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**PUEBLO COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT**

June 28, 2013

Carlie A. Ronca, Chief, Resources Division
United States Department of the Interior
Great Plains Region
Eastern Colorado Area Office
11056 West County Road 18E
Loveland, Colorado 80537-9711

Subject: Environmental Monitoring of the Southern Delivery System Project (PCAR)

Dear Ms. Ronca:

We received your letter requesting verification that the SDS project is meeting its commitments to Pueblo County's permits, approvals and agreements as described in the Record of Decision and relative to our review of the 2012 Permit Compliance Report prepared by Colorado Springs Utilities (CSU) as SDS project manager. The terms and conditions of the SDS 1041 Permit issued by the County require ongoing compliance by the SDS participants. During 2012, CSU has been both sincere and forthcoming in its efforts to comply with the 1041 Permit. However, based upon information known and available to the County at this time, there are areas of concern, including those issues described below which arose or continued during 2012.

1. Pueblo West, as one of the proposed SDS Participants, has challenged the enforceability of Condition 9 in Pueblo County's approval of 1041 Permit No. 2008-002 (SDS 1041 Permit). Condition 9 requires all SDS Participants to cooperate in and comply with the Pueblo Flow Management Plan and its requirements for maintaining certain flows through Pueblo below Pueblo Reservoir by cessation of exchanges. Pueblo West filed a lawsuit against the County in Case No. 09CV695 in Pueblo County District Court to prevent the County's enforcement of this Condition 9. A Settlement Agreement, dated November 23, 2010, was executed between Pueblo West, Pueblo County, the City of Colorado Springs on behalf of its Utilities, and the Board of Water Works of Pueblo, under which the Parties agreed to stay further action in the lawsuit pending the

satisfaction of several preconditions to settlement set forth in the Settlement Agreement, including a proposed exchange regiment by which Pueblo West could comply with Condition 9. The Settlement Agreement further provides that ***Pueblo West cannot utilize the features and facilities of the SDS Project*** until it dismisses its lawsuit against the County in accordance with the Settlement Agreement or until a final court judgment has been entered that Pueblo West is entitled to utilize the SDS features and facilities. As of this date, the preconditions to settlement have not been satisfied fully (including Pueblo West's construction of Wildhorse Creek return flow pipeline proposed by Pueblo West for completion in 2013).

2. CSU made a commitment to an assured funding for stormwater control infrastructure, as assumed under the SDS EIS and expressed under Condition 19 of the 1041 Permit: "... *Colorado Springs has established a Stormwater Enterprise Fund to finance the capital costs of needed stormwater control infrastructure. See Mitigation Appendix E-2.*" This is critical because under Condition 23 of the 1041 Permit, the applicant committed to "*maintain stormwater controls and other regulations intended to ensure the Fountain Creek peak flows resulting from new development served by the SDS project within the Fountain Creek basin are no greater than existing conditions.*" In 2009, shortly after the 1041 Permit was issued, the City of Colorado Springs abolished its Stormwater Enterprise Fund and has not put an alternative program in place. There is now a lack of reliable funding for stormwater infrastructure within Colorado Springs and surrounding regions. The County has relayed its concerns to the Colorado Springs City Council as well as the Mayor of Colorado Springs and is monitoring this issue to ensure permanent alternative financing measures will be adopted timely to meet the intent of the 1041 Permit, or if not, whether a Permit amendment or suspension is required. There might also be the need for Reclamation to issue a supplemental EIS to assess the cumulative effects of uncontrolled stormwater controls when combined with increased flows associated with SDS and with the proposed Master Storage Contract in Pueblo Reservoir (which is now the subject of a pending EIS by Reclamation).
3. In the annual report, CSU describes under Appendix 7 of its 2012 Compliance Report its progress related to wastewater system improvements. Under Condition 7 of the 1041 Permit, CSU committed to invest an additional \$75,000,000 in its wastewater system between January 1, 2009 and December 31, 2024. CSU is to provide an annual report to Pueblo County describing such expenditures for the prior year. According to the 2012 report, CSU expended \$2,811,339 in 2012 for its LCERP and MHERP programs. The total expended to date since 2009 is reportedly \$26.7M. However, there has not yet been adequate backup documentation provided by CSU to confirm the amount spent, despite requests by County staff for such additional documentation. We note the dollar amount spent each year on these wastewater system improvements has decreased since 2009 which raises our concerns whether CSU will be able to meet its full commitment by 2024.

4. Condition 16 of the 1041 permit states “*Colorado Springs Utilities commits to Pueblo County as a part of the 1041 process that it will voluntarily participate, when and if the Southeastern Colorado Water Conservancy District, the Bureau of Reclamation, and any other affected party agree to participate, in developing a reservoir management plan for Pueblo Reservoir designed to protect reservoir levels and recreational opportunities on Pueblo Reservoir to the extent feasible given the potential for future changes in hydrology and water demands by project beneficiaries.*” We are unaware of any efforts by any of the parties to implement this condition. A reservoir management plan is particularly critical given Reclamation’s pending EIS for the Arkansas Valley Conduit, Interconnect, and Master Storage Contract projects at Pueblo Reservoir.
5. Condition 6 of the 1041 Permit requires monetary mitigation of just under \$50M to be paid by the SDS Applicant to the Fountain Creek Watershed, Flood control and Greenway District for Fountain Creek impacts. These monies are to be paid in five annual installments beginning on January 15 of the year following SDS water deliveries, or if paid later than October, 21, 2012 because of project delays, the payments are to be increased by indexing as required to preserve their present value. The completion date of the SDS Project was postponed by CSU for about 4 years and is now projected to be completed in 2016. No installment payment was made on or before October 21, 2012. The discussion of the suitable indexing method is ongoing but has not been resolved yet between the County and CSU.
6. A landowner of a large ranch over which the pipeline crosses in the S3 area has made complaints pertaining to Condition 22 of the 1041 Permit, “Reclamation of Disturbed Lands” and associated *Mitigation Appendix C-9 Site Restoration*. Mr. Walker, the rancher, disputes the revegetation and the post-construction contours. Pueblo County has obtained professional services of a consultant for the matters relevant to the site restoration and revegetation measures over the pipeline within Pueblo County, and CSU has agreed to reimburse Pueblo County for such expenses pursuant to Condition 29.
7. Condition 4 of the 1041 Permit requires that the Applicant shall comply with applicable local, State and federal regulatory requirements; in that regard, Mitigation Appendix C-7 specifically references 401 Certification by the State of Colorado pursuant to the Clean Water Act requirements. By Order dated April 12, 2012 in Case 2011CV174, the District Court in and for Pueblo County held the State’s 401 Certification to be void. The Court found that the Colorado Water Quality Control Commission did not follow lawful procedures, and the WQCC was arbitrary and capricious in its findings that SDS would comply with water quality standards and would not cause significant degradation to the Arkansas River and Fountain Creek. The Court also found that the proposed adaptive management plan and other mitigation measures would not provide reasonable assurance that the water quality standards would be met. This Order is now the subject of an appeal to the Colorado Court of Appeals, and the County is awaiting the outcome of that appeal to determine whether an amendment or suspension of the 1041 Permit is required.

Thank you for the opportunity to comment. If you have any questions, I can be reached at 719-583-6105 or armstron@co.pueblo.co.us

Sincerely,



Joan Armstrong

Director

1041 Permit Administrator

c: Board of County Commissioners
Peter Blood, Interim-County Attorney
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