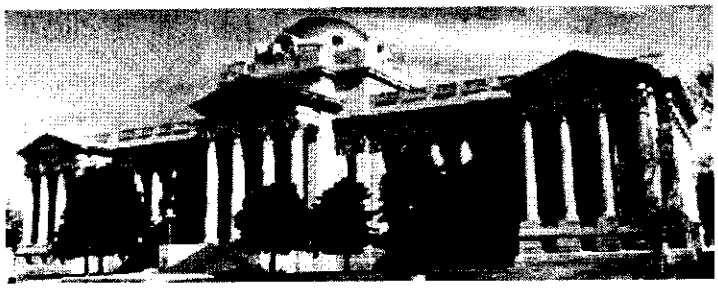
Anthony Nuñez
District 1
Chair-2008

John B. Cordova, Sr.
District 2

J.E. Chostner
District 3



Kim B. Headley
Planning and Development
Director
planning@co.pueblo.co.us

BOARD OF COUNTY COMMISSIONERS
DEPARTMENT OF PLANNING AND DEVELOPMENT

TRANSMITTED VIA US MAIL AND E-MAIL (jfredell@csu.org)

Mr. John Fredell
Southern Delivery System Project Director
Colorado Springs Utilities
Plaza of the Rockies, 3rd Floor
121 S. Tejon, MC 930
Colorado Springs, CO 80947-0930

Re: Determination on the Request for a Finding of No Significant Impact ("FONSI") for the Southern Delivery System Project ("SDS"); Pueblo County 1041 Permit No. 2008-002

Dear Mr. Fredell:

Colorado Springs Utilities, on behalf of the project participants, submitted a request for a FONSI for the proposed SDS project in Pueblo County. The SDS participants request a determination that they need not submit a permit application to Pueblo County under its regulations for Areas and Activities of State and Local Interest under Title 17, Division II of the Pueblo County Code.

The FONSI procedure and criteria are set forth in Sections 17.148.240, 17.164.020, 17.172.070, 17.172.080 and 17.172.090 of the Pueblo County Code. A FONSI may be determined and issued "if the construction or operation of the Project, without mitigation, in its proposed location is unlikely to have any significant adverse impact to the County in consideration of the Permit Application Approval Criteria" of the regulations for each applicable area and activity (Sections 17.172.090 and 17.164.020).

I have determined that the SDS project does not qualify for a FONSI under the Pueblo County regulations. The SDS project participants must therefore proceed with their application to the County for a permit to conduct the proposed activity.

EXHIBIT
SDS
5
tabbies

A. Procedural Background

Your five-page FONSI request letter ("FONSI Request"), dated March 26, 2008, described some of the components of the SDS project in Pueblo County, along with the twelve pages of technical maps, drawings and specifications of the facilities and the pipeline easements over twenty miles in length. The FONSI Request is premised upon the U.S. Bureau of Reclamation's draft Environmental Impact Statement ("DEIS") dated February 29, 2008; the result of a five-year study process on the SDS. The DEIS and accompanying technical appendices and data compilations are several thousand pages in length.

A final EIS and Record of Decision are not expected until sometime in 2009. (Figure S-10, SDS Project EIS Timeline, Statement Summary, DEIS, p. 46). Notably, Reclamation will not identify specific mitigation measures to be implemented until the Record of Decision, and the DEIS states detailed mitigation plans will only be prepared prior to construction. (Statement Summary, DEIS, p. 44). On August 25, 2008, Reclamation announced it will be preparing an additional water quality analysis for the DEIS in response to comments it received and it extended the public comment period until 45 days after the release of the new analysis.

Your letter also stated that Springs Utilities reserves all rights and arguments of the SDS participants in their pending litigation against the County challenging the applicability of the County regulations to the SDS project. (Case No. 06CV438, Div. B, Pueblo County District Court; on appeal in Case No. 07CA2543, Colorado Court of Appeals). Additionally, on March 27, 2008, another lawyer for Springs Utilities, Mr. David Eason of Berenbaum, Weinshienk & Eason P.C., wrote a three-page letter to the County's attorneys in connection with the FONSI application "to confirm certain matters with respect to that submission and any application made to Pueblo County;" that letter recites several legal positions and objections by Springs Utilities.

A pre-application meeting on the FONSI Request was held on April 23, 2008 in our offices, and it was continued by mutual agreement to another meeting on May 14, 2008. The City's representatives at the meetings were Mr. Bruce Spiller, P.E., an engineer with CH2M Hill; Mr. Daniel Higgins, Construction and Delivery Program Manager of SDS for Springs Utilities; and Mr. David Robbins, attorney for Springs Utilities. Pueblo County's representatives included me; Mr. Jeff Woeber, County Planner; Mr. Gary Raso, Pueblo County Special Land Use Counsel; and Mr. Ray Petros, Pueblo County Special Counsel on water and land use matters.

These meetings -- about eight hours in total -- were informative and productive. In response to our questions, several supplemental reports and information were presented to us of a technical nature. We also have the benefit of the numerous

documents and information about the SDS made available by Springs Utilities as part of the discovery process in the litigation. (A reference table describing some of those documents is attached to this letter, and those documents are incorporated as part of the administrative record.) County staff or its counsel also reviewed the DEIS and many of its associated studies, attended public informational and public agency meetings held by the Bureau of Reclamation on the DEIS, and read many of the approximately 400 comment letters by interested parties to the Bureau on the SDS. Pueblo County counsel, on behalf of the County planning staff and its attorneys, submitted a comment letter to the Bureau as to concerns and questions about the adequacy of the DEIS (Petros letter, dated June 13, 2008, to the Bureau).

By letter to you dated May 22, 2008, I notified Colorado Springs Utilities of my estimate of a fee in the amount of $25,000 to be paid by the SDS participants to reimburse the County for its costs for determining whether a FONSI or a permit is required (Section 17.172.080(C)). Pursuant to our regulations, we could not proceed further on the FONSI determination until receipt of those funds.

Approximately seven weeks later, on July 7, 2008, you notified me by letter that Colorado Springs Utilities would be providing Pueblo County with a $25,000 check as an advance on fees; these funds were received by the County on July 7, 2008. You also asked that the County withhold any decision on the FONSI until additional information could be provided to the County. However, in an e-mail communication on July 23, 2008 to Mr. Petros, Mr. Robbins clarified that Colorado Springs Utilities did not desire any further pre-application meetings and urged the County to proceed with a FONSI determination. On August 6, I met with Mr. Higgins at his request to discuss his questions on the County's regulations and application process.

On August 20, 2008, Colorado Springs Utilities tendered its application, associated materials (in ten boxes) and initial fee deposit of $50,000 for a County permit to construct, operate and maintain the SDS components within Pueblo County. In your accompanying letter, you acknowledged that a FONSI was improbable. It is unclear whether your filing of the application constituted a withdrawal of the FONSI Request. Nonetheless, for the record, I believe it appropriate to issue this formal denial of the FONSI Request.

B. SDS Project

The SDS project within Pueblo County includes: the proposed storage of large quantities of SDS water (up to 42,000 AF annually) in Pueblo Reservoir under new proposed long-term contracts with the Bureau of Reclamation; the trade of water stored in Pueblo Reservoir, under new contracts with the Bureau, for water stored in other upstream reservoirs; the modification of one or two outlets of Pueblo Reservoir for

connection to the SDS pipeline; the construction of a 14,000 square foot, 42-foot high pump station building, office and parking lot below the dam in Lake Pueblo State Park with a pumping capacity of 78 million gallons per day; the construction of a 66-inch diameter pipeline through about 20 miles of Pueblo County, much of it through the urbanized area of Pueblo West in unincorporated Pueblo County; and the carriage of return flows from the SDS pipeline and other sources in Fountain Creek or the Arkansas River across lands in Pueblo County, for recapture through the SDS pipeline, directly or by exchange.

95% of the pipeline capacity would be used by the City. Other El Paso County participants identified at this time are the City of Fountain and the Security Water District. Pueblo West Metropolitan District would tap into the SDS pipeline near its beginning to obtain an additional delivery intake for its water system.

According to information supplied by the City in the litigation, the pipeline in the Proposed Alignment from Pueblo Reservoir would cross an estimated 130 separate parcels in Pueblo County; the City has not acquired any land or easements for these facilities. An estimated 26 rural residential lots in Pueblo County with homes on them would be crossed by the pipeline. 24 Pueblo County roads, US Highway 50, the Arkansas River, and 50 drainages in Pueblo County are estimated by the City to be crossed by the pipeline in the Proposed Alignment.

The City estimates approximately 330 acres in Pueblo County would be acquired in fee or for permanent and temporary easements for the pipeline in the Proposed Alignment. During construction, trenches for the pipeline would be dug about 20-feet deep on the average, and 22 to 40-feet across at the surface.

At least 20 large concrete vaults, partially buried, would be constructed in Pueblo County along the pipeline in its Preferred Alignment. The vaults would be between 300 and 1,300 square feet each. These structures would house meters, valves, air vents, and water discharge outlets. About 40 concrete manhole structures would be constructed in Pueblo County.

In our pre-application meetings, the representatives of Colorado Springs Utilities stated that an electrical substation and associated power lines likely would be constructed in Lake Pueblo State Park in Pueblo County to support the SDS pumping station. Size, location, and other facets of these electrical components are unknown at this time.

The City has stated the maximum flow rate of water to be delivered through the pipeline from Pueblo Reservoir (all pursuant to existing water rights) is 96 million gallons per day (148.5 cubic feet per second or 107,620 acre-feet per year. It appears the DEIS, however, assumes that the pipeline would only be operated at about 60% of

capacity on the average (DEIS, p. 12). 18 mgd of capacity (27.8 cfs or 20,180 AF maximum) would be allocated to Pueblo West at a connection near the very beginning of the pipeline. On the average, 63% of the pipeline deliveries to the City would result in return flows carried down Fountain Creek or through a pipeline through Pueblo County to the Fountain's confluence with the Arkansas River. By 2046, the City expects it may have up to 102.1 cfs or 74,000 AF per year of returns in Fountain Creek for recapture and diversion into the SDS pipeline in Pueblo County. These flows are not natural to Fountain Creek in Pueblo County.

The City has estimated the costs of the SDS components in Pueblo County to be $127 million. The DEIS estimates the capital cost of the SDS (configured with the pipeline from Pueblo Reservoir) to be about $1.1 billion.

C. Mitigation

It is evident from the magnitude of the SDS Project and the scope and complexity of the DEIS that, without mitigation, the SDS Project is likely to have significant adverse impact to the County in consideration of the approval criteria of the County regulations. Mitigation will likely be required to avoid adverse environmental, socioeconomic and infrastructure impacts, and impacts to surrounding properties and roadways (noise, vibration, construction, traffic, reclamation and weed control).

In its FONSI Request, Colorado Springs Utilities itself has acknowledges the need for mitigation of SDS. Also, in your letter to Reclamation, dated June 13, 2008, you submitted comments on behalf of Colorado Springs Utilities on the DEIS as follows:

> "6. The DEIS addresses many issues and finds that there will be no major adverse effects to the environment and the economics of the region. Moreover, the DEIS suggests possible mitigations." (p. 8).
>
> "The DEIS considers in great detail the impacts of the SDS project on Fountain Creek. It requires Colorado Springs Utilities to take steps to mitigate any impacts on Fountain Creek." (p. 9)
>
> "Colorado Springs Utilities will adopt measures to mitigate adverse geomorphic effects of increased base flows in Fountain Creek and Williams Creek Reservoir exchange flow releases, due to the project." (p. 9)
>
> "The SDS project will not adversely affect aquatic habitat; impacts to aquatic habitats will be mitigated to ensure protection of aquatic life." (p. 11)

> "Impacts to wetlands and waters in the project area will be mitigated to ensure protection." (p. 11)

> "Specific individual cultural resources effects, and the extent of those effects, will be determined during the final project design. To date, several mitigation approaches and agreements have been completed." (p. 14)

Additionally, in its SDS project website, www.sdswater.org, under the section "Protecting the Environment and Fountain Creek," Colorado Springs Utilities states:

> "We will be required to mitigate the impacts SDS does create for Fountain Creek. The Bureau of Reclamation will outline these requirements in its Record of Decision for the Environmental Impact Statement for the project."

The DEIS also recognizes the need for mitigation of SDS impacts. For example, in the section of its Statement Summary entitled "Mitigation Measures" at p. 44, the DEIS states:

> "The DEIS describes mitigation measures that could be taken to avoid, minimize, or compensate for direct or indirect effects on the resource. In general, these measures apply to all alternatives. Differing details for specific alternatives are described as necessary. Reclamation will identify the specific mitigation measures to be implemented in a compilation of environmental commitments that will be included in the Record of Decision. Detailed mitigation plans will be prepared for the Preferred Alternative prior to construction."

As an example and of particular concern to Pueblo County, the DEIS at Section 3.21.5.4 (p. 494) recommends mitigation measures for construction in or use of public roads and bridges, but are only set forth in general terms.

The SDS website also has a link to a list and copies of the approximately 400 comment letters received by Reclamation on the DEIS. Many of these comment letters, particularly those by public agencies and environmental organizations, identify adverse impacts of SDS which might likely require mitigation measures.

The possibility that mitigation of impacts might be required by Reclamation or other permitting authorities is inconsequential to my FONSI determination. Under the County regulations, if the proposal requires mitigation it does not qualify for a FONSI.

D. Comparisons to Other Projects

The FONSI Request states that the SDS Project's impact to the County "will be of the same scope and magnitude as three similar projects for which the County granted a FONSI, or on other grounds determined that a permit was not required." These three projects are: Pueblo West Sewer Connector Line, County File No. 2007-001; Pueblo Board of Water Works Raw Water Pipeline, County File No. 1998-001; and the Fountain Valley Conduit (for which a County file has not been found), constructed many years ago as part of the original Fry-Ark Project authorized in the early 1960's.

Such an argument is not relevant to whether the SDS satisfies the criteria for a FONSI at this time. Comparisons are difficult at best given the differences in the projects, changes in surroundings, differences in time, accumulation of impacts from other projects, and increased knowledge of the potential impacts.

In any event, two of the projects (FVA pipeline and Pueblo Water pipeline) are readily distinguishable from SDS. These two projects preceded the County's adoption in 2005 of the designation for Efficient Utilization of Municipal and Industrial Water Projects (§17.172) and the adoption of the FONSI procedure.

The FONSI issued for the Pueblo West sewer line granted in May, 2007 is not comparable to SDS in scope or impact. The Pueblo West sewer connector line was to connect already platted lots in Pueblo West to a wastewater treatment plant with available capacity. Central sewer lines were already installed in both of the tracks, such that the proposed sewer lines would serve as a collector for these existing lines. The proposed sewer line was to be installed primarily in existing public utility easements.

Of more significance, as you already know, based upon the County planning staff's review of its records for purposes of the pending litigation, there have been about 25 permits issued and approved under the Areas and Activities Regulations for various projects. These include Permit 2003-003 issued to Pueblo West Metropolitan District in 2003 for its proposed construction of a 36-inch raw water line from Pueblo Reservoir and pump station. Also, recently a FONSI was denied in the case (Southwest Farms, County file 1041 Permit No. 2007-003) of a proposed conversion of a future gravel pit into a 13,000 acre-foot reservoir east of the City of Pueblo.

E. Conclusion

For the foregoing reasons, the FONSI Request for the SDS project is denied. Pueblo County planning staff is available to assist you in completing your application to the County for the activities permit(s).

Sincerely,

Kim B. Headley
Planning and Development Director

REFERENCES

(Documents disclosed in Case No. 06CV438,
Div. B, Pueblo County District Court)

1. Letter to the U.S. Bureau of Reclamation from Colorado Springs Utilities dated March 2, 2005 requesting long-term conveyance and storage contracts at Springs' Utilities (SU) document number SU6025.

2. Amendment No. 1 to Memorandum of Understanding between the Bureau of Reclamation and Colorado Springs Utilities dated March 2004 at document number SU730.

3. Memorandum prepared for Colorado Springs Utilities by CH2M Hill dated August 14, 2007 describing the components of SDS within Pueblo County at document numbers SU2515, 2517-2520.

4. Map of Proposed Alignment of Raw Water Pipeline (a/k/a Exhibit A to Amended Complaint).

5. Map of Alternative Alignment of Raw Water Pipeline (a/k/a Exhibit B to Amended Complaint).

6. Discovery Responses of Colorado Springs Utilities to Pueblo County's First Set of Requests for Admission, Interrogatories, and Requests for Production dated August 24, 2007 ("Discovery Responses"), including, but not limited to, pages 16-17 (Interrogatory No. 7), 17 (Interrogatory No. 8), 17-18 (Interrogatory No. 9), 19 (Interrogatory No. 10).

7. Stipulated Facts in Trial Management Order dated September 21, 2007 at page 5, ¶3.

8. Colorado Springs Utilities Tabulation of SDS South Section of Raw Water Pipeline Parcel Information within Pueblo County dated August 2, 2007 at document numbers SU5976-5980.

9. Technical Memorandum No. 7-D.1.1S prepared for the City by CH2M Hill dated September 20, 2005 regarding SDS Proposed Easement Widths for the South Section of the Raw Water Pipeline at document numbers SU3123-3125.

10. City's Tabulation of SDS Raw Water Pipeline Pueblo County Road and Land Crossings (Proposed Alignment) dated August 24, 2007 at document number SU5982.

11. City's Tabulation of SDS Raw Water Pipeline Pueblo County Road and Land Crossings (Alternative Alignment) dated August 24, 2007 at document number SU5983.

12. City's Tabulation of SDS Raw Water Pipeline Approximate Number of Acres for Permanent and Temporary Easements within Pueblo County dated August 24, 2007 at document number SU5981.

13. 1041 Permit Application List; prepared by Pueblo County Planning Staff on January 24, 2007 at Pueblo County document number 0077-0078.