

*A Pueblo Story...*

# The Historic Arkansas Riverwalk of Pueblo

By Judy Kochevar



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# **INTRODUCTION**

For years, various members of the Pueblo community talked about beautifying central Pueblo in the area where the historic Arkansas River flowed. That area consisted of cooling ponds, parking lots, a ditch, weeds and debris. What once was originally home to Native Americans, trappers, adventurers, and, eventually, a thriving business district, deteriorated after the devastating flood of 1921 and the subsequent relocation of the river farther south. The Pueblo Conservancy District, which was formed after the flood to oversee the realignment of the river and the management of it, led the way to reclaim the original river channel and revive, as well as beautify, the historic tract.

In the mid-1980s the Conservancy District, with the cooperation and support of Aquila (formerly Centel and WestPlains Energy) and Tommy Thomson of the Southeastern Water Conservancy District, began studying the possibilities of beautifying the existing cooling ponds. About that same time, a handful of Pueblo residents were envisioning a river park similar to San Antonio's River Walk. These pioneers banded together and enlisted the help of the City and County of Pueblo, the Pueblo Board of Water Works, and other Pueblo residents to organize a plan of action to bring back the historic river channel to central Pueblo. What resulted after years of time-consuming meetings, planning sessions, legal wranglings, a bond election, and subsequent construction, is a sparkling gem in the heart of Pueblo. For generations to come, the Historic Arkansas Riverwalk of Pueblo or HARP will be a lively gathering place filled with people enjoying the once-forgotten location of a historical area of Pueblo and the Southwest.

The spirit of those community visionaries is very much alive in the city of Pueblo as witnessed in the building of the Riverwalk. This is their story.

To write this book, I had to rely on the historical information given to me by many people in the Pueblo community. This book would not have been completed without their interest, time, and cooperation. I received the information and data from many sources and this book was written in accordance with that information. I apologize to those people who were involved in this project and not mentioned in this book.

A special thank you to the board of the Pueblo Conservancy District – Pat Kelly, Kathy Farley, and Gus Sandstrom. My appreciation also goes to Don Banner, Frank Childress, Cathy Green, Alan Hamel, Diane Hochevar, Ray Koester, Tony Langoni, Leslie Martinez, Mel Murray, Lori Palomarez, Jeff Osterman, Ed Simonich, John Suhay, Tony Taibi, Dr. William Turman, George Williams, Jan Williams, Bill Zwick, and the staff of the City of Pueblo Planning Department.

Thank you to Kathleen Kochevar who voluntarily and patiently edited this book.

This book also contains all the legal documents pertinent to the construction of HARP.



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**Chronology**  
**Historic Arkansas Riverwalk of Pueblo**

<b>Date</b>	<b>Event</b>
<b>June 3, 1921</b>	Flood sweeps through Pueblo
<b>1922</b>	Pueblo Conservancy District formed
<b>May, 1923</b>	Decision to move the Arkansas River through Pueblo is published in Pueblo Conservancy District's Official Plan
<b>1925</b>	The new Arkansas River channel is completed
<b>1986</b>	Decision was made by Conservancy District to beautify the cooling ponds at Centel Corporation
<b>1990</b>	Discussions were begun by the Pueblo Conservancy District, the Southeastern Conservancy District, the City of Pueblo Planning Department, and citizens of Pueblo regarding the possible building of a river park in the old Arkansas River channel
<b>August, 1991</b>	Historic Arkansas River Task Force is formed
<b>1992</b>	Funding is garnered from many sources for initial planning and engineering studies
<b>1993</b>	Actions to ensure water supply and water rights are begun
<b>August 17, 1993</b>	Pueblo Board of Water Works resolved to obtain a reliable water supply for the river project
<b>October 27, 1993</b>	Letter of Understanding signed by the Pueblo City Council, Pueblo Conservancy District, Pueblo Board of Water Works, Aquila (formerly WestPlains Energy) to formulate cooperation and responsibilities
<b>March 28, 1994</b>	The Historic Arkansas River Project Commission was formed to oversee the management of the project
<b>August, 1994</b>	Funding is committed by the Pueblo Conservancy District and the City of Pueblo to pay for the Phase I construction drawings and design work by Design Studios West
<b>April 7, 1994</b>	The authority of the Pueblo Conservancy District is expanded to participate in the development of parks and recreational activities
<b>February 28, 1995</b>	The HARP Foundation is incorporated as a Colorado non-profit to accept and disburse public and private funding for the project
<b>1995</b>	A "Bring Back the River" campaign was waged to inform the citizens of the benefits of the proposed river walk and to encourage them to pass the \$12.85 million bond issue for the building of the river walk
<b>November 7, 1995</b>	The bond issue passes
<b>November 27, 1995</b>	The Pueblo City Council awards a contract to Design Studios West to complete the preliminary and final design of the project
<b>November, 1995-September, 1996</b>	Adjacent land for the river walk had to be secured via a lengthy legal process
<b>September 9, 1996</b>	The Pueblo Board of Water Works enters into a 150-year real property lease with Aquila (formerly WestPlains Energy) for the right to use their water supply, facilities, and land
<b>September 27, 1996</b>	Groundbreaking ceremony
<b>October, 1996</b>	Name of the project is changed to the Historic Arkansas Riverwalk of Pueblo
<b>August, 1998</b>	Construction begins on Phase II
<b>November 25, 1999</b>	1 <sup>st</sup> Annual Christmas Lights Extravaganza is held
<b>October 6 &amp; 7, 2000</b>	Official Grand Opening of the Historic Arkansas Riverwalk of Pueblo
<b>June 16, 2001</b>	1 <sup>st</sup> Annual Boats, Blues, and BBQ is held
<b>April 5, 2001</b>	Excursion boats launched at the Riverwalk
<b>January, 2002</b>	Construction begins on Phase IIC (Boettcher educational area)

## **EXECUTIVE SUMMARY**

### **Background**

The Pueblo Conservancy District was formed by the State of Colorado as a flood control authority after the devastating flood that swept through Pueblo, Colorado, on June 3, 1921, to build dikes and realign the river to its present location. The original river channel was transformed into the Historic Arkansas Riverwalk of Pueblo (HARP) in the late 1990's, with the Grand Opening occurring October 5 and 6, 2000.

The building of the Riverwalk was a labor of love for many concerned citizens of Pueblo as well as for the public and private entities that supported the project. From 1991 to the present, the citizens organized various groups to reach their goals. Working with the City and County of Pueblo, they raised critical funds, and are now planning for the future.

### **The Pueblo Conservancy District**

The Pueblo Conservancy District played an important role in the building of HARP. Its members had the foresight to explore the possibility of beautifying the cooling ponds at what is now Aquila (formerly WestPlains Energy). This enterprise, along with a citizens' initiative started by local dentist Frank Childress, led to the building of the Riverwalk modeled on the San Antonio River Walk.

The Pueblo Conservancy District continues to lend its monetary support and guidance to the Riverwalk today.

### **Historic Arkansas River Task Force**

To make the dream of a river park/river walk a reality, five members of the community formed the Historic Arkansas River Task Force in 1991. The group held its initial meeting on August 21, 1991. The project received various types of support from the Southeastern Water Conservancy District, the Pueblo Conservancy District, the Pueblo Chamber of Commerce, the City of Pueblo Planning Department, the Board of Water Works, Aquila, and Pueblo Community College.

According to the official minutes of that first meeting, the following occurred to begin the process of establishing a river walk in Pueblo:

- ◆ An overview of the project was presented and the task force was established to draft a strategic plan for the "development of a historic river park along the Arkansas River in downtown Pueblo. The task force will be known as the Historical Arkansas River Park Committee (H.A.R.P.)."
- ◆ The mission of the H.A.R.P. Committee was to "establish the historic Arkansas River channel as a multi-use river park."

### **Development Plan**

An initial development plan was prepared for the first meeting and revised during that meeting. The goal of the redevelopment effort was to "establish the Historic Arkansas River Channel as a multi-use river park between the Centel (formerly WestPlains Energy, now Aquila) cooling pond and Lew Rhoades Parkway."

In addition to the support of individuals, the City of Pueblo, the Board of Water Works, and Aquila joined the efforts of the Pueblo Conservancy District to realize the dream of a revitalization project which would capture the historical significance of the Arkansas River as the provider of "life blood" to the residents of Pueblo.

Knowing that they had many challenges to overcome in their pursuit of the river park, the task force galvanized their efforts to obtain funding and community support.

## **Water Rights Issues**

There can be no river park without a reliable source of water. This primary issue was seriously addressed during 1993. Concerted efforts by the Pueblo Board of Water Works, Aquila, and the Pueblo Conservancy District met this challenge head-on via engineering studies, legal work, foresight, and planning. Important issues facing the Water Resources Committee at this time were:

- ◆ Water supply—A reliable source of water was necessary for the initial project as well as any future project expansion. Compliance with state and federal water laws regarding temperature and water quality had to be in place.
- ◆ Water Rights—These rights needed to be protected for Aquila and the St. Charles Mesa Water District while ensuring an adequate water flow for the proposed project.

## **HARP Commission**

The HARP Commission was formed on March 28, 1994, by Resolution #7337 of the Pueblo City Council. According to the Resolution, the Commission had the following responsibilities:

- ◆ to promote and seek community support for and involvement in the project
- ◆ to act as a coordinating agency assisting in the development of cooperation agreements and relationships among interested private and public entities
- ◆ to evaluate and make recommendations concerning the plan, design, engineering, construction, management, maintenance and funding for the project and appropriate entities and organizations that perform such activities
- ◆ to organize a tax-exempt, non-profit foundation capable of accepting and disbursing private and public donations and contributions for the planning, design, construction, management and maintenance of the project

The HARP Commission was disbanded on April 9, 2001, by the Pueblo City Council with Resolution #9267 repealing Resolution # 7337 that had created the HARP Commission. In its place, the HARP Authority formed the Citizens Advisory Design and Construction Committee, ensuring that the Authority will continue to benefit from the expertise of the former HARP Commission members. The Executive Director of the HARP Authority oversees this committee.

## **Election**

After more than four years of planning and soliciting cooperation among various public entities and the Pueblo citizenry by the HARP Commission, the bond issue for the Riverwalk passed by a narrow margin on November 7, 1995.

## **Property Ownership/Planning**

After much research and legal wrangling, the property on which the HARP project would be built was secured. While this lengthy legal process was being completed, planning was in its final stages.

## **Groundbreaking/Construction**

A groundbreaking ceremony was held on September 27, 1996, at the parking lot located next to Victoria Street (east of Lake Elizabeth).

Construction began on October 15, 1996. The initial construction consisted of Phases I and II. Phase III will be constructed after the Pueblo Police Building and Pueblo County Health Department are relocated.



## **Phase I**

- 1) Opened up the water channel by removing the parking lots along Elizabeth Street between Victoria and Main Streets
- 2) Removed the existing 96" storm sewer pipe which extended from Aquila and replaced it with a new multi-diameter storm sewer drainage extension
- 3) Relocated major utilities under the channel
- 4) Realigned Elizabeth Street to the east to connect with City Hall Place
- 5) Constructed Lake Elizabeth
- 6) Built three bridges over Lake Elizabeth, Main Street, and Union Avenue
- 7) Completed soil, environmental, and earth work

## **Phase II**

- 1) Added channel edges, art walls, ADA access ramps, railings, public fixtures, public art, landscaping
- 2) Built lake front wall along Lake Elizabeth
- 3) Finished Lew Rhodes Parkway
- 4) Completed bicycle and pedestrian trails
- 5) Began landscaping
- 6) Built education plazas

## **Phase III**

A linkage north to the existing Marriott Hotel, channel, pedestrian crossover, grading of the PAD site, boat turnaround in the channel, and the development of a new plaza will be important elements in this phase. Parking issues continue to be critical.

## **HARP Foundation**

The HARP Foundation was incorporated as a Colorado non-profit corporation on February 28, 1995. The Articles of Incorporation state that the purpose of the Foundation is to:

“...Accept and disburse private and public donations and contributions for the planning, design, construction, management and maintenance of the public project located within the City of Pueblo, Colorado, known as the Historic Arkansas River project.

To date, the HARP Foundation has raised over \$7 million.

## **The HARP Authority**

The mission of the HARP Authority is to manage in the most effective and efficient means possible the supervision, promotion, operation, development, and maintenance of the Historic Arkansas Riverwalk of Pueblo for the enjoyment of the citizens of Pueblo and its visitors.

The HARP Authority is a separate legal entity formed by Pueblo City Ordinance # 6282.

## **Board of Water Works**

Without a clean and permanent supply of water, the Riverwalk could not have been possible. Since 1991, the Board of Water Works and its management have been an active partner in the HARP project. Time, funding, and in-kind services donated by the Board of Water Works helped to bring the project to fruition.

**Aquila**

Aquila (formerly Centel and WestPlains Energy) not only cooperated on water rights and land issues regarding the development of a river walk, but it also became a key player and active corporate partner. From its in-kind donations during the planning and construction phases to its financial backing, Aquila helped to make the Riverwalk possible.

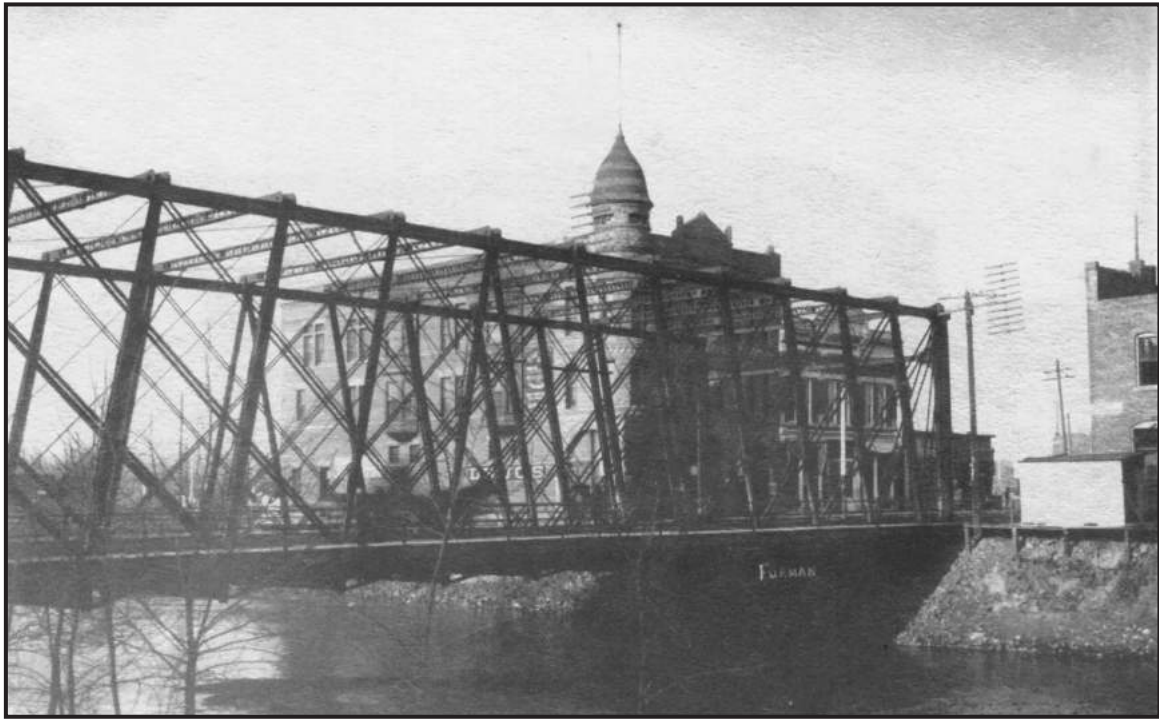
**City and County of Pueblo**

The City and County of Pueblo continue to support the HARP project both financially and with the expertise of their personnel.

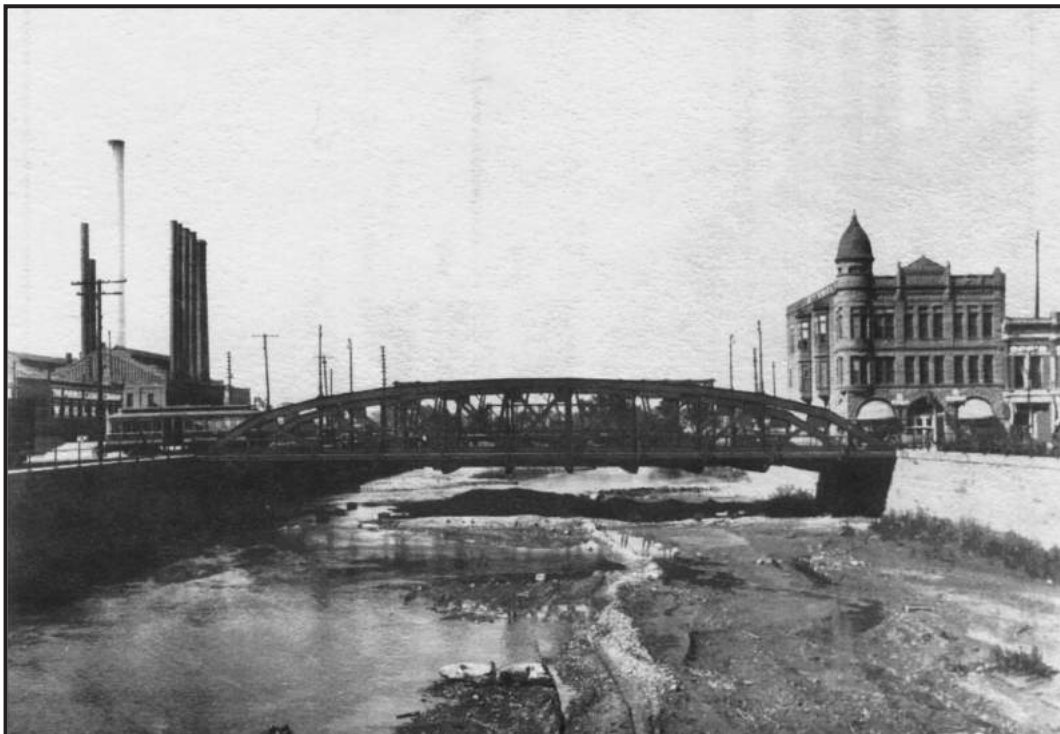
**Future Plans**

The first business on the Riverwalk, a kiosk, opened in Spring, 2001. Permanent structures will be important as the HARP project is transformed from a park-like project to a vibrant area of multi-use buildings. The courting of private sector developers is an on-going process.

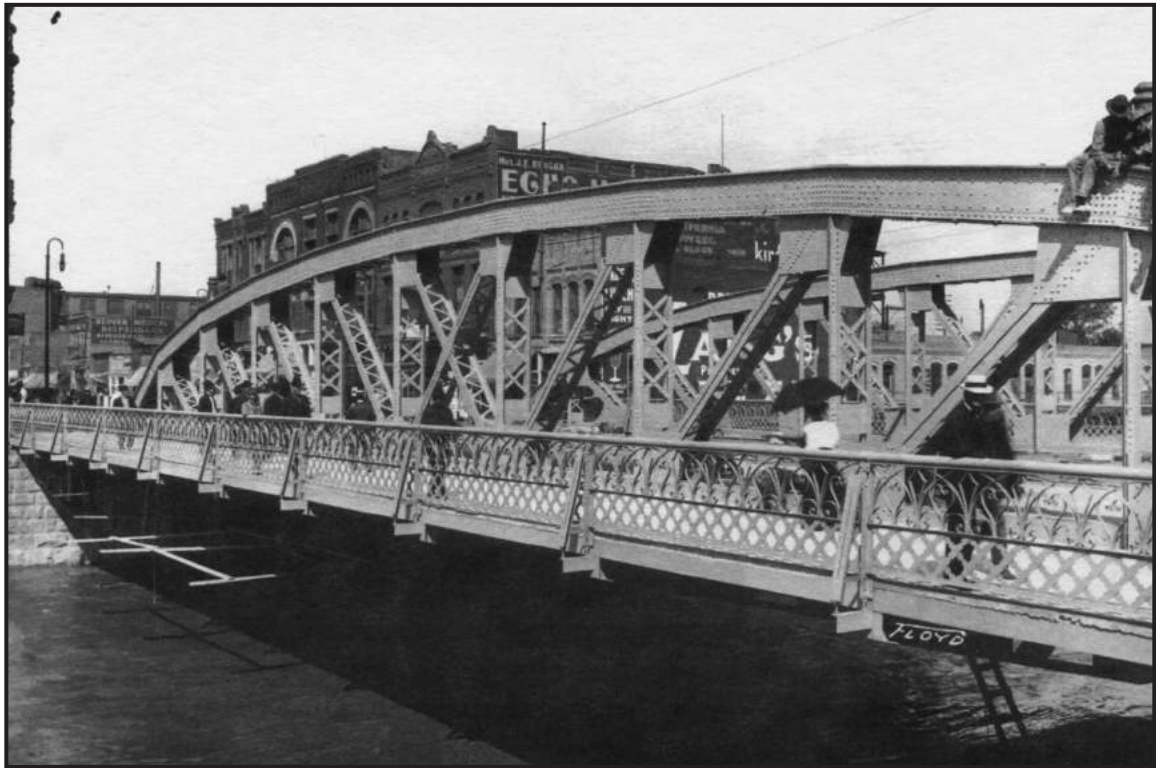
The completion of Phase III with its connection to the Pueblo Convention Center is on-hold until the Pueblo Police Building is moved. This part of the project will be funded with monies from the bond issue.



Arkansas River and Riverside Block. Original Union Avenue bridge circa 1889.  
*Photo courtesy of the Pueblo County Historical Society.*



A replaced Union Avenue bridge pre-1921.  
*Photo courtesy of the Pueblo County Historical Society.*



Union Avenue Bridge circa 1910. Pedestrian railing was reproduced for HARP bridges.  
*Photo courtesy of the Pueblo Historical Society.*



A picture of the original Arkansas River limestone wall.  
Some of this stone was used in the building of the Riverwalk.  
*Photo courtesy of the Pueblo County Historical Society.*





Aerial view of flood area.  
*Photo courtesy of the Pueblo County Historical Society.*



Refrigerator car carried half a mile. Corner of Victoria & B Street.  
*Photo courtesy of Pueblo County Historical Society.*



Small break in levee at Victoria Avenue.  
*Photo courtesy of the Pueblo County Historical Society.*



South of the Santa Fe Railroad ticket office near Victoria Avenue.  
*Photo courtesy of Pueblo County Historical Society.*





Rio Grande freight yards.  
*Photo courtesy of the Pueblo County Historical Society.*



Surveying the damage from the east of the Santa Fe bridge. Nuckoll's Packing Company on left.  
*Photo courtesy of the Pueblo County Historical Society.*

## **BACKGROUND**

### **Background—Pueblo Conservancy District/Arkansas River**

The Pueblo Conservancy District was formed by the State of Colorado as a flood control authority after the devastating flood that swept through Pueblo, Colorado, on June 3, 1921, to build dikes and realign the river to its present location. Members of the Conservancy District decided in the plan of 1923 to “provide for protection by the combination of a large channel through Pueblo and a retarding barrier across the valley about six miles above the City for partly regulating great floods before they reach the channel at Pueblo... The improvement including the retarding barrier will protect Pueblo from a flood two to three times as great as that of 1921, depending upon the relative duration and intensity of the rainfall causing the flood, and the construction will be of a permanent character.”<sup>1</sup>

“**The present channel through the City will not be used as part of the river.** It could therefore be filled, but the expense would be considerable inasmuch as there will be no surplus earth available from other parts of the work. Also, in order not to damage the power plants of the Southern Colorado Power Company, it is necessary to maintain the supply of water used by them for condensing purposes. This could be done satisfactorily by conveying water from the river to the plants through a large underground conduit, and returning the water to the river in another conduit.

“The Plan provides for leaving the present channel open, and for keeping it filled with water. An intake is provided in the new channel a short distance below the West Fourth Street Bridge by which the Southern Colorado Power Company may let the required amount of condensing water into the old river channel. The water will then be taken by the power plants from the old channel and returned to it without changing the present facilities.”<sup>2</sup>

“An amount of water equal to the low flow of the river is required for condensing purposes and its circulation will keep fresh the water ponded in the present channel.”<sup>3</sup>

### **Background—Historic Arkansas Riverwalk of Pueblo**

The Historic Arkansas Riverwalk of Pueblo became a reality with its Grand Opening on October 5 and 6, 2000. The Riverwalk has revitalized Central Pueblo with its beauty and potential for development. Puebloans and visitors alike are now enjoying the benefits of HARP. Boat tours down the channel with narrations on the history of the Arkansas River, pedal boats on Lake Elizabeth, and music and entertainment provide a welcome attraction for visitors.

Many entities and the citizens of Pueblo share the knowledge that teamwork and hard work resulted in the completion of the first two phases of the Riverwalk. Subsequent phases are scheduled for future construction or planning.

One entity that had the foresight for the beautification of the cooling ponds at Aquila and the opening of the old Arkansas River channel was the Pueblo Conservancy District.

### **Arkansas River Improvements Preceding HARP**

Several years of working 24 hours a day and moving untold amounts of earth resulted in the completion of the river channel in 1925. The Pueblo Conservancy District continues to make an impact on the citizens of Pueblo through its management of the Arkansas River and its involvement in the HARP project. Board members of the Pueblo Conservancy District who have been involved in both the improvements of the Arkansas and Fountain Rivers as well as the building of HARP are Pat Kelly, Kathy Farley, and Gus Sandstrom. Their foresight and subsequent actions that influenced the quality of life surrounding the rivers of Pueblo resulted in, but is not limited to, the following:

- ◆ An agreement was made between the Pueblo Conservancy District and the City of Pueblo regarding the Right of Way dated January 23, 1978, granting PCD a thirty-foot right of way and easement on a defined section along the south bank of the Arkansas River to “construct, install and maintain non-motorized bicycle and pedestrian trails (Exhibit A).”



- ◆ In 1986, a fact-finding trip was made to Wichita, Kansas for the purpose of studying what Wichita did to improve and beautify the Arkansas River and the local Power Company plant. This fact-finding trip was made possible through the support and connections of Tommy Thomson, Executive Director of the Southeastern Water Conservancy District. Officials from Wichita shared with the Pueblo representatives the problems that they encountered with their similar project and how those problems were resolved. Upon their return to Pueblo, the Pueblo Conservancy District board members, and the PCD engineer (Ray Koester), envisioned the beautification of the cooling ponds at Aquila in Pueblo as a start to redevelop the old Arkansas River channel without interrupting the water supply to the power company.
- ◆ In 1986, a joint effort among the Pueblo Conservancy District, the City of Pueblo, and the St. Charles Mesa Water District resulted in the building of a five-pod boat chute, grade control structure, and walking bridge on the Arkansas River below the Santa Fe Avenue bridge. Funding was provided by the Conservancy District, a grant from the Boettcher Foundation, and the Colorado Lottery Conservation Trust Fund. This project created a stronger bond among the entities involved.
- ◆ A second trip to Wichita occurred in 1988, with the participants gaining more detailed information concerning the design, financing, and development of the Wichita project. This information provided the background and impetus for the cooling pond beautification. From this initial planning stemmed:
  - 1) a cooperative relationship between the Pueblo Conservancy District and Aquila
  - 2) a conceptual design done by the City of Pueblo Planning Department (financed equally by the City and PCD)
  - 3) the seeds of a much more extensive project that would eventually grow into HARP
- ◆ In 1989, PCD Board members Pat Kelly, Kathy Farley, and Gus Sandstrom made a fact-finding trip to San Antonio. They were accompanied by PCD Administrator/Engineer Ray Koester, Tommy Thomson of the Southeastern Conservancy Water District, and City Planner Bill Zwick. The Pueblo contingent met with officials from the City of San Antonio to familiarize themselves with the river walk operation in general and to gain the following information in particular:
  - 1) How the river flowed and how it was diverted
  - 2) How the engineers went through the system of closure to create the water for the San Antonio River Walk
  - 3) What it entailed to re-use the limestone rock from the original river bed
- ◆ In September, 1991, the Pueblo Conservancy District, City of Pueblo, Pueblo County, and the Fountain Creek Commission appointed Urban Edges, Inc., and Denton Harper Marshall & Associates to study the Arkansas and Fountain Rivers in Pueblo and make recommendations for the development of a concept for improvement of the rivers and their right-of-ways. Also, a guide to existing facilities, "Discover the Pueblo River Greenway," was published at that time. project participants included the Pueblo Regional Planning Commission, the United States Army Corps of Engineers (Albuquerque, New Mexico office), and the citizens of Pueblo.

During that same time frame in 1988 when the cooling pond beautification was being planned, local dentist Frank Childress began a citizen's initiative to build a river walk similar to the one he had seen in San Antonio, Texas.

## Potential Economic Benefits of Developing a River Walk

In 1990, as discussions were underway regarding the development of a river walk in Central Pueblo on the site of the original Arkansas River channel, the economy of Pueblo was in a recession. The unemployment rate exceeded *nine percent* and reports stated that *eighteen percent* of families were living in poverty. Backers of the project anticipated that the development of a river park\* would:

- 1) increase economic activity
- 2) improve the quality of life for all residents
- 3) create a strong pedestrian linkage system throughout central downtown Pueblo
- 4) preserve the history of the central Pueblo area
- 5) provide the incentive to permanently pull downtown Pueblo out of an economic slump

\*Information included in the “404” permit application to the Army Corps of Engineers

## Historic Arkansas River Task Force

To make the dream of a river park/river walk a reality, five members of the community formed the Historic Arkansas River Task Force in 1991. Led by Tony Zeiss, then President of Pueblo Community College, the task force also included Alan Hamel, Executive Director of the Board of Water Works, Meme Dunkel of the Pueblo Chamber of Commerce, Jim Munch, Director of Planning for the City of Pueblo, Bill Zwick of the Planning Department, and Tommy Thomson, Executive Director of the Southeastern Water Conservancy District. The group met for its initial meeting on August 21, 1991.

The project received various types of support from the Southeastern Water Conservancy District, the Pueblo Conservancy District, the Pueblo Chamber of Commerce, the City of Pueblo Planning Department, the Board of Water Works, Aquila, and Pueblo Community College.

According to the official minutes of that first meeting, the following occurred to begin the process of establishing a river walk in Pueblo:

- ◆ Tony Zeiss presented an overview of the project and explained that the task force was established to draft a strategic plan for the “development of a historic river park along the Arkansas River in downtown Pueblo. The task force will be known as the Historical Arkansas River Park Committee (H.A.R.P.)”
- ◆ The mission of the H.A.R.P. Committee was to “establish the historic Arkansas River channel as a multi-use river park”
- ◆ Two sub-committees were consequently formed:
  - 1) Physical Planning Committee
  - 2) Political Committee

## **Development Plan**

An initial development plan was prepared for the first meeting and revised during that meeting. The goal of the redevelopment effort was to “establish the “Historic Arkansas River Channel as a multi-use river park between Centel cooling pond and Lew Rhoades Parkway.” In order to include all interested parties in the City of Pueblo, a citizens task force was established with the goals of having permanent representatives from the following entities to join Thomson, Zeiss, and Dunkel:

- ◆ RE-Do (Revitalize and Enhance Downtown Organization) and Union Avenue Merchant representatives
- ◆ Pueblo City Council
- ◆ Pueblo Conservancy District
- ◆ Pueblo Board of Water Works
- ◆ Aquila
- ◆ City of Pueblo employee representative

A strategic plan committee was formed, along with development and promotional committees. This was the first step in a planning process that spanned approximately six years in the 1990s and continues today as projects for future building and development of the Riverwalk “grow” on paper.

It is anticipated by those city planners involved today that this project will continue to evolve well into the future.

## **THE PROCESS**

In addition to the support of individuals, the City of Pueblo, the Board of Water Works, and Aquila joined the efforts of the Pueblo Conservancy District to realize the dream of a revitalization project which would capture the historical significance of the Arkansas River as the provider of “life blood” to the residents of Pueblo.

Knowing that they had many challenges to overcome in their pursuit of the river park, the task force galvanized their efforts regarding funding and obtaining community support.

The members of the task force reiterated in their January 31, 1992, meeting the importance of getting out into the community to help educate the “public in general” about the project. To accomplish this, the members committed to speak to local service organizations and clubs to keep the momentum going. They also wanted to encourage more Pueblo residents to get involved in the undertaking, and therefore worked tirelessly to promote the benefits of the Riverwalk to the community.

### **Initial Funding**

Without adequate funding, the river walk project could not be realized. During this early time of the Historic Arkansas River Park Task Force, funding was needed for the initial planning and engineering studies for the project. Design Studios West was chosen for this planning work at a cost of \$33,950. Contributions came from many sources, including the personal funds of the task force members. A sampling of the sources of funds/in-kind services follows:

- ◆ City Council allocated \$25,000 from its Community Development Block Grant for design development (January, 1992)
- ◆ Pueblo Conservancy District committed the resources to pay the engineering fees of their engineer (January, 1992)
- ◆ Aquila committed \$2,500 (February, 1992)
- ◆ Pueblo Board of Water Works committed \$2,500 (April, 1992)
- ◆ The Pueblo Board of Water Works and Aquila donated in-kind services for engineering and legal fees regarding water rights
- ◆ Pueblo Community College offered in-kind services for grant writing and engineering drafting

The Aquila gift is the first major corporate contribution to the river park organization.<sup>4</sup>

Prior to hiring Design Studios West for the initial design, Bill Zwick of the City of Pueblo Planning Department prepared the initial schematic designs for the proposed project. He continues to be an integral part of the planning process.

### **Community Outreach**

An Education Sub-Committee was formed in the summer of 1992 for the purpose of educating the community about the river park concept. Initial members and their capacities included:

- ◆ Dean Dennis, Pueblo Chamber of Commerce
- ◆ Dr. Frank Childress, local dentist and concerned citizen
- ◆ Ruth McDonald, Union Avenue Historic District
- ◆ Glenn Reiff, Pueblo Planning and Zoning Commission
- ◆ Sam Corsentino, City of Pueblo
- ◆ Jim Munch, City of Pueblo
- ◆ Bill Zwick, City of Pueblo

This sub-committee prepared and scheduled presentations and workshops as well as introduced design concepts and the proposed designs to the community. This group and its successors were active through the 1990s.

## **Technical Review Committee**

A Technical Review Committee was formed in August, 1992, by the Historic Arkansas River Park Task Force to coordinate with Design Studios West regarding design and budgeting. Initial members of this committee are listed below:

- ◆ Jim Munch
- ◆ Ray Koester, Pueblo Conservancy District
- ◆ Ken Grobe, Aquila
- ◆ Pat Kelly, Pueblo Conservancy District
- ◆ Alan Hamel, Pueblo Board of Water Works
- ◆ Meme Dunkel, Pueblo Chamber of Commerce
- ◆ Tony Zeiss, Pueblo Community College

## **Finance Committee**

To identify potential sources of funding for construction costs, a sub-committee was formed by the Arkansas River Park Task Force in August, 1992. Members of this sub-committee were:

- ◆ Ken Grobe
- ◆ Pat Kelly
- ◆ Meme Dunkel
- ◆ Dr. Monique Ammerman, Pueblo Community College

## **Water Sub-Committee**

In the fall of 1992, a Water Sub-Committee was created to address power plant operations, water rights, water quality, and water flow issues. The committee was headed by Alan Hamel, Executive Director of the Pueblo Board of Water Works. Members included:

- ◆ Lee Simpson, St. Charles Mesa Water District
- ◆ Rich Kramer, Aquila
- ◆ Ray Koester
- ◆ Dennis Maroney, City of Pueblo
- ◆ Tommy Thomson, Southeastern Colorado Water Conservancy District

## **Water Rights Issues**

There can be no river park without a reliable source of water. This primary issue was seriously addressed during 1993. Concerted efforts by the Pueblo Board of Water Works, Aquila, and the Pueblo Conservancy District met this challenge head-on via engineering studies, legal work, foresight, and planning. Important issues facing the Water Resources Committee (formerly known as Water Sub-Committee) at this time were:

- ◆ Water supply—A reliable source of water was necessary for the initial project as well as any future project expansion. Compliance with state and federal water laws regarding temperature and water quality had to be in place.
- ◆ Water Rights—These rights needed to be protected for Aquila and the St. Charles Mesa Water District while ensuring an adequate water flow for the proposed project (Exhibit B).



Significant actions taken for planning purposes and to assure compliance with the above issues included:

- ◆ A water study was undertaken by Rocky Mountain Consultants and funded by the Pueblo Board of Water Works in the amount of \$36,000.
- ◆ With Resolution No.93-13 (August 17, 1993), the Pueblo Board of Water Works was to secure a reliable water supply for the river project (Exhibit C).
- ◆ A determination was made by the Water Resource Committee, Design Studios West, and Wright Water Engineers to file for a Junior Water Right. “The best means of guaranteeing water flow through the project is for the Board of Water Works to file a Junior Water Right.”<sup>5</sup>
- ◆ A decision was made to include the Pueblo Convention Center (north of the proposed river channel) in the planning of the river walk (voters approved the building of the convention center in 1994). Water had to be available for this added expansion.

## **Planning/Development**

Design Studios West and its consultants worked many hours with representatives of the utility companies, city officials, business owners, the HARP task force and sub-committees, as well as the interested conservancy districts to develop the initial plan for the river walk. Several charrettes (design/planning sessions) were held to determine possible design scenarios; they eventually produced the preliminary drawings for the river walk. During these sessions, James Keeter, a consultant from San Antonio, suggested that the project be built in phases—similar to the San Antonio River Walk process. Mr. Keeter also recommended that the economic viability of the project should be tied to the Union Avenue Historic District.<sup>6</sup>

The final plan by DSW included technical design, estimated costs, and construction scheduling. Taken into account were water levels and flows, vehicular and pedestrian traffic, parking, historical factors, local business concerns, and public input. (Please refer to the designs illustrated in this book to understand more about all of the planning that was done prior to construction.)

## **Financing**

The preliminary design presented by DSW in August, 1993, estimated the cost of the project to be nine million dollars. Discussion of the funding and repayment capabilities would continue. Suggested sources of funds included grants, loans, and matching funds. During their August 9, 1993, meeting, the Pueblo City Council allocated the funds necessary for the completion of the final river walk design.

## **American Planning Association Award—September, 1993**

The Colorado Chapter of the American Planning Association selected the HARP project to receive the APA’s chapter award. The project was primarily selected for the representation and cooperation of several entities that were making their ideas a reality.

Those entities mentioned during the award presentation included: the City of Pueblo, the Pueblo Board of Water Works, the Pueblo Conservancy District, Aquila, and various citizens representing community interests.

## **Letter of Understanding**

To formulate the cooperation, responsibilities and technical assumptions of the various entities involved in the planning of the HARP project, a Letter of Understanding (Exhibit D) was signed on October 27, 1993, by the following parties:

- ◆ Pueblo City Council
- ◆ Pueblo Conservancy District
- ◆ Pueblo Board of Water Works
- ◆ Aquila

## **Establishment of HARP Commission—1994**

The Historic Arkansas River project Commission was formed on March 28, 1994, by Resolution #7337 of the Pueblo City Council (Exhibit E). According to the Resolution, the Commission has the following responsibilities:

- ◆ to promote and seek community support for and involvement in the project
- ◆ to act as a coordinating agency between and assist in the development of cooperation agreements and relationships among interested private and public entities
- ◆ to evaluate and make recommendations concerning the plan, design, engineering, construction, management, maintenance and funding for the project and appropriate entities and organizations that perform such activities
- ◆ to organize a tax-exempt non-profit foundation capable of accepting and disbursing private and public donations and contributions for the planning, design, construction, management and maintenance of the project

The commission consisted of fifteen members appointed by the Pueblo City Council. The original members of the HARP Commission were:

- ◆ Tommy Thomson, Chairman
- ◆ Pat Kelly, Vice-Chairman
- ◆ Lee Simpson
- ◆ Dave Anderson
- ◆ Rich Kramer
- ◆ Sam Corsentino
- ◆ Dr. Frank Childress
- ◆ Alan Hamel
- ◆ Ken Grobe
- ◆ Ruth McDonald
- ◆ Glenn Reiff
- ◆ Andrea Aragon
- ◆ Tony Langoni
- ◆ Dean Dennis
- ◆ Meme Dunkel-Martin

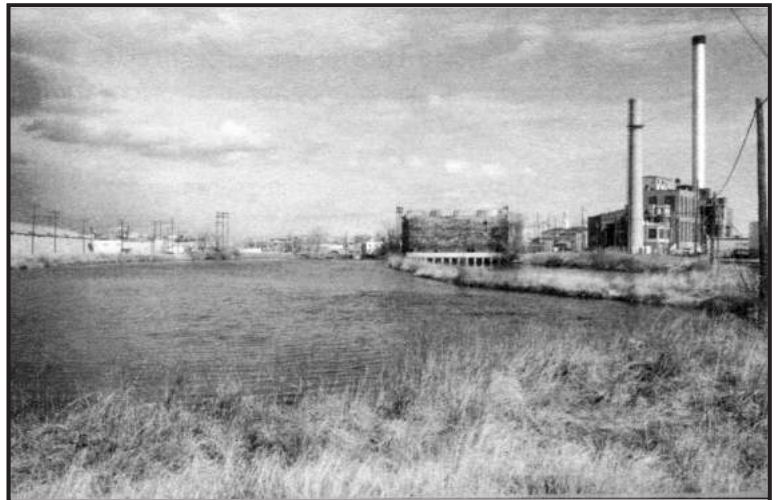


The Arkansas River Channel as it is now. The diversion structure above the small island is where water is diverted to Aquila for its use before it enters Lake Elizabeth. The water re-enters the Arkansas River at Runyon Lake approximately 1 1/2 miles to the south.

*Photo courtesy of Frank Childress.*

Cooling pond at Aquila circa 1996. This area is now Lake Elizabeth.

*Photo courtesy of HARP Authority.*



Parking lot between Victoria and Union Avenue - circa 1996. This area is now part of Kelly Falls and the Riverwalk. In addition to the construction, the locomotive had to be re-located to the Railroad Museum.

*Photo courtesy of the HARP Authority.*



Parking lot between Union Avenue and Main Street - circa 1996. This area now is filled with people walking, riding boats, bicycling, and eating.

*Photo courtesy of Frank Childress.*

A pre-construction photo showing the back of City Hall - circa 1996.

*Photo courtesy of Frank Childress.*



An aerial view of the cooling pond at Aquila and the transformation of the second cooling pond into Lake Elizabeth.

*Photo courtesy of Frank Childress.*

## **ACTIVITIES LEADING TO THE BUILDING OF HARP**

Once the concept plan was presented by Design Studios West in 1993, the three-phased project and its potential challenges were faced by all participants. Issues that needed to be addressed were:

- ◆ funding of construction drawings and design work for Phase I
- ◆ assuring a permanent water supply and completing all of the legal agreements involved with the supply issue
- ◆ providing additional education regarding similar successful projects
- ◆ studying and preparing for complete project funding

### **Funding for Phase I Design**

In August, 1994, the Pueblo Conservancy District and the City of Pueblo each committed \$150,000 for the construction drawings and design work for Phase I of the project. This \$300,000 permitted Design Studios West to complete pre-construction and engineering and design drawings.

### **Expanded Authority—Pueblo Conservancy District**

The charter of the Pueblo Conservancy District was expanded by the State of Colorado to include its power to participate in the “development of the parks and recreational activities within the boundaries of its District.” This expanded power was authorized via House Bill 94-1027 and signed April 7, 1994 (Exhibit F).

### **Inclusion of Convention Center/Hotel**

As part of the final design, the linkage of HARP with the Pueblo Convention Center was discussed during a meeting June 1 and 2, 1994, by Design Studios West, the City of Pueblo, and interested parties. From that meeting and subsequent design/engineering work, it was decided that a linkage of HARP with the Convention Center was possible.

### **Fact-finding Trips**

In order to understand the nuances of building and managing such a large project as the proposed Pueblo river walk, fact-finding excursions were made by the HARP Commission members and City of Pueblo employees. Those trips (made during 1994 and 1995) and their primary purposes and results included:

- ◆ Estes Park, Colorado—Toured the park area and observed the river stabilization, the materials used, landscaping, the amphitheater, drinking fountains, trash receptacles, rest rooms, etc.
- ◆ Boulder, Colorado Pearl Street Mall—Addressed how the project was supported by the parking garage, how the management funded the maintenance and the challenges of working with vendors.
- ◆ Cañon City, Colorado—Met with the Cañon City Manager and the Field Manager of the River Station project. The Pueblo contingent was given a walking tour of the project as well as information regarding partnerships and funding.
- ◆ San Antonio, Texas—Representatives from Pueblo garnered information regarding: boat concessions, financing, and flood protection information. Discussions regarding the types of businesses that would enhance the Historic Arkansas Riverwalk of Pueblo were also held.

The group also visited the Cherry Creek Mall and the 16<sup>th</sup> Street Mall in Denver during this time frame to observe their operations.



## **HARP Foundation**

The HARP Foundation was incorporated as a Colorado non-profit corporation on February 28, 1995 (Exhibit G). Pueblo attorney Pat O'Callahan donated his legal expertise for this incorporation. The Articles of Incorporation state that the purpose of the Foundation is to:

“...Accept and disburse private and public donations and contributions for the planning, design, construction, management and maintenance of the public project located within the City of Pueblo, Colorado, known as the Historic Arkansas River project.”

According to the Articles of Incorporation for the HARP Foundation, there were to be five members of the corporation. The original members were:

- ◆ Ken Grobe, President
- ◆ David Trujillo, Vice President
- ◆ Gus Sandstrom, Secretary
- ◆ Chris Weaver, Treasurer
- ◆ Kathy Farley, member

The amended HARP Foundation by-laws (April 30, 1996) established a board of thirteen directors.

## **Financing**

Decisions now had to be made as to how to finance the \$12.85 million project. The HARP Commission members, working with bond counsel and Pueblo City management recommended a Limited Tax General Obligation Bond to the Pueblo City Council. By using this type of funding, the City would be able to fund a bond issue without an increase in either property or sales tax rates. “To accomplish this, the City Council will place a question on the November, 1995 ballot which will authorize an increase in the City’s spending limit of \$1.1 million to support a bond of \$12.85 million. The ballot question will include an annual spending limit for debt service; the maximum proceeds for the bond issue; and a specific prohibition of any tax increase to meet bond indebtedness. It will also authorize the expenditure of all proceeds only for the HARP project.”<sup>7</sup>

## **ELECTION**

Chris Weaver, Pueblo City Council President and a proponent of the river walk, worked tirelessly to provide the projections that assured the city's ability to pay down the debt on a bond issuance. "According to Weaver's figures, the city can afford to make the \$1.1 million bond debt payment and have the change left over for the remaining nineteen years of the pay back schedule."<sup>8</sup>

### **Election Committee**

An Election Committee was formed on May 9, 1995 in "order to seek passage of an election issue presented to the City of Pueblo voters on November 6, which seeks approval to commit already collected excess tax revenues as a source of funds to retire general obligation debt used to fund the proposed HARP Riverwalk project in 1996, and subsequent years."<sup>9</sup>

Seventeen committee volunteers, headed by Pat Kelly, were Election Committee members. Funds raised through the Election Committee were used for:

- 1) materials
- 2) advertising
- 3) brochures
- 4) signs
- 5) events

### **Bring Back the River**

A well-orchestrated campaign to "bring back the river" was waged through most of 1995 for the purpose of informing the citizens of Pueblo of the benefits that a river walk along the old river channel in the heart of the city would bring the city and its residents. Many citizens were involved in the election campaign that was spearheaded by the Election Committee. Members of the HARP Commission and the HARP Foundation were active in the campaign.

Members of the Election Committee raised almost \$34,000 for the community outreach which included:

- 1) preparing/distributing project fact sheets
- 2) providing speakers/public forums
- 3) holding discussions
- 4) waging publicity campaign with "bring back the river" theme
- 5) developing a model of the HARP project
- 6) unveiling the model of HARP on August 14, 1995 with news conference and walking tours
- 7) showing the HARP model (built by the architectural firm of Hurtig Gardner and Froelich, Inc.) at the Colorado State Fair in 1995
- 8) presenting final design on October 12, 1995

The Election Committee had to not only educate the voting public on the benefits of the river walk but simultaneously battle an organized effort to defeat the bond issue by its naysayers.

An editorial that appeared in the May 1, 1995, Pueblo Business Journal summed up the effort to get the HARP project approved: "So, we must continue on this productive path and substantial goals and activities that will ensure survival of our community while, at the same time, continue to make this a great place to live."

An article written by Ken Grobe, retired Vice President of WestPlains Energy (now Aquila) and a HARP Commission member, summed up the importance of the water as a lifeblood to a community by quoting noted New York architect Stanton Eckstrut: "The real key to long-term success is knotting the waterfront and the city back together again...building plenty of everyday city activities—housing, neighborhoods, shops, entertainment, open spaces — so that city residents, not just visitors use and enjoy these new places. Then, cities should encourage real activity in the water...the attractions in the water create value on the nearby land."<sup>10</sup>

## **BOND ISSUE PASSES**

After more than four years of planning, cooperation among various public entities and the Pueblo citizenry, and plain hard work, the bond issue for the Riverwalk passed by a narrow margin on November 7, 1995.

### **Bond Issue**

The Denver office of Principal Financial Securities, Inc. was retained to issue the \$12.85 million Limited Tax General Obligation Bonds, Series 1996. These bonds are “payable from all available City funds, without any increase in the current rate of property taxes and secured by a pledge of the City’s ad valorem property taxes without any increase in the current rate of such property taxes; thus, if the funds available to the City at any time are insufficient to pay the principal of, premium, if any, or interest on the Bonds, the City is not authorized to levy additional ad valorem property taxes to make such payments without prior voter approval by a majority of the electorate of the City, voting on such a ballot issue pursuant to the charter and Colorado law.”<sup>11</sup>

The bonds have a AAA rating and are dated June 1, 1996. Without the citizens of Pueblo passing the bond issue, the old river channel would still be a plethora of parking lots and weeds.

## **POST-ELECTION ISSUES**

### **Final Design Plan**

On November 27, 1995, the Pueblo City Council awarded a contract to Design Studios West to complete the preliminary and final design of the project. Construction plans and specifications that would be suitable for bidding are also part of the contract. The estimated cost for this work was \$635,000.

The construction documents are to include: bridge design, engineering, water control features, plaza and landscape improvements.<sup>12</sup>

### **Final Design Plan Discussion**

The HARP Commission met on December 7, 1995, to discuss the final design plan. Areas of concern included:

- ◆ Maintenance
- ◆ Construction
- ◆ Public Art
- ◆ Engineering
- ◆ Transportation Issues/ Parking

### **Restructuring of HARP Commission**

The HARP Commission was restructured in December, 1995 to reflect the positive election results. Committees were now:

- ◆ Technical
- ◆ Public Communications
- ◆ Urban and Governmental Affairs
- ◆ Private Sector Investment
- ◆ Art Engagement
- ◆ HARP Foundation

### **Economic Analysis**

The Leland Consulting Group was given a contract by the City of Pueblo in October, 1995, to perform an economic analysis and a private sector strategy for the downtown area and HARP. The consulting group worked with the HARP Commission’s Private Sector Investment Committee that was charged with attracting private development to the HARP project. This information was compiled into a marketing booklet that was sent to potential developers.

## **PLANNING AND CONSTRUCTION**

### **Property Ownership**

In order for the HARP project to go forward, the adjacent land had to be secured. The land upon which the HARP project was to be constructed, which included both the north and south banks of the Arkansas River as it originally flowed through Pueblo prior to the flood of 1921, was acquired by the United States through the Louisiana Purchase. All of the land south of the south bank of the Arkansas River as it originally flowed, was at the time of the Louisiana Purchase, part of Mexico. A part of the HARP project that was north of the north bank of the Arkansas River became the property of the Colorado State Board of Land Commissioners after Colorado became a state, as a land grant from the United States in support of President Jefferson's drive to promote public education. The State Board of Land Commissioners was to hold that land in trust to support public education. The land south of the south bank of the Arkansas River was granted by Mexico to Mexican nationals who then sold it to the early pioneers in Pueblo who subsequently subdivided it and developed the land. The land north of the north bank of the Arkansas River was platted by the state of Colorado as the State Edition and was sold to generate monies managed by the State Board of Land Commissioners.

After the Pueblo flood in 1921, which wiped out most of the improvements that were along the Arkansas River and what is now the footprint of the HARP project, ownership of the land upon which the footprint of the present HARP project was located, was vested primarily in the Pueblo Conservancy District, but there was also land owned by the City of Pueblo and various railroad lines that had acquired land rights adjacent to the riverbank prior to the flood. Legal title to this land was, however, questionable.

To clarify the legal title, it was necessary to bring a lawsuit to quiet the title to the land. The Plaintiffs in that lawsuit included the Pueblo Conservancy District and the City of Pueblo. The defendants in that lawsuit included all the parties who had historically had an interest in the land including the County of Pueblo, the State of Colorado, other public and numerous private entities as well as most of the railroads that were ever located in Pueblo County, Colorado.

Attorney, Donald J. Banner, legal counsel for the Pueblo Conservancy District prosecuted the quiet title action on behalf of the Plaintiffs and with considerable effort, the title to the land was perfected in the Pueblo Conservancy District and the City of Pueblo. Thereafter, the Pueblo Conservancy District conveyed its interest in the land to the City of Pueblo, reserving a right to utilize so much of the land upon which the Arkansas River originally flowed as might be necessary for the Conservancy District Purposes.

Only after this lengthy legal process was the construction on Phase I able to occur.

### **Groundbreaking**

With the bond issue a success and the final design plans for the Phase I complete, the community gathered for a groundbreaking on September 27, 1996 at the parking lot located next to Victoria Street (east of Lake Elizabeth).

The theme for the groundbreaking was "the day the project became a place." Members/employees of the Pueblo Conservancy District, The Pueblo Board of Water Works, Aquila, the City of Pueblo, and concerned citizens of Pueblo attend this spirited celebration of cooperation that culminated in the re-birth of the old Arkansas River channel and of Central Pueblo. Joanne Dodds, Pueblo historian, presented an overview of the history of the Arkansas River in Pueblo.

Water rights, land deeds and legal agreements all took the time, effort, and financial resources of the entities involved.

At this time, the name of the project was officially changed to the Historic Arkansas Riverwalk of Pueblo from the Historic Arkansas Riverwalk project.

The original river channel that once served as the gathering place for Native Americans, trappers, frontiersmen, and adventurers, such as Zebulon Pike, was to be transformed again.

## **HARP Construction Begins—1996**

After submitting the winning bid on October 15, 1996, Lawrence Construction began construction on Phase I of the Historic Arkansas River of Pueblo.

### **Phase I**

- 1) Opened up the water channel by removing the parking lots along Elizabeth Street between Victoria and Main Streets
- 2) Removed the existing 96" storm sewer pipe which extended from Aquila and replaced it with a new multi-diameter storm sewer drainage extension
- 3) Relocated major utilities under the channel
- 4) Realigned Elizabeth Street to the east to connect with 1<sup>st</sup> Street
- 5) Realigned Grand Avenue
- 6) Constructed Lake Elizabeth
- 7) Built three bridges over Main Street, Union Avenue, and the new Grand Avenue
- 8) Completed soil, environmental, and earth work

Plans for Phase II were paid for by funds from the bond issue. Construction of Phase II commenced in August, 1998. The majority of the funding from Phase II came from GOCO (Greater Outdoor Colorado), the HARP Foundation, Colorado State Energy Impact Assistance Funds, and from the United States Economic Development Administration.

### **Phase II**

- 1) Added channel edges, art walls, ADA access ramps, railings, public fixtures, public art, landscaping
- 2) Built lake front wall along Lake Elizabeth
- 3) Finished Lew Rhoades Parkway
- 4) Completed bicycle and pedestrian trails
- 5) Began landscaping
- 6) Built education plazas

The contractor for Phase IIA was Houston Construction and GMG Construction was the contractor for Phase IIB.

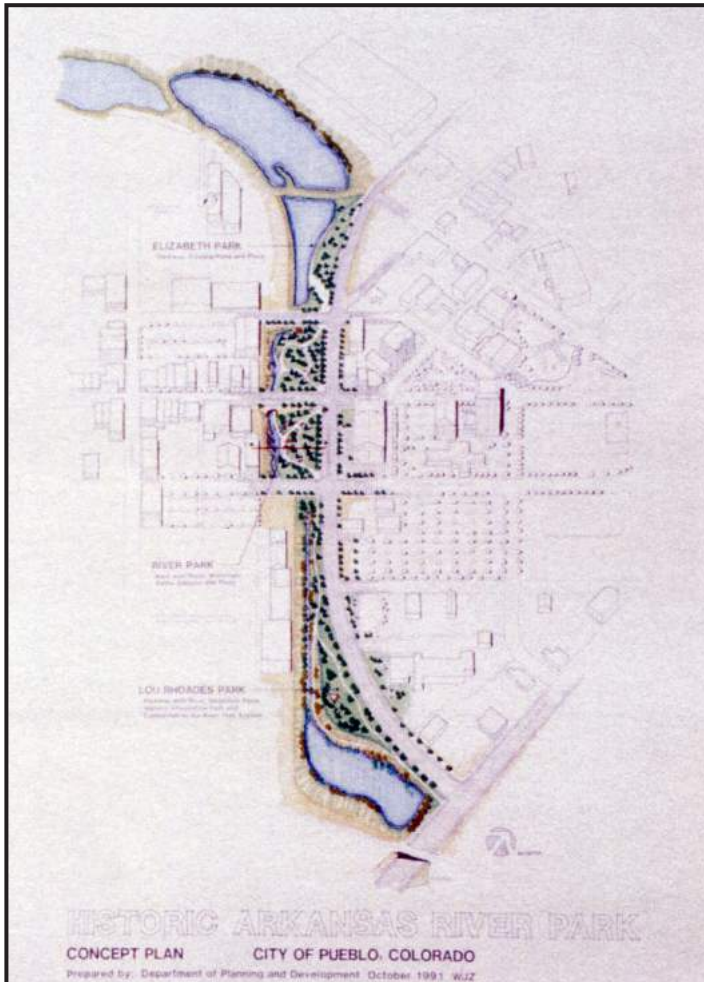
### **Phase III**

A linkage north to the existing Pueblo Convention Center/Marriott Hotel, channel, pedestrian crossover, grading of PAD site, boat turnaround in the channel, and the development of a new plaza will be important elements in this phase. Parking issues continue to be important. Construction plans as of 2002, are contingent upon the removal of the current police building and the relocation of the Pueblo City/County Health Department.

### **Future Phases**

The HARP Foundation, private donors, and the City of Pueblo Planning Department hope to continue the expansion of the Riverwalk to other areas in central Pueblo.



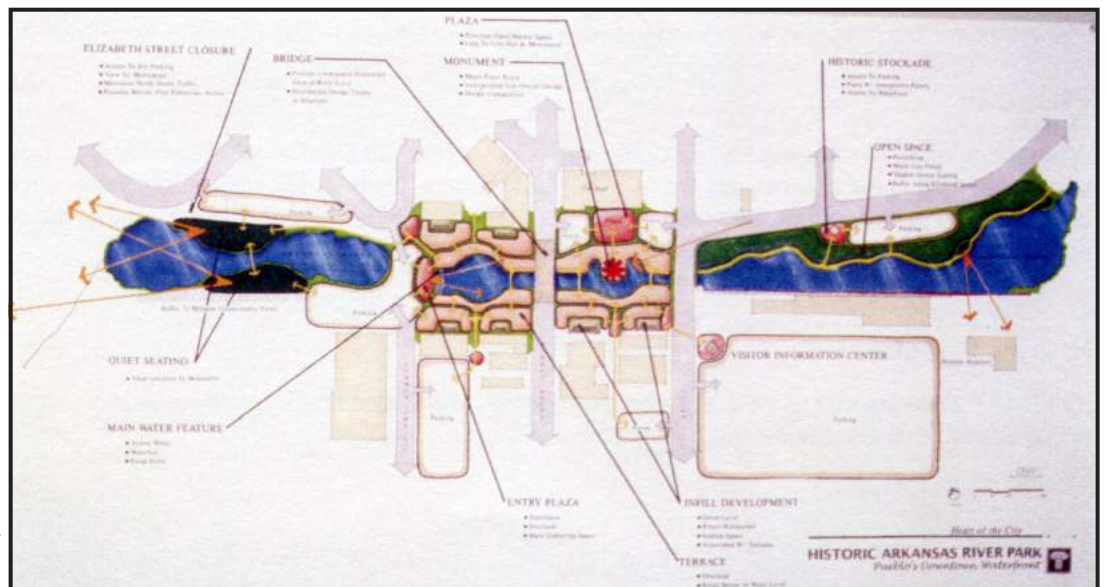


Early concept plan in 1991 of proposed River Park.

*Drawing courtesy of the City of Pueblo.*

Concept program plan of HARP showing proposed use within the Riverwalk, circa 1992.

*Drawing courtesy of the City of Pueblo.*

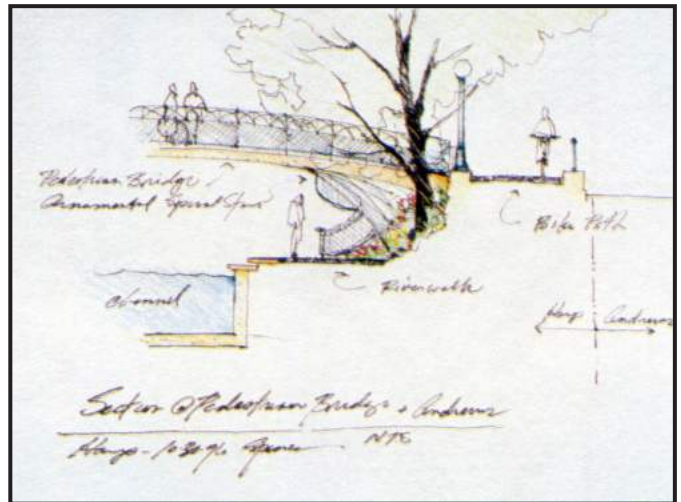




A 1996 concept perspective sketch of the confluence area.

*Sketch courtesy of the City of Pueblo.*

Section drawing done by Design Studios West on October 30, 1996.  
*Drawing courtesy of the City of Pueblo.*

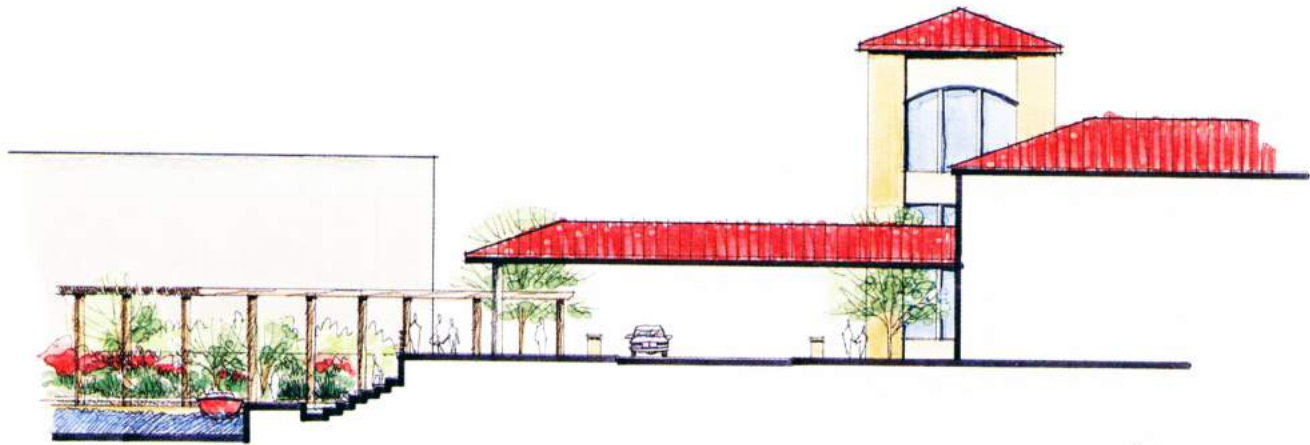


Model depicting future HARP development.

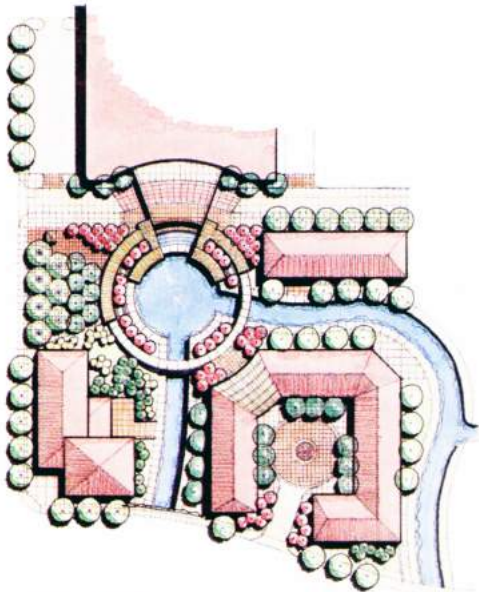
*Courtesy of the City of Pueblo.*





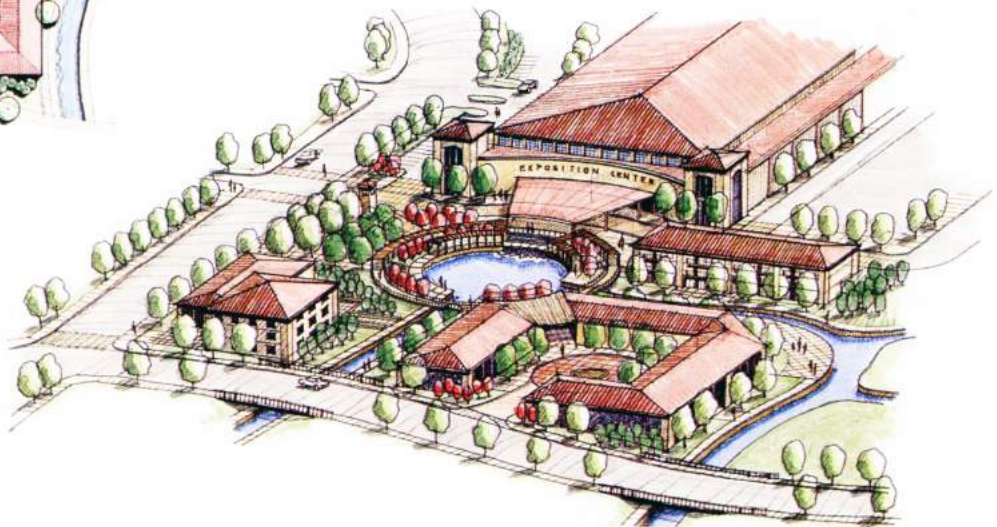


CONCEPT "B"  
SECTION

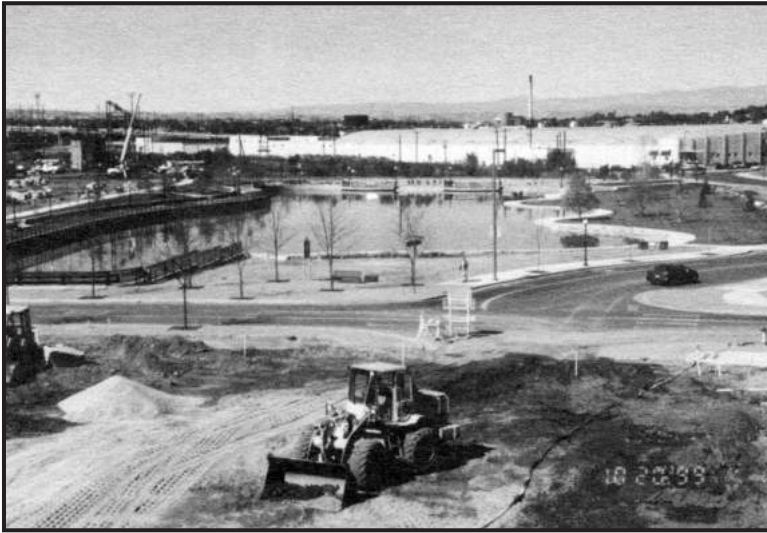


An illustration of the HARP  
linkage to the Pueblo  
Convention Center

*Courtesy Design Studios West*







Lake Elizabeth construction - formerly a holding pond for Aquila.

*Photo courtesy of Frank Childress.*

96" storm sewer pipes had to be replaced as part of the project construction.

*Photo courtesy of Frank Childress.*



Stone from the original Arkansas River Channel, now used as a retaining wall between the pedestrian and bicycle paths.

*Photo courtesy of Frank Childress.*



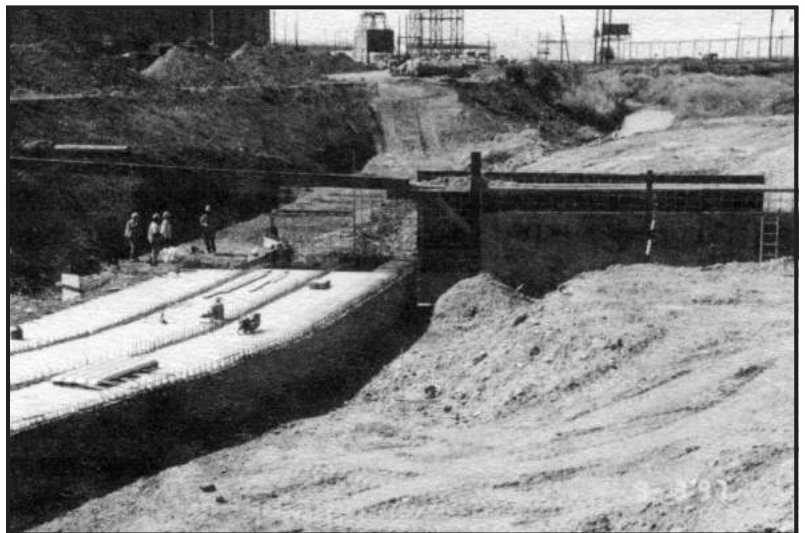


Excavation of the old Arkansas River Channel - circa 1996.

*Photo courtesy of Frank Childress.*

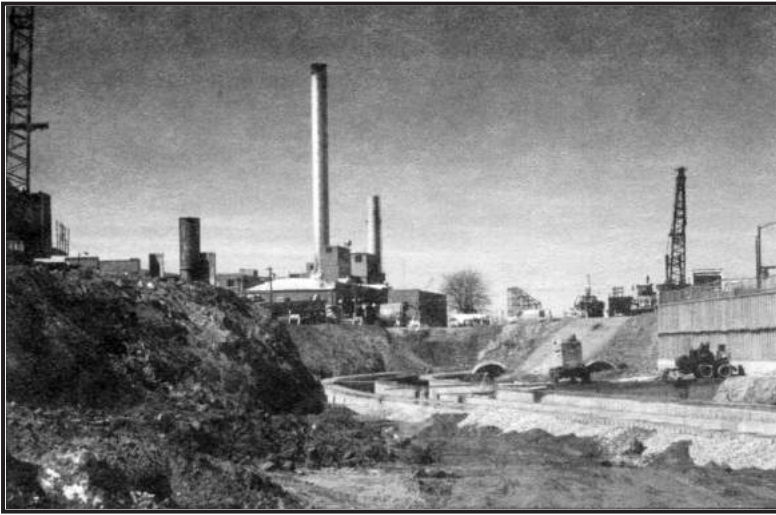
Construction of the new storm sewer culverts, circa 1997. New river channel was built as an integral part above the storm sewer culvert.

*Photo courtesy of Frank Childress.*



A bird's eye view of Kelly Falls and the area between Victoria and Union Avenue.

*Aerial photo courtesy of Frank Childress.*



Excavation and construction of the river channel.

*Photo courtesy of Frank Childress.*

96" storm sewer pipes removed from the river channel.

*Photo courtesy of Frank Childress.*



Construction of the new river channel heading toward the natural area.

*Photo courtesy of Frank Childress.*

## **HARP PARTNERS**

### **HARP Foundation**

The first meeting of the HARP Foundation was on May 2, 1995. Meetings continue to be held on the fourth Monday of every month (except December). The Foundation is the primary fund-raising arm of HARP.

The mission of the HARP Foundation is to secure funding to enhance and enrich the basic infrastructure of the Riverwalk by transforming it into a cultural, educational, recreational, and social centerpiece for the citizens of Colorado (September 19, 1996). DD Marketing was retained to manage the HARP Foundation in September, 1996. The firm's low fees and positive results have benefited the HARP Foundation.

The Foundation's initial goal of raising \$7 million was met in November, 2000. Corporations, private citizens, and foundations provided the bulk of the donations. The HARP "Navy" was formed in September, 1998, to encourage individual donors to contribute to HARP. The HARP Navy initiative raised almost \$150,000.

In June, 2002, a new fund-raising campaign for the HARP Foundation was initiated to complete construction of the link between the existing channel and the Pueblo Convention Center.

Major gifts from foundations include:

Packard Foundation .....	\$ 1,012,000
El Pomar Foundation .....	\$ 1,000,000
Gates Family Foundation .....	\$ 700,000
Adolph Coors Foundation .....	\$ 600,000
Boettcher Foundation .....	\$ 350,000
William G. Gilmore Foundation on behalf of Rocky Mountain Steel Mills .....	\$ 250,000
Chamberlain Foundation .....	\$ 75,400
Christmas Foundation .....	\$ 75,400
Robert Jackson Foundation .....	\$ 50,000
Thatcher Foundation on behalf of Mahlon White .....	\$ 35,000
Bonfils-Stanton Foundation .....	\$ 25,000
Temple Buell Hoyne Foundation .....	\$ 19,000

Corporations that donated over \$10,000 include:

Aquila/WestPlains/Utilicorp .....	\$ 451,000
Lawrence Construction .....	\$ 80,000
McKinney Concrete .....	\$ 15,000
Boeing .....	\$ 10,000
Colomex .....	\$ 10,000

Other entities that donated over \$10,000 include:

Economic Development Administration .....	\$ 1,200,000
Great Outdoors Colorado Trust Fund .....	\$ 1,175,000
County of Pueblo .....	\$ 515,000
Colorado Department of Local Affairs .....	\$ 500,000
Colorado Department of Transportation .....	\$ 62,500
Colorado Historical Society .....	\$ 30,000
Pueblo Conservancy District.....	\$ 10,000

Individual Donors who gave \$10,000 or more include:

Brett and Pat Kelly .....	\$ 150,500
Dr. Gerald and Rosemary Reilly .....	\$ 150,000
Tom and Kathy Farley .....	\$ 61,700
William and Mary Adams .....	\$ 50,000
Tom and Mary Cooney .....	\$ 50,000
Mr. and Mrs. Jerome Crane .....	\$ 50,000
Dr. Chris and Judy Stjernholm .....	\$ 50,000
Clementine Cardillo/Josephine Giaccio .....	\$ 35,000
Charles and Desda Vial .....	\$ 34,800
Dr. Robert and Shirley Dingle .....	\$ 25,000
George R. and Elisabeth W. Ireland .....	\$ 25,000
James O'Neal .....	\$ 25,000
Dr. William and Lynette Wilz .....	\$ 25,000
Dave and Adele Anderson .....	\$ 20,000
Dan and Kerry DeRose .....	\$ 20,000
Dr. Edward and Neta DeRose .....	\$ 20,000
Mark De Rose .....	\$ 20,000
Mike and Tonya DeRose .....	\$ 20,000
Dr. Wyman and Doris Ewing .....	\$ 20,000
Ken and Jean Grobe .....	\$ 20,000
John and Linda Stachler .....	\$ 20,000
Richard and Joyce Lawrence .....	\$ 18,500
Joan Occhiato .....	\$ 15,000
Daniel and Prina Fitzgerald .....	\$ 14,100
Don Brandes, Design Studios West .....	\$ 12,700
Phillip and Randall Barber .....	\$ 11,500
Robert and Sara Tonsing .....	\$ 11,000
Dr. Bill and Peggy Turman .....	\$ 10,500
Mary (Sandy) Rawlings .....	\$ 10,400
Bud and Ruth Dammann .....	\$ 10,000
Lisa DeRose .....	\$ 10,000
Rance and Voisey Jo Dunmire .....	\$ 10,000
Diane Aven for Ruth Gast .....	\$ 10,000
Henry and Ellyn Geisel .....	\$ 10,000
Kirk and Paula Kochenberger .....	\$ 10,000
Dr. Gary and Pamela Parks .....	\$ 10,000

## **ARTWORK DONORS**

Artwork donations add to the enjoyment of the Riverwalk experience. Public discussions were held to ascertain the ideas that people had regarding the types of art that should be placed throughout HARP. Individuals and their families, organizations, and foundations that have added to the beauty in the form of donated art or sculptures are:

<b>Donor</b>	<b>Artwork</b>	<b>Artist</b>
El Pomar Foundation and other numerous donors	Confluence Fountain	Wet Designs
George R. & Elisabeth W. Ireland, Henry D. & Ernamarie T. Williams	The Geese Bronze	Nick Moffett
Kathy & Tom Farley, Dr. Gerald & Rosemary Reilly	Farley-Reilly Fountain	Richard Hanson
Pat & Brett Kelly	Kelly Falls	Craig Campbell, DSW
Mary & Tom Cooney	Francis of Assisi Bronze	Mario Gambandi
DeRose and Kochenberger Families	Children Engaging in Sports Bronzes	Rick Willits
Frances Weaver in Memory of Chris Weaver	Working Bells (to be rung by visitors to HARP)	Framework by Jim Bishop
Bonfils-Stanton, Colorado Historical Society	Historic Interpretive Flood Wall	Jean and Tom Latka
Clementine Cardillo, Josephine M. Giaccio, Jerome Crane, and the Mahlon Thatcher White Foundation	Summer Showers	George Lundeen
Dan & Prina Fitzgerald	The Wonder of It All	Shalah Perkins
Colorado Historical Society, Colorado Department of Transportation, The Boettcher Foundation, Pueblo County, and Coors Foundation	Boettcher Outdoor Classroom and Interpretive Tile Walkway (depicting the journey of Zebulon Pike)	Ken Williams  Ken Williams
Pueblo Physicians	Physicians' Fountain in El Pomar Plaza	

In the spirit of the Riverwalk truly being a community project, donations of all amounts from various entities and individuals have been given to the HARP Foundation—the Pueblo Beautiful Association, the students at Sunset Park Elementary School, 4-H members, Pueblo Kiwanis, the USC Foundation, the 30's Club, the Rotary Club as well as numerous other individuals and businesses have all contributed to the beauty of the Riverwalk. Donations have been made to the Foundation to pay for artwork, fountains, trees, gazebos, the natural area, benches, lamp posts, etc.



Government contributions such as a donation of \$400,000 from Pueblo County and \$62,500 from the Colorado Department of Transportation add to community/state involvement while the \$10,000 given by the Pueblo Conservancy District emphasizes its on-going commitment to the project. One million dollars was donated to the project by GOCO (Great Outdoors Colorado).

Linda Tafoya, Executive Director of the Coors Foundation, summed up the community involvement pertaining to HARP with her comment: “The trustees of our Foundation were impressed with the Riverwalk project and with the wonderful support demonstrated by the fine people of Pueblo.”<sup>13</sup>

In-kind donations such as legal advice have also benefited the project via the HARP Foundation. Please refer to the Appendix for a complete list of all donors.

## **Board of Water Works**

Without a clean and permanent supply of water, the Riverwalk could not have been possible. Since 1991, the Board of Water Works and its management have been an active partner in the HARP project. Time, funding, and in-kind services donated by the Board of Water Works helped to bring the project to fruition. Alan Hamel, Executive Director of the Board of Water Works, led the effort and planning to assure the water rights for HARP.

The water for HARP emanates from two cooling ponds at Aquila. An early contribution of \$2,500 (March, 1992) and a subsequent donation of \$36,000 to fund a key water study and engineering work, and in-kind donations by the Board helped to assure a continuous water flow for the HARP project.

Actions that the Board of Water Works has approved to assure an adequate supply of water are as follows:

- 1) The Board entered into a 150-year Real Property Lease with Aquila for the right to use their water supply, facilities, and land (September 9, 1996—Exhibit H)
- 2) Aquila agreed to allow the Board of Water Works to have the right of first refusal if Aquila would ever quit the power generation business at this location
- 3) The Board continues to provide an independent water supply for the project via a tailwater right at Aquila’s release point (Case No. 93CW86 in Water Division Court 2 approved February 19, 1998—Exhibit I)
- 4) The Board supplements and will continue to supplement the water augmentation necessary for the evaporative losses provided through the Aquila Lease by providing ninety acre feet of transmountain water per annum. This is a \$5,000 per acre foot value for a total of \$450,000 for water and storage, which is a one-time (cost as of June, 2001) investment.
- 5) The Board has provided (since 1999) treated water to the HARP Authority and will continue to do so in the future in the amount of approximately \$11,000 per year
- 6) In-kind services for labor and equipment will be provided by the Board in the amount of approximately \$25,000 per year for managing the water rights and operating HARP’s water system
- 7) As part of a revised Intergovernmental Agreement with the City, County, Pueblo Conservancy District, and the Historic Arkansas Riverwalk of Pueblo Authority, the Board provides up to 7.2 million gallons of treated water per annum for the Authority/City-owned parks/landscaped areas/buildings/facilities
- 8) The Board spent over \$103,000 in legal and engineering fees to negotiate and finalize the Aquila contract and place the new water right
- 9) The Board provided in-kind donations as well as man-power hours throughout the building of the project

## **Aquila**

Aquila not only cooperated on water rights and land issues regarding the development of a river walk, but it also became a key player and active corporate partner. Ken Grobe, former Vice-president of Centel (now Aquila), led the initial effort regarding the cooperation of Aquila. The leadership continued with James Miller and Carole J. Lange. To date, Aquila:

- 1) gave the first major corporate gift in the amount of \$28,500 in August, 1992 to help underwrite the planning costs of the project
- 2) entered into a 150-year Real Property Lease with the Board of Water Works to use Aquila's water supply, facilities, and land (Exhibit H)
- 3) donated over \$450,000 in hard-dollar contributions to the project
- 4) provided in-kind contributions of legal, engineering, rights of way, technical, and labor to HARP (included power line removal)
- 5) encouraged management to be involved via participation in the HARP Foundation and the HARP Commission

## **Pueblo Conservancy District**

As early as 1982, the board members of the Pueblo Conservancy District were interested in beautifying the cooling ponds at Aquila. From the first fact-finding trip to Wichita, they were determined to help change the landscape of Central Pueblo. Board members Pat Kelly, Gus Sandstrom, Kathy Farley, and engineer Ray Koester were involved from the early meetings of the River Park Commission. In addition to their volunteer time and expertise, the board members have:

- 1) approved monetary donations exceeding \$150,000 (including \$150,000 for the completion of the pre-construction engineering and final design drawings for the project)
- 2) made in-kind legal and engineering donations totaling over \$89,000
- 3) given \$50,000 in the platting of the HARP subdivision
- 4) approved the appropriation of monies that amount to ten percent of the operating budget of the HARP Authority
- 5) assured the land adjacent to the old Arkansas River channel was available for development by completing a quiet title action for the land (Case No. 97, CV342—Exhibit J)
- 6) provided and continue to provide a member representative on the HARP Authority Council

## **City of Pueblo**

From the early River Task Force meetings in 1991 when Director of Planning Jim Munch and Planners Bill Zwick and Cathy Green were participants, the City of Pueblo and its employees have been active in the development of the HARP project. Lew Quigley, the former City Manager and past members of the City Council supported the revitalization project with funding and manpower. Without the support and assistance of the City Council, led by then-president Chris Weaver, the bond issue might not have been successful. That support continues today as the City of Pueblo provides fifty percent of the operating expenses for the HARP Authority.

Tom Cvar, Director of Public Works, was the project Manager who oversaw all of the construction of HARP.

The City of Pueblo also appoints two citizens as its representatives to the HARP Authority Council.

## **Pueblo County**

The County of Pueblo supports the HARP Authority by providing forty-percent of its operating expenses. The County appoints a County Commissioner as its member of the HARP Authority Council. Also, the County of Pueblo donated \$450,000 to the HARP Foundation. Those projects that have been partially or totally funded by the County include the outdoor education center and rest rooms, the landing at Lake Elizabeth, the stream in the Adams family active area, the natural area boardwalks, and the children's interactive water area.

## **HARP Authority**

The mission of the HARP Authority is to manage in the most effective and efficient means possible the supervision, promotion, operation, development, and maintenance of the Historic Arkansas Riverwalk of Pueblo for the enjoyment of the citizens of Pueblo and its visitors.

The HARP Authority is a separate legal entity formed “to promote, manage, supervise, operate, develop and maintain the public project known as the Historic Riverwalk of Pueblo (and) will promote the public health, safety, convenience and welfare of the City and its citizens...(Ordinance # 6282—Exhibit K)”

The HARP Council is the governing body of the HARP Authority. The Council consists of representatives from:

- 1) The City of Pueblo (two representatives)
- 2) Pueblo County
- 3) Pueblo Conservancy District
- 4) Pueblo Board of Water Works
- 5) Ex-officio member from the Parks and Recreation Department

The original HARP Authority Council members were:

- 1) Pat Kelly, Chairman
- 2) Jill Mattoon, Vice Chairman
- 3) Sandy Gutierrez, Secretary
- 4) Vera Ortegon, Treasurer
- 5) Dr. Richard Martinez
- 6) Richard Zajac (ex-officio member)

The Historic Arkansas Riverwalk of Pueblo continues to be in a construction phase. There are three primary phases of construction work. Phase I, which included the construction of the infrastructure improvements necessary to restore the Arkansas River to its 1921 location, was completed in the second half of 1998. Phase I cost \$8.8 million and included the excavation of Lake Elizabeth and the river channel, the building of three bridges (Union, Main, Grand Streets), the re-routing of Elizabeth Street, and the installation and/or replacement of all utilities. In addition, \$2.5 million was spent on the initial architectural/building plans for the HARP project.

Phase II construction is subdivided into Phases A, B, and C. Phase IIA— the construction of public plazas, walkways, bicycle paths, and landscaped areas is complete. Privately and/or Foundation-funded enhancements such as Kelly Falls, Farley/Reilly Fountain, Victoria Plaza/Event Area and Gazebo are also part of Phase IIA construction projects. Phase IIB projects included additional architectural plans, the construction of the plaza and boat house, construction of the parking lots, and landscaping. Phase IIB also consists of mixed use, private development areas along the Riverwalk. Construction for Phase IIC began in the Spring, 2002. Phase IIC will be the Boettcher Outdoor Education Center. It is located in the natural/educational area of HARP. This phase will include Pike Plaza and Anderson Gardens.

The following provides a short description of work completed and a timeline for future project completion.

## **HARP Construction Timetable**

September, 1996	HARP groundbreaking completed
October, 1996	Phase I construction begins (Lawrence Construction)
July, 1998	Phase I completed
August, 1998	Phase II A construction began (Houston Construction)
January 8, 1999	Private sector development proposals due for Phase II B
August, 1999	Phase II A completed

April , 2000	Phase II B completed
October 6&7, 2000	Official Opening of Historic Arkansas Riverwalk of Pueblo
Second Quarter, 2002	Phase IIC construction begins
Third Quarter, 2002	Phase IIC construction scheduled to be completed
To be determined*	Phase III construction begins
To be determined*	Phase III construction completed

\*cannot be scheduled until the Pueblo Police station and the City/County Health Department are moved

Phase I and Phases II A and B were completed on time and on budget.

As a leasing agent, contractor, or manager, the HARP Authority has the following responsibilities:

- ◆ to develop and review all contracts with the HARP attorney
- ◆ to negotiate with developers
- ◆ to manage/contract for patio spaces and other spaces for various venues
- ◆ to promote/contract space and/or activities to prospective contractors and lessors
- ◆ to provide or approve operating procedures for all contractors
- ◆ to enforce the contracts and verify that approved procedures are being followed by contractors or employees

Specifically, the HARP Authority manages its own offerings or oversees the contractors of all products and services to be marketed at the Riverwalk.

The HARP Authority is currently seeking/meeting with potential commercial developers for the Riverwalk.

## **The HARP Commission**

The HARP Commission provided the backbone of the HARP project for many years. The HARP Commission was disbanded on April 9, 2001 by the Pueblo City Council with Resolution #9267 (Exhibit L) repealing Resolution # 7337 that created the HARP Commission. In its place, the HARP Authority formed the Citizens Advisory Design and Construction Committee, retaining members of the HARP Commission so that the Authority would continue to benefit from the expertise of the Commission members. The Executive Director of the HARP Authority oversees this committee.

## **The Greater Pueblo Chamber of Commerce**

The Pueblo Chamber of Commerce promotes the Riverwalk via their publications and trade show presentations.

## **Future Plans**

The first business on the Riverwalk, a kiosk, opened in Spring, 2001. Permanent structures will be important as the HARP project is transformed from a park-like project to a vibrant area of multi-use buildings. The courting of private sector developers is an on-going process.

The completion of Phase III with its connection to the Pueblo Convention Center is on hold until the Pueblo Police building is moved. This part of the project will be funded with monies from the bond issue.

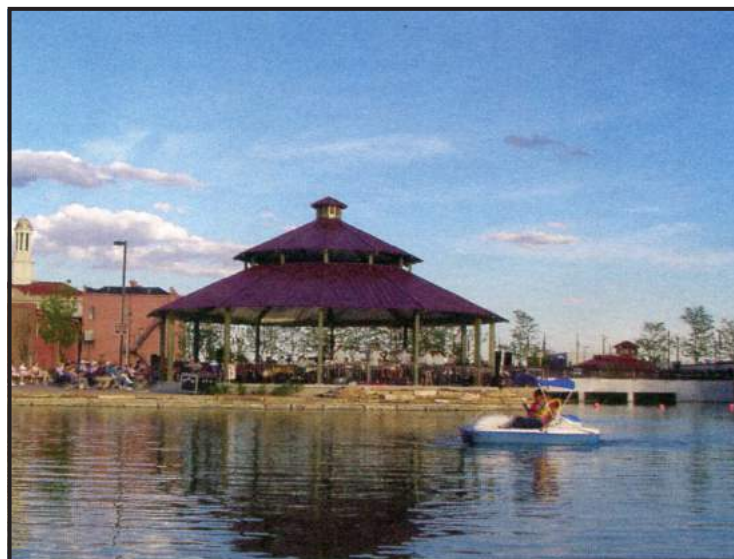
Preliminary sketches of future phases of the Riverwalk show the potential of the project.



Riders pulling into the boat house area.  
*Photo courtesy of the Pueblo Board of Water Works.*

Visitors enjoying a paddle boat ride and a concert on Lake Elizabeth.

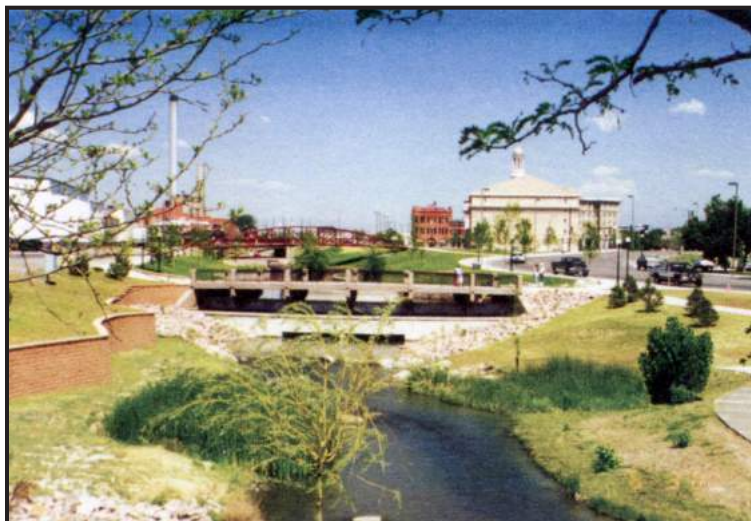
*Photo courtesy of the Pueblo Board of Water Works.*



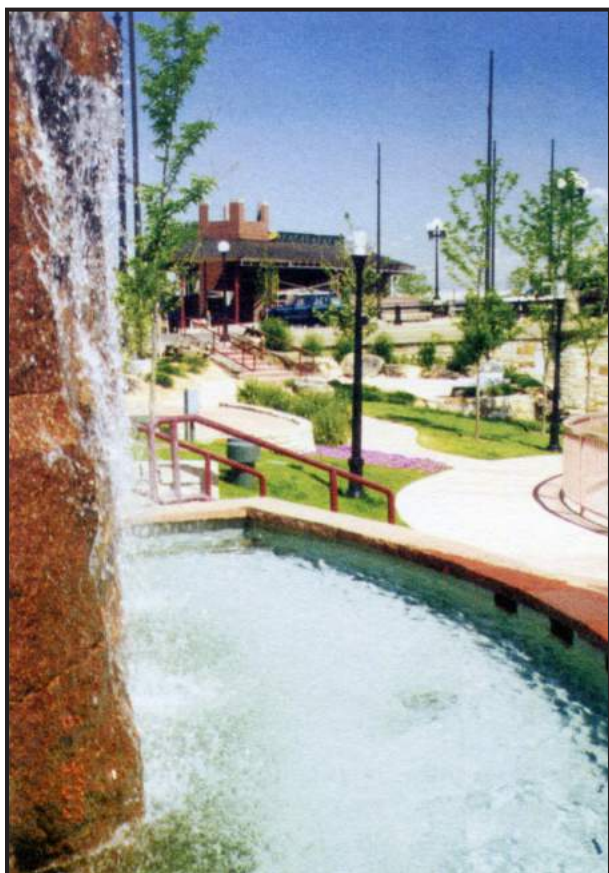
Union Avenue Bridge. Flags representative of Spain, France, Mexico, and the Republic of Texas line the Union Avenue bridge as a reminder of the roles that these entities played along the Arkansas River.

*Photo courtesy of Frank Childress.*





A view from the natural area of the Riverwalk.  
*Photo courtesy of Frank Childress.*



A day and night view of the Farley-Reilly Fountain.  
*Photos courtesy of Frank Childress.*



A sing along at the annual tree lighting and Christmas Extravaganza.

*Photo courtesy of the Pueblo Board of Water Works.*

El Pueblo Museum Fandango event.

*Photo courtesy of the Pueblo Board of Water Works.*



Visitors enjoying bronze sport sculptures.

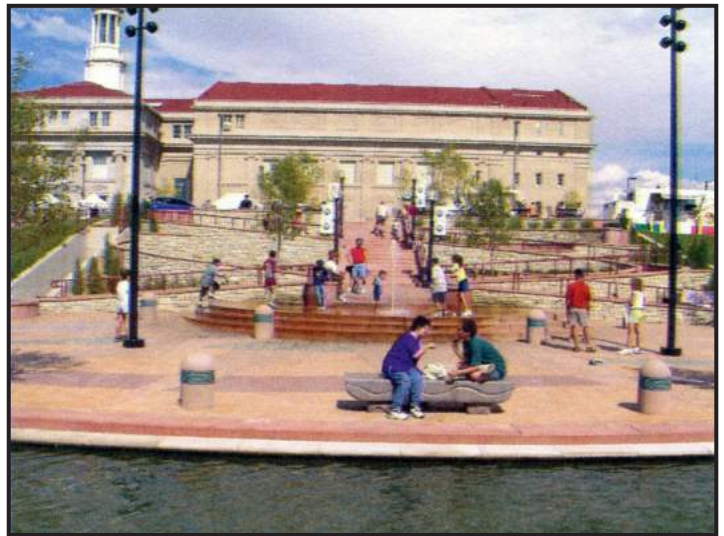
*Photo courtesy of the Pueblo Board of Water Works.*





Fireworks over Lake Elizabeth highlight the annual Christmas Extravaganza.  
*Photo courtesy of Pueblo Board of Water Works.*

Visitors enjoying a summer day at El Pomar Plaza.  
*Photo courtesy of Pueblo Board of Water Works.*



Lake Elizabeth.  
*Photo courtesy of Design Studios West.*



Families enjoying Kelly Falls.  
*Photo courtesy of Pueblo Board of Water Works.*

Physicians' Fountain. Children cooling off in the shooting fountains at El Pomar Plaza.  
*Photo courtesy of the Board of Water Works.*



Falls going into the natural/  
educational area.  
*Photo courtesy of John Suhay.*

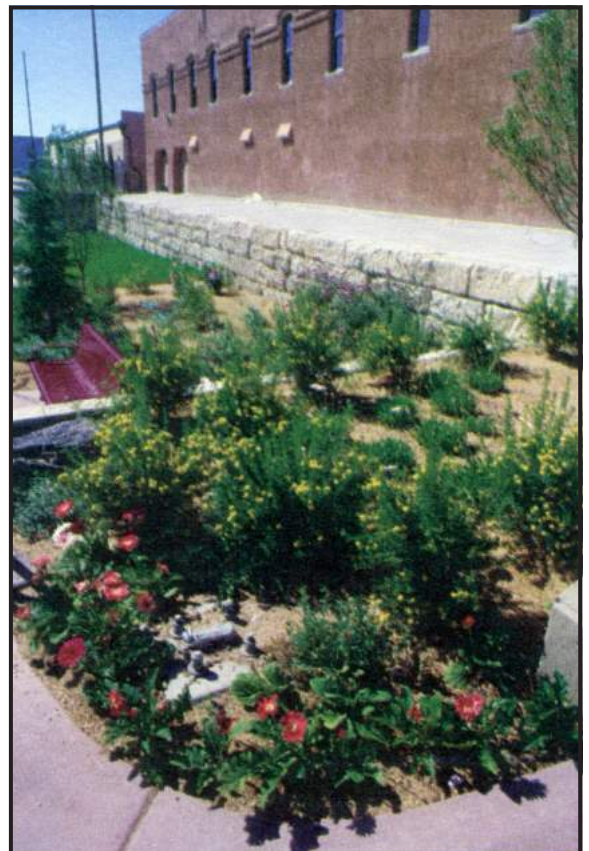




Kelly Falls.  
*Photo courtesy of John Suhay.*

Occhiato Gardens. Limestone retaining wall from original Arkansas River channel in background.

*Photo courtesy of John Suhay.*



Interpretive wall depicting the rich history of the Arkansas River.

*Photo courtesy of John Suhay.*





Boat riders view of the Historic Arkansas Riverwalk of Pueblo.

*Photo courtesy of John Suhay.*



Flags representing the history of the Arkansas River with City Hall in the background.

*Photo courtesy of John Suhay.*



A view of Pueblo City Hall and the completed part of the planned north river channel that will reach the Pueblo Convention Center. This section, although part of the original bond issue, cannot be completed until the police station is moved.

*Photo courtesy of Frank Childress.*



*HARP Existing*

HISTORIC ARKANSAS  
RIVERWALK OF PUEBLO

DSW  
DESIGN STUDIOS WEST, INC.

*HARP Future Phases*

HISTORIC ARKANSAS  
RIVERWALK OF PUEBLO

DSW  
DESIGN STUDIOS WEST, INC.

## ***APPENDIX***

## **Contributors to the HARP Foundation through May 31, 2002**

<b>CONTRIBUTOR</b>	<b>AMOUNT</b>	<b>CONTRIBUTOR</b>	<b>AMOUNT</b>
30's Club .....	\$900.00	Belcher, Olive .....	\$1,500.00
Abel Engineering.....	\$1,000.00	Benfatti, Debbie .....	\$750.00
Abriendo Inn .....	\$250.00	BF Goodrich .....	\$2,500.00
Adams Electric .....	\$1,500.00	Bisel, Ruth.....	\$250.00
Adams, Robert & Suzanne .....	\$250.00	Board of Water Works .....	\$1,000.00
Adams, William & Mary .....	\$50,000.00	Boeing Company .....	\$10,000.00
Adkins, Ralph & Assoc. ....	\$30.00	Boettcher Foundation .....	\$350,000.00
Adolph Coors Foundation .....	\$600,000.00	Bonfils-Stanton Foundation .....	\$25,000.00
Agnello, John & Dee .....	\$250.00	Brill, William & Beverly .....	\$2,000.00
Alsever, Robert .....	\$250.00	Brown, Dr. Stephen & Rebecca .....	\$5,000.00
Alsever, Robert N. ....	\$250.00	Brown,Paul/Denton,Dr. Janise .....	\$1,000.00
Anderson, Dave & Adele .....	\$20,000.00	Bryant, Dr. Michael & Elizabeth .....	\$7,000.00
Anonymous I .....	\$100,110.58	Temply Hoyne Buell Foundation .....	\$19,000.00
Anonymous II .....	\$34,634.93	Butcher, Kenneth & Barbara .....	\$20.00
Anonymous III .....	\$100.00	Cardillo, Clementine/ Giaccio, Josephine .....	\$35,000.00
Anonymous IV .....	\$100,000.00	Carey, Donald F. ....	\$273.47
Anton, Hank & Suzie .....	\$250.00	Carlisle, Mike .....	\$1,500.00
Anzuini, Gary .....	\$1,000.00	Carlson, Dan .....	\$750.00
Aquila/WestPlains/Utilicorp .....	\$451,399.00	Carter, James & Mary Jo .....	\$2,000.00
Archuleta, Reuben .....	\$250.00	Centennial Anatomy Class .....	\$75.00
Askwig, William & Mona .....	\$6,500.00	Central Class of 44 .....	\$25.00
Austin, Mark (trees) .....	\$150.00	Chamberlain Foundation.....	\$75,400.00
Avalos, Patrick & Rita .....	\$500.00	Chenoweth, Mr. & Mrs. John E. ....	\$250.00
Aven, Diane for Ruth Gast .....	\$10,000.00	Childress, Dr. Frank & Elke.....	\$2,000.00
Bailey, Paul .....	\$25.00	Chimento, Dr. James & Carol .....	\$375.00
Baillie, William & JoAnn .....	\$250.00	City-County Foundation .....	\$2,125.00
Ball, Jill & Michael .....	\$250.00	Clark Spring Water.....	\$250.00
Banner, Don & Helen .....	\$250.00	Clutter, Dr. Joseph & Sydney .....	\$3,000.00
Barber, Phillip & Randall .....	\$11,500.00	Cocharo, Sam & Lois .....	\$250.00
Barker, Brad & Gail .....	\$250.00	Colb, Dr. & Mrs. Michael A. ....	\$250.00
Bartecchi, Dr. Carl & Kay .....	\$5,000.00		



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<b>CONTRIBUTOR</b>	<b>AMOUNT</b>	<b>CONTRIBUTOR</b>	<b>AMOUNT</b>
Cole, David & Sarah .....	\$100.00	Design Studios West/ Don Brandes .....	\$12,700.00
Collins, Marvin .....	\$250.00	Dingle, Dr. Robert & Shirley .....	\$25,000.00
Colo Spgs Convention Bureau .....	\$4,000.00	Divelbiss, Maggie .....	\$500.00
Colomex, Inc. ....	\$10,000.00	Donovan, Richard .....	\$25.00
Colorado Dept of Local Affairs .....	\$500,000.00	Dougherty, Brian .....	\$25.00
Colorado Dept of Transportation ....	\$62,500.00	Dougherty, John & Maxine .....	\$25.00
Colorado Historical Society .....	\$30,000.00	Driscoll, James & Janice .....	\$250.00
Comer, Adrian .....	\$250.00	DS Masonry .....	\$5,000.00
Cook, Jennifer .....	\$250.00	Dunlap, Dorothy .....	\$250.00
Cooney, Tom & Mary .....	\$50,148.32	Dunmire, Rance & Voisey Jo .....	\$10,000.00
Cooper, Gordon .....	\$6,000.00	Dunsmoor, Mark & Debbie .....	\$1,125.00
County of Pueblo .....	\$515,000.00	Economic Development Administration .....	\$1,200,000
Courtright, Clay & Anne .....	\$3,000.00	Egelman, Arthur & Cirel .....	\$1,500.00
Crain, William & Eleanor .....	\$1,000.00	Einspahr, Orin .....	\$500.00
Crane, Jerome & Sue .....	\$50,000.00	El Pomar Foundation .....	\$1,000,000.00
Crosson, Dr. David & Barbara .....	\$1,500.00	Elizondo, Sel & Vivian .....	\$1,500.00
Crouse, Lyle & Pat .....	\$250.00	E. M. Christmas Foundation .....	\$75,400.00
Cruz, Gilbert & Vera .....	\$750.00	Epstein, Scott .....	\$250.00
Dammann, Ruth & Bud .....	\$10,000.00	Eskra, Rudy & Karen .....	\$1,000.00
Darrow, Dick & Nancy .....	\$1,500.00	Ewing, Dr. Wyman & Doris .....	\$20,000.00
Dazzio, Mr. & Mrs. Sam .....	\$250.00	Faiola, Sandra .....	\$250.00
DD Marketing .....	\$8,800.00	Farley, Tom & Kathy .....	\$61,727.53
Dell, Tony & Carla .....	\$4,800.00	FCE .....	\$280.00
Dennis, Dean & Gigi .....	\$2,000.00	Fimple, Dr. Bill & Ruth .....	\$250.00
DePalma, Ruth Louise .....	\$250.00	First Union Securities .....	\$1,500.00
DeRose, Dan & Kerry .....	\$20,000.00	Fitzgerald, Daniel & Prina .....	\$14,125.00
DeRose, Dr. Edward & Neta .....	\$20,000.00	Fowler, Dr. James & Sharon .....	\$5,000.00
DeRose, Lisa .....	\$10,000.00	Fox, Jonathan & Shari .....	\$1,000.00
DeRose, Mark .....	\$20,000.00	Frasher, Jim & Cheryl .....	\$250.00
DeRose, Mike & Tonya .....	\$20,000.00		
DeSalvo, Russel .....	\$5,000.00		

**Contributors to the HARP Foundation through May 31, 2002**

CONTRIBUTOR	AMOUNT	CONTRIBUTOR	AMOUNT
Frawley, Corrigan, Frawley, Hosanna .....	\$1,500.00	Home Again/Karen Smith .....	\$200.00
Fujishiro, John/Plumer, Shirley .....	\$1,550.00	HOTT-FX.....	\$750.00
Gates Family Foundation .....	\$700,000.00	Hoyle, Dr. Clifford & Marilyn .....	\$3,500.00
Geisel, Albert & Else .....	\$5,000.00	Huffaker, Robert & Jacquie .....	\$100.00
Geisel, Henry & Ellyn .....	\$10,000.00	Hurley, Dr. Grant & Bev .....	\$500.00
Geller, Jeffrey & Deborah .....	\$1,500.00	Imprinted Sportswear Shop .....	\$258.63
Gersick, Rita .....	\$250.00	Internal Health Care (Gonzales) .....	\$1,500.00
Gillispie, Charles & Sharlene .....	\$1,000.00	Ireland, George R. & Elisabeth W.....	\$25,000.00
Glover, R. Allan & Wanda M. ....	\$750.00	Robert Jackson Foundation.....	\$50,000.00
Gower Memorial .....	\$790.00	Johnson, David K. ....	\$250.00
Great Outdoors Colorado Trust Fund .....	\$1,175,000	Johnson, Marc .....	\$350.00
Green, Cathy .....	\$200.00	Kamin, Michael & Irma .....	\$10.00
Grobe, Ken & Jean .....	\$20,000.00	Kaufman, Buzz & Kelly .....	\$250.00
Guerrero, Tito .....	\$250.00	Keefe, Michael & Crute, Denise .....	\$5,100.00
Gunn, Charles E. ....	\$100.00	Keilbach, John & Mary .....	\$1,000.00
Gustamante, J. Daniel .....	\$250.00	Kellett, James & Bette .....	\$250.00
Hahn, Greg & Cathy .....	\$5,000.00	Kelly, Bret & Pat .....	\$150,550.00
Hall, Millie .....	\$10.00	Khosla, Rocky & Madeline .....	\$250.00
Hallock, Col. & Mrs. Richard .....	\$4,000.00	Klemmer, Howard & Pauline .....	\$250.00
Hamel, Alan & Mary Kay .....	\$750.00	Kochenberger, Kirk & Paula.....	\$10,000.00
Harshman, Royal & Iva Lee .....	\$750.00	Kogovsek, Ray .....	\$250.00
Hart, Theresa Pineda .....	\$250.00	Kolbezen, Bruce .....	\$500.00
Healy, June & Tom .....	\$5,000.00	Kumler, Ruth .....	\$5,000.00
Heath, Brad & Gina .....	\$250.00	Krasovec, Patricia .....	\$250.00
Henderson, Val & Dan .....	\$1,500.00	Kroger Foundation .....	\$1,250.00
Hern, Priscilla .....	\$250.00	La Renaissance .....	\$1,750.00
Herzog, Harvey & Sarah .....	\$500.00	La Van, Vickie .....	\$250.00
Hilvitz, Phil & Joni .....	\$5,000.00	Lange, David & Carole .....	\$3,150.00
Hindsley, Georgann .....	\$1,500.00	Lawrence Construction .....	\$80,000.00
Helzer, Suzanne & Robert .....	\$3,000.00	Lawrence, Dr. Richard & Joyce .....	\$18,494.55
		Lee, Vonetta .....	\$150.00

## **Contributors to the HARP Foundation through May 31, 2002**

<b>CONTRIBUTOR</b>	<b>AMOUNT</b>	<b>CONTRIBUTOR</b>	<b>AMOUNT</b>
Leedom, Eric & Kathy .....	\$250.00	Mondragon, Edward & Gloria .....	\$250.00
Lehl, Marilyn .....	\$250.00	Montez, Arline .....	\$250.00
Lemasters Janitor Supply .....	\$312.50	Montoya, Joseph & Lydia .....	\$250.00
Lemasters, Clarence & Sandra .....	\$250.00	Moore, Beverly .....	\$250.00
Lile, Leesa .....	\$1,500.00	Moore, James & Mary .....	\$250.00
Macartney, Ruth .....	\$250.00	Morauski, Bob .....	\$100.00
Mack, Phyllis .....	\$250.00	Morton, Dr. David E. ....	\$350.00
Manzanares, Abel .....	\$750.00	Munch, Jim & Karen .....	\$250.00
Martinez, Vern .....	\$250.00	Murray, Melvin & Madeline .....	\$6,000.00
Masias, Ray & Margaret .....	\$250.00	Naureth, Linda .....	\$25.00
Massey, Dr. Benjamin & Kay .....	\$1,500.00	Nerenberg, Michael J. ....	\$750.00
Masterantonio, Dominick .....	\$250.00	O'Callaghan, Pat & Julie .....	\$3,750.00
Mastro, Dr. Edward & Sue .....	\$5,000.00	Occhiato, Joan .....	\$15,000.00
Mattoon, Jill & Rick .....	\$250.00	Ohlsen, Dr. Joel & Christina .....	\$3,000.00
MBLD PC .....	\$7,705.80	O'Neal, James .....	\$25,000.00
McCarthy, Dr. & Mrs. Paul .....	\$25.00	O'Rourke, Patti .....	\$1,000.00
McCloskey, Sue .....	\$560.00	Ortegon, Vera .....	\$1,500.00
McCown, Jean .....	\$1,500.00	Packard Foundation .....	\$1,012,000.00
McCreight, Mr. & Mrs. James .....	\$176.76	Padula, Brad .....	\$5,000.00
McDermott, Jerry & Rosemarie .....	\$750.00	Parks, Dr. Gary & Pamela .....	\$10,000.00
McEvoy, Patricia & Carle .....	\$4,000.00	Parkview Medical Center .....	\$2,750.00
McHardy, Dr. Bryson & Carolyn .....	\$1,000.00	Parlapiano, David & Marjorie .....	\$1,000.00
McKinney Concrete .....	\$15,000.00	Patterson, Bill & Diane .....	\$250.00
McNamara, B.J. ....	\$1,500.00	Patti, James J. ....	\$2,500.00
Meier, Steven & Michelle .....	\$150.00	Payne, Dr. Wayne & Susie .....	\$1,500.00
Merrill Lynch .....	\$1,000.00	Paz en la Casa, Vincente .....	\$750.00
Metz, John & Blanche .....	\$250.00	Pearl, Ed .....	\$1,500.00
Miller, Mark & Jane .....	\$250.00	Pena, Nora Ann .....	\$250.00
Miller, Raymond & Gertrude .....	\$250.00	Petrocco, Frank & Hazel .....	\$250.00
Minnequa Bank .....	\$1,500.00	Pflum, Eugene & Mary .....	\$750.00
Molello, Dan .....	\$250.00	Phelps, Anne & Jim .....	\$250.00

**Contributors to the HARP Foundation through May 31, 2002**

CONTRIBUTOR	AMOUNT	CONTRIBUTOR	AMOUNT
Phelps, Thomas & Betty .....	\$1,500.00	(In Kind).....	\$12,700.00
Phelps, Dr. Lynn & Sharon.....	\$2,500.00	Romero, Ernest.....	\$250.00
Phelps, Harvey & Adah .....	\$500.00	Romero, Henry & Sue .....	\$250.00
Poole, Mr. & Mrs. James.....	\$2,500.00	Roselawn Cemetery Assoc. ....	\$1,500.00
Positive Change .....	\$830.16	Rotary Club of Pueblo .....	\$2,500.00
Proudfoot, Becky .....	\$50.00	Roumph, Mike & Molly .....	\$5,000.00
Public Service of Colorado .....	\$5,000.00	Rowley, Dr. R. Douglas .....	\$4,000.00
Pueblo 4 - H Foundation .....	\$3,842.00	Royal Electric Service .....	\$250.00
Pueblo Assoc. of Realtors.....	\$250.00	Rush's Lumber .....	\$250.00
Pueblo Beautiful Association .....	\$8,000.00	Sackett, Walter .....	\$750.00
Pueblo Chieftain .....	\$645.00	Salvatore, Dr. James/ Kulik, Dr. Shirley .....	\$3,000.00
Pueblo Classic Memorials (in kind). ..	\$11,000.00	Sanchez, Gil .....	\$500.00
Pueblo Conservancy District .....	\$10,000.00	Sandstrom, Gus & Sue .....	\$5,500.00
Pueblo Imaging Center .....	\$2,000.00	Schmidt, Dr. John & Dr. Janice .....	\$5,000.00
Pueblo Kiwanis Club .....	\$2,500.00	Seal, Emmett & Marge .....	\$250.00
Puls, Gerald & Elaine .....	\$250.00	Seavy, Jack & Susan .....	\$250.00
Pumphrey, William .....	\$2,500.00	Security Service Fed Cr Union .....	\$5,000.00
Quenzer, Bonita .....	\$250.00	Seilheimer, Jack & Donna .....	\$250.00
Quigg, R.L. ....	\$250.00	Senatore, Mike & Lottie .....	\$250.00
Radway, Dr. Paul .....	\$5,000.00	Settipani, Dr. Frank .....	\$250.00
Rapp, Dr. Barry & Wendy .....	\$1,000.00	Shroyer, J.M. ....	\$250.00
Ratliff, Greg & Shelley .....	\$750.00	Silva, Bob & Meredith .....	\$750.00
Rau, Robert & Jane .....	\$20.00	Sims, Mark .....	\$6,000.00
Rawlings, Mary (Sandy) .....	\$10,429.86	Smith, Bruce .....	\$250.00
Razor, Evelyn .....	\$250.00	Smith, C.W. & Jan .....	\$250.00
Reed, Shannon & Denise .....	\$250.00	Smith, Dr. & Mrs. Thomas.....	\$1,000.00
Reichert, Dr. & Mrs. Thomas .....	\$25.00	Smith, William E. & Evelyn M. ....	\$250.00
Reilly, Dr. Gerald & Rosemary .....	\$150,000.00	Snapp, Otto W. ....	\$250.00
Robler, Bob .....	\$250.00	Soldan, Bill & Marj.....	\$300.00
Rocky Mountain Coors Distributing .....	\$5,000.00	Spahr, Patricia H. ....	\$1,000.00
Rocky Mountain Steel Mills			

## **Contributors to the HARP Foundation through May 31, 2002**

<b>CONTRIBUTOR</b>	<b>AMOUNT</b>	<b>CONTRIBUTOR</b>	<b>AMOUNT</b>
Speaks, Don & Gwen .....	\$250.00	US Bancorp Foundation .....	\$250.00
Spinuzzi, Sam & Shirley .....	\$250.00	USC Foundation .....	\$1,000.00
Spradley Motors .....	\$5,000.00	Vaccaro, Joe & JoAnn .....	\$250.00
Stachler, John & Linda .....	\$20,000.00	Valdez, James & Debbie .....	\$750.00
Stark, Thomas & Tracey .....	\$1,500.00	Valenzuela, Dr. James R. ....	\$250.00
Stein, Marvin (In Kind) .....	\$9,000.00	Vallejo, M. Edmund & Gregoria .....	\$3,000.00
Sternholm, Chris & Judy .....	\$50,000.00	Ventura Enterprises .....	\$2,000.00
Stewart, Gentry & Genira .....	\$250.00	Verna, Nadene .....	\$250.00
Stringer, Kent & Rebeccah .....	\$1,500.00	Vial, Charles & Desda .....	\$34,775.26
Summit Brick & Tile .....	\$1,660.00	Vickery, Marie B. ....	\$750.00
Sunset Park Elementary .....	\$250.00	Volk, Dean & Wolf, Amy .....	\$250.00
Susnara, Gary .....	\$1,500.00	Von Ahlefeldt, Ruth S. ....	\$250.00
Swanson, Jim & Bennie .....	\$100.00	Wallace, Preston & Helen .....	\$250.00
T&M Granite		Waller, Darrell & Nancy .....	\$25.00
& Marble, Inc. (In Kind) .....	\$11,000.00	Wampler, Jay & Joan .....	\$250.00
Taulli, Frank .....	\$250.00	Wayne's Towing .....	\$250.00
Taussig, Anna .....	\$750.00	Weaver, D.A. ....	\$275.00
Taylor, Earl E. ....	\$25.00	Weaver, Fran .....	\$3,465.00
TERRACON .....	\$250.00	W. Gilmore Foundation for	
Thatcher Foundation		Rocky Mountain Steel Mills .....	\$250,000.00
for Mahlon White .....	\$35,000.00	White, Ken .....	\$200.00
Thomas, Trudy .....	\$1,000.00	White, Ken & Gala .....	\$250.00
Thorton Orthopedic .....	\$1,000.00	Wilcoxson Family .....	\$1,500.00
Thrifty Nickel Want Ads .....	\$250.00	Williams, Estelle .....	\$1,500.00
Tonsing, Robert & Sara .....	\$11,000.00	Williams, Henry & Ernamarie .....	\$9,634.00
Tracey, Dr. John .....	\$8,000.00	Williams, Ralph & Jan .....	\$5,750.00
Trane Co. ....	\$250.00	Wilz Memorial .....	\$740.00
Transit Mix of Pueblo .....	\$1,209.00	Wilz, William & Lynette .....	\$25,000.00
Tucker, Kelly .....	\$250.00	Wolther, Jack & Jean .....	\$250.00
Turman, Dr. Bill & Peggy .....	\$10,500.00	Wood, LaVeta .....	\$250.00
Tuttle, Martha .....	\$250.00	Wright, Steven .....	\$25.00



## **NOTES**

1. Pueblo Conservancy District, *Official Plan*. (Pueblo: 1923), 1
2. Ibid., 10
3. Ibid., 10
4. *The Ledger*, 19 August 1992
5. *Historic Arkansas River Task Force Minutes*, 10 August 1993
6. *Historic Arkansas River Park Task Force Minutes*, 16 March 1993
7. *Pueblo City Council Work Session Background Paper*, 17 April 1996
8. Espinosa Juan, "Weaver: Riverwalk Easily Within City's Budget," *The Pueblo Chieftain*, 22 October. 1995
9. HARP Riverwalk Election Committee. *Statement of Fund Needs and Purposes* (Pueblo: 1995)
10. Grobe, Ken, "The Case for HARP," *The Pueblo Chieftain*, 22 October 1995
11. Principal Financial Securities, Inc., *Pre-marketing Memorandum* (Pueblo: 1996)
12. City of Pueblo, Colorado, *Requests for Qualifications-based Procurement* (Pueblo: 1994)
13. Roper, Peter, "Coors Gives \$600,000 to Riverwalk," *The Pueblo Chieftain*, 5 September 1998

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*Historic Arkansas River Park Task Force Meeting Minutes*, 21 Jan. 1992-20 Oct. 1992.

*Historic Arkansas River Project Commission Meeting Minutes*, 10 May. 1994-12 Dec. 2000.

*Historic Arkansas River Project Committee*, 8 Dec. 1992-12 Apr. 1994.

*Pre-marketing Memorandum* Denver: 1996. Principal Financial Securities, Inc.

Pueblo Conservancy District, *Official Plan*, Pueblo: 1923.

*River Park Task Force Meeting Minutes*, 29 Aug. 1991-3 Oct. 1991.

## EASEMENT AND RIGHT-OF-WAY

W I T N E S S E T H:

PUEBLO CONSERVANCY DISTRICT

BY Patricia D Kelly  
President

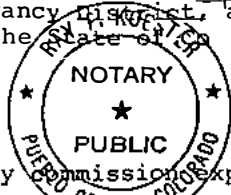
Katherine M. Farley  
Secretary-Treasurer

CITY OF PUEBLO, a Municipal Corporat

*Lucy J. Costa*  
City Clerk

By Gene M. Wentz  
Vice President of the Council

The foregoing instrument was acknowledged before me this 28th day of FEBRUARY, 1978 A.D., by PATRICIA D. KELLY, as President and KATHLEEN M. FAULTS, as Secretary of Pueblo Conservancy District, a conservancy district organized under the laws of the State of CO.



My commission expires:

Ray J. Koester  
Notary Public  
2/26/81

nt was acknowledged before me this 1st  
A.D., by Steve L. Martinez, as Vice-  
il and Lucy J. Costa, as City Clerk of  
tion.

Notary Public

November 13, 1981

	Notary Public
My commission expires:	November 13, 1981

November 13, 1981

My commission expires:

## EXHIBIT B

CARLSON, HAMMOND & PADDOCK, L.L.C.  
ATTORNEYS AT LAW

MARY MEAD HAMMOND  
WILLIAM A. PADDOCK  
LEE H. JOHNSON  
MELANIE KOPPERUD BACKES  
PETER C. FLEMING  
K. GWEN BEACHAM

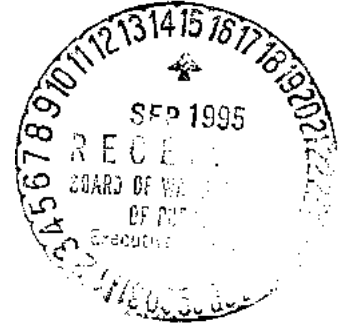
1700 LINCOLN STREET, SUITE 3900  
DENVER, COLORADO 80203-4539

JOHN UNDEM CARLSON  
(1940-1992)

TELEPHONE (303) 861-9000  
TELECOPIER (303) 861-9026

September 12, 1991

Mr. Alan C. Hamel  
Executive Director  
Board of Water Works of  
Pueblo, Colorado  
P.O. Box 400  
Pueblo, Colorado 81002



Re: HARP/WestPlains Energy Water Right

Dear Alan:

We have previously discussed the potential acquisition of the WestPlains Power Plant's water right by the Board of Water Works of Pueblo, Colorado (the "Board") for the purpose of ensuring a reliable and low-cost water supply for the HARP Project. The primary value in the WestPlains water right lies in its priority, not its historical use. The decree for that water right states that it is non-consumptive. Its value to the Board therefore arises from the fact that it delivers water into the proposed HARP Project area and allows a corresponding depletion to be made to the reach of the Arkansas River from the intake of the WestPlains water right downstream to the point of return of the water at Runyon Lake.

This is the reach of the river in which the St. Charles Mesa Water District (the "District") has its principal point of diversion. The WestPlains water right permits diversions above the District's point of diversion up to 200 c.f.s. Since these diversions are senior in priority, they can be made without respect to any impact on the District's water rights. In contrast, each of the recent decrees obtained by the Board for exchanges through this reach of the river have contained terms and conditions to prevent adverse impacts to the quality of the water available at the District's point of diversion. This makes the WestPlains' water right potentially quite valuable either as a water supply or as a bargaining tool with the District.

You have asked us for our thoughts on how the Board may continue to enjoy the benefits of the WestPlains water right for the HARP Project should WestPlains either scale back or cease use of this water right in connection with its power generation at the present plant location. Due to the potential importance of this transaction, we have spent quite a bit of time looking at the law to see how this might best be accomplished. There are essentially four alternative methods to achieve this goal. They are (1) an



Mr. Alan C. Hamel  
September 12, 1995  
Page 2

outright purchase of the water right, (2) a long-term lease of the water right, (3) an option to purchase the water right, and (4) a right of first refusal to purchase the water right. Attached to this letter is an excellent memorandum prepared by Gwen Beacham discussing the legal requirements of and the potential advantages and disadvantages of these four alternatives.

We believe that an outright purchase of the water right by the Board is the best alternative, followed by (1) a long-term lease with an option to purchase, (2) an option to purchase, and (3) a right of first refusal. The basis for our thinking and possible alternative ways to structure such a transaction are discussed below and in the attached memorandum.

An unconditional sale of the water right would not be attractive to WestPlains because WestPlains needs the water right for its continued operations. However, because the WestPlains water right is "non-consumptive," it will be difficult for WestPlains to obtain a change in point of diversion and place of use of the water right. Therefore, it is of limited value at other locations. Since the principal value of the water right to WestPlains is its ability to use it in place, the sale of the water right to the Board might be made attractive if it were coupled with either a long-term lease of the water right back to WestPlains or a conveyance of the water right back to WestPlains that contained a right of reverter to the Board. The right of reverter would provide that if WestPlains failed to use the water right for its decreed purposes at its present location, the water right would revert to the Board.

A purchase with a lease back by WestPlains is a more attractive alternative than the reconveyance with a right of reverter in the Board. The reason for this is that the lease can address issues such as the amount, time, and quantity of water to be diverted by WestPlains and the ability of the Board to call for the delivery of water for diversion of water at times that WestPlains is not doing so. Neither of these approaches would necessarily require a change of water rights but would have the effect of assuring a senior water supply for the HARP Project.

If WestPlains is unwilling to consider an outright sale on any terms, then the next best alternative would be a lease with an option to purchase it at either a date certain or when WestPlains elected to sell the water right. The lease would entitle the Board to use so much of the water right as was not needed or unused by WestPlains. There is a body of old case law in Colorado which

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September 12, 1995  
Page 3

permits an owner of a water right to lease his unused water to another provided that no injury results. All of those cases were decided under the statutory acts that did not require a change of water right decree for a changed type of use, or place of use, but rather only required a change decree for a change in point of diversion. Thus, while the Board could lease the water right or the unused portions thereof, this alternative would likely require a change in water rights before the Board could apply the water to HARP uses. I doubt WestPlains would allow a change of its water right under a lease.

Nonetheless, the long-term lease is an attractive alternative because the lease can include an option to purchase the water right. The purchase option in the lease would not be subject to the rule against perpetuities and therefore the option could extend beyond a 21-year period. Likewise, the lease with an included option could potentially be obtained on financial terms more favorable than the mere exercise of an option in the future. The Board could attempt to fix the price for the water right at the present time or provide a procedure by which the price of the water right would be ascertained at the time for exercise of the option.

The difficulty with the lease alternative is that an option or a right of first refusal contained in a lease can be subordinated to judgment liens. Thus, a creditor could obtain the water by foreclosure of a judgment lien. The water right would be sold free of any lease and option of the Board. In addition, as with any contract, if the Board were somehow to fail to perform any of the terms of the lease containing the option, the right to exercise the option could be lost through termination of the lease.

If WestPlains is unwilling to consider either an outright sale or a long-term lease with an option, then the Board has two alternatives remaining--an option to purchase and a right of first refusal. The difference between an option and a right of first refusal is the option gives the Board the right to compel the sale of the water right to it within a specified time, whereas a right of first refusal has no effect unless WestPlains decides to sell the water right.

An option can be made conditional upon the happening of some specified future event, such as if WestPlains decides to stop generating power at the current plant site or converts to an operation which requires substantially less water use. For both the option and the right of first refusal, the price can be set out specifically in the agreement, or it may be left to determination

Mr. Alan C. Hamel  
September 12, 1995  
Page 4

at a future time. It is at least advisable that a method to determine price be defined in the option or right of first refusal to eliminate future disputes. Likewise, in the case of a right of first refusal, it must specify the event or events which will trigger the Board's right to exercise the right of first refusal.

There are several other HARP-related issues that come up in connection with the WestPlains water right. The first is the use of the WestPlains diversion facilities and storage facilities for transportation of the HARP water rights. If the Board were to acquire the WestPlains water rights and then lease them back to WestPlains, the Board would own the diversion structures and easements for the carriage of water and could elect to put HARP water in those same structures. Absent purchase by the Board, it will probably be necessary to obtain an easement from WestPlains to carry HARP water through its diversion structures, ditches, and reservoirs to the HARP Project area. If WestPlains permits this to be done without written agreement, then an easement would arise by implication. The better practice would be to have a written easement agreement allowing the Board to carry up to 35 c.f.s. through the facilities, and granting the Board the right to enlarge them to the extent necessary to convey its water. Since a portion of the land is apparently owned by the Pueblo Conservancy District, similar easements may be necessary from the District.

This raises a similar question for the HARP Project itself. I have assumed, but do not know, that the land involved in the HARP Project area will be owned by the City of Pueblo or that the City will acquire easements on the property. It will be necessary for the Board to coordinate with the City to ensure that appropriate easements are obtained from adjacent landowners to permit inundation of their property with the HARP Project water.

Once you've had an opportunity to review this letter, we need to discuss how you wish to proceed with WestPlains Energy. I would be happy to prepare whatever documents are necessary or to call and discuss this matter with WestPlains' attorneys. However, I anticipate that informal discussions by you with WestPlains in connection with HARP's planning meetings are probably the appropriate next step. Please give me a call when you have a free moment.

Yours very truly,

*Bill Paddock*

William A. Paddock

## EXHIBIT C

R E S O L U T I O N   N O . 93-13

A RESOLUTION CONCERNING APPROPRIATION OF WATER RIGHT FOR USE IN CONNECTION WITH THE HISTORIC ARKANSAS RIVER PROJECT WITHIN THE CITY OF PUEBLO, COLORADO.

WHEREAS, there is currently being planned a redevelopment project for downtown Pueblo. The purpose of the project is to encourage and promote the economic vitality of the Union Avenue Historic District with the City of Pueblo. A central feature of the project will be the redevelopment of the historical Arkansas River channel through a portion of the Union Avenue Historic District. That channel for the Arkansas River has not been used to carry the normal flows of the river since completion of the new river channel and flood levy around downtown Pueblo constructed after the flood of 1921;

WHEREAS, in cooperation with several local and state organizations, the City of Pueblo has vigorously pursued the planning and design of improvements to and adjoining the historic Arkansas River channel running through the heart of downtown Pueblo;

WHEREAS, work undertaken on the Historic Arkansas River Project ("HARP") includes, among other things, a conceptual master plan for the improvement and amenities for the project and preparation of a final design for the proposed improvements;

WHEREAS, the HARP project will require a constant and reliable supply of surface water year round to accomplish its intended purposes. The preliminary design of the project has found the water needs of HARP to be a minimum rate of flow of 25 c.f.s. and a maximum rate of flow of 100 c.f.s.;

WHEREAS, the only water currently flowing in the historical Arkansas River channel is water diverted into the channel by WestPlains Energy Company and diffuse surface runoff reaching the historical river channel. Water is diverted into the historical river channel by WestPlains Energy in exercise of its water rights and, after use by WestPlains Energy, is discharged to the river channel and is not thereafter rediverted or reused within the HARP project area:

WHEREAS, the quantity of water diverted by WestPlains Energy and discharged into the historical river channel is not always sufficient to meet the projected needs of HARP and does not constitute a sufficient or reliable supply adequate to meet the needs of HARP;

WHEREAS, the Board of Water Works of Pueblo is vested with the control and management of water supply and water works for the City of Pueblo and is empowered to appropriate, adjudicate, acquire,

change and otherwise take all necessary actions to obtain and maintain water supplies for the City of Pueblo;

WHEREAS, the Board of Water Works of Pueblo has agreed to and intends to take all actions it deems prudent and reasonable to obtain a secure and reliable water supply for use in the HARP.

NOW THEREFORE BE IT RESOLVED:

1. The Board of Water Works hereby makes this written expression of its intention to appropriate sufficient water from the Arkansas River and its tributaries to supply up to 100 c.f.s. of water for use for HARP. The point of diversion for the water shall be at the current point in the flood control dike on the Arkansas River where WestPlains Energy diverts water from the Arkansas River into the historical Arkansas River channel. That point is more particularly located on the north bank of the present channel of the Arkansas River approximately whence the West Quarter of Section 36, Township 20 South, Range 65 West of the 6th P.M. bears South 65°30' West a distance of 1,000 feet.

2. It is also the intention of the Board to appropriate all tail water, wastewater and other surface flows currently flowing in the historical river channel, including, but not by way of limitation, all tail water discharged by WestPlains Energy Company near where Victoria Street crosses the historical Arkansas River channel. The amount of this appropriation shall be the entire flow in the historic channel or 200 c.f.s., whichever is less. The point of diversion of this water right shall be at each place that such water reaches the historical channel of the river commencing at the point described in Paragraph No. 1 above.

3. The beneficial use of said water shall be all beneficial uses incident to the HARP project, including the maintenance of flows in the historic river channel, storage of water in impoundments now or hereafter constructed in the historical river channel, and all beneficial uses related to the Board's operations, including but not limited to irrigation, domestic, municipal, commercial, industrial, mechanical, power generation and cooling, wastewater treatment, recreation, fish and wildlife, replacement, augmentation, exchange, substitution, and storage in aid of any of the foregoing purposes.

4. The place of use of the water will be the historic Arkansas River channel from the point of diversion from the new channel of the Arkansas River described in Paragraph No. 1 above, downstream to the place where the historical river channel discharges into Runyon Lake. The time of use shall be year round.

5. It is acknowledged that it may be necessary for the Board to propose and implement a plan for augmentation, substitution, or exchange to prevent injury to other vested water rights while

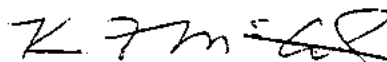


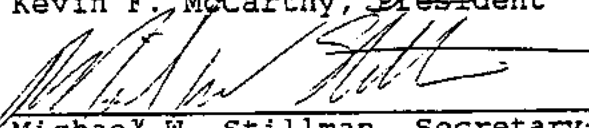
permitting the new water rights appropriated by the Board to be exercised year round.


6. The Board hereby directs the Executive Director and his staff, in conjunction with such engineers, attorneys and other consultants the Executive Director may deem necessary, to take all actions reasonably necessary to perfect the appropriations of water described herein, to obtain a judicial conformation of such rights so that water can be made available in the time, place and amount needed to carry out the purposes of the HARP, and to enter into such negotiations and agreements as may be necessary to accomplish the purposes set forth herein.

Dated this 17th day of August, 1993.

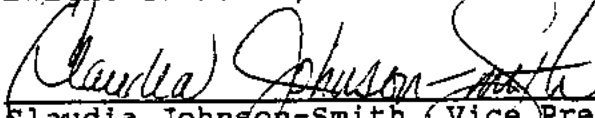
BOARD OF WATER WORKS OF PUEBLO, COLORADO

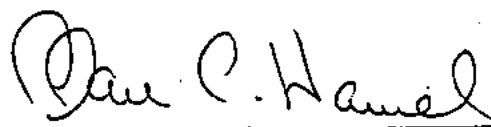
  
Kevin F. McCarthy, President

  
Michael W. Stillman, Secretary-Treasurer

  
Verdon L. Johnson, Vice President

  
Dwight G. Robbe, Vice President

  
Claudia Johnson-Smith, Vice President

  
Alan C. Hamel, Executive Director

  
William F. Mattoon, Attorney



## Board of Water Works of Pueblo, Colorado

319 West Fourth Street • P.O. Box 400 • Pueblo, Colorado 81002 • 584-0250

October 1, 1993

Mr. Rich Kramer  
Vice President of Human Resources  
WestPlains Energy  
P. O. Box 75  
Pueblo, Colorado 81002

Mr. Ray Koester, Engineer  
Pueblo Conservancy District  
c/o KLH Engineering consultants  
111 E. 5th Street  
Pueblo, Colorado 81003

Mr. Jim Munch  
Director of Planning & Development  
City of Pueblo  
P. O. Box 1427  
Pueblo, Colorado 81002

Re: Letter of Understanding Between Relevant  
Parties Regarding the Historic Arkansas  
River Project (HARP)

Dear Rich, Ray, and Jim:

As you are aware, the City of Pueblo, in cooperation with several local and state organizations, has vigorously pursued the planning and design of the historic river channel running through the heart of downtown Pueblo. This project, referred to as the Historic Arkansas River Project (HARP), has recently completed a conceptual master plan and is currently preparing a more detailed final design. The project consultants are working with an overall HARP Task Force chaired by Mr. Tommy Thomson, General Manager of the Southeastern Colorado Water Conservancy District. In addition, a special HARP subcommittee has been formed with the intent of investigating all technical water issues related to the proposed project. This Technical Water Subcommittee is composed of the following individuals:

Alan C. Hamel, Chair, Board of Water Works  
Don Brandes, Jr., Design Studios West  
Ray Brown, Colorado Department of Transportation  
Mark Even, West Plains Energy  
Hugh Hahn, Design Studios West  
Lee Huffstutter, Board of Water Works  
Ray Koester, KLH Engineering Consultants  
Dennis Maroney, City of Pueblo Public Works Dept.  
Jim Munch, Department of Planning & Development  
Bud O'Hara, Board of Water Works  
Lee Simpson, St. Charles Mesa Water Water District  
Tommy Thomson, Southeastern Colorado Water Conservancy  
District  
Ken Wright, Wright Water Engineers

At a recent Technical Water Subcommittee meeting it was decided that a preliminary Letter of Understanding be circulated among the public and private sector interests who may be affected by the HARP project. Specifically, it was felt that certain assumptions should be clarified and agreed to among the HARP committee members as a means of establishing greater communication and confirming certain technical assumptions.

Please accept this preliminary Letter of Understanding as the basis for a more final and binding Letter of Agreement which may be agreed to as the HARP project proceeds. Below are the basic technical assumptions and areas of mutual understanding which the Technical Water Subcommittee has identified for your consideration:

- 1) All parties understand that, in general, the overall intent of the HARP project is to rehabilitate the Historic Arkansas River channel and to encourage and promote the economic vitality of the Union Avenue Historic District, without impairing the Pueblo Conservancy District's responsibilities with use of existing Arkansas River channel and levy.
- 2) All parties understand that, in order to achieve these broad HARP goals, it may be necessary for both private sector and public sector entities to maintain certain historic water rights through the project area. All such agreements are intended to benefit the general public and are not intended to be detrimental to any of the concerned parties.

- 3) All parties understand that, for the purpose of planning and preliminary engineering, WestPlains will continue to exercise its water rights and, after use, discharge the same into the historical channel of the Arkansas River at or near the location of the current power plant to facilitate development of the historic park. It is important to understand that there is to be no substantial new depletion caused by the project without provision being made for its replacement from other sources of supply. WestPlains does, though, reserve the right to transfer this right to another location, if that made good strategic sense for their company.
- 4) All parties understand that the Pueblo Conservancy District and the City of Pueblo may elect to dedicate, lease or allow for the use of certain lands in the HARP project, provided said lands are not vital to the flood control responsibilities of the Pueblo Conservancy District.
- 5) All parties understand that the City of Pueblo will act as the lead agency in evaluating and determining the available methods and sources of funding for the planning, design, engineering, financing and long-term maintenance of the HARP improvements, and that such improvements shall be finally determined by the agency or entity who becomes responsible for such funding after considering recommendations made by the HARP Committee.
- 6) All parties understand that the Board of Water Works of Pueblo will provide preliminary water engineering and legal services, in addition to considering providing augmentation water, if needed, and filing for a new water right or rights on behalf of the project and the City, if appropriate.
- 7) All parties understand that, in an effort to properly plan and engineer the HARP project, all parties shall work together in a mutually cooperative manner to further determine the following issues and concerns:
  - a. Overall waterfront/urban design elements
  - b. Land use and ownership
  - c. Infrastructure requirements
  - d. Circulation, access and parking
  - e. Implementation program and project phasing
  - f. Design criteria for flows at a minimum of 24 cubic feet per second (cfs), an average of 50 cfs and a maximum of 200 cfs.
  - g. The affect of the Pueblo Conservancy District's flood control responsibilities and the Arkansas River Channel and levy.
  - h. Limits any rights to use water and structures.

These and other project elements will be further developed as a part of the ongoing HARP planning phase.

If you are in general agreement with the points described above, please sign below as confirmation to the HARP Technical Water Subcommittee to proceed to more detailed discussions. If you have any questions regarding these points or believe that certain elements can be modified to better reflect your position, please contact me at your earliest convenience.

Very truly yours,

*Alan C. Hamel*

Alan C. Hamel, Chair  
HARP Technical Water Subcommittee

js

BOARD OF WATER WORKS OF PUEBLO

By *[Signature]*

\_\_\_\_\_  
President Title

\_\_\_\_\_  
Date

PUEBLO CONSERVANCY DISTRICT

By *Patricia Kelly*

\_\_\_\_\_  
Director Title

\_\_\_\_\_  
Date

WESTPLAINS ENERGY

By *[Signature]*

\_\_\_\_\_  
Vice Pres. of Human Resources Title

\_\_\_\_\_  
Date

CITY OF PUEBLO

By *Jay B. Kastelic*

\_\_\_\_\_  
PRESIDENT OF THE COUNCIL Title

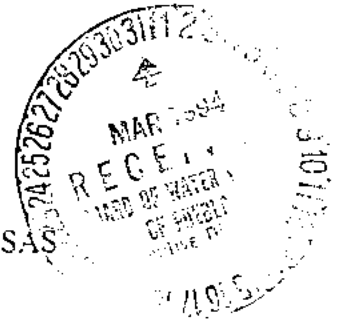
\_\_\_\_\_  
OCT. 27, 1993 Date



## EXHIBIT E

RESOLUTION NO. 7337

### A RESOLUTION CREATING THE HISTORIC ARKANSAS RIVER PROJECT COMMISSION



BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that:

#### SECTION 1.

There is hereby created a commission to be known as the Historic Arkansas River Project Commission (the "Commission").

#### SECTION 2.

The Commission shall have the following enumerated responsibilities and authority with respect to the Historic Arkansas River Project (the "Project") and such other responsibilities and authority as the City Council may by Resolution assign to the Commission:

- (a) to promote and seek community support for and involvement in the Project.
- (b) to act as a coordinating agency between and assist in the development of cooperation agreements and relationships among interested private and public entities.
- (c) to evaluate and make recommendations concerning the plan, design, engineering, construction, management, maintenance and funding for the Project and appropriate entities and organizations to perform such activities.
- (d) to organize and establish a tax-exempt nonprofit foundation capable of accepting and disbursing private and public donations and contributions for the planning, design, construction, management and maintenance of the Project.

#### SECTION 3.

All members of the Commission shall be appointed by the City Council and shall be subject

to removal by the City Council. The Commission shall have the authority to elect its own officers and adopt its own bylaws. Meetings of the Commission shall be open to the public and adequate notice thereof shall be given to its members. The Commission shall be composed of fifteen (15) members and the following persons are hereby appointed as members of the Commission:

Dave Anderson	Alan Hamel
Andrea Aragon	Pat Kelly
Dr. Frank Childress	Tony Langoni
Sam Corsentino	Rich Kramer
Dean Dennis	Ruth McDonald
Meme Dunkel-Martin	Glenn Reiff
Ken Grobe	Lee Simpson
Charles (Tommy) Thompson	

#### SECTION 4.

The City Manager may assign City staff and employees to assist the Commission in the performance of its responsibilities.

#### SECTION 5.

The Commission shall have no authority or power to commit or bind the City to any contract, agreement or undertaking nor to expend or commit any funds or resources of the City. All such actions and expenditures shall be made, taken and authorized by the City Council.

#### SECTION 6.

This Resolution shall become effective upon final passage.

INTRODUCED: March 28, 1994

By FAY KASTELIC  
Councilperson

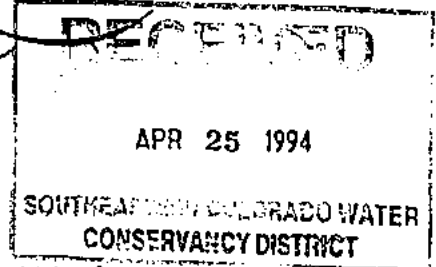
ATTEST:

MARIAN D. MEAD  
City Clerk

APPROVED:

By JOYCE R. LAWRENCE  
President of the City Council

## EXHIBIT F



HOUSE BILL 94-1027

BY REPRESENTATIVES Romero, Berry, Jerke, and Mattingly;  
also SENATORS Rizzuto, Pastore, and Thiebaut.

CONCERNING EXPANSION OF THE POWERS OF CONSERVANCY DISTRICTS.

*Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. 37-2-101 (1), Colorado Revised Statutes, 1990 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

37-2-101. Jurisdiction of district court - purposes of districts. (1) The district court sitting in and for any county in this state has jurisdiction, when the conditions stated in section 37-2-102 are found to exist, to establish conservancy districts, which may be entirely within or partly within and partly without the judicial district in which said court is located, for any of the following purposes:

(g) PARTICIPATING IN THE DEVELOPMENT OF PARKS AND RECREATIONAL FACILITIES WITHIN THE BOUNDARIES OF THE CONSERVANCY DISTRICT.

SECTION 2. 37-3-103 (1), Colorado Revised Statutes, 1990 Repl. Vol., is amended BY THE ADDITION OF A NEW PARAGRAPH to read:


37-3-103. General powers. (1) In order to protect life and property within the district, and to protect or relieve land subject to overflowing or washing, or which is menaced or threatened by the normal flow or flood or surplus or overflow waters of any natural watercourse, stream, canyon, or wash, whether perennial, intermittent, or flood, and in order to effect the protection of the land and other property in the district, and in order to accomplish all other purposes of the district, the


Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

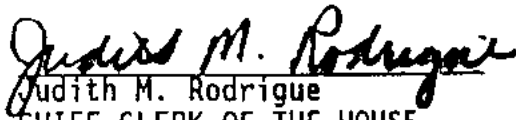
board of directors is authorized:

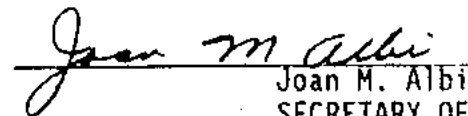
(k) PARTICIPATE IN THE DEVELOPMENT OF PARKS AND RECREATIONAL FACILITIES INCLUDING, BUT NOT LIMITED TO, TRAILS, GREENWAYS, AND RIVERFRONT DEVELOPMENT WITHIN THE BOUNDARIES OF SAID DISTRICT.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

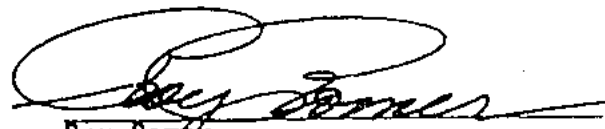
  
Charles E. Perry  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

  
Tom Norton  
PRESIDENT OF  
THE SENATE

  
Judith M. Rodrigue  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

  
Joan M. Albi  
SECRETARY OF  
THE SENATE

APPROVED April 7, 1994 at 2:44 P.M.

  
Roy Romer  
GOVERNOR OF THE STATE OF COLORADO



ARTICLES OF INCORPORATION  
OF  
THE HARP FOUNDATION951005277 \$50.00  
SECRETARY OF STATE  
02-28-95 15:55

The undersigned persons, acting as incorporators of a corporation under the provisions of "Colorado Nonprofit Corporation Act" sign and acknowledge the following Articles of Incorporation for such corporation:

FIRST: The name of the corporation is: THE HARP FOUNDATION

SECOND: The period of duration is perpetual.

THIRD: The purpose or purposes for which the corporation is organized is to accept and disburse private and public donations and contributions for the planning, design, construction, management and maintenance of the public project located within the City of Pueblo, Colorado, known as the "Historic Arkansas River Project".

Notwithstanding any other provisions of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal Income Tax under Section 501(c)3 of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue law) or (b) by a corporation contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Internal Revenue law). The corporation shall be prohibited from engaging in any regular business or activity of a kind ordinarily carried on for profit and no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its Member, Officers, Directors, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation of services rendered and to make payments and distributions in furtherance of the purposes set forth herein.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

FOURTH: The membership of the corporation shall consist of five Members, who are natural persons serving in an elected or appointed position on the governing boards, council, or commission of one of the following public entities:

1. City Council, City of Pueblo, Colorado.
2. Board of Water Works, City of Pueblo, Colorado.
3. Board of County Commissioners, County of Pueblo, State of Colorado.
4. The Pueblo Conservancy District, a Colorado Corporation.
5. Historic Arkansas River Project Commission (appointed under Resolution 7337 of Pueblo City Council March 28, 1994).


STATE OF COLORADO       )  
                                  ) ss.  
COUNTY OF PUEBLO       )

The foregoing Articles of Incorporation was acknowledged before me this 22<sup>nd</sup> day of February, 1995 by Patricia D. Kelly, Kenneth A. Grobe and James F. Munch.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

MY COMMISSION EXPIRES: May 11, 1996  
Bonded Thru NOTARY PUBLIC AGENCY

  
Notary Public

**EXHIBIT H**

Reception #: 1140809 Date: 09/30/1996 Time: 1020 Book: 2932 Page: 991 Chris C. Munoz  
Inst: LEASE R Fee: 125.00 D Fee: 0.00 SC: 1.00 Pg: 1 of 25 Pueblo Co.Clk.&Rec.

**REAL PROPERTY LEASE**

This Real Property Lease ("Agreement" or "Lease") is entered into this 9th day of September, 1996, by and between Utilicorp United, Inc., by its Division, WestPlains Energy ("WestPlains" or "Landlord"), a Delaware corporation, whose address is 200 West 1st Street, Pueblo, Colorado 81003, and the Board of Water Works of Pueblo, Colorado (the "Board" or "Tenant") whose address is 319 West Fourth, P.O. Box 400, Pueblo, Colorado 81002.

**RECITALS:**

A. There is currently planned within the City of Pueblo ("Pueblo") a redevelopment of the Historic Arkansas River Channel where it flowed through downtown Pueblo prior to 1921. This project, known as the Historic Arkansas Riverwalk Project ("HARP Project"), involves the restoration of the Historic Arkansas River Channel as it generally existed before 1921, as a scenic, aesthetic, recreational, economic development, and park amenity in downtown Pueblo. The parties expect that the HARP Project will increase the value of the real property that adjoins and that is near the project area, including the real property of WestPlains. The expectation of increased real property values is part of the consideration for this Agreement.

B. WestPlains owns and operates a water-cooled electrical generation plant and owns and leases from the Pueblo Water Conservancy District lands adjacent to and underlying the Historic Arkansas River Channel in Pueblo, Colorado. The cooling water used at the power plant is diverted from the Arkansas River under WestPlains' water rights, used for power generation purposes, and after use is discharged to the Historic Arkansas River Channel.

C. The Board is an independent board established by the charter of the City of Pueblo, Colorado, and vested with the entire control and operation of the water works of the City of Pueblo.

D. The Board is actively involved in obtaining the water supplies necessary for the HARP Project. The Board's activities include this Agreement and the filing of the application for new junior water rights and a plan for augmentation for the HARP Project, now pending in Case No. 93CW086, District Court, Water Division No. 2, Colorado.

E. To supply water to the HARP Project, it is necessary to use the existing diversion, transmission, and storage facilities used by WestPlains. In addition, it may be necessary to enlarge, modify and/or improve those diversion, transmission, and storage facilities.

F. The Board desires to lease from WestPlains the right to use, divert, carry, and store water in the WestPlains Water Facilities to be used in conjunction with the HARP Project and to lease and occupy the land under and surrounding Lake Elizabeth. To the extent that WestPlains' interest in the Water Facilities and the Premises are derived from a lease with the Pueblo Water Conservancy District, the Board desires to sublease from WestPlains the right to use, divert, carry, and store water in the WestPlains Water Facilities to be used in conjunction with the HARP Project and to occupy the land under and surrounding Lake Elizabeth.

G. The Board desires to obtain a right of first refusal to purchase the water rights owned by WestPlains in the event that WestPlains ceases to use its water rights for power generation purposes at a power plant located at or within close proximity to "D" Street immediately northwest of Victoria Street in Pueblo, Colorado.

H. WestPlains is willing to lease and sublease to the Board the right to use the Water Facilities and to grant the right to enlarge, modify, and/or improve these Water Facilities in conjunction with the HARP Project, including occupancy of the land under and surrounding Lake Elizabeth. WestPlains is also willing to grant the Board a right of first refusal to purchase its interest in the Water Facilities and Water Rights on the terms stated below.

IN CONSIDERATION of the recitals and covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Board and WestPlains agree as follows:

#### Article I - Definitions

For purposes of this Agreement, the following defined terms shall have the meaning given to them in this Article.

1.1 "HARP Water Rights" shall mean the HARP Water Right, the HARP Tailwater Right, and the HARP Plan for Augmentation now pending and as hereafter decreed by the District Court, Water Division No. 2, State of Colorado, in Case No. 93CW086, including any future changes or modifications of said water rights and plan for augmentation.

1.2 "The District" shall mean the Pueblo Water Conservancy District, a flood control district organized and existing pursuant to Title 37, Articles 1-8 of the Colorado Revised Statutes, and its successors and assigns.

1.3 "WestPlains Water Rights" or the "Water Rights" shall mean the Southern Colorado Power Company's Cooling and Condensing System for 200 c.f.s. with Non-Irrigation Priority No. 1 and Priority Date of April 14, 1926; and the Southern Colorado Power Company's Cooling Basin, Non-Irrigation Reservoir Priority No. 5, with Priority Date

of April 14, 1926, for 4,553,548 cubic feet (104.5 acre-feet); all as more fully described in the October 13, 1932, Decree in Case No. 19693 in the Pueblo County District Court entitled "In the Matter of the Adjudication of Rights to the Use of Water for Beneficial Purposes other than Irrigation in Water District 14, of the State of Colorado."

1.4 "River Intake" shall mean the diversion dam and intake structures at the points of diversion from the Arkansas River for the WestPlains Water Rights decreed in Case No. 19693, on October 13, 1932, by the Pueblo County District Court.

1.5 "Lake Elizabeth" shall mean the pond located in the Historic Arkansas River Channel immediately west of Victoria Avenue, and any enlargement, modification, or improvement thereto in connection with the HARP Project. Said pond is a portion of the Southern Colorado Power Plant Company's Cooling Basin as decreed by the Pueblo County District Court in Case No. 19693 on October 13, 1932.

1.6 "HARP Project" shall mean that certain project to redevelop the Historic Arkansas River Channel.

1.7 "Historic Arkansas River Channel" shall mean the channel of the Arkansas River within the City of Pueblo as it generally existed just before the 1921 flood and prior to construction of the flood control levies by the District.

1.8 "Water Facilities" shall mean any Unused Capacity to divert, transport, and store water through and in the River Intake, the conduit and canal or waterway from the River Intake to Lake Elizabeth, Lake Elizabeth, and from Lake Elizabeth into the discharge conduits.

1.9 "WestPlains Water Facilities" or "Premises" shall mean the Water Facilities, all improvements necessary for the use of the Water Facilities in conjunction with the HARP Project, and the real property on which some of the Water Facilities are located, described in Exhibit 1, and depicted on the map attached hereto as Exhibit 2.

1.10 "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321); (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601); or (vii) defined as a



"regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. § 6991).

1.11 "Unused Capacity" shall be that capacity of the Water Facilities to divert, transport, or store water not being used by Landlord at any given time.

1.12 "Term" shall mean the initial Term and any Extended Term of the Lease.

#### Article II - Lease of Real Property

2.1 Landlord hereby leases to Tenant and Tenant leases from Landlord the right to use the WestPlains Water Facilities in conjunction with the HARP Project and to divert, transport, and store water in and through the WestPlains Water Facilities for HARP Project purposes. This Lease encompasses only Landlord's ownership interest in the WestPlains Water Facilities, and shall be subject to Landlord's prior right to use and occupy the WestPlains Water Facilities for the diversion, transportation, and storage of the WestPlains Water Rights for the purposes and in the manner described in the original decree for the WestPlains Water Rights.

2.2 Subject to the consent of the District, Landlord hereby subleases to Tenant and Tenant hereby subleases from Landlord the right to use, in conjunction with the HARP Project, so much of the WestPlains Water Facilities as are used by Landlord pursuant to a lease, easement, or right of way agreement with the District. In conjunction with the HARP Project, and subject to the consent of the District, Landlord also hereby subleases to Tenant and Tenant also hereby subleases from Landlord, the right to divert, transport, and store water in and through those portions of the WestPlains Water Facilities leased by Landlord from the District. This Sublease shall be subject to Landlord's prior right to use and occupy the WestPlains Water Facilities for the diversion, transportation, and storage of the WestPlains Water Rights for the purposes and in the manner described in the original decree for the WestPlains Water Rights. This sublease shall not be construed to modify or amend any existing lease, easement, or right of way from the District to Landlord.

2.3 The Premises, with all of its improvements and appurtenances, is hereby leased and subleased to the Board for a period of one hundred (100) years commencing on the date of this Agreement and expiring on September 30, 2096. So long as Tenant pays the rent, and performs all of its obligations in this Lease, Tenant's use of the Premises will not be disturbed by Landlord, or anyone claiming by, through or under Landlord except as necessary to accommodate Landlord's prior right to use the Premises as described in paragraphs 2.1 and 2.2 above.

2.4 So long as Tenant is not in default under this Lease, either at the time of exercise or at the time the Extended Term commences, the Lease shall automatically be extended for two additional periods of twenty-five (25) years (the "Extension Period") on the same terms,

covenants, and conditions as this Lease, unless Tenant, with the written consent of the City of Pueblo, gives Landlord written notice of its intent not to extend the Lease at least twelve (12) months prior to the expiration of the initial Term or Extended Term, whichever the case may be.

2.5 Upon consent in writing given by the City of Pueblo, Tenant may cancel this Lease by giving Landlord at least one-hundred and eighty (180) days' prior written notice of Tenant's election to cancel this Lease. The cancellation date will be stated in Tenant's notice and will be no less than one-hundred and eighty (180) days after the date of Tenant's notice. Tenant cannot elect to cancel this Lease if an Event of Default under paragraph 11.3 exists at the time of its election. Tenant will cure any such default under this Lease which exists on the cancellation date, and Tenant's obligation to cure any such default within the period of time specified in this Lease will survive the cancellation date. On or prior to the cancellation date, Tenant will surrender possession of the Premises to Landlord in accordance with the provisions of this Lease. Upon cancellation, Landlord and Tenant will be relieved of their obligations under this Lease, except for those obligations accruing prior to the cancellation date.

2.6 Tenant will pay Landlord ONE HUNDRED DOLLARS (\$100.00) annually as rent during the term of the Lease. The rent for the first year was paid on the date of this Agreement, the receipt of which is acknowledged by Landlord. Each successive year's rental shall be paid to Landlord on or before the first day of June, at the address specified by Landlord, or such other place as Landlord determines, without prior demand and without any abatement or set-off. Landlord shall be responsible for the payment of all real property taxes and other taxes levied on the WestPlains Water Facilities owned by Landlord.

2.7 Tenant shall separately meter and pay the appropriate suppliers for all gas, electricity, light, heat, telephone, power, and other utilities and communications services used by Tenant on the WestPlains Water Facilities during the term of the Lease, whether or not such services are billed directly to Tenant. Tenant will also procure, or cause to be procured, without cost to Landlord, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance upon the WestPlains Water Facilities of wires, pipes, conduits, tubes, and other equipment and appliances for use in supplying any such service to and upon the WestPlains Water Facilities. Landlord, upon request of Tenant, and at the sole expense and liability of Tenant, will join with Tenant in any application required for obtaining or continuing any such services.

### Article III - Insurance

3.1 Landlord's Insurance. At all times during the term of this Lease, to the extent reasonably insurable, Landlord will maintain (a) fire and extended coverage insurance covering the Premises in an amount sufficient to prevent Landlord from being a co-insurer

under its policies of insurance, and (b) public liability and property damage insurance in an amount customary for properties which are comparable to the Premises.

**3.2 Tenant's Insurance - General.** At all times during the term of this Lease, Tenant will carry and maintain, at Tenant's expense:

**3.2.1** Public liability and property damage liability insurance, with a combined single occurrence limit of not less than FIVE MILLION DOLLARS (\$5,000,000.00). Tenant's obligation to carry and maintain public liability and property damage insurance may be satisfied by the City of Pueblo carrying and maintaining such insurance on the Premises in compliance with the requirements of this Article III.

**3.2.2** Fire and extended coverage insurance covering all insurable leasehold improvements on the Premises and all of Tenant's equipment, fixtures, and other property from time to time in, on, or upon the Premises. This insurance will be in an amount not less than the full insurable value without deduction for depreciation. This insurance will provide protection against all perils included within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended peril (all-risk). All net policy proceeds will be used for the repair or replacement of the property damaged or destroyed.

**3.2.3** Worker's compensation insurance satisfying Tenant's obligations under the worker's compensation laws of the State of Colorado.

**3.3** All policies of liability insurance which Tenant is obligated to maintain according to this Lease (other than any policy of worker's compensation insurance) will name Landlord as an additional insured. Original or copies of original policies (together with copies of the endorsements naming Landlord as an additional insured) and evidence of the payment of all premiums of such policies will be delivered to Landlord prior to Tenant's occupancy of the Premises and from time to time at least thirty (30) days prior to the expiration of the term of each such policy. All public liability and property damage liability policies maintained by Tenant will contain a provision that Landlord, although named as an insured, will nevertheless be entitled to recover under such policies for any loss sustained by it, its agents, and its employees as a result of the acts or omissions of Tenant. All such policies maintained by Tenant will provide that they may not be terminated or amended except after thirty (30) days' prior written notice to Landlord. All public liability, property damage liability, and casualty policies maintained by Tenant will be written as primary policies, not contributing with and not in excess of coverage that Landlord may carry. All insurance required by Tenant under this Article III may be provided through self-insurance or self-insurance pool arrangements. To the extent not covered by Tenant's Insurance, and to the extent permitted by law, Tenant will indemnify, defend, and hold Landlord harmless from any other liability, claim, action, penalty, cost, or expense arising from any occurrence involving the Premises which is not caused by the negligence or willful act of Landlord, its officers, agents, employees, or contractors.

3.4 Landlord and Tenant waive all rights to recover against each other or against the officers, directors, shareholders, partners, joint venturers, employees, agents, invitees, or business visitors of each other for any loss or damage arising from any cause covered by any insurance required to be carried by each of them pursuant to paragraphs 3.1(a) and 3.2.2 or any other insurance actually carried by each of them. Landlord and Tenant will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises pursuant to paragraphs 3.1(a) and 3.2.2.

#### Article IV - Use of Premises

4.1 Tenant may use the Premises in conjunction with the HARP Project and divert, transport, and store water lawfully available to the HARP Water Rights and any other water or water rights of Tenant that may be lawfully diverted, transported, or stored on the Premises. During the Term of this Lease, Landlord shall continuously divert, transport, and store through and in the WestPlains Water Facilities the amount of water lawfully available and reasonably necessary to accomplish the decreed beneficial uses under the WestPlains Water Rights. Notwithstanding the foregoing, upon not less than ninety (90) days prior written notice to Tenant, in the event that Landlord ceases to utilize the Premises for the generation of electricity, otherwise ceases to have the need for such WestPlains Water Rights, or the cost to continue to divert, transport, and store the WestPlains Water Rights is no longer economically justifiable to Landlord, Landlord may discontinue its obligation under this paragraph 4.1 to divert, transport, and store the WestPlains Water Rights. On the effective date of such notice, Landlord shall not be obligated to further divert, transport, and store the WestPlains Water Right but shall thereby grant its consent to Tenant to divert, transport, and store at Tenant's sole cost and expense the WestPlains Water Rights. Tenant may take such action as may be necessary to authorize Tenant's use of the WestPlains Water Rights consistent with Landlord's right to resume use of the WestPlains Water Rights in accordance with their original decree. Landlord shall have the right to resume the use, diversion, transportation, and storage of such Water Rights upon ninety (90) days notice to Tenant.

4.2 Tenant's use of the Premises for the HARP Project and for diversion, transportation, and storage of water for the HARP Project shall be exclusive as to everyone except Landlord. Tenant's right to use the Premises is subject to Landlord's prior right to use the Premises for the exercise of the WestPlains Water Rights in accordance with their decrees for power production purposes. Tenant shall be entitled to use all Unused Capacity for the exercise of Tenant's water rights. Landlord shall have the right at all times to spill any water stored on the Premises under Tenant's water rights to the full extent of the WestPlains Water Rights and to curtail diversion of Tenant's water rights as necessary for maintenance or repair of the Premises, compliance with laws, rules, and regulations, and for exercise of the WestPlains Water Rights. Landlord shall provide Tenant with as much notice as reasonably possible before spilling or curtailing Tenant's water rights. During the term of this Lease or any extension of this Lease, Landlord may not lease the Premises to any

other person or entity and may not permit any other person or entity to use the leased Premises except a lease that is expressly subject to this Lease and Tenant's rights hereunder.

4.3 Tenant will not use or occupy any portion of the Premises in violation of any law, ordinance, order, rule, regulation, certificate of occupancy, judicial decree, or other governmental requirement. Tenant will comply with all laws, ordinances, orders, rules, regulations, judicial decrees, and other governmental requirements relating to the use, condition, or occupancy of the Premises. Tenant shall maintain in good working order discharge facilities from Lake Elizabeth equipped with a measuring device capable of measuring all tailwater discharged by Landlord.

4.4 Tenant will have the right to contest by appropriate proceedings diligently conducted in good faith in the name of Tenant, or, with the prior consent of Landlord, in the name of Landlord, or both, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation, or legal requirement of any nature with respect to the Premises or which, in the opinion of Tenant, would adversely affect the Premises or the HARP Project. If compliance with any such law, ordinance, order, rule, regulation, or requirements may legally be delayed pending the prosecution of any proceeding without incurring any lien, charge, or liability of any kind against the Premises, or Tenant's interest in the Premises, and without subjecting Tenant or Landlord to any civil liability for failure so to comply, Tenant may delay compliance until the final determination of such proceeding. Even if such lien, charge, or liability may be incurred by reason of any such delay, Tenant may so contest and delay, so long as (a) such contest or delay does not subject Landlord to criminal liability and (b) Tenant furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of any contest or delay. Landlord will not be required to join any proceedings referred to in this paragraph unless the provision of any applicable law, rule, or regulation at the time in effect requires that such proceedings be brought by or in the name of Landlord, or both. In that event Landlord will join the proceedings or permit them to be brought in its name if Tenant pays all related expenses. To the extent Landlord would contest such matters, but for the action of Tenant, then Tenant shall not be obligated to pay any fees, costs, or expenses of Landlord.

#### Article V - Assignment

5.1 Tenant may assign in whole or in part its leasehold interest to any governmental or quasi-governmental entity formed for the purpose of or who becomes responsible for the operation of the HARP Project. Such assignment does not require approval of Landlord. Any other assignment of the Lease by Tenant must be approved by Landlord in writing, which approval shall not be unreasonably withheld provided that the assignee is of established financial responsibility. Upon assignment, the assignee may assume and be responsible for all rights and obligations under this Lease, and Tenant shall cease to have any rights or obligations under this Lease. Tenant may not assign this Lease in whole or in



part for the benefit of creditors nor may Tenant encumber in any manner its leasehold interest.

5.2 No assignment will be effective until a fully-executed copy of the instrument of assignment has been delivered to Landlord.

#### **Article VI - Maintenance, Repairs, and Improvements**

6.1 Landlord shall at all times during the term of this Lease keep and maintain the Premises at its own cost and expense, in good order, condition, and repair. Landlord's duty to maintain and repair the Premises shall not include (1) any damages caused by an act, negligence, or omission of Tenant or Tenant's employees, agents or contractors; or (2) any structural alterations or improvements required by any governmental entity solely by reason of Tenant's use of the Premises; or (3) any improvements made in connection with the HARP Project or Tenant's use of its water rights on the Premises. Landlord shall not be required to keep and maintain the Premises in a better condition than that existing at the beginning of this Lease unless required to do so by law or by order of the State Engineer or other lawful authority.

6.2 Tenant shall at all times during the term of this Lease keep and maintain at its own cost and expense, in good order, condition, and repair any improvements or fixtures installed by Tenant on the Premises in connection with the HARP Project and shall restore or repair any damages caused by the negligence, act, or omission of Tenant or Tenant's employees, agents, contractors, or persons making permissive use of the HARP Project.

6.3 Tenant will not make or cause to be made any alterations, additions, or improvements to or of any part of the Premises, or attach any fixture or equipment to the Premises, which will materially interfere with Landlord's use of the WestPlains Water Facilities for the diversion, transportation, and storage of the WestPlains Water Rights for their decreed use, without first affording Landlord the opportunity to review all plans and obtaining Landlord's written consent. Tenant agrees to pay all costs of such improvements and to protect Landlord from any mechanic's lien claims or other claims of contractors or suppliers. All alterations, additions, fixtures, and any improvements permanent in character, made in or upon the Premises either by Tenant or Landlord (other than equipment, fixtures, and non-permanent alterations installed by Tenant), will be Landlord's property and, at the end of the term of this Lease, will remain on the Premises without compensation to Tenant.

#### **Article VII - Re-Delivery at End of Term**

7.1 If Tenant is not then in default, at the end of the Term of this Lease Tenant may remove and Landlord may direct Tenant to remove all non-permanent alterations, additions, fixtures, equipment, and improvements made in or upon the Premises by Tenant. Unless otherwise agreed by Landlord and Tenant, or as otherwise directed by Landlord, any non-

permanent alterations, additions, fixtures, equipment, and improvements not removed within ninety (90) days of the end of the Term of the Lease shall become the sole and separate property of Landlord. If Tenant fails to remove any such non-permanent alterations, additions, fixtures, or improvements as directed by Landlord, then Landlord may perform the removal itself and Tenant shall be liable for all costs of such removal. Landlord may exercise any and all other remedies available in law or equity to enforce Tenant's obligation under this paragraph.

#### Article VIII - Damage or Destruction of Premises

8.1 If the Premises are damaged by fire, flood or other casualty, the Premises shall be restored to such condition as will permit the exercise of the WestPlains Water Rights or to such other condition as Tenant and Landlord shall mutually agree (the "Restoration"). Tenant and Landlord by mutual agreement may include other property in the Restoration.

8.2 So long as Landlord or its assigns is still using or in the future may use the WestPlains Water Rights or some or all of the Water Facilities in the generation of electrical power, the Restoration shall be undertaken jointly by Tenant and Landlord and shall be completed in an expeditious manner.

8.3 All available net insurance proceeds shall be applied first to the cost of Restoration.

8.4 So long as Landlord or its assigns is still using or in the future may use the WestPlains Water Rights or some or all of the Water Facilities in the generation of electrical power, if the available net insurance proceeds are insufficient to pay all costs of Restoration, the difference between the cost of Restoration and net insurance proceeds shall be apportioned between and paid by Landlord and Tenant based upon the average flow of water under WestPlains' Water Rights and HARP Water Rights through the WestPlains Water Facilities during the prior five (5) calendar years or upon such other equitable basis as Landlord and Tenant may mutually agree.

8.5 If Landlord or its assigns is no longer using, and covenants that in the future it will not use, the WestPlains Water Rights or some or all of the Water Facilities in the generation of electrical power, Tenant shall have the sole discretion to determine how and when to restore the Premises.

8.6 For purposes of this Article VIII, the term "Premises" does not include any equipment or any portion of the WestPlains Water Facilities used (a) for or in the generation of electrical power, (b) for the diversion of water from Lake Elizabeth into WestPlains' electrical generation facilities, or (c) for the discharge of cooling water from WestPlains' electrical generation facilities directly into Lake Elizabeth or the Historic Arkansas River Channel. It is the intent of the parties that Tenant not be required to pay for the restoration

of any property or equipment or any portion of the WestPlains Water Facilities not necessary for the continued operation of the HARP Project unless the damage is caused by Tenant.

#### Article IX - Eminent Domain

9.1 If the whole or substantial portion of the Premises is taken by the right of eminent domain or by condemnation which renders the Premises untenable, Landlord and Tenant shall expeditiously cause similar or substitute Premises to be acquired or constructed which will adequately serve the respective needs of Landlord and Tenant (the "Substitute Premises"). Notwithstanding the foregoing, if Landlord or its assigns has permanently ceased use of the WestPlains Water Rights and the WestPlains Water Facilities for power generation purposes, Landlord shall have no obligations under this paragraph 9.1.

9.2 If any portion of the Premises is taken by the right of eminent domain or by condemnation which does not render the Premises untenable, Landlord and Tenant shall expeditiously cause the Premises to be repaired, restored, or altered in such a manner that the respective needs of Landlord and Tenant will be adequately met (the "Restored Premises"). Notwithstanding the foregoing, if Landlord or its assigns has permanently ceased use of the WestPlains Water Rights and the WestPlains Water Facilities for power generation purposes, Landlord shall have no obligations under this paragraph 9.2.

9.3 The net award from the exercise of eminent domain or condemnation shall first be applied to the cost of the Substitute Premises or the Restored Premises.

9.4 If the net award is inadequate to pay all costs of the Substitute Premises or the Restored Premises, the difference between the net award and the cost of the Substitute Premises or the Restored Premises, whichever the case may be, shall be apportioned between and paid by Landlord and Tenant based upon the average flow of water under WestPlains Water Rights and HARP Water Rights through the WestPlains Water Facilities during the prior five (5) calendar years or upon such other equitable basis as Landlord and Tenant may mutually agree. Notwithstanding the foregoing, if Landlord or its assigns has permanently ceased use of the WestPlains Water Rights and the WestPlains Water Facilities for power generation purposes, Landlord shall have no obligations under this paragraph 9.4.

9.5 For purposes of this Article IX, the term "Premises" does not include any equipment or any portions of the WestPlains Water Facilities used (a) for or in the generation of electrical power, (b) for the diversion of water from Lake Elizabeth into WestPlains' electrical generation facilities, or (c) for the discharge of cooling water from WestPlains' electrical generation facilities directly into Lake Elizabeth or the Historic Arkansas River Channel. It is the intent of the parties that Tenant not be required to pay for any portion of any Substitute Premises or Restored Premises, including any portion of the WestPlains Water Facilities not necessary for the continued operation of the HARP Project.

### Article X - Subordination and Attornment

10.1 Except as expressly provided in this Agreement, neither this Lease nor Tenant's rights under this Lease shall be subject to or subordinate to any ground lease or underlying lease, mortgage, deed of trust, or other lien, encumbrance, or indenture, or any renewals, extensions, modifications, consolidations, and replacements of them, which now or in the future affect the Premises or any interest of Landlord in the Premises or Landlord's interest in this Lease and the estate created by this Lease. Landlord shall obtain all instruments and documents from third parties to effectuate this paragraph 10.1.

10.2 If any holder of any mortgage, indenture, deed of trust, or other similar instrument described in subparagraph (a) succeeds to Landlord's interest in the Premises, its rights in the Premises shall be subject to the terms and provisions of this Lease and Tenant's rights hereunder and Tenant will pay to it all rents subsequently payable under this Lease. Tenant will automatically become the tenant of, and attorn to, such successor in interest without change in this Lease. Such successor in interest will not be bound by any rent prepaid more than one year in advance. Upon request by such successor in interest, Tenant will execute, acknowledge, and deliver an instrument or instruments confirming the attornment. The instrument of attornment will also provide that such successor in interest will not disturb Tenant in its use of the Premises in accordance with this Lease or Tenant's rights under this Lease.

### Article XI - Default

11.1 The failure of Landlord (a) to discharge fully any of its obligations imposed by this Lease or a mortgage executed by (or assumed by) Landlord encumbering the Premises, or (b) to pay any real estate taxes and assessments affecting the Premises, or (c) to make any repairs which this Lease or any law requires it to make to the Premises, shall be an event of Default by Landlord. Landlord shall cure any monetary default within fifteen (15) days of written notice of default by Tenant, and shall cure any other default within thirty (30) days of written notice of default by Tenant, or such greater time as may be required for curing a default which cannot reasonably be cured in thirty (30) days. In the event that Landlord fails to timely cure an Event of Default, Landlord shall be deemed in Default and Tenant may (but will not be required to) discharge such obligations, or pay such taxes and assessments, or make such repairs, as the case may be. If it does, all amounts paid by Tenant in doing so and all costs and expenses incurred by Tenant in connection with doing so (together with interest at the prime rate then in effect at the Norwest Bank of Denver, Colorado, or its successor, plus two (2) percentage points, per annum from the date of Tenant's payment of such amount or incurring of each such cost or expense until the date of full repayment by Landlord) will be payable by Landlord to Tenant on demand. In the proof of any damages which Tenant may claim against Landlord arising out of Landlord's default, including Landlord's failure to maintain insurance, Tenant will not be limited to the amount of the unpaid insurance premium but rather Tenant will also be entitled to recover

as damages for such breach, the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs, and expenses of suit, including attorneys' fees, arising out of damage to, or destruction of, the Premises occurring during any period for which Landlord was in Default. In addition to the foregoing remedies, Tenant shall have all other rights and remedies under law and in equity, including the right to specifically enforce Landlord's obligations hereunder without proof or showing of an inadequate remedy at law.

**11.2** If Tenant fails to pay when due amounts payable under this Lease or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after fifteen (15) days' prior written notice to Tenant for any monetary Default and after thirty (30) days' prior written notice to Tenant or such greater time as may be required for curing a Default which cannot be reasonably cured within thirty (30) days (or, in case of any emergency, upon such notice or without notice, as may be reasonable under the circumstances) and without waiving any of its rights under this Lease, may (but will not be required to) pay such amount or perform such obligation.

**11.2.1** All amounts so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such obligations (together with interest at the prime rate plus two (2) percent, as determined by the Norwest Bank of Denver, Colorado, or its successor, from the date of Landlord's payment of such amount or incurring of each such cost or expense until the date of full repayment by Tenant) will be payable by Tenant to Landlord on demand. In the proof of any damages which Landlord may claim against Tenant arising out of Tenant's failure to maintain insurance, Landlord will not be limited to the amount of the unpaid insurance premium but rather Landlord will also be entitled to recover as damages for such breach, the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs, and expenses of suit, including attorneys' fees, arising out of damage to, or destruction of, the Premises occurring during any period for which Tenant has failed to provide such insurance.

**11.3** The following occurrences are "Events of Default" or "Default" by Tenant:

**11.3.1** Tenant fails in the due and punctual payment of rent, and such failure continues for fifteen (15) days after written notice from Landlord;

**11.3.2** Tenant files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors; and

**11.3.3** Tenant breaches any of the other agreements, terms, covenants, or conditions that this Lease requires Tenant to perform, and such breach continues for a period of thirty

(30) days after written notice by Landlord to Tenant, or such greater time as may be required for curing a default which cannot be reasonably cured within thirty (30) days.

**11.4** If any one or more Events of Default set forth in paragraph 11.3 occurs, then Landlord may not terminate the Lease, but may exercise any other rights and remedies under law or in equity including the right to specifically enforce Tenant's obligations under this Lease without proof or showing of an inadequate remedy at law.

**11.5** In the event of a Default hereunder, the nondefaulting party shall be entitled to recover its costs and reasonable attorneys' fees incurred in enforcing its rights hereunder.

#### Article XII - Right of First Refusal

**12.1** Landlord grants Tenant a Right of First Refusal to purchase, jointly or separately, all of Landlord's right, title, and interest in both the WestPlains Water Facilities and the WestPlains Water Rights and any easements, real property, and improvements necessary for their use and enjoyment ("Right of First Refusal"). This Right of First Refusal shall only be effective if the City of Pueblo fails to exercise its right of first refusal contained in the franchise agreement between Landlord and the City of Pueblo. This Right of First Refusal shall survive the expiration of the Franchise Agreement in effect between Landlord and the City of Pueblo at the time of signing this Agreement.

**12.2** If Landlord receives an offer for the sale or exchange ("Sale") of either or both the Water Facilities or the WestPlains Water Rights, and Landlord intends to accept the offer, or if Landlord makes an offer to sell either or both the WestPlains Water Facilities or WestPlains Water Rights, and the offeree accepts the offer, Landlord shall give written notice of the offer to Tenant. Provided Tenant is not in Default, Tenant will have forty-five (45) days to accept in writing the offer and, if accepted by Tenant, Tenant will be obligated to purchase the property strictly in accordance with the offer.

**12.3** If Tenant does not accept an offer to purchase either the WestPlains Water Facilities or the WestPlains Water Rights, Landlord shall thereafter be free to consummate the transaction substantially in accordance with the offer as disclosed to Tenant. If Landlord fails to consummate the transaction set forth in the offer, Tenant shall continue to have a Right of First Refusal to purchase the property that was the subject of the offer. If Tenant accepts an offer and then fails to close on the purchase, Tenant's Right of First Refusal shall expire as to the property subject to the offer, but not as to any property not included in the offer but included in this Right of First Refusal.

**12.4** Tenant does not have any Right of First Refusal to purchase the WestPlains Water Facilities or the WestPlains Water Rights in the following transactions: (i) the sale of more than fifty percent (50%) of the voting stock of Landlord to an entity acquiring all or substantially all of the assets of Landlord; (ii) the sale of more than fifty percent (50%) of



the voting stock of any company that owns more than fifty percent (50%) of the voting stock of Landlord; (iii) the spinning-off of Landlord by its owner to operate as an independent power generation enterprise; (iv) sales of the properties to a related entity (as that term is defined below); (v) sale of the power plant, the Premises, and WestPlains Water Rights as a whole to an entity that will continue to use this property to generate electrical power; (vi) the transfer of the power plant, Premises, and WestPlains Water Rights as a whole into a joint venture or a partnership that will continue to use this property to generate electrical power; (vii) the merger, consolidation, or other combination of Landlord with another entity, even if Landlord is not the surviving corporation of such a transaction or (viii) encumbrances of the property. The term "related entity" shall mean any corporation (A) which owns eighty percent (80%) or more of the voting stock of Landlord; (B) eighty percent (80%) or more of whose voting stock is owned by Landlord, or (C) eighty percent (80%) or more of whose voting stock is owned by a corporation which also owns fifty percent (50%) or more of the voting stock of Landlord.

12.5 Tenant does not have a Right of First Refusal to purchase either the WestPlains Water Rights or the WestPlains Water Facilities if at the time Landlord receives an offer or Landlord makes an offer that is accepted, Tenant is in Default under the Lease.

12.6 The Right of First Refusal continues as to any portion of the property not subject to the offer. The Right of First Refusal also continues in full force and effect if Landlord does not consummate the sale.

12.7 Any sale of the WestPlains Water Facilities and the WestPlains Water Rights to anyone other than Tenant is and shall be expressly made subject to this Lease and Tenant's rights hereunder.

#### Article XIII - Hazardous Materials

13.1 Tenant shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Premises by Tenant, its agents, employees, contractors, or invitees except in compliance with all applicable federal, state, and local laws and regulations.

13.2 If any Hazardous Material brought onto the Premises by Tenant results in any contamination of the Premises, Tenant shall, at its sole expense, promptly take all remedial action necessary to comply with all applicable governmental requirements.

13.3 Landlord shall not cause or permit any Hazardous Material to be brought, kept, or used upon the Premises by Landlord, its agents, employees, contractors, or invitees except in compliance with all applicable federal, state and local laws and regulations. If any Hazardous Material used by Landlord results in contamination of the Premises, Landlord

shall, at its sole expense, promptly take all remedial action necessary to comply with all applicable governmental requirements.

Article XIV - Miscellaneous Provisions

14.1 Landlord and Tenant warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Premises or this Lease. Tenant agrees to indemnify Landlord against any loss, liability, and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone with whom Tenant has dealt with regard to the Premises or this Lease. Landlord agrees to indemnify Tenant against any loss, liability, and expense (including attorneys' fees and court costs) arising out of claims for fees or commissions from anyone with whom Landlord has dealt with regard to the Premises or this Lease.

14.2 Any notice, request, demand, consent, approval, or other communication required or permitted under this Lease will be written and will be deemed to have been given (a) when personally delivered, (b) when delivered via overnight or other courier service, or (c) on the third business day after it is deposited in any depository regularly maintained by the United States Postal Service, first class postage prepaid, certified or registered mail, return receipt requested, addressed to:

LANDLORD: Utilicorp United, Inc., by its  
Division, WestPlains Energy  
200 West 1st Street  
Pueblo, Colorado 81003

With a copy at  
the same time to: Stephen T. Adams  
Blackwell Sanders Matheny Weary & Lombardi L.C.  
40 Corporate Woods, Suite 1200  
Indian Creek Parkway  
Overland Park, Kansas 66210

TENANT: Board of Water Works of Pueblo, Colorado,  
Alan C. Hamel, Executive Director  
319 West Fourth, P.O. Box 400  
Pueblo, Colorado 81002

With a copy at  
the same time to: William A. Paddock, Esq.  
Carlson, Hammond & Paddock, L.L.C.  
1700 Lincoln Street, Suite 3900  
Denver, Colorado 80203-4539

City Manager  
City of Pueblo  
1 City Hall Place  
Pueblo, Colorado 81003

Either Landlord or Tenant may change its address or addresses and the person or persons to whom notice is to be directed for purposes of this paragraph by giving ten (10) days' prior written notice according to this paragraph 14.2.

14.3 Tenant may record this Lease or a memorandum of this Lease in the real property records of Pueblo County, Colorado.

14.4 Time is of the essence for each and every provision of this Lease.

14.5 The failure of Landlord or Tenant to insist in one or more cases upon the strict observation of any of the terms of this Lease shall not be construed as a waiver or relinquishment in any future case of any of the terms of this Lease.

14.6 Whenever this Lease requires Landlord's consent or approval, Landlord will not withhold its approval or consent unreasonably or in bad faith, and Landlord will not unreasonably delay its response to Tenant's request for its approval or consent. If Landlord withholds its consent or approval, its response will explain its reasons for doing so.

14.7 This Lease cannot be modified orally, but only by an amendment in writing signed by Landlord and Tenant. The table of contents and captions of this Lease are for convenience of reference only, are not a part of this Lease, and shall not define or limit any of the terms of this Lease. The exhibits to this Lease are incorporated into the Lease. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. Each party to this Agreement has engaged legal counsel to negotiate, draft and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the parties acknowledge and agree that it shall not be construed against any party on the basis of authorship.

14.8 This Lease constitutes the entire agreement between Landlord and Tenant with respect to the subject matter and supersedes all prior agreements and understandings, written or oral, with respect to the subject matter. Except for those which are set forth in this Lease, no representations, warranties or agreements have been made by Landlord or Tenant to one another with respect to this Lease.

14.9 This Lease shall be governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue on any action arising out of this Lease will be proper only in the District Court of Pueblo County, State of Colorado.

14.10 If Landlord and Tenant litigate any provision of this Lease or the subject matter of this Lease, the unsuccessful litigant will pay to the successful litigant all costs and expenses, including reasonable attorneys' fees and court costs, incurred by the successful litigant at trial and on any appeal. If, without fault, either Landlord or Tenant is made a party to any litigation instituted by or against the other, the other will indemnify the faultless one against all loss, liability, and expense, including reasonable attorneys' fees and court costs, incurred by it in connection with such litigation.

14.11 Each of the representations and warranties made by Landlord and Tenant in this Lease, or in any document or instrument delivered pursuant to this Lease shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as and at the date of any Closing and shall survive the Closing.

14.12 Landlord and Tenant acknowledge and agree that the legal description of the real property to be occupied by Tenant as set forth in paragraph 1.9 above is the best legal description available at the time of execution of this Lease. Landlord and Tenant agree that upon completion of construction of the HARP Project, Tenant shall provide, at its sole expense, a survey of the real property actually occupied by Tenant under this Lease. The surveyed legal description shall be made part of this Lease and shall supersede any prior legal description.

14.13 The benefits and the burdens of this Agreement will inure to the benefit of and will be binding upon the heirs, successors, personal representatives, and assigns of Landlord and Tenant.

BOARD OF WATER WORKS OF  
PUEBLO, COLORADO

By: Alan C. Hamel  
Alan C. Hamel,  
Executive Director

UTILICORP UNITED, INC., BY ITS  
DIVISION, WESTPLAINS ENERGY

By: [Signature]

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Pueblo )

The foregoing instrument was acknowledged before me this 6th day of September 1996, by Alan C. Hamel, Executive Director, Board of Water Works of Pueblo, Colorado.

Witness my hand and official seal.

My commission expires: May 15, 1999.



Mary Beth Whalen  
Notary Public - Mary Beth Whalen

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Pueblo, Colorado )

The foregoing instrument was acknowledged before me this 9th day of September 1996, by Carole J. Lange, as President of Utilicorp United, Inc. by its Division, WestPlains Energy.

Witness my hand and official seal.

My commission expires: 7/13/2000.



Roberta Jo Carlisle  
Notary Public

## RESOLUTION OF THE PUEBLO CONSERVANCY DISTRICT

A meeting of the Board of Directors of the Pueblo Conservancy District (the "District"), convened upon due and proper notice, was held on September 3, 1996, for the purpose of considering the proposed Real Property Lease (the "Lease") between Utilicorp United, Inc., by its division WestPlains Energy Company ("WestPlains"), and the Board of Water Works of Pueblo, Colorado (the "Board"). WestPlains is the successor in interest to Southern Colorado Power company and is the owner of a non-exclusive right of way or easement over lands of the District situated in the former channel of the Arkansas River in Section 36, T.20 S., R. 65 W. of the 6th P.M. in Pueblo County, Colorado. By the Lease, WestPlains proposes to grant to the Board the right to use, alter, and modify certain water facilities of WestPlains located on lands owned by the District. The purpose of the Lease is to provide lands and water and water use facilities to the Board for use in conjunction with the Historic Arkansas Riverwalk Project ("HARP") in downtown Pueblo. After reviewing the proposed Lease between WestPlains and the Board, and after discussing its terms, a motion was <sup>made, duly</sup> seconded that the District give its approval and consent to the Lease, including its consent to the Board's use and occupancy of lands owned by the District for HARP Project purposes, all in substantial accordance with the proposed Lease (Draft, August 8, 1996), which proposed Lease is attached to this Resolution as Exhibit "A". The question was called, and the motion was unanimously adopted by the Board of Directors.

Notwithstanding anything in this Resolution or the Lease referred to herein to the contrary, the Pueblo Conservancy District does not in any way grant greater rights to the Board than the rights originally granted in its agreement with Southern Colorado Power Company or its successor.

*Patricia Kelly*  
\_\_\_\_\_  
President, Board of Directors  
Pueblo Conservancy District

Book: 2933 Page: 11 Chris C. Munoz  
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## Parcel 1

That certain diversion dam, with its appurtenances, constructed in the new channel of the Arkansas River as part of the intake works provided by the grantor as a part of the Official Plan of The Pueblo Conservancy District for diverting water from said new channel for the purpose of preserving for said grantee its supply of water for cooling and condensing purposes at its Pueblo power plants, with the right on the part of the grantee to operate, alter, repair, reconstruct, remove or extend to same; together with an easement for all of said purposes upon the land of the grantor upon which said diversion dam is located, and upon and along the adjoining lands of the grantor located within the new channel of the Arkansas River, as may well as the north and south embankments of said channel, as may be necessary for any and all of said purposes, said dam being located upon the following described tract of land, to-wit:

A tract of land fifty (50) feet wide and three hundred (300) feet long, in the South half of the Northwest Quarter (S1/2 of NW1/4) of Section 36, Township 20 South, Range 65 West of the, Sixth Principal Meridian, bounded and described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W which is the basis of bearing; thence S 82° 48' 03" W, 1,868.24 feet to a point which is on the center-line between two existing four foot concrete pipe conduits, said point being 99.00 feet Northeasterly at right angles from the center-line of the now existing West Bound main line track of the Denver & Rio Grande Western Railroad Company; thence along the center-line between the two four foot concrete pipe conduits, (which the Official Plan of The Pueblo Conservancy District shows to bear S 57° 02' 40" W,) S 57° 14' 11" W, 515.00 feet; thence S 32° 45' 49" E, 5.95 feet to the True Point of Beginning of Parcel 1, hereby conveyed; thence S 57° 34' 11" W, 300.00 feet; thence S 32° 25' 49" E, 50.00 feet; thence N 57° 34' 11" E, 300.00 feet; thence N 32° 05' 49" W, 50.00 feet to the True Point of Beginning.

## Parcel 2:

That certain intake structure, with its appurtenances, located in the northerly levee embankment of the new channel of the Arkansas River, as said intake works were constructed by the grantor as a part of the Official Plan of The Pueblo Conservancy District for the purpose of preserving for said grantee its supply of water for cooling and condensing purposes at its Pueblo power plants, with the right on the part of the grantee to operate, alter, repair or reconstruct the same; together with an easement for all of said purposes upon the land of the grantor upon which said intake structure is located within the new channel of the Arkansas River, as well as the north levee embankment of said channel, as may be necessary for any and all to said purposes, said intake structure being located upon the following described tract of land, to-wit:

A tract of land fifty (50) feet wide and seventy-five (75) feet long, in the South half of the Northwest Quarter (S1/2 of NW1/4) of Section 36, Township 20 South, Range 65 West of the

Sixth Principal Meridian, bounded and described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W which is the basis of bearing; thence S 82° 48' 03" W, 1,868.24 feet to a point which is on the center-line between two existing four foot concrete pipe conduits, said point being 99.00 feet Northeasterly at right angles from the center-line of the now existing West Bound main line track of the Denver & Rio Grande Western Railroad Company; thence along the center-line between the two four foot concrete pipe conduits, (which the Official Plan of The Pueblo Conservancy District shows to bear S 57° 02' 40" W,) S 57° 14' 11" W, 460.00 feet to the True Point of Beginning of Parcel 2, hereby conveyed; thence N 32° 45' 49" W, 25.00 feet; thence S 57° 14' 11" W 75.00 feet; thence S 32° 45' 49" E 50.00 feet thence N 57° 14' 11" E, 75.00 feet; thence N 32° 45' 49" E, 25.00 feet to the True Point of Beginning.

### Parcel 3:

Those certain conduit structures consisting of two (2) forty-eight (48) inch reinforced concrete pipes, and their supports and appurtenances, extending Northeasterly from the intake structure described in Parcel 2 hereof, in a straight line into the old channel of the Arkansas River, as said conduit structures were constructed as a part of the Official Plan of The Pueblo Conservancy District, for the purpose of preserving for said grantee its supply of water for cooling and condensing purposes at its Pueblo power plants; together with an easement for the maintenance and operation of said conduit structures upon the following described tract of land upon which said structures are located, to-wit:

A tract of land, fifty (50) feet wide and four hundred sixty (460) feet long, in the South Half of the Northwest Quarter (S1/2 of NW1/4) of Section 36, Township 20 South, Range 65 West, of the Sixth Principal Meridian, being a strip of land twenty-five (25) feet in width on each side of a center-line, four hundred sixty (460) feet in length, described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W which is the basis of bearing; thence S 82° 48' 03" W, 1,868.24 feet to the True Point of Beginning; thence S 57° 14' 11" W, 460.00 feet, said center-line being located along the center-line of two existing four foot concrete pipe conduits which lie under the tracks of the Denver & Rio Grande Western Railroad Company (which the Official Plan of The Pueblo Conservancy District shows to bear S 57° 02' 40" W,).

### Parcel 4:

An easement and right of way for the flow, pondage and circulation of water over, upon, along, and across that portion of the old channel of the Arkansas River adjacent to the Southerly bank thereof and lying between the conjunction of the conduit structures described in Parcel 3 hereof with said old channel, and the Southwesterly boundary of the existing railway transfer

yards as constructed by The Pueblo Conservancy District, together with all culverts and water-way structures located thereon, said portion of said old channel covered by the easement and right of way in this Parcel 4 granted being more particularly described as follows, to-wit:

A tract of land in the South half of the Northwest Quarter (S1/2 of NW1/4) of Section 36, Township 20 South, Range 65 West, of the Sixth Principal Meridian, being a part or portion of the old channel of the Arkansas River, and more particularly described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W which is the basis of bearing; thence S 82° 48' 03" W, 1,868.24 feet to a point which is on the center-line between two existing four foot concrete pipe conduits that bear S 57° 14' 11" W, (which the Official Plan of The Pueblo Conservancy District shows to bear S 57° 02' 40" W,) , said point being 99.00 feet Northeasterly at right angles from the center-line of the now existing West Bound main line track of the Denver & Rio Grande Western Railroad Company; thence S 32° 45' 49" E, 25.00 feet; thence S 57° 14' 11" W, 107.00 feet; thence S 70° 27' 20" E, 211.82 feet; thence S 00° 00' 00" E, 60.00 feet; thence S 81° 48' 20" E, 630.00 feet; thence N 81° 20' 43" E, 87.54 feet to a point which lies 34.00 feet Southwesterly at right angles from the center-line of the Northerly track of the Missouri Pacific Railroad Company; thence N 61° 02' 49" W, 237.05 feet parallel to and 34.00 feet Southwesterly of the center-line of the Missouri Pacific Railroad Company's Northerly track; S 75° 16' 18" W, 36.83 feet; thence S 60° 55' 29" E, 600.08 feet; thence S 69° 11' 31" W, 86.00 feet; thence S 15° 52' 35" W, 75.99 feet; thence S 57° 14' 11" W, 188.00 feet; thence S 32° 45' 49" E, 25.00 feet to the True Point of Beginning.

### Parcel 5:

An easement and right of way for the flow, pondage and circulation of water over, upon, along and across the following described lands, together with all culverts and water-way structures now located thereon, and together with the right to operate, maintain, alter, repair and reconstruct existing structures of grantee thereon, and to erect, construct, maintain, alter, repair, reconstruct and operate such new structures as grantee, its successors and assigns, may at any time determine to be useful or convenient in connection with its water supply for its Pueblo power plants as now existing or hereafter constructed; provided, however, that no such new structures shall be erected by the grantee which shall in any way unreasonably interfere with the use of railway rights of way now existing or hereafter to be granted in accordance with the Official Plan of The Pueblo Conservancy District; the tract of land covered by the easement and right of way in this Parcel 5 conveyed being described as follows, to-wit:

A tract of land in the South Half of the Northwest Quarter (S1/2 of NW1/4), and in the South Half of the Northeast Quarter (S1/2 of NE1/4) of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian, being a part or portion of the old channel of the Arkansas River, and more particularly described as follows:

Beginning at a point which is the Northwest corner of Lot 8, Block 14, State Addition as shown on the plat of the Historical Arkansas Riverwalk Project, Filing One, whence the most Northerly line of said Historical Arkansas Riverwalk Project, Filing One, bears S 89° 24' 27" W

which is the basis of bearing; thence S 20° 58' 32" W 220.64 feet to the True Point Beginning; thence N 74° 02' 42" W, 258.00 feet; thence N 89° 52' 38" W, 370.00 feet; thence S 80° 05' 00" W, 300.00 feet; thence S 27° 37' 43" W, 35.20 feet; thence S 08° 18' 26" E, 60.94 feet, to a point on the center-line of the Northerly track of the Missouri Pacific Railroad Company; thence S 75° 16' 18" W, 49.23 feet; thence S 61° 02' 49" E, 237.05 feet parallel to and 34.00 feet Southwesterly of the center-line of the Missouri Pacific Railroad Company's Northerly track; thence S 82° 16' 15" E 541.87 feet thence along a curve to the left whose center bears N 18° 07' 08" W, 711.22 feet as shown on said recorded plat of the Historic Arkansas Riverwalk Project, Filing One a distance of 230.28 feet; thence N 53° 19' 47" E 27.83 feet; thence N 00° 35' 33" W, 149.47 feet; to the True Point of Beginning.

#### **Historic Arkansas Riverwalk Project, Parcel A, Block 1:**

An easement and right of way for the purposes of a water course as flow, pondage, circulation, and outlet of the water supply of the power plants of the grantee at Pueblo, Colorado, now existing or hereafter erected over, upon, along and across the following described strip of land, together with all culverts and water-way structures now located thereon, and together with the right to operate, maintain, alter, repair and reconstruct such existing culverts and water-way structures, and to erect, construct, maintain, alter, repair, reconstruct and operate such new or additional structures on said strip of land as grantee, its successors and assigns, may at any time

determine to be useful or convenient in connection with the easement and right of way in this Parcel 7 conveyed being described as follows, to-wit:

A tract of land, being a part or portion of the old channel of the Arkansas River, in the East half (E1/2) of Section 36, Township 20 South, Range 65 West of the Sixth Principal Meridian, more particularly described as follows:

A Certain parcel as platted in the Historic Arkansas Riverwalk Project, Filing One according to the recorded plat thereof; being Parcel A, Block 1 of said Historic Arkansas Riverwalk Project, Filing One.

Book: 2933 Page: 15 Chris C. Munoz  
Page: 24 of 25 Pueblo Co.Clk.&Rec.

"EXHIBIT 2 NOT RECORDED"

Book: 2933 Page: 16 Chris C. Munoz  
Page: 25 of 25 Pueblo Co.Clk.&Rec.



DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO

Case No. 93CW86

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**MOTION FOR SUMMARY JUDGMENT**

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CONCERNING THE APPLICATION FOR CONDITIONAL WATER RIGHTS AND FOR APPROVAL OF PLAN FOR AUGMENTATION OF THE BOARD OF WATER WORKS OF PUEBLO, COLORADO

IN PUEBLO COUNTY.

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Applicant, the Board of Water Works of Pueblo, Colorado (the "Board"), by its attorneys, hereby moves the Court for summary judgment pursuant to C.R.C.P. 56. As grounds therefor, the Board states as follows:

1. The Board filed the Application in this case on December 30, 1993.
2. Statements of Opposition to the Application were timely filed by the St. Charles Mesa Water District, the Colorado Water Conservation Board, the Pueblo West Metropolitan District, and the Southeastern Colorado Water Conservancy District (collectively referred to herein as "Objectors"). In addition, the Board entered into a Stipulation with WestPlains Energy Company on March 8, 1994, by which WestPlains agreed not to file a Statement of Opposition or oppose entry of a decree in this case.
3. Pursuant to C.R.S. § 37-92-302(4), the Division Engineer filed his Consultation Report in this case on April 15, 1994, and the undersigned counsel served the Consultation Report on the Objectors on April 18, 1994.
4. The Board has entered into Stipulations with all of the Objectors, pursuant to which each Objector has consented to the entry of a decree in this case.
5. Pursuant to C.R.C.P. 56 and 121 § 1-15, a party may move for summary judgment, and summary judgment shall be granted if the materials on file with the Court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.



6. This case is now ripe for determination by Motion for Summary Judgment because there are no disputed facts and all issues between the Board and the Objectors regarding this case have been resolved.

7. Prior to filing this Motion for Summary Judgment, the Board circulated a copy of the Motion and the attached proposed decree to the Objectors with a request that they contact the Board's counsel if they objected to the granting of the Motion. No objections were received from any of the Objectors.

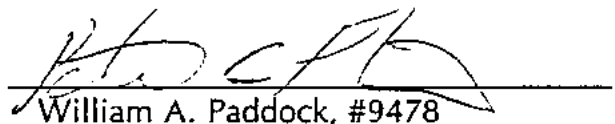
8. The Board is filing contemporaneously herewith a Motion to Rerefer this matter from the Water Referee to the Water Judge. The reason for the Motion to Rerefer is to avoid any appearance of impropriety due to the fact that the current Water Referee was an employee of the Board at the time the Application in this case was filed.

WHEREFORE, the Board respectfully requests that the Court grant this Motion for Summary Judgment and enter the proposed decree attached to this Motion as the Judgment and Decree of the Court in this matter.

Respectfully submitted this 5<sup>th</sup> day of January 1998.

CARLSON, HAMMOND & PADDOCK, L.L.C.

By:



William A. Paddock, #9478

Peter C. Fleming, #20805

1700 Lincoln Street, Suite 3900

Denver, Colorado 80203

(303) 861-9000

**ATTORNEYS FOR APPLICANT, THE BOARD  
OF WATER WORKS OF PUEBLO, COLORADO**

CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of January 1998, true and correct copies of the attached MOTION FOR SUMMARY JUDGMENT and a proposed ORDER in Case No. 93CW86 were deposited in the United States mail, postage prepaid, and addressed to the following:

Julianne M. Woldridge, Esq.  
MacDougall Law Office  
102 North Cascade Avenue, Suite 400  
Colorado Springs, CO 80903

Anne J. Castle, Esq.  
Holland & Hart, L.L.P.  
555 17th Street, Suite 3200  
Denver, Colorado 80201-8749

Stephen H. Leonhardt, Esq.  
Fairfield and Woods, P.C.  
One Norwest Center, Suite 2400  
1700 Lincoln Street  
Denver, Colorado 80203

Robert F.T. Krassa, Esq.  
Krassa, Madsen & Miller, L.L.C.  
1680 38th Street, Suite 800  
Boulder, Colorado 80301-2611

Stephen C. Cann, Esq.  
Assistant Attorney General  
Natural Resources Section  
1525 Sherman Street, 5th Floor  
Denver, Colorado 80203

Joyce B. Faulk

## DISTRICT COURT, WATER DIVISION NO. 2, STATE OF COLORADO

Case No. 93CW86

---

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

---

CONCERNING THE APPLICATION FOR CONDITIONAL WATER RIGHTS AND FOR  
APPROVAL OF PLAN FOR AUGMENTATION OF THE BOARD OF WATER WORKS OF  
PUEBLO, COLORADO

IN PUEBLO COUNTY.

---

This matter came before the Court on the Applicant's Motion for Summary Judgment. The Court, having reviewed the pleadings and stipulations, and being fully advised in the premises finds that there is no genuine issue as to any material fact and that the Applicant is entitled to judgment as a matter of law.

THEREFORE, the Motion for Summary Judgment is hereby GRANTED, and the Court ORDERS that the proposed decree attached to the Motion for Summary Judgment be and hereby is entered as the Judgment and Decree of the Court in this matter.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

BY THE COURT:

---

John E. Anderson, III, Water Judge  
Water Division No. 2  
State of Colorado

**EXHIBIT J**

DISTRICT COURT, PUEBLO COUNTY, COLORADO

Case No. 97 CV 342 Div. A

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**ANSWER AND COUNTERCLAIMS OF DEFENDANTS COLORADO STATE BOARD  
OF LAND COMMISSIONERS AND STATE OF COLORADO**

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THE CITY OF PUEBLO, a Municipal Corporation and  
THE PUEBLO CONSERVANCY DISTRICT

Plaintiffs,

v.

COLORADO STATE BOARD OF LAND COMMISSIONERS et al.,

Defendants.

---

Defendants Colorado State Board of Land Commissioners and State of Colorado, by and through the Colorado Attorney General, answer the Plaintiffs' First Amended Complaint as follows:

1. Defendants Colorado State Board of Land Commissioners and State of Colorado (collectively, the "State Land Board") admit the allegations in Paragraph 1.
2. The State Land Board denies that the Plaintiffs are the owners of the real estate described in Exhibit A to the extent that such ownership conflicts with the ownership and interests of the State Land Board. The State Land Board admits that the real estate at issue is in Pueblo County. The State Land Board further admits that Plaintiffs intend to re-subdivide the real estate at issue as alleged.
3. The State Land Board admits the allegations in Paragraph 3.
4. The State Land Board is without knowledge to admit or deny the allegations in Paragraph 4.
5. The State Land Board admits the allegations in Paragraph 5 to the extent they represent the intentions of the Plaintiffs. The State Land Board denies the allegations of Paragraph 5 to the extent that such allegations do not recognize the State Land Board's continuing interest in the public streets and rights-of-ways in the portions of real estate that have been previously platted and described as the State Addition to the City of Pueblo, the State Addition Central Pueblo, and in the land exposed by the change of the Arkansas River channel.

6. The State Land Board owns the reversion interest of a Railway right-of-way (the "Right-of-Way") which runs through a portion the real property described in Exhibit A of the First Amended Complaint including but not limited to Block 14 of the State Addition to the City of Pueblo. The State Land Board is without knowledge to further admit or deny the allegations in Paragraph 6 and therefore denies those allegations.
7. The State Land Board is without knowledge to admit or deny the allegations in Paragraph 7 and therefore denies those allegations.
8. The State Land Board is without knowledge to admit or deny the allegations in Paragraph 8 and therefore denies those allegations.
9. The State Land Board admits that it claims right, title or interest in and to portions of the real estate described in Exhibit A of the First Amended Complaint adverse to the Plaintiffs. The State Land Board denies that its claims are without foundation or right. The State Land Board is without knowledge to further admit or deny the allegations in Paragraph 9 and therefore denies those allegations.
10. The State Land Board is without knowledge to admit or deny the allegations in Paragraph 10 and therefore denies those allegations.

### COUNTERCLAIMS

11. A portion of the lands that are the subject of this action may be owned by the State of Colorado and held in trust for Colorado's public schools.
12. As a condition of granting statehood to Colorado in 1876, the United States Congress granted to Colorado certain lands to be used to raise revenue "for the support of common schools." 225 [United States] Statutes at Large 475 (1875); Colorado Enabling Act § 7. In turn, the framers of the Colorado Constitution required that:

[G]rants of land made by Congress to the State shall be judiciously located and carefully preserved and held in trust for the use and benefit of the respective objects for which said grants of land were made.
13. Colorado Constitution Article IX, § 10. This land is commonly called "school land". The Public School Fund, including the school lands and proceeds which constitute it, is "inviolable". Colorado Constitution Article IX, §§ 3 and 5.

14. The State Land Board is the trustee of approximately three million acres of school land located throughout Colorado. One of the school sections originally granted to Colorado's school trust by the federal government -- portions of Section 36, Township 20 South, Range 65 West, Pueblo County -- contains the school land involved in this litigation.
15. In 1880, the State Land Board issued a Right-of-Way to the Pueblo and Arkansas Railroad Company (the "Right-of-Way"). The Right-of-Way permitted the Pueblo and Arkansas Railroad Company to use a portion of that school section for its railway. A copy of the Right-of-Way is attached as exhibit 1 and incorporated herein by reference.
16. The portion of land granted in the Right-of-Way is 200 feet wide, 100 feet on either side of the center of the railroad tracks and runs through Block 14 of the State Addition to the City of Pueblo.
17. The Right-of-Way includes portions of the land in which Plaintiff is attempting to quiet title by this action.
18. The Right-of-Way is for the sole purpose of a railroad track and the necessary buildings or shops to be used in connection therewith, and it reverts back to the State Land Board once it ceases to be used for a railroad track..
19. The State Land Board's governing statute, C.R.S. § 36-1-136, provides that whenever a right-of-way granted for a railroad ceases to be used for a railroad, such right-of-way terminates and all rights revert to the state.
20. The Right-of-Way has ceased to be used for a railroad track
21. Upon information and belief The State Land Board may continue to hold its reversionary interest in portions of Block 14 of the State Addition to City of Pueblo including portions of the land which is the subject matter of this action as school lands for the benefit of public education.
22. The Block 14 of the State Addition to the City of Pueblo contains an alley way which has been abandoned (the "Block 14 Alley").
23. The Block 14 Alley is within the Right-of-Way.
24. The Block 14 Alley is part of the school land and has never been conveyed by the State Land Board other than by the Right-of-Way.
25. The State Land Board retains its reversionary interest in the Block 14 Alley as school lands for the benefit of public education.



26. The State Land Board does not possess constitutional authority to dedicate land for streets and alley ways when it plats real property.
27. The State Land Board retains title to all streets and alley ways contained in plats filed by the State Land Board.
28. The Block 14 Alley is an alley way contained in a plat filed by the State Land Board, the State Addition to the City of Pueblo.
29. Upon information and belief the Block 14 Alley has been abandoned, and the State Land Board has good title to the entire Alley as school lands for the benefit of public education.
30. The State Land Board filed the plat for the State Addition Central Pueblo.
31. The plat for State Addition Central Pueblo contains streets and alley ways.
32. The State Land Board does not possess constitutional authority to dedicate land for streets and alley ways when it plats real property.
33. The State Land Board continues to own the reversionary interest in all streets and alley ways within the State Addition Central Pueblo and owns any streets and alley ways that have been abandoned or will be abandoned as a result of Plaintiffs' action as school lands for the benefit of public education.
34. Upon information and belief, the original grant by the federal government to the State Land Board of land in Section 36, Township 20 South, Range 65 West, Pueblo County extended to the Meander Line on the South Side of the Arkansas River as surveyed by Ed. H. Kellogg for the U.S. Surveyor General's Office October 7-11, 1872, and approved October 26, 1872 (the "Meander Line").
35. Upon information and belief, subsequent flooding of the Arkansas River and the flood control efforts caused the Arkansas River channel to be changed.
36. Upon information and belief, the real property exposed by such change, up to the Meander Line is owned by the State Land Board as school land for the benefit of public education and has never been conveyed in any manner.
37. As this matter deals with land records that are often more than 100 years old, the State Land Board reserves the right to amend its Answer as continuing investigation merits. The State Land Board further demands strict proof by the Plaintiff.

WHEREFORE, the State Land Board requests a complete adjudication of the rights of all parties to this action with respect to the real property at issue, a decree quieting the title of the State Land Board of those portions of the real property at issue claimed by the State Land Board, forever barring and enjoining the other parties from asserting any claim or title thereto, and adjudging that the State Land Board is the owner in fee simple and entitled to possession of those portions of the real property at issue claimed by the State Land Board; and for other such relief as to the Court may seem proper.

Respectfully submitted this 27<sup>th</sup> day of February, 1998.

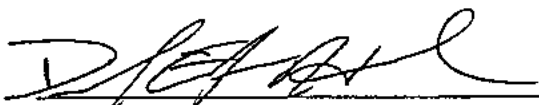
GALE A. NORTON  
Attorney General

MARTHA PHILLIPS ALLBRIGHT  
Chief Deputy Attorney General

RICHARD A. WESTFALL  
Solicitor General

JOSEPH C. SMITH, JR.  
Deputy Attorney General

CHERYL A. LINDEN  
First Assistant Attorney General



D. EDGAR HAMRICK, 24586\*  
Assistant Attorney General  
Natural Resources Section

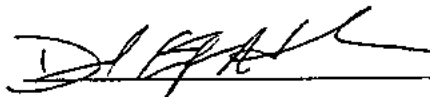
Attorneys for Defendants Colorado State Board Of  
Land Commissioners And State Of Colorado

1525 Sherman Street, 5th Floor  
Denver, Colorado 80203  
Telephone: (303) 866-5040  
FAX: (303) 866-3558  
\*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Answer of Defendants Colorado State Board Of Land Commissioners And State Of Colorado upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado, this 27<sup>th</sup> day of February 1998, addressed as follows:

Donald J. Banner, Esq.  
Banner, Buxman, Enck & Ohlsen, P.C.  
601 N. Main Street, Suite 200  
Pueblo, CO 81003-1423



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AN ORDINANCE APPROVING AN INTERGOVERNMENTAL  
AGREEMENT CREATING THE HISTORIC ARKANSAS RIVER-  
WALK OF PUEBLO AUTHORITY AND AUTHORIZING THE  
PRESIDENT OF THE CITY COUNCIL TO EXECUTE SAME

WHEREAS, Section 18(2)(a) and (b) of Article XIV of the constitution of the state of Colorado and the Colorado Intergovernmental Relations Act, §29-1-201 et seq. C.R.S. authorizes political subdivisions to cooperate and contract with one another, including the establishment of a separate legal entity, to provide any function, service or facility lawfully authorized to each of the contracting units, and

WHEREAS, the creation of a separate legal entity to promote, manage, supervise, operate, develop and maintain the public project known as the Historic Arkansas Riverwalk of Pueblo will promote the public health, safety, convenience and welfare of the City and its citizens, and

WHEREAS, the creation of such separate legal entity by intergovernmental agreement between and among the City of Pueblo, a municipal corporation, Pueblo County, Colorado, Pueblo Conservancy District, and the Board of Water Works of Pueblo would be in furtherance of the purposes of, and within the power and authority of each of said contracting units. NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

The Intergovernmental Agreement dated as of December 1, 1997 between and among the City of Pueblo, Pueblo County, Colorado, Pueblo Conservancy District, and the Board of Water Works of Pueblo, Colorado, organizing and creating the Historic Arkansas Riverwalk of Pueblo Authority, a copy of which is attached hereto and incorporated herein, having been approved as to form by the City Attorney, is hereby approved.

SECTION 2.

The President of the City Council is authorized to execute and deliver the Intergovernmental Agreement in the name of the City, and the City Clerk is directed and authorized to affix the seal

of the City thereto and attest same.

SECTION 3.

This Ordinance shall become effective upon final passage.

INTRODUCED: December 8, 1997

By Samuel Corsentino  
Councilperson

ATTEST:

APPROVED:

Gina Dutcher  
City Clerk

Cathy A. Garcia  
President of the City Council

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT entered into as of December 1, 1997 between Pueblo, a Municipal Corporation, organized and existing under the constitution and laws of the state of Colorado (herein "City"); Pueblo County, Colorado, a political subdivision of the state of Colorado, organized and existing under the constitution and laws of the state of Colorado (the "County"); Pueblo Conservancy District, a special district organized and existing under the laws of the state of Colorado (the "District"); and the Board of Water Works of Pueblo Colorado, an independent body established, organized and existing under the charter of the City (the "Board"), (individually the "Party" and collectively the "Parties"), WITNESSETH:

### RECITALS:

A. Sections 18(2)(a) and (b) of Article XIV of the constitution of the state of Colorado and the Colorado Intergovernmental Relationships statute, §29-1-201 et. seq. C.R.S., authorize political subdivisions to cooperate and contract with one another, including the establishment of a separate legal entity, to provide any function, service or facility lawfully authorized to each of the contracting units, including the sharing of costs, if such contract sets forth fully the purposes, powers, rights, obligations, and responsibilities, financial or otherwise, of the contracting parties.

B. Each of the Parties is a political subdivision as defined in §29-1-202(2) C.R.S. and desires to cooperate and contract among themselves to create a separate legal entity to promote, manage, supervise, operate, develop, and maintain the project within the jurisdictional boundaries of each of the Parties known as the Historic Arkansas Riverwalk of Pueblo (the "HARP").

C. The promotion, management, supervision, operation, development, and maintenance of HARP will be in furtherance of the purposes of, and within the powers and authority of each of the Parties.

### AGREEMENT

In consideration of the foregoing Recitals and mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City, County, District and Board agree as follows:

### ARTICLE I - DEFINITIONS

For purposes of this Agreement, the following defined terms shall have the meaning given to them in this Article:

1.1 "Act" means the Colorado Intergovernmental Immunity Act, §24-10-101 et seq.



C.R.S. and any amendments thereto or substitutions therefor.

1.2 "Bonds" means the \$12,850,000 City of Pueblo, Colorado Limited Tax General Obligation Bonds, Series 1996.

1.3 "Development Plan" or "Plan" means the HARP Program Diagram dated November 26, 1996 attached hereto and as same may be hereafter amended by consent of all of the Parties to this Agreement.

1.4 "Land" means and includes Public Land and Private Land.

1.5 "Private Land" means Lot 1, Block 1; Lot 1, Block 2; Lots 2 and 3, Block 3; and Lots 1 and 2, Block 4 and facilities thereon within the Subdivision.

1.6 "Public Land" means all the land and facilities thereon within the Subdivision except the Private Land and Lot 1, Block 3.

1.7 "Subdivision" means the Historic Arkansas Riverwalk Project, Filing One, as amended, from time to time, by the approval of both the City and the District.

## ARTICLE II - HISTORIC ARKANSAS RIVERWALK AUTHORITY

2.1 There is hereby created and organized as a separate legal entity pursuant to §29-1-203 C.R.S., the Historic Arkansas Riverwalk of Pueblo Authority (the "Authority"), whose function, purpose and obligation shall be to promote, manage, supervise, operate, develop, and maintain HARP. The Authority shall be an agency and instrumentality of the State of Colorado separate from the Parties and, except as otherwise specifically provided in this Agreement, shall not be subject to administrative direction by the Parties nor their respective officers or employees.

2.2 The governing body of the Authority shall be known as the Historic Arkansas Riverwalk Project Council (the "HARP Council") consisting of five members, two appointed by the City Council of City, and one appointed by the governing body of each of the other Parties. The members of the HARP Council may be persons other than members of the governing bodies of the parties. The members of the HARP Council shall be appointed for terms of three years, provided, that the members who are first appointed shall be appointed for staggered terms as follows: one appointed by the City Council of City for a term of one year; one appointed by the Board of Commissioners of County for a term of two years; one appointed by the members of the Board for a term of two years; one appointed by the directors of the District for a term of three years; and one appointed by the City Council of City for a term of three years. Any member of the HARP Council may be removed at any time by a majority vote of the members of the governing body of the Party who appointed such member. In the event of the death, resignation or removal of a member, the Party who appointed such member shall promptly appoint a successor member to fill the unexpired

term of such member.

2.3 Three members of the HARP Council shall constitute a quorum. An affirmative vote of at least three members is necessary to approve or authorize any action by the HARP Council. The HARP Council shall annually elect a chairperson, vice-chairperson, secretary and treasurer from its members and shall adopt its own bylaws which shall not be inconsistent with any provision of this Agreement.

2.4 The Director of City's Parks and Recreation Department shall be an ex-officio member of the HARP Council without vote.

2.5 The HARP Council shall have the power and the authority to exercise all the powers of the Authority.

2.6 All meetings of the HARP Council shall be conducted in accordance with the Colorado Open Meetings Law, §24-6-401 et seq. C.R.S., as amended or replaced.

2.7 Members of the HARP Council shall serve without compensation for acting as members of the HARP Council.

### ARTICLE III - POWERS OF THE AUTHORITY

3.1 The Authority may exercise any and all powers in furtherance of its function, purpose, and obligation which powers shall include, but shall not be limited to the following powers:

(a) To make and enter into contracts that are in furtherance of the function, purpose and obligation of the Authority with the Parties to this Agreement (either jointly or separately), the state of Colorado, the federal government, any other governmental body or unit, or any private person, partnership or corporation or other private entity; provided, however, that (i) before the purchase of supplies, materials, services or equipment ample opportunity be given for competitive bidding, and (ii) contracts for improvements be awarded to the lowest and best bidder by competitive sealed bidding after ample advertising.

(b) To have the management, control and supervision of all the business and affairs of the Authority.

(c) To appoint, hire, and retain employees and independent agents, contractors, engineers, and attorneys.

(d) To fix and from time to time increase or decrease fees, rates or charges for services, programs, or facilities furnished by the Authority.

(e) To promote and market HARP and activities conducted thereon.

(f) To request proposals for, negotiate, and make recommendations to the City Council of City with respect to contracts, leases and permits for the development, use, lease, sale or other disposition of Private Land. Each recommendation shall be detailed and include, without limitation, data and information in support of the recommendation, a copy of the request for proposals and responses thereto by parties other than the party who is the subject of the recommendation.

(g) To review and make recommendations to the City Council of City for the use, development, construction, installation, removal and renovation of Public Land and disposition of funds available therefor.

(h) To sue or be sued and to be a party to suits, actions, and proceedings.

(i) To obtain appropriate liability and casualty insurance.

(j) To appropriate and expend funds in accordance with the Approved Annual Plan and Budget adopted and approved as provided in Article IV hereof.

(k) To issue or reissue revenue bonds, notes or other obligations payable from the revenue derived from the functions, services, or facilities of the Authority; provided, however, that the term, conditions, details, sale and payment of such bonds, notes or other obligations, the proceedings relating thereto, the pledge of revenue, and the refunding thereof shall be set forth in a resolution approved by the governing body of each Party (except the Board).

(l) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers hereby granted.

#### ARTICLE IV - BUDGET

4.1 HARP Council shall, after consultation with the appropriate officers of each Party, prepare an annual operating plan and line item budget for the promotion, management, supervision, maintenance, development, and operation of HARP specifically identifying all items of anticipated revenues (including funds from each Party except the Board) and expenditures for the next calendar year (the "Annual Plan and Budget"). The Parties acknowledge and agree that because the Board has assumed the expense and responsibility of providing and furnishing water for HARP, the Board shall be excluded from and not be responsible for appropriating any other funds for HARP. For purposes of this Article IV, "appropriate officers of each Party" means and includes the chief executive officer and financial officer of each Party.

4.2 The appropriate officers of each Party shall jointly meet with the HARP Council no

later than August 1 of each year to consult with the HARP Council in the preparation of the Annual Plan and Budget.

4.3 The Annual Plan and Budget shall be submitted to each Party on or before August 31 of each year, commencing August 31, 1998.

4.4 The appropriate officers of each Party (except the Board) shall cause the annual budget prepared and submitted by such officers to the governing body of such Party to contain a specific line item for an appropriation to the Authority based upon the Annual Plan and Budget submitted by the HARP Council together with written recommendations, if any, of such officers. The governing body of each Party shall, in its sole discretion, approve such budgeted specific line item for appropriation to the Authority in an amount equal to, or greater or lesser than the amount contained in HARP Council's Annual Plan and Budget. The funds budgeted and appropriated by a Party may be disbursed to the Authority on such periodic basis during the calendar year as that Party may determine. If, during any calendar year, Authority revenues are greater than revenues contained in the Approved Annual Plan and Budget for that calendar year, each Party may proportionately reduce its appropriation to the Authority for that calendar year.

4.5 The Parties (except the Board) hereby declare their present intention and expectation to annually appropriate and budget a pro-rata equitable share of the expenses in excess of revenues for the promotion, management, supervision, operation, development and maintenance of HARP as follows: City - 50%, County - 40%, and District - 10%, provided however, that this declaration shall not be construed as contractually obligating or binding on the Parties. It is the further intent of the Parties, that the decision to budget and appropriate funds for the promotion, management, supervision, operation and maintenance of HARP shall be made solely by the governing body of each Party (except the Board) and not by HARP Council or any officer of such Party. Any obligation of a Party to budget and appropriate funds for the promotion, management, supervision, operation, development, and maintenance of HARP shall be from year to year only and shall not constitute a mandatory payment obligation of a Party in any fiscal year beyond a fiscal year during which such funds are budgeted and appropriated. Neither this Agreement nor any provision hereof shall be construed or interpreted as creating a general obligation or debt or indebtedness or multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of any Party within the meaning of any constitutional, statutory or charter debt limitation.

4.6 HARP Council after adoption of the budgets of each Party shall adopt the Authority's Annual Plan and Budget including the amounts, if any, each Party has budgeted and appropriated for the promotion, management, supervision, operation and maintenance of HARP for the next calendar year (the "Approved Annual Plan and Budget").

4.7 HARP Council shall only commit and expend funds in accordance with the Approved Annual Plan and Budget and shall not make any budgetary appropriation or encumbrance or incur any debt or multiple-fiscal year financial obligation or initiate any purchase or construction of any facility, improvement or equipment which will require an expenditure or payment in any succeeding

fiscal year unless the financial obligations of the Authority payable in any succeeding fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

4.8 All revenues derived from (a) the use or lease (but not the sale or other disposition) of the Private Land, and (b) the use of, and activities conducted on the Public Land and facilities located thereon (except facilities, including without limitation, parking areas and parking facilities, constructed or installed on the Public Land by City funds other than the net proceeds of the Bonds; provided, however, that City funds shall constitute a majority of the funds used for such construction or installation and for such purpose "City funds" means and includes all grants and awards to the City by the federal or state government or any agency thereof) shall be paid to, collected and held by the Authority in a separate account and expended by the Authority solely for the maintenance and operation of HARP. Authority will at least quarterly prepare and submit to each Party a financial report showing by line item all such revenues and expenditures during the prior quarter, year-to-date, and prior two years' actual revenues and expenditures.

4.9 HARP Council may appoint advisory committees consisting of such persons and for such purposes as the HARP Council may determine.

#### ARTICLE V - LAND

5.1 The Land is owned by either City or District. As included within the Development Plan and Subdivision, the portions of the land owned by the District (the "District Land") are and will be used in compliance with and meet the flood control and recreational purposes and responsibilities of District. Therefore, upon completion of construction of the HARP river channel, District will convey to City by appropriate deed all its right, title and interest in and to District Land (subject to a reservation for specific and described easement for the flow of water for Conservancy District purposes), and City will hold, use and transfer District Land only in compliance with the Development Plan and Subdivision.

5.2 HARP Council shall deliver to City Council of City and to the other Parties its written recommendations for the development, use, lease, sale or other disposition of all or any portion of Private Land which shall be consistent and in conformity with the Development Plan and Subdivision (the "Recommendations"). City Council of City will authorize and approve the development, use, lease, sale or other disposition of Private Land in accordance with the Recommendations, unless the City Council of City, for any reason, after public hearing held within sixty (60) days after receipt of complete and detailed Recommendations, rejects, alters or modifies, in whole or in part, the Recommendations (the "City Council Action"). In such event, the City Council of City, in its discretion, may either (a) return the Recommendations with the City Council Action to the HARP Council for reconsideration, or (b) direct that the Private Land be developed, used, leased, sold or otherwise disposed of as the City Council of City may determine, provided such determination is consistent and in conformity with the Development Plan and Subdivision. The provisions of this Article 5.2 shall not prevent nor be construed to prevent the City Council from

acting with respect to such Recommendations earlier than said 60-day period, provided, however, that if the Recommendations or City Council Action relate to the sale of the Private Land, the City Council of City may not act with respect thereto earlier than thirty (30) days after receipt of such Recommendations. Notice of any public hearing provided for in this Article 5.2 shall be given to the Authority at least ten (10) calendar days before the date of the public hearing.

5.3 Pursuant to the provisions of Section 7-21 of the Charter of the City, City Council of City shall create a Special Fund and will segregate and hold in the Special Fund and appropriate and expend the net proceeds from the sale or other disposition of Private Land (but not the lease or use of the Private Land) for the improvement, maintenance, development, and renovation of HARP.

5.4 On written recommendation of the HARP Council, the City Council of City will cause to be placed on its agenda an appropriate resolution or ordinance setting forth needful rules, regulations, fees, rates and charges for or with respect to the use of the Public Land and activities conducted thereon, provided that any such resolution or ordinance and all provisions thereof shall be subject to approval and adoption by the City Council of City in its sole discretion.

5.5 No Disqualified Person shall acquire or hold any interest, direct or indirect, in any contract, development agreement, lease, or permit for the development, lease, use, purchase, sale or other disposition of Private Land (the "Development Project"), nor shall any Disqualified Person have any interest, direct or indirect, in any contract or proposed contract for materials or services to be furnished or used in connection with any Development Project. Every contract, development agreement, lease or permit made in violation of this Article 5.5 shall be voidable by the Authority, unless a majority of the HARP Council determines that, in light of such interest, the participation of the Disqualified Person in such Development Project would not be contrary to the public interest. For purposes hereof "Disqualified Person" means and includes (a) a member of the HARP Council or employee of the Authority, (b) an immediate member of the family (spouse, father, mother, son, daughter, brother or sister) of any member of the HARP Council or employee of the Authority, and (c) any corporation, limited liability company, partnership, sole proprietorship, trust or other person or entity carrying on a business in which a person described in (a) or (b) above has a financial ownership or employment interest, or, in which such person is an officer, manager or director.

#### ARTICLE VI - BOND PROCEEDS

6.1 City will use the net proceeds of the Bonds to construct, acquire and improve HARP.

#### ARTICLE VII - WATER

7.1 The Board will make available and supply water to the HARP project in the quantities set forth and subject to the conditions set forth below:



## 7.2 Non-Potable Water

(a) The Board is a party to a Real Property Lease with Utilicorp United, Inc., by its Division, WestPlains Energy, dated September 9, 1996 and recorded September 30, 1996 in Book 2932, Page 991, Instrument No. 1140809 of the records of the Pueblo County Clerk and Recorder (the "Lease") under the provisions of which WestPlains is obligated to continuously divert, transport, and store, through and in the WestPlains water facilities, the amount of water lawfully available and reasonably necessary to accomplish the decreed beneficial uses under the WestPlains Water Rights. The return flow from said water usage will be a portion of the water that the Board will supply to the HARP project.

The Lease also provides for a right of first refusal to the Board to purchase both the WestPlains Water Facilities and the WestPlains Water Rights. The Board is not obligated to exercise said right of first refusal and may not do so.

(b) The Board has filed Case No. 93 CW 086 in the District Court, Water Division No. 2 in Colorado, an application for new junior water rights and a plan of augmentation for the HARP project. Said case is pending and it is contemplated that a decree favorable to Board will be entered in said case within a reasonable time period.

The quantities of non-potable water to be furnished by the Board in connection with the HARP project shall be limited to:

- (1) those waters which pursuant to the Lease Agreement are obligated to be diverted by Utilicorp, return flows from which will be utilized in the HARP project;
- (2) the water derived from the rights of Utilicorp, if in fact they are eventually purchased by the Board pursuant to the right of first refusal;
- (3) the water decreed to the Board in Case No. 93 CW 086, District Court, Water Division No. 2, when said application and plan for augmentation is in fact decreed to the Board.
- (4) such water of the Board from its other supplies not to exceed 90 acre-feet per annum.

In explanation, the HARP project has been designed so that it can function if necessary with quantities of water smaller than the existing WestPlains diversions. By the closing of certain gates and structures, the quantities of water flowing in the channel can be greatly reduced, while still substantially maintaining the appearance of a flowing stream. The Board will promptly notify the Authority of any changes in water supply available from the Lease Agreement or other sources that will necessitate the closing of gates or structures in order to operate the HARP project.

The Board agrees to furnish from its HARP decree, and other water sources, a quantity of water to the HARP project to augment, supplement or replace the WestPlains return flows as necessary in a quantity not to exceed 90 acre-feet per annum.

7.3 The water to be furnished by the Board in connection with the HARP project shall be limited to the existing boundaries of the project as they are described in the HARP Program Diagram dated November 26, 1996, attached hereto as Exhibit "A". The Board shall not be obligated without a further agreement to supply water to any expanded or increased HARP project.

7.4 Potable Water. Any potable water to be supplied by the Board to the HARP project will be furnished in accordance with the Board's then existing policies concerning potable water furnished to the City of Pueblo, its parks, buildings or facilities, except as set forth below. For the purposes of the Board's existing policies, the irrigated areas of the HARP project shall be construed to be and shall constitute a park 5 acres and larger. Potable water supplied for irrigation under Article 7.4 of this Agreement shall not exceed 4.5 million gallons per annum and shall be supplied by the Board without rates, fees or other charges. Potable water shall be supplied from existing Board mains, and the Board shall not be responsible for extending said mains or service lines at its cost. Any such costs of extended mains or service lines shall be at the expense of the HARP project. Potable water use shall be metered and monitored by the City in the same manner as water furnished to City parks.

7.5 Water Furnished to Building Pad Sites. Certain real property within the HARP project has been designated as building pad sites in anticipation of the construction of the buildings in the future. Other or additional areas within the HARP project in the future may be so designated or so used. If the buildings constructed on said sites are privately-owned, leased or occupied, or if they are owned, leased or occupied by public entities other than the City of Pueblo, the Board will charge for water furnished and the extension of water service to said buildings under its then existing water policies and then existing water rates. An example of such extension charges would be those associated with the Board's plant water investment fees and meter set fees.

If the buildings are city-owned, leased or occupied, the Board will charge for water furnished and the extension of water service in accordance with the Board's then existing policies concerning potable water furnished to the City of Pueblo, its buildings or facilities.

7.6 Small Structures. Small entertainment or refreshment kiosks or structures may be established within HARP, including those which may be leased to private lessees, on land not designated as building pad sites within the HARP project. These may be served by potable water from the City's service lines within the HARP project. The Board will charge for water furnished and the extension of water service to any such structures in accordance with the Board's then existing policies concerning potable water furnished to the City of Pueblo, its buildings or facilities.

7.7 Return Flows. The return flows from all non-potable water furnished by the Board to the HARP project shall not be recycled and shall be allowed to return to the Arkansas River. Any

fountains or water features of the HARP project served by potable water shall be recirculated insofar as reasonably possible without the expenditure of excessive monies on engineering and recirculating equipment.

7.8 Board Review of Fountains and Water Features. The design of all fountains or water features to be incorporated in the HARP project shall be submitted in a timely fashion to the Board and the Board shall have the opportunity to examine and approve or disapprove said features in the context of the adequacy of water supplies and the Board's existing water distribution system to serve said fountains or water features. "Water feature" for purposes of this Agreement means a fountain, waterfall or other structure, the use of which would significantly increase the loss of water by evaporation or seepage beyond the loss which would normally occur in the HARP channel or lake areas of the HARP project. If in the Board's opinion, the fountains or water features are not appropriately designed for the use of the supplies of water and system available to the HARP project to be furnished by the Board, the Board may approve or disapprove of such design of fountains or water features. Approval shall not be unreasonably withheld or delayed, but if the Board disapproves, then the Board shall not be obligated to furnish water, either potable or non-potable under this Agreement for such water features or fountains, the plans for which the Board has not approved, provided, however, that if the Board disapproves, any other Party to this Agreement may upon written notice given to the Board within thirty (30) days after its decision to disapprove, request the Board to reconsider its decision.

#### ARTICLE VIII - LIABILITY, INDEMNIFICATION AND IMMUNITY

8.1 Neither the individual members of HARP Council, nor any of the Parties, or their governing bodies, officers, agents or employees, shall be liable or responsible for any act or undertaking of Authority, contractual or otherwise, regardless of the procedure by which such act or undertaking may be entered into, including the approval by any Party.

8.2 The Authority shall, to the extent permitted and within the limitations of the Act, indemnify and defend each councilmember, officer and employee of the Authority in connection with any claim or actual or threatened suit, action, proceedings in which he or she may be involved in his or her official capacity by reason of his or her being or having been a councilmember, officer or employee of the Authority, or by reason of any action or omission by him or her in any such capacity; provided, however, the Authority shall have no obligation to indemnify and defend any such councilmember, officer or employee of the Authority for any suit, claim, action or proceedings arising out of criminal offenses, willful and wanton acts or omissions, or gross negligence of such councilmember, officer or employee. The Authority's obligations pursuant to this Section shall be limited to monies of the Authority available for such purpose, including, but not limited to, insurance proceeds.

8.3 Immunity. The Authority, the County, the City, the District and the Board, and their respective board members, commissioners, councilmembers, officers and employees shall be entitled

to all immunities, protections and limits on liability provided by the Act and all other applicable laws in connection with the organization, operation and activities of the Authority and the activities of the District, the Board, the County and the City in connection therewith. None of such immunities, protections or limits on liability may be waived.

#### ARTICLE IX - DEFAULT, WITHDRAWAL AND TERMINATION

9.1 If a Party remains in default in the performance of any of its obligations hereunder for a period of sixty (60) days after receipt of written notice from the HARP Council or any other Party specifying such default, the HARP Council or any other Party may

(a) remove such defaulting Party as a participating Party under this Agreement (the "Removal"); and/or,

(b) institute appropriate legal action in law or equity, including specific performance, to enforce the defaulting Party's obligations hereunder.

In the event of litigation under this Agreement, the court shall award the prevailing party its costs and expenses, including reasonable expert witness and attorney fees.

9.2 Any Party may withdraw as a participating Party under this Agreement upon action taken by its governing body delivered to Authority and each of the other Parties at least one hundred eighty (180) days prior to December 31 of the year of withdrawal (the "Withdrawal").

9.3 The term and position of any member of HARP Council appointed by a Removed or Withdrawn Party shall automatically expire and vacate upon the effective date of such Removal or Withdrawal.

9.4 Except as otherwise provided in Article 9.5, this Agreement shall remain in full force and effect until terminated by the mutual consent of all Parties, except Removed or Withdrawn Parties whose consent shall not be required.

9.5 The Withdrawal or Removal of any Party shall not terminate this Agreement or the Authority. Upon the Withdrawal or Removal of any Party, the remaining Parties shall expeditiously amend and modify this Agreement to continue the Authority upon such terms and conditions as such other Parties shall mutually agree; provided, however, that if the other Parties do not so amend or modify this Agreement within ninety (90) days after the effective date of the Removal or Withdrawal of any Party, this Agreement and Authority shall terminate and cancel.

9.6 The provision and obligations of Articles 5.1 and 7 shall survive the Withdrawal or Removal of any Party, the termination of this Agreement, and/or the dissolution of Authority for the benefit of the City and District. Article 5.1 may be enforced by District and Article 7 may be

enforced by City.

9.7 In the event of the termination of this Agreement or the dissolution of Authority, all assets of Authority shall be transferred to City to be used for the promotion, management, supervision, operation, and maintenance of HARP. The term "assets of Authority" shall not include the water rights or water leases owned by the Board.

#### ARTICLE X - MISCELLANEOUS

10.1 This Agreement shall become effective upon the date this Agreement is approved by the governing bodies of all the Parties, and may be amended or modified in writing approved by the governing bodies of all the Parties, except Rescinded or Withdrawn Parties.

10.2 This Agreement shall be governed by and construed in accordance with the laws of the state of Colorado.

10.3 If any section, clause or provision of this Agreement shall for any reason be determined to be invalid or unenforceable, such determination shall not affect any of the remaining sections, clauses or provisions of this Agreement.

10.4 This Agreement may not be assigned in whole or in part by any Party. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors.

10.5 Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the District, the Board, the County and the City any right, remedy or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the District, the Board, the County and the City.

10.6 This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same agreement.

10.7 Nothing in this Agreement shall be deemed or construed to limit, impair or restrain any of the powers and authority of the City, the County, the District or the Board, conferred by constitution, statute, charter or other laws, including but not limited to, the lawful exercise of their respective legislative powers.

Executed as of the day and year first above written.

BOARD OF COUNTY COMMISSIONERS  
OF PUEBLO COUNTY, COLORADO

PUEBLO, A MUNICIPAL CORPORATION

By Kathy Farley  
Chairman of the Board  
Attest: Rein C. Munoz  
Title: County Clerk & Recorder

By Cathy A. Garcia  
President of the City Council  
Attest: Angie Dutcher  
City Clerk

Approved as to form:

Thomas J. [Signature]  
City Attorney

# PUEBLO CONSERVANCY DISTRICT

By [Signature]  
Title: President  
Attest: Patricia Kelly  
Title: \_\_\_\_\_

# BOARD OF WATER WORKS OF PUEBLO, COLORADO

By [Signature]  
Title: Board President  
Attest: Verdon L. Johnson  
Title: Secretary-Treasurer



## EXHIBIT L

RESOLUTION NO. 9267A RESOLUTION REPEALING RESOLUTION NO. 7337  
CREATING THE HISTORIC ARKANSAS RIVER PROJECT  
COMMISSION

WHEREAS, the Historic Arkansas River Project Commission ("HARP Commission") was created March 28, 1994 by Resolution No. 7337 and assigned specific responsibilities and authority with respect to HARP, and

WHEREAS, the Historic Arkansas Riverwalk of Pueblo Authority ("HARP Authority") was created by Intergovernmental Agreement dated December 1, 1997 between the City of Pueblo, County of Pueblo, Pueblo Board of Water Works and Pueblo Conservancy District, and

WHEREAS, the HARP Authority's function, purpose and obligation are to promote, manage, supervise, operate, develop and maintain HARP, and

WHEREAS, the HARP Commission would be better constituted as an advisory committee to the HARP Council instead of a separate independent commission appointed by the City Council in order that activities not reserved to the City Council relating to HARP be under the same governing authority. NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF PUEBLO, that:

SECTION 1.

Resolution No. 7337 is repealed and the Historic Arkansas River Project Commission is hereby dissolved.

SECTION 2.

The City Council requests the HARP Council to establish an advisory committee composed of the current members of the Historic Arkansas River Project Commission and assign to such advisory committee such activities as the HARP Council may determine to be in the best interests of HARP.

SECTION 3.


The City Council hereby thanks the members of the Historic Arkansas River Project



Commission for their services and accomplishments with respect to HARP and its development.

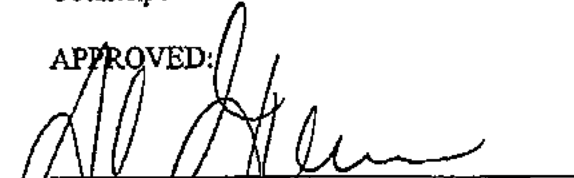
INTRODUCED: April 9, 2001

ATTEST:

  
City Clerk

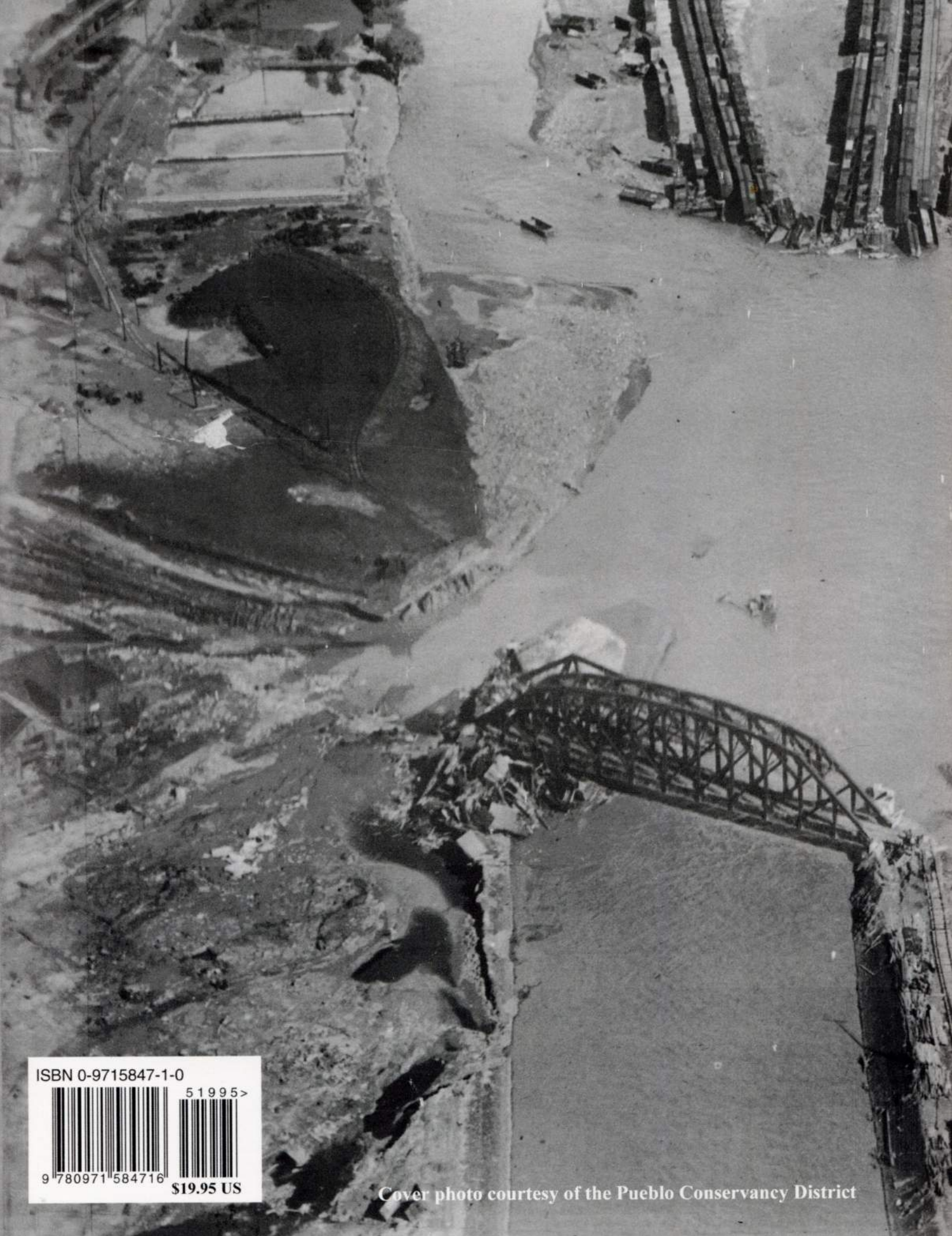
By Robert Schilling  
Councilperson

APPROVED:

  
President of the City Council



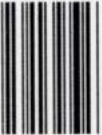




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