

ANTHONY NUÑEZ
CHAIRMAN
DISTRICT 1

J.E. CHOSTNER
CHAIR PRO TEM
DISTRICT 3



JOHN B. CORDOVA SR.
COMMISSIONER
DISTRICT 2

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

**PUEBLO COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: Pueblo Board of County Commissioners

THROUGH: Joan Armstrong, Interim Director *ga*

FROM: Jeffrey Woeber, AICP, Planner II *JW*

DATE: September 26, 2012

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

PURPOSE, DISCUSSION

The applicant, at the request of a property owner, has requested a waiver of the revegetation requirement within a condition of approval for 1041 Permit No. 2008-002, (Southern Delivery System 1041 Permit). The owner of the subject property, located at 623 N. Canvas Drive, on Lot 39, Block 6, Tract 233, Pueblo West, has submitted a written request asking that his property not be revegetated (see Exhibits 1, 2). The owner states he intends to construct a corral on his lot on the area of the SDS pipeline route.

The Condition of Approval reads as follows:

Condition No. 22 in the resolution of approval for the 1041 Permit (Resolution No. P&D 09-22) requires a preconstruction evaluation of existing vegetation, which was completed by the applicant, and reclamation and revegetation of the site. Similarly, Condition C-9, within the Resolution's Mitigation Appendix, has detailed requirements for site restoration of disturbed areas.

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.

RECOMMENDATION

It is staff's opinion that this is not a "material change" which would require a Permit amendment. This lot will comprise approximately 140 feet of the SDS pipeline project.

The Permit Administrator (Planning Director) supports the waiver request, as long as there is concurrence by the Board of County Commissioners.

jmw

Attachments, Exhibit 1 – Emailed Request from CSU to Julie Ann Woods, d. 9/18/12
Exhibit 2 – Memorandum of Agreement for Revegetation (With Waiver)
Exhibit 3 – Letter from Property Owner

From: [Kevin Binkley](#)
To: [Woods, Julie Ann](#); [Armstrong, Joan](#); [Woeber, Jeff](#); [Gary Raso](#)
Cc: "graso@rasopc.com" (graso@rasopc.com); [Mark Pifher](#); [Keith Riley](#); [Lyman Ho](#); [Allison Mosser](#)
Subject: Pueblo West Resident Revegetation Waiver Request
Date: Tuesday, September 18, 2012 9:23:42 AM
Attachments: [Dees Revegetation Waiver.pdf](#)

Hi Julie Ann,

Per our telephone conversation, please find attached a copy of the revegetation waiver and corresponding letter from the current property owner (Mr. Thomas Dees) at 623 N. Canvas Drive in Pueblo West, which requests a waiver from SDS-related revegetation activities on his property. Mr. Dees plans to construct a horse corral in the area to be revegetated and has requested the revegetation waiver for this reason. The property has been returned to final grade and stabilized with crimped in hay to the property owner's satisfaction. To complete the waiver process, we respectfully request Pueblo County's concurrence and acceptance of Mr. Dees' waiver request and removal of this portion of the project from the SDS revegetation requirements under the Pueblo County 1041 permit (including, but not limited to, condition C-9). Please let us know if this matter might be up for discussion at the next scheduled planning work session on October 4 or if this will be handled through your office.

Thank you in advance for your consideration and please do not hesitate to contact us if you should have any questions or require additional information.

Best,
-Kevn.

Kevin Binkley
Permitting and Compliance Specialist
Southern Delivery System
Direct Line: 719.668.3748
Cell: 719.339.3394
Email: kbinkley@csu.org

CONFIDENTIALITY NOTICE - This email transmission, and any documents, files or previous email messages attached to it, may contain information that is legally privileged or otherwise confidential to include customer and business information. If you are not the intended recipient, or an authorized person for the intended recipient, you are hereby notified that any disclosure, copying or distribution of this information, or any action taken in reliance on the information contained within this email, is strictly prohibited. If you have received this email message in error, please notify the sender and then delete the message (and any attachments) from your computer and/or network. Thank you.



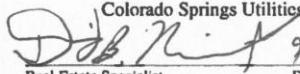
Colorado Springs Utilities
It's how we're all connected

Memorandum of Agreement APN. 9532006040
 For Revegetation Property Owner Thomas C. Dees
 Southern Delivery System Segment Work Package S2
 Property Address: 623 N Canvas Dr, Pueblo West, CO 81007
 Parcel Description: See Exhibit A for property owner's property. See Exhibits B and C for the areas of Revegetation Activities. Revegetation activities are intended to occur where Southern Delivery System construction disturbances have occurred on owner's property.

1. The undersigned owner agrees to allow revegetation activities (as defined on the attached scope of work) on his/her property for a one-year term renewable for two additional terms upon the mutual agreement of both parties. Payment shall be made for each separate term following the execution and delivery of the license agreement or a renewal of the license agreement.
2. It is understood by the owner that the revegetation access is for a public purpose and is voluntary and may be revoked upon thirty (30) days written notice. Revocation of access shall constitute a waiver of future revegetation work and a release of Colorado Springs Utilities (CSU) from performing and completing such work on the owner's property, excepting the removal of all or a portion of the irrigation system and fencing.
3. If the owner declines to execute a Revegetation License Agreement, owner understands that no future agreements will be offered or are available. By declining the Revegetation Offer, owner acknowledges that the Southern Delivery System shall not conduct its revegetation activities on the owner's property.
4. Payment for Year One shall be \$300.00. Payment for Year Two shall be \$200.00. Payment for Year Three shall be \$100.00. Each payment shall be made in a separate calendar year. Samples of the Agreements are attached for reference purposes.
5. The memorandum shall not be considered as binding upon the parties until such time as all of the hereinbelow signatures have been obtained.
6. This Agreement shall be construed in accordance with the laws of the State of Colorado.

The parcel proposed to be revegetated contains 4,903 square feet in Permanent Easement;
7,004 square feet in Temporary Construction Easement
 and improvements as follows: _____

Compensation shall be paid upon execution and acceptance of each Revegetation License Agreement.

Colorado Springs Utilities

 Real Estate Specialist Date 9/6/12

Owner

Owner _____ Date _____

APPROVED:

 SWS Land Team Date 9/11/12

Owner _____ Date _____


Owner _____ Date _____

City Attorney's Office _____ Date _____

SWS Director/Deputy Director _____ Date _____

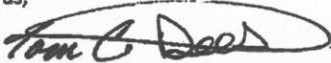
Revegetation Waiver

I hereby decline having my property revegetated following construction of the Southern Delivery System pipeline, waive any obligation that Colorado Springs Utilities has to do so, and understand that I will not be offered the opportunity to include my property in the revegetation activities in the future.

Owner  Date 8/22/12

I, Thomas Dees, would like no revegetation to occur on my property at 623 N. Canvas Drive in Pueblo West as a part of the revegetation program for the Southern Delivery System. I plan on constructing a corral using the rear of my property for my horses and the proposed revegetation program would interfere with my plans. I acknowledge that I will not be paid for the license agreement, however, believe that this course is in my best interest. Staff from SDS has explained the program and been professional and courteous and I appreciate their time and effort. David Marciniak had told me that by putting portable panels around my property where the water line exists would not interfere with my plans for my property.

Regards,
(sign)



Thomas Dees