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Statement of Bill Thiebaut, Office of the District Attorney for the 10<sup>th</sup> Judicial District,  
To the Pueblo Board of County Commissioners Regarding  
Colorado Springs Utilities' 1041 Application for the Southern Delivery System

December 11, 2008

Introduction

This statement is submitted by Bill Thiebaut, District Attorney for the Tenth Judicial District, Colorado, which comprises Pueblo County. This Statement is being submitted with regard to the 1041 Permit Application submitted by Colorado Springs Utilities ("CSU") to Pueblo County for its proposed Southern Delivery System ("SDS"). As District Attorney, it is my duty to protect the health and safety of the citizens of Pueblo County and to ensure that laws are being enforced. I am submitting this Statement in furtherance of that duty.

Colorado Springs Utilities' sewage spills into Fountain Creek

Shortly after I was elected in 2004, citizens in Pueblo County began communicating with my office to request that I protect them from illegal sewage spills and other pollution releases occurring from the City of Colorado Springs. These illegal pollution spills often originated from Colorado Springs' sewage collection system, would then enter tributaries of Fountain Creek, and ultimately flow downstream into Pueblo County. These sewage spills were often caused by pipe blockages, lift station failures, pipe leakages, human errors, and broken pipes in streambeds. These spills contained raw sewage, heavy metals, and anything else flushed down toilets, sinks, and industrial drains. The sewage spills contained high levels of bacteriological contamination, such as *e coli* and fecal coliform, that can cause serious public health problems.

These sewage spills also cause flooding, stream bank erosion and sedimentation in the Fountain Creek watershed due the sudden and unnatural introduction of additional flows to the creek. Flooding damages property and causes pollutants to be spread beyond the streambed. Erosion causes loss of property. Sedimentation impairs water quality and harms in-stream habitat.

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These sewage spills from CSU also often resulted in the issuance of “stream closure” orders by local health departments prohibiting use of the waters in Fountain Creek and its tributaries. These stream closures prevented many public uses of Fountain Creek in Pueblo County, such as fishing, boating and irrigation. These stream closures have an adverse impact on the economy of Pueblo County. CSU’s illegal sewage releases have contributed to Fountain Creek being listed as an “impaired waterbody” under the federal Clean Water Act.

In 2005, I filed a lawsuit against Colorado Springs Utilities under the federal Clean Water Act seeking to put an end to these illegal sewage spills and pollution releases. Colorado Springs Utilities is subject to pollution discharge permits, rules and regulations that prohibit illegal discharges of untreated raw sewage and excessive pollution into Fountain Creek and its tributaries. My lawsuit sought to stop CSU’s illegal pollution by enforcing these discharge prohibitions.

During the course of the litigation, I learned that sewage spills are related both to the volume of sewage in the collection system and the volume of water in a streambed. For example:

1. high volumes of sewage in a collection system can caused pipe leakage, pipe breakage, or sewage overflow;
2. lift station overflow or failure can be attributed to a high volumes of sewage in the collection system;
3. breakage of in-stream sewage collection pipes can be caused by high volumes of water in the stream;
4. erosion of a streambed can expose sewage collection pipes;

High volume flows and other problems resulted in many of the sewage spills occurring in CSU’s collection system.

#### CSU’s Southern Deliver System and 1041 Application

CSU now proposes to build the Southern Deliver System (“SDS”) which would collect 78 million gallons/day of raw water from the Arkansas River and convey this raw water to the City of Colorado Springs. This raw water will largely be used for domestic purposes to expand the population of the City of Colorado Springs. The SDS will result in significantly greater volumes of water being introduced to CSU’s sewage collection system and ultimately to Fountain Creek.

In evaluating CSU’s 1041 permit application, Pueblo County should consider the impact these new SDS flows may have on CSU’s compliance with its pollution discharge permits and related water quality impacts in Pueblo County. Pueblo County should also consider flooding, erosion and sedimentation of Fountain Creek in Pueblo County that may result from the SDS project.

### Concerns about the SDS and CSU's 1041 Application

I am concerned that introduction of 78 million gallons/day of new raw water into the CSU sewage collection system and Fountain Creek will exacerbate the water quality problems my lawsuit is attempting to eliminate.

For example, I am concerned that introduction of new significant flows into Fountain Creek and its tributaries may cause future stream crossing pipe breakages in CSU's sewage collection system. It does not appear that the existing stream crossings were designed to accommodate the additional in-stream flows contemplated by the SDS. Moreover, I do not believe that there is an adequate plan to ensure final remediation of existing stream crossings and that all stream crossings were designed to withstand the additional in-stream flows contemplated by the SDS.

I am also concerned that the SDS will add additional sewage volume into CSU's sewage collection and treatment system. The majority of CSU's collection system is composed of antiquated vitrified clay pipe some of which is over 100 years old. I am concerned that introduction of significant new volumes of sewage into the collection system could cause pipe failure and/or overflow.

Future sewage spills caused by the new SDS flows would pollute Fountain Creek in Pueblo County, result in stream closures, contribute to the creek's impairment, threaten public health and safety, and hurt our economy.

I am also concerned that the additional SDS flows will directly exacerbate flooding, erosion and sedimentation in Fountain Creek in Pueblo County. Moreover, expanding the population of Colorado Springs will result in more buildings and parking lots. Buildings and parking lots create hard surfaces that both increase stormwater flows and result in a loss infiltration of storm flows into the soil. This combination results indirectly in higher volumes of storm flows reaching Fountain Creek and its tributaries during storm events that can exacerbate the flooding, erosion and sedimentation noted above.

### Recommendations

As noted above, the SDS proposal has the significant potential to adversely impact water quality, flooding, erosion, and sedimentation in Pueblo County. Therefore, before approving CSU's 1041 permit application for the SDS, Pueblo County must ensure that the proposal will not adversely impact the public health or environment in Pueblo County.

If Pueblo County approves CSU's 1041 permit application, it should consider issuing a "conditional approval" requiring CSU to prove that the SDS will not result in

future sewage spills, flooding, erosion or sedimentation. Examples of such "conditions" could include:

- a condition requiring CSU to design and implement a series of near-stream ponds and reservoirs along Fountain Creek to control the flow and water quality of the Creek;
- a condition requiring CSU to prove that all of its sewage system stream crossings have been originally designed and constructed to withstand the anticipated flows resulting directly and indirectly from the SDS (discharge water and stormwater) and that all final remediation of stream crossings have been completed;
- a condition requiring CSU to prove that all of its sewage treatment systems and components are capable of treating the additional flows caused by the SDS;
- a condition requiring CSU to prove that all of its lift stations have been originally designed and are capable of handling the additional flows caused by the SDS;
- a condition requiring CSU to prove that all of its collection system is capable of handling the additional flows caused by the SDS;
- a condition requiring CSU to provide all relevant information regarding its sewage treatment and collection system to Pueblo County upon request and to consult with Pueblo County regarding such information;
- a condition requiring complete and continuous compliance with the terms and conditions of all discharge permits, rules and regulations associated with its sewage treatment system, sewage collection system and non-potable water system.
- a condition requiring CSU to reimburse Pueblo County for the legal and technical costs associated with ensuring compliance with the terms and conditions of any 1041 approval;

Thank you for considering this Statement in your evaluation of CSU's 1041 permit application for the SDS.

12/11/2008  
Date

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