

**Hearing of Subcommittee on Water and Power**  
***“The Fryingpan-Arkansas Project 45: Sustainable Water for the 21<sup>st</sup> Century”***  
**Testimony of Edward J. Tauer**  
**Mayor, City of Aurora**  
**June 1, 2007**

**I. Background**

The City of Aurora is the third largest municipal water provider in the State of Colorado and serves the needs of 300,000 people and businesses within its service area. The City operates a complex and integrated water system to reliably serve its customers with a safe drinking water supply. As a part of that water system, the City of Aurora derives about one quarter of its source water from the Arkansas River basin and has had a long-standing and productive relationship with the Fryingpan-Arkansas Project since its very inception in the 1960's. All water sources have been developed under the State's water laws and operating agreements with the federal government and local agencies.

Aurora is the third largest financial contributor to Fryingpan- Arkansas Project repayment, subsidizing the repayment obligations of local agricultural and municipal users while helping to retire the public debt at an earlier time. Aurora trails only El Paso County and Pueblo County, who contribute to project repayment obligations through the payment of ad valorem taxes on property within the Southeastern Colorado Water Conservancy District.

**Aurora History in the Fryingpan – Arkansas Project**

In the early 1960's, Aurora joined with Colorado Springs in the purchase and development of the Homestake Project. The Homestake Project imports water from the Eagle River, a tributary to the Colorado River and delivers water to the South Platte River basin through the Homestake Reservoir outlet and tunnel to Turquoise Lake and Twin Lakes which are both Fry-Ark facilities. Water is piped and pumped from Twin Lakes through the Otero Pump Station to Spinney Mountain Reservoir and then by gravity to the City of Aurora.

The Fryingpan-Arkansas Project was proposed as a source of supplemental water for agricultural and municipal entities within the Arkansas basin. However, recognizing the economies of scale that could be realized where two projects, i.e., Homestake and Fry-Ark which were simultaneously in the planning and development stages, the Bureau of Reclamation entered into discussions with Colorado Springs and Aurora in an attempt to coordinate efforts and thereby minimize costs and maximize efficiencies. In 1965, prior to the construction of the East Slope components of the Fry-Ark Project, both Aurora and Colorado Springs executed a contract with the Bureau of Reclamation. That contract acknowledged that “it will be economically feasible to transport all or part of the Homestake Project water through the Fryingpan-Arkansas Project facilities for delivery to the cities.” The contract was designed to “provide... for the coordinated operation of the two Projects, and to provide a method of payment for the use of the Fryingpan-Arkansas Project facilities.”

In particular, the contract identified how Fry-Ark facilities would “provide carriage of Homestake water... and storage for Homestake water...,” and contained flow rate limits as well as a storage of 30,000 acre-feet cap for Homestake water to be stored in East Slope Fry-Ark Project facilities. The 1965 contract went on to state:

*10(b) The United States hereby grants an option to the cities to negotiate for additional storage service in the eastern slope project works over and above the 30,000 acre-feet contemplated by this agreement, if and when there may be capacity in the system unused by the Project or uncommitted by prior agreements.*

See attached.

The storage space option referenced in the above paragraph was specifically not limited to Homestake water and could include native Arkansas Valley waters that were legally developed by Aurora for municipal purposes.

In response to subsequent questions concerning the Bureau's ability to contract with an out-of-basin entity, such as Aurora, for the use of excess capacity in Fry-Ark facilities, the Bureau has, on two separate occasions, concluded that such authority indeed exists. These statements were issued in 1986 and in 2003. See correspondence of Ray Whelms and John W. Keys attached hereto. However, reference to such participation by Aurora was previously made as early as 1964 in the Bureau's memorandum on the proposed water service contract for the Fry-Ark Project and subsequently in the operating principles for the Project.

## **II. Aurora's Water Acquisitions in the Arkansas Valley**

Beginning in the late 1970's, Aurora received numerous sale offers from Arkansas Valley farmers who wanted to sell their decreed agricultural water rights. Aurora has since acquired and subsequently received State decrees for approximately 26,000 acre-feet of water from a number of farmers, ranchers and ditch shareholders. The City of Aurora has completed the necessary Colorado water court adjudications required to change the water rights to municipal use, ensuring "no injury" to other water rights and agreeing to a number of decree terms and conditions as related to the individual adjudications. These have included yield limitations and revegetation requirements. The City has operated an office in the lower Arkansas Valley near Rocky Ford and maintained an ongoing community presence that addresses water administration, revegetation, local watershed protection issues and other Arkansas Valley water management matters.

## **III. Intergovernmental Agreements**

In order to implement the various operating agreements and work cooperatively within the Arkansas basin, Aurora has executed a number of Intergovernmental Agreements (IGAs) with entities within the area served by the Fryingpan-Arkansas Project, as well as entities within the Upper Arkansas basin. The provisions of these agreements extend far beyond the requirements of state law in preventing injury and providing mitigation for water transfers. These include the following:

- ◆ 2004 Regional (6-Party) IGA
- ◆ 2003 Southeastern Colorado Water Conservancy District IGA
- ◆ 1994, 2001 and 2005 Otero County IGA's
- ◆ 2005 Rocky Ford School District IGA
- ◆ 2003 Upper Arkansas Water Conservancy District IGA

A summary sheet for each of the above referenced IGAs is attached hereto. Of particular note, in those documents Aurora voluntarily agreed to the following:

- ◆ To support Preferred Storage Options Plan (PSOP) legislation in a form as referenced in the 2004 Regional IGA.
- ◆ To refrain from the additional purchase and permanent transfer of agricultural water rights from the basin for 40 years, with specific agricultural fallowing and leasing opportunities during drought recovery periods.
- ◆ To make multi year, multi-million dollar payments for the use of unused and available space in Fry-Ark facilities.
- ◆ To curtail water diversions and exchanges in support of a flow program and for the aquatic and recreational benefit of the river reach below Pueblo Reservoir.
- ◆ To make payment in lieu of taxes (PILT payments) and other tax loss payments (due to differential land and property tax assessments) to Otero County.
- ◆ To compensate the Rocky Ford School District in the sum of \$1.5 million dollars as mitigation for perceived losses resulting from changes in their tax base – Aurora will complete payments over a five year period rather than the negotiated 99 year payout to provide the School District with substantial and effective cash payments in the near future.
- ◆ To provide an Upper Basin replacement or softening pool of water.

#### **IV. Additional Cooperative Activities**

Aurora has also extended its comprehensive local community programs through a variety of additional cooperative activities in the Arkansas Valley. These include:

- ◆ Investment in a “continued-farming, drip irrigation” project (approximately \$2 million) whereby Aurora assists local farmers with \$1,400.00 per-acre for the installation of drip irrigation systems, \$50.00 per planted acre for ten years, and ½ acre-foot per acre of augmentation water annually.
- ◆ Creation of a partnership with Lake County including the formation of the Lake County Open Space Initiative (LACOSI) designed to enhance recreation, historic preservation and wildlife activities along the upper Arkansas River riparian corridor.
- ◆ Conduct of a fen (wetland) research project to investigate, in cooperation with others, tools for wetland mitigation for this endangered high-altitude flora environment

To date, under the various Bureau contracts, IGAs, and other governing documents, Aurora has spent almost \$35 million dollars on its operations in the Arkansas Valley and estimates that it will potentially spend, in the next 40 years, an additional \$150 million dollars. See attached expenditure summary. Aurora is fully vested in ensuring a successful relationship with the Fryingpan-Arkansas Project and the people of the Lower Arkansas Valley.

#### **V. Leasing and Sustainable Water Use**

In the recent severe drought of the last five years, Aurora’s water storage fell to unacceptably low levels. As a part of an integrated program to recover the reservoirs, Aurora developed and

implemented a highly effective short-term leasing program for fallowed agricultural water supplies within the Arkansas Valley. Aurora entered into a contractual leasing/fallowing relationship with the Rocky Ford Highline Canal Company whereby 37% of ditch acres were temporarily fallowed and, in exchange, almost \$11 million dollars was placed into the local economy at a time when drought conditions already precluded an adequate water supply for crop production. Aurora's financial arrangement with the farmers, which also included soil stabilization, weed control and canal structural improvements, was overwhelmingly embraced by local shareholders and Aurora was only able to subscribe about one-half of all the water offered to the program.

Aurora believes that the temporary leasing/fallowing concept, which it has supported legislatively, is a valuable and viable option to the "buy and dry" practices of the past. Though it is a complicated undertaking which is not easily implemented, with the ditch companies input and cooperation, in coordination with the use of storage facilities such as those of the Fry-Ark Project, it is a mechanism that can be employed to the benefit of both municipal and agricultural entities in the Valley.

Aurora has been a statewide leader in both water conservation and reclamation. The City's comprehensive water conservation policies and continuing mandatory watering restrictions have greatly reduced per capita consumption. In addition, it is ensuring the maximum utilization of previously developed water supplies, having embarked on the \$750 million dollar Prairie Waters Project. This Project is designed to make successive reuse of its fully consumable return flows in the South Platte River. Those project facilities include a series of alluvial wells downstream from the City that will divert water to a 34 mile pipeline and a state-of-the-art water treatment plant. Indeed, Aurora is mindful of its responsibility to avoid waste, thereby minimizing and delaying its need for additional agricultural supplies and transbasin imports.

## **VI. Forty-year Contract Request**

Since 1986, Aurora has executed a series of year-to-year contracts with the Bureau of Reclamation for the storage and exchange of water within the Fry-Ark system. These annual operating contracts have always been the subject of NEPA reviews. Most recently, consistent with the provisions of the aforementioned IGAs and Bureau policy, Aurora has requested a forty-year contract from the Bureau in lieu of the year-to-year arrangement. This long-term contract will provide additional water supply certainty to the City.

Aurora has spent approximately four years and over \$1.5 million dollars working with the Bureau in the conduct of an environmental analysis (EA) which examined the environmental and socio-economic impacts associated with this long term extension of the existing practice. This effort, which included extensive modeling of potential hydrologic and water quality impacts and numerous opportunities for public comment, concluded that there would be no significant impact from the proposed action. A FONSI was recently issued by the Bureau. The final contract terms are now being circulated for further public comment, though the contract was the subject of public negotiation sessions.

The following facts ensure that there can be no harm to the Fry-Ark Project or its beneficiaries as a result of the long-term contract.

- ◆ Aurora will receive, and has received in the past, no Project water under the Bureau contracts.

- ◆ If there is insufficient storage capacity i.e. Aurora water cannot be stored at the same time as Project water or Project beneficiary water, Aurora is the “first to spill”. No Project water is displaced by the City’s use of empty and excess space in the facilities.
- ◆ Aurora’s contract exchange opportunities under the contract are subordinate to all present and future exchange requests of in-district entities.

In addition to the above “constraints” on Aurora’s use of excess capacity, the Project will realize significant “economic benefits.” These include anticipated payments from Aurora to the Project of greater than \$45 million dollars and, in the case of contract exchanges, additional water yield. If Aurora is able to exchange water with the Bureau located high in the basin for water Aurora has stored lower in the basin, e.g. at Pueblo Reservoir, the Fryingpan-Arkansas Project can deliver that water to downstream beneficiaries without incurring the approximately 10% river shrink or loss that would otherwise occur as the water is moved down stream. The federal government and project participants benefit by receiving that greater amount of water for their use.

## **VII. Conclusion**

The City of Aurora appreciates the opportunity to present this testimony on its longstanding involvement with the Fryingpan-Arkansas Project. Aurora takes very seriously its obligation to the Project and Project beneficiaries while it operates its Water System in compliance with State water decrees and the multiple IGAs with local agencies. Aurora will continue to cooperate with all involved entities to promote the Bureau’s goals of maximum utilization of existing infrastructure. Aurora will work with responsible parties to minimize conflicts and mitigate adverse water development impacts. In fact, as we move into a new era of water supply management, the Fry-Ark Project can be a shining example of cooperative efforts designed to ensure sustainable and balanced water management approaches.

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION

Fryingpan-Arkansas Project, Colorado

AGREEMENT BETWEEN THE UNITED STATES AND THE CITIES  
OF COLORADO SPRINGS, AND AURORA, COLORADO FOR THE  
TRANSPORTATION OF WATER FROM THE HOMESTAKE PROJECT

THIS AGREEMENT, Made this 14<sup>th</sup> day of December, 1965,

in pursuance generally of the Act of June 17, 1902 (32 Stat. 338), and Acts amendatory thereof and supplementary thereto, particularly the Act of August 16, 1962 (76 Stat. 389), all collectively hereinafter referred to as the Federal Reclamation Laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as The United States, and the Cities of Colorado Springs, and Aurora, municipalities organized and existing under the laws of the State of Colorado, hereinafter referred to as "the Cities."

WITNESSETH THAT:

EXPLANATORY RECITAIS

WHEREAS, the following statements are made in explanation:

(a) The United States, acting through the Secretary of the Interior, is constructing the Fryingpan-Arkansas Project as authorized by the Act of Congress approved August 16, 1962 (76 Stat. 389) for the purpose of supplying water for irrigation, municipal, domestic, and industrial uses, generating and transmitting hydroelectric power and energy, controlling floods and for other useful and beneficial purposes.

(b) The project works to be constructed are as set forth in House Document 187, Eighty-third Congress, modified as proposed in the September 1959 report of the Bureau of Reclamation entitled "Ruedi Dam

(b) Should the United States for any cause not construct those Eastern Slope carriage works known as the Elbert Power Canal, Otero Power Canal, or Snowden Diversion Canal (as presently planned or as they may be modified or substituted for) and, therefore, the United States is unable to comply with the provisions of subarticle 2(b), this agreement and the payment schedules of Article 5 will be amended to conform with the resulting reduced service to the Homestake Project.

#### CONSTRUCTION OF HOMESTAKE WORKS

9. The Cities will advance funds, or make suitable arrangements with the United States, to finance construction of the bifurcation works on the Otero Power Canal which will serve the Homestake delivery conduit, and will do likewise with respect to any other feature appurtenant to the Eastern Slope project works, which is not required by the Fryingpan-Arkansas Project, but which the Cities may request for the better coordination and operation of the projects. The extent and cost of such works shall be agreed upon by both parties prior to the award of any contract for their construction.

#### INTERIM OR OTHER AGREEMENTS

10. (a) The United States will provide interim storage service, if requested by the Cities between completion of construction of Turquoise Lake and completion of construction of Twin Lakes Reservoir and Twin Lakes Otero Canal, provided the available storage capacity in Turquoise Reservoir is not required for project operation. Such interim service shall be rendered under a separate agreement on terms mutually satisfactory to the parties hereto, but any charges collected under any interim contracts shall not be credited to any payments due under this agreement.

(b) The United States hereby grants an option to the Cities to negotiate for additional storage service in the Eastern Slope project works

over and above the 3,000 acre-feet contemplated by this agreement, if and when there may be capacity in the system unused by the project or uncommitted by prior agreements.

UNITED STATES NOT LIABLE; POLLUTION CONTROL

11. (a) The United States shall not be responsible for the control, carriage, handling, use, disposal, or distribution of water which may be furnished at the points of delivery established by the Cities; nor for claim of damage of any nature whatsoever, including, but not limited to, property damage, personal injury, or death, arising out of or connected with the control, carriage, handling, use, disposal or distribution of the Cities' water beyond such delivery points.

(b) The Cities agree that they will comply fully with all applicable Federal laws, orders, and regulations, and the laws of the State of Colorado as administered by appropriate authority with respect to the pollution of streams, reservoirs, or water courses by the discharge of refuse, garbage, sewage effluent, industrial waste, oil, mine tailings, or other pollutants.

PENALTY FOR DELINQUENT PAYMENTS

12. Every installment or charge required to be paid to the United States under this agreement and which shall remain unpaid after it shall have become due and payable, shall be subject to a penalty of one-half of one percent per month from the date of delinquency; and no water shall be delivered to a City via the Otero Power Canal or from Homestake water stored under the terms of this contract in the Last Slope storage system during any period in which that City may be in arrears in the advance payment of charges accruing under this contract. During any period when only one City may be in arrears, water delivery to the non-delinquent City shall not be affected.





United States Department of the Interior

BUREAU OF RECLAMATION  
EASTERN COLORADO PROJECTS OFFICE  
P.O. BOX 449  
LOVELAND, COLORADO 80539-0449

IN REPLY  
REFER TO:

E-100

APR 30 1986

Mr. Raymond D. Nixon  
President Southeastern Colorado  
Water Conservancy District  
P.O. Box 440  
Pueblo, CO 81002

Dear Mr. Nixon:

I have made the decision to execute a temporary storage contract with the City of Aurora. Our plan is to have the contract fully executed by May 12, 1986. The proposed contract has been revised to incorporate some of the comments included in Mr. Kevin Pratt's letter of March 25, 1986. Enclosed is a copy of the revised proposed contract. We will consider additional comments on the revisions to the contract if received in this office by May 5, 1986. As a matter of information, it is our intent to use the terms of this contract in future temporary storage contracts subject to the appropriate adjustment to the price and spill priority for entities within the District.

Our decision to proceed with the contract has been made after having given the District more than ample opportunity to present their comments and arguments through letters, telephone conversations, and face-to-face meetings. Regional Director, Bill Martin will be in Pueblo on Friday May 2 should you desire to hear firsthand the basis of our decision.

Mr. Pratt's letters of January 21 and March 6, 1986, raised questions concerning our authority to contract with the City of Aurora. After a careful review of Mr. Pratt's letters, the applicable statutes, and other pertinent documents, we have concluded that the United States does have the authority to contract with the City of Aurora for storage service in the Fryingpan-Arkansas Project reservoirs.

Mr. Pratt asked what is the authority to store water for the City of Aurora in east slope Fryingpan-Arkansas Project (Project) reservoirs. He then divided his question into two parts. First, what is the authority to contract for storage of water for a municipality? The irrigation storage authority he cited (43 U.S.C. 523), Act of February 21, 1911, is referred to as the Warren Act which

authorized the sale of water or storage excess to the needs of a project. We have not used the Warren Act as authority for contracting for storage space.

Second, what is the authority to contract for storage in project reservoirs with an entity outside the Arkansas Valley? The Act of August 16, 1962 (43 U.S.C. 616), Project Authorizing Act, authorizes the Secretary of the Interior to construct, operate, and maintain the project and lists the primary project purposes which includes, "other useful and beneficial purposes incidental thereto,..." and that the project shall be operated "in substantial accordance with the engineering plans set forth in House Document Numbered 187, 83d Congress,...." House Document 187 on page 29 discusses sale of additional nonproject water storage space to the Colorado Fuel and Iron Corporation (CF&I) (10,000 acre-feet), owner of Sugar Loaf Reservoir (Turquoise Lake), and the Twin Lakes Reservoir and Canal Company (54,000 acre-feet). On pages 65 and 67 these two company storage reservoirs are again incorporated in the project plan and they are agreeable so long as "Their rights are not impaired." The legislative history acknowledges these companies private water use of project facilities and additional storage space for beneficial purposes. Thus, the project facilities can be used for storage of nonproject water and the specific legislative reference is "other useful and beneficial purposes incidental thereto, ...." Provision of the additional storage space in Sugar Loaf Reservoir is included in the 1965 contract with CF&I for acquisition of Sugar Loaf Reservoir. There is no provision for the District to have control or approval authority over project operations which have no impact on the District's benefits from the project. However, all payments by contractors for storage of nonproject water shall be applied as a credit toward the District's repayment obligation.

Title IX, P.L. 95-586, amending the Project Authorizing Act amends section 1 to state that the Secretary of the Interior is authorized to construct, operate, and maintain the Fryingpan-Arkansas Project "as further modified and described in the Final Environmental Statement (FES) for said project, dated April 16, 1975." The project operation, as it had been conducted, is discussed in detail in the FES. The Homestake Project is discussed in the FES, page II-138. FES pages II-146 through II-150 discussed interrelations with other projects and proposals for water development. It discusses interrelationships of eastern Colorado water developments which includes water developments in all of Colorado east of the continental divide. Also discussed are the use of imported west slope water, ground water, and eastern Colorado surface water to meet the demands of urban population growth. This legislation recognizes past use of project water storage space for storage of nonproject water and approves such past practices as well as anticipated future operating practices.

The Water Supply Act of 1958 authorizes construction of water storage capacity for future use without a firm contractual commitment. Ruedi Reservoir space for storage of water for use of west slope Colorado entities was constructed under the authority of the Water Supply Act of 1958. The area of use is not within any particular district committed to repay the cost of the regulatory space in Ruedi Reservoir. Where Reclamation law refers to water sale, the sale of storage and water has been used interchangeably.

Contract No. 6-07-70-W0090 (Homestake contract) with Colorado Springs and Aurora, Colorado, was executed on December 14, 1965, pursuant to

Reclamation law, particularly the Act of August 16, 1962, for storage and carriage of nonproject municipal water from the non-Federal Homestake Project owned jointly by the two cities. The City of Aurora and its place of use for such stored water is outside the Arkansas Valley and outside the District. The Homestake contract approval memorandum dated November 8, 1965, by the Acting Commissioner of Reclamation and approved on November 24, 1965, by the Secretary of the Interior, in discussing the proposed contract states that article 10(b) "also assures the cities that storage service, in addition to the 30,000 acre-feet guaranteed under this contract, can be obtained by separate agreement ...." The Homestake contract became operational on January 1, 1982. As authorized by the memorandum dated June 7, 1971, from the Commissioner of Reclamation to the Secretary of the Interior, discussing temporary storage contracts for the project and approved by the Secretary of the Interior on June 10, 1971, and under provision of article 10a of the Homestake contract, water was stored for Aurora commencing in 1973 pursuant to the terms of a temporary storage contract with annual renewal contracts until 1982.

Article 10(b) makes no statement limiting the additional storage service to only Homestake Project water. Other sections of the contract clearly limit the 30,000 acre-feet of storage service to only Homestake Project water. The 30,000 acre-feet of storage was determined to be fully adequate for regulation of Homestake Project water (66,000 acre-feet annually) with the 45,000 acre-feet Homestake Reservoir as discussed in the November 8, 1965, memorandum approved by the Acting Commissioner of Reclamation.

Nonproject water storage service has been provided in project east slope reservoirs to municipal contractors including Aurora, Pueblo, Pueblo West Metropolitan District, Colorado Springs, and the Twin Lakes Reservoir and Canal Company, mainly owned by these municipal users, since 1972 by temporary contracts and by the contract for storage executed with Aurora and Colorado Springs in 1965. The revenues from this storage service are applied to the District's repayment obligation reducing the District's ultimate repayments to the United States.

Mr. Pratt's comments on the recent court ruling on the San Juan-Chama Project concerned a municipality attempting to use its project water supply as recreation water and leave it in reservoir storage which was determined to be an unauthorized change of use of project water.

We believe the facts in the Aurora contract are more analogous to those in Carson-Truckee Irrigation District v. Clark, 537 F. Supp 106 at 112, 745 F2d 257 at 260 (1985). In Carson-Truckee, the court determined that Congressional authorization of "other beneficial purposes" could include municipal and industrial (M&I) uses despite the fact that M&I use was not mentioned in the project authorization or legislative history. The District Court noted that, at the time of authorization, there was no need for M&I uses, but in the intervening years M&I water became needed.

The Act of February 25, 1920, Sale of Water for Miscellaneous Purposes (43 U.S.C. 521) grants authority to sell project water to a municipality when

the project irrigated lands had been acquired by the municipality and retired from irrigation. The storage contract with Aurora is unrelated to project water or water rights.

Executing a new contract for additional storage service with Aurora would not be a major operational change, but would be a continuation of procedures in effect since the project was authorized. All storage contracts contain language requiring the contractor, in cooperation with the State, to make determination of the right to store water under Colorado law, regardless of the source of the water. A contract with Aurora would be junior in priority to all project purposes and would not impact project operation.

The proposed contract permits water storage by Aurora only after all the storage needs of the Project, including winter water and storage needs of entities within the Southeastern Colorado Water Conservancy District, are met. These provisions fully protect the authorized purposes of the Project, the District's contracted water service, and the availability of the facilities for use by entities within the District. The proposed contract is in accord with both the letter and the spirit of Amendment No. 4 of Contract No. 5-07-70-W0086 between the United States and the District.

The proposed contract provides for a storage rate of \$32 per acre-foot, a rate eight times larger than that charged to entities within the District. The City of Aurora is being charged the higher rate because they do not pay ad valorem taxes toward the repayment of the Project. The \$32 per acre-foot rate will not be used as a precedent for future storage contracts with entities outside the District.

The proposed contract specifically excludes exchanges involving Project water. The proposed contract requires both storage of water and any exchange with nonproject water to be approved by the State of Colorado Division of Water Resources. These provisions clearly place the responsibility for administration of water rights with the State of Colorado.

The proposed contract will continue the current practice of using a composite evaporation rate. This method has worked well in the past and, in our judgment, is equitable.

The proposed contract includes the Bureau's standard assignment clause. This clause applies to the assignment of the contract, not the assignment of the water. The only requirements that the proposed contract puts on use of water is the acreage limitation and the requirements of Reclamation law if the water is used for agricultural purposes. We do not control the use of nonproject water since the use of nonproject water is a State Water Rights matter.

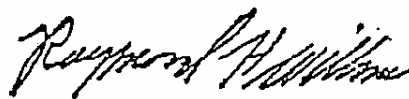
We feel that the issue of moving Arkansas River water out of the basin is a matter to be settled by the State of Colorado. We consider it inappropriate for the United States to attempt to influence the outcome of this resource allocation by denying a contract that we could otherwise grant. While it is true that

the transfer of the water out of the basin may reduce the tax base of the District, the impacts will not be of such magnitude as to jeopardize the financial integrity of the Fryingpan-Arkansas Project. It is our policy to avoid unnecessary intrusions into state and local affairs.

It should be kept in mind that the proposed contract is a temporary storage contract that will expire on December 31, 1986. The proposed contract contains no provisions for renewal. Should a situation materialize which has a direct negative impact on the Fryingpan-Arkansas Project, we will be at liberty to revise the terms or, if necessary, decline to issue a new contract in 1987.

Thank you for expressing your thoughts concerning our temporary storage contract with the City of Aurora.

Sincerely yours,



Raymond Willms  
Project Manager

cc: Mr. Kevin B. Pratt  
Fairfield and Woods  
1600 Colorado National Building  
950 Seventeenth Street  
Denver, CO 80202

Mr. John Dingess  
Special Counsel to the  
City of Aurora  
Suite 820  
Aurora, CO 80013-4090



# United States Department of the Interior

BUREAU OF RECLAMATION

Washington, D.C. 20240

APR 3 2003

IN REPLY REFER TO:

W-6335  
WTR 1.10

Mr. Peter D. Binney, P.E.  
Director of Utilities  
City of Aurora  
1470 South Havana Street  
Aurora, CO 80012

Dear Mr. Binney:

As you are aware, the Bureau of Reclamation has been reviewing the authority to issue a long-term contract to the City of Aurora, Colorado for the utilization of Fryingspan-Arkansas Project facilities. Our review is complete and we have concluded that such authority exists. The arrangements with the City of Aurora will not adversely affect Reclamation's contract with the Southeastern Colorado Water Conservancy District.

Last year we worked diligently with the District, the city and others on an amendment in the nature of a substitution, to HR 3881 introduced last year. While we did collaborate on substitute language, we all understand that there are still some issues with the substitute language which require resolution. Even with clarification on the authority to enter into a long-term contract with the City of Aurora, legislation is desirable for a number of reasons, including to meet the projected increase of water storage needs, and to clarify disposition of revenues. The alternatives derived from the substitute language will offer lower cost and more environmentally friendly solutions to water users than building new facilities. I believe the proponents of the legislation will be able to resolve the remaining differences and stand ready to work to bring an agreed upon solution back to the Congress.

By this letter I am requesting Ms. Maryanne Bach, Regional Director, Great Plains Region to take the necessary steps to initiate contract negotiations with the City of Aurora. She will be contacting you regarding this matter. If you have questions, please contact her at 406-247-7600.

Sincerely,

John W. Keys, III  
Commissioner

Identical Letter Sent To:

Mr. James Broderick  
Project Manager  
Southeastern Colorado Water Conservancy District  
31717 United Avenue  
Pueblo, CO 81001

cc: See attached list