INTERGOVERNMENTAL AGREEMENT BETWEEN THE SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT AND THE CITY OF AURORA

This Intergovernmental Agreement ("IGA") is entered into this ___ day of ____________, 2003, by and between the Southeastern Colorado Water Conservancy District ("Southeastern") and the City of Aurora, Colorado, a municipal corporation of the counties Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise ("Aurora") collectively hereinafter referred to as the "Parties").

I. Recitals

Whereas, the Fryingpan-Arkansas Project was authorized by the Act of Congress approved August 16, 1962 (76 Stat. 389), as amended, as a multi-purpose reclamation project under the 1939 Reclamation Projects Act;

Whereas, the United States, acting through the Secretary of the Interior, constructed the Fryingpan-Arkansas Project as set forth in House Document 187, 83rd Congress, modified as proposed in the September 1959 report of the Bureau of Reclamation ("Reclamation") entitled "Ruedi Dam and Reservoir, Colorado," House Document 353, 86th Congress, 2nd Session, with such proper minor modifications, omissions, or additions as were necessary to carry out the objectives of the project, 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 incidental thereto;

Whereas, Southeastern has assumed responsibility to repay the United States' construction costs for the Fryingpan-Arkansas Project pursuant to Contract No. 5-07-70-W0086, as amended, between Southeastern and the United States;

Whereas, consultants to the Southeastern Colorado Water and Storage Needs Assessment Enterprise, a separate water activity enterprise formed by Southeastern, prepared a Preferred Storage Options Plan report, dated September 21, 2000, which PSOP Report identifies estimated future water storage needs of several potential participants and outlines a plan for meeting those needs, including re-operation of existing water storage in Fryingpan-Arkansas Project East Slope reservoirs ("Re-operations"), followed by construction of the Enlargements to Pueblo Reservoir and Turquoise Reservoir;

Whereas, the PSOP Report deferred the decision whether to allow Aurora to participate in the Enlargements to a later time, after the extent of participation by Arkansas River Basin entities was determined;

Whereas, following the PSOP Report, representatives of Southeastern, PSOP Participants and others have participated in a Storage Implementation Committee, which developed the Implementation Committee Report dated April 19, 2001;
Whereas, Southeastern has pursued enactment of federal legislation to implement the components of the PSOP Report;

Whereas, Southeastern and Aurora were parties to that certain Intergovernmental Agreement between them dated December 7, 2001 (the “2001 IGA”), whereby they agreed to support certain federal legislation as described therein;

Whereas, such legislation was introduced in the 107th Congress as H.R. 3881, but was not enacted during the 107th Congress;

Whereas, Southeastern and Aurora continue to desire the enactment of federal legislation expressly authorizing Reclamation to enter into contracts for Re-operations and with Aurora for use of Fryingpan-Arkansas Project facilities, and authorizing studies of the Enlargements;

Whereas, Aurora’s use of Pueblo Reservoir and other Fryingpan-Arkansas Project facilities requires a contract with Reclamation;

Whereas, by his letter of April 3, 2003, Commissioner John W. Keys, III announced Reclamation’s conclusion that it has authority to enter into long-term contracts with Aurora for utilization of Fryingpan-Arkansas Project facilities;

Whereas, Reclamation has executed temporary annual “if-and-when” contracts in Fryingpan-Arkansas Project facilities with Aurora since 1986 and in his April 3, 2003 letter, Commissioner Keys requested that the Regional Director initiate negotiations with Aurora for a long-term contract with Aurora;

Whereas, Aurora and the Rocky Ford Ditch Sellers Group have filed and amended an application for change of water rights in the Rocky Ford Ditch, Case No. 99CW169, Water Division 2, seeking to change about 36% of the Rocky Ford Ditch water rights, including 40.2 c.f.s. of “Priority 1” with an 1874 appropriation date, to alternate points of diversion at Pueblo Reservoir and other alternate diversion points;

Whereas, Aurora also filed and amended an exchange application (Case No. 99CW170, Water Division 2), seeking to exchange the same Rocky Ford Ditch water (as in Case No. 99CW169, Division 2) upstream from Pueblo Reservoir and Lake Meredith to Turquoise Reservoir and Twin Lakes, and other diversion and storage facilities;

Whereas, Aurora and Lake County, Colorado have also filed an application for change of water rights in Lake County, Colorado (Case No. 98CW137, Water Division 2);

Whereas, Lake County, Colorado has also filed an application for a plan for augmentation in Lake County, Colorado (Case No. 98CW173, Water Division 2);
Whereas, Aurora also filed an exchange application (Case No. 01CW145, Water Division 2), seeking rights of exchange to the proposed Box Creek Reservoir site in Lake County, Colorado;

Whereas, proceedings pursuant to retained jurisdiction provisions of Case No. 83CW018, Water Division 2 (Aurora’s Rocky Ford Ditch – I water rights) are currently pending;

Whereas, Southeastern is an opposer in Case Nos. 99CW169, 99CW170, 98CW137, 98CW173, 01CW145, and 83CW018;

Whereas, Aurora has stipulated to the applications filed by Southeastern in Water Court, Water Division No. 2 Case Nos. 00CW138 (Pueblo Reservoir Enlargement), 00CW139 (Turquoise Reservoir Enlargement), and 99CW160 (appropriative rights of exchange on Grape Creek);

Whereas, Aurora is an opposer in Water Court, Water Division No. 2, Case No. 02CW037 (Southeastern’s diligence application for multiple structures of the Fryingpan-Arkansas Project);

Whereas, Aurora operates a large multi-component water supply system to provide a reliable supply of water to its citizens, and from time to time, water in amounts above current demands may be present in individual components of the Aurora water supply system, resulting in “amounts above Aurora’s annual Arkansas Basin component requirements” as defined in this IGA;

Whereas, the U.S. Fish & Wildlife Service issued a Final Programmatic Biological Opinion dated December 20, 1999 (“PBO”) regarding various depletions to the flow of the Colorado River, including depletions from transmountain diversions by Aurora and the Fryingpan-Arkansas Project, and the PBO called for numerous recovery actions to be taken, including a permanent commitment of 10,825 acre-feet per year by the water users benefiting from such depletions, as more fully described in the PBO;

Whereas, the safety and reliability of the Fryingpan-Arkansas Project and Aurora’s water supply system are of paramount and critical interest to both Aurora and Southeastern;

Whereas, the Fryingpan-Arkansas Project and Pueblo Reservoir are administered by Reclamation, and use thereof is governed by federal law, and, accordingly, this IGA, while binding on Aurora and Southeastern, is not binding upon the United States, except to the extent that may be provided in federal law;

Whereas, Aurora and Southeastern wish to resolve the pending Water Court cases and the other issues discussed herein in a mutually beneficial and timely fashion, on the terms set forth herein, and agree that certain benefits under this IGA will not accrue to either party until such settlement has been reached; and
Whereas, Aurora and Southeastern have identified additional benefits that may be realized by facilitating the delivery to Aurora of short-term or interruptible supplies of water according to schedules and agreement described herein and Aurora making certain payments and giving other consideration to Southeastern in return for such benefits.

II. Purposes

The purposes of this IGA are to agree upon and implement terms:

A. for the Parties’ cooperation in efforts to pass federal legislation that provides specific authorization: (1) to implement the Re-operations component of the PSOP Report, (2) to engage in a Feasibility Study relating to the Enlargements component of the PSOP Report, and (3) for Aurora’s contracting for “if-and-when” available storage and exchange use of excess capacity in current Fryingpan-Arkansas Project facilities;

B. upon which Aurora will enter into certain future contracts for use of Fryingpan-Arkansas Project facilities, whether pursuant to such new legislation or to existing law, and will exercise its rights under such future contracts during the term of this IGA;

C. whereby Southeastern will facilitate the delivery of water acquired by Aurora under short-term leases or interruptible supplies for delivery to Aurora’s water supply system using contracts with Reclamation or by other means;

D. creating a framework pursuant to which Aurora and Southeastern will proceed to settle their opposition to Water Court applications filed by each other;

E. upon which Southeastern will obtain and manage water made available to it pursuant to Section III.D hereof; and

F. whereby Aurora will make payments to Southeastern, or to the Southeastern Colorado Water Activity Enterprise, at Southeastern’s direction, after fulfillment of certain conditions as identified in this IGA, for services provided by Southeastern and benefits received by Aurora in connection with Aurora’s uses of Fryingpan-Arkansas Project facilities, as described herein.

III. Agreements

A. Previous Agreement Replaced

The Parties agree the 2001 IGA is superseded and fully replaced by this IGA and that, following execution of this IGA, said former agreement is no longer in effect, in whole or in part.
B. Authorization for Aurora’s Use of Fryingpan-Arkansas Project Facilities

1. Southeastern and Aurora agree that:

   a. Following execution of this IGA, Southeastern and Aurora shall request Members of Congress to introduce and support federal legislation in form substantially similar to that attached hereto as Exhibit 1, providing express authorization:

      i. to implement the Re-operations component of the PSOP Report;

      ii. to engage in a Feasibility Study relating to the Enlargements component of the PSOP Report; and

      iii. for Aurora’s contracting for “if-and-when available” storage and exchange use of excess capacity in current Fryingpan-Arkansas Project East Slope facilities for the purpose of storing and exchanging non-project Arkansas River water owned or leased by Aurora; provided that any contract executed by Aurora pursuant to such legislation shall not be inconsistent with the terms of this IGA.

   b. Until Aurora obtains a forty year contract with Reclamation, Southeastern will not oppose Aurora’s request for annual “if-and-when” agreements for storage and exchange purposes consistent with this IGA.

   c. With the exception of the existing Homestake agreement, Contract No. 6-07-70-W0090 (Formerly Agreement No. 14-06-700-6019) between the Cities of Aurora and Colorado Springs and the United States, the Twin Lakes agreement, Contract No. 7-07-7010056 between Twin Lakes Reservoir and Canal Company and the United States, the CF&I Turquoise agreement, Contract No. 6-07-7—W0089 and all renewals thereof (collectively the “Existing Long-Term Contracts”), all other future contracts for Aurora’s use of Fryingpan-Arkansas Project facilities shall be on an “if-and-when” basis, providing that Aurora’s water stored in Fryingpan-Arkansas Project facilities shall be spilled consistent with the spill priorities set out in Article 13 of Contract No. 5-07-70-W0086, as amended, between Southeastern and the United States.

   d. During the term of this IGA, Aurora shall not use Fryingpan-Arkansas Project facilities in connection with any further permanent transfers of water rights that are decreed from sources in the Arkansas River Basin; rather, Aurora’s use of excess capacity in the Fryingpan-Arkansas Project facilities shall be limited to use of Fryingpan-Arkansas Project East Slope facilities for diversion, storage and exchange of:
i. those Arkansas River Basin water rights that Aurora currently owns and uses pursuant to decree;

ii. those Rocky Ford Ditch water rights for which application has been made in Case Nos. 99CW169 as amended and 99CW170 as amended, those Lake County water rights for which application has been made in Case No. 98CW137, and those exchange rights requested in Case No. 01CW145;

iii. water available to Aurora from water lease agreements that existed as of December 7, 2001, including those extended or replaced for no more than the existing annual volumetric amount of water;

iv. water available to Aurora from interruptible supply agreements or water bank transactions that are authorized under Colorado law and consistent with this IGA;

v. water that is traded to, or exchanged, with the City of Aurora, Colorado, or an enterprise of the City, for one of the foregoing items (i) – (iii), so long as such trade or exchange does not increase the draft of water from the Arkansas River Basin that would have been available to the City of Aurora, Colorado, or an enterprise of the City under items i) – iii); and

vi. water obtained by Aurora from outside Water Division No. 2.

e. During the term of this IGA, Aurora shall not initiate or seek to implement any further permanent transfer of water rights not presently owned or under contract by Aurora (as identified in the table in Section III.B.1.h below) that are decreed from sources in the Arkansas River basin, even if such transfer would involve use of new Aurora facilities rather than Fryingpan-Arkansas Project facilities, absent a mutually agreed amendment to this IGA regarding such transfer..

f. The Fryingpan-Arkansas Project Operating Principles shall govern Aurora’s use of Fryingpan-Arkansas Project facilities, and provisions of any contract executed by Aurora for such use shall assure that such contract, and the uses and operations pursuant thereto, shall not impair or otherwise interfere with:

i. the Fryingpan-Arkansas Project’s authorized purposes;
ii. the ability of the Fryingpan-Arkansas Project contractors (including Southeastern) to meet existing repayment obligations;

iii. the storage allocations and limitations pursuant to Contract No. 5-07-70-W0086, as amended, between Southeastern and the United States, and Southeastern’s Allocation Principles;

iv. the yield of the Fryingpan-Arkansas Project from its West Slope and East Slope water rights;

v. the Winter Water Storage Program;

vi. the Upper Arkansas River Flow Management Program;

vii. the capacity in Fryingpan-Arkansas Project facilities, including the south outlet works capacity for the Arkansas Valley Pipeline, which is needed to satisfy Fryingpan-Arkansas Project purposes and contractual obligations existing at the time of the execution of any Contract pursuant to this IGA;

viii. the ability of qualified entities within Southeastern’s District boundaries to enter into Re-operations contracts for the use of excess water storage and conveyance capacity consistent with the PSOP Report, the Implementation Committee Report and the herein described federal legislation or any companion or successor legislation; or

ix. the ability of entities located within Southeastern’s District boundaries to enter into contracts for the use of excess water storage capacity pursuant to Reclamation law.

h. Aurora agrees that, whether or not such requirements are contained in legislation,

i. Aurora will not make a request to Reclamation for any long-term contract for use of Fryingpan-Arkansas Project facilities for a term in excess of forty years; and

ii. prior to requesting renewal of the initial long-term contract, or entering into a new long-term contract for use of storage or carrying capacity, Aurora will negotiate a new IGA with Southeastern, such agreement being completed at least 12
months prior to expiration of this IGA. If, after negotiations, Southeastern and Aurora are unable to reach agreement upon a succeeding mutually acceptable IGA regarding such renewal contract, the parties agree that any dispute will be submitted to mediation before a neutral third party. Neither Aurora nor Southeastern may unreasonably withhold their consent to any such mediated IGA. To the extent that no agreement is reached following the mediation provided for in this paragraph, the parties agree that any action by either party shall be brought in the District Court, 19th Judicial District, Colorado, and shall be governed by the laws of the State of Colorado.

h. During the term of this IGA, Aurora’s use of leased water, as described under Sec. III.B.1.d.(iii) and (iv), from the Arkansas River basin will be in two categories, 1) existing long-term leases and 2) other available water sources. Aurora’s purpose in accessing Category 1 and 2 Water is to assist in filling the capacity of Aurora’s proportioned ownership of the Otero Pump Station, that capacity being on average 78 cfs. The annual volumetric amount is estimated to be 54,000 acre-feet, although operational requirements will cause that amount to vary from year to year.

Water right components used to fill this capacity are listed in the table below. These amounts are average annual numbers that fluctuate from year to year and would therefore result in a varying amount of water identified as “Interruptible and Short Term Leases”.

<table>
<thead>
<tr>
<th>Originating River Basin</th>
<th>Water Supply Source</th>
<th>Average Annual Yield</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado River</td>
<td>Homestake</td>
<td>12,900 ac-ft</td>
</tr>
<tr>
<td></td>
<td>Twin Lakes</td>
<td>2,700 ac-ft</td>
</tr>
<tr>
<td></td>
<td>Busk-Ivanhoe</td>
<td>2,500 ac-ft</td>
</tr>
<tr>
<td>Arkansas River (existing)</td>
<td>Rocky Ford Ditch I</td>
<td>8,100 ac-ft</td>
</tr>
<tr>
<td></td>
<td>Colorado Canal</td>
<td>7,900 ac-ft</td>
</tr>
<tr>
<td></td>
<td>Upper Arkansas Ranches</td>
<td>500 ac-ft</td>
</tr>
<tr>
<td>Arkansas River (projected from pending Water Court actions)</td>
<td>Rocky Ford Ditch II (99CW169)</td>
<td>5,100 ac-ft</td>
</tr>
<tr>
<td></td>
<td>Leadville Ranches (98CW137 Aurora ownership)</td>
<td>1,100 ac-ft †</td>
</tr>
<tr>
<td></td>
<td>Pueblo BOWW lease</td>
<td>5,000 ac-ft</td>
</tr>
<tr>
<td>TOTAL – Currently Available Supplies</td>
<td></td>
<td>45,800 ac-ft</td>
</tr>
<tr>
<td></td>
<td>Interruptible and short term leases **</td>
<td>8,200 ac-ft</td>
</tr>
<tr>
<td>TOTAL Supply Delivered to Otero Pump Station</td>
<td></td>
<td>54,000 ac-ft</td>
</tr>
</tbody>
</table>
**Potential for short term contracts or other leased water to meet available capacity at Otero Pump Station.**

† An estimate of yield from these water rights; Southeastern accepts this estimate only for the purpose of this IGA provision, awaiting final determination in Case 98CW137.

Any reduction to the total current available supplies, namely an average of 45,800 ac-ft per year under average hydrologic conditions, resulting from any settlement of the City of Pueblo’s instream flow requests, shall allow Aurora to permanently develop an equivalent amount of water yield from additional storage, trades and/or exchanges, or if needed from acquisitions. Nothing in this IGA shall preclude Aurora from seeking compensation from City of Pueblo in an amount not to exceed the cost of developing those replacement sources of water.

Category 1 Water, long-term leases – this includes only the current lease with the Pueblo BOWW and any renewal or replacement thereof by lease from any source, which are included in section III.B.1.d.(iii).

Category 2 Water, other available leased water, including short term and interruptible leased water and water bank supplies, may be used to the extent needed, when available, to make up the difference of 8,200 ac-ft on average as set forth above, to the extent provided and subject to the terms of this IGA.

It is anticipated that the use of Category 1 and 2 Water will be dictated primarily, but not exclusively, by hydrologic and operational conditions with less likelihood of being used during wet periods and average hydrologic periods following wet hydrologic periods. Use of Category 1 and 2 Water most likely, although not exclusively, will occur during the dry hydrologic periods and the reservoir recovery period following those dry hydrologic periods. Operational considerations could also require use of Category 1 and 2 Waters as described in this IGA. During the term of this IGA, the following conditions will govern Aurora’s use of leased Arkansas River basin water:

1) Aurora will not divert Category 2 water when Aurora’s total system wide reservoir storage is above sixty percent (60%) of present capacity on March 15th of any given year except as may be required to exercise interruptible supply contracts within the total volumetric limits, during the term of this IGA, as described under paragraph III.B.1.h (3) below. If Aurora exercises the uses of leased water under this provision, then Aurora will provide to Southeastern a description of reservoir storage contents illustrating the reservoir deficits that would be partially filled by the delivery of those leased waters.

2) For any year that Aurora diverts Category 2 water, it shall implement City-wide water conservation measures in effect throughout the year, which shall include, at a minimum, a) an increasing block rate structure designed to encourage water conservation at a level dictated by available water supplies, and b) restrictions on outdoor water use that limit the volume delivered for those purposes while buffering reservoir storage levels.
3) To implement Category 2 leases as described herein, Aurora will use interruptible supply contracts to divert water for no more than 3 successive years, nor for more than 3 years in each 10-year period, with an aggregate amount not to exceed 145,200 acre-feet at the intakes to Otero Pump Station over the term of this IGA.
   a. From the effective date of this agreement through December 31, 2005, Aurora will not use interruptible supply contracts to divert an aggregate amount greater than 25,200 acre-feet for that period, nor to divert more than 12,600 acre-feet in any single year.
   b. From January 1, 2006 through the remaining term of this IGA, Aurora will not use an interruptible supply contract to divert more than 10,000 ac-ft in any single year nor for more than three successive years.
   c. Aurora shall not, pursuant to such agreements, use any “Winter Water” stored in Pueblo Reservoir pursuant to the decree in Case No. 84CW179, Div. 2, unless such use is approved by Reclamation with the concurrence of Southeastern and the State Engineer. However, if Aurora enters into a water lease that includes Winter Water as a component, Aurora may trade such Winter Water for use by canals downstream from Pueblo Reservoir in exchange for water that Aurora may use, which use shall be subject to the limitations provided herein.
   d. The single year lease limitation shall apply to the year in which water was diverted into storage and not to the year or years in which Aurora may move the water into its South Platte system through the Otero Pump Station. This recognizes that such water may be held in a carryover storage account for delivery through the Otero Pump Station in a following year.
   e. After December 31, 2028, the 3-year-in-10 limits set forth above shall be reduced as necessary to allow Aurora to divert the aggregate total of 145,200 acre-feet over the term of this IGA; provided that:
      i. Such contracts may not be used for more than 7 years of the last 15 years of the term of this IGA, nor for more than 5 years of the last 10 years of the term of this IGA;
      ii. Aurora’s annual diversions under such contracts shall remain limited to no more than 10,000 acre-feet in any single year; and
      iii. Aurora will not use such contracts to remove water from the same irrigated land for more than 3 successive years.

4) Should extraordinary circumstances arise beyond those specifically described in this IGA, the parties will consider those circumstances and may amend specific limitations related to the annual volume of leased water that may be developed by Aurora for a period not to exceed one calendar year.

5) For any waters leased by Aurora under the terms of this agreement, Aurora will provide to Southeastern a copy of the agreement between the lessor and Aurora describing the terms of that lease and obligations related to land stabilization, weed control and other agreed upon obligations. Southeastern may provide reasonable comments to Aurora on such leases, and Aurora agrees to make reasonable efforts to implement appropriate recommended actions. This IGA does not preclude Southeastern and others from submitting constructive comments on such leases to the Colorado Division of Water Resources regarding terms and conditions to avoid injury, or to Reclamation regarding conditions on use of Fryingpan-Arkansas Project
facilities consistent with this IGA; however, Southeastern will not seek to prevent
such leases so long as they are operated under the terms of this IGA.

6) Nothing herein shall preclude Aurora from developing new water sources from the
Colorado River and its tributaries; provided that Aurora shall not use Fryingpan-
Arkansas Project facilities for storage or delivery of water from such new sources,
except to the extent allowed by Aurora’s existing contract rights for the Homestake
Project and Turquoise Reservoir and as a shareholder of Twin Lakes Reservoir &
Canal Co., Aurora’s contract for excess capacity as provided in this IGA, any
extension or renewal of such contract rights.

For the year 2004, Aurora has requested an “if-and-when” contract from Reclamation for up to
10,000 acre-feet for storage of both leased water and water from other sources. Aurora expects
to subsequently store leased water in the long-term “if-and-when” contract storage space
requested from Reclamation.

i. Southeastern agrees not to contest Reclamation’s determination of
authority to contract with Aurora, so long as such contracts are consistent with the
terms of this IGA, nor to contest Aurora’s right to renew or modify the Existing
Long-Term Contracts with Reclamation for continuation of Aurora’s existing
operations using Fryingpan-Arkansas Project facilities. Southeastern does not
waive its right to provide comments to Reclamation regarding the terms and
conditions of such contracts, consistent with this IGA and with Southeastern’s
rights and interests in the Fryingpan-Arkansas Project.

j. Aurora may, at any time during the term of this IGA, request a
contract for delivery of Aurora’s Busk-Ivanhoe rights through excess capacity
when available in Fryingpan-Arkansas Project facilities on either a temporary or
permanent basis, should Aurora experience difficulties in moving those waters
through the Carlton Tunnel. Aurora shall notify Southeastern of such request, and
Southeastern may provide comments to Reclamation consistent with
Southeastern’s rights and interests and investment in such Fryingpan-Arkansas
Project facilities. Aurora may also file future Water Court actions that involve
Aurora’s Busk-Ivanhoe rights. The provisions of this IGA do not address and
shall not apply to any aspect of Aurora’s Busk-Ivanhoe rights.

k. Southeastern and Aurora will, within one year after execution of
this IGA, meet with each other and with Reclamation to discuss the possible joint
operation of Aurora’s proposed Box Creek Reservoir together with the Mt. Elbert
Conduit and other Fryingpan-Arkansas Project facilities, in ways that will not
adversely impact any Fryingpan-Arkansas Project operations.

l. Southeastern and Aurora will, within one year after execution of
this IGA, discuss with each other and with other interested parties, including but
not necessarily limited to Colorado Springs Utilities, the Board of Water Works
of Pueblo, Reclamation and the Colorado River Water Conservation District,
ways of meeting their portions of the 10,825 acre-foot water users' commitment pursuant to the PBO from Ruedi Reservoir and/or other water facilities in western Colorado.

m. During 2001 Aurora requested to participate in the Enlargements, in an amount not to exceed 10,000 acre-feet of storage for Aurora, on terms substantially similar to those outlined in the Implementation Committee Report for Enlargements participants, except that Aurora's participation obligations would include development of a greater proportionate amount of EWMS for Southeastern. Any future participation of Aurora in the Enlargements is not provided for in this IGA, but will require execution of a further agreement between Aurora and Southeastern, following completion of federal studies on the Enlargements and a full assessment of storage space needs for use within the Southeastern District, and will also require authorization by Congress as part of any legislation authorizing construction of the Enlargements.

2. Responsibilities.

Southeastern and Aurora shall cooperate fully in the implementation of this IGA. Specifically, Aurora and Southeastern each shall have the following responsibilities:

a. **Aurora's responsibilities:**

i. Aurora shall cooperate with Southeastern in joint efforts to enact appropriate federal legislation that provides specific authorization: (1) to implement the Re-operations component of the PSOP Report, (2) to engage in a Feasibility Study relating to the Enlargements component of the PSOP Report, and (3) for Aurora's contracting for "if-and-when" available storage and exchange use of excess capacity in current Fryingpan-Arkansas Project facilities. These efforts shall include coordination of lobbying efforts; sharing of information in developing joint strategies to reach the goal of passage of the federal legislation meeting the needs of both parties; meeting upon the request of either party to share information or develop such joint strategies; and attempting to reach agreement on such amendments as may facilitate passage of federal legislation, consistent with this IGA and the Parties' interests and objectives. Aurora and Southeastern acknowledge that such amendments may be agreed upon without need for amendment of this IGA.
ii. Aurora agrees that its use of Fryingpan-Arkansas Project facilities for exchange and storage shall be governed by its Contracts with the United States, shall be subject to limitations applicable to such Contracts as described in this IGA, and shall be subject to the Allocation Principles and to the spill priority established in the District’s Contract with the United States (Contract No. 5-07-70-W0086, as amended).

iii. Aurora, acting by and through its Utility Enterprise, represents and warrants that it is an “enterprise” as defined in Article X, Section 20(2)(d) of the Colorado Constitution, and that it is authorized to enter into the multiple-fiscal year financial obligations provided in this IGA, notwithstanding Article X, Section 20(4)(b) of the Colorado Constitution.

iv. Aurora shall provide to Southeastern an annual accounting of any water diverted pursuant to short-term leases and interruptible supply contracts within Section III.B.1.h of this IGA, and all other estimates and accounting reasonably necessary to facilitate Southeastern’s computation of the payments referred to in Section III.E. of this IGA.

v. Aurora agrees not to knowingly or intentionally impede the development and implementation of any of the storage components provided for in the PSOP Report. In the event Southeastern supports enactment of federal legislation that is limited to initial implementation of the Enlargements component of the PSOP Report, Aurora will not oppose such legislation so long as Aurora’s ability to enter into long-term contracts with Reclamation consistent with this IGA is not adversely affected.

vi. In order to comply with the National Environmental Policy Act (‘NEPA’) and related statutes applicable to Aurora’s Reclamation contract requests, it shall be Aurora’s sole responsibility to provide, at its own expense, any further engineering or other information necessary to document Aurora’s existing water supplies, present and future water uses, and need for additional water storage space, as well as any necessary analysis of other storage space alternatives available to Aurora.

vii. Aurora intends that any contract it executes with Reclamation for use of Fryingpan-Arkansas Project
facilities shall be for a term not to exceed 40 years, and shall provide for storage or exchange of non-Project water at rates established by the United States, after consultation with Southeastern and Aurora, for storage or exchange of water to be used outside Southeastern's boundaries. Aurora and Southeastern intend that such rates shall reflect Reclamation's current rate-setting policies for such out-of-District use, and must be sufficient to ensure that Aurora's uses of Fryingpan-Arkansas Project facilities will not result in any adverse or incremental impacts to Southeastern or other in-District beneficiaries in the financing, repayment, operation, maintenance and replacement of the Fryingpan-Arkansas Project.

viii. Aurora shall bear its own costs for any efforts necessary to secure its own contract or contracts for use of Fryingpan-Arkansas Project facilities, and shall be responsible for compliance with all terms and conditions imposed by the United States in any such contract.

ix. Aurora makes the following commitments, with the expectation that these commitments will be reflected in any future contract entered into between Aurora and the United States for use of Fryingpan-Arkansas Project facilities:

a. Aurora shall cooperate with Southeastern and other entities in a flow management program designed to bypass sufficient inflows, when necessary to achieve target minimum flows of 100 c.f.s. (including Fish Hatchery return flows) on the Arkansas River just below Pueblo Dam, as provided in the Implementation Committee Report.

b. For the term of this IGA during which Aurora owns and uses water rights that were originally decreed for diversion below Pueblo Reservoir, it shall participate in a long-term water quality monitoring and maintenance program as outlined in the Implementation Committee Report. The financial obligations for such participation began in January 2002, pursuant to a joint funding agreement between Southeastern and the United States Geological Survey ("USGS"). The non-federal portion of the cost-share for this program in 2002 was $57,404, and for 2003 will be $91,130. While this estimate illustrates the expected range of magnitude of costs,
Aurora’s obligations pursuant to this IGA shall be determined by Aurora’s share (based on a ratio of 5,000 acre-feet or actual contracted storage amounts, whichever is larger, to total participation in Reoperations and Enlargements) of actual costs incurred, rather than estimates.

c. Aurora will participate in a Regional Resource Planning Group ("RRPG") with Southeastern, to identify regional opportunities, to assist with establishing priorities and to guide implementation of those recommended plans. This group shall include representatives of at least Southeastern and Aurora and one additional representative from the PSOP Implementation Committee, and may, by separate agreement with Southeastern and Aurora, also include representatives of other entities within the Southeastern District such as the Upper Arkansas Water Conservancy District, Lower Arkansas Valley Water Conservancy District, Pueblo Board of Water Works, Colorado Springs Utilities and/or City of Pueblo. To assist in the initial funding for this Group’s tasks, Aurora will contribute $50,000 to the Southeastern Colorado Water Activity Enterprise for the sole purposes as described in this subparagraph c. by February 1 of each year from 2004 through 2008, inclusive. Southeastern and Aurora, with input from other participants, shall prepare and agree on an annual budget and task description by May 1st of each year from 2004 to 2008 to guide the activities of the RRPG. Any uncommitted funds contributed by Aurora at the end of the five year period will be returned to Aurora with no further obligation remaining to Aurora after that time for the activities of the RRPG absent a further agreement.

x. Aurora has requested, by letter of June 5, 2003, and will continue to diligently pursue, a long-term contract with Reclamation with a term of no more than 40 years for use of Fryingpan-Arkansas Project facilities. Upon execution of this IGA, Aurora will modify its request so as to seek such a contract upon terms consistent with this IGA.

xi. Aurora shall be solely responsible for any change of water rights proceeding or other adjudication that may be
necessary in order to store its own non-Project water in one or more of the Fryingpan-Arkansas Project Reservoirs.

b. **Southeastern's responsibilities:**

i. Southeastern shall cooperate with Aurora in joint efforts to enact appropriate federal legislation that provides specific authorization to: (1) implement the Re-operations component of the PSOP Report, (2) to engage in a Feasibility Study relating to the Enlargements component of the PSOP Report, and (3) for Aurora's contracting for "if-and-when" available storage and exchange use of excess capacity in current Fryingpan-Arkansas Project facilities. These efforts shall include coordination of lobbying efforts, sharing of information in developing joint strategies to reach the goal of passage of the federal legislation meeting the needs of both parties; meeting upon the request of either party to share information or develop such joint strategies; and attempting to reach agreement on such amendments as may facilitate passage of federal legislation, consistent with this IGA and the Parties' interests and objectives. Aurora and Southeastern acknowledge that such amendments may be agreed upon without need for amendment of this IGA.

ii. Southeastern shall provide to Aurora all estimates and accounting reasonably necessary to facilitate the payments referred to in Part III.E. of this IGA.

iii. Southeastern shall be responsible for administering the Winter Water Spill Credit and WWSC Surcharges as set forth in the Implementation Committee Report and in this IGA.

iv. Southeastern shall be responsible for facilitating the definition, implementation, and administration of the flow management program below Pueblo Dam as outlined in the Implementation Committee Report, with the advice of the Storage Implementation Committee and in consultation with Aurora. Similarly, Southeastern, in cooperation with the USGS, shall be responsible for facilitating the definition, implementation and administration of the long-term water quality monitoring and maintenance program as outlined in the Implementation Committee Report, with the advice of the Storage Implementation Committee and in
consultation with Aurora. Southeastern also will participate in a Regional Resource Planning Group, established with Aurora and other parties as provided in Sec. III.B.2.a.ix(c).

v. Southeastern may participate in scoping and review and provide comments to the United states, in order to implement and enforce this IGA and to protect Southeastern’s and its constituents’ interests in the Fryingpan-Arkansas Project, as part of the contract negotiation and NEPA compliance process related to any Aurora contracts with Reclamation concerning Fryingpan-Arkansas Project facilities. However, Southeastern shall not knowingly or intentionally impede Aurora’s contract negotiations and NEPA compliance conducted pursuant to this IGA.

vi. Southeastern shall cooperate to enable Aurora’s access to, and operation of, short-term leases and interruptible supplies to the extent provided in Section III.B.1.h. of this IGA.

vii. Southeastern’s undertaking and fulfillment of its responsibilities described above will depend upon its receipt of Aurora’s payments as set forth in this IGA.

C. Settlement of Litigation; Settlements with Other Parties

1. Within 90 days after execution of this IGA, and consistent with the agreed timetable attached as Exhibit 2 hereto, Aurora and Southeastern will complete negotiation and execution of stipulations that settle all outstanding issues in Water Division. 2 Case Nos. 99CW169, 99CW170, and 98CW137. Upon Southeastern’s execution of such settlement stipulations in Case Nos. 99CW169, 99CW170, and 98CW137, Aurora shall execute a stipulation withdrawing its statement of opposition in Water Division 2, Case No. 02CW037. Prior to execution of such settlement stipulations, Aurora shall not be required to make the payments provided for in Sections III.E.1 and III.E.4.a, c, and d of this IGA, and shall not commence any formal long-term contract negotiations with Reclamation, but may commence pre-negotiation activities including NEPA compliance and a related MOU with Reclamation.

2. No later than five days after execution of this IGA, Aurora and Southeastern will join in a motion to bifurcate Case No. 99CW169 so as to postpone any proceedings on the Applicants’ claims for alternate points of
diversion upstream from Pueblo Reservoir (the “Upstream Alternate Points”), in order that those claims would be dismissed upon the attainment of the following: 1) entry of a decree in the remaining portion of Case No. 99CW169 allowing use of Pueblo Reservoir as an alternate point of diversion, 2) entry of a decree in Case No. 99CW170 allowing exchange from Pueblo Reservoir to the upstream facilities claimed by the initial application therein and 3) execution of a long-term contract by Aurora with Reclamation. Any settlement stipulation between Southeastern and Aurora in Case Nos. 99CW169 and 99CW170 will provide that Southeastern consents to Aurora’s use of Pueblo Reservoir upon decreed terms and conditions that are consistent with this IGA, including a requirement, as a condition to Aurora’s use of Pueblo Reservoir, that Aurora have a valid contract for such use in effect at the time of such use; however, such stipulation will not include Southeastern’s consent to a decree for use of the Upstream Alternate Points in Case No. 99CW169. Southeastern and Aurora further intend that any settlement stipulation in Case No. 99CW169 will address Southeastern’s remaining identified concerns in a manner that will avoid injury without reducing Aurora’s long-term average yield as negotiated in Case No. 99CW169 of 5,104 acre-feet per year. Any settlement stipulation between Southeastern and Aurora in Case No. 98CW137 will be conditioned upon the Applicants’ dismissal of their claim for an alternate point of diversion at the Halfmoon Pipeline Intake. Any settlement stipulation between Southeastern and Aurora in Case Nos. 98CW137 and 99CW170 will provide for the bifurcation of all claims associated with the proposed Box Creek Reservoir and related facilities from those cases, so that those claims will be addressed by settlement stipulation and/or decree in conjunction with Aurora’s pending application in Case No. 01CW145 (Div. 2), rather than by Southeastern’s settlement stipulations in Case Nos. 98CW137 and 99CW170 as provided herein, or any decree entered pursuant thereto.

Any settlement stipulation between Southeastern and Aurora in Case Nos. 98CW137, 99CW169 and 99CW170 will provide for a decree requirement on Aurora’s future reuse efforts that is no less restrictive on Aurora than the negotiated provision attached as Exhibit 3 hereto. Attached as Exhibit 4 hereto is the parties’ Memorandum of Understanding that is referred to in the negotiated decree provision, which shall be approved by Aurora City Council and executed by all parties prior to the execution of settlement stipulations as provided herein.

3. Following execution of a stipulation with Aurora and Lake County in Case No. 98CW137, Southeastern will commence good faith negotiations with Lake County in an effort to achieve settlement of all outstanding issues between Southeastern and Lake County in Water Division 2, Case Nos. 98CW173 and 00CW139.

4. Southeastern is willing to participate in negotiations with Aurora and other parties to the pending retained jurisdiction proceedings in Case No. 83CW018, toward a settlement prior to the scheduled court hearing.
5. Upon execution of this IGA, Southeastern and Aurora shall commence good-faith negotiations in an effort to settle all outstanding issues in Water Division 2, Case No. 01CW145, within one year.

6. Southeastern and Aurora shall use their best efforts to include Upper Arkansas Water Conservancy District ("UAWCD") in all settlement discussions of cases in which UAWCD is a party.

7. Aurora agreed within a separate and distinct IGA with Otero County, dated October 29, 2001, that it will pay to the Otero County Treasurer and/or other appropriate taxing entities a total amount not less than the annual difference between tax assessments for land currently irrigated with water rights that are the subject of Case No. 99CW169, and the tax assessments for the same land after the cessation of irrigation, for a period of 90 years. Aurora has provided to Southeastern the executed agreement between Aurora and Otero County that describes the terms and obligations that will be met to satisfy this condition.

D. Management of Water Amounts Above Aurora’s Annual Arkansas Basin Component Requirements

1. Southeastern will have the opportunity to manage water amounts above Aurora’s annual Arkansas Basin component requirements in any year, subject to the following conditions:

   a. Aurora shall be solely responsible for making the determination each year of any water amounts above Aurora’s annual Arkansas Basin component requirements;

   b. Colorado Canal water may be provided to revegetated lands or lands to be revegetated in Crowley County prior to making such excess water available to Southeastern;

   c. Should Aurora enter into any agreement to develop storage in Otero County, any provision therein to provide water for entities in Otero County may take priority to providing excess supplies to Southeastern.

2. In managing these amounts of water above Aurora’s annual Arkansas Basin component requirements, Southeastern shall:

   a. Store Aurora’s annual excess water in Enterprise Water Management Space, or in alternative storage available to Southeastern until the Enterprise Water Management Space is available.
b. Allocate an initial amount of such water in the amount of 1,000 acre-feet to a Softening Pool operated by Southeastern. The purpose of this Softening Pool shall be to alleviate, wholly or in part, any negative impacts on upstream water rights resulting from Aurora’s exercise of its 1874 Rocky Ford Ditch water rights, without any charge to owners of such upstream water rights that are used within the boundaries of the Southeastern District. Southeastern shall make its best efforts to operate this Softening Pool, when available, to alleviate such impacts to upstream water users. Nothing herein shall preclude any additional agreement(s) that Southeastern or Aurora may enter into with the Upper Arkansas Water Conservancy District regarding the operation and/or management of this Softening Pool, including any provision of additional water to the softening pool.

c. Develop policies and set rates for the allocation and sale of such annual excess water for use within Southeastern’s boundaries, to the extent not allocated to the Softening Pool described above; and

d. Provide to Aurora a first right of refusal, exercisable within 30 days of Southeastern’s giving notice to Aurora by certified mail, to purchase 50 percent of the annual excess water conveyed to and stored by Southeastern (from water not allocated to the Softening Pool described above), to take from storage and use during the water year such excess water supplies are stored, at a rate of 1.5 times the rate for sale of such water to municipal entities inside the Southeastern District.

3. Aurora will provide to Southeastern the option to use up to 750 acre-feet of yield annually (which will be used to facilitate Southeastern’s operation of a water bank in the Arkansas River Basin), from those water rights described in Case No. 99CW169 when available, for a five year period following entry of the decree in Case No. 99CW169; provided that if such decree is not entered by April 15, 2004, then Aurora may give notice to terminate this option effective on or after April 15, 2009. Aurora’s assignment of this water is not subject to the first right of refusal provided in sub-section 2.c. of this section. Aurora will have the right to withhold delivery of this water for use within its water supply system during drought conditions, defined as any time Aurora’s present total system-wide reservoir storage is below sixty percent (60%) of capacity on March 15th of any given year. In any water year when Aurora withholds delivery of water pursuant to this provision, Aurora shall purchase at least an equal amount of water from a water bank operating in the Arkansas River Basin, if allowed by State law and if such water is available at a price not to exceed $100 per acre-foot in the year this option is exercised. Nothing in this IGA is intended to limit Aurora’s ability to lease or purchase water from a water bank operating in the Arkansas River basin. Aurora will, consistent with its overall system-wide water operations, make the water available for any remainder of the five-year period following a drought as soon as reasonably possible considering its system-wide demands and supplies.
E. Payment Requirements

1. Aurora shall pay the following sums to the Southeastern Colorado Water Activity Enterprise:

   a. $1,000,000 for contracting, financing and administration services, and/or for future water facilities development, construction, and engineering services, as a lump sum payment upon execution by Aurora and Reclamation of a long-term contract for use of Fryingpan-Arkansas Project facilities; this payment is not subject to proration as provided for herein.

   and

   b. Payments for contracting, financing and administration services and/or operation, maintenance and replacement services, payable in annual installments of $50,000 per year on the first day of February in each and every year, beginning upon the soonest occurrence of (i) when a decree has been entered in Case No. 99CW169, Water Division 2, and Aurora has obtained a contract for storage in Pueblo Reservoir of water available pursuant to said Case No. 99CW169; (ii) when the long-term contract described in sub-section a. immediately above is executed; or (iii) when legislation as described in Section III.B.1.a. above is enacted; and continuing for forty years for each year so long as Aurora has a contract in effect with Reclamation that allows Aurora to move Arkansas River basin water using Fryingpan-Arkansas Project facilities.

   c. Southeastern and Aurora intend that the proceeds from the payments Southeastern receives pursuant to sub-sections (a) and (b) immediately above should be applied to some combination of (a) payment by Southeastern to Reclamation for a full credit against Southeastern’s contract obligations for Fryingpan-Arkansas Project costs, credited in the year any such payment is made; (b) the mitigation of any impacts upon the Arkansas River basin that Southeastern is to address pursuant to this IGA; (c) development of water conveyance and/or storage facilities (including the Arkansas Valley Conduit) for use in the Arkansas River basin below Pueblo Reservoir, within Southeastern boundaries; and/or (d) funding a reserve fund for operation, maintenance and replacement of Fryingpan-Arkansas Project facilities. However, these payments to Southeastern are nonrefundable even if Southeastern is unable to apply the proceeds to any of these uses. The application of funds for these purposes will be made at Southeastern’s discretion but any such decision made by Southeastern will not create any further liabilities to Aurora.

2. Aurora agrees to reimburse Southeastern ten percent (10%) of Southeastern’s legal and lobbying expenses associated with the passage of the
legislation described in Section III.B. above. Aurora’s share of these expenses shall not exceed $25,000 absent further agreement of the Parties. Southeastern shall bill Aurora for such expenses incurred during the previous calendar quarter. Aurora shall make such reimbursement payments, together with payments pursuant to Section III.B.2.a.ix.b. and ix.c of this IGA, to Southeastern within 30 days of receipt of Southeastern’s request for payment.

3. Aurora commits that whenever it executes a contract with Reclamation pursuant to this IGA for storage of water in Fryingpan-Arkansas Project facilities it will, in executing such contract, agree to pay the following sums to the Southeastern Colorado Water Activity Enterprise as provided in sub-section III.E.3.c below:

a. a $10 surcharge for each acre-foot of water for which Aurora has a contract to store, but in no event less than 10,000 acre-feet, for a total payment of not less than $100,000, in each and every year that Aurora is under contract for use of Fryingpan-Arkansas facilities following execution of this IGA, in payment for Enterprise services in connection with such storage; provided that after 2013, this surcharge shall be the higher of $10 per acre-foot or one-and-one-half times the surcharge Southeastern charges upon storage of water in Fryingpan-Arkansas facilities for municipal use within the Southeastern District; and

b. additional surcharges on such storage (the “WWSC Surcharges”) in the amount set by Southeastern’s Board of Directors in its good faith discretion for Re-operations storage participants, for the purpose of providing Winter Water Storage Program participants a credit toward purchase of Project Water when Winter Water is spilled, as set forth in the PSOP Report and Implementation Committee Report.

c. The surcharges referenced in this sub-section 3 shall be due and payable to the Southeastern Colorado Water Activity Enterprise within 30 days upon receipt of the request for payment from the Enterprise, or at such time as provided in Aurora’s contract with Reclamation.

4. Aurora agrees to pay the following surcharges to the Southeastern Colorado Water Activity Enterprise for contracting, financing and administration services, and/or for future water facilities development, construction, and engineering services, in addition to those described above, in connection with Aurora’s expanded ability to use Fryingpan-Arkansas Project facilities in connection with interruptible supply agreements as provided for under Section III.B.1.h.:

a. Aurora shall pay to Southeastern a lump sum payment totaling $4,800,000, which lump sum represents the value received by Aurora through its ability to obtain a total of approximately 96,000 acre-feet of leased water over the
first 25 years of this IGA according to the terms of Sec. III.B.1.h (3), at a unit rate of $50 per acre-foot, as provided herein. Of this amount, Aurora shall deposit $1,000,000 into an interest-bearing escrow account by February 1, 2004, and the remaining $3,800,000 by February 1, 2005. The full escrow balance (including accrued interest) shall be disbursed to Southeastern upon the later of Aurora’s execution of a long-term contract with Reclamation or February 1, 2005, with earlier interim disbursements of $50 per acre-foot of Category 2 water leased by Aurora according to the terms of Sec. III.B.1.h, by December 15 of each year in which Aurora leases such water. This lump sum payment is subject to proration only if the long-term contract between Aurora and Reclamation is for less than twenty-five years, in which event any funds paid by Aurora under this subsection in excess of the prorated amount are to be refunded to Aurora. Of this $4,800,000, Southeastern and Aurora intend that Southeastern will use $2,000,000 to subsidize participation by eligible entities east and west of Pueblo in the PSOP (Re-Operations and Enlargements).

b. In each calendar year that interruptible supply agreements are exercised by Aurora according to the terms of Sec. III.B.1.h (3), Aurora shall pay to Southeastern a unit rate of $41.32 per acre-foot, subject to adjustment as provided below, for water delivered to Otero Pump Station. Over the term of this IGA, Aurora shall pay to Southeastern an anticipated total amount of $6,000,000. Each February 1st, Aurora shall pay Southeastern a dollar amount based upon the total amount of water delivered to Otero Pump Station during the previous calendar year times the unit rate of $41.32 per acre-foot, subject to adjustment as provided below. If Aurora does not receive delivery of such water, in whole or in part, during the term of this IGA, then the remaining balance of the $6,000,000 total amount, net of any amounts previously paid pursuant to this sub-section b, shall be due and payable to Southeastern as a balloon payment on or before December 31 of the final year of the term of this IGA; except that if Aurora is prevented from receiving delivery of such water using Fryingpan-Arkansas Project facilities for any part of the term of this IGA, then this $6,000,000 total obligation shall be reduced by $41.32 per acre-foot that Aurora is prevented from receiving, but in no event shall this total obligation be reduced to less than $4,000,000, so long as Aurora maintains the ability to exercise leases as described in Section III.B.1.h using Fryingpan-Arkansas Project facilities for at least 25 years during the term of this IGA.

i. Commencing January 1, 2028 and continuing throughout the remaining term of this IGA, the unit rate per acre-foot for water delivered to Otero Pump Station shall be subject to increase every five years on January 1st of such year. Such increase shall be equal to the percentage increase, if any, of Aurora’s water rates for its residential and commercial customers for treated water over the preceding five-year period. By September 30, 2027, and every five
years thereafter, Aurora will provide Southeastern with information on Aurora's water rates for its residential and commercial customers for treated water over the preceding five-year period, enabling the Parties to make this determination. Southeastern will provide Aurora at least 30 days written notice of any rate adjustment pursuant to this sub-section before such increase shall be effective. In no event shall the unit rate per acre-foot be reduced.

ii. Southeastern and Aurora intend that Southeastern will apply payments received after December 31, 2028 pursuant to this Sec.III.E.4.(b), in an amount up to $2,000,000, to assist in developing storage in the upper Arkansas River basin for water to be used within the Southeastern District and the Upper Arkansas Water Conservancy District, if such storage can be beneficially used.

c. Aurora shall pay to Southeastern an additional lump sum amount of $1,250,000 in recognition of the value that operation of interruptible and short-term leases in the amount of up to 96,000 acre-feet provides to Aurora's future growth during the first 25 years of the term of this IGA. This payment will be made within 12 months of the date of execution of this IGA. Additional payments of $50,000 per year payable on February 1st of the following year will be made for service beyond the first twenty-five years of this IGA (with the first such payment due February 1, 2030), so long as Aurora maintains the ability to exercise such leases using Fryingpan-Arkansas Project facilities.

d. In addition to the amounts set forth above, Aurora shall pay to Southeastern an additional lump sum amount of $4,000,000 by September 30, 2028. Such amount reflects the benefits to be derived by Aurora under this IGA over the remaining 15 years of this IGA, so long as Aurora maintains the ability to exercise leases as described in Section III.B.1.h using Fryingpan-Arkansas Project facilities.

IV. General Provisions and Term

A. Term. This IGA shall remain in effect until the expiration of the term of Aurora's initial long-term contract (not to exceed 40 years) with Reclamation pursuant to this IGA or for 40 years from execution of this IGA, whichever is longer, or until terminated by a subsequent written agreement of both parties hereto.

B. Notices. Any notice, demands or other communications required or desired to be given under any provision of this IGA shall be given in writing, delivered personally or sent by certified or registered mail, return receipt requested, postage pre-paid, addressed as follows:
To Southeastern:
General Manager
Southeastern Colorado Water Conservancy District
31717 United Avenue
Pueblo, Colorado 81001

To Aurora:
Director of Utilities
15151 East Alameda Parkway
Suite 3600
Aurora, Colorado 80012-1555

or at any other such address as either party may hereafter, from time to time, designate by written notice to the other party given in accordance with this paragraph. Notice shall be effective upon receipt.

C. **Heads for Convenience Only.** Paragraph headings and titles contained in this IGA are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this IGA.

D. **Amendment.** This IGA may be modified, amended or changed in whole or in any part only by an agreement in writing duly authorized and executed by Aurora and Southeastern with the same formality as this IGA.

E. **Waiver.** The waiver of any breach of any provision of this IGA by either Aurora or Southeastern shall not constitute a continuing waiver of any subsequent breach of said party, either for breach of the same or for breach of any other provision of this IGA.

F. **Non-Severability.** Each paragraph of this IGA is intertwined with the others and is not severable unless by mutual consent of Aurora and Southeastern.

G. **Effect of Invalidity.** If any portion of this IGA is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties agree to use their best efforts to reform as soon as possible any such invalidity and achieve a valid agreement that accomplishes the purposes of this IGA as originally set forth.

H. **Governing Law.** This IGA and its application shall be construed in accordance with the laws of the State of Colorado.

I. **Multiple Originals.** This IGA may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same IGA.
J. **Survival of Representations.** Each and every covenant, promise, payment or option contained in this IGA shall not merge in any deed, lease, contract or other instrument conveying or concerning any interest in the land, water rights or any other type of real property, but shall survive each instrument and transfer, nevertheless, and be binding and obligatory upon each of the parties.

K. **No Attorney’s Fees.** In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this IGA, the parties agree that each shall be responsible for their own costs and attorneys fees associated with any such activities, with the exception of any claims found by the courts to be frivolous or groundless as per Colorado statutes.

L. **Specific Performance Available.** In the event of litigation concerning this IGA, without limiting other form of remedies available, the remedy of specific performance will be available to either Aurora or Southeastern.

M. **Intent of Agreement.** This IGA is intended to describe the rights and responsibilities of and between Aurora and Southeastern and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto, nor to limit; impair, or enlarge in any way the powers, regulatory authority and responsibilities of Aurora or Southeastern, or any other governmental entity not a party hereto.

N. **Joint Draft.** The parties hereto, with each having the advice of legal counsel and an equal opportunity to contribute to its content, jointly drafted this IGA.

O. **Non-Business Days.** If the date for any action under this IGA falls on a Saturday, Sunday or a day that is a “holiday” as such term is defined in CRCP 6, then the relevant date shall be extended automatically until the next business day.

P. **Non-Assignability.** Neither Aurora nor Southeastern may assign its rights or delegate its duties under this IGA without the prior written consent of the other party, except that either party may assign and delegate to a separate enterprise formed by that party’s governing Board or Council, which enterprise is wholly owned by that party.

Q. **Successors and Assigns.** This IGA and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns in the event assignment is allowed.

R. **Reduction Clause.** This IGA represents the entire agreement of the Parties, and neither Party has relied on any fact or representation not expressly set forth herein. This IGA supersedes all prior agreements and understandings of any type, both written and oral among the Parties with respect to the subject matter hereof.

S. **Sole Obligation of the Utility Enterprise.** The parties agree that any and all obligations of Aurora under this IGA are the sole obligations of the City of Aurora Utility Enterprise, and as such, shall not constitute a general obligation or other indebtedness of the City
of Aurora or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of any constitutional, statutory, or charter limitation. The parties also agree that, in the event of a default by Aurora on any of its obligations under this Agreement, Southeastern shall not have any recourse against any of the properties or revenues of the City of Aurora, except that in order to satisfy any non-appealable judgment against Aurora, Southeastern shall have recourse against the net revenues of the Aurora Water System that are available therefore in the City of Aurora Utility Enterprise Water Fund, or any successor enterprise fund, after payment of all expenses related to the operation and maintenance of said Aurora Water System.

V. Definitions.

A. “Amounts above Aurora’s annual Arkansas Basin component requirements” means water originating from Aurora’s Arkansas River Basin water rights that is available to Aurora but is not taken to meet current Aurora municipal demand in a given water year.

B. “Aurora” means the City of Aurora, Colorado, acting by and through its Utility Enterprise created by Aurora Ordinance No. 93-31 effective June 9, 1993.

C. “Enlargements” means the proposed enlargements to Pueblo Reservoir and Turquoise Reservoir, as described in the PSOP Report and Implementation Committee Report.

D. “Enterprise Water Management Space” or “EWMS” means that portion of Enlargements storage space managed by Southeastern as described in the PSOP and Implementation Committee Reports.

E. “Fryingpan-Arkansas Project” means the Fryingpan-Arkansas Project, which was authorized by the Act of Congress approved August 16, 1962 (76 Stat. 389), as amended.

F. “Implementation Committee Report” refers to the report dated April 19, 2001 developed by Southeastern’s Preferred Storage Options Plan Implementation Committee, together with any subsequent amendment or supplement thereto.

G. “Interruptible Supply Agreement (or contract),” for the purpose of this IGA, means a lease, option or other agreement for the temporary cessation of the historic and decreed irrigation use of water and the temporary use of such water by Aurora outside of the Arkansas River basin, pursuant to Colorado law. Such temporary cessation/use may be during a full or partial season of historic use. Colorado laws authorizing the use of interruptible supply agreements, for the purpose of this IGA, include but are not limited to C.R.S. §§ 37-80-120; 37-80.5-101, et seq.; 37-83-105; 37-90-137; 37-92-308; and 37-92-309.

H. “Long-Term Contract” means, for the purpose of this IGA, a multi-year contract of at least 25 years. The Parties hereto intend that Aurora enter into a long-term contract with Reclamation for a term of 40 years.

J. "Reclamation" means the United States Department of the Interior, Bureau of Reclamation.

K. "Rocky Ford Ditch Sellers Group" means those individuals who have executed with Aurora a Master Contract for Purchase of Rocky Ford Ditch Company Stock and who as a group appear as a co-Applicant with Aurora in Water Division 2, Case No. 99CW169.

L. "Southeastern" means the Southeastern Colorado Water Conservancy District, including its Southeastern Colorado Water Activity Enterprise created by resolution of the Southeastern Board of Directors dated September 21, 1995, as amended.

M. "Upper Arkansas River Flow Management Program" refers to the cooperative program with the Colorado Department of Natural Resources (currently an annual program), whereby Reclamation releases water from either Twin Lakes and/or Turquoise Reservoirs specifically for instream uses, including recreation and fishery uses, followed by storage in Pueblo Reservoir.

N. "Water year" means the time period from March 16 of a given year to March 15 of the following year.

O. "Winter Water Storage Program" means the program whereby non-Project water available to certain water rights is stored in Pueblo Reservoir and other facilities between November 15 and March 15, as described and decreed in Case No. 84CW179, Water Division 2.

ATTEST:

JAMES W. BRODERICK
Asst. Secretary

By: ALAN HAMEL, President

SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT

STEPHEN H. LEONHARDT, ESQ.
Burns, Figa & Will, P.C.
ATTEST:

DEBRA A. JOHNSON,
City Clerk

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

PAUL E. TAUER, Mayor

APPROVED AS TO FORM FOR AURORA:

JOHN M. DINGESS, ESQ.
Special Counsel

SEAL
STATE OF COLORADO
COUNTY OF PUEBLO

The foregoing instrument was acknowledged before me this 3rd day of October, 2003, by Alan Hamel, President, and attested to by James W. Broderick, Assistant Secretary, on behalf of the Southeastern Colorado Water Conservancy District.

Witness my hand and official seal.  

My commission expires: 9-13-05

(SEAL) NOTARY PUBLIC

STATE OF COLORADO
COUNTY OF ARAPAHOE

The foregoing instrument was acknowledged before me this 3rd day of October, 2003, by Paul E. Tauer, Mayor, and attested to by Debra A. Johnson, City Clerk, on behalf of the City of Aurora, Colorado, acting by and through its Utility Enterprise.

Witness my hand and official seal.  

My commission expires: 10-15-05

(SEAL)

Attachments:
1. Draft Federal Legislation
2. Schedule for Settlement Negotiations
3. Proposed Reuse Language for Decree
4. Reuse Memorandum of Understanding
[H. R. _______]

To authorize the Secretary of the Interior to engage in a feasibility study relating to long term water needs for the area served by the Fryingpan-Arkansas Project, Colorado, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. Hefley introduced the following bill; which was referred to the Committee on ________

A BILL

To authorize the Secretary of the Interior to engage in a feasibility study relating to long term water needs for the area served by the Fryingpan-Arkansas Project, Colorado, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PURPOSES.

The purposes of this Act are as follows:

(1) To authorize the Secretary of the Interior (hereinafter referred to as "the Secretary") to engage in a feasibility study relating to present and future water supply and related storage requirements of the area served by the Fryingpan-Arkansas Project, Colorado.
(2) To amend the Act of August 16, 1962, as amended, (76 Stat. 389 et seq.) to authorize the Secretary to enter into contracts for the use of excess storage and conveyance capacity of the Fryingpan-Arkansas Project, Colorado, for nonproject water for municipal, water banking, and other beneficial purposes.

SEC. 2. FEASIBILITY STUDY.

(a) AUTHORIZED - Pursuant to Federal reclamation law (the Act of June 7, 1902, and all Acts amendatory thereof or supplementary thereto), the Secretary, through the Bureau of Reclamation, is authorized to conduct a feasibility study to determine the most feasible method of meeting the present and future water supply and related storage requirements within the area served by the Fryingpan-Arkansas project, including the potential enlargement of Fryingpan-Arkansas facilities. In conducting such study, the Secretary shall take into consideration the Preferred Storage Options Plan Report published September 21, 2000, by the Southeastern Colorado Water and Storage Needs Assessment Enterprise and Final PSOP Implementation Committee Report dated April 19, 2001 (hereinafter referred to as the “PSOP Reports”) and the need to ensure compliance with the Arkansas River Compact as executed by the states of Colorado and Kansas on December 14, 1948.

(b) FUNDING. - Before funds are expended for the study authorized by this section, the Southeastern Colorado Water Activity Enterprise shall first agree to participate in the feasibility study and to fund, at a minimum, 50 percent of the costs of such
study. The Southeastern Colorado Water Activity Enterprise’s share of the costs may be provided partly or wholly in the form of services directly related to the conduct of the study, as determined by the Secretary. Costs incurred prior to the enactment of this Act to develop the PSOP Reports may be credited toward such Enterprise’s share of the costs of the feasibility study, as determined by the Secretary.

(c) STUDY TO BE SUBMITTED. - The Secretary shall submit the feasibility study authorized by this section to the President and the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(d) FURTHER AUTHORIZATION REQUIRED FOR CERTAIN EXPENDITURES. - No funds shall be expended for the construction of enlargements, or any other alternative identified in the feasibility study authorized by this section, without further authorization by Congress.

(e) AUTHORIZATION OF APPROPRIATIONS. - There is authorized to be appropriated $4,000,000 to conduct the feasibility study authorized by this section.

SEC. 3. SECRETARY AUTHORIZED TO ENTER INTO CONTRACTS FOR THE USE OF EXCESS STORAGE AND CONVEYANCE CAPACITY OF THE FRYINGPAN-ARKANSAS PROJECT, COLORADO.

The Act of August 16, 1962, as amended, (76 Stat. 389 et seq., as amended), is amended further by adding at the end the following new sections:
§SEC. 8. (a)(1) Except as provided in Section 9, and subject to the provisions of this Act, including, but not limited to section 5, and all other applicable Federal statutes, the Secretary is authorized to enter into contracts with any agency or entity, private or public, including those operating or participating in a water bank established pursuant to Colorado law, for the use of excess capacity in the Fryingpan-Arkansas project for the purpose of diverting, storing, impounding, pumping, or conveying nonproject water for irrigation, domestic, municipal and industrial, or any other beneficial purpose.

(2) In entering into such contracts, the Secretary shall take into consideration the Preferred Storage Options Plan Report published September 21, 2000, by the Southeastern Colorado Water and Storage Needs Assessment Enterprise and Final PSOP Implementation Committee Report dated April 19, 2001 (hereinafter referred to as the “PSOP Reports”) and the need to ensure compliance with the Arkansas River Compact as executed by the States of Colorado and Kansas on December 14, 1948.

“(b) The Secretary is authorized to enter into contracts pursuant to this section provided that-

“(1) such contracts shall not impair or otherwise interfere with:

“(A) the Fryingpan-Arkansas Project’s authorized purposes;

“(B) the ability of the Fryingpan-Arkansas Project contractors to meet such contractual
obligations to the Secretary as exist at the time of the execution of a contract pursuant to the authority of this section;

"(C) such contractual obligations as the Secretary has to Fryingpan-Arkansas Project contractors at the time of the execution of a contract under the authority of this title;

"(D) the storage allocations and limitations pursuant to Contract No. 5-07-70-W0086, as amended, renewed or superceded, between the Southeastern Colorado Water Conservancy District and the United States, and the allocation principles adopted by the Southeastern Colorado Water Conservancy District on November 29, 1979, and confirmed by the district court of Pueblo County in Civil Action No. 40487 by decree dated December 18, 1979, including any subsequent modifications made by the district that are confirmed by the District Court;

"(E) the yield of the Fryingpan-Arkansas Project from its West Slope and East Slope water rights; or

"(F) the ability of individuals or entities located within the natural basin of the Arkansas River within Colorado to enter into contracts for the use of excess water storage and conveyance capacity
pursuant to section 8 of this Act or any other authority under Reclamation law.

"(2) To the extent such contracts are with an individual or entity that does not have an allocation of Project carry over storage space pursuant to the allocation principles adopted by the Southeastern Colorado Water Conservancy District on November 29, 1979, and confirmed by the District Court of Pueblo County in Civil Action No. 40487 by decree dated December 18, 1979, including any subsequent modifications made by the District that are confirmed by the District Court ('non-qualified' entities); the contracts shall not impair or otherwise interfere with the ability of qualified entities located within the natural basin of the Arkansas River within Colorado to enter into contracts for the use of excess water storage and conveyance capacity pursuant to this section 8. Except as provided in section 9, before entering into such a contract with an individual or entity that will use water stored or conveyed under such contract outside of the natural basin of the Arkansas River within Colorado, the Secretary shall provide the Southeastern Colorado Water Conservancy District a first right of refusal, exercisable within 90 days, to enter into contracts for the use of excess water storage and conveyance capacity made available to the individual or entity that will use water
stored or conveyed under such contract outside of the natural basin of the Arkansas River within Colorado.

"(3) Nothing in sections 8 through 12 of this Act shall--

"(A) increase diversions of Project water from the natural basin of the Colorado River;

"(B) increase diversions of nonproject water from the natural basin of the Colorado River within Colorado into another river basin for delivery or storage, except as provided in section 12 of this Act;

"(C) affect in any way contracts, or the renewal of contracts, entered into pursuant to authority other than section 8 of this Act, including, but not limited to, Contract Nos. 00XX6C0049 and 009D6C0048 between the Board of Water Works of Pueblo, Colorado and the United States, or the renewal of Contract Nos. 00XX6C0049 and 009D60048; Contract No. 6-07-70-W0090 (formerly Agreement No. 14-06-700-6019) between the Cities of Aurora and Colorado Springs and the United States; Contract No. 7-07-7010056 between Twin Lakes Reservoir and Canal Company and the United States; Contract No. 9-07-70-W0099 between the United States and High Line Canal Company; and Contract No. 2-07-70-W0104 between Board of Water Works of Pueblo and the United States; or
"(D) affect the interpretation or implementation of existing law or legislation for any other Congressionally authorized water project.

"(c) Subject to the provisions of subsection (b), the Secretary may enter into contracts authorized by this section upon such terms and conditions as the Secretary may determine to be just and equitable. The term of any such contract shall be for such period, not to exceed 40 years, as the Secretary deems appropriate. Upon expiration, such contracts may be renewed upon such terms and conditions as may be mutually agreeable to the Secretary and the contractor for the use of excess capacity.

"(d) The Secretary shall establish such charges, subject to subsection (e), for the use of excess capacity as the Secretary deems appropriate. Such charges shall consist of the following components.

"(1) One component shall reflect either

(A) construction costs based on either the original cost, the estimated current costs, or other appropriate measure of costs, including interest as provided in paragraph (3) of this subsection, of constructing the Fryingpan-Arkansas project facilities involved; or

(B) another appropriate rate, such as a market rate.
"(2) A second, separate component shall reflect an appropriate charge for operating, maintaining, and replacing these same facilities.

"(3) Except in the case of a market based rate, when excess capacity in Fryingpan-Arkansas Project facilities will be used to divert, store, impound, pump, or convey nonproject water for municipal and industrial purposes, an interest component using the rate determined by the Secretary in accordance with the Water Supply Act of 1958 (43 U.S.C. §390b).

"(e) All charges established pursuant to this section shall be just and equitable as to the rates paid by the project contractors that receive project water from the Fryingpan-Arkansas Project facilities. The project contractor rate shall be the baseline from which adjustments can be made based on the particular circumstances involved in the contract.

"(f) Prior to the execution of any contracts under this section, the Secretary shall execute an agreement with the Southeastern Colorado Water Activity Enterprise to provide guidelines for the terms to be contained in the contracts executed pursuant to this section. Such guidelines shall appropriately address impacts associated with water operations under the contracts, such as storage and conveyance charges, surcharges established by the Enterprise, reimbursement of costs incurred, and water quality monitoring, as identified by the Southeastern Colorado Water Activity Enterprise and the Secretary.
"(g) Any contract executed under this section shall contain a provision pursuant to which the contracting entity agrees to cooperate in a voluntary flow management program designed to maintain a target minimum flow of 100 cfs just below Pueblo Dam.

"SEC. 9. (a) The Secretary of the Interior may enter into new and renewal contracts with the City of Aurora, Colorado, or an enterprise of the City, for a term not to exceed the term referenced in Section 8(c), for use of storage or carrying capacity excess of the requirements of the Fryingpan-Arkansas Project, Colorado, for the purpose of impounding, storage, and carriage of non-project water for domestic, municipal, industrial and other beneficial purposes. Such contracts shall be--

"(1) limited to the storage and carriage of waters appropriated from the Arkansas River held by the City of Aurora, Colorado, or an enterprise of the City that--

(A) are decreed water rights and owned by the City of Aurora, Colorado, or an enterprise of the City as of December 7, 2001, or;

(B) are water rights described in a Colorado Water Court water rights application pending as of December 7, 2001, or an amendment or re-filing thereof, as long as such amendment or re-filing does not increase the draft of water from the Arkansas
Basin that would have been available to City of Aurora, Colorado, or an enterprise of the City under the original application, or

(C) result from water lease agreements existing as of December 7, 2001, including any renewal or replacement contract for no more than the existing amount of water, or

(D) result from interruptible supply agreements or water bank transactions authorized under Colorado law, and operating no more than five calendar years during any period of ten consecutive calendar years, or

(E) is traded to, or exchanged with, the City of Aurora, Colorado, or an enterprise of the City for one of the foregoing items (A) through (C) as long as such trade or exchange does not increase the draft of water from the Arkansas River Basin that would have been available to the City of Aurora, Colorado, or an enterprise of the City under subparagraphs (A) through (C);

"(2) are for water obtained by the City of Aurora, Colorado, or an enterprise of the City from the Colorado River consistent with section 12;

"(3) contain a provision pursuant to which the City of Aurora agrees to cooperate in a voluntary flow management program designed to maintain a target minimum
flow of 100 cfs just below Pueblo dam;

"(4) include a provision whereby the City of Aurora, Colorado, or an enterprise of the City, agrees to participate in a long-term water quality monitoring and management program as outlined in the Implementation Committee Report dated April 19, 2001; and

"(5) ensure compliance with the Arkansas River Compact as executed by the states of Colorado and Kansas on December 14, 1948.

"(b) Prior to the execution of any renewal contract with the City of Aurora, the Secretary of the Interior shall execute an Agreement with the Southeastern Colorado Water Activity Enterprise, which agreement shall provide guidelines for the terms to be contained in a renewal contract executed pursuant to this section. Such guidelines shall appropriately address those impacts associated with water operations under the contracts, such as storage and convenience charges, surcharges established by the Enterprise, reimbursement of costs incurred, and water quality monitoring, as identified by the Southeastern Colorado Enterprise and the Secretary.

"(c) Any contract executed under the authority of subsection (a) or (b) shall be in compliance with the provisions of section 8(b)(1).

"(d) The Secretary shall establish such charges under this section 9 in a manner consistent with the provisions of section 8(d) and (e).
"SEC 10. (a) Except as provided under subsection (b), all revenue generated pursuant to contracts executed under sections 8 and 9 shall be credited as follows:

"(1) That portion of the charges established pursuant to section 8(d) and 9(d) which is attributable to the component which reflects interest shall be credited as a general credit to the Reclamation Fund.

"(2) That portion of the charges established pursuant to section 8(d)(2) and the comparable provision of 9(d) shall be credited against the appropriate project operation, maintenance, and replacement costs.

"(3) All remaining revenues in excess of those in paragraphs (1) and (2) of this subsection shall be credited as follows:

(A) If reimbursable federal construction costs are outstanding for the Fryiingpan-Arkansas project at the time revenues are received, then all remaining revenues shall be covered into the Reclamation Fund and credited to the Fryiingpan-Arkansas project. All remaining revenues shall be credited against such reimbursable costs in a manner the Secretary deems to be just and equitable as to the reimbursable purposes which are involved. The revenues so credited shall not be applied so as to reduce the amount of the current annual payments due the Secretary from the project contractors or any other parties responsible for
paying outstanding reimbursable project construction costs unless and until the party's current annual payment due exceeds the remaining reimbursable construction costs payable by the party.

"(B) If no reimbursable Federal Fryingpan-Arkansas project construction costs are outstanding at the time revenues are received, then all remaining revenues shall be credited to a separate fund, established in the Treasury of the United States, to be known as the Fryingpan-Arkansas Project Fund, which shall remain available, without appropriation, for new federally funded construction on the project, including, but not limited to, additions, rehabilitations and betterments, safety of dams modifications, and major capital replacements, applied against the Federal reimbursable costs, if any, of such new construction in such manner as the Secretary deems just and equitable as to the Federal reimbursable project purposes involved. No expenditures may be made from the Fryingpan-Arkansas Project Fund without the express written consent of the Secretary and the Enterprise.

"(b) DIRECT PAYMENTS. - Payments generated pursuant to contract terms established under section 8(f) and the comparable provisions of 9(b) shall be made directly by the contractors to the Southeastern Colorado Water Activity Enterprise.
"SEC. 11. (a) Nonproject water diverted, stored, impounded, pumped, or conveyed under a contract entered into pursuant to section 8 or 9 shall be exempt from any acreage limitation provisions of the Act of June 17, 1902 (32 Stat. 388), and Acts amendatory thereof and supplementary thereto including, but not limited to, the Warren Act of 1911, the Reclamation Reform Act of 1982 (96 Stat. 1263; 43 U.S.C. 390aa–390zz–1) and from any farm unit size limitations established pursuant to section 4(c)(5) of the Act of August 11, 1939 (Chapter 717; 16 U.S.C. 590z–2(c)(5)).

(b) Notwithstanding subsection (a), if such nonproject water is commingled with project water in Reclamation project facilities, and the resulting commingled supply is used to irrigate lands in a project contractor’s service area, then such commingled water shall bear the same acreage limitations or farm unit size limitations as the project water unless --

"(1) contract provisions are in effect which provide that project or nonproject water, or both, will be accounted for on a quantitative basis, that project water will not be delivered to ineligible land, and that appropriate charges, as determined by the Secretary, will be paid for the project water, and

"(2) the charges for the use of the excess capacity include an appropriate interest component, as determined by the Secretary."
"SEC. 12. (a) Excess water storage capacity of the Fryngpan-Arkansas project to divert, store, impound, pump, or convey nonproject water made available under contracts executed pursuant to the provisions of sections 8 and 9 shall not be utilized so as to increase diversion of nonproject water from the natural basin of the Colorado River within Colorado into another river basin for delivery or storage unless --

"(1) the diversion is the subject of a decree entered prior to the effective date of this section for which no new infrastructure or legal approvals are necessary to divert the water out of the natural basin; or

"(2) the diversion is the subject of an agreement in existence on the date of the enactment of this section, contemplating additional diversions diverted through or stored in the facilities authorized by this Act, between the beneficiary of such transbasin diversion and the water conservation district, as defined under Colorado law, from within whose boundaries the waters are proposed for diversion; or

"(3) the diversion is the subject of an intergovernmental agreement or other contractual arrangement executed after the date of the enactment of this section, between the beneficiary of such transbasin diversion and the water conservation district, as defined under Colorado law, from within whose boundaries the waters are proposed for diversion; or
“(4) the beneficiary of such transbasin diversion provides compensatory storage or alternate water supply in an amount equal to the quantity diverted out of the basin for the benefit of the water conservation district, as defined under Colorado law, from within whose boundaries the waters are proposed for diversion.

“(b) Prior to executing any agreement, or arrangement or agreement for provision of compensatory storage or alternative water supply, that allows for increased diversions of nonproject water as described in subsection (a), the parties to such agreements or arrangements shall submit the agreement or arrangement to the Secretary, who, within 30 days, shall submit such agreement or arrangement to the President Pro Tempore of the Senate and the Speaker of the House of Representatives for a period of not less than 60 days.

“(c) This section shall not be considered as precedent for any other congressionally authorized project.
EXHIBIT 2

SECWCD/ Aurora cases: Schedule for settlement negotiations per IGA (assumes IGA is executed by Oct. 3, 2003)

1. Rocky Ford (II) Transfer (99CW169) [trial set 12/2/03], Reuse issue:

Sept. 30  Assess settlement progress- vacate remaining depositions, of SE, UA & Applicants’ witnesses, etc.

Sept. 30  Sign/ file stip. on motion to bifurcate upstream alternate points

Sept. 30  Aurora to provide revised proposed decree in response to SE comments, including bifurcation of upstream points

Oct. 1-3  Execution of IGA and Reuse MOU

Oct. 3    Exchange proposed settlement stipulations

Oct. 3    Deadline (per Case Mgmt. Order) for identification of trial information not previously disclosed pertaining to Part A of bifurcated case

Oct. 6    SE deadline (extended) for 26.a.2 on reuse: not needed (and can vacate some depo’s) because bifurcation, Reuse MOU agreed

Oct. 7    SE, Applicants meet to negotiate any remaining terms

Oct. 9    Finalize proposed decree and stip. for SECWCD Board review

Oct. 16   SECWCD Board to approve settlement stipulation

Oct. 17   SE and Applicants sign stipulation

Oct. 20   Discovery cutoff (per Case Mgmt. Order)

Oct. 17-Nov. 8    Further negotiations if needed

Dec. 2-19  Trial date
2. Rocky Ford (II) Exchange (99CW170) [no trial set; still on Referee’s docket]
(schedule is tentative):

Oct. 6-14  SE to provide initial comments on proposed decree provided by Aurora in early August (will attempt to get engineers’ input for comments by then—McGregor, Walter)

Oct. 16   SECWCD Board’s initial consideration of settlement, directions for negot.

Oct. 20-23 SE, Aurora meet to negotiate proposed decree and related issues

Oct. 24-31 Aurora provides revised proposed decree, w/ Box Cr. claims bifurcated

Nov. 4-5 SE to provide proposed stip. and further comments on proposed decree

Nov. 6-11 SE, Aurora meet to further negotiate issues

Nov. 13 Provide revised proposed decree and stip. for SECWCD Board review

Nov. 20 Target date for SECWCD Board to approve settlement stipulation as package deal with Aurora withdrawal from 02CW037

Nov. 21-Dec. 4 Sign stip. (in tandem with 02CW037), or further negot. if needed

Dec. 11-18 Final meeting for SECWCD Board to approve settlement stipulation

Dec. 19 Target deadline to sign settlement stipulation
3. **Aurora/ Lake County transfer case (98CW137) [trial set 5/10/04] (see above re: reuse issue)**

**Sept. 30**  Deadline for Objectors’ expert disclosures (except on Halfmoon Cr., Box Cr., reuse)

**Oct. 1**  SE supplement prop. decree comments based on expert reports

**Oct. 2-6**  Aurora to provide revised proposed decree, w/ Halfmoon Cr. claim dismissed, Box Cr. claims bifurcated, Reuse addressed per MOU

**Oct. 7-14**  Experts meet to negotiate HCU and related issues; Parties negotiate proposed decree and settlement terms; try to finalize proposed agreement on long-term HCU figure

**Oct. 16**  SECWCD Board’s initial consideration of settlement, directions for negot.

**Oct. 20-Nov. 7**  Parties conduct further settlement discussions

**Nov. 13**  Finalize proposed decree and stip. for SECWCD Board review

**Nov. 15**  Deadline for Aurora’s rebuttal expert disclosures

**Nov. 20**  SECWCD Board approval of settlement stipulation

**Nov. 21-Dec. 4**  Target deadline to sign settlement stipulation; or further negotiations if needed