

**Oral Comments of the Rocky Mountain Environmental
Labor Coalition on the Recommended Terms and Conditions
and Mitigation of Project Impacts
March 18, 2009**

Good evening. My name is Joseph Santarella. I serve as counsel for the Rocky Mountain Environmental Labor Coalition (RMELC) and respectfully submit these oral and written comments on their behalf. First of all, I want to thank the Commissioners for holding this public hearing and allowing the public to comment on the Recommended Terms and Conditions and Mitigation of Project Impacts presented in the Banks and Gesso Memorandum dated March 10th, 2009. I also want to thank the Pueblo County Planning and Development Department and Banks and Gesso for their efforts in reviewing the proposed SDS project and developing recommended conditions and impact mitigation practices.

However, as a threshold matter, RMELC hereby objects to the unreasonably short period of time (less than a week) afforded to the public to review and provide comments on the Mitigation Plan relating to the proposed SDS project. Prior to last Thursday when RMELC received the CSU e-mail and reviewed an article in the Pueblo Chieftain regarding the Mitigation Plan and this public hearing, Pueblo County officials had advised the public that a separate hearing would be held for the public to comment on the Mitigation Plan after such recommendations were presented at the public hearing tonight. RMELC is unaware of any formal notice



provided by Pueblo County to the public setting a deadline for submission of public comments on the Mitigation Plan. Under the circumstances, the public's participation rights have been materially compromised. RMELC therefore urges the Commissioners to extend this public hearing for at least two weeks to allow the public adequate time to review and comment on the Mitigation Plan.

Notwithstanding the hardships posed by such a short comment period, RMELC offers the following comments and criticisms to the proposed SDS project and the Mitigation Plan. RMELC remains steadfastly opposed to the SDS project as currently proposed. Despite the best efforts of the Pueblo County Planning and Development Department, the SDS project even with the conditions and impact mitigation practices set forth in the Mitigation Plan clearly is inconsistent with Pueblo County's approval criteria under the 1041 regulations and not in the best interests of Pueblo County and its residents. CSU's water grab will deprive Pueblo County of the West's most valuable commodity and compromise Pueblo and Pueblo County's ability to compete for jobs and growth along the Front Range while imposing significant hardships on many Pueblo County residents. Accordingly, RMELC again urges the Commissioners to deny the SDS project 1041 permit application.

Assuming *arguendo* that Pueblo County succumbs to CSU's pressure tactics, RMELC recommends that the applicable terms and conditions for the proposed

SDS project be fortified with concrete enforceable conditions to minimize and address impacts on Pueblo County. In our view, the Mitigation Plan ignores the single most effective means for minimizing impacts of the SDS project and Pueblo County and its residents. Namely, limiting the amount of water diverted from the Arkansas River Basin by the SDS pipeline.

To minimize impacts on Pueblo County and its residents, the Commissioners should condition approval of the SDS project as follows: (1) establish a concrete enforceable annual limit on the amount of water that may be diverted from the Arkansas River as recommended in the Petros Memorandum dated January 20th, 2009; (2) prohibit delivery of water from the SDS pipeline to parties other than the project proponents irrespective of whether such third parties are in El Paso or Teller Counties; and (3) require concrete enforceable water conservation measures and goals to reduce residential and commercial water consumption by the project proponents rather than the vague and unenforceable commitment to water conservation currently included in the Staff Recommendations. All of these measures would effectively reduce the amount of water diverted by the proposed SDS pipeline thereby minimizing impacts on the Arkansas River Basin water flow and quality and reducing return flows into Fountain Creek.

It is true that \$50 million is a lot of coin. But we all know that throwing money at the problem cannot and will not address the impacts that will result from decreased flows in the Arkansas River, which will shrink the Pueblo Reservoir, and reduce flows in the Arkansas River with negative impacts on water flow and quality, or impacts on Fountain Creek and the Arkansas River below Fountain Creek due to increased flows in Fountain Creek. And what if \$50 million is not enough to address impacts to Pueblo County and its residents? Then, what will be done and who will be held accountable? Unfortunately, the likely answers to these questions are nothing and nobody because the Mitigation Plan does not provide any mechanisms to address such contingencies.

Furthermore, the Petros Memorandum notes that CSU and the other project proponents could divert an additional 28,000 acre feet per year beyond the 60,000 acre feet contemplated in the Final EIS for the SDS project if the 78 millions of gallons per day or “mgd” pumping limit at the Juniper Pump Station serves as the only limitation on water diversion. Water is too precious of a resource and valuable of a commodity and the impacts on Pueblo County and its residents are far too pervasive and significant to allow CSU to sell the excess water as a water broker to the highest bidders throughout El Paso and Teller Counties as currently permitted within the Mitigation Plan. Absent such limitations, CSU stands to

profit greatly through the sale of such water to third parties and Pueblo County and its residents will be left to deal with the consequences.

In a prior memorandum by Banks and Gesso dated December 3rd, 2008, the staff of the Pueblo County recommended that approval of the proposed SDS project be withheld due to the lack of concrete enforceable mitigation proposals. Since that time little has changed other than the proposed transfer of \$50 million to a yet to be formed District. Purported mitigation proposals to minimize impacts from construction and operation of the SDS pipeline on Pueblo County and its residents remain vague and unclear. No specifics regarding the scope and goals of mitigation measures have been provided. Moreover, CSU's and other project proponents' commitment with regard to water conservation efforts and other wholly reasonable and affordable measures to reduce the diversion of water from the Arkansas River Basin lack any specific terms or conditions and are not enforceable.

In addition, under the Mitigation Plan, CSU and the other project proponents are receiving credit for simply committing to terms and conditions that will be required by federal and state permitting agencies in the future anyway. For example, the limitation set forth in the Mitigation Plan stating that the \$75,000,000 is "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” is disingenuous at best in light of the fact that CSU has been issued compliance orders and entered into Compliance Orders on Consent in response to a Notice of Violation issued by the Colorado Department of Public Health and the Environment (“CDPHE”) on October 7, 2005, for water quality violations resulting from wastewater system deficiencies and violation of permit conditions and water quality standards, BOR has not issued the ROD for the proposed SDS project, the Army Corps of Engineers has not issued any wetlands permits for the proposed project under section 404 of the Clean Water Act and United States Environmental Protection Agency has not weighed in as to the nature and extent of wetlands mitigation required to comply with the Clean Water Act § 404(b)(1) guidelines. Accordingly, the Mitigation Plan should delete the January 30, 2009, date and clearly state that the funds be expended on “projects not required by other regulatory permits, enforcement, regulations now and in the future.”

At the public hearing in December 2008, RMELC proposed many important mitigation conditions. RMELC stressed that if the Commissioners decide to approve the 1041 Permit Application, the approval must be contingent upon the Applicants’ adoption and implementation of certain necessary conditions with clear and enforceable requirements. Most of these conditions have not been

adopted in the Mitigation Plan but are needed to protect the welfare and environment of Pueblo County and its residents.

RMELC proposes the following for adoption by the Commissioners to strengthen the Mitigation Plan:

Condition No. 1

The Applicants should not be allowed to pump more water than is necessary to meet ongoing present demands of water users to be served by the SDS Project and must be subject to clear and enforceable numeric pumping limitations that prevent the sale or lease of water to third parties by the Applicants.

Condition No. 2

The Commissioners should require the creation of a trust fund with pre-established procedures for compensating property owners within the Fountain Creek watershed for negative impacts to their property including loss and damage to property caused by erosion due to non-native flows into Fountain Creek from CSU facilities.

Condition No. 3

The Applicants should be required to remove all vegetation on the land within newly flooded reservoirs to minimize the potential release of mercury and other contaminants.

Condition No. 4

The Applicants should be required to implement, by a date certain, ordinances requiring water conservation measures including maximum use of water efficient appliances and water-wise landscaping for residential and commercial properties.

Condition No. 5

The Applicants should be required to implement, by a date certain, land use requirements to minimize stormwater runoff.

Condition No. 6

The Applicants should be required to adhere to specified conservation techniques during construction of the Project.

Condition No. 7

The Applicants should be required to maximize the use of renewable energy sources and recycling of wastes during the Project's operation.

Condition No. 8

The Applicants should be required to establish a trust fund to compensate Pueblo County property owners and residents who work, reside or recreate in close proximity to the SDS Route for nuisances resulting from the construction and operation of the SDS pipeline.

Conclusion

RMELC, therefore, respectfully requests that the Commissioners **deny** the 1041 Permit Application for the proposed SDS as inconsistent with the Chapter 17 approval criteria. Alternatively, the 1041 Permit for the SDS project should not be issued until the Applicants have executed contracts with the Bureau of Reclamation, received all necessary Clean Water Act Section 404 permits from the Army Corps of Engineers, and negotiated easements and purchased property rights from affected landowners in Pueblo County. Finally, if the Commissioners decide to issue the 1041 Permit for the SDS project, RMELC requests that the Commissioners require the Applicants to adopt and implement the clear and enforceable conditions as set forth above and as discussed in the December 2008

Banks Report. Most importantly, the Commissioners must limit the amount of water diverted from the Arkansas River Basin by the SDS pipeline through clear and enforceable conditions.

Thank you for your time and consideration of RMELC's position.