

**RECOMMENDED TERMS AND CONDITIONS
AND MITIGATION OF PROJECT IMPACTS**

Southern Delivery System
1041 Application
March 10, 2009

MEMORANDUM

TO: Pueblo Board of County Commissioners

FROM: Paul Banks, Banks and Gesso, LLC

THROUGH: Kim Headley, Pueblo Co. Planning and Development Director

DATE: March 10, 2009

SUBJECT: 1041 Permit Application No. 2008-002, Southern Delivery System
Colorado Springs Utilities
City of Fountain
Security Water District
Pueblo West Metropolitan District

INTRODUCTION

This report contains Staff's complete set of recommended terms and conditions and mitigations of project impacts if the County Commissioners decide to approve the 1041 Permit Application. It is recommended that the Board seek and allow time for public comment on all recommended conditions and impact mitigation practices.

Staff recommends approval of 1041 Permit Application No. 2008-02, subject to the following terms and conditions:

1. **Commitments of Applicant.**

The following terms and conditions contain the specific commitments of the Applicant and shall be met as herein described.

2. **Term of Permit.**

This Permit is valid indefinitely for the life of the SDS Project, provided Applicant is in compliance with this Permit. If the Applicant fails to take substantial steps to construct the permitted development within thirty-six (36) months from the date of the Permit, then the Permit may be revoked or suspended by the County in accordance with its Areas and Activities Regulations. The Applicant may submit

a written request to Pueblo County for an extension of the time period to begin construction under the Permit for good cause.

3. **Transfer of Permit.**

This Permit may be transferred in whole or part to another party only with the written consent of the Board of Pueblo County Commissioners. A proposed transferee shall demonstrate that it can and will comply with all the requirements, terms and condition contained in the Permit.

4. **Compliance with other Regulatory Requirements.**

Applicant shall comply with applicable local, State and federal regulatory requirements and permits. *See Mitigation Appendix C-7.* Prior to commencement of construction of any phase or work package of the SDS Project in Pueblo County, and within 60 days of said permit approvals, Applicant shall provide copies to Pueblo County of permits applicable to that work package of construction. If any such permits or approvals result in a material change in the SDS Project or are inconsistent with the terms and conditions of this Permit, Applicant shall notify Pueblo County, and Pueblo County shall determine whether a Permit amendment or suspension is required.

4.1. **Other Pueblo County Regulations.**

This permit shall not constitute an exemption from Pueblo County zoning, building, health or other applicable regulations and codes (except as provided in Section 17.140.010(F) of the Pueblo County Code regarding special use permits).

4.2. **Flood Hazard Area Development Permits.**

The Applicant shall obtain a Flood Hazard Area Development permit(s) for construction proposed within any designated 100-year floodplain in Pueblo County (as identified by the most current FEMA Flood Insurance Rate Maps for Pueblo County). These permits require review and approval by the Pueblo County Department of Planning and Development prior to any construction within a floodplain.

4.3. **Permit for New Electrical Substation and Transmission Lines.**

Construction of a new substation and transmission lines for the Juniper Pump Station shall require approval by Pueblo County of a Use by Review as specified in the Public Use District (S-1) zoning regulations if less than 115 Kv. If 115 Kv or greater, a separate permit application shall be submitted under the applicable Areas and Activities Regulations.

5. **Permit Amendment.**

Any material change in either the construction, use or operation (exceeding 78 mgd pumping by the Juniper Pump Station) of the SDS Project from that approved herein, or with the Applicant's performance of the terms and conditions approved herein, shall require a permit amendment. For these purposes, a material change shall be any change in the Project which significantly changes the nature of impacts addressed by the Permit. The Applicant shall notify Pueblo County of any material change in the SDS Project (not including routine maintenance, repair or operation of an existing facility) and the County will determine whether an amendment or new permit is required. Any disagreement about the materiality of a change shall be subject to the Dispute Resolution Process outlined herein.

5.1. **Use Of New Water Supplies Delivered Through SDS Project.**

Although Applicant currently has no firm plans to acquire by purchase or lease additional water rights in the Arkansas Basin either downstream or upstream of Pueblo Reservoir, the possibility exists that additional water supplies will be required in the future. In addition, if third-party contracts or agreements are executed meeting the other terms and conditions of this permit, those entities might well seek to acquire new or additional water rights for transportation of water through the SDS Project. Pueblo County asserts that it possesses the legal authority to regulate and control such additional water and water rights transportation through the SDS project. Nothing in the terms and conditions of this 1041 Permit is intended to prevent Pueblo County from asserting that jurisdiction and regulatory authority, subject to the right of any such third-party and/or Applicant to assert any defenses to the exercise of the County's authority that may then exist.

5.2 **Carriage Of Water To Entities That Are Not SDS Project Participants**

Although Colorado Springs has no existing permits or agreements with third-parties not listed as Applicants on 1041 Permit Application Number 2008-002, it does not intend to foreclose the potential of making additional agreements for the long term delivery of water to third parties via the SDS Project. In the event any such third-party contracts are entered into under which Colorado Springs would deliver water to such a third-party in El Paso County, Colorado Springs shall require that the following conditions be included in any contract, permit or agreement with such third-party:

- A. A clear acknowledgment of support for the Fountain Creek Watershed Flood Control and Greenway District, together

with a commitment to participate in the financing of said district;

- B. A clear and irrevocable commitment not to serve property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River;
- C. The adoption and maintenance of a financing mechanism similar to the Colorado Springs Stormwater Enterprise capable of financing, constructing and maintaining storm water detention and retention facilities intended to insure that the storm flows of the Fountain Creek Basin do not increase above existing conditions, along with the adoption and maintenance of regulations and ordinances requiring stormwater detention, retention and management no less strict than those in place in the City of Colorado Springs. This condition can only apply to such third parties who have the legal authority to regulate in this manner;
- D. An agreement to accept and comply with the City of Pueblo Flow Management Program and the Pueblo Recreational In-channel Diversion Decree both impacting the Arkansas River between Pueblo Dam and its confluence with Fountain Creek, in any application for a change of water rights or exchange implicating that reach of the river;¹
- E. Participation in any water quality monitoring or studies to the same degree and extent as undertaken by the City of Colorado Springs; and
- F. Support of any studies of a flood control dam or dams on Fountain Creek.

Upon the submission of contracts or agreements to Pueblo County evidencing the acceptance of the foregoing terms and conditions, Colorado Springs Utilities shall be entitled to enter into third-party contracts for the delivery of water from Pueblo Reservoir to entities located in El Paso County or Teller County within the Arkansas River Basin. Nothing herein shall provide a right in the City of Colorado Springs or any other entities to operate the SDS Project at a rate of flow in excess of 78 mgd without applying for and receiving an amended 1041 Permit satisfying any additional terms and conditions which might then be imposed.

¹ The term "Pueblo RICD" refers to case no. 01CW160, District Court, Water Division 2, Colorado.

5.3. Reservation of Permit Authority.

Colorado Springs currently does not have the authority to enlarge the storage capacity of Pueblo Reservoir. Should the enlargement of Pueblo Reservoir occur in the future, and should Colorado Springs become a participant in that enlargement, Pueblo County reserves the right to assert, at that time, that those actions constitute a permissible activity under its 1041 regulations, subject to the right of Colorado Springs to assert any defenses to the exercise of the County's authority that may exist.

6. Monetary Mitigation for Fountain Creek Impacts.

In order to mitigate the impacts of SDS to Fountain Creek in Pueblo County, Colorado Springs Utilities, acting in its capacity as project manager for the SDS, will pay fifty million dollars (\$50,000,000) to the Fountain Creek Watershed, Flood Control and Greenway District ("District") described in the Intergovernmental Agreement for the Management and Conservation of Fountain Creek executed by El Paso County on December 15, 2008 and Pueblo County on December 16, 2008.

Three hundred thousand dollars (\$300,000) of that amount shall be paid in equal annual installments of one hundred thousand dollars (\$100,000), commencing July 1, 2009. These payments shall be used to assist in the identification and prioritization of projects, and to fund a study or studies of opportunities for constructing flood control and sediment control facilities which may include the feasibility of a dam or dams on Fountain Creek or its tributaries in order to improve the flood protection for the City of Pueblo and the Fountain Creek Basin.

Payment shall be made as to the remaining forty-nine million seven hundred thousand (\$49,700,000) as follows: nine million seven hundred thousand (\$9,700,000) on January 15, of the year following completion and commencement of water deliveries through the SDS Pipeline from Pueblo Reservoir to Colorado Springs; and in equal annual installments of ten million dollars (\$10,000,000) on January 15 of each of the four years thereafter.

Payments shall be made to the District, provided: it is created by legislation supported by Pueblo County and El Paso County for the management and conservation of Fountain Creek; it provides for participation by Pueblo County and the City of Colorado Springs as voting members of the board of directors; it has equal representation of entities from Pueblo County and El Paso County as voting members of the board of directors; and it has power to levy taxes and impose fees. If the District is not so created, then Pueblo County and Colorado Springs will establish a not for profit corporation pursuant to the Colorado Revised Nonprofit Corporation Act, C.R.S. § 7-121-101, et seq, governed by a

board of directors having an equal number of directors from Pueblo County and from Colorado Springs, for the purposes specified herein. The Foundation, if established, will be referred to as the Fountain Creek Restoration Foundation. ("FCRF").

The District (or if not created, the FCRF) may use funds provided by Colorado Springs Utilities under this permit condition only for one or more new projects in the Fountain Creek watershed between Colorado Springs and the Arkansas River confluence in Pueblo that create a significant and not merely incidental benefit to Fountain Creek within Pueblo County for improvement of water quality, for flood control, or for prevention of erosion and sedimentation. Subject to these criteria, acceptable projects may include:

- A. those projects that have been identified by the United States Corps of Engineers ("Corps") as high priority erosion, sedimentation or flood control projects in a formal Corps recommendation for Fountain Creek;
- B. erosion, sedimentation, flood control or water quality improvement projects identified as part of the Fountain Creek Corridor Master Plan adopted by Colorado Springs Utilities and the Lower Arkansas Valley Water Conservancy District;
- C. any other sedimentation and erosion control, flood control, including a dam or dams, or stream improvement project that is found to be acceptable by the District or, if not created, the FCRF.

In the event completion of the SDS Project is delayed beyond 42 months after the effective date of the permit because of an affirmative decision made by Colorado Springs, then the payments made by Colorado Springs Utilities pursuant to this paragraph shall begin to be made on such date, without regard to project construction status, or payments shall be subject to annual indexing commencing 42 months after the effective date of the permit, to increase the amount of such payments as required to preserve their present values, using the Colorado Front Range Producer Price Index, but not to exceed a maximum annual increase of 3.5%.

7. Expenditures for Wastewater System Improvements.

In order to continue its efforts to protect against future spills to Fountain Creek, to increase its opportunities for reuse, and to mitigate possible water quality impacts by the SDS Project to Fountain Creek, Colorado Springs Utilities shall commit to invest an additional seventy-five million dollars (\$75,000,000) in its wastewater system. Expenditures will be made as part of the wastewater collection system rehabilitation programs or wastewater reuse systems between January 1, 2009 and December 31, 2024 as required. These expenditures shall be for projects

not currently required by other regulatory permits, agency enforcement or court orders, consent agreements, or governmental regulations existing as of January 30, 2009. These expenditures will include the Local Collector Evaluation and Rehabilitation Program (LCERP) for the improvement and fortification of wastewater lines which could adversely affect Fountain Creek or its tributaries. These expenditures are subject to annual appropriation by the Colorado Springs City Council. Beginning in 2010, by January 31 of each year, Colorado Springs Utilities shall provide an annual report to Pueblo County describing such expenditures for the prior year.

8. Sediment Control/Dredging and Clear Springs Ranch.

It is acknowledged by Pueblo County and Applicant that one mitigation commitment will be a project to reduce the sediment load in lower Fountain Creek through dredging and the construction of sediment collection devices. These efforts will occur prior to the construction of the SDS Project. These sediment removal activities are of vital importance to Pueblo County because they will assist the City of Pueblo in preserving the flood protection of the Fountain Creek levees at or above the 100 year flood level. This mitigation commitment may be conducted in cooperation with a project or projects of the U.S. Army Corps of Engineers. It is acknowledged that there will have to be sampling done on the bed sediments in Fountain Creek to insure that no hazardous materials exist that would make a dredging and sediment removal project technically or financially impracticable. Applicant, as a condition of this permit, will pursue vigorously its efforts to complete this sediment removal project at the levels committed to in the final Environmental Impact Statement process. In the event that sediment removal is not practicable because of the quality of the bed sediments, Applicant will commit an equal amount of money that would have been expended on this sediment removal project at the level required by the FEIS for another project designed to assist the City of Pueblo in restoring and maintaining sufficient flood protection to allow the existing levee systems to withstand a 100 year flood, subject to approval of the Bureau of the Bureau of Reclamation.

In addition, Applicant has committed, as part of the EIS process, to construct new wetlands and redirect a portion of the channel of Fountain Creek adjacent to the wetlands area at the Clear Spring Ranch to reduce the slope and improve channel stability through this area subject to the approval of the Bureau of Reclamation. The redirected channel is proposed to have an increased length and sinuosity to stabilize the channel. The purpose of this mitigation activity is to reduce sediment transport down Fountain Creek into Pueblo County, improve water quality and reduce flood threat downstream. This project will be completed to the levels required by the Bureau of Reclamation.

Applicant has submitted a letter to the Bureau of Reclamation, dated _____, stating its intention and desire to achieve its obligations set forth in the Final

Environmental Impact Statement, sections 5.2.4 and 5.2.6, in the manner described in this paragraph 8. A copy of the letter has been made a part of the record.

9. Continuation of Pueblo Flow Management Program.

All SDS Participants shall cooperate in and comply with the PFMP (including Pueblo West and Security who are not signatories to the PFMP agreements at this time) and its requirements for maintaining target flows through Pueblo below Pueblo Reservoir by cessation of exchanges.

10. Implementation of Arkansas River Low Flow Program.

Colorado Springs Utilities shall promptly submit a signed Memorandum of Understanding between the Pueblo Board of Water Works and Colorado Springs Utilities which shall provide the terms and conditions under which each of the entities will contribute to and assist in the maintenance of a storage pool in Pueblo Reservoir designed to permit the release of water into the Arkansas River during times when the flow in the River could fall dangerously low, to levels at or below 50 cubic feet per second (cfs).

11. Construction and Use of North River Outlet Works.

Colorado Springs Utilities shall promptly submit to Pueblo County an executed Memorandum of Understanding with the Pueblo Board of Water Works designed to describe the manner in which the two entities will use the South Outlet Works & Joint Use Manifold and the North Outlet Works of Pueblo Dam for the provision of municipal water supplies. If approved by the Bureau of Reclamation, the North Outlet Works shall be constructed and used as the primary outlet works for SDS.

12. Safety Review of Design and Construction of Structures at Pueblo Dam.

No construction shall occur at or near Pueblo Reservoir Dam (outlet modifications and pipelines west of the Pueblo West turnout) until the Bureau of Reclamation has performed its dam safety review and has accepted the design construction plans. Prior to commencement of construction, Applicant shall provide Pueblo County with written proof of such acceptance by the Bureau of Reclamation and any other required regulatory agency.

13. County Road Improvements and Restoration.

The Applicant shall obtain and comply with Excavation Permits from the Pueblo County Public Works Department ("Department") for each road crossing within the County, and Access Permits from the Department for each access point onto a County road. The Applicant shall submit a Traffic Control Plan to the

Department for review and approval. The Applicant shall submit a Staging Area Plan to the Department for review and approval to define construction work times, material delivery hours, noise suppression, dust abatement, construction methods, and other mitigation of construction nuisances. The Applicant shall provide a Haul Route Plan to the Department for review and approval; the Haul Route Plan shall identify the roads utilized for construction vehicle traffic, maintenance of those roads at Applicant's expense during the project and rehabilitation of those roads to current Pueblo County Roadway Design and Construction Standards at Applicant's expense. Within thirty (30) days of the Applicant issuing a notice to proceed to its contractors to perform pipeline installation activities that require use of roads in the Haul Route Plan, the Applicant shall establish a cash payment, escrow, or other financial instrument such as a performance bond, acceptable to the County, in an amount estimated by the Department to cover the total costs for rehabilitation of the roads to County Standards (currently estimated at approximately \$6.1 million), plus estimated increases in costs over time as represented by the Construction Cost Index. The Applicant shall coordinate, design and construct the SDS pipeline facilities so as to anticipate and accommodate future roadways and utilities across the SDS easement so as not to unreasonably preclude them or increase their costs. *See Mitigation Appendix, CR-1 through CR-11 with Exhibits 1 – 5.*

14. Cultural and Archaeological Resource Protections.

Applicant shall execute the Programmatic Agreement in a form substantially similar to that set forth in the FEIS with the applicable federal and state agencies and Native American Tribes. Applicant shall comply with the standards and procedures of the Programmatic Agreement to ensure the identification, avoidance, protection and disposition of cultural and archaeological resources which may be encountered during construction in Pueblo County, as required by federal and state laws and in accordance with landowner agreements. Proof of execution of the Programmatic Agreement shall be provided to Pueblo County prior to land disturbance.

15. Acquisition of Property Interests.

Applicant shall acquire necessary property interests required for each individual work package or phase of the SDS Project in Pueblo County prior to the initiation of construction of that work package. Private property owners shall be treated fairly by the Applicant and the SDS Project shall not create undue financial burdens on existing or future residents of Pueblo County. The Applicant shall commit to using the power of eminent domain only as a last resort. The Applicant shall offer to compensate landowners to have their own appraisal done if they disagree with the Applicant's appraisal. Applicant shall reimburse landowners for relocation costs, title work and closing costs in accordance with the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests. No landowner should have out-of-pocket

expenses from the Project. Applicant shall provide proof to the County that it has secured the necessary interests in property required to construct the Project prior to starting construction at any given location. See *Mitigation Appendix SE-1*.

16. Lake Level Management at Pueblo Reservoir.

Colorado Springs Utilities commits to Pueblo County as a part of the 1041 process that it will voluntarily participate, when and if the Southeastern Colorado Water Conservancy District, the Bureau of Reclamation, and any other affected party agree to participate, in developing a reservoir management plan for Pueblo Reservoir designed to protect reservoir levels and recreational opportunities on Pueblo Reservoir to the extent feasible given the potential for future changes in hydrology and water demands by project beneficiaries.

17. Payments In-Lieu Of Property Tax.

Applicant shall minimize to the extent practicable the number of private properties acquired in fee to support construction and operation of SDS facilities. For those private properties purchased and owned in fee, Applicant shall make an annual payment in lieu of taxes equal to the value of the taxes assessed by the Pueblo County Assessor. Payment shall be made to the Pueblo County Treasury on or before April 30 of each calendar year. See *Mitigation Appendix SE-2*.

18. Monitoring Program and Adaptive Management for Fountain Creek and the Arkansas River.

Applicant shall implement a monitoring program to provide information on the current water quality and geomorphology (including erosion, sediment loading and channel stability conditions) in Fountain Creek and the Arkansas River, and to track changes over time. The monitoring will assist in the selection of mitigation measures and in the assessment of the effectiveness of SDS mitigation measures on Fountain Creek and the Arkansas River. To collect data that supports the evaluations related to impacts on water quality and geomorphology, Applicant shall implement monitoring activities at defined monitoring locations in the Fountain Creek Basin and the Arkansas River. See *Mitigation Appendix E-1*.

Pursuant to the Environmental Impact Statement process, Applicant has committed to engage in adaptive management, which contemplates that Applicant will undertake modified or different mitigation activities for impacts that have been identified in the EIS. If additional mitigation activities are required in order for Applicant to comply with the requirements of the ROD, any costs associated with that additional mitigation activity shall be the sole responsibility of Applicant.

To the extent that the monitoring and the adaptive management program causes Pueblo County to request or require that additional mitigation activities occur over

and above those required by the Bureau of Reclamation, Applicant's obligation to conduct those mitigation activities shall be the responsibility of the Fountain Creek District (or FCRF, if the District is not formed) and not directly the responsibility of Applicant. Pueblo County shall be a stakeholder in the Adaptive Management Program, for purposes of this paragraph.

19. **Colorado Springs Utilities - Wastewater Collection System Management Practices to Protect Water Quality.**

Colorado Springs Utilities has committed as a condition of this Permit to continue to implement and maintain wastewater collection system improvements within the Fountain Creek drainage to prevent and minimize the impact of its wastewater system overflows or spills through prevention programs and response activities. Since 2000, it has spent \$114 million for these programs. In addition, Colorado Springs has established a Stormwater Enterprise Fund to finance the capital costs of needed stormwater control infrastructure. See *Mitigation Appendix E-2*.

20. **Construction Impact Mitigation.**

Applicant shall mitigate the impacts of project construction, as set forth in the Mitigation Appendix C-1 through C-22, to include the following:

- Proof of required permits and compliance
- Pre-existing condition assessment of affected properties
- Public information measures and responses to public complaints
- Pre-mobilization readiness
- Sustainable design and construction
- Protection of open excavations and trenches
- Construction site maintenance
- Provisions for access to properties
- Limits on work hours
- Dewatering control
- Lighting Control
- Dust Control
- Noise control
- Drainage and erosion control
- Traffic control
- Weed control
- Protection of plants and wildlife/vegetation surveys
- Hazardous waste management
- Management of surface and ground water flows
- Protection of livestock
- Site restoration

Applicant shall assign a point of contact for responding to public questions, comments and concerns during construction in Pueblo County and one-year following final construction in Pueblo County. Applicant shall also develop notices to affected residents and a website for information on construction scheduling.

21. Juniper Pump Station Architectural Review.

Applicant shall allow Pueblo County to appoint a representative who will participate in the final selection of the architecture and landscaping for the Juniper Pump Station, along with representatives of Colorado State Parks and the Bureau of Reclamation.

22. Reclamation of Disturbed Lands.

Applicant shall conduct a preconstruction evaluation of existing vegetation to be disturbed during construction of the SDS Project within Pueblo County. Upon reclamation of the site, the vegetation cover shall be of the same seasonal variety native to the area of the disturbed land, or a reasonable substitute pursuant to agreement with the landowner. The revegetated area will be considered acceptable if its cover will be not less than 90 percent of the pre-construction vegetation cover with similar species diversity. Applicant shall provide to Pueblo County a security bond equal to \$2,000/acre of land in permanent or temporary construction easement in each work package. The security bond shall be released upon establishing 90 percent of pre-construction vegetation cover on the impacted land segment. See Mitigation Appendix C-9.

23. Stormwater Management.

The Applicant shall maintain stormwater controls and other regulations intended to ensure that Fountain Creek peak flows resulting from new development served by the SDS project within the Fountain Creek basin are no greater than existing conditions. This requirement can only apply to Project Participants who have the legal authority to regulate in this manner. Regulations shall comprehensively address peak flow conditions, runoff volumes, and flood hazards, incorporating at a minimum all relevant components of existing regulations of Colorado Springs and the other Project Participants including: regional drainage planning for low-flow and major storm events; detention; erosion and sediment control for land disturbance, construction, and similar activities; structural measures such as channel protection and engineered outfalls; prohibition of activities that infringe on the designated floodway; water quality controls, including water quality capture volume and a determination of the need for permanent best management practices (BMPs); and adequate provision for maintenance of all drainage-related facilities so required. This condition shall not prevent Colorado Springs and other local jurisdictions subject to this condition from revising and improving stormwater regulations from time to time, to incorporate new

technologies, management techniques, or otherwise modify regulations consistent with the intent of not exceeding historical peak flows. See Mitigation Appendix E-2.

24. Conservation and Reuse.

In recent years, Applicant has demonstrated a commitment to water conservation programs and local reuse. Continued commitment and local reuse will reduce the Applicant's diversions from the Arkansas River and Pueblo Reservoir and reduce flows on Fountain Creek, thereby reducing the impacts of the SDS Project in Pueblo County. Applicant has specifically committed itself to continue such conservation and reuse despite the availability of additional water from the SDS Project.

25. Compliance Monitoring and Reporting.

Applicant shall monitor and periodically report to Pueblo County on its compliance with this Permit. During project construction in Pueblo County, Applicant will submit a quarterly report to Pueblo County summarizing the activities during that period, forecasting activities scheduled for the upcoming period, and addressing compliance with the terms and conditions of the Permit. After commencing deliveries of water through the SDS pipeline, Applicant shall submit annual reports to Pueblo County summarizing its activities related to the SDS Project, the Permit, and addressing compliance with the terms and conditions of the Permit. Pueblo County may, at its discretion, hold public reviews of the reports and Permit compliance, including hearings in accordance with its regulations. See Mitigation Appendix ENF-1.

26. Noncompliance.

Substantial noncompliance with the terms and conditions set forth herein shall be subject to the provisions governing revocation or suspension of a permit set forth in section 17.148.320(A) of the Pueblo County Code. The final resolution of issues related to non-compliance (except for the failure to pay the monetary mitigation payments as set forth in Paragraph 6 herein) and any further act of revocation or suspension of the Permit will be accomplished through the dispute resolution process described below.

27. Approval by Colorado Springs.

The Colorado Springs City Council must take formal action to recognize the commitments herein prior to Pueblo County's final issuance of a 1041 permit for SDS.

28. Mitigation Appendix.

The provisions of that certain Mitigation Appendix previously referenced herein and attached hereto is hereby incorporated by this reference as though fully set forth. In the event of a conflict between the provisions of the Mitigation Appendix and the terms and conditions set forth in this Resolution, then the terms and conditions set forth in this Resolution shall prevail.

29. Dispute Resolution.

If a dispute between the Applicant and the County arises relating to any term or condition contained in this Permit (except for the failure to pay the monetary mitigation payments as set forth in Paragraph 6), the following procedure shall be followed:

- A. A joint management team, comprised of three (3) representatives of each Party shall first consider any of the circumstances and contentions related to any disputed matter. If the County Manager for Pueblo County [or another representative of the County as designated by the Board of Commissioners] (County Manager) determines that Pueblo County requires technical assistance to assess a disputed matter, Applicant will pay the costs, not to exceed a total of \$150,000 for all disputes related to the Permit, of hiring a technical consultant for that purpose.
- B. If not resolved by agreement of the members of the joint management team, the disputed matter shall be referred by either Party to the Administrative Officers of the Parties defined below. The Administrative Officers shall hold a meeting promptly, but in no event later than fifteen (15) working days from the referral of the dispute, also attended by other staff members with direct responsibility regarding the dispute, to attempt in good faith to negotiate a resolution or cure of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party hereto of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing. For purposes of this dispute resolution provision, "Administrative Officers" means the Chief Water Services Officer for Colorado Springs Utilities and the County Manager [or another representative of the County as designated by the Board of Commissioners].
- C. If, within fifteen (15) working days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation with Applicant to bear the costs of the mediation.

- D. The Parties agree to participate in good faith in the mediation and related negotiations for a period of 30 calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to pursue any other legal remedy including the remedies contained in any conditions or commitments appended to or made a part of the Permit. The Parties agree to reasonably expedite any legal proceedings brought hereunder in order to obtain a prompt resolution. The venue for these legal proceedings shall be the District Court of Pueblo County.

30. **Integrated Terms and Conditions.**

In issuing this Permit, the Board of County Commissioners has determined that the benefits accruing to the County and its citizens from the SDS Project (subject to the terms and conditions set forth herein) outweigh the unavoidable impacts and losses of resources within the County. Consequently, if any term or condition herein is deemed invalid and unenforceable, this Permit shall be rescinded or suspended unless the Board of County Commissioners, in its discretion, approves a Permit amendment.