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DISTRICT 3

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

DEPARTMENT OF PLANNING AND DEVELOPMENT

MEMORANDUM

TO: Pueblo Board of County Commissioners

FROM: Jeffrey Woeber, Planner II 

DATE: September 28, 2011

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

PURPOSE

Applicant has requested a waiver of a Condition of Approval for 1041 Permit No. 2008-002 (Southern Delivery System 1041 Permit). The waiver would allow the applicant to exceed the limitation specified in the Condition of Approval No. C-1, 4., where the maximum length of an open trench cannot exceed 400 feet. This waiver would be applicable only to that portion of the pipeline project located on Mr. Gary Walker's property, who has requested the applicant expedite the construction process on his property (approximately 5.25 miles). The applicant's letter of request is attached as Exhibit 1.

The Permit Administrator supports the waiver request, subject to approval by the Board of County Commissioners.

The Condition of Approval reads as follows:

MITIGATION APPENDIX

C-1 Protection of Open Excavations and Trenches

Applicant shall provide safe work sites for the residents of Pueblo County.

4. Limit the maximum length of open trench to 400 linear feet.

The applicant had discussed this with Mr. Headley before his retirement. Mr. Headley had asked the applicant to contact the Colorado Department of Public Health and Environment (CDPHE), Air Pollution Control Division, as well as the Colorado Division of Wildlife (DOW), and ensure those Agencies concurred there would be no issues with the increased length of the trench. The applicant has obtained each of those Agencies' concurrence, provided the mitigation measures outlined in the U.S. Bureau of Reclamation's Record of Decision (ROD) are followed. A letter from the CDPHE is attached as Exhibit 2, and a letter from the DOW as Exhibit 3.

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.

The above Permit Amendment Section is also consistent with the applicable Section of the 1041 Regulations:

Section 17.172.200, Permit Amendment

A. Any material change in the construction, use, or operation of a Project from that approved by the Permit Authority shall require a permit amendment. The amendment shall be processed in accordance with and subject to the same procedures and requirements set forth herein for a new permit.

"Material Change" is defined as follows:

Section 17.172.040, Definitions

J. Material change: Any change in the Project as approved by the Permit Authority which significantly changes the nature of impacts considered by the Permit Authority in approval of the original Permit or in the case of a development not previously issued a permit, a structural modification, change of use, change of operation, change of user, which significantly changes the nature of the development and its associated impacts.

It is staff's opinion that this is not a "material change" which would require a Permit amendment. Exceeding the 400 foot limitation for the length of the trench, specifically to accommodate one property owner's desire to expedite the project across his land, would not significantly change the nature of impacts addressed by the Permit. This opinion is based on the comments submitted by the CDPHE and the DOW.

jmw

Attachments, Exhibit 1 – Letter of Request from Colorado Springs Utilities
Exhibit 2 – Comments from CDPHE
Exhibit 3 – Comments from Colorado DOW



Colorado Springs Utilities
It's how we're all connected

August 30, 2011

Mr. Gary Raso
Assistant County Attorney
Pueblo County, Colorado
215 West 10th Street
Pueblo, Colorado 81003

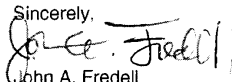
RE: Pueblo County 1041 Permit No. 2008-02
Mitigation Appendix C-1, Project Detail 4 Waiver Request
SDS Raw Water Pipeline (RWP) South 3 (S3) through Gary Walker Ranch

Dear Mr. Raso,

This letter is a follow up to a conversation Colorado Springs Utilities originally initiated with Mr. Kim Headley of the Pueblo County Department of Planning and Development during his tenure. In response to a request received from Mr. Gary Walker regarding expedited pipeline construction activities across his ranch property (approximately 5.25 miles), Colorado Springs Utilities had requested a waiver of Mitigation Appendix Construction Condition C-1, Project Detail 4 of the Southern Delivery System (SDS) 1041 Permit limiting the maximum length of open trench to 400 linear feet.

Per the request of Mr. Headley for approval of this waiver, Colorado Springs Utilities has received concurrence from the Colorado Department of Health and Environment (CDPHE) Air Pollution Control Division (APCD) and the Colorado Division of Wildlife (CDOW) that extending the maximum open trench length does not conflict with their regulatory or wildlife management requirements. Per the attached response letters, both the CDPHE-APCD and CDOW concur that there are no open trench limitations as long as construction Best Management Practices (BMPs) are in place and that trench slopes are constructed such that wildlife can safely evacuate open trenches.

Based on the receipt of the attached agency correspondence, Colorado Springs Utilities respectfully requests a waiver of Construction Condition C-1, Project Detail 4 of the 1041 Permit across the Gary Walker Ranch property.

Sincerely,

John A. Fredell
Program Director
Southern Delivery System

Enclosures: CDPHE and CDOW response letters

cc: Joan Armstrong, Pueblo County Department of Planning and Development

121 South Tejon Street, Third Floor
P.O. Box 1103, Mail Code 930
Colorado Springs, CO 80947-0930

Phone 719/668-4800
Fax 719/668-8735
<http://www.csu.org>

EXHIBIT 1

July 7, 2011

Mr. Keith Riley
Southern Delivery System Planning, Permitting,
Land Acquisition & Risk Management Program Manager
Colorado Springs Utilities
121 South Tejon Street
Mail code 930
Colorado Springs, CO 80947-0930

Re: **Air Quality Mitigation for the Southern Delivery System Project**

Dear Mr. Riley,

Allison Mosser has asked me to write to you to confirm that the air quality mitigation requirement for the Southern Delivery System construction is contained at page 21 of the Record of Decision ("ROD") issued by the Bureau of Reclamation for the Project. We do not and have not imposed standards concerning the length of open trench allowed for pipeline construction and believe that if the mitigation measures outlined in the ROD are followed that the short and long-term effects on air quality will be appropriately reduced or mitigated. We do not require a condition in any permit that would restrict or limit the distance of open trench during the construction project as long as the mitigation measures are followed and the contractor complies with the conditions of the Colorado Department of Public Health and Environment - Air Pollution Control Division's air quality standards for construction activities.

Very truly yours,



Adam Wozniak
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246
303-692-3160 (direct)
adam.wozniak@state.co.us

EXHIBIT 2



COLORADO PARKS AND WILDLIFE
1313 Sherman Street, Room 618 • Denver, Colorado 80203
Phone (303) 866-3437 • FAX (303) 866-3206
wildlife.state.co.us • parks.state.co.us



July 27, 2011

Mr. Keith Riley
Southern Delivery System Planning, Permitting,
Land Acquisition & Risk Management Program Manager
Colorado Springs Utilities
121 South Tejon Street
Mail code 930
Colorado Springs, CO 80947-0930

Re: **Wildlife Mitigation for the Southern Delivery System Project**

Dear Keith:

Allison Mosser of your staff asked me to confirm for you that the necessary wildlife mitigation activities during construction of the Southern Delivery System are contained in the Fish and Wildlife Mitigation Plan and the U.S. Bureau of Reclamation's Record of Decision ("ROD"). In particular, I would like to draw your attention to page 18 of the ROD under the heading "Wildlife" where one of the mitigation measures to be implemented is "Install wildlife crossovers (trench plugs) during pipeline construction with ramps on each side at a maximum of one-quarter mile intervals and at well-defined game trails." With this condition it is clear that we believe that larger open trenches, with this mitigation in place, do not present a risk to wildlife and we do not believe that the open trench length (400 feet) limitation contained in the Pueblo County 1041 Permit is a necessary requirement imposed by the Division. Further, the SDS Permitting and Compliance Team has been collaborating with our regional staff and reached a determination that trench plugs are not necessary if the contractor is meeting OSHA condition 1926.651(c)(1)(a) and (2).

1926.651(c)(2): Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees.

1926.651(c)(1)(i): Structural ramps that are used solely by employees as a means of access or egress from excavations shall be designed by a competent person. Structural

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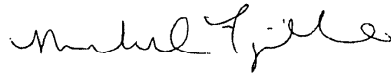
John W. Hickenlooper, Governor • Mike King, Executive Director, Department of Natural Resources
Rick D. Cables, Director, Colorado Parks and Wildlife
Parks and Wildlife Board: David R. Brougham • Gary Butterworth, Vice-Chair • Chris Castilian
Dorothea Farris • Tim Glenn, Chair • Allan Jones • Bill Kane • Gaspar Pericone • Jim Pribyl • John Singletary
Mark Smith, Secretary • Robert Streeter • Lenna Watson • Dean Wingfield
Ex Officio Members: Mike King and John Salazar

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ramps used for access or egress of equipment shall be designed by a competent person qualified in structural design, and shall be constructed in accordance with the design.

To meet the condition, the contractor will construct and maintain, at a minimum, a 1 to 1 sloped earthen ramp. The slope will depend on the soil type in the construction area. Additionally, the contractor agrees to place a similar ramp on the opposite trench slope every 0.25 miles or at well-defined game trails.

Very truly yours,



Michael Trujillo
Area Wildlife Manager, Pueblo
mike.trujillo@state.co.us

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