

LIANE "BUFFIE" MCFADYEN
CHAIR
DISTRICT 2

SAL PACE
CHAIR PRO TEM
DISTRICT 3



TERRY A. HART
COMMISSIONER
DISTRICT 1

GREGORY J. STYDUHAR
COUNTY ATTORNEY

BOARD OF PUEBLO COUNTY COMMISSIONERS

May 11, 2015

Merv Bennett
President, Colorado Springs City Council
P.O. BOX 1575
Colorado Springs, CO 80907

Andy Pico
Member, Colorado Springs City Council and Chair of the Board of Directors of Colorado Springs Utilities
P.O. BOX 1575
Colorado Springs, CO 80907

Steven Bach
Mayor, City of Colorado Springs
30 S. Nevada Ave.
Colorado Springs, CO 80903

RE: Pueblo County 1041 Permit for the Southern Delivery System: Stormwater Controls

Gentlemen:

For your information, I have attached a copy of a report prepared by Pueblo County staff and presented to the Board of County Commissioners at our regularly scheduled work session on May 11, 2015 ("Memo to BOCC"). Staff has reported that there is adequate justification for the County to issue an Order to Colorado Springs to show cause at a public hearing why the SDS Permit should not be suspended or amended as a result of its repeal of a dedicated funding mechanism for stormwater control within Colorado Springs and its failure to replace it. The Board, however, has accepted, for the present time, the recommendations of our staff including its recommendation that we refrain from taking any action until August 1, 2015. The several reasons for delaying action are more particularly set forth in the report.

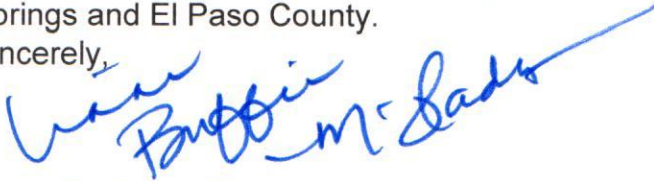
Please note that the Board did take issue with the report's statement that "...Colorado Springs personnel agreed to give a timeline to Pueblo County staff [to provide information responsive to Pueblo County requests]." Memo to BOCC, page 3. Given the ripeness of our staff's requests, the Board feels that June 1, 2015 is a sufficient

PUEBLO COUNTY COURTHOUSE
215 W. 10TH ST., PUEBLO, CO 81003-2992
(719) 583-6000
FAX: (719) 583-6549
www.county.pueblo.org

amount of time for compliance with these requests and necessary for punctual investigation on the part of our staff.

There is a substantial amount of work to be accomplished in the intervening period by all concerned. We are hopeful that a productive and honest effort by all parties will allow for some meaningful and realistic solutions to surface; solutions that will work not only for the citizens of Pueblo County, but also for the citizens of the City of Colorado Springs and El Paso County.

Sincerely,

A handwritten signature in blue ink, appearing to read "Liane Buffie McFadyen", with a long, sweeping underline.

Liane "Buffie" McFadyen

Chair, Pueblo County Board of County Commissioners

Enclosure

LIANE "BUFFIE"
MCFADYEN
CHAIR
DISTRICT 2

SAL PACE
CHAIR PRO TEM
DISTRICT 3



TERRY A. HART
COMMISSIONER
DISTRICT 1

JOAN ARMSTRONG
DIRECTOR
planning@co.pueblo.co.us

**PUEBLO COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT**

MEMORANDUM

TO: Board of County Commissioners

FROM: Joan W. Armstrong, Director, Department of Planning and Development *ja*
Alf Randall, Director, Department of Engineering and Public Works *AR*

DATE: May 11, 2015

SUBJECT: SDS 1041 Permit (Resolution No. P&D 09-22): Stormwater Controls.

PURPOSE

On April 13, 2015, the Board of County Commissioners enacted Resolution No. 15091 directing Pueblo County Staff to investigate compliance matters with the Southern Delivery System 1041 Permit. Specifically, staff in the Pueblo County Departments of Planning and Development and Public Works were directed to recommend to the Board whether the lack of a long-term, sustainable, dedicated funding mechanism for stormwater controls by the SDS participants within the Fountain Creek Watershed requires a hearing by the Board to determine whether the SDS 1041 Permit should be revoked, suspended, amended, supplemented, or clarified. Staff and the office of the Pueblo County Attorney were also authorized to retain legal, engineering, and other consultants to assist staff in the investigation of this issue. Finally, staff was directed to make such informational requests to the SDS Applicant and project participants as may be reasonably necessary to conduct the investigation and to report to the Board any refusals of such requests or difficulties in obtaining the information.

The purpose of this Memorandum is to advise the Board on the findings of staff to date and to recommend a course of action for Board consideration on this stormwater matter. This Memorandum does not address other areas of concern over SDS 1041 Permit compliance.

SUMMARY AND RECOMMENDATION

Based upon its investigation to date, including consultation with legal counsel, staff advises the Board of County Commissioners that there is adequate justification for the County to issue an Order to Colorado Springs, as the manager of the SDS project, to show cause at a public hearing why the SDS Permit should not be suspended or amended as a result of its repeal of a dedicated funding mechanism for stormwater control within Colorado Springs and its failure to replace it.

It is, however, the recommendation of staff that the County defer action on the issuance of a show cause Order and the subsequent public hearing until August 1, 2015.

This course of action would allow for the new Colorado Springs Mayor (the run-off election between the two finalists is scheduled for May 19, 2015) and City Council to continue to address potential solutions with Pueblo County and would also allow the City of Colorado Springs stormwater staff to respond to pending requests for information to identify stormwater funding and projects as well to identify high-priority stormwater projects and a timeline for their completion. Secondly, the additional time would also allow the County a chance to finalize its engagement of Wright Water Engineers, Inc. for needed expert review and advice on stormwater matters. The additional time will allow Wright Water to develop the facts and to gather the data necessary to support Pueblo County in any subsequent hearing.

DISCUSSION

ACTIONS TAKEN SINCE APRIL 13, 2015

In response to the directives set forth by the Board in Resolution No. 15-091, staff and counsel immediately began the investigation of SDS Permit compliance matters. The investigation actually began in anticipation of Resolution No. 15-091. A conference call was had with City stormwater staff. Colorado Springs stormwater personnel described the City's calculation of expenditures on stormwater controls between 2004 and 2014 as set forth on a spreadsheet and report previously issued by the City. In 2015 Colorado Springs personnel calculated the total expenditures for its stormwater program for the years 2004 through 2014 to be \$243,184,532.00. Under questioning by Pueblo County, City staff tried to provide explanation and clarification of these expenditures, but acknowledged that prior reporting of stormwater expenditures has been conflicting and inconsistent. City staff has agreed to provide data and documentation for the projects included on the spreadsheet and understands that a review of that documentation is necessary before firm conclusions regarding what can be realistically categorized as stormwater expenditures can be made.

In addition, City staff also agreed to assemble and provide information in response to staff's requests including:

- (1). A description of projects to be undertaken in 2015 with the approximately \$19,000,000.00 recently budgeted by Colorado Springs City Council;

- (2). A map depicting the location of stormwater projects undertaken by Colorado Springs between 2004 and 2014;
- (3). A list of stormwater projects undertaken and completed by the City between 2004 and 2014, with consistent names for each project; and
- (4). A list of stormwater projects that would provide the most benefit and protection from floods downstream on Fountain Creek to its confluence with the Arkansas River.

As part of the promise to provide such information, Colorado Springs personnel agreed to give a timeline to Pueblo County staff for the provision of this information. Pueblo County legal counsel will also remind the CSU SDS project manager and CSU's legal counsel of the pressing need for the timeline and for the information itself.

Staff will update the Board as to the continuing status and results of the investigation.

Staff has also communicated with Ken Wright, a principal in and a lead engineer for Wright Water Engineers, Inc. The parties have mutually developed a Scope of Work which has been incorporated into a draft of a formal engagement agreement pursuant to which Wright Water Engineers will commence work for Pueblo County. This agreement should be forthcoming within the next several days for consideration and final presentation to the Board for approval.

The Scope of Work to be undertaken by Wright Water is anticipated to include an evaluation and report upon which high priority stormwater projects identified by consultants to the City would be most beneficial to Pueblo County; identification and recommendation of Fountain Creek channel improvements which will provide and improve safe passage of flood flows through Pueblo County and the City of Pueblo; and an evaluation and report on Fountain Creek flow rates and volumes (base flow and peak flow) caused by urbanization in Colorado Springs including imported flows and impervious surfaces. In response to staff questions, representatives of Colorado Springs Utilities, as the SDS project manager, continues to represent that although some testing of the SDS pipeline might occur later this year, delivery of water to the water supply systems of SDS project participants will not commence until sometime in 2016. Staff will continue to press for binding representations on this matter.

PUEBLO COUNTY 1041 REGULATIONS

Pueblo County 1041 Regulations, Pueblo County Code Chapter 17.148 and 17.172 mandate certain requirements and procedures for administering and enforcing permits. Some key highlights of those provisions are:

- A permit is only valid "for the development or activity described in the application package and applicant's commitments of record, together with the conditions of approval, if any, imposed by the permit authority." See Section 17.148.300.

- A permit amendment is required for “any material change in the construction, use, or operation of a Project” from the permit approved by the Board. See Section 17.172.200.
- A “material change” includes any change in the Project “which significantly changes the nature of impacts” considered by the Board when approving the permit. See Section 17.172.040(J).
- A permit amendment is to be processed in accordance with the same procedures and requirements for a new permit. See Section 17.172.200.
- If the Board, as the permitting authority, makes a preliminary determination that the permit holder has violated the terms of the permit or the 1041 regulations, the Board may, after allowing at least 15 days to correct the violations, temporarily suspend the permit for 90 days. See Section 17.148.320.
- The permit holder, if it disagrees with the alleged violation, has 15 days to show cause as to why the temporary suspension should not be ordered. See Section 17.148.320.
- With or without a temporary suspension, the Board also may permanently revoke or suspend the permit after conducting a public hearing in which it finds that there has been a violation of the permit or an applicable regulation. See Section 17.148.320.
- A permit holder that “does not comply with permit requirements, or who exceeds the permission granted in the permit,” may be enjoined from the permitted activity and may be subject to criminal or civil liability. See Section 17.148.330.

The highlighted requirements and procedures will play a central role if the Board decides to issue a show cause order and hold a hearing.

THE SDS 1041 PERMIT, CONSIDERATIONS AND QUESTIONS

After extensive hearings and public comment, the Board of County Commissioners issued the SDS 1041 Permit on April 21, 2009. The Permit included several findings and imposed terms and conditions on the basis of those findings upon Colorado Springs Utilities as the Permit Applicant. Condition 27 of the Permit also required the Colorado Springs City Council to take formal action to recognize the findings, commitments, terms and conditions of the Permit prior to its final issuance by Pueblo County. Colorado Springs passed the resolution on April 14, 2009 and it states that the Council recognized the commitments and the terms and conditions to be included in the final permit, and, the resolution directs Colorado Springs Utilities to comply with the commitments.

Several matters of note occurred during the permitting process:

- **Colorado Springs touted SWENT to win support for the SDS 1041 Permit.**

On November 22, 2005, Colorado Springs approved an ordinance establishing a Stormwater Enterprise (SWENT). SWENT provided a funding mechanism dedicated to stormwater control projects. Even though Colorado Springs relied upon SWENT to induce the Pueblo County community to support SDS and the issuance of the 1041 Permit, (see **Exhibit A** for examples of its representations touting SWENT), the Colorado Springs City Council voted 5-4 on December 8, 2009 to abolish SWENT.

- **Colorado Springs submitted the DEIS and the FEIS in support of its 1041 Permit Application.**

A Draft Environmental Impact Statement (DEIS) and a Final Environmental Impact Statement (FEIS) were submitted by Colorado Springs as part of its application and in support of the 1041 Permit request and were made a part of the record of the permit proceedings. Several references to the FEIS are included in the SDS Permit. See Findings 7(c)(ii) and 21, and Terms and Conditions 8 and 18.

- **The DEIS and the FEIS relied upon continued SWENT funding to predict impacts to flows and water quality in Fountain Creek caused by SDS.**

The existence of SWENT was referenced on a number of occasions in both environmental impact statement documents as a reasonably foreseeable action that would minimize and mitigate the effects of historical and future water use on water quality and quantity within the City served by SDS. Examples of SWENT or other dedicated funding sources for stormwater control as used in the DEIS are set forth on **Exhibit B** attached hereto and examples of SWENT or other dedicated funding sources for stormwater controls as used in the FEIS are set forth on **Exhibit C** attached hereto.

- **Colorado Springs officials assured Pueblo County during Permit proceedings that Colorado Springs was committed to SWENT.**

Numerous commitments, representations, and assurances regarding SWENT were made in the record of the 1041 Permit. For some examples of commitments, representations, and statements that were made prior to, during, and after the 1041 Permit hearing, see **Exhibit D** attached hereto.

- **In Condition 19 of the SDS 1041 Permit, funding from SWENT was listed as a part of Colorado Springs' commitment to improve Fountain Creek.**

Condition 19 states that since the year 2000, Colorado Springs Utilities has spent \$114 Million Dollars for these programs and "in addition, Colorado Springs has established a Stormwater Enterprise Fund to finance the capital costs of needed stormwater control infrastructure".

- **SWENT, or a similar dedicated stormwater funding mechanism can be deemed a critical "stormwater control" required by Permit Condition 23 to prevent flows from exceeding existing conditions.**

The importance of Condition 23 is underscored by the Board's findings. Finding number 25 states that "SDS project will increase flows in Fountain Creek in Pueblo County", and "new development and growth service by the SDS project, without proper management, could increase flows and volumes and pollutant loads in Fountain Creek. Without mitigation, such increased flows would aggravate problems of erosion, sedimentation, flooding, and water quality degradation".

- **Condition 5.2 of the SDS Permit requires new participants in SDS to have stormwater funding similar to SWENT. The Condition creates a problem if Colorado Springs has no dedicated funding source for stormwater controls.**
- **Without a dedicated stormwater funding source, other SDS Permit conditions could be inadequate and require modification.**

SWENT, as a substantial, dedicated, multi-year funding mechanism, was an important link in the chain of promised improvements for Fountain Creek used by Colorado Springs to win support of SDS and the SDS Permit.

- **Very few of the backlogs of capital improvement projects which were to be funded by SWENT have been built to date.**

Although information is still being gathered, it appears that the amount necessary to fund backlogged projects has risen to approximately \$534,000,000.

- **Leaders in Colorado Springs and in El Paso County have acknowledged the need for dedicated stormwater funding and their obligations to Pueblo County.**

See Exhibit ~~E~~ D.

COUNTERPOINTS RAISED BY COLORADO SPRINGS

In discussions with Pueblo County staff and counsel and in communications to the Board of County Commissioners, several arguments have been raised in response to Pueblo County's concern with the dissolution of SWENT and the failure to replace it. One argument that has surfaced is that Colorado Springs Utilities and the City of Colorado Springs are separate entities and that Utilities has no authority over, and cannot be held responsible for, stormwater management or funding under the SDS permit. Utilities was the designated applicant manager, but the City of Colorado Springs was one of four named Project Participants. The application states that Colorado Springs Utilities represents the other project participants in all matters regarding the Pueblo County 1041 permit application.

In addition, all of the condemnation actions for the SDS pipeline and the easements required were obtained in the name of City of Colorado of Springs, not Colorado Springs Utilities. All SDS participants committed to only using water rights that they own, but the City of Colorado Springs owns the water rights to be conveyed through the SDS pipeline. If the City is not an SDS permit participant, it would appear then that the City's ownership of project water rights and its acquisition of the pipeline easements in its name might be a violation of Condition No. 3 on the permit requiring the County's prior consent to a transfer of the permit, in whole or in part, to another party.

In summary, Colorado Springs can be expected to advance arguments in response as follows:

- SWENT is not an explicit condition of the SDS permit.
- The 1041 Permit does not mandate a fixed amount of stormwater expenditures or a list of specific projects.
- Utilities has no authority to manage stormwater.
- Other express conditions of the 1041 permit adequately protect Fountain Creek.
- SDS return flows will only minimally increase stormwater flows.
- Only when peak flows exceed existing conditions, is there a violation of Condition 23.
- The City's new Drainage Criteria Manual will control stormwater flows off new development.
- The City has spent significant sums of money on stormwater controls even without SWENT.

As the Board proceeds, it will have to balance some of these considerations with the competing and compelling considerations discussed in previous sections of this memorandum.

CONCLUSION

Staff concludes as is more particularly set forth in the **SUMMARY AND RECOMMENDATION** of this memorandum.

EXHIBIT A

Examples of Commitments, Representations, Inducements and Statements Made Prior To, During and After the 1041 Permit Hearing

- March 1, 2004 Intergovernmental Agreement Among the City of Pueblo, the City of Colorado Springs and the Board of Water Works of Pueblo: The City and the Water Board Agree to provide support for the SDS, in part, in exchange for Colorado Springs' commitment to collaboration and mitigation of high flow conditions and sediment transport on Fountain Creek.
- 2005 Southern Delivery Dispatch: "We value Pueblo and the entire Arkansas Valley as important stakeholders in the SDS."
- March 24, 2005 Southern Delivery Dispatch: "[W]e are working hard to build and maintain important, long-lasting relationships with the Lower Arkansas Valley, Pueblo leadership, the Pueblo Board of Water Works, and City of Pueblo staff....We are working hard to do this in a way that brings our communities together and ensures that the SDS project has minimal disruption to our neighbors....As a community-owned, non-profit utility in Colorado Springs since the late 1800s, that is our commitment and promise."
- April 4, 2005 Southern Delivery Dispatch: "We, in writing, have committed to seek solutions to stormwater as part of the 2004 intergovernmental agreements with Pueblo."
- September 30, 2005 Southern Delivery Dispatch: "As evidenced by our actions, Springs Utilities is absolutely committed to reducing the risk for future [wastewater] overflows and working with downstream communities to protect the water we all share."
- June 1, 2005 Statement of Lionel Rivera, Mayor, City of Colorado Springs, for field hearing on the Frying Pan-Arkansas Project, p. 45: "To better manage the impacts urban runoff has on Fountain Creek, Colorado Springs this past year adopted a Stormwater Enterprise whereby approximately \$14.3 million a year will be collected from fees imposed on property owners to fund much-needed capital improvements in our stormwater collection and management system."
- May 22, 2008 Southern Delivery System E-News: "Colorado Springs has taken responsibility and action to resolve its past problems with Fountain Creek. We are a part of many exciting regional efforts underway to improve the creek and make it an amenity for many communities to enjoy. And while SDS does not create significant impacts to the creek, we are committed to addressing those that do." . . . "We point to our track record over the past five years to demonstrate that our efforts are working. And we also recognize we have a ways to go. That is why we are teaming up with others in the region who also care about the future of Fountain Creek and why we are working with them to help fund and create a vision to maximize its full potential. As the region's largest city, Colorado Springs remains committed to stepping to do our part."
- June 6, 2008 correspondence from Lionel Rivera, Mayor of Colorado Springs, to Kara Lamb, US Bureau of Reclamation: "Colorado Springs is committed to, and heavily invested in, protecting Fountain Creek. Colorado Springs has acted aggressively to resolve past problems with Fountain Creek. . . . The Colorado Springs City Stormwater Enterprise is aimed specifically at improving the city's ability to control stormwater runoff."
- November 5, 2008 Southern Delivery System E-News: "Colorado Springs ballot question 200, a measure that would have likely eliminated the City of Colorado Springs Stormwater Enterprise, was defeated by voters 60% to 40% Tuesday. . . . Loss of the Stormwater Enterprise could have jeopardized plans for the Southern Delivery System (SDS) originating from Pueblo Dam. . . . Continuation of the Stormwater Enterprise conveys Colorado Springs' commitment to meeting its legal and moral obligations to address stormwater discharged

into Fountain Creek.” . . . “I have said all along that the Colorado Springs voters would do the right thing,’ said John Fredell, Southern Delivery System project director. ‘The continuation of the Stormwater Enterprise is good news for everyone concerned about controlling the impacts of stormwater to our community, our downstream neighbors, and to the health of Fountain Creek.”

- December 9, 2008 Southern Delivery System 1041 Permit Public Hearing before Pueblo County Board of County Commissioners. Presentation Handout by Colorado Springs Utilities:
“We will:
 - Build SDS in an environmentally responsible manner
 - Mitigate SDS impacts
 - Use water rights we own
 - Ensure that Pueblo County won’t pay for SDS
 - Continue doing our part to improve Fountain Creek”
- December 9, 2008 Public Hearing regarding House Bill 1041 Permit No. 2008-002 before Pueblo County Board of County Commissioners, pp. 47-48: Mr. Glidden: “Colorado Springs, through their Stormwater Enterprise, has made a significant investment in the Drainage Basin Planning Study – and I think you all know that the citizens of Colorado Springs endorse the investment in these kinds of studies by retaining the Stormwater Enterprise at the recent legislation, and, so, they are going to be able to continue to do some of the things that they have done – but the purpose of those studies is to try to identify what some of the problems are in the watershed . . .”
- December 23, 2008 Southern Delivery System 1041 Permit Application rebuttal submission by Colorado Springs, p. 8:
 - “[Pueblo County Staff] **Comments:** The assumption was made that new regulations would be in place and that runoff controls and detention would be implemented and would be successful. These assumptions cannot be relied upon to mitigate impacts to Fountain Creek. (Staff Report p. 6).
 - [Colorado Springs Utilities] **Response:** Project Participants disagree. These assumptions are indeed valid. The Colorado Springs Stormwater Enterprise is a legal institution formed pursuant to the laws of the State of Colorado and the ordinances of the City of Colorado Springs. It is created to maintain stormwater flows within the boundaries of Colorado Springs at 2006 levels, even with increased population growth. (Colorado Springs City Code, Art. 8, Ch. 14) The collection of the fees that support the work of the Stormwater Enterprise are subject to legal enforcement. The Stormwater Enterprise is described in detail in Section 3.1.3.1 of the FEIS. Additional information about the Stormwater Enterprise can be found at: <http://www.springsgov.com/Page.asp?NavID=6598>.”
- December 29, 2008 Public Hearing regarding House Bill 1041 Permit No. 2008-002
 - Mr. McCormick, pp. 53-54: “[W]e have fully engaged in commitments to address problems on Fountain Creek, and – and several examples are listed; I want to mention again the Stormwater Enterprise that our city council implemented, and has continued to support, and survived a challenge here in the most recent election, those are critical kinds of things that show our continued commitment to Fountain Creek and – and to addressing long-term issues on Fountain Creek.”
 - Mr. McCormick, p. 66: “I think our point is that the Stormwater Enterprise is in place, and the regulations that it puts in place are effective, the process by which it raises revenues is effective...”

- Mr. Banks, p. 67: "So the EIS and the Bureau are requiring you to continue the Stormwater Enterprise and/or implement the regulations of – that were assumed in the modeling?"
 - Mr. Fredell: "No, I – I don't see that as a requirement of an EIS, but they are in place currently and there is no process in place to remove that regulation, so we assume that it is going to continue, and I think that's a reasonable assumption in terms of the Stormwater Enterprise as well as the other very comprehensive stormwater regulation that's in place within the City."
 - Mr. McCormick, p. 87: "And we have, again, continued with our – the City has with the Stormwater Enterprise, which, again, manages flows in a way that reduces risks to our creek crossings."
- April 9, 2009 transcript of Colorado Springs City Council Meeting: Mr. McCormick, p. 15: "Fountain Creek is an essential part of our water system, we use it daily to convey our – convey our return flows, and we do have a responsibility to do our part to ensure that it's maintained."

Page 16-17: "There's a condition that requires us to maintain stormwater controls and other regulations intended to ensure that Fountain Creek peak flows resulting from new developments served by SDS are no greater than existing conditions, and this will apply to other project participants who have the legal authority to regulate in this manner."
- October 16, 2009 Colorado Springs Gazette article: Is Issue 300 all about stormwater? Bruce says yes; City says no. "Mayor Lionel Rivera, in a sentiment echoed by City Attorney Patricia Kelly and some other Council members, say the measure would not impact the Stormwater Enterprise if it passes, because residents pay directly to the enterprise."
- November 4, 2009 Email from Bruce McCormick, Chief Water Services Officer for Utilities to Jeff Chostner, Pueblo County Commissioner:
 - Transmitting Official Statement by City of Colorado Springs: "City Council has publically stated that Issue 300 will not impact the Stormwater Enterprise so we do not anticipate any changes at this time to our operations."
 - Transmitting messages provided in response to questions by Chieftain: "Colorado Springs Utilities supports the City's Stormwater Enterprise and believes it is a responsible way to fund stormwater projects that benefit the environment, our community and downstream neighbors."
- November 13, 2009 Pikes Peak Area Council of Governments Brochure, "Fountain Creek Watershed": "The mean annual flow of Fountain Creek has risen from a historical average of approximately 60 cubic feet per second (cfs) to greater than 230 cfs."
- November 25, 2009 Pueblo Chieftain, Questions Linger for SDS Commitments: "Five of nine [Colorado Springs] council members directed City staff to dissolve the enterprise in two years, reducing fees in 2010 and 2011. The other members of council wanted to abolish it immediately.".... "The position is a far cry from November 2005, when council approved the Stormwater Enterprise on a 7-2 vote. At the time, Mayor Lionel Rivera said: 'We are looking at a population of 90,000 in 35 years. If we are not willing to address stormwater today, I don't think it's fair to ask others in the region to endorse the Southern Delivery System.'"

EXHIBIT B

February 2008 Southern Delivery System Draft Environmental Impact Statement: References to SWENT or Other Dedicated Funding Source for Stormwater Control

- Page 125: "The Colorado Springs Stormwater Enterprise was established in 2005 to fund stormwater drainage capital improvement projects, maintenance and operations, and compliance with Colorado Springs' municipal storm sewer (MS4) discharge permit. . . . The Stormwater Enterprise is expected to update DBPSs [drainage basin planning studies] on an ongoing basis, and the drainage criteria and requirements for stormwater detention and development will be modified accordingly."
- Page 126: "Continued implementation of these actions by the Stormwater Enterprise is anticipated to reduce the water quality and quantity effects of historical and future development within the city limits of Colorado Springs on surface waters in the Fountain Creek Basin."
- Page 245: "Reasonably foreseeable actions with potential cumulative water quality effects include the Colorado Springs Stormwater Enterprise, completion of the CSRWRF, alluvial groundwater development by Fountain, urban development in El Paso, Pueblo, and Fremont Counties, and climate change."
- Page 247: "The Colorado Springs Stormwater Enterprise's top priority projects are likely to reduce stream channel erosion and thus suspended sediment concentrations through the addition of drop structures, bank protection, and other channel improvements in Fountain Creek and its tributaries. . . . The Colorado Springs Stormwater Enterprise will place 'increased emphasis on detention and water quality control' (Baker 2006)."
- Page 251: "Additionally, municipal stormwater regulations throughout the analysis area would specify restrictions on the potential effects of development within the analysis area. For example, the recently approved Colorado Springs Stormwater Enterprise (discussed in zero) would require peak future flows (up to the 100-year recurrence interval) to remain at current peak flow levels following future development (Colorado Springs 2007A; Baker 2006)."
- Page 254: "In the cumulative effects analysis, it was assumed that the City of Colorado Springs would implement the Colorado Springs Stormwater Enterprise that was approved by the City Council in 2005 and is beginning implementation.... Additionally, for new development, it implements regulations that require peak flows under future conditions to be maintained at current peak flow values, for peak flows with recurrence intervals of 100 years or less.... The Colorado Springs Stormwater Enterprise was assumed to be in effect for the area within the city limits of the City of Colorado Springs for the cumulative effects analysis."
- Page 261: "Two reasonably foreseeable actions would affect peak flows and flood plains in the cumulative effects analysis: increased urban and suburban development in the analysis area and the Colorado Springs Stormwater Enterprise. . . . Because of the Stormwater Enterprise, cumulative effects future peak flows would be equal to Existing Conditions peak flows for the areas within the City of Colorado Springs service area or directly downstream of the City's service area."
- Page 289: "Two reasonably foreseeable actions would affect geomorphology under the cumulative effects analysis: urban and suburban development within El Paso, Pueblo, and Fremont Counties, and the Colorado Springs Stormwater Enterprise (as described in Section 3.1.3.1)."
- Page 291: "Although development would result in increased peak flow sediment transport capacity for most of the analysis area, the Colorado Springs Stormwater Enterprise would

maintain future conditions (2046) peak flows, and thus peak flow sediment transport capacity, at Existing Conditions (2006) levels for areas within the Colorado Springs through the use of regional flood control structures and flood control requirements for new development.”

- Page 340-341: “The cumulative effects from planned water projects (Clear Springs Regional Water Reclamation Facility, the Stormwater Enterprise, and Fountain’s water supply project) and changes in peak flows from increased development were calculated for the cumulative effects on stream flow, which was used to estimate cumulative effects on wetland and riparian vegetation.”

EXHIBIT C

December 2008 Southern Delivery System Final Environmental Impact Statement: References to SWENT or Other Dedicated Funding Source for Stormwater Control

- Page 91: "Colorado Springs recently created a Stormwater Enterprise (Section 3.1.3.1), which is also intended to address stormwater issues in portions of the Fountain Creek basin."
- Page 152: "The Colorado Springs Stormwater Enterprise was established in 2005 to fund stormwater drainage capital improvement projects, maintenance and operations, and compliance with Colorado Springs' municipal storm sewer discharge permit."
- Page 153: "Continued implementation of these actions by the Stormwater Enterprise is anticipated to reduce the water quality and quantity effects of historical and future developments within the city limits of Colorado Springs on surface waters in the Fountain Creek Basin."
- Page 308: "Reasonably foreseeable actions with potential cumulative water quality effects include the Colorado Springs Stormwater Enterprise . . ."
- Page 311: "The Colorado Springs Stormwater Enterprise's top priority projects are likely to reduce stream channel erosion and thus suspended sediment concentrations . . ."
- Page 312: "Some of the reasonably foreseeable actions identified in Section 3.1.3.1 would likely improve water quality in the Fountain Creek basin, regardless of the SDS project. The City of Colorado Springs Stormwater Enterprise --- could potentially improve levels of parameters that are currently of concern."
- Page 317: "For example, the recently-approved Colorado Springs Stormwater Enterprise would require future peak flows to remain at current peak flow levels following future development."
- Page 319: "In the cumulative effects analysis, it was assumed that the City of Colorado Springs would implement the Colorado Springs Stormwater Enterprise that was approved by the City Council in 2005 and is beginning implementation....The City of Colorado Springs Stormwater Enterprise was assumed to be in effect for the area within the city limits of the City of Colorado Springs for the cumulative effects analysis."
- Page 329: "Two reasonably foreseeable actions would affect peak flows in flood plains in the cumulative effects analysis: increased urban and suburban development in the analysis area and the Colorado Spring Stormwater Enterprise....Because of the Stormwater Enterprise, cumulative effects future peak flows would be equal to existing conditions peak flows for areas within the City of Colorado Springs service area directly downstream of the city service area."
- Page B-214: "Implementation of the Colorado Springs Stormwater Enterprise is considered a reasonably foreseeable action and, therefore, its potential effects were reflected only in cumulative effects analysis."
- Page C-8: "Implementation of the Colorado Springs Stormwater Enterprise is considered a reasonably foreseeable action."

EXHIBIT D

Examples of Comments and Representations After the Abolishment of SWENT

- December 4, 2009 Southern Delivery System E-News: "Springs Utilities pledges to meet all SDS-related requirements related to storm runoff."
- May 3, 2012 Letter from Pueblo County Board of County Commissioners to Mayor Stephen G. Bach, Mr. Scott Hente, and members of the City Council: Letter requests that immediate action be taken to solve stormwater funding deficit.
- May 4, 2012 Letter from Steve Bach, Mayor, City of Colorado Springs, to Pueblo County Board of County Commissioners: "Colorado Springs general staff is searching for efficiencies within the current revenue streams and expenditures budget which we could contribute to stormwater improvements in Colorado Springs."
- May 10, 2012 Letter from Jan Martin, President Pro Tem, Colorado Springs City Council, to Pueblo Board of County Commissioners: "Protecting our watershed is a high priority for City Council, and you have our commitment that we will continue working toward that goal."
- 2012 Infrastructure Report Card for the Colorado Springs area grades Colorado Springs Stormwater overall at a D-minus and F for funding.
- November 13, 2012 Letter from Mayor Bach and Scott Hente, Colorado Springs City Council to Pueblo County Board of County Commissioners: Colorado Springs will propose a 2013 combined stormwater budget of \$27,772,356.
- December 20, 2012 Letter from Pueblo County Board of County Commissioners responding to Mayor Bach and Scott Hente: "Very little, if any, of the \$28 million claimed by the City and Utilities in their 2013 budget on stormwater improvements is spent on the high-priority CIPs, which were to be funded by SWENT."
- June 6, 2013 letter from Mayor Bach and Colorado Springs Council President King to Pueblo County Commissioner Sal Pace:
 - "As you know, the approval of the Pueblo Board of County Commissioners of the 1041 permit application submitted by Colorado Springs Utilities ("CSU") was approved on April 21, 2009. Colorado Springs and CSU submitted a five year funding and project priority plan for our stormwater capital projects during the review of the 1041 permit. This plan contemplated spending approximately \$88 million over the course of five years, for an average of \$17.6 million per year. We have attached a copy of that funding summary for your review."
 - Claims to have spent in excess of \$46 Million on stormwater projects in 2013, and that "Colorado Springs and its enterprises will continue to make substantial progress in high priority stormwater projects in the coming years, and is working diligently to design and implement a sustainable funding source and stormwater management structure to complete all the appropriate work."
- July 17, 2013 Colorado Springs Independent: "Last fall, City Attorney Chris Melcher told Council the city is obligated to pay \$13 million to \$15 million a year for stormwater management — the amount that had been generated by fees for stormwater before a 2009 ballot measure prompted Council to abolish them."
- September 20, 2013 Southern Delivery System Update, Colorado Springs Utilities: "1041 Permit does not include . . . a specific yearly amount of stormwater funding, funding of specific projects, or requirement to remediate current and historic conditions."
- August 26, 2014 Mayor Steve Bach proclamation in opposition to stormwater ballot initiative, stating that the IGA creating the Pikes Peak Regional Drainage Authority "is not fair to the citizens of Colorado Springs."

- July 23, 2014 Colorado Springs Gazette, City Council Endorses Regional Stormwater Plan: "Colorado Springs City Council endorses the creation of a regional stormwater authority – which if voters approve in November would collect \$48 million a year in fees to pay for regional flood control projects."
- September 2, 2014 El Paso County Resolution No. 14-326: Resolution to Approve and Authorize a Ballot Question for the November 2014 General Election for the Purpose of Determining Citizen Support for Creation of the Pikes Peak Regional Drainage Authority.
 - Statement of Votes Cast, Ballot Initiative 1B, El Paso County Election Results: Yes – 46.71%; No – 53.29%.
- December 3-9, 2014 Colorado Springs Independent Letter to Editor by Larry Small, Vice-Chair of the Colorado Springs City Council during 1041 permitting and now director of the Fountain Creek Watershed District: "Naïve thinking": "With the failure of the stormwater ballot question, it's time for Colorado Springs to take responsibility for its share of the problem, which is the majority share."
- December 7, 2014 Pueblo Chieftain Guest column by Larry Small, "Control needs a flood of funds, not a trickle": "[A]dding funding for City departments in areas where sufficient dedicated funding already exists is not fiscally responsible... Stormwater management is unfunded and has no dedicated general fund commitment – it should.... To think that \$40 million over five years with no identified future funding would have any significant impact on a \$500 million problem is naïve thinking, to say the least. To believe it would have any benefit in mitigating the impact to Colorado Springs down-stream neighbors demonstrates a lack of understanding of the problem."
- January 24, 2015: Colorado Springs City Council votes 7-2 to spend \$19 million in 2015 toward stormwater, of which \$8 million is from the City's general fund, \$8 million from a stormwater projects fund, and \$3 million from Colorado Springs Utilities.
 - Councilperson Jan Martin, sponsor of resolution, states that items such as maintenance of gas lines by Colorado Springs Utilities that cross rivers are expenses related to stormwater.
- Colorado Springs Utilities Draft 2015 Annual Operating & Financial Plan: 2015 Budget of \$1,082,682,000.