

RESOLUTION NO. 1575

A RESOLUTION OF THE GOLDEN CITY COUNCIL APPROVING AN AGREEMENT WITH THE COORS BREWING COMPANY PERTAINING TO COORS PENDING WATER RIGHTS APPLICATION (AUGMENTATION PLAN III)

WHEREAS, Coors has a water right application pending in Case No. 99CW236, Water Division No. 1 ("Coors Aug III"), in which Golden is an objector; and

WHEREAS, Golden owns the Oulette Ditch water right on Clear Creek with a priority date of May 31, 1860, which is Priority No. 5 on Clear Creek. The Oulette Ditch water right was originally located downstream of Coors' wastewater discharge. In 1966, Golden obtained a final decree in Case No. B-88646, District Court in and for the City and County of Denver, allowing Golden to divert its Oulette Ditch water right upstream at Golden's municipal headgate, subject to certain terms and conditions (the "Oulette Change Decree"); and

WHEREAS, in 2002, the State and Division Engineers ("State") issued a cease and desist order that, for the first time, enforced a provision of the Oulette Change Decree which the State interpreted as subordinating Golden's upstream diversion of the Oulette Ditch water right to the calling Priority No. 9 in the Farmers High Line Canal under certain conditions when there is more than 3.5 cfs flow in Clear Creek at the original Oulette Ditch headgate. The State's interpretation of the Oulette Change Decree was upheld by the Water Court at a hearing for a temporary restraining order in Case No. 02CW191, and upheld by the Colorado Supreme Court on appeal (*City of Golden v. Simpson*, 83 P.2d 87 (Colo. 2004)); and

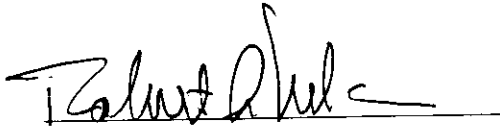
WHEREAS, Golden contends that Coors Aug I and II allow, and Coors Aug III will allow, increased wastewater discharges to Clear Creek at the discharge location above the original Oulette Ditch headgate, which in turn could increase the times when the 3.5 cfs Flow Conditions are triggered, thus increasing the likelihood that said Conditions will reduce Golden's diversions under Priority No. 5; and

WHEREAS, Coors and Golden desire to reach a settlement on Golden's assertion of potential injury to Golden's Oulette Ditch water right as a result of Coors Aug I, II and III, by granting Golden the right to divert Coors' share of daily deliveries of Thornton Water under certain circumstances and under the repayment conditions.

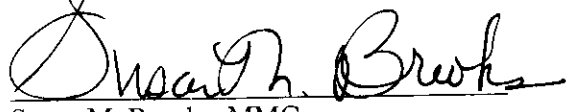
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

City Council hereby approves the settlement agreement with Coors Brewing Company, in essentially the same form as the copy of such agreement accompanying this resolution. The Mayor is authorized to execute the Settlement Agreement on behalf of the City.


Adopted the 9th day of June, 2005.


Robert A. Nelson
Mayor Pro Tem

ATTEST:


Susan M. Brooks, MMC
City Clerk

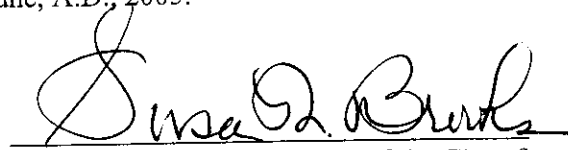
APPROVED AS TO FORM:


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 9th day of June, A.D., 2005.

(SEAL)

ATTEST:


Susan M. Brooks, City Clerk of the City of
Golden, Colorado

SETTLEMENT AGREEMENT

This AGREEMENT, dated this 17th day of May, 2005, is hereby entered into between the City of Golden, a Colorado municipal corporation ("Golden"), and the Coors Brewing Company, a Colorado corporation ("Coors").

WHEREAS, Coors has a water right application pending in Case No. 99CW236, Water Division No. 1 ("Coors Aug III"), in which Golden is an objector;

WHEREAS, Coors has previously obtained decrees in Water Division No. 1 on similar applications in Consolidated Case Nos. W-8036(75) and W-8256(76) ("Coors Aug I") and in Case No. 89CW234 ("Coors Aug II");

WHEREAS, Golden owns the Oulette Ditch water right on Clear Creek with a priority date of May 31, 1860, which is Priority No. 5 on Clear Creek. The Oulette Ditch water right was originally located downstream of Coors' wastewater discharge. In 1966, Golden obtained a final decree in Case No. B-88646, District Court in and for the City and County of Denver, allowing Golden to divert its Oulette Ditch water right upstream at Golden's municipal headgate, subject to certain terms and conditions (the "Oulette Change Decree");

WHEREAS, in 2002, the State and Division Engineers ("State") issued a cease and desist order that, for the first time, enforced a provision of the Oulette Change Decree which the State interpreted as subordinating Golden's upstream diversion of the Oulette Ditch water right to the calling Priority No. 9 in the Farmers High Line Canal under certain conditions when there is more than 3.5 cfs flow in Clear Creek at the original Oulette Ditch headgate. The State's interpretation of the Oulette Change Decree was upheld by the Water Court at a hearing for a temporary restraining order in Case No. 02CW191, and upheld by the Colorado Supreme Court on appeal (*City of Golden v. Simpson*, 83 P.2d 87 (Colo. 2004)). There are several conditions in the Oulette Change Decree at paragraphs 7(e), 7(f), 7(h)(2), 7(h)(3) where a potential subordination of Golden's upstream diversions under Priority No. 5 to another water right may be triggered when flows at the original Oulette Ditch headgate exceed 3.5 cfs (the "3.5 cfs Flow Conditions");

WHEREAS, Golden contends that Coors Aug I and II allow, and Coors Aug III will allow, increased wastewater discharges to Clear Creek at the discharge location above the original Oulette Ditch headgate, which in turn could increase the times when the 3.5 cfs Flow Conditions are triggered, thus increasing the likelihood that said Conditions will reduce Golden's diversions under Priority No. 5;

WHEREAS, Golden has asserted in Coors Aug III that Coors needs to pipe wastewater past the original Oulette Ditch headgate to prevent injury to the Oulette Ditch water right and Coors has denied that assertion;

WHEREAS, by way of an agreement between Coors and the City of Thornton ("Thornton") dated May 23, 1988, as later amended ("Coors-Thornton Agreement"), Coors obtained the right to 2100 acre-feet of firm annual yield from certain water rights owned by

Thornton in Clear Creek subject to the conditions of said Agreement, ("Thornton Water");

WHEREAS, by separate agreement between Golden and Coors, also dated May 23, 1988 ("Coors-Golden Agreement"), Golden acquired the right to exercise options on up to 900 acre-feet of the Thornton Water, and Golden subsequently has exercised those options;

WHEREAS, Coors, Golden and Thornton obtained a decree in Case No. 96CW1117, Water Division No. 1, that allows the use of the Thornton Water by Coors and Golden as contemplated in the Coors-Thornton and Coors-Golden Agreements;

WHEREAS, Coors and Golden desire to reach a settlement on Golden's assertion of potential injury to Golden's Oulette Ditch water right as a result of Coors Aug I, II and III, by granting Golden the right to divert Coors' share of daily deliveries of Thornton Water under certain circumstances and under the repayment conditions discussed below.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Golden and Coors agree as follows:

1. Loaned Water. At times during the "loan season," as that term is defined herein, when Golden's ability to divert under its Oulette Ditch water right is limited or curtailed as a result of any of the 3.5 cfs Flow Conditions in the Oulette Change Decree, Golden may elect to receive all or part of Coors' daily deliveries of the Thornton Water while the subordination is in effect ("Loaned Water"). Daily deliveries of the Loaned Water shall be in addition to Golden's share of the daily deliveries of Thornton Water. Within one business day of a written request by Golden specifying the timing and amount of requested Loaned Water, Coors shall begin allowing the delivery of the Loaned Water to Golden as requested. Delivery of Loaned Water to Golden shall be combined with the daily delivery of Golden's Thornton Water under the decree in Case No. 96CW1117. Golden may, from time to time, adjust the amount of Loaned Water that it requests and receives under this Agreement. Golden shall use the Loaned Water directly (without storage) in its municipal system and Coors shall be entitled to use all wastewater returns generated from Golden's use of Loaned Water, as with other Thornton water. Golden and Coors shall seek the maximum amount of daily deliveries of Thornton Water legally available from Thornton at such times as Golden is using Loaned Water under this Agreement.
2. Loan Season. The portion of each year during which Golden may receive deliveries of Loaned Water is from September 1 through the end of the Farmers High Line Canal irrigation diversion season that fall (the "Loan Season").
3. Golden's Accounting. Golden shall maintain daily records of the delivery and use of the Loaned Water, and of the effluent attributable to such Loaned Water, and Golden shall provide such accounting to Coors on a daily basis or on such longer interval as may be acceptable to Coors. Golden shall provide Coors a final, summary accounting of the delivery and use of the Loaned Water not more than fourteen days after the end of the Loan Season.

4. Loan Payment. Golden shall be obligated to reimburse Coors for Golden's use of that amount of water which equals the total amount of the Loaned Water each Loan Season minus the effluent attributable to the Loaned Water that accrues during the Loan Season ("Net Loan Amount") as provided for in Golden's accounting.

- (a) Golden shall repay the Net Loan Amount by allowing Coors to utilize that portion of Golden's share of daily deliveries of Thornton Water in an amount calculated by Golden to ensure repayment of the Net Loan Amount by a date chosen by Golden, but in no event later than April 30 of the following calendar year. Repayment shall begin as soon after the Loan Season as is practicable, but in no event more than fourteen days after the end of the Loan Season; provided, however, that if the water level in Guanella Reservoir is at or below the outlet works at the end of the Loan Season, then Golden may delay initiation of the repayment of the Net Loan Amount until the water level rises above the outlet works or thirty days after the end of the Loan Season, whichever occurs first. In any circumstance, Golden's repayment shall be completed no later than April 30 (the end of the current delivery season).
- (b) If daily deliveries of Golden's interest in Thornton Water during the repayment period will not be adequate to reimburse the full Net Loan Amount, or if Coors and Golden mutually agree, Golden may use other sources of water that are fully reusable and consumable to assist in repaying the Net Loan Amount. Golden shall not lease its interest in Thornton Water to any other party during the time it is delaying repayment to Coors because the water level is below the outlet works of Guanella Reservoir. Notwithstanding the foregoing, Golden shall assign to Coors all or part of its daily deliveries of Thornton Water following the Loan Season to the extent needed to assure that the total deliveries of Thornton Water for use by Golden during any delivery season (as defined in the Coors-Thornton Agreement) do not exceed 900 acre-feet.
- (c) In any year in which Coors loans water to Golden pursuant to this Agreement, upon request by Coors, Golden shall disclose to Coors during the Loan Season (i) the current water level in Guanella Reservoir, and projected water level at the end of the Loan Season; (ii) water sources available to Golden to repay the Net Loan Amount as provided herein; and (iii) any water lease affecting Golden's ability to repay the Net Loan Amount from those sources.

5. Limitations.

- (a) In no event shall the combined total of Golden's rate of diversion of its interest in the Thornton Water and the Loaned Water exceed the flow rate limitations set forth at paragraphs 17.1.2, 23 and 24.12 of the decree in Case No. 96CW1117.
- (b) Golden's pre-existing right to 900 acre-feet of Thornton Water is subject to drought reduction pursuant to paragraph 2.D of the Coors-Thornton Agreement

and paragraph 1 of the Coors-Golden Agreement. Although this Settlement Agreement provides for a temporary loan of Coors' Thornton Water to Golden in addition to the daily deliveries to which Golden is already entitled, under no circumstances shall Golden's total use of Thornton Water, including Loaned Water, during a delivery season (as defined in the Coors-Thornton Agreement and 96CW1117 decree) exceed 900 acre-feet.

6. Coors-Golden Agreement. This Settlement Agreement, and the use of Loaned Water pursuant thereto, does not modify any provision of the Coors-Golden Agreement and/or the Coors-Thornton Agreement, including without limitation, Golden's obligation regarding the cost-sharing provisions in the Coors-Thornton Agreement, so that the maximum annual delivery to Golden of Thornton Water for any purpose, including the maximum delivery for calculating Golden's pro rata share of allowable costs, shall never exceed 900 acre-feet.

7. Golden's Use of Thornton Water. The parties agree that Golden may use the Coors cooling water return contemplated in the Coors-Golden Agreement (§ 4) and the decree in Case No. 96CW1117 (§ 23.2.4) for the delivery of Loaned Water to the same extent and upon the same conditions as for delivery of other Thornton Water, and further agree that Coors' cooling water rights and operations (including the cooling water return) shall not interfere with Golden's ability to utilize, in accordance with the decree in Case No. 96CW1117, Thornton Water including the Loaned Water.

8. Coors Aug I, II and III cases. Upon execution of this Settlement Agreement, Golden shall stipulate to entry of a proposed decree in Case No. 99CW236 by way of stipulation substantially in the form attached hereto as Exhibit 1. Golden agrees not to exercise or extend the retained jurisdiction provision in Coors Aug II case and further agrees not to assert any challenge to Coors' existing water right decrees, including Coors Aug I, Aug II and the pending Aug III, based upon effects they have on Clear Creek flows at the original Oulette Ditch headgate.

9. Flows at the Oulette Ditch Headgate. Coors consents to Golden's deduction from Clear Creek flows at the original Oulette Ditch headgate of any water accruing to Clear Creek above that point that is leased, loaned or sold by Coors, Golden or others for use downstream from that point, for the purpose of administration of the 3.5 cfs Flow Conditions of the Oulette Change Decree, and will cooperate with Golden in any efforts by Golden to seek approval of such deductions as may be required from the State or Division Engineer, or from the Water Court in a proceeding initiated by Golden. Coors does not consent to such deductions of any Coors effluent that is not leased for use downstream. Coors will also cooperate with Golden in any effort by Golden to address the administration by the Water Commissioner and operation of the Slough Ditch system and its effects on flows at the Oulette Ditch headgate, so long as such efforts are consistent with existing Clear Creek water rights decrees. Coors' cooperation pursuant to this paragraph 9 shall not, however, obligate Coors to expend any fees for legal or consultant services, provided that Golden's attorney may contact Coors' in-house counsel regarding any legal issues arising under this paragraph 9; and any obligation of Coors for such cooperation

shall be limited to the specific circumstances expressly described in this paragraph 9.

10. Term. This agreement shall run in perpetuity for so long as Thornton shall deliver the Thornton Water to Coors and Golden and/or their successors and assigns. This Agreement may be recorded in the real property records of Jefferson County, Colorado, and shall be binding upon all successors and assigns of the parties.

11. Representations. Golden and Coors do hereby represent and warrant that each has full authority to enter into this Agreement and that the person executing this Agreement on each party's behalf has the authority to do so.

12. Miscellaneous Provisions.

A. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.

B. Counterparts. This Agreement, or the signature page thereof, may be executed in counterparts, all of which have full force and effect as an original, including admission into evidence, and facsimile signatures shall constitute originals for all purposes.

C. Integration. This Agreement constitutes the entire agreement of the parties and a complete merger of all prior negotiations and oral agreements relating to the specific matters addressed herein (which do not include the matters being addressed by separate settlement agreement among Coors, Golden and Thornton in Case No. 03CV2779, Adams County District Court). This agreement shall not be modified except in writing signed by all the parties hereto, or their authorized representatives.

D. Enforcement. The provisions of this Agreement are enforceable by the parties through whatever legal means available and the parties may seek specific enforcement and/or damages and/or such other relief as may be allowed under Colorado law.

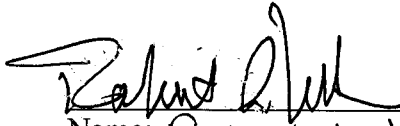
E. Effective date. Upon execution by the parties hereto, this Agreement shall be in full force and effect and shall be legally binding upon each party.

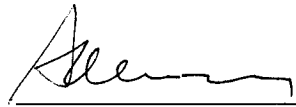
F. Further Action. Each party agrees to execute, approve and adopt any and all instruments, documents and resolutions as may be reasonably necessary to effectuate the covenants, terms, conditions and provisions contained herein. Such instruments, documents and resolutions shall be in a form and substance reasonably acceptable to the parties.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above by the duly authorized representatives of the parties hereto.

CITY OF GOLDEN

COORS BREWING COMPANY


Name: Robert A. Nelson
Title: Mayor Pro Tem

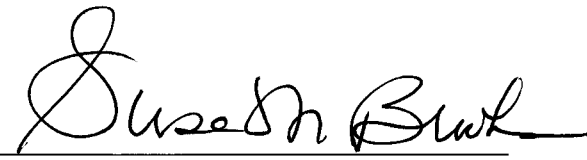

Name: Samuel D. Walker
Title: U.S. Chief Legal Officer

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 10 day of ^{June}~~May~~, 2005, by
Robert A. Nelson as the Mayor Pro Tem
for the City of Golden.

My commission expires: Sept 19, 2005

Witness my hand and official seal.

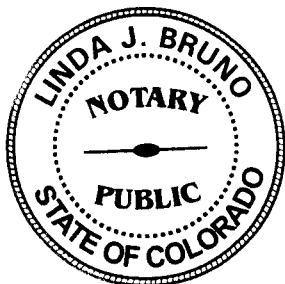

Notary

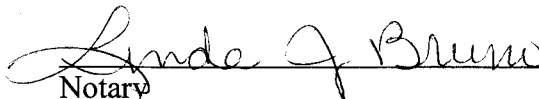
STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 17 day of May, 2005, by
Samuel D. Walker as the Global Chief Legal Officer
for the Coors Brewing Company.

My commission expires: 11-12-2007.

Witness my hand and official seal.




Notary