

BEFORE THE PUBLIC UTILITIES COMMISSION

STATE OF COLORADO

Docket No. 04A-524W

IN THE MATTER OF THE APPLICATION OF LAKE DURANGO WATER COMPANY FOR AN ORDER AUTHORIZING LAKE DURANGO WATER COMPANY TO PROCEED WITH THE CONSTRUCTION OF THE LIGHTNER CREEK PROJECT AND ENTER INTO AN AGREEMENT WITH THE TIERRA HERMOSA LLC FOR TAPS AS PAYMENT FOR DEVELOPMENT OF THE LIGHTNER CREEK PROJECT AND ITS FUNDING.

Docket No. 04A-525W

IN THE MATTER OF THE APPLICATION OF LAKE DURANGO WATER COMPANY FOR AN ORDER AUTHORIZING LAKE DURANGO WATER COMPANY TO ACCESS FUNDS IN THE CAPITAL IMPROVEMENT ESCROW ACCOUNT TO PAY FOR ENGINEERING COSTS RELATED TO THE DEVELOPMENT OF THE LIGHTNER CREEK PROJECT.

**STIPULATION REGARDING ACCESS TO FUNDS IN THE CAPITAL
IMPROVEMENT FUND ESCROW ACCOUNT**

Lake Durango Water Company (LDWC), Staff of the Public Utilities Commission (Staff), Durango West Metropolitan District No. 1 (DW1), Durango West Metropolitan District No. 2 (DW2), the Board of County Commissioners of La Plata County, Colorado (LaPlata County), Rafter J Association, Inc. (Rafter J), Shenandoah Homeowners Association, Inc. (Shenandoah HOA), Shenandoah Highlands Homeowners Association (Shenandoah Highlands) and Barton K Cross (collectively the "Parties") hereby enter into this Stipulation.

I. INTRODUCTION

1. On October 15, 2004, LDWC filed an Application in which it seeks access to funds in its Capital Improvement Fund Escrow Account (the "CIF Account") to pay for an engineering study for development of the Lightner Creek Project (Engineering Application), which was assigned Docket No. 04A-525W.¹

2. One component of the Settlement Agreement entered into in Dockets 03S-052W and 02A-629W, collectively the 2003 Lake Durango Water Company rate case, was the creation and funding of the CIF Account. The CIF Account is designated and reserved for Commission-approved (a) customer rebates, (b) acquisitions of water supply or (c) major system infrastructure additions and improvements. No expenditures of CIF Account revenues shall occur without prior Commission approval. As of January 10, 2005, the balance in the CIF Account was \$61,850.16.

3. The Engineering Application seeks authorization to access up to \$53,240 from the CIF Account to pay for a comprehensive engineering study for the development of the Lightner Creek Project.

4. On December 22, 2004, a prehearing conference in this consolidated docket was held in front of Administrative Law Judge (ALJ) Mana L. Jennings-Fader. At such time, the Parties informed the ALJ that they had reached an agreement in principle concerning access to funds from the CIF Account for preliminary engineering and permitting work (the "Preliminary

¹ The Engineering Application was supplemented by a filing made on November 1, 2004.

Assessment”) related to the proposed Lightner Creek Project (“Project”), and verbally described such principles.²

5. This Stipulation formalizes the agreement in principle and the Parties respectfully request that the ALJ issue an order approving it as expeditiously as possible.

II. TERMS OF STIPULATION

1. The parties stipulate and agree that LDWC should be allowed to access up to \$25,000 from the CIF Account as needed to pay the cost associated with the Preliminary Assessment described below for the proposed Project.

2. The Preliminary Assessment shall include three distinct tasks: a) performance of a safe yield analysis from the Project operated in conjunction with Lake Durango Reservoir and using the best existing information to estimate the quantity of water available in the worst drought situation (2001 through 2004) and described in terms of the number of units capable of being served (based on 350 gallons per unit per day), given the Project’s water rights, sizing of the Project pump and pipeline, and other considerations that impact yield; b) performance of preliminary engineering and design work to produce a feasibility level Project cost estimate; and c) preparation and submittal of a Nationwide 12 Permit Application to the Army Corp of Engineers.

3. LDWC shall expeditiously and prudently solicit outside professional expertise to perform the Preliminary Assessment tasks described above. If the expected aggregate cost associated with the Preliminary Assessment tasks does not exceed \$25,000, then LDWC will be

² The Parties acknowledge that additional engineering work may be required and that it may be appropriate that additional funds from the CIF Account be used for such purposes. This Stipulation is designed to address preliminary, threshold engineering work that will provide information that will inform future decisions in this docket. This Stipulation is not meant to preclude LDWC from requesting authorization, in an appropriate manner, to access additional funds from the CIF Account as this proceeding progresses.

authorized to request disbursements of up to \$25,000 from the CIF Account and shall proceed with contracting for and finalizing the tasks in a timely manner. LDWC may access the funds in the CIF Account to pay for performance of the Preliminary Assessment as provided herein below. Copies of all contracts, invoices, or payment voucher requests associated with the Preliminary Assessment shall be provided to Staff, and to any other party upon request.

4. The Parties believe that \$25,000 from the CIF Account should be sufficient to adequately perform the Preliminary Assessment. However, should LDWC find that the \$25,000 is insufficient, LDWC may request that the Commission grant it authority to access additional CIF Account funds to complete the Preliminary Assessment. Prior to making such a request, LDWC shall provide all Parties with detailed information as to the basis for its position that additional funds are needed to complete the Preliminary Assessment. The Parties will promptly assess the information received and schedule discussions on the matter. Should the Parties agree that expenditures in excess of \$25,000 are justified, the Parties may jointly move the Commission to modify this Stipulation and increase the amount LDWC is authorized to access from the CIF Account. If any Party opposes the use of CIF Account funds in excess of \$25,000, then LDWC may move the Commission to increase the authorization for the Preliminary Assessment in spite of such opposition. Any Party may respond to the request as appropriate, including requesting that a hearing be held to address such request.

5. The CIF Account escrow agent shall be authorized by the Commission to disburse funds from the CIF Account if requested by LDWC in the following manner:

- (a) LDWC shall submit to the escrow agent a written request for disbursement. The written request shall provide sufficient information (e.g., detailed invoices) to identify the portion of the Preliminary Assessment for which payment is requested. The

escrow agent is not required to make payment directly to the party identified in the invoice and is not required to verify the accuracy of the information contained in the invoice; however, the escrow agent must ensure that the request is properly authorized by LDWC and that the sum of all disbursements are not in excess of \$25,000;

- (b) Officers of LDWC may be held personally liable for improper requests for disbursements of CIF Account funds.

6. LDWC shall provide Staff and each of the Parties with the results of the Preliminary Assessment. The Parties shall promptly assess the information and schedule discussions on the matter in an attempt to reach an agreement on whether the Project should be undertaken. Should the Parties agree, further stipulations in these proceedings may be filed consistent with the Parties' agreement. If agreement cannot be reached, LDWC may file appropriate requests with the Commission to authorize further expenditures on the Project. Any Party may respond to such requests as appropriate, including requesting that a hearing be held to address such requests.

III. GENERAL TERMS

1. This Stipulation shall not become effective until the issuance of a final Commission order approving the Stipulation, which order does not contain any modification of the terms and conditions of this Stipulation that is unacceptable to the Parties hereto. In the event the Commission modifies this Stipulation in a manner unacceptable to any Party hereto, that Party shall have the right to withdraw from this Stipulation and proceed to hearing on some or all of the issues that may be appropriately raised by that Party in this docket under a new

procedural schedule. The withdrawing Party shall notify the Commission, and the other Parties to this Stipulation, in writing within ten (10) days of the date of the Commission order that the Party is withdrawing from the Stipulation (such notice being referred to as the "Notice"). A Party who properly serves a Notice shall have and be entitled to exercise all rights the Party would have had in the absence of the Party's agreeing to this Stipulation. Hearing shall be scheduled on an expedited basis, as soon as practicable.

2. In the event that this Stipulation is not approved, or is approved with conditions that are unacceptable to any Party who subsequently withdraws, the negotiations or discussions undertaken in conjunction with the Stipulation shall not be admissible into evidence in this or any other proceeding.

3. Approval by the Commission of this Stipulation shall constitute a determination that the Stipulation represents a just, equitable and reasonable resolution of the issues specifically address in the Stipulation.

4. This Stipulation may be executed in counterparts, all of which when taken together shall constitute the entire agreement between the Parties with respect to the issues addressed by this Stipulation.

DATED this 18th day of January, 2005.

LAKE DURANGO WATER COMPANY

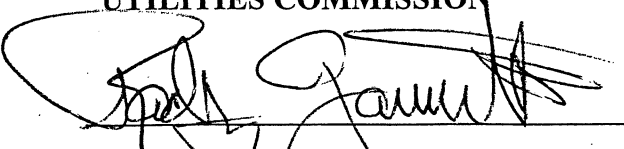
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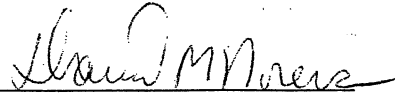
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**DURANGO WEST METROPOLITAN
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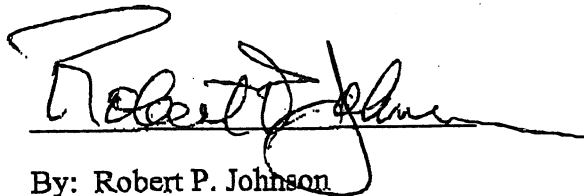
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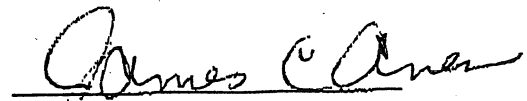
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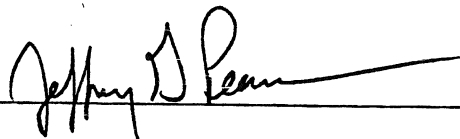
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Appendix A
Docket Nos. 04A-524W & 04A-525W
Decision No. R05-0087-I
January 20, 2005
Page 11 Of 16

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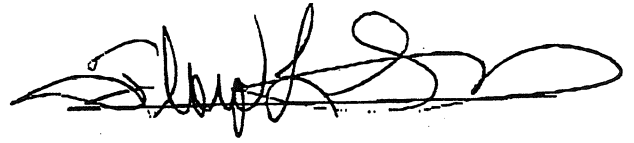
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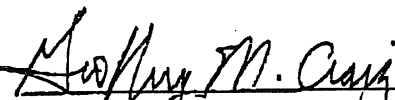
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