

**From:** Ray Petros [<mailto:rpetros@petros-white.com>]  
**Sent:** Monday, April 11, 2011 6:22 PM  
**To:** Cordova, John; Nunez, Anthony; Chostner, Jeff; Headley, Kim; Kogovsek, Dan; [rasopc@aculink.net](mailto:rasopc@aculink.net)  
**Subject:** CSU/Donala Water Supply Agreement

Last Thursday (April 7), we received this email (below) from Mr. Robbins notifying Pueblo County that Colorado Springs Utilities is planning to enter into a short-term water supply agreement with the Donala Water and Sanitation (which serves an area outside CSprgs, to the north of the City and east of I-25). Mr. Robbins informed me today that the proposed agreement will be presented to City Council tomorrow (April 12) for approval. The agreement is for Utilities to supply up to 1,000 AF/yr through December 2015, and for Utilities to deliver Donala water (e.g., from dry-up of ranches in Lake County) through Springs' existing system (not including through Fry-Ark facilities).

This water supply agreement *does not trigger* any requirements for Pueblo County approval under the SDS 1041 Permit. Notice is being provided merely as a courtesy at this time, although we should expect that this arrangement will become permanent at some point in the future. Mr. Robbins assured me today by phone that Utilities will require Donala to obtain both Reclamation approval (after an environmental assessment) and County 1041 permit approval before a permanent agreement is executed between the parties after SDS is operational.

In anticipation of a permanent agreement, however, this temporary agreement already requires Donala to comply with the conditions of the SDS 1041 Permit Condition 5.2 for Utilities to enter into long-term water supply agreements with third parties in El Paso County. Donala has agreed *inter alia* to support the Fountain Creek Watershed District, not to serve water for uses outside the Arkansas Basin, to comply with the Pueblo Flow Mgmt Program, and to support studies of flood control dams in the Fountain Creek watershed.

I've attached a memo to explain in more detail this Donala Agreement and its SDS implications. --Ray

**Raymond L. Petros Jr., Esq**

**Petros & White LLC**  
**1999 Broadway, Suite 3200**  
**Denver, CO 80202**  
**303-825-1980 - phone**  
**303-825-1983 - facsimile**

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**From:** David W. Robbins [<mailto:davidrobbins@hillandrobbins.com>]  
**Sent:** Thursday, April 07, 2011 4:34 PM  
**To:** Ray Petros; Kogovsek, Dan; [rasopc@aculink.net](mailto:rasopc@aculink.net)  
**Cc:** [GBostrom@csu.org](mailto:GBostrom@csu.org); John Fredell; 'BGracely@csu.org'; Keith Riley; [DONeil@CSU.ORG](mailto:DONeil@CSU.ORG)  
**Subject:** Short term Water Supply contract

Friends - Attached is a draft of the short term treated water supply contract with Donala I discussed with Dan on the phone. I have tried to talk to both Gary and Ray but neither one has been available at the times I have called and I didn't hear back on my messages. It is provided for your information even though it does not involve the delivery of water from Pueblo Reservoir or the use of SDS facilities. However, we have taken great care to insure that the terms of the contract do not offend the letter or spirit of the SDS - 1041 permit. Please note that it is only for a short term and will terminate prior to SDS becoming available. No water associated with this contract will come through SDS. CSU will deliver treated water currently in the CSU portfolio not new water to be brought through SDS. In addition, this is a short term contract and Condition 5 refers specifically to long term contracts. It is possible that a long term contract will be discussed with Donala in the future but that would only occur within the context of the 1041 permit conditions and the BOR contract and NEPA process. The reason for my call was to make it abundantly clear that those processes will still be followed if or when a long term contract is contemplated. However, to be sure that no question can be raised about CSU's commitment to the permit conditions you will find that the requirements of Condition 5.2 are incorporated in the short term permit at paragraph 15, even though that might not be required. I have reviewed the permit conditions and I think this contract and the incorporated requirements exceed the letter of the permit conditions and certainly comply with the spirit of the permit. David.

## **AGREEMENT FOR SHORT-TERM WATER SERVICE**

**THIS AGREEMENT** (“Agreement”) is made and entered into this first day of May, 2011, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called “UTILITIES,” and the Donala Water and Sanitation District, 15850 Holbein Drive, Colorado Springs, Colorado, hereinafter called the “DISTRICT.”

### **RECITALS**

- A.** The DISTRICT is a Colorado statutory water and sanitation district with service boundaries located generally in the area of Gleneagle, outside of, but adjacent to, the City of Colorado Springs. The DISTRICT was formed on November 30, 1972 and currently serves a customer base of approximately 2,600 taps in the Colorado Springs metropolitan area;
- B.** The DISTRICT intends to increase and diversify its water supply to meet its long-term water needs and reduce its historic and current reliance on non-renewable groundwater resources;
- C.** Because the DISTRICT’s long-term water supply planning is not yet complete, the DISTRICT desires to receive short-term, interruptible water service from UTILITIES;
- D.** UTILITIES currently has infrastructure capacity available in its water system; a sufficient but interruptible supply of fully consumable water, not including water imported from the Blue River or any other type of water that could be replaced in UTILITIES’ system by Blue River water; sufficient water transportation/displacement and storage capacity not including UTILITIES’ excess capacity storage space in the Fryingpan-Arkansas Project; and water treatment capacity to provide short-term, interruptible water related services to the DISTRICT until December 31, 2013;

E. UTILITIES and the DISTRICT recognize that new infrastructure will be necessary to connect the DISTRICT's water system to UTILITIES' water system to implement this Agreement;

F. Pursuant to Section 6-50 (Water Rights) of Article VI (Utilities) of the Charter of the City of Colorado Springs, as amended, the City of Colorado Springs has the authority to buy, exchange, augment, lease, own, and control water and water rights; and

G. UTILITIES has entered into this Agreement pursuant to Section 12.4.304 (Service; Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended (Ord. 10-76).

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION  
INCLUDING THE FOREGOING REPRESENTATIONS, IT IS AGREED AS  
FOLLOWS:**

1. **Term:** This Agreement shall become effective 8am MST May 1, 2011 and remain in effect until 5pm MST December 31, 2013. The DISTRICT agrees that the DISTRICT bears the sole responsibility for providing an adequate supply of water for its growth. The DISTRICT shall maintain and operate its independent water supply system on a continuous, year-round basis, so as to be prepared to provide any water required by the DISTRICT's customers in excess of the water provided by UTILITIES pursuant to this Agreement. This contract may be renewed in one year increments at the UTILITIES' CEO's discretion, after consultation with City staff, for up to two additional years, but in no case longer than December 31, 2015.

2. **Short-Term Water Service:** In 2011, UTILITIES will provide to the DISTRICT's system an annual minimum amount of 100 acre-feet of treated potable water, on a take-or-pay basis. The minimum take will be escalated to a annual minimum amount of 200 acre-feet of treated potable water, on a take or pay basis beginning in 2012 and thereafter. UTILITIES shall not be obligated to provide to the DISTRICT more than 1,000 acre-feet annually. The DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside the Arkansas River

Basin. The DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside the DISTRICT's existing service territory as of the date of the Agreement or to any entity or person other than the current residential, commercial, and industrial customers of the DISTRICT, except DISTRICT may serve subdivided lots within Chaparral Hills Subdivision, El Paso County, Colorado, which are served under court order by the DISTRICT as well as Academy Water and Sanitation District if absorbed into DISTRICT service area. Neither Chaparral Hills Subdivision nor Academy Water and Sanitation District are beneficiaries of this Agreement except as they may receive water service from the DISTRICT.

3. **Requests for and Delivery of Water:** The DISTRICT shall directly communicate with UTILITIES Systems Control as specified in 3.A. and follow-up with a written request for deliveries of water, specifying amounts, rates, and duration at least three (3) business days prior to the expected delivery date(s). UTILITIES will provide a response at least one (1) day prior to the requested delivery date accepting, modifying, or denying the request. For the purposes of the DISTRICT requesting service and UTILITIES responding to requests, the term "written" shall include communications by electronic mail to certain electronic mail addresses, which the DISTRICT and UTILITIES shall provide to each other upon execution of this Agreement. The DISTRICT shall limit its water demand on UTILITIES' system to an instantaneous flow rate of no less than 200 gallons per minute, not more than 2,083 gallons per minute, and a total maximum daily delivery of 1.2 million gallons per day (daily flow limit). UTILITIES agrees to maintain the hydraulic grade line at the connection point between the DISTRICT's system and UTILITIES' system at or above 7100 feet. UTILITIES may, as it deems necessary and without providing the DISTRICT notice, increase, decrease, or waive these daily and instantaneous flow limits based on system performance to protect UTILITIES' water system and deliveries to UTILITIES' customers or for other good cause. UTILITIES will make best efforts to provide the DISTRICT timely notice of any changes of this type.

A. UTILITIES System Control

- i. Operations Supervisor, Jeremy McBeain, [jmcbeain@csu.org](mailto:jmcbeain@csu.org), office phone (719) 668-4588, cell phone (719) 494-6973
- ii. System Control Operator, if acknowledge within 24 hours by Mr. McBeain, office (719) 668-4570.
- iii. [Water\\_accounting@csu.org](mailto:Water_accounting@csu.org)

**B. DISTRICT System Control**

- i. Superintendent, Robert Hull, [roberth@donalawater.com](mailto:roberth@donalawater.com), 488-3603, cell – 499-3661
- ii. Chief Water Operator, Mark Parker, [markp@donalawater.com](mailto:markp@donalawater.com), 488-3603, cell, 499-8255

**4. Acceptance of DISTRICT Water into UTILITIES Water System:**

UTILITIES will accept fully consumable water owned by the DISTRICT (“DISTRICT Water”) and decreed for municipal use, into UTILITIES water system which will thereby transfer ownership of DISTRICT water to UTILITIES. The amount of DISTRICT Water accepted by UTILITIES shall not exceed the amount of water UTILITIES provides to the DISTRICT plus any system losses. The delivery will be accomplished by book over of DISTRICT Water from the DISTRICT’s account in Pueblo Reservoir, or some other mutually agreed upon location, to the UTILITIES water system as designated by UTILITIES. DISTRICT Water shall be delivered to UTILITIES as requested at UTILITIES sole discretion. Further, it is agreed that UTILITIES shall not be obliged to accept into its water system any DISTRICT Water that would interfere with UTILITIES’ rights, operations, or yields. DISTRICT will provide a final decree for DISTRICTS’ Water to UTILITIES for review and acceptance. Any DISTRICT water not accepted into UTILITIES system will be the sole responsibility of the DISTRICT.

**5. Return Flows:** All water furnished by UTILITIES under this Agreement is on a short term basis only for the use of the DISTRICT for the purposes for which the water rights have been decreed. Neither DISTRICT nor its customers shall have the right to

make a succession of uses of such water; and upon completion of the primary use, all dominion over the water furnished hereunder shall revert completely to UTILITIES.

UTILITIES retains the legal ownership of and the right to use, reuse, successively use, and dispose of all return flows resulting from the DISTRICT's one-time use of water provided by UTILITIES under this Agreement. The DISTRICT shall maintain dominion and control over all of UTILITIES' water during the distribution of the water and once returned to the DISTRICT's wastewater collection system. The DISTRICT shall be solely responsible for the collection, treatment and discharge of all wastewater generated by the use of UTILITIES' water furnished under this Agreement. The DISTRICT shall cooperate with UTILITIES to quantify the daily discharge of such return flows to permit their inclusion in the Monument/Fountain Creek Transit Loss Model. UTILITIES agrees to pay a pro rata share of the DISTRICT's flow-based cost for the use of the Monument/Fountain Creek Transit Loss Model based upon the percentage of the DISTRICT's effluent that is UTILITIES' return flows from water provided to the DISTRICT pursuant to this Agreement. The DISTRICT shall be solely responsible for its own base cost for the use of the Model. UTILITIES shall have the right to review the water accounting documents of the DISTRICT to verify the quantities of such return flows resulting from UTILITIES' water deliveries to DISTRICT.

6. **Consequence of Loss of Dominion over Return Flows:** If UTILITIES should lose legal dominion over the return flows that result from the DISTRICT's use of the water provided under this Agreement, UTILITIES may take either of the following actions at its sole discretion:

- A. UTILITIES may apply the then-applicable augmentation tariff rate as provided to the DISTRICT pursuant to this Agreement where appropriate to compensate for the value of the return flows lost to UTILITIES. The DISTRICT agrees to pay UTILITIES for augmentation at the rates established in **Appendix A** attached hereto and incorporated herein. UTILITIES will bill the DISTRICT monthly in arrears with payment due within thirty (30) days of the date of billing; or

B. UTILITIES may terminate this Agreement without any liability to the DISTRICT or any third party including the DISTRICT's customers.

7. **Water Rights Unaffected:** No water rights are being transferred to or from UTILITIES or the DISTRICT under this Agreement.

8. **Service Rate, System Usage Fee, and Billing:** The DISTRICT agrees to pay UTILITIES for water provided at the service rates established in **Appendix A** attached hereto and incorporated herein. Additionally, DISTRICT shall pay an annualized system usage fee as provided in **Appendix A**. UTILITIES will bill the DISTRICT monthly in arrears with payment due within thirty (30) days of the date of billing.

9. **Water Metering and Systems Interconnection Costs:** As a condition precedent to UTILITIES performance under this Agreement, the DISTRICT agrees to pay \$296,902, due 30 days after the Agreement is executed, to reimburse UTILITIES for the installation of new pumping equipment at the Northgate Pump Station to meet the requirements for water provided to the DISTRICT. The DISTRICT also agrees to design and construct, at its sole expense, all interconnection infrastructure consisting of a water main extension to connection points, flow control and metering vault including SCADA telemetry and a backflow prevention vault to meet UTILITIES' Line Extension and Service Standards (Standards). DISTRICT will dedicate flow control and metering vault and associated water mains for UTILITIES ownership, as defined in the Standards and will provide a recorded permanent easement, as necessary, for these facilities. UTILITIES will approve the design, construction and final acceptance of the infrastructure as defined in the Standards.

All materials and installations must meet UTILITIES' standards. UTILITIES will verify flow meter accuracy on a schedule similar to other large customer billing meters.

All excavations for water service installation or repair shall be performed in accord with Colorado Springs City Code and the UTILITIES Rule and Regulations as applicable and as amended. The excavations shall meet all applicable safety standards, including any requirements as to barricades and lights. Streets, sidewalks, parkways and other public



property disturbed in the course of work shall be restored in a manner satisfactory to the Department of Public Works of the City.

**10. Water Use Restrictions; Termination:** The DISTRICT agrees to establish formal restrictions regarding the use of water and to declare and enforce such restrictions as directed by UTILITIES at any time during the term of this Agreement, consistent with Section 12.4.602 of the City Code of Colorado Springs. The DISTRICT agrees to declare and enforce water use restrictions that are no less restrictive than the water use restrictions required by UTILITIES at any time during the term of this Agreement.

The DISTRICT acknowledges and consents to UTILITIES' right to terminate deliveries of water under this Agreement due to a significant interruption of water supplies, a substantial disruption (including but not limited to legal challenges impacting the water system, and maintenance and repair to the infrastructure) to UTILITIES' water system, DISTRICT's breach of a material term or condition of this Agreement, at UTILITIES' convenience upon thirty (30) days written notice, or as otherwise authorized by the City Code of Colorado Springs. UTILITIES will make reasonable efforts to notify the DISTRICT of circumstances that could result in such termination.

In the event the rate structure established in **Appendix A** of this Agreement is challenged in court, whether by DISTRICT or by an independent third party, either party shall have the option to suspend services under the Agreement pending the outcome of such proceeding. Notwithstanding the preceding, nothing herein shall be interpreted to extend the term of this Agreement.

**11. Conservation Plan:** DISTRICT agrees to deliver a State submitted conservation plan to UTILITIES within six months of the execution of the Agreement. The DISTRICT agrees to abide by and enforce the conservation plan submitted to the State in its current form or as it may be changed through the State approval process.

**12. City of Colorado Springs Compliance:** DISTRICT agrees to comply with all applicable ordinances, regulations and rules concerning the use of UTILITIES' water system.

13. **Drinking Water Quality Regulatory Compliance; Required Permits:**

- A. The water provided by UTILITIES into the DISTRICT's system shall be potable water which complies with the Federal Safe Drinking Water Act and the applicable Colorado Primary Drinking Water Regulations (5 C.C.R. 1003-1). Pursuant to §1.8 of the Colorado Primary Drinking Water Regulations, UTILITIES' responsibility regarding the quality of water furnished shall extend only up to the point of delivery to the DISTRICT'S water system. The DISTRICT agrees that its system constitutes a Consecutive System and, in accordance with §1.9 of the Colorado Primary Drinking Water Regulations, the DISTRICT is responsible for all applicable monitoring and reporting requirements of the Colorado Primary Drinking Water Regulations of water within the DISTRICT's system.
- B. DISTRICT will be responsible for obtaining, prior to operation, any applicable permits from any permitting authority or approvals from the Colorado Department of Public Health and Environment for the construction and connection of the system interconnection/point of entry necessary to fulfill this Agreement. A copy of such approval will be provided to UTILITIES.

14. **Colorado Water Quality Control Act Compliance:** If, at any time during the effective term of this Agreement, the DISTRICT fails to meet the requirements of the Colorado Water Quality Control Act, and applicable control regulations promulgated and permits issued thereunder, UTILITIES may in its sole discretion suspend deliveries and interrupt its performance of this Agreement without commensurate extension of this Agreement or liability to DISTRICT or any third party, including DISTRICT'S customers, until compliance is achieved. With or without suspension or interruption by UTILITIES, the DISTRICT, in the event of failure to meet such requirements, shall implement cost-effective solutions to reduce water pollution with the objective of achieving and maintaining water quality in accordance with the applicable designated uses and water quality standards established by the Water Quality Control Commission, and discharge permit limits imposed by the Water Quality Control Division upon the

DISTRICT. In the event UTILITIES fails to meet requirements of the Colorado Water Quality Control Act and applicable regulations thereunder, UTILITIES shall notify DISTRICT in the same manner as other customers, and DISTRICT shall have the option of immediately suspending the delivery of water under this Agreement.

**15. Regional Cooperation**

- A. The DISTRICT acknowledges and agrees to support the Fountain Creek Watershed, Flood Control, and Greenway District to the extent authorized under Colorado Revised Statutes § 32-1-1001 *et seq.*
- B. The DISTRICT irrevocably commits not to serve water purchased under this Agreement to property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River.
- C. The DISTRICT agrees to actively support and cooperate with the City of Colorado Springs, El Paso County, and other regional entities having jurisdiction over stormwater detention and retention on Fountain Creek and to take whatever actions that are within the DISTRICT's legal authority to insure that stormwater in the Fountain Creek Basin does not increase above existing conditions, it being understood that District has no express authority with respect to regulation or control of stormwater or funding of stormwater projects.
- D. The DISTRICT agrees to accept and comply with the City of Pueblo Flow Management Program and Pueblo Recreational In-Channel Diversion Decree, both impacting the Arkansas River between Pueblo Dam and its confluence with Fountain Creek, in any application for a change of water rights or exchange implicating that reach of the Arkansas River.
- E. The DISTRICT agrees to participate in any water quality monitoring or studies to the same degree and extent as undertaken by the City of Colorado Springs. The DISTRICT shall pay a yearly water quality monitoring fee as provided in **Appendix A**. UTILITIES will bill the

DISTRICT annually with payment due within thirty (30) days of the date of billing.

- F. The DISTRICT agrees to support any studies of a flood control dam or dams on Fountain Creek, it being understood that DISTRICT has no express authority to regulate or control stormwater or fund stormwater projects.

**16. No assignment without consent; no third party beneficiary:** There shall be no assignment of the rights or obligations contained in this Agreement by either party without the prior written consent by the other party, and any such assignment shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to DISTRICT, UTILITIES may assign this Agreement without consent to the City of Colorado Springs, Colorado. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and DISTRICT.

**17. Legal Notice:** Notices under this Agreement, other than the DISTRICT's requests for water and UTILITIES' responses to such requests, shall be given in writing, signed by an authorized representative of the party giving notice. Telephonic or email notice is not acceptable. Notices shall be delivered by facsimile, by courier service delivery (such as Federal Express), or by first-class mail to one of the two (2) people specified below at the following addresses and telephone numbers:

**For UTILITIES**

**A) Chief Water Services Officer: Gary Bostrom**

- a. Address: Colorado Springs Utilities, ATTN: Chief Water Services Officer, 121 S. Tejon St., 5th Floor, Colorado Springs, CO 80903, P.O. Box 1103, Colorado Springs, CO 80947-0950, Fax (719) 668-4158.

**B) City Attorney's Office - Utilities Division**

- a. Address: Colorado Springs Utilities, ATTN: City Attorney's Office – Utilities Division, 121 S. Tejon St., 4th Floor, Colorado Springs, CO 80903, P.O. Box 1103, Colorado Springs, CO 80947-0940, Fax (719) 668-8048.

**For the DISTRICT**

**A) General Manager: Dana Duthie**

- a. Address: Donala Water and Sanitation District, ATTN: General Manager, 15850 Holbein Drive, Colorado Springs, CO 80921, Office phone (719) 488-3603, Fax (719) 488-3110.

**B) Office Administrator: Jackie Sipes**

- a. Address: Donala Water and Sanitation District, ATTN: Superintendent, 15850 Holbein Drive, Colorado Springs, CO 80921, Office phone (719) 488-3603, Fax (719) 488-3110.

18. **Cancellation:** Either party has the option to cancel this Agreement by March 1 of any given year for the balance of the Agreement.

19. **Governing law, Jurisdictional and Venue:** This Agreement shall be construed in accordance with the laws of the State of Colorado (except for its conflict of law provisions) as well as the Colorado Springs City Charter and the City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado and, more specifically, El Paso County, Colorado and, if necessary, for exclusive federal questions, the United States District Court for the District of Colorado.

20. **Force Majeure:** Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbance. Due to any natural or manmade event, if UTILITIES mandates water restrictions or prohibitions of any type, the DISTRICT will meet or exceed such prohibitions or restrictions.

21. **Entire Agreement; Modifications to be in Writing:** This Agreement, including any and all appendices and exhibits attached hereto, contains the entire understanding between the parties. No modification, amendment, notation, or other alteration to this

Agreement shall be valid or any force or effect unless mutually agreed to by the parties in writing as an addendum to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement which are not specifically set forth herein. Email and all other electronic (including voice) communications from UTILITIES, except as otherwise specifically provided herein, in connection with this Agreement, are for informational purposes only. No such communication is intended by UTILITIES to constitute either an electronic record or an electronic signature or to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

22. **No Precedent; Severability:** The parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future Agreement, nor vest any rights in either party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be binding upon the parties who agree that the Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this \_\_\_ day of \_\_\_\_\_, 2011.

COLORADO SPRINGS UTILITIES

DONALA WATER AND  
SANITATION DISTRICT

By: \_\_\_\_\_  
Gary Bostrom  
Chief Water Services Officer

By: \_\_\_\_\_  
Timothy G. Murphy  
President

APPROVED AS TO FORM:

\_\_\_\_\_


Diane O'Neil  
City Attorney's Office – Utilities Division

PETROS & WHITE LLC

ATTORNEYS AT LAW

MEMORANDUM

TO: PUEBLO COUNTY COMMISSIONERS; DAN KOGOVSEK, ESQ.; GARY RASO, ESQ.; MR. KIM HEADLEY

FROM: RAYMOND L. PETROS JR, ESQ. 

DATE: APRIL 11, 2011

RE: NOTICE BY COLORADO SPRINGS UTILITIES OF A SHORT-TERM WATER SUPPLY AGREEMENT WITH DONALA WATER & SANITATION DISTRICT

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Condition 5.1 of the SDS 1041 Permit reserves the authority of Pueblo County to regulate the introduction of new water supplies through the SDS Pipeline. In addition, Condition 5.2 provides that if any of the SDS participants enter into contracts to deliver water to a third party in El Paso County, certain conditions are to be included in any such contract. Those conditions include the following:

- A. Support of the Fountain Creek Watershed Flood Control and Greenway District and a commitment to participate in the financing of said District;
- B. A commitment not to serve property outside the drainage of the Arkansas River;
- C. To the extent such third parties have legal authority to regulate stormwater, the adoption of a financing mechanism similar to the Colorado Springs Stormwater Enterprise to maintain and construct storm water detention and retention facilities in Fountain Creek;
- D. An agreement to comply with the Pueblo flow management program;
- E. Pro-rata participation in water quality monitoring and studies required under the permit; and
- F. Support of any studies of a flood control dam or dams on Fountain Creek.

To ensure that it is complying with the spirit and letter of these Conditions 5.1 and 5.2, Colorado Springs Utilities, through its lawyer, David Robbins, has notified the County of its intent to enter into a short term water agreement ("Agreement") with the Donala Water & Sanitation District. The term of the Agreement is through December 31, 2015. Consequently, it is not likely a long-term contract that triggers Condition 5.2. Also, because the Agreement expires before the expected completion date of the SDS Pipeline, the SDS Pipeline will not be used to deliver water to Donala under this temporary Agreement. Finally, under the express



terms of the Agreement, Colorado Springs will not allow Donala to store water in Colorado Springs' Fry-Ark facilities.

According to Mr. Robbins, Utilities is giving this notice merely as a courtesy to Pueblo County and in the hope of allaying any concerns by the County. He said it was Utilities' position that Donala will have to obtain both Reclamation's approval and Pueblo County's approval for any long-term delivery of water through the SDS Pipeline. It was for that reason that Utilities was now only willing to enter into a short-term contract with Donala.

The Agreement provides that Utilities will deliver to the District 100 acre-feet of treated water in 2011, 200 acre-feet of treated water in 2012, and no more than 1000 acre-feet annually if the term of the agreement is extended through 2015. The District is responsible for reimbursing Utilities for almost \$300,000.00 for the installation of new pumping equipment to deliver water to the District, and the District also must design and construct it at its sole expense the interconnection infrastructure to the City's system.

Under the agreement, the City also agrees to deliver to Donala an amount of water equal to the amount of water delivered by Donala to the City's system. According to Mr. Robbins, Donala has acquired irrigation water rights from ranches in Lake County, which water Donala is planning to store in a temporary storage account in Pueblo Reservoir, and then booking that water over to Colorado Springs' account in the reservoir. At the present time, Donala is solely relying upon nontributary groundwater wells to supply its needs.

As part of the Agreement, Donala agrees to the Conditions A through F of SDS permit Condition 5.2 discussed above. The conditions of the Agreement fairly incorporate all six conditions, except that the Agreement omits the requirement of Condition A that Donala participate in the financing of the Fountain Creek District. When I pointed this out to Mr. Robbins, he promised to check with Utilities to determine if the omission was merely an oversight and to get back to me promptly with the answer.

I asked Mr. Robbins whether Donala is within the Southeastern District boundaries. He did not believe so. He also did not know whether the Southeastern District would object to Colorado Springs supplying water outside the Southeastern boundaries, though he suspects this issue would come up in a long-term contract. Supposedly, the notice of the Donala Agreement was also given to the Southeastern board.

Although this Agreement by its terms is short-term and temporary, Pueblo County should assume that a water supply arrangement with Donala will become long-term. Donala is spending too much money for the interconnection for only a four-year agreement.

Utilities should be given due credit for giving the County some advance notice of this Agreement, even though the Agreement will be presented to City Council tomorrow, April 12, 2011. (The County was only given a three business-day notice of this agreement; Mr. Robbins observed that Condition 5.2 does not require advance approval by the County, but only notification that a contract has been entered into by Utilities "evidencing the acceptance of the terms and conditions" of Condition 5.2.)

In conclusion, at this point, there is nothing for Pueblo County to act upon in terms of approving or disapproving this short-term water contract between Utilities and Donala. However, we need to anticipate that Donala eventually will obtain a long-term contract with Utilities for delivery of water. According to Mr. Robbins, Donala's attorney, Mr. Fendel, has told Utilities that Donala is planning to apply for a 1041 Permit to the County in the near future.