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**PUEBLO COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT**

March 28, 2014

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

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

Dear Ms. Ronca:

We received your letter requesting verification that the SDS project is meeting its commitments to Pueblo County's permits, approvals and agreements as described in the Record of Decision ("ROD") and relative to our staff review of the 2013 Permit Compliance Report prepared by Colorado Springs Utilities (Utilities) as SDS project manager. As you are no doubt aware, the terms and conditions of the SDS 1041 Permit issued by the County require ongoing compliance by the SDS participants.

During 2013, Utilities staff and consultants have met with County staff and consultants monthly to monitor and evaluate compliance with the 1041 Permit; these meetings have been helpful. Additionally, on September 20, 2014, Utilities made a public presentation to the Board of Commissioners reporting on the status of the SDS project construction. Based upon information known and available to the County at this time, County staff has identified concerns, including those issues described later in this letter, which arose or have continued during 2013.

As a reciprocal courtesy, the County would request a letter from Reclamation as to how the SDS Project is meeting its commitments and obligations in the ROD and associated federal licenses and approvals, and, importantly, the processes and inspections which Reclamation is employing to determine compliance. For example, now that construction of the pipeline through Pueblo is nearing completion, the County would welcome input from Reclamation about the

pipeline revegetation and reclamation efforts of Utilities and what monitoring and inspection by Reclamation is being done in this respect. The County staff has an interest in enlisting the expertise of Reclamation and coordinating efforts with Reclamation to ensure viability and success of the revegetation and reclamation of the pipeline right of way on both federal and other property through the County.

The concerns of the County staff at this time on 1041 Permit compliance include the following:

1. **Pueblo West Lawsuit against 1041 SDS 104 Permit and against Enforcement of Pueblo Flow Management Plan.** Pueblo West, as one of the proposed SDS Participants, has challenged the enforceability of Condition 9 in Pueblo County's approval of 1041 Permit No. 2008-002 (SDS 1041 Permit). Condition 9 requires all SDS Participants to cooperate in and comply with the Pueblo Flow Management Plan and its requirements for maintaining certain flows through Pueblo below Pueblo Reservoir by cessation of exchanges. Pueblo West filed a lawsuit against the County in Case No. 09CV695 in Pueblo County District Court to prevent the County's enforcement of this Condition 9. A Settlement Agreement, dated November 23, 2010, was executed between Pueblo West, Pueblo County, the City of Colorado Springs on behalf of its Utilities, and the Board of Water Works of Pueblo, under which the Parties agreed to stay further action in the lawsuit pending the satisfaction of several preconditions to settlement set forth in the Settlement Agreement, including a proposed exchange regimen by which Pueblo West could comply with Condition 9. The Settlement Agreement further provides that **Pueblo West cannot utilize the features and facilities of the SDS Project** until it dismisses its lawsuit against the County in accordance with the Settlement Agreement or until a final court judgment has been entered that Pueblo West is entitled to utilize the SDS features and facilities. As of this date, the preconditions to settlement have not been satisfied fully (including Pueblo West's construction of Wildhorse Creek return flow pipeline proposed by Pueblo West for completion in 2013 but which construction still has not yet commenced).
2. **Stormwater Controls.** Utilities made a commitment to sustainable and substantial funding for stormwater control infrastructure, as assumed under the SDS EIS which EIS was submitted to the County by the Applicant in support of its 1041 Permit. Condition 19 of the 1041 Permit incorporates this assumption: *"In addition, Colorado Springs has established a Stormwater Enterprise Fund to finance the capital costs of needed stormwater control infrastructure."* This funding is critical because under Condition 23 of the 1041 Permit, the Applicant committed to *"maintain stormwater controls and other regulations intended to ensure the Fountain Creek peak flows resulting from new development served by the SDS project within the Fountain Creek basin are no greater than existing conditions."* In 2009, shortly after the 1041 Permit was issued, the City of Colorado Springs abolished its Stormwater Enterprise Fund and has not put an alternative program in place. There is now a lack of an assured and sustainable funding for stormwater infrastructure and maintenance within Colorado Springs and surrounding

regions, including other SDS participants in El Paso County. The County has relayed its concerns to the Colorado Springs City Council as well as to the Mayor of Colorado Springs and is monitoring this issue to ensure permanent alternative financing measures will be adopted timely to meet the intent of the 1041 Permit, or if not, whether a 1041 Permit amendment or suspension is required. There might also be the need for Reclamation to issue a supplemental EIS to assess the cumulative effects of uncontrolled stormwater controls when combined with increased flows associated with SDS and with the proposed Master Storage Contract in Pueblo Reservoir (which is now the subject of an EIS and ROD by Reclamation).

3. **Wastewater System Improvements.** In the 2013 annual report, Utilities describes under Appendix 7 of its 2013 Compliance Report its progress related to wastewater system improvements. Under Condition 7 of the 1041 Permit, Utilities committed to invest an additional \$75,000,000 in its wastewater system between January 1, 2009 and December 31, 2024. Utilities is to provide an annual report to Pueblo County describing such expenditures for the prior year. According to the 2013 report, Utilities expended \$4,258,725 in 2013 for its LCERP and MHERP programs. The total expended to date since 2009 is reportedly \$30,934,478. The County appreciates the detailed lists of reported projects which Utilities now has added to Appendix 7 beginning with the 2013 report. However, County staff has not been able independently to verify and confirm the reported amount spent by Utilities. The County is pleased that Utilities has increased substantially its annual expenditures over the 2012 year; nevertheless, the County has a continuing concern as to whether Utilities will be able to meet its full commitment by 2024.
4. **Pueblo Reservoir Management Plan.** Condition 16 of the 1041 permit states *“Colorado Springs Utilities commits to Pueblo County as a part of the 1041 process that it will voluntarily participate, when and if the Southeastern Colorado Water Conservancy District, the Bureau of Reclamation, and any other affected party agree to participate, in developing a reservoir management plan for Pueblo Reservoir designed to protect reservoir levels and recreational opportunities on Pueblo Reservoir to the extent feasible given the potential for future changes in hydrology and water demands by project beneficiaries.”* We are unaware of any efforts by any of the parties to implement this condition. A reservoir management plan is particularly critical given Reclamation’s pending approval process for the Arkansas Valley Conduit, Interconnect, and Master Storage Contract projects at Pueblo Reservoir. In this regard, we understand Reclamation and Colorado Parks and Wildlife are preparing a recreation management plan for Pueblo Reservoir State Park, which would be an opportunity for a reservoir management plan to be studied and developed in conjunction with that recreation plan.
5. **Fountain Creek Monetary Mitigation Payments.** Condition 6 of the 1041 Permit requires monetary mitigation of just under \$50M to be paid by the SDS Applicant to the Fountain Creek Watershed, Flood Control and Greenway District (FCWFCGD) for Fountain Creek impacts. These monies are to be paid in five annual installments

beginning on January 15 of the year following SDS water deliveries, or if paid later than October, 21, 2012 because of project delays, the payments are to be increased by indexing as required to preserve their present value. The completion date of the SDS Project was postponed by CSU for about 4 years and is now projected to be completed in 2016. No installment payment was made on or before October 21, 2012. The discussion of the suitable indexing method is ongoing and is expected to be resolved soon between the County and Utilities. There are also ongoing negotiations for approval of interim annual monetary advances to be paid by Utilities to the FCWFCGD to help fund additional flooding and sedimentation studies on Fountain Creek before the first installment is due.

6. **Restoration of Disturbed Areas.** Condition 22 of the SDS Permit, together with Mitigation Appendix C-9, required reclamation of lands disturbed by the SDS construction. Among other requirements, the SDS Applicant is to revegetate disturbed areas in Pueblo County to not less than 90 per cent of the pre-construction vegetation cover with similar species diversity. The Applicant provided the County security bonds equal to a penal amount of \$2,000/acre of land in permanent or temporary construction easements, to be released upon establishing 90 percent of pre-construction vegetation cover; these bonds currently are set to expire on December 31, 2015. A landowner of a large ranch over which the pipeline crosses in the S3 area has made complaints to the County pertaining to Condition 22 of the 1041 Permit. Mr. Walker, the rancher, disputes the SDS efforts at revegetation and the post-construction contours on his ranch. Pueblo County has obtained professional services of a consultant for the matters relevant to the site restoration and revegetation measures over the pipeline within Pueblo County, and CSU has agreed to reimburse Pueblo County for such expenses pursuant to Condition 29. The County has been informed by Utilities that it is remediating the damage to its prior revegetation and drainage efforts caused by storms in 2013.

7. **Water Quality 401 Certification.** Condition 4 of the 1041 Permit requires that the Applicant shall comply with applicable local, State and federal regulatory requirements; in that regard, Mitigation Appendix C-7 specifically references 401 Certification by the State of Colorado pursuant to the Clean Water Act requirements. By Order dated April 12, 2012 in Case 2011CV174, the District Court in and for Pueblo County held the State's 401 Certification to be void. The Court found that the Colorado Water Quality Control Commission did not follow lawful procedures, and the WQCC was arbitrary and capricious in its findings that SDS would comply with water quality standards and would not cause significant degradation to the Arkansas River and Fountain Creek. The Court also found that the proposed adaptive management plan and other mitigation measures would not provide reasonable assurance that the water quality standards would be met. This Order was reversed on an appeal to the Colorado Court of Appeals, although there is a pending petition to the Colorado Supreme Court to appeal the decision of the Court of Appeals. The County is awaiting the outcome of possible Supreme Court review to determine whether an amendment or suspension of the 1041 Permit is required.

8. **Haul Road Repair and Restoration.** Condition 13 of the 1041 Permit, together with its Mitigation Appendix CR-5, required identification of Haul Roads used during SDS construction, and required the SDS Project Applicant to maintain, repair and rehabilitate County roads used as Haul Roads. The County and Utilities entered into a letter agreement, dated May 29, 2012, to implement and satisfy this condition. In January 2014, Utilities made the final installment payment in full satisfaction of the monetary mitigation of \$15 Million for road rehabilitation as set forth in the letter agreement. By letter dated June 21, 2013 from me as County Planning Director to Utilities, the County acknowledged Utilities' notification of the cessation of the use of County Haul Roads for SDS construction, and the County released the SDS Applicant from ongoing maintenance of the County Haul Roads, subject to continuing warranty obligations for road crossings.

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

Sincerely,



Joan Armstrong
Director
1041 Permit Administrator

cc: Board of County Commissioners
Greg Styduhar, County Attorney
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