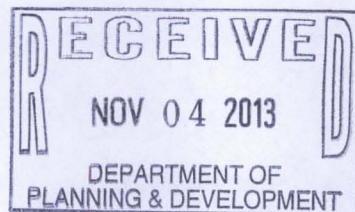


SDS Update Sept. 20. 2013- Supplemental Information





Colorado Springs Utilities

It's how we're all connected

Commissioners:

As you are aware, on September 20, 2013 you held a public work session for purposes of receiving an update from the Southern Delivery System (SDS) Participants upon the status of: (1) project construction within Pueblo County and (2) project compliance with the terms and conditions of the County's 1041 permit for the project. Colorado Springs Councilwoman Martin also provided some information regarding independent, regional stormwater control efforts within El Paso County. Finally, the County Commissioners afforded the public an opportunity to comment upon project activities.

On behalf of the SDS Participants, we provided you with a rather detailed report on our activities and you heard some comments from the public, including a few property owners located along the project alignment. Each of you asked a number of specific questions to SDS Project staff, and each was answered to the best of staff's ability given readily available information. Our staff made no attempt at that time to present a point-by-point response to the public comments, though they did take notes and later obtained a copy of the meeting's recorded transcript.

The purpose of the attached submission is to both supplement with supporting documentation some of those initial answers, and to respond for the first time to certain statements made by members of the public.

The SDS Participants have attempted to be as thorough as possible in the preparation of this document. However, should you need additional information, or have any further questions, please do not hesitate to contact me (719-668-8693) or Keith Riley (719-668-8677).

Sincerely,

Mark Pifher

Manager, SDS Permitting and Compliance

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>

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Section 1. Attorney Fees for Property Owners

Certain property owners raised the issue of whether they have the right to recover attorney fees they have incurred in connection with SDS Project land acquisition activities. Specifically, the property owners pointed to paragraph 15 of the Pueblo County 1041 permit for SDS which provides, in part, that “no landowner should have out-of-pocket expenses from the Project.” This condition is further clarified in the Mitigation Appendix under SE-1: “Reimburse landowners for relocation costs, title work, and closing costs. No landowner should have out-of-pocket expenses from the project for these activities.”

It is the understanding of the SDS Participants that attorney fees were never intended to be included as part of such “out-of-pocket” expenses. This understanding has been acknowledged by the County Attorney at the time, i.e., Dan Kogovsek. The court transcript from the LaVetta Kay land acquisition court proceeding (attached) contains the following statement of the County’s position on this issue:

Mr. KOGOVSEK: Well, the County, speaking now on behalf of the Board of County Commissioners who issued the 1041 permit and approved condition 15, there was discussion at that time regarding attorney’s fees being awarded to the landowners. We felt that was not an appropriate subject for a 1041 permit under State Statute. Only this Court has jurisdiction over the award of attorney’s fees and so that is not covered. The costs from our perspective are the costs of appraisals regardless of value and any costs associated with the recording of an easement. So, it’s, for us, it’s appraisals and any title work, any recording fees should not be borne by the landowners.

THE COURT: Okay.

MR. KOGOVSEK: And the disagreement we’ve had, frankly, Your Honor, with some landowners is on the issue of attorney’s fees. It’s our position only you have jurisdiction over that. That’s something we cannot include in a 1041 permit.

Two property owners filed motions with the Pueblo County District Court asking the Court to order SDS to pay money to the property owners so they could hire attorneys. Both of these property owners claimed that the language in the 1041 permit obligated SDS to pay their attorney fees as part of their out-of-pocket costs related to the condemnation. The Court, in light of Mr. Kogovsek’s statement of the County’s interpretation of the 1041 Permit condition and the applicable law, denied both motions. Thus, both the Pueblo County Attorney and the Pueblo County District Court determined that SDS was not required to pay the property owners’ attorney fees. (see attached).

The following supporting documents are attached:

- Attachment A. Transcript from Kay Property Land Acquisition Court Proceeding
- Attachment B. Pueblo Chieftain (July 20, 2011): County Firm on SDS Real Estate Costs

- Attachment C. Pueblo Court Motions and Orders denying requests for attorney fees – Maxwell and Kay Properties.

Note that the court, as is customary, in denying the motions, used the proposed forms of orders submitted by the owners which stated that the order is being granted, but stamped “DENIED” at the top, indicating the Court’s final ruling on the motion.

Pueblo County, CO <u> X </u> District <u> </u> County Court address: 320 W. Tenth Street Pueblo, CO 81003 Phone Number: (719) 583-7000	<p style="text-align: center;">Court Use Only</p>
THE CITY OF COLORADO SPRINGS, Plaintiff, v. LAVETTA KAY, et al., Defendants.	
Attorney or Party without Attorney Edward Blieszner, Esq. Attorney for Plaintiff Pro se Attorney for Defendants	Case No: 11 CV 331 Division: C
TRANSCRIPTIONIST'S TRANSCRIPT	

The following hearing was held on August 17, 2011, before
The Honorable Victor I. Reyes, District Court Judge of the Pueblo
Combined Court.

This transcript is the preliminary remarks prior to hearing
in its entirety as requested by Edward Blieszner, Esq.

This transcript is the work product of Transcripts by Michelle
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consent pursuant to C.R.S. 13-5-128 and in compliance with
Colorado CJD 05-03.

I N D E X

2

Opening Statements

PAGE

3

Transcriptionist's Certificate

16

1 THE COURT: Alright, this is 11 - C - V - 331, The
2 City of Colorado Springs versus Lavetta Kay. Miss Kay, are you
3 prepared to go forward today?

4 MS. KAY: As much as possible.

5 THE COURT: Alright.

6 MR. BLIESZNER: Good afternoon, Your Honor, Edward J.
7 Blieszner and Don Banner on behalf of the City of Colorado
8 Springs.

9 THE COURT: Alright, and are you ready to go forward?

10 MR. BLIESZNER: Yes we are, Your Honor.

11 THE COURT: Alright, your first witness, please?

12 MR. ROBBINS: Your Honor, if I may please, I'm also
13 David Robbins of the Firm Helen Robbins. I'm going to be sitting
14 at counsel table with Mr. Blieszner and I'm one of the counsel for
15 Colorado Springs.

16 THE COURT: Alright, thank you.

17 MS. KAY: Your Honor, can I request at this time that I
18 have my sister sit at counsel table with me?

19 THE COURT: That's fine. Mr. Kogovsek?

20 MR. KOGOVSEK: Good afternoon, Your Honor, Dan Kogovsek,
21 Pueblo County Attorney appearing on behalf of the County
22 Treasurer. We're parties to the case. The Treasurer has taken
23 the position that he is neither for nor opposed to the Petition
24 and the Application for Possession and with the Court's
25 permission, we will not participate in the hearing and I'd like

1 your permission to leave.

2 THE COURT: Mr. Kogovsek, were you involved in these
3 negotiations with Colorado Springs at all, as far as, when they
4 entered into that agreement?

5 MR. KOGOVSEK: Oh, yes, Your Honor, I was along with
6 other attorneys representing Pueblo County.

7 THE COURT: Right, because I think ---

8 MR. KOGOVSEK: If you'd like me to stay I certainly
9 will, Your Honor.

10 THE COURT: Well, I think, what everybody's hang-up
11 seems to be is that one paragraph that talks about people being
12 out costs, that's one of the bigger hang-ups that's come up.
13 Because the way that paragraph is worded, what is that a 1040 or
14 whatever that agreement was, now I forgot the paragraph number.

15 MR. KOGOVSEK: That's right.

16 THE COURT: But it's the paragraph that has to do with
17 nobody, that no, basically nobody affected by this is gonna be out
18 any costs.

19 MR. KOGOVSEK: That's correct. It's paragraph 15, Your
20 Honor.

21 THE COURT: Right, and what was that supposed to mean?

22 MR. KOGOVSEK: Well, the County, speaking now on behalf
23 of The Board of County Commissioners who issued the 1041 permit
24 and approved condition 15, there was discussion at that time
25 regarding attorney's fees being awarded to the landowners. We

1 felt that was not an appropriate subject for a 1041 permit
2 under State Statute. Only this Court has jurisdiction over the
3 award of attorney's fees and so that is not covered. The costs
4 from our perspective are the costs of appraisals regardless of
5 value and any costs associated with the recording of an easement.
6 So, it's, for us, it's appraisals and any title work, any
7 recording fees should not be borne by the landowners.

8 THE COURT: Okay.

9 MR. KOGOVSEK: And the disagreement we've had, frankly
10 Your Honor, with some landowners is on the issue of attorney fees.
11 It's our position only you have jurisdiction over that. That's
12 something that we cannot include in a 1041 permit.

13 THE COURT: Right, 'cause I was getting actually
14 requests to appoint counsel.

15 MR. KOGOVSEK: Correct.

16 THE COURT: So, alright, thank you. At this time you're
17 free to go.

18 MR. KOGOVSEK: Thank you, Your Honor.

19 THE COURT: Alright, Mr. Blieszner, your first witness,
20 please.

21 (this concludes the opening statements as requested in this case)

22 *****
23
24
25

TRANSCRIPTIONIST'S CERTIFICATE

The above and foregoing is a true transcript of the hearing in proceedings taken in the above-entitled case, which was audio recorded in the Pueblo County Combined Court at the time and place set forth above, which was listened to and transcribed to the best of my ability.

Done this 8th day of October, 2013.

Michelle Flesher
Transcriptionist

County firm on SDS real estate costs

Pueblo Chieftain -- July 20, 2011 -- http://www.chieftain.com/news/local/county-firm-on-sds-real-estate-costs/article_1f085232-b292-11e0-83c8-001cc4c03286.html

Pueblo County commissioners have taken the position that Colorado Springs is obligated to pay for all title work, appraisals and closing costs, but not court costs, for Southern Delivery System land or easement purchases in Pueblo County.

A letter sent to SDS Project Director John Fredell this week says that under a condition of the 1041 permit Pueblo County granted Colorado Springs Utilities and its SDS partners in 2009.

"The Pueblo County commissioners are concerned that CSU may not be in compliance with condition No. 15 of the SDS 1041 permit," County Attorney Dan Kogovsek said in the letter.

The county letter was prompted by a June 29 letter to commissioners from Branson Haney, a local real estate broker who owns two parcels of land in Pueblo West, which have been condemned for easements under eminent domain by Colorado Springs.

Colorado Springs is planning to begin construction on the SDS pipeline through Pueblo West in the near future. The pipeline will take water from Pueblo Dam to Colorado Springs, Security and Fountain in El Paso County. It also will increase supply to Pueblo West through a tap near the dam.

Colorado Springs must obtain easements or purchase 170 parcels of land along an 18-mile route through Pueblo County. It has completed many of the purchases, but filed eminent domain cases in Pueblo District Court on 23 parcels.

Judge Victor Reyes has ruled for Colorado Springs in some of the cases, but postponed his decision for 30 days in the cases of Haney and Dwain Maxwell. Both landowners have since met with Colorado Springs real estate consultants.

More court dates are upcoming for other landowners, including Gary Walker, who owns seven large parcels along the route on Walker Ranches north of Pueblo West.

Kogovsek said the court costs in the cases are not covered by the 1041 provision for "no out of pocket costs" to landowners.

That was a central issue of Haney's complaint, as well as the issue of paying for second appraisals.

"It's just not within our power under the 1974 HB1041 to require Colorado Springs to pay attorney fees and other court costs," Kogovsek said. "It is within our power to require them to pay closing costs, title work and appraisals."

Under state statute, in civil cases, court costs are paid to the prevailing party if the value exceeds 30 percent of the amount in dispute, Kogovsek explained. County commissioners do not have the authority to alter that.


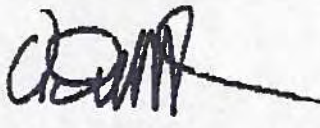
Another 1041 condition says that eminent domain will be used as a last resort, which some

landowners say was violated because Utilities would not budge from original offers and negotiate prices. In a meeting with commissioners in February, Fredell addressed that issue, saying all landowners were being treated equally.

In February the issue was whether Colorado Springs would pay for second appraisals, if requested, on all easements regardless of value. Colorado Springs had taken the position that it was not required to pay to second appraisals on parcels with a value less than \$5,000.

Shortly after meeting with commissioners, Colorado Springs agreed to pay for second appraisals on any easement it has not yet completed in Pueblo County.

"I think we have protected landowners to the extent we are able," Kogovsek said.

	DENIED	The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.	
Court Address: 320 W. 10 th Street Pueblo, Colorado 81003-2953 Telephone No: (719) 583-7000			Victor I. Reyes District Court Judge <small>DATE OF ORDER INDICATED ON ATTACHMENT</small>
Petitioner: CITY OF COLORADO SPRINGS, COLORADO vs. Respondents: DWAIN B. MAXWELL and HELEN E. MAXWELL, individuals; WELLS FARGO BANK, N.A., a national association; NICHOLAS GRADISAR, Pueblo County Public Trustee; and DEL OLIVAS, Pueblo County Treasurer.			EFILED Document - District Court 2011CV334 PUEBLO COUNTY, COLORADO COURT USE ONLY Filing Date: Jul 22 2011 10:17 AM MDT Filing ID: 38835968 Review Clerk: N/A Case Number: 2011CV334 Div.: C Ctrm:
MOTION TO MAKE FUNDS AVAILABLE FOR LEGAL REPRESENTATION, FEES AND COSTS TO BE PAID BY PETITIONER IN COMPLIANCE WITH THE 1041 PERMIT			

This matter having come before the Court on the Respondent's Motion To Make Funds Available for Legal Representation, Fees and Costs to be Paid by Petitioner in Compliance with the 1041 Permit and the court being fully advised;

IT IS ORDERED that said Motion to Make Funds Available for Legal Representation, Fees and Costs to be paid by Petitioner in Compliance with the 1041 Permit be granted.

Done and ordered this _____ day of _____, 2011.

BY THE COURT:

 District Court Judge

This document constitutes a ruling of the court and should be treated as such.

Court: CO Pueblo County District Court 10th JD

Judge: Victor I Reyes

File & Serve

Transaction ID: 38832128

Current Date: Jul 22, 2011

Case Number: 2011CV334

Case Name: CITY OF COLORADO SPRINGS COLORADO and MAXWELL, DWAIN B et al

Court Authorizer: Victor I Reyes

/s/ Judge Victor I Reyes



DENIED

The moving party is hereby **ORDERED** to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

Victor I. Reyes
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

COMBINED COURT, PUEBLO COUNTY, STATE OF COLORADO (10TH Judicial District)

Court Address: 320 W. 10th Street

Pueblo, Colorado 81003-2953

Telephone No: (719) 583-7000

Petitioner: CITY OF COLORADO SPRINGS, COLORADO

Vs.

Respondents: LAVETTA KAY, an individual; PREMIER MORTGAGE SERVICES, INC., a Colorado Corporation; NICHOLAS GRADISAR, Pueblo County Public Trustee; and DEL OLIVAS, Pueblo County Treasurer.

^COURT USE ONLY^

Case Number: 2011CV331

Div.: C

Ctrm:

MOTION TO MAKE FUNDS AVAILABLE FOR LEGAL REPRESENTATION, FEES AND COSTS TO BE PAID BY PETITIONER IN COMPLIANCE WITH THE 1041 PERMIT

This matter having come before the Court on the Respondent's Motion To Make Funds Available for Legal Representation, Fees and Costs to be Paid by Petitioner in Compliance with the 1041 Permit and the court being fully advised;

IT IS ORDERED that said Motion to Make Funds Available for Legal Representation, Fees and Costs to be paid by Petitioner in Compliance with the 1041 Permit be granted.

Done and ordered this _____ day of _____, 2011.

BY THE COURT:

District Court Judge

This document constitutes a ruling of the court and should be treated as such.

Court: CO Pueblo County District Court 10th JD

Judge: Victor I Reyes

File & Serve

Transaction ID: 38756856

Current Date: Jul 19, 2011

Case Number: 2011CV331

Case Name: CITY OF COLORADO SPRINGS COLORADO and KAY, LAVETTA et al

Court Authorizer: Victor I Reyes

**Court Authorizer
Comments:**

The Court does not have the jurisdiction to enter the Order requested.

/s/ Judge Victor I Reyes

COMBINED COURT, PUEBLO COUNTY, STATE OF
COLORADO (10TH Judicial District)

Court Address: 320 W. 10th Street
Pueblo, Colorado 81003-2953

Telephone No: (719) 583-7000

Petitioner: CITY OF COLORADO SPRINGS, COLORADO

Vs.

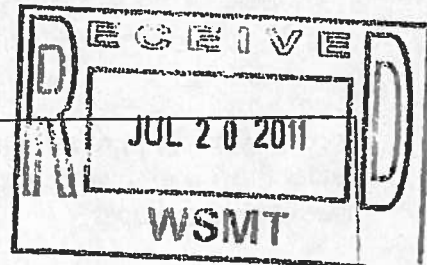
Respondents: DWAIN B. MAXWELL & HELEN E.
MAXWELL, individuals; WELLS FARGO BANK, N.A., A
NATIONAL ASSOCIATION; NICHOLAS GRADISAR,
Pueblo County Public Trustee; and DEL OLIVAS, Pueblo
County Treasurer.

Attorneys for Petitioner:

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E-mail: dbanner@comcast.net



ACOURT USE ONLY^

Case Number:
2011CV334

Div.: C

Ctrm:

**MOTION TO MAKE FUNDS AVAILABLE FOR LEGAL
REPRESENTATION, FEES AND COSTS TO BE PAID BY PETITIONER IN
COMPLIANCE WITH THE 1041 PERMIT**

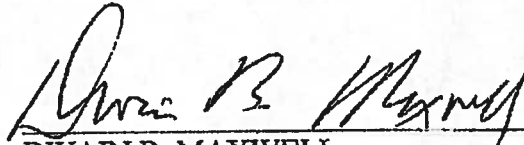
CERTIFICATE OF MAILING

The undersigned hereby certifies that on July 19, 2011 a true and accurate copy of the **Motion To Make Funds Available for Legal Representation, Fees and Cost to be paid by Petitioner in Compliance with the 1041 Permit** was served by placing it in the United States mail, postage pre-paid and properly addressed to the following:

Office of City Attorney
Patricia K. Kelly
Anne H. Turner
30 S. Nevada Avenue, Suite 501
Colorado Springs, CO 80903

Edward J. Blieszner
WELBORN SULLIVAN MECK & TOOLEY, P.C.
1125 17th Street, Suite 2200
Denver, Colorado 80202

Donald J. Banner
BANNER & BOWER, P.C.
503 Main St., Suite 221
Pueblo, Colorado 81003


DWAIN B. MAXWELL


HELEN E. MAXWELL

Section 2. Maxwell Property

Mr. Dwain Maxwell provided comments regarding the SDS easement acquisition process and construction and site restoration activities during the public work session.

Summary of Compensation Provided to Maxwells

The table below is an inventory of the compensation paid to the Maxwells by SDS for land acquisition, cost reimbursement and construction-related mitigation.

Dwain and Helen Maxwell

1123 Kirkwood Drive

Pueblo West, CO 81007

Costs Reimbursed	
SDS paid for owner's appraisal	\$4,000.00
SDS paid for owner's appraiser to testify in Court	\$1,830.00
SDS paid for owner's costs for Court process	\$526.37
• Including mileage, postage, filing fees, certified mail costs	
Total	\$6,356.37

Compensation Received for Easements and Mitigation	
Land acquisition of easements (permanent/temporary)	\$1,850.00
• Amount owed as determined by jury of Pueblo County residents and then ordered by Court	
Year 1 License Agreement for Re-vegetation Access	\$300.00
Additional construction mitigation/compensation	
• Compensation in lieu of replacement plants	\$400.00
• Permanent chain link fencing requested by owner after construction (see invoices for materials and labor)	\$8,285.00
• Pueblo West Architectural Committee fence application fee (see invoice attached)	\$25.00
• Release from all claims of damages by SDS up to Sept. 10, 2012	\$1.00
Total	\$10,861.00

Easements Acquisition

The following are concerns raised by Mr. Dwain Maxwell regarding SDS easement acquisition activities and the SDS Participants' responses to those concerns.

- “Contract” – Mr. Maxwell stated that land owners do not have a “contract” with SDS.

Response: The easement agreement between Mr. Maxwell and SDS is a formal contract with binding terms and conditions upon both parties. The existence of this contractual obligation has been demonstrated by the voluntary execution of a “release” agreement signed by Mr. and Mrs. Maxwell. This agreement “releases Colorado Springs Utilities, and its contractors, agents and employees, from any and all claims and demands of whatsoever nature related to construction and revegetation of the Southern Delivery System to date (Sept. 10, 2012), including but not limited to stucco damage, loss of use and restoration to property directly or indirectly resulting from said construction.” (release attached).

- Appraisals – Mr. Maxwell stated that 1041 Permit requires land owners to receive money for a valid appraisal before condemnation, that there was a threat that SDS would not pay for his appraisal, that he had to go to Pueblo County to get SDS to pay for appraisal, and that SDS never furnished a valid appraisal.

Response: Colorado statutes state that a Value Finding, instead of an appraisal, is the proper method to estimate compensation for easements where the value will be under \$5,000. CDOT, as well as cities, counties and other governmental entities in Colorado, follow this approach. SDS had a Value Finding developed by its professional land acquisition services contractor, which determined an initial value of \$2,200 for the 0.17 acres of permanent easement and 0.14 acres of temporary construction easement needed to cross the back of the Maxwell property.

The Maxwells did obtain their own opinion of Just Compensation from an appraiser of their own choosing and at SDS' expense. The Maxwells' appraiser claimed that the total amount of just compensation due was \$16,350.00 – of this amount, the actual land value of the easements was determined at \$1,850.00 with the remaining \$14,500.00 attributed to Compensable Damages, including diminution in value of the Maxwell property due to the presence of the SDS easement and improvements. In order to determine a proper value, SDS had an independent third-party appraiser review the original SDS Value Finding and the owner's appraisal. The independent third-party reviewer determined that the SDS Value Finding should be relied on as the basis of the offer.

Notwithstanding the large disparity in amounts and significant disagreement with certain methodology used by the Maxwells' appraiser, SDS paid the appraiser's invoice in full to reimburse them for the expense of their appraisal. The Maxwell's appraiser did testify on their behalf at the valuation hearing in Pueblo County District Court, and SDS also paid the Maxwells for the time spent by their appraiser in preparing for and giving testimony at the trial.

Notwithstanding Colorado statutes regarding Value Findings, SDS also paid for a separate new appraisal of the Maxwell easement prior to the Maxwell valuation trial. That appraiser also determined the value of the easements at \$1,850.00 (consistent with Maxwell's appraisal), but found no damages or loss of value due to the presence of the easement. A jury of six Pueblo County citizens and peers of the Maxwells determined the value of the easements to be \$1,850.00. The jury also concluded that the presence of the SDS easement and pipeline resulted in no loss of value to the remainder of the Maxwell property. The Court accepted the jury's verdict and entered its final order directing SDS to pay the Maxwells this amount, which was done.

- Attorneys – Mr. Maxwell stated that SDS used 6 or 8 attorneys in condemnation and that he had to represent himself.

Response: Three attorneys appeared on behalf of the SDS project at various stages of the Maxwell Court hearings – Mr. Edward J. Blieszner, Mr. David Robbins, and Mr. Don Banner. Mr. Blieszner was the only attorney who took an active part in the jury trial to determine the compensation due to the Maxwells. Mr. Banner was present and available as an advisor during that trial but did not examine any witnesses or present any arguments to the Court or jury.

As the Court transcript indicates, Pueblo County attorney Dan Kogovsek was present at portions of preliminary hearings regarding the Kay property representing the Pueblo County Treasurer and Pueblo County Commissioners.

Mr. Maxwell chose to represent himself following the Court's denial of his motion requesting that SDS provide funds to cover his attorney fees and following Mr. Kogovsek's explanation before the Court that the 1041 permit and Pueblo County Commissioners did not have the ability to require SDS to pay for Mr. Maxwell's legal costs. (See attached documents regarding the motions, their denial and Court transcript.)

- Valuation – Mr. Maxwell stated that he offered to settle for \$10,000 plus \$2,600 against an \$18,500 appraisal, that he was paid only \$1,850, and that he asked Pueblo County to require SDS to pay "the other \$16,000 plus that they owe us because they did not comply with the 1041".

Response: The \$18,500 reference seems to be in error. As stated in a previous response above, the Maxwells' appraisal amount was for \$16,350. See previous explanation under Appraisal.

The Pueblo County jury found that the Maxwells were entitled to only \$1,850 in compensation. The Court accepted this verdict and ordered SDS to pay this amount, and it did so. The additional amounts which the Maxwells' appraiser testified should be awarded were attributed to "Compensable Damages," including a claimed decrease in value of the Maxwell's property due to the presence of the SDS easement and pipeline. The jury did not accept the testimony of Maxwell's appraiser and determined that there was no loss of value to the Maxwells' property, nor any

entitlement to any other “damages,” and entered its verdict accordingly. The Maxwells never appealed the final verdict or judgment of the District Court, thereby making that judgment the final word as to all amounts owed by SDS to the Maxwells for the easement and related court proceedings.

Additionally, following the Court process, the Maxwells signed a “release agreement” that “releases Colorado Springs Utilities, and its contractors, agents and employees, from any and all claims and demands of whatsoever nature related to construction and revegetation of the Southern Delivery System to date (Sept. 10, 2012), including but not limited to stucco damage, loss of use and restoration to property directly or indirectly resulting from said construction.” (See attached Release.)

Because the amount owed by SDS to the Maxwells for the easement and the impacts, if any, to their remaining property has been determined by a jury of the Maxwells’ peers and confirmed by the Pueblo County District Court in a judgment which is now final, SDS does not believe additional compensation is warranted for land acquisition.

- Barn – Mr. Maxwell expressed concern about prohibition of placing a barn or tree in the easement, despite continuing to pay taxes and that the remainder of property is too small to allow a barn.

Response: The Maxwells’ lot is 315 feet deep by 140 feet wide. The SDS permanent easement lies within the rear 60 feet of the property. According to the site plan filed with Pueblo West, there is approximately 175 feet between the rear of the Maxwells’ house and the closest edge of the SDS permanent easement. Further, the covenants running with the land indicate the Maxwells have a 150-foot rear-yard set back and the SDS permanent easement is within that setback. Additionally, these arguments were presented to the jury by the Maxwells and their appraiser. The jury found that no loss of value to the Maxwell property has occurred as the result of any restrictions imposed by the SDS easement.

- Pueblo West Covenants – Commissioner McFadyen asked whether the appraisal included the value of Pueblo West covenants that allow a property owner to keep horses and that allow outbuildings.

Response: Until only recently, the Pueblo West Architectural Control Committee (ACC) prohibited structures within the rear 150 feet of the lot, thus the overlapping of the SDS permanent easement within the rear set back had no impact on value. The SDS temporary easements have expired. These ACC covenants are still in effect and were used as the basis for determining the property’s status as part of the valuation process. The Pueblo West covenants and their impact on the Maxwell property were discussed before the jury in the Maxwell trial, and the jury found that there was no impact to the Maxwell property as the result of the presence of the SDS easement.

- Easement Dimensions – Mr. Maxwell stated that the SDS easement was to be 50 feet wide (7,352 square feet) but was in actuality 100 feet wide.

Response: The SDS permanent easement is 52.5 feet wide at this location and an additional 7.5 feet of temporary construction easement to the west of the SDS permanent easement and 35 feet to the east of the permanent easement was acquired for construction. Again, that temporary easement has expired.

The following supporting documents are attached:

- Attachment D Maxwell Appraisal Third-Party Review
- Attachment E Maxwell Rule and Order (containing easement agreements)
- Attachment F Maxwell Release Agreement
- Attachment G Maxwell Property Revegetation License Agreement
- Attachment H Maxwell Memorandum of Agreement for Fencing and Replacement Plants Compensation
- Attachment I SDS Contact Log for Maxwell Property

Construction and Site Restoration

The following are concerns raised by Mr. Maxwell regarding SDS construction and site restoration activities and the SDS Participants' responses to those concerns.

- Dust – Mr. Maxwell stated that, during SDS construction, dust was not suppressed with water and that dust storms resulted.

Response: The SDS pipeline installation contractor supplied and operated water trucks that sprayed water along the alignment to suppress dust in the active construction areas throughout the day. Daily dust particulate readings were obtained by the SDS field staff and recorded. When a dust concern was received via the SDS Hotline, additional tests were conducted for three consecutive days following the activity to ensure dust in the active construction areas were maintained within the permitted limits. The SDS Participants do not agree that dust storms resulted from SDS construction.

- Restoration – Mr. Maxwell stated that the land was stripped of topsoil and that any topsoil is now gone.

Response: At the start of construction, the top soil in this area was pushed to the edge of the work limits along the alignment and retained there until completion of the pipeline installation. Upon completion of the backfilling and grading operations, the original soil materials were pulled back across the alignment to return the top portion of soils, which contained the native seed bed for the base of the revegetation restoration efforts.

- Weeds – Mr. Maxwell stated that weeds were over four feet high and were mowed immediately before the September 20 work session.

Response: There are no weed species on Colorado's Noxious Weeds A, B, or C List present on Mr. Maxwell's property. The plant species that are present represent what are considered "nurse crop" (or annuals) that provide protection of the planted species, and will be out-competed in subsequent years and as watering is reduced. Mowing of the SDS alignment was conducted per general maintenance requirements in the SDS revegetation contract and was season and weather dependent. The occurrence of mowing operations in relation to any discussions with property owners or meetings is coincidental.

- Irrigation – Mr. Maxwell stated that watering of the reseeded area was spasmodic and there is no irrigation plan. He further stated that watering caused flooding and caused weeds to spread down the sides and center of his yard to the street.

Response: The SDS revegetation contractor carefully monitored watering, which was conducted in accordance with an irrigation schedule that was developed in consultation with multiple experts and designed to ensure successful plant growth. The irrigation schedule that was developed is designed to meet the needs of the native species and the frequency of irrigations was planned. This schedule was adjusted and refined to ensure optimum watering during seed germination and root development.

The SDS Participants do not agree that flooding occurred due to irrigation activities. Any excessive watering was adjusted immediately and damaged or vandalized irrigation system components were repaired as soon as they were identified/ reported. Any occurrence of weeds would be the result of indigenous seeds found in the topsoil. It's possible that the irrigation water applied to the easement area enabled pre-existing seeds to grow outside the easement. If the Maxwells will grant SDS access to these areas, SDS would be willing to remove the weeds.

**REVIEW APPRAISAL
PERTAINING TO**

**Narrative Appraisal Report of an Improved Parcel of Land, Located at 1123 N. Kirkwood
Drive, Pueblo, Colorado.**

OWNED BY

Dwain B. Maxwell and Helen E. Maxwell

THE APPRAISAL REVIEWED WAS PREPARED BY

Larson & Associates, LLC

SIGNED BY

Brad D. Larsen

EFFECTIVE DATE OF REPORT

April 13, 2011

EFFECTIVE DATE OF THE APPRAISAL REVIEW

June 7, 2011

APPRAISAL REVIEW PREPARED BY

**JOEL C. GRIFFIN, MAI
1805 SOUTH BELLAIRE STREET
SUITE 402
DENVER, COLORADO 80222**

JOEL C. GRIFFIN, MAI

REAL ESTATE APPRAISER • CONSULTANT
1805 SOUTH BELLAIRE STREET • SUITE 402
DENVER, COLORADO 80222
TEL. (303) 504-9551
FAX (303) 757-0431
EMAIL: jcgriffin@qwestoffice.net

June 7, 2011

The City of Colorado Springs, on behalf of its enterprise, Colorado Springs Utilities
30 South Nevada Avenue, Suite 701
Colorado Springs, Colorado
80903

RE: Review of Narrative Appraisal Report of an Improved Parcel of Land, Located at 1123 N.
Kirkwood Drive, Pueblo, Colorado.

Ownership : Dwain B. Maxwell and Helen E. Maxwell
Valuation Date : April 13, 2011
Appraisal Prepared By : Larson & Associates, LLC
Appraisal Signed By : Brad D. Larson

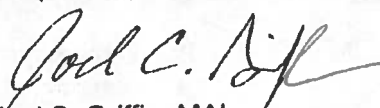
Dear Sirs:

As requested, I have reviewed the appraisal of the property identified above. The Reviewer's Worksheet summarizing my review of the factual data presented in this appraisal is included in this document at Page iv. Also included in this review are my conclusion of value, my **Certificate of Review**, the **Statement of Review Appraiser and Recommended Market Value of the Acquisition**, and my qualifications. The effective date of this review is June 7, 2011. The recommended **Total Just Compensation** due the owner(s) of the property is **\$2,164.**

Extent of the Review

1. The reports were studied in detail and notes were taken for reference in this review.
2. The subject properties and the comparable sales were physically inspected. The sales utilized by the Appraiser are consummated sales.
3. A market study of sales activity of properties comparable to the subject properties was made. That analysis confirmed that all current and applicable transfers were considered.
4. The appraisals and procedures applied are in conformity with Minimum Appraisal Requirements, current statutes and legal rulings pertaining to the valuation of real property.
5. An opinion was formed as to the appropriateness, correctness and completeness of the appraisal methods and techniques used in the reports. The reasons for disagreement, if any, are discussed in the Reviewer's Worksheet.
6. An opinion was formed as to the adequacy and relevance of the market data included in the appraisals.
7. An opinion was formed as to the appropriateness and completeness of the adjustments to the sales data.
8. An opinion was formed as to the correctness and appropriateness of the analyses, opinions and conclusions in the reports reviewed. Any suggestions or responses are discussed in the Reviewer's Worksheet.
9. Appraisals, if available, of adjoining and/or adjacent properties, as well as other similar properties in the immediate area of the subject properties were analyzed regarding overall valuation consistency.

Respectfully submitted,



Joel C. Griffin, MAI
State of Colorado Certified
General Appraiser #CG01313380

JCG

REVIEWER'S WORKSHEET ON APPRAISAL STANDARDS

Property; 1123 N. Kirkwood Drive, Pueblo, Colorado.
Appraiser Name: Brad D. Larson

Appraiser's Date of Value: April 13, 2011
Name of Ownership: Dwain B. Maxwell and Helen E. Maxwell

YES NO NA

☒ ☐ ☐

1. Is the purpose of the appraisal in the Report? It should include a definition of the value being utilized and the specific rights or interest(s) being appraised.

☒ ☐ ☐

2. Is there a description of the neighborhood?

☒ ☐ ☐

3. Is there a description of the subject property, total ownership, property interest being acquired (include easements) and description of the remainders?

☒ ☐ ☐

4. Did the Appraiser include photographs of the subject property including all principal above ground improvements taken or affected?

☐ ☐ ☒

5. Is there an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which the appraiser considered to be part of the real property to be acquired?

☐ ☐ ☒

6. An inventory of real and personal property may be required. This inventory must delineate real/personal property and tenant or fee ownership of the item. It must specifically identify what property has been included in the appraised value. Are the inventory and explanation included in the report?

☒ ☐ ☐

7. Is Highest and Best Use clearly set out?

☒ ☐ ☐

8. Is the appraisal consistent with the Highest and Best Use determination?

☒ ☐ ☐

9. Are the comparable sales adequately described and are the similarities/dissimilarities and adjustment factors adequately explained?

☒ ☐ ☐

10. Are the subject property, comparable sales and zoning consistent or adequately discussed if not consistent?

YES NO NA

☐ ☐ ☒

11. If subject ownership sold within last five years, did the appraiser include the sale and a discussion in the report?

☒ ☐ ☐

12. Is there an adequate sales map?

☒ ☐ ☐

13. Was project enhancement properly considered?

☒ ☐ ☐

14. Was cash equivalency properly considered?

☒ ☐ ☐

15. Correlation: Were all of the appropriate appraisal methods considered? Does the appraisal include sufficient explanation of how the approaches to value were considered?

☐ ☒ ☐

16. Is there factual and analytical support for the Appraiser's opinion of damages and/or benefits to remaining real property?

☐ ☐ ☒

17. In determining the amount of compensation to be paid for a partial taking, has the Appraiser applied the proper analysis and methodology in offsetting damages and benefits?

☒ ☐ ☐

18. Are total just compensation, value date and Appraiser's signature specifically set out?

☒ ☐ ☐

19. Is there a Certification and Statement of Contingent and Limiting Conditions?

☒ ☐ ☐

20. Are other descriptive materials such as maps, charts, plans and photographs properly referenced in the report?

☒ ☐ ☐

21. Did the Appraiser give the property owner or his representative an opportunity to accompany the Appraiser on the Appraiser's inspection of the property?

☒ ☐ ☐

22. Does the appraisal comply with the Uniform Standards of Professional Appraisal Practice (USPAP)?

☒ ☐ ☐

23. Do the analyses, appraisal and information utilized in the report comply with Colorado eminent domain law?

☐ ☐ ☒

24. Is the valuation consistent with other appraisals of adjacent properties, as well as other similar properties in the immediate area ?

All items checked "No" must be explained. These explanations are as follow:

- Item No. 16** The appraiser presents a paired sales analysis comparing properties that back up to overhead power lines, like the subject property, to properties that do not back up to overhead power lines. This analysis is flawed because the subject project and proposed acquisitions are for an underground water pipeline which is not the same as an overhead power line. The impacts are obviously not the same. This appraisal cannot be relied on as a result.

It is my opinion that this appraisal is flawed as explained above and should not be relied on. Bernie Krebs, Wilson and Company, prepared a Determination of Value Finding Analysis and estimated the Just Compensation to be \$2,164. She did not find damages which is appropriate. The Value Finding should be relied on.

This appraisal is Not Accepted, the appraisal has deficiencies and should not be used as the basis of Just Compensation.


Joel C. Griffin, MAI, Reviewer
State of Colorado Certified
General Appraiser #CG01313380

June 7, 2011

PROPERTY : 1123 N. Kirkwood Drive, Pueblo, Colorado
OWNERSHIP NAME : Dwain B. Maxwell and Helen E. Maxwell

**STATEMENT OF REVIEW APPRAISER
AND
RECOMMENDED OPINION OF MARKET VALUE FOR THE ACQUISITION**

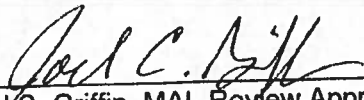
I hereby stipulate to the following:

- ◆ That, as part of the appraisal review, there has been a field inspection of the properties to be acquired and the comparable sales applicable thereto.
- ◆ That I have no direct or indirect present or contemplated future personal interest in such properties or in any monetary benefit from its acquisition.
- ◆ That my estimate has been reached independently, without collaboration or direction, and is based on appraisal(s) and other pertinent factual data.
- ◆ That, unless otherwise stated, the Review Appraiser agrees with the identification or listing of any buildings, structures and other improvements on the land as well as fixtures and appurtenances which the Appraiser considered to be a part of the real property to be acquired.

It is my opinion that the **Total Just Compensation** due the owner(s) of the referenced properties as of April 13, 2011, is **\$2,164**.

The above mentioned **Total Just Compensation** is based on a Determination of Value Finding Analysis prepared by Bernie Krebs of Wilson and Company.

June 7, 2011

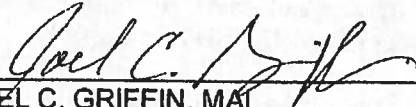


Joel C. Griffin, MAI, Review Appraiser
State of Colorado Certified
General Appraiser #CG01313380

CERTIFICATE OF REVIEW

I certify that, to the best of my knowledge and belief:

- ♦ The facts and data reported by the Review Appraiser and used in the review process are true and correct.
- ♦ The analyses, opinions and conclusions in this review report are limited only by the assumptions and limiting conditions stated in this review report and are my personal, unbiased professional analyses, opinions and conclusions.
- ♦ I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
- ♦ My compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in, or the use of, this review report.
- ♦ My analyses, opinions and conclusions were developed, and this review report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice and the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.
- ♦ I personally inspected the subject property of the report under review;
- ♦ No one provided significant professional assistance to the person signing this review report.
- ♦ As of the date of this report, I, Joel C. Griffin, MAI, have completed the requirements of the continuing education program of the Appraisal Institute.



JOEL C. GRIFFIN, MAI
State of Colorado Certified
General Appraiser #CG01313380

JCG

CONTINGENT AND LIMITING CONDITIONS

1. The legal description of the subject property provided in the report is assumed to be correct. The Appraiser has not re-verified the land size from the county records. The data are assumed to be accurate.
2. The Appraiser assumes a fee simple title subject to the easements of record. No investigation to the title has been made, and it is assumed that the property is marketable.
3. Information obtained from others and used in this report has been investigated and is believed to be correct although complete accuracy cannot be guaranteed.
4. The Appraiser assumes that there are no adverse soil conditions that would affect the value of the property. It is further assumed that there are no hazardous materials in the structure or on the land. The Appraiser assumes that there is no contamination on the property. No responsibility is assumed for any such conditions discovered or for any expertise or engineering knowledge required to discover them. The client is urged to retain an expert in this field.
5. The market data presented in the report for review has been reinspected. At the Appraiser's discretion, certain market transactions were re-verified. It is an assumption of this review that the data presented is accurate. If erroneous data is discovered in the report at a later date, a complete new review will be necessary.
6. This appraisal is as of the effective date of the report and is not intended to reflect any subsequent fluctuations in the market conditions or changes in the project plans.
7. The fee for this appraisal review does not provide for time spent in extensive consultation or in court. Time spent in this manner will be charged at \$225.00 per hour.

QUALIFICATIONS OF JOEL C. GRIFFIN, MAI

EDUCATION:

- ♦ Centennial High School; Pueblo, CO; Graduated 1965.
- ♦ Southern Colorado State College; Pueblo, CO; 2 years.
- ♦ Course study, examinations and experience ratings required for the Appraisal Institute's MAI designation.
- ♦ Course study, examinations and experience ratings required for the Appraisal Institute's SRA designation.
- ♦ Continuing education consisting of courses and seminars relating to Real Estate Appraising to qualify for Recertification. Currently certified through the Appraisal Institute and the State of Colorado.

PROFESSIONAL DESIGNATIONS AND AFFILIATIONS:

- ♦ Member Appraisal Institute (MAI)
- ♦ Senior Residential Appraiser Member (SRA)
- ♦ Certified General Appraiser in Colorado #CG01313380.
- ♦ Member: International Right-of-Way Association.
- ♦ Colorado Real Estate Broker's License.

EXPERIENCE:

- ♦ Corporate Broker and President of Vail Properties, Ltd.; Vail, CO; 1972-75.
- ♦ Broker/Associate, Commercial Investment Properties; Winger Real Estate Company; Denver, CO; 1975-77.
- ♦ Presently self-employed as a professional Real Estate Appraiser and Consultant practicing within the metropolitan area of Denver.
- ♦ Appraisal experience includes appraising all types of residential, commercial, industrial, development and mountain properties.

QUALIFIED AS EXPERT WITNESS:

- ♦ In District Courts in Denver, Adams, Arapahoe, Boulder, Douglas, Jefferson, Eagle, Elbert and Larimer Counties.




RECENT APPRAISAL CLIENTS:

Arapahoe County
Chrysler Corporation
City of Broomfield
City and County of Denver
City of Thornton
Colorado Dept. of
Transportation
Denver Water Board
E-470 Public Highway Authority

FDIC
Northern Colorado Water
Conservancy District
Northwest Parkway Public
Highway Authority
RTC
Regional Transportation District
Subaru of America
Town of Castle Rock

U. S. Postal Service
Universal Field Services, Inc.
Urban Drainage and
Flood Control

♦ Numerous individual clients including out-of-state banks, private property owners and attorneys.

	GRANTED	The moving party is hereby ORDERED to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.	 Victor I. Reyes District Court Judge DATE OF ORDER INDICATED ON ATTACHMENT
COMBINED COURT, PUEBLO COUNTY, STATE OF COLORADO (10th Judicial District) Court Address: 320 W. 10 th Street Pueblo, Colorado 81003-2953 Telephone No.: (719) 583-7000			FILED Document - District Court 2011CV334 Pueblo County Clerk & Recorder Filing Date: Apr 4, 2012 Filing ID: 3310974 Revised: [Signature] 4-4-12
Petitioner: CITY OF COLORADO SPRINGS, COLORADO vs. Respondents: DWAIN B. MAXWELL and HELEN E. MAXWELL, individuals; WELLS FARGO BANK, N.A., a national association; NICHOLAS GRADISAR, Pueblo County Public Trustee; and DEL OLIVAS, Pueblo County Treasurer.			 ACOURT Case Number: 2011CV334 Div.: C
RULE AND ORDER			

THIS MATTER having come before the Court for a two day trial to a jury on March 22 and 23, 2012, and the jury, having returned its verdict, and the Court, being fully advised in the premises, hereby FINDS THAT:

1. The court has full and complete jurisdiction of the subject matter and the parties and service of process has been made on all interested parties.
2. This is a condemnation action filed by the Petitioner, the City of Colorado Springs (the "City"), to acquire a permanent easement and a temporary construction easement across portions of a parcel of real property located in Pueblo County, Colorado known as 1123 North Kirkwood Drive, Pueblo West, Colorado 81007.
3. Respondents Dwain B. Maxwell and Helen E. Maxwell are the record owner of the property referred to in paragraph 2 above.
4. The easements acquired by the City are described in Exhibit A and Exhibit B attached hereto and incorporated herein by this reference (the "Property").
5. The jury, in its verdict, awarded the Maxwells \$1,850.00 for the value of the permanent and temporary construction easements being acquire by the City in this action and no other amounts.
6. No respondents, other than the Maxwells, appeared at trial or have asserted any claim to the proceeds to be paid by the City in this case.

THEREFORE, it is hereby ORDERED that:

1. The easement interests in the property described in Exhibit A and Exhibit B have been duly and lawfully taken and condemned by the City of Colorado Springs pursuant to the statutes and the Constitution of the State of Colorado, and title to these easements is hereby vested in and conveyed to the City according to the terms described in Exhibit A and Exhibit B free and clear of any interest of the Respondents herein; and,

2. A certified copy of this Rule and Order shall be recorded and indexed in the office of the Clerk and Recorder of Pueblo County, Colorado, in like manner as if it were a deed of conveyance from the Respondents and parties interested to the City.

4. The Clerk of this Court is ordered to issue a check in the amount of \$1,850.00 payable to Dwain and Helen Maxwell and to send that check to them at the following address:

Dwain and Helen Maxwell
1123 North Kirkwood Drive
Pueblo West, Colorado 81007

5. The Clerk of this Court is ordered to issue a check in the amount of all remaining funds deposited in this action payable to the City of Colorado Springs and to send that check to the City addressed as follows:

Anne Turner, Esq.
Assistant City Attorney
30 S. Nevada Avenue, Suite 501
Colorado Springs, CO 80901-1575

Done and ordered this ____ day of _____, 2012

BY THE COURT:

District Court Judge

This document constitutes a ruling of the court and should be treated as such.

Court: CO Pueblo County District Court 10th JD

Judge: Victor I Reyes

File & Serve
Transaction ID: 43347294

Current Date: Apr 01, 2012

Case Number: 2011CV334

Case Name: CITY OF COLORADO SPRINGS COLORADO and MAXWELL, DWAIN B et al

Court Authorizer: Victor I Reyes

/s/ Judge Victor I Reyes

Exhibit A

PERMANENT EASEMENT

FILED Document - District Court
2011CV334
CO Pueblo County District Court 10th JB
Filing Date: Mar 28 2012 11:51AM MDT
Filing ID: 43347294
Review Clerk: Shelli L. Clementi

- a. A perpetual, non-exclusive permanent easement to enter, occupy, and use the real property described in **Exhibit A-1** attached hereto to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove one or more pipelines, conduits, poles, vaults, meters, regulator stations, switches, transformers, valves, hydrants, manholes, access roads or any other utility structures (including, but not limited to, communication facilities), and all necessary underground or aboveground cables, wires, and appurtenances thereto, including, but not limited to, electric or other control systems, cables, wires, connections, and surface appurtenances ("Improvements") and to make any cuts and fills in the earth necessary to the performance of such work, in, on, under, through, over and across such real property (Permanent Easement").
- b. Colorado Springs shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across other adjoining property owned by the Property owner for access to and from any roads, highways, streets, alleys, or any other point to the Permanent Easement, in order to perform its rights in the Permanent Easement. To the maximum practicable extent, Colorado Springs shall use existing gates, roads, trails or facilities to avoid disruption of the Property owner's operations on other property.
- c. Colorado Springs shall have the right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove at any time or from time to time, one or more additional Improvements and appurtenances thereto within the Permanent Easement. Such right shall be perpetual, and the Property owner shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Permanent Easement.
- d. Except as provided in subparagraph (e) below, the Property owner shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Colorado Springs in the Permanent Easement. The Property owner shall only perform or permit other persons or entities to perform construction or other work within the Permanent Easement after prior written approval by Colorado Springs and only if such construction or other work is performed in accordance with the terms hereof, all applicable laws, rules and regulations, and Colorado Springs' rules and regulations as they may be modified from time to time. The Property owner reserves use of the Permanent Easement, whether longitudinal or otherwise, for installing the following with written approval from Colorado Springs: pavement, curbs, gutters, sidewalks, parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again, such as, but not limited to: stone, brick, or other masonry-type fences or walls), low-height landscaping, and

sprinkler systems which are capable of being reasonably located by Colorado Springs ("Property Owner's Improvements"); provided however, that the exercise of such rights, in the reasonable opinion of Colorado Springs, does not injure or interfere with, now or in the future, any of the Colorado Springs' rights in the Permanent Easement including, but not limited to, Colorado Springs' rights of maintenance and reasonable access.

- e. The Property owner shall not construct or place any permanent structure or building on any part of the Permanent Easement including, but not limited to: posts, poles, fences (except posts, poles, or fences that can be easily removed and erected again; and except for garage-door porch stoops and only those retaining walls up to 4 feet in height that may be required to extend into the side lot-line easements of a residential property), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, play houses or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining wall, or any edifice projections such as, but not limited to: balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, Colorado Springs may remove any structure or building constructed or placed within the Permanent Easement. If the Property owner constructs, places or permits any structure or building within the Permanent Easement, then the Property owner shall reimburse Colorado Springs for all expenses (including, but not limited to removal, court, collection, and attorneys' fees and costs) associated with or arising from removing such structure or building. Despite anything herein to the contrary, Colorado Springs may, in its sole discretion, provide written consent allowing Property owner to build an encroachment in the Permanent Easement; provided however, if Colorado Springs determines that, as a result of any approved encroachment, it is necessary to relocate any existing Improvements, then such relocation shall be at the Property owner's sole expense, regardless of the encroachment approval. The Property owner shall grant to Colorado Springs any permanent easements required for the relocated Improvements. Moreover, in no event shall the Property owner:
- i. construct or place, longitudinally along or otherwise within the Permanent Easement any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities or other utility or appurtenance without the prior written consent of Colorado Springs; or
 - ii. change, by excavation or filling, the present grade or ground level of the Permanent Easement without the prior written consent of Colorado Springs. Further, if Colorado Springs determines that, as a result of any approved grading, it is necessary to relocate any existing Improvements, then the Property owner acknowledges that such relocation shall be at the Property owner's sole expense and the

Property owner shall grant to Colorado Springs any permanent easements required for the relocated Improvements.

The Property owner shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments including storm water quality features or facilities, and other land uses within the Permanent Easement unless the prior written consent of Colorado Springs is provided. Additionally, the Property owner shall not construct any new, or alter any existing landfills, wetlands, water impoundments, and other similar uses within the Property, which might, in Colorado Springs's reasonable discretion, endanger or interfere with any Improvements, including, but not limited to, Colorado Springs's rights of maintenance and reasonable access, without the prior written consent of Colorado Springs.

- f. Colorado Springs shall replace, repair, or reimburse the Property owner for the reasonable cost of replacement or repair of physical damage to the Property Owner's Improvements on the Property, whether or not within the Permanent Easement, but only if such damage is caused by Colorado Springs's construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements, Colorado Springs shall promptly restore, replace, or repair the surface of the Permanent Easement to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, Colorado Springs shall not be liable for damage to, nor shall it be obligated to repair or replace, any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Permanent Easement in violation of the terms hereof including, but not limited to, any tree(s) that interfere with the Improvements or Colorado Springs's rights in the Permanent Easement.
- g. Colorado Springs shall have the perpetual right to cut, trim, control, and remove trees, brush, and other obstructions which injure or interfere with Colorado Springs's use, occupation or enjoyment of the Permanent Easement, or Colorado Springs's right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove its Improvements, without liability for damages arising there-from.
- h. The Property owner shall not impair any lateral or subjacent support for the Improvements.
- i. The Permanent Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. The exercise of any rights in the Permanent Easement other than those retained by the Property owner shall be within the sole discretion of Colorado Springs. Colorado Springs shall permit and authorize such other uses of the Permanent Easement, not hereby reserved in the Property owner, as will not impair

Colorado Springs's rights in the Permanent Easement subject to the limitations contained herein.

PARCEL DESIGNATION:	9520004010	DATE:	December 3, 2009
OWNER:	MAXWELL, DWAIN B. & HELEN E., (Owner current as of the date of certification hereon)		

EXHIBIT B
LEGAL DESCRIPTION

A permanent easement situated in LOT 9, BLOCK 5, TRACT NO. 237, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 20, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1679 at Page 219 of the records of Pueblo County, more particularly described as follows:

The east 52.51 feet of the west 60.01 feet of said Lot 9.

Said easement contains 7,352 square feet or 0.169 acres more or less.

EXHIBIT C SKETCH is attached hereto and is only intended to depict Exhibit B – Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Ave., Suite 700, Colorado Springs, Co, 80903

9520004010_EXB.doc

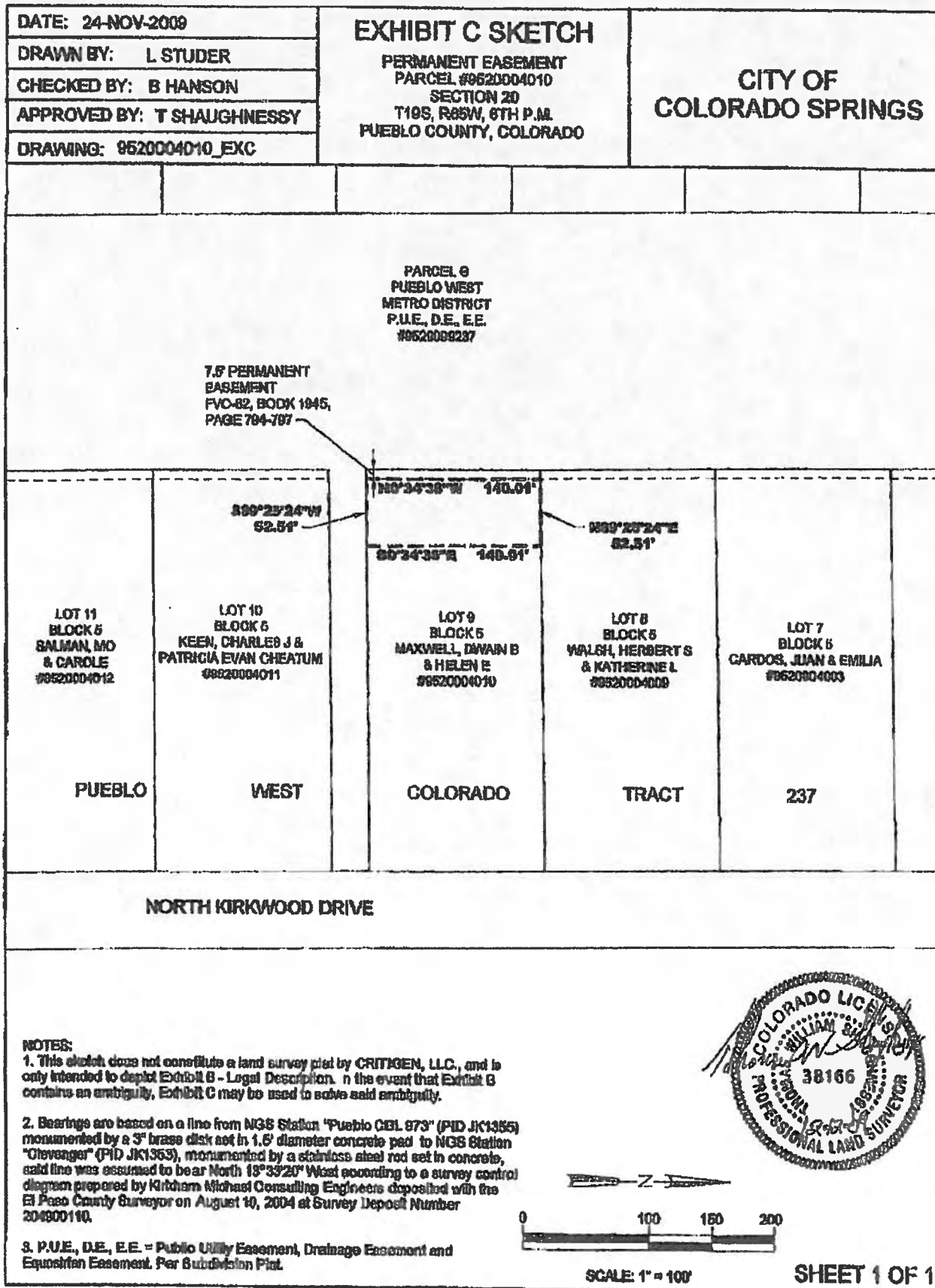


Exhibit B

TEMPORARY EASEMENT

FILED Document - District Court
2011CV334
CO Pueblo County District Court 10th JD
Filing Date: Mar 28 2012 11:51AM MDT
Filing ID: 43347294
Review Clerk: Shelli L. Clementi

A temporary construction easement ("Temporary Construction Easement") over and across the real property described in Exhibit B-1 attached hereto, together with rights of ingress and egress for the said construction. Colorado Springs may use the Temporary Construction Easement area for storage of materials and equipment, storage of fill material, temporary storage of waste materials, operation of construction equipment, and any other reasonably necessary activity related to construction. The term of the Temporary Construction Easement shall be for a period of one year, which period shall commence upon written notice from Colorado Springs, its contractor, or their agents. Prior to commencement of the Temporary Construction Easement term, the Property owner shall move, remove, relocate, or otherwise clear any moveable objects or temporary improvements from the Temporary Construction Easement at the Property owner's expense. Upon completion of the improvements, Colorado Springs will, insofar as practicable, restore the Temporary Construction Easement area to its condition prior to construction and repair any and all damage that may arise from construction activities. The Property owner shall not erect or construct any building or other permanent structure within the above-described property during the Temporary Construction Easement term.

EXHIBIT B

PARCEL DESIGNATION:	9520004010	DATE:	March 17, 2010
OWNER:	MAXWELL, DWAIN B. & HELEN E. (Owner current as of the date of certification hereon)		

EXHIBIT B
LEGAL DESCRIPTION

A temporary construction easement situated in LOT 9, BLOCK 5, TRACT NO. 237, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 20, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1679 at Page 219 of the records of Pueblo County, more particularly described as follows:

The west 7.50 feet and the east 35.01 feet of the west 95.02 feet of said Lot 9.

Said easement contains 5,952 square feet or 0.137 acres more or less.

EXHIBIT C SKETCH is attached hereto and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.

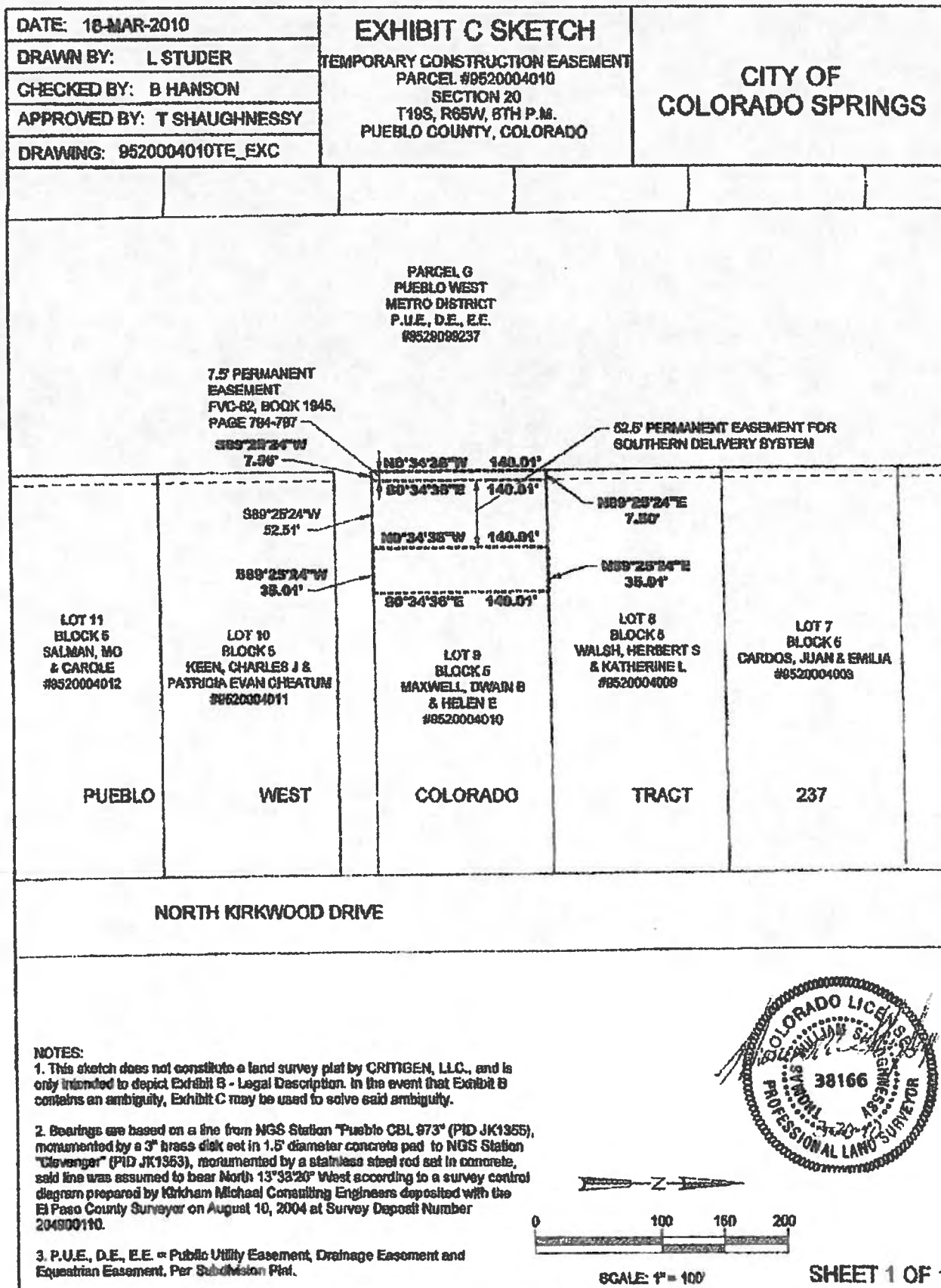


Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

9520004010TE_EXB.doc

EXHIBIT B-1

04/09/2012 11:28:50 AM



RELEASE

The undersigned hereby acknowledge(s) receipt from Colorado Springs Utilities (CSU), the sum of One and no/100 dollar (\$1.00) and other good and valuable consideration as full and final payment for any claims of damage or loss related to the construction of the Southern Delivery System Project on the real property described in the attached Exhibit A. The undersigned hereby releases the City of Colorado Springs acting by and through Colorado Springs Utilities, and its contractors, agents and employees, from any and all claims and demands of whatsoever nature related to construction and revegetation of the Southern Delivery System to date, including but not limited to stucco damage, loss of use and restoration to property directly or indirectly resulting from said construction. This agreement does not release SDS/CSU from any claims arising out of future construction or revegetation activities.

Signed and delivered this 10th day of Sept., 2012.

Owners:

Dwain B. Maxwell
Dwain B. Maxwell

Helen E. Maxwell
Helen E. Maxwell

Approved as to Form:

Andie Brubaker
Assistant City Attorney - Utilities

Approved:

James R. Hi
~~Real Estate Services~~
As Land Trust
W.R.
SDS Deputy Director



REVEGETATION LICENSE AGREEMENT (YEAR ONE) Pueblo County

APN: 9520004010

Owner: Dwain and Helen Maxwell Tenant: NA

Address: 1123 Kirkwood Drive,
Pueblo West, CO 81007

Contact Info: 719-647-5815

Property Address: 1123 Kirkwood Drive, Pueblo West, CO 81007

Owner ("Licensor") hereby authorizes the City of Colorado Springs, a home rule city and municipal corporation, on behalf of its enterprise, Colorado Springs Utilities ("Licensee"), its agents or contractors to enter upon said property for the purpose of Revegetation Activities within the lands described in Exhibits B and C attached hereto and incorporated herein by reference. These Revegetation Activities shall include the following: seeding, re-seeding, irrigation, irrigation installation, irrigation and irrigation maintenance, soil preparation, soil amending, minor grading, fence installation, fence maintenance, fence removal, and/or weed control. Any activities outside these defined activities are subject to the property owners consent.

Licensor hereby certifies that he/she is the owner of the property at the address indicated above.

As consideration for the rights granted by this License, the Licensor shall be compensated the sum of Three Hundred and no/100 Dollars (\$300.00), and other good and valuable consideration upon execution and acceptance of this License.

This License shall commence on Sept. 10th, 2012 and terminate one year thereafter. This License shall be non-exclusive and may be terminated by Licensor upon thirty (30) days written notice.

This License shall not be recorded at the Office of the Clerk and Recorder for the county in which the property is located.



Colorado Springs Utilities

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This License shall be construed in accordance with the laws of the State of Colorado.

Notices shall be sent to the following addresses:

if to Licensor:

Dwain &

Helen Maxwell

1123 Kirkwood Drive

Pueblo West, CO 81007

if to Licensee:

Colorado Springs Utilities

c/o Deputy Program Director

P.O. Box 1103, Mail Code 930

Colorado Springs, CO 80947-0930

10th Sept.
Dated this ~~30th~~ day of ~~August~~, 2012

Owner/Licensor:

Helen Maxwell

Dwain Maxwell

Colorado Springs Utilities/Licensee:

[Signature]

APPROVED AS TO FORM
CITY OF COLORADO SPRINGS
CITY ATTORNEY'S OFFICE

Christina B. [Signature]
Name: *Christina B. [Signature]*

PARCEL DESIGNATION:	9520004010	DATE:	December 3, 2009
OWNER:	MAXWELL, DWAIN B. & HELEN E., (Owner current as of the date of certification hereon)		

EXHIBIT A

LOT 9, BLOCK 5, TRACT NO. 237, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 20, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1679 at Page 219 of the records of Pueblo County.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Ave., Suite 700, Colorado Springs, Co, 80903

PARCEL DESIGNATION:	9520004010	DATE:	December 3, 2009
OWNER:	MAXWELL, DWAIN B. & HELEN E., (Owner current as of the date of certification hereon)		

EXHIBIT B
LEGAL DESCRIPTION

A permanent easement situated in LOT 9, BLOCK 5, TRACT NO. 237, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 20, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1679 at Page 219 of the records of Pueblo County, more particularly described as follows:

The east 52.51 feet of the west 60.01 feet of said Lot 9.

Said easement contains 7,352 square feet or 0.169 acres more or less.

EXHIBIT C SKETCH is attached hereto and is only intended to depict Exhibit B – Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Ave., Suite 700, Colorado Springs, Co, 80903

DATE: 24-NOV-2009

DRAWN BY: L STUDER

CHECKED BY: B HANSON

APPROVED BY: T SHAUGHNESSY

DRAWING: 9520004010_EXC

EXHIBIT C SKETCH

PERMANENT EASEMENT
PARCEL #9520004010
SECTION 20
T19S, R65W, 6TH P.M.
PUEBLO COUNTY, COLORADO

CITY OF
COLORADO SPRINGS

PARCEL G
PUEBLO WEST
METRO DISTRICT
P.U.E., D.E., E.E.
#9529099237

7.5 PERMANENT
EASEMENT
FVC-62, BOOK 1945,
PAGE 794-797

S89°25'24"W
52.51'

N0°34'36"W 140.01'

S0°34'36"E 140.01'

N89°25'24"E
52.51'

LOT 11
BLOCK 5
SALMAN, MO
& CAROLE
#9520004012

LOT 10
BLOCK 5
KEEN, CHARLES J &
PATRICIA EVAN CHEATUM
#9520004011

LOT 9
BLOCK 5
MAXWELL, DWAIN B
& HELEN E
#9520004010

LOT 8
BLOCK 5
WALSH, HERBERT S
& KATHERINE L
#9520004009

LOT 7
BLOCK 5
CARDOS, JUAN & EMILIA
#9520004003

PUEBLO

WEST

COLORADO

TRACT

237

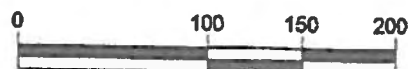
NORTH KIRKWOOD DRIVE

NOTES:

1. This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.

2. Bearings are based on a line from NGS Station "Pueblo CBL 973" (PID JK1355), monumented by a 3" brass disk set in 1.5' diameter concrete pad to NGS Station "Clevenger" (PID JK1353), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Kirkham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204900110.

3. P.U.E., D.E., E.E. = Public Utility Easement, Drainage Easement and Equestrian Easement. Per Subdivision Plat.



SCALE: 1" = 100'

SHEET 1 OF 1

PARCEL DESIGNATION:	9520004010	DATE:	March 17, 2010
OWNER:	MAXWELL, DWAIN B. & HELEN E. (Owner current as of the date of certification hereon)		

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Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

PARCEL DESIGNATION:	9520004010	DATE:	March 17, 2010
OWNER:	MAXWELL, DWAIN B. & HELEN E. (Owner current as of the date of certification hereon)		

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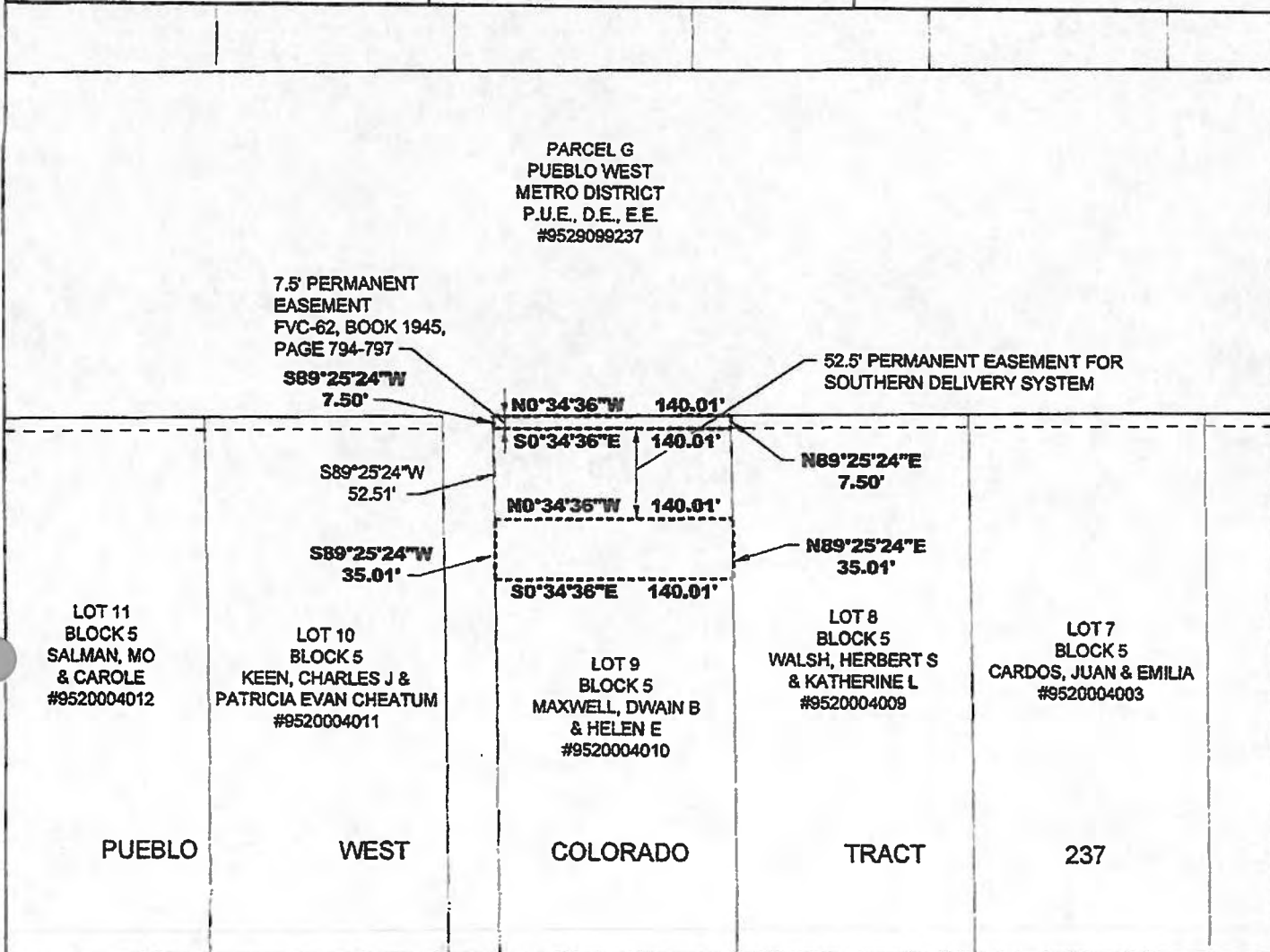
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Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

DATE: 18-MAR-2010	EXHIBIT C SKETCH TEMPORARY CONSTRUCTION EASEMENT PARCEL #9520004010 SECTION 20 T19S, R65W, 6TH P.M. PUEBLO COUNTY, COLORADO	CITY OF COLORADO SPRINGS
DRAWN BY: L STUDER		
CHECKED BY: B HANSON		
APPROVED BY: T SHAUGHNESSY		
DRAWING: 9520004010TE_EXC		



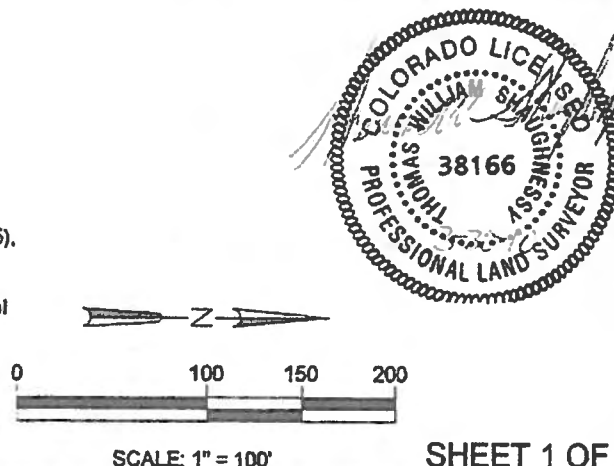
NORTH KIRKWOOD DRIVE

NOTES:

1. This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.

2. Bearings are based on a line from NGS Station "Pueblo CBL 973" (PID JK1355), monumented by a 3" brass disk set in 1.5' diameter concrete pad to NGS Station "Clevenger" (PID JK1353), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Kirkham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204900110.

3. P.U.E., D.E., E.E. = Public Utility Easement, Drainage Easement and Equestrian Easement. Per Subdivision Plat.



SHEET 1 OF 1



Colorado Springs Utilities

It's how we're all connected

Memorandum of Agreement

APN: 9520004010

For Revegetation Property Owner:

Dwain and Helen Maxwell

Southern Delivery System

Segment Work Package: S2

Property Address: 1123 N. Kirkwood Dr, Pueblo 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 13,304 square feet on parcel and improvements as follows: See addenda 1. See attached drawing.

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

Colorado Springs Utilities

Owner

Real Estate Specialist

Date

APPROVED:

SDS Land Team

Date

City Attorney's Office

Date

SDS Director/Deputy Director

Date

Owner

Date

Owner

Date

Owner

Date

Addenda 1 For Revegetation
Southern Delivery System
Property Address: 1123 Kirkwood Drive, Pueblo West, CO 81007

Property Owner: Dwain and Helen Maxwell
Segment Work Package: S2

Colorado Spring Utilities (CSU) or its representatives will remove the existing temporary chain link construction fence from the property owners property.

Colorado Springs Utilities or its representatives will install a new commercial grade 5-foot high chain link fence as indicated on the attached drawing. Separate end posts shall be installed at the northwest and northeast corners adjacent to the neighbors' fence line, but shall not be connected to the neighbor's fence. The fence shall consist of: commercial grade posts and top rails matching the neighbor's fence, concrete post footers, one 8-foot double swing gate near the northwest corner of the fence, one pedestrian gate near the house and two 12-foot double swing gates next to the house along the southeast and northeast corners of the fence. The poles shall be located at maximum 8-feet on center. The property owner will allow CSU, SDS and/or its contractors access to areas inside and outside the area described in the attached exhibit A for the purposes of fence installation. The owner shall own and maintain such fence, poles, posts and gates upon completion of the installation.

Owner shall sign any necessary application or permit required for the construction of the fence by the Pueblo West Architectural Committee or designee. Any permit fee shall be paid for by CSU or its agents.

CSU, SDS or any other agency will not modify or remove any fencing without permission from the property owner. If fencing is to be removed, it will only be removed if there are no other methods to complete any projects within the permanent easement.

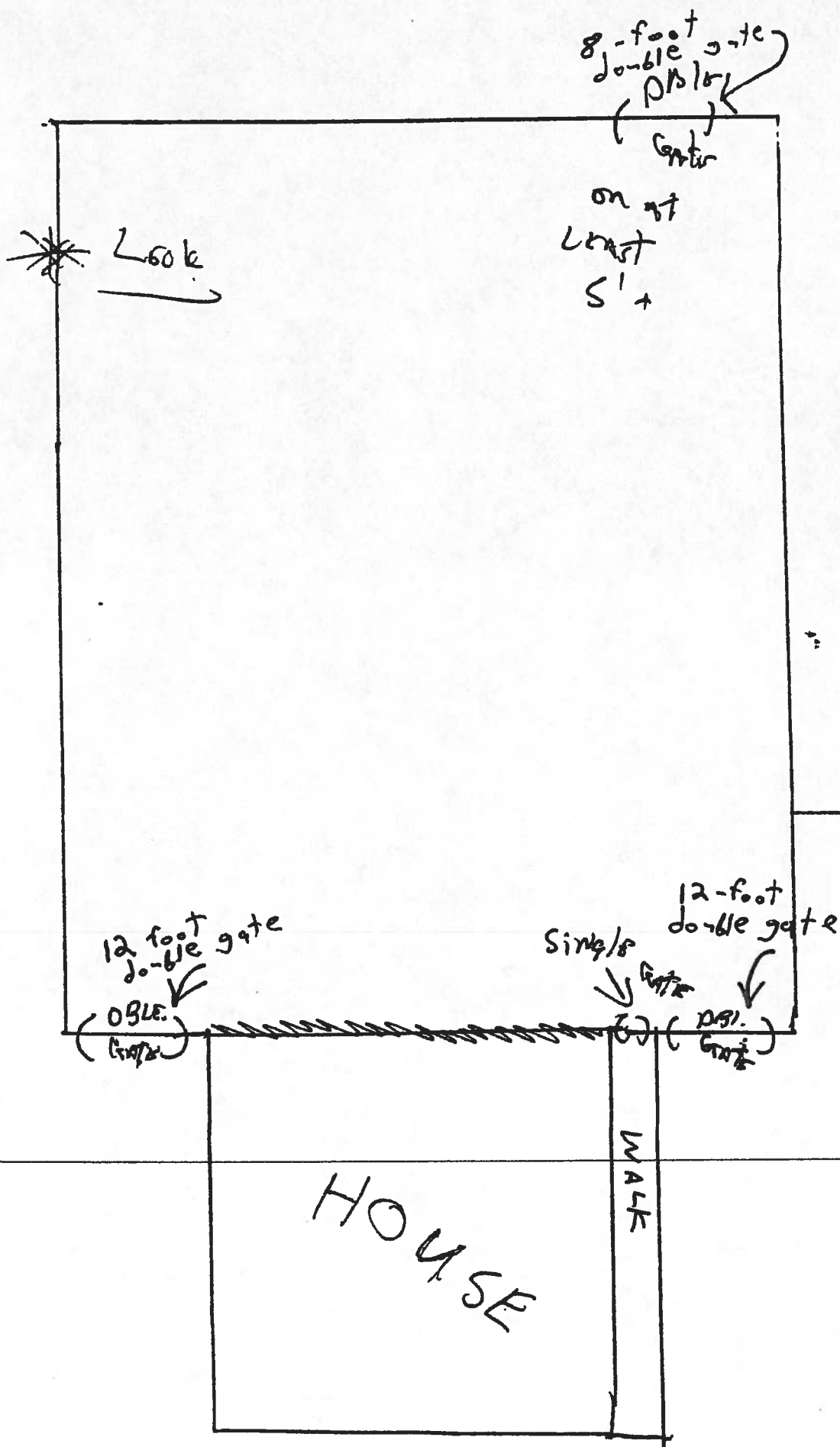
Should it become necessary to remove or modify the fence, CSU will take full responsibility for the cost, replacement or repair of the fence.

CSU may only allow any other entity, business, city, town, county, state or government to use this easement or install anything on this easement with written consent from the property owner.

Irrigation shall consist of an underground temporary line and sprinkler heads located inside the Permanent Utility Easement area that is fenced.

The property owner will accept \$400 in lieu of SDS planting yuccas and pear cacti in the easement to replace those plants that were removed or damaged during construction.

Owner shall sign the attached Release



Colorado Springs Utilities

(719) 668-8550

No. 214121**Check Date: 9/20/12****DWAIN AND HELEN MAXWELL, 1123 N KIRKWOOD DRIVE, PUEBLO WEST****CO 81007, UNITED STATES****(14330)**

Description	Date	Gross Amount	Discount Amount	Net Amount Paid
0912\$70100 Revegetation year one, cacti replacement and release. APN 9520004010	09/19/12	\$701.00	\$0.00	\$701.00
TOTALS:		\$701.00	\$0.00	\$701.00

Detach at Perforation Before Depositing Check

Page 1 of 1

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

ACCOUNTS PAYABLE SECTION, P.O. BOX 1103, COLORADO SPRINGS, CO 80947-0929

JPMorgan Chase Bank N.A.
Columbus, OH 43271
56-1544/441

Check Date
09/20/2012

Number
214121

PAY *Seven Hundred One and 00/100 Dollars*PAY
TO THE
ORDER
OF**DWAIN AND HELEN MAXWELL
1123 N KIRKWOOD DRIVE
PUEBLO WEST CO 81007
UNITED STATES
(14330)**

Amount
\$ *****701.00
Void After 90 Days

*Recd
9/20/12
[Signature]**[Signature]*
W J Chernie

RECEIPT DATE 10/11/12 No. 966095

RECEIVED FROM David marcinaka \$ 25.00

Twenty five 00/100 DOLLARS

☐ FOR RENT 1097 N. Kirkwood Dr.

☐ FOR

ACCOUNT		<input type="radio"/> CASH	
PAYMENT	<u>25.00</u>	<input type="radio"/> CHECK	FROM _____ TO _____
BAL. DUE		<input type="radio"/> MONEY ORDER	BY <u>SC</u>
		<input type="radio"/> CREDIT CARD	



PAID
10-23-12
SC

PETTY CASH RECEIPT

Date 10/11/12

Total Received \$ _____

COMP	ACCT UNIT	ACCOUNT	SUB ACCT	ACTIVITY	ACCTG CAT	AMOUNT
100	305180	1003000	0001			\$25.00

FOR Reimbursement for fence application
fee for Pueblo West Metro District.
SDS reveg after construction for:
1097 N. Kirkwood Dr.
 F01-10114 (4/2003)

Authorized Approval:

Jessie Rain

Cash Received By:

Stephen J. Vici

COPY

TOP NOTCH FENCING LLC
4755 BERGEMANN RD
PUEBLO, CO 81005

Invoice

Date 8/17/2012
Invoice # 409

Bill To

Western States Reclamation/
Dwain Maxwell
1123 Kirkwood Dr

Ship To

P.O. #
Terms

Ship Date 8/17/2012
Due Date 8/17/2012
Other

Item	Description	Qty	Price	Amount
Chain link	Install 5ft commercial grade fence with posts 8ft on center			
materials	Fence materials including everything except gates	220	8.50	1,870.00
Gates	new 4ft gates and labor	1	152.50	152.50
Labor	Labor to install fence	220	7.00	1,540.00
Chain link	Provide and stockpile materials for east side/ 12ft gate and fence materials for 145ft+			
materials	Fence materials	145	8.50	1,232.50
Gates	12 ft double gate	1	290.00	290.00
$\begin{array}{r} 220 \\ 145 \\ \hline 365 \end{array}$ $5085 \div 365 \text{ LF} = 13.93$				
Subtotal				\$5,085.00
Sales Tax (0.0%)				\$0.00
Total				\$5,085.00
Payments/Credits				\$0.00
Balance Due				\$5,085.00

TOP NOTCH FENCING LLC
rhorst@topnotchfencing.net

719-565-9573
866.381.8901

TOP NOTCH FENCING LLC
4755 BERGEMANN RD
PUEBLO, CO 81005

Invoice

Date 10/2/2012
Invoice # 436

Bill To

Western States Reclamation/
Duane Maxwell

Ship To

P.O. # 44069
Terms

Ship Date 10/2/2012
Due Date 10/2/2012
Other

Item	Description	Qty	Price	Amount
Chain link	Install 5ft chainlink fence up to house and into house on both sides with 2 walk gates and 2 double drive gates. Using the materials already provided plus supplying the needed additional materials			0.00
materials	Fence materials needed to complete project	75	8.50	637.50
Gates	Additional gates needed			0.00
Gates	4 ft gates and gate posts	1	200.00	200.00
Gates	12 ft double gate and gate posts	1	345.00	345.00
Labor	Labor to install fence	226	7.00	1,582.00
materials	Concrete for previously supplied fence		135.50	135.50
Gates	Replace the back gate with a 6ft gate by moving the post and reinstalling. Moving the 4ft gate up to beside the house		300.00	300.00
		Subtotal		\$3,200.00
		Sales Tax (0.0%)		\$0.00
		Total		\$3,200.00
		Payments / Credits		\$0.00
		Balance Due		\$3,200.00

TOP NOTCH FENCING LLC
rhorst@topnotchfencing.net

719-565-9573
866.381.8901

Payments / Credits \$0.00
Balance Due \$3,200.00

SDS Pueblo County Citizen Call Log Excerpts - Q3 2011 through July 2013

Date	Name of Caller	Reason for Call	Response	Follow Up	Disposition
11/21/2011	Dwayne Maxwell	Concern about unexpected fencing activity in easement.	Fencing crews were given direction to leave the area and recheck their plans for type of fence for these properties.	Reschedule fencing crews to do these properties in chain link, rather than orange construction fencing.	Resident was accepting of new fence plan and were cordial as chain link was placed on the easement a few weeks later.
3/13/2012	Dwain Maxwell	Dust complaint	Contacted resident engineer, who had water truck apply more water in the affected area. Air quality readings taken within the easement were within acceptable levels.	None requested	Resident satisfied with outcome.
3/19/2012	Dwain Maxwell	Dust complaint, concern about night vehicle maintenance near his home.	Contacted resident engineer, who had water truck apply more water in the affected area. Air quality readings taken within the easement were within acceptable levels. Also asked resident engineer to make sure night maintenance is further from the Maxwell home. This work was two lots away.	None requested	Resident satisfied with outcome.
3/20/2012	Dwain Maxwell	Question about our grading to final contours.	Shared information with him about our commitment and obligations to return land to original contours.	None requested	Resident satisfied with outcome.

6/7/2012	Dwain Maxwell	Questions about installation/location of Pueblo West's trail	Explained that gravel staged in the construction area will not stay there and will be used for trail only, and that trail will not be on Mr. Maxwell's property.	None requested	Resident seemed satisfied.
6/15/2012	Dwain Maxwell	Called to inquire about the timing of final items associated with his court proceeding.	The land team coordinated with Mr. Maxwell to address his questions.	None requested	Resident seemed satisfied.
8/19/2012	Dwain Maxwell	Concerned about potential impact to the stucco of his home stemming from construction earlier in the year.	Contacted project manager who requested monitoring data to investigate any potential impacts to nearby property.	Monitoring data supported that there was no activity that would have caused damage to nearby property. Information was shared with the property owner.	Resident concerned, but seemed satisfied after several meetings.
6/7/2013	Dwain Maxwell	Resident called to inquire about his watering schedule, his missing that day's watering, and express his concern that the area needs more water.	SDS called Mr. Maxwell and discussed the watering schedule and that sometimes it does vary. SDS indicated they would see if a representative was able to manually start his zone for some auxiliary watering.	No representatives were available to stop by the property. Reveg team indicated enough water had been applied to last through weekend.	Mr. Maxwell was very concerned and expressed his displeasure that watering needs to be followed through on more consistently.
6/10/2013	Dwain Maxwell	Resident called to inquire about his watering schedule, his missing that morning's watering, and express his concern that the area needs more water.	SDS called him back and indicated the timer should have initiated his Monday watering. An irrigation specialist stopped at the property to check that the system was operational.	The system was operational, however it was found that the system had not been restarted for the week until after Mr. Maxwell's morning cycle would have initiated. SDS manually ran his sprinklers to catch up on the water cycle.	Mr. Maxwell was very concerned and expressed his displeasure that watering needs to be followed through on more consistently.

6/14/2013	Dwain Maxwell	Resident called to inquire about his watering schedule, his missing that afternoon's watering, and express his concern that the area needs more water.	SDS called him back and let him know that the irrigation schedule is being reset, so his times would vary as the contractor prepares the new schedule for the following week.		Mr. Maxwell was very concerned and expressed his displeasure that watering needs to be followed through on more consistently.
7/12/2013	Dwain Maxwell	Resident called to inquire about the watering schedule and requested specific times and days of the week for watering. He expressed concern about oversaturation of irrigation water on the property and its effect on revegetation.	SDS spoke with him to better understand his concern about oversaturation and began exploring irrigation options to address his concern. SDS requested a few days to seek a solution.	Mr. Maxwell expressed his interest in having his request addressed immediately. SDS suggested to have a representative meet with him the upcoming week to further discuss the revegetation efforts on his property. Following the call, SDS began a new discussion with the SDS revegetation team related to watering schedules.	Mr. Maxwell was very concerned and expressed his displeasure that his request could not be met immediately.
7/19/201	Dwain Maxwell	Resident called SDS representative who he saw at his next door neighbors and requested that he stop by to discuss activities on his property.	SDS stopped by to discuss options with Mr. Maxwell related to irrigation timing on his property. The SDS representative indicated that they were continuing to inquire about options to address his concerns related to watering oversaturation while still achieving the necessary water penetration.	SDS indicated they would work with their revegetation team to identify potential refinements to the irrigation process so runoff was not occurring on the property and the necessary amount of water was still being maintained. SDS and the property owner agreed to get together in the coming week to see if conditions improved and discuss irrigation.	Mr. Maxwell seemed satisfied and willing to let the SDS revegetation team determine what other approach for irrigation might be feasible. He indicated he understood the difficulty of meeting his exact request, but if SDS could assure him that the proper water amount was being applied he would be satisfied.

7/26/2013	Dwain Maxwell	SDS and Mr. Maxwell spoke about conditions at the property. Mr. Maxwell said he has not noticed any changes. The SDS representative indicated some refinements had been made to prevent runoff.	SDS and Mr. Maxwell discussed meeting during a watering cycle to better visualize how the system is operating. Mr. Maxwell expressed his displeasure that his original request for specific days and times for watering could not be met.	Mr. Maxwell requested to be kept updated about changes to irrigation on his property.	Mr. Maxwell expressed his displeasure with the revegetation progress and requested to be kept informed about adjustments to his irrigation and a day to meet to discuss runoff on his property.
7/31/2013	Dwain Maxwell	Resident called to let SDS know a sprinkler head was misaligned and causing an irrigation issue. Mr. Maxwell also requested an update on what day might work to meet an SDS representative to walk through his property to further discuss the revegetation and irrigation process.	SDS representative agreed to meet with Mr. Maxwell the following day to observe the sprinkler head and to further discuss the revegetation and irrigation process on his property.	On-going, SDS is working with Mr. Maxwell and the SDS revegetation team to realign the sprinkler head and check the other heads on the adjoining properties and will continue to monitor.	In Process

Section 3. Kay Property

Ms. LaVetta Kay provided comments regarding SDS communication and site restoration activities during the public work session.

Summary of Compensation Provided to Kay

The table below is an inventory of compensation paid to LaVetta Kay by SDS for land acquisition, cost reimbursements and construction-related mitigation.

La Vetta Kay

1104 E. Ranch Drive

Pueblo West, CO 81007

<u>Costs Reimbursed</u>	
SDS paid for owner's appraisal	\$4,000.00
Total	\$4,000.00

<u>Compensation Received for Easements and Mitigation</u>	
Land acquisition of easements (permanent/temporary)	\$6,000.00
<ul style="list-style-type: none">• Ms. Kay agreed to accept this amount as settlement of the Court case in lieu of proceeding with a jury trial• Included owner's potential damages, interest, Court costs expert witness fees, costs and other expenses related in any way to this case• Appraisals varied from \$4,400 to \$5,300	
Additional construction mitigation payment	\$6,000.00
<ul style="list-style-type: none">• Temporary relocation for herself, her family and pets during construction<ul style="list-style-type: none">○ Note: SDS didn't require proof of actual relocation from owner• Housecleaning services (interior/exterior) following construction	
8 replacement plants and installation costs	\$737.00
<ul style="list-style-type: none">• Yuccas, Sage and Saltbrush	
Total	\$12,737.00

Communication and Site Restoration

The following are concerns raised by Ms. Kay regarding SDS communication and site restoration activities and the SDS Participants' responses to those concerns.

- Communication – Ms. Kay stated that 1041 Condition 28 requires effective communication and that she did not receive such communication.

Response: The SDS construction facilitators have communicated more with Ms. Kay during the last 2.5 years than with most other property owners in Pueblo County. Ms. Kay had not expressed dissatisfaction with the communication process until the September 20, 2013 Pueblo County work session. Included in this section is documentation of more than 50 individual contacts with Ms. Kay since July 2011, as well as additional correspondence with Ms. Kay.

- Weeds – Ms. Kay stated that weeds within the SDS revegetation area are “horrible.”

Response: There are no weed species on Colorado's Noxious Weeds A, B, or C List present on the Kay property. The plant species that are present represent what are considered "nurse crop" (or annuals) that provide protection of the planted species, and will be out-competed in subsequent years and as watering is reduced. Mowing was conducted by the revegetation contractor, which resulted in several compliments from other commenters.

The following supporting documents are attached:

- Attachment J Kay Property Rule and Order and Stipulation (contains Easement Agreement)
- Attachment K Kay Property Settlement Agreement
- Attachment L SDS Contact Log for Kay Property
- Attachment M Correspondence Regarding Kay Property

COMBINED COURT, PUEBLO COUNTY, STATE OF COLORADO (10 th Judicial District) Court Address: 320 W. 10 th Street Pueblo, Colorado 81003-2953 Telephone No.: (719) 583-7000	EFILED Document – District Court 2011CV331 CO Pueblo County District Court 10th JD Filing Date: Mar 22 2012 3:48PM MDT Filing ID: 43261826 Review Clerk: N/A
Petitioner: CITY OF COLORADO SPRINGS, COLORADO vs. Respondents: LAVETTA KAY, an individual; PREMIER MORTGAGE SERVICES, INC., a Colorado corporation; NICHOLAS GRADISAR, Pueblo County Public Trustee; and DEL OLIVAS, Pueblo County Treasurer.	▲COURT USE ONLY▲ Case Number: 2011CV331 Div.: C
RULE AND ORDER	

THIS MATTER having come before the Court on the parties' Stipulation for Entry of Rule and Order and the Court, being fully advised in the premises, hereby FINDS THAT:

1. The court has full and complete jurisdiction of the subject matter and the parties and service of process has been made on all interested parties.
2. This is a condemnation action filed by the Petitioner, the City of Colorado Springs (the "City"), to acquire a permanent easement and a temporary construction easement across portions of a parcel of real property located in Pueblo County, Colorado known as 1104 East Ranch Drive, Pueblo West, Colorado 81007.
3. Respondent LaVetta Kay is the record owner of the property referred to in paragraph 2 above.
4. The easements acquired by the City are described in Exhibit A and Exhibit B attached hereto and incorporated herein by this reference (the "Property").
5. The City and Respondent Kay have reached an agreement as to the amount of compensation the City is to pay for the benefit of Respondents which amount shall constitute the full amount due to the Respondents for the easements described in Exhibit A and Exhibit B as well as compensation for all interest, damages to the remainder of the property, attorney fees, expert witness fees, costs and other expenses related in any way to this case.

6. The City and all other Respondents have agreed to the entry of this Rule and Order, disclaimed any interest in the final amount to be paid for the easements, or disclaimed an interest in this action.

THEREFORE, it is hereby ORDERED that:

1. The Stipulation for Entry of Rule and Order is accepted;
2. The easement interests in the property described in Exhibit A and Exhibit B have been duly and lawfully taken and condemned by the City of Colorado Springs pursuant to the statutes and the Constitution of the State of Colorado, and title to these easements is hereby vested in and conveyed to the City according to the terms described in Exhibit A and Exhibit B free and clear of any interest of the Respondents herein; and,
3. A certified copy of this Rule and Order shall be recorded and indexed in the office of the Clerk and Recorder of Pueblo County, Colorado, in like manner as if it were a deed of conveyance from the Respondents and parties interested to the City.
4. The Clerk of this Court is ordered to issue a check in the amount of \$1,300.00 payable to the City of Colorado Springs and to send it to the City addressed as follows:
Anne Turner, Esq.
Assistant City Attorney
30 S. Nevada Avenue, Suite 501
Colorado Springs, CO 80901-1575
5. All remaining amounts on deposit in the Court's Registry shall be held until further order of this Court.

Done and ordered this 22nd day of March, 2012

BY THE COURT:



District Court Judge

Exhibit A

PERMANENT EASEMENT

- a. A perpetual, non-exclusive permanent easement to enter, occupy, and use the real property described in **Exhibit A-1** attached hereto to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove one or more pipelines, conduits, poles, vaults, meters, regulator stations, switches, transformers, valves, hydrants, manholes, access roads or any other utility structures (including, but not limited to, communication facilities), and all necessary underground or aboveground cables, wires, an appurtenances thereto, including, but not limited to, electric or other control systems, cables, wires, connections, and surface appurtenances ("Improvements") and to make any cuts and fills in the earth necessary to the performance of such work, in, on, under, through, over and across such real property (Permanent Easement").
- b. Colorado Springs shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across other adjoining property owned by the Property owner for access to and from any roads, highways, streets, alleys, or any other point to the Permanent Easement, in order to perform its rights in the Permanent Easement. To the maximum practicable extent, Colorado Springs shall use existing gates, roads, trails or facilities to avoid disruption of the Property owner's operations on other property.
- c. Colorado Springs shall have the right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove at any time or from time to time, one or more additional Improvements and appurtenances thereto within the Permanent Easement. Such right shall be perpetual, and the Property owner shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Permanent Easement.
- d. Except as provided in subparagraph (e) below, the Property owner shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Colorado Springs in the Permanent Easement. The Property owner shall only perform or permit other persons or entities to perform construction or other work within the Permanent Easement after prior written approval by Colorado Springs and only if such construction or other work is performed in accordance with the terms hereof, all applicable laws, rules and regulations, and Colorado Springs' rules and regulations as they may be modified from time to time. The Property owner reserves use of the Permanent Easement, whether longitudinal or otherwise, for installing the following with written approval from Colorado Springs: pavement, curbs, gutters, sidewalks, parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again, such as, but not limited to: stone, brick, or other masonry-type fences or walls), low-height landscaping, and

sprinkler systems which are capable of being reasonably located by Colorado Springs ("Property Owner's Improvements"); provided however, that the exercise of such rights, in the reasonable opinion of Colorado Springs, does not injure or interfere with, now or in the future, any of the Colorado Springs' rights in the Permanent Easement including, but not limited to, Colorado Springs' rights of maintenance and reasonable access.

- e. The Property owner shall not construct or place any permanent structure or building on any part of the Permanent Easement including, but not limited to: posts, poles, fences (except posts, poles, or fences that can be easily removed and erected again; and except for garage-door porch stoops and only those retaining walls up to 4 feet in height that may be required to extend into the side lot-line easements of a residential property), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, play houses or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining wall, or any edifice projections such as, but not limited to: balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, Colorado Springs may remove any structure or building constructed or placed within the Permanent Easement. If the Property owner constructs, places or permits any structure or building within the Permanent Easement, then the Property owner shall reimburse Colorado Springs for all expenses (including, but not limited to removal, court, collection, and attorneys' fees and costs) associated with or arising from removing such structure or building. Despite anything herein to the contrary, Colorado Springs may, in its sole discretion, provide written consent allowing Property owner to build an encroachment in the Permanent Easement; provided however, if Colorado Springs determines that, as a result of any approved encroachment, it is necessary to relocate any existing Improvements, then such relocation shall be at the Property owner's sole expense, regardless of the encroachment approval. The Property owner shall grant to Colorado Springs any permanent easements required for the relocated Improvements. Moreover, in no event shall the Property owner:
 - i. construct or place, longitudinally along or otherwise within the Permanent Easement any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities or other utility or appurtenance without the prior written consent of Colorado Springs; or
 - ii. change, by excavation or filling, the present grade or ground level of the Permanent Easement without the prior written consent of Colorado Springs. Further, if Colorado Springs determines that, as a result of any approved grading, it is necessary to relocate any existing Improvements, then the Property owner acknowledges that such relocation shall be at the Property owner's sole expense and the

Property owner shall grant to Colorado Springs any permanent easements required for the relocated Improvements.

The Property owner shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments including storm water quality features or facilities, and other land uses within the Permanent Easement unless the prior written consent of Colorado Springs is provided. Additionally, the Property owner shall not construct any new, or alter any existing landfills, wetlands, water impoundments, and other similar uses within the Property, which might, in Colorado Springs's reasonable discretion, endanger or interfere with any Improvements, including, but not limited to, Colorado Springs's rights of maintenance and reasonable access, without the prior written consent of Colorado Springs.

- f. Colorado Springs shall replace, repair, or reimburse the Property owner for the reasonable cost of replacement or repair of physical damage to the Property Owner's Improvements on the Property, whether or not within the Permanent Easement, but only if such damage is caused by Colorado Springs's construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements, Colorado Springs shall promptly restore, replace, or repair the surface of the Permanent Easement to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, Colorado Springs shall not be liable for damage to, nor shall it be obligated to repair or replace, any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Permanent Easement in violation of the terms hereof including, but not limited to, any tree(s) that interfere with the Improvements or Colorado Springs's rights in the Permanent Easement.
- g. Colorado Springs shall have the perpetual right to cut, trim, control, and remove trees, brush, and other obstructions which injure or interfere with Colorado Springs's use, occupation or enjoyment of the Permanent Easement, or Colorado Springs's right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove its Improvements, without liability for damages arising there-from.
- h. The Property owner shall not impair any lateral or subjacent support for the Improvements.
- i. The Permanent Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. The exercise of any rights in the Permanent Easement other than those retained by the Property owner shall be within the sole discretion of Colorado Springs. Colorado Springs shall permit and authorize such other uses of the Permanent Easement, not hereby reserved in the Property owner, as will not impair

Colorado Springs's rights in the Permanent Easement subject to the limitations contained herein.

PARCEL DESIGNATION:	505014004	DATE:	August 18, 2009
OWNER:	KAY, LAVETTA, (Owner current as of the date of certification hereon)		

EXHIBIT B
LEGAL DESCRIPTION

A permanent easement situated in LOT 27, BLOCK 7, TRACT NO. 254, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 5, Township 20 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1735 at Page 529 of the records of Pueblo County, more particularly described as follows:

The east 52.51 feet of the west 60.01 feet of said Lot 27

Said easement contains 17,834 square feet or 0.409 acres more or less.

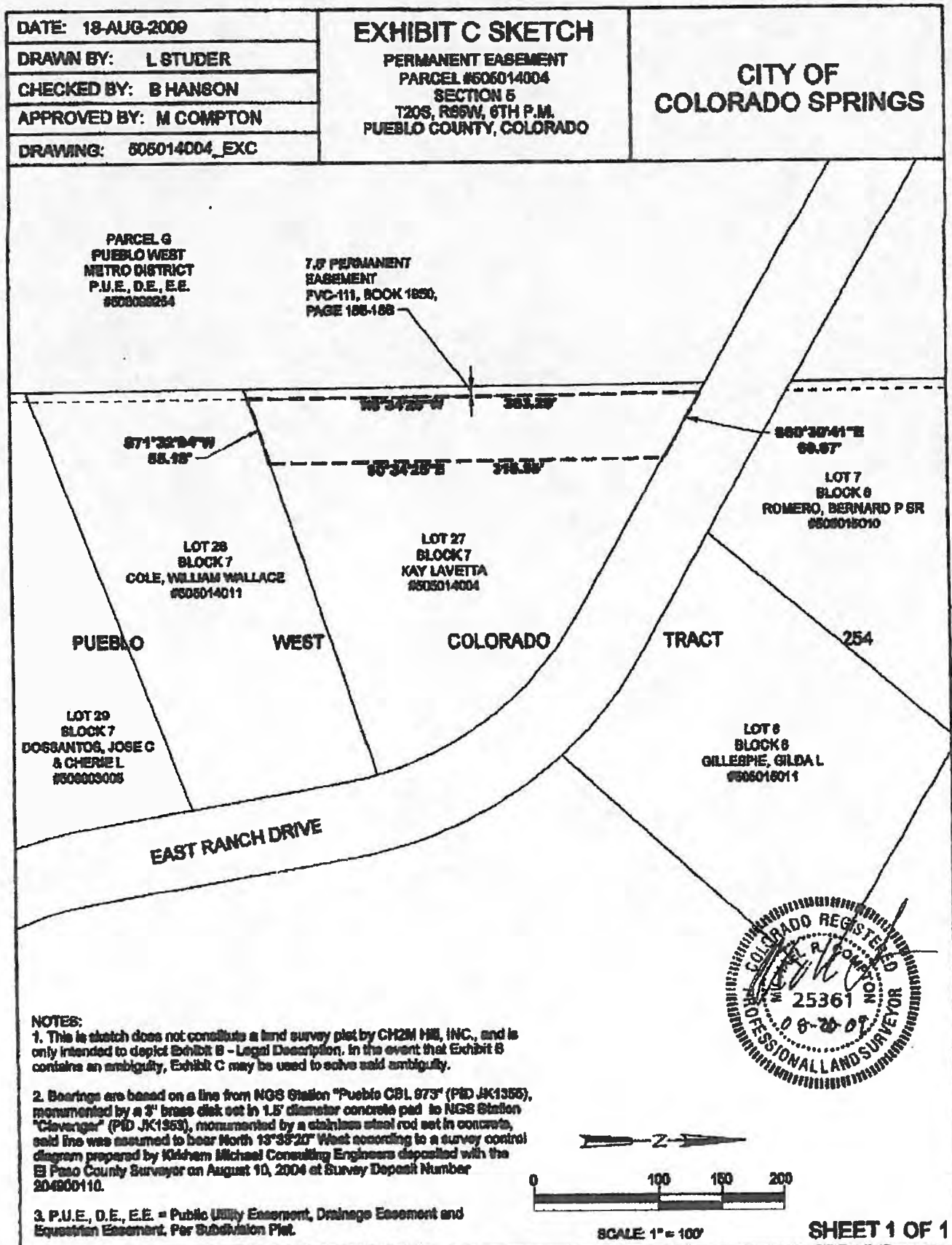
EXHIBIT C SKETCH is attached hereto and is only intended to depict Exhibit B – Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.



Prepared for and on behalf of Colorado Springs Utilities by: Michael R. Compton, L.S. 25361, of CH2M Hill, Inc. 90 South Cascade Ave., Suite 700, Colorado Springs, Co. 80903

505014004_EXB.doc

EXHIBIT A-1



© CH2M HILL 2004. All rights reserved. This document and the ideas and designs incorporated herein, as an instrument of professional service, is the property of CH2M HILL and is not to be used in whole or part, for other project without the written authorization of CH2M HILL.

EXHIBIT A-1

Exhibit B

TEMPORARY EASEMENT

A temporary construction easement ("Temporary Construction Easement") over and across the real property described in Exhibit B-1 attached hereto, together with rights of ingress and egress for the said construction. Colorado Springs may use the Temporary Construction Easement area for storage of materials and equipment, storage of fill material, temporary storage of waste materials, operation of construction equipment, and any other reasonably necessary activity related to construction. The term of the Temporary Construction Easement shall be for a period of one year, which period shall commence upon written notice from Colorado Springs, its contractor, or their agents. Prior to commencement of the Temporary Construction Easement term, the Property owner shall move, remove, relocate, or otherwise clear any moveable objects or temporary improvements from the Temporary Construction Easement at the Property owner's expense.

Upon completion of the improvements, Colorado Springs will, insofar as practicable, restore the Temporary Construction Easement area to its condition prior to construction and repair any and all damage that may arise from construction activities. The Property owner shall not erect or construct any building or other permanent structure within the above-described property during the Temporary Construction Easement term.

PARCEL DESIGNATION:	505014004	DATE:	March 17, 2010
OWNER:	KAY, LAVETTA (Owner current as of the date of certification hereon)		

EXHIBIT B
LEGAL DESCRIPTION

A temporary construction easement situated in LOT 27, BLOCK 7, TRACT NO. 254, PUEBLO WEST COLORADO, located in the Southeast Quarter of Section 5, Township 20 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, according to the plat thereof recorded in Book 1735 at Page 529 of the records of Pueblo County, more particularly described as follows:

The west 7.50 feet of said Lot 27;

Together with the following:

COMMENCING at the southwest corner of said Lot 27;

Thence North 71°32'04" East a distance of 63.06 feet on the southerly line of said Lot 27 to the easterly line of a 52.5 foot permanent easement for the Southern Delivery System and the **POINT OF BEGINNING**;

Thence North 0°34'25" West a distance of 144.13 feet on said easterly line;

Thence South 60°13'32" East a distance of 57.95 feet;

Thence South 0°34'25" East a distance of 98.70 feet to the southerly line of said lot 27;

Thence South 71°32'04" West a distance of 52.55 feet on said southerly line to the **POINT OF BEGINNING**;

Together with the following:

COMMENCING at the southwest corner of said Lot 27;

Thence North 71°32'04" East a distance of 63.06 feet on the southerly line of said Lot 27 to the easterly line of a 52.5 foot permanent easement for the Southern Delivery System;

Thence North 0°34'25" West a distance of 144.13 feet on said easterly line to the **POINT OF BEGINNING**;

Thence continue North 0°34'25" West a distance of 171.82 feet on said easterly line to the northerly line of said Lot 27;

Thence South 60°30'41" East a distance of 86.44 feet on said northerly line;

Thence South 29°37'45" West a distance of 148.71 feet to the **POINT OF BEGINNING**;

Said easement contains 15,249 square feet or 0.350 acres more or less.

EXHIBIT C SKETCH is attached hereto and is only intended to depict Exhibit B – Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.

Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

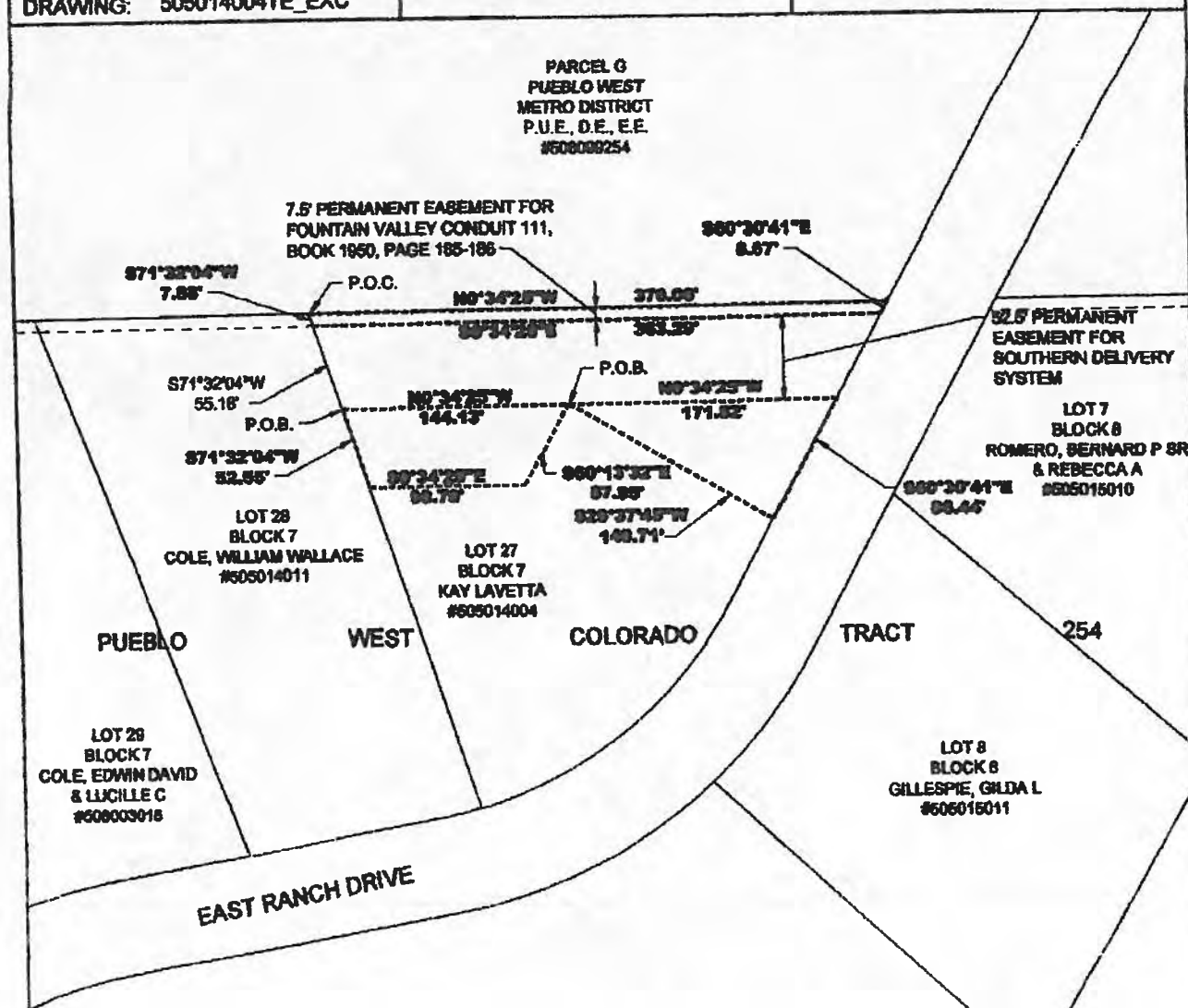
505014004TE_EXB.doc

EXHIBIT 4
PUEBLO COMBINED COURT; 2011CV331

EXHIBIT B-1



DATE: 18-MAR-2010	EXHIBIT C SKETCH TEMPORARY CONSTRUCTION EASEMENT PARCEL #505014004 SECTION 5 T20S, R85W, 6TH P.M. PUEBLO COUNTY, COLORADO	CITY OF COLORADO SPRINGS
DRAWN BY: L STUDER		
CHECKED BY: B HANSON		
APPROVED BY: T SHAUGHNESSY		
DRAWING: 505014004TE_EXC		



NOTES:

1. This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.

2. Bearings are based on a line from NGS Station "Pueblo CBL 973" (PID JK1355), monumented by a 3" brass disk set in 1.5' diameter concrete pad to NGS Station "Clevenger" (PID JK1353), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Krikham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204900110.

3. P.U.E., D.E., E.E. = Public Utility Easement, Drainage Easement and Equestrian Easement. Per Subdivision Plat.



**EXHIBIT 4
PUEBLO COMBINED COURT; 2014-03-31 OF 1**

COMBINED COURT, PUEBLO COUNTY, STATE OF COLORADO (10 th Judicial District) Court Address: 320 W. 10 th Street Pueblo, Colorado 81003-2953 Telephone No.: (719) 583-7000	EFILED Document – District Court 2011CV331 CO Pueblo County District Court 10th JD Filing Date: Mar 22 2012 3:45PM MDT Filing ID: 43261693 Review Clerk: N/A
Petitioner: CITY OF COLORADO SPRINGS, COLORADO vs. Respondents: LAVETTA KAY, an individual; PREMIER MORTGAGE SERVICES, INC., a Colorado corporation; NICHOLAS GRADISAR, Pueblo County Public Trustee; and DEL OLIVAS, Pueblo County Treasurer.	
Attorneys for Petitioner: Office of the City Attorney CHRISTOPHER J. MELCHER, CITY ATTORNEY/CHIEF LEGAL OFFICER Anne H. Turner (Reg. #: 38287) 30 S. Nevada Avenue, Suite 501 Colorado Springs, Colorado 80903 Phone Number: (719) 385-5909 FAX Number: (719) 385-5535 E-mail: aturner@springsgov.com Edward J. Blieszner (Reg. #: 11161) WELBORN SULLIVAN MECK & TOOLEY, P.C. 1125 17 th Street, Suite 2200 Denver, Colorado 80202 Phone Number: (303) 830-2500 FAX Number: (303) 832-2366 E-mail: eblieszner@wsmtlaw.com	▲ COURT USE ONLY ▲ Case Number: 2011CV331 Div.: C
STIPULATION FOR ENTRY OF RULE AND ORDER	

Petitioner, the City of Colorado Springs (the "City") and Respondent, LeVetta Kay, stipulate as follows:

1. This is an eminent domain action filed by the City to acquire a permanent and temporary construction easement across a portion of certain property in Pueblo County, Colorado,

known as 1104 East Ranch Drive, Pueblo West, Colorado 81007. The property owner of record is Respondent LaVetta Kay.

2. The City and Ms. Kay have reached a settlement on the amount of just compensation due for the acquisition of the property interests which are the subject of this litigation.

3. Respondents Nicholas Gradisar, in his capacity as Pueblo County Trustee, and Del Olivas, in his capacity as Pueblo County Treasurer, have both disclaimed any interest in this action.

4. Respondent-Intervenor Wells Fargo Bank, N.A., has filed a motion stating that it would not participate in the valuation trial but would agree to be bound by this Court's final decree. Accordingly, Wells Fargo takes no interest in the determination of the final amount to be paid for the property rights the City is acquiring.


5. These parties stipulate that a final Rule and Order may enter to conclude this matter and that the total compensation to be paid by the City for the property interests, including all interest, damages to the remainder of the property, attorney fees, expert witness fees, costs and other expenses related in any way to this case, shall be \$6,000. The City has already deposited \$7,300 in this case. Therefore, \$1,300 shall be returned to the City and the remaining \$6,000 on deposit shall be held until further stipulation or order of this Court.

WHEREFORE, the City of Colorado Springs and Respondent LaVetta Kay stipulate to the entry of a final Rule and Order in the form of the proposed order being filed with this Stipulation.

DATED this 22 day of March, 2012.

CHRISTOPHER J. MELCHER,
City Attorney/Chief Legal Officer
ANNE H. TURNER
City Attorney/Senior Attorney

WELBORN SULLIVAN MECK & TOOLEY, P.C.


s/ Edward J. Blieszner

Edward J. Blieszner

ATTORNEYS FOR PETITIONER


s/ LaVetta Kay

LaVetta Kay

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of March 2012, I filed a true and correct copy of the foregoing by and through LexisNexis file and serve, U.S. Mail and/or Email to the following:

Donald J. Banner
Banner & Bower, P.C.
503 Main Street, Suite 221
Pueblo, CO 81003

Christopher T. Groen, Esq.
Phillip A. Vaglica, Esq.
Castle Stawiarski, LLC
999 18th Street, Suite 2301
Denver, CO 80202

s/_____

SDS Contact Log -- Lavetta Kay, South Pipeline 2: The SDS construction facilitators have communicated more with Ms. Kay during the last 2.5 years than with most other property owners associated with the SDS project. Included in this section is documentation of more than 50 individual contacts with Ms. Kay since July 2011.	
DATE	Caller/Contact
07/15/2011	Ms. Kay wanted to schedule her pre-existing condition assessment. Ms. Kay was called back on 7/19 and an appointment was scheduled.
08/19/2011	30-Day Construction Letter mailed to S2 properties, including Ms. Kay's. References construction activities starting as soon as Aug. 26, 2011.
09/15/2011	7-Day Doorhanger placed on Ms. Kay's door
09/26/2011	Formal beginning of easement access in South Pipeline 2 for construction of SDS
09/30/2011	Pre-existing condition assessment conducted at Ms. Kay's home: Photos taken inside and outside at her request
11/30/2011	Ms. Kay called hotline to check on the status of her pre-existing condition assessment photos and video. Explained the process and would get discs to her soon.
12/27/2011	Checking on activity in easement wanted to be sure we would protect/move the cactus in her yard. Arranged visit in the field with Ms. Kay and told her that we would move the current plants to a place of her choosing AND replace all such plants again after construction.
01/20/2012	Margaret Radford hand-delivered CD containing video and photos of Ms. Kay's property
01/23/2012	Garney Construction and Dennis Auge (SDS) used backhoe to move Ms. Kay's original prickly pear cactus and yuccas to east side of property. She seemed pleased with our efforts.
03/02/2012	Ms. Kay called hotline to request information about vibration monitoring process. Margaret Radford explained methodology and next steps when construction is near her home.
03/22/2012	Ms. Kay called with concern about construction near her home and whether it is SDS. Margaret Radford drove to her home and found a Centurylink crew on site. Asked them for their completion time and provided to Ms. Kay.
05/18/2012	Ms. Kay called with concern about SDS pipe being staged in the vicinity of her house (in temporary easement) and asking about timeline of construction work. Explained timeline and indicated that we would be in touch as often as she would like before.
05/24/2012	David Marciniak contacted Ms. Kay by phone to let her know that likely construction would take place on her property around June 4. Ms. Kay had concerns that she did not have time to relocate during the week of construction. Margaret Radford told her that no one is going to check to see if she's relocated. She offered that grandchildren are not living at the house right now.
Week of June 4, 2012	Installation of SDS pipeline takes place on Ms. Kay's property
06/04/2012	Ms. Kay called with dust complaint -- perception that dust is blowing from the spoil piles on her property. Margaret Radford contacted resident engineer who sent a water truck to this area. Area was watered within 30 minutes of her call.
06/07/2012	Post-construction followup letter mailed to Ms. Kay, giving guidance on what she can expect next

06/18/2012	Ms. Kay called hotline to ask what equipment would be onsite near her home for completion of the drainage area north of her home. Provided information.
08/08/2012	Margaret left packet offering Revegetation License Agreement opportunity on Ms. Kay's doorstep, per her request.
08/17/2012	Ms. Kay agreed to meet at her house to talk about revegetation license agreement. Her sister and brother in law were also present. Ms. Kay complained about construction. She stated that the TCE expires Aug. 17. We stated that Sept. 26 is the expiration date, per the 30-day letter. She stated that she wants revegetation and understands that we need access to do that. She also asked whether vehicle traffic will end after seeding; whether we will have a two-track or not; and what kind of fencing will we have along Ranch to keep vehicles out. She stated that she would think about the revegetation license agreement.
9/6/12 and 9/12/12	Margaret Radford left message for Ms. Kay, asking her to call. No response.
09/13/2012	Margaret Radford spoke with Ms. Kay at S2 dinner for residents.
09/13/2012	Ms. Kay called and said that she was demanding more than \$300 (reveg license amount) for the inconvenience of construction. Margaret Radford reminded her that the construction easement is still open. She disagrees that the TCE is still in effect and referred to a court case. I reminded her that our 30-day letter said that the TCE opened 9/26/2011 and she said she hadn't received the letter.
09/18/2012	Margaret Radford called Ms. Kay with information, left message, no call back.
9/20 and 9/21	Margaret Radford called Ms. Kay -- left message asking her to call back. No response
09/25/2012	Margaret Radford called and left voicemail; no response. Cleanup was conducted per Ms. Kay's request on the easements and just inside her other property to remove trash that had blown in and other possible construction site debris. Also she asked about attorneys fees and Margaret Radford mentioned that Lyman would know about that.
09/26/2012	Site visit: (Margaret Radford) Saw Ms. Kay's car home, stopped by to say hello. She said she was not going to sign revegetation license agreement, but still wanted revegetation. She also said she had a "list of demands" she would send through the "land process." She also said the pvc sprinklers are eyesores and she wanted them buried. I had to cut the call short because of traffic concerns (I was driving) I let her know that the straw bale would be removed soon. She indicated that she wanted Western States to quit using Ranch Drive entrance to easement and I told her that would end when the TCE expires. She also complained that workers left a trailer of white PVC pipe on the permanent easement overnight. She also wants signs to tell trail walkers that they need to stay off her property. I answered her 8/17 questions and overall she seemed satisfied.
10/04/2012	David Marciniak called to let Ms. Kay know that we would like to come to the property tomorrow to maintain the plants she had requested to be removed. She said she would prefer that nobody is on the property until the letter she sent to Lyman Ho on 9/27 is replied to. I asked if she wanted to cancel the plant maintenance for 10/5 and she said yes.
10/08/2012	Lyman Ho (SDS) called 547-0878 and left message that he heard that she sent him a letter but he had not received one. Left e-mail and phone number.

10/09/2012	Lyman Ho sent Ms. Kay a letter, responding to her Oct. 9, 2012, letter, declining Ms. Kay's claim of \$100 per day for SDS access after what she believed was the expiration of the temporary easement.
03/20/2013	Two calls this week to ask Ms. Kay if we can make arrangements to plant her replacement plants. No word back from Ms. Kay yet.
04/01/2013	Ms. Kay called and said she never got Lyman Ho's letter. Margaret Radford e-mailed Lyman to that effect. Lyman sent Margaret an e-mail that day saying he left Ms. Kay a voicemail.
04/01/2013	Ms. Kay mentioned in another phone conversation that she wanted Lyman Ho to call her. Margaret conveyed that to Lyman. He left her a voicemail on 4/1.
04/08/2013	Lyman Ho talked with Ms. Kay, who was ill. Lyman sent her copies of his letter and response and offered to meet with her on Thursday if she wants.
First two weeks of April 2013	Multiple back and forth e-mails between Margaret Radford and Ms. Kay, asking Ms. Kay to choose her replacement plants before the summer gets too hot. Cordial interaction, see attached examples.
4/12/13, 4/15/2013, 4/19/13, 4/20/13.	E-mails between Margaret Radford and Ms. Kay regarding the replacement plants we would like to provide for her.
04/16/2013	Ms. Kay mentioned that she is feeling better and hoping Mr. Ho will contact her.
06/05/2013	Site visit for Ms. Kay to show team where she would like plants to be placed. Also she asked us to remove trash Also cleaned up plant growth areas and picked up trash at her direction.
06/03/2013	Received one-time access permission from Ms. Kay via e-mail so that crews could install eight plants, including yuccas and Russian sage.
06/06/2013	Planted eight nursery-grade plants total, including yuccas and Russian sage. Purchased from Seuffer Nursery.
07/16/2013	Crew pulled straw bales and cleaned up ditches along Ms. Kay's property and Ranch Road.
07/31/2013	Western States Reclamation trimmed tall plant growth on the permanent and former temporary easement (they did not realize they were crossing into the former temporary and that we had no written agreement in place with Ms. Kay)
08/05/2013	Call from Ms. Kay, saying that our crews trespassed on her property because the taller plants had been trimmed on the former temporary and the permanent easement. She is worried that crews also cut down her replacement ornamental plants but she can't tell. She said she never gave permission for the plant growth to be cut down. I asked her if she had wanted them to stay, and she said no, but she needed to give permission. I told her I would come down and look and report back to her.
08/06/2013	Margaret Radford visited Ms. Kay's property with her permission. Explained to her son, who was at home that our crew had accidentally strayed into the former temporary because they were trying to make it look nicer for her. He said he had seen the workers cutting the taller plants and was glad.

8/6/13, 8/7/13	Margaret Radford talked twice to Ms. Kay, explained that the crew strayed by accident, trying to do a good job cleaning up the taller plants. She said she would not accept the apology. During this time frame she advised me via text that she was meeting with an attorney.
08/16/2013	Margaret Radford received a phone call on work cell from Ms. Kay's sister, who stated that Ms. Kay is quite ill and cannot meet right now about the maintenance of the revegetation. She asked why SDS turned down Ms. Kay's request regarding payment related to expiration of the easement. Margaret stated that Ms. Kay has been working with Lyman Ho on that matter. She said something to the effect that, "oh, that's right, and she's gotten his letter of denial" or words to that effect.
08/20/2013	Margaret Radford sent Ms. Kay a letter again requesting that she sign the revegetation license agreement so that we can have clear direction in writing and pay her \$200 for the second year of access. No response has come to that letter.
09/13/2013	Letter from Mark Pifher (SDS) to Ms. Kay, responding to her Aug. 26 letter to Colorado Springs Utilities CEO Jerry Forte, declining Ms. Kay's claim of \$36,000 for SDS access after what she believed was the expiration of the temporary easement.

From: Vetta [<mailto:veek1258@yahoo.com>]
Sent: Monday, June 03, 2013 9:56 PM
To: Margaret Radford
Subject: Access

Margaret,

I hope this is adequate. Do you know if Lyman ever found my letter dated December 10, 2012. The return receipt was dated sometime after the 1st of the year. I'm not sure of the date but I have the return receipt at home. I'll give you a call and let you know approximately what time I will be off so we can get those stakes in place.

Vetta

I La Vetta Kay grant SDS one time access to my property located at 1104 East Ranch Dr for the purpose of planting seven plants as previously discussed with SDS's representative Margaret Radford. This granting of one time access does not release SDS from their contractual obligation for compensation to me for any and all access including previous or future access to my property to complete revegetation or other necessary reason that may require right of entry to my property.

Your suggestions

1 Joshua tree
 2 regular white-blooming yucca
 1 Russian Sage
 2 red-blooming yucca ?

My list

1 Russian Sage Blue
 1 regular white-blooming yucca
 1 Russian Sage Lavender
 2 red-blooming yucca

PLUS 1 of the salt bush or salt brush?

1 Salt brush

--- On Wed, 4/24/13, Margaret Radford <mrادford@csu.org> wrote:

From: Margaret Radford <mrادford@csu.org>
Subject: Update on your plants from Margaret
To: "Vetta" <veek1258@yahoo.com>
Date: Wednesday, April 24, 2013, 10:41 AM

Hi Lavetta:

We will drop stakes by today or tomorrow. They will be out on the edge of the former construction area. Please feel free to write on the stake in Sharpie which plant goes where. Just place the stakes where you'd like the plants, and experiment to your liking.

We are hoping to do the work next week. I need your permission, in an e-mail, to enter the property to plant the plants. Please return an e-mail that says we have permission to enter the property to install your plants. We can't do the work unless you permit us to. :)

Margaret Radford

Construction Facilitator

Southern Delivery System Program

(719) 668-4805 or 290-0885

From: Vetta [<mailto:veek1258@yahoo.com>]
Sent: Saturday, April 20, 2013 9:02 PM
To: Margaret Radford
Subject: Re: Need your plant decision today please

Hi Margaret

I have six windows open at once trying to decide what I want.

Your suggestions

My list

1 Joshua tree

1 Russian Sage Blue

2 regular white-blooming yucca

1 regular white-blooming yucca

1 Russian Sage

2 Russian Sage Lavender

2 red-blooming yucca ?

2 red-blooming yucca

PLUS 1 of the salt bush or salt brush? 1 Salt brush

Ok see what you can do with this. Now the hard part deciding where to put them.

Thanks

La Vetta

--- On Fri, 4/19/13, Margaret Radford <mrادford@csu.org> wrote:

From: Margaret Radford <mrادford@csu.org>
Subject: Need your plant decision today please
To: "week1258@yahoo.com" <week1258@yahoo.com>
Date: Friday, April 19, 2013, 9:13 AM

Hi Lavetta:

If at all possible, we need you to choose your plants today and give us an e-mail stating we have access next week for the limited purpose of placing the plants according to your direction. We are hoping to get our crews out next week, before the weather gets too hot (which could happen very quickly here in Colorado :)

Please review the list below and make chances accordingly, and send back to me. We need this no later than Monday so that we can get the plants ordered, brought to Pueblo West, and planted.

Thanks!

Margaret Radford
Construction Facilitator
Southern Delivery System Program
(719) 668-4805 or 290-0885

From: Margaret Radford
Sent: Monday, April 15, 2013 3:00 PM
To: 'Vetta'
Subject: We would like to make plant selections by Wednesday if possible

Hi again:

So I found out that the salt bush or salt brush (I've seen it called both) IS available at the nursery! Woo-hoo!

So, dear, let's get some choices made. What if you did this?

1 Joshua tree
2 regular white-blooming yucca
1 Russian Sage
2 red-blooming yucca ?
PLUS 1 of the salt bush or salt brush?

I haven't included any prickly pear, but certainly revise at will and add those. I just wanted to get you something extraordinary! On the cactus, we will need to know if you are content with the spine-free ones, or whether we need to keep looking. I think I mentioned that one of our staff (Dennis, the senior-level field engineer whom you've met) has prickly pear-type cactuses on his place near Penrose and would be happy to pot some up for us to plant at your house. He would love to share :)

Please let me know asap -- e-mail is good because I can get it even if I'm in a meeting.

Talk to you later today, I hope?

Margaret

Please revise at will -- and I need your order by Wednesday so we can get the plants delivered to Pueblo West (from Canon City) for planting. When could I come and see you and the two of us stake out where you'd like the plants to go? We'd like to get the plants into town this week for planting late this week or next week. How would that be?

Margaret Radford
Construction Facilitator
Southern Delivery System Program
(719) 668-4805 or 290-0885

From: Margaret Radford
Sent: Friday, April 05, 2013 5:03 PM

To: 'veek1258@yahoo.com'
Cc: David B Marciniak
Subject: Plant pictures from Margaret

Hi Lavetta:

So the sizes I've sent pictures of are in 5-gallon buckets, and the nursery says they are ideally suited for transplant to your yard during the next few weeks, before it gets too hot. All of the yucca you see will grow the way you are used to, except the Joshua tree. It grows a "trunk" and then the leaves are up on top--which might be a nice, different feature to add to the mix. The ones whose pictures are labeled whiteblossom are most like yours from before, I think. They seemed quite hardy, and a brilliant green. Then there are the prickly pear minus the prickles -- :) We certainly can keep looking for ones with spines, but this nursery didn't have any. I thought you might prefer the smooth ones, with the grandkids and all.

So take a look at these and let me know what you think. We have another resident whose plants we hope to plant next week, and we would like to do yours at that same time. We would need verbal permission to proceed and your designation of where you'd like them to go. A grouping would be most effective, I think, for visual impact.

I'm eager to see what you think. They are lovely plants and I'm excited to get them planted for you to nurture and enjoy.

take care
Margaret

Margaret Radford
Construction Facilitator
Southern Delivery System Program
(719) 668-4805 or 290-0885



Southern Delivery System
To learn more about SDS visit: www.sdswater.org

Aug. 20, 2013

Lavetta Kay
1104 E Ranch Dr
Pueblo West, CO 81007-1196

Parcel Ref: 505014004

Dear Lavetta:

I appreciate you letting me know through your sister that you have been ill. I hope you are feeling better and well on the way to recovery.

In response to recent concerns you expressed, I wanted to communicate with you in writing to provide some clarity. As you may recall, last year at this time the SDS program offered you Year One of the Revegetation License agreement, which would have paid you \$300 to grant us access to maintain the former temporary easement as we maintain the permanent easement. At that time, you declined to sign a license agreement and also declined to sign a waiver to opt out of revegetation. You did state to me several times, however, that you wanted the former temporary easement watered and that you wanted revegetation. Accordingly, this spring and summer, our contractor has watered the permanent and former temporary easements and attempted to maintain the plant growth in both areas.

To avoid any misunderstandings, we need a more formal arrangement in place. We are requesting that you either sign a Year Two Revegetation License Agreement (and receive \$200) or sign a waiver of revegetation. The other property owners in Pueblo West affected by the SDS pipeline have joined with us in these agreements to receive payment and to provide clear direction to the SDS team. Our main goal is to maintain the revegetation plants on your property in the easement areas for your enjoyment and to fulfill our commitments.

Below are details about the options to provide more clear direction to our contractor for revegetation:

The revegetation license agreements are voluntary. Property owners may choose to opt in to the SDS revegetation program or to opt out of the program, or cancel at any time.

Here are the two options for the SDS revegetation program:

1. OPT IN

If you choose to continue participation in the SDS revegetation program, you would agree to permit our contractors, currently Western States Reclamation, limited access to continue establishing native grasses in the former construction area on your property. Payment to you under this Year Two agreement is \$200. Our need for access will be more limited during Year Two because grass seed already has been planted on your property. Activities during this period may include continued irrigation, fence maintenance and fence removal; re-seeding if needed; and weed control.

2. OPT OUT

We recognize that you may not want to have these activities continue on your property. If you prefer, you may opt out of SDS revegetation. By choosing this option, you would waive and release SDS and its contractors from any revegetation obligations on your property and assume full responsibility for maintenance after the expiration of the temporary easement. This opt-out plan does not include financial compensation.

Our contractors are scheduled to mow in your area this fall, so a timely response will help provide us direction on whether you wish to have this work performed on your property or not, as well as your preference for ongoing maintenance of the former temporary construction easement area.

Please call me at **855-SDS-4YOU** (737-4968) or on my cell line, (719) 290-0885.

Sincerely,

Margaret Radford
Construction Facilitator
(719) 668-4805

Amy Borders

From: Lyman Ho
Sent: Tuesday, September 03, 2013 11:20 AM
To: Amy Borders
Subject: FW: email

Follow Up Flag: Follow up
Flag Status: Flagged

From: Lyman Ho
Sent: Tuesday, October 09, 2012 10:20 AM
To: 'Vetta'
Subject: RE: email

Lavetta,
I did receive it this time. For some odd reason, the one you sent on Monday arrived 6 minutes before this one.
Lyman

From: Vetta [<mailto:veek1258@yahoo.com>]
Sent: Tuesday, October 09, 2012 9:56 AM
To: Lyman Ho
Subject: Re: email

Lyman

Below is a document for your review. I have also attached it so it may be printed out for you convenience.

Vetta

Colorado Springs Utilities
P.O. Box 1103
Mail Code 930
Colorado Springs , CO 810947-0930

September 27, 2012

RE: APN-505014004
Property Address: 1104 Ranch Drive
Pueblo West, CO 81007

Lyman Ho:

The temporary construction easement that Colorado Springs Utilities purchased expired midnight August 17, 2012 the date Colorado Springs Utilities was granted condemnation. The Court or Property Owner has never accepted an alternate date for the temporary easement to expire.

For prior and continued access to the temporary easement for SDS to comply with the 1041 Permit this is a Notice of Demand for \$100.00 a day retro to the expiration date of August 17, 2012 until completion of revegetation.

Payment of \$100.00 a day is payable the first of every month until completion.

SDS and Colorado Springs Utilities were never granted by the Court or Property Owner an alternate date for expiration of temporary easement. SDS and Property Owner have not come to a licensed agreement that would allow their contractors to perform limited and infrequent revegetation activities on said property and SDS is hereby notified that all access to temporary easement will require prior arrangement and approval of property owner.

I am not waiving my rights to have my property restored and revegetated to its prior condition before construction. I understand for successful revegetation of my property, access to the temporary easement is essential. As SDS did not complete revegetation in a timely matter to be in compliance with the 1041 Permit, Property Owner demands the above fore mentioned compensation for access to the temporary easement until the required revegetation is completed.

I trust that you will expedite the issues concerning this matter and will commence with current and past due payments by October 1, 2012 .

Sincerely your

La Vetta Kay

--- On Tue, 10/9/12, Lyman Ho <lhs@csu.org> wrote:

From: Lyman Ho <lhs@csu.org>

Subject: email

To: "veek1258@yahoo.com" <veek1258@yahoo.com>

Date: Tuesday, October 9, 2012, 9:43 AM

here it is

CONFIDENTIALITY NOTICE - This email transmission, and any documents, files or previous email



Colorado Springs Utilities

It's how we're all connected

October 23, 2012

La Vetta Kay
1104 Ranch Drive
Pueblo West, CO 81007

Subject: Letter of September 27, 2012 APN 5050-14-004

Dear Ms. Kay:

I received your letter via email on Tuesday, Oct. 9, 2012, and received your email sent on Monday, Oct. 8 on Oct. 9 as well. To date, I have not received a postal delivery of the letter. It may be due to the zip code typo containing 6 digits rather than 5.

This letter is to inform you that your Notice of Demand for \$100.00 per day "retro to the expiration date of August 17, 2012" is declined. We disagree with the date of August 17, 2012 being the actual expiration date. We would refer you to review the actual Rule and Order, specifically in the language of the Temporary Easement contained within Exhibit B. Additionally, we disagree with your determination that compensation is due "until completion of revegetation." Since the installation of measures necessary for revegetation were completed during the duration of the temporary construction easement, we were within our right to perform this task in the temporary easement.

As a reminder, we notified you by letter dated Aug. 19, 2011, that the one-year temporary construction easement would begin Sept. 26, 2011. Prior to September 26, 2012, we installed an irrigation system wholly contained within the permanent easement, planted native seed on all disturbed ground on your property, mulched the ground to maintain the integrity of the plantings and tackified the surface to provide dust control during the winter. Please understand that the revegetated area has the best opportunity to succeed if all of it is irrigated beginning in the spring. You will be receiving a letter in the near future from the project's Public Involvement staff regarding next steps for maintenance of the revegetated area.

In your letter, you specifically state that you are not waiving the revegetation on your property and we appreciate your recognition of the importance of the revegetation success. However, because you appear to be declining the suggested License Agreement allowing access for additional work within the temporary construction easement area, we will work to respect your wishes and refrain from entering that area with the exception of ingress and egress as set forth in the Permanent Easement (Exhibit A, Paragraph b, of the court's final Rule and Order) and with the exception of irrigation as described above unless requested by you to do otherwise.

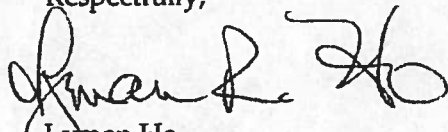
121 South Tejon Street, Third Floor
P.O. Box 1103, Mail Code 930
Colorado Springs, CO 80947-0930

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

Page 2
October 22, 2012

As always, we remain available to discuss this matter or any additional questions you may have.

Respectfully,



Lyman Ho
SDS Land Acquisition Manager

cc: File APN 5050-14-004

Colorado Springs Utilities
P.O. Box 1103
Mail Code 930
Colorado Springs, CO 810947-0930

December 10, 2012

RE: APN-505014004
Property Address: 1104 Ranch Drive
Pueblo West, CO 81007

Lyman Ho:

I received your letter dated October 23, 2012 declining demand for compensation for access to the temporary construction easement to complete revegetation. Once again for the record I am not waiving or declining the revegetation on my property as was stipulated in the 1041. I was assured by representatives from SDS on numerous occasions that my property would be restored to its prior condition after the pipeline installation. SDS/Colorado Springs Utilities has not completed the revegetation to my property to its prior condition.

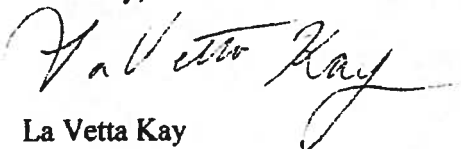
Your letter states that you disagree with the expiration date of August 17, 2012. The SDS form letter dated August 19, 2011 sent out to all property owners affected by the project stated that the one year construction easement would begin September 26, 2011. This date does not apply to my property as my property was taken by condemnation through the court and therefore your one year temporary construction easement commenced when the court granted condemnation. Just because SDS/Colorado Springs Utilities has not completed the revegetation within the one year temporary time frame this does not release SDS from their contractual obligation to complete the revegetation and further compensate me for access on my property.

I stand firm on my demand for compensation for access to the temporary easement on my property. Your intimidation and bullying tactics and failure to even attempt reasonable negotiations leaves me no choice but to go back to court and let the Judge clarify his ruling which granted the Condemnation of my property on August 18th, 2011 starting the possession as well as access to the temporary easement.

Let this letter further serve as notice that SDS has neglected to clean up on going construction debris causing an unsightly portrayal of my property. The burden of cleaning up your trash and debris should not fall upon me or other property owners. SDS needs to be monitoring on a regular basis the construction site to ensure that the property isn't portrayed in a negative manner due to the on going debris.

I am open to all negotiations to resolve the issues at hand.

Sincerely,



La Vetta Kay

Velia Kay
1104 E. Ranch Dr
Pueblo, CO 81007

CERTIFIED MAIL



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Colorado Springs Utilities
c/o Lyman Ho
121 S. Tejon St. 3rd Floor
P.O. Box 1103, Mail Code 930
Colorado Springs, CO 80947-0930

La Vetta Kay
1104 E. Ranch Dr.
Pueblo West, CO 81007
719-547-0878
719-994-2185

August 26, 2013

Colorado Springs Utilities
Jerry Forte CEO
121 South Tejon Street, Third Floor
P.O. Box 1103
Mail Code 930
Colorado Springs, CO 810947-0930

RE: APN-505014004

Property Address: 1104 Ranch Drive
Pueblo West, CO 81007

Dear Mr. Forte:

Condemnation of my property was granted by the court to Colorado Springs Utilities on August 18, 2011 starting the possession as well as the one year construction access to the temporary easement as set forth in the Petition in Condemnation.

SDS has not completed the required revegetation of referenced property within the set time frame to comply with the 1041 permit (Contract Mitigation Appendix C-9). For SDS to continue compliance of revegetation access to property is necessary and the property owner is due compensation.

On September 27, 2012 a letter was sent to Colorado Springs Utilities/Lyman Ho, Land Acquisition Manager. CSU was given a Notice of Demand for \$100.00 a day retro to the expiration date of August 17, 2012 until completion of revegetation for prior and continued access to the temporary easement for CSU/SDS to comply with the 1041 Permit.

I am not waiving my rights to have my property restored and revegetated to its prior condition before construction. As SDS has not completed revegetation to be in compliance with the 1041 Permit, Property Owner demands the above fore mentioned compensation for access to the temporary easement until the required revegetation is completed.

Let this letter further serve as notice that on August 1, 2013 SDS contractors trespassed not only on to the temporary easement but also property not in the easement area. Under the law even the slightest entry onto land without the property owner's permission entitles the property owner the right to damages in a nominal sum. No notice was given

to the property owner that SDS would be doing any work in the area. SDS contractors did not have permission to access the property. The easement across the street and behind referenced property was not disturbed. Margaret Radford the SDS Construction Facilitator was contacted concerning this incident of trespassing. Ms. Radford could not give any explanation for this violation.

Colorado Springs Utilities is currently in arrears \$36,500.00. Enclosed is your Past Due Bill. I trust that you will expedite the issues concerning this matter and will commence with current and past due payments by September 1, 2013.

Sincerely,



La Vetta Kay

cc: Keith King, Colorado Springs City Council President

La Vetta Kay
1104 E. Ranch Dr.
Pueblo West, CO 81007
Phone: 719-547-0878
Cell: 719-994-2185
Email: veek1258@yahoo.com

Bill

**Bill To: Colorado Springs Utilities
121 South Tejon Street, Third Floor
P.O. Box 1103, Mail Code 930
Colorado Springs, Co 80947-0930**

Phone 719-668-4800
Fax 719-668-8735
<http://www.csu.org>

Date	Description	Amount	Payment	Balance
8/18/2012 to 8/17/2013 PAST DUE	Compensation for access to the temporary easement for SDS to complete revegetation.	\$100.00 a day	0	\$36,500.00
			Total	\$36,500.00

REMITTANCE
Customer ID: 505014004
Statement Date: 8/19/2013
Amount Due: \$36,500.00
Due Date: 9/1/2013



Colorado Springs Utilities

It's how we're all connected

September 13, 2013

La Vetta Kay
1104 E. Ranch Drive
Pueblo West, CO 81007

RE: APN 505014004

Property Address: 1104 Ranch Drive, Pueblo West, CO 81007

Dear Ms. Kay:

I am in receipt of your letter to Mr. Forte, dated August 26, 2013 expressing your concerns and issues related to the Southern Delivery System (SDS) project. It appears that your concerns revolve around access to your property as we work to ensure the successful re-vegetation of our former pipeline construction areas. I would like to apologize for any misunderstanding and will explain in this letter the circumstances that may have led to some confusion.

Regarding the expiration date of the Temporary Construction Easement, our records indicate that an Order for Immediate Possession was granted by the Pueblo District Court on August 19, 2011. Under the provisions of that order, "The term of the Temporary Construction Easement shall be for a period of one year, which period shall commence upon written notice from Colorado Springs, its contractor, or their agents." A letter, dated August 26, 2011, was written to you informing you that the term of the Temporary Construction Easement would commence on September 26, 2011. Therefore, the term of the Temporary Construction Easement is considered to have been September 26, 2011 through September 25, 2012, and hence has expired.

As you are aware, you were offered the opportunity to participate in the three-year voluntary re-vegetation license program, under which SDS contractors and personnel would gain periodic access in order to continue re-vegetation efforts after the term of the Temporary Construction Easement had expired. Participating property owners are compensated under this program based on a decreasing rate of activity during the re-vegetation period (\$300 for year one, \$200 for year two, and \$100 for year three). Additionally, each property owner is offered the choice to formally opt out of this program. You have declined to either opt-in or opt-out of the program in writing, and this has led to misunderstandings about your expectations regarding future access.

With reference to the 1041 Permit (Mitigation Appendix C-9), we believe that SDS has in fact consistently complied with the terms of the Permit. SDS graded, seeded and planted the disturbed areas on your property within the first period for favorable planting conditions, as required, and we have applied irrigation water to the seeded areas. In addition, SDS has posted the required security bond which, according to the Permit, "... shall be released in full to the Applicant two years following the final completion of the construction contract" unless successful revegetation is not achieved. The 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>

language thus contemplates a multi-year period for the re-establishment of vegetation, and that period has not expired.

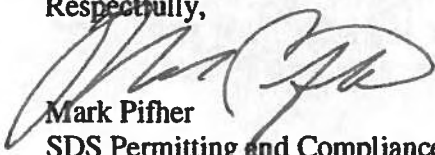
With regard to your Notice of Demand for \$100.00 per day in compensation until completion of re-vegetation, we consider both the demand and the amount to be arbitrary and without any legal or factual basis. A review of the only two court cases fully adjudicated in Pueblo County involving the acquisition of Pueblo West properties for the SDS discloses that a jury of Pueblo County residents arrived at a valuation of \$149 for a one-year temporary construction easement for the SDS project. The August 1, 2013 incident that you cited in your correspondence was an instance in which an SDS contractor, who was maintaining the vegetation growth in the permanent easement area, unknowingly crossed into the former temporary easement while performing those maintenance activities. While SDS is committed to the successful re-vegetation of your property, we also work very hard to be respectful of property owners. We apologize if this maintenance activity was unwanted.

We appreciate that you have previously cooperated with our staff and contractors as we have removed silt fencing, picked up construction debris and planted yucca and shrubs to replace your original plants that were located in the former construction area. In the spirit of that cooperation and to avoid future misunderstandings, we would encourage you to sign up for the year 2 license agreement program (and receive \$200 compensation) or voluntarily opt out of that program. That said, in light of your letter, and absent a signed license agreement from you, Colorado Springs Utilities and its SDS contractors will refrain from accessing, for purposes of conducting future maintenance activities, that portion of your property located in the former temporary construction easement area. However, we will continue irrigation of that area on an as needed basis unless you request in writing that we discontinue that activity as well.

Finally, please note that we have contacted Pueblo County staff for any additional guidance on its expectations of the SDS project when a property owner does not provide clear direction in writing about access for ongoing re-vegetation activities.

Should you have any further questions or comments relative to the above, I encourage you to contact the SDS Construction Hotline at 1-855-737-4968. We remain committed to working collaboratively with you moving forward.

Respectfully,



Mark Pifher
SDS Permitting and Compliance Manager

Cc: Keith King, Colorado Springs City Council President
Jerry Forte, Colorado Springs Utilities CEO
John Fredell, SDS Program Director
Joan Armstrong, Director at Pueblo County Dept. of Planning & Development

Section 4.	Walker	Ranches	Property
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Ms. Laurie Clark provided comments on behalf of Walker Ranches regarding SDS easements acquisition and construction and site restoration activities during the public work session.

Summary of Compensation Provided for Walker

The table below is an inventory of compensation provided to Mr. Walker by SDS and additional investments made by SDS in response to concerns raised by Mr. Walker.

Walker Ranches LLLP

7 parcels vacant land

Pueblo, CO 81008

Costs Reimbursed		
SDS to pay for owner's appraisal once received (SDS only recently received (week of October 21, 2013) Mr. Walker's appraisal but has not yet received an invoice to be paid)		
	Total	TBD
Compensation Received for Easements and Mitigation		
Land acquisition of easements (permanent/temporary)		\$76,046.00
<ul style="list-style-type: none"> Deposited into Pueblo County District Court registry 100% may be withdrawn by owner Valuation hearing scheduled for February 2014 to determine final compensation 		
Additional construction mitigation compensation		
<ul style="list-style-type: none"> Cattle relocation during construction and revegetation <ul style="list-style-type: none"> Agreement for SDS to pay \$120,000 per 6 months 		\$480,000.00
<ul style="list-style-type: none"> Agreement extended additional year to Nov. 2014 <ul style="list-style-type: none"> Two \$120,000 payments still to be made* 		*\$240,000.00
	Total	\$796,046.00
Additional SDS Costs		
Revegetation test plots		
<ul style="list-style-type: none"> SDS hired contractor to test multiple approaches to revegetation 		\$184,340.00
<ul style="list-style-type: none"> Developed test plots on FVA alignment across Walker Ranches 		\$53,418.00
Hired Colorado Natural Heritage Program (CSU-Fort Collins) experts		\$100,000.00
<ul style="list-style-type: none"> This contract is primarily for work in Pueblo County and Walker Ranches. 		
Hired engineering firm to independently assess grading and drainage issues		\$50,095.00
	Total	\$387,853.00

* Estimated costs, excluding staff time

Site Restoration

The following are concerns raised by Ms. Clark regarding SDS site restoration activities and the SDS Participants' responses to those concerns.

- **Irrigation System** – Ms. Clark referenced revegetation test plots that the SDS Participants, in consultation with experts including Ms. Renée Rondeau (Colorado Natural Heritage Program (CNHP)), established on Walker Ranches. Ms. Clark stated that the irrigation design system used to support SDS revegetation is inconsistent with the results of the test plots study.

Response: In 2011, Colorado Springs Utilities hired a local revegetation contractor to establish four half-acre test plots on the Walker Ranches property to evaluate the effect of differing irrigation application rates on establishment of native seed. Irrigation system design considerations were not an element of that study, and CNHP did not define irrigation system design features based on that study.

The irrigation system on Walker Ranches is properly designed and installed and is fully adequate to establish native plants at a level of cover similar to pre-construction conditions. The specifications for revegetation (and irrigation) on the segments of the SDS pipeline within Pueblo County (i.e., South Pipelines 1, 2, and 3) were reviewed by CNHP and other experts. Additionally, CNHP representatives, including Ms. Rondeau, participated in the preparation of specifications and technical review of proposals received for this work.

- **Summer 2013 Storm Events** – Ms. Clark stated that no significant rainfall events occurred on Walker Ranches.

Response: Following the August 2013 storm events, the SDS Participants hired an independent engineering firm (Kiowa Engineering) to assess the storm events in the area of the SDS alignment on Walker Ranches. According to the assessment findings, some rainfall depths as recorded by the nearest gauges in the area (located at the Fort Carson MPRC Meteorological Station approximately 5 miles west of the SDS alignment, and along the Young Hollow drainage channel approximately 2.5 miles north-northwest of the north end of the Walker Ranches property portion of the alignment) exceeded the 100-year recurrence interval.

- **Restoration and Revegetation** – Ms. Clark made several statements regarding restoration, site grade and revegetation activities for the SDS pipeline alignment.

Response: The SDS Participants are fully aware of Mr. Walker's concerns, including those identified by Ms. Clark during her presentation. We have performed on-site investigations of Mr. Walker's concerns on a number of occasions in an attempt to develop, and we are in the process of implementing solutions for the areas of concern. Prior to the recent August storm events, the SDS Program provided a letter (dated June 27, 2013) to Mr. Walker and his consultants that proposed 18 specific areas of additional restoration both inside and adjacent to the SDS

alignment to address most or all of Mr. Walker's concerns. We asked Mr. Walker's team to supplement the identified areas if they were thought to be inadequate. Mr. Walker's team has not commented on the proposed activities. However, permission to conduct the proposed restoration adjacent to the current SDS easement was only recently granted by Mr. Walker, and the additional restoration work will commence in the next few weeks.

After the August/September storm events, the Project Participants retained Kiowa Engineering to undertake an independent evaluation of the need for any additional restoration work. Further restoration activities will be undertaken in response to that evaluation as conditions warrant assuming any necessary right of access is granted by Mr. Walker.

Evaluation of the revegetation activities on the Walker property continues under the oversight and direction of the experts retained by the Project Proponents and Pueblo County. Adjustments in the revegetation efforts, if any, will be undertaken as dictated by expert findings.

The following supporting documents are attached:

- Attachment N. Walker Ranches Order Granting Possession and Stipulation
- Attachment O. Walker Ranches Cattle Management Agreement
- Attachment P. Correspondence Regarding Walker Ranches Grading, Restoration, and Storm Impacts

**GRANTED**

The moving party is hereby **ORDERED** to provide a copy of this Order to any pro se parties who have entered an appearance in this action within 10 days from the date of this order.

Attachment N Section 4

Victor I. Reyes
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

FILED Document - District Court

COMBINED COURT, PUEBLO COUNTY, STATE OF
COLORADO (10th Judicial District)

Court Address: 320 W. 10th Street
Pueblo, Colorado 81003-2953
Telephone No.: (719) 583-7000

2011CV313
CO Pueblo County District Court 10th JD
Filing Date: Oct 11 2011 3:51PM MDT
Filing ID: 40296763
Review Clerk: N/A

Petitioner: CITY OF COLORADO SPRINGS, COLORADO

vs.

Respondents: WALKER RANCHES, LLLP, a Colorado limited liability limited partnership; and DEL OLIVAS, Pueblo County Treasurer.

▲COURT USE ONLY▲

Case Number: 2011 CV 313

Div.: C

ORDER GRANTING IMMEDIATE POSSESSION

This matter having come before the Court on the Petitioner's Stipulation for Immediate Possession of the property described in the Petition in Condemnation (the "Property"), and the Court being fully advised in the premises does hereby find:

1. That the Court has jurisdiction over the subject matter of this action;
2. That there is an immediate need for the Petitioner to take possession and use of the Property for the purposes set forth in the Petition in condemnation;
3. That before the filing of the condemnation action, good faith negotiations were conducted for the acquisition of the Property;
4. That Petitioner has the legal authority to condemn for the purposes sought in this petition and that acquisition of the Property is necessary for such purposes;
5. That a public use and purpose is being served by the condemnation of the property;
and
6. That the sum of \$76,046.00 constitutes a sufficient deposit for the immediate possession of the Property by the Petitioner.

IT IS ORDERED that Petitioner will deposit the sum of \$76,046 into the registry of the court and the clerk of the court is directed to accept such amount and release it to Respondent Walker Ranches LLLP upon Respondent's request pursuant to the parties' stipulation.

IT IS FURTHER ORDERED that upon deposit of such funds, Petitioner will have the right to possession of the property as described in the Petition in Condemnation and the parties'

Stipulation for Immediate Possession filed in this matter according to the terms and conditions of that Stipulation which Stipulation is incorporated herein by this reference.

Done and ordered this ____ day of _____, 2011.

BY THE COURT:

District Court Judge

This document constitutes a ruling of the court and should be treated as such.

Court: CO Pueblo County District Court 10th JD

Judge: Victor I Reyes

File & Serve

Transaction ID: 40279316

Current Date: Oct 11, 2011

Case Number: 2011CV313

Case Name: CITY OF COLORADO SPRINGS COLORADO and WALKER RANCHES LLLP et al

Court Authorizer: Victor I Reyes

/s/ Judge Victor I Reyes

COMBINED COURT, PUEBLO COUNTY, STATE OF
COLORADO (10th Judicial District)
Court Address: 320 W. 10th Street
Pueblo, Colorado 81003-2953
Telephone No.: (719) 583-7000

Petitioner: CITY OF COLORADO SPRINGS,
COLORADO

vs.

Respondents: WALKER RANCHES, LLLP, a Colorado
limited liability limited partnership; and DEL OLIVAS,
Pueblo County Treasurer.

Attorneys for Petitioner:

Office of the City Attorney
Patricia K. Kelly (Reg. #: 14408)
Anne H. Turner (Reg. #: 38287)
30 S. Nevada Avenue, Suite 501
Colorado Springs, Colorado 80903
Phone Number: (719) 385-5909
FAX Number: (719) 385-5535
E-mail: pkelly@springsgov.com
aturner@springsgov.com

Edward J. Blieszner (Reg. #: 11161)
WELBORN SULLIVAN MECK & TOOLEY, P.C.
1125 17th Street, Suite 2200
Denver, Colorado 80202
Phone Number: (303) 830-2500
FAX Number: (303) 832-2366
E-mail: eblieszner@wsmtlaw.com

Attorneys for Respondent: Walker Ranches, LLLP

Donald M. Ostrander (Reg. #12458)
DUNCAN OSTRANDER & DINGESS, P.C.
3600 S. Yosemite Street, suite 5000
Denver, Colorado 80237
Phone Number: (303) 779-0200
Email: dostrander@dodpc.com

▲COURT USE ONLY▲

Case Number: 2010 CV 313

Div.: C

STIPULATION FOR IMMEDIATE POSSESSION

PETITIONER, the City of Colorado Springs, Colorado, by and through the Office of the City Attorney and the law firm of Welborn Sullivan Meck & Tooley, P.C. and Respondent Walker Ranches, LLLP by and through the law firm of Duncan, Ostrander & Dingess, P.C., stipulate to the following:

The Petitioner, City of Colorado Springs, has a need to acquire the property which is the subject of this action for the public purpose of constructing facilities related to its Southern Delivery System project. The property sought to be acquired is necessary for this project. The parties have negotiated concerning this acquisition but such negotiations have failed to result in an agreement.

IT IS FURTHER STIPUATED AND AGREED that upon deposit in the registry of this court of the sum of \$76,046.00 by the petitioner, petitioner may take possession of the property described in the petition in condemnation herein, including any improvements thereon, and may take, possess, use, and enjoy said property or land as against the said respondents and their successors, assigns and personal representatives, and each of them, and all persons whomsoever claiming any right, title, or interest in and to said property, by, through, or under the respondents, together with the right to make cuts and fills thereon, and to take and use therefrom and add thereto any and all earth, stone, gravel, and timber and other materials for construction and maintenance purposes, all during the pendency of and until the final conclusion of this action. Petitioner's use of the Temporary Construction Easement areas and the two year time period for the use of those easement areas shall commence upon notice from Petitioner, its contractor or agent and such notice shall not be given until the deposit referred to above has been made. In addition, temporary possession shall be granted immediately for the following limited purposes:

- a. Geotech Borings: Petitioner shall be granted access for the purpose of three Geotechnical Borings along Steel Hollow. The time and duration shall accommodate existing and concurrent grazing operations, if any.
- b. Vegetative and Wildlife Survey: Petitioner shall be granted limited access to the pipeline easement for vegetative and wildlife surveys. The hours and means of travel shall be coordinated with Gary Walker with a minimum 24 hours advance notice.
- c. Cultural Survey: Petitioner shall be granted temporary access along the permanent and temporary easement corridor not to exceed one (1) week to the area to be disturbed for purposes of a cultural survey.
- d. Cultural Mitigation: Petitioner shall have access for cultural mitigation. No artifacts or items of historic significance may be permanently relocated off site without approval of Respondents excepting any human remains that may be considered as historical or of historical significance. In that event, Native American Tribal entities shall be offered the right to take possession of such remains. If such possession is declined, Respondent maintains the right to retain such remains for itself.

- e. Survey: Petitioner shall have access to the ownership of Respondents for the limited purpose of establishing section corners. No greater access than the minimum necessary to carry out this survey shall be granted by this agreement.
- f. Additional compensation: Petitioner shall amend its Petition to add additional time to the temporary easements for the above additional takings if such temporary use is determined to extend the two year term of the temporary construction easement and update its appraisal to reflect the additional time.

IT IS FURTHER STIPULATED AND AGREED that if Petitioner decides to amend its Petition to include a permanent easement across the shaded, triangular area shown on the attached Exhibit A, Respondent will agree to such an amendment and will allow Petitioner to take possession of that easement area upon Petitioner increasing its deposit accordingly .

IT IS FURTHER STIPULATED AND AGREED that all test results, surveys and other information shall be shared with Respondent within a reasonable time after obtaining that information or data and compiling it into a final or reportable format.

IT IS FURTHER STIPULATED AND AGREED that, pursuant to the provisions of §§ 38-1-105 and 38-1-116, C.R.S. the respondents may, upon proper application to the clerk of this court, withdraw from the registry fund of this court 100% of the sum of \$76,046.00 deposited by the petitioner, provided that all respondents consent to such withdrawal.

IT BEING EXPRESSLY UNDERSTOOD AND AGREED that the said sum, if withdrawn, shall be and constitute a partial payment of the compensation to be eventually paid to said respondent owners and others interested, if any, and shall be deducted by the clerk of this court from any award or verdict entered thereafter, or deducted by petitioner from any settlement amount agreed upon.

IT IS FURTHER STIPULATED AND AGREED that the Respondents shall have an additional 90 days from the date of the deposit to complete an appraisal at Petitioner's expense.

IT IS FURTHER STIPULATED AND AGREED that the terms of the Cattle Relocation Agreement previously entered into by Petitioner and Respondent Walker Ranches LLLP, as well as any amendments that may be made to that agreement, are made a part of this agreement. The payments to be made to Respondent as set forth in the Cattle Relocation Agreement shall not be merged into any right of compensation due to Respondent by this taking.

THE UNDERSIGNED RESPONDENTS hereby state and verify that there are no other parties interested in the property sought to be acquired by the petitioner herein, other than those named herein, and do hereby agree to indemnify and hold petitioner harmless from any claim or claims which might be asserted by parties other than the undersigned respondents.

RESPONDENTS, BY ENTERING into this stipulation, do not waive their right to raise any issue pertaining to just compensation at the time of trial.

Date: _____

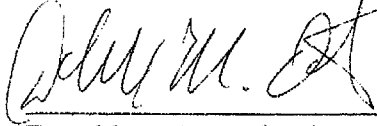
Respectfully submitted,

WELBORN SULLIVAN MECK &
TOOLEY, P.C.

By: _____
Edward J. Blieszner, #11161

ATTORNEYS FOR PETITIONER

DUNCAN OSTRANDER & DINGESS, P.C.

By:  _____
Donald M. Ostrander, #12458

ATTORNEYS FOR RESPONDENT
WALKER RANCHES, LLLP

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____ 2011, I electronically filed a true and correct copy of the foregoing by and through LexisNexis file and serve and have designated notification of the filing to the following:

Office of the City Attorney
Patricia K. Kelly, City Attorney
Anne H. Turner, Senior Attorney
30 S. Nevada Avenue, Suite 501
Colorado Springs, CO 80903

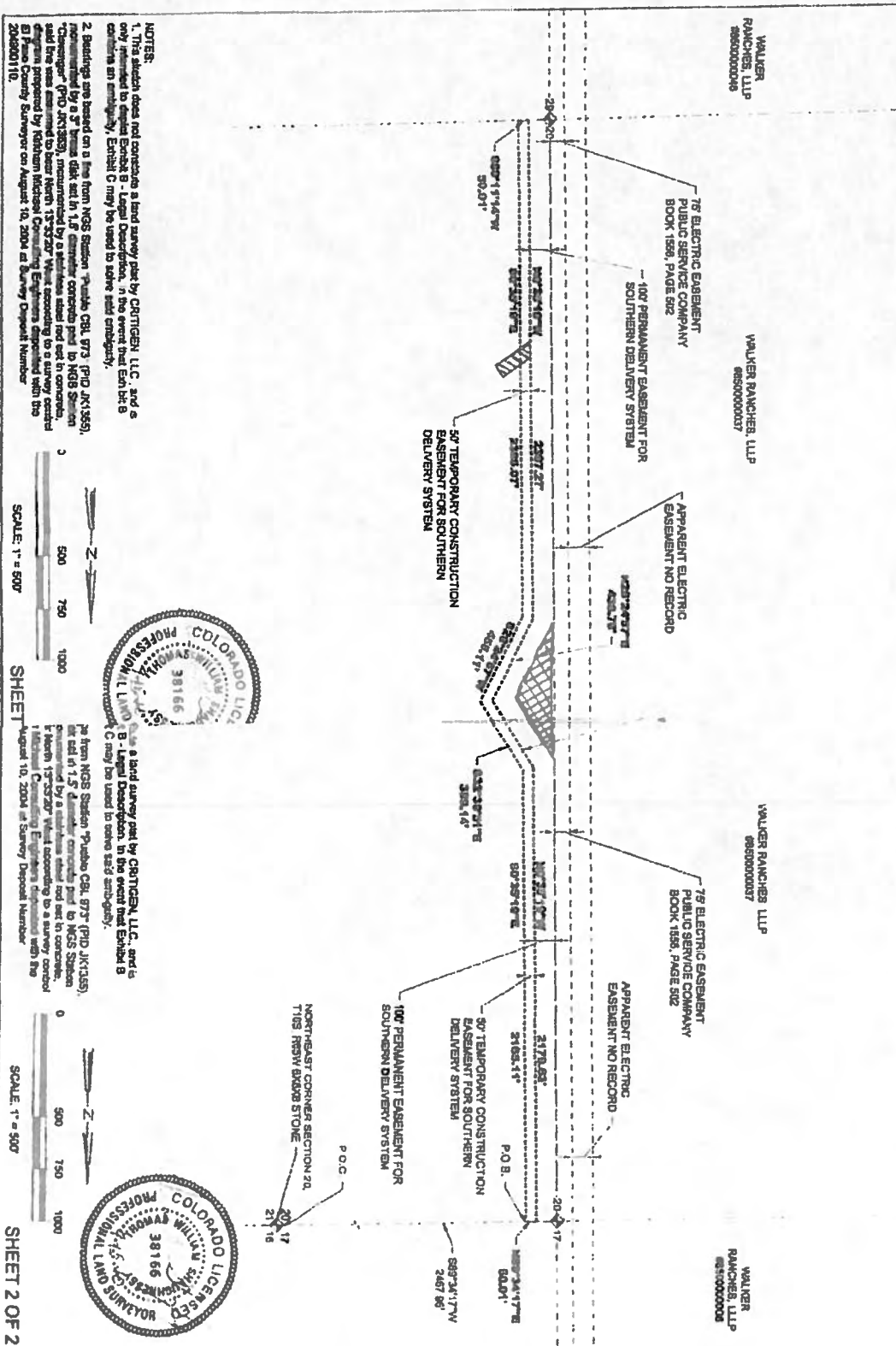
Donald J. Banner
Banner & Bower, P.C.
503 Main Street, Suite 221
Pueblo, CO 81003

Daniel C. Kogovsek, County Attorney
Peter S. Blood, Assistant County Attorney
Office of the Pueblo County Attorney
215 West 10th Street
Pueblo, CO 81003

s/

Jo Cooks

DATE: 27-JULY-2010	EXHIBIT C SKETCH	0	EXHIBIT C SKETCH
DRAWN BY: T STUDER	TEMPORARY CONSTRUCTION EASEMENT	OWNER: LAUREN HENNESSY	CITY OF COLORADO SPRINGS
CHECKED BY: T SHAW/HENNESSY	PARCEL #6500000037	SECTION 20	
APPROVED BY: B HANSON	7185, 8655V, 8TH P.M.	HANSON	
DRAWING: 6500000037TE-1_EXC	PUEBLO COUNTY, COLORADO	03/7TE-2_EXC	



NOTES:

1. This sketch does not constitute a land survey plot by CH2M HILL, LLC, and is only intended to depict District B - Large Description, in the event that Exhibit C contains an ambiguity, Exhibit C may be used to settle said ambiguity.

2. Boundaries are based on a line from NGS Station "Pueblo C&L 973" (PID JN1355), measured by a steel chain link, and a 1.8' concrete corner post to NGS Station "Chattanooga" (PID JN1363), measured by a steel chain link and set in concrete. The line was set to the steel link N 32° 29' West, according to a survey conducted by Teknon Industries-Civil Engineering, Incorporated and set by El Paso County Surveyor on August 10, 2004 at Survey Control Number 2004001110.

© CH2M HILL, 2004. All rights reserved. This document and the letters incorporated herein are the property of CH2M HILL, and may not be used in whole or in part, for other projects without the written permission of CH2M HILL.

SCALE: 1" = 500'

SHEET

1. a land survey plot by CURTIS, LLC, and
2. Legal Description, in the event that Exhibit B
& C may be used to achieve said ambiguity;

SCALE. 1" = \$00

SHEET 2 OF 2



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

July 17, 2013

Gary Walker, General Partner
Walker Ranches, LLLP, a Colorado limited liability limited partnership
7170 Turkey Creek Ranch Road
Pueblo, CO 81007

HAND DELIVERED

Subject: Extension of Stock Management Agreement

Dear Mr. Walker:

This letter is to formally notify you of Colorado Springs Utilities' intent to extend the Stock Management Agreement dated July 1, 2011 for an additional one year period. This extension has a term beginning on November 1, 2013 and terminates October 31, 2014. A copy of the Agreement is included for your reference. Please feel free to contact me if you have any questions regarding this matter.

Sincerely,

Lyman R. Ho
Land Acquisition Manager
Southern Delivery System
Colorado Springs Utilities

cc: File: APN #'s 8500000006, 8500000037, 8500000045, 8500000046, 8500000049,
9500000006, and 9500000001
K. Riley
A. Borders

REC. by Gary

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>

STOCK MANAGEMENT AGREEMENT

THIS AGREEMENT is entered into this 1st day of July, 2011 by and between COLORADO SPRINGS UTILITIES, an enterprise of the CITY OF COLORADO SPRINGS, a home rule city and municipal corporation of the State of Colorado ("Utilities") and WALKER RANCHES LLLP, a Colorado limited liability limited partnership ("Walker").

I. Purpose

The purpose of this Agreement is to provide the terms upon which Utilities will provide payment to Walker for the management of cattle during the construction of Utilities' Southern Delivery System Project ("SDS").

II. Background

Walker owns and operates a large ranch in northern Pueblo County ("Walker Ranch") as shown and depicted on the attached Exhibit A. Utilities must traverse the Walker Ranch for approximately seven (7) miles along a generally south-to-north alignment in order to install the water transmission pipeline for SDS. This alignment is attached as Exhibit B. During the construction process to install that pipeline there will be significant amounts of mechanical equipment, large excavations, truck and vehicular traffic and revegetation activities, all of which are inconsistent with the maintenance of a cattle herd on the property.

In order to avoid adverse impacts to Walker Ranch and or to its cattle operation from Utilities' activities and to ensure the continued health of the cattle herd and the avoidance of injury or sickness to the cattle it is necessary to relocate the cattle from direct conflict with the pipeline alignment during the construction process.

Walker currently owns over 1,000 cattle under two registered brands at the Walker Ranch ("cattle herd"). Walker has provided copies of purchase invoices and brucellosis vaccination records demonstrating ownership of the cattle herd. Walker intends to increase the size of the

cattle herd by the purchase of other cattle, keeping calves to raise as heifers and sell cattle from this herd over the next two years as market demand and availability allows.

SDS essentially bisects the Walker Ranch impacting its operations as a separate ranch. Pursuant to the 2009 Pueblo County 1041 Permit, Utilities is required to relocate the Walker cattle. Therefore Utilities is entering into this two year agreement to allow for construction and re-vegetation of the easement areas following actual construction of the pipeline and to insure the wellbeing of the Walker operation.

In lieu of maintaining records concerning the whereabouts of specific herds of cattle on Walker Ranch or an alternative location such as Turkey Creek Ranch and in lieu of providing invoices for the actual costs of moving the cattle, Utilities and Walker agree to a specific, not-to-exceed payment of \$240,000 per year for a two year term regardless of the total number of cattle owned by Walker subsequent to this Agreement.

Walker shall initially relocate all cattle from pastures 4, 5, and 6 as shown and generally depicted on Exhibit A, upon thirty (30) days written notice by Utilities, said relocation shall not take place prior to November 1, 2011.

III. Utilities

- A. Walker has requested to have the cattle relocated and Gary and Georgia Walker as owners of the Turkey Creek Ranch have offered to use the Turkey Creek Ranch as one potential alternate site for the cattle to be located. Gary and Georgia Walker have provided a copy of a lease on Turkey Creek Ranch to a third party to establish that Turkey Creek Ranch is operated as an independent property.
- B. Utilities agrees to compensate Walker for the removal of its cattle from Walker pastures 4, 5, and 6 at a not-to-exceed figure of \$240,000 per year. This annual payment (\$240,000) was determined by the present number of Walker animal units (1000) times \$20 per animal unit per month ("AUM") time 12 months and will not be adjusted with any future increase or decrease of the total number of animal units owned by Walker Ranch LLLP. An animal unit is defined as a cow with or without a nursing calf; a bull; a replacement heifer or a yearling. Payments shall be made in advance on a semi-annual basis to Walker.

- C. Utilities agrees to make the first of four payments on November 1, 2011 and every six months thereafter for two years.
- D. Utilities may extend this relocation agreement in six (6) month increments at the current rate of \$20,000 per month, if at its sole discretion it deems it necessary for up to one additional year. An extension beyond an additional one year period will require the mutual consent of both parties. Such extensions shall be effective upon ninety (90) days written notice to Walker prior to October 31, 2013.

IV. Walker Agreements

- A. Walker agrees to move its cattle from the land which will be included within the SDS construction zone (Pastures identified as #4, 5 and 6 on Exhibit A attached hereto and incorporated herein by reference) within thirty (30) days written notice by Utilities that construction is going to commence, said relocation shall not take place prior to November 1, 2011.
- B. Walker warrants that it owns all the cattle being relocated under two registered brands and that no cattle shall be occupying Walker property that are not owned by Walker.
- C. Walker agrees to be solely responsible for providing an alternative location for pastures 4, 5, and 6 on which to graze its cattle during the term of this Agreement. Said alternative location may be Turkey Creek Ranch and or an alternative location at the total discretion of Walker. The City of Colorado Springs, Colorado Springs Utilities, its contractors and assigns shall be held harmless from any and all damages, claims or losses suffered on the Walker Ranch to any cattle located belonging to Walker during the term of this Agreement. Furthermore, if Walker elects to move cattle to or from any pasture on the Walker Ranch through Pastures 4, 5 and 6, then, Walker shall do so at its own risk without any liability to the City of Colorado Springs, Colorado Springs Utilities, its contractors and assigns. In such an event, Walker agrees to avoid damages to any re-vegetation activities on the pipeline alignment for the term of this agreement. Walker agrees to be fully responsible for maintaining all existing pasture fencing within the Walker Ranch with the exception of fencing directly impacted by the SDS project within the pipeline alignment and right of way.
- D. Walker agrees to provide all fencing, water, salt, minerals, feed supplements including hay and all care for the livestock at any alternate location at no additional expense to Utilities.
- E. Walker agrees to accept responsibility for the health and welfare of his cattle at the new location and that Utilities will have no obligations in that regard.
- F. Walker agrees that Utilities will not have any other expenses related to the cattle other than the payments specified in III.B. above and that any expenses associated with the maintenance of the cattle and the property on which they are being grazed including insurance and taxes will be borne by Walker.

- G. Walker agrees to use its best efforts to keep cattle from entering Pastures 4, 5 and 6 during the term of this Agreement. In the event cattle breach the boundary or fences and are located on these pastures, Walker agrees to remove them within 24 hours of being notified of their presence. Such removal and responsibility shall rest solely upon Walker.
- H. Walker acknowledges that it may have benefits under the Colorado Springs relocation policies (Chapter 6, Article 13, Colorado Springs City Code) and that it waives its ability to receive such benefits by accepting this agreement.
- I. Walker agrees to stipulate to immediate possession in the eminent domain proceeding to acquire the interests described in Exhibit B provided that such stipulation does not in any way interfere with Walker's legal rights to receive just compensation for such interests.

V. General Provisions

- A. **Entire Agreement.** This Agreement constitutes the full agreement by and between the Parties on issues pertaining to the relocation of cattle and all previous negotiations whether oral, written are hereby superseded by this Agreement and integrated herein. Both parties acknowledge that a Right of Entry for revegetation test plots and an eminent domain proceeding for the acquisition of the easements in Exhibit B are separate matters from this Agreement unless otherwise provided herein.
- B. **Binding.** This Agreement is binding upon the respective Parties, their heirs, assigns, successors in interest and personal representatives.
- C. **Term.** The term of this Agreement shall commence on November 1, 2011 for the period of two years, unless extended by the Parties in writing as set forth in III D.
- D. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested). Such communications must be sent to the respective parties at the following addresses:

To Walker: Gary Walker
7170 Turkey Creek Ranch Rd
Pueblo, CO 81007
Phone: (719) 547-2291 or
Cell: (719)250-3827

To Utilities: Southern Delivery Program Director
Colorado Springs Utilities
Plaza of the Rockies, South Tower

P.O. Box 1103
Colorado Springs, CO 80947

- E. **Headings for Convenience Only.** Paragraph headings and titles contained in this Agreement are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.
- F. **Amendment.** This Agreement may be modified, amended or changed in whole or in part by an amendment in writing duly and mutually authorized and executed by Utilities and Walker with the same formality as this Agreement.
- G. **Effect of Invalidity.** If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties agree to use their best efforts to reform as soon as possible any such invalidity and achieve a valid agreement that accomplishes the purposes of this Agreement as originally set forth.
- H. **Governing Law.** This Agreement and its application shall be construed in accordance with the laws of the State of Colorado.
- I. **Multiple Originals.** This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Agreement.
- J. **Intent of Agreement.** This Agreement is intended to describe the rights and responsibilities of and between Utilities and Walker and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto; nor to limit, impair or enlarge in any way the powers, regulatory authority and responsibilities of Utilities or Walker, or any other governmental entity not a party hereto.
- K. **Non-Assignability.** Neither Utilities nor Walker may assign its rights or delegate its duties under the Agreement without the prior written consent of the other party.
- L. **Availability of Funds.** In accord with the Colorado Springs City Charter, performance of Utilities' obligations under this Agreement are expressly subject to appropriation of funds by the Colorado Springs City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Utilities' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement shall thereafter become null and void by operation of law, and Utilities shall thereafter have no liability for compensation or damages related to relocation to Walker in excess of Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Utilities shall notify Walker as soon as

reasonably practicable in the event of non-appropriation or in the event a spending limitation becomes applicable.

- M. **Governmental Immunity.** Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to Utilities or the City of Colorado Springs under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.
- N. **Force Majeure.** Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government (other than the Colorado Springs City Council), or labor disturbances.
- O. **Audit.** Walker shall maintain accurate records of all amounts billable to and payments made by Utilities in accordance with recognized accounting practices and in a format that will permit audit, for a period of three (3) years after the last payment related to this Agreement. Such records shall be open to reasonable inspection and subject to audit and/or reproduction, during normal working hours, by Utilities or its authorized representative. Utilities shall give Walker advance notice of intended audits.
- P. **Confidentiality.** Walker acknowledges that Utilities is a public entity subject to the provisions of the Colorado Public Records Act, C.R.S. § 24-72-201 et seq. Any confidential and/or proprietary information that either party discloses to the other with respect to this Agreement shall be designated as confidential and proprietary by the disclosing party at the time of disclosure. Walker specifically acknowledges that the information received in the preparation of this document may become public information unless otherwise stated.

Walker Ranches LLLP.
a Colorado limited liability limited partnership


Authorized Signature

Gary R. Walker
Printed Name

General Partner
Title

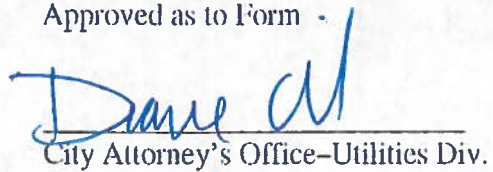
Colorado Springs Utilities


Authorized Signature

John A. Fredell
Printed Name

SDS Program Director
Title

Approved as to Form -


City Attorney's Office-Utilities Div.

APPROXIMATE PUEBLO COUNTY
WALKER PROPERTY HOLDINGS

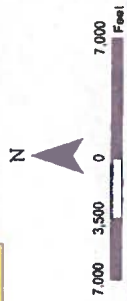


Exhibit A
to
Stock Management
Agreement

Fort Carson Military
Reservation

TURKEY CREEK
RANCH

US 50

PUEBLO
WEST

PURCELL BLVD

I-25

BUNG HOLLOW RD

Exhibit B to Stock Management Agreement
Sheet 1 of 7

PARCEL DESIGNATION:	9508000001	DATE:	September 7, 2010
OWNER:	WALKER RANCHES, LLLP (Owner current as of the date of certification hereon)		

EXHIBIT B

LEGAL DESCRIPTION

A permanent easement situated in the North Half of Section 8, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, more particularly described as follows:

COMMENCING at the Northeast Corner of said Section 8 from which a NGS point JK1353, a stainless steel rod set in concrete, known as "Clevenger", bears North 22°51'47" East a distance of 37,279.11 feet;

Thence South 89°24'33" West a distance of 2,548.07 feet on the north line of said Section 8 to the **POINT OF BEGINNING**;

Thence South 0°35'19" East a distance of 90.10 feet to a point of non-tangent curve;

Thence southerly on the arc of a non-tangent curve to the right a distance of 203.25 feet, said curve has a radius of 630.03 feet, a central angle of 18°29'01" and a long chord that bears South 9°49'49" East a distance of 202.37 feet;

Thence South 0°35'19" East a distance of 2,355.61 feet to the south line of the North Half of said Section 8;

Thence South 89°30'48" West a distance of 100.03 feet on said south line to the east line of a 60 foot wide water pipeline easement as recorded in Book 2002 at Page 195 of the records of said county;

Thence North 0°35'19" West a distance of 2,355.43 feet on said east line to a point of curve;

Thence northerly on said east line on the arc of a curve to the left a distance of 186.57 feet, said curve has a radius of 530.15 feet, a central angle of 20°10'09" and a long chord that bears North 10°40'23" West a distance of 185.61 feet to the east line of a 75 foot wide electric easement as recorded in Book 1556 at Page 503 of the records of said county;

Thence North 0°35'19" West a distance of 107.10 feet on said east line to said north line;

Thence North 89°24'33" East a distance of 100.03 feet on said north line to the **POINT OF BEGINNING**.

Said easement contains 264,975 square feet or 6.083 acres more or less.

EXHIBIT C SKETCH is attached hereto and is only intended to depict EXHIBIT B -- Legal Description. In the event that EXHIBIT B contains an ambiguity, EXHIBIT C may be used to solve said ambiguity.



Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

9508000001PE_EXB.doc

Exhibit B

Sheet 2 of 7

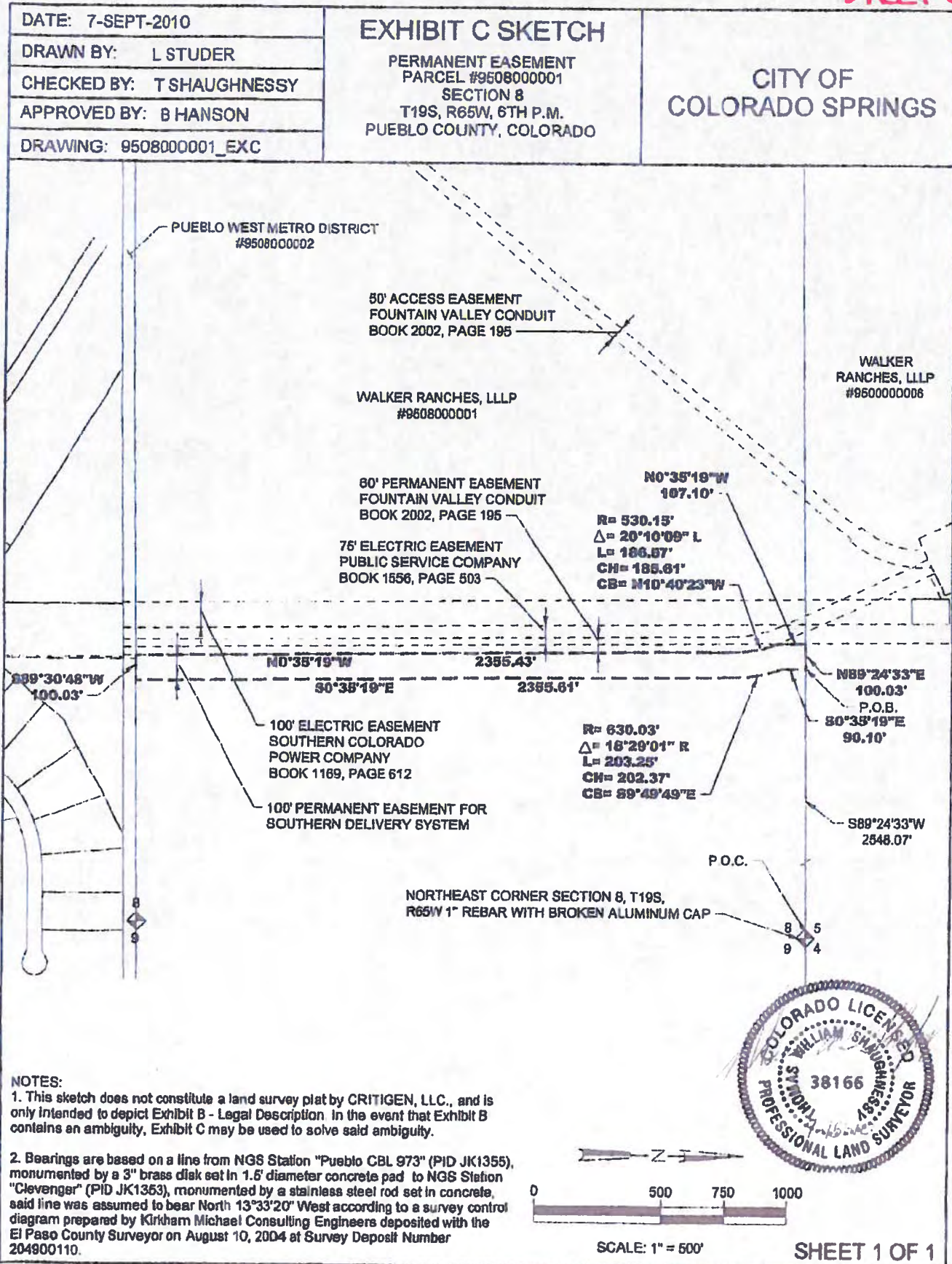


Exhibit B

Sheet 3 of 7

PARCEL DESIGNATION:	9508000001	DATE:	September 7, 2010
OWNER:	WALKER RANCHES, LLLP (Owner current as of the date of certification hereon)		

EXHIBIT B

LEGAL DESCRIPTION

A permanent easement situated in the North Half of Section 8, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, more particularly described as follows:

COMMENCING at the Northeast Corner of said Section 8 from which a NGS point JK1353, a stainless steel rod set in concrete, known as "Clevenger", bears North 22°51'47" East a distance of 37,279.11 feet;

Thence South 89°24'33" West a distance of 2,548.07 feet on the north line of said Section 8 to the **POINT OF BEGINNING**;

Thence South 0°35'19" East a distance of 90.10 feet to a point of non-tangent curve;

Thence southerly on the arc of a non-tangent curve to the right a distance of 203.25 feet, said curve has a radius of 630.03 feet, a central angle of 18°29'01" and a long chord that bears South 9°49'49" East a distance of 202.37 feet;

Thence South 0°35'19" East a distance of 2,355.61 feet to the south line of the North Half of said Section 8;

Thence South 89°30'48" West a distance of 100.03 feet on said south line to the east line of a 60 foot wide water pipeline easement as recorded in Book 2002 at Page 195 of the records of said county;

Thence North 0°35'19" West a distance of 2,355.43 feet on said east line to a point of curve;

Thence northerly on said east line on the arc of a curve to the left a distance of 186.57 feet, said curve has a radius of 530.15 feet, a central angle of 20°10'09" and a long chord that bears North 10°40'23" West a distance of 185.61 feet to the east line of a 75 foot wide electric easement as recorded in Book 1556 at Page 503 of the records of said county;

Thence North 0°35'19" West a distance of 107.10 feet on said east line to said north line;

Thence North 89°24'33" East a distance of 100.03 feet on said north line to the **POINT OF BEGINNING**.

Said easement contains 264,975 square feet or 6.083 acres more or less.

EXHIBIT C SKETCH is attached hereto and is only intended to depict EXHIBIT B – Legal Description. In the event that EXHIBIT B contains an ambiguity, EXHIBIT C may be used to solve said ambiguity.



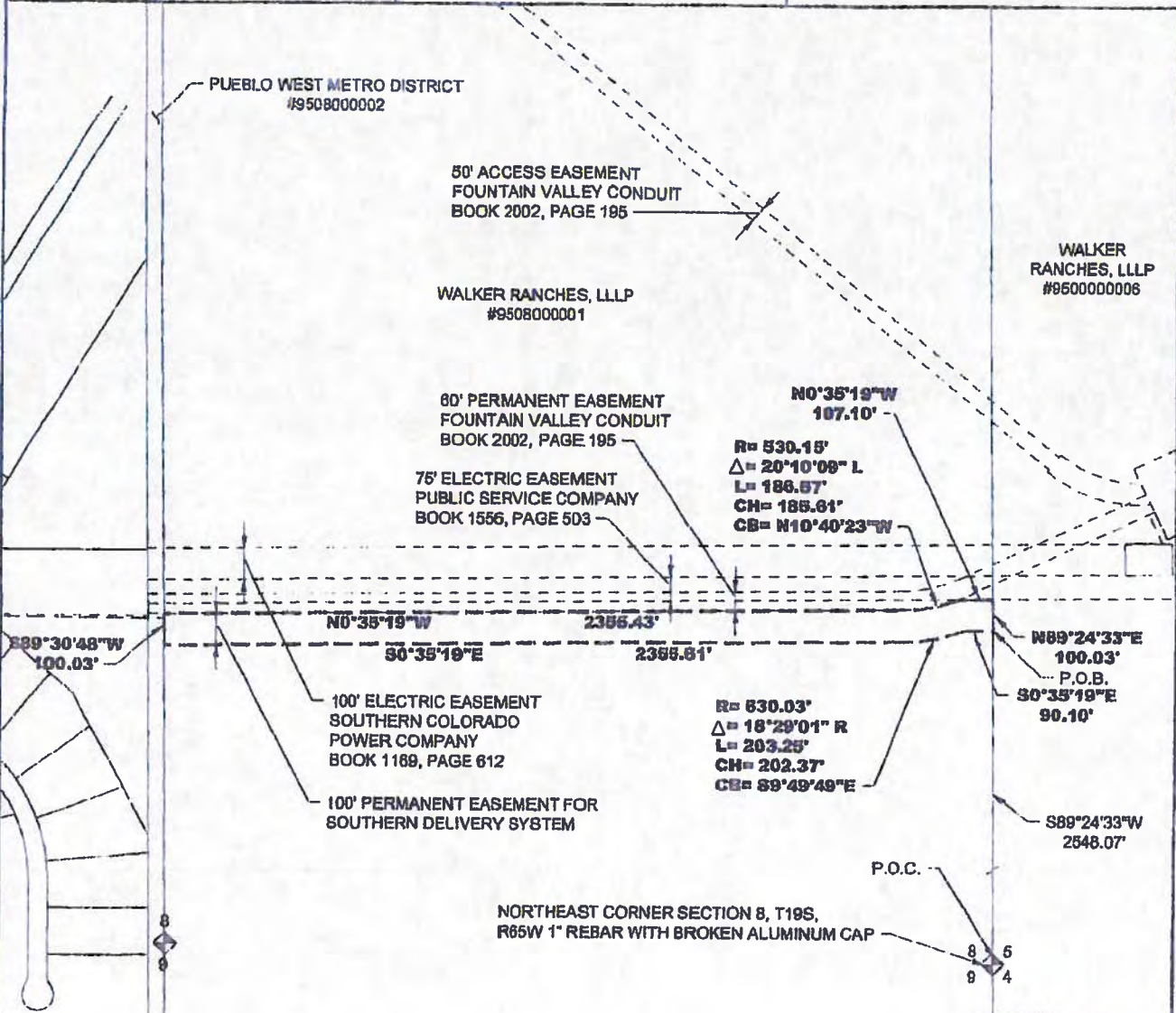
Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

9508000001PE_EXB.doc

Exhibit B

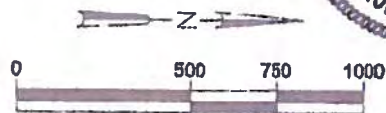
Sheet 4 of 7

DATE: 7-SEPT-2010	EXHIBIT C SKETCH PERMANENT EASEMENT PARCEL #9508000001 SECTION 8 T19S, R65W, 6TH P.M. PUEBLO COUNTY, COLORADO	CITY OF COLORADO SPRINGS
DRAWN BY: L STUDER		
CHECKED BY: T SHAUGHNESSY		
APPROVED BY: B HANSON		
DRAWING: 9508000001_EXC		



NOTES:

1. This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.
2. Bearings are based on a line from NGS Station "Pueblo CBL 973" (PID JK1355), monumented by a 3" brass disk set in 1.5' diameter concrete pad to NGS Station "Clavenger" (PID JK1353), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Kirkham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204900110.



SCALE: 1" = 500'



SHEET 1 OF 1

Exhibit B

Sheet 5 of 7

PARCEL DESIGNATION:	9500000006	DATE:	September 7, 2010
OWNER:	WALKER RANCHES, LLLP (Owner current as of the date of certification hereon)		

EXHIBIT B

LEGAL DESCRIPTION

A permanent easement situated in Section 5, Township 19 South, Range 65 West of the Sixth Principal Meridian, Pueblo County, Colorado, more particularly described as follows:

COMMENCING at the Southeast Corner of said Section 5 from which a NGS point JK1353, a stainless steel rod set in concrete, known as "Clevenger", bears North 22°51'47" East a distance of 37,279.11 feet;

Thence South 89°24'33" West a distance of 2,548.07 feet on the south line of said Section 5 to the **POINT OF BEGINNING**;

Thence continue South 89°24'33" West a distance of 100.03 feet on said south line to the east line of a 75 foot wide electric easement as recorded in Book 1556 at Page 503 of the records of said county;

Thence North 0°35'19" West a distance of 5,321.15 feet on said east line to the north line of said Section 5;

Thence North 89°18'35" East a distance of 100.03 feet on said north line;

Thence South 0°35'19" East a distance of 5,321.32 feet to the **POINT OF BEGINNING**.

Said easement contains 532,270 square feet or 12.219 acres more or less.

EXHIBIT C SKETCH is attached hereto and is only intended to depict EXHIBIT B – Legal Description. In the event that EXHIBIT B contains an ambiguity, EXHIBIT C may be used to solve said ambiguity.



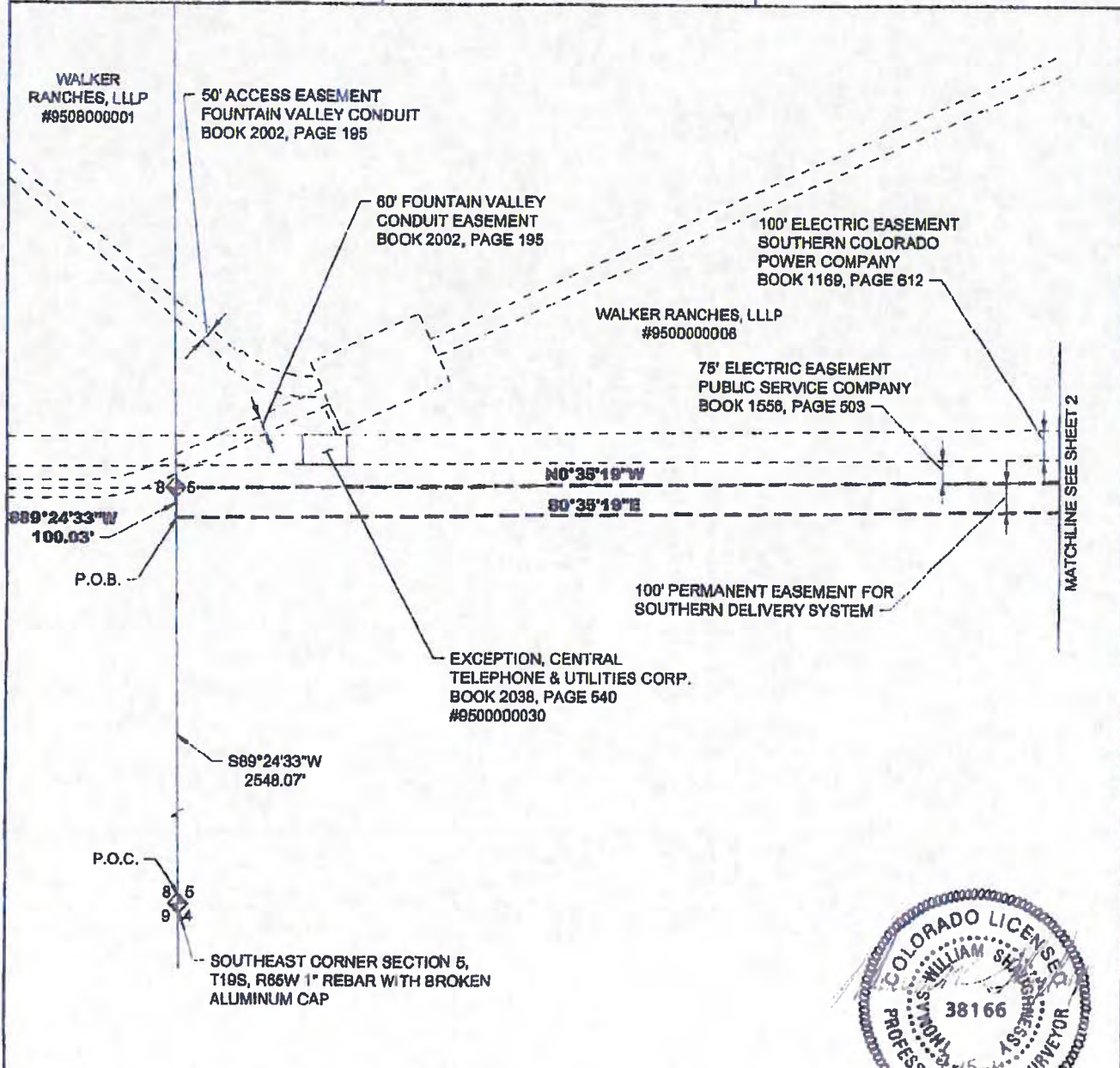
Prepared for and on behalf of Colorado Springs Utilities by: Thomas W. Shaughnessy, L.S. 38166, of CRITIGEN, LLC, 90 South Cascade Avenue, Suite 700, Colorado Springs, Colorado, 80903

9500000006PE_EXB.doc

Exhibit B

Sheet 6 of 7

DATE: 7-SEPT-2010	EXHIBIT C SKETCH PERMANENT EASEMENT PARCEL #9500000006 SECTION 5 T19S, R65W, 6TH P.M. PUEBLO COUNTY, COLORADO	CITY OF COLORADO SPRINGS
DRAWN BY: L STUDER		
CHECKED BY: T SHAUGHNESSY		
APPROVED BY: B HANSON		
DRAWING: 9500000006-1_EXC		



NOTES:

1. This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.
2. Bearings are based on a line from NGS Station "Pueblo CBL 873" (PID JK1355), monumented by a 3" brass disk set in 1.5' diameter concrete pad to NGS Station "Clavenger" (PID JK1353), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Kirkham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204800110.



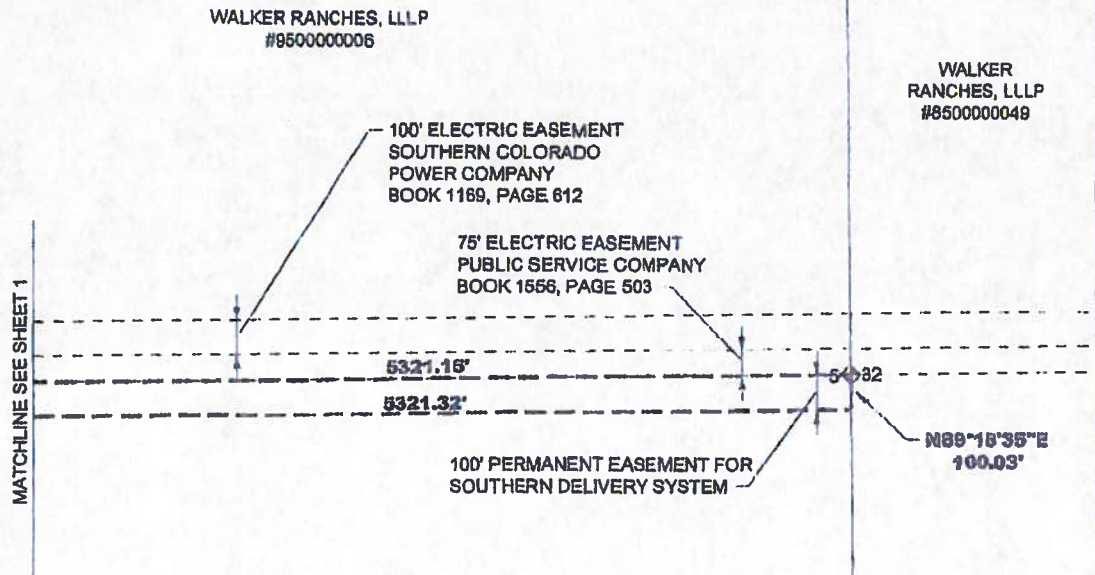
SCALE: 1" = 500'

SHEET 1 OF 2

Exhibit B

Sheet 7 of 7

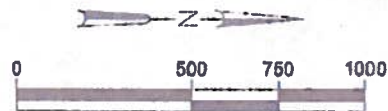
DATE: 7-SEPT-2010	EXHIBIT C SKETCH PERMANENT EASEMENT PARCEL #9500000006 SECTION 5 T19S, R65W, 8TH P.M. PUEBLO COUNTY, COLORADO	CITY OF COLORADO SPRINGS
DRAWN BY: L STUDER		
CHECKED BY: T SHAUGHNESSY		
APPROVED BY: B HANSON		
DRAWING: 9500000006-2_EXC		



NOTES:

1. This sketch does not constitute a land survey plat by CRITIGEN, LLC., and is only intended to depict Exhibit B - Legal Description. In the event that Exhibit B contains an ambiguity, Exhibit C may be used to solve said ambiguity.

2. Bearings are based on a line from NGS Station "Pueblo CBL 873" (PID JK1355), monumented by a 3" brass disk set in 1.5' diameter concrete pad to NGS Station "Clevenger" (PID JK1353), monumented by a stainless steel rod set in concrete, said line was assumed to bear North 13°33'20" West according to a survey control diagram prepared by Kirkham Michael Consulting Engineers deposited with the El Paso County Surveyor on August 10, 2004 at Survey Deposit Number 204900110.



SCALE: 1" = 500'

SHEET 2 OF 2

Walker Log of contacts

November 4 through 11 2011	Walsh Env. for noise and dust survey.
November 7, 2011	Pre-construction Photos and Video.
November 10 and 11th 2011	Escort Collette Chamberlain with WCRM to Steel Hollow for over site of drilling of test holes.
November 14, 2011	Walsh Env. Noise and dust baselines.
November 15, 2011	Walsh Env. Noise and dust baselines.
After November 15th Reynolds (Layne) had access to Walker property.	
February 15, 2012	Meet Doug Hobbs to talk about moving 200 head of cattle through right of way to another pasture to the west.
May 10, 2012	Talked to Doug Hobbs about using old road around Steel Hollow, due to excavation in Steel Hollow for pipeline. Doug give the ok. Also ask Doug about leaving T-posts and rip rap check dams. He said they wanted the T-post left and would check with Gary on Rip-Rap.
June 4, 2012	Talked with Doug Hobbs about any concerns and drove S3 from south to north across Walker ranch, No issues at this time , would need to check with Gary.
June 14,12	Had a problem with flow fill delivery's running late call Doug Hobbs and let him know would be their tell 6:30 p.m.
September 4 through 6, 2012	Tie in completed between S2 and S3.
February 3, 2013	Called Doug Hobbs to inform him that a crew would be working on vaults the next 4 days.
March 1, 2013	Called Doug Hobbs let him know a group was going out to look at alignment.
March 12, 2013	Called Doug Hobbs about crew going to CAV # 3 on 3/13/13 for inspection.
April 18, 2013	Called Doug Hobbs to inform Layne working on alignment for 2 days.
April 16,2013	Let Doug Hobbs know Western States installing new BMP's on slope at Steel Hollow.
April 29,2013	Called Doug Hobbs let him know group would be out to inspect Steel Hollow.

May 14, 2013
Call Doug Hobbs about going on S3 to install Back flow preventer on FVA.

May 20, 2013
Talked with Doug Hobbs about Re-veg crew working on issues.

June 17, 2013
Meet Doug Hobbs and Western States Re-veg about moving temp gate 50 feet to the west to stay out of re-veg area.

June 18, 2013
Received call from Doug Hobbs , Gary had changed his mind didn't want us to move gate . Left it the way it was.

June 21, 2013
Called Doug Hobbs to inform him of Environmental walk on Monday June 24, 2013.

July 29, 2013
Called Doug Hobbs about CNHP working all week on S3 alignment. July 29 thru August 2, 2013.

August 12, 2013
Notify Doug Hobbs of re-veg crew working on alignment after heavy rain. August 12 thru 14th.

August 15, 2013
Called Doug Hobbs about Kevin B. going to S3 alignment to inspect damage.

Walker Inc. contacts

November 4 through 11 2011	Walsh Env. for noise and dust survey.
November 7, 2011	Pre-construction Photos and Video.
November 10 and 11th 2011	Escort Collette Chamberlain with WCRM to Steel Hollow for over site of drilling of test holes.
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April 29,2013	Called Doug Hobbs let him know group would be out to inspect Steel Hollow.

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June 17, 2013	Meet Doug Hobbs and Western States Re-veg about moving temp gate 50 feet to the west to stay out of re-veg area.
June 18, 2013	Received call from Doug Hobbs , Gary had changed his mind didn't want us to move gate . Left it the way it was.
June 21, 2013	Called Doug Hobbs to inform him of Environmental walk on Monday June 24, 2013.
July 29, 2013	Called Doug Hobbs about CNHP working all week on S3 alignment. July 29 thru August 2, 2013.
August 12 , 2013	Notify Doug Hobbs of re-veg crew working on alignment after heavy rain. August 12 thru 14th.
August 15, 2013	Called Doug Hobbs about Kevin B. going to S3 alignment to inspect damage.



March 14, 2013

Don Ostrander, Attorney
Duncan, Ostrander & Dingess, P.C.
3600 S. Yosemite Street, Suite 500
Denver, Colorado 80237-1829

**Subject: South Raw Water Pipeline 3 Post-Construction Grading on Walker Ranches,
Southern Delivery System**

Dear Mr. Ostrander,

On February 13, 2013, Southern Delivery System (SDS) staff met with Mr. Gary Walker to discuss Mr. Walker's concerns about post-construction grading for SDS South Pipeline 3 across Walker Ranches. Mr. Walker expressed general concern about drainage within the re-graded area, including the influence of a two-track access road paralleling portions of the pipeline alignment and "crowning" near the pipe centerline. However, no specific adjustments to site grading were identified. Colorado Springs Utilities remains committed to working with Mr. Walker to address his concerns over post-construction restoration. Accordingly, we have evaluated conditions at the site and identified some areas where we are prepared to implement changes during the next few weeks:

- **Two-Track Access Road.** A two-track access road has been developed parallel to much of the pipeline alignment. Soil compaction along the road has produced a detectable depression in certain areas relative to the immediately surrounding grade. Colorado Springs Utilities will fill and regrade the impacted two-track areas to mimic the surrounding grades and reseed the area. We will also install some small soil berms across the former two-track areas to limit future drainage along the historical two-track route. Mr. Walker noted that he has some stockpiled top soil near his pond adjacent to the SDS alignment at the south end of the property that he would like used in such regrading. After inspection and confirmation that the stockpiled soil is suitable, we will incorporate that soil into the work. It should be noted, however, that Colorado Springs Utilities will use its easement across Walker Ranches for purposes of ongoing revegetation work and long-term pipeline operation and maintenance, resulting in the continued existence of a two-track road.
- **Steele Hollow.** The S3 construction area included a 3.2-acre crossing of Steele Hollow. The Steele Hollow crossing was constructed in accordance with a channel design permitted by the U.S. Army Corps of Engineers (Individual Permit No. SPA-2005-0013-SCO and Nationwide Permit 13). Some localized erosion is occurring along the bank beneath the erosion control blanket at the northwestern-most edge of the Steele Hollow construction area. Colorado Springs Utilities will regrade that area to direct drainage away from the affected erosion control blanket, repair the erosion, reinstall the erosion control blanket, and reseed the area.

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

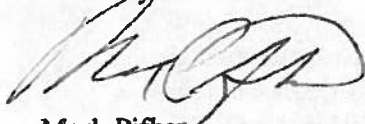
Phone 719.668.4800
Fax 719.668.8734
<http://www.csu.org>

We looked closely at any potential "crowning" and did not identify any noteworthy concerns in the field or in post-construction, detailed aerial survey data. Consequently, no grade modifications to address "crowning" are planned at this time.

During the February 13, 2013 meeting, Mr. Walker also expressed concern about design of the temporary irrigation system for revegetation. Specifically, he was concerned that the sprinkler head spacing does not create sufficient overlap in water application between sprinkler heads. The irrigation system was designed by an experienced irrigation system design engineer taking into account the specific site conditions and the intended purpose. Two groups of restoration ecologists – Colorado Natural Heritage Program (an extension of Colorado State University) and Redente Ecological Consultants, Inc. – have evaluated the site independently. Both groups provided favorable opinions with regard to site conditions and the quality of the revegetation work, and hence no irrigation system modifications are being implemented.

Colorado Springs Utilities remains committed to addressing reasonable landowner preferences for post-construction grading and to successfully revegetating the construction area. Accordingly, we will participate in a future site visit with Mr. Walker's drainage/revegetation representatives and representatives from Pueblo County to review site conditions following completion of the work described above. Please contact me at 303-668-8693 with any questions regarding this information.

Sincerely,



Mark Pifher
SDS Permitting and Compliance Manager

cc: Joan Armstrong, Pueblo County Planning
David Benbow, Pueblo County Engineering
Richard Griffith, Assistant City Attorney – Colorado Springs
Brian Whitehead, SDS Project Manager (S3)
Lyman Ho, SDS Land Acquisition Manager
Edward J. Bliezner, Welborn Sullivan Meck & Tooley, P.C.

Kevin Binkley

Subject: SDS Revegetation and Grading Contour Tour_Walker Ranches
Location: Meet at Gate Near Corner of Young Hollow Road and Antelope Road (North of Walker Ranches) Site Tour
Start: Wed 5/22/2013 1:00 PM
End: Wed 5/22/2013 4:00 PM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: Kevin Binkley
Required Attendees: Mark Pifher; Keith Riley; Alec Hart; Rick Griffith (City) (rgriffith@springsgov.com); 'Armstrong, Joan'; Benbow, Dave (Benbow@co.pueblo.co.us); 'graso@rasopc.com' (graso@rasopc.com); Lyman Ho; grwalker@socolo.net; dostrander@dodpc.com; EBlieszner@wsmtlaw.com

Based on the responses to the Doodle Survey, it appears that the afternoon of Wednesday, May 22nd (1pm to 4pm) for the tour is the best time for most people.
Please feel free to forward the invitation to any other parties not included on this distribution that you wish to attend (e.g. Ms. Laurie Clark); however, please keep in mind that we will want to limit the number of participants in an effort to protect the work completed to date. Please feel free to contact me with any questions.

Best regards,
-Kevin.

Kevin Binkley
Permitting and Compliance Specialist
Southern Delivery System
121 S Tejon St, 3rd Floor
Colorado Springs, CO 80903
719.668.3748 (o)
719.339.3394 (c)
kbinkley@csu.org

Mark Pifher
Kevin Binkley
Jeff Daniels
Jennifer Hunt
Laurie Clark - Clark Engineering
Chris Turner - Attorney
Andy Bethert - Attorney
Gery Walker
Joan Armstrong - Pueblo County

Kevin Binkley

Subject: SDS Walker Ranches Tour
Location: Meet at Mr. Walker's South Gate or at Gate Near Corner of Young Hollow Road and Antelope Road (North of Walker Ranches) SDS Pueblo West Office
Start: Thu 6/20/2013 9:00 AM
End: Thu 6/20/2013 12:00 PM
Recurrence: (none)
Meeting Status: Meeting organizer
Organizer: Kevin Binkley
Required Attendees: Mark Pifher; Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); 'Laurie Clark' (clarkeng@gmail.com); grwalker@socolo.net; 'graso@rasopc.com' (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City) (rgriffith@springsgov.com); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Warren Keammerer (wrkeam@comcast.net)
Optional Attendees: Alec Hart

Based on a couple of scheduling conflicts, we are moving this meeting to the morning of Thursday June 20. Please let me know if there are any significant conflicts with this time, otherwise we look forward to meeting everyone out on the site. We will aim to limit the amount of traffic traveling directly on the SDS alignment as much as possible during this visit.

Thank you in advance.
Best regards,

Kevin Binkley
Permitting and Compliance Specialist
Southern Delivery System
121 S Tejon St, 3rd Floor
Colorado Springs, CO 80903
719.668.3748 (o)
719.339.3394 (c)
kbinkley@csu.org

Mark Pifher
Kevin Binkley
Lyman Ho
Gery Walker
Remington Walker (son)
Laurie Clark - Clark Engineering
Chris Turner - Attorney
Joan Armstrong - Pueblo County
Warren Keammerer - Reveg Expert Pueblo Co
Richard Wray (Kiowa Engineering)

Mark Pifher

From: Laurie Clark <clarkeng@gmail.com>
Sent: Friday, September 06, 2013 5:37 PM
To: Mark Pifher
Cc: Kevin Binkley; Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); grwalker@socolo.net; 'graso@rasopc.com' (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart
Subject: Re: SDS Walker Ranches

Mark,

Good to hear you are proceeding with the work to bring the easement into compliance and address the construction deficiencies. As we understand it, these storm events were less than the minor storm event.

Could we have electronic copies of all the aerial photographs you had flown for our use? This would save you some expense in our preparation of the appraisal work and help Gary to understand, from pre-construction conditions to now, the areas you need access to, per the work outlined in your email of today.

Would you also tell us where you will be acquiring new topsoil to replace the topsoil that washed away during the storm events. Just moving what is remaining around will not be sufficient for sustained growth over the easement.

Finally just a thought on how to aide in the fast track of the work. As we discussed at the meeting in your office on June 20, any request for additional easement outside the original one needs to include specific information on what work will be done, how it will be done, if it is permanent or temporary and what monetary compensation you are offering to cover the disturbance of the property. If this information accompanies the request for additional easement area, it will enable Gary and his team to respond in a timely manner.

Please feel free to contact Don Ostrander with any questions you have on the request for easements.

Sincerely,

Laurie

Laurie E. Clark, P.E.
Clark Engineering LLC
6821 Highway 78 West
Pueblo, Colorado 81005

clarkeng@gmail.com

(719) 566-6800 Office
(719) 564-5338 Fax
(719) 240-6504 Cell

On Fri, Sep 6, 2013 at 4:18 PM, Mark Pifher <mpifher@csu.org> wrote:

Laurie, et. al., I just wanted to give you a brief update on what has been happening on this end relative to additional work on the Walker Ranch properties. As everyone knows, we had some large precipitation events in August. These occurred prior to our commencing the work identified on the Issues List that accompanied our late June correspondence to you. Based on those events, we did perform some necessary BMP repairs. However, we also had aerial photos taken of the entire alignment, and issued a contract to Kiowa Engineering for purposes of identifying what further remediation activities were warranted in view of the storm damage. We have now received a preliminary report from Kiowa and they are going to accompany some of our staff on a final field trip to the site this coming Tuesday. We will then have a final report that we can share with you and which will identify "additional" work to be performed, i.e., over and above that identified on the Issues List. The other topic that we will be raising again, and which still needs to be resolved, is access to the area for purposes of performing the work. Lyman Ho will be providing some additional property descriptions relative to the new work--he has already provided some information on the original work. Needless to say, we would like to keep this on a fast track in order to complete some re-seeding this Fall. Thanks for your patience.

From: Mark Pifher

Sent: Thursday, June 27, 2013 1:15 PM

To: 'Laurie Clark'; Kevin Binkley

Cc: Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); grwalker@socolo.net; 'graso@rasopc.com' (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart; dostrander@dodpc.com

Subject: RE: SDS Walker Ranches

Just a heads-up that the attached letter is being mailed out today along with another copy of the Issues List that we have already seen. Thanks

From: Laurie Clark [<mailto:clarkeng@gmail.com>]

Sent: Wednesday, June 19, 2013 12:29 PM

To: Kevin Binkley

Cc: Mark Pifher; Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); grwalker@socolo.net; 'graso@rasopc.com' (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart

Subject: Re: SDS Walker Ranches Tour

Kevin,

I will talk with Gary but any access other than the easement has not been granted. We technically should be meeting on the easement at the south property line of the Walker Ranches, but as I am allowed to use the Blackstone gate we asked our guest on the last tour to meet us there. As this is your tour request, including

those county staff, we are to my knowledge not providing any transportation, but relied on your initial request for a meeting and query on how many Walker Ranch representatives would attend so you could provide seats for all.

If transportation is not provided I will have to talk with Mr. Walker to be sure he has his hiking boots on.

Laurie

On Wed, Jun 19, 2013 at 11:58 AM, Kevin Binkley <kbinkley@csu.org> wrote:

Hi Laurie,

We are planning to transport two, two-seat ATVs (similar to the two we had last time) to the south ranch gate off of Blackstone Drive to transport the four Colorado Springs Utilities representatives and anticipated that Mr. Walker would likely have his four-seat ATV available for his guests as we did for the last visit. As for driving on the easement, I anticipate the alignment will be fairly wet with the irrigation system having been operating, so we would like to minimize our driving on the alignment if at all possible. At a minimum we would like to revisit the three or four areas south of Steele Hollow that were identified during our last tour to discuss our proposed solutions and would like to rely on Mr. Walker's expertise of the ranch property to gain access to the areas outside of the alignment wherever possible. If either trucks or ATVs are to be used, I would request that we try to utilize the existing access along the electric utility easement adjacent to the west of the SDS alignment if at all possible. Please let me know if this access along the electric utility easement would be acceptable.

Thank you. We look forward to continuing to work with you.

Best regards,

-Kevin.

Kevin Binkley

Permitting and Compliance Specialist

Southern Delivery System

121 S Tejon St, 3rd Floor

Colorado Springs, CO 80903

9.668.3748 (o)

719.339.3394 (c)

kbinkley@csu.org

From: Laurie Clark [mailto:clarkeng@gmail.com]

Sent: Wednesday, June 19, 2013 10:42 AM

To: Kevin Binkley

Cc: Mark Pifher; Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); grwalker@socolo.net; graso@rasopc.com (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart

Subject: Re: SDS Walker Ranches Tour

Kevin,

I think it will just be Gary Walker and myself on Thursday. Gary's time will be limited. As this is your meeting will CSU be providing the transportation? If not can we drive on the easement with pickups?

Laurie

On Mon, Jun 3, 2013 at 9:18 AM, Kevin Binkley <kbinkley@csu.org> wrote:

Hi Laurie,

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Looking again at the Doodle Survey, it appears that the morning of Thursday, June 20th may also work for most. I will move the date to June 20th from 9am to noon to help accommodate your other appointment as we value your participation.

Thank you in advance and we look forward to seeing all that can attend on the morning of the 20th.

Best regards,

-Kevin.

 Kevin Binkley

Permitting and Compliance Specialist

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From: Laurie Clark [mailto:clarkeng@gmail.com]

Sent: Saturday, June 01, 2013 12:16 PM

To: Kevin Binkley

cc: Mark Pifher; Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); grwalker@socolo.net; graso@rasopc.com (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart

Subject: Re: SDS Walker Ranches Tour

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Thanks,

Laurie

On Tue, May 28, 2013 at 5:20 PM, Kevin Binkley <kbinkley@csu.org> wrote:

Based on the Doodle Survey sent around and the responses received, the afternoon of June 19 appears to be the best day and time for all parties.

Please let me know if there are any significant conflicts with this time, otherwise we look forward to meeting everyone out on the site.

We will aim to limit the amount of traffic traveling directly on the SDS alignment as much as possible during this visit.

Thank you in advance.

Best regards,

Kevin Binkley

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Mark Pifher

From: Laurie Clark <clarkeng@gmail.com>
Sent: Wednesday, June 19, 2013 10:42 AM
To: Kevin Binkley
Cc: Mark Pifher; Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); grwalker@socolo.net; 'graso@rasopc.com' (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart
Subject: Re: SDS Walker Ranches Tour

Kevin,

I think it will just be Gary Walker and myself on Thursday. Gary's time will be limited. As this is your meeting will CSU be providing the transportation? If not can we drive on the easement with pickups?

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Thank you in advance and we look forward to seeing all that can attend on the morning of the 20th.

Best regards,

-Kevin.

Kevin Binkley

Permitting and Compliance Specialist

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To: Kevin Binkley

Cc: Mark Pifher; Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); grwalker@socolo.net; 'graso@rasopc.com' (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart

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Thanks,

Laurie

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We will aim to limit the amount of traffic traveling directly on the SDS alignment as much as possible during this visit.

Thank you in advance.

Best regards,

Kevin Binkley

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Mark Pifher

From: Mark Pifher
Sent: Tuesday, August 06, 2013 8:09 AM
To: grwalker@socolo.net
Cc: 'Armstrong, Joan'; 'graso@rasopc.com'; 'Chris Turner' (cturner@bethartturner.com); 'Laurie Clark'; John Fredell (jfredell@csu.org); Kevin Binkley
Subject: Storm Damage

Gary, we are aware of the fact that a rain storm sometime this weekend caused damage to our reclamation efforts on your property. These conditions will need to be remediated. We are arranging to have our experts examine the area and develop a response plan, though access yesterday was extremely difficult due to the muddy conditions. We will keep you informed of our activities. Feel free to contact me with any questions. Thanks

Mark Pifher

From: Mark Pifher
Sent: Friday, June 07, 2013 1:13 PM
To: 'Gary Walker'; 'Laurie Clark'; Kevin Binkley
Cc: Keith Riley; Lyman Ho; 'Armstrong, Joan'; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner'; graso@rasopc.com; 'Andy Bethart'; Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart; Janet Rummel
Subject: RE: SDS Walker Ranches Tour

Gary, we will have some concrete proposals for you. In the meantime, we wanted to get the road reseeded.

From: Gary Walker [mailto:grwalker@socolo.net]
Sent: Friday, June 07, 2013 12:44 PM
To: Mark Pifher; 'Laurie Clark'; Kevin Binkley
Cc: Keith Riley; Lyman Ho; 'Armstrong, Joan'; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner'; graso@rasopc.com; 'Andy Bethart'; Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart; Janet Rummel
Subject: RE: SDS Walker Ranches Tour

Mark,

If you are considering our concerns and working on a response about those obvious problems with your easement then why is work continuing without any changes? Since our last meeting on the Walker Ranch portions of the SDS project you have initiated seeding, mulching and irrigating without addressing any of the problems we have pointed out over the past year.

I saw the problems for Walker Ranch created by your project a year ago. Since then I have had numerous meetings with CSU staff in an attempt to be proactive in rectifying or at least mitigating those problems. But after every meeting, construction seems to continue without change. I hope you are sincere in trying to fix these problems and not just patronizing us.

Gary Walker

From: Mark Pifher [mailto:mpifher@csu.org]
Sent: Friday, June 07, 2013 11:51 AM
To: Laurie Clark; Kevin Binkley
Cc: Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris Turner' (cturner@bethartturner.com); grwalker@socolo.net; 'graso@rasopc.com' (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart; Janet Rummel
Subject: RE: SDS Walker Ranches Tour

I just wanted everyone to know that CSU is working upon a written response to the concerns identified at the site visit on May 22, including a recitation of actions we are willing to undertake, and hopes to have that available prior to the June 20 date.

From: Laurie Clark [mailto:clarkeng@gmail.com]
Sent: Monday, June 03, 2013 10:23 AM
To: Kevin Binkley
Cc: Mark Pifher; Keith Riley; Lyman Ho; Armstrong, Joan; eblieszner@wsmtlaw.com; dostrander@dodpc.com; 'Chris

Turner' (cturner@bethartturner.com); grwalker@socolo.net; 'graso@rasopc.com' (graso@rasopc.com); Andy Bethart (abethart@bethartturner.com); Rick Griffith (City); jeff.woeber@co.pueblo.co.us; rwrap@kiowaengineeringcs.com; Alec Hart

Subject: Re: SDS Walker Ranches Tour

Kevin,

You are the best. I appreciate the change. Hopefully this will mean a cooler tour with less wind.

Laurie

On Mon, Jun 3, 2013 at 9:18 AM, Kevin Binkley <kbinkley@csu.org> wrote:

Hi Laurie,

I believe your understanding of the consensus following the May 22 field meeting is accurate. We intend to provide a letter prior to the June 19th meeting which outlines the items discussed during the May 22 tour and our proposed actions and/or responses. The purpose and intent of the June 19th meeting is to briefly tour the site with the appropriate group of consultants and staff with the property owner to view the areas where actions are proposed and to obtain final consensus and approval of the proposed actions prior to commencing with the work.

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Memorandum

To: Mark Pifher
From: Richard Wray
Date: September 19, 2013
Project: Southern Delivery System (SDS) Raw Water Pipeline Segment S3, Pueblo County, Colorado
Subject: Results of Post Construction Field Evaluation- Drainage- Segments S1, S2 and S3

This memorandum serves to summarize the results of the field evaluation conducted by Kiowa Engineering on August 20, 2013 and follow up evaluation on September 10, 2013 conducted by the SDS Program. The evaluation was in response to heavy rainfall events that occurred in early August that affected the surface drainage conditions for portions of segments S1, S2 and S3 of the SDS pipeline (Heavy rainfall in parts of Colorado between September 12 and September 15, 2013 did not substantially affect the areas described in this memorandum). This segment lies entirely within Pueblo County. Copies of aerial photographs captured on September 17, 2013 were provided and reviewed by Kiowa Engineering in support of the September 10, 2013 SDS Program observations.

The rains of August 3rd through the 12th caused localized erosion to occur and an overall degradation of the vegetative cover within these segments. Concentrated rainfall within the easement caused runoff flow to generally run parallel within the easement until low points adjacent to the alignment were encountered, at which point the concentrated flow ran off the alignment. Sheet flow reaching the easement from offsite areas also flowed along the easement, sometimes along the two track access road. The runoff along the easement wherever the vegetative cover was sparse caused topsoil to be eroded. In general wherever vegetative cover was present the erosion of the surficial soils was greatly reduced. During the September 10, 2013 evaluation, some areas where concentrated flows parallel to the alignment were evident during the August 20, 2013 evaluation had begun to recover and reestablish with new vegetative growth, which was supported by the September 17, 2013 aerial images.

The alignment was also affected by runoff wherever major drainageways crossed the alignment. At some locations flow within the major drainageways caused erosion of the surficial soils and erosion control netting to be washed away.

Two general repair categories are offered to address the erosion within the alignment. Category 1 repairs require minor re-grading parallel to the easement, surface roughening (disking), reseeding and the placement of waddles at 100 to 150-foot intervals within the affected areas as needed. Category 2 repair will involve redesign as described in greater detail below prior to addressing the drainage and erosion issues caused by the runoff events in August. Recommended actions along the alignment as determined in the field and as a result of review of the design plans are summarized below.

Segment S1

Station 193+00 to 194+00: Category 1 repair within the affected area of the alignment between this stationing to address surface erosion due to runoff concentration.

Segment S2

Station 755+00: Category 1 repair to address surface erosion due to runoff concentration.

Station 751+00 to 752+00: Category 1 repair within the affected area where the natural drainageway crosses through the alignment.

Segment S3

Station 800+00 to 801+80: Category 1 repair within the affected area to eliminate depression that causes surface runoff to collect and pond. Fill should be placed so that runoff is forced to the west and into the natural drainage paths that carry runoff south. It appears that the current grade may not match the design plans at this location; this should be verified through survey (Category 2).

Station 807+50 to 808+20: Category 2 redesign required as sheet pile check appears to have been installed too high and does not allow runoff collected by diversion berm to pass through the alignment as intended. Diversion berm was breached as a result causing runoff to move south along the alignment. Diversion berm needs to be repaired and re-vegetated. The sheet pile does not appear to have a sufficient low point to force flow over the center of the structure and as a result runoff passes around the check structure.

Station 815+00 to 826+00: Category 1 repair within the affected area of the alignment between this stationing as needed to address erosion caused by sheet flow and concentrated surface runoff within easement. Note that recovery of some areas and reestablishment of new vegetative growth was identified during the September 10, 2013 evaluation through this area.

Station 832+00 to 838+00: Category 2 redesign of drainage required as runoff within natural swale that crosses alignment from west to east caused erosion of surface soil and loss of erosion control netting. Redesign should consider using riprap or a turf reinforcement material (TRM) similar to Colobond Enkamat 7020.

Station 841+00 to 846+00: Category 1 repair within the affected area of the alignment between this stationing to address erosion caused by sheet flow and concentrated surface runoff within easement.

Station 846+00: Category 2 redesign required as sheet pile check appears to have been installed too high and does not allow runoff collected by diversion berm to pass over the check. Low point does not appear to have been provided for per the design plans causing runoff to pass around the check structure. Category 1 repair is required in drainage swale up-gradient and down-gradient of the check structure.

Station 846+00 to 847+00: Category 1 repair within the affected area of the alignment between this stationing to address erosion caused by sheet flow and concentrated surface runoff within easement.

Station 851+00 to 855+00: Category 1 repair within the affected area of the alignment between this stationing as needed to address erosion caused by sheet flow and concentrated surface

runoff within easement. Note that recovery of some areas and reestablishment of new vegetative growth was identified during the September 10, 2013 evaluation through this area.

Station 866+00 to 867+50: Category 1 repair within the affected area to address erosion caused by concentrated offsite surface runoff entering easement. Gravel roadway that crosses the alignment at this station needs to be re-graded to match the pre-construction conditions.

Station 881+00 to 885+00: Category 1 repair within the affected area of the alignment between this stationing to address erosion caused by sheet flow and concentrated surface runoff within easement and to reestablish original drainage swale across alignment.

Station 891+00 to 898+00: Category 1 repair within the affected area of the alignment between this stationing as needed to address erosion caused by sheet flow and concentrated surface runoff within easement. Note that recovery of some areas and reestablishment of new vegetative growth was identified during the September 10, 2013 evaluation through this area.

Station 898+00 to 903+00: Category 1 repair within the affected area of the alignment between this stationing to reestablish original drainage swales across alignment and address areas of erosion caused by sheet flow and concentrated surface runoff within easement.

Station 958+00 to 961+00: Category 1 repair within the affected area of the alignment between this stationing as needed to address erosion caused by sheet flow and concentrated surface runoff within easement. ATV trail that crosses the alignment at station 959+00 needs to be re-graded to match the pre-construction condition. Note that recovery of some areas and reestablishment of new vegetative growth through this area was identified during the September 10, 2013 evaluation.

Station 985+00 to 987+00: Category 2 redesign required within the affected area as concentrated runoff that has caused head-cutting where the concentrated runoff exits the easement and into a natural drainageway, riprap or TRM needs to be provided capable of withstanding the forces of the runoff at this location.

Station 994+00 to 955+00: Category 2 redesign required within the affected area as concentrated runoff along east side of easement has caused erosion at outfall to the natural receiving swale at this point along the alignment. Riprap rundown may be needed to carry runoff into the natural swale.

Station 1015+00 to 1016+50: Riprap bank lining needs to be extended where Steele Hollow enters the easement from the west. This situation was noted in previous field evaluations.

Station 1017+00 to 1019+00: Narrow ATV trail/swale that originally crossed the easement at this location needs to be re-established to pre-construction conditions. As-built grades do not appear to meet the grading as shown on the design plans. TRM or other suitable erosion control measure may be needed to stabilize swale.

Station 1040+00 to 1045+00: Category 2 redesign required as runoff within natural swale that crosses alignment has caused erosion of surface soil and loss of erosion control netting. Redesign should consider using a TRM. Work outside of the western and eastern alignment boundaries will be necessary to properly correct the flow of the drainage.

Station 1048+00 to 1054+00: Category 1 repair within the affected area of the alignment between this stationing to address erosion caused by sheet flow and concentrated surface runoff within western portion of easement along former access area.

Station 1051+00 to 1054+00: Minor raking to remove sediment deposited outside to the west easement line.

Station 1067+00 to 1068+00: Category 1 repair within the affected area of the alignment between this stationing to address erosion caused by sheet flow and concentrated surface runoff within western portion of easement along former access area.

Station 1131+00 to 1132+00: Category 2 redesign to address drainage through culvert at Young Hollow Road. Culvert appears to be higher than the natural drainage elevation causing the blow-off station at this location to become submerged. Redesign to address measures to prevent ponding upstream of roadway along the alignment and in the rear of the blow-off station.



Colorado Springs Utilities

It's how we're all connected

June 27, 2013

Gary R. Walker
Walker Ranches
7170 Turkey Creek Ranch Rd
Pueblo, CO 81007

Re: Easement Reclamation

Dear Mr. Walker:

I wish to thank you and your consultants for meeting with Colorado Springs Utilities (CSU) and Pueblo County representatives on June 20. The meeting afforded the parties an opportunity to discuss all of the reclamation work that has been performed to date, and to further explore the issues identified on the attached Issues List (List), including the nature of the additional work SDS is prepared to undertake in response to the concerns you have expressed. We hope to commence that work, as further described in the "Responses" section of the List document, as soon as possible.

SDS acknowledges that the List represents only those concerns identified to date by the parties based upon the information currently available, and it is possible that additional issues, of which the parties are not now aware, could arise in the future. However, as stated at the meeting, a never ending "do loop" must be avoided and closure must be achieved.

As noted at the meeting, CSU desires to continue to collaborate with you in undertaking the reclamation activities, and will therefore periodically update you and your consultants on the timing, nature and results of the work performed at the site. You should certainly feel free to contact me (719-668-8693) or Kevin Binkley (719-668-3748) at any time should you or your consultants have any information or suggestions related to the work that you would like to share.

In regards to the additional temporary access agreements or licenses that will be needed to complete a couple of the discussed items, per your instruction, we have contacted Mr. Ostrander and Mr. Turner with those requests.

Should you have any questions or comments relative to the above, please do not hesitate to contact me at any time.

Sincerely,

Mark Pifher
SDS Permitting Manager

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>

Pifher letter to Walker dated 6/27/13

Page 2

cc: Joan Armstrong
Don Ostrander
Chris Turner
John Fredell
Laurie Clark
Rick Griffith

Issues List

1. Issue: A six-inch (approximate) mound remains in various areas on each side of the easement.

Response: Southern Delivery System (SDS) will correct this by leveling the mounds where they exist. The SDS revegetation contractor, Western States Reclamation, Inc. (WSRI) will accomplish this task.

2. Issue: Ensure that the topsoil in the reclaimed area was not imported.

Response: SDS has confirmed through the project managers that no topsoil was imported to the site; however, some soil from the north end of the Walker Ranches property was transported to the south end of the Walker Ranches property. A copy of the pertinent soil analysis data from the south end of the ranch property can be provided upon request.

3. Issue: There appears to be non-native rocks in the easement.

Response: In discussions with the contractors and project managers, SDS has confirmed that the rocks in the easement originated from within the construction site. However, some of the rocks undoubtedly came from a depth below the topsoil. Some rocks have already been hand-picked and removed from the site; however, SDS is willing to provide some soil amendments in identified "rocky" areas to aid in the revegetation effort if requested.

4. Issue: There appears to be crowning in middle of the easement.

Response: SDS has enclosed a copy of the available survey data, which appears to show very minimal changes in ground surface elevations between pre and post construction conditions, i.e., less than one foot deviation. This minimal variation is consistent with standard industry practices and, SDS believes, County expectations. SDS has investigated, and material was removed from the site in order to ensure proper site restoration. That said, in select identified areas SDS, in consultation with the experts assisting Mr. Walker, can undertake appropriate

grading efforts in areas where drainage patterns may be adversely affected by current contours as part of efforts associated with issue #5 below.

5. Issue: There exists an uneven grading pattern in easement areas that may promote a poor drainage pattern.

Response: As referenced above, SDS can undertake appropriate grading efforts in areas where drainage patterns may be adversely impacted by current contours. The exact locations will be determined in consultation with the experts assisting Mr. Walker. The parties agree to minimize, to the extent practicable, the temporary movement of existing irrigation lines.

6. Issue: The sprinkler heads do not adequately cover the easement revegetation area.

Response: SDS believes the sprinkler system is adequate to meet revegetation needs. See attached Redente Ecological Consultants (REC) memorandum, which addresses sprinkler head spacing. Parties must keep in mind that there is no permit requirement to irrigate. SDS will be held to the Colorado Department of Public Health and Environment (CDPHE) construction stormwater and Pueblo County 1041 permit revegetation standards.

7. Issue: The check dams must be maintained and removed when appropriate.

Response: SDS will maintain the check dam structures for their useful life as stormwater management Best Management Practices and remove them once vegetation is re-established.

8. Issue: Any underground springs must be maintained so as to ensure their future availability.

Response: A commitment was made in Appendix C-20 of the Pueblo County 1041 permit to prevent injury to springs. During construction, the springs were located with the assistance of the Walker Ranches foreman and the Controlled Low-Strength Material (CLSM) levels in the trench were adjusted to ensure unimpeded flow of the springs.

9. Issue: The access road along the west side of the easement is too deep and will cause drainage flow problems.

Response: The former site of the road has been ripped, fluffed, and reseeded. Close attention was been paid to drainage contours in the completion of this work.

10. Issue: A drainage arroyo is blocked where the concrete improvement was installed.

Response: SDS will rectify this once Mr. Walker grants access to areas surrounding the arroyo, which are outside the easement boundaries for SDS.

11. Issue: It is necessary to ensure that Mr. Walker is able to cross the easement with a new water pipe.

Response: This should not be an issue given the depth of the SDS pipeline. The parties need to coordinate when any trenching for such a pipe is scheduled to occur.

12. Issue: The blow-off valve area needs additional rip-rap for channel protection.

Response: SDS will extend the rock area once Mr. Walker grants access to areas immediately downgradient, which are outside the easement boundaries for SDS. SDS will also provide information on the flow capacity of the blow-offs.

13. Issue: There is off-easement erosion in the Steele Hollow area.

Response: SDS agrees that this is an issue in the northwestern portion of the drainage channel, immediately outside of the existing SDS easement boundary, and will rectify the condition once Mr. Walker grants access to the area outside of the easement.

14. Issue: Revegetation needs to include native plants like cholla as well as grasses.

Response: These species were pulled to the side during construction and pulled back over the alignment as part of the final restoration efforts. The replaced topsoil material included seeds and vegetation from the pre-existing site condition and were mixed with the seeds planted during the revegetation efforts. Applicable permit revegetation requirements will be met.

15. Issue: Concern was expressed that the contractor would be prematurely released from the stormwater permit obligations.

Response: WSRI will continue to hold the CDPHE construction stormwater permit until the revegetation percent threshold under the CDPHE stormwater permit is met.

16. Issue: Was appropriate mulch utilized to avoid weeds/foreign species?

Response: SDS has confirmed that only certified weed free mulch was used. Documentation will be provided.

17. Issue: Identify the porosity of the CLSM material.

Response: SDS we will provide this information. Please also refer to the response to Issue 5, indicating that CLSM levels in the trench were adjusted to ensure unimpeded flow of identified springs.

18. Issue: Are there unacceptable weeds growing on the north end of the alignment along the up-slope?

Response: SDS will have Colorado Natural Heritage Program and/or Pueblo County's revegetation consultant, Dr. Keammerer, confirm what species are growing in this area and its acceptability (as a nurse crop) under the revegetation plan or mitigate appropriately.

Section 5. Lower Arkansas Valley Water Conservancy District

The SDS Participants presented water quality information in response to assertions made by the Lower Arkansas Valley Water Conservancy District. That information and related correspondence with the Lower Arkansas Valley Water Conservancy District is provided for reference.

The following supporting documents are attached:

- Attachment Q. SDS Correspondence with Lower Arkansas Valley Water
- Attachment R. Selected Slides from SDS Presentation (September 20, 2013)



Colorado Springs Utilities

It's how we're all connected

August 14, 2013

Board of Directors
Lower Arkansas Valley Water Conservancy District
801 Swink Avenue
Rocky Ford, CO 81067

RE: Pueblo Chieftain Water Quality Article

Dear LAVWCD Board of Directors:

Colorado Springs Utilities (Springs Utilities) read with interest the Pueblo Chieftain July 18, 2013 story regarding flow, sediment and *E. coli* data for Fountain Creek. It is our understanding that the conclusions contained in the story were drawn from an analysis of data found in the 2012 MS4 (stormwater) permit report filed by the City of Colorado Springs with the Colorado Department of Public Health and Environment (CDPHE). We have reviewed the MS4 report and plotted the data found therein as well as any additional relevant data we could locate, and have been unable to replicate the numbers reported in the newspaper story. We have requested the analysis that led to the conclusions in the story but have not received it at this time. Based on our analysis, we do not believe the data in the report supports any correlation between an increase in flows and/or pollutant concentrations in Fountain Creek and the dissolution of the Colorado Springs Stormwater Enterprise (SWENT) in 2010.

We would like to share our analysis with you and hope to begin a dialogue that will allow us to reach a shared understanding of what the raw data does, and does not, tell us, and what additional work, if any, may further inform the situation.

Using data from the USGS continuous recording stations along Fountain Creek, we found no increase in average or peak flows when comparing 2009 flows to 2012 flows, i.e., SWENT and post-SWENT years, as referenced in the Chieftain story. This is depicted in the three attached charts (Appendices 1-3), which, in fact, show a slight downward trend in average and peak flows.

Obviously, there will be a varying number of "peak days" recorded in any given year. This is simply based upon the random occurrence of storm events. However, Springs Utilities could not locate any evidence upon which a conclusion can be reached that a storm event in 2009 (during SWENT) of a given magnitude produced a significantly different flow than a comparable event in 2012 (post-SWENT) as a result of the absence of detention facilities that "may" have been built if SWENT had been in existence. Obviously, making such a comparison on a storm- by- storm basis is fraught with peril given the variable nature of Front Range summer "monsoon" events where isolated storm cells can drop significant precipitation at very specific locations that do not necessarily reflect the actual point of flow measurement.

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August 14, 2013

For example, a significant rainfall event in August of 2008 (1.48") resulted in a sustained peak flow at Security of approximately 6000 cfs, while only about one-half of that flow level was recorded at the Pueblo gauge. However, a single, short duration storm event in July 2010 of approximately 1.2" resulted in an instantaneous peak flow of almost 8000cfs at Security, but a peak of about only 1550 cfs at Pueblo. This would indicate that a number of factors are at work, including exactly where the storm event is centered, the intensity and duration of the storm, and even whether water rights are being exercised in the same manner during the storm occurrences.

Relative to *E. coli* densities, Springs Utilities has graphed the available data for the 2008-2012 period, and it demonstrates, if anything, a slight downward trend at the Security gauge during the summer months of these years (Appendix 4). The graphs also demonstrate that *E. coli* densities are not well correlated with flow levels (Appendices 5-6, Fountain Creek at Highway 50 and Fountain Creek at Pinon). Naturally, many factors may influence *E. coli* densities in a particular stream reach, including land use activities unrelated to a stormwater regulatory program, and the presence of waterfowl and other bird species. That said, point sources, including Springs Utilities' wastewater reclamation facilities, must always be prepared to meet their *E. coli* permit effluent limitations.

Drawing any conclusions from the sediment data is even more complex. The 2007-2012 time series at the Security gauge (Appendix 7) would appear to show a small upward trend beginning in 2010. However, upon closer examination, this simply reflects the fact that there were higher peak events in 2010-2012, i.e., more intense storms, which naturally move more sediment. In fact, when the 2007-2012 sediment data are plotted against flow (Appendices 8 and 9), the 2010-2012 data are actually concentrated below the approximate trend line for the 2007-2009 data. That is to say, for the 2010-2012 period, there is a lower sediment concentration associated with a given flow rate when compared to the 2007-2009 data.

The majority of the above observations are based on data collected at the Security gauge, which is the farthest downstream gauge used in the MS4 report. However, it may be valuable to examine more closely the "Pueblo" USGS monitoring records, as these may be of greater direct interest to the Pueblo area and downstream communities. Unfortunately, a preliminary analysis of this site by Springs Utilities revealed that sediment and *E. coli* measurements were not necessarily taken at the same frequency or on the same dates as they were at the Security gauge. This makes it difficult to draw any conclusions.

The observations above should be considered in the context of the soon to be released USGS "Fountain Creek Peak Flow and Sediment Study," which was funded by the SDS participants. Though it is estimated that the final version of the study will not be available until this December, the USGS has presented preliminary results to the Fountain Creek Watershed Flood Control and Greenway District (FCWFCGD). Representatives of Springs Utilities were present for the presentation. As noted in the USGS presentation, the study objective was "to assess the effectiveness of various management strategies to attenuate storm flows and to control the erosional and depositional effects of sediment transport." The USGS developed a fairly complex model encompassing the Fountain Creek basin and ran thirteen (13) separate "scenarios" in which varying numbers of detention facilities were constructed in an effort to reduce peak flows and sediment transport "in Pueblo". Scenario #1 had seven detention facilities (3,520 a/f total), all in El Paso County, while scenario #8 had forty-four detention facilities (30,500 a/f total), six of which were in Pueblo County. Scenario #12 had only ten detention facilities (13,250 a/f), but six of the ten were within Pueblo County. What is most telling and interesting relative to potential future

August 14, 2013

planning, is that the modeling indicates that the FCWFCGD could construct as many as thirty-four facilities in El Paso County and not have the type of significant effect on peak flows (24.9% reduction) and sediment (8.6% reduction) that the USGS was attempting to identify. Yet, with scenario #12 and the ten facilities, where the majority of facilities are constructed in Pueblo County, there was a significant reduction in both peak flows (47.7%) and sediment loading (62.1%).

The above USGS modeling effort further supports the conclusion that no valid correlation can be drawn between any increase in flows or sediment loading, even if such increases were recorded, and the existence or non-existence of SWENT during the years referenced in the Chieftain story. That is to say, while local infrastructure investments within Colorado Springs outside the context of any permit requirements may have benefited Colorado Springs' residents, the few actual detention facilities that "may" have been constructed by the Enterprise in those three years (2010-2012) would have had no significant impact on flows or sediment loads in Pueblo or below Pueblo. However, the preliminary USGS results do indicate that a dialogue over the future construction of detention facilities within Pueblo County, under the auspices of the FCWFCGD, is a concept that merits future investigation.

Springs Utilities would like to reiterate that it takes stormwater control and water quality within the Fountain Creek basin very seriously, as the basin represents one of Springs Utilities' water supply sources and a community amenity. While the Pueblo County 1041 permit for the Southern Delivery System does not require any set monetary amount of stormwater control investments or the construction of any identified list of infrastructure projects, the SDS participants must ensure that once the SDS project is operational there must be in place "controls and other regulations intended to ensure that Fountain Creek peak flows resulting from new development served by the SDS project within the Fountain Creek basin are no greater than existing conditions." Springs Utilities and its partners shall meet that commitment.

Finally, Springs Utilities has been an active participant in the formation of the Arkansas Fountain Coalition for Urban River Evaluation (AF Cure), a consortium of local entities, including the City of Pueblo, dedicated to water quality monitoring and water quality improvement in the Fountain Creek watershed. Springs Utilities has also indicated to the USGS its interest in funding, along with other interested parties, "post-fire/post storm event" water quality monitoring in order to evaluate the impacts of the Waldo Canyon and Black Forest fires. This is in addition to the continuation of the water quality monitoring activities established under the 1041 permit.

Springs Utilities hopes that this material proves of benefit to the Lower District in evaluating the stormwater/water quality/water quantity nexus. Springs Utilities would be glad to attend the District's September Board meeting and provide both any further explanation of the data we have examined, and an update on local Stormwater Steering Committee activities. In addition, Springs Utilities staff would be available to meet with any of the District's water quality consultants in the interim should you believe that would be useful.

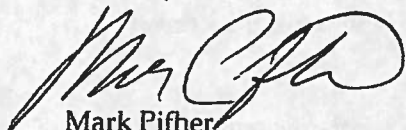
Pifher letter to LAVWCD Board of Directors

Page 4

August 14, 2013

Thank you for your attention to the matter.

Sincerely,

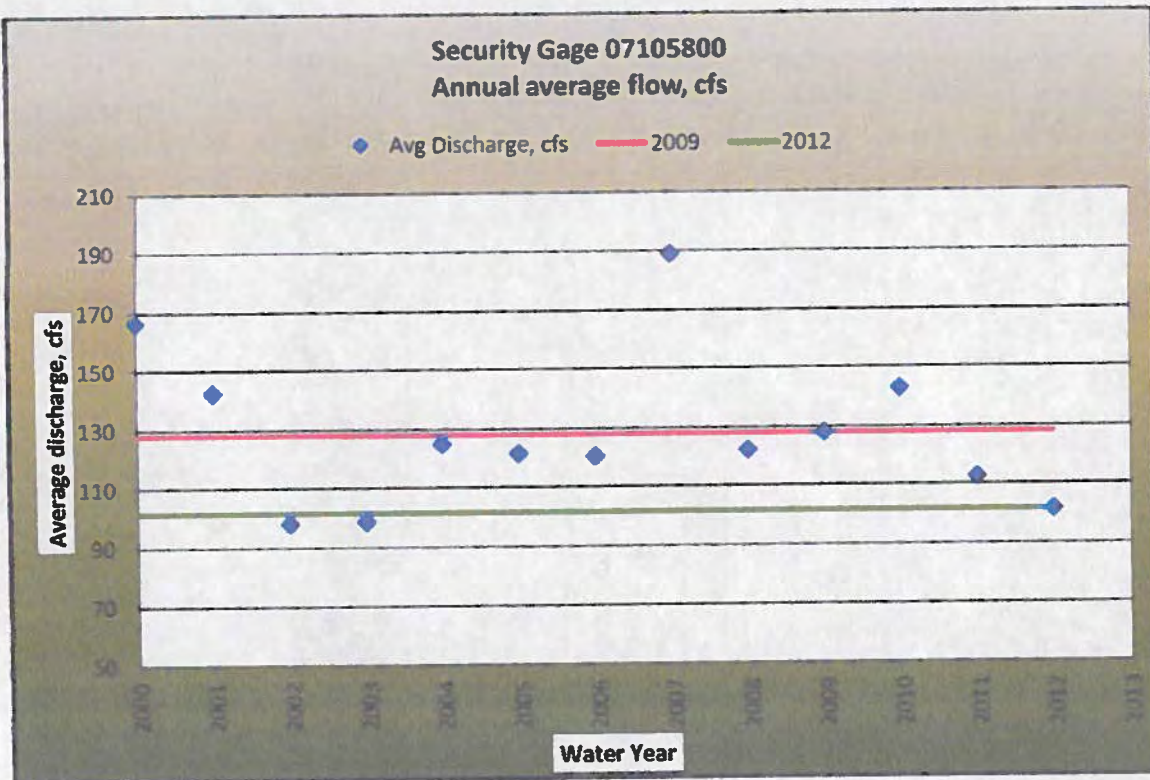
A handwritten signature in black ink, appearing to read 'Mark Pifher', with a stylized flourish at the end.

Mark Pifher
SDS Permitting Manager
Colorado Springs Utilities

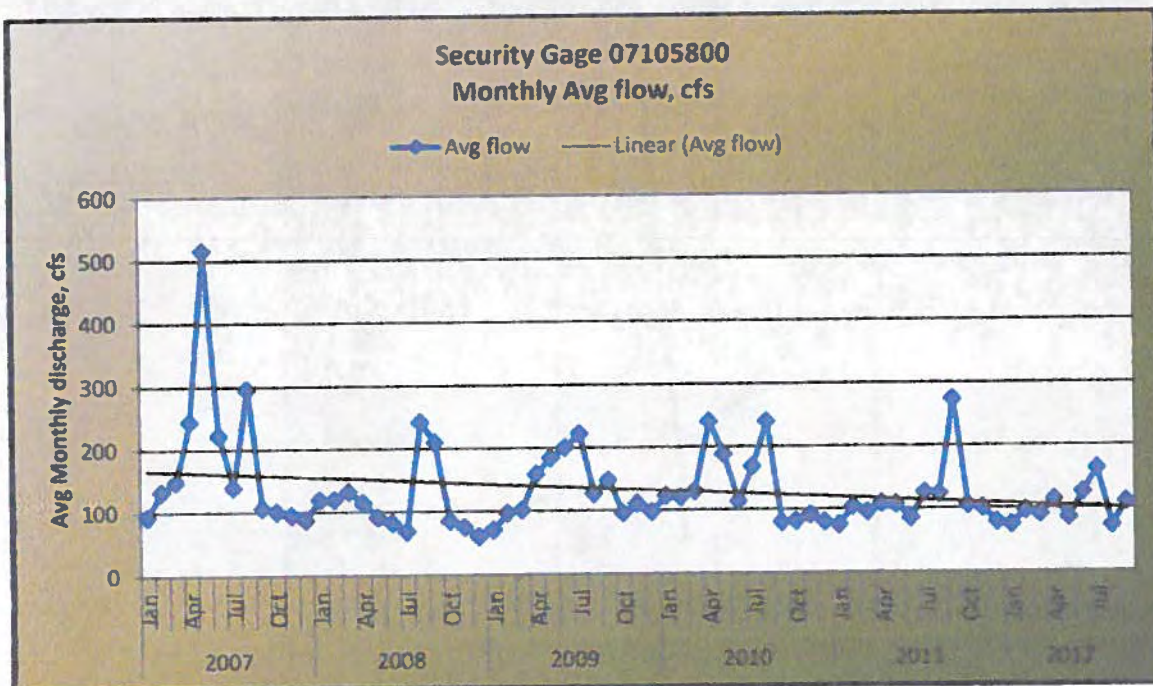
Attachments: Appendices 1 through 9

cc: Jay Winner, Executive Director LAVWCD
Peter Nichols, Attorney

Appendix 1

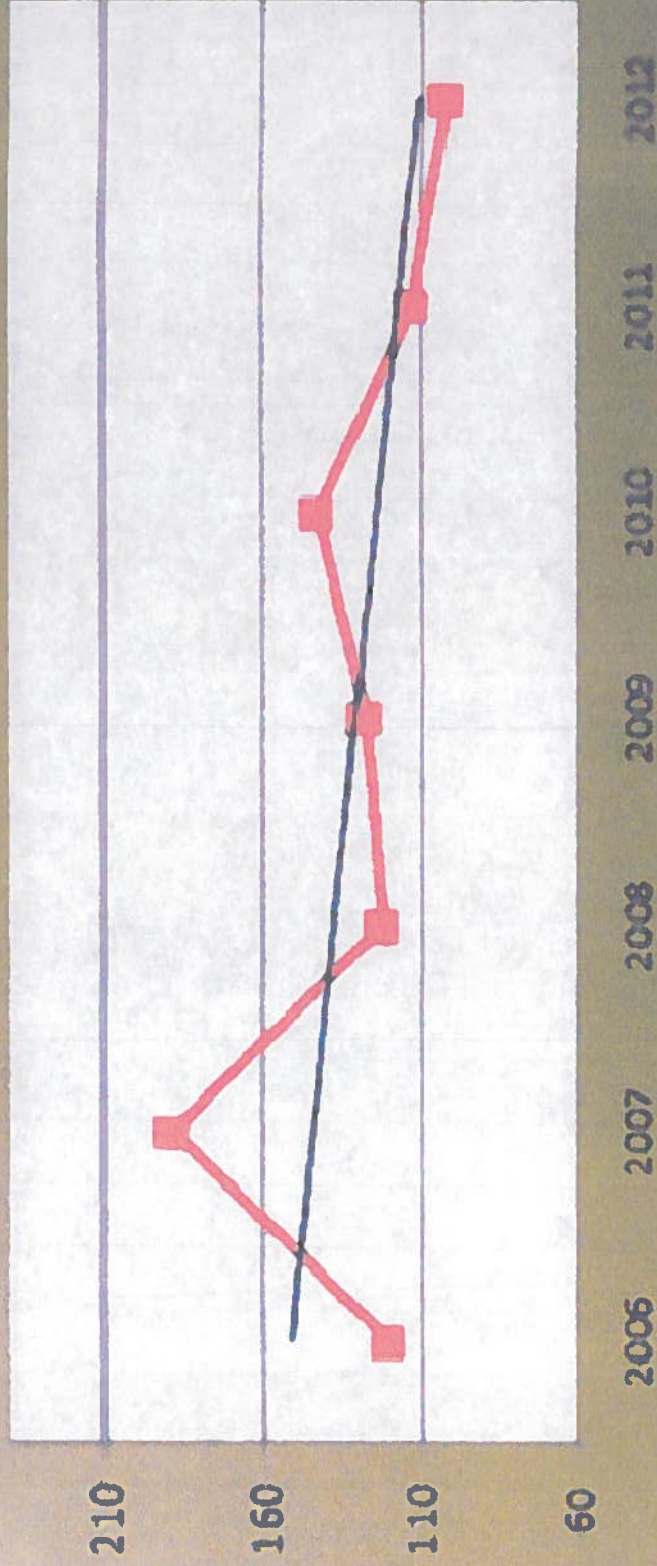


Appendix 2



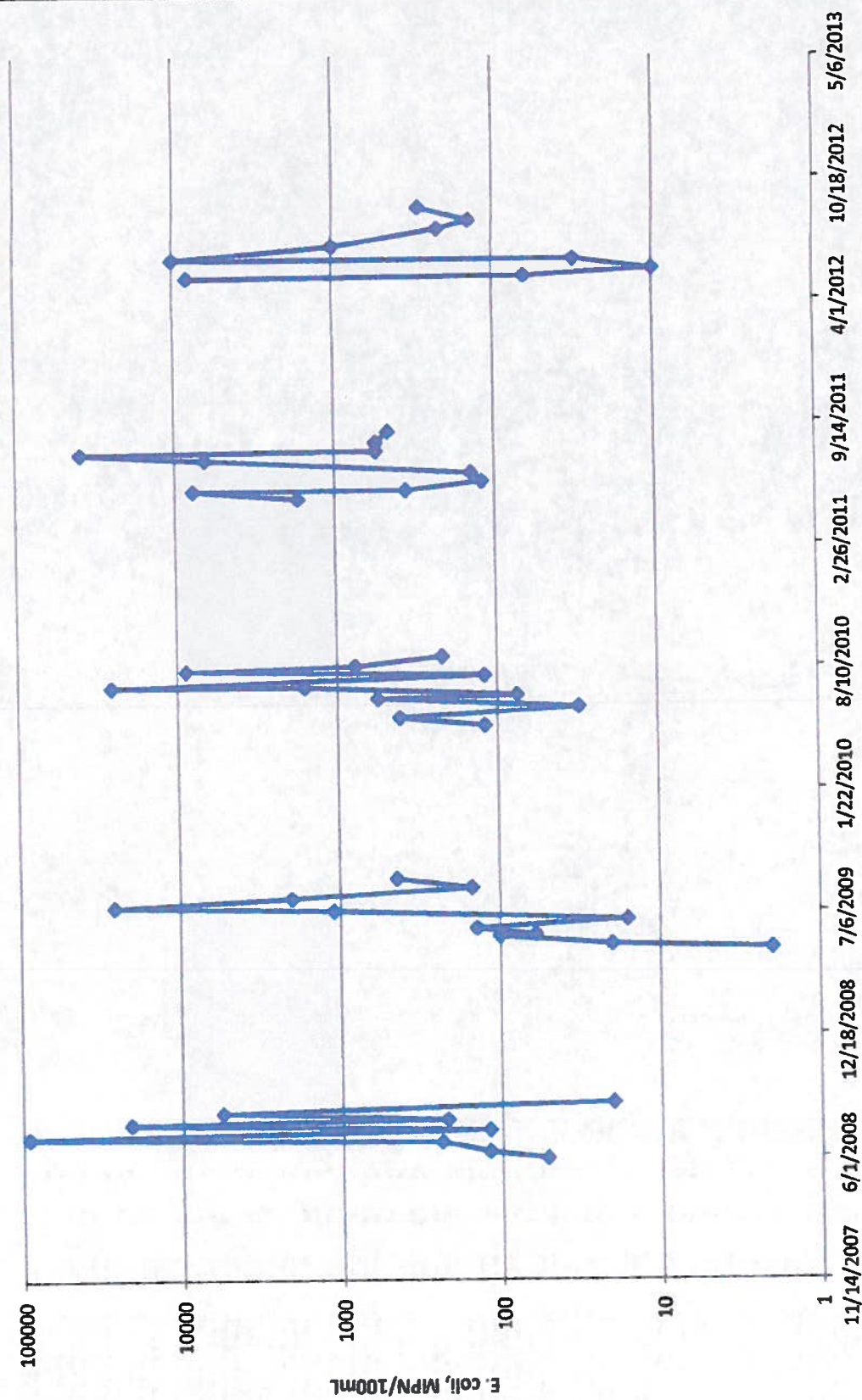
Security Gage 07105800 Annual Avg flow, cfs

■ Avg flow
 — Linear (Avg flow)



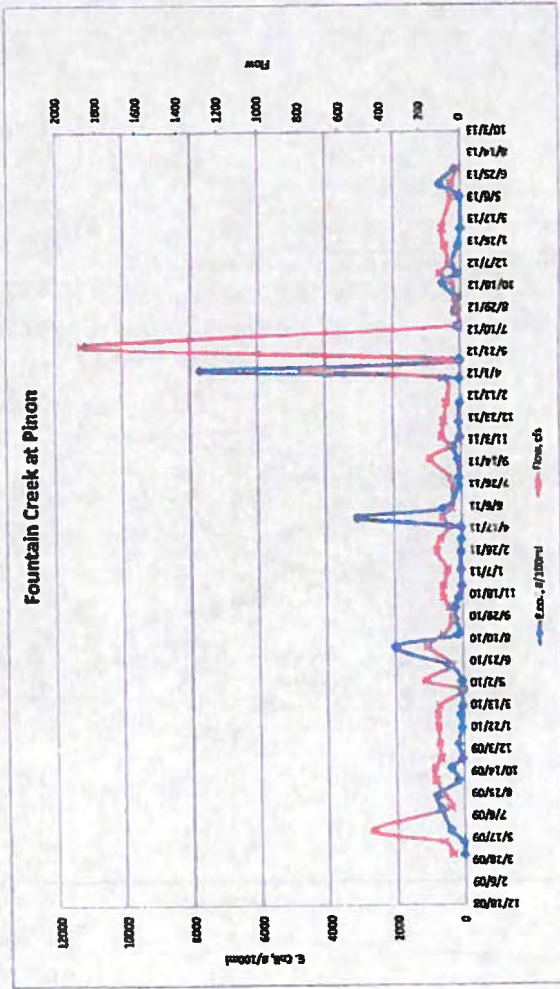
Appendix 4

May through September - Station 07105800 - *E. coli*



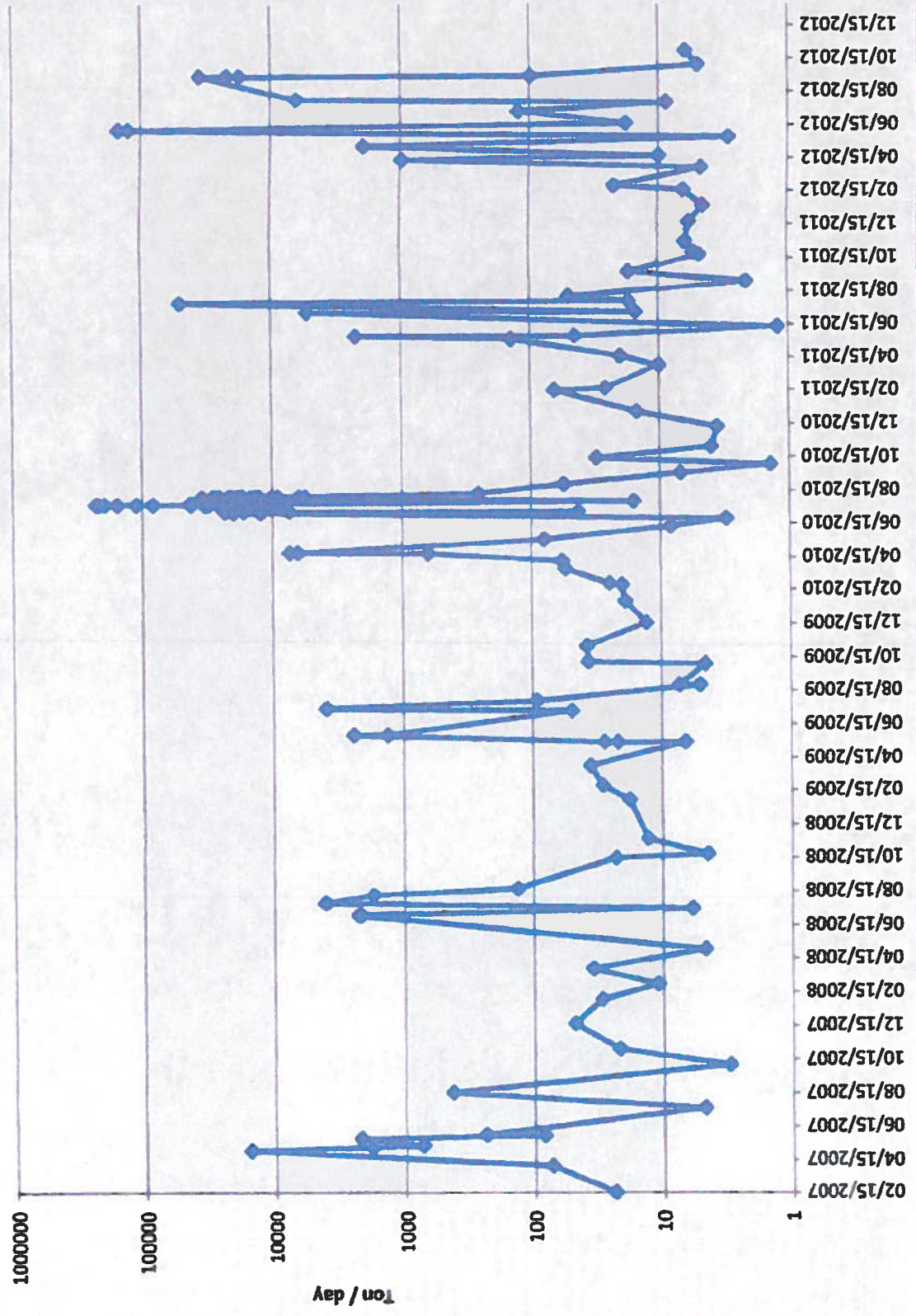
Appendix 6

Sample No.	Description	Date Sampled	E. Coli Coliform #/100 ml	Flow cfs	Method
1464-06	Fountain Creek at Pison Bridge	4/9/09	18.5	61.9223 B	
1775-06	Fountain Creek at Pison Bridge	5/7/09	50.5	106.9223 B	
1763-06	Fountain Creek at Pison Bridge	6/4/09	41.1	450.9223 B	
1822-06	Fountain Creek at Pison Bridge	7/13/09	687	69.9223 B	
1883-06	Fountain Creek at Pison Bridge	8/20/09	816	300.9223 B	
1907-06	Fountain Creek at Pison Bridge	9/24/09	172	245.9223 B	
1947-06	Fountain Creek at Pison Bridge	10/22/09	370	245.9223 B	
1972-06	Fountain Creek at Pison Bridge	11/12/09	50.4	115.9223 B	
2009-06	Fountain Creek at Pison Bridge	12/11/09	172	120.9223 B	
2104-06	Fountain Creek at Pison Bridge	2/18/10	52.1	125.9223 B	
2131-06	Fountain Creek at Pison Bridge	3/12/10	91	137.9223 B	
2171-06	Fountain Creek at Pison Bridge	4/15/10	39.4	119.9223 B	
2201-06	Fountain Creek at Pison Bridge	5/14/10	37.3	21.9223 B	
2248-06	Fountain Creek at Pison Bridge	6/10/10	38.4	187.9223 B	
2303-06	Fountain Creek at Pison Bridge	7/22/10	411	55.9223 B	
2341-06	Fountain Creek at Pison Bridge	8/19/10	1990	174.9223 B	
2418-06	Fountain Creek at Pison Bridge	9/23/10	162	98.9223 B	
2465-06	Fountain Creek at Pison Bridge	10/21/10	238	50.9223 B	
2500-06	Fountain Creek at Pison Bridge	11/11/10	219	64.9223 B	
2548-06	Fountain Creek at Pison Bridge	12/6/10	127	94.9223 B	
2604-06	Fountain Creek at Pison Bridge	1/13/11	35.9	74.9223 B	
2645-06	Fountain Creek at Pison Bridge	2/24/11	31.5	125.9223 B	
2683-06	Fountain Creek at Pison Bridge	4/12/11	74.1	108.9223 B	
2703-06	Fountain Creek at Pison Bridge	5/12/11	16.1	69.9223 B	
2738-06	Fountain Creek at Pison Bridge	6/21/11	3000	96.9223 B	
2802-06	Fountain Creek at Pison Bridge	7/23/11	548	53.9223 B	
2831-06	Fountain Creek at Pison Bridge	8/11/11	93.3	41.9223 B	
2881-06	Fountain Creek at Pison Bridge	9/22/11	68.7	50.9223 B	
2921-06	Fountain Creek at Pison Bridge	10/19/11	105	153.9223 B	
2959-06	Fountain Creek at Pison Bridge	11/10/11	248	53.9223 B	
3026-06	Fountain Creek at Pison Bridge	12/15/11	35.9	94.9223 B	
3119-06	Fountain Creek at Pison Bridge	1/26/12	52	85.9223 B	
3145-06	Fountain Creek at Pison Bridge	3/22/12	28.2	77.9223 B	
3189-06	Fountain Creek at Pison Bridge	4/12/12	34.5	88.9223 B	
3214-06	Fountain Creek at Pison Bridge	5/3/12	7700	787.9223 B	
3270-06	Fountain Creek at Pison Bridge	6/7/12	18	29.9223 B	
3312-06	Fountain Creek at Pison Bridge	7/19/12	11100	1670.9223 B	
3348-06	Fountain Creek at Pison Bridge	8/23/12	79.4	15.9223 B	
3390-06	Fountain Creek at Pison Bridge	9/20/12	172	28.9223 B	
3417-06	Fountain Creek at Pison Bridge	10/25/12	119	30.9223 B	
3445-06	Fountain Creek at Pison Bridge	11/15/12	548	47.9223 B	
3499-06	Fountain Creek at Pison Bridge	12/4/12	101	101.9223 B	
3550-06	Fountain Creek at Pison Bridge	1/17/13	299	60.9223 B	
3539-06	Fountain Creek at Pison Bridge	2/26/13	98.8	79.9223 B	
3674-06	Fountain Creek at Pison Bridge	3/19/13	18.7	51.9223 B	
3718-06	Fountain Creek at Pison Bridge	4/16/13	58.4	44.9223 B	
		5/10/13	613	46.9223 B	
		7/10/13	161	15.9223 B	



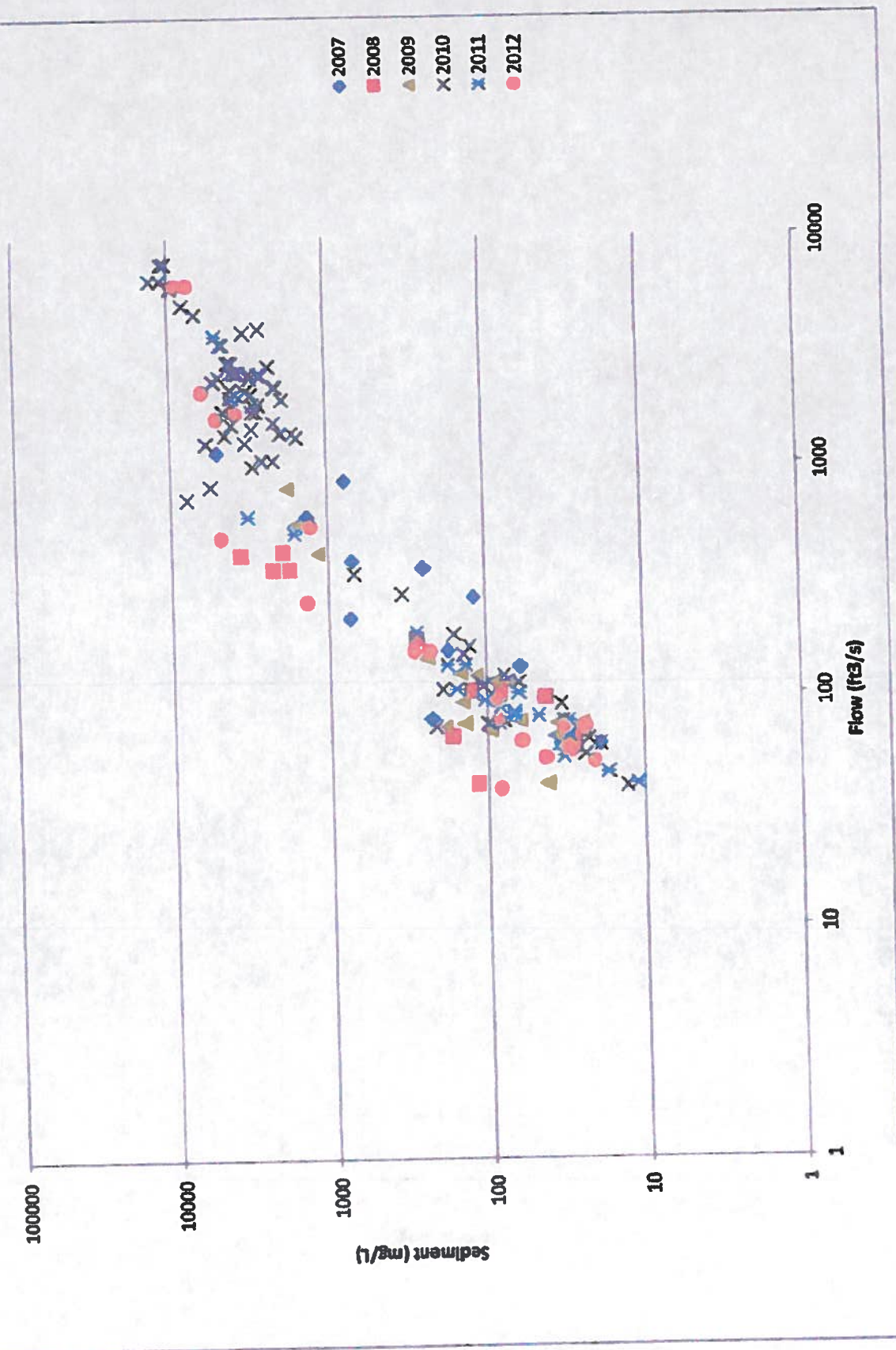
Appendix 7

Station 07105800 - Suspended Sediment Discharge



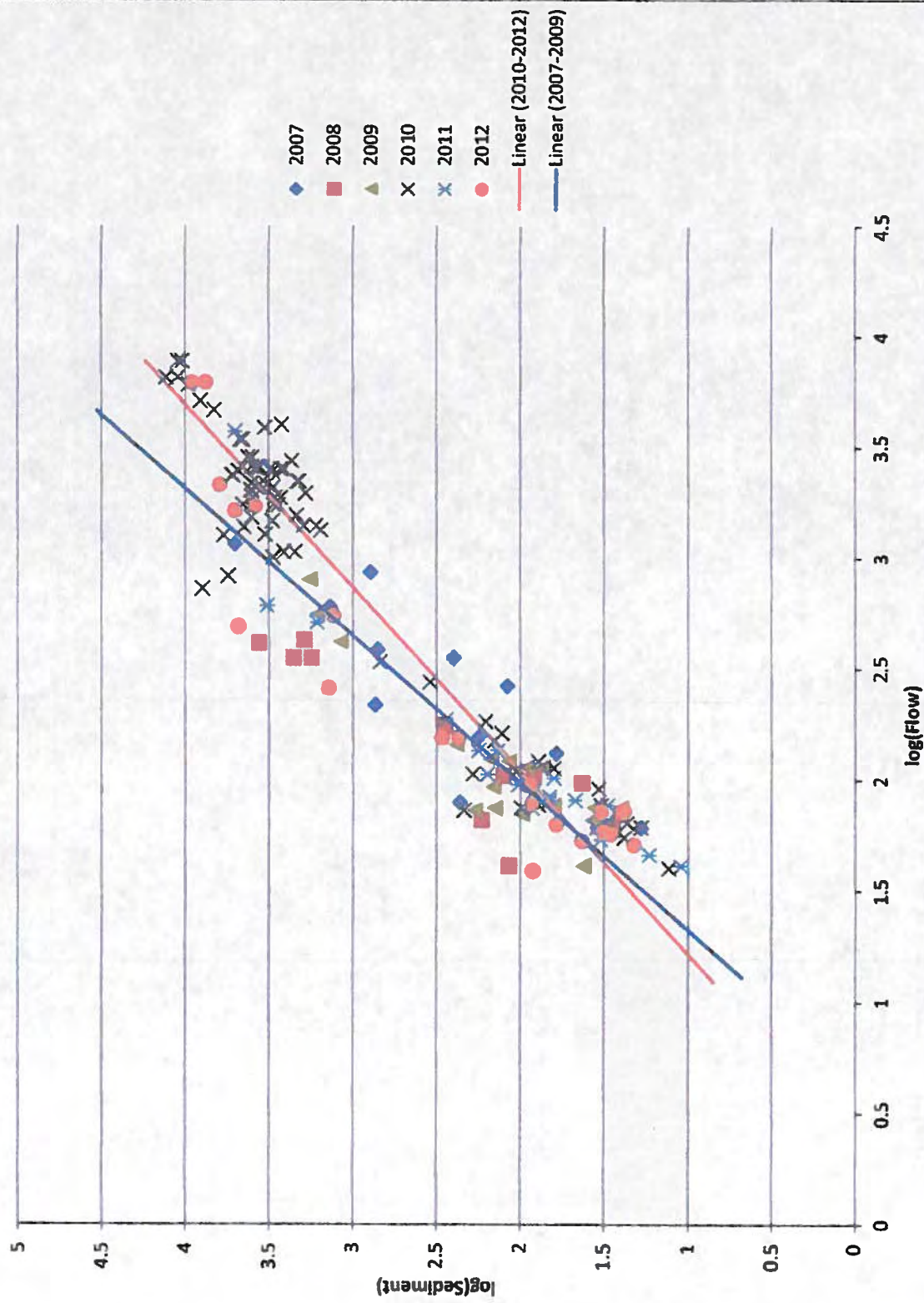
Appendix 8

Sediment Concentration vs. Instantaneous Discharge - 07105800



Appendix 9

Sediment Concentration vs. Instantaneous Discharge - 07105800



Conducted analysis of LAVWCD assertions about Fountain Creek flows after dissolution of SWENT:

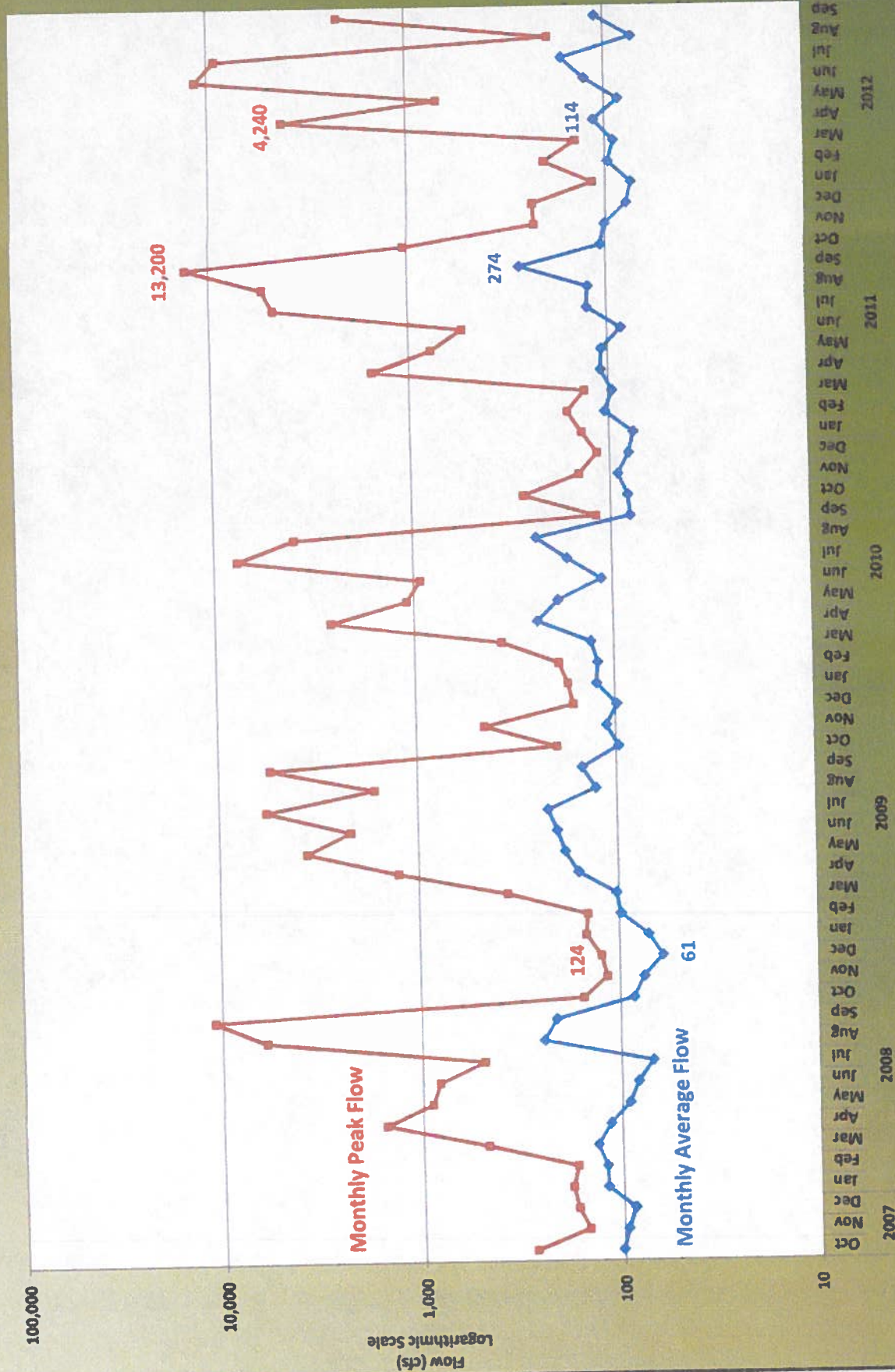
- Data does not support link between increased flows or pollutants and dissolution of SWENT in 2010
- No increase in average or peak flows pre and post SWENT; data actually shows downward trend
- *E.coli* data shows slight downward trend
 - State listed creek as impaired due to various sources
- No increased sediment load; slight decrease in 2010-2012
- USGS study indicates stormwater detention facilities built within Colorado Springs would have minimal impact on peak flows in Pueblo



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Actual Flow Analysis

Security Gage 07105800 Monthly Average and Peak Flow October 2007 - September 2012

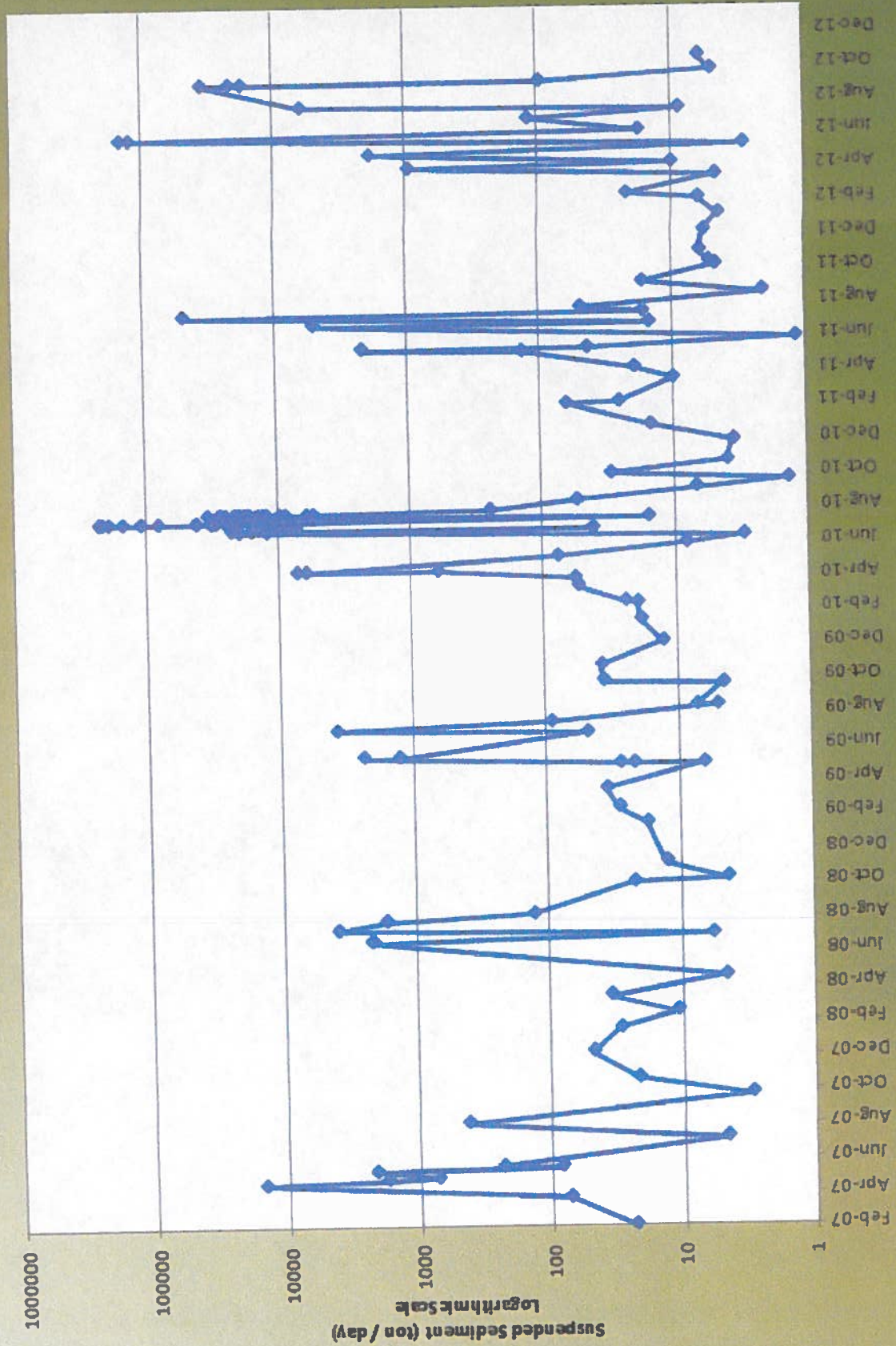




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Actual Sediment Analysis

Station 07105800 - Suspended Sediment Discharge

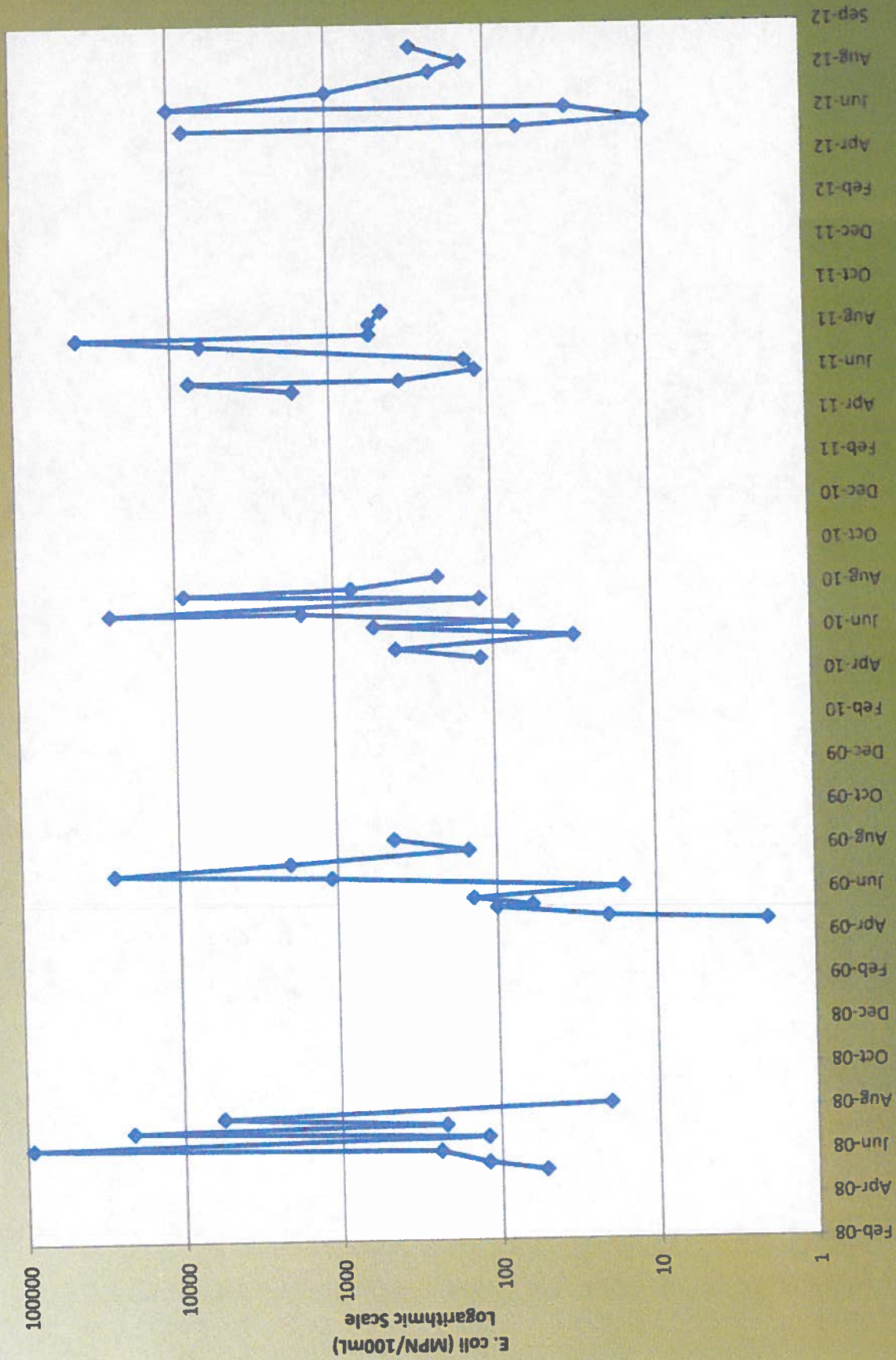




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Actual E.coli Analysis

May through September - Station 07105800 - E. coli

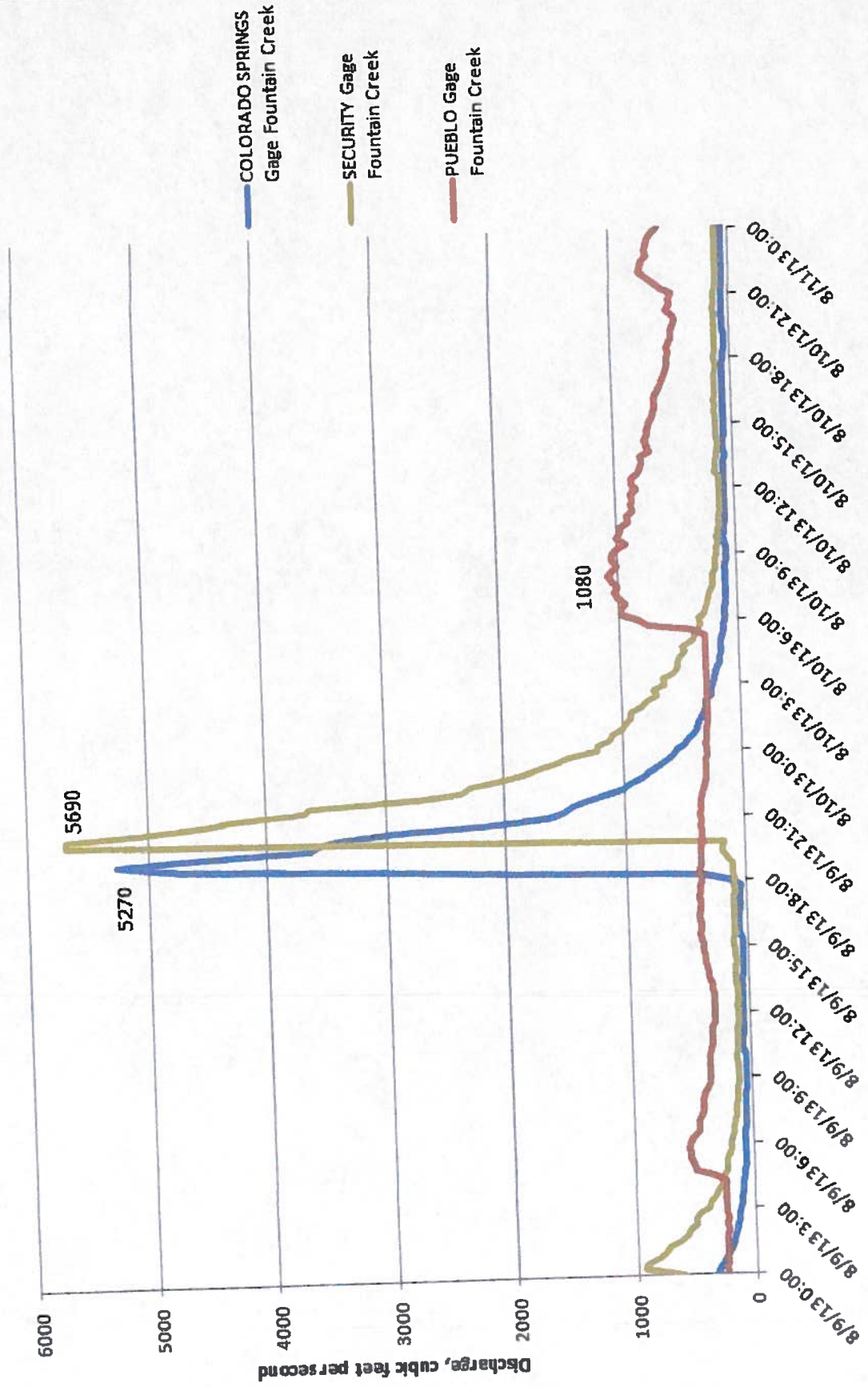




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August Storm Flow Analysis

USGS Discharge Data 8/9/13 - 8/11/13

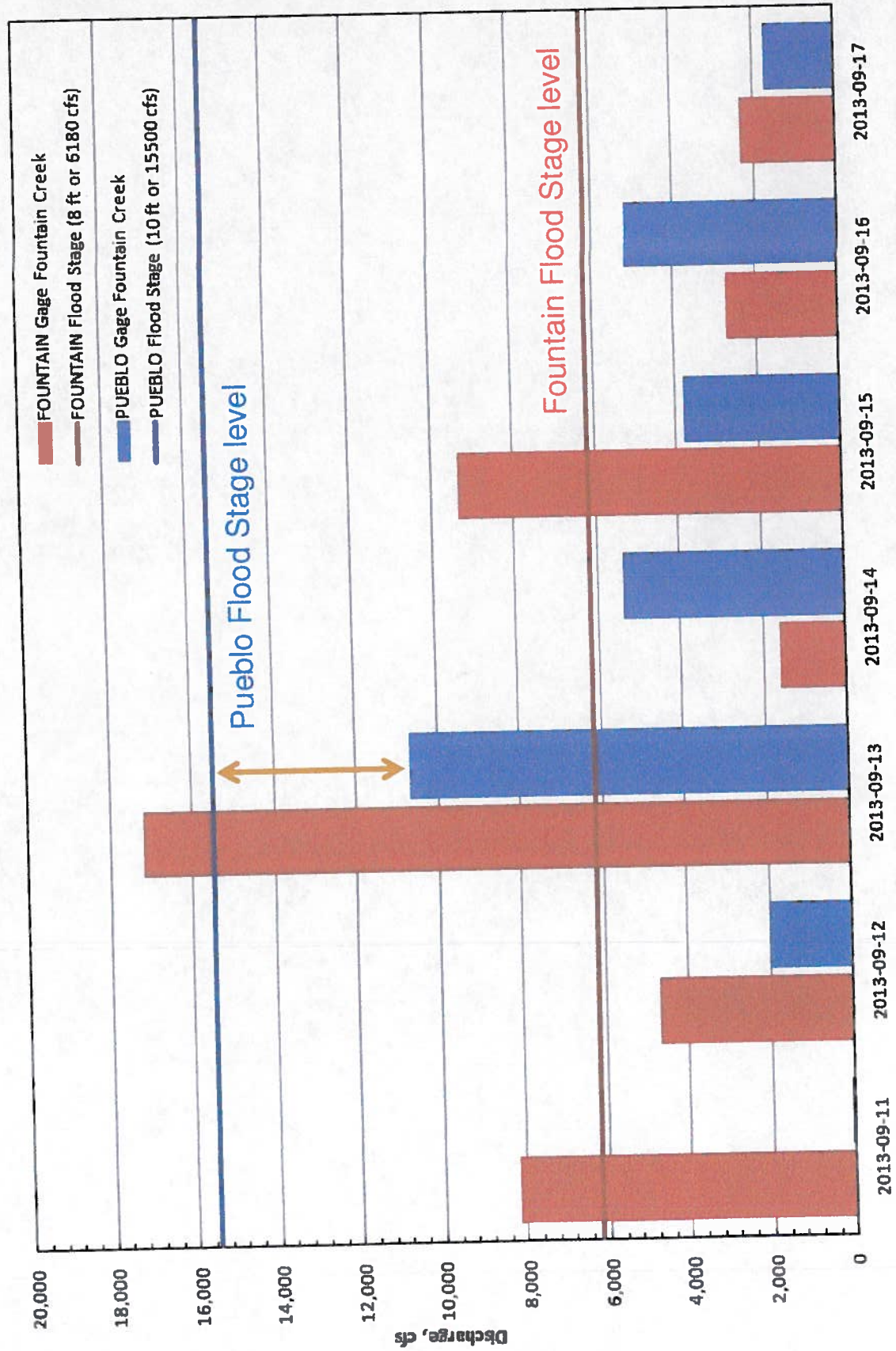




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Sept. Storm Flow Analysis

Peak Flow Data 9/11/2013 - 9/17/2013



Section 6. Responses to Additional Commissioner and Public Comments

The following are additional comments and questions raised by County Commissioners or members of the public and the SDS Participants' responses to those concerns.

- Fountain Creek Average Depth – Commissioner Pace asked about the amount of water that corresponds to average depth information in the SDS Participant's presentation slide titled "Fountain Creek at Pueblo."

Response: Table 45 (page 226) of the SDS Final Environmental Impact Statement (FEIS), which is available at www.sdseis.com, contains average monthly streamflows for the Fountain Creek at Pueblo gage under existing conditions and with SDS operating at full capacity in 2046. The reported annual average streamflows for existing conditions and with SDS at capacity were 188 and 253 cubic feet per second, respectively. This compares to a 2 year peak flow of 4,700 cfs and a 100 year peak flow of 44,000 cfs. Page 227 of the FEIS states that this change in streamflow corresponds to a depth increase of about 0.2 feet, corresponding to the increase shown on the slide.

- Adaptive Management Process – Commissioner Hart asked how the adaptive management process would function and whether there are timeline aspects for that process.

Response: The Bureau of Reclamation's Record of Decision (ROD) for the SDS Project contained certain General Commitments as well as more specific mitigation measures, the implementation of which is the responsibility of the SDS Participants. With regard to the protection of water quality, the ROD (p. 13) provided that SDS must "include water quality monitoring and adaptive management within the integrated adaptive management program." The General Commitments (ROD p. 12), in turn, obligated SDS to "develop an integrated adaptive management program for the project that will be coordinated with the Participants' existing monitoring programs and Environmental Management System...."

The details of the adaptive management program can be found in the Integrated Adaptive Management Plan (IAMP), which was designed "to provide a structured framework for decision making that can adjust SDS Project mitigations if outcomes from the proposed project mitigation measures are different than contemplated in the Final Environmental Impact Statement (FEIS)." The IAMP (p. ES-1), as accepted by the Bureau of Reclamation, contains a nine step process for adaptive management implementation. Figure 3-1 of the IAMP, a copy of which is attached, summarizes the Integrated Adaptive Management Plan Process. There is no specific timeline attached to the completion of the process, as the process is triggered on an "as-needed" basis. If "unexpected substantive changes occur" from the project based on measured, i.e., monitored metrics, compared with the projected impacts in the FEIS, follow-up monitoring will be conducted to "better understand the extent and cause of unexpected changes if the unexpected changes are shown to be a result of

SDS Project operations” (IAMP p. 3-3). The management actions are then reassessed and will be revised as warranted.

- Scope of SDS Effects Analyses – Ms. Dorothy Butcher asked a number of questions about hydrologic and water quality effects associated with SDS.

Response: This information is contained in the SDS FEIS, which is available at www.sdseis.com. The U.S. Bureau of Reclamation prepared the FEIS in cooperation with the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, U.S. Bureau of Land Management, and the U.S. Fish and Wildlife Service. That document is the culmination of 5.5 years of rigorous technical analyses and public participation. It contains detailed information on a wide range of environmental, cultural, and socioeconomic effects of SDS construction and operation through 2046. Section 3.8, beginning on page 315, contains information specific to flood hydrology (or peak flows) in Fountain Creek. Section 3.7, beginning on page 259, provides information specific to water quality in Fountain Creek. A less technical discussion is provided in the FEIS Summary, which is also available at www.sdseis.com.

In summary, the SDS FEIS water quality analysis concluded that the amount of *E. coli* in the creek will not increase as a result of SDS, and in fact, the concentrations could even be slightly less during the operation of SDS due to additional water in the creek.

Specific to flows on Fountain Creek, the SDS FEIS concluded the following:

Base flows: When SDS and current water systems are operating at full capacity (in decades), SDS return flows will have a negligible impact on base flows in Fountain Creek – a depth increase of only 2 to 3 inches in Pueblo.

Storm flows: The SDS FEIS concluded there would be negligible adverse effects on peak flows and that there would be beneficial effects once the SDS reservoirs are constructed. Nevertheless, Colorado Springs is required by Condition 23 of the Pueblo County 1041 permit to “maintain stormwater controls and other regulations intended to ensure that Fountain Creek peak flows resulting from new development served by the SDS project within the Fountain Creek basin are no greater than existing conditions.”

The following supporting document is attached:

- Attachment S. Summary of SDS Integrated Adaptive Management Plan Process

FIGURE 3-1
Summary of the Southern Delivery System Project Integrated Adaptive Management Plan Process

