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**PUEBLO COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT**

January 14, 2013

Colorado Springs Utilities
Mr. Mark Pifher, SDS Permitting and Compliance Manager
121 South Tejon Street, Third Floor
P.O. Box 1103, Mail Code 930
Colorado Springs, CO 80947-0930

Re: Condition 6 of SDS 1041 Permit-- Monetary Mitigation for Fountain Creek Impacts

Dear Mr. Pifher:

Condition 6 of Pueblo County Resolution No. P&D 09-22, which approved 1041 Permit No. 2008-002 for the Southern Delivery System Project, requires the Applicant to pay \$50 million to the Fountain Creek Watershed Flood Control and Greenway District (the "District") for mitigation of SDS impacts to Fountain Creek in Pueblo County. The last paragraph of Condition 6 reads as follows:

"In the event completion of the SDS Project is delayed beyond 42 months after the effective date of the permit because of an affirmative decision made by Applicant, then the payments to be made by the Applicant pursuant to this paragraph shall begin to be made on such date, without regard to project construction status, or such payments shall be subject to annual indexing commencing 42 months after the effective date of the permit, to increase the amount of such payments as required to preserve their present values, using the Colorado Front Range Producer Price Index, but not to exceed a maximum annual increase of 3.5%."

The effective date of the SDS 1041 Permit was April 21, 2009 by signature and recordation of Resolution No. P&D 09-22. 42 months after the effective date was October 21, 2012. On July 22, 2009, the Utilities Board, comprised of members of the Colorado Springs' City Council, voted to postpone completion of the SDS Project four years from its original completion date of 2012 to at least 2016. As a result of this affirmative decision to postpone the completion of the Project, the payments on the balance of \$49,700,000 were to have begun to be made on October 21, 2012, or such remaining funds would be subject to annual indexing commencing on such date to increase the amount of such payments as required to preserve their present values at the rate and in the manner set forth in Condition 6.

Because no installment payment pursuant to Condition 6 was made to the District on October 21, 2012, it is our determination that that annual indexing on the payments began as of October 21, 2012. You may recall that we discussed this determination with you and other CSU

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representatives at our meeting on November 20, 2012. Please acknowledge promptly in writing Applicant's concurrence or disagreement with this determination.

Thank you for your attention in this matter. Please do not hesitate to contact this office if you require further information or have any questions in this matter.

Sincerely,



Joan Armstrong
Director

c: Board of County Commissioners
Gary Raso, Special Assistant County Attorney
Raymond L. Petros Jr., Esq., Petros and White, LLC
Robert C. Schmidt II, PE, County Engineer/Director of Public Works
David Benbow, General Services Engineer, Department of Engineering and Public Works
Larry Small, Executive Director Fountain Creek Watershed Flood Control and Greenway
District
1041 Permit No. 2008-002 File