

ANTHONY NUÑEZ
CHAIRMAN
DISTRICT 1

J.E. CHOSTNER
CHAIR PRO TEM
DISTRICT 3



JOHN B. CORDOVA SR.
COMMISSIONER
DISTRICT 2

JULIE ANN WOODS
DIRECTOR
planning@co.pueblo.co.us

**PUEBLO COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: Pueblo Board of County Commissioners

THROUGH: Julie Ann Woods, Director *Jan*

FROM: Jeffrey Woeber, Planner II *JW*

DATE: September 5, 2012

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

PURPOSE

Applicant has requested a "Modification to Construction Specification for Segment S-1 of the SDS." This is regarding a Condition of approval for 1041 Permit No. 2008-002, (Southern Delivery System 1041 Permit).

The modification, or 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. The applicant proposes "...using two four hundred foot headings instead of one." This waiver would be applicable only to that portion of the pipeline project located within Segment S-1 of the Pipeline Project. The two open trenches would be near the Motorsports Park (Honor Farm area), as well as an area south of the Honor Farm area which includes State Park land, small pieces of land owned by the Union Pacific Railroad, Pueblo West Metropolitan District land, and some federal land south of the railroad property that is leased by State Parks. The applicant states that allowing two open trenches, up to 400 feet in length, will "...allow the pipeline to be installed expeditiously and allow Colorado Springs to move promptly to get the right of way re-vegetated and returned to the City for the operation of the Motor Sports Park." Letters from the applicant are attached as Exhibits 1 and 2.

The Permit Administrator (Planning Director) supports the waiver request, as long as there is concurrence 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 states "...we would like to move forward on or before August 31 in order to expedite construction and re-vegetation across the City and State property within the S-1 segment. We understand that this is a priority for the Commissioners because of the location of this segment, and the interest in completing and re-vegetating the segment so as to allow the conduct of recreational activities on the Honor Farm property without further impediment."

The City Attorney has commented, "Yes, the City is OK with this (trench proposal)." (See Exhibit 3.) The City Attorney did caution that if any change to the Colorado Department of Public Health and Environment's (CDPHE) "Air Pollution Emissions Notice" (APEN) was required, then Colorado Springs Utilities would have to ensure they were in compliance with that Permit. Colorado Springs Utilities has provided documentation from the CDPHE, stating they do not restrict or limit the distance of an open trench, as long as mitigation measures are followed and the applicant is in compliance with the CDPHE's air quality standards (Exhibit 4).

The applicant has stated the trenches will be completed, with re-vegetation under way, by March 13, 2013.

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, by temporarily opening two trenches, would not significantly change the nature of impacts addressed by the Permit.

jmw

Attachments, Exhibit 1 – Letter of Request from Colorado Springs Utilities to Julie Ann Woods, d. 8/27/12
 Exhibit 2 – Letter from Colorado Springs Utilities to Ray Petros, d. 8/23/12
 Exhibit 3 – Misc. Emails, d. 8/23/12 – 8/28/12
 Exhibit 4 – Letter from CDPHE regarding no limitations on trenching , d. 7/7/11



August 27, 2012

Julie Ann Woods
Pueblo County Director of Planning and Development
229 West 12th Street
Pueblo, CO 81003-2810

Re: Modification to Construction Specification for Segment S1 of the SDS

Dear Ms. Woods:

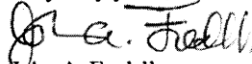
The staff of Colorado Springs Utilities is writing to request permission for its contractor to install the SDS Pipeline within segment S-1 using two four hundred foot headings instead of one. We have undertaken the following preliminary conversations in advance of this request.

1. We have confirmed with the City of Pueblo, through conversations with the City Attorney, that the use of two-four hundred foot headings for the SDS Pipeline through segment S1 is acceptable so long as other provisions of the City's license and the 1041 Permit are met.
2. We have conferred with Mr. Petros, your outside counsel, and have written to confirm that he sees no problem with this request.
3. We understand that the County Commissioners have expressed their view that this is an appropriate matter for the staff to approve.

We are willing to execute a letter of agreement with the County confirming the conditions associated with this request if that would be your preferred course of action, but we would like to move forward on or before August 31 in order to expedite construction and revegetation across the City and State property within the S1 segment. We understand that this is a priority for the Commissioners because of the location of this segment, and the interest in completing and revegetating the segment so as to allow the conduct of recreational activities on the Honor Farm property without further impediment.

We look forward to speaking with you and will promptly respond to any questions you may have. Thank you very much for your consideration.

Very truly yours,



John A. Fredell

cc: Keith Riley
Mike Pifher
Rick Griffith
Tom Florczak
Ray Petros
David W. Robbins

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

Phone 719.668.4800
Fax 719.668.8734
<http://www.csu.org>

EXHIBIT 1

DAVID W. ROBBINS
ROBERT F. HILL
DENNIS M. MONTGOMERY
JOHN H. EVANS
JENNIFER H. HUNT
PETER J. AMPE
NATHAN P. FLYNN
ANDREW J. ROTTMAN

HILL & ROBBINS, P.C.
ATTORNEYS AT LAW
100 BLAKE STREET BUILDING
1441 EIGHTEENTH STREET
DENVER, COLORADO 80202-1256

TELEPHONE
303 296-8100

FAX
303 296-2388

E-MAIL
webmaster@hillandrobbs.com

WEBSITE
www.hillandrobbs.com

August 23, 2012

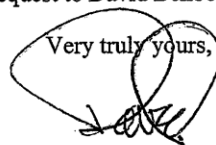
Raymond L. Petros, Jr., Esq.
Petros & White, LLC
1999 Broadway, Suite 3200
Denver, CO 80202

Re: **Modification to Construction Specification for Segment S1 of the SDS**

Dear Ray:

Just a short note to confirm that you are in agreement that the contractor for Colorado Springs Utilities on segment S1 of the SDS Project should be authorized to construct the pipeline on two independent headings, allowing for two open trenches of up to four hundred feet each.. As you and I discussed this approval is with the express understanding that all other aspects of both the Pueblo County 1041 Permit and the City of Pueblo License Agreement for construction of the SDS remain in place and are applicable to the entire right of way whether installed using one or two headings. If we can get the County approval to proceed in this manner it will allow the pipeline to be installed expeditiously and allow Colorado Springs to move promptly to get the right of way re-vegetated and returned to the City for the operation of the Motor Sports Park. If you would confirm this understanding for me I would sincerely appreciate it. We understand that the Commissioners are willing to allow construction to proceed in this manner upon County staff approval and we are writing to make this request to David Benbow.

Very truly yours,



David W. Robbins

cc: John Fredell
Keith Riley
Mark Pifher
Gary Raso

EXHIBIT 2

Woeber, Jeff

From: Woods, Julie Ann
Sent: Tuesday, August 28, 2012 3:15 PM
To: Woeber, Jeff
Subject: FW: Letter from David Robbins Re Modification to Construction Specifications

Julie Ann Woods, AICP/ASLA

Director

Pueblo County Department of Planning & Development



229 W. 12th St.
Pueblo, CO 81003
719-583-6100 Main
719-583-6381 Direct
woodsja@co.pueblo.co.us

*"Good plans shape good decisions. That's why good planning helps to make elusive dreams come true."
--Anatole France*

From: Tom Florczak [mailto:tflorczak@pueblo.us]
Sent: Saturday, August 25, 2012 8:57 AM
To: Woods, Julie Ann
Subject: RE: Letter from David Robbins Re Modification to Construction Specifications

"Air Pollution Emission Notice" It's what they call air quality permits....

THOMAS J. FLORCZAK
CITY ATTORNEY
CITY OF PUEBLO LAW DEPARTMENT
503 N. MAIN STREET, SUITE 203
PUEBLO, COLORADO 81003
719.562.3899

Confidentiality Notice: This electronic mail message and any attachments may be privileged and/or confidential. If you are not the intended recipient or a representative of the intended recipient, then you are prohibited from disclosing, copying, using, or otherwise disseminating any information in this message or its attachments. If you have received the message in error, please immediately destroy all electronic and paper copies of this message and notify the sender of the error in transmission, either by electronic response to this message or by calling the sender at (719) 562-3899. Thank you for your cooperation.

From: Woods, Julie Ann [mailto:woodsja@co.pueblo.co.us]
Sent: Friday, August 24, 2012 8:48 AM
To: Tom Florczak
Subject: RE: Letter from David Robbins Re Modification to Construction Specifications

Tom-
What is an APEN?

Julie Ann Woods, AICP/ASLA

Director

Pueblo County Department of Planning & Development



229 W. 12th St.
Pueblo, CO 81003
719-583-6100 Main
719-583-6381 Direct
woodsja@co.pueblo.co.us

"Good plans shape good decisions. That's why good planning helps to make elusive dreams come true."
--Anatole France

From: Tom Florczak [<mailto:tflorczak@pueblo.us>]
Sent: Thursday, August 23, 2012 5:33 PM
To: 'David W. Robbins'; 'Ray Petros'; 'Rae Macias'
Cc: 'JFredell@csu.org'; 'KRiley@csu.org'; 'mpifher@csu.org'; 'Gary Raso (graso@rasopc.com)'; Woods, Julie Ann; Benbow, Dave; Schmidt, Robert; Kogovsek, Dan; Scott Hobson; Munch, Jim
Subject: RE: Letter from David Robbins Re Modification to Construction Specifications

All:

Yes, the City is Ok with this. The only caution flag is that if the change requires any modification to an APEN, that CSU obtain that.

Tom

THOMAS J. FLORCZAK
CITY ATTORNEY
CITY OF PUEBLO LAW DEPARTMENT
503 N. MAIN STREET, SUITE 203
PUEBLO, COLORADO 81003
719.562.3899

Confidentiality Notice: This electronic mail message and any attachments may be privileged and/or confidential. If you are not the intended recipient or a representative of the intended recipient, then you are prohibited from disclosing, copying, using, or otherwise disseminating any information in this message or its attachments. If you have received the message in error, please immediately destroy all electronic and paper copies of this message and notify the sender of the error in transmission, either by electronic response to this message or by calling the sender at (719) 562-3899. Thank you for your cooperation.

From: David W. Robbins [<mailto:davidrobbins@hillandrobbins.com>]
Sent: Thursday, August 23, 2012 1:37 PM
To: 'Ray Petros'; Rae Macias
Cc: JFredell@csu.org; KRiley@csu.org; 'mpifher@csu.org'; Gary Raso (graso@rasopc.com); Woods, Julie Ann; Benbow, Dave; Schmidt, Robert; Kogovsek, Dan; Tom Florczak
Subject: RE: Letter from David Robbins Re Modification to Construction Specifications

Of course, I'll get it to you as soon as Tom sends it back but you all can confirm with Tom Florzak verbally in the meantime. I've copied him on this response. David

From: Ray Petros [<mailto:rpetros@petros-white.com>]
Sent: Thursday, August 23, 2012 1:27 PM
To: Rae Macias; David W. Robbins
Cc: JFredell@csu.org; KRiley@csu.org; 'mpifher@csu.org'; Gary Raso (graso@rasopc.com); Woods, Julie Ann; Benbow, Dave; Schmidt, Robert; Kogovsek, Dan
Subject: RE: Letter from David Robbins Re Modification to Construction Specifications

Julie Ann Woods, AICP/ASLA

Director

Pueblo County Department of Planning & Development



229 W. 12th St.
Pueblo, CO 81003
719-583-6100 Main
719-583-6381 Direct
woodsja@co.pueblo.co.us

"Good plans shape good decisions. That's why good planning helps to make elusive dreams come true."
--Anatole France

From: Tom Florczak [<mailto:tflorczak@pueblo.us>]
Sent: Thursday, August 23, 2012 5:33 PM
To: 'David W. Robbins'; 'Ray Petros'; 'Rae Macias'
Cc: 'JFredell@csu.org'; 'KRiley@csu.org'; 'mpifher@csu.org'; 'Gary Raso (graso@rasopc.com)'; Woods, Julie Ann; Benbow, Dave; Schmidt, Robert; Kogovsek, Dan; Scott Hobson; Munch, Jim
Subject: RE: Letter from David Robbins Re Modification to Construction Specifications

All:

Yes, the City is Ok with this. The only caution flag is that if the change requires any modification to an APEN, that CSU obtain that.

Tom

THOMAS J. FLORCZAK
CITY ATTORNEY
CITY OF PUEBLO LAW DEPARTMENT
503 N. MAIN STREET, SUITE 203
PUEBLO, COLORADO 81003
719.562.3899

Confidentiality Notice: This electronic mail message and any attachments may be privileged and/or confidential. If you are not the intended recipient or a representative of the intended recipient, then you are prohibited from disclosing, copying, using, or otherwise disseminating any information in this message or its attachments. If you have received the message in error, please immediately destroy all electronic and paper copies of this message and notify the sender of the error in transmission, either by electronic response to this message or by calling the sender at (719) 562-3899. Thank you for your cooperation.

From: David W. Robbins [<mailto:davidrobbins@hillandrobbins.com>]
Sent: Thursday, August 23, 2012 1:37 PM
To: 'Ray Petros'; Rae Macias
Cc: JFredell@csu.org; KRiley@csu.org; 'mpifher@csu.org'; Gary Raso (graso@rasopc.com); Woods, Julie Ann; Benbow, Dave; Schmidt, Robert; Kogovsek, Dan; Tom Florczak
Subject: RE: Letter from David Robbins Re Modification to Construction Specifications

Of course, I'll get it to you as soon as Tom sends it back but you all can confirm with Tom Florzak verbally in the meantime. I've copied him on this response. David

From: Ray Petros [<mailto:rpetros@petros-white.com>]
Sent: Thursday, August 23, 2012 1:27 PM
To: Rae Macias; David W. Robbins
Cc: JFredell@csu.org; KRiley@csu.org; 'mpifher@csu.org'; Gary Raso (graso@rasopc.com); Woods, Julie Ann; Benbow, Dave; Schmidt, Robert; Kogovsek, Dan
Subject: RE: Letter from David Robbins Re Modification to Construction Specifications

July 7, 2011

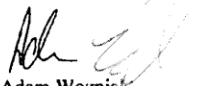
Mr. Keith Riley
Southern Delivery System Planning, Permitting,
Land Acquisition & Risk Management Program Manager
Colorado Springs Utilities
121 South Tejon Street
Mail code 930
Colorado Springs, CO 80947-0930

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