

C. Technical Assistance. Aurora, through its Arkansas Valley Range Project office staff, shall cooperate with and provide Lower, the Super Ditch Company, Lower Valley ditch companies, and Lower Valley irrigators with technical advice and assistance:

a. In the establishment and operation of a viable Water Leasing Program, including the Super Ditch Company;

b. In the development and implementation of irrigation improvements that improve water quality in the Lower Arkansas Valley, including the fallowing of low-productive and saline lands; and

c. In the development and implementation of alternative cropping and irrigating approaches that reduce the consumptive use of irrigation water.

D. Continued Farming. Lower and Aurora acknowledge that information and expertise gained from Aurora's existing continued farming program in the Lower Arkansas Valley can be of assistance to the land fallowing Super Ditch Company. Lower agrees to support Aurora's continued farming program, including through the sale or lease by Lower of augmentation water thereto, on an equal basis with other purchasers, when such supplies are available.

E. 2003 IGA Modifications. At such time as the Water Leasing Program, including the Super Ditch Company, is established, and from time to time thereafter, Lower and Aurora shall jointly examine whether any modifications to existing IGA provisions or this Stipulation and Settlement which serve to constrain Aurora's participation in the Water Leasing Program, including the Super Ditch Company, would assist in promoting the success of the program. If each concludes that such modifications would indeed be beneficial, they shall cooperate in the promotion of such modifications before water lessors, the Super Ditch Company, and the remaining signatories to the existing IGAs.

F. Water Storage. The Arkansas Valley is subject to wide variations in available water supply as a result of natural climatic conditions. During and after times of drought, like 2002, water in storage is critical to meeting the needs of water uses. Aurora is accordingly planning to expand storage of its own, and because Lower lacks any storage reservoirs of its own, agrees to support Lower's participation in the following contemplated expansions on equitable terms.

1. Water storage - Restoration of Yield (ROY).

a. In Article II of the Six-Party IGA, Southeastern, Colorado Springs, Fountain, Aurora, and the PBWW ("ROY Participants") agreed to implement a program to restore lost yield to their "Subject Exchanges" resulting from the Arkansas River Flow Management Program. The program to restore yield resulting from the Foregone Diversions established under the 6-Way IGA is known as the ROY Program.

b. If the economically feasible storage capacity, as determined by the ROY Participants, exceeds the ROY demands of the ROY Participants, then Aurora agrees to support a request by Lower, Conduit Participants and/or the Super Ditch Company for an opportunity to participate in the ROY Storage Project to the extent of any such excess ("if-and-when") storage capacity. The final terms of such participation shall be the subject of a separate written agreement with the parties participating in the ROY Storage Project.

c. Any storage by Lower or Conduit Participants shall be on an "if and when" available basis unless otherwise agreed between the ROY Participants and the entity leasing the unused storage capacity.

2. Water storage – Aurora Facilities. Lower shall have the right to financially participate in the construction of additional storage within the basin that is constructed by Aurora to the extent that: (i) there are no legal constraints that preclude such participation; and (ii) such participation will not in any way impair or impede the ability of the storage project proponent to realize its contemplated project yield. In the event of such participation, Lower shall: (i) pay those costs associated with the construction of the additional storage space as calculated by the project proponent; (ii) pay, on an annual basis, a prorata share of any administration expenses associated with project operations; and (iii) pay, on an annual basis, its prorata share of operation, maintenance or replacement costs. Any federal, state or local approvals necessary for project construction shall remain the obligation of the project proponent; provided, however, that Lower shall provide such non-financial assistance, in the form of support for the project, as requested by the project proponent. Aurora and Lower shall enter into good faith negotiations of a comprehensive agreement setting forth the terms of Lower's participation in the project. Negotiation of the future agreement shall commence when Aurora provides notice to Lower of Aurora's desire to commence negotiations, which shall be given at least 120 days prior to the planned submission of an application for a federal Clean Water Act Section 404 permit for the construction of the storage. Aurora's agreement to allow Lower to participate in the project, on mutually acceptable terms yet to be negotiated, does not preclude Aurora from granting similar rights to other entities. With the consent of Aurora, which shall not be unreasonably withheld, Lower may assign or otherwise transfer part of all of its interest under this provision to the Super Ditch Company.

3. Water storage - Regional Water Management Program (described in 6-Party IGA at VI). If the Regional Water Management Program Participants (the PBWW, Southeastern, City of Pueblo, Colorado Springs, Fountain, and Aurora) decide to pursue the construction of water storage projects, then Aurora shall support a request by Lower to participate in such storage project before any other non-Regional Water Management Program Participant. Such participation shall be on such terms and conditions as the parties may mutually agree. The final terms of such participation shall be the subject of a separate written agreement between the parties participating in that

storage project. Lower may assign or otherwise transfer part or all of its interest under this provision to the Super Ditch Company.

4. Water storage – Colorado Canal Companies. Aurora agrees that Lower may enter into an appropriate agreement to utilize space in Lake Meredith and/or Lake Henry that is in excess of the needs of the shareholders in the Colorado Canal Companies. Any such agreement must be consistent with the by-laws of the Colorado Canal Companies, and the availability of such space is subject to the fulfillment of all existing contractual obligations of the companies. The Parties to this Stipulation and Settlement that are shareholders in the Colorado Canal Companies agree to support an agreement between the Companies and Lower that is consistent with the Companies' Bylaws and existing agreements with other entities for storage. No right or priority of exchange shall attach to any such storage agreement. With the consent of Aurora, which shall not be unreasonably withheld, Lower may assign or otherwise transfer part or all of its interest under this provision to the Super Ditch Company.

G. Water Exchanges – Cooperation. The Parties agree to cooperate with each other and the Super Ditch Company in moving water owned or leased by each from points at or below Pueblo Reservoir to points at or above Pueblo Reservoir by means of administratively approved exchanges or contract exchanges. In return for such cooperation, the Parties agree not to oppose each others' administratively approved exchanges or contract exchanges.

The Parties have no obligation to assist each other in moving water hereunder if doing so materially interferes with the Party's operation of its own water supply systems. In any such transaction the Parties shall have the duty of timely:

- a. Providing notice to the Party or Parties from whom the Party seeks assistance in moving the water;
- b. Providing a description of the source, quantity, location, and any other pertinent information concerning the water it seeks to move;
- c. Identifying the location to which it wants to move the water and providing proof of its right to divert and/or store water at that location;
- d. Providing proof of any required judicial or administrative approval of the proposed movement of the water; and
- e. Providing such other information as is reasonably necessary to implement the proposal to move the water.

The Party assisting in moving water shall not be liable for any inability to move the water or for any loss of water resulting from the transaction. The Party owning or leasing the water moved shall bear all costs reasonably related to each such transaction.

By the 10th day of the following month, upon request by Lower, Aurora shall provide Lower with monthly accounting sheets describing all of Aurora's water trades and exchanges within the basin for the preceding month and shall promptly respond to any clarification requests thereon from Lower.

VII. Tamarisk and Other Invasive Vegetative Species

The Parties to this Stipulation and Settlement are on record in their support of the removal and control of Tamarisk and other invasive vegetative species, such as Russian Olive, throughout the Arkansas Basin. Consequently, the provisions of Paragraph III conditions notwithstanding, the Parties to this Stipulation and Settlement will support Tamarisk removal activities throughout the Arkansas Basin, including the use of funds derived from the federal government. The Parties agree to support federal tamarisk funding and legislation.

VIII. Crowley County Revegetation

Some lands in Crowley County, formerly irrigated by water from the Colorado Canal, have been withdrawn from irrigation due to the purchase of the Colorado Canal shares used on those lands by Colorado Springs, Aurora, Pueblo West and others. This provision applies solely to lands associated with Aurora's transfers of irrigation water. Consequently, upon satisfaction of the Paragraph III conditions, it is agreed as follows:

A. Lower recognizes that significant revegetation efforts have been undertaken by Aurora in the past pursuant to the requirements by the Water Court in Case Nos. 84CW62, 84CW63 and 84CW64 and the associated Proxy Group Stipulation. Nothing in this Stipulation and Settlement is intended to modify or affect the terms of those documents or to imply that the requirements of those documents have not been met. The provisions of this section are separate from and in addition to those earlier documents.

B. The Parties recognize that some questions have arisen concerning the adequacy of revegetation on some parcels of land in Crowley County.

C. As a requirement of Case Nos. 84CW62, 84CW63 and 84CW64, Aurora has identified all lands which have been "dried up" as a result of water being removed for municipal uses on a map maintained by the Colorado Canal Company at its office. Aurora shall make a copy of this dry up map identifying these lands available to the Crowley County Commissioners.

D. Aurora shall investigate properties withdrawn from irrigation due to Aurora's purchase of Colorado Canal shares and identified by Crowley County as potentially in need of additional revegetation activities. Aurora shall work cooperatively

with Crowley County in implementing additional revegetation activities to the extent determined necessary and appropriate.

1. To the extent lands are privately owned, any future activities would be conditioned upon Crowley County obtaining the owners' permission for adequate access and operation.

2. Water delivery systems (laterals) must be intact for delivery of water from the Colorado Canal to the parcel. Aurora will, in cooperation with Crowley County, identify laterals, and the ownership and status thereof. A map of lands from which water was purchased by Aurora is attached as Exhibit F

3. Aurora will provide water for revegetation activities from available Colorado Canal shares owned by the City during above average water supply years, i.e., those years in which Aurora's system storage on April 1 is no less than 80% of total storage capacity and the most recent NRCS run-off forecast for the Arkansas River at Salida is for flows greater than 100% of average.

E. Aurora shall cooperate with Crowley County in seeking the advice and/or assistance of the Natural Resources Conservation Service where appropriate.

F. Aurora received and recorded in Crowley County a covenant running with the lands that precludes the farming and removal of revegetation without the permission of Aurora. Aurora agrees not to provide that permission without the consent of Crowley County.

G. Aurora agrees to cooperate with Lower, Colorado Springs Utilities, and Pueblo West Metropolitan District to address similar issues on land dried up by such entities in order to achieve a comprehensive resolution of this issue in the Lower Valley.

IX. Additional Support for Basin Water Supplies

Upon satisfaction of the Paragraph III conditions, it is agreed as follows:

A. Infrastructure Improvements and Research. Aurora, in coordination with Lower and the Super Ditch Company, shall work cooperatively with the agricultural community in the Lower Arkansas Valley, and in particular any participants in the Water Leasing Program, including the Super Ditch Company, upon the identification of infrastructure investments and research designed to assist in the implementation of the Super Ditch Company or other activities that may serve to mitigate the adverse impacts, if any, upon rural economies in the Lower Arkansas valley of the transfer of water from agricultural to municipal uses. Such infrastructure and research may include, without limitation, irrigation efficiency technology, water quality improvements, check structures, ditch lining, drainage systems, ditch wide consumptive use analysis, crop pattern/water demand investigations, and the potential water quality and economic benefits that might

be derived therefrom. The extent of Aurora's financial commitment to such efforts shall be as referenced in subparagraph C below.

B. Fountain Creek. In addition, acknowledging the benefits to water suppliers and other Arkansas River interests of water quality remediation and watershed restoration efforts along the Fountain Creek corridor, Aurora and Lower shall also work cooperatively, in coordination with Colorado Springs Utilities and other interested parties, upon Fountain Creek remediation and restoration efforts. The extent of Aurora's financial commitment to such efforts shall be as referenced in subparagraph C below.

C. Funding Contribution. The provisions of Paragraph III notwithstanding, Aurora shall contribute the sum of \$125,000 per year for so long as the stay is in effect, and, upon the satisfaction of the Condition set forth in Paragraph III, \$125,000 per year until Aurora has contributed a total of \$500,000, and thereafter \$250,000 per year until Aurora has contributed a total of \$2,000,000 to the efforts referenced in subparagraphs A and B above. The monies shall be placed in an interest bearing escrow account established by Aurora. Aurora shall consult with Lower, the Super Ditch Company, and other public and private organizations and state and local agencies as mutually agreed by the Parties upon how such funds should be expended, with Aurora allocating such monies to identified activities on a periodic basis. All funds, including accrued interest, shall be committed within 12 months after the payment, and expended within 24 months after the payment.

D. Any funds expended by Aurora in meeting the defined goals of subparagraph A or B above following execution of this Stipulation and Settlement may be applied to the funding requirement of subparagraph C above .

X. Miscellaneous

A. No Amendment or Repeal. The Parties acknowledge that nothing herein shall serve to amend or repeal any provision of previously executed written agreements involving the Arkansas Basin water rights of Aurora and/or Aurora's use of Fryingpan-Arkansas Project facilities. Lower desires to work cooperatively with Aurora and the signatories to such agreements on matters of mutual interest and concern and in a manner consistent with those agreements.

B. Implementation - Regional Water IGA Management Committee. If a Regional Water IGA is signed by the Parties and others, the Parties will appoint representatives to a Regional Water IGA Management Committee ("Committee") if created to implement such IGA. Upon formation of such Committee, Aurora and Lower shall contribute \$25,000 annually, or whatever amount the Parties to the Regional Water IGA may mutually agree each will contribute from time to time, to the Committee to implement and further the goals of the Regional Water IGA. The Parties agree that the Regional Resource Planning Group created pursuant to the IGA between Southeastern and Aurora dated October 3, 2003 may be abolished and its responsibilities, functions

and funding transferred to the Committee upon mutual agreement of the parties to such IGA.

C. No Waiver. By signing this Stipulation and Settlement, the Parties do not waive their right to protect their own water rights and other interests by all lawful means.

D. Notice. Whenever Notice is required by this Stipulation and Settlement, it shall be given to the appropriate Party(s) at the following address:

R. Jay Winner, General Manager
Lower Arkansas Valley Water Conservancy District
802 Swink Avenue
Rocky Ford, CO 81067
719-254-5115
719-254-5150 (fax)

With copies to:

Peter D. Nichols, Esq.
Robert V. Trout, Esq.
Peggy E. Montano, Esq.
Lisa M. Thompson, Esq.
Trout, Raley, Montano, Witwer & Freeman, P.C.
1120 Lincoln Street, Suite 1600
Denver, CO 80203
303-861-1963
303-832-4465 (fax)

H. Barton Mendenhall, Esq.
Mendenhall & Malouf
805 Chestnut Avenue
P.O. Box 552
Rocky Ford, CO 81067
719-254-7606
719-254-4200 (fax)

Mark T. Pifher, Esq.
Director of Utilities
City of Aurora
15151 E. Alameda Parkway, Suite 3600
Aurora, CO 80012
303-739-7370
303-739-7491 (fax)

With copies to:

Charles Richardson, Esq,
City Attorney
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012
303-739-7030
303- 739-7042 (fax)

Stuart L. Somach, Esq.
Somach Simmons & Dunn
813 Sixth Street, Third Floor
Sacramento, CA 95814
916-446-7979
916-446-8199 (fax)

John M. Dingess, Esq.
Duncan, Ostrander & Dingess, PC
3600 S. Yosemite Street, Suite 500
Denver, CO 80237
303-779-0200
303-779-3662 (fax)

E. Change of Notice. A Party may change the address to which Notice is to be given by giving Notice to the other Party.

F. No Third Party Beneficiaries. No third party shall have intended or implied enforceable rights under this Stipulation and Settlement.

G. Marginal Headings. The marginal headings and titles to the Sections of this Stipulation and Settlement are not a part of this Stipulation and Settlement and shall have no effect upon the construction or interpretation of any part hereof.

H. Time. Time is of the essence in this Stipulation and Settlement and with respect to each and all of its provisions in which performance is a factor.

I. Choice of Law. This Stipulation and Settlement shall be governed by the laws of the State of Colorado in all respects including matters of validity, construction, performance and enforcement.

J. Interpretation. This Stipulation and Settlement shall be deemed to have been jointly prepared by both of the parties, and any ambiguities or uncertainties herein shall not be construed for or against either of the parties. All exhibits and addenda attached to this Stipulation and Settlement are incorporated into this Stipulation and Settlement by reference.

K. Entire Agreement. This Stipulation and Settlement and all exhibits attached hereto contain the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this Stipulation and Settlement shall be of no force or effect. This Stipulation and Settlement can only be modified by a writing signed by both Parties.

L. Fees and Costs. Upon dismissal each Party to the litigation shall pay for its own costs, including attorneys' fees.

M. Contract Shall Remain in Full Force and Effect. The Contract shall stay in full force and effect through the pendency of all actions contemplated in this Stipulation and Settlement.

N. No Repeal of Rights. Nothing herein is intended to repeal or amend Aurora's rights or obligations under existing Agreements, including the Southeastern/Aurora IGA dated October 3, 2003 and the "six-party" IGA dated May 25, 2004.

O. Sole Obligation of Utility Enterprise.

1. This Stipulation and Settlement shall never constitute a general obligation or other indebtedness of the City of Aurora, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City.

2. In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Stipulation and Settlement, Lower shall have no recourse for any amounts owed to it against any funds or revenues of the City except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Water Enterprise Fund, as the terms "Water System" and "Water Enterprise Fund" are defined in City Ordinance No. 2003-18, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City.

3. Aurora represents that this Stipulation and Settlement has been duly authorized, executed and delivered by Aurora and constitutes a valid and legally binding obligation of Aurora, enforceable against Aurora in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

P. Counterparts. The Parties may execute this Stipulation and Settlement in two counterparts, which shall, in the aggregate, be signed by both Parties; both counterparts, when taken together, shall constitute this Stipulation and Settlement.

XI. Dispute Resolution

If a dispute arises between the Parties relating to any provision of this Stipulation and Settlement, the following procedure shall be followed:

A. The appropriate Parties' representatives listed in Exhibit G, as may be revised from time to time, shall first consider any proposed decision or disputed matter. If not resolved by agreement of the Parties' representatives, the proposed decision item or disputed matter shall be reported to the Administrative Officers. The Administrative Officers shall hold a meeting promptly, but in no event later than 20 calendar days from the referral of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce obligations and liabilities of the Parties or be deemed a waiver by a Party hereto of any remedies to which such Party would otherwise be entitled under this Stipulation and Settlement unless otherwise agreed by the Parties in writing. "Administrative Officers" collectively shall mean the Director of Utilities for the City of Aurora, and the General Manager of Lower, or, in all cases, such other officer authorized by the Party to act in such capacity, and the designated representatives of any subsequent parties.

B. If, within 20 calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.

C. The Parties agree to participate in good faith in the mediation and related negotiations for a period of 30 calendar days. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other legal or equitable remedy. The Parties agree to reasonably expedite any legal proceedings brought hereunder in order to obtain a prompt resolution.

D. Nothing herein shall prevent any Party from pursuing any legal or equitable remedy in a timely manner to avoid the running of any applicable statute of limitation.

XII. Exhibits Incorporated by Reference

- A. United States Bureau of Reclamation Contract No. 07XXC0010.
- B. Summary of Aurora Water Supplies from Arkansas River sources.

B-1 Fry-Ark Legislation (CAM07731 DISCUSSION DRAFT S.L.C.) and so-called "6-party Amendments" (Oct. 23, 2007)

B-2 Fry-Ark Legislation to provide for the construction of the Arkansas Valley Conduit in the State of Colorado: H.R. 172 and S. 187, 111th Congress, 1st Session.

C Fry-Ark Legislation concerning the study of the historical impacts of water transfers (date).

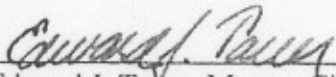
D. Super Ditch Company Articles of Incorporation and Bylaws (May 7, 2008, as amended).

E. Stipulation in Case No. 05CW105.

F. A map depicting the Crowley County land that Aurora dried up in Case Nos. 84CW62, 84CW63 and 84CW64.

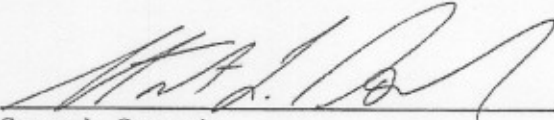
G. List of Party Representatives.

**CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE**



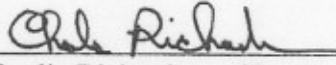
Edward J. Tappier, Mayor, City of Aurora

Date: 4/6/09



Stuart L. Somach
Somach Simmons & Dunn
813 Sixth Street, 3rd Floor
Sacramento, CA 95814
916-446-7979
916-446-8199 (fax)

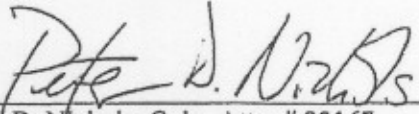
Date: 3/18/09



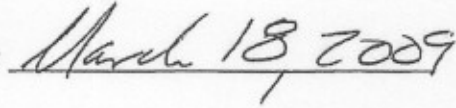
Charlie Richardson, City Attorney
Attorneys for City of Aurora, Colorado

Date: 3-31-09

LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT



Date:



Peter D. Nichols, Colo. Atty. # 33167

Robert V. Trout, Colo. Atty. # 7190

Peggy E. Montañó, Colo. Atty. # 11075

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