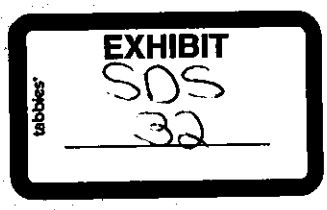
Paul Banks

From: Headley, Kim [kheadley@co.pueblo.co.us]
Sent: Thursday, December 18, 2008 9:25 AM
To: paulb@banksandgesso.com
Cc: rasopc@aculink.net; Raymond Petros; Chostner, Jeff; Cordova, John; Nunez, Anthony; Severance, Greg
Subject: Mitigation - Sedimentation

Paul, I had a meeting yesterday with representatives of FEMA (Region 8, Nancy Stienbrenner), Michael Baker jr (contractors to FEMA; Dave Jula) Colorado Water Conservation Board (Map Modernization Coordinators for FEMA in Colorado, Thuy Patton) and Anderson Consulting Engineers (contractors to CWCB, Mark Kempton) regarding the Map Modernization process (conversion FEMA floodplain maps to "DFIRM's" ; digital flood insurance rate maps) for the City and County of Pueblo. This effort has been underway since 2004. The biggest obstacle has been the levees on the Arkansas River and Fountain Creek. Using the hydrology developed by the Corps of Engineers as part of the Fountain Creek Watershed project, Anderson has calculated base flood elevations (BFE) for Fountain Creek. There is an issue with the Fountain Creek levees through Pueblo not containing the BFE at several locations. The problem is associated with sediment aggradation in the channel. As you are aware, the number one rated project in the COE Watershed Study was sediment removal from Fountain Creek through the levee portion within the City of Pueblo. We will be unable to obtain a "compliance determination" for the levee from FEMA unless provisions are made for sediment removal. It is critical, in my opinion, that SDS mitigation measures address this issue. More information can be obtained by contacting Mark Kempton at Anderson Consulting; (970) 226-0120.
Regards and Best Wishes for a Joyous Holiday Season.
Kim



From: BltAlt@aol.com [mailto:BltAlt@aol.com]
Sent: Thursday, December 18, 2008 10:11 AM
To: Headley, Kim
Subject: Re: Noxious Weed Mitigation Measures

Kim:
I have been giving a lot of thought to this. It is a golden opportunity for a number of reasons.

We rarely have to opportunity to work on an entire watershed for removal of tamerisk.

1. We have ample justification based upon desires of Senator Ken Salazar's Crown Jewel Project for in it he says in part "Fountain . . . "a flourishing environment for plants and animals." I don't think he was thinking of tamerisk and russian olive. I haven't look at the entire project but there maybe a section on weeds. Oh, by the way, it might not be a bad idea to have the new Secretary of Interior happy with us.
2. Then there is the water savings. This is a two edged sword because if you believe, as I do, that there is too much water in the Fountain, then pulling up the tamerisk will probably raise the water table and put more water in the Fountain. However, if you look at the waste these plants cause in water loss removing the tamerisk is still the wise choice for Colorado and with the addition of SDS--what's a little more (I suppose). I have someone looking at this to estimate just how much water can be saved by removing the tamerisk but I don't have anything yet.
3. Measures for its removal have been studied and tried in various environments so we have a knowledge and data base on what works and what does not.
4. This cannot be done in a short time. If we got started tomorrow it would be 2012 or longer before we could be 80-90% free of tamerisk (and russian olive) in the watershed.
5. I believe it could be done for about 10% of the mitigation money if the figure we discussed at the 1041 hearing is correct.
6. Supplementing the mitigation money. We shouldn't overlook the availability of federal funding sources like NRCS's EQIP program. There are probably state funds out there too. With good seed money for leverage it opens up a lot of money sources--like we have in our pending county program.
7. As to measures--these are my ideas based upon what I know about tamerisk/russian olive removal
    - The practice used will depend a good deal on the environment
    - We must protect the native vegetation, i.e., cottonwoods, willows and various other wide leaf plants native to the watershed. Wetlands are vulnerable to many chemicals so spraying will have to be carefully thought out. Choice of chemicals will have to be looked at closely since we are working near a live waterway. There maybe areas in tributaries like Jimmy Camp and Williams Creek where aircraft could be effective and cost effective in spraying tamerisk.
    - It will do no good to just clear the Fountain riparian areas alone. Tributaries to the Fountain should be cleared first.
    - Insects (beetles from South Asia) have had spotty success in various parts of the southwest and may be the final application to attack new growth
    - Based upon my knowledge of the Fountain I think mechanical removal followed up by careful application of chemicals would be the best practice for most of the watershed.
    - Removing the dead debris is a must, for if it is left, a flood event could transport this debris into structures and native cottonwoods causing unforeseen and expensive damage.
    - Follow up re-vegetation is vital. Disturbed lands are what other noxious weeds love the best. Following the removal within months the disturbed areas will need to be re-seeded with willows, grasses and wetland plants. Despite re-vegetation efforts other noxious weeds including the tamerisk and russian olive

will infest the disturbed areas and a vigorous annual control of the young weeds will be necessary for 2-3 years .

- If I were doing this, my plan would be:
- Hire a contractor with equipment to extract the tamerisk and russian olive. The same contractor should have large bin grinders to reduce the debris to mulch. The mulch would be much easier to dispose of and probably cheaper. Burning is an alternative but large fires would damage the soil and make re-vegetation harder. Any surviving trunks or roots should be treated with a chemical brushed on the exposed wood and around the surviving bark. Various chemicals have been used successfully for this control of re-growth.
- It would be good if the removal were coordinated with other state and local government weed control efforts. For example, if you remove the weeds from the Fountain and CDOT doesn't clear the drainage along I-25 the effort may be for naught. By the same token if there are weeds in the drainages along Sand Creek and they are not controlled the weeds will return quickly to the Fountain. In Pueblo County, weed control efforts along Overton Road should be done to keep re-infestation from happening. Once again, good opportunity to leverage funds.

Hope this helps. If you need me to talk with you team I would be happy to do this and bring an expert along
Cheers
Bill

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858 Sequoya PW CO

To:Pueblo County Commissioners From: John Mauldin, Pueblo West

Comments for 1041 hearing on 11 Dec 2008 on permit application for SDS pipeline

Others have been informing you of major deficiencies in EIS on this project, & of many ongoing problems with past such projects, & of many problems with Fountain Creek. In contrast to actual limited studies in the EIS, the Bureau's process as presented to public last April indicated no subjects are off the table. I saw that ALL possible social & economic factors count as "environment". Thus the ethics of taking water across basins, taking land, & disrupting community to push over-growth & allow over-use of water in face of ever-drier Western climate should be part of the big picture. You properly under 1041 oversee & defend the environmental integrity of this county, for benefit of present & future residents. I can see the County in a tight spot because of lack of adequate EIS to work from and possibility of being sued if not permit this project & sued if allow it to begin major damages. Bottom line might be: where is major long-term benefit to our area & state from moving water this way? What does COunty get for this risk, & maybe not solving Fountain Creek? Does major new taxmoney come from this to offset losses to residents? A few short-term jobs?

Because EIS neglected study of impact on Pueblo West (PW), i mention some of those. Media & SDS Corporation underplay & mis-state effects on residents of North PW, which is NOT (quote) "sparsely populated". Yes i saw Gary Walker's appreciation of wild land & concerns about PW, & i want him to know that PW as whole was never consulted on whether its Water Dept should sign onto SDS in 2003 to tap into it. PW Boards change: a member who works for Colo SPrgs was unelected, & same for a member who appeared unauthorized in ads for SDS. Our new busy Board is trying to catch up on many local problems besides this related one.

Media & SDS Corp.allege only 1 or 2 houses in the path, but i have looked at all on-line county maps of platted lots near the path, and at large printed map from SDS application. I also personally drove near most of the path to locate affected houses & count them. Along the 7 mile route thru PW i find 14 houses close or very close to it, except i havent looked at the north-most mile. The existing utility corridor is about 200 ft wide in most of PW. Residential lot lines adjoin the platted lines of this corridor. You should know from your Planning Dept that about 120 lots typically 1 to 2 acres adjoin the corridor on the east. On-line county maps are about 5 years out of date showing houses, and i found no easement maps. But i cant conceive that those lots east of corridor have 100 ft easement all the way, to allow expansion as media and SDS map have partly shown to be needed east of established utility corridor. Such lots would not have been platted & sold, because no one would buy a lot with half the back or side-yard at risk of being taken. Some of those lots are oriented so a house on it would necessarily be in the way.

EIS does not cover the utility lines, but i see no space between power lines for big access & excavation requiring 100 ft wide working area as Corp, has said it needs. Power poles have been put right up to edge of corridor. Some houses are only 20 to 40 ft from those. Big machinery will be bumping into houses farther away, and other residents will lose half their backyard. It seems that wholesale condemnation of property will be occurring, & extensive court battles. The big implication then is that about 120 lot owners sooner or later will be very upset with County & others at major invasion thru, if not permanent taking of, their land.

Then there are about 1000 more lot/house owners within range of extreme noise, diesel pollution, blowing dirt, & disrupted travel all day, not for weeks promised but for many months. Two years ago i watched a much smaller deep sewer pipe put in along Purcell & across country, 3 miles taking 8 months of repeated return to work each section with noise, dust, & traffic disruption.* This must be scaled up a factor of 10 or more to get the picture. I also mention destruct ion of many local PW roads, and surely extensive dynamiting like before.

Media keep talking of PW wanting the water, but the facts are different. Total projected water need of PW after build-out decades hence is about 7000 acre-feet. Bureau overestimated about 10000 acre-ft. How PW Board entered into an agreement to tap for 20000 acre-ft from this pipe alone has yet to be studied or explained. Talk of PW saving money by this alternate route from Lake Pueblo is still unstudied also. When all terms are settled, PW may lose big money on this compared to building its own extra pipe. PW may decide that upsetting 1000 residents to maybe save $100,000 is not worth it. PW Board may yet withdraw from SDS.

PW Board knows none of above is in EIS & how media & Corp have minimized effects.

I dont see how County can require problems of SDS to be mitigated for PW & beyond. Looking along 7 miles of backyards & arroyos & beyond to wild land northward, how can 100 ft wide scar be "restored" with fragile plants & natural topography? Even with decades of stewardship requiring continued invasion of private property, this mistake will be much more visible than 4 power lines. I hope you will visit the whole path to see.

You should know that citizens are busy, and for every one who speaks here there are a 100 who wished they could. Widespread opposition to a bad idea begins to appear only when big effects are immediate and costs become personal. I hope you know that the private Colo SPrgs Utility COrp, cant be trusted on any aspect.

I will provide copy of my comments to you for further study. Thanks

* I saw the spare required & similar methods used,

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STATEMENT OF NEAL HALL

My name is Neal Hall and I am the Business Manager of the Colorado Building and Construction Trades Council. My organization represents building trades unions throughout the state. The Council is opposed to the SDS project as presently proposed in the 1041 application.

Colorado Springs Utilities has a long history about how it does its construction projects. Besides being openly hostile to organized labor, its philosophy is simply to state: "How cheaply can we get this done?" It has shown a lack of concern about quality of the construction and to the effects on the surrounding areas of the labor practices of its contractors.

One of the most egregious acts CSU has engaged in recently is the hiring of a general contractor that appeared to be using uncertified, illegal immigrants as welders. In 2002, a CSU contractor hired several persons who spoke no English as welders. During the job, some were deported back to Argentina. However, these same people showed up on the job a few weeks later. When this information was presented to the Colorado Springs City Council, it was ignored. It should be noted that the quality of the welding performed by these individuals was extremely poor.

There are two parts of the criteria that you must apply that I think are of particular interest to the citizens of Pueblo County. You must conclude that the project will not create an undue financial burden on existing or future residents of the County. You must also find that the project will not significantly degrade any current or foreseeable future sector of the local economy. It is my belief that this project will do both of these things.

By operating on the "cheapest is best" principle, contractors hired by CSU have lower bids because they do not provide even basic health insurance to their employees. This means that these employees use emergency room services rather than primary care physicians. Because

of the cost of these services and the low wages paid to the workers, the County ends up picking up the overwhelming majority of these costs. This creates an undue financial burden on County residents. This is especially true of illegal immigrants.

Because many of these workers have no ties to the local community, their lifestyles reflect an attitude of taking what they can and giving nothing in return. Such an attitude damages the community both economically and socially.

It is a fair question to ask how local businesses can compete with an entity that hires cheap illegal workers to do its work. They cannot. Such actions not only degrade sectors of the local economy, they run the risk of driving some companies out of business.

It does not have to be this way. With appropriate pre-job requirements and/or transparency during construction, most of these problems can be avoided. Recognizing that you have the authority to approve the permit with conditions, let me make a few suggestions. First, requiring that the project be done pursuant to a project labor agreement with the CBCTC will mean that the workers will be highly skilled and legal. They will be paid a living wage and have benefits that will not place a drain on local services.

If not done under a PLA, there may be other things that at least address these issues. For example, the general contractor can be required to use the Department of Homeland Security verification system for all employees, including those of its subcontractors, before they are allowed to work a single hour on the project. In order to ensure compliance, you could require that the responses from that system be turned over to the County along with weekly payroll records. To prevent the negative impact of sub-standard wages and benefits, you can require that all workers be paid the equivalent of the Federal Davis-Bacon wages and benefits. You would want weekly verification of this fact also sent to the County. You can require that at

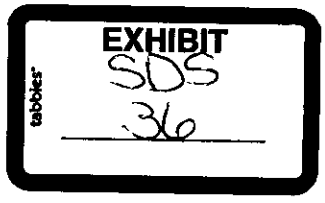
least 50% of the contractors on the project are based in Pueblo County so that your construction industry is not degraded. While none of these is as effective and cost effective as requiring a PLA, they will help protect the citizens and businesses of Pueblo County as you are required to do.

Thank you.

Comments to Pueblo County Commissioners, 11 December 2008
By Dr. Don G. Schley, PMP

1. Perjured Fredell water affidavit – Case No. 04CW132 – claimed in December 2004/January 2005 that "…Colorado Springs…owns the land …on which all of the structures are located" for the SDS. By structures, the document further specified "The relevant structures in this Application are the exchange to and from points." Those exchange to and from points listed the proposed Jimmy Camp Creek Reservoir, the majority of the land for which is owned by the Banning Lewis Ranch Corporation, and the proposed Upper Williams Creek Reservoir, the majority of which lies under control of the United States Air Force, and the rest of which lies in private hands. This perjured Application in Judge Maes' Division Water Court II makes a mockery of the judicial proceedings and the formal legal aspects of this project and proceeding, both the JCCR and UWCR being integral parts of the SDS.
2. BOR, in the March 2006 Alternatives Analysis Report on SDS, established 3 level 1 screening criteria: must be legal, must be technically feasible and use existing technology, and must not require federal legislation.
    a. Per the criterion of legality, in the case of SDS as proposed, in conjunction with the obligations set forth in the 2004 IGAs, and Pueblo County's stated desire to expand the scope of those agreements to require a minimum flow guarantee (not just the agreed-to curtailment of exchange), unfortunately, the Colorado Springs City Charter, Article 6-80, Sale, Conveyance or leasing of Utilities, contains the following prohibition: "Council shall sell, convey or lease all or any substantial part of the property of Utilities or any Utilities department without an affirmative vote of the electors of the City; provided that the foregoing shall not apply to the sale, lease, or conveyance of property of Utilities or any Utilities department (i) which occurs in the ordinary course of business, or (ii) which shall cease to be necessary for the efficient operation of the Untility, or (iii) which shall have been replaced by other property serving substantially the same function. (1995)" Certainly these IGAs do not constitute actions in the "ordinary course of business", nor have these curtailed water rights ceased to be "necessary for the efficient operation of the Utility, nor have these rights been "replaced by other property serving substantially the same function." Therefore, neither CSU nor the Mayor nor any member of City Council, has the authority to enter into such agreements. Finally, no vote of the electors has ever taken place approving the curtailment of Colorado Springs' valuable water rights "from Turquoise Lake to Lake Meredith" (per the IGAs). That is to say, these agreements are inherently illegal. Surely the Pueblo County Commissioners do not want to endorse agreements that are based on agreements that are illegal on their face.

A "Council shall not..."



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b. Per the criterion that denies a requirement for federal legislation, SDS has always looked forward to PSOP—the preferred storage option—i.e., the raising of Pueblo Dam (which, in the case of the DEIS and the 1041 application, has been deliberately withdrawn from discussion). However, the lack of capacity in the Joint-use-manifold to support both Colorado Springs' future water demands and the water allocations already assigned to the JUM (The JUM was constructed in 1975 at the request of the PBWW-PBWW, and the use of which is allocated between the following parties: PBWW, Pueblo West, Fountain Valley Conduit, and the Arkansas Valley Conduit—the latter of which has yet to be constructed) demands further action by the BOR down the road.

3. The inadequacy of CSU's current configuration, which declares that it intends to use the outlet works at Pueblo Dam without modification, is disingenuous because the space already allocated in the JUM is inadequate to address CSU's long-term needs under SDS. This fact means that down the road, the PSOP option will have to be brought back onto the table, and federal legislation will be required.
4. PSOP—the proposal to raise Pueblo Dam by 15 feet to accommodate Colorado Springs' long-term municipal storage needs—poses real hazards to the community of Pueblo. Certainly the Pueblo Board of Commissioners need to be aware of these dangers. First, according to the Wahler Report of 1977 and subsequent studies by engineers and consultants of the BOR, Pueblo Dam was built on weak rock, and has over the last decade require substantial remediation, including the pumping of 64,000 cubic yards of concrete under the dam's main spillway to stabilize it, the unprecedented step of attempting to reinforce the dam's face with rock bolts, the equally surprising step of pouring a 12-foot high "shoe" and the base of the dam to prevent it from "kicking out" at the bottom after stress tests revealed that the dam was flexing there (an attribute due to its weak foundation), instead of at the top the way soundly built dams do. The dam was also constructed without the requisite piezometers needed to measure movement in the dam. Finally, owing to the structural weakness of the dam's foundation, the dam has never been "spilled" and the reservoir has never been filled. As long as the reservoir continues to be operated in this fashion, it will probably be safe, but Colorado Springs' proposal to raise the dam puts the entire community of Pueblo at risk to the dam breaking.

5. Those of us who have friends and long-standing relationships in Pueblo do not want to see such a tragedy occur. A friend of mine spent the summer of 1977 as a member of the first-response American Red Cross Disaster Relief Team at the second Johnstown, Pennsylvania, flood. Days 1 & 2 were spent in rescue mode; day 3 was spent in body recovery. This is not a scene anyone wants to see repeated in this city. The residents of Colorado Springs do not wish to jeopardize the safety of the citizens of Pueblo by raise a dam and expanding a reservoir which, using the best case, make an extremely poor candidate for such undertakings.

6. Pipeline Route is unstable and hazardous to the environment. The article in the Chieftain, "Last Stand", a few days ago, made this case more eloquently than I can here.

24 November 2008

Mr. Michael Ryan
Regional Director, Great Plains Region
U.S. Bureau of Reclamation
P.O. Box 36900
Billings, MT 59107-6900

RE: SDS-DEIS Responses to the Supplemental Information Report—Addenda to the official administrative record.

Dear Mr. Ryan:

The cited documents below are herewith and henceforth incorporated by reference into the official administrative record of this SDS-NEPA process. *Specific documents are not attached in compliance with the express CEQ guidelines that paperwork be minimized.* All documents are from the public domain and can be provided or accessed as needed. The documents so referenced include, but are not limited to, the following citations.

All Articles from the Pueblo Chieftain pertaining to PSOP and SDS, especially those written by Chris Woodka, and especially including, but not limited to the following: Woodka, Chris. "Fountain Creek By-pass added to SDS". *Pueblo Chieftain,* 8 Oct 2005, as *well as all those in which USBR representative Pat Mangan and CSU representative Gary Bostrum deny that any extant studies exist on the proposed Hwy 115 route* (cf. Fryingpan-Arkansas Project environmental documents, below).

All CEQ Guidelines and Regulations.

All documents pertaining to the Colorado Springs' City Council and Utilities Board's efforts to have the Phantom Canyon Pumped-Storage Hydro Project considered in the alternatives analysis, including meeting minutes, inter-office memos, e-mails, and communications with MWH(A), CH2MHill, and other consultants. Pertinent communications would be between March and May 2005.

All Federal Register documents pertaining to the SDS project, including but not limited to Federal Register: September 8, 2003 (Vol. 68, No. 173) [Notices; pp. 52953-52955], which documents the need for further EA compliance studies "when Springs Utilities requested approval to convey their non-Fry-Ark water through the South Outlet Works to the Joint Use Manifold and Pipeline." This document seems to be reflected in the SDS 1041 application to Pueblo County of August 2008, but is nowhere reflected in the NEPA process.

(SDS 366)

All Intergovernmental Agreements (IGAs) between either the City of Colorado Springs, Colorado, and/or Colorado Springs utilities enacted in furtherance of the Preferred Storage Option Proposal (PSOP) and the SDS, including but not limited to those with Pueblo, The Colorado River District, and others.

All documents of the Citizen Tool Box—NEPA 40 Q & A.

All Draft and Formal Prospecti for Colorado Springs' Utilities bond offerings supporting PSOP and/or the proposed Southern Delivery System (especially those issued in furtherance of the 2003B and 2005 Bond offerings).

All Intergovernmental Agreements (IGAs) between either the City of Colorado Springs, Colorado, and/or Colorado Springs utilities enacted in furtherance of the Preferred Storage Option Proposal (PSOP) and the SDS, including but not limited to those with Pueblo, The Colorado River District, and others.

All MWH(A) memos of critical import to the SDS process, including the memo of 5 May 2005 which states explicitly that "The Participants have proposed use of Pueblo Reservoir without modification for regulating storage." (P. 1), and the memo of September 2005, where the Participant's notice of intent was apparently changed, but never publicized as required by the rules, regulations and guidelines governing the NEPA process.

All NEPA regulations and guidelines, including but not limited to US District Court, US Circuit Court of Appeals, and US Supreme Court decisions pertaining to the interpretation and application of NEPA rules, guidelines and regulations.

All pertinent US Statutes, including but not limited to 40 USC 1506.5 (c), which specifies that "a consulting firm preparing an EIS must execute a disclosure statement".

All responses to the original SDS-DEIS (due 13 June 2008) by the following individuals: Dr. Don G. Schley, PMP, AEON Project Development; Tom Gallagher, Colorado Springs City Councilman; Mark Morley, Principal, H20 Providers, and The Morley Companies; Warren Paul, P.E., Washington Group International, Division of URS Corporation, as well as all responses submitted to the current Supplemental Information Report, October 2008.

Bingham, Donald L. and Klein, John M., "Extent of development and hydrologic conditions of the alluvial aquifer, Fountain and Jimmy Camp Valleys, Colorado, 1972".

Bureau of Reclamation Information Quality Guidelines. http://www.usbr.gov/main/qoi/guidelines.html (accessed 22 May 2008).

Bird/Wildlife Aircraft Strike Hazard Assessment Report (for the Southern Delivery System Environmental Impact Statement). Prepared under contract with MWH Americas, Inc., September 2007.

Colorado Springs Utilities Water Resource Plan, 1996.

Draft Engineering report on the Southern Delivery System, in support of Colorado Springs 2003B Utility Revenue Bonds offering: prepared by CH2MHill for CSU, October 2003.

Draft Environmental Statement on the Fryingpan-Arkansas Project, Vols 1-3, 1973; and the *Supplement to the Environmental Statement*, Fryingpan-Arkansas Project, 1978. These documents prove that USBR representative Pat Mangan and CSU representative Gary Bostrom were lying consistently throughout the NEPA process when they claimed that neither CSU nor USBR had any knowledge of any formal environmental documents on the Highway 115 route. These official USBR documents were extant, known and available to both Bostrum and Mangan at the time these claims were made.

Earth Manual: A Water Resources Technical Publication. A guide to the use of soils as foundations and as construction materials for hydraulic structures. 2nd Edition: United States Department of the Interior, Bureau of Reclamation, 1974 (The most recent edition is *Earth Manual—Part I. A guide to the use of soils as foundations and as construction materials for hydraulic structures*. USBR. 3rd Edition, 1998.

Emmons, Patrick J., "Artificial-recharge tests in Upper Black Squirrel Creek Basin, Jimmy Camp Valley, and Fountain Valley, El Paso County, Colorado," U.S. Geological Survey, July 1977.

FERC Permit #P-12714-00, November 2006 (Phantom Canyon Pumped-Storage Project). This document proves that knowledge of such a project was available to USBR, its representatives, and to the Participants throughout the NEPA Process. The Feasibility study on the project prepared by the Washington Group International, a Division of URS, was also potentially available to the USBR, but CSU and MWHA prevented this material ever being part of the process, and USBR never sought to correct this deficiency in the NEPA process.

Federal Register (40 CFR 1502.24). Requirement for Scientific Accuracy.

Federal Register/ Vol. 69, No. 45, Monday, March 8, 2004, pp. 10866-10887. *National Environmental Policy Act Revised Implementing Procedures; Notice.*

Final Environmental Assessment, Pueblo Board of Water Works, July 2000.

Final PSOP Implementation Committee Report: Addendum to Preferred Storage Options Plans Report. Developed by PSOP Implementation Committee, 19 April 2001. Submited

to the Southeastern Colorado Water Activity Enterprise, 31717 United Avenue, Pueblo, Colorado 81001.

Fountain Creek Watershed Study. Task Order No. 2. Contract Number W912PP-04-C-0006. Prepared by URS Group, Inc. for the US Army Corps of Engineers, March 2005.

Hazardous Materials Assessment (for the Southern Deliver System Environmental Impact Statement). Prepared under contract with MWH Americas, Inc., July 1997.

Letter to Colorado Springs Utilities and the City of Aurora, 29 September 2000 RE: EVALUATION OF DESIGN MODIFICATIONS, PUEBLO DAM. Ueblacker Associates, Lakewood, CO

MWHA Professional Services Agreement No. 200316026; 10 September 2003; between CSU and MWHA. 40 USC 1506.5 (c), specifies that "a consulting firm preparing an EIS must execute a disclosure statement".

MWHA memo of 5 May 2005, where the SDS project's scope was changed, eliminating PSOP as part of the SDS, but was never publicized in accordance with the rules governing the NEPA process.

MWHA memo of September 2005, where the Applicant's notice of intent was apparently changed, but never publicized in accordance with the rules governing the NEPA process.

Memorandum for Heads of Agencies: "Guidance on Applying Section 404 (r) of the Clean Water Act To Federal Projects which Involve the Discharge of Dredged or Fill Materials into Waters of the U.S., including Wetlands." Executive Office of the President, Council on Environmental Quality, 17 November 1980.

Milenski, Frank. *Water: the Answer to a Desert's Prayer*. Aurora, Colorado: Milenski Agriculture Consulting Service, 1990.

Milenski, Frank. *In Quest of Water: A History of the Southeastern Colorado Water Conservation District and the Fryingpan-Arkansas Project*. Aurora, Colorado: Milenski Agriculture Consulting Service, 1994.

Minutes of meeting between USBR representative Pat Mangan and MWH(A) representative Bill Vandeveer (April 2005) regarding the CSU Board's request that the Phantom Canyon project be included in the Alternatives Analysis.

Moore, John E. E.; Moore, John E., & Moore. Moore E. *Field Hydrogeology- a Guide for Site Investigations and Report Preparation*. Lewis: July 2002.
Their Silent Profile: Inactive Coal and Metal Mines of Colorado-Colorado Inactive Mine Reclamation Plan (published under the auspices of The Inactive Mine Program of the Colorado: Mined Land Reclamation Division, Department of Natural Resources. 1982.

National Environmental Policy Act Revised Implementing Procedures; Notice. Federal Register/ Vol. 69, No. 45, Monday, March 8, 2004, pp. 10866-10887.

Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act; 40 CFR Parts 1500-1508 (2005).

Response to Mr. Morley's Comments made at the January 2006 Utility Board Meeting (18 Jan 2006). Prepared by CSU Staff.

Southeastern Colorado Water and Storage Needs Assessment Enterprise: Preferred Storage Options Plan. Prepared by GEI Consultants, Inc. 21 September 2000 and submitted to the Southeastern Colorado Water Conservancy District and Enterprise Board, 31717 United Avenue, Pueblo, Colorado, 81001. Project 99061.

Supplement to the Final Environmental Impact Statement on the Frying-Pan Arkansas Project, USBR, 1978.

Steers, Mark and Trojanowski, John. *Pueblo Dam – Risk Analysis – Modified Dam Including Contraction Joint Leakage and Concrete Dam Tension Issues*. Prepared by Mark Steers and John Trojanowski, US Dept of the Interior, USBR, July 2000.

Supplement to the Final Environmental Impact Statement on the Frying-Pan Arkansas Project, US Bureau of Reclamation, 1978.

The Seedskadee Project, by Toni Rae Linenberger (USBR History Program, Denver, Colorado; Research on Historic Reclamation Projects, 1997), treating the Fontenelle Dam in southwestern Wyoming; accessed18 April 2008.
http://www.usbr.gov/dataweb/html/seedskadeeh.html

The Southern Delivery System Pueblo County 1041 Permit Application (August, 2008), which reverses the MWH(A) memo of 5 May 2005 to CSU proposing "use of Pueblo Reservoir without modification for regulating storage..." and thus documenting a further reversal a project scope, all outside of the NEPA process.

The Teton Basin Project. USBR Lower Division, Idaho. Accessed 18 April 2008. http://www.usbr.gov/dataweb/html/teton1.html.

The Ticknor Report: Utilities and Economic Development Competitiveness for Colorado Springs. Prepared for the Greater Colorado Springs Economic Development Corporation by the Economic Development Research Group, Ticknor and Associates; 1 August 2005.

Trojanowski, John. *Pueblo Dam Study to Raise the Operating Pool for Southeastern Colorado Water and Storage Needs Assessment Enterprise*, for the USBR, 31 August 1999.

Ueblacker, Horst. "Evaluation of Design Modifications, Pueblo Dam"; letter from Horst Ueblacker, P.E., of Ueblacker Associates, 29 Sept. 2000, to Gary Bostrom of CSU and Douglas Kemper, City of Aurora. [*This critical evaluation was unfortunately left off the reference list of my original submission on safety issues pertaining to the SDS, but was included in the text of this response. The letter shows that PSOP was under active consideration, and provides the best summary available on the problems that inhere in Pueblo Dam and Colorado Springs' proposals to raise it.*]

USBR. *Pueblo Dam, Safety of Dams, Final Environmental Assessment, 1998.*

Vegetation Resources Technical Report. SDS Environmental Statement. Prepared by ERO Resources Corp. under contract with MWH Americas, Inc., November 2007.

Wahler, W.A., & Associates. *The Wahler Reports: Review of the Design, Construction, and Operation of Pueblo Dam Project, Colorado*. Washington, DC: US Department of the Interior, June, 1977.

Wahler, W.A. & Associates. *The Wahler Report: Review of the Design, Construction and Operation of the Mt. Elbert Forebay Dam and Reservoir Project, Colorado*, for the United States Department of the Interior, Washington, D.C. Contract No. 14-01-0001-77-C-10. W. A. Wahler, June 1977.

Wildlife Technical Resources Report. SDS Environmental Statement. Prepared by ERO Resources Corp. under contract with MWH Americas, Inc., November 2007.

Wilshire, Richard Lynn. "100 Years of Embankment Design and Construction in the US Bureau of Reclamation". Richard Lyman Wilshire, P.E., Civil Engineer, served as Principal Designer, Geotechnical Services Division, Group I, Technical Services Center, Bureau of Reclamation, U.S. Dept. of the Interior, Denver, Colorado. Paper presented at the Bureau of Reclamation History Symposium, University of Nevada—Las Vegas, June 18-19, 2002.

I am forwarding this record of critical process documents to be added to the official administrative record of this NEPA Process to the Commissioner of Reclamation and the Secretary of the Interior as well.

Sincerely,

Dr. Don G. Schley, PMP
Principal
Aeon Project Development

31 North Tejon Street, Suite 306A-B
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719-219-6946

Aeon Project Development, LLC: Project Analysts
Dr. Don G. Schley, PMP

COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED SOUTHERN DELIVERY SYSTEM (SDS) OF COLORADO SPRINGS UTILITIES (APPLICANT)

Safety Issues ignored in the Draft Environmental Impact Statement (DEIS) for the proposed Southern Delivery System

Introduction:

The principals of Aeon Project Development, being citizens of Colorado Springs and ratepayers of Colorado Springs Utilities impacted by the Applicant's proposed SDS, and having demonstrable expertise in the field of project development and project management, offer the following comments on the DEIS for the proposed SDS project.

Referenced Documents:

Bird/Wildlife Aircraft Strike Hazard Assessment Report (for the Southern Delivery System Environmental Impact Statement). Prepared under contract with MWH Americas, Inc., September 1997.

Regulations for implementing the Procedural Provisions of The National Environmental Policy Act; 40 CFR Parts 1500-1508 (2005)

Bureau of Reclamation Information Quality Guidelines. http://www.usbr.gov/main/qoi/guidelines.html (accessed 22 May 2008)

And others. See end pages.

Deficiencies in the DEIS:

Based on thorough review of the evidence, facts, and supporting documents—both those submitted by the Bureau of Reclamation (BOR) and those provided by other agencies, we have determined that the DEIS directly violates the laws and regulations governing the preparation of environmental impact statements provided by the Council on Environmental Quality (CEQ) of the Executive Office of the President of the United States.

- The DEIS fails to ensure "that environmental information is available to public officials and citizens before decision are made and before actions are taken".

(SDS 36c)

- The DEIS fails to provide the "accurate scientific analysis, expert agency comments, and public scrutiny" which "are essential to implementing NEPA." [NEPA Regulations, 1500.1 (b)]
- The DEIS deliberately omits identifying and assessing "the reasonable alternatives to proposed actions" and deliberately ignores known and foreseeable alternatives "that will avoid or minimize adverse effects of these actions upon the quality of the human environment." [NEPA Regulations, 1500.2 (e)]
- The DEIS fails to "avoid or minimize any possible adverse effects" of the proposed actions "upon the quality of the human environment." [NEPA Regulations, 1500.2 (f)]
- The DEIS, in direct violation of NEPA regulations [NEPA Regulations, 1500.1 (c)] attempts to generate paperwork (over 10,000 pages worth!), rather than providing the necessary scientific information to "foster excellent action".
- The DEIS, in further direct violation of NEPA regulations [NEPA Regulations, 1500.2 (b), seeks to inundate the public with excessive paperwork and "extraneous background data", rather than emphasizing "real environmental issues and alternatives."
- The DEIS, even where critical safety issues are identified in supplementary reports (as in the Bird-Aircraft Strike Hazard Assessment Report [BASHAR] illegally segments its analysis so as to avoid the necessary of rejecting the Applicant's preferred Alternative #2).
- The DEIS' complete omission of critical safety factors reflects the severity of these violations and the calculated deliberation behind them.
- The DEIS further violated NEPA guidelines and regulations by failing to consult with cooperating and affected agencies such as the FAA and the United States Army Corps of Engineers [NEPA Regulation 1502.9 (a)]
- *The DEIS violates regulatory requirements for scientific accuracy.* [40 CFR 1502.24; Federal Register/Vol. 69, No. 45/Monday March, 2004, p. 10880: ch. 4, sub-part 4.15]
- The DEIS fails to respect the BOR's own information quality guidelines which require "comprehensive internal and external procedures for ensuring the quality, objectivity, utility and integrity of its data, analyses and scientific conclusions." [USBOR Guidelines, p. 1]
- The DEIS deliberately ignores its own documentation on safety factors, including *The Wahler Report* on the Pueblo Dam (1977), the Supplement to the Final Environmental Impact Statement on the Frying-Pan-Arkansas Project (1978; detailing recent seismic activity in the Pueblo area) as well as the reports by Ueblacker and Associates (2000), Steers and Trojanowski (2000), and Wilshire (2002).
- The BOR's own principals have collaborated with the Applicant, CSU, to deny to wider public and in their own process for a and documents known scientific facts regarding the safety of Pueblo Dam, including the demonstrable fact of recent seismic activity that could imperil the already marginal dam. BOR representatives were actually called on this official policy

of denial and misrepresentation by State Rep. Buffy McFayden, a respected geologist, in the most recent public hearing on the SDS-DEIS in Pueblo (29 May 2008). No single aspect of the BOR's NEPA process gets to the heart of the flaws in this DEIS like this official policy of disinformation carried out to protect the Applicant's preferred alternative from the negative impacts of known scientific and engineering facts about that alternative.

- *Evidence of the illicit collaboration between the BOR, its principals, and the Applicant's project in furthering the Applicant's interest in its own project without critical attention to the quality of information is* illustrated by the BOR's dependence on the Applicant's contracted service provider, MWHA, without disclosing the contractor's substantive fiduciary in the Applicant's own project [see **Professional Services Agreement No. 200316026; 10 September 2003; between CSU and MWHA**].

Summary of Critical Public Safety Issues

Critical public safety issues, putting at risk tens of thousands of lives, potentially polluting long-standing and productive alluvial aquifers and proposed fresh-water storage vessels, and threatening the operations of Schriever and Peterson Air Force Bases, Ft. Carson, and Colorado Springs Airport (COS) have been completely ignored in the SDS-EIS. Even where hazards are noted, as in the Bird/Wildlife Aircraft Strike Hazard Assessment Report (BASHAR, September 2007), the conclusions of those individual reports are not considered in the Draft EIS for their impact on the viability of the proposed project and its alternatives.

The safety hazards that pertain to this SDS-EIS can be grouped under four headings:

1) The known structural and engineering problems with Pueblo Dam, which are directly related to the similarly constructed and failed BOR project at the Teton Dam in southeastern Idaho and the perennially problematic BOR project at Fontenelle, Wyoming (see cited reports).
2) The known seismic problems in the Pueblo basin, specifically documented in the Supplement to the Final Environmental Impact Statement on the Frying-Pan-Arkansas Project (1978).
3) The underlying geological problems posed by the proposed Jimmy Camp Creek Reservoir (JCCR) both in terms of digging out this deep alluvial sand basin and attempting to seal the fractured underlying bedrock with imported clay, and the geological fault-line that would bisect the proposed earthen dam of over a mile in length.
4) The hazards posed by numerous, abandoned shallow-shaft coal mines in the immediate vicinity of the proposed JCCR and dam site to the stability of the proposed dam, and the viability of downstream alluvial aquifers relied on by the citizens of Fountain, Widefield and Security for their water
5) The undisclosed hazards stemming from the fact that Jimmy Camp Creek Basin was used as a bombing range during WWII.
6) The existence of known and active major landfill sites upstream of the proposed JCCR and UWCR.

7) The hazards of increased large-bird strikes on planes flying into and out of Peterson/COS.

1) The structural problems with the Pueblo Dam predate 1975. These were well-known to the BOR and confirmed when the Carter administration commissioned the engineering firm of W.A. Wahler to study 7 problem dams in the West and prepare detailed reports on these in the wake of the Teton Dam catastrophe—a dam constructed using the same obsolete (and no longer permitted) bulwark technique that was used at Pueblo. For this reason, the dam has never been "spilled" and is never allowed to exceed 85% of its storage capacity. The BOR even refers to Pueblo Dam as a "problem dam" in its official 100-year history (Wilshire, 2002). In fact, two of the five Frying-Pan Arkansas Project reservoirs—Mt. Elbert and Pueblo—failed peer review. The list of deficiencies is long and repetitive.

   a. The fundamental instability of the Pueblo Dam is reflected in three recent engineering studies completed in 2000, the first by Mark Steers and John Trojanowksi of the BOR (July 2000), the second by John Trojanowski (31 August 2000) and the third by Horst Ueblacker, P.E., of Ueblacker Associates (29 September 2000). These problems are further highlighted in the definitive *Wahler Report* (1977), and in Richard Lyman Wilshire's recent study of these problems presented to the Bureau of Reclamations History Symposium (2002). These reports consistently note and describe the problems with Pueblo Dam. For instance, BOR design engineer Wilshire (2002) noted that:

> The Wahler Reports [1977]...presented some fairly alarming conclusions and recommendations", for instance, that "the reservoir behind Pueblo Dam should not be permitted to rise above its present [1977] level until certain supplementary investigations and/or actions have been completed." (p. 53)....As a consequence of the Wahler Report, Pueblo has never been fully tested by allowing the reservoir to rise and then "spilling" it over its spillway. The BOR attempted to address the practical difficulties with the reservoir and dam by implementing unique engineering solutions during the last decade. First, in 1999 63,000 cubic yards of concrete had to be pumped into a developing gap between the foundation of the central part of the concrete dam and the bedrock beneath the main spillway (Ueblacker, p. 1). Second, a 45-foot wide "toe-block" was poured on the downstream side of the dam, up against the foot of the dam, when pressure and stress tests revealed that the Pueblo Dam flexed at the bottom of the structure, rather than the top as a dam should. This revelation indicated that the dam was not properly founded, and that a breach, when it occurred, would result in the bottom of the dam "kicking" upward and outward. The "toe block" was added to slow such a breach

Third, after sawdust distributed on the upstream side of the dam reappeared on the downstream face of the dam through micro-fissures, the unprecedented measure was taken of attaching rock-bolts to the face of the dam to ensure greater integrity. The BOR's own internal studies estimate that such a breach in the Pueblo Dam would result in approximately 14,500 deaths downstream of the dam in the city of Pueblo itself, with an estimated total of 17,000 deaths among those living along the 117-mile river corridor between Pueblo Dam and John Martin Reservoir. (Steers & Trojanowski, August, 2000, p. 15)

b. Unique and unaddressed problems with Pueblo Dam include the problem of unbonded lift lines which could open under increased tensile loads. The Steers-Trojanowski report notes that "...studies indicate that the life lines could open under the entire massive head of the dam if they are unbonded and undrained. The studies to date have not verified whether or not the lift lines in the Pueblo Dam are bonded or not (Steer-Trojanowski, August 2000, pp. 6-7).
c. In accordance with *The Wahler Report* recommendations, Pueblo Reservoir Dam has never been fully tested—that is, it has never been allowed to fill to the crest of the dam and spill over. As Steers and Trojanowski noted in their report, since the reservoir has never been higher than elevation 4888.35...the amount of damage to the waterstop above this elevation is unknown." (p. 8)
d. The Ueblacker Associates letter of September 29, 2000 included the following observation:

"Pueblo Dam is situated on a foundation consisting of inter-bedded sandstones and shales that can be classified as weak rock. The rock mass is considerably fractured allowing water under pressure to move through the foundation and exit between the buttresses and below the toe of the dam. The nearly horizontal shale beds underlying the overflow or spillway section of the dam are of particular concern in maintaining stability, because of their low shear strength and low resistance to erosion."

i. **Horst Ueblacker's conclusions concerning the safety of Pueblo Dam are striking:**

"*I believe the dam safety modifications presently in place at Pueblo Dam are inadequate*....The RCC plug and toe block serve mainly as passive resistance requiring sliding to take place along identified planes of weakness in the foundation before reactive forces of sufficient magnitude for counteracting this movement can fully be mobilized to prevent a possible dam failure. This is unacceptable. During this process joints in the rock mass can

widen allowing more water under high pressure to enter and penetrate the foundation The already very low shear strength of potential failure planes could thereby be further reduced and uplift pressures and seepage forces increased causing the dam to fail without warning.

Pueblo reservoir has never spilled and therefore the dam has never been tested to safely pass the design flood. Reclamation bases all their decision making regarding dam safety on risk analyses which by teir very nature are unreliable because of the many variables and unknowns entering the equation. What is needed here is 'good engineering judgment' to remedy *a situation that with the next flood could turn into a disaster of unimaginable proportions and consequences.*" (Italics added; Ueblacker, pp. 2-3)

e. These problems with the dam have serious and unexamined consequences for the proposed preferred alternative—which has always been linked, both publicly and privately, to the raising of Pueblo Dam. [Colorado Springs Utilities 1996 Water Resource Plan.] In the first place, the fact that water pressure behind the dam makes the dam flex outward at its base indicates that the applicant's original proposal—simply to add 15' of elevation to the dam—could have the effect of exerting increased downward pressure on the dam structure and destabilizing it even more than at present. These structural weaknesses in the present dam would in all likelihood require the demolition of the present structure and the rebuilding of a new, properly founded and constructed dam). The cost of this operation has never been studied or presented by either the BOR or the applicant, despite the criticality of this undertaking to the SDS project as proposed.

f. Here, three other failed or otherwise unsafe BOR projects are worth noting: 1) the BOR's Teton Dam, in southwestern Idaho, which failed on 5 June 1976 (and which was built with identical construction technology as used in Pueblo Dam), spilling nearly 300,000 acre feet of water and killing 14 persons, (Teton, BOR); 2) the BOR's Fontenelle Dam in southwestern Wyoming which has been problematic since its construction in 1964, and which carries the second-lowest safety rating of any operating dam in the BOR's history (the BOR has had to intervene several times during the last 45 years to initiate emergency "fixes" to this dam to keep it from breaking; Linenberger, 1997); and 3) the Mt. Elbert Reservoir, which had to be completely redesigned and reconstructed because of engineering design flaws. (Wilshire, 2002; p. 55; Wahler, June 1977)

    i. The Pueblo Dam cannot be considered apart from its parallels to these other problematic BOR projects (Teton, Fontenelle and Mt. Elbert), especially as more than 102,000 people live almost

immediately below the dam in Pueblo, Colorado. By the BOR's own estimates, a breach of Pueblo dam would lead to nearly 15,000 deaths among the populace of Pueblo. *The SDS-DEIS ignores this critical safety aspect of the applicant's preferred alternative altogether*, despite the massive potential loss of life if the dam were to break, as other dams using an identical construction technology have already done (particularly the Teton Dam). Yet Pueblo Reservoir and its expansion (the Preferred Storage Option, or PSOP), according the Colorado Springs 1996 Water Resource Plan the critical component of the SDS, have been removed from consideration as this aspect of SDS is not "reasonably foreseeable" because it requires federal legislation.

ii. The costs for the expansion of Pueblo Reservoir, and the related impacts of expansion and construction (including the destruction of the Pueblo Triploid lizard and its habitat), are ignored. Yet these are very high, including tearing down and rebuilding of the dam, and constitute a necessary consideration for the preferred alternative #2. Nonetheless, these costs and impacts are never addressed, despite Colorado Springs and Colorado Springs' Utilities intense lobbying of Pueblo, the Lower Arkansas Valley, the Colorado River District, and other affected entities for support for federal legislation studying their PSOP (Preferred Storage Option) proposal—that is, specific federal legislation to study the feasibility of raising Pueblo Dam.

iii. The omission of this critical feature of the SDS proposal—and in fact the key feature which alone allow the SDS proposal to meet its own purpose and needs (firm water storage past 2046)—gives further evidence of the deliberately *arbitrary and capricious nature* of this Draft EIS. The 1996 Water Resource Plan developed by Colorado Springs Utilities names the inability to expand the Pueblo Reservoir as a fatal flaw. In other words, despite CSU's denials, SDS by the applicant's own planning and written recommendations to its own board cannot proceed without the expansion of Pueblo Reservoir. The inability to obtain sufficient contractual water storage in Pueblo Reservoir is described alternately in the 1996 Water Resource Plan as a "fatal flaw" and rendering the project "non-feasible". (pp. vii 34, 36)

iv. The omission of *known data on recent seismic activity* in the Pueblo Valley itself, although these seismic events are detailed in the *Supplement to the Final Environmental Impact Statement on the Frying-Pan Arkansas Project*, US Bureau of Reclamation, 1978.

2) The underlying geological problems posed by the proposed Jimmy Camp Creek Reservoir (JCCR): the other dam involved in the proposed alternative, that at Jimmy Camp Creek, is just as riddled with safety problems as the Pueblo Dam.

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December 23, 2008

By e-mail and U.S. Mail

Raymond Louis Petros Jr.
Petros & White, LLC
1999 Broadway Ste 3200
Denver, CO 80202

Re: Pueblo County review of SDS permitting

Dear Ray:

This firm represents the Speight Family Partnership and the Greenview Trust, unsuccessful Plaintiffs in Case 01CV1290, District Court, El Paso County, which was the subject of my letter, dated November 18, 2008 to Mr. Kogovsek, the Pueblo County Attorney, which I understand was entered into the record in recent "1041" proceedings before the Pueblo County Commissioners.

You said in our telephone conversation, that it would be helpful if we suggested mitigation measures.

We believe that four measures would be workable, affordable, and useful, summarized as follows:

1) Detention facilities;

2) Cease construction of concrete trapezoidal drainage channels;

3) Revise the Fountain Creek Transit Loss Model to charge transbasin water with transpiration by increased riparian vegetation; and

4) Control riparian vegetation to pre-1960s extent.

BACKGROUND FOR MITIGATION:

Before you rationally and properly address mitigation for the planned Southern Delivery foreign water return flows down Fountain Creek, please review briefly the impact and consequences that the first introduction of foreign water to the Fountain's stream has produced

over the last two decades.

Prior to the introduction of transmountain water, Fountain Creek was generally an intermittent, low- and slow-flowing stream. This low-base level, pre-foreign water natural state meant that the riverbed had capacity for groundwater recharge. Some silt and erosion were present but limited; water loss to transpiration was insignificant (because of limited availability of water to support riparian vegetation), and the creek's periodic flooding was not constrained or impeded by lush vegetation, allowing the flow to utilize the established flood plain.

With the introduction of foreign water to the stream, Fountain Creek became a continuous flowing river with significantly higher base levels. As a result, the riverbed's natural capacity to effect ground water/channel storage (especially during high flows) diminished, while the actual velocity and rate of the river's surface flow increased—which in turn significantly increased silt transport and erosion of the riverbed and banks. This continuous availability of water also promulgated vast reaches of thick riparian vegetation along the river's entire channel, constricting and impeding the river's course while increasing in-channel velocity and erosive capability. The product of this on-going erosion is clearly visible at many places.

Introduction of transmountain water by the City of Colorado Springs allowed the City to expand its urbanization. According to Colorado Springs Stormwater Enterprise, undeveloped 100 percent pervious farmland produces a natural runoff of 1.6 cubic feet per second (cfs), while 100 percent impervious, urban surfaces (such as driveways & parking lots) can generate 6.7 cfs per acre of runoff. Higher velocity and rate runoffs created by the city's urbanization growth are presently routed—without substantial mitigation—to even higher-speed drainage structures (e.g., fully concreted, graded, trapezoidal ditches) directly feeding the flow into the Fountain. It's an irrefutable fact that this high-velocity water creates significantly greater erosion in the Fountain, but this potential for significant downstream damage has not gone unnoticed. The City's own experts and planning studies have repeatedly indicated for more than four decades that there was a need to mitigate runoff flows—especially storm water drainage—through the use of adequate detention. Generally speaking, however, with the arrival of foreign water and increased urbanization it produced, the City ignored expert advice for mitigation and detention of storm and return flows to the river. We should note that under Colorado Law, the City is absolutely immune from liability for any damage it causes to downstream interests by the operation of its water, sanitation and drainage facilities, and it has no duty to follow the advice of its own experts and drainage planning studies.

Nothing is more telling about the domino-effect consequences of Colorado Springs' incapacity to detain, control, and mitigate its drainage and foreign water than the 1999 Flood. During those 1999 flooding events, detention was virtually non-existent, compounded by the fact that the City continued to inject its foreign water return flows into the Fountain's stream after the river had reached and exceeded its flooding level. By comparison, the 1999 Flood was a "modest" 10-year flooding event, producing significantly less flooding water within Pueblo County than, for example, the major 1965 Flood, which was a 500-year event. Despite that stark contrast, the 1999 Flood did, in fact, cause more public and private property damage in the

Fountain Valley than any of the previously known floods. In fact, land outside the river's flood plain, land that had never been subjected to the consequences of flooding, was literally destroyed and washed down the river. Colorado Springs did not initiate the 1999 flood. Nevertheless, it is an indisputable reality that the City's water management practices of never addressing the urbanization water issues, storm water maintenance and detention, and the impacts its foreign water cultivated caused this a ten-year flooding event to explode into a major and unprecedented disaster for downstream public and private interests.

Specifically: (1) Because most of the envisioned storm water detention was never built before 1999 and no other significant mitigation was ever put in place or required for developed land, extremely high-velocity storm water was channeled, by design, through the City's drainage directly into the Fountain at rates and velocities well beyond what would have occurred naturally or historically;

(2) Because the river had been transformed into a continuous flowing river with the introduction of foreign water, the river's channel storage was at full capacity (according to the City's own expert), and therefore, it could not accommodate or mitigate any of the urbanized flooding inflow;

(3) Because the river had been transformed into a continuous flowing river by foreign water, the Fountain's surface base-level flow was higher, thus advancing the river to its flooding stage sooner than it would have otherwise;

(4) Because the river's channel had been destabilized and constricted by significant new riparian growth created and irrigated with the introduction of foreign water, the river's 1999 floodwaters were redirected to land that never been eroded by flooding. Moreover, as indicated in the expert report, the channel adjustments due to the encroachment of vegetation into the channel has caused an increase in erosion rates very similar to those that were experienced as a result of the flood of record in 1965 (about 10 ft/year), thus clearly illustrating how the long-established Overton Road County bridge (one of the two County bridges destroyed in 1999) located originally some 100 feet inland and on land 40 feet above the river's channel was eroded and destroyed;

(5) Because Colorado Springs had no capacity to regulate or detain its sanitation facility's outflow, foreign water volumes continued to be inserted into the river after it had already reached flooding stage.

Without workable mitigation—coupled with a revamping of the transmountain transit return flow calculation model—the introduction of Southern Delivery foreign water will further destabilize the river exponentially, greatly harming property and native water owners within Pueblo County.

SUGGESTED MITIGATION:

MAINTAIN HISTORIC FLOWS

As a prerequisite for the introduction of more foreign water return flows through the County, and in recognition that this water will directly foster new upstream developments, Colorado Springs must agree by contract to comply with the precept in Colorado Drainage Law that historic storm water flows from those developments must be mitigated and maintained at a 100 percent previous, natural runoff levels to protect downstream properties in the Pueblo County from damage.

BUILD DETENTION

For every development, the City must require detention facilities to be built hand-in-hand with the development or regionally "in advance", so as to accommodate a 100-year storm and to restrict release of foreign water runoffs and storm water to the Fountain Basin to historic or native rates and conditions (i.e., follow similar attenuation provisions and drainage criteria runoff policies adopted by the City of Fort Collins and the City of Pueblo). A deleterious side-effect of detention must also be considered and addressed. Detention precipitates silt. The resultant "clear" water released from detention degrades the bed and banks until its silt transport capacity is reached. Therefore, check dams and grade control must be used to keep velocities low.

CHANGE DRAINAGE CHANNEL PROGRAMS

All drainage channels delivering return flows to the Fountain will employ structures designed to moderate the velocity and rate of those return/storm flows, such as check dams and vegetated waterways. The practice of building drainage structures designed to deliver high volumes of water to the Fountain riverbed at high speed will be permanently terminated. All new or repaired structures will be designed to attenuate inflow rates to the historic natural runoff.

REGULATE SANITATION RETURNS

In addition, the City must build and maintain detention structures for its sanitation facilities, so as to store foreign water return flows and the spilling of any raw sewage during flooding conditions. The City will acknowledge as part of the permitting process that it has a duty and responsibility to control its foreign water especially during adverse flooding conditions. As such if the City fails to control and regulate its foreign water and manages its sanitation structures processing that foreign water so as to exacerbate downstream flooding and excessive erosion-producing conditions, the City agrees to waive sovereign immunity for any direct or collateral damage its foreign water may cause within Pueblo County.

TRANSIT MODEL REVISION:

With the introduction of Southern Delivery foreign water, the Fountain's daily surface flow will be dominated by foreign water. In order to protect downstream native water rights from a de facto taking, the transmountain transit model must be revised so that the City's foreign water

transit loss assumes a proportional risk for any and all losses within the river's channel. Any transit loss in addition to calculated evaporation and bank/channel storage—to include specifically the addition of transpiration or mysterious loss—will be proportionally allotted between native and foreign water predicated on the percentage of flow each has of the total flow. Downstream native water rights will not be used to indemnify foreign water from unforeseen losses, such as misappropriation or inadvertent diversions, and the actual amount of water being lost to transpiration and the irrigation of invasive riparian growth within the channel shall be directly proportional and commensurate to the percentage of return flows within the stream. Any unexplained, unforeseen, unauthorized, or excessive transpiration loss (e.g., tamarisk, salt cedar loss) to what the river's total flow "should be" (foreign plus native flow initial inputs minus known and calculated losses and lawful diversions between gage readings) versus what the flow "actually is" at the Pueblo gage, will be apportioned to each segment's specific percentage of the total flow and the practice of attributing such channel risk loss exclusively to native water rights will cease.

The extent of pre-transbasin riparian vegetation can be determined from aerial photos. Present riparian vegetation not only covers a greater area, it is more dense and healthy. The "new" vegetation consumes a great deal of water without any resultant benefits to native water users. The reality is that junior native water rights in the Fountain and Arkansas are actually being systematically usurped by ignoring transbasin transpiration and with the introduction of SDS water, that rate of seizure will grow significantly. Riparian vegetation should be controlled to pre-1960's conditions, and to the degree it is not, then transbasin water should be charged a supplementary transit loss for the difference, periodically updated for future additional riparian growth, so as to restore and maintain junior native water right entitlements.

Thank you for the opportunity to submit this letter.

Very truly yours,

M. E. MacDougall
for the firm

MEM/em

cc: Robert Speight
Ralph Williams
Mike Harvey
Clyde Young
John Himmelreich
Lee MacDonald

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December 29, 2008

By e-mail and U.S. Mail

Raymond Louis Petros Jr., Esq.
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1999 Broadway Ste 3200
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Re: Fountain Creek

Dear Ray:

I e-mailed you a letter dated December 23, 2008 suggesting certain mitigation solutions.

I forgot to ask that my said letter be included in the record of proceedings.

I also forgot to refer to the "Vegetation and Channel Changes at the Greenview Site," paragraph 2.9.1, pages 23-29 of Dr. Harvey's Report, which was included in my previous correspondence. That Report states, in part, at page 28:

> The data in Table 4 clearly show that the areas of higher density vegetation (complete ground cover (shrubs), medium density trees and shrubs, and dense trees and shrubs) increased substantially between 1955 and 1993. If the agricultural land within the polygon in 1955 and 1993 are subtracted from the total areas, and the percentages are recomputed, it is apparent that the percentage of the three higher-density vegetation units increased from about 28 to 49 percent between 1955 and 1993. The increases in the amount and density of the riparian vegetation can be attributed to the increased base flows in Fountain Creek as a result of flow importation to the basin (Table 2), and the absence of large floods since 1965 (Stogner, 2000).

Thank you for the opportunity to make suggestions.

Please make this letter part of the record of proceedings as well.

Very truly yours,

M. E. MacDougall
for the firm

MEM/em

cc: Robert Speight
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December 29, 2008

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County of Pueblo
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Pueblo, CO 81003

Re: Colorado Springs Utilities 1041 SDS Permit

Gentlemen:

As you are aware, this office represents the Walker Family, upon whose land approximately seven (7) miles of the pipe will traverse in conjunction with the SDS. Several years ago, the Fountain Valley Pipeline traversed their property, and as a result, the Walkers have first-hand knowledge of the pitfalls associated with the construction of a pipeline across their property. Many of these concerns were testified to at the December 11, 2008 hearing.

Colorado Springs is proposing that a sixty-six inch (66") pipe be placed in an approximately thirteen foot (13') deep ditch, with approximately five hundred feet (500') of ditch open during construction. It is our further understanding that the pipe will be bedded in a slurry, which would be composed of cement and native material.

As a result of the construction, there will be a large amount of spoils that will need to be hauled off, which will create a great deal of traffic associated with bringing in the pipe and hauling off the spoils. This will require effective dust mitigation, which could affect the plant life for several hundreds of yards on each side of the excavation site. At this point, what dust mitigation will be approved or required is up in the air and needs to be addressed with specificity.

Our next concern is the erosion that will occur during the construction process. It is estimated that the construction process will take approximately one (1) year and will cross the Walker property in several areas where the soil is quite fragile. Specificity again needs to be determined to prevent erosion and the negative affect on the amount of water the stock water ponds will hold.

(SDS 39a)

EXHIBIT
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Security is another major concern. Access to the Walker property needs to be restricted in order to avoid the unauthorized trespass upon the Walker property by the employees of the contractors. Such security would eliminate poaching, rustling and destruction to Walker infrastructure, which occurred during the construction of the Fountain Valley Pipeline and definitely affected wildlife on the Walker property.

We are also concerned that the pipeline will negatively affect the groundwater in this area, which water is basically used for livestock. Such waters could be completely dried up by the construction of this pipeline.

Next is our concern regarding the Walkers' operation of the ranch during the construction period. Obviously, the construction is a complete nuisance to the ranching operation of the Walkers, as it will basically cut a portion of the ranch in two. This dissection of the Walker property will definitely affect the Walkers' ability to use the balance of the property as a ranch.

Another item of concern is the reclamation; a specific plan for reclamation needs to be in existence.

As was mentioned during the public hearing, the Walker Ranch has the Pueblo Goldenweed, the Arkansas Feverfew, the Round Four O'clock, and Primrose, all of which are extremely rare plants. These plants have importance in the conservation easement on portions of the Walker property, which easements were granted to the Nature Conservancy on behalf of the Army. The Colorado Springs Vegetation Resources Technical Report dated in November 2007 says there were not any of these endangered plants. Since the proposed alignment of the new SDS line was brought to the Walkers' attention in the latter part of October, the Walkers assumed that the pipeline would follow the old Fountain Pipeline, which they have recently determined is not the case. It is my understanding that the determination of the existence of these plants cannot be accomplished until the spring, when the plants begin to grow. If there are these rare plants where the pipeline is currently aligned, certain mitigations will need to be done to avoid concerns about these already endangered plants. It is hard to imagine the nuisance that will be created by the construction of the pipeline on all of the properties through which it will be constructed, but particularly on the Walker Ranch.

The Walkers are also concerned that, when construction is completed, their property would become a staging area for work on adjacent properties.

We are aware of the Springs' concerns that the cost of the work required to identify the mitigation as well as a solution to it is expensive and is somewhat of a chicken-and-egg situation on justifying the expense without some indication that they would be obtaining a permit. If a permit is granted, there needs to be specificity with reference to the mitigations or conditions that would require specificity, so that the Walker property can be adequately protected and would be left whole after the construction.

Very truly yours,

NAYLOR & GEISEL, P.C.

John R. Naylor, Esq.

JRN:kas

cc: Client

Gary Raso, Esq.
215 E. Pitkin
Pueblo, CO 81004

United States Department of the Interior

COLORADO FISH AND WILDLIFE ASSISTANCE OFFICE
Mountain-Prairie Region

IN REPLY REFER TO
FWS/R6/COFWMO
Mail Stop 65320

MAILING ADDRESS:
P.O. Box 25486, DFC
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Boulevard
Lakewood, Colorado 80228-1807

Dec. 22, 2008

To: Gary Walker
7170 Turkey Creek Ranch Rd.
Pueblo, CO 81007

Gary,
This letter is intended to describe the biological inventory work that I have completed on the Walker Ranches. Most of the intensive inventory work that I have done was done from 2004-2007.

I conducted intensive surveys on the parts of the Walker Ranches (both Gary & Robert Walker Ranches and the Walker Partnership) within the Fort Carson "buffer area" – the area where the Army is interested in avoiding development incompatible with their military training mission. On your ranch to the east of Fort Carson this buffer area extends from the Fort Carson fence to the east two miles. Within that two-mile buffer I spent numerous days during the growing season walking the property, mainly looking for a suite of rare plant species (round-leaf four-o'clock (*Oxybaphus rotundifolius*), golden blazing star (*Nuttallia chrysantha*), Pueblo goldenweed (*Oönopsis puebloensis*), Arkansas Valley feverfew (*Parthenium tetraneuris*), and Arkansas Valley evening primrose (*Oenothera harringtonii*) but also noting other things of biological interest. Several of these years were good moisture years providing optimal conditions for surveying for the plants, which can be ephemeral in above ground growth depending on the moisture conditions. Numerous new locations for these plants were documented during those surveys. Data from the surveys have been incorporated into databases at the Colorado Natural Heritage Program at CSU.

My understanding is that the proposed Southern Delivery System pipeline route is ½ mile east of the buffer area, because I have not systematically surveyed that area I can not say whether or not the plants or other notable biological resources occur there.

If further clarification is needed feel free to contact me.

Sincerely,

Steve Kettler

Steve Kettler – Ecologist
U.S. Fish & Wildlife Service
303-236-4266

CC: Adam Misztal – FWS CO Ecological Services Office
CC: Bruce Rosenlund – FWS CO Management Assistance Office
CC: Tom Warren - Ft. Carson/PCMS

(SDS 396)

EXHIBIT 1

Southern Delivery System Pipeline Assessment on Walker Ranch

Renée Rondeau (Ecologist) and Michael Menefee (Environmental Reviewer)
Colorado Natural Heritage Program
December 13, 2008

The following assessment documents unknown and known biological and conservation information for the proposed Southern Delivery System pipeline portion that bisects the Walker Ranch. The Colorado Natural Heritage Program (CNHP) specializes in maintaining and disseminating conservation data with special attention paid to rare and imperiled species and plant communities, collectively called conservation targets. The fundamental data that CNHP maintains is a documented occurrence of a conservation target. In addition to occurrences, the more meaningful conservation data is the value added conservation site; the site boundary depicts the primary area associated with maintaining the ecological processes necessary to maintain viable populations of the occurrences.

The best procedure for CNHP to obtain and maintain conservation data is for biologist trained in Natural Heritage Methodology to survey and report on the area of interest; however expert biologist not trained in Heritage Methodology can collect and disseminate data to CNHP which will then be incorporated into the conservation database via a QC/QA procedure, thus providing assurance of data quality. The CNHP has not specifically surveyed the proposed pipeline area but other portions of the Walker Ranch have been visited in the past, primarily for rare plant inventories associated with a Fort Carson buffer project. CNHP recommends that a complete survey for new or existing conservation targets take place by CNHP trained ecologist to survey for rare plants, animals, and plant communities as the greater area has been identified as an important conservation area (see below for known information). These surveys should take place during the peak growing season (June-September). Survey results conducted during a drought season should be discounted as many of the plants will remain dormant and cannot be seen.

The intersection of the Great Plains and the Rocky Mountains produces a unique diversity of plant and animal communities where pronghorn mix with mule deer and elk and where unusual combinations of plants occupy the landscape. This intersection is also heavily utilized by humans and we often speak of this area as the Front Range, the most populated area in Colorado. Large remaining intact patches of natural landscapes are vanishing quickly at this boundary. One of the only intact patches remaining between Pueblo and Colorado Springs occurs on the Walker Ranch. The proposed pipeline's path is within this patch (Figure 1.)

(SDS 39C)

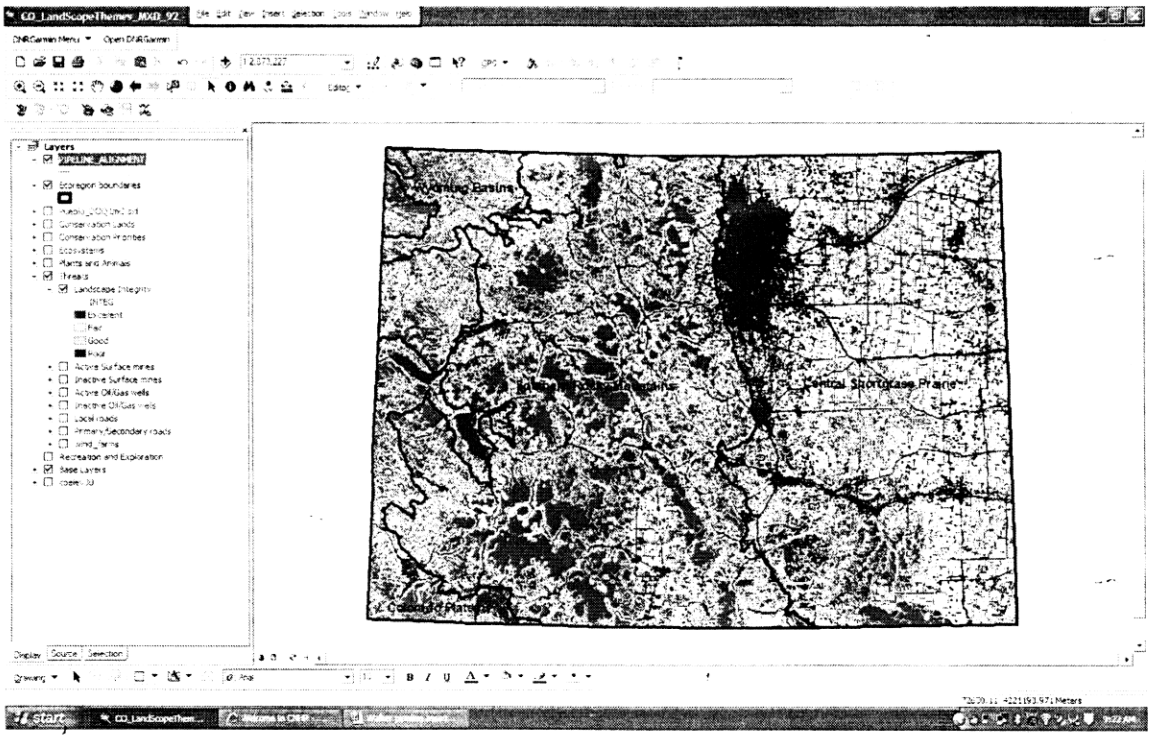

Figure 1. A landscape integrity map depicts the heavily human-impacted areas in red. The black lines denote the ecoregional boundaries. The arrow points to the Walker Ranch and pipeline area.

One can review existing aerial photos on Google Earth and also observe that the proposed pipeline's path through the Walker Ranch is through a natural landscape. Figure 2 provides an aerial view of the landscape with the pipeline area through the Walker Ranch depicted in black.

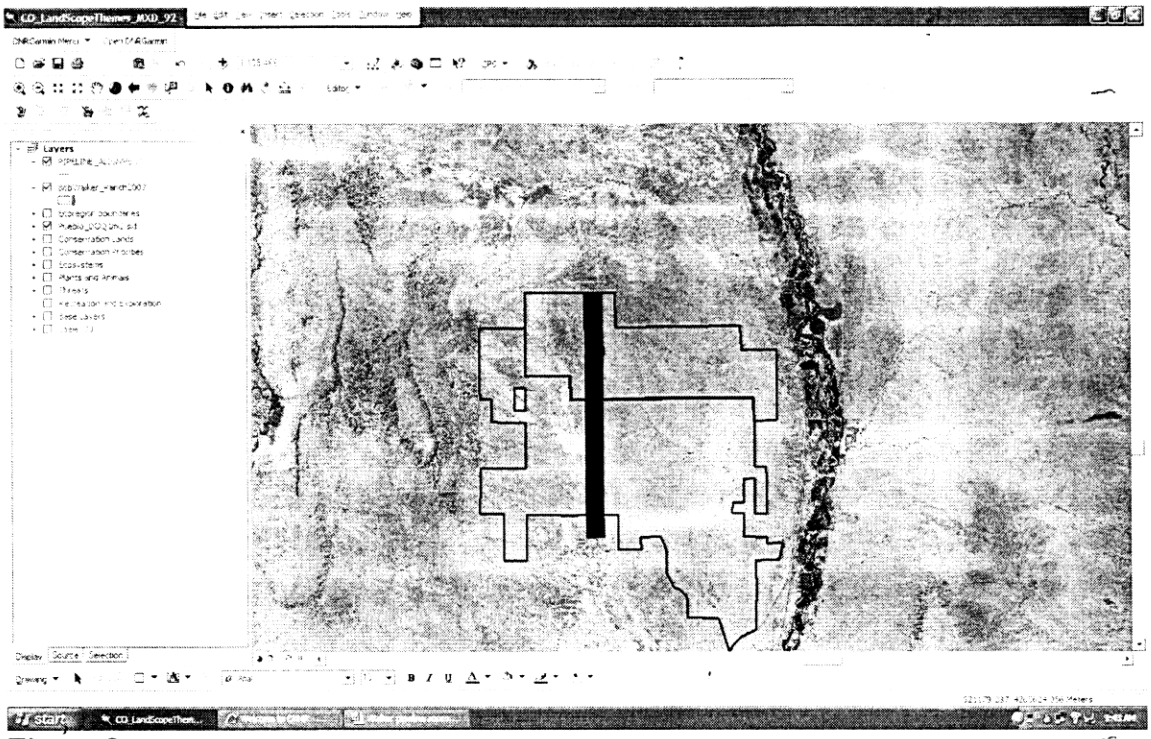

Figure 2. Aerial view of Walker Ranch with pipeline area depicted in solid black rectangle. Pueblo West is south of the depicted pipeline and Fountain Creek is to the east of the ranch boundaries. Native plant communities dominate Walker Ranch landscape, one of the few remaining intact prairie landscapes between Pueblo and Colorado Springs.

Several organizations have developed some type of conservation planning document or database that depicts conservation priority lands. The Walker Ranch and surrounding area has been selected as a high priority area by the Colorado Division of Wildlife (State Wildlife Action Plan), The Nature Conservancy Central Shortgrass Prairie Ecoregional Assessment, and the Colorado Natural Heritage Program. Figures 3-5 depict these areas.

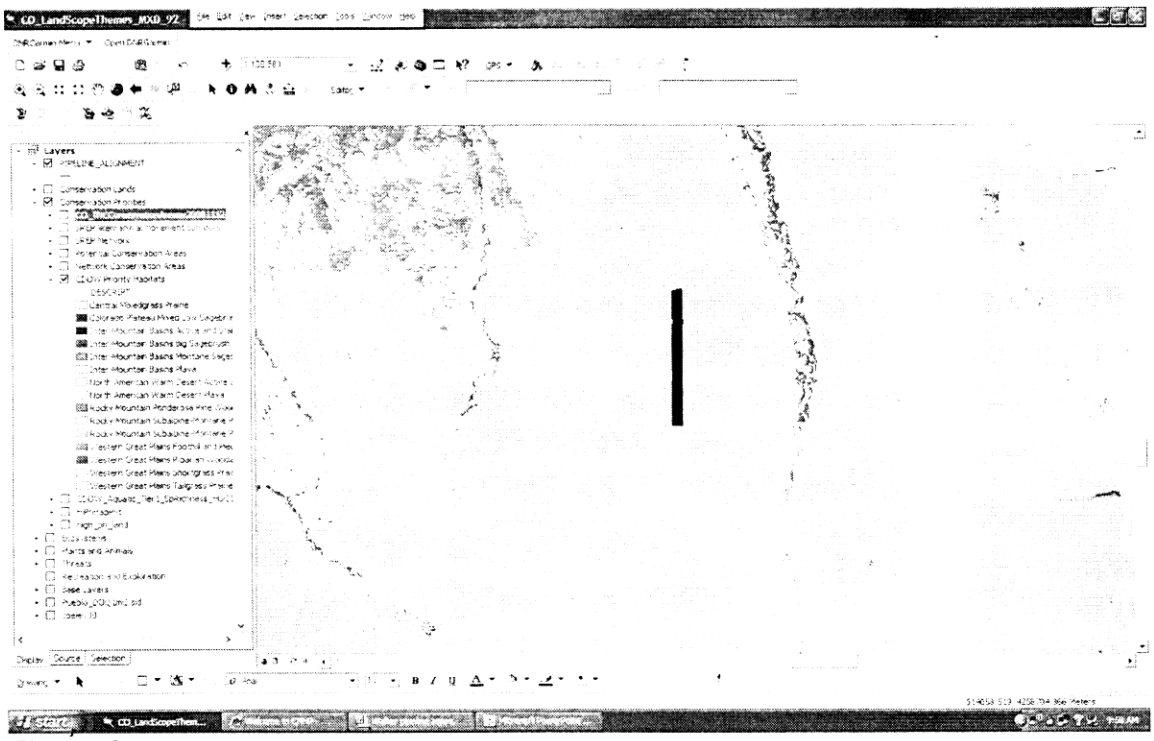

Figure 3. Colorado Division of Wildlife identified high priority habitats in their State Wildlife Action Plan. The pipeline runs through the shortgrass prairie, a high priority for conservation efforts. The orange color is the shortgrass prairie.

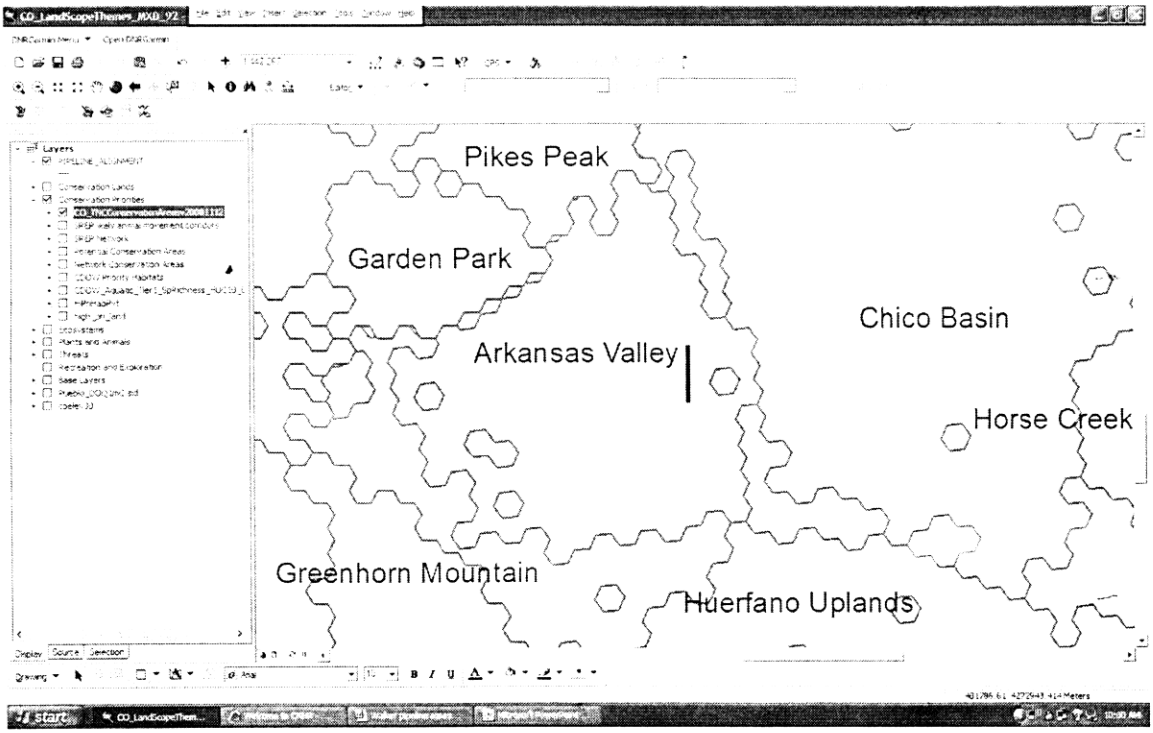

Figure 4. The Nature Conservancy and the Shortgrass Prairie Partnership identified this area as the Arkansas Valley site, important for rare plants, black-tailed prairie dogs, mountain plovers, burrowing owls, ferruginous hawks, shortgrass prairie and shrublands.

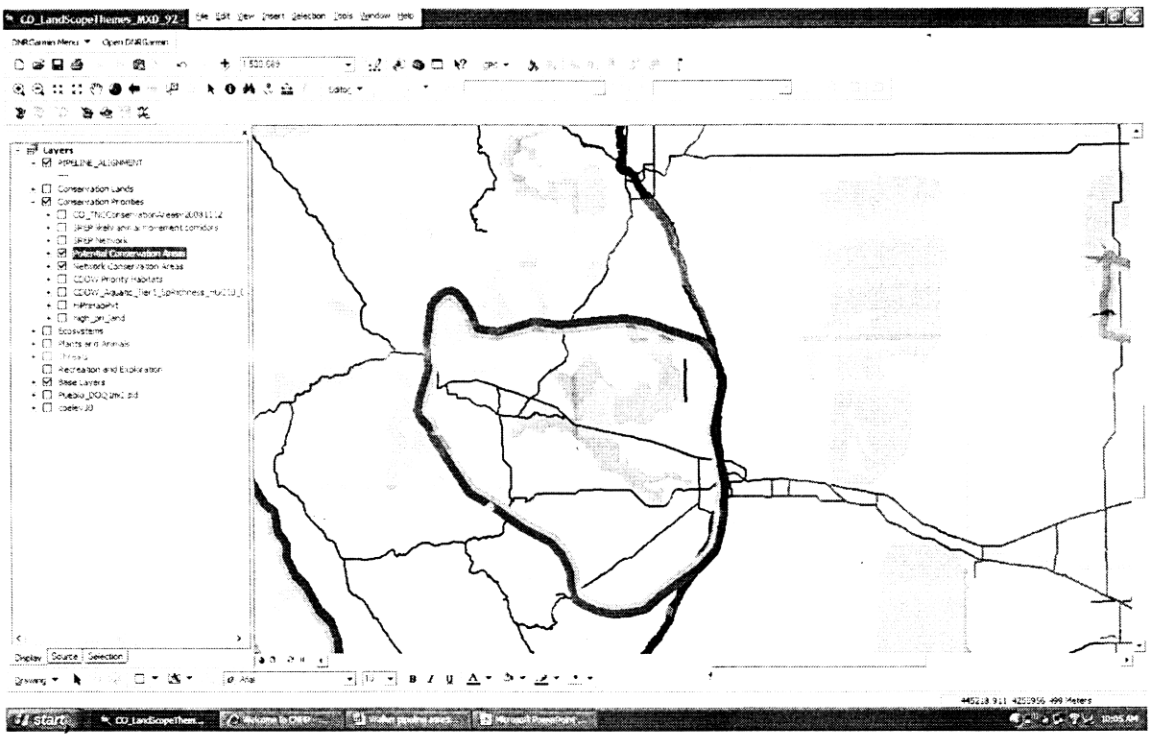

Figure 5. The Colorado Natural Heritage Program has identified the Rare Plants of the Chalk Barrens Potential Conservation Areas (PCA) as a critical site to protect and manage for some of Colorado's rarest plants (a B1 site or irreplaceable site) The Arkansas Valley Barrens Network of Conservation Areas is also denoted as an important area for multiple conservation targets and Potential Conservation Areas.

In addition to the area being identified as a priority conservation area by CDOW, TNC, and CNHP, a recent analysis by the Colorado Natural Heritage Program and The Nature Conservancy (cite scorecard) identified all of the remaining patches of shortgrass prairie that are larger than 50,000 acres. The Walker Ranch is one of the remaining 34 pactches in Colorado (Fig. 6). The shortgrass prairie ecosystem has declined by 48%, more than any other major ecosystem in Colorado (cite scorecard). In addition it is the least protected ecosystem in Colorado (cite scorecard).

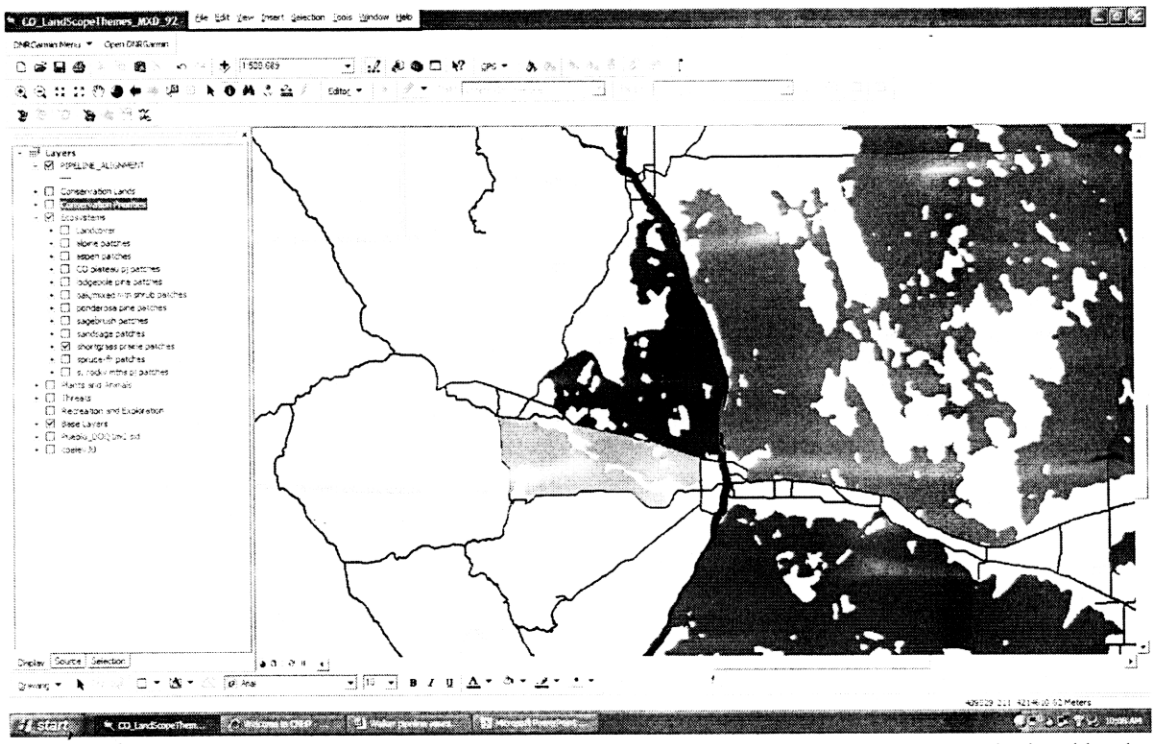

Figure 6. Shortgrass prairie patches that are larger than 50,000 acres and near Pueblo are depicted by the different colored polygons. The blue and gold patches are the furthest west patches of shortgrass prairie in Colorado and border the pinyon-juniper foothills region (not depicted).

Rare species and habitat occurrences: Although the CNHP database does not contain any rare element occurrence records that bisect the proposed pipeline a 2005 field trip by Renée Rondeau and Steve Kettler identified several observations of elements of concern. At the southern boundary of the depicted pipeline we spotted 7 burrowing owls on a black-tailed prairie dog town; burrowing owls and black-tailed prairie dogs are Tier 1 species for CDOW and are a conservation targets for CNHP. In addition, we noted an *Atriplex confertifolia* plant community on the numerous shale barrens (white patches on the aerial photo). Less than 1% of Colorado's landscapes are comprised of barrens—an imperiled habitat, yet nearly all occurrences of barrens host either rare plants or rare plant communities (22% of Colorado's rarest plants occur on barrens—the most important rare plant habitat in Colorado). The proposed pipeline intersects several patches of barrens.

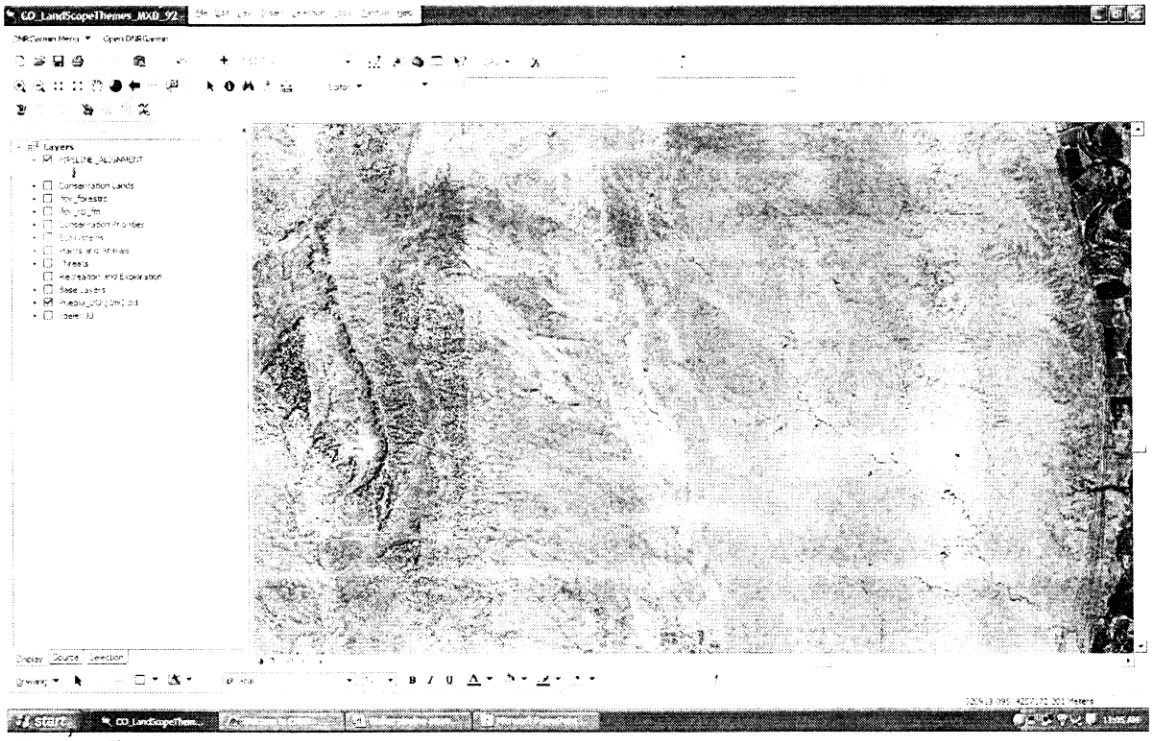

Figure 7. The pipeline area is depicted in light blue; the lighter, nearly white patches under the blue line are barrens that are dominated by *Atriplex confertifolia*. Barrens are Colorado's rarest habitats and nearly all occurrences host either rare plants or rare plant communities. *Atriplex confertifolia* is a rare plant community in Colorado, primarily found on the west slope.

Although there is ample evidence to support the biodiversity value of this area there is no legal protection noted. A nearby easement on Mr. Walker's property is protecting large and high quality occurrences of rare plants. Mr. Walker has expressed an interest in further protecting the rest of the property but to date, much of this property is still susceptible to development issues.

Impact concerns from proposed pipeline: Fragmentation impacts continue to chip away at our large landscapes and although numerous impacts have a relatively small footprint, the accumulative weight can be significant. We like to use the backpackers pack as an analogy to fragmentation impacts. Generally, a backpacker will weigh each item prior to placing it in his pack, most items are picked for their light weight factor (low impact), however by the time the backpack is full of all of these light weight items, the pack is extremely heavy and can easily cause harm to the person carrying the pack. That is, any given item (fragmentation impact) doesn't appear to be much of a problem because its weight appears insignificant but by the time you add it all together it is significant. This means that choices need to be made at the most miniscule scale and every item (development) has an impact. Thus, the pipeline may appear to be a relatively small item with a small footprint, but its impact is larger than the footprint. The impacts from this pipeline can easily extend 100 yards on either side of the disturbance, if not more. Disturbance always opens up an avenue for invasive species or weeds. Although reseeding can assist with healing the disturbance, seldom does it completely restore the area and weeds nearly always propagate no matter how hard of an effort is placed into

restoring the area. It is very important that we recognize that development practices, no matter how small they appear, have an impact on our native landscapes that translates to a reduction in ecological services that maintain our quality of life. CNHP along with other conservation organizations recommend that all new development impacts that occur within native landscapes be mitigated for using avoid, minimize, and mitigate procedures. Best management practices can help on-site mitigation but most of the impacts require additional off-site mitigation to ensure net conservation gains to offset the conservation loss.

Dear Bureau of Reclamation:

I am sure that you and your team have studied the volume and flow of Fountain Creek with the growth in the recent years. Please carefully consider the expected increase and the impact that erosion from the return flows will take on an already fragile, over burdened, meandering eco system. Not to mention what will happen with heavy rains during the spring and summer seasons.

Considerable time, study, and expense was put into the rock blanket dam on my property constructed in the 1908's, and withheld the floods of the 1990's. The El Paso County's dam constructed below us would have also withheld had it been properly funded and constructed as well. With that in mind, the one strong dam that has withheld should be reinforced to prevent further erosion.

We all know from the Grand Canyon what fast moving water can fo over a period of time. I am concerned that the volume and velocity of the water will cause the creek bed to go deeper because it cannot go wider. This is causing it to drain shallow domestic wells along the Fountain alluvial.

I also stringly object to the "eminent domain" wording in the Environmental Impact Statement.

I want you to concider some sort of a detention to slow down the Williams Creek Resevoir Plan so that the volume that you are talking about would drain into the creek slower than you have planned.

The potential environmental impact is not adequately covered and accounted for in these areas that I have previously mentioned. With the slow down in the housing market and the down economy, I think that now is an ideal time to slow up the statement so that all alternatives can be taken into consideration more thoroughly.

I appreciate these meetings so that those of us who cannot afford the staff and legal expertise can still have our voices heard. We may be smaller, but it is still of great importance to us. We landowners who have attended the meetings represent the larger number of cutizens who will be affected by your actions and decisions.

Sincerely and God Bless,

12/28/08

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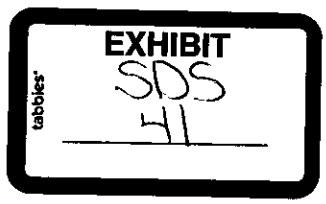
Sincerely and God Bless,

Jane Green 12/29/08

Jane Green



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Sincerely and God Bless,

Keith Atkinson