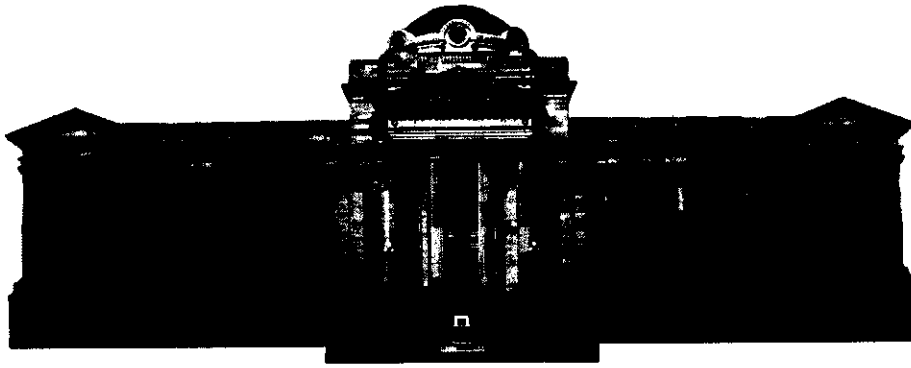


JOHN B. CORDOVA, SR.  
CHAIRMAN  
DISTRICT 2

ANTHONY NUÑEZ  
CHAIR PRO TEM  
DISTRICT 1



J.E. CHOSTNER  
COMMISSIONER  
DISTRICT 3

KIM B. HEADLEY  
DIRECTOR  
planning@co.pueblo.co.us

## DEPARTMENT OF PLANNING AND DEVELOPMENT

### MEMORANDUM

TO: Pueblo Board of County Commissioners

FROM: Jeffrey Woeber, Planner II *JW*

DATE: July 14, 2011

SUBJECT: 1041 2008-002 (Southern Delivery System 1041 Permit)  
Waiver Request for Condition of Approval  
Colorado Springs Utilities (Applicant)

Work Session Discussion Item

#### PURPOSE

Staff is seeking the Board's direction regarding a waiver request for a condition of approval of the approved 1041 Permit for the Southern Delivery System.

The Condition of Approval reads as follows:

#### MITIGATION APPENDIX

##### C-11 Dust and Other Air Emission Controls (Dust Control)

4. Use construction equipment that meets Colorado opacity standards for operating emissions. Construction equipment will be emissions tested at an approved facility prior to use on the site. This test will be performed each year that the equipment is used on the project. The certificates of approval for each item of construction equipment will be maintained by the Applicant and be available for inspection by Pueblo County if requested.

The applicant has submitted a letter, attached as Exhibit 1, requesting a waiver of this condition. This request is based on the fact that the Colorado Department of Public Health and Environment (CDPHE), Air Pollution Control Division regulations do "not have any regulatory requirements or opacity standards for emissions testing associated with construction equipment."

In recent discussion with CDPHE staff, it was noted that although there are no such standards or requirements for construction equipment, such as trenching equipment, front end loaders, generators and the like, this does not extend to, for example, dump trucks and trucks used to transport construction equipment to the job site.

## **PERMIT AMENDMENT**

The Section of the Resolution of approval for the 1041 Permit applicable to Permit Amendment is as follows:

### **5. Permit Amendment**

Any material change in either the construction, use, or operation (exceeding 78 mgd pumping by the Juniper Pump Station) of the SDS Project from that approved herein, or with the Applicant's performance of the terms and conditions approved herein, shall require a permit amendment. For these purposes, a material change shall be any change in the Project which significantly changes the nature of impacts addressed by the Permit. The Applicant shall notify Pueblo County of any material change in the SDS Project (not including routine maintenance, repair, or operation of an existing facility) and the County will determine whether an amendment or new permit is required. Any disagreement about the materiality of a change shall be subject to the Dispute Resolution Process outlined herein.

It is staff's opinion that this is not a "material change" which would require a Permit amendment, as it is not feasible for the applicant to meet the opacity and emissions testing requirements of the Permit Condition.

jmw

Attachment, Exhibit 1 – Letter from Colorado Springs Utilities

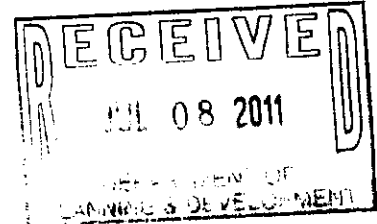


Colorado Springs Utilities

*It's how we're all connected*

July 6, 2011

Mr. Kim Headley  
Director Pueblo County Planning and Development  
229 West 12<sup>th</sup> Street  
Pueblo, Colorado 81003



RE: Pueblo County 1041 Permit No. 2008-002  
Construction Equipment Emission Testing Waiver Request

Mr. Headley,

Pursuant to our conversation last Friday, July 1, 2011, I am submitting a request for a waiver of Mitigation Appendix - Construction Condition C-11, Project Detail 4 of the Southern Delivery System 1041 Permit. The condition states the Applicant is to "Use construction equipment that meets Colorado opacity standards for operating emissions." Further, the condition states that the Applicant shall be able to provide annual emissions testing "...certificates of approval for each item of construction equipment for inspection by Pueblo County if requested."

In an effort to clarify the regulatory requirements of this condition, Colorado Springs Utilities contacted Mr. Raymond Elick of the Mobile Sources Program at the Colorado Department of Public Health and Environment (CDPHE) Air Pollution Control Division on June 30, 2011. According to Mr. Elick, Colorado does not have any regulatory requirements or opacity standards for emissions testing associated with construction equipment. Additionally, under the CDPHE Air Quality Control Commission Regulation No. 12 - Reduction of Diesel Vehicle Emissions, 5CCR1001-15, Part B - Diesel Opacity Inspection Program, Definition I.B.20, "Diesel Vehicle" does not include the following: vehicles registered pursuant to Section 42-3-134 (12), or 42-3-138, C.R.S.: off-the-road diesel powered vehicles or heavy construction equipment.

Based on the above information, there are no applicable regulatory requirements or standards in place to meet this condition. As a result, Colorado Springs Utilities respectfully requests a waiver of Construction Condition C-11 Project Detail 4 of the 1041 Permit.

Thank you in advance for your consideration.

Sincerely,

Allison Mosser  
Southern Delivery System  
Colorado Springs Utilities

EXHIBIT 1

JOHN B. CORDOVA, SR.  
CHAIRMAN  
DISTRICT 2

ANTHONY NUÑEZ  
CHAIR PRO TEM  
DISTRICT 1



J.E. CHOSTNER  
COMMISSIONER  
DISTRICT 3

JOAN ARMSTRONG  
INTERIM DIRECTOR  
planning@co.pueblo.co.us

## DEPARTMENT OF PLANNING AND DEVELOPMENT

August 18, 2011

Ms. Allison Mosser  
Southern Delivery System  
Colorado Springs Utilities  
121 South Tejon Street, 3<sup>rd</sup> Floor  
P.O. Box 1103, MC 930  
Colorado Springs, Colorado 80947-0930

Dear Ms. Mosser:

Colorado Springs Utilities has requested a waiver of a Condition of Approval associated with Pueblo County's approved 1041 Permit No. 2008-002 (Southern Delivery System). The waiver request is for the following Condition:

### MITIGATION APPENDIX

#### C-11 Dust and Other Air Emission Controls (Dust Control)

4. Use construction equipment that meets Colorado opacity standards for operating emissions. Construction equipment will be emissions tested at an approved facility prior to use on the site. This test will be performed each year that the equipment is used on the project. The certificates of approval for each item of construction equipment will be maintained by the Applicant and be available for inspection by Pueblo County if requested.

The waiver request has been reviewed by me, as the 1041 Permit Administrator, and by the Board of County Commissioners, as the 1041 Permit Authority. As it has been determined that the State of Colorado does not have opacity standards or emissions testing for construction equipment, Condition of Approval No. C-11, 4. is hereby waived. This waiver applies only to construction equipment for the Southern Delivery System Project that is not subject to Colorado opacity standards for operating emissions.

Please be advised that this determination does not constitute an exemption from any other applicable regulations. The project is subject to approval by any regulatory agency where required by regulation or statute.

Sincerely,

Joan Armstrong  
Interim Director

c: Pueblo Board of County Commissioners  
Gary Raso, Assistant County Attorney