4-23-1984

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

SUPREME COURT, STATE OF COLORADO

Case No. 83-SA252

REPLY OF AMICUS CURIAE COLORADO MUNICIPAL LEAGUE

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, et al.,

Plaintiffs-Appellees,

v.

DENVER BOARD OF WATER COMMISSIONERS, et al.,

Defendants-Appellants.

Susan K. Griffiths, #2328
Tami A. Tanoue, #12952
Attorneys for the Colorado Municipal League
1500 Grant Street, Suite 200
Denver, Colorado 80203
831-6411

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REPLY

The reply of the Colorado Municipal League ("League") is limited to those arguments made in the answer brief of Plaintiffs - Appellees ("Counties") which warrant some response in addition to the League's opening brief.

I. THE DISTRICT COURT FAILED TO APPLY OR MISAPPLIED TRADITIONAL TESTS FOR DETERMINING PUBLIC UTILITY STATUS.

The tests applied by Colorado courts to determine public utility status are critically important. They guide the actions of those who wish to obtain or avoid the consequences of that status. Under traditional Colorado tests, an entity will not be considered a public utility unless it expresses an unequivocal intention to serve the public indiscriminately to the extent of its capacity or it affirmatively seeks to and does become the exclusive service provider within a defined area. These tests, however, were not applied or were misapplied by the District Court in this case. See pages 6-11 of the League's opening brief.

To avoid the consequences of the traditional tests, the Counties argue that a new public utility test, created solely for municipalities, should be adopted:

> Only where a municipality is extending a utility service outside of its corporate boundaries and such service is incidental to its essential purpose in servicing its own residents, it is not a 'public utility' and, therefore, is not subject to PUC jurisdiction. (Emphasis in the original.)

Counties' answer brief, page 10. The Counties cite no case which mentions an "incidental service" test except for a single reference in City of Englewood v. City and County of Denver, 123 Colo. 290, 229 P.2d 667 (1951):

> The prime purpose, and we may add, the only purpose, was to supply water to the residents of Denver and the permission granted the Englewood residents by the ordinance, supra, to connect with the corporate lines was, and is, wholly incidental to the main purpose and is strictly a municipal affair.

City of Englewood, 229 P.2d at 671. A reading of the full opinion in City of Englewood, however, makes it clear that the Court did not believe it was creating a new test for municipal public utility status. Rather, the full opinion shows that the Court applied the traditional test of public utility status, requiring an unequivocal intention on the part of the utility to serve the public indiscriminately, to the extent of the utility's capacity. City of Englewood, 229 P.2d at 672-673. The full opinion also contains a lengthy discussion of the constitutional and statutory limitations preventing the extension of PUC jurisdiction to municipal water utilities.

In addition to lacking case law support for their proposed new test, the Counties fail to explain why the traditional tests should no longer be applied in determining the public utility status of municipal water services. They also fail to explain how the "incidental service" test will be applied. Is it an objective or subjective test? Does "incidental" refer to the purposes of the municipality, as City of Englewood states (see above quote)? Or does it refer to the service provided by the

municipality? If it refers to the service, as the Counties suggest, is it measured by the volume of water? The number of present customers? The number of proposed future customers? The money received from rates imposed? The size of the area served? The number of taps served? If the municipality hopes or intends to annex served areas in the future, does the outside service become "incidental" to the municipality's essential purpose in serving its own residents? These questions are not addressed by the Counties.

The Counties appear to have proposed a special test for municipal public utility status which they believe will fit their facts. But the test applied by this Court will not affect only Denver. It will affect each of the at least 109 other municipalities which serve extraterritorial customers (League's opening brief at page 1) and which likely have been guided in the past by the traditional public utility tests. No reason exists to create this special test for municipalities.

II. THE PUBLIC UTILITIES COMMISSION, BY STATUTE, LACKS JURISDICTION OVER A MUNICIPALITY PROVIDING EXTRATERRITORIAL WATER SERVICE AS A PUBLIC UTILITY.

The League's opening brief (pages 11-23) argues that numerous statutes and related court decisions establish a statutory exemption from Public Utilities Commission (PUC) regulation for municipal extraterritorial water service. The Counties respond that these statutes are grants of municipal authority for extraterritorial service and do not explicitly remove PUC jurisdiction over a municipality which has become a public utility in its

extraterritorial service. The League disagrees, for the reasons set out in its opening brief and as follows.

A. Pursuant to Colorado Constitution, Article XXV, the General Assembly has designated the municipality as the sole regulator of rates and services for its extra-territorial water supply.

Colorado Constitution, Article XXV (adopted in 1954), vested authority in the PUC to regulate public utilities "[u]ntil such time as the General Assembly may otherwise designate...." In 1962, the General Assembly adopted or expanded the language of §31-35-402(1)(f)[1] and §31-35-410 to "otherwise designate" a municipality as the sole regulator of rates and services for its extraterritorial water supply. This statutory language explicitly prevents the exercise of PUC jurisdiction over a municipality which may have become a public utility in its extraterritorial water service. Section 31-35-402(1)(f) explicitly states that the municipality's authority to establish rates for all customers (including extraterritorial) shall be "without any modification, supervision or regulation... by any board, agency, bureau, commission, or official other than the governing body collecting them...." Section 31-35-410 states:

> The water facilities or sewerage facilities or both may be acquired, purchased, constructed, reconstructed, improved, bettered, and extended, and bonds may be issued under this part 4 for said purposes...without regard to the requirements, restrictions, debt, or other limitations or other provisions

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[1] Statutory citations are to C.R.S., as amended through April, 1984, unless otherwise specifically noted.

> contained in any other law....Insofar as the provisions of this part 4 are inconsistent with the provisions of any other law, the provisions of this part 4 shall be controlling. (Emphasis added.)

Both of these statutes are broadly worded; both were enacted after the Public Utility Law in 1913; and both were enacted after Article XXV of the Colorado Constitution. Both, when read in conjunction with the rest of part 4 of article 35, indicate a legislative intent to eliminate any non-municipal restriction on or regulation of municipal water service provided inside or outside municipal boundaries. Any law which is inconsistent with municipal regulation of water rates and service is specifically superseded.

The Counties argue, however, that an exception must be read into these very broadly worded statutes for municipalities providing water service as a public utility. No support for that argument appears in the wording of the statutes or in the broad interpretation given these statutes in City of Thornton v. Public Utilities Commission, 157 Colo. 188, 402 P.2d 194 (1965) [see also the broad interpretation given similar statutes in Matthews v. Tri-County Water Conservancy District, 200 Colo. 202, 613 P.2d 889 (1980)], discussed in the League's opening brief at pages 17-21. Moreover, the history of the statutes does not support the Counties' argument.

B. The intent of the 1962 amendments was to designate the municipality, rather than the PUC, as the sole regulator of rates and services for the municipality's extraterritorial water supply even where the municipality had acquired the status of a public utility.

Prior to 1962, it was well established that, as a matter of constitutional and statutory law, a municipality had exclusive control over its internal and extraterritorial utility services, with only one possible exception--where it was operating an extraterritorial service as a public utility. See City of Lamar v. Town of Wiley, 80 Colo. 18, 248 P. 1009 (1926); Town of Holyoke v. Smith, 75 Colo. 286, 226 P. 158 (1924); Colorado Constitution, Article V, §35; and City of Englewood. Moreover, specific municipal authority for extraterritorial water service existed for some fifty years before 1962. §31-15-708(1)(d), originally enacted in 1911. Consequently, the only conceivable legislative purpose behind the 1962 legislation was to ensure exclusive municipal control over its extraterritorial water service under any circumstance, including the circumstance where the municipality had become a public utility, as specifically permitted by the 1954 addition of Article XXV to the Colorado Constitution. To interpret the 1962 statutues otherwise would be to presume that the General Assembly intended the new language to have no meaning, contrary to settled rules of statutory construction. See Industrial Commission v. Milka, 159 Colo. 114, 410 P.2d 181 (1966); 2A C. D. Sands, Sutherland Statutory Construction §45.12(1973); and McMillin v. Colorado, 158 Colo. 183, 405 P.2d 672 (1965).

C. The 1983 enactment of H.B. 1283 is irrelevant to the issues presented in this case.

The Counties argue that the 1983 enactment of H.B. 1283 (Exhibit B to the Counties' answer brief) indicated a legislative intent to allow PUC regulation of extraterritorial water service because the original version of the bill (Exhibit C to the Counties' answer brief) was amended to refer only to natural gas and electric utilities. A more reasonable explanation for the amendments, however, was a legislative recognition of the need to conform the substance of the bill to the subject expressed in the bill title ("CONCERNING REGULATION BY THE PUBLIC UTILITIES COMMISSION OF RATES AND CHARGES BY MUNICIPAL NATURAL GAS AND ELECTRIC UTILITIES") (emphasis added) in order to meet the restrictions of Colorado Constitution, Article V, §21 ("No bill...shall be passed containing more than one subject, which shall be clearly expressed in its title....") The amendments also eliminated any question which might otherwise be raised as to continued PUC regulation of municipal extraterritorial transportation systems. Further, it is simply unreasonable to draw any implication from the General Assembly's failure in 1983 to exempt municipal extraterritorial water and sewer services from PUC regulation since the PUC had not (at least for the thirty-two years since City of Englewood) exercised jurisdiction over municipal extraterritorial water services, and because the 1962 statutory amendments (previously discussed) removed any possibility of PUC jurisdiction over such service.

CONCLUSION

For the reasons previously given and the authorities cited in its opening brief and in this reply, the League urges the Court to hold either that municipal extraterritorial water service is not subject to the jurisdiction of the PUC or that Denver is not operating as a public utility in its extraterritorial supply of water.

Respectfully submitted,

Susan K. Griffiths, No. 2328
Tami A. Tanoue, No. 12952

By Susan K. Griffiths

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Municipal League
1500 Grant Street, Suite 200
Denver, Colorado 80203
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CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing REPLY has been mailed, postage prepaid, this 23rd day of April, 1984, addressed to:

Stephen Kaplan
Brian Goral
City Attorneys' Office
353 City and County Bldg.
Denver, Colorado 80202

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Susan K. Griffith

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:

(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:

(SEAL)

By Marguerite S. Pugsley
President

APPROVED:

Administration Division

Legal Division

Planning Division

REGISTERED AND COUNTERSIGNED:
Auditor, City and County of Denver

By

PARTICIPATION AGREEMENT

THIS AGREEMENT, made and entered into as of this 12th day of January, 1982, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, hereinafter referred to as the "Board" and the WILLOWS WATER DISTRICT, a quasi-municipal corporation of the State of Colorado hereinafter referred to as "Willows"

WITNESSETH:

WHEREAS, on December 30, 1981, Willows and the Board executed a Distributor's contract which requires, in part, Willows to participate in the cost of Conduit No. 112, and the Highlands Pump Station, and

WHEREAS, Willows is desirous of obtaining sources of water supply in order to meet the water demands within the Highlands 460 Subdivision of The Willows, more particularly described in Exhibit "A" attached hereto, and

WHEREAS, under the participation policy of the Board, Willows is required to participate in the cost of various facilities required to provide such additional capacity, and

WHEREAS, to meet the demands for additional water service to the Highlands 460 Subdivision, construction of additional facilities will be required as described in Exhibit "B" attached hereto and made a part hereof, and

WHEREAS, the parties hereto wish to set forth their respective rights and obligations with regard to participation in the costs of construction of the facility described in Exhibit "B" and the reservation of capacity therein to Willows.

NOW, THEREFORE, in consideration of the premises and the promises hereinafter contained, the parties hereby mutually agree as follows:

1. The facilities and appurtenances described in Exhibit "B" required to provide water supply to the Highlands 460 Subdivision under the terms of this Agreement shall be constructed by the Board or its contractor, and shall be the property of the Board.

2

WSE No. 83 SA 79

2. Based upon information and projections developed by the Board and Willows, the capacity requirements of the Highlands 460 Subdivision have been estimated.

A. New facilities to be constructed:

It has been determined by the parties that projected development within the Highlands 460 Subdivision will require, in part, the construction of:

> A 24-inch main from the Board's Highlands Reservoir and Pump Station thence northeasterly in an existing Right of Way to S. Monroe Way 3400 ft. ± (Conduit No. 112); or equivalent capacity in an alternative facility as determined by the Board.

Willows shall pay 100% of the total actual cost of constructing Conduit No. 112, (or equivalent capacity in an alternative facility) as described in Exhibit "B". The actual costs of construction shall include, but shall not be limited to, labor and materials, contract payments, engineering and inspection, right-of-way acquisition, etc., and it is expressly understood that Willows shall be responsible for 100% of any license or permit fees imposed by any governmental entity having jurisdiction over the construction of the above listed facilities.

B. Per tap assessment for existing facilities:

Willows shall pay a per-tap assessment for use of existing pumping and storage capacity at the Highlands Reservoir and Pump Station for each existing and future tap in the Highlands 460 Subdivision. A schedule of 3/4 inch equivalent taps is attached hereto as Exhibit "C".

3. A. Willows shall pay to the Board 100% of the actual costs of construction of Conduit No. 112 (or its proportionate share of an alternate facility), in accordance with the following schedule:

(I.)	Within 30 days of execution of this agreement	(15%)	$ 35,700*
(II.)	Within 30 days of notification of acceptance of a purchase contract for materials or of awarding the first contract for materials or installation of the Conduit	(35%)	$ 83,300*
(III.)	Within 30 days of notification of 50% completion of the Conduit	(30%)	$ 71,400*
(IV.)	Within 30 days of notification of the completion of the Conduit, the balance of Willows' obligation	(20%)	$ 47,600*
	TOTAL	(100%)	$238,000
(V.)	Final billing adjustment (±) based on actual cost established after closing all work orders		$ XX *

* Fixed payment amount based on estimated cost

** Payment to be adjusted on basis of actual cost. If the Board elects to construct a facility other than Conduit No. 112 as described in Exhibit "B", Willows' costs shall be based upon the estimated costs to construct 3400 feet of 24 inch diameter Conduit. See Exhibit "D" for ratio of costs to be used for Conduits of various sizes.

B. The Board reserves the right to assess an interest fee for all participation payments not paid on time. Willows shall pay an interest charge based on the amount due from Willows multiplied by 1-1/2 times the weighted daily average interest rate received by The Board on its short term investments for the previous complete calendar month multiplied by the number of days overdue. In no event shall any payment by Willows be more than thirty calendar days in arrears. To avoid any confusion, any payment falling due on a Saturday shall be due on the immediately preceding Friday, and any payment due on a Sunday shall be due on the immediately succeeding Monday. If the due date falls on a holiday, payment shall be due on the next succeeding working day.

C. Assessments per equivalent 3/4-inch tap for existing facilities:

Effective January 4, 1982, Willows shall be assessed a participation charge for all future equivalent 3/4-inch tap installed within the Highlands 460 Subdivision for use of existing pumping and storage capacity at Highlands Pump Station and Reservoir. This charge is currently $535.00 per 3/4-inch equivalent tap.

(1) The assessment per tap is due and shall be paid according to one of the following options:

(a.) The assessment per tap and System Development Charge may be paid in full at the same time.

(b.) Willows may use The Board's then current "stub-in" agreement, in which case the assessment per tap will be due when the balance of the System Development Charge is paid.

(c.) Willows may prepay the assessment per tap in advance of applying for taps, in which case, the assessment per tap will be credited towards taps subsequently purchased. This option is limited to 1502 equivalent 3/4-inch taps.

(2.) Taps may be purchased (i.e., assessment per tap and System Development Charge paid in full) singly or in such quantities as desired by Willows and shall be eligible for service subject to all applicable Board rules regarding application, installation, activation and use of licenses and/or taps.

(3.) It is The Board's policy to reserve capacity in Highlands Reservoir and Pump Station only for taps which the assessment per tap has been

paid in full and to sell remaining system capacity, if any, on a first come, first served basis.

(4.) The Board reserves the right to increase the per tap assessment to reflect the impacts of inflation. Such adjustments will be based on recognized price indices which will be reviewed at least annually and will apply to all taps for which the assessment per tap has not been previously paid.

(5.) If the Department establishes a standard participation charge, such charge shall apply in lieu of participation charges herein described to all taps for which the assessment per tap has not been previously paid.

4. Upon completion of Conduit No. 112, a total of 1502 equivalent 3/4 inch taps will be reserved for use within the Highlands 460 area as described in Exhibit "A". All existing taps in the Highlands 460 area at the time of completion of Conduit No. 112 will be counted as part of the reservation of capacity.

5. SPECIAL CONDITIONS:

A. Payment of Per Tap Participation Fees for Existing Taps:

Not later than January 29, 1982, Willows shall pay to the Board the 1981 per-tap participation fee for the Highlands Reservoir and Pump Station for each existing and active tap as of December 30, 1981. The 1981 per tap participation fee is $500 per equivalent 3/4-inch tap.

B. Required Information:

(1) Not later than January 29, 1982, Willows will submit to the Board, on the Board's form, a standard tap license for each existing active tap in the Highlands 460 area. Each license must be completed in full (except for the signature of the bonded plumber).

(2) Not later than January 29, 1982, Willows will submit to the Board, on the Board's form, a standard tap license and stub-in agreement for all stub-ins in the Highlands 460 area.

(3) Within fifteen (15) days of execution of this Contract, original mylars or photo mylars of the distribution system serving the Highlands 460 area must be submitted to the Board. The mylars must include all necessary measurements and other information required to allow the Board's engineer to satisfactorily locate the facilities in the field

C. Required Construction:

(1) After execution of this Contract and prior to completion of Conduit No. 112 (or an alternative facility), Willows shall complete at its expense all construction detailed in Exhibit "E". The Board reserves the right to make any required connections to Board facilities at The Willows' sole expense.

6. It is the Board's policy to install or permit installation of transmission and distribution facilities only in dedicated streets or

rights-of-way where final grades and alignments have been established. If the Board proceeds to install or permit installation of water transmission or distribution facilities before final grades alignments of dedicated streets and/or rights-of-way are established and in so doing relies on any preliminary information provided by Willows, such construction shall be at the sole financial risk of Willows. Should any alteration in grade or alignment occur during design or construction or subsequent to construction of water transmission and distribution facilities, Willows will be solely responsible for all costs associated with redesigning, relocating or in any other way providing the necessary changes or improvements needed to satisfactorily protect the water distribution or transmission facility. The necessity and extent of any such remedial changes or improvements shall be at the sole discretion of the Board's Director of Engineering.

7. Any representation concerning the timing of water availability either made orally or as set forth herein is an estimate only and the Board makes no commitment or guarantee whatsoever in this regard. However, the Board will exercise reasonable diligence in completing all facilities required for service to Willows in accordance with the period stated in Exhibit "B".

8. The participation costs specified herein do not include System Development Charges, costs of interior distribution mains, or other water service costs, nor shall payment by Willows of any sums under the terms of this agreement relieve Willows its successors or assigns, or residents from liability for such other charges and costs. Except as otherwise provided in this Agreement, payment of System Development Charges, costs of interior distribution mains, or other water service costs shall be in accordance with the Board's Operating Rules as the same may exist from time to time.

9. The parties hereto agree that this Agreement is and shall be deemed to be performable in the City and County of Denver and venue for any dispute arising hereunder shall be in the District Court in and for the City and County of Denver.

10. Except for existing taps referenced under Paragraph 5.B.(1) of this Agreement, all 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.

11. This Agreement is made under and conformable to the Operating Rules of the Board as amended from time to time, and 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 the 1960 compilation adopted by the General City Election of May, 1959 and effective on and after May 28, 1959. Insofar as applicable, said Charter provisions and Operating Rules are incorporated herein and made a part hereof and shall supercede any apparently conflicting provision otherwise contained in this Agreement.

12. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their sucessors and assigns.

13. This Agreement incorporates and is subject to all terms and conditions, not inconsistent with the express provisions of this Agreement, which are contained in the Distributor's Contract No. 233 between the Board and Willows Water District dated December 30, 1981, and all amendments thereto.

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

ATTEST:

W. F. Miller
Secretary

Engineering and Construction Division

Administration Division

K. S. Mitchell
Planning Division

CITY AND COUNTY OF DENVER
acting by and through its
BOARD OF WATER COMMISSIONERS

By: Marguerite S. Pugsley
President

REGISTERED AND COUNTERSIGNED
Charles D. Byrne, Auditor
CITY AND COUNTY OF DENVER

By: Charles D Byrne
C-4, 1/12/82

(EXECUTIONS CONTINUED ON PAGE 7)

(EXECUTIONS CONTINUED FROM PAGE 6)

Legal Division

ATTEST:

ROBERT J. FLYNN, Assistant Secretary

WILLOWS WATER DISTRICT

By:

ROBERT H. NOVICK
Vice President

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.

Exhibit "B"

Description of Conduit No. 112
and Construction Schedule

Conduit	Schedule
A 24 inch Conduit from the Board's Highland's Reservoir and Pump Station, Thence northeasterly in an existing Right-of-way to S. Monroe Way, 3400 Ft. ±.	Completion - April 30, 1982

Exhibit "C"

Equivalent 3/4-Inch Single-Family Taps
For Various Size Connections

Connection Size	Equivalent 3/4-Inch Taps
3/4"	1
1"	2
1-1/4"	3
1-1/2"	4
2"	8
3"	18
4"	36
6"	94
8"	200
10"	360
12"	600

Exhibit "D"

For use in the event the Board elects to construct a facility other than conduit No. 112 sized at 24-inch diameter:

Dia.	Cost/Ft.	% (24"/size installed)
24"	$ 70.	100.0
30"	85.	82.4
36"	99.	70.7
42"	117.	59.8
48"	132.	53.0
54"	164.	42.7
60"	203.	34.5
66"	241.	29.0

Example of Use:

The Board constructs 10,000 feet of 54" Conduit at actual cost of $1,700,000.

Districts share would be:

$$\frac{\$1,700,000}{10,000 \text{ft.}} = \$170/\text{ft.}$$

$170/ft. X 3400' X 42.7% = $246,806.00

a. Install 200' of 12-inch in S. Adams Circle, Dry Creek Road to S. Madison Circle, (connect to existing 14-inch).

b. Install 200' 12-inch in Otero Avenue and S. University Blvd. (connect to Conduit No. 84).

c. Install 600' of 8-inch in Mineral Avenue, S. Harrison Circle to S. Jackson Cirlce.

d. Disconnect 8-inch from 16-inch in S. Colorado Blvd. at S. Monroe Way, and connect to Conduit No. 130 (50'-8").

e. Disconnect 12-inch from 16-inch in S. Colorado Blvd. at Mineral Avenue and connect to Conduit No. 130 (50'-12").

f. Disconnect 8-inch from 16-inch in S. Colorado Blvd. at S. Harrison Way and connect to Conduit No. 130 (50'-8").

g. Abandon 200' of 12-inch main at 1100 feet west of S. Colorado Blvd. to the north of County Line Road (in R.O.W.).

h. Abandon 150' of 12-inch main at 1800 feet west of S. Colorado Blvd. to the north of County Line Road (in R.O.W.).

i. Abandon 150' of 12-inch main at 3000 feet west of S. Colorado Blvd. to the north of County Line Road (in R.O.W.).

j. Abandon 550' of 12-inch main between S. Jackson St. and S. Madison Circle (in R.O.W.).

k. Abandon 200' of 6-inch main between lots 7 and 8 between Mineral Pl. and Mineral Avenue.

l. Connect to existing 14-inch and install 150' of 12-inch main in S. Jackson St. from Dry Creek Road to the south.

m. Disconnect 8-inch from 16-inch in S. Colorado Blvd., 200 feet south of Dry Creek Road and abandon adjoining 200 feet of 8-inch main between lots 12 and 13.

n. Abandon 500' of 12-inch main in Dry Creek Road, S. Colorado Blvd. to west and between lots 4 and 5.

o. Install 400' of 12-inch at S. Colorado Blvd. and Dry Creek Road to connect existing 14-inch main with Conduit No. 130.

p. Addition of one fire hydrant to be located on Phillips Drive at approximately 400 feet south of Otero Pl. between lots 5 and 6.

q. Abandon 200' of 12-inch main between lots 19 and 20 on southwest side of S. Adams Way.

r. Install 300' of 8-inch main in S. Jackson St. across Conduit 27 R.O.W.

s. After completion of Conduit No. 112, Willows shall connect its distribution mains to outlets on Conduit No. 112 at the following locations:

(1) Phillips Drive and Conduit No. 27 R.O.W.
(2) S. Milwaukee Street and Conduit No. 27 R.O.W.
(3) S. Monroe Way and Conduit No. 27 R.O.W.

AGREEMENT

THIS AGREEMENT, made and entered into as of this 28th day of December, 1977, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, hereinafter referred to as "Board", and the SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT, a quasi-municipal corporation of the State of Colorado, hereinafter referred to as "District".

WITNESSETH:

WHEREAS, the District, by Distributor's Contract dated the 13th day of July 1961, has agreed to obtain its water supply from the Board and the Board has agreed to provide such supply and,

WHEREAS, the District is desirous of obtaining additional facility capacity in order to meet the demands for water service within the boundaries of the District, as the same may exist from time to time, and

WHEREAS, under the policy of the Board, the District is required to participate in the cost of the facilities required to provide such additional capacity, and,

WHEREAS, to meet the demands for additional water service from the District additional facilities will be required, to wit:

an extension of Conduit No. 109 to approximately Belleview Ave. and Simms Street; the West Belleview Reservoir and Pump Station to be located at Belleview Ave. and Simms Street; Conduit No. 115 which will extend from the West Belleview Pump Station to the Chatfield Pump Station and Reservoir; and the Chatfield Reservoir and Pump Station to be located in the vicinity of the existing Chatfield Reservoir and Pump Station; and all appurtenances thereto all of which facilities are more particularly described in Exhibit "A" attached hereto and made a part of this Agreement, and

WHEREAS, the District and the Board have agreed in an amendment to the Amendment dated January 26, 1977 to the Distributor's Contract dated July 13, 1961 executed contemporaneously herewith to delete certain language contained in said amendment dated January 26, 1977, to wit:

3

ISE NO. 83 SA 79

"Potable water service will be extended to the included area or any part thereof (as described in Exhibit "A", "B", and "C", hereof) only when the Board of Water Commissioners determines that it has a sufficient supply of raw and treated water available therefor", and

WHEREAS, the parties hereto desire to set forth their respective rights and obligations with regard to participation in the cost of construction of the facilities described in Exhibit "A", and the reservation of capacities therein to District.

NOW, THEREFORE, for and in consideration of the promises and the covenants hereinafter contained, the parties hereby agree as follows:

1. The facilities and appurtenances thereto, as described in Exhibit "A", required to provide additional capacity to the District under the terms of this agreement, shall be constructed by the Board or its contractor, and shall be the property of the Board. The Board shall reserve sufficient capacity in its facilities to serve the taps reserved to District herein, subject to aforesaid Distributor's Contract dated July 13, 1961, as amended.

2. The Board or its consultant shall forthwith prepare the design and plans for each facility listed in Exhibit "A". District shall be given the opportunity to review and comment upon the plans prepared. "Preliminary" plans will be provided the District for comment and District will provide its comments to the Board within 10 business days after receipt thereof, "Final" plans will also be provided to District for comment and District will provide its comments within 5 business days after receipt thereof. It is expected that any disputes concerning the designs or adequacy of the plans will be resolved to the mutual satisfaction of the parties but in the event a dispute is not mutually resolved, the Board's Engineering Criteria and judgement shall prevail.

3. A. The District shall review the detailed cost estimate for each facility listed in Exhibit "A", to be prepared by Board upon completion of the design therefor, and shall approve each estimate prior to the Board's

inviting bids for construction of that facility. District shall provide its approval (or disapproval) of each cost estimate within 10 business days after the receipt thereof. Failure to approve or disapprove within 10 business days shall be deemed approval. In the event of disapproval of a detailed cost estimate by District, the parties shall strive to resolve the cause of the disapproval. If the parties fail to resolve the cause of the District's disapproval to their mutual satisfaction, this agreement shall be terminated and the termination shall proceed as set forth in Paragraph 3 B herein. Bids exceeding the detailed cost estimate of any major bid item, or the total detailed cost estimate, of any of the facilities identified in Exhibit "A" by more than ten (10) percent shall not be accepted by Board without the concurrence of District. However, after bids equaling 10 percent of the total of all costs for all of the facilities listed in Exhibit "A" have been accepted by Board, District shall thereafter either consent to all bid awards by Board, or, unless otherwise agreed by both parties, terminate this agreement. In lieu of termination, District shall have the option of accepting a mutually agreed reduction in its share of the total costs and a corresponding reduction in the number of 3/4 inch equivalent taps allocated to the District elsewhere in this agreement.

B. If District elects to terminate this agreement, upon verified billing from Board, District shall pay the total costs incurred by Board to date of termination excluding only those items of work which, in the sole opinion of the Board, are useable by other customers of the Board. The total costs incurred by Board to date of termination shall include, but are not limited to costs of any previously accepted bids and all penalties and damages assessable against Board either by settlement or legal action on account

of such termination. All bills shall be due within thirty (30) days of receipt. District shall be permitted to audit all billings and final project costs under this Agreement. Board shall retain responsibility for actual award of all contracts, payments thereunder and administration of said project(s), subject to the above provisions. In the event of termination, District shall not be permitted any additional taps hereunder, except that taps that have been allowed as a result of completion of certain phases of the work as provided in Par. 8A herein may be retained for use by the District.

4. The Board shall obtain all Rights-of-Way and easements needed for the installation of the facilities addressed herein. The District, upon request by the Board, will assist in obtaining the necessary easements and rights-of-way. The District's expenses in providing such assistance shall be reported to the Board and included into the costs of the facilities. Such costs will be pro-rated between the Board and the District as specified elsewhere herein.

5. Exhibit "B" attached hereto and made a part hereof, sets forth the estimated completion dates for the facilities to be constructed hereunder. The Board makes no commitment or guarantee when the facilities described on Exhibit "B" will be installed, however, the Board will exercise reasonable diligence to complete each of the facilities by the dates shown on Exhibit "B".

6. The actual costs of constructing each of the facilities shall be apportioned between the Board and the District according to the estimated cost proportions for the facility shown on Exhibit "A". In the event that the actual costs are higher or lower than the estimate for a particular facility, the cost to be paid by the District shall be increased or decreased as appropriate, according to the percentage division of estimated costs shown on Exhibit "A". The actual cost of each facility shall include, but

is not limited to such items as: The Board's cost of materials, contract costs, design and Engineering, land acquisition, consultant costs, inspection, administration, and District's right-of-way costs. Board shall identify, separate and record the costs, for each facility. Those items of cost, which relate to two or more facilities, which cannot be accurately identified and recorded to each facility shall be pro-rated among the appropriate facilities in the same ratio as the estimated total costs of the appropriate facilities shown on Exhibit "A".

7. The District's share of the costs of constructing the facilities identified in Exhibit "A" shall be paid to the Board according to the following schedule:

   a. 15% of the District's share of the total of the estimated costs, as shown on Exhibit "A", of all of the facilities identified therein shall be due and payable at the time of execution hereof.

   b. 35% of the District's share of the estimated total cost, as shown in Exhibit "A", of each of the six facilities identified therein shall be due and payable at the time of award of the first contract by Board for the installation or materials for construction of each of the facilities. Six payments will be made under this procedure; one for each facility.

   c. 30% of the District's share of the estimated total cost, as shown on Exhibit "A", of each of the six facilities identified therein shall be due and payable when 50% of the total estimated cost of that facility, including the applicable accumulated expenses of the Board, has been paid by the Board. Six payments will be made under this procedure; one for each facility.

d. A final payment shall be due and payable upon the completion of each of the six facilities identified in Exhibit "A". The final payment together with the previous payments made pursuant to Par. 7 a, b, and c above shall comprise the total amount of the actual costs of each facility that is to be paid by District according to the cost proportions shown in Exhibit "A". Under this procedure, six final payments shall be paid by District; one payment upon the completion of each of the six facilities.

e. All payments referenced in Par. 7 a, b, c, and d above shall be made by District within 30 days following receipt of the Board's billing therefor.

8. In consideration of the participation charges to be paid by District detailed hereinbefore, and upon completion of all facilities described in Exhibit "A", Board shall reserve unto District a total of 11,900 equivalent 3/4 inch taps ~~on a maximum day basis~~, as determined by the criteria of the Board and which criteria shall be final. A table of "Equivalent Taps" for taps of various sizes is attached hereto as Exhibit "C" and is made a part hereof. The District's right to utilize the taps reserved hereunder shall be subject to the current tap allocation program of the Board or such other tap limitations as may be effected from time to time by the Board in accordance with the terms of said Distributor's Contract dated July 13, 1961. Any restrictions or limitations applicable to District shall be equally applicable to other Distributor's similarly situated.

A. 7,222 of said 11,900 total taps shall be obtainable from connections to Conduit 115 as described in Exhibit "A", or from such other source as may be mutually agreed to. It is understood that the District, at its sole cost, must install the necessary extensions from Conduit 115 and

Distribution piping in order to utilize the taps herein reserved. It is understood by the parties that the facilities to be constructed hereunder will not all be completed at the same time, and that the total of 7,222 equivalent taps will be available to District only upon the completion of all of the facilities described in Exhibit "A". On a phased basis, the following numbers of taps will be available for use by the District upon the completion of certain of the said facilities:

(1). 2,222 equivalent taps shall be available for use by the District upon the completion of that portion of Conduit 115 situate South of Coal Mine Ave.

(2). 2,222 additional equivalent taps (total of 4,444 equivalent taps) shall be available for use by the District upon the completion of Conduit 109, the West Belleview Reservoir, the West Belleview Pump Station, and that portion of Conduit 115 situate North of Coal Mine Ave.

(3). 2,778 additional equivalent taps (total of 7,222 equivalent taps) shall be available for use by the District upon the completion of the remaining facilities (Chatfield Reservoir and the Chatfield Pump Station).

B. (1). 4,678 of said 11,900 total taps shall be reserved to the District, at the proposed terminus of Conduit 109 at the West Belleview Pump Station, free from further participation in the costs of constructing the facilities described in Exhibit "A".

(2). It is understood that said 4,678 taps may not be used by District until such time as certain future facilities including additional pumping and storage are constructed. Construction of these future facilities will

require further participation by District beyond the costs addressed herein and would be as determined in a participation agreement executed separate herefrom at some subsequent date between the Board and the District.

(3). In order to record the intent of the parties with regard to the future facilities contemplated, at the time of the making hereof, the facilities and their currently estimated costs, as shown at Exhibit "D", constitute the type of future facilities that must be constructed before District can use the 4,678 equivalent taps reserved to District herein. Neither the Board nor the District assumes any obligation hereunder as to when, if ever, said future facilities will be constructed or what their size, location or capacity will be. The District has the right, however, to construct said facilities, subject to Board's approval, to utilize said 4,678 equivalent taps. The future obligation, if any, upon the Board and District hereunder, shall be to negotiate in good faith for construction of said future facilities in order to fulfill the intent and terms of said Distributor's Contract dated July 13, 1961 regarding water service to the District and in consonance with the water supply conditions and policies of the Board in effect at that time.

(4). At any time prior to initiation of construction of the future facilities discussed in Par. 8 B(b) above, Board shall have the right to purchase, any or all of said 4,678 taps from District, subject to the District's prior written consent and approval. For each tap so purchased, Board shall pay to District a sum of money determined as follows:

(a) The per tap contribution by District towards the cost of constructing Conduit 109; this will be the District's participation in Conduit 109 divided by 11,900.

(b) The amount determined in 8 B(4) (a) above shall be increased or decreased by the same ratio that the U.S. Department of Labor Consumer Price Index for Urban Wage Earners and Clerical Workers (U.S. City Average - All Items) has increased or decreased between the time of completion and acceptance of Conduit 109 and the time of purchase of such taps by the Board. In making such determination, the index for the month next prior to said time of completion and acceptance, and the index for the month next prior to said time of purchase shall be used.

9. Taps allotted to the District herein may be used only within the Contract Service Area of the District, as described in the Distributor's Contract dated July 13, 1961, as the same now exists or hereafter may exist from time to time or within the contract service area of the Meadowbrook Water and Sanitation District as described in Distributor's Contract No. 194 dated August 9, 1963 as the same may exist from time to time. The Meadowbrook Water and Sanitation District is included within the area for use of the allotted taps because of the dependancy of Meadowbrook upon District for its water supply, and wherever reference is made herein to the total number of taps that may be installed within District pursuant to this or prior agreements, such total number of taps shall include all taps installed within the Meadowbrook Water and Sanitation District.

10. Pursuant to the participation agreement between Board and District dated March 26, 1975, and a Department letter dated May 5, 1977, a copy of which is attached hereto as Exhibit

"E", the District (including Meadowbrook Water and Sanitation District) has been previously authorized to install a total of 3,213 equivalent 3/4 inch taps. Such authorization was based upon the hydraulic capacities of the mains that currently supply the District. The total of 7,222 taps reserved herein is in addition to the 3,213 taps previously authorized for use within the District. Accordingly, the total number of equivalent taps that may be installed within the District in consideration of this agreement and all prior agreements, shall be 10,435 equivalent 3/4 inch taps. The foregoing 10,435 taps do not include the 4,678 taps referred to in Par. 8 B(1).

11. The participation costs specified herein do not include System Development Charges, costs of interior distribution mains, or any other applicable installation costs nor shall payment by District of any sums under the terms of this agreement relieve the District or its assigns, or any of its customers or residents from liability for such other charges and costs.

12. Nothing herein shall be construed as actual or implied agreement of the Board to increase the present water contract service area of the District. However, a District request for service area enlargement shall not be treated any less favorably than a request from any other Distributor similarly situated and it is anticipated that any future request for enlargement of water service area shall be approved or disapproved upon the criteria of availability or lack of availability of treated and raw water supplies in accordance with the then applicable policies and procedures of the Board.

13. This agreement shall be binding upon the parties hereto, their successors and assigns.

14. The parties hereto agree that this contract is and shall be deemed 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.

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

ATTEST:

J. L. Aghrie

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

by: Charles T. Brannan

APPROVED:

Planning and Water Resources

William C. Tolle
Engineering and Construction

William H. Miller
Administration and Public Affairs

Legal Division

REGISTER AND COUNTERSIGNED:
John F. Dee, Jr., Auditor
City and County of Denver

by: John F. Dee, Jr.

ATTEST:

SOUTHWEST METROPOLITAN WATER
AND SANITATION DISTRICT

by: Frank W. Brock

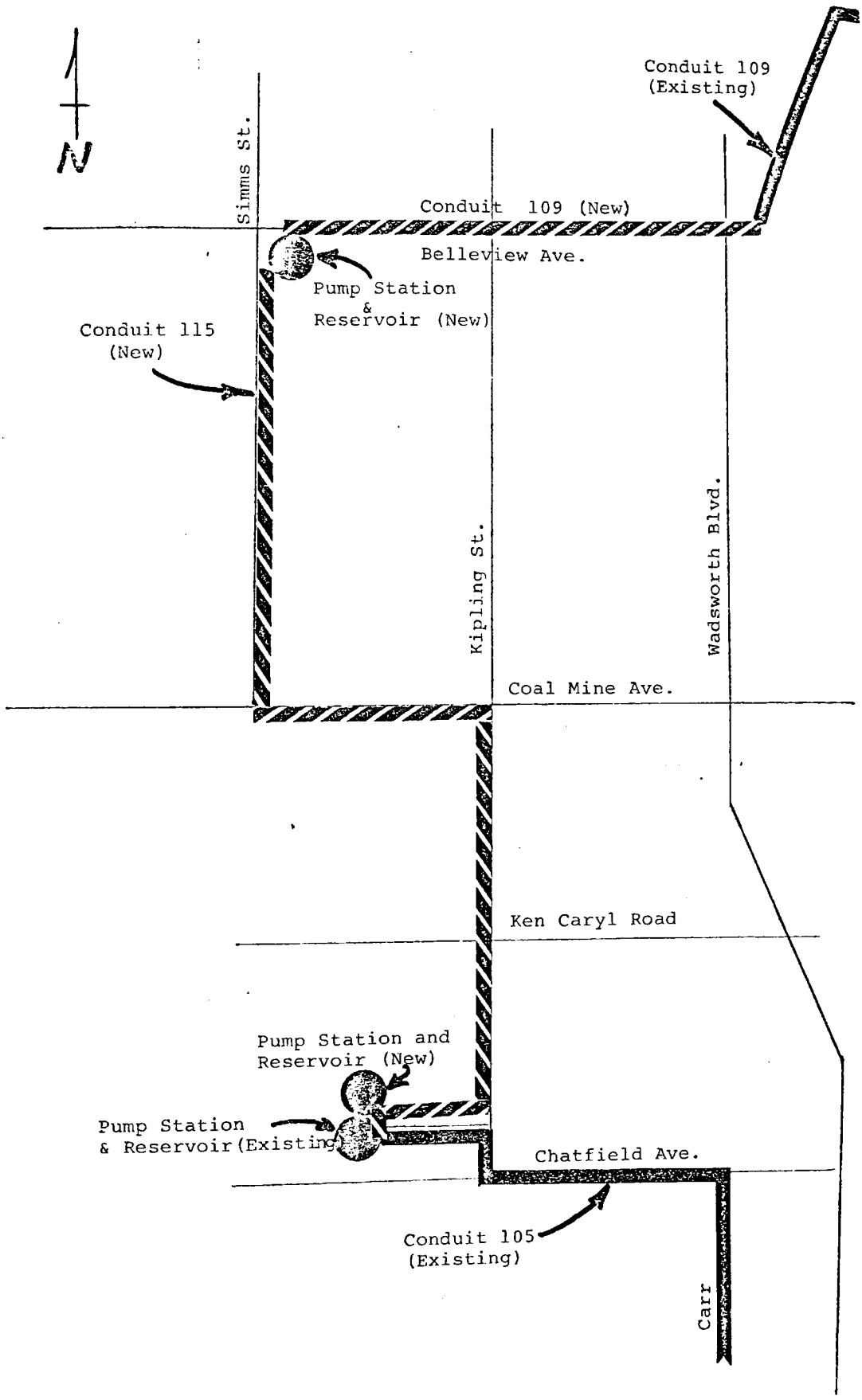
EXHIBIT "A"
FACILITIES TO BE CONSTRUCTED AND
SHARING OF COSTS

Facility	Estimated Total Cost	Estimated Cost to be paid by District	Percent of actual cost to be paid by District
	$	$	%
1. Extension of Conduit Number 109. A 54 inch Conduit extended in Belleview from Ammons to Simms:	1,234,000.00	983,300.00	see note 1 below
2. West Belleview Pump Station a. A Pump Station sized for an ultimate capacity of 85 MGD	1,726,000.00	324,800.00	18.82
b. 16 MGD of pumping capacity to be installed hereunder*	430,000.00	430,000.00	100.00
3. West Belleview Reservoir A 10 MG Reservoir:	1,117,000.00	595,400.00	53.30
4. Conduit 115 a. A 36 inch conduit between West Belleview and Chatfield Reservoirs and Pump Stations	2,603,000.00	2,328,800.00	89.46
b. Additional pumps in existing Chatfield Pump Station and Master Meter & Vault	151,000.00	151,000.00	100.00
5. Chatfield Pump Station a. An addition to the existing Pump Station or a new Pump Station sized at 20 MGD	505,000.00	252,500.00	50.00
b. Land costs for Chatfield Reservoir	326,000.00	326,000.00	100.00
6. Chatfield Reservoir A 3.33 MG Reservoir*	411,700.00	411,700.00	100.00
Totals	8,503,700.00	5,803,500.00	-----

See attached sketch for appropriate locations.

Note 1. The District's cost shall be the total cost of constructing this facility if sized at 36 inches. Cost data from the Conduit 115 bids shall be used as a basis for comparison of 36 inch vis-a-vis 54 inch costs. Cost data to be adjusted to the date of comparison according to changes in the Consumer Price Index, U.S. All Items, published by U.S. Department of Labor.

* If facility is constructed at a size (capacity) other than as shown above, the percentage of the actual cost to be paid by District will be adjusted in the same ratio as: $\frac{\text{size shown above}}{\text{size constructed}}$.



SKETCH SHOWING
GENERAL LOCATION OF FACILITIES

EXHIBIT "B"

ESTIMATED COMPLETION DATES

FACILITY	ESTIMATED COMPLETION DATE
1. Extension of Conduit No. 109	April, 1979
2. West Belleview Pump Station	April, 1980
3. West Belleview Reservoir	April, 1980
4. Conduit 115	November, 1979
a. Entire Length	November, 1979
b. Conduit 115 South of Coal Mine Ave.	November, 1978
c. Additional Pumps	November, 1978
5. Chatfield Pump Station	April, 1982
6. Chatfield Reservoir	April, 1982

EXHIBIT "C"

TABLE OF EQUIVALENT TAPS

CONNECTION SIZE	EQUIVALENT 3/4" TAPS
3/4"	1
1"	2
1¼"	3
1½"	4
2"	8
3"	18
4"	36
6"	94
8"	200
10"	360
12"	600

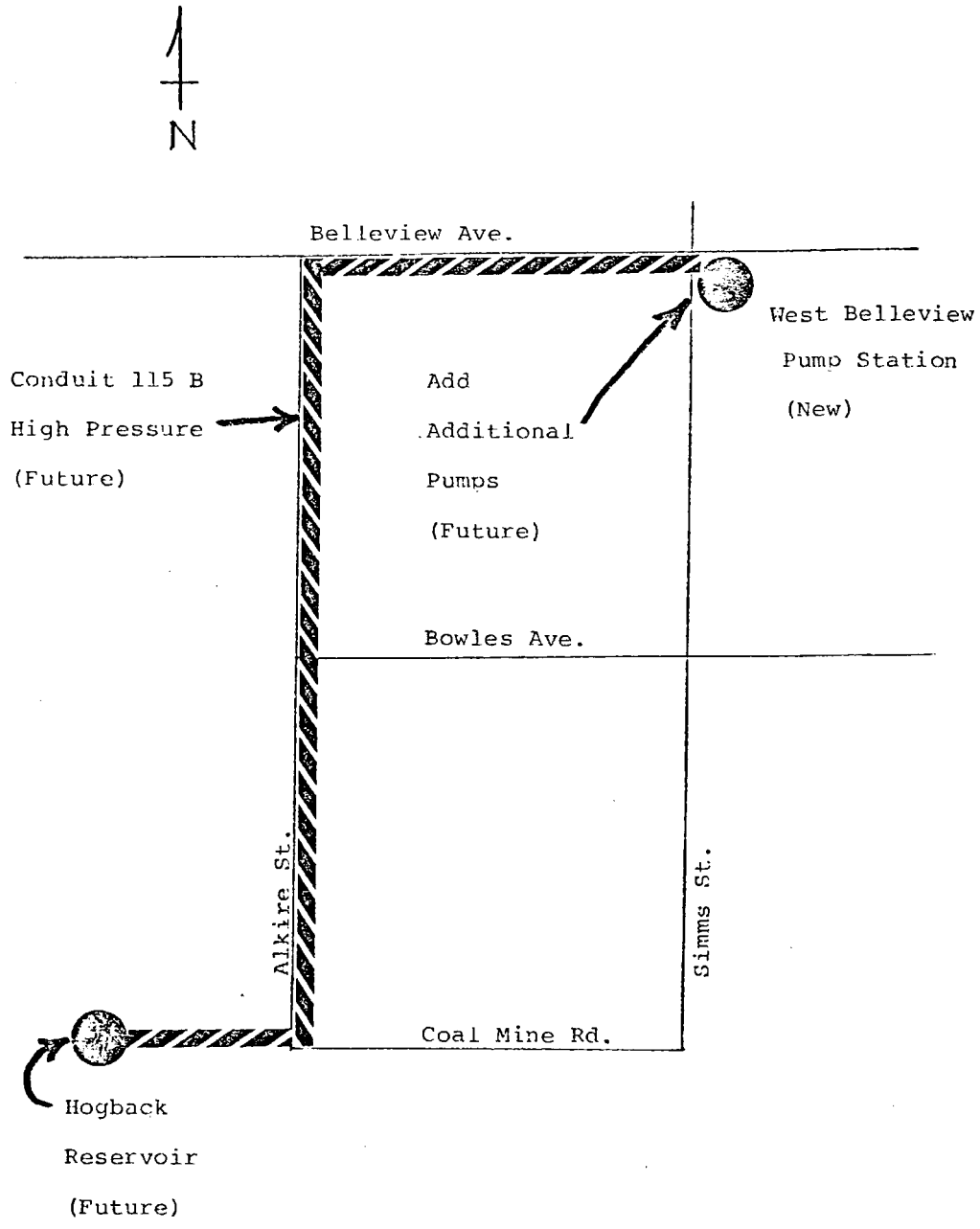
EXHIBIT "D"

FUTURE FACILITIES REQUIRED PRIOR TO

DISTRICT'S USE OF 4,678 EQUIVALENT TAPS

FACILITY	ESTIMATED 1977 TOTAL COST
	$
1. Additional Pumps Installed in West Belleview Pump Station	338,000
2. Conduit 115 B A 36" Conduit between West Belleview Pump Station and the Hogback Reservoir	1,241,000
3. Hogback Reservoir A 5 MG Reservoir	454,800

The facilities depicted above are shown only to reflect the intent of the parties at this time. No representation is made that these facilities will be constructed or that the sizes, costs and locations will remain as shown.



SKETCH SHOWING GENERAL

LOCATION OF REQUIRED FUTURE FACILITIES

EXHIBIT "E"

GILVIE
anager

Board of Water Commissioners

144 West Colfax Avenue Denver, Colorado 80202 Phone 222-5511

May 5, 1977

Mr. Robert J. Flynn, attorney
Southwest Metropolitan Water
& Sanitation District
500 Continental National
Bank Building
3333 South Bannock
Englewood, Colorado 80110

Dear Mr. Flynn:

As promised at the conclusion of our discussion on May 3, 1977, I have caused Department staff to make a further review of the current tap limitation that confronts the S.W. Metro District.

In reviewing this matter, it will be helpful to recount how the limitation was established at 3085 equivalent taps.

a. As of May 1, 1974, there were a total of 849 equivalent taps installed in S.W. Metro District and Meadowbrook District. At that time, the 16-inch main in Bowles Ave. was the sole feed into the District(s), and, except as noted later herein, these 849 taps were presumably supplied by the 16" main in Bowles Ave.

b. A meeting was held on February 27, 1975 attended by yourself, Charles Meurer, K.C. Ensor, W.A. Schuler, G. Pauline, and G. Shellenbaum to discuss construction of a 24"/16" main in Carr from conduit 105 to provide a second feed to the District. Using the District's suggested criteria of 1.8 GPM/tap at max hour, the 24"/16" main would have a capacity of 2122 equivalent taps. In the course of the meeting it was agreed to raise the number to 2222 taps.

c. The sum of 849 + 2222 is 3071 equivalent taps and this number was proposed in the participation agreement sent to the District on March 11, 1975. By letter dated March 18, 1975, you suggested that the total should be raised to 3100 taps since the District would incur about $8,000.00 in costs due to the unanticipated requirement to install a 24" valve. In a spirit of compromise, the Department agreed to a total of 3085 taps, an increase of 14 taps to our original proposal. Accordingly, the capacity of the 24"/16" was raised from 2222 to 2236 taps

and on this basis, the agreement was subsequently approved by the District and the Board.

With reference to item "a" above, two points should be noted. First, the capacity of the 16" main in Bowles was included into the determination of the overall tap limitation of 3085 taps and second if 849 taps were being served by the 16" main, then a max hour demand of only 1.47 GPM/tap is implied. Subsequent to the execution of the Participation Agreement, it came to light that all 849 existing taps were not in fact, served by the 16 inch main in Bowles. Approximately 128 of the 849 existing taps were supplied from a District main located in Santa Fe Drive which served the Rio Grande Industrial Park. Subtracting these 128 taps from the 849 existing taps meant that only 721 taps were served from the 16 inch main in Bowles at a max hour demand of 1.73 GPM/tap. Regardless of whether the max hour demand factor was 1.47 or 1.73, both figures are lower than the Districts suggested factor of 1.8 and greatly below the Departments factor of 2.5 GPM/tap. (If the Department had required adherence to its factor of 2.5, only 500 taps would have been allowed from the 16 inch main in Bowles.)

The point of this detailed explanation is that the Department has allowed the use of demand factors far below its standard which has had the consequence of increasing the number of taps the district has been allowed to install. The impact of the relaxation of the Department's standards has yet to be felt by the District due to the inclusion of 300-400 stub-outs in the tap counts. As these stub outs are activated, the district's system will become strained and the present quality of service will decline.

With regard to those taps that are served from the District Main in Santa Fe Drive, we will agree that these taps should not be charged against the capacity of the 16-inch main in Bowles or conduit 120 in Carr. We will reduce the Districts "tap count " so that this error is remedied. This will increase the taps available to the District by 128.

Sincerely,

J.L. Ogilvie
Manager

JLO/GES/gps

4/18/75
Mark Schomerus
5/5/75

AGREEMENT

THIS AGREEMENT, is made and entered into as of this 26th day of MARCH, 1975, by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, hereinafter referred to as "Board", and the SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT, a quasi-municipal corporation of the State of Colorado, hereinafter referred to as "District".

WITNESSTH:

WHEREAS, the District is desirous of obtaining additional water supply in order to meet the demands generated by population growth within the boundaries of the District, as the same may exist from time to time and,

WHEREAS, the District by distributor's contract dated the 13th day of July, 1961, has agreed to obtain its water supply from the Board and the Board has agreed to provide such supply, and,

WHEREAS, under the Participation Policy of the Board, the District is required to participate in the cost of additional transmission facilities required to provide such service, to-wit: A 24-inch and 16-inch main in South Carr Street extending north approximately 13,924 feet from Conduit Number 105 at Ute Avenue and South Carr Street to a 16-inch main located at South Carr Street and Coal Mine Avenue and various appurtenances thereto, all of which facilities are more particularly described in Exhibit "A" attached hereto and made a part of this Agreement, and,

WHEREAS, the parties hereto wish to set forth their respective rights and obligations with regard to service to the District's contract service area and participation in costs of construction of the facilities described in Exhibit "A", and,

WHEREAS, the engineering firm of Meurer, Serafini and Meurer, Inc., hereinafter referred to as "Engineer", has pursuant to the terms of a contract between Engineer and District dated April 8, 1974, prepared plans and specifications for the facilities described in Exhibit "A". #4 CASE NO. 83 SA 79

NOW, THEREFORE, in consideration of the promises and the premises, hereafter contained, the parties hereby mutually agree as follows:

1. District shall construct at its sole cost the 24-inch and 16-inch mains in South Carr Street identified as Phase IA and Phase IB in Exhibit "A". Said costs shall include all costs of constructing the mains, cost of right-of-way, Engineer's fees, and the cost of inspection performed by Board. Board inspection costs will be the cost of one full time inspector and related overhead. District shall install in Ken Caryl Road, as a part of Phase IB, approximately 18 feet of 24-inch main and a 24-inch valve and vault, which valve shall be the point of connection between Phase IB and Phase II as described in Exhibit "A".

2. Board shall construct at its sole cost the 24-inch main in Ken Caryl Road identified as Phase II in Exhibit "A". Board's costs for Phase II shall not include any Engineer's fees, which fees shall be paid by District pursuant to paragraph 3 herein. The point of connection between Phase II and Phase IA shall be the 24-inch valve to be installed by District as a part of Phase IB.

3. The plans and specifications for the facilities described in Exhibit "A" prepared by Engineer shall be used subject to Board approval. District shall pay all fees and charges due for services provided by Engineer and the Board shall have no liability whatsoever for such fees.

4. District shall obtain at its sole cost the necessary rights-of-way for construction of the facilities described in Exhibit "A". Said rights-of-way shall be upon the Board's standard right-of-way form and shall be assigned to Board.

5. Upon completion of construction of Phase IA and Phase IB, the District will quitclaim to Board its interest in the mains constructed and herein identified as Phase IA and Phase IB. In consideration for the conveyance of said mains, Board agrees to thereafter maintain and replace as required, and operate said mains as a part of its total system.

6. Upon completion of the facilities described in Exhibit "A", District shall be entitled to a supply of water equal to 5,500,000 gallons per day in addition to the water now supplied to District. Said 5,500,000 gallons per day

may be provided from the facilities described in Exhibit "A" or such other source as may be acceptable to District, as the Board may elect to use. Premised upon current engineering standards, 2,236 three-quarter inch equivalent taps may be supplied from said 5,500,000 gallons per day. Equivalent three-quarter inch taps shall be determined in accordance with Exhibit "B", attached hereto and made a part hereof. Said 2,236 equivalent taps shall be in addition to the 849 equivalent taps that were receiving water service on May 1, 1974, in both District and the Meadowbrook Water District. The 849 equivalent taps together with the 2,236 equivalent taps allocated above, total 3,085 taps which sum constitutes the total number of equivalent taps which shall be free of further participation charges.

7. It is currently estimated that the facilities described in Exhibit "A" will be completed within four (4) months from the date of execution of this Agreement. It is understood that the foregoing time period is an estimate and neither party makes any commitment or guarantee whatsoever as to the time of completion of the mains to be constructed by each, however, both parties agree to exercise reasonable diligence in completing the mains described in accordance with the schedule stated herein.

8. In the event Board determines that the water mains installed pursuant to this Agreement have the capacity to serve taps in addition to the 2,236 three-quarter inch equivalent taps specified in Paragraph 6 herein, said additional taps will be available for purchase upon the prior payment of additional participation charges pursuant to Board's policies existing at the time of application.

9. This document constitutes the full and complete agreement of the parties and all prior agreements, whether oral or written relating to the construction of the facilities described in Exhibit "A", are superseded by these presents to the extent inconsistent with the terms hereof.

10. The charges and fees specified herein do not include system development charges, cost of interior distribution mains or any other applicable installation costs nor shall payment by District of any sums under the terms of this Agreement relieve the District, its successors or assigns, from liability for such other charges and costs.

11. Nothing herein shall be construed as actual or implied agreement of the Board to increase the present water contract service area of the District.

12. This Agreement shall be binding upon the District, its successors and assigns.

13. The parties hereto agree that this contract is and shall be deemed 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.

14. This Agreement incorporates all the terms and conditions of the Distributor's Contract between the parties hereto dated July 13, 1961, and all amendments thereto.

Specific attention is called to the fact that portions of the Distributors Service area not actually receiving water service, or in the opinion of the Board not in immediate prospect of requiring water service may be deleted from said Area under said contract pursuant to the notice provisions provided therein.

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

CITY AND COUNTY OF DENVER,
acting by and through its
BOARD OF WATER COMMISSIONERS

ATTEST:

By:

APPROVED:

REGISTERED AND COUNTERSIGNED:
Charles D. Byrne, Auditor
City and County of Denver

Planning and Water Resources

By:

Legal Division

ATTEST:

SOUTHWEST METROPOLITAN WATER
AND SANITATION DISTRICT

By:

EXHIBIT "A"

Participation Facilities

Phase IA:

16-inch water main in South Carr Street extending from an existing 16-inch main at South Carr Street and Coal Mine Avenue to a 24-inch main at South Carr Street and Ken-Caryl Road, together with appurtenances thereto.

5,498 feet

Phase IB:

24-inch water main in South Carr Street extending from a 16-inch main at South Carr Street and Ken-Caryl Road to Conduit Number 105 at South Carr Street and Ute Avenue, together with appurtenances thereto.

8,426 feet

Phase II

24-inch water main in Ken-Caryl Road extending East from a 24-inch main at South Carr Street and Ken-Caryl Road to an 18-inch main in Ken-Caryl Road, together with appurtenances thereto.

1,991 feet

EXHIBIT "B"

Equivalent 3/4-Inch Single-Family Taps
For Various Size Connections

Connection Size	Equivalent 3/4-inch Taps
3/4"	1
1"	2
1-1/4"	3
1-1/2"	4
2"	8
3"	18
4"	36
6"	94
8"	200
10"	360
12"	600