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**PUEBLO COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT**

April 17, 2015

Mr. Anthony C. Curtis, Acting Chief, Resources Division
U.S. Bureau of Reclamation
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 Mr. Curtis:

We received your letter, dated February 17, 2015, requesting verification that the SDS project is meeting its commitments to Pueblo County's permits, approvals and agreements and relative to our staff review of the 2014 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 2014, Utilities staff and consultants have met with County staff and consultants periodically to monitor and evaluate compliance with the 1041 Permit; these meetings have been helpful. 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 2014.

As a reciprocal courtesy, the County reiterates its request to Reclamation last year 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. The County made this request in last year's compliance letter to Reclamation, but to date, Reclamation has not responded to the County's invitation. For example, the County would welcome input from Reclamation about the SDS pipeline revegetation and reclamation efforts and what monitoring and inspection by Reclamation is being done in this respect, particularly on Reclamation property.

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 Metropolitan District, 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 in 2009 against the County in Case No. 09CV695 in Pueblo County District Court to prevent the County's enforcement of this Condition 9. A Settlement Agreement, dated November 23, 2010, was executed between Pueblo West, Pueblo County, the City of Colorado Springs on behalf of its Utilities, and the Board of Water Works of Pueblo, under which the Parties agreed to stay further action in the lawsuit pending the satisfaction of several preconditions to settlement set forth in the Settlement Agreement, including a proposed exchange regiment by which Pueblo West could comply with Condition 9. The Settlement Agreement further provides that **Pueblo West cannot utilize the features and facilities of the SDS Project** until it dismisses its lawsuit against the County in accordance with the Settlement Agreement or until a final court judgment has been entered that Pueblo West is entitled to utilize the SDS features and facilities. As of this date, the preconditions to settlement have not been satisfied fully (including Pueblo West's construction of Wildhorse Creek return flow pipeline proposed by Pueblo West for completion in 2013 but which construction still has not yet commenced). Discussions are pending between representatives of the County and Pueblo West for dismissal of by Pueblo West of this lawsuit.
2. **Stormwater Controls.** Utilities made a commitment to sustainable and substantial funding for stormwater control infrastructure, as assumed under the SDS EIS. The EIS was submitted to the County by the Applicant in support of its 1041 Permit. Condition 19 of the 1041 Permit, among other permit terms and statements in the record, 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. A ballot measure to establish a regional stormwater fee program in El Paso County was defeated by the voters in November, 2014. Consequently, there continues to be 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. As a consequence, the County staff is investigating whether a 1041 Permit amendment, clarification, suspension or other enforcement action is required to be heard and determined by the Board of County Commissioners this year prior to the commencement of SDS operations for delivery of water to El Paso County Participants.

3. **Transfer of Permit.** Condition 3 of the 1041 Permit provides that the “Permit may be transferred in whole or in part to another party only with the written consent of the Board of Pueblo county Commissioners. A proposed transferee shall demonstrate that it can and will comply with all the requirements, terms and condition contained in the Permit.” The County is investigating whether Applicant is in compliance with this condition. As an example, the County understands that the SDS Applicant is in the process of transferring to Reclamation the ownership and control of all or part of the North Outlet of the Pueblo Reservoir which was constructed by Applicant as part of the SDS Project. No request has been made to the County for its consent to this transfer.
4. **Wastewater System Improvements.** In the 2014 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 2014 report, Utilities expended \$7,751,529 in 2014 for its LCERP and MHERP programs. The total expended to date since 2009 is reportedly \$38,686,007. 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 2013 year; nevertheless, the County has a continuing concern as to whether Utilities will be able to meet its full commitment by 2024.
5. **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.

6. **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. In May, 2014, the County and Utilities agreed upon a suitable indexing method, as set forth in Pueblo County Board Resolution P&D 14-15, dated May 14, 2014.
7. **Reimbursement of Landowner Expenses.** Condition 15 of the SDS Permit (Acquisition of Property Interests) requires that “[p]rivate property owners be treated fairly by the Applicant and the SDS Project shall not create undue financial burdens on existing or future residents of Pueblo County. The Applicant shall commit to using the power of eminent domain only as a last resort. . . .No landowner should have out-of-pocket expenses from the Project.” Pueblo County has received landowner complaints in this regard and is investigating possible noncompliance by the SDS Applicant. As an example, Walker Ranches, the landowner of a large ranch in the S3 Segment of the SDS Pipeline ROW, has complained that the City of Colorado Springs has failed to reimburse it for hundreds of thousands of dollars it has incurred for, among other expenses, consultants it has had to retain during the acquisition and construction of the SDS ROW and pipeline over its ranch.
8. **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. The County has received some complaints from landowners as to the adequacy of reclamation and revegetations and continues to investigate such matters. Walker Ranches, the landowner of a large ranch over which the pipeline crosses in the S3 area has made numerous 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. The County understands this issue, among others, is the subject

of a trial in Pueblo County District Court beginning on April 13, 2015 in a condemnation action for the SDS ROW over the 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 and 2014. Currently, Utilities is requesting the County to approve the revegetation efforts on the pipeline ROW segments within Pueblo County and to release the bonds.

9. **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 my letter dated December 8, 2014 to Utilities, the County released the associated Road Rehabilitation Bond. 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 any continuing warranty obligations for road crossings, some of which warranties have been released in 2014.

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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