

OFFICE OF THE DISTRICT ATTORNEY
TENTH JUDICIAL DISTRICT, COLORADO

Statement of Bill Thiebaut, Office of the District Attorney for the 10th Judicial District,
To the Pueblo Board of County Commissioners Regarding
The Terms, Conditions, and Mitigation Measures for any Final 1041 Permit for Colorado
Springs Utilities' Proposed Southern Delivery System

March 18, 2009

1. Introduction

This statement is submitted by Bill Thiebaut, District Attorney for the Tenth Judicial District, Colorado which comprises Pueblo County. This Statement is being submitted with regard to the proposed terms, conditions, and mitigation measures for any final Colorado Springs Utilities ("CSU") 1041 Permit for its proposed Southern Delivery System ("SDS"). As District Attorney, it is my duty to protect the health and safety of the citizens of Pueblo County and to ensure that laws are being enforced. I am submitting this Statement in furtherance of that duty. My previous Statement on CSU's 1041 Application submitted to the Pueblo Board of County Commissioners on December 11, 2008 is incorporated herein by reference.

I want to thank the Pueblo Board of County Commissioners and staff for their time and effort in reviewing CSU's 1041 Permit application.

2. Concerns and Recommendations in Previous Statement

As noted in my previous Statement, I am concerned that introduction of 78 million gallons/day of new raw water into the CSU sewage collection system and Fountain Creek will exacerbate the water quality problems my Clean Water Act lawsuit against CSU is attempting to eliminate. Accordingly, in my previous Statement I proposed the following specific recommendations to ensure implementation of the SDS would not exacerbate water quality problems from Colorado Springs' sewage collection system:

- a condition requiring CSU to design and implement a series of near-stream ponds and reservoirs along Fountain Creek to control the flow and water quality of the Creek;
- a condition requiring CSU to prove that all of its sewage system stream crossings have been originally designed and constructed to withstand the anticipated flows resulting directly and indirectly from the SDS

(discharge water and stormwater) and that all final remediation of stream crossings have been completed;

- a condition requiring CSU to prove that all of its sewage treatment systems and components are capable of treating the additional flows caused by the SDS;
- a condition requiring CSU to prove that all of its lift stations have been originally designed and are capable of handling the additional flows caused by the SDS;
- a condition requiring CSU to prove that all of its collection system is capable of handling the additional flows caused by the SDS;
- a condition requiring CSU to provide all relevant information regarding its sewage treatment and collection system to Pueblo County upon request and to consult with Pueblo County regarding such information;
- a condition requiring complete and continuous compliance with the terms and conditions of all discharge permits, rules, and regulations associated with its sewage treatment system, sewage collection system, and non-potable water system.
- a condition requiring CSU to reimburse Pueblo County for the legal and technical costs associated with ensuring compliance with the terms and conditions of any 1041 approval.

3. The Terms and Conditions Do Not Address Previous Concerns

Although the terms and conditions do provide a mechanism to study construction of a series of ponds and reservoirs along Fountain Creek, there is no requirement for CSU to build and operate these structures. Please include such a requirement in any final 1041 Permit.

The terms and conditions do not provide any assurance that sewage collection system stream crossings in the City of Colorado Springs are capable of accommodating the additional in stream flows contemplated by the SDS. These additional flows pose a significant risk of sewage pipe failure, sewage spills, and contamination of Fountain Creek. Moreover, the proposed terms and conditions do not ensure final remediation of existing stream crossings. The consent agreements with Colorado Department of Public Health and Environment do not provide a schedule under which sewage pipe stream crossings will undergo final remediation by a date certain. Please include such a requirement in your final Permit.

The terms and conditions do not ensure that additional sewage volume into CSU's sewage collection and treatment system will not cause sewage pipe failure or overflow from the antiquated vitrified clay sewage pipe which comprises approximately 80 percent of the Colorado Springs sewage collection system. Approximately 80 percent of the sewage spills in Colorado Springs sewage collection system occur from this antiquated vitrified clay pipe. Please include a requirement in your final Permit requiring CSU to ensure the additional SDS flows will not adversely impacts CSU's sewage collection and treatment system.

4. Additional Concerns with Specific Terms and Conditions

In addition to the concerns outlined above and in my previous Statement, I also have the following specific concerns with the proposed terms and conditions:

Condition 7, pages 6-7:

The second sentence of this condition should be revised to read as follows:
“Expenditures will be made between the effective date of this permit and December 31, 2024.”

The third sentence of this condition should be revised to read as follows:
“These expenditures shall be for projects not required by other regulatory permits, agency enforcement or court orders, consent agreements, or government regulations.”

The fourth sentence of this condition should be deleted because the LCERP program is a requirement of CDPHE consent agreements.

This condition should impose a requirement on CSU to fully implement the Sanitary Sewer Evaluation and Rehabilitation Program (“SSERP”) for remediation of all sewer pipes less than 10” in size by 2012. This condition should also prohibit CSU from claiming financial credit for SSERP expenditures under this condition.

Condition 18, pages 10-11:

The third paragraph of this condition should be deleted in its entirety.

Condition 19, page 11:

This condition is vague and unenforceable. Instead, this condition should be revised to read as follows:

“CSU shall maintain complete and continuous compliance with the terms and conditions of all discharge permits, rules, regulations, court orders, and consent agreements associated with its sewage treatment system, sewage collection system, and non-potable water system.”

This condition should impose a condition on CSU to fully implement the Sanitary Sewer Evaluation and Rehabilitation Program (“SSERP”) for remediation of all sewer pipes less than 10” in size by 2012.

Condition 23, page 12:

The first sentence of this condition should be revised to read as follows:

“The Applicant shall maintain and/or construct new stormwater controls to prevent future stormwater flows from exceeding current conditions.”

The following sentences should be added as the second, third, and fourth sentences in this condition:

“Before commencing any construction on this project, Applicant shall submit a report to Pueblo County calculating the existing stormwater flows that constitute “current conditions”. This report shall be subject to public comment, public review, and Pueblo County approval. Any dispute over the content of this report shall be subject to the dispute resolution provisions of this permit.”

Additional Terms and Conditions

The Permit does not contain a term or condition requiring CSU to report and mitigate any spill or release from the SDS system. CSU currently operates a non-potable water delivery system in the City of Colorado Springs. This non-potable water system has had numerous spills, releases, and leaks over the past 8 years. These spills, releases, and leaks carry pollution to Fountain Creek, cause erosion and carry sediment into Fountain Creek, and cause sudden high flows to Fountain Creek. As such, any final permit should contain a release reporting and mitigation requirement and clearly state that any such spills, releases or leaks are un-permitted discharges and violations of the Colorado Water Quality Control Act and federal Clean Water Act.

5. Additional Concerns with Mitigation Appendix

In addition to the concerns outlined above and in my previous Statement, I also have the following specific concerns with the proposed Mitigation Appendix:

Appendix E-1 “Environmental Conditions/Mitigation

This Appendix must contain a requirement for CSU to characterize the current baseline water quality and geomorphic conditions of Fountain Creek for all pollutants it will be monitoring. Without adequate baseline monitoring, it is impossible to determine how actions related to construction of the SDS may be impacting Fountain Creek. If CSU does not have adequate existing monitoring data for all pollutants, the terms and conditions should require CSU to collect at least 1 year of monitoring data from all monitoring sites before commencing any construction of the SDS. The terms and conditions should require CSU to submit a baseline monitoring report characterizing existing conditions prior to any construction. Such a report should be subject to public notice, public comment, and approval of Pueblo County. Any dispute over the content of this report shall be subject to the dispute resolution provisions of this permit.

CSU should be required to post all monitoring data to a publicly available website created and maintained by CSU.

ENF-1 Compliance Monitoring and Reporting

The terms, conditions, and mitigation measures suggested in this Statement shall be included in CSU's annual reporting requirements under Mitigation Appendix E-1. All reports and information collected by CSU should be posted in a timely manner to a publicly available website created and maintained by CSU.

Thank you for considering this Statement in your evaluation of the proper terms, conditions, and mitigation measures for any final 1041 Permit.

March 18, 2009 11:20 a.m.
Date

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