



April 8, 2014

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

Re: PCAR for Southern Delivery System

Dear Ms. Ronca:

Colorado Springs Utilities (CSU) is in receipt of the Pueblo County Department of Planning and Development correspondence to you dated March 28, 2014, concerning the permit compliance status of the Southern Delivery System (SDS) Project. I would like to supplement our first quarter reporting matrix with the following additional detail on the areas of concern noted by the County. In addition, CSU is prepared to provide you, upon request, with any available additional documentation that you believe may be useful, and will gladly arrange for a tour of the Project site should you so desire.

1. Pueblo West and Condition # 9: CSU has continued to work with Pueblo West to ensure that there is full compliance on its part with the conditions of the permit, with specific reference to condition # 9. A copy of the 2010 Settlement Agreement referenced in the Pueblo County correspondence is enclosed for your review and use.
2. Stormwater Controls: As Reclamation is aware, CSU has been continuing to assist the City in advancing the finalization and approval of a new Colorado Springs' drainage criteria manual (DCM). The DCM embodies the type of regulatory program contemplated under Condition # 23 of the Pueblo County 1041 permit. A revised version of the DCM has been submitted to the Colorado Department of Public Health and Environment (CDPHE) for its review. The revisions are designed to address the original set of CDPHE comments. It is anticipated, based on dialogue with CDPHE staff, that the CDPHE review should be complete in the coming weeks. The final draft can then be brought before City Council for its approval. In addition, as indicated in the quarterly matrix, the citizen led Stormwater Task Force is making great strides in an effort to place a regional stormwater proposal on the November ballot. Legal, engineering, and economic research have been conducted by outside consultants, a second public opinion poll has been completed, and both an IGA and ballot language are in the draft stages.
3. Wastewater System Improvements: CSU has reiterated its offer to Pueblo County staff to make available to them the CSU manager responsible for tracking the system improvements. Such a face-to-face meeting may assist in providing the type of verification that the County seeks.

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

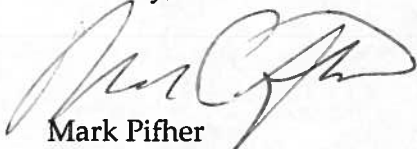
Phone 719.668.4800
Fax 719.668.8734
<http://www.csu.org>

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4. Pueblo Reservoir Management Plan: Neither the Southeastern Colorado Water Conservancy District nor Reclamation, the two agencies with primary jurisdiction over Reservoir operations have, to date, pursued a management plan. That said, CSU has once again brought this issue to the attention of Jim Broderick of the Southeast District. He has indicated that Pueblo County can contact him directly to discuss the status of any planning activities. This message has been conveyed to County staff.
5. Fountain Creek Monetary Mitigation: CSU agrees that staff of the parties have reached a verbal understanding as to the Condition # 6 calculation methodology and a written representation of that understanding should be executed shortly.
6. Restoration of Disturbed Areas: CSU, through its consultants, has been working cooperatively with the County and its consultant in efforts to ensure that the County's revegetation criteria are met. This includes the sharing of expert reports and the conduct of on-site visits. Relative to Mr. Walker's claims, after the large storm events of last fall, CSU retained expert consultants to visit the Walker easement and identify any additional restoration and revegetation activities that they believed were warranted. CSU, at great expense, has conducted all of the restoration efforts identified by the consultants and is very close completing the additional revegetation. In addition, County staff was given a tour of the Walker easement upon substantial completion of the above activities. Unfortunately, in a dispute over the value of the construction easement, which was originally appraised at approximately \$75,000, Mr. Walker has claimed damages to his property in an amount over \$9,000,000. A trial has been scheduled in the matter for November, 2014, and the litigants are currently exchanging expert reports.
7. Water Quality 401 Certification: CSU is awaiting the grant or denial of the petition for cert filed by those opposing the project and which is currently pending in the Colorado Supreme Court.

Should you be in need of any further information or explanation, please do not hesitate to contact me.

Sincerely,



Mark Pifher
SDS Permitting Manager

cc: Jaci Gould, Area Manager, BOR Great Plains Region
Mike Ryan, Regional Director, BOR Great Plains Regional Office
Anne Castle, Assistant Secretary for Water and Science, Department of the Interior
Joan Armstrong, Director, Pueblo County Planning and Development

Settlement Agreement

This Settlement Agreement ("Agreement") is entered into and effective this ____ day of 11/23/ 2010 among Pueblo West Metropolitan District ("Pueblo West"), the Board of County Commissioners of Pueblo County ("County"), the City of Colorado Springs on behalf of its Colorado Springs Utilities ("Utilities"), and the Board of Water Works of Pueblo ("PBWW"). The four entities together are referred to as the "Parties."

RECITALS

A. This Agreement establishes terms and conditions for settlement of: (1) issues arising out of Condition 9 in the County's approval of a 1041 Permit No. 2008-002 ("SDS 1041 Permit") pursuant to its land use code for the water supply project known as the Southern Delivery System ("SDS"), (2) the resulting civil action commenced by Pueblo West under Case Number 09CV695 in Pueblo County District Court, and (3) issues arising out of Pueblo West's proposed pump-back by pipeline of its reusable return flows to a watershed that drains into Pueblo Reservoir ("Pump-back") for delivery into Pueblo Reservoir.

B. On July 16, 2010, counsel for the Parties signed a Settlement Memorandum ("Settlement Memorandum.") The Settlement Memorandum contemplated the development and formal execution of this Agreement consistent with the provisions of the Settlement Memorandum.

C. As used herein, the terms "PFMP" or "FMP" refer to the Arkansas River Flow Management Program for foregoing exchanges and changes of water rights ("Subject Exchanges" as defined in the following described Intergovernmental Agreements) within

a segment of the Arkansas River below Pueblo Reservoir to help achieve the Year-Round Flows and Recreation Flows, all as more fully set forth in the March 2004 "Three Party IGA" between the City of Pueblo ("City"), PBWW, and Utilities, and in the May 2004 "Six Party IGA" between the same three parties and the City of Aurora, the Southeastern Colorado Water Conservancy District and the City of Fountain, and the February 20, 2006 Clarification Letter signed by all six (6) parties. In the SDS 1041 Permit, this program is referred to as the Pueblo Flow Management Program or "PFMP", and Condition 9 requires all SDS Participants to cooperate in and comply with the PFMP. Pueblo West is not a signatory to either the Three Party IGA or the Six Party IGA.

D. Pueblo West has contracted to participate in the first approximately 800 feet of the SDS pipeline, out of approximately 43 miles total length, which saves construction costs compared with Pueblo West building its own separate pipe and pumping plant to move more water from the outlet of Pueblo Dam to its water treatment plant. Pueblo West is also seeking a contract with the Bureau of Reclamation to obtain up to 10,000 acre-feet of long-term "excess capacity" storage in Pueblo Reservoir.

E. Pueblo West holds a decree of the water court in Case No. 85CW134(A) entered on September 21, 1993, for a conditional water right to recapture and successively use the sewered Reusable Return Flow as defined therein, which water is referred to herein as the Part A Reusable Return Flow.

F. Pueblo West holds a decree of the water court in Case No. 85CW134(B) entered on June 9, 2009, for a conditional water right to recapture and successively use the non-sewered Reusable Return Flows as defined therein, resulting from outdoor uses and septic systems in Pueblo West, which water is referred to herein as the Part B Reusable Return Flows (subject to the limitations of paragraph 2 of the decree in Case No. 85CW134(B), all references in this Agreement to Cases No. 85CW134(A) and

85CW134(B) include the potential additional sources of water mentioned in or to be approved in accordance with paragraph 7 of the decree in Case No. 85CW134(A)).

G. One means by which Pueblo West may recapture and reuse its Part A and B Reusable Return Flows is by exchanging those return flows downstream of Pueblo Dam for water in the Arkansas River at Pueblo Dam, which water is delivered to Pueblo West or stored in Pueblo Reservoir by Pueblo West. These conditional appropriative rights of exchange decreed to Pueblo West in Case Nos. 85CW134 (A) and (B) are not currently subject to the FMP, and are senior to the City of Pueblo's Recreational In-Channel Diversion water right ("RICD") on the Arkansas River. Pueblo West's decrees do restrict the exchanges at certain times of the year and during certain flow conditions on the river including, with respect to the Part B Reusable Return Flows, when the flows in the Arkansas River below the Pueblo Reservoir outlet, including the Fish Hatchery flows, are less than 100 c.f.s. or would be reduced below 100 c.f.s. by the exchanges. Pueblo West, therefore, is one of the few major water users with appropriative rights of exchange that could operate through the reach of the Arkansas River from its confluence with Fountain Creek upstream to Pueblo Reservoir, which exchanges are not currently subject to all of the requirements of the FMP, although they are subject to certain restrictions in the decrees in Cases No. 85CW134(A) and (B).

H. Under this Agreement, all of Pueblo West's exchanges would be subject to reduction as necessary to meet the Year-Round Flow requirement of 100 c.f.s. in the Arkansas River at the Above Pueblo Location, calculated as set forth in the FMP. Also, Pueblo West's exchanges from points at or below the "Combined Flow Location" as defined in the FMP (just above the Fountain Creek confluence) will be subject to curtailment as needed or necessary to meet the Year Round and Recreational Flow requirements of the FMP. Making those exchanges subject to the FMP will help to satisfy the purposes and goals of the FMP.

I. Some of Pueblo West's exchanges decreed in Cases No. 85CW134(A) and 85CW134(B) are unique because the substitute water supply for those exchanges is delivered to the Arkansas River upstream of the City's RICD water right and Whitewater Park, and therefore operation of such exchanges will not deplete stream flows in the portion of the Arkansas River downstream of its confluence with Wildhorse Creek, including the flows at the Combined Flow Location. To account for this unique circumstance, the Parties desire to obtain a reasonable accommodation under the FMP accounting with respect to the Recreation Flows. Under this Agreement Pueblo West could operate such exchanges up to a maximum average daily rate of 6 c.f.s., with an instantaneous rate not to exceed 10 c.f.s., when the river flows are at or above the 100 c.f.s. Year-Round Flow Requirement as measured at the Above Pueblo location.

J. The Parties desire to cooperate to assist Pueblo West in the development of alternatives to the Pump-back to avoid any potential adverse impacts to the water quality of Pueblo Reservoir. The Parties also acknowledge the need to protect water quality in the Arkansas River downstream from its confluence with Wildhorse Creek to protect the aquatic life and habitat and recreational uses in that reach, and will reasonably cooperate with each other and the City of Pueblo in providing such protection. This Agreement does not impose an obligation on any party to expend funds or provide water or other property for this purpose.

K. Pueblo West and Pueblo County wish to settle the issues listed in Recital A above in a fair and amicable manner. PBWW and Utilities believe it is in each of their best interest to settle the issues listed in Recital A above, and wish to participate in this Agreement to the extent set forth herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Condition 9 of the County 1041 Permit for SDS.** Condition 9 of the SDS 1041 Permit provides as follows:

"9. Continuation of Pueblo Flow Management Program.

All SDS Participants shall cooperate in and comply with the PFMP (including Pueblo West and Security who are not signatories to the PFMP agreements at this time) and its requirements for maintaining target flows through Pueblo below Pueblo Reservoir by cessation of exchanges."

The Parties agree that Pueblo West's acceptance of and ongoing compliance with the terms and conditions of this Agreement will constitute Pueblo West's full satisfaction of the requirements of Condition 9.

2. **Exchanges of Pueblo West Return Flows and Relationship to the FMP Program.**

a. **Wildhorse Creek Exchange.** Pueblo West's reusable water in Pesthouse Gulch, Wildhorse Creek, a.k.a. Dry Creek ("Wildhorse Returns") includes all of the Part A and all of the Part B Reusable Return Flows that accrue to the Arkansas River downstream from Pueblo dam, as the same are quantified under their respective decrees. Pueblo West's Wildhorse Returns will accrue to the Arkansas River at the confluence of Wildhorse Creek, either by flowing down the natural stream system, as such reusable water does at the time of execution of this Agreement, or through a collection and pipeline system that Pueblo West intends to construct, and that will discharge into Wildhorse Creek just upstream of its confluence with the Arkansas River, ("Wildhorse Pipeline Project"). The Wildhorse Returns accruing to the Arkansas River may be exchanged upstream by Pueblo West for storage in Pueblo Reservoir or for diversion from the Arkansas River at Pueblo Dam ("Wildhorse Exchange"). The amount

of the exchange is limited to the amount of Wildhorse Returns that are measured, released into Wildhorse Creek, and delivered to the Arkansas River in accordance with the decrees in Cases No. 85CW134(A) and 85CW134(B).

b. Reduction of Wildhorse Exchange. The rate of Pueblo West's Wildhorse Exchange will be subject to reduction only in the amount necessary to meet the FMP's Year-Round Flow of 100 c.f.s. at the Above Pueblo Location, calculated as set forth in the FMP. Because of the unique circumstance that the Wildhorse Returns accrue to the Arkansas River above the City's Whitewater Park and RICD water right, operation of the Wildhorse Exchange will not reduce the flow of the Arkansas River downstream from Wildhorse Creek. Therefore, the Wildhorse Exchange will not be subject to the Year-Round flow of 85 c.f.s. at the Combined Flow Location

c. Limit on Wildhorse Exchange Rate. Pueblo West's Wildhorse Exchange will be limited to a maximum daily average rate of 6 c.f.s. and a maximum instantaneous rate of 10 c.f.s. Any Wildhorse Exchange above these rates will be subject to all requirements of the FMP.

d. Wildhorse Exchange Rate Added to Above Pueblo Location for Recreation Flows. Because the Recreation Flows for the FMP are measured at the Above Pueblo Location, Pueblo West's Wildhorse Exchange rate set forth in paragraph 2.c., will be added to the Above Pueblo Location for determining compliance with the Recreation Flow requirements for the Subject Exchanges whose source of substitute water supply is delivered to the Arkansas River downstream of the Combined Flow Location. The Parties will seek to authorize this by means of a letter of clarification signed by Pueblo West, and signed and approved by all parties to the Six Party IGA.

e. Other Pueblo West Exchanges. Pueblo West's exchanges from Lake Meredith, and all other exchanges that use substitute water released into the Arkansas River downstream of Pueblo Reservoir (except for the Wildhorse Exchange as defined above), will be subject to curtailment as needed or necessary to meet all of the Year-Round and Recreational flows of the FMP.

3. Participation in the Flow Management Committee, Recovery of Yield (ROY), and the ROY Planning Subcommittee.

a. Pueblo County will support Pueblo West's representation on the Flow Management Committee.

b. PBWW and Utilities agree that, with the consent of the other parties to the Six Party IGA, Pueblo West may attend and participate fully as a non-voting member in all meetings of the Flow Management Committee.

c. Pueblo West, at its sole discretion, may fully participate in the Recovery of Yield (ROY) and the ROY Planning Subcommittee. If a permanent ROY storage facility is planned, Pueblo West will be extended the option to participate in the use of the ROY facility with the cost to Pueblo West determined on a pro rata basis.

d. The ROY participants have already filed for an appropriative right of exchange in Case No. 06CW120, District Court, Water Division 2. The application in that case does not include any reusable water that Pueblo West is unable to divert or exchange due to the applicable limitations of the FMP imposed by this Agreement, Pueblo West's "Foregone Diversions". Pueblo County will support Pueblo West's request to be a party to Case No. 06CW120, so long as the addition of Pueblo West as a party does not affect the priority date of that exchange.

e. Whether or not Pueblo West is added as a party in Case No. 06CW120, PBWW and Utilities will meet with Pueblo West and the other co-applicants in Case No. 06CW120 to develop a plan to make contract exchanges with Pueblo West to ensure that its Foregone Diversions, attributable to the appropriative rights of exchange decreed in Case Nos. 85CW134(A) and (B), are made available to it in Pueblo Reservoir on an equal, pro rata basis with the quantities of ROY water exchanged by river flow from below the Combined Flow Location into or upstream of Pueblo Reservoir by other ROY Participants.

4. **Consent by Other FMP Parties.** This settlement is contingent upon the written consent of the parties to the existing Three Party IGA and Six Party IGA, by a letter of clarification, to: (a) account for Pueblo West's exchanges as set out in this Agreement; (b) not suspend their reduction of the Subject Exchanges, as a result of the limited Wildhorse Exchange, pursuant to Paragraph I(D) of the Three Party IGA and Paragraph D of Exhibit 1 of the Six Party IGA; (c) Pueblo West's non-voting participation in the Flow Management Committee; and (d) Pueblo West's participation in the ROY and the ROY Planning Subcommittee, all as set forth herein. The City has advised the Parties that the City will require as a condition of the City's approval of the letter of clarification referenced in this paragraph, that Pueblo West agree (a) not to oppose any water court applications for findings of diligence or to make absolute the City of Pueblo's RICD water right, and (b) not to oppose or impair the appropriation of a junior, instream flow water right by the CWCB, for a flow rate of 100 CFS on the mainstem of the Arkansas River through the City of Pueblo, between the hours of 10:00 pm and 6:00 am daily. The City acknowledges that Pueblo West will seek a reciprocal agreement from the City, requesting that the City not oppose any water court applications for findings of diligence or to make absolute Pueblo West's conditional water rights in Case Nos. 85CW134 (A) and (B).

5. **Changes to FMP.** In the event any of the FMP requirements are lawfully modified, Pueblo West's obligations shall be modified to the same extent and in the same proportion as those for the parties to the Six Party IGA. The County, however, reserves the right to assert that any modification which provides relaxation of the current flow management requirements for the SDS participants may constitute a material change requiring an amendment of the SDS 1041 Permit.

6. Contract Exchanges for Pueblo West's Twin Lakes Water.

a. Pueblo West annually delivers water from Twin Lakes Reservoir down the Arkansas River to Pueblo Reservoir. This water is currently assessed a 10% transit loss for delivery to Pueblo Reservoir, resulting in lost water supply to Pueblo West. Utilities stores water in Twin Lakes Reservoir and agrees to participate in a contract exchange, at Pueblo West's option, between Pueblo Reservoir and Twin Lakes Reservoir. Through this contract exchange Utilities will annually provide Pueblo West with up to 900 acre-feet of fully reusable water stored in Pueblo Reservoir in exchange for an identical amount of Pueblo West's fully reusable water stored in Twin Lakes Reservoir. This amount of contract exchange will eliminate transit losses assessed against that amount of Pueblo West's fully reusable water in Twin Lakes thereby, offsetting projected losses that might be experienced by Pueblo West due to its compliance with the FMP as set forth in this Agreement.

b. When a permanent ROY storage facility filled from the Arkansas River downstream from the Combined Flow Location is completed, Utilities' obligation to make contract exchanges with Pueblo West will be reduced from 900 acre-feet to the amount required to replace the water losses to Pueblo West caused by the FMP. The reduction will be to the amount of water that Pueblo West would lose had Pueblo West exercised its option to participate in such a ROY storage facility. If more than one such ROY storage facility is constructed, the reduction will be based upon the assumption that Pueblo West exercised its option to participate in each ROY storage facility to the extent necessary to recapture its water losses under the FMP.

c. PBWW has an existing agreement with Utilities for a contract exchange similar to the contract exchange described in paragraph 6.a that might be affected by this contract exchange between Utilities and Pueblo West. Utilities and PBWW hereby accept this agreement for a contract exchange between Utilities and Pueblo West and agree that Utilities will reserve sufficient water to fulfill its obligations to Pueblo West under this agreement prior to making exchanges with the PBWW that might otherwise impair Utilities ability to carry out the exchange with Pueblo West.

7. Pueblo West Pump-Back. Provided all necessary governmental permits, authorizations, and approvals have been issued for the Wildhorse Pipeline Project, Pueblo West will not pump its Wildhorse Returns for discharge into a watershed that drains into Pueblo Reservoir without both the prior written consent of all the parties who divert their municipal water supply directly from Pueblo Reservoir, and further subject to obtaining all applicable governmental permits or authorizations necessary for the Pump-back. Pueblo West has postponed further action upon its pending application before the Colorado Department of Public Health and Environment (CDPHE) for approval of a site application and new discharge permit for its proposed Pump-back. Upon the issuance of all necessary permits and approvals for the Wildhorse Creek pipeline as described herein, Pueblo West shall withdraw its Pump-back application before the CDPHE.

8. Support for Wildhorse Pipeline Project.

a. Pueblo County and the other Parties support Pueblo West's efforts to convey its Wildhorse Returns by the Wildhorse Pipeline Project as an alternative to the Pump-back of such water for discharge into a watershed that drains into Pueblo Reservoir. Pueblo County Staff will assist Pueblo West in attempting to resolve any concerns that are raised in the City or County permit processes, or before other agencies in other approval and permit processes.

b. This Settlement is subject to Pueblo West obtaining all necessary land use approvals and permits from any governmental entity for Pueblo West's Wildhorse Pipeline Project with no additional limits, other than those set forth herein, on river flow conditions on Pueblo West's exercise of its Wildhorse Exchange, or additional requirements for Pueblo West to dedicate water or forego use of water to assist in maintaining river flows.

c. County 1041 permits for the Wildhorse Pipeline Project will be processed as part of this settlement process. In addition, it appears that City permits will also be

necessary for the Wildhorse Pipeline Project. Pueblo West is preparing and will promptly tender 1041 permit applications to the County and appropriate permit applications to the City for that project, and the County will consider and process them promptly. Although the County cannot commit in advance to approving any permits, the parties understand that the completion of this settlement is contingent upon the issuance of the necessary County and City permits for the Wildhorse Pipeline Project.

d. Pueblo West believes that Pueblo West's collection and piping of its Wildhorse Returns to a discharge location on Wildhorse Creek immediately upstream of its Arkansas River confluence and the exchange of that water to Pueblo Reservoir or to facilities immediately below the dam may not require further CDPHE permitting or water court approval. The Parties agree not to oppose any Pueblo West applications made in conformance with this Agreement to the CDPHE for the Wildhorse Pipeline Project; to Pueblo Area Council of Governments (PACOG) for a requested amendment of the regional 208 plan to approve the discharge location to Wildhorse Creek as contemplated by the Wildhorse Pipeline Project, or to the Division 2 Water Court as may be necessary to adjust its 85CW134(A) and 85CW134(B) decrees, to conform the delivery location of Pueblo West's Wildhorse Returns to a location(s) on Wildhorse Creek upstream of its confluence with the Arkansas River by means of the Wildhorse Pipeline Project.

e. No party shall knowingly and intentionally take any actions to impair or impede Pueblo West's ability to permit or construct the Wildhorse Pipeline Project in conformance with this Agreement. Actions or refusals to act by any party in its permitting process consistent with sub-paragraphs 8. a, b, c, and d above, shall not be construed to impair or impede Pueblo West's efforts to permit and construct the Wildhorse Pipeline Project as set forth above.

f. This Agreement shall neither be construed as a County regulatory approval of the Wildhorse Pipeline Project nor as a waiver of the County's regulatory authority, and does not predetermine or prejudge the outcome of specific permit applications that may be filed with the County for the Wildhorse Pipeline Project.

g. This Agreement does not constitute any form of regulatory approval of the Wildhorse Pipeline Project by the City, and is not to be construed as City regulatory approval of the Wildhorse Pipeline Project or a waiver of the City's regulatory authority, and does not predetermine or prejudice the outcome of specific permit applications that may be filed with the City for the Wildhorse Pipeline Project.

9. 1041 Permitting for Pueblo West Water Projects.

a. The settlement will not include any exemption from County 1041 permits for future Pueblo West water projects.

b. Pueblo West reserves all its defenses to the applicability or exercise of the County's authority that might then exist to future County 1041 permits or other land use approvals for Pueblo West water or sewer projects, including any conditions that could result in a loss of water to Pueblo West, a contribution by Pueblo West to the FMP, or to any other flow protection or enhancement programs, other than as set forth herein. Specifically, with respect to future County 1041 permits for Pueblo West water or wastewater projects that do not include diversions, exchanges, or storage from the stream system (e.g., a simple extension of a treated water distribution main within Pueblo West's approved service areas), Pueblo West reserves all its claims and defenses to any terms and conditions the result of which require Pueblo West dedicate water or forego use of water for maintaining river flows or a further contribution by Pueblo West to the FMP or to any other flow protection or flow enhancement programs.

10. Settlement of Pending Litigation and 404 Process.

a. Upon execution of this Agreement, Pueblo West and the County will move to stay all proceedings in Case 09CV695 until the issuance of all necessary permits and approvals for the Wildhorse Pipeline Project as described herein, and the completion of construction and the commencement of operation of that Project. Thereupon, Pueblo West will move to dismiss its amended complaint in Case 09CV695 pursuant to a

stipulation with County consistent herewith, each party to bear its own costs and attorney fees. The stipulation shall provide for Pueblo West's reservation of defenses, claims, or portions of claims, of general or future applicability to future projects not covered under the SDS 1041 permit and the stipulation shall provide for the amendment of the amended complaint as necessary so that a clear distinction can be made between claims, or portions of claims, of general or future applicability (which shall be dismissed without prejudice) from claims which are specific to the effect of the SDS 1041 permit (which shall be dismissed with prejudice).

b. Pursuant to the Settlement Memorandum, Pueblo West and the County have advised the Court that settlement is likely and have jointly requested the Court to delay further action in the lawsuit until both parties file a joint stipulation for dismissal of the Complaint or until either party advises the Court that settlement is no longer likely due to a failure of conditions set forth in the Settlement Memorandum and set forth herein.

c. In the event Pueblo West has received all permits and other governmental approvals necessary for construction of the Wildhorse Pipeline Project, but Pueblo West nevertheless at its own discretion elects not to construct that Project, then upon a date two (2) years after the receipt of the last necessary permit or approval for the Wildhorse Pipeline Project, Pueblo West will move to dismiss the amended complaint in 09CV695 consistent with foregoing paragraph 10.a.

d. Pueblo West will withdraw its 404 comment letter to the U.S. Army Corps of Engineers upon execution of this Agreement.

e. Neither the start of construction nor any other physical activity in furtherance of the SDS project shall be, or shall imply, a waiver of any claims or defenses of either party in Case 09CV695, nor shall any such physical activity be the basis for any claims or defenses based on the doctrines of waiver, laches, estoppel, or mootness in Case 09CV695.

f. Utilities and the County hereby agree that Pueblo West's lawsuit in Case 09CV695 will not be a "third party lawsuit" for purposes of invoking the precondition to the further covenants of the City of Colorado Springs and its Utilities pursuant to the provisions of paragraphs II-A-2 and II-B of the separate settlement agreement entered into between them dated May 28, 2009, in Cases 06CV438, Pueblo County District Court and 07CA2543, Colorado Court of Appeals, and the covenants of the parties contained therein will remain binding upon them by the terms of that May 28, 2009 agreement.

g. In this Agreement and in the Stipulated Motion to Stay in Case 09CV695, Pueblo West represents, agrees, and covenants that its rights to utilize the features and facilities of the SDS Project pursuant to the Intergovernmental Agreement Among City of Colorado Springs, Colorado and City of Fountain, Colorado and Security Water District for Construction of the Southern Delivery System, Effective August 1, 2003, and the First amendment to Intergovernmental Agreement Dated August 1, 2003 For Construction of the Southern Delivery System Dated February 4, 2008, and SDS 1041 Permit are to be held in abeyance unless and until the complaint in Case 09CV695 has been and is finally dismissed in conformity with paragraph 10.a. and 10.c. or upon entry of a final judgment that Pueblo West is entitled to utilize the SDS features and facilities. Only upon dismissal of the complaint in 09CV695, or upon entry of a final judgment that Pueblo West is entitled to utilize the SDS features and facilities, shall Pueblo West be entitled to utilize the SDS features and facilities.

11. Next Steps. Pueblo West is preparing and will complete and submit permit applications promptly to the City and County as described. The other Parties will not oppose Pueblo West's efforts to obtain the City's approval of any permits required from the City for the Wildhorse Pipeline Project, and the Parties will work together to obtain the consent of the other Three Party IGA and Six Party IGA signatories as required herein.

12. Termination.

a. In the event that Pueblo West is unable to obtain all required permits and approvals necessary to proceed with the construction and operation of the Wildhorse Pipeline Project as described herein, then this Agreement shall terminate and shall be of no further force and effect, and all parties acknowledge and agree that Pueblo West has reserved, without waiver, all rights it may have to pursue all other options and alternatives it may have to exercise its exchanges of reusable return flows as described herein without any prejudice to such efforts from the terms and provisions of this Agreement. Notwithstanding such termination and reservation, however, the provisions, agreements and covenants of the parties set forth in paragraphs 10(e), 10(f) and 10(g) shall survive such termination and be enforceable fully.

b. This Agreement shall terminate in the event Pueblo West or the County advises the Court in said case 09CV695 that settlement is no longer likely due to a failure of conditions set forth in this Agreement. Notwithstanding such termination, however, the provisions, agreements and covenants of the Parties set forth in paragraphs 10(e), 10(f), and 10(g) shall survive such termination and be enforceable fully.

[Handwritten signature]
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13. Other Provisions

a. Notices. All notices and other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by express courier, or by First Class U.S. Mail, postage prepaid. Notice delivered in person or by courier shall be effective upon such delivery; notice provided through the U.S. Mail shall be effective three days after deposit in the U.S. Mail. Notice shall be given to the receiving party at the following addresses, or to such other address or person as such party may have given to the other by subsequent notice pursuant to this Paragraph.

If to County: Chairman, Board of County Commissioners of Pueblo
County
215 W. 10th Street
Pueblo, CO 81003

and also to: Pueblo County Attorney
215 W. 10th Street
Suite 312
Pueblo, CO 81003

If to the PBWW: Executive Director
Board of Water Works of Pueblo, Colorado
P.O. Box 400
Pueblo, CO 81002

and also to: William A. Paddock, Esq.
Carlson, Hammond & Paddock, LLC
1700 Lincoln, Suite 3900
Denver, CO 80203-4539

If to Utilities: Chief Executive Officer
Colorado Springs Utilities
121 South Tejon Street, Fourth Floor
P.O. Box 1103, Mail Code 946
Colorado Springs, CO 80947-0946

and also to: City Attorney/General Counsel
City of Colorado Springs, Colorado
30 S. Nevada, Suite 501
Colorado Springs, CO 80901-1575

If to Pueblo West: Manager
Pueblo West Metropolitan District
709 E. Industrial Blvd.
P.O. Box 7005
Pueblo, CO 81007

and also to: Thomas J. Mullans, Esq.
Mullans, Piersel & Reed, P.C.
1311 N. Greenwood Street
Pueblo, CO 81003-2734

b. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement between all the Parties relating to the subject matter hereof. The Settlement Memorandum and all prior contemporaneous oral agreements and discussions among the Parties or their respective agents or representatives relating to the subject hereof are merged into this Agreement. This Agreement may be altered, amended, or revoked only by an instrument in writing signed by all of the Parties. Email and all other electronic (including voice) communications from any Party in connection with this Agreement are for informational purposes only. No such communication is intended by any party to constitute either an electronic record or an electronic signature, or to constitute any agreement by any Party to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

c. **Applicable Law.** This Agreement shall be governed by and construed according to the law of the State of Colorado.

d. **Waiver.** The failure of one of the Parties to insist upon the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach thereof shall not constitute a waiver of that or any other provision of this Agreement or limit that Party's, or any other Parties, right thereafter to enforce any provision or exercise any right.

e. **Captions.** All captions contained in this Agreement are for convenience only and shall not be deemed to be part of this Agreement.

f. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

g. **Parties Bound by Agreement.** This Agreement is binding upon the Parties hereto and upon their respective legal representatives and successors.

h. **No Precedent.** This Agreement is based upon the unique facts and circumstances that gave rise to the issues resolved herein and does not create any

precedent binding on the Parties in any other circumstances. This Agreement is not intended to create and does not create a precedent for any future exceptions to or modifications of the FMP.

i. Specific Performance. In the event of any default by any Party hereunder, in addition to other damages or other remedies provided by law or equity, any other non-defaulting Party shall have the right to seek specific performance or injunctive relief.

j. Joint Draft. The Parties, with each having the opportunity to seek the advice of legal counsel and each having an equal opportunity to contribute to its content, drafted this Agreement jointly.

k. Non-Severability. Each provision of this Agreement is integrated with the others and is not severable unless by mutual consent of the Parties.

l. Authorizations. The governing bodies of each of the parties have authorized by resolution the execution of this Agreement.

The Parties have executed this Agreement as of the date first above written.

Attest:

By:


Gilbert Ortiz, County Clerk


The Board of County Commissioners
of Pueblo County

By:


J.E. Chostner, Chairman

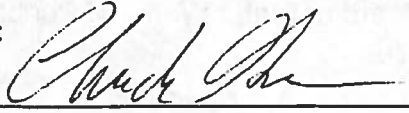
Date signed: 11-23-10

Approved as to form:


Daniel Kogovsek, Esq.
County Attorney

Attest:

By:


Chuck Green, Secretary

Pueblo West Metropolitan District

By:


Michael French, President

Date signed:

11-23-10

Approved as to form:


Thomas J. Mullans, Esq.
Attorney for Pueblo West Metropolitan District

Attest:

By:


Bruce McCormick
Chief Energy Services Officer

Colorado Springs Utilities

By:


Jerry Fong, P.E.
Chief Executive Officer

Date signed:

12/17/2010

Approved as to form:

 12/17/2010
Kenneth J. Burgess
Deputy City Attorney-Utilities

The Board of Water Works of Pueblo

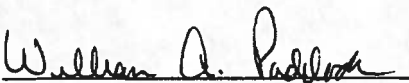
Attest:

By: 
Michael A. Cafasso Secretary-Treasurer

By: 
Thomas Autabee, President

Date signed: 12/21/10

Approved as to form:


William A. Paddock, Attorney



Reburr?
Julie Ann
Roth