

**J.E. Chostner**  
Chair-2009  
District 3

**John B. Cordova, Sr.**  
District 2

**Anthony Nuñez**  
District 1



**Kim B. Headley**  
Planning and Development  
Director  
planning@co.pueblo.co.us

**BOARD OF COUNTY COMMISSIONERS  
DEPARTMENT OF PLANNING AND DEVELOPMENT**

**MEMORANDUM**

**TO:** Board of County Commissioners  
**FROM:** Kim B. Headley, Director *KBH*  
**DATE:** September 21, 2009  
**SUBJECT:** Colorado Springs Utilities Proposal for Payments to the Fountain Creek Watershed, Flood Control and Greenway District

**SUMMARY**

Colorado Springs Utilities ("Utilities") has proposed to make short-term payments to the Fountain Creek Watershed, Flood Control and Greenway District ("District") for the continued development of the Fountain Creek Master Plan ("Master Plan") and to help with initial staffing of the District. However, under a pending IGA, the payments are conditioned upon obtaining written acceptance by the County Commissioners that such funds will be accepted as payments toward the Monetary Mitigation under Condition No. 6 of the Southern Delivery System ("SDS") Permit (1041 Permit No. 2008-002).

The Pueblo County Regulations for Areas and Activities of State and Local Interest ("1041 Regulations") do not provide a procedure for the County to confirm compliance with a 1041 Permit, when the proposal for mitigation credit does not appear to constitute a material change in the construction, use, or operation of the project. If such an amendment were required, the request for the amendment would have to be processed in accordance with the same procedures and requirements as a new permit. Other regulations apply when the County discovers a violation of the terms of a permit, which again would not appear to be applicable in this situation. Therefore, as the Administrator of the County's 1041 Regulations, I am preparing this written determination to determine if the proposed payments qualify as Monetary Mitigation for Fountain Creek impacts under Condition No. 6 of the SDS 1041 Permit.

**BACKGROUND**

Board of County Commissioners Resolution No. P & D 09-22 approved 1041 Permit No. 2008-002 for the construction of and use of the Southern Delivery

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System. Condition No. 6 requires the Applicant to pay \$50 million to the District to mitigate the impacts of SDS to Fountain Creek in Pueblo County.

Beginning on July 1, 2009, \$300,000.00, in equal annual installments of \$100,000.00, are to be paid by the Applicant to fund studies for constructing flood control and sediment control facilities on Fountain Creek. Utilities has made its first payment to the District, which is being kept in a separate account. Those funds **are not** the subject of this memo.

Condition No. 6 requires that the remaining \$49,700,000.00 be made to the District in five annual installments, beginning on January 15 of the year following completion and commencement of water deliveries through the SDS pipeline. It is these monetary obligations that are the subject of this memo and for which a credit is being requested by Utilities.

By an IGA effective August 28, 2009, Utilities, the District and the Lower Arkansas Valley Water Conservancy District ("Lower Ark") reached an agreement whereby the Lower Ark and Utilities would each contribute \$300,000.00 over a period of two years to the District. Each would contribute \$200,000.00 (payable in equal monthly installments over two years) to the District for the continued development of the Master Plan and the pursuit of funding sources. In addition, each party would contribute \$100,000.00 (in equal annual installments of \$50,000.00 over two years) to the District to initially fund a staff for the District, including the cost of the salary of a director, the cost of legal counsel, and the cost of any administrative support.

Paragraph 3 of the IGA explicitly requires the District "to obtain written acceptance by the Pueblo County Board of County Commissioners, that funds contributed hereunder by Colorado Spring Utilities will be accepted as payments toward the Monetary Mitigation for Fountain Creek Impacts pursuant to Term and Condition No. 6 of the Pueblo County 1041 Permit for the Southern Delivery System." The use of such a condition will likely be an important tool in the future for ensuring proper expenditure of funds by the District for Monetary Mitigation under the County permit.

Condition No. 6 of the SDS Permit requires that the Monetary Mitigation be used by the District "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." Condition No. 6 states that an "acceptable project" may include projects identified by the U.S. Army Corps of Engineers, projects identified as part of the Master Plan adopted by Utilities and

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the Lower Ark, and any other sedimentation erosion control, flood control, dam or stream improvement found to be acceptable by the District.

It is important to note, Condition No. 6 requires the District to use the funds "only for one or more new projects". Presumably, this language was used to ensure that the funds would be used primarily for project costs and not for routine administrative expenses of the District or for operation and maintenance expenses. However, it appears to be within the discretion of Utilities and the County to determine that credit can be given as Monetary Mitigation for the development of the Master Plan to identify projects and to provide at least the start-up funding to provide staffing for the District to pursue such projects.

### **RELEVANT 1041 REGULATIONS**

Section 17.172.200 (applicable to municipal and industrial water projects, and also by incorporation, to domestic water and sewer system activities) provides that any "material change in the construction, use or operation of a project from that approved by the permit authority shall require a permit amendment." Such amendment is to be processed in accordance with and subject to the same procedures and requirements set forth for a new permit. See also 17.148.300(C). Section 17.172.040(J) defines a "material change" as "any change in the project as approved by the permit authority which significantly changes the nature of impacts considered by the permit authority in approval of the original permit or . . . a structural modification, change of use, change of operation, change of user, which significantly changes the nature of the development and its associated impacts."

Section 17.172.210 states that the provisions of these water project and domestic water system regulations and any permits issued thereunder "shall be administered, enforced and inspected in accordance" with the general administrative regulations of the areas and activities regulations.

In the general administrative section of the regulations, Section 17.148.320 provides that the County may revoke and/or temporarily suspend a permit for a period of ninety (90) days if the County were to determine that the terms of any permit have been violated by the holder of the permit. Notice to the applicant and a public hearing are required before any permanent revocation or suspension.

Section 17.148.330 provides that the County may enjoin a party who is not compliant with permit requirements or who exceeds the permission granted in the permit, and the permit holder may be subject to such other criminal or civil

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liabilities as may be prescribed by law.

Section 17.148.350 also provides that the County or its authorized representative, the administrator, is empowered and directed to inspect and examine the use, occupation or development of an activity for determining whether it is in violation of any provision of the regulations or any permit issued by the County; if such a violation is found, the County or the administrator may by written order direct that remedial action be taken in compliance with the applicable regulations or permit, although such written order is not a prerequisite to the institution of enforcement proceedings by the County.

Section 17.148.360 provides that the county commissioners are empowered generally to hear appeals from any person aggrieved by any decision of the administrator made in the course of administering these regulations.

Absent affirmative action by an administrator and justifiable reliance that would prevent a county from asserting a contrary position, an administrator cannot bind the Board of County Commissioners with respect to an interpretation of a regulation or term and condition of a permit. For example, Section 17.136.010 specifically provides that no "oversight or dereliction on the part of the County Zoning Administrator or his or her authorized assistants or on the part of any official or employee of the county shall legalize or authorize the violations of any of the provisions of this resolution."

Consequently, confirmation of compliance with a permit should be made by the Board of Commissioners in order for an outside party to rely upon that determination. Presumably for that reason, the IGA specifically requires board approval.

### **DETERMINATION**

Based upon the above facts and analysis, it is my determination, as the County's 1041 Permit Administrator, that Colorado Springs Utilities' proposal to make short-term payments to the Fountain Creek Watershed, Flood Control, and Greenway District for the continued development of the Fountain Creek Master Plan and to help with initial staffing of the District qualifies as Monetary Mitigation for Fountain Creek impacts under Condition No. 6 of the SDS 1041 Permit.

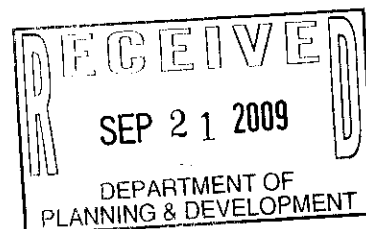


Colorado Springs Utilities

*It's how we're all connected*

September 18, 2009

Mr. Kim Headley  
Director, Department of Planning and Development  
229 West 12th Street  
Pueblo, CO 81003



**Re: Financial Contributions Satisfying the Monetary Mitigations for Fountain Creek of the City of Colorado Springs Under Its Pueblo County 1041 Permit for the SDS**

Dear Kim:

Over the past several months, Colorado Springs Utilities ("Utilities") and the Lower Arkansas Valley Water Conservancy District ("Lower") have been working with the newly formed Fountain Creek Watershed, Flood Control and Greenway District ("Fountain Creek District") to come up with a program to continue the financing of the ongoing master planning activities on Fountain Creek.

As you will recall, Utilities and Lower have already contributed a joint total of \$600,000.00 over the past few years toward the master planning activities in a voluntary effort to get that process moving forward. Those funds are soon to be exhausted and we find ourselves in a position where the Fountain Creek District is not yet financially able to pick up the burden but the planning activities are not completed and need to be moved forward.

Utilities and Lower have agreed, preliminarily, to contribute another \$600,000.00 over the next two years in order to allow these activities to move forward. The monies will consist of a total of \$400,000.00 for the master planning activities and an additional \$200,000.00 to fund initial staffing for the Fountain Creek District. County Attorney, Dan Kogovsek, has been involved in these conversations throughout.

Had Utilities completed the Southern Delivery System ("SDS") and begun making the payments required by its 1041 Permit, totaling \$50 million, then those funds would have been used for purposes advanced by those described above. Because Utilities has not completed the SDS Project, it is necessary to obtain formal recognition by Pueblo County acting through its Board of County Commissioners that the expenditure of these funds at this time will be credited against Utilities' financial responsibilities under the 1041 Permit described at ¶ 6 of the 1041 Permit on a dollar-for-dollar basis.

Although ¶ 3 of the proposed IGA effectuating this program states that the Fountain Creek District has the responsibility for obtaining written approval from the Pueblo County Commissioners, Utilities thought it would be helpful to you and to the process if we gave you formal notice of this requirement and requested your participation in assisting the Fountain Creek District in acquiring that approval.

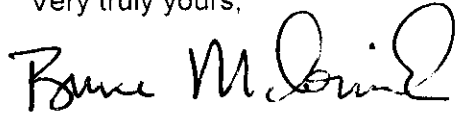
121 South Tejon Street, Fifth Floor  
P.O. Box 1103, Mail Code 950  
Colorado Springs, CO 80947-0950

Phone 719-668-8000  
Fax 719-668-8020  
<http://www.csu.org>

As a result, we would request that you support and facilitate a resolution by the Pueblo County Commissioners accepting Utilities' contributions to the Fountain Creek District and the master plan process as meeting the requirements of ¶ 6 of the 1041 Permit and offsetting required contributions thereunder on a dollar-for-dollar basis.

Thank you very much for your cooperation. If you have questions, please feel free to give me a call. We look forward to working with you and getting this process moved forward quickly.

Very truly yours,

A handwritten signature in black ink, appearing to read "Bruce McCormick". The signature is fluid and cursive, with a large, stylized "M" and "C".

Bruce McCormick  
Chief Water Services Officer  
Colorado Springs Utilities

cc: Dan Kogovsek, Esq.  
Mark Shea, Esq.  
Carol Baker  
John Fredell  
David W. Robbins, Esq.

# EL PASO COUNTY



## OFFICE OF THE COUNTY ATTORNEY CIVIL DIVISION

**William H. Louis, County Attorney**

### Assistant County Attorneys

M. Cole Emmons

Lori L. Seago

Andrew C. Gorgey

Amy Folsom Mullaney

John N. Franklin, *Of Counsel*

September 25, 2009

Board of County Commissioners of Pueblo County  
229 West 12<sup>th</sup> Street  
Pueblo, CO 81003

Re: Use of Funding Toward Monetary Mitigation by Colorado Springs Utilities Under  
Pueblo County 1041 Permit for the Southern Delivery System

Dear Commissioners:

Pursuant to that certain Intergovernmental Agreement dated August 28, 2009, between the Lower Arkansas Valley Water Conservancy District ("Lower Ark"), the City of Colorado Springs on behalf of its enterprise, Colorado Springs Utilities ("Colorado Springs Utilities"), and the Fountain Creek Watershed, Flood Control, and Greenway District ("Fountain Creek District") and a request by Colorado Springs Utilities, the Fountain Creek Watershed, Flood Control and Greenway District Board of Directors ("District Board"), through its undersigned counsel, hereby formally requests the Board of County Commissioners of Pueblo County, Colorado, to authorize funds described herein to be accepted as payments toward the Monetary Mitigation for Fountain Creek Impacts pursuant to Term and Condition 6 of the Pueblo County 1041 Permit for the Southern Delivery System.

In order to facilitate completion of the Fountain Creek Corridor Master Plan to revitalize Fountain Creek, and in order to provide a short term revenue source to fund initially the Fountain Creek District in order to allow the Fountain Creek District to fund its own staff, such as a director, legal counsel, and administrative support, the Lower Ark and Colorado Springs Utilities have agreed to provide funding under the IGA as follows (Paragraph references are to the IGA):

"1.4. The Lower Ark and Colorado Springs Utilities each agree and commit to fund, in an amount not to exceed \$100,000.00 each annually, the continued development of the Master Plan and the identification and pursuit of funding sources to implement the Master Plan for a period of two years commencing on October 1, 2009. Payments from Colorado Springs Utilities and the Lower Ark pursuant to this Section 1.4 shall be made payable to the Fountain Creek District in twenty-four (24) equal monthly installments of \$8,333.33 from each entity commencing October 1, 2009. These funds, when paid, shall be held in a separate account from other funds of the Fountain Creek District and may only be used in the manner and for the purposes designated by

27 E. VERMILIO AVENUE  
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903  
FAX: (719) 520-6487

the Steering Committee, which purposes must meet the requirements set forth in paragraph 1.3 hereof.

2. As an additional commitment and obligation to those provided in Paragraph 1.4 above, the Lower Ark and Colorado Springs Utilities, in order to facilitate the cooperative work on the Master Plan of the Steering Committee, each agree and commit to provide to the Fountain Creek District an amount not to exceed \$100,000.00 each over a two year period. This commitment shall consist of an annual payment by each party of \$50,000.00 to fund initially a staff for the Fountain Creek District, to pay for related expenses, or both. This may include, but is not limited to, expenditures to defray the cost of the salary of a director, the costs of legal counsel, and the costs of any administrative support. The two year period shall commence on October 1, 2009. The annual \$50,000.00 payments from Colorado Springs Utilities and the Lower Ark pursuant to this Section 2.0 shall be made payable to the Fountain Creek District and delivered to the Fountain Creek District on or before October 1<sup>st</sup> of 2009 and again on or before October 1<sup>st</sup> of 2010.”

As a condition precedent to the effectiveness of the IGA, the District Board agreed to obtain written acceptance by the Pueblo County Board of County Commissioners that the above described funds contributed by Colorado Springs Utilities will be accepted by Pueblo County as payments toward the Monetary Mitigation for Fountain Creek Impacts pursuant to Term and Condition 6 of the Pueblo County 1041 Permit for the Southern Delivery System. Colorado Springs Utilities’ obligations under the IGA are dependent upon that acceptance by Pueblo County.

Therefore, pursuant to the above, the District Board respectfully requests approval of use of the funds described herein as payments toward the Monetary Mitigation for Fountain Creek Impacts pursuant to Term and Condition 6 of the Pueblo County 1041 Permit for the Southern Delivery System. Please do not hesitate to contact either me at (719) 520-6488 or any of the Directors of the District board should you have any questions or need additional information.

Very truly yours,



M. Cole Emmons

Counsel for, and on behalf of, the Fountain Creek  
Watershed, Flood Control and Greenway District  
Board of Directors

cc: Daniel Kogovsek, Esq., Pueblo County Attorney  
Mark D. Shea, Esq., Water Attorney, Colorado Springs  
City Attorney’s Office—Utilities Division  
Raymond Petros, Esq.



RESOLUTION NO. P&D 09- 22

THE BOARD OF COUNTY COMMISSIONERS  
OF PUEBLO COUNTY COLORADO

A RESOLUTION APPROVING 1041 PERMIT NO. 2008-002  
WITH TERMS AND CONDITIONS FOR CONSTRUCTION AND USE OF A  
MUNICIPAL WATER PROJECT KNOWN AS THE SOUTHERN DELIVERY SYSTEM WITHIN  
PUEBLO COUNTY, COLORADO

WHEREAS, the Board of County Commissioners has held public hearings on the Permit referenced above and having considered the testimony and the documentary evidence submitted does hereby find and conclude as is hereinafter set forth:

1. The Pueblo County Board of County Commissioners has adopted regulations for areas and activities of State and local interest pursuant to §§ 24-65.1-101, et seq., C.R.S. (2008) ("HB 1041"), §§ 29-20-101, et seq., C.R.S. (2008) ("HB 1034"), and other applicable land use and regulatory powers of Pueblo County. These regulations, titled "Pueblo County Regulations for Area and Activities of State and Local Interest," are set forth in Title 17, Land Use, Division II of the Pueblo County Code ("Areas and Activities Regulations"). Chapter 17.148 contains the general administrative provisions applicable to all designated areas and activities regulated in the County, and subsequent chapters address each specific area or activity which has been designated by the County for regulation.
2. An Application has been submitted to Pueblo County for approval of a permit to conduct certain activities under Chapters 17.164 and 17.172, Pueblo County Code, for the Southern Delivery System project within Pueblo County (the "SDS Project"). The SDS Project, as proposed and as is more particularly set forth in the Application for this Permit, is a regional water delivery project. As proposed, the SDS Project would use Pueblo Reservoir, a feature of the Fryingpan-Arkansas Project, located in Pueblo County to regulate storage and would deliver untreated water through a proposed 53-mile pipeline to treatment and distribution facilities.
3. Chapter 17.164, "Local Regulations of Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and Major Extensions of Existing Domestic Water and Sewage Treatment Systems," contains procedures and criteria for permitting major new water and sewer systems or major extensions of existing systems.
4. Chapter 17.172, "Regulations for Efficient Utilization of Municipal and Industrial Water Projects," contains procedures and criteria for development of municipal and industrial water projects.
5. Section 17.140.010(F) of the Pueblo County Code provides that any proposed activity or use, which requires a permit pursuant to the Areas and Activities Regulations, shall not require application for and issuance of a Special Use Permit otherwise required by Pueblo County zoning regulations.

## RESOLUTION NO. P&D 09-\_\_\_\_ (CONT.)

6. Colorado Springs Utilities, on behalf of itself and its project partners, filed the Application. Colorado Springs Utilities is an enterprise owned and operated by the City of Colorado Springs. Colorado Springs Utilities is the project manager charged with the responsibility to oversee the permitting, construction, and operation of the SDS Project pursuant to agreement with the other project partners, the City of Fountain ("Fountain"), the Security Water District ("Security"), and the Pueblo West Metropolitan District ("Pueblo West District") (these four partners are collectively the "Applicant" or the "Participants").

7. The proposed SDS Project includes the following features:

**(a) In Pueblo County:**

**(i) Long-Term Storage in Pueblo Reservoir.**

The Participants would use up to 42,000 acre feet (AF) of existing excess ("if and when") storage space in Pueblo Reservoir under proposed renewable contracts (with individual terms of up to 40 years) with the United States Bureau of Reclamation ("Reclamation"), the owner of Pueblo Reservoir, as follows: Colorado Springs Utilities--28,000 AF; Fountain--2,500 AF; Security--1,500 AF; and Pueblo West District--10,000 AF. This water would be delivered to the Participants through the reservoir outlet works.

**(ii) Modification of the Pueblo Reservoir Outlet Works for Pipeline Intakes.**

By proposed renewable contracts with Reclamation (with individual terms of up to 40 years), the North River Outlet Works, located on the north side of the Arkansas River at the Pueblo Reservoir dam, would be modified to allow a connection to be constructed to an untreated water pipeline of the Participants. This north intake connection would serve as the preferred SDS intake. Additionally, a new tie-in to the existing Joint Use Manifold, which serves as a connection to other municipal users on the south side of the River at the dam, might be constructed as an alternate SDS intake. This south intake would involve constructing a buried pipeline under the River to join the north intake pipeline. The Joint Use Manifold is currently used for deliveries to pipelines for the Pueblo Water Board, the Fountain Valley Authority ("FVA"), Pueblo West District, and possibly to the planned Arkansas Valley Conduit to eastern Colorado communities; if an SDS connection to this Manifold were constructed, it would be operated pursuant to a future agreement among Applicant, the Bureau of Reclamation, the Pueblo Board of Water Works, and other entities.

**(iii) Pueblo West Turnout.**

On the north side of the Arkansas River, a turnout from the pipeline from the outlet(s) would be constructed for water delivery to the existing Pueblo West Pump Station and then through an existing pipeline for treatment by Participant Pueblo West Metropolitan District. A pipeline would be constructed from the turnout about 140 feet to the Pueblo West Pump Station. This turnout would be in addition to the proposed river intake pump station of Pueblo West District, which was previously authorized by Reclamation and by a Pueblo County Areas

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

and Activities Permit 2003-003 near the same location. Construction of the Pueblo West river intake pump station is necessary to provide system redundancy. Pueblo West District is pursuing construction of the river intake pump station independent of SDS.

**(iv) Juniper Pump Station.**

Beyond the Pueblo West Turnout, a pipeline would be constructed approximately 1,500 feet to the Juniper Pump Station to be built east of the base of the Pueblo Dam and to the north of the Arkansas River. The building would be approximately 14,000 square-feet and 42 feet high, and it would include an office, parking lot, and auxiliary power facilities, in addition to pumping facilities. The pump station would be operated by Participants on land leased from Reclamation.

**(v) SDS Pipeline.**

From the Juniper Pump Station, a 66-inch diameter raw water pipeline (with a maximum capacity of 78 million gallons per day ("mgd") from the Juniper Pump Station) would extend approximately 20 miles to the El Paso County line. Along the pipeline, the Applicant would construct various buried appurtenances and structures, including access manways, vaults, valves, air vents, and drainage structures. The pipeline in Pueblo County would be crossing under Hwy. 50 and under about 130 separate parcels, 24 County roads, and 50 drainages within Pueblo County; the pipeline would require about 238 acres of permanent easements and another 92 acres of temporary easements for construction within Pueblo County. The SDS Pipeline would extend northward out of Lake Pueblo State Park into Pueblo West, cross U.S. Highway 50 West approximately 3,600 feet east of Purcell Boulevard, and continue northward through the central portion of Pueblo West north of U.S. Highway 50. The pipeline generally would parallel the existing FVA pipeline right-of-way through most of Pueblo West, thereafter diverge from the FVA pipeline location in portions of northern Pueblo County, and exit Pueblo County approximately 3½ miles west of Interstate 25.

**(b) In El Paso County (outside the terms of this permit):**

**(i) SDS Pipeline:** Approximately 33 miles of raw water pipeline extending from the El Paso County line to the terminal storage reservoir and water treatment plant.

**(ii) Terminal Reservoir and WTP.**

An approximately 30,500 AF terminal storage reservoir would be constructed on upper Williams Creek, tributary to Fountain Creek, in El Paso County. Flows from the SDS pipeline would be stored there and/or delivered to a new water treatment plant (WTP) to be constructed by Colorado Springs Utilities. Phase 1 of the new WTP would deliver 50 mgd of treated water to meet the maximum day demand. Security would receive treated water by connection to Colorado Springs' distribution system. Fountain would receive its share of water through the FVA pipeline by an administrative trade with Colorado Springs of an equivalent amount of water and treatment capacity in that system.

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

**(iii) Return Flow Reservoir.**

Colorado Springs Utilities would construct a 28,500 acre-foot exchange reservoir on the lower Williams Creek, a tributary to Fountain Creek. The purpose of the reservoir would be to store return flows for later release to Fountain Creek and for exchange upstream on the Arkansas River when higher river conditions allow such exchanges. Releases to Fountain Creek would be by a pipeline at a maximum release rate of 300 cubic feet per second ("cfs").

**(c) Other SDS Project Activities:**

**(i) Conveyance of Fountain Creek Return Flows.**

Municipal return flows (sewered and non-sewered) and other reusable water is and will be discharged into Fountain Creek after use by the Participants (except for Pueblo West District). This water flows down Fountain Creek to its confluence with the Arkansas River and is exchanged pursuant to existing water rights decrees to Pueblo Reservoir or other decreed points of diversion and/or storage. This river exchange will decrease flows in the Arkansas River below the Reservoir through Pueblo County and the City of Pueblo to the Fountain Creek confluence.

**(ii) SDS Project Operations.**

The assumed operations for purposes of the environmental impact studies by Reclamation are set forth in detail in Appendix D, Operations, Southern Delivery System Final Environmental Impact Statement (December 2008) (the "FEIS").

**(iii) Schedule and Cost.**

The current proposed schedule is to commence construction beginning in 2009, with completion in late 2012, for the Pueblo Reservoir outlet modifications, Juniper Pump Station, SDS pipeline, and WTP (to 50 mgd). Engineering and construction of the terminal storage reservoir (Upper Williams Creek) would occur between 2015 and 2017. Engineering and construction of the exchange reservoir (Williams Creek) and conveyance facilities and the WTP expansion would commence in 2021 and be completed in 2024. The estimated capital cost of the SDS Project is about \$1.1 billion (2007 dollars).

**(iv) Not Related to Pueblo Reservoir Enlargement.**

Enlargement of Pueblo Reservoir by raising the dam is not a component of the SDS Project for purposes of this Application or Permit, nor is reoperation of space in Pueblo Reservoir. According to the FEIS, enlargement is not needed to fulfill the project's purpose or Participants' needs, and the periodic unavailability of storage space under "if and when" storage contracts was considered in evaluating the project yield to the Participants.

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

8. On March 26, 2008, the Applicant requested a Finding of No Significant Impact (FONSI) for the SDS Project under the provisions of the Areas and Activities Regulations. On August 28, 2008, the Pueblo County Planning and Development Director determined that the SDS project did not qualify for a FONSI and that the Applicant had to proceed with its application to the County for a permit to conduct the proposed activity. Notice of this determination was given to Applicant and published on August 30, 2008 in accordance with the Areas and Activities Regulations. This FONSI denial was not appealed to the Board of County Commissioners and the time for such an appeal has expired.

9. On August 20, 2008, the Applicant submitted an application for a permit for the Southern Delivery System Project under Sections 17.164 and 17.172 of the Pueblo County Code.

10. On October 24, 2008, the Pueblo County Planning and Development Director determined that the Application was complete.

11. At the request of the Pueblo County Planning and Development Director and upon published notice, the Applicant hosted four public meetings to explain the SDS Project and answer questions. A meeting was held on October 16, 2008 at the Visitor's Center at Lake Pueblo State Park, Colorado, on the topic of impacts to Lake Pueblo State Park. Meetings were held on October 23 and 27, 2008, at the VFW Post in Pueblo West, Colorado, on the topic of pipeline routing and construction. A meeting was held on October 30, 2008 at the Old Pueblo Museum in Pueblo, Colorado, on the topic of impacts to Fountain Creek.

12. On October 15, 2008, the Pueblo County Planning and Development Director mailed a letter to various public agencies and other interested entities requesting comments on the Application.

13. On November 1, 2008, the Pueblo Board of County Commissioners published notice under §17.148.260, Pueblo County Code, that it would hold a public hearing beginning on December 9, 2008, at 6:00 p.m., in the Jackson Conference Room of the Sangre de Cristo Arts and Conference Center, 210 North Santa Fe Avenue, Pueblo, Colorado, to review and consider action regarding the Application.

14. Under direction of Pueblo County planning staff, the Applicant mailed notice of the public hearing to owners of property located within 500 feet of the SDS Project.

15. A hearing was held on December 9, 2008, at which time Applicant and County staff made their presentations. The hearing was continued to December 11, 2008, December 29, 2008, January 21, 2009, February 25, 2009, and March 18, 2009 pursuant to Section 17.148.260, Pueblo County Code.

16. On December 3, 2008, the Pueblo County staff issued its written comments on the Application, and on December 8, 2008, issued an addendum to those comments. At the hearings on January 21, 2009 and February 25, 2009, the Pueblo County staff, consultants, and attorneys presented additional written comments, updates on federal agencies' reviews of the SDS Project, and recommended terms and conditions if a permit were to be approved by the Board.

## **RESOLUTION NO. P&D 09-\_\_\_\_ (CONT.)**

17. On December 23, 2008, the Applicant submitted Rebuttal Submissions to the Pueblo Board of County Commissioners in response to the written comments of the Pueblo County staff and written and public comments received at the December 11, 2008 hearing. The Applicant also responded to questions by the County Commissioners and County staff, consultants, and attorneys. The Applicant also submitted another written Rebuttal Submission on January 21 in response to testimony and additional written comments.

Public comment on the proposed Permit was received by the Board of County Commissioners on December 11, 2008, with further written comment accepted for the record until closure of the public comment portion of the hearing on December 29, 2008. Additional public comment regarding mitigation and proposed conditions was allowed by the Board of County Commissioners, up to the closure of this additional comment period on March 18, 2009.

The matter was tabled to April 2, 2009 to allow for further consideration of the proposed terms and conditions by the City of Colorado Springs City Council. To further accommodate this review the matter was again tabled by the Board of County Commissioners to April 21, 2009 for final deliberation and final action on the Permit request.

18. In support of the Application, the Applicant incorporated and relied upon analyses produced for the Environmental Impact Statement required by the Bureau of Reclamation under the National Environmental Policy Act ("NEPA"). A draft Environmental Impact Statement (DEIS) was released in February 2008. A Supplemental Information Report (SIR) was released in October 2008, as a result of Applicant's changes to the proposed SDS Project and in response to public comments on the project. A final Environmental Impact Statement (FEIS) was released on December 12, 2008, which contains recommended mitigation measures for a Reclamation action. Applicant has agreed to perform significant additional mitigation activities under this permit for the 78 mgd SDS Project. Reclamation executed its Record of Decision ("ROD") on March 20, 2009, selecting the SDS Project as outlined in this Application as the preferred alternative for implementation. As of the date hereof, Reclamation has not entered into contracts with the Participants.

19. The Applicant has demonstrated a need for the SDS Project to provide water for the projected demand of the Participants' communities for the reasonably foreseeable future, to provide water delivery system redundancy, and to increase drought protection.

20. The SDS Project would benefit citizens in Pueblo West by, amongst other matters, providing a water delivery capacity for its projected build-out. Pueblo West's use of the pipeline from the North Outlet Works would provide valuable redundancy to its pipeline from the Joint Use Manifold.

21. According to the FEIS, there are several other reasonable alternatives to the SDS Project pipeline from Pueblo Reservoir, but these alternatives are substantially more expensive and not as operationally efficient. The FEIS estimates that the pipeline from Pueblo Reservoir would save the Applicant over \$215 million in capital costs and \$50 million in operating costs when compared to the next likely alternative. Upon the issuance of a satisfactory permit by Pueblo County for the SDS Project, the Applicant has agreed that a portion of such savings would be used for mitigation of impacts and improvements on Fountain Creek specified as commitments in the permit.

**RESOLUTION NO. P&D 09-\_\_\_\_ (CONT.)**

22. The SDS Project will decrease flows in the Arkansas River between Pueblo Reservoir and the Fountain Creek confluence under some hydrologic conditions. Without mitigation, such reduced flows could further impair water quality, endanger aquatic life and the riparian environment, and adversely impact recreation, boating, and angling.

23. In anticipation of permitting for the SDS Project and to mitigate its effects, the City of Colorado Springs, Fountain, and other water supply entities entered into agreements to manage flows between Pueblo reservoir and the Fountain Creek confluence ("Pueblo Flow Management Program" or "PFMP"). Its purpose is to provide a reasonable level of protection for streamflows to protect the Arkansas River Corridor Legacy Project (riparian and channel restoration, preservation of aquatic life, and boat chutes, constructed and financed by the City of Pueblo and the U.S. Army Corps of Engineers). The parties agreed to forego certain exchanges of water and changes of water rights to assist in providing both year-round flow and recreational flows at specified target flow levels. The PFMP agreements provide that Colorado Springs can terminate its participation if Colorado Springs is unable to reasonably construct the SDS Project from Pueblo Reservoir due to terms, conditions or requirements contained in any federal, State, or local permit, permission or license including Reclamation's Record of Decision or this Permit. The continuation of the PMFP and the achievement of its purposes are necessary to address the decreased flows referenced in these findings. Accordingly, it will be necessary for all Project Participants to continue to abide by its terms.

24. At some times and under certain hydrologic conditions, the SDS Project will decrease lake levels and surface acreage in Pueblo Reservoir with potential adverse effects on recreation, boating, and angling.

25. The SDS Project will increase flows in Fountain Creek in Pueblo County. New development and growth serviced by the SDS Project, without proper management, could increase flows and volumes and pollutant loads in Fountain Creek. Without mitigation, such increased flows would aggravate problems of erosion, sedimentation, flooding, and water quality degradation.

26. The SDS Project, even with mitigation, will have unavoidable construction impacts on Pueblo West and other Pueblo County residents due to truck hauls, increased traffic, noise, disruption of roads, excavation, and easement acquisition. Offsetting such impacts, Applicant estimates the capital construction costs of facilities in Pueblo County would be approximately \$193 million through 2012 which Applicant represents would benefit the local economy in Pueblo County through opportunities for employment and purchases of goods and services in Pueblo County.

27. In its testimony and written submittals, the Applicant made the following commitments to Pueblo County:

"We will:

- Build SDS in environmentally responsible manner
- Mitigate SDS impacts
- Use water rights we own
- Ensure that Pueblo County won't pay for SDS
- Continue doing our part to improve Fountain Creek"

## **RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

28. With mitigation pursuant to the terms and conditions of this Permit, the Board finds that the benefits of the SDS Project outweigh the losses of resources and environmental and socioeconomic impacts to the County and its residents.

29. Subject to Applicant's compliance with the terms and conditions of the Permit and its satisfaction of its commitments herein described, the SDS Project complies with the criteria set forth in Sections 17.164.030 (A) through (O), and 17.172.130 (B)(1) through (29).

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Pueblo County Commissioners does hereby approve a permit for construction, operation and use of the SDS Project within Pueblo County, Colorado, on the basis and terms of the findings set forth above in this Resolution, and further based upon the Record made in this matter including specifically, but not limited to, the documentary and other evidence submitted by Pueblo County staff and consultants, and subject to the following general terms, conditions and commitments, together with the detailed descriptions of those terms, conditions and commitments contained in the Mitigation Appendix referenced herein and incorporated herein:

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.



## **RESOLUTION NO. P&D 09-\_\_\_\_ (CONT.)**

### **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.

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

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

Although Applicant has no existing permits or agreements with third-parties not listed as Applicants on 1041 Permit Application No. 2008-002, except all existing service agreements already disclosed to Pueblo County, 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 Applicant would deliver water to such a third-party in El Paso County, Applicant 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;<sup>1</sup>
- E. Pro rata participation in any water quality monitoring or studies to the same degree and extent as undertaken by the Applicant under this permit; 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, Applicant 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 Applicant or any other entities to operate the SDS Project at a rate of flow in excess of 78

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<sup>1</sup> The term "Pueblo RICD" refers to Case No. 01CW160, District Court, Water Division 2, Colorado.

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

mgd without applying for and receiving an amended 1041 Permit satisfying any additional terms and conditions which might then be imposed.

**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 then exist.

**6. Monetary Mitigation for Fountain Creek Impacts.**

In order to mitigate the impacts of SDS to Fountain Creek in Pueblo County, Applicant 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 dollars (\$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").

## **RESOLUTION NO. P&D 09-\_\_\_\_ (CONT.)**

The District (or if not created, the FCRF) may use funds provided by the Applicant 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 Army 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 Applicant, then the payments to be made by the Applicant pursuant to this paragraph shall begin to be made on such date, without regard to project construction status, or such 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.

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

**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 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 Springs Ranch to reduce the slope and improve channel stability through this area subject to the approval 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 Reclamation.

Applicant has submitted a letter to Reclamation, dated April 20, 2009, 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). SDS participants shall not exchange against reservoir releases made by the Board of Water Works of Pueblo or Colorado Springs Utilities for the Arkansas River Low Flow Program.

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

**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.*

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

**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.*

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

**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



## RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)

- 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

## RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)

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, below what they would have been without such conservation and reuse, 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.

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

**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.

**RESOLUTION NO. P&D 09-\_\_\_\_\_ (CONT.)**

**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.

The foregoing resolution is hereby made the official act of Pueblo County by and through the action of the Board of County Commissioners on this 21<sup>st</sup> day of April, 2009. In addition to the Board's approval and adoption of this resolution, the Board further directs that this resolution is certified by the Clerk to the Board through his attestation and signature below and that it shall be delivered for recordation to the Office of the Pueblo County Clerk and Recorder.

\_\_\_\_\_  
J.E. Chostner, Chairman

\_\_\_\_\_  
Anthony Nuñez

\_\_\_\_\_  
John B. Cordova, Sr.

**ATTEST:**

By: \_\_\_\_\_  
Gilbert Ortiz, County Clerk

## **NOTICE**

NOTICE IS HEREBY GIVEN THAT THE PUEBLO COUNTY BOARD OF COUNTY COMMISSIONERS WILL HEAR AND CONSIDER A PROPOSED RESOLUTION ENTITLED "ACCEPTING CERTAIN PAYMENTS BY COLORADO SPRINGS UTILITIES TO THE FOUNTAIN CREEK WATERSHED, FLOOD CONTROL, AND GREENWAY DISTRICT TOWARD MONETARY MITIGATION REQUIRED UNDER 1041 PERMIT NO. 2008-002, CONDITION NO. 6" AT ITS REGULARLY SCHEDULED PUBLIC MEETING ON SEPTEMBER 29, 2009, AT 9:00 A.M. IN THE COMMISSIONER'S CHAMBERS OF THE PUEBLO COUNTY COURTHOUSE LOCATED AT 215 W. 10<sup>TH</sup>, PUEBLO, COLORADO.

A COPY OF THE PROPOSED RESOLUTION TO BE CONSIDERED BY THE BOARD IS ATTACHED.