IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-CV-02371-PAB-BNB

CITY OF AURORA, Colorado, a municipal corporation,
acting by and through its Utility Enterprise, Aurora Water,

PLAINTIFF AND COUNTERCLAIM-DEFENDANT,

and

GRIMM CONSTRUCTION COMPANY, INC.
d/b/a GARNEY CONSTRUCTION, a Colorado corporation,

COUNTERCLAIM-DEFENDANT,

vs.

PS SYSTEMS, INC., a Colorado corporation,
and RAR GROUP, LLC, a Colorado limited
liability company,

DEFENDANTS AND COUNTERCLAIMANTS.

AFFIDAVIT OF MARK PIFHER IN SUPPORT OF
MOTION TO DISMISS DEFENDANTS' COUNTERCLAIM
FOR LACK OF SUBJECT MATTER JURISDICTION

I, Mark Pifher, being duly sworn upon oath, hereby depose and state as follows:

1. I am the Director of Water for the City of Aurora ("Aurora"). As such, I have primary responsibility for the large municipal water supply and filtration project named the Prairie Waters Project ("the Project" or "Prairie Waters"), including the proposed Aquifer Recharge and Recovery ("ARR"), which is a natural water filtration component that Aurora is considering building as part of the pre-treatment portion of the Project.

2. Although it is designed, the ARR portion of the Project is not built. Aurora's construction design drawings demonstrate that Prairie Waters was designed with configurations that both included and excluded the ARR facility. Because this litigation is not complete, and the City thus has not received a declaration as to whether the ARR design is covered by the claims of the Defendants' patents, the City built Prairie Waters using the design configuration which did *not* include the ARR. The Project is currently built and functional without the use of ARR.

3. On March 20, 2008, Aurora entered into a contract for construction of the ARR with Counterclaim-Defendant Grimm Construction Company, Inc. d/b/a Garney Construction ("Garney"). Pursuant to that contract, Garney may only construct the ARR when Aurora authorizes it to do so.

4. Aurora has not authorized completion of construction of the ARR because it is waiting for the outcome of this declaratory judgment action. Aurora will not authorize Garney to proceed with such construction if either or both of the patents-in-suit – U.S. Patent No. 6,840,710 and U.S. Patent No. 7,192,218 ("the PS patents") – are found to be valid and enforceable, and there is a judicial declaration that one or both of the patents would be infringed if the ARR were built.

5. Aurora designed its Project to divert its fully consumable return flows from the South Platte River near Brighton, Colorado, by means of a riverbank well field. Aurora chose the river bank well diversion method as a means to pretreat the water before it is transported via a 34-mile pipeline to Aurora's new state-of-the-art water purification plant, The Peter D. Binney Water Purification Facility, ("the Peter Binney Plant").

6. If it is held that the design of the proposed ARR does not infringe the PS Patents, Aurora may add the ARR facility as another level of pretreatment, along with riverbank filtration, before purification at the Peter Binney Plant. If it is built, the ARR will be located near the riverbank well field where water is pumped from the South Platte River, and water would pass through the ARR before entering the pipeline. The ARR configuration, including surface infiltration basins and a series of extraction wells, was designed to further naturally purify and treat water after it exited the riverbank well field but before it entered the pipeline on its way to final treatment at the Peter Binney Plant. To restrict the flow of groundwater into and out of the ARR, the facility would be surrounded by a low-permeability barrier ("LPB") consisting of two discontinuous slurry wall segments and two grout column segments, which were necessary to support a county road which bisects the ARR site.

7. The Prairie Waters Project as built without the ARR is nearing final completion and is operational. Currently, the City is testing the system as built and has successfully drawn water from the South Platte River by means of the riverbank wells, then run that filtered water from the riverbank well field through the 34-mile pipeline to the Peter Binney Plant.

8. Water treated through Prairie Waters as currently built (without the ARR feature) will meet applicable state and federal drinking water quality standards.

9. The low-permeability barrier ("LPB") portion of the ARR (consisting of two discontinuous slurry-wall segments and two grout column segments) has already been constructed. The LPB was built after the named inventors of the PS patents agreed that gravel pits confined by barriers, such as the numerous slurry-wall lined gravel pits found along the South Platte River, do not infringe the PS patents. If the design of the complete ARR is found to

infringe one or both patents in this case, and Aurora therefore does not build the ARR, Aurora likely would mine gravel inside the LPB and use the excavated pit for water storage.

10. The total cost of the Prairie Waters Project was budgeted at approximately $754.8 million, and is currently estimated to be completed for approximately $655 million. The additional ARR purification portion of the Project, if built, is estimated to cost approximately $23 million.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on April 12, 2010.

s/Mark Pifher
Mark Pifher