

1 PUEBLO COUNTY BOARD OF COUNTY COMMISSIONERS' MEETING

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3 Sangre de Cristo Arts & Conference Center

4 Robert Jackson Conference Room

5 210 North Santa Fe Avenue

6 Pueblo, Colorado 81003

7

8 January 21, 2009

9 6:05 p.m.

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11 PUBLIC HEARING REGARDING

12 HOUSE BILL 1041 PERMIT NO. 2008-002

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17 PRESENT:

18 COUNTY COMMISSIONER J.E. CHOSTNER - CHAIRMAN

19 COUNTY COMMISSIONER JOHN B. CORDOVA, SR. -

20 CHAIRMAN PRO TEM

21 COUNTY COMMISSIONER ANTHONY NUNEZ

22 GARY J. RASO, PUEBLO COUNTY ATTORNEY

23 SUE KOVACICH - CLERK

24

25

1 COMMISSIONER CHOSTNER: Board of County
2 Commissioners will come to order. Today is January
3 21st, 2009, it's 6:00 in the evening, we are reconvening
4 our hearings on the proposed Southern Delivery System by
5 Colorado Springs Utilities.

6 We are very pleased to have Mayor Rivera and
7 Vice Mayor Small here, and your staff, Mr. Robbins, good
8 to see you all here, thank you for being here and
9 traveling to Pueblo.

10 We will start this with Mr. Raso going over
11 the agenda and other proposed items that we'll be
12 discussing tonight. So, Mr. Raso, I'll turn it over to
13 you.

14 MR. RASO: Thank you.

15 Chairman Chostner and members of the Board,
16 this is a continuation of the hearing which was last in
17 session on December 29th, 2008, this is on the Southern
18 Delivery System 1041 Permit application. The agenda for
19 this evening's meeting -- last month at -- at the
20 hearings on the 29th we introduced into the record, but
21 it didn't receive a lot of discussion at the time, we
22 had a lot else on the plate, Ex -- Exhibit -- it was
23 Exhibit 31, that was the Final Environmental Impact
24 Statement issued by the United States Bureau of
25 Reclamation. The Board has asked that this evening we

1 start tonight's agenda with a presentation or summary by
2 our staff of some of the more salient points of the
3 Final EIS, our staff may have -- they -- our board may
4 have questions for them; certainly the Applicant can
5 give a -- a summary or a presentation of what -- some of
6 the highlights it thinks it would like the Board to
7 consider in the Final EIS, and you would also be
8 available for questions.

9 After we conclude that part of the agenda we
10 will introduce into the record an initial set of
11 recommended conditions and mitigation of project
12 impacts. This is not completed, but we do have -- Banks
13 and Gesso, on behalf of Pueblo County, has prepared this
14 initial set of terms and conditions, we'll put those
15 into the record; and there will be copies available for
16 members of the public, al -- some of you already have
17 them; they're also posted on the County website, right
18 on page 1; and, then, we will con -- post -- not
19 postpone, but we will conclude the hearings for tonight
20 and continue those to February 11th for a final set of
21 terms and conditions.

22 That being said, Commissioners, prior to
23 getting started with Mr. Banks on the Final EIS, CSU
24 submitted, at the request of Pueblo County, some
25 supplemental information to go along with their

1 application, and I believe this was dated December 24th,
2 2008, our staff and, I believe, the staff at CSU would
3 like this supplemental information be made a part of the
4 record, and I would ask it be in -- made that part, and
5 labeled Exhibit 43.

6 (Exhibit 43 was marked for identification.)

7 MR. RASO: Thank you.

8 That said, Mr. Banks, are you prepared to
9 proceed with the -- a report on the Final EIS?

10 MR. SCHATZ: This is Alex Schatz, from Banks
11 and Gesso, I'll speak for Paul --

12 MR. RASO: Okay.

13 MR. SCHATZ: -- since he's -- oh, excuse me.

14 MR. PETROS: Excuse me, Gary. Weren't you
15 going to introduce some other exhibits, or is that going
16 to --

17 MR. RASO: Oh, do you want the exhibits in
18 first? We can certainly do that.

19 MR. PETROS: I think the letters that have
20 been received --

21 MR. RASO: Okay. All right. Well, the --
22 the -- I -- I don't think we have any other letters
23 that -- that relate to the EIS or to the initial terms
24 and conditions.

25 MR. PETROS: Well, I -- I thought there were

1 some letters from the --

2 MR. RASO: Lower --

3 MR. PETROS: -- Lower Arkansas --

4 MR. HEADLEY: Let me interrupt.

5 Didn't we discuss entering those at the next
6 hearing?

7 MR. RASO: Yes --

8 MR. PETROS: Oh, I'm sorry.

9 MR. RASO: -- because they relate to
10 mitigation --

11 MR. PETROS: I'm sorry.

12 MR. RASO: -- and I think that's when
13 we'll -- we'll put those, as well as any others received
14 related to mitigation, in, on the 11th.

15 I believe Alex Schatz is -- is going to make
16 the initial presentation.

17 MR. SCHATZ: Very well.

18 Thank you, Commissioners, a pleasure to be
19 here again to talk about this very complex and
20 voluminous set of documentation for the Southern
21 Delivery Project. I am here tonight to speak to the
22 process -- the 1041 process insofar as a lot of the data
23 relates to the EIS that was produced per the Bureau of
24 Reclamation.

25 The FEIS was December -- on or about December

1 14th, as you recall, we last met on December 29th, that
2 provided only two weeks to review the documentation, the
3 Applicant doesn't directly work with the Bureau of
4 Reclamation that produced the FEIS, so I think at that
5 time there was some confusion about what the FEIS said,
6 how it relates to the 1041 conditions. I'm here tonight
7 not to try to comprehensively go through what you can
8 see is about four inches of documentations -- changes
9 we've flagged everywhere with sticky notes just for your
10 visual inspection -- there was a lot that changed
11 between the Draft EIS and Final EIS -- what I am going
12 to try to do tonight is just summarize that, summarize
13 it insofar, again, as it affects the 1041 and,
14 particularly, the outstanding issues, the issues that
15 are not resolved, not really come to landing yet in
16 terms of mitigation or findings pursuant to your 1041
17 criteria, sort of as a sampling and highlighting of
18 what's going on (indicating).

19 Next slide.

20 MR. SCHATZ: Determine what angle works here
21 for the remote.

22 The -- the first major addition to the -- and
23 the bullet -- the first major addition is the selection
24 of preferred alternative, that is in Chapter 2.7 of the
25 FEIS. It's expanded from a page or two to now being

1 quite a few -- close to 60, 70 pages. Many of the pages
2 are actually a summary table that compares various
3 attributes that were assessed for the FEIS.

4 As you see there, all alternatives would have
5 adverse environmental effects. That's the FEIS'
6 finding, that's been stated on the record before.

7 How was the preferred alternative selected?
8 By the FEIS' rationale, it had similar or fewer
9 environmental effects than other alternatives, and
10 particularly presents the lowest cost, which is closely
11 related to the fact that, in the estimation of the
12 Bureau, involves the lowest usage of energy.

13 But the methodology -- if you look at the
14 FEIS in that section, again it lays out the attributes,
15 it compares the seven alternatives and the no-impact
16 alternative, but it -- it really does not compute, it
17 doesn't present what would be called the "suitability
18 model", where you have explicit quantification and,
19 then, a weighted value given to different attributes
20 that are looked at. So it is really a -- a qualitative
21 way of figuring out what the preferred alternative is.

22 Not that we differ with that, not that we are
23 trying to replicate the EIS process, but, again, the
24 value of the EIS is limited because we have specific
25 criteria in Pueblo County 1041 Regulations that we need

1 to be accountable to.

2 And, again, on sort of the theme of quanti --
3 qualitative findings, the approach to mitigation taken
4 is a -- a watershed approach. Again, we don't
5 necessarily differ with that, but it is something that
6 you need to keep in mind as you look at this.

7 Next slide.

8 So, for example, one of the things that we
9 are dealing with, obviously, is the amount of flow that
10 is in rivers once flows are taken out and put into
11 municipal use. That is in this very extended Table 24,
12 as I -- I mentioned. Looking at average annual stream
13 flow, at a couple of data points on the Arkansas
14 River -- this is at basically the -- a point where flows
15 return to the Arkansas after they are taken out --
16 existing condition is 631 -- and you'll notice there I
17 give you a couple of alternatives to take a look at --
18 the preferred would take that down to 547 cfs, that is
19 a -- a delta of 84 cfs less that would be in the
20 Arkansas River on an average annual basis. That is, in
21 percentage terms, of 13 percent approximately.

22 And you'll see -- comparing it to the other
23 alternatives -- none of them that I put up there -- and,
24 again, there are seven alternatives that were looked at,
25 I -- I give you three preferred, downstream, intake and

1 the Highway 115, which is the active alternative to this
2 through Fremont County for comparison -- but, again,
3 this is the lowest of -- of those that you see up there.

4 For Fountain Creek where waters are
5 increasing, the amount of water is increasing existing
6 conditions a hundred 88 cfs -- and this is using FEIS
7 data -- and the preferred alternative is 253, that delta
8 is 65 cfs, or about 35 percent average annual stream
9 flow increase.

10 That number, by the way, the delta between
11 existing condition and the preferred alternative
12 proposed action, has been a moving target. We've heard
13 that number shift from 50 to 70 to even greater numbers,
14 and when you count in the return flow for exchanges
15 that -- releases for exchanges, that number increases
16 substantially, as you recall, that -- that number
17 approaches the 400 cfs, which is, obviously, a dramatic
18 increase in the base flow. None of that has really
19 changed in the FEIS.

20 So I -- I just note below that the condition
21 that we continue to find in the EIS, FEIS, as reported
22 in Staff Report, diminished flow on Arkansas River,
23 increased flow on the Fountain Creek, that's an obvious
24 consequence of doing this project, and I know that the
25 preferred alternative's not necessarily the least impact

1 from an overall flow perspective, so, obviously, some
2 other values, like lowest cost, lowest energy, came into
3 the -- the NEPA process.

4 And that put emphasis on different criteria.
5 For example, 1041, if you were doing an alternatives
6 analysis, could yield a different preference.

7 Next slide.

8 And, again, this is not new information, but,
9 again, the FEIS doesn't change it, and that needs to be
10 noted. The FEIS is not binding on Pueblo County's 1041
11 review, there is a distinct set of local regulations,
12 and, in fact, your County, in its code, expresses that
13 significant adverse environmental impacts that are
14 mitigated or compensated for. That is most succinctly
15 stated in your Criterion G, "Environmental impacts
16 related to the proposed activity will be identified and
17 will be mitigated or compensated for according to your
18 1041 Regs", which we are in the process of developing
19 mitigation presently.

20 The outcome of -- of the EIS process is --
21 what it is it -- it assumes that there will be impacts,
22 that's stated; and I just want to note that that
23 justifies the distinct review and the thorough review in
24 the 1041 process.

25 Reasonable impacts to facilitate this type of

1 project can and will happen, but, again, the purpose of
2 1041 review is to facilitate that with mitigation, and,
3 so -- next slide -- another major addition -- first
4 bullet -- the FEIS Chapter 5 discusses mitigation. The
5 Applicant states right up-front, and has stated before
6 for you, that they expect that -- substantial mitigation
7 to be required by the 1041 Permit.

8 And a note below that, the Bureau of
9 Reclamation, in its discussion in Chapter 5 of the FEIS,
10 discusses the broader coordination of the NEPA process
11 and the contracts with the Bureau and other permits such
12 as explicitly stated there, 1041 review.

13 Some of the things -- some of the important
14 things that will be -- again, according to FEIS Chapter
15 5 -- reached as conditions or mitigations with that
16 broader coordination in mind include active management,
17 flow management, ways to reduce erosion, sedimentation,
18 armoring of banks, other types of geomorphologic
19 controls. In fact, most topics -- most impacts are to
20 be coordinated with other agencies.

21 My note at the top is not any sort of
22 critique of the Bureau of Reclamation, that's the way
23 its regulations works. It waits, it is intended that
24 the 1041 Permit will issue, and they can work into the
25 EIS process.

1 Next slide.

2 Some examples of what is presently going on
3 with the Bureau of Reclamation and other agencies,
4 determining a relationship to some existing flow
5 management programs. The Upper Arkansas Valley has a
6 flow management program, what will be done to make this
7 project operate consistently with the FEIS.

8 Again, in the FEIS and DEIS it's assumed that
9 other permits will be in place to put checks and
10 balances and monitor the effects of the project. There
11 is some activity now to do monitoring of head pressure
12 at the joint-use manifold, and -- and some mitigation if
13 that becomes acceptably at risk.

14 There is currently a process to identify
15 water quality monitoring protocols. We were told by the
16 Applicant last time, you'll recall, that we would be
17 included in that process, and we are hoping to get that
18 settled.

19 Dredging on Fountain Creek is actively being
20 discussed, and you'll recall that's an Army Corps of
21 Engineers recommendation.

22 And, then, also of significance, enhance
23 angling and recreation opportunities on the Lower
24 Arkansas Reservoir.

25 All of those, and many, many more, in Chapter

1 5 of the FEIS discuss this mitigation condition.

2 Bureau of Reclamation, on its own, is moving
3 forward with a couple things. Just of note in Chapter
4 5, one is measures to regulate and monitor storage
5 capacity in Lake Pueblo, and also to monitor the
6 conditions of the Arkansas River Compact.

7 Next slide.

8 So I put up here water quality not as, again,
9 the only issue, it's a representative issue of something
10 that is unresolved as a technical part of this process.

11 The FEIS discusses nonattainment for
12 selenium, sulfates or salinity and E. coli. Essentially
13 the monitor -- or the mitigation for that in the FEIS is
14 a monitoring program. Again, we're -- we're certainly
15 not suggesting that that is deficient, it -- it may not
16 meet the 1041 standard, but that proposal is, again, one
17 we're interested in participating in.

18 But -- next bullet point -- even within the
19 FEIS there is some latitude of disagreement. For
20 example, the EPA commented at length on the water
21 quality issue and noted -- as you can read there --
22 "that any measurable increased pollutant loading to an
23 impaired water body is a potentially significant impact
24 with associated cleanup requirements and costs". If you
25 look at your 1041 criteria, that actually is fairly

1 close to what is required in -- in that review, and our
2 review, presently.

3 So the EPA's concerns echo some of the
4 concerns of the 1041 process.

5 The EPA recommends mitigation of
6 nonattainment type water quality constituents, which is
7 to say that monitoring alone may not be sufficient for
8 even what they estimate the EIS process should require.

9 And, then, another federal agency involved,
10 the U.S. Army Corps of Engineers, stated prior -- and,
11 again, this is in the DEIS process, not the FEIS -- but
12 their comment to the draft stated that the proposed
13 action is not substantiated in the DEIS as the least
14 environmentally-damaging, practical alternative. So
15 they will be looking presently through their 404 process
16 to do some substantial mitigation to bring this in line
17 with the standards that they are held to.

18 Next slide.

19 So what is unresolved in terms of 1041? Did
20 the FEIS address everything? No. Again, the
21 nonattainment components of water quality are largely
22 chemicals and -- and naturally-occurring substances,
23 contaminants, nutrients are enhanced or -- or
24 concentrated by wastewater flow through urban use.

25 Flow characteristics, such as depth, rate and

1 pulses of water, into the Fountain Creek system, for
2 example, are not treated as -- in the FEIS water quality
3 recommendations.

4 And emerging contaminants. Again, Mercury
5 was mentioned, but other industrial metals are of
6 concern in the watershed; spills and untreated waste and
7 sediment for reasons that I'll talk about.

8 Next bullet.

9 And, finally, total loading issues. Whether
10 you dilute pollutants or not, whether you look at the
11 standards for the creek, there is no doubt that
12 growth -- urban growth and even the base flow conditions
13 here will lead to greater total loading of, for
14 example, E. coli or sediment as contaminants in the
15 Fountain Creek. So, generally speaking, dilution on
16 Fountain Creek is due to flows that are redirected; and
17 in points on the Arkansas, for example, just below the
18 dam, there's a greater concentration of certain
19 contaminants.

20 So -- next bullet -- at this point we can
21 definitely say that we recommend continued involvement
22 in the establishment of sampling protocols, and, again,
23 of interest is what can actually physically mitigate
24 some of these conditions when the project comes on line.

25 Another sample of -- topic -- next line --

1 geomorphology. There was quite a bit of confusion on
2 the 29th about what the FEIS said about this. Here's a
3 quote -- and I'm not going to read it all, it will be in
4 the record and -- and it would be slow here -- but the
5 final sentence is really pertinent, "An increased stream
6 flow has exacerbated erosion in the upper portions of
7 Fountain Creek and deposition in the lower portions of
8 the creek." The FEIS did not change the fundamental
9 finding in the fundamental phenomenon that's occurring
10 on Fountain Creek, which is an upstream degradation and
11 a downstream aggradation, or, put in more lay terms,
12 moderate sedimentation downstream of Williams Creek,
13 that is a base flow condition, and, of course, it's
14 exacerbated in peak flow conditions.

15 So under all conditions in Fountain Creek
16 there is more sediment potentially to be deposited.
17 That presents a problem for a 1041 and -- and Pueblo
18 County in general, for example, because FEMA is
19 currently looking at certification of the levees through
20 the city of Pueblo, and they are affected by sediment;
21 the carriage capacity of -- of flood and base flow is
22 affected by sediment that is reducing the capacity of
23 the channel.

24 Next slide.

25 And, again, more water in the creek -- in

1 Fountain Creek means more downstream sediment transport.
2 Again, the FEIS has not changed that finding. The
3 cumulative finding -- which was not what was addressed
4 by the Applicant last time -- is that there would be
5 some hundred 60 tons per day or 26 tons per day, but
6 something in that order or magnitude, that is
7 newly-deposited in the Fountain Creek due to the
8 project. Again, that order of magnitude, around a
9 hundred tons per day, but even less, about -- is dumping
10 a coffee table in the -- the creek every day.
11 Obviously, it's not all occurring in one place like
12 that. The analogy that the Applicant presented
13 initially was the sheet of paper, but it's not deposited
14 like that either. There's no finding in the FEIS as to
15 where exactly sediment is being deposited, but clearly
16 it is downstream and -- and, quite likely, a substantial
17 amount of it is in Pueblo County.

18 So that continues to be a significant
19 concern, and if we had to figure out exactly where
20 and -- and how much were -- were deposited -- or to be
21 deposited that would be a very lengthy study, obviously
22 we're trying to avoid that by coming up with some
23 reasonable mitigation and conditions for one dredging
24 proposal. But the trend is clear.

25 Next slide.

1 In addition to sedimentation, the
2 geomorphology criteria in the 1041 Regulations talk
3 about flood hazard, that's a peak flow type condition,
4 and, as you'll recall, on the 29th we discussed what is
5 the regulatory condition, what has the Stormwater
6 Enterprise accomplished, and how can this basic
7 assumption of the FEIS be true. The assumption is that
8 bas -- that hydrologic conditions -- a hydrograph peak
9 flow -- the amount of water that is moving through when
10 you have a flood type stage on the creek -- is going to
11 be the same in the future as it is in 2006, so you're --
12 you can have more growth in Colorado Springs, but it
13 will not accelerate the water and flush it down and lead
14 to higher levels of flooding. How is that true? Well,
15 the assumption made in the FEIS is that first quote,
16 that "the Stormwater Enterprise will require future peak
17 flows", blah, blah, blah, "through main and current peak
18 flow levels".

19 In fact, the Applicant has clarified that not
20 only is it the Stormwater Enterprise that achieves this,
21 but it's an existing regulatory structure in El Paso
22 County and Colorado Springs, and we're certainly open to
23 that; but the FEIS has never explicitly gone into why
24 this assumption is true. In fact, it's made it somewhat
25 difficult to figure out what is going on because the

1 Stormwater Enterprise stands in for all these regulatory
2 controls that are supposedly controlling peak flow
3 levels.

4 You know, the effects of the Stormwater
5 Enterprise are reasonably foreseeable according to the
6 FEIS, and that is perhaps true, but the assurance that's
7 needed to make sure that urban growth upstream does not
8 lead to greater flood hazards is something that I think
9 the 1041 Regulations are not looking at what's
10 potentially reasonably foreseeable, what's going to
11 actually occur. So the commitment that you actually see
12 on the record is aspirational, to the extent
13 practicable, Colorado Springs' new Stormwater Enterprise
14 strives to match future and historical hydrographs in
15 the city -- that's the Applicant's statement in a letter
16 on the record -- but our finding on -- in Staff
17 Report -- and it continues to this day, similar to
18 something the State of Kansas observed -- and you can
19 read the quote there -- but it is that this -- this
20 control of the peak flow is based on modeling assumption
21 and not analysis. We don't explicitly see what's go --
22 what's being controlled, what's being detained upstream,
23 what kind of water quality features are included. And,
24 again, we're open to that, but we haven't seen it.

25 So the concerns are catastrophic events,

1 major storm events, you've experienced damage to
2 structures in Pueblo County, we discussed that earlier
3 on the record, that the -- the concerns are nothing new.

4 Nonpoint source runoff and water quality are
5 impacted when flood conditions essentially flush out
6 pollutants that are otherwise sitting there on -- on dry
7 ground, and -- and for most enforcement of these assumed
8 best practices, these assumed standards for improvements
9 upstream, urban growth, we need to understand why it's
10 occurring. So at this point we believe that a condition
11 that would essentially enumerate and -- and enforce
12 those assumptions is appropriate, and we're asking the
13 Applicant -- and we believe the Applicant is willing to
14 provide that enumeration -- of -- of how the regulatory
15 structure, in addition to the Stormwater Enterprise,
16 will lead to that enforcement, create an enforceable
17 situation.

18 The next bullet.

19 So that there is really no change in our
20 conclusions based on the FEIS. Again, geomorphology,
21 that condition, including both sedimentation and
22 flooding hazards, is a concern; and, again, I just
23 mentioned that the dredging program, as a potential
24 condition, is very key to helping address some of the
25 obvious concerns there.

1 Next slide.

2 Another area of concern that was expressed in
3 the Staff Report, addressed in the FEIS, recreational
4 impacts. The FEIS itself finds that there will be a
5 negative impact in recreation-related economy in the
6 County. I cannot speak to the methodology that was used
7 to reach this conclusion, but that is on the Applicant's
8 own record in the FEIS.

9 And next bullet.

10 Some of the concerns we had enumerated before
11 in the findings of the FEIS, Lake Pueblo would be
12 affected by the drawdowns. The vertical elevation of
13 water affects access to boat slips, though they are
14 apparently not impacted by any condition here because
15 the lower elevation of only 10 percent would not lead
16 those boat slips to go dry. Horizontally, however, the
17 FEIS finds that 7 percent of the surface area as a -- an
18 annual average -- 7 percent of the surface area of Lake
19 Pueblo would be reduced, that, obviously, has an impact
20 on the aesthetics, the ability of people who park in the
21 parking lot here to get to the water, et cetera
22 (indicating). So that is a concern that continues,
23 despite the findings of the FEIS; in fact, because of
24 the findings of the FEIS.

25 Next bullet.

1 Then the Arkansas River below the dam. As I
2 said, more flow going through the pipe leads to less
3 flow going over the dam or through the dam by about 13
4 percent -- according to the FEIS -- relative to existing
5 conditions, and based on the sampling time for historic
6 flows, about 25 percent, so somewhere in there. That's,
7 obviously, very substantial, and there is quite a few
8 recreational resources in that area west of the downtown
9 in Pueblo and -- and east of the dam.

10 And, then, down river there are a number of
11 reservoirs where conditions for fish and -- and just
12 generally nutrient and -- and the odor and so forth
13 related to that are a concern.

14 The next bullet.

15 The Applicant has talked about, and I just
16 want to note for the record, that agriculture does have
17 the same sort of impacts to the reservoir, on the flows
18 through the Arkansas, through Pueblo, there is no doubt
19 about that, but the FEIS also clearly enumerates those
20 impacts I have summarized for you above.

21 Next slide.

22 The general issue in the FEIS is the -- some
23 of the project assumptions -- pipeline capacity being a
24 key one -- for several 1041 issues. You will recall
25 last time I spoke to you, or at least spoke in any sort

1 of structured way, I talked about Criteria 26, which is
2 concern with excess capacity. While the project has a
3 78 million gallon per day capacity -- that's something
4 that the Applicant is willing to stipulate to -- the
5 yie -- the amount of water that can be moved through the
6 pipe, if that capacity is used, is about 88,000
7 acre-feet. 88,000 acre-feet -- next bullet point -- is
8 more than the Applicant's water rights that they
9 submitted for the record would actually deliver to -- to
10 El Paso County and -- and the participants, so there's a
11 margin there of about 28,000 acre-feet, again, as an
12 average, that might be available to carry other flows;
13 and, in fact, other people are interested and seem to be
14 paying attention.

15 For example, we'll be getting a letter to you
16 for the record from the Lower Arkansas Valley Super
17 Ditch, they've expressed an interest in potentially
18 having their water carried through SDS, that in concept
19 at this point, but, nonetheless, demonstrating that this
20 pipeline could be used to deliver more water than was
21 used for -- next bullet point -- the assumptions of the
22 FEIS.

23 Deliveries of water to nonparticipants have
24 not been modeled, that is explicitly covered several
25 places in the FEIS. For example, talking about

1 delivering water to the Monument/Tri-Lakes area. The
2 FEIS said expanding this proposed delivery project to
3 incorporate that area is outside the scope of the FEIS.

4 Pikes Peak Regional Water Authority can --
5 put a letter in the record for the FEIS that basically
6 said, you know, "We're interested in this capacity in
7 deliveries, and being at least acknowledged."

8 And the Bureau, in its FEIS, had the same
9 essentially rebuke, to say that the scope of the F -- of
10 the EIS did not include that kind of water delivery.

11 What's the effect on 1041?

12 The next bullet.

13 And I want to -- just right here I want to
14 say that Ray Petros has done a pretty good memo -- in
15 fact, very good -- I'm not one to judge water
16 attorneys -- but he will be submitting for the record a
17 memo that summarizes in some more detail some of these
18 quantitative issues with the pipeline capacity.

19 What are the concerns with third-party
20 deliveries? Well, new exchanges reduce flows through
21 Pueblo County on the Arkansas River. Again, that's an
22 effect I've already talked about. It becomes even more
23 of an effect potentially if you have more water moving.

24 Greater total load, urban wastewater
25 treatment type of contaminants and, also, other nonpoint

1 source as water is associated with land u -- urb --
2 urbanization and land use changes.

3 Then downstream there is the risk of dry-up.
4 With conversion to municipal use based on the 28,000
5 acre-foot number that's estimated at about 15,000 acres
6 of potential dry-up. It's not a guarantee that that's
7 going to happen, again it's a potential impact that has
8 not necessarily been studied at all in the FEIS or on
9 the 1041 record.

10 Next slide.

11 Some other issues just, you know, for the
12 record tonight, the representative issues. Again, these
13 aren't even all of them, but I wanted to note that we
14 will continue to look into plants and wildlife, the
15 limitations of the FEIS and -- and characterizing what's
16 out there. There are some limitations in the access at
17 the time of year that those studies occurred, and --
18 and, also, the way that the impact is characterized --
19 there is a -- a record from Trout Unlimited, I
20 believe -- but a number of commentators talking about --
21 in fact, the Division of Wildlife, I believe, had this
22 issue, "Minor adverse effect for fisheries is 25 percent
23 loss of fish, when it's a species of concern is that
24 acceptable?"

25 And that's a question mark for you, and your

1 1041 criteria will allow you to look at that and come up
2 with a standard that's appropriate to your concerns of
3 Pueblo County and the impacts to Pueblo County.

4 Next bullet.

5 Talked quite a bit the last time I was before
6 you about wastewater. At this point the Applicant has
7 discussed investing in some contaminant measures for
8 SDS-related waste flows through their collection system,
9 that's in progress at this point, the issue's not
10 completely resolved.

11 Next bullet.

12 Adaptive management. I just want to mention
13 here is an issue where we don't know exactly what's
14 going to happen in the future. Other conditions can
15 affect the very concerns -- water quality,
16 sedimentation -- that -- that are part of the 1041
17 review process; and, again, the FEIS said that Pueblo
18 County will be part of the adaptive management process.
19 We hope that is a vigorous discussion and that we can
20 come back with a condition that really gives Pueblo
21 County some sort of meaningful measure as well as a
22 relationship to the continued management of the
23 pipeline.

24 Then -- next -- Paul will discuss quite a few
25 other topical areas with you when he discusses the

1 mitigation measures.

2 Next slide.

3 Just to conclude, I have not been able,
4 obviously, to go over all five inches thick of the FEIS.
5 What we're trying to do tonight is say the FEIS is a
6 substantial step forward, it defines the preferred
7 alternative, it defines the mitigation measures quite a
8 bit more, but it is not necessarily inclusive of all
9 1041 issues, it doesn't resolve 1041 issues necessarily
10 either.

11 You know, that's consistent with what the
12 Applicant stated, the Applicant has expected the 1041
13 process to be meaningful, in at least their oral
14 delivery to you. So let's clear up the -- the
15 misunderstandings from the 29th of December and say that
16 we're moving forward with mitigation, again, Paul will
17 talk with you quite a bit about that.

18 Conservation is an issue that's treated in
19 the FEIS sort of lightly. We believe that there's going
20 to be some conditions on that.

21 And, then, I just want to note another
22 question for a representative here, they talked about
23 their record concerning spills, but is that sufficient
24 to meet the Pueblo 1041 criteria or do you want them to
25 really follow through with their suggestion of -- of

1 doing a little bit more on their collection -- waste
2 collection system infrastructure?

3 Final bullet point.

4 1041 criteria do require us to continue to do
5 some analysis and, hopefully, resolve this through
6 mitigation, to which Paul will address you.

7 Thank you.

8 MR. RASO: Mr. Schatz, do you have a -- a
9 pow -- a disk of this powerpoint presentation?

10 MR. SCHATZ: Yes.

11 MR. RASO: Are you done with it? Can we get
12 it into the record, or do you -- or you have further use
13 for it tonight?

14 MR. SCHATZ: We do have that, and I have a
15 hard copy for you as well, I'll bring it right up.

16 MR. RASO: All right, if I could have that
17 introduced and marked as Exhibit 44.

18 MR. SCHATZ: Sure.

19 (Exhibit 44 was marked for identification.)

20 MR. RASO: Thank you.

21 MR. SCHATZ: Thank you.

22 MR. RASO: Mr. Petros, Mr. Gesso?

23 MR. PETROS: Well, just very briefly, I would
24 like to make sure we have in the record my memo that was
25 addressed to Banks and Gesso, which basically summarizes

1 the hydrologic data from the FEIS tables concerning some
2 of the numbers that Mr. Schatz used concerning lake
3 level declines, project parameters, flows through
4 Pueblo, decreases and increases in -- in Fountain Creek.

5 Mr. Raso, I would like to --

6 MR. RASO: Yes. That's the memo dated
7 January 20th, 2009?

8 MR. PETROS: Well -- that -- that's correct.

9 MR. RASO: We'll mark that as Exhibit 45.

10 (Exhibit 45 was marked for identification.)

11 MR. PETROS: And just, you know, very
12 briefly, the SDS Project is a huge and grand project,
13 the FEIS reports that there will be 86,000 acre-feet of
14 water that would be exchanged through Pueblo into Pueblo
15 Reservoir on the average, and, on the average, about
16 60,000 acre-feet of that would go through the pipeline,
17 24,000 would be stored in Pueblo Reservoir and exchanged
18 to upstream reservoirs. We forget that that's part of
19 the SDS Project as well.

20 And, then, finally, there's an -- a trade
21 component of about 5,000 acre-feet over and above the
22 24,000 that would be traded -- Pueblo Reservoir water
23 would be traded for water stored -- Fry-Ark water stored
24 in Turquoise or -- or Twin Lakes.

25 So we are talking a large project. Compare

1 this to the total yield of the Fry-Ark Project, which is
2 about 73,000 acre-feet, so we are talking about a very
3 large project, and we need to be, obviously, concerned
4 about its -- its impacts.

5 The -- the -- the other thing that has come
6 up as a result of the F -- FEIS, Pueblo County, along
7 with other commenters, had -- had suggested on the DEIS
8 that we lack information about just the operations of
9 the reservoir, specifically whether it be limited to
10 existing water rights, whether it be limited to existing
11 participants, whether enlargement of the reservoir is --
12 is needed. The D -- the FEIS is very clear in saying
13 that the in -- that the SDS Project, as studied, is
14 without an enlargement of Pueblo Reservoir, it involves
15 if and when storage which is available; about 70
16 percent -- 71 percent of the time would that storage be
17 available, the other time it wouldn't be available.
18 That was put into the yield analysis, okay, and --
19 and -- and how it is. So, obviously, if the reservoir
20 were enlarged the yield of the project could in --
21 in -- increase.

22 The user -- I think Alex pointed out some
23 specific references where comments were made about
24 supplying water to northern El Paso County for NEPA
25 analysis, they said additional NEPA analysis would be

1 required if the participants were expanded in -- in that
2 form.

3 And the same way with new water rights, if
4 new water rights were acquired that would require
5 further NEPA analysis and amendment of the existing
6 record.

7 So that's how the Reclamation came down on
8 those three project parameters, and in that regard I
9 would like to submit a -- just some excerpts of some of
10 the pages from the FEIS which address those three topics
11 where -- where they specifically say it doesn't include
12 enlargement, it doesn't involve other than existing
13 water rights, and it involves deliveries of water to the
14 participants' communities.

15 MR. RASO: Commissioners, we would ask that
16 this be marked as Exhibit 46 (indicating). These are
17 selected portions of the FEIS which Mr. Petros has asked
18 to be made a part of the record, and which are the
19 subject of his testimony.

20 COMMISSIONER CHOSTNER: So ordered.

21 (Exhibit 46 was marked for identification.)

22 MR. PETROS: With -- with that I think that
23 leads into Mr. Bank's talk about where we are as far as
24 mitigation terms and -- and conditions, and some of the
25 open issues.

1 MR. BANKS: Good evening, Commissioners, I'm
2 Paul Banks. The report that I'm going to give you
3 tonight -- there's a hard copy available and, as Mr.
4 Raso had mentioned, it's also on the website -- contains
5 Staff's recommended conditions if the Board decides to
6 approve the 1041 application. The -- the conditions are
7 accompanied by details -- mitigation details which would
8 also be required.

9 Commissioners, this is a parcel -- partial
10 list of recommended conditions, and the rest will come
11 at a later date. The general categories of con -- of
12 terms and conditions that will come subsequently have
13 been discussed by Ray and Alex, and they are generally
14 the "use of new water rights, the carriage of water to
15 entities that are not currently the project
16 participants, Lake Pueblo water level management,
17 monetary mitigation for impacts to Fountain Creek,
18 issues related to potential enlargement of Lake Pueblo,
19 issues related to Colorado Springs Stormwater Enterprise
20 and wastewater collection systems, issues related to the
21 use of the joint-use manifold and the North Outlet
22 Works, management of river flows in the Arkansas River
23 below the dam, of labor practices as discussed and
24 mentioned by the Board of County Commissioners, and
25 water quality monitoring". These are complicated and

1 important issues, and we must take the time to cover
2 them and do the analysis.

3 Could I have the first -- oh, I'm -- I have
4 this (indicating). I will probably mess this up.

5 These are Staff's recommended conditions of
6 approval.

7 And E-1 -- E identifier is environmental -- E
8 is for environmental and C is for construction, so just
9 for -- a numbering system for reference.

10 The "Application shall reduce sediment
11 transport down Fountain Creek, improve water quality by
12 reducing concentrations of nutrients, bacteria, and
13 metals, and reduce flood threat downstream by providing
14 enhanced overbank flood storage by construction of the
15 Clear Springs Ranch Project".

16 That project would involve the redirection of
17 1,925 feet of Fountain Creek and the creation of 14
18 acres of new wetlands. That construction is very
19 consistent with the stable channel objectives of the
20 Corp of Engineers, as mentioned in their watershed study
21 in the Corridor Master Plan.

22 Construction Mitigation number 1, the
23 "Applicant shall provide safe work sites for the
24 residents of Pueblo County."

25 And I might add here, too, residents and

1 others. Obviously, if someone has a guest from outside
2 of town, you want safe work sites as well.

3 This involves temporary security fences,
4 daily inspection of the open trenches and excavations,
5 the shoring or benching of excavations, signage or
6 lighting to alert the public of potential construction
7 hazards, and the designation of a qualified and
8 experienced safety representative at the work site.

9 The "Applicant shall minimize adverse light
10 impacts to Pueblo County residents during night time
11 hours." This involved several things -- and I'm
12 summarizing the details, there are more -- notification
13 of property owners within 500 feet of the job site 48
14 hours prior to any night work, except in the case of
15 emergencies.

16 The lighting will be designed to prevent
17 glare on adjacent properties, light bulbs and light
18 sources shall be shielded so that they do not directly
19 shine on public roadways or residences; and the light
20 standards, the light poles, shall not exceed 24 feet in
21 height (indicating).

22 The "Applicant shall maintain construction
23 sites and equipment in a safe and secure manner for the
24 protection of Pueblo County residents." This involves
25 closing the ends of -- the open ends of installed

1 pipelines during nonworking hours. You got a 5-foot
2 diameter pipe, they're going to close the end. They're
3 going to close the end during the nonconstruction hours.

4 Providing barricades and light as necessary
5 to prevent unauthorized entry to the work sites, locking
6 or otherwise disabling construction equipment; storing
7 of materials and equipment in secure areas, proper
8 storage of things like paints, solvents, fuels.

9 Lock controlled access points with strict
10 policies on who has the keys to those locked access
11 points.

12 And with respect to traffic control, no
13 residents or business will be cut off from vehicular
14 traffic for a period to exceed four hours unless special
15 arrangements have been made and alternative access has
16 been provided.

17 And let me point out on that particular one,
18 the Public Works -- your Public Works Department is
19 requiring a traffic control plan, and any road closures
20 or prevention of access to people will be controlled by
21 your Public Works Department, and I can assure you they
22 will look very closely at closing roads or temporarily
23 preventing access to businesses or properties.

24 This also involves the sweeping of roadways,
25 streets and walkways.

1 Chain-link fence around the work sites,
2 barbed wire fences in livestock areas. The material of
3 the fencing shall be agreed upon and discussed with the
4 landowner.

5 And, lastly, "24/7 security services,
6 including mobile patrols, lighting and video
7 surveillance".

8 "Applicant shall prevent unauthorized access
9 to properties." This involves working with the property
10 owners prior to mobilizing to the -- to work at -- on a
11 specific area -- in a specific area, establishing
12 mutually-agreeable conditions of access. The landowner
13 and the -- and the Applicant will establish
14 mutually-agreeable conditions of access.

15 Again, strict control on keys -- access keys
16 to gates -- to locked gates, and the designation of a
17 Safe -- Health and Safety Officer.

18 "Applicant shall determine the condition of
19 Pueblo County residents' existing property so that it
20 can be restored to preconstruction condition or better."
21 This involves examining the land, drainage, vegetation
22 and structures prior to construction. The structure
23 owner will be invited to attend the -- the assessment.

24 The condition of the land, fences and
25 buildings, and so forth, will be documented in writing

1 and by photographs and audio video recordings, and such
2 documentation will be provided to the property owner for
3 review and acceptance. This is basically to document
4 the condition before construction and determine if any
5 damage has been caused by the construction.

6 "Applicant shall limit the work hours to
7 minimize disturbance to Pueblo County residents." This
8 involves performing the work from between 7 a.m. and 6
9 p.m. Monday through Friday. Work -- any work outside of
10 these hours would be restricted to maintenance of
11 traffic, safety and construction controls. Landowners,
12 residents within 500 feet of the affected portion of the
13 work site would be notified 48 hours in advance if work
14 outside of these hours had to be done for one of those
15 reasons stated, so there's a -- there's advance notice
16 if the work goes beyond Monday through Friday, 7 a.m. to
17 6 p.m.

18 "Applicant shall obtain all applicable
19 permits", and there's quite a list of them, Bureau of
20 Reclamation permit, U.S. Fish and Wildlife permits,
21 Corps of Engineer permits, CDOT permits, Colorado
22 Department of Public Health and Environment permitting
23 authorities, the railroads -- Union-Pacific, Burlington
24 Northern -- county permits, City of Pueblo permits.

25 So there's a long list of required permits

1 that they will obtain, and provide proof that they have
2 obtained them to the County within 60 days of getting
3 them.

4 "Dewatering. Applicant shall minimize
5 dewatering impacts on Pueblo County properties and water
6 courses." This will be accomplished by obtaining a
7 construction dewatering permit from the Colorado
8 Department of Public Health and Environment.

9 The creation of a water quality -- a water
10 control plan to control water during the course of
11 construction, including weekends and holidays; and
12 "Design and operate dewatering systems to prevent the
13 loss of ground as water is removed, to avoid inducing
14 settlement or damage to existing facilities".

15 If the -- if the trench had to be dewatered,
16 the water would go into a nearby drainageway.

17 "Site restoration. Applicant shall provide
18 Pueblo County residents with replacement vegetation and
19 property to match preconstruction conditions or better",
20 including grading "disturbed areas to preconstruction
21 contours so preconstruction drainage paths are
22 reestablished", the reclamation of disturbed land, a
23 preconstruction evaluation of existing vegetation along
24 the pipeline right-of-way to determine the species that
25 were present, the vegetative cover that is replaced will

1 be of the same seasonal variety native to the area.

2 In those areas of disturbed vegetation where
3 seeds are not commercially available, seeds will be
4 collected on site to be used in revegetation, including
5 rare plants identified in the FEIS, the Colorado
6 National Heritage Program, or by other qualified
7 investigators.

8 The Applicant will -- will use soil
9 stabilizing practices, the revegetated area will be not
10 less than 90 percent of the preconstruction vegetation.

11 They will restore all roads and driveways;
12 restore damaged or injured properties, including
13 outbuildings; restore or replace fences and gates; and
14 also post, for the revegetation purposes, a -- a
15 security bond for \$2,000 per acre, good for a period of
16 two years, to insure that the revegetation has been
17 established.

18 "App -- Applicant shall keep Pueblo County
19 residents informed of the SDS project and the upcoming
20 construction activities", including the designation of a
21 Public Communications Officer, the establishment of a
22 local telephone number or hotline to be called; a
23 development of a website that contains information,
24 construction scheduling, things like that; mailers and
25 door hangers for the residents within 500 feet with

1 advanced notice of construction activities.

2 Concerning dust, the "Applicant shall
3 minimize fugitive dust impacts to County residents",
4 this includes watering of unpaved roads, the limitation
5 of vehicle speeds to 30 miles an hour or less on the
6 construction sites, covering excavated material with
7 synthetic or natural cover, installing vehicle tracking
8 control at access points, sweeping of paved roads, and
9 monitoring -- dust monitoring -- a minimum of once-a-day
10 monitoring dust along the construction site with action
11 levels established such that if they are exceeded
12 techniques must be implemented to contain fugitive dust.

13 Construction equipment will meet the
14 Colorado's capaci -- or opacity standards, and there
15 will be no burning of waste materials or rubbish or
16 debris in the construction site.

17 "Applicant shall maintain soil within
18 construction zone." This is the details of which are to
19 obtain a permit for Drainage and Erosion Control, create
20 and implement a Stormwater Management Plan and restore
21 lands outside the work area that have been impacted by
22 sediment. Some dirt washes out of the construction
23 area, this applies to it, and they'll restore it
24 (indicating).

25 The "Applicant shall perform pre-mobilization

1 readiness reviews prior to Applicant's contractors
2 beginning on-site construction activities." This
3 involves the Project Execution Plan, a Pre-Mobilization
4 Readiness Review to determine the readiness to proceed.
5 Pueblo County will be invited to participate in those
6 readiness reviews, and they will include safety and
7 emergency preparedness procedures, quality assurance and
8 quality control plans, having all required permits; site
9 security, communications, agency approvals, and the
10 verification that they have the right to use the land
11 that they're doing the construction project on.

12 So all those things would be in this
13 Pre-Mobilization Readiness Review.

14 Concerning Traffic Control, they "shall
15 provide safe vehicular" -- "Applicant shall provide safe
16 vehicular and pedestrian traffic" per the development --
17 development of a Traffic Control Plan. And, again, I
18 previously mentioned this would be reviewed and approved
19 by your Public Works Department.

20 The plan would include a location of maps --
21 drawings of the project location showing phases of the
22 project, speed limits and traffic control measures to be
23 employed by the project, as well as a Haul Route Plan
24 reviewed and approved by your Public Works Department.

25 "Applicant shall control impacts to native

1 endangered and threatened flora and fauna." This is
2 accomplished, of course, with the procedures of the
3 Final Environmental Impact Statement, as well as working
4 with and submitting a wildlife mitigation plan to the
5 Colorado Division of Wildlife.

6 "Applicant shall -- shall control spread of
7 noxious weeds resulting from project construction."

8 This is going to include locating existing weeds along
9 the -- that would be disturbed by construction,
10 implementing a weed eradication program within the
11 project limits.

12 Also, the major equipment would be cleaned by
13 high-pressure air or water spray before being delivered
14 to the project. A lot of weed seeds come in on
15 vehicles, get tracked in.

16 The "use of weed free seed, mulch and borrow
17 material", the "use of 100 percent certified weed
18 free -- weed free seed", and -- thank you -- and
19 "disturbed areas would be re-seeded as soon as
20 practicable after the disturbance".

21 "Applicant shall ensure that hazardous wastes
22 are appropriately managed." These are anticipated to be
23 in very small volumes, however, the regulations for
24 handling, storage and transportation have to be
25 followed; includes things like paints and solvents and

1 fuels. And there will be the development and
2 implementation of a Health, Safety and Environmental
3 plan prior to mobilizing on this site.

4 "Applicant shall, where practical, design SDS
5 facilities to be sustainable or 'green'." This is a
6 1041 requirement, and this can be either accomplished
7 through the balance of cut and fill materials, by using
8 site and building designs to promote energy and resource
9 conservation, and by using high-efficiency motors.

10 The "Applicant shall, where practicable, use
11 sustainable -- sustainable construction practices."
12 This, again, could be through a materials handling plan
13 including recycling and reuse, minimize permanent
14 disposal of such items as motor oil, waste paper, so
15 forth; the use of a minimum of 10 percent biodiesel and
16 the purchase of goods locally where practical.

17 The "Applicant shall restore ground and
18 surface water supplies to pre-construction conditions."
19 This is accomplished by restoring disturbed surfaces to
20 preconstruction contours as defined by surveying --
21 aerial surveying and mapping, performing preconstruction
22 hydrologic investigations on properties that have active
23 springs along the pipeline route, and design and
24 construct the pipeline to prevent injury to the springs.

25 "Protection of Livestock. Applicant shall

1 protect livestock on lands crossed by the project during
2 construction." This will be accomplished by working
3 jointly with the landowners, with -- and the livestock
4 owners to determine where the grazing areas, watering
5 points and livestock pathways to food and water are;
6 provide access to the livestock throughout the farm
7 area, provide alternative accessible water sources;
8 maintain existing fences, and keep gates closed and
9 secure.

10 Also, temporarily relocating livestock away
11 from the construction area if requested by the livestock
12 owner. So move the -- move the cattle or horses
13 temporarily away from the construction area.

14 "Applicant shall not begin construction at
15 Pueblo Dam until the Bureau of Reclamation has reviewed
16 and accepted the construction plans, including review of
17 dam safety of the mod -- modifications to the North
18 Outlet Works." And they will provide the County with
19 documentation of the same.

20 Architecture. "Applicant shall allow Pueblo
21 County to appoint a representative who will participate
22 in the final selection of the architecture for the
23 Juniper Pump Station along with and in conjunction with
24 Colorado State Parks and the Bureau of Reclamation."

25 "Applicant shall execute the Programmatic

1 Agreement" that's contained in the EIS concerning the
2 protection of cultural resources and comply with its
3 provisions, and also provide a copy of that Programmatic
4 Agreement to the county government.

5 Concerning Electricity, the "Applicant shall
6 agree that construction of a new substation and
7 transmission line to the Juniper Pump Station shall
8 require approval by Pueblo County of a Use By Review
9 Permit Application as specified in the Public Use
10 District (S-1) zoning regulations, which will not be
11 unreasonably withheld by Pueblo County."

12 "Applicant shall secure land necessary for
13 construction of the project in a fair and equitable
14 manner." This involves the treatment of private
15 property owners fairly, and the commitment to use of
16 eminent domain only as a last resort; offer to
17 compensate landowners to have their own appraisal done
18 should they disagree with the Applicant's appraisal;
19 reimburse landowners for relocation costs, title work
20 and closing costs; and, finally, providing proof to
21 Pueblo County that they have secured the necessary
22 rights to construct the project prior to starting
23 construction in any given area.

24 "Operational Practices. Applicant shall
25 limit the maximum release rate from the Williams Creek

1 Reservoir to 300 cubic feet per second." This is
2 consistent with documentation contained in the EIS.

3 "Pipeline Drainage. Applicant shall limit
4 the release rate of drains from the pipeline to a
5 drainageway to the equivalent of less than a 2-year
6 storm event in that drainageway, except in the case of
7 emergency." If they have to drain the pipe and drain it
8 into a -- one of your -- one of our drainageways,
9 that -- that discharge will be equivalent of a two-year
10 storm event.

11 Concerning Enforcement Practices. The
12 "Applicant shall monitor and report on compliance with
13 the conditions of the 1041 permit." We are recommending
14 a quarterly report during project construction to be
15 delivered to Pueblo County that will provide a summary
16 of activities relating to compliance with the conditions
17 of the 1041 Permit if approved, this could include the
18 Safety Incident Log, Citizen Call Log, description of
19 mitigation of restoration activities, list of
20 noncompliance by the contractors, a schedule and key
21 milestones met and forecast for the future.

22 We also recommend an annual report after
23 pumping starts. So that first part is quarterly during
24 construction, the three-year construction period, when
25 that's done the annual report of compliance with the

1 terms and conditions of the permit if approved. And
2 that annual report could include things such as, but not
3 be limited to, maximum daily flows, exchange rates from
4 the reservoir, water quality monitoring, sed --
5 sediment -- sediment monitoring, et cetera.

6 Also in your report is a document from your
7 Public Works Department listing conditions of
8 mitigations concerning the use of county roads, and the
9 repair and maintenance on those roads when the work is
10 done, and that includes -- and I have just kind of
11 summarized up on the screen what that includes -- is
12 obtaining an excavation permit, an access permit,
13 submittal for review and approval of traffic control
14 plan, staging area plan for areas that would stage
15 equipment and pipes and supplies and so forth, a haul
16 route plan which would designate and restrict the haul
17 route to certain roadways; maintenance and repair of
18 roads is at the Applicant's expense, there's a
19 requirement of a performance bond, the estimated amount
20 of the road repair and maintenance is \$6.6 million;
21 drainage and erosion control plans for the blowoff
22 valves, stormwater management plan for construction, all
23 of these to be submitted to Public Works for review and
24 approval prior to use of the roads.

25 No unreasonable prohibition of future roads

1 and utilities across the pipeline, and review final
2 construction plans and modify as necessary. There may
3 be some changes in the final construction plan, Public
4 Works wants to reserve the right to review the final
5 plans.

6 And that concludes our presentation.

7 MR. RASO: Thank you.

8 I would ask that -- that the report which Mr.
9 Banks just summarized, entitled "Recommended Conditions
10 and Mitigation of Project Impacts", dated January 21st,
11 2009, be made a part of the record as Exhibit 47.

12 COMMISSIONER CHOSTNER: So moved.

13 (Exhibit 47 was marked for identification.)

14 COMMISSIONER CHOSTNER: At this time --

15 MR. RASO: Excuse me, I -- I have -- excuse
16 me -- there were -- on pages -- I believe it is -- it's
17 on the roads, there are some exhibits that are referred
18 to on page 23 of Mr. Bank's report, those were not
19 submitted in conjunction with this report, they were
20 submitted by our Public Works Department to Mr. Banks,
21 and I'd ask that the construction cost estimates, which
22 are in detail -- and I believe these have been given to
23 the Applicant, they were Exhibit 4 to our Public Works
24 Department -- I would ask that that be made Exhibit 48
25 to the record.

1 (Exhibit 48 was marked for identification.)

2 MR. RASO: The Pueblo County Roadway Design
3 and Construction Standards were -- are referenced
4 throughout but are not actually in the Banks and Gesso
5 report, and I would ask that be made Exhibit 49.

6 (Exhibit 49 was marked for identification.)

7 MR. RASO: And, then, I believe the map --
8 and it's been put up over there on the wall -- but this
9 shows the Haul Route Plan map that's referred to in the
10 Banks and Gesso report, and in our Public Works
11 recommendations, I would ask that that be made Exhibit
12 50 to the --

13 MS. KOVACICH: You want that marked?

14 MR. RASO: Yes, thank you.

15 COMMISSIONER CHOSTNER: Exhibits 48, 49 and
16 50 are admitted into the record.

17 (Exhibit 50 was marked for identification.)

18 COMMISSIONER CHOSTNER: Anything else at this
19 time, Mr. Raso?

20 MR. RASO: That's it.

21 COMMISSIONER CHOSTNER: Do any of the
22 commissioners have any questions at this time?

23 Commissioner Nunez?

24 COMMISSIONER NUNEZ: I do not at this time.

25 Are we going to --

1 MR. RASO: Well, yes, you get --

2 COMMISSIONER CHOSTNER: We will have an
3 opportunity --

4 COMMISSIONER NUNEZ: Okay, then I'll reserve
5 my questions.

6 COMMISSIONER CHOSTNER: Mr. Cordova?

7 COMMISSIONER CORDOVA: Not at this time.

8 COMMISSIONER CHOSTNER: I have two questions.

9 Paul, with regard to C-19, your sustainable
10 construction practices, your heading there is,
11 "Applicant shall, where practicable, use sustainable
12 construction practices." What does "where practicable"
13 mean?

14 MR. BANKS: I -- I don't think a strict
15 requirement that didn't contain that language would
16 be -- would be reasonable. I mean, if you wanted to
17 buy -- or were trying to recycle or reuse materials but
18 couldn't for some reason, I don't think -- I don't think
19 a strict requirement to recycle would be a good idea.

20 The -- the purchase of local goods -- for
21 example, fuel or supplies -- I don't think a strict
22 requirement to purchase them locally would be a good
23 idea.

24 "Where practicable" means where it is
25 economically reasonable and -- and feasible within

1 the -- the confines.

2 COMMISSIONER CHOSTNER: And I guess my
3 question -- follow-up question is who decides that?

4 MR. BANKS: The way this is written, it would
5 be the -- the Applicant.

6 COMMISSIONER CHOSTNER: 'Cause there's a --
7 there's a consensus among the commissioners to do things
8 in as environmentally-friendly a way as possible, so we
9 may need to have discussion on that as well.

10 MR. BANKS: We can certainly do that, but I
11 would like to -- the Board to keep in mind that the
12 extremely rigid 100-percent requirement might be a
13 little -- just from a construction standpoint might be a
14 little difficult. We can certainly work on the
15 language.

16 COMMISSIONER CHOSTNER: We understand that,
17 but I think we want to have some input as to what that
18 means.

19 Second question was with regard to county
20 roads -- and I don't know whether you have this
21 information or not, Paul -- but did Pueblo West have an
22 opportunity to contribute information regarding this?

23 MR. BANKS: Can I ask Greg Severance to
24 answer that?

25 MR. SEVERANCE: Yes, Commissioners.

1 COMMISSIONER CHOSTNER: Okay, I -- I want to
2 make sure that Pueblo West had the opportunity to
3 provide information with regards to the roads. Okay.

4 And we can -- we can follow up and discuss
5 that at the task force meeting that Pueblo County has
6 with the Metro District. I want to make sure we have a
7 complete list of -- and your concerns are adequately
8 addressed.

9 With that, Mr. Raso, I guess we will give an
10 opportunity to Colorado Springs Utilities to respond to
11 this information?

12 MR. RASO: Certainly. And I'll leave that up
13 to -- to Mr. Robbins and -- and his clients, if you
14 would like to make a presentation concerning anything
15 you've heard here tonight or address the Board in any
16 way, you're certainly willing to do so.

17 If there was anything done here tonight,
18 particularly in the first part of that presentation,
19 that you want a chance to -- to think about and present
20 something further, we'll start the next hearing with
21 that as -- if you would prefer.

22 So it's up -- up to you.

23 MR. ROBBINS: Mr. Raso, thank you very much.

24 Mr. Chairman, members of the commission, we
25 certainly enjoyed and were interested in the

1 presentation made by Banks and Gesso tonight. We,
2 obviously, have not had an opportunity to review it in
3 any detail, I don't think that we will want to make an
4 extended presentation sort of discussing the Final
5 Environmental Impact Statement, in our view that was
6 performed by a consultant to the Bureau of Reclamation
7 and it represents the Bureau of Reclamation's analysis
8 of the Southern Colorado Delivery System, and I think we
9 prefer to let it stand at that; although, we may want to
10 take Mr. Raso up on his kind offer, on your behalf, to
11 make some comments or provide some written information
12 before your next hearing. If that would be acceptable
13 to you, sir.

14 COMMISSIONER CHOSTNER: We certainly want to
15 offer you that opportunity, and we look forward to any
16 presentation that you have.

17 MR. ROBBINS: Thank you very much.

18 COMMISSIONER CHOSTNER: Thank you.

19 Mr. Raso, anything else tonight?

20 MR. RASO: Thank you.

21 If you don't have any other questions for our
22 staff, I would again remind the members of the public
23 that are here that hard copies of the Banks and Gesso
24 set of initial recommendations -- excuse me --
25 are -- are here, I don't know if they've all been

1 snatched up tonight or not; it's also on the Pueblo
2 County website.

3 For -- just for informational purposes, we're
4 going to ask the Board to entertain a motion to continue
5 these hearings to February 11th, 2009, here at the same
6 place, the same time, 6 p.m.

7 On the first page of Banking -- of Banks and
8 Gesso's "Recommended Conditions in Mitigation" they do
9 identify those issues that have -- that are not yet
10 completed, and let me just briefly recite those, this --
11 these are conditions dealing with the "use of new water
12 rights, the carriage of water to entities that are not
13 currently project participants, Lake Pueblo water level
14 management, monetary mitigation for impacts to Fountain
15 Creek, issues related to the potential enlargement of
16 Lake Pueblo, issues related to the Colorado Springs
17 Stormwater Enterprise and wastewater collection systems,
18 issues related to the use of the Joint Use Manifold in
19 the North Outlet Works, management of river flows in the
20 Arkansas River below the dam, labor practices and water
21 quality monitoring". So there's still quite a bit of
22 work to be done, what you saw here tonight -- or what I
23 think our Staff has referred to as -- as -- somewhat
24 loosely -- but construction phase terms and conditions,
25 and those are substantial as you can see; and, in

1 particular, if you're the Applicant that has to build
2 this project. So that's what we will be doing.

3 If there's nothing further, I would ask that
4 the Board entertain our --

5 MR. ROBBINS: Mr. Raso?

6 MR. RASO: Yes? Go ahead.

7 MR. ROBBINS: It -- it's come to my
8 attention -- and I think I recall -- that at the last
9 hearing the Commission asked if we would provide any
10 comments we might wish to make to Exhibits 32 through 42
11 which were received at the last hearing, and we did, in
12 fact, prepare a short, two-page response in respect to
13 the Commission's desire to have our responses at this
14 hearing, and I neglected to put that matter on the
15 record, and would ask to be able to submit this letter
16 to you at this time (indicating).

17 MR. RASO: Yes, thank you for reminding me,
18 I -- I forgot that.

19 COMMISSIONER CHOSTNER: That is an exhibit?

20 MR. RASO: Yes, we will make it Exhibit 51.

21 MR. ROBBINS: Thank you very much.

22 MR. RASO: Thank you.

23 I would ask that this document -- it's
24 entitled -- well, it's got a Southern Delivery cover
25 sheet, dated July -- January 21st, 2000 -- excuse me --

1 2009, it is their response to Exhibits 32 through 42
2 that were introduced at -- at the last hearings, and
3 we -- we -- more or less, they had not had a chance to
4 thoroughly review and respond to those, so their
5 response has been submitted in writing, I would ask that
6 that be made Exhibit 51.

7 (Exhibit 51 was marked for identification.)

8 COMMISSIONER CHOSTNER: So ordered that it be
9 admitted to the record.

10 MR. RASO: Thank you.

11 Any -- anything further, Mr. Robbins?

12 MR. ROBBINS: No, sir. Thank you for your
13 courtesy.

14 MR. RASO: Mr. Kogovsek?

15 MR. KOGOVSEK: Nothing further.

16 MR. RASO: Commissioners, if you would, I
17 believe a motion would be in order to continue these
18 hearings to February 11th, 2009, to commence at 6:00
19 p.m. here at the Sangre de Cristo Arts and Conference
20 Center in the Jackson Conference Room.

21 COMMISSIONER CHOSTNER: Prior to entertaining
22 that motion I would ask my colleagues if they have any
23 questions or comments?

24 Commissioner Nunez?

25 COMMISSIONER NUNEZ: Yes, I -- you know, I

1 would like for our staff to -- you know, these
2 conditions and mitigations that -- that we reviewed here
3 tonight, I would urge that we move on this stuff, you
4 know, I think we need to -- to come to some
5 understanding here, I think if we're going to move this
6 project I think that we need to move on it, so I would
7 instruct staff to get with -- with this -- with these
8 conditions and mitigations, see what -- how we're going
9 to resolve this. These -- what you have presented to
10 us, Paul, is of a great concern to me, and for us to be
11 able to -- to move I think that we have to have some
12 kind of resolution to it.

13 COMMISSIONER CHOSTNER: Thank you,
14 Commissioner Nunez.

15 Commissioner Cordova?

16 COMMISSIONER CORDOVA: I would go along with
17 my colleague's comments that we need to move a little
18 faster on this. This document, to me, sort of
19 represents the easy parts of the mitigation, we need to
20 get into the real meat of the stuff now with the water
21 rights and this kind of stuff. So I look forward to our
22 next hearing.

23 COMMISSIONER CHOSTNER: I would also ask
24 staff to move expeditiously, but I would ask our
25 Applicants to meet them on clarifying issues, making

1 sure we understand what they are, so that this Board can
2 make a -- a rational decision. So I would ask all
3 parties to move on this as expeditiously as possible.

4 With that I would entertain a motion to
5 continue --

6 MAYOR RIVERA: Commissioner Chostner, just a
7 clarification.

8 Are you encouraging our staff to get with
9 your staff face-to-face and start working these out
10 prior to the next meeting?

11 COMMISSIONER CHOSTNER: I think they will
12 contact you as necessary, and when and if they do you
13 need to respond as quickly as possible.

14 MAYOR RIVERA: Okay. Thank you.

15 COMMISSIONER NUNEZ: Commissioner, I would so
16 move.

17 COMMISSIONER CORDOVA: Second.

18 COMMISSIONER CHOSTNER: All those in favor of
19 the motion to continue say "aye".

20 COMMISSIONER NUNEZ: Aye.

21 COMMISSIONER CORDOVA: Aye.

22 COMMISSIONER CHOSTNER: The motion passes.

23 We are continued until . . .

24 MR. RASO: February 11th, 2009, at the
25 Jackson Conference Room, to commence at 6 p.m.

1 COMMISSIONER CHOSTNER: Thank you.

2 (The proceedings were concluded at the hour
3 of 7:25 p.m.)

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C E R T I F I C A T E

1
2 STATE OF COLORADO)
3 COUNTY OF PUEBLO) ss.

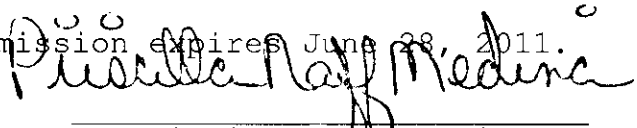
4 I, Priscilla Naff Medina, a Professional Court
5 Reporter and Notary Public within and for the State of
6 Colorado, do hereby certify that said proceedings were
7 taken in shorthand by me at the time and place
8 heretofore set forth, and was reduced to typewritten
9 form under my supervision;

10 That the foregoing is a true transcript of the
11 proceedings had;

12 That I am neither attorney nor counsel, nor in
13 any way connected with any attorney or counsel for any
14 of the parties to said action, nor otherwise interested
15 in the outcome of this litigation.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand this 24th day of January, 2009.

18 My commission expires June 28, 2011.

19 
20 Priscilla Naff Medina
21 Registered Professional Reporter
22 Notary Public
23
24
25

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