

Southern Delivery System

1041 Permit Application Rebuttal Submission

December 23, 2008



Colorado Springs Utilities (“Springs Utilities”), on behalf of itself and its project partners, submits this Rebuttal Submission to the Pueblo Board of County Commissioners in support of its Southern Delivery System (“SDS”) 1041 Permit Application.

This submission responds to the report of the Pueblo County Department of Planning and Zoning (through its consultant Banks & Gesso) and the public comments submitted to the Board both in writing and during the public hearing on December 11, 2008.

Responses to comments on the SDS application are divided into four general sections below: Environmental Matters, Socio-economic Issues, Infrastructure, and Operations.

I. Environmental Matters

A. General

The environmental impacts of the SDS Project and its alternatives have been studied and disclosed in extensive detail during the U.S. Bureau of Reclamation’s environmental impact statement process for the SDS Project. The culmination of that process — the final environmental impact statement (FEIS) for the SDS Project — was released by the Bureau of Reclamation on December 12, 2008. Supporting technical documents have been available publicly for many months.

The FEIS and its supporting technical studies are a critically important part of the record in this 1041 proceeding. They constitute by far the most authoritative and thorough review of the environmental effects of the SDS Project. They are cited regularly throughout this rebuttal because they address and answer many of the comments and concerns expressed by staff and the public in this 1041 process. This fact is no surprise. The FEIS process was a comprehensive and thorough endeavor. The highly detailed underlying technical studies and analyses and the FEIS were assembled and refined in a highly transparent public process.

Many of the statements and approaches of Pueblo County staff and public commenters in the 1041 process align very closely to the wide-ranging and detailed comments received by the Bureau of Reclamation in the SDS Project environmental impact statement process. For that reason, many of the responses in this rebuttal document mirror very closely the responses to public comments collected in Appendices B and C of the SDS Project FEIS.

B. The Arkansas River and Fountain Creek

Staff and commenters raise concerns about the potential for various environmental impacts in the Arkansas River, in Fountain Creek, and in tributaries to these waters. Project Participants understand these concerns and are committed to working with Pueblo County and others to minimize environmental impacts and improve environmental conditions in these waters.

1. Growth

➤*Comments:* Commenters suggest the SDS Project will induce growth, resulting in increased stormwater runoff that will reach Fountain Creek. The increased stormwater runoff will cause increases in water pollution from E. coli, dissolved selenium, and sulfates. (Staff Report pp. 6 and 28; Comments of Pueblo Chieftain).

Response: The SDS Project will not induce population growth in the areas served by Project Participants. This conclusion is discussed in detail in Section 3.15 of the FEIS (discussion about land use and growth at page 499). Very substantial population growth will occur in those areas with or without the SDS Project, and the SDS Project is necessary to supply this new population with drinking water. See also FEIS, Section 3.1.3.1. (discussion of reasonably foreseeable actions, including growth). Detailed information about the water demand associated with increasing population also is described in detail in Section 1.5.1 of the FEIS.

Environmental effects from population growth result from a variety of causes, not the SDS Project itself. Nonetheless, many of these effects will be addressed in strategies adopted for the SDS Project in Section 5.0 of the FEIS.

2. Water Quality

➤*Comments:* The SDS could have significant impacts on water quality. (Staff Report pp. 6 and 28; Comments of Pueblo Chieftain). These impacts could include increased salinity, introduction of mercury, selenium and other contaminants, and future raw wastewater spills from Colorado Springs' wastewater treatment facilities. (Staff Report p. 28; Comments of Sierra Club; Comments of Rocky Mountain Environment and Labor Coalition ("RMELC"); Comments of Bill Thiebaut; Comments of Dennis Sole).

Response: The SDS Project will not create toxic methyl mercury in project reservoirs or in the Arkansas River or Fountain Creek. The specific location characteristics of a reservoir (soil type, vegetation, organic material) are critical to whether methyl mercury will be formed in that reservoir. The Colorado Department of Public Health and Environment (CDPHE) has studied the formation and bioaccumulation of methyl mercury in numerous reservoirs in Colorado, including reservoirs located on the eastern plains that are similar to those reservoirs to be constructed as part of the SDS Project. Because mercury contamination has not been found in the reservoirs in eastern Colorado with similar characteristics, Project Participants do not expect methyl mercury creation or bioaccumulation in the reservoirs that are constructed as part of the SDS Project. The foregoing is only a brief summary of a considerably more extensive discussion of this issue in the FEIS. The discussion responds to comment 3353 in the FEIS. The reader is referred to that discussion, beginning on page C-37 of Appendix C of the FEIS.

Water quality effects associated with Williams Creek Reservoir are discussed in detail in Section 3.7 of the FEIS. Ultimately with regard to Williams Creek Reservoir, the FEIS concludes that "no adverse effects on water quality downstream of Williams Creek Reservoir would likely occur in [the SDS Project]." *Id.* The seepage from Williams Creek reservoir is not likely to increase concentrations of dissolved selenium downstream to a significant degree. (See FEIS p. 306)

Although E. coli continues to be an issue in Fountain Creek and its tributaries, there is no direct correlation between urban growth and significant increases in E. coli contamination. Indeed, rural areas are also a substantial cause of E. coli contamination. A recent USGS study of fecal coliform (a related bacterial indicator) found decreasing or no temporal trend in densities over a 10-year period from 1987 to 1997 (Bossong 2001), while the population of El Paso County increased by 100,000 people during this period (CDOLA 2008).

The FEIS contains an extensive discussion and analysis of existing conditions for salinity in the basin and the possible effects from the SDS Project. Section 3.7.5.1. Effects upon crop yields in the Arkansas River basin as a result of the construction and operation of the SDS Project will also be small. *Id.*

The operation of the SDS Project will be subject to adaptive management for water quality. This means that the effects of the construction and operation of the project will be monitored extensively in waterways potentially affected by SDS. If concentrations of contaminants indeed rise significantly, the Project Participants will study the matter in detail, consult with the Bureau of Reclamation and others — including Pueblo County — and ultimately put in place a management program to address this issue appropriately in the areas and instances in which it occurs.

➤**Comments:** Springs Utilities continues to spill untreated wastewater into Fountain Creek. (Comments of Bill Thiebaut; Comments of Sierra Club; Comments of Willie Olson). Suggested conditions include requiring Springs Utilities to design and implement a series of near-stream ponds and reservoirs to control flow and water quality. (Comments of Bill Thiebaut).

Response: From time to time, every wastewater treatment system in the United States, including the City of Pueblo, experiences unwanted spills of wastewater from its wastewater system. (See Angela K. Lafferty and William C. Lauer, *Benchmarking, Performance Indicators for Water and Wastewater Utilities: Survey Data and Analysis Report* (AWA 2007). Springs Utilities uses its best efforts to eliminate these types of spills and to minimize their effects when they occur. In fact, Springs Utilities has accomplished great reductions in spill volumes over the past three years in its wastewater treatment system due in part to large investments in improvements. Since 2000, Springs Utilities has invested more than \$100 million for improvements to its wastewater collection systems. It has spent more than \$40 million to upgrade the Las Vegas wastewater treatment plant. It has spent \$80 million for the new J.D. Phillips Water reclamation facility and \$10 million for the Fountain Creek Recovery Project, which allows Springs Utilities to divert spills from Fountain Creek below Colorado Springs into a retention pond for recovery and treatment. The Fountain Creek Recovery Project has never had to be used. Spills have significantly decreased over the last three years. The commenters ignore the improvements in Springs Utilities' performance and assume conditions that no longer exist.

➤**Comments:** The reservoirs constructed and used in the SDS Project will cause eutrophication problems in downstream stream segments. (Comments of Sierra Club).

Response: Eutrophication is an increase in chemical nutrients that can result in an undesirable growth and decay of plants in a waterway, potentially resulting in injury to aquatic life through reduction in dissolved oxygen, reduced aesthetic quality of a waterway, and undesirable tastes and odors. Eutrophication difficulties will not be caused downstream by the reservoirs constructed and used in the SDS Project. The FEIS thoroughly examines the potential for eutrophication in the reservoirs used in the SDS Project, including Pueblo Reservoir, Upper Williams Creek Reservoir, and Williams Creek Reservoir. Section 3.4.7.1 (surface water quality). In Pueblo Reservoir, the SDS Project would have only a small effect upon peak chlorophyll *a* concentrations. Section 3.7.5 of the FEIS. Williams Creek Reservoir is projected to have no adverse effects upon downstream water bodies. *Id.* The same is true of the terminal storage reservoir for the SDS Project, Upper Williams Creek Reservoir, which would be low in nutrients. *Id.*

3. Arkansas River Flows Through Pueblo

➤**Comments:** Reduced flows in the Arkansas River below the dam may result in impacts on fishery, riparian environments, the Legacy Project, the kayak course and downstream agriculture. (Staff Report p. 3; Comments of Turkey Creek Conservation Dist.). The maintenance or improvement of the Pueblo Flow Management Program should be a condition of the permit. (Comments of Dr. Thomas Autobee).

Response: The section of the Arkansas River below Pueblo Reservoir is controlled by releases from the reservoir. Summer stream flow in this reach of the Arkansas River is dominated by releases made for downstream irrigation. Flows in this reach are heavily impacted by inflows from Wildhorse Creek and diversions between Wildhorse Creek and Fountain Creek. Neither of these influences is related to SDS activities.

The Pueblo Flow Management Program (PFMP) provides an important benefit to this section of the Arkansas River. The PFMP is the result of intergovernmental agreements (IGAs) for a target flow program on the stretch of the Arkansas River through the City of Pueblo, which includes the Legacy Project and the kayak course. The IGA parties – Colorado Springs, Pueblo Board of Water Works, City of Aurora, and the Southeastern Colorado Water Conservancy District (SECWCD) – agreed to reduce or limit the operation of Arkansas River exchange water rights operated through the City of Pueblo to attain a year-round average daily flow of 100 cubic feet per second (cfs) at the Above Pueblo Gage (below Pueblo Dam), to maintain a seasonal recreational flow between 100 and 500 cfs from March 16 through November 14 (the 245-day boating season) and to cooperate with other agencies and water users to release water for special events planned on an annual basis. The PFMP with Colorado Springs' participation is designed to provide significant benefits to the river in dry years, and has been successful. Colorado Springs and the other participants have worked, and continue to work, cooperatively with the City of Pueblo to achieve its goals for flow through the City.

The SDS project and the PFMP are related because Colorado Springs can terminate its participation in the PFMP if Colorado Springs cannot reasonably construct the SDS from Pueblo

Dam due to terms or conditions in federal, state, or local licenses or permits necessary for construction and operation of the project. If Colorado Springs is permitted to construct the SDS as requested in this Application, it will continue to participate in the PFMP and will comply with all of its provisions.

4. Wastewater Treatment Capacity

➤*Comments:* The Application lacks critical information relating to whether the project would overburden wastewater treatment capacity. (Staff Report pp. 27, 66; Comments of RMELC). Mr. Thiebaut requests several conditions aimed at ensuring wastewater treatment capacity, including proof that: (1) all of Colorado Springs' wastewater system stream crossings have been originally designed and constructed to withstand the anticipated flows resulting directly and indirectly from SDS and that all final remediation of stream crossings has been completed; (2) all wastewater treatment systems and components are capable of treating additional flows; (3) all lift stations are capable of handling additional flows; and (4) the collection system is capable of handling increased flows. Mr. Thiebaut would also require Colorado Springs to provide all relevant information regarding its wastewater treatment and collection system to Pueblo County on request.

Response: Springs Utilities plans in detail to meet its future wastewater treatment capacity needs. Pursuant to C.R.S. § 25-8-501(5)(d) and (e), wastewater system permittees are required to initiate engineering and financial planning for expansion of wastewater treatment works whenever throughput and treatment reaches eighty percent of design capacity, and must begin construction of such expansion whenever throughput and treatment reaches ninety-five percent of design capacity. From 2000 to 2008, SU completed six different comprehensive wastewater planning documents including the Wastewater Infrastructure Strategic Plan (WISP), the Las Vegas Wastewater Treatment Masterplan, and the Clear Springs Ranch Treatment Plant Siting Study. In 2008, the Wastewater Integrated Masterplan (WWIM), which supersedes the other master plans, was developed and is currently under final review. This comprehensive document evaluates all Springs Utilities wastewater systems, analyzes current capacity, anticipates increased flows, and recommends improvements and expansions in an environmentally responsible manner. In addition, a capacity model of the entire wastewater collection system including lift stations has been completed and is utilized to ensure additional flows can be accommodated prior to the approval of any system extensions or tie-ins. Springs Utilities' wastewater plans can be found at <http://www.csu.org/business/development/page8183.html>

The initial inspection, assessment and stabilization of all designated stream crossings in the Springs Utilities' service area are complete. In addition, all pipe segments that are within 50 feet of the banks of drainages in Springs Utilities' service territory have been inspected and assessed. Springs Utilities continues to inspect, assess, monitor, stabilize and comprehensively improve wastewater infrastructure in and near streams as required to increase the integrity of the entire wastewater collection system. Prior to going into design for remediation, pipe segments near creeks are reviewed for relocation away from the creek environment. All pipe replacements adhere to the 100-year flood design criteria as required by the Colorado Department of Public Health and Environment (CDPHE). These projects, which maintain and renew the wastewater collection system, are planned for and handled through substantial investments in operations and

maintenance and capital budgets. Since the initiation of the Sanitary Sewer Creek Crossings Program in 2005, there have been no storm-related wastewater infrastructure failures.

5. Water Quantity and Flooding

➤**Comments:** Increased return flows from SDS, imported return flows from exchanges, and stormwater discharges from increased growth will increase flood risk. (Staff Report pp. 3-4, 6, 57; Comments of Pueblo Chieftain; Comments of Turkey Creek Conservation Dist.; Comments of RMELC; Comments of Willie Olson). Flood events are exacerbated by increased daily flows caused by effluent from the upstream wastewater disposal system. (Comments of Turkey Creek Conservation Dist.). Applicant has discounted increased flood risk at the levees caused by sediment buildup in the creek bed. (Staff Report p. 6).

Response: The FEIS studies and analyzes flooding potential from the SDS Project in extensive detail. Section 3.8. It concludes that ultimately the SDS Project will have a minor beneficial effect upon flooding in Fountain Creek and the Arkansas River. This is a result of the construction of Williams Creek Reservoir and its storage and detention capacity. See FEIS responses to comments numbers 3251 through 3274 in Appendices B and C of the FEIS, and the analyses cited therein. The effect of SDS return flows during a 100-year flood, even at maximum exchange releases from Williams Creek Reservoir, will only increase flood levels through Pueblo by ½ inch. The effect of increased stormwater flows during a 100-year flood when the basin is fully developed (built out) is predicted to only increase the depth in Fountain Creek by 4 inches at the Pueblo gage again assuming maximum exchange releases from Williams Creek Reservoir.

The FEIS requires mitigation measures to address the impacts of increased flows, including construction of a wetland mitigation area on Clear Springs Ranch or other suitable site. The Clear Springs Ranch site may include a relocated channel which, in combination with wetlands, will help restore the function of the stream and reduce erosion. Also as part of the FEIS, Springs Utilities has committed to undertake sediment removal strategies intended to implement the recommendations of the USACE Watershed Study.

➤**Comments:** The proposed maximum flow increase of about 400 cfs represents an increase in baseflows of approximately 267 percent, not including all related flows, like possible increased runoff from new development. (Staff Report p. 6).

Responses: The comment reflects a maximum daily value that would occur only during occasional releases of up to 300 cfs for short periods of time (four to six weeks) from Williams Creek Reservoir to satisfy water rights obligations. In 2046, average annual flows on Fountain Creek at Pueblo for direct effects are reported in the FEIS as likely to increase by approximately 35%. This increase includes return flows, ungaged return flows and the effects of stormwater discharges for future conditions within the applicants' service area. The FEIS reports that average annual flows attributable to cumulative effects including not only the SDS but also growth outside the Project Participants' service areas are also likely to increase by approximately 35%.

➤**Comments:** The assumption was made that new regulations would be in place and that runoff controls and detention would be implemented and would be successful. These assumptions cannot be relied upon to mitigate impacts to Fountain Creek. (Staff Report p. 6).

Response: Project Participants disagree. These assumptions are indeed valid. The Colorado Springs Stormwater Enterprise is a legal institution formed pursuant to the laws of the State of Colorado and the ordinances of the City of Colorado Springs. It is created to maintain stormwater flows within the boundaries of Colorado Springs at 2006 levels, even with increased population growth. (Colorado Springs City Code, Art. 8, Ch. 14) The collection of the fees that support the work of the Stormwater Enterprise are subject to legal enforcement. The Stormwater Enterprise is described in detail in Section 3.1.3.1 of the FEIS. Additional information about the Stormwater Enterprise can be found at: <http://www.springsgov.com/Page.asp?NavID=6598>.

6. Sedimentation and Erosion

➤**Comments:** The 47 percent increase in base flows attributable to the SDS will have significant impacts on erosion and sedimentation downstream of Williams Creek. (Staff Report pp. 6; 55-56; Comments of Dr. Thomas Autobee; Comments of Pueblo Chieftain; Comments of Turkey Creek Conservation Dist.). Routine operations of the SDS are expected to deposit 100 tons of sediment each day downstream. (Staff Report p. 56). Mobility of sediment and instability of the Fountain Creek channel upstream from Pueblo must be controlled; dredge programs have been suggested by the US Army Corps and others. (Staff Report p. 60; Comments of Dr. Thomas Autobee).

Response: Erosion and sedimentation resulting from the SDS Project are analyzed and discussed in detail in the FEIS, Section 3.9 (geomorphology), along with extensive analyses of surface water hydrology in Section 3.5. The FEIS assesses impacts to erosion and sedimentation in several ways. The increased flows do have the ability to transport greater quantities of sediment. However, a more important characterization of low flow erosion and sedimentation impacts is the relative ability of different segments of the stream to carry the additional sediment load. In this case, the FEIS reports that the reach of Fountain Creek below Williams Creek has a slightly greater increase in carrying capacity and would therefore transport more sediment through without deposition. In fact, the report indicates that deposition in the lower reach of Fountain Creek will be decreased, having a beneficial or negligible impact.

Project Participants will address mobility of sediment and erosion potential in Fountain Creek through mitigation measures adopted and described in the FEIS. Section 5.2.4. These include a geomorphic mitigation plan and selection of geomorphic mitigation measures consistent with the Fountain Creek Watershed Study and the Fountain Creek Corridor Master Plan. Additional detail is presented in the FEIS. As discussed above in section I.A.5, Springs Utilities is committed to mitigating the impacts of SDS related changes, including the construction of a wetland mitigation area on Clear Spring Ranch or other suitable site and proposed sediment removal.

C. Noxious Weeds and Non-Native Vegetation

➤*Comments:* The application lacks critical information relating to noxious weed infestation of Pueblo Reservoir. (Comments of RMELC). The non-native waters that run down the Fountain Creek watershed create extra vegetation in the stream bed and riparian areas, most of which are noxious weeds, which should be controlled. (Comments of Turkey Creek Water Conservation Dist.).

Response: Noxious weeds identified in the studies underlying the FEIS are listed and described at Section 3.12.4.3. The spread of noxious weeds through the construction process will be controlled during the SDS Project. FEIS, Section 3.21.5.4. and 5.2.7. As to the possibility that noxious weeds will increase at Pueblo Reservoir as a result of operation of the SDS project, the FEIS concludes that the SDS Project will have no effect upon riparian vegetation on the banks of Pueblo Reservoir. This is because the fluctuation in water levels resulting from the SDS Project will be within the range of existing, normal fluctuation for the reservoir. Section 3.11.5.1.

Controlling the infestation of noxious weeds and non-native vegetation is an issue across the United States, including Colorado. The Colorado Noxious Weed Act requires landowners and managers to manage noxious weeds if they are likely to damage neighboring lands and requires that each municipality in Colorado adopt a noxious weed management plan. The City of Colorado Springs and Springs Utilities have a Noxious Weed Management Plan that describes how weed management is implemented. It includes, but is not limited to identification and mapping of noxious weeds, land management goals, duties and responsibilities, weed control and management techniques, and adaptive management.

D. Wetlands

➤*Comments:* SDS will create more standing water and wetlands, increasing the numbers of disease carrying mosquitoes. (Comments of Turkey Creek Conservation Dist.).

Response: Wetlands result in reduced flood flows, reduced sedimentation and reduced erosion, and provide increased wildlife habitat and recreational opportunities, all of which have been requested by commenters in this process. Springs Utilities is committed to developing and maintaining new wetlands. While wetlands can result in an increase in the numbers of mosquitoes, the SDS Project Participants will implement reasonable means of controlling mosquitoes within the wetlands constructed as part of the SDS project. Mosquito control will be addressed in project construction practices. Any increase in disease vectors as a result of the SDS Project wetlands will be insignificant.

E. Flora and Fauna

➤*Comments:* The Walker Ranch is reportedly the location of certain critical habitat and/or individuals of threatened and endangered species subject to protection under the ESA that have not been addressed. (Staff Report p. 53; Comments of Gary Walker; Comments of RMELC). Other species that may be affected include burrowing owls, ferruginous hawks, golden eagles, leopard frogs, and the Arkansas darter. (Comments of Turkey Creek Conservation District). Concerns about invasive mussels have not been studied in any detail. (Staff Report p. 54).

Response: Flora and fauna studies were conducted by Reclamation's contractors along the SDS pipeline alignment through the Walker Ranch to identify species listed under the Endangered Species Act (ESA) or State programs.

Flora surveys were conducted for threatened, endangered, and candidate species and Colorado Natural Heritage Program (CNHP) species of concern. Potential habitat was assessed during the appropriate flowering period for all plant species and plant communities listed by CNHP as critically imperiled (S1) or imperiled (S2), as well as US Fish and Wildlife and Bureau of Land Management-sensitive species. Survey results show no occurrences of these species within the SDS study area on the Walker Ranch (ERO 2007a). However, two CNHP-listed vulnerable species (S3), Arkansas River feverfew and showy prairie gentian occur within the study area in Pueblo County (mitigation is not identified by CNHP for S3 species). Additionally, Mr. Walker stated that an independent study conducted on his behalf, by Renee Rondeau of the CNHP, documented the presence of certain protected species on Walker ranch.

Fauna surveys addressed federally threatened, endangered, and candidate wildlife species and their habitats. No occurrences of these species or their habitats were found within the SDS study area on Walker Ranch.

Fauna surveys also addressed state-listed threatened, endangered, and species of special concern and CNHP sensitive species. Potential habitat was found in Pueblo County for certain species within these categories. (ERO 2007b).

Prior to SDS construction, Utilities will take the following actions to avoid or mitigate impacts to flora and fauna:

- conduct pre-construction clearance surveys in suitable habitat for state-listed species;
- conduct pre-construction migratory bird and raptor nest surveys;
- impose seasonal restrictions on construction activity to avoid wildlife impacts, and;
- mitigate impacts to state-listed amphibian species by avoiding, minimizing, and mitigating wetland impacts (Reclamation 2008, Section 5.2.8).

Utilities will also fully evaluate information provided by Mr. Walker and his consultant to ensure it has effectively identified potential impacts to all protected species within the SDS corridor on Walker ranch.

Invasive mussels were recently discovered at Pueblo Reservoir and therefore, the data available for detailed studies is minimal. Invasive mussels are addressed in the SDS FEIS. FEIS section 3.10. SDS would not reasonably be expected to exacerbate the spread of mussels within Pueblo Reservoir or downstream along the Arkansas River. Colorado Springs is working with other entities and the scientific community to find solutions to the mussel problem.

F. Recreation

➤*Comments:* Water level fluctuations and drawdowns in Lake Pueblo could lower the water level such that shoreline recreation or the boat ramps would be rendered unusable and/or impact the general attractiveness of Lake Pueblo. (Staff Report pp. 3, 5; Comments of Pueblo Chieftain) Boating and fishing will be diminished if flows are altered below Pueblo Dam. (Comments of Turkey Creek Conservation Dist.; Comments of Dennis Sole) Early construction of Williams Creek Reservoir would minimize Lake Pueblo fluctuations. (Staff Report p. 5).

Response: The recreational facilities at Pueblo reservoir are located such that they are functional for all water levels above the “Inactive Pool.” Project Participants are requesting excess capacity storage. By Bureau of Reclamation regulation, excess capacity storage can only occur in storage space above the Inactive Pool. Therefore, SDS will not be permitted to withdraw water to cause lake levels to drop below the recreational facilities.

Early construction of the Terminal Storage Reservoir at Upper Williams Creek would not be expected to significantly impact levels in Lake Pueblo. During the first six years of operation of the SDS, the demands being met by SDS will be small enough that Springs Utilities will be able to manage delivery without SDS terminal storage by using existing non-SDS terminal storage.

The PFMP, discussed above in section I.A.3, will provide protection for recreation uses on the stretch of the Arkansas River below Pueblo Dam.

G. Efficiency

➤*Comments:* There has been no demonstration that the project is designed or operated to implement principles of resource conservation, energy efficiency, recycling, or reuse, or that Colorado Springs generally has a serious water recycling program. (Staff Report p. 48; Comments of Dennis Sole; Comments of RMELC). Applicants should be required to implement, by a date certain, ordinances requiring maximum use of water efficient appliances and water-wise landscaping, and to maximize the use of renewable energy sources and recycling of wastes during project operation. (Comments of RMELC).

Response: Conservation has been an integral part of Springs Utilities’ operations for more than 60 years. Springs Utilities began using meters to conserve water in the 1940s, long before it was standard practice. It pioneered the use of treated wastewater for irrigation in the 1960s. It opened its award-winning Xeriscape™ Demonstration Garden in the 1990s. And its 1996 Water Resource Plan identifies conservation as one of four components for providing safe, reliable water. Springs Utilities is proud of its conservation efforts and what they’ve accomplished as a leader in water conservation efforts over the last several years. Its per capita residential water use is the lowest along Colorado’s Front Range. The Colorado Springs community used 5 billion gallons less water in 2007 than in 2001, despite a 10 percent increase in population.

Some of the conservation measures Springs Utilities has implemented and plans to implement include:

- Conservation Education. Springs Utilities distributes educational materials through customer newsletters, community events and its web site. Last year, it offered 63 classes and presentations on Xeriscape™ and other water conservation topics to over 2,300 participants. Springs Utilities partners with educators to provide curriculum-based materials in schools.
- Special Events. In 2007, Springs Utilities hosted an Earth Day celebration attended by approximately 400 people. It hosts an annual symposium on water-wise landscaping.
- Pricing. Residential customers pay a 3-tiered price for the water they use. The first tier is the least expensive and covers essential indoor use. The second tier is higher in price and covers typical outdoor use. The third tier is the highest price for water used over and above typical indoor and outdoor water usage. Commercial customers are on a seasonal pricing structure where they pay a lower price for winter use and a higher price for summer use when the demand is greater.
- Residential Rebates. Springs Utilities provides Energy Star clothes washer rebates, irrigation equipment rebates and high-efficiency toilet rebates.
- Commercial Landscape Code. The city requires water-efficient landscaping for newly developed commercial, industrial and multi-family properties.
- Voluntary Restrictions. Springs Utilities has implemented voluntary water restrictions to encourage wise water use by asking its customers to voluntarily cut back on water use. The voluntary restrictions replaced more stringent mandatory drought-related restrictions in place from 2002-2005.
- Partnerships. Springs Utilities collaborate with a number of groups such as the Colorado WaterWise Council, Colorado Water Conservation Board and others to spread the water conservation message.

On December 31, 2007, Springs Utilities submitted an updated water conservation plan to the Colorado Water Conservation Board (CWCB) for review and approval. It was approved on January 30, 2008, and Springs Utilities is using it as a blueprint for conserving even more water.

In addition, Colorado Springs Utilities operates the second largest non-potable water system in the state of Colorado. Currently, Utilities meets approximately 13% of its total water demand with non-potable water. In 2007, Utilities expanded its non-potable treatment capacity by approximately 10 mgd through the completion of the J.D. Phillips Water Reclamation Facility.

II. Socio-Economic Issues

A. Easements and/or Land Acquisition

➤*Comments:* The SDS will create impacts associated with securing easements, fee ownership and condemnation. (Staff report p. 4). The County should ensure that property owners are treated fairly, and that the project does not create undue financial burdens on residents. (Staff Report p. 9). No landowner should have out-of-pocket expenses. (*Id.*). Along the 7 mile route through Pueblo West, there are 14 houses that would be impacted by construction. (Comments of John Mauldin). When homes are taken, fair market value may not make the homeowners whole. (Comments of Amber Autobee). The SDS alignment does not follow the Fountain Valley Pipeline as I had been led to believe (Comments of Gary Walker)

Response: The construction of the SDS will require Springs Utilities to purchase property interests, such as easements on private property and fee simple acquisitions of property, for the construction of necessary facilities. Land acquisition for SDS will be conducted in accordance with the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest adopted by the Colorado Springs City Council on September 11, 2007. The Manual is derived from the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. This process ensures that property interests are acquired in a fair and consistent manner, including appropriate compensation for real property, structures, relocation, temporary housing, storage, and other items in accordance with the Manual. Additionally, other costs such as appraisals, title commitments, and closing costs will be paid by Utilities. The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests, Grant of Permanent Easement and Temporary Construction Easement Agreements, and Southern Delivery System brochures given to the affected property owners and handed out at recent Land Acquisition meetings are all attached.

The vast majority of the property interests acquired in Pueblo County will be easements. The standard easement documents used by Colorado Springs Utilities state that the Grantor of the easement “shall retain the right to make full use of the property, except for use as might endanger or interfere with the right of the Grantee in the Permanent Easement.”

The comment that 14 houses in Pueblo West would be directly impacted by pipeline construction is incorrect. In an effort to minimize the impacts to occupied structures in Pueblo West, the width of the permanent easement was reduced. Because of this change, the number of houses that would be impacted by construction has been reduced as follows:

- one house will be acquired,
- one garage will be acquired, and
- four houses may be acquired at the property owner’s option.

Location maps and design drawings showing the pipeline alignment and properties in Pueblo County are included in Appendix B of the 1041 Application.

Optimizing the width of the easement has also minimized the number of properties that have the potential to be acquired in fee by Springs Utilities, reducing the impact to Pueblo County tax revenue. Where practicable, when construction is finished, any unimproved property acquired by Colorado Springs for the project will be listed for sale, encumbered by the SDS easement.

Condemnation of property interests for SDS is a matter of last resort. Springs Utilities is committed to working with property owners to negotiate settlements fair to both parties to avoid eminent domain.

Springs Utilities is committed to the fair and consistent treatment of all property owners affected by the SDS Land Acquisition process and will make every reasonable effort to resolve property owner issues and minimize individual hardships.

Springs Utilities disputes the assertion of Gary Walker that he had no prior knowledge of the SDS alignment through Walker Ranch and that he was not advised of the proposed SDS alignment. In fact, Mr. Walker and other members of his family executed Right of Entry agreements providing access to 25 individual parcels from 2002 to 2006, .

Gary Walker executed a Right of Entry for parcel number 9508000001 in June 2004. The map included with the Right of Entry shows that the proposed SDS alignment diverges from the Fountain Valley Authority pipeline. Copies of signed Right of Entry agreements and a map identifying parcels for which Right of Entry was obtained are attached.

With regard to Gary Walker's comments suggesting that other organizations have installed infrastructure across Walker Ranch and failed to adequately mitigate the effects of their construction, Utilities wants to clarify that it did not perform any construction or manage the construction of any of the projects he referred to.

B. Property Tax Issues

➤*Comments:* There may be property tax consequences to the County and Pueblo West. (Staff Report p. 4) If a landowner has a 100-foot permanent easement on their property that they cannot use, they may seek a decrease in the assessed valuation of the property, resulting in additional lost revenue to the County and Pueblo West. (Staff Report p. 9)

Response: Based upon our analysis, the tax implications resulting from SDS land and easement acquisitions will be minimal. Springs Utilities is prepared to engage Pueblo County and Pueblo West in discussions regarding reimbursement for any demonstrated tax consequences

C. Labor Issues

➤*Comments:* The application fails to provide critical information about the impacts of the SDS project on labor contractors and members of organized labor who reside and work in Pueblo County and who are an important sector of the Pueblo County economy. (Comments of RMELC) Local businesses cannot compete with an entity that hires cheap illegal workers. The County should require a Project Labor Agreement with the Colo. Building Construction Trades Council and use of the Department of Homeland Security verification system for all employees.

(Comments of Colorado Building Construction Trades Council; Comments of RMELC) The County should also require all workers on the project to be paid the equivalent of the Federal Davis-Bacon Wages and benefits and require at least 50 percent of the contractors to be based in Pueblo County. (Comments of Colorado Building Construction Trades Council)

Response: Project Participants believe the SDS Project can provide significant benefits to the local economies. It is Springs Utilities' policy to solicit and encourage participation from local suppliers whenever and wherever competitive local sources exist. Contracted services are commonly procured through a process where supplier selection criteria emphasize best or highest value, including cost as only one of many considerations. Springs Utilities' procurement policies ensure a fair and open competitive environment, affording opportunity without reliance upon exclusive contracting practices or application of prescriptive labor and wage provisions.

In order to provide the broadest opportunity for local contractors and suppliers to participate in the Project, Springs Utilities will sponsor procurement workshops in Pueblo and Colorado Springs. The focus of these workshops will be to provide information about upcoming SDS contracting opportunities and how businesses can effectively participate in Springs Utilities procurement processes.

Springs Utilities is committed to equal employment opportunity for all and maintains and implements equal opportunity and affirmative action in its daily operations. Springs Utilities' policy is that no person shall be discriminated against because of race, color, national origin or ancestry, sex, age, religious convictions, veteran status, disability or political beliefs. Contractors shall comply with all federal and state nondiscrimination laws and have an equal employment opportunity policy. Contractors shall also comply with Springs Utilities' Equal Employment Opportunity/Affirmative Action policies regarding nondiscrimination and harassment, which includes sexual harassment, in the conduct of their business while on Springs Utilities' property and/or interacting with Springs Utilities' employees. Contractors are required to cooperate with Springs Utilities in using contractor's best efforts to ensure that disadvantaged business enterprises are afforded the full opportunity to compete for subcontracts or work under any Springs Utilities contracts.

Colorado state law C.R.S. § 8-17.5-101, *et seq.*, requires "illegal aliens" compliance language and certification ("Compliance") provisions in all public contracts for services executed or renewed after August 9, 2006. Springs Utilities has placed such provisions in all service contracts since the Colorado state law became effective. Springs Utilities' policy for "Illegal Aliens Compliance" is attached.

Allegations that Springs Utilities hired illegal aliens or otherwise undocumented workers to perform skilled trade work during the construction of the Front Range Power Plant Project are unfounded. Springs Utilities and a project partner contracted for the engineering, procurement, and construction of the facility and an employment eligibility verification program implemented by the contractor identified workers having discrepancies in their employment eligibility documents. Those employees who were able to provide the required information resumed their positions on the job. The contractor now participates in e-Verify, a Government program through the United States Immigration and Customs Enforcement (ICE) and the Social Security administration. Participation in e-Verify is one of two methods Colorado Springs Utilities allows

contractors to use to confirm they do not employ illegal aliens. The other method requires the contractor to participate in the Colorado Department of Labor and Employment program.

D. Impacts to Landowners and Residents

➤*Comments:* Financial burdens of the SDS could be indirect, including the diminishment of the economic productivity of agricultural land or natural resources in Pueblo County. (Staff Report p. 46) Applicants should be required to reimburse Pueblo County property owners and residents who work, reside, or recreate in close proximity to the SDS route for nuisances resulting from the construction and operation of the SDS pipeline. (Comments of RMELC; Comments of Turkey Creek Conservation Dist.) The Application lacks critical information relating to the environmental impacts on Pueblo County citizens residing in high-risk areas (environmental justice). (Comments of RMELC) One landowner is concerned that diversion of flow would occur above him and return below him, so he potentially would be unable to divert his 20 AF. (Comments of Rick Stewart)

Response: Springs Utilities will meet the conditions of its permits and treat the citizens of Pueblo County fairly. Complaints regarding compensable damages resulting from project construction or operation will be handled fairly and on an individual basis, according to the appropriate process.

The FEIS studied the potential for effects of salinity on agricultural productivity, and determined that differences in crop yield compared to existing conditions would range from negative 0.1 percent to positive 0.4 percent. FEIS section 3.7.5.1. The model used to determine these effects is described in Section 3.7.3.2 of the FEIS.

Environmental justice concerns are fully addressed in Section 3.16 of the FEIS. Based on the Bureau of Reclamation's evaluations, no direct or indirect Environmental Justice effects are anticipated as a result of the SDS Project.

The water rights for the SDS project will operate according to Colorado Water Law under Colorado Springs' existing water rights decrees. As described in Colorado Revised Statutes, "no water storage facility may be operated in such a manner to cause material injury to the senior appropriative rights of others" (C.R.S. 37-87-101(1)(a)). For a detailed analysis of surface water hydrology issues related to the SDS Project, see Section 3.5 and Appendix A of the FEIS.

III. Infrastructure

A. Integrity of Pueblo Dam and Outlet Works

➤*Comments:* There are concerns about the potential impact of SDS on the structural integrity of Pueblo Dam as a result of new storage and new construction. (Staff Report p. 3; Comments of Pueblo Chieftain; Comments of Don Schley) The county should get assurances from State Engineer or the Bureau of Reclamation that additional storage and/or new construction at and below the dam will not affect the structural integrity of the dam, and the feasibility and safety of the dam outlet connections need to be confirmed. (Staff Report pp. 5, 42, 45) The County should get a commitment that Colorado Springs will dredge a volume of silt to equal its average storage, so it can't ask to raise the dam. (Comments of James Colson)

Responses: The water storage in Pueblo Reservoir will not create any new or additional stresses on Pueblo Dam beyond those already considered in the design of Pueblo Dam because the SDS Project does not require any increase in storage capacity.

Safety is the Project Participants' most important consideration in the construction and operation of the SDS Project. The construction of the North River Outlet Works will require attaching new facilities to the existing Pueblo Dam. These facilities will not impact the integrity of the dam. The Bureau is responsible for ensuring dam safety, and will continue to inspect the dam. All SDS designs for facilities directly connecting to, or modifying Pueblo Dam will require review and acceptance by Bureau of Reclamation's Dam Safety staff prior to the commencement of construction of any new SDS facilities at Pueblo Dam.

B. Impacts on Future Utility Infrastructure in SDS Corridor

➤**Comments:** The number of possible conflicts between the SDS and potential future utilities leads to questions about the need for a variance procedure and a review of "non-exclusive" easement language that may nonetheless restrict the operations of other utilities in the project area. (Staff Report pp. 4, 45)

Response: Springs Utilities will develop reasonable easement use criteria that fully protect safety, operational, and maintenance requirements of SDS project facilities.

C. Construction Issues

➤**Comments:** The application does not address "green" construction methods. (Staff Report p. 48; Comments of RMELC) Mr. Walker is concerned about the handling of dust abatement, revegetation, erosion damage, surface and ground water movement, poaching, and trespassing on his property. (Comments of Gary Walker)

Response: SDS project facilities (pump stations and other buildings), will utilize resource conserving design criteria, such as LEED standards, widely accepted by industry for the efficient utilization of energy. Materials will be selected for their sustainable nature and energy consuming equipment (pumps, motors, lighting, etc.) will be selected based upon high efficiency and low energy consumption. Equipment and materials that can be sourced locally (e.g. concrete, masonry, and conduit/wire) will be used to keep project funds in the local economy, but also as a means to reduce the project's overall carbon footprint. During construction, methods will be developed to minimize the use of non-recyclable materials and a program initiated with construction contractors to recycle/reuse materials to the maximum extent possible. General conditions within construction contracts will specify contractors demonstrate the use of recycling/reuse measures, local purchase preferences and use of sustainable operations where applicable.

Protection of properties and the environment is of utmost concern to Project Participants, and they will work jointly with agencies, landowners and public officials to minimize the impact of the SDS Project along its alignment. Springs Utilities is currently working with Pueblo County staff to develop detailed, specific and enforceable mitigation plans addressing road rehabilitation, revegetation, dust control, traffic control, safety, stormwater management, work

hours, wildlife protection, vegetation surveys and mitigation, hazardous materials management, water quality, geology, paleontology, cultural resources, and property access.

IV. Operations

A. Limitations on Pumping and Discharges

➤*Comments:* There are concerns about the actual pumping capacity of the SDS versus the capacity assumed for modeling purposes. (Staff Report p. 65) Applicants should not be allowed to pump more water than is necessary to meet ongoing present demands of water users to be served by the project and must be subject to clear and enforceable numeric pumping limitations. (Comments of RMELC) Discharge from Williams Creek Reservoir should be restricted to a maximum of 300 cfs. (Staff Report p. 7)

Response: The Project Participants are seeking a permit for a project to pump 78 mgd (96 mgd including Pueblo West). The water supply for the operation of the SDS Project will be subject to the limitations contained in the participants' water rights decrees and are administered by the Colorado State Engineer. The County's 1041 authority does not extend to the administration of the participants' water rights. As long as the project does not exceed the parameters set forth in the application, it should not be subject to ongoing regulation. If the project were ever planned to be used at a pumping rate exceeding 78 mgd, the Applicants agree that they would need to seek amendment of the permit.

Colorado Springs agrees and commits to limit releases from Williams Creek reservoir to 300 cfs.

B. Purpose and Need

➤*Comments:* The County should consider the cumulative impacts of the applicant's preferred action alternative in conjunction with other water projects in the Fountain Creek watershed, and the other alternatives that were rejected by the Bureau of Reclamation. (Comments of RMELC) The County should also ask for more information on the cost of reverse osmosis of the sewage effluent at the outfall compared to the costs of SDS. (Comments of Jack Gillespie) Pueblo West's total projected water need was overestimated in the EIS. (Comments of John Mauldin)

Response: Under Section 17.172.120.B.(4) of Pueblo County's code, an applicant for a 1041 permit asked to describe "[t]he need for the Project, including a discussion of alternatives to the Project that were considered and rejected . . ." The various alternatives to the SDS Project were the subject of extensive discussion the application and in the FEIS and its supporting documents. See FEIS, Chapter 2 generally and Section 2.3 for a discussion of alternatives considered and rejected. A great deal of additional detail is present in the Alternatives Analysis Report underlying the FEIS. Project Participants have analyzed cumulative impacts of the SDS Project in detail in the 1041 application. Their analysis is based upon the approach used in the FEIS: to identify those impacts that are reasonably foreseeable and to analyze those. This approach is described in detail in Section 3.1.3 of the FEIS.

The Project Participants conducted a thorough analysis of the costs and benefits of reverse osmosis for the SDS Project and determined that it is not feasible at this time. A description of the process and the costs of reverse osmosis are summarized in Sections 2.2.6.1 and 2.3.5 of the FEIS. The bases for the cost calculations are contained in “CH2M HILL. 2007g. Best Available Alternative Cost Estimates, Southern Delivery System. Technical Memorandum 6-H.19. Prepared for Colorado Springs Utilities. July 24” and “Addendum to Alternative Cost Estimates - Addition of Reuse Alternatives and Alternative 7. Technical Memorandum 6-H.16.B. CH2M HILL. Revised July 6, 2007.”

C. Acquisition of Necessary Permits/Contracts

➤*Comments:* The application is premature and incomplete without a final EIS, Record of Decision, and fully executed contracts with the Bureau of Reclamation. (Comments of Sierra Club; Comments of RMELC) The pipeline is just the first phase of the overall project. (Comments of Don Schley; Comments of Matt Peulen) The Bureau and Colorado Springs have segmented the project to keep the critical elements of PSOP, the elevation of Pueblo Dam on which SDS is founded, from the public view so they can drive through this pipeline and the rest of the project in segments. (Comments of Don Schley) The 2004 IGAs likely violated the Colorado Springs City Charter because they curtailed Colorado Springs’ fundamental water rights. (Comments of Don Schley)

Response: Project Participants disagree that the application is premature and oppose any suggestion that approval should await final contracts from the Bureau of Reclamation. Such an approach would lead to a waste of County resources, much greater expense for all concerned, and great confusion. The FEIS recommends the SDS Project as submitted in this application as the preferred alternative.

Project Participants have applied to Pueblo County for a 1041 permit for the specific project identified in the application submitted — and not for any significantly different project. Project Participants expect and ask to build the project they describe in their application. Comments that the SDS is part of a larger project are incorrect. This project does not include the Preferred Storage Options Plan (PSOP), nor does it envision a change in the crest elevation of Pueblo Dam. The PSOP is a proposal by the Southeastern Colorado Water Conservancy District. If that study ever moves forward it will be the subject of a separate process involving all interested participants, which may or may not include the Project Participants.

If the SDS Project changes significantly within Pueblo County as a result of action by the Bureau of Reclamation, the U.S. Army Corps of Engineers, or for any other reason, Project Participants will amend their permit application with Pueblo County and then proceed through appropriate processes to examine the required changes under County law.

D. Enforceability of Mitigation

➤*Comments:* All mitigation measures in section H of the permit application and the summary of EIS mitigation measures should be enforceable conditions of approval of the 1041 permit. (Staff Report p. 8) The permit should require complete and continuous compliance with all laws, discharge permits, rules and regulations associated with Colorado Springs’ wastewater

treatment system; require CSU to reimburse Pueblo County for the legal and technical costs associated with ensuring compliance with the terms and conditions of any 1041 approval; and incorporate the requirements of any court decisions in the pending Sierra Club Clean Water act case and contracts with the Bureau. (Comments of Bill Thiebaut; Comments of Sierra Club)

Response: Project Participants support the idea that mitigation properly required under Pueblo County 1041 legal authorities will be enforceable conditions in a 1041 permit for the SDS Project. We will work closely with Pueblo County to this end.

Project Participants oppose any condition in a 1041 permit that results in Pueblo County's ability to enforce the permits or other requirements of other authorities, such as the Bureau of Reclamation or the U.S. Army Corps of Engineers. The reasons are both legal and practical. Efforts to pursue duplicative legal enforcement of state and federal permits and laws by Pueblo County are likely illegal under preemption doctrines. If the United States writes a complex permit under the Clean Water Act, for example, the County lacks authority to differ from any interpretation by the United States of its own permit. The basis for this legal conclusion echoes in practical terms. Any such local conditions invite inconsistency in application and enforcement, wasteful arguments over differing interpretations, and unnecessary added expense and delay.

E. Necessity for Future 1041 Permitting

➤**Comments:** Staff recommends a condition of approval that requires amendment to this permit if any water is sold, leased, or delivered to any entity other than the currently listed applicants. (Staff Report p. 9) Staff also recommends a condition of approval that requires an amendment to this permit if the applicants plan any enlargement of Lake Pueblo. (Staff Report p. 10)

Response: Project Participants are seeking a permit for a pipeline and appurtenances to deliver 78 mgd (96 mgd including Pueblo West). Project Participants oppose any conditions purporting to require an amended 1041 permit if any water is sold, leased or delivered to additional or different participants. Colorado Springs commits that it will not use the SDS Project to export water from the Arkansas River basin. As long as the participants do not pump more than 78 mgd (96 mgd including Pueblo West) and the SDS facilities, including pump stations and pipelines, are not expanded, there is no basis for requiring an amended permit. Any plans to enlarge Lake Pueblo would be controlled by the Bureau of Reclamation, not Colorado Springs. If Lake Pueblo is to be enlarged, Pueblo County will have to interact with the party or parties undertaking the enlargement, which may not include the Project Participants. Colorado Springs' potential future participation (as a beneficiary of the Fryingpan-Arkansas Project) in any enlargement undertaken by the Bureau of Reclamation or other parties cannot trigger 1041 permit requirements on the part of Colorado Springs.