10-20-1983

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

SUPREME COURT, STATE OF COLORADO

Case No. 83-SA-252

BRIEF OF CITY OF COLORADO SPRINGS AMICUS CURIAE

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	)	Appeal from the District Court in and for the County of Denver State of Colorado
-vs-	)	No. C-51288, Courtroom 19 Honorable William M. Ela Judge
THE DENVER BOARD OF WATER COMMISSIONERS; THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, a municipal corporation; FREDRICO PENA, Mayor; and THE DENVER PLANNING BOARD, Defendants-Appellants	)	

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INTEREST OF THE CITY OF COLORADO SPRINGS AS AMICUS CURIAE.

The ruling of the lower court that the Denver Water Board when serving out-of-City consumers must comply with the rules and regulations of the Colorado Public Utilities Commission is of concern to Colorado Springs. However, what is of most concern to Colorado Springs, is the ruling that, to the extent available beyond the needs of the residents of Denver, the Denver Water Board must supply water to the citizens and residents of the counties surrounding Denver within the Denver Metropolitan area as defined by the court (Order p. 45). Colorado Springs like Denver currently has more water available than its residents can use; however, the City's clearly stated water policy is that the City will not serve water outside the City limits unless the land sought to be served can be annexed to the City of Colorado Springs. If the ruling of the lower court is upheld without specific factual or legal limitation the City of Colorado Springs could be forced to provide water, and perhaps wastewater service, to areas in the Colorado Springs

metropolitan area currently not being served by municipalities, water districts, or water companies. This decision would render the use of Colorado Springs' water supply to serve large tracts of land in the unincorporated areas of El Paso County without annexation thus resulting in loss of the City's sales and use tax base and property tax base, create urban-suburban sprawl and in general result in haphazard land use planning.

There are constitutionally imposed jurisdictional differences between Colorado Springs and Denver. Until the initiated constitutional amendment of 1974 prohibiting striking off of the territory of a county (Art. XIV §3) when Denver annexed land such land was removed from the adjoining county and annexed to the City and County of Denver. Art. XIV §3 of the Colorado Constitution now prohibits annexation unless the voters of the county from which land is to be stricken off approve of such. Colorado Springs, like other Colorado cities, is not a City and County and thus when land is annexed by Colorado Springs, El Paso County does not lose its tax base just planning control over the land annexed. Interestingly enough, Colorado Springs and other Colorado cities' annexation powers were limited by another constitutional amendment adopted in 1980 prohibiting unilateral annexation of land, except enclaves, without a vote of the landowners and registered electors in the area proposed to be annexed. Art. II §30 of the Colorado Constitution.

While the City of Colorado Springs' current water policy is <u>not</u> to serve water without annexation, the City does have 991 metered water customers outside the City limits. Two of these are bulk rate distributor contracts to the major defense facilities outside the City - Fort Carson to the South and the United States Air Force Academy to the North. The City also serves Peterson Air Force Base which is in the City. 731 customers are west of the City in Chipita Park and Green Mountain Falls, and the City is obligated to serve these areas as a result of its early acquisition of the water rights of the Ute Pass Land Co. on the north slope of Pikes Peak. The remaining customers, 258, have been either long standing suburban customers west and north of the

City to whom service was provided in exchange for rights-of-way or customers with whom the City has annexation agreements entered into prior to the constitutional amendment prohibiting unilateral annexation and the lower court's decision in this case.

Subjecting the City to the rules and regulations of the Colorado Public Utilities Commission in providing these customers water service would be an exercise in time consuming bureaucratic red tape. They constitute 991 customers out of the current 73,004 in-City metered customers. As suburban customers, they pay 51% more than inside City customers. This rate differential is established by ordinance and has been in effect for a number of years. Oddly enough, the City of Colorado Springs and other Colorado municipally owned utilities were responsible for the adoption in 1983 of H.B. 1283 amending Section 40-3-102, C.R.S. 1973 (1977 Repl. Vol.) and adding new sections removing Public Utilities Commission control over electric and gas provided by municipalities to consumers outside their city limits.

Application of the lower court decision to Colorado Springs will lead not only to higher regulatory costs but could lead to provision of water to areas that could not or would not annex to the City of Colorado Springs. The decision, if applied to Colorado Springs, could lead to the City being forced to use its water to bail out water districts in the metropolitan area whose water resources, underground or surface, are not sufficient. The decision, if applied to Colorado Springs, would substitute the control of the courts or the unelected Public Utilities Commission for that of the elected City Council. The elected City Council is ultimately responsible for making decisions regarding the provision of water services to citizens of Colorado Springs, and for making decisions of whether the City will supply water to customers outside the City limits.

STATEMENT OF ISSUE PRESENTED FOR REVIEW

If surplus water is available, are municipally owned water systems subject to regulation by the Court or Colorado Public Utilities Commission in serving areas outside of their municipal limits?

STATEMENT OF THE CASE

This controversy is related solely to whether a Colorado municipality under a given set of facts and as a matter of law can be judicially compelled to comply, in the provision of water services to outside City consumers, with the rules and regulations of the Colorado Public Utilities Commission, and to the extent surplus water is available beyond the needs of the residents of the municipality, to supply water to citizens and residents of a surrounding metropolitan area as defined by the Court.

Colorado Springs adopts the Denver Board of Water Commissioners' statement of the course of proceedings and disposition below.

STATEMENT OF FACTS

Colorado Springs, like Denver and many other Colorado cities, has undertaken extensive and expensive water acquisition, transportation, treatment and distribution. Historically, water planning has always been a matter of local concern - certainly there is no evidence of county or state action in this critical and determinative aspect of urbanization and urban planning.

Colorado Springs currently has a safe annual yield of water totalling 82,400 acre-feet. Present annual potable use is 60,000 acre-feet. The City has undeveloped potable supplies of 28,100 acre-feet. There are 82,567 acres of land within the City limits of which 40,239 acres are developed and of the remaining 42,327 acres, 37,210 acres are vacant but developable. Population is currently 235,000 inside the City and 340,000 in the metropolitan area. The City under bulk rate distributors' contracts provides Fort Carson, Peterson

Air Force Base, and United States Air Force Academy with 9,000 acre-feet per year. The City's Utility Department has computed the annual water requirement per composite acre of developed land at 1.25 acre-feet per year. Thus given City growth by development of vacant land or by annexation water supplies being used at a composite rate of 1.25 acre-feet per acre per year will be fully utilized at some point in the future. When this is to occur is a function of growth and water usage, but ultimately the City's water resources currently developed and undeveloped will be fully utilized.

Over the past seven years, the Colorado Springs City Council has developed fifteen specific water policies the last being adopted September 27, 1983. These policies spell out the provision of municipal services, particularly water and wastewater, to land outside of the City limits (Parts 1, 2 & 3 of Chapter 15 of the Code of the City of Colorado Springs 1980, as amended). The City has a "first-come, first-served" policy providing that the City will not engage in water banking and that the City does not have "...any legal or moral obligation to force compulsory rationing or conservation measures upon existing water users to make water available to those who failed to avail themselves of the use of City water during the period when it was in abundant supply." (Resolution # 19-79). The City has an urban infill policy encouraging development of vacant land within the City limits (Resolution # 150-80). And the City has a water protection policy directing the City administration to actively defend City water and water rights and place on notice all district water systems connected to the City system that such connections exist solely for emergency reasons and do not obligate the City to serve water to persons within district service areas (Resolution # 110-81).

Attached hereto as Appendix A is Resolution # 300-83 "A Resolution Setting Forth City of Colorado Springs Position Regarding Water". This resolution was considered by the City Council during 1983 and adopted September 27th. It recites past water policy and indicates the City will not extend water outside its boundaries except with contemporaneous annexation or for extraordinary reasons. It directs the aggressive

acquisition of water resources, recognizes the natural and man-made boundaries of the City to the south, west and north, indicates City Council will examine all requests for water outside City boundaries to determine if such requests are a logical extension of the City and indicates that the extension of water or wastewater is contingent upon the applicant's ability to successfully annex. The policy notes that the City and County should have an intergovernmental agreement to control development of the urban fringe of the City. The policy gives notice that the City water supplies are not inexhaustible, and that the City will not withhold water for the future use of land inside or outside the City. This comprehensive statement of the City's water policy constitutes the locally elected officials direction to the City administration in matters pertaining to water and notice to current as well as prospective water users of the City of Colorado Springs position regarding water service. It was adopted by the locally elected officials who are responsible for the Colorado Springs water system with a 1982 capital value of $215,370,421.00 and 1982 revenues of $20,521,055.00.

Unlike Denver, the City of Colorado Springs has few suburban customers and unlike Denver, the City of Colorado Springs can still require annexation in order to receive City water service -- whether such interferes with a County planning functions or not. Like Denver though, the City of Colorado Springs is concerned with losing control of its water to the Public Utilities Commission or judiciary which could result in mandated service to the metropolitan area including bail out of failing water districts, service to land the City does not desire to serve, or service to uses of land the City does not approve.

SUMMARY OF ARGUMENT

Control of surplus City water resources by the judiciary or Public Utilities Commission could result in mandated service areas outside the City creating sprawl and loss to the City's property tax base and sales and use tax base, bail out of water districts with insufficient

resources, loss of land use management currently obtained through annexation, and create "inner city" problems by not being able to annex.

I

ARGUMENT

EXCEPT UNDER LIMITED CIRCUMSTANCES A MUNICIPALITY IS NOT OBLIGATED TO PROVIDE SERVICES OUTSIDE OF ITS BOUNDARIES. STATUTES AND CASE LAW ALLOW A MUNICIPALITY DISCRETION TO SERVE BY CONTRACT OR OTHERWISE OUTSIDE MUNICIPAL LIMITS IF THE MUNICIPALITY SO DESIRES.

A. Mandating Out-of-City water service will create future water service problems inside Colorado Springs and may create the situation of not being able to serve inside the City because the water surplus had to be used to serve outside the City.

The past actions of Colorado Springs do not indicate any analogy to Robinson v. City of Boulder, 190 Colo. 357, 547 P.2d 228 (1976), as the lower court determined of Denver in this situation. Even though the lower court admitted the Water Board did not oppose "competitors" who would serve the metropolitan area; "...however, this Court found credible evidence that only the Water Board had the ability and capacity to serve the court's defined metropolitan area". Order p. 43 (emphasis added).

Colorado Springs at City Code §15-2-201:A clearly states:

> "The City has never previously and does not now assert exclusive control over the right to serve areas outside the corporate limits of the City with water and wastewater. Areas and activities outside the corporate limits of the City are free to obtain water and wastewater services from any other sources."

Just like Denver, Colorado Springs could be found to be the only entity with the ability and capacity to serve the Colorado Springs metropolitan area. However, should this mean as a matter of law that Colorado Springs must provide judicially mandated service to the metropolitan area? The answer is no, because to do so denies the owners of

acknowledged property rights in water, the citizens of Colorado Springs, ability to use their water within their boundaries and to determine as purely a contractual matter who may use their water outside of the City's boundaries under agreed upon terms and conditions.

Robinson, supra, is distinguishable, for unlike Colorado Springs, Boulder by the course of conduct it followed "...in providing water and sewer services to this (Gunbarrel) area indicates that it has held itself out to be the one and only such servicing agency in the Gunbarrel area." p. 230 The Court determined that Boulder had secured a monopoly over the Gunbarrel area water and sewer utilities. The lower court's findings do not indicate this of Denver (nor could it of Colorado Springs) but the Order only indicates that Denver alone had the capacity and ability to serve the metropolitan area. This is tantamount to concluding that because a City engaged in excellent water planning that it must share its good efforts with those who failed to plan or more importantly with those who would seek to reap the benefits of good water planning without the commensurate equitable responsibilities of ensuring a city's continued healthy economic existence through annexation or annexation agreement.

The inequity of the lower courts opinion is apparent in the Colorado Springs situation. There are 37,210 acres of vacant but developable land within the City limits that for any number of reasons may not develop right away. In the meantime, many pressures exist for development of land outside of the City but within the metropolitan area. If the City had to serve these areas before areas within its limits develop, could the City cut off water to its mandated outside consumers because it needed to serve consumers inside the City limits? Robinson, supra, offers guidance -- a City cannot refuse to serve an area it has "staked out" except for utility related reasons. The converse of this rule is clearly set out in Denver Welfare Rights Organization v. Public Utilities Commission, 190 Colo. 329, 547 P.2d 239 (1976) that once utilities have been provided they cannot be discontinued except for utility related reasons (i.e. shortage, failure to pay bills) and then only in a reasonable and non-discriminatory

manner. The fallacy of the lower court using Robinson, supra, as the focal point of its decision is that the lower court by its decision requires water service to the metropolitan area to the extent surplus water is available, but the lower court fails to deal with the situation of what happens to undeveloped in-City land when surplus water may no longer be available because of development outside the City. Because utilities cannot be cut off except for utility related reasons, it would seem that the court is undeniably taking water from its owners and redistributing it to consumers who are not the owners of the water.

This judicial solution results in a taking of property, ignores Colorado water law, and deprives the owners of the water, control of the beneficial uses to which their water is put by contract or, in Colorado Springs case, by statutorily provided annexation or annexation agreement. Would it be possible to "conditionally" serve water outside of a City's limits knowing that at some time in the future such service would have to be revoked to serve landowners within the City? Could such a situation result in the City being mandated to acquire more water in order to serve not only its own residents but the residents of the mandated metropolitan service area?

The Supreme Court in Robinson agreed with the Boulder District Court stating:

> "The court concluded that Boulder can only refuse to extend its service to landowners for utility-related reasons. Growth control and land use planning considerations do not suffice. We agree." p. 229

The lower court in this case by adopting Robinson has given to County Commissioners and residents of areas of counties without water service or without sufficient water service but within a judicially defined metropolitan area a necessary ingredient of growth - water. The resulting sprawl within the metropolitan area, be it Denver or Colorado Springs, will be undeniable -- for again Robinson is clear that once a municipality has exclusively and actively staked out an area or, as in this case, is mandated to serve an area because only it has the capacity

and ability to provide such service then such service must be provided except for utility related reasons.

B. It is discretionary whether a city will sell surplus water outside its city limits, and if it chooses to do so, the city may specify the terms upon which the water may be obtained.

Art. XX §1 of the Colorado Constitution provides that a home rule city "...shall have the power, within or without its territorial limits to...maintain, conduct and operate water works...". The legislature has expressly provided that statutory cities have the power "[t]o 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". Section 31-15-708(d), C.R.S. 1973 (1977 Repl. Vol.). At Section 31-35-402, C.R.S. 1973 (1977 Repl. Vol.), municipalities are given the statutory power "[t]o operate and maintain water facilities or sewerage facilities or both for its own use and for the use of public and private consumers within or without the territorial boundaries of the municipality..." It is not mentioned in the Constitution or statutes that when a City serves water outside its City limits that it is subject to court or Public Utilities Commission control or that it must serve mandated service areas.

Case law pronounced by the Supreme Court indicates that a City in providing its residents with water is not a utility under jurisdiction of the Public Utilities Commission in furnishing outside city areas water service. It is discretionary whether a City will sell surplus water outside its City limits and when it does so it acts in a proprietary capacity. City of Englewood v. City and County of Denver, 123 Colo. 290, 229 P.2d 667 (1951), City of Colorado Springs v. Public Utilities Commission, 126 Colo. 295, 248 P.2d 311 (1952), City of Fort Collins v. Parkview Pipeline, 139 Colo. 119, 336 P.2d 716 (1959), and Colorado Open-Space Council, Inc. v. City and County of Denver, 190 Colo. 122, 543 P.2d 1258 (1975).

The lower court at p. 36 of its Order found annexation for water service a usurpation of County Commissioner planning functions and at p. 42 of its Order found the Denver Water Board "used delivery of new water service as a land use planning device allowing new service providing annexation would occur." Such a land use planning device is provided for in the Colorado annexation statute and case law. See Section 31-12-121, C.R.S. 1973 (1977 Repl. Vol.) allowing a municipality as a condition precedent to supplying municipal services (water) to require a contemporaneous annexation agreement to the municipality. In City of Colorado Springs v. Kitty Hawk Development Co., 154 Colo. 535, 392 P.2d 467 (1964) app. dismissed, 379 U.S. 647, 85 S.Ct. 612, 13 L.Ed.2d 551 (1965), a case involving annexation by agreement in order to get water the Court said:

> "It is now well established in this state that a City is under no obligation to sell or furnish water or sewer services to anyone outside its corporate limits, but, if it elects to do so, it acts in a proprietary capacity, and the relationship entered into between a City as a supplier and such users is purely contractual (citations omitted)." p. 471

The Supreme Court went on to state:

> "We find nothing in the general laws of this state or in the Constitution prohibiting imposition of conditions by a municipality upon one seeking annexation. A municipality is under no legal obligation in the first instance to annex contiguous territory, and may reject a petition for annexation for no reason at all. It follows that if a municipality elects to accept such territory solely as a matter of its discretion, it may impose such conditions by way of agreement as it sees fit." p. 472

Clearly, the annexation statute and case law permit a city to deprive a county of its land use planning functions directly by annexation or indirectly by an annexation agreement - a contractual relationship between the City and landowner upon whatever terms are

agreed upon by the parties. Applying the logic contained in Kitty Hawk, if a municipality need not annex contiguous territory for no reason at all could not a municipality as a condition of granting water service to contiguous territory impose such conditions as the other party agrees to, and could not those conditions be planning and land use control as to the land served thus removing control from the County Commissioners? This is what Denver was doing with its distribution and connector contracts, not because it chose not to annex, but because the voters of the state adopted Art. XIV §3, virtually prohibiting annexation by Denver. Just because Denver cannot annex does not mean that it loses control of its water resources or incidental control of land uses consuming its water resources.

Water is a property right which is severable and transferrable. Its allocation is controlled by Colorado water law on a first in time, first in right basis, and because it is a property right, it is controlled by private market place forces - primarily supply and demand. Home rule cities have authority to acquire water beyond their immediate needs for future growth Denver v. Sheriff, 105 Colo. 193, 96 P.2d 836 (1939). Barring the constitutional prohibition to annexation by Denver, it can be assumed Denver would have continued to annex as a condition of water service or at least required annexation agreements as a condition of water service. To penalize the citizens of Denver who own Denver's water resources by giving control of its water when it serves outside the City to the PUC is not in accord with statute or case law. Provision of surplus water by distributor or connector contract to areas outside Denver in the metropolitan area is an incidental proprietary function that Denver does not have to engage in. Of course if it did not, it could lose its surplus water for failing to put it to a beneficial use and thus the water would be subject to private market demands under the prior appropriation doctrine. However, Denver has chosen to engage in responding to private market forces for its surplus water and lawfully contracts as a supplier with users. This relationship is purely contractual. Kitty Hawk, supra.

C. County planning is inadequate and the lower court's decision bails the county out of responding to insufficient water service problems within their jurisdiction.

The lower court's finding in its Order at p. 30 "that wells have become more and more unreliable overall in the metropolitan area" is a classic example of inadequate water planning.

Historically, the cities have been responsible for the acquisition of water for urban purposes. Counties until recently did not even have constitutional or statutory authority to provide water. Colorado Constitution Article XIV §16 and Section 30-20-402(1)(b), C.R.S. 1973 (1977 Repl. Vol.). Strickler v. City of Colorado Springs, 16 Colo. 61, 26 P. 313 (1891) stands for the proposition that municipalities can appropriate and develop water systems while Denver v. Sheriff, supra, recognizes that home rule cities under Art. XX have unique water needs and that if there is unappropriated water available, a city can take more than it presently needs in anticipation of normal growth over a reasonable period of time.

Because cities have not always required annexation in exchange for water for many reasons and because of suburban growth and mandated subdivision regulation in counties, counties now require secure sources of water. See Sections 30-28-133 and 30-28-136, C.R.S. 1973 (1977 Repl. Vol.). However, wells have and may continue to prove insufficient even though approved by the counties or the State. Now, for whatever reasons, although it is suspected such reasons are similar to voter approval of the recent constitutional amendments prohibiting annexation by Denver and unilateral annexation by other cities, the counties have prevailed upon the lower court to rule cities must share their water resources to serve unincorporated county areas within judicially defined metropolitan areas. It was improper for the lower court, except on the very limited basis set out in Robinson, to rule a city had to serve a metropolitan area because only it had the ability and capability to serve that area.

Water flows toward money, and the counties and their unincorporated area residents have a choice - contract with cities in their proprietary

capacity under agreed upon terms and conditions or provide their own sufficient water service. To seek to have the judiciary mandate service under a regulated monopoly concept is totally improper in view of Colorado water law, statutory municipal right to serve consumers outside of municipal limits upon such conditions as the municipality may impose, and statute and case law allowing annexation or annexation agreements as well as purely contractual water service.

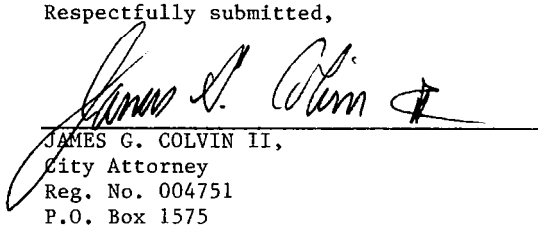
CONCLUSION

In Englewood, supra, the Court in ruling Out-of-City water service to Englewood was not subject to PUC control in dictum at p. 671 noted there was a great distinction between supplying water and that of supplying electric current. The lower court's decision in this case may require the Supreme Court to clearly indicate that distinction. First, water is not produced by a plant. Second, water is a finite natural resource. And third, water in Colorado is a recognized property right severable and transferable. The Colorado prior appropriation system is a private market approach to allocation of a scarce resource. Those most willing to pay for its beneficial use are by law allowed to acquire and use it.

Because water is not treated as a public utility except when an owner "stakes out" a territory, the Court cannot mandate the provision of water service. Just because a city by virtue of good water planning has the ability and capacity to expand its water services to serve future customers does not mean that it becomes a regulated monopoly judicially or regulatorily mandated to serve a defined area outside the City. Such decisions under current Colorado law are for the owners of the property -- not the court or regulatory body. To give power to distribute water resources to other than the owners of the water resources is to interfere with their ownership, take their property, and destroy the Colorado prior appropriation system.

For these reasons, this Court must overrule the lower court and uphold a municipality's right to distribute its surplus water resources as the elected officials of the municipality deem proper.

Respectfully submitted,



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CERTIFICATE OF MAILING

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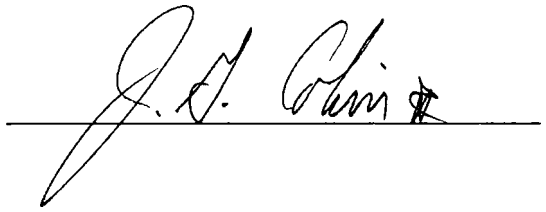

RESOLUTION NO. 300-83

A RESOLUTION SETTING FORTH CITY OF COLORADO SPRINGS' POSITION REGARDING WATER.

WHEREAS, the City Council adopted eleven (11) policies dealing with the provision and extension of water or wastewater, or both, to landowners outside of the City limits,[1] and

WHEREAS, since such policies were adopted, Article II, Section 30 of the Colorado Constitution was amended November 4, 1980, prohibiting unilateral annexation of properties adjacent to the City unless such property is entirely surrounded by or is solely owned by the City, and the Denver District Court in the "Tri-Counties" case [Board of County Commissioners of the County of Arapahoe, et al. v. The Denver Board of Water Commissions, et al. on appeal to the Colorado Supreme Court (Case No. 83 SA 252)] ruled that the Public Utilities Commission has jurisdiction over the tariffs and regulations of the Denver Water Department in serving consumers outside of the Denver City limits, and

WHEREAS, as a result of the above actions, the City of Colorado Springs has modified its position on annexations to the extent that the City will only extend water or wastewater service outside of its boundaries contemporaneously with annexation and thus will not extend such services without annexation unless there are extraordinary circumstances, and

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1 See Parts 1 (General Provisions), 2 (Availability of Services), and 3 (Land Eligible for Annexation) of Article 2 (Annexations) of Chapter 15 (Annexations, Subdivisions and Land Development) of the Code of the City of Colorado Springs 1980, as amended.

WHEREAS, the City Council in January of 1979 adopted a resolution relating to the use and allocation of water within the boundaries of the City of Colorado Springs known as the "first-come, first-served" policy and within such resolution is the recognition that once water is provided to a consuming source such service is to be perpetual, unless general conditions such as a drought require otherwise, and

WHEREAS, the "first-come, first-served" resolution recognizes that the City does not have any legal or moral obligation to engage in water banking, to force compulsory rationing, or to force conservation measures upon existing City water consumers to make water available to those who failed to avail themselves of the use of City water during the period when it was in abundant supply, and

WHEREAS, in April of 1980 a resolution establishing an urban infill policy was adopted recognizing that at that time forty-two percent (42%)[1] of the land within the City limits was vacant and developable and that maximizing the use of existing City services could reduce sprawl, decrease financial burdens to the citizens, reduce pollution, increase utilization of mass transit, conserve energy and maintain natural and nonrenewable resources and that an urban infill policy is to encourage the development of vacant (unimproved) land within the City limits as an alternative to unnecessary urban sprawl, and

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[1] Now estimated at 43% in Department of Utilities' Report on Water Supply and Availability dated July, 1983.

WHEREAS, a resolution relating to the water and water rights' protection policy of the City of Colorado Springs adopted in April of 1981 directs that the City Administration actively defend the City's water and water rights in any case where there is an apparent or potential harm to the City's water or water rights and that the City place on notice any and all outside of the City water districts and systems that are connected to the City's water system that such connections exist solely for emergency purposes (except for contract obligations) and shall not obligate the City to serve water to such areas, and

WHEREAS, the City and County have met at times to discuss the means by which the County can require evidence that establishes the adequate sufficiency and dependability of a water supply for proposed subdivisions on the City's urban fringe area sufficient in terms of quantity, quality and dependability for the perpetual supply of such subdivision so that it does not pose a potential burden to the City, and the City desires to continue such discussions with the County in order to adopt a joint policy.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City shall continue to aggressively look for reliable water resources, the City shall continue to explore the future use of nonpotable water including wastewater treatment plant locations under the adopted 208 Plan, and the City shall examine logical conservation measures.

Section 2. The City shall examine the feasibility of coordinating with land developers to search for reliable water resources which the developer can bring to the City by its own financial methods. The feasibility study shall examine the various aspects of developers bringing water to the City including but not limited to: ownership of water, storage of water, potential for City and developers competing for same water resources, compatibility of developer acquired water with City water system, legal control of water if financed by a district, and general financial impact on City of developer-provided water.

Section 3. As of this date the City Council acknowledges and recognizes that the City's boundaries are confined to the south by the existence of Fort Carson and the unincorporated areas of Security and Widefield; to the west by the existence of the Pikes Peak National Forest and the City of Manitou Springs, and to the north by the United States Air Force Academy and the Black Forest, and that the major area of expansion for the City's boundaries are to the east.

Section 4. The City Council will examine all requests for water or wastewater service or both outside the City's boundaries to determine if such requests are a logical extension of the City boundaries. Extension of such services shall be contingent upon the applicant's ability to successfully annex to the City of Colorado Springs.

Section 5. In examining proposed land developments outside of the City limits, the City shall consider the feasibility of the project developing outside of the City limits without City water or wastewater or both, and if development is feasible, whether the resulting urbanized

growth in the unincorporated areas will constitute an inequity to the residents of the City of Colorado Springs. Further, in determining tax equity the City should consider the historical impact of development of urban areas around core cities, the many different taxing entities necessary to serve such developments, and the negative fiscal impact of such developments. In the event of such determination the City may consider annexation legally enforceable by agreement in return for City services.

Section 6. The development of the urban fringe not subject to annexation agreement should be the subject of an intergovernmental agreement with the County in order to assure consistency with County and City urban standards and policies, improved environmental quality, coordinated drainage systems and an equitable method of allocating and financing resources and governmental services.

Section 7. The City of Colorado Springs gives notice to all owners of undeveloped land lying within the present or future City limits that the City is under no legal obligation to retain or set aside quantities of water for future use of land at the time as it may be developed and that the City cannot legally withhold quantities of water or delay development of its presently acquired but undeveloped water rights and systems, and that the City's supplies of water are not inexhaustible, and even though further acquisition of water may be diligently sought, the City may not be able to acquire and develop sufficient future water supplies to meet all future requests.

Section 8. That the State Legislature and other officials, both statewide and local, must examine the reliability of groundwater resources so as to prevent developments that may not have water sufficient in the future to serve such developments. Such developments could occur both on the fringe area of the City of Colorado Springs as well as in the I-25 corridor between Colorado Springs and Denver.

Dated at Colorado Springs, Colorado, this 27th day of September 1983.

MAYOR

ATTEST:

City Clerk

I, R. E. Parker, City Clerk of the City of Colorado Springs, Colorado, do hereby certify that the foregoing is a true and correct copy of Resolution No. 300-83, adopted by the City Council of the City of Colorado Springs the 27th day of September, 1983.

Dated at Colorado Springs, Colorado, this 19th day of October, 1983.

R E Parker

City Clerk