

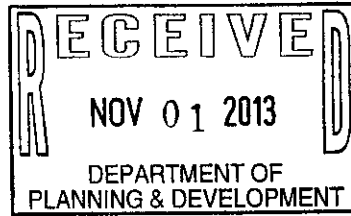


Colorado Springs Utilities

*It's how we're all connected*

October 31, 2013

Ms. Joan Armstrong  
Director of Planning and Development  
Pueblo County  
229 W. 12th Street  
Pueblo, CO 81003



**Subject: Condition 6 - Monetary Mitigation for Fountain Creek Impacts, Southern Delivery System (SDS), 1041 Permit No. 2008-002**

Dear Ms. Armstrong,

This letter is in response to both your January 14, 2013 letter requesting written acknowledgement that the annual indexing pursuant to Condition 6 of the 1041 permit began on October 21, 2012, and our subsequent conversations since that time on choosing an appropriate indexing calculation methodology that is consistent with the permit language.

The last paragraph of Condition 6 states 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%"*

Colorado Springs Utilities ("CSU") acknowledges that annual indexing of the \$49,400,000 remaining balance of the monetary mitigation pursuant to Condition 6 began on October 21, 2012.

That said, however, CSU and its consultants, as well as County staff, have been unable to locate an index by the name listed in the permit ("Colorado Front Range Producer Price Index"). Hence, as recently indicated to you, we propose that the parties agree upon the use of the U.S. Department of Labor, Bureau of Labor Statistics "Producer Price Index for Finished Goods", as can be found at <http://www.bls.gov/ppi/data.htm> (select "Top Picks" under "Commodity Data including stage-of-processing indexes (Producer Price Index - PPI)" and then select "Finished goods - WPUSOP3000"). This national PPI represents the entire marketed output of finished goods from U.S. producers and would fulfill the stated intent of Condition 6, i.e., to preserve the present value of the monetary mitigation amount established in the 1041 permit.

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>

In addition to obtaining an agreed upon understanding of the actual indexing metric to be employed in performing the Condition 6 calculation, CSU also wants to ensure that both the Applicant and Pueblo County agree upon the actual calculation methodology to be followed. In that regard, Condition 6 provides that:

“Payment shall be made as to the remaining forty-nine million seven hundred thousand (\$49,700,000) as follows: nine million seven hundred thousand (\$9,700,000) on January 15 of the year following completion and commencement of water deliveries through the SDS Pipeline from Pueblo Reservoir to Colorado Springs and in equal annual installments of ten million dollars (\$10,000,000) on January 15 of each of the four years thereafter.” [Note that an additional \$300,000 was paid by CSU to the FCWFCGD, with the concurrence of Pueblo County, in 2009].

CSU believes that the following proposal represents an indexing calculation approach that honors the intent of this permit language. It has been prepared with the assistance of the Chief Financial Officer for Utilities and an independent outside economic consultant. A calculation summary can be found as attachment A hereto. In summary, the methodology would work as follows:

- As noted above, the parties have agreed that the 42-month date for commencing annual indexing as referenced in Condition 6 of the 1041 permit is October 21, 2012.
- Under one scenario, Condition 6 provides that if the SDS Pipeline is complete and water delivered to Colorado Springs on or before December 31, 2015, the initial payment would be due on January 15, 2016. Under this scenario there would be three “annual” twelve month indexing periods prior to the January 15, 2016 date, i.e., October 21, 2012 to October 21, 2015 (36 months total). The amount of the payment due on January 15, 2016, would thus reflect a net present value calculation for each of the three indexing periods: for administrative convenience, the PPI annual rate of inflation corresponding most closely to the indexing period will be used in the calculations, e.g., the published PPI for November 2012 and November 2013 will be used to calculate the net present value for the indexing period from October 21, 2012, to October 21, 2013.
  - For example, assuming that the PPI increased at a rate of 3.33% for each of the three annual periods, the amount owed would be calculated initially by multiplying \$9.4M by 3.33%. The resulting product would be added to the base amount (resulting in approximately \$9.713M) and that figure would then be multiplied again by 3.33% for the second annual period, with the resulting product added to the base amount and then increased a final time by the same 3.33%, resulting in a first payment in the approximate amount of \$10.37M on January 15, 2016.
  - The next payment, due on January 15, 2017, was originally in the amount of \$10M. This payment would now also be three years later in time than if the SDS Pipeline had been completed by October 21, 2012. Rather than being paid on January 15, 2014, it would be paid on January 15, 2017. Thus, the parties would look to the annual PPI changes from October 21, 2013 to October 21, 2016, using the November to November PPI numbers, for purposes of adjusting this payment. If, once again, the PPI increased by 3.33% for each of the three one-year periods, the January 15, 2017 payment would be approximately \$11.03M.

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- The same three twelve-month adjustments, reflecting the annual PPI changes, would be made for each of the next three \$10M payments, e.g., the adjustment for the January 15, 2018 payment would encompass the PPI changes for the three one-year periods from October 21, 2014 to October 21, 2017.
- Under a second scenario, if the SDS Pipeline was not completed and water was not delivered to Colorado Springs until some date in 2016, the first payment would be due on January 15, 2017. However, that payment would reflect four periods of PPI indexing, i.e., from October 21, 2012 to October 21, 2016. The amount of each of the remaining annual payments would be calculated following the same procedure outlined above, but each one would have four years of PPI indexing to maintain net present value.
- On or before December 31 of each year, commencing in the year before the first payment is due, CSU staff shall meet with Pueblo County staff for purposes of confirming the final PPIs for each of the November to November twelve month periods used in the calculation and reaching agreement upon the amount to be paid by CSU on or before January 15 of the following year utilizing the calculation methodology more fully described above. All documentation associated with such PPI determinations and subsequent calculations shall be retained by County staff as a record of the process followed in reaching the payment amount. Though such a situation is not anticipated, to the extent there is a "negative" PPI in any annual period utilized in the calculation, the parties have agreed that such annual period will be treated as zero, or "no change" for that annual period.

Though the payments under Condition 6 are not due for a number of years, it would be in our mutual interests to confirm our agreement upon the intended index and calculation methodology at this time. It is my understanding that the County Attorney's office will be preparing a Resolution for the Board of County Commissioners consideration which would reflect that confirmation.

Thank you for your assistance.

Sincerely,



Mark Pifher  
SDS Permitting and Compliance Manager

cc:  
John Fredell  
Rick Griffith  
Keith Riley