

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Fryingpan-Arkansas Project, Colorado**

**CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND THE CITY OF COLORADO SPRINGS FOR THE USE OF EXCESS CAPACITY
IN THE FACILITIES OF THE FRYINGPAN-ARKANSAS PROJECT**

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THIS CONTRACT, made this 4th day of MAY, 2011, pursuant generally to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C. § 391, et seq.), and acts amendatory thereof and supplementary thereto, particularly, but not limited to, Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197; 43 U.S.C. § 389) and the Fryingpan-Arkansas (Fry-Ark) Project Act of August 16, 1962 (76 Stat. 389; 43 U.S.C. § 616) as amended, all collectively known as the Federal Reclamation laws, is between the UNITED STATES OF AMERICA, hereinafter referred to as the "United States," represented by the Contracting Officer executing this Contract, and the CITY OF COLORADO SPRINGS, COLORADO, acting by and through its UTILITY ENTERPRISE, hereinafter referred to as the "Contractor." The United States and the Contractor collectively are referred to as the "Parties."

EXPLANATORY RECITALS

The following statements are made in explanation:

a. WHEREAS, the Secretary of the Interior (Secretary), acting through the Bureau of Reclamation (Reclamation), was authorized by the Fry-Ark Project Act of August 16, 1962 (76 Stat. 389; 43 U.S.C. § 616) as amended, to construct, operate and maintain the Fry-Ark Project (Project), Colorado, in substantial accordance with the engineering plans set forth in House Document 187, 83rd Congress, 1st Session, as modified by House Document 353, 86th Congress, 2nd Session, and as further modified and described in the description of the proposal contained in the final environmental statement for the Fry-Ark Project; and

b. WHEREAS, Section 1 of the Fry-Ark Project Act states that the Secretary is authorized to construct, operate and maintain the Project for the purposes of supplying water for irrigation, municipal, domestic, industrial, hydroelectric power, flood control and other beneficial incidental uses including recreation and the conservation and development of fish and wildlife; and

c. WHEREAS, Section 3 of the Fry-Ark Project Act requires that the Project shall be operated in accordance with the Operating Principles as adopted by the State of Colorado on December 9, 1960 (House Document 130, 87th Congress, 1st Session); and

d. WHEREAS, the Project is a multipurpose project in Colorado that diverts water from the Colorado River Basin on the West Slope and transports it through the Continental Divide to the Arkansas River Basin on the East Slope; and

e. WHEREAS, Section 14 of the Reclamation Project Act of 1939 (53 Stat. 1197; 43 U.S.C. § 389) authorizes the Secretary to enter into contracts for the exchange or replacement of water as in the judgment of the Secretary are necessary and in the interests of the United States and the Project; and

f. WHEREAS, Southeastern Colorado Water Conservancy District (District) is the repayment entity for the reimbursable costs of the Project; pursuant to Contract No. 5-07-70-W0086 (January 21, 1965), as amended, with the United States; and

g. WHEREAS, Article 13 of Contract No. 5-07-70-W0086, as amended, establishes and describes the order of priority for evacuation of excess water stored in order to meet Project purposes; and

h. WHEREAS, the United States and the Contractor have had a continuous and long-standing contractual relationship dating back to the original Project authorization, that includes several long-term contracts and, since 2005, annual temporary Excess Capacity contracts for up to 20,000 acre-feet of water; and

i. WHEREAS, by letters dated April 13, 2004, and March 2, 2005, the Contractor requested a long-term contract for storage of Nonproject Water and Project Water Return Flows in Pueblo Reservoir for up to 28,000 acre-feet per year. The Contractor also requested a long-term contract to exchange up to 10,000 acre-feet per year of Nonproject Water and Project Water Return Flows in Pueblo Reservoir with Project Water stored upstream in Twin Lakes or Turquoise Reservoirs; and

j. WHEREAS, the Parties desire to enter into a contract, pursuant to applicable Federal Reclamation laws and the laws of the State of Colorado, for use of Excess Capacity pursuant to the terms and conditions set forth herein; and

k. WHEREAS the Contractor is acting through its community-owned utility enterprise that provides natural gas, electricity, water and wastewater services to customers in the Pikes Peak region of El Paso County, Colorado. The Contractor, through its utility enterprise, is responsible for Colorado Springs' water system, including formulation of policy, review and approval of the budget, setting rates, and long-range planning, to ensure that the Contractor's water system is operated and maintained in an efficient and cost-effective manner. As such, the Contractor has need and necessity for the storage and exchange contracts that are the subject hereof for the purpose of supplying water for municipal and other uses to the present and future inhabitants of the City of Colorado Springs and to those persons, firms, or corporations desiring water from the Contractor's water system. The Contractor has also requested that the United States recognize the occasional need to release water from Pueblo Reservoir to the Arkansas River for augmentation purposes. The Contractor's service area is within the Arkansas River basin and within the District's boundaries; and

l. WHEREAS, the Contractor currently holds water rights, operates facilities and undertakes other lawful transactions concerning water operations in the Arkansas River Valley; and

m. WHEREAS, the Southern Delivery System (SDS) is a proposed non-federal regional water delivery project that is designed to meet future water needs of the SDS Participants. Currently, in addition to the Contractor, the other area participants are the City of Fountain, acting by and through its Electric, Water and Wastewater Utility Enterprise, Security Water District Enterprise, acting by and through its Water Activity Enterprise, and Pueblo West Metropolitan District, acting by and through its Water Enterprise hereinafter referred to collectively as the SDS Participants; and

n. WHEREAS, a proposed purpose for SDS is to provide additional yield and system redundancy for the SDS Participants; and

o. WHEREAS, the current proposal is to modify the existing Project river outlet works on Pueblo Dam in order to attach a pipeline to convey water north to the service areas of the SDS Participants while still maintaining the functionality and integrity of Pueblo Dam; and

p. WHEREAS, the modified outlet capacity from Pueblo Reservoir and other facilities to be constructed as part of SDS, in conjunction with potential future facility connections and agreements among the entities and others, subsequent to all appropriate environmental analyses and assessments, and applicable contracts could result in facility redundancy that could be of mutual benefit to the entities during future periods of emergency or other outlet outages; and

q. WHEREAS, SDS will be constructed by the SDS Participants at their sole expense; and

r. WHEREAS, contemporaneous with this Contract, the United States and the Contractor are executing Contract No. 11XX6C0005, to provide for the conveyance of water through the modified outlet works and each SDS Participant will be executing the following Excess Capacity contracts: the Security Water District Enterprise, acting by and through its Water Activity Enterprise, Contract No. 11XX6C0003, the City of Fountain, acting by and through its Electric, Water, and Wastewater Utility Enterprise Contract No. 11XX6C0004, and Pueblo West Metropolitan District acting by and through its Water Enterprise Contract No. 11XX6C0006.

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

DEFINITIONS

1. Where used herein, unless specifically expressed otherwise or obviously inconsistent with the intent hereof, the term:

a. "Contracting Officer" shall mean the Secretary of the Interior or a duly authorized representative. Unless stated otherwise, the Contracting Officer shall be deemed to be the Secretary's authorized representative.

b. "Contractor" shall mean the City of Colorado Springs, Colorado, acting by and through its Utility Enterprise.

c. "District" shall mean the Southeastern Colorado Water Conservancy District organized under the laws of the State of Colorado which is the repayment entity for the reimbursable water supply costs of the Project; pursuant to Contract No. 5-07-70-W0086 (January 21, 1965), as amended.

d. "Excess Capacity" shall mean capacity within Project facilities that is in excess of the needs of the Project, if and when available, as determined solely by the Contracting Officer, within the bounds of applicable laws and regulations, to store, convey and exchange water.

e. "Nonproject Water" shall mean all water that meets all of the following specifications: (i) water that is not defined as Project Water herein; (ii) water that was included in meeting the demands of the SDS Participants and was analyzed pursuant to the National Environmental Policy Act of 1969 (NEPA) (P.L. 91-190; 42 U.S.C § 4321) in the Final Environmental Impact Statement (FEIS) Numbered 08-63 and Record of Decision (ROD) Numbered GP-2009-01; and (iii) water that is listed on the table attached as Exhibit E which is hereby made a part of this Contract.

f. "North Outlet Works" shall mean those facilities as more fully described in Contract No. 11XX6C0005.

g. "Operating Principles" shall mean the Project Operating Principles set forth in House Document 130, 87th Congress, 1st Session, 1961.

h. "Project" shall mean the Fryingpan-Arkansas Project, Colorado.

i. "Project Water" shall mean the water available to the Project through the State of Colorado decreed water rights for the Project pursuant to the Operating Principles.

j. "Project Water Return Flows" shall mean the Project Water that is returned to the Project and accrues back to the Contractor for its reuse.

k. "Single Purpose SDS Works" shall mean those works constructed by the SDS Participants to convey SDS Water from the North Outlet Works to the SDS Participants' service areas.

l. "Southern Delivery System" (SDS) shall mean the non-federal regional water delivery project that consists of capacity in the North Outlet Works sufficient to deliver 96 million gallons per day (mgd) and the Single Purpose SDS Works.

m. "SDS Participants" shall mean the entities that will use SDS to meet their future water needs. The SDS Participants are the City of Colorado Springs, City of Fountain, Security Water District, and Pueblo West Metropolitan District.

n. "SDS Water" shall mean only the following types of water defined in this section as: (i) Project Water legally available to the Contractor; (ii) Non-Project Water; and (iii) Project Water Return Flows.

o. "Spill" shall mean evacuation from Pueblo Reservoir pursuant to the spill priorities described in Article 13 of Contract Number 5-07-70-W0086, as amended, between the District and the United States.

PURPOSE

2. The purpose of this Contract is to provide for the use of Excess Capacity in Project facilities to store and exchange the Contractor's Nonproject Water and Project Water Return Flows for the Contractor's subsequent use and exchange pursuant to the terms and conditions of this Contract.

TERM OF CONTRACT

3. a. This Contract will become effective on January 1, 2011, and shall remain in effect until December 31, 2049, unless terminated sooner in accordance with the provisions of Article 12.

b. The Contractor may request renewal of this Contract upon written request to the Contracting Officer on or before two years prior to the expiration of this Contract, *Provided, That* upon such renewal request, the Contracting Officer will enter into good faith negotiation which shall be upon mutually agreeable terms and conditions and shall be in accordance with the applicable federal laws and policies and State laws in effect at that time.

LIMITATIONS

4. a. Nothing in this Contract is to be construed to affect any contractual commitments under any long-term contract in effect at the date of execution of this Contract concerning the Project, including, but not limited to Contract No. 5-07-70-W0086 dated January 21, 1965, as amended.

b. Nothing in this Contract is to be construed to increase the total quantity of water which the State of Colorado is entitled to use, and to which the State is limited, under applicable compacts, statutes and treaties. To the extent applicable, this Contract is subject to the following:

(1) The Boulder Canyon Project Act, approved December 21, 1928, (45 Stat. 1057; 43 U.S.C. §§ 617 *et seq.*).

(2) The Colorado River Compact signed November 24, 1922.

(3) The Upper Colorado River Basin Compact.

(4) The Boulder Canyon Project Adjustment Act, approved July 19, 1940 (54 Stat. 774, 43 U.S.C. §§ 681 *et seq.*).

(5) The Colorado River Storage Project Act, approved April 11, 1956 (70 Stat. 105, 43 U.S.C. §§ 620 *et seq.*).

(6) The Mexican Water Treaty.

(7) The Arkansas River Compact.

c. The Contracting Officer shall operate the Project in accordance with the Operating Principles.

d. Except as explicitly provided in this Contract nothing in this Contract is to be construed to require a change in Project operations, including, but not limited to, a change in the spill priorities as established in Article 13 of Contract No. 5-07-70-W0086 (January 21, 1965), as amended nor to effect the Contractor's rights thereunder.

e. Nothing in this Contract is to be construed to require the Contracting Officer to take any action which as determined solely by the Contracting Officer within the bounds of all applicable laws and regulations may cause harm to the Project.

f. Nothing in this Contract is to be construed to grant the Contractor any right, title, or interest other than that explicitly provided for in this Contract.

g. In accordance with Article 17, the Contractor's receipt of any benefit under this Contract is conditioned upon payment of charges due.

h. The Contractor shall not exchange water from Pueblo Reservoir to upstream locations as against releases made by Reclamation in support of the Upper Arkansas Voluntary Flow Management Program (Flow Program), or make any exchanges from Pueblo Reservoir which would require Reclamation to release additional water to meet the objectives of the Flow Program. In the event of a water shortage emergency condition in the Upper Arkansas Basin, the Contractor will utilize exchange opportunities under this Contract to the extent possible, if shortages still exist the Contractor will consult with Reclamation and the District to determine how to resolve the shortage emergency.

i. This Contract is to be construed to allow legally authorized discharges of water from Pueblo Reservoir into the Arkansas River.

CONTRACTED SERVICE

5. a. STORAGE

(1) Pursuant to Reclamation law, the Contractor may store up to 28,000 acre-feet of Nonproject Water and Project Water Return Flows in Pueblo Reservoir at any one time pursuant to the terms and conditions of this Contract.

(2) The Contractor is authorized to utilize 17,000 acre-feet of storage in 2011 and to utilize 500 acre-feet of additional storage each year thereafter until the maximum 28,000 acre-feet per year is reached. The maximum amount of storage available to the Contractor in any year during this build-up schedule (the "Schedule") shall be known as the "Storage Floor". The Contractor may notify the Contracting Officer at any time that it wishes to utilize storage, up to the maximum 28,000 acre-feet, in advance of the Schedule. A storage amount requested in advance of the Schedule then becomes the Storage Floor

and cannot be decreased. The Storage Floor will only increase again when the storage amount established by the Schedule exceeds the then-current Storage Floor. Storage Floor increases will then resume according to the Schedule, unless the Contractor again requests storage in advance of the Schedule, until the maximum 28,000 acre-feet of storage is reached.

- (3) The Contracting Officer shall have sole authority, within the bounds of applicable laws and regulations, to determine if and when the Contractor may store Nonproject Water and Project Water Return Flows.
- (4) The Contracting Officer shall account for all the water stored through reservoir water accounting procedures and storage will be determined in accordance with the terms of this Contract.
- (5) If the Contracting Officer determines that Project operations may require a spill, the Contracting Officer shall notify the Contractor as soon as reasonably possible of the quantity and timing of the water that may be spilled.
- (6) The amount of Nonproject Water and Project Water Return Flows that is not delivered or spilled during the calendar year may be carried over to the next year while the Contract is in effect, but total Nonproject Water and Project Water Return Flows in the Project may not exceed the acre-feet established in Subarticle 5.a.(2) at any one time.

b. EXCHANGE

- (1) Based on Project water availability as determined solely by the Contracting Officer within the bounds of applicable laws and regulations, the Contractor may exchange up to 10,000 acre-feet per year of Nonproject Water and Project Water Return Flow water stored in Pueblo Reservoir for an equal amount of Project Water stored in Twin Lakes or Turquoise Reservoirs pursuant to the terms and conditions of this Contract. After the Contracting Officer notifies the Contractor of the amount of exchange that is available to the Contractor for the year, which shall occur on or about May 1st, the Contractor shall notify the Contracting Officer within 15 business days of the amount of exchange service that the Contractor requests for the year. The Contractor shall exchange no more than a total of 10,000 acre-feet in any year.
- (2) The Contracting Officer shall have sole authority within the bounds of applicable laws and regulations to determine if and when an exchange may occur.
- (3) The Contracting Officer shall execute the exchanges herein contemplated through its reservoir water accounting procedures.
- (4) On an annual basis, the Contracting Officer shall offer use of Excess Capacity for exchange to the Contractor and to other long-term contractors that will use the water within the boundaries of the District, regardless of the

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date on which the contracts are executed. If demand for Excess Capacity for exchange exceeds the availability for the year, the Contracting Officer shall offer the Excess Capacity to the Contractor and other long-term contractors that will use the water within the boundaries of the District on a pro rata share based upon the amount of exchange requested by each contractor to the total amount of exchange requested for that year by all of the long-term contractors that will use the water within the boundaries of the District.

PAYMENT CHARGES**6. a. STORAGE**

- (1) In the years 2011 through 2017, this Contract will be the instrument used to address payments for all of the SDS Participants. In year 2018, and from that time forward, each entity's individual Excess Capacity contract will be the instrument used to bill each respective entity. Initially upon execution of this Contract, the Contractor shall submit an advance non-refundable payment for the year 2011 in the amount of \$1,386, which will provide for payments established in this subarticle for the SDS Participants. The parties agree that the schedule in Subarticle 6(a)(1) accounts for any payments for the use of Project facilities that may have been made pursuant to temporary contracts in water year 2011. For the years 2011 through 2017, the total amount billed under this contract shall account for the SDS Participants' storage established in the following schedule: .

Year	Colorado Springs	Fountain	Security	Pueblo West	Total Storage	Rate	Storage Payment	Recognition of Oversized Pipe	Bill Amount
2011	17,000	400	250	8,000	25,650	\$36.00	\$ 923,400.00	\$ 236,000.00	\$ 1,386.00 *
2012	17,500	400	250	8,000	26,150	\$36.64	\$ 958,136.00	\$ 955,000.00	\$ 3,136.00
2013	18,000	700	500	8,000	27,200	\$37.30	\$1,014,560.00	\$1,012,000.00	\$ 2,560.00
2014	18,500	700	500	8,000	27,700	\$37.97	\$ 1,051,769.00	\$1,049,000.00	\$ 2,769.00
2015	19,000	1,000	750	8,000	28,750	\$38.65	\$ 1,111,187.50	\$1,110,000.00	\$ 1,187.50
2016	19,500	1,000	750	8,312.5	29,562.5	\$39.34	\$ 1,162,988.75	\$1,162,000.00	\$ 988.75
2017	20,000	1,300	1,000	8,312.5	30,612.5	\$40.04	\$1,225,724.50	\$ 476,522.17	\$749,202.33
							Total Recognition of Oversized Pipe	\$6,000,522.17	

*The SDS Participants collectively made payments under their 2011 temporary contracts in the amount of \$686,014, which left a balance of \$237,386 (Long Term Storage Payment less Temporary Storage Payment). \$236,000 was the recognition for the oversized pipe therefore \$1,386 was the remaining bill amount.

- (2) After the initial contract payment, subsequent advance nonrefundable payments will be due on or before November 1 of each year for the following calendar year. Beginning for water storage in 2012 and each year thereafter, the water storage rate, determined under Article 6, shall be increased annually at the rate of 1.79 percent. In 2018, the SDS Participants' billings shall be in accordance with their respective Excess Capacity contracts identified in whereas clause "r" of the Explanatory Recitals. For water storage in 2011, this charge shall be in the amount of \$36.00 per acre-foot multiplied by the amount of the Storage Floor, as that term is defined in Subarticle 5.a.(2), regardless of the amount stored by the Contractor with recognition of the oversized pipe. In the years 2011-2017 the Storage Floor is depicted above. Each year thereafter, the water

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storage charge shall be the rate per acre-foot shown on Exhibit A, which is attached to and made a part of this Contract, multiplied by the amount of that year's Storage Floor, plus any additional storage requested by the Contractor. When the maximum amount of storage specified by Article 5 reaches the full 28,000 acre feet, the annual charge thereafter shall be the applicable rate as shown in Exhibit A, multiplied by 28,000 acre-feet.

- (3) The Contractor shall not be relieved of the obligation to pay the annual storage charge described above for any reason, including the failure or inability to store water in any year.

b. EXCHANGE:

- (1) The Contractor shall notify the Contracting Officer, the requested exchange amount, if any, and pay in advance a non-refundable \$36.00 per acre-foot, beginning in year 2011 in the manner described in Subarticle 5.b.(1). This rate shall each be increased annually at the rate of 1.79 percent. These charges and rates are shown in "Exhibit B," which is attached to and made a part of this Contract.
- (2) The Contractor shall not be relieved of the obligation to pay, or entitled to any credit for or refund of, the annual exchange charge described above for any reason, including the failure or inability to exchange water in any year.

c. No further rate adjustment is required under this Contract because the charges for storage and exchange are already subject to annual upward adjustment.

d. Revenues from the storage and exchange charges described in Subarticles 6.a.(1) and 6.b.(1) will be credited in accordance with Section 2(b) of the Project Act, as amended by Section 9115, Title IX of Public Law 111-11.

e. If, in the future, Reclamation adopts criteria for a market-based pricing policy for use of Excess Capacity at either Fry-Ark Project facilities specifically or for Reclamation facilities generally, then at the request of either party, the price set forth in Article 6 of this Contract may be reevaluated and adjusted by the Contracting Officer to conform to that pricing policy. The decision to adopt a market-based pricing policy will rest solely with Reclamation, and it is understood that the policy may not require Reclamation to apply identical pricing for similar services. The terms of this article will expire five years from the date of Contract execution unless extended by the written, mutual consent of the Parties.

NORTH OUTLET WORKS

7. a. The Parties have executed Contract No. 11XX6C0005 for the North Outlet Works ("NOW Contract").

b. The Contractor shall receive recognition for over-sizing approximately the first 1,600 feet of pipe within the North Outlet Works to a 90-inch diameter which will be to the benefit of Project beneficiaries and the United States.

c. The Contracting Officer shall retain the option to adjust the schedule in Subarticle 6.a.(1) in the years 2011 through 2017 if additional payments for storage are made pursuant to Article 6 and/or through an increase in the Contractor's Storage Floor as determined in Subarticle 5(a)(2). A revised schedule shall be inserted above if the Contracting Officer's option described herein is exercised.

**MEASUREMENT AND ACCOUNTING FOR THE USE
OF EXCESS CAPACITY**

8. a. If requested by the Contracting Officer, the Contractor shall submit and revise, if necessary, a written schedule of the anticipated monthly demands for the Excess Capacity of the Contractor's Nonproject Water and Project Return Flows.

b. The Contractor is solely responsible for making whatever arrangements are necessary for making water available to the Contractor under Colorado law, including but not limited to, obtaining approval of the State of Colorado's Division of Water Resources. The Contractor is solely responsible for any transportation losses assessed by the State of Colorado's Division of Water Resources and/or associated with the use of Excess Capacity for the Contractor's Nonproject Water and Project Water Return Flows. The Contractor shall account for Nonproject Water and Project Water Return Flows according to the limitations in the water rights listed in Exhibit E and provide the same to the Contracting Officer upon request. The Contracting Officer shall account for any such transit and evaporation losses assessed on Nonproject Water and Project Water Return Flows stored and conveyed under this Contract.

c. The Contracting Officer shall provide for the daily accounting of the Contractor's water showing:

- (1) The amount of water placed into storage in the Project;
- (2) The amount of the Contractor's water exchanged for Project Water stored upstream in either Twin Lakes or Turquoise Reservoirs;
- (3) The evaporation losses charged against the Contractor's water, which shall be on a proportional basis with all other water stored in Pueblo Reservoir; and
- (4) The amount of Contractor's water remaining in storage at the end of each day (Midnight).

d. The Contractor shall furnish the Contracting Officer, or the Contracting Officer's designee, without charge such Contractor records as may be required for such daily accounting.

ENVIRONMENTAL COMPLIANCE AND COMMITMENTS

9. a. The Contractor, acting as project manager for the SDS Participants, shall implement the environmental commitments set forth in the FEIS Numbered 08-63 and ROD Numbered GP-2009-01. The environmental commitments are described in Exhibit C, attached, and are made part of this Contract. The Contractor shall submit to the

Contracting Officer by January 31 of each year a report, satisfactory to the Contracting Officer, that certifies progress in the previous year regarding successfully implementing the commitments in a timely manner. If at any time during the term of this Contract, the Contractor fails to implement or comply with the environmental commitments, the Contracting Officer may immediately cease storage, conveyance, and exchange of Nonproject Water and Project Water Return Flows until the commitments are implemented and fulfilled to the satisfaction of the Contracting Officer. Failure to implement or comply with the environmental commitments may also result in the termination of this Contract by the United States in accordance with Article 12.

b. The Contractor shall be responsible for the costs of all current and future NEPA and Endangered Species Act (ESA) compliance and mitigation measures identified in the FEIS and the ROD associated with the use of the Excess Capacity described in this Contract.

PERMITS, APPROVALS, AND AGREEMENTS

10. a. The Contractor and the SDS Participants, must obtain all Federal, State, and local permits, approvals, licenses and agreements necessary for the construction, implementation and operation of the SDS project ("licenses and approvals"). These licenses and approvals may include, as examples, a Section 404 permit under the Clean Water Act, appropriate 1041 permits, and consultation with the Colorado Division of Wildlife (CDOW) and the Colorado Water Conservation Board. The Contractor shall comply with all licenses and approvals.

b. The Contractor shall notify and provide copies to the Contracting Officer of all licenses and approvals as they are completed, issued or modified. The Contractor shall also notify the Contracting Officer within 72 hours of receipt of any notice of non-compliance of any license or approval.

c. If the Contractor fails to comply with this Article 10, the United States may terminate this Contract in accordance with Article 12.

CONTRACTOR'S USE OF WATER

11. The Contractor may use SDS Water stored, conveyed or exchanged pursuant to this Contract and the NOW Contract only in those areas that are within both the Contractor's service area and the boundaries of the District, for all lawfully decreed purposes that are consistent with Reclamation laws and the laws of the State of Colorado and that are within the scope of all environmental documents, permits, approvals, licenses and agreements. Any sale, transfer, or assignment by the Contractor of the storage, conveyance or exchange rights under this Contract or the NOW Contract or any portion thereof, to store, convey, or exchange SDS Water is prohibited unless approved in advance and in writing by the Contracting Officer. Any such approval will require an appropriate level of environmental compliance prior to the Contracting Officer's determination.

TERMINATION OF CONTRACT

12. a. If at any time the Contracting Officer determines that the Contractor or any other SDS Participant was not able to obtain all permits, licenses and approvals necessary to construct and operate the SDS, the Contracting Officer shall provide notice of this determination to the Contractor and request the offending party to provide a written response to both the Contracting Officer and other SDS Participants within ninety (90) days of its receipt as to the reasons why the permit, license or approval was unable to be attained and how the offending party intends to fully commit to its contractual obligations hereunder. The Contracting Officer will consider the written response by the offending party, and determine whether the termination of this Contract is necessary to protect the Contracting Officer's or the United States' interests. The Contracting Officer may also consider steps to remedy the problem that may be taken by other SDS Participants. If Contracting Officer solely determines that the unattained license, permit, or approval impacts this Contract including any environmental commitments, the United States may terminate this Contract by providing notice of the termination to the Contractor.

b. The United States may, at any time, terminate this Contract for cause and cease the use of Excess Capacity hereunder upon failure of the Contractor: (i) to make any payment required by this Contract; (ii) to comply with any term or condition of this Contract; or (iii) to comply with any lawful notice, order, or final administrative or judicial determination that the Contractor has violated a law, rule, or regulation of the United States or the State of Colorado directly relating to this Contract; Provided, That this Contract shall not be terminated unless such failure or violation continues 60 days after the United States gives the Contractor written notice to correct the problem.

c. To the extent consistent with federal law, the Parties acknowledge that the version of Section 7-60 of the Colorado Springs City Charter in effect at the date of Contract execution applies to this Contract. The Parties further acknowledge that, notwithstanding the application of the Section 7-60 of the Colorado Springs City Charter, the United States retains all rights to challenge, in any judicial, administrative, or other forum, whether application of Section 7-60 of the Colorado Springs City Charter prevents the recovery of damages necessary to redress any injury incurred by the United States, including but not limited to recovery of benefits derived from the recognition of the oversized pipe to the benefit of the Contractor or other loss of economic benefit caused by early termination of this Contract by the Contractor.

d. If the Contractor is unable to pay pursuant to Subarticle c. above, then the Contractor shall have 30 days from the date of non-payment to request evacuation of any water stored pursuant to this Contract, and the Contracting Officer shall release such water upon a timely request.

e. The Contracting Officer reserves the option to consider the Contractor's termination in determining whether it will be suitable to enter into any future contracting actions with the Contractor for the use of Reclamation facilities, except where such consideration will be inconsistent with Contractor's rights under existing contracts.

f. No waiver at any time by either party of its rights with respect to default or any other matter arising in connection with this Contract will be deemed to be a waiver with respect to any subsequent default or matter.

SEVERABILITY

13. In the event that any one or more of the provisions contained herein is, for any reason, held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Contract, but this Contract is to be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause the fundamental benefits afforded the Parties by this Contract to become unavailable or materially altered.

STANDARD CONTRACT ARTICLES

CONTRACT DRAFTING CONSIDERATIONS

14. This Contract has been negotiated and reviewed by the Parties hereto, each of whom is sophisticated in the matters to which this Contract pertains. Articles 1 through 13 of this Contract have been drafted, negotiated, and reviewed by the Parties and no one party shall be considered to have drafted the stated articles.

NOTICES

15. Any notice, demand, or request authorized or required by this Contract shall be deemed to have been given, on behalf of the Contractor, when mailed postage prepaid, or delivered to the:

Regional Director
Great Plains Region
Bureau of Reclamation
P.O. Box 36900
Billings, Montana 59107-6900

or street address:
316 North 26th Street
Billings, Montana 59101

and on behalf of the United States, when mailed postage prepaid or delivered to the:

Chief Water Services Officer
121 South Tejon Street,
Mail Code 0950
Colorado Springs, CO 80947-0950

The designation of the addressee or the address may be changed by notice given in the same manner as provided in this article for other notices.

CHARGES FOR DELINQUENT PAYMENTS

16. a. The Contractor shall be subject to interest, administrative, and penalty charges on delinquent payments. If a payment is not received by the due date, the Contractor shall pay an interest charge on the delinquent payment for each day the payment is delinquent beyond the due date. If a payment becomes 60 days delinquent the Contractor shall pay, in addition to the interest charge, an administrative charge to cover additional costs of billing and processing the delinquent payment. If a payment is delinquent 90 days or more the Contractor shall pay, in addition to the interest and administrative charges, a penalty charge for each day the payment is delinquent beyond the due date, based on the remaining balance of the payment due at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt collection services associated with a delinquent payment.

b. The interest rate charged shall be the greater of either the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of 0.5 percent per month. The interest rate charged will be determined as of the due date and remain fixed for the duration of the delinquent period.

c. When a partial payment on a delinquent account is received, the amount received shall be applied first to the penalty charges, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

17. a. The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligation to the Contractor.

b. The payment of charges becoming due pursuant to this Contract is a condition precedent to receiving benefits under this Contract. The United States shall not make Excess Capacity available to the Contractor through the Fryingpan-Arkansas Project facilities during any period in which the Contractor is in arrears in the advance payment of Excess Capacity due the United States.

CONFIRMATION OF CONTRACT

18. The Contractor has provided a letter dated April 25, 2011 (Exhibit D) that adequately demonstrates to the Contracting Officer evidence that pursuant to the laws of the State of Colorado, the Contractor is a legally constituted entity and the contract is lawful, valid and binding on the Contractor. This Contract shall not be binding on the United States until such evidence has been provided to the United States satisfaction. Exhibit D herein referenced is made part of this Contract. This fulfills the requirement for the following standard article:

Promptly after the execution of this Contract, the Contractor shall provide evidence to the Contracting Officer that, pursuant to the laws of the State of Colorado, the Contractor is a legally constituted entity and the contract is lawful, valid, and binding on the Contractor. This Contract shall not be binding on the United States until such evidence has been provided to the United States satisfaction.

CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

19. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

20. No Member of or Delegate to the Congress, Resident Commissioner, or official of the Contractor shall benefit from this Contract other than as a water user or landowner in the same manner as other water users or landowners.

CHANGES IN CONTRACTOR'S ORGANIZATION

21. While this Contract is in effect, no change may be made in the Contractor's organization, which may affect the respective rights, obligations, privileges, and duties of either the United States or the Contractor under this Contract including, but not limited to, dissolution, consolidation, or merger, except upon the Contracting Officer's written consent.

ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

22. The provisions of this Contract shall apply to and bind the successors and assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest therein by either party shall be valid until approved in writing by the other party.

BOOKS, RECORDS, AND REPORTS

23. The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including the Contractor's financial transactions; water supply data; Project operation, maintenance, and replacement logs; Project land and rights-of-way use agreements; the water users' land-use, land-ownership, land-leasing, and water-use data; and other matters that the United States may require. Reports shall be furnished to the United States in such form and on such date or dates as the United States may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

RULES, REGULATIONS, AND DETERMINATIONS

24. a. The Parties agree that the delivery of water or the use of Federal facilities pursuant to this Contract is subject to Federal reclamation law, as amended and supplemented, and the rules and regulations promulgated by the Secretary under Federal reclamation law.

b. The United States shall have the right to make determinations necessary to administer this Contract that are consistent with its expressed and implied provisions, the laws of the United States and the State of Colorado, and the rules and regulations promulgated by the Secretary. Such determinations shall be made in consultation with the Contractor.

PROTECTION OF WATER AND AIR QUALITY

25. a. Project facilities used to make available and deliver water to the Contractor shall be operated and maintained in the most practical manner to maintain the quality of the water at the highest level possible as determined by the United States: *Provided, That* the United States does not warrant the quality of the water delivered to the Contractor and is under no obligation to furnish or construct water treatment facilities to maintain or improve the quality of water delivered to the Contractor.

b. The Contractor shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Colorado; and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities necessary for the delivery of water by the Contractor; and shall be responsible for compliance with all Federal, State, and local water quality standards applicable to surface and subsurface drainage and/or discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within the Contractor's Project Water Service Area.

c. This article shall not affect or alter any legal obligations of the Secretary to provide drainage or other discharge services.

WATER CONSERVATION

26. Prior to the delivery of water provided from or conveyed through federally constructed or federally financed facilities pursuant to this Contract, the Contractor shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation Reform Act of 1982 (RRA) and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

EQUAL EMPLOYMENT OPPORTUNITY

27. During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, disability, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion,

sex, disability, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the United States setting forth the provisions of this nondiscrimination clause.

b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, disability, or national origin.

c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the United States, advising the labor union or workers' representative of the Contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965 (EO 11246), and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor will comply with all provisions of EO 11246, and of the rules, regulations, and relevant orders of the Secretary of Labor.

e. The Contractor will furnish all information and reports required by EO 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

f. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in EO 11246, and such other sanctions may be imposed and remedies invoked as provided in EO 11246 or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

g. The Contractor will include the provisions of this Contract article 27 in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of EO 11246, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

28. a. The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 U.S.C. § 2000d), the Rehabilitation Act of 1973 (Pub.L. 93-112, Title V, as amended; 29 U.S.C. § 791, et seq.), the Age Discrimination Act of 1975 (Pub. L. 94-135, Title III; 42 U.S.C. § 6101, et seq.), Title III of the Americans with Disabilities Act of 1990 (Pub. L. 101-336; 42 U.S.C. § 12181, et seq.), and any other applicable civil rights laws, and with the applicable implementing regulations and any guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

b. These statutes prohibit any person in the United States from being excluded from participation in, being denied the benefits of, or being otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation on the grounds of race, color, national origin, disability, or age. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

c. The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this article and that the United States reserves the right to seek judicial enforcement thereof.

d. Complaints of discrimination against the Contractor shall be investigated by the United States' Office of Civil Rights.

MEDIUM FOR TRANSMITTING PAYMENTS

29. a. All payments from the Contractor to the United States under this Contract shall be by the medium requested by the United States on or before the date payment is due. The required method of payment may include checks, wire transfers, or other types of payment specified by the United States.

b. Upon execution of this Contract, the Contractor shall furnish the United States with the Contractor's taxpayer's identification number (TIN). The purpose for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising out of the Contractor's relationship with the United States.

CONSTRAINTS ON THE AVAILABILITY OF WATER

30. a. In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a condition of shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a condition of shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

b. If there is a condition of shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet current and future legal obligations, then no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

IN WITNESS WHEREOF, the Parties hereto have signed their names the day and year first above written.

THE UNITED STATES OF AMERICA

By [Signature]
Regional Director

CITY OF COLORADO SPRINGS, ACTING BY AND THROUGH ITS UTILITY ENTERPRISE

By: [Signature]
Chief Executive Officer: Jerry Forte, P.E

APPROVED AS TO FORM FOR COLORADO SPRINGS,
Acting by and through its Utility Enterprise

[Signature] 5/2/2011
Special Counsel

State of Colorado)
County of El Paso)ss

The foregoing Contract was acknowledged before me this 2nd day of May, 2011 by Jerry Forte, Chief Executive Officer, for the City of Colorado Springs, acting by and through its Utility Enterprise.

Witness my hand and official seal

[Signature]
Notary Public

My Commission Expires: 5/19/2013

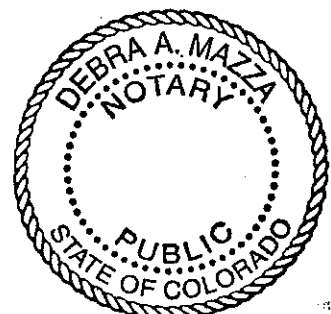


Exhibit A
Storage Payment

Number	Year	Acre-Feet	Index	Rate	Total
7	2018	20,500	1.79%	\$ 40.76	\$835,580.00
8	2019	21,000	1.79%	\$41.49	\$871,290.00
9	2020	21,500	1.79%	\$42.23	\$907,945.00
10	2021	22,000	1.79%	\$42.99	\$945,780.00
11	2022	22,500	1.79%	\$43.76	\$984,600.00
12	2023	23,000	1.79%	\$44.54	\$1,024,420.00
13	2024	23,500	1.79%	\$45.34	\$1,065,490.00
14	2025	24,000	1.79%	\$46.15	\$1,107,600.00
15	2026	24,500	1.79%	\$46.98	\$1,151,010.00
16	2027	25,000	1.79%	\$47.82	\$1,195,500.00
17	2028	25,500	1.79%	\$48.67	\$1,241,085.00
18	2029	26,000	1.79%	\$49.54	\$1,288,040.00
19	2030	26,500	1.79%	\$50.43	\$1,336,395.00
20	2031	27,000	1.79%	\$51.33	\$1,385,910.00
21	2032	27,500	1.79%	\$52.25	\$1,436,875.00
22	2033	28,000	1.79%	\$53.19	\$1,489,320.00
23	2034	28,000	1.79%	\$54.14	\$1,515,920.00
24	2035	28,000	1.79%	\$55.11	\$1,543,080.00
25	2036	28,000	1.79%	\$56.10	\$1,570,800.00
26	2037	28,000	1.79%	\$57.10	\$1,598,800.00
27	2038	28,000	1.79%	\$58.12	\$1,627,360.00
28	2039	28,000	1.79%	\$59.16	\$1,656,480.00
29	2040	28,000	1.79%	\$60.22	\$1,686,160.00
30	2041	28,000	1.79%	\$61.30	\$1,716,400.00
31	2042	28,000	1.79%	\$62.40	\$1,747,200.00
32	2043	28,000	1.79%	\$63.51	\$1,778,280.00
33	2044	28,000	1.79%	\$64.65	\$1,810,200.00
34	2045	28,000	1.79%	\$65.81	\$1,842,680.00
35	2046	28,000	1.79%	\$66.99	\$1,875,720.00
36	2047	28,000	1.79%	\$68.18	\$1,909,040.00
37	2048	28,000	1.79%	\$69.41	\$1,943,480.00
38	2049	28,000	1.79%	\$70.65	\$1,978,200.00

Exhibit B
Exchange Payment

Number	Year	Index	Rate
0	2011	1.79%	\$36.00
1	2012	1.79%	\$36.64
2	2013	1.79%	\$37.30
3	2014	1.79%	\$37.97
4	2015	1.79%	\$38.65
5	2016	1.79%	\$39.34
6	2017	1.79%	\$40.04
7	2018	1.79%	\$40.76
8	2019	1.79%	\$41.49
9	2020	1.79%	\$42.23
10	2021	1.79%	\$42.99
11	2022	1.79%	\$43.76
12	2023	1.79%	\$44.54
13	2024	1.79%	\$45.34
14	2025	1.79%	\$46.15
15	2026	1.79%	\$46.98
16	2027	1.79%	\$47.82
17	2028	1.79%	\$48.67
18	2029	1.79%	\$49.54
19	2030	1.79%	\$50.43
20	2031	1.79%	\$51.33
21	2032	1.79%	\$52.25
22	2033	1.79%	\$53.19
23	2034	1.79%	\$54.14
24	2035	1.79%	\$55.11
25	2036	1.79%	\$56.10
26	2037	1.79%	\$57.10
27	2038	1.79%	\$58.12
28	2039	1.79%	\$59.16
29	2040	1.79%	\$60.22
30	2041	1.79%	\$61.30
31	2042	1.79%	\$62.40
32	2043	1.79%	\$63.51
33	2044	1.79%	\$64.65
34	2045	1.79%	\$65.81
35	2046	1.79%	\$66.99
36	2047	1.79%	\$68.18
37	2048	1.79%	\$69.41
38	2049	1.79%	\$70.65

EXHIBIT C

Environmental Commitments

The Parties agree that the Environmental Commitments as expressed herein are required in order to meet and discharge the obligations of this Contract. The Contracting Officer may invoke Article 12 (Termination of Contract) for failure to meet and discharge this obligation.

The ROD is attached in executed form to this Exhibit C and by this reference is made a part of the Contract.

RECLAMATION

Managing Water in the West

Record of Decision For the Southern Delivery System Final Environmental Impact Statement

Record of Decision Reference No.: GP-2009-01

Approved: 

Date: MAR 20, 2009

Michael J. Ryan, Regional Director
Great Plains Region
Bureau of Reclamation



U.S. Department of the Interior
Bureau of Reclamation
Great Plains Region
Billings, Montana

March 2009

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Introduction

The U.S. Department of the Interior, Bureau of Reclamation, (Reclamation), has published a Final Environmental Impact Statement (FEIS) for the Southern Delivery System. The Southern Delivery System (SDS) Project is a proposed regional water delivery project designed to serve most or all future water needs through 2046 of the City of Colorado Springs, City of Fountain, Security Water District, and Pueblo West Metropolitan District (the "Participants"). As proposed, the SDS Project would deliver Fryingpan-Arkansas (Fry-Ark) Project water and non-Fry-Ark Project water from Pueblo Reservoir to the Participants for storage, treatment, and distribution to customers.

Three major federal actions by Reclamation were analyzed in the FEIS: (1) entering into excess capacity contracts with the Participants for use of Fry-Ark facilities, (2) issuance of a special use permit to connect to Fry-Ark facilities, (3) and an "administrative swap" of Fountain Valley Authority (FVA) water associated with SDS Project deliveries. Reclamation is responsible for managing Fry-Ark facilities, and is the lead agency for the purposes of compliance with the National Environmental Policy Act of 1969 (NEPA). The U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, U.S. Bureau of Land Management, and the U.S. Fish and Wildlife Service are cooperating agencies.

The Fry-Ark Project is an existing water supply project in Colorado, owned by the United States, operated by Reclamation, and authorized in 1962 to serve both agricultural and municipal entities. The Fry-Ark Project

transfers, stores, and delivers water from both the Western and Eastern Slopes of the Rocky Mountains to water users in the Arkansas River Basin.

The primary federal action analyzed in the FEIS involves Reclamation entering into up-to-40-year contracts with the Project Participants for use of the Eastern Slope System of the Fry-Ark Project in Colorado. The contracts would be for use of existing storage capacity in Pueblo Reservoir when this space is not filled with Fry-Ark Project water or water stored under the Winter Water Storage

Major Federal Actions Approved in this ROD

1. Excess Capacity Contracts for Water Storage, Conveyance, and Exchange
2. Special Use Permit
3. Fountain Valley Authority Administrative "Swap"

Program, conveyance of water through facilities associated with Pueblo Reservoir, and for exchange of water between Pueblo Reservoir and Reclamation reservoirs in the upper Arkansas River Basin including Twin Lakes and Turquoise Lake. The use of

Fry-Ark facilities by entities other than Reclamation for water storage or conveyance requires a contract with Reclamation.

Pueblo West would participate in the proposed SDS Project infrastructure only if Reclamation selects an alternative that includes diverting water from facilities associated with Pueblo Reservoir. Pueblo West would construct its new water intake and pump station at its approved location on the Arkansas River downstream of Pueblo Dam if Reclamation selects an alternative that does not divert water from facilities associated with Pueblo Reservoir. Pueblo West has also requested excess capacity storage in Pueblo Reservoir in all Action Alternatives (SDS Project alternatives that require one or more of the major federal actions analyzed in the FEIS).

The second federal action analyzed in the FEIS is issuance of a special use permit or other agreement from Reclamation to connect the

SDS Project pipeline to Reclamation facilities. Pueblo West would continue to maintain its existing conveyance contract with Reclamation to use the joint use manifold from Pueblo Reservoir.

The third federal action analyzed in the FEIS is the approval of an administrative trade ("swap") of an equal amount of capacity in the Fountain Valley Authority (FVA) pipeline for capacity in the SDS Project untreated water pipeline and water treatment plant. This trade would allow Fountain to use a portion of Colorado Springs' FVA capacity in trade for Colorado Springs' use of an equal amount of Fountain's capacity in the proposed SDS Project.

In the FEIS, Reclamation identified the Participants' Proposed Action as the Agency Preferred Alternative. This Record of Decision (ROD) describes the alternative selected for implementation and the rationale for that decision. It also describes the alternatives considered in reaching the decision, and identifies those measures that will be taken to minimize environmental harm from implementation of the selected alternative in accordance with 40 CFR § 1502.2.

The NEPA Process

The FEIS and this ROD have been prepared in accordance with the Council on Environmental Quality's (CEQ) NEPA regulations (40 CFR 1500-1508) and Department of the Interior policies. The Draft Environmental Impact Statement (DEIS) analyzing the environmental

consequences of the alternatives was released for public review on February 29, 2008. Public comments were received until June 13, 2008. Nearly 400 public comments raised a variety of topics. Comments related to water quality, dam safety, and the Western Slope, as

well as changes to the alternatives prompted Reclamation to release a Supplemental Information Report after publication of the DEIS. The Supplemental Information Report was released for public review from October 3, 2008 through November 24, 2008. A total of 40 public comments were received on the Supplemental Information Report. An

FEIS, which addressed public comment on both the DEIS and the SIR, was filed with the Environmental Protection Agency (EPA) (filing number FES 08-63) on December 12, 2008 and noticed by the EPA and Reclamation in the *Federal Register* on December 19, 2008. The decision documented in this ROD is based on the FEIS and public comment received on the FEIS.

In addition to NEPA, the Participants will need to obtain several permits or approvals from federal, state, and local agencies before implementing the SDS Project. Major permitting elements and consultation requirements for the alternatives may include but are not limited to:

- A Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers
- A Clean Water Act Section 401 certification and a Colorado Discharge permit from the Colorado Department of Public Health and Environment

Firm yield is the highest water demand that can be continuously fulfilled based on historical hydrologic conditions. The firm yield is the water demand fulfilled just prior to the level that produces system shortages.

SMAPD is the average annual increase in demand met for a project (such as SDS) at a specified annual demand level. For the purposes of this FEIS, SMAPD is always evaluated at a demand level equal to the 2046 demand from the Participants' Planning Demand Forecast.

- A National Historic Preservation Act Section 106 review from the Advisory Council on Historic Preservation
- A Section 7 consultation by the Fish and Wildlife Service
- A 1041 land use change permit from Pueblo or Chaffee county
- Land use approval from El Paso and/or Fremont county
- Special use permit or similar authorization from Fort Carson and/or Bureau of Land Management
- A Coordination Act Report pursuant to the Fish and Wildlife Coordination Act of 1958

Alternatives Considered in Detail

The alternatives considered in detail are briefly summarized as follows (see Table 1).

No Action Alternative (Alternative 1)

NEPA requires No Action to be considered in an EIS and represents the most likely future in the absence of a major federal action by Reclamation. It serves as a benchmark against which effects of the other alternatives are compared.

This alternative would not incorporate regional sharing of facilities. Each Project Participant would meet projected demands by independently developing other water supplies that would not require long-term contracts with Reclamation. Colorado Springs, Fountain, and

Security would expand ground water use. Colorado Springs would use Denver Basin ground water, Fountain would expand its Fountain Creek alluvial well field, and Security would acquire additional water rights in the Widefield Aquifer. No Action would not require a major federal action by Reclamation; therefore, the Participants would not use excess capacity storage contracts. Colorado Springs would construct a new untreated water intake from the Arkansas River at the Colorado 115 crossing near Florence. Due to requirements in existing water rights decrees, exchanges would be made from Fountain Creek to the upper Arkansas River Basin. Exchanges would be primarily diverted by the existing Ark-Otero untreated water intake near Buena Vista, which would be upgraded as part of the alternative. The Highway 115 untreated water intake would be supplied through releases from upper Arkansas River Basin storage reservoirs. An extension pipeline would be constructed from the existing FVA pipeline permitting both the SDS Project and

FVA water to be delivered to the proposed Jimmy Camp Creek Reservoir through the new untreated water pipeline. From the reservoir, water would be treated and distributed to customers. A portion of Colorado Springs' reusable return flows would be stored in the proposed Williams Creek Reservoir prior to

exchange down Fountain Creek. Pueblo West would meet projected future water demand by implementing the 18-mgd (million gallons per day) intake on the Arkansas River near Pueblo Reservoir, which was previously approved by Reclamation in 2003.

The seven alternatives are:

- No Action Alternative (Alternative 1)
- Participants' Proposed Action (Alternative 2)
- Wetland Alternative (Alternative 3)
- Arkansas River Alternative (Alternative 4)
- Fountain Creek Alternative (Alternative 5)
- Downstream Intake Alternative (Alternative 6)
- Highway 115 Alternative (Alternative 7)

Alternatives 2 through 7 are referred to as the "Action Alternatives"

Table 1. Summary of Alternatives Components.

Alternative		Regulating Storage	Untreated Water Intake	Untreated Water Alignment	Terminal Storage and Water Treatment Plant†	Return Flow Storage and Conveyance
Alternative 1: No Action	Colorado Springs	None	Arkansas River at Lester & Attebery Ditch, FVA supply, Denver Basin Ground Water, and Ark-Otero Improvements	Ground Water Collection System Colorado 115 Alignment FVA Extension Pipeline	Jimmy Camp Creek Reservoir, Conventional Water Treatment Plant	Williams Creek Reservoir, Chilcotte Ditch In and Williams Creek Return Flow Conveyance Pipeline Out
	Fountain	None	Fountain Creek Alluvial Well field Expansion	Ground water Collection System Expansion	No Storage, Expansion of Existing (planned) Water Treatment Plant	None
	Security	None	Widfield Aquifer Wells (agricultural to municipal transfer)	Existing	Existing (disinfection only)	None
	Pueblo West	None	Arkansas River Downstream of Pueblo Reservoir	Pipeline to Existing River Pump Station	Existing	None
Alternative 2: Participants' Proposed Action		Pueblo Reservoir	Joint Use Manifold and/or Pueblo Dam North Outlet Works	Western Alignment, Including Conveyance to Pueblo West	Upper Williams Creek Reservoir, Conventional Water Treatment Plant	Williams Creek Reservoir, Chilcotte Ditch In and Williams Creek Return Flow Conveyance Pipeline Out
Alternative 3: Wetland Alternative		Pueblo Reservoir	Joint Use Manifold and/or Pueblo Dam North Outlet Works	Western Alignment, Including Conveyance to Pueblo West	Upper Williams Creek Reservoir, Conventional Water Treatment Plant	No Reservoir, Return Flow Pipeline to Arkansas River Near Highway 115
Alternative 4: Arkansas River Alternative		Pueblo Reservoir	Arkansas River Upstream of Fountain Creek	Eastern Alignment, excluding Conveyance to Pueblo West	Jimmy Camp Creek Reservoir, Conventional Water Treatment Plant	No Reservoir, Return Flow Pipeline to Arkansas River Near Highway 115
Alternative 5: Fountain Creek Alternative		Pueblo Reservoir	Joint Use Manifold and/or Pueblo Dam North Outlet Works	Western Alignment, Including Conveyance to Pueblo West	Jimmy Camp Creek Reservoir, Conventional Water Treatment Plant	Williams Creek Reservoir, Chilcotte Ditch and Pipeline In and Return Flow Pipeline to the confluence of Fountain Creek and the Arkansas River Out
Alternative 6: Downstream Intake Alternative		Pueblo Reservoir	Arkansas River Downstream of Fountain Creek	Eastern Alignment, Excluding Conveyance to Pueblo West	Jimmy Camp Creek Reservoir, Conventional and Advanced‡ Water Treatment Plant	Williams Creek Reservoir, Chilcotte Ditch In and Williams Creek Return Flow Conveyance Pipeline Out
Alternative 7: Highway 115 Alternative		Pueblo Reservoir	Arkansas River at Lester & Attebery Ditch, FVA Supply, and Ark-Otero Improvements	Colorado 115 Alignment, Excluding Conveyance to Pueblo West FVA Extension Pipeline	Jimmy Camp Creek Reservoir, Conventional Water Treatment Plant	Williams Creek Reservoir, Chilcotte Ditch In and Williams Creek Return Flow Conveyance Pipeline Out

† Treated water alignments are not included in this table and would be constructed as proposed by the Participants.

‡ Advanced treatment in this alternative includes a reverse osmosis process.

Participants' Proposed Action (Alternative 2)

The Participants' Proposed Action is the Participants' proposal to construct and operate the SDS Project. Untreated water would be stored in Pueblo Reservoir and diverted from Pueblo Dam. This water would be conveyed through a new pipeline and pump stations to the proposed Upper Williams Creek Reservoir, treated, and distributed to the Participants' customers. A portion of Colorado Springs' reusable return flows would be stored in the proposed Williams Creek Reservoir prior to exchange down Fountain Creek. Regulating storage in Pueblo Reservoir would be through one or more long-term excess capacity storage contracts with Reclamation. These contracts would allow the Participants to store non Fry-Ark Project water in existing Fry-Ark storage space when excess space is available. Water stored in this excess space would be subject to spill from the reservoir according to existing spill priorities. All Action Alternatives include one or more long-term excess capacity contracts.

Wetland Alternative (Alternative 3)

The Wetland Alternative would address scoping issues about minimizing wetland impacts. The Wetland Alternative would disturb the least amount of wetlands by using the terminal storage reservoir site with the fewest wetlands and eliminating the need for the return flow reservoir by using a return flow pipeline. Untreated water would be stored in Pueblo Reservoir and diverted from Pueblo Dam. This water would be conveyed through a new pipeline and pump stations to the proposed Upper Williams Creek Reservoir, treated, and distributed to the Participants' customers. Colorado Springs' reusable return flows would be piped from its existing wastewater treatment plants to the Arkansas

River near Colorado 115. By conveying Colorado Springs' reusable return flows to a location upstream of Pueblo Reservoir, this alternative avoids the need for a new return flow reservoir such as the proposed Williams Creek Reservoir.

Arkansas River Alternative (Alternative 4)

The Arkansas River Alternative would address scoping issues about maximizing low flows in the Arkansas River through the City of Pueblo, minimizing water quality effects on the lower Arkansas River, and minimizing the total surface acres disturbed. Stream flow in the Arkansas River through Pueblo would be maximized by diverting water from the Arkansas River downstream of Pueblo, and returning treated return flows to the Arkansas River upstream of Pueblo. Untreated water would be stored in Pueblo Reservoir, released to the Arkansas River from the dam, and diverted from the Arkansas River upstream of Fountain Creek. This water would be conveyed through a new pipeline and pump stations to the proposed Jimmy Camp Creek Reservoir, treated, and distributed to the Participants' customers. Colorado Springs' reusable return flows would be piped from its existing wastewater treatment plants to the Arkansas River near Colorado 115. Pueblo West would not participate in SDS Project infrastructure if this alternative were chosen.

Fountain Creek Alternative (Alternative 5)

The Fountain Creek Alternative is designed to address significant issues concerning potential effects of return flows on Fountain Creek erosion, sedimentation, and water quality. Untreated water would be stored in Pueblo Reservoir and diverted from Pueblo Dam. This water would be conveyed to the proposed

Jimmy Camp Creek Reservoir, treated, and distributed to the Participants' customers. Colorado Springs' reusable return flows would be stored in the proposed Williams Creek Reservoir. Water delivered to the Arkansas River for exchanges would be conveyed in a new pipeline to the mouth of Fountain Creek, instead of in Fountain Creek.

Downstream Intake Alternative (Alternative 6)

The Downstream Intake Alternative addresses public interest in an alternative that uses an untreated water intake downstream of Fountain Creek. Untreated water would be stored in Pueblo Reservoir, released from the dam, and then diverted from the Arkansas River downstream of Fountain Creek. This water would be conveyed through a new pipeline and pump stations to the proposed Jimmy Camp Creek Reservoir, treated, and distributed to the Participants' customers. The water treatment plant would include advanced treatment and would require partial (50 percent) reverse osmosis to provide acceptable water quality to the Participants' customers. Colorado Springs' reusable return flows would be stored in the proposed Williams Creek Reservoir prior to exchange down Fountain Creek. Pueblo West would not participate in SDS Project infrastructure if this alternative were chosen.

Highway 115 Alternative (Alternative 7)

The Highway 115 Alternative would address public and Participant interest in an alternative that uses the Colorado 115 corridor for water conveyance and includes an excess capacity storage contract. As with the No Action Alternative, a new untreated water intake from the Arkansas River would be constructed at the Colorado 115 crossing near Florence. Colorado Springs' reusable return flows would be stored in the proposed Williams Creek

Reservoir prior to exchange releases down Fountain Creek. Exchanges would be made from Fountain Creek and Pueblo Reservoir to the upper Arkansas River Basin, and would be primarily diverted by the Ark-Otero untreated water intake. Excess exchanges would be stored in the upper Arkansas River Basin storage facilities or in Pueblo Reservoir regulating storage. The Highway 115 untreated water intake would be supplied by releases from upper Arkansas River Basin storage. An extension pipeline would be constructed from the existing Fountain Valley Authority pipeline, and would help increase system flexibility for Colorado Springs by permitting FVA water to be delivered to Jimmy Camp Creek Reservoir through the new untreated water pipeline. Pueblo West would not participate in SDS Project infrastructure if this alternative were chosen.

The Decision

Based on the analyses contained in the FEIS including the information summarized in Table 24 (Summary of direct and indirect effects) in the FEIS, public comments received on the DEIS and Supplemental Information Report, and consideration of comments received on the FEIS, the Great Plains Regional Director has decided to select the Participants' Proposed Action for implementation.

This decision allows the following Federal actions to be approved by Reclamation to implement construction and operation of the Participants' Proposed Action:

- Execution of up-to-40-year contracts between Reclamation and the Project Participants for use of the Eastern Slope System of the Fry-Ark Project in Colorado for storage, conveyance and exchange

- Issuance of a special use permit or other agreement from Reclamation to the Participants allowing connection of the SDS Project pipeline to Reclamation facilities
- Approval of an administrative trade ("swap") between Colorado Springs and Fountain of an equal amount of capacity in the FVA pipeline for capacity in the SDS Project untreated water pipeline and water treatment plant

Approval of these Federal actions by Reclamation will allow the Project Participants to proceed with construction and operation of the selected alternative in a manner that is consistent with those actions as described and evaluated in the FEIS.

Basis for Selection of the Agency Preferred Alternative for Implementation

The FEIS describes the environmental effects of the alternatives analyzed in detail. This ROD selects the Agency Preferred Alternative for implementation. That decision is based on how well the alternatives addressed the significant issues identified during scoping, the environmental effects of the alternatives, and other technical factors, including economic and engineering considerations.

The environmental and technical evaluations performed as part of the FEIS indicate that all six of the Action Alternatives considered in detail are reasonable. Reclamation compared all of the alternatives in terms of how well they addressed the ten public scoping issues and other relevant environmental and non-environmental issues identified by Reclamation during the FEIS process, including energy use and estimated costs. Based upon these considerations, Reclamation

identified the Participants' Proposed Action as the Agency Preferred Alternative in the FEIS.

All alternatives would have adverse environmental effects. The Participants' Proposed Action would result in similar or fewer environmental effects when compared to the other alternatives. Additionally, this alternative would have the lowest total project cost and lowest energy use requirements, resulting in the lowest greenhouse gas emissions, of any Action Alternative. All of the Action Alternatives were developed to address specific environmental issues or meet public interest objectives. However, the other alternatives would have adverse environmental effects on other resources, would have a higher total cost, and would require at least as much or substantially more energy than the Participants' Proposed Action. There would be no impacts to Indian trust assets (ITA) and no unresolved ITA issues.

Environmentally Preferred Alternative

The CEQ regulations require the ROD to identify one or more environmentally preferred alternative. The environmentally preferred alternative is the alternative(s) that causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources. Because it will cause the least damage to the biological and physical environment, Reclamation has determined that the Participants' Proposed Action is the environmentally preferred alternative.

Summary of Comments on the FEIS

Two letters containing comments on the FEIS were received during the 30-day waiting period. Comments were considered substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document
- Question, with reasonable basis, the adequacy of the environmental analysis
- Present reasonable alternatives other than those presented in the EIS
- Cause changes or revisions in the alternatives
- Provide new or additional information relevant to the analysis

The first comment letter was from Mr. Dave Miller, President of the Natural Energy Resources Company. His comments are briefly summarized with Reclamation's responses as follows:

1. Mr. Miller was concerned that transmountain diversion alternatives that would convey water from the Gunnison River Basin and Aspinall Unit reservoirs to the Arkansas River or South Platte River basins, including the proposed Central Colorado Project, were not considered in the FEIS. He suggested two options for delivering the Gunnison River transmountain water to Colorado Springs and provided a citation to additional information on the internet. Both options included construction of an up-to-1.2 million acre-foot reservoir in the Gunnison River Basin and a 42-mile-long pipeline from the Gunnison River Basin to the South Platte River Basin. Pipelines to other river basins as well as power generation facilities were also included. The first option included construction of a new pipeline originating in the upper South Platte River Basin and traversing South Park, Colorado to Colorado Springs. The second option was construction of a new diversion upstream of Cheeseman Reservoir in the South Platte River Basin and a pipeline to the divide between the

South Platte and Arkansas River basins near Monument, Colorado. In the second option water would presumably be conveyed in the South Platte River toward Cheeseman Reservoir, diverted, and then delivered to Colorado Springs by conveying it in Monument Creek.

Reclamation did consider potential alternatives involving a transmountain diversion from the Gunnison River Basin, including the proposed Central Colorado Project, in its alternatives analysis and the FEIS (please refer to page 92 of the FEIS and comment responses 2300 and 3181 in Appendix B of the FEIS). These alternatives were dismissed from detailed evaluation due to substantial logistical, technical, or environmental deficiencies, less favorable environmental characteristics, and purpose and need criteria, with cost issues also identified (refer to page 87 of Reclamation's 2006 Alternatives Analysis for additional details).

2. Mr. Miller suggested that Reclamation did not consider and respond its prior comments, which included descriptions of benefits of the proposed Central Colorado Project.

Reclamation reviewed all comments on the DEIS and Supplemental Information Report, including those submitted by the commenter, and provided a response to each substantive comment (please refer to FEIS Appendix B and C). The commenter's previous comments contained eight substantive issues (refer to FEIS Appendix B, page B-241), all of which were addressed in the FEIS.

3. Mr. Miller requested investigations of alleged state and federal policy violations and oversights that lead to the seven

alternatives that were retained for detailed evaluation in the EIS.

Reclamation prepared the EIS and supporting documents in compliance with applicable laws, regulations, and policies (refer to comment responses 3020, 5000, and 5200 in FEIS Appendix B and 5000 in FEIS Appendix C).

4. Mr. Miller suggested that the process for determining the scope of the SDS Project (presumably meaning the range of alternatives) used by Colorado Springs prior to and during preparation of the EIS was fatally flawed and should have been challenged by Reclamation.

Reclamation was not directly involved in alternatives evaluations that Colorado Springs performed prior to Reclamation's preparation of the EIS. During preparation of the EIS, Reclamation used the purpose and need for the proposed SDS Project and an array of logistical, technical, and environmental screening criteria to define a full range of reasonable alternatives for detailed evaluation in the EIS (refer to Reclamation's 2006 Alternatives Analysis report, Section 2.3 of the FEIS, and responses to comments 31-1, 1002, 1010, 1011, 1012, 2001, and 2003 in FEIS Appendix B).

5. Mr. Miller suggested that the FEIS did not include a long-term analysis of carbon footprint and pumping costs for the life of the project.

Estimated carbon emissions at 2046 water demand (highest emission scenario) were provided in Section 3.24.5 of the FEIS. Operational costs associated with pumping requirements of each alternative were considered in Reclamation's alternatives screening process (refer to Chapter 2 of the FEIS and comment response 2001 in FEIS

Appendix B) and in the alternatives effects analyses (refer to Sections 3.15 and 3.16 of the FEIS and comment response 2011 in FEIS Appendix B). Operational costs, including pumping, for all seven alternatives were evaluated for the 40-year life of the contracts requested by the Project Participants.

6. Mr. Miller suggested that stabilization of Pueblo Dam and enlargement of Pueblo Reservoir should be included in the cost of the SDS Project alternatives.

Pueblo Dam (or Pueblo Reservoir) is identified as an existing facility in the FEIS and Action Alternatives for the SDS Project would use only existing storage space in the existing conservation pool of this facility. Moreover, Reclamation's facilities must be operated and maintained safely, in order to protect our nation's security, economy, and environment. Reclamation ensures safety through inspections for safety deficiencies, analyses that use current technologies and designs, and corrective actions if needed based on current engineering practices. Costs to fund Reclamation's Dam Safety Program are provided by appropriations from Congress, and are not directly passed onto Project Participants (refer to comment responses 2011 and 3326 in FEIS Appendix B).

None of the SDS Project alternatives include enlargement of Pueblo Reservoir as a project component. Enlargement of Pueblo Reservoir is not needed to fulfill the project's purpose or needs (refer to comment response 2004 in FEIS Appendix B).

7. Mr. Miller requested a stay of the SDS Record of Decision pending analysis of the

alternatives and completion of the policy investigations described above.

Reclamation considered this request and determined that the alternatives suggested by the commenter were given appropriate consideration in the FEIS and supporting documents and that the suggested investigations are not warranted. Consequently, a stay of the Record of Decision is not necessary.

The second comments letter was received from the Environmental Protection Agency (EPA)-Region 8 and is summarized as follows:

The EPA commented that in general the FEIS was largely responsive to the issues it raised in its comments on the DEIS and SIR. EPA believes SDS is more environmentally protective as a result and commends Reclamation for addressing EPA's comments and concerns. EPA commends Reclamation for conducting additional water quality analysis for the FEIS and working to resolve differences on a range of other issues. EPA is very pleased to see that the "Modified Proposed Action" is the Agency-Preferred Alternative. EPA believes the FEIS is largely responsive to the issues it raised in its comments on the DEIS and SIR.

EPA expressed two areas of continuing concern. First, it has some remaining concerns about the project's impact on water quality; however, EPA is pleased with the addition of Section 5.0 in the FEIS Environmental Commitments. EPA supports implementation of water quality monitoring when construction begins to allow three years of baseline data to be collected before SDS becomes operational. EPA believes the water quality monitoring program is appropriate and will help ensure that any potential problems that SDS causes would be addressed in an effective and timely manner.

Second, EPA remains concerned about indirect impacts from induced growth on increased flows to Fountain Creek resulting from SDS have not been sufficiently addressed in the FEIS. EPA believes there should be a commitment that stormwater Best Management Practices be implemented for future growth in Colorado Springs.

Reclamation's view is that growth is not a direct or indirect effect of the proposed SDS Project, and effects associated with growth are disclosed within the cumulative effects Section of the FEIS. As disclosed in the FEIS, there will be minor increases in peak flows and floodplains for Fountain Creek. Average simulated stream flows on Fountain Creek at Pueblo change from 249 cubic feet per second (cfs) for the No Action Alternative to 253 cfs with the Participants Proposed Action. That is an increase of 4 cfs, and represents an increase of 2%. As a result, no commitments are proposed in the ROD to mitigate the effects on peak flows or floodplains on Fountain Creek.

The City of Colorado Springs Stormwater Enterprise is described as a reasonably foreseeable action on page 125 of the DEIS. As part of their stormwater discharge permit, the City of Colorado Springs is responsible for constructing capital stormwater projects and regulating stormwater infrastructure on private property necessary for managing water quantity and quality. These activities will occur no matter what alternative is constructed for the SDS project, and are not considered as mitigation for SDS.

Public comments on the FEIS were considered but did not result in changes to the proposed action or in the selection of the Preferred Alternative.

Environmental Commitments

This section summarizes the environmental commitments that will be incorporated into the selected alternative. These commitments will be fully incorporated into all final design and project implementation activities. Reclamation will ensure that these measures are implemented through terms and conditions of any long-term contract between Reclamation and the Participants. Such contracts will, at a minimum, include a requirement for the Project Participants to submit to Reclamation an annual compliance report that certifies progress in successfully implementing these commitments in a timely manner as prescribed in this ROD and any contracts. All practicable means to avoid or minimize environmental harm from the selected alternative have been considered and adopted. The environmental commitments and mitigation measures in this section of the ROD are intended to avoid and/or minimize any environmental harm.

The Participants must obtain other significant Federal, State and local permits, approvals, and agreements for the SDS Project. These permits, approvals, and agreements may include, as examples, a Section 404 permit under the Clean Water Act, a 1041 permit from Pueblo County, and consultation with the Colorado Division of Wildlife (CDOW) and the Colorado Water Conservation Board. These permits, approvals, and agreements may trigger other environmental compliance requirements by Federal agencies which would also include significant environmental commitments (mitigation) to be undertaken by Participants as part of the SDS Project.

Comprehensive monitoring of the implementation of Participants' environmental commitments for the SDS Project will be coordinated between Reclamation, the Project Participants, and the authorities responsible for

these additional, separate permits, approvals, and agreements. This monitoring and coordination is intended to avoid redundant, inconsistent, or ineffective environmental commitments for the SDS Project. Reclamation will participate fully in this process of coordinating environmental commitments. A detailed and specific list of environmental commitments and plan for their implementation will emerge from this coordination process.

The timing of this process is important. Coordination of implementation of the environmental commitment plan will occur prior to executing any contracts for the SDS Project. Any long-term contract between Reclamation and the Participants will contain all specific environmental commitments and obligations by Participants that are determined by Reclamation to be required for the SDS Project. In the discussion below, significant environmental commitments by Participants and Reclamation are described in two forms. First, there are environmental commitments that Reclamation is responsible for implementing. Second, there are environmental commitments that will be required by Reclamation that the project Participants are responsible for implementing and that will be conducted during the broader coordination process with other permitting and approving authorities.

Reclamation's Commitments

The following mitigation measures will be implemented:

- If Reclamation receives credible information that operations under the contract are causing a violation of the Arkansas River Compact, Reclamation will immediately initiate discussions among the parties, including the party alleging the Compact violation, to

develop a solution and remedy the violation.

- Reclamation will complete its coordination with the U.S. Fish and Wildlife Service under the Fish and Wildlife Coordination Act (FWCA) prior to implementation of the selected alternative. The U.S. Fish and Wildlife Service was a cooperating agency with Reclamation during preparation of the Final EIS and was consulted throughout the NEPA process for the SDS Project. A draft FWCA Report is on-file with Reclamation. Fish and wildlife conservation measures recommended in the final FWCA Report will be considered by Reclamation and those found to be appropriate will be implemented by Reclamation and/or the Project Sponsors through construction requirements, contract provisions, and terms and conditions of any long-term water-related contract between Reclamation and the Participants.

Participants' Commitments

General Commitments

The following mitigation measures will be implemented:

- Comply with all applicable permits, regulations, and laws including but not limited to CDPHE, USCOE 404, and local land use permits obtained for the SDS project.
- Construct and operate the SDS Project in a manner that does not differ substantially from that evaluated in this FEIS, except under emergency conditions, and unless additional and appropriate environmental investigations are completed by

Reclamation and approval is then given to Participants to alter construction or operation of the SDS Project

- Develop and implement a head pressure monitoring program on the Joint Use Manifold to isolate effects attributable to the SDS Project and to mitigate those effects if they were to occur. This program will be developed over a 3-year period from the date that water is first delivered from the Joint Use Manifold for the SDS Project. Development of the monitoring program will include involvement of all other Joint Use Manifold users. This commitment will not be necessary if the intake for SDS is at the North River Outlet Works, and the Joint Use Manifold is not used for SDS.
- Develop an integrated adaptive management program for the project that will be coordinated with the Participants' existing monitoring programs and the Environmental Management System discussed in Appendix F of the FEIS. The integrated adaptive management program will be finalized prior to executing any contracts for the SDS Project.

Surface Water

The following mitigation measures will be implemented:

- Comply with the Upper Arkansas Voluntary Flow Management Program except during emergency conditions as defined in Section 2.b. of the Memorandum Of Understanding for Settlement of Case No. 04CW129, Water Division 2 (Chaffee County Recreational In-Channel Diversion)

- Comply with the Pueblo Flow Management Program pursuant to existing intergovernmental agreements. If Reclamation and the Participants receive credible information that project operations are impairing physical diversion of a senior water right, contrary to Colorado water law, the Participants will immediately initiate discussions among the parties, including the party alleging the impairment and Reclamation, to develop a solution and remedy the impairment in compliance with Colorado water law.
- Participants will consult with Reclamation each year on the average annual flow in Fountain Creek. If the average annual stream flow of Fountain Creek as measured at Pueblo (USGS gauge station number 071056500) exceeds the scope and range of the flow estimated and analyzed in the Final Environmental Impact Statement (see Table 33 of the FEIS), then Participants will coordinate with Reclamation, within their adaptive management plan, to evaluate the cause(s) for the change in flows and determine whether appropriate response actions, such as monitoring and/or mitigation measures, are warranted. Each year, Participants will report to Reclamation the average annual flow in Fountain Creek at Pueblo together with other relevant data.

Surface water mitigation measures will resolve adverse effects to physical diversions of senior water rights.

Water Quality

The following mitigation measures will be implemented:

- Include water quality monitoring and adaptive management within the integrated adaptive management program (see Participants' General Commitments)
- Begin implementing water quality monitoring when construction of the project begins. This will allow about three years of baseline data to be collected before project operations begin.
- Submit water quality monitoring data, including trend analyses, for the preceding calendar year to Reclamation by January 31st of the subsequent year.
- If the Colorado Department of Public Health and Environment (CDPHE) determines that operation of the SDS Project is causing significant adverse water quality effects, the Participants will coordinate with Reclamation, CDPHE, and other interested parties to evaluate and select measures to mitigate adverse effects.
- In the event that operation of the SDS Project causes, or threatens to cause, stream flows in the Arkansas River or other waterways to diminish to low levels that will contribute significantly to elevated concentrations/densities of dissolved selenium, *E. coli*, or sulfate, the Participants will coordinate with Reclamation, CDPHE, CDOW, and other interested parties to evaluate and select measures to mitigate adverse effects.

Development and implementation of a water quality monitoring and adaptive management plan will provide a means of detecting changes

in water quality, judging whether they are likely caused by operation of the SDS Project, and addressing actual effects in a systematic manner. Additionally, implementation of the geomorphology mitigation measures (below) will reduce suspended sediment and total recoverable iron concentrations in Fountain Creek and the lower Arkansas River.

Geomorphology

The following mitigation measures will be implemented:

- Prepare a geomorphic mitigation plan and secure Reclamation approval prior to executing any contracts for the SDS Project. This plan could include, but is not limited to:
 - Evaluate and consider strategies to remove sediments that reduce the effectiveness of Corps levees located near Fountain Creek at its confluence with the Arkansas River
 - Evaluate and consider strategies to increase the sinuosity of Fountain Creek at appropriate locations in order to reduce undesirable erosion and sedimentation
 - Evaluate and consider strategies at appropriate locations along Fountain Creek to reduce undesirable erosion and sedimentation
 - Select geomorphic mitigation measures for SDS Project effects that are, to the extent practicable, consistent with priority projects identified in the Corps of Engineers' Fountain Creek Watershed Study and the Fountain Creek Corridor Master Plan. Locations where geomorphic mitigation projects
- could occur include, but are not limited to:
 - Fountain Creek at the Clear Spring Ranch site, directly upstream and downstream of the confluence of Little Fountain Creek and Fountain Creek (approximately 4 miles)
 - Fountain Creek from upstream of Fountain Boulevard to upstream of Colorado 85/87 at the Sand Creek confluence (approximately 3 miles)
- Complete pre-project geomorphic mitigation, including channel stabilization projects and non-structural options such as conservation easements, before the project is operational. Channel stabilization could include, but is not limited to, increasing stream sinuosity, flattening of steep side slopes, installation of grade control structures, and use of buried riprap, erosion blankets, and/or vegetative cover for channel stabilization in areas of high and/or erosive velocities.
- Design and construct an energy dissipation structure that will protect against erosion at the outlet of the pipeline from Williams Creek Reservoir to Fountain Creek
- Evaluate and implement appropriate future geomorphic stabilization projects, if such future projects are determined to be necessary after the project is operational.

When implemented, these recommendations will mitigate potential adverse effects on geomorphology by avoiding or minimizing effects of return flow discharges through an energy dissipation structure, compensating for anticipated effects, and responding to effects identified after project operations begin.

Aquatic Life

The following mitigation measures will be implemented:

- Submit a proposed wildlife mitigation plan to the Colorado Wildlife Commission (Wildlife Commission) pursuant to C.R.S. § 37-60-122.2. This proposal will include actions the Participants propose to mitigate impacts that the SDS Project may have on fish and wildlife. As required by that statute, the Wildlife Commission will evaluate the probable impact of the project on fish and wildlife and, if the Participants and Wildlife Commission cannot agree upon reasonable mitigation, the Wildlife Commission will make recommendations to the Colorado Water Conservation Board (CWCB) regarding what it believes to be reasonable mitigation actions. If the Participants and the Wildlife Commission agree on a mitigation plan, the Wildlife Commission will submit that agreement to the CWCB, which must adopt the agreement as the state's official position. If the Participants and the Wildlife Commission do not reach agreement on a mitigation plan, the CWCB will consider the plan submitted by the Participants and the recommendations of the Wildlife Commission and either affirm the recommendations of the Wildlife Commission, which then becomes the State's official position, or submit its own recommendations to the Governor, who will ultimately determine the state's official position on the proposed wildlife mitigation plan.
- In the event that operation of the SDS Project causes, or threatens to cause, stream flows in Fountain Creek or the Arkansas River to diminish to low levels that could contribute significantly to impairment of aquatic life, coordinate with Reclamation, CDPHE, CDOW and other interested parties to evaluate and select measures to mitigate adverse effects
- Evaluate and consider participation in CDOW fish hatchery programs
- Monitor the effects of the operation of the SDS Project upon aquatic life in Fountain Creek and the Arkansas River between Pueblo Dam and the Las Animas Gage. Aquatic sampling will be conducted once per year at up to 10 locations. Monitoring methods and locations will be identified in the proposed wildlife mitigation plan that will be submitted to the Colorado Wildlife Commission pursuant to C.R.S. § 37-60-122.2. Use the information from this monitoring in the adaptive management program for the SDS Project.

When implemented, these recommendations will mitigate potential adverse effects on aquatic life by avoiding or minimizing effects, compensating for anticipated effects, and detecting and responding to effects identified after project operations begin.

Wetlands, Waters, and Riparian Vegetation

The following mitigation measures will be implemented:

- Design final alignments and facilities to avoid and minimize wetland impacts
- Assess alternative construction methods for pipeline crossings (i.e., directional drilling v. open cut) to minimize wetland and stream impacts

- Mitigate impacts to jurisdictional and non-jurisdictional wetlands in areas of temporary, short-term effects such as pipeline crossings, on-site at the place of disturbance with similar wetlands and soils to replace existing wetland functions and values
- Mitigate all unavoidable, permanent impacts to jurisdictional and non-jurisdictional wetlands with compensatory wetlands that replace existing wetland functions and values. Compensatory wetland mitigation will likely occur at the Clear Spring Ranch site on Fountain Creek downstream of the city of Fountain.
- Control tamarisk that may establish around newly constructed reservoirs
- Evaluate and consider a strategy to increase the sinuosity of Fountain Creek at appropriate locations in order to create wetlands areas
- Evaluate and consider the construction and maintenance of new areas of wetlands along Fountain Creek in order to participate in wetlands banking programs. Evaluate and consider cooperation with Colorado agencies to expand such a wetlands creation process

Mitigation plans for jurisdictional and non-jurisdictional wetlands will be submitted for approval by the Corps of Engineers and Reclamation, respectively. All design and planning measures for wetlands, waters, and riparian vegetation will be completed before any contracts for the SDS Project.

By reviewing the location of wetlands during final design, effects on wetlands can be avoided and minimized. Specifically, the pipeline construction corridors through wetlands will be reduced to the minimum

width practicable. Similarly, construction methods that do not involve trenching through a wetland will avoid impacts. Wetlands mitigated in place and off-site will replace affected wetlands on a 1:1 ratio and will provide similar functions and values. The 404 permitting process is ongoing and the final off-site mitigation ration for jurisdictional wetlands for the 404 permit has not yet been determined.

Vegetation

The following mitigation measures will be implemented:

- Prior to final design, review locations of Needle and Threadgrass -- Blue Grama Grasslands, high quality shrublands and woodlands, and other areas with desirable vegetation to determine design changes within the current study area that will avoid and minimize impacts
- Replace mature trees (diameter at breast height of 12 inches or greater) within construction areas at a 1:1 ratio with the same or similar native species with available nursery container stock or pole plantings as soon as practicable after construction activities have ended
- For 1 year after construction, monitor the construction areas to determine if appropriate native vegetation is establishing. If native vegetation is not establishing, the site will be reseeded with appropriate species
- In the appropriate season prior to construction, survey potential construction areas with known populations of dwarf milkweed and other plant species of concern, to locate areas where impacts can be avoided and minimized to the extent practicable

with design changes within the current study area. After identifying populations to avoid, mark populations within or nearby the construction easement as environmentally sensitive so that workers avoid inadvertent impacts.

- During construction, wash major construction equipment before it enters the site so that noxious weeds are not spread from other construction sites
- Use certified weed-free mulch after seeding construction areas
- Reseed construction areas with comparable native vegetation as soon as practicable after disturbance, using seed that does not contain any noxious weed seed
- Monitor construction areas for 3 years after construction to assess if noxious weeds have invaded the site. If noxious weeds are present, weed control plans will be formulated and completed.
- Because the project may indirectly increase the spread of tamarisk, the Participants will work with the Colorado Department of Agriculture's Colorado Noxious Weed Management Team on tamarisk issues in the Arkansas Valley including submitting a request for partnership evaluation.

Impacts to plant species and communities of concern and other sensitive vegetation areas can be avoided and minimized during final design and implementation. Because mitigation measures such as transplanting of individuals are often unsuccessful, avoidance and minimization will ensure survival, especially of plant species of concern. Seeding disturbed areas, replacing mature trees, and controlling noxious weeds will replace existing

vegetation types and structural diversity and will ensure that high quality habitat remained.

Wildlife

The following mitigation measures will be implemented:

- Submit a proposed wildlife mitigation plan to the Colorado Wildlife Commission pursuant to C.R.S. § 37-60-122.2 as described above.
- Promptly revegetate all disturbed areas with native species that provide species diversity and food and cover for large game and wildlife habitat
- Conduct clearance surveys in suitable habitat for state-listed species following standard protocols, as available, prior to construction (e.g., CDOW undated)
- Conduct raptor nest surveys prior to construction and impose seasonal restrictions to surface activity within recommended buffers (generally ¼ to ½ mile) around active raptor nest sites and heron rookeries during construction
- Consult with CDOW and U.S. Fish and Wildlife Services' Migratory Permit Bird Office to develop mitigation for unavoidable loss of raptor nests. Options may include constructing artificial nests in suitable habitat or enhancing prey habitat
- Develop construction schedules to avoid impacts to nesting migratory birds. If construction is scheduled to occur during the nesting season (April 1 through August 31) in areas where migratory birds may nest, a qualified biologist will conduct a nesting bird survey prior to the commencement of construction activities to determine the presence of migratory birds and their nests. If an active nest is detected, a

buffer zone between the nest and the limit of construction will be flagged and avoided during the nesting season, or construction will be scheduled outside of the nesting season.

- Conduct pre-construction surveys for swift fox den sites within appropriate habitat along the pipeline corridor and proposed reservoir sites. Avoid surface disturbance within ¼ mile of active den sites while young are den-dependent (March 15 - June 15)
- Restrict pesticides for rodent control within swift fox overall range
- Mitigate impacts to state-listed amphibian species by avoiding, minimizing, and mitigating wetland effects as described above
- Impose seasonal restrictions on construction to avoid sensitive large game winter habitat (from first large snowfall to summer green-up)
- Install wildlife crossovers (trench plugs) during pipeline construction with ramps on each side at a maximum of ¼ mile intervals and at well-defined game trails
- Create additional nesting habitat or nest boxes in nearby trees for the Lewis' woodpecker when nest trees are destroyed.

By replacing vegetation including structural diversity, the long-term effects on wildlife will be reduced by allowing wildlife to return to disturbed areas. Pre-construction surveys will identify wildlife use at the time of construction and allow for planning for avoidance and minimization. Imposing seasonal and/or daily restrictions on construction will enable wildlife to use important habitat, especially during breeding and other critical periods. Wildlife crossovers installed within the pipeline trench

will facilitate wildlife passage and provide escape routes for wildlife trapped within the trench, thereby reducing mortality.

Recreation

The following mitigation measures will be implemented:

- During short-term construction activities that require trail closures of developed recreational trails, designate a safe and reasonable detour around the project site. Post signs directing trail users.
- Work with the local municipality to establish alternate trails with consistent width, surfacing, and signage
- Within developed parks with temporary effects, commit to full reclamation of the impact area by replacing turf, irrigation systems, and other facilities that could be affected. Provide follow-up monitoring and maintenance for 1 year to ensure that reclamation efforts are successful.
- In developed park areas with permanent, above ground SDS Project facilities, reconfigure park facilities that will be directly affected and visually screen SDS Project facilities from other park uses with vegetation, berming, or attractive fencing
- Seek opportunities to enhance angling, boating, or other recreation opportunities at Lake Henry, Lake Meredith, and Holbrook Reservoir so that they are less vulnerable to water level fluctuations. Work with the CDOW to identify priority projects and include them in a proposed wildlife mitigation plan to the Colorado Wildlife Commission pursuant to C.R.S. § 37-60-122.2 as above.

The proposed mitigation measures will reduce the impact of project facility construction on trail users. They will also reduce the short- and long-term impacts of project facilities on park infrastructure, vegetation, aesthetics, and recreation experiences. Collaboration with the CDOW to enhance fishing and boating opportunities may result in such improvements to recreation at Lake Henry, Lake Meredith, and Holbrook Reservoir.

Socioeconomics and Land Use

The following mitigation measures will be implemented:

- Acquire properties and easements through voluntary, willing participant agreements to the maximum extent practicable
- Develop a construction management plan to outline best management practices to minimize impacts to surrounding properties and submit plan to Reclamation for approval prior to construction.

Adverse short-term effects on landowners with parcels that will contain SDS features will be offset through mutually agreed upon compensation. The land use mitigation measures will minimize disturbances to properties near the project during construction or minimize land use changes and conflicts.

Cultural Resources

The following mitigation measures will be implemented:

- Comply with the requirements of the Programmatic Agreement between Reclamation, the ACHP, Colorado Springs, and the Colorado SHPO (Appendix I of the FEIS)

Development of the project alternatives will result in impacts to non-renewable historic properties. As a result, it will be necessary to implement a mitigation plan in an effort to resolve any adverse effects. Mitigation may be accomplished through avoidance, implementation of protective measures, or data recovery. If avoidance and preservation are not possible, a data recovery plan may be used to collect and analyze significant information, thus preserving that information. Data collection as a mitigation measure should only be implemented when other means to protect or preserve historic properties have been exhausted or are not feasible. Within the data recovery plan, specific research problems concerning scientific, humanistic, and cultural concerns will be developed. Research also will focus on problems in prehistoric and historic archaeological methods and theory. Ultimately, the data collected likely will provide information regarding the cultures that have occupied the area in the past.

Indian Trust Assets

Continue consultation with Native American Tribes in accordance with the Programmatic Agreement. Under the Agreement, Reclamation and the Project Participants will coordinate with the tribes to identify and mitigate impacts to any traditional cultural properties or resources.

Noise and Vibration

The following mitigation measures will be implemented:

- Construction equipment used by contractors shall function as designed and shall conform to applicable noise emission standards
- Generally adhere to project work hour restrictions (7 a.m. to 7 p.m.) within

500 feet of residences, hospitals, schools, churches, and libraries. Work hours may need to be extended from time to time in order to expeditiously restore traffic flow or public access.

- Restrict access to construction areas so that the public could not be in close proximity to loud equipment or blasting
- House project operating equipment (e.g., pump stations) in structures designed to minimize radiated noise outside the structure, and will meet local noise ordinance requirements.

By following existing standards, restricting work hours and access to construction areas, and insulating new noise within structures, noise effects will be minimized by maintaining acceptable noise levels and limiting the number of people exposed to increased noise levels.

Visual Resources

The following mitigation measures will be implemented:

- Vegetate earthen dam faces with native herbaceous plants to match the adjacent undisturbed prairie plant communities
- Revegetate and/or landscape with plants, all disturbances associated with the construction of all facilities
- Restore as many existing grades as practicable following pipeline excavations
- Enclose pump stations and well equipment in structures matching the architectural characteristics of the surrounding structures
- Construct powerlines with non-specular (not shiny) wire, non-reflective and opaque insulators, and light-colored, non-reflective finished poles

- Reclaim construction access roads and staging areas by restoring existing grade and revegetating the area of disturbance
- Apply water with standard construction practices to control airborne fugitive dust within construction areas
- Install baffles on construction lighting fixtures to direct light onto the construction activity only in locations where safety is a concern, scenic quality will be affected, or near occupied homes and businesses.

Restoring existing grades, revegetating disturbed areas, using architectural styles consistent with the area, and designing powerlines to have low visibility will minimize the visual contrast between the surrounding areas and will reduce the visibility of disturbance or new structures from observation points. Reducing airborne fugitive dust and construction lighting will reduce the area affected during construction.

Traffic

The following mitigation measures will be implemented:

- Use trenchless construction to the extent practicable when construction features cross railroad lines, state highways, county roadways in densely populated areas, and major city roadways in densely populated areas.
- Prepare traffic control plans for approval by state and local traffic authorities and followed by contractors during construction
- Construct traffic signage, signals, acceleration, and deceleration lanes as directed by state and local traffic authorities for access to reservoir sites, treatment plants, and pump stations

- Construct improvements to existing access roads or construction of temporary alternate access roads to reservoir sites, treatment plants, and pump stations as directed by state and local traffic officials
- Modify or reconstruct bridges when the load limits are not adequate for construction of the SDS Project and other access routes are not reasonable.

When implemented, these recommendations will mitigate potential adverse effects on traffic by minimizing delays and promoting traffic safety.

Soils

The following mitigation measures will be implemented:

- Minimize the area of disturbance to defined construction limits and limit the time bare soil is exposed
- Contain soils within the construction area through temporary sediment control measures such as silt fences, sediment logs, trenches, and sediment traps
- Remove woody vegetation prior to topsoil salvage and, to the extent possible, salvage topsoil within tree stump roots
- Use topsoil salvage methods including windrowing topsoil at the limits of construction and pulling the soil back on slopes during reclamation
- Apply topsoil, soil amendments, fertilizers, and mulches as appropriate, and seed selectively during favorable plant establishment climate conditions to match site conditions and revegetation goals

- To the extent practicable, avoid irrigated lands during final design
- To the extent practicable, allow continued use of lands crossed by project facilities after construction
- Where the proposed pipeline crosses prime farmland soils, develop a soils handling plan that separates the top 6 inches and the soils between 6 and 36 inches for subsequent reclamation

Proposed mitigation measures will reduce short-term and long-term losses of soil and soil productivity. Redistribution of topsoil to soil-deficient areas will increase soil productivity in those areas. Topsoil, soil amendments, fertilizers, and mulches will increase productivity and help establish cultivated vegetation and crops. A soils handling plan for prime farmland soils will ensure high quality topsoil is preserved and distributed properly.

Air Quality

The following mitigation measures will be implemented:

- Develop and implement standard control practices, such as watering, to minimize particulate and dust emissions from construction work sites as specified in the fugitive dust control plan
- Ensure construction equipment (especially diesel equipment) meets opacity standards for operating emissions
- Promptly revegetate disturbed areas

The proposed mitigation measures will reduce both short-term and long-term effects on air quality by following standards on construction equipment and minimizing fugitive dust.

Hazardous Materials

The following mitigation measures will be implemented:

- Remove solid waste and properly dispose of at a permitted solid waste disposal facility prior to construction of project facilities at the site
- Inspect the ground surface beneath the solid waste for evidence of hazardous material or petroleum product spills such as soil staining and unusual odors or colors
- If evidence of a spill or spills is noted, delineate the extent of the spill by laboratory analysis and excavate any contaminated soils and properly dispose of at a permitted waste disposal facility
- If soil and/or ground water contamination is encountered during construction of project facilities, implement mitigation procedures to minimize the risk to construction workers and to the future operation of the project.

The proposed mitigation measures will identify areas of potential contamination from hazardous materials and will remediate the soil and ground water if any contamination was identified.

connect to Fry-Ark facilities, and; (3) approve an "administrative swap" of FVA water associated with SDS Project deliveries.

Implementation

The decision to implement the Federal actions needed by Reclamation for the selected alternative will be effective immediately upon approval of this Record of Decision. Reclamation staff will proceed with all activities needed to commence negotiations with the Project Participants to: (1) enter into excess capacity contracts for use of Fry-Ark facilities: (2) issue a special use permit to

OFFICE OF THE CITY ATTORNEY



CITY OF COLORADO SPRINGS

April 25, 2011

Michael J. Ryan
Regional Director
Great Plains Region
Bureau of Reclamation
P.O. box 36900
Billings, MT 59107

Dear Mr. Ryan:

I am City Attorney/Chief Legal Officer for the City of Colorado Springs and all its enterprises, including its Colorado Springs Utilities ("Colorado Springs"). Paragraph 19 of the final draft Contract Between the United States of America and the City of Colorado Springs for the Use of Excess Capacity in the Facilities of the Fryingpan-Arkansas Project ("Contract") requires that Colorado Springs provide evidence that it is a legally constituted entity and the Contract is lawful, valid, and binding on Colorado Springs. Pursuant to the Contract, I have been asked to render my opinion as to whether Colorado Springs is a legally constituted entity and whether the Contract is lawful, valid, and binding on Colorado Springs.

In order to render this opinion I have examined the following:

A. Colorado Constitution Art. XX, which sets forth the requirements for incorporation of a home rule city and the powers granted to home rule cities.

B. Sections 1-10, 1-20 and 6-30 of the Charter of the City of Colorado Springs ("City Charter"), which establish the formation of Colorado Springs and the powers assumed by Colorado Springs relating to the operation of public utilities and works and the execution of related contracts.

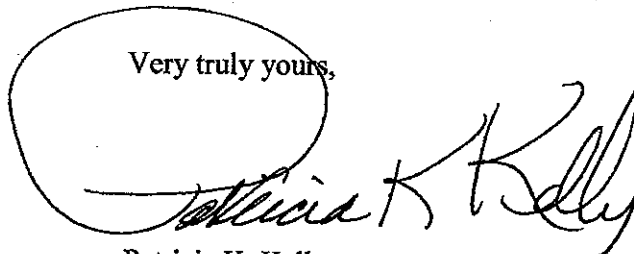
C. Article X, § 20 of the Colorado Constitution and City Charter § 7-90, each of which define government owned businesses as "enterprises."

D. Sections 12.1.103 and 12.1.104 of the City Code of the City of Colorado Springs 2001, as amended ("City Code") which govern the operations of Colorado Springs Utilities as an enterprise of the City of Colorado Springs.

Based on my review of the foregoing, it is my opinion that:

1. Colorado Springs is a home rule municipal corporation organized by charter pursuant to Colo. Const. Art. XX, § 6, having the authority "to construct, condemn and purchase, purchase, acquire, lease, add to, maintain, conduct, and operate waterworks, light plants, power plants, transportation systems, heating plants, and any other public utilities or works . . ." City Charter § 1-20(d). The City has the authority to enter into a valid and binding contract with the United States for the lease of excess capacity in the facilities of the Fryingpan-Arkansas Project.
2. in addition, C.R.S. § 37-45.1-101 *et seq.*, provides that Colorado Springs has the power and authority to operate Colorado Springs Utilities as an enterprise.
3. Colorado Springs Utilities has been duly organized by the City of Colorado Springs and is a validly formed and existing "enterprise" within the meaning of Colo. Const. Art. X, § 20(2)(d) and City Charter § 7-90(b)(5). The City Council of Colorado Springs serves as the governing board of directors of Colorado Springs Utilities in accord with City Charter § 6-40(a). Thus, Colorado Springs Utilities is a legally constituted enterprise of the City.
4. Because the Contract will be executed directly by the City of Colorado Springs, the authority of Colorado Springs Utilities to enter into the Contract with the United States is irrelevant. Colorado Springs Utilities has the authority to execute business contracts in its own name and all such contracts are deemed to be executed by the City of Colorado Springs on behalf of its Utilities enterprise and are legally enforceable against the City of Colorado Springs through its Utilities enterprise. City Code § 12.1.108.

Very truly yours,

A handwritten signature in cursive script, reading "Patricia K. Kelly". The signature is written in dark ink and is positioned below the "Very truly yours," text. A large, faint circular mark is visible behind the signature.

Patricia K. Kelly
City Attorney/Chief Legal Officer

cc: John Fredell

Exhibit E
Contract No.11XX6C0002
Description of Water Rights Analyzed in the EIS

Decree No.	Name	Description	Entities	Amounts	Type	Approximate Geographic Extent (e)
Primary Sources of Supply						
1. Div. 2, 84CW203	Colorado Springs Arkansas River Exchange (Sewered Phase)	Exchange of Colorado Springs Sewered Reusable Return Flows within the Arkansas River Basin	Colorado Springs	164 [1,000 (a)] cfs	Exchange of Transmountain or Consumptive Use water	From Colorado Springs on Fountain Ck to the Arkansas River and points upstream of Pueblo Reservoir including Otero Pump Station Intake, Twin Lakes, and Turquoise Reservoirs, South Slope System, Clear Creek Reservoir, and the Rosemont System
2. Div. 2, 84CW202, 84CW203, 86CW118 (B), and 89CW036	Colorado Springs Arkansas River Exchange (Non- Sewered Phase)	Exchange of Colorado Springs Non-Sewered Reusable Return Flows within the Arkansas River Basin and Groundwater Augmentation Plan	Colorado Springs	17[1,000 (a)] cfs	Exchange of Transmountain or Consumptive Use water	From Colorado Springs on Fountain Ck to the Arkansas River and points upstream of Pueblo Reservoir including Otero Pump Station Intake, Twin Lakes, and Turquoise Reservoirs
3. Div. 2, 84CW62, 63, & 64	Colorado Canal Companies (Colorado Canal, Lake Henry, Lake Meredith) Change of Water Rights and Consumptive Use Exchange	Exchange of Colorado Springs and Pueblo West Pro Rata Ownership of Transferred Colorado Canal Companies' Shares	Colorado Springs, Pueblo West, Fountain	Constrained by available exchange potential and release rate from Lake Meredith or 756 cfs.	Change and Exchange of Consumptive Use water	From Lake Meredith Outlet near Rocky Ford to points upstream of Pueblo Reservoir including Twin Lakes, and Turquoise Reservoirs.

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Decree No.	Name	Description	Entities	Amounts	Type	Approximate Geographic Extent (e)
4. Div. 2, 86CW118 (A)	Colorado Canal Companies (Colorado Canal, Lake Henry, Lake Meredith) Reusable Return Flow Exchange-Sewered Phase	Exchange of Colorado Springs and Pueblo West Reusable Return Flows from Transferred Colorado Canal Companies' Share	Colorado Springs, Fountain, Pueblo West	164 [1,000 (a)] cfs	Change and Exchange of Consumptive Use water	From Fountain Creek (From Storage in Terminal Storage Reservoir) including Pueblo Reservoir, Otero Pump Station Intake, Twin Lakes, and Turquoise Reservoirs
5. Civil Action No. 4613 and W-829-76	Fryingpan-Arkansas Project Decrees	Decrees for Fryingpan-Arkansas Project Water	Colorado Springs, Fountain, & Security	According to Allocation Principles. Purchased Fry-Ark Return Flows may be exchanged under Fry-Ark Decrees or under No. 1 and No. 2 above	Trans-mountain imports from the Fryingpan R. to the upper Arkansas R. Basin and native east slope waters	Headwaters of the Fryingpan and Arkansas R. to Project storage including Pueblo, Twin Lakes, and Turquoise Reservoirs.
6. W-4396 and W-4559	City of Fountain - Plan for Augmentation including Exchange and Change of Water Rights (Augmentation Plan I)	Change and exchange of Fountain's interests in several surface water rights in Fountain Ck. to wells as alternate points of diversion or augmentation of depletions caused by these wells.	Fountain	221 Fountain Mutual shares; 0.55 cfs of Stubbs & Miller; partial interest in first 5 cfs of Womack Ditch	Fountain Ck. native waters	Fountain Ck. at or near the City of Fountain

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Contract No. 11XX6C0002

Description of Water Rights Analyzed in the EIS

Decree No.	Name	Description	Entities	Amounts	Type	Approximate Geographic Extent (e)
7. Div. 2, 85CW110	City of Fountain – Plan for Augmentation including Exchange and Change of Water Rights (Augmentation Plan II)	Change and exchange of Fountain's interests in Fountain Mutual Irrigation Company and Fry-Ark Return Flows in Fountain Ck. to wells as alternate points of diversion or augmentation of depletions caused by these wells	Fountain	137 additional Fountain Mutual shares	Fountain Ck. native waters and reusable Fry-Ark return flows	Fountain Ck. at or near the City of Fountain
8. Div. 2, 01CW108	City of Fountain – Plan for Augmentation including Exchange and Change of Water Rights	Change and exchange of Fountain's interests in Fountain Mutual Irrigation Company and Fry-Ark Return Flows in Fountain Ck. to Pueblo Reservoir when not being used for 6 & 7 above	Fountain	358 Fountain Mutual shares studied in the EIS	Fountain Ck. native waters and reusable Fry-Ark return flows	Fountain Ck. at or near the City of Fountain and Arkansas River between the mouth of Fountain Ck. and Pueblo Reservoir
9. Div. 2, 01CW146	City of Fountain – Plan for Augmentation including Exchange and Change of Water Rights	Change and exchange of Fountain's interests in Fountain Mutual Irrigation Company and Fry-Ark Return Flows in Fountain Ck. to Pueblo Reservoir when not being used for 6 & 7 above	Fountain	Additional Fountain Mutual - a total of 515 shares were studied by MWH in the EIS	Fountain Ck. native waters and reusable Fry-Ark return flows	Fountain Ck. at or near the City of Fountain and Arkansas River between the mouth of Fountain Ck. and Pueblo Reservoir

Exhibit E
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Decree No.	Name	Description	Entities	Amounts	Type	Approximate Geographic Extent (e)
10. 1936 Decree No. 284, W-1901, & Div. 5, 84CW162	Independence Pass Transmountain Diversion System (Twin Lakes Reservoir and Canal Company) Decrees	Decrees for Pueblo West Shares in the Twin Lakes Reservoir and Canal Company	Pueblo West	6,332 (f) acre-ft	Trans-mountain imports from the Roaring Fork R. to the upper Arkansas R. Basin	Headwaters of the Roaring Fork and Arkansas R. to east slope storage including Pueblo, Twin Lakes, and Turquoise Reservoirs
11. Div. 2, 81CW0056	Wheel Ranch Ditch	Diversion of Consumptive use portion of Wheel Ranch Ditch water right	Pueblo West	1.5 cfs	Change and Alternate Point-of-Diversion of Consumptive Use water	Arkansas R. immediately upstream of Pueblo Reservoir and Pueblo Reservoir
12. Div. 2, 85CW134(b)	PWMD - Plan For Reuse and Exchange	Reuse and Exchange of Reusable Non-Sewered Return Flow	Pueblo West	(g)	Reusable Sewered Return Flow	Arkansas River from Pueblo Reservoir to Wildhorse Creek
Secondary Sources of Supply						
13. 1936 Decree No. 284, W-1901, & Div. 5, 84CW162	Independence Pass Transmountain Diversion System (Twin Lakes Reservoir and Canal Company) Decrees	Decrees for Colorado Springs Shares in the Twin Lakes Reservoir and Canal Company	Colorado Springs	11,283 & 18,475 (b) acre-ft	Trans-mountain imports from the Roaring Fork R. to the upper Arkansas R. Basin	Headwaters of the Roaring Fork and Arkansas R. to east slope storage including Pueblo, Twin Lakes, and Turquoise Reservoir, Northslope and Rampart Reservoirs
14. Supreme Court Case No. 18855, Civil Action No. 1193	Homestake Project Decrees	Decrees for Homestake Project Water Delivered through Turquoise Reservoir	Colorado Springs	700/ 126,844 (c) cfs/acre-ft	Trans-mountain imports from the Eagle R. to the upper Arkansas R. Basin	Headwaters of the Eagle R. and Homestake Ck. to east slope storage including Pueblo, Twin Lakes, Turquoise Reservoir, Northslope and Rampart Reservoirs

Exhibit E
Contract No.11XX6C0002
Description of Water Rights Analyzed in the EIS

Decree No.	Name	Description	Entities	Amounts	Type	Approximate Geographic Extent (e)
15. Div. 2, 86CW117	CF&I Water Rights	Transfer Case for Use of Purchased CF&I Water Rights in the Arkansas R. and Turquoise Reservoir including Colorado Gulch Placer	Colorado Springs	17,372 (d) acre-ft	Changed Native Arkansas Water Rights	Headwaters of the Arkansas R. and Turquoise Reservoir to other east slope storage including Pueblo, Twin Lakes, Northslope and Rampart Reservoirs

- (a) Maximum Rate of Exchange from Fountain Ck. Terminal Storage into Pueblo Reservoir or other decreed storage locations
(b) Twin Lakes Reservoir Storage Decrees
(c) Decreed Homestake Tunnel Flow Limitation and Homestake Reservoir Storage Decree
(d) CF&I Sugarloaf Reservoir Storage Decree
(e) Upon completion of the SDS Jimmy Camp Ck. Reservoir will become an additional terminal storage location
(f) Pueblo West share of Twin Lakes Reservoir storage decrees at time of SDS EIS
(g) Amount equal to the reusable portion of effluent from PWMMD's wastewater treatment facility.

Notes:

- (1) Legal limitations of use are described in the terms and conditions of the respective decrees and administered according to the priority system by the Div. 2 Engineer. The rights have been decreed by original intent or through change of water rights proceedings for the municipal purposes including residential, commercial, industrial, and irrigation uses within the respective party's service areas.
(2) Table originally compiled by Brett Gracely at Colorado Springs Utilities. Modified by MWH and WRC to include Pueblo West water sources. Modified by Gary Thompson to correct errors related to City of Fountain. Modified by MWH (9/14/2010) to correct water sources for Pueblo West and Fountain.