

APPENDIX F

Rebuttal Statement of Legal Points in Support of
the Thornton Water Project Application
dated July 31, 2018



City of Thornton

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July 31, 2018

Via email: bocc@larimer.org

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Commissioner Donnelly
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**Re: REBUTTAL STATEMENT OF LEGAL POINTS IN SUPPORT OF THE
THORNTON WATER PROJECT AREAS AND ACTIVITIES OF STATE
INTEREST (1041) PERMIT APPLICATION BEFORE THE BOARD OF
COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO FILE
NO: 18-ZONE2305**

Dear Commissioners Johnson, Gaiter and Donnelly, Ms. Haag and Mr. Helmick:

The city of Thornton ("Thornton") understands that Chairperson Johnson closed the public comment period for Thornton's 1041 Permit Application at the end of the hearing on July 23, 2018. As such, Thornton believes that public comments submitted after July 23 should not be part of the record or considered by the Commissioners in their review and decision on Thornton's Application.

However, under the Larimer County Code, Section 12.4.3.E., Thornton is permitted to respond to any evidence or testimony presented by the public. Accordingly, in addition to the rebuttal evidence and testimony that Thornton plans to present at the continuation of the 1041 Permit Application hearing on August 1, 2018, please accept this Rebuttal Statement of Legal Points submitted by the city of Thornton ("Thornton") for its 1041 Permit Application for a domestic water transmission line. Thornton requests that this Rebuttal Statement, together with its Exhibits (enclosed) be included in the record that is before the Board of County Commissioners of Larimer County ("Board") in considering Thornton's 1041 Permit Application. In addition, given Chairperson Johnson's statement that Thornton should plan on half an hour or less for rebuttal comments, with most of that time

for the Commissioners questions, Thornton also intends to submit, for the record, an additional written rebuttal report to address additional factual matters prior to or at the continuation of the 1041 Permit Application hearing on August 1, 2018.

Thornton is requesting a 1041 permit to conduct an activity of state interest as authorized by C.R.S. § 24-65.1-101 *et seq.* ("1041 Act") and Sections 12 and 14 of Part II of the Larimer County Land Use Code ("LUC"). The activity of state interest involves the siting and development of a new domestic water transmission line that is contained within new permanent easements greater than 30 feet. LUC 14.4.J.

The issue before the Board is whether Thornton's pipeline project, originating from the Water Supply and Storage Company's ("WSSC") Reservoir #4 through unincorporated Larimer County, satisfactorily demonstrates compliance with the 12 expressed criteria in Larimer County's 1041 regulations. *See* LUC 14.10 D. 1-12. The evidence presented to the Board in Thornton's application and in testimony demonstrates that Thornton has met all 12 criteria and a 1041 permit should be granted.

A. Larimer County's 1041 Regulatory Authority is on Behalf of the Health, Welfare, and Safety of the People of the State, Who Include the Residents of Thornton, Colorado.

In public comment about the 12 Criteria, particularly Criterion 10,^{1/} Thornton heard that Larimer County has no obligation or responsibility to consider the residents of Thornton in this 1041 process. Thornton believes that this is incorrect under both the 1041 Act and Larimer County's own regulations.

The Colorado legislature granted local governments the authority to regulate activities of state interest – such as the construction of water transmission lines – in the context of “land use, land use planning, and quality of development . . . *in which the state has responsibility for the health, welfare, and safety of the people of the state* and for the protection of the environment of the state.” C.R.S. § 24-65.1-101(1)(c) (emphasis added). Larimer County, having accepted this authority from the state in enacting its 1041 regulations, must give effect to these words used by the legislature. *See Larson v. Sinclair Transp. Co.*, 284 P. 3d 42, 47 (Colo. 2012) (“We avoid constructions that would render words or the statute superfluous or yield illogical or absurd results.”). Indeed, as stated by Larimer County the purpose and intent its 1041 Regulations: “. . . is to facilitate the . . . regulation of . . . activities of state interest *consistent with applicable statutory requirements.*” (Emphasis added). Accordingly, Larimer County's regulation of Thornton's pipeline project is for the health, welfare and safety of the people of the state. Consequently, the health, welfare, and safety of the people of the state that Larimer County has an obligation to, and responsibility for, include both the residents of Larimer County and the residents of Thornton.

^{1/} Criterion 10 states: “The benefits of the proposed development outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development.” LUC 14.10 D.10.

B. Larimer County's 1041 Regulatory Criteria Must Be Applied as Being Connected to the Activity Being Regulated.

In adopting regulations applicable to an activity of state interest, a local government must adopt regulations "in relation to" that activity of state interest. C.R.S. § 24-65.1-402(2). In other words, there must be a nexus between the activity being regulated (here pipeline construction) and the criteria, as applied to that activity – in this case impacts from the construction of a water pipeline- and Larimer County has promulgated such criteria in accordance with state law.

Focusing on Criteria 2, 10 and 11, which Thornton has heard mentioned the most in public comment, Thornton looked carefully at the words in these criteria in relation to the construction of the pipeline sought in preparing its application.

1. Reasonable Siting and Design Alternatives For a Water Transmission Line do not Include Transmission via River or Ditch, Which are Not in Size-Defined Easements.

For Criterion 2^{2/} Thornton has heard that "reasonable siting and design alternatives" should include a down-the-river or down-the-ditch alternative. But reading Criterion 2 in relation to the "siting and development" of a water transmission line in certain sized-defined easements, Criterion 2 asks whether applicant has presented reasonable location and design alternatives for a pipeline project. Criterion 2 does not provide authority for Larimer County to regulate transmission of water in natural water course or ditches, because those conveyance systems are not in new size-defined easements. In addition, a reasonable location or design alternative in relation to a water transmission pipeline does not include requiring an applicant to take its decreed water rights other than at the decreed point of diversion or at a location down-ditch from a decreed storage location. Moreover, if Criterion 2 were read to require an applicant to convey its water via a river or ditch it would be unrelated to Larimer County's authority to regulate pipeline transmission line projects. Thus, under the 1041 Act it would be an impermissible criterion.

Thornton presented evidence in its presentation that it analyzed 14 alternatives total, including 10 alternatives for taking its water by pipeline out of the WSSC Reservoir #4. The details of these alternatives are set forth in greater detail in Thornton's application. Staff directed Thornton to include one preferred alignment in the application, which Thornton did and staff deemed the application to be complete with the one preferred alternative. Accordingly, Thornton satisfied Criterion 2 in presenting reasonable siting and design alternatives for its pipeline project.

^{2/} Criterion 2 states: "The applicant has presented reasonable siting and design alternatives or explained why no reasonable alternatives are available." LUC 14.10 D.2.

a. The Point of Diversion of Thornton's Water Rights is at the Larimer County Canal Which Cannot be Changed Through This 1041 Permitting Process.

The point of diversion that Thornton can legally divert its WSSC and JDC water from Poudre River are the original ditch headgates near Ted's Place, not some downstream point as suggested by a number of the public comments. Paragraph 11.3.4 of the Water Court Decree at p. 10 states:

11.3.4 No Change in Point of Diversion. The points of diversion of the WSSC and JDC water rights **will not be changed.** (Emphasis added).

This finding of fact is incorporated into the judgment and decree in paragraph 49 at p. 38. As Thornton previously pointed out in its June 29, 2018 Statement in Support, the 1041 Act explicitly provides that this 1041 permitting process cannot be used as a means of "modifying or amending existing laws or court decrees with respect to determination and administration of water rights." C.R.S. § 24-65.1-106(1)(b). Accordingly, suggested alternatives that Thornton change the decreed point of diversion the 1041 Act says cannot be done through this permitting process.

b. A Down-the-Ditch Option Requires Ditch Company Approval, Non-Injury to Other Shareholders, Non-Objection by Other Water Right Holders, and is Operationally Infeasible.

During public comment, it was suggested that Thornton misrepresented the second sentence of Paragraph 11.3.4 of the Water Court Decree and so there are options for Thornton to take its water down-ditch of WSSC #4. Paragraph 11.3.4 of the Water Court Decree at p. 10 states in full:

11.3.4 No Change in Point of Diversion. The points of diversion of the WSSC and JDC water rights will not be changed. After water is diverted into the Larimer County Canal, Thornton will withdraw water by a pump station at WSSC Reservoir No. 4 which is fed by a runout from the canal located approximately sixteen miles down the canal from its headgate or at such other point(s) within the WSSC System **as may be agreed upon by Thornton and WSSC**, following notification of the Division Engineer and the objectors identified with an asterisk [*] in paragraph 3.^{3/} (Emphasis added).

It was suggested during public comment that a down-the-ditch alternative is a simple and feasible option for Thornton. Neither suggestion is correct. First, Thornton is not a majority shareholder in WSSC. WSSC is an independent mutual ditch company. Indeed, on December 12, 1986 Thornton entered into an Agreement with WSSC to assure

^{3/} There are eight objectors that would require notification.

permanent, independent local control of WSSC. *See* Agreement Between the Water Supply & Storage Company and The City of Thornton, Colorado (December 12, 1986) Paragraph 6, Page 8 (“1986 WSSC/Thornton Agreement”), attached hereto and incorporated herein by reference as Exhibit 1 (Exhibit J to Thornton’s water decree). Thornton agreed that the Board of Directors would always be controlled by the shareholders of the company who use the waters represented by the shares in Weld and Larimer Counties. *Id.* Accordingly, for any withdrawal location other than WSSC Reservoir #4, WSSC and Thornton must negotiate an agreement at arm’s length. Because another point of withdrawal would be detrimental to WSSC, injure other WSSC shareholders, and be operationally infeasible for Thornton, it is unlikely any other diversion point could be agreed upon between the parties.

As Keith Amen, President of the Water Supply and Storage Company states with respect to suggested alternatives that Thornton can take its water down-ditch from WSSC #4:

First of all, it was suggested that Thornton could take is water from Black Hollow Reservoir. Black Hollow Reservoir is not a water storage reservoir in the traditional sense. The Company generally utilizes Black Hollow to equalize flow in the lower portions of the system. In other words, water is delivered to Black Hollow, temporarily stored and then released within a few hours or days. Because this reservoir is shallow, its level must be maintained within a narrow range of depths to be able to supply water to shareholders that have agriculture operations below it. Allowing Thornton to take delivery of its water out of Black Hollow would prevent the Company from operating consistent with historical practice, and would adversely impact the Company and especially its stockholders downstream. **As a result, the Company would not permit Thornton to take delivery of its water out of Black Hollow.**

Another suggestion was made that Thornton could take delivery its water from Cobb Lake. This is not possible either. Neither Thornton nor the Company own Cobb Lake.^{4/}

^{4/} (Footnote not in original, footnote added by Thornton). Contrary to public comment, Cobb Lake is currently unavailable to Thornton as a storage reservoir and even if it were, it would require Thornton to amend its decree to allow storage of its water there. Because neither WSSC nor Thornton own Cobb Lake, Thornton would need to obtain a storage agreement with the owner of that reservoir for its share water. Assuming Thornton could obtain a storage agreement with the owner of Cobb Lake, Thornton would not be able to obtain the same storage yield as it already has in WSSC #4. Thornton’s agreement for excess capacity in Cobb Lake would be subordinate to WSSC’s 1938 storage right (for the full amount available in Cobb Lake) and a recent City of Fort Collins storage right in Cobb Lake. In addition, because Thornton does not have the legal right to store its water in Cobb

None of the suggested alternatives have taken into account what the consequences are for the remaining WSSC shareholder's and their vested interests. Reservoir 4 is below our main canal and is utilized by exchanging the water stored in it with other water providers. Thus, making it the best option for Company operations, satisfying the need to keep all of the shareholders whole. (Emphasis added).

See Statement of Keith Amen, President of the Water Supply and Storage Company, attached hereto and incorporated herein by reference as Exhibit 2.

Second, even assuming that WSSC and Thornton could agree on a different point of withdrawal within the WSSC system, the Division Engineer and seven other parties must be notified of the proposed change of point of withdrawal. These parties must be notified because they have an opportunity to object to a different point of withdrawal if they believe that their water rights will be injured by such change. If any or all of these parties object to the proposed different point of withdrawal, and those objections could not be resolved then Thornton could not change its point of withdrawal.

Third, operationally, as pointed out by Mr. Amen, storage of Thornton's share water in Black Hollow Reservoir would alter the historic conditions of water deliveries to other shareholders in time and quantity and so adversely affect other shareholders and therefore be contrary to paragraph 4 of the 1986 WSSC/Thornton Agreement.

Lastly, requiring Thornton to run its WSSC#4 water down the ditch across Larimer County to Cobb Lake or farther effectively results in a denial of Thornton's 1041 application to run a pipeline across Larimer County. Denial of the application requires findings that Thornton did not meet one or more of the criteria.

2. There is no Nexus Between Cache la Poudre River Flows and the Thornton Water Pipeline Construction Project.

In public comment, Thornton heard that this 1041 permitting process is an opportunity for Larimer County to mitigate flow conditions in the Poudre River by requiring Thornton to

Lake Thornton would need to modify or amend its water court decree to allow storage of its share water in Cobb Lake.

leave its water in the River.^{5/}

Thornton notes that the newspaper headline the Commissioners were shown on July 9, 2018 about low flow conditions in the Cache la Poudre River is clearly not related to Thornton's water pipeline construction project, which has not yet been permitted. In other words, there is no nexus between Thornton's water pipeline construction project and Poudre River flows.

The water rights that Thornton owns in the WSSC system have been diverted by WSSC shareholders at the Larimer County Canal headgate for more than 100 years. Thornton's water court decree requires that to continue to be the case. Construction of Thornton's pipeline project will not change flows in the Poudre River. Consequently, none of the 12 review criteria are a basis for requiring mitigation for a situation completely unrelated to the construction of the proposed project.

3. Criterion 10 Considers The Benefits of The Proposed Development to The People of The State.

In public comment, Thornton heard that Criterion 10 (see footnote 1 for text) requires that there be benefits to Larimer County from the project. But the words of Criterion 10 speak to whether benefits of the "proposed development" outweigh the losses of any natural resources or reduction of productivity of agricultural lands as a result of the proposed development. The criterion does not read benefits of the proposed development solely "to Larimer County" and the absence of this phrase makes sense. In the 1041 framework related to an activity of state interest, the benefits of the proposed development relate to the health, welfare and safety of all the people of the state, including the residents of Thornton.

The development of the water supply project to the people of the state does outweigh the losses of any natural resources or reduction of productivity of agricultural lands. Thornton has testified that the project is needed to supply Thornton residents and businesses with water through 2065. Thornton has also demonstrated that construction of the pipeline will not result in losses of any natural resources. In addition, there will only be a short-term effect on a limited area of agriculture due to construction of the pipeline. Once construction is completed, agriculture can resume over the top of the pipeline. Accordingly, there will only be, at most, a short term reduction of productivity of agricultural lands which does not outweigh the benefits of the proposed development.

^{5/} As pointed out by Thornton in its June 29, 2018 Statement in Support, and above, the 1041 Act explicitly provides that this 1041 permitting process cannot be used as a means of "modifying or amending existing laws or court decrees with respect to determination and administration of water rights." C.R.S. § 24-65.1-106(1)(b). Suggested alternatives that require Thornton to put its water in the River necessarily require Thornton to change the decreed point of diversion and the 1041 Act says this cannot be done through this permitting process.

4. Thornton has satisfied Criterion 11 by Demonstrating a Reasonable Balance Between Costs to Mitigate Significant Adverse Affects and the Benefits Achieved by Such Mitigation.

In public comment, Thornton heard that Criterion 11^{6/} should be read to consider the costs to Thornton to mitigate significant adverse affects of the project as essentially irrelevant. But that is not what Criterion 11 says. Criterion 11 says that there must be a reasonable balance between the costs to Thornton to mitigate significant adverse affects caused by the project and the benefits achieved by such mitigation. So first, "significant adverse affects" caused by the project must be identified. Thornton has demonstrated that there are no "significant adverse affects" caused by the construction of the underground water transmission line. Thornton has shown that the effects of construction can be avoided altogether or reasonably mitigated. What effects there are from the construction project are short term in nature. Thornton has demonstrated that the preferred alignment, presented in Thornton's application, does reasonably balance the costs between the short term effects of the project and the benefits achieved by such mitigation.

What Thornton has heard as "significant adverse affects" of the project mainly center on Poudre River flows. As the evidence demonstrates, this proposed pipeline project does not and will not affect Poudre River flows.

C. Colorado Springs' Southern Delivery System 1041 Permit Requires Mitigation Under Regulations and For Conditions Not Applicable in Larimer County or to Thornton's Permit Application.

In public comment, Thornton heard that the Board should look to the 1041 permit issued to Colorado Springs by Pueblo County for Colorado Springs' Southern Delivery System for guidance on what mitigation measures it should impose against Thornton. However, that situation is not comparable to Thornton's 1041 application before Larimer County and so is not a useful example for a couple of reasons.

First, Pueblo's 1041 regulations and review criteria are far more extensive than Larimer County's. For example, Pueblo has chosen to regulate "Site Selection and Construction of Major New Domestic Water . . . Systems and Major Extensions of Existing Domestic Water Systems . . ." and "Efficient Utilization of Municipal and Industrial Water Projects". Pueblo County Land Use Code Sections 17.164 and 17.172 respectively. Colorado Springs submitted its application under both activities of state interest. Each of these activities have their own set of review criteria in the former there are 15 review criteria and in the latter there are 29 review criteria. Larimer County has chosen to regulate a much narrower subset of what Pueblo County does - site selection and construction of a water transmission line in certain size-defined easements - and so chosen its review criteria accordingly.

^{6/} Criterion 11 states: "The proposal demonstrates a reasonable balance between the costs to the applicant to mitigate significant adverse affects and the benefits achieved by such mitigation." LUC 14.10 D. 11.

Second, Colorado Springs' project is not similar to the application before the Board. Key differences between Colorado Springs' project and the TWP are:

- Source water is different. Colorado Springs' source water is a new appropriation of water rights from the Arkansas River, whereas Thornton's share water has been diverted by WSSC shareholders from the Poudre River for over 100 years;
- Storage reservoirs are different. Colorado Springs' storage reservoir is a public reservoir, whereas Thornton's share water is stored in a privately-owned reservoir;
- Effect on river flows are different. Colorado Springs' water project will decrease flows in the Arkansas River under certain river conditions, whereas Thornton's construction of a water pipeline will not change the current flows in the Poudre River;
- Wastewater discharges are different. Colorado Springs' project increases wastewater discharges into Pueblo County, whereas Thornton's wastewater does not discharge into Larimer County.

These are among the reasons why Colorado Springs permit includes a flow management program, an agreement to forego certain exchange opportunities, a storage pool maintenance agreement, and an agreement by Colorado Springs to fund a Watershed District. The direct impacts of Colorado Springs' project on Pueblo County resulted in the need for the mitigation measures above, which are not present with Thornton's pipeline project. So the mitigation measures in Colorado Springs' permit that the Board has been asked to consider applying to Thornton are simply not applicable to Thornton's project.

D. The Thornton Water Project is for a Single Pipeline.

1. Thornton's 1041 Application Seeks Permission to Construct a Single Pipeline.

In public comment, Thornton heard that because Thornton's water decree contemplates a 3 phased water plan, that this 1041 application -- for a single pipeline to convey Thornton's share water -- will allow multiple pipelines in the future. Thornton's decree does contemplate additional pipelines. But this 1041 permit application is for a single pipeline. Multiple pipelines cannot be constructed under the framework of this permit application. By law, Thornton would have to come back to Larimer County and apply for any new pipeline under Larimer County's then-existing regulations.

However, to address this concern, Thornton agrees that Larimer County may include as a condition of this permit that: "Any proposed additional pipeline project that Thornton may seek will be subject to Larimer County's then-existing regulations".

2. Larimer County's 1041 Regulations Do Not Address Cumulative Impacts.

In public comment, Thornton heard that because Thornton's water decree contemplates future pipelines, that Thornton should have to permit those pipelines now so that Larimer County can evaluate the cumulative impacts of this pipeline with possible future pipelines. Larimer County's 1041 regulations do not contemplate that an applicant must permit any

and all additional future contemplated projects at one time. Nor do Larimer County's 1041 review criteria include a cumulative impact assessment.

Nevertheless, to address this concern, Thornton agrees that Larimer County may include as a condition of this permit, that if Thornton comes back in the future with any future project subject to Larimer County's 1041 Regulations that: "Any new pipeline application will evaluate cumulative impacts of the additional pipeline proposed and the pipeline permitted under this permit."

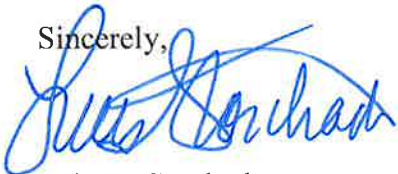
CONCLUSION

Thornton has met Larimer County's 12 criteria for the pipeline project originating at the Water Supply and Storage Company Reservoir #4 through unincorporated Larimer County in compliance with Larimer County's 1041 Code. Larimer County Staff thoroughly reviewed Thornton's 1041 Application for a water transmission pipeline under Colorado law and the County's 12 review criteria and recommended that the Board approve it, subject to a number of conditions to avoid and mitigate impacts of the pipeline project.

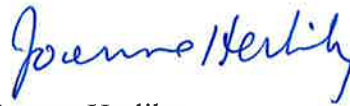
Thornton respectfully requests that the Board accept the recommendation of Staff and approve the 1041 Application, subject to the conditions included by Staff in the Staff Report at found at:

https://onlineportal.larimer.org/EnerGov_Prod/CitizenAccess/Site/Plan/View/ByPlanNumber/18-ZONE2305 [onlineportal.larimer.org], Filename: 070918bcc630SCAN WITH ADDENDUM.pdf, pages 123-126, accessed July 30, 2018, as well as the conditions suggested by Thornton included herein.

Sincerely,



Luis A. Corchado
City Attorney



Joanne Herlihy
Senior Assistant City Attorney

encls.

Exhibit 1- Agreement Between the Water Supply & Storage Company and The City of Thornton, Colorado (December 12, 1986)

Exhibit 2- Statement of Keith Amen, President of the Water Supply and Storage Company

AGREEMENT BETWEEN THE WATER SUPPLY & STORAGE COMPANY 2 OF 4

AND

THE CITY OF THORNTON, COLORADO

THIS AGREEMENT is made and entered into effective the 12th day of December 1986, by and between the Water Supply & Storage Company, a mutual ditch company and non-profit corporation organized under the laws of the State of Colorado (herein referred to as "Water Supply") and the City of Thornton, Colorado, a municipal corporation of the State of Colorado (herein referred to as "Thornton").

Factual Background and Intent of This Agreement

Water Supply is a mutual ditch and reservoir company with many ditches and reservoirs. Its primary historic function has been to furnish irrigation water for approximately 50,000 acres in Larimer and Weld Counties, Colorado. It was originally authorized to issue 600 shares of stock (the "original issue"). All of such stock was issued, although a portion of the stock has been reacquired by the company as treasury stock. The City of Fort Collins has acquired approximately 22 shares of the original issue, and is contractually entitled to receive an additional 5 shares of the original issue from Anheuser-Busch, Inc. It will probably acquire additional original issue shares in the future.

In 1985 and 1986 Thornton obtained options to acquire, and is now acquiring, and intends to acquire, a total of 283 shares of the original issue; and Thornton may desire to acquire additional original issue shares in the future.

Upon learning of Thornton's potential acquisition of a substantial portion of the original issue, the directors of Water Supply determined to authorize the issuance of additional stock, to be exchanged for additional water rights. This would increase the amount of water available to the system, and would also have the effect of reducing Thornton's proportionate ownership of the

company. Pursuant to this determination, the Board so authorized the issuance of an additional 300 shares of stock (the "new issue"). This action, if valid, increased the total authorized shares from 600 to 900.

The company then issued 84 shares of the new issue to the City of Fort Collins, Colorado ("Fort Collins") in exchange for certain water rights owned by Fort Collins.

Thornton did not and does not agree that either the action of the Board in amending its Articles of Incorporation to authorize the new issue, nor the issuance of new issue stock under the contract with Fort Collins was legal or proper. Thornton accordingly commenced action in the District Court of Larimer County, Colorado, designated as Case No. 86CV982 (the "lawsuit"), asserting its position in this regard and also raising certain other questions as to the propriety of the Board's consummated or contemplated actions, and seeking injunctive relief. Water Supply answered asserting the propriety of all of its consummated and contemplated actions, and the matter remains at issue. Fort Collins was also joined as a defendant, and thereafter Thornton amended its complaint to add Great Western Sugar Company and the First Interstate Bank of Fort Collins, N.A. as additional defendants, and also joined three individual shareholders as parties plaintiff.

Before, during and subsequent to the initiation of the lawsuit, the parties have discussed means of resolving all of their disputes. As a result of such discussions, Water Supply has agreed that Thornton has a right to use the water represented by its shares, and the right to seek the consent of individual stockholders for the purpose of obtaining a right of first use of the waters represented by the shares of such individual stockholders. Water Supply has further recognized that Thornton should be able to make use of the waters for its own municipal purposes. Thornton has recognized that Water Supply wishes to maintain its Board independent from Thornton's direct control, by assuring that a majority of the Board of Directors is elected by

local shareholders (who are defined as shareholders who utilize their water rights within Larimer and Weld Counties), a right to insist that the use of water by Thornton is without injury to remaining shareholders, a right to insure a proper quality of water to be returned by Thornton under any first use plan, and a right to otherwise maintain and insure the integrity of the Water Supply system now and in the future.

To accomplish all of the foregoing, this Agreement has been conceived. Its purpose is to meet the recognized and legitimate needs of both parties, to resolve the present lawsuit, to resolve all known and anticipated controversies, and to lay the foundations for future cooperation between the parties, to the benefit of both and to the detriment of neither.

Agreement

To accomplish all of the foregoing, it is therefore agreed between the parties as follows:

1. Water Supply will grant to Thornton, by appropriate instruments, the right to occupy and use whatever property of Water Supply as may be required for Thornton to install, operate and maintain both a diversion structure and a return delivery structure from and to the Larimer County Ditch or one of its reservoirs at a location to be chosen by Thornton within that reach of the ditch extending from its river headgate on the Cache La Poudre River to Rocky Ridge Reservoir. The diversion and return structures will be so located that there is no intervening headgate between them, except as authorized by paragraph 1(b) of this agreement. Water Supply does not, however, warrant or imply that it owns fee simple title to lands adjacent to the ditch at the location to be selected by Thornton. On the contrary, Thornton understands that much of the Larimer County Ditch exists by a grant of right-of-way, easement, or as a result of prescriptive use. The intent of Water Supply's agreement, therefore, is to grant to Thornton such rights as it is in Water Supply's power to grant, and to allow the construction, operation

and maintenance of the required structures, insofar as Water Supply is legally authorized to allow them.

a. The location and construction of the facilities will be subject to approval by Water Supply, which will not be unreasonably withheld. Further, the construction of any facilities by Thornton shall be at times so as to not disrupt the operations of Water Supply. In exchange for this right, Thornton agrees that it will indemnify Water Supply for any losses or damages occasioned by virtue of the construction, operation or maintenance of any facilities installed by Thornton.

b. Although the return delivery structure may be at the point that Thornton may designate, within the limitations imposed by paragraph 1 and 1(a) of this agreement, Thornton will discuss the location with Water Supply. If the parties agree on an alternative location, the structure will be placed at the alternative location. If the parties do not agree on an alternative location, Water Supply may nonetheless designate a different location for such structure, provided:

(a) That the cost of returning the water to the alternative location, together with the costs of necessary modifications to the Larimer County Ditch as necessary to insure the delivery of water to shareholders whose headgates lie between the point of return originally selected by Thornton and the point selected by Water Supply, do not exceed the cost of returning the water to the location selected by Thornton; or

(b) Water Supply pays such excess costs; and also provided under either alternative as described in these subparagraphs (a) or (b) that the point of return to the Water Supply system does not quantitatively diminish the

right of Thornton to any exchange or first use right in regard to the water diverted through the Poudre River headgate of the Water Supply and Storage Company.

c. Thornton may divert, by means of the diversion structure:

(1) Its pro-rata share of the water running in the ditch, as represented by its present or future ownership of stock;

(2) Waters represented by shares of stock in which Thornton has acquired a right of first use, as set forth in paragraph 9 hereafter.

(3) Under reasonable terms and conditions, and without injury to Water Supply or its shareholders and without prejudice to the rights of other shareholders, and when sufficient capacity exists, other waters owned or controlled by Thornton. But this subparagraph does not imply that any excess capacity cannot in the future be utilized by Water Supply for the benefit of all shareholders.

2. As to all waters to which Thornton diverts under rights of first use, as described in paragraph 9 hereafter, Thornton shall simultaneously replace, by means of delivery through the return delivery structure, the quantity of water diverted through the diversion structure. At its election, and in its sole discretion, Thornton may also simultaneously replace, through the return delivery structure, that quantity of water diverted through the diversion structure by virtue of Water Supply shares owned by Thornton. Any returned waters will be subject to the water quality restrictions imposed by this agreement.

3. In recognition of Water Supply's capability of storing water, and in the interests of mutual benefits, the parties agree that they will cooperate, to the extent possible, in allowing

Thornton to utilize any excess storage capacity of the system in connection with its return delivery obligations set forth in paragraph 2 above. Specifically, Thornton will be allowed to store waters in the company's reservoirs for the credit of Thornton, if storage capacity exists, and the storage of water would in no way be detrimental to the company or its other shareholders. Storage will not be allowed unless there is excess reservoir capacity, and in the event that Water Supply is able to fill its reservoirs from other waters, then Thornton's storage credits will be cancelled. Further, by agreement of the parties, and to their mutual advantage, the parties may from time to time agree that Thornton may at times deliver water in excess of its obligation, or less water than it is obligated to return, with the excess or deficiency to be adjusted by future deliveries.

4. Thornton agrees that if it removes water from the Water Supply system, it must do so only under conditions that historic water deliveries to other shareholders (whether they are served directly from the Larimer County Ditch or other structures owned or operated by Water Supply, or from lateral ditches from the Larimer County Ditch) are not altered in time or quantity, their expenses not increased, nor their other rights adversely affected. This agreement may be enforced by Water Supply for the benefit of its shareholders whether or not Thornton seeks approval of its proposed use of water from the District Court of Water Division No. 1.

In the event that Thornton files an application with the District Court of Water Division No. 1, seeking approval of its proposed future uses of the water represented by its shares, or of the first use of water represented by other shares, Water Supply agrees that it will not enter any statement of opposition or objection to such action, nor will it object to or oppose any other attempts by Thornton to obtain administrative or judicial approval concerning Thornton's use of the water, except that Water Supply may enter a statement of opposition, or otherwise object to any plan insofar, and only insofar, as is necessary to

protect the rights of other shareholders of Water Supply from injury as a result of Thornton's plans. Such objection shall be for the limited purpose of assuring that the historic water deliveries to other shareholders (whether they are served directly from the Larimer County Ditch or other structures owned or operated by Water Supply, or from lateral ditches from the Larimer County Ditch) are not altered in time or quantity, their expenses not increased nor their other rights adversely affected by Thornton's proposed use or future actions. However, before entering any such objection, Water Supply will attempt in good faith to negotiate with Thornton concerning the proper steps to be taken to avoid any potential injury to such other shareholders, and shall enter such objection or statement of opposition or other protest only in the event that such negotiations with Thornton are unsuccessful.

Thornton does recognize that Water Supply is itself the owner of the controlling interest of two separate and independent mutual irrigation systems, to wit: the Jackson Ditch Company and the Tunnel Water Company. Nothing herein shall be construed to prohibit any director of Water Supply from voting in favor of those companies objecting to any of Thornton's future plans, to the extent necessary to protect those companies from injury. Further, this agreement on behalf of Water Supply will not be construed to prohibit Water Supply from paying its proportionate share of the dues and expenses levied by the Cache La Poudre Water Users Association, even though such Association might be an active protestant. Water Supply will instruct the Association that no objection to Thornton's plans may be made by the Association on behalf of Water Supply.

5. Any replacement or return water delivered by Thornton to the Larimer County Ditch, or other reservoirs or structures of Water Supply, through the return delivery structure or otherwise, shall meet minimum water quality standards. The initial standards to be met will be those set forth in Exhibit A attached hereto and by this reference made a part of this Agreement.

Thornton and Water Supply may, by mutual consent, temporarily or permanently modify the standards as additional information and knowledge is acquired. Thornton's right of first use of any water, or its right to return waters represented by its own shares, is conditioned upon the returned waters meeting this water quality standard. If the quality of the replacement water does not meet those standards, then the first use of water or Thornton's election to return water represented by its own shares shall be terminated until the standards can again be met, or until Water Supply and Thornton mutually agree that the standard in some particulars should be temporarily or permanently modified.

Thornton agrees that in the event that any shareholder shall bring suit against Water Supply and/or its Board of Directors on account of the quality of water returned by Thornton to the Larimer County Canal, or other ditch or reservoir of Water Supply, then Thornton will indemnify Water Supply and/or its directors for the cost of defense of said suit and for any claim for damages to such shareholder or shareholders relating thereto. Thornton may elect to directly defend such suit or suits.

6. To assure permanent, independent local control of Water Supply, the parties agree that the majority of the Board of Directors should hereafter be selected by the shareholders of the company who utilize the waters represented by those shares in Larimer and Weld Counties. The parties further acknowledge that Thornton, as a major stockholder, should have appropriate, though not controlling, representation on the Board of Directors. It is accordingly agreed:

a. The Board of Directors will be increased to 9 directors. For a period of not to exceed 5 years from the annual meeting to be held in 1987, Thornton may select no more than 2 of such directors (so long as it is the owner of at least 280 shares of original issue stock), and the remaining directors will be selected by those shareholders

who utilize their water rights within Larimer and Weld Counties (such shareholders will hereinafter be referred to as "local shareholders"). By the fifth anniversary, that is on or before the annual meeting of shareholders to be held in 1991, and thereafter, Thornton will be entitled to select 4 of such 9 directors, so long as Thornton has at least 280 shares. Commencing in 1991, and for all future years, the remaining 5 directors will be selected by the local shareholders. In the event that, in the future, Thornton shall own less than 280 shares, it shall be entitled to select directors proportionate to its stock ownership, but never more than four, and the remaining directors shall be selected by local shareholders.

b. The Board of Directors or local shareholders will be authorized, by amendment to the Articles of Incorporation, by bylaw, or by other means, to determine procedures by which the directors to be designated by them will be selected. Thornton agrees that an arrangement substantially in accord with the amendments to articles and bylaws attached as Exhibit B and C is agreeable to and would be honored by Thornton. Thornton will vote its shares in favor of the directors selected by the local shareholders.

c. This paragraph shall not be construed to prevent Thornton from attempting to influence local shareholders with respect to the election of board members selected from local shareholders.

d. The terms of this paragraph 6 shall be effective even though Thornton shall acquire shares in excess of 283; and it will also apply to any shares acquired by any shareholder who, in the future, agrees to join Thornton in removing water from the system through the proposed Thornton pipeline or other structure to be constructed by or for Thornton for the transmission or exchange of Water Supply water out of the Poudre basin; and Thornton shall require such future participant to abide by the terms and intent of this

paragraph as it affects such future participant's shareholdings, and require the participant to vote its shares in the same manner as is required of Thornton.

7. As stated, one of the disputes between the parties is the authorization and issuance of shares of stock in addition to the 600 shares of stock originally authorized. Thornton seeks to have cancelled the issuance of 84 shares of new issue stock in the hands of Fort Collins, to prohibit the reissuance of those shares, or other new issue shares, without Thornton's consent. Water Supply is willing to cause to be cancelled the 84 shares issued to Fort Collins, and to agree to not otherwise issue the new issue shares, in light of the other provisions of this agreement which, in the judgment of Water Supply, substantially accomplish the purposes intended by the new issue. Accordingly it is agreed:

a. Water Supply agrees that the contract between it and Fort Collins, dated the 17th day of June, 1986, will be caused to be terminated, and Water Supply shall obtain the return and cancellation of the 84 shares of new issue stock held by Fort Collins.

b. Thornton agrees that Water Supply may, at its election, enter into a new agreement with Fort Collins under which it may acquire the waters or water rights represented and specified in the subject contract with the City of Fort Collins, in substance as contained in the present but to be cancelled contract, but without the issuance of the 84 shares. The parties recognize that the exchange, if consummated, would contemplate Water Supply and Fort Collins seeking a decree from the District Court of Water Division No. 1 authorizing the change in point of diversion of those water rights to the Larimer County Ditch, allowing Water Supply to divert those rights, and allowing Fort Collins to divert negotiated amounts at Fort Collins' points of diversion, or to allow Water Supply to trade its waters of

the Northern Colorado Water Conservancy District for the City's water, on some fair and reasonable basis. Thornton agrees that it will not object to the concept of such exchange, but does reserve the right to enter any water court proceeding in which the change in point of diversion of the water rights is sought, so as to assure that Thornton, as a shareholder of Water Supply, and other shareholders of Water Supply, receive an equivalent amount of high quality water in exchange for the water delivered to Fort Collins.

c. Water Supply will not hereafter issue shares of stock of Water Supply, in excess of the originally authorized 600 shares of capital stock of the company, without Thornton's consent.

8. Thornton desires to have this Agreement ratified by a two-thirds vote of the original issue shares. Thornton also desires that the Articles of Incorporation of the Company be amended in certain particulars by the original issue shareholders so as to assure Thornton of its rights under this Agreement. While Water Supply does not concur that shareholder action in all respects desired by Thornton is necessarily required, it has agreed to accommodate Thornton's desires in this regard. It is accordingly agreed:

a. This Agreement is conditioned upon its approval and ratification by at least two-thirds of the votes of original issue shares which shareholders present or represented by proxy are entitled to cast at a meeting of shareholders to be properly called and held for this purpose as soon as feasible, but in any event no later than two months from the date of the execution of this Agreement.

b. This Agreement is conditioned upon approval of the Articles of Amendment attached hereto as Exhibit B, by at least two-thirds of the votes of original issue shares which shareholders present or represented by proxy are entitled to cast at a meeting properly held and called for this purpose,

concurrent with the date of the meeting upon which the ratification of this Agreement is proposed, as stated in subparagraph (a) above.

9. Water Supply grants to Thornton the right to seek consent for and to obtain, from individual shareholders of the company, the rights of "first use" of the waters represented by each share. A uniform contract will be utilized, in form attached as Exhibit D.

a. Thornton agrees that it will pay, directly to participating shareholders, the following consideration for each share of stock under the reuse plan:

i. The sum of \$10,000.00, to be paid by December 31, 1986, or within ten days of the execution by the shareholder of the first use agreement, whichever is later.

ii. The sum of \$20,000.00 by a promissory note, bearing interest at 5.5% per annum. The note shall bear interest only from January 1, 1987 (or from the date of the shareholder's execution of the reuse contract, whichever is later) to and through the year 2000. Thereafter the note will be amortized over a period of 5 years at 5.5%, with payments, including principal and interest, of \$4,683.53 per share.

b. Thornton further agrees:

i. If Thornton offers to negotiate such a first use contract with any shareholder, it will make the same offer to all shareholders, and the offers shall be kept open for a period of at least one year from the date of first offer.

ii. For a period of five years from the date of first offer, Thornton will not offer to any shareholder consideration in excess of that paid or offered to any

other shareholder unless Thornton shall pay the same consideration to all participating shareholders, such payment to be made retroactive if necessary.

10. As a capital contribution to aid in preserving the integrity of the Water Supply system, Thornton agrees:

a. To pay Water Supply the sum of \$500,000.00, on or before March 15, 1987.

b. To pay Water Supply the sum of \$936,000.00, on or before March 15, 1988.

c. To pay Water Supply the sum of \$858,000.00, on or before March 15, 1989.

d. To issue to Water Supply Thornton's promissory note in the amount of \$850,000.00, bearing interest at 5.5% per annum. The note shall pay interest only from January 1, 1990, to and through the year 2000 in yearly installments of \$46,750 on March 15 of each year and then will be paid, on an amortized basis, including principal and interest, over five years beginning 2001 through 2005, at the rate of \$199,050.00 per annum, payable March 15th of each such year.

11. As additional capital contribution, Thornton will, when requested by Water Supply, convey or assign to Water Supply or its assigns the 1,049 acre foot units of the Northern Colorado Water Conservancy District acquired by Thornton as a part of its acquisition of shares of stock in Water Supply. The intent is to generate water for Water Supply and its Shareholders.

12. As additional capital contribution, Thornton agrees to contribute an amount of money not to exceed \$5,000,000.00 to Water Supply for the design, obtaining approval and construction of Trap Lake II or other mutually acceptable reservoir or other structures or improvements designed to increase the supply of water for the entire system. In connection with such construction, Thornton shall not be required to make its contribution, or any portion thereof, prior to January 1, 1990.

Water Supply may, however, arrange for the construction, or proceed with such construction, under other loans or grants. In the event that other loans or grants are obtained by Water Supply, then Thornton will have the option to assume the loan or grant (up to a limit of \$5,000,000.00) in lieu of making the cash payment.

13. On behalf of each share of stock for which Thornton acquires the right of first use within a period of five years as stated in paragraph 9, and for the benefit of the owner of the stock and Water Supply, Thornton agrees to pay to Water Supply annually the amount of any assessment levied against such stock, but not initially exceeding \$550.00 per share. The amount of assessment to be paid by Thornton may be adjusted for the year 1995 and years thereafter, to reflect increased costs of operation, or the value of money, but in no event shall Thornton's contribution exceed the greater of the following:

- a. The assessments voted by the shareholders or
- b. An amount equal to \$550 plus an increase of 3% per year (compounded) from the year 1995.

14. Within 15 days from the date of ratification of this contract by the shareholders of Water Supply:

- a. The City of Thornton shall furnish to Water Supply and to each shareholder a facsimile copy of the opinion of qualified tax or bond counsel to the effect that the monetary obligations of Thornton, represented by Thornton's promissory notes, are accompanied by the pledge of Thornton's full faith and credit, and that the interest on said notes is exempt from federal and state income taxation under existing law.

- b. Thornton shall furnish to Water Supply the opinion of its Utility Attorney, to the effect that this agreement is binding upon Thornton and that all of Thornton's obligations under the agreement are enforceable by Water Supply, or by the shareholders as the case may be, according to its terms.

c. Water Supply shall furnish to the City of Thornton the opinion of its counsel that the ratification of this agreement, and the amendment of the Articles as required by the agreement, has been accomplished by all necessary corporate action of Water Supply, that the Articles as amended are valid, and that the agreement is enforceable against Water Supply in accordance with its terms. However, Thornton agrees that it does not and will not rely upon this opinion as it relates to the propriety of Thornton's diversion and first use and return of waters to the system; rather, Thornton has and will rely upon the opinion of Thornton's own counsel on this subject.


15. The obligations of each of the parties hereto are contingent and conditional upon the other party performing all of its obligations. It is specifically agreed that neither party can be compensated by damages in the event of the other party's breach of this Agreement. Rather, specific performance is agreed to be the only remedy. The Court in the pending lawsuit case No. 86CV982, in the District Court of Larimer County, Colorado, shall retain jurisdiction for the purpose of approving this Agreement and enforcing the terms hereof. Enforcement may take the form of mandatory or prohibitory injunction. While either party is in default in regard to any of its obligations, the other party is relieved of the duty to perform its own obligations.

16. This agreement shall be binding on the successors and assigns of the parties.

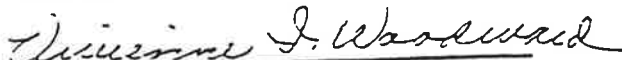
17. This agreement shall be submitted to the court in the lawsuit as a stipulated settlement of the case with the request that the court approve it, and incorporate it into a decree depositive of the lawsuit, subject to retained jurisdiction to enforce its terms.

IN WITNESS WHEREOF the parties have caused these presents to be executed the day and year first above written.

WATER SUPPLY & STORAGE COMPANY

By: 
President

ATTEST:


Secretary

THE CITY OF THORNTON acting by and through its Utilities Board

By: 
Margaret W. Carpenter, Mayor

ATTEST:


City Clerk

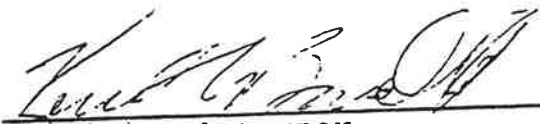
By: 
Chairman, Utilities Board
Address:


Secretary, Utilities Board

9500 Civil Center Drive
Thornton, CO 80229

APPROVED:


City Manager/Utilities Director


Utilities Attorney

whf29

Exhibit A

This Exhibit establishes initial water quality standards. It is a part of the agreement between the parties, and all of its terms will be enforced as if they were fully set forth in the agreement.

The intent of the agreement, and of this schedule, is to allow Thornton to obtain water under "first use" agreements, or to use the water represented by Thornton's ownership of shares of stock of Water Supply under a first use plan to be developed by Thornton, which first use plans contemplate the return of water into the Water Supply system. The water quality standards contemplated by paragraph 5 of the agreement are designed to assure that returned water is of good quality, suitable for agricultural use, non-hazardous to mankind, suitable for stock water, non-malodorous, and otherwise suitable for its historic uses.

The parties have adopted the following water quality standards based upon a limited amount of water quality data. In the future, more water quality data will become available, and additional scientific knowledge as to the effect of certain constituents will be developed. These circumstances may require that these standards be modified. Should a change or modification be sought to the standards or monitoring program, the party seeking the change shall contact the other party and discuss the proposed change. If the parties agree that a change is proper, the water quality standards shall be amended. If the parties cannot agree, either party may petition the court in Case No. 86CV982, under the retained jurisdiction clause of paragraph 15 of the contract, for determination of the proper water quality standard. Changes from established water quality standards will not be made unless additional water quality data, or additional scientific knowledge, justifies the change. The standard is and will remain that of reasonableness to accomplish the intent of assuring that water returned is suitable for agricultural use, including the watering of livestock, safe for human contact, and nonmalodorous.

TABLE A1.0 WATER QUALITY STANDARDS FOR RETURN FLOW WATER

PARAMETER (1)	WATER QUALITY STANDARD (2)	COMMENTS	SAMPLE FREQUENCY & TYPE	ANALYTICAL METHOD (3)
	LIMIT UNITS			
CHLORINATED PESTICIDES				
CHLORDANE	0.00004 ug/L	No sample to exceed.	Monthly, Grab	EPA 608
ENDRIN	0.0002 ug/L	No sample to exceed.	Monthly, Grab	SM 509
LINDANE	0.004 ug/L	No sample to exceed.	Monthly, Grab	SM 509
MIREX	0.1 ug/L	No sample to exceed.	Monthly, Grab	SM 509A
TOYAPHENE	0.005 ug/L	No sample to exceed.	Monthly, Grab	EPA 608
CHLOROPHENOLS (HERBICIDES)				
2,3,5-TP SILVEZ	0.01 ug/L	No sample to exceed.	Monthly, Grab	SM 509B
CHLOROPHENOL	0.001 ug/L	No sample to exceed.	Monthly, Grab	EPA 625
MONOHYDROIC PHENOL	0.001 ug/L	No sample to exceed.	Monthly, Grab	
BENTHIONE	0.0001 ug/L	No sample to exceed.	Monthly, Grab	EPA 625
PHYSICAL				
DISSOLVED OXYGEN	2 ug/L	Four week average not to exceed.	Weekly, Grab	SM 507
ELECTRIC CONDUCTIVITY	1500 uho/cm	3-year moving average) no sample to exceed 3000 uho/cm.	Weekly, Composite	SM 205
pH	6.5 - 8.5	Four week average not to exceed.	Weekly, Grab	ELECTRODE, 0.01 STANDARD UNITS
SODIUM ADSORPTION RATIO	5	Four week average not to exceed.	Weekly, Composite	CALCULATION
TDS	1000 ug/L	3-year moving average) no sample to exceed 2000 ug/L.	Weekly, Composite	SM 209B
BIOLOGICAL				
FECAL COLIFORMS (GED. MEAN)	200 /100 ml	Four week average not to exceed.	Weekly, Grab	SM 908
INORGANICS				
CYANIDE	0.2 ug/L	No sample to exceed.	Monthly, Composite	EPA 325.2
FLUORIDE	1.6 ug/L	Four week average not to exceed.	Weekly, Composite	EPA 340.1
NITRATE (as N)	10 ug/L	Four week average not to exceed.	Weekly, Grab	EPA 353.2
NITRITE (as N)	1 ug/L	Four week average not to exceed.	Weekly, Grab	EPA 353.2
METALS				
ALUMINUM	5 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 202.1j 202.2
ARSENIC	0.05 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 206.2
BARIUM	1 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 208.1j 208.2
BERYLLIUM	0.1 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 210.2
BORON	0.75 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 212.3
CADMIUM	0.01 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 213.2
CROMIUM TOTAL	0.05 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 218.2
COBALT	0.1 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 219.2
COPPER	0.2 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 220.1j 220.2
IRON	5 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 236.1j 236.2
LEAD	0.05 ug/L	Four week average not to exceed.	Biweekly, Composite	EPA 239.2

TABLE A1.0 WATER QUALITY STANDARDS FOR RETURN FLOW WATER

PARAMETER (1)	WATER QUALITY STANDARD (2)	COMMENTS	SAMPLE FREQUENCY & TYPE	ANALYTICAL METHOD (3)
	LIMIT UNITS			
LITHIUM	2.5 ug/L	Four week average not to exceed.	Biweekly, Composite SM 303	
MANGANESE	0.2 ug/L	Four week average not to exceed.	Biweekly, Composite EPA 243.1j	243.2
MERCURY	0.002 ug/L	Four week average not to exceed.	Biweekly, Composite EPA 245.1	
MOLYBDENUM	0.01 ug/L	Four week average not to exceed.	Biweekly, Composite EPA 246.2	
NICKEL	0.2 ug/L	Four week average not to exceed.	Biweekly, Composite EPA 249.1j	249.2
SELENIUM	0.01 ug/L	Four week average not to exceed.	Biweekly, Composite EPA 270.2	
SILVER	0.05 ug/L	Four week average not to exceed.	Biweekly, Composite EPA 253.2	
VANADIUM	0.1 ug/L	Four week average not to exceed.	Biweekly, Composite EPA 286.2	
ZINC	2 ug/L	Four week average not to exceed.	Biweekly, Composite EPA 289.1	
RADIOACTIVE MATERIALS				
GROSS ALPHA ACTIVITY (EXCLUDING RADON & URANIUM)	15 pCi/L	No sample to exceed.	Quarterly, Grab	SM 703
CESIUM 134	80 pCi/L	No sample to exceed.	Quarterly, Grab	SM 709
PLUTONIUM 238, 239, and 240	15 pCi/L	No sample to exceed.	Quarterly, Grab	
RADIUM 226 and 228	5 pCi/L	No sample to exceed.	Quarterly, Grab	SM 707
STRONTIUM 90	8 pCi/L	No sample to exceed.	Quarterly, Grab	SM 704
THORIUM 230 and 232	60 pCi/L	No sample to exceed.	Quarterly, Grab	SM 303
THALLIUM	20000 pCi/L	No sample to exceed.	Quarterly, Grab	SM 708

(1) Thornton will continue with the monitoring program currently being conducted by the City. This program will include all parameters and sampling currently being monitored with reservoirs sampled on a monthly basis, and rivers and ditches sampled twice per month when diversions are being made at the Water Supply and Storage headgate. At all other times, all locations will be sampled on a monthly basis. Once return flows are being delivered the sample location will be the return flow water only.

(2) These standards apply to the water returned to the Water Supply System. Where the actual water quality at the point and time of return to the System is less than these standards, the system water quality shall functionally become the temporary acceptable standard.

(3) EPA = EPA Methods for Chemical Analysis of Water and Wastes.
SM = Standard Methods for the Examination of Water and Wastewater.

TABLE A1.1 ADDITIONAL PARAMETERS TO BE MONITORED FOR IN
RETURN FLOW WATER

PARAMETER	SAMPLING FREQUENCY & TYPE	ANALYTICAL METHOD (1)
ALDRIN	Monthly, Grab	EPA 608
AMMONIA-NITROGEN	Weekly, Grab	EPA 350.1
BICARBONATE	Weekly, Composite	SM 403
BOD	Weekly, Grab	EPA 405.1
CALCIUM	Weekly, Composite	SM 311.0
CARBONATE	Weekly Composite	SM 403
CHLORIDE	Weekly, Composite	EPA 325.3
COD	Weekly, Grab	EPA 410.2
COLIFORMS - TOTAL	Weekly, Grab	SM 909
CUTHIDA	Monthly, Grab	
DOT (DDD & DDE)	Monthly, Grab	SM 509
DEMATONE	Monthly, Grab	
DIELDRIN	Monthly, Grab	SM 509
ENDOSULFAN	Monthly, Grab	SM 509
FECAL STREP	Weekly, Grab	SM 910
HEPTACHLER	Monthly, Grab	SM 509
MAGNESIUM	Biweekly, Composite	EPA 242.1
MALATHION	Monthly, Grab	SM 509A
METHOXYCHLOR	Monthly, Grab	SM 509
PARATHION	Monthly, Grab	SM 509A
PCB	Monthly, Grab	SM 509
POTASSIUM	Weekly, Composite	EPA 258.1
RESIDUAL SODIUM CARBONATE	Weekly, Composite	Calculation
SODIUM	Weekly, Composite	EPA 273.1
SULFATE	Weekly, Composite	EPA 375.4
SUM OF ANIONS	Weekly, Composite	Calculation
SUM OF CATIONS	Weekly, Composite	Calculation
TEMPERATURE	Weekly, Grab	Thermometer
THALLIUM	Biweekly, Composite	EPA 279.1; 279.2
TOTAL ALKALINITY	Weekly, Composite	SM 403
TOTAL HARDNESS	Weekly, Composite	SM 314B

WS & S WATER QUALITY STANDARDS:

Sampling Frequencies and Methodologies, Testing and Violations

Sampling Frequency

1. Reuse/return flow water will be sampled as noted in table of standards whenever Thornton is returning water to the Water Supply and Storage system.
2. During two weeks of every year daily samples shall be taken in order to evaluate the representativeness of the weekly samples. The weeks during the year when daily sampling will be performed will be determined as follows:
 - One set of daily samples (7) will be taken during the irrigation season (April 1-October 31) and one set will be taken during the non-irrigation season.
 - The week during which daily samples will be taken for each season will be picked at random.
3. Definitions:
 - Weekly sample = flow composite of 7 daily samples.
 - Daily sample = flow composite of 24 hourly samples.

Sampling and Analysis Methodologies

1. Sampling

- Composite and grab samples as noted in table of standards.
- Appropriate preservation techniques will be employed.

See reference list:

Standard Methods for the Examination of Water and Wastewater, (current edition), American Public Health Association.

Testing

Various testing procedures to determine the numeric values for water quality parameters may be appropriate to present to the W.S. & S. These include:

1. Standard test Procedures:

- Code of Federal Regulations, Title 40, Part 136;
- The latest approved EPA Methods for Chemical Analysis of Water and Wastes;
- Standard Methods for the Examination of Water and Wastewater (current edition), American Public Health Association;
- ASTM Standards, Part 31, Water;
- EPA Biological Field and Laboratory Methods

2. Monitoring to determine compliance with metals limitations shall be based on potentially dissolved metals*.

3. Metals results shall be the mean value from three repetitions of the analysis with a duplicate and spike analysis of 10% of the samples.

All other analyses shall include duplicate and spike analysis of 10% of the samples.

Violations

1. All Parameters

The four week moving average shall not exceed the standard value for all weekly and biweekly sampled parameters except for electric conductivity and total dissolved solids. The 3-year moving average of electric conductivity and total dissolved solids shall not exceed the standard with no sample to exceed 3000 umho/cm and 2000 mg/L respectively. No sample shall exceed the standard value for monthly and quarterly sampled parameters.

* This is equivalent "acid extractable" method now utilized by Thornton.

Exhibit B
Articles of Amendment

The second declaration of the Company's Articles of Incorporation is hereby amended to read in its entirety:

SECOND--That the objects for which said company is incorporated are, and shall be, to acquire by every lawful means, an additional supply of water for irrigation of agricultural lands, other irrigation, municipal, industrial, recreational, or other beneficial uses within the State of Colorado, for the benefit of the owners of water rights in and from that certain irrigation canal known as the Larimer County Ditch, now owned and controlled by the Larimer County Ditch Company; and among other means for accomplishing said desired end, to enter upon, prosecute, and maintain, but not be limited to, the following enterprises:

1st) To acquire and become the owner by purchase, condemnation, or other lawful means, all the ditches, water rights, appropriations, franchises, and privileges of Larimer Water Supply Company, and by means of said ditches, and by extending and further prosecuting the construction thereof, and by the construction of new ditches, to take, divert, and appropriate as much as possible of the unappropriated waters of the Grand, Michigan, and Laramie Rivers, and streams and waters tributary thereto, and to conduct such water so diverted by means of a system of ditches and dams into the several branches and the main stream of the Cache la Poudre River, but not so as to raise the waters thereof above ordinary highwater mark; and to take the said water or an equivalent amount, making due allowance for evaporation and seepage, out again at and through the headgate of the Larimer County Ditch, and into and along the said ditch for distribution among its water-right owners who are or shall become stockholders in this company.

2nd) To acquire, by lease, purchase, condemnation, or

other lawful means, those certain natural basins, commonly known and designated as Chambers Lake, Trap Lake, Lost Lake and Laramie Lake, in Larimer County, Colorado, and all the rights, appropriations of water, privileges and franchises of the Larimer County Reservoir Company in connection therewith; also the dam heretofore constructed by the Larimer County Reservoir Company, and all the appliances connected therewith; and to construct a new dam where a breach lately occurred in the natural embankment of said Chambers Lake, and by means of said dams and other appliances, from time to time hereafter, with water heretofore appropriated for and which can be used for that purpose, and only with such water and other water which can be appropriated for such purpose to fill said Chambers Lake and to store such water therein; and afterwards, from time to time, to conduct said water, so stored, from said reservoir, and also water which this Company appropriates and stores in said other lakes of which Lost Lake and Laramie Lake will be filled from the head waters of the Laramie River, as appropriated heretofore by ditches heretofore constructed by the Larimer County Reservoir Company, into and along the Cache La Poudre River; but not so as to raise the water thereof above ordinary highwater mark; and to take the said water or an equivalent amount, making due allowance for evaporation and seepage, out again at and through the headgate of the Larimer County Ditch, and into and along said Ditch, to be distributed among the water-right owners thereof who are or shall become stockholders in this Company.

3rd) To acquire and become the owner by lease, purchase, condemnation or other lawful means, of those certain natural basins or depressions, adapted to the storage of water near the line of the Larimer County Ditch, known as Reservoirs Numbers 1, 2, 3, 4 and 5 of said company (Number 5 being that certain natural basin or depression known as "Long Pond") and sufficient contiguous lands needed to construct necessary embankments for the storage and discharge of water

in said depressions; and also for the convenient and economical management and care of the same; and to acquire in like manner other convenient reservoir sites suited for the storage of water if at any time hereafter said company shall regard it practicable and feasible to construct other reservoirs than those above particularly mentioned; and to erect necessary embankments, flumes, headgates, weirs and other appliances to render any or all the natural depressions to be acquired by this Company well adapted for reservoirs for the storage of water, with means for drawing water gradually therefrom as needed for irrigation purposes; and to fill any or all of said reservoirs with water heretofore appropriated for filling Reservoirs Numbers 2, 3 and 4 and also with water not otherwise appropriated, by means of the Larimer County Ditch or any other ditch now constructed, or hereafter to be constructed, as feeders for all or any of said reservoirs, to conduct water thereto from any available sources of supply.

4th) Wherever practicable, to use the water stored by this company in any of its reservoirs directly for the purpose of supplying the water-right owners, in and under the Larimer County Ditch, who are or shall become stockholders in this company, with water for irrigation of agricultural lands, other irrigation, municipal, industrial, recreational, or other beneficial uses within the State of Colorado and where any reservoir or water supply of this Company is so located that its water cannot directly be used to supplement the water supply of the said Larimer County Ditch water-right owners, then to acquire the right, either by contract with other corporations or persons, or by any other lawful means, to obtain in exchange for the water stored in any of the reservoirs of this Company, or otherwise supplied by it, other water in equivalent amount or in such quantities as can be obtained in lieu thereof; which water so acquired in exchange or in lieu of the stored or supplied water, shall be conducted into and along the Larimer County Ditch or any

portion thereof for the benefit of its water-right owners, as aforesaid; also, to acquire by purchase, lease, condemnation or other lawful means, the right to convey water from said reservoirs to other ditches, or through Dry Creek, in Larimer County, or by other means, back to the Cache la Poudre River to be used in exchange as aforesaid.

5th) To acquire and become the owner by purchase, or any other lawful means, of any existing appropriation or appropriations of water, either from the Cache la Poudre River or from any streams tributary thereto, or from any other source whatsoever; and wherever practicable, with due regard to the rights of intervening appropriators, to use such purchased appropriations by conducting such waters into the Larimer County Ditch or any of the reservoirs of this Company, or diverting the same at its headgate for the use of said water-right owners as aforesaid; also, the right to buy and sell lands, and to stock and cultivate the same.

6th) To acquire any waste, drainage, flood or subterranean waters, and to construct necessary ditches to conduct such waters in the Larimer County Ditch, or any of the reservoirs of this Company, as aforesaid.

7th) To manage, control, maintain, keep in repair and improve from time to time, all reservoirs, flumes, headgates, feeders, ditches, wasteways, outlets and other property of said Company; and to superintend and control the filling of any of its reservoirs, and the storage of water therein, the drawing of water therefrom, and the delivery of said water for irrigation of agricultural lands, other irrigation, municipal, industrial, recreational, or other beneficial uses within the State of Colorado, to those entitled thereto.

8th) To borrow money for any corporate purposes when deemed necessary or expedient and to secure the payment of the same by deeds of trust or mortgages on any or all of the corporate property or franchises; to raise funds when in the judgment of the Board of Directors, expedient, at any time,

by the sale or transfer of any of its reservoir sites, or by the sale of any of its stored waters, and to use the money so acquired for any proper corporate purposes.

9th) To exercise all the powers incidental to those above enumerated and by any lawful means whatever to increase the irrigation supply of the water-right owners in the Larimer County Ditch.

The sixth declaration of the Company's Articles of Incorporation is hereby amended to read in its entirety:

SIXTH--The use to which the water now owned or hereafter acquired by the Company is intended to be applied, is for irrigation of agricultural lands, other irrigation, municipal, industrial, recreational or other beneficial uses within the State of Colorado.

The ninth declaration of the Company's Articles of Incorporation is hereby amended to read in its entirety:

NINTH--The affairs and management of said corporation is to be under the control of a Board of nine Directors. Directors need not be shareholders. Directors shall be elected by shareholders, subject, however to the following:

1st) So long as the City of Thornton, Colorado, or its assigns is the owner of not less than 280 shares of the capital stock of the Company, the City of Thornton and its assigns, may select up to four of the Directors. At any time that the City of Thornton, Colorado, and its assigns own less than 280 shares of stock of the Company, it shall be entitled to select the number of directors, not in excess of four, as shall represent its and its assigns proportionate ownership of the capital stock of the Company.

2nd) The remaining Directors, not less than five, shall be nominated and chosen by stockholders who use the water represented by their shares within Larimer and Weld Counties, Colorado, from facilities of or by contract with the

Company. The By-Laws of the Company may specify means by which such shareholders may nominate and elect these Directors, but no by-law will be adopted which is in conflict with the intent of this paragraph.

The tenth declaration of the Company's Articles of Incorporation is hereby amended to read in its entirety:

TENTH--The principal place of business and office of said corporation shall be located in the City of Fort Collins, in the County of Larimer, and State of Colorado.

The eleventh declaration of the Company's Articles of Incorporation is hereby amended to read in its entirety:

ELEVENTH--The Board of Directors shall have power to make such prudential by-laws as they may deem proper for the management of the affairs of said corporation, not inconsistent with the laws of the State of Colorado, for the purpose of carrying on all kinds of business within the objects and purposes of said Company. Said by-laws, among other things, shall provide that the water which is supplied and diverted by means of the enterprise of this Company into the Larimer County Ditch, or into any of the reservoirs of this Company, shall only be delivered to and distributed among stockholders in this Company.

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Exhibit C

Amendment of By-Laws

ARTICLE III. BOARD OF DIRECTORS

The Board of Directors shall consist of nine persons, who need not be shareholders. It shall be the duty of said Board to exercise general supervision over the affairs of the Company, to receive and pass upon reports of the secretary and treasurer, to audit all bills and accounts against the Company and direct the secretary in correspondence. It shall cause its officers to make a full audit of their several departments, and to prepare reports for submission at the Annual Meeting of the stockholders.

The affairs and management of said corporation is to be under the control of the Board of nine Directors, four of which are to be selected by the City of Thornton, Colorado, or its assigns, so long as that city and its assigns control 280 or more shares of stock, and the remaining Directors, not less than five, to be nominated and selected by the shareholders who utilize their waters in Larimer and Weld Counties from the facilities of, or under contracts with the Company (the local shareholders). Municipalities, or other governmental, quasi-governmental or private entities located outside of Larimer and Weld Counties will never be considered local shareholders, no matter where the water owned by them is used. Provided, however, that for the years 1987, 1988, 1989 and 1990, said local shareholders shall elect seven Directors, and Thornton and its assigns shall select two Directors. The seven Directors elected by the remaining Directors for the years 1987, 1988, 1989 and 1990 shall be nominated and elected on staggered terms under the provisions of by-laws now in effect. In 1991 and following years the number of Directors selected by the local shareholders shall be reduced to five, unless Thornton shall elect to select less than four Directors, in which event the local shareholders will also select such additional number of Directors as shall bring the entire Board to the number of nine. In 1990 two of the Directors to be selected by the local shareholders shall be elected for a three

year term, two shall be elected for a two year term, and one shall be elected for a one year term. Upon the expiration of the respective terms, the local shareholders shall select Directors to replace the Directors whose terms have expired. Nominations for Directors shall be made by the local shareholders from the floor and the nominees receiving the highest number of votes shall be considered the nominees of the local shareholders. Those nominees so selected shall be submitted as the choice of the local shareholders and Thornton will cast its votes in favor of those nominees.

Any Director shall be eligible for re-election. All Directors shall serve until their successors are duly elected or appointed. In the event that any Director should be unable to continue his duties because of resignation, death or disability, the Board of Directors may appoint a successor to serve until the next Annual Meeting at which time a successor shall be elected by the shareholders to fill the unexpired terms of such Director.

The Board of Directors shall meet at such times as they shall from time to time determine. A meeting of the Board may at any time be called by the President, or any other three members of the Board, by causing personal notice to be served upon the Directors or by mailing the same in the Post Office in Fort Collins addressed to each Director, at his address as furnished to the secretary, at least three days before the date of such proposed meeting.

Five of the Directors shall constitute a quorum for the transaction of business at any meeting regularly called or adjourned; but any meeting of the Directors however called shall be valid when every member of the Board is present at such meetings, or shall give their several written consent thereto upon the recorded minutes thereof.

ARTICLE VIII. BY-LAW ON DISTRIBUTION OF WATER

Any water supplied by this Company, either from the reservoirs of this Company, or from any other sources provided by

this Company, shall be under the control of this Company, subject to any contract to protect the right of The Larimer County Ditch Company in the control of the canal, and shall be distributed pro-rata among the stockholders of this Company, who shall from time to time be entitled to the same, or their lessees, agents or other representations.

In order for a water right owner in The Larimer County Ditch Company to be entitled to receive water distributed by this Company he must have stock in this Company with all assessments paid, to the extent of one share of stock for every water right upon which he receives water.

The Company is authorized to carry and distribute to shareholders or others, water provided by the system and reservoirs of the Northern Colorado Water Conservancy District, upon such charges, terms and conditions as shall be from time to time provided by the Board of Directors.

ARTICLE X. AMENDMENTS

These By-Laws may be changed, amended or revoked at any time by a vote of six concurring Directors at any meeting of the Board of Directors.

Exhibit D
First Use Agreement

THIS AGREEMENT is made between the undersigned shareholder of capital stock of the Water Supply & Storage Company (the "Shareholder"), and the City of Thornton, Colorado, a municipal corporation of the State of Colorado, acting by and through its Utilities Board, (the "City").

1. Shareholder is the owner of _____ share(s) of stock of the Water Supply & Storage Company ("Water Supply") represented by Water Supply's stock certificate # _____. The water is used for the irrigation of lands described in Exhibit A, attached.

2. Shareholder hereby grants to City the right to first use the water to which Shareholder is entitled to receive from the Company under the share or shares described in paragraph 1, on an annual basis, subject to the following terms and conditions.

A. The City will pay to shareholders the following consideration for each share of stock described in paragraph 1:

(i) The sum of \$10,000.00, to be paid by December 31, 1986, or within ten days of the execution by the shareholder of this agreement.

(ii) The sum of \$20,000.00 by a promissory note, bearing interest at 5.5% per annum. The note shall bear interest only from January 1, 1987 (or from the date of the shareholder's execution of the reuse contract) to and through the year 2000. Thereafter the note will be amortized over a period of 5 years at 5.5%, with payments, including principal and interest, of \$4,683.53 per share. City pledges its full faith and credit to secure the note.

(iii) On behalf of each share of stock for which City acquires the right of first use, and for the benefit of the owner of the stock and Water Supply, Thornton agrees to pay to Water Supply annually the amount of any assessment levied against such stock, but not initially exceeding \$550.00 per share. The amount of assessment to be paid by Thornton may be adjusted on and after the assessment for the year 1995 and years thereafter, to reflect increased costs of operation, or decreased value of money, but in no event shall Thornton's contribution exceed the greater of the following:

- a. The assessment voted by the shareholders or
- b. An amount equal to an increase of 3% per year (compounded) from the year 1995.

(iv) Total compensation and payments for and on behalf fractional shares shall be proportionate.

B. The Shareholder's water will be returned to the Water Supply system to assure that shareholder receives his full entitlement of water under shareholder's share or shares in the same quantity and at the same time as would have occurred if this agreement had not been executed.

C. The use of the water by City and City's return of water will be subject to the terms of the agreement between the City and Water Supply dated October ____, 1986.

D. City's use of the water will be subject to shareholder's rights to transfer his right of use to any lands now under the Larimer County Canal (and its laterals).

E. This agreement may be recorded, and the stock subject to this agreement may be identified by writing thereon "This certificate subject to first use rights in favor of City of Thornton, Colorado."

DATED _____, 198____.

Shareholder(s)

CITY OF THORNTON, COLORADO

By: _____

wnf29d

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AMENDMENT TO AGREEMENT

This is the first amendment to the agreement between the Water Supply and Storage company and the City of Thornton, Colorado, dated December 12, 1986.

The parties agree that paragraph 3 is amended to read as follows:

3. In recognition of Water Supply's capability of storing water, and in the interest of mutual benefits, the parties agree that they will cooperate, to the extent possible, in allowing Thornton to use excess storage capacity of the system for the storage of any water legally available to Thornton. Specifically, Thornton will be allowed to store waters in the company's reservoirs for the credit of Thornton, if storage capacity exists and the storage of water would in no way be detrimental to the company or its other shareholders. Storage will not be allowed unless there is excess reservoir capacity, and in the event that Water Supply is able to fill its reservoirs from other waters, then Thornton's storage credits will be cancelled correspondingly. Further, by agreement of the parties, and to their mutual advantage, the parties may from time to time agree that Thornton may at times deliver water in excess of its obligation, or less water than it is obligated to return, with the excess or deficiency to be adjusted by future deliveries.

Dated this 12th day of June, 1991.

ATTEST:

Dana M. Barber
Secretary

WATER SUPPLY AND STORAGE COMPANY

By: [Signature]
Its: President

THE CITY OF THORNTON ACTING BY AND THROUGH ITS UTILITIES BOARD

By: _____
Margaret W. Carpenter, Mayor

ATTEST:

By: _____
Chairman Utilities

City Clerk

Address: _____

EXHIBIT
A-212
86CW481 etc

**THE WATER SUPPLY & STORAGE COMPANY
P.O. Box 2017
Fort Collins, CO 80522-2017**

July 30, 2018

Larimer County Board of County Commissioners
200 West Oak Street
Fort Collins, CO 80521

Re: Thornton Water Project 1041

Larimer County Board of County Commissioners:

As President of the Water Supply and Storage Company, I offer the following comments for your consideration with respect to the City of Thornton's rebuttal of testimony.

During the public hearings conducted by the Commissioners, there were basically three alternatives suggested for the delivery of Thornton's water to avoid the need for the Douglass Road pipeline. Under Thornton's existing agreement with the Company, those alternatives would first need to be approved by the Company, and that approval would only be given if the alternatives would not cause a negative impact on the Company and its stockholders.

First of all, it was suggested that Thornton could take its water from Black Hollow Reservoir. Black Hollow Reservoir is not a water storage reservoir in the traditional sense. The Company generally utilizes Black Hollow to equalize flow in the lower portions of the system. In other words, water is delivered to Black Hollow, temporarily stored and then released within a few hours or days. Because this reservoir is shallow, its level must be maintained within a narrow range of depths to be able to supply water to shareholders that have agriculture operations below it. Allowing Thornton to take delivery of its water out of Black Hollow would prevent the Company from operating consistent with historical practice, and would adversely impact the Company and especially its stockholders downstream. As a result, the Company would not permit Thornton to take delivery of its water out of Black Hollow.

Another suggestion was made that Thornton could take delivery its water from Cobb Lake. This is not possible either. Neither Thornton nor the Company own Cobb Lake.

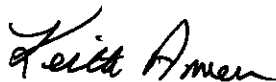
Finally, regarding the suggested alternative that Thornton take delivery of its water directly from the Poudre River, this is not something that the Company can agree to. In addition to the reasons set forth in my previous letter to the County Commissioners, the Company's operations and obligations to its agricultural shareholders require that all water, including Thornton's, first be diverted and stored in the Company's system, and deliveries made to the Company's agricultural shareholders, before Thornton can take delivery of its water. This is to ensure that Thornton does not receive more water than is actually delivered to the Company's agricultural shareholders.

Another way to put it is that Thornton's entitlement is not simply a function of what is available at the river, but, rather, a complicated combination of available river water, storage capacity, actual storage and system losses, that can only be determined once the water is physically in the Company's system. As a result, the Company cannot accommodate an alternative whereby Thornton leaves its water in the river for downstream diversion.

None of the suggested alternatives have taken into account what the consequences are for the remaining WSSC shareholder's and their vested interests. Reservoir 4 is below our main canal and is utilized by exchanging the water stored in it with other water providers. Thus, making it the best option for Company operations, satisfying the need to keep all of the shareholders whole.

Please contact me at your convenience if you have questions or comments regarding this letter.

Sincerely,



Keith Amen
President