use outside Denver will be curtailed on the following basis, the first listed curtailment being adopted to meet the least serious situation and the succeeding curtailment being adopted in addition to prior listed curtailments, the last to meet the gravest possible situation and one which every reasonable precaution must be taken to avoid, to-wit:

1. Restrictions of uses, which can be accomplished without serious injury to person or property, and prohibition of non-essential uses.

2. Prohibition of irrigation except for commercial greenhouses.

3. Prohibition of every use except for domestic use and for essential commercial enterprises and industry.

4. Prohibition of all use outside the city except domestic use.

5. Prohibition of all uses outside the city.

In order to enable the Board to provide an adequate supply of water to the people of Denver without impairment of essential deliveries of water under this and similar contracts, the Board will impose any restrictions or prohibitions contemplated by Item 1 above uniformly inside and outside Denver."

D. The Distributor owns and controls certain pipes and other devices for distributing water from the Denver Water System to users within the territory described in Exhibit A, attached hereto and made a part hereof, and hereinafter referred to as "Distributor's Service Area", or is in a position to secure authority and acquire the necessary pipes and devices to do so, which pipes and devices are herein sometimes referred to as "distribution facilities".

E. The securing of an adequate water supply by the Board for the future growth of the Denver Metropolitan Area is necessary and of mutual advantage to the parties hereto and the users they serve.

F. The term "Board" as used herein shall include the Board of Water Commissioners and any authorized representative.

NOW, FOR AND IN CONSIDERATION of the premises and in further consideration of the promises and agreements hereinafter contained, the Board agrees to sell, and the Distributor to buy, the use of water upon the conditions and limitations hereinafter provided:

1. The Distributor promises to cause to be paid to the Board under the provisions of paragraphs 31 and 33 hereof, for the use of water provided by the Board hereunder, the amount or amounts of money calculated by utilizing the schedules attached to and made a part of this contract and denominated Exhibit B. It is mutually agreed that said schedules provide for the payment for water use of amounts sufficient to constitute a compliance with requirements of the Charter of the City and County of Denver at the time of the making of this agreement. The schedule of charges provided for in this paragraph shall remain in full force and effect until the revenue resulting from collection of charges set forth in Exhibit B shall become inadequate to meet the standards of return required by the Charter for water delivered outside Denver, or until the Board shall deem it necessary to raise or lower the charges for the water either inside or outside Denver. The Board may establish reasonable classifications of users for various purposes, including but not limited to, rate making. Methods of collection and schedules of charges for use outside Denver shall be applied uniformly among similar users. Exhibit C attached hereto constitutes the water rates for service inside Denver. Any new schedule of charges for water use outside Denver shall become Exhibit B and for inside

Denver, Exhibit C, but nothing herein shall be deemed to require a continuance of classifications of charges of similar definition to those contained in said exhibits as presently or hereafter constituted. In addition to any other rate or charge herein provided, Distributor shall pay or cause to be paid all applicable system development charges, participation charges, and such other rates, tolls, charges or combinations thereof as the Board may, from time to time, in the exercise of its lawful authority impose. Any other provision of this Agreement notwithstanding, the taps to be provided hereunder shall only be provided in conformity with and as allowed by the Board's tap allocation program, first adopted at the Board's meeting on May 31, 1977, as recessed to June 1, 1977, as the same may be amended from time to time.

2. It is mutually agreed that the duration of this contract is such that the passage of time will require changes in the charges to be made for the use of water hereunder, and that the most feasible way to insure fairness will be to keep charges for the use of water outside Denver uniformly related to charges for the use of water inside Denver. It is therefore agreed:

(a) The Board may modify the schedule of charges for use of water hereunder from time to time in its discretion, provided:

(1) Such modification will become effective not earlier than 3 months after the change shall be adopted by the Board.

(2) The Board will take reasonable steps to notify the Distributor of such change immediately after such change shall have been adopted.

(3) The new charges will not be disproportionately greater for water use outside Denver than for water use inside Denver.

(b) The charges under this and other like contracts shall not be deemed to be disproportionately greater to outside users under the reference in subparagraph 2a(3), if the rate of return (expressed as a percentage) from all the Board's potable water sales outside Denver shall be no more than six (6) percentage points greater than the rate of return from all the Board's potable water sales in Denver. Rate of return shall be derived by dividing total revenue (total

outside Denver or total inside Denver) in excess of the applicable costs and charges for operation, maintenance, and depreciation, by the value of the plant devoted to the furnishing of the water supply from which the revenue was derived. The Board shall have reasonable discretion to establish and apply criteria for determining, as to both outside and inside Denver, necessary plant, plant value, and operation, maintenance and depreciation expense, provided the application of the criteria shall be made as if there were no differential between charges inside and outside Denver.

3. No water delivered under this contract shall be used outside the Distributor's Service Area as the same may exist from time to time, and Distributor agrees to disconnect forthwith any tap to Distributor's system through which water is furnished for use outside said area.

4. The Distributor's Service Area may only be enlarged by the inclusion of such additional property therein as authorized by the Board in writing upon application by the Distributor.

5. If any portion of the Distributor's Service Area is not actually receiving water service, or in the opinion of the Board in immediate prospect of requiring water service, it may be deleted from the area to be served hereunder upon three years written notice from the Board to the Distributor. Unless countermanded, such notice will be effective at its expiration date, as to any area not then actually receiving water service. The Distributor shall be under no obligation by virtue of this agreement as to any territory deleted hereunder from its Service Area.

6. Every service attached to the Distributor's distribution facilities shall be connected under the same provisions as required by Board rules for attaching to distribution facilities inside Denver. The Board agrees that it will not make any tap or issue any permit for attachment to the water system of the Distributor except upon written authorization of the Distributor. Upon receipt of written authority from the Distributor, the Board will make taps on applications in the regular course of its business. The Distributor

shall be fully liable to the Board for unreported connections including payment of all water charges thereon.

7. Notwithstanding any other term or provision in this contract, it is specifically understood and agreed that the Board may suspend the making of new taps to Distributor's distribution facilities whenever it appears to the Board that such action is necessary to diminish the likelihood of curtailment of use under the bases set out in paragraph C above. The Board agrees to give six (6) months written notice of such suspension to the Distributor unless the circumstances require a shorter period, provided, however, that the Board shall be obligated to exercise such right of suspension uniformly among all Distributors similarly situated, and provided further that the Board may, for the benefit of the national defense or for publicly owned agencies or agencies exempt from ad valorem taxes, provide for exception to the rule of uniformity.

8. The Distributor agrees to furnish the Board with a continuously complete record of its installations; agrees that it will not make a new installation or change in its water facilities except after written notice to the Board and opportunity furnished the Board to inspect installations or changes as they are made to insure their conformity to plans and specifications approved by the Board; and agrees to maintain facilities, once installed, in good repair at all times and to make such replacements thereto as may be necessary to keep said facilities in proper operating condition at all times. All design, installation, operation and maintenance of Distributor's facilities must be in accordance with the then current Engineering Standards of the Board, as the same may exist from time to time, and with plans and specifications submitted by the Distributor to and approved by the Board. The Board may require the plans and specifications of the facilities to be prepared by a registered engineer, but in any event in such a manner so as to be readily understood and recorded by the Board's engineers. The Board reserves the right to require that tracings, maps or blueprints be furnished for the Board's files. The Board will not perform engineering services for the Distributor but shall be entitled to inspect the Distributor's plans and installations thereunder at

Distributor's expense. Engineering Standards for distribution facilities outside Denver shall not be required to be higher than those in force for distribution facilities inside Denver. The provisions of this paragraph apply to all facilities acquired by the Distributor including those acquired as completed units.

9. It is mutually agreed that service to all water users in accordance with the Board's Engineering Standards is desired by both parties hereto and that therefore no new taps may be made to the Distributor's distribution facilities which would impair the capacity of said facilities to furnish water service in accordance with the Board's Engineering Standards, as the same may exist from time to time.

10. The Board agrees to use every reasonable means to furnish a continuous supply of water from the Denver Water System at the point or points of connection between its facilities and those of the Distributor so as to enable the Distributor to furnish an adequate supply of water to all users within the Distributor's Service Area. The Distributor understands and agrees that the Board may limit the use of water outside Denver in times of water shortage on the basis set out in paragraph C above or any modification made by the Board thereto for good reason. The Distributor agrees that it will, at all times, operate the distribution system under its control in such a way as not to unreasonably interfere with service to others dependent upon the Denver Water System for a supply of water. In furtherance of this principle the Distributor specifically agrees that it will operate its facilities, especially any pumping or storage facilities, in correlation with operation of Board facilities and will install and use such devices including telemetering, as are reasonably necessary to effectuate correlation.

11. All the general rules and regulations placed in force by the Board from time to time shall be as fully enforceable in the Distributor's Service Area as inside Denver. The Distributor shall have the full right to make and enforce rules, not inconsistent with Board rules, to govern uses in the Distributor's Service Area. The Distributor agrees to assist the Board in every manner reasonably possible in enforcing the Board's rules. The Distributor agrees to

prevent all unnecessary or unreasonable waste of water from its distribution facilities and to impose rules against, and make reasonable effort to enforce prevention of, waste from its facilities and all connections thereto.

12. Each of the parties to this agreement recognizes in the other the right to enforce its rules and the terms of this contract by turning off or disconnection of the supply of water of those who violate such rules or contract, and it is the intent of this paragraph that neither shall interfere with the other in the enforcement of its rules or this contract. The Distributor agrees that neither it nor any of its officers, employees or agents by its authority will turn on any service connection after the same shall have been turned off by the Board except by written authority by the Board to do so. The Board agrees that it will not turn on any service connection which shall have been turned off by the Distributor when acting within the limitations imposed by this agreement, except on the written request of the Distributor. In order to effectuate the intent of this paragraph, both the Board and the Distributor shall notify each other of the turning on or off of water to consumers of either of them in the Distributor's Service Area at times and in a manner so as to cause a minimum of inconvenience to either party hereto.

13. The Distributor agrees that hereafter it will supply no water in its Service Area except that secured from the Denver Water System and that it will devote its water facilities permanently to that function, and that it will not make or permit any cross-connection whatsoever to any other supply. The Distributor shall be relieved of the obligations of this paragraph as to any portion of its Service Area as to which the Board shall cease to furnish a water supply hereunder.

14. Both parties to this agreement recognize that the water supply for the Denver Metropolitan area is dependent upon sources from which the supply is variable in quantity and beyond the control of the Board. No liability shall attach to the Board hereunder on account of any failure to accurately anticipate availability of water supply or because of an actual failure of water supply due to

inadequate run-off or occurrence beyond the reasonble control of the Board. The Board agrees to construct and devote adequate facilities to make available to the Distributor a permanent water supply in view of historical experience with water run-off so far as reasonably possible. Its judgment in providing safety factors shall not be questioned unless clearly unreasonable.

15. The Board agrees to exercise reasonable care and foresight to furnish water outside Denver as potable as that furnished inside Denver. No promise or guarantee of pressure is made by the Board or is to be implied from anything contained herein.

16. In the event the Distributor shall fail to keep or perform any agreement on its part to be kept and performed according to the terms and provisions of this agreement and the Board gives the Distributor written notice specifying the particular default or defaults, the Distributor shall have such time as provided in said notice, which period of time shall in no event be less than ninety (90) days, in which to correct such default or defaults. In the event the Distributor shall fail to correct such default or defaults within the time provided in the notice, the Board without obligation to the Distributor or any person or corporation claiming by, through or under the Distributor may take possession and control of the distribution facilities and all rights of the Distributor connected thereto which the Board finds to be so affected by Distributor's default. While in possession and control of said facilities, the Board may take such steps as it may deem proper or necessary to correct the default or defaults. During such possession and control the Board may collect the then current total service charges for water furnished the Distributor's Service Area from the various users and the Board shall have power to enforce collection of said charges in the same manner as it employs in Total Service Contract Areas. The Distributor agrees to reimburse the Board for all expenses incurred by the Board in correcting the default or defaults and upon payment of all such expenses, possession and control of said distribution facilities shall be returned to the Distributor. Waiver or failure to give notice of a particular default or defaults, under this paragraph shall not be construed as condoning any continuing or subsequent default.

17. It is agreed that the damage to the Board for failure of the Distributor or its successor to perform its promise to continue to use water from the Denver Water System for supplying its Service Area will be not less than the reproduction cost of the part of the Board's facilities used to supply said Service Area which damage the Distributor agrees to pay immediately upon the occurrence of such failure.

18. In order to provide for conditions which would be created in the event of annexation by the City and County of Denver of all or part of the Distributor's Service Area:

(a) The Distributor shall convey by a suitable instrument to the Board a clear and unencumbered title, without cost to the Board, to any of its facilities located within the geographical area annexed as requested by the Board. The Board shall have one (1) year from the date of any annexation in which to make said request.

(b) After any conveyance shall have been made to the Board as provided in subparagraph 18(a), the Board agrees to maintain and operate that part of the facilities conveyed hereunder necessary to continue service to all areas supplied with water therefrom as long as said facilities are essential in delivering water from the Denver Water System.

(c) The Distributor shall convey by a suitable instrument to the Board a clear and unencumbered title to so much of its total facilities outside the annexed area, including whole or fractional interest in all or parts thereof, as the Board shall elect, provided the Board shall designate within one (1) year of the date of any annexation the parts of the facilities it desires, and further provided that the Board shall pay, at the time of conveyance, the then reasonable market value of the facilities or interest in facilities the Board so elects to acquire from the Distributor together with reimbursements for the then calculated loss to the Distributor on account of any remaining facilities outside Denver not taken.

(d) Until an election shall be made by the Board, under this paragraph and its various subparagraphs, Distributor will continue to distribute water to users in the annexed area provided the income of the Distributor is not disturbed during this interim. Such obligation shall terminate one (1) year after the date of such annexation.

19. The benefits and obligations created by this contract shall not be modified by any amendment hereafter made to the Charter of the City and County of Denver unless agreed to by the Board and the Distributor.

20. It is agreed that nothing in this contract shall be taken or held as imposing on the Board any obligation to effectively regulate or control any Distributor outside Denver, it being intended by this agreement to give the Board a voluntary option to exercise certain powers respecting Distributors rather than imposing on the Board an obligation to do so.

21. The Board assumes no responsibility for any facility beyond the Denver Water System and in any case in which the facility of any third party shall be involved in the furnishing of service to the Distributor, the Distributor agrees to look solely to such third party for service to be rendered by facilities of such third party.

22. This contract is similar to a number of other contracts for furnishing a water supply outside Denver and it is understood and agreed that the Board may so perform such contracts as to similarly treat those similarly situated. Insofar as reasonably possible all regulations pertaining to water service outside Denver shall be uniform.

23. The Board reserves the right to refuse to permit its water supply to be furnished to any premises where the use of such water will result in a health hazard in Denver. Any determination on this matter by the Board shall be subject to review by the State Health Department of the State of Colorado or a similar lawfully authorized health authority of the State, and the Board agrees to be bound by the decision of such authority but may contest such decision on the grounds of fraud or abuse of discretion.

24. No assignment by the Distributor of its rights under this contract shall be binding on the Board unless the Board shall have assented to such an assignment with the same formality as employed in the execution of this contract.

25. All water furnished hereunder is on a leasehold basis for the use of the Distributor and its customers for all the various purposes for which Denver has been decreed the right to appropriate water. Such right to use water by the Distributor and its customers does not include any right to make a succession of uses of such water and upon completion of the primary use by the Distributor or its customers all dominion over the water so leased reverts completely to the Board. Except as herein specifically otherwise provided, all property rights to the water to be furnished by the Board hereunder are reserved in the Board, provided, however, that nothing herein shall be deemed or construed as creating an obligation on the Board to separate said water from any material added to it in use by the Distributor or its customers or as creating any obligation on the Board regarding purification of the total mass after use by the Distributor and its customers, nor shall anything contained herein be deemed as imposing on the Distributor any obligation by virtue of this contract for the purification of water after use by the Distributor or its customers, any such obligation, if it exists, being such as may arise without respect to anything contained in this contract. It is the obligation of the Distributor to cooperate with the Board in seeing that water originating in the system controlled by the Board is used without waste. It is mutually agreed that there is no obligation on the Distributor with respect to creating any particular volume of return flow from water delivered hereunder.

26. The parties hereto agree that this contract will continue until terminated by mutual agreement, notwithstanding curtailment of service as provided for herein; however, if water use is curtailed to the extent set out in subparagraphs 4 or 5 of paragraph C, the Distributor may, within the time such curtailment is being imposed, terminate this agreement by notifying the Board in writing of such intention. This contract shall be terminated forthwith upon receipt of such notice.

27. The parties hereto agree that this contract is and shall be deemed to be performable in the City and County of Denver, notwithstanding that either of the parties may find it necessary to take action in furtherance of or compliance with the contract outside said City and County.

28. Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise at some future time said right or rights or any other right it may have hereunder.

29. None of the Board's remedies provided for under this agreement need to be exhausted or exercised as a prerequisite to resort to further relief to which it may be entitled.

30. Nothing in this agreement shall be construed as a grant by the Board of any exclusive right or privilege.

31. All water furnished in the Distributor's Service Area through the Distributor's distribution facilities shall be paid for at current charges, directly to the Board by the various users; and the Board shall have power to enforce collection of bills in the same manner as it employs inside Denver.

32. As part of the consideration for the making and performance of this agreement the Distributor waives and relinquishes any and all rights to which the Distributor is now entitled or which may hereafter accrue to the Distributor arising out of any agreement or contract of whatever form or nature to purchase or have furnished water or the use thereof from or by the Board at a rate of charge other than as established hereunder from time to time by the Board, any such claims being unliquidated and disputed.

33. (Special Provisions).

(a). Subject to the consent of the Distributor, which consent shall not be unreasonably withheld, the Board shall have the authority to exercise all rights with respect to the physical facilities of the Distributor in order to use said facilities to serve or contribute to the service of any other area than that described in the attached Exhibit A. Subject to the consent of the Distributor, which consent shall not be unreasonably withheld, the Board may furnish water through the facilities of the Distributor to other service areas.

(b). In the event of annexation of any or all of the Distributor's Service Area to the City and County of Denver, the Distributor shall convey by special warranty deed to the Board, without cost to the Board, all easements, rights-of-way or other property interests of the Distributor containing water mains, appurtenances or other water distribution facilities within the annexed area, to the extent permitted by law. Similarly, the Distributor shall convey to the Board any of its easements, rights-of-way or other property interests containing any facility conveyed to the Board under the conditions of paragraph 18(c) above.

(c). Distributor shall convey to the Board, by good and sufficient special warranty deed, quitclaim deed, and such other documents of conveyance as may be required by the Board, all of its right, title and interest in and to the water, water rights and rights to the use of water described in Exhibit "D", as changed in the proceeding hereinafter referred to. Distributor shall complete the change of water right proceeding presently pending in the Water Court for Water Division No. 1, Case No. 80 CW 313, and shall be responsible for all obligations as may be contained in the decree in said proceeding, except for the obligations involved in the future operation of the changed water rights. Distributor shall also perform all obligations required of it under the purchase contract dated August 2, 1979, between Distributor and Robert R. Spencer, and the Assignment of the same date from Robert R. Spencer to Distributor, all at Distributor's sole expense. Distributor shall take such action as may be required in the opinion of the Board to convey good and merchantable title, free and clear of all encumbrances, to the Board. If Distributor accomplishes the change of water rights in said Case No. 80 CW 313 by final adjudication, Distributor shall thereupon become entitled to a credit from the Board in the amount of Six Hundred Thousand Dollars ($600,000.00), without interest, applicable to system development charges which are payable to the Board from and after said date of final adjudication with

respect to new taps licensed by the Board in conformity with its then current tap allocation program within the Contract Service Area of Willows Water District as described in this Distributor's Contract. Distributor will defend the Board and protect said water rights in any litigation arising out of the aforesaid purchase contract and assignment or out of any proceedings under the retained jurisdiction of the Court in said Case No. 80 CW 313, all at the sole expense of Distributor.

(d). Within thirty (30) days from the execution of this contract Distributor will pay to the Board system development charges for all existing water connections within the contract service area at the rate of $2,350.00 per equivalent 3/4-inch connection according to the schedule of such charges adopted by the Board on September 26, 1979, and enter into a Participation Contract in accordance with the Board's current policies for the connections and extensions, disconnections, and participation charges for the Department's existing Highlands Pump Station, and for a 24-inch conduit extending northeasterly from Highlands Pump Station approximately 3,400 feet, and other improvements.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

Nicholas M. Schmidt

(SEAL) Nicholas M. Schmidt, Secretary

WILLOWS WATER DISTRICT
Distributor

By Robert H. Novick

Robert H. Novick, Vice President
c/o Robert J. Flynn
500 First Interstate Center, Englewood, CO 80110
Address of Distributor

(303) 762-8030
Telephone Number

CITY AND COUNTY OF DENVER,
ACTING BY AND THROUGH ITS
BOARD OF WATER COMMISSIONERS

ATTEST:

W. H. Miller

(SEAL)

By Marguerite S. Pugsley
President

APPROVED:

Administration Division

Legal Division

Planning Division

REGISTERED AND COUNTERSIGNED:
Auditor, City and County of Denver

By Charles D. Segna

EXHIBIT "A"

Legal Description

A tract of land located in Section 36, Township 5 South, Range 68 West, of the 6th P.M., County of Arapahoe, State of Colorado, more particularly described as follows:

Beginning at the northeast corner of said Section 36; thence S00°06'33"W, along the east line of said Section 36, a distance of 2641.02 feet; thence S00°06'18"W, along said east line, a distance of 2641.38 feet to the southeast coerner of said Section 36; thence N89°57'33"W, along the south line of said Section 36, a distance of 4,076.93 feet; thence N00°04'09"E parallel to the west line of said Section 36, a distance of 930 feet; thence N89°57'33"W, parallel to the south line of said said Section 36, a distance of 660 feet; thence S00°04'09"W, parallel to the West line of said Section 36, a distance of 930 feet to the South line of said Section 36; thence N89°57'33"W, along said south line, a distance of 546 feet to the southwest corner of said Section 36; thence N00°04'09"E, along the west line of said Section 36, a distance of 2639.38 feet to the west 1/4 corner of said Section 36; thence S89°58'29"E, a distance of 2642.53 feet to the southwest corner of the northeast quarter of said Section 36; thence N00°04'51"E, along the west line of said northeast quarter, a distance of 2640.64 feet to the north line of said Section 36; thence S89°59'43"E, along said north line, a distance of 2643.37 feet to the Point of Beginning,

containing 466.42 acres, more or less.

RA'. SCHEDULE NO. 4 - OUTSIDE TY
METERED RETAIL (READ & BILL) SERVICE AND
PRIVATE FIRE PROTECTION SERVICE
Effective February 1, 1982

Applicability: All licensees outside the territorial limits of the City and County of Denver who receive water service from the Board of Water Commissioners under agreements whereby the licensee, in some manner, operates and maintains portions of the systems used to supply the licensee, and the Board is responsible for billing each licensee on an individual basis.

Payment: Rates for water service under this rate schedule are net. Bills are due and payable upon issuance and become delinquent twenty (20) days after billing date.

Rates:

A. Metered Service

Charges for metered service consist of a consumption charge and a service charge. The consumption charge is based upon the amount of water delivered during the billing period. The service charge is based upon the meter size and aplies to all services that are "on" at any time during the billing period.

Consumption Charge:

	Monthly Usage Gallons	Bimonthly Usage Gallons	Rate Per 1,000 Gallons
First	15,000	30,000	1.43
Next	35,000	70,000	1.31
Next	650,000	1,300,000	1.22
Over	700,000	1,400,000	1.00

Service Charge:

Meter Size	Monthly $	Bimonthly $
5/8 inch	2.85	5.70
3/4 inch	4.00	8.00
1 inch	4.65	9.30
1 1/4 inch	4.95	9.90
1 1/2 inch	6.00	12.00
2 inch	8.50	17.00
3 inch	15.00	30.00
4 inch	23.00	46.00
6 inch	42.00	84.00
8 inch	62.00	124.00
10 inch	87.00	174.00
12 inch	108.00	216.00

B. Private Fire Protection Service:

	Monthly $	Bimonthly $
Fire Hydrant	10.50	21.00
Sprinkler Systems and Stand Pipes:		
Size of connection:		
4 inch or smaller	6.00	12.00
6 inch	10.50	21.00
8 inch	18.50	37.00
10 inch	29.00	58.00
12 inch	42.00	84.00
16 inch	93.00	186.00

BOARD OF WATER COMMISSIONERS
City and County of Denver
1600 West 12th Avenue
Denver, CO 80254

SYSTEM DEVELOPMENT CHARGES

Effective February 1, 1982

Domestic Service	Outside City Fee
Connection Size	$
3/4 inch	3,570.00
1 inch	7,140.00
1 1/4 inch	10,710.00
1 1/2 inch	14,280.00
2 inch	28,560.00
3 inch	64,260.00
4 inch	128,520.00
6 inch	335,580.00
8 inch	714,000.00
10 inch	1,285,200.00
12 inch	2,142,000.00

EXHIBIT "C"

RATE SCHEDULE NO. 1 - INSIDE CITY

METERED SERVICE AND PRIVATE FIRE PROTECTION SERVICE

Effective February 1, 1982

Applicability: All licensees with metered service having the right to take and use water inside the territorial limits of the City and County of Denver. Private Fire Protection Service: Applicable to all licensees inside the City and County of Denver.

Payment: Rates for water service under this rate schedule are net. Bills are due and payable upon issuance and become delinquent 20 days after billing date.

Rates:

A. Metered Service:

Charges for metered service consist of a consumption charge and a service charge. The consumption charge is based upon the amount of water delivered during the billing period. The service charge is based upon the meter size and applies to all services that are "on" at any time during the billing period.

Consumption Charge:

	Monthly Usage Gallons	Bimonthly Usage Gallons	Rate Per 1,000 Gallons
First	15,000	30,000	$0.74
Next	35,000	70,000	0.60
Next	650,000	1,300,000	0.46
Over	700,000	1,400,000	0.42

Service Charge:

Meter Size	Monthly $	Bimonthly $
5/8 inch	1.90	3.80
3/4 inch	2.65	5.30
1 inch	3.10	6.20
1 1/4 inch	3.30	6.60
1 1/2 inch	4.05	8.10
2 inch	5.50	11.00
3 inch	10.00	20.00
4 inch	15.00	30.00
6 inch	28.00	56.00
8 inch	41.00	82.00
10 inch	58.00	116.00
12 inch	72.00	144.00

B. Private Fire Protection Service

	Monthly Charge $	Bimonthly Charge $
Fire Hydrant	6.50	13.00
Sprinkler systems and stand pipes:		
Size of connection:		
4 inch or smaller	4.00	8.00
6 inch	6.50	13.00
8 inch	10.50	21.00
10 inch	14.50	29.00
12 inch	21.00	42.00
16 inch	46.50	93.00

BOARD OF WATER COMMISSIONERS
City and County of Denver
1600 W. 12th Avenue
Denver, CO 80254

EXHIBIT "C" (Continued)

SYSTEM DEVELOPMENT CHARGES

Effective February 1, 1982

Domestic Service	Inside City Fee
Connection Size:	$
3/4 inch	2,550.00
1 inch	5,100.00
1 1/4 inch	7,650.00
1 1/2 inch	10,200.00
2 inch	20,400.00
3 inch	45,900.00
4 inch	91,800.00
6 inch	239,700.00
8 inch	510,000.00
10 inch	918,000.00
12 inch	1,530,000.00

EXHIBIT "D"

WATER RIGHTS TO BE CONVEYED TO BOARD AS DESCRIBED IN APPLICATION 80 CW 313

Civil Action Number	Priority	Name of Ditch	Adjudaction Date	Appropriation Date	Amount CFS (Cubic feet per second)	Source
341	9	Four Mile	10-18-1889	6-1-1868	15.0	Four Mile Creek
1636	55	Lower Placer	5-22-1913	12-31-1879	7.4	High Creek (Four Mile)
341	190	Four Mile, 1st Enlargement	10-18-1889	5-11-1884	3.75	Four Mile Creek
341	211	Peart Lower	10-18-1889	5-15-1887	15.0	Four Mile Creek
341	224	Peart Upper	10-18-1889	6-15-1888	30.0	Four Mile Creek
3286	A-45	Peart Spring	3-24-1953	12-31-1888	1.5	Spring Tributary Middle Fork South Platte
3286	A-280	Temple	3-24-1953	12-31-1895	4.5	Four Mile Creek